START

Title: FEDERAL REGISTER.

Volume: 64 Issues: 244-250
PAGES:71267-73880

Date: DECEMBER 21 - DECEMBER 30, 1999

UMI Number: 2575.00

Notes: REEL: 11 OF 11
INCLUDES:
OCTOBER -DECEMBER LSA (LIST OF CFR SECTIONS AFFECTED)

UMI®

Bell & Howell Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–21–99
Vol. 64 No. 244

federal register

Tuesday
December 21, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
64
ISS
2
4
4
DE
21
999
UMI

12–2
Vol.
Page

12–21–99
Vol. 64 No. 244
Pages 71267–71632

federal register

Tuesday
December 21, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect; documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche — **202–512–1800**
Assistance with public subscriptions — **512–1806**
General online information — **202–512–1530; 1–888–293–6498**
Single copies/back copies:
Paper or fiche — **512–1800**
Assistance with public single copies — **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche — **523–5243**
Assistance with Federal agency subscriptions — **523–5243**

Contents

Federal Register

Vol. 64, No. 244

Tuesday, December 21, 1999

Agency for Health Care Policy and Research
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71460–71461

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Federal Crop Insurance Corporation
See Forest Service
See Rural Housing Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Mexican fruit fly, 71267–71270
PROPOSED RULES
Plant-related quarantine, domestic:
Pine shoot beetle, 71322–71323

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71409–71410 , 71410–71411

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71409

Comptroller of the Currency
RULES
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazards areas, 71272–71275
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71547–71549

Defense Department
RULES
Freedom of Information Act; implementation:
National Reconnaissance Office, 71297–71299
National Security Agency/Central Security Service, 71299–71304

Education Department
PROPOSED RULES
Postsecondary eduction:
Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Program, 71551–71565
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71442–71443
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Career Ladder Program, 71567–71589

Employment and Training Administration
PROPOSED RULES
Birth and adoption unemployment compensation
Correction, 71346–71347
NOTICES
Adjustment assistance:
Camp-Hill Corp., 71501
Energizer Power Systems, 71501–71502
Fashions Apparel, Inc., 71502
Jockey International, 71502
Levingston Engineers, Inc., 71502
Levi Strauss & Co., 71505–71506
Moltech Power Systems, 71502
Philips Lighting Co., 71502–71503
Reef Gear Manufacturing, Inc., 71503
Russell Corp., 71503
Williams Advanced Materials, Inc., 71503
Agency information collection activities:
Proposed collection; comment request, 71503–71505
NAFTA transitional adjustment assistance:
Georgia-Pacific Corp., 71505
Wabash Technologies, 71506
Westinghouse Electric Co., 71506–71507

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Nevada Test Site, NV, 71443–71444
Oak Ridge Reservation, TN, 71444
Rocky Flats, CO, 71444

Energy Information Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71445–71446

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 71304–71317
PROPOSED RULES
Confidential business information; elimination of special treatment for certain category, 71366–71367
Pesticide programs:
Pesticide container and containment standards, 71368–71369
Water supply:
National primary drinking water regulations—
Radon-222; maximum contaminant level goal; public health protection, 71367–71368
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71451–71452

Air pollution control:
Citizens suits; proposed settlements—
Natural Resources Defense Council et al., 71453–71454
Pesticide registration, cancellation, etc.:
Cry9C BT corn plant; allergenicity assessment, 71452–71453
Reports and guidance documents; availability, etc.:
Air emissions; CERCLA federally permitted release definition, 71613–71620
Superfund; response and remedial actions, proposed settlements, etc.:
Crews Plating Site, TX, 71454

Executive Office of the President
See Science and Technology Policy Office
See Presidential Documents

Farm Credit Administration
RULES
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazards areas, 71272–71275

Farm Service Agency
NOTICES
Meetings:
National Drought Policy Commission, 71401

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 71278–71280, 71282–71283
Pratt & Whitney, 71280–71282
PROPOSED RULES
Airworthiness directives:
Airbus, 71333–71336
Boeing, 71336–71339
NOTICES
Advisory circulars; availability, etc.:
Transport category rotorcraft—
Garlick Helicopters, Inc.; Model GH205A helicopters; type certification basis, 71543–71546
Meetings:
Air Traffic Procedures Advisory Committee, 71542
Passenger facility charges; applications, etc.:
Chicago Midway Airport, IL, 71542–71543
Yakima Air Terminal-McAllister Field, WA, 71543

Federal Communications Commission
PROPOSED RULES
Radio services, special:
Fixed microwave services—
Local multipoint distribution service, 71373–71377
Maritime services—
Los Angeles and Long Beach, CA; 156.250 MHz frequency availability for port operations, 71369–71373
NOTICES
Radio services, special:
Maritime services—
Los Angeles and Long Beach, CA; 156.250 MHz frequency availability for port operations, 71456–71457

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Potato crop; certified seed endorsement, 71270–71271
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71401–71406

Federal Deposit Insurance Corporation
RULES
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazards areas, 71272–71275
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71547–71549

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Various States, 71317–71320
NOTICES
Disaster and emergency areas:
Massachusetts, 71457

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Virginia Power & Electric Co. et al., 71446–71448
Environmental statements; availability, etc.:
Alabama Power Co., 71448–71449
Cocheco Falls Associates, 71449
Georgia Power Co., 71449
Hydroelectric applications, 71449–71450
Preliminary permits surrender:
Allison Lake Hydro, 71446
Applications, hearings, determinations, etc.:
Jones Black River Services, Inc., 71446
Pacific Gas & Electric Co., 71446
Wisconsin Electric Power Co. et al., 71450

Federal Highway Administration
RULES
Right-of-way and environment:
Right-of-way program administration, 71284–71297
PROPOSED RULES
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—
Regulatory signs, low volume rural roads, and traffic control for highway-rail grade crossings, 71358–71366
Retroreflective sign and pavement marking materials; color specifications, 71354–71358
NOTICES
Meetings:
Intelligent Transportation Society of America, 71546–71547

Federal Housing Finance Board
RULES
Federal home loan bank system:
Corporate governance responsibilities devolution, 71275–71278

Federal Reserve System
RULES
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazards areas, 71272–71275

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71547–71549
Banks and bank holding companies:
Formations, acquisitions, and mergers, 71457

Federal Trade Commission
RULES
Organization, functions, and authority delegations:
Regional Offices; miscellaneous rules, 71283–71284
NOTICES
Committees; establishment, renewal, termination, etc.:
Online Access and Security Advisory Committee, 71457–71459

Food and Drug Administration
PROPOSED RULES
Medical devices:
Premarket notification; substantially equivalent premarket notification; redacted version requirement, 71347–71354
NOTICES
Food additive petitions:
Food Safety and Inspection Service, Agriculture Department, 71461
Reports and guidance documents; availability, etc.:
Drugs of abuse testing; over-the-counter sample collection systems labeling, 71461–71462

Forest Service
NOTICES
Environmental statements; notice of intent:
Medicine Bow-Routt National Forests, CO, 71406
Tahoe National Forest, CA, 71406–71407

General Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Small Business Competitiveness Demonstration Program, 71459–71460

Health and Human Services Department
See Agency for Health Care Policy and Research
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
RULES
Health resources development:
Organ procurement and transportation network; operation and performance goals
Effective date stay

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department

Immigration and Naturalization Service
PROPOSED RULES
Immigration:
Illegal Immigration Reform and Immigrant Responsibility Act of 1996; nonimmigrant foreign students and other exchange program participants—
F, J, and M classifications; fee collection authorization, 71323–71331

Inspector General Office, Health and Human Services Department
RULES
Health care programs; fraud and abuse:
Health Insurance Portability and Accountability Act—
Medicare and State health care programs; anti-kickback statute for shared risk arrangements; statutory exception; correction, 71317

Interior Department
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service
See Reclamation Bureau
See Special Trustee for American Indians Office

International Trade Administration
NOTICES
Antidumping:
Professional electric cutting tools from—
Japan, 71411–71423
Welded ASTM A-312 stainless steel pipe from—
Korea, 71423–71424

International Trade Commission
NOTICES
Import investigations:
Carbon steel products from—
Various countries, 71494–71495
CD-ROM controllers and products containing same, 71495
Circular seamless stainless steel hollow products from—
Japan, 71495–71496
Stainless steel plate from—
Sweden, 71496–71497
Tin- and chromium-coated steel sheet from—
Japan, 71497
Trade and investment in services database, 71497–71498

Justice Department
See Immigration and Naturalization Service
See National Institute of Corrections
NOTICES
Pollution control; consent judgments:
Atkemix Thirty-Seven, Inc., et al., 71498
Cumberland Farms, Inc., 71498–71499
Exxon Corp. et al., 71499
Privacy Act:
Systems of records, 71499–71500

Labor Department
See Employment and Training Administration
See Labor-Management Standards Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71500–71501

Labor-Management Standards Office
RULES
Labor-management standards:
Labor organization annual financial reports; technical amendments, 71621–71624

Land Management Bureau
NOTICES
Public land orders:
Montana, 71467
Utah, 71467–71468

Merit Systems Protection Board
RULES
Privacy Act; implementation
Correction, 71267

National Aeronautics and Space Administration
PROPOSED RULES
Meritorious claims resulting from conduct of NASA functions, 71339–71341

National Archives and Records Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71507
Agency records schedules; availability, 71507–71509

National Credit Union Administration
RULES
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazards areas, 71272–71275

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Hydraulic and electric brake systems—
Heavy vehicle antilock brake system (ABS); performance requirement, 71377–71388

National Indian Gaming Commission
NOTICES
Indian Gaming Regulatory Act:
Fee rates, 71509

National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Newly appointed wardens; development of training curriculum for delivery of executive training, 71500

National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
PubMed Central National Advisory Committee, 71462
Meetings:
National Center for Research Resources, 71462–71463
National Institute of Dental and Craniofacial Research, 71464
National Institute of Diabetes and Digestive and Kidney Diseases, 71463–71464
National Institute of General Medical Sciences, 71464
National Institute on Aging, 71463
National Institute on Drug Abuse, 71463
National Library of Medicine, 71465
Scientific Review Center, 71465–71467

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, 71320–71321
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 71390–71395
Pollock, 71396–71400
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 71388–71390
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71424–71425
Meetings:
New England Fishery Management Council, 71425–71426
Pacific Fishery Management Council, 71426–71427

National Park Service
NOTICES
Environmental statements; availability, etc.:
Gettysburg National Military Park, PA, 71483–71492
Reports and guidance documents; availability, etc.:
Simplified standard concession contracts, 71468–71483

Nuclear Regulatory Commission
PROPOSED RULES
Radioactive material packaging and transportation:
Nuclear waste shipment; advance notification to Native American Tribes, 71331–71333
NOTICES
Environmental statements; availability, etc.:
Carolina Power & Light Co., 71514–71516
Duke Power Co., 71516–71517
Meetings:
Reactor Safeguards Advisory Committee et al., 71517
Regulatory guides; issuance, availability, and withdrawal, 71517–71518
Applications, hearings, determinations, etc.:
DeLeo, Alfonso, Jr., 71509–71511
Entergy Operations, Inc., 71511–71514
General Electric Co., 71517

Patent and Trademark Office
NOTICES
Patents:
Patent application examination—
Revised utility examination guidelines; comment request, 71440–71442
Written description requirement; guidelines; comment request, 71427–71440

Presidential Documents
PROCLAMATIONS
Special observances:
Battle of the Bulge, Fifty-fifth anniversary (Proc. 7261), 71627–71630
Wright Brothers Day (Proc. 7262), 71631–71632

Public Health Service
See Agency for Health Care Policy and Research
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71492–71493

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for off-farm housing, 71609–71611

Section 515 Rural Rental Housing Program, 71604–71607
Section 533 Housing Preservation Program, 71607–71609
Section 538 Guaranteed Rural Rental Housing Program, 71601–71604

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71407–71408
Environmental statements; availability, etc.:
Alabama Electric Cooperative, 71408–71409

Science and Technology Policy Office
NOTICES
Reports and guidance documents; availability, etc.:
Government-university research partnership; statement of principles; comment request, 71454–71456

Securities and Exchange Commission
PROPOSED RULES
Public utility holding companies:
Acquisition of U.S. utilities by foreign companies; internationalization, 71341–71346
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 71518–71523
National Association of Securities Dealers, Inc., 71523–71529
New York Stock Exchange, Inc., 71529–71534

Special Trustee for American Indians Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71493–71494

State Department
NOTICES
Art objects; importation for exhibition:
Walker Evans, 71534–71535
Grants and cooperative agreements; availability, etc.:
Newly Independent States—
Secondary School Partnership Program, 71535–71538
Ron Brown Fellowship Program, 71538–71541

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Union Pacific Railroad Co., 71547

Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71547–71549

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 71541
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 71541–71542

Treasury Department
See Comptroller of the Currency
See Thrift Supervision Office
NOTICES
Meetings:
International Financial Institution Advisory Commission, 71547

Separate Parts In This Issue

Part II
Department of Education, 71551–71565

Part III
Department of Education, 71567–71589

Part IV
Department of Agriculture, Rural Housing Service, 71591–71611

Part V
Environmental Protection Agency, 71613–71620

Part VI
Department of Labor, Labor- Management Standards Office 71621–71624

Part VII
Department of Health and Human Services, 71625–71626

Part VIII
The President, 71627–71632

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7261 71629
7262 71631

5 CFR
1205 71267

7 CFR
301 71267
457 71270
Proposed Rules:
301 71322

8 CFR
Proposed Rules:
103 71323
214 71323
299 71323

10 CFR
Proposed Rules:
71 71331
73 71331

12 CFR
22 71272
208 71272
339 71272
614 71272
760 71272
932 71275
934 71275
935 71275

14 CFR
39 (3 documents) 71278, 71280, 71282
Proposed Rules:
39 (2 documents) 71333, 71336
1261 71339
1267 71339

16 CFR
0 71283

17 CFR
Proposed Rules:
250 71341

20 CFR
Proposed Rules:
604 71346

21 CFR
Proposed Rules:
807 71347

23 CFR
130 71284
480 71284
620 71284
630 71284
635 71284
645 71284
710 71284
712 71284
713 71284
Proposed Rules:
655 (2 documents) 71354, 71358

29 CFR
403 71622

32 CFR
296 71297
299 71299

34 CFR
Proposed Rules:
694 71552

40 CFR
52 71304
Proposed Rules:
2 71366
141 71367
142 71367
165 71368

42 CFR
1001 71317
121 71626

44 CFR
64 71317

47 CFR
Proposed Rules:
0 71369
80 71369
90 71369
101 71373

49 CFR
Proposed Rules:
571 71377

50 CFR
648 71320
Proposed Rules:
622 71388
679 (2 documents) 71390, 71396

Rules and Regulations

Federal Register
Vol. 64, No. 244
Tuesday, December 21, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1205

Privacy Act Regulations; Correction

AGENCY: Merit Systems Protection Board.

ACTION: Correction of Final Rule.

On September 21, 1999, final rules were published at 64 FR 51043, Privacy Act. In that document, 5 CFR 1205.12 contained two paragraphs (c). This document correctly codifies the paragraph designations in that section.

DATES: Effective date December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: FR Doc. 99–24552 published in the **Federal Register** of Tuesday, September 21, 1999, revised 5 CFR part 1204. This document corrects § 1205.12 as follows:

PART 1205—PRIVACY ACT REGULATIONS

1. The authority citation for part 1205 continues as follows:

Authority: 5 U.S.C. 552a and 1204.

2. On page 51044, in § 1205.12, the second paragraph (c) is correctly designated as paragraph (d). Corrected designated paragraph (d) reads as follows:

§ 1205.12 Time limits and determinations.

* * * * *

(d) *Determinating officials.* The Clerk of the Board, a Regional Director, or a Chief Administrative Judge will make determinations on requests.

Dated: December 13, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–33080 Filed 12–20–99; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–075–2]

Mexican Fruit Fly; Regulated Areas, Regulated Articles, and Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by adding a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the regulated area. We are also amending the regulations to provide for the use of a new alternative chemical treatment for premises and for the use of a cold treatment for citrons, litchis, longans, persimmons, and white zapotes, which are all regulated articles. These new treatment options will minimize the effect of restrictions on the interstate movement of regulated articles from regulated areas. We are also removing kumquats from the list of regulated articles. We have determined that kumquats do not pose a risk of hosting the Mexican fruit fly.

DATES: This interim rule was effective December 14, 1999. We invite you to comment on this docket. We will consider all comments that we receive by February 22, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–075–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–075–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from regulated areas.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulations that impose restrictions on the intrastate movement of regulated articles that are substantially the same

as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

In an interim rule effective September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52211–52212, Docket No. 99–075–1), we designated an area in San Bernardino and Riverside Counties, CA, as a regulated area.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that a portion of San Diego and Riverside Counties, CA, is infested with the Mexican fruit fly. Specifically, since October 12, 1999, inspectors have detected Mexican fruit flies in the Fallbrook area of San Diego and Riverside Counties, CA.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3(c) by designating an area in San Diego and Riverside Counties, CA, as a regulated area. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portion of the quarantined State of California as a regulated area. Officials of State agencies of California are conducting an intensive Mexican fruit fly eradication program in the regulated areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated areas that are substantially the same as those imposed with respect to the interstate movement of regulated articles.

The Mexican fruit fly is not known to occur in the continental United States outside of the regulated areas in California and Texas.

Treatments

Section 301.64–10 of the regulations lists treatments for regulated articles. Regulated articles treated in accordance with this section may be moved interstate from a regulated area to any destination. Section 301.64–10 contains treatments for specified fruits, treatments for soil within the dripline of plants producing specified fruits, and treatments for premises (fields, groves, or areas) that are within a quarantined area but outside the infested core area.

In accordance with § 301.64–10(c), premises that are located within the regulated area but outside the infested core area, and that produce regulated articles, must receive regular treatments with malathion bait spray. We are amending § 301.64–10(c) to include a new alternative chemical treatment for premises. The new chemical treatment is a spinosad bait spray. Without spinosad bait spray, the only treatment made available by the regulations for premises has been malathion bait spray. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

We are also amending § 301.64–10 to add provisions for cold treatment of citrons, litchis, longans, persimmons, and white zapotes. In the PPQ Treatment Manual, which is incorporated by reference into the Code of Federal Regulations (CFR), we list a cold treatment that is effective for Mexican fruit fly for several commodities. We also want to allow a cold treatment that is not listed in the PPQ Treatment Manual. Therefore, we are adding a new paragraph (f) to § 301.64–10 to state that citrons, litchis, longans, persimmons, and white zapotes may be cold treated in accordance with the PPQ Treatment Manual and in accordance with a treatment schedule described in paragraph (f).

Regulated Articles

Section 301.64–2 of the regulations lists articles that are regulated for the Mexican fruit fly. Kumquats are on the list of regulated articles because kumquats are known hosts to some species of *Anastrepha*. After reviewing scientific data, APHIS has determined that kumquats are not a host to the Mexican fruit fly. Therefore, we are removing kumquats from the list of regulated articles. This action will relieve unnecessary restrictions on the movement of kumquats from regulated areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this interim rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

This action amends the Mexican fruit fly regulations by adding a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. We are also amending the regulations to provide for the use of a new alternative chemical treatment for premises and for the use of a cold treatment for citrons, litchis, longans, persimmons, and white zapotes, which are regulated articles. This new treatment option will minimize the effect of restrictions on the interstate movement of regulated articles from regulated areas. We are also removing kumquats from the list of regulated articles. We have determined that kumquats do not pose a risk of hosting the Mexican fruit fly.

Newly Regulated Area

This rule restricts the interstate movement of regulated articles from a portion of San Diego and Riverside

Counties, CA. Within the regulated area there are approximately 2,000 growers operating on 11,400 acres (72 square miles), 38 packing houses, 50 fruit sellers, and 2 farmer's markets that may be affected by the regulations. Those entities that move regulated articles interstate will have to comply with the regulations concerning certification and treatment. There are various relatively low cost treatments available, which in most cases will allow interstate movement of regulated articles.

Spinosad Bait Spray

Currently, growers have an option to treat the premises that are within the quarantined area but outside the infested core area and that produce regulated articles with regular treatments of malathion bait spray. This rule provides for the additional treatment alternative of spinosad bait spray for these premises. Growers and nurseries in all regulated areas may be affected by this change. However, because the cost for applying spinosad bait spray is comparable to the cost for applying the currently available malathion bait spray, entities will be little affected.

Cold Treatment

This rule also adds provisions for cold treatment of persimmons, longans, litchis, citrons, and white zapotes to qualify them for interstate movement from the regulated areas. Previously, no treatment was listed in the regulations for these fruits. In the regulated area in 1998, approximately $860,000 worth of persimmons were grown on 286 acres. We do not have information on the number of growers or value of longans, litchi, citron, or white zapotes grown in the regulated area, but the numbers are likely to be very small.

Cold treatment may take place in a refrigerated container which can be leased for approximately $65 per day. Using the container for 26 days (20 days of treatment and 6 days of preparation) would cost $1,690. Assuming that there are 800 flats of persimmons in one of these refrigerated containers, the cold treatment would add $2.11 to the cost of each flat of persimmons. Cold treatment may also take place at an approved facility, which would likely be less costly. Additionally, cold storage for the preparation of persimmons for market is a common practice; therefore, the treatment may add little additional cost (measures such as closer monitoring of temperature or better sealing of the facility may be required). Cold treatment allows the fruit to be shipped interstate to markets outside the regulated area.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because if no action was taken, the Mexican fruit fly would spread to noninfested areas of the continental United States.

This interim rule contains no information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule: (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–2 [Amended]

2. In § 301.64–2, paragraph (a), the regulated article "Kumquat (*Fortunella japonica*)" is removed.

3. In § 301.64–3, paragraph (c), the entry for California is amended by adding an entry for San Diego and Riverside Counties, in alphabetical order, to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

* * * * *

San Diego and Riverside Counties. That portion of San Diego and Riverside Counties in the Fallbrook area bounded by a line drawn as follows: Beginning at the intersection of Rainbow Glen Road and Interstate Highway 15; then southwest along Interstate Highway 15 to Old Highway 395; then west and south along Old Highway 395 to Canonita Drive; then west along Canonita Drive to Tecalote Drive; then south along Tecalote Drive to Puerta Del Mundo; then northwest along Puerta Del Mundo to Peony Drive; then west along Peony Drive to Citrus Lane; then south along Citrus Lane to Citrus Drive; then south along Citrus Drive to Wilt Road; then west along Wilt Road to Laketree Drive; then southwest along Laketree Drive to Gird Road; then south along Gird Road to Knottwood Way; then west along Knottwood Way to Genista Place; then south along Genista Place to Brushwood Lane; then west and south along Brushwood Lane to Staghorn Court; then southwest along an imaginary line to the intersection of Linda Vista Drive and Via Monserate; then west along Via Monserate to Ramona Drive; then south along Ramona Drive to Hillrise Road; then west along Hillrise Road to La Canada Road; then west along La Canada Road to South Mission

Road; then southwest along an imaginary line to the east end of Shady Hill Lane; then west along Shady Hill Lane to Gateview Drive; then southwest along Gateview Drive to Olive Hill Road; then north along Olive Hill Road to Morro Hills Road; then west along Morro Hills Road to Sleeping Indian Road; then west along Sleeping Indian Road to Conejo Road; then northwest along an imaginary line to the intersection of Fallbrook Road and Vandergrift Boulevard; then west along Vandergrift Boulevard to Camp De Luz Road; then north along Camp De Luz Road to the intersection of the boundary line for the Camp Pendleton Marine Corps Base and De Luz Road; then northeast along De Luz Road to Daily Road; then northeast along Daily Road to Lynda Road; then northeast along Lynda Road to Sandia Creek Drive; then east and south along Sandia Creek Drive to Rock Mountain Drive; then east along Rock Mountain Drive to the Riverside/San Diego County line; then southeast along an imaginary line to the intersection of Stage Coach Lane and the Riverside/San Diego County line; then east along the Riverside/San Diego County line to the second unnamed road (near gate); then south along the second unnamed road (near gate) to Rainbow Glen Road; then southeast along Rainbow Glen Road to the point of beginning.

* * * * *

4. Section 301.64–10 is amended as follows:

a. Paragraph (c) is revised to read as set forth below.

b. A new paragraph (f) is added to read as set forth below.

§ 301.64–10 Treatments.

* * * * *

(c) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mexican fruit fly. Determination of the time period must be based on the day degrees model for Mexican fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

* * * * *

(f) *Citrons, litchis, longans, persimmons, and white zapotes.* Cold treatment in accordance with the PPQ Treatment Manual (for full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference") and in accordance with the following schedule:

Treatment	Exposure period
33 °F or below	18 days.
34 °F or below	20 days.
35 °F or below	22 days.

Done in Washington, DC, this 14th day of December 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33059 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Potato Crop Insurance Certified Seed Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific provisions that amend the Potato Crop Insurance Certified Seed Endorsement. The intended effect of this action is to improve the insurance coverage to better meet the needs of the insured. The changes will be effective for the 2001 and subsequent crop years.

EFFECTIVE DATE: This rule is effective January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the OMB under control number 0563–0053 through April 30, 2001. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

On Friday, July 30, 1999, FCIC published a notice of proposed rulemaking in the **Federal Register** at 64 FR 41336–41338 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.145, Potato Crop Insurance Certified Seed Endorsement, effective for the 2000 and succeeding crop years.

Following publication of the proposed rule on July 30, 1999, the public was afforded 60 days to submit written comments and opinions. No comments were submitted.

FCIC has made the following changes to the provisions contained in the proposed rule:

1. Section 8—Corrected section reference numbers in loss calculation steps. References should have been to section 8 rather than section 9.

2. Section 9—Clarified that provisions did not extend the period for which insurance was available.

The notice of proposed rulemaking indicated the amendments would be effective for the 2000 crop year. However, after publication of the proposed rule, FCIC determined there was an insufficient amount of time to implement the changes for the 2000 crop year. Therefore, the amendments will be effective for the 2001 and subsequent crop years.

List of Subjects in 7 CFR Part 457

Crop insurance, certified seed potatoes.

Final Rule

For the reasons stated in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, effective for the 2001 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p)

2. Amend § 457.145 as follows:

a. Revise the introductory text;

b. Revise sections 5, 8 and 9 of the endorsement; and

c. Add new sections 10 and 11 to the endorsement to read as follows:

§ 457.145 Potato crop insurance—certified seed endorsement.

The potato Certified Seed Endorsement provisions for the 2001 and succeeding crop years are as follows:

* * * * *

5. Your certified seed production guarantee per-acre will be the per-acre production guarantee used to cover the same acreage under the terms of the Northern Potato Crop Provisions. However, unless a written agreement provides otherwise, if the total amount of insurable certified seed acreage you have for the current crop year is greater than 125 percent of your average number of acres entered into and passing certification in the potato certified seed program in the three previous calendar years, your certified seed production guarantee for each unit will be reduced as follows:

* * * * *

8. If, due to insurable causes occurring within the insurance period, the amount of certified seed you produce is less than your certified seed production guarantee, we will settle your claim by:

(a) Multiplying the insured acreage by its respective certified seed production guarantee;

(b) Multiplying each result in section 8(a) by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(c) Totaling the results of section 8(b);

(d) Multiplying the number of hundredweight of production that qualify as certified seed and any amount of production lost due to uninsured causes, or that does not qualify as certified seed due to uninsured causes, by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(e) Subtracting the result of section 8(d) from the result of section 8(c); and

(f) Multiplying the result of section 8(e) by your share.

9. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage or production has failed certification. Nothing herein extends the insurance period beyond the time period specified in section 8 of the Northern Potato Crop Provisions and section 11 of the Basic Provisions.

10. Acreage covered under the terms of this endorsement will have the same unit structure as provided under the Basic Provisions and the Northern Potato Crop Provisions. For example, if you have two optional units (00101 and 00102) under your Northern Potato Crop Insurance Policy and you elect this endorsement, you will also have two optional units (00201 and 00202) for certified seed coverage, provided that certified seed is grown in both units 00101 and 00102. Or, if you have two basic units (00100 and 00200) under your Northern Potato Crop Insurance Policy and you elect this endorsement, you will also have two basic units (00300 and 00400) for certified seed coverage, provided that certified seed is grown in both units 00100 and 00200. In the event certified seed acreage is not grown in the same optional or basic units as acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, certified seed units will be established in accordance with the unit division provisions contained in the Basic Provisions and the Northern Potato Crop Provisions. For example, if a basic unit is divided into two optional units for potato acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, but certified seed is grown in only one of those optional units, the certified seed acreage will be insured as one basic unit.

11. Any production that does not qualify as certified seed because of varietal mixing or your failure to follow the standard practices and procedures required for certification will be considered as lost due to uninsured causes.

Signed in Washington, D.C., on December 15, 1999.

Robert J. Prchal

Deputy Administrator, Insurance Services, Federal Crop Insurance Corporation.

[FR Doc. 99–32955 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket No. 99–19]

RIN 1557–AB74

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. 10–52]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AC24

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB89

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

Loans in Areas Having Special Flood Hazards

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and National Credit Union Administration (NCUA) (collectively, the Agencies).

ACTION: Joint final rule.

SUMMARY: The Agencies jointly are making technical amendments to their regulations on loans in areas having special flood hazards. This action removes an outdated cross-reference to Federal Emergency Management Agency (FEMA) regulations that had contained the text of the Standard Flood Hazard Determination Form (Form). This action is intended to update and make accurate the Agencies' regulations regarding loans in areas having special flood hazards.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT:

OCC: Carol Workman, Compliance Specialist, Community and Consumer Policy, (202) 874–4858; Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874–5750; or Jacqueline L. Lussier, Senior Attorney, Legislative and Regulatory Activities Division, Office of Chief Counsel, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Kathleen C. Ryan, Attorney, Division of Consumer & Community Affairs (202) 452–3667; Michael O'Rourke, Counsel, Legal Division, (202) 452–3288, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Ken Baebel, Senior Review Examiner, Division of Compliance and Consumer Affairs, (202) 942–3086; Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 942–3090; or Nancy Schucker Recchia, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–8885, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FCA: Tong-Ching Chang, Policy Analyst, Office of Policy and Analysis, (703) 883–4498; or Wendy R. Laguarda, Senior Counsel, Office of General Counsel, (703) 883–4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. TDD (703) 883–4444.

NCUA: Kimberly Iverson, Program Officer, (703) 518–6375; or Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Final Rule

As required by federal law, FEMA established the Form for determining whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area, whether flood insurance is required, and whether federal flood insurance is available. 42 U.S.C. 4104b. On July 6, 1995, FEMA published a final rule that included the text of the Form at 44 CFR part 65 (Appendix A). 60 FR 35276. The Agencies published a joint final rule on the same date requiring lending institutions supervised by the Agencies (regulated lenders) to use the Form. 60 FR 35286. On August 29, 1996, the Agencies published a joint final rule that revised their respective flood insurance regulations. 61 FR 45684. This joint final rule also required regulated lenders to use the Form. The Agencies' regulations cross-referenced 44 CFR part 65 (Appendix A).

On May 21, 1998, FEMA published a final rule that removed 44 CFR part 65 (Appendix A). 63 FR 27856. FEMA removed Appendix A to enhance its ability to incorporate changes to the Form outside of the rulemaking process, while continuing to provide full notice of the availability of the Form to the public and to affected parties. *Id.*

Because FEMA removed 44 CFR part 65 (Appendix A), it is necessary for the Agencies to make conforming changes to their regulations.[1] This joint final rule removes the cross-reference in the Agencies' respective flood insurance regulations to 44 CFR part 65 (Appendix A) and replaces it with a statement that the Form is available from FEMA. The Agencies are making substantively similar technical clarifying changes to their regulations.

Regulated lenders still must use the Form for determining whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area, whether flood insurance is required, and whether federal flood insurance is available. Regulated lenders may obtain the Form from FEMA through the mail by writing to FEMA Distribution Facility, P.O. Box 2012, Jessup, MD 20794–2012; by telephone at (800) 480–2520; or from FEMA's Internet website at <http://www.fema.gov/library/sfldfrm.pdf>.

II. Notice and Comment

This joint final rule makes only technical amendments removing an outdated cross-reference to another agency's regulations and, in some instances, adding information on the Form's availability. It makes no substantive changes to the Agencies' regulations. The Agencies therefore for good cause find that notice and public comment are unnecessary under section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)).

III. Effective Date

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a federal banking agency that impose additional reporting, disclosures, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. This joint final rule is not subject to this delayed effective date requirement because it imposes no new requirements. It simply makes technical amendments. The Form is available from FEMA and regulated lenders will not need any additional time to adjust

[1] The Office of Thrift Supervision published this change separately. See 64 FR 69183, 69185 (December 10, 1999).

their policies or practices in order to comply with this joint final rule.

The Agencies also find good cause to dispense with the 30-day delayed effective date requirement under section 553(d) of the APA (5 U.S.C. 553(d)). Section 553(d) of the APA provides, subject to certain exceptions, that publication of a final rule must be made not less than 30 days before its effective date (5 U.S.C. 553(d)). A rulemaking is excepted from this requirement where an agency finds good cause for an earlier effective date and publishes such finding with rule (5 U.S.C. 553(d)(3)). As noted previously this joint final rule makes only technical amendments to remove an outdated cross-reference to another agency's regulations and, in some instances, adds information on the Form's availability. It makes no substantive changes to the Agencies' regulations. Accordingly, the Agencies find good cause to dispense with the delayed effective date requirements and to make this joint final rule effective upon publication in the **Federal Register**.

IV. Paperwork Reduction Act

The Agencies have determined that this joint final rulemaking does not contain or modify a collection of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is not necessary to publish a notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis are not applicable. Moreover, since this joint final rule imposes no new requirements and makes only technical amendments, this joint final rule will not have a significant economic impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801–808) provide generally for agencies to report final rules to Congress and the General Accounting Office (GAO) for review before the rules may take effect. The reporting requirement is triggered when a federal agency issues a final rule. The Agencies will submit the appropriate reports to Congress and the GAO as required by SBREFA.

The Office of Management and Budget has found that this joint final rule does not constitute a "major rule" as defined by SBREFA.

VII. Executive Order 12866

OCC: The OCC has determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

VIII. Unfunded Mandates Act of 1995

OCC: The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (UMA), applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which the agency published a general notice of proposed rulemaking (2 U.S.C. 1532). As noted previously, the Agencies have determined, for good cause, that notice and comment is unnecessary. Accordingly, the UMA does not require a budgetary impact analysis.

Nevertheless, the OCC has determined that its portion of this joint final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

IX. Executive Order 13132 Statement

OCC: The OCC has determined that its portion of this joint final rule does not constitute a policy that has federalism implications for purposes of Executive Order 13132.

NCUA: Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. NCUA's portion of this joint final rule will apply to all federally insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that its portion of this joint final rule does not constitute a policy that has federalism implications for purposes of the executive order.

X. Assessment of Impact of Federal Regulation on Families

The Agencies have determined that this joint final rule will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, the OCC amends part 22 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 22 continues to read as follows:

Authority: 12 U.S.C. 93a; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 22.6, paragraph (a) is revised to read as follows:

§ 22.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will

be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A bank may obtain the standard flood hazard determination form from FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

Dated: December 9, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends part 208 of chapter II of title 12 of the Code of Federal Regulations as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: (12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c) 321–338a,371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909, 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.25, paragraph (f)(1) is revised to read as follows:

§ 208.25 Loans in areas having special flood hazards.

* * * * *

(f) Required use of standard flood hazard determination form. (1) use of form. A member bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A member bank may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 10, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 339 of chapter III of title 12 of the Code of Federal Regulations as set forth below:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 339 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 339.6, paragraph (a) is revised to read as follows:

§ 339.6 Required use of standard flood hazard determination form.

(a) Use of form. A bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A non-member bank may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of December 1999.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

Farm Credit Administration

12 CFR Chapter VI

Authority and Issuance

For the reasons stated in the joint preamble, the Board amends part 614 of chapter VI of title 12 of the Code of Federal Regulations as set forth below.

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 413B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. In § 614.4940, paragraph (a) is revised to read as follows:

§ 614.4940 Required use of standard flood hazard determination form.

(a) Use of form. System institutions must use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A System institution may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

Dated: December 8, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA amends part 760 of chapter VII of title 12 of the Code of Federal Regulations as set forth below.

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 760 continues to read as follows:

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 760.6, paragraph (a) is revised to read as follows:

§ 760.6 Required use of standard flood hazard determination form.

(a) Use of form. A credit union shall use the standard flood hazard determination form developed by the Director when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used

in a printed, computerized, or electronic manner. A credit union may obtain the standard flood hazard determination form from FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

By the National Credit Union Administration Board on November 30, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–32687 Filed 12–20–99; 8:45 am]

BILLING CODE 4810–33–M; 6210–01–M; 6714–01–M; 6705–01–M; 7535–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932, 934, 935

[No. 99–62]

RIN 3069–AA89

Devolution of Corporate Governance Responsibilities

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to devolve certain corporate governance responsibilities from the Finance Board to the Federal Home Loan Banks (Banks), pursuant to the requirements of the Federal Home Loan Bank System Modernization Act of 1999.

DATES: This interim final rule shall be effective on December 21, 1999. The Finance Board will accept written comments on the interim final rule on or before January 20, 2000.

ADDRESSES: Mail comments to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, or Scott L Smith, Deputy Director, (202) 408–2991, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408–2932, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Bank System and Finance Board Roles and Responsibilities

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks. *See* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994). Specifically, the Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that primary duty, the Finance Board also is responsible for ensuring that the Banks carry out their housing finance and community lending mission, and that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* 1422a(a)(3).

Historically, the Bank Act has required the Finance Board to be involved in varying degrees in the corporate governance of the Banks, typically by requiring Finance Board approval for a host of Bank practices. However, the recently enacted Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act) [1] repealed most of those requirements, thereby removing most of the last vestiges of governance responsibilities from the Finance Board. *See* Pub. L. No. 106–102, 604(a)(6); 606(d), (f), (g) (1999). Accordingly, the Finance Board is amending its regulations to remove the corresponding Finance Board approval requirements for such corporate governance functions, consistent with the Modernization Act.

II. Analysis of Interim Final Rule

A. Part 932–Directors, Officers and Employees of the Banks

1. Amendment of Bank Directors' Meeting and Compensation and Expenses Regulations—§§ 932.16, 932.17

Section 7(i) of the Bank Act formerly permitted each Bank, with the approval of the Finance Board, to pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors. *See* 12 U.S.C. 1427(i) (1994). Section 932.17 of the Finance Board's regulations permits each Bank, within certain standards of reasonableness set forth in the regulation, to implement its own policy on director compensation and allows each Bank to pay its directors for such expenses as are payable by the Bank to its senior officers. *See* 12 CFR 932.17 (1999). Payments made in compliance with the regulation are deemed to be approved by the Finance Board, as required by section 7(i).

The Modernization Act amended section 7(i) of the Bank Act by imposing specific limits on annual compensation for the Chairperson, Vice Chairperson and other members of the Bank's board of directors. *See* Modernization Act, 606(b). These statutory limits on annual directors' compensation are implemented by revised § 932.17(c)(1) of this interim final rule. Payments made in compliance with the limits and standards are deemed to be approved by the Finance Board for purposes of section 7(i).

The Finance Board understands that the new statutory limits generally would result in most directors receiving less compensation than that currently allowed pursuant to existing § 932.17. Nevertheless, that appears to be precisely what Congress intended. Moreover, based on the Finance Board's consultations with Congress, it is clear that Congress intended that no diminution in workload would result as a consequence of the reduced directors' compensation. Accordingly, for safety and soundness reasons, § 932.16 is revised to require that each Bank's board of directors continue to maintain its level of oversight of the management of the Bank. Consistent with this maintenance of effort standard, § 932.16 requires each Bank's board of directors to hold no fewer in-person meetings in any year than it has held on average over the immediately preceding three years, but a Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the required number of in-person board meetings.

In addition, and consistent with Congressional intent, the Finance Board believes that directors should be compensated only for the performance of official Bank business and not simply for holding office. Accordingly, § 932.17 is revised to provide that, starting in 2000, a Bank may not pay fees to a director, such as retainer fees, that do not necessarily reflect actual performance by the director of official Bank business. Thus, a director who regularly fails to attend board or committee meetings may not be paid at all, and the Finance Board would consider such failure a dereliction of the director's fiduciary duties that would constitute cause for removal of the director, pursuant to section 2B(a)(2) of the Bank Act. *See* 12 U.S.C. 1422b(a)(2) (1994).

2. Removal of Selection and Compensation of Bank Officers and Employees Regulations—§§ 932.18 and 932.19

Section 12(a) of the Bank Act formerly made the selection and compensation of Bank officers and employees subject to Finance Board approval. *See* 12 U.S.C.

[1] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338, enacted into law on November 12, 1999.

1432(a) (1994). Sections 932.18 and 932.19 of the Finance Board's regulations set forth requirements for the selection of Bank Presidents and other Bank officers and employees, and for the payment of compensation to Bank officers and employees. *See* 12 CFR 932.18, 932.19 (1999).

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval in connection with the selection and compensation of Bank officers and employees. *See* Modernization Act, § 606(d)(1)(B). Accordingly, 932.18 and 932.19 of the Finance Board's regulations are removed.

B. Part 934—Operations of the Banks

1. Amendment of Bank Budgets Regulation—§ 934.7

The Bank Act does not provide explicitly for Finance Board approval of Bank budgets. However, pursuant to the Finance Board's supervisory responsibilities under the Bank Act, *see* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994), § 934.7 of the Finance Board's regulations establishes specific requirements for the Banks' preparation and reporting of budget and other financial information to the Finance Board. In addition, section 12(a) of the Bank Act formerly required prior Finance Board approval for a Bank to buy or erect a bank building to house the Bank, or to lease a bank building under a lease with a term of more than ten years. *See* 12 U.S.C. 1432(a) (1994). Section 934.7(a)(2) of the Finance Board's budget regulation implements this provision by providing that, pursuant to the requirement of section 12(a) of the Bank Act, a Bank must obtain prior approval of the Finance Board before purchasing or erecting, or leasing for a term of more than 10 years, a building to house the Bank. *See* 12 CFR 934.7(a)(2) (1999).

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval of such Bank building transactions. See Modernization Act, 606(d)(1)(A). Accordingly, the requirement in paragraph (a)(2) for Finance Board approval of such transactions is removed from § 934.7. In addition, consistent with the devolution philosophy reflected in this interim final rule, the Finance Board has determined that the Banks should no longer be required to submit to the Finance Board the budget and other financial reports required by §§ 934.7(b) through (e). Accordingly, §§ 934.7(b) through (e) are removed.

2. Amendment of Bank Bylaws Regulation—§ 934.16

Section 12(a) of the Bank Act formerly provided that the Banks had the power, by their boards of directors, to prescribe, amend, and repeal bylaws governing the manner in which their affairs may be administered, subject to the approval of the Finance Board. *See* 12 U.S.C. 1432(a) (1994). Section 934.16 of the Finance Board's regulations allows the Banks to adopt, amend or repeal their bylaws without Finance Board approval, as long as the bylaws or amendments are consistent with applicable statutes, regulations and Finance Board policies. *See* 12 CFR 934.16 (1999).

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval of Bank bylaws, provided that the bylaws are consistent with applicable laws and regulations, as administered by the Finance Board. *See* Modernization Act, § 606(d)(1)(C). The Finance Board believes that, as a matter of sound corporate governance practice, the Banks should have bylaws governing the manner in which the Banks' affairs are conducted. Accordingly, § 934.16 is revised to provide that a Bank's board of directors shall have in effect at all times bylaws governing the manner in which the Bank administers its affairs, and that such bylaws shall be consistent with applicable laws and regulations as administered by the Finance Board.

3. Amendment of Bank Dividends Regulation—§ 934.17

Section 16(a) of the Bank Act formerly provided generally that dividends may be paid by the Banks out of previously retained earnings or current net earnings only with the approval of the Finance Board. *See* 12 U.S.C. 1436(a) (1994). Section 6(g) of the Bank Act provides that all stock of any Bank shall share in dividend distributions without preference. *See* 12 U.S.C. 1426(g) (1994). Section 934.17 of the Finance Board's regulations implements these statutory provisions by providing generally that the board of directors of each Bank, with the approval of the Finance Board, may declare and pay a dividend from net earnings, including previously retained earnings, on the paid-in value of capital stock held during the dividend period. *See* 12 CFR 934.17 (1999). Section 934.17 also provides that dividends on such stock shall be computed without preference and only for the period such stock was outstanding during the dividend period. *See id.* In addition, dividend payments by the Banks have been subject to a Finance Board Dividend Policy, *see* Finance Board Res. No. 90–38 (Mar. 15, 1990), as well as Board of Directors Resolutions approving specific Bank dividend payments, that established specific conditions for approval of such dividend payments, including that the dividend payment would not result in a projected impairment of the par value of the capital stock of the Bank.

The Modernization Act amended section 16(a) of the Bank Act by removing the requirement for Finance Board approval of Bank dividend payments. *See* Modernization Act, section 606(g)(1)(B). In addition, under the Modernization Act, section 6(g) remains in effect during a transition period until the Finance Board has adopted capital regulations and approved the capital structure plans of the Banks, after which period section 6(g) is repealed. *See id.* section 608.

Because the payment of dividends no longer requires the approval of the Finance Board, the Finance Board believes the determination of the applicable dividend period for such payments also should be a discretionary decision of the Banks. Therefore, § 934.17 of the Finance Board's regulations is revised to eliminate references to the dividend period during which capital stock is held. However, the Finance Board believes that, for safety and soundness reasons, the capital stock impairment restriction currently imposed pursuant to the Dividend Policy should continue to apply. Accordingly, § 934.17 of the Finance Board's regulations is revised to provide that a Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings, and only if such payment will not result in a projected impairment of the par value of the capital stock of the Bank. Section 934.17 also provides that dividends on such capital stock shall be computed without preference.

Consistent with these regulatory amendments, the Finance Board intends to rescind by separate resolution its Dividend Policy as no longer necessary.

C. Part 950—Bank Advances

1. Removal of Requirement for Finance Board Approval of Bank Forms for Advances Applications, Advances Agreements and Security Agreements—§ 935.4(d)(2)

Section 9 of the Bank Act formerly required that applications from members for Bank advances must be "in such form as shall be required by the [Bank] with the approval of the [Finance] Board." *See* 12 U.S.C. 1429

(1994). In addition, section 10(d) of the Bank Act formerly required that members enter into an obligation to repay the advance, "in such form as shall meet the requirements of the [B]ank and the approval of the [Finance] Board." *See id.* section 1430(d). Section 935.4(d)(2) of the Finance Board's regulations provides that each Bank's forms for all advances applications, advances agreements and security agreements are deemed approved by the Finance Board if such forms are consistent with the requirements of part 935. *See* 12 CFR 935.4(d)(2) (1999). Section 935.4(d)(2) also requires each Bank to provide copies of its current forms for all advances agreements and security agreements, and any substantive revisions thereto, to the Finance Board. *See id.*

The Modernization Act amended section 9 of the Bank Act by removing the requirement for Finance Board approval of Bank advances application forms. *See* Modernization Act, section 606(f)(1)(A). In addition, the Modernization Act amended section 10(d) of the Bank Act by removing the requirement for Finance Board approval of Bank forms for the repayment of advances. *See id.* section 606(f)(2)(B)(i). Accordingly, a regulatory provision governing Finance Board approval of Bank forms for advances applications, advances agreements and security agreements is no longer necessary, and § 935.4(d)(2) is removed.

2. Removal of Requirement for Finance Board Approval of Bank Approvals of Conditional Advances—§ 935.5(a)(2)

Section 9 of the Bank Act formerly required that a Bank may, subject to the approval of the Finance Board, grant an application for advances on such conditions as the Bank may prescribe. *See* 12 U.S.C. 1429 (1994). Section 935.5(a)(2) of the Finance Board's regulations implements this provision by providing that a Bank, in its discretion, may approve a member's application for an advance subject to such additional terms as the Bank may prescribe, pursuant to the provisions of the Bank Act, part 935, and any policy guidelines of the Finance Board. *See* 12 CFR 935.5(a)(2) (1999).

The Modernization Act amended section 9 of the Bank Act by removing the requirement for Finance Board approval in connection with Bank conditional advances. *See* Modernization Act, section 606(f)(1)(B). Accordingly, a regulatory provision governing Finance Board approval of Bank conditional advances is no longer necessary, and § 935.5(a)(2) is removed.

3. Removal of Requirement for Finance Board Approval of Bank Transfers of Advances and Advance Participations—§ 935.16

Section 10(d) of the Bank Act formerly required that: "[s]ubject to the approval of the [Finance] Board, any [Bank] shall have power to sell to any other [Bank], with or without recourse, any advance made under the provisions of this chapter, or to allow to such [Bank] a participation therein, and any other [Bank] shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor." *See* 12 U.S.C. 1430(d) (1994). Section 935.16 of the Finance Board's regulations allows the Banks to purchase and sell advance participations without the approval of the Finance Board, subject to the approval of the boards of directors of the relevant Banks. *See* 12 CFR 935.16 (1999). The Finance Board currently approves proposed Bank transfers of whole advances pursuant to Chairman's Orders that set forth certain conditions for the approval. The Finance Board recently proposed amending § 935.16 to allow the Banks to approve the transfer of whole advances, in addition to advance participations, without Finance Board approval, subject to the transfers meeting certain conditions derived in part from the Chairman's Orders. *See* 64 FR 44444 (Aug. 16, 1999).

The Modernization Act amended section 10(d) of the Bank Act by removing the requirement for Finance Board approval in connection with transfers of Bank advances and advance participations. *See* Modernization Act, section 606(f)(2)(B)(ii). Accordingly, a regulatory provision governing transfers of Bank advances and advance participations is no longer necessary, and § 935.16 is removed. The Finance Board by separate action has withdrawn its proposed transfer of advances regulation, *see* Docket # 99–63 (Dec. 14, 1999).

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, do not apply. Moreover, the interim final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act. *See id.* section 601(6).

IV. Paperwork Reduction Act

This interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the changes made by this interim final rule implement recently enacted statutory amendments that rendered obsolete certain provisions of the Finance Board's regulations. *See* 5 U.S.C. 553(b)(3)(B).

List of Subjects in 12 CFR Parts 932, 934, and 935

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts 932, 934, and 935, Code of Federal Regulations, as follows:

PART 932–DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS

1. The authority citation for part 932 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

2. Revise § 932.16 to read as follows:

§ 932.16 Site and frequency of board of directors and committee meetings.

(a) *Site.* Meetings of a Bank's board of directors and committees thereof usually should be held within the district served by the Bank. No meetings of a Bank's board of directors and committees thereof may be held in any location that is not within the United States, including its possessions and territories.

(b) *Maintenance of effort.* (1) Notwithstanding the limits on annual directors' compensation established by section 7(i) of the Act, as amended, the board of directors of each Bank shall continue to maintain its level of oversight of the management of the Bank, and, except as provided in paragraph (b)(2), the board of directors shall hold no fewer in-person meetings in any year than it has held on average over the immediately preceding three years.

(2) A Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the number of in-person board of

directors meetings required under paragraph (b)(1).

3. Amend § 932.17 by:

a. Revising paragraphs (a) through (c); and

b. Adding paragraph (f), to read as follows:

§ 932.17 Compensation and expenses of Bank directors.

(a) *Definition.* As used in this section, compensation means any payment of money or provision of any other thing of value (or the accrual of a right to receive money or a thing of value in a subsequent year) in consideration of a director's performance of official duties for the Bank, including, without limitation, daily meeting fees, incentive payments and fringe benefits.

(b) *Annual compensation policy.* Beginning in 2000 and annually thereafter, each Bank's board of directors shall adopt by resolution a written policy to provide for the payment to Bank directors of reasonable compensation for the performance of their duties as members of the Bank's board of directors, subject to the requirements set forth in paragraph (c) of this section. At a minimum, such policy shall address the activities or functions for which attendance is necessary and appropriate and may be compensated, and shall explain and justify the methodology for determining the amount of compensation to be paid to directors.

(c) *Policy requirements.* Payment to directors under each Bank's policy on director compensation may be based upon factors that the Bank determines to be appropriate, but each Bank's policy shall conform to the following requirements:

(1) *Statutory limits on annual compensation.* Pursuant to section 7(i) of the Act, as amended, for 2000, the following limits on compensation shall apply: for a Chairperson—$25,000; for a Vice Chairperson—$20,000; for any other member of the Bank's board of directors—$15,000. Beginning in 2001 and for subsequent years, these limits on annual compensation shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on annual compensation.

(2) *Compensation permitted only for performance of official Bank business.* The total compensation received by each director in a year shall reflect the amount of time spent on official Bank business, such that greater or lesser attendance at board and committee meetings during a given year will be reflected in the compensation received by the director for that year. A Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business.

* * * * *

(f) *Approval.* Payments made to directors in compliance with the limits on annual directors' compensation and the standards set forth in this section are deemed to be approved by the Finance Board for purposes of section 7(i) of the Act, as amended.

4. Remove §§ 932.18 and 932.19, and reserve subpart C.

PART 934—OPERATIONS OF THE BANKS

5. The authority citation for part 934 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431(g), 1432(a), and 1442.

6. Amend § 934.7 by:

a. Removing the words "and reporting requirements" from the heading;

b. Removing paragraphs (a)(2), (b), (c), (d) and (e); and

c. Redesignating paragraphs (a)(1), (3), (4) and (5) as paragraphs (a), (b), (c) and (d), respectively.

7. Revise § 934.16 to read as follows:

§ 934.16 Bank bylaws.

A Bank's board of directors shall have in effect at all times bylaws governing the manner in which the Bank administers its affairs, and such bylaws shall be consistent with applicable laws and regulations as administered by the Finance Board.

8. Revise § 934.17 to read as follows:

§ 934.17 Bank dividends.

A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings, and only if such payment will not result in a projected impairment of the par value of the capital stock of the Bank. Dividends on such capital stock shall be computed without preference.

PART 935—ADVANCES

9. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

§ 935.4 [Amended]

10. Amend § 935.4 by:

a. Removing paragraph designation (d)(1); and

b. Removing paragraph (d)(2).

§ 935.5 [Amended]

11. Amend § 935.5 by:

a. Removing paragraph (a)(2); and

b. Redesignating paragraph (a)(3) as paragraph (a)(2).

§ 935.16 [Removed]

12. Remove § 935.16.

Dated: December 14, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–33069 Filed 12–20–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–194–AD; Amendment 39–11467; AD 99–26–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the rudder trim control knob with an improved new knob. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane.

DATES: Effective January 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 25, 2000.

ADDRESSES: The service information referenced in this AD may be obtained

from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 12, 1998 (63 FR 7076). That action proposed to require replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the rudder trim control knob with an improved new knob.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the supplemental NPRM or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry will be affected by this AD.

Replacement of the rudder trim switch and modification of the wiring will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $37,800, or $420 per airplane.

Replacement of the rudder trim control knob will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $5,400, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–08 AIRBUS INDUSTRIE: Amendment 39–11467. Docket 96–NM–194–AD.

Applicability: Model A310 and A300–600 series airplanes, certificated in any category; except those on which Airbus Modification 11874 [reference Airbus Service Bulletin A310–27–2087 (for Model A300 series airplanes) or A300–27–6042 (for Model A300–600 series airplanes), both dated October 2, 1998] has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane, accomplish the following:

Corrective Actions

(a) Within 90 days after the effective date of this AD, replace the rudder trim switch, part number (P/N) 097–023–00, in the flight compartment, with a new switch, P/N 097–023–01; and modify the wiring in panel 408VU; in accordance with Airbus Service Bulletin A310–27–2084, Revision 01 (for Model A310 series airplanes); or A300–27–6037, Revision 01 (for Model A300–600 series airplanes), both dated September 29, 1998; as applicable.

Note 2: Accomplishment of the actions required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A310–27–2084 (for Model A310 series airplanes); or A300–27–6037 (for Model A300–600 series airplanes), both dated February 12, 1997; as applicable, is acceptable for compliance with that paragraph.

(b) Within 10 months after the effective date of this AD, replace the rudder trim control knob on the rudder trim switch with an improved new knob in accordance with Airbus Service Bulletin A310–27–2087, Revision 01 (for Model A310 series airplanes); or A300–27–6042, Revision 01 (for Model A300–600 series airplanes), both dated February 17, 1999; as applicable.

Note 3: Accomplishment of the actions required by paragraph (b) of this AD in accordance with Airbus Service Bulletin A310–27–2087 (for Model A310 series airplanes); or A300–27–6042 (for Model

A300–600 series airplanes), both dated October 2, 1998; as applicable, is acceptable for compliance with that paragraph.

Spares

(c) As of the effective date of this AD, no person shall install in the flight compartment of any airplane a rudder trim switch having P/N 097–023–00.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A310–27–2084, Revision 01, dated September 29, 1998; Airbus Service Bulletin A300–27–6037, Revision 01, dated September 29, 1998; Airbus Service Bulletin A310–27–2087, Revision 01, dated February 17, 1999; or Airbus Service Bulletin A300–27–6042, Revision 01, dated February 17, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 97–111–219(B), dated May 7, 1997, and 1999–012–275(B), dated January 13, 1999.

(g) This amendment becomes effective on January 25, 2000.

Issued in Renton, Washington, on December 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32508 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–32–AD; Amendment 39–11465; AD 99–26–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that requires initial and repetitive fluorescent magnetic particle inspections or fluorescent penetrant inspections of the combustion chamber outer case (CCOC) for cracks, and, if necessary, replacement with serviceable parts. Also, this AD requires a one-time boss material verification, and, if necessary, replacement with serviceable parts. Finally, this AD requires replacement of CCOCs with welded-on bosses with improved, one-piece CCOCs. Installation of the one-piece CCOC constitutes terminating action to the inspection requirements of this AD. This amendment is prompted by a report of an uncontained engine failure caused by fatigue cracks originating at the weld joining the drain boss to the CCOC. The actions specified by this AD are intended to prevent CCOC cracks, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective February 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 22, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines was published in the **Federal Register** on September 23, 1999 (64 FR 51483). That action proposed to require initial and repetitive fluorescent magnetic particle inspections or fluorescent penetrant inspections of the combustion chamber outer case (CCOC) for cracks, and, if necessary, replacement with serviceable parts. Also, that AD proposed to require a one-time boss material verification, and, if necessary, replacement with serviceable parts. Finally, that AD proposed to require replacement of CCOCs with welded-on bosses with improved, one-piece CCOCs. Installation of the one-piece CCOC would constitute terminating action to the inspection requirements of the AD. That action was prompted by a report of an uncontained engine failure caused by fatigue cracks originating at the weld joining the drain boss to the CCOC. That condition, if not corrected, could result in CCOC cracks, which could result in an uncontained engine failure and damage to the airplane.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Understated Financial Impact

One commenter states that the Federal Aviation Administration (FAA) has understated the financial impact of the AD by not including the ancillary costs of removing a cracked CCOC. The FAA does not concur. The indirect costs associated with this AD are not directly related to this rule, and, therefore, are not addressed in the economic analysis for this rule. A full cost analysis for each AD, including such indirect costs, is not necessary since the FAA has already performed a cost benefit analysis when adopting the airworthiness requirements to which these engines were originally certificated. A finding that an AD is warranted means that the original design no longer achieves the level of safety specified by those airworthiness requirements, and that other required actions are necessary, such as inspections of existing CCOCs and replacement with a one-piece CCOC. Because the original level of safety was

already determined to be cost beneficial, these additional requirements needed to return the engine to that level of safety do not add any additional regulatory burden, and, therefore, a full cost analysis would be redundant and unnecessary.

SB Publication Date vs. Effective Date of This AD

The same commenter expresses confusion as to how to compute the compliance intervals of this AD; specifically, if the effective date of the AD should be used vs. the publication date of the SB for a compliance baseline. The FAA concurs. For the purpose of this AD, all baseline compliance times should be calculated based upon the effective date of this AD. The FAA has added an explanatory paragraph (c) to this final rule to explicitly address this issue.

On-Wing Rejection of CCOC and Replacement of CCOC

The same commenter states that there is no clear direction as to the time interval between an on-wing rejection and the subsequent removal of the CCOC. The FAA concurs. After an on-wing rejection, the CCOC must be removed prior to further flight. The FAA has added explicit phrasing to each inspection paragraph of this final rule to indicate that there is no operating interval between an on-wing rejection and the subsequent removal of the CCOC.

Concurrence

One commenter supports the rule as proposed.

New Revision to Service Bulletin (SB)

Since publication of the NPRM, PW has issued Revision 2 to SB No. 6291, dated August 27, 1999. The original version of PW SB No. 6291, dated May 20, 1997, Revision 1, dated July 9, 1997, or Revision 2, dated August 27,1999, are all acceptable for performing the terminating action of installing a one-piece machined CCOC assembly, part number (P/N) 815556, as stated in paragraph (d) of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 2,624 engines of the affected design in the worldwide fleet. The FAA estimates that 1,280 engines installed on aircraft of U.S. registry will be affected by this proposed AD, that it will take approximately 2.5 work hours per engine to accomplish the proposed inspections and that the average labor rate is $60 per work hour. Required parts will cost approximately $42,320 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $54,361,600.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (E.O.) 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under E.O. 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–06 Pratt & Whitney: Amendment 39–11465. Docket 99–NE–32–AD.

Applicability: Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines with combustion chamber outer case (CCOC), part numbers (P/Ns) 5000238–01, 797707, 807684, and 815830 installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent CCOC cracks, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Perform initial and repetitive fluorescent magnetic particle inspections (FMPI) or fluorescent penetrant inspections (FPI) of drain bosses and Ps4 bosses of the CCOC for cracks, and, if necessary, replace with serviceable parts prior to further flight, in accordance with the procedures and intervals specified in paragraph 1.A. of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. A6359, Revision 1, dated July 30, 1999.

(b) For CCOCs listed by serial number (S/N) in Table 3 of PW ASB No. A6359, Revision 1, dated July 30, 1999, inspect for proper Ps4 and drain boss material, and, if necessary, replace with serviceable parts prior to further flight, in accordance with the procedures and intervals specified in paragraph 1.B. of the Accomplishment Instructions of PW ASB No. A6359, Revision 1, dated July 30, 1999.

Effective Date for Computing Compliance Intervals

(c) For the purpose of this AD, use the effective date of this AD for computing compliance intervals whenever PW ASB No. A6359, Revision 1, dated July 30, 1999, refers to the publication date of the ASB.

Terminating Action

(d) At the next part accessibility after the effective date of this AD when the CCOC has accumulated cycles-in-service greater than the initial inspection threshold specified in

table 1 of PW ASB A6359, Revision 1, dated July 30, 1999, replace the CCOC with a one-piece machined CCOC assembly, part number (P/N) 815556, in accordance with PW Service Bulletin (SB) No. 6291, dated May 20, 1997, or Revision 1 dated July 9, 1997, or Revision 2, dated August 27,1999. Installation of an improved, one-piece CCOC, P/N 815556, constitutes terminating action to the inspections required by this AD.

Definition

(e) For the purpose of this AD, part accessibility is defined as an engine disassembly in which the CCOC is removed from the engine.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions required by this AD shall be done in accordance with PW ASB No. A6359, Revision 1, dated July 30, 1999, and PW SB No. 6291, dated May 20, 1997, Revision 1, dated July 9, 1997, and Revision 2, dated August 27, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment becomes effective on February 22, 2000.

Issued in Burlington, Massachusetts, on December 8, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–32506 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–248–AD; Amendment 39–11475; AD 99–26–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, that requires repetitive inspections to detect cracking of the inner skin panel of the longitudinal lap joint; and repair, or modification and new repetitive inspections, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct stress corrosion cracking of the inner skin panel of the longitudinal lap joint, which could result in rapid depressurization of the airplane.

DATES: Effective January 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 25, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes was published in the **Federal Register** on October 21, 1999 (64 FR 56712). That action proposed to require repetitive inspections to detect cracking of the inner skin panel of the longitudinal lap joint; and repair, or modification and new repetitive inspections, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required eddy current inspection (either internal or external), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $720, or $240 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–15 AIRBUS: Amendment 39–11475. Docket 98–NM–248–AD.

Applicability: Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress corrosion cracking of the inner skin panel of the longitudinal lap joint, which could result in rapid depressurization of the airplane, accomplish the following:

Initial Inspection

(a) Within 400 flight cycles after the effective date of this AD, perform an external eddy current inspection for cracking of the inner skin panel of the longitudinal lap joint between frames 65 and 72 at stringer 57, in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999.

Repetitive Inspections

(b) If no cracking is detected during the inspection performed in accordance with paragraph (a) of this AD: Thereafter, perform an internal or external eddy current inspection, as specified in paragraphs (b)(1) and (b)(2) of this AD, as applicable; at intervals not to exceed 1,250 flight cycles or 7 months, whichever occurs first; in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999; until the requirements of paragraph (e) of this AD have been accomplished.

(1) If the most recent inspection was an internal eddy current inspection, perform an external eddy current inspection of the inner skin panel of the longitudinal lap joint.

(2) If the most recent inspection was an external eddy current inspection, perform an internal eddy current inspection of the inner skin panel of the longitudinal lap joint.

Corrective Actions

(c) If any cracking is detected during any inspection performed in accordance with paragraph (a) or (b) of this AD, prior to further flight, accomplish the actions required by either paragraph (c)(1) or paragraph (c)(2) of this AD.

(1) Repair the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999. Thereafter, repeat the inspection of areas in which no cracking is detected at the interval specified in, and in accordance with, paragraph (b) of this AD; and repeat the inspection of the repaired area at the intervals specified in the service bulletin, in accordance with the service bulletin. If any cracking is found in the repaired area during any repetitive inspection, prior to further flight, repair in accordance with the service bulletin.

Note 2: Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999, references Airbus Structural Repair Manual Chapter 53–17–00, as an additional source of service information to accomplish the repair specified in paragraph (c)(1) of this AD.

(2) Modify the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995, and accomplish the requirements of paragraph (d) of this AD.

(d) For airplanes modified in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995: Inspect the modified inner skin panel of the longitudinal lap joint to detect cracking at the applicable threshold and repetitive intervals specified in Table 1A, 1B, or 2 of Airbus Service Bulletin A300–53–211, Revision 5, dated April 29, 1999, in accordance with Airbus Service Bulletin A300–53–211, Revision 5. If any cracking is found during any repetitive inspection, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–211, Revision 5.

Optional Modification

(e) Modification of the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995, constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD. Such modification does not terminate the repetitive inspections required by paragraph (d) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995; Airbus Service Bulletin A300–53–211, Revision 5, dated April 29, 1999; and Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–6, 8–12 ..	1	Jan. 29, 1999.
7	Original	Sept. 5, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–150–246(B), dated April 8, 1998.

(i) This amendment becomes effective on January 25, 2000.

Issued in Renton, Washington, on December 13, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32736 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 0

Miscellaneous Rules

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission Rules of Practice are being amended to reflect a reconfiguration of the Commission's Regional Office structure and operations.

EFFECTIVE DATE: December 21, 1999.

ADDRESSES: Requests for copies of the **Federal Register** notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The notice announcing the changes is available on the Internet at the Commission's website, "http://www.ftc.gov".

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, telephone number (202) 326–2514, E-mail "dclark@ftc.gov".

SUPPLEMENTARY INFORMATION: In July 1999 the Commission implemented a plan to reconfigure its Regional Office structure and operations. In particular, the Commission reduced the number of regions from ten to seven; closed the Boston and Denver Regional Offices, effective July 10, 1999; and changed the names and geographic areas of responsibility of the remaining Regional Offices.

List of Subjects in 16 CFR Part 0

Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, of the Code of Federal Regulations as follows:

PART 0—ORGANIZATION

1. The authority for Part 0 continues to read as follows:

Authority: Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383 as amended (5 U.S.C. 552).

2. Section 0.19(b) is revised to read as follows:

§ 0.19 The Regional Offices.

* * * * *

(b) The names, geographic areas of responsibility, and addresses of the respective regional offices are as follows:

(1) *Northeast Region* (located in New York City, New York), covering Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Puerto Rico. Federal Trade Commission, One Bowling Green, Suite 318, New York, New York 10004.

(2) *Southeast Region* (located in Atlanta, Georgia), covering Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. Federal Trade Commission, Suite 5M35, Midrise Building, 60 Forsyth Street, SW., Atlanta, Georgia 30303.

(3) *East Central Region* (located in Cleveland, Ohio), covering Delaware, District of Columbia, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia. Federal Trade Commission, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114.

(4) *Midwest Region* (located in Chicago, Illinois), covering Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603–5701.

(5) *Southwest Region* (located in Dallas, Texas), covering Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201.

(6) *Northwest Region* (located in Seattle, Washington), covering Alaska, Idaho, Montana, Oregon, Washington, and Wyoming. Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington 98174.

(7) *Western Region* (located in San Francisco and Los Angeles, California), covering Arizona, California, Colorado, Hawaii, Nevada, and Utah.

(i) San Francisco Office: Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California 94103.

(ii) Los Angeles Office: Federal Trade Commission, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 99–33014 Filed 12–20–99; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712, and 713

[FHWA Docket No. FHWA–98–4315]

RIN 2125–AE44

Right-of-Way Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the right-of-way regulations for federally assisted transportation programs administered under title 23, United States Code. The FHWA clarifies and reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the State level. Conforming revisions are made to several regulatory parts to remove outdated, redundant, and unnecessary content. Also, the regulations are arranged to follow the same sequence as the development and implementation of a Federal-aid project to assist the public and State transportation departments (STDs) in locating regulations applicable to a specific point of interest.

DATES: This final rule is effective January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Ware, (202) 366–2019, Office of Real Estate Services, HEPR–20, or Mr. Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's webpage at: http://www.access.gpo.gov/nara.

Background

The FHWA began the process of revising its regulations with an advance notice of proposed rulemaking (ANPRM) published on November 6, 1995 (60 FR 56004). As a first step in the comprehensive revision of the regulations, the FHWA removed obsolete and redundant parts by publishing an interim final rule on April 25, 1996, at 61 FR 18246. This action removed from title 23, CFR, all of parts 720 and 740, and portions of parts 710 and 712. Comments received in response to the ANPRM also identified the need for a comprehensive rewrite of the existing real estate program regulations.

An NPRM, published at 63 FR 71238, on December 24, 1998, proposed to revise the regulations and arrange them to follow the same sequence as the development and implementation of a Federal-aid project and thereby assist the public and State transportation departments in locating regulations applicable to a specific point of interest. The NPRM also proposed to clarify the State-Federal partnership.

The FHWA provides funds to the States and other organizations to reimburse them for the costs they have incurred in constructing highways and other transportation related projects. Regulations dealing with reimbursement and management of right-of-way (ROW) are contained in 23 CFR parts 710 through 713.

Discussion of Comments

ANPRM of November 6, 1995

Twenty comments were received: 2 from individuals, 2 from private groups or organizations, and 16 from STDs.

Based on the responses received, the FHWA concluded that the (ROW) regulations needed a comprehensive revision. During an initial review, the FHWA identified several parts of the regulations that were no longer needed.

NPRM of December 24, 1998

Twenty-eight comments were received in response to the December 24, 1998, NPRM. Comments were received from 25 States, one non-profit organization, a law firm representing five States, one individual, and a subcommittee of a right-of-way organization. The FHWA gratefully acknowledges the effort required to provide comprehensive comments, endorsements, and recommendations relating to the regulation.

Most commenters strongly supported the need to reorganize the regulations. A couple of comments noted that the regulations should not be reorganized and that reorganization could mean additional work for some States which had provided cross references by section number to the FHWA regulations. It was concluded that the advantages of completing a comprehensive rewrite of regulations which are nearly 25 years old outweighed the time and expense of changing cross references. Since the new regulations provide significant revisions, the text of State right-of-way manuals would require some revision in any event.

The NPRM proposed that Federal funds be allowed to participate in all costs necessitated by State law. Most commenters stated that they welcomed the reduction in Federal involvement in State matters and that since State laws varied widely, it made sense to reimburse based on actual State expenditures. Some commenters believed that allowing Federal reimbursement of costs not previously permitted would encourage State legislatures and courts to expand both property damage payments and costs of acquisition, such as, payments of property owners legal fees, court costs, and perhaps loss of business costs. In developing the final rule, the FHWA concluded that neither the FHWA nor STDs may have sufficient resources to monitor a wide variety of State laws and court decisions and that an across-the-board reimbursement of State expenditures required by State law is the most practical and equitable solution.

As the comment of the Vermont STD correctly noted, business loss can partially overlap "damages" and there is great difficulty trying to isolate and separate items in which the FHWA could not previously participate versus items where participation was permitted. Court awards most often do not clearly separate the various elements of damages making it difficult to isolate historically "noncompensable" damages.

Several comments were received suggesting that specific wording should be revised to more closely mirror language used by individual States. In completing the final rule, the FHWA selected language which it believes is best understood and utilized by the majority of the States. Nuances in language can be accommodated in the State procedural manual.

Several comments were received that questioned the procedures for receiving either credit or reimbursement for early acquisitions. These comments typically reflected that the reader believed that the FHWA was too restrictive, and that there should be no impediment to States moving forward to acquire right-of-way and receive reimbursement or credit at a subsequent date. There were also comments that FHWA should advance Federal funds for use in corridor preservation.

At the present time the FHWA believes that TEA–21 offers a great deal of flexibility in considering early acquisition in selected situations. The FHWA was aware of the statutory requirements which must be met in order to obtain either credit or reimbursement at a later date, as well as, lawsuits which have challenged early acquisition approaches and has adopted an approach which it considers prudent, and cautious, while fully implementing the intent of TEA–21. As additional experience is gained in the application of the TEA–21 principles, the FHWA will update the web page for "Questions and Answers" which will be developed continually to facilitate implementation of early acquisition concepts.

A limited number of comments were received questioning the FHWA's determination under the Unfunded Mandates Reform Act that the proposed regulation would result in estimated annual costs of less than $100 million. The regulation as developed should result in a reduction of costs to State, local, or tribal governments since they will not have to maintain staff to conduct surveillance to identify claims for elements of property damage that are not eligible for Federal reimbursement under the old regulation. The reduction in Federal approval actions should also result in cost savings by eliminating the time requirements for such approval.

The final rule also permits reimbursement to States for property acquisition costs and administrative costs which are not now reimbursed, so it is a benefit to those States.

A comment was received questioning the need for a reversionary clause when property is transferred at no cost by an STD to be used for public purposes under title 23, U.S.C. The FHWA concluded that where property to be used for public purposes is transferred at no cost, good stewardship and recognition of the public trust dictates that the property be placed in the use for which the disposal was approved. The reversionary clause is the most effective method to assure that use.

One comment was received concerning the need to insure that FHWA approval is required for the disposal of property at nominal or no costs in exceptional circumstances. Several comments were received suggesting that no FHWA approval for any disposal should be mandated. The requirement for FHWA approval is based on the requirements of 23 U.S.C. 156(b) and remains in the final rule. The rule's intent is that disposals for less than fair market value are to be the exception, rather than the rule. Language has been added encouraging that the criteria for disposals at less than fair market value be clearly stated in the STD manuals.

It is our intent to maintain current program guidance and information in an electronic format with "Questions and Answers" and policy interpretations. Technical air space guidance will also be maintained in this manner. The URL for up-to-date guidance is: *http://www.fhwa.dot.gov/realestate/index.htm*. This final rule seeks to further clarify and reduce Federal regulatory

requirements and to place primary responsibility for a number of approval actions at the State level. The adoption of these regulatory changes impacts other parts of 23 CFR, and in developing the final rule, attention has been given to conforming revisions as necessary. Such other parts include: 23 CFR part 130, Subpart D, Advance right-of-way revolving funds; 23 CFR part 480, Use and disposition of property previously acquired by States for withdrawn Interstate segments; 23 CFR part 620, Subpart B, Relinquishment of highway facilities; 23 CFR part 630; 23 CFR part 635; and 23 CFR part 645.

This final rule substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule. A unified purpose and applicability statement along with definitions is included in part 710, subpart A of this final rule. This consolidates material now found in several locations of the existing regulations.

The following table highlights the reordering of the content and intended revisions and redesignations for each subpart of the existing regulation:

Old part, subpart or section	New part, subpart or section
Part 130, subpart D	Removed.
Part 480	Removed.
620.202	620.202 [Revised].
620.203(j)	620.203(j) [Revised].
630.106(c)(3)	630.106(c)(3) [Revised].
635.307(b)(3)	635.307(b)(3) [Revised].
645.103(c), 645.111(c) and (d), and 645.113(i)	645.103(c), 645,111(c) and (d), and 645.113(i) [Revised].
710, subpart A [Reserved]	710, subpart A [Added].
710, subpart B (§§ 710.201–710.205)	710.201.
710, subpart C (710.301–710.306)	710.203.
712, subpart A [Reserved]	Removed.
712, subpart B (712.201–712.204)	710, subpart C.
712, subpart C [Reserved]	Removed.
712, subpart D (712.401–712.408)	710.105, 710.203.
712, subpart F (712.601–712.606)	710.509.
712, subpart G (712.701–712.703)	Removed.
713, subpart A (713.101–713.103)	710.101–710.103.
713, subpart B (713.201–713.205)	710.405.
713, subpart C (713.301–713.308)	710.407–710.409.

Part and Section Analysis

Part 130, Subpart D—Advance Right-of-Way Revolving Funds

Part 130, subpart D is removed from title 23, CFR, because section 1211 (e) of the TEA–21 eliminated the right-of-way revolving fund.

Part 480—Use and Disposition of Property Previously Acquired by States for Withdrawn Interstate Segments

Part 480 is removed from title 23, CFR, since section 1303 of the TEA–21 now allows States to retain the proceeds for the lease or sale of real estate on Federal projects as long as the proceeds are used for title 23, U.S.C., type projects. Other provisions of part 480 are obsolete.

Part 620, Subpart B—Relinquishment of Highway Facilities

Part 620 is amended to clarify that it is applicable only to transfers of highway facilities for continued highway use. Approvals for other disposals and modifications of access are governed by 23 CFR part 710.

Section 630.106(c)(3)

In § 630.106(c)(3), the reference to "23 CFR part 712" is revised to read "23 CFR part 710" to provide a current reference.

Section 635.307(b)(3)

In § 635.307(b)(3), the reference to "23 CFR 713, subpart A" is revised to read "23 CFR 710.403" to provide a current citation.

Part 645—Utilities

Sections 645.103(c) and 645.111 (c) and (d) are amended to revise the reference "23 CFR chapter I, subchapter H, Right-of-Way and Environment" to read "23 CFR 710.203." Section 645.113(i) is amended to revise the reference "23 CFR part 712, the Acquisition Functions" to read "23 CFR 710.503."

Parts 710—Right-of-Way—General; 712—The Acquisition Function; and 713—Right-of-Way—The Property Management Function

Parts 710, 712, and 713 are removed in their entirety, and replaced by six new subparts under a new part 710. The reorganization includes: subpart A—General; subpart B—Program Administration; subpart C—Project Development; subpart D—Real Property Management; subpart E—Property Acquisition Alternatives; and subpart F—Federal Assistance Programs. These new sections clarify the purpose of the regulation and include a new definition section. Detailed requirements and rules have been replaced by a provision that will allow States to include their acquisition process in a State manual to be approved by the FHWA.

This final rule seeks to further clarify and reduce Federal regulatory requirements and to place primary responsibility for a number of approval actions at the State level. It substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule.

Part 710, Subpart A—General

A unified purpose and applicability statement along with definitions is included in subpart A of this final rule. This consolidates material now found in several locations of the existing regulations.

Part 710, Subpart B—Program Administration

Section 710.201 clarifies that the STD has the overall responsibility to assure compliance with State and Federal laws and regulations. The methods and practices of the STDs are to be specified in ROW operations manuals submitted for approval by the FHWA no later than January 1, 2001, and certified as current every five years thereafter.

State ROW manuals are considered to be a sound basis for implementing appropriate procedures at the State and local level. It is a State responsibility to

maintain the manual and complete the various right-of-way phases in accordance with Federal law and regulations. The manual provides a documented reference for use by State ROW personnel, local public agencies, affected individuals, and the FHWA. Alternative methods to achieve program objectives have been explored in developing this final rule, specifically, efforts were made to reduce the level of Federal oversight, required recordkeeping, and mandated reporting. The FHWA believes that the need for project level surveillance has diminished since the era of the Interstate program when Federal funding was allocated on the basis of the cost to complete the system. Now States receive a fixed allocation of Federal funds based largely on formula. Hence, it is clearly in the States' best interest to use their Federal-aid funds prudently in all areas, including the acquisition, management, and disposition of real property.

Section 710.203(b)(1) expands Federal reimbursement for right-of-way acquisition costs beyond the current limit of "generally compensable" costs. Under former regulations, the States and the Federal government were required to ascertain which types of acquisition costs were generally compensable across the nation and limit Federal reimbursement to those activities. This limits State flexibility, imposes a "one size fits all" philosophy, and creates administrative burdens for both the States and the FHWA. State and Federal staff time devoted to isolating and extracting these costs does not add value to the overall transportation program accomplishments. Moreover, States should have greater discretion in determining the best use of formula-allocated Federal funds for acquisition purposes, as they now have in virtually every other aspect of projects funded with Federal-aid.

Since 1991, the kinds of activities that are eligible for Federal-aid funds have greatly increased, and States have received greatly expanded discretion in the use of Federal-aid funds. This final rule echoes statutory and policy changes that have occurred throughout the rest of the Federal-aid program for the surface transportation program.

Part 710, Subpart C—Project Development

The sections in this subpart were taken from part 712, subpart B and revised to provide a brief chronology of the sequence and actions which are necessary to qualify for Federal-aid funding. Section 710.305 provides new agency requirements mandating that in areas in which Clean Air Act conformity determination has lapsed, special coordination is necessary prior to initiating new projects or continuing activity on existing projects. Section 710.311 includes a new TEA–21 provision which provides that an oversight agreement between the STD and the FHWA must specify responsibility for the review of projects at the plan, specification, and estimate (PS&E) stage.

Part 710, Subpart D—Real Property Management

The sections in this subpart were taken from part 712, subpart B and revised to provide that the STD will charge fair market value for the use or disposal of real estate acquired with title 23, U.S.C., funding. Exceptions to the requirement to collect fair market value or rent may be approved by the FHWA. The air rights guidelines are to be maintained on the Internet. The STD may retain the Federal share of rental and disposal proceeds if used for projects eligible under title 23, U.S.C.

Section 710.401 provides that property disposals or any other use of right-of-way along the Interstate requires the STD to obtain FHWA concurrence, but this would no longer be required for non-Interstate highways. Instead, the STD ROW manual would specify procedures for the leasing, maintenance and disposal of property rights, including access control.

Section 710.403(e) of the final rule includes a TEA–21 provision that the Federal share of proceeds from the sale or lease of real estate originally acquired as part of a Federal-aid project (not limited to airspace) could be retained by the STD, if used for projects that would be eligible for funding under title 23, U.S.C. Section 710.403(d) of the final rule requires that, with certain exceptions, the STD charge fair market value for the sale or lease of real property if the property was acquired with Federal assistance made available from the highway trust fund. This reflects the provision of 23 U.S.C. 156, as amended by section 1303 of TEA–21. This revision reduces administrative burdens on States and the FHWA and gives States and local governments greater flexibility in use of funds, while also protecting Federal interests by ensuring funds are used on purposes permitted under title 23, U.S.C. This procedure applies to all disposals, including surplus property from withdrawn Interstate projects, processed subsequent to June 9, 1998, the effective date of TEA–21. Under the rule, income from all property uses and dispositions is treated in a uniform manner.

The final rule in § 710.405 continues to specify procedures the States will be required to follow in use of airspace on the Interstate facilities which have received funding under title 23, U.S.C., in any way. However, these airspace requirements will no longer be mandated for non-Interstate highways.

The final rule in § 710.405 relocates a significant amount of detail relating to the management of airspace. The detailed provisions for airspace, particularly the detailed geometric requirements for the use of property over or under a highway, will be developed and updated through an airspace technical guidance document. An advantage of an airspace technical guidance document is that it is easier to update.

Part 710, Subpart E—Property Acquisition Alternatives

The sections in this subpart were taken from part 712, subparts E and F. Subpart G relating to the right-of-way revolving fund is removed since TEA–21 eliminated the revolving fund.

The final rule in § 710.501 also includes a TEA–21 provision (section 1301) that the value of property acquired by State or local governments before project agreement could be credited toward the State share of project cost, as long as certain conditions, including those relating to the environmental process, have been met. Prior to TEA–21, private property donated to a Federal project could be credited to the non-Federal share, but no such credit was permitted for publicly-owned property. The regulation fulfills TEA–21 statutory provisions by allowing a State credit toward the non-Federal share of the cost of a project, and mandating the credit in the case of locally-owned property. The conditions which must be met to allow the credit would include careful observance of the environmental process.

As a basis for protective buying, significant increased cost may be used as a justification under § 710.503(b).

The final rule in §§ 710.505 and 710.507 contains separate sections for property donations by private parties and contributions by State or local governments to clearly distinguish between these distinct actions, both of which can generate credits for the State or local matching share of a project.

The final rule in § 710.513(b) clarifies that where property is to be used for environmental mitigation or environmental banking, the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 91–645, 84 Stat. 1894,

as amended) apply in the acquisition of the property.

In general, FHWA approval actions in § 710.409 and 710.405 for disposal of property and use of air space were revised in the final rule to more closely parallel the assumptions of responsibilities principles, as outlined in section 1306 of TEA–21 to stress FHWA approval actions on the Interstate system.

Part 710, Subpart F—Federal Assistance Programs

Sections 710.601 and 710.603 were taken from part 712, subpart F and revised to provide updated references to new legislation and to conform the regulatory references to this final rule.

Part 712—The Acquisition Function

Part 712 is removed from title 23, CFR. The provisions of current part 712, subpart B, concerning general provisions and project procedures are relocated and revised as new part 710, subpart C, project development.

We are removing current part 712, subparts A and C (empty reserved slots) and G, right-of-way revolving fund. Subpart G was eliminated by section 1211(e) of the TEA–21. The revolving fund was a pool of money that could be used by States to acquire right-of-way in advance of the time that State funding was available.

The information in current part 712, subpart D regarding administrative and legal settlements and court awards is relocated to new §§ 710.105 (Definitions) and 710.203 (Funding and reimbursement).

Federal land transfers and direct Federal acquisition policies and procedures found in current part 712, subpart E are relocated to new part 710, subpart F (Federal assistance programs), §§ 710.601 and 710.603.

Current part 712, subpart F, concerning functional replacement of real property in public ownership is relocated to new part 710, subpart E, specifically § 710.509.

A major objective of the final rule is to reorder the regulation so that it follows the same sequence as the development and implementation of a Federal-aid project. This rearrangement in chronological order should aid the public and State transportation departments (STD) in effectively using the regulation.

The final rule also clarifies the State-Federal partnership, which is not considered a major or significant change.

Part 713—Right-of-Way—The Property Management Function

Part 713 is removed from title 23, CFR. Current subpart A concerning purpose, applicability, policies and procedures of property management are relocated to new part 710, subpart A (§§ 710.101 and 710.103) and included in the general statement for real property.

Current part 713, subpart B regarding management of airspace on Federal-aid highway systems for non-highway purposes is relocated to new part 710 at § 710.405 (air rights on the Interstate). The FHWA approval for the use of airspace is limited to Interstate projects. Disposal of rights-of-way provisions found in current part 713, subpart C are relocated to new part 710, subpart D (real property management) at §§ 710.407 (leasing) and 710.409 (disposals). This section clarifies that income received by the STDs may be retained when used for projects eligible under title 23, U.S.C.

Provisions relating to the real estate issues contained in sections 1301 and 1303 of the TEA–21 have been incorporated into these regulations, notably: (1) Allowing credit to the non-Federal share when a State or local government contributes land to a project; (2) allowing States to retain income from sale or lease of real property, as long as the income is used for projects eligible under title 23, U.S.C.; and (3) eliminating the right-of-way revolving fund and clarifying credit for private property donations.

Rulemaking Analyses and Notices

All comments received before the close of business on March 24, 1999, were considered in developing the final rule and late comments were considered to the extent practicable. The comments are available for examination using docket number FHWA 98–4315 in the docket room at the above address or via the electronic addresses provided above.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be significant because these regulations simplify, clarify, reorganize, and/or eliminate existing requirements. The procedures would simply implement current law and eliminate constraints on FHWA reimbursement for certain right-of-way expenditures when those expenditures are made under provisions of State law. Neither the individual nor cumulative impact of this action is significant because this rule does not alter the funding levels available to the States for Federal or federally-assisted programs covered by the TEA–21.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities, such as local agencies and businesses. This action would merely update and clarify existing procedures. Also, this rule reduces Federal regulatory requirements and allows State procedures to be utilized. Local entities could also adopt State procedures for advancing Federal-aid projects under the State transportation plan. Accordingly, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and concludes that this action will not have any effect on the quality of the human and natural environment.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by

State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 49 U.S.C. 3501–3520, Federal agencies must determine whether requirements contained in rulemaking are subject to the information collection provisions of the PRA.

The FHWA has determined that this final rule places a requirement on the STDs, for Right-of-Way Manuals, that requires Office of Management and Budget (OMB) approval.

The FHWA is allowing STDs to develop and submit the manuals by January 1, 2001. The FHWA estimates the annual burden of this requirement is approximately 4,000 hours on a national basis.

A request for OMB approval of the manual requirement will be submitted in the near future.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 130

Grant programs—transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 480

Grant programs—transportation, Highways and roads, Intergovernmental relations, Mass transportation, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 620

Grant programs—transportation, Highways and roads, Rights-of-way.

23 CFR Part 630

Government contracts, Grant programs—transportation, Highways and roads, Project authorization, Reporting and recordkeeping requirements.

23 CFR Part 635

Grant programs—transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements.

23 CFR Part 645

Grant programs—transportation, Highways and roads, Rights-of-way, Utilities.

23 CFR Parts 710, 712, and 713

Grant programs—transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 23 U.S.C. 107, 108, 111, and 315, the FHWA amends 23 CFR chapter I as set forth below:

PART 130—[REMOVED]

1. Remove part 130.

PART 480—[REMOVED]

2. Remove part 480.

PART 620—[AMENDED]

3. The authority citation for part 620 continues to read as follows:

Authority: 23 U.S.C. 315 and 318; 49 CFR 1.48; and 23 CFR 1.32.

4. Revise § 620.202 to read as follows:

§ 620.202 Applicability.

The provisions of this subpart apply to highway facilities where Federal-aid funds have participated in either right-of-way or physical construction costs of a project. The provisions of this subpart apply only to relinquishment of facilities for continued highway purposes. Other real property disposals and modifications or disposal of access rights are governed by the requirements of 23 CFR part 710.

5. Revise § 620.203(j) to read as follows:

§ 620.203 Procedures.

* * * * *

(j) If a relinquishment is to a Federal, State, or local government agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge, the STD may retain the Federal share of the proceeds if used for projects eligible under title 23 of the United States Code.

PART 630—[AMENDED]

6. Revise the authority citation for part 630 to read as follows:

Authority: 23 U.S.C. 105, 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; 49 CFR 1.48(b).

§ 630.106 [Amended]

7. Amend § 630.106(c)(3) by revising the citation "23 CFR part 712" to read "23 CFR part 710".

PART 635—[AMENDED]

8. Revise the authority citation for part 635 to read as follows:

Authority: 23 U.S.C. 101(note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

§ 635.307 [Amended]

9. Amend § 635.307(b)(3) by revising the citation "23 CFR part 713, subpart A" to read "23 CFR 710.403".

PART 645—[AMENDED]

10. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

11. Amend §§ 645.103(c) and 645.111(c) and (d) by revising the words "23 CFR chapter I, subchapter H, Right-of-Way and Environment" to read "23 CFR 710.203".

11–A. Amend § 645.113 (i) by revising the words "23 CFR part 712, the Acquisition Functions" to read "23 CFR 710.503".

PART 712—[REMOVED]

12. Remove part 712.

PART 713—[REMOVED]

13. Remove part 713.
14. Revise part 710 to read as follows:

PART 710—RIGHT-OF-WAY AND REAL ESTATE

Subpart A—General

Sec.
710.101 Purpose.
710.103 Applicability.
710.105 Definitions.

Subpart B—Program Administration

710.201 State responsibilities.
710.203 Funding and reimbursement.

Subpart C—Project Development

710.301 General.
710.303 Planning.
710.305 Environmental analysis.
710.307 Project agreement.
710.309 Acquisition.
710.311 Construction advertising.

Subpart D—Real Property Management

710.401 General.
710.403 Management.
710.405 Air rights on the Interstate
710.407 Leasing.
710.409 Disposals.

Subpart E—Property Acquisition Alternatives

710.501 Early acquisition.
710.503 Protective buying and hardship acquisition.
710.505 Real property donations.
710.507 State and local contributions.
710.509 Functional replacement of real property in public ownership.
710.511 Transportation enhancements.
710.513 Environmental mitigation.

Subpart F—Federal Assistance Programs

710.601 Federal land transfer.
710.603 Direct Federal acquisition.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Subpart A—General

§ 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23 of the United States Code in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

§ 710.103 Applicability.

This part applies whenever Federal assistance under title 23 of the United States Code is used. The part applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website: *http://www.fhwa.dot.gov/realestate/index.htm*

§ 710.105 Definitions.

(a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

Access rights means the right of ingress to and egress from a property that abuts a street or highway.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

Acquisition means activities to obtain an interest in, and possession of, real property.

Air rights means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

Airspace means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

Damages means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

Disposal means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code.

Donation means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

Easement means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

NHS means the National Highway System as defined in 23 U.S.C. 103(b).

Oversight agreement means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

Real property means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

Relinquishment means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

Right-of-way means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A legal settlement is a settlement reached by a responsible State legal representative after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A court settlement or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

State agency means a department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State transportation department (STD) means the State highway department, transportation department, or other State transportation agency or commission to which title 23 of the United States Code funds are apportioned.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91–646, 84 Stat.

1894), and the implementing regulations at 49 CFR part 24.

Subpart B—Program Administration

§ 710.201 State responsibilities.

(a) *Organization.* Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.

(b) *Program oversight.* The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

(c) *Right-of-way (ROW) operations manual.* Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:

(1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.

(2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.

(3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) *Compliance responsibility.* The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.

(e) *Adequacy of real property interest.* The real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the United States Code shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

(f) *Recordkeeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either:

(i) The date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or

(ii) The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

(2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.

(g) *Procurement.* Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.

(h) *Use of other public land acquisition organizations or private consultants.* The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

(i) *Approval actions.* Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.

(j) *Approval of just compensation.* The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.

(k) *Description of acquisition process.* The STD shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English.

§ 710.203 Funding and reimbursement.

(a) *General conditions.* The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in § 710.501 for early acquisition:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The State has executed a project agreement;

(3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) clearance, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and

(4) Costs have been incurred in conformance with State and Federal law requirements.

(b) *Direct eligible costs.* Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Participation is provided for:

(1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.

(ii) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning,

right-of-way plan preparation, title work, and similar necessary right-of-way related work.

(iii) The cost to acquire real property, including incidental expenses.

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.

(v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.

(2) *Relocation assistance and payments.* Payments made incidental to and associated with the displacement from acquired property under 49 CFR part 24.

(3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable State law.

(4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) *Payroll-related expenses and technical guidance.* Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A–87 (available at http://www.whitehouse.gov/omb/circulars). This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.

(6) *Property not incorporated into a project funded under title 23 of the United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.

(ii) *Easements not incorporated into the right-of-way.* The cost of acquiring easements outside the right-of-way for permanent or temporary use.

(7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) *Access rights.* Payment for full or partial control of access on an existing highway (*i.e.*, one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) *Utility and railroad property.* (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, Subpart B, Railroad-Highway Projects.

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) *Withholding payment.* The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) *Indirect costs.* Indirect costs may be claimed under the provisions of OMB Circular A–87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

Subpart C—Project Development

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process are provided in this subpart.

§ 710.303 Planning.

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA's planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal-aid funding.

§ 710.305 Environmental analysis.

The National Environmental Policy Act (NEPA) process, as described in FHWA's NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where applicable, a State also must complete Clean Air Act (42 U.S.C. 7401 *et seq.*) project level conformity analysis. In areas in which the Clean Air Act conformity determination has lapsed, acquiring agencies must coordinate with Federal Highway Administration for special instructions prior to initiating new projects or continuing activity on existing projects. At the time of processing an environmental document, a State may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501, are satisfied.

§ 710.307 Project agreement.

As a condition of Federal-aid, the STD shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The STD must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, a State may request credit toward the non-Federal share, for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

§ 710.309 Acquisition.

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The State shall conduct acquisition and related relocation activities in accordance with 49 CFR part 24.

§ 710.311 Construction advertising.

The State must manage real property acquired for a project until it is required for construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. On Interstate projects, prior to advertising for construction, the State shall develop ROW availability statements and certifications related to project acquisitions as required by 23 CFR 635.309. For non-Interstate projects, the oversight agreement must specify responsibility for the review and

approval of the ROW availability statements and certifications. Generally, for non-NHS projects, the State has full responsibility for determining that right-of-way is available for construction.

Subpart D—Real Property Management

§ 710.401 General.

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the STD shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23 of the United States Code funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

§ 710.403 Management.

(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

(b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.

(c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.

(d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in paragraphs (d) (1) through (5) of this section. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the general requirement for charging fair market value may be approved in the following situations:

(1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by Railroads in accordance with 23 CFR part 646.

(4) Use for Bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Use for transportation projects eligible for assistance under title 23 of the United States Code.

(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

(f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

(g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

§ 710.405 Air rights on the Interstate.

(a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.

(1) This subpart applies to Interstate facilities which received title 23 of the United States Code assistance in any way.

(2) This subpart does not apply to the following:

(i) Non-Interstate highways.

(ii) Railroads and public utilities which cross or otherwise occupy Federal-aid highway right-of-way.

(iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.

(iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for non-highway purposes; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. The STD must obtain prior FHWA approval, except for paragraph (c) of this section.

(c) An STD may make lands and rights-of-way available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements

(d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: *http://www.fhwa.dot.gov/realestate/index.htm.*

§ 710.407 Leasing.

(a) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State and the FHWA harmless,

nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

§ 710.409 Disposals.

(a) Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with § 710.403(c).

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

(c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

Subpart E—Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) *Real property acquisition.* The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal-aid project if the following conditions are met:

(1) The property was lawfully obtained by the State;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired in accordance with the provisions of 49 CFR part 24;

(4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4);

(5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:

(i) The decision on need to construct the project;

(ii) The consideration of alternatives; and

(iii) The selection of the design or location; and

(6) The property will be incorporated into a Federal-aid project.

(7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) *Reimbursement.* In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:

(1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and

(2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

§ 710.503 Protective buying and hardship acquisition.

(a) *General conditions.* Prior to the STD obtaining final environmental approval, the STD may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

(1) The project is included in the currently approved STIP;

(2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) *Protective buying.* The STD must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The STD must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) *Environmental decisions.* Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

§ 710.505 Real property donations.

(a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a Federal-aid project may donate the property to the STD. Prior to accepting the property, the owner must be informed by the agency of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than $2500, or the State appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 U.S.C. 323(d).

(b) *Credit for donations.* Donations of real property may be credited to the

State's matching share of the project. Credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of a project. The STD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

§ 710.507 State and local contributions.

(a) *General.* Real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement.

(b) *Effective date.* Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.

(c) *Exemptions.* Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

(d) *State contributions.* Real property acquired with State funds and required for federally-assisted projects may support a credit toward the non-Federal share of project costs. The STD must prepare documentation supporting all credits including:

(1) A certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State to acquire title can be used as justification for the value of the real property.

(e) *Credit for local government contributions.* A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The STD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

§ 710.509 Functional replacement of real property in public ownership.

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project, in lieu of paying the fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if:

(1) Functional replacement is permitted under State law and the STD elects to provide it.

(2) The property in question is in public ownership and use.

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility.

(4) The State has informed the agency owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.

(5) The FHWA concurs in the STD determination that functional replacement is in the public interest.

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement are limited to costs which are actually incurred in the replacement of the acquired land and/or facility and are:

(1) Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a State determines that payments providing for functional replacement of public facilities are allowable under State law, the State will incorporate within the State's ROW operating manual full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation enhancements.

(a) *General.* Section 133(b) (8) of title 23 of the United States Code authorizes the expenditure of surface transportation funds for transportation enhancement activities (TEA). Transportation enhancement activities which involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the Code of Federal Regulations (CFR), except as specified in paragraph (b)(3) of this section.

(b) *Requirements.* (1) Displacements for TEA are subject to the Uniform Act.

(2) Acquisitions for TEA are subject to the Uniform Act except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) Entities acquiring real property for TEA who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).

(4) The requirements of the Uniform Act do not apply when real property acquired for a TEA was purchased from a third party by a qualified conservation organization, and—

(i) The conservation organization is not acting on behalf of the agency receiving TEA or other Federal-aid funds, and

(ii) There was no Federal approval of property acquisition prior to the involvement of the conservation organization. ["Federal approval of property acquisition" means the date of the approval of the environmental document or project authorization/agreement, whichever is earlier. "Involvement of the conservation organization" means the date the organization makes a legally binding offer to acquire a real property interest, including an option to purchase, in the property.]

(5) When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the

requirements of the Uniform Act apply as if the agency had acquired the property itself.

(6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

(c) *Property management.* Real property acquired with TEA funds shall be managed in accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23 of the United States Code.

§ 710.513 Environmental mitigation.

(a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.

(b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federal-aid highway project.

Subpart F—Federal Assistance Programs

§ 710.601 Federal land transfer.

(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, 104 Stat. 1808, as amended).

(b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.

(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

(1) The purpose for which the lands are to be used;

(2) The estate or interest in the land required for the project;

(3) The Federal-aid project number or other appropriate references;

(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

§ 710.603 Direct Federal acquisition.

(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the STD with landowners;

(9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, *et seq.*)

(c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State.

(i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

Issued on: December 13, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–32908 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 296

National Reconnaissance Office Freedom of Information Act Program Regulation

AGENCY: National Reconnaissance Office, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the National Reconnaissance Office (NRO) regulation governing the disclosure of information under the Freedom of Information Act. This part is reissued pursuant to the Department of Defense rule, which implements the Freedom of Information Act and it conforms to the Department's rule and schedule. As a component of the Department of Defense, the Department rules and schedules with respect to the Freedom of Information Act, as amended, will also be the policy of the NRO.

EFFECTIVE DATE: October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Friemann, Chief, Information Access and Release Center, (703) 808–5029, Reading Room Appointments (703) 808–2474 or (703) 808–5500.

SUPPLEMENTARY INFORMATION: The NRO published a final rule of this part on November 16, 1993 (58 FR 60382). This rule does not constitute a significant regulatory action within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), nor the reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) apply. It is hereby certified that this final rule does not exert a significant economic impact nor impose new requirements on a number of small entities. This determination is made based upon the fact that the rule merely codifies the procedural aspects of the NRO Freedom of Information Act Program, as amended by the "Electronic Freedom of Information Act Amendment of 1996". It includes guidance on how and from whom to request information pertaining to the NRO.

List of Subjects 32 CFR Part 296

Freedom of information.

Accordingly, 32 CFR part 296 is revised to read as follows:

PART 296—NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.
296.1 Purpose.
296.2 Definitions.
296.3 Indexes.
296.4 Procedures for request of records.
296.5 Appeals.
296.6 Reading room.

Authority: 5 U.S.C. 552, as amended.

§ 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (5 U.S.C. 552 as amended) (FOIA), and to promote uniformity in the NRO FOIA program.

§ 296.2 Definitions.

The terms used in this part, with the exception of the following, are defined in 32 CFR part 286:

(a) *Freedom of Information Act appellate authority.* The Chief of Staff, NRO.

(b) *Initial denial authority.* The Chief, Information Access & Release Center NRO.

§ 296.3 Indexes.

(a) The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552(a)(2), except the index noted in paragraph (b) of this section.

(b) A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by December 31, 1999.

§ 296.4 Procedures for request of records.

(a) *Requests.* Requests for access to records of the National Reconnaissance Office may be filed by mail or FAX addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715, FAX Number (703) 808–5082. Requests need not be made on any special form but must be by letter or FAX or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All requests should contain a willingness to pay assessable FOIA fees.

(b) *Date of acceptance.* The requestor shall be promptly informed by letter of the date of acceptance of the request. The search conducted pursuant to that request shall be for records in existence as of and through the acceptance date.

(c) *Determination and notification.* When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or may contain information that is exempt under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority shall notify the requestor of the determination within 20 working days of the receipt of the request.

(d) *Multi-track processing.* The NRO has 3 queues in which requests may be processed when a significant number of pending requests prevents a response within 20 working days, all based on the date of receipt, first-in first-out, and the amount of work, time, and volume involved in processing the requests. (See subparagraph C1.5.4.2. of DoD 5400.7–R [1], Sept 1998). The queues are:

(1) *Simple.* Those requests which are easily handled and processed.

(2) *Complex.* Those requests which are complicated by multiple searches, co-ordinations, consultations, volume etc.

(3) *Expedited.* Expedited processing shall be granted to a requestor after the requestor asks for and demonstrates a compelling need for the information (paragraph C1.5.4.3. of DoD 5400.7–R)

(e) *Extension of response time.* In unusual circumstances when additional time is needed to respond, the Initial Denial Authority shall notify the requestor in writing of the reasons therefore, and an anticipated date, not to exceed 10 additional working days, on which a determination is expected to be dispatched. The Initial Denial Authority will normally send this notification within 20 working days from receipt of the request. Should it be determined that this 10 additional working days cannot be met, the requestor shall be notified and offered the opportunity to limit or narrow the scope of the request in order to facilitate faster processing, or to arrange an alternative time for processing the request (paragraph C1.5.2.6. of DoD 5400.7–R)

(f) *Fees.*

(1) *General.* As a component of the Department of Defense, the applicable published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed $250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requestor with a history of prompt payment. Where a requestor has previously failed to pay a fee within 30 calendar days of the date of the billing, the requestor will be required to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing of a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment for work already completed is not an advance payment. Responses will not be held pending receipt of fees from requestors with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Chief, Information Access and Release Center (IARC) and made payable to the Treasurer of the United States.

§ 296.5 Appeals.

Any person denied access to records, denied a fee waiver, involved in a dispute regarding fee estimates, or who considers a no record determination, or any determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appellate Authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715, should reference the initial denial, and shall contain the basis for disagreement with the initial denial. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

§ 296.6 Reading room.

(a) The NRO shall provide a reading room equipped with hard copy and electronic records as required in the "Electronic Freedom of Information Act Amendments of 1996". The NRO Reading Room is located at 14675 Lee Road, Chantilly VA, 20151–1715 and is open weekdays only from 8:00 am until

[1] Copies may be obtained via internet at http://web7.whs.osd.mil/corres/htm.

4:00 p.m. Requestors must call for an appointment twenty-four (24) hours in advance so that optimum customer service can be provided. (703) 808–5029. Fees will be charged for duplication of hard copy records at $.15 per page after the first 100 pages. Softcopy media provided to visitors is assessed as follows:

(1) 5.25" Floppy diskette $0.50
(2) 3.5" Floppy diskette $0.50
(3) CD–R Media $3.75
(4) Video Tape $4.00.

(b) The NRO FOIA Electronic Reading Room is located on the NRO Home Page: *www.nro.odci.gov.*

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–32306 Filed 12–20–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 299

RIN 0790–AG59

National Security Agency/Central Security Service (NSA/CSS) Freedom of Information Act Program

AGENCY: National Security Agency/Central Security Service, Defense.

ACTION: Final rule.

SUMMARY: This rule revises the National Security Agency/Central Security Services (NSA/CSS) regulation governing disclosure of information under the Freedom of Information Reform Act of 1986. As a component of the Department of Defense, the Departmental rules and schedules with respect to the Freedom of Information Reform Act will also be the policy of the NSA/CSS. The effect of the revised rule is to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996. It also incorporates guidance provided by the Department of Defense on implementation of this amended law.

EFFECTIVE DATE: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Paisley, FOIA Office, National Security Agency. (301) 688–6527.

SUPPLEMENTARY INFORMATION: This rule does not constitute a major rule within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), nor the reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) apply. It is hereby certified that this proposed rule does not exert a significant economic impact on a significant number of small entities. This determination is made based upon the fact that the rule merely updates the procedural aspects of the NSA/CSS Freedom of Information Act Program, which include guidance on how and from whom to request information pertaining to the NSA/CSS; imposes no new requirements, rights, or benefits on small entities; will have neither a beneficial nor an adverse affect on small entities, and is not a major rule under the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 299

Freedom of information.

Accordingly, 32 CFR part 299 is revised to read as follows:

PART 299—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE (NSA/CSS) FREEDOM OF INFORMATION ACT PROGRAM

Sec.
299.1 Purpose.
299.2 Definitions.
299.3 Policy.
299.4 Responsibilities.
299.5 Procedures.
299.6 Fees.
299.7 Exempt records.

Authority: 5 U.S.C. 552.

§ 299.1 Purpose.

(a) This part implements 5 U.S.C. 552, as amended, and DoD 5400.7–R,[1] assigns responsibility for responding to written requests made pursuant to 5 U.S.C. 552; and provides for the review required to determine the appropriateness of classification pursuant to DoD 5200.1–R.[2]

(b) This part applies to all NSA/CSS elements, field activities and personnel, and governs the release or denial of any information under the terms of the Freedom of Information Act (FOIA).

§ 299.2 Definitions.

Terms used in this part, with the exception of the terms in § 299.4, are defined in DoD 5400.7–R. For ease of reference, however, some terms are defined in this section.

(a) FOIA request. (1) A written request for NSA/CSS records, that reasonably describes the records sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization or a business, but not including a Federal Agency or a fugitive from the law that either explicitly or implicitly invokes 5 U.S.C. 552, as amended, DoD 5400.7–R, or NSA/CSS Freedom of Information Act Program, within the National Security Agency/Central Security Service. Requesters should also indicate a willingness to pay fees associated with the processing of their request or, in the alternative, why a waiver of fee may be appropriate.

(2) An FOIA request may be submitted by U.S. mail or its equivalent, by facsimile or electronically through the NSA FOIA Home Page on the World Wide Web (WWW) once the development of a Web-based procedure for submitting FOIA requests is completed. The Web-based system will consist of a form to be completed by the requester, requiring name and postal mailing address. The WWW address is http://www.nsa.gov.8080/docs/efoia/.

(3) When a request meeting the requirements stated in this section is received by the FOIA office and there is no remaining question about fees, that request is considered perfected.

(b) *Privacy Act (PA) request.* A request submitted by a U.S. citizen or an alien admitted for permanent residence for access to records on himself/herself which are contained in a PA system of records and/or seeking an amendment to his/her records. For purposes of this part, PA request refers to a request for copies of records. Regardless of whether the requester cites the FOIA, PA or neither law, the request will be processed under both this part and NSA/CSS Regulation 10–35, Implementation of the Privacy Act of 1974.[3]

(c) *Agency records.* (1) Products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, including those in electronic form or format (including e-mails), or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in NSA/CSS's possession and control at the time the FOIA request is made. The term "records" does not include:

(i) objects or articles such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence;

(ii) Intangible records such as an individual's memory or oral communication; and

(iii) Personal records of an individual not subject to agency creation or

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to this section.

[3] Copies may be obtained through a FOIA request to the National Security Agency, Ft. George G. Meade, MD 20755–6000.

retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(2) A record must exist and be in the possession and control of the NSA/CSS at the time of the request to be subject to this part. There is no obligation to create or compile a record or obtain a record not in the possession of the NSA/CSS to satisfy an FOIA request. The NSA/CSS may compile or create a new record when doing so would be less burdensome to the Agency than providing existing records and the requester does not object.

(3) Hard copy or electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3) and are available through an established distribution system or the Internet, normally need not be processed under the FOIA. The Agency will provide guidance to the requester on how to obtain the material outside of the FOIA process. If the requester insists that the request be processed under the FOIA, then it shall be so processed.

§ 299.3 Policy.

(a) Pursuant to written requests submitted in accordance with the FOIA, the NSA/CSS will make records available to the public consistent with the Act and the need to protect government interests pursuant to subsection (b) of the Act. Oral requests for information will not be accepted. Before the Agency responds to a request, the request must comply with the provisions of this part.

(b) Requests for electronic records shall be processed, and the records retrieved whenever retrieval can be achieved through reasonable efforts (in terms of both time and manpower) and these efforts would not significantly interfere with the operation of an automated information system. Reasonable efforts shall be undertaken to maintain records in forms of formats that render electronic records readily reproducible.

(c) The NSA/CSS does not originate final orders, opinions, statements of policy, interpretations, staff manuals, or instructions that affect members of the public of the type generally covered by the indexing requirement of 5 U.S.C. 552. Therefore, it has been determined, pursuant to the pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552. However, should such material be identified, it will be indexed and placed in the library at the Cryptologic History Museum, which serves as the NSA/CSS FOIA reading room, and made available through the Internet. Copies of records which have been released under the FOIA and which NSA/CSS has determined are likely to become the subject of subsequent requests will be placed in the library of the Cryptologic History Museum. In addition, these records will be made available to the public through the Internet. An index of this material will be available in hard copy in the museum library and on the Internet.

§ 299.4 Responsibilities.

(a) The Deputy Director for Corporate Management (DDCM) is responsible for responding to FOIA requests and for collecting fees from FOIA requesters.

(b) The Director of Policy (N5) is the NSA/CSS focal point for responding to FOIA requests. The Deputy Director of Policy (N5P) is the initial denial authority (IDA) and is responsible for:

(1) Receiving and staffing all initial, written requests for the release of information;

(2) Conducting the necessary reviews to determine the releasability of information pursuant to DoD 5200.1–R;

(3) Providing the requester with releasable material;

(4) Notifying the requester of any adverse determination, including informing the requester of his/her right to appeal an adverse determination to the appeal authority (see § 299.5(m));

(5) Assuring the timeliness of responses;

(6) Negotiating with the requester regarding satisfying his request (e.g., time extensions, modifications to the request);

(7) Authorizing extensions of time within Agency components (e.g., time needed to locate and/or review material);

(8) Assisting the Office of General Counsel (OGC) in judicial actions filed under 5 U.S.C. 552;

(9) Maintaining the FOIA reading room and the Internet home page; and

(10) Compiling the annual FOIA report.

(c) The Chief, Finance and Accounting Office (N12) is responsible for:

(1) Sending initial and follow-up bills to FOIA requesters as instructed by the FOIA office, with a copy of all bills going to the FOIA office. In cases where an estimate of fees is provided to the requester prior to the processing of his/her request, no bill will be sent. Although the FOIA office asks FOIA requesters to send payment to the FOIA office, for subsequent forwarding to the Finance and Accounting Office, payment may be received directly in the Finance and Accounting Office. Such payment may be identified by the payee as payment for a Freedom of Information Act request, by the letters "FOIA," or as payment for J9XXX/J10XXXX. (FOIA requests are serialized by a one-up number beginning on October 1 of each year, e.g., J9001, J9002);

(2) Receiving and handling all checks or money orders remitted in payment for FOIA requests, crediting them to the proper account and notifying the FOIA office promptly of all payments received;

(3) Notifying the FOIA office promptly of any payments received directly from requesters even if no bill was initiated by the Finance and Accounting Office; and

(4) Issuing a prompt reimbursement of overpaid fees to the requester upon being notified of such overpayment by the FOIA office.

(d) The Deputy Director, NSA/CSS, is the FOIA Appeal Authority required by 5 U.S.C. 552 for considering appeals of adverse determinations by the Deputy Director of Policy. In the absence of the Deputy Director, the Executive Director, NSA/CSS, serves as the Appeal Authority.

(e) The General Counsel (GC) or his designee is responsible for:

(1) Reviewing responses to FOIA requests to determine the legal sufficiency of actions taken by the Deputy Director of Policy, as required on a case-by-case basis;

(2) Reviewing the appeals of adverse determinations made by the Deputy Director of Policy. The GC will prepare an appropriate reply to such appeals and submit that reply to the NSA/CSS FOIA Appeal Authority for final decision; and

(3) Representing the Agency in all judicial actions relating to 5 U.S.C. 552 and providing support to the Department of Justice.

(f) The Deputy Director for Support Services will establish procedures to ensure that:

(1) All inquiries for information pursuant to 5 U.S.C. 552 are delivered promptly to the Deputy Director of Policy; and

(2) Any appeal of an adverse determination is delivered promptly and directly to the NSA/CSS Appeal Authority staff.

(g) The Key Components and Field Chiefs will:

(1) Establish procedures to ensure that any inquiries for information pursuant to 5 U.S.C. 552 are referred immediately and directly to the Deputy Director of Policy. Field Elements should forward,

electronically, any requests received to the DIRNSA/CHCSS, ATTN: N5P; and

(2) Designate a senior official and an alternate to act as a focal point to assist the Deputy Director of Policy in determining estimated and actual cost data, in conducting searches reasonably calculated to retrieve responsive records and assessing whether information can be released or should be withheld.

(h) Military and civilian personnel assigned or attached to or employed by the NSA/CSS who receive a Freedom of Information Act request shall deliver it immediately to the Deputy Director of Policy. Individuals who are contacted by personnel at other government agencies and asked to assist in reviewing material for release under the FOIA must direct the other agency employee to the NSA/CSS FOIA office promptly.

§ 299.5 Procedures.

(a) Requests for copies of records of the NSA/CSS shall be delivered to the Deputy Director of Policy immediately upon receipt once the request is identified as a Freedom of Information Act or Privacy Act request or appears to be intended as such a request.

(b) The Deputy Director of Policy will endeavor to respond to a direct request to NSA/CSS within 20 working days of receipt. If the request fails to meet the minimum requirements of a perfected FOIA request, the FOIA office will advise the requester of how to perfect the request. The 20 working day time limit applies upon receipt of the perfected request. In the event the Deputy Director of Policy cannot respond within 20 working days due to unusual circumstances, the chief of the FOIA office will advise the requester of the reason for the delay and negotiate a completion date with the requester.

(c) Direct requests to NSA/CSS will be processed in the order in which they are received. Requests referred to NSA/CSS by other government agencies will be placed in the processing queue according to the date the requester's letter was received by the referring agency if that date is known. If it is not known when the referring agency received the request, it will be placed in the queue according to the date of the requester's letter.

(d) The FOIA office will maintain three queues ("simple," "complex" and "expedite") for the processing of records in chronological order. Cases placed in the "simple" queue require little time to process. "Complex" cases require a substantial amount of review and research prior to making a final release determination. This procedure is followed so that a requester will not be required to wait a long period of time to learn that the Agency has no records responsive to his request or to obtain records that do not require a lengthy review.

(e) Expedited processing shall be granted to a requester if he/she requests such treatment and demonstrates a compelling need for the information. A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. A compelling need is defined as follows:

(1) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(2) The information is urgently needed by an individual primarily engaged in disseminating information to inform the public about actual or alleged Federal Government activity. Urgently needed means that the information has a particular value that will be lost if not disseminated quickly.

(3) A request may also be expedited, upon receipt of a statement certified by the requester to be true and correct to the best of his/her knowledge, for the following reasons:

(i) There would be an imminent loss of substantial due process rights.

(ii) There is a humanitarian need for the material. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind.

(4) Requests which meet the criteria for expedited treatment as defined in paragraph (e)(3) of this section will be placed in the expedite queue behind requests which are expedited because of a compelling need (see § 299.5(e)).

(5) A decision on whether to grant expedited treatment will be made within 10 calendar days of receipt. The requester will be notified whether his/her request meets the criteria for expedited processing within that time frame. If a request for expedited processing has been granted, a substantive response will be provided within 20 working days of the date of the decision to expedite. If a substantive response cannot be provided within 20 working days, a response will be provided as soon as practicable and the chief of the FOIA office will negotiate a completion date with the requester, taking into account the number of cases preceding it in the expedite queue and the complexity of the responsive material.

(f) If the Deputy Director of Policy, in consultation with the GC, determines that the fact of the existence or non-existence of requested material is a matter that is exempt from disclosure, the requester will be so advised.

(g) If the FOIA office determines that NSA/CSS may have information of the type requested, the office shall contact each Key Component reasonably expected to hold responsive records.

(h) The FOIA office will assign the requester to the appropriate fee category under 5 U.S.C. 552, as amended, DoD 5400.7–R, and NSA/CSS Freedom of Information Act Program, and, if a requester seeks a waiver of fees, the FOIA office will, after determining the applicable fee category, determine whether to waive fees pursuant to DoD 5400.7–R. (See also § 299.6.) If fees are to be assessed in accordance with the provisions of 5 U.S.C. 552 and DoD 5400.7–R, the Key Component will prepare an estimate of the cost required to locate, retrieve and, in the case of commercial requesters, review the records. Cost estimates will include only direct search, duplication costs and review time (for commercial requesters) as defined in DoD 5400.7–R.

(1) If the cost estimate does not exceed $25.00, the component shall search for and forward to the FOIA office the documents responsive to the request. Fees $15.00 and under will be waived.

(2) If the costs are estimated to exceed $25.00, the component shall provide an estimate to the FOIA office without conducting the search. The chief of the FOIA office will advise the requester of the costs to determine a willingness to pay the fees. A requester's willingness to pay fees will be satisfactory when the estimated fee does not exceed $250.00 and the requester has a history of prompt payment. A history of prompt payment means payment within 30 calendar days of the date of billing. If fees are expected to exceed $250.00, the requester will be required to submit payment before processing is continued if the requester does not have a history of prompt payment. All payments will be made by certified check or money order made payable to the Treasurer of the United States.

(3) When a requester has previously failed to pay a fee charged within a timely fashion (i.e., within 30 calendar days from the date of billing) payment is required before a search is initiated or before review is begun. When a requester has no payment history, an advance payment may be required of the requester after the case has been completed, but prior to providing the final response.

(4) If a requester has failed to pay fees after three bills have been sent, additional requests from that requester

and/or the organization or company he/she represents will not be honored until all costs and interest are paid.

(i) Upon receipt of a statement of willingness to pay assessable fees or the payment from the requester, the FOIA office shall notify the NSA/CSS component to search for the appropriate documents.

(1) The component conducting the search will advise the FOIA office of the types of files searched (e.g., electronic records/e-mail, video/audio tapes, paper), the means by which the search was conducted (e.g., subject or chronological files, files retrievable by name or personal identifier) and any key words used in an electronic search.

(2) If the search does not locate the requested records, the Deputy Director of Policy shall so advise the requester and offer appeal rights.

(3) If the search locates the requested records, the holding organization will furnish copies of these records immediately to the FOIA office. The Deputy Director of Policy will make a determination as to the releasability of the records in consultation with the GC, the Legislative Affairs Office (if any information relates to members of Congress or their staffs) and other Agency components, as appropriate. This determination shall also state, with particularity, that a search reasonably calculated to locate responsive records was conducted and that all reasonably segregable, non-exempt information was released. The located records will be handled as follows:

(i) All exempt records or portions thereof will be withheld and the requester so advised along with the statutory basis for the denial; the volume of material being denied, unless advising of the volume would harm an interest protected by exemption (see 5 U.S.C. 552); and the procedure for filing an appeal of the denial.

(ii) All segregable, non-exempt records or portions thereof will be forwarded promptly to the requester.

(j) Records or portions thereof originated by other agencies or information of primary interest to other agencies found in NSA/CSS records will be handled as follows:

(1) The originating agency's FOIA Authority will be provided with a copy of the request and the stated records.

(2) The requester will be advised of the referral, except when notification would reveal exempt information.

(k) Records of portions thereof originated by a commercial or business submitter and containing information that is arguably confidential commercial or financial information as defined in Executive Order 12600 (52 FR 23781, 3 CFR, 1988 Comp., p. 235) will be handled as follows:

(1) The commercial or business submitter will be provided with a copy of the records as NSA/CSS proposes to release them, and the submitter will be given an opportunity to inform the FOIA office about its objections to disclosure in writing.

(2) The Deputy Director of Policy or his/her designee shall review the submitter's objections to disclosure and, if N5P decides to release records or portions thereof to the requester, provide the submitter with an opportunity to enjoin the release of such information.

(l) Records may be located responsive to an FOIA request which contain portions not responsive to the subject of the request. The non-responsive portions will be processed as follows:

(1) If the information is easily identified as releasable, the non-responsive portions will be provided to the requester.

(2) If additional review or coordination with other NSA/CSS elements or other government agencies or entities is required to determine the releasability of the information, and the processing of the material would be facilitated by excluding those portions from review, the requester should be consulted regarding the need to process those portions. If the requester states that he is interested in the document in its entirety, including those portions not responsive to the subject of his request, the entire document will be considered responsive and reviewed accordingly.

(3) If the conditions as stated in paragraph (l)(2) of this section pertain, but it is not a simple matter to contact and/or reach an agreement with the requester, the non-responsive portions will be whited-out or otherwise marked to differentiate the removal of non-responsive material from the removal of exempt portions. The requester shall be advised that portions were removed as non-responsive. In addition, he/she shall be given an indication of the manner in which those portions would be treated if responsive (e.g., the information would be protected by exemptions, would require extensive review/consultation). Such a response is not considered an adverse determination. If the requester informs the FOIA office of his interest in receiving the "whited-out" portions, the request will be placed in the same location within the processing queue as the original request and those portions of the documents will be processed.

(4) If the requester states in his initial request that he/she wants all non-responsive portions contained within documents containing responsive information, then the documents will be processed in their entirety.

(m) Any person advised of an adverse determination will be notified of the right to submit an appeal which must be postmarked within 60 days of the date of the response letter and that the appeal must be addressed to the NSA/CSS Appeal Authority, National Security Agency, Ft. George G. Meade, MD 20755–6000. The following actions are considered adverse determinations:

(1) Denial of records or portions of records;

(2) Inability of NSA/CSS to locate records;

(3) Denial of a request for the waiver or reduction of fees;

(4) Placement of requester in a specific fee category;

(5) Amount of estimates of processing costs;

(6) Denial of a requester for expeditious treatment; and

(7) Non-agreement regarding completion date of request.

(n) The GC or his designee will process appeals and make a recommendation to the Appeal Authority.

(1) Upon receipt of an appeal regarding the denial of information or the inability of the Agency to locate records, the GC or his designee shall review the record and determine whether the denial was proper and/or whether an adequate search was conducted for responsive material, and make other determinations and recommendations as appropriate.

(2) If the GC or his/her designee determines that additional information may be released, the information shall be made available to the requester within 20 working days from receipt of the appeal. The conditions for responding to an appeal for which expedited treatment is sought by the requester are the same as those for expedited treatment on the initial processing of a request. (See paragraph (e) of this section.)

(3) If the GC or his/her designee determines that the denial was proper, the requester must be advised within 20 days after receipt of the appeal that the appeal is denied. The requester likewise shall be advised of the basis for the denial and the provisions for judicial review of the Agency's appellate determination.

(4) If a new search for records is conducted and produces additional material, the additional records will be forwarded to the Deputy Director of Policy, as the IDA, for review. Following his/her review, the Deputy Director of Policy will return the material to the GC

with his/her recommendation for release or withholding. The GC will review the material on behalf of the Appeal Authority, and the Appeal Authority will make the release determination. Upon denial or release of additional information, the Appeal Authority will advise the requester that more material was located and that the IDA and the Appeal Authority each conducted an independent review of the documents. In the case of denial, the requester will be advised of the basis of the denial and the right to seek judicial review of the Agency's action.

(5) When a requester appeals the absence of a response to a request within the statutory time limits, the GC shall process the absence of a response as it would denial of access to records. The Appeal Authority will advise the requester of the right to seek judicial review.

(6) Appeals will be processed using the same multi-track system as initial requests. If an appeal cannot be responded to within 20 working days, the requirement to obtain an extension from the requester is the same as with initial requests. The time to respond to an appeal, however, may be extended by the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request. That is, if the initial request is processed within 20 working days so that the extra 10 days of processing which an agency can negotiate with the requester are not used, the response to the appeal may be delayed for that 10 days (or any unused portion of the 10 days).

§ 299.6 Fees.

(a) Upon receipt of a request, N5P shall evaluate the request to determine the fee category or status of the requester, as well as the appropriateness of a waiver or reduction of fees if requested. There are no fees associated with a Privacy Act request, except as stated in NSA/CSS Regulation 10–35, Implementation of the Privacy Act of 1974. If fees are assessable, a search cost estimate will be sent to the Key Component(s) expected to maintain responsive records. If N5P assigns a fee category to a requester which differs from that claimed by the requester or determines that a waiver or reduction of fees is not appropriate, N5P shall notify the requester of this discrepancy and of the estimated cost of processing the request. The requester will be given 30 days to provide additional substantiation for the fee status claimed or for a fee waiver or reduction. The requester will be advised that his/her request will not be processed until the discrepancy over the fee category, fee waiver or reduction, or both are resolved. He/she will also be advised of his/her right to appeal N5P's determination. A fee waiver or reduction will be granted or denied in accordance with DoD 5400.7–R and based on information provided by the requester. If the requester does not respond to N5P's initial notification of the discrepancy in fee assessment within the 30 days, N5P's determination about that requester's fee status shall be final.

(b) Fees will reflect only direct search, review (in the case of commercial requesters) and duplication costs, recovery of which are permitted by 5 U.S.C. 552. Fees shall not be used to discourage requesters.

(c) No minimum fee may be charged.

(d) Fees will be based on estimates provided by appropriate organizational focal points. Upon completion of the processing of the request and computation of all assessable fees, the request will be handled as follows:

(1) If the actual costs exceed the estimated costs, the requester will be notified of the remaining fees due. Upon the requester's agreement to pay the amount in excess, non-exempt information will be provided to the requester and additional fees will be collected. If the requester refuses to pay the amount in excess, processing of the request will be terminated with notice to the requester.

(2) If the actual costs are less than estimated fees which have been collected from the requester, the non-exempt information will be released and the FOIA office will advise Finance and Accounting Office of the need to refund funds to the requester.

(e) Fees for manual searches, review time and personnel costs associated with computer searches will be computed according to the following schedule:

Type	Grade	Hourly rate
(1) Clerical	E9/GS8 and below	$12
(2) Professional	O1–O6/GS9–GS15	25
(3) Executive	O7/SCE/SLE/SLP	45

(f) Fees for machine time involved in computer searches shall be based on the direct cost of retrieving information from the computer, including associated input/output costs.

(g) Search costs for audiovisual documentary material will be computed as for any other record. Duplication costs will be the actual, direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(h) Duplication fees will be assessed according to the following schedule:

Type	Cost per page
(1) Office Copy	$.15
(2) Microfiche	.25
(3) Printed Material	.02

§ 299.7 Exempt records.

(a) Records meeting the exemption criteria of 5 U.S.C. 552 need not be published in the **Federal Register**, made available in a reading room, or provided in response to requests made under 5 U.S.C. 552.

(b) The following nine FOIA exemptions may be used by the NSA/CSS to withhold information in whole or in part from public disclosure when disclosure would cause foreseeable harm to an interest protected by the exemption. Discretionary releases will be made whenever possible.

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive Order.

(2) Records relating solely to the internal personnel rules and practices of an agency.

(3) Records which concern matters that a statute specifically exempts from disclosure, so long as the statutory exemptions permit no discretion on what matters are exempt; or matters which meet criteria established for withholding by the statute, or which are particularly referred to by the statute as being matters to be withheld. Examples of such statutes are:

(i) The National Security Agency Act of 1959 (Public Law 86–36 Section 6);

(ii) 18 U.S.C. 798;

(iii) 50 U.S.C. 403–3(c)(6);

(iv) 10 U.S.C. 130; and

(v) 10 U.S.C. 2305(g).

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency.

(6) Personnel and medical files and similar files, the disclosure of which, would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to

the extent that the production of such records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a source within NSA/CSS, state, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis, or could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; and

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) Information which has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of reasons cited in this section, shall be considered as being "For Official Use Only (FOUO). No other material shall be considered or marked FOUO.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 99–32418 Filed 12–20–99; 8:45 am]

BILLING CODE 5000–1–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 012–FIP; FRL–6511–3]

RIN 2060–AI54

Revision to Promulgation of Federal Implementation Plan for Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or "the Act"), EPA is finalizing proposed amendments to the moderate area federal implementation plan (FIP) for the Phoenix PM–10 nonattainment area. These amendments modify the fugitive dust rule to add or replace certain test methods and allow alternative control measures (ACMs) to be implemented without prior EPA approval. For the convenience of readers, the entire FIP rule is reprinted in this publication.

DATES: This action is effective on January 20, 2000.

ADDRESSES: A copy of docket No. A–98–42 containing material relevant to this final action, including EPA's responses to comments received on the proposed amendments, is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Eleanor Kaplan (415) 744–1159 to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the docket No. A–98–42 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic Availability: This document is also available as an electronic file on EPA's Region 9 Air Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Karen Irwin (415) 744–1903.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Summary of Final Action on Proposed Revisions
A. Test Methods
1. Silt Content Test Method
2. Visible Crust Test Method
3. Standing Vegetation Test Method Density Procedure
B. Alternative Control Measures
III. Unpaved Roads
IV. Agency Responses to Comments
V. Text Corrections to the Final Rule
VI. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility Analysis
F. Unfunded Mandates Reform Act (UMRA)
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act (NTTAA)
I: Submission to Congress and the General Accounting Office
J. Petitions for Judicial Review

I. Background

On August 3, 1998 (63 FR 41326), EPA finalized a FIP for the Phoenix PM–10 nonattainment area (the "final FIP"). Readers should refer to 63 FR 41326 for details of the history and contents of the final FIP.

The final FIP includes a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads codified at 40 CFR 52.128 (63 FR 41326, 41350), hereafter referred to as "the final FIP rule".[1] EPA subsequently proposed specific revisions related to the test methods, ACMs, and unpaved road requirements of the final FIP rule (64 FR 3263, January 21, 1999). EPA accepted comments on the proposed amendments through March 8, 1999. EPA is now finalizing action on all but one of the proposed amendments and re-publishing the final FIP fugitive dust rule in its entirety.

A detailed discussion of the FIP rule revisions proposed by EPA can be found in 64 FR 3263, January 1999. EPA proposed to add a silt content test method for unpaved roads and unpaved parking lots, add a new visible crust test method or replace the visible crust test method for vacant lots, add a procedure for measuring the density of standing vegetation to the standing vegetation test method, include coverage of privately owned unpaved roads that are privately maintained or not maintained,[2] and allow ACMs to be implemented without prior EPA approval.

[1] EPA promulgated the final FIP rule as part of its court-ordered obligation to provide for the implementation of Reasonably Available Control Measures (RACM) (required by section 189(a)(1)(C) of the Clean Air Act) in the Phoenix PM–10 nonattainment area.

[2] Note: the FIP rule as finalized in August 1998 includes coverage of privately owned unpaved roads that are publicly maintained; EPA's proposal in January 1999 to include privately owned roads that are privately maintained or not maintained has no bearing on existing FIP rule coverage of privately owned, publicly maintained unpaved roads.

II. Summary of Final Action on Proposed Revisions

A. Test Methods

1. Silt Content Test Method

The final FIP rule contains an opacity standard of twenty (20) percent, or Ringlemann 1, for unpaved roads and unpaved parking lots. Compliance with this standard is to be tested using visible emissions test methods included in the final Phoenix FIP rule.[3] EPA proposed an additional, new test method for measuring silt content.[4]

EPA solicited comments on this additional test method and whether or not to retain the existing opacity test method in the final FIP rule. EPA received no comments suggesting that the existing opacity test method be eliminated from the FIP rule. In this final action, EPA has added the silt content test method into the FIP rule and retained the opacity test method. Therefore, sources subject to the FIP rule will need to comply with both a silt content standard and an opacity standard.

Also, EPA received public comments suggesting that silt loading be taken into account. In this final action, EPA has included a silt loading value in the silt content test method, below which a source may be deemed in compliance with the FIP rule. Text changes to accommodate this addition occur in paragraph (b)(16) and in Appendix A, I.B of the final amendments.

Furthermore, EPA has clarified the following items from the proposed test method text:

- Samples should be collected to a depth of approximately 1 centimeter or until a hard subsurface is reached, whichever occurs first.
- If sieving is simplified by combining three samples, each sample should weigh within one ounce of the other two samples. (EPA's contractor clarified that samples must be of approximately the same weight in order to ensure technical accuracy if they are combined.)[5]

EPA has corrected the following two items from the proposed test method text:

- An incorrect reference to collector pan material as silt fraction has been eliminated.
- A printing error in the AP–42 silt content test method with respect to the method's equation to calculate percent silt content.

2. Visible Crust Test Method

The final FIP rule's test method for measuring visible crust thickness on vacant lots involved breaking off a piece of crust, checking whether the crust crumbles easily and measuring its thickness with a ruler.[6] EPA proposed an alternative method to determine the sufficiency of a visible crust.[7] The alternative test method involves dropping a small steel ball from a height of one foot in select one square foot areas and checking to see whether the ball penetrates the surface or causes loose grains to appear. Public comments received support the alternative method. In this final action, EPA has replaced the earlier visible crust thickness test method with the alternative visible crust test method. This required renumbering of the proposed text[8] for consistency with the numbering of other vacant lot test methods. Also, EPA has modified the text to allow the weight of the ball used in the test method to range from 16 to 17 grams, as opposed to an exact weight of 16.33 grams.

3. Standing Vegetation Test Method Density Procedure

The final FIP rule contains a test method for standing vegetation.[9] EPA proposed to add a vegetation density procedure involving the use of a grid with one inch or half-inch squares to help ensure that various vegetative structures can be assessed accurately and consistently.[10] Public comments received support the inclusion of the vegetation density procedure in the standing vegetation test method. In this final action, EPA has added the density procedure into the final FIP rule. EPA also made two minor text corrections to the proposed test method which are enumerated in the Technical Support Document associated with this action, which can be found in Docket No. A–98–42.

B. Alternative Control Measures

In the final FIP rule (August 1998), ACMs are allowed provided that they are submitted to EPA and receive EPA approval.[11] ACMs are any RACM not specifically listed in the rule that can meet the rule's stabilization standards for each source category.[12] EPA proposed to amend the final FIP rule such that ACMs would not require prior EPA approval.[13] In today's action, EPA has accordingly eliminated the final FIP rule requirement that ACMs receive prior EPA approval.

III. Unpaved Roads

The final FIP rule contains requirements to control fugitive dust from unpaved roads that are publicly owned and/or operated (*i.e.*, maintained). This includes privately owned roads that are publicly maintained. EPA proposed to include in the FIP rule unpaved privately owned roads that are privately maintained or not maintained. EPA is not taking final action at this time on the proposed amendments to the unpaved road requirements of the final FIP rule. The Maricopa Association of Governments (MAG) recently announced its intent to pave or otherwise control all unpaved roads located in the PM–10 nonattainment area with traffic levels that meet or exceed 130 average daily trips.[14] EPA believes that the County's action may supersede the need for EPA to control additional unpaved roads as specified in the proposed FIP revision, and thus is not taking action on the proposed revision at this time.

IV. Agency Responses to Comments

A 45-day public comment period was provided in 64 FR 3263. EPA received several comments on the proposed FIP rule revisions and responds to the most significant below. EPA has responded to all comments associated with this final action in the Technical Support Document, which can be found in Docket No. A–98–42.

Comment: Maricopa County Environmental Services Division (MCESD) comments that by itself, the silt content of the surface material on an unpaved road is a unidimensional parameter and does not indicate whether or not the road is stabilized. It is the silt loading value which provides an indicator of stabilization as it estimates the amount of fine particulate per surface area which may become airborne. The proposed test method should be modified to derive silt loading in place of silt content.

---

[3] Reference Method 9 (40 CFR part 60, appendix A) and Methods 203A and 203C. Appendix A.I. to § 52.128 (63 FR 41326, 41353–41355).

[4] 64 FR 3263, 3267–3268.

[5] Chatten Cowherd, MRI Research Institute in Kansas City, Missouri, January 1999.

[6] 63 FR 41324, 41355.

[7] 64 FR 3263, 3268–3269.

[8] 63 FR 3263, 3268.

[9] 63 FR 41326, 41356.

[10] 64 FR 3263, 3269–3271. The procedure was provided to EPA by Larry Hagen, Agricultural Engineer, United States Department of Agriculture, Wind Erosion Research Unit, 2004 Throckmortion Hall, Kansas State University, Manhatten, Kansas 66506.

[11] 63 FR 41326, 41352.

[12] The ACM provisions of the rule do not otherwise authorize any modification of the FIP rule's requirements.

[13] 64 FR 3263, 3267.

[14] Memorandum from Lindy Bauer, MAG, to Members of the MAG Air Quality Planning Team, November 30, 1999, summarizing the MAG Transportation Review Committee's funding recommendations presented on November 23, 1999.

Response: EPA has modified the test method to include a silt loading parameter, such that surfaces with less than 0.33 oz/ft.^{2} silt loading will be considered stable under the FIP rule. However, EPA has retained the silt content standards of 6 percent for unpaved roads and 8 percent for unpaved parking lots when silt loading is greater than or equal to 0.33 oz/ft.^{2}

Comment: MCESD, Maricopa County Department of Transportation (MCDOT) and Arizona Department of Environmental Quality (ADEQ) comment on the benefits associated with retaining the opacity test method in the FIP rule while adding a silt content test method. With respect to visible crust test methods, however, MCESD and ADEQ comment that EPA should replace (*i.e.*, not retain) the visible crust test currently found in the FIP rule with the proposed "drop ball" visible crust test. Arizona Center for Law in the Public Interest (ACLPI) comments that they support the use of the most accurate test methods available, however, test methods should not be replaced where the superiority of the replacement tests has not been established; requiring both existing and proposed tests, at least for a certain time period, would not be unduly cumbersome or expensive to the regulated community, and this would also allow EPA to compare the relative value and accuracy of the two sets of tests.

Response: EPA has retained the opacity standard in the FIP rule, while adding a new test method for measuring silt content. Retaining both the opacity and silt content standards and test methods in the final FIP rule will provide greater flexibility for qualified persons to conduct compliance testing of fugitive dust sources and will allow opportunities to compare the relative value and accuracy of the two tests.

With respect to visible crust test methods, EPA has replaced the former visible crust test with the proposed "drop ball" visible crust test. EPA conducted field testing of both the visible crust test method in the final FIP rule and the proposed "drop ball" visible crust test method. Field testing showed that the proposed "drop ball" test method is easier to conduct, more accurately repeatable by various parties, and more indicative of whether a sufficiently stabilizing crust exists. To ensure the use of a superior method, EPA is replacing the test method in the final FIP rule with the "drop ball" test method. (Interested parties should note that the test method for threshold friction velocity promulgated in the final FIP rule can also be used to determine source compliance where some visible crusting is present.)

Comment: ADEQ comments that adding the vegetative density procedure to the current test method would clarify the method and produce more accurate results when performed by different individuals.

Response: EPA has added the vegetative density procedure to the standing vegetation test method.

Comment: ADEQ comments that they support eliminating the requirement to submit ACMs to EPA because implementation costs will decrease since parties will not need to commit time and resources to submit ACMs to EPA and wait for approval before utilizing them. ACLIPI, however, comments that they strongly object to the implementation of ACMs without EPA approval because without such approval, ACMs will inevitably become "least effective control measures".

Response: EPA has eliminated the requirement to submit ACMs to EPA for approval. Since the FIP rule contains standards and test methods which indicate whether a surface is stabilized, owners/operators can be allowed flexibility as to the type of control measure applied as long as the control measure results in a stabilized surface. The elimination of the requirement to submit ACMs for prior EPA approval does not lessen the owners'/operators' responsibility to implement control measures effectively on the sources subject to the rule. In fact, by emphasizing the intended result, as opposed to the type of control, EPA hopes to increase owners'/operators' understanding that their responsibility under the FIP rule will remain until a source is controlled, even if the owner/operator inadequately implements a control measure or implements an ineffective control measure. If applied, ACMs must meet the minimum standards established by the FIP rule, therefore, requiring that ACMs be submitted to EPA for approval would result in unnecessary administrative burden.

V. Text Corrections to the Final Rule

In addition to finalizing the proposed rule amendments, EPA is incorporating a few minor corrections to final FIP rule text at 40 CFR 52.128. These are enumerated in the Technical Support Document associated with this action, which can be found in Docket No. A–98–42.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Due to potential novel policy issues this action is considered a significant regulatory action and therefore must be reviewed by OMB. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The revisions finalized in this rulemaking concern test methods and flexibility for alternative compliance. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Analysis

1. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

For the purposes of this inquiry, as it applies to the proposed amendments to the federal fugitive dust rule (40 CFR § 52.128), EPA is assuming that the affected or potentially affected sources constitute "small entities" as defined by the RFA.

A detailed discussion of the RFA analysis for the final FIP is found in section V.B. at 63 FR 41326. In general, the finalized amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods as they currently exist in the rule. Thus, EPA believes that the amendments will not change the final FIP RFA analysis, except possibly to have a lesser impact on small entities.

2. RFA Analysis

a. Finalized Amendments to Federal Rule for Unpaved Roads, Unpaved Parking Lots and Vacant Lots

EPA believes that the finalized test method amendments will provide either more flexibility or an improved procedure for determining compliance with the FIP fugitive dust rule. The silt content test method will allow persons who are not certified in visible emissions training to test the stability of an unpaved road or unpaved parking lot by using an alternative method to the opacity test method. EPA plans to ensure that the necessary sieve units are available for loan by local entities to regulated sources. Also, the newly added visible crust test method accomplishes the same objective as the previous visible crust test method yet is more practical and can be accurately repeated by various parties. The additional procedure to assist parties in measuring frontal silhouette area of various vegetative structures is merely intended to address circumstances that may arise in the field which are not addressed in the final FIP rule. Finally, eliminating the requirement for EPA approval of ACMs increases the rule's flexibility for source owners/operators and reduces the paperwork burden of the rule.

b. Certification

For reasons discussed above, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. After consideration of the economic impacts of today's final rule amendments on small entities, I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act (UMRA)

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

A detailed discussion of the UMRA requirements and how they are addressed can be found in section V.C. of the final FIP rulemaking (63 FR 41326). As explained above, today's finalized amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods currently in the rule. Thus, EPA believes that the amendments will not change the final FIP UMRA analysis, except possibly to have a lesser impact on most regulated entities.

G. Paperwork Reduction Act

The finalized test method and ACM amendments do not impact the information collection request analysis for the final FIP (EPA ICR 1855.02). The final FIP (63 FR 41326) provides more information on the information collection request requirements.

H. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, Sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In this action, EPA has incorporated voluntary consensus standards where feasible [See language for Appendix A to § 52.128, I.B(iv)]. However, in most cases there are no applicable technical standards or field procedures specifically designed for the source categories at hand. OMB has reviewed and concurred on the applicable technical standards finalized in this revision.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: December 13, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.128 is revised as follows:

§ 52.128 Rule for unpaved parking lots, unpaved roads and vacant lots.

(a) *General.* (1) *Purpose.* The purpose of this section is to limit the emissions of particulate matter into the ambient air from human activity on unpaved parking lots, unpaved roads and vacant lots.

(2) *Applicability.* The provisions of this section shall apply to owners/operators of unpaved roads, unpaved parking lots and vacant lots and responsible parties for weed abatement on vacant lots in the Phoenix PM–10 nonattainment area. This section does not apply to unpaved roads, unpaved parking lots or vacant lots located on an industrial facility, construction, or earth-moving site that has an approved permit issued by Maricopa County Environmental Services Division under Rule 200, Section 305, Rule 210 or Rule 220 containing a Dust Control Plan approved under Rule 310 covering all unpaved parking lots, unpaved roads and vacant lots. This section does not apply to the two Indian Reservations (the Salt River Pima-Maricopa Indian Community and the Fort McDowell Mojave-Apache Indian Community) and a portion of a third reservation (the Gila River Indian Community) in the Phoenix PM–10 nonattainment area. Nothing in this definition shall preclude applicability of this section to vacant lots with disturbed surface areas due to construction, earth-moving, weed abatement or other dust generating operations which have been terminated for over eight months.

(3) The test methods described in Appendix A of this section shall be used when testing is necessary to determine whether a surface has been stabilized as defined in paragraph (b)(16) of this section.

(b) *Definitions.* (1) *Average daily trips (ADT)*—The average number of vehicles that cross a given surface during a specified 24-hour time period as determined by the Institute of Transportation Engineers Trip Generation Report (6th edition, 1997) or tube counts.

(2) *Chemical/organic stabilizer*—Any non-toxic chemical or organic dust suppressant other than water which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not prohibited for use by any applicable law, rule or regulation.

(3) *Disturbed surface area*—Any portion of the earth's surface, or materials placed thereon, which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition, thereby increasing the potential for emission of fugitive dust.

(4) *Dust suppressants*—Water, hygroscopic materials, solution of water and chemical surfactant, foam, or non-toxic chemical/organic stabilizers not prohibited for use by any applicable law, rule or regulation, as a treatment material to reduce fugitive dust emissions.

(5) *EPA*—United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

(6) *Fugitive dust*—The particulate matter entrained in the ambient air which is caused from man-made and natural activities such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind. This excludes particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, and from piledrivers.

(7) *Lot*—A parcel of land identified on a final or parcel map recorded in the office of the Maricopa County recorder with a separate and distinct number or letter.

(8) *Low use unpaved parking lot*—A lot on which vehicles are parked no more than thirty-five (35) days a year, excluding days where the exemption in paragraph (c)(2) of this section applies.

(9) *Motor vehicle*—A self-propelled vehicle for use on the public roads and highways of the State of Arizona and required to be registered under the Arizona State Uniform Motor Vehicle Act, including any non-motorized attachments, such as, but not limited to, trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle.

(10) *Off-road motor vehicle*—any wheeled vehicle which is used off paved roadways and includes but is not limited to the following:

(i) Any motor cycle or motor-driven cycle;

(ii) Any motor vehicle commonly referred to as a sand buggy, dune buggy, or all terrain vehicle.

(11) *Owner/operator*—any person who owns, leases, operates, controls, maintains or supervises a fugitive dust source subject to the requirements of this section.

(12) *Paving*—Applying asphalt, recycled asphalt, concrete, or asphaltic concrete to a roadway surface.

(13) *Phoenix PM–10 nonattainment area*—such area as defined in 40 CFR 81.303, excluding Apache Junction.

(14) *PM–10*—Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by reference or equivalent methods that meet the requirements specified for PM–10 in 40 CFR part 50, Appendix J.

(15) *Reasonably available control measures (RACM)*—Techniques used to prevent the emission and/or airborne transport of fugitive dust and dirt.

(16) *Stabilized surface*—(i) Any unpaved road or unpaved parking lot surface where:

(A) Any fugitive dust plume emanating from vehicular movement does not exceed 20 percent opacity as determined in section I.A of Appendix A of this section; and

(B) Silt loading (weight of silt per unit area) is less than 0.33 ounces per square foot as determined by the test method in section I.B of Appendix A of this section OR where silt loading is greater than or equal to 0.33 ounces per square foot and silt content does not exceed six (6) percent for unpaved road surfaces or eight (8) percent for unpaved parking lot surfaces as determined by the test method in section I.B of Appendix A of this section.

(ii) Any vacant lot surface with:

(A) A visible crust which is sufficient as determined in section II.1 of Appendix A of this section;

(B) A threshold friction velocity (TFV), corrected for non-erodible elements, of 100 cm/second or higher as determined in section II.2 of Appendix A of this section;

(C) Flat vegetation cover equal to at least 50 percent as determined in section II.3 of Appendix A of this section;

(D) Standing vegetation cover equal to or greater than 30 percent as determined in section II.4 of Appendix A of this section; or

(E) Standing vegetation cover equal to or greater than 10 percent as determined in section II.4 of Appendix A of this section where threshold friction velocity, corrected for non-erodible elements, as determined in section II.2 of Appendix A of this section is equal to or greater than 43 cm/second.

(17) *Unpaved parking lot*—A privately or publicly owned or operated area utilized for parking vehicles that is not paved and is not a Low use unpaved parking lot.

(18) *Unpaved road*—Any road, equipment path or driveway used by motor vehicles or off-road motor vehicles that is not paved which is open to public access and owned/operated by any federal, state, county, municipal or other governmental or quasi-governmental agencies.

(19) *Urban or suburban open area*—An unsubdivided or undeveloped tract of land adjoining a residential, industrial or commercial area, located on public or private property.

(20) *Vacant lot*—A subdivided residential, industrial, institutional, governmental or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature.

(c) *Exemptions.* The following requirements in paragraph (d) of this section do not apply:

(1) In paragraphs (d)(1), (d)(2) and (d)(4)(iii) of this section: Any unpaved parking lot or vacant lot 5,000 square feet or less.

(2) In paragraphs (d)(1) and (d)(2) of this section: Any unpaved parking lot on any day in which ten (10) or fewer vehicles enter.

(3) In paragraphs (d)(4)(i) and (d)(4)(ii) of this section: Any vacant lot with less than 0.50 acre (21,780 square feet) of disturbed surface area(s).

(4) In paragraph (d) of this section: Non-routine or emergency maintenance of flood control channels and water retention basins.

(5) In paragraph (d) of this section: Vehicle test and development facilities and operations when dust is required to test and validate design integrity, product quality and/or commercial acceptance. Such facilities and operations shall be exempted from the provisions of this section only if such testing is not feasible within enclosed facilities.

(6) In paragraph (d)(4)(i) of this section: Weed abatement operations performed on any vacant lot or property under the order of a governing agency for the control of a potential fire hazard or otherwise unhealthy condition provided that mowing, cutting, or another similar process is used to maintain weed stubble at least three (3) inches above the soil surface. This includes the application of herbicides provided that the clean-up of any debris does not disturb the soil surface.

(7) In paragraph (d)(4)(i) of this section: Weed abatement operations that receive an approved Earth Moving permit under Maricopa County Rule 200, Section 305 (adopted 11/15/93).

(d) *Requirements.* (1) *Unpaved parking lots.* Any owners/operators of an unpaved parking lot shall implement one of the following RACM on any surface area(s) of the lot on which vehicles enter and park.

(i) Pave; or

(ii) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly such that the surface is stabilized; or

(iv) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(2) Any owners/operators of a low use unpaved parking lot as defined in paragraph (b)(8) of this section shall implement one of the RACM under paragraph (d)(1) of this section on any day(s) in which over 100 vehicles enter the lot, such that the surface area(s) on which vehicles enter and park is/are

stabilized throughout the duration of time that vehicles are parked.

(3) *Unpaved roads.* Any owners/operators of existing unpaved roads with ADT volumes of 250 vehicles or greater shall implement one of the following RACM along the entire surface of the road or road segment that is located within the Phoenix non-attainment area by June 10, 2000:

(i) Pave; or

(ii) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly such that the surface is stabilized; or

(iv) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(4) *Vacant lots.* The following provisions shall be implemented as applicable.

(i) *Weed abatement.* No person shall remove vegetation from any vacant lot by blading, disking, plowing under or any other means without implementing all of the following RACM to prevent or minimize fugitive dust.

(A) Apply a dust suppressant(s) to the total surface area subject to disturbance immediately prior to or during the weed abatement.

(B) Prevent or eliminate material track-out onto paved surfaces and access points adjoining paved surfaces.

(C) Apply a dust suppressant(s), gravel, compaction or alternative control measure immediately following weed abatement to the entire disturbed surface area such that the surface is stabilized.

(ii) *Disturbed surfaces.* Any owners/operators of an urban or suburban open area or vacant lot of which any portion has a disturbed surface area(s) that remain(s) unoccupied, unused, vacant or undeveloped for more than fifteen (15) calendar days shall implement one of the following RACM within sixty (60) calendar days following the disturbance.

(A) Establish ground cover vegetation on all disturbed surface areas in sufficient quantity to maintain a stabilized surface; or

(B) Apply a dust suppressant(s) to all disturbed surface areas in sufficient quantity and frequency to maintain a stabilized surface; or

(C) Restore to a natural state, i.e. as existing in or produced by nature without cultivation or artificial influence, such that all disturbed surface areas are stabilized; or

(D) Apply and maintain surface gravel uniformly such that all disturbed surface areas are stabilized; or

(E) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(iii) *Motor vehicle disturbances.* Any owners/operators of an urban or suburban open area or vacant lot of which any portion has a disturbed surface area due to motor vehicle or off-road motor vehicle use or parking, notwithstanding weed abatement operations or use or parking by the owner(s), shall implement one of the following RACM within 60 calendar days following the initial determination of disturbance.

(A) Prevent motor vehicle and off-road motor vehicle trespass/ parking by applying fencing, shrubs, trees, barriers or other effective measures; or

(B) Apply and maintain surface gravel or chemical/organic stabilizer uniformly such that all disturbed surface areas are stabilized.

(5) *Implementation date of RACM.* All of the requirements in paragraph (d) of this section shall be effective eight (8) months from September 2, 1998. For requirements in paragraph (d)(4)(ii) and (d)(4)(iii) of this section, RACM shall be implemented within eight (8) months from September 2, 1998, or within 60 calendar days following the disturbance, whichever is later.

(e) *Monitoring and records.* (1) Any owners/operators that are subject to the provisions of this section shall compile and retain records that provide evidence of control measure application, indicating the type of treatment or measure, extent of coverage and date applied. For control measures involving chemical/organic stabilization, records shall also indicate the type of product applied, vendor name, label instructions for approved usage, and the method, frequency, concentration and quantity of application.

(2) Copies of control measure records and dust control plans along with supporting documentation shall be retained for at least three years.

(3) *Agency surveys.* (i) EPA or other appropriate entity shall conduct a survey of the number and size (or length) of unpaved roads, unpaved parking lots, and vacant lots subject to the provisions of this section located within the Phoenix PM–10 nonattainment area beginning no later than 365 days from September 2, 1998.

(ii) EPA or other appropriate entity shall conduct a survey at least every three years within the Phoenix PM–10 nonattainment area beginning no later than 365 days from September 2, 1998, which includes:

(A) An estimate of the percentage of unpaved roads, unpaved parking lots, and vacant lots subject to this section to which RACM as required in this section have been applied; and

(B) A description of the most frequently applied RACM and estimates of their control effectiveness.

Appendix A to § 52.128—Test Methods To Determine Whether A Surface Is Stabilized

I. Unpaved Roads and Unpaved Parking Lots

A. Opacity Observations

Conduct opacity observations in accordance with Reference Method 9 (40 CFR Part 60, appendix A) and Methods 203A and 203C of this appendix, with opacity readings taken at five second observation intervals and two consecutive readings per plume beginning with the first reading at zero seconds, in accordance with Method 203C, sections 2.3.2. and 2.4.2 of this appendix. Conduct visible opacity tests only on dry unpaved surfaces (i.e. when the surface is not damp to the touch) and on days when average wind speeds do not exceed 15 miles per hour (mph).

(i) Method 203A—Visual Determination of Opacity of Emissions From Stationary Sources for Time-Arranged Regulations

Method 203A is virtually identical to EPA's Method 9 (40 CFR Part 60 Appendix A) except for the data-reduction procedures, which provide for averaging times other than 6 minutes. That is, using Method 203A with a 6-minute averaging time would be the same as following EPA Method 9 (40 CFR Part 60, Appendix A). Additionally, Method 203A provides procedures for fugitive dust applications. The certification procedures provided in section 3 are virtually identical to Method 9 (40 CFR Part 60, Appendix A) and are provided here, in full, for clarity and convenience.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for time-averaged regulations. A time-averaged regulation is any regulation that requires averaging visible emission data to determine the opacity of visible emissions over a specific time period.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by an observer qualified according to the procedures of section 3.

2. Procedures

An observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions from Stationary Sources. These procedures are not applicable to this section.

2.2 Procedures for Fugitive Process Dust Emissions. These procedures are applicable for the determination of the opacity of fugitive emissions by a qualified observer. The qualified field observer should do the following:

2.2.1 Position. Stand at a position at least 5 meters from the fugitive dust source in order to provide a clear view of the emissions with the sun oriented in the 140-degree sector to the back. Consistent as much as possible with maintaining the above requirements, make opacity observations from a position such that the line of vision is approximately perpendicular to the plume and wind direction. As much as possible, if multiple plumes are involved, do not include more than one plume in the line of sight at one time.

2.2.2 Field Records. Record the name of the plant or site, fugitive source location, source type [pile, stack industrial process unit, incinerator, open burning operation activity, material handling (transfer, loading, sorting, etc.)], method of control used, if any, observer's name, certification data and affiliation, and a sketch of the observer's position relative to the fugitive source. Also, record the time, estimated distance to the fugitive source location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), observer's position relative to the fugitive source, and color of the plume and type of background on the visible emission observation form when opacity readings are initiated and completed.

2.2.3 Observations. Make opacity observations, to the extent possible, using a contrasting background that is perpendicular to the line of vision. For roads, storage piles, and parking lots, make opacity observations approximately 1 meter above the surface from which the plume is generated. For other fugitive sources, make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. For intermittent sources, the initial observation should begin immediately after a plume has been created above the surface involved. Do not look continuously at the plume but, instead, observe the plume momentarily at 15-second intervals.

2.3 Recording Observations. Record the opacity observations to the nearest 5 percent every 15 seconds on an observational record sheet. Each momentary observation recorded represents the average opacity of emissions for a 15-second period.

2.4 Data Reduction for Time-Averaged Regulations. A set of observations is composed of an appropriate number of consecutive observations determined by the averaging time specified. Divide the recorded observations into sets of appropriate time lengths for the specified averaging time. Sets must consist of consecutive observations; however, observations immediately preceding and following interrupted observations shall be deemed consecutive. Sets need not be consecutive in time and in no case shall two sets overlap, resulting in multiple violations. For each set of observations, calculate the appropriate average opacity.

3. Qualification and Testing

3.1 Certification Requirements. To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5 percent increments to 25 different black plumes and 25 different white plumes, with an error not to exceed 15 percent opacity on any one reading and an average error not to exceed 7.5 percent opacity in each category. Candidates shall be tested according to the procedures described in paragraph 3.2. Any smoke generator used pursuant to paragraph 3.2 shall be equipped with a smoke meter which meets the requirements of paragraph 3.3. Certification tests that do not meet the requirements of paragraphs 3.2 and 3.3 are not valid.

The certification shall be valid for a period of 6 months, and after each 6-month period, the qualification procedures must be repeated by an observer in order to retain certification.

3.2 Certification Procedure. The certification test consists of showing the candidate a complete run of 50 plumes, 25 black plumes and 25 white plumes, generated by a smoke generator. Plumes shall be presented in random order within each set of 25 black and 25 white plumes. The candidate assigns an opacity value to each plume and records the observation on a suitable form. At the completion of each run of 50 readings, the score of the candidate is determined. If a candidate fails to qualify, the complete run of 50 readings must be repeated in any retest. The smoke test may be administered as part of a smoke school or training program, and may be preceded by training or familiarization runs of the smoke generator during which candidates are shown black and white plumes of known opacity.

3.3 Smoke Generator Specifications. Any smoke generator used for the purpose of paragraph 3.2 shall be equipped with a smoke meter installed to measure opacity across the diameter of the smoke generator stack. The smoke meter output shall display in-stack opacity, based upon a path length equal to the stack exit diameter on a full 0 to 100 percent chart recorder scale. The smoke meter optical design and performance shall meet the specifications shown in Table A. The smoke meter shall be calibrated as prescribed in paragraph 3.3.1 prior to conducting each smoke reading test. At the completion of each test, the zero and span drift, shall be checked, and if the drift exceeds ±1 percent opacity, the condition shall be corrected prior to conducting any subsequent test runs. The smoke meter shall be demonstrated at the time of installation to meet the specifications listed in Table A. This demonstration shall be repeated following any subsequent repair or replacement of the photocell or associated electronic circuitry including the chart recorder or output meter, or every 6 months, whichever occurs first.

3.3.1 Calibration. The smoke meter is calibrated after allowing a minimum of 30 minutes warm-up by alternately producing simulated opacity of 0 percent and 100 percent. When stable response at 0 percent or 100 percent is noted, the smoke meter is adjusted to produce an output of 0 percent or 100 percent, as appropriate. This calibration shall be repeated until stable 0 percent and 100 percent readings are produced without adjustment. Simulated 0 percent and 100 percent opacity values may be produced by alternately switching the power to the light source on and off while the smoke generator is not producing smoke.

3.3.2 Smoke Meter Evaluation. The smoke meter design and performance are to be evaluated as follows:

3.3.2.1 Light Source. Verify from manufacturer's data and from voltage measurements made at the lamp, as installed, that the lamp is operated within ±5 percent of the nominal rated voltage.

3.3.2.2 Spectral Response of Photocell. Verify from manufacturer's data that the photocell has a photopic response; i.e., the spectral sensitivity of the cell shall closely approximate the standard spectral-luminosity curve for photopic vision which is referenced in (b) of Table A.

3.3.2.3 Angle of View. Check construction geometry to ensure that the total angle of view of the smoke plume, as seen by the photocell, does not exceed 15 degrees. Calculate the total angle of view as follows:

$\phi_v = 2 \tan^{-1} d/2L$

Where:

ϕ_v = total angle of view;
d = the photocell diameter + the diameter of the limiting aperture; and
L = distance from the photocell to the limiting aperture.

The limiting aperture is the point in the path between the photocell and the smoke plume where the angle of view is most restricted. In smoke generator smoke meters, this is normally an orifice plate.

3.3.2.4 Angle of Projection. Check construction geometry to ensure that the total angle of projection of the lamp on the smoke plume does not exceed 15 degrees. Calculate the total angle of projection as follows:

$\phi_p = 2 \tan^{-1} d/2L$

Where:

ϕ_p = total angle of projection;
d = the sum of the length of the lamp filament + the diameter of the limiting aperture; and
L = the distance from the lamp to the limiting aperture.

3.3.2.5 Calibration Error. Using neutral-density filters of known opacity, check the error between the actual response and the theoretical linear response of the smoke meter. This check is accomplished by first calibrating the smoke meter according to 3.3.1 and then inserting a series of three neutral-density filters of nominal opacity of 20, 50, and 75 percent in the smoke meter path length. Use filters calibrated within ±2 percent. Care should be taken when inserting the filters to prevent stray light from affecting the meter. Make a total of five nonconsecutive readings for each filter. The maximum opacity error on any one reading shall be ±3 percent.

3.3.2.6 Zero and Span Drift. Determine the zero and span drift by calibrating and operating the smoke generator in a normal manner over a 1-hour period. The drift is measured by checking the zero and span at the end of this period.

3.3.2.7 Response Time. Determine the response time by producing the series of five simulated 0 percent and 100 percent opacity values and observing the time required to reach stable response. Opacity values of 0 percent and 100 percent may be simulated by alternately switching the power to the light

source off and on while the smoke generator is not operating.

4. References

1. U.S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; appendix A; Method 9 for Visual Determination of the Opacity of Emissions from Stationary Sources. Final Rule. 39 FR 219. Washington, DC. U.S. Government Printing Office. November 12, 1974.

2. Office of Air and Radiation. "Quality Assurance Guideline for Visible Emission Training Programs." EPA–600/S4–83–011. Quality Assurance Division. Research Triangle Park, N.C. May 1982.

3. "Method 9—Visible Determination of the Opacity of Emissions from Stationary Sources." February 1984. Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III, section 3.1.2. Stationary Source Specific Methods. EPA–600–4–77–027b. August 1977. Office of Research and Development Publications, 26 West Clair Street, Cincinnati, OH.

4. Office of Air Quality Planning and Standards. "Opacity Error for Averaging and Nonaveraging Data Reduction and Reporting Techniques." Final Report–SR–1–6–85. Emission Measurement Branch, Research Triangle Park, N.C. June 1985.

5. The U.S. Environmental Protection Agency. Preparation, Adoption, and Submittal of State Implementation Plans. Methods for Measurement of PM_{10} Emissions from Stationary Sources. Final Rule. **Federal Register**. Washington, DC. U.S. Government Printing Office. Volumes 55. No. 74. pps. 14246–14279. April 17, 1990.

(ii) Method 203C—Visual Determination of Opacity of Emissions From Stationary Sources for Instantaneous Limitation Regulations

Method 203C is virtually identical to EPA's Method 9 (40 CFR Part 60, Appendix A), except for the data-reduction procedures which have been modified for application to instantaneous limitation regulations. Additionally, Method 203C provides procedures for fugitive dust applications which were unavailable when Method 9 was promulgated. The certification procedures in section 3 are identical to Method 9. These certification procedures are provided in Method 203A as well, and, therefore, have not been repeated in this method.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for instantaneous limitations. An instantaneous limitation regulation is an opacity limit which is never to be exceeded.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by a qualified observer.

2. Procedures

The observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions From Stationary Sources. Same as 2.1, Method 203A.

2.1.1 Position. Same as 2.1.1, Method 203A.

2.1.2 Field Records. Same as 2.1.2, Method 203A.

2.1.3 Observations. Make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present.

Do not look continuously at the plume. Instead, observe the plume momentarily at the interval specified in the subject regulation. Unless otherwise specified, a 15-second observation interval is assumed.

2.1.3.1 Attached Steam Plumes. Same as 2.1.3.1, Method 203A.

2.1.3.2 Detached Steam Plumes. Same as 2.1.3.2, Method 203A.

2.2 Procedures for Fugitive Process Dust Emissions.

2.2.1 Position. Same as section 2.2.1, Method 203A.

2.2.2 Field Records. Same as section 2.2.2, Method 203A.

2.2.3 Observations.

2.2.3.1 Observations for a 15-second Observation Interval Regulations. Same as section 2.2.3, Method 203A.

2.2.3.2 Observations for a 5-second Observation Interval Regulations. Same as section 2.2.3, Method 203A, except, observe the plume momentarily at 5-second intervals.

2.3 Recording Observations. Record opacity observations to the nearest 5 percent at the prescribed interval on an observational record sheet. Each momentary observation recorded represents the average of emissions for the prescribed period. If a 5-second observation period is not specified in the applicable regulation, a 15-second interval is assumed. The overall time for which recordings are made shall be of a length appropriate to the regulation for which opacity is being measured.

2.3.1 Recording Observations for 15-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 15-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for a 15-second period.

2.3.2 Recording Observations for 5-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 5-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for 5-second period.

2.4 Data Reduction for Instantaneous Limitation Regulations. For an instantaneous limitation regulation, a 1-minute averaging time will be used. Divide the observations recorded on the record sheet into sets of consecutive observations. A set is composed of the consecutive observations made in 1 minute. Sets need not be consecutive in time, and in no case shall two sets overlap. Reduce opacity observations by dividing the sum of all observations recorded in a set by the number of observations recorded in each set.

2.4.1 Data Reduction for 15-second Observation Intervals. Reduce opacity observations by averaging four consecutive observations recorded at 15-second intervals. Divide the observations recorded on the record sheet into sets of four consecutive observations. For each set of four observations, calculate the average by summing the opacity of the four observations and dividing this sum by four.

2.4.2 Data Reduction for 5-second Observation Intervals. Reduce opacity observations by averaging 12 consecutive observations recorded at 5-second intervals. Divide the observations recorded on the record sheet into sets of 12 consecutive observations. For each set of 12 observations, calculate the average by summing the opacity of the 12 observations and dividing this sum by 12.

3. Qualification and Test

Same as section 3, Method 203A.

TABLE A.—SMOKE METER DESIGN AND PERFORMANCE SPECIFICATIONS

Parameter	Specification
a. Light Source	Incandescent lamp operated at nominal rated voltage.
b. Spectral response of photocell	Photopic (daylight spectral response of the human eye—Reference 4.1 of section 4.)
c. Angle of view	15 degrees maximum total angle
d. Angle of projection	15 degrees maximum total angle.
e. Calibration error	±3 percent opacity, maximum.
f. Zero and span drift	±1 percent opacity, 30 minutes.
g. Response time	≤5 seconds.

B. Silt Content

Conduct the following test method to determine the silt loading and silt content of unpaved road and unpaved parking lot surfaces.

(i) Collect a sample of loose surface material from an area 30 cm by 30 cm (1 foot by 1 foot) in size to a depth of approximately 1 cm or until a hard subsurface is reached, whichever occurs first. Use a brush and dustpan or other similar device. Collect the sample from a routinely-traveled portion of the surface which receives a preponderance of vehicle traffic, i.e. as commonly evidenced by tire tracks. Conduct sweeping slowly so

that fine surface material is not released into the air. Only collect samples from surfaces that are not wet or damp due to precipitation or dew.

(ii) Obtain a shallow, lightweight container and a scale with readings in half ounce increments or less. Place the scale on a level surface and zero it with the weight of the empty container. Transfer the entire sample collected to the container, minimizing escape of particles into the air. Weigh the sample and record its weight.

(iii) Obtain and stack a set of sieves with the following openings: 4 mm, 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Pour the entire sample into the top sieve, minimizing escape of particles into the air by positioning the sieve/collector pan unit in an enclosed or wind barricaded area. Cover the sieve/collector pan unit with a lid. Shake the covered sieve/collector pan unit vigorously for a period of at least one (1) minute in both the horizontal and vertical planes. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for a complete separation of material in order to ensure that all material has been sifted to the finest sieve through which it can pass. If not, reassemble and cover the sieve/collector pan unit and shake it for period of at least one (1) minute. After disassembling the sieve/collector pan unit, transfer the material which is captured in the collector pan into the lightweight container originally used to collect and weigh the sample. Minimize escape of particles into the air when transferring the material into the container. Weigh the container with the material from the collector pan and record its weight. Multiply the resulting weight by 0.38 if the source is an unpaved road or by 0.55 if the source is an unpaved parking lot to estimate silt loading. Divide by the total sample weight and multiply by 100 to arrive at the percent silt content.

(iv) As an alternative to conducting the procedure described above in section I.B.(ii) and section I.B.(iii) of this appendix, the sample (collected according to section I.B.(i) of this appendix) may be taken to an independent testing laboratory or engineering facility for silt loading (*e.g.* net weight < 200 mesh) and silt content analysis according to the following test method from "Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples", (Fifth Edition, Volume I, Appendix C.2.3 "Silt Analysis", 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

1. Objective—Several open dust emission factors have been found to be correlated with the silt content(< 200 mesh) of the material being disturbed. The basic procedure for silt content determination is mechanical, dry sieving. For sources other than paved roads, the same sample which was oven-dried to determine moisture content is then mechanically sieved.

2.1 Procedure—Select the appropriate 20-cm (8-in.) diameter, 5-cm (2-in.) deep sieve sizes.

Recommended U. S. Standard Series sizes are 3/8 in., No. 4, No. 40, No. 100, No. 140, No. 200, and a pan. Comparable Tyler Series sizes can also be used. The No. 20 and the No. 200 are mandatory. The others can be varied if the recommended sieves are not available, or if buildup on 1 particulate sieve during sieving indicates that an intermediate sieve should be inserted.

2.2 Obtain a mechanical sieving device, such as a vibratory shaker or a Roto-Tap ®[1] without the tapping function.

2.3 Clean the sieves with compressed air and/or a soft brush. Any material lodged in the sieve openings or adhering to the sides of the sieve should be removed, without handling the screen roughly, if possible.

2.4 Obtain a scale (capacity of at least 1600 grams [g] or 3.5 lb) and record make, capacity, smallest division, date of last calibration, and accuracy. (See Figure A)

2.5 Weigh the sieves and pan to determine tare weights. Check the zero before every weighing. Record the weights.

2.6 After nesting the sieves in decreasing order of size, and with pan at the bottom, dump dried laboratory sample (preferably immediately after moisture analysis) into the top sieve. The sample should weigh between ~ 400 and 1600 g (~ 0.9 and 3.5 lb). This amount will vary for finely textured materials, and 100 to 300 g may be sufficient when 90% of the sample passes a No. 8 (2.36 mm) sieve. Brush any fine material adhering to the sides of the container into the top sieve and cover the top sieve with a special lid normally purchased with the pan.

2.7 Place nested sieves into the mechanical sieving device and sieve for 10 minutes (min). Remove pan containing minus No. 200 and weigh. Repeat the sieving at 10-min intervals until the difference between 2 successive pan sample weighings (with the pan tare weight subtracted) is less than 3.0%. Do not sieve longer than 40 min.

2.8 Weigh each sieve and its contents and record the weight. Check the zero before every weighing.

2.9 Collect the laboratory sample. Place the sample in a separate container if further analysis is expected.

2.10 Calculate the percent of mass less than the 200 mesh screen (75 micrometers [μm]). This is the silt content.

Figure A. Example silt analysis form.

Silt Analysis

Dated: _____
By: _____
Sample No: _____ Sample Weight (after drying)
Material: _____
Pan + Sample: _____
Pan: _____
Split Sample Balance: _____
Dry Sample: _____
Make _____ Capacity: _____
Smallest Division _____
Final Weight _____
% Silt = [Net Weight <200 Mesh] ÷ [Total Net Weight × 100] =____%

SIEVING

Time: Start:	Weight (Pan Only)
Initial (Tare):	
10 min:	
20 min:	
30 min:	
40 min:	

Screen	Tare weight (screen)	Final weight (screen + sample)	Net weight (sample)	%
⅜ in.				
4 mesh.				
10 mesh.				
20 mesh.				
40 mesh.				
100 mesh.				
140 mesh.				
200 mesh.				
Pan.				

(v) The silt loading and percent silt content for any given unpaved road surface or unpaved parking lot surface shall be based on the average of at least three (3) samples that are representative of routinely-traveled portions of the road or parking lot surface. In order to simplify the sieve test procedures in section I.B.(ii) and section I.B.(iii) of this appendix, the three samples may be combined as long as all material is sifted to the finest sieve through which it can pass, each sample weighs within 1 ounce of the other two samples, and the combined weight of the samples and unit area from which they were collected is calculated and recorded accurately.

[1] CFR part 60, App. A, Meth. 5, 2.1.2, footnote 2.

II. Vacant Lots

The following test methods shall be used for determining whether a vacant lot, or portion thereof, has a stabilized surface.

Should a disturbed vacant lot contain more than one type of disturbance, soil, vegetation or other characteristics which are visibly distinguishable, test each representative surface for stability separately in random areas according to the test methods in section II. of this appendix and include or eliminate it from the total size assessment of disturbed surface area(s) depending upon test method results. A vacant lot surface shall be considered stabilized if any of the test methods in section II. of this appendix indicate that the surface is stabilized such that the conditions defined in paragraph (b)(16)(ii) of this section are met:

1. Visible Crust Determination

(i) Where a visible crust exists, drop a steel ball with a diameter of 15.9 millimeters (0.625 inches) and a mass ranging from 16 to 17 grams from a distance of 30 centimeters (one foot) directly above (at a 90 degree angle perpendicular to) the soil surface. If blowsand is present, clear the blowsand from the surfaces on which the visible crust test method is conducted. Blowsand is defined as thin deposits of loose uncombined grains covering less than 50 percent of a vacant lot which have not originated from the representative vacant lot surface being tested. If material covers a visible crust which is not blowsand, apply the test method in section II.2 of this appendix to the loose material to determine whether the surface is stabilized.

(ii) A sufficient crust is defined under the following conditions: once a ball has been dropped according to section II.1.(i) of this appendix, the ball does not sink into the surface so that it is partially or fully surrounded by loose grains and, upon removing the ball, the surface upon which it fell has not been pulverized so that loose grains are visible.

(iii) Conduct three tests, dropping the ball once per test, within a survey area the size of one foot by one foot. The survey area shall be considered sufficiently crusted if at least two out of three tests meet the definition in section II.1.(ii) of this appendix. Select at least two other survey areas that represent the disturbed surface area and repeat this procedure. Whether a sufficient crust covers the disturbed surface area shall be based on a determination that all of the survey areas tested are sufficiently crusted.

(iv) At any given site, the existence of a sufficient crust covering one portion of a disturbed surface may not represent the existence or protectiveness of a crust on another disturbed surface(s). Repeat the visible crust test as often as necessary on each representative disturbed surface area for an accurate assessment of all disturbed surfaces at a given site.

2. Determination of Threshold Friction Velocity (TFV)

For disturbed surface areas that are not crusted or vegetated, determine threshold friction velocity (TFV) according to the following sieving field procedure (based on a 1952 laboratory procedure published by W. S. Chepil).

(i) Obtain and stack a set of sieves with the following openings: 4 millimeters (mm), 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Collect a sample of loose surface material from an area at least 30 cm by 30 cm in size to a depth of approximately 1 cm using a brush and dustpan or other similar device. Only collect soil samples from dry surfaces (i.e. when the surface is not damp to the touch). Remove any rocks larger than 1 cm in diameter from the sample. Pour the sample into the top sieve (4 mm opening) and cover the sieve/collector pan unit with a lid. Minimize escape of particles into the air when transferring surface soil into the sieve/collector pan unit. Move the covered sieve/collector pan unit by hand using a broad, circular arm motion in the horizontal plane. Complete twenty circular arm movements, ten clockwise and ten counterclockwise, at a speed just necessary to achieve some relative horizontal motion between the sieves and the particles. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for loose particles. If loose particles have not been sifted to the finest sieve through which they can pass, reassemble and cover the sieve/collector pan unit and gently rotate it an additional ten times. After disassembling the sieve/collector pan unit, slightly tilt and gently tap each sieve and the collector pan so that material aligns along one side. In doing so, minimize escape of particles into the air. Line up the sieves and collector pan in a row and visibly inspect the relative quantities of catch in order to determine which sieve (or whether the collector pan) contains the greatest volume of material. If a visual determination of relative volumes of catch among sieves is difficult, use a graduated cylinder to measure the volume. Estimate TFV for the sieve catch with the greatest volume using Table 1, which provides a correlation between sieve opening size and TFV.

TABLE 1 (METRIC UNITS).—DETERMINATION OF THRESHOLD FRICTION VELOCITY (TFV)

Tyler Sieve No.	Opening (mm)	TFV (cm/s)
5	4	>100
10	2	100
18	1	76
35	0.5	58
60	0.25	43
Collector Pan	.....	30

Collect at least three (3) soil samples which are representative of the disturbed surface area, repeat the above TFV test method for each sample and average the resulting TFVs together to determine the TFV uncorrected for non-erodible elements.

(ii) Non-erodible elements are distinct elements on the disturbed surface area that are larger than one (1) cm in diameter, remain firmly in place during a wind episode and inhibit soil loss by consuming part of the shear stress of the wind. Non-erodible elements include stones and bulk surface material but do not include flat or standing vegetation. For surfaces with non-erodible elements, determine corrections to the TFV by identifying the fraction of the survey area, as viewed from directly overhead, that is occupied by non-erodible elements using the following procedure. Select a survey area of one (1) meter by 1 meter. Where many non-erodible elements lie on the disturbed surface area, separate them into groups according to size. For each group, calculate the overhead area for the non-erodible elements according to the following equations:

(Average length) × (Average width) = Average Dimensions *Eq. 1*

(Average Dimensions) × (Number of Elements) = Overhead Area *Eq. 2*

Overhead Area of Group 1 + Overhead Area of Group 2 (etc.) = Total Overhead Area *Eq. 3*

Total Overhead Area/2 = Total Frontal Area *Eq. 4*

(Total Frontal Area/Survey Area) × 100 = Percent Cover of Non-erodible Elements *Eq. 5*

(Ensure consistent units of measurement, e.g. square meters or square inches when calculating percent cover.)

Repeat this procedure on an additional two (2) distinct survey areas representing a disturbed surface and average the results. Use Table 2 to identify the correction factor for the percent cover of non-erodible elements. Multiply the TFV by the corresponding correction factor to calculate the TFV corrected for non-erodible elements.

TABLE 2.—CORRECTION FACTORS FOR THRESHOLD FRICTION VELOCITY

Percent cover of non-erodible elements	Correction factor
≥10%	5
≥5% and < 10%	3
< 5% and ≥ 1%	2
< 1%	None.

3. Determination of Flat Vegetation Cover

Flat vegetation includes attached (rooted) vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind. Flat vegetation which is dead but firmly attached shall be considered equally protective as live vegetation. Stones or other aggregate larger than one centimeter in diameter shall be considered protective cover in the course of conducting the line transect method. Where flat vegetation exists, conduct the following line transect method.

(i) Stretch a one-hundred (100) foot measuring tape across a disturbed surface area. Firmly anchor both ends of the measuring tape into the surface using a tool such as a screwdriver with the tape stretched taut and close to the soil surface. If vegetation exists in regular rows, place the tape diagonally (at approximately a 45 degree angle) away from a parallel or perpendicular position to the vegetated rows. Pinpoint an area the size of a 3/32 inch diameter brazing

rod or wooden dowel centered above each one-foot interval mark along one edge of the tape. Count the number of times that flat vegetation lies directly underneath the pinpointed area at one-foot intervals. Consistently observe the underlying surface from a 90 degree angle directly above each pinpoint on one side of the tape. Do not count the underlying surface as vegetated if any portion of the pinpoint extends beyond the edge of the vegetation underneath in any direction. If clumps of vegetation or vegetative debris lie underneath the pinpointed area, count the surface as vegetated unless bare soil is visible directly below the pinpointed area. When 100 observations have been made, add together the number of times a surface was counted as vegetated. This total represents the percent of flat vegetation cover (e.g. if 35 positive counts were made, then vegetation cover is 35 percent). If the disturbed surface area is too small for 100 observations, make as many observations as possible. Then multiply the count of vegetated surface areas by the appropriate conversion factor to obtain percent cover. For example, if vegetation was counted 20 times within a total of 50 observations, divide 20 by 50 and multiply by 100 to obtain a flat vegetation cover of 40 percent.

(ii) Conduct the above line transect test method an additional two (2) times on areas representative of the disturbed surface and average results.

4. Determination of Standing Vegetation Cover

Standing vegetation includes vegetation that is attached (rooted) with a predominant vertical orientation. Standing vegetation which is dead but firmly rooted shall be considered equally protective as live vegetation. Conduct the following standing vegetation test method to determine if 30 percent cover or more exists. If the resulting percent cover is less than 30 percent but equal to or greater than 10 percent, then conduct the Threshold Friction Velocity test in section II.2 of this appendix in order to determine whether the disturbed surface area is stabilized according to paragraph (b)(16)(ii)(E) of this section.

(i) For standing vegetation that consists of large, separate vegetative structures (for example, shrubs and sagebrush), select a survey area representing the disturbed surface that is the shape of a square with sides equal to at least ten (10) times the average height of the vegetative structures. For smaller standing vegetation, select a survey area of three (3) feet by 3 feet.

(ii) Count the number of standing vegetative structures within the survey area. Count vegetation which grows in clumps as a single unit. Where different types of vegetation exists and/or vegetation of different height and width exists, separate the vegetative structures with similar dimensions into groups. Count the number of vegetative structures in each group within the survey area. Select an individual structure within each group that represents the average height and width of the vegetation in the group. If the structure is dense (i.e. when looking at it vertically from base to top there is little or zero open air space within its perimeter), calculate and record its frontal silhouette area according to Equation 6 of this appendix. Also use Equation 6 if the survey area is larger than nine square feet, estimating the average height and width of the vegetation. Otherwise, use the procedure in section II.4.(iii) of this appendix to calculate the Frontal Silhouette Area. Then calculate the percent cover of standing vegetation according to Equations 7, 8 and 9 of this appendix. (Ensure consistent units of measurement, e.g. square feet or square inches when calculating percent cover.)

(iii) Vegetative Density Factor. Cut a single, representative piece of vegetation (or consolidated vegetative structure) to within 1 cm of surface soil. Using a white paper grid or transparent grid over white paper, lay the vegetation flat on top of the grid (but do not apply pressure to flatten the structure). Grid boxes of one inch or one half inch squares are sufficient for most vegetation when conducting this procedure. Using a marker or pencil, outline the shape of the vegetation along its outer perimeter according to Figure B, C or D of this appendix, as appropriate. (**Note:** Figure C differs from Figure D primarily in that the width of vegetation in Figure C is narrow at its base and gradually broadens to its tallest height. In Figure D, the width of the vegetation generally becomes narrower from its midpoint to its tallest height.) Remove the vegetation and count and record the total number of gridline intersections within the outlined area, but do not count gridline intersections that connect with the outlined shape. There must be at least 10 gridline intersections within the outlined area and preferably more than 20, otherwise, use smaller grid boxes. Draw small circles (no greater than a 3/32 inch diameter) at each gridline intersection counted within the outlined area. Replace the vegetation on the grid within its outlined shape. From a distance of approximately two feet directly above the grid, observe each circled gridline intersection. Count and record the number of circled gridline intersections that are not covered by any piece of the vegetation. To calculate percent vegetative density, use Equations 10 and 11 of this appendix. If percent vegetative density is equal to or greater than 30, use the equation (Eq. 14, 15 or 16) that matches the outline used to trace the vegetation (Figure B, C or D) to calculate its Frontal Silhouette Area. If percent vegetative density is less than 30, use Equations 12 and 13 of this appendix to calculate the Frontal Silhouette Area.

(iv) Within a disturbed surface area that contains multiple types of vegetation with each vegetation type uniformly distributed, results of the percent cover associated with the individual vegetation types may be added together.

(v) Repeat this procedure on an additional two (2) distinct survey areas representing the disturbed surface and average the results.

Height × Width = Frontal Silhouette Area *Eq. 6*

(Frontal Silhouette Area of Individual Vegetative Structure) × Number of Vegetation Structures Per Group = Group Frontal Silhouette Area of Group *Eq. 7*

Frontal Silhouette Area of Group 1 + Frontal Silhouette Area of Group 2 (etc.) = Total Frontal Silhouette Area *Eq. 8*

(Total Frontal Silhouette Area/Survey Area) × 100 = Percent Cover of Standing Vegetation *Eq. 9*

[(Number of circled gridlines within the outlined area counted that are not covered by vegetation / Total number of gridline intersections within the outlined area) × 100] = Percent Open Space *Eq. 10*

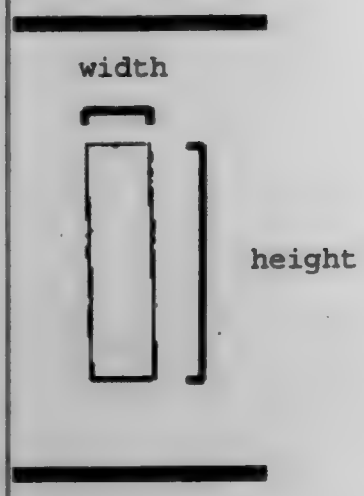
100 = Percent Open Space = Percent Vegetative Density *Eq. 11*

Percent Vegetative Density/100 = Vegetative Density *Eq. 12*

BILLING CODE 6560-50-P

$$[\text{Max. Height} * \text{Width}] * \left[\frac{\text{Vegetative Density}}{0.4}\right]^{0.5} = \text{Frontal Silhouette Area} \qquad \text{Eq. 13}$$

Figure B



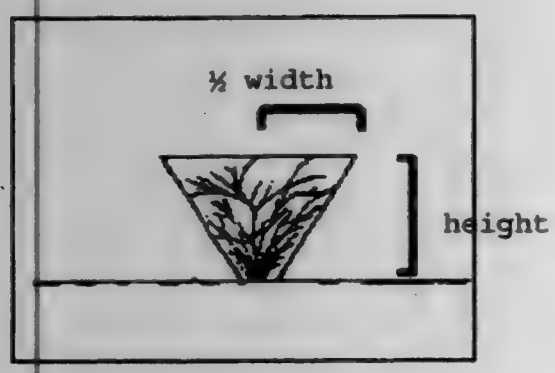
Cylinder:

Frontal Silhouette Area =

maximum (max.) height X max. width

Eq. 14

Figure C



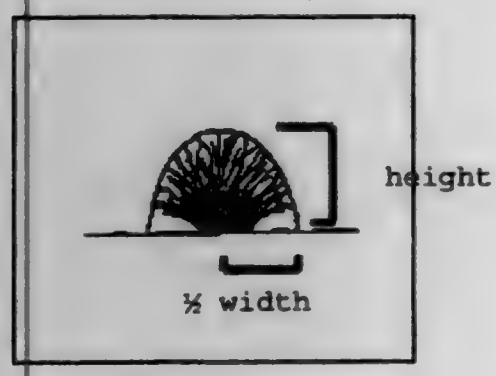
Inverted Cone:

Frontal Silhouette Area =

max. height X ½ max. width

Eq. 15

Figure D



Upper Sphere:

Frontal Silhouette Area =

(3.14 X max. height X ½ max. width)/2

Eq. 16

BILLING CODE 6560-50-C

III. Alternative Test Methods

Alternative test methods may be used upon obtaining the written approval of the EPA.

[FR Doc. 99-32760 Filed 12-20-99; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991-AA91

Federal Health Care Program: Fraud and Abuse; Statutory Exception to the Anti-Kickback Statute for Shared Risk Arrangements; Correction

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Interim final rule with comment period; correction amendment.

SUMMARY: This document contains corrections to the interim final regulations which were published in the **Federal Register** on Friday, November 19, 1999 (64 FR 63504). These regulations established two new safe harbors from the anti-kickback statute (section 1128B(b) of the Social Security Act) to provide protection for certain managed care arrangements. A number of inadvertent errors appeared in both the preamble and in the text of the regulations that warrant clarification or revision. As a result, we are setting forth these revisions in order to assure the technical correctness of that document and the regulations.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619-0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued interim final regulations on November 19, 1999 (64 FR 63504) that set forth two new safe harbors from the anti-kickback statute to provide protection for certain managed care arrangements. In that interim final rule, a number of inadvertent errors appeared in the preamble and in 42 CFR part 1001 which are now being corrected.

In the preamble on page 63505, second column, an extra bullet point was inserted before the words "Underwriters/National Association of Life Underwriters." As corrected, the eleventh bullet point appearing in column two should read as "Independent Insurance Agents of America/National Association of Health Underwriters/National Association of Life Underwriters."

On page 63507 of the preamble, in the third column, second paragraph, the reference to "paragraph (1)(i)(A)(IV)" should be corrected to read as "paragraph (1)(i)(A)(4)." Similarly, in the third paragraph on this page, the reference to "§ 1001.952(t)(1)(i)(A)(IV)" should be corrected to read as "§ 1001.952(t)(i)(A)(4)."

In the first column on page 63508, in the second full paragraph, line 15, the words "or cost" should be inserted after the words "programs on a fee-for-service."

On page 63511, in the first column, the first line of the first full paragraph, the regulatory reference "§ 1001.965(u)(2)(i)(B)" should be corrected to read as "§ 1001.952(u)(1)(i)(B)." In addition, in the third full paragraph in column one on the same page, on the fourth and fifth lines, the parenthetical phrase "(paragraphs (u)(1)(i)(C)(I)–(III))" is revised to read as "(paragraphs (u)(1)(i)(C)(1)–(3))." Lastly, in the last paragraph in column one, the parenthetical reference "(paragraph (u)(1)(i)(C)(IV))" should be corrected to read as "(paragraph (u)(1)(i)(C)(4))."

In addition, we are correcting the regulatory text that was set forth in § 1001.952(t). In the regulations text on page 63513, § 1001.952(t)(1)(i)(B) is amended by adding the words "or cost" after the words "fee-for-service." In addition, in § 1001.952(t)(1)(ii)(B), we are (1) adding the words "for or" after the phrase "receives remuneration in return" and (2) are adding the words "or cost" after the words "fee-for-service." These words were inadvertent omitted in the November 19, 1999 interim final rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Social Security.

Accordingly, 42 CFR part 1001 is corrected by making the following correcting amendments:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.952 is amended by republishing the introductory text, and by revising paragraphs (t)(1)(i)(B) and (t)(1)(ii)(B) to read as follows:

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(t) *Price reductions offered to eligible managed care organizations.* * * *

(1) * * *

(i) * * *

(B) In establishing the terms of the agreement, neither party gives or receives remuneration in return for or to induce the provision or acceptance of business (other than business covered by the agreement) for which payment may be made in whole or in part by a Federal health care program on a fee-for-service or cost basis.

* * * * *

(ii) * * *

(B) In establishing the terms of the agreement, neither party gives or receives remuneration in return for or to induce the provision or acceptance of business (other than business covered by the agreement) for which payment may be made in whole or in part by a Federal health care program on a fee-for-service or cost basis.

* * * * *

Dated: December 14, 1999.

Joel Schaer,

OIG Regulations Officer.

[FR Doc. 99-32940 Filed 12-20-99; 8:45 am]

BILLING CODE 4152-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7725]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain

management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York: Sloatsburg, village of, Rockland County.	360690	July 7, 1975, Emerg.; January 6, 1982, Reg.; December 1, 1999, Susp.	December 1, 1999	December 1, 1999..

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Rhode Island: North Providence, town of, Providence County.	440020	October 6, 1972, Emerg.; December 15, 1977, Reg.; December 6, 1999, Susp.	December 6, 1999	December 6, 1999.
Region III				
Philadelphia: Smithfield, township of, Monroe County.	421896	November 8, 1974, Emerg.; March 4, 1988, Reg.; December 6, 1999, Susp.	.....do	Do.
Region V				
Michigan:				
Nashville, village of, Barry County.	260902	July 29, 1992, Emerg.; December 6, 1999, Reg.; December 6, 1999, Susp.	.....do	Do.
Northville, city of, Wayne & Oakland Counties.	260235	March 29, 1976, Emerg.; September 16, 1981, Reg.; December 6, 1999, Susp.	.....do	Do.
Ohio:				
Bay Village, city of, Cuyahoga County.	390093	June 14, 1974, Emerg.; December 1, 1977, Reg.; December 6, 1999, Susp.	.....do	Do.
Wisconsin:				
Ozaukee County, unincorporated areas.	550310	May 14, 1971, Emerg.; May 16, 1977, Reg.; December 6, 1999, Susp.	.....do	Do.
Saukville, village of, Ozaukee County.	550317	April 18, 1984, Emerg.; December 16, 1980, Reg.; December 6, 1999, Susp.	.....do	Do.
Region VI				
Oklahoma: Lincoln County, unincorporated areas.	400457	September 28, 1990, Emerg.; February 3, 1993, Reg.; December 6, 1999, Susp..	.....do	Do.
Texas:				
Midland, city of, Midland County.	480477	May 16, 1975, Emerg.; September 27, 1991, Reg.; December 6, 1999, Susp.	.....do	Do.
Midland County, unincorporated areas.	481239	March 8, 1978, Emerg.; September 27, 19991, Reg.; December 6, 1999, Susp.	.....do	Do.
Odessa, city of, Midland County.	480206	March 27, 1980, Emerg.; March 4, 1991, Reg.; December 6, 1999, Susp.	.....do	Do.
Region VII				
Iowa: Ankeny, city of, Polk County.	190226	June 13, 1975, Emerg.; May 16, 1983, Reg.; December 6, 1999, Susp.	.....do	Do.
Missouri:				
Foristell, city of, St. Charles County.	290902	February 24, 1993, Reg.; December 6, 1999, Susp.	.....do	Do.
Lee's Summit, city of, Jackson & Cass Counties.	290174	February 4, 1972, Emerg.; April 3, 1978, Reg.; December 6, 1999, Susp.	.....do	Do.
Nebraska:				
Albion, city of, Boone County.	310009	May 9, 1975, Emerg.; April 2, 1986, Reg.; December 6, 1999, Susp.	.....do	Do.
Boone County, unincorporated areas.	310008	July 28, 1982, Emerg.; September 18, 1987, Reg.; December 6, 1999, Susp.	.....do	Do.
Petersburg, village of, Boone County.	310308	August 13, 1976, Emerg.; September 24, 1984, Reg.; December 6, 1999, Susp.	.....do	Do.
St. Edward, village of, Boone County.	310010	November 2, 1974, Emerg.; February 1, 1990, Reg.; December 6, 1999, Susp.	.....do	Do.
Region VIII				
Utah: Santa Clara, town of, Washington County.	490178	August 7, 1975, Emerg.; August 5, 1986, Reg.; December 6, 1999, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region X				
Alaska: Kenai Peninsula, borough of.	020012	June 19, 1970, Emerg.; November 20, 1986, Reg.; December 6, 1999, Susp.	.....do	Do.
Washington: Kittitas County, unincorporated areas..	530095	February 5, 1974, Emerg.; May 5, 1981, Reg.; December 6, 1999, Susp.	.....do	Do.
Region I				
Vermont:				
Bellows Falls, village of, Windham County.	500125	June 23, 1975, Emerg.; July 16, 1979, Reg.; December 20, 1999, Susp.	December 20, 1999	December 20, 1999.
Rockingham, town of, Windham County.	500135	January 24, 1975, Emerg.; May 15, 1980, Reg.; December 20, 1999, Susp.	.....do	Do.
Springfield, town of, Windsor County.	500154	June 17, 1975, Emerg.; December 4, 1979, Reg.; December 20, 1999, Susp.	.....do	Do.
Thetford, town of, Orange County.	500075	October 20, 1975, Emerg; June 3, 1991, Reg.; December 20, 1999, Susp.	.....do	Do.
Region IV				
South Carolina:				
Hollywood, town of, Charleston County.	450037	February 18, 1986, Emerg.; June 17, 1986, Reg.; December 20, 1999, Susp.	.....do.	Do.
Ravenel, town of, Charleston County.	450043	September 25, 1975, Emerg.; April 1, 1981, Reg.; December 20, 1999, Susp.	.....do	Do.
Tennessee:				
Lincoln County, unincorporated areas.	470104	June 3, 1991, Emerg.; October 1, 1992, Reg.; December 20, 1999 Susp.	.....do	Do.
Petersburg, town of, Lincoln County.	470106	March 24, 1975, Emerg.; September 29, 1986, Reg.; December 20, 1999, Susp.	.....do	Do.
Region V				
Minnesota: Sauk Rapids, city of, Benton County.	270023	June 18, 1973, Emerg.; October 14, 1977, Reg.; December 20, 1999, Susp.	.....do	Do.
Wisconsin: Grant County, unincorporated areas.	555557	March 26, 1971, Emerg.; May 25, 1973, Reg.; December 20, 1999, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: December 7, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–33009 Filed 12–20–99; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 121499B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 1999, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New Jersey that the quota has been harvested, and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective 0001 hours December 22, 1999 through 2400 hours December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final total commercial quota for summer flounder for the 1999 calendar year was set equal to 10,729,274 lb (4,866,717 kg) (64 FR 46596, August 26, 1999). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,853,926 lb (840,927 kg).

Section 648.101(b) requires the Regional Administrator, Northeast Region (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New Jersey has attained its quota for 1999 as of December 22, 1999.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours December 22, 1999, further landings of summer flounder in New Jersey by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the same date, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 15, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33012 Filed 12–16–99; 4:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 244
Tuesday, December 21, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–082–1]

Pine Shoot Beetle; Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action would eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by February 22, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–082–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–082–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Christine Markham, Regional Program Manager, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5202; (919) 716–5582; or Coanne E. O'Hern, Operations Officer, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Pine shoot beetle is a pest of pine trees. Pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. During "maturation feeding," young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishment of pine shoot beetle populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

The regulations at 7 CFR 301.50 through 301.50–10, "Subpart—Pine Shoot Beetle," restrict the interstate movement of regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle into noninfested areas of the United States.

Section 301.50–2 lists articles regulated because of pine shoot beetle. Regulated articles are the following pine products (*Pinus* spp.): Bark nuggets (including bark chips), Christmas trees, logs with bark attached, lumber with bark attached, nursery stock, pine wreaths and garlands, raw pine materials for pine wreaths and garlands, and stumps.

We propose to remove pine wreaths and garlands from the list of regulated articles in § 301.50–2. This would mean that these commodities would no longer need to be issued a certificate or limited permit to move out of an area quarantined because of pine shoot beetle, and they would no longer have to be cold treated or fumigated prior to movement from a quarantined area. Pine wreaths and garlands would be able to move without restriction from a quarantined area.

We are proposing this change based on information we have accumulated during the course of our regulatory program. When we added pine wreaths and garlands to the list of regulated articles in 1995, we regulated the commodities as a precautionary measure because they are made of live plant (pine) material. At that time, industry in quarantined areas did not produce significant amounts of these commodities. Since that time, the domestic production of these commodities has increased, and we have learned a great deal about the risk associated with the movement of these commodities.

Over the years, we have learned that the manufacture of pine wreaths and garlands greatly reduces the risk that these commodities will carry pine shoot beetle. To increase the value and enhance the appearance of their products, producers of pine wreaths and garlands choose the freshest, healthiest, and most attractive pine material to create wreaths and garlands. First, this means that producers cut the pine material from the tree as close to the time of sale as possible. Therefore, because most pine wreaths and garlands are sold for the Christmas holiday, the material is removed from pine trees after the pine shoot beetle has moved to the base of the tree for overwintering. Second, this means that producers do not include any brown or thinning pine shoots in wreaths and garlands. In doing so, producers are excluding material that could be infested with pine shoot beetle.

We have also learned that, most often, "pine" wreaths produced in quarantined areas are actually made from balsam fir (*Abies balsamea*) adorned by minimal sprigs of pine and other species, such as arborvitae (*Thuja* spp.). Balsam fir is not a host of pine shoot beetle. Likewise, pine garlands produced in quarantined areas are generally made from eastern white pine (*Pinus strobus*), a pine species that is not a preferred host for pine shoot beetle. Although pine shoot beetle will feed on the shoots of, and breed in, eastern white pine and other pine species, pine shoot beetle prefers to feed on and breed in Scots pine (*Pinus sylvestris*) or jack pine (*Pinus banksiana*). However, even if pine

wreaths and garlands were made of favored host pine material, we believe that the way these commodities are manufactured would preclude the presence of pine shoot beetle.

Therefore, we believe that pine wreaths and garlands do not pose a risk of spreading pine shoot beetle. Accordingly, we propose to amend § 301.50–2(a) by removing pine wreaths and garlands from the list of regulated articles. Raw pine materials for wreaths and garlands, however, would continue to be listed as regulated articles in § 301.50–2(a) because those articles present a risk of spreading pine shoot beetle.

As a result of removing pine wreaths and garlands from the list of regulated articles, we also propose to amend § 301.50–10(b) and (c) by removing references to treatment options for pine wreaths and garlands. If pine wreaths and garlands were no longer regulated, there would be no reason to list treatments for these commodities in the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We propose to amend the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action would eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

In 1995, nurseries and other producers in quarantined areas earned an average of 4 percent of their revenue from wreaths and garlands. However, over the next 3 years, that amount doubled; in 1998, nurseries and other producers in quarantined areas increased their earnings from the sale of wreaths and garlands to an average of 8 to 10 percent of their revenue.

The highest levels of production of these commodities in quarantined areas occurs in northeastern States. In 1998, production of wreaths and garlands amounted to approximately $5.3 million in Vermont, approximately $3 million in New Hampshire, and approximately $10 to $12 million in Maine. Most wreaths and garlands produced in quarantined areas are sold locally.

Most of the producers of pine wreaths and garlands are small businesses, according to the standards of the Small Business Administration (SBA). Nurseries with less than $3.5 million in sales are classified as small business by the SBA. Therefore, approximately 65 percent of all nurseries are considered small businesses. In addition, Christmas tree farms with less than $500,000 in sales are considered small businesses. Nationwide, more than 70 percent of Christmas tree farms are considered small businesses.

This rule would eliminate treatment and certification requirements for pine wreaths and garlands. This would save affected producers time and money and would facilitate the movement of these commodities. Specifically, the elimination of treatment requirements for pine wreaths and garlands moving out of quarantined areas would save affected producers an average of 1 percent of revenue generated from the sale of these commodities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.50–2, paragraph (a) would be revised to read as follows:

§ 301.50–2 Regulated articles.

* * * * *

(a) Pine products (*Pinus* spp.), as follows: Bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for pine wreaths and garlands; and stumps.

* * * * *

3. In § 301.50–10, paragraph (b), up to and including the colon, and paragraph (c), up to the table, would be revised to read as follows:

§ 301.50–10 Treatments.

* * * * *

(b) Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands as follows: * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows: * * *

Done in Washington, DC, this 14th day of December 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33058 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, and 299

[INS No. 1991–99]

RIN 1115–AF56

Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104–208

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations to: Establish a $95 fee, that schools and exchange visitor programs must collect and remit on behalf of F–1, J–1, and M–1 nonimmigrants who are subject to this

fee when they first register or enroll in school or first commence exchange program participation in the United States; explain which F–1, J–1; and M–1 nonimmigrants are required to pay the fee; describe the consequences that an F–1, J–1, or M–1 nonimmigrant faces upon failure to pay the fee; specify the consequences that an approved school or exchange program faces if it fails to collect the fee and remit it to the Service; and to specify which F–1, J–1, and M–1 nonimmigrants are exempt from the fee.

This rule is necessary to implement section 641 (regarding the Program to Collect Information Relating to Nonimmigrant Foreign Students and Other Exchange Program Participants) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as well as the authority that the Service already has under sections 103 (regarding the Powers and Duties of the Commissioner of the Service) and 214 (regarding Admission of Nonimmigrants) of the Immigration and Nationality Act (Act) and under 31 U.S.C. 9701 and section 286(m) of the Act.

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please references INS No. 1991–99 on your correspondence. Comments are available at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Kristen L. Casa or Song Park, Program Analysts, or Maurice R. Berez, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 415 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Who are F, J, and M Nonimmigrants?

The Act provides for the admission of different classes of nonimmigrants. The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification. Some classifications permit the nonimmigrant's spouse and qualifying child(ren) to accompany the nonimmigrant to the United States, or to join the nonimmigrant here. To qualify, a child must be unmarried and under the age of 21.

The F–1 nonimmigrants are foreign nationals enrolled as students in Service-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, and in language training programs in the United States. For the purposes of this regulation, the term school refers to all of these types of Service-approved institutions. An F–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F–1 student.

The J–1 nonimmigrants are foreign nationals who have been selected by a United States Information Agency (USIA) designated sponsor to participate in an exchange visitor program in the United States. A J–2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J–1 exchange visitor.

The M–1 nonimmigrants are foreign nationals enrolled as students in Service-approved vocational or other recognized nonacademic institutions, other than in language training programs in the United States. The term school also encompasses those institutions attended by M–1 students for the purpose of this proposed rulemaking. An M–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M–1 student.

What are institutions of higher education and designated exchange visitor programs?

Section 641 of the IIRIRA refers to institutions of higher education approved by the Service in consultation with the Department of Education (ED) and exchange visitor programs designated by the USIA. In consultation with the ED and the USIA, the Service has determined definitions for the terms institution of higher education and designated exchange visitor program drawing on generally accepted definitions of these terms as well as definitions contained in the Higher Education Act and other Service and USIA regulations. For the purpose of this rule, institutions of higher education include those defined as such under section 101(a) of the Higher Education Act of 1965; designated exchange visitor programs are those entities designated pursuant to 22 CFR 514.6 by the USIA as authorized to bring nonimmigrants to the United States to participate in a program designated under section 101(a)(15)(J) of the Act and further designated by the Service for the mandated reporting process.

Why is the Service proposing to collect information relating to nonimmigrant foreign students and other exchange program participants?

On September 30, 1996, President Clinton signed into law the IIRIRA, Pub. L. 104–208, Division C. Subtitle D of Title VI of the IIRIRA amended the Act and added new statutory provisions relating to nonimmigrants admitted to or applying for classification under section 101(a)(15) (F), (J), and (M) of the Act. Section 641(a)(1) of the IIRIRA, in particular, directs the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education and designated exchange visitor programs.

Independent of the requirements of section 641 of the IIRIRA, the Service collects information on nonimmigrant students from educational institutions pursuant to the authority under sections 103 and 214 of the Act. These sections, that the Attorney General has delegated to the Service, give the Service authority to establish regulations governing the admission of nonimmigrants. Under this authority, the Service requires educational institutions to maintain records on nonimmigrant students and to provide information from the records to the Service upon request of the Service. To the extent that these record collection activities cause the Service to expend appropriated funds and yield particularized benefits to program participants, 31 U.S.C. 9701 requires the Service to assess a fee for providing the benefit.

This proposed rule, therefore, rests on the authority that the Service exercises under section 103 and 214 of the Act, as well as section 641 of the IIRIRA.

Who will be included in the program to collect information relating to nonimmigrant foreign students and other exchange program participants?

The Service intends to include F–1, J–1, and M–1 nonimmigrants at all educational levels in this program. Section 641 of the IIRIRA, by its terms, expressly applied this reporting program to F–1 and M–1 students enrolled in institutions of higher education and to J–1 exchange visitors in all USIA designated exchange visitor programs that the Attorney General selected for inclusion in the program. As noted, however, sections 103 and 214 of the Act also authorize the collection of this information. The Service anticipates that it will be better

able to serve all F–1, J–1, and M–1 immigrants as a result of this program. For example, the information to be collected will assist the Service and school or exchange visitor program in determining whether the F–1, J–1, or M–1 nonimmigrant has maintained his or her lawful nonimmigrant status. This information is important in the determination of the nonimmigrant's eligibility for permanent residence or other immigration benefits. Thus, the inclusion of all F–1, J–1, and M–1 nonimmigrants in this information collection program will benefit the nonimmigrants themselves, as well as schools, exchange visitor programs, and the Service.

It is the Service's desire to understand the needs and concerns of the educational community to the best of its ability while completely fulfilling its statutory requirements and obligations. The Service would encourage and welcome comment from the educational community regarding its proposal to include F–1, J–1, and M–1 nonimmigrants at all educational levels in this program.

Why is the Service proposing a fee?

Section 641(e) of the IIRIRA requires that a Service-approved institution of higher education and a USIA designated exchange visitor program shall impose and collect a fee from each F–1 and M–1 student and each J–1 exchange visitor identified under section 641(e)(3) of the IIRIRA to support the described information collection program. Just as section 641 of the IIRIRA is not the only statutory basis for this program, section 641(e) of the IIRIRA is not the only statutory basis for assessing a fee. Under 31 U.S.C. 9701, the Service must assess a fee for the participation in any program that affords a particular benefit to an identifiable recipient. As noted, the Service intends this program to benefit all F–1, J–1, and M–1 nonimmigrants by creating a process for verifying their satisfactory compliance with the conditions of their status. Since the program will benefit all of these nonimmigrants and the schools and exchange visitor programs in which they enroll, all F–1, J–1, and M–1 nonimmigrants, except those specifically identified in the proposed rule, will, pursuant to 31 U.S.C. 9701, be subject to the fee. Under the first exception, J–1 nonimmigrants who participate in exchange programs sponsored by the Federal Government will not have to pay the fee. This exception is required by section 641(e)(3) of the IIRIRA.

Under the second exception, the Service has determined that it should not impose the fee on F–1 and M–1 nonimmigrants who are enrolled in private academic high schools or in other approved schools that are not "institutions of higher education" as defined in section 101(a) of the Higher Education Act of 1965, as amended. (It should be noted that attendance of public elementary schools is prohibited for F–1 and M–1 nonimmigrants under section 625 of the IIRIRA. Therefore, public elementary schools are not addressed in this rulemaking.)

Section 641(e)(4)(B) of the IIRIRA does not clearly authorize the Service to deposit to the Examinations Fee Account the fees that would be paid under this proposed rule by schools on behalf of F–1 and M–1 students who are not enrolled in approved institutions of higher education. Exempting these students is consistent with 31 U.S.C. 9701 because the Service believes that the funds that could be collected from these nonimmigrants would not justify the costs of collecting and accounting for the fees.

The Service invites comments on how it plans to impose the mandated fee through this proposed rule. In addition, comments are invited regarding who will be subject to the fee and who may be exempt from the fee.

How will the Service handle the fees it collects?

The general principle, set forth in section 286(c) of the Act, is that, except for fees collected from persons living in Guam or the Virgin Islands, the Service, as the Attorney General's delegate, must deposit with the Department of Treasury as miscellaneous receipts all filing fees and other fees. Section 641(e)(4)(B) of the IIRIRA permits the Service, as the Attorney General's delegate, to deposit the fees that the Service would collect under this proposed rule into the Examinations Fee Account established under section 286(m) of the Act. Under section 641(h) of the IIRIRA, only those F–1 and M–1 nonimmigrants who are enrolled in approved institutions of higher education and those J–1 nonimmigrants who participate in designated exchange programs that the Service has selected for participation in the program are within the scope of section 641 of the IIRIRA. Since the Service has selected all approved institutions of higher education and all designated exchange programs for participation in this program, the Service will deposit to the Examinations Fee Account all fees paid under this proposed rule.

What variables were used in determining the fee?

The Service conducted a fee study that considered all of the costs incurred as a result of the foreign student and exchange visitor information collection program in order to determine the amount of the fee. Initially, section 641(e)(4)(A) of the IIRIRA sets the maximum permissible fee at $100. The amount of the proposed fee is $95. The amount of the fee is subject to change in the future based upon periodic review and analysis of the cost of conducting the information collection program, as required in section 641(f)(2) of the IIRIRA. The following discussion provides a description of the calculation of the fee.

The proposed fee was calculated based on the program and system costs and the estimated population base of covered fee payers. The calculated costs include those expenses incurred by the Government to develop, produce, deploy, operate, and maintain the program and system. In addition, the proposed fee will cover the costs associated with the creation and population of new positions required to support this program.

The revenue from the proposed fee will also cover the costs of technical and program support that the Government needs to administer benefits and to monitor schools, program sponsors, students, and exchange visitors solely for the purpose of this reporting program. In addition, a portion of the revenue from the proposed fee will be used for the direct support of Service operations relating to student and exchange visitor-related activities.

Program Costs

For the Fee Study, program costs were defined and organized into nonrecurring costs and recurring costs.

Nonrecurring Costs

The following include the nonrecurring costs that total $12.3 million:

- *Development:* Development costs are associated with designing and developing the new program and associated system. The system will utilize an Internet-based processing approach, with electronic data transfer and electronic "event" notifications, to maintain accurate electronic files on foreign students and exchange visitors. School and exchange sponsors will submit to the Service, via the Internet, ongoing electronic "event" notifications throughout the individual's program in the United States. These notifications, made electronically through the system,

will immediately inform the Service of changes in student or exchange visitor status. The system is ultimately expected to improve the timeliness for benefits processing as well as the accuracy of the information used for processing foreign students and exchange visitors from point of visa issuance, admission to the United States, and throughout the course of their stay in the United States while pursuing their program of education or exchange. System development will begin after successful completion of the operational prototype. The Service will incur system development costs from 1999 through 2001. These costs include system and application design, development, integration, applications testing, and verification and validation.

• *Deployment:* Deployment funds will be expended to deliver and install the new national system software at designated Service regional offices (SROs), district offices (DOs), service centers (SCs), ports-of-entry (POEs), Service Headquarters, DOS Headquarters and DOS Consular Posts, U.S. Information Service (USIS) Offices, and the United States Customs Service (USCS).

Development and deployment nonrecurring costs span several years beyond fiscal Year (FY) 2001 at varying funding levels. For example, the Service, in partnership with the USCS and DOS (including USIA functions merged into DOS), will incur deployment expenses in FY 2002 and FY 2003. Partnership with USCS is necessary as the Service shares information technology with that agency at POEs throughout the country, and deployment of the program would not be complete without linkage to these share systems. Subsequent fee studies will include cost projections for the years beyond FY 2001 and may result in an adjustment to the fee amount.

Recurring Costs

These recurring costs which total approximately $31 million are provided for the period October 1, 1999, through September 30, 2001 and consist of the following:

• *Service Personnel costs* include funding support staff at Service Headquarters, DOS Headquarters (for DOS and USIA expenditures relating to work performed by DOS and USIA personnel to meet this new Service requirement, including, but not limited to, USIA functions merged into DOS), Service field offices, and Help Desk customer support.

• *System Operations and Maintenance (O&M) costs* include expenses for ongoing operational support for the current operational electronic reporting prototype and a planned Beta test of the national electronic reporting program and system, including software and equipment maintenance, such as server maintenance.

• *Program operations* include those costs for full-scale Program operation, such as the Operations Help Desk, coordination with schools/programs, staffing Service offices and other Government agencies, and computer system processing. These costs include, but are not limited to, Service Headquarters and contract support.

• *Overhead costs* relate to the management and administrative (M&A) costs to support the planned electronic reporting program. Calculation of the student/exchange visitor program contribution is based upon comparing resources between the entire Service as an agency and the information collection program for foreign students and exchange visitors. An allocation was calculated based upon the proportion of the program resources to total Service resources.

The cost projections use FY 1999 through FY 2001 budget estimates as the base for determining the full cost to design and deploy the program.

The Service is estimating the fee as proposed in this rule to be $95, and invites comments on this proposed fee amount.

How was the user fee population base calculated?

The statute specifies that certain nonimmigrants are subject to the proposed fee as follows: students and exchange visitors in the F–1, J–1, and M–1 nonimmigrant categories. By statute, the only nonimmigrants exempted from the fee are J–1 exchange visitors who are participants in a program sponsored by the Federal Government and, as discussed above, the Service has also exempted F–1 and M–1 nonimmigrants enrolled in private elementary schools and public or private academic high schools. The remainder of nonimmigrants in the F–1, J–1, and M–1 nonimmigrant categories are subject to the proposed fee. For the purposes of this regulation, the only students and exchange visitors who will be required to pay the proposed fee will be those who have a program start date occurring on or after August 1, 1999.

In the user base calculation, the proposed fee is levied on new students and exchange visitors whose programs begin on or after August 1, 1999. In subsequent years, those initial students or exchange visitors who transfer into a new school, institution or program, or change program category will again pay the proposed fee to their new school, institution, or program for remittance on their behalf by the new school, institution or exchange visitor program. Upon transfer they will be paying as new students or exchange visitors in the new school, institution, program or category, together with the initial students and exchange visitors admitted each year. The user base, including all F–1, J–1, and M–1 nonimmigrants, was calculated to the approximately 251,000 in both FY 2000 and FY 2001. The total population for this 2-year period is 501,000 paying students and exchange visitors.

How were enrollment figures projected?

Available data was analyzed based on trends experienced by the Service in other programs as well as trends projected by the aggregate totals estimated for students and exchange visitors. The analysis also reflects the following assumptions.

• The student and exchange visitors population base will not change dramatically over the next 2 years (2000 and 2001).

• The data on the student and exchange visitor population found in the 1996 *Statistical Yearbook for the Immigration and Naturalization Service* and the Institute for International Education's (IIE) "Open Doors 1996–1997" publication are the best available data at present.

• The USIA-provided data on the exchange visitor population are the best available.

• A portion of the student/exchange visitor population is not subject to the proposed fee.

When must a school or exchange visitor program collect and remit the fee?

• For those F–1, J–1, and M–1 nonimmigrants who are subject to the fee and who first register at a school, commence participation in an exchange visitor program, transfer to a new school/program, or change exchange visitor category between August 1, 1999, and the date on which the Service publishes the final rule in the **Federal Register**, the fee must be collected and remitted to the Service by not later than the end of a grace period, to be specified by the Service, after the date of publication of the final rule. The Service invites comments and suggestions as to the amount of time that would constitute an adequate and reasonable grace period for students and exchange visitors who qualify as outlined above in this paragraph.

• For those F–1, J–1, and M–1 nonimmigrants who are subject to the

fee and who first register at a school, commence participation in an exchange visitor program, transfer to a new school/program, or change exchange visitor category after the date on which the Service publishes the final rule in the **Federal Register**, the fee must be collected and remitted to the Service not later than 90 calendar days from the first date cited in block 5 of the Form I–20 or block 3 of the Form IAP–66.

A detailed description and set of procedures delineating the entire payment remittance process, including the provision for a grace period as described above, and the definition of a valid form of payment will be provided in a **Federal Register** Notice that will be published concurrently with the final rule.

Under what circumstances must an F–1, J–1 or M–1 nonimmigrant pay the fee again?

The fee must be paid whenever a new Form I–20, Certificate of Eligibility for a Nonimmigrant Academic or Vocational Student, or a new Form IAP–66, Certificate of Eligibility for an Exchange Visitor, is issued by a Service approved school or a designated exchange program for any of the following purposes to an F–1, J–1, or M–1 nonimmigrant who is subject to the fee:

- Transfer to a new school/exchange visitor program;
- Commencement of a new program after completion of the initial program; or
- Change of exchange visitor category.

Under the above three circumstances, the proposed fee must be collected and remitted by the school or exchange visitor program not later than 90 days after:

- The report date indicated in block 5 of the new Form I–20, Certificate of Eligibility for Nonimmigrant Student Status, for F–1 and M–1 students, or
- The begin date indicated in block 3 of the new Form IAP–66, Certificate of Eligibility for Exchange Visitor Status, for J–1 exchange visitors.

Who is responsible for collection and remittance of the fee to the Service?

Section 641(e) of the IIRIRA stipulates that "an approved institution of higher education and a designated exchange visitor program "must collect the proposed fee from each F–1, J–1, and M–1 nonimmigrant who is subject to the fee and must then remit the fees to the Service. Each approved institution or program that is subject to this requirement, therefore, must actually collect and remit the fees. The Service recognizes that this aspect of the law gives rise to concerns among members of the educational community and other stakeholder groups. Predominant among these concerns are a perceived expansion in the role of the Designated School Official/Responsible Officer (DSO/RO) as an agent of the Federal Government, and the short timeline provided for public institutions to coordinate with State educational authorities and local governments to authorize them to assume the proposed fee collection and remittance responsibility.

To meet its responsibility under this proposal, the institution, school, or exchange program must:

- Establish a means to collect, remit, and account for all fees collected from nonimmigrants who are subject to the fee;
- Inform each F–1, J–1, or M–1 nonimmigrant who is subject to the fee of his/her obligation to pay the fee;
- Verify that a Form I–901 has been completed, either manually or electronically, by or in behalf of each F–1, J–1, or M–1 nonimmigrant who is subject to the fee;
- Collect the required fee from each F–1, J–1, or M–1 nonimmigrant who is subject to the fee;
- Remit the form and fee together to the Service in accordance with § 103.2(a); and
- Verify fee payment as a prerequisite for any and all administrative or benefit applications through the DSO/RO, or to the Service subsequent to commencement of the program.

For example, a DSO or RO must verify that any F–1, J–1, or M–1 nonimmigrant who is subject to the fee has paid the fee before the DSO or RO may take any of the following actions: endorsing a Form I–20 or Form IAP–66; recommending to the Service/USIA that a benefit be granted; or granting a benefit to a student/exchange visitor through authority that has been delegated by Government regulation. It should be noted that failure by a DSO or RO to comply with these requirements may constitute grounds for withdrawal of school approval or program designation under existing Service regulations at 8 CFR 214.4(a) and USIA regulations at 22 CFR 514.60.

The Service welcomes and encourages comment from the educational community on this entire regulation, particularly in regard to the proposed requirement that schools and exchange visitor programs collect and remit the fee. It is the Service's desire to understand and meet the needs of the educational community to the best of its ability while completely fulfilling its statutory requirements and obligations.

How will the fee be remitted to the Service?

Service-approved schools and USIA designated exchange visitor programs will collect the proposed fee when an F–1, J–1, or M–1 nonimmigrant who is subject to the fee first registers, enrolls, or transfers into a program of study at the school, or changes exchange visitor category, or begins participation in the designated exchange visitor program. If an F–1, J–1, or M–1 nonimmigrant who is subject to the fee transfers to a new school or program, or otherwise commences a new program or changes category, the nonimmigrant will once again be subject to the proposed fee, even if the same institution conducts the new program. The following instances are examples provided for reference:

- If a nonimmigrant F–1 student in a bachelor degree program at university "A" transfers to university "B" to continue to pursue his/her bachelors degree at university "B," university "B" would be required to collect and remit the proposed fee on behalf of the F–1 student.
- Two additional examples would be if a nonimmigrant student completes his/her undergraduate course of studies, and then enters a graduate program at the same university, or if a J–1 exchange visitor changes category from a research scholar to a student at the same institution, the school, or exchange visitor program must again collect and remit the proposed fee on behalf of the described nonimmigrant.

Because section 641(e)(1) mandates that the Service receive the proposed fee through the school or exchange visitor program only at the time the nonimmigrant first registers or first commences participating in the exchange, the amount of the proposed fee will be set to recover the cost of providing the services related to section 641 of the IIRIRA, based on the average length of an F–1, J–1, or M–1 nonimmigrant's program in the United States. If a particular nonimmigrant leaves earlier, the Service will not refund the balance of the proposed fee.

Form I–901 will be available to schools and designated exchange programs from the Service's website. Valid payment of the fee is required in order for an F–1, J–1, or M–1 nonimmigrant who is subject to the fee to maintain status. However, payment of the proposed fee alone does not create or maintain F–1, J–1, or M–1 status for any nonimmigrant who is subject to the fee and who fails to comply fully with all applicable regulations under 8 CFR

214.2(f), 214.2(j), 214.2(m), and 22 CFR part 514.

Will the Service furnish a receipt to paying nonimmigrants?

Yes. As evidence of payment, a receipt will be furnished to both the institution or exchange visitor program collecting and remitting the fee as well as to each F–1, J–1, and M–1 nonimmigrant who is subject to and has paid the fee. The receipt must be retained and produced by the student, exchange visitor, school, or program upon request by the Service. A detailed description and set of procedures delineating the entire payment remittance process and definition of valid form of payment will be provided in a **Federal Register** Notice that will be published concurrently with the final rule.

What happens if a school or exchange visitor program fails to collect and remit the fee on behalf of an F–1, J–1, or M–1 nonimmigrant who is subject to the fee?

Failure to collect and remit the fee as required will result in the nonimmigrant's loss of status. For any nonimmigrant who is subject to the fee, formal reinstatement will be necessary in order to regain lawful nonimmigrant status as an F–1 or M–1 student and valid program status as a J–1 exchange visitor. Application for reinstatement should be conducted as prescribed at § 214.2(f)(16), 62 FR 19925, and § 214.2(m)(16) for F, J, and M nonimmigrants respectively.

In addition, a copy of the receipt evidencing payment of the fee must also be included as supporting evidence of valid status with all subsequent applications for benefits. This includes benefits authorized, recommended or endorsed by a DSO or RO as well as applications for benefits filed with the Service by an F–1, J–1, or M–1 nonimmigrant who is subject to the fee, and/or his/her dependents, or with USIA by a J–1 nonimmigrant and/or his/her dependents.

An F–1, J–1, or M–1 nonimmigrant who is subject to the fee would be required to provide a copy of his/her receipt evidencing payment of the proposed fee in order to apply for benefits that include, but are not limited to: change of status, authorization for curricular practical training, recommendation for and authorization of optional practical training, recommendation for employment authorization based on severe economic hardship, reduction in course load, extension in program length, authorization for off-campus employment, endorsement for academic training, and application for reinstatement.

Failure by an authorized institution or designated exchange visitor program to impose, collect, and remit the fee may also result in withdrawal of school approval from the Service to issue Form I–20 under 8 CFR 214.4(a) or termination of program designation by USIA under 22 CFR 514.60. The Service in cooperation with USIA may decide to review fee payer data against various government and school records to analyze compliance by schools, exchange programs, students, and exchange visitors. The Service may bill schools or exchange visitor sponsors for fees not remitted.

Who is exempt from the fee?

The only nonimmigrants in F, J, and M status exempt from the fee are:

- J–1 nonimmigrants who come to the United States as participants in programs sponsored by the Federal Government,
- F–1 and M–1 nonimmigrants enrolled in private elementary schools and public or private academic high schools, and
- F–2, J–2, and M–2 dependents.

If the fee is remitted in error by any nonimmigrant, it will not be refunded.

Regulatory Flexibility Act

The Commissioner, in accordance with the Regulatory Flexibility Act (15 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The regulation levies an annual fee in the amount of $95 on nonimmigrant students and exchange visitors initially arriving or continuing a program in the United States. The volume of fee payers expected is approximately 251,000 in each of the first 2 years of program operation. The total projected revenues for each fiscal year, therefore, amount to approximately $24 million. Individuals as opposed to small businesses file these applications.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year, and it will not significantly or uniquely effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Assessment of Regulatory Impact on the Family

As provided by section 654 of the 1999 Treasury and General Government Appropriations Act, Pub. L. 105–277, Division A, 101(h), 112 Stat. 2681–528, the Commissioner has determined that this proposed rule will not have an adverse impact on the strength or stability of the family.

Executive Order 12866

This proposed rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review. While the economic impact of this proposed rule is expected to be an annual revenue approximately $23.87 million to the Service, such an impact does not meet the threshold to be considered economically significant as specified under Executive Order 12866.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism survey impact statement.

Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information required by the proposed Form I–901, Fee Remittance

Form for Certain F–1, J–1, and M–1 Nonimmigrants, is considered an information collection and subject to review and clearance under the Paperwork Reduction Act procedures. The information collection requirement contained in this rule has been submitted to the OMB under the Paperwork Reduction Act for review and approval. The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

Since the rulemaking action needs to be completed in an expedited manner to comply with statutory mandates, the Service is providing for the review of the form I–901 as part of the proposed rule. Therefore, the Service solicits public comments for 60 days on the information collection requirement in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 251,000 forms will be submitted annually. The Service also estimates that it will take a given nonimmigrant approximately 19 minutes to comply with the requirements. This calculation amounts to 79,483 total burden hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the information requirement. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of this information collection requirement, including suggestions for reducing the burden should direct them to: Stuart Shapiro, OMB, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503, and Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. The comments or suggestions should be submitted within 60 days of publication of this rulemaking.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements, Students.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a): 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding the entry for "Form I–901" to the listing of fees, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–901. for remittance of the fee levied on specified F–1, J–1, and M–1 nonimmigrant aliens required under section 641(e) of Public Law 104–208—$95. This fee may not be waived.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

4. Section 214.2 is amended by:

a. Adding a new paragraph (f)(17);

b. Adding a new paragraph (j)(5);

c. Adding a new paragraph (m)(18), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(17) *Remittance of the fee.* (i) An F–1 nonimmigrant who begins a program of study at a Service-approved institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, on or after August 1, 1999, is subject to a fee payable to the Service. The fee and Form I–901, Fee Remittance Form for Certain F–1, J–1, and M–1 Nonimmigrants, will be collected and remitted to the Service by the school on behalf of the F–1 student. The fee will be due 90 days from publication of a final rule in the **Federal Register** or 90 days after the first date appearing in block 5 of the Form I–20, whichever date is later. An F–1 nonimmigrant described in paragraph (f)(17)(v) of this section is not subject to this fee.

(ii) A Service-approved school must collect the fee from an F–1 nonimmigrant described in paragraph (f)(17)(i) of this section when he or she first registers at the school and remits it directly to the Service in order for the F–1 student and his or her F–2 dependents to remain in lawful nonimmigrant status. Failure by the school to impose, collect, and remit the fee is conduct which does not comply with Service regulations and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). Failure by such an F–1 student to pay the fee as required is a violation of status for the F–1 principal as well as any F–2 dependents, and neither the F–1 nor F–2 nonimmigrant will be considered to have gone out of status "through no fault of his or her own" or "for technical reasons." Payment of the fee does not, however, preserve the lawful status of any F–1 or F–2 nonimmigrant who has violated his or her status in some other way.

(iii) Any F–1 student who is out of status for late payment or nonpayment of the required fee must also apply for reinstatement as provided under paragraph (f)(16) of this section. The Form I–539, Application to Extend Status/Change Nonimmigrant Status, must be submitted together with a copy of a valid receipt from the Service as evidence of having paid the fee in order to be eligible to apply for reinstatement to F–1 status. Approval of the Form I–539 also reinstates the status of any F–2 dependents.

(iv) If an F–1 nonimmigrant is subject to the fee, the F–1 nonimmigrant and his/her F–2 dependents must present a copy of the receipt evidencing payment

of the fee in order to be eligible for any benefit endorsed or authorized by a DSO or with applications for benefits filed with the Service by the F–1 nonimmigrant and/or his/her dependents, including change of status. A DSO's failure to verify that an F–1 nonimmigrant who is subject to the fee has paid the fee before endorsing or authorizing any application for benefits is conduct which does not comply with Service regulations and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). If an F–1 nonimmigrant subject to this fee transfers to a new institution of higher education or begins a new program at the same institution, the F–1 nonimmigrant must pay the fee when the F–1 nonimmigrant begins studies at the new institution or in the new program.

(v) An F–1 nonimmigrant is not subject to the requirements of this paragraph if the F–1 nonimmigrant is enrolled in a private elementary school or a public or private academic high school in the United States.

* * * * *

(j) * * *

(5) *Remittance of the fee.* (i) A nonimmigrant in J–1 status commencing participation in a USIA-designated exchange visitor program on or after August 1, 1999, is subject to a fee payable to the Service. The fee and Form I–901, Fee Remittance Form for Certain F–1, J–1, and M–1 Nonimmigrants, will be collected and remitted to the Service by the exchange visitor program on behalf of the J–1 exchange visitor. The fee will due 90 days from publication of the final rule in the **Federal Register** or 90 days after the first date appearing in block 3 of the Form IAP–66, whichever date is later. A J–1 nonimmigrant described in paragraph (j)(5)(v) of the section is not subject to this fee.

(ii) A designated exchange visitor program must collect the fee from a J–1 nonimmigrant who is subject to the fee described in paragraph (j)(5)(i) of this section in order for the J–1 exchange visitor and his or her J–2 dependents to remain in valid program status. Failure by such a J–1 exchange visitor to pay the fee as required is a violation of valid J–1 program status for the J–1 principal as well as any J–2 dependents, and neither the J–1 principal nor the J–2 dependents will be considered to have gone out of status "through no fault of his or her own" or "for technical reasons." Payment of the fee does not, however, preserve the lawful status of any J–1 or J–2 nonimmigrant who has violated his or her status in some other way. Failure by the exchange visitor program to attempt to collect and remit the fee may cause the Service to request the USIA to terminate program designation pursuant to 22 CFR 514.60.

(iii) Any J–1 exchange visitor who is out of program status for late payment or nonpayment of the required fee must also apply for reinstatement as provided under 22 CFR Part 514. The application or request for reinstatement to valid program status must be submitted to the USIA together with a copy of a valid receipt from the Service as evidence of having paid the fee in order to be eligible to apply for reinstatement to valid J–1 program status. Reinstatement of the J–1's status also reinstates the status of any J–2 dependents.

(iv) If a J–1 nonimmigrant is subject to the fee, the J–1 nonimmigrant and his/her J–2 dependents must present a copy of the receipt evidencing payment of the fee with all subsequent benefits endorsed or authorized by an RO as well as applications for benefits filed with the Service or USIA by the J–1 nonimmigrant and/or his/her dependents, including change of status. If a J–1 nonimmigrant transfers to a new exchange visitor program, or to a different exchange visitor program or category at the same institution, the J–1 nonimmigrant must pay the fee when participation at the new institution or in the new program or category commences.

(v) A J–1 nonimmigrant is not subject to the requirements of this paragraph if the J–1 nonimmigrant comes to the United States as a participant in a program sponsored by the Federal Government.

* * * * *

(m) * * *

(18) *Remittance of the fee.* (i) An M–1 nonimmigrant who begins a program of study at a Service-approved institution of higher education, as defined by section 101(a) of the Higher Education Act of 1965, as amended, on or after August 1, 1999, is subject to a fee payable to the Service. The fee and Form I–901, Fee Remittance Form for Certain F–1, J–1, and M–1 Nonimmigrants, will be collected and remitted to the Service by the school on behalf of the M–1 student. The fee will be due 90 days from publication of the final rule in the **Federal Register** or 90 days after the first date appearing in block 5 of the Form I–20, whichever date is later. An M–1 nonimmigrant described in paragraph (m)(18)(v) of this section is not subject to the is fee.

(ii) A Service-approved school must collect the fee from an M–1 nonimmigrant described in paragraph (m)(18)(i) of this section and remit it directly to the Service in order for an M–1 student and any M–2 dependents to remain in lawful nonimmigrant status. Failure by the school to impose, collect, and remit the fee is conduct that does not comply with Service regulations, and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). Failure by such an M–1 student to pay the fee as required is a violation of status for the M–1 principal as well as any M–2 dependents, and neither the M–1 student nor any M–2 dependent will be considered to have gone out of status "through no fault of his or her own" or "for technical reasons." Payment of the fee does not, however, preserve the lawful status of any M–1 or M–2 nonimmigrant who has violated his or her status in some other way.

(iii) Any M–1 student who is out of status for late payment or nonpayment of the required fee must also apply for reinstatement as provided under paragraph (m)(16) of this section. The Form I–539, Application to Extend Status/Change Nonimmigrant Status, must be submitted together with a copy of a valid receipt from the Service as evidence of having paid the fee for all applicable programs in order to be eligible to apply for reinstatement to M–1 status. Approval of the Form I–539 also reinstates the lawful status of any M–2 dependents.

(iv) If an M–1 nonimmigrant is subject to this fee, the M–1 nonimmigrant and his/her M–2 dependents must include a copy of the receipt evidencing payment of the fee with all subsequent requests for benefits endorsed or authorized by a DSO as well as applications for benefits filed with the Service by the M–1 nonimmigrant and/or his/her dependents, including change of status. A DSO's failure to verify that an M–1 nonimmigrant who is subject to the fee has paid the fee before endorsing or authorizing any application for benefits is conduct which does not comply with Service regulations and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). If an M–1 nonimmigrant transfers to a new institution of higher education, or begins a new program at the same institution, the M–1 nonimmigrant must pay the fee when the M–1 nonimmigrant begins training at the new institution or in the new program.

(v) An M–1 nonimmigrant is not subject to the requirements of this paragraph if the M–1 nonimmigrant is enrolled in a private elementary school

or a public or private academic high school in the United States.

* * * * *

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

6. Section 299.1 is amended in the table by adding, in proper numerical sequence, the entry for From "I–901" to read as follows:

§ 299.1 Prescribed forms.

Form No.	Edition date	Title
*	*	*
I–901	XXXXX	Remittance of the fee required for certain F–1, J–1, and M–1 nonimmigrant aliens.
*	*	*

6. Section 299.5 is amended in the table by adding, in proper numerical sequence, the entry for Form "I–901" to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS Form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–901	Remittance of the fee required for certain F–1, J–1, and M–1 non-immigrant aliens.	1115–
*	*	*

* * * * *

Dated: December 14, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–32842 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 71 and 73

RIN 3150–AG41

Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering an amendment to its regulations that would require NRC licensees to notify Native American Tribes of shipments of certain types of high-level radioactive waste, including spent nuclear fuel, prior to transport to or across the boundary of Tribal lands. Current NRC regulations require advance notification of these shipments to States. In recognition of Tribal sovereignty and the need for Tribes to be informed about activities that occur on Tribal lands, the NRC seeks to extend these regulations to include advance notification of these shipments to Federally recognized Native American Tribes. This advance notice of proposed rulemaking is issued to invite early input from affected parties and the public on the issue of advance notification.

DATES: The comment period expires March 22, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the rulemaking website.

FOR FURTHER INFORMATION CONTACT: Tony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, e-mail AJD@nrc.gov or Stephanie R. Martz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1520, e-mail SRM1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Current NRC regulations require that licensees inform State governors of certain radioactive waste shipments passing through or across the boundary of the State.

In particular, 10 CFR 71.97 requires advance notification to States of shipments of certain types of radioactive waste and small quantities of irradiated reactor fuel. The types of shipments covered by the Part 71 notification requirements are specified in 10 CFR 71.97(b).

In 10 CFR 73.37, advance notification to States of shipments of certain quantities of irradiated reactor fuel is required. The notification requirements in Part 73 apply to most shipments of irradiated reactor fuel. The types of shipments covered by the Part 73 notification requirements are detailed in 10 CFR 73.37(a). NRC regulations (10 CFR 73.37(g)) require State officials and other individuals to protect schedule information related to these fuel shipments from unauthorized disclosure as specified in 10 CFR 73.21. The NRC was directed to promulgate these regulations by the NRC Authorization Act for Fiscal Year 1980 (Sec. 301(a), Pub. L. 96–295).

In accordance with the notification procedures in Part 71, a licensee must notify the governor of a State, or the governor's designee, in writing, prior to a shipment of radioactive waste or nuclear fuel. If the notification is delivered by mail, it must be postmarked at least 7 days before the beginning of the 7-day period during which it is estimated that the shipment will depart from its point of origin. If the notification is hand-delivered, it must be delivered at least 4 days before the beginning of the 7-day period during which it is estimated that the shipment will depart from its point of origin.

In accordance with 10 CFR 71.97, a list of the names and mailing addresses of the governor's designees receiving advance notification is published in the **Federal Register** and is updated on a

yearly basis (see, *e.g.*, 64 FR 35197 (June 30, 1999)).

The notification for shipments under Part 71 must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;

(2) A description of the irradiated reactor fuel or nuclear waste contained in the shipment;

(3) The point of origin of the shipment and the 7-day period during which the shipment is estimated to depart;

(4) The 7-day period during which the shipment is estimated to arrive at the State boundary;

(5) The shipment's destination and the 7-day period during which the shipment is estimated to arrive at its destination; and

(6) A point of contact, with a telephone number, for current shipment information.

If the schedule of the shipment changes by more than 6 hours from the information furnished, the licensee must notify the governor or the governor's designee ("the responsible party") of the schedule change by telephone (or other means), and must inform the responsible party of the number of hours that the schedule has changed (*i.e.*, advanced or delayed) relative to the previously furnished information.

The notification for shipments under 10 CFR 73.37(f)(2) must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver;

(2) A description of the shipment;

(3) A listing of the routes to be used within the State; and

(4) A statement that certain information, which is provided as a separate enclosure to the written notification, is required by NRC regulations in 10 CFR 73.21 to be protected as Safeguards Information.

The information to be provided as a separate enclosure to the notification under Part 73 is as follows:

(1) The estimated date and time of departure from the point of origin of the shipment;

(2) The estimated date and time of entry into the State;

(3) For a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of 10 CFR 73.21, as Safeguards Information, until at least 10 days after the shipment has entered or originated within the State; and

(4) For a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of 10 CFR 73.21, as Safeguards Information, until at least 10 days after the last shipment in the series has entered or originated within the State, and an estimate of the date on which the last shipment in the series will enter or originate within the State.

To help minimize the possibility for radiological sabotage, schedules and itineraries for shipments of irradiated reactor fuel under Part 73 are required to be protected as Safeguards Information. State officials, State employees, and other responsible parties who receive schedule information are required to protect that information from unauthorized disclosure under 10 CFR 73.21 and 73.37(g). Title 10 of the Code of Federal Regulations, 10 CFR 73.21(a), stipulates that information protection procedures employed by State and local police forces are deemed to meet the information protection measures specified in 10 CFR 73.21(b) through (i). Title 10 of the Code of Federal Regulations, 10 CFR 73.21(c), specifically limits information disclosure except to persons with an established "need to know." For State and local governments, these persons are either the governor, the governor's designated representative, or a member of a State or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies. Title 10 of the Code of Federal Regulations, 10 CFR 73.21(d), prescribes protection required while the information is being used or stored, and 10 CFR 73.21(g) specifies the protection required when the information is transmitted outside an authorized place of use or storage. With respect to the provision of 10 CFR 73.37(f)(4) that the governor's representative be notified in the event of a change in the schedule, NRC policy is that the licensee need notify only a single designated individual within each State (47 FR 600; January 6, 1982).

Further information regarding NRC's transportation requirements can be found in NUREG–0725, "Public Information Circular for Shipments of Irradiated Reactor Fuel," Revision 13, October 1998. Single copies are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Specific Proposal

The Commission is considering amending Parts 71 and 73 to require that licensees provide timely advance notification to Native American Tribes prior to transport of certain types of nuclear waste, including spent fuel, to or across the boundary of Tribal lands. This amendment would require licensees to provide to the Native American Tribes notification similar to that now required to be provided to the States.

In 1994, the U.S. Department of Energy (DOE) notified the NRC of its intent to implement its Tribal notification policy for DOE's shipments of spent nuclear fuel and high-level radioactive waste. DOE presently accomplishes these shipments under DOE regulations. An amendment to NRC regulations would clarify how DOE, when making shipments under NRC regulations, and NRC licensees would provide notification to Native American Tribes of spent nuclear fuel and high-level radioactive waste shipments that pass to or across the boundary of Tribal lands. Such an amendment would advance NRC's efforts to recognize the sovereignty of Federally recognized Native American Tribes in accordance with President Clinton's 1994 memorandum entitled, "Government-to-Government Relations with Native American Tribal Governments." [59 FR 22951; May 4, 1994] This memorandum states, in part,

> The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.

The President's memorandum does not impose any new obligations on NRC, as an independent regulatory agency, or on other Executive departments and agencies. However, this memorandum encourages Federal agencies, among other things, to consult with Tribal governments, before engaging in activities that may affect Tribes, and to remove any procedural impediments to agencies being able to work directly with Tribal governments.

To accomplish this, the memorandum encourages each Executive department and agency to "apply the requirements of Executive Order Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities."

The primary purpose of the rule contemplated by the Commission would be to inform Native American Tribes of shipments passing to or across the boundary of Tribal lands as a recognition of Tribal sovereignty as well as the need for Tribes to be aware of activities that occur on Tribal lands. While emergency preparedness would not be the main reason for developing such a rule, Tribes that do have emergency preparedness capabilities would benefit from notification.

Specific Considerations

Before the NRC prepares a proposed rule on the subject, the NRC is seeking advice and recommendations on this matter from all interested persons. Comments accompanied by supporting reasons are particularly requested on the following questions arranged by topic:

A. Developing a List of Native American Tribe Contacts

A.1. In preparing the list of Tribal contacts, the NRC would most likely look to the list of Federally recognized Native American Tribes maintained by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior. Is this an appropriate approach? Are there any other sources that the NRC should consider? (See the BIA website at http://www.doi.gov/bureau-indian-affairs.html).

A.2. How can the NRC ensure that contact information is kept current, particularly for smaller Tribes? In maintaining State contacts, the NRC provides each State with the opportunity to update its information annually. Should NRC follow the same approach for Tribal contacts?

A.3. How can licensees effectively and efficiently provide notification to Native American Tribes, particularly smaller Tribes, of a schedule change that would require updated notification by telephone at any time of day?

B. Minimizing the Licensees' Administrative Burden

B.1. In what ways can licensees comply with this advance notification requirement, while keeping their administrative burden at a minimum?

B.2. If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?

C. Identifying the Location of Tribes Along Shipment Routes

C.1. How can licensees effectively and comprehensively identify the location of Native American Tribes along a particular vehicle, rail, or vessel shipment route?

C.2. Should DOE and NRC licensees develop and maintain a central data base regarding the location of Tribal lands? Should NRC look to Geographic Information System (GIS) resources to provide licensees with information regarding the location of Tribal lands?

C.3. What types of Tribal lands should the rule apply to (*e.g.*, Trust Lands, Fee Lands (*i.e.*, lands owned by Native Americans but not held in trust by the Federal government), *etc.*)?

D. Safeguards Information

D.1. Should advance notification of spent fuel shipments be provided to any federally recognized Native American Tribe when spent fuel shipments are transported to or across tribal boundaries?

D.2 The NRC's "need-to-know" requirement for advance notification of spent fuel shipment information is found in 10 CFR 73.21. Should this requirement be broadened to include other entities, such as Federally recognized Native American Tribes?

D.3. Does wider dissemination of shipment information increase the risk to safeguarding spent fuel shipments (*i.e.*, protecting public health and safety)? How should the NRC address any increase in risk compared with the benefits to be gained from Tribal notification?

D.4. How should the rule address the point of contact for Safeguards Information in the context of Tribal notification?

D.5. A recipient of Safeguards Information must expend resources to ensure the information is handled properly. Are there Tribes who may not wish to be recipients of Safeguards Information?

D.6. If a Tribal government receives Safeguards Information, should the NRC review the Tribe's actions to control and protect Safeguards Information?

D.7. 10 CFR 73.21(a) states that "information protection procedures employed by State and local police forces are deemed to meet the information protection requirements of § 73.21(b) through (i)." Should the NRC determine the ability of Tribal governments to protect Safeguards Information and, if so, how?

D.8. Should the contemplated rule include an exemption to the notification requirement if there is reason to believe that a Tribe will not be able to protect the Safeguards Information from disclosure? What basis would the NRC need for granting such an exemption?

D.9. Should 10 CFR 73.37(f) be changed to a permissive form? That is, should the licensee be permitted rather than required to release Safeguards Information to responsible Tribal government officials?

The preliminary views expressed in this notice may change in light of comments received. If the proposed rule is developed by the Commission, there will be another opportunity for additional public comment in connection with that proposed rule.

List of Subjects

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Exports, Imports, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, and Security measures.

The authority citation for this document is: 42 U.S.C. 2201; 42 U.S.C. 5841.

Dated at Rockville, Maryland, this 14th day of December, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–32929 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–56–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300–B2K, A300 B4–2C, A300 B4–100, and A300 B4–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, that currently requires certain structural inspections and modifications. This action would require that those inspections be accomplished on additional airplanes. This action also would require new repetitive inspections for airplanes in

certain configurations at revised thresholds and intervals. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by January 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–56–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 10, 1996, the FAA issued AD 96–08–08, amendment 39–9574 (61 FR 18661, April 29, 1996), applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, to require structural inspections and modifications. That action was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The requirements of that AD are intended to prevent degradation of the structural capability of the affected airplanes.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Airbus has issued Revision 6 of Airbus Service Bulletin A300–53–0162, dated March 20, 1996. The inspections and modifications described in Revision 6 of the service bulletin are identical to those in Revisions 4 and 5 of the service bulletin (which were referenced in AD 96–08–08 as appropriate sources of service information). However, the effectivity listing of Revision 6 of the service bulletin has been revised to include airplanes on which Airbus Modifications 3275 and 5724 or Airbus Service Bulletin A300–53–0161 has been accomplished (i.e., Configuration 2 airplanes). The remaining affected airplanes (Configuration 1) were subject to the requirements of AD 96–08–08.

Airbus also has issued Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, which describes procedures for inspections of an additional area between fuselage frames FR10 and FR10A. The actions in Revision 2 are similar to those described in the original version and Revision 1 of Service Bulletin A300–53–278 (the service bulletin number was revised in Revision 2 to A300–53–*0278*), which were referenced in AD 96–08–08 as appropriate sources of service information; except, the inspections have been revised from eddy current inspections to visual inspections. In addition, the effectivity listing of Revision 2 of the service bulletin has been revised to include airplanes on which Airbus Modification 1446 has been accomplished (i.e., Configuration 3 airplanes). The remaining affected airplanes (Configurations 1 and 2) were subject to the requirements of AD 96–08–08.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 90–222–116(B)R4, dated March 27, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–08–08 to continue to require certain structural inspections and modifications. The proposed AD would require that those inspections be accomplished on additional airplanes. The proposed AD also would require new repetitive inspections for airplanes in certain configurations at revised thresholds and intervals. The new actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 13 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that were previously required by AD 96–08–08, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The new inspection that is proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9574 (61 FR 18661, April 29, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–56–AD. Supersedes AD 96–08–08, Amendment 39–9574.

Applicability: All Model A300 B2, A300 B2K, A300 B2–200, A300 B4–2C, A300 B4–100, and A300 B4–200 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection and Modification

(a) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), whichever occurs later, except as provided in paragraph (d) of this AD for the service bulletin identified in paragraph (a)(8) of this AD. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection. After April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), the actions shall only be accomplished in accordance with the latest revision of the service bulletins specified.

(1) Airbus Service Bulletin A300–53–103, Revision 4, dated June 30, 1983; or Revision 5, dated February 23, 1994;

(2) Airbus Service Bulletin A300–53–126, Revision 7, dated November 11, 1990; or Revision 8, dated September 18, 1991;

(3) Airbus Service Bulletin A300–53–146, Revision 7, dated April 26, 1991;

Note 2: Airbus Service Bulletin A300–53–146 provides for a compliance threshold of within 5 years after the date of issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990, the accomplishment of which is required by AD 85–07–09, amendment 39–5033.

(4) For Configuration 1 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Airbus Service Bulletin A300–53–162, Revision 4, dated November 12, 1990; Revision 5, dated March 17, 1994; or Revision 6, dated March 20, 1996. After the effective date of this new AD, only Revision 6 of the service bulletin shall be used.

(5) Airbus Service Bulletin A300–53–196, Revision 1, dated November 12, 1990; as amended by Service Bulletin Change Notice 1.A., dated February 4, 1991, or Revision 2, dated March 17, 1994.

Note 3: Airbus Service Bulletin A300–53–196 provides for a compliance threshold of within 6,000 landings after accomplishment of Airbus Service Bulletin A300–53–194, accomplishment of which is required by AD 87–04–12, amendment 39–5536.

(6) Airbus Service Bulletin A300–53–225, Revision 2, dated May 30, 1990;

(7) Airbus Service Bulletin A300–53–226, Revision 4, dated November 12, 1990; or Revision 5, dated September 7, 1991;

Note 4: Airbus Service Bulletin A300–53–226 provides for a compliance threshold of within 5 years after the issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990; but not later than 20 years after first delivery; the accomplishment of which is required by AD 90–03–08, amendment 39–6481.

(8) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Airbus Service Bulletin A300–53–278, dated November 12, 1990; or Revision 1, dated March 17, 1994;

(9) Airbus Service Bulletin A300–54–045, Revision 4, dated January 31, 1990; or Revision 6, dated February 25, 1994;

(10) Airbus Service Bulletin A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A., dated February 13, 1990; or Revision 3, dated February 25, 1994;

(11) Airbus Service Bulletin A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994; and

(12) Airbus Service Bulletin A300–54–066, Revision 1, dated February 15, 1989, and

Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994.

(b) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after March 29, 1996 (the effective date of AD 96–06–08, amendment 39–9574), whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(1) Airbus Service Bulletin A300–57–0194, Revision 2, including Appendix 1, dated August 19, 1993;

Note 5: Airbus Service Bulletin A300–57–0194 provides for a compliance threshold of prior to the accumulation of 36,000 landings for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has not been accomplished and for Model A300 B2 series airplanes on which that modification has been accomplished prior to the accumulation of 24,000 landings on the airplane. Airbus Service Bulletin A300–57–0194 also provides for a compliance threshold of prior to the accumulation of 12,000 landings after the accomplishment of Airbus Service Bulletin A300–57–165 (for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has been accomplished on or after the accumulation of 24,000 landings on the airplane).

(2) Airbus Service Bulletin A300–57–166, Revision 3, including Appendix 1, dated July 12, 1993;

(3) Airbus Service Bulletin A300–57–0167, Revision 1, including Appendix 1, dated May 25, 1993;

(4) Airbus Service Bulletin A300–57–0168, Revision 3, including Appendix 1, dated November 22, 1993;

(5) Airbus Service Bulletin A300–57–0180, Revision 1, dated March 29, 1993;

(6) Airbus Service Bulletin A300–57–0185, Revision 1, including Appendix 1, dated March 8, 1993; and

Note 6: The Airbus service bulletins specified in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this AD provide for a compliance threshold of prior to the accumulation of 36,000 landings (for Model A300 B2 series airplanes); 30,000 landings (for Model A300 B4–100 series airplanes); and 25,000 landings (for Model A300 B4–200 series airplanes) after the effective date of French airworthiness directive 93–154–149(B), issued on September 15, 1993.

(7) Airbus Service Bulletin A300–54–0084, dated April 21, 1994.

(c) For Configuration 2 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996, prior to or at the thresholds identified in the service bulletin; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the service bulletin for the inspection.

(d) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 3,600 flight cycles. Accomplishment of the inspections required by this paragraph constitutes terminating action for the inspections required by paragraph (a)(8) of this AD.

(1) For airplanes that have not been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Inspect at the time specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) For Configuration 1 airplanes: Prior to the accumulation of 18,300 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(ii) For Configuration 2 airplanes: At the earlier of the times specified in paragraphs (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) At the time specified in paragraphs (a) and (a)(8) of this AD.

(B) Prior to the accumulation of 22,000 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Perform the next inspection within 3,600 landings after accomplishing the last inspection, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(e) For Configuration 3 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, prior to the accumulation of 26,000 total flight cycles; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

Note 7: Accomplishment of the inspections specified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, is considered acceptable for compliance with the significant structural details (SSD) inspection 536206 of "Airbus Industrie A300 Supplemental Structural Inspection Document" (SSID), Revision 2, dated June 1994, required by AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996).

Corrective Action

(f) If any discrepant condition identified in any service bulletin referenced in this AD is found during any inspection required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletin, except as specified in paragraph (g) of this AD.

(g) If any crack is found during any inspection required by this AD; and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 9: The subject of this AD is addressed in French airworthiness directive 90–222–116(B)R4, dated March 27, 1996.

Issued in Renton, Washington, on December 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32983 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–30–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, –400 series airplanes, that currently requires repetitive high frequency eddy current (HFEC) inspections to detect cracking of

the front spar web of the center section of the wing, and repair, if necessary. This action would require that the existing inspection be accomplished at a reduced threshold. This action also would add a requirement that the existing HFEC inspection be accomplished on repaired areas. This proposal is prompted by reports of cracking in repaired areas of the front spar web and cracking of the front spar web on an airplane that had accumulated fewer flight cycles than the inspection threshold of the existing AD. The actions specified by the proposed AD are intended to prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard.

DATES: Comments must be received by February 4, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–30–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 19, 1997, the FAA issued AD 97–05–01, amendment 39–9945 (62 FR 8613, February 26, 1997), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, to require repetitive high frequency eddy current (HFEC) inspections to detect cracking of the front spar web of the center section of the wing, and repair, if necessary. That action was prompted by reports of fatigue cracking found in the front spar web. The requirements of that AD are intended to prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–05–01, the FAA has received reports of cracking in repaired areas of the front spar web on Model 747SR series airplanes. Also, the FAA has received a report for the first time of cracking in the front spar web on a Model 747–200 series airplane. The Model 747–200 series airplane had accumulated 13,309 total flight cycles, which is less than the 18,000 total landing compliance time specified in AD 97–05–01 for certain airplanes.

The front spar web on Model 747SR series airplanes is identical to that on the affected Model 747–200 series airplanes, except there is no fuel located behind the front spar web on Model 747SR series airplanes. In addition, if the subject fatigue cracking were to occur on these airplanes, the cabin pressure would vent through the front spar web and then the limiting access holes of the front spar; this would result in a loss of pressurization, but not sudden decompression. This would also not result in damage to unpressurized areas. Therefore, no unsafe condition exists on Model 747SR series airplanes.

Explanation of Relevant Service Information

Subsequent to the finding of this new cracking, the manufacturer issued and the FAA reviewed and approved Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997, and Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999.

The method of inspection in Revision 2 of the service bulletin is identical to that described in Revision 1 of the service bulletin (which was referenced in AD 97–05–01 as the appropriate source of service information). However, Revision 2 revises the inspection procedures to include instructions for repetitive HFEC inspections of the aft side of the front spar web to detect cracking. These instructions were added to allow inspection when a prior repair precludes access to the forward side of the front spar web.

The inspection procedures in Revision 3 of the service bulletin are identical to those described in Revision 2 of the service bulletin. Revision 3 reduces the inspection threshold and revises the listing of current operators of affected airplanes.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–05–01 to continue to require accomplishment of the requirements of the existing AD and to require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and the Service Bulletins

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane

approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 485 airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 97–05–01 and retained in this AD, take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $50,400, or $480 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9945 (62 FR 8613, February 26, 1997), and by adding a new airworthiness directive (AD), to read as follows:

BOEING: Docket 99–NM–30–AD. Supersedes AD 97–05–01, amendment 39–9945.

Applicability: Model 747–200, –300, –400 series airplanes, up to and including line number 744, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard, accomplish the following:

Restatement of Requirement of AD 97–05–01, Amendment 39–9945

Repetitive Inspections

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996; Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of the requirements of paragraph (b) of this AD.

(1) For airplanes that have accumulated 12,000 to 17,999 total landings as of April 2, 1997 (the effective date of AD 97–05–01, amendment 39–9945): Perform the initial inspection within 12 months after April 2, 1997, unless previously accomplished within the last 12 months prior to April 2, 1997. Perform this inspection again prior to the accumulation of 18,000 total landings or within 1,400 landings, whichever occurs later; after accomplishing the initial inspection, and thereafter at intervals not to exceed 1,400 landings.

(2) For all other airplanes: Perform the initial inspection prior to the accumulation of 18,000 total landings or within 12 months after April 2, 1997, whichever occurs later. Repeat this inspection thereafter at intervals not to exceed 1,400 landings.

New Requirements of This AD

Repetitive Inspections

(b) Prior to accumulation of 12,000 total landings, or within 12 months after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 1,400 landings. Accomplishment of the HFEC inspection constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

Repair

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, confirm the cracking with secondary procedures in accordance with Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997, or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999. Thereafter repeat the HFEC inspection required by paragraph (a) or (b) of this AD at intervals not to exceed 1,400 landings.

(1) If any vertical crack is found that is less than 10 inches in length and has not extended in a diagonal direction, prior to further flight, repair in accordance with the service bulletin.

(2) If any vertical crack is found that is 10 inches or greater in length; or if any crack is found that has extended in a diagonal direction (regardless of the length); or if any crack is found that would affect an existing repair, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or a Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32982 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (99–159)]

14 CFR Parts 1261 and 1267

RIN 2700–AC35

Meritorious Claims Which Result From the Conduct of NASA Functions

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) proposes to amend its rules regarding the submission and processing of meritorious claims under section 203 of the National Aeronautics and Space Act of 1958, as amended. NASA regulations currently discuss the submission and processing of meritorious, as well as tort, claims by NASA. This proposal provides separate coverage for meritorious claims in a new part. The proposal reflects the statutes and requirements governing these two types of claims, differences in their processing and settlement by NASA, and differences in their payment.

DATES: Comments must be received on or before February 22, 2000.

ADDRESSES: Send comments to Associate General Counsel (Contracts), Code GK, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546–0001. Submit electronic comments and other data to *broan@hq.nasa.gov*. NASA will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Bernard J. Roan, (202) 358–2072 (voice), (202) 358–4355 (fax), and *broan@hq.nasa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: 42 U.S.C. 2473(c)(13) governs meritorious claims against NASA for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of NASA's functions. Meritorious claims are those claims that NASA decides, as a matter of equity or fairness, to pay, but for which the United States could not be held legally liable to the claimant. 42 U.S.C. 2473(c)(13) authorizes NASA to consider and pay such meritorious claims in amounts of $25,000 or less and to consider for payment such meritorious claims exceeding $25,000. In turn, 31 U.S.C. 3104 requires the Secretary of the Treasury to certify payment of any claim exceeding $25,000 which NASA considers meritorious.

NASA regulations at 14 CFR subpart 1261.3 presently govern the processing of meritorious claims. Subpart 1261.3 discusses tort and meritorious claims without drawing any significant distinctions between the two types of claims. Moreover, subpart 1261.3 does not discuss the relationship between NASA and the Secretary of the Treasury in processing meritorious claims settled by NASA. Addressing meritorious claims separately from tort claims helps to clarify the bases NASA deems acceptable for considering meritorious claims.

The proposed rule creates a new part 1267 of 14 CFR governing NASA's processing of meritorious claims. The new part 1267 establishes specific procedures for considering meritorious claims arising from NASA space launch activities.

The proposed rule applies only to meritorious claims brought by third parties. The proposed rule does not apply to claims arising from NASA space launches for which the United States provides its space launch contractor indemnification against third party claims under other statutory authority. Moreover, the proposed rule, read in conjunction with proposed implementing coverage in the NASA supplement to the Federal Acquisition Regulation, addresses certain insurance requirements levied on space launch contractors for the payment of third party claims which might otherwise be filed as meritorious claims. Finally, the new part 1267 discusses administrative matters, such as filing and documenting meritorious claims, time limitations, processing by NASA officials, and final approval by the NASA General Counsel.

As required by the Regulatory Flexibility Act, NASA certifies that this proposed rule will not have a significant economic impact on small business entities.

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

As required by the Unfunded Mandates Reform Act, NASA certifies that this regulation will not compel the expenditure in any 1 year of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, the detailed statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects

14 CFR Part 1261

Accidents, Administrative practice and procedure, Claims, Tort claims.

14 CFR Part 1267

Accidents, Administrative practice and procedure, Claims, Federal Acquisition Regulations, Government contracts, Government procurement, Space transportation and exploration, Tort claims.

For the reasons set forth in the preamble, NASA proposes to amend 14 CFR parts 1261 and 1267 as follows:

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

Subpart 1261.3—Claims Against NASA or Its Employees for Damage to or Loss of Property or Personal Injury or Death—Accruing on or After January 18, 1967

1. The authority citation for subpart 1261.3 is revised to read as follows:

Authority: 28 U.S.C. 2671–2680; and 28 CFR part 14.

2. Remove § 1261.301 paragraphs (b) and (c) and redesignate paragraph (d) as (b).

3. Remove § 1261.307 paragraph (b) and redesignate paragraph (c) as (b).

4. Amend § 1261.308 by:

A. Amending paragraph (c) by removing the phrase "pursuant either to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13)"; and

B. Removing paragraph (d).

5. Amend § 1261.312 paragraph (a) by removing the phrase "a Voucher for Payment of Tort Claims (NASA Form 616) if the claim has been acted upon pursuant to 42 U.S.C. 2473(c)(13), or".

6. Add part 1267 to read as follows:

PART 1267—MERITORIOUS CLAIMS WHICH RESULT FROM THE CONDUCT OF NASA FUNCTIONS

Sec.

1267.100 Scope of the part.
1267.101 Authorities.
1267.102 Applicability.
1267.103 Definitions.
1267.104 Claims.
1267.105 Presentation of claims.

1267.106 Filing and processing third party claims involving launch service contractors.
1267.107 Evidence and information required from third party claimants.
1267.108 Time limitations for third party claims.
1267.109 NASA action on a launch service claim.
1267.110 Confidentiality.

Authority: 42 U.S.C. 2473(c)(13); 31 U.S.C. 1304.

§ 1267.100 Scope of the part.

This part sets forth the procedures for submitting and processing claims against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of certain space launch functions by NASA through launch service contractors. This part further designates the NASA officials authorized to act upon these claims.

§ 1267.101 Authorities.

42 U.S.C. 2473(c)(13)(A), sec. 203(c)(13)(A) of the National Aeronautics and Space Act of 1958, as amended, authorizes NASA to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, any claim made against the United States for $25,000 or less for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of NASA's functions as specified in 42 U.S.C. 2473(a). NASA may settle and pay a claim under this authority even though the United States could not be held legally liable to the claimant.

(a) 42 U.S.C. 2473(c)(13)(B) authorizes NASA to consider a claim in excess of $25,000 which, but for the dollar amount, would otherwise be covered by 42 U.S.C. 2473(c)(13)(A).

(b) 31 U.S.C. 1304, as amended by Public Law 104–316, appropriates amounts to pay settlements of meritorious claims, when certified by the Secretary of the Treasury and in excess of the amount payable from Agency appropriations under 42 U.S.C. 2473.

§ 1267.102 Applicability.

(a) One of NASA's primary functions is launching Government and Government-sponsored payloads into space. In recognition of this fact, NASA has determined that launches conducted by NASA through launch service contractors constitute, for purposes of considering claims under 42 U.S.C. 2473(c)(13), the conduct of a NASA function. Accordingly, NASA will include in its contracts for launch services a clause designating the launch as being the conduct of a NASA function and agreeing to consider claims resulting from the launch under the authority of 42 U.S.C. 2473(c)(13) and the procedures prescribed in this part.

(b) This part does not apply to launches for which the NASA Administrator has provided indemnification pursuant to Public Law 85–804, or to launches for which the Department of Transportation has issued or transferred a license under the Commercial Space Launch Act, 49 U.S.C., Chapter 701.

§ 1267.103 Definitions.

(a) *Meritorious claims* are those claims that NASA decides to pay as a matter of equity or fairness, but for which the United States could not be held legally liable to the claimant.

(b) *Third party claimant* means any person or entity, other than NASA, the launch service contractor, or the launch service contractor's subcontractors, at any tier, involved in the performance of launch services pursuant to a contract with NASA. For purposes of this part, employees of the Government, employees of the launch service contractor, and employees of the launch service contractor's subcontractors come within the definition of third party claimant.

§ 1267.104 Claims.

(a) For purposes of this part, a meritorious claim arises as a demand by a third party claimant against a NASA launch service contractor for money damages, in a sum certain, for bodily injury, death, or damage to or loss of real or personal property resulting from a launch conducted by NASA through that launch service contractor.

(b) NASA will consider a third party claim, originally made against a launch service contractor, as a claim against the United States for purposes of 42 U.S.C. 2473(c)(13) if the launch services were provided pursuant to a contract containing the clause at NASA Federal Acquisition Regulation Supplement (NFS) 1852.228–XX. Once received and evaluated, NASA will consider a third party claim that is reasonable in amount to be meritorious, unless the gross negligence or willful misconduct of the third party claimant, or any launch service contractor or subcontractor, caused or was an intervening cause in the bodily injury, death, or damage to or loss of real or personal property for which damages are sought.

(c) NASA will forward any meritorious claim that is reasonable in amount and arose out of the conduct of NASA's space launch function to the Secretary of the Treasury for certification for payment from the permanent Judgment Fund pursuant to 31 U.S.C. 1304 and implementing regulations; provided, the claim exceeds $25,000 and the launch service contractor has exhausted any insurance coverage required by the contract.

§ 1267.105 Presentation of claims.

(a) For damage to or loss of real or personal property, the owner of the property or his or her duly authorized agent or legal representative may present a claim.

(b) For bodily injury, the injured person or his or her duly authorized agent or legal representative may present a claim.

(c) For wrongful death, the executor or administrator of the decedent's estate or any other person legally entitled to assert such a claim in accordance with applicable state law may present a claim.

(d) For any loss wholly compensated by insurance, an insurer with the rights of a subrogee may present a claim. For any loss partially compensated by insurance, multiple parties with the rights of subrogees may present claims individually as their respective interests appear, or jointly. An insurer that provides insurance required by the NASA launch service contract may not present a subrogation claim based on that insurance.

(e) If an agent or legal representative presents a claim, it must be presented in the name of the claimant. The agent or legal representative must sign the claim, showing the title or legal capacity of the person signing, accompanied by evidence of the legal authority of the agent or representative to present a claim on behalf of the claimant.

§ 1267.106 Filing and processing third party claims involving launch service contractors.

(a) To come under this part, a third party claim arising out of a launch conducted by NASA through a launch service contractor must first be filed with the contractor providing the launch service. If the identity of the cognizant launch service contractor is not apparent, a claimant should contact the nearest NASA Center for information.

(b) The cognizant launch service contractor must promptly process any third party claim received in accordance with the terms of the contract and this part. As an initial matter, the launch service contractor must verify that any third party claim for bodily injury, death, or damage to or loss of real or personal property resulted from a launch conducted by NASA through the launch service contractor. If the claim resulted from a launch by NASA

conducted through the launch service contractor, then the contractor must settle the matter in a reasonable amount, applying any available insurance coverage required by the contract.

(c) If the cognizant launch service contractor finds that the insurance coverage required by the contract has been exhausted, the claim must be given to the NASA contracting officer. The contracting officer must consider any remaining liability as a claim against the United States in accordance with this subpart, the terms of the launch service contract, the Federal Acquisition Regulation (FAR), and the NASA FAR Supplement (NFS). As such, the contracting officer must examine the remaining liability to determine whether the amount claimed is reasonable. For amounts determined to be unreasonable, the contracting officer must refer the claim back to the launch service contractor to conduct further discussions. Ultimately, the contract's disputes clause prescribes procedures for resolving disagreements, if necessary. For amounts determined to be reasonable, the contracting officer must process the claim in accordance with § 1267.109.

§ 1267.107 Evidence and information required from third party claimants.

(a) A third party claimant should, insofar as possible, provide competent evidence to the launch service contractor to substantiate the circumstances alleged to have given rise to the claim and the amount claimed. A third party claimant should obtain supporting statements, repair bills, one or more estimates for repair, and other data, if possible. Documentation from disinterested parties should be obtained whenever possible.

(b) With regard to the amount claimed, a third party claimant must notify the launch service contractor of, and provide information concerning, any money or other property received as damages or compensation, or which the third party claimant may be entitled to receive from other sources by reason of the claimed bodily injury, death, or damage to or loss of real or personal property. These other sources of money, damages, or compensation include, but are not limited to, other launch service contractors, insurers, employers, and persons whose conduct may have caused or contributed to the accident or incident.

(c) A third party claimant must provide an English translation of any supporting document written in a foreign language.

§ 1267.108 Time limitations for third party claims.

(a) Consistent with the time limitation stipulated in 42 U.S.C. 2473(c)(13)(A), to receive consideration in accordance with this part, a third party claimant must file its claim with the launch service contractor within 2 years after the occurrence of the accident or incident out of which the claim arose. If the launch service contractor receives a third party claim within this time period, but after the launch service contract has expired, or if the claim is still pending when the contract expires, the contracting officer will reserve the matter for resolution during final contract closeout.

(b) A third party claimant has properly filed a claim for purposes of paragraph (a) of this section, when the cognizant launch service contractor receives from the claimant, or the claimant's duly authorized agent or legal representative, a written notification and description of the incident or accident giving rise to the claim, accompanied by substantiation of the amount claimed.

§ 1267.109 NASA action on a launch service claim.

(a) The contracting officer must investigate any launch service claim submitted by the launch service contractor. As necessary, the contracting officer may request any NASA office or other Federal agency to assist in the investigation.

(b) The contracting officer must evaluate any launch service claim submitted by a launch service contractor to determine that it is meritorious and reasonable in amount. As part of this evaluation, the contracting officer must verify that the amount requested is over and above any insurance required by the contract and that the launch service contractor or its insurer has, in fact, paid out an amount to the third party claimant equal to the amount of any required insurance coverage.

(c) The NASA General Counsel is NASA's final approving official for claims arising under 42 U.S.C. 2473, in an amount exceeding $25,000. To pay this type of claim from the permanent indefinite judgment fund, however, 31 U.S.C. 1304 requires certification by the Secretary of the Treasury. Accordingly, to facilitate the processing of claims under this part, the contracting officer must forward to the NASA General Counsel the following documentation:

(1) A short and concise statement of the general facts surrounding the launch service claim as a whole;

(2) Copies of all relevant portions of the launch service contract file and the claim file; and

(3) The contracting officer's analysis of the launch service claim and recommendations regarding payment from the permanent indefinite judgment fund.

(d) The NASA General Counsel must fully evaluate and consider any launch service claim forwarded in accordance with paragraph (c) of this section. If the General Counsel deems the claim to be reasonable, the General Counsel will refer the launch service claim to the Secretary of the Treasury for certification and payment from the permanent indefinite judgment fund pursuant to 31 U.S.C. 1304.

§ 1267.110 Confidentiality.

Under the process prescribed in this subpart, NASA officials may gain access to contractor documents and other materials that are privileged, business sensitive, or confidential. In accordance with 18 U.S.C. 1905, NASA officials may not disclose these materials in any manner or to any extent not authorized by law and must take appropriate steps to prevent unauthorized disclosures.

Daniel S. Goldin,

Administrator.

[FR Doc. 99–32591 Filed 12–20–99; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–27110; International Series Release No. 1210; File No. S7–30–99]

Registered Public-Utility Holding Companies and Internationalization

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: We are seeking comment on various issues surrounding the acquisition of United States utilities by foreign companies that will register as holding companies following the transaction.

DATES: Comments must be submitted on or before February 4, 2000.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All

comment letters should refer to File No. S7–30–99; include this file number on the subject line if E-mail is used. Anyone can read and copy the comment letters at our Public Reference Room, 450 Fifth Street, NW Washington, DC 20549. Electronically submitted comment letters also will be posted on our Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Catherine A. Fisher, Assistant Director, or Mark F. Vilardo, Senior Counsel, both at 202/942–0545.

SUPPLEMENTARY INFORMATION: Today we are requesting comment on issues arising under the Act with respect to foreign acquisitions of U.S. utilities.

Table of Contents

I. Executive Summary and Introduction
II. Background
III. Acquisition of U.S. Utilities by Foreign Companies
A. The Legal Framework
B. Areas for Comment
1. General Policies of the Act
2. Section 11
3. Other Standards for Reviewing Acquisitions
4. Substantive Regulation of Foreign Holding Companies
5. Accounts and Records; Jurisdiction
6. Other Issues

I. Executive Summary and Introduction

In 1992, Congress adopted the Energy Policy Act of 1992 [Pub. L. 102–486, 106 Stat. 2776 (1992)] ("Energy Policy Act"). The legislation amended the Public Utility Holding Company Act of 1935 [15 U.S.C. 79(a) *et seq.*] ("Holding Company Act" or "Act") to create two new types of exempt entities, exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"). The legislation was intended to facilitate investments in foreign utilities by U.S. companies.

Just as registered holding companies have pursued investment opportunities abroad, foreign companies are increasingly seeking to enter the utility business in the United States.[1] Recently, two British companies engaged in the utility or energy business, Scottish Power plc ("ScottishPower") and The National Grid Group plc ("National Grid"), have announced (and, in the case of ScottishPower, completed) plans to acquire U.S. utilities or public-utility holding companies.[2] ScottishPower has registered under the Act and National Grid has announced its intention to do so. The acquisition of a U.S. utility or holding company by a foreign company and the acquiror's subsequent registration raise a number of interpretative and policy issues under the Act. We will need to address these issues when such transactions are presented to us for any necessary approvals or when the foreign companies register under the Act. We are, therefore, seeking comment from the public relating to these issues.

II. Background

Congress amended the Holding Company Act in 1992 in response to changes in the United States utility industry. As discussed in greater detail below, the Energy Policy Act created new categories of exempt entities and thereby provided greater flexibility for U.S. and foreign companies to acquire EWGs and for U.S. utilities to acquire both EWGs and FUCOs.[3]

The utility business is rapidly evolving into a global industry, with participants seeking multinational investment opportunities. Sweeping political and economic changes worldwide have created a large demand for American utility expertise and significant investment opportunities for United States companies. Registered public utility holding companies have taken advantage of these opportunities. As of December 31, 1998, registered holding companies had invested $8.2 billion in FUCOs and $892 million in domestic and foreign EWGs. Based on publicly reported information, we believe that investments made by exempt holding companies and public utilities not part of a registered or exempt holding company system, are significantly higher.[4] At the same time, foreign energy companies have made significant investments in the United States, primarily through acquisition of electric wholesale generation units which, by virtue of the Energy Policy Act, are exempt from the Act.[5] In this Release, we are requesting comment on issues relating to the acquisition of U.S. utility companies by foreign holding companies.

III. Acquisition of U.S. Utilities by Foreign Companies

In 1994, in recognition of the increasingly international nature of the energy business, we requested public comment on the concept of foreign ownership of U.S. utilities.[6] We asked,

---

[1] *See infra* note 5.

[2] On December 7, 1998, ScottishPower, an electric, gas and water utility based in the United Kingdom, announced its proposed acquisition of PacifiCorp, a electric utility operating in the western United States, in a share exchange valued at $12.8 billion, including assumed debt. *See ScottishPower Offers $7.8 Billion for PacifiCorp*, Megawatt Daily, Dec. 8, 1998, at 1. On December 14, 1998, National Grid, an electric transmission utility, also based in the U.K., announced its proposed acquisition of New England Electric System ("NEES"), an electric utility operating in the northeast United States, for $3.2 billion in cash. *See* Laura Johannes, *Electric Utility Set to Be Acquired by National Grid*, Wall St. J., Dec. 14, 1998, at A2. In June 1999, the Federal Energy Regulatory Commission ("FERC") approved each of these transactions. *See* Howard Buskirk, *FERC Approves Foreign Buys of U.S. Utilities*, The Energy Daily, Jun. 17, 1999, at 3. On November 30, 1999, ScottishPower announced that it had completed its acquisition of PacifiCorp. On December 1, 1999, ScottishPower filed with this Commission its Form U5A, notification of registration as a holding company under the Act. National Grid's application concerning its acquisition of NEES is pending at the Commission. *See* Holding Co. Act Release Nos. 27085 and 27086 (Oct. 8, 1999), 64 FR 56236 (Oct. 18, 1999) and 64 FR 56372 (Oct. 19, 1999) (notices of the applications relating to the proposed acquisition of NEES by National Grid and National Grid's financing authorizations). ScottishPower concluded that, under section 9(a) of the Act, it did not require our approval to acquire PacifiCorp. *See infra* note 29 for a discussion of the circumstances under which a utility acquisition requires our approval.

[3] The Energy Policy Act amended the Holding Company Act by, among other things, adding section 33, which addresses acquisition and ownership of FUCOs. In section 33(c)(1), Congress directed the Commission to adopt rules concerning FUCO acquisitions by registered holding companies. *See* 15 U.S.C. 79z–5b(c)(1). Under this directive, the Commission proposed rules 55 and 56 in 1993, but deferred action on those rules in order to consider the comments received on the rules. *See* Holding Company Act Release No. 25757 (Mar. 8, 1993), 58 FR 13719 (Mar. 15, 1993) (proposing release); Holding Company Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993) (adopting certain rules, deferring action on rules 55 and 56). The Commission will consider reproposing rules 55 and 56 in the near future.

[4] As of December 31, 1998, holding companies exempt under rule 2 of the Act had invested $12.3 billion in FUCOs and domestic and foreign EWGs. In addition, domestic energy companies that are not part of either a registered or exempt holding company system have made major investments in FUCOs and EWGs in recent years. For example, in 1995 and 1996, PacifiCorp, a public utility company operating in the western United States, acquired an Australian electric distribution company and an interest in an Australian power plant and mine for a total of $1.7 billion. According to a U.S. Department of Energy report, U.S. energy companies have played "a major role * * * as investors in the reformed and privatized electricity sectors" in the United Kingdom, Australia and Argentina. *See* Electricity Reform Abroad and U.S. Investment, Energy Information Administration, September 1997, at v.

[5] In 1998, foreign utilities invested $31.3 billion in the United States. *See Power Legislation; Foreign Companies Acquiring U.S. Utility Systems: Overcoming PUHCA*, Power Economics, March 31, 1999, at p. 23. For example, National Power plc, the U.K.'s largest power generator, has invested over $1.0 billion in U.S. generating facilities and had announced plans to spend an additional $1.6 billion on U.S. generation projects and acquisitions. *See Overseas Investments; National Power Steps Over the Pond*, Power Economics, Nov. 30, 1998, at 5. In addition, British Energy Inc., a British utility, in partnership with PECO Energy Co., an inactive registered holding company, have agreed to buy three of four U.S. nuclear plants that have been put up for sale in the past year. *See* Christopher Palmieri and John Gorham, *Give Me Your Nukes*, Forbes, Sept. 6, 1999, at 124–25. *See also infra* note 37.

[6] *See* Request for Comments on Modernization of the Regulation of Public-Utility Holding

among other things, whether the Holding Company Act permits foreign ownership; what conditions should be placed on foreign ownership; whether there was a national security interest in restricting foreign ownership of U.S. utilities; whether there are difficulties in obtaining information from foreign companies that would support limitations on foreign ownership; and what types of safeguards or limitations on ownership might prevent or minimize such risks.

Most commenters appeared to agree that the Holding Company Act did not, or should not, prohibit foreign ownership of U.S. utilities.[7] Commenters suggested that foreign ownership could bring some advantages to domestic utilities—increased sources of capital (which could reduce the cost of capital) and management experienced in dealing with competitive markets.[8] Commenters agreed that foreign holding companies would and should be subject to the same regulatory requirements as U.S. companies.[9] Local regulators were divided on whether foreign ownership would impede their ability to obtain information relevant to ratemaking.[10]

Since our initial request for comment, there have been significant foreign investments in domestic power projects.[11] The prospect of foreign ownership of significant U.S. utilities is raised by ScottishPower's acquisition of PacifiCorp and National Grid's proposed acquisition of NEES.[12] ScottishPower has registered under the Act, and National Grid has announced its intention to do so. The acquisition of a U.S. utility or holding company by a foreign company and the acquiror's subsequent registration raise a number of interpretative and policy issues under the Act. We think it appropriate, therefore, to renew our request for comment on the issues related to foreign ownership of U.S. utilities.

A. The Legal Framework

Federal law imposes various restrictions on foreign ownership of some significant industries. Some laws specifically restrict foreign ownership.[13] Others provide for ownership subject to certain conditions. The Federal Aviation Act, for example, establishes percentage limitations on board membership and voting interests in determining whether an air carrier is considered a United States citizen.[14]

In contrast, the Holding Company Act is silent concerning foreign ownership of domestic utilities. Nowhere does the Act explicitly require that a holding company be organized under U.S. law.[15] Indeed, we have noted that the Holding Company Act "contains no prohibition against foreign holding companies as such."[16] We have not had occasion, however, at least in recent times, to address the registration under the Act of a foreign holding company.

It appears that Congress, in 1935, did not intend or foresee ownership of a domestic utility by a holding company domiciled outside the United States. The Act places structural and geographic limitations upon public-utility holding company systems. Section 11 of the Act generally limits a registered holding company to ownership of a single "integrated public-utility system," defined in terms of a group of naturally related operating properties. Under section 2(a)(29) of the Act, an integrated public-utility system is "confined in its operations to a single area or region, in one or more States * * *."[17]

For many years, it was generally assumed that the integration provisions of the Act would generally preclude a U.S. registered holding company from owning both domestic and foreign utility properties, especially if the foreign utility operations were located in a country not contiguous to the United States.[18] For virtually identical reasons, the integration provisions were understood to bar a holding company with foreign utility operations from acquiring a U.S. utility.[19]

In 1992, we determined that a U.S. registered holding company could acquire foreign utility properties notwithstanding the integration

---

Companies, Holding Co. Act Rel. No. 26153 (Nov. 2, 1994), 59 FR 55573 (Nov. 8, 1994).

[7] Consolidated Natural Gas Company; NEES; Southern Company ("Southern"); Wisconsin Electric Power Company; City of New Orleans; American Gas Association ("AGA"); National Power PLC/American National Power, Inc.; New York State Bar; Yorkshire Electricity Group/National Grid Company ("Yorkshire"). Only two commenters, the staff of the Michigan Public Service Commission ("MPSC") and Allegheny Power System ("APS"), suggested that foreign ownership should be prohibited. Comments we received in response to our initial request for comments may be found in File No. S7–32–94.

[8] City of New Orleans; Southern; Yorkshire.

[9] *See, e.g.*, AGA; City of New Orleans.

[10] The MPSC expressed concern that absentee owners may not place sufficient emphasis on service and the public interest, and that access to books and records may be compromised. On the other hand, City of New Orleans stated that foreign ownership would not impair access to relevant books and records.

[11] *See supra* notes 4 and 5.

[12] *See supra* note 2.

[13] *See, e.g.*, 16 U.S.C. 797 (power production on land and water controlled by the U.S. government); 42 U.S.C. 2131–2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials); 42 U.S.C. 6508 and 43 U.S.C. 1701 *et seq.* (oil and gas leases within the National Petroleum Reserve).

[14] *See* 49 U.S.C. 1301(16) (air carrier considered U.S.citizen if president and two-thirds of board of directors and other managing officers are U.S. citizens and at least 75% of voting interest is owned or controlled by U.S. citizens).

[15] The key definitions in the Holding Company Act (*e.g.*, "electric utility company," "gas utility company," "public-utility holding company," "holding company," "holding-company system") make no reference to a company's domicile. *See, e.g.*, sections 2(a)(3) [15 U.S.C. 79b(a)(3)], 2(a)(4) [15 U.S.C. 79b(a)(4)], 2(a)(5) [15 U.S.C. 79b(a)(5)], 2(a)(7) [15 U.S.C. 79b(a)(7)] and 2(a)(9) [15 U.S.C. 79b(a)(9)] of the Act. Section 5 [15 U.S.C. 79e] of the Act, which sets forth certain procedural requirements for registration under the Act, does not refer to the domicile of the holding company.

Section 4(b) [15 U.S.C. 79d(b)] of the Act does make reference to holding companies' being organized under state law. This section generally requires that a holding company must register with the Commission if any of its securities that were publicly offered after January 1, 1925 are held "by persons not resident in the State in which such holding company is organized." (Section 2(a)(24) of the Act defines the term "State" to mean "any State of the United States or the District of Columbia.") The legislative history suggests that section 4(b) was included to assure that the Act subjected to federal regulation those companies that might in some way affect interstate commerce, rather than to require that holding companies be organized under state law. *See* S. Rep. No. 621, 74th Cong., 1st Sess. 25:

[Section 4(b)] subjects to Federal jurisdiction those holding companies which, though they may not contemplate new acts in interstate commerce in the immediate future, are nevertheless affected with a national public interest by reason of the fact that they have in the past set in motion through the channels of interstate commerce forces which affect investors throughout the country, which forces are still in operation in more than one State and cannot be effectively dealt with by any State.

[16] Gaz Metropolitain, Inc., Holding Co. Act Rel. No. 26170 (Nov. 23, 1994) ("*Gaz Met*"). In *Gaz Met* we approved the acquisition of a Vermont gas utility by a Canadian gas holding company and granted the holding company an exemption from registration under section 3(a)(5) of the Act. Section 3(a)(5) makes an exemption available to a holding company that "is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company."

[17] The provisions of section 11(b)(1)(A)–(C) create an exception to the requirement of a single integrated system. Clause B would permit a registered holding company to own, in addition to its primary U.S. integrated system, an additional system located in a contiguous foreign country.

[18] *See, e.g.*, Electric Bond and Share Co., 33 S.E.C. 21 (1952) ("the provisions of Section 11(b)(1) stand in almost every detail as an unyielding barrier" to the simultaneous holding of large domestic utility operations and utility operations in Cuba, Mexico, Central and South America, China and India). *See also* Report Relating to Intercorporate Relations Between the General Public Utilities Corp. and the Manila Electric Company, S. Rep. 2787, 84th Cong., 2d Sess. (July 25, 1956) (report of Senator Magnuson from the Committee on Interstate and Foreign Commerce to accompany H.R. 10621, a bill to exempt General Public Utilities Corp., a registered holding company, from the provisions of section 11(b)(1) of the Act, under which we had ordered the holding company to divest its Philippine utility subsidiary).

[19] *See Gaz Met*, *supra* note 16. In *Gaz Met*, we determined that the integration provisions did not bar the Canadian gas holding company from owning a Vermont gas utility.

provision.[20] In that year also, as discussed previously, Congress amended the Holding Company Act to permit the ownership of EWGs and FUCOs—utility properties that would not, when combined with existing utility properties, constitute an integrated system.

Sections 32 and 33 provide that EWGs and FUCOs are not public-utility companies. Thus, the Act's statutory integration provisions, by their terms, are not applicable to these entities. To eliminate any doubt that ownership does not implicate the Act's integration requirements, section 33(c)(3) provides that ownership of a FUCO is considered to be "consistent with the operation of a single integrated public utility system, within the meaning of section 11 * * *."[21] Section 32(h)(1) contains a similar provision for EWGs.

Section 33 is neutral on its face with respect to the ownership of a FUCO by a foreign holding company.[22] It is thus possible to construe section 33(c)(1) to allow a foreign holding company to qualify its foreign utility operations as a FUCO, and the foreign holding company to acquire a U.S. utility without regard to the integration of the foreign and domestic operations. As explained above, the Act would otherwise generally raise significant barriers to an acquisition of U.S. utility properties by a foreign company with existing foreign utility properties.

In adopting the Energy Policy Act, Congress did not address this possibility and therefore may not have intended this interpretation of section 33(c)(1). The legislative history of the Energy Policy Act emphasizes that the legislation was designed to enable U.S. companies to respond to domestic and overseas investment opportunities. Nothing in the legislative history suggests that section 33 was intended to be a vehicle for foreign investment in the United States.

Moreover, although section 33(c)(1) does not expressly preclude foreign holding companies, we do not believe it should be interpreted to permit a foreign holding company to acquire a U.S. utility if doing so would undercut the fundamental purpose of the Act—to protect consumers and investors.[23] We recognize that foreign registered holding companies present novel and important issues. We therefore are soliciting comments generally on the registration and regulation of foreign holding companies. These comments will inform our consideration of rule 55, our consideration of applications and requests for interpretative guidance concerning foreign holding companies and our review, under section 11, of registration statements filed by foreign holding companies. The comments may also suggest an additional rulemaking to address these issues.

B. Areas for Comment

1. General Policies of the Act

The Holding Company Act was intended to address the practices by which small groups of investors, by means of the holding company structure, were able to exploit vast networks of utility companies, to the detriment of utility consumers and other security holders. The specific problems identified by Congress included inadequate disclosure, excessive leverage, abusive affiliate transactions, evasion of state regulation, and the growth and extension of holding companies without regard to the economy of management and operation of system utility companies.[24]

We request comment whether foreign registered holding companies, by virtue of being foreign, are inconsistent with the Holding Company Act's policies. In general, we request comment concerning:

- the effects of foreign ownership on effective Commission regulation;
- the effects of foreign ownership on effective state regulation;
- the effects of foreign ownership on investor protection; and
- the effects of foreign ownership on consumer protection.

In particular, a registered foreign holding company would likely own significant foreign utility operations. The magnitude of these foreign utility operations could be significantly greater than those currently owned by U.S. holding companies; they could be significantly larger than the holding company's U.S. utility system. Will this expose U.S. ratepayers to greater risks? Should newly registered, foreign holding companies' interests in FUCOs and EWGs be "grandfathered," with only post-registration FUCO and EWG investments counted toward the aggregate investment test of rule 53(a)(1)?[25] U.S. holding companies, in seeking authorization to issue securities to finance the acquisition of FUCOs, have represented that they will not seek recovery in rates for any losses, or inadequate returns, on their investments in FUCOs and EWGs. Will foreign holding companies be in a position to make similar undertakings with respect to their FUCO operations?

We also request comments on whether structural safeguards can be developed to limit the risk that financial problems in the holding company's FUCOs will have an adverse effect on U.S. ratepayers and security holders of the holding company's U.S. subsidiaries. For example, would requiring the U.S. utility subsidiary stock to be owned by an intermediate holding company based in the U.S. and organized under state law provide any additional protection to U.S. interests?. Would such intermediate holding companies be consistent with the Act's goal of simplifying the corporate structure of holding companies? We are particularly interested in the views of state regulators and consumers concerning the effects of foreign ownership on state regulation and consumer protection.

2. Section 11

Section 11 has been described by the Supreme Court as the "very heart" of the Act.[26] In addition to the general requirement that a registered holding company own a single integrated public-utility system, section 11 limits nonutility businesses to those that are

---

[20] *See* Southern Co., Holding Co. Act Release No. 25639 (Sept. 23, 1992) (authorizing registered holding company to acquire Australian utility operations). We relied upon the second clause of section 10(c)(2), which provides that section 10(c)(2), requiring us to find that an acquisition "will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system," does not apply to an acquisition of a public-utility company operating exclusively outside the United States. In 1992, also, we granted orders of exemption under section 3(b) from all provisions of the Act for two newly formed indirect Australia subsidiaries of SCEcorp, an exempt holding company. *See* SCEcorp., Holding Co. Act Release No. 25564 (June 29, 1992).

[21] Section 11 also provides that any nonutility business owned by a registered holding company be "reasonably incidental, or economically necessary or appropriate, to the operations of such integrated public utility system * * *." Section 33(c)(3) provides that ownership of a FUCO satisfies this standard.

[22] Section 33(a)(3) provides an exemption for a FUCO "notwithstanding that the [FUCO] may be a subsidiary * * * of a holding company or of a public utility company." The nationality of the holding company is not a component of the exemption. Similarly, section 32 allows ownership of a domestic EWG without regard to the owner's nationality.

[23] *See* Crandon v. United States, 494 U.S. 152, 158 (1990) ("In determining the meaning of [a federal] statute, [the court] look[s] not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.") (citations omitted).

[24] Section 1(b) of the Holding Company Act [15 U.S.C. 79a(b)].

[25] Rule 53 provides a partial "safe harbor" for EWG financings by registered holding companies. Among other things, in order to qualify for the safe harbor the amount of a registered holding company's aggregate investments in EWGs and FUCOs cannot exceed 50% of the system's consolidated retained earnings. *See* rule 53(a)(1) [17 CFR 250.53(a)(1)].

[26] SEC v. New England Elec. System, 384 U.S. 176, 180 (1966), citing North American Co. v. SEC, 327 U.S. 686, 704 n.14 (1946).

"reasonably incidental, or economically necessary or appropriate" to system utility operations, on our finding that the nonutility businesses are "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems." Section 11 further directs us to require the simplification of the corporate structure of registered systems and to ensure that voting power is fairly and equitably distributed among security holders.

The policies underlying section 11 must also enter into our consideration of the acquisition of a U.S. utility by a foreign company. Section 10(c)(1) provides that we cannot approve an acquisition if it would be detrimental to the carrying out of the provisions of section 11. Section 10(c)(2) provides that we must find that the acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system.

Section 10(c)(2) "make[s] clear that the Commission was not to approve acquisitions of utility securities merely because of the absence of indications of any positive detriment to the carrying out of Section 11."[27] What types of direct or indirect benefits should be considered under section 10(c)(2) when a foreign company seeks to acquire a domestic utility? For example, would a domestic public-utility system benefit from an affiliation with a financially stronger foreign holding company, or a foreign company that has experience in operating in competitive markets? Are these benefits a sufficient basis for making the findings required by section 10(c)(2)? Are there other economies and efficiencies that foreign ownership would confer upon a domestic system?

Commenters should specifically address the key goals of an integrated system as reflected in section 2(a)(29)—the "advantages of localized management, efficient operation, and the effectiveness of regulation * * *."[28] Localized management is a particular issue in this context. The advantage of localized management is that policies affecting consumers and local regulators are handled by persons who are intimately familiar with local conditions and are sensitive and responsive to the interests of the community and of consumers. This does not necessarily mean that the directors and officers of the holding company must be permanent residents of the locality. For example, the advantages of localized management can be realized where the authority and responsibility for local policy-making are properly delegated throughout the service territory of the holding company. Would a foreign holding company be able to preserve the advantages of local management?

Section 11 not only addresses the integration of utility properties but also requires us to limit the nonutility businesses of a registered holding company to those that are "reasonably incidental, or economically necessary or appropriate to the operations of" the holding company system. We have interpreted this provision to reflect a Congressional policy against nonutility acquisitions that bear no functional relationship to the core utility business of the registered holding company. We request comments on how this provision should apply with respect to non-utility businesses of a FUCO.

3. Other Standards for Reviewing Acquisitions

Section 9 of the Act provides that, under certain circumstances, the acquisition of a public-utility company or public-utility holding company requires our prior approval.[29] The main purpose of section 9 is to prevent "the growth and extension of holding companies [that bear] no relation to economy of management and operation or the integration and coordination of related operating properties" (an abuse that led to enactment of the Holding Company Act).[30] Section 10 of the Act sets forth the standards for reviewing acquisitions. Section 10(b) provides that we shall approve an acquisition unless we affirmatively find that the acquisition will have certain adverse consequences.[31] Section 10(c)(2) provides that we shall not approve an acquisition unless we affirmatively find that the acquisition will "[tend] towards the economical and the efficient development of an integrated public-utility system." Finally, section 10(f) requires us to be satisfied that there is compliance with state law.

We request comments concerning whether the foreign nature of an acquiror raises any particular issues concerning the application of section 10. In addition to the issues relating to section 10(c), we must consider the following issues:

Section 10(b)(1) Will the acquisition tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors, or consumers?

Traditionally, our evaluation of this factor has been informed by federal antitrust policies.[32] Should we weigh concentration of control issues in view of the increasing internationalization of the energy business? Should we continue to rely, where appropriate, upon the findings and requirements of other agencies that address the potential anticompetitive effects of an acquisition?

Section 10(b)(3): Will the acquisition unduly complicate the capital structure of the holding-company system of the applicant or be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system?

We request comments concerning how foreign ownership could "unduly complicate the capital structure of the holding company system * * *." We would, of course, have to consider whether the holding company has

---

[27] Electric Bond and Share Co., supra note 18, at 31.

[28] Section 2(a)(29) of the Act.

[29] Section 9(a)(1) of the Act requires our prior approval under section 10 of a direct or indirect acquisition by a registered holding company of any securities or utility assets.

Section 9(a)(2) of the Act bars any person who is an affiliate of a public-utility or holding company from becoming an affiliate of any other public-utility company or holding company without our prior approval. Section 2(a)(11)(A) defines an "affiliate" of a specified company as "any person that directly or indirectly owns, controls, or holds with power to vote 5 per centum or more of the outstanding voting securities of such specified company." As noted above, a FUCO is not a public-utility company for purposes of the Act.

An entity that has no public utility affiliate may acquire the securities of a single utility without the need to seek or obtain our prior authorization. This acquisition, which is known as a "first bite," would not be subject to section 9(a)(2). For example, ScottishPower concluded that its acquisition of PacifiCorp constituted its "first bite" for purposes of section 9(a). *See* PacifiCorp proxy statement, dated May 6, 1999. at 69.

An acquisition of a company having two or more utility subsidiaries, however, would simultaneously involve both a "first bite" and a "second bite" and so be subject to section 9(a)(2). *See* Coral Petroleum, Inc., Holding Co. Act Release No. 21632 (June 19, 1980).

[30] *See* section 1(b)(4) of the Act.

[31] In addition to the findings discussed below, we must find that the consideration paid in connection with the acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired.

[32] *See, e.g.*, Sempra Energy, Holding Co. Act Release No. 26890 (June 26, 1998) (relying upon findings and remedial measures of the Department of Justice, the FERC and the interested state commission to address potential anticompetitive effects of acquisition); Entergy Corp., Holding Co. Act Release No. 25952 (Dec. 17, 1993) (relying upon hearing records and orders of FERC and state commissions). *See also* Madison Gas and Electric Co. v. SEC, slip op., Dkt. No. 98–1216 (DC Cir. Mar. 16, 1999) ("We have previously observed that the SEC is entitled to 'watchfully' defer to the determinations of other regulatory bodies * * *.") (citations omitted).

issued stock with special voting rights to any particular group or class.[33] In this regard, we understand that, in connection with certain foreign utility privatization transactions, foreign governments hold special or "golden" shares that give them veto rights with respect to certain corporate transactions. We recognize that these shares are intended to protect the foreign government's regulatory interests rather than to create the type of abusive capital structure that led to passage of the Act. Are these types of arrangements inconsistent with the Act?

We would also consider whether foreign law imposed any impediments on our ability to inspect the foreign holding company and its subsidiaries. Such impediments could be detrimental to the public interest, the interests of investors and consumers, and "the proper functioning of [a] holding-company system."

4. Substantive Regulation of Foreign Holding Companies

The Holding Company Act imposes a comprehensive federal framework of regulation on registered holding companies. A registered foreign holding company would be subject to this framework to the same degree as a registered domestic company. For example, we must approve:

- issuances and sales of securities;[34]
- certain acquisitions;[35] and
- sales of utility assets.

We also have jurisdiction over intrasystem transactions. For example, section 12 requires our prior approval for a registered holding company or its subsidiary "to lend or in any manner extend its credit to or indemnify any company in the same holding-company system." Section 13 authorizes us to regulate service, sales and construction contracts between operating utilities within a registered system and other companies within the same system and require that such services be performed at cost. Finally, registered holding companies are subject to extensive reporting, recordkeeping and accounting requirements.

Despite our jurisdiction over registered holding companies, the EWGs and FUCOs owned by a foreign registered holding company, like those of a domestic registered holding company, would generally be exempt from the Act. Moreover, a FUCO may issue and acquire securities without our authorization. A registered holding company with large FUCO operations may be able to issue securities through a FUCO to finance other businesses. Does this raise significant policy issues under the Act, even if the holding company's U.S. utilities do not have any liability with respect to those financings?

5. Accounts and Records; Jurisdiction

The Holding Company Act contains a number of provisions designed to prevent companies in registered holding company systems from engaging in abusive affiliate transactions. In order for these provisions to be effective, we were given the authority to monitor intra-system transactions by requiring the making and keeping of holding company system records and mandating that we have access to those records.[36]

We anticipate that we would be able to exercise this authority with respect to foreign registered holding companies. We request any information concerning possible impediments to our exercise of our inspection authority and jurisdiction. Are there difficulties in obtaining information from foreign companies that are inconsistent with regulation under the Holding Company Act? What types of safeguards or limitations on ownership might prevent or minimize such risks?

6. Other Issues

Are there any other policy issues related to foreign acquisitions of U.S. utilities that we should consider? For example, do we need to consider national security interests that would be implicated by a foreign acquisition of a U.S. utility?[37] We note that the President may investigate the national security effects of "foreign control of persons engaged in interstate commerce in the United States," and suspend or prohibit any acquisition, merger, or takeover of such persons in order to protect the national security.[38] United States companies have acquired significant interests in FUCOs over the past several years. Would restrictions on foreign ownership of U.S. utilities be likely to lead to restrictions on investment in FUCOs by U.S. investors?

Dated: December 14, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–32952 Filed 12–20–99; 8:45 am]

BILLING CODE 8010–01–P

[33] *See* section 11(b)(2).

[34] Sections 6 and 7 require our prior approval under specified qualitative standards for most types of securities issuances.

[35] Section 11(b)(1) confines the nonutility businesses of a registered holding company to those that have a functional relationship to its core utility business. Rule 58 under the Act permits a registered holding company to acquire certain types of non-utility businesses without our approval.

[36] *See* section 15 of the Act.

[37] In response to our prior request for comments, APS raised national security concerns. Most of the other commenters did not believe that there were any national security concerns or that any such concerns should be addressed by Congress. Some federal laws specifically restrict foreign ownership of certain regulated entities, while others provide for ownership subject to certain conditions. *See, e.g.*, 42 U.S.C. 2131–2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials). The Nuclear Regulatory Commission ("NRC") has developed a "Standard Review Plan" for use in reviewing nuclear power plant licenses involving foreign interests. *See* Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 FR 5355 (Sept. 28, 1999). The NRC has approved, with certain restrictions on foreign ownership and control, transfers of the operating license for three nuclear power plants. *See NRC Approves AmerGen's Takeover of Clinton Plant*, The Energy Daily, Nov. 30, 1999 (describing transfers of two operating licenses to AmerGen Energy Co., a company jointly owned by PECO Energy Co., an inactive registered holding company, and British Energy Inc., a British utility company), and PacifiCorp (Trojan Nuclear Plant), 64 FR 63060 (Nov. 18, 1999) (NRC order approving transfer of licenses to ScottishPower). *See also supra* note 5.

[38] 50 U.S.C. App. 2170. The President has established the Committee on Foreign Investment in the United States to administer this authority. *See* 31 CFR 800.101, *et seq.*

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB21

Birth and Adoption Unemployment Compensation; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rulemaking; Correction.

SUMMARY: This document corrects the preamble to a notice of proposed rulemaking published in the **Federal Register** of December 3, 1999 (64 FR 67971), concerning Birth and Adoption Unemployment Compensation. The preamble to the notice of proposed rulemaking provided only a mailing address to which written comments could be submitted. This correction provides an e-mail address to which comments may be submitted.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Unemployment Insurance Service, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–4231, Washington, DC 20210. Telephone: (202) 219–5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219–8506.

Correction

In the notice of proposed rulemaking FR Doc. 99–30445, beginning on page 67971 in the issue of December 3, 1999, make the following correction in the Addresses section. On page 67972 in the first column, add at end of the first sentence (after the ZIP code) the following: ", or by e-mail to the following address: commentonbaauc@doleta.gov."

Dated: December 15, 1999.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 99–32987 Filed 12–20–99 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 99N–4784]

Premarket Notification; Requirement for Redacted Version of Substantially-Equivalent Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its premarket notification regulations to require applicants to submit a redacted version of each premarket notification submission for which FDA has issued an order declaring a device to be substantially equivalent to a legally marketed predicate device. The purpose of this requirement is to provide applicants improved opportunity to protect nonpublic information contained in their premarket notifications while facilitating the release of information to which the public is entitled under the Federal Food, Drug, and Cosmetic Act (the act); the Freedom of Information Act; and FDA's Public Information regulations. The proposed rule does not require submission of a redacted version of any premarket notification received by FDA prior to the effective date of the regulation.

DATES: Submit written comments by March 22, 2000. Submit written comments on the information collection requirements by January 20, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Regulations Staff (HFZ–215), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20857, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

Under the act, 21 U.S.C. 301 *et seq.*, FDA clears medical devices for commercial distribution in the United States through three regulatory processes: Premarket approval (PMA), product development protocol (PDP), and premarket notification (a premarket notification is generally referred to as a "510(k)" after the section of the act where the requirement is found). In addition, a significant number of devices have been exempted, subject to the limitations on exemptions, from any requirement to obtain premarket notification clearance because FDA has determined that the remaining general controls and special controls are adequate to provide a reasonable assurance of the safety and effectiveness of those devices. A variety of general controls, such as good manufacturing practices (GMP's), establishment registration and device listing, and Medical Device Reporting (problem reporting), and special controls for class II devices, are applicable to devices exempted from premarket notification to control the risks presented by these devices. For additional information on exemption from premarket notification, see 21 CFR 807.85 and FDA's medical device classification regulations, 21 CFR parts 862 through 892.

A. Premarket Notification

Of the three regulatory processes used by FDA to clear medical devices for commercial distribution, the premarket notification or 510(k) process is the most commonly used. The following table 1 summarizes FDA's experience during fiscal year (FY) 1998:

TABLE 1.—PRODUCT APPLICATIONS PROCESSED DURING FY 1998

Responsible center	Premarket Notifications		Premarket Approval Applications		Product Development Protocols		
	Received	Clear	Received	Approved	Received	Approved[1]	Complete
CBER	33	44	2	0	0	0	0
CDRH	4,623	3,824	55	46	11	4	0
All FDA	4,656	3,868	57	46	11	4	0

[1] Approval of a PDP protocol does not constitute marketing approval. A Notice of Completion must be submitted and approved before a device may be marketed under a PDP.

The purpose of a premarket notification is to demonstrate that the new device is substantially equivalent to a legally-marketed predicate device. A predicate device can be any of the following: A device legally marketed prior to May 28, 1976 (the date the Medical Device Amendments of 1976 and its premarket notification requirement became law); a device which has been reclassified from class III into class I or class II (the act provides three classes of devices: Class I devices are regulated primarily through general controls, such as registration, listing, and GMP's; class II devices are subject to both general controls and special controls, such as performance standards; class III devices are subject to general and special controls and must also undergo premarket review and approval); or a device which has been found to be substantially equivalent through the 510(k) premarket notification process.

Under section 513(i) of the act (21 U.S.C. 360c), a device is substantially equivalent if it has the same intended use and technological characteristics as a predicate device, or has different characteristics but data demonstrate that the new device is as safe and effective as the predicate device and does not

raise different issues of safety or efficacy. A device that is not shown to be substantially equivalent to a predicate device can be marketed only after the sponsor submits, and obtains FDA approval of, a PMA or notice of completion of a PDP, unless the device is reclassified into class I or class II under section 513(e) or section 513(f) of the act.

B. Statutory and Regulatory Requirements Relating to Release of Information in a 510(k)

Certain information in a 510(k) that has been cleared by FDA (i.e., found to be substantially equivalent to a legally-marketed predicate device) is subject to public disclosure under section 513(i)(3) of the act. That section and FDA's implementing regulations require applicants to provide FDA with an adequate summary (510(k) summary) of any information in their submission regarding safety and effectiveness for disclosure by FDA upon request, or alternatively, to submit a statement (510(k) statement) to FDA promising that they themselves will make certain 510(k) information available to the public upon request.

A second Federal statute relevant to the release of 510(k) information is the Freedom of Information Act (FOIA), 5 U.S.C. 552. The FOIA generally makes available for public disclosure all records in an agency's files, whether created by or submitted to the agency, except to the extent those records are covered by one or more of the nine exemptions enumerated in the statute (5 U.S.C. 552(b)). In particular, exemption 4 of FOIA protects from mandatory disclosure trade secrets and confidential commercial information (5 U.S.C. 552(b)(4)). In addition, the act requires withholding of trade secret information from the public, 21 U.S.C. 331(j), and the Trade Secrets Act also prohibits disclosure of trade secrets and confidential commercial information unless specifically authorized by law, 18 U.S.C. 1905. Accordingly, when FDA receives FOIA requests for 510(k) records (other than 510(k) summaries, which are intended for public disclosure as submitted by the applicant) trade secret and confidential commercial information will ordinarily be redacted (i.e., deleted) before the materials are released to the public. Prior to making final decisions about redactions and releasing these records to the public, FDA currently solicits the 510(k) holders' views on what information in their 510(k) submissions may be released to the public and what information may properly be withheld as exempt under FOIA. This practice is consistent with Executive Order 12600, which required agencies to establish predisclosure notification procedures under FOIA to protect confidential commercial information in the agencies' files.

In addition to FOIA's exemption from disclosure for trade secrets and confidential commercial information, FOIA permits the Government to withhold information about individuals in personnel, medical, and similar files, when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). With regard to 510(k)s, the issue of personal privacy protection occasionally arises when medical records or other data with patient identifiers are included or summarized in a 510(k). FDA's regulations implementing FOIA request applicants to delete names or other information that could identify patients or research subjects prior to submitting records to FDA, and require FDA to delete such information from any records it discloses (21 CFR 20.63). Similarly, FDA's regulations relating to 510(k)s require those 510(k) holders who submitted a 510(k) statement to FDA to delete such information before releasing a 510(k) (§ 807.93(c) (21 CFR 807.93(c))). (Submission of a 510(k) statement obligates the firm to provide a copy of an appropriately-redacted 510(k) to any requestor.)

Except for information that is exempt from disclosure under FOIA, all information in a 510(k) submission is available for disclosure to the public once the 510(k) is cleared. This includes the original submission, correspondence with FDA, memoranda of telephone conversations, amendments, or other supplemental information submitted prior to clearance of the 510(k) by FDA.

C. Predisclosure Notification and Other Issues Relating to FOIA Requests for 510(k)s

When a request is received for a particular 510(k) that has not been previously released under FOIA, FDA provides the 510(k) holder with a "predisclosure notification" in accordance with Executive Order 12600. Subject to certain exceptions, Executive Order 12600 requires the Government to notify submitters of records containing confidential commercial information prior to disclosure of those records in response to a FOIA request. The submitter is then permitted an opportunity to object to the disclosure of any part of the records and to state the basis for each such objection. FDA's predisclosure notification procedures implementing Executive Order 12600 are set forth at § 20.61(d) through (f) (21 CFR 20.61(d) through (f)).

It has been FDA's experience that many 510(k) holders who are provided predisclosure notification by the agency fail to respond adequately; they may not provide an appropriately redacted 510(k), not offer reasons to support redactions, or not respond at all. One reason for this occurrence is that, given the tight statutory timeframes FDA faces for responding to FOIA requests, the 510(k) holder can only be given a very short time to respond to the predisclosure notification; § 20.61(e)(2) requires a response in 5 working days. A second reason is that by the time a FOIA request is filed and predisclosure notification is given, a significant period of time may have passed since the 510(k) was cleared by FDA. As a result, the team of experts at the submitter company that contributed to the development of the 510(k) submission may not be readily available to respond to the predisclosure notification and will, in any case, have to spend time reviewing the 510(k) to refresh recollections and identify trade secrets or confidential commercial information that may be protected from public disclosure.

In addition, because there is no requirement at present for a 510(k) holder to inform FDA when ownership of the 510(k) is transferred to a new party, FDA has, in many instances, been unable to locate and verify the current 510(k) holder for purposes of sending predisclosure notification. Many other 510(k) holders simply fail to respond at all to FDA's predisclosure notification. Consequently, FDA assumed the job of unilaterally redacting many 510(k)s when responding to FOIA requests for those records. As FDA has invested more time and effort in redacting 510(k)s, the resources devoted to responding to 510(k) FOIA requests has inevitably increased. At times, this has resulted in significant backlogs that have delayed the release of information to the public and diverted limited agency resources from other responsibilities, including support for premarket review and postmarket surveillance.

II. Procedural Amendments

The proposed rule would amend § 807.87 (21 CFR 807.87) to require 510(k) applicants to include a statement that would commit the applicant to provide a redacted version of the 510(k) within 30 days of FDA's finding the device substantially equivalent. Proposed § 807.91 sets forth the statement that must be submitted. The statement is referred to as a

"commitment to submit a redacted 510(k)." The redacted version is one that can be immediately released in response to a freedom of information request, published on the Internet, or otherwise made available to the public. The redacted version would include all sections of the 510(k) submission, including amendments, supplements, and all other documents included in the 510(k) submission, except to the extent that information may be appropriately redacted that is exempt from disclosure under FOIA, such as trade secrets, confidential commercial information, and personal privacy information.

The requirement to provide the redacted version within 30 days of FDA's decision is consistent with the statutory time set by section 513(i) of the act for submission of a 510(k) summary or statement. Although FOIA requires FDA to respond to FOIA requests within 20 days, FDA believes it is unlikely that there will be a real conflict between these two timeframes. This is because FDA publishes a list of 510(k) clearances about the same time each month, resulting in a lag time of at least 5 days, and up to 35 days, between the time of FDA's decision and the announcement of the decision. Although a 510(k) submitter may disclose the clearance of a 510(k) before FDA does, FDA believes it is extremely unlikely that the clearance would be made known and a FOIA request submitted so rapidly that the FDA response would be delayed due to the 30 days applicants would be permitted to provide a redacted version of the 510(k) to FDA.

Applicants would be permitted to use either of two techniques to redact information: (1) The entire 510(k) may be resubmitted with the information to be withheld from disclosure physically obscured to render it unintelligible (e.g., by covering the text or figure with black ink), or (2) the information to be withheld may be omitted from the redacted version, but the extent of each deletion must be described at the place in the document where the redaction was made (e.g., an indication that "pages 12 through 15 have been redacted" or "paragraph concerning sources of raw materials has been deleted"). Simply providing FDA with written instructions such as, "please do not release Section IV," and then expecting FDA to follow those instructions to locate and redact the information as specified by the applicant would be insufficient to comply with the requirement to submit a 510(k) already redacted of information that is exempt from disclosure to the public.

FDA encourages, but would not require, the redacted version to be submitted on disk, preferably as a portable document format file (.pdf file). Submission of .pdf files will facilitate FDA's release of information in electronic form, thereby assisting FDA in complying with its new obligations under the Electronic Freedom of Information Act Amendments of 1996 (EFOIAA) to make reasonable efforts to furnish records in an electronic format when requested to do so.

The proposed rule does not address the redaction of 510(k)s submitted to FDA prior to the effective date of the regulation. FDA will continue to provide predisclosure notification for those documents under the existing approach for the 10 years following their date of submission to the agency (Executive Order 12600 requires predisclosure notification for 10 years following submission of a document), and will address redaction of these 510(k)s on a case-by-case basis using FDA's current approach. Eighty percent of recent FOIA requests for 510(k)s have been for files less than 2 years old. Consequently, the agency expects most of its current predisclosure notification workload to be significantly reduced over time.

The requirement to provide a redacted 510(k) within 30 days of FDA's clearance is expected to provide 510(k) applicants and holders two significant benefits:

First, this approach would permit applicants to consider and address FOIA disclosure issues during and immediately following the development and assembly of the 510(k), while the expert team that contributed to the development of the 510(k) is available and engaged. FDA believes it will be significantly easier and less expensive for the applicant to deal with FOIA disclosure issues at an early stage rather than having to reassemble experts to review the 510(k) and resolve disclosure issues at some indeterminate time in the future.

Second, FDA believes this approach would permit applicants to have a larger voice in determining what information would be protected from disclosure. Indeed, this approach recognizes that the firm is in a uniquely well-qualified position to identify trade secret and confidential commercial information relating to its own 510(k) submission. Currently, FDA assumes the entire responsibility for designating what information is considered trade secret or other confidential information in a 510(k) when it cannot locate the current owner of the 510(k) or when the owner fails to respond to predisclosure notification within an appropriate time. Because FDA is unlikely to have all the information that would be available to the submitter, FDA may not identify trade secret and confidential commercial information in the 510(k) in the same way as the 510(k) holder would have done.

In addition to these two direct benefits, device applicants would also benefit indirectly from the approach set forth in the proposed rule because FDA would be able to free some resources it currently spends on efforts to determine what information should be protected from disclosure. Therefore the focus would be on those resources instead on activities more directly related to the device review process.

The proposed rule would benefit FDA in two key ways:

1. It would eliminate the need to routinely provide individual predisclosure notification to 510(k) holders when a 510(k) is requested under FOIA; currently, 510(k) submissions are the only significant category of records maintained by FDA that requires predisclosure notification. Given the significant volume of FOIA requests for 510(k)s and the time and effort required to process them under the current system, adopting the approach established by the proposed rule would significantly improve FDA's ability to provide timely responses to FOIA requests for 510(k)s and at the same time would allow the agency to redirect resources to product reviews and other activities more closely related to the agency's public health mission.

2. As discussed above, the regulation would ensure that the party that is in the best position to identify trade secret and confidential commercial information assumes primary responsibility for redacting that information.

The proposed rule will benefit the public by making information to which the public is entitled available in a more timely manner and at lower cost.

A. Copyrighted Information Provided in a 510(k)

Submitters of 510(k)s occasionally provide copyrighted materials to FDA in support of their submissions. When a FOIA request is received for a 510(k) that includes copyrighted materials, FDA may include a copy of any of those materials in response to the request, except to the extent that such materials are exempt under FOIA exemption four. FDA's disclosure of nonexempt information contained in copyrighted materials in response to a FOIA request is generally considered a "fair use under the Copyright Act of 1976 (17 U.S.C. 101

et seq.) and, thus, does not constitute copyright infringement. See 17 U.S.C. 107, and Office of Information and Privacy, U.S. Department of Justice, Copyrighted Materials and the FOIA, *FOIA Update*, Fall 1983, at pp. 3 to 5.

The EFOIA A amend FOIA to require Federal agencies to make certain FOIA responses available to the public "by computer telecommunications or *** other electronic means," such as posting the FOIA response on the Internet. The Department of Justice has advised Federal agencies that when records are made available through electronic means such as the Internet, the agency "should guard against the possibility that such extraordinarily wide dissemination of the record *** might be regarded as copyright infringement." See U.S. Department of Justice, *Amendment Implementation Questions*, *FOIA Update*, Winter 1997, at pp. 3 to 4.

FDA intends to make all redacted 510(k)s available through the Internet, regardless of whether a FOIA request has been received. This will make the information in those 510(k)s available to the public more rapidly and without having to pay fees which may be assessed when FDA responds to a FOIA request. FDA recognizes the need to avoid infringing copyrights when providing redacted 510(k)s through the Internet, and believes that it can provide appropriate protection of copyrighted materials by distinguishing between two categories of materials: Those whose copyright is owned by the applicant (e.g., an operating manual for a device) and those whose copyright is owned by another person (e.g., a copy of an article from a medical journal).

Under the proposed rule, copyrighted materials whose copyright is owned by a person other than the applicant must be placed in a single appendix, as required by proposed § 807.90(e), and listed in a bibliography, as required by proposed § 807.87(k). These copyrighted materials may not be included in any other portion of the 510(k). They may be referred to at any point in the 510(k) by citing the appropriate entry in the bibliography of copyrighted materials. FDA will not release the appendix containing copyrighted materials as part of a redacted 510(k) made available through FDA's Internet site, but would release the bibliography of materials included in the appendix.

Copyrighted materials whose copyright is owned by the applicant may be included, at the applicant's discretion, in any portion of a 510(k). FDA would treat these materials in the same manner as any other information submitted in a 510(k) and would include them in any redacted 510(k) made available through FDA's Internet site. FDA also intends to include a warning concerning the need to respect copyrights with all copyrighted materials the agency provides through the Internet. An applicant who is concerned about possible copyright infringement by persons who obtain a redacted 510(k) from FDA's web site may wish to clearly indicate when included material is copyrighted or reformat the information prior to submitting a 510(k) to avoid submitting copyrighted materials.

FDA recognizes that there is some uncertainty concerning the most appropriate method of protecting copyrighted materials included in a 510(k). For that reason, FDA is requesting comments on both the approach set forth in the proposed rule and on alternative approaches. Possible alternatives include, but are not limited to, the following:

FDA could permit copyrighted materials from any source to be included anywhere in the 510(k) and could include those materials with the redacted 510(k) made available through the agency's Internet site, while providing a clear and prominent warning to persons who download the redacted 510(k) that they must avoid infringing copyrights and may not make use of any copyrighted material unless such use would be a "fair use."

FDA could require explicit consent from each copyright holder, permitting FDA to release those copyrighted materials through the agency's Internet site as part of the redacted version of the 510(k). An applicant would not be permitted to submit copyrighted material without providing the required consent. If a copyright holder refuses to provide the required consent, the applicant would be required to reformat or summarize the relevant information from copyrighted materials prior to submitting the 510(k) for clearance.

FDA could prohibit the inclusion of any copyrighted materials whose copyright is owned by the applicant or by any person who prepared the materials at the request of the applicant unless the applicant or its agent consents to release of the material on FDA's Internet site. Applicants who did not provide the required consent would have to reformat the information to avoid the need to submit the copyrighted material. Applicants would be permitted to submit copyrighted materials from medical journals and other independent sources by including them in a separate appendix and listing them in a bibliography.

FDA has also requested that the Department of Justice provide its opinion concerning FDA's proposed approach. FDA will consider the Department of Justice's response and any comments received on FDA's proposed approach and alternative approaches in preparing a final rule.

B. Implementation and Enforcement

Under the proposed rule, FDA would not routinely review each redacted 510(k) to ensure that the applicant has redacted all confidential commercial information potentially eligible for protection. In addition, except for cases of clearly abusive redactions (e.g., a claim by a submitter that an entire file is exempt from disclosure), FDA will rely on parties that request a 510(k) (through FOIA or other channels) to raise any issue of excessive redaction. If FDA learns that an applicant has inappropriately redacted information not eligible for protection from disclosure under FOIA, FDA may require the applicant to resubmit an appropriately redacted version, or may release the inappropriately redacted information and pursue enforcement action. This approach will enable FDA to provide information more rapidly and focus more of its resources on device review.

FDA retains exclusive authority to make final determinations concerning whether a redaction is permitted under FOIA and is not delegating this authority to any person required to submit a redacted 510(k). Failure to provide a redacted version of a 510(k) in accordance with a commitment to submit a redacted 510(k) made under § 807.87(j) would be a prohibited act under sections 301(p) and (q) of the act (failure to provide any information required by section 510(k) and failure or refusal to furnish information required under section 519 of the act, records and reports on devices), 21 U.S.C. 331(p) and (q), and may result in FDA enforcement action, including administrative civil money penalties of up to $15,000 per violation (21 U.S.C. 333(f)). Some of the resources currently devoted to identifying what information should be protected from disclosure could be redirected, when necessary, to compliance actions against submitters who do not follow the new rule.

C. Relation to Requirement for a 510(k) Summary or 510(k) Statement

Section 513(i)(3) of the act requires a 510(k) applicant to include an adequate summary of any information respecting safety and effectiveness ("510(k) summary") with each 510(k) submission or to state that such information will be

made available upon request of any person ("510(k) statement"). Applicants who choose to include a 510(k) statement in lieu of a 510(k) summary must respond to written requests by an individual for a copy of the 510(k), excluding patient identifiers and trade secret and confidential commercial information, within 30 days of receipt of the request. The information to be made available to a requestor is "a duplicate of the premarket notification submission including any adverse safety and effectiveness information but excluding all patient identifiers and trade secret or confidential commercial information, as defined in § 20.61" (21 CFR 807.3(o)). Holders of 510(k)s may not charge requestors for compiling and providing this information. Noncompliance with the 510(k) statement is a prohibited act under section 301(p) of the act.

The information which a 510(k) submitter must provide to requestors when it elects to submit a 510(k) statement is the same information that would be required to be submitted to FDA under this proposed regulation, that is, a redacted 510(k). To avoid imposing redundant burdens on 510(k) submitters, FDA will, at the submitter's option, assume the burden of responding to requests for safety and effectiveness information made under section 513(i) of the act. Submitters who have submitted an appropriately redacted 510(k) to FDA will be permitted under proposed § 807.93(d) to refer all such requests to FDA's Internet site (at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpmn/search.cfm). Assuming the submitter has provided an appropriately redacted 510(k) that meets FDA's requirements, all the 510(k) submitter will be required to do to fulfill its statutory obligation is to inform the requestor that the requested information is available on FDA's Internet site; this response to the requestor would have to be made within 10 days of the request. FDA believes this approach will reduce costs submitters now accrue when they submit a 510(k) statement and that requestors will find it easier to obtain all such information from a single source.

A submitter who wishes to submit a 510(k) summary instead of a 510(k) statement will still be permitted to do so, but submission of a 510(k) summary will not relieve the submitter of its obligation under this proposed rule to submit a redacted 510(k) to FDA. Section 807.93(a) has been amended to provide alternative 510(k) statements. Section 807.93(a)(i) provides the statement to be submitted by a firm that chooses to continue to reply directly to requests for safety and effectiveness information; proposed § 807.93(a)(ii) provides the statement to be submitted by a firm that chooses to have FDA respond on the firm's behalf to such requests.

A person who previously submitted a 510(k) statement, and thereby committed to make available a redacted copy of the 510(k) upon the request of any person, may revoke that statement by submitting a redacted 510(k) to FDA. FDA will then assume the responsibility for responding to requests for the redacted copy on behalf of that person. Submitting a redacted 510(k) to FDA permits persons who have found it burdensome to respond to such requests an opportunity to shift the responsibility to FDA.

III. Request for Comments

Interested persons may, on or before March 22, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Comments regarding the information collection provisions should be submitted by January 20, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts and equity). The Regulatory Flexibility Act requires an analysis of regulatory options that would minimize any significant impact of a rule on small entities unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities. Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866. The proposed rule is limited to minimize its impact in two significant ways: (1) There is no retrospective effect, because the regulation will not apply to premarket notifications received by FDA prior to the effective date of the regulation, and (2) it will not apply to premarket notifications that were not found substantially equivalent or which were withdrawn. FDA believes there will be no long-term impact on most persons whose premarket notifications are found substantially equivalent because the primary effect of the regulation will affect only the timing of when a redacted version will be required.

FDA currently bears the burden of redacting 35 percent of premarket notifications requested under FOIA without any input from the applicant, either because the applicant cannot be located or does not respond to predisclosure notification. Therefore, this rule is expected to shift to a great extent the resources needed to redact submissions from FDA to the applicant who is in a much better position to redact the 510(k). FDA estimates that 1,240 submissions are affected and that for each submission it will take manufacturers 2 hours to comply. In addition, submitters of the 4,423 premarket notifications that are found substantially equivalent will spend up to 15 minutes to prepare and submit a statement of compliance with this rule to FDA. Using hourly earnings of $35, FDA estimates the total annual cost of compliance with this proposed rule is approximately $125,500. The hourly earnings are derived from the Statistical Abstract of the United States 1997, Table 672 median annual earnings in 1995 for men in a professional specialty, adjusted for fringe benefits and pay increases (30 percent and 20 percent, respectively). Because these costs are based on no more than 2.25 hours per submission and are spread over many submitters, this rule will not have a significant economic impact on small entities.

FDA further believes that by preparing the redacted version earlier, while the expert team that contributed

to the development of the 510(k) is available and engaged, there may be some long-term savings when compared with the costs of delayed redaction inherent in the current approach.

This rule is not a significant regulatory action as defined by the Executive Order, and is not subject to review under the Executive Order. This rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act. Furthermore, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further regulatory flexibility analysis is required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have a practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Addition of Written Commitment to Submit, and Submission of, a Redacted Premarket Notification upon FDA's Finding of Substantial Equivalency

Description: The statutory authority for this proposed regulation includes: (1) The authority to require premarket notification (generally referred to as 510(k)) (21 U.S.C. 360(k)); (2) The Freedom of Information Act (5 U.S.C. 552) (FOIA) because a premarket notification that has been cleared by FDA (found to be substantially equivalent) is subject to public disclosure under 5 U.S.C. 552, which requires Federal agencies to release all agency records, including materials obtained by the agency, except to the extent a FOIA exemption applies; (3) FOIA sections 552(b) and (c), and specifically 552(b)(4), permit withholding of certain information from public disclosure, including "trade secrets and commercial or financial information obtained from a person and privileged or confidential;" and (4) section 513(i)(3) of the act requires an adequate summary of information respecting safety and effectiveness to be provided by the submitter of a 510(k) that has been cleared by FDA. In addition, the act requires withholding of trade secret information from the public (21 U.S.C. 331(j)), and the Trade Secrets Act also prohibits disclosure of trade secrets and confidential commercial information unless specifically authorized by law, 18 U.S.C. 1905.

These proposed reporting requirements are intended to provide applicants with an improved opportunity to protect nonpublic information contained in their premarket notifications while facilitating the release of information to which the public is entitled. The proposed rule would preserve scarce FDA resources because it proposes to eliminate the need for FDA to routinely redact any 510(k) submitted after the effective date except to the extent challenges are raised to the redactions made by the applicant or in other cases where the agency finds that the applicant has not provided an appropriately redacted 510(k). The proposed rule also would preserve FDA resources by eliminating the need to routinely provide individual predisclosure notification and followup to 510(k) holders when a 510(k) is requested. The proposed written commitment to submit a redacted 510(k) is intended to provide FDA with assurance that the applicant agrees to provide the redacted 510(k) within 30 days of FDA issuing its substantial equivalence order.

The proposed rule would require the premarket submission to include a written commitment from the submitter agreeing to provide a redacted version of their 510(k) (from which those portions that contain "trade secrets and commercial or financial information obtained from a person and privileged or confidential or protected personal privacy information" are deleted) within 30 days of FDA issuing its order of substantial equivalence, together with a redacted copy of the 510(k).

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.87(j) and 807.91	4,423	1	4,423	0.25	1,106
807.95(f)	3,675	1	3,675	2.00	7,350
Total Hours				2.25	8,456

[1] There are no operating and maintenance costs or capital costs associated with this collection of information.

Several steps were performed by FDA to derive the burden hour estimates. FDA estimated the number of respondents by first taking the number of 510(k)s filed and cleared during FY 1998 (4,656) and reducing those numbers by roughly 5 percent because the number of 510(k)s filed in the past few years has been decreasing at approximately that rate (6,434 510(k)s were received during FY 94, compared with 4,656 during FY 98; 510(k) receipts have decreased each year since FY 94). The projected number of 510(k)s filed provides the number of respondents (approximately 4,423) affected by proposed § 807.87(j).

To determine the number of respondents affected by proposed § 807.95(f), FDA estimated the number of 510(k)s expected to be cleared (approximately 3,675), using the methodology previously described.

FDA then estimated the amount of hours per response. The estimate for proposed § 807.87(j) is based on FDA's professional judgment. The estimate for proposed § 807.95(f) is based on FDA's direct experience in redacting 510(k)s. FDA then multiplied the total annual responses by the hours per response to obtain the total hours. The hours per response includes the amount of time to add the statement to the premarket submission and to review and redact the premarket submission. There are no capital or operating and maintenance costs associated with this information collection.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), FDA has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by January 20, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

List of Subjects in 21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 807 be amended as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTS OF DEVICES

1. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

2. Section 807.87 is amended by redesignating paragraphs (j), (k), and (l), as paragraphs (l), (m), and (n); and by adding new paragraphs (j) and (k) to read as follows:

§ 807.87 Information required in a premarket notification submission.

* * * * *

(j) A written commitment, as described in § 807.91 that the submitter will provide to FDA, no later than 30 days after the date of the FDA order declaring the device to be substantially equivalent under § 807.100(a)(1), a copy of the premarket notification submission, with all information that is exempt from public disclosure in accordance with part 20 of this chapter redacted in accordance with § 807.95(f).

(k) A bibliography of all copyrighted materials included in the premarket notification submission.

* * * * *

3. Section 807.90 is amended by adding paragraph (f) to read as follows:

§ 807.90 Format of a premarket notification submission.

* * * * *

(f) Include any copies of copyrighted materials in a single appendix, which shall be the final section of the premarket notification. Copyrighted materials whose copyright is not owned by the applicant shall not be included in any other section of the premarket notification.

4. Section 807.91 is added to subpart E to read as follows:

§ 807.91 Commitment to submit a redacted 510(k).

(a) A statement committing to submit a redacted 510(k) shall state as follows:

I certify that, in my capacity as the (position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm) of (company name), I will submit to FDA, no later than 30 days after the date of an FDA order under § 807.100(a)(1) declaring this device to be substantially equivalent, a redacted copy of the entire premarket notification as required by § 807.95(f).

(b) The statement in paragraph (a) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as "Commitment to Submit a Redacted 510(k)."

5. Section 807.93 is amended by revising paragraph (a) and by adding paragraphs (d) and (e) to read as follows:

§ 807.93 Content and format of a 510(k) statement.

(a)(1) A 510(k) statement submitted as part of a premarket notification shall state as follows (choose one):

(i) Option 1—For firms that will directly respond to all requests for information:

I certify that, in my capacity as (the position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm), of (company name), I will make available all information included in this premarket notification on safety and effectiveness within 30 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent. The information I agree to make available will be a duplicate of the premarket notification submission, including any adverse safety and effectiveness information, but excluding all patient identifiers, and trade secret and confidential commercial information, as defined in § 20.61.

(ii) Option 2—For firms that choose to have FDA respond on the firm's behalf to all requests for information:

I certify that, in my capacity as (the position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm), of (company name), I will refer all requests for information included in this premarket notification to FDA's Internet site (http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpmn/search.cfm) within 10 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent.

(2) The statement in paragraph (a)(1)(i) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as "510(k) statement."

(3) The statement in paragraph (a)(1)(ii) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as "Commitment to Refer 510(k) Requests to FDA."

* * * * *

(d) At the option of a 510(k) submitter who has elected to submit the statement provided in paragraph (a)(1)(ii) of this section and who has submitted an appropriately redacted 510(k) to FDA under § 807.95(f), all requests received by the submitter for information included in paragraph (a) of this section may be satisfied by referring the requestor to FDA's Internet cite.

(e) A previously submitted 510(k) statement may be revoked any time, subject to the following requirements:

(1) A revocation of a 510(k) statement is made by submitting a copy of all information submitted with, or incorporated by reference in, the premarket submission, from which information that is exempt from public disclosure under part 20 of this chapter has been redacted.

(2) Redactions shall be made as specified by § 807.95(f).

(3) The redacted copy is to be sent to FDA's Center that reviewed the 510(k) at the appropriate address provided in § 807.95(f)(4).

(4) A revocation of a 510(k) statement becomes effective 30 days after it has been submitted to FDA. The submitter must respond to all requests for information received prior to the effective date.

6. Section 807.95 is amended by adding paragraph (f) to read as follows:

§ 807.95 Confidentiality of information.

* * * * *

(f)(1) Not later than 30 days after the date of the FDA order issued under § 807.100(a)(1) declaring a device to be

substantially equivalent, the submitter shall send to FDA a copy of all information submitted with, or incorporated by reference in, a premarket submission, from which information that is exempt from public disclosure under part 20 of this chapter has been redacted in one of the following two ways:

(i) The information exempt from disclosure has been physically obscured so as to render it illegible, e.g., by covering the text or figure with black ink.

(ii) The information exempt from disclosure has been omitted. In such cases, the extent of the deletions shall be described, e.g., "Pages 12 through 15 have been deleted."

(2) Whenever copyrighted materials are obscured or omitted, a reference to the bibliographic entry identifying the material under § 807.87(k) shall be included at the point where the materials originally appeared in the submission.

(3) The redacted copy may be submitted on a disk as a portable document format (.pdf) file.

(4) The redacted copy is to be sent to the center that reviewed the 510(k) at the appropriate address: Food and Drug Administration, Center for Devices and Radiological Health (HFZ–82), 2098 Gaither Rd., Rockville, MD 20850, or Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–99), 11401 Rockville Pike, Rockville, MD 20852.

Dated: December 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33003 Filed 12–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6190]

RIN 2125–AE67

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its color specifications for retroreflective signing materials. This revision would include daytime and nighttime specifications for both assigned and unassigned colors found in the Manual on Uniform Traffic Control Devices (MUTCD). Color specifications for fluorescent colors and pavement marking material would also be included.

DATES: Comments must be received on or before June 21, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. Dockets, Room PL–401 by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The MUTCD is incorporated by reference in 23 CFR. The color specifications found in the appendix to subpart F of part 655 of 23 CFR are incorporated by reference in the MUTCD.

The current specifications for the color of retroreflective sign sheeting were determined on the basis of material available more than 15 years ago. Since then, new microprismatic material has been commercially available and the original CIE Illuminant C [1] has been replaced with CIE Illuminant D 65. In addition, an extensive international effort is in progress to specify the nighttime appearance of retroreflective materials. Lastly, expanding the specifications to include fluorescent materials is also necessary at this time. In addition to revising the daytime color specifications for retroreflective sign sheeting material used primarily for traffic signs, color specifications for pavement markings and markers would be added. The first introduction of the color specification for nighttime use of these materials would be included in this revision. Instrumentation for measuring retroreflectivity is now available for in-situ measurements as well as ease in quality control and lab measurements. Color instruments are available for daytime measurements of traffic signs and pavement markings. New pigment formulations, especially for pavement marking material, are now in use because of environmental concerns. The American Traffic Safety Services Association assisted FHWA in soliciting samples for measurement from sign sheeting material and pavement marking material manufacturers. Samples were received from 11 manufacturers. Several types of pavement marking materials were received, *i.e.*, paint, tape, epoxy, and polyester. Polycarbonate and other signing materials were not included in the sampling. Manufacturers of polycarbonate and other material may provide signs that conform to the color limits stated for sign sheeting material.

Definitions

The following discussion on the procedures followed to develop this proposed revision contains abbreviations which are defined as follows:

Material types:
- eg = enclosed lens sheeting material
- encp = encapsulated lens sheeting material
- seg = super-engineering grade material
- up = microprismatic sheeting material (or vinyl)
- exp = exposed glass spheres for pavement marking materials

Measurement units:
- mm = millimeter

[1] Illuminant C is a standard from the International Commission on Illumination (CIE) for filtered tungsten illumination that simulates average daylight with a color temperature of 6,774 degrees K. Illuminant D 65 is a standard representing daylight with a correlated color temperature of 6504 K.

nm = nanometer
Colors:
B = blue; G = green; W= white; BR = brown; BK = black; R = red; O = orange; Y = yellow; YG = yellow-green; F as a prefix means the material is fluorescent.

Chromaticity coordinates and luminous factors: x and y for a 2° CIE Standard Photopic Observer.

CIE Illuminant D 65 for daytime measurements and CIE Illuminant A for nighttime measurements.

Y CIE tristimulus value for the luminous factor (total luminous factor for fluorescent materials). Y_F CIE tristimulus value for the fluorescence luminance factor. Nighttime chromaticity coordinates are given only for x and y as the coefficient of retroreflection is specified elsewhere.

The color boxes are given by corner coordinates in x and y.

Measurement Equipment and Procedures

Daytime Measurements and Equipment

All of the measurements involved in this proposed revision were performed at the FHWAs Turner-Fairbank Highway Research Center (TFHRC) in McLean, Virginia, with the lone exception being the fluorescent measurements made at Labsphere Corp. in North Sutton, New Hampshire. The facility used at the TFHRC was the Visibility and Photometric Laboratory. Daytime measurements were made in the facility using a Hunter LabScan Model II with a serial number 14277. This instrument was loaned to the Visibility and Photometric Laboratory by Hunter Associates in Reston, Virginia. The instrument uses a scanning interference filter and optics to rapidly scan the visible spectrum. The sample port is about 30mm in diameter and is illuminated by a filtered tungsten-halogen light source normal to the sample. The reflected light is collected by a series of fiber optics at 45° arranged circumferentially to the sample normal. The spectral data from 380 to 780nm is then analyzed and the CIE Chromaticity Coordinates x, y and the luminance factor Y for CIE Illuminant D 65 and the 2° CIE Standard Photopic Observer are computed and stored in memory in the computer. This type of instrument is widely used in many material and testing laboratories in the United States and was chosen for this reason.

Procedure

Each sample was measured in two locations on the sample, rotating the sample in its own plane for each measurement. The averages of the two readings for each sample were automatically determined and are the values used in this report. Calibration of the Labscan II was performed using a certified white reference standard number LS–14277 with tristimulus values of X=79.79; Y=84.47; and Z=90.59. The reference standard was calibrated traceable to the National Institute of Standards and Technology in August 1996. The data was taken for the 10° Standard Observer and calculated for the 2° observer after collection.

For the fluorescent samples, measurement was performed on Labspheres Bispectral Fluorescence Colorimeter Model BFC–450 Serial Number 2. The illumination and collection geometry was 45/0. This instrument consists of two monochromators with the irradiating one using a Xenon light source and the other a rapid scanning array detector type. The sample port is 32mm in diameter with the illumination area 25mm in diameter. The excitation irradiance wavelength range is from 300–780nm and the emission wavelength range is from 380–780nm. Computation of the reflectance luminance factor and the fluorescence luminance factor is automatically performed in the software for CIE D 65 Standard Illuminant and the CIE 2° Standard Photopic Observer. The total chromaticity in 1931 coordinates is also given. The data used in this report is the combined chromaticity coordinates for the total luminance factor. Calibration is performed against certified white diffuse standards.

Nighttime Measurements and Equipment

The ART Model 940D Computer Controlled Photometric Range System was used for the nighttime measurements. The illumination source was a 150 W Oriel Xenon arc lamp projector and the collection used an Optronics, Model 754 SN 9420–1009 Spectroradiometer. The double monochromator model 754–0–PMT SN 94102011 was used for the spectrum analysis. The wavelength range was set at 380–780nm with an interval of 10nm. The high-voltage on the multiplier phototube was varied depending on the sample size and efficiency. The absolute value of the radiance is not required for chromaticity measurements and the coefficient of retroreflection determination is not a part of this report. The optical collection of the retroreflected radiant flux was obtained using a large 65mm diameter achromat lens and quartz fiber optics circle to line configuration as input to the double monochromator. The Xenon light source was positioned at an angle of approximately 0.33° from the collection optics. The goniometer for the sheeting was set at 5° to the optical axis of the light source. The goniometer is a photometer for measuring the directional light distribution characteristics of sources, media, and surfaces. For the pavement marking materials the collection optics were raised to 1.0° from the light source and the goniometer set at 88.76° approximating 30 meter geometry. Nighttime color specification limits for red and blue pavement marking material were not included in Table 6. Samples received from the manufacturers were too small in size to provide reliable measurements for nighttime specifications.

Procedure

Calibration of the spectroradiometer was performed using a certified white diffuse standard for the 100° line and the zero or dark value was obtained with the light source illuminating a black sample. Compensation for the ambient level is automatically performed in the software. The relative spectral reflectance data over the above wavelength range was stored and the chromaticity computation was automatically performed.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal and

will not have a significant economic affect on small businesses, industry, or highway agencies. The color revisions will not be noticeable to the general public, however, the quality of the color in the signs will improve. This rulemaking proposes to revise the color specifications currently stated in 23 CFR which are also incorporated by reference in the Manual on Uniform Traffic Control Devices. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed revision will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this proposed revision would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Regulation Identification Number

A regulation identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: December 14,1999. —

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 655, as set forth below:

PART 655—[AMENDED]

1. Revise the authority citation for part 655 to read as follows:

Authority: 23 U.S.C. 109(d), 114(a), 315, and 402(a); 49 CFR 1.48.

2. Revise the appendix to subpart F to read as follows:

Appendix to Subpart F of Part 655—Alternate Method of Determining the Color of Retroreflective Sign Materials and Pavement Marking Materials

1. Although the FHWA Color Tolerance Charts depreciate the use of spectrophotometers or accurate tristimulus colorimeters for measuring the daytime color of retroreflective materials; recent testing has determined that 0/45 or 45/0 spectroradiometers and tristimulus colorimeters have proved that the measurements can be considered reliable.

2. The daytime color of non-fluorescing retroreflective materials may be measured in accordance with ASTM Test Method E 1349, "Standard Test Method for Reflectance Factor and Color by Spectrophotometry Using Bidirectional Geometry" or ASTM Test Method E 1347, (Replaces E 97) "Standard Test Method for Color and Color-Difference Measurement by Tristimulus (Filter) Colorimetry." The latter test method specifies bidirectional geometry for the measurement of retroreflective materials. The geometric conditions to be used in both test methods are 0/45 or 45/0 circumferential illumination or viewing. Uniplanar geometry is not recommended for material types IV or higher (designated microprismatic). The CIE standard illuminant used in computing the colorimetric coordinates shall be D65 and the 2° Standard CIE Observer shall be used.

3. For fluorescent retroreflective materials ASTM E 991 may be used to determine the chromaticity provided that the D65 illumination meets the requirements of E 991. This practice, however, allows only the total luminous factor to be measured. The luminescent luminous factor must be determined using bispectral fluorescent colorimetry. Commercial instruments are available which allow such determination. Some testing laboratories are also equipped to perform these measurements.

4. For nighttime measurements CIE Standard Illuminant A shall be used in computing the colorimetric coordinates and the 2° Standard CIE Observer shall be used.

5. Average performance sheeting is identified as Types I and II sheeting and high performance sheeting is identified as Type III. Super-high intensity sheeting is identified as Types V, VI and VII in ASTM D 4956.

6. The following six tables depict the 1931 CIE Chromaticity Diagram x and y coordinates for the corner points defining the recommended color boxes in the diagram. Lines drawn between these corner points specify the limits of the chromaticity allowed in the 1931 Chromaticity Diagram. Color coordinates of samples that lie within these lines are acceptable. For blue and green colors the spectrum locus is the defining limit between the corner points located on the spectrum locus:

TABLE 1 TO PART 655, SUBPART F.—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIALS WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE D65 STANDARD ILLUMINANT

Color	Chromaticity coordinates (corner points)								Luminance factor range Y in percent	
	1		2		3		4			
	x	y	x	y	x	y	x	y	Min.[1]	Min.[2]
White	.355	.355	.305	.305	.285	.325	.335	.375	≥35	≥27
Red	.648	.351	.735	.265	.629	.281	.565	.346	≥5	≥3
Orange	.562	.350	.645	.355	.570	.429	.506	.404	≥17	≥12
Brown	.430	.340	.430	.390	.518	.434	.570	.382	≥3–10	≥3–10
Yellow	.498	.412	.557	.442	.479	.520	.438	.472	≥27	≥16
Green	.026	.399	.166	.364	.286	.446	.207	.771	≥4	≥3
Blue	.078	.171	.150	.220	.210	.160	.137	.038	≥1	≥1
Lt. Blue	.180	.260	.240	.300	.270	.260	.230	.200	≥15	≥15
Yellow/green	.387	.610	.460	.540	.421	.486	.368	.539	≥	≥50
Purple	.302	.064	.307	.202	.374	.247	.457	.136	≥3	≥2
Coral*	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Black	.355	.355	.305	.305	.285	.325	.335	.375	≥3 max.	.....

*No coordinates recommended for this color.
[1] Types I and II.
[2] Types III–VII.

TABLE 2 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIALS WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 0.33°, ENTRANCE ANGLE = +5° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	.475	.452	.360	.415	.392	.370	.515	.409
Red	.650	.348	.620	.348	.712	.255	.....	.....
Orange	.643	.355	.613	.355	.565	.405	.595	.405
Brown	.595	.405	.540	.405	.570	.365	.643	.355
Yellow	.513	.487	.500	.470	.545	.425	.572	.425
Green	.007	.570	.200	.500	.322	.590	.193	.782
Blue	.033	.370	.180	.370	.230	.240	.091	.133
Lt Blue*	.....	.....	.....	.....	.....	.....	.....	.....
Coral*	.....	.....	.....	.....	.....	.....	.....	.....
Purple*	.....	.....	.....	.....	.....	.....	.....	.....

*No coordinates recommended for this color.

TABLE 3 TO PART 655, SUBPART F.—DAYTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE D65 STANDARD ILLUMINANT

Color	Chromaticity coordinates (corner points)								Luminance factor limits %	
	1		2		3		4			
	x	y	x	y	x	y	x	y	Y	Y_F
									Min	Max
Fluorescent Orange	.562	.350	.645	.355	.570	.429	.506	.404	20	10
Fluorescent Yellow	.557	.442	.498	.412	.438	.472	.479	.520	35	15
Fluorescent Yellow/Green	.387	.610	.368	.539	.421	.486	.460	.540	50	20
Fluorescent Green	.320	.590	.320	.682	.210	.770	.230	.670	30	15

TABLE 4 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 0.33°, ENTRANCE ANGLE =+5° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Orange	.625	.375	.669	.331	.636	.330	.589	.376
Fluorescent Yellow	.554	.445	.610	.390	.569	.394	.526	.437

TABLE 4 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 0.33°, ENTRANCE ANGLE =+5° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A—Continued

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Yellow/Green	.480	.520	.550	.449	.523	.440	.473	.490
Fluorescent Green	.007	.570	.200	.500	.322	.590	.193	.782

TABLE 5 TO PART 655, SUBPART F.—DAYTIME COLOR SPECIFICATION LIMITS FOR PAVEMENT MARKINGS MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE D65 STANDARD ILLUMINANT

Color	Chromaticity coordinates (corner points)								Y values %			
	x	y	x	y	x	y	x	y	With Glass Beads		Without Glass Beads	
									Min	Max	Min	Max
White	.355	.355	.305	.305	.285	.325	.335	.375	50	.....	70	.....
Yellow	.560	.440	.460	.400	.420	.440	.490	.510	30	.....	35	.....
Red	.480	.300	.690	.315	.620	.380	.480	.360	6	15	.....	.....
Blue	.105	.100	.220	.180	.200	.260	.060	.220	5	14	.....	.....

TABLE 6 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR PAVEMENT MARKING RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 1.05°, ENTRANCE ANGLE = 88.76° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	.480	.410	.430	.380	.405	.405	.455	.435
Yellow	.575	.425	.490	.410	.460	.440	.510	.490

[FR Doc. 99–32910 Filed 12–20–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6298]

RIN 2125–AE66

Revision of the Manual On Uniform Traffic Control Devices; Regulatory Signs, Low Volume Rural Roads, and Traffic Control for Highway-Rail Grade Crossings

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134.

This document proposes new text for the MUTCD in Chapter 2B—Regulatory Signs, Part 5—Traffic Control Devices for Low-Volume Rural Roads, and Part 8—Traffic Control for Highway-Rail Grade Crossings (update information). The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes included herein are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before June 30, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Transportation Operations, Room 3408, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL): *http/dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

The text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA Home Page at the URL: *http://www.fhwa.dot.gov/operations/mutcd.* Please note that the current proposed sections contained in this docket for MUTCD Chapters 2B, Part 5, and Part 8 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR Part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Highway-Rail Intersections. The summary of proposed changes for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The summary of proposed changes for Parts 1 and 7 was published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A—General Provisions and Standards for Signs, Chapter 2D—Guide Signs for Conventional Roads, Chapter 2E—Guide Signs—Freeways and Expressways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I was published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The summary of proposed changes for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles was published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33802. The summary of proposed changes for Chapter 2C—Warning Signs and Part 10—Traffic Control for Highway-Light Rail Transit Grade Crossings was published as Phase 5 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33806.

This notice of proposed amendments is Phase 6 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Chapter 2B, Part 5, and update information for previously published proposed changes to Part 8. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The remaining parts include Part 6—Traffic Control for Construction, Maintenance, Utility, and Incident Management and updates to the following previously published parts of the MUTCD: Part 1—Definitions; Part 3— Markings; and Part 4—Signals.

The proposed new style of the MUTCD would be a 3-ring binder with 8–½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions; (2) Guidance—representing "should" conditions; (3) Options—representing "may" conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. The adopted final version of the new MUTCD will be in metric and English units. Dual units will be shown in the MUTCD particularly for speed limits, guide sign distances, and other measurements which the public must read.

The FHWA invites comments on the proposed text for MUTCD chapter 2B, part 5, and part 8 update. A summary of the proposed significant changes contained in these sections are included in the following discussion:

Discussion of Proposed Amendments to Chapter 2B—Regulatory Signs

The following items are the most significant proposed revisions to Chapter 2B:

1. In Section 2B.1, the FHWA proposes to delete the sentence indicating that all regulatory signs shall be retroreflective or illuminated since this information is covered in Section 2A.8 which provide general requirements for all signs, including regulatory signs.

2. In Section 2B.3, the FHWA proposes to include an explanation of when various sign sizes should be used based on the roadway classification. This information is currently shown in the "Standard Highway Signs" book.[1] However, we believe it is worth mentioning in the MUTCD text as well.

3. In Section 2B.3, the FHWA proposes to add Table 2B.1 which

[1] "Standard Highway Signs," FHWA, 1979 (Metric) is included by reference in the 1988 MUTCD. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

shows the sign codes, the standard sign sizes, and applicable MUTCD sections for more detailed information. The FHWA believes that having this information in a table format will provide an easy and quick reference for the readers. In an effort to improve sign visibility, the FHWA also proposes to increase the standard letter size for the following signs:

TABLE SHOWING SIGNS WITH PROPOSED INCREASED STANDARD LETTER SIZES

Sign	Code	Proposed standard size
Two-Way Left Turn Only	R3–9b	750mm x 1050mm (30″ x 42″).
Center Lane Buses and HOV 2+ Only	R3–11	1050mm x 1500mm (42″ x 60″).
Do Not Enter	R5–1	900mm x 900mm (36″ x 36″).
Pedestrians and Bicycles Prohibited	R5–10b	900mm x 600mm (36″ x 24″).
Pedestrians Prohibited	R5–10c	750mm x 450mm (30″ x 18″).
One Way	R6–1	900mm x 900mm (36″ x 36″).
One Way	R6–2	900mm x 900mm (36″ x 36″).
Divided Highway	R6–3 and 3a	900mm x 900mm (36″ x 36″).
No Parking/Restricted Times	R7–200	500mm x 450mm (20″ x 18″).
Hitch Hiking Prohibited (symbol)	R9–4a	600mm x 600mm (24″ x 24″).
Left on Green Arrow Only	R10–5	900mm x 1200mm (36″ x 48″).
Use Lane with Green Arrow	R10–8	750mm x 900mm (30″ x 36″).
Left (Right) Turn Signal	R10–10	750mm x 900mm (30″ x 36″).
Left Turn Yield on Green Ball	R10–12	750mm x 900mm (30″ x 36″).
No Trucks Over 7000 lbs Empty Weight	R12–3	750mm x 900mm (30″ x 36″).

4. In Section 2B.4, paragraph 2, the FHWA proposes to require the use of the 4–WAY supplemental plaque (R1–3) at intersections where all approaches are controlled by STOP signs. In the 1988 MUTCD this was a recommended practice. However, the FHWA believes that due to the increased aggressive driving behavior, disregard of STOP signs, and the hazardous nature of these type intersections, the required use of the 4–WAY supplemental plaque will provide additional emphasis and motorist information at these locations.

5. In Section 2B.5, the FHWA proposes to change the title from "Warrants for Stop Signs" to "Stop Sign Application." This proposed change attempts to eliminate the misunderstanding created by the term "warrants" which has a "legal sanctions" connotation. The GUIDANCE provided in Section 2B.5 for installing STOP signs is not intended to be a legal sanction or authorization, but instead is intended to list possible situations where these signs could be appropriate based on an engineering study.

6. In Section 2B.5, paragraph 6, the FHWA proposes to add GUIDANCE to describe the appropriate street to stop traffic in a two-way STOP control situation.

7. In Section 2B.5, paragraph 7, the FHWA proposes to include considerations that may help engineers and other transportation officials decide the appropriate street to install STOP signs at 2–WAY STOP intersections.

8. In Section 2B.5, paragraph 9, the FHWA proposes to include SUPPORT information to clarify to the reader that restrictions on the use of STOP signs as discussed in section 2B.5 also apply to Multiway STOP signs (section 2B.7).

9. In Section 2B.6, paragraph 4, the FHWA proposes to change the following sentence from an OPTION condition to a GUIDANCE condition: "Stop lines, when used to supplement a STOP sign, should be located at the point where the road user should stop." The use of pavement markings helps to reinforce sign and other traffic control device messages. We believe that recommending the use of the STOP line provides the road user with additional information on which to make safe traffic operation decisions.

10. In Section 2B.6, paragraph 5, the FHWA proposes to add a sentence which states that STOP signs should not be placed on the far-side of the intersection. Although this is not new guidance and is shown in many of the typical figures in the 1988 MUTCD, we believe that it is appropriate to include this proposed text to eliminate any ambiguity.

11. In Section 2B.7, the FHWA proposes to add the word "application" to the title since this term is more descriptive of the information contained in this section on multi-way stop signs. In Section 2B.7, paragraph 2, the FHWA proposes to add GUIDANCE to recommend that the decision to install Multiway Stop signs should be based on an engineering study.

12. In Section 2B.7, paragraph 2, the FHWA proposes to specifically state that the decision to install multi-way stop signs should be based on an engineering study. Although this recommended GUIDANCE is usually followed, the FHWA believes it is appropriate to include this general practice in the MUTCD text.

13. In Section 2B.7, paragraph 3, the FHWA also proposes to recommend criteria that should be considered in the engineering study. This proposed change also eliminates the misunderstood term "warrants" and uses instead the term "engineering study." The recommended criteria are generally consistent with the text in the 1988 MUTCD except for the following proposed changes:

(a) In item 3a which discusses minimum vehicle volumes at intersections where multiway stop signs are considered, the FHWA proposes to change "500 vehicles per hour" to "300 vehicles per hour." This proposed change allows more consideration flexibility and allows more intersections to qualify for multiway stop sign installlations.

(b) In item 3b, the FHWA proposes to add bicycle volumes to the combination volume studies of vehicles and pedestrians. Bicycle travel is one of the FHWA's program emphasis areas identified in our strategic plan. The FHWA believes that bicycle travel should be an integral part of traffic control considerations.

(c) In item 4, the FHWA proposes to provide a means for combining data on the accident experience and volume counts when considering the installation of multiway stop signs.

14. The discussion in Section 2B.7, paragraph 3, provides primary criteria for consideration when installing Multiway Stop signs. In Section 2B.7, paragraph 4, the FHWA proposes to include additional supporting criteria for consideration. Also in paragraph 4,

the FHWA proposes to add a crosss-reference to a proposed new section 2C.31 which discusses the optional use of a new "CROSS TRAFFIC DOES NOT STOP sign" at multiway stop intersections. This proposed sign may be used where engineering study indicates drivers frequently mistake 2-way and multiway stop controlled intersections.

15. The FHWA proposes to separate the discussion on Yield signs to cover general design and purpose for Yield signs (Section 2B.8); "Yield Sign Application" (Section 2B.9); and "Yield Sign Placement" (Section 2B.10). This proposed change also avoids the use of the misunderstood term "warrants."

16. In Section 2B.10, paragraph 2, the FHWA proposes to change the following sentence from a GUIDANCE condition to a STANDARD condition: "The YIELD sign shall be located as close as practical to the intersection it regulates, while optimizing its visibility to the road user." The FHWA believes that enhancing sign visibility will help improve intersection safety and reduce intersection crashes. This same change is proposed for STOP signs in Section 2B.6, paragraph 2.

17. In Section 2B–8 of the 1988 MUTCD, the following sentence was included: "YIELD signs should not be used on the through roadway of expressways." The FHWA proposes not to include this sentence in the new Section 2B.10, "Yield Sign Application." The reason for not including this sentence is to avoid potential conflict with YIELD signs installed at signalized intersections on expressways for the purpose of controlling right-turn movements.

18. In Section 2B.11, paragraph 2, the FHWA proposes the following revisions to help clarify the design and application of the Truck Speed Sign. The "TRUCKS 40" sign currently shown in the 1988 MUTCD is intended to be the supplemental plaque message that is required for use below the Speed Limit Sign (R2–1). The FHWA proposes to assign the "TRUCKS 40" supplemental plaque the sign code (R2–2P). The R2–2P supplemental plaque is not to be used independently. The FHWA also proposes to clarify that the legend "TRUCKS 40" may also be included within the same panel as the Speed Limit Sign (R2–1).

In addition to the above clarification, the FHWA proposes to modify the 1988 MUTCD to explain that a Truck Speed Sign (R2–2) contains the legend "TRUCKS 40 MPH" or "TRUCK SPEED 40" and is used independently. The FHWA proposes to develop a design drawing for the R2–2 independent Truck Speed Sign and to include the design in the "Standard Highway Signs" book.

19. In Section 2B.11, paragraph 3, the FHWA proposes to designate 3 as the maximum number of speed limits displayed on any one speed limit sign or assembly sign. In the 1988 MUTCD this was recommended GUIDANCE. The FHWA proposes to change this to STANDARD practice because 3 speed limits is the maximum amount of information that the road user can safely read and comprehend.

20. In Section 2B.12, Paragraph 2, the FHWA proposes to add another option for day and night speed limits using changeable message signs that change for traffic and ambient conditions provided that the appropriate speeds are shown at the proper times. This proposed change will allow Intelligent Transportation Systems (ITS) technology for changeable message signs.

21. In Section 2B.14, paragraph 6, the FHWA proposes to include an optional method for installing Reduced Speed Ahead (R2–5 series) signs which are intended to advise road users of the appropriate speed limit change ahead. The proposed optional method discussed in item 2 was submitted by the Minnesota Department of Transportation. The proposed optional method would use an assembly consisting of the Speed Limit Sign (R2–1) with the supplemental legend plaque "BEGIN" mounted above the R2–1 sign and the supplemental distance plaque (¼ mile, etc.) mounted below the R2–1 sign. The recommended color for the supplemental plaques is yellow.

22. In Section 2B.15, the FHWA proposes to combine the discussion for the Turn Prohibition and the U-Turn Prohibition signs into one section since they are both related.

23. In Section 2B.15, paragraph 1, the FHWA proposes to reword this sentence and classify it as a STANDARD since the Turn Prohibition Signs (R3–1 to R3–4) are the appropriate and standard signs for use where turns are prohibited.

24. In Section 2B.15, paragraph 5, the FHWA proposes to change the condition for installing turn prohibition signs (R3–1 to R3–4) adjacent to a signal face from an OPTION to GUIDANCE. In situations where signals are present, placing the turn prohibition sign adjacent to the signal face is recommended because it enhances the sign's visibility and improves the road user's ability to see the sign placed in this overhead position.

25. In Section 2B.15, paragraph 6, in addition to recommending the installation of an overhead-mounted turn prohibition sign at signalized intersections, the FHWA proposes to include a sentence stating that installing a post-mounted turn prohibition sign to supplement the overhead sign is an OPTION.

26. In Section 2B.16, paragraph 2, the FHWA proposes to add a new Intersection Lane Control Sign (R3–5a) which may be used to explain to road users that they must stay in the same lane and proceed straight through an intersection.

27. In Section 2B.16, paragraph 3, the FHWA proposes to add a new requirement that whenever lane use control signs are installed, lane-use pavement markings shall also be installed. This requirement would apply whether the lane-use control message was for mandatory or optional traffic movements. In the 1988 MUTCD the use of pavement markings was recommended, but not required, for mandatory movement situations only. This proposed change to require lane-use pavement markings and signs in both mandatory and optional traffic movement situations will benefit the road users by providing additional information to assist them in the decisionmaking tasks involved with perceiving and executing safe and appropriate traffic maneuvers. This proposed change is also consistent with the proposed text for mandatory-turn pavement markings discussed in Chapter 3B.12. Requiring pavement markings along with lane-use control signs means that road users who may not see the sign (particularly ground-mounted signs) may have an opportunity to see the pavement marking and react accordingly. This is a practice that is successfully used in Europe and it is called "horizontal signing." European traffic engineers have found that the redundancy provided by horizontal signing is a very important element of attaining and improving both traffic efficiency and safety for road users. The FHWA proposes a 10 year compliance period based on the effective date of the MUTCD final rule. This would allow States time to implement this proposed change.

28. In Section 2B.16, paragraphs 6 and 7, the FHWA proposes to add language to distinguish between when overhead and ground mounted intersection lane-use control signs are used. The following language is proposed: "When the number of through lanes for an approach is two or less, the intersection lane-use control signs (R3–5, R3–6, or R3–8) may be either overhead or ground mounted. When the number of approach lanes is three or more, these intersection

lane-use control signs should be mounted overhead." This proposed change considers the visibility needs of the road user based on the number of lanes at the intersection approach, particularly in situations where the road user's view may be obstructed by other vehicles in the adjacent lanes.

29. The FHWA proposes to add a new Section 2B.17 that specifically addresses the standard application and placement location for mandatory movement lane-use control signs (R3–5 and R3–7). The FHWA proposes to clarify the placement location for these signs. In paragraph 1, the FHWA proposes to clarify that the word message "LEFT LANE MUST TURN LEFT" (R3–7) sign shall be for ground mounting only.

In paragraph 3, the FHWA proposes to change the 1988 MUTCD text to indicate that the "LEFT OR RIGHT TURN ONLY" (R3–8) symbol sign can be either ground mounted or overhead mounted. This is also consistent with the proposed language in Section 2B.15, paragraph 5. In paragraph 3, the FHWA also proposes to add a new design standard for the R3–5 symbol sign. A proposed word message plaque LEFT LANE, CENTER LANE, etc. would be required below the R3–5 symbol sign so that the road user will know which lane applies to the sign.

30. In Section 2B–18, the FHWA proposes to expand the discussion on the Optional Movement Lane-Use Control (R3–6) sign and include the discussion in a new separate section. In paragraph 1, the FHWA proposes to specifically state that the Optional Movement Lane-Use Control (R3–6) sign shall be installed at the intersection location.

In paragraph 2, the FHWA proposes to specifically state that the Optional Movement Lane-Use Control (R3–6) sign shall indicate all permissible lane movements at the intersection.

31. In Section 2B.19, the FHWA proposes to classify the Double Turn Lane-Use Control (R3–8) sign as an Advance Intersection Lane-Use Control sign. The FHWA also proposes to provide placement guidance that indicates the R3–8 sign would be installed in advance of the tapers or at the beginning of the turn lane so that road users can determine in advance their appropriate vehicle placement for lane changes.

32. The FHWA proposes to add a new Section 2B.21, "Reversible Lane Control Signs." The use of reversible lane traffic control is a practice which is commonly used throughout the United States and it is appropriate for the MUTCD to provide design, application, and placement information.

In paragraph 1, the FHWA proposes to add a discussion on the purpose and use of the Reversible Lane Control signs (R3–9c to R3–9i). A diagram of these new signs are shown in the proposed text for section 2B.20. The FHWA also proposes to include a statement that the reversible lane control signs may be either static or changeable message signs. The FHWA supports the use of changeable message signs especially in situations where real time motorist information is needed for changing traffic conditions.

33. In Section 2B.21, paragraph 2, although the Reversible Lane Control signs may be either ground or overhead mounted, the FHWA proposes to require that when ground mounted Reversible Lane Control signs are used, they shall be used as a supplement to overhead signs or signals. The ground mounted sign will provide the road user with additional information and an added opportunity to view the sign message and react accordingly.

34. In Section 2B.21, paragraph 3, the FHWA proposes to require the use of Reversible Lane Control signs at locations where it is determined by a traffic engineering study that lane use control signals or barriers are not necessary to operate a reversible lane.

35. There are times when jurisdictions responsible for traffic control may want to exercise the option of installing only pavement markings and reversible lane control signs rather than lane control signals to reverse traffic flow. In Section 2B.21, paragraph 4, the FHWA proposes 3 conditions that must be considered before a decision is made to reverse traffic flow with the use of only pavement markings and reversible lane control signs.

36. In Section 2B.21, paragraph 5, the FHWA proposes to refer the reader to a new Table 2B.2 which describes the meanings of symbols and legends used on reversible lane control signs. In paragraph 5 through 8, the FHWA proposes to provide a discussion for the appropriate design principles of reversible lane control signs.

37. In Section 2B.21, paragraphs 9 through 12, the FHWA proposes to provide a discussion for the appropriate placement principles for reversible lane control signs. The new signs R3–9g, R3–9h are proposed for advance reversible lane control application and the R3–9i sign is proposed for use at the termination of the reversible lane control.

38. In Section 2B.21, paragraph 13, the FHWA proposes to require that the Turn Prohibition signs be mounted overhead and separate from the Reversible Lane Control signs. In paragraph 14, the FHWA proposes to recommend that when the Turn Prohibition signs are used, a message stating the distance of the prohibition (example, NEXT 1 MILE) should be included on the sign.

39. In Section 2B.21, paragraph 17, the FHWA proposes to recommend that where left turning vehicles may impact the traffic safety and operational efficiency of reversible lanes, consideration should be given to prohibiting left and U-turns for a specified time period.

40. In Section 2B.26, the FHWA proposes to change the title from "Signs for Uphill Traffic Lanes" to "Slow Moving Traffic Lane Signs." Since slow moving traffic is not only attributed to "uphill" roadway conditions, the FHWA proposes to delete the reference to uphill traffic and use the term "slow moving traffic" instead.

41. In Section 2B.26, paragraph 2, the FHWA proposes to recommend that the TRUCK LANE XX FEET sign (R4–6) should be installed in advance of the TRUCKS USE RIGHT LANE (R4–5) sign. In the 1988 edition of the MUTCD this is an optional condition which means that the sign may or may not be installed. The FHWA believes that changing this to a recommended condition will provide the road user with important advanced information that will aid in the driver's decisionmaking task.

42. In Section 2B.26, paragraph 3, the FHWA proposes to add a sentence to explain that the SLOWER TRAFFIC KEEP RIGHT sign (R4–3) may be used as a supplement or alternative to the TRUCKS USE RIGHT LANE sign (R4–5). This is particularly useful in situations where the slower traffic may not be just truck traffic.

43. In Section 2B.29, paragraph 1, the FHWA proposes to include a reference to direct readers to Figure 2–5a which shows the signing and pavement marking treatments for divided highway intersections with medians 9 m (30 ft.) or wider. The FHWA proposes to revise the figure shown in the 1988 MUTCD. The figure currently shown in the 1988 MUTCD shows two diagrams: one for divided highways with medians less than 9 m (30 ft.) and one for divided highways with medians 9 m (30 ft.) or wider. The proposed new figure for medians 9 m (30 ft.) or wider is expanded to show stop lines, wrong-way pavement markings, and pavement markings which show the vehicle turning path. This figure was one of the recommendations included in the "Older Driver Highway Design

Handbook."[2] It is intended to reduce the potential for wrong-way movements for drivers turning left from the minor roadway. This proposed figure is shown in the proposed text for Chapter 2B for docket comment purposes. If adopted, it will replace the figure currently shown in Chapter 2A.

44. In Section 2B.30, paragraph 6, the FHWA proposes to clarify that the PEDESTRIAN PROHIBITED signs (R9–3a or R5–10c) should be installed so as to be clearly visible to pedestrians at a location where an alternative route or path is available. Pedestrian safety is a program emphasis area for the FHWA and we believe that this proposed change will help reduce the potential for pedestrians to walk in unsafe areas.

45. In Section 2B.31, paragraph 2, the FHWA proposes to change the recommendation regarding placement of the One Way signs (R6–1 and R6–2) to a requirement. The FHWA believes that requiring the placement of the One Way sign parallel to the one-way street at all alleys or roadway intersections to one way streets will: (1) Give motorists clearer directions, and (2) make traffic operations safer by reducing the chance of road users inadvertently making wrong-way movements.

46. In Section 2B.32, paragraph 3, the FHWA proposes to modify the text to allow the option of placing the Divided Highway Crossing signs (R6–3 and R6–3a) beneath the STOP or YIELD signs. In the 1988 MUTCD this option only applied to the STOP sign.

47. In Sections 2B.33, 2B.34, and 2B.35, the FHWA proposes to eliminate the distinction between urban and rural parking, stopping, and standing signs since the design and placement principles for both urban and rural conditions are substantially the same. The FHWA also proposes to separate the discussion on design and placement of these signs into individual sections (2B.34 and 2B.35).

48. In Section 2B.34, "Design of Parking, Stopping, and Standing Signs," the FHWA proposes to require all street parking signs to be illuminated or retroreflective. This proposed change is consistent with Section 2A.8 which discusses the general provisions and standards for signs.

49. In Section 2B.35, paragraph 2, the FHWA proposes to include a sentence indicating that the spacing of parking signs should be based on legibility and sign orientation. The FHWA believes this is helpful placement guidance to follow when making sure that the parking signs are visible, particularly with regards to the surrounding traffic setting. This guidance would include such considerations as the roadway geometry and surrounding conditions—such as curves or shrubbery that may hinder sign visibility.

50. In the title for section 2B.36, the FHWA proposes to change the title from "Emergency Parking Signs" to "Emergency Restriction Signs." This proposed change will allow the section to cover not just the EMERGENCY PARKING ONLY (R8–4) sign but other emergency restriction signs such as the EMERGENCY STOPPING (R8–7) and DO NOT STOP ON TRACKS (R8–8) signs.

51. In section 2B.36, paragraph 3, the FHWA proposes to allow the choice of using either the color red or black for the legend on emergency restriction signs R8–4, R8-7, and R8–8. Red is the color designated in section 1A of the Manual for restrictions and prohibition signs and black is the color designated for regulatory signs. The FHWA believes that either of these colors is appropriate. The background for these signs will remain white.

52. The 1988 MUTCD contains a sentence that the WALK ON LEFT (R9–1) and NO HITCH HIKING (R9–4) signs do not need to be retroreflective. The FHWA proposes to change the 1988 MUTCD by requiring that all signs, including pedestrian signs, shall be either retroreflective or illuminated to increase their visibility to road users. This proposed new requirement applies to all pedestrian signs and includes Section 2B.37, "Walk on Left and No Hitch Hiking Signs," Section 2B.38, "Pedestrian Crossing Signs," and Section 2B.39, "Traffic Signal Signs, Auxiliary."

53. In Section 2B.39, paragraphs 7 and 10, the FHWA proposes to add 2 new symbol signs for NO RIGHT TURN ON RED (R10–11c) and NO LEFT TURN ON RED (R10–11d). These new symbol signs would combine the standard NO RIGHT TURN (R3–1) and NO LEFT TURN (R3–2) symbols with the legend "ON RED."

54. In Section 2B.39, paragraph 12, the FHWA proposes to add 2 new signs for use with emergency beacon installations. These 2 proposed word message signs are: EMERGENCY SIGNAL (R10–13) and EMERGENCY SIGNAL/STOP WHEN FLASHING RED (R10–14).

55. The FHWA proposes to add a new section 2B.48 that will include provisions for the design and operation of high occupancy vehicle (HOV) lanes and a new section 2B.49 that will address the application and placement for HOV signs. Significant deployment has occurred with HOV lanes used on roadway facilities throughout the United States and the FHWA believes it is appropriate to address design, application and placement of signs and pavement markings for these special facilities. The language proposed for section 2B.48 would provide agencies that own and operate HOV lanes with an overall discussion on HOV signing principles. In addition to this proposed new section, the FHWA proposes the following MUTCD changes related to HOV lanes:

(a) The FHWA proposes to revise the R3–10 through R3–15 preferential lane signs (see proposed section 2B.22). These signs would be specifically designated for high occupancy vehicle (HOV) lanes which by definition include carpools, vanpools, and buses carrying at least two or more persons. The word message "restricted lane" shown on the R3–10, R3–12, R3–13, and R3–15 would be revised to identify the type of preferential vehicle traffic allowed in the lane (example: HOV lane, bus lane, or taxi lane.) When the preferential lane is for high occupancy vehicles, the word message "HOV" would be required along with the minimum allowable vehicle occupancy level (example: HOV 2+). The minimum allowable vehicle occupancy level would vary based on the level established for a particular facility by the State or local highway agency.

The diamond symbol is proposed for exclusive HOV use lanes. In situations where a preferential lane is not an HOV lane but is reserved for bus and/or taxi use, then the word message "BUS (or TAXI)" would replace the message on the R3–10 through R3–15 signs. The sign number for these proposed new signs would be R3–10a, R3–11a, etc. NOTE: In the proposed changes for MUTCD Part 9—Bicycles, the FHWA has proposed to delete the diamond symbol from the R3–16 and R3–17 "Bicycle Lane" signs since the diamond symbol has become synonymous with high occupancy vehicle lanes. The FHWA also proposes to add a new HOV supplemental plaque (R3–5c) to the text in proposed section 2B.17, "Mandatory Movement Lane Control Signs." This plaque would be used with the R3–5 ground mounted sign on HOV facilities to indicate the appropriate mandatory lane movement.

(b) The FHWA proposes to add the following definitions in Part 1:

High Occupancy Vehicle (HOV)—a motor vehicle carrying at least two or more persons, including carpools, vanpools, and buses. The agencies that

[2] "Older Driver Highway Design Handbook," Report No. FHWA–RD–99–045, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court,Unit Q, Lanham, Maryland 20706.

own and operate HOV lanes have the authority and responsibility to determine the occupancy requirements for vehicles operating in HOV lanes, except that no fewer than 2 occupants per vehicle may be required.

HOV lane—any preferential lane designated for exclusive use by HOVs for all or part of a day—including a designated lane on a freeway, other highway, street, or independent roadway on a separate right-of-way.

Occupancy requirement—any restriction that regulates the use of a facility for any period of the day based on a specified number of persons in a vehicle.

Occupants—the number of people in a car, truck, bus, or other vehicle.

Concurrent flow HOV lane—an HOV lane that is operated in the same direction as the adjacent mixed flow lanes, separated from the adjacent general purpose freeway lanes by a standard lane stripe, painted buffer, or barrier.

Contraflow lane—a lane operating in a direction opposite to the normal flow of traffic designated for peak direction of travel during at least a portion of the day. Contraflow lanes are usually separated from the off-peak direction lanes by plastic pylons, moveable or permanent barrier.

(c) The FHWA proposes to also include provisions for HOV signs and markings to MUTCD Chapter 2E—Guide Signs—Freeways and Expressways and MUTCD Part 3—Markings.

Discussion of Proposed New Part 5—Traffic Control Devices for Low Volume Rural Roads

1. The FHWA proposes adding a new Part 5, "Traffic Control Devices For Low Volume Rural Roads." The current Part 5 (Islands) is proposed to be incorporated into Part 3 as discussed in the notice of proposed amendment dated January 6, 1997, at 62 FR 691. The intent is to have a part of the MUTCD dedicated to those low volume facilities that constitute a high percentage of the total road miles in the United States. The goal of Part 5 is to provide standards and guidance for traffic control devices that are unique to or most applicable to low volume roadways. Part 5 is currently designed to reference other applicable sections of the MUTCD relative to standards and guidance for traffic control devices that are appropriate for low volume roads but are also applicable to higher class facilities. An alternative format could be to eliminate a separate Part 5 and place the small amount of information that is applicable only to low volume rural roads in other appropriate sections of the MUTCD.

2. In Section 5A.1, the FHWA proposes to define low volume roads as those facilities that lie outside the corporate limits of communities and have a traffic volume of less than 200 AADT (average annual daily traffic).

3. In Section 5A.1, the FHWA proposes to provide three categories of low volume rural roads for use throughout Part 5:

Category 1—Unimproved roadways
Category 2—Graded drained earth or gravel roadways
Category 3—Paved roadways

4. The FHWA is proposing to add to Part 5 typical figures for those signs that may have metric message. These include SPEED LIMIT sign (R2–1), NIGHT Speed sign (R2–3), LOCAL TRAFFIC ONLY (R11–3), WEIGHT LIMIT sign (R12–1), Advisory Speed Plaque (W13–1), NEXT XX M (FT) sign (W7–3a), ROAD WORK XX M (FT) sign (W20–1), and Supplemental Plate (W16–1).

5. In Section 5.A.2, the FHWA proposes options for the deployment of traffic control devices on low volume rural roads that vary from what is, typically, appropriate for higher class facilities.

6. In Section 5A.4, paragraph 2, the FHWA proposes, for low volume roads, an option to allow a 0.6 m (2 ft) offset from the edge of a shoulder, or roadway without shoulders, to the near edge of a sign. This varies from the recommended offset of 1.8 m (6 ft) from the edge of the shoulder or 3.6 m (12 ft) from the edge of the traveled way, where no shoulder exists, as published in Section 2A.24 of the 1988 MUTCD; or 1.8 m (6 ft) from the shoulder or traveled way as proposed in Section 2A.19 published in the notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The proposed option would be allowed on low volume roads if roadside features such as terrain, shrubbery, and/or trees prevent lateral placement in accordance with Section 2A.19.

7. In Section 5B.2, the FHWA proposes adding supplemental criteria for use with the warrant criteria in Sections 2B.4 through 2B.8 of the 1988 MUTCD to guide the installation of Stop and Yield signs on low volume rural roads.

8. In Section 5C.11, the FHWA proposes adding a new NO TRAFFIC SIGNS warning sign for optional use on Category 1 roads (unimproved roadways with less than 200 AADT) as proposed by the National Committee on Uniform Traffic Control Devices. The FHWA is aware that some low volume rural roads have no signs and that NO TRAFFIC SIGNS warning signs could alert road users for safety purposes.

9. In Section 5E.2, the FHWA proposes adding additional criteria for considering centerline installation on Category 3 roads (paved roads with less than 200 AADT) that supplement the criteria proposed in Chapter 3B published in the notice of proposed amendment dated January 6, 1997.

Discussion of Proposed Amendments to Part 8—Traffic Control for Highway-Rail Grade Crossings (Update)

The summary of proposed changes for Part 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. Since that time, a number of tragic highway-rail grade crossing crashes have occurred. Following the Fox River Grove, Illinois school bus crash, the United States Department of Transportation (USDOT) decided to build upon its 1994 Highway-Rail Crossing Safety Action Plan by forming an internal USDOT Task Force to review the decisionmaking process for designing, constructing, and operating rail crossings and provide recommendations. The following proposed changes are based on the Highway-Rail Crossing Safety Action Plan, the USDOT Task Force Implementation Report dated June 1, 1997, and the National Transportation Safety Board recommendations. These proposed changes are intended as updates to the previously published notice of proposed amendment (NPA) dated January 6, 1997:

1. Based on the notice of proposed amendments published December 5, 1997 at 62 FR 64324, the title of Part 8 would be changed from "Traffic Control for Roadway-Rail Intersections" to "Traffic Control for Highway-Rail Grade Crossings." This new terminology is incorporated in the language in this notice of proposed amendments.

2. The FHWA proposes to update Section 8A.1, paragraph 5, to include 16 terms specific to highway-rail grade crossing traffic control devices. The definitions for these following terms are included in the proposed text: (1) Minimum Track Clearance Distance; (2) Clear Storage Distance; (3) Preemption; (4) Interconnection; (5) Monitored Interconnected Operation; (6) Minimum Warning Time—Through Train Movements; (7) Right-of-Way Transfer Time; (8) Queue Clearance Time; (9) Separation Time; (10) Maximum Preemption Time; (11) Advance Preemption and Advance Preemption

Time; (12) Simultaneous Preemption; (13) Pre-Signal; (14) Cantilevered Signal Structure; (15) Design Vehicle; and (16) Dynamic Envelope.

3. The FHWA proposes to update Section 8A.2, paragraph 6 to clarify the fact that all highway-rail grade crossings shall comply with the MUTCD as stated in 23 CFR 655.603(b). The FHWA also proposes to also add a new discussion in paragraphs 2 and 3 to allow the option of using the national highway-rail intersection (HRI) architecture as a method for conducting an engineering study to determine the method for linking the highway, vehicles, and traffic management systems with rail operations and wayside equipment.[3]

4. The FHWA proposes to update Section 8A.4, paragraph 5, by changing the following sentence from a recommendation (GUIDANCE) to a mandatory (STANDARD) condition: "If the existing traffic control devices at a multiple-track crossing become improperly placed or inaccurate because of the removal of the tracks, the existing devices shall be relocated and/or modified."

5. The FHWA proposes to update the last paragraph of Section 8A.5 by changing the following sentence from a recommendation (GUIDANCE) to a mandatory (STANDARD) condition: "If a highway-rail grade crossing exists either within or in the vicinity or roadway work activities, then lane restrictions, flagging, or other operations shall not be performed in a manner that would cause vehicles to stop on the railroad tracks with no means to escape."

6. The FHWA proposes to add a new Section 8A.6 to describe the dynamic envelope clearance concept and provide standards and guidance for delineating this clearance required for the train and its cargo overhang.

7. The FHWA proposes to add a new Section 8A.7 to discuss the application of Storage Space Signs (W10–11 and 11a) which are intended to warn road users of locations where vehicle storage space is limited between the railroad tracks and the adjacent highway intersection.

8. The FHWA proposes to add a new Section 8A.8 to define private highway-rail grade crossings and to discuss issues related to these private crossings.

9. The FHWA proposes to update Section 8B.2, paragraph 3. If crossbuck signs are installed back-to-back, any retroreflective material used on the back of one crossbuck blade would be blocked by the second mounted crossbuck sign. Therefore, the FHWA proposes to modify the language in this section accordingly.

10. The FHWA proposes to update Section 8B.2, paragraph 4, to require retroreflective material to be used on supports at all highway-rail grade crossings, not just passive highway-rail grade crossings. This proposed change would improve visibility of the grade crossing supports.

11. The FHWA proposes to update Section 8B.3 by adding a new paragraph 6 under GUIDANCE to read, "Where the distance between the railroad and the parallel highway from edge of track to edge of highway is less than 30 m (100 feet), it is not necessary to install a W10–1 sign if the W10–2, W10–3, or W10–4 signs are used on the parallel highway." The purpose of this proposed change is to reduce the sign clutter on highways where there is less than 30 m (100 feet) between the highway-rail grade crossing and a highway intersection.

12. The FHWA proposes to update Section 8B.7, paragraph 1, by adding a new phrase to the end of this paragraph that would read, "* * * in accordance with Chapter 2C." The FHWA believes that this addition would help ensure that STOP AHEAD (W3–1a) or YIELD AHEAD (W3–2a) advance warning signs are used.

13. The FHWA proposes to add a new Section 8B.9 to discuss the application and placement of highway-rail crossing identification signs and 1–800 numbers to provide a means for emergency notification. The former Section 8B.9 published in the January 6, 1997, notice would become Section 8B.14, "Pavement Markings."

14. The FHWA proposes to add a new Section 8B.10 to provide a sign for use on class 5 or higher railroad tracks where trains may exceed 130 km (80 mph). The former Section 8B.10 published in the January 6, 1997, notice would become Section 8B.15, "Stop Lines."

15. The FHWA proposes to add a new Section 8B.11 to provide a sign for use at highway-rail grade crossings which have the Federal Railroad Administration's authorization for trains not to sound horns. The former Section 8B.11 published in the January 6, 1997, notice would become Section 8B.16, "Low Ground Clearance Crossings."

16. The FHWA proposes to add a new Section 8B.12 to provide a sign to warn road users that a particular highway-rail grade crossing is not equipped with automated signals.

17. The FHWA proposes to add a new Section 8B.13 to provide a sign for use at highway-rail grade crossings without active warning devices. This regulatory sign would direct road users to look for approaching trains.

18. The FHWA proposes to update Section 8C.1, paragraph 2 to indicate that luminares shall be located so that they do not impose unnecessary glare on approaching road users.

19. The FHWA proposes to update Section 8D.2 to move paragraph 10 from a recommendation (GUIDANCE) to a mandatory (STANDARD) condition. The paragraph will read: "Flashing-light signals shall be placed to the right of approaching highway traffic on all highway approaches to a crossing. They shall be located laterally with respect to the highway in conformance with Figure 8–5. This shall not apply where such location would adversely affect signal visibility." The FHWA proposes this change because we believe flashing-light signals shall always be placed on the right side of the road where people expect to receive roadway information.

20. The FHWA proposes to revise Section 8D.2 to delete the last sentence of paragraph 6. The reason for this proposed change is to avoid limiting the type of technology used to charge the batteries for highway-rail grade crossing warning systems.

21. In Section 8D.4, the FHWA proposes to include a discussion to require that the approach lane gate arms be designed to fail safe in the down position. This is consistent with the discussion already covered in Section 8D.5 for exit lane gate arms.

22. The FHWA proposes to add a new Section 8D.5 to provide standards and guidance for Four Quadrant Gate Systems. Four Quadrant Gate Systems consists of a series of automatic gates used as an adjunct to flashing lights to control traffic on all lanes at the highway-rail grade crossing.

23. The FHWA proposes to update Section 8D. 6 of the previously published January 6, 1997, notice (see section 8D.7 in this proposed update for Part 8.) The FHWA proposes to change paragraph 2 to indicate that traffic control signals shall not be used on roadways at highway-rail grade crossings in lieu of gates and/or flashing lights where train speeds are greater than 32 km/h (20 mph). The FHWA also proposes to add the following 2 new paragraphs: (1) At the end of the GUIDANCE for this section the FHWA proposes to recommend that a NO TURN ON RED sign should be used where a pre-signal is installed at an interconnected highway-rail grade crossing near a signalized intersection with a storage problem; and (2) The FHWA proposes a new OPTION which would allow the highway traffic signals

[3] Available from Federal Railroad Administration, 4007th Street, SW., Washington, DC 20590.

to be mounted on the same cantilevered device as the railroad flashing lights in situations where the highway-rail grade crossing and the highway intersection are in close proximity and when determined feasible by an engineering study.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Authority: 23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48.

Issued on: December 13, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–32907 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL–6513–1]

Elimination of Special Treatment for Category of Confidential Business Information: Extension of the Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 25, 1999, the Environmental Protection Agency (EPA) published a notice in the **Federal Register** (64 FR 57421) proposing to amend its regulations to eliminate the special treatment given to a category of confidential business information (CBI). This category of information includes comments received from businesses to substantiate their claims of confidentiality for previously submitted information (a "substantiation"). Under EPA's current regulations (40 CFR 2.205 (c)), if a substantiation is properly marked as confidential when received by EPA (in accordance with 40 CFR 2.203(b)) and not otherwise possessed by EPA, the substantiation "will be regarded as entitled to confidential treatment and will not be disclosed by EPA without the [submitter's] consent, unless its disclosure is duly ordered by a Federal court, notwithstanding other provisions of this subpart to the contrary." EPA proposes to amend its regulations to remove this provision, so that substantiations will be treated in exactly the same way as other information requested under FOIA and claimed as confidential. EPA believes that the special treatment of substantiations under 40 CFR 2.205 (c) is not necessary to encourage businesses to submit sufficient information to support their confidentiality claims and that its CBI determination procedures (40 CFR part 2, subpart B) provide adequate safeguards to prevent the improper release of additional CBI contained in a submitter's substantiation. In addition, the removal of this provision will bring EPA into conformity with other Federal agencies which do not provide special treatment for substantiations.

As detailed in 64 FR 57421, EPA originally sought comments on the proposed rule by December 27, 1999. In response to requests from interested parties for additional time to analyze and comment on the proposed rule, EPA hereby extends the comment period for 30 days to January 26, 2000.

DATES: Comments on the proposed rule must be submitted by January 26, 2000.

ADDRESSES: Written comments on this proposed rule should be addressed to Rebecca Moser, Environmental Protection Agency, Office of Environmental Information (Mail Code 2822), 401 M Street, SW, Washington, DC 20460. Documents related to this proposed rule will be available for public inspection and viewing by appointment.

FOR FURTHER INFORMATION CONTACT: Rebecca Moser, (202) 260–6780.

Dated: December 13, 1999.

Margaret N. Schneider,

Acting Assistant Administrator, Office of Environmental Information.

[FR Doc. 99–33029 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6513–5]

RIN 2040–AA94

National Primary Drinking Water Regulations; Radon-222

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed radon in drinking water rule; notice of extension of public comment period.

SUMMARY: Today, the Environmental Protection Agency (EPA) is providing notice to extend the public comment period for the proposed rule that would provide a multimedia approach to reducing radon risks in indoor air (where the problem is greatest), while protecting public health from the highest levels of radon in drinking water (40 CFR Parts 141 and 142). The proposed rule for radon in drinking water was published in the **Federal Register** on November 2, 1999 (64 FR 59246).

DATES: EPA must receive public comments, in writing, on the proposed regulations by February 4, 2000. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) February 4, 2000.

ADDRESSES: You may send written comments to the Radon-222, W–99–08 Comments Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP6.1, or WP8 file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–99–08. Comments and data will also be accepted on disks in WP6.1, WP8, or ASCII format. Electronic comments on this action may be filed online at many Federal Depository libraries.

Please submit a copy of any references cited in your comments. Facsimiles (faxes) cannot be accepted. EPA would appreciate one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the address listed previously. The Docket also has several of the key supporting documents electronically available as PDF files. For information on how to access Docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For general information on radon in drinking water, contact the Safe Drinking Water Hotline, phone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries regarding the proposed regulations, contact Sylvia Malm, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency (mailcode 4607), 401 M Street, SW, Washington DC, 20460. Phone: (202) 260–0417. E-mail: *malm.sylvia@epa.gov*. For inquiries regarding the proposed multimedia mitigation program, contact Anita Schmidt, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, (mailcode 6609J), 401 M Street, SW, Washington, DC, 20460. Phone: (202) 564-9452. E-mail: *schmidt.anita@epa.gov*. For general information on radon in indoor air, contact the Radon Hotline at 1–800–SOS–RADON (1–800–767–7236).

SUPPLEMENTARY INFORMATION: On November 2, 1999, EPA published the proposed regulation for radon in drinking water, 40 CFR Parts 141 and 142 (64 FR 59246). The November 2 notice provided a deadline of 60 days from the date of publication for receipt of public comments. Since the publication date, EPA has received requests to extend the comment period to allow sufficient time for all parties potentially impacted by this proposal to consider and provide comprehensive comments. In response to these requests, EPA has decided to extend the public comment period by an additional 30 days to February 4, 2000.

The Agency is proposing a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Regulations (NPDWR) for radon-222 in public water supplies. Under the framework set forth in the 1996 amendments to the SDWA, EPA is also proposing an alternative maximum contaminant level (AMCL) and requirements for multimedia mitigation (MMM) programs to address radon in indoor air. Public water systems (PWS) are defined in the Safe Drinking Water Act (SDWA). This proposed rule applies to community water systems (CWS), a subset of PWSs. Under the proposed rule, CWSs may comply with the AMCL if they are in States that develop an EPA-approved MMM program or, in the absence of a State program, develop a State-approved CWS MMM program. This approach is intended to encourage States, Tribes, and CWSs to reduce the health risk of radon in the most cost-effective way. The Agency is also proposing a maximum contaminant level (MCL) for radon-222, to apply to CWSs in non-MMM States that choose not to implement a CWS MMM program. The proposal also includes monitoring, reporting, public notification, and consumer confidence report requirements for radon-222 in drinking water.

Dated: December 15, 1999.

Dana D. Mineiva,

Acting Assistant Administrator.

[FR Doc. 99–33031 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP–190001B; FRL–6396–7]

RIN 2070–AB95

Standards for Pesticide Containers and Containment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 21, 1999 (64 FR 56918), EPA reopened the comment period on the proposed rule "Standards for Pesticide Containers and Containment"(59 FR 6712, February 11, 1994) to obtain comment on four specific issues. EPA is extending the comment period by 60 days until February 19, 2000. The comment period was initially scheduled to close on December 20, 1999. The October 21, 1999 notice solicited comments on potential changes that would reduce the scope of the container standards, add an exemption for certain antimicrobial pesticides, and adopt some of the Department of Transportation (DOT) hazardous materials regulations. That notice also requested comments on the definition for small business used to identify small pesticide formulators, agrichemical dealers and commercial pesticide applicators in the small entity impact analysis. These potential changes, if adopted in the final rule, would support EPA's goal of pollution prevention by promoting the use of refillable containers and would harmonize and promote consistency within the Federal packaging standards by adopting the DOT standards. In addition, the changes would decrease the estimated economic impact by reducing the number of pesticide products subject to the container requirements compared to the original proposal.

DATES: Comments, identified by the docket control number OPP–190001B, must be received on or before February 19, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–190001B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Nancy Fitz, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7385; fax number: (703) 308–3259; e-mail address: fitz.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide formulator, agrichemical dealer, or an independent commercial applicator. However, the issues addressed in this action apply mainly to pesticide formulators. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	SIC	Examples of Potentially Affected Entities
Pesticide formulators	32532	2879	Establishments that formulate and prepare insecticides, fungicides, herbicides, or other pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments. Some formulating establishments are owned by the large basic pesticide producers and others are independent.
Agrichemical dealers	44422	5191	Retail dealers that distribute or sell pesticides to agricultural users.
Independent commercial applicators	115112	0721	Businesses that apply pesticides for compensation (by aerial and/or ground application) and that are not affiliated with agrichemical dealers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in Unit VII of the proposed rule published in the **Federal Register** of October 21, 1999 (64 FR 56918) and in §§ 165.100, 165.120, 165.122, 165.140, 165.141, and 165.142 of the original proposed rule (59 FR 6712, February 11, 1994). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The EPA has established an official record for this action under docket control number OPP–190001B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. A public version of this record, including printed, paper versions of any electronic comments submitted during the comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

C. How and to Whom do I Submit Comments?

As described in Unit I. of the proposed rule published in the **Federal Register** of October 21, 1999 (64 FR 56918) (FRL–5776–3), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the proposed rule. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPP–190001B in the subject line on the first page of your response.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we discuss in this document, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you use.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrive at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is EPA Taking?

EPA is extending the comment period for 60 days in response to a request for an extension. On October 21, 1999 (64 FR 56918) (FRL–5776–3), EPA reopened the comment period on the rule "Standards for Pesticide Containers and Containment" to obtain comment on four specific issues. The October 21, 1999 **Federal Register** notice solicited comments on four aspects of the original 1994 proposed rule that proposed container design and residue removal requirements for refillable and nonrefillable pesticide containers and standards for pesticide containment structures. (59 FR 6712, February 11, 1994) (FRL–4168–9). Because of the lengthy time period between the original proposal in 1994 and the recent notice to reopen the comment period, EPA believes that granting the extension is warranted.

B. What is the Agency's Authority for Taking this Action?

EPA proposed the standards for pesticide containers and containment based on the authority in section 19 of the Federal Insecticide, Fungicide, and Rodenticide Act.

III. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA on a proposed rule that previously published in the **Federal Register** of October 21, 1999 (64 FR 56918). For information about the applicability of the regulatory assessment requirements to that proposed rule, which published in the **Federal Register**, please refer to the discussion in Unit X of that document.

List of Subjects in 40 CFR Part 165

Environmental protection, Antimicrobial pesticides, Packaging and containers, Pesticides and pests.

Dated: December 10, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–33034 Filed 12–20–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0, 80, and 90

[WT Docket No. 99–332; FCC 99–348]

Making the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to designate marine VHF Channel 05A for

port operations communications in Los Angeles and Long Beach, California ports. The effect of this rule is that it will foster reliable marine communications and increase safe vessel transit in the ports. The action will allow the LA/LB Pilots to manage vessel traffic in that area more efficiently and protect the marine environment by preventing collisions and groundings.

DATES: Comments must be submitted on or before January 18, 2000 and reply comments are due on or before February 1, 2000.

FOR FURTHER INFORMATION CONTACT: James Shaffer of the Commission's Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Notice of Proposed Rule Making* FCC 99–348, adopted on November 15, 1999, and released on November 19, 1999. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY A257, 445 12th Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

2. By letter the Los Angeles and Long Beach Port Pilots (jointly, LA/LB Pilots) request the assignment of an intership marine VHF channel dedicated to port operations (namely, pilot-tug communications) in the Ports of Los Angeles and Long Beach, California. They note that marine VHF Channels 01A (156.050 MHz), 05A (156.250 MHz), and 63A (156.175 MHz) are currently used for U.S. Coast Guard (Coast Guard) designated Vessel Traffic Service (VTS) systems in defined areas of the United States. The LA/LB Pilots recommend that one of these frequencies be designated for intership communications regarding port operations to improve vessel traffic safety in the Los Angeles and Long Beach port area. In this *Notice of Proposed Rule Making*, we propose to amend part 80 of the Commission's rules to designate marine VHF Channel 05A for port operations communications in Los Angeles and Long Beach, California ports. We believe that this action will foster reliable marine communications and increase safe vessel transit in the ports.

3. The LA/LB Pilots state that the ports of Los Angeles and Long Beach are among the busiest in the world, with considerable vessel congestion. In this type of environment, harbor pilots rely upon clear and effective radio communications with tugs to help ensure the safe ingress and egress of large vessels. The LA/LB Pilots note that there is only one frequency, marine VHF Channel 77 (156.875 MHz), dedicated to intership communications related to port operations. The Commission's rules provide that Channel 77 "is limited to communications with pilots regarding the movement and docking of ships," and that "[n]ormal output power must not exceed 1 watt." The LA/LB Pilots state that marine VHF Channel 77 is frequently congested. They further contend that while output power is limited to one watt, communications often carry over from one port to the other and there is interference when more than one ship is maneuvering in or out of port.

4. The LA/LB Pilots note that marine VHF Channels 01A (156.050 MHz), 05A (156.250 MHz), and 63A (156.175 MHz) are used for communications related to port operations in certain Coast Guard-designated VTS areas. Specifically, the frequencies 156.050 MHz and 156.175 MHz are currently allocated in the United States to the Public Safety Pool in the private land mobile radio services; however, they were made available to maritime radio users for commercial and port operation purposes in a portion of the Coast Guard-designated New Orleans VTS system. The frequency 156.250 MHz, which is currently allocated to maritime mobile radio, was made available for port operations purposes within the Coast Guard-designated Houston and New Orleans VTS systems, and Seattle VTS system. The LA/LB Pilots state that their monitoring of these channels detected no users in the area of the Ports of Los Angeles and Long Beach.

5. In addition, the Los Angeles/Long Beach Harbor Safety Committee (LA/LB Safety Committee) note that the Coast Guard and Marine Exchange of Los Angeles-Long Beach Harbor, Inc., acting for the State of California, currently have a Memorandum of Agreement in which the Coast Guard agrees to provide personnel support for the operation of an interim Vessel Traffic Information Service (VTIS). The VTIS system is an advisory communications service to coordinate vessel movement and prevent damage to or loss of vessels, bridges or other structures, and to protect these waters and associated natural resources from environmental harm resulting from such damage or loss. Vessels report, by voice, information related to position, navigation and conditions affecting navigation to the Coast Guard, which tracks the vessels' movements. The LA/LB Safety Committee also recommend the use of either marine VHF Channels 01A, 05A, or 63A for intership communications related to port operations in the Los Angeles and Long Beach ports.

6. The LA/LB Pilots also note that authorities responsible for port safety, including the Coast Guard, the California Office of Oil Spill Response and Prevention, and the LA/LB Harbor Safety Committee, fully support the request. The Southern California Marine Radio Council (SCMRC), which is the FCC-designated marine VHF frequency coordinating committee for this region, also supports this request.

7. As an initial step to provide some relief for frequency congestion in communications related to port operations in the Los Angeles and Long Beach port areas the feasibility of using frequency 156.250 MHz for intership communications was investigated in conjunction with the Coast Guard and industry. This frequency had not been previously assigned, other than in Coast Guard-designated Houston, New Orleans, and Seattle VTS systems because of its band edge location and the resultant potential harmful interference with land mobile radio assignments on the adjacent public safety frequency 156.240 MHz. However, after reviewing assignments in the Los Angeles and Long Beach area it appears that 156.250 MHz could be utilized without harmful interference to existing radio operations as it is not assigned for public safety purposes. Therefore, we believe it is in the public interest to provide in the Rules for the use of frequency 156.250 MHz (marine VHF Channel 05A) in the Los Angeles and Long Beach port areas to alleviate the communications congestion related to port operations. Thus, we propose to amend § 80.373 of the Commission's rules to so provide. Further, we propose to make assignments on Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude, secondary to marine port operations on 156.250 MHz. We propose to amend § 90.20 of the Commission's rules to indicate the aforementioned secondary status. We seek comment on these proposals.

8. Accordingly, effective upon the adoption date of this *Notice of Proposed Rule Making*, no applications for public safety pool frequencies of 156.240 and

156.2475 MHz within 100 miles of the geographic center of Los Angeles will be accepted for filing during the pendency of the *Notice of Proposed Rule Making*. Any applications received on or after this date will be returned as unacceptable for filing.

9. We note that currently there are no private coast stations authorized to operate on marine VHF Channel 05A within the Los Angeles and Long Beach area. We propose not to authorize future private coast stations on this channel if we ultimately designate marine VHF Channel 05A for port operations. The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., which operates the VTIS for the ports of Los Angeles and Long Beach, describes its area of responsibility as within a 25-nautical mile radius of Point Fermin. We propose to designate this area as the radio protection area for port operations on 156.250 MHz. We do not believe that such an approach would adversely affect private coast operations. In this connection, Wireless Telecommunications Bureau staff would assist future applicants in finding suitable alternative channels to Channel 05A. We seek comment on this proposal.

10. Finally, we propose to amend § 0.331 of the Commission's rules to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to indicate that the use of marine VHF frequencies in defined port areas are available for intership communications related to port operations to alleviate the communications congestion related to port operations. We believe that this approach will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm. We seek comment on this proposal.

11. We conclude that permitting frequency 156.250 MHz (marine VHF Channel 05A) for intership communications related to port operations in the Los Angeles and Long Beach, California ports will allow the LA/LB Pilots to manage vessel traffic in that area more efficiently and protect the marine environment by preventing vessel collisions and groundings. We are proposing, therefore, to amend § 80.373(f) of the Commission's rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available only for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The radio protection area will be defined as "within a 25-nautical mile radius of Point Fermin, California." Additionally, we are proposing to amend § 90.20(c) of the Commission's rules to indicate that assignments on public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles are secondary to marine port operations on 156.250 MHz.

Procedural Matters

12. *Ex Parte Presentations.* This *Notice of Proposed Rule Making* is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission Rules.

13. *Pleading Dates.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 18, 2000, and reply comments on or before February 1, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

14. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

15. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–B204, Washington, DC 20554.

16. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, SW, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Initial Regulatory Flexibility Act Analyses

17. As required by the Regulatory Flexibility Act,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible impact on small entities of the proposals suggested in the *Notice of Proposed Rule Making*. *See* Appendix A. Written public comments are requested on the Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

18. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

19. NOTICE IS HEREBY GIVEN and COMMENT IS SOUGHT on the proposed regulatory changes described

[1] *See* 5 U.S.C. 603.

in the *Notice of Proposed Rule Making*, as set forth in Proposed rules.

20. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

21. IT IS FURTHER ORDERED that effective upon the release date of this *Notice of Proposed Rule Making*, no applications will be accepted for filing for the public safety frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude. This freeze will continue until the Commission makes an announcement that such applications acceptance will resume.

Initial Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act,[2] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports*, provided in paragraph 11 of the item. The Commission will send a copy of the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

[2] 5 U.S.C. 603.

I. Need for and Objectives of the Proposed Rule

The purpose of this *Notice* is to determine whether it is in the public interest, convenience, and necessity to amend our rules to allow frequency 156.250 MHz (marine VHF Channel 05A) to be used for communications related to port operations in the Los Angeles and Long Beach harbor areas. These proposed actions should protect the marine environment and increase the safety and efficiency of navigation and movement of ship by allowing the LA/LB Pilots to manage vessel traffic in that area more efficiently.

II. Legal Basis:

Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

III. Description and Estimate of the Number of Small Entities to Which Rule Will Apply

The proposed amendments will affect small businesses in the marine radio services that use a marine VHF radio. Neither the Commission nor the SBA has developed a definition of small entities applicable to marine radio services that use a marine VHF radio. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were companies that used a marine VHF radio, nearly all such companies were small businesses under the SBA's definition. We invite comment on whether this is the correct definition to use in this context.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no reporting, recordkeeping and other compliance requirements proposed.

V. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

The proposed rules would make frequency 156.250 MHz (marine VHF Channel 05A) available for intership communications related to port operations in the Los Angeles and Long Beach harbor areas. We believe that this flexible approach allows the LA/LB Pilots to manage vessel traffic in the Los Angeles and Long Beach harbor areas more efficiently and protect the marine environment by preventing vessel collisions and groundings. Currently under the rules frequency 156.250 MHz is currently allocated to maritime mobile and was made available for port operations purposes within the Coast Guard designated Houston and New Orleans, and Seattle Vessel Traffic Service (VTS) systems. We seek comments on whether the proposed amendment are sufficient to alleviate the communications congestion related to port operations in the Los Angeles and Long Beach harbor areas. This decision benefits small entities and seeks to ensure reliable marine communications, increase safe vessel transit to protect U.S. waters and associated natural resources from environmental harm, and increase port efficiency thereby promoting growth within the shipping community.

VI. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

List of Subjects

47 CFR Part 0

Administrative practice and procedure.

47 CFR Part 80

Communications equipment, marine safety.

47 CFR Part 90

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rules

Title 47 of the Code of Federal Regulations, parts 0, 80 and 90, are proposed to be amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by adding new paragraph (d)(3) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) * * *

(3) Designate by footnote to frequency table in § 80.373(f) of this chapter marine VHF frequencies are available

for intership port operations communications in defined port areas.

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307 (e), 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 (e), 309 and 322 unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. In § 80.373 (f), footnote 2 to the table is amended as follows:

§ 80.373 Private communications frequencies.

* * * * *

[2] 156.250 MHz is available for port operations communications use only within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383. 156.250 MHz is available for intership port operations communications used only within the area of Los Angeles and Long Beach harbors, within a 25-nautical mile radius of Point Fermin, California.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

5. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 322 unless otherwise noted.

6. Section 90.20 is amended by revising the table in paragraph (c) (3) and by adding paragraph (d)(79) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
*	*	*	*
156.240	do	43, 79	PH
156.2475	do	43, 44, 79	PH
*	*	*	*

* * * * *

(d) * * *

(79) This frequency will be secondary to marine port operations within 100 miles of Los Angeles (coordinates 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude).

* * * * *

[FR Doc. 99–32840 Filed 12–20–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 99–379]

Local Multipoint Distribution Service

AGENCY: Federal Communications Commission

ACTION: Notice of proposed rule making.

SUMMARY: The Commission's rules for the Local Multipoint Distribution Service (LMDS) prohibit an incumbent local exchange carrier (LEC) or incumbent cable company, or any entity with an attributable interest in these incumbents, from having an attributable interest in an A-block LMDS license whose geographic service area significantly overlaps the incumbent's service area. This LMDS eligibility rule will sunset on June 30, 2000, unless the Commission extends it. This document seeks comment on whether to allow the restriction to sunset, or to extend the restriction.

DATES: Submit comments on or before January 21, 2000; submit reply comments on or before February 11, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th St SW, Washington, DC 20554. See Supplementary Information for information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Stacy Jordan or John Spencer, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Notice of Proposed Rule Making (Sixth NPRM) in CC Docket No. 92–297 (including the associated Initial Regulatory Flexibility Analysis), FCC 99–379, adopted December 1, 1999, and released December 13, 1999. The complete text of the Sixth NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street SW, Washington, DC. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the Sixth NPRM

1. The LMDS allocation consists of two primary blocks of spectrum: an A block consisting of 850 MHz at 27.5 GHz, 150 MHz at 29 GHz, and 150 MHz at 31 GHz; and a B block consisting of 150 MHz at 31 GHz. The LMDS allocation is unusual in both the size of the allocation and the extent to which the spectrum is unencumbered.

2. When the Commission adopted final LMDS rules in 1997, it assumed that the LMDS spectrum allocation provided a rare opportunity for facilities-based providers of local exchange services, multi-channel video programming distribution (MVPD) services, broadband data services, or all of the above. In order to foster competition, the Commission imposed in 47 CFR 101.1003 a short-term ownership eligibility rule prohibiting incumbent local exchange carriers (LECs) or cable companies from having an attributable interest in an LMDS A-block license that overlaps with ten percent or more of the population in their service areas. This decision was based on four considerations: the most likely uses for LMDS; the then-current market structure for local exchange services and MVPD services, and whether the incumbent operators in these markets would have the incentive to attempt to forestall competition in their respective markets; whether an eligibility restriction would be the best means to promote competition; and whether efficiencies would be lost if the LMDS spectrum were operated by

providers other than the incumbent cable operators and local exchange carriers.

3. The first LMDS products are just now becoming available in the United States, and LMDS remains a nascent market whose evolution is uncertain. Our research suggests that in the near term, LMDS may be used primarily to provide high-speed data and Internet services to small and medium-sized businesses rather than to provide services, especially MVPD services, to single-family residences. Possible other services include: video conferencing, tele-medicine, distance learning, closed-circuit applications, and backhaul or backbone applications. An industry segment aiming to provide service akin to typical landline service (including lifeline telephone service with directory assistance) has yet to emerge. CLEC holders of LMDS licenses plan to bundle local exchange services with high-speed data and Internet access services.

4. A number of factors may affect the development and deployment of these markets and the types of services offered using the LMDS spectrum. The characteristics of LMDS spectrum and equipment help determine the uses to which it will be put. Due to propagation limitations, LMDS will likely be used not as a stand-alone network, but as a "roof-top" means to complement or extend other existing networks. Compared to fiber, LMDS's lower cost and shorter deployment time make it an effective means of reaching the last mile. At the end of that last mile are likely to be small and medium-sized businesses in urban and suburban areas, as the propagation characteristics of LMDS favor taller buildings.

5. While multiple dwelling units may be served by LMDS in three to five years, there is a significant question whether the cost of the customer premises equipment (CPE) will forestall a business case for single-family homes for many years. Estimates for the cost of the CPE range from $5,000 to $7,000. The radio frequency hazard potential of a microwave service like LMDS may always require professional installation, precluding cost-saving consumer installation. The subscribers would also have to generate enough revenue to establish a hub from which their remote would receive a signal. The costs to establish a hub range from $300,000 to $400,000, which could become prohibitive given that the range for LMDS is limited to one-to-three miles.

6. Service affordability is another issue for the residential market. A residential market demand for broadband services at prices profitable to LMDS licensees may not exist if consumers are unwilling to pay substantially higher prices for the advantages of broadband. Early cable broadband services have experienced low penetration rates, which may indicate a reluctance of residential consumers to pay a high subscriber fee for high-speed Internet access. However, these early figures may underestimate the actual residential market for high-speed data and Internet access.

7. Deployment of LMDS systems could be delayed or hampered by lack of building access. LMDS licensees are encountering difficulties negotiating roof right-of-way agreements and overcoming inside-wiring issues. Another possible source of delay is the lack of equipment for the 150 MHz LMDS B block and the upper 300 MHz of the LMDS A block. The A-and B-block allocations are unique to the U.S. The lack of international frequency harmonization and the potential interference between the A and B blocks have been blamed for increased equipment development time and costs. Once production commences, the shorter production runs on specialized equipment may frustrate the attainment of scale economies.

8. Finally, several competing technologies are capable of delivering broadband services. Most residential and small business consumers access the Internet via the ILEC and relatively slow modems. The residential market is beginning to see high-speed services via coaxial cable, ILEC xDSL, and satellite. The rules for LMDS, MMDS, 24 GHz, and 39 GHz allow point-to-point and point-to-multipoint services, and these licensees appear to be targeting the same populations, small and medium-sized businesses. These frequencies, however, vary somewhat in their propagation characteristics, distance limitations, and spectrum allocations.

9. The Sixth NPRM seeks comment broadly on the question whether the LMDS restriction should be allowed to sunset on June 30, 2000, or should be extended. The rule provides that the restriction will terminate unless we "extend its applicability based on a determination that incumbent LECs or incumbent cable companies continue to have substantial market power in the provision of local telephony or cable television services." Consistent with our findings that incumbent LECs and cable television providers continue to hold dominant positions in the local telephony and MVPD services markets, this standard would suggest that we extend the applicability of the eligibility restriction. We have significant questions, however, about whether this standard remains the appropriate one for evaluating whether we should extend the restriction, or whether a different standard is more appropriate.

10. We therefore seek comment generally on the standard that we should apply in making this decision, as well as on alternative standards. For example, our analysis in the *LMDS Report and Order*[1] suggests that the true harm to competition may lie not in the incumbent local exchange carriers' or cable companies' power in their respective markets, but in the incumbents' incentive and ability to foreclose LMDS as a source of competition in their own or related markets. Thus, we could extend the sunset of the eligibility rule upon a finding that the incumbent local exchange carriers and cable companies possess the incentive and ability to purchase the LMDS block to prevent entry of a competitor. Alternatively, we seek comment on whether we should use the test adopted in the *39 GHz Report and Order*.[2] There, we "inquired whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm." We seek comment on whether we should require that this test be met before extending the LMDS eligibility restriction. Finally, we seek comment on the sufficiency of case-by-case review of license transfers and assignments to safeguard against anti-competitive acquisition of LMDS licenses if the eligibility rule is allowed to sunset.

11. We seek comment on the likely course of LMDS market development, particularly LMDS licensees' and equipment manufacturers' current expectations for LMDS and the markets most likely to be targeted by the licensees. More specifically, we seek comment on the characteristics, technical and otherwise, of the services most likely to be provided over LMDS. We seek comment on whether LMDS will be used to provide typical landline service in some geographic areas and to what consumer groups. We seek comment on whether LMDS licensees expect to use LMDS to deliver MVPD services to single-dwelling residential customers and/or multi-dwelling residential customers in any geographic areas. Further, we seek comment on the characteristics of the consumers to which these services will be directed. Finally, we seek comment on what broadband applications, if any, are

[1] 62 FR 23148, Apr. 29, 1997.
[2] 63 FR 3075, Jan. 21, 1998.

likely to be provided by LMDS licensees, and the characteristics of the consumers that will be targeted.

12. We also plan to evaluate whether we should extend the eligibility restriction to avert the possibility of incumbent LECs and cable companies acquiring LMDS to forestall new facilities-based competition for broadband services. The net benefits of extending the eligibility restriction will depend on a number of factors, including whether the LMDS A block can serve as a facilities-based medium for broadband services, and whether this spectrum is unique in both its size and extent to which it is unencumbered. We seek comment on whether the net benefits of extending the eligibility restriction may be greater than the net benefits of permitting the incumbents to acquire the LMDS A block.

13. We seek comment on the extent and robustness of residential consumer demand for broadband services. We invite comment on the extent the cost and line-of-sight limitations of LMDS might hamper the ability of LMDS to provide effective competition to either the ILECs' or the cable operators' broadband means of access into the home or very small businesses. We seek comment on whether technological advances and increasing deployment will improve equipment range and lower equipment costs. We also seek comment on the extent to which affordability enhancing innovations like equipment leasing may emerge as an alternative to outright equipment purchase, particularly for CPE.

14. We seek comment on whether the capability of LMDS to provide high-speed data and Internet telecommunications would give incumbents a strategic incentive to acquire LMDS spectrum to forestall the use of LMDS as a means of access for another facilities-based provider of broadband services, and whether we should retain the LMDS eligibility restriction for at least some period in order to prevent such a result. With respect to cable, if the cable industry primarily serves residential areas and likely LMDS service will be to small- and medium-sized businesses, we seek comment on whether we should restrict incumbent cable companies' use of the LMDS spectrum to serve business needs for high-speed data and Internet access.

15. We invite comment about the extent to which LMDS, MMDS, 24 GHz, 39 GHz, and other media that might offer consumers broadband access are substitutable. We seek comment on the degree to which LMDS, MMDS, 24 GHz, 39 GHz, and other frequencies could be used to offer consumers similar services at similar prices; whether the size of the LMDS allocation and its lack of encumbrances provide advantages to the license holder over alternative frequencies; and whether the limitations and the cost of LMDS will hamper the ability of LMDS to provide effective competition for services provided by either the incumbent LECs or cable operators. We seek comment on the limitations (capacity, rain fade, and line of sight) of these other wireless services relative to LMDS. We seek comment on the extent to which the time-to-market leads of the 24 MHz and 39 MHz licensees yield competitive advantages in high-speed data and Internet access that could handicap LMDS licensees. Given the similarities between LMDS and 24 GHz and 39 GHz spectrum, we seek comment on the implications of the lack of eligibility restrictions at the latter two frequencies.

16. We seek comment on whether the broadband offerings by ILECs and incumbent cable operators justifies extending the restriction to either ILECs or incumbent cable companies, or both. We seek comment on the likelihood that LMDS, if used for broadband, will provide effective competition against incumbent LECs' and cable operators' broadband offerings. Specifically, we invite comments on the incumbent LECs' and cable operators' most likely footprints for broadband services. Cable operators' current coverage areas do not lend themselves to providing broadband access to businesses. We invite comment on the present reach of cable networks and the ease with which these networks could be extended to reach business subscribers. In addition, we seek comment on whether the ILECs are likely to provide xDSL services to a large segment of residential or business customers. We seek comment on whether the equipment cost and deployment cost of LMDS relative to ILECs' T–1 leased lines or xDSL will disadvantage LMDS in the market. To the extent LMDS and a T–1 line are substitutes, the falling prices for T–1 leased lines may diminish the profitability of LMDS service.

17. We seek comment on the significance of uncertainty in the market for the eligibility restriction. There are uncertainties regarding how LMDS equipment will continue to evolve; how fast LMDS equipment costs will fall; how much difficulty licensees will encounter negotiating roof right-of-way agreements, interconnection agreements, and other necessary negotiations to provide services; and how the domestic LMDS market will develop. These uncertainties may have led firms to hold off investments until there is less uncertainty in the market, and may warrant delaying the sunset of the eligibility restriction. We seek comment on these concerns and on whether the Commission should extend the eligibility restriction to allow the market more time to reveal how LMDS and competing media will be marketed and deployed.

18. Finally, we note that uncertainty in the market impacts bond and stock market activity. The uncertainty surrounding LMDS may spill over into the capital markets and impede the efforts of LMDS licensees to raise debt and equity capital. We seek comment on the effect of extending, or not extending, the eligibility restriction on LMDS licensees' access to capital. While extending the eligibility restriction might encourage investment, lifting the restriction could have a similar effect: that is, large investors currently prohibited from doing so might acquire significant stakes in LMDS licensees, stimulating investment therein. We seek comment on both scenarios. We also seek comment on the concerns of small entities on the various issues discussed above.

Summary of Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA),[3] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules suggested in this Sixth NPRM. Written public comments are requested on the IRFA. Comments should be identified as responses to the IRFA, and must be filed by the deadlines for comments on the Sixth NPRM provided above. The Commission will send a copy of the Sixth NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

20. *Need for and Objectives of the Proposed Rule:* In this Sixth NPRM, the Commission seeks comment on whether to allow the eligibility restriction for the Local Multipoint Distribution Service (LMDS) set out in 47 CFR 101.1003(a) to sunset as scheduled, or to extend the restriction. As discussed in detail above, various policy reasons might dictate action for or against the sunset.

21. *Legal Basis:* See Authority section, below.

22. *Description and Estimate of the Number of Small Entities to Which the*

[3] U.S.C. 603. The RFA, 5 U.S.C. 601 et seq., has been amended by the Contract with America Advancement Act, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Actions Taken May Apply: The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the action taken. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one that: (1) Is independently owned and operated; (2) Is not dominant in its field of operation; and (3) Satisfies any additional criteria established by the Small Business Administration (SBA).[6] Below, we further describe and estimate the number of small business concerns that may be affected by the actions taken in this Sixth NPRM.

23. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[7] We first discuss the number of small telecommunications entities falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules, and that may be affected by this Sixth NPRM.

24. *Total Number of Telecommunications Entities Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[8] This number contains a variety of different categories of entities, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the actions taken in this Second Report and Order.

25. The most reliable source of current information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[9] According to data in the most recent report, there are 3,604 interstate carriers. These include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

26. We have included small incumbent local exchange carriers (LECs) in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[10] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

27. *Wireline Carriers and Service Providers (SIC 4813).* The Census Bureau reports that there were 2,321 telephone communications companies other than radiotelephone companies in operation for at least one year at the end of 1992.[11] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the actions taken in this Sixth NPRM.

28. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small LECs. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[12] The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, there are 1,410 LECs. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs that may be affected by the actions taken in this Sixth NPRM.

29. *A-Block LMDS Providers.* The total number of A-block LMDS licenses is limited to 493, one for each Basic

---

[4] 5 U.S.C. 601(6).

[5] U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632.

[7] 13 CFR 121.201.

[8] 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, Bureau of the Census, U.S. Dept. of Commerce, at Firm Size 1–123 (1995) (1992 Census).

[9] Carrier Locator: Interstate Service Providers, Fig. 1 (Jan. 1999) (Carrier Locator). See also 47 CFR 64.601-.608.

[10] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996).

[11] 1992 Census, supra, at Firm Size 1–123.

[12] 13 CFR 121.210, SIC Code 4813.

Trading Area.[13] The Commission has held auctions for all 493 licenses, in which it defined "very small business" (average gross revenues for the three preceding years of not more than $15 million), "small business" (more than $15 million but not more than $40 million), and "entrepreneur" (more than $40 but not more than $75 million) bidders.[14] There have been 99 winning bidders that qualified in these categories in these auctions, all of which may be affected by the actions taken in this Sixth NPRM.

30. *Cable Services or Systems.* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[15] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

31. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[16] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

32. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[17] The Commission has determined that there are 66 million subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[18] Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66 million subscribers.

33. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:* In this Sixth NPRM we seek comment on whether to allow the existing LMDS eligibility restriction to sunset. These actions impose no reporting, recordkeeping or other compliance requirements.

34. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* This Sixth NPRM is a broad inquiry into whether there continues to be a need for an LMDS ownership restriction. It seeks comment on the present and likely future nature of the marketplace for various services that may be offered using LMDS spectrum, the costs and benefits of a restriction, and appropriate criteria for evaluating whether to extend the restriction. It also seeks the views of small businesses on the various issues raised.

35. *Federal Rules That May Overlap, Duplicate, or Conflict with the Proposed Rules:* There are no federal rules that overlap, duplicate or conflict with 47 CFR 101.1003(a).

36. *Report to Congress:* The Commission will send a copy of this Sixth NPRM, including this IRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[19] In addition, the Commission will send a copy of this Sixth NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. Summaries of this Sixth NPRM and IRFA will be published in the **Federal Register**.

List of Subjects in 47 CFR Part 101

Communications, local multipoint distribution service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–33005 Filed 12–20–99; 8:45 am]

BILLING CODE 6712–01–P

[13] 47 CFR 101.1005, 101.1007.

[14] 47 CFR 101.1107(a)-(c), 101.1112.

[15] 13 CFR 121.201, SIC 4841.

[16] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995), 60 FR 10,534 (Feb. 27, 1995).

[17] 47 U.S.C. 543(m)(2).

[18] 47 U.S.C. 76.1403(b).

[19] See 5 U.S.C. 801(a)(1)(A).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 99–6550]

RIN 2127–AH16

Federal Motor Vehicle Safety Standards: Heavy Vehicle Antilock Brake System (ABS) Performance Requirement

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 10, 1995, NHTSA published a final rule amending the hydraulic and air brake standards to require medium and heavy vehicles to be equipped with antilock brake systems (ABS) to improve the directional stability and control of these vehicles during braking. We supplemented the ABS requirements for truck tractors with a braking-in-a-curve performance test on a low-coefficient of friction surface, using a full brake application, in both the unloaded (bobtail) condition and with the tractor loaded to its gross vehicle weight rating (GVWR) using an unbraked control trailer. The braking-in-a-curve test was not applied to single-unit trucks or buses or to air-braked trailers because we had performed only limited testing of ABS-equipped single-unit vehicles. We stated that we would continue research on dynamic performance tests for single-unit trucks, buses, and trailers, and would consider applying performance test requirements to these vehicles in the future.

The agency is now proposing to apply the braking-in-a-curve dynamic performance test requirement to single-unit trucks and buses that are required to be equipped with antilock braking systems. After issuing the March 1995 final rule, we tested several ABS-equipped single-unit trucks and buses equipped with both hydraulic and air

brakes. We tentatively conclude that the test results confirm that the braking-in-a-curve performance test requirement is practicable for those vehicles. Adopting this requirement would complement the ABS equipment requirements and stopping distance requirements. Taken together, these requirements would improve the ability of the affected vehicles to stop in a stable and controllable manner.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than February 22, 2000.

ADDRESSES: You should mention the docket number of this document in your comments and submit them in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mr. Jeff Woods, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division at (202) 366–2720, and fax him at (202) 493–2739.

For legal issues, you may call: Mr. Otto Matheke, Attorney-Advisor, Office of the Chief Counsel at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

I. Background
II. Single-Unit Truck & Bus ABS Performance Testing
III. Proposed Braking-in-a-Curve Test for Single-Unit Trucks and Buses
A. Air-braked Trailers Not Included
B. Testing in the Loaded/GVWR Conditions
C. Road Test Geometry
D. Test Surface
E. Test Speed
F. Type of Brake Application
G. Number of Test Stops
H. Required Performance
I. Lightly-Loaded Test Weight
J. Loaded Test Weight
K. Initial Brake Temperature
L. Transmission Position
M. Test Sequence
N. Special Drive Considerations
IV. Intermediate and Final Stage Manufacturers
V. Benefits
VI. Costs
VII. Compliance Date
VIII. Rulemaking Analyses and Notices
A. EO 12866 and DOT Regulatory Policies and Procedures
B. Regulatory Flexibility Act
C. Federalism
D. National Environmental Policy Act
E. Paperwork Reduction Act
F. Unfunded Mandates
G. Civil Justice Reform
IX. Comments

I. Background

On December 18, 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA or Act), Pub. L. 102–240. Section 4012 of the Act directed the Secretary of Transportation to initiate rulemaking for improving the braking performance of new commercial motor vehicles, *i.e.*, those with GVWRs of over 26,000 pounds (lbs.), including truck tractors, trailers, and dollies. The Act directed that in that rulemaking, the agency examine antilock brake systems (ABS), means of improving brake compatibility, and methods of ensuring the effectiveness of brake timing.

In response to that congressional mandate, we published an advance notice of proposed rulemaking (ANPRM) on June 8, 1992 announcing our interest in proposing improvements in the directional stability and control of heavy vehicles during braking (57 FR 24212). That notice requested comments on such issues as the occurrence of loss-of-control crashes; the availability and performance of systems to improve directional stability and control; anticipated performance requirements, test procedures, and equipment requirements; diagnostic equipment to ensure in-use functioning of the systems; and anticipated costs of such equipment. The notice also requested comments on whether to include vehicles with GVWRs between 10,000 and 26,000 lbs. in the rulemaking action.

NHTSA received comments in response to the ANPRM from heavy vehicle manufacturers and users, brake manufacturers, safety advocacy groups, trade associations, state entities and individuals. Most agreed that we should take action to improve the stability and control of heavy vehicles during braking to reduce the number of loss-of-control crashes. Commenters also addressed the application of potential rulemaking to certain vehicles, test procedures, warning and diagnostic systems, an implementation schedule for the requirements, and the costs of the hardware.

We next published a notice of proposed rulemaking (NPRM) on September 28, 1993 (58 FR 50738) to amend Federal Motor Vehicle Safety Standard (Standard) Nos. 105, *Hydraulic brake systems* (now titled *Hydraulic and electric brake systems*), and 121, *Air brake systems*, to require all air-braked and hydraulic-braked vehicles with GVWRs over 10,000 lbs. to be equipped with ABS to improve the lateral stability and control of these vehicles during braking. The NPRM also proposed that the ABS requirement be supplemented by a braking-in-a-curve test on a low coefficient of friction surface using a full brake application.

We published a final rule requiring ABS on hydraulic and air-braked medium and heavy vehicles on March 10, 1995 (60 FR 13216) (hereinafter referred to as the stability and control final rule). The ABS requirements included a braking-in-a-curve performance test on a low-coefficient of friction surface for truck tractors only. The test includes a full brake application in both the unloaded (bobtail) configuration and with the tractor loaded to its GVWR, the latter using an unbraked control trailer.

The braking-in-a-curve test was not applied to single-unit trucks, buses, or air-braked trailers at that time. Our Motor Vehicle Safety Research Advisory Committee's ABS Task Force had developed the braking-in-a-curve test procedure only for truck tractors. Since neither the agency nor the Task Force had included single-unit vehicles in the test program up to that time, we decided that, in view of the limited available data with respect to such vehicles and the concerns expressed by the American Automobile Manufacturers Association and other commenters about this dynamic performance test, we would apply the braking-in-a-curve test to truck tractors only. We stated, however, that we would continue research on dynamic performance tests for single-unit vehicles and would consider applying performance test requirements to those vehicles at a future time [1] (see section II below for a discussion of the testing of single unit trucks and buses that gave rise to this rulemaking action).

II. Single-Unit Truck and Bus ABS Performance Testing

NHTSA conducted ABS testing of single-unit trucks and buses in 1996 and 1997 at our Vehicle Research and Test

[1] The agency published two companion final rules on the same day, one to reinstate stopping distance requirements for air-braked medium and heavy vehicles (60 FR 13286) and another to implement stopping distance requirements for hydraulic-braked medium and heavy vehicles (60 FR 13297). The cost/benefit information used for the three final rules was based on NHTSA's Final Economic Assessment, *Final Rules, FMVSS Nos. 105 & 121, Stability and Control During Braking Requirements and Reinstatement of Stopping Distance Requirements for Medium and Heavy Vehicles*, published in February, 1995.

Center (VRTC) in East Liberty, OH [2]. Five air-braked straight trucks and two hydraulic-braked buses, all equipped with ABS, were used in the tests to aid in determining if the braking-in-a-curve performance test for tractors could also be applied to single-unit vehicles. The vehicles were subjected to all the requirements of Standards No. 105 and No. 121, including the braking-in-a-curve performance tests.

The braking-in-a-curve tests were conducted by first finding the maximum drive-through speed, then determining the maximum brake-through speed. Maximum drive-through speed is defined in Standard No. 121 as the fastest constant speed that a vehicle can be driven through at least 200 feet of curve arc length without departing the lane. Maximum brake-through speed is defined as the fastest speed at which a full brake application can be made while the vehicle is in the curve, without the vehicle departing the lane. Determination of the maximum brake-through speed provided data on the potential margin of compliance or non-compliance for the test vehicles. More than four stops for the braking-in-a-curve test were performed during the loaded and unloaded tests.

The straight trucks were chassis-cabs without bodies or equipment that would normally be installed by a second-stage manufacturer. The vehicles were equipped with ABS systems that met the equipment requirements of Standard No. 121. In order to simulate the unloaded condition of completed vehicles, a 2,500 lb load frame was installed on the chassis cabs. The load frame, which is used to secure ballast to the vehicle for testing in the loaded condition, includes a built-in roll bar to protect the test driver in the event of rollover during the tests. The instrumentation for collecting the test data, and the test driver, added another estimated 250 pounds to the unloaded vehicle test weight. Tests were conducted with all fuel tanks and fluid reservoirs filled to normal capacity.

To test the straight trucks in the loaded condition, we added steel and/or concrete weights to the load frame so that the total weight of the vehicles was in accordance with their GVWRs and the axle loads were in proportion with their GAWRs. For most of the vehicles, the loads were situated so that the centers of gravity of the loads were 32 inches above the frame. This provided a ballast height which corresponded to the specification in Standard No. 121 that the control trailer used for truck tractor road tests have a ballast center of gravity height not more than 24 inches above the flat bed surface of the control trailer. The 32-inch load height for single unit trucks is eight inches higher than for truck tractors to account for the height from the tractor's frame rails to the top of the control trailer, due to the fifth wheel coupling arrangement. For two of the vehicles, however, we conducted additional tests in the fully loaded condition with the load elevated to the maximum height specified by the manufacturer in their final-stage manufacturer's guidelines. These two tests with elevated center of gravity loadings were conducted to give some indication of the effect center of gravity height has on braking performance in the braking-in-a-curve test.

The two school buses were equipped with ABS systems that met the ABS equipment requirements of Standard No. 105 that became effective on March 1, 1999. Since they were complete vehicles, no load frame or ballast was added for tests in the unloaded condition. However, the test instrumentation and driver added approximately 250 pounds to the unloaded vehicle weight. In addition, all fuel tanks and fluid reservoirs were filled to normal capacity. The loaded tests on the two school buses were conducted by placing sand bags on the floor and seats of each bus such that the total vehicle weight was equal to its GVWR with the axle load in proportion with the vehicle's GAWR.

The braking-in-a-curve tests were conducted on an asphalt surface that was coated with Jennite, a driveway sealer, and wetted using a water truck. A 12-foot-wide lane was marked with the center of the lane having a 500-foot radius of curvature. The lane was marked with traffic cones on both sides spaced at 20-foot intervals. The surface had a cross slope of one percent and approximately zero longitudinal slope. The peak coefficient of friction (PFC) of the surface during the time of the testing ranged from 0.34 to 0.41. The effect of the cross slope was such that the test condition was considered to be worst case, since all road testing may not be able to be conducted on a completely level road surface due to variability and water run-off design requirements. The effect of the lower PFC would also be considered a worst-case test condition.

In conducting the tests, the driver was instructed to begin the test in the center of the lane and to steer as necessary to keep the vehicle within the lane. If any cones were hit, the vehicle was considered to have gone out of the lane. The maximum drive-through speed was determined by making passes through the lane at a constant speed and increasing or decreasing the speed slightly on each successive pass to determine the maximum speed at which the vehicle would remain within the lane. Once this speed was determined, two or three additional passes were made to verify that the speed determined was the maximum speed at which the vehicle would remain in the lane. Similarly, the maximum brake-through speed was determined by making successive stops, increasing the speed gradually each time, to find the maximum speed at which the vehicle would stay in the lane. For these stops, the brake was applied as rapidly as possible to a full pressure application or full travel condition and held until the end of the stop.

The results of the testing at VRTC confirmed that the braking-in-a-curve test is practicable, repeatable, and safe for single unit vehicles. Six of the seven vehicles tested met the performance requirements now in effect for tractors, i.e., they stayed in the lane in at least three out of four stops when subjected to maximum braking at 75 percent of the maximum drive-through speed. In fact, these six vehicles remained in the lane during all four stops at 75 percent of the drive-through speed, all with a large margin of compliance.

The two trucks for which elevated center-of-gravity ballast height comparison tests were conducted showed that the increased height did not have much effect on the vehicle's performance compared with the lower, 32-inch ballast center-of-gravity height testing. The test driver commented that this test condition caused an unsettling feeling during the testing in the vehicle's roll stability. However, to observers watching the testing, there were no indications that the vehicles were nearing rollover, such as lifting of an inside tire.

We note that the one vehicle that did not meet the 75 percent of drive-through speed requirements was equipped with heavy duty axles with GAWR ratings of 20,000 pounds for the steer axle and 30,000 pounds for the single drive axle. Paragraph S3(b) of Standard No. 121 provides that any vehicle with an axle that has a GAWR of 29,000 pounds or more is excluded from Standard No. 121. Therefore, this particular vehicle would not need to comply with the braking-in-a-curve test. If a manufacturer were to produce this vehicle to comply voluntarily with Standard No. 121, regardless of the exclusion for axles over 29,000 pounds, additional ABS development would probably be necessary. We note also that

[2] DOT HS 808941, *Single Unit Truck and Bus ABS Braking-In-A-Curve Performance Testing*, February 1999.

while this vehicle did not meet the proposed requirements when tested in the unloaded condition, it passed the tests in the loaded condition by staying in the lane in all four of the stops at 75 percent of the drive-through speed.

III. Proposed Braking-in-a-Curve Test for Single-Unit Trucks and Buses

Based on the tests conducted at VRTC, NHTSA proposes a braking-in-a-curve test for single-unit trucks and buses, similar to the stability and control performance test in effect for air-braked tractors. We propose slight modifications, however, to allow for the differences between tractors and single-unit vehicles and to accommodate vehicles with hydraulic braking systems. Specifics of the proposed test are provided in the following subsections.

A. Air-Braked Trailers Not Included

NHTSA is not proposing at this time to apply performance test requirements to air-braked trailers. We have not conducted testing of trailers since the March 1995 final rules, but may resume research concerning trailer dynamic performance tests at a later date.

B. Testing in the Loaded/GVWR Conditions

NHTSA proposes that the braking-in-a-curve test be conducted in both the lightly-loaded vehicle condition and with the vehicle loaded to GVWR. There are several reasons why we are proposing testing in both loading conditions. First, this would be consistent with the test procedure currently in place for tractors. Second, testing in the fully-loaded and empty conditions was specified in the stability and control final rule in order to fully evaluate the vehicle's braking performance at two extreme loading conditions. The intent was to determine the minimum number of test conditions that would provide a thorough evaluation of a vehicle's braking system. Third, we determined that these two loading conditions, evaluated in the single braking-in-a-curve maneuver, provide a sufficient range of test conditions while still providing a minimum level of performance testing.

The agency is aware of a discussion in the SAE Truck and Bus Vehicle Deceleration and Stability Subcommittee that braking-in-a-curve testing of medium and heavy vehicles is only needed in the lightly-loaded condition. The discussion, which took place at the 1995 SAE Truck and Bus Exposition in Winston-Salem, N.C., centered around testing performed by member organizations of the subcommittee indicating that vehicles in the lightly-loaded test condition have a lower margin of compliance than vehicles tested in the loaded condition.

Our testing at VRTC indicated the following for the seven vehicles tested with regard to the proposed 75 percent maximum brake-through to maximum drive-through test requirement: (a) Four vehicles had lower margins of compliance in the lightly-loaded tests than in the loaded tests; (b) two vehicles had the same margin of compliance in both the loaded and lightly-loaded tests; and (c) one vehicle had a higher margin of compliance in the lightly-loaded test than in the loaded test. These results indicate that in general, the lightly-loaded test condition is the most severe test. We note, however, that the margin of compliance was generally high for most of the vehicles tested. The intent of testing vehicles in both the lightly-loaded and GVWR conditions was to simulate the possible braking conditions and maneuvers likely to be encountered by vehicles operated on public roads, while minimizing the number of tests that would have to be conducted to certify compliance. Deleting the loaded-to-GVWR test condition would eliminate the range of test conditions resulting in a single, lightly-loaded test. Although we are not proposing to eliminate testing at GVWR, we welcome comments on this issue.

C. Road Test Geometry

NHTSA proposes the same road test geometry now in effect for tractors, namely a 12-foot-wide lane with a 500-foot radius measured at the center of the lane. We consider this geometry to be representative of an exit ramp with a moderately sharp curve, a type of road that all vehicles could be expected to encounter at some time. One consideration in the use of this test geometry for single-unit vehicles is that the wheelbases of such vehicles can be longer than for tractors or of the control trailer kingpin-to-axle length. Since most heavy vehicles are equipped with a non-steering rear axle(s), the path of the rear axle of a single-unit truck during a slow-speed turning maneuver follows a smaller radius than the wheels on the front steer axle. The tests conducted at VRTC, which included testing vehicles with wheelbases ranging from 148 inches through 311 inches, did not indicate any problems with the inside wheels on the rear axle(s) running off the inside of the curve and departing the lane. We believe, therefore, that the 500-foot radius curve is large enough to avoid that problem during testing of single-unit vehicles.

D. Test Surface

We propose a test surface having a PFC of 0.5, which is a low coefficient of friction surface representative of a wet, worn asphalt roadway. As we noted in the stability and control final rule, maintaining a test surface of 0.5 PFC may not always be possible. However, minor variations in the test surface are not expected to have a major effect on the performance of vehicles in the braking-in-a-curve test, since that test has no stopping distance requirements. We have also determined that specifying PFC test surfaces is more appropriate for both high and low-friction surface testing compared to the older method of specifying skid numbers. This is especially true for ABS-equipped vehicles which, during maximum braking, are prevented from sustained wheel lockup. The testing conducted at VRTC confirmed that this is the case for the medium and heavy single-unit vehicles tested and that specifying a PFC of 0.5 is appropriate for the braking-in-a-curve test.

E. Test Speed

NHTSA proposes a test speed of 75 percent of the maximum drive-through speed or 30 mph, whichever is lower, for the braking-in-a-curve test for single unit trucks and buses.

The requirement for testing tractors at the lower value of either 30 mph or 75 percent of the maximum drive-through speed resulted from the need to have sufficient vehicle speed to adequately evaluate the performance of an ABS-equipped braking system. The test speed needed to be limited, however, to ensure that the test procedure could be safely conducted. In addition, by conducting the maximum drive-through speed determination before the braking-in-a-curve test, the effects of slight variability in test surface friction would be minimized since the drive-through speed would be measured for each combination of test vehicle and test surface just prior to conducting the braking tests.

All of the single-unit trucks and buses tested at VRTC had maximum drive-through speeds in both the empty and loaded conditions ranging between 32 and 37 mph. This range represents the maximum constant speed that the vehicle can be driven through 200 feet of curve arc (for a 500-foot radius curve) without the driver's losing control and the vehicle's departing the lane. None of the vehicles was able to negotiate the curve at 40 mph, which would be the upper limit of the drive-through speed determination required for a braking strategy specified as the lower of 30

mph or 75 percent of maximum drive-through speed. Therefore, these speeds are sufficiently high to place the vehicles at their performance limit for cornering under this test condition. Further, conducting a maximum brake application at 75 percent of this speed is a rigorous test of ABS performance.

The testing at VRTC also indicated that the test speeds were not so high as to pose an unreasonable risk to the test drivers or vehicles. When the vehicles did lose control during the determination of the maximum drive-through speed, the test drivers were able to regain control in a short time and bring the vehicle to a safe stop. The test vehicles were equipped with a roll bar in the event of vehicle rollover during testing. However, no rollovers occurred nor were there any indications of near-rollover, although as noted above, the testing with high-center-of-gravity loadings did result in an unsettling feeling for the test driver.

F. Type of Brake Application.

NHTSA proposes a brake pedal force of 150 pounds that is to be achieved within 0.2 seconds from the initial application of force to the brake control and maintained for the duration of the stop.

We stated in the stability and control final rule that the braking-in-a-curve test evaluates vehicle stability and control during worst case braking applications in an aggressive or "hard" stop. In that scenario, full brake applications are more readily repeatable than "driver best effort" brake applications. A full treadle brake application for air-braked tractors is defined in Standard No. 121 as the output pressure measured at any of the treadle valve output circuits reaching 85 psi within 0.2 seconds after the application is initiated, or, as amended in the December 1995 final rule, one in which maximum treadle travel is achieved within 0.2 seconds after the application is initiated. Since the actuation of air brakes in single-unit vehicles is similar to that used in tractors, we consider this same approach to be valid for single-unit vehicles as well. The tests at VRTC confirmed that the minor differences in the service braking systems between tractors and the single-unit vehicles tested were not found to have an effect on the ability of achieving the 85 psi application within 0.2 seconds as measured at the treadle valve. We are aware that, because of the wide variety of single-unit vehicles, there may be vehicles that would not be able to achieve this application rate. In those cases, achieving maximum treadle travel within 0.2 seconds would be considered sufficient to define a full brake application.

Standard No. 105 does not currently include a definition of a full brake application for medium and heavy vehicles equipped with hydraulic braking systems. Performance requirements for the first effectiveness stop for school buses with GVWRs of over 10,000 lbs. and the second and third effectiveness stops for all vehicles with GVWRs of over 10,000 lbs. do not include specifications for maximum brake pedal force during these tests. For the five fade and recovery stops that apply to vehicles with GVWRs of over 10,000 lbs., the maximum permissible pedal force is 150 lbs. during the first four of these stops. The water recovery test requirements also include a 150-lbs. maximum pedal force requirement during the first four stops. These tests do not require that the maximum pedal force be used nor do they specify an application rate. The spike stops required for vehicles with GVWRs of less than 10,000 lbs. include a specification for a 200-lb. brake pedal application within 0.08 seconds, and is representative of a maximum braking condition such as a "panic" stop. However, this high level of pedal force may make it necessary to use a mechanical actuator to achieve and maintain the 200-lb. force. Since the purpose of the proposed braking-in-a-curve test for medium and heavy vehicles is to evaluate the stability and control during a "hard" stop, rather than specifically a "panic" stop, we tentatively conclude that a pedal force of 150 lbs. is sufficient to perform the braking-in-a-curve evaluation, without necessitating specialized test equipment. In addition, since the proposed test surface has a PFC of 0.5, which represents a slippery road surface, we tentatively conclude that the 150 lbs. of pedal force is sufficient to cause instability and loss of control in many medium or heavy vehicles that are not equipped with ABS.

The agency considers the proposed 0.2 seconds for achieving the 150-lbs. brake pedal force to be sufficiently rapid to represent a hard stop in a medium or heavy vehicle equipped with hydraulic brakes, and practicable from the standpoint of conducting performance tests on these type vehicles. While the spike stop requirements for vehicles under 10,000 lbs. GVWR include achieving the pedal application force within 0.08 seconds, the heavier brake components typically used in medium and heavy vehicles equipped with hydraulic brakes may not be able to be actuated as rapidly as in light vehicles. Also, the 0.08 second application rate for the spike stops in light vehicles is often achievable only with a mechanical brake pedal actuator. In all of the braking-in-a-curve tests conducted by VRTC on medium and heavy vehicles with both hydraulic and air brakes, the test driver applied the brakes to minimize test complexity. This may also slightly increase the application time needed compared to a mechanical brake pedal actuator.

NHTSA is not proposing to specify the brake pedal application rate for medium and heavy vehicles equipped with hydraulic brakes to include a reference to maximum pedal travel, as is specified for air-braked vehicles. The brake pedals in hydraulic braking systems do not typically reach their physical limit of travel during "hard" or "panic" stops. Therefore, we believe that specifying such a brake application rate strategy for hydraulic-braked vehicles would be inappropriate.

G. Number of Test Stops

NHTSA proposes that in 4 consecutive stops, the required performance must be achieved in at least 3 of those stops.

In the stability and control final rule, we required that tractors comply with the braking-in-a-curve test requirements during 3 consecutive stops. In response to several petitions for reconsideration, we amended that requirement in the December 13, 1995 final rule to include one additional stop in which compliance is not required. Thus, the requirement now is that tractors must comply with the braking-in-a-curve test requirements in 3 out of 4 consecutive stops. This allows for minor variability in the performance of the test driver.

Earlier testing of ABS-equipped tractors showed that the ABS provided consistent performance in maintaining stability and control during the braking-in-a-curve test. Although one vehicle could not comply with the braking-in-a-curve test during the VRTC testing of ABS-equipped straight trucks and buses, the vehicles that did stay in the lane during the test were able to do so consistently. We believe, therefore, that it is appropriate to include that same number of test stops for straight trucks and buses as we now require for tractors, namely that during 4 consecutive stops, the required performance must be met in at least 3 of those stops (see H below).

H. Required Performance

NHTSA proposes to require that the test vehicle remain within a 12-foot-wide lane during the braking-in-a-curve test.

We believe that prescribing a 12-foot-wide lane during the braking-in-a-curve test is an appropriate performance measure for single-unit trucks and buses. The lane width of 12 feet is representative of a typical travel lane on a typical U. S. hard-surface road. Therefore, we tentatively conclude that it is appropriate to require that vehicle control within a lane of that width be maintainable by a driver during hard braking.

I. Lightly-Loaded Test Weight

NHTSA proposes that the braking-in-a-curve test in the lightly-loaded condition be conducted at the curb weight of the vehicle plus up to 1,500 pounds, including the driver, instrumentation, and roll bar.

As discussed above, the single-unit trucks tested at VRTC were chassis-cabs which had not been completed by the installation of a body or other equipment. In order to provide some additional weight to the chassis-cabs to better simulate an unloaded completed vehicle, a 2,500 pound load frame was bolted directly to the frame rails of each test vehicle. This load frame was also used to secure ballast for tests conducted in the loaded condition. As noted above, we are aware of the discussion in the trucking industry, through the SAE Truck and Bus Vehicle Deceleration and Stability Subcommittee, as to what suitable weight should be used for a load frame for testing incomplete vehicles. We do not propose that any weight figure be specified in the stability and control requirements for Standard Nos. 105 and 121. We are aware of the wide variety of bodies and equipment that are installed on chassis-cabs and the variability in the weight of that equipment. Selection of one weight for a load frame may be appropriate for one weight class of vehicle, but not for another. Thus, unlike the vehicles we tested at VRTC, we do not conduct compliance testing on incomplete vehicles. For the purposes of compliance testing, we will obtain completed vehicles and expect to test them at their curb weight, plus an allowance for test and safety equipment, as discussed below.

The VRTC tests of buses in the unloaded configuration were performed on completed vehicles, so no additional weight, other than the driver and instrumentation, was added for the unloaded tests. The tests were conducted with the buses at curb weight with full fuel tanks. The combined weight of the test driver and instrumentation was approximately 250 pounds.

A January 6, 1997 petition for rulemaking submitted by the Truck Manufacturers Association (TMA) to amend Standard No. 121 included, among other things, a request for an additional weight allowance for a rollbar of up to 1,000 pounds for the straight line stopping distance tests for tractors, trucks, and buses in the lightly-loaded condition. The rollbar is intended to provide driver protection in the event of a rollover that could occur while testing heavy vehicles in limit-performance maneuvers. [The rollbar portion of the TMA petition was granted. In a notice published in the **Federal Register** on February 3, 1999 we proposed allowing the use of a rollbar in compliance testing (64 FR 5259).] We believe that in order to provide adequate protection for test drivers, the same provision for a rollbar should be permitted for the braking-in-a-curve test for single-unit vehicles. Therefore, we propose that the braking-in-a-curve test in the lightly-loaded condition include the unloaded vehicle weight plus up to 1,500 pounds for driver, instrumentation, and a rollbar. The 1,500 lb figure is based on the existing definition of "lightly-loaded vehicle weight" for vehicles with GVWRs of over 10,000 lbs. and the 1,000 lbs. for a rollbar. That term is defined in S4 of Standard No. 105 as the unloaded vehicle weight plus up to 500 lbs., including driver and instrumentation. This weight provision need not be included for tests in the fully-loaded condition since the weight of these items would be included as part of the load.

J. Loaded Test Weight

NHTSA proposes to use the existing definitions of "loaded test weight" in Standard Nos. 105 and 121 for the braking-in-a-curve tests for single-unit trucks and buses.

The existing definitions, which are used for straight-line stopping distance tests required for loaded single-unit trucks and buses, specify that the vehicle be loaded to its GVWR in proportion to each GAWR. An exception is provided in Standard No. 105 for cases in which an axle weight in the unloaded condition already exceeds its proportional GAWR with the vehicle loaded to GVWR. In such cases, the vehicle is loaded only over the other axle(s) until the GVWR is reached.

The loading requirements for tractors in Standard No. 121, applicable to both straight line stopping distance and braking-in-a-curve tests, provide that the center of gravity height of the ballast shall be less than 24 inches above the fifth wheel of the tractor. This is a relatively low center of gravity loading that is used to evaluate the braking performance of loaded tractors during the braking-in-a-curve test and minimizes the risk of vehicle rollover during the test. This loading condition also provides a uniform test condition for tractors so that results will be repeatable from one test to another.

The loading of straight trucks during the braking-in-a-curve tests conducted at VRTC included a load frame and ballast with a combined center of gravity height of 32 inches above the frame rail of the chassis cab. This loading scheme was selected to adequately evaluate the braking performance of the trucks while minimizing the risk of rollover. The purpose of the braking-in-a-curve test is to evaluate the vehicle's yaw stability and the driver's ability to maintain steering control, not to evaluate the vehicle's roll stability. Therefore, a reasonable loading scheme with respect to load center of gravity height is needed to ensure the safety of the test procedure.

As in the case with the unloaded single-unit truck and bus vehicle tests, we do not conduct compliance testing on incomplete vehicles in the loaded condition. Since there are many configurations of bodies and equipment used in the completion of single-unit trucks, including flatbeds, tankers, van bodies, dump bodies, rollbacks, mixers, etc., and other configurations of vehicles not based on typical chassis-cabs, such as step vans, motor homes, and certain fire trucks, we believe that it would not be possible to specify a loading scheme that would be applicable to all single-unit trucks and buses. We are aware of efforts by the SAE Truck and Bus Vehicle Deceleration and Stability Subcommittee to revise Recommended Practice (RP) J1626, *Braking, Stability, and Control Performance Test Procedures for Air-Brake Equipped Trucks,* to incorporate loading requirements which can be used for testing incomplete chassis-cabs. However, we do not expect that this RP will address testing of completed single-unit vehicles or incomplete/completed vehicles manufactured on other types of chassis. For many types of vehicles, we will need to develop suitable loading schemes on a case-by-case basis, depending on the vehicle type. For example, a passenger bus could be loaded using sand bags or other heavy objects placed in all passenger seating positions and on the floor or in cargo areas to achieve GVWR loading in proportion to the vehicle's GAWRs.

K. Initial Brake Temperature

NHTSA proposes an initial brake temperature between 150 and 200 degrees F.

In the September 1993 NPRM, we proposed using a higher initial brake temperature range of 250 to 300 degrees F. The intent was to reduce the amount of time needed to conduct the road tests by reducing the amount of time that brakes would need to cool between stops. In general, comments on the proposed increased temperature range stated that the increased temperatures would necessitate design changes in the braking system by requiring more aggressive linings, and that this increased initial temperature range would not be consistent with testing that had been conducted in the past using the lower initial temperature range. These negative aspects of the proposed temperature range outweighed the small benefits in reduced testing time, so we retained the 150 to 200 degree initial brake temperature criteria. For those reasons, we believe that this initial temperature range is also appropriate for testing of single-unit trucks and buses for the braking-in-a-curve test.

L. Transmission Position

NHTSA proposes that the braking-in-a-curve test for single-unit trucks and buses be conducted either with the vehicle's transmission placed in a neutral position or with the clutch pedal depressed. This technique minimizes the effects of engine and driveline retardation, which is necessary in order to solely evaluate the performance of the braking system without undue driveline influences. Although the effects of engine and driveline retardation can affect the stability of medium and heavy vehicles when operated on low coefficient of friction road surfaces, this is not the primary purpose of the braking-in-a-curve test. The proposed test condition also helps to ensure test repeatability and reproducibility.

M. Test Sequence

NHTSA proposes that the braking-in-a-curve test for air-braked single-unit trucks and buses be conducted immediately after the burnish procedure as indicated in Table I of Standard No. 121, with the loaded tests followed by the unloaded tests. We further propose that the braking-in-a-curve test for hydraulic-braked single-unit trucks and buses be conducted immediately after the post-burnish brake adjustment in S7.4.2.2, with the loaded tests followed by the unloaded tests.

We originally selected this test sequence for air-braked tractors so that vehicle stability during the braking-in-a-curve test could be checked early in the test sequence. In the final rule of December 13, 1995, we amended the test sequence by placing both braking-in-a-curve tests immediately after the burnish for several reasons: (a) to allow test track wetting to be accomplished more efficiently; (b) to minimize ABS performance variability that might occur after tires are subjected to high-speed stopping distance tests on a high coefficient of friction surface; and (c) to minimize vehicle transfers for those manufacturers that use a different test site for ABS testing. The same sequence is being proposed in this notice. In addition, the loaded test is proposed to be conducted prior to the unloaded test, since the vehicle would already be fully-loaded immediately following the brake burnish.

N. Special Drive Considerations

We propose that single-unit trucks and buses being tested in the braking-in-a-curve test under Standard No. 105 be subjected to the same road test provisions as are currently specified for trucks and buses in subsection S6.1 of Standard No. 121.

Paragraph S6.1.11 specifies that vehicles with interlocking axles or front wheel drive systems which are engaged and disengaged by the driver be tested with such systems disengaged. As in the case of the transmission, the driveline effects of a front wheel drive or interaxle locking system on the performance of the vehicle in the braking-in-a-curve test should be minimized to the extent possible. Since the road test conditions in Standard No. 105 do not include this provision, we propose the same provision under Standard No. 105 as under Standard No. 121. We invite comments on this issue.

IV. Intermediate and Final Stage Manufacturers

In the NPRM of September 28, 1993 and the stability and control final rule of March 10, 1995, we discussed the issue of certification to Standard Nos. 105 and 121 for vehicles manufactured in two or more stages. One concern was that final stage manufacturers would not be able to conduct the road testing for each type of vehicle they manufacture. We stated that in many cases the incomplete vehicle manufacturer could pass through certification to the final stage manufacturer if the final stage manufacturer adhered to specifications provided by the incomplete vehicle manufacturer, for example, by not exceeding the GAWRs, not altering any brake component, and keeping the center of gravity of the completed vehicle within a specified envelope.

In cases for which pass-through certification was not available, such as vehicles built in one stage, the manufacturer could use engineering analysis, actual testing, or computer simulations to certify their vehicles. Moreover, a manufacturer need not conduct such testing or analysis itself, but could base its certification on the services of independent engineers and testing laboratories, or could join together through trade associations to sponsor testing or analysis. Finally, manufacturers could rely on testing and analysis by third parties, such as brake manufacturers, who typically perform extensive analyses and tests of their products. Based on these various options available to vehicle manufacturers, we do not believe that the proposed performance requirements pose any significant certification burdens for final stage manufacturers or other small manufacturers.

Another concern was that the pass-through certification from an incomplete vehicle manufacturer could have design limitations that are so design restrictive that final stage manufacturers would not be able to readily adhere to them. As stated above, however, the testing at VRTC showed that varying the load height on the trucks being tested did not have an appreciable effect on the results of the braking-in-a-curve test. Therefore, based on the testing performed to date, we are not aware of any significant additional requirements that would be necessary as a result of implementing the braking-in-a-curve test for single-unit trucks and buses that would result in the pass-through certification becoming unduly restrictive for final stage manufacturers.

V. Benefits

NHTSA published a detailed estimate of the costs and benefits of equipping medium and heavy vehicles with ABS in the February 1995 Final Economic Assessment (FEA) (see footnote 1 above). This FEA provided estimates for the reduction in fatal, injury-producing, and property-damage-only (PDO) crashes by equipping medium and heavy vehicles with ABS and implementing/reimplementing straight line stopping distance requirements. It also provided a detailed analysis of the projected costs to consumers and vehicle manufacturers to meet the ABS requirements. The projected annual benefits of ABS were summarized for all medium and heavy vehicles as follows:

1. 29,103 crashes prevented per year.
2. 38,227 fewer vehicle involvements in PDO crashes.

3. 15,900 to 27,413 vehicle occupant injuries prevented per year.

4. 320 to 506 vehicle occupant fatalities prevented per year.

5. $457,780,795 to $552,769,946 of property damage prevented.

Table 6 on page V–12 of the FEA provides a breakdown of the estimated benefits of ABS for each vehicle type including combination vehicles, bobtail tractors, single-unit trucks, and buses. That table also shows the reduced fatalities, injuries, and PDO crash damage to other vehicles involved in crashes with these medium and heavy vehicles. The breakdown did not differentiate between single-unit trucks and buses equipped with air versus hydraulic braking systems. In general, the table indicates that for single-unit trucks and buses equipped with ABS, between 16 and 34 truck and bus occupant fatalities will be prevented each year, and between 79 and 117 fatalities among occupants of other vehicles will be prevented each year.

The potential benefits of applying the braking-in-a-curve performance test to single-unit trucks and buses, compared with the benefits of solely requiring the ABS equipment portions in the respective safety standards, were not differentiated in the FEA nor for the purposes of this rulemaking action. The full benefits projected in the FEA are based on having both the equipment requirements and performance tests to ensure that ABS installed on medium and heavy vehicles performs with a maximum level of safety. The benefits projected in the FEA reflect the installation of antilock brake systems that were in use and on the road at the time of the analysis. We have since conducted ABS braking-in-a-curve tests, on six single-unit vehicles—four straight trucks and two buses—that are now required to have ABS installed. All these vehicles passed the performance requirements with a large margin of compliance. While we project no additional benefits by requiring these performance tests, they will help assure that minimum levels of safety are maintained.

VI. Costs

In the February 1995 FEA, NHTSA provided an extensive evaluation of the estimated costs to vehicle manufacturers and consumers associated with requiring ABS on medium and heavy vehicles. The majority of costs to consumers were the increased purchase price of vehicles equipped with ABS, in-service costs to perform maintenance and repairs to the ABS, and lost revenue and increased fuel consumption due to the extra weight of the ABS equipment. The FEA also included the costs to vehicle manufacturers to comply with the ABS requirements and the stopping distance requirements in the companion final rule. Although specific costs were not identified for conducting the braking-in-a-curve test for tractors, the costs to vehicle manufacturers (excluding the cost for the ABS equipment which would be passed on to the consumer) for all medium and heavy vehicles to comply with the new stopping distance requirements were estimated as follows:

Air-braked vehicles—Total cost of $11.71 million, including $6.0 million for compliance testing costs and $5.71 million related to vehicle modifications necessary to improve vehicle stopping distance performance. For the estimated 208,500 air-braked vehicles produced each year, the total estimated cost per vehicle for the first year after the final rules was $56. For the remaining years after the first year, the estimated cost per vehicle was $37.

Hydraulic-braked vehicles—Total cost of $1.0 million, all for compliance testing. During the first year after the final rules, an estimated 194,400 vehicles would be affected for a cost per vehicle estimated at $5. In the years following the first year, the cost per vehicle was estimated at $2 per vehicle.

The first-year costs are higher because the additional road test requirements imposed by the control and stability final rule and the stopping distance final rule would require compliance testing of all affected vehicles that are already in production, while in the later years, only new vehicle designs or vehicles with modifications to their braking systems would need to be tested. Complete compliance tests for both hydraulic-and air-braked vehicles were estimated to cost $5,000 per vehicle per test.

NHTSA provides the following estimates for the cost of implementing the braking-in-a-curve test for single-unit trucks and buses. A stand-alone braking-in-a-curve test is estimated to cost $1500, and the incremental cost to incorporate the braking-in-a-curve test into a complete Standard No. 105 or 121 compliance test is estimated at $1,000.

For air-braked single-unit vehicles: As shown in Table 13 of the FEA, an estimated 53,900 single-unit trucks and 7,000 buses would be affected annually. For all air-braked vehicles, including tractors, the FEA estimated that twelve medium and heavy vehicle manufacturers would need to conduct 100 compliance tests each, for a total of 1200 compliance tests. If only single-unit trucks and buses are to be tested, there are fewer numbers of these vehicles produced compared to tractors, but there are more vehicle types that would need to be tested. We estimated, therefore, that the twelve manufacturers would need to conduct 60 compliance tests each, for a total of 720 tests, in the first year that the braking-in-a-curve test would become effective, at a cost of $1,080,00 (720 × $1,500). This assumes that compliance testing for the stopping distance requirements would have already been conducted. The cost per air-braked vehicle is estimated to be about $18 ($1,080,000 ÷ 60,900). In the later years, it is estimated that 30 compliance tests would be required annually, for a total cost of $360,000 (12 × 30 × $1,000). The cost per air-braked vehicle in the later years would be about $6 ($360,000 ÷ 60,900).

Hydraulic-braked single-unit vehicles: As shown in Table 13 of the FEA, an estimated 194,400 single-unit vehicles would be affected annually. Assuming that the timing of the braking-in-a-curve test is such that all of the affected vehicles would have this test requirement included in a complete compliance test to all of the requirements in Standard No. 105, the $1,000 per test cost is used. The estimates in the FEA were that 10 vehicle manufacturers would need to conduct 20 compliance tests each, for a total of 200 compliance tests, at an annual cost of $200,000 (200 × $1,000). The cost per vehicle is then estimated at about $1 ($200,000 ÷ 194,400). This cost per vehicle would be the same in the later years.

Implementing the braking-in-a-curve performance test for single-unit vehicles with either hydraulic or air brakes is not expected to result in any increases in vehicle equipment or manufacturing costs, since these vehicles are already required to be equipped with ABS. As long as the antilock braking systems that are being installed on affected vehicles perform as they are supposed to, that is, preventing wheel lockup under a variety of road and load conditions, then these vehicles should be able to comply with the braking-in-a-curve test without additional development or equipment costs to the vehicle manufacturer. Thus all costs associated with requiring the braking-in-a-curve test are limited to the cost of vehicle manufacturers performing road tests and do not include equipment costs.

VII. Compliance Date

NHTSA proposes that the compliance date for the braking-in-a-curve test requirements, for both air and hydraulic-braked single unit trucks and buses, be two years after publication of the final rule in the **Federal Register**. Due to the operating conditions of these trucks, which often call for specialized designs, manufacturers produce a large

number of different truck configurations. The proposal would provide sufficient leadtime to ensure that the manufacturers can test a relatively large number of vehicle types and configurations. At the same time, it would also ensure that this important check of vehicle stability is implemented in a timely manner to ensure the safe operation of these vehicles. Optional early compliance would be permitted on and after the date of publication of the final rule in the **Federal Register**.

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review.*

We have analyzed the impact of this rulemaking and have determined that it is not "significant" within the meaning of DOT's regulatory policies and procedures. This action proposes to amend the air and hydraulic brake standards applicable to medium and heavy vehicles to provide for a braking-in-a-curve test for single-unit trucks and buses to enhance the stability and control of those vehicles. As discussed in Section VII above, we estimate that the total cost of the braking-in-a-curve test for manufacturers of single-unit vehicles equipped with air brakes would be approximately $1,080,000 the first year, for a per-vehicle cost about $18. In the later years, we estimate that the per-vehicle cost would be approximately $6. for a total cost of about $360,000. For hydraulic-braked single-unit vehicles, we estimate the annual cost to manufacturers of the braking-in-a-curve test to be about $200,000, for a per-vehicle cost of about $1. We estimate that this cost would be the same in the later years.

As discussed above, NHTSA evaluated in detail the costs and benefits of equipping medium and heavy vehicles with ABS. We believe that the full array of costs and benefits discussed in the FEA will not be fully attained until 10 years or more since it will take that long until all existing non-ABS medium and heavy vehicles have been replaced by newer vehicles equipped with ABS. Accordingly, we believe that the projected figures in the FEA are still valid and on that basis, we have concluded that preparation of another full regulatory evaluation is not warranted.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is our statement providing the factual basis for this certification (5 U.S.C. 605(b)). The amendments proposed in this action would primarily affect manufacturers of medium and heavy vehicles, including single-unit trucks and buses. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business as a business entity that operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies,* prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Parts and Accessories,* prescribes a small business size standard of 750 or fewer employees.

The amendments proposed in this rulemaking add an additional test procedure to the air and hydraulic brake standards, applicable only to medium and heavy single-unit trucks and buses. These amendments do not apply to trailers. The amendments, if adopted, would impose minimal testing costs to manufacturers of the affected vehicles, most if not all of which would not qualify as small businesses under SBA guidelines. We estimate that the proposed amendments, if adopted, would result in minimal, if any, additional costs to small businesses or consumers. Accordingly, there would be no significant impact on small businesses, small organizations, or small units by these amendments. For those reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

C. Executive Order No. 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles of E.O. 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub L. 96–511, NHTSA states that there are no information collection requirements associated with this rulemaking action.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposed rule does not meet the definition of a Federal mandate because, if adopted, annual expenditures by the stated entities will not exceed the $100 million threshold.

G. Civil Justice Reform

The amendments proposed in this rulemaking action would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision of a state may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if that standard is identical to the Federal standard. However, the United States government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. Section 30161 of Title 49, U.S. Code sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceeding is not required before parties may file suit in court.

IX. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
- On that page, click on "search."
- On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
- On the next page, which contains docket summary information for the docket you selected, click on the desired comments.
- You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference. Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.105 would be amended by adding definitions of "Full brake application" and "Maximum drive-through speed" to S4; by revising S5.1, S6.9.2 the introductory text of S7, S7.5, and Table I; and by adding S5.1.7 and S6.14, to read as follows:

§ 571.105 Standard No. 1059, Hydraulic brake and electric systems.

* * * * *

S4 *Definitions.*

* * * * *

Full brake application means a brake application in which the force on the brake pedal reaches 150 pounds within 0.2 seconds from the point of application of force to the brake control.

* * * * *

Maximum drive-through speed means the highest possible constant speed at which the vehicle can be driven through 200 feet of a 500-foot radius curve arc without leaving the 12-foot lane.

* * * * *

S5.1 *Service brake systems.* Each vehicle must be equipped with a service brake system acting on all wheels. Wear of the service brake must be compensated for by means of a system of automatic adjustment. Each passenger car and each multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less must be capable of meeting the requirements of S5.1.1 through S5.1.6 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Each school bus with a GVWR greater than 10,000 pounds must be capable of meeting the requirements of S5.1.1 through S5.1.5, and S5.1.7 under the conditions specified in S6, when tested according to the procedures and in the sequence set forth in S7. Each multipurpose passenger vehicle, truck and bus (other than a school bus) with a GVWR greater than 10,000 pounds must be capable of meeting the requirements of S5.1.1, S5.1.2, S5.1.3, and S5.1.7 under the conditions specified in S6, when tested according to the procedures and in the sequence set forth in S7. Except as noted in S5.1.1.2 and S5.1.1.4, if a vehicle is incapable of attaining a speed specified in S5.1.1, S5.1.2, S5.1.3, or S5.1.6, its service brakes must be capable of stopping the vehicle from the multiple of 5 mph that is 4 to 8 mph less than the speed attainable in 2 miles, within distances that do not exceed the corresponding distances specified in Table II. If a vehicle is incapable of attaining a speed specified in S5.1.4 in the time or distance interval set forth, it must be tested at the highest speed attainable in the time or distance interval specified.

* * * * *

S5.1.7 *Stability and control during braking.* When stopped four consecutive times under the conditions specified in S6, each vehicle with a GVWR greater than 10,000 pounds and manufactured on or after (COMPLIANCE DATE, if adopted) must stop from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway. Stop the vehicle with the vehicle:

(a) Loaded to its GVWR, and

(b) At its unloaded weight, plus up to 500 pounds (including driver and instrumentation), or at the manufacturer's option, at its unloaded weight plus up to 500 pounds (including driver and instrumentation)

and plus not more than an additional 1000 pounds for a roll bar structure on the vehicle.

* * * * *

S6.9.2 (a) For vehicles with GVWRs greater than 10,000 pounds, road tests are conducted on a 12-foot-wide, level roadway, having a peak friction coefficient of 0.9 when measured using an American Society for Testing and Materials (ASTM) E 1136 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 40 mph, without water delivery. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

(b) For vehicles with GVWRs greater than 10,000 pounds, stability and control during braking tests are conducted on a 500-foot-radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an American Society for Testing and Materials (ASTM) E1136 standard reference tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, with water delivery.

* * * * *

S6.14 *Special drive conditions.* A vehicle with a GVWR greater than 10,000 pounds equipped with an interlocking axle system or a front wheel drive system that is engaged and disengaged by the driver is tested with the system disengaged.

* * * * *

S7. *Test procedure and sequence.* Each vehicle must be capable of meeting all the applicable requirements of S5 when tested according to the procedures and in sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in the burnish and reburnish procedures and in S7.9 and S7.10. For vehicles only having to meet the requirements of S5.1.1, S5.1.2, S5.1.3, and S5.1.7 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.5, S7.9, S7.10, S7.11 and S7.18. However, at the option of the manufacturer, the following test procedure and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7, S7.8, S7.9, S7.10, S7.11, and S7.18. The choice of this option must not be construed as adding to the requirements specified in S5.1.2 and S5.1.3. Automatic adjusters must remain activated at all times. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5, S7.8, S7.9, S7.10, S7.15 and S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector is required to be in neutral for a deceleration, a stop or snub must be obtained by the following procedures:

(a) Exceed the test speed by 4 to 8 mph;

(b) Close the throttle and coast in gear to approximately 2 mph above the test speed;

(c) Shift to neutral; and

(d) When the test speed is reached, apply the service brakes.

* * * * *

S7.5 (a) *Stability and control during braking* (vehicles with GVWRs greater than 10,000 pounds). Make four stops in the loaded condition specified in S5.1.7(a) and then four stops in the unloaded condition specified in S5.1.7(b). Use a full brake application for the duration of the stop, with the clutch pedal depressed or the transmission selector control in the neutral position, for the duration of each stop.

(b) *Service brake system—second effectiveness test.* Repeat S7.3. Then (for passenger cars and other vehicles with GVWRs of 10,000 pounds or less) make four stops from 80 mph if the speed attainable in 2 miles is not less than 84 mph.

* * * * *

TABLE I—BRAKE TEST PROCEDURE SEQUENCE AND REQUIREMENTS

Sequence	Test load		Test procedure	Requirements
	Light	GVWR		
1. Instrumentation check	.....	.....	S7.2	
2. First (preburnish) effectiveness test	.....	X	S7.3	S5.1.1.1
3. Burnish procedure	.....	X	S7.4	
4. Braking-in-a-curve test	X	X	S7.5(a)	S5.1.7
5. Second effectiveness test	.....	X	S7.5(b)	S5.1.1.2
6. First reburnish	.....	X	S7.6	
7. Parking brake	X	X	S7.7	S5.2
8. Third effectiveness (lightly loaded vehicle)	X	.....	S7.8	S5.1.1.3
9. Partial failure	X	X	S7.9	S5.1.2
10. Inoperative brake power and power assist units	.....	X	S7.10	S5.1.3
11. First fade and recovery	.....	X	S7.11	S5.1.4
12. Second reburnish	.....	X	S7.12	
13. Second fade and recovery	.....	X	S7.13	S5.1.4
14. Third reburnish	.....	X	S7.14	
15. Fourth effectiveness	.....	X	S7.15	S5.1.1.4
16. Water recovery	.....	X	S7.16	S5.1.5
17. Spike stops	.....	X	S7.17	S5.1.6
18. Final inspection	.....	.....	S7.18	S5.6
19. Moving barrier test	.....	X	S7.19	S5.2.2.3

* * * * *

3. Section 571.121 would be amended by revising S5.3, S5.3.6, S5.3.6.2 introductory text and paragraph (a), S6.1.15, and Table I to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3 *Service brakes—road tests.* The service brake system on each truck tractor must, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck other than a truck tractor must, under the conditions of S6, meet the requirements

of S5.3.1, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck other than a truck tractor manufactured on or after [Compliance date to be inserted] must, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each trailer must, under the conditions of S6, meet the requirements of S5.3.3, S5.3.4, and S5.3.5 when tested without adjustments other than those specified in this standard. However, a heavy hauler trailer and the truck and trailer portions of an auto transporter need not meet the requirements of S5.3.

* * * * *

S5.3.6 *Stability and control during braking—trucks and buses.* When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and S5.3.6.2, each truck tractor must stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway. When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and S5.3.6.2, each bus and truck other than a truck tractor manufactured on or after [Compliance date to be inserted], must stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway.

* * * * *

S5.3.6.2 Stop the vehicle, with the vehicle:

(a) Loaded to its GVWR so that the load on each axle measured at the tire-ground interface is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of any axle, and

(b) * * *

* * * * *

S6.1.15 *Initial brake temperature.* Unless otherwise specified, the initial brake temperature is not less than 150°F and not more than 200°F. The temperature of each brake is measured by a single plug-type thermocouple installed in the center of the lining surface of the most heavily loaded shoe or pad as shown in Figure 2. The thermocouple is outside any center groove.

* * * * *

TABLE I—STOPPING SEQUENCE

1. Burnish.

2. Stops on a peak friction coefficient surface of 0.5:

(a) With the vehicle at gross vehicle weight rating (GVWR), stop the vehicle from 30 mph using the service brake, for a single-unit vehicle or for a truck tractor with a loaded unbraked control trailer;

(b) With the vehicle at unloaded weight plus up to 1,500 lbs, stop the vehicle from 30 mph using the service brake, for a truck tractor or a single-unit vehicle;

3. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles within the limits recommended by the vehicle manufacturer.

4. Other stops with vehicle at GVWR:

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle;

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.

5. Parking brake test with the vehicle loaded to GVWR.

6. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles, within the limits recommended by the vehicle manufacturer.

7. Other stops with the vehicle at unloaded weight plus up to 1500 lbs:

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle;

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a truck tractor or for a single-unit vehicle.

8. Parking brake test with the vehicle at unloaded weight plus up to 500 lbs.

9. Final inspection of service brake system for condition of adjustment.

* * * * *

Issued on December 14, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–32889 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991112303–9303–01; I.D. 100499A]

RIN 0648–AM01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 1999–2000 Catch Specifications for Gulf Group King and Spanish Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to increase the total allowable catch (TAC) and the bag limit for Gulf group Spanish mackerel and to establish a new fishing season for the Gulf group king mackerel gillnet fishery. The intended effects of this rule are to enhance the economic and social benefits from the Gulf group king and Spanish mackerel fisheries while maintaining healthy stocks.

DATES: Written comments must be received at the appropriate address or fax number, (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on January 20, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the environmental assessment and regulatory impact review (RIR) supporting this action should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619–2266, PHONE: 813–228–2815, FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the

Gulf of Mexico and South Atlantic Fishery Management Councils and was approved by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Gulf of Mexico Fishery Management Council (Council) made recommendations for changes in certain management measures, in a regulatory amendment for 1999–2000 catch specifications, to the Regional Administrator, Southeast Region, NMFS (RA). The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

Bag Limit for Captain and Crew of For-Hire Vessels

NMFS recently published a final rule (64 FR 45457, August 20, 1999) establishing a zero-fish bag limit of Gulf group king mackerel for captain and crew of for-hire vessels (i.e., charter vessels and headboats). In the 1999/2000 catch specifications that this rule proposes to implement, the Council proposes to restore the 2–fish-per-person-per-day bag limit for this segment of the fishery, concluding that the management goals to rebuild this stock can be achieved without this restriction. Nevertheless, NMFS continues to believe that a zero-fish bag limit of Gulf group king mackerel for the captain and crew of for-hire vessels is necessary for the adequate conservation and management of this overfished resource. The rationale for its belief is set forth in the preamble to the final rule (64 FR 45457, August 20, 1999) to implement the 1998/1999 catch specifications. Two independent sampling programs indicate that on a per-trip basis the per-angler catch exceeds the allowable bag limit unless the captain and crew are included as anglers. The recreational fishery has consistently overrun its allocation since the 1986/87 fishing year, and the catch attributable to the captain and crew contributes to this problem. NMFS anticipates that a zero-fish bag limit for captains and crew will reduce total charterboat landings by as much as 17 percent. Fifty to sixty-five percent of the total recreational landings are from charterboats, thus the total reduction in recreational catch could be as high as 10–12 percent. Additionally, enforcement of a daily bag limit for captain and crew of for-hire vessels is difficult where those vessels and crews make multiple trips within a day. NMFS also believes that a 0–fish bag limit for Gulf group king mackerel for captain and crew on for-hire vessels will reduce in-season recreational sales, which are then counted against the commercial quota. This leads to situations where the fish are counted twice: once as a recreational catch, and once as a commercial sale. This double counting of fish contributes to an "artificial" overrun of the commercial quotas. Elimination of this double counting should foster a more accurate depiction of fishing mortality, thus providing more accurate stock assessments. For these reasons, the RA has determined that the Council's proposed reinstatement of the 2–fish bag limit on Gulf group king mackerel for the captain and crew of for-hire vessels is contrary to the goals and objectives of the FMP and to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Consistent with the FMP framework provisions, the proposed 2–fish bag limit for this fishery is not proposed in this rule. The RA has notified the Council of his action and reasons therefore.

Fishing Season Changes for the Gillnet Fishery

The Council recommends the establishment of a new opening date for the gillnet fishery for Gulf group king mackerel of 6:00 a.m. eastern standard time on the Tuesday following the Martin Luther King, Jr. holiday, with the following weekend open as long as the quota has not been taken. All subsequent weekends and holidays would be closed. Weekend and holiday closures, would be from 6:00 a.m. Saturday to 6:00 a.m. Monday eastern standard time (or Tuesday if Monday is a holiday). During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the Florida west coast subzone would not be able to fish for or possess Gulf group king mackerel.

The Council proposes this new fishing season because the gillnet fishery has the capability of harvesting large amounts of king mackerel in a short timeframe; thus it is imperative to be able to implement a closure on short notice. The fishery in southern Florida normally is conducted during the month of January. By delaying the opening of the season until after the 3-day weekend associated with the Martin Luther King holiday and by closing all weekends after the first weekend to gillnet fishing, the Council intends to reduce the possibility of the fishery exceeding its allocation because fishing is occurring during a period when a closure notice cannot be published.

Increase TAC for Spanish Mackerel

The Council recommends an increase in the TAC for Gulf group Spanish mackerel from 7.0 to 9.1 million lb (3.2 to 4.1 million kg). This TAC would be at the lower end of the acceptable biological catch range of 9.1 to 17.2 million lb (4.1 to 7.8 million kg), and within the confidence intervals established (7.1 to 9.7 million lb (3.2 to 4.4 million kg)) for maximum sustainable yield. Landings in this fishery have been below the established TAC since the 1989/1990 fishing season. Since the 1995/1996 fishing year, landings have averaged about 2.5 million lb (1.1 million kg) while TAC remained at 7.0 million lb (3.2 million kg). The stock is not overfished or undergoing overfishing, and the Council intends to enhance the social and economic benefits from the fishery by providing optimal utilization of this resource. A 9.1 million-lb (4.1 million-kg) TAC would provide a 3.913 million-lb (1.775 million-kg) allocation to recreational fishing and a 5.187 million-lb (2.353 million-kg) allocation to commercial fishing.

Increase the Recreational Bag Limit for Spanish Mackerel

The Council proposes to increase the bag limit for Gulf group Spanish mackerel from 7 fish off Texas and 10 fish for all other states to 15 fish per person per day for the entire exclusive economic zone (EEZ) in the Gulf (Florida through Texas) with the change to be effective January 1, 2000. The recreational fishery has not met its allocation in recent years under the more restrictive bag limits. Thus, based on the healthy status of the stock and the proposed increase in TAC, the Council intends to provide greater social and economic benefits from the optimal utilization of this resource.

Classification

This proposed rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification is based largely on the findings in the RIR. The factual basis for the certification is summarized as follows:

Based on Small Business Administration definitions found in Section 601(3) of the Regulatory

Flexibility Act, there are 1,440 small business entities permitted for commercial coastal migratory pelagics fishing, and an additional 1,113 for-hire (charterboat and headboat) small business entities have permits. A majority of the commercial small business entities will receive insignificant positive benefits from the actions. The actions will not affect significantly for-hire small businesses. The only action affecting commercial revenues is the proposal to change the start date for the gillnet fishery. This change is expected to result in a slight increase in exvessel prices because the commercial catches will be spread more evenly over the year. None of the proposed actions would lead to increased compliance costs, so there are no differential small versus large entity impacts. In addition, there are no expected capital costs of compliance, and there are no additional requirements for bookkeeping or record keeping. Since the expected economic impacts are small and positive, there is no expectation that any of the small business entities comprising the universe will cease business if the actions are implemented.

As a result, a regulatory flexibility analysis was not prepared. Copies of the RIR are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (m) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(m) *Closures of the Gulf group king mackerel gillnet fishery.* The gillnet fishery for Gulf group king mackerel in or from the EEZ is closed each fishing year from July 1 until 6:00 a.m. on the day after the Martin Luther King Jr. Federal holiday, which is the third Monday in January. The gillnet fishery also is closed during all subsequent weekends and observed Federal holidays, except for the first weekend following the Martin Luther King Jr. holiday which will remain open to the gillnet fishery provided a notification of closure of that fishery has not been filed under § 622.43(a). Weekend closures are effective from 6:00 a.m. Saturday to 6:00 a.m. Monday. Holiday closures are effective from 6:00 a.m. on the observed Federal holiday to 6:00 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the Florida west coast subzone may not fish for or possess Gulf group king mackerel.

3. In § 622.39, paragraph (c)(1)(iv) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(iv) Gulf migratory group Spanish mackerel—15.

* * * * *

4. In § 622.42, paragraph (c)(2)(i) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(2) * * *

(i) *Gulf migratory group.* The quota for the Gulf migratory group of Spanish mackerel is 5.187 million lb (2.353 million kg).

* * * * *

5. In § 622.44, paragraph (a)(2)(ii)(A)(*1*) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

(*1*) In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(m) or § 622.43(a).

* * * * *

[FR Doc. 99–32923 Filed 12-20-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210329–9329–01; I.D. 102699B]

RIN 0648–AM63

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Amendment 58 to Revise the Chinook Salmon Savings Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 58 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (BSAI) (FMP) and associated recommendations from the North Pacific Fishery Management Council (Council). Amendment 58 would establish a framework to allow NMFS to reduce the annual trawl bycatch limit for chinook salmon and it would revise the Chinook Salmon Savings Area (CHSSA) in the BSAI. This action is necessary to reduce chinook salmon bycatch and is intended to further the conservation and management objectives of the FMP.

DATES: Comments on the proposed rule must be received no later than February 4, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. NMFS will not accept comments submitted by e-mail or the Internet. Copies of Amendment 58 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the BSAI under the FMP. Regulations appearing at 50 CFR part 679 issued under authority of the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) implement the FMP. General regulations governing U.S. fisheries appear at 50 CFR part 600. The Council prepared the FMP under authority of the Magnuson-Stevens Act. The Council prepared Amendment 58 to the FMP primarily to reduce bycatch of chinook salmon by trawl fisheries in the BSAI. NMFS published a notice of availability for this amendment in the **Federal Register** at 64 FR 60157 on November 4, 1999, soliciting public comments on this amendment through January 3, 2000. Public comments that are received on that request for comments or in response to this notice of proposed rulemaking on or before January 3, 2000, will be considered in the approval/disapproval decision. Comments received after that date, but before the end of the comment period for this proposed rule, will not be considered in the approval-disapproval decision of the amendment, but will be considered in context of this proposed rule. The preamble of the final rule will contain a summary of the comments received, both on Amendment 58 and on the proposed rule. Copies of Amendment 58 are available upon request (see **ADDRESSES**).

Background

Trawl fisheries in the BSAI, particularly the midwater pollock fishery, incidentally catch chinook salmon, which is why Amendment 58 removes the PSC limit. Salmon are prohibited species in the BSAI groundfish fisheries. They cannot be retained and must be returned to the sea as soon as possible with a minimum of injury after they have been counted by a NMFS certified observer. However, the mortality rate for salmon caught in trawl fisheries is 100 percent as salmon cannot survive interception by trawl gear. Final regulations published on November 29, 1995 (60 FR 61215), effective January 1996, established annual prohibited species catch (PSC) limits for chinook salmon and specific seasonal no trawling zones in the CHSSA that are triggered when the limits are reached. These existing regulations prohibit trawling in the CHSSA through April 15 of each year once the bycatch limit of 48,000 chinook salmon, as specified in the FMP, is reached.

Chinook salmon bycatch in trawl fisheries reached a high in 1980, when foreign trawl vessels intercepted approximately 115,000 chinook salmon. Following Federal action to reduce bycatch in the trawl fisheries, the foreign fleet was constrained by a bycatch reduction schedule that reduced the allowable level each year from 65,000 chinook salmon in 1981 to 16,500 chinook salmon in 1986. Domestic vessels began fishing in the mid-1980s and bycatch numbers remained below 40,000 fish until 1993. From 1994 to 1998, most of the chinook salmon bycatch was within the area designated as the CHSSA. During this same period, the bycatch limit of 48,000 chinook salmon was exceeded four times, with a high of about 60,000 chinook salmon intercepted in 1998. Since 1996, when the CHSSA became effective, a PSC limit of 48,000 chinook salmon has been in place between January 1 and April 15 for vessels using trawl gear, with no restrictions on the amount of chinook salmon bycatch in the subsequent months.

Concern over chinook salmon bycatch in the groundfish trawl fisheries exists because incidental harvests reduce the amount of chinook salmon available for escapement and subsistence in commercial and recreational fisheries. Between 50 and 90 percent of the chinook salmon bycatch in the BSAI is estimated to originate in Western Alaska river systems. Minimum escapement goals for the Yukon River, Kuskokwim River, and portions of Bristol Bay are being met through careful management of directed fisheries by time, area, and gear restrictions. In addition, chinook salmon is one of the major food items of Native communities in Western and Interior Alaska and plays an important role in supporting the indigenous cultures and mixed, subsistence-cash socioeconomic systems of these peoples. Finally, commercial and recreational chinook salmon fishing provides a primary source of income for Western Alaska communities.

The Magnuson-Stevens Act emphasizes the importance of minimizing bycatch in achieving sustainable fisheries. National standard 9 mandates that conservation and management measures, to the extent practicable, (1) minimize bycatch and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. In addition, section 303 of the Magnuson-Stevens Act was amended in 1996 to add bycatch reduction incentives as a discretionary provision of fishery management plans. This provision states that any fishery management plan may "include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch" (section 303(b)(10)).

To comply with these provisions of the Magnuson-Stevens Act, the Council emphasized the need for additional bycatch management measures during the 1997 call for proposals to reduce bycatch and bycatch rates. At its meeting in September 1997, the Council initiated development of an analysis to investigate lowering the chinook salmon bycatch limit in the BSAI. This proposal, submitted by the Yukon River Drainage Fisheries Association, identified the current bycatch trigger of 48,000 chinook salmon as too high to reduce chinook salmon bycatch effectively. Additionally, bycatch of chinook salmon after April 15 does not apply toward the PSC limit that triggers a closure.

At its meeting in February 1999, the Council considered this information and the analysis prepared by its staff and by staff from the Alaska Department of Fish and Game in support of this action and adopted Amendment 58 to the BSAI FMP to reduce chinook salmon bycatch in the BSAI. The Council considered five alternatives and recommended the combination of FMP and regulatory amendments that would: (1) Reduce the chinook salmon bycatch limit from 48,000 to 29,000 chinook salmon over a 4-year period, (2) implement year-round accounting of chinook salmon bycatch for the pollock fishery, beginning on January 1 of each year, (3) revise the boundaries defined by the CHSSA, and (4) set new CHSSA closure dates.

Elements of the Proposed Rule

Chinook Salmon Savings Areas

Currently, the CHSSA encompasses three non-contiguous areas of the BSAI comprising nine geographic blocks, each defined by 1/2° latitude by 1° longitude. These blocks are closed to all vessels using trawl gear through 1200 hours Alaska local time (A.l.t.) April 15 once an annual PSC limit of 48,000 chinook salmon is reached. Monitoring of incidental catches in the trawl fisheries begins on January 1. If closed, the CHSSA reopens 1200 hours A.l.t. April 15 for the remainder of the year, regardless of the amount of chinook salmon bycatch.

Analysis of 1994–1997 observer data indicated that the current boundaries of the CHSSA could be modified slightly to incorporate new regions of relatively high chinook bycatch. High rates of bycatch were found in the vicinity of the Pribilof Islands. However, bycatch within specific areas and years was not found to be consistent. Alternatively, the two-block component of the current

CHSSA, in the Pribilof Islands, has had low bycatch rates of chinook salmon since its inception in 1996. Hence, these two blocks would be removed from the CHSSA. Additionally, the new area near Unimak Island, which showed consistently high bycatch rates of chinook salmon, would be included in the revised CHSSA.

Progressive Reduction of the Chinook Salmon Bycatch Limit

This action would prohibit directed fishing for pollock by vessels using trawl gear within the CHSSA when NMFS determines that the bycatch limit for chinook salmon has been attained for each year according to the following schedule:

Year	Chinook Salmon Limit
2000	41,000
2001	37,000
2002	33,000
2003 and after	29,000

Accounting for the PSC limit would begin on January 1 and continue throughout the fishing year. Non-pollock fisheries, which account for about 10 percent of the trawl chinook salmon bycatch, would be exempt from the closure of the CHSSA, and any chinook salmon bycatch in those fisheries would not be counted toward the PSC limit.

Historically, the Pacific cod trawl fishery is the only non-pollock fishery that intercepts a significant amount of chinook salmon. This fishery has accounted for a consistent amount of bycatch, ranging from 5,000 to 7,000 chinook salmon per year, while the pollock fishery bycatch of chinook salmon has ranged from approximately 40,000 to 60,000 chinook salmon per year. The Council recommended the exemption of the Pacific cod fishery because the Pacific cod fishery has exhibited consistent and relatively low bycatch of chinook salmon (about 10 percent of the annual bycatch). The pollock fishery has intercepted about 90 percent of the annual chinook salmon bycatch and has also shown greater flexibility in reducing its bycatch of chinook salmon by altering its fishing patterns. For these reasons, the Council determined that a PSC limit would be most effective if applied in a relative amount to the pollock fishery only. The Council assumed that a bycatch limit of 29,000 chinook salmon for the pollock fishery would be in addition to about 7,000 chinook salmon intercepted annually by the Pacific cod fishery (for a total of about 36,000 chinook salmon taken as bycatch).

In the event the chinook salmon limit is triggered before April 15, the CHSSA would close immediately. The closure would be removed on April 15 (before the beginning of the second pollock season), but would be reinitiated on September 1 and continue through the end of the year. If the limit were reached after April 15, but before September 1, then the CHSSA would close on September 1. The date, September 1, was selected because analysis indicates that bycatch increases in the fall. If the limit were reached after September 1, the CHSSA would close immediately and not reopen until the following year on January 1.

Classification

This action has been determined to be not significant under E.O. 12866.

NMFS has prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed action would apply to the 138 fishing vessels in the pollock fishery. In 1997, 34 factory trawlers and 106 catcher vessels participated in the pollock fishery harvesting about 1.15 million mt of pollock, an ex-vessel value of about $227 million. Under the proposed rule, if a chinook salmon PSC limit were attained, all vessels would be prohibited from directed fishing for pollock within the CHSSA, and the proposed regulations could affect all 138 vessels, including CDQ vessels. However, the available pollock TAC would not be reduced; only the location of the catch would be restricted. Therefore, this action should not prevent these vessels' ability to harvest the entire amount, although pollock catch rates could decrease as a direct result of a CHSSA closure. During the summer months when chinook salmon bycatch has been historically very low, the CHSSA would be open for directed fishing even if the PSC limit has been previously attained. NMFS is not aware of any Federal regulations that duplicate this proposed rule. No new reporting, recordkeeping, or compliance requirements are imposed by this rule. NMFS designed this rule to minimize impacts on small entities. The rule would specifically target the pollock fishery, which is composed primarily of large entities and which historically has been responsible for the vast majority of chinook salmon bycatch in the BSAI. All other fisheries in the BSAI, many of which have a higher number and percentage of small entity participation, are exempt from the chinook salmon PSC limit and any trawling prohibitions that might result from attainment of a PSC limit. Chinook salmon bycaught in non-pollock fisheries also would not be counted toward the cap under the preferred alternative, which reduces the potential for behavior of non-pollock fisheries to adversely impact (small) pollock operations. NMFS considered the alternative of maintaining the status quo. Although maintaining the status quo might minimize impacts on small entities, it would not achieve the objectives of this action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for *Chinook Salmon Savings Area of the BSAI* is revised to read as follows:

* * * * *

Chinook Salmon Savings Area of the BSAI (see § 679.21(e)(7)(viii)).

* * * * *

3. In § 679.7, paragraph (d)(9) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * * *

(d) * * *

(9) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest pollock CDQ in the Chinook Salmon Savings Area between January 1 and April 15, and between September 1 and December 31, after the CDQ group's chinook salmon PSQ is attained.

* * * * * *

4. In § 679.21, paragraphs (e)(1)(vii) and (e)(7)(viii) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * * *

(e) * * *

(1) * * *

(vii) *Chinook salmon.* The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect

when the Regional Administrator determines that the PSC limit of chinook salmon caught while harvesting pollock in the BSAI between January 1 and December 31 is attained according to the following amounts identified for each year:

Year	Chinook Salmon Limit
2000	41,000
2001	37,000
2002	33,000
2003 and after	29,000

* * * * *

(7) * * *

(viii) *Chinook salmon.* (A) *Closure.* If, during the fishing year, the Regional Administrator determines that catch of chinook salmon, by vessels using trawl gear while directed fishing for pollock in the BSAI, will reach the annual limit, as identified in paragraph (e)(1)(vii) of this section, NMFS, by notice in the **Federal Register** will close the Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear consistent with the following dates:

(*1*) From the effective date of the closure notice until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained before April 15.

(*2*) From September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained after April 15.

(B) [Reserved]

* * * * *

5. In part 679, Figure 8 is removed and Figure 8a and Figure 8b are added to read as follows:

BILLING CODE 3510–22–F

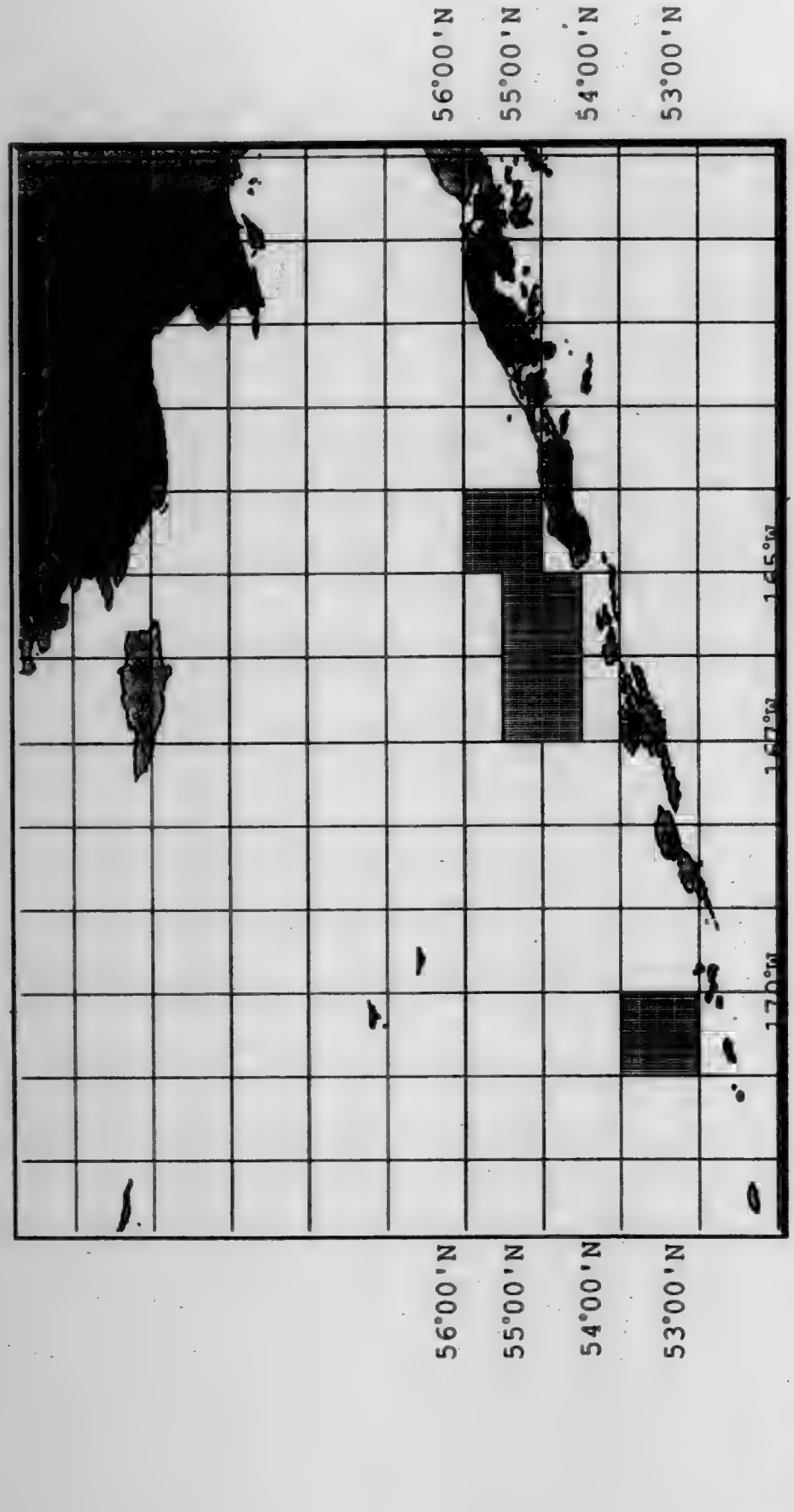


Figure 8a to part 679. Chinook Salmon Savings Areas of the BSAI a. Map

Chinook Salmon Savings Areas

Figure 8b.

The Chinook Salmon Savings Area as defined in the following two areas of the BSAI:

b. Coordinates

(1) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00' N., 171° 00' W.;

54° 00' N., 170° 00' W.;

53° 00' N., 170° 00' W.;

53° 00' N., 171° 00' W.; and

54° 00' N., 171° 00' W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

56° 00' N., 165° 00' W.;

56° 00' N., 164° 00' W.;

55° 00' N., 164° 00' W.;

55° 00' N., 165° 00' W.;

54° 30' N., 165° 00' W.;

54° 30' N., 167° 00' W.;

55° 30' N., 167° 00' W.;

55° 30' N., 165° 00' W.; and

56° 00' N., 165° 00' W.

[FR Doc. 99–32926 Filed 12–20–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210331–9331–01; I.D. 102899B]

RIN 0648-AN34

Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the American Fisheries Act (AFA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to implement an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands (BS/AI) directed fishing allowance under the AFA. The AFA authorized a $75 million loan to reduce fishing capacity for offshore component (OC) pollock and the inshore fee system as the means of repaying the loan. The proceeds of the loan partly paid the cost of removing nine OC catcher-processors (which the AFA specified) from all commercial fishing in the U.S. exclusive economic zone (EEZ). The intent of this rule is to implement the inshore fee system that the AFA requires.

DATES: Comments must be received at the appropriate address or facsimile number (see **ADDRESSES**) no later than January 5, 2000.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282. Written comments should be sent to Michael L. Grable at the above address. Comments also may be sent, via facsimile, to 301-713-1306. NMFS will not accept comments sent by e-mail or the Internet. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this proposed rule should be sent to both Michael L. Grable and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, 301-713–2390, fax 301-713-1306, e-mail *Michael.Grable@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The President signed the AFA into law on October 20, 1998, as part of the Omnibus Appropriations Bill for fiscal year 1999 (Pub. L. 105-277). The AFA required the Federal Government to pay, not later than December 31, 1998, $90 million to the owners of nine large catcher processors harvesting OC pollock. In return, eight of these vessels had to stop all commercial fishing in the EEZ immediately and be scrapped by December 31, 2000. Although the ninth vessel did not have to be scrapped, it also had to stop all commercial fishing in the EEZ immediately and the owner had to certify that neither the owner nor anyone who purchased the vessel from the owner intended to use the vessel outside the EEZ to harvest any fish that also occur within the EEZ.

Before December 31, 1998, NMFS paid the required amount to the owners of these vessels. In accordance with the AFA, NMFS paid $15 million of this amount from an AFA appropriation and the remaining $75 million from the proceeds of a fishing capacity reduction loan under sections 1111 and 1112 of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and g) (Title XI). The AFA requires the loan to be repaid by fees under section 312(d)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(d)(2)(C)) (Magnuson-Stevens Act).

Upon payment of the $90 million, NMFS revoked all nine vessels' domestic fishing permits, one owner provided the certificate required for the ninth vessel, and the other owners began preparing for scrapping the remaining eight vessels. All eight vessels are presently undergoing scrapping at a scrapping facility in San Francisco, CA. Scrapping is scheduled to be completed before December 31, 2000.

Under the AFA and section 312(d)(2)(C) of the Magnuson-Stevens Act, all vessel owners harvesting IC pollock (fish sellers) are required to pay the fee and all fish processors making the first ex-vessel purchase of IC pollock (fish buyers) are required to collect the fee and account for and forward the fee revenue to NMFS for the purpose of repaying the loan. The fish sellers pay, and the fish buyers collect, the fee when the fish buyers deduct the fee from the ex-vessel value of all IC pollock before paying the net ex-vessel value of the fish to the fish sellers.

The fee is six-tenths (0.6) of one cent for each pound, round-weight, of all IC pollock that fish sellers land. The AFA provides that fee payment and collection shall begin on or after January 1, 2000. Although the loan's scheduled maturity is 30 years, the AFA also provides that fee payment and collection "shall * * * continue without interruption until such loan is fully repaid * * *" (section 207(b)(2)). Whether the loan is repaid before, at, or after its scheduled maturity depends on when fee payment begins, the rate at which loan principal bears interest, annually determined total allowable pollock catches after December 31, 1999, and IC pollock allocations after December 31, 2004. NMFS has not finally determined the rate at which the loan's principal bears interest. The other variables controlling the time required to fully repay the loan are not presently determinable.

Several assumptions are, consequently, necessary to project the time required to fully repay the loan. The first assumption involves the time at which fee payment begins. For projection purposes, NMFS assumes that fee payment begins on January 1, 2000. The second assumption involves the rate at which the principal of the loan bears interest. NMFS believes this rate will be either 7.09 percent or 7.81 percent per annum. For projection purposes, NMFS assumes the higher of these two rates. The third assumption involves the annual total allowable catch of pollock after December 31, 1999, which may vary from year to year. For projection purposes, NMFS assumes that the average annual total allowable catch of pollock after December 31, 1999, will be the same as the average annual total allowable catch of pollock over the 14-year period from the beginning of 1985 through end of 1998 (2.769 billion pounds or 1.256 million metric tons). The fourth assumption involves IC pollock allocations after December 31, 2004. This depends on whether the North Pacific Fishery Management Council maintains IC pollock allocations after December 31, 2004, at the same level as IC pollock allocations, under the AFA, from January 1, 1999, to December 31, 2004 (i.e., 42 percent of total allowable catch). For the purposes of this projection, NMFS assumes that IC pollock allocations after December 31, 2004, will be the same as IC pollock allocations from January 1, 1999, to December 31, 2004. Under these four

assumptions, the loan will be repaid in 21 years (i.e., 9 years less than the scheduled maturity). Actual conditions different than those NMFS assumes for the purpose of this projection may, however, cause loan repayment to occur sooner or later than here projected. Future total allowable catches may be the biggest determinate of the time actually required to repay this loan.

Accordingly, this rule proposes that fee payment and collection begin on the seventh calendar day after the date that a final fee rule is published in the FEDERAL REGISTER and continue without interruption until the loan is fully repaid (without regard to whether this is a period longer or shorter than the loan's scheduled maturity of 30 years).

The fixed interest rate at which the loan accrues interest is two percent of the principal amount of the loan outstanding plus such additional percent as the Secretary of Commerce is obligated to pay as the interest cost of borrowing from the United States Treasury the funds from which NMFS made the loan. On December 30, 1998, NMFS disbursed all $75 million of the loan's original principal amount. Interest has been accruing since that date. NMFS is still determining the interest rate that the statutory formula requires (which, as noted, will probably be either 7.09 percent or 7.81 percent per annum). NMFS will apply all fee receipts, first, to the payment of accrued interest and, second, to the reduction of loan principal.

Section 312(b)-(e) of the Magnuson-Stevens Act provides for fishing capacity reduction programs (which may be funded by loans under sections 1111 and 1112 of Title XI). Although the IC pollock loan is authorized by the AFA rather than by section 312(b)-(e) of the Magnuson-Stevens Act, the AFA specifies that the IC pollock loan is repayable under section 312(d)(2)(C) of the Magnuson-Stevens Act. NMFS has already proposed a framework rule for implementing section 312(b)-(e) of the Magnuson-Stevens Act (64 FR 6854, February 11, 1999). The proposed framework rule would establish detailed provisions for paying, collecting, disbursing, accounting for, and reporting about fees repaying fishing capacity reduction loans.

NMFS had hoped to implement the fishing capacity reduction framework rule before NMFS had to provide for payment and collection of the IC pollock fee. NMFS intended to provide for payment and collection of the IC pollock fee by making the loan subject to the framework rule provisions about fee payment and collection. Because NMFS has not yet adopted and promulgated the framework rule, however, NMFS must now separately provide for payment and collection of the IC pollock fee by proposing to add a temporary subpart G to 50 CFR part 679 (subpart G). NMFS has drawn most of the procedural provisions of the proposed subpart G from the proposed framework rule. After a framework rule is adopted and promulgated, NMFS will revoke subpart G and concurrently provide, by a program implementation rule under the framework rule, for the continuing payment and collection of the IC pollock fee.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the AFA, the Magnuson-Stevens Act, Title XI, and other applicable laws.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the action in the proposed rule on small entities. In summary, the IRFA states that this proposed rule would apply to about 100 fish sellers (all of whom are small entities) and about eight fish buyers (none of whom are small entities). The IRFA indicates that the average annual fee expense for each fish seller will likely be about $60,000. Recordkeeping and reporting requirements would fall primarily on the fish buyers, who collect the fee. The estimated annual compliance cost to fish buyers is about $5,568 per fish buyer. Several minimal recordkeeping and reporting requirements also apply to fish sellers. A fish seller must report to NMFS if a fish buyer refuses to collect the fee. The estimated compliance cost, should a fish buyer's refusal to collect the fee require a fish seller to report, is about $25 per report. In specific and limited circumstances when a fish seller becomes a *de facto* fish buyer for recordkeeping and reporting requirements, the estimated compliance cost is the same as a fish buyer's compliance cost. The Paperwork Reduction Act (PRA) discussion further details these costs. This proposed rule does not duplicate or conflict with any other Federal rules of which NMFS is aware. NMFS considered two alternatives that might have lessened the economic impact on small entities. These alternatives were not collecting the fee and delaying fee collection. Not collecting the fee would both cost the Nation $75 million and violate the AFA. Delaying fee collection would increase the ultimate cost to fish sellers (because interest would continue to accrue on an unreduced $75 million principal balance) and prolong the time required for fish sellers to repay the loan. The AFA requires that the fee system remain in effect until the loan is fully repaid. The EA/RIR/IRFA further discusses these alternatives and their economic impact on IC pollock fish sellers and fish buyers.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the PRA requirements unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains collection of information requirements subject to the PRA that have been approved by OMB under OMB Control No. 0648-0376. This PRA approval occurred in connection with proposal of the framework rule for implementing section 312(b)-(e) of the Magnuson-Stevens Act, including a collection of information burden for fee payment, collection, disbursement, accounting, and reporting under section 312(d)(2)(C) of the Magnuson-Stevens Act. The AFA provides that payment and collection of the IC pollock fee shall be in accordance with 312(d)(2)(C) of the Magnuson-Stevens Act.

The estimated response times for this collection of information are: 10 minutes per fishing trip to maintain records on transactions, 2 hours per fish buyer's monthly report, 4 hours per fish buyer's annual report, and 2 hours per fish buyer's or fish seller's report about fish sellers who refuse to pay, or fish buyers who refuse to collect, the fee.

These estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the function of the agency, including: whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to

NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

AUTHORITY: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, a paragraph (k) is added to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(k) This part also governs payment and collection of the loan, under the American Fisheries Act (AFA), the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. A subpart G is added to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the AFA

Sec.

679.60 Definitions.
679.61 Loan.
679.62 Fee payment and collection.
679.63 Fee collection deposits, disbursements, records, and reports.
679.64 Late charges.
679.65 Enforcement.
679.66 Prohibitions and penalties.

Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the AFA

Authority: Pub. L. 105-277, 16 U.S.C. 1801, *et seq.*

§ 679.60 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 679.1 of this title, the terms used in this subpart have the following meanings:

American Fisheries Act (AFA) means Title II of Pub. L. 105-277.

Borrower means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

Delivery value means the gross ex-vessel value of all fee fish at fish delivery.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

Fee means the six-tenths (0.6) of one cent that fish buyers deduct (under the inshore fee system provided for in section 207(b) of the AFA) from the gross ex-vessel value of each pound of round weight fee fish harvested from the IC directed fishing allowance.

Fee fish means all pollock harvested from the IC directed fishing allowance until such time as the loan's principal and interest are fully repaid.

Fish buyer means the first ex-vessel fish buyer who, in an arm's-length transaction, purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes title to, or possession of, fee fish from a fish seller.

Fish seller means the harvester who catches and, in an arm's-length transaction, first sells fee fish to a fish buyer.

IC directed fishing allowance means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

Loan means the loan authorized by section 207(a) of the AFA.

Net delivery value means the delivery value minus the fee.

Subaccount means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

§ 679.61 Loan.

(a) *Principal amount.* The loan's principal amount is $75,000,000 (seventy five million dollars).

(b) *Disbursement.* NMFS disbursed, in accordance with section 207(d)(1) of the AFA, the loan's full principal amount on December 30, 1998.

(c) *Interest.* Interest shall, from the date NMFS disbursed the loan until the date the borrower fully repays the loan, accrue at a fixed rate equal to 2 percent of the principal amount of the loan outstanding plus such additional percent as the Secretary of Commerce shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make the loan. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(d) *Repayment.* The fee shall be the exclusive source of loan repayment. The fee shall be payable on all fee fish, without interruption, until such a time as all loan principal and accrued interest is fully repaid.

(e) *Application of fee receipts.* NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued interest and, second, to reduction of the loan's principal balance.

(f) *Obligation.* The borrower shall repay the loan in accordance with the AFA and this subpart.

§ 679.62 Fee payment and collection.

(a) *Payment and collection.* (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying (or, as the case may be, promising later to pay) the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value (or, as the case may be, the fish buyer's promise later to pay the net delivery value) rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2)(i) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer (and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller) each time that the fish seller sells fee fish to:

(A) Any fish buyer whose place of business is not located in the United States, who does not take delivery, title, or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish (either with or without processing the fish), or

(C) Any other fish buyer who the fish seller has good reason to believe is a fish buyer not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, recordkeeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(b) *Notification.* (1) Before the time that the fee first becomes effective, NMFS will send an appropriate fee payment and collection notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(2) When NMFS determines that the loan is fully repaid, NMFS will publish a **FEDERAL REGISTER** notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(c) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next seven calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next seven calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

§ 679.63 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally chartered national bank for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* At the end of each business week, each fish buyer shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest (if any), but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to "NOAA Inshore Component Pollock Loan Subaccount." The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox account and the manner and form of settlement sheet by means of the notification in § 679.62(b)(1).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date the delivery is made,

(ii) The seller's identity,

(iii) The round weight of fee fish delivered,

(iv) The identity of the fishing vessel that delivers the fee fish,

(v) The delivery value,

(vi) The net delivery value,

(vii) The identity of the payor to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value is paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the subaccount's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* On December 31, 2000, and on each December 31 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

(1) Total round weight bought;

(2) Total delivery value paid;

(3) Total fee amount collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to the subaccount lockbox;

(6) Total amount of interest earned on deposits and disbursed to the fish buyer or other parties; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and confidentiality does not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality provisions make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the books and records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and its auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(i) *Refunds.* When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

§ 679.64 Late charges.

The late charge for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§ 679.65 Enforcement.

NMFS shall institute an action at law against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§ 679.66 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for anyone to:

(1) Avoid, decrease, interfere with, hinder, or delay payment or collection of (or otherwise fail to fully and properly pay or collect) any fee due and payable under this subpart or convert (or otherwise use for any purpose other than the purpose this subpart intends) any paid or collected fee;

(2) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the subaccount's lockbox account—all as this subpart requires;

(3) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(4) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(5) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(6) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(7) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(8) Otherwise materially interfere with the efficient and effective repayment of the loan.

(b) Anyone who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

[FR Doc. 99–33068 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 244
Tuesday, December 21, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission meetings.

SUMMARY: The National Drought Policy Commission (Commission) will continue discussion on its draft report of the Commission findings. They will also discuss the status of Commission activities and other committee business. This notice announces three meetings being held via teleconferencing on January 5, January 19, and February 2, 2000.

DATES: The Commission will conduct three meetings via teleconferencing: (1) January 5, 2000, from 1 p.m. to 3 p.m.; (2) January 19, 2000, from 2 p.m. to 4 p.m.; (3) February 2, 2000, from 1 p.m. to 3 p.m. in the Mezzanine Conference Room, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC. All times noted are Eastern Standard Time. Members of the public in the Washington, DC area may attend the meetings in person at the above address. All meetings are open to the public; however, teleconference lines are limited. Please call Leona Dittus at 202–720–3168 if you are interested in participating in the call and to obtain the dial-in number. Seating is limited and is available on a first-come, first-served basis.

Persons with disabilities who require accommodations to attend or participate in this meeting should contact Leona Dittus, on 202–720–3168, or Federal Relay Service at 1–800–877–8339, and leona.dittus@usda.gov, by COB December 30, 1999.

COMMENTS: The public is invited to respond and/or to submit additional comments, concerns, and issues for consideration by the Commission.

ADDRESSES: Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, DC 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus (202) 720–3168; FAX (202) 720–9688; internet leona.dittus@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will: (a) Better integrate Federal laws and programs with ongoing State, local, and tribal programs; (b) improve public awareness of the need for drought mitigation, prevention, and response; and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency.

Below is a draft vision statement and set of principles to guide the Commission.

Draft Vision Statement

Our vision is of a well-informed, involved U.S. citizenry and its governments prepared for and capable of lessening the impacts of drought—consistently and timely—in the new millennium.

This vision is based on the following principles:

Consideration of all affected entities and related issues, including legal, economic, geographic, climate, religious, and cultural differences; fairness and equity; and environmental concerns;

Comprehensive, long-term strategies that emphasize drought planning and measures to reduce the impacts of drought;

Federal role focused on appropriate coordination, technical assistance, education, and incentives while at all times respecting the rights and responsibilities of Federal, State, and local governments, and tribal sovereignty;

Self-reliance and self-determination;

Lessons learned from past drought experiences;

Shared drought-related expertise and knowledge across international borders.

In addition to your own views and thoughts regarding a national drought policy, as you review the draft vision and guiding principles, the Commission would be interested in your thoughts regarding the following questions:

1. What is the best means for informing the public of Federal assistance for drought planning and mitigation?
2. What type of information do you need for responding to the drought?
3. What needs do you or your organization presently have with respect to addressing drought conditions?
4. What do you see as the Federal role with respect to drought preparedness? Drought response? Should Federal emergency assistance be contingent on advance preparedness?
5. Are there any ways you feel that the Federal government could better coordinate with State, regional, tribal, and local governments in mitigating or responding to droughts?
6. What lessons have you or your organization learned from past drought experiences that would be beneficial in the creation of a national drought policy?

Signed at Washington, D.C., on December 16, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–33097 Filed 12–16–99; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Public Comment on Information Collections Related to Pilot and Private Crop Insurance Policies

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C., chapter 35), this notice announces Federal Crop Insurance Corporation's (FCIC) public comment period on the information collection requests (ICRs) associated with new crop insurance programs (pilot and private crop insurance policies) administered by Federal Crop Insurance Corporation (FCIC). FCIC is soliciting comments on pilot and private crop

insurance policies in selected states and counties concerning its information collections. FCIC is also soliciting comments on the crop history survey which collects information needed to determine the feasibility of developing crop insurance programs.

DATES: Written comments on this notice will be accepted until close of business February 22, 2000.

ADDRESSES: Interested persons are invited to submit written comments to Timothy Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to *DirectorPDD@RM.FCIC.USDA.GOV*. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Conway, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO address listed above, telephone (816) 926–7743.

SUPPLEMENTARY INFORMATION:

Title: New Crop Insurance Programs (pilot and private crop insurance policies).

Abstract: The Secretary of Agriculture's goal is to expand the crop insurance safety net to as many agricultural crops and commodities as possible. In keeping with these goals, FCIC is currently offering new crop insurance policies (pilot and private crop insurance policies). Pilot programs are generally approved for a 3 year period and then analyzed to determine whether or not to extend the program. Private products are approved by the FCIC board of directors (board) and are in force until the program is withdrawn by the company or canceled by the board. The following is a list of pilot and private crop insurance policies along with the state and counties where they are offered. In the future, a decision may be made to implement these program(s) into additional areas. The Crop History Survey may be used by FCIC to request information from insureds prior to the implementation of the pilot or private crop insurance policies or to expand these programs if this information is not otherwise available. Also, producers requesting crop insurance are required to complete specific forms dependent on the crops to be insured.

Adjusted Gross Revenue (AGR): Androscoggin, Cumberland, Kennebec, and York counties, Maine; Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worchester counties, Massachusetts; Belknap, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan counties, New Hampshire; Allegan, Berrien, Kent, Ottawa, and Van Buren counties, Michigan; and Alachua, Gilchrist, Levy, Marion, Sumter, and Suwannee counties, Florida effective for the 1999 through 2001 insurance years.

Avocado (APH): Dade County, Florida, effective for the 1999 through 2001 crop years.

Avocado/Mango Tree: Dade County, Florida, effective for the 1998 through 2001 crop years.

Barley (IP): In the specified number of counties in the following states; Idaho-43, Minnesota-74, Montana-108, North Dakota-53, Oregon-30, South Dakota-28, and Washington-38.

Barley, Feed (RA): Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, and Valley counties in Idaho; and Adams, Barnes, Benson, Billings, Bottineau, Billings, Bowman, Burke, Burleigh, Cass, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grand Forks, Grant, Griggs, Hettinger, Kidder, La Moure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Morton, Mountrail, Nelson, Oliver, Pierce, Ramsey, Ranson, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stuteman, Towner, Traill, Walsh, Ward, Wells, and Williams counties in North Dakota.

Beans, Fresh Market: Dade County, Florida; Hyde and Tyrrell counties in North Carolina; Accomack and Northhampton counties in Virginia effective for the years 2000 through 2002.

Cabbage: Rabun County, Georgia; Monroe, Orleans, and Ontario counties, New York; Pasquotank County, North Carolina; Schuylkill County, Pennsylvania; and Carroll County, Virginia for the 1999 through 2001 crop years; and in Colquitt County, Georgia; Flagler, Putnam, and St. Johns counties, Florida; Horry County, South Carolina; and Hidalgo County, Texas for the 2000 through 2002 crop years.

Canola/rapeseed (RA): Bannock, Benewah, Bingham, Blaine, Bonner, Bonneville, Boundary, Caribou, Cassia, Clearwater, Fremont, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Power, Teton, and Twin Falls counties in Idaho; and Barnes, Benson, Bottineau, Burke, Burleigh, Cavalier, Divide, Eddy, Foster, Grand Forks, Griggs, Kidder, McHenry, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Sheridan, Stutsman, Towner, Walsh, Ward, Wells, and Williams counties in North Dakota.

Cherries: San Joaquin County, California; Lake County, Montana; Hood River and Wasco counties, Oregon; and Benton, Chelan, Douglas, Franklin, and Yakima counties, Washington, for the 1999 through 2001 crop years.

Chile Peppers: Cochise County, Arizona; and Luna and Hidalgo counties, New Mexico for the 2000 through 2002 crop years.

Citrus, Dollar (CA): Fresno and Tulare counties, California for the 2001 through 2003 crop years.

Clams, Cultivated: Brevard, Dixie, Indian River, and Levy counties, Florida; Barnstable, Bristol, Dukes, Nantucket, and Plymouth counties, Massachusetts; and Charleston County, South Carolina; Accomack and Northampton counties, Virginia for the 2000 through the 2002 crop years.

Corn (GRIP): All counties in Illinois except Alexander, Cook, Du Page, Hardin, Johnson, Pope, Pulaski, and Union; all counties in Indiana except Brown, Crawford, Dearborn, Floyd, Monroe, Ohio, Perry, and Switzerland; and all counties in Iowa.

Corn (RA): All counties in Illinois, Indiana, Iowa, North Dakota, Minnesota except Cook, Lake, and Ramsey counties, and South Dakota except Jackson, and Shannon counties.

Cotton (CRC): In the specified number of counties in the following states; Alabama-60, Arizona-9, Arkansas-31, California-12, Florida-24, Georgia-97, Kansas-13, Louisiana-25, Mississippi-66, Missouri-7, New Mexico-11, North Carolina-53, Oklahoma-35, South Carolina-41, Tennessee-25, Texas-163, and Virginia-11.

Crambe: Bottineau, Golden Valley, Grant, Hettinger, Renville, Stark, and Ward counties in North Dakota for the 1999 through 2001 crop years.

Cucumber: Gratiot and St. Joseph counties, Michigan; Columbus, Duplin, Franklin, Greene, Robeson counties, North Carolina; Clarendon County, South Carolina; and Frio, Medina,

Uvalde counties, Texas for the 2000 through 2002 crop year.

Grain Sorghum (CRC): In the specified number of counties in the following states: Alabama-34, Arkansas-49, California-5, Colorado-18, Florida-5, Georgia-79, Illinois-62, Indiana-17, Iowa-32, Kansas-105, Kentucky-21, Louisiana-34, Maryland-5, Michigan-3, Minnesota-1, Mississippi-49, Missouri-92, Nebraska-75, New Mexico-10, North Carolina-81, North Dakota-1, Ohio-7, Oklahoma-71, South Carolina-21, South Dakota-59, Tennessee-35, Texas-202, Virginia-79, and Wisconsin-2.

Grain Sorghum (IP): 201 specified counties in Texas.

Mint: Starke and Pulaski counties, Indiana; Flathead county, Montana; Grant and Yakima counties, Washington; Dane, Marquette, Jefferson, and Walworth counties, Wisconsin, effective for the 2000 through 2002 crop years.

Mustard: All counties in North Dakota for the 1999 through 2001 crop years.

Pecan Revenue: Dougherty, Lee, and Mitchell Counties, Georgia; Culberson, El Paso, and Pecos Counties, Texas; and Dona Ana County, New Mexico, effective for the 1998 through 2000 crop years.

Rangeland (GRP): Big Horn, Blaine, Carter, Custer, Fallon, Glacier, Phillips, Powder River, Roosevelt, Rosebud, Sheridan, and Valley counties, Montana, effective for the 1999 through 2001 crop years.

Rice (CRC): In the specified number of counties in the following states: Arkansas-43, California-13, Florida-3, Louisiana-30, Mississippi-27, Missouri-7, Oklahoma-1, Tennessee-1, and Texas-23.

Soybeans (GRIP): All counties in Illinois except Cook, Du Page, Hardin, Johnson, and Pope: all counties in Indiana except Brown, Crawford, Dearborn, Floyd, Lawrence, Monroe, Ohio, Orange, Perry, and Switzerland; and all counties in Iowa effective for the 1999 and subsequent crop years.

Soybeans (IP): In the specified number of counties in the following states: Arkansas-42; Illinois-102; Indiana-92; Maryland-22; North Carolina-89; and Adair, Audubon, Cass, Dallas, Guthrie and Shelby counties in Iowa.

Soybeans (RA): All counties in Illinois, Indiana, and Iowa; all counties in Minnesota except Carlton, Cass, Cook, Hubbard, Itasca, Lake, St. Louis, and Wadena counties; all counties in North Dakota except Adams, Billings, Bowman, Burke, Divide, Dunn, Emmons, Golden Valley, Grants, Hettinger, Logan, McHenry, McIntosh, McKenzie, Mercer, Morton, Oliver, Renville, Sioux, Slope, Stark, and Williams counties; and all counties in South Dakota except Bennett, Butte, Corson, Custer, Dewey, Fall River, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Pennington, Perkins, Shannon, Stanley, and Zieback counties.

Squash, Winter: Colbert and Jackson counties, Alabama; Hartford County in Connecticut; Berkshire, Bristol, Franklin, Hampden, and Hampshire counties in Massachusetts; Atlantic, Cumberland, Gloucester, and Salem counties in New Jersey; and Monroe Orange, Orleans, and Suffolk counties in New York; and Bucks and Lancaster counties in Pennsylvania for the 1999 through 2001 crop years.

Strawberries: Fresno, Merced, Santa Barbara, and Ventura counties in California; Hillsborough and Manatee counties in Florida; Livingston and Tangipahoa counties in Louisiana; and Brunswick, Buncombe, Columbus, Cumberland, Duplin, Guilford, Haywood, Henderson, Johnston, New Hanover, Pender, Robeson, and Wake counties in North Carolina for the 2000 through 2002 crop years.

Sunflowers, (RA): All counties in North Dakota.

Sweetpotato: Baldwin County, Alabama; Merced County in California; Avoyelles, Morehouse and West Carroll Parishes in Louisiana; Columbus and Johnston Counties in North Carolina; Horry County in South Carolina effective for the 1998 through 2000 crop years.

Watermelon: Geneva County, Alabama; Sussex County in Delaware; Alachua, Jackson, and Manatee counties in Florida; Crisp, Tift, Turner, and Worth counties in Georgia; Wicomico county in Maryland; Chowan and Sampson counties in North Carolina; and Duval, Frio, and Hidalgo counties in Texas, effective for the 1999 through 2001 crop years.

Wheat (CRC): In the specified number of counties in the following states: Alabama-58, Arizona-11, Arkansas-53, California-34, Colorado-38, Georgia-128, Idaho-42, Illinois-102, Indiana-92, Iowa-66, Kansas-105, Kentucky-75, Louisiana-41, Michigan-80, Minnesota-84, Mississippi-77, Missouri-96, Montana-54, Nebraska-82, New Mexico-15, North Carolina-82, North Dakota-53, Ohio-76, Oklahoma-77, Oregon-30, South Carolina-45, South Dakota-66, Tennessee-67, Texas-206, Utah-23, Virginia-76, Washington-29, Wisconsin-55, and Wyoming-16.

Wheat (RA): Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, Valley, and Washington counties in Idaho; 84 counties in Minnesota; all counties in North Dakota; and 66 counties in South Dakota.

Wild Rice: Lassen, Modoc, Shasta, and Sutter counties in California; and Aitkin, Beltrami, Clearwater, Lake of the Woods, Pennington, and East Polk counties in Minnesota, for the 1999 through 2001 crop years.

Crop History Survey: Surveys are necessary in certain situations before a decision can be made to develop or implement crop insurance coverage under a pilot program. Information is needed to determine the feasibility of developing crop insurance programs. This information is used to develop premium rates and insurance prices and other actuarial design components. Actual historic acreage and yield data from growers is often the only source of this kind of information.

The agency seeks public comment regarding the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Burden Statement: FCIC has estimated an information collection burden for its forms that includes the time to complete the form and for the representative to explain the benefits of the program to the producer. Various activities of the loss adjuster (e.g., measuring acreage and making appraisals) was also considered in the burden estimates.

Total Burden: The total burden is estimated at 49,782 hours.

Purpose of Information Collected: The crop insurance program is the principal risk management tool used by producers of farm products. The Act requires the crop insurance program to operate on an actuarially sound basis. To meet these goals, existing crop programs must be improved and expanded, new crop products developed, and new insurance concepts studied for possible implementation. Meeting these goals

requires the collection of a wide range of information that is used in part to establish insurance coverage, premiums, payments, indemnities and allow for other program and administrative operations; as well as to create an information data base used to support continued development and improvements in crop insurance products and which meet the goal of a sound insurance program. The various categories of forms, the nature of the information collected, and the purpose for the information are described below.

Sales documents provide the information required to issue a crop insurance policy, such as the insured's name, address, social security number, crop(s) to be insured, dollar amount of insurance or price election and level of coverage selected by the producer, crop condition reports for perennial crops, assignment or transfer of indemnity, power of attorney, or other information affecting policy benefits.

Yield Reports establish an individual producer's actual production and yield history and provide the basis for calculating the insured's production guarantee. The production guarantee is the simple average of a minimum of four yearly yields up to a maximum of ten yields.

Option forms allow a producer to modify the insurance coverage contained in the provisions in the crop insurance policy. An option may provide additional or limit the insurable causes of loss, provide different methods of determining losses, or provide different types of unit division to increase a producer's protection, etc. Producers select a coverage on the option form.

Acreage reports indicate the location, number of acres, dates planted, share (percent of interest), and other information by unit for each crop to be insured. The reports include plant inventory and container reports for nursery crops, planting records for some crops, and tonnage reports for raisins. These reports are used to determine premium and liability and must be submitted on or before the final acreage reporting date specified in the policy.

Claim Forms notify an insurance provider of a loss due to an insurable cause. Appraisal worksheets for each individual crop are used in the field by the loss adjuster to determine the production to be counted in establishing the loss. Other forms in this category are various inspection, appraisal, production records, and claim for indemnity documents. The claim for indemnity form summarizes information determined by the loss adjuster and is required to compute the amount of an indemnity. The adjuster will determine from observation, appraisals, and measurements, the amount of harvested and unharvested production, primary and secondary (when applicable) causes of loss, number of units (when applicable), number of planted and harvested acres and any other information necessary to determine the amount of loss.

Survey Form is sometimes necessary to collect information about a crop prior to a pilot program being developed or before a pilot program is extended to other areas.

Frequency of Reporting: Some sales forms are completed only when a producer applies for crop insurance, e.g., the application and most coverage options. Canceling and reinstating insurance coverage, transferring insurance coverage to a different insurance provider, and changing the amount of insurance coverage are instances when forms would have to be completed again. Other forms are completed annually, such as forms used to collect crop acreage data, production data used to establish the insurance guarantee, and administrative forms such as the assignment of indemnity and certain coverage options. Acreage report forms must be completed every crop year and include such information as acres, type, practice, APH yields, share insured, etc. This information is used to establish the guarantee. More than one crop may be reported on one form, and producers may need to complete more than one form per year. Some acreage reports may need to be revised, which will require an additional report to be submitted during the crop year. Notice of damage and claim forms are completed by crop year, crop, and unit when a crop has been damaged or destroyed. FCIC estimated the proportion of insureds who complete each form in a given year, recognizing that some insureds complete the forms more than once in any given year and some of the forms are not filled out by every producer every year.

Recordkeeping Requirements: FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of a normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Forms and Current OMB Docket Numbers: The following list of FCIC forms may be used for the above crops. This list has been compiled by grouping the forms in numerical order.

Form number	Form title	Current OMB number
FCI–5	Request for Actuarial Change	0563–0053
FCI–5–A	Request for Actuarial Change	0563–0053
FCI–5–B	Request for Actuarial Change	0563–0053
FCI–6	Statement of Facts	0563–0053
FCI–12	Crop Insurance Application	0563–0053
FCI–12–A	Contract Changes	0563–0053
FCI–12 AGR	Adjusted Gross Revenue Application	0563–
FCI–12–P	Pre-Acceptance Perennial Crop Inspection Report	0563–0053
FCI–12–P (Cherries)	Pre-Acceptance Perennial Crop Inspection Report	0563–
FCI–12–PAW (Alm/Cit/Fig/FrP/Pru/StF/Wal).	Pre-Acceptance Inspection Report (Almond/Citrus/Fig/Fresh Plum/Prune/Stonefruit/Walnut Addendum Worksheet).	0563–
FCI–12–PAW (Cherries)	Producer's Pre-Acceptance Worksheet	0563–
FCI–12–PAW (Perennial Crops)	Producer's Pre-Acceptance Worksheet	0563–0053
FCI–19	Crop Insurance Acreage Report	0563–0053
FCI–19–A (APH)	Production and Yield Report	0563–0053
FCI–19–A (APH) (Review Form)	Actual Production History Review Report	0563–0053
FCI–19–A (APH–BPW)	Block Production Worksheet	0563–0053
FCI–19–A (APH–USW)	Unit Summary Worksheet	0563–0053
FCI–20	Application for Assignment of Indemnity	0563–0053
FCI–21	Transfer of Right to Indemnity	0563–0053
FCI–73	Certification Form	0563–0053

Form number	Form title	Current OMB number
FCI–74	Production Worksheet	0563–
FCI–74 (Cont. Sheet)	Production Worksheet, Continuation Sheet—Harvested Production	0563–0053
FCI–74 AGR	AGR Claim for Indemnity Worksheet	0563–
FCI–74 Clams	Clam Production Worksheet/Claim Form	0563–
FCI–74–A (Florida Avocado)	Florida Avocado Appraisal Worksheet	0563–
FCI–74–A (Beans, Fr. Market)	Fresh Market Beans Appraisal Worksheet	0563–
FCI–74–A (Cabbage)	Cabbage Appraisal Worksheet	0563–
FCI–74–A (Canola/rapeseed)	Canola and Rapeseed Appraisal Worksheet	0563–
FCI–74–A (Cherries)	Cherry Appraisal Worksheet	0563–
FCI–74–A (Chile Pepper)	Chile Pepper Appraisal Worksheet	0563–
FCI–74–A (AZ/CA Citrus)	Citrus Appraisal Worksheet	0563–0053
FCI–74–A (Clams)	Clam Appraisal Worksheet	0563–
FCI–74–A (CN/GS/SIL)	Weight Method Appraisal Worksheet—(Corn, Popcorn, Hybrid Seed Corn, Grain Sorghum, and Silage).	0563–0053
FCI–74–A (Cotton)	Appraisal Worksheet—Cotton	0563–0053
FCI–74–A (Crambe)	Crambe Appraisal Worksheet	0563–
FCI–74–A (Cucumbers)	Cucumber Appraisal Worksheet	0563–
FCI–74–A (Florida Fruit Trees)	Florida Fruit Tree Worksheet	0563–
FCI–74–A (Florida Fruit Trees) (Continuation Sheet).	Florida Fruit Tree Worksheet	0563–
FCI–74–A Mint (Winter Coverage Option)	Mint Appraisal Worksheet (Winter Coverage Option)	0563–
FCI–74–A (Mustard)	Mustard Appraisal Worksheet	0563–
FCI–74–A (Pecan)	Pecan Appraisal Worksheet	0563–
FCI–74–A (Random Path)	Random Path Worksheet	0563–
FCI–74–A (Small Grains)	Small Grains Appraisal Worksheet (Wheat-Barley-Rye-Rice-Cultivated Wild Rice)	0563–0053
FCI–74–A (Soybeans)	Soybeans Appraisal Worksheet	0563–
FCI–74–A (Winter Squash)	Appraisal Worksheet Winter Squash (Mature Stage)	0563
FCI–74–A (Strawberries)	Strawberry Appraisal Worksheet	0563–
FCI–74–A (Sunflowers)	Appraisal Worksheet Sunflowers	0563–
FCI–74–A (Sweetpotato)	Appraisal Worksheet Sweetpotato	0563–
FCI–74–A (Watermelon)	Watermelon Appraisal Worksheet	0563–
FCI–74–B (CN&GS)	Stand Reduction Appraisal Worksheet (Corn and Grain Sorghum)	0563–0053
FCI–74–B (Cotton)	Appraisal Worksheet Cotton	0563–0053
FCI–74–B (Cucumbers)	Cucumber Stand Reduction and Hail Damage Worksheet	0563–
FCI–74–B Mint (Ministill)	Mint Appraisal Worksheet (Ministill)	0563–
FCI–74–B (Pecan)	Summary of Harvested Pecan Production	0563–
FCI–74–B (Strawberry)	Strawberries Summary of Harvested Production	0563–
FCI–74–C (Avocados)	Summary of Harvested Avocado Production Worksheet	0563–
FCI–74–C (CN&GS)	Hail Damage Appraisal Worksheet (Corn & Grain Sorghum)	0563–0053
FCI–74–C (Cucumber)	Cucumber Appraisal Worksheet	0563–
FCI–74–D (Cucumber)	Summary of Harvested Production	0563–
FCI–74 T–P–C	Production Worksheet	0563–
FCI–74 T–P–C (Cont. Sheet)	Production Worksheet (Continuation Sheet—Harvested Production)	0563–0053
FCI–74 T–P–C AUP (QAW)	AUP Cotton Quality Adjustment Worksheet	0563–0053
FCI–78	Request To Exclude Hail And Fire	0563–0053
FCI–480	Request for Policy Cancellation and Transfer of Experience Data	0563–0053
FCI–532	Power of Attorney	0563–0053
FCI–549	High-Risk Land Exclusion Option	0563–0053
FCI–552	Self-Certification Replant Worksheet	0563–0053
FCI–553	Unit Division Option	0563–0053
FCI–568	Pick Record for Perennial Crops	0563–0053
FCI–575	Social Security Number (SSN) and Employer Identification (EIN) Reporting Form	0563–0053
FCI–576	Disclaimer	0563–0053
FCI–587	Request to Waive Administrative Fees for Catastrophic Crop Coverage	0563–0053
FCI–598	Cabbage Pilot Crop Insurance Provisions Disclaimer	0563–
FCI–599	Underwriting Report/Pre-acceptance Inspection/Self-certification Worksheet	0563–
FCI–820	Crop History Survey	0563–
FCI–821 AGR	Annual Farm Report	0563–
FCI–822 AGR	Inventory and Accounts Receivable Report	0563–
FCI–823 AGR	Agricultural Commodity Profile	0563–
FCI–824 AGR	Animal Inventory/Accounting Worksheet	0563–

Signed in Washington, D.C., on December 15, 1999.

Robert J. Prchal,

Deputy Administrator, Insurance Services, Federal Crop Insurance Corporation.

[FR Doc. 99–32934 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bark Beetle Analysis Environmental Impact Statement Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Routt County, CO

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, and Medicine Bow-Routt National Forests will prepare an Environmental Impact Statement (EIS). The EIS will assess and disclose the environmental effects of an imminent bark beetle analysis. The area of the analysis is the Hahns Peak/Bears Ranger District and the portion of the Parks Ranger District East of the Continental Divide to the boundary of the Medicine Bow-Routt National Forest.

Over the next few months the Medicine Bow-Routt National Forests will be developing a proposed action and making decisions on how to respond to a bark beetle epidemic. The public is strongly encouraged to participate in this process.

An epidemic will cause significant changes to the forest landscape, recreation experience, watershed conditions, and wildlife habitat—changes that many people will not consider positive. Spruce and pine trees on private lands throughout Routt, Moffatt, and Grand counties will be at risk, including trees in urban areas.

The Forest Service has been working since late spring to define the problems an epidemic will present. Along with key members of the community, Forest Service officials visited the Dixie National Forest in Utah to see how they were managing their current bark beetle epidemic. A community task force was developing that continues to meet regulatory. Field surveys have been conducted on National Forest System lands to estimate the potential effects of bark beetles on various resources. Extensive beetle population surveys have also been completed.

The U.S. Forest Service has a responsibility to manage National Forests for the public good. Various laws, regulations and policies frame the purpose of National Forests and provide reasons for the Forest Service to manage a bark beetle epidemic. The guiding legal framework compels the Forest Service to:

- Prevent an epidemic from spreading to adjacent lands where possible,
- Maintain healthy and aesthetically pleasing stands of trees in the ski area,
- Restrict insect outbreaks in timber management, recreation, and scenic areas,
- Sustain the growing stock of timber,
- Protect the wildlife and plant species that depend on mature spruce forest, and
- Maintain watershed health.

DATES: Public Scoping began with a mailing to people who expressed an interest in the Routt Divide Blowdown. South Fork Salvage Analysis, and Upper Elk River Access Analyses, land owners within the Forest Service boundaries adjacent to the analysis area, and State, County, and local officials. There will be a 45-day public comment period following the publication of this notice.

On January 6, 1999, Forest Service specialists will host an open house for the public to discuss the Bark Beetle Analysis from 4:00 pm until 7:00 pm at the Forest Service Office, 925 Weiss Dr., Steamboat Springs, CO 80487.

A Draft Environmental Impact Statement (DEIS) will be prepared and available after the scoping comment period. After a 45-day comment period from the date of this notice, a Final Environmental Impact Statement (FEIS) will be prepared and available for the Bark Beetle Analysis.

ADDRESSES: Mail comment letters to and request further information from: Andy Cadenhead, Interdisciplinary Team Leader, Medicine Bow-Routt National Forest, 925 Weiss Dr., Steamboat Springs, CO 80487, (970) 870–2220.

Responsible official: Jerry E. Schmidt, Forest Supervisor, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, WY 82070.

Jerry Schmidt,

Forest Supervisor.

[FR Doc. 99–32980 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–8M–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pendola Fire Restoration Project, Tahoe National Forest, Yuba County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Tahoe National Forest, will prepare an Environmental Impact Statement (EIS) for proposed timber salvage, wildlife habitat improvement, and non-native and invasive plant control projects within the 2,600-acre National Forest System land portion of the Pendola Fire Restoration Project analysis area located just north of Bullards Bar Reservoir and west of the town of Camptonville, California, near the Pendola Ranch. The project area is located within all or portions of T18N, R07E; T18N; R08E; T19N, R07E; and T19N, R08E MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and postmarked by January 7, 2000.

ADDRESSES: Written comments concerning the project should be directed to U.S.F.S., Tahoe National Forest, Downieville Ranger District, ATTN: Dennis Stevens, 15924 Highway 49, Camptonville, CA 95922.

FOR FURTHER INFORMATION CONTACT: Jeane Masquelier, District Ranger, or Dennis Stevens, Project Manager, Downieville Ranger District, Camptonville, CA 95922 at (530) 288–3231.

SUPPLEMENTARY INFORMATION: On October 16, 1999, the Pendola wildfire started just north of Bullards Bar Reservoir. Before being controlled, the fire consumed over 4,565 acres of land on the northeast side of the reservoir, with approximately 2,600 of these acres being National Forest System lands. These 2,600 acres of National Forest System lands are being analyzed for projects within the Pendola Fire Restoration analysis area. The analysis area incorporates land within the Upper Mill Creek, Lower Mill Creek, Bridger Creek, North Yuba Arm of Bullards Bar Reservoir, and the Willow Creek Arm of Bullards Bar Reservoir watersheds, all of which drain into the North Yuba River, on which Bullards Bar Reservoir is situated. Located west of Camptonville, California, and north of and immediately adjacent to the reservoir at around 2,000 to 2,500 feet in elevation, the area is dominated by mixed conifer and hardwood forest, of which over 70 percent burned with moderate to high intensity, leaving scattered live tress, small patches of live trees, and many

areas that completely burned. The remaining 30 percent burned with a lower intensity, leaving partially burned or lightly underburned areas. This loss of vegetation has resulted in large areas of exposed soils, large amounts or new fuels, and the loss of standing timber. The fire also affected other important resources, such as wildlife habitat, visual quality, historic and prehistoric sites, fisheries, sensitive plant and animal species, and water quality.

In preparing the Environmental Impact Statement, the Forest Service will identify and analyze a range of alternatives that address the issues developed for this area. One of the alternatives will be no treatment. An ecological approach will be used to achieve multiple-use management of the Pendola Fire area. It also means that the needs of people and environmental values will be blended in such a way that this area's desired condition would represent a diverse healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the draft Environmental Impact Statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. We have already initiated consultation with the United States Fish and Wildlife Service for the bald eagle and the California red-legged frog. This input will be used in preparation of the draft Environmental Impact Statement. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3 Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by, the decision are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to mining claim owners, private land owners, and special use permitees within the Downieville Ranger District boundaries; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. A public meeting is scheduled for January 6, 2000, at the Downieville District Ranger Station office, in Camptonville, CA, from 2 pm until 5 pm.

The draft EIS is expected to be filed with the Environmental Protection Agency and be available for public review in February, 2000. The comment period on the draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft Environmental Impact Statement stage but that are not raised until after completion of the final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments on the draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final Environmental Impact Statement is expected to be available by April, 2000. The responsible official, the Forest Supervisor of the Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, will document the decision and reasons for the decision in the Record of Decision.

Dated: December 13, 1999.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 99–32953 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 22, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Certification of Authority.
OMB Control Number: 0572–0074.
Type of Request: Extension of currently approved information collection.

Abstract: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). A major factor in managing loan programs is controlling the advance of funds. One reason to control funds is so that the actual borrowers get their money. The use of RUS Form 675 allows this control to be achieved by providing a list of authorized signatures against which signatures requesting funds are compared. RUS Form 675 provides an effective control against the unauthorized release of funds by providing a list of authorized signatures. OMB Circular A–123, Management Accountability and Control, states that information should be maintained on a current basis and that cash should be protected from unauthorized use. This

form allows borrowers to keep RUS up-to-date of any changes in signature authority and controls the release of funds only to authorized borrower representatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.1 of an hour per response.

Respondents: Small businesses and organizations.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 45.

Copies of this information collection, and related form and instructions, can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 14, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–33056 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 22, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, D.C. 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Type of Request: Reinstatement without change of previously approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, e.g., the RUS mortgage, limit the rights of a RUS borrower to dispose of its capital assets.

The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows the telecommunications program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.84 hours per response.

Respondents: Small businesses or organizations.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 213.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 14, 1999.

Christopher McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–33057 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Alabama Electric Cooperative; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an environmental assessment with respect to the potential environmental impacts related to the construction and operation of a 496 megawatt combined cycle electric generation plant and associated facilities. RUS may provide financing assistance to Alabama Electric Cooperative for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue,

SW, Washington, DC 20250–1571, telephone: (202) 720–0468. Information is also available from Phillip Burgess, Alabama Electric Cooperative, Highway 29 North, Andalusia, Alabama 36420–0550, telephone (334) 427–3309.

SUPPLEMENTARY INFORMATION: The project consists of the construction of a 496 megawatt combined cycle electric generation plant in Covington County, Alabama. The preferred site for the plant is adjacent to Alabama Electric Cooperative's McWilliams electric generating plant located in Gantt, Alabama. Associated with the plant will be approximately 18.6 miles of 230 kilovolt transmission line from the proposed plant to Opp, Alabama, and approximately 60 miles of natural gas pipeline from the proposed plant to Flomaton, Alabama. The natural gas pipeline to be constructed and owned by Southeast Alabama Gas District, will traverse Covington, Conecuh, and Escambia Counties, all of which are in Alabama. Alternative sites for the plant location were considered near Alabama Electric Cooperative's Lowman Plant at Leroy in Washington County, Alabama, and at a site in Damascus/Teddy area in Escambia County, Alabama. Three electric transmission line routes and three natural gas pipeline routes were considered.

Alabama Electric Cooperative prepared an environmental report for RUS, which describes the project and assesses its potential environmental impacts. RUS has conducted an independent evaluation of the environmental report, assisted in its completion, and accepted it as the agency's environmental assessment. No significant impacts are expected as a result of the construction and operation of the project.

The environmental assessment can be reviewed at the Andalusia Public Library, South Three Notch Street, Andalusia, Alabama; the White Smith Memorial Library, 213 College Ave., Jackson, Alabama; the Brewton Public Library, 206 Jackson Street, Brewton, Alabama; the headquarters of Alabama Electric Cooperative at the address provided above, or the headquarters of RUS, at the address provided above.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on the environmental assessment for at least 35 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by RUS' Environmental Policies and Procedures, 7 CFR Part 1794.

Dated: December 15, 1999.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99–33055 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Participation Agreement and Trade Mission Application.

Agency Form Number: ITA–4008P.

OMB Number: 0625–0147.

Type of Request: Regular Submission.

Burden: 2,792 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 20 minutes–70 minutes.

Needs and Uses: The ITA–4008P, "Participation Agreement," is the vehicle by which individual firms agree to participate in any of ITA's trade promotion program, and record their required participation fee to the U.S. Department of Commerce (DOC). Together with the relevant ITA–4008P–A, "Conditions of Participation," it forms a contract between the individual firm and the DOC. The ITA–4008P–1, "Trade Mission Application," is used to solicit information from firms seeking to participate in DOC overseas trade missions covered by the Statement of Policy Governing Overseas Trade Missions of the Department of Commerce issued by Secretary Daley on March 3, 1997. Trade Mission participants will be required to complete the Forms ITA–4008P, ITA–4008P–1, and ITA–4008P–A. Other DOC trade event participants will complete Forms ITA–4008P and ITA–4008P–A.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230. Email LEngelme@doc.gov.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 16, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33074 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

Evaluation of the Census 2000 Partnership Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sherri Norris, Bureau of the Census, Room BH–120–2, Washington, DC 20233; (301) 457–8081.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census 2000 Partnership Program works to establish partnerships with state, local and tribal governments; private industry; local governments and community groups. The goal is to increase the awareness of the census and to increase response rates,

especially among historically undercounted populations.

The program has both a national and a regional focus. On the national level, the program is designed to implement promotional activities that may be sponsored and/or supported by national/umbrella government and nongovernmental organizations. In addition, the Census Bureau will partner with Fortune 500 companies to promote the importance of the census through the services and products they provide.

The regional partnership program reflects the Census Bureau's belief that the foundation for broad-based participation in the census must be built at the community level. Its primary purpose is to establish partnerships with state, local, and tribal governments; community organizations; businesses and the media.

The partnership program is a means to encourage mail response by those people who are not persuaded by direct mail, advertising or other methods. It complements these other methods by spreading information about the census, by assuring people that it is okay to participate and by providing help if needed.

For the evaluation, a contractor will be hired to conduct the data collection. Self-administered mail questionnaires will be sent to a sample of Census 2000 partners. The questionnaire will ask the partners about the activities performed for the Census 2000 Partnership Program, about the materials they received, and about their recommendations for improving the Program. The results will be used to evaluate the program, for 2010 planning purposes and to improve future census operations.

II. Method of Collection

Mailed self-administered questionnaire with appropriate follow-up reminders.

III. Data

OMB Number: Not available.
Form Number: Forthcoming.
Type of Review: Regular Submission.
Affected Public: Individuals, representatives of the Census 2000 partnership organizations.
Estimated Number of Respondents: 10,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 2,500.
Estimated Total Annual Cost: There is no cost to the respondent other than the time taken to complete the survey.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33071 Filed 12–20–99; 8:45 am]

DEPARTMENT OF COMMERCE

Census Bureau

Evaluation of the Census 2000 Census in Schools Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sherri Norris, Bureau of the Census, Room BH–120–2, Washington, DC 20233; (301) 457–8081.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census in Schools Program provides teachers with interactive, engaging, and colorful lesson plans that meet national and state curriculum standards and that: help students understand the importance and benefits of the census; promote awareness and encourage greater participation in the census; and strive to increase the mailback response rate for the census.

Census in Schools materials have been made available to schools nationwide. This includes a Spring 1999 mailing to all teachers in the 40 percent of the nation's schools in the hardest to enumerate areas, and a Fall 1999 mailing to the principals and selected school officials in the remaining 60 percent of schools.

For the evaluation, a contractor will be hired to conduct the data collection. Self-administered mail questionnaires will be sent to a sample of teachers and principals in the United States. The questionnaire will ask the teachers and principals about their involvement in Census in Schools, about the materials they may have received, and about their recommendations for improving the Program. The results will be used to evaluate the program, for 2010 planning purposes and to improve future census operations.

II. Method of Collection

Mailed self-administered questionnaire with appropriate follow-up reminders.

III. Data

OMB Number: Not available.
Form Number: Forthcoming.
Type of Review: Regular Submission.
Affected Public: Individuals, K–12 school teachers and principals in the United States.
Estimated Number of Respondents: 4,000.
Estimated Time Per Response: 10 minutes.
Estimated Total Annual Burden Hours: 667.
Estimated Total Annual Cost: There is no cost to the respondent other than the time taken to complete the survey.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33072 Filed 12–20–99; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan: Final Results of the Fifth Antidumping Duty Administrative Review and Revocation of the Antidumping Duty Order, in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On August 10, 1999, the U.S. Department of Commerce published in the **Federal Register** the preliminary results of the fifth administrative review of the antidumping duty order on professional electric cutting tools from Japan (64 FR 43346). This review covers Makita Corporation Incorporated, a manufacturer and exporter of the subject merchandise to the United States. The period of review is July 1, 1997, through June 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Our analysis of the comments received as well as our discussion of the issues related to revocation of the antidumping duty order are described below in the "Revocation" and "Interested Party Comments" sections of this notice. After review of the comments, we have not changed the preliminary results, including the determination to revoke the antidumping duty order, in part, with respect to professional electric cutting tools that are produced by Makita Corporation Incorporated and that are also exported by Makita Corporation Incorporated. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood at (202) 482–3836 or Brian Smith at (202) 482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1999, the U.S. Department of Commerce ("the Department") published in the **Federal Register** preliminary results of the 1997–1998 administrative review of the antidumping duty order on professional electric cutting tools ("PECTs") from Japan (64 FR 43346) ("preliminary results") and its preliminary intent to revoke the antidumping duty order, in part, with respect to PECTs that are produced by Makita Corporation Incorporated and that are also exported by Makita Corporation Incorporated ("Makita Japan"). The period of review ("POR") for this administrative review is July 1, 1997, through June 30, 1998.

The petitioner, Black & Decker (U.S.) Inc. ("Black & Decker"), and respondent Makita Japan (along with Makita Japan's affiliated selling agent in the United States, Makita U.S.A. Inc. ("Makita USA")), requested a hearing in this case on September 9, 1999. The petitioner and Makita Japan/Makita USA (hereafter collectively referenced as "Makita") submitted case briefs and rebuttal briefs on September 10, 1999 and September 17, 1999, respectively. On October 8, 1999, based on the petitioner's and Makita's timely requests, the Department conducted a public hearing. Also, based on the petitioner's timely request, the Department conducted a non-public hearing in which counsel for the interested parties discussed proprietary information protected under an administrative protective order ("APO").

The Department has now completed this administrative review, in accordance with section 751(a) of the Act.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to regulation are to the Department's regulations at 19 CFR Part 351 (1998).

Scope of Review

Imports covered by this review are shipments of PECTs from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term "electric" encompasses electro-mechanical devices, including tools with electronic variable speed features. The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term "unassembled" means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. These are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECTs order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States ("HTSUS"); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

"Corded" and "cordless" PECTs are included within the scope of this order. "Corded" PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT.

"Cordless" PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Duty Absorption

On September 24, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case Makita Japan sold to the United States through an importer (*i.e.*, Makita USA) that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, a duty absorption determination in this segment of the proceeding is appropriate. As we have found that there is no dumping margin for Makita with respect to its U.S. sales, we have also found that there is no duty absorption for purposes of the final results (*see Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany*, 64 FR 43146 (August 9, 1999).).

Normal Value Comparisons

We made normal value ("NV") comparisons to constructed export price based on the same methodology used in the preliminary results (*see* preliminary results at 43348–43350, and Preliminary Results Calculation Memorandum to the File dated August 3, 1999).

Determination to Revoke Order in Part

The Department "may revoke, in whole or in part," an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. (*See* 19 CFR 351.222(e)(1).) Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that: (1) The company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. See 19 CFR 351.222(b)(2); *see, e.g., Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada*, 64 FR 12977, 12978 (March 16, 1999) ("*Pure Magnesium from Canada*").

In our *preliminary results*, we found that Makita met the requirements for revocation (*see preliminary results*, 64 FR 43351, 43352).

The petitioner argues that revocation is not appropriate because it is likely that Makita will resume selling subject merchandise below NV if the order is revoked. In general, the petitioner argues that Makita has avoided dumping margins in the past by drastically reducing its import volumes, and that Makita's pricing practices and loss in market share indicate that Makita is not able to compete effectively in the U.S. market without lowering prices. Additionally, the petitioner argues that Makita could easily expand its production capacity in Japan in order to begin selling at below NV in the future. Furthermore, the petitioner argues that market demand in Japan is declining, thereby increasing Makita's dependance on the U.S. market.

In response, Makita argues that its sales have in fact been in commercial quantities, and that the record clearly indicates that it is not likely that Makita will sell at below NV in the future if the order is revoked. Makita argues that it has experienced a drastic change in circumstance as a result of the building of its U.S. manufacturing facility, where a majority of Makita's electric cutting tools for the U.S. market are now produced. Thus, Makita stresses, most of its production of "subject merchandise" occurs in the United States, and consequently such products are no longer subject to the antidumping duty order. Makita notes that it has made and continues to make substantial investment in the U.S. facility, and that maintaining the U.S. facility is consistent with the company's objective of producing in close proximity to its customers. Furthermore, Makita states that, while it has additional capacity in its U.S. production facility, it has limited remaining production capacity in its facilities in Japan. As such, Makita

claims that it is not likely that Makita would ever shift production of its power tools back to Japan.

With regard to the market conditions and pricing levels, Makita argues that it has no need to sell at below NV, because the U.S. electric power tool market in general and electric cutting tool market in particular are healthy, stable, and growing, and the Japanese electric power tool market is also relatively stable. Makita further argues that it is able to charge premium prices because of its reputation for quality. Thus, Makita contends, it can make sales in the U.S. market, even when its prices are higher than its competitors' prices.

Upon review of the three criteria outlined at section 351.222(b) of the Department's regulations, the comments of the parties, and all of the evidence in the record, we have determined that the Department's requirements for revocation have been met. Based on the final results in this review and the final results of the two preceding reviews, Makita has demonstrated three consecutive years of sales at not less than NV. Furthermore, we find that Makita's aggregate sales to the United States have been made in commercial quantities during each of those years. Finally, based on our review of the record and the comments of the parties, we continue to find that it is not likely that Makita will sell at below NV in the future for the reasons set forth in the August 2, 1999, Revocation Memorandum (*see Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* dated August 2, 1999 (hereafter "August 2 Revocation Memorandum").

Although, Makita's sales to the United States have decreased substantially since the imposition of the antidumping order, its exports of subject merchandise to the United States, in particular specialty PECTs, remain significant and reflect Makita's normal commercial practice. Further, while Makita has maintained consistent export volumes of its "specialty" PECTs, Makita transferred production of the remaining subject merchandise (*i.e.*, non-specialty PECTs) to the United States. Makita made a substantial investment in a U.S. manufacturing facility, and subsequently shifted production of subject merchandise to that facility. Additionally, the record indicates that the U.S. production facility now manufactures comparable volumes of non-specialty merchandise to those previously manufactured by Makita Japan. This significant change in business practice explains the decrease in Makita's exports of subject merchandise to the United States. With respect to products produced in Japan (*i.e.*, specialty PECTs), Makita has maintained consistent, significant levels of export sales levels to hundreds of U.S. customers since 1995 (*see* August 2 Revocation Memorandum at Attachment 2, Makita's October 26, 1998, section C response at Appendix C–2, and "*Commercial Quantities*" section below). Based on these facts (confirmed at verification) and our review of Makita Japan's sales practices, we find that we can reasonably conclude that the de minimis margins calculated for Makita are reflective of the company's normal commercial experience and provide a reasonable basis for our decision on revocation. *See* August 2 Revocation Memorandum at 10–11; and *Pure Magnesium from Canada* 64 FR 12977, 12979 (March 16, 1999) (where the Department found that because sales and volume figures were so small, both in absolute terms and in comparison with the period of investigation ("POI"), it could not conclude that the reviews were reflective of what the company's normal commercial experience would be without the discipline of an antidumping duty order).

Additionally, after consideration of the various comments that were submitted in response to the *preliminary results*, the Department continues to find that because Makita is not likely to sell subject merchandise in the United States below NV in the future, the continued application of the antidumping duty order is no longer necessary to offset dumping. As we stated in *Brass Sheet and Strip from Germany, Final Results of Antidumping Administrative Review and Determination to Revoke in Part*, 61 FR 49727, 49730 (September 23, 1996), "[i]n prior cases where revocation was under consideration and the likelihood of resumption of dumped sales was at issue, the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales." *See also Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part*, 63 FR 6519, 6523 (February 9, 1998).

Based upon the relevant factors in this case, we find that it is not likely that Makita will sell at less than NV if the order is revoked with respect to Makita and, therefore, the continued application of the antidumping duty order to Makita is no longer necessary to offset dumping. First, with regard to capacity utilization, the record establishes that Makita Japan has very limited remaining capacity in its Japanese facilities, while it has additional remaining capacity at Makita Corporation of America ("MCA"). Makita has made significant investments in its U.S. facility, and all evidence in the record indicates that MCA intends to produce PECTs in the United States for the long-term. The majority of the PECTs sold by Makita USA are now being produced in the United States. Moreover, as confirmed at verification, Makita has never shifted production of any tool from MCA back to Japan. Additionally, Makita Japan is currently producing only specialty PECTs for export to the U.S. market, and Makita Japan's existing production in Japan is primarily geared toward production for the home market. Furthermore, the record indicates that Makita Japan produces specialty PECTs to order and thus maintains low inventories of subject merchandise, another fact suggesting that Makita would be less likely to dump subject merchandise.

Second, with respect to specialty tools (imports from Makita Japan), Makita has consistently priced its products higher than its competition in the United States. Thus, the record indicates that Makita has not needed to lower prices of its Japan-produced tools in order to remain competitive or to maintain a consistent level of sales (*i.e.*, quantity). Although Makita has lost U.S. market share in recent years, it has maintained consistent annual sales in significant quantities.

Third, the record indicates that the electric power tool industry, including PECTs, in the United States and around the world is stable and/or growing (see August 2 Revocation Memorandum at 14–15). Based on our review of the record data, we found that this price stability characteristic of the electric power tool industry mitigates against the possibility of future dumping, as compared to other industries where market prices are volatile (*see* the Department's July 9, 1999, verification report at 34–39; the Department's July 13, 1999, verification report at 13–15; the August 2 Revocation Memorandum at 14–15).

Therefore, for the reasons discussed above and in our August 2 Revocation Memorandum at 11–15, we find that Makita Japan qualifies for revocation of the order on PECTs which it produces and exports to the United States under 19 CFR 351.222(e)(1)(ii).

We note that in response to the decision by a WTO Panel, the Department revised its revocation regulation. *See* United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors of One Megabit or Above From Korea, WTO Doc. WT/DS99/R (January 29, 1999). The new regulation replaces the "not likely" standard with a requirement that "[t]he continued application of the antidumping duty order is no longer necessary to offset dumping" now codified at 19 CFR 351.222(b). While this regulation was not yet in effect for purposes of this review, and thus does not apply to this case, we determine, as discussed above and in the comments outlined below, that continuation of the order with respect to Makita is no longer necessary to offset dumping.

Interested Party Comments

General

Comment 1: The Department's Grant of Constructed Export Price Offset

Makita argues that the Department's grant of a constructed export price ("CEP") offset is in accordance with the law. Makita notes that because the petitioner stipulated to dismissal of its judicial challenge to the Department's grant of the CEP offset in the prior fourth antidumping duty administrative review, it may be assumed that the petitioner is no longer interested in pursuing the CEP offset issue for purposes of the current proceeding.

In response, the petitioner asserted that, although it stipulated to dismissal of prior litigation on this issue, it reserves its right to appeal the issue if and when it is finally resolved.

Department's Position: We agree with Makita that the Department's calculation of a *de minimis* margin, in particular the grant of a CEP offset as part of the level of trade ("LOT") analysis, is in accordance with the U.S. antidumping law. As we explained in the final results for the previous fourth antidumping duty administrative review:

> The Department is continuing its practice, articulated in section 351.412(c) of its regulations, of making LOT comparisons for CEP sales on the basis of the CEP after adjustments provided for in section 772(d) of the statute. As stated in *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185 (June 3, 1998), we recognize that the Department's practice has been criticized by the CIT in *Borden, Inc.* v. *United States*. However, the decision in *Borden, Inc.* v. *United States*, is not final, and we believe our practice to be in full compliance with the statute and the regulations. Thus, we will continue to apply the methodology articulated in the regulations at section 351.412. *Professional Electric Cutting Tools from Japan Final Results of the Administrative Review*, 63 FR 54441 at 54444 (October 9, 1998) (Comment 2)

Accordingly, we have applied the methodology articulated in the regulations at section 351.412.

Comment 2: Criteria for Revocation Set Forth in the Department's Regulations

Makita argues that it has met the criteria for revocation set forth in the Department's regulations. Specifically, Makita states that: (1) It has made sales of subject merchandise for three consecutive years (*i.e.*, three PORs) at *de minimis* antidumping duty margins; (2) it agrees to reinstatement of the antidumping duty order (should dumping of subject merchandise resume) and has provided the requisite certifications set forth in the Department's regulations (*see preliminary results*, "*Intent To Revoke*" section, 63 FR at 43350 (August 10, 1999)); (3) it has made sales of subject merchandise in commercial quantities (*see* "*Commercial Quantities*" section below for further discussion); and (4) there is no likelihood that Makita will in the future sell the subject merchandise at less than NV (*see* "*Likelihood of Future Dumping*" section below for further discussion). Therefore, based on its fulfilment of the criteria outlined above, Makita argues that the Department should revoke the order with respect to PECTs that are produced by Makita Japan and that are also exported by Makita Japan.

The petitioner argues that Makita has not met the criteria for revocation set forth in the Department's regulations. Specifically, the petitioner states that: (1) Makita's sales of subject merchandise have not been in commercial quantities; and (2) Makita has not presented any compelling argument demonstrating that it is not likely to dump subject merchandise in the future.

Department's Position: We agree with Makita that it has met the Department's criteria for revocation set forth in its regulations. Specifically, Makita has met the following requirements: (1) Makita has made sales of subject merchandise for three consecutive years (*i.e.*, three PORs) at *de minimis* dumping margins; (2) Makita agrees to reinstatement of the antidumping duty order (should dumping of subject merchandise resume) and has provided the requisite certifications set forth in the Department's regulations (*see preliminary results*; "*Intent To Revoke*" section, 63 FR at 43350). In addition, we have determined that Makita has made sales of subject merchandise in commercial quantities (*see* "*Commercial Quantities*" section below for detailed discussion) in each of the three years of *de minimis* margins. Finally, we find that it is not likely that Makita will in the future sell the subject merchandise at less than NV (*see* "*Likelihood of Future Dumping*" section below for detailed discussion), and that the continued application of the antidumping duty order is no longer necessary to offset dumping. Therefore, the Department is revoking the order with respect to PECTs from Japan that are produced by Makita Japan and that are also exported by Makita Japan.

Commercial Quantities

Comment 1: Standard for Determining Whether Sales are Made in Commercial Quantities

The petitioner states that Makita has not met the threshold requirement of demonstrating that sales of subject merchandise were made in commercial quantities during the three PORs under review (*i.e.*, 3rd Administrative Review: 7/1/95–6/30/96, 4th Administrative Review: 7/1/96–6/30/97, and 5th Administrative Review: 7/1/97–6/30/98—hereafter "3rd AR," "4th AR," and "5th AR"). The petitioner argues that Makita's sales during the three years under review are not representative of its normal commercial behavior, as is demonstrated by the disparity between pre-order and post-order subject merchandise sales volumes. The petitioner asserts that the Department is applying an incorrect standard by ignoring the disparity in pre-order and post-order sales volumes and is setting bad policy by finding sales in commercial quantities under the facts of this case. Specifically, the petitioner states that, consistent with prior determinations on revocation, the Department must consider both absolute and relative current sales volumes (i.e., post-order) in comparison to respondent's sales volumes prior to the order, because sales volumes subsequent to the order are meaningless without a pre-order benchmark. Thus, the petitioner claims that the Department erred in its preliminary results by considering sales volume only in absolute terms for determining whether sales were made in commercial quantities.

The petitioner argues that the Department's case history on commercial quantities determinations in the context of revocation has focused on absolute and relative sales volumes between the pre- and post-order periods. To support its argument, the petitioner

cites to cases where the respondent had zero or very few sales in absolute terms and the Department found that it did not meet the commercial quantities threshold (*see, e.g., Pure Magnesium from Canada*, 64 FR 12978 (March 16, 1999), and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999) (hereafter "*Corrosion-Resistant Steel from Canada*"). The petitioner also cites to a case where respondent had 35, 45, and 70 percent of its pre-order relative sales volumes during the three consecutive PORs without dumping and the Department concluded that these sales volumes met the commercial quantities threshold (*i.e., Silicon Metal from Brazil: Preliminary Results, Intent to Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits*, 64 FR 43161, 43162 (August 9, 1999) (hereafter "*Silicon Metal from Brazil*")). The petitioner states that although Makita had more than a few sales in absolute terms, Makita's sales history is not analogous to *Silicon Metal from Brazil* case cited above. Therefore, as a matter of policy, as a matter of consistency, and due to the importance of the comparative standard used in determining normal commercial activities, the petitioner maintains that Makita's sales volumes cannot be considered satisfactory.

The petitioner disagrees with the Department's finding in the preliminary results that, "[a]lthough Makita's sales to the United States have decreased substantially since the imposition of the antidumping order, its exports to the United States remain significant. * * * Thus regardless of the decrease in shipments during the course of this proceeding, * * * Makita is currently selling in commercial quantities." (*See* August 2 Revocation Memorandum at 10.) Specifically, the petitioner claims that sales volume during the POI must be considered when ascertaining whether the company's current sales reflect normal commercial practice, because the POI provides the only time period for which there is evidence concerning the respondent's commercial behavior without the discipline of the antidumping duty order. *Citing Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews, Intent to Revoke in Part, Intent to Not Revoke in Part, and Rescission of Review in Part*, 64 FR 45228, 45230 (August 19, 1999) (hereafter "*Corrosion-Resistant Carbon Steel Flat Products from Canada*") (where the Department found that sales were not in commercial quantities when the respondent's sales volumes for the current POR were only 0.173 percent of the POI sales volumes); and *Pure Magnesium from Canada*, 64 FR 12977, 12982 (March 16, 1999) (where the volume of subject merchandise sales sold in each year under review was less than 0.5 percent of the volume sold prior to the imposition of the order). Thus, the petitioner claims that because the volume of Makita's subject merchandise sales sold in each year under review was one percent or less than the volume sold prior to the imposition of the order, the Department cannot reasonably conclude that the consecutive *de minimis* margins are reflective of Makita's normal commercial experience in this case. Additionally, the petitioner argues that the Department cannot declare an amount to be "significant" (*i.e.*, current sales volume) without having some comparison or benchmark to provide context; in other words, "significant" must be relative to some defensible benchmark (*See Shakeproof Assembly Components* v. *United States*, Slip Op. 99–70 at 6 (CIT July 29, 1999) and *Taiwan Semiconductor Industry Ass'n* v. *United States*, Slip Op. 99–57 at 18 (CIT June 30, 1999).)

Additionally, the petitioner maintains that Makita's current sales activity (post-order) does not reflect the company's normal commercial activity (pre-order), because Makita's recent exports to the United States consist only of low-sales-volume, "specialty" PECT models (*i.e.*, not high-sales-volume, non-specialty PECT models), which are sold at relatively high prices. The petitioner argues that Makita's pre-order subject merchandise exports represented a full range of PECT models sold in significant quantities, rather than just "specialty" PECT models. Thus, the petitioner argues that Makita's post-order "specialty" PECT sales are not reflective of the company's normal pre-order commercial activity. The petitioner further contends that Makita's total number of PECT sales dropped considerably while Makita's sales of other non-subject power tools (*i.e.*, drills, sanders, and grinders) remained consistent, thus indicating that Makita's current sales of subject merchandise are not reflective of its normal commercial activity.

Makita states that its sales from the 3rd through the 5th ARs represent Makita's normal commercial behavior and reflect significant, consistent sales volumes. In addition, Makita argues that its current sales volumes continue to exhibit substantially the same range of specialty PECTs that were exported in 1992, prior to the imposition of the antidumping duty order, and that nothing has changed in regard to its specialty PECT exports.

Furthermore, Makita argues that it is not necessary to rely on pre-order sales volumes in this case in order to ascertain Makita's normal commercial practice, emphasizing that the Department cannot ignore the fact that Makita has established a permanent U.S. production facility that now manufactures the majority of Makita's PECT production for the U.S. market. Thus, Makita asserts, the subject merchandise that was previously produced in Makita's facility in Japan (pre-order) is now being manufactured in the United States. As a consequence of this substantial and permanent change in the company's business practice, which occurred in 1993, Makita stresses that pre-order export levels cannot properly represent current commercial activity.

Makita further notes that because it has permanently shifted the production of its high-sales-volume, "non-specialty" PECTs from Makita Japan to its U.S. production facility (i.e., MCA)), it is unlikely that Makita will ever again achieve 1992 pre-order sales quantities of PECTs that are produced in Japan. Thus, Makita argues that if the Department were to apply the petitioner's suggested requirement for commercial quantities, Makita could never obtain a revocation of the order. In effect, Makita argues, no company that shifts its production to the United States would ever be able to seek revocation. Makita further argues that the Department has considerable discretion in determining whether sales were made in commercial quantities and that the Department's preliminary finding in this case was in fact consistent with another recent decision issued by the Department. *Citing Notice of Preliminary Results of Antidumping Administrative Review and Intent to Revoke Order in Brass Sheet and Strip from the Netherlands*, 64 FR 48760, 48765, (September 8, 1999) (hereafter "*Brass Strip from the Netherlands*"), Makita states that its change in commercial practice is similar to the circumstances in that case, where the respondent acquired a U.S. production facility and shifted significant production to the United States. Makita notes that, in *Brass Strip from the Netherlands*, the Department determined that the respondent's U.S.

sales were made in commercial quantities, despite a decline in exports, based on the Department's finding that the acquisition of the U.S. facility represented an "unusual occurrence" that significantly altered the company's commercial practice. Makita further argues that, *in Brass Strip from the Netherlands*, the Department stated that it is reasonable to conclude that the company's commercial practices were permanently changed when its subject merchandise production shifted to its U.S. facility, thereby making the date of the production shift, rather than the pre-order period, the appropriate benchmark for measuring whether respondent's sales during the three years without dumping were made in commercial quantities.

Makita stresses that it is not necessary to consider pre-order sales volumes, if the more current data provides the Department with appropriate information for determining Makita's normal commercial behavior. Makita argues that the Department's practice regarding the determination of commercial quantities must be applied on a case-by-case basis and that there are no set guidelines, commercial standards, or policies setting forth precise minimum sales quantities or permissible percentage changes in those quantities that are needed to determine a respondent's normal commercial behavior. Makita argues that this case is different from the cases cited by the petitioner (*i.e., Pure Magnesium from Canada, Corrosion-Resistant Steel from Canada, Corrosion-Resistant Carbon Steel Flat Products from Canada*, and *Silicon Metal from Brazil*), noting that none of the cases cited involved a major shift in production of subject merchandise. Additionally, Makita argues that the petitioner's citation to *Shakeproof Assembly Components* v. *United States* and *Taiwan Semiconductor Industry Ass'n* v. *United States* is not persuasive because those cases involved decisions by the International Trade Commission ("ITC"), rather than the Department of Commerce.

Makita also argues that there is a sound basis on which to evaluate what the Department means when it uses the term "significant" with respect to Makita's volume of export sales to the United States in this review. Specifically, Makita notes that by defining the relevant universe of subject merchandise imports as specialty PECTs only, then its sales of the 16 specialty PECTs in the post-order period have unquestionably been consistent and significant in relation to pre-order sales of the same 16 models.

Finally, in response to the petitioner's argument that the Department should decide this case in a manner consistent with other revocation cases, Makita states that this is precisely what the Department did, *i.e.*, the Department based its decision on Makita's normal commercial practices. Makita argues that if the Department could not consider a significant and long-term change in business practice (*i.e.*, shifting high-volume PECT production to a U.S. production facility (MCA)), Makita would forever be locked into the order. According to Makita, any changes in the way Makita did business that resulted in lower volumes of imports would result in an indefinite continuation of the order, thereby rendering the revocation provision meaningless for Makita.

Department's Position: We agree with the petitioner that in order to form the basis for a revocation determination, past margins must be reflective of the company's normal commercial activity. *See Corrosion-Resistant Steel from Canada*. Sales during a POR which, in the aggregate, are of an abnormally small quantity do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id.; see also Pure Magnesium from Canada* at 12979 ("These sales and volume figures are so small, both in absolute terms and in comparison with the period of investigation, that we cannot reasonably conclude that the zero margins [respondent] received are reflective of the company's normal commercial experience."). However, the determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts of each proceeding. Neither the statute nor the regulations prescribes a specific standard for determining whether sales have been made in commercial quantities. For example, we have specifically found in prior cases that although one or two sales is not generally sufficient to meet the threshold, a sales drop-off after the imposition of an antidumping duty order does not necessarily prevent revocation (*see, e.g., Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part* 64 FR 50489, 50490–Comment 1, 50492–Comment 4 (September 17, 1999) (hereafter "*Pure Magnesium from Canada 2*") (where one or two sales was not consistent with normal commercial practice; also stating that a sales drop-off after imposition of the order does not necessarily prevent revocation). *See also Corrosion-Resistant Steel from Canada* (although one sale during the POR was insufficient, several thousand sales during another POR was distinguishable); and *Brass Strip from the Netherlands*, 64 FR 48760, 48765 (September 8, 1999) (respondent provided a commercially acceptable explanation of why exports of subject merchandise had declined).

In this case, we agree with Makita that its sales volumes during each of the three years under consideration were significant. Unlike in prior cases where the Department did not revoke because the respondent did not meet the basic threshold requirement of sales made in commercial quantities, in this case, Makita made thousands of sales during each POR to hundreds of different customers (*see* August 2 Revocation Memorandum at Attachment 2 and Makita's October 26, 1998 section C response at Appendix C–2). Compare Corrosion-Resistant Steel from Canada (sales were not in commercial quantities where respondent only had *one sale* during the POR); *Pure Magnesium from Canada* (sales were not in commercial quantities where respondent had *one sale* in two of the relevant years and *two sales* in the other). Thus, this case is distinguishable from other cases where the respondents only had one or two sales during the relevant PORs. Moreover, although Makita's aggregate subject merchandise PECT sales have decreased since the imposition of the antidumping order, that decrease relates to products that Makita now produces in the United States. Makita continues to export from Japan significant quantities of "specialty" PECTs, the only PECT models not produced in the United States, and these quantities are significant relative to pre-order (1992) sales of the same models.[1]

Furthermore, sales during the three years in question are reflective of the company's normal commercial experience since the establishment of its production facility in the United States. The record indicates that the U.S. production facility now manufactures volumes of merchandise comparable to

[1] Makita's history of specialty PECT sales is as follows: Makita's 1993 sales of specialty PECTs were 00.00% of its 1992 sales of specialty PECTs. Makita's 1994 sales of specialty PECTs were 38.39% of its 1992 sales of specialty PECTs. Makita's 1995 sales of specialty PECTs were 38.60% of its 1992 sales of specialty PECTs. Makita's 1996 sales of specialty PECTs were 47.16% of its 1992 sales of specialty PECTs. Makita's 1997 sales of specialty PECTs were 42.17% of its 1992 sales of specialty PECTs. Makita's 1998 sales of specialty PECTs were 50.86% of its 1992 sales of specialty PECTs. (See August 2 Revocation Memorandum at Attachment 2).

what was previously being manufactured by Makita Japan. This significant change in business practice provides a logical commercial explanation for Makita's relative drop in subject merchandise sales.

In the preliminary results of *Brass Strip from the Netherlands*, we evaluated whether the volume of sales prior to the order was the proper benchmark for measuring whether a respondent's sales volumes during the three years without dumping were made in commercial quantities, where the respondent acquired a U.S. manufacturing facility (subsequent to the imposition of the order) and had shifted a substantial portion of its production of subject merchandise to the United States. In *Brass Strip from the Netherlands* at 48765–48766, we found that this "unusual occurrence" provided sufficient reason to re-evaluate the benchmark. We stated:

> Although both the quantity and number of [respondent]'s shipments to the United States of subject merchandise have decreased since the imposition of the antidumping duty order, we find that the . . . acquisition of [the U.S. facility] and the subsequent transfer of in-scope radiator strip production to the United States is reflective of the type of "unusual occurrence" contemplated by the Department, in promulgating its regulations, as an acceptable explanation of why exports of subject merchandise have declined. Prior to this acquisition, . . . [respondent] continued to ship in similar quantities to the pre-order period and the subsequent cessation of shipments until 1995 was the immediate result of the 1991 acquisition. Based upon these circumstances, it is reasonable to conclude that the company's commercial practices were permanently changed in 1991, and that 1991, rather than the pre-order period, should be the benchmark for measuring whether the company's sales during the three years without dumping were made in commercial quantities.

Thus, as indicated in *Brass Strip from the Netherlands*, in order to ascertain a corporation's "normal commercial practice" with respect to shipment volumes, where necessary, we will evaluate the most appropriate benchmark. We recognize that in most cases, sales of subject merchandise sold prior to the imposition of the order will provide the most relevant benchmark. However, in unusual instances, such as those in this case, flexibility may be warranted in order to properly evaluate the company's normal commercial practice. In this instance the record indicates that Makita made the long term, if not permanent, decision to shift its production of non-specialty PECTs to the United States in 1993. Thus, while the sales levels prior to the imposition of the order provide an appropriate benchmark for analyzing sales volumes of specialty PECTs—this benchmark is no longer relevant to sales volumes of non-specialty PECTs. As such, we have compared Makita's sales volumes of specialty PECTs prior to the imposition of the order with those in the post-order period and, as stated above, after considering all relevant factors, found the latter to be significant.

Additionally, as we stated in *Pure Magnesium from Canada* 2 at 50492, a sales drop-off after imposition of the order does not necessarily prevent revocation. The Department explained:

> The Department's threshold requirement does not mean, as NHCI suggests, that the Department is effectively disqualifying companies from revocation if there is a sales drop off following the imposition of an antidumping order. The issue that is analyzed by the Department is the magnitude of the drop-off. In this regard, the Department has expressed its intent to revoke an antidumping duty order even where the sales drop-off has been substantial so long as the sales used to demonstrate a lack of price discrimination are reflective of the company's normal commercial experience.

Thus, the normal concern that accompanies decreased sales (i.e., that a low level of sales activity does not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping) is not present here because there is an explanation as to why Makita has decreased sales of subject merchandise and current sales levels are significant. *Compare* with *Pure Magnesium from Canada* (where the Department could not reasonably conclude that the zero margins received by respondent were reflective of the company's normal commercial experience without the discipline of an order). For these reasons, we find that we can reasonably conclude that the *de minimis* margins calculated for Makita are reflective of the company's normal commercial experience and provide a reasonable basis for our decision to revoke. *See* August 2 Revocation Memorandum at 10–11.

Comment 2: Consideration of "Changed Circumstances" in the Context of Revocation

The petitioner states that the Department has improperly collapsed its revocation review pursuant to 751(a) of the Act with a changed circumstance review pursuant to 751(b) of the Act. The petitioner purports that the Department has done this without prior notice and therefore does not have the authority to do so. Citing the Department's August 2 Revocation Memorandum (at 4–5), the petitioner states that in its preliminary results of this AR the Department concluded that Makita's main argument supporting revocation is its "changed circumstance" in subject merchandise production (*i.e.*, Makita Japan's substantial investment in a U.S. production facility—MCA—and its PECT/power tool production shift from Makita Japan to MCA). The petitioner argues that the Department has been careful not to conduct a review under the guise of a changed circumstances review and that the Department has always given notice in the **Federal Register** when it does initiate a changed circumstance review (*citing Carbon Steel Plate from Korea: Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order* 51 FR 13042 (April 17, 1986); and *Certain Dried Heavy Salted Codfish from Canada; Initiation and Preliminary Results of Changed Circumstances Administrative Review; Consideration of Revocation; and Intent to Revoke Antidumping Duty Order* 54 FR 41479 (October 10, 1989)). Therefore, the petitioner argues that by considering MCA as a factor for revocation, the Department is effectively conducting a changed circumstances review without proper notice, and is thus violating its statutory and regulatory obligations.

Makita states that the Department did not convert the revocation proceeding to a changed circumstances proceeding. Makita stresses that the fact that some of the Department's preliminary findings could also have been used in a changed circumstances review does not turn the revocation proceeding into a changed circumstances review. Makita notes that at no point did the Department indicate that its decision to revoke was based simply on "changed circumstances." Rather, according to Makita, the Department considered the establishment of MCA as a relevant factor regarding Makita's normal business practices and its applicability toward satisfying the commercial quantities threshold.

Department's Position: This administrative review has been conducted under section 751(a) of the Act; it is not a "changed circumstances" review under section 751(b). The difference between these two types of proceedings is primarily procedural. A section 751(a) review is conducted any time the Department receives a request for review in the anniversary month. Moreover, the regulations specifically provide that, if certain criteria are met, parties may request revocation at the time they request an administrative review under section 751(a) (*see* 19 CFR 351.222(e)). In contrast, a 751(b) review

is conducted any time the Department determines that there are changed circumstances sufficient to warrant review. Revocation can also be considered in the context of a 751(b) review (*see* 19 CFR 351.222(g)).

Although changed circumstances may warrant a review under section 751(b), nothing precludes the Department from considering facts relating to changed circumstances in the context of a section 751(a) review. In fact, the Department must consider all facts of record that are relevant to an issue under consideration in a section 751(a) review, whether it be an issue related to a margin calculation or to a request for revocation. However, the character of the review does not change simply because some of the facts considered relate to changes in the way a company conducts business.

Makita's establishment of MCA and its subsequent transfer of production to the United States is a relevant fact that cannot be ignored in the Department's revocation analysis. Indeed this fact could be characterized as a significant "changed circumstance" as was stated in the preliminary results. This characterization of the record facts, however, does not alter the nature of the proceeding. The petitioner, who has participated throughout this 751(a) review, has been afforded full notice and opportunity to provide evidence and comment regarding the issue of revocation generally and the impact of the shift in production specifically. The petitioner, in fact, has commented extensively on these issues.

Comment 3: Five Percent Market Viability Test and Commercial Quantities Determination

The petitioner argues that the Department's commercial quantities determinations in the context of revocation should be consistent with its policy in determining market viability under 19 CFR 351.404(b). The petitioner states that the Department's five percent viability standard is an appropriate benchmark to use because the requirement that NV be based on home market (or third country market) sales of a certain quantity and the commercial quantities standard are similar. The petitioner states, based on this comparison, that sales quantities in the U.S. market that are less than five percent of pre-order sales should not be considered representative to calculate margins for purposes of revocation.

Regarding the petitioner's argument that the Department's revocation determinations should be consistent with its home market viability determinations, Makita states that the five percent test for home market viability is designed for an entirely different purpose and has little applicability to the determination of commercial quantities in revocation. According to Makita, given the many years (six years at minimum) that typically intervene between the pre-order period and the revocation determination, any fixed, pre-determined percentage would not allow for significant changes in commercial practice. Additionally, Makita purports that by rejecting home markets where the quantity of sales is less than five percent of the U.S. export quantity, the Department is in no way suggesting that such sales are not made in commercial quantities.

Department's Position: We agree with Makita that the five percent test for home market viability is not relevant to the determination of commercial quantities in a revocation proceeding. The purpose of the viability test is to identify the most appropriate market in which to determine the NV of the subject merchandise, which is an issue that must be decided very early in the proceeding. That issue lends itself to a rule of general applicability and a general rule facilitates the requisite early decision. In contrast, for revocation, the issue is whether a company's sales during the three years in question provide a reasonable and reliable basis for determining that continuation of the order with respect to that company is no longer necessary to offset dumping. This is a more complex issue and a threshold matter in the context of the revocation decision. Thus, a general rule on the level of sales is inappropriate; it is an issue that can only reasonably be decided on a case-by-case basis.

Likelihood of Future Dumping

Comment 1: History of Dumping

The petitioner states that Makita's history of dumping, as evidenced by the imposition of the antidumping duty order, illustrates that Makita has to dump in order to compete effectively in the U.S. market, and that Makita will resume dumping if the Department revokes the order. The petitioner notes that Makita's drop in subject merchandise sales since the imposition of the antidumping duty order (*i.e.*, in terms of total number of models, total number of units, and loss of market share) has been substantial based on the Department's preliminary analysis. Thus, the petitioner states that revoking the order now would provide little commercial benefit to Makita unless Makita intends to resume selling higher volumes of subject merchandise in the United States at dumped prices.

The petitioner also argues that Makita will resume dumping subject merchandise in the future if the order is revoked because Makita has continued dumping non-subject tools (*i.e.*, professional electric sanding-grinding tools ("PESGTs")). The petitioner purports that Makita's normal pattern of production and trade are presumptively reflected in its non-subject tool sales and therefore Makita's trade in PECTs will match its trade in PESGTs if the order is revoked. Based on its analysis of Makita's PESGTs sales, the petitioner maintains that Makita has not stopped dumping its PESGTs in the U.S. market since the time of the antidumping duty investigation (*see* pages 7–13 of the petitioner's September 10, 1999, case brief).[2] In addition, the petitioner states that, based on Makita's admission, PESGTs are not materially different from PECTs. According to the petitioner's analysis, Makita has continued dumping its PESGTs at a 46 percent margin during the PORs that are the subject of this revocation inquiry. Therefore, the petitioner states that continued dumping of non-subject tools provides a clear indication that Makita would likely resume dumping subject merchandise if the antidumping duty order were revoked.

Finally, the petitioner asserts that Makita has an incentive to resume dumping of its low-sales-volume, specialty PECTs that it has been importing into the United States during the pre- and post-order periods. The petitioner states that Makita's sales of specialty PECTs have decreased by 50 percent since 1992, as a result of increasing its prices on specialty PECTs in response to the antidumping duty order. Thus, the petitioner argues that there is incentive for Makita to resume dumping of subject merchandise (*i.e.*, specialty PECTs).

Makita disagrees, stating that the facts alleged by the petitioner do not show any history of dumping by Makita, but only show a history of accusations that Makita engages in dumping. Makita states that the petitioner's allegation is not supported by any evidence in the record because the Department has found that Makita has not dumped subject merchandise for three years. Makita maintains that its losses in market share are not compelling

[2] Note: PESGTs were investigated as subject merchandise during the original less-than-fair-value investigation of PECTs. However, the ITC determined that there was no material injury to the U.S. industry for these products. Consequently, no antidumping duty order was imposed on PESGTs from Japan.

evidence that it is likely to dump if the order is revoked, especially since, in Makita's opinion, increases in the petitioner's U.S. market share have resulted from predatory pricing techniques, which also explain Makita's decreased market share. Makita states that its subject merchandise sales business is not predicated on a particular market share in order to effectively compete in the United States. More importantly, Makita points out that most of its U.S. PECT sales are not subject merchandise, but are U.S.-MCA-produced PECTs. Therefore, Makita maintains that it does not need to dump its sales of subject merchandise (*i.e.*, low-sales-volume, specialty PECTs) in order to maintain its U.S. market share because most of its PECTs for the U.S. market are produced at MCA.

Further, Makita argues that the petitioner's assertion that revocation will only benefit Makita by facilitating its resumption of dumping is inaccurate. Makita states that revocation of the order will have the following benefits: (1) Removal of the stigma associated with being the subject of an antidumping duty order; (2) resumption of sales to U.S. customers who will not purchase tools that are subject to an antidumping duty order; and (3) elimination of expenses involved with participation in the Department's administrative reviews. Thus, Makita asserts the petitioner has presented no positive rebuttal evidence which can overcome the presumption that, if the order is revoked, there is no likelihood that Makita will resume dumping in the future.

Regarding the petitioner's argument that Makita's continued "dumping" of non-subject power tools is probative of future dumping of subject merchandise, Makita contends it is unpersuasive because Makita's sales of non-subject merchandise are irrelevant and outside the scope of this proceeding. Makita argues that a comparison of its subject merchandise sales with its non-subject merchandise sales is nowhere recognized as a relevant test of any likelihood of future dumping of subject merchandise. Makita purports that the petitioner misrepresents Makita's comments regarding the distinctions between PESGTs and PECTs. Makita states that it never claimed that there are no differences between PESGTs and PECTs, but that there is a substantial commonality in components, production machinery, manufacturing processes, and assembly of the two tool categories. Thus, Makita states, there are no relevant production-related distinctions between PESGTs and PECTs that would prompt Makita to keep production of either tool category in Japan or the United States. Makita contends that the petitioner's argument which seeks to compare Makita's pricing and production policies on PESGTs (non-subject merchandise) and PECTs (subject merchandise) in the context of analyzing the likelihood of future dumping of the latter, is not founded in Department precedent. Thus, Makita states that the petitioner's argument lacks relevant evidence rebutting the Department's presumption that Makita is not likely to dump in the future.

Regarding the petitioner's argument that Makita is likely to resume dumping of specialty PECTs to regain market share, Makita states the following: (1) Its current sales volumes of specialty PECTs are not inconsistent with its historical sales volumes; (2) it does not need to lower the price of specialty PECTs because of its premium pricing strategy; and (3) it has flexibility in the amounts by which it can lower prices on specialty PECTs (should Makita choose to) before dumping occurs. Specifically, Makita argues that its sales of specialty PECTs have always been limited and have fluctuated from year to year. Makita states that the record shows that it is engaged in premium pricing of its specialty PECTs, where it restricts the supply of a tool category in order to maintain its higher price quality image, but that there is no evidence on the record showing that Makita intends to regain market share through reduced prices. In addition, Makita states that it has significant room in which to lower its specialty PECT prices before dumping occurs and this shows that Makita has not increased prices on specialty PECTs simply to avoid dumping.

Department's Position: We disagree with the petitioner's contention that Makita's history of dumping PECTs, prior to the 3rd AR of this proceeding, illustrates that dumping is a necessary part of Makita's competitive position in the U.S. PECT market. As a threshold matter, the Department's revocation analysis focuses on the three most recent review periods. The Department generally finds that three consecutive years of non-dumped sales in commercial quantities indicates that a company will not dump in the future. *See Corrosion-Resistant Steel from Canada* at 2175 ("in evaluating the issue of likelihood, the Department has considered three years of sales in the United States with no dumping margins, plus an agreement to reinstatement [of] the order, to be indicative of expected future behavior."). Thus, where there is no evidence to the contrary, the Department will normally determine that revocation is warranted. *See also Furfuryl Alcohol From the Republic of South Africa; Preliminary Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order*, 64 FR 10983, 10894 (March 8, 1999); *Titanium Sponge from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review and Partial Revocation*, 63 FR 47474, 47475 (September 8, 1998); *and Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986, 17988 (April 13, 1998) (hereafter *Steel Rope from Korea*). Makita has satisfactorily established that it has sold subject merchandise in commercial quantities at fair value for three consecutive years. Absent evidence to the contrary, the Department presumes that three years of *de minimis* or zero margins is indicative of Makita's future behavior (*see* August 2 Revocation Memorandum at 11).

We also disagree with the petitioner's allegation that Makita's continued dumping of non-subject power tools (including both U.S.-made and Japanese-made non-subject merchandise) is probative of future dumping of subject merchandise in this case. Generally, information regarding non-subject merchandise is irrelevant to whether an existing order continues to be necessary to offset dumping of the subject merchandise. The information provided by the petitioner does not warrant an exception in this case and thus cannot provide a basis for rebutting the presumption established by three consecutive years of sales of the subject merchandise at not less than fair value. Although the petitioner did not submit its allegation regarding Makita's pricing of non-subject merchandise in time for the Department to consider it for purposes of the preliminary results, the Department preliminarily indicated that pricing of non-subject merchandise might be a relevant factor in its analysis and that it may consider the petitioner's information for purposes of the final results (*see* August 2 Revocation Memorandum at page 16). However, as discussed above, the Department finds that in this case, the information on sales of non-subject merchandise is irrelevant for purposes of this final revocation determination. Therefore, the Department's revocation decision in this case is based only on the facts related to the subject merchandise sales alone.

The Department further disagrees with the petitioner's allegation that Makita will resume dumping to regain lost share of the PECT market. Evidence

on the record indicates that Makita has suffered continued losses in its market share in the "electric power tool market" as a whole (*i.e.*, all electric power tools including subject PECTs—*see* Makita's February 9, 1999, submission at Appendix 15). Therefore, if the petitioner's rationale (*i.e.*, dumping maintains market share) is to be considered accurate, one would have expected Makita to have maintained its market share in other categories of electric power tools, which the petitioner contends Makita has continued to dump, while only losing market share in PECTs. This in fact is not the case, as Makita has lost market share in other electric power tool categories as well. Thus, it is clear there are other factors that impact a competitor's position in the market (*e.g.*, introduction of a new competitor, innovations, reputation). Therefore, we agree with Makita that its sales of subject merchandise are not predicated on a particular market share in order to effectively compete in the United States.

Comment 2: Home Market Demand

The petitioner states that declining home market sales and home market demand (*i.e.*, decline in the Japanese electric power tool market and Japanese housing starts from 1997–1998), coupled with rising demand in the United States, have increased the likelihood that Makita will dump PECTs in the U.S. market in the future. The petitioner submits that the evidence in the record contradicts the Department's finding of market stability in Japan. Therefore, the petitioner maintains that with Makita's declining sales in the home market, Makita has greater incentive to direct its PECT sales to the U.S. market.

Makita stresses that although there have been fluctuations in its home market electric power tool sales and Japanese housing starts, the petitioner is confusing short-term fluctuations in an otherwise relatively stable home market with a permanent decline in demand for electric power tools (*i.e.*, from 1992 to 1997). In addition, Makita states it has no incentive to increase exports from Japan because most of its tools sold in the U.S. market are produced in the United States (*i.e.*, MCA), and that its focus is to increase production at MCA rather than increase production in Japan. Moreover, Makita states that it has many other viable markets, other than the United States and Japan, where Makita Japan sells its cutting tools, thereby reducing its financial dependance on Japanese exports to the United States. Furthermore, Makita maintains that it would not be practical for Makita Japan to export subject merchandise that would, in effect, be competing with MCA's production of PECTs.

Department's Position: We agree with Makita that a stable home market does not require an absence of market fluctuations, and that the evidence on the record pertaining to the health of the Japanese home market does not suggest that Makita is likely to dump PECTs in the U.S. market in the future if the order were revoked. Although the petitioner claims that the Japanese power tool market is in decline, we find that the record data indicates that the market in Japan is relatively stable (*see* August 2 Revocation Memorandum at 14). We do not conclude that the drop in housing starts in Japan and home market demand for subject merchandise between fiscal year ("FY") 1996 and FY 1997 indicates a declining or unhealthy market. Rather, we would expect even a healthy market, especially the electric power tool market, to experience both peaks and troughs in demand. Contrary to the petitioner's assertion, we have no evidence that suggests that the above mentioned one-year decline in the Japanese power tool market is a long-term occurrence. Therefore, based on the evidence as a whole, we find the Japanese power tool market to be relatively stable.

In addition, the record supports Makita's assertion that it is unlikely to increase its PECT exports from Japan to the United States to pre-order levels because most of its tools sold in the U.S. market are now produced in the United States by MCA. This conclusion is particularly evident when reviewing Makita's production capacities in both the U.S. and home markets, i.e., Makita has substantial excess capacity available in the United States and is producing at full capacity in Japan. (See Comment 3 of this section below for further discussion.) Furthermore, it is unlikely that Makita Japan will resume its pre-order export levels of subject merchandise because such exports would be competing with MCA's production of PECTs, or would require costly shifts in PECT production back to and restructuring of capacity utilization in Japan (see the Department's July 9, 1999 verification report at 22–23, 34–36; and July 13, 1999 verification report at 4–7). Finally, we verified that Makita has other viable markets, other than the United States and Japan, wherein Makita Japan can sell its cutting tools (see the Department's July 9, 1999, verification report at 36–40). Thus, Makita Japan is not dependant on Japanese exports to the United States for financial viability. As such, based upon the data on the record regarding the Japanese and U.S. PECT markets, the existence of Makita's U.S. production facility, the available or lack of available production capacity levels in MCA and Makita Japan (*i.e.*, Okazaki plant), respectively, and Makita's healthy sales history in other world markets, we find that the sales pattern in the Japanese home market does not suggest that Makita is likely to resume dumping of PECTs in the United States without the discipline of the order.

Comment 3: PECT Production in Japan Versus the United States

The petitioner purports that Makita Japan could increase its production output with relative ease and despite its reported capacity utilization figures and thereby increase production of PECTs for sale in the U.S. market at dumped prices if the order is revoked. The petitioner argues that plant capacity is unrelated to production output because the annual production output at Makita's Okazaki plant has increased nearly 100 percent from 1992 through 1997, while its capacity utilization has remained constant during the same time period. Furthermore, the petitioner suggests that the Department has ignored its claim regarding the ease with which an electric power tool manufacturer can expand production. (*See* Declaration of Ronald S. Taylor, Black & Decker February 24, 1999, submission.) Finally, the petitioner argues that a manufacturing plant (*i.e.*, Makita's Okazaki plant) with easily modifiable assembly lines does not face the same barriers to expansion and conversion as other complex, more capital-intensive facilities with fixed, dedicated, and expensive equipment. Thus, the petitioner asserts that Makita's capacity in Japan can be easily and relatively inexpensively altered, resulting in increased PECT production in Japan for sale in the U.S. market at dumped prices if the order is revoked.

The petitioner also states that Makita USA's consolidated financial statements show poor performance for FYs 1997 and 1998 [3] and Makita's U.S. production facility MCA has utilized less than two thirds of its total production capacity. The petitioner argues that Makita's U.S. operations are a drain on the Makita corporation and that continued poor financial performance of Makita's U.S.

[3] The financial statements for Makita USA (Makita Japan's affiliated selling agent in the United States) and MCA (Makita's U.S. production facility) are consolidated for financial reporting purposes in the United States. The Makita USA/MCA consolidated financial statement is consolidated into Makita's overall corporate financial statement as well.

operations will render Makita's capital investments in MCA moot.

In addition, the petitioner states that the downward trend in the yen against the U.S. dollar (*i.e.*, depreciation of the yen against the dollar) suggests that production in Japan is and will become more profitable than production in the United States based on its estimation of Makita's cost of manufacturing in the United States verses Makita's cost of manufacturing in Japan. The petitioner argues that Makita would have increased its profits if Makita would have shifted its production back to Japan (*see* the petitioner's September 17, 1999, case brief at 18–19 and at Exhibit 6). Finally, the petitioner asserts that Makita's loss in U.S. market share gives Makita a financial incentive to concentrate its production of cordless tools (*i.e.*, PECTs) in Japan. Specifically, the petitioner claims that Makita has not participated meaningfully in the U.S. market for cordless saws, which are currently produced by MCA. Because cordless tools are not affected by voltage differences, the petitioner argues that if the order is revoked Makita will consolidate its cordless saw production in Japan in order to take advantage of its economies of scale and production experience in Japan. The petitioner argues further that Makita will have to adopt measures to regain market share which will include a resumption of subject merchandise sales at dumped prices, particularly in the popular and growing cordless PECT market. Thus, the petitioner asserts that Makita USA's poor financial performance, favorable currency fluctuations, and losses in U.S. market share all give Makita an incentive to resume dumping in the United States should the order be revoked.

Makita asserts that the Department correctly concluded that Makita Japan operates at the upper limit of the maximum volume that can be produced by its Japanese facility. Makita states that because it closed down its Anjo, Japan production facility and moved a portion of Anjo's production capacity into the Okazaki plant in 1997, the Department must consider the distinctions between Makita's prior and current production capacities, namely, its past capacity when its Okazaki and Anjo plants were open and producing PECTs in comparison to its current capacity where only a single plant (i.e., the Okazaki plant) is producing PECTs. Makita argues that when recognizing such significant differences, it is clear that the closing of the Anjo plant significantly reduced its production capacity and Makita Japan's ability to expand its capacity.

Makita argues further that whether or not it can set up new assembly lines in its Okazaki plant is not relevant to this segment of the proceeding. Makita states that assembly of new lines involves the construction of new capacity and not the utilization of current capacity. Makita maintains that in this segment of the proceeding the Department's focus should be whether Makita has idle capacity currently available to increase the output of subject tools for export. Makita states that evidence on the record suggests that no such additional capacity is available in Japan.

Regarding the petitioner's allegation that the Department has not considered the affidavit of Ronald S. Taylor, regarding the ease with which assembly lines can be added to Makita's Okazaki production plant, Makita states that the statements made in the affidavit are not applicable to Makita's business practices for the following reasons: (1) Makita's Okazaki plant does not have the floor space to add production; (2) substantial increases in capacity in Japan would include re-opening the Anjo facility and a reduction in capacity at MCA; and (3) returning production to Japan would be costly and difficult to implement. Thus, Makita argues that transferring production from MCA back to Japan is neither easy nor inexpensive, and that the affidavit does not fully address Makita's commercial situation because Makita's long-range business strategy includes the shifting of production closer to its international markets.

Furthermore, Makita argues that Makita USA is on the road to profitability and that MCA's operations have been profitable in 1997 and 1998. Makita argues that Makita USA's poor financial performance in FYs 1997 and 1998 and MCA's low capacity utilization does not support a return of production to Japan, but rather a reinforcement of its efforts to increase production at MCA (noting that Makita has made a substantial investment in MCA). In addition, if Makita's only business concern was cost of production, then, Makita states, it would be far more sensible for it to shift its production to the People's Republic of China where it already has a production facility rather than Japan. Makita argues that Makita USA's poor financial performance is not unexpected in a situation where a still-expanding U.S. subsidiary (*i.e.*, MCA) is operating below its capacity. Makita asserts that MCA is still growing toward its role as the main provider of electric power tools in the U.S. market and that Makita's continued investment in the facility indicates Makita's continued commitment to expand MCA's role in the U.S. market. Thus, Makita contends that the establishment and strengthening of MCA is a long-term investment project on which it does not expect an immediate return.

In addition, Makita maintains that only when the value of the Japanese yen is decreasing against the U.S. dollar do currency fluctuations make its Japanese operations more profitable than its operations in the United States. Makita states that MCA was established, at least in part, in order to avoid dependancy on exchange rate fluctuations and the risks associated with them. Makita argues that the time frames (*i.e.*, June 1993 and June 1998) that the petitioner cites in its analysis were periods when the yen was weak against the dollar, but that in June 1995 and September 1999 when the yen was stronger, Makita's U.S. operations were more profitable. Notwithstanding these facts, Makita states that it has never conditioned its long-term strategy on short-term currency fluctuations, but on the premise that Makita is best served by eliminating the risks associated with the unpredictability of fluctuating exchange rates and by moving production from Japan to its local markets.

Finally, Makita states that the petitioner's argument that Makita has financial incentive to consolidate its production of electric power tools in Japan, particularly cordless PECTs, is based on the petitioner's incorrect assumption that Makita does not already produce cordless PECTs in the United States. Makita notes that it has been producing cordless PECTs at MCA for years, and has never found that production would be facilitated or improved if it was shifted back to Japan. Makita argues it has not forfeited its share of the U.S. cordless PECT market, but rather it has taken full advantage of the opportunity by establishing efficient operations that are close to its customer base in the U.S. market. Makita states that the petitioner has not presented any evidence supporting the argument that consolidation of cordless tool production in Japan would be more cost effective.

Department's Position. We agree with Makita that the record indicates an intent to maintain and/or increase production operations in the United States without increasing production in Japan. The record indicates that Makita has limited unutilized capacity in Japan, but available capacity in the United States. Makita's verified submissions demonstrate that Makita's facility in Okazaki, Japan (Makita's only remaining production facility for PECTs in Japan) is currently operating at full capacity,

and has been doing so since 1991. Two important facts that were considered in analyzing production capacity at the Okazaki plant are (1) the Okazaki plant (and the Anjo plant when it was open) has operated with two shifts only since 1996, and thus the Okazaki plant's capacity utilization figures were based on one production shift prior to 1996; and (2) Makita closed down its Anjo production facility and moved a portion of Anjo's production capacity (*i.e.*, production equipment including armature winding lines, assembly lines, armature shaft hardening machines) into the Okazaki plant in 1997, thereby bringing the Okazaki plant to its optimal production capacity. The addition of a production shift explains how Makita's Okazaki plant was able to increase its total annual production nearly 100 percent from 1992 through 1997, while its annual capacity utilization remained constant. Additionally, we verified that it would be difficult, if not impossible, for Makita to add a third shift in its Okazaki plant (*see* August 2 Revocation Memorandum at 14). In sum, comparing Makita's production capacity and total annual output when its Okazaki and Anjo plants were open and producing electric power tools with one shift each, with Makita's current production capacity and annual output at the Okazaki plant producing electric power tools with two shifts (*see* Appendix 4 of Makita's September 17, 1999, rebuttal brief and verification exhibit 13 of the Department's July 9, 1999 verification report), the Department finds that Makita Japan's total annual production output at the Okazaki plant using two production shifts since 1997 is comparable to Makita Japan's previous total annual production output at the Anjo and Okazaki plants using one production shift in each plant prior to 1997. In short, from 1992 through 1998, Makita Japan's annual production of electric power tools for each shift reflected Makita Japan's optimal capacity utilization. Thus, Makita Japan's production with two shifts at one plant (*i.e.*, Okazaki plant) is comparable to Makita Japan's production with one shift at each of the two plants (*i.e.*, Okazaki and Anjo plants).

We further note that although Makita USA's financial statement reports a poor performance for 1997 and 1998, the MCA plant operated profitably in 1998 (*see* the Department's July 13, 1999, verification report at 10 and 11, and verification exhibit 12). Moreover, there is nothing on the record to indicate that the entire financial loss is directly related to Makita's U.S. production of PECTs. Indeed, the Department recognizes there could be a number of explanations for Makita USA's poor financial performance in 1997 and 1998 (*e.g.*, accounting policies, long-term investment strategies, failed business ventures). There is nothing on the record indicating specifically what the losses are attributable to and, where the U.S. production operation has been profitable in 1998, the Department cannot make an assumption that the corporation would choose to cease such operations in order to increase profitability for a related entity. Additionally, Makita's statement regarding the expected growth of MCA provides a reasonable explanation for any losses incurred, *i.e.*, MCA is still growing toward its role as the main provider of electric power tools in the U.S. market and Makita continues to invest in the facility (*see* the Department's July 13, 1999, verification report at 9 and verification exhibit 12); thus it is reasonable to conclude that building up MCA is a long-term undertaking and Makita does not expect an immediate return on its investment.

Additionally, the record supports and we accept Makita's characterization as to the effect of currency fluctuations on Makita's decision to maintain production of PECTs at MCA (*see* Makita's September 17, 1999, rebuttal brief at 31–33). Given the many factors that can affect profitability during a time of currency depreciation, we cannot determine which operations (*i.e.*, Makita's Japanese operations or Makita's U.S. operations) will be more profitable as the petitioner suggests. However, a depreciation of the yen does not imply that dumping will occur. To the contrary, the Department notes that during a period of a depreciating home market currency, there is even less pressure to engage in pricing below NV. In this proceeding, there is no evidence on the record indicating the likelihood of a resumption of dumping due to the effect of a long-term depreciation of the yen against the dollar, which by itself does not indicate a likelihood of sales at less than fair value. *See Steel Rope from Korea* at 17988. Furthermore, Makita has demonstrated that there are a number of long-term business advantages in establishing a U.S. production facility including: (1) Makita's ability to avoid dependancy on exchange rate fluctuations and the risks associated with them; and (2) Makita's ability to respond to the needs of the U.S. market in a more timely fashion. Finally, evidence on the record supports Makita's long-term business practice of moving production from Japan to Makita's electric power tool markets abroad (*see* the Department's July 9, 1999, verification report at 22–23 and verification exhibit 6A).

Comment 4: Pricing Practices With Respect to Subject and Non-Subject Merchandise

The petitioner states that Makita's inability to undercut its U.S. competitors' prices with respect to PECTs it produces in Japan, coupled with its widespread undercutting of prices on U.S.-made PECTs and other non-subject tools, indicates the effectiveness of the order and the likelihood that Makita would resume dumping if the order were revoked. The petitioner states that if it were not for the order, Makita's prices for specialty PECTs imported from Japan would be lower than those of Makita's competitors. Therefore, the petitioner argues that by forcing Makita to maintain high prices, the order has resulted in Makita's devastating loss of U.S. market share in PECTs, and that Makita will have to lower its prices on PECTs as soon as the order is lifted in order to regain its lost market share.

Makita states that it has considerable room for dropping the price on its subject merchandise sales without incurring a dumping liability. Makita argues that it has not been forced to maintain higher prices on its Japan-made specialty PECTs due to the impact of the order, but has chosen not to lower its prices for marketing purposes (*i.e.*, Makita's marketing strategy entails producing a higher quality product that demands higher prices). Thus, Makita states that higher pricing is the result of its business strategy rather than the result of the impact to the antidumping duty order.

In addition, Makita argues that it has not undercut the petitioner's prices with respect to its U.S.-produced PECTs, and that Makita has in fact experienced drops in its market share of non-subject, U.S.-produced PECTs. Makita states that of the thousands of U.S.-produced PECT sales made every month, the petitioner has found only 10 PECT models on which to base its allegation of price undercutting. Makita argues that even if the petitioner's allegation were correct, the small number of tool models cited would amount to a *de minimis* margin. In response to the petitioner's allegation that market share is gained through undercutting competitors' prices, Makita reasons that if it had undercut its competitors' prices with its U.S.-produced PECTs, then it should have increased its share of the U.S. PECT market rather than lost it (as is the case since 1992). To the contrary, Makita

purports that petitioner undercuts Makita's prices in every case of which Makita is aware.

Department's Position: We disagree with petitioner. Regarding the petitioner's argument that Makita would undercut U.S. competitors' prices on PECTs if the order were revoked, the Department generally finds that three years of no dumping is predictive of future behavior. (*See Corrosion-Resistant Steel from Canada*, at 2175. Thus, where there is no evidence to the contrary, the Department will normally determine that continuation of the order is no longer necessary to offset dumping. Further, because Makita has agreed to reinstatement of the order in the event of future dumping, it is inappropriate to presume that the imposition of the order is the only factor preventing dumping. Rather, we considered other factors that might suggest a likelihood of future dumping as discussed in the "*Determination to Revoke the Order in Part*" and "*Likelihood of Future Dumping*" sections in this notice above.

Regarding the petitioner's argument that Makita's widespread undercutting of prices on U.S.-made PECTs and other tools is indicative of Makita's behavior in the absence of an order, the Department reiterates its position enumerated above in Comment 1 of the "*Likelihood of Future Dumping*" section of this notice. We disagree with the petitioner's allegation that the pricing of non-subject merchandise in this case is probative of whether the order continues to be necessary to offset dumping of subject merchandise.

Final Results of the Review

We determine that the following weighted-average margin for Makita exists for the period July 1, 1997, through June 30, 1998:

Manufacturer/producer/exporter: Makita Corporation Incorporated

Margin (percent): 0.07 percent (*de minimis*)

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced by Makita Japan and that are also exported by Makita Japan, entered, or withdrawn from warehouse, for consumption on or after July 1, 1998. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct Customs Service to refund with interest any cash deposits on entries made after June 30, 1998.

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. For entries of subject merchandise that are produced by Makita Japan and that are also exported by Makita Japan, entered, or withdrawn from warehouse, for consumption during the POR (*i.e.*, July 1, 1997–June 30, 1998), the Department will instruct the Customs Service to liquidate entries without regard to antidumping duties. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds with interest if applicable.

Cash Deposit Requirements

The following deposit requirements shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of this final results of the administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Makita Japan will be zero, except that for imports of PECTs that are produced by Makita Japan and that are also exported by Makita Japan, cash deposits will no longer be required and the suspension of liquidation will cease for entries made on or after July 1, 1998; (2) if the exporter is not a firm covered in this review or the less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will be 54.5 percent, the "all others" rate made effective by the LTFV investigation. These requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers and Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.105(a). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–32673 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded ASTM A–312 Stainless Steel Pipe From Korea: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of Administrative Review.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0648 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

Background

On December 30, 1998, the Department of Commerce (the Department) received a request from

Avesta Sheffield Pipe Co.; Damascus Tube Division, Damascus-Bishop Tube Co.; and the United Steelworkers of America (AFL–CIO/CLC), herein referred to as "the domestic industry," for administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe from Korea. On January 25, 1999, the Department published its initiation of this administrative review covering the period of December 1, 1997 through November 30, 1998 (64 FR 3682).

Extension of Time Limits for Preliminary Results

Because of the reasons enumerated in the Memoranda from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Administrative Review of Certain Welded ASTM A–312 Stainless Steel Pipe from Korea,* dated December 13, 1999, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results to December 20, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: December 13, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–33075 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. 121599C]

Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects Office, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910 (301–713–3000, ext. 138) or via Internet at Bob.Leeworthy@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to add socioeconomic monitoring information to the ecological monitoring information in the Florida Keys National Marine Sanctuary (FKNMS). In 1997, regulations became effective that created a series of "no take zones" in the FKNMS. Monitoring programs are used to test the ecological and socioeconomic impacts of the "no take zones". This year three voluntary data collection efforts will be initiated to support the socioeconomic monitoring program.

The first collection involves a set of four panels on commercial fishing operations, where commercial fishermen will be interviewed to assess financial performance and assess the impacts of Sanctuary regulations. Information on catch, effort, revenues, operating and capital costs will be obtained to do financial performance analysis. Information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, years of experience in fishing will be gathered to compare panels with the general commercial fishing population. The data would be collected annually.

The second collection will monitor recreational for-hire operations through the use of dive logs for estimating use in the "no take areas" versus other areas for snorkeling, scuba diving and glass-bottom boat rides. Volunteers will collect the logbooks monthly.

The third collection will survey all users of "no take areas". Respondents will be asked to rate both the importance and satisfaction with various natural resource attributes and characteristics (e.g., water clarity, coral cover, number and diversity of sea life, etc.).

II. Method of Collection

Interviews will generally be used. The user surveys will also include use of a mailed questionnaire. The dive shop logbook collection is a request to keep records.

III. Data

OMB Number: None

Form Number: None

Type of Review: Regular submission

Affected public: Individuals, business or other for-profit

Estimated Number of Respondents: 1,070

Estimated Time Per Response: 3 hours for commercial fishing panels, 10 hours for dive shops, and 20 minutes for sanctuary users.

Estimated Total Annual Burden Hours: 920

Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–33063 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–JE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121599D]

National Marine Sanctuaries–Socioeconomic Impacts of Marine Reserves

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects Office, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910 (301–713–3000, ext. 138) or via Internet at Bob.Leeworthy@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to give users of National Marine Sanctuaries fair representation in the process of creating a marine reserve (no-take zone). This will be accomplished by collecting socioeconomic information and incorporating the information into a geographical information system (GIS) that will support socioeconomic impact analyses. Socioeconomic Impact Analyses attempt to show who might be impacted by a marine reserve (i.e., who benefits and who suffers potential costs). Impacts are measured not only on direct users that would be displaced but also the secondary impacts such as income and employment in the local and regional economies and to consumer's through either higher prices for commercial fishing products or lower quantity and quality of recreational experiences. In FY 2000, NOAA plans to apply the information collection and analyses to the Channel Islands National Marine Sanctuary, which is revising its management plan and will propose the creation of a marine reserve.

One set of respondents would be commercial fishermen. Interviews would gather information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, years of experience in fishing and years of fishing experience in the study area. Total catch, effort and revenue, by major species and by geographical areas, will also be compiled. Information on costs of operation and investment in the fisheries will also be obtained. Detailed maps will be used in working with fishermen to allocate their catch and effort geographically.

A second set of respondents would be Wholesale Processors. Personal interviews will be conducted with wholesale processors of commercial fishing catch to determine the disposition of catch (e.g. how much is exported out of the local area, how much is sold to local retail markets, and how much is sold to restaurant markets) and the price mark-ups at each market level.

The third set of respondents would be Recreational For-Hire Businesses. Personal interviews would be conducted with for-hire charter and party (head-boats) boat operations that take recreational fishermen, divers, and wildlife viewers to the Channel Islands National Marine Sanctuary. As with commercial fishing operations, maps will be used to allocate activity by geographic area. Information on number of passengers (normalized to person-days of activity), operating revenues, cost and profits will be obtained.

II. Method of Collection

Personal interviews.

III. Data

OMB Number: None
Form Number: None
Type of Review: Regular submission
Affected public: Business or other for-profit
Estimated Number of Respondents: 665
Estimated Time Per Response: 2 hours
Estimated Total Annual Burden Hours: 1,330
Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–33064 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–JE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121499D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees in January, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between Wednesday, January 5, and Friday, January 28, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Warwick, RI, Portland, ME, Danvers, MA and Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950–2866; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, January 5, 2000, 10:00 a.m.—Gear Conflict

Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Discussion and development of recommendations on whether fishing vessels should be required to use a Vessel Monitoring System (VMS) to reduce the incidence of gear conflicts between fixed and mobile gear fishermen; discussion of methods to implement a VMS requirement in fisheries that are not managed by the Council; and discussion of various management measures that can be used to mitigate gear conflicts, such as additional marking requirements.

Thursday, January 6, 2000, 9:30 a.m.—Whiting Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Committee development of a scoping document for a proposed Small Mesh Species Fishery Management Plan (FMP), which would establish a separate plan for whiting, red hake, offshore hake, and possibly ocean pout. These species are currently managed under the Multispecies FMP. The scoping document may include options for limiting access and applying a Total Allowable Catch (TAC) to small mesh species fisheries, and any other issues that the committee identifies.

Monday, January 10, 2000, 10:00 a.m. and Tuesday, January 11, 2000, 8:30 a.m.—Scallop Oversight Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Committee approval of Total Allowable Catch research set-aside mechanism and groundfish management issues relating to Framework Adjustment 13 to the Scallop FMP (scallop vessel access to groundfish closed areas); development of recommendations concerning the extension of the Seastead Site research project closed area (proposed Framework Adjustment 14 to the FMP); and approval of Amendment 10 objectives (comprehensive management strategy, including rotational area management), schedules and a draft scoping document.

Wednesday, January 12, 2000, 9:30 a.m.—Experimental Fisheries and Research Steering Committee

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Development of research priorities for the New England groundfish fishery and other fisheries that impact the groundfish resource.

Thursday, January 13, 2000, 9:30 a.m.—Joint Herring Committee and Atlantic States Fisheries Commission Herring Section Meeting

Location: Holiday Inn by the Bay, 8 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Committee and Section review and approval of a draft scoping document that identifies issues to be considered during the development of a controlled access system in the Atlantic herring fishery; Committee and Section consideration of the impact of the partial approval of the Atlantic Herring FMP and discussion of the need for additional management measures such as, but not limited to, spawning closures, effort controls, gear restrictions, or other measures for the fishery; Committee and Section discussion of gear use issues in the eastern Gulf of Maine, and possible development of additional management measures to address concerns raised by purse seine and mid-water trawl vessels that fish in this area.

Tuesday, January 18, 2000, 8:30 a.m.—Red Crab Committee Meeting

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone; (978) 777–2500.

Discussion of issues to address in the scoping process for this new FMP, review of the draft scoping document and review of the draft control date letter to NMFS. There will be a closed session at the end of the meeting to review applications for the Red Crab Advisory Panel.

Friday, January 28, 2000, 9:30 a.m.—Social Sciences Advisory Committee Meeting

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

Committee discussion of how it can implement recommendations on improving social and economic impact analyses in fishery management plans; discussion of committee involvement in the development of Amendment 10 to the Atlantic Scallop FMP (to establish a rotational area management system).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 16, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33067 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121499C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session which is open to the public.

DATES: The work session will be held on Monday, January 31, 2000 from 11 a.m. to 5 p.m.; on Tuesday, February 1, from 8 a.m. to 5 p.m.; and on Wednesday, February 2, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at NMFS Pacific Fisheries Environmental Laboratory, 1352 Lighthouse Avenue, Pacific Grove, CA; (831) 648–8515.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to draft sections of the fishery management plan and related documents for highly migratory species fisheries off the West Coast.

Although non-emergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 16, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33066 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 991027288–9288–01]

RIN 0651–AB10

Revised Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. § 112, ¶ 1 "Written Description" Requirement; Request for Comments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from any interested member of the public on the following Revised Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112, ¶ 1 "Written Description" Requirement (Revised Interim Guidelines). These Revised Interim Guidelines will be used by PTO personnel in their review of patent applications for compliance with the "written description" requirement of 35 U.S.C. § 112, ¶ 1. This revision supersedes the Interim Written Description Guidelines which were published contemporaneously in both the **Federal Register** and Official Gazette at 63 FR 32,639 (June 15, 1998) and 1212 O.G. 15 (July 7, 1998), respectively. This revision reflects the current understanding of the PTO regarding the written description requirement of 35 U.S.C. 112, ¶ 1 and is applicable to all technologies.

DATES: Written comments on the Revised Interim Guidelines will be accepted by the PTO until March 22, 2000.

ADDRESSES: Written comments should be addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Stephen Walsh, or to Box Comments, Assistant Commissioner for Patents, Washington, DC 20231, marked to the attention of Linda S. Therkorn. Alternatively, comments may be submitted to Stephen Walsh via facsimile at (703) 305–9373 or by electronic mail addressed to "stephen.walsh@uspto.gov" or to Linda Therkorn via facsimile at (703) 305–8825 or by electronic mail addressed to "linda.therkorn@uspto.gov."

FOR FURTHER INFORMATION CONTACT: Stephen Walsh by telephone at (703) 305–9035, by facsimile at (703) 305–9373, by mail to his attention addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, or by electronic mail at "stephen.walsh@uspto.gov'; or Linda Therkorn by telephone at (703) 305–8800, by facsimile at (703) 305–8825, by mail addressed to Box Comments, Assistant Commissioner for Patents, Washington, DC 20231, or by electronic mail at "linda.therkorn@uspto.gov."

SUPPLEMENTARY INFORMATION: The PTO requests comments from any interested member of the public on the following Revised Interim Guidelines. As of the publication date of this notice, this revision will be used by PTO personnel in their review of patent applications for compliance with the "written description" requirement of 35 U.S.C. 112, ¶ 1. Because this revision governs internal practices, it is exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

Written comments should include the following information: (1) Name and affiliation of the individual responding, and (2) an indication of whether the comments offered represent views of the respondent's organization or are respondent's personal views. If you believe the PTO should further amend these revised interim guidelines before they are made final, you should include the following information in your comments: (1) The rationale supporting the proposal, including the identification of applicable legal authority; and (2) a description of the potential benefits and drawbacks of adopting the proposal. The PTO is particularly interested in comments relating to the following topics: (1) The accuracy of the methodology, (2) the legal analysis in the guidelines, and (3) relevant factors to consider in determining whether the written description requirement is satisfied.

Parties presenting written comments are requested, where possible, to provide their comments in machine-readable format in addition to a paper copy. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5" floppy disk formatted for use in a Macintosh, Windows, Windows for Workgroups, Windows 95, Windows 98, Windows NT, or MS–DOS based computer.

Written comments will be available for public inspection on or about April 19, 2000, in Suite 918, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine readable format will be available through the PTO's Website at http://www.uspto.gov.

Discussion of Public Comments

Comments were received from 13 individuals and 16 organizations in response to the Request for Comments on the Interim Guidelines for the Examination of Patent Applications Under the 35 U.S.C. 112, ¶ 1 "Written Description" Requirement published contemporaneously in the **Federal Register** and Official Gazette at 63 FR 32,639 (June 15, 1998) and 1212 O.G. 15 (July 7, 1998), respectively; and the Extension of Comment Period and Notice of Hearing published at 63 FR 50887 (September 23, 1998) and 1214 O.G. 180 (September 29, 1998). The written comments and the testimony at the public hearing have been carefully considered.

Overview of Comments

The majority of comments favored issuance of written description guidelines, with revisions. Several major issues arose in the oral testimony and written comments submitted in response to the Interim Guidelines on the Written Description Requirement with respect to the scope of the Guidelines, the method of analysis, and the content of the examples. In view of

the comments and testimony received, the Guidelines have been rewritten in a technology neutral manner which is broadly applicable to all areas of technology and to all types of claims (original, new, or amended, and product, process, or product-by-process). Furthermore, the examples have been removed from the Guidelines and examples addressing a broad range of technologies will be incorporated into examiner training materials. Revised Interim Guidelines are being issued for a second round of Notice and Comment because the form and content of the Guidelines are sufficiently different from the previous Guidelines that additional public comment is desired.

The Extension of Comment Period and Notice of Hearing published at 63 FR 50887 (September 23, 1998) and 1214 O.G. 180 (September 29, 1998) asked for comments regarding the patentability of Expressed Sequence Tags (ESTs). Many comments took this opportunity to heavily criticize the patentability of ESTs, grounding their arguments in fairness and policy issues. Many comments also expressed the opinion that ESTs lacked the utility, enablement, and written description necessary to satisfy title 35 of the U.S. Code. The Revised Interim Guidelines are not the appropriate vehicle to fully address the patentability of ESTs. In view of comments and testimony with respect to ESTs and the enablement and utility requirements, the Office is revising the Utility Guidelines as published at 60 FR 36263 (July 14, 1995), and will also be revising the examiner training material with regard to both the utility and enablement requirements. Comments pertaining to the utility and enablement requirements will be addressed in the notice revising the Utility Guidelines. Responses to the comments germane to the written description requirement are set forth below.

Responses to Specific Comments

(1) *Comment:* Several comments criticized the Guidelines for failing to set out a general, systematic examination of the case law on written description. Comments mentioned *Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d 1555, 19 USPQ2d 1111 (Fed. Cir. 1991), in particular as important for summarizing the state of the law as the Federal Circuit sees it. Other comments particularly urged a general analysis of case law as it pertains to written description for chemical compounds, and criticized the fact that the Guidelines relied heavily on only three recent cases. *Response:* The suggestion to provide a general, systematic legal analysis has been adopted. The Revised Interim Guidelines are grounded more broadly than the three cases heavily relied upon in the original Interim Guidelines, and cases dealing with a variety of arts are relied upon.

(2) *Comment:* The comments were equally divided with respect to the issue of whether the Guidelines should be broadly applicable to all technologies or limited to biotechnology, DNA claims, or unpredictable arts. Two of the comments urging broad applicability stated that the law should be articulated in a clear and technology neutral fashion, and several comments urged that examples and training materials should illustrate application of the Guidelines in a diverse range of technologies. One comment suggested that applications in which written description problems are likely to arise should be identified generically, rather than requiring a written description analysis in each application. *Response:* The suggestion to cover all technologies and to articulate the law in a clear and technology neutral fashion has been adopted. While a written description analysis is required in each case, the Revised Interim Guidelines clearly specify when a written description issue is most likely to arise, and—for most applications—the Revised Interim Guidelines will quickly lead the examiner to determine that, at least for original claims, the written description requirement has been met. The Revised Interim Guidelines avoid narrowing the application of the written description requirement to a single art, and the examiner training materials will illustrate application of the revision in various technologies.

(3) *Comment:* While the majority of comments supported the Interim Guidelines, eight comments opposed their issuance. Some of those opposing the guidelines argued that the decision in *Regents of the University of California* v. *Eli Lilly*, 119 F.3d 1559, 43 USPQ2d 1398 (Fed. Cir. 1997), *cert. denied*, 523 U.S. 1089 (1998), is a drastic departure from legal precedent and PTO practice. In particular, two comments suggested that the Interim Guidelines should be replaced by Revised Interim Guidelines, and one comment recommended that final Guidelines be deferred until the U.S. Court of Appeals for the Federal Circuit or the U.S. Supreme Court hands down decisions that elaborate, construe, modify, or overrule *Eli Lilly* and/or decide related issues not dealt with by that case. See Comments (5) and (9) for more opposing comments. *Response:* This revision is based on the Office's current understanding of the law and is believed to be fully consistent with binding precedent of the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit. Guidelines are necessary in this area to promote uniformity and consistency in the examination process. The suggestion to issue Revised Interim Guidelines for a second round of Notice and Comment has been adopted. The revision is written in a technology neutral manner, and the form is sufficiently different from the previous guidelines that additional public comment is desired.

(4) *Comment:* Six comments were in favor of including process and product-by-process claims in the analysis, whereas one comment was opposed. One comment criticized the Guidelines for failing to acknowledge the "safe harbor" product-by-process type claim noted in *Fiers* v. *Revel*, 984 F.2d 1164, 25 USPQ2d 1601 (Fed. Cir. 1993), and *Amgen Inc.* v. *Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991). One comment observed that process and product-by-process claims tend not to implicate many written description issues, and it may be useful to point out possible enablement deficiencies for such claims. Two comments suggested that the Guidelines should distinguish between claims to processes whose patentability depends on the compositions used in them, as opposed to those where patentability rests in the steps of the process itself. *Response:* The suggestion to address process and product-by-process claims has been adopted. Furthermore, the training materials will analyze claims wherein the patentability depends on the compositions used therein, as well as those where the patentability rests in the process steps themselves. Enablement issues raised by process and product-by-process claims are outside the scope of these Revised Interim Guidelines.

(5) *Comment:* While one comment stated that the Guidelines correctly present the relationship between written description and enablement, a number of comments dispute that the statute actually has a written description requirement distinct from the enablement requirement. One comment requested that the PTO refrain from issuing any Guidelines in this area until the U.S. Supreme Court rules on the Federal Circuit's present position on written description. Several comments urged the PTO to announce that it will not follow the court decisions applying the separate written description requirement, while others observed that the PTO and the practitioners must nevertheless follow the case law. Some of these comments urged the PTO to

withdraw the Guidelines on the grounds that they are premature because the case law has not developed sufficiently. Others urged the PTO to limit application of the Guidelines to the narrow subject matter of the *Fiers, Amgen,* and *Eli Lilly* cases. *Response:* A separate written description requirement has long been a part of the U.S. patent law. *See, e.g., In re Ruschig,* 379 F.2d 990, 154 USPQ 118 (CCPA 1967). The Federal Circuit has recognized the distinct and separable nature of this requirement. *See Vas-Cath.* Although the interpretation of the law is always evolving, the PTO is obliged to follow the law as currently interpreted by the court. As noted above, the suggestion to limit the application of the Revised Interim Guidelines to certain subject matter has not been adopted.

(6) *Comment:* While several of the comments stated that the Guideline's explanation of the purpose of the written description requirement is accurate, a number of comments suggested that the concept of "possession" should be more fully explained or developed. One comment urged that the meaning of "possession of the invention" is different for written description than enablement, whereas another observed that an "in possession of the invention" test for compliance with the written description requirement does not appear in 35 U.S.C. 112, and its definition and application are not clearly stated in the Federal Circuit cases to date. Another comment urged that descriptive attributes which provide proof of written description should include evidence typically provided to prove a complete and enabling conception. One comment stated that the meaning of "has invented" is unclear and queried if actual reduction to practice is required. The same comment asked for clarification on what kind of description equates with possession of a claimed species. One comment stated that a question left unanswered in the Guidelines is that if one has "made" an invention, is one necessarily in possession of it, or are there some further criteria? Two comments observed that physical possession is not necessary: one must have complete conception of the invention in mind. These comments suggested that the possession analysis incorporate the Supreme Court's statements in *Pfaff* v. *Wells Electronics, Inc.,* 525 U.S. 55, 48 USPQ2d 1641 (1998) (the word "invention" must refer to a concept that is complete: one can prove that an invention is complete and ready for patenting before it has been reduced to practice). One of these comments elaborated that the doctrine of simultaneous conception and reduction to practice should remain applicable to only a very small number of cases, including biotechnology cases. *Response:* The Revised Interim Guidelines expand the explanation of possession by discussing decisions that offer some guidance as to how possession may be shown. The concepts in *Pfaff* v. *Wells Electronics* that are pertinent to an analysis of compliance with the written description requirement have been incorporated in this revision. At this time, the Federal Circuit has not indicated that reduction to practice is necessary for conception or written description of a biotechnological invention. The Office does not intend to impose a written description requirement that is more robust than that set forth by the courts. Accordingly, the Revised Interim Guidelines do not impose a *per se* requirement for reduction to practice in any technology to satisfy the written description requirement. However, the Federal Circuit has recognized that in some instances an inventor may only be able to establish a conception (and therefore possession) by pointing to a reduction to practice through a successful experiment. *See Amgen Inc.* v. *Chugai Pharmaceutical Co.,* 927 F.2d at 1206, 18 USPQ2d at 1021. In such instances, the alleged conception fails not merely because the field is unpredictable or because of the general uncertainty surrounding experimental sciences, but because the conception is incomplete due to factual uncertainty that undermines the specificity of the inventor's idea of the invention. *Burroughs Wellcome Co.* v. *Barr Laboratories Inc.,* 40 F.3d 1223, 1229, 32 USPQ2d 1915, 1920 (Fed. Cir. 1994). Reduction to practice in effect provides the only evidence to corroborate conception (and therefore possession) of the invention. *Id.*

(7) *Comment:* Other comments on "possession" urged that possession is to be evaluated by looking to the claims; that the possession question is to be assessed as set forth in *In re Alton,* 76 F.3d 1168, 1176, 37 USPQ2d 1578, 1584 (Fed. Cir. 1996); and that compliance must be assessed on a case-by-case basis given that the question of compliance with the written description requirement is one of fact. One comment stated that the test should be whether the inventor had envisioned the embodiments, not that one of skill in the art can now envision the embodiments. Another comment stated that the Guidelines should take a position with regard to their application to the analysis of declarations submitted under 37 CFR 1.131. *Response:* The Revised Interim Guidelines require the examiner to determine whether there is sufficient written description to inform a skilled artisan that the applicant was in possession of the claimed invention as a whole at the time the application was filed. The revision also indicates that compliance with the written description requirement is a question of fact which must be resolved on a case-by-case basis. While this revision addresses the analysis of possession only in the context of the written description requirement, similar principles apply in determining whether an inventor has met his or her burden of demonstrating possession of the claimed invention in an affidavit or declaration submitted under 37 CFR 1.131.

(8) *Comment:* Several comments suggested that the Guidelines should address questions of support for claims added or amended by the applicant during prosecution (or during an interference). Two comments suggested that the Guidelines should address the "omitted element" prong of the written description requirement. One comment indicated the Guidelines should harmonize chemical and nonchemical case law on when an applicant may amend to broaden or change a definition based on an original disclosure. Another comment stated that the Guidelines should acknowledge that it is proper to amend the claims to excise prior art. *Response:* The suggestions to address questions of support for new or amended claims and to address the "omitted element" test have been adopted.

(9) *Comment:* Several comments indicated that case law such as *In re Koller,* 613 F.2d 819, 204 USPQ 702 (CCPA 1980), hold that original claims constitute their own written description, or that a statement in *ipsis verbis* is a sufficient description, and that those cases should be adhered to. Three comments pointed out that the Guidelines fail to distinguish between original claims and added/amended claims, arguing that the original claim doctrine should exempt originally filed claims from further requirements. *Response:* The Revised Interim Guidelines emphasize that a description as filed is presumed to be adequate, unless or until the examiner introduces sufficient evidence or technical reasoning to the contrary. The original claim doctrine continues to be viable, but the court has indicated that every claim must be supported by sufficient

evidence of possession, and that, under certain circumstances, claim language may not provide an adequate written description of itself. There are no *per se* rules, since the analysis must be done on a case-by-case basis. While original claims have an initial presumption of descriptive support, the applicant should show support for new or amended claims. *See, e.g.*, Manual of Patent Examining Procedure (MPEP) §§ 714.02 and 2163.06 (7th Ed., July 1998) ("Applicant should * * * specifically point out the support for any amendments made to the disclosure.").

(10) *Comment:* One comment indicated that written description problems may arise where there is an inadequate description or demonstration of possession of a genus or where there is an improper genus (no common structure and function that is linked to the practical utility disclosed by the specification). Another comment stated that the Guidelines should address the informational nature of nucleic acid sequences and amino acid sequences. One comment urged that "[a] written description of a genus is sufficient when it is described in enough detail that possession is understood," and that the number of species relates more to enablement. *Response:* The Revised Interim Guidelines indicate that the written description requirement for a claimed genus may be satisfied through sufficient description of a representative number of species. The revision does not require a particular number of species to support a genus, but rather requires that the species adequately described be representative of the claimed genus.

(11) *Comment:* A comment urged that the Guidelines should explicitly state that the maturation of the technology will increase the understanding of one skilled in the art, and ease the predictable scope of the claimed invention beyond the exemplified embodiments, as recognized in the applicant's specification. *Response:* The Revised Interim Guidelines emphasize that in a mature art with a high level of knowledge and skill, less evidence of possession is required.

(12) *Comment:* One comment objected to the requirement for an assessment of predictability as a touchstone for written description. The comment described this inquiry as new and lacking case law support. Several comments stated that predictability is an inquiry relating to the enablement requirement, but not to the written description requirement. Others commented generally that the Guidelines conflate what should be separate enablement and written description analyses. On the other hand, at least one comment stated that the distinctions between these elements converge when lack of enablement results from undue breadth of claims. One comment stated that a review of the application is insufficient to establish the level of predictability in an art. Another queried if the review is to be done after a search in the art and assessment of the art. Another comment stated that the lack of guidance for distinguishing between predictable and unpredictable areas within the field of biotechnology leads to confusion. *Response:* The Revised Interim Guidelines reduce the emphasis on predictability because of the confusion with enablement. Instead, the Guidelines emphasize the knowledge in the art and the skill of the practitioner considered in the totality of the circumstances. With respect to the comment regarding biotechnology, this sliding scale will permit broader claims as the knowledge and skill in this art improve. The Guidelines discuss how the general knowledge in the art may be relied on as evidence of how much description may be needed in particular cases.

(13) *Comment:* Several comments criticized the methodology of the Guidelines because the analytic steps set out by the court in *In re Moore*, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971) (first determine what the claims cover, then review the specification for support) were reversed. *Response:* The Revised Interim Guidelines restate the analytic sequence so it is clearly consistent with *In re Moore*. The revision also makes it clear that each claim must be separately analyzed and given its broadest reasonable interpretation in light of and consistent with the written description. *See, e.g., In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

(14) *Comment:* One comment suggested that the Guidelines should provide more instruction on the different amount of description needed to support an essential feature of an invention in contrast to a nonessential feature. The comment explained that contrasting the amount of description needed to support a novel or nonobvious feature of an invention with the amount of description needed for features of an invention that were known in the prior art would be helpful. *Response:* The Revised Interim Guidelines distinguish between novel and old elements in a claim to clarify that the amount of written support needed in an application can vary depending on the general knowledge that was readily available in a particular art.

(15) *Comment:* One comment criticized the analysis for setting out conclusions before the analytic method and for distorting or bypassing the analysis. The same comment said that some of the examples yield illogical results. *Response:* The examples have been deleted from the Guidelines, and the analytical method has been clarified.

(16) *Comment:* The Guidelines were heavily criticized in ten comments for overemphasizing the importance of the preamble and for indicating that generic preamble terms such as "nucleic acid" would need less descriptive support than narrower terms such as "cDNA." One comment objected to the proposition that one may have an adequate written description of a genus of DNA when one does not disclose what gene product the DNA encodes and what that gene product does. This comment recommended deletion of the example bridging F.R. 32640–41 ("a gene comprising SEQ ID NO: 1") as inconsistent with the rest of the Guidelines. *Response:* The Revised Interim Guidelines clarify that the examiner must consider the claim as a whole and that the preamble may be a limitation of the claim. Preamble language is discussed in the context of determining what the claim as a whole encompasses within its scope. However, the Revised Interim Guidelines maintain that any term may trigger a need for more descriptive support because of usage or context. The revision clarifies that during examination claim terms are given their broadest reasonable interpretation consistent with the specification. *See In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). The examples have been removed from the text of the revision.

(17) *Comment:* Four comments objected to the Guidelines' definitions for the terms gene, mRNA, and cDNA, stating that the art often refers only to the coding portion of the molecules and does not necessarily imply the presence of regulatory elements or recite specific structures. One comment further indicated that adoption of the PTO's new definition of these terms for purposes of written description considerations could potentially destabilize the economic infrastructure of the biotechnology community because innumerable patents have issued claiming such molecules without regard to the PTO's new interpretation of claim language. The Guidelines were said to use two inconsistent meanings for the term gene that differed in scope and confused the distinction between

genus and species. *Response:* The Revised Interim Guidelines no longer define the term "gene."

(18) *Comment:* One comment indicated that the PTO has the opportunity to emphasize the written description requirement as an anti-submarine patent device; this comment and another observed that two parties could obtain claims which would be almost identical in scope in hindsight, based on completely different paths to the claim. *Response:* In *Hyatt* v. *Boone*, 146 F.3d 1348, 1353, 47 USPQ2d 1128, 1131 (Fed. Cir. 1998), the Federal Circuit addressed the submarine patent issue in finding that the appellant's parent application lacked written descriptive support for a later added claim. When an explicit limitation in a claim "is not present in the written description whose benefit is sought it must be shown that a person of ordinary skill would have understood, at the time the patent application was filed, that the description requires that limitation." *Id.*

(19) *Comment:* A comment stated that the Guidelines give too much emphasis to claim structure, as if the claim is the sole source of the written description. Another comment had a different view, stating that the Guidelines fail to focus on the invention being claimed, and noting that in some circumstances, failure to provide the structure of a gene, enzyme, etc. should not result in finding that a claim containing it fails to meet the written description requirement. *Response:* The Office gives a claim its broadest reasonable interpretation during examination. If the claim taken as a whole requires a limitation not set forth in the original disclosure it may raise an issue of lack of proper written description. As noted in *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998), "the name of the game is the claim."

(20) *Comment:* One comment indicated that there was not enough emphasis on transitional phrases and their impact on the adequacy of the written description. *Response:* As with the preamble, the transitional phrase is discussed in the context of the scope of the claimed invention as a whole.

(21) *Comment:* The Extension of Comment Period and Notice of Hearing requested comments as to how the transition terms "having" and "consisting essentially of" should be treated within the context of nucleotide and amino acid sequence claims. Two comments observed that transitional phrases in the context of nucleotide and amino acid sequence claims should have the same treatment as in chemical cases. Another comment stated that "consisting essentially of" language in DNA or vector claims should not be rejected as *per se* improper under 35 U.S.C. 112, ¶ 2. Two comments stated that lacking an art-accepted meaning or a definition in the specification, "having" would imply an open claim format; another comment stated that "having" is understood to mean "comprising." The term "consisting essentially of" was defined by one comment as a closed claim format that is essentially limited to the compound or composition defined explicitly following the transitional phrase, and by two other comments as having the stated sequence and excluding any alterations which materially change the structure and/or function of the specified sequence. One comment opined that "A DNA consisting essentially of SEQ ID NO: 1" would be limited to DNAs having the nucleotide sequence set forth in SEQ ID NO: 1 plus minor additions at the 5'— and/or 3' —ends of the recited sequence. Another comment observed that the meaning of "consisting essentially of" depends on how the specification defines its usage. *Response:* During examination, the claim as a whole is given the broadest reasonable interpretation consistent with the specification. Transitional phrases should be given the same treatment in all cases. The Revised Interim Guidelines set forth legally recognized definitions for transition language in an endnote. "Consisting essentially of" is acceptable transition language in nucleic acid and protein claims. The impact of the transition language on enablement and practical utility will not be dealt with in this forum.

(22) *Comment:* One comment criticized the use of the taxonomic terms "genus" and "species." The comment explained that because the terminology is well established in biology, it should not be applied to chemical compounds. Two comments described the Guidelines as deficient in analyzing the proper relationship of preamble, transitional phrase and claim body for distinguishing genus from species claims. According to another comment, the Guidelines confuse genus and species claims. *Response:* The Revised Interim Guidelines refer to the terms "genus" and "species" in their well accepted legal sense as widely used patent terms of art that are recognized as distinct from their use as taxonomic terms. The revision clarifies what is meant by genus and species.

(23) *Comment:* Several comments found the explanations for the examples deficient because they do not clarify what would constitute a sufficient disclosure. One comment urged that there is no guidance provided as to what would constitute sufficient identifying characteristics, and the Guidelines do not set forth the number of the examples needed for sufficient written description. Another comment urged that structure, or function plus partial structure, or function plus "some characteristics" (*e.g.*, 2 or more), is sufficient to meet the written description requirement. Yet another comment urged that uncertainties and potential problems exist because it is unclear how "relevant" or "sufficient" identifying characteristics are established; that it is unclear how functional properties fit into the analysis; and that problems exist with the level of uncertainty when the complete structure is not disclosed or the structure is not disclosed and only a few identifying characteristics are disclosed. Another comment urged that the methodology is incomplete as to how many identifying characteristics are required and what characteristics are relevant for description of a species. This comment applied the same reasoning to the number of species required for describing a genus. One comment urged that functional characteristics in combination with certain objectively defined physical characteristics can serve to characterize the compound sufficiently to establish possession, even in less developed arts. One comment urged that the ability to predict structure from function is given as a standard for the written description requirement without any citation to authority. *Response:* The Revised Interim Guidelines do not include examples within the text. The test for whether sufficient identifying characteristics have been disclosed is not a bright-line test, but rather requires weighing various factors including the level of skill and knowledge in the art, and the extent to which relevant identifying characteristics are described. The revision provides more guidance to the examiners by citing as examples cases involving mature arts with a high level of skill and knowledge (*e.g.*, *Pfaff* v. *Wells Electronics, Fonar Corp.* v. *General Electric Co.*, 107 F.3d 1543, 1549, 41 USPQ2d 1801, 1805 (Fed. Cir. 1997) and *Vas-Cath* v. *Mahurkar*), as well as cases in emerging technologies where more description is necessary (*e.g.*, *Eli Lilly, Amgen* v. *Chugai*, and *Fiers* v. *Revel*). The test remains whether one of skill in the art, provided with the disclosure, would recognize that the applicant was in possession of the claimed subject matter when the application was filed.

(24) *Comment:* The Extension of Comment Period and Notice of Hearing requested comments on how the final Guidelines should address the deposit of a biological material made under 37 CFR 1.801, and comments on the extent to which a deposit of biological material may be relied upon to support the addition or correction of sequence information. Several comments expressed the opinion that deposit of a compound or biological material can be one means of demonstrating possession of a specifically claimed compound that has not otherwise been described in a complete manner in the specification. One comment stated that if a gene were cloned but not sequenced, and the vector in question were deposited, the sequence is an inherent property of the deposited vector and hence the description requirement would be satisfied if the claim referred to the deposit. One comment urged that the description requirement may be satisfied by the inherent properties of a disclosed structure, citing *Kennecott Corp.* v. *Kyocera Int'l Inc.*, 835 F.2d 1419, 5 USPQ2d 1194 (Fed. Cir. 1987). As for the later addition or correction of information, several comments indicated that actual possession established through a deposit with a partial characterization (*i.e.*, to correlate the physical description to the material that has been deposited, such as molecular weight, partial sequence) should be sufficient to avoid problems with new matter where the information added to a disclosure is an inherent characteristic of the compound or composition. One comment indicated that correcting a sequence based on more accurate sequencing of deposited material does not introduce new matter. One comment stated that present genus-species concepts should prevent an applicant from obtaining an unfair advantage by depositing a large amount of material and then relying on inherency; if a variety of materials are deposited in a single host, the specification must adequately describe how to isolate the intended molecule(s). Two comments expressly stated "no comment" with regard to the issue of adding a substantial amount of sequence information. One comment opined that the date of deposit is not controlling with regard to the issue of whether the written description requirement is met, and a second comment observed that *In re Lundak*, 773 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985), cannot be limited by rule. *Response:* The Revised Interim Guidelines indicate that a deposit of a claimed biological material in accordance with the requirements of 37 CFR 1.801 *et seq.* is evidence of actual reduction to practice of the biological material. However, a deposit is not a substitute for a written description of the claimed invention. The Revised Interim Guidelines also address the issue of when a deposit can be relied upon to correct minor sequencing errors. However, addition of sequence information based on a deposit is not specifically addressed; these circumstances create issues yet to be resolved by the courts, and will be resolved on a case-by-case basis in the PTO. *See, e.g., In re Fisher*, 427 F.2d 833, 836, 166 USPQ 18, 21 (CCPA 1970).

(25) *Comment*: One comment explained that associating taxonomic groupings with gene sequences is a dated concept because genes are not distinguishable as to origin. The generic term "mammal gene" was said to be meaningless, absent an implied process limitation that the gene was obtained from a mammal. *Response*: The examples have been removed from the revision. However, the training materials will permit applicants to use taxonomic modifiers such as "mammalian" because the usage is ubiquitous in the literature and in patents and generally has an accepted meaning in the art.

(26) *Comment*: One comment urged that broad functional claims lacking defining structure should not be granted on the basis of a "not easily generalizable disclosure." A different comment stated that functional characteristics can be appropriate in all arts. Comments differed on hybridization, where some held it is a proper defining characteristic, and another stated it is insufficient. *Response*: The Revised Interim Guidelines do not establish per se rules regarding functional language. When used appropriately, functional language may provide an adequate written description of the claims invention as discussed in the Revised Interim Guidelines.

(27) *Comment*: Several comments indicated that the Guidelines present inadequate guidance with respect to analyzing written description support for genus claims. One comment stated that the Guidelines provide inadequate criteria for selection of appropriate genuses. Another comment stated that the Guidelines do not provide adequate guidance to determine whether an applicant has presented a properly formed genus, and suggested that "a genus designation should be strictly tied to the disclosed properties of the structures being claimed." Another comment stated that the Guidelines should clarify that the genus/species distinction is determined by the transitional phrase and body of the claim, not the preamble. Another comment stated that the Guidelines provide inadequate guidance as to the number of species required to meet the written description requirement for a genus. One comment urged that a relevant factor to consider is whether the claims cover embodiments broader than the essential elements of the embodiments described in the specification as in *Gentry Gallery Inc.* v. *Berkline*, 134 F.3d 1473, 45 USPQ2d 1498 (Fed. Cir. 1998). According to this comment, species rarely, if ever, constitute sufficient support for generic claims unless accompanied by a general disclosure that is commensurate in scope with the claims. *Response:* The Revised Interim Guidelines follow Federal Circuit case law which requires a representative number of species to satisfy the written description requirement for a genus. Written description is a question of fact, and what constitutes a representative number for a genus is a factual determination left to a case-by-case analysis by the examiner.

(28) *Comment*: One comment urged that general allegations of "unpredictability in the art" are insufficient to support a case against the applicant, and that examiners should be instructed to weigh applicant's evidence of what the description provides to one of skill in the art. *Response*: The suggestion to clarify that a general allegation of "unpredictability in the art" is insufficient to support a rejection has been adopted. A disclosure as filed is *prima facie* adequate. To support a rejection, the PTO has the burden of showing why the applicant's evidence is insufficient. In any case where lack of written description is found, the PTO should cite documentary evidence in support of the finding. Where documentary evidence is not available, technical reasoning, as distinguished from legal reasoning, may support the finding when the technical line of reasoning relates to fact finding regarding possession of the invention.

(29) *Comment*: One comment indicated that rejections based on the enablement and written description requirements of 35 U.S.C. 112 should be made separately, and the rejections should not mix standards. *Response*: Examiners are directed to make separate rejections based on the enablement and written description requirements of 35 U.S.C. 112. *See, e.g.*, MPEP § 706.03(c) (explaining when it is appropriate to use a particular form paragraph for rejecting claims under 35 U.S.C. 112, ¶1) and MPEP § 2164 ("limitations must be

analyzed for both enablement and description using their separate and distinct criteria").

(30) *Comment*: One comment observed that the Guidelines do not guide examiners in how to suggest amendments to bring the claims into compliance. The comment also observed that examiners may be ill-equipped to deal with evaluating the sufficiency of applicant's efforts. *Response:* The training materials will provide guidance as to how rejections for lack of an adequate written description can be overcome.

(31) *Comment*: One comment stated that the Guidelines should instruct examiners to pay due regard to the scientific and commercial realities of each individual invention, such that the scope of the claims is a fair reflection of the applicant's contribution to the art. *Response*: The scientific and commercial realities of each invention are considered to the extent that they impact analysis of a claimed invention for compliance with Title 35 of the U.S. Code. The Office is bound to follow the law and cannot make judgment calls as to what is "a fair reflection of the applicant's contribution to the art."

(32) *Comment:* While two comments observed that the Guidelines should not have a significant impact on patents or pending or newly filed applications because they are only Guidelines which are not binding on the Board or examiners, three comments were of the opinion that the Guidelines would impact pending and newly filed cases by limiting the scope of patent protection. One comment was of the opinion that the Guidelines should have no impact on issued cases except reissues, whereas another expected many issued patents to be declared invalid (more as a result of *Eli Lilly* than the Guidelines). Another comment observed that the Guidelines should not impose significant new burdens on patent applicants in the biotechnology arts or give rise to a new "anti-patenting" posture in the biotechnology examination group; however, the PTO should not be misled into adapting "customer-friendly" examination standards that do not subject applications to a thorough and rigorous examination. One comment opined that the Guidelines will result in a great increase in the number of appeals until the Federal Circuit makes clear that the law is quite different, thus delaying commercialization of potentially life improving and life saving inventions. According to this comment, universities and small inventors do not have the financial support to provide the exhaustive kind of work the Guidelines can require for meaningful coverage; this will mean that many biotechnology inventions will not be commercialized. One comment stated that the Commissioner indicates that meaningful patent coverage is required for commercial exploitation of biotechnological inventions, yet the PTO continues to take a position that leads away from what the Commissioner espouses. Another comment felt that the scope of allowed claims would be dependent on the examiner; a potential applicant would not know what sort of claims could be obtained based on a particular disclosure. One comment opined that applications filed after publication of the Guidelines will probably be much more detailed and longer in length. *Response*: The Revised Interim Guidelines clarify that a written description issue should rarely arise for an original claim because such a claim is presumed to have adequate descriptive support. The burden is on the examiner to provide evidence or reasoning in support of any rejection. Such an approach would not be expected to increase the number of appeals, nor should it require exhaustive work for meaningful coverage. The Revised Interim Guidelines are intended to promote uniformity, not diminish it.

(33) *Comment*: One comment indicated it is premature to instruct examiners in the proposed Guidelines since they may change dramatically as a result of public comment. Three comments stated that the Guidelines should not be applied until final Guidelines have been approved; two of these indicated that the Guidelines should only be applied to applications filed after implementation. One comment suggested preparing separate guidance for currently pending applications. *Response*: Separate guidance is not required for pending applications and applications filed after implementation of any final Guidelines; the Guidelines do not establish new law or rules or impose any additional requirements on applicants.

(34) *Comment*: One comment requested that the PTO address the issue of open-claim language for EST claims in the final Guidelines because of their importance to the biotechnology industry. Several comments stated that permitting open-ended language with respect to an EST claim contradicts the written description requirement because the common structural features of the EST do not constitute a "substantial portion of the genus" as required by the *Eli Lilly* case. According to these commentators, a claim such as "a DNA comprising SEQ. ID. NO: 1" would lack written description when SEQ. ID. NO: 1 was a gene fragment. *Response*: The Revised Interim Guidelines maintain the view that use of such terms as "gene" in the preamble of an EST claim may raise a written description issue if one skilled in the art would understand that a "gene" requires elements which are not sufficiently described. However, claims to "a DNA comprising SEQ. ID. NO: 1" are unlikely to raise a written description issue. The comments do not explain why there is a written description problem for a claim such as "a DNA comprising SEQ. ID. 1" when SEQ. ID. 1 is an EST, while there is no problem when SEQ. ID. 1 is a whole gene or a gene promoter. The only difference seems to be the utility of the DNA fragment.

(35) *Comment*: One comment asserted that the scope and level of unpredictability of the structure is so large that the person skilled in the art could not envisage sufficient species to place the genus in possession of the inventor at the time of filing, and that it should be a rare disclosure that supports EST claims broader than the specific SEQ. ID, even for claims such as "a DNA comprising the EST of SEQ. ID. NO: 1." The comment also suggested that claim language that supports the introduction of an infinite amount of random sequence would require an immense number of exemplary species. Several commentators advanced the position that disclosure of only a small fragment does not convey that the inventor was in possession of all of the possible molecules or that the inventor was in possession of the fragment wherever it occurs. *Response*: A claim such as "a DNA comprising the EST of SEQ. ID. NO: 1" or "a gene comprising the EST of SEQ. ID. NO: 1" will be analyzed for compliance with the written description requirement by determining whether the partial structure in combination with any other disclosed relevant identifying characteristics are sufficient to show that a skilled artisan would recognize that the applicant was in possession of the claimed invention as a whole. The Office does not agree with the comment that the scope of such an EST claim is necessarily too large to satisfy the written description requirement. The PTO has issued numerous patents in the past directed to nucleic acids that use open-ended language. Although an applicant presenting an original claim to an EST using open-ended claim language with disclosure of only the EST sequence is not in possession of any arbitrary specific possible molecule that contains the EST, the applicant may

be in possession of a broad genus of DNA where the EST is in any random nucleic acid sequence. The comment's statement to the contrary would preclude open-ended claims incorporating any DNA sequence such as gene or promoter. In fact, such a view would appear to preclude open-ended language for any other polymer. However, such open-ended EST claims may not comply with the utility and scope of enablement requirements of 35 U.S.C. 101 and 112.

Revised Interim Guidelines for the Examination of Patent Applications Under the 35 U.S.C. § 112, ¶ 1 "Written Description" Requirement

These revised interim "Written Description Guidelines" are intended to assist Office personnel in the examination of patent applications for compliance with the written description requirement of 35 U.S.C. 112, ¶ 1. This revision is based on the Office's current understanding of the law and public comments received in response to the PTO's previous request for public comments on its Interim Written Description Guidelines and is believed to be fully consistent with binding precedent of the U.S. Supreme Court, as well as the U.S. Court of Appeals for the Federal Circuit and its predecessor courts.

This revision does not constitute substantive rulemaking and hence does not have the force and effect of law. It is designed to assist Office personnel in analyzing claimed subject matter for compliance with substantive law. Rejections will be based upon the substantive law, and it is these rejections which are appealable. Consequently, any perceived failure by Office personnel to follow the Revised Interim Guidelines is neither appealable nor petitionable.

These Revised Interim Guidelines are intended to form part of the normal examination process. Thus, where Office personnel establish a *prima facie* case of lack of written description for a claim, a thorough review of the prior art and examination on the merits for compliance with the other statutory requirements, including those of 35 U.S.C. 101, 102, 103, and 112, is to be conducted prior to completing an Office action which includes a rejection for lack of written description. Office personnel are to rely on this revision of the guidelines in the event of any inconsistent treatment of issues involving the written description requirement between these Revised Interim Guidelines and any earlier guidance provided from the Office.

I. General Principles Governing Compliance With the "Written Description" Requirement for Applications

The first paragraph of 35 U.S.C. 112 requires that the "specification shall contain a written description of the invention. * * *" This requirement is separate and distinct from the enablement requirement.[1] The written description requirement has several policy objectives. "[T]he 'essential goal' of the description of the invention requirement is to clearly convey the information that an applicant has invented the subject matter which is claimed."[2] Another objective is to put the public in possession of what the applicant claims as the invention. The written description requirement of the Patent Act promotes the progress of the useful arts by ensuring that patentees adequately describe their inventions in their patent specifications in exchange for the right to exclude others from practicing the invention for the duration of the patent's term.[3]

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.[4] An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations.[5] Possession may be shown by actual reduction to practice,[6] or by showing that the invention was "ready for patenting" such as by the disclosure of drawings or other descriptions of the invention that are sufficiently specific to enable a person skilled in the art to practice the invention.[7] A question as to whether a specification provides an adequate written description may arise in the context of an original claim which is not described sufficiently, a new or amended claim wherein a claim limitation has been added or removed, or a claim to entitlement of an earlier priority date or effective filing date under 35 U.S.C. 119, 120, or 365(c).[8] Compliance with the written description requirement is a question of fact which must be resolved on a case-by-case basis.[9]

A. Original Claims

There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed.[10] However, the issue of a lack of adequate written description may arise even for an original claim when an aspect of the claimed invention has not been described with sufficient particularity such that one skilled in the art would recognize that the applicant had possession of the claimed invention.[11] The claimed invention as a whole may not be adequately described if the claims require an essential or critical element which is not adequately described in the specification and which is not conventional in the art.[12] This problem may arise where an invention is described solely in terms of a method of its making coupled with its function and there is no described or art recognized correlation or relationship between the structure of the invention and its function.[13] A lack of adequate written description problem also arises if the knowledge and level of skill in the art would not permit one skilled in the art to immediately envisage the product claimed from the disclosed process.[14]

B. New or Amended Claims

The proscription against the introduction of new matter in a patent application [15] serves to prevent an applicant from adding information that goes beyond the subject matter originally filed.[16] Thus, the written description requirement prevents an applicant from claiming subject matter that was not adequately described in the specification as filed. New or amended claims which introduce elements or limitations which are not supported by the as-filed disclosure violate the written description requirement.[17] While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of the error in the specification, but also the appropriate correction.[18]

Under certain circumstances, omission of a limitation can raise an issue regarding whether the inventor had possession of a broader, more generic invention.[19] A claim that omits an element which applicant describes as an essential or critical feature of the invention originally disclosed does not comply with the written description requirement.[20]

The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed.[21]

[1] See Endnotes at end of this notice.

II. Methodology for Determining Adequacy of Written Description

A. Read and Analyze the Specification for Compliance With 35 U.S.C. 112, ¶ 1

Office personnel should adhere to the following procedures when reviewing patent applications for compliance with the written description requirement of 35 U.S.C. 112, ¶ 1. The examiner has the initial burden, after a thorough reading and evaluation of the content of the application, of presenting evidence or reasons why a person skilled in the art would not recognize that the written description of the invention provides support for the claims. There is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed;[22] however, with respect to newly added or amended claims, applicant should show support in the original disclosure for the new or amended claims.[23] Consequently, rejection of an original claim for lack of written description should be rare. The inquiry into whether the description requirement is met is a question of fact that must be determined on a case-by-case basis.[24]

1. For Each Claim, Determine What the Claim as a Whole Covers

Claim construction is an essential part of the examination process. Each claim must be separately analyzed and given its broadest reasonable interpretation in light of and consistent with the written description.[25] The entire claim must be considered, including the preamble language[26] and the transitional phrase.[27] The claim as a whole, including all limitations found in the preamble,[28] the transitional phrase, and the body of the claim, must be sufficiently described in the specification to satisfy the written description requirement.[29]

The examiner should evaluate each claim to determine if sufficient structures, acts, or functions are recited to make clear the scope and meaning of the claim, including the weight to be given the preamble.[30] The absence of definitions or details for well-established terms or procedures should not be the basis of a rejection under 35 U.S.C. 112, ¶ 1, for lack of adequate written description. Limitations may not, however, be imported into the claims from the specification.

2. Review the Entire Application to Understand What Applicant Has Described as the Essential Features of the Invention

Prior to determining whether the disclosure satisfies the written description requirement for the claimed subject matter, the examiner should review the claims and the entire specification, including the specific embodiments, figures, and sequence listings, to understand what applicant has identified as the essential distinguishing characteristics of the invention. The analysis of whether the specification complies with the written description requirement requires the examiner to determine the correspondence between what applicant has described as the essential identifying characteristic features of the invention, *i.e.*, what the applicant has demonstrated possession of, and what applicant has claimed. Such a review is conducted from the standpoint of one of skill in the art at the time the application was filed,[31] and should include a determination of the field of the invention and the level of skill and knowledge in the art. Generally, there is an inverse correlation between the level of skill and knowledge in the art and the specificity of disclosure necessary to satisfy the written description requirement. Information which is well known in the art does not have to be described in detail in the specification.[32]

3. Determine Whether There is Sufficient Written Description To Inform a Skilled Artisan That Applicant Was in Possession of the Claimed Invention as a Whole at the Time the Application Was Filed

a. Original claims.—Possession may be shown in any number of ways. Possession may be shown by actual reduction to practice, by a clear depiction of the invention in detailed drawings which permit a person skilled in the art to clearly recognize that applicant had possession of the claimed invention, or by a written description of the invention describing sufficient relevant identifying characteristics such that a person skilled in the art would recognize that the inventor had possession of the claimed invention.[33]

A specification may show actual reduction to practice by showing that the inventor constructed an embodiment or performed a process that met all the limitations of the claim, and determined that the invention would work for its intended purpose.[34] Actual reduction to practice of a biological material may be shown by specifically describing a deposit made in accordance with the requirements of 37 C.F.R. § 1.801 *et seq.*[35]

An applicant may show possession of an invention by disclosure of drawings that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole.[36] The description need only describe in detail that which is new or not conventional.[37] This is equally true whether the claimed invention is directed to a product or a process. Normally a reduction to drawings will adequately describe the claimed invention.[38]

An applicant may also show that an invention is complete by disclosure of sufficiently detailed relevant identifying characteristics which provide evidence that applicant was in possession of the claimed invention,[39] *i.e.*, complete or partial structure, other physical and/or chemical properties, functional characteristics when coupled with a known or disclosed correlation between function and structure, or some combination of such characteristics.[40] What is conventional or well known to one skilled in the art need not be disclosed in detail.[41] If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met.[42]

(1) For each claim drawn to a single embodiment or species:[43]

(a) Determine whether the application describes an actual reduction to practice of the claimed invention.

(b) If the application does not describe an actual reduction to practice, determine whether the invention is complete as evidenced by a reduction to drawings.

(c) If the application does not describe an actual reduction to practice or reduction to drawings, determine whether the invention has been set forth in terms of distinguishing identifying characteristics as evidenced by other descriptions of the invention that are sufficiently detailed to show that applicant was in possession of the claimed invention.

(i) Determine whether the application as filed describes the complete structure (or acts of a process) of the claimed invention as a whole. The complete structure of a species or embodiment typically satisfies the requirement that the description be set forth "in such full, clear, concise, and exact terms" to show possession of the claimed invention.[44] If a complete structure is disclosed, the written description requirement is satisfied for that species or embodiment, and a rejection under 35 U.S.C. 112, ¶ 1 for lack of written description must not be made.

(ii) If the application as filed does not disclose the complete structure (or acts of a process) of the claimed invention as a whole, determine whether the specification discloses other relevant identifying characteristics sufficient to

describe the claimed invention in such full, clear, concise, and exact terms that a skilled artisan would recognize applicant was in possession of the claimed invention.[45] Whether the specification shows that applicant was in possession of the claimed invention is not a single, simple factual determination, but rather is a conclusion reached by weighing many factual considerations. Factors to be considered in determining whether there is sufficient evidence of possession include the level of skill and knowledge in the art, partial structure, physical and/or chemical properties, functional characteristics alone or coupled with a known or disclosed correlation between structure and function, and the method of making the claimed invention. Disclosure of any combination of such identifying characteristics that distinguish the claimed invention from other materials and would lead one of skill in the art to the conclusion that the applicant was in possession of the claimed species is sufficient. Patents and printed publications in the art should be relied upon to determine whether an art is mature and what the level of knowledge and skill is in the art. In most technologies which are mature, and wherein the knowledge and level of skill in the art is high, a written description question should not be raised for original claims even if the specification discloses only a method of making the invention and the function of the invention.[46] In contrast, in emerging and unpredictable technologies, more evidence is required to show possession. For example, disclosure of only a method of making the invention and the function may not be sufficient to support a product claim other than a product-by-process claim.[47] Furthermore, disclosure of partial structure without additional characterization of the product may not be sufficient to evidence possession of the claimed invention.[48]

Any claim to a species that does not meet the test described under at least one of (a), (b), or (c) must be rejected as lacking adequate written description under 35 U.S.C. 112, ¶ 1.

(2) For each claim drawn to a genus:

The written description requirement for a claimed genus may be satisfied through sufficient description of a representative number of species by actual reduction practice (see (1)(a), above), reduction to drawings (see (1)(b), above), or by disclosure of relevant identifying characteristics, *i.e.*, structure or other physical and/or chemical properties, by functional characteristics coupled with a known or disclosed correlation between function and structure, or by a combination of such identifying characteristics, sufficient to show the applicant was in possession of the claimed genus (see (1)(c), above).[49]

A "representative number of species" means that the species which are adequately described are representative of the entire genus. Thus, when there is substantial variation within the genus, one must describe a sufficient variety of species to reflect the variation within the genus. What constitutes a "representative number" is an inverse function of the skill and knowledge in the art. Satisfactory disclosure of a "representative number" depends on whether one of skill in the art would recognize that the applicant was in possession of the necessary common attributes or features of the elements possessed by the members of the genus in view of the species disclosed. In an unpredictable art, adequate written description of a genus which embraces widely variant species *cannot* be achieved by disclosing only one species within the genus.[50] Description of a representative number of species does not require the description to be of such specificity that it would provide individual support for each species that the genus embraces.[51] If a representative number of adequately described species are not disclosed for a genus, the claim to that genus must be rejected as lacking adequate written description under 35 U.S.C. 112, ¶ 1.

b. New claims, amended claims, or claims asserting entitlement to the benefit of an earlier priority date or filing date under 35 U.S.C. §§ 119, 120, or 365(c).—The examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the original disclosure a description of the invention defined by the claims.[52] However, when filing an amendment an applicant should show support in the original disclosure for new or amended claims.[53] To comply with the written description requirement of 35 U.S.C. 112, ¶ 1, or to be entitled to an earlier priority date or filing date under 35 U.S.C. 119, 120, or 365(c), each claim limitation must be expressly,[54] implicitly,[55] or inherently[56] supported in the originally filed disclosure.[57] Furthermore, each claim must include all elements which applicant has described as essential.[58]

If the originally filed disclosure does not provide support for each claim limitation, or if an element which applicant describes as essential or critical is not claimed, a new or amended claim must be rejected under 35 U.S.C. 112, ¶ 1, as lacking adequate written description, or in the case of a claim for priority under 35 U.S.C. 119, 120, or 365(c), the claim for priority must be denied.

III. Complete Patentability Determination Under All Statutory Requirements and Clearly Communicate Findings, Conclusions and Their Bases

The above only describes how to determine whether the written description requirement of 35 U.S.C. 112, ¶ 1 is satisfied. Regardless of the outcome of that determination, Office personnel must complete the patentability determination under all the relevant statutory provisions of Title 35 of the U.S. Code.

Once Office personnel have concluded analysis of the claimed invention under all the statutory provisions, including 35 U.S.C. 101, 112, 102, and 103, they should review all the proposed rejections and their bases to confirm their correctness. Only then should any rejection be imposed in an Office action. The Office action should clearly communicate the findings, conclusions, and reasons which support them. When possible, the Office action should offer helpful suggestions on how to overcome rejections.

A. For Each Claim Lacking Written Description Support, Reject the Claim Under Section 112, ¶ 1, for Lack of Adequate Written Description

A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption.[59] The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.[60] In rejecting a claim, the examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should:

(1) identify the claim limitation at issue; and

(2) establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of "unpredictability

in the art" is not a sufficient reason to support a rejection for lack of adequate written description.

When appropriate, suggest amendments to the claims which can be supported by the application's written description, being mindful of the prohibition against the addition of new matter in the claims or description.[61]

B. Upon Reply By Applicant, Again Determine the Patentability of the Claimed Invention, Including Whether the Written Description Requirement is Satisfied by Reperforming the Analysis Described Above in View of the Whole Record

Upon reply by applicant, before repeating any rejection under 35 U.S.C. 112, ¶ 1 for lack of written description, review the basis for the rejection in view of the record as a whole, including amendments, arguments, and any evidence submitted by applicant. If the whole record now demonstrates that the written description requirement is satisfied, do *not* repeat the rejection in the next Office action. If the record still does not demonstrate that written description is adequate to support the claim(s), repeat the rejection under 35 U.S.C. 112, ¶ 1, fully respond to applicant's rebuttal arguments, and properly treat any further showings submitted by applicant in the reply. Any affidavits, including those relevant to the 112, ¶ 1, written description requirement,[62] must be thoroughly analyzed and discussed in the next Office action.

ENDNOTES

1. *See, e.g., Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d 1555, 1560, 19 USPQ2d 1111, 1114 (Fed. Cir. 1991).

2. *In re Barker*, 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977).

3. *See Regents of the University of California* v. *Eli Lilly*, 119 F.3d 1559, 1566, 43 USPQ2d 1398, 1404 (Fed. Cir. 1997), *cert. denied*, 523 U.S. 1089 (1998).

4. *See, e.g., Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116. Much of the written description case law addresses whether the specification as originally filed supports claims not originally in the application. The issue raised in the cases is most often phrased as whether the original application provides "adequate support" for the claims at issue or whether the material added to the specification incorporates "new matter" in violation of 35 U.S.C. § 132. The "written description" question similarly arises in the interference context, where the issue is whether the specification of one party to the interference can support the newly added claims corresponding to the count at issue, *i.e.*, whether that party can "make the claim" corresponding to the interference count. *E.g., see Martin* v. *Mayer*, 823 F.2d 500, 502, 3 USPQ2d 1333, 1335 (Fed. Cir. 1987).

In addition, early opinions suggest the Patent and Trademark Office was unwilling to find written descriptive support when the only description was found in the claims; however, this viewpoint was rejected. *See In re Koller*, 613 F.2d 819, 204 USPQ 702 (CCPA 1980) (original claims constitute their own description); *In re Gardner*, 475 F.2d 1389, 177 USPQ 396 (CCPA 1973) (accord); *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976) (accord). It is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification.

These early opinions did not address the quality or specificity of particularity that was required in the description, *i.e.*, how much description is enough.

5. *Lockwood* v. *American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

6. An application specification may show actual reduction to practice by describing testing of the claimed invention or, in the case of biological materials, by specifically describing a deposit made in accordance with 37 CFR 1.801 *et seq.* 37 CFR 1.804, 1.809. *See also Deposit of Biological Materials for Patent Purposes, Final Rule*, 54 FR 34,864 (August 22, 1989) ("The requirement for a specific identification is consistent with the description requirement of the first paragraph of 35 U.S.C. 112, and to provide an antecedent basis for the biological material which either has been or will be deposited before the patent is granted." *Id.* at 34876. "[T]he description must be sufficient to permit verification that the deposited biological material is in fact that disclosed. Once the patent issues, the description must be sufficient to aid in the resolution of questions of infringement." *Id.* at 34,880.). Such a deposit is not a substitute for a written description of the claimed invention. The written description of the deposited material needs to be as complete as possible because the examination for patentability proceeds solely on the basis of the written description. *See, e.g., In re Lundak*, 773 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985). *See also* 54 FR at 34,880 ("As a general rule, the more information that is provided about a particular deposited biological material, the better the examiner will be able to compare the identity and characteristics of the deposited biological material with the prior art.").

7. *Pfaff* v. *Wells Electronics, Inc.*, 525 U.S. 55,____, 119 S.Ct. 304, 312, 48 USPQ2d 1641, 1647 (1998).

8. A description requirement issue can arise for original claims (*see, e.g., Eli Lilly*, 119 F.3d 1559, 43 USPQ2d 1398) as well as new or amended claims. Most typically, the issue will arise in the context of determining whether new or amended claims are supported by the description of the invention in the application as filed (*see, e.g., In re Wright*, 866 F.2d 422, 9 USPQ2d 1649 (Fed. Cir. 1989)), whether a claimed invention is entitled to the benefit of an earlier priority date or effective filing date under 35 U.S.C. 119, 120, or 365(c) (*see, e.g., Tronzo* v. *Biomet, Inc.*, 156 F.3d 1154, 47 USPQ2d 1829 (Fed. Cir. 1998); *Fiers* v. *Revel*, 984 F.2d 1164, 25 USPQ2d 1601 (Fed. Cir. 1993); *In re Ziegler*, 992 F.2d 1197, 1200, 26 USPQ2d 1600, 1603 (Fed. Cir. 1993)), or whether a specification provides support for a claim corresponding to a count in an interference (*see, e.g., Fields* v. *Conover*, 443 F.2d 1386, 170 USPQ 276 (CCPA 1970)).

9. *Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116 (Fed. Cir. 1991).

10. *In re Wertheim*, 541 F.2d at 262, 191 USPQ at 96.

11. See endnote 4.

12. For example, consider the claim "A gene comprising SEQ ID NO: 1." A determination of what the claim as a whole covers may result in a conclusion that specific structures such as a promoter, a coding region, or other elements are included. Although all genes encompassed by this claim share the characteristic of comprising SEQ ID NO: 1, there may be insufficient description of those specific structures (*e.g.*, promoters, enhancers, coding regions, and other regulatory elements) which are also included.

13. A biomolecule sequence described only by a functional characteristic, without any known or disclosed correlation between that function and the structure of the sequence, normally is not a sufficient identifying characteristic for written description purposes, even when accompanied by a method of obtaining the claimed sequence. For example, even though a genetic code table would correlate a known amino acid sequence with a genus of coding nucleic acids, the same table cannot predict the native, naturally occurring nucleic acid sequence of a naturally occurring mRNA or its corresponding cDNA. *Cf. In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993), and *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995) (holding that a process could not render the product of that process obvious under 35 U.S.C. 103). The Federal Circuit has pointed out that under United States law, a description that does not render a claimed invention obvious cannot sufficiently describe the invention for the purposes of the written description requirement of 35 U.S.C. 112. *Eli Lilly*, 119 F.3d at 1567, 43 USPQ2d at 1405. The fact that a great deal more than just a process is necessary to render a product invention obvious means that a great deal more than just a process is necessary to provide written description for a product invention.

Compare Fonar Corp. v. *General Electric Co.*, 107 F.3d 1543, 1549, 41 USPQ2d 1801, 1805 (Fed. Cir. 1997) ("As a general rule, where software constitutes part of a best mode of carrying out an invention, description of such a best mode is satisfied by a disclosure of the functions of the software. This is because, normally, writing code for such software is within the skill of the art, not requiring undue experimentation, once its functions have been disclosed * * *. Thus, flow charts or source code listings are not a requirement for adequately disclosing the functions of software.").

14. *See, e.g., Fujikawa* v. *Wattanasin*, 93 F.3d 1559, 1571, 39 USPQ2d 1895, 1905 (Fed. Cir. 1996) (a "laundry list" disclosure of every possible moiety does not constitute a written description of every species in a genus because it would not "reasonably

lead" those skilled in the art to any particular species); *In re Ruschig*, 379 F.2d 990, 995, 154 USPQ 118, 122–23 (CCPA 1967) ("If n-propylamine had been used in making the compound instead of n-butylamine, the compound of claim 13 would have resulted. Appellants submit to us, as they did to the board, an imaginary specific example patterned on specific example 6 by which the above butyl compound is made so that we can see what a simple change would have resulted in a specific supporting disclosure being present in the present specification. The trouble is that there is no such disclosure, easy though it is to imagine it.").

15. 35 U.S.C. 132 and 251. *See also In re Rasmussen*, 650 F.2d 1212, 1214, 211 USPQ 323, 326 (CCPA 1981). *See* Manual of Patent Examining Procedure (MPEP) §§ 2163.06–2163.07 (7th Ed., July 1998) for a more detailed discussion of the written description requirement and its relationship to new matter.

16. The claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not found in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter. *In re • Benno*, 768 F.2d 1340, 226 USPQ 683 (Fed. Cir. 1985).

17. *See, e.g., In re Lukach*, 442 F.2d 967, 169 USPQ 795 (CCPA 1971) (subgenus range was not supported by generic disclosure and specific example within the subgenus range); *In re Smith*, 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972) (a subgenus is not necessarily described by a genus encompassing it and a species upon which it reads).

18. *In re Oda*, 443 F.2d 1200, 170 USPQ 260 (CCPA 1971). With respect to the correction of sequencing errors in applications disclosing nucleic acid and/or amino acid sequences, it is well know that sequencing errors are a common problem in molecular biology. *See, e.g.*, Richterich, Peter, "Estimation of Errors in 'Raw' DNA Sequences: A Validation Study," *Genome Research*, 8:251–259 (1998). If an application as filed includes sequence information and references a deposit of the sequenced material made in accordance with the requirements of 37 CFR 1.801 *et seq.*, corrections of minor errors in the sequence may be possible based on the argument that one of skill in the art would have resequenced the deposited material and would have immediately recognized the minor error. Deposits made after the filing date can only be relied upon to provide support for the correction of sequence information if applicant submits a statement in compliance with 37 CFR 1.804 stating that the biological material which is deposited is a biological material specifically defined in the application as filed.

19. *See, e.g., Gentry Gallery, Inc.* v. *Berkline Corp.*, 134 F.3d 1473, 45 USPQ2d 1498 (Fed. Cir. 1998) (claims to a section sofa comprising, *inter alia*, a console and a control means were held invalid for failing to satisfy the written description requirement where the claims were broadened by removing the location of the control means.); *Johnson Worldwide Associates Inc.* v. *Zebco Corp.*, 175 F.3d 985, 993, 50 USPQ2d 1607, 1613 (Fed. Cir. 1999) (In *Gentry Gallery*, the "court's determination that the patent disclosure did not support a broad meaning for the disputed claim terms was premised on clear statements in the written description that described the location of a claim element—the 'control means'—as 'the only possible location' and that variations were 'outside the stated purpose of the invention.' *Gentry Gallery*, 134 F.3d at 1479, 45 USPQ2d at 1503. *Gentry Gallery*, then, considers the situation where the patent's disclosure makes crystal clear that a particular (*i.e.*, narrow) understanding of a claim term is an 'essential element of [the inventor's] invention.'"); *Tronzo* v. *Biomet, Inc.*, 156 F.3d 1154, 1159, 47 USPQ2d 1829, 1833 (Fed. Cir. 1998) (claims to generic cup shape were not entitled to filing date of parent application which disclosed "conical cup" in view of the disclosure of the parent application stating the advantages and importance of the conical shape.).

20. *See Gentry Gallery*, 134 F.3d at 1480, 45 USPQ2d at 1503; *In re Sus*, 306 F.2d 494, 134 USPQ 301 (CCPA 1962) ("[O]ne skilled in this art would not be taught by the written description of the invention in the specification that any 'aryl or substituted aryl radical' would be suitable for the purposes of the invention but rather that only certain aryl radicals and certain specifically substituted aryl radicals [*i.e.*, aryl azides] would be suitable for such purposes."). A claim which omits matter disclosed to be essential to the invention as described in the specification or in other statements of record may also be subject to rejection under 35 U.S.C. § 112, ¶ 1. as not enabling, or under 35 U.S.C. 112, ¶ 2. *See In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976); *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976); and *In re Collier*, 397 F.2d 1003, 158 USPQ 266 (CCPA 1968). *See also Reiffin* v. *Microsoft Corp.*, 48 USPQ2d 1274, 1277 (N.D. Cal. 1998) and MPEP § 2172.01.

21. *See, e.g., Vas-Cath, Inc.*, 935 F.2d at 1563–64, 19 USPQ2d at 1117.

22. *Wertheim*, 541 F.2d at 262, 191 USPQ at 96.

23. *See* MPEP §§ 714.02 and 2163.06 ("Applicant should * * * specifically point out the support for any amendments made to the disclosure."); and MPEP § 2163.04 ("If applicant amends the claims and points out where and/or how the originally filed disclosure supports the amendment(s), and the examiner finds that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of the filing of the application, the examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.").

24. *See In re Smith*, 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972) ("Precisely how close [to the claimed invention] the description must come to comply with § 112 must be left to case-by-case development."); *In re Wertheim*, 541 F.2d at 262, 191 USPQ at 96 (inquiry is primarily factual and depends on the nature of the invention and the amount of knowledge imparted to those skilled in the art by the disclosure).

25. *See, e.g., In re Morris*, 127 F.3d 1048, 1053–54, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

26. "Preamble language" is that language in a claim appearing before the transitional phase, e.g., before "comprising," "consisting essentially of," or "consisting of."

27. The transitional term "comprising" (and other comparable terms, *e.g.*, "containing," "including," and "having") is "open-ended—it covers the expressly recited subject matter, alone or in combination with unrecited subject matter. *See, e.g., Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves the "claim open for the inclusion of unspecified ingredients even in major amounts"), *quoted with approval in Moleculon Research Corp* v. *CBS, Inc.*, 793 F.2d 1261, 1271, 229 USPQ 805, 812 (Fed. Cir. 1986). "By using the term 'consisting essentially of,' the drafter signals that the invention necessarily includes the listed ingredients and is open to unlisted ingredients that do not materially affect the basic and novel properties of the invention. A 'consisting essentially of' claim occupies a middle ground between closed claims that are written in a 'consisting of' format and fully open claims that are drafted in a 'comprising' format." *PPG Industries* v. *Guardian Industries*, 156 F.3d 1351, 1354, 48 USPQ2d 1351, 1353–54 (Fed. Cir. 1998). For search and examination purposes, absent a clear indication in the specification of what the basic and novel characteristics actually are, 'consisting essentially of' will be construed as equivalent to "comprising." *See, e.g., PPG*, 156 F.3d at 1355, 48 USPQ at 1355 ("PPG could have defined the scope of the phrase 'consisting essentially of' for purposes of its patent by making clear in its specification what it regarded as constituting a material change in the basic and novel characteristics of the invention.").

28. *See Pac-Tec Inc.* v. *Amerace Corp.*, 903 F.2d 796, 801, 14 USPQ2d 1871, 1876 (Fed. Cir. 1990) (determining that preamble language that constitutes a structural limitation is actually part of the claimed invention).

29. An applicant shows possession of the claimed invention by describing the claimed invention with all of its essential novel elements. *Lockwood*, 107 F.3d at 1572, 41 USPQ2d at 1966.

30. *See, e.g., Bell Communications Research, Inc.* v. *Vitalink Communications Corp.*, 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995) ("[A] claim preamble has the import that the claim as a whole suggests for it."); *Corning Glass Works* v. *Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989) (The determination of whether preamble recitations are structural limitations can be resolved only on review of the entirety of the application "to gain an understanding of what the inventors actually invented and intended to encompass by the claim.").

31. *See, e.g., Wang Labs.* v. *Toshiba Corp.*, 993 F.2d 858, 865, 26 USPQ2d 1767, 1774 (Fed. Cir. 1993).

32. *See, e.g., Hybritech Inc.* v. *Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379–80, 231 USPQ 81, 90 (Fed. Cir. 1986).

33. *Pfaff* v. *Wells Electronics, Inc.*, 119 S.Ct. at 311, 48 USPQ2d at 1646 ("The word 'invention' must refer to a concept that is complete, rather than merely one that is 'substantially complete.' It is true that reduction to practice ordinarily provides the best evidence that an invention is complete. But just because reduction to practice is sufficient evidence of completion, it does not follow that proof of reduction to practice is necessary in every case. Indeed, both the facts of the *Telephone Cases* and the facts of this case demonstrate that one can prove that an invention is complete and ready for patenting before it has actually been reduced to practice.").

34. *Cooper* v. *Goldfarb*, 154 F.3d 1321, 1327, 47 USPQ2d 1896, 1901 (Fed. Cir. 1998). *See also UMC Elecs. Co.* v. *United States*, 816 F.2d 647, 652, 2 USPQ2d 1465, 1468 (Fed. Cir. 1987) ("[T]here cannot be a reduction to practice of the invention * * * without a physical embodiment which includes all limitations of the claim."); *Estee Lauder Inc.* v. *L'Oreal S.A.*, 129 F.3d 588, 593, 44 USPQ2d 1610, 1614 (Fed. Cir. 1997) ("[A] reduction to practice does not occur until the inventor has determined that the invention will work for its intended purpose."); *Mahurkar* v. *C.R. Bard Inc.*, 79 F.3d 1572, 1578, 38 USPQ2d 1288, 1291 (Fed. Cir. 1996) (determining that the invention will work for its intended purpose may require testing depending on the character of the invention and the problem it solves).

35. 37 CFR §§ 1.804, 1.809. *See also* endnote 6.

36. *See, e.g., Vas-Cath*, 935 F.2d at 1565, 19 USPQ2d at 1118 ("drawings alone may provide a 'written description' of an invention as required by § 112"); *In re Wolfensperger*, 302 F.2d 950, 133 USPQ 537 (CCPA 1962) (the drawings of applicant's specification provided sufficient written descriptive support for the claim limitation at issue); *Autogiro Co. of America* v. *United States*, 384 F.2d 391, 398, 155 USPQ 697, 703 (Ct. Cl. 1967) ("[I]n those instances where a visual representation can flesh out words, drawings may be used in the same manner and with the same limitations as the specification.").

37. *See Hybritech* v. *Monoclonal Antibodies*, 802 F.2d at 1384, 231 USPQ at 94; *Fonar Corp.* v. *General Electric Co.*, 107 F.3d at 1549, 41 USPQ2d at 1805 (source code description not required).

38. This is especially true for the mechanical and electrical arts. *See, e.g., Pfaff* v. *Wells Electronics*, 119 S.Ct. at 312, 48 USPQ2d at 1647.

39. For example, the presence of a restriction enzyme map of a gene may be relevant to a statement that the gene has been isolated. One skilled in the art may be able to determine when the gene disclosed is the same as or different from a gene isolated by another by comparing the restriction enzyme map. In contrast, evidence that the gene could be digested with a nuclease would not normally represent a relevant characteristic since any gene would be digested with a nuclease. Similarly, isolation of an mRNA and its expression to produce the protein of interest is strong evidence of possession of an mRNA for the protein.

Examples of identifying characteristics include a sequence, structure, binding affinity, binding specificity, molecular weight, and length. Although structural formulas provide a convenient method of demonstrating possession of specific molecules, other identifying characteristics or combinations of characteristics may demonstrate the requisite possession. For example, unique cleavage by particular enzymes, isoelectric points of fragments, detailed restriction enzyme maps, a comparison of enzymatic activities, or antibody cross-reactivity may be sufficient to show possession of the claimed invention to one of skill in the art. *See Lockwood*, 107 F.3d at 1572, 41 USPQ2d at 1966 ("written description" requirement may be satisfied by using "such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention").

However, a definition by function alone "does not suffice" to sufficiently describe a coding sequence "because it is only an indication of what the gene does, rather than what it is." *Eli Lilly*, 119 F.3 at 1568, 43 USPQ2d at 1406. *See also Fiers*, 984 F.2d at 1169–71, 25 USPQ2d at 1605–06 (discussing *Amgen Inc.* v. *Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991)).

40. If a claim limitation invokes 35 U.S.C. § 112, ¶ 6, it must be interpreted to cover the corresponding structure, materials, or acts in the specification and "equivalents thereof." See 35 U.S.C. 112, ¶ 6. *See also B. Braun Medical, Inc.* v. *Abbott Lab.*, 124 F.3d 1419, 1424, 43 USPQ2d 1896, 1899 (Fed. Cir. 1997). If the written description fails to set forth the supporting structure, material or acts corresponding to the means-(or step-) plus-function, the claim may not meet the requirement of 35 U.S.C. 112, ¶ 1. A means-(or step-) plus-function claim limitation satisfies 35 U.S.C. 112, ¶ 1 if: (1) The written description links or associates particular structure, materials, or acts to the function recited in a means-(or step-) plus-function claim limitation; or (2) it is clear based on the facts of the application that one skilled in the art would have known what structure, materials, or acts perform the function recited in a means-(or step-) plus-function limitation. In considering whether there is 35 U.S.C. § 112, ¶ 1 support for the claim limitation, the examiner must consider not only the original disclosure contained in the summary and detailed description of the invention portions of the specification, but also the original claims, abstract, and drawings. See the Interim Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112 ¶ 6, 64 FR 41392 (July 30, 1999).

41. *See Hybritech Inc.* v. *Monoclonal Antibodies, Inc.*, 802 F.2d at 1384, 231 USPQ at 94.

42. *See, e.g., Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin* v. *Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating "the description need not be in *ipsis verbis* [i.e., "in the same words'] to be sufficient").

43. A claim which is limited to a single disclosed embodiment or species is analyzed as a claim drawn to a single embodiment or species, whereas a claim which encompasses two or more embodiments or species within the scope of the claim is analyzed as a claim drawn to a genus. *See also* MPEP § 806.04(e).

44. 35 U.S.C. 112, ¶ 1. *Cf. Fields* v. *Conover*, 443 F.2d 1386, 1392, 170 USPQ 276, 280 (CCPA 1971) (finding a lack of written description because the specification lacked the "full, clear, concise, and exact written description" which is necessary to support the claimed invention).

45. For example, if the art has established a strong correlation between structure and function, one skilled in the art would be able to predict with a reasonable degree of confidence the structure of the claimed invention from a recitation of its function. Thus, the written description requirement may be satisfied through disclosure of function and minimal structure when there is a well-established correlation between structure and function. In contrast, without such a correlation, the capability to recognize or understand the structure from the mere recitation of function and minimal structure is highly unlikely. In this latter case, disclosure of function alone is little more than a wish for possession; it does not satisfy the written description requirement. *See Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1406 (written description requirement not satisfied by merely providing "a result that one might achieve if one made that invention"); *In re Wilder*, 736 F.2d 1516, 1521, 222 USPQ 369, 372–73 (Fed. Cir. 1984) (affirming a rejection for lack of written description because the specification does "little more than outline goals appellants hope the claimed invention achieves and the problems the invention will hopefully ameliorate"). *Compare Fonar*, 107 F.3d at 1549, 41 USPQ2d at 1805 (disclosure of software function adequate in that art).

46. *See, e.g., In re Hayes Microcomputer Products Inc. Patent Litigation*, 982 F.2d 1527, 1534–35, 25 USPQ2d 1241, 1246 (Fed. Cir. 1992) ("One skilled in the art would know how to program a microprocessor to perform the necessary steps described in the specification. Thus, an inventor is not required to describe every detail of his invention. An applicant's disclosure obligation varies according to the art to which the invention pertains. Disclosing a microprocessor capable of performing certain functions is sufficient to satisfy the requirement of section 112, first paragraph, when one skilled in the relevant art would understand what is intended and know how to carry it out.")

47. *See, e.g., Fiers* v. *Revel*, 984 F.2d at 1169, 25 USPQ2d at 1605; *Amgen Inc.* v. *Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1206, 18 USPQ2d 1016, 1021 (Fed. Cir. 1991). Where the process has actually been used to produce the product, the written description requirement for a product-by-process claim is clearly satisfied; however, the requirement may not be satisfied where it is not clear that the acts set forth in the specification can be performed, or that the product is produced by that process.

48. *See, e.g., Amgen Inc.* v. *Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1206, 18

USPQ2d 1016, 1021 (Fed. Cir. 1991)("A gene is a chemical compound, albeit a complex one, and it is well established in our law that conception of a chemical compound requires that the inventor be able to define it so as to distinguish it from other materials, and to describe how to obtain it. Conception does not occur unless one has a mental picture of the structure of the chemical, or is able to define it by its method of preparation, its physical or chemical properties, or whatever characteristics sufficiently distinguish it. It is not sufficient to define it solely by its principal biological property, *e.g.*, encoding human erythropoietin, because an alleged conception having no more specificity than that is simply a wish to know the identity of any material with that biological property. We hold that when an inventor is unable to envision the detailed constitution of a gene so as to distinguish it from other materials, as well as a method for obtaining it, conception has not been achieved until reduction to practice has occurred, *i.e.*, until after the gene has been isolated.")(citations omitted). In such instances the alleged conception fails not merely because the field is unpredictable or because of the general uncertainty surrounding experimental sciences, but because the conception is incomplete due to factual uncertainty that undermines the specificity of the inventor's idea of the invention. *Burroughs Wellcome Co.* v. *Barr Laboratories Inc.*, 40 F.3d 1223, 1229, 32 USPQ2d 1915, 1920 (Fed. Cir. 1994). Reduction to practice in effect provides the only evidence to corroborate conception (and therefore possession) of the invention. *Id.*

49. *See Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1400.

50. *See, e.g., Eli Lilly.*

51. For example, in the genetics arts, it is unnecessary for an applicant to provide enough different species that the disclosure will permit one of skill to determine the nucleic acid or amino acid sequence of another species from the application alone. The stochastic nature of gene evolution would make such a predictability nearly impossible. Thus, the Federal Circuit could not have intended that representative number requires predictability of sequences.

52. *See Wertheim*, 541 F.2d at 263, 191 USPQ at 97 ("[T]he PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims."). *See also* MPEP § 2163.05.

53. *See* MPEP §§ 714.02 and 2163.06 ("Applicant should * * * specifically point out the support for any amendments made to the disclosure.").

54. *See, e.g., In re Wright*, 866 F.2d 422, 425, 9 USPQ2d 1649, 1651 (Fed. Cir. 1989)(Original specification for method of forming images using photosensitive microcapsules which describes removal of microcapsules from surface and warns that capsules not be disturbed prior to formation of image, unequivocally teaches absence of permanently fixed microcapsules and supports amended language of claims requiring that microcapsules be "not permanently fixed" to underlying surface, and therefore meets description requirement of 35 U.S.C. 112.).

55. *See, e.g., In re Robins*, 429 F.2d 452, 456–57, 166 USPQ 552, 555 (CCPA 1970) ("[W]here no explicit description of a generic invention is to be found in the specification * * * mention of representative compounds may provide an implicit description upon which to base generic claim language."); *In re Smith*, 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972)(a subgenus is not necessarily implicitly described by a genus encompassing it and a species upon which it reads).

56. *See, e.g., In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950–51 (Fed. Cir. 1999)("To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'") (citations omitted).

57. When an explicit limitation in a claim "is not present in the written description whose benefit is sought it must be shown that a person of ordinary skill would have understood, at the time the patent application was filed, that the description requires that limitation." *Hyatt* v. *Boone*, 146 F.3d 1348, 1353, 47 USPQ2d 1128, 1131 (Fed. Cir. 1998).

58. *See, e.g., Johnson Worldwide Associates Inc.* v. *Zebco Corp.*, 175 F.3d at 993, 50 USPQ2d at 1613; *Gentry Gallery, Inc.* v. *Berkline Corp.*, 134 F.3d at 1479, 45 USPQ2d at 1503; *Tronzo* v. *Biomet, Inc.*, 156 F.3d at 1159, 47 USPQ2d at 1833; and *Reiffin* v. *Microsoft Corp.*, 48 USPQ2d at 1277.

59. *See, e.g., In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971).

60. *Wertheim*, 541 F.2d at 262, 191 USPQ at 96.

61. *See In re Rasmussen*, 650 F.2d at 1214, 211 USPQ at 326.

62. *See In re Alton*, 76 F.3d 1168, 1176, 37 USPQ2d 1578, 1584 (Fed. Cir. 1996).

Dated: December 16, 1999.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 99–33053 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 991027289–9289–01]

RIN 0651–AB09

Revised Utility Examination Guidelines; Request for Comments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from any interested member of the public on the following Revised Utility Examination Guidelines. The PTO is publishing a revised version of guidelines to be used by Office personnel in their review of patent applications for compliance with the utility requirement based on comments received in response to the Request for Comments on Interim Guidelines for Examination of Patent Applications. Under the 35 U.S.C. 112, ¶ 1 "Written Description" Requirement; Extension of Comment Period and Notice of Hearing. 63 FR 50887 (September 23, 1998). These Revised Utility Guidelines will be used by PTO personnel in their review of patent applications for compliance with the "utility" requirement of 35 U.S.C. 101. This revision supersedes the Utility Examination Guidelines that were published at 60 FR 36263 (1995) and at 1177 O.G. 146 (1995).

DATES: Written comments on the Revised Utility Examination Guidelines will be accepted by the PTO until March 22, 2000.

ADDRESSES: Written comments should be addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Mark Nagumo, or to Box Comments, Assistant Commissioner for Patents, Washington, DC 20231, marked to the attention of Linda S. Therkorn. Alternatively, comments may be submitted to Mark Nagumo via facsimile at (703) 305–9373 or by electronic mail addressed to "mark.nagumo@uspto.gov"; or to Linda Therkorn via facsimile at (703) 305–8825 or by electronic mail addressed to "linda.therkorn@uspto.gov."

FOR FURTHER INFORMATION CONTACT: Mark Nagumo by telephone at (703) 305–8666, by facsimile at (703) 305–9373, by electronic mail "mark.nagumo@uspto.gov," or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 8, Washington, DC 20231; or Linda Therkorn by telephone at (703) 305–9323, by facsimile at (703) 305–8825, by electronic mail at "linda.therkorn@uspto.gov," or by mail marked to her attention addressed to Box Comments, Assistant Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The PTO requests comments from any interested member of the public on the following Revised Utility Examination Guidelines. As of the publication date of this notice, this revision will be used by PTO personnel in their review of patent

applications for compliance with the "utility" requirement of 35 U.S.C. 101. Because this revision governs internal practices, it is exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

Written comments should include the following information: (1) Name and affiliation of the individual responding, and (2) an indication of whether the comments offered represent views of the respondent's organization or are respondent's personal views.

Parties presenting written comments are requested, where possible, to provide their comments in machine-readable format in addition to a paper copy. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5" floppy disk formatted for use in a Macintosh, Windows, Windows for Workgroups, Windows 95, Windows 98, Windows NT, or MS–DOS based computer.

Written comments will be available for public inspection on or about April 19, 2000, in Suite 918, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine readable format will be available through the PTO's Website at http://www.uspto.gov.

I. Discussion of Public Comments

Comments received by the Office in response to the request for public comment on the Interim Written Description Guidelines regarding the patentability of expressed sequence tags (ESTs) suggested the need for revision or clarification of the final Utility Examination Guidelines as published at 60 FR 36263 (1995) and 1177 O.G. 146 (1995). All comments have been carefully considered. Many comments stated that sufficient patentable utility has not been shown when the sole disclosed use of an EST is to identify other nucleic acids whose utility was not known, and the function of the corresponding gene is not known. Moreover, several comments opined that ESTs are genomic research tools that should be available for unencumbered research to advance the public good. One comment stated that asserted utilities for ESTs, such as mapping the genome or tissue typing, would probably not satisfy the requirements of 35 U.S.C. 101 if the length of the attached DNA sequence were greatly extended. Other comments stated that the disclosure of a DNA sequence alone is insufficient to enable scientists to use ESTs for mapping or tissue typing. Some comments suggested that PTO examination procedures would result in granting patents based on nonspecific and nonsubstantial utilities, contrary to established case law. See Brenner v. Manson, 383 U.S. 519, 534–35, 148 USPQ 689, 695 (1966) (requiring disclosure of "specific utility," and of "substantial utility," "where specific benefit exists in currently available form"); accord, In re Ziegler, 992 F.2d 1197, 1201, 26 USPQ2d 1600, 1603 (Fed. Cir. 1996) (requiring that a specific and substantial or practical utility for the invention be disclosed as a condition of meeting the practical utility requirement of § 101). Consequently, a number of changes have been made to the Utility Examination Guidelines to clarify the position of the Patent and Trademark Office. Updated training material will be developed in the examination corps to address technology-specific issues.

II. Guidelines for Examination of Applications for Compliance With the Utility Requirement

A. Introduction

The following guidelines establish the policies and procedures to be followed by Office personnel in the evaluation of any patent application for compliance with the utility requirements of 35 U.S.C. 101 and 112. These guidelines have been promulgated to assist Office personnel in their review of applications for compliance with the utility requirement. The guidelines do not alter the substantive requirements of 35 U.S.C. 101 and 112, nor are they designed to obviate the examiner's review of applications for compliance with all other statutory requirements for patentability.

B. Examination Guidelines for the Utility Requirement

Office personnel are to adhere to the following procedures when reviewing patent applications for compliance with the "useful invention" ("utility") requirement of 35 U.S.C. 101 and 112, first paragraph.

1. Read the claims and the supporting written description.

(a) Determine what the applicant has claimed, noting any specific embodiments of the invention.

(b) Ensure that the claims define statutory subject matter (i.e., a process, machine, manufacture, composition of matter, or improvement thereof).

2. Review the claims and the supporting written description to determine if the applicant has asserted for the claimed invention any specific and substantial utility that is credible.

(a) If the invention has a well-established utility, regardless of any assertion made by the applicant, do not impose a rejection based on lack of utility. An invention has a well-established utility if a person of ordinary skill in the art would immediately appreciate why the invention is useful based on the characteristics of the invention (e.g., properties or applications of a product or process).

(b) If the applicant has asserted that the claimed invention is useful for any particular practical purpose (i.e., it has a "specific and substantial utility") and the assertion would be considered credible by a person of ordinary skill in the art, do not impose a rejection based on lack of utility.

(1) A claimed invention must have a specific and substantial utility. This requirement excludes "throw-away," "insubstantial," or "nonspecific" utilities, such as the use of a complex invention as landfill, as a way of satisfying the utility requirement of 35 U.S.C. 101.

(2) Credibility is assessed from the perspective of one of ordinary skill in the art in view of the disclosure and any other evidence of record (e.g., test data, affidavits or declarations from experts in the art, patents or printed publications) that is probative of the applicant's assertions. An applicant need only provide one credible assertion of specific and substantial utility for each claimed invention to satisfy the utility requirement.

(c) If no assertion of specific and substantial utility for the claimed invention made by the applicant is credible, and the claimed invention does not have a well-established utility, reject the claim(s) under section 101 on the grounds that the invention as claimed lacks utility. Also reject the claims under § 112, first paragraph, on the basis that the disclosure fails to teach how to use the invention as claimed. The section 112, first paragraph, rejection imposed in conjunction with a section 101 rejection should incorporate by reference the grounds of the corresponding section 101 rejection.

(d) If the applicant has not asserted any specific and substantial utility for the claimed invention and it does not have a well-established utility, impose a rejection under section 101, emphasizing that the applicant has not disclosed a specific and substantial utility for the invention. Also impose a separate rejection under section 112, first paragraph, on the basis that the applicant has not disclosed how to use the invention due to the lack of a specific and substantial utility. The sections 101 and 112 rejections shift the

burden of coming forward with evidence to the applicant to:

(1) Explicitly identify a specific and substantial utility for the claimed invention; and

(2) Provide evidence that one of ordinary skill in the art would have recognized that the identified specific and substantial utility was well established at the time of filing. The examiner should review any subsequently submitted evidence of utility using the criteria outlined above. The examiner should also ensure that there is an adequate nexus between the showing and the application as filed.

3. Any rejection based on lack of utility should include a detailed explanation why the claimed invention has no specific and substantial credible utility. Whenever possible, the examiner should provide documentary evidence (e.g., scientific or technical journals, excerpts from treatises or books, or U.S. or foreign patents) to support the factual basis for the *prima facie* showing of no specific and substantial credible utility. If documentary evidence is not available, the examiner should specifically explain the scientific basis for his or her factual conclusions.

(a) Where the asserted specific and substantial utility is not credible, a *prima facie* showing of no specific and substantial credible utility must establish that it is more likely than not that a person skilled in the art would not consider credible any specific and substantial utility asserted by the applicant for the claimed invention.

The *prima facie* showing must contain the following elements:

(1) An explanation that clearly sets forth the reasoning used in concluding that the asserted specific and substantial utility is not credible;

(2) Support for factual findings relied upon in reaching this conclusion; and

(3) An evaluation of all relevant evidence of record.

(b) Where no specific and substantial utility is disclosed or known, a *prima facie* showing of no specific and substantial utility must establish that it is more likely than not that a person skilled in the art would not be aware of any well-established credible utility that is both specific and substantial.

The *prima facie* showing must contain the following elements:

(1) An explanation that clearly sets forth the reasoning used in concluding that there is no known well established utility for the claimed invention that is both specific and substantial;

(2) Support for factual findings relied upon in reaching this conclusion; and

(3) An evaluation of all relevant evidence of record.

4. A rejection based on lack of utility should not be maintained if an asserted utility for the claimed invention would be considered specific, substantial, and credible by a person of ordinary skill in the art in view of all evidence of record.

Office personnel are reminded that they must treat as true a statement of fact made by an applicant in relation to an asserted utility, unless countervailing evidence can be provided that shows that one of ordinary skill in the art would have a legitimate basis to doubt the credibility of such a statement. Similarly, Office personnel must accept an opinion from a qualified expert that is based upon relevant facts whose accuracy is not being questioned; it is improper to disregard the opinion solely because of a disagreement over the significance or meaning of the facts offered.

Once a *prima facie* showing of no specific and substantial credible utility has been properly established, the applicant bears the burden of rebutting it. The applicant can do this by amending the claims, by providing reasoning or arguments, or by providing evidence in the form of a declaration under 37 CFR 1.132 or a printed publication that rebuts the basis or logic of the *prima facie* showing. If the applicant responds to the *prima facie* rejection, the Office personnel should review the original disclosure, any evidence relied upon in establishing the *prima facie* showing, any claim amendments, and nay new reasoning or evidence provided by the applicant in support of an asserted specific and substantial credible utility. It is essential for Office personnel to recognize, fully consider and respond to each substantive element of any response to a rejection based on lack of utility. Only where the totality of the record continues to show that the asserted utility is not specific, substantial, and credible should a rejection based on lack of utility be maintained.

If the applicant satisfactorily rebuts a *prima facie* rejection based on lack of utility under section 101, withdraw the § 101 rejection and the corresponding rejection imposed under section 112, first paragraph.

Dated: December 16, 1999.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 99–33054 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 15, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Application for grants under Disability and Rehabilitation Research.

Frequency: Annually.

Affected Public: Not-for-profit institutions; individuals or households; businesses or other for-profit; State, local, or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 805. Burden Hours: 16,100.

Abstract: The National Institute on Disability and Rehabilitation Research (NIDRR) provides grants for research and related activities in Rehabilitation of Individuals with disabilities. The grant application package contains program profiles, standard forms, program regulations, sample rating forms, and transmitting instructions. Applications are primarily institutions of higher education, but may also include hospitals, State Rehabilitation education agencies and voluntary and profit organizations.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO __ IMG __ Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila __ Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–32971 Filed 12–20–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 16, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement

Title: Robert C. Byrd Honors Scholarship Program Performance Report

Frequency: Annually

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 1

Burden Hours: 148

Abstract: This information is required of State agencies that administer the Robert C. Byrd Honors Scholarship Program under Title IV, Part A, Subpart 6 of the Higher Education Act of 1965, as amended and administered under 34 CFR Part 654. This information is used to monitor the compliance of the state educational agencies.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33078 Filed 12–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 5, 2000: 6 p.m.–9 p.m.

ADDRESSES: Embassy Suites Hotel, 4315 Swenson Street, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and discussion on Stewardship.

2. Discussion regarding the Underground Testing Area recommendation and letter.

3. Review of the SSAB's comments on the Draft Yucca Mountain Environmental Impact Statement.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on December 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33046 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 5, 2000: 6:00–9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Street, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Carol Davis, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0418.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. "EPA's Role in Federal Facilities Restoration," presented by Mr. Richard Green, Director of Waste Management Division, EPA Region 4.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carol Davis at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Carol Davis, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0418.

Issued at Washington, DC on December 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33047 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 6, 2000: 6 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Risk Assessments Workshop, with Bonnie LaVelle of EPA Region VIII.

2. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on December 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33048 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed revision and extension of approval to the Form EIA–902, "Annual Geothermal Heat Pump Manufacturers Survey."

DATES: Written comments must be submitted on or before February 22, 2000. If you anticipate difficulty in submitting comments within that period, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Peter Holihan, Energy Information Administration (EI–52), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Mr. Holihan may be reached by phone at (202) 426–1147, by e-mail James.Holihan@eia.doe.gov, or by FAX (202) 426–1311.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mr. Holihan at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

The Form EIA–902 collects information on shipments of geothermal heat pumps. The survey tracks shipments of the following three main types of geothermal heat pumps, as classified by the Air Conditioning & Refrigeration Institute (ARI), and the much smaller shipped volume of non-ARI rated systems. A brief description of the ARI-classified system is as follows:

ARI 320—Water-Source Heat Pumps (WSHP)—These systems are installed in commercial buildings, where a central chiller or boiler supplies chilled or heated water, respectively, to heat pumps installed in series. The heat pumps reject building heat to chilled water during the cooling season and, during the heating season, take heat from boiler water.

ARI 325—Ground Water-Source Heat Pumps (GWHP)—The GWHP is an open-loop system in which ground water is drawn from an aquifer or other natural body of water into piping. At the heat pump, heat is drawn from or dumped to the water through a heat exchanger to the refrigerant in the heat pump. The heated or cooled water returns to its source.

ARI 330—Ground Source Closed-Loop Heat Pumps (GSHP)—A water or water/glycol (antifreeze) solution flows continuously through a closed loop of pipe buried underground. Ground heat is absorbed into or rejected from the solution flowing in the closed loop. At the heat pump, heat is drawn from or dumped to the closed loop solution via heat transfer through a heat exchanger, which passes heat to or removes heat from the refrigerant in the heat pump. Depending on the type of ground and land area, systems can either be installed horizontally or vertically.

Data are collected by model type, heat pump capacity, region of destination, customer type, and economic sector. Respondents are all U.S. geothermal heat pump manufacturers.

II. Current Actions

EIA will be requesting a three-year extension of Office of Management and Budget approval to continue using Form EIA–902 through 2003.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average four hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) total dollar amount annualized for capital and start-up costs; and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. What additional actions could be taken to minimize the burden of this collection of information, including the use of information technology? For example, should the agency develop additional electronic methods (e.g., forms and instruction on diskettes, touch tone data entry, forms that may be completed and submitted directly through the Internet, and data submission by fax or e-mail) for respondents to submit information?

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the method(s) of collection.

As a Potential User:

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, December 15, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–33049 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11614–001]

Allison Lake Hydro; Notice of Surrender of Preliminary Permit

December 15, 1999.

Take notice that Allison Lake Hydro, permittee for the proposed Allison Lake Project, has requested that its preliminary permit be terminated. The permit was issued on November 20, 1998, and would have expired on October 31, 2001. The project would have been located on Allison Lake and Creek in Valdez County, Alaska.

The permittee filed the request on November 15, 1999, and the preliminary permit for Project No. 11614 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32951 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–13–000]

Jones Black River Services, Inc; Notice of Withdrawal

December 15, 1999.

Take notice that on December 2, 1999, Jones Black River Services, Inc. withdrew its application for determination of exempt wholesale generator status filed in the above-captioned proceeding.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 6, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32944 Filed 12–20–99; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1354–005]

Pacific Gas & Electric Company; Notice of Telephone Conference

December 15, 1999.

The Commission staff, U.S. Forest Service and Pacific Gas & Electric Company (PG&E) will conduct a telephone conference at 2 p.m. Eastern Standard Time (EST), on December 21, 1999, to update staff on Forest Service and PG&E points of view on whether certain lands should be included within the boundary of the Crane Valley Project No. 1354 and on how such an issue might affect PG&E's application for new license in this proceeding.

Parties in the new license application proceeding wishing to take part in the conference call may do so by calling (800) 545–4387 on December 21, 1999 and informing the operator that they want to be part of the Crane Valley Project conference call and giving the operator the conference call identification number M–57609. The operator will start accepting requests to be a part of the conference call at 1:45 p.m. EST prior to the 2 p.m. EST meeting. If you have any questions regarding this notice, please contact Charles Hall at (202) 219–2853 or send e-mail to charles.hall@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32947 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–417–001, et al.]

Virginia Power and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

December 13, 1999.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Company

[Docket No. ER99–417–001]

Take notice that on November 16, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a refund report as directed by the Commission's Order of October 28, 1999 in this proceeding. Under the tendered refund report, Virginia Power demonstrated the calculation of the amounts collected in excess of the settlement rates accepted by the Commission, together with interest computed under Section 35.19a of the Commission's Regulations.

Copies of the filing were served upon the Public Service Commission of West Virginia, the Virginia State Corporation Commission and the North Carolina Utilities Commission and all parties of record.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER99–4545–001]

Take notice that on December 7, 1999, the California Independent System Operator Corporation (ISO), tendered for

filing a Notice to Market of Ability to File Disputes on Final Settlement Statements (Notice) which was sent to Market Participants on December 3, 1999 and posted on the ISO Home Page. The Notice states that, effective with Final Settlement Statements published on December 15, 1999 for Trade Date October 1, 1999, the ISO will accept settlement disputes of Incremental Changes that occur between Preliminary and Final Settlement Statements, in accordance with the terms of Amendment No. 22 to the ISO Tariff.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER00–657–000]

Take notice that on December 6, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing errata to its November 23, 1999, filing of agreements between PG&E and East Bay Municipal Utility District (EBMUD) providing for special facilities and the parallel operation of EBMUD's Pardee and Camanche Powerhouses and PG&E's electrical system. The errata correct dates, footnotes and adds missing line diagrams.

Copies of this filing have been served upon EBMUD and the CPUC.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Avista Corporation

[Docket No. ER00–732–000]

Take notice that on December 6, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an unexecuted Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with Public Utility District No. 1 of Pend Oreille County. The unexecuted Service Agreement will be replaced by an executed Service Agreement upon approval and receipt from the Public Utility District No. 1 of Pend Oreille County Commission Board.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of November 10, 1999.

Notice of this filing has been served upon Mr. Dick L. Arkills, Director, Power Supply & Engineering, Pend Oreille PUD.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER00–733–000]

Take notice that on December 6, 1999, the New England Power Pool (NEPOOL or the Pool) Participants Committee tendered for filing a request for termination of memberships in NEPOOL, with a retroactive effective date of October 1, 1999, of Barton Village, Inc., Village of Enosburg Falls Electric Light Department, Hardwick Electric Department, Village of Hyde Park, Village of Jacksonville, Inc., Electric Company, The Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department, Northfield Electric Department, Orleans Electric, Stowe Electric Department and Swanton Village (collectively, the Terminating Vermont Municipals). Such terminations are pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by the Terminating Vermont Municipals. The NEPOOL Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Participants Committee requests a retroactive termination to October 1, 1999 to accommodate to the extent possible, given NEPOOL procedural requirements, the requests made by the Terminating Vermont Municipals for early termination of their memberships. The Participants Committee states that such terminations of the Terminating Vermont Municipals will not impact charges under the NEPOOL Agreement to any other Participant, will have no adverse impact on NEPOOL operations or the operations of any continuing Participant, and would not change the NEPOOL Agreement in any manner, other than to remove the Terminating Vermont Municipals from membership in the Pool.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER00–734–000]

Take notice that on December 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Tacoma City Light (Tacoma).

A copy of the filing was served upon Tacoma.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–735–000]

Take notice that on November 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Southern Company Services, Inc., (Southern).

A copy of the filing was served upon Southern.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER00–736–000]

Take notice that on December 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Southern Company Energy Marketing, L.P., (SCEM).

A copy of the filing was served upon SCEM.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER00–737–000]

Take notice that on December 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between El Dorado Energy, LLC (El Dorado) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on El Dorado and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be effective as of November 23, 1999.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER00–738–000]

Take notice that on December 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between El Dorado Energy, LLC (El Dorado) and the ISO for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be effective as of November 23, 1999.

The ISO states that this filing has been served on El Dorado and the California Public Utilities Commission.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Avista Corporation

[Docket No. ER00–739–000]

Take notice that on December 7, 1999, Avista Corporation tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with El Paso Power Service Company.

Avista Corporation requests waiver of the prior notice requirement and requests an effective date of November 1, 1999.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Merrill Lynch Capital Services, Inc.

[Docket No. ER00–740–000]

Take notice that on December 7, 1999, Merrill Lynch Capital Services, Inc., (MLCS), tendered for filing pursuant to section 35.13 of the Commission's Regulations under the Federal Power Act (18 CFR 35.13) and Section 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205), revisions to its FERC Electric rate Schedule No. 1, the purpose of which is to permit MLCS to resell firm transmission rights.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Canal Emirates Power International, Inc.

[Docket No. ER00–741–000]

Take notice that on December 7, 1999, Canal Emirates Power International, Inc. (Canal) petitioned the Federal Energy Regulatory Commission (Commission), for acceptance of Canal Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity and ancillary services at market-based rates; and the waiver of certain Commission regulations.

Canal owns a 50 MW cogeneration facility located in Binghamton, New York. Canal intends to operate that facility for the purpose of engaging in wholesale sales of electric energy and capacity, and ancillary services, to customers in the restructured New York electricity market at market-based rates. The shareholders of Canal are two individuals that do not have any ownership interest in a franchised electric utility. Canal also does not own or control any transmission facilities (other than limited interconnection facilities). Canal has no affiliates.

Canal also requested waiver of the 60-day prior notice requirement to allow Canal Rate Schedule FERC No. 1 to become effective February 1, 2000.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–742–000]

Take notice that on December 7, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Sierra Pacific Power Company (Sierra Pacific) for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective December 1, 1999.

The ISO states that this filing has been served on Sierra Pacific and the California Public Utilities Commission.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PPL Martins Creek, LLC; PPL Montour, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; and PPL Susquehanna, LLC

[Docket No. ER00–744–000]

Take notice that on December 7, 1999, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC and PPL Susquehanna LLC (collectively Applicants), tendered for filing an Application for Authority to Sell Electric Energy, Capacity and Ancillary Services at Market-Based Rates, to Resell Transmission Rights and Associated Ancillary Services and for Acceptance of Power Sales Agreements, in connection with a proposed corporate realignment of PP&L Resources, Inc.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32943 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–058]

Alabama Power Company; Notice of Availability of Environmental Assessment

December 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to permit Mr. Donald F. Seibert (permitee) to reconstruct and expand the existing Anchor Bay Marina and has prepared an Environmental Assessment (EA) for the proposed action.

This 65-year-old facility, formerly known as Castaway Island Marina, experienced deferred maintenance when it was operated by its previous owner. Moreover, 48 of the marina's 70 covered wet slips were destroyed, and several of its other structures experienced extensive damage in 1995 as the result of Hurricane Opal. The permitee proposes to implement a three-year redevelopment plan that would enable the marina to accommodate 180 boats in the water and an additional 250 boats in storage.

Anchor Bay Marina is situated in the southwestern portion of Lake Martin, which was formed in 1926 after the completion of Alabama Power Company's Martin Dam on the Tallapoosa River.

In the EA, Commission staff does not identify any significant impacts that would result from Commission's approval of the proposed marina redevelopment. Further, staff finds that Commission-imposed mitigative or enhancement measures are not needed

at the site to protect the area's environmental resources. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A,888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32946 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718–011]

Cocheco Falls Associates; Notice of Availability of Draft Environmental Assessment

December 15, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA is for petitions to revise the license for the Cocheco Falls Project with respect to fish passage. The DEA recommends reasonable modifications to project structures and operation to benefit fish passage and that such modifications would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, NE, Washington, DC 20426.

Comments on the DEA are invited. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers for substance should be supported by appropriate documentation. Comments should be filed within 60 days from the date of this notice with David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, and should reference Project No. 4718.

For further information, please contact the project manager, Mr. Robert H. Grieve, at (202) 219–2655.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32950 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2177–037]

Georgia Power Company; Notice of Availability of Environmental Assessment

December 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has received the application requesting the Commission's authorization to permit the Smiths Water and Sewer Authority (Authority) to increase the rate of water withdrawal at its existing pumping station at Lake Oliver reservoir to 8.0 million gallons per day and has prepared an Environmental Assessment (EA) for the proposed action.

Existing facilities at the Authority's water pumping station are able to accommodate the increased water withdrawal; consequently, the proposed action would not require any new construction activity.

Lake Oliver, the reservoir formed by Oliver Dam, is the second of three impoundments that comprise the Middle Chattahoochee Project. The project's three developments abut one another over a 16-mile-long distance of the Chattahoochee River.

In the EA, Commission staff does not identify any significant impacts that would result from Commission's approval of the proposed additional water withdrawal from Lake Oliver reservoir. Further, staff finds that Commission-imposed mitigative or enhancement measures are not needed at the site to protect the area's environmental resources. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32949 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing With The Commission and Soliciting Motions To Intervene and Protest

December 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–2631–007.

c. *Date Filed:* August 31, 1999.

d. *Applicant:* International Paper Company.

e. *Name of Project:* Woronoco Hydroelectric Project.

f. *Location:* On the Westfield River in the Town of Russell, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ted Lewellyn, P.E., International Paper Company, Paper Mill Road, Millers Falls, MA 01349, (413) 659–2337

Michael K. Chapman, Esq., International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, (901) 763–5888

Jon Christensen, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967, (207) 487–3328

i. *FERC Contact:* Allan Creamer (202) 219–0365 or E-mail at allan.creamer@ferc.fed.us.

j. *Deadline for Filing Motions to Intervene and Protest:* February 4, 2000.

k. *Status of Environmental Analysis:* This application has been accepted for filing, but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The proposed run-of-river project would consist of the following features: (1) two non-contiguous dam sections, with lengths of about 307 feet (North dam) and 351 feet (South dam), and a crest elevation of 229 feet NGVD; (2) a 655-foot-long earthen dike with a sheet steel core; (3) a 40-foot-wide by 15-foot-high intake structure, having trashracks with 1.25-inch clear bar spacing; (4) a 550-foot-long penstock; (5) a powerhouse

containing three Francis turbines and generating units, having an installed capacity of 2,700 kW; (6) a 43-acre impoundment that extends approximately 1.2 miles upstream; (7) an interim downstream fish passage facility; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be approximately 7,700 MWh. No federal lands are affected by the proposed project.

m. *Purpose of Project:* The power generated by the project is sold on the local power grid. If the adjacent mill facilities and the hydro station (both owned by International Paper Company) is sold to a manufacture, power generated by the proposed project could be used to run the mill as well as be sold on the local power grid.

o. *Availability of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy of the application may be viewed or printed by accessing the Commission's website at http://www.ferc.fed.us/online/rims.htm, or call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at International Power Company, Paper Mill Road, Millers Falls, Massachusetts 01349 and through the Town of Russell, Robert P. Drake, Chairman, Board of Selectman, Town of Russell, Russell, Massachusetts 01071.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32945 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1980–009 and 1759–036 et al.]

Notice of Public Meetings; Wisconsin Electric Power Co. and Norway, WI; Upper Menominee River Basin Projects

December 15, 1999.

In the matter of: Wisconsin Electric Power Company; Project Nos. 1980–009, 1759–036, 2072–008, 2073–008, 2074–007, 2131–020, 11830–000, and 11831–000. Upper Menominee River Basin Hydroelectric Projects; Project No. 2471–005, Sturgeon Plant Project: City of Norway; Project No. 2720–032, Sturgeon Falls Project; Notice of Public Meetings.

Pursuant to the Energy Policy Act of 1992, and as part of the license applications, Wisconsin Electric Power Company (hereinafter, referred to as "WE") prepared an Applicant-Prepared Environmental Assessment (APEA) for the Upper Menominee River Basin Projects and filed it with the Federal Energy Regulatory Commission (Commission) on October 1, 1999. WE also filed with the Commission a surrender application and APEA for the Sturgeon Plant Project (P–2471–005). The City of Norway filed with the Commission an amendment of license and APEA for the Sturgeon Falls Project (P–2720–032).

Two public meetings will be held, pursuant to the National Environmental Policy Act of 1969, to solicit comments about the Upper Menominee River Basin Projects, the Sturgeon Plant Project, and the Sturgeon Falls Project. The meetings will be held on Wednesday, March 1, 2000, from 1:00 to 4:00 p.m. and from 7:00 to 10:00 p.m. The meetings will be at the Premier Center, located at 300 East F Street, Iron Mountain, in Iron County, Michigan. The public meetings are open to all interested parties.

Meeting Procedures

The public meetings will be conducted according to the procedures used at Commission scoping meetings. The public meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined at the beginning of each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least ten minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written public comments may also be mailed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, by March 10, 2000. Correspondence should clearly show the following caption on the first page for each separate proceeding: (1) Public Meeting Comments, Upper Menominee River Basin Hydroelectric Projects, FERC Nos. 1980–009, 1759–036, 2072–008, 2073, 2074–007, 2131–020, 11830–000, and 11831–000; (2) Public Meeting Comments, Sturgeon Plant Project, FERC No. 2471–005; or (3) Public Meeting Comments, Sturgeon Falls Project, FERC No. 2720–032.

For further information, please contact Ms. Patti Leppert-Slack at the Commission, (202) 219–2767.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32948 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6512–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; the SunWise School Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): The SunWise School Program, Stratospheric Protection Division, EPA ICR No. 1904.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 22, 2000.

ADDRESSES: Office of Atmospheric Programs, Stratospheric Protection Division, U.S. Environmental Protection Agency, 401 M Street, SW (6205J), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kristin Kenausis, (202) 564–2289, (202) 565–2095 (fax), *kenausis.kristin@epa.gov* or visit the SunWise website at www.epa.gov/sunwise.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are elementary and middle school students, parents, teachers (SIC Div. I: Group 8211), and school administrators (SIC Div. I: Group 8211).

Title: SunWise School Program; EPA ICR No. 1904.01.

Abstract: The goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise School Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and advisory board meetings, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; (2) Parent survey to compare findings with those of their children as well as to draw comparisons with the benchmarks established in other national surveys; (3) Teacher questionnaire for measuring their receptivity to the educational component of the Program; and (4) School administrator questionnaire to show receptivity to the SunWise School Program and its standards, such as the educational component, proposed policy changes, and school practices with the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The SunWise School Program will conduct four different surveys, targeting four distinct audiences.

(A) Number to be surveyed annually	(B) Total hours burden	(C) Rate per hour ($)	(D) Total cost (D=B*C)
3,000 Students	3,000	0	0
1,000 Teachers	500	$36.86	$18,440.00
1,000 Parents	250	20.29	5,072.50
1,000 School Administrators	250	35.18	8,795.00
Total (Annual)	4,000		32,307.50
ICR Total (3 years)	12,000		96,922.50

Dated: December 14, 1999.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 99–33032 Filed 12–20–99; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[PF–867A; FRL–6098–2]

Allergenicity Assessment of Cry9C BT Corn Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is soliciting input on the assessment of the potential for allergenicity of non-digestible proteins expressed as plant-pesticides. The specific case in question concerns the Cry9C insecticidal protein derived from *Bacillus thuringiensis* and expressed in field corn. In addition to EPA data evaluation records, the Agency is asking for comment on questions within an EPA background document regarding the use of amino acid homology, the brown Norway rat model, and other items regarding the assessment for potential allergenicity. This issue will also be one of the subjects of a FIFRA Science Advisory Panel (SAP) meeting in early February, 2000.

DATES: Comments, identified by docket control number PF–867A, must be received on or before February 22, 2000. The actual meeting date and other details will be announced in a subsequent **Federal Register** publication.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–867A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Kough or Mike Mendelsohn, OPP/ BPPD (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308 8267 or (703) 308–8715; tax number: (703) 308–7026; e-mail address: kough.john@epa.gov or mendelsohn.mike @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are technical experts in human allergenicity or those persons who may be required to conduct testing to assess the potential for the allergenicity of non-digestible proteins expressed as plant-pesticides under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents (including copies of EPA's data evaluation records, and the list of questions regarding allergenicity) that might be available electronically, from the EPA's Biopesticide Internet Home Page at http:/ /www.epa.gov/pesticides/ biopesticides. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/ fedrgstr.

2. *In person.* The Agency has established an official record for this action under docket control number PF–867A. The official record consists of the documents specifically referenced in this action (including copies of EPA's health effects reviews, the list of selected technical experts that comprise the technical peer review committee, and the list of questions regarding allergenicity), any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–867A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–867A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

On April 7, 1999, EPA announced the receipt of a pesticide petition (PP 9F5050) (64 FR 16965) (FRL–6069–8) from AgrEvo USA Company. The petition, 9F5050, proposed an amendment to 40 CFR 180.1192 to expand the current exemption from the requirement of a tolerance for *Bacillus thuringiensis* subspecies tolworthi Cry9C protein and the genetic material necessary for its production in corn from corn used for feed only (and associated residues in meat, poultry, milk, or eggs resulting from animals fed such feed) to all food commodities. EPA has completed it's initial review of the data submitted in support of this petition and is and is soliciting public comment on the data evaluation records, and a list of questions regarding human allergenicity assessment for non-digestible proteins expressed as plant-pesticides. This issue will also be one of the subjects of a FIFRA Science Advisory Panel (SAP) meeting in early February 2000.

B. What is the Agency's Authority for Taking this Action?

The Agency is soliciting input to aid in determining whether there is a reasonable certainty of no harm for the proposed expansion of the exemption from the requirement of a tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 9, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–32871 Filed 12–17–99; 9:17 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6511–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency ("EPA") on December 1, 1999, to address a lawsuit filed by the Natural Resources Defense Council, Environmental Defense Fund, Conservation Law Foundation, Clean Air Council, Natural Resources Council of Maine, and Sierra Club (collectively referred to as "NRDC"). This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses EPA's alleged failure to meet a mandatory deadline under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate federal implementation plans establishing attainment demonstrations for certain ozone nonattainment areas classified as serious or severe and located in the eastern part of the United States and to impose sanctions in those areas. *NRDC v. EPA*, No. 1:99CV02976 (D.D.C.).

DATES: Written comments on the proposed consent decree must be received by January 20, 2000.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344–A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the proposed consent decree are available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on December 1, 1999.

SUPPLEMENTARY INFORMATION: NRDC alleges that EPA has a mandatory duty to promulgate federal implementation plans (FIPs) and impose sanctions on 10 nonattainment areas located in 13 States and the District of Columbia. There are four areas that are classified as serious ozone nonattainment areas for the 1-hour ozone standard: Greater Connecticut located in Connecticut; Metropolitan Washington located in Washington, DC, Maryland and Virginia; Springfield/Western Massachusetts located in Massachusetts; and Atlanta located in Georgia. There are six areas classified as severe ozone nonattainment for the 1-hour ozone standard: New York-Northern New Jersey-Long Island located in Connecticut, New York and New Jersey; Philadelphia-Wilmington-Trenton located in Pennsylvania, Delaware, Maryland, and New Jersey; Baltimore located in Maryland; Houston-Galveston-Brazoria located in Texas; Chicago-Gary-Lake County located in Illinois and Indiana; and Milwaukee-Racine located in Wisconsin.

The proposed partial consent decree provides, in part, that EPA will promulgate full attainment FIPs by May 15, 2001 for the serious areas without fully approved attainment demonstration SIPs as of that date and will promulgate full attainment demonstration FIPs by June 14, 2002 for the severe areas without fully approved attainment demonstration SIPs as of that date. In addition, the consent decree provides for the FIP promulgation dates to be advanced (to February 28, 2001 for serious areas and July 31, 2001 for severe areas) if by May 31, 2000, EPA does not either (1) find that for purposes of transportation conformity the areas have adequate motor vehicle emissions budgets associated with submitted attainment demonstration SIPs, or (2) disapprove the submitted attainment demonstration SIPs. Finally, the consent decree provides that plaintiffs will file for dismissal of two lawsuits that are pending in the United States Court of Appeals for the District of Columbia Circuit and that were filed by some or all of the plaintiffs in the District Court

case. These two cases are: *Delaware Valley Citizens' Council for Clean Air* v. *Browner*, No. 96–1316 (D.C. Cir.) (challenge to EPA's findings of failure to submit certain portions of the attainment demonstration), and *Delaware Valley Citizens' Council for Clean Air* v. *Browner*, No. 98–1079 (D.C. Cir.) (challenge to EPA's "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS," issued by Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated December 29, 1997 (63 FR 8196 (Feb. 18, 1998)).

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final consent decree will be entered with the court and will establish deadlines for promulgation of federal implementation plans in the absence of approved state plans.

Dated: December 9, 1999.

Gary S. Guzy,

General Counsel.

[FR Doc. 99–32862 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6512–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Crews Plating Superfund site, with Mr. Kent McNair.

The settlement requires the settling party to pay a total of $27,301.44 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before January 20, 2000.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6713. Comments should reference the Crews Plating Superfund Site, Dallas, Dallas County, Texas, and EPA Docket Number 6–21–99, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Boydston, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–7376.

Dated: December 15, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 8.

[FR Doc. 99–33024 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Science and Technology Policy

Request for Comment on Proposed Statement of Principles of the Government-University Research Partnership

AGENCY: Office of Science and Technology Policy.

ACTION: Request for comment on proposed statement of principles of the government-university research partnership.

SUMMARY: An April 27, 1999 Presidential Memorandum directed that the National Science and Technology Council "in consultation with research universities and other stakeholders in the Federal science and technology enterprise, shall develop a statement of principles that clearly articulates the roles, responsibilities, and expectations of each of the partners and establishes a framework for addressing future issues as they arise. Ultimately, this statement of principles will serve to shape future discussions and guide policy development and decision making." President Clinton asked that this action be completed within twelve months of the date of the memorandum. The findings and recommendations contained in the NSTC report on Renewing the Federal Government-University Research Partnership for the 21st Century should provide the basis for proceeding. The report proposed a draft statement of principles developed by the NSTC and recommended that it be finalized in consultation with the interested community. As part of this process, this notice seeks public comment.

DATES: The Office of Science and Technology Policy welcomes comments on the proposed policy. In order to be assured consideration, comments must be postmarked no later than February 18, 2000.

ADDRESSES: Written comments should be mailed to Dr. Arthur Bienenstock, Associate Director for Science, Office of Science and Technology Policy, Washington, DC 20502. The entire NSTC report may be viewed electronically by going to the following web site: *http://www.whitehouse.gov/WH/EOP/OSTP/html/rand/index.htm*. In order to provide comments electronically, click on "Your comments," then on "Click here to provide your electronic comments."

FOR FURTHER INFORMATION CONTACT: Anne-Marie Mazza, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20502. Tel: 202–456–6040; Fax: 202–456–6027; e-mail: *amazza@ostp.eop.gov*.

SUPPLEMENTARY INFORMATION: In order for the partnership between the Federal government and the university community to thrive, there must be a clear understanding on the part of both parties of the goals of the partnership and the responsibilities of the partners. The following questions sometimes arise in consideration of this partnership: Why does the Federal government invest in university research? What is the role of graduate students in the research enterprise? On what basis are the costs of research allocated among the parties? Federal

laws, circulars, and regulations govern operational aspects of the government-university relationship in areas such as allowable costs, administrative procedures, compliance issues, and audit practices. Yet statements of the rationale, goals, and objectives of the public investment in university-based research remain implicit, or are dispersed in a variety of legislation and other policy documents. As long as this is so, the government-university partnership risks being defined primarily in an ad hoc manner, by detailed accounting, administrative, and financial management requirements, and not by broader national goals.

In addition to the Presidential Memorandum to the NSTC cited above, the President also released on April 27, 1999 the NSTC report on Renewing the Federal Government-University Research Partnership for the 21st Century. One of the recommendations contained in this report is the development of a statement of principles of the government-university partnership in research. A clearly articulated statement of the principles of the partnership will help clarify the roles, responsibilities, and expectations of each of the partners and establish a framework for addressing future issues as they arise. Ultimately, an agreed upon statement of principles also would serve to shape future discussions, to formulate policies, and to help guide decision-making. The process itself of engaging the government and university partners in a dialogue will increase mutual understanding and provide a good foundation for resolving complex issues in the future. The purpose of this notice is to help further this dialogue.

The NSTC report issued a proposed statement of the principles of the government-university partnership (see below). These were developed through interagency review and discussion that benefited greatly from input provided by the university community. Further dialogue is needed among all stakeholders before the principles are finalized.

The goals in developing a statement of principles are to help foster an environment that promotes scientific discovery, technological innovation, and the development of the next generation of scientists and engineers. The Federal government recognizes the importance to the nation of the American university system and is driven by a desire to sustain that special resource for maximum benefit to the nation. A statement of principles will help articulate these goals, and provide guidance for translating these goals into actions. In order to be most effective, these principles must be understood and agreed upon by the parties to it.

Below is the proposed statement of principles:

Proposed Statement of Principles of the Government-University Research Partnership

The following are guiding principles that govern interactions between the Federal government and universities that perform research.

1. Guiding Principles

• Research Is an Investment in the Future.

Government sponsorship of university research—including the capacity to perform research and the training of the next generation of scientists and engineers—is an investment in the future of the nation, helping to assure the health, security, and quality of life of our citizens. Government investments recognize that the expected benefits of research often accrue beyond the investment horizons of corporations or other private sponsors. Investments in research are managed as a portfolio, with a focus on aggregate returns; investments in individual research efforts that make up the portfolio are based on the prospects for their technical success, though not on a presumption that those outcomes can be predicted precisely.

• The Linkage Between Research and Education Is Vital.

The integration of research and education is the hallmark and strength of our nation's universities. Students (undergraduates as well as graduates) who participate in federally sponsored research grow intellectually even as they contribute to the research enterprise. Upon graduation, they are prepared to contribute to the advancement of national goals and to educate subsequent generations of scientists and engineers. Their intellectual development and scientific contributions are among the important benefits to the Nation of Federal support for research conducted at universities. There should be compelling policy reasons for creating or perpetuating financial or operational distinctions between research and education. Our scientific and engineering enterprise is further enhanced by the intellectual stimulation brought to campus by students from varying cultural, ethnic, and socioeconomic origins.

• Excellence Is Promoted When Investments are Guided by Merit Review.

Excellence in science and engineering is promoted by making awards on the basis of merit. Merit review assesses the quality of the proposed research or project and is often used in combination with a competitive process to determine the allocation of funds for research. Merit review relies on the informed advice of qualified individuals who are independent of those individuals proposing the research. A well-designed merit review system rewards quality and productivity in research, and can accommodate endeavors that are high-risk and have potential for high gain.

• Research Must Be Conducted with Integrity.

The ethical obligations entailed in accepting public funds and in the conduct of research are of the highest order and recipients must consider the use of these funds as a trust. Great care must be taken to "do no harm" and to act with integrity. The credibility of the entire enterprise relies on the integrity of each of its participants.

2. Operating Principles

The following operating principles are intended to assist agencies, universities, individual investigators, and auditing and regulatory bodies in implementing the guiding principles.

• Agency Cost Sharing Policies and Practices Must be Transparent.

As in any investment partnership, each partner contributes to the research endeavor. While the primary contribution of universities is the intellectual capital of the researchers' ideas, knowledge, and creativity, it is sometimes appropriate for universities to share in the costs of the research (and in some cases cost sharing is required by statute). Cost sharing can be appropriate when there are compelling policy reasons for it, such as in programs whose principal purpose is to build infrastructure and enhance an awardee's institution's ability to compete for future Federal awards. Cost sharing is rarely appropriate when an awardee is acting solely as a supplier of goods or services to the government since this would entail a university subsidy of goods purchased by the government. If agency funds are not sufficient to cover the costs of a research project, the agency and the university should re-examine the scope of the project, unless there are compelling policy reasons to require university cost sharing. Agencies should be clear about their cost sharing policies and announce when and how cost sharing will figure in selection processes, including explicit information regarding the amount of cost sharing expected.

• Partners Should Respect the Merit Review Process.

Excellence in science is promoted when all parties adhere to merit review

as the basis for distributing Federal funds for research projects and refrain from seeking Federal funds through non-merit-based means. Federal investments in research are made with the expectation that the research community will select promising research paths more productively and wisely by relying on merit review than can a process that bypasses merit review to directly fund a specific individual or institution. Success in obtaining funds outside the merit review system can be discouraging to researchers who participate in the process. Most significantly, bypassing merit review threatens to undermine research excellence. Merit review may be used in conjunction with other selection criteria to support agency or program goals.

• Agencies and Universities Should Manage Research in a Cost-Efficient Manner.

The goal of all those involved in sponsoring, performing, administering, regulating, and auditing university-based research and associated educational activities of the research enterprise should be to make maximum resources available for the performance of research and education. This goal can be accomplished by keeping agencies' and universities' costs of compliance with Federal requirements to the minimum required for good stewardship of Federal funds. For example, administrative requirements should rely on the least burdensome and least costly methods that can effectively provide needed stewardship. Universities should likewise manage their Federal grants as efficiently as possible.

• Accountability and Accounting Are Not the Same.

The principal measure of accountability must be research outcomes: have the researchers carried out a program of research consistent with their commitment to the government? Financial accountability is also important and should assure research sponsors that Federal funds have been used properly to achieve the goals of the research in a cost effective manner. Federal agencies must ensure that financial accountability requirements are limited to those that are reasonably required for good stewardship and that each measure adds sufficient value in terms of increased stewardship to justify the burdens and costs it imposes on universities and agencies.

• The Benefits of Simplicity in Policies and Practices Should Be Weighed Against the Costs.

The costs and benefits of simplicity in regulatory, administrative, cost accounting, and auditing practices should be assessed against the costs and benefits of accommodating diverse Federal programs and the multiplicity of university organizational structures in determining best policies and practices. "One size fits all," or uniformity for uniformity's sake can unintentionally increase requirements and burdens, but a multiplicity of practices can also be costly. These tradeoffs should be carefully assessed whenever changes in government-wide or agency-specific policies and practices are proposed.

• Change Should be Justified by Need and the Process Made Transparent.

The process of change in the government-university partnership should be made as transparent as possible. Modifications in administrative, regulatory, or auditing requirements, or in cost sharing expectations, should be kept as infrequent as possible, consistent with the need to respond to changing circumstances. The impact of change in one part of the system should be understood relative to the whole. Reasonable time should be allowed for both agencies and universities to adapt to change.

Dated: December 15, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–32962 Filed 12–20–99; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 99–332; FCC 99–348]

Making the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Order portion of this document states that the Commission generally holds in abeyance and will not process pending applications for public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles. The Commission takes this action to stop processing applications while it considers a proposal to utilize the frequency 156.250 MHz for port operations in the Los Angeles and Long Beach area.

DATES: Effective November 15, 1999.

FOR FURTHER INFORMATION CONTACT: James Shaffer of the Commission's Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Notice of Proposed Rule Making and Order* FCC 99–348, adopted on November 15, 1999, and released on November 19, 1999. The full text of this *Notice of Proposed Rule Making and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W. Washington, D.C. 20037.

2. Effective upon the adoption date of this *Notice of Proposed Rule Making and Order,* no applications for public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles will be accepted for filing during the pendency of the *Notice of Proposed Rule Making and Order.* Any applications received on or after this date will be returned as unacceptable for filing.

3. Our decision to impose the freeze on Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedures Act. *See* 5 U.S.C. 553(b)(A), (d); Kessler v. FCC, 326 F.2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, or making the freeze effective 30 days after publication in the **Federal Register**, because to do so would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purpose of the freeze. *See* 5 U.S.C. 553(b)(A), (d)(3).

Ordering Clauses

4. Authority for issuance of this *Notice of Proposed Rule Making and Order* is contained in Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

5. NOTICE IS HEREBY GIVEN and COMMENT IS SOUGHT on the proposed regulatory changes described in the *Notice of Proposed Rule Making and Order,* as set forth in Proposed rules.

6. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed*

Rule Making and Order, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

7. IT IS FURTHER ORDERED that effective upon the release date of this *Notice of Proposed Rule Making and Order*, no applications will be accepted for filing for the public safety frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude. This freeze will continue until the Commission makes an announcement that such applications acceptance will resume.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–32930 Filed 12–20–99; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3153–EM]

Massachusetts; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Massachusetts (FEMA–3153–EM), dated December 6, 1999, and related determinations.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 13, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–33010 Filed 12–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 14, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. U.S. Trust Corporation, New York, New York, and NCT Holdings, Inc. Greensboro, North Carolina; to acquire 100 percent of the voting shares of U.S. Trust Company of North Carolina, Greensboro, North Carolina. NCT Holdings, Inc., also has applied to become a bank holding company.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Wewahitchka State Bank Employee Stock Ownership Plan,Wewahitchka, Florida; to acquire 43 percent of the voting shares of Gulf Coast Community Bancshares, Inc., Wewahitchka, Florida, and thereby indirectly acquire Wewahitchka State Bank, Wewahitchka, Florida.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Valley View Bancshares, Inc., Overland Park, Kansas; to acquire 90 percent of the voting shares of Bank of Lee's Summit, Lee's Summit, Missouri.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Bank of Whitman ESOP, Colfax, Washington; to acquire 44 percent of the voting shares of Whitman Bancorporation, Colfax, Washington, and thereby indirectly acquire Bank of Whitman, Colfax, Washington.

In connection with this application, Applicant also has applied to acquire B.O.W.F.I., Inc., Colfax, Washington, and thereby engage in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32932 Filed 12–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Establishment of the Federal Trade Commission Advisory Committee on Online Access and Security and Request for Nominations

AGENCY: Federal Trade Commission.

ACTION: Notice and request for nominations.

SUMMARY: The Federal Trade Commission ("Commission" or "FTC") has established an Advisory Committee on Online Access and Security ("Advisory Committee"). The purpose of the Advisory Committee is to provide advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them and maintaining adequate security for that information. The Commission also seeks nominations of individuals for appointment to the Advisory Committee.

DATES: The Advisory Committee will meet on February 4, 2000; February 25, 2000; March 31, 2000; and April 28, 2000. Nominations for Advisory Committee membership must be submitted on or before January 5, 2000.

ADDRESSES: The Advisory Committee will meet in Room 432, Federal Trade

Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Advisory Committee meetings will be open to the public. Parties interested in submitting nominations should send an original and two copies to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Nominations should be captioned "Advisory Committee on Online Access and Security—Nomination, P004807." To enable prompt review and public access, paper submissions should be accompanied by a version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the submitter, the Advisory Committee caption, and the name and version of the word processing program used to create the document. Alternatively, nominations may be submitted to the following email address: advisorycommittee@ftc.gov. The public may also submit comments in the manner designated for nominations.

FOR FURTHER INFORMATION CONTACT: Laura Mazzarella, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3424, email lmazzarella@ftc.gov; or Hannah Stires, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3178, email hstires@ftc.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 41 *et seq.*; 5 U.S.C. App. §§ 1–15; 16 CFR Part 16.

In accordance with the requirements of Section 9 of the Federal Advisory Committee Act, 5 U.S.C. App. § 9(a)(2), and Part 16 of the Commission's regulations, 16 CFR 16.5(d), the Commission has directed publication of this notice that it has established an Advisory Committee on Online Access and Security. The Commission certifies that creation of the Advisory Committee is necessary and in the public interest because it will further the Commission's work in fostering and evaluating self-regulatory efforts to protect consumer privacy online. By this Notice, the Commission is also requesting nominations for members to serve on the Advisory Committee.

1. Background

The Commission has been involved in addressing online privacy issues for almost five years.[1] Throughout its online privacy efforts, the Commission's goal has been to understand the emerging online marketplace and its information practices, to assess the impact of these practices on consumers, and to encourage and facilitate effective self-regulation as the preferred approach to protecting consumer privacy online.

The Commission has issued two reports to Congress describing the status of domestic commercial Web sites' implementation of fair information practices. In Privacy Online: A Report to Congress (June 1998) ("1998 Report"), the Commission described the well-settled fair information practice principles of (1) Notice/Awareness; (2) Choice/Consent; (3) Access/Participation; (4) Integrity/Security; and (5) Enforcement/Redress. The 1998 Report assessed existing self-regulatory efforts in light of these fair information practice principles and set out findings of the Commission's extensive survey of commercial Web sites' information practices. The 1998 Report concluded that an effective self-regulatory system had yet to emerge and that additional incentives were required in order to ensure that consumer privacy would be protected.[2]

In a follow-up report entitled Self Regulation and Privacy Online: A Report to Congress (July 1999) ("1999 Report"), the Commission noted that a recent Georgetown University study had found a significant improvement in the number of Web sites meeting the fair information practice principle of notice/awareness. The Commission also noted that significant challenges remain for industry self-regulation, particularly the full implementation of all fair information practice principles identified in the 1998 Report. Recognizing that providing reasonable access to and adequate security for personal information collected from and about online consumers raises a number of implementation issues for online businesses, the Commission announced its intention to convene a task force to examine these issues.[3]

2. The Advisory Committee

Pursuant to Section 9 of the Federal Advisory Committee Act, 5 U.S.C. App. § 9(c), the Commission has charged the Advisory Committee with providing advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them and maintaining adequate security for that information. The Advisory Committee will consider the parameters of reasonable access to personal information and adequate security and report to the Commission on options for implementation of these information practices.

The Advisory Committee will consider, among other things, whether the extent of access provided by Web sites should vary with the sensitivity of the personal information collected and/or the purpose for which such information is collected; whether the difficulty and costs of retrieving consumers' data should be considered; whether consumers should be provided access to enhancements to personal information collected directly from them, such as inferences about their preferences and information about them derived from other databases; appropriate and feasible methods for verifying the identity of individuals seeking access; whether a reasonable fee should be assessed for access, and if so, what a reasonable fee would be; and whether limits should be placed on the frequency of requests for access, and if so, what those limits should be.

The Advisory Committee will also consider how to define the standards by which the adequacy of measures taken by Web sites to protect the security of personal information collected online may be judged; what might constitute reasonable steps to assure the integrity of this information; and what managerial and technical measures should be undertaken to protect this information from unauthorized use or disclosure.

The Advisory Committee will conduct its work in accordance with the provisions of the Federal Advisory Committee Act. The agency will provide

---

[1] The Commission held its first public workshop on privacy in April 1995. Since then, the Commission has held a series of hearings and workshops focusing on online privacy, including most recently a public workshop on Online Profiling sponsored jointly with the Department of Commerce on November 8, 1999. The Commission and its staff have also issued several reports addressing consumer protection issues, including online privacy, in the electronic marketplace. See, e.g., Individual Reference Services: A Federal Trade Commission Report to Congress (December 1997); FTC Staff Report: Public Workshop on Consumer Privacy on the Global Information Infrastructure (December 1996); FTC Staff Report: Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech, Global Marketplace (May 1996).

[2] With respect to the protection of children's privacy online, the Commission recommended that Congress enact legislation. 1998 Report at 42–43. Congress subsequently enacted the Children's Online Privacy Protection Act of 1998, 15 U.S.C. § 6501 *et seq.*, and authorized the Commission to promulgate regulations implementing the Act. The Commission's final rule was issued in October 1999. 16 CFR Part 312 (1999).

[3] 1999 Report at 14.

necessary support services to the Advisory Committee. The duties of the Advisory Committee will be solely advisory; determinations of actions to be taken and policy to be expressed with respect to matters upon which the Advisory Committee provides advice or recommendations shall be made solely by the Commission.

The Advisory Committee will meet in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, on February 4, 2000; February 25, 2000; March 31, 2000; and April 28, 2000. Meetings of the Advisory Committee will be open to the public. Meetings of subgroups of the full Advisory Committee will likely occur more frequently. Subgroups will report to the Advisory Committee only. The Advisory Committee will present its written report describing options for implementing reasonable access to, and adequate security for, personal information collected online, and the costs and benefits of each option, by May 15, 2000. The Advisory Committee will conclude its work on May 31, 2000.

Fifteen days after publication of this notice in the **Federal Register**, a copy of the Advisory Committee's charter will be filed with the Secretary of the Federal Trade Commission, the Committee on Commerce, Science, and Transportation of the United States Senate, and the Committee on Commerce of the United States House of Representatives. A copy of the charter will also be furnished to the Library of Congress and posted on the Commission's Web site at www.ftc.gov. The charter will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Federal Trade Commission regulations, 16 CFR 4.9, Monday through Friday between the hours of 8:30 a.m. and 5 p.m. in Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The Commission will provide additional information about Advisory Committee meetings, including meeting times and agendas, in the **Federal Register** and on the Commission's Web site, www.ftc.gov.

3. Nominations for Advisory Committee Membership

The Advisory Committee will include approximately thirty members who are appointed for a limited term, to begin on February 4, 2000, and to end on May 31, 2000, and who serve at the discretion of the Commission. In selecting Advisory Committee members, the agency will appoint individuals who can represent effectively the broad range of interests affected by commercial Web sites' collection of personal information from and about online consumers, including online businesses, trade associations, privacy and consumer groups, and experts in interactive technology.

Nominees should have expertise in the issues and/or technologies relevant to the implementation of fair information practices by commercial Web sites. Nominees must be able to attend all Advisory Committee meetings and to participate in good faith in the tasks undertaken by the Advisory Committee. Members of the Committee will serve without compensation and will bear the cost of their own travel-related expenses. Employees of the United States Government are not eligible to serve as members of the Advisory Committee.

Advisory Committee members will be selected on the basis of the following criteria:

1. The individual's participation would promote a balance of points of views represented and functions to be performed by the Advisory Committee.

2. The individual has expertise in or knowledge of the issues that are the focus of the Advisory Committee's work.

3. The individual adequately reflects the views of the relevant affected interest(s).

Interested persons may nominate themselves or others for Advisory Committee membership. Nominations should include a summary of the nominee's qualifications and of the interests he or she can represent and should be submitted in the form and manner described above on or before January 5, 2000. At its discretion, the agency may also appoint Advisory Committee members according to the above criteria in order to insure that committee membership is balanced in terms of points of view and that the relevant interests are represented. The agency will notify members of their selection as soon as possible after January 20, 2000.

By direction of the Commission.

Donald S. Clark,

Secretary of the Commission.

[FR Doc. 99–33015 Filed 12–20–99; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Expansion of Small Business Participation in Ten (10) Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is publishing its revised list of the ten (10) targeted industry categories for expanded small business participation in acquisitions. Title VII of the "Business Opportunity Development Reform Act of 1988" (Public Law 100–656) required GSA to implement a program to expand small business participation in the agency's acquisitions of selected products and services in 10 industry categories where historically small business participation had been low despite adequate numbers of small business contractors in the economy. Criteria for determining products and services in the ten (10) targeted industry categories were (1) the products or services were purchased in substantial quantities by the Federal Government, (2) less than ten (10) percent annually was purchased from small business concerns, and (3) the industries had significant amounts of small business productive capacity that had not been utilized by the Government. The Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the program through September 30, 1996. In 1997, the Small Business Reauthorization Act of 1997, was enacted into law. As a result, the program is extended indefinitely. GSA's past participation in awarding contracts to small businesses in selected industry categories targeted for expansion has been successful by either meeting or exceeding 10 percent. Therefore, GSA recognized the need to select ten (10) new targeted industry categories. The Office of Federal Procurement Policy (OFPP) directed agencies in the **Federal Register** dated June 2, 1999, to publish an announcement to solicit public comments on its agency program for expansion of small business participation in the targeted categories. GSA's program includes the following selected targeted industry categories:

SIC	Description
2392 ..	House Furnishings.
2393 ..	Mattresses and Bedsprings.
2621 ..	Paper Mills.
2656 ..	Sanitary Food Containers.

SIC	Description
2679 ..	Converted Paper Products.
3519 ..	Internal Combustion Engines.
3631 ..	Household Cooking Equipment.
3633 ..	Household Laundry Equipment.
3951 ..	Pens and Mechanical Pencils.
4813 ..	Telephone Communications (Except Radio).

DATES: Public comments on GSA's program for expansion of small business participation in the above targeted categories should be submitted in writing to the address shown below on or before January 5, 2000.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, GSA Acquisition Policy Division, (202) 219–0202.

Dated: December 16, 1999.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–33077 Filed 12–20–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality (AHRQ), formerly known as the Agency for Health Care Policy and Research (AHCPR).

ACTION: Notice.

SUMMARY: This notice announces that the Agency for Healthcare Research and Quality (AHRQ) is planning to request the Office of Management and Budget (OMB) to allow a proposed information collection of the "1999–2001 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC)" In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 13, 1999 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 20, 1999.

ADDRESSES: Written comments should be submitted to the OMB Desk Office at the following address: Alison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

"1999–2001 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC)."

The MEPS–IC, an annual survey of the characteristics of employer-sponsored health insurance, was first conducted by AHRQ in 1997, seeking data pertaining to the calendar year 1996. The survey has since been conducted annually for calendar years 1997 and 1998.

This survey will be conducted for AHRQ by the Bureau of the Census using a sample comprised of:

1. Employers selected from Census Bureau lists of private sector employers and government employers (known as the List Sample); and

2. Employers identified by respondents to the MEPS-Household Component (MEPS–HC) for the same calendar year (known as the Household Sample).

Data to be collected from each employer will include a description of the business (e.g., size, industry) and description of health insurance plans available, plan enrollments, total plan costs and costs to employees.

Data Confidentiality Provisions

The MEPS–IC List Sample data confidentiality is protected under section 9 of Title 13, United States Code (the U.S. Census Bureau statute). MEPS–IC Household Sample data confidentiality is protected under sections 308(d) and 903(c) of the Public Health Service Act (42 U.S.C. 242m and 42 U.S.C. 299a–1). Section 308(d), the confidentiality statute of the National Center for Health Statistics, is applicable because the MEPS–HC sample is derived from respondents of an earlier NCHS survey. Section 903(c) is the confidentiality statute that applies to all identifiable data collected pursuant to AHRQ's statutory authorities. All data products listed below must fully comply with the data confidentiality statute under which the raw data was collected.

Data Products

Data will be produced in three forms: (1) Files derived from the Household Sample, which can be linked back to other information from household respondents in the MEPS–HC; (2) files containing employer information from the List Sample (available for use by researchers at the Census Bureau's Research Data Centers); and (3) a large compendium of tables of estimates based on the List Sample (available on the AHRQ website). These tables will contain descriptive statistics, such as, numbers of establishments offering health insurance, average premiums, average contributions, total enrollments, numbers of self insured establishments and other related statistics for a large number of population subsets defined by firm size, state, industry and establishment characteristics, such as, age, profit/nonprofit status and union/nonunion.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health care offerings;
- Producing estimates to support the Bureau of Economic Analysis within the Department of Commerce and the Health Care Financing Administration in their respective calculations of health care expenditures for the Gross Domestic Product and National Health Accounts (annual totals for various categories of health care expenditures for the United States);
- Producing national and State estimates of spending on employer-sponsored health insurance to study the results of national and State health care policies;
- Supplying data for modeling the demand for health insurance; and
- Providing data on health plan choices, costs, and benefits that can be linked back to households' use of health care resources as were reported in the MEPS–HC survey for studies of the consumer health care selection process.

These data will provide the basis for researchers to address important questions for the benefit of employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. The Census Bureau's first contact with employers will be made by telephone.

This contact will solicit and gather information on the availability of health

insurance from that employer and essential persons to contact. Based upon this information, Census will mail a questionaire to the employer. In order to assure high response rates, Census will follow-up with a second mailing at an acceptable interval, followed by a telephone call to collect data from those who have not responded by mail. For large organizational respondents with high burdens, such as State employers and very large firms, Census will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats and use of special forms.

Estimated Annual Respondent Burden

Annual number of respondents	Estimated hours per respondent	Estimated total annual burden hours	Estimated annual cost to the government
33,839	.5	19,369	$7,000,000

Estimates of annual respondent burden are based upon experience from collection of the previous three MEPS—IC surveys.

Copies of these proposed collection plans and instruments can be obtained from the AHRQ Reports Clearance Officer (see above).

Dated: December 15, 1999.

John M. Eisenberg,

Director.

[FR Doc. 99–32942 Filed 12–20–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–5322]

United States Department of Agriculture, Food Safety and Inspection Service; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the United States Department of Agriculture, Food Safety and Inspection Service has filed a petition proposing that the food additive regulations be amended to increase the maximum dose of ionizing radiation permitted in the treatment of poultry products, include specific language intended to clarify the poultry products covered by the regulations, and remove the limitation that any packaging used during irradiation of poultry shall not exclude oxygen.

FOR FURTHER INFORMATION CONTACT: Rudaina H. Alrefai, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 100 C St. SW., Washington, DC 20204, 202–418–3034.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9M4696) has been filed by the United States Department of Agriculture, Food Safety and Inspection Service, 300 12th St. SW., rm. 112, Washington, DC 20250. The petition proposes to amend the food additive regulations in § 179.26 *Ionizing radiation for the treatment of food* (21 CFR 179.26) in item 6. of the table in paragraph (b) to: (1) Increase the maximum dose of ionizing radiation permitted in the treatment of poultry products (2) include specific language intended to clarify the poultry products covered by the regulations and (3) remove the limitation that any packaging used during irradiation of poultry shall not exclude oxygen.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 3, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–33004 Filed 12–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5125]

Draft Guidance on the Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing." This guidance is neither final nor is it in effect at this time. This guidance provides labeling recommendations for over-the-counter sample collection systems for drugs of abuse testing and is being issued as a result of FDA's proposed reclassification of over-the-counter sample collection systems for drugs of abuse testing as class I restricted devices.

DATES: Submit written comments concerning this draft guidance by March 22, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on this draft guidance to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Joseph Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 5, 1998 (63 FR 10792), FDA published a proposed rule that would reclassify over-the-counter (OTC) sample collection systems for drugs of abuse testing from class III (premarket approval) to class I (general controls),

and would exempt them from the premarket notification (510(k)) and current good manufacturing practice (CGMP) requirements. The proposal would also restrict these devices under section 520(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(e)) to require the following: (1) The laboratory test(s) incorporated into these systems would be required to have been cleared, approved, or otherwise recognized by FDA as accurate and reliable for laboratory use; (2) the laboratory performing the underlying test(s) must be able to reliably perform the necessary screening and confirmatory tests; and (3) the samples must be adequately identified to avoid mix-ups and the test sample collection system must be accurately labeled so that consumers can readily use it. The draft guidance will help manufacturers meet this third criterion if the regulation becomes final and also can be used by manufacturers currently marketing these products under FDA's Interim Policy regarding "Parents' Access to Tests for Drugs of Abuse." This draft guidance also addresses the need to provide consumers with access to professional assistance in interpreting/understanding test results and counseling referrals.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on labeling of over-the-counter sample collection systems for drugs of abuse testing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the draft guidance entitled "Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing" via your fax machine; call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1154) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes the draft guidance entitled "Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing" will be available at http://www.fda.gov/cdrh/ggpmain.html#docs.

IV. Paperwork Reduction Act of 1995

The information collection provisions referred to in this guidance have been approved under OMB control number 0910–0368. This approval expires April 30, 2001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

V. Comments

Interested persons may, on or before March 22, 2000, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 10, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–33002 Filed 12–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the PubMed Central National Committee (Committee).

This Committee will advise the Director, NIH, the Director, National Library of Medicine, and the Director, National Center for Biotechnology Information, on the content and operation of the PubMed Central repository. The Committee will establish criteria to certify groups submitting materials to the system, monitoring the operation of the system, and ensuring that PubMed Central evolves and remains responsive to the needs of researchers, publishers, librarians and the general public.

Unless renewed by appropriate action prior to its expiration, the charter for the PubMed Central National Advisory Committee will expire two years from the date of establishment.

Dated: December 15, 1999.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 99–32966 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

Date: January 5, 2000.

Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: 6705 Rockledge Drive, suite 6018, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: D. G. Patel, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0824.
(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33084 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Development of Improved HIV Risk Behavior Questionnaire and Interview"
Date: January 5, 2000.
Time: 9:30 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Prevention Training".
Date: January 12, 2000.
Time: 9:30 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "INVEST".
Date: January 19, 2000.
Time: 9:30 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Measurement Modules for Prevention Interventions".
Date: January 26, 2000.
Time: 9:30 a.m. to 10:30 a.m.
Agenda: To review and evaluate contract proposals.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Develop Prevention Research Dissemination".
Date: January 26, 2000.
Time: 10:30 a.m. to 3 p.m.
Agenda: To review and evaluate contract proposals.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program review, national Institutes of Health, DHHS, 6001 Executive Boulevard, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32968 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review of P01—Teleconference.
Date: January 13, 2000.
Time: 11:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Gateway Building, 7201 Wisconsin Avenue, Suite 2c212, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: William A. Kachadorian, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.
(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 10, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32969 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 J2.

Date: January 7, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 10, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32970 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: January 13–15, 2000.

Time: 7:30 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Juliana Hotel, 590 Bush Street, San Francisco, CA 94108.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Bulding, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93,821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield.

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33082 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee A.

Date: March 15, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33083 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel Dental, Oral and Craniofacial Data Resource Center.

Date: January 13, 2000.

Time: 9 am to 1 pm.

Agenda: To review and evaluate contract proposals.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, Phd., Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33085 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel NHAAP Phase II Contract Review.

Date: January 27, 2000.

Time: 10:30 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

Contact Person: Peter Clepper, Program Officer, National Library of Medicine, Extramural Programs, Rockledge One, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33081 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1999.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edmund Copeland, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 1999.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 21, 1999.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 21, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John L. Bowers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 21, 1999.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edmund Copeland, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32967 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 4, 2000.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 6, 2000.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Leonard Jakubczak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 7, 2000.
Time: 2:45 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Carl D. Banner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 1999.

LaVerne, Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32963 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 15, 1999.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32964 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 20, 1999.
Time: 1:00 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892 (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 21, 1999.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32965 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC 1.

Date: December 17, 1999.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33086 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 41226]

Public Land Order No. 7421; Partial Revocation of Secretarial Order Dated November 24, 1933; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 40 acres of public land withdrawn for the Bureau of Land Management's Public Water Reserve No. 107, Interpretation No. 192. The land does not qualify for a public water reserve and the revocation is needed to permit disposal of the land through exchange. With this revocation, there is no remaining land withdrawn under this Secretarial order in the state of Montana. The land has been open to metalliferous mining and mineral leasing under the terms of the withdrawal, but is temporarily closed to surface entry and all mining due to a pending legislated land exchange.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Russ Sorensen, Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–2337 or Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated November 24, 1933, which withdrew public land for the Bureau of Land Management's Public Water Reserve No. 107, Interpretation No. 192, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

T. 13 S., R. 1 E.,
Sec. 18, NE¼SE¼.

The area described contains 40 acres in Beaverhead County.

2. The above-described land is hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

Dated: December 1, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–32973 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 78501]

Public Land Order No. 7422; Withdrawal of National Forest System Lands for the Diamond Fork System, Bonneville Unit of the Central Utah Project; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,795 acres of National Forest System lands from location and entry under the United States mining laws, for a 20-year period, for the Department of the Interior, Central Utah Project Completion Act Office to protect the Diamond Fork System, Bonneville Unit of the Central Utah Project. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Diamond Fork System, Bonneville Unit of the Central Utah Project:

Salt Lake Meridian

Uinta National Forest

T. 8 S., R. 5 E.,
Sec. 1;
Sec. 2, lots 1, 2, 7, and 8;
Sec. 12, E½SE¼;
Sec. 14, S½SE¼;
Sec. 20, E½NE¼SE¼ and SE¼SE¼;
Sec. 21, S½NE¼, E½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 22, NE¼, NE¼NW¼, S½NW¼, N½SW¼, and N½SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼, SE¼NW¼, and S½;
Sec. 33, SW¼NW¼.

The areas described aggregate approximately 2,795 acres in Utah County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: December 1, 1999.

John Berry,

Assistant Secretary of the Interior,

[FR Doc. 99–32972 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Simplified Standard Concession Contracts

ACTION: Proposed National Park Service simplified standard concession contracts.

SUMMARY: The National Park Service (NPS) authorizes certain business entities to operate concessions in areas of the national park system. The agreements embodying these authorizations consist primarily of standard language that incorporate NPS terms and conditions established by law and prudent contract administration. In 1998, Public Law 105–391 was enacted which in many significant ways affects the content of concession contracts to be entered into after its effective date. On September 3, 1999, NPS published a proposed new standard concession contract (Category I contract) reflecting the requirements of the new law, as well as a variety of improvements NPS wishes to make to its standard concession contract, including a new organizational structure for the sake of clarity.

Under this notice, NPS proposes two simplified versions of its proposed standard concession contract (Category II and Category III contracts) that will be used for smaller concession operations.

NPS proposes the following distinctions between the three contract categories:

Category I contracts will be used in situations where the concessioner will be required or allowed to construct or install capital improvements on park area lands, thereby acquiring a compensable interest in real property on park area lands. Category I contracts will also require that the concessioner perform capital maintenance on assigned concession facilities, as necessary, and will require the establishment of a maintenance reserve for this purpose.

Category II contracts will be used in situations where a concessioner will operate on assigned land or in an assigned concession facility, but will not allow the concessioner to construct or install capital improvements or perform capital maintenance and, therefore, do not involve the concessioner's obtaining a compensable interest in real property located on park area lands. As an example, a Category II contract might be used to authorize a gift shop operation in a portion of a park visitor center, or a snack bar operation in an assigned building.

Category III contracts will be used in situations where no lands or buildings are assigned to the concessioner; consequently, the concessioner will not be allowed to construct or install any capital improvements or perform capital maintenance and the concessioner will not obtain any compensable interest in real property located on park area lands. Many outfitter/guide operations will be authorized by Category III contracts.

NPS, although not required to do so by law, seeks public comments on the proposed simplified standard concession contracts (Category II and Category III contracts) to assist it in the development of final versions as a matter of public policy.

DATES: NPS will accept written comments on the proposed simplified concession contracts on or before January 20, 2000.

ADDRESSES: Comments should be addressed to: Concession Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 "C" Street, NW, Washington, D.C. 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION: Public Law 105–391, enacted on November 13, 1998, among other matters, amended the statutory policies and procedures under which NPS operated its concession program. The new law requires adoption of new regulations governing the award, content and management of concession contracts. On June 30, 1999, NPS published for public comment proposed regulations implementing the new law. On September 3, 1999, NPS published for public comment a proposed new standard concession contract. As indicated in the September 3, 1999, public notice, after adoption of the new regulations and the new standard contract, NPS intended to develop and adopt a simplified ("short-form") concession contract that will be used for smaller concession operations that do not involve the concessioner's obtaining a compensable interest in real property located on park area lands. However, based on its initial review of comments in response to the proposed regulations and standard concession contract, NPS has determined that it would be appropriate to develop two simplified contract categories and publish both simplified concession contracts for public comment prior to the adoption of final regulations and the new standard concession contract. Any changes that may be made to the standard concession contract as a result of public comment will be incorporated, to the extent applicable, in the simplified concession contracts. NPS plans to adopt the new regulations, the new standard concession contract and the simplified concession contracts contemporaneously after due consideration of all public comments received on these documents.

Category II Contract

United States Department of the Interior

National Park Service

_____

[Name of Area]

_____

[Site]

_____

[Type of Service]

Concession Contract No. _____

_____

[Name of Concessioner]

_____

[Address, including email address and phone number]

Doing Business As _____

Covering the Period ____ ____ through

_____

Category II—Concession Contract

Table of Contents

Identification of the Parties
Purpose and Authorities
Sec. 1. Term of Contract
Sec. 2. Definitions
Sec. 3. Services and Operations
A. Required and Authorized Visitor Services
B. Operation and Quality of Operation
C. Operating Plan [OPTIONAL]
D. Merchandise and Services
E. Rates
F. Impartiality as to Rates and Services
Sec. 4. Concessioner Personnel
Sec. 5. Legal, Regulatory, Policy Compliance
A. Legal, Regulatory, Policy Compliance
B. Notice
C. How and Where to Send Notice
Sec. 6. Environmental and Cultural Protection
A. Environmental Protection
B. Protection of Cultural and Archeological Resources
Sec. 7. Interpretation of Area Resources
A. Concessioner Obligations
B. Director Review of Content
C. Provision of Interpretation Not Exclusive
Sec. 8. Concession Facilities Used in Operation by Concessioner
A. Assignment of Concession Facilities
B. Concession Facilities Withdrawals
C. Effect of Withdrawal
D. Right of Entry
E. Personal Property
F. Condition of Concession Facilities

G. Utilities
Sec. 9. Maintenance
A. Maintenance Obligation
B. Maintenance Plan [Optional]
Sec. 10. Fees
A. Franchise Fee
B. Payments Due
C. Interest
Sec. 11. Indemnification and Insurance
A. Indemnification
B. Insurance in General
C. Commercial Public Liability
D. Property Insurance
Sec. 12. Bonds and Liens
A. Bonds
B. Liens
Sec. 13. Accounting Records and Reports
A. Accounting System
B. Annual Financial Report
C. Other Financial Reports
Sec. 14. Other Reporting Requirements
A. Insurance Certification
B. Environmental Reporting
C. Miscellaneous Reports and Data
Sec. 15. Suspension and Termination
A. Suspension
B. Termination
C. Notice of Bankruptcy or Insolvency
D. Requirements in the Event of Termination
E. Removal of Personal Property
Sec. 16. Assignment, Sale or Encumbrance of Interests
Sec. 17. General Provisions
Sec. 18. Special Provisions [Optional]
Exhibits
Exhibit "A": Nondiscrimination
Exhibit "B": Assigned Land, Real Property Improvements
Exhibit "C": Assigned Government Personal Property
Exhibit "E": Insurance Requirements
Exhibit "F": Maintenance Plan [OPTIONAL]
Exhibit "G": Operating Plan [OPTIONAL]
Exhibit "X": 36 CFR Part 51

[Corporation]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, a corporation organized and existing under the laws of the State of _____ doing business as *hereinafter* referred to as the "Concessioner":

[Partnership]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director", and *of* _____, _____, and _____ of, partners, doing business as, pursuant to a partnership agreement dated _____, with the principal place of business at _____, hereinafter referred to as the "Concessioner":

[Sole Proprietorship]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, an individual of, doing business as _____, hereinafter referred to as the "Concessioner":

Witnesseth

That whereas, [Name of Park, Recreation Area, etc.] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director;

Now, therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (P.L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____ ("CONTRACT") shall be effective as of _____, and shall be for the term of _____ (____) years from _____, 20____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and/or protection of public health and safety.

(b) "Area" means the property within the boundaries of [Name of Park Unit].

(c) "Capital Improvement" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this CONTRACT.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT, all real property improvements assigned to the Concessioner under this Contract, including without limitation all government personal property assigned to the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.

(e) "Director" means the Director of the National Park Service and his duly authorized representatives unless otherwise indicated.

(f) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each, of which is hereby made a part of this CONTRACT.

(g) "Gross Receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(i) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(ii) Charges for employees' meals, lodgings, and transportation;

(iii) Cash discounts on purchases;

(iv) Cash discounts on sales;

(v) Returned sales and allowances;

(vi) Interest on money loaned or in bank accounts;

(vii) Income from investments;

(viii) Income from subsidiary companies outside of the Area;

(ix) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(x) Sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(xi) Receipts from the sale of handcrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether

provided by; the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(h) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever.

(i) "Leasehold Surrender Interest" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this CONTRACT.

(j) "Real Property Improvements" means real property other than land, including, but not limited to, capital improvements.

(k) "Superintendent" means the manager of the Area.

(l) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and authorized to provide by section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) *Required Visitor Services.* The Concessioner is required to provide the following visitor services during the term of this CONTRACT:

[Provide detailed description of required services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used. A provision stating "The Concessioner may provide services incidental to the operations authorized hereunder at the request and written approval of the Director" is acceptable.]

(2) *Authorized Visitor Services.* The Concessioner is authorized but not required to provide the following visitor services during the term of this CONTRACT:

[Provide detailed description of authorized services.]

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. The Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(c) Operating Plan [OPTIONAL—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit "G." The Director in his discretion, after consultation with the Concessioner, may make modifications to the initial Operating Plan provided that these modifications shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All material, regardless of media format (*i.e.* printed, electronic, broadcast media), provided to the public by the Concessioner, including promotional material, must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that all gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with rate approval procedures and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) In providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit "A."

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify Concessioner's complimentary or reduced rate policies and practices.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those identified in Exhibit "A."

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be

identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants for employment to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall hire, to the greatest extent possible, people who are both interested in serving the public in a national park environment and interested in being positive contributors to the park's purpose.

(f) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(g) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(h) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any employee housing within the Area.

(i) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(j) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that violates the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this CONTRACT, shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Protection

(1) In addition to complying with all Applicable Laws pertaining to the protection of natural resources within the area, the Concessioner will conduct its operation, construction, maintenance, acquisition, and provision of visitor services in a manner that prevents or reduces environmental degradation and that promotes the use of environmentally beneficial products. The Concessioner will develop, pursuant to guidelines provided by the Director, and carry out, to the satisfaction of the Director, a documented environmental monitoring program or programs to ensure that park resources affected by concessioner activities under this CONTRACT are not unduly impaired. The Concessioner shall be financially responsible for environmental audits that may be required by the Director for each three-year period of this CONTRACT.

(2) The Concessioner shall obtain the Director's approval prior to using any chemicals, pesticides, any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(3) The Concessioner shall monitor, test, maintain, repair, upgrade, replace, remove, or mitigate, in accordance with Applicable Laws and in accordance with the requirements of the Director:

(i) Any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product on or to the Area, including soil, surface water or groundwater;

(ii) Any materials, equipment, and facilities associated with such discharge, release or threatened release; or

(iii) any materials, equipment and facilities used in the handling, storage, disposal, transport or other use of any such hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) The Concessioner shall timely contact, notify and/or otherwise confer with appropriate federal, state and/or local agencies with respect to any reporting obligation arising out of Concessioner's operations under this CONTRACT and the Concessioner shall simultaneously provide notice of such contact to the Director and allow the Director the opportunity to participate in any such proceedings.

(5) The Concessioner shall give the Director immediate notice of any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(6) The Concessioner shall give the Director immediate written notice of any threatened or actual notice of violation of any federal, state or local law, rule, regulation, requirement or policy relating to or governing the use, handling, storage, disposal, transport, presence, acceptable concentration, or remediation of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product received by Concessioner.

(7) The Concessioner, at its sole cost and expense, shall promptly rectify any discharge or release as set forth in this section or any threatened or actual violation as set forth in this section, including, but not limited to, payment of any fines or penalties imposed thereon.

(8) The Concessioner shall indemnify the United States in accordance with section 12 of the Contract from losses, damages or judgements (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts fees) arising out of the activities of the Concessioner pursuant to this section. Such indemnification shall survive termination of this CONTRACT.

(9) If the Concessioner does not promptly rectify the discharge or release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product, the Director may, in its sole discretion and after notice to Concessioner, take any such action the Director deems necessary to minimize, remediate, or otherwise clean up such release or discharge, and recover any costs associated with such action from the Concessioner upon demand.

(10) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(11) The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

(b) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, subcontractors or agents, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Interpretation of Area Resources

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, materials or displays to the Director for review and approval prior to offering such programs, exhibits or displays to Area visitors.

(c) Provision of Interpretation Not Exclusive

Notwithstanding any provision of this CONTRACT to the contrary, the Director retains the right to provide Area interpretation, including without limitation, the conduct of interpretive programs and the sale of interpretive materials, directly or though cooperative or other agreements with third parties, as the Director determines to be necessary or appropriate.

Sec. 8. Concession Facilities Used in Operations by Concessioner

(a) Assignment of Concession Facilities

(1) The Director hereby assigns Concession Facilities as described in Exhibit B to the Concessioner for the purposes of this CONTRACT. The Concessioner shall not be authorized to construct any Capital Improvements upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(2) The Director shall from time to time amend Exhibit B to reflect changes in Concession Facilities assigned to Concessioner.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) The withdrawal is for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land assigned to the Concessioner is no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director considers as essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated by the Director as a termination of this Contract pursuant to Section 16. No compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) *Personal Property Provided by the Concessioner.* The Concessioner shall provide all personal property, including removable equipment, furniture and goods, necessary for its operations under this CONTRACT.

(2) *Personal Property Provided by the Government.* The Director may provide certain items of government personal property and equipment for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property and equipment listed in Exhibit C to the Concessioner as of the effective date of this CONTRACT. This Exhibit C will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property and equipment assigned to it

and shall be responsible for maintaining the property and equipment as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

Concessioner has inspected the Concession Facilities, including any government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities "as is."

(g) Utilities

(1) The Director may provide utilities to the Concessioner for use in connection with the operations required and/or authorized under this CONTRACT when available at rates to be fixed by the Director under applicable guidelines.

(2) If the Director does not provide these utilities, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

Sec. 9. Maintenance

(a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan [OPTIONAL—This section may be deleted and maintenance requirements incorporated under Section 18, Special Provisions.]

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and, after consultation with the Concessioner, shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit F. The Director in his discretion may modify the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

Sec. 10. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ Percent (_____ %) of the Concessioner's Gross Receipts for the preceding year or portion of a year.

(2) The Concessioner agrees that this franchise fee is consistent with the probable value of the privileges granted by this CONTRACT as defined in this section.

(3) The Concessioner shall have no right to an adjustment of the fees except as provided below. The Concessioner shall have no right to waiver of the franchise fee.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15)-day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

Sec. 11. Indemnification and Insurance

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way relating to or arising out of the activities of the Concessioner, his employees, subcontractors or agents under this CONTRACT. This indemnification shall survive the termination or expiration of this Contract.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually, thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit E. Furthermore, the commercial general liability package shall provide the coverages and limits described in Exhibit E.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may, in his discretion, modify Exhibit E to revise the minimum required limits or to require additional types of insurance.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and other buildings, structures, equipment, furnishings, betterments, improvements and merchandise utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities in amounts that the Director may require during the term of the Contract. The values currently in effect are set forth in Exhibit E. This Exhibit will be revised at least every three (3) years, or earlier if there is a substantial change in value of Concession Facilities.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities, equipment, furnishings and other personal property hereunder, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit E.

Sec. 12. Bonds and Liens

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds acceptable to the Director conditioned upon faithful performance of its obligations under this CONTRACT, in such form and in such amount as the Director may deem adequate.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder.

Sec. 13. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its account in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than ninety (90) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the gross receipts, by an independent Certified Public Accountant.

Sec. 14. Other Reporting Requirements

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 12, at the time insurance is first purchased, and annually thereafter, the Concessioner shall provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director thirty (30) days advance written notice of any material change in its insurance program.

(b) Environmental Reporting

The Concessioner shall submit a quarterly report on any matters related to the Concessioner's environmental compliance requirements under this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

Sec. 15. Suspension and Termination

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part when necessary for administrative purposes or to enhance or protect Area resources, visitor enjoyment or safety. No compensation of any nature shall be due the Concessioner in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT in whole or part at any time when necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(2) The Director may terminate this CONTRACT in whole or part for default if the Director determines that the Concessioner has breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only visitor services required or authorized by the Director, the requirement to pay the established franchise fee, and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach or to provide a plan, to the satisfaction of the Director in his sole discretion, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver or liquidator, or the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of this CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director notice fifteen (15) days prior to filing any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, this CONTRACT is not a lease, but is an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 1135.

(d) Requirements in the Event of Termination

(1) In the event of termination of this CONTRACT by the Director for any reason, no compensation of any nature shall be due the Concessioner including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, and except as otherwise provided in this section, the Concessioner shall, at Concessioner's expense, promptly vacate the Area, remove all of Concessioner's personal property, repair any injury occasioned by installation of removal of such property, and ensure that Concession Facilities are in as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted.

(e) Removal of Personal Property

Except as otherwise provided in this CONTRACT, upon expiration or termination of this CONTRACT for any reason, the Concessioner shall remove its personal property from the Area unless it is sold to the Director or a successor concessioner. No compensation is due the Concessioner from the Director or a successor concessioner for such personal property. The Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner as of the date of expiration or termination of this CONTRACT, unless the Director in writing extends such date of removal, shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws.

Sec. 16. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of 36 CFR Part 51 as it may be amended from time to time with respect to proposed conveyances and encumbrances as those terms are defined in 36 CFR Part 51, including, but not limited to, proposed management and subconcession agreements. Failure by the Concessioner to comply with 36 CFR Part 51 is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of 36 CFR part 51.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to 36 CFR part 51 of the requirements of that regulation.

Sec. 17. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by 36 C.F.R. Part 51 as it may now exist or be amended from time to time.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release

by the Director to the extent required or authorized by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of principal services required and/or authorized under this CONTRACT are not permitted. However, subconcession or other third party agreements may be allowed for incidental or specialized services which are incidental to the principal services required and/or authorized under this CONTRACT. Any proposal to provide incidental or specialized services through subconcession or other third party agreements must be submitted to the Director in writing, along with a copy of the proposed subconcession or third party agreement, and shall be effective only if approved in writing by the Director. If the Director approves a subconcession or other third party agreement, the Concessioner and the Director will amend the CONTRACT to reflect such approval. Agreements with others to provide vending or other coin-operated machines shall not be considered subconcession agreements.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) The Concessioner is not granted by this CONTRACT any rights to renewal of this CONTRACT or to award of a new contract of any nature.

(j) This CONTRACT does not grant rights or benefits of any nature to any third party.

(k) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

Sec. 18. Special Provisions

[OPTIONAL—To be used when operating and maintenance requirements are incorporated in the body of the contract, rather than as separate operating and maintenance plans.]

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract as of the _____ day of _____, _____.

Concessioner:

By _____

(Title, Company Name)

United States of America:

By _____

(Director, National Park Service)

[Corporations]

Attest:

By _____

Title _____

[Sole Proprietorship]

Witnesses:

Name _____

Address _____

Title _____

Name _____

Address _____

Title _____

[Partnership]

Witnesses as to Each:

Name _____

Address _____

(Name) _____

Address _____

[Concessioner]

Name _____

(Name) _____

Category III—Contract

United States Department of the Interior

National Park Service

_____

[Name of Area]

_____

[Site]

_____

[Type of Service]

Concession Contract No. _____

_____

[Name of Concessioner]

_____

[Address, including email address and phone number]

Doing Business As _____

Covering the Period_____ through _____

_____

Category III—Concession Contract

Table of Contents

Identification of the Parties

Purpose and Authorities

Sec. 1. Term of Contract
Sec. 2. Definitions
Sec. 3. Services and Operations
A. Required and Authorized Visitor Services
B. Operation and Quality of Operation
C. Operating and Maintenance Plan [OPTIONAL]
D. Merchandise and Services
E. Rates
F. Impartiality as to Rates and Services
Sec. 4. Concessioner Personnel
Sec. 5. Legal, Regulatory, Policy Compliance
A. Legal, Regulatory, Policy Compliance
D. Notice
E. How and Where to Send Notice
Sec. 6. Environmental and Cultural Protection
A. Environmental Protection
B. Protection of Cultural and Archeological Resources
Sec. 7. Fees
A. Franchise Fee
B. Payments Due
C. Interest
Sec. 8. Indemnification and Insurance
A. Indemnification
B. Insurance in General
C. Commercial Public Liability
Sec. 9. Bonds and Liens
A. Bonds
B. Liens
Sec. 10. Accounting Records and Reports
A. Accounting System
B. Annual Financial Report
C. Other Financial Reports
Sec. 11. Other Reporting Requirements
A. Insurance Certification
D. Environmental Reporting
E. Miscellaneous Reports and Data.
Sec. 12. Suspension and Termination
A. Suspension
E. Termination
F. Notice of Bankruptcy or Insolvency
G. Requirements in the Event of Termination
E. Removal of Personal Property
Sec. 13. Assignment, Sale or Encumbrance of Interests
Sec. 14. General Provisions
Sec. 15. Special Provisions [Optional]
Exhibits
Exhibit "A": Nondiscrimination
Exhibit "C": Assigned Government Personal Property
Exhibit "E": Insurance Requirements
Exhibit "G": Operating and Maintenance Plan [OPTIONAL]
Exhibit "X": 36 CFR Part 51

[Corporation]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of

the_____Region, hereinafter referred to as the "Director," and, a corporation organized and existing under the laws of the State of_____doing business as *hereinafter* referred to as the "Concessioner":

[Partnership]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the_____Region, hereinafter referred to as the "Director", and *of*_____,_____, and _____ of, partners, doing business as, pursuant to a partnership agreement dated_____, with the principal place of business at_____, hereinafter referred to as the "Concessioner":

[Sole Proprietorship]

This CONTRACT made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the_____Region, hereinafter referred to as the "Director," and, an individual of, doing business as_____, hereinafter referred to as the "Concessioner":

Witnesseth

That whereas, [*Name of Park, Recreation Area, etc.*] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director;

Now, therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (P.L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____("CONTRACT") shall be effective as of _____, and shall be for the term of (_____) years from_____, 20____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and/or protection of public health and safety.

(b) "Area" means the property within the boundaries of [*Name of Park Unit*].

(c) "Capital Improvement" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(e) "Director" means the Director of the National Park Service and his duly authorized representatives unless otherwise indicated.

(f) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each, of which is hereby made a part of this CONTRACT.

(g) "Gross Receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(i) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(ii) Charges for employees' meals, lodgings, and transportation;

(iii) Cash discounts on purchases;

(iv) Cash discounts on sales;

(v) Returned sales and allowances;

(vi) Interest on money loaned or in bank accounts;

(vii) Income from investments;

(viii) Income from subsidiary companies outside of the Area;

(ix) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(x) Sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies

(xi) Receipts from the sale of handcrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by; the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(h) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever.

(i) "Leasehold Surrender Interest" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this CONTRACT.

(j) "Superintendent" means the manager of the Area.

(k) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and authorized to provide by section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(c) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area: [Provide detailed description of required and authorized services.]

The Concessioner shall not be authorized to construct any Capital Improvements upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(d) Operation, Maintenance and Quality of Operation

(1) The Concessioner shall provide, operate and maintain the required and authorized visitor services in

accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(2) The Concessioner shall provide and maintain all personal property necessary for its operations under this Contract.

(3) The Director may provide certain items of government personal property and equipment for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property and equipment listed in Exhibit C to the Concessioner as of the effective date of this CONTRACT. This Exhibit C will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property and equipment assigned to it and shall be responsible for maintaining the property and equipment as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(c) Operating and Maintenance Plan

[OPTIONAL—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating and Maintenance Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating and Maintenance Plan is attached to this CONTRACT as Exhibit "G." The Director in his discretion, after consultation with the Concessioner, may make modifications to the initial Operating and Maintenance Plan provided that these modifications shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area. The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area.

(2) All material, regardless of media format (*i.e.* printed, electronic, broadcast media), provided to the public by the Concessioner, including promotional or interpretive material, must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that all gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with rate approval procedures and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) In providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit "A."

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify Concessioner's complimentary or reduced rate policies and practices.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those identified in Exhibit "A."

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants for employment to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall hire, to the greatest extent possible, people who are both interested in serving the public in a national park environment and interested in being positive contributors to the park's purpose.

(f) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(g) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(h) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any employee housing within the Area.

(i) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution,

dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(j) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that violates the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, Policy Compliance

(c) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(d) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this CONTRACT, shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Protection

(1) In addition to complying with all Applicable Laws pertaining to the protection of natural resources within the area, the Concessioner will conduct its operation, maintenance, acquisition, and provision of visitor services in a manner that prevents or reduces environmental degradation and that promotes the use of environmentally beneficial products. The Concessioner will develop, pursuant to guidelines provided by the Director, and carry out, to the satisfaction of the Director, a documented environmental monitoring program or programs to ensure that park resources affected by concessioner activities under this CONTRACT are not unduly impaired. The Concessioner shall be financially responsible for environmental audits that may be required by the Director for each three-year period of this CONTRACT.

(2) The Concessioner shall obtain the Director's approval prior to using any chemicals, pesticides, any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(3) The Concessioner shall monitor, test, maintain, repair, upgrade, replace, remove, or mitigate, in accordance with Applicable Laws and in accordance with the requirements of the Director:

(i) Any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product on or to the Area, including soil, surface water or groundwater;

(ii) Any materials, equipment, and facilities associated with such discharge, release or threatened release; or

(iii) Any materials, equipment and facilities used in the handling, storage, disposal, transport or other use of any such hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) The Concessioner shall timely contact, notify and/or otherwise confer with appropriate federal, state and/or local agencies with respect to any reporting obligation arising out of Concessioner's operations under this Contract and the Concessioner shall simultaneously provide notice of such contact to the Director and allow the Director the opportunity to participate in any such proceedings.

(5) The Concessioner shall give the Director immediate notice of any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(6) The Concessioner shall give the Director immediate written notice of any threatened or actual notice of violation of any federal, state or local law, rule, regulation, requirement or policy relating to or governing the use, handling, storage, disposal, transport, presence, acceptable concentration, or remediation of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product received by Concessioner.

(7) The Concessioner, at its sole cost and expense, shall promptly rectify any discharge or release as set forth in this section or any threatened or actual violation as set forth in this section, including, but not limited to, payment of any fines or penalties imposed thereon.

(8) The Concessioner shall indemnify the United States in accordance with section 12 of the CONTRACT from losses, damages or judgements (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts fees) arising out of the activities of the Concessioner pursuant to this section. Such indemnification shall survive termination of this CONTRACT.

(9) If the Concessioner does not promptly rectify the discharge or release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product, the Director may, in its sole discretion and after notice to Concessioner, take any such action the Director deems necessary to

minimize, remediate, or otherwise clean up such release or discharge, and recover any costs associated with such action from the Concessioner upon demand.

(10) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(11) The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

(b) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, subcontractors or agents, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ percent (_____ %) of the Concessioner's Gross Receipts for the preceding year or portion of a year.

(2) The Concessioner agrees that this franchise fee is consistent with the probable value of the privileges granted by this CONTRACT as defined in this section.

(3) The Concessioner shall have no right to an adjustment of the fees except as provided below. The Concessioner shall have no right to waiver of the franchise fee.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15)-day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

Sec. 8. Indemnification and Insurance

(b) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way relating to or arising out of the activities of the Concessioner, his employees, subcontractors or agents under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually, thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit E. Furthermore; the commercial general liability package shall provide the coverages and limits described in Exhibit E.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may, in his discretion, modify Exhibit E to revise the minimum required limits or to require additional types of insurance.

Sec. 9. Bonds and Liens

(c) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds acceptable to the

Director conditioned upon faithful performance of its obligations under this CONTRACT, in such form and in such amount as the Director may deem adequate.

(d) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder.

Sec. 10. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its account in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than ninety (90) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the gross receipts, by an independent Certified Public Accountant.

Sec. 11. Other Reporting Requirements

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 12, at the time insurance is first purchased, and annually thereafter, the Concessioner shall provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director thirty (30) days advance written notice of any material change in its insurance program.

(b) Environmental Reporting

The Concessioner shall submit a quarterly report on any matters related to the Concessioner's environmental compliance requirements under this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the Contract or otherwise, including, but not limited to, operational information.

Sec. 12. Suspension and Termination

(b) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part when necessary for administrative purposes or to enhance or protect Area resources, visitor enjoyment or safety. No compensation of any nature shall be due the Concessioner in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT in whole or part at any time when necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(2) The Director may terminate this CONTRACT in whole or part for default if the Director determines that the Concessioner has breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only visitor services required or authorized by the Director, the requirement to pay the established franchise fee, and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director in his sole discretion, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the

benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director notice fifteen (15) days prior to filing any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, this CONTRACT is not a lease, but is an executory Contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 1135.

(d) Requirements in the Event of Termination

(1) In the event of termination of this CONTRACT by the Director for any reason, no compensation of any nature shall be due the Concessioner including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, and except as otherwise provided in this section, the Concessioner shall, at Concessioner's expense, promptly vacate the Area, remove all of Concessioner's personal property, repair any injury occasioned by installation of removal of such property, and ensure that Concession Facilities are in as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted.

(e) Removal of Personal Property

Except as otherwise provided in this CONTRACT, upon expiration or termination of this CONTRACT for any reason, the Concessioner shall remove its personal property from the Area unless it is sold to the Director or a successor concessioner. No compensation is due the Concessioner from the Director or a successor concessioner for such personal property. The Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner as of the date of expiration or termination of this CONTRACT, unless the Director in writing extends such date of removal, shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws.

Sec. 13. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of 36 CFR Part 51 as it may be amended from time to time with respect to proposed conveyances and encumbrances as those terms are defined in 36 CFR Part 51, including, but not limited to, proposed management and subconcession agreements. Failure by the Concessioner to comply with 36 CFR Part 51 is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of 36 CFR Part 51.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to 36 CFR Part 51 of the requirements of that regulation.

Sec. 14. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by 36 CFR Part 51 as it may now exist or be amended from time to time.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent required or authorized by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of principal services required and/or authorized under this CONTRACT are not permitted. However, subconcession or other third party agreements may be allowed for incidental or specialized services which are incidental to the principal services required and/or authorized under this CONTRACT. Any proposal to provide incidental or specialized services through subconcession or other third party agreements must be submitted to the Director in writing, along with a copy of the proposed subconcession or third party agreement, and shall be effective only if approved in writing by the Director. If the Director approves a subconcession or other third party agreement, the Concessioner and the Director will amend the CONTRACT to reflect such approval. Agreements with others to provide vending or other coin-operated machines shall not be considered subconcession agreements.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service Contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 C.F.R., Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) The Concessioner is not granted by this CONTRACT any rights to renewal of this CONTRACT or to award of a new CONTRACT of any nature.

(j) This CONTRACT does not grant rights or benefits of any nature to any third party.

(k) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this CONTRACT.

Sec. 15. Special Provisions

[OPTIONAL—To be used when operating and maintenance requirements are incorporated in the body of the CONTRACT, rather than as a separate operating and maintenance plan.]

In witness whereof, the duly authorized representatives of the parties have executed this CONTRACT as of the_____day of_____.

Concessioner:

By (Title) (Company Name)

United States of America:

By Director, National Park Service

[Corporations]

Attest:

By _____

Title _____

[Sole Proprietorship]

Witnesses:

Name _____

Address _____

Title _____

Name _____

Address _____

Title _____

[Partnership]

Witnesses as to each:

Name _____

Address _____

Name _____

Address _____

[Concessioner]

(Name) _____

(Name) _____

Dated: December 1, 1999.

Maureen Finnerty,

Associate Director, Park Operations and Education, National Park Service.

[FR Doc. 99–31752 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision, General Management Plan and Environmental Impact Statement, Gettysburg National Military Park, Adams County, PA

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final General Management Plan/Final Environmental Impact Statement for Gettysburg National Military Park, Adams County, Pennsylvania.

DATES: The Regional Director, Northeast Region, approved the Record of Decision on November 23, 1999.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, PA 17325, telephone 717–334–1124.

SUPPLEMENTARY INFORMATION:

Introduction

The Department of the Interior, National Park Service (NPS) has prepared this Record of Decision on the Final General Management Plan and Environmental Impact Statement for Gettysburg National Military Park (NMP), Pennsylvania. This Record of Decision is a statement of the background of the project, the decision made, the basis for the decision, other alternatives considered, the environmentally preferable alternative, measures to minimize environmental harm, and the public involvement in the decision making process.

Background of the Project

Park Significance, Legislative Purpose, Mission and Mission Goals

Gettysburg NMP, located in Adams County, Pennsylvania, was established to preserve the nationally significant resources of the Battle of Gettysburg, the Soldiers' National Cemetery and the commemoration and preservation of the battlefield. The battle was the largest and most costly in human terms to occur on the North American continent. It lessened the Confederacy's ability to successfully wage war and contributed to the ultimate preservation of the United States. The creation of the Soldiers' National Cemetery, and Abraham Lincoln's Gettysburg Address, heightened Americans' sense of the meaning and importance of the war. The national park inspired by those who experienced the Civil War preserved major features of the 1863 battlefield and commemorated the valor and sacrifice of the participants. These elements make Gettysburg a place where Americans continue to remember and honor those whose struggle led to a united nation.

As part of its compliance with the Government Performance and Results Act of 1993, NPS developed for each unit of the national park system a legislative purpose statement, a mission statement and mission goals. NPS developed these elements in consultation with the Pennsylvania State Historic Preservation Officer, the Gettysburg National Military Park Advisory Commission, other interested agencies and organizations, and the public.

The legislated purposes of Gettysburg NMP are:

- To preserve the topographical, natural and cultural features that were significant to the outcome of the Battle of Gettysburg.
- To mark the lines of battle, and to preserve the monuments and markers that commemorate the struggle.
- To provide opportunities for people to learn about the Battle of Gettysburg in the full social, political and cultural context of the Civil War and American History.
- To preserve the objects, artifacts and archives that document the battle, its aftermath and commemoration.

The mission that NPS has established for Gettysburg NMP is: To preserve and protect the resources associated with the Battle of Gettysburg and the Soldiers' National Cemetery, and to provide understanding of the events that occurred here, within the context of American history.

The four mission goals that NPS established for Gettysburg NMP are:

- The landscapes, buildings, monuments, structures, archeological sites, artifacts and archives that are significant to the outcome and commemoration of the Battle of Gettysburg are protected, rehabilitated and maintained in good condition.
- The public understands and appreciates the significant events associated with the Gettysburg Campaign and its impact upon the development of the nation.
- Visitors safely enjoy high quality educational experiences accessible to all segments of the population.
- Public and private entities understand the park's mission and act cooperatively to protect and interpret resources related to the Gettysburg Campaign and its commemoration.

The Need for a New General Management Plan

The purpose of a General Management Plan/Environmental Impact Statement (GMP/EIS) is to set forth a basic management philosophy for a park and to provide a framework for future decision making. NPS' Management Policies require that a park's GMP be reviewed periodically and revised or amended as necessary to reflect new issues or management objectives, or when it has exceeded the period for which it was developed, which is usually 15 years. (NPS Management Policies, Chapter 2:6) The park's last GMP was completed more than 17 years ago, in 1982; although the plan continues to be used as a general

guide for operations, it is no longer adequate to address the policy and operational issues now facing the park's managers.

Since the completion of the 1982 plan, the boundaries of the park have changed, adding more than one-third to its total acreage. NPS has determined that the park contains three nationally significant landscapes, only one of which NPS considered fully in the 1982 GMP. Some of the most important resources of the park are sustaining damage from visitors. In other cases, such as at Ziegler's Grove, Culp's Hill, and the second day's battlefield, changes to the natural and built environment have obscured the underlying historic landscape of the battle. NPS surveys of its collections and archives revealed that lack of adequate, environmentally controlled storage space was causing these resources to deteriorate. The lack of an appropriately sized and environmentally controlled gallery for the cyclorama painting, "Battle of Gettysburg," meant that it, too, was sustaining damage. The park's increasing visitation, the changing educational needs of its visitors, and the demands placed on its visitor infrastructure, exceed NPS' ability to provide necessary services. Therefore, at Gettysburg NMP, a new GMP/EIS was needed to provide guidance for stewardship and interpretation of the park's three nationally significant landscapes—the site of the Battle of Gettysburg, the Soldiers' National Cemetery, and the commemorative landscape of avenues and monument—as well as its collections and archives. Consequently, the decision was made to begin a general management plan with an environmental impact statement in order to reach a decision regarding the specific resource conditions and visitor experiences that NPS should achieve and maintain at Gettysburg NMP.

The Planning Process

NPS began the EIS process on May 5, 1997 with the publication in the **Federal Register** of a Notice of Intent to prepare a draft EIS. Scoping meeting were held to identify issues and concerns relating to the proposed general management plan. NPS published the Notice of Availability of the draft EIS in the **Federal Register** on August 18, 1998. The comment period on the draft ended October 17, 1998. NPS responded to substantive comments in the Final GMP/EIS, which was released on June 18, 1999. The Notice of Availability of the Final GMP/EIS appeared in the **Federal Register** on June 25, 1999.

The Final General Management Plan/Environmental Impact Statement has been prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended, which requires the evaluation of potential impacts resulting from federal actions. It includes a description of the environment affected by the proposed activities and the environmental consequences of implementing any of the alternatives.

The Final General Management Plan/Environmental Impact Statement is a programmatic statement. The proposed action and alternatives consist of a basic management framework for future decision making; therefore, site-specific details and recommendations are not always included. Consequently, the statement presents an overview of potential impacts relating to the proposed program for each alternative. In the future, if NPS determines that specific actions called for by the approved plan require additional analysis of impacts, more detailed assessments of impacts may be prepared as part of necessary implementation planning. These documents will be tiered from this environmental impact statement.

In the process of preparing this GMP/EIS, NPS conducted new research and analysis on the battle and its relationship to the contested terrain. Based on careful study of period documents, NPS delineated those battlefield landscape features that were significant to the outcome of the battle, as well as the locations of combat. NPS also studied the features that characterize the Soldiers' National Cemetery and the battle's commemoration. In addition, NPS conducted an extensive assessment to compare present day landscape features to those that existed at the time of the battle. Through this work, NPS divided the resources of Gettysburg NMP into five priority and two other categories. Resources in Priority categories 1, 2, and 3 are essential to the reasons for which Gettysburg NMP was designated by Congress, and their preservation and rehabilitation is mandatory if NPS is to meet its legislative purposes at this park. Resources in Priority categories 4 and 5 include other types of resources, such as non-battle related wetlands, that NPS must consider according to law or NPS policies. Other categories included tools, such as visitor centers, and non-contributing features.

This information was used to delineate resource areas: the Major Battle Action Area, the Soldiers' National Cemetery and the Battlefield Commemorative Area. Each of these resource areas contains a concentration of essential park resources. NPS must protect these resources in order to maintain unimpaired the values for which Congress designated the park. NPS used these resource areas to differentiate actions for the GMP alternatives.

Combination of Other Ongoing Planning With the General Management Plan

In 1994, several years before the initiation by NPS of a new GMP for Gettysburg NMP, NPS had begun a process to consider changes to its visitor center and museum facilities. The current visitor center and museum facilities at Gettysburg NMP are located on land that was central to the Battle of Gettysburg and they are visible from large portions of the battlefield as contemporary intrusions on the battlefield's historic setting. In addition, the facilities are greatly inadequate to meet visitor and curatorial needs. For these reasons, construction of new museum and visitor center facilities in a more suitable location has long been an objective of the park. However, Federal funding limitations have effectively precluded the possibility of constructing replacement facilities with government funds.

The concept of a public/private cooperative effort to solve some of the visitor center and curatorial needs was first considered by NPS when a local developer proposed a new Cyclorama Building paired with a private IMAX theater on a piece of park-owned land. In order to respond to the unsolicited offer, NPS held three public workshops and in March 1995 developed a draft plan/environmental assessment to evaluate the proposal. After a total of 65 days of public and agency review, NPS decided to look at additional options for the building's configuration and initiate a nationwide call for cooperators.

Between August 1995 and April 1996, NPS prepared a Draft Development Concept Plan/Environmental Assessment (DCP) to explore alternatives for the center. The DCP included four alternative concepts for the new facilities: a no action alternative; building a collections and archival storage facility and leaving the Cyclorama and Visitor Center as they are now; renovating the existing Visitor Center in place and building a new Cyclorama Building with collections storage; and building a new combined facility incorporating all these uses on a site removed from significant battle action (the preferred option indicated in the Draft DCP/EA). As a part of the development of this plan, NPS held a series of workshops, focus group

meetings, and community presentations for the purpose of understanding public concerns, writing goals for the facility, and developing criteria for judging proposals and sites.

After considering public comments on this concept plan, in 1996 NPS issued a Request for Proposals, Visitor Center and Museum Facilities, Gettysburg National Military Park (RFP). The RFP solicited specific proposals from non-Federal sources to enter into a cooperative agreement with NPS to provide new visitor center and museum facilities either on park land or on non-park land in the vicinity of the park. The terms of the RFP invited creative proposals from all possible sources with few limitations so long as they furthered the NPS goals for the new facilities. The RFP required that proposals suggest a site for the facilities within a specific area of consideration (extending beyond the boundaries of the park). Among other matters, the RFP noted that a reevaluation of environmental issues would be a part of the process for entering any agreement, and that depending on the proposal an amendment to the current General Management Plan might be required.

NPS, as of the RFP closing date of May 16, 1997, received six proposals. On November 8, 1997, the Director of the National Park Service announced that it had selected a proposal for negotiation. NPS selected the proposal because it offered to have a non-profit corporation provide the facilities sought by NPS on an excellent site and ultimately would result in the donation of the facilities to Gettysburg NMP.

Although the proposal was judged as the best overall proposal received in response to the RFP, NPS pointed out that there were aspects of the proposal that needed to be negotiated in order to achieve an acceptable cooperative agreement. As part of this process, NPS sought public comment on the proposal through environmental and other public review processes between November 1997 and spring 1998.

Scoping for the park's new General Management Plan and Environmental Impact Statement had been initiated in April 1997. Based on public input received from the DCP, the GMP/EIS and other public comment, NPS determined that it was desirable to incorporate the issues of visitor use and interpretation at the visitor center and museum facilities as an element of its forthcoming draft GMP/EIS.

Relationship of the General Management Plan to Other Plans and Processes

1990 Boundary Legislation/1993 Land Protection Plan: The GMP/EIS is based upon the park boundaries defined by Public Law 101–377, An Act to Revise the Boundary of Gettysburg National Military Park. The priorities and planned actions for protecting lands within the 1990 boundary are detailed in the park's 1993 Land Protection Plan. The action alternatives in the GMP/EIS describe several minor boundary adjustments and other actions needed to address deficiencies in the 1990 legislation and the 1993 Land Protection Plan.

1995 White-Tailed Deer Management Plan /Environmental Impact Statement: In 1994, NPS released a draft white-tailed deer management plan and environmental impact statement (white-tailed deer management plan). This white-tailed deer management plan reviewed alternatives for managing the population of white-tailed deer at Gettysburg NMP and Eisenhower NHS. In June 1995, NPS approved the white-tailed deer management plan and a record of decision was signed. NPS determined in the white-tailed deer management plan that a deer density of 25 deer per forested square mile must be maintained at Gettysburg NMP and Eisenhower National Historic Site. There is nothing in the GMP/EIS for Gettysburg NMP that will affect this desired deer density, hence the white-tailed deer management plan is not affected by the GMP/EIS.

Government Performance and Results Act Strategic Park Management Plan: In 1997, NPS developed a systemwide plan to meet the requirements of the Government Performance and Results Act of 1993. As previously noted, as a part of its compliance with this act, NPS develops for each unit of the national park system a new significance statement, legislative purpose statements, mission statement, mission goals and long term goals to guide management of the park (the Strategic Park Management Plan). At Gettysburg National Military Park, this plan was developed in consultation with the State Historic Preservation Officer, the Gettysburg National Military Park Advisory Commission, other interested agencies and organizations, and the general public. The action alternatives developed in the GMP/EIS are based upon the significance, purpose, mission and mission goals outlined in the park's Strategic Park Management Plan.

Decision (Selected Action)

The National Park Service will implement Alternative C, the proposed plan, (the selected action), as described in the Final General Management Plan and Environmental Impact Statement issued in June 1999.

The intent of the selected action is to rehabilitate the Gettysburg battlefield so that the features that were significant to the outcome of the battle and its commemoration more nearly reflect their historic conditions. The selected action will identify and protect the resources that contribute to the park's national significance, including its three nationally significant landscapes: the site of the Battle of Gettysburg, the Soldiers' National Cemetery, and the commemorative landscape of avenues and monuments built by the battle's veterans. Through the construction of new museum and collections storage facilities, the selected action will also provide improved protection for the cyclorama painting, a National Historic Object, and for the park's extensive collections and archives. The combination of rehabilitated historic landscapes and improved museum interpretation in the new facility will allow visitors to understand the Battle of Gettysburg, its aftermath and commemoration within the full context of American history. Because the present Visitor Center and Cyclorama Building are located virtually on Ziegler's Grove, one of the most historically significant areas of the battlefield, NPS is compelled to remove these structures and restore the historic scene. Partnerships with private entities and local and state governments will permit increased protection and interpretation of Civil War resources, as well as of historically significant viewsheds and roads outside of the park's boundaries. Together, these actions will allow NPS to meet the legislative purposes of the park.

Specifically, under the selected action, NPS will rehabilitate both the significant large-scale and small-scale elements of the park's historic landscape. NPS will reinstitute the pattern of open fields and wooded areas, and the historic circulation system of lanes, present during the battle. This will restore within the Battle Action Resource Area the fields of view that prevailed in 1863 and allow visitors to understand how the armies moved across the landscape. The selected action also includes within the Battle Action Resource Area the rehabilitation of those small-scale landscape elements-fences, woodlots, orchards and other features-that were significant to the

outcome of the battle. The selected action will enable visitors to appreciate the obstacles and terrain that confronted individual troops during the conflict.

The selected action will rehabilitate the major landscape features and circulation of the Civil War portion of the Soldiers' National Cemetery, as well as its significant design features. Together these actions will allow visitors to understand the equality of sacrifice made by those who lost their life in the battle, as intended by the designer of the Soldiers' National Cemetery.

The selected action will also restore the major features of the park's Battlefield Commemorative Area, including monument groups. The selected action will provide for enhanced protection of these resources, which are the most threatened by visitor overuse. It will incorporate coordinated measures to manage visitor use and transportation, including a shuttle to provide access to park sites and a link to downtown. This will respond to visitor desires to see the battlefield while protecting sensitive cultural and natural resources from damage. The selected action will also revise agricultural practices in order to protect historic and natural resources through such means as altering mowing schedules to protect nesting birds, removing wetlands and streambanks from pastures, utilizing low-till and no-till methods, and limiting pesticide use. (Historic field patterns will be recreated by erecting fences or hedgerows in existing historic crop fields and in newly opened areas.)

The selected action will provide a new museum complex, located at a site outside the Battle Action Resource Area, where NPS could provide adequate protection for its archives, collections and the cyclorama painting and provide necessary visitor services without harming the historic landscapes of the park. The museum facilities proposed in the selected action will provide adequate facilities for the protection of the park's remarkable collections and archives. A new gallery for the cyclorama painting, "Battle of Gettysburg," will allow the painting to be properly hung and displayed in an environmentally stable gallery, which is critical to its preservation. A new facility will greatly improve museum interpretation at the park, and place the Gettysburg Battle in its larger context of the Civil War and the Gettysburg Campaign. The complex will be built by a private foundation at no cost to the government, and NPS will retain final approval on all decisions that would affect the complex's design, interpretation or use. The complex will include necessary and appropriate visitor services that are entirely consistent with the purposes of the park and NPS policy.

The Visitor Center and Cyclorama Building are currently located on some of the Battle of Gettysburg's most historically significant land along Cemetery Ridge, known as Ziegler's Grove. Ziegler's Grove was at the center of the Union line during the second and third days of the battle, and was the site where more than 6500 men fought. To achieve the park's legislative mandate park managers determined to return Ziegler's Grove to its 1863 appearance by removing the intrusive Visitor Center and Cyclorama Building. The relocation of visitor facilities to a new site near their existing location but on land that was not significant to the outcome of the battle will allow restoration of Ziegler's Grove, the area that was the center of the Union Line during the second and third days of the battle.

The selected action will include measures to interpret the role of both soldiers and noncombatants, and will strengthen the interpretation of the role of the town of Gettysburg in the battle and its aftermath and link it to the battlefield. It will expand partnerships and cooperative initiatives with entities at all levels, especially those that could protect the historically agricultural character of significant battle and Civil War sites outside the park's boundary, the character of historic road corridors and park gateways, and important park viewsheds. The approach to rehabilitation incorporated in the selected action will broaden the scope of overall interpretation and expand the number of venues that could be well understood by and interpreted to visitors. In turn, the opening of new sites for interpretation will provide relief for heavily visited and adversely impacted sites. The selected action also adopts a previously approved Development Concept Plan/ Environmental Assessment, which proposed consolidation of park offices and visitor facilities not included in the park's museum and visitor center to a site within the Visitor and Park Services Overlay Area.

Basis for Decision

Alternative C, the proposed plan in the Final GMP/EIS and the selected action, provides the most desirable combination of resource preservation, visitor interpretation and experience, and cost-effectiveness among the alternatives considered for meeting the legislative purposes and mission of Gettysburg NMP. The selected action will allow NPS fully to meet both its resource preservation and interpretive mandates.

The selected action will significantly improve resource protection. The selected action will preserve and rehabilitate the features that were significant to the outcome of the battle and allow the restoration of Ziegler's Grove, the site of some of the most intense and bloodiest fighting of the war. It will significantly enhance preservation and rehabilitation of the nationally significant Soldiers' National Cemetery, the site of Lincoln's Gettysburg Address and of the burial of many Union dead. It will preserve the nationally significant commemorative corridors of Gettysburg NMP by providing for the restoration of monument groups (markers, monuments, cannon, etc.) and by limiting future damage from visitor overuse to sensitive resources here. Transportation management will further protect sensitive resources from vehicular damage. New collections storage will provide adequate conditions for the preservation and curation of the park's collections and archives. A new, environmentally stable gallery in which the conserved cyclorama painting will be displayed will allow NPS to stem further deterioration and adequately preserve this National Historic Object.

Changes in the management of the park's agricultural program to enhance surface water quality in the park's streams and ponds, enhance streambank stabilization and reduce soil erosion will protect watershed areas considered significant to the Chesapeake Bay. The combination of removal of non-historic woodlands and changes in the agricultural tilling, mowing and haying techniques will allow NPS to better protect the state-listed open-land species that inhabit the park.

In addition, the selected action will encourage partnerships with private entities and local and regional governments to protect, preserve and interpret resources that are related to the Battle of Gettysburg, its aftermath and commemoration that are located outside of park boundaries. The selected action calls for partnership actions to preserve resources and interpret the role of the Borough of Gettysburg in the battle, its aftermath and the ongoing preservation of the battlefield. It also encourages partnerships with private entities and local and regional governments to protect the agricultural setting of the park and major roadways leading to the park, including Taneytown Road and Baltimore Pike, elements that are important to a visitor's experience.

These actions should limit somewhat the amount of significant battle and Civil Wars sites outside the park boundary lost to commercial and suburban development.

The selected action also will greatly improve interpretation of the Battle of Gettysburg, its aftermath and commemoration both through enhanced museum interpretation as well as through landscape restoration. New museum exhibits will provide substantially improved interpretation of the battle in its full context, as required by the park's legislation. Visitors' experiences in the park will be improved, both in the museum complex and on the battlefield. Visitors will receive improved orientation and information about how to use the park. Rehabilitation of the landscape will allow visitors to understand both the movements of the armies as well as the impact of the battle on individual soldiers. Rehabilitation of the Soldiers' National Cemetery will allow visitors to understand the meaning inherent in its design, a meaning so eloquently defined by Abraham Lincoln in the Gettysburg Address.

Implementation of this action will increase visitation and length of stay at the park, which in turn will increase per capita spending by 10% over current levels. The combination of higher per capita spending and a moderate increase in visitation means that visitors will spend an additional $24,278,900 annually in the communities adjacent to the park, an increase of 21.5% over current spending levels. (Final GMP/EIS, 91–92, 282–286)

Other Alternatives Considered

The Final General Management Plan/Environmental Impact Statement describes four alternatives for management, the environment that will be affected by those alternatives, and the environmental consequences of implementing these action alternatives. The major topic areas covered in each alternative are related to the park's four mission goals, and include resource protection and rehabilitation, visitor interpretation, visitor experience, and partnerships. Major impact topics include impacts to cultural resources, impacts to natural resources, impacts to visitor interpretation and experience, impacts to the socio-economic environment, impacts to traffic, parking and transit, and impacts to park operations.

NPS considered three alternatives in addition to Alternative C, the proposed plan. They are:

Alternative A: Continuation of Current Management

This alternative assumed continuation of current policies and associated actions. It provided a baseline for comparison of the other alternatives and is required by the National Environmental Policy Act regulations. Alternative A retained the management guidance and direction of the 1982 General Management Plan and the subsequent Management Objectives developed in the 1988 Statement for Management. This alternative retained the management zones defined by the 1982 GMP and would have continued the management policies articulated in that document towards the landscape, park facilities, and visitor use management. Under this management strategy, NPS would have continued to preserve existing features and resources significant to the battle. Existing historic cropfields and woodlots would have continued to be preserved and maintained in their current conditions, using contemporary agricultural techniques. The Soldiers' National Cemetery would have continued to be managed to maintain and perpetuate modern vegetation and changes made for maintenance with modern equipment. In the commemorative area, individual monuments and monument groups would have continued to be preserved and restored, and the formal designed corridor in which the War Department placed them would have been recalled by mowing of the area. Modern features, such as parking areas, bollards, paths, fencing or other restraints would have been added as needed to protect resources from overuse and damage by pedestrians and vehicles. NPS would have continued to manage Big Round Top as a natural area. NPS managers rejected this option among other reasons because it failed to provide adequate protection to the park's three historic landscapes, did not allow for the restoration of Ziegler's Grove, and did not provide adequate protection for the park's archives, collections and the cyclorama painting. For a fuller discussion of the issues surrounding a continuation of current management policies, see the discussion of issues considered on pages 10–17 of the Final GMP/EIS.

Alternative B: Minimum Required Actions

This alternative included the least costly set of actions that would have responded minimally to the park's mission goals. Alternative B incorporated rehabilitation of large-scale landscape features in the Major Battle Action Area and the Soldiers' National Cemetery and preservation of other 1863 features. It would also have provided a new museum complex to replace obsolete facilities and meet the park's interpretive goals. Because the actions included in Alternative B were considered necessary to meet minimally the park's mission goals, the actions recommended in this alternative were also incorporated into Alternative C, the selected action, and Alternative D.

As a part of Alternative B, the rehabilitation of large-scale landscape features would have reinstated the patterns of open and wooded areas within the Major Battle Action Area, including restoration of Ziegler's Grove. Because of this action, NPS would be able to represent accurately the patterns of open land vs. forested land present during the battle in the areas where major battle action occurred. This would allow visitors to visualize and understand the major movements of the armies and to appreciate tactical decisions made by its leaders. Alternative B would not, however, have rehabilitated the small-scale features that were significant to the outcome of the battle, such as fence lines or orchards.

Alternative B also suggested rehabilitation of the large-scale landscape and designed features that characterize the Saunders design for the Soldiers' National Cemetery. Under this alternative, the cemetery would have remained in its modern condition, except that the vegetation and circulation in the Civil-War portion of the cemetery would have been managed so that visitors could understand the ideas of equality expressed by Saunders in the design. These ideas parallel those expressed by Abraham Lincoln in his Gettysburg Address. The commemorative landscape would have been managed similarly to Alternative A.

This alternative incorporated the development of a new museum complex and associated facilities that could provide improved interpretation and visitor services, located on a site that was not pivotal to the outcome of the battle. Enhanced programs would have provided broad, in-depth interpretation of the causes and consequences of the Gettysburg Campaign, its impact on participants and noncombatants, and the enduring meaning of the Gettysburg Address. Strong linkages would have been provided from the park and the proposed museum complex to historic structures at the center of the Borough of Gettysburg. NPS would have worked cooperatively with partners to communicate the role of key in-town

sites during and after the battle. Based on such agreements, an NPS presence would have been possible to interpret these topics.

The broad initiatives of this alternative would have improved the visitors' understanding of the battle landscape by making it possible for them to understand the movements of the armies—the generals' perspective—and by providing greatly improved centralized interpretation of the causes and consequences of the Gettysburg Campaign. Alternative B also incorporated visitor activity management policies that would have improved the condition of park resources by limiting damage from visitor use.

This alternative provided for better protection of the park's landscape and historic resources than did Alternative A, no action. However, NPS managers rejected this option because they considered that the rehabilitation of both the large-scale features and the small-scale features that were significant to the outcome of the Battle of Gettysburg, its aftermath and commemoration (as called for in Alternative C, the selected action) would more fully meet the park's legislative mandates by preserving and rehabilitating all features that were significant to the outcome of the battle. In addition, although Alternative B would have improved interpretation of the battlefield, especially of the general's perspective, the selected action would allow visitors to understand not only the general's perspective but also the impact of the battle upon individual combatants and civilians.

Alternative D: Maximum Park Rehabilitation

This alternative included the resource management, interpretive and museum facilities actions included in Alternative C. However, Alternative D expanded on the resource management actions described in Alternative C by recommending additional rehabilitation and restoration. Alternative D proposed restoring the entirety of the known and documented battle landscape in the Major Battle Action area and the significant elements outside the Major Battle Action area included in the other resources area. This alternative would have rehabilitated all identifiable historic features, regardless of their significance to the outcome of the Battle of Gettysburg.

Rehabilitation of missing features from the commemorative era, principally along the system of commemorative avenues, would have allowed visitors to experience the commemorative park built by battle veterans. Interpretation would have relied heavily on the new museum complex to provide the context overview, and assumed that visitors would be able to understand those stories without extensive field interpretation because NPS had fully restored the battlefield, cemetery and commemorative landscapes.

Modern wayside signs would have been removed and visitors would have had to rely on the system of markers placed by the park's veterans to understand and experience the park. Visitors would have been encouraged to concentrate their travel along the commemorative avenues, and alternative means of transport and interpretation would have encouraged visitors to tour the battlefield with far less reliance on private vehicles than currently.

Although this alternative provides for better protection of the park's landscape and historic resources than Alternative A, and for more extensive rehabilitation than either Alternative B or C, NPS managers rejected it because the environmental and dollar costs were much greater than any other alternative because it proposed rehabilitation of the entire park, including places that were not the site of major battle action. In addition, NPS managers did not consider that this alternative could provide significantly improved resource protection or interpretation.

Other Alternatives Considered

In addition, a number of other alternatives were considered by the planning team or in public workshops, but not included for further consideration in the Draft GMP/EIS. These are discussed in detail on pages 58–60 of the Final GMP/EIS.

Two additional alternatives were proposed and reviewed with the public in workshops and were presented in GMP newsletters. These alternatives were called Improve Areas of Most Intensive Use, and Diversified Visitor Experience. The first recommended traffic free zones representing each day of the battle, where special interpretation, resource protection and other actions would occur. The public generally felt that this approach was too restrictive and placed too much emphasis on first time visitors. The second alternative placed its emphasis on innovative interpretation of the battlefield. NPS would have concentrated its resources on interpretation rather than on rehabilitation and restoration, although a minimum level of rehabilitation of the park's landscapes was included. Most participants liked the idea of expanded interpretation, but believed it should be combined with the higher levels of rehabilitation and preservation proposed by the other alternatives.

The GMP team considered two other alternatives, Full Restoration and Interpretation Only. The first responded to the perception among some participants in the public process that the battlefield should be fully restored to its 1863 condition. However, NPS determined that this was not feasible and would not comply with the Secretary's Standards for Historic Preservation because of its impact on the park's two nationally significant post-battle landscapes, the Soldiers' National Cemetery and the commemoration built by battle veterans. The Interpretation Only alternative would have included no rehabilitation and restoration of park features. However, visitor surveys, comment during scoping, and experience with visitors on the site convinced NPS managers that this approach could not meet the park's interpretive goals. In addition, NPS managers believed that this approach would not allow NPS to meet its legislative purposes. For these reasons, these four alternatives were eliminated from further consideration.

NPS' consideration of alternatives for its visitor facilities, through the development of the draft DCP and its RFP process is discussed in the Background of the Project section of this ROD.

Environmentally Preferable Alternative

The environmentally preferred alternative is defined as "the one that will promote National Environmental Policy as expressed in the National Environmental Policy Act's, section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances the historic, cultural, and natural resources in the area where the proposed action is to take place." ("Forty Most Asked Questions Concerning Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations," 1981).

The environmentally preferred alternative is Alternative C, the selected action. Alternative C best protects, preserves and enhances the historic, cultural and natural resources of Gettysburg NMP. In particular, the selected action: increases the ability of the park to protect, preserve and enhance the historic and cultural resources of the park and meet its

legislative mandate; minimizes the loss of forest cover while achieving the park's critical cultural resource goals; improves the capability of the park's natural environment to support the state-listed open land species; and allows NPS to meet more fully the requirements of the Chesapeake Bay Program. As noted above, the selected action improves the ability of NPS to protect the essential resources of Gettysburg NMP. Through this proposal, NPS could: preserve and rehabilitate the resources considered significant to the outcome of the battle; protect the cyclorama painting, collections, and archives; and preserve and rehabilitate the significant features of the Soldiers' National Cemetery and commemorative landscapes of the park. The selected action allows NPS fully to meet the requirements of Gettysburg NMP's legislation at the least cost to the environment, park visitors and the Federal budget. The provision of new museum facilities on a site removed from the park's most important resources means that NPS could restore these significant areas.

Although the new construction needed to consolidate the park's museum and visitor facilities would permanently remove 18 acres of land, including up to 2 acres of wetlands, at the new site as wildlife habitat, NPS will be able to restore about 38 acres of meadow, orchard and woodlands that were very significant to the outcome of the battle at the sites of the current facilities. The selected action proposes the removal of only as much non-historic forest as is needed to meet the park's legislative purposes and mission goals. In addition, under the selected action, NPS will maintain as historic woodlots the number of acres needed in order to meet the park's legislative purpose. The gradual removal of some non-historic forest will increase the total acreage of open land in the park, because those areas will be reestablished as open grasslands, pastures, or orchards. The increased area of open grassland will improve and expand the habitat needed to support the sensitive state-listed species that occur within the park, almost all of which are open land species. NPS will more fully meet the requirements of the Chesapeake Bay Program by protecting sensitive watersheds from cattle and other agricultural damage. NPS will institute changes in its management of the park's agricultural permits to enhance surface water quality in the park's streams and ponds, enhance streambank stabilization, and reduce soil erosion. In addition, these changes will mean that up to 100 acres of wetlands eliminated by draining for agricultural purpose since the time of the battle will eventually be rehabilitated. Alternative A, as described in the Final General Management Plan/Environmental Impact Statement, does not provide adequate protection for the park's three historic landscapes, its cultural and natural resources, or its collections, archives and the cyclorama painting and therefore does not meet the park's legislative mandate.

Alternative B, as described in the Final General Management Plan/ Environmental Impact Statement, would provide many of the same cultural and natural resource benefits as described in the selected action. Both alternatives would include the rehabilitation of the pattern of open vs. closed areas present during the battle, actions to preserve resources in the Soldiers' National Cemetery and the commemorative Resource Area, reformulation of the park's agriculture program, and provision of new visitor facilities. However, Alternative C, the selected action, more fully meets NPS' legislative purposes because it provides for the protection and, where needed, the rehabilitation, of all features that were significant to the outcome of the Battle of Gettysburg, its aftermath and commemoration. Alternative B merely provides for the rehabilitation of a subset of those resources during the period of the plan.

Alternative D, as described in the Final General Management Plan/ Environmental Impact Statement provides for maximum rehabilitation of the park's landscapes, including all features that could be documented. This would provide for rehabilitation of landscapes and features beyond that called for by the park's legislative purposes. Although this could provide a more complete experience of the conditions prevalent in 1863, the environmental costs would be concomitantly greater. Because park managers do not consider that additional restoration would significantly improve interpretation or protection of essential resources, the additional environmental costs would not be warranted.

The selected action provides the appropriate balance between protection and rehabilitation of the park's significant cultural and natural resources and environmental costs.

Measures to Minimize Environmental Harm

NPS has identified and incorporated into the selected action all practical measures to avoid or minimize environmental impacts that could result from its implementation. These measures are presented in detail in the Final General Management Plan/ Environmental Impact Statement.

Rehabilitation of the features that were significant to the outcome of the Battle of Gettysburg, its aftermath and commemoration has the potential to cause environmental harm. NPS will take the following actions to avoid or minimize harm resulting from these actions:

- Impacts to known and unknown archeological resources due to tree removal will be mitigated and minimized by implementing Section 106 of NHPA, through the use of best management practices, and through appropriate design that will allow for little ground disturbance.
- Use of best management practices will minimize impacts to topography due to tree removal and existing roads and lanes will be used so that no new roads will need to be constructed.
- Short-term impacts to soils due to tree removal will be minimized using best management practices.
- Tree removal may have an impact to roosting and nesting areas of black vultures in the park. These actions will be mitigated by leaving the white-pine trees typically used by vultures and by leaving small clumps and mature trees around known nesting areas.
- Tree removal may have an impact on certain species of the fauna of the park. None of these species are rare or of special concern. However, NPS will minimize these impacts by using best practices and by monitoring of specific taxa.
- Localized steam water temperature will increase in some sub-watersheds from loss of forest cover; however, this can be minimized by planting low growing woody vegetation along stream corridors.
- Tree removal and conversion of the area into an actively managed woodlot could have an impact on one state-listed plant specie. However, using best management practices for tree removal and protecting individual plants could minimize this. Maintaining the area as a woodlot will benefit the plant by opening the canopy.

Rehabilitation of Ziegler's Grove and the center of the Union's battle line along Cemetery Ridge necessitates the removal of the Cyclorama Building, which is listed on the National Register of Historic Places. In December 1998, NPS began consultations with the Advisory Council on Historic Preservation, the Pennsylvania Historic Preservation Officer, and interested

parties and individuals regarding the removal of the structure. On May 14, 1999, the Advisory Council on Historic Preservation concurred with the draft GMP/EIS' proposed restoration of the park's historic landscapes and the cyclorama painting, and the removal of the Cyclorama Building, finding that "The rehabilitation of this key battlefield site so that the battlefield can properly be interpreted must be regarded as a historic mission of the highest order." A history of related actions is included on page 241 of the Final General Management Plan/ Environmental Impact Statement; the Advisory Council on Historic Preservation's Finding is included as Appendix 11. After that decision, NPS consulted with the Advisory Council, the Pennsylvania State Preservation Officer and interested parties to develop appropriate mitigation policies with regard to the removal of the Cyclorama Building and in accordance with the Memorandum of Agreement dated July 29, 1999.

Construction activities related to the relocation of the park's museum complex, visitor facilities and administrative facilities to a site removed from its prime resources have the potential to cause environmental harm. NPS will take the following actions to avoid or minimize harm resulting from these actions:

- Implementation of appropriate erosion control and revegetation measures will minimize short- and long-term disturbance and vegetation loss from construction activities for the new visitor facilities, administrative facilities, burial of utility lines, and other actions.
- Unknown archeological resources may be impacted by development activities and, if significant, the facilities will be relocated or the archeological resources could be excavated to salvage the artifacts. In addition, a monitoring and preservation program will allow archeologists to determine the nature of cumulative impacts, and devise avoidance or mitigation methods.
- Two small areas of historic rock walls may be destroyed to accommodate entrances to the new museum complex. NPS will consult with the Advisory Council and the State Historic Preservation Officer to develop appropriate mitigation policies with regard to the removal of these two sections of wall.
- Design of the new visitor or administrative facilities will seek to minimize topographic changes and keep as much of the new site in a natural condition as possible.
- Approximately 10 acres of prime farmland may be impacted by development; a Farm Conversion Impact Rating and Land Evaluation System Report will be completed before any work begins. Approximately 38 acres of meadow, orchard, and woodlands will be re-established at the sites of the old visitor centers to mitigate the removal of approximately 21–26 acres of hay and 8 acres of woods at the new museum and visitor center site.
- Up to 2 acres of wetlands could be impacted due to construction; however, a Wetlands Statement of Findings as required by Directors Order 77.1, will be completed prior to the initiation of work. In addition, up 100 acres of wetlands will be restored as a result of changes to the agriculture program and the removal of field drains in agricultural fields.
- Construction activities could temporarily displace or kill some individual wildlife or flora around the new visitor and administrative facilities. This will be mitigated through the park's inventorying and monitoring program to assure no sensitive species are being affected.
- Visitors might be temporarily inconvenienced by construction and relocation activities; however, construction and relocation will be scheduled to avoid the peak visitation periods.

Although overall visitor spending will increase due to the new museum complex, redistribution of visitor spending may occur because of the relocation of the museum complex. The anticipated increases in visitation, the increase in length of stay, the limitation of the menu and of the serving times in the food service facility, the routing of the park auto tour route through the Borough of Gettysburg, and the continued availability of information about community visitor facilities in the museum by the Visitor and Convention Bureau should help mitigate these impacts. To minimize development of new tourism related private development near the new museum site, NPS, either directly or through its various partners, will protect through easement or acquisition, lands that were significant to the outcome of the Battle.

Public and Interagency Involvement

NPS officially began the EIS process on May 5, 1997 with the publication in the **Federal Register** of a Notice of Intent to prepare a draft EIS. Scoping meetings were held to identify issues and concerns relating to the proposed general management plan. As a part of its scoping for the EIS, Gettysburg NMP requested public and agency review the park's legislative purposes, mission, and mission goals, developed as a part of NPS' compliance with the Government Performance and Results Act. NPS also held meetings to discuss its analysis of park resources, concepts for the park, and alternatives for the park. After NPS selected a proposal for negotiation for new museum and visitor facilities (as a result of the Draft Development Concept Plan and Environmental Assessment for Collections Storage, Museum and Visitor Facilities and subsequent RFP), it held additional meetings to review the details of the proposed facilities and their possible environmental consequences with the public. During Spring, 1998, NPS determined as a result of these meetings and other agency and public comment to combine the Draft Development Concept Plan and Environmental Assessment for Collections Storage, Museum and Visitor Facilities with the ongoing GMP/ EIS process. During this period, NPS also prepared and mailed five newsletters to interested agencies, organizations, and individuals. A Draft General Management Plan/ Environmental Impact Statement was developed and released to the public on August 14, 1998. Almost 3,800 copies of the Draft General Management Plan/ Environmental Impact Statement were distributed to agencies, organizations and the public. The Notice of Availability of the draft EIS was published in the **Federal Register** on August 18, 1998. Nine public meetings were held during the public comment period. Two workshops provided an overview of the entire GMP. Four workshops concentrated on a particular aspect of the plan, including resource preservation and rehabilitation, socioeconomic impacts, partnership issues including traffic, and interpretation and education. One meeting held by the Gettysburg NMP Advisory Commission, incorporated discussion on the GMP and the museum complex proposal. All seven of these meetings included question and answer sessions. NPS also held two formal public hearings to allow the public to comment on the plan. A listing of meetings, public workshops and hearings, and consultation activities is included in the Final General Management Plan/Environmental Impact Statement beginning on page 306.

The comment period on the draft ended October 17, 1998. Between October 1998 and May 1999 NPS met with local governments, members of Congress and representatives of state and local agencies and organizations to

ensure that their comments and concerns had been properly understood. Comments received through January 20, 1999 were included in the Final GMP/EIS.

NPS received over 500 oral or written comments on the draft GMP/EIS. Some comments concerned the relocation of the park's visitor centers to a nearby site. Some commentors, representing descendents of the more than 6500 men who fought where the Visitor Center and Cyclorama Building are now located, contended that appropriate restoration of the Ziegler's Grove area is necessary because of the approximately 970 soldiers who became casualties of the Battle of Gettysburg at that location. Others, many of whom operate businesses in close proximity to the park's visitor centers, are concerned that NPS' relocation of its visitor facilities would impact their businesses, either by changing pedestrian patterns or by removing parking from near their businesses.

NPS acknowledged in the draft GMP/EIS that despite the overall positive economic impact resulting from Alternative C, the selected action, the relocation of park visitor facilities might change visitor spending patterns and create indirect effects on area development or individual businesses. Because of comments received during scoping, NPS had included actions to mitigate possible effects in the draft GMP/EIS. These included: NPS partnership in the development of the Wills House; an NPS ranger presence in downtown; partnerships to strengthen the historic pathways pedestrian environment; expansion of NPS' auto tour to include resources within the Borough of Gettysburg; inclusion of a downtown/park shuttle; protecting sites within the park boundary and the Gettysburg Battlefield Historic District from inappropriate development; and continued promotion of local visitor services by the Visitor and Convention Bureau in the park visitor center. As a result of comments received on the draft GMP/EIS, NPS enhanced its discussion of the protection of Taneytown Road and Baltimore Pike, and included capital costs for the shuttle, which had inadvertently been left out of the draft GMP/EIS. Finally, NPS decided to provide parking to serve the Soldiers' National Cemetery near the existing parking lots and included this in the Final GMP/EIS.

Other commentors were concerned that the inclusion of a cafeteria-style restaurant, arts and crafts store and other retail activities originally proposed for inclusion in the museum complex would compete unfairly with local businesses. One of NPS' goals was to improve visitors' experiences in the museum complex by providing necessary and appropriate facilities that would enable them to extend their stay in the facility and properly use and enjoy the facility. During GMP scoping, NPS evaluated the proposal in relation to this goal, and determined what was necessary and appropriate to allow visitors to extend their stay in the facility and therefore in the community. Because of this scoping process, NPS reduced the size of the cafeteria-style restaurant and eliminated the arts and crafts store and other retail activities in the proposed new museum complex. These changes were described in the draft GMP/EIS.

However, even after making these changes in the draft GMP/EIS, NPS received comments about the food service facility during the public review of that document. After a review of the comments received on the draft GMP/EIS, NPS reevaluated its needs again and determined that it could further reduce the scope of the food service to be included in the facility and still meet its goal. NPS determined that limited food service would allow visitors to extend their stay and properly use and enjoy the facilities. Therefore, NPS decided to change the cafeteria-style restaurant to a limited food service facility, operating with a warming kitchen and providing snacks and light meals only. An economic assessment performed on this limited food service option found that food service expenditures within the park would decrease by 34% from the level predicted in the draft GMP/EIS, and that visitor expenditures outside the park would therefore increase by an estimated additional $495,000 per year, to a total of $24,278,900 annually. This represents an increase in visitor spending of 21.5% over current spending levels (Final GMP/EIS, pages 91–92, 282–286).

Some commentors feared that the new museum complex would commercialize the battlefield. However, NPS considers that the proposed collections storage, museum and visitor facilities do not commercialize the battlefield, but provide necessary and appropriate services to visitors that enhance the visitor experience and are entirely consistent with NPS policies, regulations and statutes. The existing visitor facilities at Gettysburg NMP include collections storage, a museum, a visitor center, the electric map, the cyclorama painting, a conventional theater in which NPS presents an education film, a licensed battlefield guide tour center, and the park's book and museum store. The new facility will continue these uses, providing enough space to make these operations more efficient. The new facility will also provide limited food service. The new facilities will allow NPS to provide superior orientation and interpretation, adequate protection for its collections, archives and the cyclorama painting, and will remove modern intrusions from the historic core of the battlefield.

Others were concerned that the inclusion of the museum proposal as a part of the GMP/EIS violated NPS policy or NEPA. However, after considering public and agency comment on the issue, NPS determined that it was in the public interest to combine the two ongoing public processes into the GMP/EIS. NPS considers that the environmental review procedures followed in this matter, including consideration of public comment as a part of the process, complied with NEPA.

Finally, some commentors are concerned that net removal of 576 acres of non-historic woodlands would create environmental impacts on local plant and animal communities and that rehabilitation of the battlefield was not necessary for proper interpretation of the battlefield. NPS determined that it could best meet its legislated purposes and mission, and provide a more meaningful visitor experience, by rehabilitating the battlefield in the manner described in the selected action. NPS acknowledged that removal of non-historic woodlands would have an impact on some forest species. However, with the exception of the black vulture, these species are widespread and the removal of non-historic woodlands would not affect their abundance or distribution. NPS considers that impacts upon the state-listed black vulture could be mitigated by the activities noted in the previous section. As noted above, the concomitant increase in meadow and pasture land will increase and improve open-land habitat and therefore the sensitive state-listed species that depend upon that habitat.

NPS responded to substantive comments in the final EIS, which was released to the public on June 18, 1999. NPS mailed approximately 586 copies of the two-volume document to agency, organizational and individual commentors. The Notice of Availability of the final EIS appeared in the **Federal Register** on June 25, 1999, and the Final General Management Plan/Environmental Impact Statement was made available for a 30-day no action period starting on that date.

In accordance with the Programmatic Agreement among the National Park

Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers executed July 17, 1995, NPS has completed the consultation review steps related to general management planning (VI. C., D., and E.). NPS, the Pennsylvania State Historic Preservation Officer and the Advisory Council on Historic Preservation have negotiated and on July 28, 1999 signed a Programmatic Agreement. Implementation of this agreement will fulfill the NPS' responsibilities under section 106 of the National Historic Preservation Act.

Letters received from the Pennsylvania Natural Diversity Inventory of the Pennsylvania Department of Conservation and Natural Resources and the U.S. Fish and Wildlife Service are included as Appendix 7 of the Final General Management Plan/Environmental Impact Statement. These letters identified threatened, rare and endangered species and species of special concern protected by the respective agencies. There are no known Federal threatened, rare and endangered species within the park. Impacts to state listed species are either positive, or can be mitigated, as noted above.

The public and agency comments contained in the two volumes of the Final General Management Plan/ Environmental Impact Statement and additional information available in the files at Gettysburg NMP headquarters provides valuable background for the context in which the proposed plan has been developed. All comments received on the Draft and Final General Management Plan/Environmental Impact Statement are on file at Gettysburg NMP headquarters in Gettysburg, Pennsylvania.

Dated: November 23, 1999.

John A. Latschan,

Regional Director, Northeast Regional Office.

[FR Doc. 99–32836 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, comment, and approval. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 20, 2000.

ADDRESSES: Send comments regarding the information collection to the following addresses: Mr. Larry Schluntz, Bureau of Reclamation, Reclamation Law and Revenues Office, D–5200, P.O. Box 25007, Denver, CO 80225, and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW, Washington, DC 20503.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from pubic disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the forms contact Larry Schluntz, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225; telephone: (303) 445–2901.

SUPPLEMENTARY INFORMATION:

Title: Crop Acreage and Yields and Water Distribution (OMB Control No. 1006–0001). This is a request for a reinstatement of a previous data collection with changes. The titles of the forms and the form numbers associated with this information collection are: Form 7–332, Water User Crop Census Report, and Form 7–2045, Crop and Water Data. Since this is a request for reinstatement of a previously approved collection of information, the Bureau of Reclamation (Reclamation) decided it would be less confusing for the public to use the earlier titles for these forms.

Abstract: The annual crop census is taken on all Bureau of Reclamation (Reclamation) projects, along with collection of related statistics, primarily for use as a tool in administering, managing, and evaluating the Federal reclamation program. The census is used to assist in the administration of repayment and water service contracts which are used to repay the irrigators obligation to the Federal Government. Data from the census also are utilized to determine Class 1 equivalency computations, *i.e.*, determining the number of acres of Class 2 and 3 land that are required to be equivalent in productivity to Class 1 land. Crop production data are also used to analyze the double subsidy occurring on Reclamation project lands. Double subsidies occur when an irrigator receives interest-free irrigation water and is also eligible for farm program payments from the U.S. Department of Agriculture. In recent years, the census has provided data which are used to administer international trade agreements, such as the North American Free Trade Agreement. Data from the census are also used by the Office of the Inspector General, General Accounting Office, and the Congressional Research Service to independently evaluate the Reclamation program and to estimate the impacts of proposed legislation. These data are also supplied to other Federal and State agencies to evaluate the program and provide data for research. The census will provide data to provide the required 5-year review of ability-to-pay analysis which is being incorporated into new repayment and water service contracts. The basis for these reviews is an audit by the Office of the Inspector General, Department of the Interior.

Burden: The respondent burden is estimated at 6,250 hours for farmers and 1,800 for irrigation districts. These estimates are derived as follows. There are an estimated 50,000 farm operators in the sampling universe and if a 50 percent sampling rate is assumed there will be 25,000 respondents in any given year. It is estimated that each respondent will require 15 minutes to complete the form. In most cases, the individual irrigators will have the requested data of crop production and yields in their own records and it only takes a few minutes to transfer these data to the respondent form. This yields an estimated 6,250 hours. In addition, the irrigation districts compile the individual responses into a district-wide response which is submitted to Reclamation. It is estimated that each of the 225 districts will require 8 hours to complete this compilation, which is a total of 1,800 burden hours for the districts. The overall total is estimated at 8,050 burden hours.

Respondents/Affected entities: Irrigators who receive irrigation water from Bureau of Reclamation projects and irrigation districts.

Estimated number of respondents: Estimated 50,000 irrigators in the universe; reporting burden estimate based on a 50 percent sample or 25,000 respondents annually. Approximately 225 districts will consolidate the respondent data and provide a summarized report annually to Reclamation.

Estimated total annual burden on respondents: 6,250 hours for irrigators and 1,800 hours for irrigation districts.

Frequency of Collection: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the survey forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (63 FR 10243, Mar. 2, 1998). Reclamation did not receive any comments on this collection of information during the comment period.

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximize consideration.

Murlin Coffey,

Manager, Property and Office Services.

[FR Doc. 99–32981 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

[Docket No. FR99N–0002]

Notice of Agency Information Collection: Proposed Collection; Comment Request; Direct Deposit Trust Funds Form

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces OST's plan to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Direct Deposit Trust Funds Form. Before submitting the ICR to OMB for review and approval, OST is soliciting comments on specific aspects of the proposed information collection as described below. An agency may not conduct or sponsor a collection of information and a person is not required to respond unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 22, 2000.

ADDRESSES: Send or hand deliver comments to Sarah Yepa, Office of Trust Funds Management, Office of Special Trustee for American Indians, 505 Marquette, NW, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Alley David, Liaison Officer, Branch of Directives and Regulatory Management Liaison Officer, at the above address. Telephone (505) 248–5751, Fax (505) 248–5782, or e-mail at *alley.david@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are Individual Indian Monies (IIM) account holders.

Title: Direct Deposit Trust Funds Form.

I. Background

The Debt Collection Improvement Act of 1996 requires, with few exceptions, that all Federal payments be made by automated clearinghouse (ACH). Although individual compliance to the Act is voluntary, the Secretary of the Interior, as the designated trustee for funds held by the Federal government on behalf of individual Indians, is encouraging the use of direct deposit by IIM account holders.

The information being requested will enable the Secretary to deposit IIM funds into an account at a bank by ACH rather than issue a check to the account holder. Response to the collection of information by the account holder is, however, voluntary. Conditions of disclosure are in accordance with provisions contained in the Privacy Act of 1974, as amended.

II. Benefits of Using Direct Deposit

(1) Possibility of checks being lost in the mail or stolen is eliminated.

(2) IIM funds are available sooner than if the mail service is used because they are electronically sent to the bank.

(3) If your bank account is an interest-earning account, your IIM funds begin earning interest sooner because the funds are in the bank within one or two days of the payment date.

(4) A notice of payment is sent whenever a deposit is made to the account.

(5) It's less expensive and more efficient.

III. Request for Comments

The OST is soliciting comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

IV. Burden Statement

The estimated total reporting burden is 12,750 hours over a 3-year period. The estimated burden hour per respondent is .25 hours. The estimated number of respondents is 51,000. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed for reviewing instructions; developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting existing ways to comply with any

previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Donna Erwin,

Director, Office of Trust Funds Management.

[FR Doc. 99–32897 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–2W–U

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

[Docket No. FR99N–0001]

Notice of Proposed Information Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The Office of the Special Trustee for American Indians (OST) announces a request for public comment from Indian Tribes concerning the renewal of Information Collection authorization. We will be submitting a request to the Office of Management and Budget to extend authorization for OMB Control Nos. 1035–0001, 1035–0002, and 1035–0003. The information collection allows us to collect documents associated with tribes withdrawing their funds held in trust and applying for technical assistance to withdraw funds under 25 CFR 1200.

Request for Comments

You may send or deliver comments to the addressee in the **ADDRESSES** section below. Please put the document number on your comments found in brackets in the heading of this notice. Your comments will be summarized and included in the request to OMB for approval and will become public record. We solicit your specific comments as to:

(1) Whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information has practical usefulness.

(2) Whether the accuracy of our burden estimate of the collection of information, including the validity of the methodology and assumptions used is reasonable.

(3) Enhance the quality, utility and clarity of the information to be collected.

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

DATES: You must send your comments so they are received on or by February 22, 2000.

ADDRESSES: You may mail or hand deliver your comments to: Sarah Yepa, Office of Trust Funds Management, Office of the Special Trustee for American Indians, 505 Marquette, NW, Suite 1000, Albuquerque New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Alley David, Branch of Directives and Regulatory Management, at (505) 248–5751, Fax (505) 248–5782, or electronically at *alley.david@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) allows tribes to withdraw their money held in trust by the U.S. Government. To withdraw their money, tribes must first submit an application and get approval from the Secretary of the Interior. The Reform Act also allows tribes to apply for technical assistance and financial assistance to complete the application. Financial assistance may not always be available. Section 1200.13 tells tribes how to submit an application to withdraw their money and Sec. 1200.14 tells them how they can apply for technical and financial assistance.

Burden Statement

The current information collection authorizations expire December 31, 1999. A Federal agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The application forms and burden estimates are:

1. OMB No. 1035–0001, OST Form No. SF–424A, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (Specific Budget):
   Estimate Burden Hours—468
   Annual Respondents—12
   Estimate Burden Per Response—39
2. OMB No. 1035–0002, OST Form No. SF–424, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (General):
   Estimate Burden Hours—156
   Annual Respondents—12
   Estimate Burden Per Response—13
3. OMB No. 1035–0003, Application to Withdraw Tribal Funds from Trust Status:
   Estimate Burden Hours—4,104
   Annual Respondents—12
   Estimate Burden Per Response—342
   Total Burden Hours for all Information Collections—4,728

Burden means the total time, effort, or financial resources expended to disclose or provide information to a federal agency and includes the time needed to review instructions, gather, process and submit the information.

Donna Erwin,

Director, Office of Trust Funds Management.

[FR Doc. 99–32898 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–2W–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–197 (Review); 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review); and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules

of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 3, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On December 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group responses to its notice of institution (64 FR 47862, September 1, 1999) were adequate with respect to all reviews, and that the respondent interested party group responses were adequate with respect to Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Romania, Spain, and United Kingdom but inadequate with respect to Australia, Poland, Sweden, and Taiwan. The Commission also found that other circumstances warranted conducting full reviews with respect to Australia, Poland, Sweden, and Taiwan.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32935 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–409]

Certain CD–ROM Controllers and Products Containing The Same—II; Denial of Motion for Sanctions; Vacatur of Recommended Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny respondents' motion for monetary sanctions and to vacate the presiding administrative law judge's ("ALJ") recommended determination ("RD") on monetary sanctions in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 13, 1998, based on a complaint filed by Oak Technology, Inc. ("Oak"). The respondents named in the investigation are MediaTek, Inc., United Microelectronics Corp., Lite-On Technology Corp., and AOpen, Inc. On May 12, 1999, the ALJ issued his final initial determination ("ID") finding the patent in controversy invalid, unenforceable, not infringed, and that there was no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

On January 13, 1999, respondents filed a motion for monetary sanctions against complainant Oak and its litigation counsel, Howrey & Simon ("Howrey"). On August 10, 1999, the ALJ issued an RD which recommended that sanctions be imposed on Oak and Howrey, jointly and severally, for an amount equal to respondents' reasonable attorney fees and costs in the investigation. The ALJ found that Oak and Howrey had abused Commission process by filing a section 337 complaint it knew was based on a patent that was invalid and unenforceable, in violation of section 210.4(d) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(d)).

On August 18, 1999, Oak and Howrey filed a motion to delay issuance of the public version of the RD imposing sanctions against Oak and Howrey. On August 31, 1999, the ALJ issued Order No. 18 denying Oak and Howrey's motion to delay issuance of the public version of the RD. On September 8, 1999, the Commission issued an order delaying issuance of the public version of the sanctions RD until issuance of the public version of the Commission opinion on whether there is a violation of section 337 in this investigation. The deadline for the parties to file comments on the RD was extended until 14 days after issuance of the public version of the Commission opinion on violation of section 337. All parties filed comments on the RD.

On October 1, 1999, the Commission affirmed the ID's finding of no infringement, but reversed the ID's findings of invalidity and unenforceability, and therefore determined there was no violation of section 337 in the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.25 of the Commission's Rules of Practice and Procedure (19 CFR 210.25).

Copies of the Commission's order and all other nonconfidential documents in the record of this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: December 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32934 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–859 (Preliminary)]

Circular Seamless Stainless Steel Hollow Products From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of circular seamless stainless steel hollow products, provided for in subheadings 7304.10.50, 7304.41.30, 7304.41.60, and 7304.49.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

This investigation results from a petition filed on behalf of Altx, Inc., Watervliet, NY; American Extruded Products, PMAC Ltd., Beaver Falls, PA; DMV Stainless USA, Inc., Houston, TX; Salem Tube, Inc., Greenville, PA; Sandvik Steel Co., Scranton, PA; International Extruded Products LLC d/b/a Wyman-Gordon Energy Products—IXP Buffalo, Buffalo, NY; and the United Steelworkers of America, AFL-CIO/CLC, Pittsburgh, PA, on October 26, 1999, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value imports of circular seamless stainless steel hollow products from Japan. Accordingly, effective October 26, 1999, the Commission instituted antidumping duty investigation No. 731–TA–859 (Preliminary). The Commission received an amendment to the petition on November 9, 1999, in which Pennsylvania Extruded Tube Co. joined as a co-petitioner in the case.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 4, 1999 (64 FR 60223). The conference was held in Washington, DC, on November 16, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 10, 1999. The views of the Commission are contained in USITC Publication 3262 (December 1999), entitled Circular Seamless Stainless Steel Hollow Products from Japan: Investigation No. 731–TA–859 (Preliminary).

Issued: December 13, 1999.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99–32933 Filed 12–20–99; 8:45 am]
BILLING CODE 7020–02–P

[2] Commissioner Crawford not participating.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 751–TA–15]

Stainless Steel Plate From Sweden

AGENCY: United States International Trade Commission.

ACTION: Termination of changed circumstances review.

SUMMARY: On August 6, 1999, the Department of Commerce published notice of the revocation of the antidumping finding on stainless steel plate from Sweden (64 FR 42922). The revocation of the antidumping finding renders moot the Commission's suspended changed circumstances review on stainless steel plate from Sweden (investigation No. 751–TA–15). Accordingly, the Commission hereby gives notice that it is terminating changed circumstances review investigation No. 751–TA–15.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 30, 1993, the Commission self-initiated a changed circumstances review of its 1973 affirmative determination in *Stainless Steel Plate from Sweden*, Inv. No. AA1921–114, TC Pub. 573 (May 1973). The decision to initiate the review followed discovery of a 1976 Treasury scope ruling that excluded three specific products from the scope of the original antidumping finding covering stainless steel plate from Sweden. The Commission determined that exclusion of these three products from the scope of the finding constituted changed circumstances sufficient to warrant review of its determination. Following publication of the notice of institution of the review, the domestic industry and the Swedish producer Avesta requested that the Commission suspend the review until the Department of Commerce could resolve an ongoing scope inquiry covering the same products. On August 16, 1993, the Commission suspended the review. The review has remained suspended since that date during Commerce's scope proceeding and subsequent appellate litigation.

On August 3, 1998, the Commission instituted a review of the finding under 19 U.S.C. 1675(c) to determine whether revocation of the antidumping finding covering stainless steel plate from Sweden would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (63 FR 41288, August 3, 1998). On June 23, 1999, the Commission determined that revocation of the antidumping finding covering stainless steel plate from Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *Stainless Steel Plate from Sweden*, Inv. No. AA1921–114 (Review), USITC Pub. 3204 (July 1999). Accordingly, on August 6, 1999, the Department of Commerce published notice of the revocation of the antidumping finding

covering stainless steel plate from Sweden (64 FR 42922).

Revocation of the antidumping finding covering stainless steel plate from Sweden renders moot the need for the suspended changed circumstances review of the finding. Therefore, in accordance with the provisions of 19 CFR 207.40 and 207.45(d), the Commission has determined to terminate the suspended changed circumstances proceeding.

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930.

By order of the Commission.

Issued: December 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32937 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Preliminary)]

Tin- and Chromium-Coated Steel Sheet From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of tin- and chromium-coated steel sheet (as defined by the Department of Commerce (Commerce)), that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 28, 1999, a petition was filed with the Commission and Commerce by Weirton Steel Corp., Weirton, WV; the United Steelworkers of America (USW), AFL-CIO; and the Independent Steelworkers Union (ISU), alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of tin- and chromium-coated steel sheet from Japan. Accordingly, effective October 28, 1999, the Commission instituted antidumping investigation No. 731–TA–860 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 4, 1999 (64 FR 60225). The conference was held in Washington, DC, on November 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 13, 1999. The views of the Commission are contained in USITC Publication 3264 (December 1999), entitled "Tin- and Chromium-Coated Steel Sheet from Japan: Investigation No. 731–TA–860 (Preliminary)."

By order of the Commission.

Issued: December 15, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32938 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford not participating.

INTERNATIONAL TRADE COMMISSION

[Investigation 332–408]

Database on Trade and Investment in Services, Part II

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 13, 1999.

SUMMARY: Following receipt of a request dated November 22, 1999, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–408, Database on Trade and Investment in Services, Part II, under section 332(g) of the Tariff Act of 1930 (19 U.S. C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Mr. Richard Brown, Office of Industries (202–205–3438) or Ms. Tsedale Assefa, Office of Industries (202–205–2374). For information on the legal aspects of this investigation, contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). General information concerning the Commission may be obtained by accessing its Internet server (http://www.usitc.gov).

Background:

Article 19 of the General Agreement on Trade in Services (GATS) requires World Trade Organization (WTO) members to enter into successive negotiations beginning not later than January 1, 2000, with a view to achieving progressively higher levels of liberalization in services trade and investment. In preparing for such negotiations, the USTR has asked the Commission to develop a confidential database that provides up-to-date information on service markets in other WTO member countries. As requested by the USTR, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, instituted an investigation for the purpose of developing a confidential database of information on trade and investment in 62 foreign service markets. The Commission will develop a database that provides, to the extent available, the following information with respect to six service industries:

(1) Current market access and national treatment restrictions to foreign service providers;

(2) Liberalization and deregulation that has taken place since 1995 (or since 1997 for financial services);

(3) Contemplated services liberalization or deregulation; and

(4) Sector-specific preferences extended to third-country trading partners.

The industries identified by USTR include health related and social services (defined as hospital, clinic, outpatient facility, nursing home, assisted living services, but excluding such services when publicly provided); education and training services (defined as higher education services, adult education services, and other education services, and training services in traditional and non-traditional settings, but excluding such services when publicly provided); travel and tourism services (defined as lodging, food serving services including restaurants, travel agency, tour operator, and tourist guide services); insurance services (defined as direct insurance and co-insurance, including life and non-life insurance services; reinsurance and retrocession; insurance intermediation, such as brokerage and agency; and services auxiliary to insurance including consultancy, actuarial, risk assessment and claim settlement); banking, securities, and other financial services (defined as deposit taking, lending, leasing, payment and transmission services, trading of securities and all other financial assets, securities underwriting and related services, asset management, clearance and settlement, and financial information and advisory services); and computer and related services (defined as data processing services, database services, software implementation services, and consultancy services related to the installation and maintenance of computer hardware and software). In addition, the Commission will attempt to identify common approaches, if any, to the deregulation and liberalization of service markets among WTO members. The USTR requested that the Commission provide the database no later than May 26, 2000. USTR indicated that the database will be confidential for a period of 10 years. USTR also noted that it considers the Commission's database to be an interagency memorandum that will contain predecisional advice and be subject to the deliberative process privilege. This investigation follows a previous request for a confidential database (Inv. No. 332–397) that was provided to the USTR on April 30, 1999. That database focused on distribution services (defined as wholesaling, retailing, and franchising), telecommunication services, express delivery services, entertainment technology services, foreign legal consultancy services, accounting services, architectural services, engineering services, construction services, energy services (defined as mining, oil, gas, and electricity), and environmental services. The Commission also provided information with respect to temporary entry and stay of service providers. In addition, the Commission sought to identify, to the extent available, common approaches to the deregulation and liberalization of service markets among WTO members, and best prospects for services trade liberalization during the impending WTO negotiations.

By order of the Commission.

Issued: December 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32936 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in Civil Action No. 99–2673–Civ–T–24B was lodged with the United States District Court for the Middle District of Florida on November 23, 1999.

In this action the United States sought injunctive relief and recovery of response costs under sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the Stauffer Chemical Superfund Site in Tarpon Springs, Florida ("the Site").

Under a proposed Consent Decree, Atkemix Thirty-Seven, Inc., the present owner and operator of the Site, and Rhone-Poulenc Ag Company, Inc., the former owner and operator of the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's remaining past response costs, and pay future response costs, in settlement of the government's claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Atkemix Thirty-Seven, Inc., Rhone-Poulenc Ag. Company, Inc.*, (M.D. F1.), DOJ # 90–11–2–1227/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602; the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, Post Office Box 7611, Washington, D.C. 20044–7611, (202) 514–1547. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of 25 cents per page for reproduction costs, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32976 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *Cumberland Farms, Inc.*, Civil Action No. 3:98CV2226 (AVC), was lodged on October 1, 1999, in the United States District Court for the District of Connecticut. The proposed consent decree will resolve the United States' Clean Air Act, 42 U.S.C. 7401 *et seq.* ("the Act"), claims alleged in a complaint against Cumberland Farms for violations of the Act at a bulk gasoline terminal it previously owned and operated in New Haven, Connecticut.

Pursuant to the consent decree, Cumberland Farms will pay a civil penalty in the amount of $40,000. The decree further requires Cumberland Farms to perform two supplemental environmental projects.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v.

Cumberland Farms, Inc., DOJ Ref. #90–5–2–1–06457.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Connecticut, 450 Main St., Hartford, Conn. 06103; and at the Region I office of the Environmental Protection Agency, 1 Congress St., Boston, Mass. 02114–2023. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $6.25 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32977 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby govern that a proposed Consent Decree in *United States* v. *Exxon Corporation, et al.*, DOJ # 90–11–2–201, Civ No. C–92–486, was lodged in the United States District Court for the District of New Hampshire on December 8, 1999. The Consent Decree resolves claims of the United States under Sections 106(b) and 107(a) and (c) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606(b) and 9607(a) and (c), against four defendants and twenty-seven (27) third-party defendants ("Settling Defendants") relating to cost reimbursement and cleanup of the Auburn Road Landfill Superfund Site in Londonderry, New Hampshire (the "Site"). The direct defendants are Exxon Corporation, Grassy Knoll Associates, Peter Johnson, and Workplace Systems Corporation. Under the proposed Consent Decree, the Settling Defendants agree, inter alia, to reimburse to the United States $5.84 million in past response costs incurred at the Site, to perform future Work at the Site under EPA's 1989 Record of Decision as amended by EPA's 1996 Amended Record of Decision, and to pay EPA's oversight costs incurred in connection with that Work. The Work involves operation and maintenance of the landfill cap, monitoring of ground water, surface water and sediments under a natural attenuation remedy, and the performance of any active remediation of ground water, surface water and sediments that EPA may select in the future. Also, Peter Johnson/Grassy Knoll will pay $100,000, and Workplace Systems Corporation will pay $25,000 and perform a supplemental environmental project, to resolve our claims for civil penalties/punitive damages concerning their alleged violations of a unilateral administrative order issued by EPA in 1990 ("1990 UAO").

Additionally, under the proposed Decree, Settling Defendants will reimburse the State for a portion of its past response costs and will reimburse the Town of Londonderry, New Hampshire for a portion of its response costs. Further, Peter Johnson agrees to convey to the Town of Londonberry certain property at the Site, subject to use restrictions. In return, the United States covenants not to sue Settling Defendants for response costs or response actions at the Site, subject to certain reopeners and reservations of rights. The United States also covenants not to sue Peter Johnson and Workplace Systems for civil penalties and punitive damages for their violations of the 1990 UAO. Only three third-party defendants are not participating in the settlement.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Exxon Corporation, et al.*, DOJ # 90–11–2–201. The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 55 Pleasant Street—Room 312, Concord, New Hampshire 03301; and at the Region I Office of the U.S. Environmental Protection Agency, One Congress Street, Suite 1100—RCA, Boston, Massachusetts 02114–2023. Copies of the Consent Decree may be obtained by mail from the Justice Department Consent Decree Library, P.O. Box 7611 Ben Franklin Station, Washington, DC 20044, (202) 514–1547. In requesting a copy, please enclose a check in the amount of $170.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32975 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 181–99]

Privacy Act of 1974; System of Records

The Department of Justice, United States Attorneys' Offices proposes to modify the United States Attorneys Offices Criminal Case File System, Justice/USA–007, last published separately on January 22, 1988 at 53 FR 1861 and published as modified on January 20, 1998 at 63 FR 8659, 8669. The primary purpose of this system is to facilitate a uniform system of record keeping related to criminal litigation and prosecutions and ancillary civil matters arising from criminal cases handled by the United States Attorneys Offices. The Department now proposes to modify the system by adding one new routine use.

New routine use (w) will enable the United States Attorneys Offices to better inform victims of crimes of the status of the investigation, the disposition of the case in which they were a victim or a complainant, and the status of the defendant if convicted.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given thirty days in which to comment on these proposed changes. Comments must be submitted in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington DC 20530 by January 20, 2000.

As required by 5 U.S.C. 552a(r) and the Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: December 14, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/USA–007

SYSTEM NAME:

Criminal Case Files.

SYSTEM LOCATION:

Ninety-four United States Attorneys' Offices (see Appendix identified as

Justice/USA–999); the Executive Office for United States Attorneys, United States Department of Justice, 10th and Constitution Avenue, N.W. Washington D.C. 20530; and posted on the internet website of the EOUSA at http://www.usdoj.gov/eousa.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(w) Information may be disclosed to complainants and victims to the extent necessary to provide them with information concerning the progress or results of the investigation or case arising from the matters of which they complained or were the victim.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the Administrative Office/Assistant, for the U.S. Attorney for each district (see appendix or EOUSA internet address http://www.usdoj.gov/eous).

NOTIFICATION PROCEDURE:

Address inquiries to the system manager for the judicial district in which the case or matter is pending. (See appendix or EOUSA internet address of http://www.usdoj.gov/eousa).

* * * * *

[FR Doc. 99–32941 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—"Development of Training Curriculum for Delivery of Executive Training to Newly Appointed Wardens"

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: This cooperative agreement is made available for the development of a core curriculum for the training of newly appointed prison wardens/superintendents. The award recipient will develop a 32-hour training curriculum including an instructors' guide, lesson plans, computer-generated view graphs to support the curriculum, and a participant manual. The curriculum will provide persons with prison management and operations experience with training materials and delivery strategies for state-of-the-art executive training of wardens/superintendents from multiple state, major municipal, and territorial corrections agencies who are in their initial year of service in this position. The award recipient will also develop an outcome evaluation instrument for retrospective application with those participating in the training, their superiors, peers or others.

Funds Available: The award will be limited to $100,000 (direct and indirect costs) and project activity must be completed within 12 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Wednesday, January 19, 2000, 4:00 p.m. Eastern daylight time. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

ADDRESSES AND FURTHER INFORMATION: Request for the application kit, which includes further details on the project's objectives, etc., should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email: jevens@bop.gov. A copy of this announcement, application forms, and additional information may also be obtained through the NIC web site: http.www.nicic.org (click on "What's New" and "Cooperative Agreements"). All technical and/or programmatic questions concerning this announcement should be directed to Dick Franklin at the above address or by calling 800–995–6423 or 202–307–1300, etc. 145, or by E-mail via rfranklin@bop.gov.

Eligibility Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1)

NIC Application Number: 00P08 This number should appear as a reference line in your cover letter and also in box 111 of Standard Form 424.

Catalog of Federal Domestic Assistance Number: 16.601.

Authority: Public Law 93–415.

Dated: December 9, 1999.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–32974 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 15, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096, ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202) 219–5096, ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit sharing Plan or Trust (29 CFR part 549).

OMB Number: 1215–0119.

Frequency: Recordkeeping only.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 1.924 million.

Total Burden Hours: (Recordkeeping) 2.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This information collection requests clearance of the recordkeeping provisions of section 7(e)(3)(b), of the Fair Labor Standards Act, which permits the exclusion from an employee's regular rate of pay, payments on behalf of an employee to a bona fide thrift or savings plan, profit-sharing plan or trust. The implementing Regulations 29 CFR parts 547 and 549 set forth the requirements for a bona fide thrift or savings plan, profit-sharing plan, or trust.

Agency: Employment Standards Administration.

Title: Request to Be Selected As Payee.

OMB Number: 1215–0166.

Agency Form Number: CM–910.

Frequency: One time.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal government.

Number of Respondents: 2,350.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 783.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $846.

Description: The CM–910 is used to obtain information about prospective representative payees to determine whether they are qualified to handle monetary benefits on behalf of the Black Lung beneficiary.

Agency: Occupational Safety and Health Administration.

Title: Vinyl Chloride (29 CFR 1910.1017).

OMB Number: 1218–0010 (Extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal, State, Local or Tribal Government.

Number of Respondents: 80.

Estimated Time Per Respondent: time for response ranges from approximately 5 minutes for employers to maintain employee exposure monitoring and medical records to 10 hours for employers to provide reports of vinyl chloride emergencies and incidents to the nearest OSHA area office.

Total Burden Hours: 2,978 hours.

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $258,042.

Description: The Vinyl Chloride Standard requires employers to monitor employee exposure to vinyl chloride, to monitor employee health, and to provide employees with information about their exposures and the health effects of exposure to vinyl chloride. In addition, employers must notify OSHA area directors of regulated areas and changes to regulated areas, and of any emergencies that involve vinyl chloride.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–32986 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,216]

Camp-Hill Corporation, McKeesport, Pennsylvania; Notice of Revised Determination on Reconsideration

On May 20, 1999, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 3, 1999 (64 FR 29891).

The Department initially denied TAA to workers of Camp-Hill Corporation, McKeesport, Pennsylvania, producing electric resistance welded (ERW) carbon and alloy pipe because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted a customer survey of the sole customer's customers of electric resistance welded (ERW) carbon and alloy pipe. The survey revealed that some of the sole customer's customers were increasing their reliance on imports of electric resistance welded (ERW) carbon and alloy pipe while reducing purchases from the sole customer.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with electric resistance welded (ERW) carbon and alloy pipe contributed importantly to the declines in sales or production and to the total or partial separation of workers of Camp-Hill Corporation, McKeesport, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Camp-Hill Corporation, McKeesport, Pennsylvania engaged in the production of electric resistance welded (ERW) carbon and alloy pipe who became totally or partially separated from employment on or after October 30, 1997 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 30th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32994 Filed 12–20–99; 8:45 am]

BILLING CODE: 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,695]

Energizer Power Systems; Eveready Battery Company Now Known as Moltech Power Systems, Gainesville, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 28, 1998 applicable to all workers of Energizer Power Systems located in Gainesville, Florida. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51605). The determination was amended on September 29, 1998 to include workers whose wages were reported under its parent firm, Eveready Battery Company. The amended notice was published in the **Federal Register** on October 9, 1998 (63 FR 54497).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production

of rechargeable batteries. Company information shows that in November 1999, the Energizer Power Systems, Division of Eveready Battery Company, was purchased by Moltech Corporation. The Gainesville, Florida location of Energizer Power Systems became known as Moltech Power Systems and will continue to lay off workers.

Accordingly, the Department is amending the certification determination to correctly identify the new ownership to read "Energizer Power Systems, Division of Eveready Battery Company, now known as Moltech Power Systems," Gainesville, Florida.

The intent of the Department's certification is to include all workers of Energizer Power Systems who were adversely affected by increased imports of rechargeable batteries.

The amended notice applicable to TA–W–34,695 is hereby issued as follows:

All workers of Energizer Power Systems, now known as Moltech Power Systems, Gainesville, Florida who became totally or partially separated from employment on or after June 12, 1997 through August 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 30th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33001 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,687]

Fashions Apparel, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 16, 1999, in response to a petition filed on the same date on behalf of workers at Fashions Apparel, Inc., El Paso, Texas.

A certification applicable to the petitioning group of workers, employed at Fashions Apparel, Inc., El Paso, Texas, was issued on November 19, 1999 and is currently in effect (TA–W–36,874). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 2nd day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32996 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,516]

Jockey International, Carlisle Textile Plant, Carlisle, KY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Jockey International, Carlisle Textile Plant, Carlisle, Kentucky. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,516; Jockey International Carlisle Textile Plant, Carlisle, Kentucky (December 2, 1999)

Signed at Washington, DC, this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32989 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,856]

Levingston Engineers, Inc., Sulphur, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Levingston Engineers, Inc., Sulphur, Louisiana. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,856; Levingston Engineers, Inc., Sulphur, Louisiana (December 2, 1999)

Signed at Washington, DC, this 6th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32988 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,034]

Moltech Power Systems, Gainesville, Florida; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 8, 1999 in response to a worker petition which was filed on October 22, 1999 on behalf of workers at Moltech Power Systems, Gainesville, Florida.

An active certification covering the petitioning group of workers remains in effect (TA–W–34,695). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 24th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32997 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,442]

Philips Lighting Company; Fairmont, WV; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 19, 1999, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE), AFL–CIO, Local 627, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Philips Lighting Company, Fairmont, West Virginia. The denial notice was signed on September 15, 1999 and published in the **Federal Register** on October 14, 1999 (64 FR 55750).

The Department has reviewed the request for reconsideration and has

determined further investigation with respect to the products manufactured at the Fairmont facility and imports of products by Philips Lighting Corporation during the relevant period is warranted. The further review will seek to establish whether any articles produced at the Fairmont facility during the relevant period are like or directly competitive with any products imported by the company during that period or whether production of any article was shifted from the Fairmont facility to Mexico or Canada during the relevant period.

Conclusion

After careful review of the application, I conclude that the additional information provided by the petitioners is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23d day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33000 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,935]

Reef Gear Manufacturing, Incorporated, Plant II, Marine City, Michigan; Notice of Termination of Affirmative Determination Regarding Application for Reconsideration

On February 11, 1998, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on February 24, 1998 (63 FR 9264).

The Department initially certified TAA to workers of Reef Gear, Plant II, Marine City, Michigan producing gear blanks because the "contributed importantly" group eligibility requirement of section 22(3) of the Trade Act of 1974, as amended, was met.

The company requested that the certification be reconsidered because it felt that imports had not caused the worker separations and provided some information which the Department felt warranted a review of its certification. After repeated attempts to collect additional information from the company, and not receiving any further information, the Department is terminating its investigation for reconsideration of this petition.

Signed at Washington, DC, this 30th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32993 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,110, Sylacagua, Alabama; TA–W–36,110E, Dadeville, Alabama; TA–W–36,110F, New # 1 Mill and 755 Lee Street Plants, Alexander City, Alabama; TA–W–36,110G, 8416 Hwy 231 North, Wetumpka, Alabama; TA–W–36,110H, Brundidge, Alabama]

Russell Corporation; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 8, 1999, applicable to workers of Russell Corporation, located in Sylacagua, Alabama. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35184).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Dadeville, New #1 Mill and 755 Lee Street Plants, Alexander City, 8416 Hwy 231 North, Wetumpka and Brundidge, Alabama locations of Russell Corporation. The workers are engaged in the production of fleece wear and/or T-shirts.

The intent of the Department's certification is to include all workers of Russell Corporation who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover the workers of Russell Corporation, Dadeville, New #1 Mill and 755 Lee Street Plants, Alexander City, 8416 Hwy 231 North, Wetumpka and Brundidge, Alabama.

The amended notice applicable to TA–W–36,110 is hereby issued as follows:

All workers of Russell Corporation, Sylacagua, Alabama (TA–W–36,110), Dadeville, Alabama (TA–W–36,110E), Alexander City, New #1 Mill and 755 Lee Street Plants, Alexander City, Alabama (TA–W–36,110F), 8416 Hwy 231 North, Wetumpka, Alabama (TA–W–36,110G), and Brundidge, Alabama (TA–W–36,110H) who become totally or partially separated from employment on or after April 12, 1998 through June 8, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 30th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32995 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,038]

Williams Advanced Materials, Incorporated, Buffalo, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 8, 1999 in response to a worker petition which was filed on behalf of all workers at Williams Advanced Materials, Incorporated, located in Buffalo, New York (TA–W–37,038).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 6th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32998 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance/NAFTA Financial Status Report/Request for Funds; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the

Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Trade Adjustment Assistance/North American Free Trade Agreement (NAFTA) Transitional Adjustment Assistance program Financial Status Report/Request for Funds. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 22, 2000.

ADDRESSES: Jess Aragon or Erica Cantor, 200 Constitution Avenue, NW, Washington DC 20210, 202–219–7979 (this is not a toll free number). FAX number 202–219–6564.

SUPPLEMENTARY INFORMATION:

I. Background

The amendments to the Trade Act contained in the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (Public Law 100–418) and Title 5 of the North American Free Trade Agreement Implementation Act (Public Law 103–182) of 1993 made some significant changes which affect the way the Trade Adjustment Assistance and North American Free Trade Agreement (NAFTA) Adjustment Assistance programs are funded and administered. These changes made enrollment in training programs an entitlement for workers adversely affected by imports (Trade program) or by imports from Canada or Mexico (NAFTA program). Thus, the Trade program and NAFTA trade program consists of entitlements for trade readjustment allowances, job search allowances, job relocation allowances and training. In order for workers to continue to receive entitlement to trade adjustment allowances, they must be enrolled in a training program approved by the Secretary of Labor (1423 of OTCA) for the trade program and (section 250 of the NAFTA Implementation Act) for the NAFTA program.

Although training becomes an entitlement under both programs, the OTCA imposed a training cap in section 236 for the Trade program and under subchapter D for the NAFTA program. The statutory cap is $80 million for the Trade program and $30 million for the NAFTA program. The purpose of the collection of this information on the Form ETA–9023 is to be able to monitor expenditures for both programs to ensure that the statutory ceilings are not exceeded.

Additionally, the Secretary of Labor is responsible for ensuring that resources are equitably distributed to the States. This form enables the ETA to evaluate a State's need for resources and to redistribute resources among States as necessary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The ETA–9023 has been successfully utilized by the ETA and the States with only minor modifications since FY 1989. The **Federal Register** Notice requests an extension of the ETA–9023 for both the TAA and NAFTA programs. Overall, States have done a commendable job in completing the form with relatively minor problems or questions raised by the States on the form. The ETA–9023 has been extremely important to the ETA over the last several years because the entire $80 million available, under the statutory cap for the Trade program for training was allocated to the States. The ETA–9023 report was critical in allowing ETA to be able to redistribute resources equitably among States so training activity would not be discontinued in some States.

Type of Review: Reinstatement.

Title: Trade Adjustment Assistance/NAFTA Financial Status Report/Request for Funds.

OMB Number: 1205–0275.

Agency Number: ETA–9023.

Affected Public: State Government, State Employment Security Agencies.

Cite/Reference/Form/etc: See below.

Cite/reference	Total respondents	Frequency	Total responses	Average time per responses	Burden
TAA Rptg.	50	5	250	2 hrs.	500
NAFTA Rptg.	50	5	250	2 hrs.	500
Totals			500		1,000

The total costs is $26.00 × 100 hours = $26,000.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 15, 1999.

Jack H. Rapport,

Comptroller, Employment and Training Administration.

[FR Doc. 99–32985 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3265]

Georgia-Pacific Corporation, Bellingham, WA; Notice of Revised Determination on Reconsideration

On October 27, 1999, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration in response to an appeal filed by the Association of Western Pulp and Paper Workers on behalf of Local 194. The notice will soon be published in the **Federal Register**.

The workers at the subject firm produced liquefied chlorine gas and a byproduct, liquid caustic soda. The workers are not separately identifiable by product.

On reconsideration, the Department obtained evidence that the subject firm increased its reliance on imports from Canada of articles like or directly competitive with chlorine.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles from Canada like or directly competitive with chlorine, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Georgia-Pacific Corporation, Bellingham, Washington. In accordance with the provisions of the Act, I make the following determination:

All workers of Georgia-Pacific Corporation, Bellingham, Washington, who became totally or partially separated from employment on or after June 16, 1998 through two years from the date of the certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32991 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,633]

Levi Strauss & Company

Texas

TA–W–36,633A
HARLINGEN PLANT and Texas Commission for the Blind, HARLINGEN, TEXAS 78550

TA–W–36,633B
CYPRESS PLANT and Judy's Cafeteria, EL PASO, TEXAS 79905

TA–W–36,633C
McALLEN PLANT and Texas Commission for the Blind, McALLEN, TEXAS 78504

TA–W–36,633H
KASTRIN PLANT, including EL PASO DIGITAL IMAGING GRAPHICS OF THE EL PASO REGIONAL OFFICE, EL PASO, TEXAS 79907

TA–W–36,633I
BROWNSVILLE PLANT, BROWNSVILLE, TEXAS 78521

TA–W–36,633J
SAN BENITO PLANT, SAN BENITO, TEXAS 78586

TA–W–36,633K
SAN ANTONIO SEWING PLANT, SAN ANTONIO, TEXAS 78227

TA–W–36,633L
SAN ANTONIO FINISHING PLANT including SAN ANTONIO CREDIT UNION, SAN ANTONIO FINISHING PLANT, SAN ANTONIO, TEXAS 78227

TA–W–36,633P
RICHARDSON TECHNOLOGY CENTER, RICHARDSON, TEXAS 75081

TA–W–36,633Q
WESTLAKE DATA CENTER, WESTLAKE, TEXAS 76262

TA–W–36,633R
DALLAS CUSTOMER FULFILLMENT REGIONAL OFFICE, DALLAS, TEXAS 75252

TA–W–36,633Z
AMARILLO FINISHING FACILITY, AMARILLO, TEXAS 79107

Tennessee

TA–W–36,633D
JOHNSON CITY PLANT including TRI-CITIES MAID (GARY, TN), JOHNSON CITY, TENNESSEE 37605

TA–W–36,633E
MOUNTAIN CITY PLANT including DIVERSCO (Spartanburg, SC), and ARAMARK (Mountain City, TN), MOUNTAIN CITY, TENNESSEE 37683

TA–W–36,633S
KNOXVILLE REGIONAL OFFICE including GLOBAL FULFILLMENT SERVICES CENTER and KNOXVILLE DIGITAL IMAGING GRAPHICS DEPARTMENT, 1700 CHERRY STREET, KNOXVILLE, TENNESSEE 37917

California

TA–W–36,633N
VALENCIA SEWING FACILITY, SAN FRANCISCO, CALIFORNIA 94103

TA–W–36,633T
LEVI STRAUSS & COMPANY CORPORATE HEADQUARTERS, SAN FRANCISCO, CA 94111

Georgia

TA–W–36,633O
BLUE RIDGE PLANT, BLUE RIDGE, GEORGIA 31503

Florida

TA–W–36,633U
WESTON CUSTOMER FULFILLMENT REGIONAL OFFICE, WESTON, FLORIDA 33331

Kentucky

TA–W–36,633V
FLORENCE CUSTOMER SERVICE CENTER, FLORENCE, KENTUCKY 41042

TA–W–36,633W
HEBRON CUSTOMER SERVICE CENTER, HEBRON, KENTUCKY 41048

Mississippi

TA–W–36,633X
CANTON CUSTOMER SERVICE CENTER, CANTON, MISSISSIPPI 39046

Nevada

TA–W–36,633Y
SKY HARBOR CSC, HENDERSON, NEVADA 89012

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 11, 1999, applicable to workers of Levi Strauss & Company at eight facilities located in Texas, Tennessee, Georgia, and Virginia. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52541). In addition, the Department denied eligibility for an additional eight Levi Strauss & Company facilities in Texas, Tennessee, and California because there had not been threats of employment loss at those facilities. The notice was also published in the **Federal Register** on September 29, 1999 (64 FR 52539).

The company requested that the seven of the eight facilities (TA–W–36,633H through TA–W–633L, and TA–W–36,633N and O) which were previously denied be certified because of reduced work hours at each facility and provided information to indicate that workers had their work hours reduced by at least 20 percent. In addition, the company requested that contractors working full-

time at all of the facilities also be included in the certification. The company also requested that an additional eleven facilities and work sites in seven states (Texas, Tennessee, California, Florida, Kentucky, Mississippi, and Nevada) be included as a result of additional layoff announcements.

The intent of the Department's certification is to include all workers of the subject firm, including full time contractors working at the identified facilities, adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers impacted by articles like or directly competitive with denim and Docker apparel.

The amended notice applicable to TA–W–36,633 is hereby issued as follows:

All workers of the following Levi Strauss & Company facilities who became totally or partially separated from employment who became totally or partially separated from employment on or after August 8, 1999 through August 11, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA–W–36,633 WICHITA FALLS PLANT, WICHITA FALLS, TEXAS 76303
TA–W–36,633A HARLINGEN PLANT, including TEXAS COMMISSION FOR THE BLIND, HARLINGEN, TEXAS 78550
TA–W–36,633B CYPRESS PLANT, including JUDY's CAFETERIA, EL PASO, TEXAS 79906
TA–W–36,633C McALLEN PLANT, including TEXAS COMMISSION FOR THE BLIND, McALLEN, TEXAS 78504
TA–W–36,633D JOHNSON CITY PLANT, including TRI-CITIES MAID (Gary, TN) JOHNSON CITY, TENNESSEE 37605
TA–W–36,633E MOUNTAIN CITY PLAN, including DIVERSCO (Spartanburg, SC) and ARAMARK MOUNTAIN CITY, TENNESSEE 37683
TA–W–36,633F WARSAW PLANT, WARSAW, VIRGINIA 22572
TA–W–36,633G VALDOSTA PLANT, VALDOSTA, GEORGIA 31601
TA–W–36,633J KASTRIN PLANT, KASTRIN, TEXAS 79907
TA–W–36,633I BROWNSVILLE PLANT, BROWNSVILLE, TEXAS 78521
TA–W–36,633J SAN BENITO PLANT, SAN BENITO, TEXAS 78586
TA–W–36,633K SAN ANTONIO SEWING PLANT, SAN ANTONIO, TEXAS 78227
TA–W–36,633L SAN ANTONIO FINISHING PLANT, including SAN ANTONIO CREDIT UNION, SAN ANTONIO FINISHING PLANT, SAN ANTONIO, TEXAS 78227
TA–W–36,633M VALENCIA SEWING FACILITY, SAN FANCISCO, CALIFORNIA 94103
TA–W–36,633O BLUE RIDGE PLANT, BLUE RIDGE GEORIGA 31503
TA–W–36,633P RICHARDSON TECHNOLOGY CENTER, RICHARDSON, TEXAS 75081
TA–W–36,633Q WESTLAKE DATA CENTER, WESTLAKE, TEXAS
TA–W–36,633R DALLAS CUSTOMER FULFILLMENT REGIONAL OFFICE, DALLAS, TEXAS 75252
TA–W–36,633S KNOXVILLE REGIONAL OFFICE, including GLOBAL FULFILLMENT SERVICES CENTER and KNOXVILLE DIGITAL IMAGING GRAPHICS DEPARTMENT, 1700 CHERRY STREET, KNOXVILLE, TENNESSEE 37917
TA–W–36,633T LEVIS STRAUSS & COMPANY CORPORATE HEADQUARTERS, SAN FRANCISCO, CALIFORNIA 94111
TA–W–36,633U WESTON CUSTOMER FULFILLMENT REGIONAL OFFICE, WESTON, FLORIDA 33331
TA–W–36,633V FLORENCE CUSTOMER SERVICE CENTER, FLORENCE, KENTUCKY 41042
TA–W–36,633W HEBRON CUSTOMER SERVICE CENTER, HEBRON, KENTUCKY 41048
TA–W–36,633X CANTON CUSTOMER SERVICE CENTER, CANTON, MISSISSIPPI 39046
TA–W–36,633Y SKY HARBOR CSC, HENDERSON, NEVADA 89012."

Signed in Washington, D.C. this 29th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32992 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003545]

Wabash Technologies, Wabash Magnetics Automotive Product Group, Huntington, Indiana; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on November 2, 1999, in response to a petition filed on behalf of workers at Wabash Technologies, Wabash Magnetics Automotive Product Group, Huntington, Indiana. Workers produce automotive-related sensors.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32999 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02932]

Westinghouse Electric Company Energy Systems Business Unit (ESBU) Including Leased Workers of Landrum Staff Services and CDI/Pensacola, Pensacola, FL; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 1, 1999, applicable to workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25374).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that some workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU), were leased from Landrum Staff Services and CDI/Pensacola to produce air cooled electric generators at the Pensacola, Florida facility. Worker separations occurred at Landrum Staff Services and CDI/Pensacola as a result of worker separations at Westinghouse Electric Company, Energy Systems Business Unit (ESBU).

Based on these findings, the Department is amending the certification to include workers of Landrum Staff Services and CDI/Pensacola, Pensacola, Florida leased to Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida.

The intent of the Department's certification is to include all workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU) adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–02932 is hereby issued as follows:

All workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida and leased workers of Landrum Staff Services and CDI/ Pensacola, Pensacola, Florida engaged in employment related to the production of air cooled electric generators at Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida who became totally or partially separated from employment on or after March 18, 1999 through April 1, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32990 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection for requesting permission to use privately-owned equipment to microfilm archival holdings in the National Archives of the United States and Presidential libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 22, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, ext. 226, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to Microfilm Records.

OMB number: 3095–0017.

Agency form number: None.

Type of review: Regular.

Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.

Estimated number of respondents: 5.

Estimated time per response: 10 hours.

Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).

Estimated total annual burden hours. 50

Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming and to schedule use of the limited space available for filming.

Dated: December 15, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–33007 Filed 12–20–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 4, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of

records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Office of the Inspector General (N1–509–00–1, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that relate to investigations of the loss of U.S. Central Command nuclear, biological, and chemical desk logs accumulated during the Persian Gulf War. Recordkeeping copies of these files are proposed for permanent retention.

2. Department of Defense, Office of the Inspector General (N1–509–00–2, 2 items, 2 temporary items). Records of investigations of deaths of members of the Armed Forces from self-inflicted causes, 1994–1999, including electronic copies of documents created using electronic mail and word processing. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

3. Department of Energy, Agency-wide (N1–434–98–24, 5 items, 4 temporary items). Investigative records that lack historical significance, including files stemming from allegations that do not result in an investigation. Files include reports, correspondence, and supporting working papers. Files that pertain to cases that attract media or congressional attention, result in substantive changes in agency policy, or document major violations of criminal law are proposed for permanent retention. A 75 year retention period is proposed for temporary files that pertain to environmental matters or health and safety issues.

4. Department of Health and Human Services, Office of the Assistant Secretary for Health (N1–514–99–1, 4 items, 4 temporary items). Older records accumulated primarily during the 1970s and 1980s. Included are such records as contract files related to health care statistics, correspondence relating to the administrative activities of the Division of Health Examination Statistics, expired project files of the Division of Data Policy documenting the process by which administrative clearances were obtained for studies, and contract files relating to the establishment of health service management operations in several localities.

5. Department of Housing and Urban Development, Federal Housing Administration (N1–31–99–1, 18 items, 10 temporary items). Closed case files for servicing and tracking loan accounts, working copies of statistical summaries and reports, and fiscal accounting records. Temporary records were accumulated between 1934 and 1971. Records proposed for permanent retention include policy correspondence, studies, procedural memos, subject files, and market analysis reports.

6. Department of the Treasury, U.S. Customs Service (N1–36–99–1, 15 items, 3 temporary items). Central File segments relating to specific actions involving rate setting, classification of merchandise, entry duties, exemptions, and similar matters, 1902–1964. Also proposed for disposal are card indexes to temporary investigation files, 1938–1958, and files on management improvement projects accumulated during the 1960s that pertain to such matters as forms management, space utilization, and personnel management. A wide variety of older records predating 1970 are proposed for permanent retention including letter books and ledgers of the Vermont District, records of the Port of New York Collector's Office, records relating to clearances and entrances at the Port of Baltimore, and selected Central File segments, 1902–1964.

7. Department of the Treasury, United States Mint (N1–104–99–3, 3 items, 3 temporary items). Correspondence, contracts, monitoring reports, statements of work, periodic inspection plans and schedules, and surveys relating to asbestos abatement in agency facilities. Also included are electronic copies of documents created using electronic mail and word processing.

8. Environmental Protection Agency, Office of Pesticides Programs (N1–412–99–13, 3 items, 3 temporary items). Company transfer files, including paper and microfilm records and electronic copies of documents created using electronic mail and word processing. The records consist of correspondence, transfer agreements, and other supporting documentation that pertain to the transfer or ownership of companies, products, and data.

9. Environmental Protection Agency, Agency-wide (N1–412–99–14, 5 items, 5 temporary items). Appointee clearance files and laboratory performance evaluation records, including electronic copies of records created using electronic mail and word processing. Clearance files document the selection of political appointees and include applications for employment, background information about individuals, financial disclosure forms, security clearances, and White House clearance checklists. Laboratory performance files document the accreditation program for labs and include statistical reports, performance summaries, and other documents, used to measure the quality of work performed at laboratories.

10. Environmental Protection Agency, Agency-wide (N1–412–99–15, 2 items, 2 temporary items). Case files and working papers for mission-related projects that explore new technologies or methods for improving the environment, including electronic copies of records created using electronic mail and word processing. The records include proposals,

monitoring and measurement plans, correspondence, progress reports, and other supporting documentation. The records do not include final reports on the planning and establishment of agency programs following pilot projects, which were previously approved for permanent retention.

11. Environmental Protection Agency, Agency-wide (N1–412–99–21, 2 items, 2 temporary items). Records relating to **Federal Register** notices, including drafts and final notices, tear sheets from the **Federal Register**, newspaper clippings, press releases, citations and abstracts of articles, correspondence, logs, and tracking systems. Also included are electronic copies of documents created using electronic mail and word processing.

12. Environmental Protection Agency, Agency-wide (N1–412–99–22, 4 items, 4 temporary items). Quality Assurance Project Plans and Quality Management Plans, including electronic copies of records created using electronic mail and word processing. Records document administrative procedures for ensuring that environmental data used to support agency decisions are of adequate quality and usability for their intended purpose. Included are records that establish criteria for planning, implementing, documenting, and assessing data collection activities.

13. Railroad Retirement Board, Office of Programs (N1–184–99–1, 6 items, 6 temporary items). Paper and optical disk copies of Railroad Unemployment Insurance Act records compiled in determining the validity of sickness insurance applications and unemployment claim forms for compensation administered by the agency. Also included are electronic copies of documents created using electronic mail and word processing.

14. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–99–2, 7 items, 7 temporary items). Records relating to the Commission Issuance Posting System Manager, an electronic database for internal agency use that contains copies of issuances and related documents. Included are input documents, the master database, outputs (including text files used for input into a publicly available data base), system documentation, and electronic copies of records created using electronic mail and word processing. Recordkeeping copies of the agency's issuances were previously approved for permanent retention.

15. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–98–7, 4 items, 4 temporary items). Records relating to the Commission Issuance Posting System, an electronic database of agency issuances created for public reference use. Included are input documents, the master database, outputs, and system documentation.

16. National Gambling Impact Study Commission, Agency-wide (N1–220–99–3, 40 items, 11 temporary items). Background information and unsolicited public opinion and reference files not used for decision-making purposes by the Commission. Also included are electronic copies of records created using electronic mail, word processing, and web-based systems. Records proposed for permanent retention include correspondence files, meeting files, subject files, subcommittee files, case studies, reports, and publications. Electronic information systems pertaining to the Commission's comprehensive study of the legal, social, and economic impact of gambling on American society are also proposed for permanent retention.

Dated: December 10, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–33006 Filed 12–20–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.08% (.0008) for tier 2 for calendar year 1999. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission.

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005; telephone 202/632/7003; fax 202/632/7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the rates being finalized today are effective for calendar year 1999.

Elizabeth L. Homer,

Vice-Chairman.

[FR Doc. 99–33079 Filed 12–20–99; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[License No. 37–20553–01 (Suspended) Docket No. 030–19405, EA 99–217]

Alfonso DeLeo, Jr., P.O. Box 312, Ardmore, PA 19003; Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License

I

Alfonso DeLeo (Mr. DeLeo or licensee) is the holder of suspended Byproduct Material License No. 37–20553–01 (license) that was originally issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on April 4, 1982. The license authorized: (1) Possession and use of cesium-137 and americium-241 sealed sources (gauges) at temporary jobsites of the licensee anywhere in the United States where the Commission maintained jurisdiction for regulating the use of licensed material; and (2) storage of the licensed material at 141 Golf Hills Road, Havertown, PA. The license has an expiration date of March 31, 2004. Licensees of the Commission are required to pay annual fees.

II

Pursuant to 10 CFR 171.16, Mr. DeLeo is required to pay an annual fee for the license. In accordance with 10 CFR Part 15, the licensee was sent an original invoice, a second invoice, and a final notice requesting payment. The final notice of payment due specifically informed the licensee that "non-payment of your fee may result in the revocation of your license in accordance with the enforcement provisions of the Commission's regulations," namely, 10 CFR 171.23. The NRC conducted an inspection at Mr. DeLeo's Havertown, PA facility on November 16, 1994, at which time he still possessed the

gauges, and had not paid the annual fees. To date, the annual fee(s) listed below have not been paid as required by 10 CFR Part 171.

DELINQUENT INVOICES

Invoice date	Invoice No.	Amount billed	Comment
1. 8/9/91	AMO2856–91	$1,400.00	FY 1991 Annual Invoice.
2. 8/24/92	AMO2423–92	400.00	FY 1992 Annual Invoice.
3. 8/21/93	AMO2764–93	400.00	FY 1993 Annual Invoice.
4. 8/20/94	AMO2144–94	2,470.00	FY 1994 Annual Invoice.
5. 7/22/95	AMO2094–95	1,700.00	FY 1995 Annual Invoice.

On February 12, 1996, the NRC issued an Order Suspending License (Effective Immediately) to Alfonso DeLeo, Jr., based on the non-payment of license fees for fiscal years 1991 through 1995. The Order of February 12, 1996, required, among other things, that Alfonso DeLeo, Jr. dispose of any licensed material acquired or possessed under the authority of License No. 37–20553–01. As of the date of this Order, Mr. DeLeo had not complied with the February 12, 1996 Order, in that he has not disposed of the subject licensed material.

During a subsequent inspection by the NRC at Mr. DeLeo's Havertown, PA facility on December 5, 1996, the NRC determined that he failed to notify the Commission in accordance with 10 CFR 30.36(d)(3) of the cessation of principal licensed activities. Specifically, Mr. DeLeo had ceased activities prior to August 15, 1994, the regulation's effective date. As a result, a Notice of Violation (Notice) was issued on December 16, 1996. Mr. DeLeo failed to reply to the Notice within 30 days of its issuance as required by 10 CFR 2.201. The NRC contacted Mr. DeLeo on February 13, 1997, concerning his failure to reply to the December 16, 1996 Notice, and he indicated that he would reply to the Notice. Mr. DeLeo did not reply to the Notice until March 16, 1998.

Prior to that reply, the NRC also sent Mr. DeLeo a letter on February 24, 1997, describing the Decommissioning Timeliness rule (10 CFR 30.36), and indicating that the licensed material in his possession needed to be transferred to another authorized recipient by October 15, 1998. The letter further stated that failure to dispose of licensed material by that date could result in significant enforcement action, including the imposition of monetary civil penalties. Nonetheless, Mr. DeLeo did not transfer the gauges. During another inspection of Mr. DeLeo's Havertown, PA, facility on March 16, 1998, he was again informed that 10 CFR 30.36 required him to transfer licensed material to an authorized recipient by October 15, 1998.

The NRC attempted to contact Mr. DeLeo several times between December 30, 1998, and March 10, 1999 by leaving messages on his answering machine to determine the status of the licensed material. As of April 1, 1999, Mr. DeLeo had not returned the telephone calls. As a result, a joint inspection/investigation by the NRC's Division of Nuclear Materials Safety and Office of Investigations was conducted on April 1, 1999, at his Havertown, PA, facility. That investigation disclosed that Mr. DeLeo still retained possession of the gauges. Based on the above, including the OI investigation, the NRC concluded that Mr. DeLeo was in willful violation of NRC requirements.

Since Mr. DeLeo had not conducted his activities in full compliance with NRC requirements, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Mr. DeLeo by letter dated June 2, 1999. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

Although Mr. Deleo confirmed to the NRC, during a telephone conversation on June 18, 1999, that he had received the NRC's June 2, 1999 letter transmitting the Notice of Violation and Proposed Imposition of Civil Penalty, he failed to respond to it and was still in possession of the gauges. Therefore, the NRC staff issued an Order on August 23, 1999, imposing a $5,500 civil penalty and also proposing additional daily penalties in the amount of $500 per day for his continued failure to transfer the gauges. Subsequently, the NRC held a management meeting with Mr. DeLeo on November 9, 1999 in the Region I office to explain the NRC's position and provide Mr. DeLeo an opportunity to explain his position. Mr. DeLeo did not agree with the NRC's position that he must immediately transfer his licensed material to an authorized recipient.

III

The deliberate failures of the licensee to: (1) Comply with the February 12, 1996 Order (suspension of license); (2) pay the annual fee as required by Commission regulations; and (3) comply with 10 CFR 30.36 demonstrate that the licensee is either unwilling or unable to comply with Commission requirements. Consequently, I lack the requisite reasonable assurance that public health and safety will be protected if the licensee were to continue to be in possession of licensed material at this time. Therefore, the public health, safety, and interest require that the licensee leak test the licensed material prior to transfer to an authorized recipient; that the licensee transfer the licensed material to an authorized recipient within 30 days as described below; and that Byproduct Material License No. 37–20553–01 be revoked. Furthermore, pursuant to 10 CFR 2.202, I find that the significance and willfulness of the violations described above is such that no further notice is required and that the public health, safety and interest require that the provisions of Section IV.A. of this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Parts 30, 170, and 171,

A. *It is hereby ordered,* effective immediately, that:

1. The requirements of Paragraphs A through E of Section III of the Order dated February 12, 1996, and attached hereto remain in effect except where modified below.

2. The licensee shall complete a leak test pursuant to Byproduct Material License No. 37–20553–01, Condition 12.A., B., C., D., E., F., and G. to confirm the absence of leakage and to establish the levels of residual radioactive contamination prior to transfer of the gauges to an authorized recipient.

3. Within 30 days of the date of this Order, the licensee shall cause all licensed material in its possession to be transferred to an authorized recipient in accordance with 10 CFR 30.41.

4. After the conditions of Paragraph 3 are met and within 30 days of the date of this Order, the licensee shall submit a completed NRC Form 314 to the Regional Administrator, NRC Region I, at 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

B. *It is further ordered* that:

1. Upon a written finding by the Regional Administrator, NRC Region I, that no licensed material remains in the licensee's possession and that other applicable provisions of 10 CFR 30.36 have been fulfilled, Byproduct Material License No. 37–20553–01 is revoked.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above provisions upon demonstration of good cause by the licensee.

V

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and shall include a statement of good cause for the extension. The answer may consent to the Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the licensee or other person adversely affected relies and reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415; and to the licensee if the answer or hearing request is by a person other than the licensee. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 13th day of December 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 99–33021 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, Unit 1 (RBS) located in West Feliciana Parish, Louisiana.

The proposed amendment would add an exception to the RBS Technical Requirements Manual (TRM), Section TR 3.9.14, current prohibition for travel of loads in excess of 1200 pounds over fuel assemblies in the spent fuel storage. The exception would allow the movement of spent fuel pool watertight gates, which separate the spent fuel pool from the cask and lower transfer pools. Approval of this exception would allow the licensee to perform maintenance and repairs to the gates and watertight seals, provided the licensee complies with the defense-in-depth recommendations, or take alternative measures to compensate for deficiencies in the defense-in-depth approach, addressed in NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants." Corresponding sections of the RBS Updated Safety Analysis Report (USAR) would be revised to be consistent with the exception and to state that the provisions of NUREG–0612 will be met.

The load of the gate (approximately 1600 pounds) and rigging (approximately 400 pounds) exceeds the load analyzed over spent fuel. In accordance with the guidance in Nuclear Regulatory Commission (NRC) Bulletin 96–02, "Movement of Heavy Loads over Spent Fuel, over Fuel in the Reactor Core, or over Safety-Related Equipment," issued April 11, 1996, and Title 10 of the *Code of Federal Regulations*, Part 50.59 (10 CFR 50.59), these changes have been determined to involve an unreviewed safety question.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involved a significant increase in the probability or consequences of an accident previously evaluated.

The River Bend Station (RBS) fuel building fuel storage facilities consist of three separate

but interconnected stainless steel-lined concrete pools. The spent fuel storage pool is the largest of these pools. Adjacent to the fuel storage pool are the cask pool and the lower inclined fuel transfer (IFTS) pool. Each of these two pools is separated from the fuel storage pool by a full-height wall broken by a watertight gate. The watertight gates are normally open, but are closed to seal their respective pools during cask handling and equipment maintenance operations. It is necessary to lift the gate between the spent fuel pool and the IFTS pool for seal replacement. The total weight of the gate including the rigging equipment is 2000 pounds. This lift is considered as a heavy load lift since it is higher than the current RBS analyzed light load limit of 1200 pounds for movement of loads over the spent fuel pool. RBS TRM 3.9.14 prohibits any load in excess of 1200 pounds from travel over fuel assemblies in the storage pool.

Each of the gates is designed with a pneumatic seal that, when pressurized, seals the respective pool from the spent fuel pool, forming a watertight barrier. No provisions for moving the gates over spent fuel were included in the licensing basis for RBS heavy loads. However, the qualified life for the gate seals necessitates that they be replaced several times over the life of the plant. Therefore, approval of an exception to the current prohibition for loads over the spent fuel pool is required to allow for replacement of the gate seals.

To perform the movement of the gate from its installed position to a position where it can be accessed for seal replacement, an engineering plan that meets the intent of NUREG–0612, "Control of Heavy Loads [at Nuclear Power Plants]," has been developed. There are numerous design features, which comply with NUREG–0612 guidelines, that will preclude the gate from dropping onto the spent fuel assemblies during the movement activity. These features include the design of the lifting devices, design of the cask and fuel bridge cranes, crane operator training, and the use of written procedures. The guidance in NUREG–0612 will be met in all respects, except that in lieu of a single[-]failure-proof crane, the scheme will employ redundant and diverse means to meet the intent of single-failure[-]proof movements.

It is proposed for the subject spent fuel pool gate lift to use one of two rigging schemes that comply with the intent of NUREG–0612 guidance. The first one will be accomplished through the use of Fuel Building bridge crane and the cask crane at the same time to provide the redundancy required to make the lift a single-failure-proof lift and satisfy NUREG–0612 single-failure-proof criteria. The other rigging scheme will involve the use of lifting lugs welded to the overhead structural steel members and special lifting devices that are designed in accordance with NUREG–0612 single-failure-proof criteria.

In the first rigging scheme, the fuel building bridge crane and the cask crane will be used to perform the gate lifting and movement. The intent of NUREG–0612 is that in lieu of providing a single-failure-proof crane system, the control of heavy loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small. The gate lifting using the fuel building bridge crane and cask crane will conform with NUREG–0612 guidelines in that the probability of the gate drop over the spent fuel assemblies is extremely small. Both cranes have a rated capacity of fifteen (15) tons. The maximum weight of the gate and associated lifting devices is one (1) ton. Therefore, there is ample safety factor margin for lifting and movements of the subject spent fuel pool gate. Special lifting devices, which have redundancy or ultimate strength of at least 10 times the lifted load, will also be utilized during the rigging process. Even though neither the fuel building bridge crane or the cask crane is a single-failure-proof crane, rigging the spent fuel pool gate using these cranes will provide the required redundancy that meets the intent of NUREG–0612 single-failure-proof criteria.

In the second rigging scheme, the initial gate lift will be performed through the use of structural steel lugs that are permanently welded to the Fuel Building overhead structural steel girder located over the centerlines of the wall openings for the two gates that separate the spent fuel pool from the IFTS and the cask pools. For example, the IFTS lower pool gate will be moved northward toward the cask pool opening using the aforementioned structural steel lugs and lifting devices such as chains, slings, and shackles. Once the gate is through the cask pool opening, the movement path will no longer be over irradiated spent fuel. Once through the cask pool opening, the gate will be moved eastward toward the center of the cask pool. The cask crane auxiliary hook will lift the gate inside the cask pool. Finally, the gate will be placed on the Fuel Building floor elevation 113 [feet] adjacent to the cask pool for seal replacement. For the movement of the gate between the spent fuel pool and the cask pool, the distance of the movement is reduced because the gate movement would essentially entail lifting of the gate to above the hinges, rotating it, and moving it through the opening directly into the cask pool. Though seal replacement on the cask pool gate is not necessary at the present time, it may be necessary in the future. As such, the proposed changes would allow movement of either of the two spent fuel pool gates for repair or seal replacement.

The proposed load lift of the fuel pool gate for replacement of the seal conforms to all of the NUREG–0612 guidelines included in Section 5.1.5(1)(a) and 5.1.6. The design of the lifting lugs and associated lifting devices (chains, slings, shackles, hoists, *etc.*) will conform to the guidelines of NUREG–0612, Section 5.1.6, "Single-Failure Proof Handling System." The auxiliary hook of the cask crane has a rated capacity of 15 tons. The cask crane is not a single-failure[-]proof crane. However, it meets NUREG–0612 criteria of Section 5.1.1(6) and is designed for seismic loading. As discussed above, the cask crane, alone, will handle the gate only after the gate is located inside the cask pool where drop of the gate above the spent fuel rack is no longer a concern. The cask pool area has been evaluated for an accidental drop of the spent fuel cask. There is no safety-related equipment inside the cask pool. The maximum weight of the gate and associated lifting devices is 2000 pounds. Therefore, there is ample safety factor margin for lifting the gate with the cask crane.

The probability and consequences of a seismic event are not affected by the proposed gate lifting. The consequences of a seismic event during the gate lifting are insignificant since both cranes, the fuel building bridge crane and the cask crane, are seismically qualified for the lifted load. In addition, the design of all rigging devices conforms to NUREG–0612 guidelines, with a factor of safety of 10 ultimate strength for the weight of the load.

Consistent with the defense-in-depth approach outlined in NUREG–0612, the movement will be conducted according to load handling instructions, operator training will be conducted on the activity prior to the movement, and the equipment will be inspected and checked before the movement will be performed. NUREG–0612 gives guidance that when a particular heavy load must be brought over spent fuel, alternative measures may be used. The combination of preventative measures, as proposed, minimizes the risks inherent in hauling large loads over spent fuel to permissible levels. With these provisions and the guidance in NUREG–0612, the increase in probability of a load drop is negligible.

It is therefore concluded that the proposed gate lifting and movement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The lifting of the fuel pool gate in the spent fuel pool as described above, minimizes the possibility of a heavy load drop onto spent fuel assemblies as not credible in accordance with NUREG–0612 single-failure-proof criteria. In addition, movement of the gate in the cask pool using the cask crane does not create the possibility of a new or different kind of accident. The cask drop accident scenario in the current RBS licensing basis, since the cask crane is not a single-failure-proof crane, envelops the accidental drop of the gate in the cask pool during handling by the cask crane. That is, the analyzed weight of a cask is 125 tons versus the weight of the gate and the associated rigging of 1 ton.

It is therefore concluded that the proposed gate lifting does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

By following the guidance in NUREG–0612, the movement of the spent fuel pool gates will have no impact on the analyses of postulated design basis events for RBS. The NRC guidance provides an acceptable means of ensuring the appropriate level of safety and protection against load drop accidents. Therefore, there is no reduction in the margin of safety associated with postulated design basis events at RBS in allowing the proposed change to the RBS licensing basis. RBS will continue to meet its commitment to comply with NUREG–0612.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 28, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 16, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of December 1999.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33134 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63, issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the Shearon Harris Nuclear Power Plant, Unit 1, (HNP) located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would support a modification to HNP to increase the spent fuel storage capacity by adding rack modules to spent fuel pools (SFPs) 'C' and 'D' and placing the pools in service. The proposed action consists of: (1) A revision to Technical Specification (TS) 5.6 to identify pressurized water reactor (PWR) burnup restrictions, boiling water reactor (BWR) enrichment limits, pool capacities, heat load limitations and nominal center-to-center distances between fuel assemblies in the racks to be installed in SFPs 'C' and 'D'; (2) an alternative plan in accordance with the requirements of 10 CFR 50.55a to demonstrate an acceptable level of quality and safety in completion of the component cooling water (CCW) and SFPs 'C' and 'D' cooling and cleanup system piping; and (3) an unreviewed safety question for additional heat load on the CCW system.

The proposed action is in accordance with the licensee's application for amendment dated December 23, 1998, as supplemented by letters dated April 30, June 14, July 23, September 3, October 15, and October 29, 1999.

The Need for the Proposed Action

The proposed action is needed for the licensee to provide spent fuel storage capacity for all four CP&L nuclear units (Harris, Brunswick 1 and 2, and Robinson) through the end of their current licenses.

HNP was originally planned as a four nuclear unit site and the fuel handling building (FHB) was designed and constructed with four separate pools capable of storing spent fuel. HNP Units 3 and 4 were canceled in late 1981 and HNP Unit 2 was canceled in late 1983. The FHB, all four pools (including liners), and the cooling and cleanup system to support SFPs 'A' and 'B' were completed. However, construction on SFPs 'C' and 'D' was discontinued after Unit 2 was canceled and the system was not completed. HNP, Unit 1 began operation in 1987 with SFPs 'A' and 'B' in service.

As permitted by the HNP operating license issued on January 12, 1987, CP&L has implemented a spent fuel shipping program. Spent fuel from Brunswick (2 BWR units) and Robinson (1 PWR unit) is shipped to HNP for storage in the HNP SFPs. CP&L ships fuel to HNP in order to maintain full core offload capability at Brunswick and Robinson. As a result of the operation of HNP, shipping program requirements, and the unavailability of a Department of Energy (DOE) storage facility, it will be necessary to activate SFPs 'C' and 'D' and the associated cooling and cleanup system by early in the year 2000. Activation of these pools will provide spent fuel storage capacity for all four CP&L units through the end of their current operating licenses.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes there are no significant environmental impacts. The factors considered in this determination are discussed below.

Radioactive Waste Treatment

HNP uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems are discussed in the Final Environmental Statement (FES, NUREG–0972) dated October 1983, and evaluated in the Safety Evaluation Report (SER, NUREG–1083) dated November 1983. The proposal to increase the spent fuel storage capacity at HNP will not involve any change in the waste treatment systems described in the FES or SER.

Gaseous Radioactive Wastes

Gaseous releases from the fuel storage area are combined with other plant exhausts. Normally, the contribution from the fuel storage area is negligible compared to the other releases and no significant increases are expected as a result of the expanded storage capacity. Storing spent fuel in four pools (instead of the previous two pools) will result in an increase in the SFP evaporation rate. The licensee has determined that the increased evaporation will increase the relative humidity of the fuel building atmosphere by less than 10%. This increase is within the capacity of both the normal and the Engineered Safety Feature (ESF) ventilation systems. The net result of the increased heat loss and water vapor emission to the environment will be negligible.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the SFP purification system. These spent resins are disposed of as solid radioactive waste. The necessity for pool filtration resin replacement is determined primarily by the requirement for water clarity, and the resin is normally expected to be changed about once a year. The licensee does not expect the resin change-out frequency of the SFP purification system to be permanently increased as a result of the expanded storage capacity. During racking operations, a small amount of additional resins may be generated by the pool cleanup system on a one-time basis.

Radiological Impact Assessment

For this modification the licensee plans to install region 2 (non-flux trap style) rack modules in pools 'C' and 'D' in incremental phases, on an as-needed basis. The licensee estimates that the collective dose associated with the proposed fuel rack installation is in the range of 2–3 person-rem.

All of the operations involved in racking will use detailed procedures prepared with full consideration of ALARA (as low as reasonably achievable) principles. The HNP racking

project represents low radiological risk because the pools currently contain no spent fuel. The Radiation Protection Department will prepare Radiation Work Permits (RWPs) for the various jobs associated with the SFP rack installation operation. These RWPs will instruct the project personnel in the areas of protective clothing, general dose rates, contamination levels and dosimetry requirements. Personnel will wear protective clothing and will be required to wear personnel monitoring equipment including alarming dosimeters.

Since the proposed license amendment does not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to use divers to remove any interferences which may impede the installation of the new spent fuel racks, the licensee will equip each diver with the appropriate monitoring equipment. The licensee will monitor and control work, personnel traffic, and equipment movement in the SFP area to minimize contamination and to assure that exposure is maintained ALARA.

On the basis of its review of the HNP proposal, the staff concludes that the increase in spent fuel storage capacity at HNP can be accomplished in a manner that will ensure that doses to workers will be maintained ALARA.

Accident Considerations

In its application, the licensee evaluated the possible consequences of fuel handling accidents to determine offsite doses. The proposed SFP rack installation at HNP will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and, therefore, will not result in an increase in the doses from a postulated fuel handling accident. The proposed action will not change the procedures or equipment used for, or the frequency of, fuel moves at HNP or fuel shipments from the Brunswick and Robinson plants. Therefore, the probability of a postulated fuel handling accident will not increase from that previously evaluated.

The staff has previously considered accidents whose consequences might exceed a fuel handling accident; that is, beyond design basis events. One such accident evaluated by the staff involves a structural failure of the SFP, resulting in loss of all contained cooling water followed by heatup and a zirconium cladding fire. The details of this severe accident are discussed in NUREG/CR–4982, entitled "Severe Accidents in Spent Fuel Pools in Support of Generic Issue 82." The staff also issued NUREG/CR–5176, entitled "Seismic Failure and Cask Drop Analysis of the Spent Fuel Pools at Two Representative Nuclear Power Plants." This report considers the structural integrity of the SFP and the pool response to the circumstances considered. Subsequently, the staff issued NUREG/CR–5281, "Value/Impact Analysis of Accident Preventative and Mitigative Options for Spent Fuel Pools," and NUREG–1353, "Regulatory Analysis for the Resolution of Generic Issue 82: Beyond Design Basis Accidents in Spent Fuel Pools." In NUREG–1353, the staff determined that no new regulatory requirements were warranted in relation to Generic Issue 82.

The staff believes that the probability of severe structural damage occurring at HNP is extremely low. This belief is based upon the Commission's requirements for the design and construction of SFPs and their contents and on the licensee's adherence to approved industry codes and standards. For example, in the HNP case, the pools are an integral part of the fuel building. The SFPs and the spent fuel storage racks are Seismic Category 1, and thus, are required to remain functional during and after a safe shutdown earthquake. In the unlikely event of a total loss of the cooling system, makeup water sources are available to replace coolant lost through evaporation or boiling. Therefore, the staff concludes that the potential for environmental impact from severe accidents is negligible.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the staff concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

A "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG–0575, Volumes 1–3, was issued by the Commission in August 1979. The finding of the FGEIS is that the environmental costs of interim storage are essentially negligible, regardless of where such spent fuel is stored. The storage of spent fuel, as evaluated in NUREG–0575, is considered to be an interim action, not a final solution to permanent disposal. One spent fuel storage alternative considered in detail in the FGEIS is the expansion of the onsite fuel storage capacity by modification of the existing SFPs. The Commission has approved numerous applications for SFP expansion. The finding in each has been that the environmental impact of such increased storage capacity is negligible. However, since there are variations in storage design and limitations caused by spent fuel already stored in the pools, the FGEIS recommended that licensing reviews be done on a case-by-case basis, to resolve plant-specific concerns.

Specific alternatives to the proposed action are discussed below.

Shipment of Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, DOE's high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing wastes at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipment of Fuel to a Reprocessing Facility

Reprocessing of spent fuel from HNP is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost. Therefore, this alternative is considered unacceptable.

Reduction of Spent Fuel Generation

Improved usage of fuel and/or operation at a reduced power level would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capability is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer offloads would be necessary. The licensee has already increased its fuel enrichment to 5 percent and is currently operating on 18-month refueling cycles. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on CP&L and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

Alternative Creation of Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, and modular vault dry storage. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies in a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the potential for fuel or cask handling accidents, potential fuel clad rupture due to high temperatures, increased land use, construction impacts, the need for additional security provisions, and high costs. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include the need for additional security provisions, increased land use, construction impacts, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost.

The environmental impacts of the alternative technologies discussed above and the proposed action are similar.

The No-Action Alternative

As an alternative to the proposed action, the staff also considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for HNP.

Agencies and Persons Consulted

In accordance with its stated policy, on December 2 and 3, 1999, the staff consulted with North Carolina State officials, Mr. Richard M. Fry and Mr. Johnny James of the North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State officials stated that they had no objection to the finding. However, they requested that the staff hold a public meeting in Raleigh, North Carolina to discuss the license amendment review process, the results of the review for HNP's proposed amendment, and the analysis that led to this environmental assessment finding.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 23, 1998, as supplemented by letters dated April 30, June 14, July 23, September 3, October 15, and October 29, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 15th day of December 1999.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33023 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Power Company; Notice of Availability of the Final Supplement 2 to the Generic Environmental Impact Statement for the License Renewal of Oconee Nuclear Station, Unit Nos. 1, 2, and 3

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific Supplement 2 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS) (NUREG–1437) regarding the renewal of operating licenses DPR–38, DPR–47, and DPR–55 for an additional 20 years of operation at the Oconee Nuclear Station (ONS) Units 1, 2, and 3, respectively. ONS is located in Oconee County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

In Section 9.3 of the report, the staff concludes:

Based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG–1437, (2) the ER [Environmental Report] submitted by Duke, (3) consultation with other Federal, State, and local agencies, (4) the staff's own independent review, and (5) the staff's consideration of public comments, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Oconee Nuclear Station, Units 1, 2, and 3 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

The final supplement to the GEIS for ONS is available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION, CONTACT: Mr. James H. Wilson, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson can be contacted at (301) 415–1108 or by writing to: James H. Wilson, U.S. Nuclear Regulatory Commission, MS 0–11 F1, Washington, DC 20555.

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33022 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste; Joint Subcommittee Meeting; Notice of Meeting

The ACRS and ACNW Joint Subcommittee will hold a meeting on January 13–14, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 13, 2000—8:30 a.m. until 5 p.m.

Friday, January 14, 2000—8:30 a.m. until 12 Noon

The Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste Joint Subcommittee will discuss the defense-in-depth philosophy in the regulatory process, including its role in the licensing of a high-level waste repository, its role in revising the regulatory structure for nuclear reactors, and how the two applications should be related to each other. The discussion will also include the role of defense in depth in the regulation of nuclear materials applications, and other related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committees.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee; written statements will be accepted and made available to the Subcommittee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS/ACNW staff members named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Subcommittee's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant senior fellow, John N. Sorensen (telephone 301/415–7372) between 8 a.m. and 5:45 p.m. (EST) or by e-mail JNS@NRC.gov or staff engineer, Michael T. Markley (telephone: 301–415–6885). Persons planning to attend this meeting are urged to contact the above-named individuals one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, *etc.*, that may have occurred.

Dated: December 15, 1999.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–33019 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–754–MLA and ASLBP No. 00–774–02–MLA]

General Electric Company; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding:

General Electric Company, Vallecitos Nuclear Center

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by Tri-Valley CAREs, the Western States Legal Foundation, Save Our Sunol, and Citizens Along the Roads and Tracks. The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission of a request for renewal of the 10 CFR Part 70 license for the General Electric Vallecitos Nuclear Center. The renewal application requests authorization to receive and possess special nuclear material and to use special nuclear material in research and development activities involving chemical and physical analysis. The notice of consideration of the renewal application and opportunity for hearing was published in the **Federal Register** at 64 FR 45,289 (Aug. 19, 1999).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Rosenthal and Judge Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Issued at Rockville, Maryland, this 15th day of December 1999.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–33018 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1086

(which should be mentioned in all correspondence concerning this draft guide), is titled "Criterion for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies." This guide is being developed to provide information so that the nuclear industry and the NRC staff may have a common understanding for deciding when the use of a non-owner operating service company would require NRC review and approval.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by February 29, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. M.J. Davis at (301) 415–1016; e-mail MJD1@NRC.GOV>.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301)415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 8th day of December 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–33020 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42232; File No. SR–Amex–99–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Amending the Exchange's Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 14, 1999.

I. Introduction

On September 20, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Exchange's audit committee requirements.

The **Federal Register** published the proposed rule change for comment on October 13, 1999.[3] In response, the Commission received 12 comment letters.[4] On November 15, 1999 and December 9, 1999, the Exchange submitted Amendments No. 1[5] and No. 2,[6] respectively, to the proposed rule change. This order approves the proposed rule change and grants accelerated approval to Amendments No. 1 and No. 2. The Commission is also soliciting comment on Amendments No. 1 and No. 2 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees ("Blue Ribbon Committee") issued a report containing recommendations aimed at strengthening the independence of the audit committee; making the audit committee more effective; and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[7] In response to the Blue Ribbon Committee's recommendations, the Exchange proposes to amend its listing standards regarding audit committee requirements. The proposed changes cover three general areas: (1) The definition of independence; (2) the structure and membership of the audit committee; and (3) the audit committee charter.

The text of the proposed rule change, as amended by Amendments No. 1 and No. 2, is as follows. Language deleted by Amendments No. 1 and No. 2 is in brackets. Language added by Amendments No. 1 and No. 2 is in italics.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] Securities Exchange Act Release No. 41981 (Oct. 6, 1999), 64 FR 55505. The Nasdaq Stock Market, Inc. and The New York Stock Exchange, Inc. have proposed rule changes relating to audit committees. *See* Securities Exchange Act Release No. 41982 (Oct. 6, 1999), 64 FR 55510 (Oct. 13, 1999) ("Nasdaq Proposal"), and Securities Exchange Act Release No. 41980 (Oct. 6, 1999), 64 FR 55514 (Oct. 13, 1999) ("NYSE Proposal").

[4] Most commenters favored the proposed rule change but recommended certain modifications to the proposed rules. The comment letters are discussed in Section III of this order.

[5] Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 12, 1999 ("Amendment No. 1"). The Exchange submitted Amendment No. 1 to require issuers listed as of the effective date of Commission approval of the proposed rule change to adopt a formal written audit committee charter within six months of the effective date of the proposed rule change. As originally filed, the proposed rule change required issuers to adopt the required charter within eighteen months of the effective date of the proposed rule change. Amendment No. 1 also states that issuers that applied for listing prior to the effective date of the proposed rule change would qualify for listing under the listing standards in force at the time of their application, and receive the same grace periods provided to currently listed issuers.

[6] Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division, Commission, dated December 8, 1999 ("Amendment No. 2"). The Exchange submitted Amendment No. 2 to revise proposed Section 121B(a)(ii) of the *Amex Company Guide* to provide that the audit committee is required to oversee the independence of the outside auditor, rather than ensure the independence of the outside auditor. Amendment No. 2 also revises the Exchange's definition of immediate family found in Section 121A(c) to include sons-in-law and daughters-in-law. Finally, Amendment No. 2 corrects a technical error in proposed Section 121B(b)(ii) by replacing a reference to Rule 4200 with a reference to Section 121A.

[7] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).* A copy of this Report can be found on-line at www.nasdaqnews.com.

Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Directors:

The Exchange requires that domestic listed companies have a sufficient number of independent directors to satisfy the audit committee requirement set forth below. Independent directors are not officers of the company and are, in the view of the company's board of directors, free of any relationship that would interfere with the exercise of independent judgment. The following persons shall not be considered independent:

(a) A director who is employed by the corporation or any of its affiliates for the current year or any of the past three years;

(b) A director who accepts any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(c) A director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, *son-in-law, daughter-in-law,* and anyone who resides in such person's home;

(d) A director who is a partner in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years;

(e) A director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

B. Audit Committee:

(a) Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(b) Composition

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in [Rule 4200] *Season 121A,* and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (b)(i) and (b)(ii) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

B. Independence

The Exchange proposes to narrow its current definition of "independent director" by specifying five new relationships that could repair a director's independent judgment as a result of financial, familial, or other material ties to management or the corporation. The proposed definition will apply to all directors, not just those serving on audit committees. Under the proposed rule change, directors with any of the following five relationships will not be considered independent: (1) Employment by the corporation or any of its affiliates for the current year or any of the past three years; (2) acceptance of any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation; (3) member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer; (4) partnership in, or a controlling shareholder or an executive officer, or any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed five percent of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years; or (5) employment as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

C. Structure and Membership of the Audit Committee

The Exchange also proposes to change the structure and membership qualifications of the audit committee. Specifically, the Exchange proposes to change the required composition of the audit committee from at least two to at

least three members. Furthermore, the audit committee must be comprised solely of independent directors rather than a majority of independent directors. The Exchange is conscious of the fact that, in exceptional circumstances, issuers may appropriately conclude that it would be in the best interests of the corporation for a non-independent director to serve on the audit committee. In such exceptional and limited circumstances, a non-independent director can serve on the audit committee, provided that the board determines that it is required by the best interests of the corporation and its shareholders, and the board discloses its reasons for the determination in the next annual proxy statement. Due to the nature of this exception, however, a corporation could have no more than one non-independent director serving on its audit committee. Also, current employees or officers, or their immediate family members, may not serve on the audit committee under this exception.

As a result of the audit committee's responsibility for a corporation's accounting and financial reporting, the Exchange believes that audit committee members should have a basic understanding of financial statements. Therefore, the proposed rule change requires each member of the audit committee to be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement, or become able to do so within a reasonable period of time after his or her appointment to the audit committee. Furthermore, in order to further enhance the effectiveness of the audit committee, at least one member of the audit committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that results in the individuals' financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

The Exchange is sensitive to the potential burden that the proposed changes to the audit committee composition requirements may place on small companies. Therefore, the Exchange proposes to exempt those corporations that file under SEC Regulation S–B from these proposed changes ("Small Business Filers").[8] Small Business Filers will be held to the existing Exchange requirements with respect to audit committee composition, that is, they must maintain an audit committee of at least two members, a majority of whom are independent.

D. Charter

The Exchange believes that a written charter will help the audit committee as well as management and the corporation's auditors recognize the function of the audit committee and the relationship among these parties. The proposed rule change requires each issuer to adopt a formal written charter. This charter must specify the scope of the audit committee's responsibilities, and how the committee carriers out those responsibilities, including structure, processes, and membership requirements. In addition, the charter must specify the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1.[9] The charter must specify the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor. Finally, it must specify the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate an outside for shareholder approval in any proxy statement). The proposed rule change requires issuers to review their charter on an annual basis.

E. Implementation

In order to minimize disruption to existing issuer audit committees, to permit current audit committee members to serve out their terms, and to allow adequate time to recruit the requisite members, the Exchange proposes to provide its issuers listed as of the effective date of the proposed rule change eighteen months after the proposed rule change is approved by the Commission to meet the audit committee structure and membership requirements.

Additionally, the Exchange proposes that issuers listed as of the effective date of the rule change be provided six months following the date of Commission approval of the proposed rule change to adopt a formal written audit committee charter as required by proposed Section 121(B)(a) of the *Amex Company Guide*.[10]

Further, for issuers that applied for listing prior to the effective date of the proposed rule change, the Exchange proposes that they be able to qualify for listing under the listing standards in force at the time of their application, and to receive the same grace periods provided to currently listed issuers, as described above. Also, in order to avoid prejudicing issuers that transfer to the Exchange from Nasdaq and the New York Stock Exchange, the Exchange proposes that these issuers be afforded the same grace periods they would have received under their previous market's implementation schedule.

III. Comments

As of December 9, 1999, the Commission received 12 comment letters on the proposed rule change.[11] In general, the commenters favored the proposed rule change but recommended certain modifications. One commenter stated that it does not support the new rules.[12]

In particular, the CII supports the new requirements, but stated that the proposed override provision, which allows a company's board to include a non-independent director on the audit committee is not appropriate because companies should not have a problem

[8] Small Business Filer is defined by Regulation S–B as an issuer that: (i) has revenue of less than $25,000,000; (ii) is a U.S. or Canadian issuer; and (iii) if a majority owned subsidiary, the parent corporation is a small business issuer. 17 CFR 228.10(a)(1).

[9] Independence Standard No. 1, Independence Discussions with Audit Committees (January 1999), which can be found on-line at www.cpaindependence.org.

[10] *See* Amendment No. 1, *supra* n.5.

[11] *See* letters from: Ernst & Young LLP ("E&Y") dated November 1, 1999; Dorsey & Whitney LLP ("Dorsey") (on behalf of nine closed-end investment management companies whose stock is listed on the Exchange) dated October 28, 1999; Deloitte & Touche LLP ("Deloitte") dated November 3, 1999; Council of Institutional Investors ("CII") dated November 8, 1999; Brian T. Borders on behalf of the National Venture Capital Association ("NVCA") dated November 12, 1999; Investment Company Institute ("ICI") dated November 3, 1999; American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO") dated November 29, 1999; Mayer, Brown & Platt on behalf of Morgan Stanley Dean Witter ("MSDW") dated November 29, 1999; Association of Publicly Traded Companies ("APTC") dated December 6, 1999; Robert A. Profusek ("Profusek") dated December 3, 1999; Stanley Keller and Richard Rowe ("Keller and Rowe") dated December 7, 1999; and The Committee on Securities Regulation of the Business Law Section of the New York State Bar Association ("NYSBA") dated December 1, 1999.

[12] APTC Letter at 2.

finding financially literate, truly independent directors.[13] In addition, the AFL–CIO stated that the restriction period for former employees, or relatives of former employees, should be five years instead of three years.[14] The AFL–CIO also stated that the $60,000 threshold to disqualify a candidate because of a significant relationship is not stringent enough.[15] Another commenter, on the other hand, stated that a quantitative test is too inflexible.[16] Keller and Rowe stated that former non-executive employment should be treated as a significant business relationship.[17] Keller and Rowe also stated that consultants who receive from the company more than a *de minimis* amount of compensation should be treated as employees, while consultants who do not should be treated as having a business relationship with the company.[18] According to this comment letter, the company's board should be permitted to determine that the compensation does not impair the director's objectivity. Keller and Rowe also objected to the financial expertise requirement and stated that no director will want to be designated the financial expert because of the added exposure to liability.[19]

Deloitte stated that requiring a company's board or audit committee to "ensure" the independence of the outside auditor goes beyond what can reasonably be expected of the board and the audit committee in their oversight role.[20] Deloitte suggested that the Exchange replace the word "ensure" with "monitor" or "actively oversee."[21] E&Y supported the proposed rule change, but stated that the Exchange should not exempt Small Business Filers from the financial literacy and expertise requirements and also should expand its definition of immediate family member to include sons-in-law and daughters-in-law.[22] NYSBA stated that the company's board should be required to adopt the audit committee charter, rather than the audit committee adopting the charter subject to board approval.[23] NYSBA also opposed requiring the audit committee to evaluate and reassess the adequacy of the audit committee on an annual basis because there is no standard to measure the adequacy of the charter.[24]

APTC stated that the proposed rule change will be counter productive to the goal of better audit committees.[25] In addition, APTC stated that the proposed rule chnage will disadvantage smaller companies more than larger companies, but concluded that it is appropriate to apply the proposed change to all companies, regardless of size.[26] Moreover, APTC is opposed to the proposal's financial literacy requirement.[27] APTC believes that the financial literacy requirement may deprive audit committees of the service of individuals with "exceptional character and/or operation experience."[28] The commenter suggested that the Exchange replace this requirement with a requirement that the committee as a whole possess a certain level of financial acumen.[29]

In addition, the NVCA stated that the proposed rule change should exclude venture capital investors from the independence qualifications.[30] The NVCA also stated that the proposed rule change should give companies that have just completed an initial public offering eighteen months to comply with the new requirements and that the exemption for Small Business Filers should be expanded to apply to companies with less than $50 million in revenue.[31]

Finally, three commenters stated that the proposed rule change should not apply to closed-end investment companies.[32] ICI and MSDW noted that closed-end investment companies are adequately regulated under the 1940 Act.[33] These two commenters also stated that the potential abuses that the proposed rule change is designed to address do not exist with respect to closed-end investment funds, because the assets of closed-end funds consist exclusively of investment securities and thus there is no opportunity to "manage" earnings or results through the selective application of accounting policies.[34]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[35] and, in particular, the requirements of Section 6(b)(5) of the Act.[36] The Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committees of companies listed on the Exchange. The Commission also believes that the new requirements will enhance the reliability and credibility of financial statements of companies to inappropriately distort their true financial performance. Further, the Commission also notes that the Exchange is amending its own listing standards, which is a function within the Exchange's discretion, as long as those changes are consistent with the Act.

Specifically, the Commission believes that the proposed definition of independence will promote the quality and reliability of a company's financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management's accounting, internal control, and financial reporting practices. For these reasons, the Commission believes that the proposal's prohibition against employees serving on the audit committee is appropriate and that the Exchange should not be required to distinguish between executive and non-executive employees.[37]

The Commission also believes that the proposed provision that permits a company to appoint one director to its audit committee who is not independent, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, adequately balances the need for objective, independent directors with the company's need for flexibility in exceptional and unusual

---

[13] CII Letter, at 2; *see also* AFL–CIO Letter at 2.

[14] AFL–CIO Letter at 2.

[15] *Id.*

[16] Profusek Letter at 2. In addition, Keller and Rowe stated that this provision might preclude a number of highly qualified candidates from serving on audit committees. Keller and Rowe Letter at 3.

[17] Keller and Rowe Letter at 2.

[18] *Id.* at 3.

[19] *Id.*; *see also* NYSBA Letter at 6.

[20] Deloitte Letter, at 1.

[21] *Id.* at 2.

[22] E&Y Letter at 4.

[23] NYSBA Letter at 2.

[24] *Id.* at 4–5.

[25] APTC Letter at 2.

[26] *Id.* at 3.

[27] *Id.* at 4–5.

[28] *Id.*

[29] *Id.* at 5.

[30] NVCA Letter at 5.

[31] *Id.* at 4.

[32] ICI Letter at 2; MSDW Letter at 1; Keller and Rowe letter at 5. In addition, Keller and Rowe stated that the proposed rule change should exempt all investment companies because their audit committee members are already required not to be "interested persons" as that term is defined in Section 2(a)(9) of the Investment company Act of 1940 ("1940 Act"). Moreover, Dorsey supported the application of the proposed rule change to investment companies. Dorsey Letter at 3.

[33] ICI Letter at 3–4; MSDW Letter at 2.

[34] ICI Letter at 3; MSDW letter at 1. ICI and MSDW also noted that the independent accountants of investment funds are selected by the independent directors of the fund.

[35] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] *See* Keller and Rowe Letter at 2.

circumstances. The Commission believes that the requirement that the company disclose in its next proxy statement the nature of the director's relationship to the issuer and the board's reasons for determining the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement. Moreover, the Commission believes that the $60,000 threshold to determine if a potential audit committee director has a significant business relationship with the company is a reasonable measure to balance the company's need to recruit audit committee members with the independence requirement.[38]

The Commission does not believe that venture capital investors should be excluded from the Exchange's definition of independence. The Commission does not view the proposed rule change as posing an undue hardship on venture capital firms or companies listed on the Amex. The Commission notes that the proposed rule change will only prohibit venture capital investors from sitting on a company's audit committee if the investor does not fall within the Exchange's definition of independent. The proposed rule change will not prohibit previously eligible investors from serving on the company's board. The Commission also notes that a venture capital investor that is not considered independent may serve on the company's audit committee, if the board determines it is in the best interests of the corporation and its shareholders and the company discloses its reasons for the determination and the nature of the director's relationship to the company in its next annual proxy statement.

In addition, the Commission believes that requiring companies to adopt formal written charters specifying the audit committee's responsibilities, and how it carries out those responsibilities, will help the audit committee, management, investors, and the company's auditors recognize the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that requiring the charter to specify that the audit committee is responsible for taking, or recommending that the company's full board take, appropriate action to oversee the independence of the outside auditor will make it more likely that companies will select objective, unbiased auditors.

[38] The Commission does not believe that the Exchange should require its listed companies to adopt a separate provision on consultants. *See* Keller and Rowe Letter at 3.

The Commission believes that the proposed rule change's compositional requirement that each issuer have an audit committee composed of three independent directors who are able to read and understand fundamental financial statements will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this standard will help to ensure that the committee as a whole is financially literate.[39] Moreover, the Commission considers that requiring one member of the audit committee to have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that indicates the individual's financial sophistication, will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities. In addition, the Commission does not believe that companies will experience undue difficulty recruiting an audit committee member that satisfies the financial expertise requirements. Moreover, the Commission believes that the proposed rule change appropriately exempts Small Business Filers from the proposed composition requirements because these companies may experience more difficulty meeting these enhanced requirements. The Commission notes that these companies will remain subject to existing Exchange rules on audit committees, which require an audit committee to have at least two members, a majority of whom are independent.

Moreover, the Commission has concluded that the Exchange's decision to include investment companies in the proposed rule change is warranted. While the Commission recognizes that the opportunity for some types of financial reporting abuses may be limited by the nature of fund assets,[40] it believes that audit committee do play an important role in overseeing the financial reporting process for investment companies.

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 revises the implementation time periods for the proposed rule change solely to provide greater clarity to issuers and to investors. The Commission believes that Amendment No. 1 will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when to rely on the protections afforded by the proposed rule change. The Commission notes that Amendment No. 2 simply clarifies that the audit committee is required to oversee, rather than ensure, the independence of the company's outside auditors; makes a technical correction to section 121A; and expands the Exchange's definition of "immediate family." The Commission believes that accelerated approval will allow the Exchange to simultaneously make all relevant modifications to the *Amex Company Guide* and will avoid potential confusion. Accordingly, the Commission finds good cause to accelerate approval of Amendments No. 1 and No. 2 to the proposed rule change, consistent with sections 6(b)(5)[41] and 19(b)[42] of the Act.

[39] *See* APTC Letter at 5.

[40] *See* Keller and Rowe Letter at 5; ICI Letter at 3; MSDW Letter at 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Co9mmission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–38 and should be submitted by January 11, 2000

VI. Conclusion

For the foregoing reasons, the Commission finds that the Exchange's proposal to amend its audit committee requirements is consistent with the requirements of the Act and the rule and regulations thereunder.

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78s(b).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[43] that the amendment proposed rule change (SR–Amex–99–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33051 Filed 12–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42231; File No. SR–NASD–99–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Its Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 14, 1999.

I. Introduction

On September 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Nasdaq's audit committee requirements.

The **Federal Register** published the proposed rule change for comment on October 13, 1999.[3] In response, the Commission received fourteen comment letters. On November 15, 1999 and December 9, 1999, the Association submitted Amendments No. 1[4] and No. 2,[5] respectively, to the proposed rule change. This order approves the proposed rule change and grants accelerated approval to Amendments No. 1 and No. 2. The Commission is also soliciting comment on Amendments No. 1 and No. 2 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees ("Blue Ribbon Committee") issued a report containing recommendations aimed at strengthening the independence of the audit committee; making the audit committee more effective; and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[6] In response to the Blue Ribbon Committee's recommendations, Nasdaq proposes to amend its listing standards regarding audit committee requirements. The proposed changes cover three general areas: (1) The definition of independence; (2) the structure and membership of the audit committee; and (3) the audit committee charter.

The text of the proposed rule change, as amended by Amendments No. 1 and No. 2, is as follows. Language deleted by Amendments No. 1 and No. 2 is in brackets. Language added by Amendments No. 1 and No. 2 is in italics.

Rule 4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(14) No change.

(15) "Independent director" means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(a) a director who is employed by the corporation or any of its affiliates for the current year or any of the past three years;

(b) a director who accepts any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(c) a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation for any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, *son-in-law, daughter-in law,* and anyone who resides in such person's home;

(d) a director who is a partner in, or a controlling shareholder or an executive officer, of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years;

(e) a director who is employed as an executive of another entity where any of the company's executive's serve on that entity's compensation committee.

(15)–(36) renumbered as (16)–(37).

(b) No change.

Rule 4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

---

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41982 (Oct. 6, 1999), 64 FR 55510. The American Stock Exchange LLC and The New York Stock Exchange, Inc. have proposed rule changes relating to audit committees. *See* Securities Exchange Act Release No. 41981 (Oct. 6, 1999), 64 FR 55505 (Oct. 13, 1999) ("Amex Proposal"), and Securities Exchange Act Release No. 41980 (Oct. 6, 1999), 64 FR 55514 (Oct. 13, 1999) ("NYSE Proposal").

[4] Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 12, 1999 ("Amendment No. 1"). The Association submitted Amendment No. 1 to require issuers listed as of the effective date of Commission approval of the proposed rule change to adopt a formal written audit committee charter within six months of the effective date of the proposed rule change. As originally filed, the proposed rule change required issuers to adopt the charter within eighteen months of the effective date of the proposed rule change. Amendment No. 1 also states that issuers that applied for listing prior to the effective date of the proposed rule change would qualify for listing under the listing standards in force at the time of their application, and receive the same grace periods provided to currently listed issuers. Finally, Amendment No. 1 modifies proposed Rule 4320(e)(21) to provide that the requirement that each issuer execute a listing agreement will not be construed to require any foreign issuer to do any act that is contrary to a law of any public authority exercising jurisdiction over the foreign issuer.

[5] Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division, Commission, dated December 8, 1999 ("Amendment No. 2"). The Association submitted Amendment No. 2 to revise proposed Rules 4310(c)(26)(A)(ii), 4320(e)(22)(A)(ii), and 4460(d)(1)(B) to provide that the audit committee is required to oversee the independence of the outside auditor, rather than ensure the independence of the outside auditor. Amendment No. 2 also revises Nasdaq's definition of immediate family found in Rule 4200(a)(15)(c) to include sons-in-law and daughters-in-law.

[6] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).* A copy of this Report can be found on-line at www.nasdaqnews.com.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(24) No change.

(25) Corporate Governance Requirements.

* * * * *

(A) No change.

(B) Independent Directors.

Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4310(c)(26)(B).

(D)–(H) renumbered as (C)–(G).

(26) *Audit Committee.*

(A) Audit Committee Charter.

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition.

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(26)–(28) renumbered as (27)–(29).

(d) No change.

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(20) No change.

(21) Corporate Governance Requirements—No provisions of this subparagraph or of subparagraph (24) shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(A) No change.

(B) Independent Directors.

Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4320(e)(22)(B).

(D)–(H) renumbered as (C)–(G).

(22) Audit Committee.

(A) Audit Committee Charter.

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition.

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(22)–(24) renumbered as (23)–(25).

(f) No change.

Rule 4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a)–(b) No change.

(c) Independent Directors.

Each NNM issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4460(d)(2).

(d) Audit Committee.

(1) Audit Committee Charter.

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(C) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(2) Audit Committee Composition.

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(C) Exception for Small Business Filers—Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(e)–(n) No change.

B. Independence

Nasdaq proposes to narrow its current definition of "independent director" by specifying five new relationships that could impair a director's independent judgment as a result of financial, familial, or other material ties to management or the corporation. The proposed definition will apply to all directors, not just those serving on audit committees. Under the proposed rule change, directors with any of the following five relationships will not be considered independent: (1) Employment by the corporation or any of its affiliates for the current year or any of the past three years; (2) acceptance of any compensation from the corporation of any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation; (3) member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer; (4) partnership in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed five percent of

the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years; or (5) employment as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

C. Structure and Membership of the Audit Committee

Nasdaq also proposes to change the structure and membership qualifications of the audit committee. Specifically, Nasdaq proposes to change the required composition of the audit committee from at least two to at least three members. Furthermore, the audit committee must be comprised solely of independent directors rather than a majority of independent directors. Nasdaq is conscious of the fact that in exceptional circumstances, issuers may appropriately conclude that it would be in the best interests of the corporation for a non-independent director to serve on the audit committee. In such exceptional and limited circumstances, a non-independent director can serve on the audit committee, provided that the board determines that it is required by the best interests of the corporation and its shareholders, and the board discloses its reasons for the determination in the next annual proxy statement. Due to the nature of this exception, however, a corporation could have no more than one non-independent director serving on its audit committee. Also, current employees or officers, or their immediate family members, may not serve on the audit committee under this exception.

As a result of the audit committee's responsibility for a corporation's accounting and financial reporting, Nasdaq believes that audit committee members should have a basic understanding of financial statements. Therefore, the proposed rule change requires each member of the audit committee to be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement, or become able to do so within a reasonable period of time after his or her appointment to the audit committee. Furthermore, in order to further enhance the effectiveness of the audit committee, at least one member of the audit committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

Nasdaq is sensitive to the potential burden that the proposed changes to the audit committee composition requirements may place on small companies. Therefore, Nasdaq proposes to exempt those corporations that file under SEC Regulation S–B ("Small Business Filers").[7] Small Business Filers will be held to Nasdaq's existing requirements with respect to audit committee composition. That is, they must maintain an audit committee of at least two members, a majority of whom are independent.

D. Charter

Nasdaq believes that a written charter will help the audit committee as well as management and the corporation's auditors recognize the function of the audit committee and the relationship among these parties. The proposed rule change requires each issuer to adopt a formal written charter. This charter must specify the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements. In addition, the charter must specify the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1.[8] The charter must also specify the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor. Finally, it must specify the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate an outside auditor for shareholder approval in any proxy statement). The proposed rule change requires issuers to review their charter on an annual basis.

E. Implementation

In order to minimize disruption to existing issuer audit committees, to permit current audit committee members to serve out their terms, and to allow adequate time to recruit the requisite members, Nasdaq proposes to provide its issuers listed as of the effective date of the proposed rule change eighteen months after the proposed rule change is approved by the Commission to meet the audit committee structure and membership requirements.

Additionally, Nasdaq proposes that issuers listed as of the effective date of the rule change be provided six months following the date of Commission approval of the proposed rule change to adopt a formal written audit committee charter in compliance with proposed Rules 4310(c)(26)(A), 4320(e)(22)(A), or 4460(d)(1).

Further, for issuers that applied for listing prior to the effective date of the proposed rule change, Nasdaq proposes that they be able to qualify for listing under the listing standards in force at the time of their application, and to receive the same grace periods provided to currently listed issuers, as described above. Also, in order to avoid prejudicing issuers that transfer to Nasdaq from the American Stock Exchange and the New York Stock Exchange, Nasdaq proposed that these issuers be afforded the same grace periods they would have received under their previous market's implementation schedule.

III. Comments

As of December 9, 1999, the Commission received 14 comment letters on the proposed rule change.[9] In general, the commenters favored the

[7] Small Business Filer is defined by Regulation S–B as an issuer that: (i) has revenue of less than $25,000,000; (ii) is a U.S. or Canadian issuer; and (iii) if a majority owned subsidiary, the parent corporation is a small business issuer. 17 CFR 228.10(a)(1).

[8] Independence Standard No. 1, Independence Discussions with Audit Committees (January 1999), which can be found on-line at www.cpaindependence.org.

[9] *See* letters from: Ernst & Young LLP ("E&Y") dated November 1, 1999; Deloitte & Touche LLP ("Deloitte") dated November 3, 1999; Council of Institutional Investors ("CII") dated November 8, 1999; Brian T. Borders on behalf of the National Venture Capital Association ("NVCA") dated November 12, 1999; PricewaterhouseCoopers LLP ("Price") dated November 1, 1999; Gary P. Kreider ("Kreider") dated November 5, 1999; American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO") dated November 29, 1999; Mayer, Brown & Platt on behalf of Morgan Stanley Dean Witter ("MSDW") dated November 29, 1999; Investment Company Institute ("ICI") dated November 3, 1999; Arthur Andersen LLP ("Arthur Andersen") dated December 3, 1999; Association of Publicly Traded Companies ("APTC") dated December 6, 1999; Robert A. Profusek ("Profusek") dated December 3, 1999; Stanley Keller and Richard Rowe ("Keller and Rowe") dated December 7, 1999; and The Committee on Securities Regulation of the Business Law Section of the New York State Bar Association ("NYSBA") dated December 1, 1999.

proposed rule change but recommended certain modifications. Two commenters opposed the proposed rule change.[10]

In particular, the CII supports the new requirements, but stated that the proposed override provision, which allows a company's board to include a non-independent director on the audit committee is not appropriate because companies should not have a problem finding financially literate, truly independent directors.[11] In addition, the AFL–CIO stated that the restriction period for former employees, or relatives of former employees, should be five years instead of three years.[12] The AFL–CIO also stated that the $60,000 threshold to disqualify a candidate because of a significant business relationship is not stringent enough.[13] Another commenter, on the other hand, stated that a quantitative test is too inflexible.[14] Keller and Rowe stated that former non-executive employment should be treated as a significant business relationship.[15] This commenter also stated that consultants who receive from the company more than a *de minimis* amount of compensation should be treated as employees, while consultants who do not should be treated as having a business relationship with the company.[16] According to this comment letter, the company's board should be permitted to determine that the compensation does not impair the director's objectivity.[17] Keller and Rowe also objected to the financial expertise requirement and stated that no director will want to be designated the financial expert because of the added exposure to liability.[18]

Deloitte and Price each stated that requiring a company's board or audit committee to "ensure" the independence of the outside auditor goes beyond what can reasonably be expected of the board and the audit committee in their oversight role.[19] Deloitte suggested that Nasdaq replace the word "ensure" with "monitor" or "actively oversee."[20] E&Y supported the proposed rule change, but stated that Nasdaq should not exempt Small Business Filers from the financial literacy and expertise requirements and also should expand its definition of immediate family member to include sons-in-law and daughters-in-law.[21] NYSBA stated that the company's board should be required to adopt the audit committee charter, rather than the audit committee adopting the charter subject to board approval.[22]

In addition, the NVCA stated that the proposed rule change should exclude venture capital investors form the independence qualifications.[23] The NVCA also stated that the proposed rule change should give companies that have just completed an initial public offering eighteen months to comply with the new requirements and that the exemption for Small Business Filers should be expanded to apply to companies with less than $50 million in revenue.[24]

APTC stated that the proposed rule change will be counter productive to the goal of better audit committees.[25] In addition, APTC stated that the proposed rule change will disadvantage smaller companies more than larger companies, but concluded that it is appropriate to apply the proposed rule change to all companies, regardless of size.[26] Moreover, APTC is opposed to the proposal's financial literacy requirement.[27] APTC believes that the financial literacy requirement may deprive audit committees of the service of individuals with "exceptional character and/or operational experience."[28] The commenter suggested that the Exchange replace this requirement with a requirement that the committee as a whole possess a certain level of financial acumen.[29]

Finally, two commenters stated that the proposed rule change should not apply to closed-end investment companies.[30] These commenters noted that closed-end investment companies are adequately regulated under the 1940 Act.[31] The commenters also stated that the potential abuses that the proposed rule change is designed to address do not exist with closed-end investment funds.[32] Finally, the commenters noted that because the assets of these funds consist exclusively of investment securities, there is no opportunity to "manage" earnings or results through selective application of accounting policies.[33]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[34] and, in particular, the requirements of Section 15(A)(b)(6) of the Act.[35] The Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committees of companies listed on Nasdaq. The Commission also believes that the new requirements will enhance the reliability and credibility of financial statements of companies listed on Nasdaq by making it more difficult for companies to inappropriately distort their true financial performance.

Specifically, the Commission believes that the proposed definition of independence will promote the quality and reliability of a company's financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management's accounting, internal control, and financial reporting practices. The Commission believes that the proposal's prohibition against employees serving on the audit committee is appropriate and that the Exchange should not be required to distinguish between executive and non-executive employees.[36] The Commission also believes that the proposed provision that permits a company to appoint one director to its audit committee who is not independent, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its

---

[10] *See* Kreider Letter; APTC Letter at 2. Kreider stated that the proposed rule change "represent[s] an awkward attempt to circumvent state corporate law and micro-manage the functions of audit committees." *Id.* at 2.

[11] CII Letter, at 2; *see also* AFL–CIO Letter at 2.

[12] AFL–CIO Letter at 2.

[13] *Id.*

[14] Profusek Letter at 2. In addition, Keller and Rowe stated that this provision might preclude a number of highly qualified candidates from serving on audit committees. Keller and Rowe Letter at 3.

[15] Keller and Rowe Letter at 2.

[16] *Id.* at 3.

[17] *Id.*

[18] *Id.*

[19] Deloitte Letter at 1; Price Letter at 1.

[20] *Id.* at 2.

[21] E&Y Letter at 4.

[22] NYSBA Letter at 2.

[23] NVCA Letter at 5.

[24] *Id.* at 4.

[25] APTC Letter at 2.

[26] *Id.* at 3.

[27] *Id.* at 4–5.

[28] *Id.*

[29] *Id.* at 5.

[30] ICI Letter at 2; MSDW Letter at 1. In addition, Keller and Rowe stated that the proposed rule change should exempt all investment companies because their audit committee members are already required not to be "interested persons" as that term is defined in Section 2(a)(9) of the Investment Company Act of 1940 ("1940 Act"). Keller and Rowe Letter at 5.

[31] ICI Letter at 3–4; MSDW Letter at 2.

[32] ICI Letter at 3; MSDW Letter at 1. ICI and MSDW also noted that the independent accountants of investment funds are selected by the independent directors of the fund.

[33] ICI Letter at 3; MSDW Letter at 1.

[34] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78o–3(b)(6).

[36] *See* Keller and Rowe Letter at 2.

shareholders, adequately balances the need for objective, independent directors with the company's need for flexibility in exceptional and unusual circumstances. The Commission believes that the requirement that the company disclose in its next annual proxy statement the nature of the director's relationship with the company and the board's reasons for determining the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement. Moreover, the Commission believes that the $60,000 threshold to determine if a potential audit committee director has a significant business relationship with the company is a reasonable measure to balance the company's need to recruit audit committee members with the independence requirement.

The Commission does not believe that venture capital investors should be excluded from Nasdaq's definition of independence. The Commission does not believe that the proposed rule change will pose an undue hardship on venture capital firms or companies listed on Nasdaq. The Commission notes that the proposed rule change will only prohibit venture capital investors from sitting on a company's audit committee if the investor does not fall within Nasdaq's definition of independent. The proposed rule change will not prohibit previously eligible investors from serving on the company's board. The Commission also notes that a venture capital investor that is not considered independent may serve on the company's audit committee, if the board determines it is in the best interests of the corporation and its shareholders and the company discloses its reasons for the determination and the nature of the director's relationship to the company in its next annual proxy statement.

In addition, the Commission believes that requiring companies to adopt formal written charters specifying the audit committee's responsibilities, and how the committee carries out those responsibilities, will help the audit committee, management, investors, and the company's auditors recognize the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that requiring the charter to specify that the audit committee is responsible for taking, or recommending that the company's full board take, appropriate action to oversee the independence of the outside auditor will make it more likely that companies will select objective, unbiased auditors.

The Commission believes that the proposed rule change's compositional requirement that each issuer have an audit committee composed of three independent directors who are able to read and understand fundamental financial statements will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this standard will help to ensure that the committee as a whole is financially literate.[37] Moreover, the Commission considers that requiring one member of the audit committee to have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that indicates the individual's financial sophistication, will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities. In addition, the Commission does not believe that companies will experience undue difficulty recruiting an audit committee member that satisfies the financial expertise requirements. Moreover, the Commission believes that the proposed rule change appropriately exempts Small Business Filers from the proposed composition requirements because these companies may experience more difficulty meeting these enhanced requirements. The Commission notes that these companies will remain subject to Nasdaq's existing rules on audit committees, which require an audit committee to have at least two members, a majority of whom are independent.

Moreover, the Commission does not believe that the proposed rule change circumvents state law.[38] The Commission notes that Nasdaq is amending its own qualification requirements governing an issuer's listing on Nasdaq, which is an appropriate function for Nasdaq as long as those requirements are consistent with the Act.

Moreover, the Commission has concluded that Nasdaq's decision to include investment companies in the proposed rule change is warranted. While the Commission recognizes that the opportunity for some types of financial reporting abuses may be limited by the nature of fund assets,[39] it believes that audit committees do play an important role in overseeing the financial reporting process for investment companies.

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 merely revises the implementation time periods for the proposed rule change to provide greater clarity to issuers and to investors. The Commission believes that Amendment No. 1 will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when to rely on the protections afforded by the proposed rule change. The Commission notes that Amendment No. 2 simply clarifies that the audit committee is required to oversee, rather than ensure, the independence of the company's outside auditors, and expands Nasdaq's definition of "immediate family." The Commission believes that accelerated approval will allow Nasdaq to simultaneously make all relevant modifications to its Rules and will avoid potential confusion. Accordingly, the Commission finds good cause to accelerate approval of Amendments No. 1 and No. 2 to the proposed rule change, consistent with Sections 6(b)(5)[40] and 19(b)[41] of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–48 and should be submitted by January 11, 2000.

---

[37] *See* APTC Letter at 5.

[38] Kreider Letter at 2.

[39] *See* Keller and Rowe Letter at 5; ICI Letter at 3; MSDW Letter at 1.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b).

VI. Conclusion

For the foregoing reasons, the Commission finds that Nasdaq's proposal to amend its audit committee requirements is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[42] that the amended proposed rule change (SR–NASD–99–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–33050 Filed 12–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42233; File No. SR–NYSE–99–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 14, 1999.

I. Introduction

On September 20, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Exchange's audit committee requirements.

The **Federal Register** published the proposed rule change for comment on October 13, 1999.[3] In response, the Commission received 25 comment letters.[4] On October 15, 1999 and December 8, 1999, the Exchange submitted Amendments No. 1 [5] and No. 2,[6] respectively, to the proposed rule change. This order approves the proposed rule change and grants accelerated approval to Amendments No. 1 and No. 2. The Commission is also soliciting comment on Amendments No. 1. and No. 2 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees ("Blue Ribbon Committee") issued a report containing recommendations aimed at strengthening the independence of the audit committee, making the audit committee more effective, and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[7]

The Exchange distributed to its listed companies the Exchange staff's suggestions for rule changes in response to the Blue Ribbon Committee's report. The comments from the Exchange's listed companies were generally supportive of the suggestions put forth by the Exchange, with some commenters expressing concerns about "financial literacy" requirement.

In response to the Blue Ribbon Committee's recommendations, the Exchange proposes to revise its listing standards regarding audit committees. The proposed rule change specifies four requirements for a qualified audit committee and defines the terms "Immediate Family" and "Affiliate" for purposes of the proposed audit committee requirements.

The text of the proposed rule change, as amended by Amendments No. 1 and No. 2, is as follows. Language deleted by Amendments No. 1 and No. 2 is in brackets. Language added by Amendments No. 1 and No. 2 is in italics.

NYSE Listed Company Manual

* * * * *

Section 3

Corporate Responsibility

303.00 Corporate Governance Standards

In addition to the numerical listing standards, the Exchange has adopted certain corporate governance listing standards. These standards apply to all companies listing common stock on the Exchange. However, the Exchange does not apply a particular standard to a non-U.S. company if the company provides the Exchange with a written certification from independent counsel of the company's country of domicile stating that the company's corporate governance practices comply with home country law and the rules of the principal securities market for the company's stock outside the United States.

303.01 Audit Committee

(A) Audit Committee Policy. Each company must have a qualified audit committee.

(B) Requirements for a Qualified Audit Committee.

(1) Formal Charter. [Each audit committee must adopt a formal written charter that is approved by the Board of Directors.] *The Board of Directors must adopt and approve a formal written charter for the audit committee.* The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify the following:

(a) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes and membership requirements;

(b) That the outside auditor for the company is ultimately accountable to the Board of Directors and audit committee of the company, that the

---

[42] 15. U.S.C. 78s(b)(2).

[43] 17. CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41980 (Oct. 6, 1999), 64 FR 55514 (Oct. 13, 1999). The Nasdaq Stock Market, Inc. and The American Stock Exchange LLC have proposed rule changes relating to audit committees. *See* Securities Exchange Act Release No. 41982 (Oct. 6, 1999), 64 FR 55510 (Oct. 13, 1999) ("Nasdaq Proposal"), and Securities Exchange Act Release No. 41981 (Oct. 6, 1999), 64 FR 55505 (Oct. 13, 1999) ("Amex Proposal").

[4] The comment letters are discussed in Section III of this order.

[5] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 14, 1999 ("Amendment No. 1"). The Exchange submitted Amendment No. 1 to require issuers to adopt a formal written audit committee charter within six months of the effective date of the proposed rule change. As originally filed, the proposed rule change required issuers to adopt the charter within eighteen months of the effective date of the proposed rule change. Amendment No. 1 also extends the definition of "officer" in Rule 16a–1(f) under the Act to Paragraph 303 of the Exchange's *Listed Company Manual.* Previously, the Exchange permitted each company's by-laws and charter to define this term.

[6] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated December 6, 1999 ("Amendment No. 2"). Amendment No. 2 revises proposed rule 303.01(B)(1) to require the board to adopt the audit committee charter. Under the original proposal, the audit committee adopted the charter, subject to board approval. Amendment No. 2 also revises proposed Rule 303.01(B)(1)(c) to replace the provision that required the board to take appropriate steps to ensure the independence of the outside auditors. The revised provision requires the board "to take appropriate action in response to the outside auditors report to satisfy itself of the outside auditor's independence." Finally, Amendment No. 2 revises proposed Rule 303.02 to require companies listing on the Exchange in conjunction with an initial public offering to have two qualified audit committee members in place within three months of listing, and a third qualified member within twelve months of listing.

[7] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).* A copy of this Report can be found on-line at www.nasdaqnews.com.

audit committee and Board of Directors have the ultimate authority and responsibility to select, evaluate and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and

(c) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the Board of Directors take appropriate action [to ensure the independence of the outside auditor] *in response to the outside auditors' report to satisfy itself of the outside auditors' independence.*

(2) Composition/Expertise Requirement of Audit Committee Members.

(a) Each audit committee shall consist of at least three directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent");

(b) Each member of the audit committee shall be financially literate, as such qualification is interpreted by the company's Board of Directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and

(c) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

(3) Independence Requirement of Audit Committee Members. In addition to the definition of Independent provided above in (2)(a), the following restrictions shall apply to every audit committee member.

(a) Employees. A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor.

(b) Business Relationship. A director (i) Who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (ii) Who has a direct business relationship with the company (*e.g.*, a consultant) may serve on the audit committee only if the company's Board of Directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the Board of Directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated.

"Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced Board of Directors' determination after three years following the termination of, as applicable, either (1) The relationship between the organization with which the director is affiliated and the company, (2) The relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (3) The direct business relationship between the director and the company.

(c) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(d) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. See para. 303.02 for definition of "Immediate Family."

303.02 Application Standards

(A) "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home.

(B) "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(C) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(1) Any determination that the company's Board of Directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(2) The financial literacy of the audit committee members;

(3) The determination that at least one of the audit committee members has accounting or related financial management expertise; and

(4) The annual review and reassessment of the adequacy of the audit committee charter.

(D) Independence Requirement of Audit Committee Members. Notwithstanding the requirements of subparagraphs (3)(1) and (3)(d) of para. 303.01, one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(E) "Officer" shall have the meaning specified in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

(F) Initial Public Offering. Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing.

B. Charter

The Exchange proposes to require audit committees to adopt a formal written charter that is approved by the company's board and to review and reassess annually the adequacy of the charter. The charter must specify: (i)

The scope of the audit committee's responsibilities and how they are being carried out; (ii) the ultimate accountability of the outside auditor to the board and audit committee; (iii) the responsibility of the audit committee and board for selection, evaluation and replacement of the outside auditor; and (iv) The responsibility of the audit committee for ensuring the independence of the outside auditor by reviewing, and discussing with the board if necessary, any relationships between the auditor and the company or any other relationships that may adversely affect the independence of the auditor.

C. Structure and Membership of the Audit Committee

The Exchange also proposes to change the structure and membership qualifications of the audit committee. Under the proposed rule change, each audit committee must have at least three independent directors, subject to a board override for one director. The board may override the three-year bar for one audit committee member after finding that an override is required in the best interests of the company and its shareholders. If it exercises the override, the company must disclose in its next annual proxy statement the nature of the relationship and the reasons for that determination. Potential candidates that are not considered independent because of a business relationship with the company or a cross compensation committee link may not be the subject of a board override.

As a result of the audit committee's responsibility for a company's accounting and financial reporting, the Exchange believes that audit committee members should have a basic understanding of financial statements. Therefore, the proposed rule change requires each audit committee member to be financially literate, or to become financially literate within a reasonable period of time after his or her appointment to the audit committee, as such qualification is interpreted by the company's board in its business judgment. Furthermore, in order to further enhance the effectiveness of the audit committee, the proposal requires at least one member of each audit committee to have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment.

D. Independence

The proposed rule change places four restrictions on audit committee members for purposes of determining each member's independence. First, Employees (including non-employee executive officers) of the company or its affiliates may not serve on the audit committee until three years following the termination of employment. However, if the relationship is with a former parent or predecessor of the company (see definition of "Affiliate" described in Subsection F below), the three-year bar applies to the time period following the severance of the relationship between the company and the former parent or predecessor.

Second, a director: (i) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (ii) who has a direct business relationship with the company (*e.g.*, a consultant), may serve on the audit committee only if the company's board determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. Business relationships can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has the business relationship.

Third, a director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

Fourth, a director who is "Immediate Family" (as that term is defined by proposed Exchange Rule 303.01(B)(3)(d)) of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship.

E. Written Affirmation

To monitor compliance with the proposed rule change, the Exchange proposes to incorporate an ongoing written affirmation requirement. In this regard, as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company must provide the Exchange written confirmation regarding:

(i) Any determination that the company's board has made regarding the independence of directors;

(ii) The financial literacy of the audit committee members;

(iii) The determination that at least one of the audit committee members has accounting or related financial management expertise; and

(iv) The annual review and reassessment of the adequacy of the audit committee charter.

F. Definitions

The Exchange proposes to codify two long-standing interpretations under the current audit committee requirements as follows:

(i) "Immediate Family" includes a person's spouse, parents, children, siblings, mother-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home; and

(ii) "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

G. Implementation

The Exchange proposes to implement a transition period to provide its issuers with sufficient time to comply with the proposed rule change. Specifically, the Exchange proposes to: (i) "grandfather" all public company audit committee members qualified under current NYSE rules until they are re-elected or replaced; and (ii) give companies that have less than three members on their audit committees eighteen months from the date of Commission approval of this rule filing to recruit the requisite members. Issuers listed on the Exchange as of the effective date of the proposed rule change will have six months to adopt a formal written audit committee charter.[8]

III. Comments

As of December 9, 1999, the Commission received 25 comment letters on the proposed rule change.[9] In

[8] *See* Amendment No. 1, *supra* n. 5.

[9] *See* letters from: Ernst & Young LLP ("E&Y") dated November 1, 1999; Deloitte & Touche LLP ("Deloitte") dated November 3, 1999; Council of Institutional Investors ("CII") dated November 8, 1999; Brian T. Borders (on behalf of the National Venture Capital Association ("NVCA")) dated November 12, 1999; Investment Company Institute ("ICI") dated November 3, 1999; PriceWaterhouseCoopers LLP ("PWC") dated November 1, 1999; Gary P. Kreider ("Kreider") dated November 5, 1999; Emerson Electric Co. ("Emerson") dated November 1, 1999; Exxon Corporation ("Exxon") dated November 3, 1999; McDonald's Corporation (McDonald's) dated November 1, 1999; Connectiv ("Connectiv") dated November 2, 1999; Texas Instruments ("TI") dated November 2, 1999; Dime Bancorp, Inc. ("Dime") dated November 3, 1999; Airlease Management Services, Inc. ("Airlease") dated November 3, 1999; The Dun & Bradstreet Corporation ("D&B") dated November 3, 1999; EMC Corporation ("EMC") dated November 1, 1999; Dorsey & Whitney LLP ("Dorsey") (on behalf of nine closed-end investment management companies whose stock is listed on the Exchange) dated October 28, 1999; Massachusetts

Continued

general, most commenters favored the proposed rule change but recommended certain modifications. Three commenters opposed the proposed rule change.[10]

In particular, the CII supports the new requirements, but stated that the proposed board override provision, which allows a company's board to include a non-independent director on an audit committee, is not appropriate because companies should not have a problem finding financially literate, truly independent directors.[11] In addition, the AFL–CIO stated that the restriction period for former employees, or relatives of former employees, should be three years instead of five years.[12] MFSC stated that audit committees should not be required to describe in their charters how they carry out their responsibilities.[13]

Many of the commenters pointed to differences between the proposed rule change, on the one hand, and the Amex Proposal and Nasdaq Proposal, on the other. Specifically, several commenters stated that the Exchange should adopt the Amex's and Nasdaq's definitions of financial literacy and expertise.[14] These commenters noted that allowing individual companies to define these terms will lead to inconsistencies. In addition, several commenters stated that the proposed rule change will discourage qualified candidates from serving on audit committees.[15] Moreover, one commenter stated that the restriction that prohibits an individual who is an immediate family member of an executive officer of the company or any of its affiliates from serving on the audit committee should not be limited to executive officers.[16] Finally, three commenters stated that the Exchange should adopt a bright line test for identifying when a director has a significant business relationship with the company, as in the Amex Proposal and Nasdaq Proposal.[17] On the other hand, another commenter opposed a bright line test and stated that the Exchange should not revise its current test to determine if a significant business relationship exists.[18]

In addition, one commenter stated that past non-executive employment should be treated as a significant business relationship.[19] This commenter also stated that consultants who receive from the company more than a *de minimis* amount of compensation should be treated as employees, while consultants who do not should be treated as having a business relationship with the company.[20] According to the commenter, the company's board should be permitted to determine that the compensation does not impair the director's objectivity.[21] Moreover, the commenter objected to the financial expertise requirement and stated that no director will want to be designated the financial expert because of the added exposure to liability.[22]

APTC stated that the proposed rule change will be counter productive to the goal of better audit committees.[23] In addition, APTC stated that the proposed rule change will disadvantage smaller companies more than larger companies, but concluded that it is appropriate to apply the proposed rule change to all companies, regardless of size.[24] Moreover, APTC is opposed to the proposal's financial literacy requirement.[25] APTC believes that the financial literacy requirement may deprive audit committees of the service of individuals with "exceptional character and/or operational experience."[26] The commenter suggested that the Exchange replace this requirement with a requirement that the committee as a whole posses a certain level of financial acumen.[27]

TI stated that to reduce unrealistic expectations, the proposed rule change should require or permit a disclaimer in the audit committee charter stating that the committee does not provide any special assurances with regard to the company's financial statements, nor does the audit committee give a professional evaluation of the quality of the audits performed by the independent public accountants.[28] Exxon and NYSBA stated that the company's board, not the audit committee, should be required to adopt the audit committee charter because audit committees are created by the board in its discretion and under authority granted by state law.[29]

Exxon also stated that proposed Rule 303.01(B)(2)(a), which requires audit committees to have at least three directors, all of whom must be independent, should provide a business judgment standard for independence, as subparts (b) and (c) of this Rule do with respect to financial literary and expertise.[30] Exxon also stated that proposed Rule 303.01(B)(1) should not give both the board and the audit committee ultimate responsibility to select, evaluate, and replace the outside auditor.[31] Exxon stated that only one body can have ultimate authority.[32] McDonald's stated that a yearly written confirmation regarding financial literacy, financial expertise, independence of directors, and adequacy of the audit committee's charter is unnecessary.[33]

Deloitte and PWC each stated that requiring a company's board or audit committee to "ensure" the

---

Financial Services Company ("MFSC") (on behalf of six closed-end funds advised by MFSC) dated November 22, 1999; Meritor Automotive, Inc. ("Meritor") dated November 24, 1999; American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO") dated November 29, 1999; Mayer, Brown & Platt on behalf of Morgan Stanley Dean Witter ("MSDW") dated November 29, 1999; Arthur Andersen LLP ("Arthur Andersen") dated December 3, 1999; Association of Publicly Traded Companies ("APTC") dated December 6, 1999; Robert A. Profusek ("Profusek") dated December 3, 1999; Stanley Keller and Richard Rowe ("Keller and Rowe") dated December 7, 1999; and The Committee on Securities Regulation of the Business Law Section of the New York State Bar Association ("NYSBA") dated December 1, 1999.

[10] *See* Kreider Letter at 2; EMC Letter at 2; APTC Letter at 2. Kreider stated his belief that the proposed rule change circumvents state corporate law. EMC stated that the proposed rule change substitutes over-generalized restrictions for the more flexible, traditional standards of good faith, candor, care and loyalty that underlie the business judgment rule under state law. EMC also stated that the independence standards may deprive audit committees of valuable financially-expert directors.

[11] CII Letter at 2; *see also* AFL–CIO Letter at 2.

[12] AFL–CIO Letter at 2.

[13] MFSC Letter at 1.

[14] Dorsey Letter at 7, 9; E&Y Letter at 3; Connectiv Letter at 2; D&B Letter at 2; Emerson Letter at 2; NYSBA Letter at 5. In addition, two commenters stated that the terms financial literacy and expertise are too subjective and should be further defined, but did not state the Amex/Nasdaq versions should be adopted. *See* McDonald's Letter at 1; MFSC Letter at 2. MFSC Letter at 2. MFSC also stated that it is not reasonable to expect a company's board to request agreement from a potential audit committee candidate that he will become financially literate because there are no accreditation criteria or specific timeframes for completing this undertaking. MFSC Letter at 2.

[15] Dime Letter at 2; NVCA Letter at 2; D&B Letter at 2; MFSC at 2.

[16] Keller and Rowe Letter at 2.

[17] E&Y Letter at 2; Emerson at 2; Arthur Andersen Letter at 1. In addition, the AFL–CIO stated that the NYSE should adopt a bright line test, but does not think the $60,000 threshold adopted by the Amex and Nasdaq is stringent enough. AFL–CIO Letter at 3.

[18] Profusek Letter at 2.

[19] Keller and Rowe Letter at 2.

[20] *Id* at 3.

[21] *Id.*

[22] *Id.; see also* NYSBA Letter at 6.

[23] APTC Letter at 2.

[24] *Id.* at 3.

[25] *Id.* at 4–5.

[26] *Id.*

[27] *Id.* at 5.

[28] TI Letter at 1.

[29] Exxon Letter at 1; NYSBA Letter at 2.

[30] Exxon Letter at 2. The Commission notes that proposed Rule 303.01(B)(2)(b) and (c) require each company's board to interpret the terms "financial literary" and "financial expertise." The business judgment standard therefore applies to the board's interpretation of these terms. Subpart (a) of the rule does not require the board to interpret the term "independence" and, thus, there is no need for a business judgment standard.

[31] Exxon Letter at 1.

[32] *Id.*

[33] McDonald's Letter at 2.

independence of the outside auditor goes beyond what can reasonably be expected of the board and the audit committee in their oversight role.[34] Deloitte suggested that the Exchange replace the word "ensure" with "monitor" or "actively oversee."[35] E&Y supports the proposed rule change overall, but stated that Small Business Filers should not be exempt from the financial literacy and expertise requirements and that the Exchange should expand its definition of immediate family member to include sons-in-law and daughters-in-law.[36] Airlease stated that smaller companies should not be required to have three independent auditors on their audit committees.[37]

In addition, the NVCA stated that the proposed rule change should exclude venture capital investors from the independence qualifications.[38] The NVCA also stated that the proposed rule change should give companies that have just completed an initial public offering ("IPO") eighteen months to comply with the new requirements.[39]

Three commenters stated that the proposed rule change should not apply to closed-end investment companies.[40] ICI and MSDW noted that closed-end investment companies are adequately regulated under the 1940 Act.[41] These two commenters also stated that the potential abuses that the proposed rule change is designed to address do not exist with respect to closed-end investment funds because the assets of closed-end funds, consist exclusively of investment securities and thus there is no opportunity to "manage" earnings or results through the selective application of accounting policies.[42]

[34] Deloitte Letter at 1; PWC Letter at 1; Meritor Letter at 2.

[35] *Id.* at 2.

[36] E&Y Letter at 4. In addition, the NVCA stated that the exemption for Small Business Filers should be expanded to apply to companies with less than $50 million in revenue. NVCA Letter at 4. The Commission notes, unlike the Nasdaq Proposal and the Amex Proposal, there is no exemption for Small Business Filers under the NYSE's proposed rule change.

[37] Airlease Letter at 1.

[38] NVCA Letter at 5.

[39] *Id* at 4.

[40] ICI Letter at 2; MSDW Letter at 1; Keller and Rowe Letter at 3. In addition, Keller and Rowe stated that the proposed rule change should exempt all investment companies because their audit committee members are already required not to be "interested persons" as that term is defined in Section 2(a)(9) of the Investment Company Act of 1940 ("1940 Act"). Keller and Rowe Letter at 5. Moreover, Dorsey supported the application of the proposed rule change to investment companies. Dorsey Letter at 3.

[41] ICI Letter at 3–4; MSDW Letter at 2.

[42] ICI Letter at 3; MSDW Letter at 1. ICI and MSDW also noted that the independent accountants of investment funds are selected by the independent directors of the fund.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[43] and, in particular, the requirements of section 6(b)(5) of the Act.[44] The Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committees of companies listed on the Exchange. The Commission also believes that the new requirements will enhance the reliability and credibility of financial statement of companies listed on the Exchange by making it more difficult for companies to inappropriately distort their true financial performance.

Specifically, the Commission believes that the proposed definition of independence will promote the quality and reliability of a company's financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management's accounting, internal control, and financial reporting practices. The Commission also believes that the proposal's prohibition against employees serving on the audit committee is appropriate and that the Exchange should not be required to distinguish between executive and non-executive employees.[45] In addition, the Commission considers that the proposed provision permitting a company to appoint one non-independent director to its audit committee, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, adequately balances the need for objective, independent directors with the company's need for flexibility in exceptional and unusual circumstances. The Commission believes that the proposal's requirement that the company disclose in its next annual proxy statement the nature of the relationship and the board's reasons for determining that the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement.[46]

[43] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78f(b)(5).

[45] *See* Keller and Rowe Letter at 2.

[46] The Commission does not believe that the Exchange should require its listed companies to adopt a separate provision on consultants. *See* Keller and Rowe Letter at 3.

The Commission does not believe that venture capital investors should be excluded from the Exchange's definition of independence. The Commission does not view the proposed rule change as posing an undue hardship on venture capital firms or companies listed on the NYSE. The Commission notes that the proposed rule change will only prohibit venture capital investors from sitting on a company's audit committee if the investor does not fall within the Exchange's definition of independence. The proposed rule change will not prohibit previously eligible investors from serving on the company's board.

In addition, the Commission believes that requiring boards of directors of listed companies to adopt formal written charters specifying the audit committee's responsibilities, and how it carries out those responsibilities, will help the audit committee, management, investors, and the company's auditors recognize, and understand the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that the proposal's requirement that companies provide yearly written confirmation regarding the independence, financial literacy, and financial expertise of directors, as well as the adequacy of the audit committee charter, will help the Exchange to ensure that listed companies are complying with the proposed rule change.

The Commission believes that the proposed rule change's requirement that each issuer have an audit committee composed of three independent directors who are able to read and understand fundamental financial statements will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this standard will help to ensure that the committee as a whole is financially literate.[47] Moreover, the Commission believes that requiring one member of the audit committee to have past employment experience in financial or accounting, requisite professional certification in accounting, or any other comparable experience or background that indicates the individual's financial sophistication, will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities. The Commission does

[47] *See* APTC Letter at 5.

not believe that these requirements will discourage qualified candidates from serving on audit committees. Rather, the Commission believes that these requirements will better enable companies to identify and select qualified directors. In addition, the Commission does not believe that companies will experience undue difficulty recruiting an audit committee member that satisfies the financial expertise requirements.

Moreover, the Commission considers the Exchange's decision to exempt Small Business Filers as appropriate.[48] The Commission notes that relatively few companies that qualify for listing on the Exchange would also qualify as Small Business Filers under SEC Regulation S–B.[49]

Furthermore, the Commission does not believe that the Exchange should be required to adopt the Amex and Nasdaq proposed definitions of financial literacy and expertise or the test to determine when a potential director has a significant business relationship with the company. The Commission notes that the proposed rule change is not inconsistent with the Act.

Moreover, the Commission has concluded that the Exchange's decision to include investment companies in the proposed rule change is warranted. While the Commission recognizes that the opportunity for some types of financial reporting abuses may be limited by the nature of fund assets,[50] it believes that audit committees do play an important role in overseeing the financial reporting process for investment companies.

Finally, the Commission does not view the proposed rule change as circumventing state law.[51] The Commission notes that the Exchange is amending its own listing standards, which is a function within the Exchange's discretion, as long as those changes are consistent with the Act.

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 revises the implementation time periods for the proposed rule change solely to provide greater clarity to issuers and to investors. The Commission believes that Amendment No. 1 will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when to reply on the protections afforded by the proposed rule change. The Commission notes that Amendment No. 2 simply codifies the Exchange's existing policy on the timing of audit committee requirements for IPO's; clarifies that the company's board must take appropriate action to satisfy itself of the outside auditor's independence, and is not intended to provide an absolute guarantee of independence; and requires the board to adopt the audit committee charter, rather than approving the charter adopted by the audit committee. The Commission believes that accelerated approval will allow the Exchange to simultaneously make all relevant modifications to its *Listed Company Manual* and will avoid potential confusion. Accordingly, the Commission finds good cause to accelerate approval of Amendments No. 1 and No. 2 to the proposed rule change, consistent with the Sections 6(b)(5)[52] and 19(b)[53] of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be witheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NYSE–99–39 and should be submitted by January 11, 2000.

VI. Conclusion

For the foregoing reasons, the Commission finds that the Exchange's proposal to amend its audit committee requirements is consistent with the requirements of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[54] that the amended proposed rule change (SR–NYSE–99–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33052 Filed 12–20–99; 8:45 am]

BILLING CODE 8010–01–M

[48] *See* NVCA and Airlease Letters.

[49] Small Business Filer is defined by Regulation S–B as an issuer that: (i) has revenue of less than $25,000,000; (ii) is a U.S. or Canadian issuer; and (iii) if a majority owned subsidiary, the parent corporation is a small business issuer. 17 CFR 228.10(a)(1).

[50] *See* Keller and Rowe Letter at 5; ICI Letter at 3; MSDW Letter at 1.

[51] Kreider Letter at 2.

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78s(b).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3180]

Culturally Significant Objects Imported for Exhibition Determinations: "Walker Evans"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Walker Evans," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lender. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about January 31, 2000, to on or about May 14, 2000; the San Francisco Museum of Modern Art, San Francisco, California, from on or about June 2, 2000, to on or about September 12, 2000, and at the Museum of Fine Arts, Houston, Texas, from on or about December 17, 2000, to on or about March 11, 2001, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–

44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: December 15, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 99–33060 Filed 12–20–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3182]

Bureau of Educational and Cultural Affairs NIS Secondary School Partnership Program

NOTICE: Request for proposals.

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, in the Bureau of Educational and Cultural Affairs of the United States Department of State announces an open competition for the NIS Secondary School Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, or Ukraine. All proposals must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component. The maximum grant award will be $125,000 for single-country applications and $200,000 for multiple country applications.

Program Information

The Secondary School Partnership Program is funded under the Freedom Support Act to assist young people in building an open society and developing democratic processes and institutions in the New Independent States (NIS). This program provides grants to link schools in the seven countries noted above with schools in the United States.

The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a U.S. network of a minimum of two secondary schools; strengthening an existing working relationship with an organization or agency of government in the NIS responsible for a network of at least two schools there; and linking the two networks in one-to-one school partnerships through a thematic project and substantive exchange activities.

Overview

The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and NIS schools featuring collaborative substantive projects and reciprocal student and educator exchanges with strong academic content. The long-term goals are to: (1) develop lasting, sustainable institutional ties between U.S. and NIS schools and communities; (2) support democracy in the NIS; (3) advance mutual understanding between the youth and teachers of the U.S. and the NIS; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools.

The program has several defining features to help the participating schools develop their partnership:

—Each partnership has a project theme and the students and teachers in the two schools work on a joint project throughout the school year related to this theme;

—The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges from three weeks to ten months in duration. Exchanges take place while the host school is in session.

—The student and teacher exchanges must be reciprocal.

—The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

—During the exchange, participants attend class, are involved in school-based activities, work on their joint project, perform community service, visit educational and cultural sites, and reside with host families.

An applicant may, but is not required to, propose one of several optional features in its proposal. Please see these three optional features described later in this solicitation.

Dates

Grants may begin on or about July 15, 2000, and cover the 2000–2001 academic year. The exact starting date of the grant will be dependent on availability of funds.

Guidelines

A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for the linkage apart from the availability of grant funds. Organizers and school networks in the U.S. and NIS should collaborate in planning and preparation. Applicants must have an NIS organizational partner that has its base of operation in the partner country and not in another country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project, such as the development of educational materials. The proposal should specify measurable goals and objectives of the program.

In general, the Bureau seeks school partnerships that target under-served countries or regions. For programs with Russia and Ukraine, priority will be given to partnerships with schools located outside of the Moscow, St. Petersburg, and Kiev regions. Bureau funding may not be used to supplant existing private sector funding. Competitive proposals must demonstrate a solid and comprehensive follow-on plan to continue after the grant has expired.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed.

For example, what will the participants be doing and how is it relevant to the thematic focus of the program? Applicants should present a program that succeeds in linking the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include but are not limited to the following: democracy education, volunteerism or community service, conflict resolution, business management, health education, environmental issues, youth leadership training, computer technology, multicultural education, and agriculture.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, shadowing of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools,

teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive.

Optional Features

An applicant may choose to present its proposed program in accordance to the guidelines above or may choose to implement one of the following features. Clearly indicate if you are including one of these features and, if so, which one, on your application cover sheet. All guidelines outlined in this solicitation still apply unless noted below.

Feature One: Educators travel separately. In lieu of having students and educators travel to their partner school together, the applicant may arrange for an escort to accompany the student group while up to two educators travel to the partner school at another time. This arrangement would apply to both U.S. to NIS travel and NIS to U.S. travel. Travel during the school year is preferred, but educators' travel may take place during the summer if a significant component of their exchange contributes to the development of the partnership between the schools. This design will allow for sustained personal contact throughout the school year and will allow educators to focus on their own professional development during their exchange.

Feature Two: Grant period spans two school years. In lieu of having one reciprocal exchange during the 2000–2001 academic year, the applicant may arrange for each school to send and receive two smaller delegations, once in 2000–2001 and again in 2001–2002 for a total of four exchange trips. The grant period would start on or about July 15, 2000, and end on or about July 15, 2002. This design allows for longer, sustained interaction between the schools. Grant requests, however, may not exceed the limits noted in this solicitation.

Feature Three: Only one school partnership is formed. In lieu of a network of schools in the U.S. and in the NIS, an applicant that is a secondary school or school district may propose to link only one school in the U.S. with one school in the NIS. The NIS organizational coordinator may be an individual at the partner school as long as he or she can fulfill the responsibilities outlined in this solicitation. The grant request that accompanies applications with this feature may not exceed $50,000.

Applicants that choose one of these features should provide a brief explanation of why they have chosen to do so and how they believe it will enhance their program.

Responsibilities

The U.S. organization receiving the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep The Bureau informed of its progress; (4) manage all travel arrangements, logistics, passports, visas, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of a grant are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants from the U.S. and the NIS in the exchange components of the program must be open, competitive, and merit-based; the proposal should describe the mechanisms used for participant selection. All participants from the U.S. and the NIS should represent the full diversity of their communities (racial, ethnic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Preference will be given to proposals that include schools that have not received funding under the NIS Secondary School Initiative for a total of three years.

Significant cost-sharing is mandatory in all proposals, and those that show more generous and creative cost-sharing will be more favorably viewed. Proposals that contain non-Bureau funded items such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, capital city civics programs, and other significant items will be more competitive proposals than those that do not. However, NIS participants may not be charged to participate in the program, aside from paying for home country costs (such as transportation to the point of departure), the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Please be sure to refer to the Project Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information. Also consult the Proposal Submission Instructions (PSI) for information on budget presentation and required forms.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire project. For single-country applications, awards may not exceed $125,000 or the country allocation noted below, whichever is less. Awards for one school partnership (optional feature three) may not exceed $50,000. The maximum award for multiple country applications is $200,000. The Bureau has set country allocations for this competition and all proposals must adhere to these maximum amounts per country. Only partnerships between secondary schools in the United States and these countries are eligible for this competition.

Country allocations (subject to change): Armenia $97,000; Azerbaijan $97,000; Belarus $97,000; Georgia $97,000; Moldova $68,000; Russia $500,000; Ukraine $330,000.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S. or NIS participants. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–26.

FOR FURTHER INFORMATION, CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 619-6299; fax (202) 619–5311; E-mail *clantz@usia.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition

with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, February 11, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and seven copies including tabs A–E and appendices should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: *ECA/PE/C–00–26*, Program Management, ECA/EX/PM, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

8. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. Cost-effectiveness/cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 14, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy, U.S. Department of State.

[FR Doc. 99–33062 Filed 12–20–99; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3181]

FY 2000 Ron Brown Fellowship Program; Request for Proposals

SUMMARY: Subject to the availability of funds for FY 2000, the Office of Academic Programs of the United States Department of State's Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Ron Brown Fellowship Program. The Bureau solicits detailed proposals from U.S. public or private non-profit organizations with at least four years of experience in conducting international academic exchange programs and meet the provisions described in IRS regulation 26 CAR 1.501c to develop and administer the FY 2000 Ron Brown Fellowship Program. Preference will be given to organizations that have placement experience at the graduate level and a demonstrated ability to conduct academic exchange programs. The level of funding for FY 2000 will be approximately $2,500,000.
Organizations are invited to submit a proposal to conduct the final selection (from a pool of well-qualified candidates), placement, orientation, monitoring, evaluation and follow-on/alumni activities for approximately 42 Fellows from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia (FYROM), Romania, Federal Republic of Yugoslavia (Serbia, Kosovo and Montenegro) (FRY), and Slovenia. Participants will be enrolled in two-year degree programs, or in one-year non-degree professional development programs (except for the one-year degree programs in law) at accredited U.S. academic institutions for study at the Masters' degree level in the fields of business administration, economics, educational administration, environmental management, journalism/mass communication, law, public administration, and public policy. Preference will be given to proposals with budgets that do not exceed $2,500,000.

Please note: This program will not support Ph.D. studies. Programs and projects must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Authority

The funding authority for the Ron Brown Fellowship Program is provided through the Support for East European Democracy (SEED) Act of 1989, targeted to advance the democratic and economic transition of Central and Eastern Europe. In order to comply with mandates for this program, the grantee organization is required to keep track of the spending for each of the participating countries under the FY 2000 Ron Brown Fellowship Program. Funds allocated for one country should not be used to support Fellows from other countries. Specific country allocations will be provided at the time of the award.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Program Information

Overview

The FY 2000 Ron Brown Fellowship Program will provide funding for approximately 42 fellowships to citizens from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Romania, FRY, and Slovenia. Fellowships will be distributed according to specified country-quotas. The goal of the Ron Brown program is to provide an opportunity for university graduates and young professionals who are selected through open merit-based competition in the aforementioned European countries to participate in quality graduate study programs at accredited universities throughout the United States. The fields of study are: business administration, economics, educational administration, environmental management, journalism/mass communication, law, public administration, and public policy. Fellowships will be awarded for one-year, non-degree professional development programs, except for one-year degree programs in law, or for two-year degree granting programs. Program

enhancements such as workshops, professional development and cultural enrichment activities, internships, alumni conferences, networking, etc. are integral components of the Ron Brown Fellowship Program and highly encouraged. Internships of up to three months for Fellows in both one-year and two-year degree programs and from three-to-five-months for non-degree professional development programs are also key components of the program. Our goal for FY 2000 is to award a greater number of Fellowships for two-year degree programs, and to attain equitable representation of the eight eligible fields while achieving wide distribution among the U.S. host universities. Fast-track placement ability is essential to enable the greater number of Fellows to start their academic program in the fall 2000. Clustering of Fellows should be avoided with no more than three Fellows at any one university. The Ron Brown Fellowship Program will not support Ph.D programs.

Guidelines

For FY 2000, as in previous years, program advertisement and participant recruitment will be the responsibility of the Public Affairs Sections (PAS) of the U.S. Embassies and/or the Fulbright commissions. PAS and/or commissions will screen applications for eligibility, arrange for TOEFL, GMAT and GRE testing where possible, conduct personal interviews, and compile a dossier on each qualified applicant. Each FAS and/or commission will compile a pool of applicants to be forwarded to the administering organization in early spring for the final selection.

Applicants are asked to develop a program plan to conduct the final selection, placement, monitoring, follow-on and alumni activities. The duration of the program should be for two academic years, 2000–2001 and 2001–2002. The program may not begin before May 1, 2000, and must be completed by December 31, 2002. Proposals should address and discuss in detail the following areas:

1. Final selection: describe in detail the process for the final selection of Fellows including method of reviewing a pool of qualified applications submitted by PAS' and/or Fulbright commissions, and specific details about the final selection panel.

2. Placement of Fellows: describe criteria for selecting host universities and measures to ensure participants' academic and cultural needs are met. A list of universities your organization works with to place scholars should be included.

3. Notification: describe plans for notifying applicants who have been selected for an award, including timely confirmation of placement, scheduling of pre-departure orientation, and all logistical arrangements.

4. Special programs: describe provisions for ESL or pre-academic programs, if necessary;

5. Orientation: describe plans for pre-departure, post-arrival and/or pre-academic orientation programs.

6. Enrichment activities: describe arrangements for cultural and professional development activities, internships, and other program enhancements including recommendations for workshops and alumni activities.

7. Monitoring/evaluating/tracking: describe methodologies for on-going monitoring and evaluation and adjustment of program accordingly. Mechanisms for alumni networking and alumni tracking should also be detailed.

8. Alumni Activities: Over 180 Fellows have completed the Ron Brown Fellowship Program since it was established in 1994. Alumni Associations have been formed in several participating countries. Describe plans to assist the development and expansion of these fledgling associations.

9. Program Identity: Describe ways to ensure that participants and alumni identify themselves as Ron Brown Fellows or Ron Brown Alumni.

10. Personnel: proposals should include curriculum vitae of personnel assigned to administer the Ron Brown program.

Participants

Fellows will be selected from a pool of applicants with a variety of professional and educational backgrounds. Since one of the purposes of the fellowships is to promote the development of professional expertise among the future leaders of central and eastern Europe, grant recipients should ideally be in the early stages of their careers, with perhaps a few years of work experience, a demonstrated ability for leadership, a clearly expressed purpose for studying in the United States, and a commitment to return home at the end of their fellowships to share their knowledge, skills and experience in the development of their countries. Fellows must be under the age of forty, possess the equivalent of a bachelor's degree, and demonstrate fluency in spoken and written English with a minimum TOEFL score of 550 or 213 on the computer-based test (or the ability to attain such a level following a limited ESL program prior to the beginning of their studies).

Visa/Insurance/Tax Requirements

All foreign participants must be sponsored under an Exchange Visitor Program on a J visa. Programs must comply with J–1 visa regulations and should reference this adherence in the proposal narrative. Ron Brown Fellows must comply with the two-year home residency requirement as stipulated by the J-visa guidelines. It is the expressed intent of this program that Fellows return immediately to their home country following completion of the academic and practical components of their program. Please refer to program specific guidelines in the Application Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes, as applicable. Organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Participants will be covered by Department of State-sponsored Medical Insurance. The administering organization will be responsible for enrolling the participants in the insurance program.

Budget Guidelines

Funding for the FY 2000 Ron Brown Fellowship Program is anticipated at $2,500,000. Applicants must submit a comprehensive line item budget for general program costs, participant program costs, alumni costs, and administrative costs. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the application packet for complete formatting instructions. Administrative costs, including indirect costs, should not exceed 20% of the total request.

The Bureau reserves the right to reduce, revise, or increase the proposal budget in accordance with the needs of the program.

Allowable costs for the program include the following:

(1) General Program Costs
(2) Participant Program Costs
(3) U.S. Administrative Costs
(4) Overseas Administrative Costs
(5) Alumni Activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Medical insurance for participants will be paid directly by the Bureau of Educational and Cultural Affairs and,

therefore, should not be included as a line-item cost in the program budget. However, a modest line-item may be included for health insurance for universities not accepting the ECA policy.

Diversity, Freedom and Democracy Guidelines

Pursuant to Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle in the program. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, the Bureau shall take steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program content, to the full extent deemed feasible.

Year 2000 (Y2K) Compliance Requirement

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.otpolicy.gsa.gov.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should refer to: The Ron Brown Fellowship Program, reference number *ECA/A/E/EUR–00–05.*

FOR FURTHER INFORMATION, CONTACT: The U.S. Department of State, Annex 44, Bureau of Education and Cultural Affairs (ECA), Office of Academic Exchange Programs, European Branch, ECA/A/E/EUR Room 238, 301 4th Street, S.W., Washington, D.C. 20547; Telephone: (202) 619–4420; Fax: (202) 619–4927; E-mail: ewingate@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Ms. Effie Wingate on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the following website: http://www.usia.gov/education/rfps. Please read all information before downloading.

Deadline For Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington, D.C. time on Thursday, February 3, 2000. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Applicants must follow all instructions given in the Solicitation Package. The original and nine copies of the completed application, including required forms, should be sent to: U.S. Department of State, Annex 44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–00–05, Office of Program Management, ECA/XE/PM, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) formatted with a maximum line length of 65 characters. These files will be transmitted electronically to the Public Affairs Sections and Fulbright Commissions overseas for their review, with the goal of reducing the time it takes to receive their comments for the grant review process.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Department of State's Office of the Coordinator for SEED programs and the Offices of Public Affairs and Fulbright commissions overseas where appropriate. Proposals may also be reviewed by the Department of State, Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Management: Proposals should exhibit substance, precision, innovation, and relevance to the Bureau's mission. Objectives should be reasonable, feasible, and flexible and proposals should clearly demonstrate how the organization will meet these objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and work plan should adhere to the program overview and guidelines described above.

2. Institutional Capacity and Record: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

3. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and

establishment of long-term institutional and individual linkages.

4. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

5. Placement experience: Proposals should demonstrate the organization's ability and experience with graduate level, fast-track placements at U.S. universities.

6. Professional and Academic Contacts: Proposals should demonstrate substantive staff knowledge of the relevant academic fields and professions to ensure productive engagement with professional and academic contacts in every phase of program planning and implementation, including the arrangement of internships and selection panels.

7. Support of Diversity: Proposals should demonstrate the organization's commitment to promoting the awareness and understanding of diversity and should include a strategy for achieving diverse group of Fellows and host institutions.

8. Project Evaluation: Proposals should include a plan to evaluate the project's success, both during and after the program. A draft survey questionnaire or other technique and a description of methodologies that can be used to link the outcomes to original project objectives should also be included. Grantee organization will be expected to submit quarterly program and financial reports.

9. Alumni Tracking and Follow-on Activities: Proposals should provide a plan for effective tracking of current and future Alumni and demonstrate the organization's willingness to provide data to and coordinate tracking with the Bureau, Public Affairs Sections and/or Fulbright commissions. Proposals may also include a plan for continued follow-on activity (without Bureau support) which insures that Bureau-supported programs are not isolated events.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any ECA representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposed budgets in accordance with the needs of the program and the availability of funds.

Awards made will be subject to quarterly reporting and evaluation requirements.

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal State Department procedures.

Notification

All applicants will be notified of the results of the review process on or about March 31, 2000.

Dated: December 14, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 99–33061 Filed 12–20–99; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending December 10, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6602.
Date Filed: December 7, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0085 dated 3 December 1999; Expedited Europe-South East Asia Resolution 002hh Intended effective date: 1 January 2000.

Docket Number: OST–99–6603.
Date Filed: December 7, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0106 dated 3 December 1999; Expedited TC3–Central America, South America Resolution 002L; Intended effective date: 15 January 2000.

Docket Number: OST–99–6604.
Date Filed: December 7, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0103 dated 3 December 1999, Expedited Areawide TC31 North and Central Pacific Resolution 015v r–1, PTC31 N&C/CIRC 0104 dated 3 December 1999, Expedited TC3 (except Japan)-North America, Caribbean Expedited Resolutions 002j r–2, 077p r–3, 077r r–4, PTC31 N&C/CIRC 0105 dated 3 December 1999, Expedited Japan-North American, Caribbean Expedited Resolutions 001b r–5, 002rr r–6, 073hh r–7, Intended effective date: 15 January 2000.

Docket Number: OST–99–6613.
Date Filed: December 8, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0083 dated 23 November 1999 Resolution 015v (r–1), PTC123 0085 dated 23 November 1999 Mid Atlantic (r–2 to r–7), PTC123 0086 dated 23 November 1999 South Atlantic (r–8 to r–20), Fares: PTC123 Fares 0034 dated 3 December 1999 (South Atlantic), PTC123 Fares 0035 dated 3 December 1999 (Mid Atlantic), Intended effective date: 1 March 2000.

Docket Number: OST–99–6627.
Date Filed: December 8, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0084 dated 23 November 1999, TC123 North Atlantic Resolutions (r–1 to r–17), Fares: PTC123 Fares 0033 dated 3 December 1999 (North Atlantic), Minutes: PTC123 0088 dated 7 December 1999, Intended effective date: 1 March 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–33016 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending December 10, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6624.
Date Filed: December 8, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 5, 2000.
Description: Application of Federal Express Corporation pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for issuance of a new certificate of public convenience and necessity authorizing Federal Express to provide scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in Italy, on the other hand, via intermediate points and beyond Italy without limitation. Federal Express further requests authority to operate its services between the U.S. and Italy in conjunction with other scheduled all-cargo

services operated by Federal Express between the U.S. and points in Europe, the Middle East, Africa and the Asia/Pacific region, subject to existing bilateral provisions.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–33017 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 10–13, 2000, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Naval Air Station Pensacola, 190 Radford Blvd., Pensacola, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, Terminal and En Route Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 10 through January 13, 2000, at the Naval Air Station Pensacola, 190 Radford Blvd., Pensacola, Florida.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 7, 2000. The next quarterly meeting of the FAA ATPAC is planned to be held from April 3–6, 2000, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 10, 1999.

Eric Harrell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 99–33042 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 222, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 222, Des Plaines, IL 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 24, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.24 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 23, 2000.

The following is a brief overview of the application.

PFC application number: 00–07–C–00–MDW.

Level of the proposed PFC: $3.00.

Actual charge effective date: September 1, 1993.

Revised estimated charge expiration date: January 1, 2047.

Total estimated PFC revenue: $630,948,770.00.

Brief description of proposed projects: Reconstruct Taxiway P, Service Road Reconstruction Along Taxiway N, Taxiway K Rehabilitation Between Runway 31C and Taxiway V, Taxiway J Rehabilitation Between Taxiway W and Runway 4L, Runway 31C Exit Taxiway Rehabilitation, Runway 13C Hold Pad Rehabilitation, Taxiway N and Taxiway Q Rehabilitation, Apron Edge Taxiway Rehabilitation, Terminal Apron Construction, Additional Residential Insulation, Midway Radio Trunking System, Midway Equipment Acquisition 1998–2003, Blast Fences Northeast and Northwest Corners, Land Acquisition Parcel #130, Land Acquisition Parcel #131, Land Acquisition Parcel #132, Concourse Building, Explosive Detection System, Taxiway/Taxilane, Aircraft Parking Apron Construction, Parking Structure Blast Mitigation, On-Airport Roads, Airline Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on December 9, 1999.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–33041 Filed 12–20–99 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (00–05–C–YKM) To Impose and Use, and Impose Only, the Revenue From a Passenger Facility Charge (PFC) at Yakima Air Terminal-McAllister Field, Submitted by the Yakima Air Terminal Board, Yakima Air Terminal-McAllister Field, Yakima, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, and impose only, PFC revenue at Yakima Air Terminal-Mcallister Field under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington, 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Clem, Airport Manager, at the following address: 2400 West Washington Avenue, Yakima, Washington 98903.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yakima Air Terminal-McAllister Field, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue, SW, Suite 250, Renton, Washington, 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–05–C–00–YKM), to impose and use, and impose only, PFC revenue at Yakima Air Terminal-McAllister Field, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 13, 1999, the FAA determined that the application to impose and use, and impose only, the revenue from a PFC submitted by Yakima Air Terminal Board, Yakima, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 14, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2000.

Proposed charge expiration date: August 1, 2002.

Total requested for use approval: $297,687.

Total requested for collection authority: $480,000.

Brief description of proposed project: Impose and Use: Update Airport Layout Plan; Install Visual Navigational Aids; Purchase Radio Equipment; B Taxiway Rehabilitation. Impose Only: Construct West Perimeter Road.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above or under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yakima Air Terminal-McAllister Field.

Issued in Renton, Washington on December 13, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–33040 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Certification Basis for Garlick Helicopters, Inc. Model GH205A Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Type Certification Basis.

SUMMARY: This document establishes the type certification basis for Garlick Helicopters, Inc. Model GH205A helicopters. It is published in the interest of keeping the public informed and to advise all interested persons of the airworthiness standards applicable to Model GH205A helicopters.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1993, Garlick Helicopters, Inc., of Hamilton, Montana, applied for a transport category rotorcraft type certificate under the provisions of 14 CFR 21.27, "Issue of type certificate: surplus aircraft of the Armed Forces of the United States," for former U.S. Army Model UH–1H and UH–1V helicopters, to be redesignated as Garlick Helicopters, Inc. Model GH205A helicopters. The later military Model UH–1V helicopters contain avionics and internal equipment changes only and is considered identical to Model UH–1H helicopters for the purposes of FAA certification.

Section 21.27 provides two methods for obtaining a type certificate on a military surplus aircraft designed and constructed in the United States and accepted for operational use by the U.S. Armed Forces. The type certificate may be obtained if the surplus aircraft (1) is a counterpart of a previously type certificated civil aircraft, or (2) meets the airworthiness standards in effect when the particular model was accepted for operational use by the U.S. Armed Forces, subject to any special conditions or later amendments necessary to ensure an adequate level of airworthiness for the aircraft. The U.S. Army procurement offices in St. Louis, Missouri, has stated that the UH–1H model helicopter was first accepted for operational use by the U.S. Army on September 8, 1966, and no similar civil version was certificated until June 13, 1968. Hence, no similar civil model was certificated prior to the first operational use of the military UH–1H model helicopter. Therefore, the

Model GH205A helicopter must comply with the airworthiness standards specified in § 21.27(f) at the regulation amendment level in effect on September 8, 1966.

Section 21.27(d) permits the FAA to relieve an applicant from strict compliance with an airworthiness standard in the certification basis, provided the stated conditions are satisfied. Additionally, § 21.27(e) permits the FAA to adopt special conditions or later airworthiness requirements if the FAA finds that the requirements stated in § 21.27(e) and (f) would not ensure an adequate level of airworthiness of the type design. Special conditions are airworthiness safety standards promulgated in accordance with §§ 11.28 and 21.16, which include public participation, and establish a level of safety equivalent to that contained in the regulations.

A notice that invited public comments on the proposed certification basis including the Special Condition concerning the T53–L–13 engine for the Model GH205A helicopters was published in the **Federal Register**, on July 2, 1997 (62 FR 35872). Numerous comments, both for and against, were received on the proposed certification basis.

General Discussion of Public Comments

The FAA has carefully reviewed and considered all comments in the development of the type certification basis and the regulatory standards contained therein for Model GH205A helicopters. Because of the volume of comments, comments of a similar nature are answered as a group.

After receipt of the comments from the notice of proposed type certification basis, the FAA decided to issue a separate Special Condition for the T53–L–13 engines. In that Final Special Condition; request for comments, the FAA disposed of the comments relating to the engine. Special Condition No. 29–006–SC, issued and effective on September 22, 1999 (64 FR 52646 September 30, 1999), promulgates the additional safety standards that the FAA Administrator considers necessary to establish a level of safety for the T53–L–13 surplus military aircraft engines installed in the Model GH205A helicopters equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Several commenters suggested that the Model UH–1H helicopters while being flown by the U.S. Army had a safe operational record. These commenters state that Model UH–1H helicopters are proven aircraft with some 20 million fleet hours. The commenters state that this satisfactory service history shows that the Model UH–1H helicopters are safe and reliable. One commenter reports that they have flown Model UH–1H helicopters in the public-use role for over 46,000 flight hours of accident-free operations. Another commenter reports that they have flown Model UH–1 helicopters accumulating over 16,000 flight hours without an incident or accident caused by mechanical failure or maintenance problems.

In general, the FAA agrees that Model UH–1H helicopters have demonstrated a satisfactory military service history. However, for FAA type certification in the civil transport rotorcraft category, more than satisfactory military service history is required. In some instances, military qualifications and acceptance do not meet the safety requirements specified in 14 CFR parts 21 and 29. Since the proposed Model GH205A helicopters will be flown in accordance with 14 CFR parts 91 and 135 operating requirements, those operations must meet the minimum appropriate level of safety commensurate with the category for which certification is requested. Therefore, in accordance with 14 CFR 21.27, the FAA will require Garlick Helicopters, Inc. to meet the appropriate regulation and certain special conditions deemed necessary to ensure the appropriate minimum level of safety.

Some public aircraft operators commented that the proposed Model GH205A helicopters would benefit the taxpayers. They argue that the taxpayers, who must pay for fire fighting and rescue services, have already paid for these helicopters as military aircraft and should continue to benefit from their operation.

The FAA does not evaluate applications for type certificates based on economic considerations. The type certification basis is established by mandating applicable minimum safety standards. The FAA presumes that the type certificate applicant has or will perform an economic analysis based on the regulatory requirements.

Several comments were received concerning the economic impact of the civil certification of military surplus helicopters. One commenter stated that infusing large numbers of military surplus aircraft into the civil market would have a much more detrimental affect on the industry than any benefits that might be realized. Not only would it affect the major manufacturers and large commercial operators, it would also affect small companies and individual owners who have invested in standard category aircraft. These commenters further state that the certification of military surplus helicopters would "devalue the civil fleet and the owners of civil-certified standard category helicopters would be at a competitive disadvantage." They further emphasized that "the civil market has already been damaged enough through national park regulations and loss of public-use contracts to surplus aircraft. Any further pursuit of an initiative to certify surplus aircraft could very well harm the industry in such a manner that it would not recover." Another commenter stated, "My concern is trying to make a profit by competing with people with lesser standards operating surplus government helicopters."

The FAA is sensitive to both sides of the economic issues associated with this project. However, in accordance with 14 CFR 21.27, an applicant is entitled to a type certificate for a surplus aircraft of an Armed Force of the United States if it complies with certain appropriate regulations. The FAA's focus is on assuring that the minimum level of safety is maintained.

One commenter states that the sudden expansion of the number of operators in the industry due to the affordability and access to surplus aircraft will result in an increased workload on an already overloaded FAA inspection system and would necessitate the need for additional manpower to regulate that growth.

The FAA continually assesses the resources needed to regulate the industry. However, the FAA has no basis to deny a type certificate to an applicant that has met all the appropriate regulatory requirements.

Several commenters state that the proposed certification basis will assure a proper level of safety for a transport category rotorcraft. These commenters emphasize that the proper level of safety is generated when the proposed regulatory criteria is met during the upgrade from military surplus to transport category rotorcraft and when the aircraft are properly maintained during service.

The FAA agrees. The type certification basis and special conditions will provide a high level of safety for Model GH205A helicopters. The airframe, including electrical and mechanical systems as well as the engine, will be inspected and overhauled in accordance with an FAA-approved procedure. Model GH205A helicopters will be produced in accordance with an FAA-approved type design. A FAA-approved production and quality system will be maintained

with FAA oversight. The Fort Worth Aircraft Evaluation Group will review the instructions for continued airworthiness for acceptability. The Rotorcraft Certification Office will review and approve the Airworthiness Limitations.

One commenter states that certification of Model GH205A helicopters would cause an irreparable setback to rotorcraft aviation due to the high noise signature of the similar Model UH–1 helicopters, which has already been responsible for a negative perception and acceptance of helicopters by the general public. Certain helicopter models are currently banned from several geographical areas in the civil sector because of their high ambient noise level.

The Model GH205A helicopter certification basis includes 14 CFR part 36, Appendix H, latest Amendment, "Noise Requirements for Helicopters under Subpart H". Further, a prototype Model GH205A helicopter has been tested and found to be in compliance with the current Part 36, Appendix H, noise certification requirements. The Model GH205A helicopters will basically have the same noise signature as existing civil certified Bell Helicopter Textron, Inc. (Bell) Model 205A helicopters.

Several commenters point out that there was a Notice of Proposed Rulemaking (NPRM No. 94–12) published in the **Federal Register** on April 21, 1994, which proposed to rescind the current rules providing for the issuance of a type certificate to surplus military aircraft previously accepted for use by the U.S. Armed Forces. They state that the airworthiness standards specified for compliance are no longer appropriate for normal or transport category helicopter type certification and do not offer the same levels of safety to the general public as current amendment levels of FAR Parts 27 and 29.

While the FAA agrees that several amendments to the normal and transport helicopter airworthiness standards, FAR Parts 27 and 29, have been incorporated to enhance flight safety since the U.S. military first accepted delivery of the Model UH–1 series helicopters, retroactive compliance to later amendment levels for previously-certificated civil helicopters has not been required of any type certificate holder. There are currently many type certificated helicopters on the FAA U.S. Registry, similar to Model GH205A helicopters, that were type certificated to the airworthiness standards in existence at the time the Model UH–1 series helicopters entered military service. The type certification basis established for Model GH205A helicopters meets the regulatory requirements of the Bell Model 205A helicopters, and also includes certain requirements imposed by later FAR Part 29 and FAR Part 33 amendment levels to achieve a level of safety equal to that required of current type certificate applicants. The FAA recognizes that the type, quantity, and potential civil usage of aircraft now being declared surplus by the U.S. Armed Forces has changed significantly since the World War II era, hence the promulgation of NPRM 94–12. NPRM 94–12 was never adopted. The FAA has a rigorous airworthiness compliance plan for the Model GH205A helicopters, including provisions for maintaining the continued airworthiness of these helicopters, such that no unfair advantage of Garlick Helicopters, Inc. over current helicopter manufacturers is intended and the type certification basis will result in a safe helicopter.

Several commenters state that the surplus Model UH–1 series airframes are similar in appearance to civil-certified Bell Model 205 helicopters, but do not meet FAR Part 29 airworthiness requirements due to significant differences in the rotor drive systems configuration, control systems design and construction materials. They state that the tail rotor on the Bell Model 205 helicopters is located on the right side of the tailboom with a push/pull tube type of control system, while on the Model UH–1 series helicopters, the tail rotor is located on the left side of the tail boom and controlled via a cable/silent chain system. A commenter further states that the hydraulic boost actuators for the collective and cyclic main rotor primary control systems on the Bell Model 205 helicopters are required by the FAA to have redundant servo valves while the corresponding actuators on the Model UH–1 series helicopters contain a single servo valve. In addition, a commenter states that many airframe components/detail parts on the Model UH–1 series helicopters may have been replaced by the military with breakout parts. Also, military design specifications in some cases allowed the substitution of aluminum and magnesium in the Model UH–1 series helicopters instead of steel for similar parts on the Bell Model 205 helicopters.

While the FAA is aware of these differences, it has determined that an applicant can conduct a design review of the Model UH–1H series helicopters to show compliance and address those areas which require modification in order to comply with the Model GH205A helicopters' type certification basis, which will result in a safe helicopter.

In accordance with FAR 21.31, Garlick Helicopters, Inc. will be required to have a complete set of FAA-approved type design data which defines the configuration and design features of the Model GH205A helicopters' type design shown to comply with the Model GH205A helicopters' type certification basis. A complete drawing package will be required including any drawings for replacement or upgraded parts utilized from the original equipment manufacturer or other FAA production approval holders.

FAA-approved procedures will be utilized to conduct receiving inspections on each Model GH205A helicopters' airframe; to purge all breakout parts; to inspect and, if necessary, overhaul all major systems; to establish criteria for use of life-limited parts; and to conform the helicopter to a FAA-approved configuration.

Since the FAA originally imposed the dual servo valve hydraulic flight control actuator requirement on the Bell Model 205 helicopters' type certification, over 20 million military and civil flight hours have been accrued with acceptable service history on both military Model UH–1 and civil Bell Model 204 helicopters, which have single servo valve hydraulic actuators. Therefore, service history for the single servo actuators has proven to be satisfactory. However, Model GH205A helicopters will be subjected to extensive ground and flight tests to demonstrate the acceptability of the single servo actuators utilized in the surplus Model UH–1 series helicopters. If these tests are successful, an equivalent level of safety will have been demonstrated for § 29.695, Power boost and power-operated control system.

Additionally, in accordance with § 21.27(e), the FAA has determined that the following sections must be included in the Model GH205A helicopters' type certification basis:

- 14 CFR part 29.2, Amendment 29–32, Special retroactive requirements. This Section requires each occupant's seat to be equipped with a safety belt and shoulder harness.
- 14 CFR part 29.785, Amendment 29–24, Seats, berths, safety belts, and harnesses. This Section describes the loads and other criteria that the seat belt and shoulder harness must meet.
- 14 CFR part 29.853, Amendment 29–18, Compartment interiors. This section describes the requirements for cabin interiors. Of particular interest are the material burn testing requirements.

Several commenters state that the proposed type certification basis will not assure a level of safety equal to other transport category helicopters currently certified, that use of obsolete certification regulations will not meet the same level of safety required of aircraft certified under modern certification regulations, and that Model UH–1H helicopters were built under military requirements while the Bell Model 205 helicopters were designed for civilian use and therefore meet a higher standard.

14 CFR 21.27 allows a type certification basis other than the most current certification regulations. As previously discussed, retroactive compliance for previously certificated civil helicopters or their derivatives has not been required of any type certificate holder. Bell Model 205 helicopters were certificated to CAR 7 rules. The FAA has determined that the Model GH205A helicopters' type certification basis at FAR 29, Amendment 1, certain later Amendments of FAR 29, equivalent safety finding requirement, CAR 13 at Amendments 13–1, 13–2 and 13–3, certain later Amendments of FAR 33, and special conditions provide a satisfactory level of safety commensurate with Bell Model 205 helicopters.

Type Certification Basis

Pursuant to the provisions of § 21.27, the type certification basis of the Garlick Helicopters, Inc. Model GH205A helicopters is:

1. 14 CFR part 29 of the Federal Aviation Regulations (FAR) effective August 12, 1965, as amended by Amendment 29–1, Category B, except:
   - Section 29.2 of the FAR effective September 16, 1991, as amended by Amendment 29–32.
   - Section 29.695 through Amendment 29–1, Category B, Finding of Equivalent Safety.
   - Section 29.785 of the FAR effective December 6, 1984, as amended by Amendment 29–24.
   - Section 29.853 of the FAR effective March 6, 1980, as amended by Amendment 29–18.
   - Section 29.1529 of the FAR effective October 14, 1980, as amended by Amendment 29–20.
2. 14 CFR part 36 of the FAR, Appendix H, latest Amendment in existence at the time of certification.
3. Part 13 of the Civil Air Regulations (CAR) effective August 12, 1957, as amended by Amendment 13–1.
4. Part 13 of the CAR effective May 17, 1958, as amended by Amendment 13–2.
5. Part 13 of the CAR effective October 1, 1959, as amended by Amendment 13–3.
6. 14 CFR Section 33.4 of the FAR effective October 14, 1980, as amended by Amendment 33–9.
7. 14 CFR Section 33.14 of the FAR effective March 26, 1984, as amended by Amendment 33–10.
8. Special Condition No. 29–006–SC.

Additional Special Conditions

The necessity for additional special conditions may become evident as more experience is gained during this type certification program. Any additional special conditions will be promulgated in accordance with §§ 11.28 and 21.16.

Post-Certification Activity

The design evaluation does not end with the issuance of the type certificate. Regulations require type certificate holders to submit various reports and data on the helicopters' service experience and to perform periodic inspections and maintenance necessary to assure continued airworthiness. The FAA continues to monitor the safety performance of a design after the type design is approved and the aircraft is introduced into service through the various reports and data that the FAA receives, and with post-certification design reviews when necessary. The airworthiness standards, such as Part 29 and Part 33, and the operational standards, such as parts 91 and 135, are amended from time to time to incorporate new technologies and to upgrade the existing level of safety. If, during an evaluation, an unsafe condition is found as a result of service experience and that condition is likely to exist or develop in other products of the same type, the FAA issues an AD under part 39 to require a change to the type design or to define special inspection or operational limitations. In effect, these are retroactive applications of required type design changes.

Issued in Fort Worth, Texas on December 9, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–33039 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, January 13, 2000. The meeting begins at 2:00 p.m. The letter designations that follow each item mean the following: (I) is an "information item;" (A) is an action item; (D) is a discussion item. This meeting includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements; (2) Review and Approval of Board Meeting Minutes for August 10, 1999, and November 7, 1999 (A); (3) US DOT ITS Federal Report (I/D); (4) Executive Committee Report (I); (5) Coordinating Council Report (A); (6) National ITS Deployment Strategy Project (I); (7) State Chapters Council Report (I); (8) ITS America Association: Business Plan and Congressional Tour Report; (9) Report of the ITS World Congress: Toronto World Congress Update; Other International Activities (I/A/D); (10) 2000 ITS America Annual Meeting Update (I); (11) President's Report (External Issues) (I); (12) Other Business; (13) At 3:30 p.m. A Business Session open only to Board Members, ITS America Members and Staff.); (14) Report of the Finance Committee: 1999 Budget Status; Resource Allocation Plans; and Ratification of Executive Committee Approval of 2000 Budget; (15) President's Report (Internal Issues); (16) Presentation of Slates of Nominees for Board and Officers; Coordinating Council Officers; At-Large Seats; and Committee/Task Force Chairs; and State Chapters Council Officers (A); (17) Other Business: 2000 Board of Directors Meeting Schedule (I); (18) Adjournment until May 4, 2000, Board of Directors Meeting #34 held in conjunction with the ITS America Annual Meeting in Boston, MA.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, January 13, 2000, from 2:00 p.m.–6:00 p.m.

ADDRESSES: Marriott Wardman Park Hotel, 2660 Woodley Road, NW,

Washington, DC Phone: (202) 328–2000. Fax: (202) 234–0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Marlene Vence-Crampton at ITS AMERICA by telephone at (202) 484–4847, or by Fax at (202) 484–3483. The DOT contact is Kristy Frizzell, ITS JPO FHWA, HOIT, Washington, DC 20590, (202) 366–0722. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 16, 1999.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 99–33038 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33827]

Union Pacific Railroad Company—Trackage Rights Exemption—CBEC Railway, Inc.

CBEC Railway, Inc. (CBEC) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP) over approximately 6.2 miles of CBEC trackage extending between CBEC milepost 0.0 and CBEC milepost 6.2, near Council Bluffs, IA.

The transaction is scheduled to be consummated on or after the December 14, 1999 effective date of the exemption.

The purpose of the trackage rights is to permit UP to provide direct service to a major utility customer on CBEC.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33827, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32904 Filed 12–20–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the "Commission") shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The seventh meeting of the Advisory Commission will be held on January 3, 2000, beginning at 4:00 p.m. and ending at 6:00 p.m. The eighth meeting of the Advisory Commission will be held on January 4, 2000, beginning at 9:00 a.m. and ending tentatively at 3:00 p.m. The locations for both meetings is not yet determined..

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

The Commission members will focus on exchange rate policy, income inequality and debt forgiveness.

Procedure

These meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the seventh or eighth meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than December 28, 1999.

Dated: December 14, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–33043 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Submission for OMB Review; Joint Comment Request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the OTS, the Board, and the FDIC (collectively, the "agencies") hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection systems described below. The

Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On September 3, 1999, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the extension, without revision, of the following currently approved information collections: the Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006).

DATES: Comments must be submitted on or before January 20, 2000.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Written comments on the FFIEC 001 and 006 should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: 1557–0127 (FFIEC 001 and 006). Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, S.W., Washington, D.C. 20219 between 9:00 a.m. and 5:00 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

OTS: Written comments on the FFIEC 001 should be submitted to the Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention: 1550–0026. Hand deliver comments to Public Reference Room 1700 G Street, NW, lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mail to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW, from 9:00 a.m. until 4:00 p.m. on business days.

Board: Written comments on the FFIEC 001 and 006 should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments on the FFIEC 001 should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of an agency's submission may be obtained by contacting:

OCC: Jessie Gates, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Mary Rawlings-Milton, OTS Clearance Officer, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC. 20429.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved collections of information

Report Title: Annual Report of Trust Assets and Annual Report of International Fiduciary Activities

Form Number: FFIEC 001 and FFIEC 006

Frequency of Response: Annual

Affected Public: Business or other for profit

For OCC:

OMB Number: 1557–0127.

Number of Respondents: 809 (FFIEC 001) 100 (FFIEC 006).

Estimated Average Time per Response: 4.4 burden hours (FFIEC 001). 4.0 burden hours (FFIEC 006).

Estimated Total Annual Burden: 3,960 burden hours

For OTS:

OMB Number: 1557–0026.

Number of Respondents: 101 (FFIEC 001).

Estimated Average Time per Response: 4.08 burden hours (FFIEC 001).

Estimated Total Annual Burden: 412 burden hours.

For Board:

OMB Number: 7100–0031.

Number of Respondents: 511 (FFIEC 001), 116 (FFIEC 006).

Estimated Average Time per Response: 3.82 burden hours (FFIEC 001), 4.0 burden hours (FFIEC 006).

Total Annual Burden: 2,416 burden hours.

For FDIC:

OMB Number: 3064–0024.

Number of Respondents: 1,602 (FFIEC 001).

Estimated Average Time per Response: 3.55 burden hours (FFIEC 001).

Estimated Total Annual Burden: 5,683 burden hours (FFIEC 001).

General Description of Reports

This information collection (FFIEC 001 and FFIEC 006) is mandatory: 12 U.S.C. 161 and 1817 (for national banks), 12 U.S.C. 1464, 1725, 1730 (for thrift institutions), 12 U.S.C. 248(a)(1) and (2) and 1844(c) (for state member banks and bank holding companies), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). The FFIEC 006, collected by the OCC and the Board, and Schedule E–Fiduciary Income Statement on the FFIEC 001, collected by all of the agencies, are given confidential

treatment (5 U.S.C. 552(b)(8)). Small businesses (i.e., small banks) are not affected.

Abstract

These interagency reports collect information on fiduciary asset totals and activities. They are used to monitor changes in the volume and character of discretionary trust activity and the volume of nondiscretionary trust activity and to determine resource needs for supervisory purposes. The data are also used for statistical and analytical purposes. No changes are proposed to the FFIEC 001 or the FFIEC 006 reporting forms or instructions.

The agencies did not receive any comments in response to the notice published in the **Federal Register** on September 3, 1999 (64 FR 48453) requesting public comment on the extension, without revision, of these information collections.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: November 19, 1999.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

Dated: December 14, 1999.

John E. Werner,

Director, Information & Management, Services, Office of Thrift Supervision.

Board of Governors of the Federal Reserve System, December 16, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 15th day of December, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–33045 Filed 12–20–99; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6210–01–P; 6714–01–P

OL

64

ISS

2
4
4

DE

21

999

MI

federal register

Tuesday
December 21, 1999

Part II

Department of Education

34 CFR Part 694
Gaining Early Awareness and Readiness for Undergraduate Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 694

RIN 1840–AC82

Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed regulations.

SUMMARY: The Secretary proposes to amend the regulations governing the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. These amendments are needed because the current regulations applied only to the fiscal year 1999 competition. These proposed regulations will apply to any future GEAR UP competitions and were drafted subject to the negotiated rulemaking process required by section 492 of the Higher Education Act of 1964 (HEA), as amended.

DATES: We must receive your comments on or before January 20, 2000.

ADDRESSES: Address all comments about these proposed regulations to Edward Fuentes, U.S. Department of Education, 1990 K Street, NW., room 6107, Washington, DC 20006. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term GEAR UP in the subject line of your electronic message.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Lisa Aserkoff, 400 Maryland Ave., SW., Room 6E205, Washington, DC 20202. Telephone: (202) 401–6296. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have the maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 6107, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9585. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

Section 403 of the Higher Education Amendments of 1998 (Amendments), (Public Law 105–244), enacted October 7, 1998, amending the Higher Education Act of 1965 (HEA) established the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), a program designed to give more low-income students the skills, encouragement, and preparation needed to pursue postsecondary education, and to strengthen academic programs and student services at participating schools.

On March 2, 1999, we published final regulations implementing GEAR UP for fiscal year 1999 (64 FR 10183), using the Department's authority under section 437(d) of the General Education Provisions Act to waive rulemaking requirements for regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)).

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. For fiscal year 1999, we determined that, to make grants under this competition before the funds expired, the use of negotiated rulemaking would be impracticable and contrary to the public interest under section 492(b)(2) of the HEA.

The proposed regulations contained in this NPRM were developed through the use of negotiated rulemaking. The proposed regulations reflect the final consensus of the GEAR UP negotiating committee (committee), which was made up of the following members:

California State University System
The College Board
Council of the Great City Schools
Ford Foundation
High School Equivalency Program and the College Assistance Migrant Program Association and the National Association for Migrant Education, Inc. (a coalition)
Hispanic Association of Colleges and Universities
"I Have a Dream" Foundation
National Alliance of Black School Educators
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of Secondary School Principals and the National Forum on Middle-Grades Reform (a coalition)
National Association of State Student Grant and Aid Programs
National Coalition of Title I/Chapter I Parents
National Collaboration for Youth
National Council of Higher Education Loan Programs
National Education Association
United States Chamber of Commerce
United States Department of Education
United States Student Association

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Background

GEAR UP provides two types of competitive grants: State grants and Partnership grants. State grants must provide early college preparation and awareness activities through the early intervention component of the GEAR UP program and scholarships for participating students through the scholarship component of GEAR UP. Partnerships must provide early college preparation and awareness activities through the early intervention component and are encouraged to provide college scholarships, although they are not required to do so.

Section 694.1 Maximum Grant Amounts

Current Regulations: The current regulations set a maximum amount that the Secretary could award each year to a Partnership or a State under GEAR UP. For Partnership grants, the maximum amount that the Secretary could award each year was calculated by multiplying the number of students the Partnership proposes to serve that year, as stated in the Partnership's plan, by $800.

For State grants, the current regulations set the maximum dollar amount that the Secretary could award each year at $5 million.

Proposed regulations: For Partnership grants, the proposed regulations would keep the same maximum amount that the Secretary could award each year as under current regulations, an amount calculated by multiplying the number of students the Partnership proposes to serve that year by $800.

Reasons: Negotiators agreed that this is an appropriate maximum average per student, per year, Federal dollar amount to spend under GEAR UP. We believe that this maximum average Federal dollar amount per student will ensure that the Department can fund a substantial number of projects nationwide each year, while still providing for a broad range of services for those students served.

Proposed regulations: For State grants the proposed regulations would state that the Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**. The negotiators recognized that a maximum grant amount was necessary to ensure that we could fund a substantial number of projects each year, while still providing the services necessary to ensure a successful program.

Several negotiators, however, expressed some concern that the maximum amount for the grant was set in regulation. These negotiators mentioned changes in funding from Congress for the program as a potential reason why there needed to be discretion each year in setting the maximum State grant amount. We therefore changed the regulations so that the maximum amount that the Secretary could award each year for a GEAR UP State grant would be announced each fiscal year in a notice published in the **Federal Register**.

Section 694.2 Students Served By the Cohort Approach Under the Early Intervention Component

Statute: Section 404B(g) of the HEA requires that Partnerships provide services to at least one grade level of students, beginning not later than the 7th grade. In addition, Partnerships must ensure that those services are provided through the 12th grade to students in the participating grade levels.

Current Regulations: The current regulations restate the statutory language, but also add language that would require States that choose to use the cohort approach to follow the same rules as Partnerships. The regulations also established the word "cohort" as the term used throughout the regulations to refer to the entire grade levels of students the Partnership (or State) served.

Proposed Regulations: The proposed regulations would be the same as the current regulations, with one addition. Partnerships, and States using the cohort approach, must ensure that supplemental appropriate services are targeted to the students with the greatest needs.

Reasons: The committee discussed the problems associated with serving an entire grade level of students in large schools. Several negotiators felt that it was important to try to ensure that the students who needed the services the most didn't get lost among the many other students also served in their school under GEAR UP. The committee discussed how to provide those students with appropriate services, without violating the statute, which requires that services be provided to entire grade levels of students.

The negotiating committee discussed several variations of language initially offered by several negotiators. The language originally offered would have required Partnerships to ensure that direct services be delivered to the most disadvantaged students within a cohort. Several other negotiators, including the Department, while recognizing the concerns the language was trying to address, believed that this language was not the best way to address those concerns. The committee discussed the use of the word "disadvantaged," and wanted to be sure that services weren't only targeted at economically disadvantaged students.

In addition, negotiators were concerned about the word "delivery," and whether it meant that the Partnership had to ensure the student actually received all of the services. Several negotiators wondered how the Partnership could ensure that each disadvantaged student actually receives all of the services if a student adamantly refuses, or doesn't show up, and what the consequences would be for a Partnership if services were not delivered. By contrast, under the proposed regulations, Partnerships would be able to provide services to the entire cohort, tailor services to students' needs, and target additional services appropriate to students with the greatest needs.

In addition, several negotiators were concerned that the requirement as a whole could be read to imply that not all students in the cohort needed to receive services. Several negotiators emphasized that one of the most important attributes of the GEAR UP program was the whole-grade approach, and the negotiators wanted to be sure that the suggested additional language wouldn't lead to Partnerships providing services to only some students in a grade.

The committee then discussed several wording alternatives to address these concerns. One negotiator suggested changing "disadvantaged" to "special needs." Some other negotiators, however, were concerned that the term "special needs" might imply only learning or physical disabilities. In addition, some negotiators suggested removing "delivery," and instead saying that Partnerships must ensure that services were "targeted to" certain students. To address the concern about the whole-grade approach, the words "supplemental appropriate services" were added, so that it was clear that while all students should receive appropriate services, students with the greatest needs should get appropriate supplemental services.

The committee then reached final consensus on a provision that requires Partnerships, or States using the cohort approach, to ensure that supplemental appropriate services are targeted to the students with the greatest needs. The committee believed that this language addresses the concern that, in large cohorts, the neediest students might "get lost," and might need some extra attention, but still makes clear that the

attention must be in addition to services provided to the entire cohort. The committee also believed that referring to "students with the greatest needs" would be flexible enough to allow individual school districts to decide how to determine which students most needed the additional services.

Section 694.3 Cohort Requirements

Statute: Section 404B(g) of the statute requires that Partnerships must provide services to at least one grade level of students, beginning not later than the 7th grade, in a participating school that has a 7th grade and in which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act (or, if a Partnership determines that it would promote the effectiveness of a program, an entire grade level of students, beginning not later than the 7th grade, who reside in public housing as defined in section 3(b)(1) of the United States Housing Act of 1937).

Current Regulations: The current regulations restate the statute, but divide the requirements into individual paragraphs, to make statutory language clearer.

Proposed Regulations: The proposed regulations would keep the same language as in current regulations.

Reason: The negotiators agreed that the regulatory language would help clarify the statutory requirements. The committee discussed whether there was any way to provide services to students before they reached schools that include a 7th grade. Some negotiators mentioned that in some States there were many elementary schools that didn't include a 7th grade, but that they felt could still benefit tremendously from a program like GEAR UP. The committee discussed this at length, but under the statute Partnerships cannot serve students in schools that do not include a 7th grade. Additionally, several negotiators thought that although others could certainly benefit from GEAR UP services, the emphasis of GEAR UP was intended for students in middle grades (i.e. schools that include a 7th grade), and wanted to ensure that GEAR UP funds reached the population for which they were intended. Students benefit most in the middle grades; research shows that course and other decisions in the middle grades are critical in determining a student's chances of going to college. The definition of schools with a 7th grade already includes a broad range of school configurations without diluting the program's unique focus on the middle grades.

Section 694.4 Changes in the Cohort

Current regulations: Under current regulations, a Partnership or State that chooses to use a cohort approach must serve, as part of the cohort, any additional students who may have enrolled in the participating school, at the grade level of the students in the cohort, after the cohort began receiving GEAR UP services. The current regulations also provide that if, after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services, not all the students in the cohort move on to the same school, the Partnership or the State may, but is not required to, provide services to all of those students. However, the Partnership or State must continue to provide GEAR UP services to at least those students in the cohort who attend subsequent participating schools that enroll a substantial majority of the students in the cohort.

Proposed Regulations: The proposed regulations would keep the same language as in the current regulations to address the students a Partnership or State must serve when there are changes in the cohort.

Reasons: The committee agreed that any new student who enrolls in a participating school and joins a GEAR UP cohort before the cohort completes the GEAR UP program in that school, should have the opportunity to benefit from the direct services the other cohort students are receiving. The committee also agreed that some students who began in the cohort are likely to leave the participating school as well, and that GEAR UP programs should not be required to serve those students.

The committee also recognized that as the cohort moves on to a subsequent participating school (for example, a high school), a single middle-grades school could feed into more than one high school. Some cohorts may, therefore, eventually be distributed among several schools. The committee agreed that Partnerships or States should be required to continue providing GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort. In doing so, the maximum number of students from the original cohort would continue to receive services, without placing an undue burden on Partnerships or States.

Sections 694.5 and 694.6 Serving Private School Students

Current Regulations: The current regulations outline the requirements a Partnership or State must meet if it chooses to provide services to private school students under the program's early intervention component. The regulations are based on private school student participation requirements generally applicable to most elementary and secondary education programs carried out by the Department.

Proposed Regulations: The proposed regulations would keep the language from current regulations for providing services to private school students under the program's early intervention component.

Reasons: The committee agreed that regulations are necessary to ensure that Federal funds are used for educational services that are secular, neutral, and nonideological.

Section 694.7 Matching Requirements

Statute: Under section 404C(b) of the HEA, the Secretary may not approve a GEAR UP plan unless the plan provides that the Partnership or State will provide, from State, local, institutional, or private funds, not less than 50 percent of the cost of the program, in cash or in kind. Section 404C(b) also gives the Secretary the authority to modify, by regulation, the 50 percent requirement for Partnerships.

Current Regulations: The current regulations require a Partnership to state in its application the percentage of the cost of the GEAR UP project for each year that the Partnership will provide from non-Federal funds, and then to comply with the matching percentage stated in the application for each year of the project period. Under current regulations, a Partnership must also provide at least 20% of the cost of the project from non-Federal funds for any year in the project period, and the non-Federal share of the cost of the GEAR UP project must be at least 50% of the total cost over the project period.

Proposed regulations: The proposed regulations would keep the requirement that the non-Federal share of the cost of the GEAR UP project be not less than 50 percent of the total cost over the project period. However, the proposed regulations would permit a match lower than 50 percent, but not lower than 30 percent, for Partnerships with three or fewer institutions of higher education as members, and in which the fiscal agent is (1) eligible to receive funds under Title V, Part B of Title III, or section 316 or 317 of the HEA, or (2) a local educational agency. In addition, to qualify for the lower match, the Partnership would have to include only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and only local educational agencies

in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

Reasons: The committee agreed that generally the 50 percent matching requirement over the entire project period gives Partnerships broad flexibility in terms of the amount of the project cost that the Partnership must provide for each year of the project. The success of any project depends in part upon strong community support. The 50 percent requirement helps to ensure that the GEAR UP project has strong community support, that all members of the Partnership contribute to the program, in cash or in kind, and that the Partnership can be sustained, even after Federal funds are no longer available, through strong community Partnerships, with support from all partners. The Department also suggested that the poorest and very rural communities were able to meet the match in the fiscal year 1999 competition.

Several negotiators, however, felt that the 50 percent match precluded some of the poorest communities from applying, because they wouldn't have the resources to meet the 50 percent match. The committee discussed a variety of options to address this problem.

One negotiator suggested a waiver of the match. If that wouldn't be possible, the negotiator suggested a minimum match of 20 percent throughout the life of the grant. The negotiator was concerned that many colleges and universities, especially those that serve low-income students, were already burdened by matching requirements of other programs, even where there is flexibility to substitute in-kind services for dollars. Several other negotiators, including the Department, felt that a minimum match of 20 percent throughout the life of the grant was too low, and that other members of the Partnership could and needed to provide more. These negotiators stressed that Partnerships would not need to use cash to meet the match, but could do so through in-kind contributions, which, in spite of the negotiator's concerns, should serve to alleviate the burden.

Another option presented by some negotiators was that Partnerships could be eligible for a 25 percent match if they served only elementary and secondary schools in which at least 50 percent of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act, and if they served only LEAs in which at least 50 percent of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act.

A third option presented to the committee would have permitted the Secretary to give special consideration to Partnerships with respect to the match either before the Partnership's application was approved or after a grant was awarded. For pre-approval special consideration, a Partnership would apply for special consideration for a match less than 50 percent, and would receive notification from the Secretary as to whether their request was granted within 30 days of the application deadline. Whether the request was pre-approval, or post-award, there would be two circumstances under which a Partnership could apply for special consideration. The first circumstance would be if an emergency, such as a natural disaster, occurred where the Partnership was located that would warrant a lower match.

The other circumstance that could allow a Partnership to apply for a lower match would be if there were within the Partnership systemic issues that could preclude the Partnership from being able to meet the match. To qualify for the lower match, the Partnership would have to show that, in spite of its limited resources, it had an ongoing commitment to serving the educational needs of targeted students. The Partnership would also have to show that it had no access to adequate fiscal resources, or that it was geographically isolated. Finally, this would be available only in geographic areas in which at least 75 percent of the students were eligible for free or reduced-price lunch, or in which there was a high unemployment rate.

The negotiators felt that the provision that appears in the proposed regulations was the best option available. Several negotiators didn't want the first option of either a waiver or a minimum 20 percent match throughout the life of the grant. These negotiators felt that a waiver would be too logistically burdensome, both for the Secretary and for the applicant. These negotiators also felt that a minimum of 20 percent over the life of the grant was too low.

Negotiators also didn't agree to the second option, because they felt it could allow too many applicants to take advantage of a reduced match, which would weaken the projects and mean more Federal money would be spent per project, and fewer projects could be funded.

Negotiators felt that the third option was not the best option for a couple of reasons. One reason is that this option would have required both the applicants and the Department to spend significant amounts of time determining whether the applicants were in fact eligible for the lower match, since the criteria to qualify for the lower match were subjective and extremely detailed. In addition, this option would have required the Secretary to make individual determinations as to whether an applicant qualified for the lower match.

Negotiators, including the Department, preferred an approach that provided a lower match for an easily definable group of applicants. Negotiators felt that this approach would be less burdensome, both for applicants and for the Department, and would still provide a lower match for the applicants that needed it most.

One negotiator argued that the group of institutions of higher education eligible for the lower match in the proposed regulations should be expanded to include institutions eligible to receive funds under all of Part A of title III of the HEA, instead of just sections 316 and 317. Other negotiators, including the Department, felt that the proposed regulations were sufficiently broad to allow a significant number of Partnerships to be eligible for the reduced match and further believed that including the institutions the negotiator suggested would expand the exception so broadly that it would become the rule.

Section 694.8 Fiscal Agents for Partnerships

Statute: Section 404B(d) of the statute requires that a Partnership designate an Institution of Higher Education (IHE) or a Local Educational Agency (LEA) as the fiscal agent for the partnership.

Current Regulations: The current regulations restate the statutory language and add that the IHE must be an IHE that is not pervasively sectarian.

Proposed Regulations: The proposed regulations would keep the language from the current regulations, but would add language clarifying that although the IHE or LEA must be the fiscal agent, any member of the Partnership can organize the project.

Reasons: Several negotiators wanted to clarify in the regulations that other members of the Partnership, such as community-based organizations, though not eligible to be the fiscal agent, could still be a driving force in a Partnership. Some negotiators felt that without the clarifying language, organizations other than IHEs and LEAs might think they couldn't play a significant organizational role in the Partnership and might be less inclined to join the Partnership.

Section 694.9 Maximum Indirect Cost Rates for States and LEAs

Current Regulations: Although the current regulations don't address indirect cost rates, we addressed indirect cost rates in the application package for GEAR UP. We determined that GEAR UP projects were educational training grants under 34 CFR 74.562. Consistent with that provision in EDGAR, a recipient was limited to the maximum of eight percent or the rate permitted by an applicant's negotiated cost rate agreement, whichever was less. This rate did not apply to costs incurred by State agencies or LEAs.

Proposed Regulations: Under the proposed regulations, the same rule that applies to applicants other than State agencies or LEAs under 34 CFR 74.562 would also apply to State agencies and LEAs, so that all grant recipients' maximum indirect cost rates would be limited to the lesser of the rate established by the negotiated indirect cost agreement, or eight percent of a modified total direct cost base.

Reasons: While both negotiators and the Department recognize that indirect costs are both real and legitimate, they also believe that having large amounts of funds compensate partners for their general overhead and related expenses is inconsistent with the purpose of the program. The negotiating committee agreed that the eight percent maximum on indirect cost reimbursement is a fair percentage that still allows significant funds to be available for direct grant services.

Section 694.10 Requirements for Awards Under the Scholarship Component

Section 694.10(a) Amount of Scholarship

Statute: Section 404E of the HEA requires States that participate in GEAR UP to establish or maintain a financial assistance program that awards scholarships to students. The minimum scholarship amount for each fiscal year must not be less than the lesser of 75 percent of the average cost of attendance for an in-State student, in a 4-year program of instruction, at public IHEs in the State, or the maximum Federal Pell Grant funded under section 401 of the HEA for the fiscal year.

Section 404E also requires that GEAR UP scholarships under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that the total amount of student financial assistance awarded may not exceed a student's total cost of attendance.

Current Regulations: The current regulations include the requirements outlining the minimum scholarship amount, and add that cost of attendance is to be determined under section 472 of the HEA.

The current regulations also require a State, or Partnership that chooses to participate in the scholarship component under section 404E, to ensure that it will not award a GEAR UP scholarship to a student in an amount that, in combination with other student financial assistance under title IV of the HEA, exceeds cost of attendance, again as defined by section 472 of the HEA.

The current regulations further require that a State or Partnership must reduce the scholarship amount proportionally for any student who receives a GEAR UP scholarship and attends an institution on a less than full-time basis during any academic year.

Proposed regulations: The proposed regulations would remain the same as the current regulations with respect to the minimum scholarship amount required. The proposed regulations would describe the statutory requirements, and would keep section 472 of the HEA as the means of determining cost of attendance for establishing the minimum award amount.

The proposed regulations would no longer require a reduction in the scholarship amount for students attending institutions on a less than full-time basis during an academic year. Instead, the proposed regulations would allow a State or Partnership to reduce the scholarship amount to students attending less than full-time, but in no case could the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

Reasons: The negotiators believed that the language in the current regulations regarding the reduction of a scholarship award for students who attend an institution on a less than full-time basis needed to be changed. The negotiators didn't think that the regulations should require that the reduction in scholarship be proportional. Several negotiators pointed out that, at some institutions, a student could attend less than full-time but still be required to pay full-time tuition and fees. In addition, a student may attend less than full-time but may still have to be on campus each day of the week, so transportation costs could be the same regardless of whether a student is attending full- or part-time.

The negotiators therefore decided that a student's scholarship shouldn't necessarily be reduced proportionately when a student attends an institution on a less than full-time basis. The negotiators thought it would be better for the student if the State or Partnership had the discretion as to whether to reduce the scholarship and if so by how much. However, in no case could the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to the student. For example, if a student attends an institution less than full-time, and the student's tuition and fees are reduced by 25%, then the State or Partnership could, if it chose, reduce the GEAR UP scholarship by no more than 25%. The negotiators felt this was the best way to ensure that students who decided to attend less than full-time could still cover at least the same amount of their tuition and fees with the their GEAR UP scholarships.

Section 694.10(b) Scholarships and Pell Grant Recipients

Statute: Section 404E requires the Secretary to ensure that States place a priority on awarding scholarships to students who will receive a Federal Pell Grant for the academic year for which the GEAR UP scholarship is awarded.

Current Regulations: Under the current regulations, a State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA, must award GEAR UP scholarships to students who are eligible for a GEAR UP scholarship, and who will receive a Federal Pell Grant for the academic year for which the GEAR UP scholarship is being awarded. If the State or Partnership still has funds remaining after awarding scholarships to those students, it may award scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

Proposed Regulations: The proposed regulations would make two substantive changes to the current regulations. First, the proposed regulations would add students "who are eligible to receive" a Federal Pell Grant, rather than just "who will receive" a Federal Pell Grant. Second, the proposed regulations would change "academic year" to "award year." With the exception of these two changes, the proposed regulations are substantively the same as the current regulations.

Reasons: Under the proposed regulations, a State or Partnership would have to award GEAR UP scholarships first to students who will receive, *or are eligible to receive,* a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded. Negotiators felt that

eligibility was crucial because in many cases it would be very difficult to tell whether a student would actually receive a Federal Pell Grant at the time the GEAR UP scholarship award would be made. The negotiators felt therefore that it was important to include that a student could be eligible to receive a Pell Grant in order to be eligible for the statutory Pell Grant priority. Negotiators felt that eligibility for a Pell Grant still showed that the student was exceptionally needy and therefore deserving of a priority for a GEAR UP scholarship.

In addition, the negotiators changed "academic year" to "award year." Several negotiators felt that using award year would be more appropriate, because student financial aid is generally provided based on an award year, and not an academic year.

The committee also agreed that we would not read the language as it appears in the proposed regulations (i.e. "first" and "during the award year") to penalize a State or Partnership that awarded all of its scholarships at the appropriate time and subsequently additional students became eligible for Pell Grants. Although a State or Partnership must first award scholarships to students they know to be eligible for a Pell Grant, they are not required to award scholarships later for students whom they couldn't have known would be eligible for a Pell Grant at the time the scholarships were awarded.

Section 694.10(c) Continuation Scholarships

Current Regulations: Under the current regulations, a State or a Partnership must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

Proposed Regulations: The proposed regulations would remain substantively the same as the current regulations.

Reasons: Negotiators felt that it was important to assure students that once they received a scholarship, it would remain available to them for as long as they remained eligible. Because GEAR UP is a program for low-income students, negotiators wanted to be sure that students wouldn't suddenly need to find alternate ways to fund their education after they'd been awarded a scholarship. Negotiators felt it was important not to deter these students from going to college because there was no guarantee that there would be money available for them after they had completed a year or more of college. With these regulations, GEAR UP students who receive a GEAR UP scholarship can be assured that for as long as they remain eligible, they will receive GEAR UP scholarship money.

Additionally, negotiators discussed whether grantees would still be required to provide continuation scholarships if Federal funding was discontinued during the life of the grant. We clarified for the negotiators that if Federal funding were discontinued during the life of the grant, we wouldn't require grantees to continue to come up with their share of the funds. If Federal funding is provided throughout the life of the grant, however, a grantee would be obligated to provide continuation scholarships to students who remain eligible for scholarships even after the grant period has ended.

Section 694.11 Disclosure Requirements Regarding an Institution's Treatment of a GEAR UP Scholarship in Relation to Other Student Financial Assistance

Statute: Under section 404E of the HEA, scholarships provided under section 404E may not be considered for the purpose of awarding Federal grant assistance under title IV, except that in no case may the total amount of financial assistance awarded to a student under title IV exceed that student's total cost of attendance.

In addition, section 404C of the HEA requires that the plan that a State or Partnership submits to be eligible for a GEAR UP grant must contain provisions designed to ensure that funds provided under GEAR UP will supplement and not supplant funds expended for existing programs.

Current regulations: The current regulations essentially reiterate the statutory provision that a GEAR UP scholarship must not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA. In addition, the current regulations established the order in which postsecondary student financial assistance must be awarded for each recipient of a GEAR UP scholarship.

Proposed regulations: The proposed regulations would modify the current regulations. Under the proposed regulations, an institution may have to disclose its policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance. An institution would not be required to disclose its policy for the treatment of a GEAR UP scholarship in relation to other financial assistance if the institution's policy meets certain criteria. The first criterion would be that the GEAR UP scholarship must not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, as required by section 404E of the statute. The second criterion is that an institution must also have a policy under which the GEAR UP scholarship does not supplant other public or institutional gift aid that the student would otherwise have been eligible to receive.

The final criterion for non-disclosure is that an institution must follow certain procedures when a student receives an overaward of student financial aid. A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance. If that combination does exceed the student's cost of attendance, the institution must, before reducing public or institutional gift aid, reduce other assistance to zero, by the amount in excess of cost of attendance, in a prescribed order. The institution must first reduce loans, then need-based employment, and then the GEAR UP scholarship before reducing public or institutional gift aid, except that the institution may reduce need-based employment first and loans second at the election of the student. This would mean that both the student and the institution would have to agree to reduce the need-based employment first and loans second.

The proposed regulations would therefore require an institution to reduce each category of assistance (i.e. loans, need-based employment, the GEAR UP scholarships) to zero, by the amount in excess of cost of attendance, before reducing the next category. For example, if a student's award package exceeds cost of attendance by $500 and the student has $400 in loans, the institution would have to reduce the loans to zero and then reduce the need-based employment by $100 to ensure that the package wouldn't exceed cost of attendance.

The proposed regulations would allow an institution to reduce its institutional aid before reducing a GEAR UP scholarship only if it determines in writing that there are exceptional circumstances related to the GEAR UP student's institutional aid that are unique to that GEAR UP student. For example, an exceptional circumstance could occur if it's clear that allowing the institution to spend the GEAR UP money and reduce the student's institutional award would benefit the GEAR UP student. What would be key to the determination of whether something is an exceptional

circumstance is the institution's alternative use of funds that would otherwise be made available to the GEAR UP student in a financial aid package. An exceptional circumstance could exist if the institution commits the institutional aid to make a grant for the future benefit of that student, such as graduate school or if the institution spends the money on a special curriculum or extra support for that student.

If exceptional circumstances do exist and an institution does reduce the GEAR UP student's institutional aid before the GEAR UP scholarship, the institution must document and maintain in the GEAR UP student's file the modification that was made to the GEAR UP student's gift aid award package and the reason for the modification. Finally, the institution would be required to provide written notification to the GEAR UP student of the reason for and the specific modification made to the gift aid package.

Under the proposed regulations, an institution would be required to disclose its policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance if it doesn't follow the procedures already discussed. The proposed regulations would require the institution, if it chooses a policy other than that outlined in § 694.11(a), to establish a policy for the treatment of GEAR UP scholarships and inform all prospective students of that policy. Under the proposed regulations, there would be a cross-reference to the definition of "prospective student" in § 668.41, which provides that prospective students are individuals who have contacted an eligible institution requesting information concerning admission to that institution. This could include students who have written a letter, called, or notified by email an institution that they'd like information about admission to the institution.

In addition, the institution would be required to notify the Department by September 1, 2000 that its treatment of GEAR UP scholarships with respect to institutional gift aid is different from the procedures that would not require disclosure. The institution also must notify the Department in a timely manner if, after September 1, 2000, it elects to treat GEAR UP scholarships differently from the procedures that would not require disclosure.

Finally, the proposed regulations would make clear that regardless of the disclosure requirements, all institutions must follow the procedures outlined in § 694.11 (a) with respect to title IV aid, regardless of whether the institution was required to disclose its policy.

Reasons: The Department's initial proposal would have required institutions to treat GEAR UP scholarships, with respect to other student financial assistance, in the same way as the procedures that do not require disclosure in the proposed regulations as they appear in this NPRM and also to apply this requirement to other private scholarship funds. However, one negotiator objected that those procedures meant that the Federal government would be putting conditions on how institutions and private charities package or award their own scholarship aid. The negotiator was concerned that this could set a negative precedent for future programs and regulations and ultimately penalize schools that do the most for needy students, such as those that practice need-blind admissions. The negotiator also argued that the "supplement not supplant" language in the GEAR UP legislation applies to programmatic funds, not to individual student aid packages funded through private dollars at colleges not part of a GEAR UP partnership. The negotiator also argued that the Department's interpretation gave special treatment to GEAR UP students over other needy students, including many in existing early intervention programs. Finally, it was pointed out that some private scholarship money is "last-dollar." To attempt to make the GEAR UP program last-dollar might have the perverse effect of decreasing a GEAR UP student's overall aid package by removing a student's eligibility for these funds.

Other negotiators, including the Department, agreed that private charitable scholarships, other than institutional aid, should be excluded from the regulation. With regard to institutional aid, however, these negotiators pointed out that it was not unprecedented for the Federal government to place conditions on such aid to protect the Federal fiscal interest. Several negotiators noted that the Federal Government had a long history of placing maintenance-of-effort, supplement-not-supplant, and similar restrictions on institutional aid as a condition of receiving Federal funds. These negotiators also felt that the Federal Government should ensure that not only its funds, but also the matching funds provided in good faith by other GEAR UP donors, such as school districts, service clubs, businesses, and SEAs and State higher education agencies, are used properly by institutions for the intended purpose of aiding GEAR UP students, not to supplant institutional scholarship aid.

These negotiators also rejected the suggestion that putting conditions on institutional scholarship aid penalizes any institutions. All institutions would be treated the same, wherever Federal GEAR UP funds were used. They argued that it cannot be considered an institutional penalty when students come to an institution with GEAR UP scholarships to help pay for college, in addition to the other scholarships for which they would otherwise qualify. The fact that some institutions would consider the conditions a denial of an opportunity to exchange GEAR UP aid for other aid, which could be used for other purposes, is not an institutional penalty but a prudent measure to prevent misuse of Federal program funds.

These negotiators rejected the suggestion that supplement-not-supplant should not apply to individual student aid packages. They agreed with the point that applying this provision to individual student aid packages gives special treatment to GEAR UP students (and TRIO and NEISP students who receive a GEAR UP scholarship) above others, but noted that this is the whole point of the GEAR UP program. They pointed out that GEAR UP scholarships are not a general need-based aid program, or an institutional aid program, but a scholarship program to motivate individual GEAR UP students and help them pay for college. The committee agreed, in response to a negotiator's concern, that excess GEAR UP scholarships would go to other GEAR UP students and not to the Federal Treasury.

In an effort to reach consensus, all the negotiators agreed to fulfill the intent of GEAR UP scholarships through public disclosure and public information. By doing so, the institution would be able to treat GEAR UP scholarships as they relate to certain other non-Title IV student financial assistance as it sees fit. An institution would, however, have to disclose, to both prospective students and the Department, that it has chosen not to follow the procedures in the proposed regulations and would have to disclose to prospective students its policy for GEAR UP scholarships. GEAR UP scholarship students would then know how institutions plan to treat GEAR UP scholarships so that they can make informed decisions about which institution they want to apply to and attend based on the amount and type of financial assistance they are likely to receive.

In addition to the reasons already mentioned, the negotiators felt that

disclosure requirements were the best option for several other purposes. A list of the institutions that report their policies to the Department will be made available to all GEAR UP Partnership and State grant programs so that they can advise students that a GEAR UP scholarship may not result in any additional benefits if used at any of the institutions on the list. Also, the Department may use the list to distinguish among institutions in future GEAR UP program evaluations, because GEAR UP scholarships should not be expected to make a program performance difference at institutions where they are packaged not to make such a difference. Finally, any institution that wants to comply with the non-supplantation procedures, but can't due to exceptional circumstances, related to a particular student, could document the circumstances, rather than inform the Department that it isn't adopting the policy in the proposed regulations. For example, if a GEAR UP student were eligible for a non-GEAR UP scholarship and any portion of the scholarship that wasn't needed for undergraduate education could be saved for graduate education, the institution could benefit the student by reducing this other scholarship before reducing the GEAR UP scholarship.

Section 694.12 Financial Assistance for Partnerships That Don't Participate in the Scholarship Component Under Section 404E of the HEA

Current regulations: The current regulations provide that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education to students who participate in the early intervention component only if the financial aid is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP.

Proposed Regulations: The proposed regulations would keep the language from the current regulations, with minor additions. One addition is that the proposed regulations would add language to clarify that the requirements in this section apply to Partnerships only if they use either GEAR UP funds, or non-Federal funds used to comply with the matching requirement, to provide the financial assistance for postsecondary education. In addition, the proposed regulations would add the requirement that the Partnership comply with the provisions in §§ 694.10(c) and 694.11, governing the treatment of student financial assistance under GEAR UP.

Reasons: Several negotiators asked for this clarifying language. Negotiators felt the regulation could be read to imply that any financial assistance provided by the Partnership would have to be directly related to, and in support of, other activities of the Partnership under the early intervention component. Negotiators wanted it to be clearer that Partnerships could also provide financial assistance using non-Federal funds that the Partnership was not using to comply with the matching requirement to students that participated in GEAR UP, and that this financial assistance would not be subject to the requirements of this section. We therefore agreed to add language that would make the clarification.

In addition, negotiators, including the Department, realized that financial assistance provided under this section should be subject to similar requirements as the financial assistance provided by the scholarship component in section 404E of the HEA.

Several negotiators wanted clarification that in addition to these requirements, there are other, more general principles that apply to Partnerships that want to offer financial assistance. For example, there are principles of obligation law that dictate when and how financial assistance can be awarded if it is going to be counted toward the match in a particular fiscal year. The committee agreed that it is not necessary or desirable to have this kind of information in regulations, but that there would need to be non-regulatory guidance from the Department on other restrictions that might apply.

Section 694.13 Determination of the State Applicant

Current regulations: The current regulations provide that the Governor of a State must designate which State agency applies for, and administers, a State grant under GEAR UP.

Proposed regulations: The proposed language would keep the language in the current regulations.

Reasons: Several negotiators mentioned that they would prefer a more collaborative approach to the designation of which State agency will apply for and administer a GEAR UP State grant. The negotiating committee therefore discussed whether others, such as the State Educational Agency (SEA), or the Chief State School Officer, should be involved in the decision. Although the negotiating committee agreed that collaboration was important, many on the committee felt that there was no need to add language to the regulations, because, in most if not all cases, the Governor of a State will collaborate with the SEA, the Chief State School Officer, and other relevant agencies and people. In addition, several negotiators felt that although many should be involved in the decision and implementation of the grant, the final decision needs to rest with the State's chief executive officer, the Governor. The Governor is in the best position to ensure that agencies collaborate in the design and implementation of the GEAR UP project. Finally, some negotiators felt that the Governor was necessary to bridge the gap between the elementary and secondary education community and the higher education community, both of which are involved in GEAR UP.

The proposed regulations remain unchanged, therefore, with the Governor responsible for designating the State agency that applies for and administers the GEAR UP State grant. However, we expect that Governors of States applying for GEAR UP grants will collaborate with appropriate agencies and officials to determine which agency should apply on behalf of the State and how agencies should collaborate in implementing the grant.

Section 694.14 21st Century Certificates

Statute: Section 404F of the HEA requires that the Secretary ensure that 21st century scholarship certificates are provided to all students participating in GEAR UP. In addition, the certificate must be personalized for each student and indicate the amount of Federal financial aid for college a student may be eligible to receive.

Current Regulations: The current regulations provide that a State or Partnership must provide, in accordance with such procedures as the Secretary may specify, a 21st Century Scholar Certificate from the Secretary of Education to each student participating in the early intervention component of its GEAR UP project. In addition, current regulations require each certificate to be personalized and to indicate the amount of Federal financial aid for college that a student may be eligible to receive.

Proposed Regulations: The proposed regulations would keep the language that is in the current regulations.

Reasons: The negotiating committee agreed that the statute requires the Secretary to ensure that the students participating in GEAR UP each receive an individualized certificate, indicating the amount of Federal financial aid for college that a student may be eligible to receive. The regulations make it clear that the State or Partnership must

provide the certificate to each student, but that the certificate will be from the Secretary. Since the certificates must be personalized, the best and most efficient way to award the certificates is to involve the Partnerships and States, since they are the more likely to have the students' personal information, such as the students' names and the date the certificate will be presented.

Section 694.15 NEISP States

Statute: Section 404A(b)(2) of the HEA requires that the Secretary ensure that students served under the chapter 2 of subpart 2 of part A of title IV of the HEA, the National Early Intervention Scholarship and Partnership (NEISP) Program, on the day before the date of enactment of the Higher Education Amendments of 1998 (Amendments) continue to receive assistance through the completion of secondary school.

Current regulations: The current regulations basically restate the requirements in statute for any State that receives a GEAR UP grant that served the students referred to in the statute.

Proposed regulations: The proposed regulations would keep the language in the current regulations.

Reasons: The negotiators agreed that the statute requires the Secretary to ensure that students served under the NEISP program continue to receive assistance through the completion of secondary school. The regulations clarify that the chapter mentioned in the statute is NEISP, and that the date of enactment of the Amendments was October 7, 1998.

Section 694.16 Mandatory Priority

Statute: Section 404A(b)(2) of the HEA requires that the Secretary, in making awards to States, give priority to eligible entities that on the date of enactment of the Amendments, carried out successful opportunity programs under chapter 2 of subpart 2 of part A of title IV, and that have a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Current regulations: The current regulations essentially restate the statute, with language that the date of enactment was October 7, 1998, and that the chapter referred to is the NEISP program, which GEAR UP replaced.

Proposed regulations: The proposed regulations basically restate the proposed regulations, with only small editorial changes.

Reason: The statutory priority remains in the regulations because the language is clearer than in the statute, and because there are also permissible priorities in the regulations, and so it seemed clearer to people to have all the priorities appear in the same place, rather than having to reference both the regulations and the statute to know what priorities applied.

Section 694.17 Permissible Priorities

Current regulations: The current regulations include two priorities that the Secretary would have the discretion to choose for the fiscal year 1999 competition. Under those regulations, the Secretary could give priority to projects by Partnerships or States that serve a substantial number or percentage of students who reside in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture. In addition, the Secretary could give priority to Partnerships that establish or maintain a financial assistance program that awards scholarships to students either in accordance with section 404E of the HEA, or in accordance with these regulations.

Proposed regulations: The proposed regulations would keep the language in the current regulations, with some minor changes. In the priority for projects in Empowerment Zones or Enterprise Communities, the proposed regulations would allow a priority for projects that serve a substantial number or percentage or students who either reside in, or attend a school in, an Empowerment Zone or Enterprise Community. In addition, the priority for Partnerships that establish or maintain a financial assistance program that awards scholarships would include language that the scholarship program is to strengthen the early intervention component of its GEAR UP project.

Reasons: For the priority about Empowerment Zones and Enterprise Communities, several negotiators felt that Partnerships or States that serve a substantial number of students who attend a school in an Empowerment Zone or Enterprise Community should be eligible for the priority, even if the students don't live in an Empowerment Zone or Enterprise Community. The committee discussed whether it could ever occur that students who weren't truly needy would ever attend schools in Empowerment Zones or Enterprise Communities. The Committee decided that it was not a concern because the other eligibility requirements would still apply.

For the priority for Partnerships that include a scholarship program in their GEAR UP project, several negotiators were concerned that this priority would penalize Partnerships that had very strong early intervention components, but no scholarships. These negotiators felt that the early intervention component was crucial to the success of GEAR UP, and that Partnerships shouldn't be penalized for concentrating their efforts and sometimes very limited resources on early intervention. The committee discussed the importance of scholarships, and the need to ensure that the benefits of the early intervention component resulted in more students going to college. The committee therefore decided to add language to the priority to ensure that the priority wouldn't be read to mean that the scholarship component was more important, or could replace, the early intervention component. The priority is not intended to imply that scholarships are more important than the early intervention component, only that scholarships are an excellent way to supplement an already strong early intervention component.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed

regulations without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

Sections 694.1, 694.3–694.6, 694.8, and 694.12–694.17 of the proposed regulations would provide guidance for complying with statutory requirements and ensure the proper and effective expenditure of program funds. These regulations would set and clarify: the maximum amount that may be awarded to a Partnership or State; the requirements for serving a cohort of students; the requirements for serving private school students; the requirements for Partnerships in designating a fiscal agent; the conditions under which Partnerships may provide financial assistance to students; the procedure for designating a State agency; the requirements for providing 21st Century Scholarship Certificates; the requirements for States that served National Early Intervention Scholarship and Partnership students; and the priorities that must and may be established by the Secretary. There would be no costs associated with these regulations.

Section 694.2 of the proposed regulations would clarify those services that a Partnership or State that chooses to use the cohort approach must provide. It would require appropriate, supplemental services to be targeted to students with the greatest needs. The Department has determined that the cost to provide these services would be minimal, and that the benefit would exceed the cost. This regulation would ensure that the neediest students in programs with large cohorts would receive a level of services sufficient to succeed in the program.

Section 694.7 of the proposed regulations would modify the matching requirements for Partnerships. It would allow Partnerships to set their own matching levels in any year, as long as they comply with the matching percentage stated in their application and provide at least 50 percent of the total project cost over the total project period. It would also allow Partnerships that meet certain, specified criteria to provide as low as 30 percent of the total project cost over the total project period. This regulation would provide greater flexibility to Partnerships in meeting matching requirements, giving Partnerships the ability to reduce costs in any given year and the ability to reduce costs over the total project period if they meet the specified criteria.

Section 694.9 of the proposed regulations would set a maximum indirect cost rate of 8 percent for State and local government agencies. The potential cost associated with this regulation would be the amount of indirect costs that a State or local government agency could not charge to program funds. This amount would be the difference between a State or local government agency's negotiated indirect cost agreement, if it would exceed 8 percent, and the 8 percent maximum rate allowed. The Department has determined that the benefit from this regulation would exceed the potential cost. Setting a maximum indirect cost rate would increase the efficiency of program funds by ensuring that the vast majority of funds are used to provide direct services to students. Furthermore, the proposed regulation would support the competitive nature of the program by setting a maximum indirect cost rate that reflects the current indirect cost rates of the States that have been awarded grants.

Section 694.10 of the proposed regulations would provide guidance for complying with statutory requirements for scholarships awarded under this program. It would require States and Partnerships that participate in the scholarship component to award continuation scholarships to those students who receive an initial scholarship, as long as those students remain eligible. The potential cost of this regulation would be the cost of scholarships for those students who continue to remain eligible beyond the time period for which a State or Partnership has budgeted. Given the substantial matching resources of States, which are required to participate in the scholarship component, the Department has determined the potential cost of this requirement to be minimal. More importantly, this regulation would ensure that students receive the continuing financial support that is necessary to complete their postsecondary education.

Section 694.11 of the proposed regulations would clarify the statutory requirements for scholarships as they relate to title IV aid. It would require institutions of higher education to disclose their policy for the treatment of a scholarship under this program, if they choose not to follow the specified procedures for determining financial assistance eligibility and making adjustments in the case of an over-award. The minimal cost of this regulation would be the cost for institutions to disclose their policy or to follow the procedures in the regulation. The Department has determined that the benefit of the proposed regulation would exceed the cost because students would be better informed about the treatment of their scholarship and the calculation of their financial assistance at competing institutions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 694.1 *What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities that would be affected by these regulations are States and State agencies, local education agencies (LEAs), local community organizations, and institutions of higher education. States and State agencies are not "small entities" under the Regulatory Flexibility Act.

Institutions of higher education are defined as "small entities," according to the U.S. Small Business Administration Size Standards, if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are

institutions controlled by governmental entities with populations below 50,000. Small LEAs and local community organizations are small entities for the purposes of the Regulatory Flexibility Act.

The proposed regulations would not have a significant economic impact on small entities because the regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The regulations would give small entities greater flexibility in meeting matching requirements, provide guidance for complying with statutory provisions, and impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act

Section 694.7 contains an information collection requirement. In addition, there is an application package associated with the regulations that contains information collection. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section as well as a copy of the application package to the Office of Management and Budget (OMB) for its review.

Collection of Information—Discretionary Grant Programs—Application Package for the Gear UP Discretionary Grant Program

The information collection would apply to two types of grants—Partnership grants and State grants—awarded to help more low-income students stay in school, study hard, and take the right courses to go to college. By June 2000, approximately 74 new Partnership grants averaging $460,000 a year for five years, and 6 new State grants averaging $2.1 million per year for five years will be awarded.

The likely respondents would be State agencies; two- and four-year degree granting institutions of higher education; LEAs; businesses and other for-profit entities; nonprofit institutions; small businesses or organizations; and public and private schools.

This collection of information is necessary for applicants to apply for new grants under the GEAR UP program. Grants will be awarded on the basis of competitively reviewed applications submitted to the U.S. Department of Education, Office of Postsecondary Education (OPE), Policy, Planning & Innovation (PPI), GEAR UP grant competition. Continued support for these grants is based on the availability of funds and substantial progress in achieving project objectives. This application process occurs once each year to enable applicants to compete for Federal funds annually appropriated by Congress. The Department of Education is requesting approval of the information collection used to apply for new grants under this program.

The total annual public reporting and record keeping burden for this information is 20 hours per application. We anticipate that there will be 800 applications (770 Partnership Grant applications and 30 State Grant applications), for a total burden of 16,000 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information associated with these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.334 Gaining Early Awareness and Readiness for Undergraduate Programs)

List of Subjects in 34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs-education, Student aid.

Dated: December 15, 1999.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 694 to read as follows:

PART 694–GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

Sec.

694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?
694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?
694.3 What are the requirements for a cohort?
694.4 Which students must a State or Partnership serve when there are changes in the cohort?
694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?
694.6 Who may provide GEAR UP services to students attending private schools?
694.7 What are the matching requirements for a GEAR UP Partnership?

694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?
694.9 What is the maximum indirect cost rate for an agency of a State or local government?
694.10 What are the requirements for awards under the program's scholarship component under section 404E of the Higher Education Act of 1965, as amended (HEA)?
694.11 What are the disclosure requirements regarding an institution's treatment of a GEAR UP scholarship in relation to other student financial assistance?
694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?
694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?
694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?
694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?
694.16 What priority must the Secretary establish?
694.17 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1070a–21 to 1070a–28

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The maximum amount that the Secretary may award each fiscal year for a GEAR UP Partnership grant is calculated by multiplying—

(1) $800; by

(2) The number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

(b) *State grants.* The Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1070a–23)

§ 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?

A Partnership, or a State that chooses to use a cohort approach in its GEAR UP early intervention component, must, except as provided in § 694.4—

(a) Provide services to at least one entire grade level (cohort) of students (subject to § 694.3(b)) beginning not later than the 7th grade;

(b) Ensure that supplemental appropriate services are targeted to the students with the greatest needs; and

(c) Ensure that services are provided through the 12th grade to those students.

(Authority: 20 U.S.C. 1070a–22)

§ 694.3 What are the requirements for a cohort?

(a) *In general.* Each cohort to be served by a Partnership or State must be from a participating school—

(1) That has a 7th grade; and

(2) In which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; or

(b) *Public housing exception.* If the Partnership or State determines it would promote program effectiveness, a cohort may consist of all of the students in a particular grade level at one or more participating schools who reside in public housing, as defined in section 3(b)(1) of the United States Housing Act of 1937.

(Authority: 20 U.S.C. 1070a–22)

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

(a) *At the school where the cohort began.* A Partnership or State must serve, as part of the cohort, any additional students who—

(1) Are at the grade level of the students in the cohort; and

(2) Begin attending the participating school at which the cohort began to receive GEAR UP services.

(b) *At a subsequent participating school.* If not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State—

(1) May continue to provide GEAR UP services to all students in the cohort; and

(2) Must continue to provide GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort.

(Authority: 20 U.S.C. 1070–a22)

§ 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

(a) *Secular, neutral, and nonideological services or benefits.* Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to students attending private schools, must be secular, neutral, and nonideological.

(b) *Control of funds.* In the case of a Partnership or State that chooses to provide services under GEAR UP to students attending private schools, the fiscal agent (in the case of a Partnership) or a State agency (in the case of a State) must—

(1) Control the funds used to provide services under GEAR UP to those students;

(2) Hold title to materials, equipment, and property purchased with GEAR UP funds for GEAR UP program uses and purposes related to those students; and

(3) Administer those GEAR UP funds and property.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.6 Who may provide GEAR UP services to students attending private schools?

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

(b) In providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be independent of the private school that the students attend, and of any religious organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.

(c) Federal funds used to provide GEAR UP services to students attending private schools may not be commingled with non-Federal funds.

(Authority: 1070a–21 to 1070a–28)

§ 694.7 What are the matching requirements for a GEAR UP Partnership?

(a) *In general.* A Partnership must—

(1) State in its application the percentage of the cost of the GEAR UP project the Partnership will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) Comply with the matching percentage stated in its application for each year of the project period.

(b) *Matching requirements.* (1) Except as provided in paragraph (b)(2) of this section, the non-Federal share of the cost of the GEAR UP project must be not

less than 50 percent of the total cost over the project period.

(2) A Partnership that has three or fewer institutions of higher education as members may provide less than 50 percent, but not less than 30 percent of the total cost over the project period if it includes—

(i) A fiscal agent that is eligible to receive funds under Title V, or Part B of Title III, or section 316 or 317 of the HEA, or a local educational agency;

(ii) Only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and

(iii) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

(3) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

§ 694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

Although any member of a Partnership may organize the project, a Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or

(b) An institution of higher education that is not pervasively sectarian.

(Authority: 20 U.S.C. 1070a–22)

§ 694.9 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

(a) *Amount of scholarship.* (1) Except as provided in paragraph (a)(2) of this section, the amount of a scholarship awarded under section 404E of the HEA must be at least the lesser of—

(i) 75 percent of the average cost of attendance, as determined under section 472 of the HEA, for in-State students in 4-year programs of instruction at public institutions of higher education in the State; or

(ii) The maximum Federal Pell Grant award funded for the award year in which the scholarship will be awarded.

(2) If a student who is awarded a GEAR UP scholarship attends an institution on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case shall the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) *Pell Grant recipient priority.* A State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA in its GEAR UP project—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded and who are eligible for a GEAR UP scholarship under the eligibility requirements in section 404E of the HEA; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (b)(1) of this section, award GEAR UP scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(c) *Continuation scholarships.* A State, or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA in its GEAR UP project, must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

(Authority: 20 U.S.C. 1070a–25)

§ 694.11 What are the disclosure requirements regarding an institution's treatment of a GEAR UP scholarship in relation to other student financial assistance?

(a) *No disclosure.* No disclosure of an institution's policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance is necessary if the institution's policy is as follows:

(1) *Other grant assistance.* A GEAR UP scholarship—

(i) Is not considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA; and

(ii) Does not supplant other public or institutional gift aid that the student would otherwise have been eligible to receive (such as grants, scholarships, and tuition discounts) unless the conditions in § 694.11(b)(2) apply.

(2) *Cost of attendance.* A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance.

(3) *Overawards.* (i) *In general.* If the combination of the GEAR UP scholarship and other student financial assistance under title IV of the HEA and any other grant or scholarship assistance exceeds the student's cost of attendance, the institution must, before reducing public or institutional gift aid, reduce the assistance to zero, by the amount in excess of cost of attendance, in the following order—

(A) Loans;

(B) Need-based student employment;

(C) The GEAR UP scholarship;

(ii) *Exception.* The institution may reduce need-based employment first and loans second at the election of the student.

(4) Notwithstanding paragraph (a)(3) of this section, an institution may reduce its institutional aid before reducing a GEAR UP scholarship only if—

(i) It determines and documents in writing that there are exceptional circumstances related to the GEAR UP student's institutional aid that are unique to that GEAR UP student;

(ii) It documents and maintains in the GEAR UP student's file the modification that was made to the GEAR UP student's gift aid award package and the reason for the modification; and

(iii) It provides written notification to the GEAR UP student of the reason for and the specific modification that was made to the gift aid package.

(b) *Disclosure.* (1) Disclosure of an institution's policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance is required if the institution does not follow the procedures set forth in paragraph (a) of this section.

(2) If an institution does not follow the procedures in paragraph (a) of this section it must—

(i) Establish a policy for the treatment of GEAR UP scholarships and inform all prospective students, as defined in § 668.41 of this chapter;

(ii) Notify the Department by September 1, 2000 that its treatment of GEAR UP scholarships with respect to institutional gift aid is different from the procedures in paragraph (a) of this section; and

(iii) If, after September 1, 2000, it elects to treat GEAR UP scholarships

differently from the procedures in paragraph (a) of this section, notify the Department in a timely manner of that decision.

(c) Notwithstanding the disclosure requirements with respect to GEAR UP and its relation to other student financial assistance, an institution must follow the procedures in paragraph (a) of this section as they relate to title IV aid.

(Authority: 20 U.S.C. 1070a–25; 20 U.S.C. 3474)

§ 694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA may provide financial assistance for postsecondary education, either with funds under this chapter, or with non-Federal funds used to comply with the matching requirement, to students who participate in the early intervention component of GEAR UP if—

(a) The financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP; and

(b) It complies with the requirements in §§ 694.10(c) and 694.11.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?

The Governor of a State must designate which State agency applies for, and administers, a State grant under GEAR UP.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate from the Secretary to each student participating in the early intervention component of its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

§ 694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?

Any State that receives a grant under this part and that served students under the NEISP program on October 6, 1998 must continue to provide services under this part to those students until they complete secondary school.

(Authority: 20 U.S.C. 1070a–21)

§ 694.16 What priority must the Secretary establish?

For any fiscal year, the Secretary selects the following priority for any State grant applicant that—

(a) On October 6, 1998, carried out successful educational opportunity programs under the National Early Intervention Scholarship and Partnership program (as that program was in effect on that date); and

(b) Has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a–21)

§ 694.17 What priorities may the Secretary establish?

For any fiscal year, the Secretary may select one or more of the following priorities:

(a) Projects by Partnerships or States that serve a substantial number or percentage of students who reside, or attend a school, in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture.

(b) Partnerships that establish or maintain a financial assistance program that awards scholarships to students, either in accordance with section 404E of the HEA, or in accordance with § 694.12, to strengthen the early intervention component of its GEAR UP project.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

[FR Doc. 99–32918 Filed 12–20–99; 8:45 am]

BILLING CODE 4000–01–U

OL

64

ISS

2
4
4

DE

21

999

MI

federal register

Tuesday
December 21, 1999

Part III

Department of Education

Bilingual Education: Career Ladder Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195E]

Bilingual Education: Career Ladder Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

NOTE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

PURPOSE OF PROGRAM: This program provides grants to upgrade the qualifications and skills of noncertified educational personnel, especially educational paraprofessionals, to meet high professional standards, including certification and licensure as bilingual teachers and other educational personnel who serve limited English proficient students, and to help recruit and train secondary students as bilingual education teachers and other educational personnel to serve limited English proficient students.

ELIGIBLE APPLICANTS: (1) One or more institutions of higher education (IHEs) that have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of this section. Consortia may include community-based organizations or professional education organizations.

APPLICATIONS AVAILABLE: December 21, 1999.

Deadline for Transmittal of Applications: February 14, 2000.

Deadline for Intergovernmental Review: April 14, 2000.

Available Funds: $5 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 25.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 60 Months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

DESCRIPTION OF PROGRAM: The statutory authorization for this program, and the application requirements that apply to this competition, are in sections 7144 and 7146–7150 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act) (20 U.S.C. 7474 and 7476–7480).

Funds under this program may be used: to develop bilingual education career ladder program curricula appropriate to the needs of consortia participants; provide assistance for stipends and costs related to tuition fees and books for coursework required to complete degree and certification requirements for bilingual education teachers; and for programs to introduce secondary school students to careers in bilingual education teaching that are coordinated with other activities assisted under this program. Activities conducted under this program must assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, must lead to the awarding of college or university credit.

Priorities

Competitive Priority 1

The Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b), gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: For a list of areas that have been designated as Empowerment Zones and Enterprise Communities go to: http://www.ezec.gov/ezec/mainmap.html and http://www.hud.gov/pressrel/ezec/urban.html

Competitive Priority 2

Under 34 CFR 75.105(c)(2)(ii) and section 7144(d) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Applications that propose to provide for:

1. Participant completion of baccalaureate and master's degree teacher education programs, and certification requirements and may include effective employment placement activities;

2. The development of teacher proficiency in English as a second language, including demonstrating proficiency in the instructional use of English and, as appropriate, a second language in classroom contexts; coordination with programs for the recruitment and retention of bilingual students in secondary and postsecondary programs training to become bilingual educators; and the applicant's contribution of additional student financial aid to participating students.

The Secretary selects applications that meet this priority over applications of comparable merit, which do not meet the priority.

Invitational Priority

The Secretary is also particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants who propose to collaborate with 2-year institutions of higher education to develop or improve teacher preparation programs for bilingual paraprofessionals.

Selection Criteria

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(Authority: 34 CFR 75.210 (a)(2)(i) and (v))

(b) *Quality of the project design.* (55 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(v) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(Authority: 34 CFR 75.210(c)(2)(i), (ii), (iv), (xii), (xiii),(xvi), (xviii), and (xxiii))

(c) *Quality of project services.* (10 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(Authority: 34 CFR 75.210(d)(2) and (3)(v))

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(2) and (3)(ii))

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(Authority: 34 CFR 75.210(g)(2)(i)))

(f) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(2) (iii), (iv), and (vi)).

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list in the **Federal Register** on April 28, 1999 (64 FR 22960–22963) or you may view the latest SPOC list on the OMB website at: *http://www,whitehouse.gov/omb/grants*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.195E, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:

(a) If you want to apply for a grant, you must —

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195E), Washington, DC 20202–4725, or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: 1U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195E), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice is divided into three parts, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with Section 427 of the General Education Provisions Act, questions and answers on this program (located at the end of the notice) and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.

b. Group Application Certification.

c. Participant Data.

d. Project Documentation.

e. Program Assurances.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** This form is intended for the use of grantees and should not be transmitted to the Department.)

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes.

ii. An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as original or copy. No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Carol Manitaras carol__manitaras@ed.gov (202) 205–9729 or Darlene Miles darlene__miles@ed.gov (202) 205–8259, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ocfo.ed.gov/fedreg.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 7474.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0542, Exp. Date: 12/31/00. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6510.

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)

2. Group Application Certification (if applicable)

3. Budget Information (ED Form No. 524)

4. Itemized Budget for each year (attached to ED Form No. 524)

5. Participant Data—approximate number of participants to be served each year.

6. Project Documentation—Section A—Copy of Transmittal Letter to SEA requesting SEA to comment on application; Section B—Documentation of Empowerment Zone or Enterprise Community—if applicable

7. Program Assurances

8. Assurances—Non-Construction Programs (SF 424B)

9. Certifications Regarding Lobbying; Debarment Suspension and Other

Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)

10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)

11. Disclosure of Lobbying Activities (SF-LLL)

12. Notice to all Applicants (See form provided below)

13. Table of Contents

14. One-page single-spaced abstract

15. Application narrative (Not to exceed 30 double-spaced pages, see instructions below)

16. *One* original and *two* copies of the application for transmittal to the Department's Application Control Center

Mandatory Page Limits for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

(1) A page is 8.5" x 11", on one side only with 1" margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables figures and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents. The page limit applies only to item 15 in the Checklist for Applicants provided above.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARD SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Application Narrative and Abstract

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions for key personnel. This package includes questions and answers to assist you in preparing the narrative portion of your application. Prepare a one-page single-spaced abstract, which summarizes the proposed project activities, the expected outcomes, and how the application addresses the invitational priority, if applicable.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. Prepare an itemized budget for each year of requested funding. Indirect costs for institutions of higher education which are the fiscal agents for Career Ladder Programs are limited to the lower of either 8% of a modified total direct cost base or the institution for higher education's actual indirect cost agreement. A modified direct cost base is defined as total direct costs less stipends, tuition and related fees, and capital expenditures of $5,000 or more. In describing student support costs distinguish costs for tuition and fees from costs for stipends.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, 1999.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a) (4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Questions and Answers

Does the Career Ladder Program have specific evaluation requirements?

Yes, the evaluation requirements are described in section 7149 of Title VII of ESEA, 20 U.S.C. 7479.

What requirements must grantees meet related to teacher certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

May program budgets include costs for items other than student tuition and fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other reasonable and necessary costs to support developmental activities.

What information may be helpful in preparing the application narrative for a Career Ladder Program?

In responding to the selection criteria applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education and other partnership organizations in planning, implementing and evaluating the proposed program? How is the program linked to the school district's overall professional development plan?
- What resources and support will each of the consortia members provide? How will resources be integrated to ensure maximum effectiveness of the program and to promote capacity building and long-range collaboration?
- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the IHE related to the preparation of new teachers, the induction of new bilingual/ESL teachers, clinical experiences for new bilingual/ESL teachers and other educational

personnel, or professional development opportunities for all teachers?

• What special selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?

• What special support will be provided to participants by experienced bilingual/ESL teachers, higher education faculty, and school administrators to guide them during their period of induction?

• How will the instructional responsibilities of participants be balanced with appropriate professional development, support and planning time?

• How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?

• How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?

• What are the expected outcomes for participant learning, effectiveness in the instructional setting, reform and improvement in the school or the university? What measures will the proposed program use to collect data on the effectiveness of the program in meeting its objectives, such as: field practice assessments, National or State benchmark tests, surveys of graduates, mentor teachers, school administrators, rates of transfer from 2-year to 4-year institutions, graduate rates, placement rates? How are needs, objectives, activities and measures linked?

• How will the program evaluation incorporate strategies for assessing the progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; documenting and identifying exemplary program features and successful strategies; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning a Career Ladder Program.

The following are the professional development principles:

• Focuses on teachers as central to student learning, yet includes all other members of the school community;

• Focuses on individual, collegial and organizational improvement;

• Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;

• Reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

• Promotes continuous inquiry and improvement embedded in the daily life of schools;

• Is planned collaboratively by those who will participate in and facilitate that development;

• Requires substantial time and other resources;

• Is driven by a coherent long-term plan;

• Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

What other information may be helpful in applying for a Career Ladder Program?

Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive Order 12372. The SEA review requirement and the requirements for Executive Order 12372 are two separate requirements.

BILLING CODE 4000–01–p

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0104 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____ City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4 1 9 5 E → Title: Bilingual Education Career Ladder Program

5. Project Director: _____

Address: _____

_____ City _____ State _____ ZIP Code + 4

Tel. #: ( ) _____ Fax #: ( ) _____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates: **Start Date:** ___/___/_____ **End Date:** ___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check "No." **The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number *Draft*

Expiration Date: *Pending OMB Clearance*

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- **Teachers and Personnel Grants**
- **Career Ladder Program**
- **Training for all Teachers**

Number of proposed participants in each of the following categories to be served each year of the grant.

Preservice Teachers (who are not paraprofessionals) _____

Preservice Teachers (who are currently paraprofessionals) _____

Inservice Teachers _____

Other Educational Personnel (Specify type of personnel below) _____

_____ _____

_____ _____

_____

Degree level(s) to be attained (if applicable) _____

_____

Certification Type(s) to be attained _____

_____

Language(s) of Participants (other than English) _____

_____

_____

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve.
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

_____

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

_____

Authorized Representative

Name: _____

Signature: _____

Typed Name: _____

Date: _____

Applicant Organization: _____

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 99–33073 Filed 12–20–99; 8:45 am]
BILLING CODE 4000–01–C

OL

64

ISS

2
4
4

DE

21

999

MI

federal register

Tuesday
December 21, 1999

Part IV

Department of Agriculture

Rural Housing Service

Grants and Cooperative Agreements; Notices of Availability of Funds (NOFA)

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 2000 (FY 2000). This action is taken to comply with 42 U.S.C. 1490p which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Carl Wagner, Director, Multi-Family Housing Processing Division, (STOP 0781), or Scott Barringer, Senior Loan Officer, Single Family Housing Processing Division, (STOP 0783), U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC, 20250, telephones (202) 720–1604, and (202) 720–1474, respectively. (These are not toll free numbers).

SUPPLEMENTARY INFORMATION:

Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

Part 1940, subpart L of 7 CFR contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." The following guidance has been provided to our State offices on FY 2000 appropriations and access to funds. Separate guidance has been provided to our State offices for assistance available in our Multi-and Single-Family Housing programs as follows:

Multi-Family Housing (MFH)

I. General

A. This provides guidance on MFH funding for the Rural Rental Housing program (RRH) for FY 2000. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 2000, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) section 504 Rural Housing Grants and section 533 Housing Preservation Grant (HPG) programs.

B. MFH loan and grant levels for FY 2000 are as follows:

MFH Loan Programs Credit Sales	$1,250,000
Section 514 Farm Labor Housing (LH) loans	25,001,005
Section 515 Rural Rental Housing (RRH) loans	114,322,076
Section 521 Rental Assistance (RA)	634,100,000
Section 516 LH grants	[1] 13,990,844
Sections 525 Technical and Supervisory Assistance grants: (TSA) and 509 Housing Application Packaging grants (HAPG) (Shared between single and multi-family housing)	[1] 2,033,563
Section 533 Housing Preservation grants (HPG)	[1] 5,515,344
Section 538 Guaranteed Rural Rental Housing program	100,000,000
Natural Disaster Funds (section 514 loans)	4,974,574
Natural Disaster Funds (section 516 grants)	3,000,000

[1] Includes carryover.

II. Funds Not Allocated to States

A. Credit Sales Authority

For FY 2000, $1,250,000 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State.

B. Section 538 Guaranteed Rural Rental Housing Program

Guaranteed loan funds will be made available under a Notice of Funding Availability (NOFA) being published in this **Federal Register**. Additional guidance will be provided at that time.

C. Natural Disaster Funds

Funds are available until exhausted to those States that have received a Presidential Declaration.

III. Farm Labor Housing (LH) Loans and Grants

A. Section 514 Farm LH Loans

1. These loans are funded in accordance with 7 CFR 1940.579(a).

FY 2000 Appropriation	$25,001,105
Available for Off-Farm Loans	20,501,000
Available for On-Farm Loans	1,500,000
National Office Reserve	3,000,105

2. Off-farm loan funds will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

B. Section 516 Farm LH Grants

1. Grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.

FY 2000 Appropriation (includes carryover)	$13,990,844
Available for LH Grants for off-farm	9,150,000
Available for Technical Assistance Grants	1,350,000
National Office Reserve	3,490,844

2. Labor Housing grant funds for off-farm will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

3. Technical assistance grants will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

C. Rental Assistance for LH

Labor Housing RA will be held in the National office for use with LH loan and grant applications. RA is only available with an LH loan of at least 5 percent of the total development cost. Projects without a LH loan cannot receive RA.

IV. Section 515 RRH Loan Funds

FY 2000 section 515 Rural Rental Housing allocation (Total)	$114,322,076
New Construction funds and set-asides	49,783,694
New construction loans	22,500,000
Set-aside for nonprofits	10,288,987
Set-aside for underserved counties and colonias	5,716,104
Earmark for EZ, EC, or REAP Zones	9,778,603
State RA designated reserve	1,500,000
Rehab and repair funds and equity	55,000,000
Rehab and repair loans	50,000,000
Designated equity loan reserve	5,000,000
General reserve	9,538,382

A. New Construction Loan Funds

New construction loan funds will be made available using a national NOFA being published in this **Federal Register**. Upon closing of the NOFA, States will submit a list, in rank order of the eligible projects.

B. National Office New Construction Set-Asides

The following legislatively mandated set-asides of funds are part of the National office set-aside:

1. *Nonprofit Set-aside* An amount of $10,288,987 has been set aside for nonprofit applicants. All Nonprofit loan proposals must be located in designated places as defined in RD Instruction 1944–E.

2. *Underserved Counties and Colonias Set-Aside.* An amount of $5,716,104 has been set aside for loan requests to develop units in one of the underserved 100 most needy counties or colonias as defined in section 509(f) of the Housing Act of 1949 as amended. Priority will be given to proposals to develop units in colonias or tribal lands.

3. *EZ, EC or REAP Zone Earmark.* An amount of $9,778,603 has been earmarked for loan requests to develop units in EZ or EC communities or REAP Zones until June 30, 2000.

C. Rental Assistance (RA)

Limited new construction RA will be held in the National office for use with section 515 Rural Rental Housing loans.

D. Designated Reserves for State RA

An amount of $1.5 million of section 515 loan funds has been set aside for matching with projects in which an active State sponsored RA program is available. The State RA program must be comparable to the RHS RA program.

E. Repair and Rehabilitation Loans

Tenant health and safety continues to be a top priority. Repair and rehabilitation funds must be first targeted to RRH facilities that have physical conditions that effect the health and safety of tenants and then made available to facilities that have deferred maintenance. All funds will be held in the National office and will be distributed based upon indicated rehabilitation needs in the MFH survey conducted in September 1999.

F. Designated Reserve for Equity Loans

An amount of $5 million has been designated for the equity loan preservation incentive described in RD Instruction 1965–E. The $5 million will be further divided into $4 million for equity loan requests currently on the pending funding list and $1 million to facilitate the transfer of properties from for-profit owners to nonprofit corporations and public bodies. Funds for such transfers would be authorized only for for-profit owners who are currently on the pending funding list who agree to transfer to nonprofit corporations or public bodies rather than to remain on the pending list. If insufficient transfer requests are generated to utilize the full $1 million set aside for nonprofit and public body transfers, the balance will revert to the existing pending equity loan funding list.

G. General Reserve

There is one general reserve fund of $9,538,382. Some examples of immediate allowable uses include, but are not limited to hardships and emergencies, RH cooperatives or group homes, or RRH preservation.

V. Section 533 Housing Preservation Grants (HPG).

Total Available	$5,515,344
Less General Reserve	550,000
Less Earmark for EZ, EC or REAP Zones	600,000
Total Available for Distribution	4,365,344

Amount available for allocation. See end of this Notice for HPG State allocations. Fund availability will be announced in a NOFA being published in this Federal Register.

The amount of $600,000 is earmarked for EZ, EC or REAP Zones until June 30, 2000.

Single Family Housing (SFH)

I. General

A. This notice provides SFH allocations for FY 2000. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568. Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation are located on a chart at the end of this notice.

B. The SFH levels authorized for FY 2000 are as follows:

Section 502 Guaranteed Rural Housing (RH) loans: Non-subsidized guarantees	$3,200,000,000
Section 502 Direct RH loans:	
Very Low-Income loans	484,000,000
Low-Income loans	616,000,000
Credit Sales (program and non program)	6,254,888
Section 504 Housing Repair loans	32,395,288
Section 504 Housing Repair grants	[1] 25,650,573
Section 509 Compensation for construction defects	[1] 1,297,169
Section 523 Mutual and Self-Help Technical Assistance and grants	[1] 29,215,509
Section 523 Self-Help Site loans	5,008,912
Section 524 RH Site loans	5,000,000
Section 306C Water and Waste Disposal (WWD) grants	1,889,621
Sections 525 Technical and Supervisory Assistance grants: (TSA) and 509 Housing Application Packaging grants (HAPG) (Shared Between Single and Multi-Family Housing)	[1] 2,033,563
Natural Disaster Funds (section 502 loans)	60,716,817
Natural Disaster Funds (section 504 loans)	15,619,877
Natural Disaster Funds (section 504 grants)	11,591,985

[1] Includes carryover.

C. SFH funding not allocated to States are:

1. *Credit Sale Authority.* States will use loan funds to finance program Real Estate Owned (REO) sales to program applicants when all credit sale authority is exhausted.

2. *Section 509 Compensation for Construction Defects.* All claims for compensation for construction defects must be submitted to the National office for authorization prior to approval.

3. *Section 523 Mutual and Self-Help Technical Assistance Grants.* $28 million has been appropriated for section 523 Mutual and Self-Help Technical Assistance Grants. Of these funds, $1 million is earmarked for EZ, EC or REAP Zones until June 30, 2000. The State Director must request funding approval from the National office for all requests. A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) contractor on all predevelopment, new, and existing (refunding) grant applications.

4. *Section 523 Mutual and Self-Help Site Loans and Section 524 RH Site Loans.* The State Director must request funding authority from the National office prior to obligating loan funds.

5. *Section 306C WWD Grants to Individuals in Colonias.* The objective of the section 306C WWD individual grant program is to facilitate the use of community water or waste disposal systems for the residents of the colonias along the U.S.-Mexico border.

The total amount available to Arizona, California, New Mexico, and Texas will

be $1,889,621 for FY 2000. This amount includes the carryover unobligated balance of $389,621 and the transferred amount of $1.5 million from the Rural Utilities Service (RUS) to RHS for processing individual grant applications. These States will have access to the equal quarterly allocation distributions.

6. *Section 525 Technical and Supervisory Assistance (TSA) and Section 509 Housing Application Packaging Grants (HAPG).* $1 million of new funds and $1,033,563 of carry-over funds from previous years remain available for the TSA and HAPG programs. State Directors should submit proposals from potential applicants to the National office for review and concurrence prior to authorizing an application. The 29 eligible States under HAPG that have active grantees operating will be able to access up to $5,000 for section 502 or 504 loan and grant programs in order to continue operations. Reserve requests will be considered on a first-come, first-served basis.

7. *Natural Disaster Funds.* Funds are available until exhausted to those States that have received a Presidential Declaration.

8. *Deferred Mortgage Payment Demonstration.* There is no FY 2000 funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

9. *Section 502 Direct Funds for Families Not Qualifying for Payment Assistance.* Funds from State's allocation may be used for qualified very low- and low-income applicants when the payment assistance formula shows there is no need for the subsidy.

II. State Allocations

A. Section 502 Nonsubsidized Guaranteed RH (GRH) Loans

1. *Amount Available for Allocation.*

Total Available	$3,200,000,000
Less National Office General Reserve	630,000,000
Less Special Outreach Area Reserve	270,000,000
Basic Formula—Administrative Allocation	2,300,000,000

2. *National Office General Reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

3. *Reservation of Funds.* Because it is anticipated that demand will exceed available funds, States must use the reservation of funds system per § 1980.351 of RD Instruction 1980–D.

4. *Special Outreach Areas.* FY 2000 GRH funding is allocated to States in two funding streams (80/20) similar to the 60/40 income split for direct SFH funds. Eighty percent of GRH funds may be used in any eligible area. Twenty percent of GRH funds are to be used in special outreach areas. Special outreach areas are counties with median incomes at or below the State's nonmetropolitan median income. Each funding stream will independently be subject to pooling.

5. *National Office Special Area Outreach Reserve.* A special outreach area reserve fund has been established at the National office. Funds from this reserve may only be used in special outreach areas.

6. *Suballocation by the State Director.* The State Director may retain funds at the State office level or suballocate to the Area or Field office level.

B. Section 502 Direct RH Loans

1. *Amount Available for Allocation.*

Total Available	$1,100,000,000
Less Required Set Aside for:	
Underserved Counties and Colonias	55,000,000
EZ, EC and REAP Earmark	60,500,000
Less General Reserve	96,500,000
Administrator's Reserve	30,000,000
Hardships & Homelessness	3,500,000
Homeownership Partnership	60,000,000
Rural Housing Demonstration Program	3,000,000
Less Designated Reserve for Self-Help	110,000,000
Basic Formula Administrative Allocation	778,000,000

2. *Reserves.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship and homeless applicants based upon historical data and projected demand. This shall include the direct section 502 loan and section 504 loan and grant programs.

(ii) The State's 25 percent portion of funds for Mutual Self-Help loans.

(iii) Subsequent loans for essential improvements or repairs and transfers with assumptions.

(iv) Financing for the purchase of program REOs when credit sale authority has been exhausted.

(v) State Directors must ensure that not less than 25 percent of the initial low-income allocation and 5 percent of the initial very low-income allocation are utilized for participation in leveraging section 502 direct loan funds.

(vi) Areas targeted by the State.

b. *National Office Reserves.*

(i) *General Reserve.* The National office has a general reserve of $96.5 million. Of this amount, the Administrator's reserve is $30 million. One of the purposes of the Administrator's reserve will be for loans in Indian Country. Indian Country is defined as land inside the boundaries of Indian reservations, communities made up mainly of Native Americans, Indian trust and restricted land, and tribal allotted lands. The remaining reserves will be distributed as follows:

(ii) *Hardship and Homelessness Reserve.* $3.5 million has been set aside for hardships and homeless.

(iii) *Homeownership Partnership.* $25 million has been set aside for Homeownership Partnerships. These funds will be used to expand existing partnerships and create new partnerships, such as the following:

(A) *Department of the Treasury, Community Development Financial Institutions (CDFI)*—Funds will be available to fund leveraged loans made in partnership with the Department of the Treasury CDFI participants.

(B) *Rural Home Loan Partnership (RHLP).* Partnership initiatives established to carry out the objectives of the National Partners in Homeownership including the RHLP and other strategies or initiatives.

(iv) *Rural Housing Demonstration Program.* $3 million has been set aside for innovative demonstration initiatives.

c. *Designated Reserve for Self-Help.* $110 million has been set aside for matching funds to assist participating Self-Help applicants. The matching funds were established on the basis of the National office contributing 75 percent from the National office reserve and States contributing 25 percent of their allocated section 502 RH funds.

d. *Underserved Counties and Colonias.* $55,000,000 has been set aside for the 100 underserved counties and colonias.

e. *Empowerment Zone (EZ) and Enterprise Community (EC) Earmark.* These funds are earmarked until June 30, 2000 for loans in EZ, EC or REAP Zones. Further information will follow.

f. *Reserve Requests.* All National office reserve requests should be submitted by the State Director to the National office on a case-by-case basis.

g. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.)

h. *Suballocation by the State Director.* The State Director may suballocate to each area office using the methodology and formulas required by 7 CFR part 1940, subpart L. If suballocated to the area level, the Rural Development Manager will make funds available on a first-come, first-served basis to all offices at the field or area level. No field office will have its access to funds restricted without the prior written approval of the Administrator.

C. Section 504 Housing Loans and Grants

Section 504 grant funds are included in the Rural Housing Assistance Grant program (RHAG) in the FY 2000 appropriation.

1. *Amount available for allocation.*

Section 504 Loans:	
Total Available	$32,395,287
Less 5% for 100 Underserved Counties and Colonias	1,620,000
EZ, EC or REAP Zone Earmark	7,000,000
Less General Reserve	1,500,000
Basic Formula—Administrative Allocation	22,276,000
Section 504 Grants:	
Total Available	25,650,573
Less 5% for 100 Underserved Counties and Colonias	1,250,000
Less EZ, EC or REAP Earmark	600,000
Less General Reserve	1,500,000
Basic Formula—Administrative Allocation	21,650,000

2. *Reserves and Set-asides.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to handle all anticipated hardship applicants based upon historical data and projected demand.

b. *Underserved Counties and Colonias.* $1,620,000 and $1,250,000, respectively, have been set aside for the 100 underserved counties and colonias until June 30, 2000 for the section 504 loan and grant programs.

c. *Empowerment Zone (EZ) and Enterprise Community (EC) Earmark (Loan Funds Only).* $7 million and $600,000, respectively, have been earmarked until June 30, 2000 for EZ, EC or REAPs for the section 504 loan and grant programs.

d. *National Office Reserve.* $1.5 million for section 504 loan hardships and $1.5 million for section 504 grant extreme hardships have been set-aside in the general reserve. For section 504 grants, an extreme hardship case is one requiring a significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant.

Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation:

Number and description	Section 502 Nonsubsidized guaranteed RH loans	Section 502 Direct RH loans	Section 504 Loans and grants
1. Basic formula criteria, data source, and weight.	See 7 CFR 1940.563(b)	See 7 CFR 1940.565(b)	See 7 CFR 1940.566(b) and 1940.567(b).
2. Administrative allocation: Western Pacific Area.	$1,000,000	$1,000,000	$1,000,000 Loan. $500,000 Grant.
3. Pooling of funds:			
a. Mid year pooling	If Necessary	None Anticipated	None Anticipated.
b. Year-end pooling	July 14, 2000	August 18, 2000	August 18, 2000.
c. Underserved Counties & Colonias.	N/A	June 30, 2000	June 30, 2000.
d. EZ & EC	N/A	June 30, 2000	June 30, 2000.
e. Credit Sales	N/A	June 30, 2000	N/A.
4. Availability of the allocation:			
a. first quarter	50 percent	50 percent	50 percent.
b. second quarter	75 percent	70 percent	70 percent.
c. third quarter allocation	100 percent	90 percent	90 percent.
a. first quarter	50 percent	50 percent	50 percent.
b. second quarter	75 percent	70 percent	70 percent.
c. third quarter	100 percent	90 percent	90 percent.
d. fourth quarter	N/A	100 percent	100 percent.

1. Data derived from the 1990 U.S. Census was provided to each State by the National office on August 12, 1993.

2. Due to the absence of census data.

3. All dates are tentative and are as of close of business (COB). Pooled funds will be placed in the National office reserve and made available administratively.

4. Funds will be distributed cumulatively through each quarter until the year-end pooling date.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

RURAL HOUSING SERVICE FY2000 MULTI-FAMILY HOUSING, SECTION 533, HOUSING PRESERVATION GRANT

State	Formula factor	Total allocation
AL	0.02957	$129,083
AK	0.00587	25,625
AZ	0.01780	77,703
AR	0.02310	100,839
CA	0.04653	203,119
CO	0.00840	36,669
DE	0.00190	8,294

RURAL HOUSING SERVICE FY2000 MULTI-FAMILY HOUSING, SECTION 533, HOUSING PRESERVATION GRANT—Continued

State	Formula factor	Total allocation
MD	0.00880	38,415
FL	0.02890	126,158
GA	0.03867	168,808
HI	0.00790	34,486
WPA	0.00647	28,244
ID	0.00743	32,435
IL	0.02250	98,220
IN	0.02157	94,160
IA	0.01340	58,496
KS	0.01130	49,328
KY	0.03483	152,045
LA	0.03170	138,381
ME	0.00913	39,856
MA	0.00793	34,617
CT	0.00453	19,776
RI	0.00100	4,365
MI	0.02977	129,956
MN	0.01673	73,032
MS	0.03180	138,818
MO	0.02460	107,387
MT	0.00620	27,065
NE	0.00713	31,125
NV	0.00263	11,481
NJ	0.00657	28,680
NM	0.01437	62,730
NY	0.02753	120,178
NC	0.04497	196,310
ND	0.00413	18,029
OH	0.03450	150,604
OK	0.01917	83,684
OR	0.01423	62,119
PA	0.03687	160,950
PR	0.04923	214,906
SC	0.02690	117,428
SD	0.00597	26,061
TN	0.02973	129.782
TX	0.07645	333,731
UT	0.00430	18,771
VT	0.00403	17,592
NH	0.00503	21,958
VI	0.00273	11,917
VA	0.02660	116,118
WA	0.01743	76,088
WV	0.01937	84,557
WI	0.01873	81,763
WY	0.00307	13,402
DISTR	1.00000	4,365,344
N/O RES	.....	550,000
EZ/EC/REAP	.....	600,000
TTL AVAIL	.....	5,515,344

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0267275	$20,767
Alaska	0.0055160	4,286
Arizona	0.0145422	11,299
Arkansas	0.0208104	16,170
California	0.0454819	35,339
Colorado	0.0091766	7,130
Delaware	0.0024571	1,909
Maryland	0.0115334	8,961
Florida	0.0312406	24,274
Virgin Islands	0.0020058	1,559
Georgia	0.0374586	29,105

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS—Continued

States	State basic formula factor	Total FY 2000 allocation
Hawaii	0.0067195	5,221
W Pac Islands	N/A	1,000
Idaho	0.0076722	5,961
Illinois	0.0266774	20,728
Indiana	0.0270785	21,040
Iowa	0.0163474	12,702
Kansas	0.0127369	9,897
Kentucky	0.0288838	22,443
Louisiana	0.0246715	19,170
Maine	0.0108314	8,416
Massachusetts	0.0109818	8,533
Connecticut	0.0066693	5,182
Rhode Island	0.0015545	1,208
Michigan	0.0353525	27,469
Minnesota	0.0199077	15,468
Mississippi	0.0250226	19,443
Missouri	0.0252733	19,637
Montana	0.0063685	4,948
Nebraska	0.0086752	6,741
Nevada	0.0028583	2,221
New Jersey	0.0097784	7,598
New Mexico	0.0110320	8,572
New York	0.0359041	27,898
North Carolina	0.0484405	37,638
North Dakota	0.0045131	3,507
Ohio	0.0390131	30,313
Oklahoma	0.0174005	13,520
Oregon	0.0154949	12,040
Pennsylvania	0.0467857	36,352
Puerto Rico	0.0239695	18,624
South Carolina	0.0258249	20,066
South Dakota	0.0062682	4,870
Tennessee	0.0291846	22,676
Texas	0.0660415	51,314
Utah	0.0040618	3,156
Vermont	0.0052653	4,091
New Hampshire	0.0072711	5,650
Virginia	0.0289841	22,521
Washington	0.0187042	14,533
West Virginia	0.0175008	13,598
Wisconsin	0.0237188	18,429
Wyoming	0.0036105	2,805
State Totals	1.0000000	778,000
General Reserve		96,500
EZ/EC/Reap Earmark		60,500
100 Underserved Counties/Colonias		55,000
Self Help		110,000
Total		1,100,000

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS

States	Total FY 2000 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
Alabama	$20,767	$8,307	$12,460
Alaska	4,286	1,714	2,572
Arizona	11,299	4,520	6,780
Arkansas	16,170	6,468	9,702
California	35,339	14,136	21,204
Colorado	7,130	2,852	4,278
Delaware	1,909	764	1,146
Maryland	8,961	3,585	5,377
Florida	24,274	9,710	14,564
Virgin Islands	1,559	623	935
Georgia	29,105	11,642	17,463

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS—Continued

States	Total FY 2000 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
Hawaii	5,221	2,088	3,133
W Pac Islands	1,000	400	600
Idaho	5,961	2,385	3,577
Illinois	20,728	8,291	12,437
Indiana	21,040	8,416	12,624
Iowa	12,702	5,081	7,621
Kansas	9,897	3,959	5,938
Kentucky	22,443	8,977	13,466
Louisiana	19,170	7,668	11,502
Maine	8,416	3,366	5,050
Masschusetts	8,533	3,413	5,120
Connecticut	5,182	2,073	3,109
Rhode Island	1,208	483	725
Michigan	27,469	10,988	16,481
Minnesota	15,468	6,187	9,281
Mississippi	19,443	7,777	11,666
Missouri	19,637	7,855	11,782
Montana	4,948	1,979	2,969
Nebraska	6,741	2,696	4,044
Nevada	2,221	888	1,333
New Jersey	7,598	3,039	4,559
New Mexico	8,572	3,429	5,143
New York	27,898	11,159	16,739
North Carolina	37,638	15,055	22,583
North Dakota	3,507	1,403	2,104
Ohio	30,313	12,125	18,188
Oklahoma	13,520	5,408	8,112
Oregon	12,040	4,816	7,224
Pennsylvania	36,352	14,541	21,811
Puerto Rico	18,624	7,450	11,175
South Carolina	20,066	8,026	12,040
South Dakota	4,870	1,948	2,922
Tennessee	22,676	9,071	13,606
Texas	51,314	20,526	30,789
Utah	3,156	1,262	1,894
Vermont	4,091	1,636	2,455
New Hampshire	5,650	2,260	3,390
Virginia	22,521	9,008	13,512
Washington	14,533	5,813	8,720
West Virginia	13,598	5,439	8,159
Wisconsin	18,429	7,372	11,058
Wyoming	2,805	1,122	1,683
State Totals	778,000	311,200	466,800
General Reserve	96,500	44,100	52,400
100 Counties/Colonias	55,000	33,000	22,000
EZ/EC/Reap Earmark	60,500	36,300	24,200
Self Help	110,000	59,400	50,600
Total	1,100,000	484,000	616,000

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, GUARANTEED LOANS (NONSUBSIDIZED)

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0253847	$58,360
Alaska	0.0061561	14,153
Arizona	0.0155290	35,701
Arkansas	0.0213661	49,121
California	0.0524861	120,666
Colorado	0.0100701	23,151
Delaware	0.0024043	5,527
Maryland	0.0104750	24,082
Florida	0.0308357	70,891
Virgin Islands	0.0027236	6,262

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, GUARANTEED LOANS (NONSUBSIDIZED)—Continued

States	State basic formula factor	Total FY 2000 allocation
Georgia	0.0385293	88,579
Hawaii	0.0083323	19,156
W Pac Islands	N/A	1,000
Idaho	0.0077774	17,880
Illinois	0.0256395	58,945
Indiana	0.0236023	54,261
Iowa	0.0151422	34,812
Kansas	0.0123032	28,285
Kentucky	0.0286790	65,933
Louisiana	0.0256223	58,906
Maine	0.0113916	26,189
Massachusetts	0.0117468	27,006
Connecticut	0.0065708	15,106
Rhode Island	0.0017216	3,958
Michigan	0.0337181	77,518
Minnesota	0.0184738	42,471
Mississippi	0.0259670	59,698
Missouri	0.0253687	58,323
Montana	0.0067138	15,435
Nebraska	0.0083216	19,131
Nevada	0.0029735	6,836
New Jersey	0.0091825	21,111
New Mexico	0.0117200	26,944
New York	0.0369739	85,003
North Carolina	0.0471742	108,453
North Dakota	0.0040847	9,391
Ohio	0.0378081	86,921
Oklahoma	0.0175713	40,396
Oregon	0.0166212	38,212
Pennsylvania	0.0438367	100,781
Puerto Rico	0.0250931	57,689
South Carolina	0.0249510	57,362
South Dakota	0.0065435	15,043
Tennessee	0.0276859	63,650
Texas	0.0665018	152,888
Utah	0.0039861	9,164
Vermont	0.0057475	13,214
New Hampshire	0.0075234	17,296
Virginia	0.0278404	64,005
Washington	0.0200905	46,188
West Virginia	0.0172518	39,662
Wisconsin	0.0222867	51,237
Wyoming	0.0035006	8,048
State Totals	1.0000000	2,300,000
General Reserve	.....	630,000
Special Outreach Areas Reserve	.....	270,000
Total	.....	3,200,000

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCTION IN THOUSANDS, SECTION 504, RURAL HOUSING LOANS

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0300207	$612
Alaska	0.0082816	169
Arizona	0.0207039	422
Arkansas	0.0232919	475
California	0.0548654	1,118
Colorado	0.0087992	179
Delaware	N/A	100
Maryland	0.0098344	200
Florida	0.0305383	622
Virgin Islands	N/A	100
Georgia	0.0408903	833
Hawaii	0.0103520	211
W Pac Islands	N/A	1,000
Idaho	0.0077640	158

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCTION IN THOUSANDS, SECTION 504, RURAL HOUSING LOANS—Continued

States	State basic formula factor	Total FY 2000 allocation
Illinois	0.0232919	475
Indiana	0.0227743	464
Iowa	0.0134576	274
Kansas	0.0119048	243
Kentucky	0.0331263	675
Louisiana	0.0305383	622
Maine	0.0103520	211
Massachusetts	0.0082816	169
Connecticut	N/A	100
Rhode Island	N/A	100
Michigan	0.0300207	612
Minnesota	0.0181159	369
Mississippi	0.0310559	633
Missouri	0.0248447	506
Montana	0.0062112	127
Nebraska	0.0072464	148
Nevada	N/A	100
New Jersey	0.0072464	148
New Mexico	0.0155280	316
New York	0.0295031	601
North Carolina	0.0491718	1,002
North Dakota	N/A	100
Ohio	0.0341615	696
Oklahoma	0.0181159	369
Oregon	0.0155280	316
Pennsylvania	0.0383023	780
Puerto Rico	0.0351967	717
South Carolina	0.0289855	591
South Dakota	0.0062112	127
Tennessee	0.0305383	622
Texas	0.0807453	1,645
Utah	N/A	100
Vermont	N/A	100
New Hampshire	0.0056936	116
Virginia	0.0305383	622
Washington	0.0191511	390
West Virginia	0.0186335	380
Wisconsin	0.0201863	411
Wyoming	N/A	100
State Totals	1.0000000	22,275
General Reserve	.....	1,500
EZ/EC/Reap Earmark	.....	7,000
100 Underserved Counties/Colonias	.....	1,620
Total	.....	32,395

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 504, RURAL HOUSING GRANTS

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0288363	$605
Alaska	0.0058359	122
Arizona	0.0175007	367
Arkansas	0.0230003	482
California	0.0494336	1,037
Colorado	0.0085822	180
Delaware	N/A	100
Maryland	0.0102987	216
Florida	0.0350154	734
Virgin Islands	N/A	100
Georgia	0.0377618	792
Hawaii	0.0078957	166
W Pac Islands	N/A	500
Idaho	0.0075524	158
Illinois	0.0271198	569
Indiana	0.0250601	525
Iowa	0.0168211	353

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 504, RURAL HOUSING GRANTS—Continued

States	State basic formula factor	Total FY 2000 allocation
Kansas	0.0137315	288
Kentucky	0.0305527	641
Louisiana	0.0267765	561
Maine	0.0106419	223
Massachusetts	0.0099554	209
Connecticut	0.0054926	115
Rhode Island	N/A	100
Michigan	0.0326124	684
Minnesota	0.0202540	425
Mississippi	0.0278064	583
Missouri	0.0264332	554
Montana	0.0061792	130
Nebraska	0.0089255	187
Nevada	N/A	100
New Jersey	0.0085822	180
New Mexico	0.0127017	266
New York	0.0332990	698
North Carolina	0.0484037	1,015
North Dakota	N/A	100
Ohio	0.0370752	777
Oklahoma	0.0188809	396
Oregon	0.0161346	338
Pennsylvania	0.0449708	943
Puerto Rico	0.0271199	569
South Carolina	0.0267765	561
South Dakota	0.0065225	137
Tennessee	0.0302094	633
Texas	0.0734638	1,540
Utah	N/A	100
Vermont	N/A	100
New Hampshire	0.0061792	130
Virginia	0.0291795	612
Washington	0.0188809	396
West Virginia	0.0185376	389
Wisconsin	0.0230003	482
Wyoming	N/A	100
State Totals	1.000000	22,267
General Reserve	.....	1,500
EZ/EC/Reap Earmark	.....	500
100 Underserved Counties/Colonias	.....	1,283
Total	.....	25,650

[FR Doc. 99–32957 Filed 12–20–99; 8:45 am]
BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice of Fund Availability (NOFA or Notice) announces the timeframe to submit proposals in the form of "NOFA responses" for the section 538 Guaranteed Rural Rental Housing Program (GRRHP). Eligible lenders are invited to submit NOFA proposals for the development of affordable rental housing to serve rural America. Lenders may submit their application concurrently with their NOFA response. This document also describes the overall application process, including the selection of NOFA responses and the allocation of interest credits.

DATES: Fiscal Year (FY) 2000 program dollars will be divided into two selection pools: an "early selection pool" of $40 million which will close at 4:00 PM Eastern Time on February 21, 2000 and the "standard selection pool" of $60 million which will close at 4:00 PM Eastern Time, on May 8, 2000. See paragraph III., "Application Process" of this NOFA for more information on this topic.

The final deadline for a FY 2000 NOFA response will be 4:00 PM Eastern Time on May 8, 2000. No NOFA responses will be accepted after 4:00 PM Eastern Time on May 8, 2000, unless that date and time is extended by Notice published in the **Federal Register**. Lenders intending to mail a NOFA response must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due NOFA responses or applications will not be accepted.

ADDRESSES: Responses for participation in the program must be identified as "Section 538 Guaranteed Rural Rental Housing Program" on the envelope and

be submitted to: Director, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 1263 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781.

FOR FURTHER INFORMATION CONTACT: Joyce Allen, Senior Loan Officer, Guaranteed Loans, Multi-Family Housing Processing Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781. E-mail: jallen@rdmail.rural.usda.gov. Telephone: (202) 690–4499. This number is not toll-free. Hearing or speech impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The GRRHP will be operated under the direction of Title 7 CFR Code of Federal Regulations part 3565 (7 CFR part 3565). In addition, this NOFA will identify any priorities for selection of proposed applications, and the process by which the Agency will score and rank the proposals. Information will also be included about submission forms and deadlines.

The Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and Agency personnel with the "how to" administrative guidance needed to administer the program. As a service to our customers, copies of HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, may be obtained from the Rural Housing Service Multi-Family Housing Processing Division at 202–720–1604. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Discussion of Notice

I. Purpose and Program Summary

On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," Public Law 104–120, authorizing the section 538 Guaranteed Rural Rental Housing Program (GRRHP). The program is designed to increase the supply of affordable multifamily housing through partnerships between Rural Housing Service (RHS) and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction or acquisition with rehabilitation of at least $15,000 per unit. RHS may guarantee such loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be split on a pro-rata basis between the lender and the Agency from the first dollar lost.

II. Allocation

Fiscal Year (FY) 2000 budget authority provides approximately $100 million in program dollars. All FY 2000 funds will be held in the National office. There are no set-asides or demonstration purposes for the GRRHP for FY 2000.

III. Application Process

FY 2000 budget authority will provide approximately $100 million in program dollars. In order to better assist lenders who are currently working with an applicant, the FY 2000 program dollars will be divided into two selection pools; an "early selection pool" of $40 million, which will close 4 p.m. Eastern Standard Time, February 21, 2000 and a "standard selection pool" of $60 million, which will close 4 p.m. Eastern Daylight Time, May 8, 2000. Any funds not used in the early selection pool will be transferred to the standard selection pool.

To be eligible for early selection, NOFA responses must have a minimum score of 20 points and must be received prior to 4:00 PM, Eastern Standard Time on February 21, 2000. NOFA responses not scoring a minimum of 20 points, responses received after the deadline for the early pool, and responses not selected due to insufficient funds in this pool will be retained for the standard selection pool with the closing deadline of May 8, 2000. The final deadline for a FY 2000 NOFA response will be 4 p.m., Eastern Daylight Time on May 8, 2000. No exceptions will be made to the above NOFA closing deadlines unless those deadlines are extended by notice published in the **Federal Register**.

In the event that there are insufficient funds available in either selection pool, priorities will be assigned to the NOFA responses on the basis of the criteria assigned in 7 CFR 3565.5(b) and in paragraph VI., "Selection Criteria" of this NOFA. In the event that there are insufficient funds available to fully fund the next NOFA proposal in the ranking list, the Agency will offer the lender the opportunity to accept a loan note guarantee for less than the requested amount. If the lender declines, the same offer will be made to the next lender on the ranking list, until all the funds are expended. In the event of ties, selection will be by lot.

In the interest of time, lenders have the option of submitting a combined NOFA response and application. However, the Agency will not give preference to a submission with both the NOFA response and application. Lenders who submit complete applications are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. RHS will base its determination of the completeness of the application and the eligibility of the lender on the information provided in the application.

Upon notice of selection, lenders with the top ranked NOFA responses will be requested to submit the required application fee of $2,500.00 and full application if not already submitted. When the conditions of the conditional commitment are met, the lender will submit the required information with a separate guarantee fee of 1% of the total guarantee amount.

IV. Submission Requirements

All NOFA responses for the GRRHP must meet the requirements of 7 CFR part 3565 and this NOFA. Incomplete submissions will not be considered, and the lender will be notified of the reason the response was incomplete.

Assistance can include both loan guarantees and interest credits. For at least 20 percent of the loans made under the program, RHS shall provide the borrower with interest credits to reduce the interest rate of the loan by a maximum of 250 basis points. However, in no instance will the lender's interest rate be reduced to lower than the applicable Federal Rate as such term is used in section 42(i)(2)(D) of the Internal Revenue Code of 1986.

RHS will provide interest credit on loans up to $1.5 million. Lenders with proposals that could be viable with or without interest credits are encouraged

to submit a NOFA response reflecting financial and market feasibility under both funding options. A request in the NOFA response to be considered under both options will not affect the rating of the response for Interest Credit selection. However, once the interest credit funds are exhausted, only those NOFA responses requesting consideration under both funding options or the Non-Interest Credit option will be further considered.

NOFA responses requesting interest credit will be ranked and scored separately using the same selection criteria for non-interest credit responses. In the event that there are insufficient funds available to fully fund the next interest credit response in the ranking list, the Agency will offer the lender the opportunity to accept a loan note guarantee for less than the requested amount. If the lender declines, the same offer will be made to the next rated response on the list until all the funds are expended. In the event of ties, selection will be by lot.

V. Sample NOFA Response

In order to expedite the review of the applications, RHS suggests using the following NOFA response guidelines. The NOFA response should be on the lender's letterhead, signed by both the lender and the applicant, and be submitted by the lender to the Agency.

Sample NOFA Response:

LENDER NAME—Lender organization name.

LENDER CONTACT NAME—Name of the lender contact for loan.

MAILING ADDRESS—Complete mailing address for lender.

PHONE NUMBER—Phone number for lender contact.

FAX NUMBER—Fax number.

E-MAIL ADDRESS—E-mail address.

APPLICANT NAME—Show official name, list any trade name as "d/b/a."

APPLICANT TAX ID NUMBER—Insert number.

NEW CONSTRUCTION OR REPAIR/REHAB. OF AT LEAST $15,000/UNIT.—State whether the project is new construction or repair/rehab.

PROJECT LOCATION TOWN—Town in which the project is located.

PROJECT COUNTY—County in which the project is located.

PROJECT STATE—State in which the project is located.

PROJECT ZIP CODE—Project zip code.

PROJECT CONGRESSIONAL DISTRICT—Congressional District for project location.

EZ/EC—Is the project in EZ/EC community? (Yes or No)

COLONIA OR TRIBAL LANDS—Is the project in a Colonia or on tribal lands? (Yes or No)

PRESIDENTIAL DECLARED DISASTER AREA—Is the project in a Presidentially declared Disaster Area? (Yes or No)

POPULATION—What is the population of the community in which the project is located? (Note: Population must be in an eligible rural area as defined in HB–1–3565, paragraph 1.6, "Eligible Rural Area.")

MEDIAN INCOME FOR COMMUNITY—Provide median income for the project community.

LOAN AMOUNT—Insert the loan amount.

PERCENTAGE OF GUARANTEE—Percentage guarantee requested.

IS A GUARANTEE FOR CONSTRUCTION ADVANCES BEING REQUESTED?—(Yes or No) (**Note:** Agency will guarantee construction advances, only as part of a combination construction and permanent loan.)

TOTAL PROJECT DEVELOPMENT COST—Enter amount for total project.

TAX CREDITS—Are tax credits to be provided to project?

LOAN TERM—Provide the loan term. (**Note:** Term may be up to 40 years.)

INTEREST RATE—Provide the interest rate. (**Note:** Max. rate is 250 basis points over treasury bond yield. Rate must be fixed rate and fully amortizing, *i.e.*, balloon mortgages are not eligible.)

BASIS POINTS OVER 30 YEAR TREASURY—Insert number.

OTHER SOURCES OF FUNDS—List all funding sources.

NUMBER OF UNITS—What is the total number of units in the project?

BEDROOM MIX—Number of units by number of bedrooms.

INTEREST CREDIT (IC)—Is interest credit requested for this loan (Yes or No)?

IF ABOVE IS "YES," SHOULD PROPOSAL BE CONSIDERED UNDER NON–IC SELECTION, IF IC FUNDS ARE EXHAUSTED?—(Yes or No) (**Note:** If "Yes," proposal must show financial feasibility for NON–IC consideration.)

RENT—What is the proposed rent structure?

COST PER UNIT—Total development cost divided by number of units.

DEBT COVERAGE RATIO—Net Operating Income divided by debt payments.

LOAN TO VALUE—Guarantee loan divided by value.

VI. Selection Criteria

NOFA proposals will be reviewed as received. In the event that demand exceeds available funds, priorities will be assigned to eligible proposals on the basis of the following criteria as described in 7 CFR 3565.5(b), and points will be assigned as follows:

(A) Projects located in rural communities with the smallest population will receive priority. All proposals will be ranked in order of their population. The proposals will be given a point score starting with the project located in the area with the lowest population receiving 20 points, the next 19 points and so forth, until up to 20 projects have received points.

(B) The most needy communities as determined by the median income from the most recently available census data. The proposals will be given a point score starting with the community having the lowest median income receiving 20 points, the next 19 points and so forth until up to 20 proposals have received points.

(C) Partnering and leveraging in order to develop the maximum number of housing units and promote partnerships with state and local communities, including other partners with similar housing goals. Leveraging points will be awarded as follows:

Loan to value ratio (percentage %)	Points
75–84	10
70–74	15
69 or less	20

(D) Loans with interest rates less than the maximum allowable 250 basis points over the 30 Year Treasury Rate will be awarded points as follows:

Interest rate	Points
250 to 201 basis points, inclusive	0
200 to 151 basis points, inclusive	5
150 to 100 basis points, inclusive	10
99 to 50 basis points, inclusive	15
Less than 50 basis points	20

(E) Preference will be given to proposals having a higher percent of 3–5 bedroom units to total units. The proposals will be ranked in order of this percent with the proposal with the highest percent receiving 20 points, the next 19 points and so forth until up to 20 projects have received points.

(F) Proposals to be developed in a colonia, on tribal land, in an Empowerment Zone or Enterprise Community, or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing (20 points).

(G) Projects will be ranked by the length of the amortization period, with the longest receiving priority as follows:

Amortization (Yrs.)	Points
40	20
At least 35	15
At least 30	10
At least 20	5
Less than 20	0

VII. Additional Information

A. National Environmental Policy Act (NEPA)

The lender will provide the applicant's completed Form RD 1940–20, "Request for Environmental Information," available by contacting the Rural Development State Environmental Coordinator (SEC) at any RD State office and submit it with the NOFA response. A description of any known environmental issues that may affect the project must also be included. This step is necessary in order for the NOFA response to be complete.

The Agency's environmental review of the property, as required under NEPA and 7 CFR part 1940, subpart G will be initiated as early as possible, but no later than the selection of the proposal for further processing. This environmental impact review must be completed prior to the Agency's issuance of a conditional commitment. The environmental review is considered complete when the environmental documents have been properly executed, when all applicable public notices have been published, the associated public comment periods have expired, and the Agency has taken any necessary actions to address the comments received.

Lenders have a responsibility to become familiar with Federal environmental requirements so that they can advise applicants and reduce the probability of unacceptable NOFA responses being submitted to the Agency. Lenders are also expected to cooperate in the collection of any environmental data which the Agency determines is necessary and in the resolution of potential environmental problems.

B. Surcharges for Guarantee of Construction Advances

There is no surcharge for guarantee of construction advances for FY 2000.

C. Maximum Interest Rate

The maximum allowable interest rate on a loan submitted for a guarantee is 250 basis points over the 30-year Treasury Bond Yield as published in the Wall Street Journal as of the business day prior to the business day the rate is set.

D. Program Fees for FY 2000

(1) There is an initial guarantee fee of 1% of the total guarantee amount which will be due when the loan guarantee is issued. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) There is an annual renewal fee of 0.5% of the guaranteed outstanding principal balance charged each year or portion of the year that the guarantee is in effect. This fee will be collected prospectively on January 1, of the calendar year.

(3) There is no site assessment and market analysis or preliminary feasibility fee in FY 2000.

(4) There is a non-refundable application fee of $2,500 when the application is submitted following proposal selection under the NOFA.

(5) There is no lender application fee for lender approval in FY 2000.

(6) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(7) There is a flat fee of $500 when a lender requests RHS to reopen a guarantee commitment after the period of the commitment lapses.

(8) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible applicant.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32958 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the section 515 Rural Rental Housing Program for Fiscal Year 2000

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 515 Rural Rental Housing (RRH) loan funds and section 521 Rental Assistance (RA) for new construction, including applications for the nonprofit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs) and Rural Economic Area Partnership (REAP) communities. This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The closing deadline for receipt of all applications, including those for the set-asides, in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on February 22, 2000. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, "Sam" Mitchell

Connecticut
Served by Massachusetts State Office

Delaware and Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam
Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2718, TDD (785) 271–2767, Gary Schumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–2500, TDD (606) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655 Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland
Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, MaryLou Affleck

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503)414–3387, Dan Streng

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon

Rhode Island
Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–3432, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier

Virgin Islands
Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

Western Pacific Territories
Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Linda Armour, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1753 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Explanation of 60-Day NOFA Application Deadline

The Agency is using a 60-day application period so that the NOFA process will coincide with the time constraints placed upon our customers by participating lenders and state housing finance agencies (SHFA). Participating lenders such as commercial banks leverage their funds with RHS funds. State organizations can provide Community Development Block Grants (CDBG) and HOME funds as another means of leveraging RHS funds, and SHFAs have certain timeframes whereby applicants can apply for tax credits. Therefore, to assist as many of our customers as possible in obtaining leveraged funds and to participate with

other funding sources, a 60-day application period is provided.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and may be requested with applications for such facilities.

B. *Distribution Methodology*

The total amount available for FY 2000 for section 515 is $114,322,076, of which $49,703,694 is available for new construction as follows:

Section 515 new construction funds	$ 22,500,000
Set-aside for nonprofits	$ 10,288,987
Set-aside for Underserved Counties and Colonias	$ 5,716,104
Set-aside for EZ, EC, and REAP zones	9,778,603
State Rental Assistance (RA) designated reserve	$ 1,500,000

C. Section 515 New Construction Funds

For fiscal year 2000, the Administrator has determined that it would not be practical to allocate funds to States because of funding limitations; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart E. The scoring factors are:

(a) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing, computed as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	5

(b) The units to be developed are in a colonia, tribal land, EZ, EC, or REAP community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. (20 points)

(c) In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or Low-Income Housing Tax Credits) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding such State resources, 20 points will be provided to loan requests that include such State resources. (National office initiative)

(d) The loan request includes donated land meeting the provisions of 7 CFR 1944.215(r)(4). (5 points)

2. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

D. Applications That Do Not Require New Construction Rental Assistance (RA)

For fiscal year 2000, limited new construction RA is available. Therefore, the Agency is inviting applications to develop units in markets that do not require RA. The market study for non-RA proposals must clearly demonstrate a need and demand for the units by prospective tenants at income levels that can support the proposed rents without tenant subsidies. The proposed units must offer amenities that are typical for the market area at rents that are comparable to conventional rents in the market for similar units.

E. Set-asides

Loan requests will be accepted for the following set-asides:

1. *Nonprofit set-aside.* An amount of $10,288,987 has been set aside for nonprofit applicants. All loan proposals must be in designated places in accordance with 7 CFR part 1944, subpart E. A State or jurisdiction may receive one proposal from this set-aside, which cannot exceed $1 million. A State could get additional funds from this set-aside if any funds remain after funding one proposal from each participating State. If there are insufficient funds to fund one loan request from each participating State, selection will be made by point score. If there are any funds remaining, they will revert to the National office reserve. Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

2. *Underserved counties and colonias set-aside.* An amount of $5,716,104 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

3. *EZ, EC, and REAP set-aside.* An amount of $9,778,603 has been set aside to develop units in EZ, EC, or REAP communities. Loan requests that are eligible for this set-aside may also be eligible for regular section 515 funds as a high-need community. The state must indicate on the list submitted to the National office if the request is eligible for the EZ, EC, and REAP set-aside and regular section 515 funds. If requests for this set-aside exceed available funds, selection will be made by point score.

F. Prior Year Applications

The Rural Housing Service published a final rule in the **Federal Register** (62 FR 67216) on December 23, 1997 outlining its application and review process for section 515 Rural Rental

Housing new construction program. The implementation proposal for those regulations provided that some applicants who filed acceptable loan requests in prior years could proceed with their loan requests provided they were in compliance with the newly published regulations, until the beginning of FY 2000. Therefore, effective this fiscal year, prior year applications will no longer be processed. All loan requests must be submitted under this NOFA.

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more.

B. No State may receive more than $2.5 million from regular section 515 funds. Reserve funds, including set-aside funds, are not included in this cap.

III. Rental Assistance (RA)

New construction RA will be held in the National office for use with section 515 Rural Rental Housing loans. RA may be requested by applicants, except for non-RA requests in accordance with section I.D. above.

IV. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart E and section V of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

V. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for the following:

1. Application information;

2. Any restrictions on funding availability (applications that exceed the National limit of $1 million will be returned to the applicant); and

3. List of designated places for which applications for new section 515 facilities may be submitted.

VI. Areas of Special Emphasis or Consideration

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National office and one by the State office. This fiscal year, the National office initiative will be used in the selection criteria as follows: In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or LIHTC) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State resources. No State selection criteria will be used this fiscal year.

B. $10,288,987 is available nationwide in a set-aside for eligible nonprofit organizations as defined in 42 U.S.C. 1485(w).

C. $5,716,104 is available nationwide in a set-aside for the 100 most Underserved Counties and Colonias.

D. $9,778,603 is available nationwide in a set-aside for EZ, EC, and REAP communities.

E. $1,500,000 million is available nationwide in a set-aside for States with viable State Rental Assistance (RA) programs. In order to participate, States are to submit specific written information about the State RA program, *i.e.*, a memorandum of understanding, documentation from the provider, etc., to the National office.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32959 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) For Section 533 Housing Preservation Grants

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on March 22, 2000. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, "Sam" Mitchell

Connecticut served by Massachusetts State Office

Delaware & Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2718, TDD (785) 271–2767, Gary Schumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–2500, TDD (606) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, MaryLou Affleck

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Dan Streng

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon

Rhode Island served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–3432, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier

Virgin Islands, served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia,

WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis
Western Pacific Territories served by Hawaii State Office
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass
Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel
Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Tracee Lilly, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.433, Rural Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are referred to 7 CFR 1944.674 and 1944.676(f), (g), and (h) for specific guidance on these requirements relative to the HPG program.

Application Requirements

7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State office to receive further information, the State allocation of funds, and copies of the preapplication package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

Funding Information

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the State office to determine the allocation and the State maximum grant level, if any. For FY 2000, $5,515,344 is available for the Housing Preservation Grant Program. A set aside of $600,000 has been established for grants located in Empowerment Zones, Enterprise Communities, and REAP Zones and $4,365,344 has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds". Decisions on funding will be based on preapplications.

December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32960 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2000

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA). This document describes the method used to distribute funds, the application process, and submission requirements.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on June 19, 2000. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to locate off-farm labor housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Center 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris
Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott
Arizona State Office, Phoenix Corporate Center 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8706, TDD (602) 280–8770, Johnna Vargas
Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Clinton King
California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo
Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 124), TDD (303) 236–1590, Mary Summerfield
Connecticut served by Massachusetts State Office
Delaware & Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker
Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz
Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers
Guam served by Hawaii State Office, Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo
Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Ladonn McElligott
Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street,

Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young
Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Julie Brown
Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 661204, (785) 271–2721, TDD (785) 271–2767, Virginia Hammersmith
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300, TDD (606) 224–7422, Paul Higgins
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson
Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes
Maryland served by Delaware State Office
Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak
Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy
Missouri State Office, 1201 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Gary Frisch
Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, MaryLou Affleck
Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer,
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer
New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler
New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez
New York State Office, The Galleries of Syracuse 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless
North Carolina State Office, 4405 Bland Road, Suite 2120, Raleigh, NC 271209, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2401, TDD (614) 255–5757, Gerald Arnott
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers
Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Margo Donelin
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock
Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon
Rhode Island, served by Massachusetts State Office
South Carolina State Office, Strom Thurmond Federal Building 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–3432, TDD (803) 765–5697, Larry D. Floyd
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat
Utah State Office, Wallace F. Bennett Federal Building 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier
Virgin Islands served by Florida State Office
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt
Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis
Western Pacific Territories served by Hawaii State Office
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass
Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel
Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Sue Harris-Green, Deputy Director, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The farm labor housing program is authorized by the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance (RA)) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally

recognized Indian tribes, agencies or political subdivisions of State or local government, and public agencies (such as local housing authorities). In addition, RHS is authorized under section 514 to make loans to finance off-farm housing to limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

The amounts available for fiscal year (FY) 2000 for off-farm new construction are: Section 514 loans—$20,501,000; Section 516 grants—$9,150,000.

C. Section 514 and section 516 new construction funds

Section 514 new construction loan funds and section 516 new construction grant funds will be distributed to States based on a national competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart D. The scoring factors are:

(a) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, Section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points; however, if the total percentage of leveraged assistance is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(b) Seasonal, temporary, migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more)

(c) For FY 2000, outstanding applications or requests that were issued an AD–622, "Notice of Preapplication Review Action," inviting a formal application, or that had been reviewed and authorized by the National Office prior to October 29, 1998 (63 FR 57932) (the publication date of the proposed rule changing from a first-come, first-served basis to an annual competitive funding cycle). (15 points)

2. States will rank preapplications by point score. For point-score ties within the State, rank order will be determined by giving first preference to the application with the greatest actual percentage of leveraged assistance. In case of further same-State ties, rank order will be determined by lottery.

3. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

II. Funding Limits

A. Individual requests may not exceed $2.5 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds.

C. New construction RA will be held in the National Office for use with section 514 loans and section 516 grants.

III. Application Process

All applications for sections 514 and 516 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart D, and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by another Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for application information.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32961 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–XV–U

OL

64

ISS

2
4
4

DE

21

999

ML

federal register

Tuesday
December 21, 1999

Part V

Environmental Protection Agency

Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6513–2]

Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

ACTION: Notice, request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is seeking comments on its interim guidance on the CERCLA section 101(10)(H) federally permitted release definition for certain air emissions. The interim guidance is published as an Appendix to this notice.

DATES: Submit comments on or before February 22, 2000.

ADDRESSES: Send comments to EPA, CERCLA Federally Permitted Release Definition, Docket Number EC–G–1999–029, Mail Code 2201–A, and mail to: 401 M Street, SW, Washington DC, 20460, or fax to: (202) 501–1011 or email to: docket.oeca@epa.gov. Submitters who want EPA to acknowledge receipt of their comments must mail a self-addressed, stamped envelope.

FOR FURTHER INFORMATION: Visit the OECA Docket Web Site at www.epa.gov/oeca/polguid/enfdock.html or contact the RCRA/UST, Superfund and EPCRA Hotline at 1–800–424–9346 (703–412–9810 in Washington, DC area). For general questions about this guidance, please contact Lynn Beasley at (703) 603–9086 and for enforcement related questions, please contact Cheryl Rose at (202) 564–4136.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

This notice publishes interim guidance on the federally permitted release exemption to section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9603 and section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11004. The guidance responds to specific questions raised by industry groups. It discusses EPA's interpretation of the federally permitted release exemption as it applies to some air emissions.

The notice also solicits public comment on the issues discussed in the interim guidance and EPA intends to conduct a public meeting on the guidance. EPA will revise the guidance if, after reviewing the comments, the Agency believes that the guidance warrants modification.

CERCLA section 103 requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of any release of a hazardous substance in an amount equal to or greater than its reportable quantity. EPCRA section 304 requires the owner or operator of a facility to notify the State Emergency Response Commissions (SERC) and Local Emergency Planning Committees (LEPC) of any release of a CERCLA hazardous substance or an EPCRA designated extremely hazardous substance (EHS) in an amount equal to or greater than its reportable quantity. These statutes, however, do not require notification for a "federally permitted release" as defined in CERCLA section 101(10).

The attached guidance discusses the CERCLA section 101(10)(H) notification exemption for certain air emissions. The guidance will assist EPA regional offices, state and local emergency response and other authorities, as well as the regulated community, to determine whether or not a particular release meets that definition. Whether the exemption applies to a particular release often depends upon the language and purposes of a facility's permits and control regulations. EPA recognizes that additional questions may arise regarding the scope of the federally permitted release exemption, and will address those circumstances on a case by case basis. For additional guidance on specific questions regarding whether to report a release, the person in charge, owner or operator should contact EPA's Office of Emergency and Remedial Response (OERR).

The Office of Solid Waste and Emergency Response (OSWER) and the Office of Enforcement and Compliance Assurance (OECA) jointly issue this guidance.

Dated: December 3, 1999.

Timothy Fields, Jr.,

Assistant Administrator for Solid Waste and Emergency Response.

Dated: December 12, 1999.

Sylvia K. Lowrance,

Acting Assistant Administrator for Enforcement and Compliance Assurance.

Appendix—Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

Table of Contents

Summary
I. Notification Requirements: CERCLA 103/EPCRA 304
II. Federally Permitted Release: Controlled & In Compliance
III. Hazardous Air Pollutant Releases that are Controlled Under CAA Section 112
IV. Hazardous Substance & Extremely Hazardous Substance Releases that are Not Controlled
A. Sources that are Exempt from Clean Air Act Regulation
B. Accidents & Malfunctions
C. Start-up & Shut-down
D. Volatile Organic Compound/Ozone Controls & Particulate Matter Controls
—VOCs as Ozone Precursors
—Particulate Matter
V. Continuous Releases
Conclusion

Summary

Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9603, requires the person in charge of a facility or vessel to immediately report any release of a hazardous substance in an amount equal to or greater than its reportable quantity (RQ) to the National Response Center (NRC). Section 304 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. 11004, requires the owner or operator of a facility to immediately notify the State Emergency Response Commissions (SERC) and Local Emergency Planning Committees (LEPC) of any release of a CERCLA hazardous substance or an EPCRA designated extremely hazardous substance (EHS) in an amount equal to or greater than its RQ and provide written followup notice as soon as practicable thereafter.[1] When a release is continuous and stable in quantity and rate, the facility may submit a report on the circumstances of the continuous release that complies with the applicable regulations. For those releases that qualify, continuous release reporting eliminates the burden of having to report each release as it occurs. The immediate and continuous release notifications provide important information for numerous activities. They help government agencies and regulated industries to:

1. Respond to releases;
2. Assess future risks and cumulative effects;
3. Identify chronic problems;
4. Develop pollution prevention and pollution reduction plans; and
5. Educate local communities and the public.

CERCLA and EPCRA, however, do not require notification to the NRC, SERC,

[1] This guidance refers to the CERCLA "person in charge" and EPCRA "owner or operator" collectively as "the facility." This document does not provide a detailed discussion of the distinctions between the two statutes, such as the different definitions of "facility" and reporting exemptions that may apply to one and not the other. Each facility should review the statutes and regulations in order to determine its obligations.

and LEPC of "federally permitted releases," as defined in CERCLA section 101(10). An air emission is a federally permitted release under the CERCLA definition when it is subject to a permit or control regulation that is issued under section 112, section 111, Title I part C or Title I part D of the Clean Air Act (CAA) or under a CAA section 110 State Implementation Plan (SIP), including any schedule or waiver granted, promulgated or approved under these sections.

This guidance document resolves some commonly asked questions regarding the CERCLA federally permitted release exemption as it applies to air emissions. This document does not specifically address every possible application of the definition. A facility should use this document as a general guide to determine whether its individual releases of hazardous substances and EHSs, on a case by case basis, are subject to a CAA permit or control regulation and, therefore, qualify for the CERCLA federally permitted release exemption.

This guidance document explains why a release is generally subject to a permit or control regulation, as defined in CERCLA section 101(10)(H), and therefore exempt from the CERCLA/EPCRA notification requirement when the release is controlled by and in compliance with provisions issued under CAA section 112, including limits and other controls under that section that are technology-based and provisions under that section that control hazardous air pollutants (HAPs) individually or as a class of compounds.

This guidance document also explains why, in the situations discussed herein, a release is generally not subject to a permit or control regulation, as defined in CERCLA section 101(10)(H), and therefore does *not* qualify for the CERCLA federally permitted release exemption when the release is:

1. An unpermitted or unregulated release, including releases from facilities that are exempt from CAA permits or control regulations, such as grandfathered or some minor sources;
2. Caused by an accident or malfunction;
3. Released during start-up or shut-down of a facility and there is no limit or other control on the release of the hazardous substance or EHS during the start up or shut down period;
4. Regulated solely to address volatile organic compound contributions to ozone ambient air quality problems; or
5. Regulated solely to address particulate matter ambient air quality concerns.

In all of these examples, hazardous substances and EHSs are not controlled and may be released directly to the environment without any limits or other control requirements. These uncontrolled releases can involve, for example, highly toxic materials like chromic acid, mercury, methyl isocyanate or 1,3 butadiene, and may occur near sensitive populations, such as elementary schools or senior citizen homes. The law gives emergency response authorities and the public the right to receive information about these hazardous releases so that they can take steps to avoid or minimize exposure, develop responsible emergency response planning and respond to emergencies.

I. Notification Requirements: CERCLA 103/EPCRA 304

CERCLA establishes broad federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. In order to alert federal officials of potentially dangerous releases of hazardous substances, CERCLA section 103 requires the facility to immediately notify the National Response Center (NRC) of any release of a hazardous substance in an amount equal to or greater than the reportable quantity (RQ) for that substance. Section 103(a) states, in part, as follows:

> Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to Section 9602 of this title, immediately notify the National Response Center....

42 U.S.C. 9603(a).

This notification provides release information to the government so that government personnel can evaluate the need for a response and undertake any necessary action in a timely fashion. CERCLA section 104 authorizes the federal government to respond whenever there is a release or a substantial threat of a release of a hazardous substance.

CERCLA section 101(14) defines the term "hazardous substance" by reference to provisions in other environmental statutes that identify substances as hazardous and to CERCLA section 102, which instructs the EPA Administrator to designate additional hazardous substances, as appropriate, when a release of such substances into the environment may present substantial danger to the public health or welfare or the environment. Pursuant to section 102, the Administrator also sets the quantities for hazardous substances that, when released, require reporting. If the Administrator has not established a quantity, section 102(b) provides for a default RQ. A table at 40 CFR section 302.4 lists the CERCLA hazardous substances with their RQs.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) revised and extended the authorities established under CERCLA. Title III of SARA, also known as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, established new authorities for emergency planning and preparedness, emergency release notification, community right-to-know reporting and toxic chemical release reporting. One purpose of EPCRA is to provide communities and the public with information on potential chemical hazards and to foster state and local planning efforts to control hazardous substance releases.

EPCRA section 304 requires the facility where a hazardous chemical is produced, used or stored to immediately report the release of reportable quantities of CERCLA hazardous substances to state and local emergency planning authorities (*i.e.*, the SERC and LEPC) for each area that the release is likely to affect. In addition, the facility must notify the SERC and LEPC of any release of a reportable quantity of any EPCRA extremely hazardous substance (EHS). These substances are listed in 40 CFR Part 355 Appendices A & B. EPCRA section 304(c) also requires the facility, as soon as practicable after a reportable release, to provide a written followup notice that includes information on the release, response actions, risks and medical advice.

CERCLA section 103(f) establishes an alternative reporting scheme for releases that are continuous and stable in quantity and rate. CERCLA and EPCRA recognize that it is not necessary for the facility to immediately notify the NRC, SERC and LEPC every time such a release occurs in an amount equal to or greater than its RQ. Instead, the facility should report these releases in compliance with EPA's regulations at 40 CFR sections 302.8 and 355.40(a)(2)(iii).

Reporting releases of hazardous substances and EHSs to federal, state, and local emergency planning and response authorities serves several functions. It provides these authorities with important information to respond to the release as quickly as possible in order to minimize the danger to human health and the environment—in particular to that of children, other sensitive populations and sensitive ecosystems. The reports also alert

emergency planning personnel to the potential for future risks so that local communities can work with facilities to minimize harm. Emergency planning agencies also use the reports to assess emergency planning needs, to identify and develop appropriate responses to acute as well as chronic exposure and to assess cumulative effects from many different sources in local areas. These agencies and other local authorities may use this information to develop plans for pollution prevention, pollution reduction, zoning and land use planning. EPCRA also emphasizes that members of the public, including local communities and individuals, have a right to know the types and amounts of releases of hazardous substances and EHSs in their communities.

II. Federally Permitted Release: Controlled and In Compliance

The CERCLA section 103 and EPCRA section 304 notification requirements do not apply to "federally permitted releases" of hazardous substances, as defined in CERCLA section 101(10). The CERCLA definition of a federally permitted release is incorporated by reference into EPCRA and, therefore, applies to the notification requirements of both statutes. The CERCLA section 101(10) definition of federally permitted release lists eleven categories of releases that are subject to permits or authorizations under enumerated provisions of specific environmental statutes. With respect to air releases, section 101(10)(H) exempts:

> any emission into the air subject to a permit or control regulation under section 111, section 112, Title I part C, Title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections[.]

CERCLA 101(10)(H); 42 U.S.C. 9601(10)(H)(internal citations omitted).

EPA administrative rulings have clarified that a release is a federally permitted release only if it is in compliance with and controlled by one of the CAA provisions identified in CERCLA section 101(10)(H). The EPA Environmental Appeals Board (EAB) concluded that an air emission must be in compliance with a permit limitation in order to qualify for the federally permitted release exemption and that a facility must report a release of a hazardous substance that exceeds a permit limit by the RQ or more.[2] An EPA Administrative Law Judge explained that a release is only a federally permitted release if the regulation imposes an emission limit or otherwise controls the release. The judge concluded that a relief valve discharge was not controlled and, therefore not federally permitted, by a NESHAP regulation that prohibited any discharge from relief valves on equipment in vinyl chloride service except for an emergency relief valve discharge.[3]

Congress did not intend for CAA permit or regulatory provisions to provide a loophole for facilities to avoid notifying the NRC, SERC and LEPC of potentially dangerous releases of hazardous substances. The Senate Report by the Committee on Environment and Public Works that accompanied the 1980 CERCLA bill explained that "[t]he federally permitted release exceptions are not directed at avoiding notice, but rather to make it clear which provisions of law apply to discharging sources." Senate Rep. No. 848, 96th Cong., 2d Sess. 50 (1980).

Congress drafted the federally permitted release exemption to apply only to releases of CERCLA hazardous substances or EPCRA EHSs that are controlled by a CAA permit or regulation. The Senate Report explained, "Subparagraph (H) of the definition covers several sections of the Clean Air Act, as amended, where they result in the control of air emissions of hazardous substances....Whether control of hazardous substance emissions is achieved directly or indirectly, the means must be specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant." Senate Rep. No. 96–848 at 49.

The Senate Committee Report also explained that "[w]hile the exemptions from liability for federally permitted releases are provided to give regulated parties clarity in their legal duties and responsibilities, these exemptions are not to operate to create gaps in actions necessary to protect the public or the environment." Senate Rep. No. 96–848 at 47. In order to avoid the "gaps" in protection of public health and the environment that concerned Congress, the federally permitted release provision exempts only those releases that are subject to emission limits and other controls that are specifically designed to address hazardous impacts from the release of the hazardous substance or EHS at issue.

III. Hazardous Air Pollutant Releases That Are Controlled Under CAA Section 112

Releases of hazardous substances and EHSs that are controlled by and in compliance with a permit or control regulation under CAA section 112 qualify for the CERCLA section 101(10)(H) federally permitted release exemption and do not have to be reported under CERCLA section 103 and EPCRA section 304. CAA section 112 provides authority for EPA, by regulation, to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs). The emission limits and other control provisions in the NESHAPs control releases of hazardous air pollutants (HAPs), as defined in CAA section 112(a)&(b). CAA section 112 also provides some authority, for example in subsections 112(g) and 112(j), to set HAP emission limits on a case by case basis in permits.

Pursuant to CERCLA section 101(14), all HAPs are also CERCLA hazardous substances. A HAP emission is generally a CERCLA/EPCRA federally permitted release if the release is in compliance with all of a NESHAP's limits and other control provisions for the specific HAPs (or groups of HAPs) and methods of release (*i.e.*, the particular emission points) at issue. EPA typically identifies the HAPs and emissions points that each NESHAP provision controls in the NESHAP and/or the preamble to the final rule promulgating the NESHAP. The pre-1990 health-based, as well as post-1990 NESHAP controls that are often technology-based, upon maximum achievable control technology (MACT), are designed to limit or eliminate emissions of HAPs—substances that were listed because of their individual hazardous qualities and impacts. Releases of hazardous substances or EHSs that are controlled by and in compliance with health-based and MACT-based NESHAP limits and other control provisions that are directed at controlling those substances, therefore, qualify for the CERCLA/ EPCRA federally permitted release exemption.

CAA section 112(l) authorizes EPA to delegate to states the authority to implement and enforce the federal NESHAPs. Under section 112(l), EPA may approve state programs to implement and enforce emissions standards and other HAP requirements in place of federal NESHAPs, provided

[2] The EAB's decision, *In re Mobil Oil Corp.*, EPCRA Appeal No. 94–2, 5 EAD 490 (EAB Sept. 29, 1994), is available at the following internet address: http://www.epa.gov/eab/alpha.htm, or by contacting the Clerk of the Board, (202) 501–7060.

[3] The ALJ's decision, *In re Borden Chemicals & Plastics, Co.*, [CERCLA] EPCRA 003–1992 (Order Granting Partial Accelerated Decision Concerning Liability, Feb. 18, 1993), is available by contacting the EPA Hearing Clerk at Headquarters, (202) 260–4865, and is also available through legal research services such as Lexis or Westlaw.

the state requirements are no less stringent than federal requirements. State programs that EPA approves under CAA section 112(l) are federally enforceable pursuant to section 112(l)(7). Releases of CERCLA hazardous substances and EPCRA EHSs that are controlled by and in compliance with these EPA-approved state programs also qualify for the CERCLA and EPCRA federally permitted release exemption.

IV. Hazardous Substance and Extremely Hazardous Substance Releases That Are Not Controlled

A release of a hazardous substance is not subject to a permit or control regulation when the facility does not have a permit or regulation that controls the release at issue. The following provides a few examples of releases that do not qualify for the CERCLA/EPCRA federally permitted release exemption. In these situations, the facility must immediately notify the NRC, SERC and LEPC when it releases a hazardous substance or EHS release in an amount that is equal to or greater than the RQ or file a continuous release report for its releases that are continuous and stable in quantity and rate.

A. Sources That Are Exempt From CAA Regulation

Air emissions of hazardous substances or EHSs that are not subject to a permit or control regulation issued under CAA sections 111, 112, Title I—part C, Title I—part D, or a section 110 SIP are not CERCLA federally permitted releases. A CAA exemption from these CAA provisions does not exempt a facility from its obligation to comply with CERCLA and EPCRA notification requirements. Emissions that are exempt from CAA requirements are not subject to a permit or control regulation, do not qualify for the CERCLA/EPCRA federally permitted release notification exemption, and must comply with CERCLA and EPCRA notification requirements. Pursuant to CERCLA and EPCRA, the facility must notify the NRC, SERC and LEPC of hazardous substance or EHS releases that are exempt from CAA permits or control regulations when the releases are equal to or greater than the applicable RQs, or file a continuous release report for its releases that are continuous and stable in quantity and rate.

Releases that are not subject to CAA permits or control regulations may include emissions from facilities that are exempt from CAA controls because they existed prior to enactment of the CAA requirement, such as unmodified "grandfathered" sources, or releases from facilities that are exempt from CAA controls because they emit an annual, cumulative amount of pollution below a stated threshold, such as unpermitted minor sources. The hazardous substance and EHS releases from these facilities are not controlled or limited by, and therefore are not subject to, a permit or control regulation. Without CERCLA and EPCRA notification, emergency response authorities would not learn of potentially dangerous releases that are exempt from CAA requirements.

A facility that is exempt from CAA permits and control regulations could release a dangerous amount of a hazardous substance that requires a federal, state or local emergency response action. Even a very small source could have a release of a hazardous substance that has catastrophic consequences and requires an immediate response. Information about emissions from exempt sources may also be crucial to emergency and pollution prevention planning. It would frustrate the notification purposes of CERCLA and EPCRA to interpret the federally permitted release exemption to authorize these releases without alerting the NRC, SERC and LEPC.

The CERCLA definition of federally permitted release includes releases that are subject to any schedule or waiver granted, promulgated or approved under the CAA sections identified in the definition. The terms "schedule" and "waiver" have specific meanings under the CAA. CERCLA's reference to CAA schedules and waivers covers only those specific meanings and does not include exempt sources. Under section 111(j)(1) of the CAA, for example, EPA may grant a waiver from a New Source Performance Standard (NSPS) in order to encourage the use of an innovative technological system or systems of continuous emission reduction. If a technology does not result in an emission reduction that equals or exceeds the applicable standard, the regulator will terminate the waiver and establish a schedule for compliance. A release of a hazardous substance or EHS that is controlled by and in compliance with a schedule or waiver issued pursuant to a CAA section listed in CERCLA section 101(10)(H) is a CERCLA/EPCRA federally permitted release, provided the schedule or waiver includes and authorizes a release of that hazardous substance.

B. Accidents and Malfunctions

Unanticipated releases, such as accidents or malfunctions, are the most obvious types of releases that concerned Congress when it enacted CERCLA section 103 and EPCRA section 304. An accident or malfunction can result in an extremely large and/or extremely toxic release. Many accidents or malfunctions require immediate responses, which could include shutting down the facility, evacuating the local population or sealing off the affected area.

A fundamental purpose of CERCLA section 103 and EPCRA section 304 is to ensure that emergency response personnel are immediately alerted of unanticipated releases. Once notified, emergency response experts can assess the dangers from the release and initiate appropriate action to ensure that the harm is minimized, the release is brought under control as quickly as possible and any remaining damage is cleaned up or repaired.

Congress did not intend to exempt unanticipated releases from CERCLA section 103 and EPCRA section 304. As explained in the Senate Report, "Accidents—whatever their cause—which result in, or can reasonably be expected to result in releases of hazardous pollutants would not be exempt from the requirements and liabilities of this bill. Thus, fires, ruptures, wrecks and the like invoke the response and liability provisions of the bill." Senate Rep. No. 96–848 at 48.

Some CAA programs recognize that accidents and malfunctions may happen even when the facility has implemented reasonable measures to avoid them. A release caused by an accident or malfunction, therefore, may not violate the facility's CAA obligations if the facility develops, maintains and is operating in compliance with an accident and malfunction plan. The CAA requires accident and malfunction plans in order to prevent accidental releases, identify accidents and malfunctions when they occur, bring accidental releases under control as quickly as possible and clean up any damage. Accident and malfunction plans, however, do not control unanticipated releases. Even when a facility is in compliance with its accident and malfunction plan, an unanticipated release of hazardous substances or EHSs could result in severe impacts that require immediate response. Unless the facility prevents a release, or until it brings an unanticipated release under control through repairs or other means, the release is uncontrolled and does not qualify for the CERCLA/EPCRA federally permitted release notification exemption. An unanticipated release of a hazardous substance or EHS that is due to an accident, malfunction or otherwise, is not subject to a permit or control regulation and must be reported under CERCLA section 103 and EPCRA

section 304 when the amount of the release is equal to or greater than the applicable RQ.

C. Start-Up and Shut-Down

Start-up and shut-down releases can be large and/or toxic and may cause harm to human health and the environment. It is important for federal, state and local emergency response personnel to have information about uncontrolled emissions during start-up and shut-down periods for analysis of chronic and cumulative impacts, proper planning and emergency response.

Some CAA regulations do not require sources to meet emission limits during start-up and shut-down. A regulation may exempt a release from CAA emission limits or other controls because, for example, it may not be technologically feasible for the source to achieve the requirement during start-up and shut-down.

If a permit or control regulation contains explicit emission limits or other controls on the releases of listed hazardous substances or EHSs during start-up or shut-down, then releases of those substances qualify for the CERCLA/EPCRA federally permitted release notification exemption up to the controlled amount. If, however, a release of a hazardous substance or EHS is exempt from CAA regulation, or is otherwise not subject to emission limits or technology controls during the start-up or shut-down of an operation, then these uncontrolled releases do not qualify for the CERCLA/EPCRA federally permitted release notification exemption and must comply with CERCLA and EPCRA notification requirements.

In many instances, facilities must have a start-up, shut-down and malfunction (SSM) plan that sets forth procedures for operating and maintaining a source during those periods. See, for example, 40 CFR 63.6(e)(3). Even when a facility is in compliance with its SSM plan, it may experience uncontrolled or unanticipated releases of a hazardous substance or EHS that require a response. To the extent that an SSM plan does not incorporate permit or regulation requirements for specific emission limits or other technology controls on the facility's releases of hazardous substances and EHSs during start-up or shut-down, then those releases are not controlled by the SSM plan and must comply with CERCLA and EPCRA notification requirements, even when the uncontrolled releases occur while the facility is operating in accordance with its CAA SSM plan.

D. Volatile Organic Compound/Ozone Controls and Particulate Matter Controls

An independent, unrelated requirement for ozone or particulate matter does not qualify a release of a hazardous substance or EHS for the CERCLA/EPCRA federally permitted release exemption. Limits or other controls on volatile organic compounds (VOCs) as ozone precursors or on small particles as particulate matter (PM) do not exempt hazardous substance and EHS releases from the CERCLA and EPCRA notification provisions. To conclude otherwise would frustrate the purposes of the CERCLA and EPCRA release notification requirements and potentially allow thousands of pounds of highly toxic chemicals to be released—perhaps next to a schoolyard, nursing home or other sensitive population, without any notice to federal, state or local response and emergency planning authorities or to the public. These releases could potentially endanger surrounding populations and have a significant impact on human health and the environment.

Hazardous substances and EHSs have RQs that range from one pound to 5,000 pounds per 24 hour period. The RQ is based upon the intrinsic physical, chemical and toxicological properties of the substance. Facilities must report a release of CERCLA hazardous substances or EPCRA EHSs when the release amount is equal to or greater than the substance's RQ. Emergency response personnel and local emergency planning officials need to have complete and accurate information regarding the releases of these different hazardous substances in order to evaluate the impact on human health and the environment from the release amount.

The manner in which EPA and authorized states regulate VOCs/ozone precursors and PM is inconsistent with the CERCLA and EPCRA notification requirements. The EPA and authorized state ambient air quality programs that regulate VOCs as ozone precursors or that regulate small particles as PM are not designed to control releases of hazardous substances and EHSs and do not address the hazardous impacts that concerned Congress when it enacted the CERCLA and EPCRA release notification requirements. The CAA provisions in CERCLA section 101(10)(H) that control hazardous emissions, and not CAA provisions directed at ozone or particulate ambient air quality, regulate hazardous substances and EHSs consistently with CERCLA and EPCRA.

Congress established separate CAA programs with independent control schemes for the different impacts from emissions of different types of substances. The different CAA programs focus on the particular harms from the substances that they are designed to regulate and impose permit and regulatory limits and other controls to achieve the specific purposes of the individual program. EPA and authorized states control hazardous emissions through NESHAPs or other hazardous emission controls that they issue pursuant to sections 112, 111 or 110 or Title I Parts C or D of the CAA. A release of a hazardous substance or EHS is only exempt from the CERCLA/EPCRA notification requirements when the release is subject to a permit or control regulation under a CAA program that is specifically designed to control the hazardous substance or EHS release. Limits and other controls on VOCs as ozone precursors or on small particles as PM do not control releases for this purpose.

VOCs as Ozone Precursors

Permit provisions and regulations that regulate ozone through VOCs are not directed at controlling releases of hazardous substances and EHSs. These limits are based upon VOC contributions to ozone formation, not upon the toxicity of individual substances. Particularly in areas that have attained the ozone national ambient air quality standard (NAAQS), Ozone-control limits on VOCs may be very large, are often expressed in annual terms, may apply to numerous substances with various toxicity levels and are unrelated to the risks posed by individual hazardous substances. Ozone-control limits on VOCs are typically not designed to control the facility's releases of hazardous substances or EHSs. Specific hazardous releases are often dangerous to human health and the environment in much smaller amounts than general VOC emissions. A facility could have a dangerous peak release of an individual hazardous substance that is consistent with a VOC limit for ozone control, but that may require an immediate response in order to protect human health and the environment.

Formaldehyde, 1,3 butadiene or ethylene oxide, for example, are VOCs that, along with less hazardous VOCs, such as dimethyl ether or ethylene, contribute to ozone formation. Formaldehyde and ethylene oxide, however, are HAPs that are subject to controls under section 112 and other CAA provisions that Congress established within the CAA to control HAPs. EPA controls formaldehyde and ethylene oxide through the HAP programs and not through limits that are

designed to address ambient ozone levels. Unlike general VOC limits, a HAP limit imposes controls on specific substances and often provides a list of hazardous substances and hourly emission limits for each. Hazardous substance and EHS releases qualify for the CERCLA/EPCRA federally permitted releases notification exemption when they are controlled by and in compliance with provisions to control HAP releases. Hazardous substances and EHSs, therefore, are not subject to a permit or control regulation under CERCLA section 101(10)(H), when the facility has a general emission limit or other control for VOCs as ozone precursors in order to address ozone ambient air quality.

Particulate Matter

PM is a designation that identifies particles of a certain size, mass or amount. CAA permits and control regulations for PM address the impacts on human health and the environment from these particles, taking into account the particles' size and mass and the dangers presented by the inhalation of small particles. The EPA program for PM is not designed to address the independent impacts from hazardous substances or EHSs that may be released in small particles. PM permits and control regulations control the emission amounts of small particles of any substance. They typically apply to hazardous and non-hazardous substances alike. Releases of hazardous substances and EHSs are subject to specific CAA provisions that are intended to address these releases.

Chromium, for example, which may be released as small particles, is a HAP that has many severe hazardous effects independent of any impact due to small particle size. Chromium is extremely toxic and may be found in its acid mist form, chromic acid. Some forms of chromium, such as hexavalent chromium, are also considered to be carcinogenic. EPA and authorized states' particulate matter provisions do not control releases of chromium or chromic acid as hazardous substance or EHS releases. These hazardous substances are subject to permits and control regulations that specifically limit or otherwise control chromium releases under the CAA's HAP programs. Releases of hazardous substances or EHSs, therefore, are not subject to a permit or control regulation under CERCLA section 101(10)(H), when the facility has a general emission limit or other control for PM.

V. Continuous Releases

In CERCLA section 103(f)(2), Congress established an alternative notification method for hazardous substance releases that do not qualify for the federally permitted release exemption under CERCLA section 101(10)(H), but that are "continuous" and "stable in quantity and rate." The continuous release reporting program provides response authorities with important information regarding the quantity, nature and potential impact of these releases, while reducing the notification burden. Response agencies maintain the immediate and continuous release notification information and use it for emergency planning and cumulative impact analysis.

Continuous release notifications perform, for example, the following important functions: (1) They provide information on releases into the environment that is often not otherwise available to emergency response personnel and the public; (2) they may alert government officials and the public as to when releases are expected to increase; and (3) they help government officials and emergency planning personnel to predict when peak exposures to nearby populations may occur. Local planners may use the continuous release applications to plan outdoor activities in the community; to assist with urban planning decisions, such as where to locate buildings that may house or provide services to sensitive populations (*e.g.*, senior citizen centers, day care centers and schools); and to assess the risk from total emissions in a community.

Facilities who believe a release could qualify as "continuous" must:

(1) Make an initial telephone call to the NRC, SERC and LEPC;

(2) Provide an initial written notification describing the release to the EPA Region, SERC and LEPC within 30 days of the telephone call; and

(3) Provide a one-time written follow-up notification to the EPA Region within 30 days of the first anniversary of filing the initial written report.

Thereafter, no further notification is required, unless there is a change in the information submitted or there is a statistically significant increase in the release. If there is a change in the composition or source of a release that did qualify as continuous, the change must be treated as a new release.[4]

The continuous release notification requirements do not impose new, independent emissions limits. They do, however, offer a less burdensome way to report predictable releases while also providing government agencies and local communities with information that may be critical to managing risks and reducing exposure to sensitive populations.

Conclusion

CERCLA section 103 and EPCRA section 304 require facilities to provide important information about hazardous substances and EHSs that are released into the environment to the NRC, SERCs, LEPCs, and indirectly to EPA, the Coast Guard, other agencies and the public. The continuous release reporting option provides a less burdensome method for facilities to notify these federal, state and local authorities of certain hazardous substance and EHS releases.

The federally permitted release exemption to CERCLA 103 and EPCRA 304 notification requirements eliminates the notification requirement, including the continuous release reporting option, for certain air emissions of hazardous substances and EHSs when the release is subject to a permit or control regulation issued pursuant to CAA, sections 112 and 111, Title I part C, Title I part D, or a section 110 SIP. This guidance document discusses the federally permitted release exemption as it would be applied in the specific situations described herein. A brief statement of the guidance's conclusions is set forth in the Summary section, above.

The facility must determine whether its hazardous substance and EHS releases qualify for the notification exemption. In order to overcome the presumption that a release of a hazardous substance or EHS is not federally permitted and that a facility must immediately notify the NRC, SERC and LEPC when the amount of release is equal to or greater than the substance's RQ, the facility must demonstrate that the CERCLA federally permitted release definition exempts the hazardous substance or EHS release from the notification requirements.

This guidance does not impose any new reporting obligations or burdens and does not recommend new forms or reporting mechanisms. CAA permit modifications are not required as a result of this guidance. When a facility's

[4] The above description of the continuous release reporting requirements is a summary of the requirements and is not intended to modify or replace the continuous release regulations. In order to determine whether a release qualifies for continuous release reporting and for instructions on how to comply, use the continuous release reporting regulations at 40 CFR section 302.8 , 40 CFR 355.40(a)(2)(iii) and 55 FR 30,166 (July 24, 1990).

CAA permit or control regulations do not control a release as the release of a particular hazardous substance or EHS, or when the release is not in compliance with such a permit or control, then the facility must comply with CERCLA section 103 and EPCRA section 304 notification requirements.

This guidance is consistent with statements that the Agency has previously made regarding the federally permitted release exemption. EPA issued two Notices of Proposed Rulemaking (NPRMs) and one Supplemental Notice regarding the application of the federally permitted release exemption in CERCLA section 101(10).[5] Subsequent administrative adjudications have provided additional guidance, and EPA has published regulations to explain the reduced reporting option for continuous releases.

When developing this guidance, EPA considered the public comments on air emissions that were submitted in response to the two NPRMs and the Supplemental Notice. Some of those comments are no longer applicable because EPA has already addressed the issues discussed in those comments through administrative adjudications or other Agency statements. EPA also considered its experience in implementing the reporting requirements under CERCLA section 103 and EPCRA section 304 and the success of the CERCLA and EPCRA programs in providing information to communities about releases of hazardous substances and EHSs.

This guidance document provides notice of EPA's interpretation of the CERCLA term "federally permitted release" as it applies in the situations described herein. It does not modify, amend or in any way change current law regarding release notification requirements under CERCLA and EPCRA. This guidance document does not impose new legally-binding requirements on EPA, states or the regulated community. EPA may revise this guidance in the future.

EPA intends to apply the interpretations set forth in this guidance in enforcement actions, but retains the discretion to adopt approaches that differ from this guidance when appropriate. When setting priorities to determine whether to pursue an enforcement action, EPA generally considers the potential for significant risks and adverse impacts on human health and the environment, as well as the integrity of the federal program.

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations and regulatory policies that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This interim guidance document does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This guidance does not impose any new requirements nor modify existing law. It explains a CERCLA provision that defines an exemption to notification requirements that are imposed by statute. The guidance does not preempt any State or local law, and does not impose any mandate on State and local governments. The requirements of section 6 of the Executive Order, therefore, do not apply to this interim guidance.

[FR Doc. 99–33030 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–P

[5] Notice of Proposed Rulemaking, 48 FR 23,552 (May 25, 1983); Notice of Proposed Rulemaking, 53 FR 27,268 (July 19, 1988); Supplemental Notice, 54 FR 29,306 (July 12, 1989).

federal register

Tuesday
December 21, 1999

Part VI

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403
Labor Organization Annual Financial Reports; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215–AB29

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule makes several minor and technical revisions to the annual financial reporting forms which labor organizations are required to file under the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). It also makes several technical amendments to the Department of Labor's regulations in which those reporting forms are prescribed. These changes are being made in order to enable the Department to optically scan the reports and make them available on its Internet Web site, and to make the reports more uniform.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N–5605, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. 431(b), requires that each covered labor organization file an annual report with the Secretary of Labor disclosing its financial condition and operations. The requirements of LMRDA section 201(b) apply to all labor organizations in the private sector. In addition, section 1209(b) of the Postal Reorganization Act, 39 U.S.C. 1209(b), makes the LMRDA applicable to labor organizations which represent employees of the U.S. Postal Service. Finally, the Department's regulations, at 29 CFR 458.3, which implement the provisions of the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 relating to standards of conduct for federal sector labor organizations, 5 U.S.C. 7120 and 22 U.S.C. 1017, respectively, apply the LMRDA reporting requirements to labor organizations which represent certain employees of the federal government.

Section 208 of the LMRDA authorizes the Secretary to issue, amend, and rescind rules prescribing the form and publication of the information and annual financial reports required by sections 201(a) and 201(b), and to provide simplified reports for labor organizations for whom the Secretary finds that by virtue of their size a detailed report would be unduly burdensome. Part 403 of title 29 of the Code of Federal Regulations contains the regulations implementing these reporting requirements and prescribing the reporting forms. The Secretary of Labor has delegated authority under the LMRDA to the Assistant Secretary for Employment Standards. See Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

The regulations, at 29 CFR 403.3 and 403.4(a), prescribe Form LM–2 for labor organizations with total annual receipts of $200,000 or more, simplified Form LM–3 for labor organizations with total annual receipts of less than $200,000, and simplified Form LM–4 for labor organizations with total annual receipts of less than $10,000. The regulations at 29 CFR 403.4(b) also provide a simplified reporting format which a parent national or international labor organization may submit on behalf of a subordinate local labor organization which has no assets, liabilities, receipts, or disbursements.

The Department has redesigned Forms LM–2/3/4 so that they can be optically scanned and made available on the Internet. The major changes to the forms are in their appearance. The most important of these changes are (1) the reporting forms are now landscape rather than portrait orientation, (2) they have pre-printed green boxes for entering information for most of the items, and (3) the spaces for entering information are larger and, consequently, the forms have more pages (twelve pages instead of six for Form LM–2, eight pages instead of four for Form LM–3, and two pages instead of one for Form LM–4). In addition, labor organizations will have to file only one copy of the report rather than the two that are now required.

The only change in the content of Forms LM–2/3/4 is that item 3 has been expanded. Currently, labor organizations are asked in item 3 to indicate whether the report is a terminal report. In the revised Forms LM–2 and LM–3, labor organizations are also asked to indicate whether the report is an amended report or a separate report for a subsidiary organization; in the revised Form LM–4, labor organizations are also asked to indicate whether the report is an amended report. This information will facilitate the processing and scanning of the reports.

The changes made in this final rule to Forms LM–2/3/4, prescribed in the regulations at 29 CFR 403.3 and 403.4(a), do not require any change in the text of the regulations.

This final rule also makes several changes to the regulations at 29 CFR 403.4(b). That regulation provides that a parent body may fulfill the reporting obligation of any of its subordinate local labor organizations which have no assets, liabilities, receipts, or disbursements, and which meet certain other conditions. It also sets out a simplified format for the parent body to follow in reporting the required information.

This final rule makes several changes to the information required to be reported by a parent national or international labor organization to fulfill the reporting obligations of its local labor organizations. First, this rule eliminates the requirement to report the location in which the local labor organization is chartered to operate. The requirement to report this information in Forms LM–2/3/4 was eliminated when those forms were revised on December 21, 1993 (58 FR 67594). This change will therefore make the reporting requirement for the simplified format the same as the requirement for Forms LM–2/3/4 with regard to the reporting of charter location.

In addition, this rule eliminates the requirement that the simplified reporting format be submitted in duplicate. This change will also make the report filing requirement uniform with Forms LM–2/3/4.

This rule also eliminates the requirement to report the names and titles of all officers of the local labor organizations for which the parent body files reports under 29 CFR 403.4(b). Only the names and titles of the president and treasurer, or corresponding principal officers, will have to be reported. This will make the simplified format reporting requirement the same as the requirements for Form LM–4 with regard to the reporting of officers.

Finally, this rule changes the regulations so that the information reported by parent national and international unions on behalf of their local labor organizations will have to be submitted on letter-size paper. Forms LM–2/3/4 are letter-size, and the instructions for those forms provide that any attached additional sheets should be letter-size. This change will, therefore, make the simplified format reports the same size as Forms LM–2/3/4, and will facilitate the processing and scanning of the reports.

The changes made by this rule will be effective January 1, 2000. Thus, labor organizations will file the new reporting forms and format for fiscal years beginning on and after January 1, 2000.

Publication in Final

The undersigned has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. This rulemaking makes technical and nonsubstantive amendments to facilitate wider availability of public information, and imposes no additional burden on the public. Consequently, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

Effective Date

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive. Therefore, these amendments shall be effective January 1, 2000. See 5 U.S.C. 553(d).

Administrative Requirements

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2). Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no additional information collection requirements. The information collection requirements in the regulations to which this rule makes technical amendments have been approved by the Office of Management and Budget (OMB control number 1215–0188).

D. Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a "major rule" requiring prior approval by the Congress and the President pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Further, since the Department has determined, for good cause, that publication of a proposed rule and solicitation of comments on this rule is not necessary, under 5 U.S.C. 808(2), this final rule is effective immediately upon publication as stated previously in this notice.

E. Unfunded Mandates Reform Act

For purposes of section 2 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, as well as Executive Order 12875 (58 FR 58093, October 28, 1993), this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

F. Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

List of Subjects in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

Adoption of Amendments of Regulations

In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby amends Chapter IV of title 29 of the Code of Federal Regulations as follows.

CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

2. Section 403.4(b) is revised to read as follows:

§ 403.4 Simplified annual reports for smaller labor organizations.

* * * * *

(b) A local labor organization not in trusteeship, which has no assets, no liabilities, no receipts and no disbursements during the period covered by the annual report of the national organization with which it is affiliated need not file the annual report required by § 403.2 if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to § 402.3(b) of this chapter, and does not have governing rules of its own;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which such simplified reports are submitted;

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, a separate letter-size sheet for each local labor organization containing the following information with respect to each local organization in the format illustrated below as part of this regulation:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The names and titles of the president and treasurer or

corresponding principal officers as of the end of the reporting period;

(4) At least thirty days prior to first submitting simplified annual reports in accordance with this section, the national organization notifies the Office of Labor-Management Standards in writing of its intent to begin submitting simplified annual reports for affiliated local labor organizations;

(5) The national organization files the terminal report required by 29 CFR 403.5(a) on Form LM–3 or LM–4, as may be appropriate, clearly labeled on the form as a terminal report, for any local labor organization which has lost its identity through merger, consolidation, or otherwise if the national organization filed a simplified annual report on behalf of the local labor organization for its last reporting period; and

(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report and the simplified annual reports for the affiliated local labor organizations, the following certification properly completed and signed by the president and treasurer of the national organization:

Certification

We, the undersigned, duly authorized officers of [name of national organization], hereby certify that the local labor organizations individually listed on the attached documents come within the purview of 29 CFR 403.4(b) for the reporting period from [beginning date of national organization's fiscal year] through [ending date of national organization's fiscal year], namely:

(1) they are local labor organizations; (2) they are not in trusteeship; (3) they have no assets, liabilities, receipts, or disbursements; (4) they are governed by a uniform constitution and bylaws, and fifty copies of the most recent uniform constitution and bylaws have been filed with the Office of Labor-Management Standards; (5) they have no governing rules of their own; and (6) they are subject to the following uniform schedule of fees and dues: [specify schedule for dues, initiation fees, fees required from transfer members, and work permit fees, as applicable].

Each document attached contains the specific information called for in 29 CFR 403.4(b)(3)(i)–(vi), namely: (i) the local labor organization's name and designation number; (ii) the file number assigned the organization by the Office of Labor-Management Standards; (iii) the local labor organization's mailing address; (iv) the beginning and ending date of the reporting period; (v) the names and titles of the president and treasurer or corresponding principal officers of the local labor organization as of [the ending date of the national organization's fiscal year].

Furthermore, we certify that the terminal reports required by 29 CFR 403.4(b)(5) and 29 CFR 403.5(a) have been filed for any local labor organizations which have lost their identity through merger, consolidation, or otherwise on whose behalf a simplified annual report was filed for the last reporting period.

(Format for Simplified Annual Reporting)

SIMPLIFIED ANNUAL REPORT

Affiliation name:

_____

Designation name and number:

_____

Unit name:

_____

Mailing address:

_____

Name of person:

_____

Number and street:

_____

City, State and zip:

_____

File number:

_____

Period covered:

_____

From Through

_____

Names and Titles of president and treasurer or corresponding principal officers

_____

For certification see NHQ file folder file number:

President _____

Where signed _____

Date _____

Treasurer _____

Where signed _____

Date _____

Signed in Washington, D.C. this 15th day of December, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 99–33044 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–45–P

federal register

Tuesday
December 21, 1999

Part VII

Department of Health and Human Services

CFR Part 121

Organ Procurement and Transplantation Network; Final Rule Amendment, Stay of Final Rule, and Additional Comment Period; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

Organ Procurement and Transplantation Network; Final Rule Amendment, Stay of Final Rule, and Additional Comment Period

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final Rule Amendment, Stay of Final Rule, and Additional Comment Period.

SUMMARY: Section 413 of the Ticket to Work and Work Incentives Improvement Act of 1999, signed into law by the President on December 17, 1999, provides that the Organ Procurement and Transplantation Network (OPTN) Final Rule published on April 2, 1998, together with the amendments published on October 20, 1999, shall not become effective before March 16, 2000. This document announces a stay of the final rule, consistent with section 413, announces that the public may submit comments on the final rule, as amended, for a 60-day period, and amends a compliance deadline in the final rule, as amended.

DATES: Under Section 413 of the Ticket to Work and Work Incentives Improvement Act of 1999 (H.R. 1180, signed into law by the President on December 17, 1999 published on April 2, 1998 (63 FR 16296), as amended by the final rule published on October 20, 1999 (64 FR 56650), is stayed effective December 17, 1999 through March 15, 2000. The amendment to 42 CFR 121.8 is effective on March 16, 2000. To ensure consideration, comments on the final rule as amended must be received by February 22, 2000.

ADDRESSES: Written comments should be submitted to Lynn Rothberg Wegman, Acting Director, Division of Transplantation, Office of Special Programs, HRSA, 5600 Fishers Lane, Room 7C–22, Rockville, Maryland 20857. The comments submitted will be available for public inspection and copying at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lynn Rothberg Wegman, at the address listed above, telephone 301–443–7577.

SUPPLEMENTARY INFORMATION: On April 2, 1998 (63 FR 16296), the Secretary of Health and Human Services published in the **Federal Register** as 42 CFR part 121 a final rule governing the operation of the Organ Procurement and Transplantation Network.

As a result of the enactment of section 4002 of the Fiscal Year 1998 Supplemental Appropriations Act, Public Law 105–174, the comment period was extended until August 31, 1998, and the final rule was not to become effective before October 1, 1998. On July 1, 1998, the Department published a document in the **Federal Register** announcing the extension of the comment period and the delay until October 1, 1998, of the effective date of the final rule. (63 FR 35847.) In addition, several of the dates contained in provisions of the final rule were also amended in the July 1, 1998, document.

On October 21, 1998, Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, became effective. Section 101(f) of Division A of the public law enacted the Department of Labor, Heath and Human Services, Education, and Related Agencies Appropriations Act for Fiscal Year 1999. Section 213 of that Act provided that the final rule at 42 CFR part 121 was not to become effective before the expiration of the 1-year period beginning on the date of enactment of that Act. Section 213 also called for the Institute of Medicine to study several aspects of the final rule and of the organ transplant system generally and encouraged the Department to meet with representatives of the OPTN. The Institute's report, issued in July 1999, the public comments received on the April 2, 1998, rule, and extensive consultation with representatives of the OPTN. The Institute's report, issued in July 1999, the public comments received on the April 2, 1998, rule, and extensive consultation with representatives of the OPTN informed the Department's deliberations on possible revisions to the rule. The result was the Department's issuance on October 20, 1999 (64 FR 56650), of amendment sot the final rule, with an effective date for the rule as amended of November 19, 1999.

It is this amended rule that is subject to the provisions of section 413 of the Ticket to Work and Work Incentives Improvement Act of 1999. The rule is not to become effective before March 16, 2000. As provided in section 413(b)W, comments may be submitted for a period ending on February 22, 2000. The Department will consider any revisions that may be appropriate based on our review of the comments.

Section 121.8(e)(2) within part 121, as amended on October 20, 1999, established a compliance deadline of February 15, 2000, for the OPTN to transmit to the Secretary revised policies and supporting documentation for liver allocation. Because we do not seek to have the deadline occur during the period when the regulation is stayed, we have decided to extend the deadline to March 16, 2000.

List of Subjects in 42 CFR Part 121

Health care, Hospitals, Organ transplantation, Reporting and recordkeeping requirements.

Dated: December 16, 1999.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: December 17, 1999.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR Part 121 is amended as follows:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

1. The authority citation for part 121 continues to read as follows:

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh).

§ 121.8 [Amended]

2. Effective March 16, 2000, in § 121.8, paragraph (e)(2) is amended by revising the words "February 15, 2000" to read "March 16, 2000".

[FR Doc. 99–33276 Filed 12–20–99; 10:11am]

BILLING CODE 4160–15–M

federal register

Tuesday
December 21, 1999

Part VIII

The President

Proclamation 7261—55th Anniversary of the Battle of the Bulge

Proclamation 7262—Wright Brothers Day, 1999

OL
64
ISS
2
4
4
DE
21
999
MI
Fed
Vol.
Tue
Tit
Th

Federal Register
Vol. 64, No. 244
Tuesday, December 21, 1999

Presidential Documents

Title 3—

The President

Proclamation 7261 of December 16, 1999

55th Anniversary of the Battle of the Bulge

By the President of the United States of America

A Proclamation

By the winter of 1944, the United States and our Allies had turned the tide of the Second World War. Allied forces had liberated the Italian peninsula and were gaining ground in France and the Low Countries. In mid-December, in a desperate attempt to halt this steady advance, Adolf Hitler launched a furious and massive counteroffensive. On December 16, 29 German divisions flooded the Allied line in the Ardennes Forest region of Belgium and Luxembourg. The Battle of the Bulge had begun.

Facing superior enemy numbers, rugged terrain, and bitter weather, the American troops at first fell back. But their determination to defeat the Nazis never wavered. For 6 weeks, U.S. soldiers responded to fierce German offensives with equally determined counterattacks, refusing to succumb to the Nazi onslaught. The siege of Bastogne in Belgium remains an enduring symbol of their indomitable spirit. At that strategic crossroads, a small detachment of the 101st Airborne Division and other attached troops were encircled. When called upon to surrender by the much larger German force, Brigadier General Anthony McAuliffe dismissed the demand with his legendary one-word reply: "Nuts." Against all odds, he and his men held firm during the siege until reinforcements arrived and helped halt the German offensive at a critical point in the Battle.

Inevitably, the spirit, toughness, valor, and resolve of the U.S. forces led to victory. By late January of 1945, the American and Allied counterattack had succeeded in pushing back the Nazi forces, eliminating the threat of further German offensives and ultimately sealing the fate of the Nazi regime. But this victory was costly. At the end of the Battle of the Bulge, some 19,000 Americans lay dead, and thousands more were wounded, captured, or missing in action.

Now, more than half a century later, we still stand in awe of the courage and sacrifice of the more than 600,000 U.S. soldiers and airmen who fought that epic battle. These seemingly ordinary Americans achieved extraordinary things. Leaving their homes, their families, and their civilian lives behind them, they stepped forward to wage a crusade for freedom. They laid the foundations of the peace and security we enjoy today and planted the seeds of democracy that now are bearing fruit throughout Europe. Many of these heroes and patriots have gone to their final rest; but their service, their sacrifice, and their achievements will live forever in the memories and hearts of their fellow Americans.

The Congress by House Joint Resolution 65, has authorized and requested the President to issue a proclamation honoring the veterans of the Battle of the Bulge.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the period of December 16, 1999, to January 25, 2000, as a time to commemorate the 55th anniversary of the Battle of the Bulge. I call upon the people of the United States to express our profound gratitude to the veterans of the Battle of the Bulge and to honor them with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99-33277
Filed 12-20-99; 10:59 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7262 of December 16, 1999

Wright Brothers Day, 1999

By the President of the United States of America

A Proclamation

We stand at a rare moment in human history: the end of a century and the birth of a new millennium. The arrival of the 21st century presents all Americans with an opportunity to reflect on where we have been as a Nation and to dream about where we will go in the future. At the dawn of this century, Orville and Wilbur Wright found themselves poised at such a moment. Behind them lay years of painstaking effort and experimentation, trial and failure, in their pursuit of the dream of powered human flight. Ahead of them stretched the sands of Kitty Hawk in North Carolina and yet another attempt to fly in the aircraft they had built by hand. On December 17, 1903, for 12 seconds and 120 feet, they achieved their dream and forever changed the destiny of humankind.

That first brief flight showed that the sky was no longer a limit but a new horizon; it ignited new dreams in our people. Each succeeding generation of Americans, building on the Wright brothers' achievement and fired by the same vision, energy, and determination, has refined the science of flight, increased the range, efficiency, and safety of aircraft, and created a modern air transportation system and aviation industry that have energized our economy and helped transform the world into a truly global community.

And, while they could never have foreseen it, the Wright brothers also brought us to the threshold of space. A scant six decades after that first flight, Americans left the Earth's atmosphere and orbited our planet. By 1969, Neil Armstrong had left the first human footprint on the dusty surface of the Moon. Today's astronauts fly space shuttle missions that are helping us meet the challenge of global climate change, bringing the International Space Station closer to completion, and expanding our knowledge of Earth and the universe. Yet even now the Wright brothers' achievement continues to fire our dreams and beckons us to make new discoveries.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as "Wright Brothers Day" and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1999, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–33278
Filed 12–20–99; 10:59 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 64, No. 244

Tuesday, December 21, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468	1
67469–67692	2
67693–67996	3
67997–68274	6
68275–68614	7
68615–68930	8
68931–69164	9
69165–69370	10
69371–69628	13
69629–69882	14
69883–70172	15
70173–70562	16
70563–70984	17
70985–71266	20
71267–71632	21

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7256	67691
7257	68269
7258	69161
7259	69163
7260	70563
7261	71629
7262	71631

Executive Orders:

June 24, 1914 (Revoked in part by PLO 7416)	67295
April 28, 1917 (Revoked in part by PLO 7416)	67295
February 11, 1918 (Revoked in part by PLO 7416)	67295
July 10, 1919 (Revoked in part by PLO 7416)	67295
May 25, 1921 (Revoked in part by PLO 7416)	67295
April 17, 1926 (Revoked in part by PLO 7416)	67295
February 7, 1930 (Revoked in part by PLO 7416)	67295
13143	68273

Administrative Orders:

Memorandums:

November 29, 1999	68275

5 CFR

410	69165
530	69165
531	69165
532	69183
534	68931
536	69165
550	69165, 69936
551	69165
575	69165
591	69165
610	69165
1205	71267
1630	67693
6801	68615

7 CFR

29	67469
246	67997, 70173
301	71267
319	68001, 69629
457	71270
761	69322
905	69371
906	69375
915	69380
1000	70868
1001	70868
1002	70868
1004	70868
1005	70868
1006	70868
1007	70868
1012	70868
1013	70868
1030	70868
1032	70868, 70985
1033	70868
1036	70868
1040	70868
1044	70868
1046	70868
1049	70868
1050	70868
1064	70868
1065	70868
1068	70868
1076	70868
1079	70868
1106	70868
1124	70868
1126	70868
1131	70868
1134	70868
1135	70868
1137	70868
1138	70868
1139	70868
1407	67470
1703	69937

Proposed Rules:

272	70920
273	70920
301	71322
955	69419
985	69421
989	69204
1032	67201
1703	69937
1744	69946
1980	70124
3555	70124
4280	69937

8 CFR

103	69983
235	68616

Proposed Rules:

100	68638
103	71323
214	71323
299	71323

9 CFR

78	67695
94	67695
130	67697, 67699

Proposed Rules:

54	70608

79.....70608
301.....70200
318.....70200
320.....70200

10 CFR

51.....68005
72.....67700
709.....70962
710.....70962
711.....70962
850.....68854
Proposed Rules:
26.....67202
71.....71331
73.....71331
431.....69598
960.....69963
963.....69963

11 CFR

Proposed Rules:
100.....68951

12 CFR

22.....71272
24.....70986
203.....70991
208.....71272
327.....70178
339.....71272
503.....69183
505.....69183
557.....69183
559.....69183
563.....69183
572.....69183
614.....71272
760.....71272
932.....71275
934.....71275
935.....71275
Proposed Rules:
202.....69963
205.....69963
213.....69963
226.....69963
230.....69963

13 CFR

107.....70992
300.....69968
301.....69968
302.....69968
303.....69968
304.....69968
305.....69968
306.....69968
307.....69968
308.....69968
314.....69968
316.....69968
317.....69968
318.....69968
Proposed Rules:
120.....67205, 69964

14 CFR

25.....67147, 67701, 67705, 69383
39.....67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394, 69629, 69964, 69967, 70181, 70997, 71001, 71003, 71004, 71006, 71007, 71009, 71010, 71012, 71278, 71280, 71282
65.....68916
71.....67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932, 69631, 69632, 70565, 70566, 70567, 70568, 70570, 71014
91.....70571
254.....70573
97.....67473, 67476, 71015, 71017
Proposed Rules:
11.....69856
25.....67804, 69425
39.....67206, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336
71.....67525, 67810, 69430, 69431, 70610, 70611, 70612
450.....69628
1261.....71339
1267.....71339

15 CFR

303.....67148
806.....67716
902.....68228, 68932, 69888
2015.....67152
Proposed Rules:
280.....69969

16 CFR

0.....71283
4.....69397
305.....71019

17 CFR

3.....68011
32.....68011
211.....67154, 68936
270.....68019
Proposed Rules:
Ch. II.....69074
4.....68304
240.....69975, 70613
250.....71341

19 CFR

12.....67479
132.....67481
163.....67481

20 CFR

404.....67719
Proposed Rules:
222.....68647
325.....67811
330.....67811
335.....67811
336.....67811
604.....67811, 67972, 71346

21 CFR

10.....69188
12.....69188
176.....68629, 69898
178.....67483
179.....69190
203.....67720
205.....67720
510.....69188, 69191
520.....68289
558.....70576
1401.....69901
Proposed Rules:
10.....69209
12.....69209
16.....70202, 70203
314.....67207
330.....71062
510.....69209
601.....67207
807.....71347
1309.....67216

23 CFR

130.....71284
480.....71284
620.....71284
630.....71284
635.....71284
645.....71284
710.....71284
712.....71284
713.....71284
Proposed Rules:
655.....71354, 71358

24 CFR

985.....67982

26 CFR

1.....67763, 69903
20.....67763, 67767, 71021
25.....67767
301.....67767
601.....69398
602.....67767, 69903
Proposed Rules:
1.....71082

28 CFR

0.....68307
91.....71022
551.....68264

29 CFR

403.....71622
4011.....67163
4022.....67163
4044.....67165, 69922
Proposed Rules:
2520.....67436
2700.....68649

30 CFR

250.....69923
740.....70766
745.....70766
761.....70766, 70838
762.....70766
772.....70766
773.....70766
778.....70766
780.....70766
784.....70766
913.....68024
914.....70578
918.....68289
936.....70584
946.....69399
Proposed Rules:
280.....68649
938.....70644

31 CFR

285.....71228
Proposed Rules:
28.....69432
285.....71233

32 CFR

287.....67166
296.....71297
299.....71299
Proposed Rules:
199.....67220, 69981

33 CFR

26.....69633
100.....67168, 67169, 69192, 70184
117.....67169, 67773, 68291
127.....67170
154.....67170
155.....67170
159.....67170
161.....69633
164.....67170
165.....70587, 71023
183.....67170
207.....69402
Proposed Rules:
100.....70650
140.....68416
141.....68416
142.....68416
143.....68416
144.....68416
145.....68416
146.....68416
147.....68416
165.....70650

34 CFR

304.....69138
606.....70146
607.....70146
Proposed Rules:
694.....71552

36 CFR

7.....71025
1220.....67662
1222.....67662
1228.....67662, 67634, 68945
Proposed Rules:
217.....69446, 70204
219.....69446, 70204
251.....70204

37 CFR

1.....67486, 67774
2.....67486, 67774
253.....67187
Proposed Rules:
201.....71086

38 CFR

Proposed Rules:
3.....67528

39 CFR

3001.....67487
Proposed Rules:
111.....68965

40 CFR

9.....68546, 68722, 69636

51 71026
52 ..... 67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404, 70589, 70592, 70593, 71026, 71027, 71031, 71035, 71038, 71304
62 70595
63 ..... 67789, 67793, 69637
70 71038
82 68039
122 68722
123 68722
124 68722
141 67450
143 67450
144 ..... 68546, 70316
145 68546
146 68546
180 ..... 68044, 68046, 68631, 69407, 69409, 70184, 70599
243 70602
300 68052

Proposed Rules:

2 71366
50 68659
52 ..... 67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332 70347, 70364, 70380, 70397, 70412, 70428, 70443, 70459, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087
62 70665
70 68066
80 70121
81 ..... 68659, 70660
85 ..... 68310, 70121
86 ..... 68310, 70121, 70665
141 71366
142 71367
165 71367
194 68661
243 70666
260 68968
372 68311
761 69358

41 CFR

Ch. 301 67670
300-3 67670
301-10 67670

42 CFR

121 71317
1001 71626

Proposed Rules:

68c 69213
433 67223
438 67223
1001 69217

44 CFR

61 71317
64 71317
65 ..... 69644, 69646, 69647, 69649
67 ..... 69652, 69655, 69657

Proposed Rules:

67 69676

45 CFR

61 71041
1302 69924
1641 67501

Proposed Rules:

160 69981
161 69981
162 69981
163 69981
164 69981
270 68202
2522 67235
2525 67235

46 CFR

28 67170
30 67170
32 67170
34 67170
35 67170
38 67170
39 67170
54 67170
56 67170
58 67170
61 67170
63 67170
76 67170
77 67170
78 67170
92 67170
95 67170
96 67170
97 67170
105 67170
108 67170
109 67170
110 67170
111 67170
114 67170
119 67170
125 67170
151 67170
153 67170
154 67170
160 67170
161 67170
162 67170
163 67170
164 67170
170 67170
174 67170
175 67170
182 67170
190 67170
193 67170
195 67170
199 67170

47 CFR

Ch. 1 68053
1 ..... 68946, 69926
2 69926
36 ..... 67372, 67416
51 68637
54 ..... 67372, 67416
69 67372
73 ..... 70606, 71041
76 ..... 67193, 67198
90 ..... 67199, 71042
95 69926

Proposed Rules:

0 71369
1 71088
2 71088
73 ..... 67236, 67535, 68662, 68663, 68664, 68665, 70670, 70671, 70672, 71097, 71098
80 71369
90 71369
101 ..... 71088, 71373

48 CFR

808 69934
812 69934
813 69934
852 69934
853 69934
1815 69415

Proposed Rules:

1 67986
2 70158
12 67992
13 67992
16 70158
22 ..... 67986, 67992
25 67446
30 67814
37 70158
52 ..... 67446, 67986, 67992
919 68072
952 68072
1815 70208
1819 70208
1852 70208

49 CFR

192 69660
195 69660
211 70193
219 69193
225 69193
235 70193
238 70193
240 70193
571 69665

Proposed Rules:

40 69076
106 71098
107 71098
171 71098
571 ..... 70672, 71377

50 CFR

17 ..... 68508, 69195
20 71236
21 71236
222 ..... 69416, 70196
223 ..... 69416, 70196
300 69672
600 67511
622 ..... 68932, 71056
635 70198
648 ..... 71060, 71320
649 68228
660 69888
679 ..... 68054, 68228, 68949, 69673, 70199

Proposed Rules:

17 ..... 67814, 69324, 70209
18 68973
216 70678
226 ..... 67536, 69448
622 ..... 70678, 71388
635 69982
648 67551
660 70679
679 ..... 67555, 69219, 69458, 71390, 71396

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 21, 1999

FARM CREDIT ADMINISTRATION
Farm credit system:
Loan policies and operations—
Special flood hazards loans; published 12-21-99

FEDERAL COMMUNICATIONS COMMISSION
Radio and television broadcasting:
Media applications, rules, and processes streamlining; mass media facilities, minority and female ownership policies and rules; biennial regulatory review; published 10-22-99

FEDERAL DEPOSIT INSURANCE CORPORATION
Special flood hazards loans; published 12-21-99

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Corporate governance responsibilities devolution; published 12-21-99

FEDERAL RESERVE SYSTEM
Membership of State banking institutions in Federal Reserve System (Regulation H):
Special flood hazards loans; published 12-21-99

FEDERAL TRADE COMMISSION
Organization, functions, and authority delegations:
Miscellaneous rules; published 12-21-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Health care programs; fraud and abuse:
Health Insurance Portability and Accountability Act—
Medicare and State health care programs; anti-kickback statute for shared risk arrangements; statutory exception; correction; published 12-21-99

MERIT SYSTEMS PROTECTION BOARD
Privacy Act; implementation; published 12-21-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Special flood hazards loans; published 12-21-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 11-16-99
Eurocopter France; published 11-16-99
Learjet; published 11-16-99

TREASURY DEPARTMENT
Comptroller of the Currency
Special flood hazards loans; published 12-21-99

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural and vegetable seeds; inspection and certification:
Fee increase; comments due by 12-28-99; published 10-29-99
Olives grown in—
California; comments due by 12-27-99; published 10-26-99
Onions grown in—
Texas; comments due by 12-27-99; published 11-26-99
Tomatoes grown in—
Florida; comments due by 12-27-99; published 10-25-99

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Scrapie in sheep and goats; movement restrictions and indemnity program; comments due by 12-30-99; published 11-30-99

COMMERCE DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

COMMERCE DEPARTMENT
Export Administration Bureau
Export administration regulations:
Foreign policy-based export controls; effects; comments due by 12-30-99; published 11-30-99
Export licensing:
Commerce control list—
Microprocessors controlled by ECCN 3A001 and graphics accelerators controlled by ECCN 4A003; License Exception CIV eligibility level expansion; comments due by 12-27-99; published 11-26-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic snapper-grouper; comments due by 12-27-99; published 10-26-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 12-27-99; published 11-24-99

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Fee schedule; comments due by 12-27-99; published 11-26-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Family member dental plan; comments due by 12-27-99; published 11-24-99
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99
Federal Acquisition Regulation (FAR):
Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

ENERGY DEPARTMENT
Western Area Power Administration
Energy Planning and Management Program:
Integrated resource planning approval criteria; comments due by 12-30-99; published 11-17-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Transportation conformity rule; grace period deletion; comments due by 12-30-99; published 11-30-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 12-27-99; published 11-26-99
Massachusetts; comments due by 12-30-99; published 11-30-99
Confidential business information; elimination of special treatment for certain category; comments due by 12-27-99; published 10-25-99
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Local exchange carrier price cap productivity offset (X-factor); prescription; comments due by 12-30-99; published 11-26-99
Radio stations; table of assignments:
Kentucky; comments due by 12-27-99; published 12-2-99

FEDERAL EMERGENCY MANAGEMENT AGENCY
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

FEDERAL HOUSING FINANCE BOARD
Agency regulations reorganization; comments due by 12-27-99; published 9-27-99
Federal home loan bank system:
Financial management and mission achievement; comments due by 12-27-99; published 9-27-99

GENERAL SERVICES ADMINISTRATION
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99
Federal Acquisition Regulation (FAR):
Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human cellular and tissue-based products:
Donors suitability determination; comments due by 12-29-99; published 9-30-99
Medical devices:
General hospital and personal use devices—
Subcutaneous, implanted, intravascular infusion port and catheter, and percutaneous, implanted long-term intravasuclar catheter; classification; comments due by 12-30-99; published 10-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Carrier determinations that supplier fails to meet requirements for Medicare billing privileges; appeals; comments due by 12-27-99; published 10-25-99
Home health agencies; prospective payment system; comments due by 12-27-99; published 10-28-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Interstate shipments—
Centers for Disease Control; infectious substances and select agents; packaging and handling; comments due by 12-27-99; published 10-28-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

INTERIOR DEPARTMENT
Indian Affairs Bureau
Land and water:
Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 12-29-99; published 11-30-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Columbian sharp-tailed grouse; comments due by 12-27-99; published 10-26-99

INTERIOR DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; comments due by 12-29-99; published 11-29-99

JUSTICE DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

JUSTICE DEPARTMENT
Parole Commission
Federal prisoners; paroling and releasing, etc.:
Rescission guidelines; comments due by 12-31-99; published 11-3-99

LABOR DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Export controlled technology; standard clause; comments due by 12-27-99; published 10-28-99
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99
Federal Acquisition Regulation (FAR):
Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

ARTS AND HUMANITIES, NATIONAL FOUNDATION
National Foundation on the Arts and the Humanities
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex:
Institute for Museum and Library Services; comments due by 12-28-99; published 10-29-99
National Endowment for the Arts; comments due by 12-28-99; published 10-29-99
National Endowment for the Humanities; comments due by 12-28-99; published 10-29-99

NATIONAL SCIENCE FOUNDATION
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99
Freedom of Information Act and Privacy Act; implementation; comments due by 12-27-99; published 11-24-99

NUCLEAR REGULATORY COMMISSION
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

POSTAL RATE COMMISSION
International mail services; cost, revenue, and volume data analysis; comments due by 12-27-99; published 11-26-99

SECURITIES AND EXCHANGE COMMISSION
Securities:
Short sales; limits lifted, etc.; comments due by 12-27-99; published 10-28-99

SMALL BUSINESS ADMINISTRATION
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99
Government contracting programs:
Contract bundling and SBA's authority to appeal adverse decisions made by procuring agency; comments due by 12-27-99; published 10-25-99

SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Federal old age, survivors, and disability insurance—
Title II benefits under family maximum provisions; reduction in cases of dual entitlement; comments due by 12-27-99; published 10-27-99

STATE DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99
Visas; immigrant and nonimmigrant documentation:
Immigrant visa fees; change in payment procedures; comments due by 12-27-99; published 10-28-99

TENNESSEE VALLEY AUTHORITY
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

TRANSPORTATION DEPARTMENT
Coast Guard
Vessel inspection:
Frequency; passenger vessel alternate hull examination program, and passenger, nautical school, and sailing school vessel underwater surveys; comments due by 12-30-99; published 11-15-99

TRANSPORTATION DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
BMW Rolls-Royce GmbH; comments due by 12-27-99; published 11-19-99
Boeing; comments due by 12-27-99; published 11-12-99
British Aerospace; comments due by 12-27-99; published 11-24-99
Dornier; comments due by 12-27-99; published 11-26-99
General Electric Co.; comments due by 12-27-99; published 10-26-99
Pratt & Whitney; comments due by 12-27-99; published 10-27-99
Airworthiness standards:
Special conditions—
Piper Cheyenne PA-31T2 airplane; comments due by 12-30-99; published 11-30-99
Raytheon Model 390 airplane; comments due by 12-30-99; published 11-30-99
Class C airspace; comments due by 12-27-99; published 11-15-99
Class D airspace; comments due by 12-30-99; published 11-15-99
Class E airspace; comments due by 12-27-99; published 11-24-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Air bag requirements for passenger cars and light trucks; upgrade; comments due by 12-30-99; published 11-5-99

TREASURY DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

VETERANS AFFAIRS DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

LIST OF PUBLIC LAWS

This is a completes the listing of public laws enacted during the first session of the 106th of Congress. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

The list will resume when bills are enacted into public law during the second session of the 106th Congress, which convenes on January 24, 2000. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1999.

H.R. 1180/P.L. 106–170

Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

Last List December 17, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: PENS will resume service when bills are enacted into law during the second session of the 106th Congress. This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Public Laws

106th Congress, 2nd Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 2nd Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 2nd Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 12/99

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

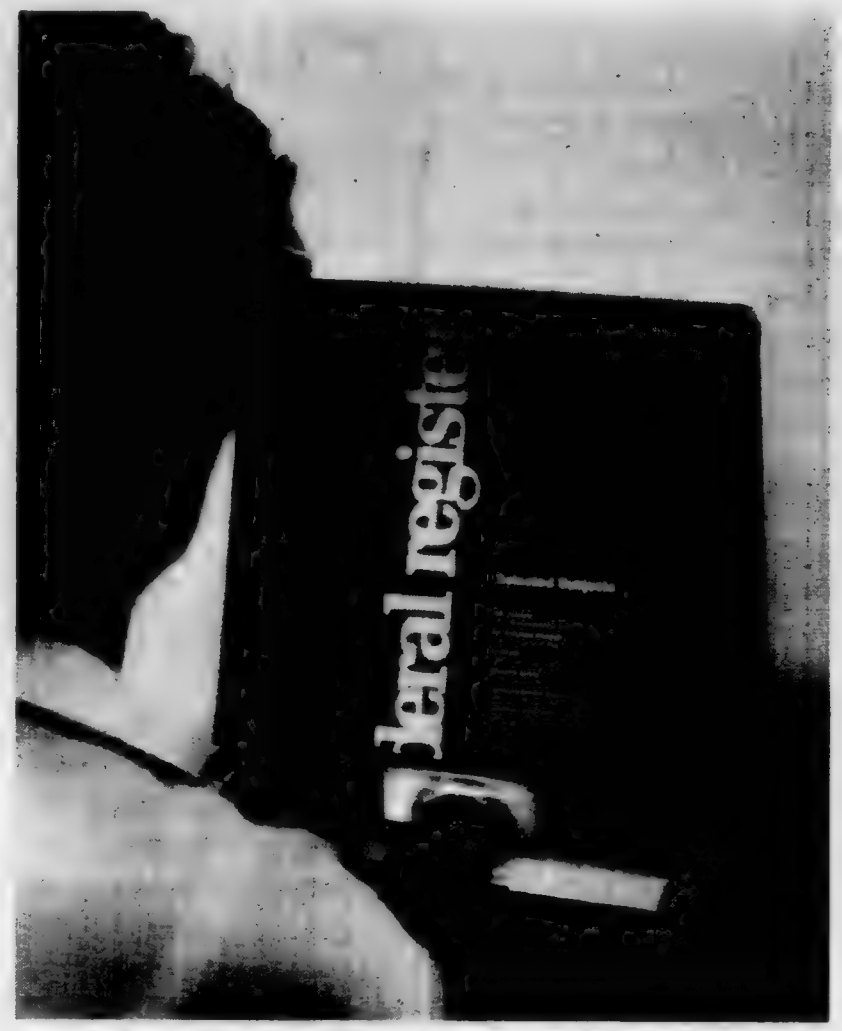
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account

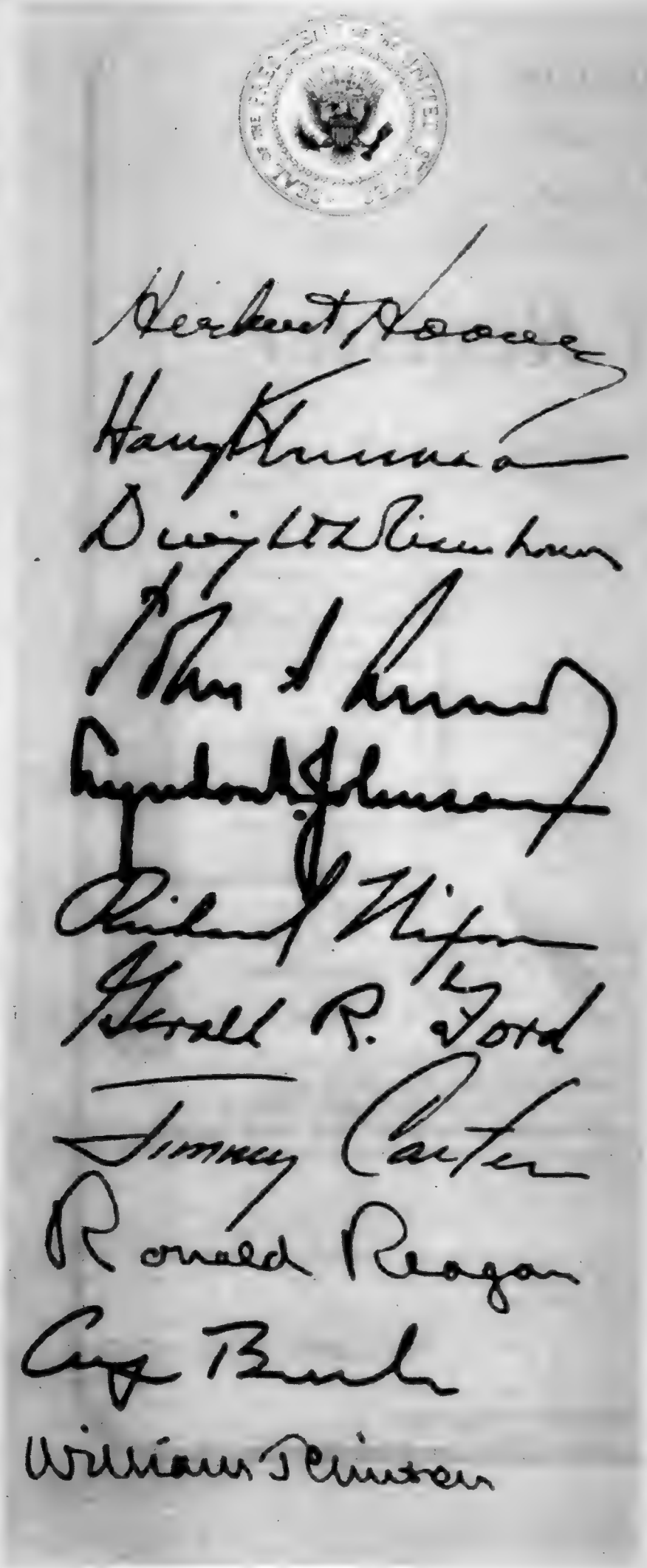
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 9/23/99)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

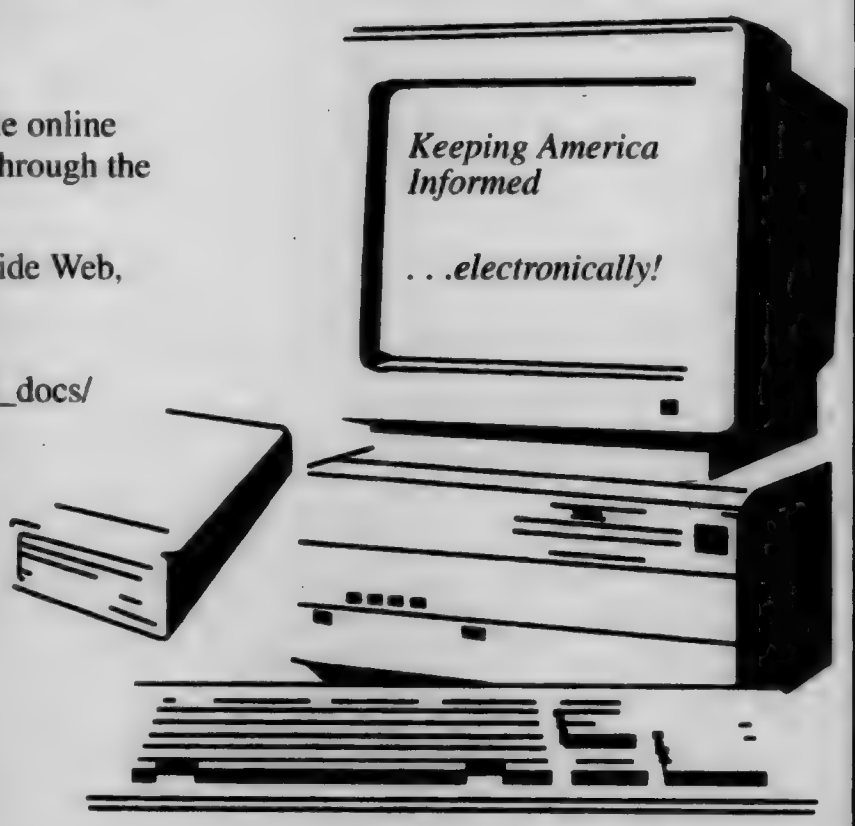
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–22–99
Vol. 64 No. 245

federal register

Wednesday
December 22, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

OL

64

ISS

2
4
5

DE

22

999

MI

12–
Vol
Pag

12–22–99
Vol. 64 No. 245
Pages 71633–71982

federal register

Wednesday
December 22, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $553, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche — **202–512–1800**

Assistance with public subscriptions — **512–1806**

General online information — **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche — **512–1800**

Assistance with public single copies — **512–1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche — **523–5243**

Assistance with Federal agency subscriptions — **523–5243**

Printed on recycled paper.

Contents

Federal Register

Vol. 64, No. 245

Wednesday, December 22, 1999

Agency for International Development
NOTICES
Meetings:
Voluntary Foreign Aid Advisory Committee, 71724

Agriculture Department
See Food and Nutrition Service
See Forest Service
See Rural Utilities Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Cigarette papers and tubes; tax increase, 71937–71947
Cigarettes; floor stocks tax, 71957–71962
Importation restrictions, markings, minimum manufacturing requirements, and penalty provisions, 71917–71926
Roll-your-own tobacco; manufacture permit requirements, 71929–71934
Tobacco product importers qualification and technical miscellaneous amendments, 71947–71954
PROPOSED RULES
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Importation restrictions, markings, minimum manufacturing requirements, and penalty provisions, 71927–71928
Roll-your-own tobacco; manufacture permit requirements, 71935–71936
Tobacco product importers qualification and technical miscellaneous amendments, 71955–71956
NOTICES
Organization, functions, and authority delegations:
Subordinate ATF officers, 71850–71851

Army Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71741
Environmental statements; availability, etc.:
Base realignment and closure—
Military Ocean Terminal, Bayonne, NJ, 71741–71742
Military traffic management:
Freight Traffic Rules Publication No. 1A reissued as Publication No. 1B, 71742

Civil Rights Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 71725

Coast Guard
RULES
Drawbridge operations:
New Jersey, 71653–71655
Ports and waterways safety:
Cape Cod Canal; arrival notification and Year 2000 (Y2K) reporting requirements for transiting vessels; regulated navigation area, 71655–71659
NOTICES
Meetings:
Houston/Galveston Navigation Safety Advisory Committee, 71843–71844

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Belarus, 71982
India; correction, 71737
Thailand, 71736–71737
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule, 71981–71982

Consumer Product Safety Commission
RULES
Bunk beds; safety standards, 71888–71915
Consumer Product Safety Act:
Multi-purpose lighters; child resistance standard, 71853–71885
NOTICES
Settlement agreements:
EOFF Electric Co., 71737–71740

Copyright Office, Library of Congress
RULES
Copyright arbitration royalty panel rules and procedures:
Satellite carrier statutory license; rate adjustment, 71659–71660

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71740–71741

Defense Department
See Army Department

Education Department
RULES
Elementary and secondary education:
State-administered programs; charter schools funding, 71963–71972

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Fusion energy sciences programs, 71746–71748
Natural and Accelerated Bioremediation Research Program, 71742–71746

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Generic maximum achievable control technology Correction, 71852

Air quality implementation plans; approval and promulgation; various States:
California, 71660–71663
Missouri, 71663–71666
Texas, 71666–71670
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Myclobutanil, 71670–71673
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 71704
Missouri, 71704
Rhode Island, 71705–71708
Texas, 71705
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azinphos-methyl, 71708–71712
NOTICES
Grants and cooperative agreements; availability, etc.:
State and Tribal Environmental Justice Program, 71751
Meetings:
Gulf of Mexico Program Citizens Advisory Committee, 71751
Pesticide, food, and feed additive petitions:
E.I. du Pont de Nemours & Co., 71760–71767
Interregional Research Project Number 4 et al., 71767–71774
Nippon Soda Co. LtD, 71774–71779
Novartis Crop Protection, Inc., 71779–71781
Pesticide registration, cancellation, etc.:
Biocontrol Ltd., 71752–71753
Fuller System Inc. et al., 71754–71757
GMJA Specialties et al., 71757–71758
Monsanto Co., 71753–71754
Registration Division (2000 FY); work plan, 71758–71760
Reports and guidance documents; availability, etc.:
Diesel emissions; health assessment document, 71751–71752
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
Minnesota, 71781–71784
Water quality criteria:
Ambient water quality criteria—
Ammonia in fresh water; document availability, 71973–71980

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 71635–71637
Class E airspace; correction, 71637
PROPOSED RULES
Airworthiness directives:
Airbus, 71696–71698
Industrie Aeronautiche e Meccaniche, 71694–71696
McDonnell Douglas, 71689–71694
NOTICES
Meetings:
Communications/Surveillance Operational Implementation Team, 71844

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
Class A low power television service; establishment Comments suspended, 71712–71713
Video description of video programming for individuals with visual disabilities; implementation Correction, 71712
NOTICES
Meetings:
Public Safety National Coordination Committee, 71784–71785
Organization, functions, and authority delegations:
Accounting officer; auditor independence and objectivity; Standard No. 1 of Independence Standards Board, 71785–71786

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Illinois, 71673–71680

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Cocheco Falls Associates, 71750–71751
Environmental statements; notice of intent:
Gulfstream Natural Gas System, L.L.C.; correction, 71852
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 71749
Eastern Shore Natural Gas Co., 71749
El Paso Natural Gas Co., 71750
PG&E Gas Transmission, Northwest Corp., 71750
PSI Energy, Inc., et al., 71750
Transcontinental Gas Pipe Line Corp., 71750

Federal Housing Finance Board
PROPOSED RULES
Federal home loan bank system:
Advance participations; sales of whole advances Withdrawn, 71689

Federal Railroad Administration
NOTICES
Emergency orders:
Oregon Pacific Railroad Co., 71844–71846
Exemption petitions, etc.:
Canadian National Railway, 71846
National Railroad Passenger Corp. (AMTRAK), 71846

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 71786
Formations, acquisitions, and mergers, 71786–71787

Federal Trade Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71787–71792

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Interest rates:
Renegotiation Board and prompt payment rates, 71851

Fish and Wildlife Service
RULES
Endangered and threatened species:
Wenatchee Mountains checker-mallow, 71680–71687
PROPOSED RULES
Endangered and threatened species:
Mountain yellow-legged frog; southern California distinct vertebrate population segment, 71714–71722
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
California Fish and Game Department; delta smelt, etc., 71735–71736
Environmental statements; notice of intent:
Lake Champlain, NY; sea lamprey control proposal
Meetings, 71813–71814

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sevoflurane, 71640
Sponsor name and address changes—
Orion Corp., 71640
Food additives:
Adjuvants, production and aids, and sanitizers—
Di(n-octyl)phosphite, 71639–71640
Polymers—
4-methylpentene-1 copolymers, 71637–71639
NOTICES
Food additive petitions:
Food Safety and Inspection Service, 71792–71793
Meetings:
Medical Devices Advisory Committee, 71793
Reports and guidance documents; availability, etc.:
Conventional foods and dietary supplements; health claims review, significant scientific agreement; industry guidance, 71794
Drug Evaluation and Research Center; information disclosure provided to advisory committees concerning open advisory committee meetings; industry guidance, 71794–71797

Food and Nutrition Service
RULES
Child nutrition programs:
Women, infants, and children; special supplemental nutrition program—
Local agency expenditure reports, 71635
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71724

Forest Service
NOTICES
Environmental statements; notice of intent:
Lolo National Forest, MT, 71724–71725

General Services Administration
NOTICES
Meetings:
President's Commission on Celebration of Women in American History, 71792

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
RULES
Medicare:
Medicare+Choice program—
Provider-sponsored organizations; solvency standards, 71673–71678
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71797–71798

Housing and Urban Development Department
PROPOSED RULES
Public and Indian housing:
Operating Fund Allocation Negotiated Rulemaking Committee—
Meetings, 71698
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71798
Public and Indian housing:
Quality Housing and Work Responsibility Act—
Implementation status; guidance, 71799–71813
Public Housing Reform Act; unobligated modernization funds; policy, 71798–71799

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgement of existence determinations, etc.:
Yuchi Tribal Organization, OK, 71814–71816
Tribal rolls:
Catawba Indian Nation of South Carolina, 71816–71827

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
S corporations—
Passthrough of items to shareholders, 71641–71652

International Trade Administration
NOTICES
Antidumping:
Sorbitol from—
France, 71727–71728
Welded stainless steel pipe from—
Taiwan, 71728–71735
Antidumping and countervailing duties:
Five-year (sunset) reviews—
Final results; time limit extension, 71726
Preliminary results; time limit extension, 71726–71727

International Trade Commission
NOTICES
Import investigations:
Carbon steel butt-weld pipe fittings from—
Various countries, 71830–71831
Citric acid and sodium citrate from—
China, 71831–71832

Labor Department
NOTICES
Meetings:
North American Agreement on Labor Cooperation National Advisory Committee, 71832

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Northeastern Great Basin, 71827–71828
Public land orders:
Oregon, 71828

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
NOTICES
Metropolitan and nonmetropolitan areas; definition standards review and alternative approaches; comment request, 71834

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Aero-Space Technology Advisory Committee, 71832

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 71832

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Western Alaska Community Development Quota Program, 71688
Northeastern United States fisheries—
Summer flounder, 71687–71688
PROPOSED RULES
Marine mammals:
Dolphin-safe tuna labeling; official mark, 71722–71723
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
California Fish and Game Department; delta smelt, etc., 71735–71736

National Park Service
NOTICES
Environmental statements; availability, etc.:
Vancouver National Historic Reserve, WA; cooperative management plan, 71828
National Register of Historic Places:
Pending nominations, 71828–71829

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
North Atlantic Energy Service Corp. et al., 71832–71834

Office of Management and Budget
See Management and Budget Office

Personnel Management Office
RULES
Employment:
Retention allowances; agency payment criteria, 71633–71635

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Standard Mail destination entry mailings; procedure changes, 71702–71704
NOTICES
Meetings; Sunshine Act, 71834

Public Debt Bureau
See Fiscal Service

Public Health Service
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71834–71835

Reclamation Bureau
NOTICES
Meetings:
Bay-Delta Advisory Council, 71829–71830

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Gas transmission and hazardous liquid pipelines in high-consequence areas; enhanced safety and environmental protection, 71713–71714
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 71847–71849

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71725

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 71835–71836
Chicago Stock Exchange, Inc.; correction, 71852
National Association of Securities Dealers, Inc., 71836–71839
Options Clearing Corp.; correction, 71852
Pacific Exchange, Inc., 71839–71842

Social Security Administration
NOTICES
Organization, functions, and authority delegations:
Deputy Commissioner Office, Disability and Income Security Programs, 71842–71843

Surface Mining Reclamation and Enforcement Office
RULES
Surface coal mining and reclamation operations:
Underground coal mining subsidence; court order compliance, 71652–71653

PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
New Mexico, 71698–71702
NOTICES
Agency information collection activities:
Proposed collection; comment request, 71830

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Research and Special Programs Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 71849–71850

Separate Parts In This Issue

Part II
Consumer Product Safety Commission, 71853–71885

Part III
Consumer Product Safety Commission, 71887–71915

Part IV
Department of Treasury, Alcohol, Tobaacco, and Firearms Bureau, 71917–71962

Part V
Department of Education, 71963–71972

Part VI
Environmental Protection Agency, 71973–71980

Part VII
Committee for Implementation of Textile Agreements, 71981–71982

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
575.....71633

7 CFR
246.....71635

12 CFR
Proposed Rules:
935.....71689

14 CFR
39.....71635
71.....71637
Proposed Rules:
39 (3 documents).....71689, 71694, 71696

16 CFR
1145.....71854
1212.....71854
1213.....71888
1500.....71888
1513.....71888

21 CFR
177.....71637
178.....71639
522.....71640
529.....71640

24 CFR
Proposed Rules:
990.....71698

26 CFR
1.....71641
602.....71641

27 CFR
200.....71918
270 (3 documents).....71918, 71929, 71937
275 (4 documents).....71918, 71929, 71937, 71947
290 (3 documents).....71918, 71929, 71937
295 (2 documents).....71929, 71937
296 (3 documents).....71929, 71937, 71957
Proposed Rules:
200.....71927
270 (2 documents).....71927, 71935
275 (3 documents).....71927, 71935, 71955
290 (2 documents).....71927, 71935
295.....71935
296.....71935

30 CFR
784.....71652
817.....71652
Proposed Rules:
931 (2 documents).....71698, 71700

33 CFR
117.....71653
165.....71655

34 CFR
76.....71964

37 CFR
258.....71659

38 CFR
Proposed Rules:
111.....71702

40 CFR
52 (3 documents).....71660, 71663, 71666
63.....71852
180.....71670
Proposed Rules:
52 (4 documents).....71704, 71705
180.....71708

42 CFR
422.....72673

44 CFR
64.....71678

47 CFR
Proposed Rules:
73 (2 documents).....71712

49 CFR
Proposed Rules:
192.....71713
195.....71713

50 CFR
17.....71680
648.....71687
679.....71688
Proposed Rules:
17.....71714
216.....71722

Rules and Regulations

Federal Register
Vol. 64, No. 245
Wednesday, December 22, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AI31

Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to provide agencies with greater flexibility to pay retention allowances of up to 10 percent of an employee's rate of basic pay (or up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances. This flexibility will help agencies retain the specialized skills they need to meet their work requirements. The final regulations revise the interim regulations to provide further guidance on defining the covered group or category of employees, to clarify the intended use of a retention allowance, and to add references to a group or category of employees in provisions dealing with the reduction or termination of retention allowances.

EFFECTIVE DATE: January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2858; FAX (202) 606–0824; EMAIL: payleave@open.gov.

SUPPLEMENTARY INFORMATION: On June 23, 1998, the Office of Personnel Management (OPM) published interim regulations to provide agencies with discretionary authority to pay retention allowances of up to 10 percent of an employee's rate of basic pay (up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances (63 FR 34119). Interested parties were invited to comment for a 60-day period. OPM received comments from three agencies. All three agencies expressed support for the additional flexibility provided by the interim regulations. Specific comments are discussed below along with a description of changes made in the final regulations.

Administering the Discretionary Authority

One agency expressed concern regarding the administration of the discretionary authority. The agency expressed concern that it may be difficult to justify the exclusion of individuals from an identified group or to identify a group that includes only individuals whom the agency is anxious to retain. The agency believes the decision to approve a group retention allowance might be highly judgmental. Another agency asked whether employees newly hired into a group receiving a retention allowance could be (or should be) excluded from receiving the allowance.

We believe the type of discretion currently used to make a judgment for paying a retention allowance on a case-by-case basis to individual employees is essentially the same used in making a determination for a category of employees. Similar to the case-by-case determinations, agencies must authorize retention allowances based on written determination that employees have unusually high or unique qualifications or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category. What is different is that the regulations do not require agencies to determine whether each individual in the targeted group is likely to leave Federal service. Instead, agencies must determine whether there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of an allowance. Section 575.305(d)(1) requires agencies to have evidence of labor market conditions or other factors to fully support this determination.

It is essential, therefore, that agencies clearly define the characteristics and coverage criteria of the identified category of employees. These criteria may include the minimum length of service a newly hired employee must fulfill with the agency before being covered by an identified group. If an appropriate group cannot be clearly defined by specific factors, or if labor market or other conditions do not indicate that there is a high risk that a significant number of employees in the group is likely to leave, then consideration should be given to granting retention allowances to selected employees in the identified group on a case-by-case basis as justified by the circumstances of the individual case. To provide further guidance to agencies on defining the covered group, we have added language to 5 CFR 575.305(d)(1) that identifies the types of factors that may be used to define the group.

Several agencies have informally requested clarification on whether a retention allowance may be offered when recruiting an employee from another agency when it knows the employee has a private sector job offer and is likely to leave Federal Service. Retention allowances are not intended to be used as a recruitment tool, especially when recruiting an employee from another agency. Section 575.305(b)(2) of the regulations further provides that a retention allowance may only be offered to an employee in or under an agency and based on the agency's determination that the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission. Therefore, in order for an agency to make its case, the employee would have to have been hired and performing a critical function for a period of time immediately prior to the payment of a retention allowance. To clarify this intent, we have added a new paragraph (d) to § 575.304 to read, "An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency."

Amount of Retention Allowance

One agency believes the interim regulations effectively allow an agency to provide a 10 percent pay raise to a significant number of employees. The agency supports the requirement for OPM approval of group/category retention allowances of more than 10 percent, thus guarding against the potential for creating an uneven playing field without reasonable notice to similarly-situated agencies. Another agency expressed concern that limiting the amount of the retention allowance

an agency can pay to a group of employees dilutes the effectiveness of extending the flexibility. The agency believes there would be no advantage to invoking this new provision unless 10 percent has already been determined to be a sufficient incentive for the situation. The agency also expressed concern that if it does seek OPM approval of a higher percentage, the agency must coordinate with other agencies, thus removing from the agency's control the discretionary flexibility which is part of the recruitment incentive.

We have not adopted any change in the amount of the retention allowance payable without OPM approval. We do not believe it would be desirable to allow individual Federal agencies to authorize retention allowances greater than 10 percent for an entire group of employees without coordination with other agencies with similar recruitment and retention needs. It would not be productive to have bidding wars between agencies, thereby depleting some agencies of the skilled workers they need. If an agency wishes to authorize an allowance of more than 10 percent, the current retention allowance authority in 5 U.S.C. 5754 and 5 CFR part 575, subpart C, continues to provide agencies with discretionary authority to pay a retention allowance of up to 25 percent of basic pay to individual employees on a case-by-case basis based on their unique qualifications or a special need of the agency if the employee would be likely to leave Federal service without the allowance.

Other Comments

One agency suggested that editorial changes should be made in the existing regulations in §§ 575.301 and 575.305 to add references to a group or category of employees in each place where a single employee is referenced. In addition, the agency suggested that the final regulations discuss the subsequent adjustment or discontinuation of retention allowances that have been approved on a group or category basis. The agency recommended that the regulations explicitly authorize agencies to adjust or discontinue such allowances either on a group/category basis or on a case-by-case basis.

OPM did not adopt the suggestion to add a reference to "a group or category of employees" in each place where an individual employee is referenced. In the interim regulation, we deliberately placed the authority and criteria for paying retention allowances on a group or category basis in a separate paragraph (d) at the end of § 575.305. We continue to believe this is the simpler and better approach.

OPM agrees with the comment that the final regulations should discuss the subsequent adjustment or discontinuation of retention allowances for a group or category of employees, as applicable. We have added the term "group or category of employees" in § 575.307(b), which discusses the reduction or termination of retention allowances.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 575

Government employees, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the interim rule amending part 575 of title 5 of the Code of Federal Regulations, which was published at 63 FR 34119 on June 23, 1998, is adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5733, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart C—Retention Allowances

2. Section 575.304 is amended by adding a new paragraph (d) to read as follows:

§ 575.304 Conditions for payment.

* * * * *

(d) An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency.

3. In § 575.30, paragraph (d) is revised to read as follows:

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

* * * * *

(d) *Approval of retention allowances for groups or categories of employees.* (1)(i) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance.

(ii) The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(iii) The targeted category should be narrowly defined using factors that relate to the conditions described in paragraph (d)(1)(i) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique qualifications, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and performance level.

(While performance level may be a factor used in defining the targeted category, performance level by itself is not sufficient to justify a retention allowance. Performance level may function as a supporting factor in authorizing an allowance or setting the allowance rate only to the extent it directly relates to the conditions in paragraph (d)(1)(i).)

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not more than 25 percent, of an employee's rate of basic pay for a group of category or employees which meets the conditions specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group

retention allowance requests must include—

(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category or employees meets the conditions specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other conditions and requirements for payment under this subpart must be met before a retention allowance may be paid to any individual employee under paragraphs (d)(1) or (d)(2) of this section.

4. In § 575.307, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 575.307 Reduction or termination of retention allowance.

* * * * *

(b) * * *

(1) A lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(2) Labor-market factors make it more likely (or reasonably likely) to recruit a candidate with qualifications similar to those possessed by the employee (or group or category of employees);

(3) The agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all); or

* * * * *

[FR Doc. 99–33178 Filed 12–21–99; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC74

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Local Agency Expenditure Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule announces that no adverse comments were received in response to the direct final rule which amends the provisions of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) regulations to permit quarterly reporting of local agency expenditures. The rule was published in the **Federal Register** on November 9, 1999 (64 FR 61015).

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Branch Chief, Supplemental Food Program Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, Room 540, 3101 Park Center Drive, Alexandria, VA 22302–1594, (703) 305–2710.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Rule?

On November 9, 1999 (64 FR 61015), we published a direct final rule which amends the WIC Program regulations to allow State agencies to permit local agencies to submit their expenditure reports quarterly. State agencies may require more frequent reports if they wish. This rule also makes a parallel change to the requirement that State agencies offset advances against incoming claims each month.

The rule provided a 30-day comment period and stipulated that unless we received written adverse comments, or written rule of intent to submit adverse comments, the rule would become effective on January 24, 2000, which is 75 days after publication in the **Federal Register**. Since no adverse comments were received, this rule confirms the rule's effective date as January 24, 2000.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act of 1995

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in 7 CFR Part 3015, Subpart V and the final rule-related rule published at 48 FR 29115, June 24, 1983, this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33133 Filed 12–21–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–323–AD; Amendment 39–11456; AD 99–25–13 C1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects two typographical errors that appeared in airworthiness directive (AD) 99–25–13 that applies to all Boeing Model 777–200 and –300 series airplanes. That AD currently requires revising the Limitations Section of the Airplane Flight Manual to prohibit the dispatch of certain airplanes under certain conditions. That AD also requires repetitive inspections to ensure correct operation of the backup generators; and, for certain airplanes, a one-time inspection to detect damage of the engine external gearbox; and corrective actions, if necessary. This document corrects incorrect paragraph references. This correction is necessary to ensure that operators accomplish the appropriate requirements of the AD.

DATES: Effective December 23, 1999. The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of December 23, 1999 (64 FR 68618, December 8, 1999).

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 99–25–13, amendment 39–11456, applicable to all Boeing Model 777–200 and -300 series airplanes, was published in the **Federal Register** on December 8, 1999 (64 FR 68618). That AD requires revising the Limitations Section of the Airplane Flight Manual to prohibit the dispatch

of certain airplanes under certain conditions. That AD also requires repetitive inspections to ensure correct operation of the backup generators; and, for certain airplanes, a one-time inspection to detect damage of the engine external gearbox; and corrective actions, if necessary. That AD was prompted by reports of inflight shutdowns due to sheared backup generator shafts. The actions specified by that AD are intended to prohibit the dispatch of an airplane with an engine-mounted backup generator having a sheared shaft; and to detect and correct damage to the engine, which could result in inflight shutdowns.

Need for the Correction

Information obtained recently by the FAA indicates that paragraph (e) of AD 99–25–13 contains two typographical errors. That paragraph specifies "paragraphs (c)(1) and (c)(2)" as the appropriate paragraph references for the action required after replacement of the backup generators.

The FAA has determined that a correction to AD 99–25–13 is necessary. The correction to paragraph (e) of that AD will specify "paragraphs (e)(1) and (e)(2)" as the appropriate paragraph references.

Correction of Publication

This document corrects the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains December 23, 1999.

Since this action only corrects typographical errors, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

99–25–13 C1 Boeing: Amendment 39–11456. Docket 99–NM–323–AD.

Applicability: Model 777–200 and –300 series airplanes equipped with Rolls-Royce Trent 800, General Electric GE90, or Pratt & Whitney PW4000 series turbofan engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prohibit dispatch of an airplane with an engine-mounted backup generator having a sheared shaft; and to detect and correct damage to the engine, which could result in inflight shutdowns; accomplish the following:

Revisions to the Airplane Flight Manual

(a) For all airplanes: Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

"Dispatch of the airplane with an engine-mounted backup generator having a sheared shaft is prohibited.

Following replacement of the backup generator on both the left and right engines, extended twin-engine operations (ETOPS) flight is prohibited until a non-ETOPS flight of at least one hour in duration is accomplished."

Prohibited Servicing or Replacement

(b) For all airplanes: As of 14 days after the effective date of this AD, servicing of both the left and right backup generators or replacement of both backup generators with new or serviceable components by the same individual prior to the same flight is prohibited.

One-Time Actions for Rolls-Royce Engines

(c) For airplanes equipped with Rolls-Royce Trent 800 series turbofan engines: Within 14 days after the effective date of this AD, determine whether the status message "ELEC BACKUP GEN L(R)" and the maintenance message "Backup generator L(R) has a sheared shaft" have occurred within the last 250 flight hours prior to the effective date of this AD. If these messages have occurred during that time, accomplish follow-on corrective actions, as applicable, at the times specified in paragraphs C.1.(c) and D. of Rolls-Royce Service Bulletin RB.211–72–C813, Revision 1, dated July 16, 1999, in accordance with the procedures specified in the service bulletin.

Note 2: Boeing Service Letter 777–SL–24–023–B, dated August 16, 1999, references Rolls-Royce Service Bulletin RB.211–72–C813, Revision 1, dated July 16, 1999, as an additional source of service information to accomplish certain actions required by this AD.

Inspections and Corrective Actions

(d) Within 14 days after the effective date of this AD, and thereafter prior to each flight: Accomplish paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

Rolls-Royce Engines

(1) For airplanes equipped with Rolls-Royce Trent 800 series turbofan engines, accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Inspect the Electrical Maintenance Page of the engine indicating and crew alerting system (EICAS), and perform follow-on corrective actions, as applicable, at the times specified in and in accordance with the procedures specified in Boeing Service Letter 777–SL–24–023–B, dated August 16, 1999.

(ii) If the status message "ELEC BACKUP GEN L(R)" is active: Prior to further flight, inspect the Maintenance Access Terminal (MAT) for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 2.a. of Boeing Service Letter 777–SL–24–023–B, dated August 16, 1999; and accomplish the corrective actions specified in Steps 2.a.(1) or 2.a.(2), as applicable, in accordance with that service letter.

General Electric Engines

(2) For airplanes equipped with General Electric GE90 series turbofan engines: If the status message "ELEC BACKUP GEN L(R)" is active, prior to further flight, inspect the MAT for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 1.a. of Boeing Service Letter 777–SL–24–024, dated August 16, 1999; and accomplish the corrective actions specified in Steps 1.a.(1) or 1.a.(2), as applicable, in accordance with the service letter.

Pratt & Whitney Engines

(3) For Model 777 series airplanes equipped with Pratt & Whitney PW4000 series turbofan engines: If the status message "ELEC BACKUP GEN L(R)" is active, prior to further flight, inspect the MAT for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 1.a. of Boeing Service Letter 777–SL–24–025, dated August 18, 1999, in accordance with that service letter.

(i) If any of the specified maintenance messages is active, prior to further flight, remove and replace the backup generator in accordance with Airplane Maintenance Manual (AMM) 24–25–01–000–801 or 24–25–01–400–801, as applicable.

(ii) If the backup generator shaft is found to be sheared, or either of the low oil

pressure messages are active, prior to further flight, accomplish the corrective actions specified in Step 1.a.(1) of Boeing Service Letter 777–SL–24–025, dated August 18, 1999, in accordance with that service letter.

Flight Test After Replacement of Backup Generators

(e) For all airplanes: As of 14 days after the effective date of this AD, following any replacement of the backup generator on both the left and right engines, accomplish paragraphs (e)(1) and (e)(2) of this AD at the times specified in those paragraphs.

(1) Prior to any ETOPS flight, conduct a non-revenue test flight of at least one hour in duration, or a non-ETOPS flight that is either a non-revenue or revenue flight of at least one hour in duration.

(2) Prior to further flight after accomplishment of the action required by paragraph (e)(1) of this AD: Verify accomplishment of the maintenance actions required by paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (a) and (d)(3)(i) of this AD, the actions shall be done in accordance with Rolls-Royce Service Bulletin RB.211–72–C813, Revision 1, dated July 16, 1999; Boeing Service Letter 777–SL–24–023–B, dated August 16, 1999; Boeing Service Letter 777–SL–24–024, dated August 16, 1999; or Boeing Service Letter 777–SL–24–025, dated August 18, 1999; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of December 23, 1999 (64 FR 68618, December 8, 1999). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) The effective date of this amendment remains December 23, 1999.

Issued in Renton, Washington, on December 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33167 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–08]

Establishment of Class E Airspace; Glendive, MT; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published on November 15, 1999 that inadvertently listed a wrong airway number in the legal description. This action corrects the final rule by reflecting the proper name of the airway in the legal description.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–08, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: On November 15, 1999, the FAA published a final rule that established Class E airspace at Glendive, MT (64 FR 61785). However, that action erroneously listed an airway as V–493, instead of V–439. This action corrects the final rule by reflecting the proper airway.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace description at Glendive, MT, as published in the **Federal Register** on November 15, 1999, (64 FR 61785), (**Federal Register** Document No. 99–29681) is corrected as follows:

§ 71.8 [Corrected]

1. On page 61786, in column 2, the airspace description in FAA Order 7400.9G incorporated by reference in 14 CFR 71.1 is corrected to read as follows:

Paragraph 6006 Class E airspace designated as an en route domestic airspace area.

* * * * *

Glendive, MT [New]

That airspace extending upward from 1200 feet AGL bounded on the east by the west edge of V–439, on the south by the north edge of V–2, and on the northwest by the southeast edge of V–545.

* * * * *

Issued in Seattle, Washington, on December 2, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–33217 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97F–0116]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-methylpentene-1 copolymers resulting from the copolymerization of 4-methylpentene-1 and 1-alkenes having from 12 to 18 carbon atoms for use in contact with food. This action is in response to a petition filed on behalf of Mitsui Petrochemical Industries, Ltd.

DATES: The regulation is effective December 22, 1999; written objections and requests for a hearing by January 21, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Parvin M. Yasaei, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 1, 1997 (62 FR 15526), FDA announced that a food additive petition (FAP 7B4534) had been filed by Mitsui Petrochemical Industries, Ltd., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001 . The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of 4-methylpentene-1 copolymers manufactured by the catalytic copolymerization of 4-methylpentene-1 with 1-alkenes having from 12 to 18 carbon atoms in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and that therefore, (3) the regulations in § 177.1520 should be amended as set forth below in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 21, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1520 is amended by revising paragraphs (a)(3)(ii) and (c) in the table for items 3.3a and 3.3b under the heading "Olefin polymers" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(ii) 4-Methylpentene-1 and 1-alkenes having from 6 to 18 carbon atoms. Such olefin basic copolymers shall contain not less than 95 molar percent of polymer units derived from 4-methylpentene-1, except that copolymers manufactured with 1-alkenes having from 12 to 18 carbon atoms shall contain not less than 97 molar percent of polymer units derived from 4-methylpentene-1; or

* * * * *

(c) * * *

Olefin polymers	Density	Melting Point (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of the polymer in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
*	*	*	*	*
3.3a Olefin copolymers described in paragraph (a)(3)(ii) of this section and manufactured with 1-alkenes having from 6 to 10 carbon atoms.				
3.3b Olefin copolymers described in paragraph (a)(3)(ii) of this section, provided that such olefin polymers have a melt temperature of 220 °C to 250 °C (428 °F to 482 °F) as determined by the method described in paragraph (d)(8) of this section and minimum intrinsic viscosity of 1.0 as determined in paragraph (d)(9) of this section.				
*	*	*	*	*

* * * * *

Dated: December 8, 1999.

L. Robert Lake,

Director, Office of Policy, Planning, and Strategic Initiatives, Center for Food Safety and Applied Nutrion.

[FR Doc. 99–33094 Filed 12–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–2534]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of di(*n*-octyl)phosphite as an extreme pressure-antiwear adjuvant for lubricants intended for incidental contact with food. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: Effective December 22, 1999. Submit written objections and requests for a hearing by January 21, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 9, 1999 (64 FR 43190), FDA announced that a food additive petition (FAP 9B4683) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of di(*n*-octyl)phosphite as an extreme pressure-antiwear adjuvant for lubricants intended for incidental contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.3570 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4683 (64 FR 43190). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 21, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS.

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3570 is amended in the table in paragraph (a)(3) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * * * * * * *	
Di (*n*-octyl) phosphite (CAS Reg. No. 1809–14–9).	For use only as an extreme pressure-antiwear adjuvant at a level not to exceed 0.5 percent by weight of the lubricant.
* * * * * * * *	

* * * * *

Dated: December 8, 1999.

L. Robert Lake,

Director, Office of Policy, Planning, and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–33095 Filed 12–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Atipamezole; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect that Orion Corp. is the correct sponsor of a new animal drug application (NADA) for Atipamezole Injection. When FDA issued the regulation reflecting the NADA approval, Pfizer, Inc., the U.S. agent for Orion Corp., was incorrectly listed as the sponsor of the application. This document corrects that error.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

SUPPLEMENTARY INFORMATION: FDA has discovered an error in the agency's regulations for animal drugs, feeds, and related products. A final rule published in the **Federal Register** of September 17, 1996 (61 FR 48829), added § 522.147 (21 CFR 522.147) and incorrectly stated that Pfizer, Inc., was the sponsor of the NADA. FDA is amending § 522.147 to correctly identify Orion Corp. as the sponsor.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.147 [Amended]

2. Section 522.147 *Atipamezole hydrochloride* is amended in paragraph (b) by removing "000069" and adding in its place "052483".

Dated: December 14, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–33123 Filed 12–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Sevoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Abbott Laboratories. The NADA provides for use of sevoflurane as an inhalant for induction and maintenance of general anesthesia in dogs.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064–4000, filed NADA 141–103 that provides for use of SevoFlo™ (sevoflurane) as an inhalant for induction and maintenance of general anesthesia in dogs. The NADA is approved as of November 17, 1999, and the regulations are amended by adding § 529.2150 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for nonfood producing animals qualifies for 5 years of market exclusivity beginning November 17, 1999, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 529.2150 is added to read as follows:

§ 529.2150 Sevoflurane.

(a) *Specifications.* The drug is a clear, colorless, stable liquid containing no additives or chemical stabilizers.

(b) *Sponsor.* See No. 000074 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* For induction of surgical anesthesia: 5 to 7 percent sevoflurane with oxygen. For maintenance of surgical anesthesia: 3.7 to 4 percent sevoflurane with oxygen in the absence of premedication and 3.3 to 3.6 percent in the presence of premedication.

(2) *Indications for use.* For induction and maintenance of general anesthesia in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 13, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–33121 Filed 12–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8852]

RIN 1545–AT52

Passthrough of Items of an S Corporation to Its Shareholders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Small Business Job Protection Act of 1996. These regulations provide the public with guidance needed to comply with the applicable law and will affect S corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective August 18, 1998.

Applicability Dates: For dates of applicability, see § 1.1366–5, § 1.1367–3, and § 1.1368–4, plus Transition Rule and Effective Date under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under section 1366, Martin Schäffer, Deane M. Burke, or David Shulman (202) 622–3070; concerning the regulations under sections 1367 and 1368, Brenda Stewart, (202) 622–3120.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1613. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The burden for this requirement is reflected in the burden of Form 1040, "U.S. Individual Income Tax Return", and Form 1120S, "U.S. Income Tax Return for an S corporation".

Suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR part 1 to provide additional rules under sections 1366, 1367, and 1368 relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

On August 18, 1998, the IRS published in the **Federal Register** (63 FR 44181), a notice of proposed rulemaking (REG–209446–82) regarding sections 1366, 1367, and 1368. Comments responding to the proposed regulations were received. The public hearing was canceled because there were no requests to speak. After considering the comments received, the proposed regulations are adopted as amended by this Treasury decision.

Explanation of Revisions and Summary of Comments

1. Aggregation of Deductions From an S Corporation With Deductions From Other Sources

The proposed regulations provide that a shareholder of an S corporation must aggregate its separate deductions and exclusions with the shareholder's pro rata share of the S corporation's separately stated deductions or exclusions in determining the allowable amount of any deduction or exclusion that is subject to a limitation in the Code.

The proposed regulations provide an example of this rule for property expensed under section 179. A commentator suggested that the example implies that a shareholder must expense its pro rata share of section 179 expense from the S corporation before it can expense any separately acquired property.

The example is intended to illustrate that a shareholder may expense only up to the amount allowable under section 179 in any given year regardless of whether the property is owned individually or through an S corporation. The example is not intended to imply that a shareholder must elect to expense property held in an S corporation before it can expense any separately acquired property. However, once an S corporation elects to expense property under section 179, a shareholder will generally elect to expense personal property only to the extent the shareholder's pro rata share of the corporation's section 179 expense does not exceed the shareholder's individual limitation under section 179(b). Accordingly, no modifications have been made to the example in the final regulations.

The commentator also requested that the final regulations provide additional examples that illustrate the aggregation of the shareholder's pro rata share of deductions and exclusions from an S corporation with deductions and exclusions from other sources and the operation of any limitations on those aggregated deductions and exclusions. Specifically, the commentator requested that the final regulations include an example in which the shareholder's aggregate section 179 expenses from several passthrough sources exceeds the maximum section 179 expense allowable. The allocation of the section 179 expense among the various sources is more appropriately addressed in the regulations under section 179 and is beyond the scope of these regulations. Accordingly, the final regulations do not adopt this comment.

2. Recharacterization of Gains and Losses at the Shareholder Level

Generally, the items of an S corporation that are passed through, and reported by, a shareholder are characterized at the corporate level in the same manner that partnership items are characterized at the partnership level.

However, the proposed regulations also contain exceptions to this general rule for contributions of either noncapital gain property or capital loss property if an S corporation is formed or availed of by any shareholder or shareholders for a principal purpose of selling or exchanging the property that in the hands of the shareholder or shareholders would have produced a different character of gain or loss. The character of the gain or loss will be the same as it would have been if the property were in the hands of the shareholder or shareholders at the time of the sale or exchange.

Commentators suggested that, in the absence of a statutory provision like section 724 in the partnership context,

the IRS lacked the authority to recharacterize gain or loss at the shareholder level. Thus, the commentators asserted that the final regulations should not adopt the recharacterization rules. Alternatively, the commentators suggested limiting the recharacterization rule to sales or exchanges occurring within a specified time period.

Unlike the partnership rules, the recharacterization rules in the proposed regulations are limited to transactions in which an S corporation is used for a principal purpose of changing the character of the gain or loss of contributed property. These rules are reasonable approaches to remedying any improper attempts to utilize section 1366(b) to avoid tax. The length of time between the contribution of the property to the S corporation and the S corporation's sale or exchange of the property will be a factor considered in evaluating whether the S corporation was availed of for a principal purpose of changing the character of the gain or loss. However, the final regulations do not adopt any particular time period. Thus, the final regulations retain the recharacterization rules as proposed.

3. Gross Income Reporting Requirement

Section 1366(c), like section 702(c) in the partnership context, provides for the passthrough of gross income to a shareholder for federal income tax purposes. Thus, where it is necessary to determine the amount or character of the gross income of a shareholder, the proposed regulations provide that a shareholder's gross income includes the shareholder's pro rata share of the gross income of the S corporation. This amount is the amount of gross income of the corporation used to derive the shareholder's pro rata share of S corporation taxable income or loss.

A commentator suggested that the rule in the proposed regulations attempts to narrow the disclosure exception under section 6501(e) by applying a pro rata concept with respect to a shareholder's gross income. The commentator recommended that the final regulations not adopt the gross income reporting rules or, alternatively, provide a de minimis exception to the rule for certain shareholders who own minority interests in an S corporation.

The rule in the proposed regulations parallels the rules for determining the amount of gross income reported by a partner in a partnership. See section 702(c); § 1.702–1(c)(2). Accordingly, the final regulations do not adopt this suggestion.

4. Carryover of Disallowed Losses Under Section 1366(d)

Section 1366(d) provides that a shareholder's disallowed losses and deductions for any taxable year shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder. The proposed regulations provide that a shareholder's losses and deductions disallowed under section 1366(d) are personal to the shareholder and cannot in any manner be transferred to another person. A commentator requested that the final regulations provide an exception to this rule for transferees that have an identity of investment interest or common basis with the transferor, such as when stock is transferred incident to divorce under section 1041.

Under section 1366(d), the carryover of disallowed losses and deductions is with respect to the shareholder whose investment limited the items of loss or deduction. Thus, the carryover is not available to a transferee who acquires the stock whether by sale, death, gift, or otherwise. Accordingly, the final regulations retain the rule that disallowed losses and deductions are nontransferable.

The proposed regulations also provide that if a shareholder transfers all of the shareholder's stock in the corporation, any disallowed loss or deduction is permanently disallowed. A commentator suggested that the final regulations permit a former shareholder of an S corporation who subsequently reacquires stock in the S corporation to utilize the losses and deductions previously disallowed to the shareholder.

Losses and deductions that are disallowed in any taxable year carry over under section 1366(d) to the succeeding taxable year of the corporation with respect to a particular shareholder. If a shareholder completely terminates its interest in the corporation, the shareholder will not be a shareholder in the succeeding taxable year of the corporation and the disallowed losses would not carry over. There is no statutory authority for the carryover of disallowed items if a shareholder is not a shareholder in the year succeeding the disallowance. The disallowed items of loss and deduction are amounts that exceed the shareholder's economic investment in the corporation. Once the shareholder terminates its interest in the corporation, it is not necessary to preserve the shareholder's position in the corporation. Thus, the final regulations do not adopt this commentator's suggestion.

5. Basis in S Corporation Stock Received as a Gift

Section 1366(d)(1) limits the amount of corporate losses and deductions that can pass through to, and be deducted by, a shareholder to the shareholder's adjusted basis in the corporation's stock and debt of the corporation to the shareholder.

The proposed regulations provide that, for purposes of section 1366(d)(1), a shareholder's basis in stock acquired by gift is the basis of the stock used for purposes of determining loss under section 1015. Thus, if the fair market value of the stock exceeds the donor's adjusted basis on the date of the gift, for purposes of section 1366(d)(1), the adjusted basis of the stock in the hands of the donee is its adjusted basis in the hands of the donor. However, if the donor's adjusted basis in the stock exceeds the stock's fair market value on the date of the gift, for purposes of section 1366(d)(1), the adjusted basis of the stock in the hands of the donee is the stock's fair market value on the date of the gift.

One commentator argued that the basis for determining loss under section 1015 is applicable only on the disposition of the gifted asset. The basis for determining loss in section 1015 generally does not affect the basis for depreciation or the deductibility of net expenses arising out of the use or operation of the gifted asset.

The proposed regulations, however, apply the loss basis rule in section 1015 not for purposes of determining the depreciable basis of a gifted asset, but rather for purposes of determining the amount of passthrough losses and deductions (including depreciation deductions and operating losses) that are allowable to a shareholder under section 1366. The donee of loss stock cannot dispose of the stock and recognize the loss inherent in the stock on the date of gift. If the donee could use the donor's basis to take depreciation deductions and operating losses of the S corporation, the donee in effect would realize the benefit of the loss inherent in the stock.

Another commentator agreed that the basis for determining loss in section 1015 ought to be the basis of gifted stock for purposes of section 1366. Thus, the final regulations continue to provide that for purposes of section 1366, the basis of stock acquired by gift is the basis for determining loss under section 1015.

6. Allocation of Disallowed Losses in Certain Corporate Separations

The proposed regulations provide rules for the carryover of disallowed

losses and deductions in the case of certain corporate reorganizations. In the case of an S corporation that transfers a part of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, any disallowed loss or deduction with respect to a shareholder of the distributing corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation with respect to the shareholder. The proposed regulations provide that the amount of disallowed loss or deduction allocated to the distributing (or controlled) corporation with respect to the shareholder is an amount that bears the same ratio to each item of disallowed loss or deduction as the value of the shareholder's stock in the distributing (or controlled) corporation bears to the total value of the shareholder's stock in the distributing and controlled corporations, in each case as determined immediately after the distribution.

A commentator suggested that the term value as used in the proposed regulations is ambiguous and that the final regulations should specifically state "fair market value." The commentator also recommended that because the computation of fair market value introduces a host of valuation issues into the transaction, the final regulations should permit an allocation of disallowed losses and deductions based on the relative adjusted bases of the assets of the distributing and controlled corporations. Finally, the commentator requested that the final regulations allow S corporations to allocate disallowed losses and deductions to the controlled or distributing corporation based upon the source of those losses and deductions. The final regulations permit shareholders to allocate disallowed losses and deductions according to any reasonable method, including a method based on the relative fair market value of the shareholder's stock in the distributing and controlled corporations immediately after the distribution, a method based on the relative adjusted bases of the assets in the distributing and controlled corporations immediately after the distribution, or, in the case of losses and deductions clearly attributable to either the distributing or controlled corporation, a method that allocates such losses and deductions accordingly.

7. Allocation of Tax on Passive Investment Income Under Section 1366(f)(3)

Section 1366(f)(3) provides that if any tax is imposed under section 1375 for a taxable year, each item of passive investment income is reduced by an amount which bears the same ratio to the amount of the tax as the amount of the item bears to the total passive investment income for the taxable year.

A commentator requested guidance in the final regulations on whether the allocation of any tax imposed under section 1375 is made based on the total gross or total net passive investment income. Under section 1375, the amount of excess passive investment income is allocated to the items of passive investment income based on the net passive investment income of the corporation. The allocation of the tax imposed on the excess passive investment income should be similarly allocated. Accordingly, the final regulations clarify that the allocation of any tax under section 1375 is based on the total net passive investment income for the taxable year.

8. Accrual of Charitable Contribution Deductions Under Section 170(a)(2)

The proposed regulations under section 1366 provide that each shareholder must take into account the shareholder's pro rata share of any charitable contributions paid by the corporation during the corporation's taxable year. A commentator requested that the final regulations clarify that separately stated items include charitable contributions paid or deemed to be paid. The commentator suggested that an accrual basis S corporation may elect under section 170(a)(2) to treat charitable contributions as paid in the year prior to the year in which the charitable contribution is actually paid.

Under section 1363(b), S corporations generally compute their taxable income in the same manner as in the case of an individual. However, S corporations are not permitted to take charitable contribution deductions by virtue of the cross reference in section 1363(b)(2) to section 703(a)(2). Instead, the deductions for charitable contributions pass through to the shareholders of the S corporation. Individuals cannot make the election under section 170(a)(2). Treasury and the Service believe that an S corporation also cannot make the election under section 170(a)(2). Accordingly, the final regulations do not adopt this suggestion.

9. Treatment of Section 108 Income

The regulations enumerate items of income (including tax-exempt income), loss, deduction, or credit of an S corporation that must be taken into account separately by each shareholder pursuant to section 1366(a)(1)(A). "Tax-exempt income" does not include income from discharge of indebtedness excluded from income under section 108 because such income is not permanently excludible from income in all circumstances in which section 108 applies. One commentator objected to this treatment of section 108 income, arguing that such income is tax-exempt and that application of section 108 at the S corporation level pursuant to section 108(d)(7)(A) does not preclude the pass-through of section 108 income. Another commentator, however, agreed with the approach taken by the regulations.

Treasury and the Service continue to believe that the absence of a stock basis increase for income of an S corporation excluded under section 108(a) is consistent with the legislative history of section 108 and the specific rules that apply to the discharge of indebtedness income of S corporations. Accordingly, the treatment of section 108 income is unchanged in the final regulations.

10. Adjustment to Basis of Stock

Section 1367(a) and § 1.1367–1 of the proposed regulations prescribe the order of adjustments required by subchapter S to the basis of a shareholder's stock in an S corporation and the manner in which those adjustments are made.

A commentator suggested that the final regulations should provide that life insurance premiums on policies owned by the S corporation do not affect either a shareholder's basis in stock/debt or the corporation's accumulated adjustments account (AAA). The commentator further suggested that § 1.1367–1(c)(2) (relating to noncapital, nondeductible expenses) be amended to make special provision for accounts receivable when debt is restored.

Because these comments relate to provisions in § 1.1367–1 that were not affected by the amendments contained in the proposed regulations, the comments are not reflected in the final regulations.

11. Adjustments Required Before Determining Tax Effect of Distribution

Section 1.1368–2 of the proposed regulations provides rules for determining the source of a distribution made by an S corporation with respect to its stock and the tax effect of the distribution to the shareholders for

taxable years of the corporation beginning on or after August 18, 1998.

One commentator interpreted § 1.1368–2(a)(5) of the proposed regulations, which prescribes the order in which adjustments are made to the AAA for purposes of determining the source of a distribution, as providing that the AAA is adjusted in the same order as the adjustments to the basis of a share of stock under § 1.1367–1 of the proposed regulations. The commentator stated that although the Small Business Job Protection Act of 1996 (1996 Act) changed the order of the adjustments to the basis of a share of stock, the 1996 Act did not change the order of the adjustments to the AAA except in situations involving a net negative adjustment (where the reductions in the account for the taxable year exceed the increases for the taxable year). When a net negative adjustment occurs, the AAA is adjusted to take into account distributions before the AAA is adjusted to take into account any net negative adjustment.

Consistent with the comment received, the final regulations make clear that except in situations involving a net negative adjustment, the order of adjustments to the AAA is not changed. Examples are added to the final regulations to illustrate the effect of the 1996 Act on the AAA ordering rules.

12. Transition Rule and Effective Date Sections 1367 and 1368

Sections 1.1367–3 and 1.1368–4 of the proposed regulations provide that the amendments to the final regulations under section 1367 and 1368 apply only to taxable years of the corporation beginning on or after August 18, 1998.

Commentators suggested that because the amendments to sections 1367 and 1368 under the 1996 Act are effective for taxable years beginning after December 31, 1996, the final regulations should be effective, at least on an elective basis, for the period beginning from the effective date of the 1996 Act and ending on the effective date of the final regulations.

Sections 1.1367–3 and 1.1368–4 of the final regulations reflect this comment and provide that for taxable years beginning on or after January 1, 1997, and before August 18, 1998, the adjustments to the basis of a shareholder's stock and the treatment of distributions by an S corporation, respectively, must be determined in a reasonable manner, taking into account the statute and the legislative history. Return positions consistent with the final regulations will be considered reasonable.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not impose a collection of information that is not already required by the underlying statute or the current regulations and reflected in the appropriate forms. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal authors of these final regulations are Terri A. Belanger, Deane M. Burke, and Brenda Stewart of the Office of Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.1366–0 and 1.1366–1 are added, § 1.1366–2 is revised, and §§ 1.1366–3 through 1.1366–5 are added to read as follows:

§ 1.1366–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1366–1 through 1.1366–5:

§ 1.1366–1 Shareholder's share of items of an S corporation.

(a) Determination of shareholder's tax liability.
(1) In general.
(2) Separately stated items of income, loss, deduction, or credit.
(3) Nonseparately computed income or loss.
(4) Separate activities requirement.
(5) Aggregation of deductions or exclusions for purposes of limitations.
(b) Character of items constituting pro rata share.
(1) In general.
(2) Exception for contribution of noncapital gain property.
(3) Exception for contribution of capital loss property.
(c) Gross income of a shareholder.
(1) In general.
(2) Gross income for substantial omission of items.
(d) Shareholders holding stock subject to community property laws.
(e) Net operating loss deduction of shareholder of S corporation.
(f) Cross-reference.

§ 1.1366–2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) In general.
(1) Limitation on losses and deductions.
(2) Carryover of disallowance.
(3) Basis limitation amount.
(i) Stock portion.
(ii) Indebtedness portion.
(4) Limitation on losses and deductions allocated to each item.
(5) Nontransferability of losses and deductions.
(6) Basis of stock acquired by gift.
(b) Special rules for carryover of disallowed losses and deductions to post-termination transition period described in section 1377(b).
(1) In general.
(2) Limitation on losses and deductions.
(3) Limitation on losses and deductions allocated to each item.
(4) Adjustment to the basis of stock.
(c) Carryover of disallowed losses and deductions in the case of liquidations, reorganizations, and divisions.
(1) Liquidations and reorganizations.
(2) Corporate separations to which section 368(a)(1)(D) applies.

§ 1.1366–3 Treatment of family groups.
(a) In general.
(b) Examples.

§ 1.1366–4 Special rules limiting the passthrough of certain items of an S corporation to its shareholders.
(a) Passthrough inapplicable to section 34 credit.
(b) Reduction in passthrough for tax imposed on built-in gains.
(c) Reduction in passthrough for tax imposed on excess net passive income.

§ 1.1366–5 Effective date.

§ 1.1366–1 Shareholder's share of items of an S corporation.

(a) *Determination of shareholder's tax liability*—(1) *In general.* An S corporation must report, and a shareholder is required to take into account in the shareholder's return, the shareholder's pro rata share, whether or not distributed, of the S corporation's items of income, loss, deduction, or credit described in paragraphs (a)(2), (3), and (4) of this section. A shareholder's pro rata share is determined in accordance with the provisions of section 1377(a) and the regulations thereunder. The shareholder takes these items into account in determining the shareholder's taxable income and tax liability for the shareholder's taxable year with or within which the taxable year of the corporation ends. If the shareholder dies (or if the shareholder is an estate or trust and the estate or trust terminates) before the end of the taxable year of the corporation, the shareholder's pro rata share of these items is taken into account on the shareholder's final return. For the limitation on allowance of a shareholder's pro rata share of S corporation losses or deductions, see section 1366(d) and § 1.1366–2.

(2) *Separately stated items of income, loss, deduction, or credit.* Each shareholder must take into account separately the shareholder's pro rata share of any item of income (including tax-exempt income), loss, deduction, or credit of the S corporation that if separately taken into account by any shareholder could affect the shareholder's tax liability for that taxable year differently than if the shareholder did not take the item into account separately. The separately stated items of the S corporation include, but are not limited to, the following items—

(i) The corporation's combined net amount of gains and losses from sales or exchanges of capital assets grouped by applicable holding periods, by applicable rate of tax under section 1(h), and by any other classification that may be relevant in determining the shareholder's tax liability;

(ii) The corporation's combined net amount of gains and losses from sales or exchanges of property described in section 1231 (relating to property used in the trade or business and involuntary conversions), grouped by applicable holding periods, by applicable rate of tax under section 1(h), and by any other classification that may be relevant in determining the shareholder's tax liability;

(iii) Charitable contributions, grouped by the percentage limitations of section 170(b), paid by the corporation within the taxable year of the corporation;

(iv) The taxes described in section 901 that have been paid (or accrued) by the corporation to foreign countries or to possessions of the United States;

(v) Each of the corporation's separate items involved in the determination of credits against tax allowable under part IV of subchapter A (section 21 and following) of the Internal Revenue Code, except for any credit allowed under section 34 (relating to certain uses of gasoline and special fuels);

(vi) Each of the corporation's separate items of gains and losses from wagering transactions (section 165(d)); soil and water conservation expenditures (section 175); deduction under an election to expense certain depreciable business expenses (section 179); medical, dental, etc., expenses (section 213); the additional itemized deductions for individuals provided in part VII of subchapter B (section 212 and following) of the Internal Revenue Code; and any other itemized deductions for which the limitations on itemized deductions under sections 67 or 68 applies;

(vii) Any of the corporation's items of portfolio income or loss, and expenses related thereto, as defined in the regulations under section 469;

(viii) The corporation's tax-exempt income. For purposes of subchapter S, tax-exempt income is income that is permanently excludible from gross income in all circumstances in which the applicable provision of the Internal Revenue Code applies. For example, income that is excludible from gross income under section 101 (certain death benefits) or section 103 (interest on state and local bonds) is tax-exempt income, while income that is excludible from gross income under section 108 (income from discharge of indebtedness) or section 109 (improvements by lessee on lessor's property) is not tax-exempt income;

(ix) The corporation's adjustments described in sections 56 and 58, and items of tax preference described in section 57; and

(x) Any item identified in guidance (including forms and instructions) issued by the Commissioner as an item required to be separately stated under this paragraph (a)(2).

(3) *Nonseparately computed income or loss.* Each shareholder must take into account separately the shareholder's pro rata share of the nonseparately computed income or loss of the S corporation. For this purpose, nonseparately computed income or loss means the corporation's gross income less the deductions allowed to the corporation under chapter 1 of the Internal Revenue Code, determined by excluding any item requiring separate computation under paragraph (a)(2) of this section.

(4) *Separate activities requirement.* An S corporation must report, and each shareholder must take into account in the shareholder's return, the shareholder's pro rata share of an S corporation's items of income, loss, deduction, or credit described in paragraphs (a)(2) and (3) of this section for each of the corporation's activities as defined in section 469 and the regulations thereunder.

(5) *Aggregation of deductions or exclusions for purposes of limitations*—(i) *In general.* A shareholder aggregates the shareholder's separate deductions or exclusions with the shareholder's pro rata share of the S corporation's separately stated deductions or exclusions in determining the amount of any deduction or exclusion allowable to the shareholder under subtitle A of the Internal Revenue Code as to which a limitation is imposed.

(ii) *Example.* The provisions of paragraph (a)(5)(i) of this section are illustrated by the following example:

Example. In 1999, Corporation M, a calendar year S corporation, purchases and places in service section 179 property costing $10,000. Corporation M elects to expense the entire cost of the property. Shareholder A

owns 50 percent of the stock of Corporation M. Shareholder A's pro rata share of this item after Corporation M applies the section 179(b) limitations is $5,000. Because the aggregate amount of Shareholder A's pro rata share and separately acquired section 179 expense may not exceed $19,000 (the aggregate maximum cost that may be taken into account under section 179(a) for the applicable taxable year), Shareholder A may elect to expense up to $14,000 of separately acquired section 179 property that is purchased and placed in service in 1999, subject to the limitations of section 179(b).

(b) *Character of items constituting pro rata share*—(1) *In general.* Except as provided in paragraph (b)(2) or (3) of this section, the character of any item of income, loss, deduction, or credit described in section 1366(a)(1)(A) or (B) and paragraph (a) of this section is determined for the S corporation and retains that character in the hands of the shareholder. For example, if an S corporation has capital gain on the sale or exchange of a capital asset, a shareholder's pro rata share of that gain will also be characterized as a capital gain regardless of whether the shareholder is otherwise a dealer in that type of property. Similarly, if an S corporation engages in an activity that is not for profit (as defined in section 183), a shareholder's pro rata share of the S corporation's deductions will be characterized as not for profit. Also, if an S corporation makes a charitable contribution to an organization qualifying under section 170(b)(1)(A), a shareholder's pro rata share of the S corporation's charitable contribution will be characterized as made to an organization qualifying under section 170(b)(1)(A).

(2) *Exception for contribution of noncapital gain property.* If an S corporation is formed or availed of by any shareholder or group of shareholders for a principal purpose of selling or exchanging contributed property that in the hands of the shareholder or shareholders would not have produced capital gain if sold or exchanged by the shareholder or shareholders, then the gain on the sale or exchange of the property recognized by the corporation is not treated as a capital gain.

(3) *Exception for contribution of capital loss property.* If an S corporation is formed or availed of by any shareholder or group of shareholders for a principal purpose of selling or exchanging contributed property that in the hands of the shareholder or shareholders would have produced capital loss if sold or exchanged by the shareholder or shareholders, then the loss on the sale or exchange of the property recognized by the corporation is treated as a capital loss to the extent that, immediately before the contribution, the adjusted basis of the property in the hands of the shareholder or shareholders exceeded the fair market value of the property.

(c) *Gross income of a shareholder*—(1) *In general.* Where it is necessary to determine the amount or character of the gross income of a shareholder, the shareholder's gross income includes the shareholder's pro rata share of the gross income of the S corporation. The shareholder's pro rata share of the gross income of the S corporation is the amount of gross income of the corporation used in deriving the shareholder's pro rata share of S corporation taxable income or loss (including items described in section 1366(a)(1)(A) or (B) and paragraph (a) of this section). For example, a shareholder is required to include the shareholder's pro rata share of S corporation gross income in computing the shareholder's gross income for the purposes of determining the necessity of filing a return (section 6012(a)) and the shareholder's gross income derived from farming (sections 175 and 6654(i)).

(2) *Gross income for substantial omission of items*—(i) *In general.* For purposes of determining the applicability of the 6-year period of limitation on assessment and collection provided in section 6501(e) (relating to omission of more than 25 percent of gross income), a shareholder's gross income includes the shareholder's pro rata share of S corporation gross income (as described in section 6501(e)(1)(A)(i)). In this respect, the amount of S corporation gross income used in deriving the shareholder's pro rata share of any item of S corporation income, loss, deduction, or credit (as included or disclosed in the shareholder's return) is considered as an amount of gross income stated in the shareholder's return for purposes of section 6501(e).

(ii) *Example.* The following example illustrates the provisions of paragraph (c)(2)(i) of this section:

Example. Shareholder A, an individual, owns 25 percent of the stock of Corporation N, an S corporation that has $10,000 gross income and $2,000 taxable income. A reports only $300 as A's pro rata share of N's taxable income. A should have reported $500 as A's pro rata share of taxable income, derived from A's pro rata share, $2,500, of N's gross income. Because A's return included only $300 without a disclosure meeting the requirements of section 6501(e)(1)(A)(ii) describing the difference of $200, A is regarded as having reported on the return only $1,500 ($300/$500 of $2,500) as gross income from N.

(d) *Shareholders holding stock subject to community property laws.* If a shareholder holds S corporation stock that is community property, then the shareholder's pro rata share of any item or items listed in paragraphs (a)(2), (3), and (4) of this section with respect to that stock is reported by the husband and wife in accordance with community property rules.

(e) *Net operating loss deduction of shareholder of S corporation.* For purposes of determining a net operating loss deduction under section 172, a shareholder of an S corporation must take into account the shareholder's pro rata share of items of income, loss, deduction, or credit of the corporation. See section 1366(b) and paragraph (b) of this section for rules on determining the character of the items. In determining under section 172(d)(4) the nonbusiness deductions allowable to a shareholder of an S corporation (arising from both corporation sources and any other sources), the shareholder separately takes into account the shareholder's pro rata share of the deductions of the corporation that are not attributable to a trade or business and combines this amount with the shareholder's nonbusiness deductions from any other sources. The shareholder also separately takes into account the shareholder's pro rata share of the gross income of the corporation not derived from a trade or business and combines this amount with the shareholder's nonbusiness income from all other sources. See section 172 and the regulations thereunder.

(f) *Cross-reference.* For rules relating to the consistent tax treatment of subchapter S items, see section 6037(c).

§ 1.1366–2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) *In general*—(1) *Limitation on losses and deductions.* The aggregate amount of losses and deductions taken into account by a shareholder under § 1.1366–1(a) (2), (3), and (4) for any taxable year of an S corporation cannot exceed the sum of—

(i) The adjusted basis of the shareholder's stock in the corporation (as determined under paragraph (a)(3)(i) of this section); and

(ii) The adjusted basis of any indebtedness of the corporation to the shareholder (as determined under paragraph (a)(3)(ii) of this section).

(2) *Carryover of disallowance.* A shareholder's aggregate amount of losses and deductions for a taxable year in excess of the sum of the adjusted basis of the shareholder's stock in an S corporation and of any indebtedness of

the S corporation to the shareholder is not allowed for the taxable year. However, any disallowed loss or deduction retains its character and is treated as incurred by the corporation in the corporation's first succeeding taxable year, and subsequent taxable years, with respect to the shareholder. For rules on determining the adjusted bases of stock of an S corporation and indebtedness of the corporation to the shareholder, see paragraphs (a)(3) (i) and (ii) of this section.

(3) *Basis limitation amount*—(i) *Stock portion.* A shareholder generally determines the adjusted basis of stock for purposes of paragraphs (a)(1)(i) and (2) of this section (limiting losses and deductions) by taking into account only increases in basis under section 1367(a)(1) for the taxable year and decreases in basis under section 1367(a)(2) (A), (D) and (E) (relating to distributions, noncapital, nondeductible expenses, and certain oil and gas depletion deductions) for the taxable year. In so determining this loss limitation amount, the shareholder disregards decreases in basis under section 1367(a)(2) (B) and (C) (for losses and deductions, including losses and deductions previously disallowed) for the taxable year. However, if the shareholder has in effect for the taxable year an election under § 1.1367–1(g) to decrease basis by items of loss and deduction prior to decreasing basis by noncapital, nondeductible expenses and certain oil and gas depletion deductions, the shareholder also disregards decreases in basis under section 1367(a)(2) (D) and (E). This basis limitation amount for stock is determined at the time prescribed under § 1.1367–1(d)(1) for adjustments to the basis of stock.

(ii) *Indebtedness portion.* A shareholder determines the shareholder's adjusted basis in indebtedness of the corporation for purposes of paragraphs (a)(1)(ii) and (2) of this section (limiting losses and deductions) without regard to any adjustment under section 1367(b)(2)(A) for the taxable year. This basis limitation amount for indebtedness is determined at the time prescribed under § 1.1367–2(d)(1) for adjustments to the basis of indebtedness.

(4) *Limitation on losses and deductions allocated to each item.* If a shareholder's pro rata share of the aggregate amount of losses and deductions specified in § 1.1366–1(a)(2), (3), and (4) exceeds the sum of the adjusted basis of the shareholder's stock in the corporation (determined in accordance with paragraph (a)(3)(i) of this section) and the adjusted basis of any indebtedness of the corporation to the shareholder (determined in accordance with paragraph (a)(3)(ii) of this section), then the limitation on losses and deductions under section 1366(d)(1) must be allocated among the shareholder's pro rata share of each loss or deduction. The amount of the limitation allocated to any loss or deduction is an amount that bears the same ratio to the amount of the limitation as the loss or deduction bears to the total of the losses and deductions. For this purpose, the total of losses and deductions for the taxable year is the sum of the shareholder's pro rata share of losses and deductions for the taxable year, and the losses and deductions disallowed and carried forward from prior years pursuant to section 1366(d)(2).

(5) *Nontransferability of losses and deductions.* Any loss or deduction disallowed under paragraph (a)(1) of this section is personal to the shareholder and cannot in any manner be transferred to another person. If a shareholder transfers some but not all of the shareholder's stock in the corporation, the amount of any disallowed loss or deduction under this section is not reduced and the transferee does not acquire any portion of the disallowed loss or deduction. If a shareholder transfers all of the shareholder's stock in the corporation, any disallowed loss or deduction is permanently disallowed.

(6) *Basis of stock acquired by gift.* For purposes of section 1366(d)(1)(A) and paragraphs (a)(1)(i) and (2) of this section, the basis of stock in a corporation acquired by gift is the basis of the stock that is used for purposes of determining loss under section 1015(a).

(b) *Special rules for carryover of disallowed losses and deductions to post-termination transition period described in section 1377(b)*—(1) *In general.* If, for the last taxable year of a corporation for which it was an S corporation, a loss or deduction was disallowed to a shareholder by reason of the limitation in paragraph (a) of this section, the loss or deduction is treated under section 1366(d)(3) as incurred by that shareholder on the last day of any post-termination transition period (within the meaning of section 1377(b)).

(2) *Limitation on losses and deductions.* The aggregate amount of losses and deductions taken into account by a shareholder under paragraph (b)(1) of this section cannot exceed the adjusted basis of the shareholder's stock in the corporation determined at the close of the last day of the post-termination transition period. For this purpose, the adjusted basis of a shareholder's stock in the corporation is determined at the close of the last day of the post-termination transition period without regard to any reduction required under paragraph (b)(4) of this section. If a shareholder disposes of a share of stock prior to the close of the last day of the post-termination transition period, the adjusted basis of that share is its basis as of the close of the day of disposition. Any losses and deductions in excess of a shareholder's adjusted stock basis are permanently disallowed. For purposes of section 1366(d)(3)(B) and this paragraph (b)(2), the basis of stock in a corporation acquired by gift is the basis of the stock that is used for purposes of determining loss under section 1015(a).

(3) *Limitation on losses and deductions allocated to each item.* If the aggregate amount of losses and deductions treated as incurred by the shareholder under paragraph (b)(1) of this section exceeds the adjusted basis of the shareholder's stock determined under paragraph (b)(2) of this section, the limitation on losses and deductions under section 1366(d)(3)(B) must be allocated among each loss or deduction. The amount of the limitation allocated to each loss or deduction is an amount that bears the same ratio to the amount of the limitation as the amount of each loss or deduction bears to the total of all the losses and deductions.

(4) *Adjustment to the basis of stock.* The shareholder's basis in the stock of the corporation is reduced by the amount allowed as a deduction by reason of this paragraph (b). For rules regarding adjustments to the basis of a shareholder's stock in an S corporation, see § 1.1367–1.

(c) *Carryover of disallowed losses and deductions in the case of liquidations, reorganizations, and divisions*—(1) *Liquidations and reorganizations.* If a corporation acquires the assets of an S corporation in a transaction to which section 381(a) applies, any loss or deduction disallowed under paragraph (a) of this section with respect to a shareholder of the distributor or transferor S corporation is available to that shareholder as a shareholder of the acquiring corporation. Thus, where the acquiring corporation is an S corporation, a loss or deduction of a shareholder of the distributor or transferor S corporation disallowed prior to or during the taxable year of the transaction is treated as incurred by the acquiring S corporation with respect to that shareholder if the shareholder is a shareholder of the acquiring S corporation after the transaction. Where the acquiring corporation is a C corporation, a post-termination

transition period arises the day after the last day that an S corporation was in existence and the rules provided in paragraph (b) of this section apply with respect to any shareholder of the acquired S corporation that is also a shareholder of the acquiring C corporation after the transaction. See the special rules under section 1377 for the availability of the post-termination transition period if the acquiring corporation is a C corporation.

(2) *Corporate separations to which section 368(a)(1)(D) applies.* If an S corporation transfers a portion of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, any loss or deduction disallowed under paragraph (a) of this section with respect to a shareholder of the distributing S corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation with respect to the shareholder. Such allocation shall be made according to any reasonable method, including a method based on the relative fair market value of the shareholder's stock in the distributing and controlled corporations immediately after the distribution, a method based on the relative adjusted basis of the assets in the distributing and controlled corporations immediately after the distribution, or, in the case of losses and deductions clearly attributable to either the distributing or controlled corporation, any method that allocates such losses and deductions accordingly.

§ 1.1366–3 Treatment of family groups.

(a) *In general.* Under section 1366(e), if an individual, who is a member of the family of one or more shareholders of an S corporation, renders services for, or furnishes capital to, the corporation without receiving reasonable compensation, the Commissioner shall prescribe adjustments to those items taken into account by the individual and the shareholders as may be necessary to reflect the value of the services rendered or capital furnished. For these purposes, in determining the reasonable value for services rendered, or capital furnished, to the corporation, consideration will be given to all the facts and circumstances, including the amount that ordinarily would be paid in order to obtain comparable services or capital from a person (other than a member of the family) who is not a shareholder in the corporation. In addition, for purposes of section 1366(e), if a member of the family of one or more shareholders of the S corporation holds an interest in a passthrough entity (e.g., a partnership, S corporation, trust, or estate), that performs services for, or furnishes capital to, the S corporation without receiving reasonable compensation, the Commissioner shall prescribe adjustments to the passthrough entity and the corporation as may be necessary to reflect the value of the services rendered or capital furnished. For purposes of section 1366(e), the term *family* of any shareholder includes only the shareholder's spouse, ancestors, lineal descendants, and any trust for the primary benefit of any of these persons.

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. The stock of an S corporation is owned 50 percent by F and 50 percent by T, the minor son of F. For the taxable year, the corporation has items of taxable income equal to $70,000. Compensation of $10,000 is paid by the corporation to F for services rendered during the taxable year, and no compensation is paid to T, who rendered no services. Based on all the relevant facts and circumstances, reasonable compensation for the services rendered by F would be $30,000. In the discretion of the Internal Revenue Service, up to an additional $20,000 of the $70,000 of the corporation's taxable income, for tax purposes, may be allocated to F as compensation for services rendered. If the Internal Revenue Service allocates $20,000 of the corporation's taxable income to F as compensation for services, taxable income of the corporation would be reduced by $20,000 to $50,000, of which F and T each would be allocated $25,000. F would have $30,000 of total compensation paid by the corporation for services rendered.

Example 2. The stock of an S corporation is owned by A and B. For the taxable year, the corporation has paid compensation to a partnership that rendered services to the corporation during the taxable year. The spouse of A is a partner in that partnership. Consequently, if based on all the relevant facts and circumstances the partnership did not receive reasonable compensation for the services rendered to the corporation, the Internal Revenue Service, in its discretion, may make adjustments to those items taken into account by the partnership and the corporation as may be necessary to reflect the value of the services rendered.

§ 1.1366–4 Special rules limiting the passthrough of certain items of an S corporation to its shareholders.

(a) *Passthrough inapplicable to section 34 credit.* Section 1.1366–1(a) does not apply to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

(b) *Reduction in passthrough for tax imposed on built-in gains.* For purposes of § 1.1366–1(a), if for any taxable year of the S corporation a tax is imposed on the corporation under section 1374, the amount of the tax imposed is treated as a loss sustained by the S corporation during the taxable year. The character of the deemed loss is determined by allocating the loss proportionately among the net recognized built-in gains giving rise to the tax and attributing the character of each net recognized built-in gain to the allocable portion of the loss.

(c) *Reduction in passthrough for tax imposed on excess net passive income.* For purposes of § 1.1366–1(a), if for any taxable year of the S corporation a tax is imposed on the corporation under section 1375, each item of passive investment income shall be reduced by an amount that bears the same ratio to the amount of the tax as the amount of the item bears to the total net passive investment income for that taxable year.

§ 1.1366–5 Effective date.

Sections 1.1366–1 through 1.1366–4 apply to taxable years of an S corporation beginning on or after August 18, 1998.

Par. 3. Section 1.1367–0 is amended in the table as follows:

1. The entries for § 1.1367–1 (e) through (g) are revised.

2. The entries for § 1.1367–1 (h) through (j) are added.

The additions and revisions read as follows:

§ 1.1367–0 Table of contents.

* * * * *

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

* * * * *

(e) Ordering rules for taxable years beginning before January 1, 1997.
(f) Ordering rules for taxable years beginning on or after August 18, 1998.
(g) Elective ordering rule.
(h) Examples.
(i) [Reserved]
(j) Adjustments for items of income in respect of a decedent.

* * * * *

Par. 4. Section 1.1367–1 is amended as follows:

1. The paragraph heading and introductory text of paragraph (e) are revised.

2. Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h), respectively.

3. New paragraph (f) is added.

4. The first and second sentences of newly designated paragraph (g) are revised.

5. Newly designated paragraph (h) is amended as follows:

a. The heading for *Example 1* is revised.

b. *Example 2* and *Example 3* are redesignated as *Example 3* and *Example 4*, respectively.

c. New *Example 2* is added.

d. The heading of newly designated *Example 4* is revised.

e. *Example 5* is added.

6. Paragraph (i) is added and reserved and paragraph (j) is added.

The additions and revisions read as follows:

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

* * * * *

(e) *Ordering rules for taxable years beginning before January 1, 1997.* For any taxable year of a corporation beginning before January 1, 1997, except as provided in paragraph (g) of this section, the adjustments required by section 1367(a) are made in the following order—

* * * * *

(f) *Ordering rules for taxable years beginning on or after August 18, 1998.* For any taxable year of a corporation beginning on or after August 18, 1998, except as provided in paragraph (g) of this section, the adjustments required by section 1367(a) are made in the following order—

(1) Any increase in basis attributable to the income items described in section 1367(a)(1)(A) and (B), and the excess of the deductions for depletion described in section 1367(a)(1)(C);

(2) Any decrease in basis attributable to a distribution by the corporation described in section 1367(a)(2)(A);

(3) Any decrease in basis attributable to noncapital, nondeductible expenses described in section 1367(a)(2)(D), and the oil and gas depletion deduction described in section 1367(a)(2)(E); and

(4) Any decrease in basis attributable to items of loss or deduction described in section 1367(a)(2)(B) and (C).

(g) *Elective ordering rule.* A shareholder may elect to decrease basis under paragraph (e)(3) or (f)(4) of this section, whichever applies, prior to decreasing basis under paragraph (e)(2) or (f)(3) of this section, whichever applies. If a shareholder makes this election, any amount described in paragraph (e)(2) or (f)(3) of this section, whichever applies, that is in excess of the shareholder's basis in stock and indebtedness is treated, solely for purposes of this section, as an amount described in paragraph (e)(2) or (f)(3) of this section, whichever applies, in the succeeding taxable year. * * *

(h) * * *

Example 1. Adjustments to basis of stock for taxable years beginning before January 1, 1997. * * *

Example 2. Adjustments to basis of stock for taxable years beginning on or after August 18, 1998. (i) On December 31, 2001, A owns a block of 50 shares of stock with an adjusted basis per share of $6 in Corporation S. On December 31, 2001, A purchases for $400 an additional block of 50 shares of stock with an adjusted basis of $8 per share. Thus, A holds 100 shares of stock for each day of the 2002 taxable year. For S's 2002 taxable year, A's pro rata share of the amount of items described in section 1367(a)(1)(A) (relating to increases in basis of stock) is $300, A's pro rata share of the amount of the items described in section 1367(a)(2)(B) (relating to decreases in basis of stock attributable to items of loss and deduction) is $300, and A's pro rata share of the amount of the items described in section 1367(a)(2)(D) (relating to decreases in basis of stock attributable to noncapital, nondeductible expenses) is $200. S makes a distribution to A in the amount of $100 during 2002.

(ii) Pursuant to the ordering rules of paragraph (f) of this section, A first increases the basis of each share of stock by $3 ($300/100 shares) and then decreases the basis of each share by $1 ($100/100 shares) for the distribution. A next decreases the basis of each share by $2 ($200/100 shares) for the noncapital, nondeductible expenses and then decreases the basis of each share by $3 ($300/100 shares) for the items of loss. Thus, on January 1, 2003, A has a basis of $3 per share in the original block of 50 shares ($6 + $3 − $1 − $2 − $3) and a basis of $5 per share in the second block of 100 shares ($8 + $3 − $1 − $2 − $3).

* * * * *

Example 4. Effects of section 1377(a)(2) election and distribution on basis of stock for taxable years beginning before January 1, 1997. * * *

Example 5. Effects of section 1377(a)(2) election and distribution on basis of stock for taxable years beginning on or after August 18, 1998. (i) The facts are the same as in *Example 4*, except that all of the events occur in 2001 rather than in 1994 and except as follows: On June 30, 2001, B sells 25 shares of her stock for $5,000 to D and 25 shares back to Corporation S for $5,000. Under section 1377(a)(2)(B) and § 1.1377–1(b)(2), B and C are affected shareholders because B has transferred shares to Corporation S. Pursuant to section 1377(a)(2)(A) and § 1.1377–1(b)(1), B and C, the affected shareholders, and Corporation S agree to treat the taxable year 2001 as if it consisted of two separate taxable years for all affected shareholders for the purposes set forth in § 1.1377–1(b)(3)(i).

(ii) On June 30, 2001, B and C, pursuant to the ordering rules of paragraph (f)(1) of this section, increase the basis of each share by $60 ($6,000/100 shares) for the nonseparately computed income. Then B and C reduce the basis of each share by $120 ($12,000/100 shares) for the distribution. Finally, B and C decrease the basis of each share by $40 ($4,000/100 shares) for the separately stated deduction item.

(iii) The basis of the stock of B is reduced from $120 to $20 per share ($120 + $60 − $120 − $40). Prior to accounting for the separately stated deduction item, the basis of the stock of C is reduced from $80 to $20 ($80 + $60 − $120). Finally, because the period from January 1 through June 30, 2001 is treated under § 1.1377–1(b)(3)(i) as a separate taxable year for purposes of making adjustments to the basis of stock, under section 1366(d) and § 1.1366–2(a)(2), C may deduct only $20 per share of the remaining $40 of the separately stated deduction item, and the basis of the stock of C is reduced from $20 per share to $0 per share. Under section 1366 and § 1.1366–2(a)(2), C's remaining separately stated deduction item of $20 per share is treated as having been incurred in the first succeeding taxable year of Corporation S, which, for this purpose, begins on July 1, 2001.

(i) [Reserved]

(j) *Adjustments for items of income in respect of a decedent.* The basis determined under section 1014 of any stock in an S corporation is reduced by the portion of the value of the stock that is attributable to items constituting income in respect of a decedent. For the determination of items realized by an S corporation constituting income in respect of a decedent, see sections 1367(b)(4)(A) and 691 and applicable regulations thereunder. For the determination of the allowance of a deduction for the amount of estate tax attributable to income in respect of a decedent, see section 691(c) and applicable regulations thereunder.

Par. 5. § 1.1367–3 is revised to read as follows:

§ 1.1367–3 Effective date and transition rule.

Except for § 1.1367–1(f), (h) *Example 2* and *Example 5*, and (j), §§ 1.1367–1 and 1.1367–2 apply to taxable years of the corporation beginning on or after January 1, 1994. Section 1.1367–1(f), (h) *Example 2* and *Example 5*, and (j) apply only to taxable years of the corporation beginning on or after August 18, 1998. For taxable years beginning before January 1, 1994, and taxable years beginning on or after January 1, 1997, and before August 18, 1998, the basis of a shareholder's stock must be determined in a reasonable manner, taking into account the statute and legislative history. Except for § 1.1367–1(f), (h) *Example 2* and *Example 5*, and (j), return positions consistent with §§ 1.1367–1 and 1.1367–2 are reasonable for taxable years beginning before January 1, 1994. Return positions consistent with § 1.1367–1(f), (h) *Example 2* and *Example 5*, and (j) are reasonable for taxable years beginning on or after January 1, 1997, and before August 18, 1998.

Par. 6. Section 1.1368–0 is amended in the table as follows:

1. The entry for § 1.1368–1(e) is revised and entries for § 1.1368–1(e)(1) and (2) are added.

2. The entry for § 1.1368–2(a)(4) is revised.

3. An entry for § 1.1368–2(a)(5) is added.

4. The entry for § 1.1368–2(d) is revised.

The additions and revisions read as follows:

§ 1.1368–0 Table of contents.

* * * * *

§ 1.1368–1 Distributions by S corporations.

* * * * *

(e) Certain adjustments taken into account.

(1) Taxable years beginning before January 1, 1997.

(2) Taxable years beginning on or after August 18, 1998.

* * * * *

§ 1.1368–2 Accumulated adjustments account (AAA).

(a) * * *

(4) Ordering rules for the AAA for taxable years beginning before January 1, 1997.

(5) Ordering rules for the AAA for taxable years beginning on or after August 18, 1998.

* * * * *

(d) Adjustment in the case of redemptions, liquidations, reorganizations, and divisions.

* * * * *

Par. 7. Section 1.1368–1 is amended by revising paragraphs (d)(1) and (e) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(d) *S corporation with earnings and profits*—(1) *General treatment of distribution.* Except as provided in paragraph (d)(2) of this section, a distribution made with respect to its stock by an S corporation that has accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(c). See section 316 and § 1.316–2 for provisions relating to the allocation of earnings and profits among distributions.

* * * * *

(e) *Certain adjustments taken into account*—(1) *Taxable years beginning before January 1, 1997.* For any taxable year of the corporation beginning before January 1, 1997, paragraphs (c) and (d) of this section are applied only after taking into account—

(i) The adjustments to the basis of the shares of a shareholder's stock described in section 1367 (without regard to section 1367(a)(2)(A) (relating to decreases attributable to distributions not includible in income)) for the S corporation's taxable year; and

(ii) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368–2(a)(3)(iii)) for the S corporation's taxable year.

(2) *Taxable years beginning on or after August 18, 1998.* For any taxable year of the corporation beginning on or after August 18, 1998, paragraphs (c) and (d) of this section are applied only after taking into account—

(i) The adjustments to the basis of the shares of a shareholder's stock described in section 1367(a)(1) (relating to increases in basis of stock) for the S corporation's taxable year; and

(ii) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368–2(a)(3)(iii)) for the S corporation's taxable year. Any net negative adjustment (as defined in section 1368(e)(1)(C)(ii)) for the taxable year shall not be taken into account.

* * * * *

Par. 8. Section 1.1368–2 is amended as follows:

1. Paragraphs (a)(1) and (a)(3)(ii), and the paragraph heading and introductory text of paragraph (a)(4) are revised.

2. Paragraph (a)(5) is added.

3. The paragraph heading for paragraph (d) is revised.

The additions and revisions read as follows:

§ 1.1368–2 Accumulated adjustments account (AAA).

(a) *Accumulated adjustments account*—(1) *In general.* The accumulated adjustments account is an account of the S corporation and is not apportioned among shareholders. The AAA is relevant for all taxable years beginning on or after January 1, 1983, for which the corporation is an S corporation. On the first day of the first year for which the corporation is an S corporation, the balance of the AAA is zero. The AAA is increased in the manner provided in paragraph (a)(2) of this section and is decreased in the manner provided in paragraph (a)(3) of this section. For the adjustments to the AAA in the case of redemptions, liquidations, reorganizations, and corporate separations, see paragraph (d) of this section.

* * * * *

(3) * * *

(ii) *Extent of allowable reduction.* The AAA may be decreased under paragraph (a)(3)(i) of this section below zero. The AAA is decreased by noncapital, nondeductible expenses under paragraph (a)(3)(i)(C) of this section even though a portion of the noncapital, nondeductible expenses is not taken into account by a shareholder under § 1.1367–1(g) (relating to the elective ordering rule). The AAA is also decreased by the entire amount of any loss or deduction even though a portion of the loss or deduction is not taken into account by a shareholder under section 1366(d)(1) or is otherwise not currently deductible under the Internal Revenue Code. However, in any subsequent taxable year in which the loss, deduction, or noncapital, nondeductible expense is treated as incurred by the corporation with respect to the shareholder under section 1366(d)(2) or § 1.1367–1(g) (or in which the loss or deduction is otherwise allowed to the shareholder), no further adjustment is made to the AAA.

* * * * *

(4) *Ordering rules for the AAA for taxable years beginning before January 1, 1997.* For any taxable year beginning before January 1, 1997, the adjustments to the AAA are made in the following order—

* * * * *

(5) *Ordering rules for the AAA for taxable years beginning on or after August 18, 1998.* For any taxable year of the S corporation beginning on or after August 18, 1998, the adjustments to the AAA are made in the following order—

(i) The AAA is increased under paragraph (a)(2) of this section before it is decreased under paragraph (a)(3)(i) of this section for the taxable year;

(ii) The AAA is decreased under paragraph (a)(3)(i) of this section (without taking into account any net negative adjustment (as defined in section 1368(e)(1)(C)(ii)) before it is decreased under paragraph (a)(3)(iii) of this section;

(iii) The AAA is decreased (but not below zero) by any portion of an ordinary distribution to which section 1368(b) or (c)(1) applies;

(iv) The AAA is decreased by any net negative adjustment (as defined in section 1368(e)(1)(C)(ii)); and

(v) The AAA is adjusted (whether negative or positive) for redemption distributions under paragraph (d)(1) of this section.

* * * * *

(d) *Adjustment in the case of redemptions, liquidations, reorganizations, and divisions* * * *

* * * * *

Par. 9. Section 1368–3 is amended as follows:

1. The heading for *Example 1* is revised.

2. *Example 3* through *Example 6* are redesignated as *Example 6* through *Example 9*, respectively.

3. *Example 2* is redesignated as *Example 3*.

4. The heading for newly redesignated *Example 3* is revised.

5. New *Example 2*, *Example 4*, and *Example 5* are added.

The revisions and additions read as follows:

§ 1.1368–3 Examples.

* * * * *

Example 1. Distributions by S corporations without C corporation earnings and profits for taxable years beginning before January 1, 1997. * * *

Example 2. Distributions by S corporations without earnings and profits for taxable years beginning on or after August 18, 1998. (i) Corporation S, an S corporation, has no earnings and profits as of January 1, 2001, the first day of its 2001 taxable year. S's sole shareholder, A, holds 10 shares of S stock with a basis of $1 per share as of that date. On March 1, 2001, S makes a distribution of $38 to A. The balance in Corporation S's AAA is $100. For S's 2001 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is $50. A's pro rata share of the amount of the items described in sections 1367(a)(2)(B) through (D) (relating to decreases in basis of stock for items other than distributions) is $26, $20 of which is attributable to items described in section 1367(a)(2)(B) and (C) and $6 of which is attributable to items described in section 1367(a)(2)(D) (relating to decreases in basis attributable to noncapital, nondeductible expenses).

(ii) Under section 1368(d)(1) and § 1.1368–1(e)(1) and (2), the adjustments to the basis of A's stock in S described in sections 1367(a)(1) are made before the distribution rules of section 1368 are applied. Thus, A's basis per share in the stock is $6.00 ($1 + [$50/10]) before taking into account the distribution. Under section 1367(a)(2)(A), the basis of A's stock is decreased by distributions to A that are not includible in A's income. Under § 1.1367–1(c)(3), the amount of the distribution that is attributable to each share of A's stock is $3.80 ($38 distribution/10 shares). Thus, A's basis per share in the stock is $2.20 ($6.00–$3.80), after taking into account the distribution. Under section 1367(a)(2)(D), the basis of each share of A's stock in S after taking into account the distribution, $2.20, is decreased by $.60 ($6 noncapital, nondeductible expenses/10). Thus, A's basis per share after taking into account the nondeductible, noncapital expenses is $1.60. Under section 1367(a)(2)(B) and (C), A's basis per share is further decreased by $2 ($20 items described in section 1367(a)(2)(B) and (C)/10 shares). However, basis may not be reduced below zero. Therefore, the basis of each share of A's stock is reduced to zero. As of January 1, 2002, A has a basis of $0 in his shares of S stock. Pursuant to section 1366(d)(2), the $.40 of loss in excess of A's basis in each of his shares of S stock is treated as incurred by the corporation in the succeeding taxable year with respect to A.

Example 3. Distributions by S corporations with C corporation earnings and profits for taxable years beginning before January 1, 1997. * * *

Example 4. Distributions by S corporations with earnings and profits and no net negative adjustment for taxable years beginning on or after August 18, 1998. (i) Corporation S, an S corporation, has accumulated earnings and profits of $1,000 and a balance in the AAA of $2,000 on January 1, 2001. S's sole shareholder B holds 100 shares of stock with a basis of $20 per share as of January 1, 2001. On April 1, 2001, S makes a distribution of $1,500 to B. B's pro rata share of the income earned by S during 2001 is $2,000 and B's pro rata share of S's losses is $1,500. For the taxable year ending December 31, 2001, S does not have a net negative adjustment as defined in section 1368(e)(1)(C). S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) The AAA is increased from $2,000 to $4,000 for the $2,000 of income earned during the 2001 taxable year. The AAA is decreased from $4,000 to $2,500 for the $1,500 of losses. The AAA is decreased from $2,500 to $1,000 for the portion of the distribution ($1,500) to B that does not exceed the AAA.

(iii) As of December 31, 2001, B's basis in his stock is $10 ($20 + $20 ($2,000 income/100 shares)—$15 ($1,500 distribution/100 shares)—$15 ($1,500 loss/100 shares).

Example 5. Distributions by S corporations with earnings and profits and net negative adjustment for taxable years beginning on or after August 18, 1998. (i) Corporation S, an S corporation, has accumulated earnings and profits of $1,000 and a balance in the AAA of $2,000 on January 1, 2001. S's sole shareholder B holds 100 shares of stock with a basis of $20 per share as of January 1, 2001. On April 1, 2001, S makes a distribution of $2,000 to B. B's pro rata share of the income earned by S during 2001 is $2,000 and B's pro rata share of S's losses is $3,500. For the taxable year ending December 31, 2001, S has a net negative adjustment as defined in section 1368(e)(1)(C). S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) The AAA is increased from $2,000 to $4,000 for the $2,000 of income earned during the 2001 taxable year. Because under section 1368(e)(1)(C)(ii) and § 1.1368–2(a)(ii), the net negative adjustment is not taken into account, the AAA is decreased from $4,000 to $2,000 for the portion of the losses ($2,000) that does not exceed the income earned during the 2001 taxable year. The AAA is reduced from $2,000 to zero for the portion of the distribution to B ($2,000) that does not exceed the AAA. The AAA is decreased from zero to a negative $1,500 for the portion of the $3,500 of loss that exceeds the $2,000 of income earned during the 2001 taxable year.

(iii) Under § 1.1367–1(c)(1), the basis of a shareholder's share in an S corporation stock may not be reduced below zero. Accordingly, as of December 31, 2001, B's basis per share in his stock is zero ($20 + $20 income—$20 distribution—$35 loss). Pursuant to section 1366(d)(2), the $15 of loss in excess of B's basis in each of his shares of S stock is treated as incurred by the corporation in the succeeding taxable year with respect to B.

* * * * *

Par. 10. § 1.1368–4 is revised to read as follows:

§ 1.1368–4 Effective date and transition rule.

Except for §§ 1.1368–1(e)(2), 1.1368–2(a)(5), and 1.1368–3 *Example 2*, *Example 4*, and *Example 5*, §§ 1.1368–1, 1.1368–2, and 1.1368–3 apply to taxable years of the corporation beginning on or after January 1, 1994. Section 1.1368–1(e)(2), § 1.1368–2(a)(5), and § 1.1368–3 *Example 2*, *Example 4*, and *Example 5* apply only to taxable years of the corporation beginning on or after August 18, 1998. For taxable years beginning before January 1, 1994, and taxable years beginning on or after January 1, 1997, and before August 18, 1998, the treatment of distributions by an S corporation to its shareholders must be determined in a reasonable manner, taking into account the statute and legislative history. Except with regard to the deemed dividend rule under § 1.1368–1(f)(3), § 1.1368–1(e)(2), § 1.1368–2(a)(5), and § 1.1368–3 *Example 2*, *Example 4*, and *Example 5*, return positions consistent with §§ 1.1368–1, 1.1368–2, and 1.1368–3 are reasonable for taxable years beginning before January 1, 1994. Return positions consistent with §§ 1.1368–1(e)(2), 1.1368–2(a)(5), and 1.1368–3 *Example 2*, *Example 4*, and *Example 5* are reasonable for taxable years beginning on or after January 1, 1997, and before August 18, 1998.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. In § 602.101, paragraph (b) is amended by adding an entry for 1.1366–1 to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1366–1	1545–1613
* * * * *	

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: December 13, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 99–32697 Filed 12–21–99; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

RIN 1029–AB69

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance with Court Order

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule: suspension.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are suspending certain portions of our permanent program regulations dealing with subsidence from underground coal mining. We are taking this action to make our rules consistent with a recent decision by the U.S. Court of Appeals for the District of Columbia Circuit.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Vermell Davis, Technology Development Staff, Division of Technical Support, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., N.W., Washington, D.C. 20240 (202) 208–2802.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Is The Background Of The Rules We Are Suspending?
II. Why Are We Publishing This Notice?
III. What Is The Effect On Approved State Regulatory Programs?
IV. Which Regulatory Provisions Are We Suspending?
V. Procedural Matters.

I. What Is the Background Of The Rules We Are Suspending?

The Energy Policy Act was enacted October 24, 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) (hereinafter, "The Energy Policy Act or EPAct). Section 2504 of that Act, 106 Stat. 2776, 3104, amends the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*

Section 2504 of EPAct added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified by section 720(a)(1), and compensation must be provided to the owners in the full amount of the diminution in value resulting from the subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies which have been adversely affected by underground coal mining operations. Under section 720(b), the Secretary of the Interior was required to promulgate final regulations to implement the provisions of section 720(a).

On September 24, 1993 (58 FR 50174), OSM published a proposed rule to amend the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. We adopted final regulations on March 31, 1995 (60 FR 16722).

II. Why Are We Suspending These Rules?

The rules were challenged by the National Mining Association in the District Court for the District of Columbia and in the U.S. Court of Appeals for the District of Columbia Circuit. On April 27, 1999, the U.S. Court of Appeals issued a decision vacating certain portions of the regulatory provisions of the subsidence regulations. *See National Mining Association* v. *Babbitt*, 173 F.3d 906 (1999). We are suspending those regulatory provisions that are inconsistent with the rationale provided in the U.S. Court of Appeals' decision.

III. What Effect Will This Suspension Have on Existing State Regulatory Programs?

States that have not yet revised their approved regulatory programs (see Subchapter T of 30 CFR Chapter VII) in response to our March 31, 1995 rule changes need not amend those programs to include counterparts to the provisions that we are suspending in this rulemaking.

States that have already revised their regulatory programs to include counterparts to the provisions that we are suspending in this rulemaking may remove or modify those counterparts in accordance with 30 CFR Part 732. However, under section 505(b) of SMCRA, these States also may elect to retain their existing regulations, unless otherwise provided by State law.

IV. Which Regulatory Provisions Are We Suspending?

1. 30 CFR 817.121(c)(4)(i)–(iv)

This regulation provided that if damage to any non-commercial building or occupied residential dwelling or structures related thereto occurred as a result of earth movement within an area determined by projecting a specific angle of draw from the outer-most boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. Once the presumption was triggered, the burden of going forward shifted to the mine operator to offer evidence that the damage was attributable to another cause. The purpose of this regulatory provision was to set out a procedure under which damage occurring within a specific area would be subject to a rebuttable presumption that subsidence from underground mining was the cause of any surface damage to non-commercial buildings or occupied residential dwellings and related structures.

The Court of Appeals vacated, in its entirety, this rule that established an angle of draw and that created a rebuttable presumption that damage to EPAct protected structures within an area defined by an "angle of draw" was in fact caused by the underground mining operation. 173 F.3d at 913.

In reviewing the regulation, the Court rejected the Secretary's contention that the angle of draw concept was reasonably based on technical and scientific assessments and that it logically connected the surface area that could be damaged from earth movement to the underground mining operation. The angle of draw provided the basis for establishing the surface area within which the rebuttable presumption would apply. The Secretary had explained that the rebuttable presumption merely shifted the burden of document production to the operator in evaluating whether the damage was actually caused by the underground mining operation within the surface area defined by the angle of draw. The Court nevertheless held that the angle of draw was irrationally broad and that the scientific facts presented did not support the logical inference that damage to the surface area would be caused by earth movement from underground mining within the area.

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable presumption failed. In reviewing the rebuttable presumption requirement, the Court held "an evidentiary presumption is 'only permissible if there is sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact * * * until the adversary disproves it.'" That is to say, for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation "more likely than not" caused the damage at the surface. See *National Mining Association,* 173 F.3d at 906–910.

In compliance with the Court of Appeals' decision of April 27, 1999, we are suspending 30 CFR 817.121(c)(4)(i) through (iv).

Paragraph (v) within this section applies generally to the types of information that must be considered in determining the cause of damage to an EPAct protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) will remain in force.

2. Section 784.20(a)(3)

This regulatory provision required, unless the applicant was denied access for such purposes by the owner, a survey which identified certain features. First, the survey had to identify the condition of all non-commercial buildings or occupied residential dwellings and related structures which were within the area encompassed by the applicable angle of draw and which might sustain material damage, or whose reasonably foreseeable use might be diminished, as a result of mine subsidence. Second, the survey had to identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant was required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any postmining damage to protected structures that occurred within the surface area that corresponded to the angle of draw for the operation. (See discussion of angle of draw above).

This regulatory provision was challenged insofar as it required a specific structural condition survey of all EPAct protected structures. The Court of Appeals vacated the specific structural condition survey regulatory requirement in its decision on April 27, 1999. In reviewing the Secretary's requirement, the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EPAct protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the "angle of draw" regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the "angle of draw".

In compliance with the Court of Appeals' decision, we are suspending that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EPAct protected structures. The remainder of this section continues in force to the extent that it applies to the EPAct protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto.

V. Procedural Matters

1. National Environmental Policy Act

This notice suspends those sections of the March 31, 1995, final rule invalidated by the U.S. Court of Appeals for the District of Columbia Circuit. The action is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969, as amended 42 U.S.C. 4332 *et seq.* This determination is made in accordance with the Departmental Manual (516 DM 2, Appendix 1.10).

2. Author

The author of this suspension notice is Vermell Davis, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

List of Subjects

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 817

Environmental Protection, Reporting and recordkeeping requirements, Underground mining.

Dated: December 7, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, we are suspending portions of 30 CFR Parts 784 and 817 as set forth below:

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 784 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq,* as amended; and 16 U.S.C. 470 *et seq.*

2. In § 784.20, paragraph (a)(3) is amended by adding a sentence at the end, reading as follows:

§ 784.20 Subsidence control plan.

(a) * * *

(3) * * * However, the requirements to perform a survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the areas encompassed by the applicable angle of draw is suspended per court order.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.,* as amended.

§ 817.121—[Suspended in part]

4. In § 817.121, paragraphs (c)(4)(i) through (iv) are suspended.

[FR Doc. 99–32738 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–075]

RIN 2115–AE47

Drawbridge Operation Regulations: Navesink River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the Oceanic Bridge, at mile 4.5, across the Navesink River at Locust Point, New Jersey. The bridge owner has asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for bridge openings from December through March because there have been few requests to open the bridge during the winter months. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: This rule is effective January 21, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–99–075) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 1, 1999, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Navasink River, New Jersey, in the **Federal Register** (64 FR 47751). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Oceanic Bridge at mile 4.5 across the Navesink River at Locust Point, New Jersey, has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water. The existing operating regulations for the Oceanic Bridge require the bridge to open on signal at all times.

The bridge owner, the County of Monmouth, asked the Coast Guard to change the regulations for the bridge and submitted bridge opening log data for the Coast Guard to evaluate.

The log data indicated the following number of openings:

	1994	1995	1996	1997	1998
December	4	12	9	6	8
January	1	1	14	2	6
February	1	1	0	1	10
March	11	13	4	6	13

The bridge owner asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for openings from December through March. The bridge opening log data shows that during this time period there have been few requests to open the bridge. The Coast Guard believes the bridge owner's request to not crew the bridge during the winter months and the twenty-four hour advance notice requirement are reasonable based upon the low number of bridge openings during that time period.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge has not had many requests to open during the winter months. Mariners will still be able to obtain bridge openings during the winter months provided they give twenty-four hours notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and

concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.734 is revised to read as follows:

§ 117.734 Navesink River (Swimming River).

The Oceanic Bridge, mile 4.5, shall open on signal; except that, from December 1 through March 31, the draw shall open on signal, if at least a twenty-four hour notice is given by calling the number posted at the bridge. The owner of this bridge shall provide and keep in good legible condition clearance gauges with figures not less than eight inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: December 8, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard.

[FR Doc. 99–33212 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–150]

RIN 2115–AE84

Regulated Navigation Area; Arrival Notification and Year 2000 (Y2K) Reporting Requirements for Vessels Transiting the Cape Cod Canal

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area for U.S. and foreign flag vessels transiting the Cape Cod Canal during the peak Y2K risk periods of December 30, 1999 to January 1, 2000 and February 27, 2000 to February 29, 2000. Owners and operators of U.S. vessels transiting the Cape Cod Canal during these periods will be required to notify the Captain of the Port, Marine Safety Office Providence RI, (hereinafter COTP Providence RI) 24 hours in advance of their transit. Owners and operators of foreign vessels will be required to notify and report Year 2000 (Y2K) preparedness information to the COTP Providence, RI 24 hours in advance of transiting the Cape Cod Canal. The advance notice and Y2K information will allow the COTP Providence, RI to assess vessel preparedness for potential Y2K-related malfunctions of equipment and systems and enable appropriate measures to be taken to protect the Cape Cod Canal from a serious marine casualty.

DATES: This temporary rule is effective from December 22, 1999 and expires on March 1, 2000. Comments must reach the addresses below on or before January 21, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 22, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to Commander, First Coast Guard District (m), 408 Atlantic Avenue, Boston, Massachusetts, 02210.

(2) By hand to room 632 on the 6th floor at the address listed above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8334.

(3) By fax to the Docket Manager at 617–223–8904.

Commander, First Coast Guard District (m) maintains the public docket for this rulemaking. Comments and related material, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 632 on the 6th floor at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dennis O'Mara, Marine Safety Division, First Coast Guard District, 617–223–8334.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD1–99–150), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand or fax, to the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard encourages you to file any important comments as quickly as possible. We will consider all comments and material received during the comment period and may change this rule, if necessary, in response to the comments.

Regulatory Information

Due to the unique nature of the Y2K problem, this rule is being made effective on the date of publication. It will have considerable positive impact on marine safety and environmental protection in the Cape Cod Canal by establishing a reporting requirement for vessels transiting the Cape Cod Canal during the peak Y2K risk periods of midnight December 30, 1999 to midnight January 1, 2000 and midnight February 27, 2000 to midnight February 29, 2000. The Cape Cod Canal is administered by the Army Corps of Engineers. There is presently no regulation requiring either a U.S. or a foreign flag vessel planning on transiting the Cape Cod Canal to notify either the Army Corps of Engineers or the Coast Guard prior to arrival at the eastern or western entrance to the Cape Cod Canal. Therefore, without this rule, the COTP Providence, RI would not be able to assess a vessel's Y2K compliance prior to the vessel arriving at the entrance of the Cape Cod Canal. Vessels could experience delay while the COTP Providence, RI determines whether the vessel should transit the Cape Cod Canal. This rule will facilitate the movement of vessels through the Cape Cod Canal during the peak Y2K risk periods by allowing the COTP Providence, RI to determine a vessel's Y2K compliance status prior to its arrival at the entrance to the Cape Cod

Canal. The reporting of the information causes no harm and the time requirements to report the information are minimal.

For these reasons, the Coast Guard finds good cause exists, under 5 U.S.C. 553 (b)(B) and 5 U.S.C. 553(d)(3), for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The maritime industry incorporates automation and computer technology into almost every aspect of its business operations. Automation is used for many shipboard systems such as main propulsion, boilers, auxiliary systems, power generation, position fixing navigation systems, communications, radar, steering systems, cargo systems, and bilge/ballast controls. Despite current regulations for equipment and systems testing, the potential technological malfunctions associated with the Year 2000 (Y2K) problem could disrupt maritime operations.

What is the Y2K Problem?

The Y2K problem stems from the widespread computer industry practice of using 2 digits instead of 4 to represent the year in databases, software applications, and hardware microchips. Certain systems will face difficulty in the year 2000 when that year is represented as "0". Unable to differentiate "0" from the year 1900, computer programs and systems aboard ships could malfunction or completely shut down.

How Might the Y2K Problem Affect Vessels?

Computer programs for engine automation systems that send critical operating signals are good examples of the Y2K problem. If these programs misread "00" as the year 1900 instead of 2000, they may misinterpret that 100 years have passed and respond with an inappropriate action or a series of inappropriate actions, creating a domino effect, that could shut down systems. Temporary loss of main engine operation or steering at sea on a calm day with no other ships in sight may only prove inconvenient. However, the unexpected loss of a ship's propulsion in the Cape Cod Canal could result in a serious casualty. The risk period for Y2K-related equipment and system failures and malfunctions is not limited to January 1, 2000. Similar problems are associated with the date February 29, 2000.

Why Is February 29, 2000 a Date of Concern?

February 29, 2000 is a date of concern because of how leap years are determined. Our calendars reflect leap years occur every four years; however, leap years do not adhere to a strict four-year cycle. As a result, century years generally are not leap years (i.e. year 1800 or 1900). However, exceptions apply to century years evenly divisible by 400, such as February 29, 2000. Problems could occur in computers not properly programmed to accept this date. If a microprocessor reads "00" as the year 1900, it will fail to accept the 29th of February because 1900, unlike 2000, was not a leap year.

Why is this Temporary Rule Necessary?

On June 23, 1999, the Coast Guard published a Temporary Interim Rule (hereinafter referred to as the "Interim Rule") that requires certain vessels to report Y2K preparedness information via the submission of a questionnaire (64 FR 33404, June 23, 1999); (64 FR 41794, August 2, 1999). The Interim Rule and current regulations do not require vessels to give advance notification prior to transiting the Cape Cod Canal. U.S. vessels are required to provide 24 hour notice of arrival to the port of destination, but the existing rules do not require canal transits to be reported. The Interim Rule requires certain U.S. vessels that are operating during the peak periods to submit a vessel Y2K questionnaire so that it is received by the Coast Guard no later than August 20, 1999. This rule requires U.S. vessels to notify COTP Providence, RI 24 hours prior to transiting the Cape Cod Canal. This will allow COTP Providence RI to access the information already provided to the Coast Guard under the Interim Rule.

The Interim Rule requires foreign vessels operating on waters subject to the jurisdiction of the U.S. during peak risk periods to submit a Y2K vessel questionnaire so that it is received by the Coast Guard no later than 24 hours prior to arrival in a U.S. port or place of destination. However, since the Cape Cod Canal is not a port or place of destination as defined by the Interim Rule, a foreign flag vessel could arrive at the canal entrance without having submitted a questionnaire to the Coast Guard within the previous 24 hour period, leaving the COTP Providence, RI uncertain as to a foreign vessel's Y2K compliance. This rule requires foreign vessels to submit Y2K preparedness information and arrival notification 24 hours in advance of arrival at the Cape Cod Canal.

Timely Y2K assessments of vessels transiting the Cape Cod Canal during peak risk periods are required due to the congested approaches, narrow width of the canal and environmental sensitivity of the surrounding area. Several shellfish beds are located in close proximity of the approaches of the Cape Cod Canal. By requiring vessels to provide 24 hour advance notification before transiting the Cape Cod Canal, the COTP Providence, RI will have time to assess a U.S. vessel's Y2K compliance (using the information submitted by the vessel) prior to its arrival at the canal. This will prevent unnecessary delays to the vessel while its Y2K compliance is determined.

How Will the COTP Providence RI Collect Y2K Preparedness Information From Foreign Vessels?

Vessels will be required to complete IMO Year 2000 questionnaire 2 and United States (U.S.) Supplement 1. The questionnaire is based on the questionnaire found in the IMO's Year 2000 Code of Good Practice. The questionnaire has U.S. specific instructions and includes a U.S. supplement. More information on this questionnaire, including applicability and submission requirements, can be found in the Discussion section of this document.

How Will COTP Providence, RI, Assess Y2K-Related Risks for Vessels Requesting To Transit the Cape Cod Canal?

The COTP Providence, RI, will use the "Y2K Risk Assessment Matrix" as a tool to help assess potential Y2K risks associated with vessel operations during peak risk periods. The risk assessment matrix is part of NVIC 7–99. NVIC 7–99 will be available in the docket at the address under **ADDRESSES** and on the Internet at *http://www.uscg.mil/hq/g-m/nvic/*.

COTP Providence, RI will conduct risk assessments during two peak risk periods:

- Between midnight December 30, 1999, and midnight January 1, 2000 (48 hours); and
- Between midnight February 27, 2000, and midnight February 29, 2000 (48 hours).

The risk assessment matrix, however, is not meant to be a binding mechanism from which the COTP cannot deviate. It is simply one tool that is designed to assist the COTP in making decisions regarding maritime safety and the marine environment. The COTP Providence, RI will use the vessel movement section of the matrix to evaluate whether or not a vessel will be

permitted to transit the Cape Cod Canal or if any conditions will be placed on the vessel prior to transit. The vessel movement section identifies vessel and cargo risk factors (inspection status, cargo, vessel history, etc.) and balances these factors with local environmental factors (time of day, weather, etc.) and the potential consequences of accidents (health and safety, environmental, vessel traffic, etc.) in the Cape Cod Canal. The matrix considers these risk factors along with mitigating factor information obtained from the questionnaires (equipment testing, contingency planning, etc.) to calculate an overall risk factor.

The Y2K Risk Assessment Matrix is a tool designed to analyze information from a variety of sources. The questionnaire required by this temporary interim rule is only one component of the risk assessment process. It is conceivable, if unlikely, that a vessel or representative could reply "no" to every question on the applicable questionnaire (indicating that no Y2K preparedness actions have been taken). The COTP, after conducting a risk assessment and classifying the vessel as low risk, could allow the vessel to transit the Cape Cod Canal without restriction during one or more peak risk periods. A vessel not prepared for Y2K could be classified as low risk based on a number of factors such as weather conditions, tide and current, type of cargo, vessel traffic density, etc. However, in most cases, a vessel that demonstrates some level of Y2K preparedness should receive a better overall risk factor score than a vessel that is not prepared for Y2K. We encourage vessel owners and operators to obtain copies of NVIC 7–99 so they can use the risk assessment matrix to conduct Y2K preparedness self-assessments.

Discussion

This rulemaking will prescribe temporary advance arrival notification for certain U.S. vessels and temporary advance arrival notification and Y2K preparedness reporting requirements for foreign vessels desiring to transit the Cape Cod Canal by adding a temporary new section in 33 CFR 165.123—Regulated Navigation Area: Advance Arrival Notification and Year 2000 (Y2K) Preparedness Reporting for Certain Vessels Transiting the Cape Cod Canal. The new section contains applicability for certain vessels and instructions for submitting the appropriate advance arrival notification and Y2K preparedness information. These temporary reporting requirements will help COTP Providence, RI assess potential Y2K risks associated with vessels transiting the Cape Cod Canal during peak risk periods.

Applicability and Exemptions

The 24 hour advance notification will apply to vessels owned in the U.S. and foreign flag vessels transiting the Cape Cod Canal during one of the following periods:

a. Between midnight December 30, 1999 and midnight January 1, 2000 (48 hours)

b. Between midnight February 27, 2000 and midnight February 29, 2000 (48 hours).

The following vessels are exempt from the 24 hour advance notification requirement:

- Recreational vessels under 46 U.S.C. 4301 *et seq.*;
- Public vessels;
- Uninspected commercial fishing vessels;
- Uninspected barges; and
- Uninspected passenger vessels.

The Y2K reporting requirements will apply to foreign flag vessels transiting the Cape Cod Canal during one of the following periods:

a. Between midnight December 30, 1999 and midnight January 1, 2000

b. Between midnight February 27, 2000 and midnight February 29, 2000 (48 hours).

Foreign flagged public vessels are exempt from the Y2K reporting requirements.

Definitions

The terms used in § 165.123 have the same meaning as those found in 33 CFR 160.309. (64 FR 33404, June 23, 1999).

Questionnaire

The Questionnaire consists of four pages. Page 1 includes instructions for completing the Questionnaire. The instructions provide very specific and detailed information on how to use the questionnaire, where to send it, when and how to update information, etc. Page 2 is the IMO Year 2000 Questionnaire 2. This questionnaire is designed to collect specific Y2K preparedness information for a vessel or fleet of vessels. Page 3 is the U.S. Supplement 1. The Coast Guard developed U.S. Supplement 1 to collect vessel specific information such as vessel type and cargo. It also asks one additional risk assessment-related question concerning Y2K contingency planning. Page 4 is a list of Marine Safety Offices/Captains of the Port. Foreign vessels requesting to transit the Cape Cod Canal must submit the questionnaire directly to COTP Providence, RI.

Y2K Reporting Requirements for Vessels Owned in the United States

Vessels owned in the U.S. are required by the Interim rule published on June 23, 1999 (amended August 2, 1999), to submit Y2K compliance information by August 20, 1999. Therefore there is no additional Y2K information required. However, if you are the vessel representative of a vessel owned in the U.S. that will transit the Cape Cod Canal during any of the peak risk periods, you must provide advance notification to COTP Providence, RI, no later than 24 hours prior to the vessel's transit of the canal.

Y2K Reporting Requirements for Foreign Flag Vessels

If you are a representative of a foreign flag vessel that will transit the Cape Cod Canal during one of the peak risk periods, you must give notification and submit a Vessel Questionnaire to COTP Providence, RI, no later than 24 hours prior to the vessel's arrival at the approach buoys of the canal.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Costs

The costs of the rule are the labor costs, and fax and mail costs required by industry to complete and submit the questionnaires, plus costs to the government to review the forms. The total cost of the rule to industry and government is less than $1,000.

Benefits

This rule will provide COTP Providence RI with critical Y2K preparedness information on vessels desiring to transit the Cape Cod Canal. COTP Providence, RI will use this information to identify potentially high risk operations during peak risk periods so appropriate measures can be taken to promote safety and environmental protection.

Small Entities

Since we did not publish a notice of proposed rulemaking, this action is not covered by the Regulatory Flexibility Act (5 U.S.C. 601–612). However, we have considered whether this temporary rule would have a significant economic

impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Small entities that own or operate certain U.S. vessels or foreign flag vessels that desire to transit the Cape Cod Canal on one of the peak dates are affected by this rule. Small entities that own or operate uninspected commercial fishing vessels, uninspected passenger vessels, uninspected barges, recreational vessels, and public vessels are exempted from this rule. It is expected to take a foreign vessel representative, on average, 13 minutes to complete a Vessel Questionnaire (includes 8 minutes to complete IMO Year 2000 Questionnaire 2 and 5 minutes to complete U.S. Supplement 1). The total cost for a single vessel, on average, is expected to range from $9.45 to $10.75 (depending on delivery costs). For each additional vessel in a fleet, total labor cost increases by $3.60 per vessel, and total delivery cost increases by $0 to $0.65, depending upon method of delivery.

The smaller a company's fleet, the smaller the hour burden and labor cost to complete and submit the Vessel Questionnaire. Because fleet size is a reasonable measure of entity size, we expect small entities to have relatively small fleets. According to the Coast Guard's data base, a U.S. vessel company, on average, has 4 vessels. Thus, the total hour burden and total cost of this rule to an entity with an average fleet is 0.47 hours and from $21.15 to 24.58, respectively. We expect the hour burden and cost of this rule to small entities to be less than this average.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call LT Dennis O'Mara at (617) 223–8334.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

Need for Information: At present, there are no regulations requiring advance notification or Y2K preparedness information for vessel transiting the Cape Cod Canal during one of the peak risk periods. The advance notice of arrival and Y2K preparedness information required by this rule will help COTP Providence, RI assess vessel preparedness for potential Y2K-related malfunctions of equipment and systems. This preparedness information will help COTP Providence, RI identify potentially hazardous situations during peak Y2K risk periods, enabling him to take appropriate measures to promote port safety and environmental protection.

Proposed Use of Information: To help COTP Providence, RI conduct Y2K risk assessments for vessels transiting the Cape Cod Canal. Risk assessments will identify potentially hazardous situations during peak risk periods so appropriate measures can be taken to help ensure port safety and environmental protection.

Description of the Respondents: Vessels that transit the Cape Cod Canal during one of the peak risk periods.

Number of Respondents: 50 U.S. Vessels and 25 foreign vessels. These totals are based upon information provided by the Army Corps of Engineers regarding the average number of vessel transits through the Cape Cod Canal.

Frequency of Response: One arrival notification for each U.S. vessel and one arrival notification, one IMO Year 2000 questionnaire 2, and one U.S. supplement 1 for each foreign flag vessel. Each U.S. company will be required to give 24-hour advance notice of arrival for every vessel in its fleet that desires to transit the Cape Cod canal during one of the peak risk periods. We expect that 50 advance notices of arrival will be submitted for U.S. vessels. The Coast Guard estimates it will take, on average, 5 minutes (0.08 hours) to submit advance notification of arrival. Thus, the total hour burden to U.S. vessel companies is less than 3 hours. With an average unit labor cost of $45 per hour, we expect the total labor cost to owners/operators of U.S. vessels is $135.

The Coast Guard estimates the average delivery cost for the required vessel information is $0.65 per page by fax. The Coast Guard anticipates receiving 100% notice of arrivals via fax. U.S. vessel representatives will submit a total of 50 submissions via fax. Thus, the delivery cost of this rule to U.S. vessels is $32.50. The total cost to U.S. vessels is $167.50.

The Coast Guard estimates that 25 foreign flag vessels will desire to transit the Cape Cod Canal during one of the peak risk periods. Thus, we expect that a total of 25 arrival notifications, 25 IMO Year 2000 Questionnaire 2's and 25 U.S. Supplement 1's will be submitted by foreign flag vessel representatives. The Coast Guard estimates it will take, on average, 5 minutes (0.08 hours) to complete and submit an advance notification of arrival, 5 minutes (0.08 hours) to complete and submit U.S. Supplement 1, and 8 minutes (0.13 hours) to complete and submit IMO Year 2000 Questionnaire 2. Consequently, the total hour burden to foreign flag vessels is 6.25 hours. At a unit labor cost of $45 per hour, the total labor cost is $281.25.

We expect foreign flag vessel representatives to submit a total of 25 submissions (25 advance arrival notifications, 25 IMO Year 2000 Questionnaires and 25 U.S. Supplement 1's). The Coast Guard estimates that 100% (75 pages) will be submitted via fax at a cost of $0.65 per page. Thus, we estimate the total delivery cost to foreign flag vessels is $48.75. The total cost of this rule to foreign flag vessels is $330.00. The total cost of this rule to industry is $497.50.

Estimate of Total Annual Burden

The estimated total annual burden is 11.5 hours. The temporary interim rule implementing this collection will be effective from December 22, 1999 through February 29, 2000.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this temporary interim rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the

quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

The Coast Guard has received emergency approval from OMB on the collection of information requirements (OMB approval number 2115–0643). This emergency OMB approval is effective until March 31, 2000.

Federalism

We have analyzed this temporary rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary rule would not impose an unfunded mandate.

Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this temporary rule and concluded that, under figure 2–1, paragraph (34)(i), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule establishes temporary reporting requirements that will assist the Coast Guard in assessing Y2K-related risks. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. § 165.100 is also issued under the authority of sec. 311, Pub. L. 105–383.

2. Add temporary § 165.123 to read as follows:

§ 165.123 Regulated Navigation Area: Cape Cod Canal.

(a) The waters of the Cape Cod Canal as defined by the area between Cleveland East Ledge lighted buoy in Buzzards Bay to the 1351 lighted buoy at the east end of the canal in Cape Cod Bay.

(b) *Definitions.* Terms used in this section have the same meaning as those found in 33 CFR 160.309.

(c) *Effective period.* This section is effective from December 22, 1999 to March 1, 2000.

(d) *Applicability.* This section applies to U.S. and foreign flag vessels transiting the Cape Cod Canal during one of the following periods:

(1) Between midnight December 30, 1999 and midnight January 1, 2000 (48 hours); and,

(2) Between midnight February 27, 2000 and midnight February 29, 2000 (48 hours).

(e) *Exemptions.* The following vessels are exempt from complying with this section:

(1) Recreational vessels under 46 U.S.C. 4301 et seq.;

(2) Public vessels;

(3) Uninspected commercial fishing vessels;

(4) Uninspected barges; and

(5) Uninspected passenger vessels.

(f) *Regulations.*

(1) The vessel representative of a U.S. vessel that will transit the Cape Cod Canal during a period described in paragraph (d) of this section, must provide arrival notification to COTP Providence RI, in accordance with requirements contained in 33 CFR 160.207 at least 24 hours prior to transiting the canal.

(2) The vessel representative of a foreign flag vessel that will transit the Cape Cod Canal during a period described in paragraph (d) of this section, must provide the following to COTP Providence, RI, at least 24 hours prior to transiting the canal:

(i) Arrival notification in accordance with 33 CFR 160.207; and

(ii) A Vessel Questionnaire, as contained in appendix A to subpart D of part 160 of this chapter.

(iii) The information required to complete the questionnaire includes:

(A) Name of person completing the questionnaire;

(B) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available);

(C) Vessel's name;

(D) Vessel's type;

(E) Cargo type;

(F) Vessel's gross tonnage;

(G) Vessel's Flag State;

(H) Vessel's IMO or Official Number; and,

(I) Status of Y2K preparedness.

Dated: December 9, 1999.

R.M. Larrabee,

Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–33213 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–15–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. RM 99–8 CARP]

Rate Adjustment of the Satellite Carrier Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is announcing the reduction of royalty rates for the section 119 satellite carrier statutory license pursuant to Title I of the Intellectual Property and Communications Omnibus Reform Act. The royalty rates for the section 119 satellite carrier statutory license are reduced from 27 cents per subscriber per month for network and superstations, respectively, to 14.85 cents for network stations and 18.9 cents for superstations.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, P.O. Box

70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On November 29, 1999, the President signed into law the Intellectual Property and Communications Omnibus Reform Act. Title I of that legislation, the "Satellite Home Viewer Improvement Act of 1999," amends section 119 of the Copyright Act to, among other things, reduce the royalty fees paid under the satellite carrier statutory license.

In October of 1997, pursuant to the Copyright Arbitration Royalty Panel process, the Librarian of Congress adjusted the royalty rates of the satellite license to 27 cents per subscriber per month for the retransmission of a network station and 27 cents per subscriber per month for the retransmission of a superstation. 62 FR 55742 (October 28, 1997). The Satellite Home Viewer Improvement Act reduces these rates by 45 percent for a network station and 30 percent for a superstation. 17 U.S.C. 119(c)(4) (A) and (B). Consequently, the new rates are 14.85 cents per subscriber per month for each network station retransmitted by a satellite carrier and 18.9 cents per subscriber per month for each superstation retransmitted by a satellite carrier.

The Satellite Home Viewer Improvement Act also amends the section 119 satellite license to include retransmissions of the Public Broadcasting Service satellite feed, which is not a television broadcast station. The Public Broadcasting Service satellite feed is treated like a network station for purposes of the royalty fee, and therefore incurs the 14.85-cent fee. The section 119 license for the Public Broadcasting Service satellite feed, however, is in effect only until January 1, 2002.

List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

Final Regulations

For the reasons set out in the preamble, chapter II of title 37 of the Code of Federal Regulations is to be amended as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

1. The authority citation for part 258 reads as follows:

Authority: 17 U.S.C. 119, 702, 802.

2. In § 258.3, add new paragraph (c) to read as follows:

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

* * * * *

(c) Commencing July 1, 1999, the royalty rate for secondary transmission of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 18.9 cents per subscriber per month for distant superstations.

(2) 14.85 cents per subscriber per month for distant network stations.

(3) 14.85 cents per subscriber per month for the Public Broadcasting Service satellite feed.

Dated: December 15, 1999.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–33196 Filed 12–21–99; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 038–0193a; FRL–6510–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rule rescissions from the South Coast Air Quality Management District (SCAQMD). This approval action will rescind these rules from the federally approved SIP. The intended effect of approving these rule rescissions is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rule rescissions consist of obsolete rules that have been superseded or removed from the SCAQMD's regulations. EPA is finalizing the approval of these rule rescissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on February 22, 2000 without further notice, unless EPA receives adverse comments by January 21, 2000. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule rescissions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule rescissions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being rescinded from the California SIP are listed below. The rescissions were submitted by the California Air Resources Board to EPA on the dates listed under each grouping.

South Coast Air Quality Management District (AQMD)

Rule 107, Determination of Volatile Organic Compounds in Organic Materials, Rescission Adopted: 3–9–92, Submitted to EPA: 9–14–92

Rule 1231, Judicial Review, Rescission Adopted: 2–2–79, Submitted to EPA: 7–25–79

Rule 1311, Power Plants, Rescission Adopted: 6–28–90 Submitted to EPA: 1–28–92

Los Angeles County Air Pollution Control District (APCD)

Rule 51, Nuisance, Rescission Adopted: 5–7–76, Submitted to EPA: 8–2–76

Orange County APCD

Rule 51, Nuisance,
Rule 67.1, Fuel Burning Equipment,

Rule 68, Fuel Burning Equipment—Oxides of Nitrogen.
Rescissions Adopted: 5–7–76
Submitted to EPA: 8–2–76

Riverside County APCD

Rule 51, Nuisance
Rescission Adopted: 5–7–76
Submitted to EPA: 8–2–76

II. Background

On March 3, 1978, EPA promulgated a list of ozone and total suspended particulate (TSP) nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast Air Basin. 43 FR 8964, 40 CFR 81.305.

On July 1, 1987 at 52 FR 24672, EPA replaced the TSP standards with new Particulate Matter (PM) standards applying only to PM up to 10 microns in diameter (PM–10).[1]

On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the South Coast Air Basin portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. South Coast Air Basin is classified as extreme non-attainment for ozone.

On November 15, 1990, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated non-attainment by operation of law and classified as moderate pursuant to section 188(a). The South Coast Air Basin was among the areas designated non-attainment. On February 8, 1993, EPA re-classified the South Coast Air Basin from moderate non-attainment to serious non-attainment for PM–10. (See 58 FR 3334—January 1, 1993).

This **Federal Register** action for SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

The State of California submitted the rule rescissions listed above to update the federally enforceable SIP for the SCAQMD. In addition, some of these rescissions are necessary to remove obsolete rules from the original districts that made up the South Coast Air Basin: Los Angeles County Air Pollution Control District (APCD), Orange County APCD, and Riverside County APCD.[2] The rescissions were adopted and submitted on the dates listed above.

These rules were originally adopted as part of individual districts' efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and particulate matter. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining whether to approve removing each rescinded rule from the SIP, EPA must evaluate the recissions for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA, and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. In general the rules which SCAQMD has rescinded are not appropriate for the SIP because they do not control criteria pollutants or have been superseded by other SIP-approved rules.

EPA has evaluated the rule recissions and has determined that recission is consistent with the CAA, EPA regulations, and EPA policy. Therefore, all of the rule recissions listed in section I, Applicability are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 22, 2000 without further notice unless the Agency receives adverse comments by January 21, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on February 22, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a

[1] On July 18, 1997, EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards. This action is part of SCAQMD's efforts to achieve compliance with the 1987 PM–10 standards.

[2] On July 16, 1975, the Los Angeles County APCD, Orange County APCD, Riverside County APCD, and San Bernardino County APCD were unified into the Southern California APCD. On February 1, 1977, the Southern California APCD became the South Coast Air Quality Management District.

federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 7, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(6)(xvii) to (6)(xviv), (47)(i)(D), (68)(ii), and (121)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(6) * * *

(xvii) Los Angeles County Air Pollution Control District.

(A)Previously approved on September 22, 1972 and now deleted without replacement Rule 51.

(xviii) Orange County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rules 51, 67.1 and 68.

(xviv) Riverside County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rule 51.

* * * * *

(47) * * *

(i) * * *

(D) Previously approved on May 9, 1980 and now deleted without replacement for implementation in the South Coast Air Quality Management District, Rule 1231. (JR)

* * * * *

(68) * * *

(ii) Previously approved on January 21, 1981 and now deleted without replacement Rule 1311.

* * * * *

(121) * * *

(i) * * *

(D) Previously approved on October 11, 1983 and now deleted without replacement Rule 107.

* * * * *

[FR Doc. 99–32642 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region VII Tracking No. MO–074–1074a; FRL–6512–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing a revision to the State Implementation Plan (SIP) which incorporates portions of new Kansas City rules contained in the Kansas City Air Pollution Control Ordinance in Sections 8–2 and 8–5. These Sections pertain to the emission of particulate matter from incinerators. This revision will concurrently remove incinerator SIP provisions contained in Chapter 18 of the 1972 version of the Kansas City Code. This action will unify the local, state, and Federal requirements for Kansas City incinerators.

DATES: This direct final rule is effective on February 22, 2000 without further notice, unless EPA receives adverse comment by January 21, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Wayne A. Kaiser at the Environmental Protection Agency, Air Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at the Environmental Protection Agency at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

Background

This section provides additional information by addressing the following questions:

What is an SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal

Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Being Addressed in This Action?

The Kansas City Air Pollution Control Code (KCAPCC) was originally submitted to EPA for approval in 1972. The incinerator provisions which were approved in 1972 are still in the Federally approved SIP today. The SIP contains two different particulate matter requirements for incinerators based on the capacity of the incinerator. Large capacity incinerators (with a charging capacity equal to or greater than 4166 pounds per hour) are required to meet an emission limit of 0.1 grains per dry standard cubic foot. Small capacity incinerators (with a charging capacity less than 4166 pounds per hour) are required to meet an emission limit of 0.2 grains per dry standard cubic foot.

The KCAPCC was amended in 1984; however, the SIP was not updated at that time. Consequently, two separate versions of the Kansas City incinerator regulations were in force at that time. The Kansas City Health Department Environmental Program enforced the 1984 version while EPA enforced the 1972 version in the SIP.

In 1996, the Air Pollution Control Code was again revised by the Kansas City Health Department. This time, a more stringent version of the incinerator rule was adopted which required incinerators of any charging capacity to meet a 0.1 grains per dry standard cubic foot particulate matter emission limit. Other limits were also included in the 1996 rule for pollutants such as hydrogen chloride, mercury, and dioxin and furans.

The Missouri Department of Natural Resources held a public hearing before the Missouri Air Conservation Commission (MACC) on October 29, 1998, on the replacement of the 1972 KCAPCC requirements for incinerators with the 1996 KCAPCC provisions which pertain to incinerators. After considering comments on this issue, on December 10, 1998, the MACC approved the submission of certain provisions of Section 8–2, "Definitions," which pertain to incinerators and certain provisions of Section 8–5, "Emission of particulate matter," pertaining to the emission of particulate matter from incinerators with a request to amend the SIP to incorporate this submission. The MACC also approved the submittal of a request to remove the 1972 Kansas City incinerator requirements contained in KCAPCC Chapter 18, Sections 18.83, "Definitions," and 18.91, "Incinerators."

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this notice, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The revision constitutes a slight increase in the stringency of requirements which pertain to incinerators operating in Kansas City, Missouri.

What Action Is EPA Taking?

EPA is processing this action as a direct final action to approve the replacement of the 1972 KCAPCC incinerator provisions contained in Chapter 18, Sections 18.83, and 18.91, with the incinerator particulate matter provisions contained in the 1996 KCAPCC in Chapter 8, Sections 8–2, "Definitions," and 8–5, "Emission of particulate matter." Specifically, the following definitions are being approved from Section 8–2: Air contaminant, Ambient air, Building, Construction, Emission, Fugitive emissions, Incinerator, Installation, Open burning, Owner, Particulate matter, Refuse, Smoke, Source, Stack, Trade waste, and Uncombined water. EPA is approving the following provisions of Section 8–5: "Emission of Particulate Matter"; subsection 8–5(c)(1)b., "Emission of Particulate Matter, Incinerators—Test Schedule"; subsection 8–5(c)(1)c., "Emission of Particulate Matter, Incinerators—Capacity"; subsection 8–5(c)(2)a., "Emission of Particulate Matter, Incinerators—Particulate and Opacity Limitations"; subsection 8–5(c)(3)a., "Emission of Particulate Matter, Incinerators—Performance Testing, Representative Sample"; subsection 8–5(c)(3)b., "Emission of Particulate Matter, Incinerators—Performance Testing, Procedure"; subsection 8–5(c)(3)c., "Emission of Particulate Matter, Incinerators—Performance Testing, Compliance"; and subsection 8–5(c)(3)d., "Emission of Particulate Matter, Incinerators—Performance Testing, When Required."

EPA's direct final approval of this submittal incorporates incinerator provisions which are already in force under the authority of the Kansas City Health Department. These revisions make routine changes to the existing SIP rules to make them consistent with the local agency rules. EPA views these revisions as noncontroversial. Therefore, we do not anticipate any adverse comments.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 22, 2000 without further notice unless the Agency receives adverse comments by January 21, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 22, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to

ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by February 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 2, 1999.

William A. Spratlin,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320 in paragraph (c), the table for "Kansas City Article III—Air Pollution" is removed and to the table for "Kansas City Chapter 8—Air Quality 17" is revised to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED MISSOURI REGULATIONS

MISSOURI citation	Title	State effective date	EPA approval date	Explanations
*	*	*	*	*
	Kansas City Chapter 8—Air Quality			
8–2	Definitions	12/10/98	12/22/99	
*	*	*	*	*
8–5	Emission of Particulate Matter	12/10/98	12/22/99	Only subsections 8–5(c)(1)b, 8–5(c)(1)c, 8–5(c)(2)a, 8–5(c)(3)a, 8–5(c)(3)b, 8–5(c)(3)c, 8–5(c)(3)d are approved in the SIP.
*	*	*	*	*

[FR Doc. 99–32860 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–115–1–7438a; FRL–6504–4]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Miscellaneous Industrial Sources, Cutback Asphalt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. The EPA is approving these revisions to regulate emissions of VOCs in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on February 22, 2000, without further notice, unless EPA receives adverse comment by January 21, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

Table of Contents

1. What action is EPA taking?
2. What is cutback asphalt?
3. Why do we regulate VOCs?
4. Where can I find EPA guidelines on cutback asphalt?
5. What are the asphalt rule changes?
6. What is a nonattainment area?
7. What is a State Implementation Plan?
8. What is the Federal approval process for a SIP?
9. What does Federal approval of a SIP mean to me?
10. What are advantages of adopting this rule?
11. What test methods will Texas use to determine compliance with the VOC content requirements?
12. What are the Subchapter F requirements for cutback asphalt?

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means EPA.

1. What Action Is EPA Taking?

On August 31, 1999, the Governor of Texas submitted the Subchapter F, "Miscellaneous Industrial Sources," of Chapter 115, "Control of Air Pollution From Volatile Organic Compounds," as a revision to the SIP. This rule making will specifically approve revisions to sections 115.512 concerning Control Requirements, 115.513 concerning Alternate Control Requirements, 115.515 concerning Testing Requirements, and 115.516 concerning Recordkeeping Requirements. Also, we are approving a new section 115.510 concerning definitions of "cutback asphalt," "conventional cutback asphalt," "exempt cutback asphalt," and "asphalt emulsion." In this document we are approving revisions to the Texas SIP concerning control of VOC emissions from asphaltic operations in Nueces County and ozone nonattainment areas. The County of Nueces is not classified as a nonattainment area for ozone. The ozone nonattainment areas include the Houston/Galveston (H/G), Beaumont/Port Arthur (B/PA), Dallas Fort Worth (DFW), and El Paso (EP). For more information on the SIP revision and EPA's evaluation, please refer to our TSD dated October 1999.

In the "Final Action" section of this document we state that we are publishing this rule without prior proposal and EPA is planning to approve this action without further notice.

2. What Is Cutback Asphalt?

If you liquify paving asphalt (asphaltic cement) with petroleum distillates, you will have cutback asphalt (liquified asphalt). Cutback asphalt contains a significant amount of light petroleum solvents such as kerosene, diesel, or naphtha. These solvents or diluents are added to the asphalt either at the refinery or the asphalt plant. As a result, cutback asphalt can be a significant source of VOCs.

3. Why Do We Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

4. Where Can I Find EPA Guidelines on Cutback Asphalt?

You can find our guidelines on cutback asphalt in the document number EPA–450/2–77–037—"Control of Volatile Organic Compounds from Use of Cutback Asphalt."

5. What Are the Asphalt Rule Changes?

The intended purpose of this rule is to reduce VOC emissions. Specifically, this rule revision applies to sources located or operating in the Nueces county, Texas. The county of Nueces is classified as an attainment area for ozone. This rule will limit the VOC volume on cutback use in the Nueces county from 8 to 7 percent. This revision will make the volume limitation for cutback use in the Nueces county more consistent with the volume limitation for cutback use in the ozone nonattainment areas.

This rule will replace the term "emulsified asphalt" with the term "alternative asphalt" for sources located or operating in both the DFW, EP, B/PA, and H/G ozone nonattainment areas and the Nueces county. *See* section 115.510.

Control requirements in section 115.512 for the DFW, EP, B/PA, and H/G ozone nonattainment areas remain the same as the control requirements in the existing federally approved SIP for Texas. The only change to the control requirements in section 115.512 is lowering of the volume limitation for cutback use in the Nueces county.

If you are in the Nueces county or any of the above-mentioned nonattainment areas, you should refer to the rule to determine if and how this rule will affect you.

For detailed evaluation of the asphalt rule changes, please see pages 2 and 3 of our TSD dated October 1999.

6. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas. The H/G, DFW, EP, and B/PA are nonattainment areas for ozone.

7. What Is a State Implementation Plan?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The NAAQS are established under section 109 of the Act to protect public health, and they address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

8. What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State may submit the adopted provisions to us and request that these provisions be included in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, we must address them prior to a final action.

All State regulations and supporting information approved by us under section 110 of the Act are incorporated into the federally approved SIP. Records of these SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations which were approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

9. What Does Federal Approval of a SIP Mean to Me?

Enforcement of the State regulation before and after it is incorporated into federally approved SIP is primarily a State function. However, once the regulation is federally approved, we and the public may take enforcement action

against violators of these regulations if the State fails to do so.

10. What Are Advantages of Adopting This Rule?

Adopting this rule will have the following advantages: (1) Reduces the VOC content of the asphalt, for Nueces county, from 8 percent of the total annual volume to 7 percent. The total annual volume percentage for the asphalt use is calculated over a two-year period, (2) makes the VOC content requirement for asphalt in the Nueces county more consistent with that of nonattainment areas, (3) allows use of alternative asphalt mixes with equal or less VOC emissions, and (4) offers more operational flexibility for a source to meet the market demands.

11. What Test Methods Will Texas Use To Determine Compliance With the VOC Content Requirements?

According to section 115.515, Texas will apply the following test methods to determine compliance with this VOC rule: (1) American Society of Testing and Materials (ASTM) Test Method D 244, "Standard Test Methods for Emulsified Asphalts, Sections 11 to 15, Residue and Oil Distillate by Distillation," as published in the 1997 edition of the Annual Book of ASTM Standards, for determining VOC content of asphalt emulsions; or (2) ASTM Test Method D 402, "Standard Test Method for Distillation of Cut-Back Asphaltic Products," as published in the 1997 edition of the Annual Book of ASTM Standards, for determining the VOC content of cutback asphalt.

12. What Are the Subchapter F Requirements for Cutback Asphalt?

The following table contains a summary of the requirements in Subchapter F for the H/G, the B/PA, the DFW, and the EP areas and the Nueces county concerning VOC contents in cutback asphalt and asphalt emulsion.

TABLE 1.—ASPHALTIC VOC CONTENT REQUIREMENTS AND THEIR CORRESPONDING AREAS IN TEXAS

Location	Requirement	Explanation
H/G, B/PA, DFW, EP areas and Nueces county	VOC content 7 percent or less of total volume, averaged over 2-year period.	For paving roadways, driveways, or parking lots.
H/G, B/PA, DFW, EP areas	No cutback asphalt	From April 16 to September 15 of any year
H/G, B/PA, DFW, EP areas and Nueces county	Asphalt emulsion 0.5 percent for seal coats	By weight percent.
H/G, B/PA, DFW, EP areas and Nueces county	3.0 percent for chip seals when dusty or dirty aggregate used.	By weight percent for asphaltic emulsion.
H/G, B/PA, DFW, EP areas and Nueces county	8.0 percent for mixing with open graded aggregate containing less than 1 percent of dust or clay-like materials.	By weight percent for asphaltic emulsion.
H/G, B/PA, DFW, EP areas and Nueces county	12.0 percent for mixing with dense graded aggregate when used to produce a mix designed to have 10 percent or less voids when fully compacted.	by weight percent for asphaltic emulsion.

When more than one asphaltic VOC content requirement from the above table applies to an asphaltic emulsion, one must use the most stringent requirement. *See* section 115.512(3).

Final Action

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on February 22, 2000, without further notice unless we receive adverse comment by January 21, 2000. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612, "Federalism," and E.O. 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the E.O. to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective February 22, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Asphalt, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: November 19, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended under Chapter 115, Subchapter F, by removing the entry for section 115.512 to 115.519 and inserting in its place individual entries for section 115.510 through section 115.519 reading as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Regulation 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter F Miscellaneous Industrial Sources				
Cutback Asphalt				
Section 115.510	Definitions	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
*	*	*	*	*
Section 115.512	Control Requirements	August 18, 1999/August 31, 1999.	December 22, 1999 and Federal Register cite.	
Section 115.513	Alternative Control Requirements.	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
*	*	*	*	*
Section 115.515	Testing Requirements	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
Section 115.516	Recordkeeping Requirements.	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
Section 115.517	Exemptions	05/08/92	03/07/95 60 FR 12438	Ref 52.2299(c)(88).
*	*	*	*	*
Section 115.519	Counties and Compliance Schedules.	05/08/92	03/07/95 60 FR 12438	Ref 52.2299(c)(88).
*	*	*	*	*

[FR Doc. 99–32858 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300957; FRL–6398–2]

RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil and its metabolites in or on hops at 5.0 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2001. This regulation also extends time-limited tolerances for combined residues of the fungicide myclobutanil and its metabolites, in or on caneberries at 1.0 ppm and in or on peppermint and spearmint at 2.5 ppm for an additional 1–year period. These tolerances will expire and are revoked on December 31, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on caneberries, hops, peppermint and spearmint. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective December 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300957, must be received by EPA on or before February 22, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300957 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9358; and e-mail address: Deegan.Dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300957. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA a final rule, published in the **Federal Register** of July 10, 1998 (63 FR 37289) (FRL–5798–6), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of myclobutanil and its metabolites in or on hops at 5.0 ppm, and caneberries at 1.0 ppm with an expiration date of December 31, 1999. In the **Federal Register** of July 17, 1998 (63 FR 38481) (FRL–6016–8), a time-limited tolerance for myclobutanil and its metabolites was established in or on peppermint and spearmint at 2.5 ppm, with an expiration date of January 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of myclobutanil on hops, caneberries, and mint for this year's growing season, due to the ongoing difficulties of controlling powdery mildew on hops and mint, peppermint rust on mint, and of orange rust on caneberries. EPA's review of these exemption requests have concluded that there are no other readily-available means to effectively control these pest situations at the current time. After reviewing each of these submissions, EPA concurs that emergency conditions existed, and EPA authorized the requested uses of myclobutanil under provisions of FIFRA section 18.

EPA's assessed the potential risks presented by residues of myclobutanil in or on caneberries, hops, and mint. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of July 10, 1998 (63 FR 37289). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1 or 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2000, or December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodites after the expiration date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300957 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 22, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so

marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300957, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408 in response to a FIFRA section 18 petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.443, by amending the table in paragraph (b), by revising the following entries to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

* * * * *

(b) * * * *

Commodity	Parts per million	Expiration/ revocation date
* *	* * *	
Caneberries	1.0	12/31/00
* *	* * *	
Hop cones, dried	5.0	12/31/01
* *	* * *	
Peppermint	2.5	12/31/00
* *	* * *	
Spearmint	2.5	12/31/00
* *	* * *	

* * * * *

[FR Doc. 99–33158 Filed 12-21-99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 422

[HCFA–1011–F]

RIN 0938–AI83

Medicare Program; Solvency Standards for Provider-Sponsored Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: The Balanced Budget Act of 1997 established a new Medicare+Choice (M+C) program that offers eligible individuals Medicare benefits through enrollment in one of an array of private health plans that contract with us. Among the new options available to Medicare beneficiaries is enrollment in a provider-sponsored organization (PSO). This final rule revises and responds to comments on solvency standards that certain entities must meet to contract as PSOs under the new M+C program. These standards, originally established in an interim final rule published on May 7, 1998, apply to PSOs that have received a waiver of the requirement that M+C organizations must be licensed by a State as risk-bearing entities.

DATES: *Effective date:* These regulations are effective on January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Marty Abeln, (410) 786–1032.

SUPPLEMENTARY INFORMATION:

I. Background—Balanced Budget Act of 1997 and the Medicare+Choice Program

Section 4001 of the Balanced Budget Act (BBA) (Public Law 105–33), enacted August 5, 1997, added a new Part C (sections 1851 through 1859) to title XVIII of the Social Security Act (the Act), establishing the "Medicare+Choice" (M+C) program. Under Part C, M+C eligible individuals (generally individuals with both Part A and Part B coverage who do not have End Stage Renal Disease (ESRD) may elect to receive their Medicare benefits through private health plans (M+C organizations) that choose to contract with HCFA. M+C organizations may offer one or more M+C plans of one of three types. Under "coordinated care plans," beneficiaries receive benefits through a network of providers, as in the case of an health maintenance organization (HMO) or preferred provider organization (P.O.). A "provider sponsored organization" (PSO), which is owned by providers through which it provides benefits, and which is the subject of this final rule, necessarily offers a coordinated care plan. (See section 1851(a)(2)(A) of the Act). Other M+C plan options provided for in Part C, but not yet offered by any M+C organization, are private-fee-for service plans and medical savings account (MSA) plans (that is, a combination of a high deductible, catastrophic insurance plan with a contribution to an M+C MSA account).

Interim final regulations for the overall implementation of the M+C program were published in the **Federal Register** on June 26, 1998 (63 FR 34968) and are set forth in part 422 of title 42 of the Code of Federal Regulations (CFR). Provisions enacted by the BBA and implemented in the interim final M+C regulations establish broad and comprehensive requirements for contracting as an M+C organization, including basic benefits, payment, access to service, quality assurance, beneficiary hold harmless, continuation of benefits, appeals mechanisms, marketing, and enrollment processes. These overall M+C regulations apply to M+C organizations that are PSOs.

A PSO is described in section 1855(d) of the Act as a public or private entity—

- That is established or organized, and operated, by a health care provider or group of affiliated health care providers;
- That provides a substantial proportion of the health care items and services directly through the provider or affiliated group of providers; and
- With respect to which the affiliated providers share, directly or indirectly, substantial financial risk for the provision of these items and services and have at least a majority financial interest in the entity.

On April 14, 1998, we published an interim final rule in the **Federal Register** at 63 FR 18124, titled "Definition of Provider-Sponsored Organization and Related Requirements" with an opportunity for public comment setting out the PSO definition, clarifying certain terms, and establishing related requirements. This PSO definitions rule established 42 CFR part 422 and subpart H of that part, dealing with PSOs. The terms and requirements related to the definition of a PSO are now found at §§ 422.350 through 422.356. On May 7, 1998, we published an interim final rule in the **Federal Register** at 63 FR 25360 titled "Waiver Requirements and Solvency Standards for Provider Sponsored Organizations," establishing solvency requirements that apply to PSOs that obtain a waiver of the M+C State licensure requirement and setting forth procedures and standards that apply to requests for the waivers. The solvency portion of the interim final PSO regulation was based on the work of the PSO negotiated rulemaking committee, as required at section 1856(a) of the Act, which provides that the Secretary establish through a negotiated rulemaking process the solvency standards that entities will be required to meet if they obtain a waiver of the otherwise applicable requirement that

they be licensed by a State. The results of the PSO solvency negotiated rulemaking committee are described in the preamble to the interim final regulation published on May 7, 1998 (63 FR 25360).

In this final rule, we focus solely on the solvency standards that will apply to PSOs that have obtained a waiver. Other PSO provisions will be addressed in the upcoming overall final M+C regulation. We note that based on §§ 422.352(a) and 422.380, State-licensed organizations that meet the PSO definition (see §§ 422.350 through 422.356) may qualify for the minimum enrollment standards established under section 1857(b) of the Act but are not subject to these solvency standards.

II. Response to Comments

The PSO solvency standards are the result of a negotiated rulemaking process. The participants in the negotiated rulemaking described their agreement on the PSO solvency standards in a Committee Statement titled "Negotiated Rulemaking Committee on PSO Solvency Standards" dated March 5, 1998. Based on these agreed upon PSO solvency standards, we published an interim final PSO solvency regulation on May 7, 1998 (63 FR 25360). The participants in the negotiated rulemaking process agreed not to submit negative comments on the interim final rule unless they determined that any provision of the interim rule incorrectly reflects the Committee solvency agreement. Section 1856(a)(9) of the Act, as amended by the BBA, requires that we publish final solvency standards within 1 year of the interim final regulations. Accordingly, this final regulation will address only the solvency standards for PSOs. Other comments on PSOs (for example, on the waiver process and definitions) will be addressed in the final M+C regulation due to be published in the fall of 1999.

We received eight public comments. Seven of the letters were from major organizations, and one letter was from a State. The comments we received are summarized below along with our responses.

Comment: We received several comments regarding whether unique solvency standards should be established for PSOs operating in rural areas. Several commenters discouraged establishing separate solvency standards for rural PSOs. One commenter noted that no State has separate solvency standards for entities that operate in distinct geographic areas. Another commenter stated that developing a successful Medicare managed care program is more difficult in a rural area than in an urban area in part because enrollment growth is smaller in rural areas, making it more difficult to cover fixed administrative costs. The commenter was also concerned that it would be difficult to track "rural" and "nonrural" PSOs within a State. According to the commenter, regulators would have the additional burden of monitoring the rural PSOs to determine whether, through growth or other reasons, it no longer met the definition of a rural PSO. If the PSO was no longer considered rural, there could be a possible disruption of services since the PSO would have to recapitalize in order to meet the higher solvency requirements for non-rural PSOs. The commenters also pointed out that rural PSOs, given less stringent solvency standards, would have a more difficult time making the transition from meeting the standards required for a Federal waiver to meeting the solvency requirements of a State once the 36-month waiver period expires.

Two commenters suggested that we consider allowing rural PSOs to "aggregate" specifically for purposes of meeting solvency standards (Regional PSOs). For example, we could permit rural providers or local rural PSOs that band into a regional PSO or rural PSOs that link to nonrural PSOs to be considered as one entity for the purpose of satisfying the PSO solvency standards. The commenter contended that such a regional approach to PSOs is likely to produce greater financial stability and greater access to care and would reduce unnecessary redundancy of solvency requirements as applied to individual entities that comprise the regional plan.

Another commenter recommended that solvency adjustments for rural PSOs be allowed in circumstances under which the commenter believes the solvency rules require more financial resources than might be necessary for smaller rural PSOs. The commenter suggested that certain solvency requirements could be reduced for rural PSOs without placing the PSO in financial jeopardy. Specifically, this commenter recommended that we have discretion to—(1) selectively allow for reductions in the minimum cash and liquidity requirements for rural PSOs; (2) allow for a reduction in the insolvency deposit for small and rural PSOs; (3) allow the use of irrevocable letters of credit for the insolvency deposit; and (4) allow for a reduction in the minimum cash portion of a rural PSO's net worth requirement.

Response: At this time, we will not establish separate solvency standards for rural PSOs. We believe that the lack of current rural PSO activity makes it difficult to realistically evaluate under what circumstances it would be feasible for us to reduce certain solvency standards for rural PSOs. We note that the States do not have different solvency requirements depending on whether an entity is operating in a rural area compared to an urban area. As a commenter noted, PSOs will be subject to State standards at the end of the 36-month waiver period. In addition, we are concerned about lessening solvency requirements and thereby putting beneficiaries at increased risk if the rural PSO becomes insolvent.

With respect to the proposal to allow rural PSOs to band together for the purpose of collectively meeting the solvency requirements, we are concerned that if more than one of these PSOs becomes insolvent, there will not be adequate funds available to protect beneficiaries. We believe the possibility of two PSOs becoming insolvent at the same time is significant because the PSOs will be operating in the same region. Accountability questions would also be raised if we allow organizations to combine for the purpose of meeting certain requirements in regulations. If several PSOs combine to meet the solvency standards, it is not clear whether these combined PSOs would be in noncompliance if one of the PSOs experienced financial difficulty. In regard to recommendations that we reduce or modify various solvency reserves, we believe these changes would be a significant departure from the solvency standards carefully worked out during the negotiated rulemaking process. For that reason and those cited above, we will not selectively reduce the solvency requirements for rural PSOs.

Comment: A commenter noted that with respect to affiliate guarantees, the Solvency Committee agreed that it was up to us to determine which entities could provide guarantees. Because of this agreement, the commenter believed that it is appropriate to comment on this part of the interim final regulation. The commenter recommended that the independently audited financial statement provided by a guarantor can only be acceptable to us if it consists of unqualified opinions from the auditor.

Response: We will not require that guarantee opinions in audited independent financial statements always be unqualified. There may be circumstances where a qualification of a financial opinion does not significantly affect the conclusions regarding the entity's ability to meet the financial solvency standards. Accordingly, we reserve the right to accept or reject a

financial statement depending on the nature and significance of the qualification of the opinion.

Comment: Several commenters requested that we clarify in this regulation whether Federal bankruptcy or State receivership law should take precedence if a PSO goes bankrupt.

Response: We recognize the importance of this question. Accordingly, we are researching the alternatives regarding the appropriate jurisdiction and venue in which to administer a financially insolvent PSO. However, resolving the precedence of Federal bankruptcy law versus State receivership law is beyond the scope of this regulation.

Comment: Several commenters stated that a current ratio of 1:1 should be a factor we will use in evaluating the ongoing solvency of a PSO but not an absolute requirement as indicated at § 422.386 of the interim final rule. Section 422.386(d) of the interim final regulations states that if a PSO fails to maintain a current ratio requirement of 1:1, we will require the PSO to initiate corrective action. The commenters pointed out that the Liquidity section of the PSO Solvency Committee Statement states that we *may* require a PSO to initiate corrective action if either of the following is evident—(1) the current ratio declines significantly, or (2) there is a continued downward trend in the current ratio.

The corrective action may include change in the distribution of assets, a reduction of liabilities, or alternative arrangements to secure additional funding requirements to restore the current ratio to 1:1.

Response: We agree that the Committee Statement indicates that a PSO current ratio of 1:1 should be a factor we will use in evaluating the solvency of a PSO but not an absolute requirement that will always result in corrective action when violated. Accordingly, we will change § 422.386(d) in the final regulation to read as follows:

> (d) If HCFA determines that a PSO fails to meet the requirement of paragraph (b)(2) of this section, HCFA may require the PSO to initiate corrective action to* * *

Comment: A commenter noted that § 422.382(a) requires that the initial net worth requirement be met at "* * * the time an organization applies to contract with us as a PSO." The commenter recommended that this requirement be changed to require that the initial net worth requirement be met at the time the application is approved or the contract entered into, rather than on the date the application is first submitted. The commenter expressed concern that since the application process can take a number of months, the PSO might have drawn down its net worth in the intervening months after the initial application and may have an inadequate net worth by the time the PSO actually enters into the contract with us.

Response: The Committee Statement on the PSO solvency standards specifies that the PSO minimum net worth amount must be met when the PSO submits the initial application. The interim final PSO regulations at § 422.382 reflect this Committee Statement. We believe it is necessary that the net worth requirement be met at the start of the application process to ensure that the applicant is financially able to enter into a contract with us. We also believe that the ongoing net worth requirement will ensure that PSOs have adequate net worth on the effective date of the contract.

Comment: Section 422.382(b) describes the ongoing net worth requirement as the greater of four amounts. The fourth amount, set forth in § 422.382(b)(4), begins with the statement "Using the most recent annual financial statement filed with HCFA, an amount equal to the sum of * * *" A commenter contended that this language was intended to be an adaptation of a similar provision set forth in Section 13.A.(2)(d) of the National Association of Insurance Commissioners (NAIC) HMO Model Act, requiring that the calculation be based "* * * on the most recent financial statement filed with the commissioner * * *" rather than the most recent annual financial statement.

The commenter noted that while the calculation results in an annualized number, the calculation should be based on the most recent HCFA filing, which could be a quarterly statement, not an annual statement. Accordingly, the commenter requested that the word "annual" be deleted from § 422.382(b)(4) in order to conform to the NAIC structure.

Response: We agree with the commenter that the word "annual" should be removed from § 422.382(b)(4). This is also consistent with the PSO Committee Agreement in which the ongoing minimum net worth requirements are specified and verification is through "* * * the most recent financial statement filed with us." Accordingly, we will revise § 422.382(b)(4) to read as follows:

> Using the most recent financial statement filed with us, an amount equal to the sum of * * *

Comment: A commenter noted that § 422.384(b)(5) requires certification of reserves and actuarial liabilities by a "qualified HMO actuary," which is not defined (the regulation does define "qualified actuary"). The commenter requested clarification of what is meant by "qualified HMO actuary."

Response: We agree that the use of the phrase "qualified HMO actuary" at § 422.384(b)(5) is confusing. Accordingly, we will change the reference at § 422.384(b)(5) to read "qualified actuary." We are not imposing any requirements on the qualifications of an actuary employed by a PSO beyond what is stated in the definition of qualified actuary under § 422.350(b).

Comment: Section 422.382(b)(4) describes the four-tiered minimum net worth test that will be applied to a PSO after the effective date of its M+C contract. Section 422.382(b)(4)(iii) states that the annual health care expenditures that are paid on a capitated basis to affiliated providers must not be included in the calculation of net worth under paragraphs (a) and (b)(4) of § 422.382. A commenter noted that the negotiated rulemaking committee specifically addressed this issue and was careful to note that the exclusion set forth in paragraph (b)(4)(iii) of § 422.382 would apply regardless of the downstream risk arrangements among providers. The commenter recommended that this nuance be noted in the text of the regulations.

Response: We agree as referenced in the Committee Statement that the exclusion from the net worth requirement calculation at § 422.382(b)(4)(iii) applies regardless of the downstream risk arrangements among providers. Accordingly, we will change the regulation at § 422.382(b)(4)(iii) by adding the following parenthetical clarification:

> Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in the calculation of the net worth requirement (regardless of downstream arrangements from the affiliated provider) under paragraphs (a) and (b)(4) of this section.

Comment: A commenter recommended that a statement be added to the preamble of the final solvency regulation clarifying (1) that funds accumulated by a PSO as subordinated liabilities may be disbursed to the affiliated providers if they are not needed to satisfy net worth requirements during the period for which the funds were held and (2) that the PSO has the flexibility to convert those funds to equity or debt to benefit the providers.

Response: As long as the minimum net worth requirement is maintained, any assets including those associated with subordinated liabilities may be disbursed as the PSO deems appropriate on the basis of sound business judgment. We do not believe any additional clarification in the preamble is necessary.

Comment: Under § 422.386(b)(3), in determining liquidity, we evaluate the level of outside financial resources to the PSO. A commenter recommended that we change § 422.386(e) to clarify that we will require a PSO to obtain funding from alternative financial resources under this provision only if there has been a change in the availability of outside financial resources available to the PSO. In support of its recommendation, the commenter pointed out that the language of the Solvency Standards Agreement (under the Part C Liquidity requirements) reads, "If there is a change in the availability of the outside resources, we will require the PSO to obtain funding from alternative financial resources."

Response: We agree with this comment. Section 422.386(b)(3) provides that, in monitoring liquidity, we will examine the "availability of outside financial resources to the PSO." We will change § 422.386(e) to read as follows:

> If HCFA determines that there has been a change in the availability of outside financial resources as required by paragraph (b)(3) of this section, HCFA requires the PSO to obtain funding from alternative financial resources.

Comment: Under § 422.390(d)(2)(ii), a guarantor must agree to not subordinate the PSO guarantee to any other claim on its resources. A commenter contended that in a typical PSO scenario, a tax-exempt hospital or health system may provide the guarantee to the PSO. In this case, the commenter believes it is likely that the hospital or health system has tax-exempt bonds in place that contain certain covenants with respect to the use and disposition of assets, including a pledge of revenues. Under most circumstances and bond documents, it would not be problematic in the commenter's view to satisfy the requirements at § 422.390(d)(2)(ii). However, the commenter believes that if a PSO were able to demonstrate that this requirement was unduly and substantially burdensome to the guarantor, we should have the authority to consider the specific facts and circumstances and sufficient discretion to modify this requirement.

Response: Section 422.390(a) of the Medicare+Choice regulations explicitly states that we have the discretion to approve or deny approval of the use of a guarantor. We believe this authority generally allows us to exercise discretion in the approval or modification of a guarantor agreement. We do not believe further clarification of this authority in the regulations is necessary.

Comment: One commenter expressed concerns that the requirement that the guarantor have a net worth of three times the amount of the guarantee may not always be adequate. The commenter noted that this amount may be adequate for some companies, but it may be a very slender margin. As an alternative approach, the commenter suggested that perhaps the net worth of a guarantor be determined as a percentage of assets or related to total liabilities in some fashion.

Response: While we agree with the commenter's concern that the guarantor having a net worth of three times the amount of the guarantee may not always be adequate, we do not believe it is necessary to change the regulation to address this concern. Section 422.390(a) explicitly states that we have the discretion to approve or deny approval of the use of a guarantor. We believe this authority generally allows us to exercise discretion in determining the net worth to be required of a particular guarantor that could be based on alternative approaches like those suggested by the commenter.

Comment: Section 422.384(e)(i) provides that guarantees will be an acceptable resource to fund projected losses of a PSO provided that, before the effective date of the PSO's M+C contract, the PSO obtains from the guarantor cash or cash equivalents to fund the amount of projected losses for the first two quarters. A commenter noted that the preamble to the interim final rule stated that funding for the first two quarters will need to be in the PSO "at least (45) days before the effective date of the contract". The commenter recommended that, rather than enforcing a uniform 45-day requirement, we exercise discretion consistent with the current language of § 422.384(e)(i). The commenter maintained that under certain circumstances the 45-day requirement could prove to be unduly burdensome and we have sufficient discretion to ensure that the guarantee amounts are sufficiently prefunded for the first quarter of operation under the contract.

Response: The preamble of the May 7, 1998 interim final rule (63 FR 25370) calls for organizations to have assets to fund the first two quarters of projected losses on their balance sheets 45 days before the effective date of the contract. However, this 45-day time period is a guideline to ensure that there is adequate time before the contract date for us to update necessary data systems. If a PSO is unable to have this funding in place 45 days before the contract effective date, this may result in a delay in the implementation of the contract.

III. Provisions of the Final Rule

We have agreed to the following changes in regulations text in response to comments on the interim final rule: Each change is based on a commenter establishing that the interim final regulation was not consistent with the agreement developed through the solvency negotiated rulemaking process.

- We have revised § 422.382(b)(4), which states that the ongoing net worth requirement be evaluated based on the most recent financial statement filed with us and not restricted to the most recent "annual" financial statement.
- We have accepted a comment to clarify in the final regulation that the exclusion from the net worth requirement calculation at § 422.382(b)(4)(iii) applies regardless of the downstream risk arrangements among providers.
- We have clarified that we are not imposing any requirement on the qualification of an actuary employed by a PSO beyond what is stated in the definition of a qualified actuary at § 422.384.
- We have changed § 422.386(d) to state that the PSO current ratio will be a factor we will use in evaluating the solvency of a PSO but not an absolute requirement that will always result in corrective action being imposed by us when violated.
- We have accepted a comment to change § 422.386(e) to make it clear that we will require a PSO to obtain funding from alternative financial resources if there is a change in the availability of outside financial resources available to the PSO.

IV. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses, unless we certify that the regulation will not have a significant economic impact on a substantial number of small entities. Most hospitals, and most other providers, physicians, and health care suppliers, are small entities either by nonprofit status or by having revenues of less than $5 million annually. The impact of this regulation will be to create a new business opportunity for these small entities to form provider-sponsored organizations to contract with the Medicare program.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule does not mandate any requirements for State, local, or tribal governments. Therefore, we have not prepared an assessment of anticipated costs and benefits of this final rule.

Because of the probability that these solvency standards may have an impact on certain hospitals, physicians, health plans, and other providers we prepared the following analysis which constitutes both a regulatory impact analysis and a regulatory flexibility analysis.

B. Background

While the term "provider-sponsored organization" has been used generally in reference to health care delivery systems that providers own or control and operate, the term has a more specific meaning for purposes of the M+C program. Accordingly, we defined, by regulation, the fundamental organizational requirements for entities seeking to be PSOs. These definitions are set forth at § 422.350. Organizations that meet these definitional requirements can apply for a Federal waiver and an M+C contract. Having defined the term PSO and the waiver process in earlier regulations, the purpose of this final rule is to finalize the interim standards for financial solvency to which these Federally waived organizations must adhere.

The solvency standards only affect organizations that have received a Federal waiver and are either applying for or actually have received an M+C contract. It is likely that waiver activity will be greater in States that have solvency standards that differ significantly from the standards developed in this regulation. Below we consider the anticipated impact of this rule.

C. Anticipated Effects

1. Effects on Providers

This final regulation establishes solvency standards for PSOs that have an approved waiver and are applying for a Medicare PSO contract. These solvency requirements are designed to ensure that provider groups have the necessary financial resources to participate in the M+C program. In addition, the regulations are intended to ensure the ongoing solvency of PSOs and to protect enrolled beneficiaries if an insolvency occurs. Through the negotiated rulemaking process and our own deliberations, we have carefully balanced the PSO solvency requirements to ensure that we are not imposing unreasonable financial barriers to the participation of provider groups in the M+C program. We believe that these solvency requirements will make it easier for provider groups to participate in the M+C program.

2. Effects on the Market Place

Since solvency standards vary by State, and State standards are evolving, it is difficult to assess the relative effect of these solvency standards. However, with several key exceptions (for example, a different initial minimum net worth requirement and a lower insolvency deposit), these solvency standards track the HMO Model Act. Therefore, we do not believe there will be a significant impact due to the existence of an unlevel playing field between PSOs and other entities. We believe that establishing standards of financial solvency is necessary to ensure that PSOs have the financial resources to provide adequate quality care and to reduce the possibility of disrupting beneficiary care.

3. Effects on States

For PSOs that obtain a Federal waiver, responsibility for monitoring their financial solvency will be transferred from the States to us. This a temporary reduction, since waivers last only 36 months and the Secretary's authority to grant waivers ends on November 1, 2002. By the end of a PSO's waiver, it will need a State license in order to continue its M+C contract. Therefore, to ease the transition from a Federal waiver to a State license, we encourage PSOs to establish a relationship with regulators in their respective States soon after receiving a waiver.

4. Effects on Beneficiaries

We expect that the advent of PSOs and M+C in general will have the effect of further mainstreaming managed care plans among Medicare enrollees. We do not anticipate an increase in the potential for service interruptions because these new PSOs will be subject to the same beneficiary hold-harmless provisions and continuation of benefits requirements as all M+C organizations. Lastly, section 1855(a)(2)(G) of the Act requires PSOs to comply with all existing State consumer protection and quality standards as if the PSO were licensed under State law.

D. Effects on the Medicare Program

We assume that PSOs will be more prone to favorable selection than other coordinated care plans since the providers in the PSO will, in many cases, know their patients. This may increase the level of favorable selection for the M+C program and could result in increased costs for the Medicare program. However, since PSOs are expected to make up a very small part of the M+C program, for the foreseeable future any PSO favorable selection will have a minimal dollar impact on the Medicare program.

We expect a greater insolvency rate from the PSOs than from the current coordinated care plans because PSOs generally have less business experience and they are smaller. Despite the insolvency rules including hold harmless, Medicare can lose money when there is an insolvency. This is particularly true when insolvency is imminent and providers therefore defer nonemergency procedures to the next month. Medicare may have to pick up the costs, especially if the beneficiary elects fee-or-service. However, as noted above, given the small number of PSOs participating in the M+C program, the

expected cost of insolvencies for the Medicare program is low.

E. Alternatives Considered

As previously discussed, the PSO solvency standards were developed through a formal negotiated rulemaking process. During the negotiated rulemaking, a number of alternatives were considered in the process of developing a consensus regarding the PSO solvency regulations. Please refer to the interim final PSO solvency regulation published in the **Federal Register** on May 7, 1998 for details on the negotiated rulemaking process including the solvency alternatives considered.

F. Conclusion

We conclude that this regulation will have an indeterminable impact on small health service providers. The provisions of this final rule are expected to be favorable for the managed care community as a whole, as well as for the beneficiaries that they serve. We have also determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of rural hospitals.

In accordance with the provisions of Executive order 12866, this regulation was reviewed by the Office of Management and Budget.

G. Federalism

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications.

In this final rule, we focus solely on the solvency standards that apply to PSOs that have obtained a waiver from State licensure requirements. The PSO waiver provisions that describe the process by which a PSO obtains a waiver from HCFA of State licensure requirements will be addressed in the final M+C regulation expected to be published in the first quarter of 2000.

The solvency portion of the PSO regulation in this final regulation is based on the work of the PSO negotiated rulemaking committee, as required at section 1856(a) of the Act, which provides that we establish through a negotiated rulemaking the solvency standards that entities will be required to meet if they obtain a waiver of the otherwise applicable requirement that they be licensed by a State. The negotiated rulemaking process and participants are discussed in the preamble to the interim final waiver and solvency regulations published in the **Federal Register** on May 7, 1998 (63 FR 25364). Among the participants in the negotiated rulemaking were the National Association of Insurance Commissioners, which is the organization of the chief insurance regulators from the 50 States, the District of Columbia, and four U.S. territories. This final solvency regulation is consistent with the solvency standards agreed upon by all participants in the negotiated rulemaking process, which, as noted, included the NAIC. We received no comments on the interim final waiver and solvency regulation and made no determinations that materially altered the PSO solvency standards agreed upon in the negotiated rulemaking. It is also notable that with limited exceptions these solvency standards track those in the HMO model act which are the model solvency standards developed by all of the States through the NAIC. Accordingly, we believe this final regulation meets Federalism requirements because we have consulted with the appropriate State officials who are in agreement with these solvency standards.

List of Subjects in 42 CFR Part 422

Health maintenance organizations (HMO), Medicare+Choice, Provider sponsored organizations (PSO).

For the reasons set forth in the preamble, 42 CFR Chapter IV, part 422, is amended as follows:

PART 422—MEDICARE—CHOICE PROGRAM

1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1851 and 1855 of the Social Security Act.

Subpart H—Provider-Sponsored Organization

2. In § 422.382, the introductory text to paragraph (b) is republished, and the introductory text to paragraph (b)(4) and paragraph (b)(4)(iii) are revised to read as follows:

§ 422.382 Minimum net worth amount.

* * * * *

(b) After the effective date of a PSO's M+C contract, a PSO must maintain a minimum net worth amount equal to the greater of—

* * * * *

(4) Using the most recent financial statement filed with HCFA, an amount equal to the sum of—

* * * * *

(iii) Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in the calculation of the net worth requirement (regardless of downstream arrangements from the affiliated provider) under paragraphs (a) and (b)(4) of this section.

* * * * *

§ 422.384 [Amended]

3. In § 422.384, in paragraph (b)(5), the phrase "qualified health maintenance organization actuary" is removed and the phrase "qualified actuary" is added in its place.

4. In § 422.386, the introductory text to paragraph (d) and paragraph (e) are revised to read as follows:

§ 422.386 Liquidity.

* * * * *

(d) If HCFA determines that a PSO fails to meet the requirement of paragraph (b)(2) of this section, HCFA may require the PSO to initiate corrective action to—

* * * * *

(e) If HCFA determines that there has been a change in the availability of outside financial resources as required by paragraph (b)(3) of this section, HCFA requires the PSO to obtain funding from alternative financial resources.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 3, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Approved: August 16, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–32939 Filed 12–21–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7721]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: We, FEMA, are suspending one community on the effective date of

this rule because of its failure to enforce its floodplain management regulations under the National Flood Insurance Program (NFIP). If we receive documentation that the community has acted to bring its floodplain management program into compliance with NFIP requirements before the effective suspension date, we will withdraw the suspension by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column of the table.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619, or (email) *Bob.Shea@fema.gov*.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance that is generally not commercially available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures.

The community listed in this notice no longer meets that statutory requirement for compliance with program regulations (44 CFR part 59 *et seq.*). Accordingly, we will suspend unincorporated areas of Hamilton County, Illinois, on the effective date in the third column of the table. As of that date, the purchase of new flood insurance policies or the renewal of existing flood insurance policies will no longer be available.

However, Hamilton County, Illinois may submit the documentation required to correct the deficiencies and to remedy the violations identified in the suspension notice to the maximum extent possible, before the actual suspension date. If the County does this, we will not suspend the County and it will continue its eligibility for the sale of insurance. And if so, we will publish in the **Federal Register** notice withdrawing the suspension of the community. In the interim, if you wish to determine whether we suspend the County on the suspension date, please contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

We have also identified the special flood hazard areas in this community by publishing a Flood Insurance Rate Map. The date of this flood map is indicated in the fourth column of the table. By law no Federal officer or agency may approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director of FEMA as an area having special flood hazards unless the community in which that area is located is participating in the NFIP (42 USC 4106). Formally identified flood-prone communities that do not qualify for the NFIP within one year after such notification or other specified date are subject to the prohibition in 42 USC 4106. The prohibition against certain types of Federal assistance becomes effective for Hamilton County, Illinois on the date shown in the last column.

The Administrator finds that notice and public comment procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because the community listed in this final rule has been adequately notified. The community received a 90-day probationary letter on November 11, 1998, and a 30-day show cause letter was sent October 18, 1999. We addressed these notifications to the Hamilton County Board Chairman indicating that we will suspend the County unless the County takes the required corrective actions and remedial measures before the effective suspension date. Since we have made these notifications, this final rule may take effect within less than 30 days.

Under the provisions of 5 U.S.C. 605(b), I certify as Associate Director for Mitigation that this rule will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002), the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to enforce adequate floodplain management, thus not complying with the Federal standards required for community participation. In each entry, a complete chronology of the effective date appears for the listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

Accordingly, we are amending 44 CFR part 64 as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

§ 64.6—LIST OF ELIGIBLE COMMUNITIES

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V:				
Illinois: Hamilton, County of.	170910	July 3, 1975, Emerg.; Aug. 19, 1985, Reg.; Jan. 17, 2000, Susp.	02–01–90	Jan. 17, 2000

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 9, 1999.
Michael J. Armstrong,
Associate Director for Mitigation.
[FR Doc. 99–33008 Filed 12–21–99; 8:45 am]
BILLING CODE 4710–21–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE32

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Sidalcea oregana* var. *calva* (Wenatchee Mountains Checker-Mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act (Act) of 1973, as amended, for *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow). This plant species is endemic to meadows that have surface water or saturated soil in the spring and early summer at middle elevations in the Wenatchee Mountains of Chelan County, Washington. Although five populations of this plant are known, three of these have very few individuals. The estimated total number of plants is about 3,300. The primary threats to *S. oregana* var. *calva* include habitat fragmentation and destruction due to alterations of hydrology, rural residential development and associated activities, competition from native and alien plants, recreation, fire suppression, and activities associated with fire suppression. To a lesser extent, the species is threatened by livestock grazing, road construction, and timber harvesting and associated impacts including changes in surface runoff in the small watersheds in which the plant occurs. This rule implements the Federal protections provided by the Act for this plant.

EFFECTIVE DATE: This final rule is effective January 21, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Western Washington Office, North Pacific Coast Ecoregion, U.S. Fish and Wildlife Service, 510 Desmond Drive, Suite 102, Lacey, WA 98503–1273.

FOR FURTHER INFORMATION CONTACT: Gerry Jackson, Supervisor, at the above address (telephone 360/753–4327; facsimile 360/753–9815).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea oregana var. *calva* (Wenatchee Mountains checker-mallow) is known only from the Wenatchee Mountains of central Washington. Specimens assignable to var. *calva* were first collected from Icicle Creek near Leavenworth in Chelan County and from wet meadows near the town of Peshastin in Chelan County by Sandberg and Leiberg on July 25, 1893 (herbarium collection, stored in permanent collection at the Smithsonian Institution and the University of Oregon herbaria (Sandberg and Leiberg #586)). Occasional collections were made over subsequent decades until the type specimen was collected by Hitchcock on June 21, 1951, from Camas Land in Chelan County (herbarium collection, stored in permanent collection at Washington State University and the University of Oregon (Hitchcock #19,427)). The taxon was first recognized as a distinct variety named *S. oregana* ssp. *oregana* var. *calva* by Hitchcock and Kruckeberg (1957). Hitchcock and Cronquist (1973) reduced *S. oregana* ssp. *oregana* to varietal status (*S. oregana* var. *spicata*), thereby eliminating the need to include the subspecies *oregana* as part of the scientific name for this taxon. No further taxonomic revisions have been made for this taxon. In recent discussions, knowledgeable individuals confirmed the distinctness of this variety (Arthur Kruckeberg, University of Washington, pers. comm. 1995; John Gamon, Washington Natural Heritage Program, pers. comm. 1996).

A member of the mallow family (Malvaceae), *Sidalcea oregana* var. *calva* is a perennial plant with a stout taproot that branches at the root-crown and gives rise to several stems that are 20 to 150 centimeters (cm) (8 to 60 inches (in)) tall. Plants vary from glabrous (lacking hairs and glands) to pubescent (hairy) or stellate (with star-shaped hairs) below, are finely stellate above, and have flower clusters with one to many stalked flowers arranged singly along a common stem. The flowers have pink petals 1 to 2 cm (0.4 to 0.8 in) long. The flowers are borne on stalks ranging from 1 to 10 millimeters (mm) (0.04 to 0.4 in) in length; the calyx (outer whorl of floral parts) ranges from uniformly finely stellate to bristly with a mixture of longer, simple to four-rayed, spreading hairs sometimes as long as 2.5 to 3 mm (0.1 to 0.12 in) (Hitchcock and Cronquist 1961). Flowering begins in the middle of June and peaks in the middle to end of July. Fruits are ripe by August. *Sidalcea oregana* var. *calva* is similar morphologically to *S. oregana* var. *procera*, which occurs in the same general region but with a more southerly distribution. *Sidalcea oregana* var. *calva* can be distinguished from var. *procera* by the type and degree of pubescence on the stems and calyx and its large, fleshy, basal leaves, which are smooth to the touch on both surfaces (Gamon 1987).

The historical site location of the 1893 collection near the town of Peshastin and three other early (pre-1940) collections in the Peshastin area have not been relocated (Gamon 1987). The location given for each of these early collections was too vague to allow for relocation. Conversion of the Peshastin and Leavenworth area to orchards or other agricultural uses and rural residential development has likely extirpated *Sidalcea oregana* var. *calva* from this area. Resurveying of three other locations thought to have *Sidalcea oregana* var. *calva* revealed plants found to be *S. oregana* var. *procera* (Gamon 1987). At another three sites where *S. oregana* var. *calva* was discovered in 1984, no plants were found in 1987, possibly because the few plants found in 1984 went undetected in 1987, the original location information was imprecise, or the few plants found in 1984 did not survive due to changes in the hydrologic regimes of the area (J. Gamon, pers. comm. 1997).

Currently, *Sidalcea oregana* var. *calva* is known to occur at five sites (populations). The largest population is located in an area called Camas Land, a wetland and moist meadow complex surrounded by ponderosa pine and Douglas-fir forests. The area is a mixture of private land, State of Washington land managed as the Camas Land Natural Area Preserve (NAP) by the Washington Department of Natural Resources (WDNR), and land administered by the Wenatchee National Forest (U.S. Forest Service). Camas Land is located and named on U.S. Forest Service and WDNR maps. Based on a recent inventory, about 2,470 individuals occur on 36 hectares (ha) (90 acres (ac)) of WDNR property in Camas Land (Washington Natural Heritage Program 1997). These plants are thought to represent about 75 percent of the Camas Land population (David Wilderman, WDNR, pers. comm. 1997). The second largest population, discovered in 1987 on private land at Mountain Home Meadow, consists of about 100 plants within a few hectares (Ted Thomas, Service, pers. obs. 1995). Two other populations on the Wenatchee National Forest have a total

of seven plants (Richy Harrod, U.S. Forest Service, pers. comm. 1997). The fifth population, on private land, has fewer than 30 plants (T. Thomas, pers. obs. 1995). The estimated total number of plants in these 5 populations is fewer than 3,300. The total area occupied by the 5 populations is approximately 50 ha (125 ac).

Sidalcea oregana var. *calva* is most abundant in moist meadows that have surface water or saturated upper soil profiles during spring and early summer, but it also occurs in open conifer stands dominated by *Pinus ponderosa* (ponderosa pine) and *Pseudotsuga menziesii* (Douglas-fir) and on the margins of shrub and hardwood thickets. Extant populations are found at elevations ranging from 600 to 1,000 meters (m) (1,970 to 3,300 feet (ft)). The soils are typically clay-loams and silty loams with low moisture permeability. Associated species include *Populus tremuloides* (quaking aspen), *Crataegus douglasii* (black hawthorn), *Symphoricarpus albus* (common snowberry), *Amelanchier alnifolia* (serviceberry), *Lathyrus pauciflorus* (few-flowered peavine), *Wyethia amplexicaulis* (northern mule's-ear), *Geranium viscosissimum* (sticky purple geranium) and *Veratrum californicum* (California false hellebore). Sixty percent of the *S. oregana* var. *calva* populations are found in association with *Delphinium viridescens* (Wenatchee larkspur), a former Federal category 1 candidate plant species.

Previous Federal Action

Federal action on *Sidalcea oregana* var. *calva* began when we published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *S. oregana* var. *calva* as a category 1 candidate species. Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. The Notice of Review published on September 27, 1985 (50 FR 39526), included *Sidalcea oregana* var. *calva* as a category 2 candidate species. Category 2 candidates were defined as taxa for which information indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a listing proposal. Later notices of review published on February 21, 1990 (55 FR 6185), and September 30, 1993 (58 FR 51144), identified the plant as a category 1 candidate species. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using the category designations and included *Sidalcea oregana* var. *calva* as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. That provision of the Act applied to *Sidalcea oregana* var. *calva*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1995.

On August 1, 1997, we published a proposed rule to list *Sidalcea oregana* var. *calva* as an endangered species (62 FR 41328). The comment period was open until September 30, 1997. With publication of this final rule, we now determine that *Sidalcea oregana* var. *calva* is endangered.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

We have updated this rule to reflect any changes in distribution, status, and threats since publishing the proposed rule and to incorporate information obtained through the public comment period. This additional information did not alter our decision to list this species.

Summary of Comments and Recommendations

In the August 1, 1997, proposed rule (62 FR 41328) and associated notifications, we requested interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published announcements of the proposed rule in newspapers, including the *Seattle Times, Seattle Post-Intelligencer, Olympian, Wenatchee World, Leavenworth Echo, Bremerton Sun, Centralia Chronicle, Everett World, Longview World, Skagit Valley Herald, Peninsula Daily News, Spokesman Review, Yakima Herald, Aberdeen Daily World, Bellingham Herald, Bellevue Daily,* and *Vancouver Columbian*, on August 1, 1997, inviting public comment.

During the comment period, we received five comments, from one Federal agency, one State agency, one conservation organization, and two individuals or groups. All commenters, except one, supported the listing of *Sidalcea oregana* var. *calva* under the Act.

Because multiple respondents offered similar comments, we grouped comments of a similar nature or point. These comments and our responses to each are discussed below.

Issue 1: One commenter was concerned that listing this species would restrict further development of the commenter's property.

Our Response: Nothing prohibits "take" of plants on private land. Future construction activities on private land would not be restricted by any regulations under the Act, provided that there is no Federal agency involvement in the activities. If actions on private property require Federal funding, authorizations, or a Federal permit, the Federal action agency must consult with us. For further discussion on consultation requirements under section 7 of the Act, see the "Available Conservation Measures" section of this final rule.

Issue 2: One commenter questioned our authority to regulate interstate

commerce, as related to this endangered species.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with *Sidalcea oregana* var. *calva*, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate—(1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because applying the Act in that case prevented destructive interstate competition and loss of biodiversity. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and regulates commercial development that is part of interstate commerce.

The Federal Government also has the authority under the Property Clause of the Constitution to protect this species. *Sidalcea oregana* var. *calva* occurs on Federal land in the Wenatchee National Forest. If this species were to become extinct, the diversity of plant life in the Wenatchee National Forest would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See e.g., *Kleppe* v. *New Mexico*, 429 U.S. 873 (1976); *United States* v. *Alford*, 274 U.S. 264 (1927); *Camfield* v. *United States*, 167 U.S. 518 (1897); *United States* v. *Lindsey*, 595 F.2d 5 (9th Cir. 1979).

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Two scientists responded to our request for peer review of this listing action. Both responders provided information that was incorporated and is presented in the final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and the regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their applications to *Sidalcea oregana* (Nutt.) var. *calva* C.L. Hitchcock (Wenatchee Mountains checker-mallow) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

All known sites and habitats for *Sidalcea oregana* var. *calva* have undergone various alterations. Conversion of land to orchards or other agricultural uses and rural residential development are thought to have extirpated historical populations (Gamon 1987). Numerous houses already exist at Camas Land, the site of the largest population, and two houses have been built there since 1987 (T. Thomas, pers. obs. 1995). Current threats to this population are posed by further subdivision for residences and associated habitat modifications, such as alterations in hydrology, increased nutrient loads into the meadow from septic systems, introduction of non-native grasses, conversion of portions of the meadow to agricultural uses including pasture land and gardens, access road construction, and trampling by people and off-road vehicles (Gamon 1987; T. Thomas, pers. obs. 1995; D. Wilderman, pers. comm. 1997).

Natural drainage channels within Camas Land have been altered to direct water away from the primary wet meadow area for agricultural purposes (Gamon 1987; R. Harrod, pers. comm. 1996; D. Wilderman, pers. comm. 1997). Alterations in hydrology threaten the species by changing the amount, timing, duration, and/or frequency of the water supply to the habitat for the species. Most individuals of *Sidalcea oregana* var. *calva* in the Camas Land meadow are associated with the drainage channels or areas that retain moisture relatively longer (Gamon 1987).

Livestock occur in Camas Land, and the sheep, horses, and cows trample vegetation, compact soils, and serve as vectors for introducing non-native plant seeds either directly or indirectly through their feed. Portions of the primary meadow have also been seeded to non-native grasses to increase forage for livestock. In addition, non-native grasses have been planted near residences for lawns and appear to be encroaching into the primary meadow area (T. Thomas, pers. obs. 1995). These introduced grasses are rhizomatous (forming a thick layer of matted roots), and tend to outcompete and, therefore, displace native species for nutrients and water (R. Harrod, pers. comm. 1996). *Sidalcea oregana* var. *calva* is generally absent from these areas except for occasional individuals along the periphery, suggesting that the introduced species are able to displace *S. oregana* var. *calva* (Gamon 1987).

The primary Camas Land meadow is used by recreationists, which has had detrimental effects on the population of *Sidalcea oregana* var. *calva* (Gamon 1987; D. Wilderman, pers. comm. 1997). People engaging in a variety of recreational activities, including trailbike riding, bow-hunting competitions, and camping, contribute to the species' decline by trampling plants and compacting the soil. Trampling of *S. oregana* var. *calva* plants has been documented (D. Wilderman, pers. comm. 1997).

Timber harvest has occurred throughout the general Camas Land area (R. Harrod, pers. comm. 1996). Local ground disturbance associated with timber harvest, such as log yarding and slash disposal, probably poses a greater threat than tree removal (Gamon 1987) by crushing plants and compacting the soil. Timber harvest may also have long-term effects on the hydrology in the small watershed and poses a threat to the species by increasing erosion and sedimentation in the wetlands where it occurs and changing the patterns of surface and subsurface water runoff.

A large portion of the two largest populations of *Sidalcea oregana* var. *calva* in Camas Land was adversely impacted by fire-suppression activities associated with the Rat Creek and Hatchery Creek fires during the fall of 1994 on the Wenatchee National Forest (Harrod 1994; T. Thomas, pers. obs. 1995). During construction of a fire safety zone in a small drainage flowing into the Camas Land Meadow, a bulldozer destroyed several hundred *S. oregana* var. *calva* plants. The plants were bladed and uprooted, the topsoil removed, and the site scraped to mineral soil. During a visit to the disturbed site in May of 1995, researchers observed no sprouts or seedlings of *S. oregana* var. *calva* (T.

Thomas, pers. obs. 1995). The likelihood of recovery of *S. oregana* var. *calva* within the disturbed portion of the population appears low (R. Harrod, pers. comm. 1996).

A second population, at Mountain Home Meadow, was also adversely impacted by fire-suppression activities associated with the Rat Creek Fire during 1994 (Harrod 1994). A fire safety area was constructed in the wetland supporting a population of *Sidalcea oregana* var. *calva*. Blading of the area by a bulldozer destroyed approximately 50 percent (more than 100 plants) of the population, disturbed the soil, and altered the hydrology of this wet meadow. One year after the disturbance, no *S. oregana* var. *calva* plants were observed at this location (T. Thomas, pers. obs. 1995). The likelihood of recovery of the destroyed portion of this population appears low (R. Harrod, pers. comm. 1996).

The potential for forest fires is high in the east side ponderosa pine and Douglas-fir forest type. Prior to 1900, historic fire frequency in the forests east of the Cascade Crest was approximately 13 years, with fire essentially absent from 1900 to 1990 (Everett *et al.* 1997). With the reduction of fires during this century, the structure of east-side forests has been altered with an increase in tree density and development into multiple canopy layers. Because of the changes in stand structure, these forests are highly susceptible to wildfire (Agee 1993). Because fires threatening private property and public structures are suppressed, the likelihood for further direct disturbance to *Sidalcea oregana* var. *calva* populations in the future remains high. Fire may play a role in the maintenance of suitable habitat for *S. oregana* var. *calva* (Gamon 1987), and fire suppression has probably resulted in less suitable habitat (R. Harrod, pers. comm. 1996). In the absence of fire, conifer recruitment and woody plant invasion may reduce the amount of habitat suitable for *S. oregana* var. *calva* by increasing competition for light, nutrients, and water. A significant increase in vegetative growth due to fire suppression outside of the immediate habitat for *S. oregana* var. *calva* may also adversely affect habitat suitability for the species by reducing the surface runoff within the small wetlands where it occurs.

Other current threats at Mountain Home Meadow, where the second largest known population of *Sidalcea oregana* var. *calva* occurs, include alteration of hydrology due to road construction, timber harvesting activities, and inadvertent trampling of the small population by guests at a nearby resort lodge. The hydrology of the site may be altered by the main access road that borders the population on the west. Timber on the ridge immediately west of the main access road was harvested in 1987. This timber was within 50 m (164 ft) of the population, and the harvest temporarily modified the area's hydrology by increasing water flow from the hillside directly into the plant's habitat. Timber was also harvested from the ridge directly above and east of Mountain Home Meadow during the summer of 1995, and this harvest may have modified surface runoff (R. Harrod, pers. comm. 1996). Construction activities and facilities maintenance at the lodge may also alter the site hydrology and adversely impact the *S. oregana* var. *calva* population at this location (Gamon 1987; T. Thomas, pers. obs. 1995).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Seed of the full species *Sidalcea oregana* is collected by horticulturists. Some populations are small enough that even limited collecting pressure could have adverse impacts. *S. oregana* var. *calva* is an attractive plant and may be sought for collection if its rarity and population locations become well known. All perennial species in the genus are considered attractive plants with horticultural potential (Hitchcock and Cronquist 1961; Gamon 1987; Hill 1993). Wild-collected seed of the species, *S. oregana* (no variety given), is available through a seed exchange program offered by the international gardening society North American Rock Garden Society (North American Rock Garden Society 1996).

C. Disease or Predation

Large numbers of aphids have infested individuals of *Sidalcea oregana* var. *calva* at the Camas Land and Mountain Home Meadow populations (Gamon 1987). The effect of these aphids, or the relationship of the aphids to *S. oregana* var. *calva*, is not known. In 1987, researchers observed that weevils had eaten the majority of the seeds that had been produced (Gamon 1987); herbivory has also been observed more recently (R. Harrod, pers. comm. 1996). Livestock, especially sheep, have grazed the Camas Land meadow complex, and the southeast portion of the meadow is currently grazed by horses. Whether herbivory by livestock or wildlife has adversely impacted the *S. oregana* var. *calva* population is unknown, as is the potential threat herbivory may currently pose. Some grazing by horses and wildlife (deer and elk) also has been observed, although the impact from grazing is unknown (Gamon 1987; R. Harrod, pers. comm. 1996).

D. The Inadequacy of Existing Regulatory Mechanisms

Sidalcea oregana var. *calva* is included on the U.S. Forest Service Region 6 Sensitive Plant List and is listed as endangered by the WDNR's Natural Heritage Program (1994). The State of Washington has no State Endangered Species Act, and therefore, the WDNR designation provides no legal protection for this species.

The Wenatchee National Forest has developed a draft conservation agreement with us for another sensitive plant species, *Delphinium viridescens*, which would indirectly provide some measures for conserving *Sidalcea oregana* var. *calva* at the three sites where the two species occur together. Some protective mechanisms discussed in the draft agreement have been implemented and may serve to promote the recovery of *S. oregana* var. *calva* on Forest Service land. However, this agreement has not been finalized, does not address all of the threats to *S. oregana* var. *calva*, and is inadequate to protect and recover the species throughout its range (Gamon 1987; J. Gamon, pers. comm. 1997). Protection provided through this conservation agreement would not extend to private or State-owned land, where most of the individual plants occur, nor would it protect the species from alteration of hydrology, rural residential development and associated impacts, competition from non-native plants, fire and fire-suppression activities, insect outbreaks, and random events. The numbers of *S. oregana* var. *calva* plants are so low on Forest Service land that these two populations may not be viable, and little opportunity exists for genetic exchange between the Wenatchee National Forest populations and the other Camas Land populations. The area where the two populations occur is designated under the Northwest Forest Plan as matrix, which is land that is available to harvest. A small portion of the area does occur in a managed late-successional reserve, which provides some protection by limiting some of the activities that may occur there. The two populations on Forest Service land occur behind locked vehicle gates, so they are afforded some measure of protection. However, foot and bicycle traffic is permitted.

The wetland habitat of *Sidalcea oregana* var. *calva* is under the jurisdiction of the U.S. Army Corps of

Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Section 404 requires project proponents to obtain a permit from the Corps prior to undertaking activities (e.g., grading, discharge of soil or other fill material) that would result in the fill of wetlands under the Corps' jurisdiction. Denial or restriction of an activity under section 404 can occur if the effects of the activity would have an adverse effect on such things as municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

Generally, if a project falls below certain thresholds, such as the fill of wetlands less than 0.13 ha (0.33 ac) under Nationwide Permit 26 (33 CFR 330.5(a)(26), the project is considered authorized. Projects meeting the criteria for a nationwide permit are normally permitted with minimal environmental review by the Corps.

Individual permits are required for the discharge of fill material into wetlands above the thresholds established by the nationwide permits. The review process for the issuance of individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, for individual permit applications, an alternatives analysis and an assessment of cumulative wetland impacts and a 30-day public review period is required. Resulting permits may include special conditions that require the avoidance or mitigation of environmental impacts. In practice, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit, unless the project has substantial or more than minimal impacts, or a species is listed as threatened or endangered, or other significant resources might be adversely affected by the proposed activity.

Three out of the five populations of *Sidalcea oregana* var. *calva* are very small, two occupying habitat less than a couple of meters in size, and one occupying a site of no more than 0.2 ha (0.05 ac). Any one of these three populations could conceivably be eliminated if the wetlands they occupy were covered by fill or discharged material. The remaining two populations could lose a large number of individuals, as well as have the hydrology of its habitat adversely modified by discharge of fill or dredged material. Because many activities that could cause modification or destruction of the wetland habitats of *S. oregana* var. *calva* could be authorized by nationwide permit, section 404 of the Clean Water Act provides insufficient protection of the species. Following listing of the species, however, section 404 could provide greater protection.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fewer than 5 individuals are present at each of 2 sites on Forest Service land, and fewer than 30 individuals are present at 1 of the sites on private land. When populations reach such low numbers of individuals, their vulnerability to extirpation from human-caused and random events increases (Gilpin and Soulé 1986; Given 1994; Schemske *et al.* 1994). An outbreak of insects, soil disturbance from livestock grazing, or a fire during the growing season of *Sidalcea oregana* var. *calva* could extirpate these small populations or reduce the habitat suitability for this species. The small, isolated nature of these populations may also have an adverse effect on pollinator activity, seed dispersal, and gene flow. Small populations may lose a large amount of genetic variability because of genetic drift and, therefore, have a reduced likelihood of long-term viability (Soulé 1980, as cited in Lesica and Allendorf 1992). The Mountain Home Meadow population has fewer than 100 plants and is also vulnerable to many of these same threats. An additional threat to the Mountain Home Meadow population from an adjacent gravel road is dust, which may hinder pollination of the plants nearest the road (Gamon 1987).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species in making this rule final. Threats to *Sidalcea oregana* var. *calva*, including alterations of wetland hydrology, development of property for residential and agricultural use, habitat modification or destruction from fire-suppression and related activities, competition with native and non-native plant species, and impacts from recreational activities, imperil the continued existence of this species. Much of the habitat where this species occurs is suitable for development and for modification by logging or agriculture and is unprotected from these threats. The small populations of this species are particularly vulnerable to extirpation from random natural events. *Sidalcea oregana* var. *calva* is known from only five populations. The most likely random natural threat to *S. oregana* var. *calva* is wildfires, which remain a concern in the east-side Cascade forest ecosystem. Two of these populations have fewer than 5 individuals each, while 1 population has fewer than 30 individuals. Another population has about 100 individuals remaining after being reduced 50 percent by fire-suppression activities. The largest population has about 2,470 individuals. *Sidalcea oregana* var. *calva* is in danger of extinction throughout its range and, therefore, meets the Act's definition of endangered. Because of the high potential for these threats, if realized, to result in the extinction of *S. oregana* var. *calva*, the preferred action is to list *S. oregana* var. *calva* as endangered. Other alternatives to this action were considered but not preferred; not listing *S. oregana* var. *calva* or listing it as threatened would not be in accordance with the Act.

Critical Habitat

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Sidalcea oregana* var. *calva* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Sidalcea oregana* var. *calva* would be prudent.

Due to the small number of populations, *Sidalcea oregana* var. *calva* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *S. oregana* var. *calva* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree

of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for *Sidalcea oregana* var. *calva*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Sidalcea oregana* var. *calva* has allow us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of *S. oregana* var. *calva* without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Sidalcea oregana* var. *calva* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing can encourage and result in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required by Federal agencies and prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, pursuant to section 7(a)(2) of the Act.

Two of the five known populations of *Sidalcea oregana* var. *calva* are found entirely on Federal lands managed by the Wenatchee National Forest, while a third population lies partially within its boundaries. The U.S. Forest Service would be required to consult with us if any actions such as timber harvesting, road construction, fire-suppression/management, or grazing activities may affect *S. oregana* var. *calva*. Other Federal agency actions that may require conference and/or consultation include Army Corps of Engineers authorization of projects affecting wetlands and other waters under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System, Natural Resource Conservation Service projects, and Department of Housing and Urban Development and Veterans Administration mortgage programs (Federal Home Administration loans). In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

Listing of this plant as endangered would provide for development of a recovery plan for the plant. Such a plan would identify both State and Federal efforts for conservation of the plant and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected States for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9 (a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These

prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove such plants from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would be sought or issued because the species is not common in cultivation or in the wild.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy is to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Two of the five known populations of Sidalcea oregana var. calva are found entirely on Federal lands managed by the Wenatchee National Forest, while a third population lies partially within its boundaries. Collection, damage, or destruction of this species on Federal lands is prohibited, although in appropriate cases a Federal permit could be issued to allow collection for scientific or recovery purposes. Such activities on non-Federal land would constitute a violation of section 9 of the Act if activities were conducted in knowing violation of Washington State law or regulations, or in the course of a violation of Washington State criminal trespass law.

We believe that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (if the species were found on Federal lands), (*e.g.*, grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (*e.g.*, bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire-break.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Supervisor of the Western Washington Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered plant species, see 50 CFR 17.62 and 17.63.

This rule has not been reviewed by the Office of Management and Budget under C.O.12866.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Western Washington Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Ted Thomas, Western Washington Office of the North Pacific Coast Ecoregion (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	•
Sidalcea oregana var. *calva.*	Wenatchee Mountains checker-mallow.	U.S.A. (WA)	Malvaceae—Mallow	E	673	NA	NA
•	•	•	•	•	•	•	•

Dated: December 8, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–33100 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 121699B]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota transfer; commercial quota harvest reopening.

SUMMARY: NMFS announces that the State of North Carolina is transferring 70,000 lb (31,752 kg) of commercial summer flounder quota to the State of New York from its 1999 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved. NMFS also announces that the summer flounder commercial fishery in the EEZ for the State of New York is reopened. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in New York for the remainder of calendar year 1999, unless closed due to the State of New York harvesting its commercial quota before the end of the calendar year. Regulations governing the summer flounder fishery require the publication of this notification to advise the State of New York that the fishery has reopened and to advise vessel permit holders and dealer permit holders that commercial quota is available for landing summer flounder in New York.

DATES: Effective December 17, 1999 through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

After taking into account any overages of state quotas that occurred in 1998, the total commercial quota for summer flounder for the 1999 calendar year was set equal to 10,729,274 lb (4,866,717 kg), with a quota of 790,006 lb (358,341 kg) for New York and a quota of 3,044,589 lb (1,381,002 kg) for North Carolina (64 FR 46596; August 26, 1999).

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided the mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS, (Regional Administrator) can transfer or combine summer flounder commercial quota under section 648.100(e). The Regional Administrator is required to consider the criteria set forth in § 648.100(e)(1), in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 70,000 lb (31,752 kg) of its 1999 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.100(e)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1999 are: New York, 860,006 lb (390,099 kg); and North Carolina, 2,974,589 lb (1,349,274 kg).

NMFS issued a notification in the **Federal Register** on October 26, 1999 (64 FR 57586), announcing that the summer flounder commercial quota available to the State of New York had been harvested. The Regional Administrator has determined, based upon dealer reports and upon other available information, that the State of North Carolina will not attain its quota for 1999 and, based on the 70,000–lb (31,752–kg) transfer of commercial summer flounder quota to the State of New York, that the State of New York commercial summer flounder fishery in the EEZ will reopen effective 0001 hours, December 17, 1999 through December 31, 1999. Therefore, vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in New York for the remainder of calendar year 1999, unless closed due to the State of New York harvesting its commercial quota before the end of the calendar year. Effective December 17, 1999 through December 31, 1999, federally permitted dealers are also advised that they may purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year.

Classification

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.03a.3(b)(1) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses. This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 17, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33151 Filed 12–17–99; 2:41 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 113099C]

Fisheries of the Exclusive Economic Zone Off Alaska; Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Approval of amendments to the 1998–2000 Multispecies Community Development Plans (CDPs) for six Community Development Quota (CDQ) groups.

SUMMARY: NMFS announces the approval of recommendations made by the State of Alaska (State) for the amendments to the 1998–2000 Multispecies (MS) CDPs for the six CDQ groups under the Western Alaska CDQ Program. This action is necessary to announce NMFS' decision to approve the State's recommendations and is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Approval of the amendments to the CDPs and the 2000 CDQ and prohibited species quota (PSQ) allocations are effective December 21, 1999.

ADDRESSES: Copies of the findings made by NMFS in approving the State's recommendations may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The current percentage allocations of pollock, arrowtooth flounder, and "other species" CDQ and chinook salmon and non-chinook salmon PSQ to the CDQ groups expire on December 31, 1999. To synchronize the 3-year CDP cycles for all CDQ species by the end of 2000, and to allow the State to evaluate the impact of the American Fisheries Act (AFA) on the pollock CDQ fisheries, percentage allocations of pollock CDQ and associated incidental catch species are being made on an annual basis in 1999 and 2000. NMFS approved the 1999 percentage allocation recommendations for pollock and the associated incidental catch species on January 11, 1999. Percentage allocations to the CDQ groups for these five CDQ and PSQ species groups now must be approved for 2000. For the 2001 through 2003 fishing years, all groundfish CDQ and PSQ species will be combined into a single 3-year CDP cycle.

Eligible Western Alaska communities submitted to the State six applications for amendments to the MS CDPs for pollock and the related incidental catch species under 50 CFR 679.30. The State conducted a public hearing on September 28, 1999. During the North Pacific Fishery Management Council's October 1999 meeting, the State consulted with the Council concerning the proposed amendments to the MS CDPs. At that time, the State recommended the same percentage allocations to all of the CDQ groups as were approved for 1999, and the Council concurred in the State's recommendations.

On November 5, 1999, the State submitted a letter and findings to NMFS recommending that the CDPs for the six CDQ groups be complete and recommending the same percentage allocations for pollock and the associated incidental catch species as those approved for these CDQ groups for 1999. NMFS agrees with the State's recommendations and approves the amendments to the 1998–2000 MS CDPs for the six CDQ groups and the percentage allocations of pollock and other associated incidental catch species for 2000.

The allocations to each CDQ group are presented in the table following. NMFS' findings regarding this decision are also available (see **ADDRESSES**).

Selected Multispecies Groundfish and Prohibited Species Community Development Quota Allocations for 2000

Species or Species Group	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
Pollock	16%	21%	5%	22%	22%	14%
Arrowtooth Flounder	18%	21%	9%	16%	16%	20%
Other Species	19%	22%	9%	14%	15%	21%
Chinook Salmon PSQ	16%	21%	5%	22%	22%	14%
Non-chinook Salmon PSQ	16%	21%	5%	22%	22%	14%

APICDA = Aleutian Pribilof Island Community Development Association
BBEDC = Bristol Bay Economic Development Corporation
CBSFA = Central Bering Sea Fishermen's's Association
CVRF = Coastal Villages Region Fund
NSEDC = Norton Sound Economic Development Corporation
YDFDA = Yukon Delta Fisheries Development Association
PSQ = prohibited species quota

Dated: December 16, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 99–33197 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 245
Wednesday, December 22, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99–63]

RIN 3069–AA80

Advance Participations; Sales of Whole Advances; Withdrawal of Proposed Rule

AGENCY: Federal Housing Finance Board.

ACTION: Withdrawal of proposed rule.

SUMMARY: In light of the enactment of the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), the Federal Housing Finance Board (Finance Board) is withdrawing its proposed rule that would have amended Part 935 of its regulation to approve the sale of whole advances between Federal Home Loan Banks (Banks) under certain limited circumstances.

FOR FURTHER INFORMATION CONTACT: Jonathan Curtis, Senior Financial Analyst, Office of Policy, Research and Analysis, (202) 408–2866; Jane S. Converse, Attorney-Advisor, Office of General Counsel, (202) 408–2976; or Neil R. Crowley, Deputy General Counsel, Office of General Counsel, (202) 408–2990, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Finance Board proposed a regulation in the **Federal Register** of August 16, 1999, to amend part 935 of its regulation to approve any sale and purchase of whole advances between Banks that met the requirements of the proposed rule. *See* 64 FR 44444 (August 16, 1999). The preamble to the proposed rule includes a detailed discussion of the background of, basis of, and reasons for, the proposed regulation.

II. Reasons for Withdrawal of the Proposed Regulation

Section 606(f)(2)(B) of the Modernization Act, Title VI, Pub. L. 106–102 (Nov. 12, 1999), removed the requirement for Finance Board approval of the sale of whole advances, or participations in advances, between Banks. *See* 12 U.S.C. 1430(d), as amended by section 606(f)(2)(B), Pub. L. 106–102 (Nov. 12, 1999). In light of the enactment of this provision, the Finance Board is withdrawing the proposed regulation approving the sale of whole advances.

In a separate action, the Finance Board also will be rescinding current section 935.16 of its regulation, which authorizes the sale of participation interests in advances between Banks.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby withdraws the Proposed Rule published at 64 FR 44444 on August 16, 1999.

Dated: December 14, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–33164 Filed 12–21–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–338–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that currently requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. This action would require, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This proposal is prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety; the latching and locking mechanisms are not of adequate design to prevent structural deformation in the event of component jamming; and that there is an absence of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions specified by the proposed AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

DATES: Comments must be received by February 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–338–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from National Aircraft Service, Inc. (NASI), 9133 Tecumseh-Clinton Road, Tecumseh, MI 49286. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood,

California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–338–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–338–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 8, 1993, the FAA issued AD 93–20–02, amendment 39–8709 (58 FR 53635, October 18, 1993), applicable to certain McDonnell Douglas Model DC–8 series airplanes equipped with a cargo conversion modification installed in accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW. That AD requires a revision to the FAA-approved Airplane Flight Manual Supplement (AFMS) to include detailed procedures for use of the cargo door warning light system; repetitive inspections of the cargo door warning system wiring and door latching roller mechanism to detect damage; and repair or replacement of damaged components. That action was prompted by the FAA's review of data indicating that disabling of certain circuit breakers may deprive the flight crew of necessary information. The requirements of that AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since issuance of that AD, the FAA has conducted a design review of McDonnell Douglas Model DC–8 series airplanes modified in accordance with STC SA1802SO [originally issued to Rosembalm and currently held by National Aircraft Services, Inc. (NASI)] and has identified several potential unsafe conditions. [Results of this design review are contained in "DC–8 Cargo Modification Review Team Review of Rosenbalm Supplemental Type Certificate SA1802SO-Installation of a Cargo Door and Interior, Final Report, Revision A, dated November 29, 1999," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket for this NPRM.] The modification defined by STC SA421NW (held by NASI) is nearly identical to that defined by SA1802SO; therefore, SA421NW has the same potential unsafe conditions. STC SA1802SO and SA421NW specify a design for installation of a main deck cargo door, associated door cutout in the fuselage, door system hydraulics, door indication system, and Class "E" cargo interior with a cargo barrier on McDonnell Douglas Model DC–8 series airplanes.

This NPRM proposes corrective action for those potential unsafe conditions that relate to the hydraulic and indication systems of the main deck cargo door and provides for a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. These conditions, if not corrected, could result in opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

Other Related Rulemaking

The FAA is considering further rulemaking to address the remaining potential unsafe conditions relating to the unreinforced main deck floor, main deck cargo door hinge, and fuselage structure in the area modified by installation of a main deck cargo door, 9g crash barrier, and fire/smoke detection system.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing Model 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap shortly after the airplane was in flight, these two accidents served to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD

contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Using the applicable requirements of Civil Air Regulations (CAR) part 4b and the design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including McDonnell Douglas Model DC–8 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02 R1, amendment 39–6415 (54 FR 50489, December 7, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 89–17–01 R1, amendment 39–6521 (55 FR 8446, March 8, 1990);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

In late 1997, the FAA informed the STC holders and operators of Model DC–8 series airplanes that it was embarking on a review of Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration by STC. The FAA proposed, at an industry sponsored meeting in early 1998, that DC–8 operators and STC holders work together to identify and address potential safety concerns. This suggestion to the affected industry resulted in the creation of the DC–8 Cargo Conversion Joint Task Force (JTF) (hereinafter referred to as "the JTF").

The current composition of the JTF includes holders of each of the five STC's that addresses the installation of a main deck cargo door in Model DC–8 series airplanes and operators and lessors of those modified airplanes. At the JTF's request, the FAA participates in its meetings to offer counsel and guidance with respect to the FAA's regulatory processes. The JTF is a clearinghouse for the gathering and sharing of information among the parties affected by the FAA review of STC cargo conversions of Model DC–8 series airplanes. The JTF also is a liaison between the FAA, operators, and STC holders.

The JTF has been working with the FAA to provide data relating to the number of STC modified Model DC–8 series airplanes and operators of those airplanes, and to identify which airplanes are modified by each STC. It also has been instrumental in polling the operators and providing maintenance schedules and locations to the FAA, which helped the FAA arrange visits to operators of airplanes modified by each of the STC's. These visits allowed the FAA to review both the available data supporting each STC and modified airplanes and to identify potential safety concerns with each of the STC modifications. Additionally, the JTF has been coordinating the funding of the industry review of the data supporting the STC's and ongoing efforts to resolve safety issues identified by the FAA.

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA, in collaboration with the JTF, conducted an engineering design review and inspection of an airplane modified in accordance with STC SA1802SO. The FAA identified a number of design features of the main deck cargo door systems of this STC that are unsafe and do not meet the criteria specified in the ATA Final Report and the FAA Memorandum. These systems include the door indication and hydraulic systems, and the lack of a means to prevent pressurization of the airplane to an unsafe level if the door is not fully closed, latched, and locked. The FAA design review team also determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

The FAA has received reports of a recent event in which a main deck cargo door came open during take-off. This event was attributed, in part, to improper indication to the flight crew that the main deck cargo door was closed, latched, and locked. Service experience indicates that opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways, including possible loss of flight control, severe structural damage, or rapid decompression of the airplane.

For airplanes modified in accordance with STC's SA1802SO or SA421NW, the FAA considers the following five specific design features of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STC's SA1802SO and SA421NW uses a warning light at the flight engineer's panel. This light indicates the door open or closed status but does not provide the status of the cargo door latch and lock positions. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight.

The light on the flight engineer's panel is labeled "CARGO DOOR WARNING" and is displayed in red since it indicates an event that requires immediate pilot action.

However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

2. Means To Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door, installed in accordance with STC's SA1802SO and SA421NW monitors only one of the 12 locks of the main deck cargo door. Therefore, the single view port does not provide confirmation that all of the locks of the main deck cargo door are engaged properly in the latches.

3. Means To Prevent Pressurization to an Unsafe Level

McDonnell Douglas DC–8 series airplanes modified in accordance with STC SA1820SO or SA421NW have no means of preventing pressurization to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked, which could precipitate a cargo door opening while the airplane is in flight.

4. Powered Lock Systems

Evaluation of the powered lock systems of the main deck cargo door for STC's SA1802SO and SA421NW indicates the potential for latent and/or single point failures that could restore or continue power to the door controls, which could result in inadvertent door openings while the airplane is in flight. STC's SA1802SO and SA421NW utilize a nose gear squat switch to remove door control power (*i.e.*, electrical and hydraulic). Latent failure of the squat

switch together with other latent and/or single point failures could precipitate inadvertent door openings.

AD 93–20–02 requires, prior to takeoff, pulling the circuit breakers of the main deck cargo door labeled "pump" and "valve" to ensure power is removed from the main deck cargo door. This requirement is considered to be interim action. To minimize the potential for latent failure of a circuit breaker in conjunction with the squat switch, the FAA finds that, for the purposes of this proposed AD, these circuit breakers must be replaced with new parts.

The design data for STC's SA1802SO and SA421NW do not include a systems safety analysis to show that an inadvertent opening of a cargo door is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

5. Lock Strength

Analysis of the existing latching and locking mechanism of the main deck cargo door indicates that, because of the existing latching and locking hydraulic cylinders, the translating beam, lever, swivel arm brackets, lock pins, and swivel arms have inadequate strength to prevent structural deformation of these parts in the event of components jamming. Structural deformation of the locking mechanism could result in the door latches not being locked and erroneous indication to the flightcrew that the latches are locked properly.

Explanation of Relevant Service Information

The FAA has reviewed and approved NASI Service Bulletin SB–99–01, Revision A, dated October 15, 1999. The service bulletin describes procedures for modification of the mechanical and hydraulic systems of the main deck cargo door installed in accordance with STC SA1802SO or SA421NW. The modification provides new parts of adequate strength to prevent structural deformation of the latching and locking mechanism by reducing the force of the latching and locking hydraulic cylinders and increasing the structural strength of the locking components. The modification involves installing a new translating beam, lever, swivel arm brackets, lock pins, swivel arms, hydraulic cylinders, and hydraulic lines.

Accomplishment of the actions specified in the service bulletin and the actions described below is intended to adequately address the identified unsafe conditions.

Explanation of Requirements of Proposed Rule

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–20–02 to continue to require a revision to the FAA-approved AFMS to include detailed procedures for use of the cargo door warning light system; repetitive inspections of the cargo door warning system wiring and door latching roller mechanism to detect damage; and repair or replacement of damaged components.

The proposed AD also would require, within 30 days after the effective date of this AD, unless previously accomplished within the last 18 months prior to the effective date of this AD, replacement of the circuit breakers of the main deck cargo door labeled "pump" and "valve" with new circuit breakers.

The proposed AD also would require, within 18 months after the effective date of this AD, accomplishment of the actions specified in the service bulletin described previously.

In addition, the proposed AD would require, within 18 months after the effective date of this AD, modification of the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is closed, latched, and locked; installation of a means to visually inspect the locking mechanism of the main deck cargo door; installation of a means to remove power to the door while the airplane is in flight; and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. These actions would be required to be accomplished in accordance with a method approved by the Manager, Los AngelesAircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Installation of STC ST01116CH (held by NASI) is an approved means of compliance with the modification requirements described previously. Accomplishment of these actions and the procedures described in NASI Service Bulletin SB–99–01 would constitute terminating action for the requirements of AD 93–20–02 [paragraphs (a) and (b) of this proposed AD].

Differences Between the AD and Relevant Service Information

The referenced service bulletin recommends accomplishing the modification of the hydraulic systems of the main deck cargo door within 180 days from July 1, 1999, not to exceed 270 calendar days from July 1, 1999. However, the FAA finds that accomplishing the following actions provides an acceptable level of safety until accomplishment of the modification:

- Replacement of the circuit breakers of the main deck cargo door labeled"pump" and "valve" with new circuit breakers;
- An FAA-approved AFMS revision to include detailed procedures for use of the cargo door warning light system as specified in paragraph (b) of the proposed AD; and
- Repetitive inspections of the cargo door warning system wiring and door latching roller mechanism to detect damage as specified in paragraph (a) of the proposed AD.

Therefore, the FAA finds an 18-month compliance time for initiating the required modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 32 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 93–20–02, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,740, or $60 per airplane, per inspection cycle.

It would take 1 work hour per airplane to accomplish the new replacement of circuit breakers, at an average labor rate of $60 per work hour. Required parts would cost approximately $265 per airplane. Based on these figures, the cost impact of this new replacement proposed by this AD on U.S. operators is estimated to be $9,425, or $325 per airplane.

It would take 80 work hours per airplane to accomplish the new modification of the hydraulic systems, at an average labor rate of $60 per work hour. Required parts would cost approximately $20,000 per airplane. Based on these figures, the cost impact of this new modification proposed by this AD on U.S. operators is estimated to be $719,200, or $24,800 per airplane.

The FAA estimates that it would take approximately 130 work hours per airplane to accomplish the modification required by paragraph (d) of the

proposed AD, at an average labor rate of $60 per work hour. The FAA also estimates that required parts would cost approximately $25,000 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $951,200, or $32,800 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8709 (58 FR 53635, October 18, 1993), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–338–AD. Supersedes AD 93–20–02, Amendment 39–8709.

Applicability: Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage, accomplish the following:

Restatement of Requirements of AD 93–20–02

Actions Addressing the Main Deck Cargo Door

(a) Within 7 days after January 21, 1992 (the effective date of AD 92–02–05, amendment 39–8141), and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(b) Within 7 days after November 17, 1993 (the effective date of AD 93–20–02, amendment 39–8709), revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item 6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.)

"Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull the cargo door circuit breakers labeled "pump" and "valve" prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI)."

New Requirements of This AD

Actions Addressing the Main Deck Cargo Door Powered Lock Systems

(c) Except as provided by paragraph (f) of this AD, within 30 days after the effective date of this AD, unless previously accomplished within the last 18 months prior to the effective date of this AD, replace the circuit breakers of the main deck cargo door labeled "pump" and "valve" with new circuit breakers.

Actions Addressing the Main Deck Cargo Door Hydraulic Systems

(d) Within 18 months after the effective date of this AD, modify the mechanical and hydraulic systems of the main deck cargo door, in accordance with National Aircraft Services, Inc. (NASI) Service Bulletin SB–99–01, Revision A, dated October 15, 1999.

Actions Addressing the Main Deck Cargo Door Indication System

(e) Within 18 months after the effective date of this AD, modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is closed, latched, and locked; install a means to visually inspect the locking mechanism of the main deck cargo door; install a means to remove power to the door while the airplane is in flight; and install a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked; in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Installation of NASI Vent Door System STC ST01116CH, is an approved means of compliance with the requirements of paragraph (e) of this AD.

(f) Compliance with both paragraphs (d) and (e) of this AD constitutes terminating action for the requirements of both paragraphs (a) and (b) of this AD, and the AFMS revision required by paragraph (b) of this AD may be removed. Compliance with paragraph (e) of this AD within 30 days after the effective date of this AD eliminates the requirement to comply with paragraph (c) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los

Angeles ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

"(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be red and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) Means to Visually Inspect the Locking Mechanism: There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on December 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33171 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–65–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The proposed AD would require repetitively inspecting the brake assembly rods and tubings for wear or damage, and replacing any worn or damaged parts. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent the brake hydraulic fluid from leaking because of the brake assembly rods contacting the brake valve tubing, which could result in the inability to adequately stop the airplane during ground operations.

DATES: Comments must be received on or before January 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–65–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4126; facsimile: (816) 329–4091.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–65–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on all I.A.M. Model Piaggio P–180 airplanes. The R.A.I. reports that the brake assembly rods may interfere with and rub on the tubings connected to the brake valves. This could cause wear and

damage to the tubing, which could result in brake fluid leakage.

This condition, if not detected and corrected in a timely manner, could result in the inability to adequately stop the airplane during ground operations.

Relevant Service Information

I.A.M. has issued Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999, which specifies procedures for inspecting the brake system assembly for wear or damage.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 99–219, dated June 22, 1999, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other I.A.M. Model Piaggio P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the brake assembly rods and tubings for wear or damage, and replacing any worn or damaged parts.

Accomplishment of the proposed inspections would be required in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999. Accomplishment of any necessary replacement would be required in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be $720, or $180 per airplane.

These figures only take into account the cost of the initial inspection and do not take into account the costs of any replacements necessary or repetitive inspections. The FAA has no way of determining the number of parts that would need replacement or the number of inspections each owner/operator of the affected airplanes would incur.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche e Meccaniche: Docket No. 99–CE–65–AD.

Applicability: Model Piaggio P–180 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the brake hydraulic fluid from leaking because of the brake assembly rods contacting the brake valve tubing, which could result in the inability to adequately stop the airplane during ground operations, accomplish the following:

(a) Within the next 150 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 150 hours TIS, inspect the brake system assembly for wear or damage. Accomplish the inspection in accordance with the Accomplishment Instructions in Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999.

(b) If any worn or damaged parts are found during any inspection required by this AD, prior to further flight, replace the parts in accordance with the appropriate maintenance manual. The repetitive inspections required by paragraph (a) of this AD still apply after replacing any worn or damaged parts.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 99–219, dated June 22, 1999.

Issued in Kansas City, Missouri, on December 16, 1999.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33170 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–331–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require a one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the spoiler servocontrol piston rod, which could result in reduced controllability of the airplane.

DATES: Comments must be received by January 21, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–331–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that several cases of spoiler servocontrol piston rod breakage have been reported. As a result, and in almost every case, the associated hydraulic system did not function correctly and the spoilers were extended in flight to the zero hinge moment position. Analysis determined that the piston rod breakage was due to excessive misalignment of the actuator housing backface. Failure of the spoiler servocontrol piston rod, if not corrected, could result in failure of the associated hydraulic system and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A320–27–1126, dated April 26, 1999 (for Model A320 series airplanes); and A320–27–1127, dated April 26, 1999, and Revision 01, dated October 6, 1999 (for Model A319 and A321 series airplanes). The service bulletins describe procedures to visually inspect the part number and serial number of the installed spoiler servocontrol. For certain serial numbers, the servocontrol must be replaced. For certain other serial numbers, the servocontrol must be re-identified. Revision 01 of Service Bulletin A320–27–1127 is essentially the same as the original issue except that the effectivity has been updated. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1999–362–139(B), dated September 8, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 210 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $25,200, or $120 per airplane.

Should an operator be required to accomplish the modification, it will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. The cost of required parts would be free of charge. Based on these figures, the cost impact of the modification is estimated to be $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–331–AD.

Applicability: The following models, certificated in any category, excluding those on which Airbus Service Bulletin A320–27–1126, dated April 26, 1999 (for Model A319 and 321 series airplanes); or A320–27–1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); has been accomplished:

- Model A319 series airplanes, serial numbers (S/N) 0546 through 0972 inclusive;
- Model A320 series airplanes, S/N 0002 through 0842 inclusive, 0846 through 0859 inclusive, 0865, 0866, and 0872 through 0960 inclusive; and
- Model A321 series airplanes, S/N 0364 through 0974 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the servocontrol piston rod, which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform a general visual inspection to determine the part number and serial number for the spoiler servocontrols, in accordance with Airbus Service Bulletin A320–27–1126, dated April 26, 1999 (for Model A319 and A321 series airplanes); or Airbus Service Bulletin A320–27–1127, dated April 26, 1999, or Revision 1, dated October 6, 1999 (for Model A320 series airplanes); as applicable. If the part number and serial number are identified in paragraph 2.B.(1)(b) of the Accomplishment Instructions of the applicable service bulletin, prior to further flight, perform applicable corrective actions (including removal, reidentification of the servocontrol, and replacement of the servocontrol with a modified part) as specified in the applicable service bulletin.

(1) For Model A319 and A321 series airplanes: Inspect within 2 months after the effective date of this AD.

(2) For Model A320 series airplanes: Inspect within 28 months after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) As of the effective date of this AD, no person shall install on any airplane a spoiler servocontrol having part number 31077–050, 31077–060, or 31077–110; and S/N 0001 to 3499, except those serial numbers excluded in paragraph 2.B.(1)(b) of the Accomplishment Instructions in Airbus Service Bulletin A320–27–1126, dated April 26, 1999; unless that servocontrol has been inspected, and corrective actions have been performed, in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–362–139(B), dated September 8, 1999.

Issued in Renton, Washington, on December 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33169 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–08]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The committee meeting will be held on January 25 and January 26, 2000. On January 25, 2000, the meeting will begin at approximately 9:30 am and end at approximately 5:30 pm. On January 26, 2000, the meeting will begin at approximately 9 am and end at approximately 4 pm.

ADDRESSES: The committee meeting will take place at the Hyatt Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Acting Director, Funding and Financial Management Division, Office of Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposed that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub.L. 105–276, approved October 21, 1998) (the "Public Housing Reform Act"). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. The next committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meeting includes the development and review of draft regulatory and preamble language; and the scheduling of future meetings, if necessary.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: December 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–33108 Filed 12–21–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS Nos. NM–037–FOR and NM–039–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to two previously proposed amendments to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for New Mexico's proposed rules pertain to timing of backfilling and grading; definitions of "material damage" and "occupied residential dwelling and associated structures"; design criteria and inspection requirements for impoundments and spillways; adjustment of bond amount for subsidence damage; ground cover requirements for lands to be developed for recreation and shelterbelts; other transportation facilities; and review criteria for improvidently issued permits. The amendments are intended to revise the New Mexico program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 21, 2000.

ADDRESSES: You should mail or hand deliver written comments to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

SPATS Nos. NM–037–FOR and NM–039–FOR

By letters dated March 11, 1996 (SPATS No. NM–037–FOR), and November 13, 1998 (SPATS No. NM–039–FOR), New Mexico submitted proposed amendments (respectively, administrative record Nos. NM–773 and NM–804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendments in response to the required program amendments at 30 CFR 931.16 (w), (x), and (aa), and at its own initiative.

OSM announced receipt of the proposed amendments in the, respectively, March 26, 1996 and the December 3, 1998 **Federal Register** (respectively, 59 FR 13117 and 63 FR 66772), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (respectively, administrative record Nos. NM–802 and NM–808). Because no one requested public hearings or meetings, none were held. The public comment periods ended on, respectively, April 25, 1996 and January 4, 1999.

SPATS No. NM–037–FOR

During its review of the March 11, 1996 amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated May 15, 1996 (administrative record no. NM–785). New Mexico responded in a letter dated November 9, 1998 by submitting a revised amendment and additional explanatory information (administrative record no. NM–803).

OSM announced receipt of the proposed amendments in the December 3, 1998 **Federal Register** (63 FR 66774) and invited public comment on its adequacy (administrative record No. NM–809). The public comment period ended on December 18, 1998.

During its review of the November 9, 1998, revised amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated December 21, 1998 (administrative record no. NM–814). New Mexico responded in a letter dated December 1, 1999, by submitting a revised amendment (administrative record No. NM–816).

New Mexico proposes further revisions to 19 NMAC 8.2 2054.A(1), (2), and (3), concerning timing of backfilling and grading. Specifically, New Mexico proposes to revise 19 NMAC 8.2 2054.A(1), concerning contour mining, to require rough backfilling and grading by not more than 60 days or 1500 linear feet; 19 NMAC 8.2 2054.A(2), concerning open pit mining, to require rough backfilling and grading on the basis of the materials submitted under 19 NMAC 8.2 906.B(3) which shall establish in specific increments the period between removal of coal and completion of backfilling and grading; and 19 NMAC 8.2 2054.A(3), concerning strip mining, to require rough backfilling and grading to be completed within 180 days and not more than four spoil ridges behind the pit being worked. New Mexico also revised both 19 NMAC 8.2 2054.A(1) and (3) to provided for additional time or distance for rough backfilling and grading if the permittee con, on the basis of the materials submitted under 19 NMAC 8.2 906.B(3) that additional time or distance is necessary. New Mexico's existing rule at 19 NMAC 8.2 906.B(3) requires a reclamation plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area. New Mexico also proposes to add a new rule at 19 NMAC 8.2 2054.A(5), concerning final pit at completion of mining, to require that rough backfilling and grading occur in accordance with a time schedule approved by the Director based on materials submitted under 19 NMAC 8.2. 906.B9(3).

SPATS No. NM–039–FOR

During its review of the November 13, 1998 amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated January 7, 1999 (administrative record no. NM–815). New Mexico responded in a letter dated December 1, 1999, by submitting a revised amendment (administrative record No. NM–816).

New Mexico proposes further revisions to 19 NMAC 8.2 107.M(1) and O(2), definitions of "material damage" and "occupied residential dwelling and associated structures"; 19 NMAC 8.2 2017.D, 2017.F(2), and 2017.G(4) and (5), design criteria for impoundments and spillways and inspection requirements for impoundments; and 19 NMAC 8.2 2072, adjustment of bond amount for subsidence damage. New Mexico also submitted, in response to required amendments at 30 CFR 931.16(o) and (t), new explanatory information concerning, respectively, (1) ground cover requirements for lands to be developed for recreation and shelterbelts at 19 NMAC 8.2 2065.B, and (2) other transportation facilities at 19 NMAC 8.2 2076. In addition, in response to the required amendment at 30 CFR 931.16(y), New Mexico submitted a new revision to 19 NMAC 8.2 1107.C(4), concerning improvidently issued permits.

Specifically, New Mexico proposed to revise:

(1) The definitions of "material damage" and "occupied residential dwelling and associated structures" at 19 NMAC 8.2 107.M(1) and O(2) to be applicable to the rules at 19 NMAC 8.2 2069 through 2072;

(2) 19 NMAC 8.2 1107.C(4) by requiring the use of the violations review criteria published in the preamble of the **Federal Register** at 54 FR 18440–18441 when determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationships will apply in finding that a permit was improvidently issued permits;

(3) 19 NMAC 8.2 2017.D, 2017.F(2), and 2017.G (4) and (5), design criteria for impoundment and spillways and inspection requirements for impoundments, to apply the design or inspection criteria applicable for those structures meeting the size criteria of 30 CFR 77.216(a) to those structures meeting the Class B or C criteria for dams in TR–60; and

(4) 19 NMAC 8.2 2072 by adding a paragraph that requires adjustment of the bond amount for subsidence damage.

New Mexico explained, in response to the required amendments at 30 CFR 931.16 (o) and (t), that the ground cover requirements for lands to be developed for recreation and shelterbelts are at 19 NMAC 8.2 2065.B, and that the

requirements for other transportation facilities are at 19 NMAC 8.2 2076.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendments to provide the public an opportunity to reconsider the adequacy of the proposed amendments in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve the amendments, they will become part of the New Mexico program.

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. NM–037–FOR and/or SPATS No. NM–039–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096.

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 1999.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 99–33140 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–040–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under this Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to revegetation success standards and sampling techniques. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4 p.m., m.s.t., January 21, 2000. If requested, a public hearing on the proposed amendment will be held on January 18, 2000. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t., on January 6, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive

one free copy of the amendment by contracting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico Program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated December 1, 1999 (administrative record No. NM–816), New Mexico submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(m), (n), and (z). The provisions of New Mexico Annotated Code (NMAC) that New Mexico proposed to revise were: 19 NMAC 8.2 2065.A, sampling techniques used to measure success of revegetation; and 19 NMAC 2065.B(1), success standards for ground cover and productivity of living plants on revegetated areas.

Specifically, New Mexico proposes to revise:

(1) 19 NMAC 8.2 2065(A) to reference a guidance document entitled *Coal Mine Reclamation Program Vegetation Standards* for the sampling techniques that can be used to measure success of revegetation and to allow for the comparison of ground cover and productivity to be made using technical standards developed using an historic record of premining conditions rather than a reference area; and

(2) 19 NMAC 2065.B(1), to allow the success standards for ground cover and productivity to be developed using the technical standards set forth in the guidance document entitled *Coal Mine Reclamation Program Vegetation Standards* rather than by comparison to a reference area.

In addition, New Mexico submitted a copy of the guidance document entitled *Coal Mine Reclamation Program Vegetation Standards* and requested OSM's approval of it as part of the New Mexico program. This document established methods and acceptable techniques of measurement that are approved and recommended when conducting vegetation baseline inventories in accordance with 19 NMAC Subpart 808 and when assessing revegetation success in accordance with 19 NMAC Subparts 2065 and 2066. Additional standards are provided regarding the selection and use of reference areas and technical standards, approved normal husbandry practices, and the demonstration of postmine suitability for livestock grazing.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

1. Written Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. NM–040–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

In accordance with the provisions of 30 CFR 732.17(h), we are requesting comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on January 6, 2000. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

ADDRESSES. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of the Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 1999.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 99–33139 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Changes in Procedures for Standard Mail Destination Entry Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Domestic Mail Manual procedures for destination entry mailings of Standard Mail (A) and Standard Mail (B) by changing the current frequency for standing appointments from once a month to once a week.

In addition, this document also proposes that when a mailer requests a standing appointment at a destination delivery unit (DDU) for a Standard Mail (A) or Standard Mail (B) mailing, the ZIP Codes of the mail being deposited must be provided at the time of request. Also, to be consistent with current standards for Standard Mail (A), a change is being made to provide for the redirection of Standard Mail (B) by the Postal Service to a facility other than the one designated by the mailer.

DATES: Comments on the proposed standards must be received on or before January 21, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6830, Washington DC 20260–2405. Copies of all written comments will be available at the Postal Service Library, 475 L'Enfant Plaza SW, Room 11–N, Washington DC, for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: RoseMarie Gay (202) 268–7810; or Patricia Bennett, (202) 268–6350.

SUPPLEMENTARY INFORMATION: Effective January 10, 1999, a number of classification and mail preparation changes were made for Standard Mail (B). In order to align the processing of Standard Mail (A) with Standard Mail (B), the Postal Service needs to modify current standards for the frequency at which recurring appointments must be made, the additional information required when depositing DDU rate mailings, and the reasons for redirect by the Postal Service.

For Standard Mail (A) and Standard Mail (B), the frequency at which recurring appointments must be made will be changed from once a month to once a week. This change was recommended by the Drop Shipment Appointment System (DSAS) workgroup of the Mailer's Technical Advisory Committee (MTAC). The Postal Service identified a high percentage of no-shows from mailers holding standing appointments. Changing the frequency to once a week should reduce the number of no-shows and make more appointments available in the DSAS for other mailers.

Since January 10, 1999 there have been instances of DDU rate Standard Mail (B) deposited at the wrong postal facility, forcing the Postal Service to reroute the mail to the proper facility. Asking mailers to provide ZIP Code information will ensure that the mail is being deposited at the correct facility. If the mailing is not for that facility, the DDU can inform the mailer/agent of the correct facility to deposit the mail when the appointment is scheduled. This will save the mailers the added expense of additional stops to reroute the mail to the correct facility. Accordingly, the Postal Service proposes to require mailers to provide the 5-digit ZIP Codes of the mail being deposited when contacting the delivery unit to make an appointment for DDU entry of Standard Mail (A) or Standard Mail (B).

The Domestic Mail Manual will be amended to include language concerning the redirection of Standard Mail (B) to a facility other than the designated bulk mail center (BMC), sectional center facility (SCF), or DDU, to be consistent with current standards for Standard Mail (A). Language will also be added to describe when the Postal Service can redirect the shipment.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service is seeking comments on the following revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552 (a): 39 U.S.C 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

3.0 DEPOSIT

* * * * *

[Redesignate 3.3 through 3.11 as 3.4 through 3.12 respectively; add new 3.3 to read as follows:]

3.3 Appointments

Appointments must be made for destination entry rate mail as follows:

a. Except for a local mailer under 4.0 and mailings of perishable commodities, appointments for deposit of destination entry rate mail at BMCs, ASFs, and SCFs must be scheduled through the appropriate appointment control center at least one business day in advance. Same-day appointments may be granted by a control center on the basis of a telephone request. All appointments for BMC loads must be scheduled by the appropriate BMC control center. Appointments for SCFs and ASFs must be scheduled through the appropriate district control center. Appointments may be made up to 30 calendar days before a desired appointment date. The mailer must adhere to the scheduled mail deposit time and location. The mailer must cancel any appointment by notifying the appropriate control center at least one business day in advance of a scheduled appointment time.

b. Electronic appointments may be made by a mailer or agent using a USPS-issued computer log-on ID. Electronic appointments or cancellations must be made at least 12 hours before the desired time and date. All information required by the USPS appointment system regarding a mailing must be provided.

c. For deposit of DDU mailings, an appointment must be made by contacting the DDU at least 24 hours in advance. If the appointment must be canceled, the mailer must notify the DDU at least one business day in advance of a scheduled appointment. Recurring appointments are allowed if shipment frequency is once a week or more often.

d. When Periodicals are transported together with Standard Mail (A) or (B) as a mixed load (see E250), an appointment must be obtained for deposit at a destination entry facility.

[Revise heading of redesignated 3.4 to read as follows:]

3.4 Advance Scheduling

[Amend 3.4b by adding a second sentence to read as follows:]

When making an appointment, or as soon as available, the mailer must provide the control center or DDU with the following information:

a. Mailer's name and address and, when applicable, the name and telephone number of the mailer's agent or local contact.

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

c. Where and how mailing was verified.

d. Method of postage payment.

e. Requested appointment date and destination facility for mailing.

f. Vehicle identification number, size, and type.

* * * * *

3.6 Redirection by USPS

[Revise redesignated 3.6 to read as follows:]

A mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

* * * * *

[Amend heading of 3.8 by changing "Standing" to "Recurring" to read as follows:]

3.8 Recurring Appointments

[Revise redesignated 3.8 to read as follows:]

A mailer may request recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointments procedures can cause revocation of the recurring appointment.

* * * * *

E652 Parcel Post

* * * * *

4.0 DEPOSIT

* * * * *

[Redesignate current 4.6 through 4.11 as 4.7 through 4.12, respectively; add new 4.6 to read as follows:]

4.6 Redirection by USPS

With the exception of mail deposited under 1.3e, a mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

[Revise heading of 4.7 to read as follows:]

4.7 Advance Scheduling

[Amend redesignated 4.7b by adding second sentence to read as follows:]

When making an appointment, or as soon as available, the mailer must provide the control center or DDU with this information:

* * * * *

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

4.8 Deposit Conditions

[Amend redesignated 3.8b by changing the frequency from "once a month" to "once a week" to read as follows:]

Deposit of mail is also subject to these conditions:

* * * * *

b. A mailer may request for recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointment procedures can cause revocation of the recurring appointment.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–33088 Filed 12–21–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 038–0193b; FRL–6510–8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern rule recissions from the South Coast Air Quality Management District (SCAQMD). This action will rescind these rules from the federally approved SIP.

The intended effect of this action is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by January 21, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule recissions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule recissions are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns the rule recissions listed below from the South Coast Air Quality Management District and its predecessor agencies, submitted to EPA by the California Air Resources Board on the dates listed for each rule.

South Coast Air Quality Management District (AQMD)

Rule 107, Determination of Volatile Organic Compounds in Organic Materials, Recission Adopted: 3–9–92
Submitted to EPA: 9–14–92

Rule 1231, Judicial Review, Recission Adopted:
Submitted to EPA: 7–25–79

Rule 1311, Power Plants, Recission Adopted: 6–28–90
Submitted to EPA: 1–28–92

Los Angeles County Air Pollution Control District (APCD)

Rule 51, Nuisance, Recission Adopted: 5–7–76
Submitted to EPA: 8–2–76

Orange County APCD

Rule 51, Nuisance
Rule 67.1, Fuel Burning Equipment
Rule 68, Fuel Burning Equipment—Oxides of Nitrogen
Recissions Adopted: 5–7–76
Submitted to EPA: 8–2–76

Riverside County APCD

Rule 51, Nuisance, Recission Adopted: 5–7–76
Submitted to EPA: 8–2–76

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: December 7, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–32643 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–074–1074b; FRL–6512–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of revising the Federally approved incinerator provisions of the Kansas City Air Pollution Control Code to ensure that they reflect the provisions currently enforced by the Kansas City Health Department in Chapter 8 of the Air Pollution Control Code. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by January 21, 2000.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: December 2, 1999.

William A. Spratlin,

Acting Regional Administrator, Region VII.

[FR Doc. 99–32861 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–115–1–7434b; FRL–6504–3]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Miscellaneous Industrial Sources, Cutback Asphalt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan (SIP). The revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. The EPA is proposing this revision to revise emissions of VOCs in accordance with the requirements of the Federal Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by January 21, 2000.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from VOC, Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 19, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–32859 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH043–7170B; A–1–FRL–6514–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire and Rhode Island; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by both the States of New Hampshire and Rhode Island on August 16, 1999 and November 17, 1999, respectively, providing that the national low emission vehicle (National LEV) be an acceptable compliance option for new motor vehicles sold in each State. In New Hampshire's case, they are providing a commitment by rule to remain part of the National LEV program, and not adopt a California low emission vehicle (CAL LEV) program for the duration of National LEV. In the case of Rhode Island, they have modified their CAL LEV rule to allow the national low emission vehicle program to be a compliance alternative under their rule. Auto manufacturers have agreed to sell these cleaner vehicles throughout each of these States for the duration of the National LEV program. These SIP revisions are required as part of the agreement between States and automobile manufacturers to ensure the continuation of this program to bring clean cars throughout the country, beginning with 1999 model year vehicles.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

DATES: Written comments must be received on or before January 21, 2000.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460. In addition, the information for each respective State is available at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095, and Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, (63 FR 926) the Environmental Protection Agency (EPA) published a final rule outlining a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate for the model years affected. The regulations provided that the program would come into effect only if northeastern States and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA found that nine northeastern States and

23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program. National LEV will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of federal and California new motor vehicle standards and test procedures, which enables manufacturers to design and test vehicles to one set of standards nationwide. The National LEV program demonstrates how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

The National LEV program will result in substantial reductions in non-methane organic gases (NMOG) and nitrogen oxides (NOx), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently. National LEV vehicles are estimated to cost an additional $76 above the price of vehicles otherwise required today, but it is expected that due to factors such as economies of scale and historical trends related to emission control costs, the per vehicle cost will be even lower. This incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV program will help ozone nonattainment areas across the country improve their air quality as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to come into effect, and will remain in effect, only if the Northeastern State and auto manufacturer participants commit to the program and abide by their commitments. The States and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the State commitments is to be made through SIP revisions that incorporate the State commitments to National LEV in State regulations, which EPA will approve into the federally-enforceable SIPs. The National LEV regulations laid out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve the revision as adequately committing the State to the National LEV program. In today's action, EPA is proposing to approve the National LEV SIP revisions for New Hampshire and Rhode Island as adequately committing each State to the program. EPA expects to take similar actions for the other States that have elected to join the National LEV program in the future.

Rhode Island has adopted a State clean vehicle program identical to the CAL LEV program (without the zero emission vehicle requirements) pursuant to section 177 of the Clean Air Act. The State has also modified that regulation accepting compliance with National LEV as an alternative for auto manufacturers to comply with the CAL LEV requirements. Rhode Island's regulation now provides that for the duration of the State's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with a State program adopted pursuant to section 177. The regulation accepts National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. The regulation further provides that the State's participation in National LEV extends until model year 2006, if by December 15, 2000, EPA adopts mandatory standards at least as stringent as the National LEV standards and such standards would apply to new motor vehicles beginning in model year 2004, 2005 or 2006. If EPA does not adopt such standards by that date, the State's participation in National LEV would extend only until model year 2004. Through these rules, and an earlier February 22, 1999 submittal, Rhode Island has adequately committed to the National LEV program, as provided in the final National LEV rule.

New Hampshire did not adopt a State clean vehicle program identical to the CAL LEV program pursuant to section 177 of the Clean Air Act. Instead, the State adopted a regulation accepting compliance with National LEV as the State's clean vehicle program, and forgoing their right to adopt a CAL LEV program. New Hampshire's regulation provides that for the duration of the State's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any State program adopted pursuant to section 177. The regulation accepts National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. The regulation further provides that the State's participation in National LEV extends until model year 2006, if by December 15, 2000, EPA adopts mandatory standards at least as stringent as the National LEV standards and such standards would apply to new motor vehicles beginning in model year 2004, 2005 or 2006. If EPA does not adopt such standards by that date, the State's participation in National LEV would extend only until model year 2004. Through these regulations, New Hampshire has adequately committed to the National LEV program, as provided in the final National LEV rule.

The final National LEV rule also stated that if States submitted SIP revisions containing language substantively identical to the language in the regulations without additional conditions, and if the submissions met the Clean Air Act requirements for approvable SIP submissions, EPA would not need to go through notice-and-comment rulemaking to approve the SIP revisions. In the National LEV rulemaking, EPA already provided full opportunity for public comment on the language for the SIP revisions. Thus, as discussed in more detail in the final rule, the requirements for EPA approval are easily verified objective criteria. See 63 FR 936 (January 7, 1998). While EPA believes that it could have appropriately approved the New Hampshire and Rhode Island submissions without providing for additional notice and comment, EPA nonetheless decided to propose approval of this action, which allows an opportunity for further public comment. Here, EPA is not under a timing constraint that would support a shorter rulemaking process, and thus EPA decided there was no need to deviate from the Agency's usual procedures for SIP approvals.

Proposed Action

EPA has evaluated the submitted SIP revisions submitted by New Hampshire and Rhode Island and has determined that they are consistent with the EPA National LEV regulations and meet the section 110 requirements for SIP approvals. Therefore, EPA is proposing approval of the New Hampshire and Rhode Island low emission vehicle rules as submitted on August 16, 1999 and November 17, 1999, respectively, into the New Hampshire and Rhode Island SIP.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a voluntary standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 14, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–33155 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300959; FRL–6399–6]

RIN 2070–AB78

Azinphos-Methyl; Proposed Revocation and Lowering of Certain Tolerances; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the tolerances for azinphos-methyl by revoking certain tolerances and modifying certain other tolerances for residues of the insectide azinphos-methyl (40 CFR 180.154). This proposed revision is in compliance with a Memorandum of Understanding between the EPA and registrants of azinphos-methyl. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by docket control number OPP–300959, must be received on or February 22, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION" section of this document. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300959 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barry O'Keefe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–8035; fax number: 703–308–8041; e-mail address: okeefe.barry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to the following:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300959. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300959 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–300959. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be

CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

In accordance with a Memorandum of Agreement (MOA) of August 2, 1999, between registrants and EPA, the EPA is proposing to revoke and to modify certain tolerances for residues of the insecticide azinphos-methyl in 40 CFR 180.154. In particular, the EPA is proposing to revoke the tolerance on sugarcane, with a revocation/expiration date of June 30, 2000, since by agreement this use has been deleted from active labels, because of surface water vulnerability and to prevent unreasonable risks to wildlife and contamination of water. EPA is setting the revocation/expiration date of June 30, 2000, in order to allow time for existing stocks in the hands of users to be used. The Agency believes that once cancellation of this use occurs, residues of azinphos-methyl will likely be nondetectable in all sugarcane commodities shortly after harvest. The MOA states that azinphos-methyl manufacturing-use products may not be reformulated for use on sugarcane, and end-use product labels intended for use in the 2000 growing season shall not have sugarcane listed as a use site in the directions for use section.

In the MOA, the registrants agreed to submit a petition requesting specific tolerance modifications to be effective January 1, 2000. Such a petition has been received by the Agency. Therefore, EPA is proposing to lower tolerances found in 40 CFR 180.154 for residues of the insecticide azinphos-methyl in or on apples, crabapples, pears, and quinces, each from 2.0 parts per million (ppm) to 1.5 ppm, in or on cranberries from 2.0 ppm to 0.5 ppm, and in or on grapes from 5.0 ppm to 4.0 ppm. The Agency intends to make these modifications effective upon publication of the final rule. These reductions in tolerances are based on the most recent data that more accurately reflect recent label changes and residue levels that are likely to be detected. Additionally, monitoring data for the years 1993–1998 indicate that the new lower tolerances are not likely to be exceeded. These data represent residues resulting from the use pattern allowed under old labels which allowed higher amounts of use than reflected in recent label changes. Little use of the older labeled products should be reflected in residues of commodities in the channels of trade.

In addition, this document also proposes to revoke tolerances found in 40 CFR 180.154 for residues of azinphos-methyl in or on commodities for which there are no registered uses; including: apricots; artichokes; barley, grain; barley, straw; beans (dry); gooseberries; grass, pasture (green); grass, pasture, hay; kiwifruit; oats, grain; oats, straw; peas, black-eyed; rye, grain; rye, straw; soybeans; wheat, grain; and wheat, straw. Additionally, in 40 CFR 180.154(b), the tolerance for pomegranates is proposed to be revoked, because there is no registered use. These revocations are for uses that have not been on active labels since January 1999. Additionally, the Agency believes that azinphos-methyl had not been used on these crops for some time. Consequently, no treated commodities covered by these tolerances are expected to be in the channels of trade. The Agency intends to make these modifications effective upon publication of the final rule.

This document also proposes to remove 40 CFR 180.531, and to revoke the three tolerances found in this section for residues of azinphos-methyl; which are as follows:

(1) Sugarcane bagasse, since this commodity is not considered a significant livestock feed item.

(2) Citrus pulp, dried, since an adequate orange processing study did not show concentration in dried orange pulp (in accordance with FFDCA section 408(a)(2), since residues in the processed food will not exceed the raw food tolerance).

(3) Soybean oil, since there are no active registrations with soybeans on the label.

Changes in commodity terminology and definitions are proposed to conform to current Agency practice. These proposed changes are in accordance with the revised Crop Group Regulation (40 CFR 180.41) and the updated Table I "Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops" (August, 1996) in the Residue Chemistry Test Guidelines: OPPTS 860.1000 (EPA 721–C–96–169). Table I contains data on both crops and livestock diets, and lists feed commodities considered significant in livestock diets. Significant feedstuffs account for more than 99 percent of the available annual tonnage (on a dry-matter basis) of feedstuffs used in the domestic production of more than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs. The EPA has devised criteria to include or exclude feedstuffs from Table I and set tolerances for significant feedstuffs. Tolerances are not set for feedstuffs which are neither significant nor a human food. Pesticide residues on such feedstuffs are governed by tolerances on the commodity from which they are derived (62 FR 66020, December 17, 1997) (FRL–5753–1). These changes relate only to nomenclature and have no effect on the scope of the tolerance. The specific commodity terminology name changes proposed are listed in the following table:

Old Commodity Name	New Commodity Name
Almonds	Almond
Almonds, hulls	Almond, hulls
Apples	Apple
Beans, snap	Bean, snap
Blackberries	Blackberry
Blueberries	Blueberry
Boysenberries	Boysenberry
Cherries	Cherry

Old Commodity Name	New Commodity Name
Citrus fruits	Fruit, citrus, group
Crabapples	Crabapple
Cranberries	Cranberry
Cucumbers	Cucumber
Eggplants	Eggplant
Filberts	Filbert
Grapes	Grape
Loganberries	Loganberry
Melons (honeydew, muskmelon, cantaloupe, watermelon, and other melons).	Melon
Nuts, pistachio	Pistachio
Onions	Onion
Parsley, leaves	Parsley, leaf
Parsley, roots	Parsley, root
Peaches	Peach
Pears	Pear
Pecans	Pecan
Peppers	Pepper
Plums (fresh prunes).	Plum, prune
Potatoes	Potato
Quinces	Quince
Raspberries	Raspberry
Strawberries	Strawberry
Tomatoes (PRE- and POST-H).	Tomato
Walnuts	Walnut

Since the available data indicate that finite residues of azinphos-methyl are not expected in animal tissues or milk, in accordance with 40 CFR 180.6(a)(3) EPA is proposing to revoke tolerances found in 40 CFR 180.154 for cattle, fat; cattle, mbyp; cattle, meat; goat, fat; goat, mbyp; goat, meat; horse, fat; horse, mbyp; horse, meat; sheep, fat; sheep, mbyp; and sheep, meat; and in 40 CFR 180.154a, the tolerance for milk. This proposal to revoke these 13 meat, milk, poultry and egg (MMPE) tolerances implements the Agency findings announced in the August 2, 1999 FR Notice (64 FR 41933) (FRL–6097–3) that, under 40 CFR 180.6 there is no reasonable expectation of finite residues for azinphos-methyl on the MMPE commodities and, therefore, these tolerances were considered reassessed and could be revoked, because they are not needed. These findings are based on feeding studies that used exaggerated amounts of azinphos-methyl (up to 11 times the dietary burden) and measurable residues still were not found. These studies were submitted after the tolerances were originally established.

This document also proposes to revoke the tolerance found in 40 CFR 180.154 for residues of azinphos-methyl in or on nectarines, in accordance with 40 CFR 180.1(h), since the tolerance on peaches covers nectarines.

This document also proposes to lower tolerances found in 40 CFR 180.154 for residues of azinphos-methyl in or on almond and potato, each from 0.3 to 0.2 ppm, and in or on almond hulls from 10.3 to 5.0 ppm, since the available data indicate that these tolerances can be lowered to achieve compatibility with the corresponding Codex maximum residue limits (MRLs). These reductions in tolerances are based on the most recent data that more accurately reflect residue levels that are likely to be detected.

It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. EPA expects to determine whether any individuals or groups want to comment on these tolerance modifications. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. 21 U.S.C. 346(a). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be "adulterated," you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3, section 5, or section 18 of FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid these trade-restricting situations, the Agency is proposing to revoke tolerances for residues on crops for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably

required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerances at issue.

Under section 408(d) of the FFDCA, the Agency may issue a final or proposed regulation establishing, modifying, or revoking a tolerance in response to a petition filed with the Agency that proposes the issuance of such regulation. On August 2, 1999, EPA and the registrants holding Section 3 registrations for azinphos-methyl signed a Memorandum of Agreement (MOA), which specifically states that the registrants shall submit to EPA a petition requesting many of the tolerance modifications detailed in this proposal; i.e. lowering tolerances on apples, crabapples, cranberries, grapes, pears, and quinces, and revoking the tolerance on sugarcane. Such a petition has been received by the Agency, dated September 22, 1999. Thus, the Agency is authorized by section 408(d) of the FFDCA to issue a proposed regulation in response to that petition. The MOA was made to help mitigate acute dietary, agricultural worker, and environmental risks. During phase five of the Tolerance Reassessment Advisory Committee (TRAC) process, the Agency invited the registrants, and any other affected or interested parties, to submit to the Agency additional risk mitigation thoughts or measures, since the acute dietary risk estimates from the revised human health risk assessment remained above the Agency's level of concern. The revised human health risk assessment may be found at http://www.epa.gov/pesticides/op. In addition to the MOA, EPA is also proposing the revocation or lowering of other tolerances, as well as changes in commodity nomenclature for various reasons as described in Unit II of this document.

F. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66%, or about 6,400, of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of November 1, 1999, EPA has assessed over 3,400 tolerances. This document proposes to revoke 35 tolerances. Since 13 tolerances were previously counted as reassessed, 22 of the 35 revocations will be counted when the final rule is published. The 22 reassessments will be counted toward the August, 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

III. Regulatory Assessment Requirements

This proposed rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IV. Consistency with International Obligations

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex MRLs in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA is developing guidance concerning submissions for import tolerance support. This guidance

will be made available to interested parties.

Codex MRLs exist for the following tolerances proposed for revocation in this document, i.e. apricot at 2.0 ppm, cereal grains at 0.2 ppm, kiwifruit at 4.0 ppm, and soy bean at 0.2 ppm. Notwithstanding the existence of these MRLs, EPA is proposing to revoke the tolerances because retention would increase the chances of misuse and may result in unnecessary restriction on trade of pesticides and foods as well as inhibiting the retention and approval of tolerances, as discussed in greater detail in Unit II.B., of this document.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. By revising § 180.154 to read as follows:

§ 180.154 O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl]phosphorodithioate; tolerances for residues.

(a) Tolerances are established for residues of the insecticide *O,O*-dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-yl) methyl]phosphorodithioate in or on the following food commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa	2.0	
Alfalfa, hay	5.0	
Almond	0.2	
Almond, hulls	5.0	
Apple	1.5	
Bean, snap	2.0	
Birdfoot trefoil	2.0	
Birdfoot trefoil hay	5.0	
Blackberry	2.0	
Blueberry	5.0	
Boysenberry	2.0	
Broccoli	2.0	
Brussels sprout	2.0	
Cabbage	2.0	
Cauliflower	2.0	
Celery	2.0	
Cherry	2.0	
Fruit, citrus, group	2.0	
Clover	2.0	
Clover, hay	5.0	
Cottonseed	0.5	
Crabapple	2.0	
Cranberry	0.5	
Cucumber	2.0	
Eggplant	0.3	
Filbert	0.3	
Grape	4.0	
Loganberry	2.0	
Melon	2.0	
Onion	2.0	
Parsley, leaf	5.0	
Parsley, root	2.0	
Peach	2.0	
Pear	1.5	
Pecan	0.3	
Pepper	0.3	
Pistachio	0.3	
Plum, prune	2.0	
Potato	0.2	
Quince	1.5	
Raspberry	2.0	
Spinach	2.0	
Strawberry	2.0	
Sugarcane	0.3	6/30/00
Tomato	2.0	
Walnut	0.3	

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.154a and 180.531 [REMOVED]

3. By removing § 180.154a and § 180.531.

[FR Doc. 99–33161 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–339; FCC 99–353]

Implementation of Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of December 1, 1999, regarding the adoption of limited requirements for television video description. This corrects paragraph 44 of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy and Rules Division, Mass Media Bureau (202) 418–2130.

Correction

In the proposed rule 99–31116, page 67241, column 3, paragraph 44 set forth certain instructions for filing comments on diskettes, and directed commenters to reference MM Docket No. 99–353. The document should have directed commenters to reference MM Docket No. 99–339. Therefore, the docket reference in paragraph 44, fifth sentence, to "99–353" is hereby deleted and replaced with the docket reference "99–339."

Dated: December 2, 1999.

Victoria Phillips,

Chief, Legal Branch.

[FR Doc. 99–33101 Filed 12–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–292; FCC 99–389]

Establishment of a Class A Television Service; Comments Suspended

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comment date suspension.

SUMMARY: This document announces that the Commission, on its own motion, has suspended the filing of comments that were due December 21, 1999, in its rulemaking proceeding in MM Docket No. 99–292 concerning the Establishment of a Class A Television Service.

EFFECTIVE DATE: December 14, 1999.

FOR FURTHER INFORMATION CONTACT: James Brown, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: On September 29, 1999, the Commission issued a Notice of Proposed Rule Making, FCC 99–257, setting forth for public comment a wide-range of issues and concerns dealing with the establishment of a form of primary status for qualifying low power television stations and on the appropriate regulatory framework for a Class A television service. On November 29, 1999, however, the Community Broadcasters Protection Act of 1999 (CBPA) was signed into law. Among other things, the legislation directed that, within 120 days after enactment of the CBPA, the Commission shall, by rulemaking, set forth regulations establishing a Class A television service for licensees of low power television that satisfy certain statutorily-prescribed criteria. The Commission is currently assessing the impact of the CBPA,

whose provisions are more narrowly focused than the matters in the instant rulemaking, and believes that suspension of the scheduled filing of comments would be more conducive to orderly rulemaking in the abbreviated proceeding mandated by the CBPA. The comment filing date IS SUSPENDED until further notice from the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–33102 Filed 12–21–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–99–6355; Notice 2]

Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High-Consequence Areas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice extending comment period and establishing Electronic Public Discussion Forum.

SUMMARY: This notice announces that the Office of Pipeline Safety (OPS) will extend to January 17, 2000, the comment period following the public meeting on pipeline system integrity programs in high-consequence areas. This notice also announces that OPS is establishing an electronic public discussion forum on pipeline system integrity management. OPS requests comments that address how to provide additional safety and environmental protection for gas transmission pipelines and hazardous liquid pipelines in high-consequence areas through regulated integrity management programs.

DATES: No later than January 17, 2000, comments can be submitted over the Internet to the OPS integrity management site at http://ops.dot.gov/imp.htm. You may also submit written comments by mail or delivery directly to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments may be submitted directly to the docket at the following Internet Web address: http://dms.dot gov. Click on "Help & Information" for instructions on how to file a document electronically. All comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

ADDRESSES: The Dockets Facility is located on the plaza level, Room PL–401, of the U.S. Department of Transportation building, 400 7th St., SW, Washington, DC. It is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Israni (tel: 202–366–4571; E-mail: mike.israni@rspa.dot.gov). You can access additional information and participate in a discussion forum at the OPS pipeline system integrity management Internet site at http://ops.dot.gov/imp.htm.

SUPPLEMENTARY INFORMATION:

Background

On November 18–19, 1999, the Office of Pipeline Safety held a public meeting to discuss the need for additional safety and environmental regulations for pipelines in high-consequence areas (i.e., areas where a pipeline failure could have serious consequences for the public or the environment). The notice announcing the meeting was published on October 21, 1999, at 64 FR 56725. OPS wanted information on pipeline operators' system integrity management programs so that it could incorporate a process into the regulations for validating pipeline system integrity in high-consequences areas. OPS is committed to enhancing protection in these areas for several reasons. OPS and National Transportation Safety Board (NTSB) investigations and analyses of major pipeline incidents have underscored the importance of protecting areas of high population density and environmentally sensitive areas. Congressional mandates have directed OPS to undertake various activities in these areas, including requiring periodic pipeline inspections in areas of high population density and in areas unusually sensitive to environmental damage.

Recent OPS initiatives have validated the importance of focusing pipeline resources and establishing higher levels of protection in areas where a pipeline accident could have serious consequences. OPS has seen a wide array of existing operator safety programs that identify, assess, and address all significant risks to the pipeline in an integrated manner. These operator-developed programs closely examine in-line inspection survey data, together with other surveillance and operating data, (e.g., expected population growth, land use, construction activity along the pipeline) and other information relevant to ensuring the integrity of the pipeline in high population areas and in environmentally sensitive areas.

Need for Extending Comment Period and Opening Electronic Discussion Forum

The November public meeting gathered information from government, industry, and public participants on integrity management programs and how to deal with integrity issues in high-consequence areas. The meeting provided a wealth of information on identifying high-consequence areas, testing and inspection technologies, and using risk data to manage pipeline system integrity. The meeting revealed the complexity inherent in requiring integrity management inspections and programs in high-consequence areas. Breakout sessions addressed the following issues:

- What are the key elements and characteristics of integrity management within companies?
  - —What are the characteristics of high-consequence areas?
  - —What are the minimum standards for integrity management programs?
  - —What elements should OPS review, evaluate, and inspect?
- What means are used to assemble and integrate information?
  - —What types of information need to be integrated to ensure pipeline system integrity?
  - —What are the key questions for OPS to ask during an inspection?

At the meeting, OPS announced that written comments on pipeline system integrity management issues would be accepted through December 20, 1999. The questions raised at the public meeting and subsequent discussions with the pipeline industry and regulators have shown that more time is needed to prepare and file comments. Therefore, we are extending the comment period to January 17, 2000. We are also setting up an electronic discussion forum so that we can get a free exchange of ideas on how to implement a pipeline system integrity management process into the pipeline safety regulations. This forum will be open until at least January 17, 2000. The transcript of the November 18–19, 1999, public meeting and public comments concerning issues raised at the meeting are available in the docket, which is accessible at the Dockets Facility or through the OPS pipeline system integrity management Internet site.

After the public meeting, OPS began discussing a conceptual model for ensuring extra protection in high-consequence areas. This model, along with additional information on the public meeting and on pipeline system integrity management issues for high-consequence areas, is posted on OPS's pipeline system integrity management Internet site at http://ops.dot.gov/imp.htm. Information on this site includes:

- General Summary of the November 18, 1999 public meeting
- Discussion page for facilitating communication
- **Federal Register** Notice on the November 18, 1999 public meeting
- Meeting Agenda and selected presentations/summaries by various speakers.
- Meeting transcripts for November 18, 1999 public meeting
- Summary of the Breakout sessions
- Conceptual pipeline system integrity management model for high-consequence areas
- Link to the DMS page for submissions to the electronic docket
- Contact (e-mail) information for Mike Israni and Beth Callsen

RSPA encourages all interested persons to access the pipeline system integrity management conceptual model and other background information at http://ops.dot.gov/imp.htm.

In particular, OPS wants comment on how to improve protection for the public and the environment for pipelines located in high-consequence areas through a more integrated approach to identifying and addressing risks. Interested persons are urged to present their views on whether and what additional inspection requirements or other preventive and mitigative actions are needed to ensure adequate protection of high-consequence areas. Comments are sought from pipeline companies on the extent of their inspection and testing programs, the types of inspection tools employed, and experience with intervals between inspections and testing. OPS is also interested in comments on the expected cumulative costs and benefits associated with implementing a pipeline system integrity management process, on whether any of these measures would have a disproportionate impact on small operators, and any concerns on the information collection, recordkeeping, or reporting requirements of this initiative under the Paperwork Reduction Act of 1995 (44 USC 3057(d)).

Authority: 49 U.S.C. Chapter 601 and 49 CFR 1.53.

Issued in Washington, DC on December 17, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–33207 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF83

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the southern California distinct vertebrate population segment (DPS) of mountain yellow-legged frog (*Rana muscosa*) as endangered, pursuant to the Endangered Species Act of 1973, as amended (Act). In southern California, this DPS has been reduced to only a few isolated remnants in the San Gabriel, San Jacinto, and San Bernardino Mountains. Hypothesized causes of the decline include predation from introduced trout or possibly some other widespread environmental effects such as airborne contaminants. These effects have probably acted in combination to produce the decline. The chronology of the decline is not well documented, but it appears that a precipitous decline occurred over the last three or four decades. The decline went largely unnoticed and was not studied. In addition to predation from trout and other widespread factors, the few remaining frogs are now threatened by recreational suction dredging for gold and human activities at campgrounds and day use areas. The remnant populations are so small that they are now at risk from random genetic, demographic, and environmental effects as well. This proposed rule constitutes the 12-month finding on a petition to list the southern California population of mountain yellow-legged frog as threatened or endangered. This proposed rule, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this DPS. We welcome data and comment from the public on this proposal.

DATES: You must submit any comments by February 22, 2000 and public hearing requests by February 7, 2000.

ADDRESSES: You may send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. You may inspect comments and materials received, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg at the above address (telephone 760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The mountain yellow-legged frog is a true frog in the family Ranidae. Mountain yellow-legged frogs were originally described by Camp in 1917 (as cited by Zweifel 1955) as a subspecies of *Rana boylii*. Zweifel (1955) demonstrated that frogs from the high Sierra and the mountains of southern California were somewhat similar to each other yet were distinct from the rest of the *R. boylii* (=*boylei*) group. Since that time, most authors have followed Zweifel, treating the mountain yellow-legged frog as a full species, *Rana muscosa*.

Mountain yellow-legged frogs are moderately sized, about 40 to 80 millimeters (mm) (1.5 to 3 inches (in)) from snout to urostyle (the pointed bone at the base of the backbone) (Jennings and Hayes 1994; Zweifel 1955). The pattern is variable, ranging from discrete dark spots that can be few and large, to smaller and more numerous spots with a mixture of sizes and shapes, to irregular lichen-like patches or a poorly defined network (Zweifel 1955). The body color is also variable, usually a mix of brown and yellow, but often with gray, red, or green-brown. Some individuals may be dark brown with little pattern (Jennings and Hayes 1994). The back half of the upper lip is pale. Folds are present on each side of the back, but usually they are not prominent (Stebbins 1985). The throat is white or yellow, sometimes with mottling of dark pigment (Zweifel 1955). The belly and undersurface of the high limbs are yellow, which ranges in hue from pale lemon yellow to an intense sun yellow. The iris is gold with a horizontal, black counter shading stripe (Jennings and Hayes 1994).

In the Sierra Nevada Mountains of California, the mountain yellow-legged frog ranges from southern Plumas County to southern Tulare County (Jennings and Hayes 1994), at elevations

mostly above 1,820 meters (m) (6,000 feet (ft)). The frogs of the Sierra Nevada are isolated from the frogs of the mountains of southern California by the Tehachapi Mountains and a distance of about 225 kilometers (km) (140 miles (mi)). The southern California frogs now occupy portions of the San Gabriel, San Bernardino, and San Jacinto Mountains. Zweifel (1955) noted the presence of an isolated southern population on Mt. Palomar in northern San Diego County, but this population appears to be extinct (Jennings and Hayes 1994). In southern California, the elevation range reported by Stebbins (1985) is 182 m (600 ft) to 2,273 m (7,500 ft). Representative localities, including some that are no longer occupied, which demonstrate the wide elevation range that mountain yellow-legged frogs inhabited in southern California, include Eaton Canyon, Los Angeles County (370 m (1,220 ft)) and Bluff Lake, San Bernardino County (2,290 m (7,560 ft)). The southern California locations now occupied by mountain yellow-legged frogs range from City Creek, in the San Bernardino Mountains (760 m (2,500 ft)), to Dark Canyon in the San Jacinto Mountains (1,820 m (6,000 ft)).

Southern California mountain yellow-legged frogs are diurnal, highly aquatic frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. In these areas, juveniles and adults feed on small, streamside arthropods (Jennings and Hayes 1994). They do not occur in the smallest creeks. The coldest winter months are spent in hibernation, probably under water or in crevices in the bank. Mountain yellow-legged frogs emerge from overwintering sites in early spring, and breeding soon follows. Eggs are deposited in shallow water where the egg mass is attached to vegetation or the substrate. In the Sierra Nevada, larvae select warm microhabitats (Bradford 1984 cited in Jennings and Hayes 1994), and the time to develop from fertilization to metamorphosis reportedly varies from 1 to 2.5 years (Jennings and Hayes 1994).

Prior to the late 1960s, mountain yellow-legged frogs were abundant in many southern California streams (G. Stewart, *in litt.* 1995), but they now appear to be absent from most places in which they previously occurred. Jennings and Hayes (1994) believe that mountain yellow-legged frogs are now absent from more than 99 percent of their previous range in southern California. This decline is part of a well-known larger pattern of declines among native ranid frogs in the western United States (Hayes and Jennings 1986; Drost and Fellers 1996). Some of the western ranid frog species experiencing noticeable declines are the California red-legged frog (*Rana aurora draytonii*) (61 FR 25813), the spotted frog (*R. pretiosa* and *R. luteventris*), the Cascades frog (*R. cascadae*), and the Chiricahua leopard frog (*R. chiricauhensis*) (62 FR 49398). Nowhere have the declines been any more pronounced than in southern California, where, besides declines in mountain yellow-legged frogs, the California red-legged frog has been reduced to a few small remnants (61 FR 25813), and the foothill yellow-legged frog (*R. boylii*) may be extinct (Jennings and Hayes 1994.)

The mechanisms causing the declines of western frogs are not well understood and are certain to vary somewhat among species, but the two most common and well-supported hypotheses for widespread declines of western ranid frogs are: (1) Past habitat destruction related to unregulated activities such as logging and mining and more recent habitat conversions for water development, irrigated agriculture, and commercial development (Hayes and Jennings 1986; 61 FR 25813); and (2) alien predators and competitors (Bradford 1989; Knapp 1996; Kupferberg 1997). Natural populations may be killed off directly by these factors operating alone or in combination, or these factors so severely disrupt the normal population dynamics that when local extinctions occur, regardless of the cause, natural recolonization is impossible. Other environmental factors that could have adverse effects over a wide geographic range include pesticides, certain pathogens, and ultraviolet-B (beyond the visible spectrum) radiation, but their role, if any, in amphibian declines is not well understood (Reaser 1996). These factors, acting singly or in combination, may be contributing to widespread, systematic declines of western ranid frogs. Determining their effects, however, is not an easy task (Reaser 1996; Wake 1998), and the Department of the Interior (USDOI) currently supports an initiative to fund research on the causes of amphibian declines (see examples in USDOI 1998).

Some of the same factors that are hypothesized to have caused declines of other western ranid frogs are likely to be responsible for the reduction of the mountain yellow-legged frog in southern California. Because the declines have been so precipitous, and have spared only a small number of frogs in a few localities, the factors, and their interactions, that caused the decline may never be fully understood. We believe that these factors are still operating, and unless reversed, a high probability exists that this frog may be extinct in southern California within a few decades. In the case of the mountain yellow-legged frog, the only factor listed above that we believe can be ruled out as a likely cause of decline is habitat destruction related to activities such as logging, mining, irrigated agriculture, and commercial development. The range of the mountain yellow-legged frog in southern California is mainly on public land administered by the U.S. Forest Service (FS). Most of the rugged canyons and surrounding mountainous terrain have been altered little and look much the same today as they did when earlier naturalists such as Lawrence Klauber collected mountain yellow-legged frogs there in the early decades of the 1900s.

Current Range and Status

In southern California, mountain yellow-legged frogs can still be found in four small streams in the San Gabriel Mountains, the upper reaches of the San Jacinto River system in the San Jacinto Mountains, and at a single locality on City Creek, a tributary of the Santa Ana River, in the San Bernardino Mountains (Jennings and Hayes 1994; M. D. Wilcox *in litt.*, 1998). These areas along with the numbers of frogs most recently observed in each area are described below.

San Gabriel Mountains: Surveys conducted from 1993 to 1997 revealed small isolated populations in the upper reaches of Prairie Creek/Vincent Gulch, Devil's Canyon, and Alder Creek/East Fork, on the East Fork of the San Gabriel River, and Little Rock Creek on the Mojave River (Jennings and Hayes 1994 and references therein; Jennings 1995; Jennings 1998). The surveys involved one to three field biologists and were conducted over 1–5 days per site. Over the course of these field studies, 15 adults or fewer were observed at any 1 site, and, after the 1995 season, Jennings (1995) concluded that the actual population at each of the sites was only 10–20 adults.

San Jacinto Mountains: Small populations of mountain yellow-legged frogs also occur in four tributaries in the upper reaches of the North Fork, San Jacinto River on Mount San Jacinto: Dark Canyon, Hall Canyon, Fuller Mill Creek, and the main North Fork, San Jacinto River (Jennings and Hayes 1994; Jennings 1995; Jennings 1998). The number of frogs occupying these sites is not known, but fewer than 10 adult frogs per site per year have been observed in surveys from 1995 to the present.

San Bernardino Mountains: A few tadpoles and 26 recently transformed

juveniles, but no adults, were rediscovered on a roughly 1-mile reach of the East Fork, City Creek during the summer of 1998 (M. D. Wilcox *in litt.*, 1998). Previous to this finding, mountain yellow-legged frogs had not been observed in the San Bernardino Mountains since the 1970s (Jennings and Hayes 1994), even though surveys were conducted during the summer and fall of 1997 and 1998 (Holland 1997; Tierra Madre 1999).

When frogs were encountered during field surveys accomplished between 1988 and 1995, only a few individuals were observed. Jennings and Hayes (1994) and Jennings (1995) suggested that the entire population of mountain yellow-legged frogs in the San Gabriel and San Jacinto Mountains (8 more or less isolated sites) was probably fewer than 100 adult frogs. Their rough estimate is based on a compilation of the results of visual surveys generally conducted on a single day, not on formal population abundance estimation techniques. While the precise number of adult frogs may be greater than 100, we concur with Jennings and Hayes (1994) that, in the San Gabriel and San Jacinto Mountains, the available data indicate that this once widespread species is now found in only a small number of relatively isolated populations. We do not know the population size of adult frogs at the recently rediscovered site on the east fork of City Creek in the San Bernardino Mountains, but because no adults and only a few juveniles and tadpoles were encountered, the adult population is probably small. Thus, we conclude that each of the three mountain ranges (San Gabriel, San Jacinto, San Bernardino) contains a small number of small, relatively isolated populations.

Distinct Vertebrate Population Segment

We analyzed the mountain yellow-legged frog according to the joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Populations, published in the **Federal Register** on February 7, 1996 (61 FR 4722). We consider three elements in determining whether a vertebrate population segment could be treated as threatened or endangered under the Act: discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity, or (2) populations delimited by international boundaries. We determine significance either by the importance or contribution, or both, of a discrete population to the species throughout its range. Our policy lists four examples of factors that may be used to determine significance: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics. If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards.

Discreteness: The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which isolate Sierran frogs from those in the mountains of southern California. The distance of the separation is about 225 km (140 mi), but the separation may not have been this great in the recent past because a frog collected in 1952 on Breckenridge Mountain in Kern County was identified by Jennings and Hayes (1994) as a mountain yellow-legged frog. The geographic separation of the Sierran and southern California frogs was recognized in the earliest description of the species by Camp (1917, cited in Zweifel 1955), who treated frogs from the two localities as separate subspecies within the *R. boylii* group. He designated the Sierran frogs *R. b. sierrae* and the southern California frogs *R. b. muscosa*, based on geography and subtle morphological differences. Zweifel (1955) reevaluated the morphological evidence and found it insufficient to warrant Camp's recognition of two subspecies, the chief difference between the two being hind-limb length.

More recently, Ziesmer (1997) analyzed the calls of Sierran (Alpine and Mariposa Counties) and southern California (San Jacinto Mountains and Riverside County) mountain yellow-legged frogs. He found that the calls of Sierran frogs differed from southern California frogs in pulse rate, harmonic structure, and dominant frequency. Based on a limited sample, Ziesmer concluded that the results supported the hypothesis that mountain yellow-legged frogs from the Sierra Nevada and southern California are separate species.

Allozyme (a form of an enzyme produced by a gene) variation throughout the range of the mountain yellow-legged frog has been examined, but the results are open to interpretation (Jennings and Hayes 1994 and references therein). In the work most applicable to the question of the distinctiveness of the Sierran and southern California frogs, David Green (pers. comm., 1998) analyzed allozyme variation in central Sierran mountain yellow-legged frogs (four individuals, Tuolumne County) and southern California mountain yellow-legged frogs (two individuals, Riverside County). He found fixed differences at 6 of 28 loci (sites on a chromosome occupied by specific genes). These limited, unpublished data suggest that Sierran and southern California mountain yellow-legged frogs are different at a level that could support the recognition of full species. However, because of the small number of individuals per sample and the limited number of samples, we view these results cautiously. It is possible that existing variation at those six loci may not have been detected with such a small number of individuals sampled. To better understand whether a genetic discontinuity significant enough to warrant full species rank exists between Sierran frogs and those from the mountains of southern California, samples of frogs from the southern Sierra Nevada, especially the Greenhorn Mountains, would be of particular interest.

Although Green's limited allozyme analysis may not be sufficient to support recognizing the Sierran and southern California populations as separate species, it does support the conclusion of significant geographic separation. This conclusion is also supported by earlier observations of morphological differences (Zweifel 1955, and references therein) and differences in vocalizations (Ziesmer 1997). Considered together, the evidence supports an interpretation of isolation between the two populations of frogs over a very long period. We find that the southern California frogs meet the criterion of "marked separation from other populations of the same taxon" and qualify as discrete according to the Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722).

Significance: One of the most striking differences between Sierran and southern California mountain yellow-legged frogs is the habitats they occupy. Zweifel (1955) observed that the frogs in southern California are typically found

in steep gradient streams in the chaparral belt, even though they may range up into small meadow streams at higher elevations. In contrast, Sierran frogs are most abundant in high elevation lakes and slow-moving portions of streams. Bradford's (1989) southern Sierra Nevada study site, for example, was in Sequoia and Kings Canyon National Parks at high elevations (between 2,910–3,430 m (9,600–11,319 ft)). The rugged canyons of the arid mountain ranges of southern California bear little resemblance to the alpine lakes of the Sierra Nevada. On the basis of habitat alone, one might easily conclude that these are two very different frogs.

The mountain yellow-legged frogs of southern California comprise the southern portion of the species' range. The extinction of this southern group would be significant because it would substantially reduce the overall range as it is currently understood, and what is now a gap in the distribution, the Tehachapi Mountains, would become the southern limit of the species' range.

In addition, evidence exists that the mountain yellow-legged frog is not simply a single species with a disjunct distribution (cited in Zweifel 1955; Stebbins 1985). As discussed above, vocal and genetic differences exist between Sierran and southern California mountain yellow-legged frogs. Although the data are limited and some important variation may have been missed, they are consistent with the earlier interpretation by Camp (1917 cited in Zweifel 1955) and numerous other authors prior to Zweifel (*e.g.*, Stebbins 1954) who treated the two forms as taxonomically distinct. If the differences in vocalization described by Ziesmer (1997) and the allozyme variation described by Green (per. comm., 1998) accurately characterize differences between the two forms, then the Sierran and southern California frogs are quite different and have been isolated for a very long time.

Our conclusion that Sierran and southern California frogs are very different from each other, and may even merit recognition as separate subspecies or possibly even species, is based on the cumulative weight of the available evidence. We find that the mountain yellow-legged frogs inhabiting the mountains of southern California meet the significance criteria under our Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722) on the basis of the geographical, ecological, vocal, and genetic discontinuities described above.

In the remainder of this proposed rule, we evaluate the southern California mountain yellow-legged frog for endangered status based on the Act's standards. For clarity, we refer to all mountain yellow-legged frogs south of the Tehachapi Mountains as the southern California DPS. We use the word "population" to describe all of the frogs living in a particular place.

Previous Federal Action

On July 13, 1995, we received a petition dated July 10, 1995, from D.C. "Jasper" Carlton (of the Biodiversity Legal Foundation), Bonnie M. Dombrowski, and Michael C. Long to list as threatened or endangered the southern California populations of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Act. Accompanying the petition was supporting information related to the taxonomy, ecology, and the past and present distribution of the species. We reviewed the petition, supporting documentation, and other information cited in this proposed rule to determine if substantial information was available to indicate that the requested action may be warranted. On July 8, 1997, we published a 90-day finding for the petition to list the southern California populations of the mountain yellow-legged frog (62 FR 36481). We found the southern California population to be a DPS and furthermore found the petition presented substantial information indicating the listing of the species (DPS) may be warranted. Once we made the finding that the petition presented substantial information, we commenced a status review pursuant to section 4(b)(3)(A) of the Act. However, consistent with the applicable Listing Priority Guidances (62 FR 55268; 63 FR 25502), our Carlsbad Field Office completed work on higher priority listing actions before completing this 12-month finding and proposed rule to list this DPS of the mountain yellow-legged frog.

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. The processing of this proposed rule is a Priority 3 action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the southern California DPS of mountain yellow-legged frogs are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

All nine known populations of southern California *Rana muscosa* occur on lands owned and managed by the FS and are clustered within three drainages, one in the San Gabriel Mountains, one in the San Bernardino Mountains, and another on Mount San Jacinto. As such, the habitats in which they live are protected against wholesale conversions to other uses. However, with so few populations remaining, and with each of those numbering only a few individuals, localized habitat alterations, which would not be appreciable if the DPS were more wide-ranging and abundant, threaten the DPS. Local habitat changes caused by recreational suction dredging for gold and human use around campgrounds, picnic grounds, and heavily used trails may harm the habitat and contribute to local extinctions wherever these activities intersect with mountain yellow-legged frogs.

Jennings (1995) observed suction dredging within the Wilderness Area where mountain yellow-legged frogs occur on the East Fork, San Gabriel River. He reported observing large quantities of trash and toxic materials being dumped into the stream bed. If this practice is continued, it could have harmful effects on the population inhabiting the East Fork, San Gabriel River. The consequences for populations on other San Gabriel River tributaries is difficult to predict, but any losses would further isolate the remaining populations and probably

reduce the time to extinction for the DPS. Other than the East Fork, San Gabriel River site, we do not know if recreational gold mining occurs or at what level on or near sites occupied by frogs. Extensive suction dredging activity at or near a breeding site could have the harmful effect of killing eggs or larvae or changing the hydrology, rendering it unsuitable for breeding. Some of the habitat effects of suction dredging on streams are described by Harvey (1986), who found dredging altered substrates and changed the habitat for fish and invertebrates.

Fairly heavy camping and day use coincides with frog habitat along the East Fork, San Gabriel River (dispersed camping), Prairie Fork Creek (campground, recently burned and presently closed by the FS), Little Rock Creek (trail, rock climbing), Dark Canyon (campground), and Fuller Mill Creek (picnic ground). In areas occupied by frogs, human presence in and along streams can disrupt the lives of eggs, larvae, and adult frogs and change the entire character of the stream and its bank and associated vegetation in ways that make whole sections of stream less suitable for frogs. Only nine very small populations remain, and at least four of these are in areas that receive reasonably heavy human camping or day use. The loss of even small numbers of frogs from any of these populations due to human camping or day use, either alone or in combination with other factors, will increase the probability of local extinction. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Numerous museum specimens from many localities (Jennings and Hayes 1994) attest to the fact that, for decades, mountain yellow-legged frogs from the southern DPS have been collected for scientific purposes. These collections probably did not have an appreciable effect. Now that the DPS has declined precipitously, populations are so few in number, and the size of each population is so small, very little or no scientific collecting of the southern DPS occurs. Collecting, scientific or amateur, if it did occur, could seriously increase the probability of extinction of any of the remaining populations. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the DPS.

C. Disease or Predation

Predation by introduced trout, including rainbow trout (*Oncorhynchus mykiss*), is one of the best documented causes of the decline of Sierran mountain yellow-legged frogs. Careful study of the distributions of introduced trout and mountain yellow-legged frogs for several years has shown conclusively that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada (Bradford 1989; Knapp 1996). Bradford (1989) and Bradford *et al.* (1993) concluded that introduced trout eliminate many populations of mountain yellow-legged frogs and the presence of trout in intervening streams sufficiently isolates other frog populations so that recolonization after stochastic (random, naturally occurring) local extinctions is essentially impossible. This mechanism is sufficient to explain the elimination of Sierran mountain yellow-legged frogs from the majority of sites they once inhabited, and, alone or in combination with other factors, introduced trout have almost certainly contributed to the widespread and systematic decline of the southern DPS as well.

Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and trout are routinely planted in Dark Canyon, Fuller Mill Creek in the San Jacinto Mountains, and City Creek in the San Bernardino Mountains. Most of the other streams still occupied by mountain yellow-legged frogs have histories of trout introductions and probably contain naturally reproducing, sustainable populations at, or very near, the sites occupied by the frogs. Wherever the two species co-occur, trout are likely to eliminate mountain yellow-legged frogs or keep populations low and limit dispersal. The widespread occurrence of introduced trout in the mountains of southern California may make it very difficult to reverse the decline to extinction of the DPS.

Another introduced predator that could have effects on the DPS similar to those of the trout, yet on a more limited scale, is the bullfrog, *Rana catesbeiana*. Bullfrogs have been listed among the threats to other western frogs (61 FR 25813; Kiesecker and Blaustein 1998) and toads (59 FR 64859). Bullfrogs are now widespread in southern California and occur in many drainages formerly and currently occupied by mountain yellow-legged frogs. The negative effects of bullfrogs on mountain yellow-legged frogs in the mountains of southern California are probably less widespread than those of introduced trout because there is less overlap in their occurrence. Any habitat alterations that are favorable to bullfrogs, however, will cause them to become abundant locally. In areas where mountain yellow-legged frogs occur, this increase could lead to local extinctions and increased isolation of the remaining populations, which would probably reduce the time to extinction for the entire DPS.

Bradford (1991) documented the loss of a Sierran population of *Rana muscosa* due to the combined effect of "red-leg" disease (caused by the bacterium *Aeromonas hydrophila*) and predation by Brewer's blackbirds, *Euphagus cyanocephalus*. Another pathogen that is generating concern among those who study amphibian declines is the chytrid fungus. Chytrids may be seriously affecting amphibians in many places around the world, and they have recently been discovered on larval mountain yellow-legged frogs in the Sierra Nevada (Gary Fellers, pers. comm. 1999). Because of the small and isolated nature of the remaining populations, disease could be serious. Any local extinctions caused by disease would further isolate the remaining populations and probably reduce the time to extinction for the entire DPS.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms have not stopped the decline of mountain yellow-legged frogs in southern California. Existing regulatory mechanisms that could provide some protection for the mountain yellow-legged frog include: (1) Consideration under the California Environmental Quality Act (CEQA); (2) consideration under section 404 of the Clean Water Act (CWA); and (3) co-occurrence with other species protected by the Endangered Species Act of 1973.

The State of California considers mountain yellow-legged frogs a species of special concern, but it is not a threatened or endangered species and receives no protection under the California Endangered Species Act. California Sport Fishing Regulations include the mountain yellow-legged frog as a protected species that may not be taken or possessed at any time except under special permit from the California Department of Fish and Game. This prohibition may help prevent threats from collecting, but this threat is not a significant cause of the decline, and the DPS is expected to continue declining toward extinction even in the absence of collecting.

The CEQA requires a full public disclosure of the potential environmental impact of proposed

projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines require a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. The CEQA provides that, when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be threatened, or where adverse impacts are not mitigated to the point of insignificance.

Besides the Act, the primary Federal law that potentially affords some protection for the mountain yellow-legged frog is section 404 of the CWA. The CWA may provide some general protections for species, however, this DPS has declined precipitously under this Federal law.

The arroyo toad (*Bufo microscaphus californicus*), a federally listed endangered species, is present in the San Gabriel Mountains, but there is no benefit to the mountain yellow-legged frog because the two species occupy different areas in the San Gabriel Mountains and the arroyo toads are not known to occur elsewhere in the limited range of the mountain yellow-legged frog.

The Angeles and San Bernardino National Forests manage all known locations of mountain yellow-legged frogs in southern California. However, the FS does not include *Rana muscosa* on its list of sensitive species, although the Angeles and San Bernardino National Forests manage the frog as if it were sensitive (M. Rogers, *in litt.*, 1997). Nevertheless, the FS does not have a management plan for the mountain yellow-legged frog or an adaptive management strategy that addresses the specific conservation and recovery needs of the species. As noted in the discussion of factors A through C above, the presence of introduced trout on FS lands is a serious threat, and, now that the DPS has been reduced to small isolated remnants, some other legal recreational activities occurring on FS lands may threaten the remaining frogs. The perilous status of the mountain yellow-legged frog reflects the overall failure or inability of existing CEQA, National Environmental Policy Act, and other Federal, State, and local ordinances and statutes to protect and provide for the conservation of this DPS.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Because the remaining populations of the DPS are small, isolated remnants, they are vulnerable to random natural events that could quickly eliminate them. It is a widely recognized principle that, in general, small populations are more vulnerable to extinction than large ones (Pimm 1991; Noss and Cooperrider 1994). Noss and Cooperrider (1994) identified four major factors that predispose small populations to extinction: (1) Environmental variation and natural catastrophes like unusually harsh weather, fires, or other unpredictable environmental phenomena; (2) chance variation in age and sex ratios or other population parameters (demographic stochastisity); (3) genetic deterioration resulting in inbreeding depression and genetic drift (random changes in gene frequencies); and (4) disruption of metapopulation dynamics (*i.e.*, some species are distributed as systems of local populations linked by occasional dispersal, which wards off demographic or genetic deterioration).

It is likely that some or a combination of these factors contribute to an increased probability of extinction of the remaining populations and the entire DPS. For example, Stewart (*in litt.*, 1995) and Jennings (*in litt.*, 1995) believe that flooding and fires could easily eliminate entire populations of mountain yellow-legged frogs, and Stewart (*in litt.*, 1995) believes flooding during the winter of 1969 was the major factor in the loss of mountain yellow-legged frogs from Evey Canyon in the San Gabriel Mountains. An illustration of possible demographic effects is seen in the results of a limited survey by Jennings (1995), who found skewed sex ratios in the San Gabriel Mountains populations. If the results accurately reflect the real sex ratios in these populations, the effective population sizes are much lower than the census populations. When effective population size is small, the negative consequences can be demographic (*e.g.*, not enough individuals of a given sex) or genetic (e.g., inbreeding depression), and can predispose these populations to a higher risk of extinction. The population genetics and metapopulation dynamics of the southern mountain yellow-legged frog have not been investigated, but we believe that the connectivity of populations within the DPS is substantially reduced compared to the recent past.

Because the southern DPS consists of small, isolated populations, it is particularly vulnerable to some or all of the effects of chance listed above. Given the low probability of improving the status of the DPS under the status quo, the probability of small population size playing a role in the extinction of one or more local populations within the next few years is high. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the entire DPS.

In summary, in southern California the mountain yellow-legged frog DPS is threatened by predation from introduced trout and possibly by other factors (e.g., airborne contaminants, pathogens) that are difficult to pinpoint and are currently the subject of national and worldwide investigations. Other local factors (recreational dredging, camping, day use), that would not cause appreciable harm if the DPS had not been reduced to small remnants, now represent serious actual or potential local threats. Compounding the effects of the large-scale (trout) and local (recreation) threats, the DPS has been reduced to very small isolated or semi-isolated populations that random events are now likely to contribute to local extinctions, which will reduce the time to extinction of the entire DPS. Even though we may never fully understand all the causes of decline, the available information suggests a high probability that this frog may be extinct in southern California within a few decades. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing the DPS in determining to propose listing. Based on this evaluation, we propose to list the southern California DPS of mountain yellow-legged frog as endangered. We considered but did not select other alternatives to this action because not listing this DPS as endangered, or listing it as threatened, would not provide adequate protection and would not be in keeping with the purpose of the Act or the definitions therein. This DPS consists of 9 small, relatively isolated

populations from which a combined total of fewer than 100 adults have been observed in recent surveys. Although all of the factors that have caused it to decline to this low level may never be known, the DPS is in immediate danger of extinction.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)). "Conservation" means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which protection under the Act is no longer necessary.

Due to the small number of populations, the mountain yellow-legged frog is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for the mountain yellow-legged frog and have not found significant specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for this DPS of the mountain yellow-legged frog.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for this DPS of the mountain yellow-legged frog will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the mountain yellow-legged frog without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for this DPS of the mountain yellow-legged frog as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include requirements for Federal protection, prohibitions against certain practices, and recovery actions. The Act provides for possible land acquisition/exchange and cooperation with the States. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below. Listing of the southern California DPS as endangered will provide for the development of a recovery plan. Such a plan will bring together both State and Federal efforts for the mountain yellow-legged frog's conservation. The plan will establish a framework for cooperation and coordination among agencies in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It will also describe site-specific management actions necessary to achieve conservation and survival of the southern California DPS of the mountain yellow-legged frog.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with section 7 regarding the southern California DPS of mountain yellow-legged frog include the U.S. Forest Service through its management activities and the U.S. Army Corps of Engineers through its permit authority under section 404 of the Clean Water Act. These agencies either administer lands containing the DPS or authorize, fund, or otherwise conduct activities that may affect the DPS.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. If the DPS is eventually listed, we believe the following actions would not be likely to result in a violation of section 9:

Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxa that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxa to the list of endangered species.

Activities that the Service believes could potentially harm the southern California DPS of mountain yellow-legged frog and result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of southern California mountain yellow-legged frogs without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken mountain yellow-legged frogs;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section);

(4) Introduction of nonnative species that compete or hybridize with, or prey on, mountain yellow-legged frogs; and

(5) Destruction or alteration of mountain yellow-legged frog habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding; and

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting mountain yellow-legged frogs by mining, or other developmental or land management activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing these permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The distribution of resident rainbow trout in the mountains of southern California prior to the stocking programs of the California Department of Fish and Game;

(3) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(4) Additional information concerning the range, distribution, and population size of this species; and

(5) Current or planned activities in the subject area and their possible impacts on the southern California population of mountain yellow-legged frogs.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein are available upon request from the Carlsbad Field Office (see **ADDRESSES** above).

Author

The primary author of this document is Paul J. Barrett, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
AMPHIBIANS							
*	*	*	*	*	*	*	*
Frog, mountain yellow-legged.	*Rana muscosa*	U.S.A. (California, Nevada) including San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties.	U.S.A., southern California.	E	.....	NA	NA
*	*	*	*	*	*	*	*

Dated: December 10, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–33087 Filed 12–17–99; 11:48 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 991210333–9333–01; I.D. 111099C]

RIN 0648–AN37

Dolphin-Safe Tuna Labeling; Official Mark

AGENCY: National Marine Fisheries Service(NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement provisions of the International Dolphin Conservation Program Act (IDCPA) that pertain to the establishment of an official dolphin-safe mark. This rule proposes that mark. The Dolphin Protection Consumer Information Act (DPCIA), as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that may be used to label tuna products as "dolphin-safe." This rule will allow consumers to distinguish dolphin-safe tuna products using the official mark from non-dolphin-safe tuna products.

DATES: Comments on the proposed rule must be received on or before January 5, 2000.

ADDRESSES: Written comments should be sent to Christopher Fanning, NMFS, Southwest Region, Sustainable Fisheries Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments also may be sent via facsimile, to (562) 980–4047. NMFS will not accept comments sent by e-mail or via Internet. A full color version of the proposed official mark may be found at the NMFS Southwest Region website at http://swr.ucsd.edu/.

FOR FURTHER INFORMATION CONTACT: Christopher Fanning, NMFS, Southwest Region, Sustainable Fisheries Division, (562) 980–4030 or J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562) 980–4020.

SUPPLEMENTARY INFORMATION:

Background

The DPCIA, 16 U.S.C. 1385, as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The IDCPA and the DPCIA became effective on March 3, 1999, when the Secretary of State certified to Congress that the Agreement on the International Dolphin Conservation Program had been adopted and was in force.

Official Mark

As discussed in the proposed rule to implement the IDCPA (64 FR 31806; June 14, 1999), the Secretary of Commerce considered the designation of a commonly used dolphin-safe logo as the official mark, but instead has decided to develop a unique logo as the official mark. This rule proposes a specific logo as the official mark.

The DPCIA establishes dolphin-safe standards applicable to tuna products labeled with either the official mark or an alternative mark, (16 U.S.C. 1385(d)). The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals. The dolphin-safe labeling standards are set forth under 50 CFR 216.91 through 216.94. This proposed rule would codify the official mark at 50 CFR 216.96.

Public Comments Solicited

NMFS is soliciting comments on this proposed rule, including the proposed official mark (see **ADDRESSES**).

Classification

Executive Order 12866

This proposed rule has been determined to not be significant for purposes of E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since the IDCPA does not mandate the use of the official mark, and use of the official mark is discretionary. Thus there are no compliance costs associated with this proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 216

Food Labeling, Marine mammals, Seafood.

Dated: December 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.96 is added to read as follows:

§ 216.96 Official mark for "Dolphin-safe" tuna products.

(a) This is the "official mark" (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the "dolphin-safe" standards set forth in the DPCIA, 16 U.S.C. 1385, and implementing regulations at 50 CFR 216.91 through 216.94:

BILLING CODE 3510–22–F

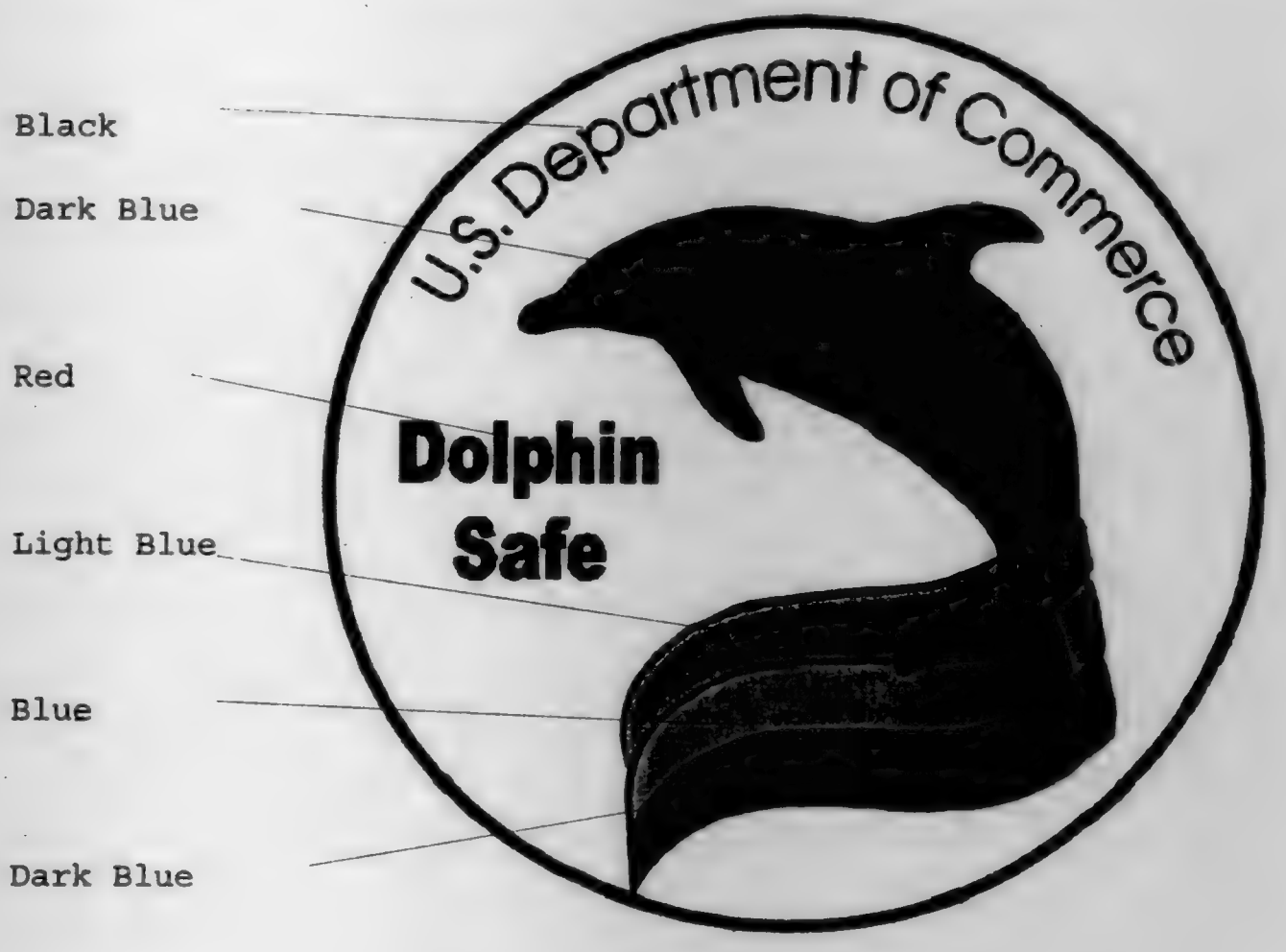


Figure 1.

BILLING CODE 3510–22–C

(b) *Location and size of the official mark.*

The official mark on labels must allow the consumer to identify the official mark and be similar in design and scale to figure 1. A full color version of the official mark may be found at http://swr.ucsd.edu/.

[FR Doc. 99–33065 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 245
Wednesday, December 22, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: January 6, 2000 (9 a.m. to 1 p.m.).
Location: Pan American Health Organization (PAHO), Auditorium A, 525—23rd Street, N.W., Washington, D.C.

The meeting will focus on building new constituencies for U.S. international cooperation in the new millennium. The ACVFA is seeking input from a broad range of private voluntary organizations (PVOs), non-governmental organizations (NGOs), and citizens' groups on fresh strategies for reaching out to new audiences and for building alliances to increase the public's understanding of, and support for, international cooperation and development. The meeting is free and open to the public. However, notification by January 4, 2000 through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Harrison on (703) 741–0567.

Dated: December 9, 1999.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 99–33188 Filed 12–21–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—The Assessment of Computer Matching in the Food Stamp Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval of data collection activities that will help to assess the effectiveness of computer matching in the Food Stamp Program.

DATES: Written comments on this notice must be received by February 22, 2000.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Alberta C. Frost, Director, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Alberta C. Frost, (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: The Assessment of Computer Matching in the Food Stamp Program.
OMB Number: Not yet assigned.
Expiration Date: N/A.
Type of Request: New collection of information.

Abstract: The project entitled "Assessment of Computer Matching in the Food Stamp Program" will examine how States are currently using or planning to use computer matching strategies to reduce fraud and abuse in the Food Stamp Program (FSP). Computer matching is most frequently used in the FSP to verify the eligibility of new applicants (intake) or to verify the continuing eligibility of current recipients (recertification). It is a powerful management tool which has increased program integrity and efficiency.

State program waivers and welfare reform legislation have substantially increased States' discretion and authority for making operational choices. As a result, the States vary considerably on many aspects of program operations, their costs, and their effectiveness. By collecting and disseminating information on computer matching, this project will help States improve program integrity and support FNS oversight to ensure that States manage the FSP as efficiently as possible.

Telephone interviews with appropriate staff in each State will be conducted to determine how they are currently using or planning to use computer matching. To reduce the respondent burden, interview protocols will be customized to include State specific items and exclude non-relevant items for each State.

Estimate of Burden: Public reporting burden is estimated to range between 1 and 2 hours for each respondent.

Respondents: Interviews will be conducted with State staff knowledgeable about food stamp computer matching activities and operations.

Estimated Number of Respondents: An average of 2 respondents for each State or a total of 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Dated: December 16, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33190 Filed 12–21–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Knox-Brooks Timber Sales and Road Rehabilitation; Superior Ranger District, Lolo National Forest; Mineral County, Montana

Authority: 40 CFR 1508.22.

AGENCY: Forest Service, USDA.

ACTION: Notice; Revised notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement (EIS) for the Knox-Brooks Timber Sales and Road Rehabilitation project in the **Federal Register** (vol. 63, no. 127, doc. no. 98–17665) on July 2, 1998. That notice of intent is revised to change the schedule for completion of the draft EIS.

Forest Service Policy mandates that a revised Notice of Intent be filed when there is a delay of more than six months in filing the draft EIS. Originally the draft EIS was to be released in November of 1998 and the final EIS in February of 1999. The draft EIS is now anticipated to be done in January of 2000 with the final EIS published in September of 2000.

DATES: This action is effective upon publication of this notice.

ADDRESSES: Michael Cole, acting District Ranger, Superior Ranger District, Box 460, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Bruce Erickson, EIS Team Leader, Superior Ranger District, as above, or phone: (406) 822–4233.

Dated: December 13, 1999.

Deborah L.R. Austin,

Forest Supervisor.

[FR Doc. 99–33184 Filed 12–21–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 22, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Deferment of RUS Loan Payments for Rural Development Projects.

OMB Control Number: 0572–0097.

Type of Request: Reinstatement, with change, of a previously approved collection.

Abstract: The Deferment of RUS Loan Payments for Rural Development Projects program allows RUS electric and telephone borrowers to defer the payment of principal and interest on any insured or direct loan made under the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912). The purpose of the Deferment program is to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. This program is administered through 7 CFR 1703, subpart H.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3.5 hours per response.

Respondents: Business or other for profit, Not-for-profit institutions.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 140 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 10, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–32956 Filed 12–21–99; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1999 rating year.

FOR FURTHER INFORMATION CONTACT: Ms. M. Catherine Gates, Director of Human Resources, U.S. Commission on Civil Rights, 624 9th Street, N.W., Washington, D.C. 20425, (202) 376–8364.

Members: Gloria Guiterrez, Assistant Director Marketing and Customer Liaison, U.S. Bureau of the Census; Robert Kugelman, Director, Office of Budget, Department of Commerce; Joseph Mancias, Senior Management Counsel, Department of Justice.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–33105 Filed 12–21–99; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Limit for Final Results of Expedited Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of expedited five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of 28 expedited sunset reviews initiated on September 1, 1999 (64 FR 47767) covering various antidumping and countervailing duty orders. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping and countervailing duty orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result of these extensions, the Department intends to issue its final results not later than March 29, 2000.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397, or (202) 482–1560 respectively.

Extension of Final Results:

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. The Department has determined that the sunset reviews of the following antidumping and countervailing duty orders are extraordinarily complicated:

A–583–080 Carbon Steel Plate from Taiwan
C–401–401 Carbon Steel Products from Sweden
C–423–806 Cut-to-Length Carbon Steel Plate from Belgium
C–351–818 Cut-to-Length Carbon Steel Plate from Brazil
C–427–810 Corrosion-Resistant Carbon Steel Flat Products from France
C–580–818 Cold-Rolled Carbon Steel Flat Products from Korea
C–580–818 Corrosion-Resistant Carbon Steel Flat Products from Korea
C–201–810 Cut-to-Length Carbon Steel Plate from Mexico
C–469–804 Cut-to-Length Carbon Steel Plate from Spain
C–401–804 Cut-to-Length Carbon Steel Plate from Sweden
C–412–815 Cut-to-Length Carbon Steel Plate from the United Kingdom
A–602–803 Carbon Steel Flat Products from Australia
A–423–805 Cut-to-Length Carbon Steel Plate from Belgium
A–351–817 Cut-to-Length Carbon Steel Plate from Brazil
A–122–822 Corrosion-Resistant Carbon Steel Flat Products from Canada
A–122–823 Cut-to-Length Carbon Steel Plate from Canada
A–405–802 Cut-to-Length Carbon Steel Plate from Finland
A–427–808 Corrosion-Resistant Carbon Steel Flat Products from France
A–428–815 Corrosion-Resistant Carbon Steel Flat Products from Germany
A–428–814 Cold-Rolled Carbon Steel Flat Products from Germany
A–428–816 Cut-to-Length Carbon Steel Plate from Germany
A–580–816 Corrosion-Resistant Carbon Steel Flat Products from Korea
A–580–815 Cold-Rolled Carbon Steel Flat Products from Korea
A–201–809 Cut-to-Length Carbon Steel Plate from Mexico
A–455–802 Cut-to-Length Carbon Steel Plate from Poland
A–469–803 Cut-to-Length Carbon Steel Plate from Spain
A–401–805 Cut-to-Length Carbon Steel Plate from Sweden
A–412–814 Cut-to-Length Carbon Steel Plate from the United Kingdom

Therefore, the Department is extending the time limit for completion of the final results of these reviews until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33222 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Limit for Preliminary Results of Full Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of full five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of six full sunset reviews initiated on September 1, 1999 (64 FR 47767) covering various antidumping and countervailing duty orders. Based on adequate responses from domestic and respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of the antidumping and countervailing duty orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result of these extensions, the Department intends to issue its preliminary results not later than March 20, 2000.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397, or (202) 482–1560 respectively.

Extension of Preliminary Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. The Department has determined that the sunset reviews of the following antidumping and countervailing duty orders are extraordinarily complicated:

C–428–817 Cut-To-Length Carbon Steel Flat Products from Germany
C–428–817 Corrosion-Resistant Carbon Steel Flat Products from Germany
C–428–817 Cold-Rolled Carbon Steel Flat Products from Germany
A–588–826 Corrosion-Resistant Carbon Steel Flat Products from Japan
A–421–804 Cold-Rolled Carbon Steel Flat Products from The Netherlands
A–485–803 Cut-To-Length Carbon Steel Plate from Romania

Therefore, the Department is extending the time limit for completion of the preliminary results of these reviews until not later than March 20, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33221 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–001]

Sorbitol From France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sorbitol from France. This review covers one manufacturer/exporter of the subject merchandise. The period of review (POR) is April 1, 1998 through March 31, 1999. The respondent failed to respond to our supplemental questionnaires. As a result, we are basing our preliminary results on adverse facts available. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries during the POR.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2924 (Baker), (202) 482–0649 (James).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (1998).

Background

The Department published an antidumping duty order on sorbitol from France on April 9, 1982 (47 FR 15391). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 1998/99 review period on April 15, 1999 (64 FR 18600). On April 30, 1999, SPI Polyols, Inc. (petitioner) requested that the Department conduct an administrative review of Roquette Freres (Roquette). We published a notice of initiation of the review on May 28, 1999 (64 FR 28973).

The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The merchandise under review is crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

Crystalline sorbitol is currently classifiable under item 2905.440.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Use of Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

On May 28, 1999 the Department issued its standard antidumping questionnaire to Roquette. Roquette submitted its response to section A of the questionnaire on July 7, 1999, and its response to sections B and C of the questionnaire on July 30, 1999. On September 23, 1999 and September 29, 1999 the Department issued supplemental questionnaires to Roquette. In an October 6, 1999, submission, Roquette informed the Department that it would not provide the Department with the information requested in the two supplemental questionnaires. The information in these questionnaires related to fundamental problems in Roquette's initial section B and C responses; absent this supplemental information the initial section B and C responses are unusable for purposes of our analysis. Therefore, we determine that the use of facts available is warranted pursuant to section 776(a)(2)(A) of the Act because Roquette withheld information requested by the Department.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997), (Final Rule).

The Department finds that in not responding to the supplemental questionnaires, Roquette failed to cooperate by not acting to the best of its ability to comply with requests for information. Therefore, pursuant to section 776(b) of the Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on the record. For this review we have determined to assign 12.07 percent as the facts available rate to Roquette. This rate represents the highest rate for any respondent in any prior segment of this proceeding. *See Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 52 FR 20444 (June 1, 1987).

Information from prior segments of the proceeding constitutes secondary information, and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1 103d Cong., 2d Sess. 870(1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see*, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we preliminarily find that the 12.07 percent rate is corroborated.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 12.07 percent exists for Roquette for the period April 1, 1998 through March 31, 1999.

Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument, not to exceed five pages in length. Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the submission of rebuttal briefs, if any, or the first working day thereafter. *See* 19 CFR 351.310(d). The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results. *See* 19 CFR 351.213(h).

Cash Deposit

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Roquette will be the rate established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 2.90 percent, the "all others" rate established in the final determination of sales at LTFV (47 FR 7459, February 12, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33223 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan: Preliminary Results of Antidumping Administrative Review and Intent To Revoke in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results in the antidumping duty administrative review of certain welded stainless steel pipe from Taiwan.

SUMMARY: In response to requests from Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and the domestic industry, the U.S. Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain welded stainless steel pipe ("WSSP") from Taiwan for the period December 1, 1997 through November 30, 1998. The Department preliminarily determines that a *de minimis* dumping margin exists for Ta Chen's sales of WSSP in the United States. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen's merchandise during the period of review, in accordance with the Department's regulations (19 CFR 351.106). The preliminary results are listed in the section titled "Preliminary Results of Review," *infra*.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Robert Bolling, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–0409, or 202–482–3434, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Background

On December 30, 1992, the Department published in the **Federal Register** (57 FR 62300) the amended antidumping duty order on WSSP from Taiwan. On December 8, 1998, the Department published in the **Federal Register** (63 FR 67646) a notice of opportunity to request administrative review of this order for the period December 1, 1997 through November 30, 1998. On December 29, 1998, Ta Chen, a Taiwan producer and exporter of subject merchandise, requested that the Department conduct a review of its sales and also requested revocation of the Department's antidumping duty order on WSSP from Taiwan. On December 30, 1998, Avesta Sheffield Pipe Co., Damascus Tube Division, Damascus-Bishop Tube Co., and the United Steelworkers of America, AFL–CIO/CLC (collectively "Petitioners"), on behalf of the domestic industry, requested that the Department conduct an administrative review with respect to Ta Chen. On January 25, 1999, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period December 1, 1997 through November 30, 1998 (64 FR 3682).

On March 12, 1999, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review in its response to Section A of the Department's questionnaire. On April 5, 1999, Ta Chen submitted its responses to Sections B, C and D of the Department's questionnaire. On July 27, 1999, Petitioners requested that the Department reject Ta Chen's request for revocation. Ta Chen submitted a response on August 3, 1999 to the Department's supplemental questionnaire. On September 22, 1999, Ta Chen requested an extension of time in which to respond to the Department's second supplemental questionnaire due to the earthquake in Taiwan on September 21, 1999. On October 5, 1999, Ta Chen submitted its response to the Department's second supplemental questionnaire. On December 8, 1999, the Department issued a third supplemental questionnaire to Ta Chen, the response to which is due December 23, 1999.

Scope of Review

The merchandise subject to this administrative review is certain welded austenitic stainless steel pipe ("WSSP") that meets the standards and specifications set forth by the American Society for Testing and Materials ("ASTM") for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5062, 7306.40.5064, 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

Period of Review

The period of review ("POR") for this administrative review is December 1, 1997 through November 30, 1998.

Verification

Due to administrative constraints, verification prior to the issuance of this notice of preliminary results was not conducted. The Department's regulations stipulate, at section 351.307, that the Department will verify factual information upon which it relies in the final results of an administrative review or in a revocation under section 751(d) of the Act, prior to issuing final results in an administrative review. Accordingly, the Department will verify the information to be used in the final results, after these preliminary results.

Product Comparison

In accordance with section 771(16) of the Act, we considered all WSSP products produced by Ta Chen, covered by the description in the "Scope of Review" section of this notice, *supra*, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to WSSP products sold in the United States. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, grade, size, schedule, and hot/cold rolled. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the February 12, 1999 antidumping duty questionnaire and instructions, or to constructed value ("CV"), as appropriate.

Date of Sale

In the home market and U.S. market, Ta Chen has reported the invoice date as the date of sale. However, the record is unclear as certain information reported in Ta Chen's questionnaire response appears to support the date of the order confirmation as the appropriate date of sale. For instance, for home market sales, Ta Chen reported that between the date of order confirmation and the date of invoice, "it is rare for the terms to change in that short a period, but sometimes the order quantity changes." See Ta Chen's Supplemental Response, at 20 (August 3, 1999). Further, Ta Chen reported that, for its export price ("EP") sales, it would not expect prices to change much between the time of the order and invoicing, and changes did not often occur. For constructed export price ("CEP") sales, Ta Chen reported that price usually does not change during this short period but that quantity might change, though that too is rare. As a result of the unclear record and the nature of marketing of these made-to-order products, on December 8, 1999, the Department requested Ta Chen to

provide additional data on its date of sale.

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. The preamble to the Final Rules ("Preamble") provides an explanation of this policy, as well as examples of when the Department may choose to base the date of sale on a date other than the date of invoice. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27348–49 (May 19, 1997). Ta Chen has reported invoice date, as it understands it to be the Department's preferred approach toward date of sale. See Ta Chen's Section A Response at 8 (March 12, 1999). In accordance with 19 CFR 351.401(i), where appropriate, we based date of sale on invoice dates recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise. However, we intend to fully verify information concerning Ta Chen's claims that invoice date is the appropriate date of sale. Based on the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale. We will consider, among other things, whether, in fact, there were any changes to the material contract terms between the original order confirmation and the date of invoice and, if so, their frequency and relative affected volumes of subject merchandise. See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand, 63 FR 7392 at 7394–95 (February 13, 1998). However, we note that in past reviews, we have used Ta Chen's date of invoice as the date of sale. In adopting the date of sale regulation, we noted that, because of the risk of double-counting, or of omitting sales from our analysis, we would exercise particular care before switching date of sale methodologies between reviews. *See* 62 FR at 27351.

Export Price/Constructed Export Price

Ta Chen reported both EP and CEP sales of subject merchandise for the POR. See Ta Chen's Section A Response, at 3 (March 12, 1999). We analyzed Ta Chen's sales made to the United States and preliminarily determine that, as reported by Ta Chen, there are both EP and CEP sales in the United States during the POR, as there appears to be a distinction in the level of sales activity which Ta Chen's U.S. affiliate performs between the two types of sales, as described below. We will carefully scrutinize each of the claimed differences at verification.

For certain sales to the United States, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, U.S. inland freight, foreign brokerage and handling, U.S. brokerage and handling, containerization expenses, marine insurance, harbor construction tax, international freight, U.S. customs duties, and warehousing expenses.

We preliminarily determined that the remaining sales were CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by Ta Chen's U.S. affiliate, Ta Chen International ("TCI"), after having been imported into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, U.S. inland freight, foreign brokerage and handling, U.S. brokerage and handling, containerization expenses, marine insurance, harbor construction tax, international freight, U.S. customs duties, and warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We recalculated credit expenses because the Department has determined that Ta Chen's submitted U.S. short-term interest rate was not based solely on short-term debt. For a further explanation, see Analysis Memo from Juanita Chen to The File, dated December 14, 1999.

With respect to its reported EP sales, Ta Chen states that it considers these sales as EP sales because: (1) The price and quantity are determined before the pipe is imported into the United States; (2) Ta Chen's U.S. subsidiary, TCI, performs no function with respect to the sales other than processing the paperwork and the pipe is shipped direct from Ta Chen to the U.S. customer, without entering a TCI warehouse; and (3) this has been Ta Chen's normal course of business for such sales and the Department has always treated such sales as EP sales. *Id.*; see also, Ta Chen's Second Supplemental Response, at 6–8 (October 5, 1999). Petitioners argue that Ta Chen's EP sales should properly be classified as CEP sales due to TCI's various responsibilities, involvement and activities related to the sales. See Petitioners' letter to the Department, at 5–6 (August 12, 1999).

Where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the affiliate's involvement in making the sale is incidental or ancillary. See Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Review ("1995–1996 WSSP Final Results"), 63 FR 38382, 38385 (July 16, 1998), citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea ("Steel Flat Product from Korea"), 63 FR 13170, 13177 (March 18, 1998). However, whenever sales are made prior to importation through an affiliated entity in the United States, the Department applies the following three-pronged test in order to determine whether to treat such sales at EP: (1) Whether the merchandise was shipped directly to the unaffiliated buyer, without first being introduced into the affiliated selling agent's inventory; (2) whether direct shipment from the manufacturer to the unaffiliated buyer was the customary channel for sales of this merchandise between the parties involved; and (3) whether the affiliated selling agent located in the United States acts only as a processor of sales-related documentation and communication link between the foreign producer and the unaffiliated purchaser. See Steel Flat Products from Korea, 63 FR at 13177; *see also PQ Corp.* v. *U.S.*, 652 F. Supp. 724, 731 (CIT 1987); *Outokumpu Copper Rolled Products* v. *U.S.*, 829 F. Supp. 1371, 1379 (CIT 1993). Where the requirements for all three prongs are met, the sales are treated as EP.

The first prong is whether the merchandise was shipped directly to the unaffiliated buyer, without first being introduced into the affiliated selling agent's inventory. As in the previous review, for the 1995–1996 administrative review period, no evidence has been presented on the record that contradicts Ta Chen's representation that, in this review, Ta Chen shipped the subject merchandise directly to the unaffiliated U.S. customer without subject merchandise entering a TCI warehouse in the United States. While we note that the verification for the previous review found no evidence to suggest that the merchandise was shipped in any other fashion, we shall nevertheless subject

this statement to verification for this review. Accordingly, the first prong of the EP test is met.

The second prong is whether direct shipment from the manufacturer to the unaffiliated buyer was the customary channel for sales of this merchandise between the parties involved. As with the first prong of the EP test, no evidence has been presented on the record to contradict Ta Chen's representation in this review that direct shipment to the U.S. customer has been its normal course of business with respect to its sales since before this dumping matter began. Accordingly, the second prong of the EP test is met.

The third prong is whether the affiliated selling agent located in the United States acts only as a processor of sales-related documentation and communication link between the foreign producer and the unaffiliated purchaser. The information submitted to the record suggests that TCI's involvement in the sales process remains largely unchanged from the previous administrative review. For the 1995–1996 review period, Ta Chen reported all of its U.S. sales as EP and we determined that "the evidence on record does not support a reclassification of Ta Chen's U.S. sales from EP to CEP transactions. Nothing in the statute, however, precludes the Department from doing so, where appropriate." See 1995–1996 WSSP Final Results, 63 FR at 38385 (July 16, 1998). Ta Chen reports that, for its reported EP sales, TCI merely processes paperwork and serves as a communication link between Ta Chen and the U.S. customer, relaying U.S. customers' price requests to Ta Chen, and relaying the negotiations, acceptances or rejections that follow between the entities. See Ta Chen's Section A Response at 5, 9 (March 12, 1999); Ta Chen's Supplemental Response at 10 (August 3, 1999). Petitioners' argue that TCI issues acceptance or alternative pricing to the U.S. customer. See Petitioners' letter to the Department, at 5 (August 12, 1999). However, Ta Chen has indicated that TCI is merely communicating acceptance or alternative pricing as instructed by Ta Chen. Ta Chen continues to set the base, minimum acceptable price for subject merchandise. See Ta Chen's Supplemental Response at 10, 11 (August 3, 1999). Accordingly, the third prong of the EP test appears to be met for purposes of this preliminary determination, and subject to verification.

The Department takes note that TCI engages in various other functions in the selling process, such as, among others, taking title to subject merchandise, clearing shipment through customs, invoicing the U.S. customer, receiving payment from the U.S. customer (after which TCI pays Ta Chen), paying for ocean shipping, U.S. customs broker charges, and international freight, and issuing credit for returns and errors. In the previous review, we found that three of these activities "were performed by TCI, but that these activities alone were not sufficient to warrant treatment of such sales as CEP transactions." See 1995–1996 WSSP Final Results, 63 FR at 38386 (July 16, 1998). In this review, there is some record evidence that TCI may be performing additional activities. Accordingly, the Department intends to verify closely Ta Chen's description of TCI's activities with respect to its EP sales to evaluate whether TCI's activities rise to the level where they can no longer be considered merely ancillary or incidental to the sale, whereupon such sales should be considered CEP. For our preliminary results, however, the data on the record to date suggests that TCI's involvement in U.S. sales of subject merchandise continues to be minimal, and that the EP sales identified by Ta Chen should remain as such.

Normal Value

After testing home market viability, as discussed below, we calculated normal value ("NV") as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production ("COP"), we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses ("SG&A"), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production in our last administrative review, the most-recently completed segment of these proceedings, we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to section 773(b)(1) of the Act. See 1995–1996 WSSP Final Results, 63 FR 38382; see also section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ta Chen's cost of materials and fabrication

for the foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ta Chen's sales of a given product during the POI were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa; 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. See Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27371 (May 19, 1997).

In the home market, Ta Chen reported that it sold to distributors and end users. Ta Chen claimed that its two customer categories constituted a single LOT. Based upon our examination of information supplied by Ta Chen in its original and supplemental questionnaire responses, we agree that only one LOT existed for Ta Chen in the home market. According to Ta Chen, it provided no strategic or economic planning services, market research, business system development assistance, personnel-training, engineering, advertising, procurement services, inventory maintenance, or post-sale warehousing for customers in either category. However, end-user customers did receive slightly higher levels of research and development and technical assistance than did distributors, but this one slight difference is not sufficient to establish discrete LOTs.

In order to determine whether there were different LOTs among sales in the U.S. market, we reviewed the selling activities associated with each channel of distribution. Ta Chen reported both EP and CEP sales in the U.S. market. However, Ta Chen reported for all of its U.S. sales a single customer category (i.e., distributor). Thus, according to Ta Chen, because all of Ta Chen's sales in the U.S. market were made through a distributor there was only one LOT. In determining whether, in fact, a single stage of marketing existed, we examined the selling functions as reflected in the EP and the CEP. In its questionnaire responses, Ta Chen reported it performed only two selling functions for both EP and CEP sales (i.e., packing, and freight and delivery). Ta Chen reported that it performed a small amount of packing for its U.S. sales and a moderate level of freight and delivery for its U.S. sales. We find preliminarily that there are no differences in selling activities for EP and CEP sales and, as a result, we preliminarily agree with Ta Chen that its EP and CEP sales constitute a single LOT. Once again, these issues will be subject to verification.

When we compared the LOT of Ta Chen's U.S. sales to its home market LOT, we found that Ta Chen provided no strategic or economic planning, market research, business system development assistance, personnel-training, engineering, advertising, procurement services, inventory maintenance, or post-sale warehousing at the EP, CEP, or home market LOT. Ta Chen reported that it provided moderate-to-low technical assistance at its home market LOT, while providing none at its EP or CEP level. Additionally, Ta Chen reported that it provided low after sales services at its home market LOT, while providing none at its EP or CEP level. The majority of packing activity at the home market LOT and EP or CEP level was performed by Ta Chen; however, some repacking occurred at the TCI Los Angeles

warehouse. Freight and delivery arrangements varied between the two markets in that U.S. movement expenses on certain U.S. sales were incurred by TCI, while other sales were made on an "F.O.B." basis. Our analysis of the selling functions performed by Ta Chen in both markets leads us to conclude that any differences in selling activities are not significant. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same LOT. Therefore, we have not made a LOT adjustment because all price comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate. Additionally, because we found that the LOT in the home market matched the LOT of the CEP transactions, we did not provide a CEP offset by adjusting normal value under section 773(a)(7)(B) of the Act.

Revocation

The Department's regulations provide for revocation of antidumping orders under section 351.222. On December 29, 1998, Ta Chen, in its capacity as a Taiwan producer and exporter of subject merchandise, requested that the Department revoke the antidumping duty order on WSSP from Taiwan with respect to Ta Chen. Ta Chen stated that it sold the subject merchandise at not less than normal value for a period of at least three consecutive years, including the current period under administrative review, and that it sold the subject merchandise in commercially significant quantities to the United States during each of these three years.[1] Ta Chen also stated that it would not sell the subject merchandise at less than normal value to the United States in the future and agreed to reinstatement of the order against Ta Chen, as long as any exporter or producer is subject to the order, if the Department concludes that Ta Chen sold the subject merchandise at less than normal value, subsequent to the revocation.

The three review periods on which Ta Chen is basing its request for revocation consist of: (1) The period for 12/1/95 through 11/30/96, for which the Department found a de minimis margin of 0.10 percent; (2) the period for 12/1/96 through 11/30/97, for which no administrative review was conducted; and (3) the period for 12/1/97 through 11/30/98, for which the Department is currently conducting an administrative review. On July 27, 1999, Petitioners requested that the Department reject Ta Chen's request for revocation, arguing that: (1) The 12/1/96 through 11/30/97 period should not count towards the three successive years of no significant dumping necessary for revocation; and (2) public information indicates that Ta Chen will continue its dumping practices if granted revocation, and thus, the years of no dumping notwithstanding, application of the order to Ta Chen continues to be necessary to offset dumping.

First, Petitioners argue that while they did not request an administrative review for the 1996–1997 period, such lack of request was not meant to indicate an opinion that Ta Chen did not dump during that period. See also Petitioners' letter to the Department (March 4, 1998). Petitioners state that Ta Chen's past and current behavior indicates its willingness to sell below normal value. Petitioners provide as examples the results in the 1992–1993 and 1993–1994 administrative reviews of WSSP (wherein the Department found that Ta Chen impeded the reviews), as well as the results in administrative reviews of other Ta Chen products for which the Department issued margins ranging from 10.2–34.95 percent, such as stainless steel plate, and stainless steel sheet and strip (wherein Ta Chen provided incomplete information). Petitioners also assert that Ta Chen has continually restructured its selling practices of WSSP, effectively preventing Petitioners from obtaining the necessary information to estimate the extent of Ta Chen's dumping for the period. Accordingly, Petitioners assert that the Department cannot presume that there was no significant dumping during the unreviewed period.

Under § 351.222(d) of our regulations, the Department may revoke a company from an antidumping order based on three years of no dumping even if the middle year was not subject to administrative review. As noted, supra, Ta Chen has provided information indicating that it had sales in commercial quantities during the intervening year. Regarding Petitioners' citation of the margins issued for Ta Chen in stainless steel plate and in stainless steel sheet and strip, these determinations have little to do with the case at hand. Not only do those administrative reviews involve margins for products other than WSSP, they also involve review periods other than the 1996–1997 period. The Department cannot presume that Ta Chen engaged in dumping of WSSP during the 1996–1997 period merely because it was found to have engaged in dumping for other products in other periods. In the immediately preceding review period of 1995–1996, the Department issued a de minimis margin of 0.10 percent. This margin has greater relevance because it is based on more recent data, and in this case there is no basis to consider older margins as being more relevant. The fact that the margin is subject to change from year to year is why the Department provides the opportunity to request administrative reviews. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR at 27325. Because no administrative review was conducted for the 1996–1997 period, the Department cannot presume a margin exists for that review period. To do so would result in unfairly penalizing the respondent where no review is requested or conducted. As for Petitioners' argument that Ta Chen has restructured its selling practices, Petitioners offer no evidence of how this restructuring has occurred, nor how such restructuring precluded Petitioners from learning about Ta Chen's activities. This is an insufficient basis for the Department to presume that Ta Chen engaged in dumping practices for the 1996–1997 period.

Second, Petitioners argue that trends in pricing, imports and economic factors, as well as Ta Chen's aggressive search for facilities in the United States, indicate that Ta Chen will continue to engage in significant dumping in the future if granted revocation. Petitioners provide three articles discussing the Asian financial crisis in relation to the steel industry. See Petitioners' letter to the Department, at Exhibit 2a (July 27, 1999). However, there is no direct discussion in these articles on the effect the crisis had on Ta Chen and its exports of WSSP. While the first article does discuss the impact of the Asian financial crisis on the Asia-Pacific area, the article focuses only on Japan and Korea; the impact on Taiwan is not discussed. The second article mentions Ta Chen only in the single statement that Ta Chen carries a 6.06 percent margin from the 1992 dumping orders. The third article states that U.S. prices for stainless steel pipe and tube are down after imports to the United States soared from a year earlier. The article Petitioners provide on Ta Chen's alleged search for facilities in the United States (see Petitioners' letter to the Department, at Exhibit 2b (July 27, 1999)) discusses talks between SouthStar Steel Corp. ("SouthStar"), a North Carolina company which imports

[1] On October 12, 1999, the Department requested that Ta Chen provide volume and value data on its exports and sales of subject merchandise for the three consecutive years. Ta Chen provided this data in an October 19, 1999 submission, which supported Ta Chen's statement that it sold subject merchandise in commercially significant quantities to the United States during these three years.

and distributes stainless steel bars, and an undisclosed company identified by industry sources as Ta Chen. The article focuses on SouthStar and how such a partnership would move SouthStar into the coil and sheet business. The article also quotes SouthStar's chairman and chief executive officer as stating that it could be from three weeks to three years before a deal is announced. Thus, the article is both remote and speculative. The remaining reasons Petitioners give to indicate a likelihood that Ta Chen will engage in future dumping are that: (1) The decline of the New Taiwan dollar demonstrates how dumping margins for Ta Chen have been masked due to fluctuations in the exchange rates (see Petitioners' letter to the Department, at Exhibit 2c (July 27, 1999)); and, (2) the pricing of WSSP has declined since 1996 (see Petitioners' letter to the Department, at Exhibit 1 (September 21, 1999)).

Based on the information submitted by Petitioners, there is insufficient support for Petitioners' argument that the Department should reject Ta Chen's request for revocation. The information provided by Petitioners does not indicate a sufficient link between the Asian economic crisis, SouthStar's actions, the decline of the New Taiwan dollar, and/or the pricing of WSSP, and potential future dumping by Ta Chen. We note that the Asian economic crisis reached its peak, and the New Taiwan dollar began its decline during the period covered by the instant review, a period during which our preliminary analysis shows de minimis dumping margins for Ta Chen. Accordingly, a finding by the Department that continued application of the order to Ta Chen is necessary to offset future dumping is too speculative (and effectively presumes dumping by all Asian exporters of stainless steel products), based on the information provided. Accordingly, the Department shall continue to consider Ta Chen's request for revocation, and review the relevant information. Since we preliminarily conclude that all criteria for revocation have been satisfied, we intend to revoke the order as to Ta Chen, subject to verification after this preliminary determination.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

CERTAIN WELDED STAINLESS STEEL PIPE

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen	0.04

The Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed (19 CFR 351.224). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

If the revocation is made final for Ta Chen, it will apply to all unliquidated entries of subject merchandise produced by Ta Chen, exported to the United States and entered, or withdrawn from warehouse, for consumption on or after December 1, 1998, the first day after the period under review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company, will be that established in the final results of this review; (2) For previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 19.84 percent. See Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan, 57 FR 62300 (December 30, 1992).

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with

sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33220 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 121499A]

Availability of an Environmental Assessment and Receipt of an Application for an Endangered Species Act Incidental Take Permit for the California Department of Fish and Game's Striped Bass Management Program Conservation Plan, for the Sacramento-San Joaquin Estuary, and Delta Rivers

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability for public comment and receipt of applications.

SUMMARY: This notice advises the public that the California Department of Fish and Game (CDFG) has applied to NMFS and FWS (the Services) for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The application requests that FWS authorize incidental take of the delta smelt (*Hypomesus transpacificus*), Sacramento splittail (*Pogonichthys macrolepidotus*), and the giant garter snake (*Thamnophis gigas*), all federally listed as threatened, during the implementation of the Striped Bass Management Program (SBMP). The application also requests that NMFS authorize incidental take of the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*), federally listed as endangered, Central Valley spring-run chinook salmon (*O. tshawytscha*), federally listed as threatened, and the Central Valley steelhead (*O. mykiss*), federally listed as threatened, during the implementation of the SBMP. The proposed NMFS permit also would authorize future incidental take of the Central Valley fall/late fall-run chinook salmon (*O. tshawytscha*) should this species become listed under the Act. The permits would be in effect for 10 years.

The Services also announce the availability of an Environmental Assessment (EA) for the incidental take permit applications. The applications include the proposed Conservation Plan (Plan) fully describing the proposed project and mitigation, and the accompanying Implementing Agreement (Agreement). This notice is provided pursuant to section 10(a) of the ESA and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Plan, EA, and Agreement should be received on or before February 22, 2000.

ADDRESSES: Comments regarding the application, Plan, or adequacy of the EA and Agreement with respect to the delta smelt, Sacramento splittail, giant garter snake, or other species for which FWS has responsibility should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Comments regarding the application, Plan, or adequacy of the EA and Agreement with respect to the Sacramento River winter-run chinook salmon, Central Valley steelhead, Central Valley spring-run chinook salmon, Central Valley fall/late fall-run chinook salmon, or other species for which NMFS has responsibility should be addressed to the National Marine Fisheries Service, Southwest Region, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, Attn: Ms. Penny Ruvelas. General comments or comments applicable to both agencies can be sent to either or both of the above addresses. Individuals wishing copies of the application, Plan, EA, or Agreement for review should contact either of the above offices. Documents also will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Robert Pine, FWS, Sacramento Fish and Wildlife Office, telephone (916) 414-6620; Penny Ruvelas, NMFS, Long Beach Office, telephone (562) 980–4197.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened, respectively. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering. The Services, under limited circumstances, may issue permits to authorize "incidental take" of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). FWS regulations governing permits for threatened and endangered species, respectively, are found in 50 CFR 17.32 and 50 CFR 17.22. NMFS regulations governing permits for threatened and endangered species are found in 50 CFR Part 222.307.

Background

CDFG seeks coverage for take of the federally listed delta smelt, Sacramento splittail, giant garter snake, Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, Central Valley steelhead, and the unlisted Central Valley fall/late fall-run chinook salmon (collectively "covered species"), incidental to implementation of the SBMP. The actions proposed to be covered by the Plan and its associated incidental take permits are: (1) annual stocking of 1– and 2-year-old striped bass in the San Francisco Bay/Sacramento-San Joaquin Estuary at numbers sufficient to restore and maintain a striped bass population of 712,000 adults, which is equivalent to the 1994 striped bass population level; (2) possible changes in the striped bass fishing regulations to help reach and maintain the target population level; and (3) monitoring of the overall striped bass population and the success of the stocked fish. Each of these actions may result in take of one or more of the covered species or in circumstances leading to the take of one or more of the covered species. The Plan is designed to include flexibility in its implementation; a series of circumstances or "thresholds" are described which would require adjustments to the SBMP. Thresholds triggering adjustments to the Plan include a low delta smelt abundance index, a low cohort replacement rate for winter-run chinook salmon, unanticipated changes in the striped bass population, and, based on monitoring, estimates of striped bass predation on covered species that are higher than those anticipated in the development of the Plan.

As a part of the Plan, CDFG proposes to monitor the striped bass population, the striped bass diet (i.e., predation on

the covered species), and the populations of the six covered fish species. The Plan also includes measures to minimize the impact of the take, such as a schedule of stocking ratios including 2-year-old bass (as opposed to all yearlings), certain timing and location restrictions on stocking activities, and changes to some of the monitoring protocols to reduce the level of take of covered species. To offset the level of take which cannot be avoided, CDFG will install and maintain fish screens on selected water diversions in both the Bay-Delta (to offset impacts to delta smelt and Sacramento splittail) and the Sacramento River (to offset impacts to Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, Central Valley fall/late fall-run chinook salmon, and Central Valley steelhead). The installation of fish screens is an action in the Delta Native Fishes Recovery Plan,

The EA considers the environmental consequences of four alternatives. Under Alternative 1, the No Action Alternative, the Services would not issue incidental take permits and CDFG would not stock striped bass or implement the associated monitoring. Without stocking striped bass, CDFG estimates that the striped bass population would decline from the 1994 level of 712,000 adults to about 515,000 adults on average over the next 5 years. Predation of the covered species would still occur under the No Action Alternative by the existing striped bass population. Under this alternative, CDFG would not modify trapping methods to reduce impacts to the covered species during striped bass monitoring.

Alternative 2, the proposed action, consists of the issuance of an incidental take permit to CDFG and implementation of the SBMP Plan. This is the proposed alternative, in part, because: (1) measures have been incorporated to minimize incidental take to the greatest extent practicable; and (2) unavoidable impacts are offset by the screening of water diversions on the Sacramento River and in the western Delta/Suisun Marsh.

Under Alternative 3, CDFG would stock 3 million yearling striped bass annually with the goal of restoring the striped bass population to 1.1 million adults. This alternative represents the initial proposal submitted to the Services by CDFG to implement the SBMP. This alternative is more consistent with the striped bass policy adopted by the California Fish and Game Commission in 1996 which establishes interim and long-term striped bass restoration goals of 1.1 million and 3 million adults, respectively, than the proposed action (Alternative 2). However, Alternative 3 would result in greater levels of predation by striped bass on the covered species than the proposed action. Alternative 3 would include similar measures to minimize and mitigate the impacts of the SBMP on the covered species as proposed for Alternative 1 except that mitigation (i.e., providing fish screens) would be commensurately greater because of the greater predation impacts associated with stocking larger numbers of striped bass.

Under Alternative 4, three different scenarios of changes to existing fishing regulations to restore the striped bass population are analyzed: Total Fishery Closure, 26–inch Minimum Retention Size, and 30–inch Minimum Retention Size. All 3 scenarios achieve a striped bass adult population of 712,000 adults after 8 to 13 years without any stocking of juvenile striped bass; however, striped bass harvest would be severely restricted, or prohibited, during this recovery period with unavoidable economic impacts. Mitigation measures are described which mitigate for impacts to covered species by the increment of the striped bass population resulting from the changed fishing regulations.

This notice is provided pursuant to section 10(a) of the ESA and the FWS and NMFS regulations for implementing NEPA. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, permits will be issued for the incidental take of the covered species. The final permit decisions will be made no sooner than 60 days from the date of this notice.

Dated: November 24, 1999.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, U.S. Fish and Wildlife Service, Sacramento, California.

Dated: December 16, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–33199 Filed 12–21–99; 8:45 am]

BILLING CODES 3510–22–F, 4310–55–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

December 16, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner ot Customs adjusting a limit.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 638/639 is being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 58369, published on October 30, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 22, 1999, you are directed to increase the current limit for Categories 638/639 to 2,296,224 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33224 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India; Correction

December 16, 1999.

In the letter to the Commissioner of Customs published in the **Federal Register** on December 16, 1999 (64 FR 70220), Category 606 and its corresponding footnote were inadvertently left out, so please make the following corrections:

In the table on page 70220, Column 3, "Group II" and its corresponding footnotes should read as follows:

Category	Twelve-month restraint limit
Group II 200, 201, 220–227, 237, 239pt. [4], 300, 301, 331–333, 350, 352, 359pt. [5], 360–362, 600–604, 606 [6], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [7], 666, 669pt. [8], 670, 831, 833–838, 840–858 and 859pt. [9], as a group.	135,993,674 square meters equivalent.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[9] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33225 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0003]

Eoff Electric Company, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1115.20(b)(4). Published below is a provisionally-accepted Settlement Agreement with Eoff Electric Company, containing monetary payments totalling between $205,000 and $369,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 6, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1382.

SUPPLEMENTARY INFORMATION: The test of the Agreement and Order appears below.

Dated: December 16, 1999.

Sadye E. Dunn,

Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission, and Eoff Electric Company ("Eoff"), a domestic corporation, to settle the staff's allegations that Eoff distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company ("Cadet"), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The "staff" is the staff of the Consumer Product Safety Commission ("the CPSC" or "the Commission"), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2053, as amended.

2. Respondent Eoff is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business located at 131 Pine Street NE, Salem, OR 97303. Eoff is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names "Cadet" and "Encore." These include all models and variants within each model of the series FW (including models FW–051, FW–101, FW–122, FW–202, and FW–751), manufactured between 1978 and 1987; series FX (including models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–122, FX–151, FX–152, FX–202, and FX–242), manufactured between 1985 and 1994; series LX (including models LX–242, LX–302, LX–402, and LX–482), manufactured between 1985 and 1994; series TK (including models TK–051, TK–071, TK–072, TK–101, TK–102, TK–151, and TK–152), manufactured between 1984 and 1998; series ZA (including models ZA–051, ZA–052, ZA–071, ZA–072, ZA–101, ZA–102, ZA–122, ZA–151, ZA–152, ZA–202, and ZA–242), manufactured between 1985 and 1994; series Z (including models Z–072, Z–101, Z–102, Z–151, Z–152, Z–202, and Z–208), manufactured between 1993 and 1999; and all series and models of the same or functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX–072, RX–101, RX–102, RX–151, RX–152, RX–202, and RX–242), manufactured between 1985 and 1994; series RLX (including models RLX–302, RLX–402, and RLX–482) manufactured between

1985 and 1994; series RK (including models RK–101 and RX–102), manufactured between 1984 and 1998; series RA (including models RA–101, RA–102, RA–151, RA–152, and RA–202), manufactured between 1985 and 1994; and series ZC (including models ZC–072, ZC–101, ZC–102, ZC–151, ZC–152, ZC–202, and ZC–208), manufactured between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as "the Heaters." The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1988, Eoff has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint ("Complaint") against Cadet, seeking a determination that certain of the Heaters present a substantial produce hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Section 15(c) and (d) of the CPSA, 15 U.S.C. §§ 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. §2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire; and/or allow lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. On July 30, 1999, the CPSC approved a Consent Agreement and Order ("the Cadet Order") between the Staff and Cadet which, *inter alia,* required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters ("the Cadet Corrective Action Plan" or "the Plan"), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the "Effective Date" of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter "Order" or "the Order"), which is hereby incorporated by reference, shall resolve all potential obligations of Eoff (and each of Eoff's predecessors, successors, assigns, parents, subsidiaries, affiliated entities, agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively "the Eoff Releasees") under Sections 15(c) and (d) of the CPSA, 15 U.S.C. §§ 2064(c) and (d), to give public notice of the alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the Heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Eoff Releasees for all other claims and causes of action which could have been alleged by the CPSC against the Eoff Releasees relating to the Heaters, based upon information in the CPSC's possession, at the time the CPSC staff signs this Consent Agreement. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 20 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Eoff for replacement heaters, and the staff has concluded that the Cadet Corrective Action Plan, and Eoff's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of consumers.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Eoff or as evidence: (a) of any violation of law or regulation by Eoff; (b) of other wrongdoing by Eoff; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Eoff or with respect to the Heaters.

9. The Heaters are "consumer products" within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C. § 2052(a)(1).

10. Eoff is a "distributor" of "consumer product[s]," which are "distributed in commerce," as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (5), and (11).

11. The CPSC has jurisdiction over Eoff and the Heaters under Sections 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. §§ 2052(a)(1), (5), and (11) and § 2064.

12. For purposes of this settlement only, Eoff agrees not to contest the staff's allegation, which Eoff denies, that the Heaters contain a "defect which creates a substantial product hazard," as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. § 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Eoff knowingly, voluntarily, and completely waives and relinquishes any past, present, and/or future right or rights in this matter: (a) to an administrative or judicial hearing and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (b) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (c) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21 and 24 of this Consent Agreement; (d) to the issuance of a proposed complaint in accordance with 16 CFR § 1115.20(b); and (e) to file any claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15(c) and (d) of the CPSA, 15 U.S.C. §§ 2064(c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject Eoff to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070.

15. Eoff agrees to fulfill all requirements of this Consent Agreement and Order.

16. for all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power. Eoff acknowledges and agrees that this Consent Agreement and Order are pursuant to the CPSC's police and regulatory power to remedy the alleged risk created by the Heaters, and that,

once Eoff signs the Consent Agreement and Order, the Consent Agreement and Order will not be subject to an automatic stay in any bankruptcy proceeding involving Eoff.

17. Eoff acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSA, 15 U.S.C. § 2073, in any United States District Court in which Eoff is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. This Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Eoff merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Eoff shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or tranferee of substantially all of Eoff's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or tranferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Eoff and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Eoff's assets, Eoff shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Eoff may disclose terms of this Consent Agreement and Order to the public.

20. The CPSC, at its sole discretion and upon reasonable notice to the staff and Eoff, may void, suspend, or rescind this Consent Agreement and Order if: (a) Eoff has made material misrepresentations regarding its financial condition as of the date of this Consent Agreement and Order; or (b) in Eoff's submissions to the staff dated May 12, 1999, July 7, 1999, July 9, 1999, and August 23, 1999, Eoff materially misrepresented the quantity of Heaters it sold.

21. If any provision of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC determines, after providing Eoff with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

22. This Consent Agreement and Order have been negotiated by the parties. Eoff is not relying on the advice of the staff, nor anyone associated with the staff, as to legal, tax, or other consequences of any kind arising out of this Consent Agreement and Order, and Eoff specifically assumes the risk of all legal, tax, and other consequences.

23. Eoff acknowledges that this Consent Agreement and Order have been negotiated between unrelated, sophisticated, and knowledgeable parties acting in their own self-interest and represented by counsel, and the provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

24. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve potential claims by the CPSC against Eoff with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the issue for determination by the CPSC. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

25. The existence of a dispute between the staff and Eoff over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation or deadline imposed upon Eoff under this Consent Agreement and Order, other than the specific provision in dispute.

26. This Consent Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the parties and approved by the CPSC.

27. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

28. Eoff's obligations under this Consent Agreement and Order shall terminate when Eoff makes the final payment required under Paragraphs 4 and 5 of the Order.

29. Eoff makes the monetary payments described in Paragraphs 4 and 5 of the Order solely as restitution to find the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Eoff and the staff consent to the entry of the Order attached hereto.

31. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 C.F.R. § 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 C.F.R. § 1115.20(b)(5).

32. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Eoff.

33. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: November 12, 1999.
Howard N. Tarnoff,
Trial Attorney,
Margaret H. Plank,
Trial Attorney,
Eric L. Stone,
Director, Legal Division.
Alan H. Schoem,
Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission.
Dated: November 12, 1999.
Victor L. Bartlett,
CEO, Eoff Electric Company.

Order

Upon consideration of the Consent Agreement entered into between Respondent Eoff Electric Company ("Eoff") and the staff of the Consumer Product Safety Commission ("the staff") (collectively "the parties"); and

The Consumer Product Safety Commission ("the CPSC" or "the Commission") having jurisdiction over the subject matter and Eoff;

It is hereby ordered that:

1. The Consent Agreement between Eoff and the staff is incorporated herein by reference and accepted, and Eoff shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet's series FW, FX, LX, TK, ZA, and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as "the Heaters."

3. Eoff shall immediately cease and desist offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Eoff-owned distribution centers, or any other persons or entities over whom Eoff has control.

4. Eoff shall pay into a staff-designated, interest-bearing escrow account ("the Escrow Account"), the sum of TWO HUNDRED AND FIVE THOUSAND DOLLARS ($205,000), according to the following schedule:

a. FIFTY ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS ($51,250) on or before the later of December 15, 1999, or upon the CPSC's final acceptance of this Order.

b. FIFTY ONE THOUSAND AND TWO HUNDRED AND FIFTY DOLLARS ($51,250) on or before June 15, 2000.

c. FIFTY ONE THOUSAND AND TWO HUNDRED AND FIFTY DOLLARS ($51,250) on or before December 15, 2000.

d. FIFTY ONE THOUSAND AND TWO HUNDRED AND FIFTY DOLLARS ($51,250) on or before June 15, 2001.

5. Eoff shall pay into the Escrow Account contingent contribution(s) of an additional EIGHTY-TWO CENTS ($0.82) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 ("the Cadet Order"); provided that the sum total of all of Eoff's contingent contribution(s) shall be capped at ONE HUNDRED AND SIXTY-FOUR THOUSAND DOLLARS ($164,000), and in no event shall Eoff be required to make more than two contingent contribution payments. Eoff shall pay a contingent contribution within fifteen (15) days of Eoff's receipt of written notice from the staff: (a) that consumers have ordered at least 350,000 total replacement heaters under the Cadet Order; or (b) specifying the number of replacement heaters in excess of 250,000 ordered by consumers within twenty-four (24) months after the Effective Date of the Cadet Order.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above: (a) to offset expenses directly related to Cadet's CPSC-approved Corrective Action Plan; and/or (b) to otherwise remedy the alleged hazard posed by the Heaters.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Eoff fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Eoff shall be liable for additional contributions to the Escrow Account. Such additional contributions shall include the following:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the deposit is not made within thirty (30) days after the due date.

Provisionally accepted and Provisional Order issued on the 16th day of December, 1999.

By Order of the Commission.
Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 99–33103 Filed 12–21–99; 8:45 am]
BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of AmeriCorps*State and National, Gayle Hilleke, (202) 606–5000, extension 431. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Type of Review: New approval.
Agency: Corporation for National and Community Service.

Title: State Administrative Standards Form.

OMB Number: None.

Agency Number: None.

Affected Public: State commissions of the Corporation for National Service.

Total Respondents: 43 state commissions.

Frequency: 14 state commissions annually.

Average Time Per Response: 340 hours per state commission.

Estimated Total Burden Hours: 4,760 hours per 14 state commissions.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The State Administrative Standards Form was developed in consultation with state commissions. State commissions collectively asked for clearly stated standards by which the Corporation would assess the adequacy of their administrative systems. The Corporation developed indicators of competency for each standard and a process for using these Standards for both self- and external assessment purposes. The Corporation seeks approval of its new State Administrative Standards Form. The information that is collected will help the Corporation determine the extent to which each state commission has in place the administrative systems for effective operation. The form will be used for both self- and external assessments of grantees. Assessment results will be used by grantees for continuous improvement and by the Corporation for guiding training and technical assistance resources, determining appropriate levels of grantee oversight, and determining eligibility for access to competitive funding and multi-year administrative awards.

Dated: December 17, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33172 Filed 12–21–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 22, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Headquarters U.S. Army, ROTC Cadet Command, Marketing Directorate, Fort Monroe, Virginia 23651, ATTN: (CPT Eric Miller, Jr.). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: ROTC Smart Book Creative Research Survey.

Needs and Uses: The Army ROTC Program produces approximately 75 percent of newly commissioned officers for the U.S. Army. To do that, Army ROTC employs the services of an advertising agency, under joint contract with USAREC and OCAR. The agency provides all advertising, from concept through creation and placement, under the supervision of the U.S. Army Cadet Command Directorate of Marketing and Public Affairs. To determine the best way to attract quality young people, the agency and Cadet Command need to evaluate the creative concepts prior to production and placement. This is done by gathering opinions from prospects in the form of a survey.

Affected Public: Individuals or Households.

Annual Burden Hours: 200.

Number of Respondents: 800.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Other (one time).

SUPPLEMENTARY INFORMATION: The response will be captured on a standard survey instrument which will be designed to comply with OMB guidance, and the responses will be entered into a contractor database for analysis. The purpose of the information (opinions) is to refine targeted advertising to meet ROTC recruiting needs.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–33137 Filed 12–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Release of the Notice of Availability on the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Military Ocean Terminal, Bayonne, NJ

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: This FEIS was prepared by the Army in compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality. The closure of the Military Ocean Terminal, Bayonne, New Jersey (MOTBY) was mandated in accordance with the recommendations of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the "BRAC law").

DATES: The review period for the FEIS will end on or before January 21, 2000.

ADDRESSES: Questions and/or written comments regarding the FEIS, or a request for a copy of the document may be directed to: U.S. Army Corps of Engineers, U.S. Army Engineer District, Mobile, ATTN: CESAM–PD (Dr. Susan Ivester Rees), 109 St. Joseph Street, Mobile, AL 36602.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Ivester Rees at 334–694–4141 or by facsimile at 334–690–2727.

SUPPLEMENTARY INFORMATION: The FEIS analyzes three alternative courses of action with respect to the disposal and subsequent reuse of the 676-acre (440 land acres and 236 submerged land acres) comprising the MOTBY: (1) The no action alternative, under which the property would be maintained in a caretaker status after closure; (2) the unencumbered alternative, under which the Army would transfer the property without encumbrances, such as environmental restrictions and

easements; and (3) the encumbered disposal alternative, under which the Army would transfer the property with various environmental restrictions and easements, limiting the future use of the property. Additionally, this FEIS analyzes the potential environmental and socioeconomic consequences of three community reuse alternative; (1) Low intensity reuse alternative; (2) low-medium intensity reuse alternative; and (3) medium intensity reuse alternative.

The FEIS concludes the no action alternative is not reasonable since the closure of MOTBY is mandated by BRAC law, and the Army has no requirement to retain the property. The FEIS also concludes that the unencumbered disposal alternative is not feasible given environmental conditions and legal requirements.

The Army's preferred alternative course of action is the encumbered disposal of excess property. Possible encumbrances include: convenants and restrictions pertaining to asbestos-containing material; lead-based paint; floodplaints; future remedial activities after transfer, wetlands and easements; and rights-of-way.

Community reuse of the MOTBY property is analyzed in the FEIS as a secondary action resulting from closure and disposal by the Army. While the Army does not control the community's reuse of the property, under NEPA, the Army is required to analyze the reasonably foreseeable impacts of its disposal action. The local community has established the Bayonne Local Redevelopment Authority (BLRA) to develop and implemented a reuse plan for the installation. Approval and implementation of the reuse plan are within the discretion of the BLRA.

Comments on the FEIS, received during the public comment period, will be used in preparing the Army's Record of Decision.

Copies of the FEIS have been forwarded to the EPA, other federal, state, and local agencies; public officials; and organizations and individuals who previously provided substantive comments in the EIS scoping process. Copies of the FEIS are avaialble for review at the following libraries. The Bayonne Free Public Library, 697 Avenue C, Bayonne, NJ 07002–2806; the Jersey City Public Library, 472 Jersey Avenue, Jersey City, NJ 07302; and the Newark Public Library, 5 Washington Street, Newark, NJ 07102.

Dated: December 14, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 99–33112 Filed 12–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Reissuance of MTMC Freight Traffic Rules Publication (MFTRP) No. 1A as MFTRP No. 1B

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services, proposes canceling MFTRP No. 1A in its entirety and reissuing it as MFTRP No. 1B.

DATES: Comments must be submitted on or before February 22, 2000.

ADDRESSES: Comments may be sent as follows: by fax: 703–681–9871 attn: Jerome Colton; by e-mail: coltonj@mtmc.army.mil.; by mail or courier to: Headquarters, Military Traffic Management Command, ATTN: MTOP–JF (Jerome Colton), Room 606, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Jerome Colton at 703–681–1417.

SUPPLEMENTARY INFORMATION: The proposed effective date for the change would be April 1, 2000.

The proposed text of MFTRP No. 1B is available on the MTMC web site at *www.mtmc.army.mil* by clicking in succession on: (1) Transportation Services, (2) Freight Logistics, (3) Freight Traffic Rules Publications and then clicking on the appropriate button indicating the 1B. Individuals without access to the Internet may obtain a copy of the proposed text by sending a request (and including their full postal mailing address) to either the fax number or the e-mail or U.S. mailing addresses indicated earlier in this announcement under **ADDRESSES**. Requests for the proposed text will not be received telephonically.

Significant changes prompting the reissuance of the publication include but are not limited to:

1. Changes to Descriptors (e.g., use of 3-character ANSI accessorial codes vice 2-character DOD codes).

2. Substantive changes to some high-profile rules (e.g. Exclusive Use, Alteration).

3. Harmonization of some rules with MTMC Guaranteed Traffic Rules Publication (MGTRP No. 50) as a first step to merging all rules publications.

4. Standardizing inconsistencies in style, wording, and format as a result of piecemeal changes over the years, and extensive use of tables to display information vice older formats using tabs.

5. Deletion of items duplicated in other source documents, such as the Tender Instructions (MT Form 364), & Carrier Qualifications in 32 CFR.

6. Inclusion of new items (e.g. Electronic Commerce, PowerTrack).

Informal feedback has been sought from industry on numerous occasions; meetings were held with various motor carrier groups (e.g. NDTA, ATA, MCC, NMFTA) early in the reissuance process (August 1998) and more recently (June, July, & October 1999). Some of this informal feedback has been incorporated into the proposed text. Formal comments from the public are now invited.

Regulatory Flexibility Act: This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act: The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection requirement or recordskeeping responsibilities are imposed on offerors, contractors, or members of the public.

Walter Scullion,

Chief, Freight Services Division (Acting), Joint Traffic Management Office.

[FR Doc. 99–33136 Filed 12–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–05: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. Applications should describe research projects in one of the following categories:

1. Research projects that address the scientific aims of individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics, Biomolecular Science and Engineering, and Assessment.

2. Research projects to be performed at a Field Research Center addressing field scale biostimulation of microbiological processes that immobilize metals and/or radionuclides. Interdisciplinary teams should include, at a minimum, experts in the fields of microbiology, geochemistry, and hydrology.

DOE has proposed to establish a Field Research Center (FRC) at one of two national laboratories, either the Y–12 site near Oak Ridge National Laboratory (ORNL) or the Hanford site at Pacific Northwest National Laboratory (PNNL). DOE is now preparing an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA) to determine whether to prepare an environmental impact statement or a finding of no significant impact for the establishment of an FRC at one of these alternative sites. As part of its assessment, the Department will also evaluate a "no-action" alternative under which it would preserve the status quo and establish no FRC. The Department has identified ORNL as its preferred alternative in the draft Environmental Assessment.

Any awards made to perform research at the FRC will be contingent upon the outcome of this NEPA review, and no awards will be made until the appropriate NEPA review is completed. All research applications that are bounded by the assumptions, impacts, and analysis of the Environmental Assessment will be presumed to be covered by the Assessment. All research applications that appear to exceed the assumptions, impacts, or analysis of the Assessment will be reviewed to determine what, if any additional NEPA review is required.

Applications for research in the Bacterial Transport (Acceleration) or System Integration Elements will not be considered at this time. Applications for research on Bioremediation and its Societal Implications and Concerns (BASIC) will be solicited under a separate announcement.

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. Early submission of preapplications is encouraged, to allow time for review for programmatic relevance. A brief preapplication should consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., February 28, 2000, to be accepted for merit review and to permit timely consideration for award late in Fiscal Year 2000 or in early Fiscal Year 2001. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preliminary application, referencing Program Notice 00–05, it should be sent by e-mail to anna.palmisano@science.doe.gov.

Formal applications referencing Program Notice 00–05 on the cover page must be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–05. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9963, e-mail: anna.palmisano@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 00–05 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The mission of the NABIR Program is to provide the fundamental science to serve as the basis for development of cost-effective bioremediation of radionuclides and metals in the subsurface at DOE sites. NABIR research encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of nutrient amendments (inorganic, organic or enzymatic) or microbial amendments. The program consists of seven interrelated scientific research elements (Biogeochemical Dynamics, Biotransformation, Community Dynamics and Microbial Ecology, Biomolecular Science and Engineering, Biotransformation and Biodegradation, Bacterial Transport, and Systems Integration/Data Management). The program also includes an element addressing ethical, legal and social issues of bioremediation called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program desires to integrate a field research capability with its existing research program. DOE has proposed to establish a Field Research Center (FRC) at one of two national laboratories, either the Y–12 site near Oak Ridge National Laboratory (ORNL) or the Hanford site at Pacific Northwest National Laboratory (PNNL). DOE is now preparing an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA) to determine whether to prepare an environmental impact statement or a finding of no significant impact for the establishment of an FRC at one of these alternative sites. As part of its assessment, the Department will also evaluate a "no-action" alternative under which it would preserve the status quo and establish no FRC. The Department has identified ORNL as its preferred alternative in the draft Environmental Assessment. Any awards made for research to be performed at the FRC will be contingent upon the outcome of this NEPA review, and no awards will be made until the appropriate NEPA review is completed. All research applications that are bounded by the assumptions, impacts, and analysis of the Environmental Assessment will be presumed to be covered by the Assessment. All research applications that appear to exceed the assumptions, impacts, or analysis of the Assessment will be reviewed to determine what, if any, additional NEPA review is required. Additional information about NABIR and the proposed Field Research Center can be accessed from the NABIR Homepage: http://www.lbl.gov/NABIR/.

Program Focus

The NABIR Program supports hypothesis-driven research that will help determine the potential for, and advance the field of, bioremediation as a cleanup option at the DOE sites. The focus of the NABIR Program is on field-scale research addressing metal and radionuclide contamination in subsurface environments at DOE sites. However, the research program will support laboratory, theoretical, modeling, and other non-field research projects, if they fill gaps that would be necessary to complete understanding for field-scale applications. Although the program is directed at specific goals, it supports research that is more fundamental in nature than demonstration projects. The NABIR program emphasizes the bioremediation of metals and radionuclides in the subsurface below the root zone, including both vadose and saturated zones. Typically, the bioremediation of metals and radionuclides involves, but

is not limited to, mobilization and immobilization scenarios. Investigators without access to laboratories licensed to work with radionuclides may propose research with non-radioactive surrogates of radionuclides, or collaborate with investigators working in a licensed laboratory. Research on bioremediation of organic contaminants, such as solvents and complexing agents will not be considered, except to the extent that they influence the primary goal of understanding the remediation of metals and radionuclides. The NABIR Program will not support research to evaluate the risk to humans or to the environment. Applicants are encouraged to review the NABIR Primer, available at http://www.lbl.gov/NABIR/primer/primer.html, for information on contaminants of DOE interest.

NABIR is a research program designed to serve as a foundation for developing microbial in situ bioremediation techniques. Although ancillary benefits of the research to other cleanup needs such as the use of bioreactors to process waste streams are anticipated, NABIR will not support research leading to ex situ treatments. NABIR research may, however, lead to the application of in situ bioremediation in conjunction with other cleanup methods, for example, using bioremediation to mobilize radionuclides so that pump-and-treat techniques could be more effective. Problems characterized by large areas with low-concentration of contaminants are emphasized over problems of localized, high concentrations. Research on phytoremediation will not be supported by NABIR.

Research plans that involve the potential release of nutrients, enzymes, and/or chemicals to the field (both at contaminated and non-contaminated control sites) should discuss the involvement of the public or stakeholders in their research, beginning with experimental design through completion of the project. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research.

A centrally-maintained database is being developed to provide appropriate data, such as site characterization and kinetics data, needed by a broad segment of investigators. Applications shall include a short discussion of the Quality Assurance and Quality Control (QA/QC) measures that will be applied in data gathering and analysis activities. Successful grantees will be expected to coordinate their QA/QC measures with NABIR program personnel.

Current Request for Applications

Two kinds of projects are solicited in this request for applications:

1. Research projects that address the scientific aims of individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics, Biomolecular Science and Engineering, and Assessment.

2. Research projects to be performed at a Field Research Center addressing field scale biostimulation of microbiological processes that immobilize metals and/or radionuclides. Research would be conducted at the proposed NABIR Field Research Center near Oak Ridge National Laboratory, Oak Ridge, TN or the Hanford site at Pacific Northwest National Laboratory (PNNL). Interdisciplinary teams should include, at a minimum, experts in the fields of microbiology, geochemistry, and hydrology.

Applications for research on Bacterial Transport and Systems Integration will not be addressed at this time. Applications for research on Bioremediation and its Societal Implications and Concerns (BASIC) will be solicited under a separate announcement.

Research Projects Addressing Individual Elements

Applicants for research projects within individual program elements should state which science element is most closely aligned with the proposed research. Although applicants may propose research that transcends more than one research element, a primary element should be specified for the purpose of merit review.

Biogeochemical Dynamics: Successful bioremediation of metals and radionuclides at DOE sites is closely linked to understanding the complex and dynamic interplay of hydrological, geochemical, and biological processes within geological media. Understanding the natural biogeochemical processes that control the mobility and form of radionuclides is one of the most challenging problems affecting the future viability of bioremediation at DOE sites, particularly within the thick vadose zones and saturated zones below the root zone where much of the contamination resides.

DOE cleanup problems are at the field scale; the immediate priority in biogeochemical dynamics is to understand the underlying mechanisms and processes governing metal and radionuclide behavior to the field. Focus will be on understanding how natural biogeochemical processes control the mobility and stability of contaminants in waste mixtures, including the biogeochemical processes that modify the form and behavior of contaminants in mixtures. New and creative scientific approaches are sought that address the following fundamental research questions:

- What are the principal biogeochemical reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases?
- What are the thermodynamic and kinetic controls on these reactions?
- What are the major factors controlling the rate and extent of oxidation and reduction of multivalent radionuclides and naturally-occurring metals in various mineral phases? How can these factors be manipulated to enhance or limit the mobility of contaminants?
- What are the biogeochemical and transport processes that control biological availability, transformation, and movement of radionuclides and metals?

Biotransformation: Biotransformation of metals and radionuclides in subsurface environments is poorly understood, and predictive models based on laboratory studies have not always accurately simulated the observed fate of metals and radionuclides in the field. Knowledge of the metabolic pathways for transformation of these contaminants by naturally occurring microbial communities in vadose zones, saturated zones and the waste plume is needed. It is important to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics. Research is needed to address questions such as:

- What are the metal-and radionuclide-transforming capabilities of indigenous microorganisms in deep vadose or saturated zones representative of DOE sites?
- What are the metabolic pathways for microbial transformation of metals and radionuclides, and can these biological processes be harnessed to sequester metals and/or radionuclides in the subsurface?
- What factors control the kinetics of desirable metal and radionuclide biotransformations in vadose and saturated zones?
- How important are microbial consortial interactions in the biotransformation of metals and radionuclides?

• How is the biotransformation of metals and radionuclides affected by chelators?

• *Community Dynamics and Microbial Ecology:* Fundamental research in Community Dynamics and Microbial Ecology at both the molecular and the microbial level is needed to understand the natural intrinsic processes of bioremediation at contaminated sites. Knowledge of microbial community structure and function may ultimately provide the ability to control or stimulate subsurface communities capable of transformation of radionuclides and metals. The influence of environmental factors on subsurface communities is important to determining the potential for metal and radionuclide biotransformation. Research should be directed toward the characterization of microbial communities at contaminated sites, and toward understanding microbial community dynamics in the presence of metals and radionuclides. Research is needed to address questions such as:

• Is there sufficient biological activity and diversity in subsurface environments to support natural and/or accelerated bioremediation of metals and radionuclides?

• What are the effects of metals and radionuclides on microbial community activity and diversity, including both metabolic and genetic activity and diversity?

• Do different microbial species interact within communities in subsurface environments contaminated with metals and radionuclides? Such interactions might include competition for substrate, or consortial interactions for transformation of metals and radionuclides.

Biomolecular Science and Engineering: The overall goal of research in the Biomolecular Science and Engineering element is to use molecular and structural biology to enhance understanding of bioremediation of metals and radionuclides, and to genetically modify macro-molecules and microorganisms to improve their bioremedial activities. Using information and data gained from other program elements, the molecules, enzymes, and enzymatic pathways that are most effective for bioremediation of metals and radionuclides will be identified. DOE objectives and priorities for research in Biomolecular Science and Engineering are to: (i) Identify, clone, and sequence novel genes and promoters important to the bioremediation of metals and radionuclides; (ii) construct or enhance bioremedial enzymatic pathways; and (iii) transfer key genes for bioremediation to microbes that can survive and compete effectively in a contaminated subsurface environment. Field release of genetically engineered microorganisms at the proposed FRC, however, will not be allowed. Research in these areas is encouraged that includes:

• How can we identify and characterize important genes, gene clusters, promoter elements, proteins, and protein pathways involved in the detoxification of metals and radionuclides or that affect the ability of organisms to live and survive under conditions in which metals and radionuclides are present in significant amounts?

• How can we identify and characterize genes, gene clusters, and promoter elements from different organisms that can work together to effect bioremediation?

• How can we identify and characterize the transfer or acquisition of genes, gene clusters, and promoter elements from one organism to another that can influence processes involved in bioremediation?

• What novel and innovative technologies for the identification and characterization of genes, gene clusters, promoters, and pathways involved in bioremediation can be explored and, on a field scale, used?

Assessment: The two primary objectives of research in the Assessment program element are to study innovative and effective methods for assessing or quantifying (i) bioremediation rate and activity, including microbial community structure and dynamics, biotransformation processes and rates, and electron flow; and (ii) bioremediation end points, including not only the concentration and speciation of the contaminants and byproducts but also the stability and bioavailability of residual end-products. NABIR will not, however, fund projects that examine human health risks of end points. Priority will be given to research applications that could lead to fieldable, cost-effective, real time assessment techniques and/or instrumentation. Assessment research addressing bacterial transport will not be covered in this solicitation. Research is sought to answer questions such as:

• Can quantitative techniques be adapted or developed for measurement of microbial community structure, activity, and effectiveness during bioremediation?

• What are the geophysical, geochemical, and hydrologic properties critical to bioremediation effectiveness and how can they be quantitatively determined?

• Can bioremediation endpoints that accurately measure bioavailability be quantitatively established?

Field Scale Bioremediation Experiment

Although bioremediation of metals and radionuclides has been studied in the laboratory, and bioremediation technologies have been demonstrated in the field, there are few examples of carefully controlled, hypothesis-driven, in situ bioremediation research at the field-scale. The availability of contaminated sites for NABIR research at the proposed Field Research Center would create an opportunity for such field scale experiments. The focus of the first set of field experiments at the proposed FRC would be on immobilization of metals or radionuclides in situ by microbiological processes.

Applicants should propose a testable hypothesis for field research, and they should describe a detailed technical approach that should include (1) Establishing an experimental and control plot within the proposed contaminated field site, and (2) manipulating the experimental plot by amendments of nutrients or other chemicals that might stimulate microbial communities to immobilize contaminants such as uranium. A statistically robust sampling regimen to determine the efficacy of the manipulation should also be described. Moreover, the applicant must explain the technical feasibility of performing the proposed field research.

The applicants should propose research to be performed as an interdisciplinary team including, at a minimum, expertise in microbiology, geochemistry and hydrology. The Principal Investigator for the team must have prior experience in relevant field research. Multi-institutional partnerships are strongly encouraged; for example, applicants may draw expertise from National Laboratories, academia, and other institutions engaged in basic research. The applicants should also describe how they would communicate their proposed experimental design and their results to stakeholders, regulators, and community groups. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. For further information on the proposed FRC, access the NABIR Homepage or contact Mr. Paul Bayer (paul.bayer@science.doe.gov).

It is anticipated that approximately $5 million will be available for multiple awards to be made in late FY 2000 and early FY 2001 in the categories described above, contingent on availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for projects in the five scientific research element projects are expected to range from $100,000 to $400,000 total costs. Annual budgets for interdisciplinary field research projects at the proposed FRC are expected to range from $300,000–$1,000,000 for total costs. Costs for drilling at the proposed FRC should not be included in the applicant's budget. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments should include short curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate, for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following web site: http://www.lbl.gov/NABIR/. For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, SC–74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: karen.carlson@science.doe.gov; for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 15, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–33200 Filed 12–21–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–07: New Programs in Fusion Energy Sciences

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science, U.S. Department of Energy (DOE) announces its interest in receiving grant applications for new research in fusion energy sciences. Programs planning to submit applications for renewal or continuation funding in FY 2000 should not submit to this Notice, but rather submit according to the procedures outlined in 10 CFR part 605.

The specific areas of interest are:

1. Magnetic Fusion Concept Exploration Experiments;
2. Inertial Fusion Energy Concept Exploration Research;
3. Inertial Fusion Energy Chamber and Target Research;
4. Magnetic Fusion Liquid Wall Experiments;
5. Fusion Materials Modeling.

More specific information on each area of interest is outlined in the general and program specific supplementary information sections below. Each grant application can be submitted to only one area of interest. Applicants must identify the area of interest in their formal submission.

DATES: To permit timely consideration for awards in Fiscal Year 2000, applications submitted in response to this notice must be received no later than 4:30 p.m., February 29, 2000. Electronic submissions of formal applications will not be accepted.

Applicants are requested to submit a letter-of-intent by January 31, 2000, which includes the title of the proposal, the name of the principal investigator(s), the requested funding and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely manner. Electronic submissions of letters-of-intent are acceptable.

ADDRESSES: The completed formal applications referencing Program Notice 00–07 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–07. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand-carried by the applicant.

Letters-of-intent referencing Program Notice 00–07 should be forwarded to: U.S. Department of Energy, Office of Science, Office of Fusion Energy Sciences, SC–50, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: John Sauter. Letters-of-intent can also be submitted via E-mail at the following E-mail address: john.sauter@science.doe.gov

FOR FURTHER INFORMATION CONTACT: Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

Magnetic Fusion Concept Exploration Experiments: Ronald A. Blanken, Research Division, SC–55; Telephone: (301) 903–3306 or 4095, or by Internet address, ronald.blanken@science.doe.gov.

Inertial Fusion Energy Concept Exploration Research: Ronald McKnight, Research Division, SC–55; Telephone: (301) 903–4597 or 4095, or by Internet address, ronald.mcknight@science.doe.gov.

Inertial Fusion Energy Chamber and Target Research: Gene Nardella, Facilities and Enabling Technologies Division, SC–52; Telephone: (301) 903–4956 or 3068, or by Internet address, gene.nardella@science.doe.gov.

Magnetic Fusion Liquid Wall Experiments: Sam Berk, Facilities and Enabling Technologies Division, SC–52; Telephone: (301) 903–4171 or 3068, or by Internet address, sam.berk@science.doe.gov

Fusion Materials Modeling: Bill Wiffen, Facilities and Enabling Technologies Division, SC–52; Telephone: (301) 903–4963 or 3068, or by Internet address, fw.wiffen@science.doe.gov.

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science Financial (SC) Assistance Program and 10 CFR part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Approximately $1,900,000 of Fiscal Year 2000 funding divided by program element as outlined below will be available to start new projects from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Since future year funding is not anticipated to increase, applications should propose constant year effort (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications requiring annual funding as low as $50,000 are welcomed and encouraged.

New research is herein defined as research which is not within the scope of work of existing programs. In cases where the new work assumes the availability of a facility, experimental apparatus or base group to perform the work, the funding source(s) for the base must be identified in the grant application.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement for DOE National Laboratories for some of the areas of interest will be available on the Office of Science Grants and Contracts Web Site. In the case of collaborative applications submitted from different institutions which are directed at a single research activity, each application must have a distinct scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. Further information on preparation of collaborative proposals may be accessed via the Internet at http://www.sc.doe.gov/production/grants/Colab.html.

To enable all reviewers in each category to read all applications in that category, the application must be limited to a maximum of twenty (20) pages (including text and figures) plus no more than one page each of biographical information and publications of the principal investigator. Although it is not required, it would be helpful for each applicant to submit fifteen (15) copies of their application due to the anticipated number of reviewers; otherwise the standard number of copies must be received with each application as outlined in the Application Guide.

In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce results within the first project period after grant initiation (typically three years but as many as five years in the case of grants where construction of complex experimental apparatus is required). The detailed description of the proposed research in addition to the information required by 10 CFR part 605 should contain the following items: (1) A succinct statement of the goal of the research, (2) A detailed research plan, (3) The specific results or deliverables expected at the end of the project period, (4) A detailed analysis of the adequacy of the facilities and budget, (5) Discussion of how the research would elucidate the physics or engineering principles of the innovation, and (6) Discussion of why this research would have an important impact on the prospects for either magnetic or inertial fusion.

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of the applicant's personnel and adequacy of the proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

Program Specific Information

Magnetic Fusion Concept Exploration Experiments

Grant applications are desired for new innovative scientific experiments that have the possibility of leading to improved magnetic fusion systems (this includes tokamak based systems with improved performance). The research should be aimed at experimentally elucidating the physics principles of such improved systems. Experiments are sought which are unique, first of a kind and which provide new insights.

These funds are targeted toward the establishment of new experiments and are not meant to support collaborations on existing concept exploration or proof-of-principle experiments. Applications for research on existing large tokamaks, independent theory investigations and new diagnostic development should not be submitted in response to this notice. Applications for new programs based on the replacement of the cores of existing experimental facilities with cores designed to study new physics ideas are allowed. Approximately $600,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Inertial Fusion Energy Concept Exploration Research

Grant applications are desired for new concept exploration scientific research that has the possibility of leading to improved inertial fusion energy systems. Such research may include, for example, expanding the scientific basis for concepts which could lead to significant increases in performance for more developed approaches. Efforts directed toward providing advances in physics understanding of problem areas, which have potentially high impact on inertial fusion energy science, are also of interest. Primary interest is in experimental programs, although it is recognized that part of a coordinated application may include theory and modeling in support of experiments. It is not anticipated that stand-alone theory applications will be supported. Approximately $400,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Inertial Fusion Energy Chamber and Target Research

Grant applications are desired for new innovative research that will address the key critical issues in the chamber systems, target technology, and safety and environmental areas for both heavy ion and laser driven inertial fusion energy systems. Examples of critical issues in the chamber systems area for heavy ion drivers are liquid chamber clearing and final focus/chamber interface. Examples of critical issues in the chamber systems area for laser drivers are chamber material lifetime uncertainty and final optics design and survivability. Examples of critical issues in the target technology area are low-cost, high production rate target fabrication and accurate injection and tracking. Examples of critical issues in the safety and environmental area are minimization of accident consequences and management of radioactive materials. The examples identified are not an inclusive list. This research can be either experimental and/or analytical in nature. Approximately $200,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Magnetic Fusion Liquid Wall Experiments

Grant applications are sought for innovative experiments that can significantly advance the knowledge base for plasma chamber concepts using liquids in direct contact with plasmas for first walls, divertors, and/or limiters. Research on such liquid wall approaches should be aimed at providing fundamental data and at elucidating dominant phenomena for a more complete scientific understanding of the following key issues: (a) Effects of liquid surfaces on plasma edge and core performance, particularly with regard to influx of particles to the plasma and trapping/pumping of particles from the plasma, (b) effects of liquid surfaces on plasma stability and confinement, particularly with regard to influences from shells and flows of electrically conducting liquids, and (c) limits of power handling and operating temperature for candidate liquid coolants, particularly with regard to turbulence and MHD considerations in free surface flow thermal-hydraulics. Proposed experiments must be accompanied by supporting analysis and modeling activities that provide for an ability to interpret experimental data and support development of computational tools for predicting liquid wall behavior under fusion-relevant conditions. Background information about ongoing research related to liquid walls can be obtained through the Internet at the following web sites: http://www.fusion.ucla.edu/APEX/ and http://pentium.ep.anl.gov/alps/. Approximately $300,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Fusion Materials Modeling

Applications are solicited for three-year grants for research on modeling and/or theory that will expand the knowledge base on understanding of the behavior of structural materials in the service environment of fusion systems. In particular, effects of the temperature, neutron flux, stress state, system fluids, dissimilar materials contact, or other components of the environment are of interest. Response to stresses arising from thermal, mechanical or other loading sources can be included. Material composition, microstructure and/or macrostructure variables may also be relevant to particular modeling approaches. In a broader sense, proposed research should also contribute to advancing the science of the behavior of materials. While the focus must be on the fusion environment, importance of proposed work beyond the interests of fusion should be identified. A particular goal of proposed modeling and/or theoretical research should be to add value to the in-place experimental program of research on materials for fusion systems. Models are desired that can guide and help interpret costly and difficult-to-obtain experimental results and that can be applied to resolving key material feasibility issues. Applications that request funding for experimental work will not be considered. However, close collaboration with the currently in-place fusion and/or other experimental materials programs is expected and encouraged. Critical interfaces with experimental programs should be identified. Background information and definition of specific areas of interest are provided in two documents produced by the fusion materials community and available on the Internet at the Virtual Laboratory for Technology (VLT) web site, located at http://vlt.ucsd.edu/. The documents are "A Whitepaper Proposing an Integrated Program of Theoretical, Experimental, and Database Research for the Development of Advanced Fusion Materials" and "Advanced Materials Program", which is Appendix D of the VLT Roadmap. These documents should be used for background and guidance, but should not be considered as establishing absolute boundaries or scope for this solicitation. Relevance of proposed research to fusion materials, especially to the feasibility issues identified in the above two referenced documents, will be considered in the process of selecting grant applications for funding. Approximately $400,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on December 15, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–33201 Filed 12–21–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–135–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1999.

Take notice that on December 10, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 10, 2000:

Seventh Revised Sheet No. 251
Original Sheet No. 397A
Original Sheet No. 397B
Original Sheet No. 397C

CNG states that the purpose of this filing is to comply with the open tap condition for disposition of jurisdictional assets as approved by the Commission in Docket No. EC 99–81–000.

CNG states that copies of its letter of transmittal and enclosures have been served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33129 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–45–000]

Eastern Shore Natural Gas Company; Notice of Application

December 16, 1999.

Take notice that on December 9, 1999, Eastern Shore Natural Gas Company, (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed in Docket No. CP00–45–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), for authorization to abandon certain facilities, and to construct and operate various facilities in Delaware, Pennsylvania and Maryland, in order to provide additional firm transportation capacity on Eastern Shore's system, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/htm* (call 202–208–2222 for assistance).

Specifically, Eastern Shore proposes to (1) construct and operate approximately two miles of 16-inch mainline looping in Pennsylvania, (2) abandon one mile of 2-inch lateral in Delaware and Maryland and replace this segment with a 4-inch lateral in Delaware and Maryland, (3) construct and operate approximately ten miles of 6-inch mainline extension in Delaware, (4) construct and operate five delivery points on the new 6-inch mainline extension in Delaware, and (5) install certain minor auxiliary facilities at the existing Daleville compressor station in Pennsylvania. Eastern Shore states that the facilities are required to provide additional firm transportation service of 7,065 dekatherms (dt) per day as requested by three of Eastern Shore's local distribution company customers, NUI Corporation (3,000 dt), Conectiv Power Delivery (1,200 dt), and Delaware Division of Chesapeake Utilities Corporation (2,865 dt).

Eastern Shore asserts that it conducted an open season between April 1 and May 7, 1999, and asserts that the result was that the three customers have fully subscribed the capacity to be made available to satisfy increased market demand. It is estimated that the cost of the proposed facilities would be $4,215,200, to be financed from internally generated funds and short-term notes, with permanent financing to be arranged on completion of construction. Eastern Shore requests a preliminary determination that the total cost of the project be given rolled-in rate treatment, stating that the project is in accordance with the Commission's recent policy statement issued in PL99–3–000.

Any questions regarding the application may be directed to Stephen C. Thompson, President, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 6, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein and if the Commission, on its own review of the matter, finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Eastern Shore to appear, or be represented, at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33125 Filed 12–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–136–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1999.

Take notice that on December 10, 1999, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective February 1, 2000:

Seventh Revised Sheet No. 29

El Paso states that the tariff sheet revises the fuel charges applicable to transportation service on El Paso's system in compliance with the Commission's order issued November 10, 1999, at Docket No. RP95–363–002, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reading Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33130 Filed 12–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–134–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 16, 1999.

Take notice that on December 10, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Twenty-Seventh Revised Sheet No. 4, Fourteenth Revised Sheet No. 4A and Eleventh Revised Sheet No. 6C, with an effective date of January 1, 2000.

PG&E GT–NW states that these tariff sheets establish PG&E GT–NW's Gas Research Institute (GRI) surcharge for calendar year 2000.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33128 Filed 12–21–99; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–188–000, ER00–213–000, and EL00–22–000]

PSI Energy, Inc., Cincinnati Gas & Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

December 16, 1999.

Take notice that on December 15, 1999, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL00–22–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL00–22–00, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 99–33124 Filed 12–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–24–000 and RP00–24–001]

Transcontinental Gas Pipe Line Corporation; Notice of Technical Conference

December 16, 1999.

In the Commission's order issued on November 26, 1999,[1] the Commission directed that a technical conference be held.

Take notice that the technical conference will be held on Wednesday, January 19, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, to address issues raised by the filing, concerns raised by the protestors, and explore the possibility of settlement.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33127 Filed 12–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718–011]

Cocheco Falls Associates; Notice of Availability of Draft Environmental Assessment

December 16, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA is for petitions to revise the license for the Cocheco Falls Project with respect to fish passage. The DEA recommends reasonable modifications to project structures and operation to benefit fish passage and that such modifications would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Hydropower Licensing,

[1] 89 FERC ¶ 61,240 (1999).

Federal Energy Regulatory Commission. Copies of the DEA can be viewed in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, NE, Washington, DC 20426. The DEA can also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Comments on the DEA are invited. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers for substance should be supported by appropriate documentation. Comments should be filed within 60 days from the date of this notice with David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, and should reference Project No. 4718.

For further information, please contact the project manager, Mr. Robert H. Grieve, at (202) 219–2655.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33126 Filed 12–21–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6514–3]

State and Tribal Environmental Justice Grants Program—FY 2000

The State and Tribal Environmental Justice (STEJ) Grants Program was intended, from its inception, to be a pilot program for states and tribes to develop model environmental justice programs for the benefit of other states and tribes. As published in the **Federal Register**, November 1, 1999, Volume 64, Number 210, the Agency had initially planned to award STEJ grants in FY 2000. However, the STEJ grants program will not be funded in fiscal year 2000, but instead will be evaluated to determine whether the objectives of the program are being met.

Over the past two years, the Agency awarded ten STEJ grants. These grants will be the focus of the evaluation. If you have any questions about the STEJ Grants Program and/or the Agency's plan to conduct an evaluation of the program, please contact Daniel Gogal, STEJ Grants Program Manager, Office of Environmental Justice, at (202) 564–2576, or 1–800–962-6215.

Dated: December 16, 1999.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 99–33156 Filed 12–21–99; 8:45 am]

BILLING CODE 6580–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6513–7]

Gulf of Mexico Program—Citizens Advisory Committee Meeting

AGENCY: U. S. Environmental Protection Agency (US EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The CAC meeting will be held on Thursday, January 20, 2000 from 3:00 p.m. to 5:30 p.m. and on Friday, January 21, 2000 from 8:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 101 South Adams Street, Tallahassee, Florida (850) 224–5000.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Director's report on the status of the GMP with particular emphasis on place-based work within states; facilitated discussion of the role and functions of the CAC within the GMP as presently constituted; and CAC members will report on their representation on the Focus Teams and Operational Committees.

The meeting is open to the public.

Dated: December 14, 1999.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 99–33153 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6514–2]

Draft Health Assessment Document for Diesel Emissions

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the extension of the public comment period for the draft Health Assessment Document for Diesel Emissions (EPA/600/8–90/057D, November 1999). The document was prepared by the National Center for Environmental Assessment Office (NCEA) within EPA's Office of Research and Development.

DATES: In the November 15, 1999, **Federal Register** (64 FR 61875), EPA announced a limited public comment period through December 17, 1999. The Agency is now extending the public comment period to January 28, 2000. Comments must be in writing and must be postmarked by January 28, 2000.

ADDRESSES: The draft document is available on the Internet at http://www.epa.gov/ncea under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff, (telephone: 202–564–3261; facsimile: 202–565–0050). If you are requesting a paper copy, please provide your name, mailing address, and the title and number for the draft: "Health Assessment Document for Diesel Emissions" (EPA/600/8–90/057D, November 1999).

Comments may be mailed to: Diesel Comments, NCEA–W/TIS (8623D), USEPA, Washington, DC 20460. Please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. If sent via overnight delivery, please use the following address: 808 17th St., 5th Floor, N.W., Washington, DC 20006. Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commenters should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For information contact Charles Ris (202–564–3203); mailing address: NCEA–W (8623D), USEPA, Washington, DC 20460; facsimile: 202–565–0078.

SUPPLEMENTARY INFORMATION: This revised draft assessment updates two earlier drafts (1998 and 1994) and focuses on health hazards (hazard identification and dose-response analysis for the purpose of characterizing the risk of diesel exhaust exposure), and also provides background information about diesel engine emissions and exposure that is useful for putting the health information into context. EPA risk assessment methods and practices have been followed in identifying possible human chronic health hazards for adverse

noncancer effects as well as carcinogenicity hazards. The Diesel Review Panel of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board met on December 1, 1999, to review this draft Health Assessment Document for Diesel Emissions.

Dated: December 15, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–33157 Filed 12–21–99; 8:45 am]

BILLING CODE 3560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30465A; FRL–6395–9]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Isomate - BAW Pheromone containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Judy Loranger, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8056; and e-mail address: loranger.judy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30465A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of (*Z,E*)-9,12-Tetradecadienyl acetate and (*Z*)-9-Tetradecen-1-ol, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of (*Z,E*)-9,12-Tetradecadienyl acetate and (*Z*)-9-Tetradecen-1-ol when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of December 16, 1998 (63 FR 69281) (FRL–6046–7), which announced that Biocontrol Limited, 400 East Evergreen Blvd., Suite 205, Vancouver, WA 98660, had submitted an application to register the pesticide product, Isomate - BAW Pheromone, a pheromone (EPA File Symbol 53575–ER), containing a mixture of 69% (*Z,E*)-9,12-Tetradecadienyl acetate and 26% (*Z*)-9-Tetradecen-1-ol. This product was not previously registered.

The application was approved on September 23, 1999, as Isomate BAW Pheromone (EPA Registration Number 53575–21) for use on alfalfa, asparagus, beans, beets, cabbage, celery, cole crops, cotton, cucumbers, ground nuts, lettuce, onions, peas, peppers, soybeans, strawberries, sweet potatoes, tomatoes and tobacco to control beet armyworm. It should be noted that since the publication of the **Federal Register** notice to announce the application to register the pesticide product, the address of the applicant has changed

and the amount of active ingredient listed in the product has changed. The applicant's current address is: 16010 NE 36th Avenue, Ridgefield, WA 98642. The product now contains 55% (*Z,E*)-9,12-Tetradecadienyl acetate and 24.8% (*Z*)-9-Tetradecen-1-ol.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 10, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–33037 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP- 30487; FRL–6399–3]

Plant-Pesticide Corn Rootworm Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30487, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30487 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 9th floor, 1921 Jefferson Davis Hwy, CM #2, Arlington, VA, (703) 308–8715, mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30487. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30487 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30487. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or

all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

EPA File Symbol: 524–LRA. Applicant: Monsanto Company, 700 Chesterfield Parkway North, St. Louis, Mo 63198. Product name: Corn Rootworm Protected Corn Hybrids. Active ingredient: *Bacillus thuringiensis* Cry3Bb protein and the genetic material necessary for its production (Vector ZMIR14L) in corn; Proposed classification/Use: None. For full commercial registration on corn.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 10, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–33163 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34146B; FRL–6391–2]

Availability of Reregistration Eligibility Decision Document for Comment; Receipt of Requests for Voluntary Cancellation, Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the Reregistration Eligibility Decision (RED) document for the pesticide active ingredient Sulfotepp. The RED represents EPA's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

The companies that hold the pesticide registrations of pesticide products containing sulfotepp (*0,0,0,0*-tetraethyl dithiopyrophosphate) have asked EPA to cancel their registrations for these products. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these voluntary cancellation requests from the registrants. EPA intends to grant the requests for voluntary cancellation and intends to issue a cancellation order at the close of the comment period for this announcement. EPA is proposing that the voluntary cancellations shall be effective on September 30, 2002, unless EPA determines before September 30, 2002, that worker and bystander risks do not exceed the Agency's level of concern. After September 30, 2002, any distribution, sale, or use of canceled sulfotepp products will only be permitted if such distribution, sale, or use is consistent with the terms of the cancellation order that the Agency intends to issue.

DATES: Comments, identified by docket control number OPP–34146B, must be received on or before February 22, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34146B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Robbi Farrell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number:703–308–8065; and e-mail address: farrell.roberta@epa.gov.

SUPPLEMENTARY INFORMATION:

This announcement consists of four parts. The first part contains general information. The second part contains the announcement of the availability of the RED. The third part addresses the registrants' requests for voluntary cancellation of their registrations of pesticide products containing sulfotepp. The fourth part proposes a cancellation order, which includes requirements relating to the distribution, sale, and use of existing stocks of canceled sulfotepp products.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those persons who use these chemicals in agricultural production. You may be potentially affected by this action if you manufacture, sell, distribute, or use sulfotepp products. Potentially affected categories and entities may include, but are not limited to commercial greenhouses and certified pesticide applicators. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the people

listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access the RED documents and RED fact sheets electronically, go to the REDs table on the EPA Office of Pesticide Programs' home page, http://www.epa.gov/REDs. For related information, see http://www.epa.gov/pesticides.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34146B. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34146B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34146B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What is the Agency's Authority for Taking these Actions?

The legal authority for these reregistration eligibility decisions falls under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, which directs that "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration" before calling in data on products and either reregistering products or taking "other appropriate regulatory action."

II. Notice of Availability of the Reregistration Eligibility Decision

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticide active ingredient sulfotepp. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides initially registered before November 1984, to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical listed in this document is incomplete. Due to the high risks estimated with available information and their inability to fulfill the data requirements needed to refine the risk assessment, the registrants requested a voluntary cancellation of their registrations. The Agency intends to grant the requests for voluntary cancellation. In addition, the Agency intends to order that the registrations be canceled effective September 30, 2002, and that any distribution, sale, or use of canceled sulfotepp products will not be lawful after September 30, 2004. By December 1999, all sulfotepp products will bear amended labels designed to improve worker and bystander

protection. This RED document describes risks of concern to the Agency, outlines the label amendments required for all registered products, and sets forth the timeline for cancellation and phase-out of sulfotepp and sulfotepp products.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60–day comment period. The 60–day public comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

III. Receipt of Requests for Voluntary Cancellation

In a memorandum of agreement ("Agreement") effective September 30, 1999, EPA and all registrants of products containing sulfotepp agreed to take several steps to reduce the risks associated with the use of sulfotepp. Based on the limited data available, EPA estimated that risks of dermal and inhalation exposure to workers and bystanders were very high. Practical, effective options for mitigation were limited, and the registrants were unable to provide the data needed to refine the risk assessment. EPA reached this agreement with the registrants to reduce those risks. As part of the Agreement, the registrants, among other things, agreed to amend the labels of their end-use products to reduce applicator risk and to cap production of sulfotepp. The registrants also requested to voluntarily cancel their sulfotepp registrations. As a result, EPA agreed not to initiate any suspension or cancellation proceedings under sections 3 or 6 of FIFRA to achieve the risk reduction measures set forth in the Agreement.

Prior to the effective date of the Agreement, each registrant submitted to EPA, pursuant to section 6(f) of FIFRA, a request for voluntary cancellation of all existing registrations held by the registrant of pesticide products containing sulfotepp. The registrations for which cancellations have been requested are identified in the table below. In the Agreement, the registrants conditioned their requests for voluntary cancellation on the following: (1) The cancellations shall be effective on September 30, 2002; (2) the cancellations shall not become effective if EPA determines prior to September 30, 2002, that worker and bystander risks do not exceed the Agency's level of concern based on the submission of new data deemed acceptable by the Agency; and (3) any resulting cancellation order will include the terms set forth in the Agreement.

Company	Reg. No	Product	SLNs
Fuller System Inc.	1327–38	Fulex Dithio Smoke Fumigant	N/A
	1327–39	Sulfotepp Technical	N/A
Plant Products Corporation	8241–10	Plantfume 103	CA89005900
	8241–11	Sulfotepp Technical	N/A

Section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. As part of the Agreement, the registrants requested that the Administrator waive any applicable public comment period under section 6(f) before taking action on their requests to cancel the registrations of the products identified in the table above. In light of this request, EPA is granting the request to waive the 180–day comment period but is nonetheless providing a 60–day public comment period before taking action on the requested cancellations. This 60–day comment period will coincide with that provided for comments on the RED document as discussed in Unit II of this Notice. EPA intends to grant the requested cancellations at the close of the comment period for this announcement. The requested cancellations shall be effective on September 30, 2002, unless EPA determines before that date that worker and bystander risks do not exceed the Agency's level of concern.

IV. Proposed Cancellation Order

The registrants have requested voluntary cancellation of the registrations of the sulfotepp products identified in the table above. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary cancellation and intends to order that the registrations of the pesticide products identified in the table be canceled on September 30, 2002. This announcement proposes the provisions for that cancellation order, including requirements for existing stocks. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term "existing stocks" will be defined, pursuant to EPA's existing stocks policy (56 FR 29362, Wednesday, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation. Any distribution, sale, or use of existing stocks of the canceled sulfotepp products after September 30, 2002, that is not consistent with the terms of the cancellation order that the Agency intends to issue will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

A. Existing Stocks Provisions

1. *Distribution or sale by registrants.* The distribution or sale of existing stocks by registrants will not be lawful under FIFRA after September 30, 2004, except for the purpose of shipping such stocks for export consistent with the requirements of section 17 of FIFRA or for proper disposal.

2. *Distribution or sale by other persons.* The distribution or sale of existing stocks by persons other than registrants will not be lawful under FIFRA after September 30, 2004, except for the purpose of shipping such stocks for export consistent with the requirements of section 17 of FIFRA or for proper disposal.

3. *Use of existing stocks.* The use of existing stocks will not be lawful under FIFRA after September 30, 2004. Any

use of existing stocks of canceled product prior to October 1, 2004, must be in accordance with either the directions for use contained in the Agreement or the existing labeling of that product.

List of Subjects

Environmental protection, pesticides and pests, Memorandum of agreement.

Dated: December 15, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–33160 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

OPP–30486; FRL–6397–1

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: NOTICE

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30486, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA. It is imperative that you identify docket control number OPP–30486 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The Product Manager, Registration Division (7505C), listed in the table below:

Product Manager	Office address/telephone no.	E-mail address
Cynthia Giles-Parker, PM 22.	Rm. 249, CM #2, 1921 Jefferson Davis Highway, 703–305–7740	giles-parker.cynthia@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically* .You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "T4Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30486. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703)–305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA. It is imperative that you identify docket control number OPP–30486 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703)–305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov,"or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic

submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30486. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1.File Symbol: 70880–R. Applicant: GMJA Specialties, 1001 13th Avenue, West Bradenton, FL 34208. Product Name: Technical PT807–HCl Plant Growth Regulator. Active Ingredient: *N,N*-Diethyl-2(4-methylbenzyloxy) ethylamine hydrachloride at 50%. Proposed/Classification: None. Use Pattern: Foliarly applied to orange trees to accelerate maturation - Formulation use only.

2. File Symbol: 70880–E. Applicant: GMJA Specialties. Product Name: Ecolyst Plant Growth Regulator. Active Ingredient: *N,N*-Diethyl-2(4-methylbenzyloxy)ethylamine hydrachloride at 3.3%. Proposed/ Classification: None. Use Pattern: Foliarly applied to orange trees to accelerate maturation.

3. File Symbol: 707–ETE. Applicant: Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. Product Name: Zoxium 80W Fungicide. Active Ingredient: 3,5-(Dichloro-*N*-(3-chloro-1-ethyl-methyl-2-oxopropyl-4-methylbenzamide at 80%. Proposed/Classification: None. Use Pattern: Control of downy mildew on grapes and late blight on potatoes.

4. File Symbol: 707–ETU. Applicant: Rohm and Haas Company. Product Name: Gavel 75DF Fungicide. Active Ingredient: 3,5-Dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methylbenzamide at 66.7%. Proposed/ Classification: None. Use Pattern: Control of downy mildew on grapes and early and late blight on potatoes.

5. File Symbol: 707–ETG. Applicant: Rohm and Haas Company. Product Name: Zoxium 80 WSP Fungicide. Active Ingredient: 3,5-Dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl-4-methylbenzamide at 80%. Proposed/ Classification: None. Use Pattern: Control of downy mildew on grapes and late blight on potatoes.

6. File Symbol: 707–ETR. Applicant: Rohm and Haas Company. Product Name: RH-117281 Technical Agricultural Fungicide. Active Ingredient: 3,5-Dichloro-*N*-(-3-chloro-1-ethyl-1-methyl-2-oxopropyl-4-methylbenzamide at 95%. Proposed/ Classification: None. Use Pattern: Control of downy mildew on grapes and late blight on potatoes. For formulation use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 6, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–32870 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00627; FRL–6390–9]

Pesticides; Availability of Registration Division's Fiscal Year 2000 Work Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Prevention, Pesticides and Toxic Substances, Office of Pesticide Programs, Registration Division (RD) is announcing the availability of its interim Fiscal Year 2000 work plan. This work plan as well as the FY1999 work plan can be found at http: //www .epa.gov/opprd001/ workplan. Because the Office of Pesticide Programs' FY2000 Operating Plan has not been finalized, this work plan is only interim in nature. Once the Office's plan is finalized, RD will publish a second notice of availability making public the posting of our final FY2000 work plan. With the publication of each year's work plan the Registration Division intends to continue to improve the transparency of the registration process of new active ingredients and/ or new tolerance petitions.

DATES: Comments, identified by docket control number OPP–00627, must be received on or before February 22, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00627 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Steve Robbins, Registration Division (7505 C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6439; fax number: (703) 305–6920; e-mail address: robbins.steve@epa. gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me? quit

This action is directed to the public in general. This action may, however, be of interest to any one who has interest in chemicals that are registered by the Registration Division in the Office of Pesticide Programs in the Environmental Protection Agency's Office of the Assistant Administrator for Prevention, Pesticides, and Toxic Substances. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents ?

1. *Electronically*: You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http: // www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http: // www.epa.gov/ fedrgstr/. To access RD's FY2000 work plan, go directly to www.epa.gov/opprd001/workplan.

2. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

The Agency has established an official record for this action under docket control number OPP–00627. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–O0627 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and ServicesDivision (7502C), Office of Pesticide Programs (OPP), Environmental ProtectionAgency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excludinglegal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa. gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00627. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the rule or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Office of Prevention, Pesticides and Toxic Substances, Office of Pesticide Programs, Registration Division (RD) is announcing the availability of its interim Fiscal Year 2000 work plan. This work plan as well as the FY 1999 work plan can be found at http: //www.epa.gov/opprd001/ workplan. Because the Office of Pesticide Programs' FY2000 Operating Plan has not been finalized, this work plan is only interim in nature. Once the Office's plan is finalized, RD will publish a second notice of availability making public the posting of our final FY2000 work plan.

Review of the registration process reveals a diversity of priority needs: there are statutory priorities such as minor use, me-too, and reduced risk actions; registrants frequently submit their top business priorities; USDA submits priorities on the basis of crop/ pest combinations; priorities for grower groups are channeled directly to EPA or revealed by trends in Section 18 requests; and priorities for public

interest groups are frequently related to contemporary issues, such as identifying methyl bromide replacement chemicals and alternatives to certain organophosphate pesticides.

This work plan represents RD's attempts at balancing these numerous priorities. In no way, however will RD neglect the many other action (e.g., label amendments, me-toos and emergency exemption) requests that are currently pending or will be submitted to the Agency during FY2000. The Agency has constructed this work plan to include some flexibility to respond to emerging public health or environmental issues. While forecasting such issues can be difficult, the Agency is committed to working with all affected parties to address their needs on an expeditious basis. Any submission which creates a modification to the schedule will, of course, require the appropriate justification and scientific data which will allow the Agency to make a sound, health-based decision. Such adjustments, however, may result in the need to modify this work plan during the fiscal year.

With the publication of each year's work plan the Registration Division intends to continue to improve the transparent y of the registration process of new active ingredients and/or new tolerance petitions.

List of Subjects

Environmental protection, Pests and pesticides.

Dated: October 29, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–32673 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–899; FRL–6391–1]

E.I. du Pont de Nemours and Company; Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–899, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–899 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5697; and e-mail address: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–904. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–904 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–899. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petition

The petitioner summary of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. PP 3F4268

EPA has received a pesticide petition (PP 3F4268) from E.I. de Nemours and Company (DuPont), DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing permanent tolerances for the combined residues of quizalofop-p-ester (ethyl (*R*)-(2–(4–((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate) and its acid metabolite quizalofop-p [R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on the raw agricultural commodities foliage of legumes vegetables (except soybeans) at 3.0 parts per million (ppm); legume vegetables (succulent or dried) group at 0.25 ppm; beet, sugar, molasses at 0.2 ppm; beet, sugar, root at 0.1 ppm, and beet, sugar, top at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The registrant has provided plant metabolism studies for soybeans, cotton, tomatoes, potatoes, and sugar beets. These studies have been previously reviewed in PP 3F4268.

In summary, quizalofop-p ethyl ester is metabolized by cleavage at three sites as follows:

· i. Primary pathway is hydrolysis of the ethyl ester linkage to form the quizalofop-p acid, then;

ii. Cleavage of the enol ether linkage in the acid, between the phenyl and quinoxalinyl rings, to form phenols, and

iii. Cleavage of the ether between the isopropanic group and the phenyl ring to form a phenol.

The plant metabolism data show that quizalofop-p ethyl ester does not translocate, but is rapidly hydrolyzed to the corresponding acid; then the phenols conjugate with the plant sugars. Metabolism studies in soybeans using the racemic mixture quizalofop ethyl ester and the resolved D+ isomer show nearly identical pathways.

The nature of the quizalofop-p ethyl ester residue in cottonseed, potatoes, tomatoes, soybeans, and sugar beets is adequately understood. The residues of concern are quizalofop-p ethyl ester and its acid metabolite, quizalofop-p, and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p ethyl ester.

2. *Analytical method.* An adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I). There are currently no actions pending against the registration of this chemical. Any secondary residues expected to occur in eggs, milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry from this use will be covered by existing tolerances.

Adequately validated residue analytical method, DuPont 2829 (Xenos Method XAM-38A, Determination of Quizalofop-P-Ethyl and its Metabolites in Canola, Flax, Lentils, Peas, Dry and Succulent Beans and Sugar Beet Tops and Roots, by Liquid Chromatography). This method determines residues of quizalofop-p-ethyl and its metabolites in oilseed and other crops. It measures levels of quizalofop-p-ethyl, quizalofop-p acid and conjugates as total residues in the form of 2-methoxy-6-chloroquinoxaline (MeCHQ). Quantitation was carried out using normal phase high pressure liquid chromatography with fluorescence detection. The residues were expressed as equivalents of quizalofop-p-ethyl.

A successful tolerance method validation (TMV) on DuPont 2829 (Xenos Method XAM-38A) is not a prerequisite for a tolerance on beans (succulent and dried) as well as sugar beets and sugar beet molasses as there is already an enforcement method in PAM II.

3. *Magnitude of residues*—i. *Magnitude of the residue in plants.* The studies submitted include field trials in three regions for succulent beans, six additional sites for dry beans in four regions and five additional sites in three regions for sugar beets.

In conjunction with previously submitted data, an adequate amount of geographically representative crop field trial residue data were presented which show that the proposed tolerances should not be exceeded when quizalofop ethyl is formulated into Assure® and used as directed.

ii. *Magnitude of the residue in animals.* A ruminant feeding study has been submitted and reviewed by EPA. In summary, three groups of three lactating dairy cows (plus a control group) were fed 0.1, 0.5, and 5.0 ppm quizalofop ethyl ester (encapsulated) for 28 consecutive days. Milk was collected daily and a sub-sample was divided into skim milk and cream. Two cows were sacrificed after 28 days with samples of fat, skeletal muscle, liver, and kidney being collected and analyzed. The remaining cow in each test group was fed a regular diet without encapsulated quizalofop ethyl ester for 7 additional days before sacrifice. Whole milk, skim milk, and cream from the control, and the 0.1 and 0.5 ppm dose groups showed no quizalofop to < 0.02 ppm (0.05 ppm in cream). From the 5 ppm dose, quizalofop residues ranged from 0.01 to 0.02 ppm in whole, and when these samples were separated into cream and skim milk, the quizalofop partitioned into the cream with residues plateauing at 0.26 to 0.31 ppm. No quizalofop to < 0.02 ppm was detected in skeletal muscle, and to < 0.05 ppm was detected in any liver or fat sample from any of the three doses. Quizalofop was detected in one kidney sample as 0.05 ppm from the 5 ppm dose.

From the feed items in this petition, all of the feed items in cattle diets can be treated with quizalofop ethyl ester. A theoretical beef cattle diet consisting of canola meal, bean and pea forage, pea hay, and sugar beet tops which none-the-less maximizes the potential quizalofop exposure of 2.1 ppm. A theoretical dairy cattle diet consisting of pea and bean forage would none-the-less maximize the potential quizalofop exposure at 2.4 ppm. Substitutions of other feed items and varying their percentages in the diets would give a lower dietary quizalofop burden.

The results of the quizalofop ethyl ester bovine feeding study show that finite residues will actually occur in milk and tissues from the feeding of quizalofop ethyl ester treated RACS or their processed feed items when Assure® II is used as directed. The established quizalofop and quizalofop ethyl ester tolerance in milk, and in fat, meat, and meat by-products of cattle, goats, hogs, horse, and sheep are adequate and need not be increased from these additional uses.

A poultry feeding study has been submitted and reviewed. In summary, 3 groups of 20 hens (plus 1 control group) were dosed with encapsulated quizalofop ethyl ester at 0.1, 0.5, and 5 ppm daily for 28 consecutive days. Eggs were collected daily, and after 28 days 3/4 of the hens in each test group were sacrificed, and samples of fat, liver, kidney, breast and thigh muscles were collected and analyzed. Tissues from each test group were pooled prior to analysis. The remaining five hens were fed a regular poultry diet without quizalofop ethyl ester for an additional 7 days before sacrifice. No quizalofop residues were detected in the liver to < 0.05 ppm, and in breast and thigh muscles to < 0.02 ppm for any dose administered. From the 5 ppm dose, one kidney sample showed 0.09 ppm quizalofop, two fat samples were 0.05 and 0.06 ppm quizalofop, and one egg sample was 0.02 ppm quizalofop.

The results of the quizalofop ethyl ester poultry feeding study show that while it is not possible to establish with certainty whether finite residues will actually occur in eggs and tissues from the feeding of quizalofop ethyl ester treated RACS or their processed feed items when Assure® II is used as directed, there is a reasonable expectation for such residues to occur. The established tolerance of quizalofop and quizalofop ethyl ester in eggs, and in fat, meat, and meat by-products of poultry are adequate and need not be changed from these additional uses.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies were conducted and the overall results placed technical grade quizalofop ethyl in toxicity Category III. These include the following studies in Category III: acute oral toxicity (LD_{50}s 1,480 and 1,670 for female and male rats, respectively) and eye irritation (mild effects; reversible within 4 days). Dermal toxicity (LD_{50}s > 5,000 mg/kg; rabbit), inhalation toxicity (LC_{50} > 5.8 mg/L; rat) and dermal irritation were classified within Category IV. Technical quizalofop ethyl was not a dermal sensitizer.

2. *Genotoxicty.* Technical quizalofop ethyl was negative in the following genotoxicity tests: bacterial gene mutation assays with *E. coli* and *S. typhimurium*; gene mutation assays in Chinese hamster ovary (CHO) cells; *in vitro* DNA damage assays with *B. subtillis* and in rat hepatocytes; and an *in vitro* chromosomal aberration test in CHO cells.

3. *Reproductive and developmental toxicity.* Studies supporting the registration include: A developmental toxicity study in rats administered dosage levels of 0, 30, 100, and 300 mg/kg/day highest dose tested (HDT). The maternal toxicity no observed adverse effect level (NOAEL) was 30 mg/kg/day and a developmental toxicity NOAEL was greater than 300 mg/kg/day (HDT). The maternal NOAEL was based on reduced food consumption and increased liver weights.

A developmental toxicity study in rabbits administered dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT). The maternal toxicity NOAEL was 20 mg/kg/day based on decreases in food consumption and body weight gain at 60/mg/kg/day (HDT).

A 2–generation reproduction study in rats fed diets containing 0, 25, 100, or 400 ppm (or approximately 1, 1.25, 5, and 20 mg/kg/day, respectively) with a developmental (systemic effects) NOAEL of 1.25 mg/kg/day for F_{2B} weanlings based on increased liver weights and increased incidence of eosinophilic changes in the livers at 5.0 mg/kg/day. These liver changes were considered to be physiological or adaptive changes to compound exposure among weanlings. When access to the mother's feed is available, it is a common observation that young rats will begin consuming chow prior to

complete weaning at 21 days of age. Consumption could not be quantified; therefore, the maternal consumption was assumed as the NOAEL (if normalized on a body weight basis, exposures to the weanling rats were likely higher). The parental NOAEL of 5.0 mg/kg/day was based on decreased body weight and premating weight gain in males at 20 mg/kg/day (HDT).

4. *Subchronic toxicity.* A 90–day study was conducted in rats fed diets containing 0, 40, 128, 1,280 ppm (or approximately 0, 2, 6.4, and 64 mg/kg/day, respectively). The NOAEL was 2 mg/kg/day. This was based on increased liver weights at 6.4 mg/kg.

A 90–day feeding study in mice was conducted with diets that contained 0, 100, 316, or 1,000 ppm (or approximately 0, 15, 47.4, and 150 mg/kg/day, respectively). The NOAEL was < 15 mg/kg/day lowest dose tested (LDT) based on increased liver weights and reversible histopathological effects in the liver at the LDT.

A 6–month feeding study in dogs was conducted with diets that contained 0, 25, 100, or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOAEL was 2.5 mg/kg/day based on increased blood urea nitrogen at 10 mg/kg/day.

A 21–day dermal study was conducted in rabbits at doses of 0, 125, 500, or 2,000 mg/kg/day. The NOAEL was 2,000 mg/kg/day (HDT).

5. *Chronic toxicity.* An 18–month carcinogenicity study was conducted in CD-1 mice fed diets containing 0, 2, 10, 80, or 320 ppm (or approximately 0, 0.3, 1.5, 12, and 48 mg/kg/day, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day. A marginal increase in the incidence of hepatocellular tumors was observed at 48 mg/kg/day, the HDT, which exceeded the maximum tolerated dose (MTD). (See the discussion by the EPA HED Carcinogenicity Peer Review Committee below.)

A 2–year chronic toxicity/carcinogenicity study was conducted in rats fed diets containing 0, 25, 100 or 400 ppm (or 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 g/kg/day (HDT). The systemic NOAEL was 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobuler enlargement of the liver at 3.7 mg/kg/day.

A 1–year feeding study was conducted in dogs fed diets containing 0, 25, 100, or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOAEL was 10 mg/kg/day (HDT).

The Carcinogenicity Peer Review Committee (CPRC) of EPA HED has evaluated the rat and mouse cancer studies on quizalofop along with other relevant short-term toxicity studies, mutagenicity studies, and structure activity relationships. The CPRC concluded, after three meetings and an evaluation by the OPP Science Advisory Panel (SAP), that the classification should be a Category D (not classifiable as to human cancer potential). No new cancer studies were required.

The first CPRC review tentatively concluded that quizalofop should be classified as a Category B2 (probable human carcinogen). That classification was based on liver tumors in female rats, ovarian tumors in female mice, and liver tumors in male mice. This classification was downgraded to a Category C (possible human carcinogen) at a second CPRC review. The change in classification was due to a reexamination of the liver tumors in female rats and ovarian tumors in female mice. The first peer review had found a statistically significant positive trend for liver carcinomas in female rats. Subsequent to this conclusion the tumor data was reevaluated, and the revaluation showed a reduced number of carcinomas. Although there remained a statistically significant positive trend for carcinomas in the study, the CPRC concluded that the carcinomas were not biologically significant given the few carcinomas identified (one at the mid-dose and two at the high dose). Noting that this level of carcinomas was within historical levels, the CPRC concluded that administration of quizalofop did not appear to be associated with the liver carcinomas.

As to the ovarian tumors in female mice, the CPRC had first attached importance to the fact that these tumors were statistically significant at the high dose as compared to historical control values although statistically significant when compared to concurrent controls. However, review of further historical control data showed that the level of ovarian tumors in the quizalofop study was similar to the background rate in several other studies. Given this information and that the quizalofop study showed no hyperplasia of the ovary, no signs of endocrine activity related to ovarian function, and no dose response relationship, the CPRC concluded that the ovarian tumors were probably not compound-related.

The findings of the second CPRC review were presented to EPA's SAP. The SAP concurred with the CPRC conclusion that the liver tumors in female rats and the ovary tumors in female mice showed no evidence of carcinogenicity. However, the SAP disagreed with CPRC's classification of quizalofop as a Category C based on the liver tumors in male mice. The SAP concluded that the mouse liver tumors did not support such a classification because the tumors occurred at a dose above the MTD and because they were not statistically significant if a "p" value of less than 0.05. The SAP believed that such greater statistical rigor was appropriate for variable tumor endpoints such as male mouse liver tumors.

Following the SAP review, the CPRC changed the classification for quizalofop to Category D. The Category D classification is based on an approximate doubling in the incidence of male mice liver tumors between controls an the high dose. This finding was not considered strong enough to warrant the finding of a Category C (possible human carcinogen) since the increase was of marginal statistical significance, occurred at a high dose which exceeded the predicted MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls; while the high dose control group was at the upper end of previous historical control-groups.

EPA has found the evidence on the carcinogenicity of quizalofop-p ethyl ester in animals to be equivocal and therefore concludes that quizalofop-p ethyl ester does not induce cancer in animals within the meaning of the Delaney clause. Important to this conclusion was the following evidence:

i. The only statistically significant tumor response that appears compound-related was seen at a single dose in a single sex in a single species.

ii. The response was only marginally statistically significant.

iii. The response was only significant when benign and malignant tumors were combined.

iv. The tumors were in the male mouse liver.

v. The tumors were within historical controls.

vi. The mutagenicity studies were negative.

Although in some circumstances a finding of animal carcinogenicity would be made despite any one, or even several, of the six factors noted, the combination of all of these factors here cast sufficient doubt on the reproducibility of the response in the high dose male mouse that EPA concludes the evidence on carcinogenicity is equivocal.

6. *Animal metabolism.* The metabolism of quizalofop ethyl in animals (rat, goat and poultry) is well understood. ^{14}C-phenyl and ^{14}C-quinoxaline quizalofop ethyl ester metabolism studies have been conducted in each species. There are similarities among these species with respect to metabolism. Quizalofop ethyl is rapidly and extensively metabolized and rapidly excreted by rats. The principal metabolites were the quizalofop-p acid and two dechlorinated hydroxylated forms of the acid. Tissue residues were minimal and there was no evidence of accumulation of quizalofop ethyl or its metabolites in the rat.

The primary pathway in ruminants is hydrolysis of the ethyl ester to form the quizalofop-p methyl ester. In poultry, the primary metabolic pathway is also the hydrolysis of the ethyl ester to form the quizalofop-p acid, then the methyl esterification to form the quizalofop methyl ester becomes a minor pathway.

The nature of the quizalofop ethyl ester residue in livestock is adequately understood. The residues of concern are quizalofop ethyl, quizalofop methyl, and quizalofop, all expressed as quizalofop ethyl.

7. *Metabolite toxicology.* There is no evidence that the metabolites of quizalofop ethyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of quizalofop p-ethyl have been conducted. However, the standard battery of required toxicology studies has been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that quizalofop p-ethyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* An analysis of chronic dietary risk was conducted to determine the total exposure from current and proposed final tolerances for quizalofop-p-ethyl. A Reference Dose (RfD) of 0.009 mg/kg/day was used in the analyses.

i. *Food.* The first step in the analysis was to run the TAS (Tolerance Assessment System) program using current tolerances with an RfD of 0.009 mg/kg/day. The Theoretical Maximum Residue Concentration (TMRC), based on the current tolerances, was 0.000318 mg/kg/day for the U.S. population (48 contiguous States) and 0.000814 mg/kg/day for the population subgroup with the highest estimated exposure (children 1–6 yrs. old). For the U.S. population subgroup this represents approximately 3.5% of the RfD while for the most exposed population this represents approximately 9.0% of the RfD. Based on the risk estimates arrived at in this analysis, chronic dietary risk from the current uses of Assure® is minimal.

ii. *Drinking water.* Another potential source of dietary exposure to pesticides is residues in drinking water. There is no established Maximum Concentration Level (MCL) for quizalofop ethyl in water. Based on the low use rate of quiza lofop ethyl, and a use pattern that is not widespread (since the current and proposed uses are on minor crops), DuPont does not anticipate residues of quizalofop in drinking water and exposure from this route is unlikely.

2. *Non-dietary exposure.* Quizalofop ethyl is not registered for any use that could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

There is no evidence to indicate or suggest that quizalofop p-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the most sensitive species chronic NOAEL of 0.9 mg/kg and a RfD of 0.009 mg/kg/day, the existing tolerances and proposed uses of quizalofop ethyl are expected to utilize 3.5% of the RfD for the general U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to quizalofop ethyl resulting from current and proposed agricultural uses.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of quizalofop ethyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. There were no developmental effects observed in the absence of maternal toxicity in the rat and rabbit developmental studies. Minimal adaptive or physiological effects were observed in livers of weanlings in the 2–generation rat reproduction study described earlier. However, this effect was only observed at a dose that far exceeds any expected human exposure. Further, the NOAEL of 0.9 mg/kg/day from the 2–year rat study with quizalofop ethyl which was used to calculate the RfD (discussed above), is already lower than any of the NOAELs defined in the developmental and reproductive toxicity studies with quizalofop ethyl.

As indicated above, infants and children have a low potential for quizalofop ethyl exposure. The toxicology profile of quizalofop ethyl demonstrates low mammalian toxicity. Because there was no evidence that offspring were uniquely susceptible to the toxic effects of quizalofop ethyl, an additional 10-fold uncertainty factor should not be required to protect infants and children. Therefore, the RfD of 0.009 mg/kg/day, which utilizes a 100–fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to quizalofop ethyl.

F. International Tolerances

Since there are no Mexican or Codex MRLs/tolerances, compatibility is not a problem at this time. Compatibility cannot be achieved with the Canadian negligible residue type limit at 0.1 ppm at the USA use pattern, which had findings of real residues above 0.1 ppm.

2. PP 4F4278

EPA has received a pesticide petition (PP 4F4278) from E.I. DuPont de Nemours and Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of triflusulfuron methyl: Methyl 2 [[[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate in or on the raw agricultural commodity [beet, sugar, root and beet, sugar, top at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism of triflusulfuron methyl in sugar beets was

studied using triflusulfuron methyl labeled separately with carbon-14 in the triazine ring and in the ester carbonyl group. Triflusulfuron methyl was extensively metabolized by sugar beets treated at the 4-8-leaf growth stage with 100 grams active ingredient per half acre (g ai/ha). Triflusulfuron methyl levels dropped rapidly from 3 ppm in the sample taken on the day of the treatment to < 0.01 ppm 14 days after treatment. The initial step in the metabolic breakdown of triflusulfuron methyl involves cleavage of the sulfonylurea bridge, which is followed by further metabolism of the initial degradates. The levels of principal radiolabeled metabolites found in plant samples (*N*-desmethyl triazine amine, *N,N*-bis-desmethyl triazine amine, acid sulfonamide, and its glucose conjugate) dropped to < 0.01 ppm at maturity. No significant (> 0.01 ppm) residues of triflusulfuron methyl or its radiolabeled metabolites were detected in mature roots or foliage.

2. *Analytical method.* A method for quantitation of triflusulfuron methyl in sugar beets uses a high performance liquid chromatograph (HPLC) with eluent and column-switching and ultra-violet (UV) detection at 232 nm for the determination of triflusulfuron methyl residues in sugar beet foliage and roots. Sample clean-up is achieved through reversed phase chromatography using eluent-switching. Column-switching provides the resolution required for quantitation of triflusulfuron methyl. The method allows for quantitation of triflusulfuron methyl in sugar beet foliage and roots at levels as low as 0.02 ppm based on a 10–gram sample. Triflusulfuron methyl is detected at levels as low as 0.005 ppm. Triflusulfuron methyl recoveries averaged 98% for forage and 101% for roots.

3. *Magnitude of residues.* Triflusulfuron methyl degraded rapidly in sugar beets to produce the triazine amine which undergoes consecutive demethylations to yield *N*-desmethyl triazine amine and *N,N*-bis-desmethyl triazine amine. Residues of triflusulfuron methyl at harvest were below the detection limits in sugar beet roots and foliage at all application levels. There is no reasonable expectation of residues of triflusulfuron methyl occurring in sugar beet roots or foliage at harvest. The data supports a preharvest interval of 30 days.

Residues of the metabolite triazine amine and *N*-desmethyl triazine amine were at or below the detection limit of 0.02 ppm in sugar beet roots and foliage at all application levels at all test sites. Residues of *N,N*-bis-desmethyl triazine amine were below the detection limit of 0.02 ppm in roots at all application levels at all locations; however, residues in foliage were detected in 7 out of 41 samples at up to 0.05 ppm in samples that were treated at exaggerated rates (70 g ai/ha/application). At the expected maximum seasonal use rate of 60 g ai/ha, residues of *N,N*-bis-desmethyl triazine amine are not expected above the 0.02 ppm detection limit.

The potential of triflusulfuron methyl residues occurring during processing of sugar beet roots treated with triflusulfuron methyl was also determined. Samples of sugar beet roots, harvested at maturity from plots treated with triflusulfuron methyl at a rate of 420 g ai/ha, were processed. Triflusulfuron methyl was below the 0.01 ppm detection limit in sugar beet root and all the processed fractions (sugar, molasses, and dried pulp). The lack of concentration of triflusulfuron methyl even at the exaggerated dose used in this study confirms that at the proposed use rate of triflusulfuron methyl, there is no reasonable expectation of residues in sugar beet roots or processed fractions.

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA criteria, technical triflusulfuron methyl is in acute toxicity Category IV for oral and inhalation routes of exposure, and for dermal irritation. Triflusulfuron methyl is in acute toxicity Category III for dermal toxicity and for eye irritation.

Acute oral toxicity in rats	LD_{50} > 5,000 mg/kg
Acute dermal toxicity in rabbits	LD_{50} > 2,000 mg/kg
Acute inhalation toxicity in rats	LC_{50} > 5.1 mg/L
Primary eye irritation in rabbits	Non-irritant
Primary dermal irritation in rabbits	Non-irritant
Dermal sensitization in guinea pigs	Non-sensitizer
Acute Neurotoxicity	(NOAEL) = 2,000 mg/kg/day highest dose tested (HDT)

2. *Genotoxicty.* Mutagenicity data technical triflusulfuron methyl include a reverse mutation assay (Ames Test) which was negative at concentrations up to 1,000 µg/plate, the highest level tested; a *Salmonella typhimurium* plate incorporation assay which was negative at concentrations up to 3,000 µg/plate, the highest level tested; a Chinese hamster ovary/hypoxanthine-guanine (CHO/HPRT) assay which was negative at concentrations up to 2,000 mg/kg/day, the highest level tested. A chromosomal aberration/human lymphocyte assay was positive in the presence of metabolic activation at concentrations greater than or equal to 1,500 µg/mL. A second chromosomal aberration/human lymphocyte assay was positive in the presence of metabolic activation at concentrations of 2,000 µg/mL. Results in the absence of metabolic activation were inconclusive for both chromosomal aberration studies. The mouse bone marrow micronucleus test was negative at doses up to 5,000 mg/kg, the highest dose level tested. In three *Salmonella typhimurium* plate incorporation assays, metabolites of triflusulfuron methyl were negative up to 5,000 µg/plate, the highest level tested.

3. *Reproductive and developmental toxicity.* In a 2–generation rat reproduction study rats were fed dosages of 0, 0.588, 5.81, 44.0 and 89.5 mg/kg/day (males) and 0, 0.764, 7.75, 58.0, and 115 mg/kg/days (females) with a reproductive toxicity NOAEL equal to or greater than 89.5 and 115 mg/k/day for males and females, respectively, based on the absence of reproductive effects in rats at the highest dose level. The NOAEL for systemic toxicity was 5.81 and 7.75 for males and females, respectively based on decreased body weight/body weight gain and food efficiency in males and females, and decreased weights of offspring from the F^0 generation on days 14 and 21 post-partum at 44.0 and 58.0 mg/kg/day in males and females, respectively.

Technical triflusulfuron methyl was evaluated for developmental toxicity potential in rats and rabbits. Rats were fed dosages of 0, 30, 120, 350, and 1,000 mg/kg/day with a developmental NOAEL equal to or greater than 1,000 mg/kg/day (HDT) and a maternal toxicity NOAEL of 120 mg/kg/day with a lowest observed adverse effect level (LOAEL) of 350 mg/kg/day based on reduced body weight gain in the 350 and 1,000 mg/kg/day animals, reduced food consumption in the 1,000 mg/kg/day animals and lower food efficiency in the 350 and 1,000 mg/kg/day.

Rabbits were fed dosages of 0, 15, 90, 270, and 800 mg/kg/day with a NOAEL for developmental toxicity of 90 mg/kg/day with a LOAEL of 270 mg/kg/day based on the increase in abortions and a decrease in mean fetal body weight. The NOAEL for maternal toxicity is 90 mg/kg/day with a LOAEL of 270 mg/kg/day based on the maternal death and abortions, and increase in clinical signs noted in the mid-high and high dose groups, decreased food efficiency and

increased post mortem finding describing gastrointestinal effects.

4. *Subchronic toxicity.* The subchronic toxicity of technical triflusulfuron methyl was evaluated in rabbits, rats, and dogs. In a 21–day dermal toxicity study with rabbits fed dosages of 50, 300, or 1,000 mg/kg/day, the systemic toxicity NOAEL was equal to or greater than 1,000 mg/kg/day for males and females. The dermal toxicity NOAEL was equal to or greater than 1,000 mg/kg/day for males and females.

Two 90–day studies were conducted in the rat. In one study, rats were fed dosages of 6.2, 127, 646, or 965 mg/kg/day (males) or 7.54, 150, 774, or 1,070 mg/kg/day (females). Triflusulfuron methyl exhibited subchronic toxicity at dietary concentrations of 2,000 ppm (127 and 150 mg/kg/day for males and females) or greater in the form of decreased body weights, decreased body weight gains, decreased food efficiency, increased mean relative liver weights, and regenerative anemia. The NOAEL was 6.2 mg/kg/day (males) and 7.54 mg/kg/day(females). In another study, rats were fed dosages of 6.56, 133, 658, or 1,036 mg/kg/day (males) or 7.71, 153, 783, or 1,124 mg/kg/day (females). Triflusulfuron methyl showed subchronic toxicity at dietary concentrations of 2,000 ppm (133 and 153 mg/kg/day for males and females) or greater in the form of decreased body weight, decreased body weight gain, decreased food efficiency, and increased mean liver weights. The NOAEL was 6.56 mg/kg/day (males) and 7.71 mg/kg/day (females).

A subchronic neurotoxicity study with rats fed dosages of 0, 6.1, 46.1, 92.7, or 186.2 mg/kg/day (males) or 7.1, 51.6, 104.1, or 205.2 mg/kg/day (females), resulted in a NOAEL of 92.7 (males) and 7.1 mg/kg/day (females). This was based on decreased body weight/body weight gain at the lowest observed effect level of 186.2 mg/kg/day (males) and 51.6 mg/kg/day (females).

In another 90–day subchronic study, dogs were fed dosages of 3.87, 146.1, or 267.6 mg/kg/day (males) or 3.72, 159.9, or 250.7 mg/kg/day (females). Triflusulfuron methyl was found to be hepatotoxic at 4,000 ppm (146.1 mg/kg/day males and 159.9 mg/kg/day (females), and greater (elevated hepatic enzyme levels and postmortem evidence, including elevation in liver weights and microscopic evidence of bile stasis). Other microscopic findings considered to be treatment related were testicular atrophy and decreased testicular weights and hypercellularity of the sternal and femoral bone marrow, with a corresponding increase in reticulocyte and leukocyte counts seen in the high-dose males and females. Based on the microscopic findings in the liver and testes of the 4,000 ppm and greater treated animals, the NOAEL was 3.87 mg/kg/day (males) and 3.72 mg/kg/day (females).

5. *Chronic toxicity.* The chronic toxicity of technical triflusulfuron methyl was evaluated in dogs, mice, and rats. In a 1–year oral toxicity study with dogs fed dosages of 1.0, 26.9, 111.6 mg/kg/day (males) and 1.2, 27.7, and 95.5 mg/kg/day (females), the NOAEL for males was 26.9 mg/kg/day; this was based on increases in alkaline phosphatase, liver weight, and incidence of minimal centrilobular hypertrophy at the LOAEL of 111.6. For females, the NOAEL was 27.7 mg/kg/day; this was based on increased liver weight and increased incidence of minimal centrilobular hepatocellular hypertrophy at the LOAEL of 95.5 mg/kg/day.

In an 18–month carcinogenicity study, mice were fed dosages of 1.37, 20.9, 349, and 1,024 mg/kg/day (males) and 1.86, 27.7, 488, and 1,360 mg/kg/day (females). Male mice had statistically significant positive trends for hepatocellular adenomas and for combined adenoma/carcinoma (driven entirely by adenomas) at 349 and 1,024 mg/kg/day. These increases were not significant in pair-wise comparisons with control groups and were determined not to be carcinogenic effects by the Carcinogenicity Peer Review Committee (CPRC). The NOAEL was based on body and organ weight effects and was 20.9 mg/kg/day (males) and 27.7 mg/kg/day (females).

In the combined chronic toxicity/carcinogenicity study rats were fed dosages of 0, 0.406, 4.06, 30.6 and 64.5 mg/kg/day (males) and 0, 0.546, 5.47, 41.5, and 87.7 mg/kg/day (females). Male rats have a significant increasing trend and significant differences in pair-wise comparisons of the 30.6 and 64.5 mg/kg/day dose groups with controls for interstitial cell adenomas. This effect was determined to be a carcinogenic effect by the CPRC. No carcinogenic effects were noted in females up to and including 87.7 mg/kg/day (highest dose tested). The LOAEL for chronic toxicity is 30.6 mg/kg/day (males) and 41.5 (females) based on decreased body weight and body weight gain, alternations in the hematology parameters (males predominately) and an increased incidence of interstitial cell hyperplasia in males. The NOAEL for chronic toxicity is 4.06 mg/kg/day (males) and 5.47 mg/kg/day (females). This value is adjusted to the lowest concentration level of the chemical at this dosage (60%), resulting in NOAELs of 2.44 mg/kg/day (males) and 3.28 mg/kg/day (females).

6. *Animal metabolism.* For triflusulfuron methyl, in both the rat and the goat, a majority of the administrated dose was excreted in feces and urine. The biotransformation pathway for triflusulfuron methyl in the rat and the goat was similar. The major pathway was demethylation of the dimethylamino substituent on the triazine ring. The intermediate hydroxylated metabolite was also present. The secondary biotransformation pathway was clevage of the sulfonylurea bridge to form methyl saccharin, *N*-desmethyl triazine amine and *N,N*-bis-desmethyl triazine amine. In the lactating goat, triflusulfuron methyl was not excreted to any appreciable level in the milk. Levels of the ester carbonyl-derived residues were generally below the limit of reliable measurement (< 0.0006 µg equivalent triflusulfuron methyl/mL) and triazine-derived residues reached a daily level of about 0.001 ppm.

Therefore, the metabolic pathways in rats and lactating goats were very similar. There were no significant plant metabolites of triflusulfuron methyl that were not found in the rat or goat metabolism studies. In the unlikely event that triflusulfuron methyl were to enter the livestock diet, triflusulfuron methyl and its metabolites would be rapidly excreted and would not accumulate in meat, meat by-products, or milk.

7. *Metabolite toxicology.* The approximate lethal dose (ALD) of the degradation product, *N,N*-bis-desmethyl triazine amine, in male rats was 450 mg/kg/day. Rats were fed dose rates of 200, 300, 450, 670, 1,000, and 2,300 mg/kg of triflusulfuron methyl. Deaths occurred up to test day 7 in rats dosed at 450 mg/kg body weight and above. Clinical signs of toxicity were observed in lethally and nonlethally dosed rats. In an *in vitro* gene mutation study, *N,N,*-bis-desmethyl triazine amine was not mutagenic in *Salmonella typhimurium* up to a dose of 5,000 µg/plate.

For the degradation product, triazine amine, the ALD in male rats was 670 mg/kg/day. The test substance dose was 200, 300, 450, 670, 1,000, or 2,300 mg/kg. Deaths occurred up to test day 4 in rats dosed at 670 mg/kg and above. Clinical signs of toxicity were observed in lethally and nonlethally dosed animals. In an *in vitro* gene mutation study, triazine amine was not mutagenic in *Salmonella typhimurium* up to a dose of 5,000 µg/plate.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of

triflusulfuron methyl have been conducted. However, the standard battery of required toxicology studies have been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that triflusulfuron methyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* The acute dietary exposure was estimated for triflusulfuron methyl using the Dietary Exposure Evaluation Model (version 6.73) for a number of subpopulation groups. An acute Tier I dietary analysis was based upon the residues for sugar beet (root) at 0.05 ppm and sugar beet (top) at 0.05 ppm. The acute reference dose (aRfD) is 0.9 mg/kg bw/day (based upon a NOAEL of 90 mg/kg bw/day and a 100-fold safety factor). For triflusulfuron methyl, the predicated exposure for the U.S. population was 0.00460 mg/kg bw/day (0.05 % of the aRfD) at the 95th percentile. The subpopulation with the highest predicted exposure was the non-nursing infants subgroup with an exposure of 0.00166 mg/kg bw/day (0.19% of the aRfD) at the 95th percentile. Because the predicted exposures, expressed as percentages of the aRfD, are well below 100%, there is reasonable certainty that no acute effects would result from dietary exposure to triflusulfuron methyl.

The chronic dietary exposure was estimated for triflusulfuron methyl using the Dietary Exposure Evaluation Model (version 6.74) for a number of subpopulation groups. A chronic Tier I dietary analysis was based upon residues for sugar beet (root) at 0.05 ppm and sugar beet (top) at 0.05 ppm. The chronic RfD is 0.024 mg/kg bw/day (based upon a NOAEL of 2.44 mg/kg bw/day and a safety factor of 100). The estimated exposure for the U.S. population was 0.000146 mg/kg bw/day (0.6% of the RfD). For the subpopulation with the highest level of exposure (non-nursing infants), the exposure was 0.000433 mg/kg bw/day (>1.8% of the chronic reference dose (cRfD)). Because the predicted exposures, expressed as percentages of the cRfD, are well below 100%, there is reasonable certainty that no chronic effects would result from dietary exposure to triflusulfuron methyl.

Even though very conservative assumptions were made in predicting acute and chronic exposures to triflusulfuron methyl, the predicted exposures expressed as percentages of the cRfD and aRfD values were found to be well within the acceptable range.

ii. *Drinking water.* Another potential source of dietary exposure is residues in drinking water. Based on the available environmental studies conducted with triflusulfruon methyl, DuPont concludes that there is no anticipated exposure to residues of triflusulfuron methyl in drinking water. In addition, there is no established maximum concentration level (MCL) for residues of triflusulfuron methyl in drinking water.

2. *Non-dietary exposure.* Triflusulfuron methyl is not registered for any use that could result in non-occupational or non-dietary exposure to the general population.

D. Cumulative Effects

Triflusulfuron methyl belongs to the sulfonylurea class of crop protection chemicals. Other structurally similar compounds in this class are registered herbicides. However, the herbicidal activity of sulfonylureas is due to the inhibition of acetolacate synthase (ALS), an enzyme found only in plants. This enzyme is part of the biosynthesis pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the relatively low toxicity of sulfonylurea herbicides in animals. There is no reliable information that would indicate or suggest that triflusulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* Based on the completeness and reliability of the toxicology data base and using the conservative assumptions presented earlier, EPA has established a chronic RfD of 0.024 mg/kg/day. This was based on the NOAEL for the 2–year chronic rat study (2.44 mg/kg/day) and a 100–fold safety factor. It has been concluded that the aggregate exposure was 0.6% of the cRfD. Generally, exposures below 100% of the cRfD are of no concern because it represents the level at or below which daily aggregrate exposure over a lifetime will not pose appreciable risk to human health. Thus, there is reasonable certainty that no harm will result from aggregate exposures to triflusulfuron methyl residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of triflusulfuron methyl, data from the previously discussed developmental and multi-generation reproductive toxicity studies were considered.

Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from the prenatal and postnatal exposures to the pesticide. The studies with triflusulfuron methyl demonstrated no evidence of developmental toxicity at exposures below those causing maternal toxicity. This indicates that developing animals are not more sensitive to the effects of triflusulfuron methyl administration than adults.

FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for triflusulfuron methyl relative to prenatal and postnatal effects for children is complete.

In addition, the NOAEL of 2.44 mg/kg/day in the chronic rat study (and upon which the cRfD is based) is much lower than the NOAELs defined in the reproduction and developmental toxicology studies. The sub-population with the highest level of exposure was non-nursing infants, where exposure was < 1.8% of the cRfD. Based on these conservative analyses, there is reasonable certainty that no harm will result to infants and children from aggregate exposures to triflusulfuron methyl.

F. International Tolerances

There are no Codex Maximum Residue Levels established for triflusulfuron methyl.

[FR Doc. 99–33159 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–903; FRL–6396–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain

pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–903, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–903 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–903. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–903 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–903. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the

name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the view of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional Research Project Number 4 and BASF Corporation, Agricultural

9E6002 and 7F4881

EPA has received a pesticide petition (9E6002) from the Interregional Research Project Number 4 (IR-4), Center for Minor Crop Pest Management, Technology Center of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390. EPA has also received a pesticide petition (7F4881) from BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709. The petitions propose, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerances for residues of pyridaben 2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one in or on the raw agricultural commodities (RAC) cranberries (9E6002), and pistachio (7F4881) at 0.5 and 0.05 and parts per million (ppm). Registration for pyridaben on cranberries would be limited to areas along the eastern coast in the states of MA, NJ, ME, NY, CT, NH, VT, RI, and DE based on the geographical representation of the residue data submitted.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by, BASF Corporation, the registrant, P.O. Box 13528, Research Triangle Park, NC 27709.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in plants is adequately understood. The residue of concern is pyridaben *per se* as specified in 40 CFR 180.494.

2. *Analytical method*. The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (GC/ECD).

3. *Magnitude of residues*. Three cranberry residue trials were conducted in two states. Residues of pyridaben were measured by GC/ECD. The method of detection had a limit of detection of 0.05 ppm. Residues ranged from 0.172 to 0.447. Pistachio use rates will be the same as almond which have already received a tolerance of 0.05 ppm.. Also, pending at EPA is a nut crop group tolerance petition including 6 residue trials of pecans showing all residues are below 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity—i. Subpopulation females 13+ years old*. The no observed adverse effect level (NOAEL) is 13 milligrams/kilograms (mg/kg). In a developmental toxicity study, Sprague-Dawley rats (22/group) from Charles River, U.K., received NC-129 Pyridaben, 98.0% active ingredient (a.i.) via gavage at dose levels of 0, 2.5, 5.7, 13.0, or 30.0 mg/kg/day from gestation day 6 through 15, inclusive. Natural mating was used. Maternal toxicity, observed at 13.0 and 30.0 mg/kg/day, consisted of decreased body weight (bwt)/weight gain and food consumption during the dosing period. Based on these effects, the maternal toxicity lowest observed adverse effect level (LOAEL) is 13.0 mg/kg/day and the maternal toxicity NOAEL is 4.7 mg/kg/day (82% of 5.7 mg/kg/day based on concentration analysis). Developmental toxicity NOAEL is 13.0 mg/kg/day based on observed decreased fetal (bwt) and increased incomplete ossification in selected bones at 30.0 mg/kg/day LOAEL. With the 100 uncertainty factor (UF) (10x for interspecies extrapolation and 10x for intraspecies variability) the chronic-population adjusted dose (cPAD) for females 13+ is 0.13 mg/kg/day.

ii. *General population including infants and children*. NOAEL = 50 mg/kg. In an acute neurotoxicity study, CD Rats (10/sex/group) were administered a single oral dose (gavage) of NC-129 in 1% aqueous carboxymethyl cellulose of 0 (vehicle), 50, 100, and 200 mg/kg (a.i. equivalents: 44.3, 79.6, and 190.0 mg/kg for males and 44.5, 99.7, and 190.0 mg/kg bwt for females). The animals were observed for mortality and clinical signs of toxicity for 14 days post-dosing. During the first 5 days, compound-related decreases in bwt gain were noted in mid-dose males (17%) and females (36%) and high-dose males (74%); the high-dose females lost weight (4 g) during the first 4 days of the observation period. Food consumption was low in all treated groups on the day of dosing with severe effects seen in the high-dose males (73% lower than controls). Dose-dependent increases in clinical signs (piloerection, hypoactivity, tremors, and partially closed eyes) were seen in mid-dose males and high-dose males and females. These effects were reversible by observation day 4. Treatment-related findings in the functional observational battery consisted of lower body temperature and reduced motor activity among the high-dose males. No treatment-related gross or microscopic neuropathologic findings were present. The NOAEL for systemic toxicity is 50 mg/kg for both sexes. The LOAEL of 100 mg/kg/day is based on systemic toxicity including clinical signs and decreased food consumption and bwt gain. With the 100 UF the aPAD for the general population is calculated to be 0.5 mg/kg/day.

2. *Subchronic toxicity*. The NOAEL is 100 mg/kg/day. In a 21–day dermal toxicity study, repeated doses of pyridaben were applied topically to approximately 10% of the body surface area of rats at doses of 0, 30, 100, 300, or 1,000 mg/kg/day for 21 days.

Increased squamous cell hyperplasia and/or surface accumulation of desquamated epithelial cells were noted sporadically in the 100, 300, and 1,000 mg/kg/day dose groups. These findings appear to be due to abrasions of the skin when the powdered substance was applied onto the skin, rather than a dose-related effect. No gross dermal irritation effects were noted. Based on the results of the study, the systemic dermal toxicity NOAEL is 100 mg/kg/day. The systemic dermal toxicity LOAEL is determined to be 300 mg/kg/day based on decreased bwt in the females. The dermal irritation NOAEL is 100 mg/kg/day. Note: In agreement, a dermal equivalent dose of 94 mg/kg/day is derived if the maternal oral NOAEL of 4.7 mg/kg/day (based on decreased bwt gain and food consumption) in the rat oral developmental toxicity study is adjusted by the proposed 5% dermal absorption rate.

3. *Chronic toxicity.* EPA has established the cPAD for pyridaben at 0.005 mg/kg/day. This cPAD is based on a 1 year feeding study in dogs with a NOAEL of 0.5 mg/kg/day and an uncertainty factor of 100 based on decreased bwt, emesis, and ptyalism.

4. *Animal metabolism.* The nature of the residue in animals is adequately understood. The residue of concern is pyridaben and its metabolites PB-7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2H)-one) and PB-9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3(2H)-one) as specified in 40 CFR 180.494.

C. Aggregate exposure

1. *Dietary exposure*—i. *Food.* From the acute dietary risk assessment, the calculated exposure yields dietary percentage of the aPAD for females 13+ years old ranging from 29% for females 13+ years old--not pregnant, non-nursing, to 42% for females 13+ years old--pregnant, not nursing. The calculated exposure yields dietary percentage of the aPAD for the remainder of the population ranging from 9% for males 13–19 years old to 77% for nursing infants > 1 year old. This risk estimate should be viewed as highly conservative; refinement using anticipated residue values and percent crop-treated data in conjunction with a Monte Carlo analysis will result in a lower acute dietary exposure estimate. In conducting the chronic dietary risk assessment, the registrant has made somewhat conservative assumptions--that 100% of cranberries will contain pyridaben residues and those residues will be at the level of the tolerance plus the ratio of organosoluble residues to pyridaben, and all commodities having published and pending pyridaben tolerances will contain pyridaben regulable residues, those residues will be at the anticipated residue level for the commodity, no percent crop treated data were used, and plant anticipated residues will be adjusted using the ratio of organosoluble residues to pyridaben all of which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure estimate.

ii. *Drinking water.* Based on information currently available to EPA, pyridaben is immobile and thus unlikely to leach to ground water. There is no established maximum contaminant level for residues of pyridaben in drinking water. No health advisory levels for pyridaben in drinking water have been established. EPA uses the Generic expected environmental concentration (GENEEC) and SCI-GROW screening models to estimate surface and ground water concentrations for first-tier exposure assessments. As screening models designed to estimate the concentrations found in surface and ground water for use in ecological risk assessment, they provide upper-bound values on the concentrations that might be found in ecologically sensitive environments because of the use of a pesticide. The models predict that as much as 2.3 part per billion (ppb) and 0.0003 ppb of pyridaben may be found in surface and ground water, respectively. The modeling data were compared to the results from modeling equations used to calculate the acute and chronic drinking water levels of concern (DWLOC) for pyridaben in surface and ground water.

a. *Acute exposure and risk.* Acute DWLOCs have been calculated by EPA at the following amounts: U.S. population 14,000 g/L; adult male 20+ years old 15,000 g/L; adult female 13+, pregnant, non-nursing 2,200 g/L infant < 1g/L, nursing 1,100 g/L.

b. *Chronic exposure and risk.* Chronic DWLOCs have been calculated by EPA at the following amounts: U.S. population 140 g/L; adult male, 13–19 years old 160 g/L; adult female 13+, nursing 100 g/L; infant > 1, non-nursing 7 g/L.

2. *Non-dietary exposure.* Pyridaben is currently not registered for use on residential non-food sites.

D. Cumulative Effects

The registrant does not have, at this time, available data to determine whether pyridaben has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyridaben does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, the registrant has not assumed that pyridaben has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* Using the published and pending tolerances, the dietary percentage of the aPAD range from 9% for males 13–19 years old to 77% for nursing infants ≤ 1 year old, with the U.S. population at 18%. This risk estimate should be viewed as highly conservative; refinement using additional anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis will result in a lower acute dietary exposure estimate. The acute dietary exposure does not exceed EPA's level of concern. Pyridaben is immobile and thus, unlikely to leach to ground water. The modeling data for pyridaben in drinking water indicate levels less than EPA's DWLOC for acute exposure. Since a refined acute risk for food only would not exceed EPA's levels of concern for acute dietary exposures and the monitoring and modeling levels in water are less than the acute DWLOC, the registrant does not expect aggregate acute exposure to pyridaben will pose an unacceptable risk to human health.

ii. *Chronic risk.* Using the somewhat conservative anticipated residue contribution (ARC) exposure assumptions described in Unit III.B. of this preamble, EPA has concluded that aggregate exposure to pyridaben from food will utilize 20% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The residues of pyridaben in drinking water do not exceed EPA's DWLOC. Pyridaben does not have any residential uses. The registrant does not expect the aggregate exposure to exceed 100% of the cPAD.

iii. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor

residential uses. Since there are no residential uses, a short-term or intermediate-term aggregate risk assessment is not required.

iv. *Aggregate cancer risk for U.S. population.* Since pyridaben has been classified as a *Group E* carcinogen "no evidence of carcinogenicity to humans," a cancer risk assessment is not required.

v. *Endocrine disrupter effects.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years old from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this a.i and end use products for endocrine disrupter effects.

vi. *Determination of safety.* Based on these risk assessments, the registrant concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyridaben residues.

2. *Infants and children*—i. *Safety factor for infants and children*—a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyridaben, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat were considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to prenatal and postnatal effects from exposure to pyridaben, effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and UF (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*—a. *Rats.* In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 4.7 mg/kg/day. The maternal LOAEL of 13 mg/kg/day was based on decreases in bwt, bwt gain, and food consumption during the dosing period (GD 6–15). The developmental (fetal) NOAEL was 13 mg/kg/day. The developmental LOAEL of 30 mg/kg/day was based on decreased fetal bwt and increased incomplete ossification in selected bones.

b. *Rabbits.* In an oral developmental toxicity study in rabbits, the maternal (systemic) NOAEL was not established. The maternal LOAEL of 1.5 mg/kg/day was based on decreases in bwt gain and food consumption. There was no developmental toxicity observed at any dose tested. Therefore, the developmental (fetal) NOAEL is 15 mg/kg/day at the highest dose tested (HDT).

iii. *Reproductive toxicity study—rats.* In the 2-generation reproductive toxicity study in rats, the prenatal (systemic) NOAEL was 2.3 mg/kg/day. The prenatal (systemic) LOAEL of 7 mg/kg/day was based on decreased bwt, decreased bwt gains, and decreased food efficiency. The reproductive (pup) NOAEL was 7 mg/kg/day and the LOAEL was 7 mg/kg/day at the HDT.

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for pyridaben is complete with respect to current data requirements. There are no prenatal or postnatal toxicity concerns for infants and children based on the results of the rat and rabbit developmental toxicity studies as well as the 2-generation rat reproductive toxicity study. According to the above, reliable data support removing the additional 10x safety factor for protection of infants and children.

v. *Conclusion.* There is a complete toxicity data base for pyridaben and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

a. *Acute risk.* Using the somewhat conservative exposure assumptions described above, the percentage of the aPAD that will be utilized by dietary exposure to residues of pyridaben for infants and children range from 16% for children 7-12 years old to 77% for nursing infants ≤ 1 year old. The acute DWLOC does not exceed EPA's level of concern. Taking into account the completeness and reliability of the toxicity data and this conservative exposure assessment, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from acute aggregate exposure to pyridaben residues.

b. *Chronic risk.* Using the somewhat conservative exposure assumptions described above, EPA has calculated that the percentage of the cPAD that will be utilized by dietary exposure to residues of pyridaben ranges from 27% for nursing infants less than 1 year old, up to 85% for non-nursing infants less than 1 year old. The chronic DWLOC does not exceed the level of concern. There are no residential uses for pyridaben. Taking into account the completeness and reliability of the toxicity data and this conservative exposure assessment, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to pyridaben residues.

c. *Short-term or intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account chronic dietary food and water plus indoor and outdoor residential uses. Since the chronic food and chronic DWLOC do not exceed EPA's level of concern and there are currently no indoor or outdoor residential uses of pyridaben, the short-term and intermediate-term aggregate risk does not exceed EPA's level of concern.

d. *Determination of safety.* Based on these risk assessments, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyridaben residues.

F. International Tolerances

There are no CODEX, Canadian, or Mexican Maximum Residue Limits established for pyridaben on cranberries and pistachio.

2. Interregional Research Project Number 4

9E6016, 9E6030, 9E6031, and 9E6034

EPA has received pesticide petitions (9E6016, 9E6030, 9E6031, and 9E6034) from the Interregional Project Number 4 (IR-4) Rutgers University, New Brunswick, NJ, 08903-0231 proposing,

pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of [bifenthrin, ((2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the RAC as follows:

1. *PP 9E6016* proposes the establishment of a tolerance for grape at 0.2 ppm.

2. *PP 9E6030* proposes the establishment of a tolerance for peppers at 0.5 ppm.

3. *PP 9E6031* proposes the establishment of a tolerance for head lettuce at 2.0 ppm.

4. *PP 9E6034* proposes the establishment of a tolerance for the caneberry subgroup at 1.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on these petitions.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of bifenthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled bifenthrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of bifenthrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances GC/ECD analytical method P-2132M.

3. *Magnitude of residues*. Field residue trials meeting EPA study requirements have been conducted at the maximum label rate for these crops. Results from these trials demonstrate that the proposed bifenthrin tolerances of 0.2 ppm for grape, 0.5 ppm for peppers, 2.0 ppm for head lettuce, and 1.0 ppm for the caneberry subgroup will not be exceeded when the product is applied following the proposed use directions.

B. Toxicological Profile

1. *Acute toxicity*. For the purposes of assessing acute dietary risk, FMC has used the maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats. The maternal LOAEL of this study of 2.0 mg/kg/day was based on tremors from day 7-17 of dosing. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity*. The following genotoxicity tests were all negative: gene mutation in *Salmonella* (Ames); chromosomal aberrations in Chinese hamster ovary (CHO) and rat bone marrow cells; hypoxanthine guanine phophoribosyl transferase (HGPRT) locus mutation in mouse lymphoma cells; and unscheduled DNA synthesis in rat hepatocytes.

3. *Reproductive and developmental toxicity*. In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOAEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day HDT.

4. *Subchronic toxicity*. The maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats is also used for short-term and intermediate-term MOE calculations (as well as acute, discussed in paragraph (1) above). The maternal LOAEL of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing.

5. *Chronic toxicity*—i. The chronic population adjusted dose (cPAD) has been established at 0.015 mg/kg/day. This cPAD is based on a 1 year oral feeding study in dogs with a NOAEL of 1.5 mg/kg/day, based on intermittent tremors observed at the LOAEL of 3.0 mg/kg/day; an uncertainty factor of 100 is used.

ii. Bifenthrin is classified as a *Group C* chemical (possible human carcinogen) based upon urinary bladder tumors in mice; assignment of a Q* has not been recommended.

6. *Animal metabolism*. The metabolism of bifenthrin in animals is adequately understood. Metabolism studies in rats with single doses demonstrated that about 90% of the parent compound and its hydroxylated metabolites are excreted.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of bifenthrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of bifenthrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that bifenthrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Tolerances have been established for the residues of bifenthrin, in or on a variety of RACs. Tolerances, in support of registrations, currently exist for residues of bifenthrin on hops; strawberries; corn grain, forage, and fodder; cottonseed; artichokes, the crop group cucurbit vegetables, the crop group legume vegetables - subgroup edible-podded legume vegetables and subgroup succulent shelled pea and bean, eggplant, the subgroup head and stem brassica, and livestock commodities of cattle, goats, hogs, horses, sheep, poultry, eggs, and milk. Pending tolerances for citrus, raspberries and sweet corn also exist. For the purposes of assessing the potential dietary exposure for the existing and pending tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated.

ii. *Drinking water*. Laboratory and field data have demonstrated that bifenthrin is immobile in soil and will not leach into ground water. Other data show that bifenthrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero [< 0.001 parts per billion (ppb)]. Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

2. *Non-dietary exposure*. Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application

and chronic dietary aggregate exposures associated with bifenthrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet. In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e., lawn care) and receptor subpopulation (i.e., adults, children 1–6 years old and infants > 1 year old) are compared to the systemic absorbed dose NOAEL for bifenthrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for bifenthrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOAEL for estimating MOEs. In the case of potential aggregate health risks, the above mentioned conservative point estimates of inhalation and incidental ingestion non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1–6 years old and infants > 1 year old. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOAEL to provide estimates of aggregate MOEs.

The non-dietary and aggregate (non-dietary + chronic dietary) MOEs for bifenthrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental ingestion) MOEs for post-application exposure for the lawn care product evaluated was estimated to be > 194,000 for adults, 52,400 for children 1-6 years old and 56,700 for infants < 1 year old. The aggregate MOE (inhalation + incidental oral + chronic dietary, summed across all product use categories) was estimated to be 2,158 for adults, 579 for children 1-6 years old and 966 for infants (< 1 year old). It can be concluded that the potential non-dietary and aggregate exposures for bifenthrin are associated with substantial margins of safety.

D. Cumulative Effects

In consideration of potential cumulative effects of bifenthrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by bifenthrin would be cumulative with those of other chemical compounds; thus only the potential risks of bifenthrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for EPA to consider concerning potential cumulative effects of bifenthrin consistent with the schedule established by EPA pursuant to the Food Quality Protection Act (FQPA).

E. Safety Determination

1. *U.S. population—i. Chronic exposure and risk.* Based on a complete and reliable toxicology data base, the acceptable cPAD is 0.015 mg/kg/day, based on a NOAEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the anticipaded residue contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000444 mg/kg bwt/day and utilize 3.0% of the cPAD for the overall U. S. population. The ARC for children 7–12 years old and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000650 mg/kg bwt/day and 0.001203 mg/kg bwt/day and utilizes 4.3% and 8.0% of the cPAD, respectively. Generally speaking, EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the cPAD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

ii. *Acute exposure and risk.* Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. For the purposes of assessing acute dietary risk for bifenthrin, the maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats was used. The maternal LOAEL of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing. This acute dietary endpoint was used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the MOEs are greater than the EPA standard of 100 for all subpopulations. The 99.9th percentile of exposure for the overall U. S. population was estimated to be 0.005932 mg/kg/day (MOE of 168). The 99.9th percentile of exposure for all infants < 1 year old was estimated to be 0.007331 mg/kg/day (MOE of 136). The 99.9th percentile of exposure for nursing infants < 1 year old was estimated to be 0.004599 mg/kg/day (MOE of 217). The 99.9th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.006974 mg/kg/day (MOE of 143). The 99.9th percentile of exposure for children 1 to 6 years old was estimated to be 0.009983 mg/kg/day (MOE of 100). Therefore, FMC concludes that the acute dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Infants and children—i. General.* In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2–generation reproductive study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal natal toxicity and the completeness of the data base.

ii. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOAEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOAEL of 4 mg/kg/day. In the rat developmental study, the maternal NOAEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL 2 mg/kg/day. There were 5/23 (22%) litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero

in the control, 1, and 0.5 mg/kg/day groups. According to recent historical data for this strain of rat, incidence of distended ureter averaged 11% with a maximum incidence of 90%.

iii. *Reproductive toxicity study.* In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOAEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day HDT.

iv. *Prenatal and postnatal sensitivity*—a. *Prenatal.* Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Postnatal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

c. *Conclusion.* Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized less than 10% of the cPAD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of bifenthrin in or on grape, peppers (bell and non-bell), lettuce, and caneberry.

[FR Doc. 99–33035 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–906; FRL–6398–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–906, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–906 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–906. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–906 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide

Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov,*" or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–904. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Nippon Soda Co. LtD with, BASF Corporation as Agent

PP 8F4945

EPA has received a pesticide petition (8F4945) from BASF Corporation , acting as Agent for Nippon Soda Company, LtD, Agricultural Products, PO Box 13528, Research Triangle Park, NC 27709-3528 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Costmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tepraloxydim [(EZ)-(RS)-2-1-[(2E)-3-chloroallyloxyimino]propyl-3-hydroxy-5-perhydropyran-4-ylcylohex-2-en-1-one] and its metabolites containing the 3-tetrahydroyrany-1-pentane-1,5-dione (GP) and/or 5-(4-tetrahydropyranyl)-3-hydroxy-cyclohex-2-en-1-one (5-OH-DP) moiety (calculated as the herbicide)] in or on the raw agricultural commodity (RAC) in cotton seed at 0.2 parts per million (ppm), cotton meal at 0.2 ppm, cotton hulls at 0.2 ppm, cotton gin trash at 3.0 ppm, soybean seed at 5.0 ppm, soybean meal at 5.0 ppm, soybean hulls, poultry meat at 0.5 ppm, poultry liver at 1.0 ppm, poultry fat at 0.5 ppm, and eggs at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues in plants is adequately understood for the purposes of registration. Analytical methods for detecting levels of tepraloxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances was submitted to EPA.
2. *Analytical method.* The proposed analytical method involves extraction, concentration, precipitation, centrifugation/filtration, oxidation, partition, and clean-up. Samples are then analyzed by GC-MS (selected ion monitoring). The limit of quantitation (LOQ) is 0.4 ppm in soybean matrices and 0.1 ppm in cotton matrices.
3. *Magnitude of residues.* Soybean samples from 22 locations in 16 states were analyzed for residues of tepraloxydim. The highest average total of tepraloxydim residues detected in soybean seed samples collected 45 days after application was 4.93 ppm. The average total of tepraloxydim residues in other soybean seed samples collected 45 days after application for the remaining sites ranged from 0.65 to 4.81 ppm. Forage and hay were not analyzed and these commodities will be restricted from feeding to livestock. The tepraloxydim residues for 2 residue decline sites did not exhibit any clear trends from the range of -10 days to +10 days around the 45–day harvest target.

In addition, soybeans were processed after treatment at the proposed label rate into hulls, meal, and refined oil. There was little or no concentration of tepraloxydim residues found in soybean meal or refined oil. Residues in the meal were roughly equal to those found in the seeds. Residues in the refined oil were less than 10% of the residues observed in the seeds. Residues concentrated slightly in the hull fractions. The average concentration factor in hulls was 1.45. Cotton samples from 13 locations in 8 States were analyzed for residues of tepraloxydim. The highest average total of tepraloxydim residues detected in cotton seed samples collected 40 days after application was 0.19 ppm. The average total of tepraloxydim residues in cotton seed for the remaining sites ranged from < 0.10 to 0.18 ppm. In gin trash, the highest average total of tepraloxydim residues detected was 2.10 ppm. The remaining sites contained tepraloxydim residues that ranged from < 0.10 to 1.34 ppm. The tepraloxydim residues for the residue decline site in North Carolina exhibited no clear trends from the -11 day harvest to the +10 day of the 41–day target. All 5-OH-DP residues were < 0.05 ppm level of quanification. Only the 36 and 51 days after last application (DALA) seed samples for tepraloxydim were at or above 0.05 ppm (0.054 and 0.05 ppm, respectively). The gin trash samples contained tepraloxydim residues ranging from < 0.05 ppm to 0.178 ppm at 36 and 46 DALA, respectively.

Available data support the proposed tolerances of poultry meat and fat at 0.5 ppm, poultry liver at 1.0 ppm, and eggs at 0.2 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Based on available acute toxicity data tepraloxydim does not pose any acute toxicity risks. Acute toxicity studies place technical tepraloxydim in toxicity category III and for acute oral, dermal, and inhalation and toxicity category IV for eye and dermal irritation. The technical material is not a positive skin sensitizer. Additionally, tepraloxydim was not found to have a neurotoxic potential after acute exposure.

2. *Genotoxicity.* The following tests were conducted: An Ames Test (1 study; point mutation): negative; *in vitro* CHO cells/hypoxanthine-guanine phosphoribosyl transferase (CHO/HPRT) (1 study; point mutation): negative; *in vitro* cytogenetics - CHO Cells (1 study; chromosome aberrations): negative; *in vitro* unscheduled DNA synthesis (UDS) test using rat hepatocytes (1 study; DNA damage and repair): negative; mouse micronucleus - *in vivo* (1 study; chromosome aberrations): negative based on the studies mentioned above, tepraloxydim does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study was conducted with rats being fed dosages of 0, 11, 53, and 268 milligrams/kilograms/day (mg/kg/day) with a reproductive no observed adverse effect level (NOAEL) of 268 mg/kg/day, pup developmental NOAEL of 53 mg/kg/day, and maternal NOAEL of 11 mg/kg/day based on the following: (1) At the parental 268 mg/kg/day dose level, decreased food consumption, reduced body weights (bwts) and/or gains, increase in albumin and cholesterol, decrease in triglycerides and increase in white blood cell count were observed; (2) at the parental (F1 females) 53 mg/.kg/day dose group only, increase in white blood cell count was observed; and (3) the only pup toxicity was observed at the 268 mg/kg/day dose group which consisted of reduced bwts and/or gains and delayed eye opening.

A developmental study in rats via oral gavage resulted in dosages of 0, 40, 120, and 360 mg/kg/day highest dose tested (HDT) with a developmental toxicity NOAEL of 40 mg/kg/day and a maternal toxicity of 120 mg/kg/day based on the following: (1) At the 360 mg/kg/day dose group, distinct maternal toxicity consisting of reduced food consumption, impairment in bwt gains, and reduced uterus weights; (2) at the 360 mg/kg/day dose group, increased resorptions and post implantation loss, lower mean percentage of live fetuses, and lower mean placental weights were observed; and (3) at the 360 and 120 mg/kg/day dose groups, slightly decreased mean fetal weights were observed with a progression of severity to the upper dose group, and, at the 360 mg/kg/day dose group, slightly increased malformation rates were observed.

A second developmental study was performed to clarify phenomenons (skeletal retardations and variations) which were observed in the preceding test also at the lowest dose level of 40 mg/kg/day, but which were still within historical control data and, therefore, assessed as not being substance-related. The dose levels in this study were 0, 10, 20, and 40 mg/kg/day HDT with a developmental toxicity NOAEL of 40 mg/kg/day and a maternal NOAEL of 40 mg/kg/day. There were no substance-related effects for all parameters measured in this study.

A developmental toxicity study in rabbits via oral gavage resulted in dosages of 0, 20, 60, and 180 mg/kg/day HDT with a developmental toxicity NOAEL of 180 mg/kg/day and a maternal toxicity NOAEL of 60 mg/kg/day based on the following: (1) At the HDT, reduced food consumption and impaired bwt gain were the only effects observed during the treatment period; and (2) no other signs of maternal toxicity were detected in this dose group or at the lower dose groups tested. No developmental or teratogenic effects were observed in this study.

4. *Subchronic toxicity.* A subchronic neurotoxicity study in rats fed dosages of 0, 28, 103, and 428 mg/kg/day (males) and 0, 33, 124, and 513 mg/kg/day (females) with a neurotoxicity NOAEL of 428 mg/kg/day (males) and 513 mg/kg/day (females) and a systemic NOAEL of –28 mg/kg/day based on the following effects: (1) At the HDT, decreased food consumption and significantly reduced bwts and/or bwt changes were observed in both male and females rats; and (2) in the mid-dose level, reduced bwts and/or bwt changes were observed in female rats only. No signs of neurotoxicity and gross and microscopic pathology were observed at any dose level tested.

In an *in vivo* dermal absorption study, male Wistar rats were dosed with [^{14}C] - tepraloxydim. Dose levels of 0.005, 0.05, and 0.5 mg/cm^2 diluted in Solvesso 200 were administered to rats on a shaved area on the back. Groups of 4 rats per dose group were sacrificed at 8, 24, or 72 hours following application of the dose. Results indicated that after the 8–hour exposure, the total percent absorbed at all dose levels was 3-5%. Additionally, with increasing dose, the percentage of radioactivity absorbed tended to decrease indicating that saturation of skin with increasing dose occurred under the conditions tested. This effect was most striking at the high dose level (HDL).

5. *Chronic toxicity.* Based on review of the available data, BASF believes the reference dose (RfD) for tepraloxydim will be based on the 2–year feeding study in rats with a threshold NOAEL of 6 mg/kg/day in male and female rats. Using an uncertainty factor of 100, the RfD is calculated to be 0.06 mg/kg/day. The following are summaries of the pertinent toxicity data supporting tepraloxydim tolerances

Two 1 year feeding study in dogs fed dosages of 0, 3.0, 12.0, 58.0 (first study) and 257.0 mg/kg/day (second study) with a NOAEL of 12 mg/kg/day based on the following effects: (1) At the 257 mg/kg/day dose level a slight anemia was detected; (2) clinical chemistry revealed disturbances in lipid, protein, and carbohydrate metabolism in both sexes of the 257 mg/kg/day dose level and, to a minor extent, in males of the

58 mg/kg/day dose level; (3) the upper two dose levels caused reduced function of the epididymides, and degeneration and atrophy of the germinal epithelium in the testes were observed; (4) increased absolute and/or relative weights for the liver, kidney, and thyroid, and decreased absolute and or relative weights (males only) of the testes and epididymides were observed in the 257 mg/kg/day dose group; (5) increased absolute and/or relative weight for the liver and thyroid, and decreased absolute and/or relative epididymides (males only) weights were observed in the 58 mg/kg/day dose group (these increases were not statistically significant); and (6) microscopic findings in the urinary bladder, liver, gall bladder, spleen, bone marrow, thyroid, testes (males), epididymides (male), and prostate (male) were seen in the 257 mg/kg/day dose group and, in the 58 mg/kg/day dose group, urinary bladder, epididymides (male), and prostate (male) microscopic findings were seen at a lesser degree than the 258 mg/kg/day dose group.

A chronic feeding study and carcinogenicity study resulted in rats being fed dosages of 0, 6.0, 33, and 154 (males) and 273 (females) mg/kg/day with a NOAEL of 6.0 mg/kg/day for males and females based on the following effects: (1) Decreased bwt, bwt change, and food consumption in both male and female rats at dose levels > 154 mg/kg/day; (2) clinical chemical changes were observed in the mid- and high-dose groups; and (3) in the 273 mg/kg/day dose group of the carcinogenicity study, there was a trend towards a slightly elevated incidence for hepatocellular adenomas and carcinomas. However, the incidence for adenomas is within the range of historical control, the incidence for carcinomas was slightly above the range of historical controls, and, in the 154 mg/kg/day male dose group of the chronic study, a trend towards a slightly elevated increase of carcinomas was observed which was not considered to be statistically significant. The higher sensitivity of females may possibly be due to the higher dose that was fed to that sex, which clearly fulfilled the criteria for a Maximum Tolerated Dose (MTD).

A carcinogenicity study in mice fed dosages of 0, 37, 332, and 1,035 mg/kg/day (males) and 0, 52, 490, and 1,456 mg/kg/day (females) with a NOAEL of 37 mg/kg/day (males) and 52 mg/kg/day (females) based on the following effects: (1) Significantly decreased bwts/bwt changes were observed in both male and female mice at the mid-dose and high-dose levels with a progression of severity to the top dose which clearly fulfilled the criteria for a MTD for both dose levels; (2) in the 1,456 mg/kg/day female dose group, a slight increase in lymphocytes and decrease in polymorphonuclear neutrophils was seen; (3) relative liver weights were increased in both sexes of the high-dose group and in males of the 332 mg/kg/day dose group; (4) in females of the high-dose and mid-dose levels, hyalinization (sclerosis) of the endometrial stroma, muscularis, and/or perivascular areas were observed in the uterus; and (5) a very slightly increased incidence of neoplasms (adenomas and carcinomas) occurred at dose levels which fulfilled the criteria for a maximum tolerated dose in the liver of female mice. No substance-related neoplasms were observed in the top dose males or in both sexes at dose levels below the MTD.

i. *Mechanistic studies*—a. *Initiation potential study.* In order to determine if tepraloxydim will initiate the carcinogenic process, tepraloxydim was tested for its foci initiating potential after single oral administration of 2,000 mg/kg/day in 0.5% aqueous carboxymethyl-cellulose (CMC) solution to partially hepatectomized female Wistar rats according to a protocol of Prof. Schulte-Hermann, University of Vienna, Austria. N-Nitrosomorpholine (NNM) is known to induce liver foci and was used as a positive control for initiation at a dose of 25 mg/kg/day. Phenobarbitone (PB) was used as a promoter. Three different groups (test substance, negative and positive controls) were each divided into two sub-groups, one being maintained for 8 weeks on basal diet, while the other sub-group was treated with 500 ppm PB in the diet for the same period. Each sub-group consisted of 15 male and 15 female animals. The rats were subjected to an adaptation period of at least 17 days. After this adaptation period, partial hepatectomy was performed. Fourteen hours after partial hepatectomy, the test and control substances were administered once by gavage to 2 groups each (initiation period) and the animals were held on basal diet ad libitum for a 14–day recovery period. Thereafter, the groups received either 500 ppm PB or basal diet for another 8 weeks (promotion period). The state of health of the animals was checked at least once a day. Body weight was determined in weekly intervals and food consumption was measured in weekly intervals during the promotion period. At the end of the study the animals were subjected to gross-pathological assessment, giving special attention to the liver. Histopathologic evaluation of the liver was performed on Hematoxylin and Eosin stained slides as well as on slides stained for Glutathione-S-Transferase P (GST-P). GST-P positive foci were evaluated quantitatively (foci/cm^2 of liver tissue). The initiating potential of a chemical is expressed in the increased number of foci relative to control.

The mean numbers of GST-P positive foci per cm^2, which were detected in the different study groups, are given in the following table.

TABLE 1: MEAN NUMBER OF GST-P POSITIVE FOCI PER CM^2

Study group	Initiation	Promotion	Mean number of foci per cm^2
0	vehicle[1]	-	0.3
1	vehicle[1]	500 ppm PB[2]	0.45
2	25 mg/kg/day NNM[3]	-	7.78
3	25 mg/kg/day NNM[3]	500 ppm PB[2]	11.86
4	2,000 mg/kg/day tepraloxydim	-	0.08
5	2,000 mg/kg/day tepraloxydim	500 ppm PB[2]	0.17

[1]vehicle = 0.5% aqueous carboxymethyl cellulose
[2]PB = Phenobarbitone
[3]NNM = N-Nitrosomorpholine

The mean number of GST-P positive foci per cm^2 liver tissue was very low in groups 4 and 5 which were treated with the test substance, and there were no significant differences to the corresponding control groups 0 and 1.

As expected, the number of GST-P positive foci per cm^2 was significantly increased in groups 2 and 3, when compared with the corresponding control groups (group 0 or 1) demonstrating the known initiating capacity of NNM.

Therefore, tepraloxydim does not have an initiating potential.

A possible non-genotoxic mechanism, which could account for the increased incidence of liver tumors, is the induction of increased cell proliferation (S-phase response).

b. *S-Phase response.* In order to determine if tepraloxydim causes cell proliferation, tepraloxydim was administered to groups of 5 male and 5 female Wistar rats at dietary levels of 0, 100, 600, 3,000 (males only), and 4,000 (females only) ppm for different time periods: 1 week, 6 weeks, and 13 weeks. An additional group with a recovery period of 2 weeks was used after 1 week administration, and a 5–week recovery group was additionally used after 13–week administration. The influence of treatment on DNA-synthesis/cell proliferation (S-phase response) in the liver was determined using bromodeoxyuridine (BrdU), which is incorporated into the DNA if DNA-synthesis and cell proliferation is induced. One week prior to necropsy, osmotic mini-pumps containing BrdU were implanted subcutaneously. Food consumption and bwt were determined weekly. The state of health was checked each day. All animals were assessed by gross pathology. BrdU incorporated into the DNA of liver cells was detected by immunohistochemistry and evaluated microscopically.

Cell proliferation can be induced diffusely in all hepatocytes or it can be localized in a specific region of the lobule. Therefore, in each of the two liver lobes, five lobules were evaluated. In order to assess whether a localized liver cell proliferation occurs in the liver lobule, the lobule was subdivided into three zones (Rappaport) containing the portal tract (zone 1), the central vein (zone 3), and the zone in-between (zone 2). In total, more than 1,000 cells per zone and more than 3,000 hepatocytes per animal were recorded and the BrdU labeling index determined.

The results from the S-phase response study in the rat liver demonstrate that tepraloxydim can induce a selective increase in cell proliferation predominantly in zone 3 after 1, 6, and 13 weeks in females at 4,000 ppm and, to a minor degree, at 600 ppm. In the males, there was an increase in cell proliferation after 1 week treatment at 3,000 ppm and, to a minor degree, at 600 ppm. The enhanced cell proliferation after 1 week of administration was reversible after 1 weeks of recovery in both sexes and appeared to be reversible in females after 5 weeks of recovery following 13 weeks of administration. The more pronounced S-phase response in female rats also explains why liver neoplasia was predominantly found in the females. These studies indicate that the mode of action by which an enhancement of liver neoplasia was induced is a chronic increase in liver cell proliferation. It is emphasized that this mechanism results in an increased incidence of liver tumors only at dose levels at the MTD. It is therefore concluded that tepraloxydim does not have an oncogenic potential of biological relevance.

6. *Animal metabolism.* The qualitative nature of the residues in animals is adequately understood for the purposes of registration. Analytical methods for detecting levels of tepraloxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances was submitted to EPA.

7. *Metabolite toxicology.* Available metabolism data indicate that the metabolites containing the GP and 5-OH-DP moiety should be included in the tolerance for expression for tepraloxydim.

8. *Endocrine disruption.* No specific tests have been performed with tepraloxydim to determine whether the chemical may have an effect in humans that is similar to an effect produced by naturally-occurring estrogen or other endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* For purposes of assessing the potential dietary exposure, BASF has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the proposed tolerances for tepraloxydim in or on the RAC cotton seed, meal, and hulls at 0.2 ppm; cotton gin trash at 3.0 ppm; soybean seed, meal, and hulls at 5.0 ppm; poultry meat and fat and 0.5 ppm; poultry liver at 1.0 ppm; and eggs at 0.2 ppm. The TMRC is a "worst-case" estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels. There are no established U.S. tolerances for tepraloxydim, and there are no currently registered uses for tepraloxydim on food or feed crops in the United States.

i. *Food.* Dietary exposure to residues of tepraloxydim in or on food from these proposed tolerances would account for less than 4.0% of the RfD (0.06 mg/kg/day) for the overall U. S. population. BASF estimates indicate that dietary exposure will not exceed the RfD for any population subgroup for which EPA has data. The most highly exposed group in the subpopulation groups would be non-nursing infants < 1 year old, which uses ~15.0% of the RfD. This exposure assessment relies on very conservative assumptions--100% of crops will contain tepraloxydim residues and those residues would be at the level of the tolerance--which results in an overestimate of human exposure.

Tepraloxydim was evaluated for its potential mutagenicity and genotoxicity *in vitro* using bacterial and mammalian cells as well as in a cytogenetics assay. The results of these studies demonstrated the absence of a mutagenic or genotoxic effect.

In vivo, the compound was assessed for the induction of micronuclei in mice. The result of this study showed that tepraloxydim has no chromosome-damaging potential.

It is therefore, concluded that tepraloxydim has no mutagenic or genotoxic properties either *in vitro* or *in vivo*.

The results of a 24–month chronic toxicity study and a carcinogenicity study in rats show that the HDL (154 mg/kg/day in males and 273 mg/kg/day in females) clearly fulfilled the criteria for a MTD based on distinctly reduced bwts or bwt changes and histopathological alterations in the liver. The test substance induced changes in clinico-chemical parameters, which are considered to be associated with liver toxicity. Histopathologically, the liver was found to be affected, therefore, this organ was identified as a target. In the carcinogenicity study, in female animals of the top dose, a slight trend towards an increased incidence of hepatocellular adenomas and carcinomas was observed which was virtually within the historical control range. In top dose males of the chronic toxicity study, a trend towards a slightly elevated increase of carcinomas was detected. As this increase was not evident in the carcinogenicity study, which involves a far greater number of animals, it is likely that this finding was incidental.

Additional mechanistical investigations have demonstrated that tepraloxydim does not possess an initiating potential for a liver carcinogenic process. Combined with the proven absence of a gene or chromosome damaging effect, it can be concluded that the increased incidence of rat liver neoplasia was not related to a genotoxic mode of action.

The results from an S-phase response study in the rat liver demonstrate that tepraloxydim can induce a selective increase in cell proliferation predominantly in zone 3 after 1, 6, and 13 weeks in females at 4,000 ppm and, to a minor degree, at 600 ppm. In the males, there was an increase in cell proliferation after 1 week treatment at 3,000 ppm and, to a degree, at 600 ppm. The enhanced cell proliferation after 1 week of administration was reversible after 2 weeks of recovery in both sexes and appeared to be reversible in females after 5 weeks of recovery following 13 weeks of administration. The more pronounced S-phase response in female rats also explains why liver neoplasia was predominantly found in the females. These studies indicate that the mode of action, by which an enhancement of liver neoplasia was induced, is a chronic increase in liver cell proliferation. It is emphasized that this mechanism results in an increased incidence of liver tumors only at dose levels at the MTD. It is therefore, concluded that tepraloxydim does not have an oncogenic potential of biological relevance. The result of the carcinogenicity study in mice demonstrates that the HDL of 1,035 mg/kg/day (males) and 1,456 mg/kg/day (females) by far exceeded the criteria of a MTD as evidenced by drastically reduced bwts or bwt changes. A trend towards an increased incidence of liver neoplasia occurred only in females exclusively at that dose level and therefore cannot be extrapolated to dose levels below the MTD. Relative liver weights were distinctly increased at the HDL associated with foci of cellular alteration and hypertrophy of hepatocytes.

In female animals of the HDLs, hyalinization of the uterus was found as well as reduced ovarian activity which may be a consequence of the reduced terminal bwts.

In conclusion, in long-term feeding studies in rats and mice, there was a slight trend towards increased incidences of liver neoplasia at the HDLs. These dose levels were at or exceeded the MTD. As the liver was shown to be the target organ, the increased cell proliferation, resulting in neoplasia is considered to have been due to the toxicity exerted on this organ.

The overall lowest NOAELs obtained in long-term feeding studies were:
Rats: 6 mg/kg/day
Mice:
Males: 37 mg/kg/day
Females: 52 mg/kg/day
Dogs: 12 mg/kg/day.
These chronic NOAELs demonstrate that the rat is the most sensitive species.

Tepraloxydim does not possess mutagenic or genotoxic properties. As discussed above, it can be concluded that the compound has no biologically relevant oncogenic potential.

Therefore, based on the results of the carcinogenicity study in mice, the results of genotoxicity testing, the results of the 24–month chronic feeding/oncogenicity study in rats, and auxiliary mechanistic data showing that tepraloxydim is not an initiator of the carcinogenic process, BASF believes that the threshold approach to regulating tepraloxydim is appropriate.

ii. *Drinking water.* Based on the available studies, BASF does not anticipate exposure to residues of tepraloxydim in drinking water. There is no established Maximum Concentration Level (MCL) for residues of tepraloxydim in drinking water under the Safe Drinking Water Act (SDWA).

2. *Non-dietary exposure.* Tepraloxydim is not currently registered for any nonagricultural use. The potential for non-occupational exposure to the general population is therefore, not significant.

D. Cumulative Effects

BASF has considered the potential for cumulative effects of tepraloxydim and other substances that have a common mechanism of toxicity. No evidence or information exists to suggest that toxic effects produced by tepraloxydim would be cumulative with those of any other chemical compound.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, BASF has estimated that aggregate exposure to tepraloxydim will utilize less than 4.0% of the RfD for the U.S. population. BASF concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of tepraloxydim, including anticipated dietary exposure and non-occupational exposures.

2. *Infants and children—*i. *Developmental toxicity.* The teratogenicity studies in rats resulted in a developmental toxicity NOAEL of 40 mg/kg/day and a maternal toxicity NOAEL of 40 mg/kg/day. These NOAEL values are 7x higher than the NOAEL from the 2–year feeding study in rats used to establish the RfD.

The teratogenicity study in rabbits resulted in a developmental toxicity NOAEL of 180 mg/kg/day and a maternal toxicity NOAEL of 60 mg/kg/day. These NOAEL values are 10x higher than the NOAEL from the 2–year feeding study in rats used to establish the RfD.

ii. *Reproductive toxicity.* The 2–generation reproduction study with rats resulted in a reproductive NOAEL of 268 mg/kg/day ppm and a maternal NOAEL of 53 mg/kg/day. These NOAEL values are significantly higher than the NOAEL from the 2–year feeding study in rats used to establish the RfD.

iii. *Reference dose.* Since developmental and reproductive toxicity occurs at levels at or above the levels shown to exhibit parental toxicity and since these levels are significantly higher than those used to calculate the RfD, BASF believes the RfD of 0.06 mg/kg/day is an appropriate measure of safety for infants and children.

Using the conservative exposure assumptions described above, BASF has concluded that the portion of the RfD that will be utilized by aggregate exposure to residues of tepraloxydim resulting from the proposed tolerances will be less than 15% for all populations of infants and children. The most highly exposed group in the subpopulation groups would be non-nursing infant < 1 year old, which uses 15% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of tepraloxydim, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level has not been established for tepraloxydim by the Codex Alimentarius Commission.

[FR Doc. 99–33036 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–907; FRL–6398–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amendment of pesticide petitions (PP 5F4469), and (PP 4F4336), proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–907, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–907 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: tompkins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–907. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–907 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–907. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Novartis Crop Protection, Inc.

PP 5F4469 and PP 4F4336

EPA has received pesticide petitions (PP 4F4336 and PP 5F4469) from Novartis Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.481 by establishing tolerances for residues of prosulfuron,1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities cereal grains group (except rice and wild rice) grain at 0.01 parts per million (ppm); cereal grains group (except rice and wild rice) forage at 0.10 ppm; cereal grains group (except rice and wild rice) fodder at 0.01 ppm; cereal grains group (except rice and wild rice) straw at 0.02 ppm; cereal grains group (except rice and wild rice) hay at 0.20 ppm; milk at 0.01 ppm; and meat, fat, kidney, liver and meat by-products of cattle, goats, hogs, horses, and sheep at 0.05 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

This is a revised notice of filing to amend a previous notice of filing published in the **Federal Register** of August 25, 1999 (64 FR 46382) (FRL–6093–7) to propose permanent tolerances, instead of time-limited, for prosulfuron. Refer to the August 25, 1999 notice for a detailed summary of available information to support this action.

[FR Doc. 99–32872 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–MN; FRL–6393–2]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Minnesota Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 29, 1999, the State of Minnesota submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Minnesota's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. Minnesota has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Minnesota.

DATES: Comments, identified by docket control number PB–402404–MN, must be received on or before February 7, 2000. In addition, a public hearing request may be submitted on or before February 7, 2000.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–MN in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Emma Avant, State of Minnesota Project Officer, Pesticides and Toxic Substances Branch, Environmental Protection Agency, Region V, 77 West Jackson Blvd, DT–8J, Chicago, IL 60601; telephone: (312) 886–7899; e-mail address: avant.emma@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in Minnesota. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PB–402404–MN. The official record consists of the documents specifically referenced in this action, this notice, the State of

Minnesota's authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region V Office, Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxic Substances Branch, Toxic Programs Section, DT–8J, 77 West Jackson Blvd, Chicago, IL.

C. How and to Whom Do I Submit Comments and Hearing Requests?

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–MN in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division, Pesticides and Toxic Substances Branch, DT–8J, 77 West Jackson Blvd, Chicago, IL 60604.

2. *In person or by courier.* Deliver your comments and hearing requests to: Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxic Substances Branch, DT–8J, Chicago, IL 60601. The regional office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically.* You may submit your comments and hearing requests electronically by e-mail to: "avant.emma@epamail.epa.gov" or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and hearing requests in electronic form must be identified by docket control number PB–402404–MN. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

II. Background

A. What Action is the Agency Taking?

The State of Minnesota has provided a certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Minnesota lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., September 29, 1999). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the Minnesota application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA

approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the State of Minnesota's proposed program has been provided by the applicant.

A. Background

The purpose of Minnesota's lead poisoning prevention program is to prevent or reduce lead poisoning in children and pregnant women. This is accomplished by surveillance of blood lead levels, provision of health education to the general public and to interested parties, and by regulation of lead hazard reduction in residences, child-occupied facilities, schools, and playgrounds.

B. Surveillance

Minnesota Statutes require that the results of all human blood lead analyses must be reported to the Minnesota Department of Health (MDH), along with associated demographic information. Information on individuals is private under Minnesota's Government Data Practices Act. Summary data are compiled annually and are public information.

Surveillance results in lead-related educational and environmental followup when analyses of venous blood samples identify: Children with blood lead levels of at least 20 micrograms of lead per deciliter (µg/dL) of whole blood; children with blood lead levels of 15 to 20 µg/dL, that persist for 90 day; and pregnant women with blood lead levels of at least 10 µg/dL. Health education and environmental followup is conducted either by the MDH or by a city or county health department with jurisdiction. Statutes require the health departments serving Minneapolis, St. Paul, and Duluth to conduct followup. Eleven other city or county health departments have chosen to conduct followup, but are allowed to cede the program to MDH by notifying the commissioner of MDH by December 31, 1999. MDH is responsible for followup in 76 of Minnesota's 87 counties.

C. Health Education

MDH conducts lead-related health education activities for both primary and secondary prevention of elevated blood lead levels. Educational materials include a variety of brochures and some videotapes. Topics include identification of possible lead sources, dealing with lead sources, preventing lead exposure to young children, remodeling older homes, disposal of lead waste, and disclosure of lead hazards to prospective buyers or renters of residences. Some of these materials are available in Spanish or Hmong.

Compliance assistance is provided as part of the health education activities. The Lead Link newsletter is targeted primarily to people with lead licenses. The newsletter provides updates on changes to rules or statutes and on new technology for lead testing or lead hazard reduction. Articles explain particular aspects of the rules or answers readers' questions. A renewal reminder is mailed to each licensee 2 to 3 months prior to the expiration of a license. In addition, staff routinely respond to inquires from licensed lead professionals on an individual basis.

D. Regulation

In 1999, MDH amended its previous administrative rules to establish procedures for conducting environmental followup of children and pregnant women with blood lead levels for which followup is mandated. These rules establish criteria for identifying potential sources of lead exposure to children and pregnant women and requires that regulated lead work in affected property be performed by individuals who have obtained licenses from the commissioner after successfully completing permitted lead training courses and passing an examination administered by a permitted independent testing organization.

Regulated lead sources include lead-based paint; lead-contaminated dust; lead-contaminated bare soil; and lead-contaminated drinking water. Standards are set in rules for the lead content of each of these regulated lead sources.

Affected property includes: residences; child-occupied facilities; schools; and playgrounds within Minnesota. However, MDH does not claim jurisdiction on tribal lands for the purpose of implementing lead-related requirements.

Regulated lead work includes: lead hazard screens; lead inspections; lead risk assessments; lead hazard reduction, which includes lead abatement and swab team services.

Providers of initial and annual refresher training courses that are intended to qualify individuals for lead-related licenses must submit course materials to MDH for review and obtain permits from MDH. The required course content and qualified personnel are described in the MDH rules.

The MDH rules apply to individuals and legal entities, including local health departments, who do regulated lead work in or for affected property. Except as provided under these rules, a person must obtain the appropriate license before doing regulated lead work. Any person doing regulated lead work who is required by these rules to have a license, must have the required license in personal possession and, on request, must show it to a representative of the commissioner or of the local health department with jurisdiction at the lead work site. A permit for a training course must be obtained by the course provider before representing the course as qualifying trainees for licensure under these rules.

An individual who does regulated lead work in a residence which is owned and occupied by the individual or by another adult individual who is related to the owner, must use the methods specified in the rules. The property owner, or an adult individual who is closely related to the owner, does not need a license to do lead hazard reduction for the owner's property. The MDH rules do not apply to:

1. Work that is performed for any purpose other than the express purpose of regulated lead work.
2. Emergency shelter homes or emergency shelter services.
3. Housing for the elderly or persons with disabilities unless at least one child, who is less than 72 months of age, resides or is expected to reside in such housing.
4. Zero-bedroom residences, unless occupied by a child with an elevated blood lead level for which a lead risk assessment is required.
5. Foster homes occupied by a child for no more than 90 days if the foster care is provided by an adult individual who is related, as defined in Minnesota Statutes.
6. Foster homes occupied by a child for no more than 30 days if the foster care is not provided by an individual who is related, as defined in Minnesota Statutes.
7. Any structure that is totally vacated within 30 days of the issuance of lead orders and that remains totally unoccupied until the structure is totally demolished which must be completed within 2 years of the date of the orders.
8. Chemical test kits for the on-site, qualitative detection of lead.

Individuals who have licenses or certificates that were issued under

previous rules for lead inspector, lead contractor, or lead worker remain licensed or certified until their annual expiration dates but must meet the requirements of the amended rules to remain licensed thereafter.

MDH has statutory authority and an administrative plan for monitoring compliance with its lead rules. MDH staff conduct on-site evaluations of lead training courses, lead inspections, lead hazard screens, lead risk assessments, and lead hazard reduction, which is defined to include lead abatement. The Minnesota Health enforcement Consolidation Act provides for penalties of up to $10,000. The amount of administrative penalties depends on the severity of the violations and can be partly or entirely forgivable, if remedial actions are promptly implemented. In addition, licenses can be suspended or revoked.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 1, 1999.

Gary Gulezian,

Acting Administrator, Region V.

[FR Doc. 99–33162 Filed 12–21–99; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2790]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fifth meeting of the Public Safety National Coordination Committee.

DATES: January 14, 2000 at 1:30 p.m.–5:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fifth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: January 14, 2000.

Meeting Time: General Membership Meeting—1:30 p.m.–5:00 p.m.

Address: Federal Communications Commission, 445 12th Street, S.W., Commission Meeting Room, Washington, D.C. 20554.

The NCC Subcommittees will meet from 8:00 a.m. to 12:00 noon, continuing their meetings from the previous day. The NCC General Membership Meeting will commence at 1:30 p.m. and continue until 5:00 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Remarks of Thomas Sugrue—Chief, Wireless Telecommunications Bureau.
5. Report from the Technology Subcommittee.
6. Report from the Implementation Subcommittee.
7. Public Discussion.
8. Other Business.
9. Upcoming Meeting Dates and Locations.
10. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rulemaking*, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fifth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this fifth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately

at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–33113 Filed 12–21–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2674]

Responsible Accounting Officer: Re: Auditor Independence and Objectivity

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document discusses the importance of independence and objectivity in the performance of audit work required by the Commission and adopts, as modified for Commission purposes, *Standard No. 1* of the Independence Standards Board, which requires auditors to disclose and discuss potential independence problems.

DATES: May 22, 2000.

ADDRESSES: Federal Communications Commission, 445–12th Street, SW, TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark Stone, Accounting Safeguards Division, Common Carrier Bureau, (202) 418–0816.

SUPPLEMENTARY INFORMATION: This Notice, was adopted and released on December 1, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street NW, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington, DC 20036, telephone (202) 857–3800.

Summary of Responsible Accounting Officer Letter

I. Introduction

The Commission relies on outside auditors to verify carrier compliance with a variety of Commission rules. For this to be effective, the Commission needs to be confident that the auditors are acting independently and that the opinions expressed by the auditors are objective and unbiased. This Responsible Accounting Officer (RAO) letter discusses the importance of independence and objectivity in the performance of audit work required by the Commission and adopts, as modified for Commission purposes, *Standard No. 1* of the Independence Standards Board, which requires auditors to disclose and discuss potential independence problems.

II. Background

In the *Joint Cost Order*, adopted in 1988, 53 FR 49320 (December 7, 1988), the Commission required large local exchange carriers to obtain independent audits to verify that their systems for allocating costs between regulated and nonregulated activities accurately reflected the procedures set forth in their cost allocation manuals and application of the Commission's rules. The Commission expressed concern in the *Joint Cost Order* that independence problems might arise, but the Commission declined to choose the independent auditors for the carriers, instead relying on the auditors' standards of professional conduct to mitigate its concerns. The Commission stated that it would review the auditors' work and "take appropriate corrective action if [it had] reason to believe that a particular firm has not performed its task in an objective and competent manner." Since that initial requirement was adopted in 1988, the Commission has added many other instances in which independent audits are relied upon to assure compliance with its rules.

Auditors are governed by standards of professional conduct that require them to remain objective toward and independent of the audited company. Those standards emphasize independence and objectivity in both fact and appearance, reflecting the practical view that, even if independent in fact, auditors should avoid even the appearance of bias so that those who rely on the results of their audits can be confident in their work.

Consulting and advocacy by accounting firms has increased substantially in recent years. In many instances, carriers use the same accounting firms to advocate positions on issues before the Commission that they engage to perform independent audits. Advocacy or support on behalf of a carrier concerning issues before the Commission, particularly with respect to auditing or accounting matters, could raise concerns and questions about the independence and objectivity of the auditors.

III. Discussion

To address the independence implications for the new consulting and advocacy services provided by auditors, the Securities and Exchange Commission and the American Institute of Certified Public Accountants recently established the Independence Standards Board (ISB). The initial standard of the ISB, *Standard No. 1—Independence Discussions with Audit Committees*, requires the following:

At least annually, independent auditors shall:

(a) Disclose to the audit committee (or the board of directors if there is no audit committee), in writing, all relationships between the auditor and its related entities and the company and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence;

(b) Confirm in writing that in its professional judgment it is independent of the company within the meaning of the Securities Acts; and

(c) Discuss the auditor's independence with the audit committee.

We believe that *Standard No. 1* can be adapted to address in part the Commission's concern about auditor independence. The Commission's concern that audits be performed with independence and objectivity mirror the concern of audit committees that are responsible for engaging independent auditors for corporations. Therefore we establish the following standard based on ISB's *Standard No. 1*. For independent audits performed pursuant to Part 32 and Sections 64.901 *et seq.* of the Commission's rules, the auditor shall at least annually:

(a) Disclose to the Accounting Safeguards Division (ASD) of the Common Carrier Bureau in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence;

(b) Confirm in writing to AS that in its professional judgment it is independent of the carrier; and

(c) Discuss the auditor's independence with ASD.

Creation of the Independence Standards Board is an encouraging sign

of the profession's desire to preserve the independence and objectivity of auditors. Although adoption of *Standard No. 1* alone may not be enough to satisfy the Commission's concerns, it should lead to a frank and open dialogue that will benefit both the Commission and the auditors.

Because items in this RAO letter pertain to the collection of information, Office of Management and Budget (OMB) approval of the proposed collection is required by the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, members of the public are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor a collection, unless the information collection contains a currently valid OMB control number. Accordingly, independent auditors will not be required to comply with this RAO until OMB has given such approval. ASD will notify the public when OMB has approved the proposed information collection.

This letter is issued pursuant to authority delegated under Section 0.291 of the Commission's rules, 47 CFR 0.291. Applications for review under Section 1.115 of the Commission's rules, 47 CFR 1.115, must be filed within 30 days of the date of this letter. *See* 47 CFR 1.4(b)(2).

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division, Common Carrier Bureau.

[FR Doc. 99–33114 Filed 12–21–99; 8:45 am]

BILLING CODE 6701–12–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 6, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Fellows Family Limited Partnership, Ruidoso, New Mexico; to retain voting shares of First Alamogordo Bancorp., Nevada, Reno, Nevada, and thereby indirectly retain voting shares of First National Bank, Alamogordo, New Mexico, and First National Bank, Ruidoso, New Mexico.

Board of Governors of the Federal Reserve System, December 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33193 Filed 12–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 14, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Old National Bancorp, Evansville, Indiana; to acquire 100 percent of the voting shares of Heritage Financial Services, Inc., Clarksville, Tennessee, and thereby indirectly acquire Heritage Bank, Clarksville, Tennessee.

2. Old National Bancorp, Evansville, Indiana; to acquire 100 percent of the voting shares of ANB Corporation, Muncie, Indiana, and thereby indirectly acquire American National Bank and Trust Company of Muncie, Muncie, Indiana; Peoples Loan & Trust Bank, Winchester, Indiana; and Farmers State Bank of Union City, Ohio, Union City, Ohio.

Board of Governors of the Federal Reserve System, December 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33096 Filed 12–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. nBank, Corp., Inc., (formerly First Commerce Bancorp, Inc.); Commerce, Georgia; to acquire 100 percent of the voting shares of First Commerce Bank, N.A. (in organization), Commerce, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Northern Missouri Bancshares, Inc., Unionville, Missouri; to acquire 100 percent of the voting shares of First National Bancshares of Gallatin, Inc. Gallatin, Missouri, and thereby indirectly acquire First National Bank of Gallatin, Gallatin, Missouri.

Board of Governors of the Federal Reserve System, December 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33194 Filed 12–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements associated with four current rules enforced by the Commission. Current clearances for this information collection expire on December 31, 1999. The FTC is requesting that OMB extend the paperwork clearances through December 31, 2002.

DATES: Comments must be filed by January 21, 2000.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to Carole Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, 202–326–3230. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Carole Reynolds at the address listed above.

SUPPLEMENTARY INFORMATION: The FTC has submitted a request to OMB to extend the existing clearances to collect information associated with the four rules described below. A **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 1999 (64 FR 55937). No comments were received.

The four rules covered by this notice are:

(1) Regulations promulgated under the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* ("ECOA") ("Regulation B") (Control Number: 3084–0087);

(2) Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* ("EFTA") ("Regulation E") (Control Number: 3084–0085);

(3) Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.*, ("CLA") ("Regulation M") (Control Number: 3084–0086)

(4) Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* ("TILA") ("Regulation Z") (Control Number: 3084–0088)

Each of these four rules impose certain PRA recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. All of these rules require covered entities to keep certain records. Staff believes that many of these entities would likely retain these records in the normal course of business even absent the recordkeeping requirement in the rules.[1] There is, however, some burden associated with ensuring that covered entities do not prematurely dispose of relevant records during the period of time required by the applicable rule.

Disclosure requirements involve both set-up and monitoring costs as well as certain transaction-specific costs. "Set-up" burden, incurred by new entrants only, includes identifying the applicable disclosure requirements, determining compliance obligations, and designing and developing compliance systems and procedures. "Monitoring" burden, incurred by all covered entities, includes reviewing revisions to regulatory requirements, revising compliance systems and procedures as necessary, and monitoring the ongoing operation of systems and procedures to ensure continued compliance. "Transaction-related" burden refers to the effort associated with providing the various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages. The actual range of compliance burden experienced by covered entities, and reflected in those averages, varies widely. Depending on the extent to which covered entities have developed automated systems and procedures for providing the required disclosures, and the efficacy of those systems and procedures, some entities may have little or no such burden, while others incur a higher burden.[2]

Calculating the burden associated with the four regulations' disclosure requirements is extremely difficult because of the highly diverse group of affected entities. The "respondents" included in the following burden calculations consist of all types of credit and lease advertisers, creditors (e.g., finance companies, mortgage companies, retailers, Internet businesses), financial institution (including new electronic commerce entities), service providers, certain government agencies and others involved in delivering electronic fund transfers of government benefits, and lessors (e.g., auto dealers, independent leasing companies, manufacturers' captive finance companies, furniture companies, computer dealers). The burden estimates represent staff's best assessment, based on its knowledge and expertise relating to the financial services industry. To derive these estimates, staff considered the wide variations in covered entities': (1) Size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) types of electronic fund transfers (EFTs) used; (4) types and occurrences of adverse actions; (5) types of appraisal reports utilized; and (6) automation with regard to compliance operations.

The estimated PRA burden associated with these rules, attributable to the Commission, is less today than in the past. Staff believes that as automation and expanded quality control become more pervasive in the financial services industry entities are able to comply more efficiently.

The cost estimates shown below relate solely to labor costs. The applicable PRA requirements impose minimal

[1] PRA "burden" does not include effort expended in the ordinary course of business, regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[2] For example, large retailers may use automated means to provide required disclosures, such as issuing, en masse, notices of changes in terms. Smaller retailers and certain types of creditors may have less automated compliance systems, and thus may issue disclosures on an individual transaction basis, resulting in higher burden.

capital or other non-labor costs, as affected entities generally have the necessary equipment for other business purposes. Similarly, staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business. The burden estimates shown below include the time necessary to train staff in compliance with the regulations.

The following paragraphs discuss each of these rules, their particular PRA requirements, and staff's best estimates of the related hour and cost burdens.

I. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B, 12 CFR part 202, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers in understanding their rights under the ECOA and to assist in detecting unlawful discrimination. The FTC enforces the ECOA as to all creditors except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 2,560,000 hours, rounded (1,150,000 recordkeeping hours + 1,409,499 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation B's general recordkeeping requirements affect 1,000,000 credit firms subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours. Staff also estimates that the requirement that creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each [3] for approximately nine million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 150,000 hours. The total estimated recordkeeping burden is 1,150,000 hours.

Disclosure: Regulation B requires that creditors (i.e., entities that regularly participate in the decision whether or not to extend credit under Regulation B) provide notices whenever they take adverse action. The Regulations also requires entities that extend various types of mortgage credit to provide a copy of the appraisal report and to notify applicants of their right to a copy of the report.

As noted above, Regulation B applies to a highly diverse group of entities, including retailers, mortgage lenders, mortgage brokers, finance companies, Internet businesses, and others. In some instances where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely board spectrum of covered entities.

Disclosure	Setup/monitoring[1] average			Transaction-related[2]			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Adverse action notices	1,000,000	.5	500,000	200,000,000	.25	833,333	1,333,333
Appraisal notices	22,000	.5	11,000	6,500,000	.25	27,083	38,083
Appraisal reports	22,000	.5	11,000	6,500,000	.25	27,083	38,083
Total							1,409,499

[1] With respect to appraisal notices and appraisal reports, the above figures assume that approximately half of applicable mortgage entities (.5×44,000, or 22,000 businesses) would not otherwise provide this information and thus would be affected.
[2] The above figures assume that half of applicable mortgage transactions (.5×13,000,000, or 6,500,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

Estimated annual cost burden: $46,418,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: Staff estimates that the general recordkeeping responsibility of one hour per creditor would involve approximately 90 percent clerical time and ten percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. As shown below, the total recordkeeping cost is $14,666,666.

Disclosure: For each notice or information item listed, staff estimates that the burden hours consist of 10 percent managerial time and 90 percent skilled technical time. As shown below, the total disclosure cost is $32,418,477.

Required task	Managerial		Skilled technical		Clerical		Total
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost (10/hr.)	Cost ($)
General Recordkeeping	0	0	100,000	$2,000,000	900,000	$9,000,000	$11,000,000
Other Recordkeeping	0	0	150,000	3,000,000	0	0	3,000,000
Total Recordkeeping							14,666,666
Adverse action notices	133,333	$6,666,665	1,200,000	23,999,994	0	0	30,666,659

[3] Regulation B contains a model form that creditors may use to gather and retain the requirement information.

Required task	Managerial		Skilled technical		Clerical		Total
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost (10/hr.)	Cost ($)
Appraisal notices	3,808	190,415	34,275	685,494	0	0	875,909
Appraisal reports	3,808	190,415	34,275	685,494	0	0	875,909
Total Disclosure							32,418,477
Total Recordkeeping and Disclosure							46,418,477

2. Regulation E

The EFTA requires accurate disclosure of the costs, terms, and rights relating to electronic fund transfer (EFT) services to consumers. Regulation E, 12 CFR part 205, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements applicable to entities providing EFT services to consumers. The FTC enforces the EFTA as to all entities providing EFT services except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 3,579,000 hours (500,000 recordkeeping hours + approximately 3,079,000 disclosure hours).

Recordkeeping: Staff estimates that Regulation E's recordkeeping requirements affect 500,000 firms offering EFT services to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 500,000 hours.

Disclosure: As noted above, Regulation E applies to a highly diverse group of entities, including financial institutions (including certain retailers and electronic commerce entities), service providers, various federal and state agencies offering electronic fund transfers (EFTs), and others. In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Initial terms	100,000	.5	50,000	1,000,000	.02	333	50,333
Change in terms	25,000	.5	12,500	33,000,000	.02	11,000	23,500
Periodic statements	100,000	.5	50,000	1,200,000,000	.02	400,000	450,000
Error resolution	100,000	.5	50,000	1,000,000	5	83,333	133,333
Transaction receipts	100,000	.5	50,000	5,000,000,000	.02	1,666,667	1,716,667
Preauthorized transfers	500,000	.5	250,000	1,000,000	.25	4167	254,167
Service provider notices	100,000	.25	25,000	1,000,000	.25	4167	29,167
Govt. benefit notices	10,000	.5	5,000	100,000,000	.25	416,667	421,667
Total							3,078,834

Estimated annual cost burden: $76,313,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 500,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $5,500,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $70,813,182.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Recordkeeping	0	$0	50,000	$1,000,000	450,000	$4,500,000	$5,500,000
Disclosure:							
Initial terms	5,033	251,665	45,300	905,994	0	0	$1,157,659
Change in terms	2,350	117,500	21,150	423,000	0	0	540,500
Periodic statements	45,000	2,250,000	405,000	8,100,000	0	0	10,350,000
Error resolution	13,333	666,665	120,000	2,399,994	0	0	3,066,659
Transaction receipts	171,667	8,583,335	1,540,000	30,900,000	0	0	39,483,34

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Preauthorized transfers	25,417	1,270,835	228,750	4,575,006	0	0	5,845,84
Service provider notices	2,917	145,835	26,250	525,006	0	0	670,84
Govt. benefit notices	42,167	2,108,335	379,500	7,590,006	0	0	9,698,34
Total Disclosure							70,813,182
Total Recordkeeping and Disclosures							76,313,182

(Minor discrepancies in totals are due to rounding of the hours shown for skilled technical time.)

3. Regulation M

The CLA requires accurate disclosure of the costs and terms of leases to consumers. Regulation M, 12 CFR part 213, promulgated by the Board of Governors of the Federal Reserve System, establishes disclosure requirements that assist consumers in comparison shopping and in understanding the terms of leases and recordkeeping requirements that assist enforcement of the CLA. The FTC enforces the CLA as to all lessors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 387,500 hours, rounded (200,000 recordkeeping hours + 187,501 disclosure hours).

Recordkeeping: Staff estimates that Regulation M's recordkeeping requirements affect 200,000 firms leasing products to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 200,000 hours.

Disclosure: As noted above, Regulation M applies to a highly diverse group of entities, including automobile lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, and diverse types of lease advertisers, and others. In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Auto Leases [1]	100,000	.75	75,000	5,000,000	.50	41,667	116,667
Other Leases [2]	100,000	.50	50,000	1,000,000	.25	4,167	54,167
Advertising	25,000	.50	12,500	1,000,000	.25	4,167	16,667
Total							187,501

[1] This category focuses on consumer vehicle leases. The number of such leases—the largest category of consumer leases—has increased considerably in recent years. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. § 1667(1); 12 C.F.R. § 213.2(e)(1).

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. § 1667(1); 12 C.F.R. § 213.2(e)(1).

Estimated annual cost burden: $6,513,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 200,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $2,200,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $4,312,523.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost (10/hr.)	
Recordkeeping	0	0	20,000	400,000	1,280,000	1,800,000	2,200,000

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost (10/hr.)	
Disclosures:							
Auto Leases	11,667	583,335	105,000	2,100,006	0	0	2,683,341
Other Leases	5,417	270,835	48,750	975,006	0	0	1,245,841
Advertising	1,667	83,335	15,000	300,000	0	0	383,341
Total Disclosures							4,312,523
Total Recordkeeping and Disclosures							6,512,523

(Minor discrepancies in totals are due to rounding of the hours shown for skilled technical time.)

4. Regulation Z

The TILA was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Regulation Z, 12 CFR part 226, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers and the enforcement of the TILA. The FTC enforces the TILA as to all creditors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 20,473,000 hours, rounded (1,000,000 recordkeeping hours + 19,472,916 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 1,000,000 firms offering credit and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours.

Disclosure: Regulation Z disclosure requirements pertain to open-end and closed-end credit. As noted above, the Regulation applies to a highly diverse group of entities, including retailers (such as department stores, appliance stores, discount retailers, medical-dental service providers, home improvement sellers, and newly-emerging electronic commerce retail operators); mortgage companies; finance companies; credit advertisers; auto dealerships; student loan companies; home fuel or power services (for furnaces, stoves, microwaves, and other heating, cooling or residential power equipment); credit advertisers; and others. In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Open-end credit:							
Initial terms	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Rescission notices	50,000	.5	25,000	100,000	.25	417	25,417
Change in terms	25,000	.5	12,500	136,000,000	.125	283,333	295,833
Periodic statements	200,000	.5	100,000	4,800,000,000	.0625	5,000,000	5,100,000
Error resolution	100,000	.5	50,000	10,000,000	5	833,333	883,333
Credit and charge card accounts	100,000	1	100,000	50,000,000	.25	208,333	308,333
Home equity lines of credit	100,000	1	100,000	5,000,000	.25	20,833	120,833
Advertising	250,000	.25	62,500	700,000	.5	5833	68,333
Closed-end credit:							
Credit disclosures	800,000	.50	400,000	330,000,000	2	11,000,000	11,400,000
Rescission notices	200,000	.50	100,000	34,000,000	1	566,667	666,667
Variable rate mortgages	100,000	.50	50,000	1,800,000	2	60,000	110,000
High rate/high fee mortgages	100,000	.50	50,000	500,000	2	16,667	66,667
Reverse mortgages	50,000	.50	25,000	150,000	1	2,500	27,500
Advertising	500,000	.25	125,000	1,000,000	1	16,667	141,667
Total open-end credit							7,060,415
Total closed-end credit							12,412,501
Total credit							19,472,916

Estimated annual cost burden: $458,877,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for

managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 1,000,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $11,000,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $447,877,068.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost (10/hr.)	
Recordkeeping	0	0	100,000	$2,000,000	900,000	$9,000,000	$11,000,000
Open-end credit Disclosures:							
Initial terms	25,833	$1,291,665	232,500	$4,649,994	0	0	$5,941,659
Rescission notices	2,542	127,085	22,875	457,506	0	0	584,491
Change in terms	29,583	1,479,165	266,250	5,324,994	0	0	6,804,159
Periodic statements	510,000	25,500,000	4,590,000	91,800,000	0	0	117,300,000
Error resolution	88,333	4,416,665	795,000	15,899,994	0	0	20,316,659
Credit and charge card accounts	30,833	1,541,665	277,500	5,549,994	0	0	7,091,659
Home equity lines of credit	12,083	604,165	108,750	2,174,994	0	0	2,779,159
Advertising	6,833	341,665	61,500	1,229,994	0	0	1,571,659
Total open-end credit							162,389,545
Closed-end credit Disclosures:							
Credit disclosures	1,140,000	57,000,000	10,260,000	205,200,000	0	0	262,200,000
Rescission notices	66,667	3,333,335	600,000	12,000,006	0	0	15,333,341
Variable rate mortgages	11,000	550,000	99,000	1,980,000	0	0	2,530,000
High rate/high fee mortgages	6,667	333,335	60,000	1,200,006	0	0	1,533,341
Reverse mortgages	2,750	137,500	24,750	495,000	0	0	632,500
Advertising	14,167	708,335	127,500	2,550,006	0	0	3,258,341
Total closed-end credit							285,487,523
Total Disclosures							447,877,068
Total Recordkeeping and Disclosures:							458,877,068

(Minor discrepancies in totals are due to rounding of the hours shown for skilled technical time.)

Debra A. Valentine,

General Counsel.

[FR Doc. 99–33106 Filed 12–21–99; 8:45 am]

BILLING CODE 8750–01–M

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 9 a.m. to 4 p.m. on Tuesday, January 18, 2000, at the New York Public Library, 5th Avenue & 42 Street, New York, NY 10018.

PURPOSE: To hear testimony about the Year 2000 Celebration plans for Women's History Month and review current related activities.

Guest speakers will address the National Women's History Month celebration to be held in Washington on March 22 and review the status of the Commissions' recommendations for action for the year 2000.

Participants may wish to make a statement covering personal interests in the history of women in America or share thoughts on appropriate commemorative events.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to *martha.davis@gsa.gov.*

Dated: December 14, 1999.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 99–33116 Filed 12–21–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–5321]

United States Department of Agriculture, Food Safety and Inspection Service; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the United States Department of Agriculture, Food Safety and Inspection Service (USDA/FSIS) has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a 4.5 kiloGray (kGy) maximum dose of ionizing radiation to treat unrefrigerated (as well as refrigerated) uncooked meat, meat products, and certain meat food products to reduce levels of foodborne pathogens and extend shelf-life.

FOR FURTHER INFORMATION CONTACT: Rudaina H. Alrefai, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3034.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9M4695) has been filed by the USDA/FSIS, 300 12th St. SW., rm. 112, Washington, DC 20250. The petition proposes that the food additive regulations in § 179.26(b) Ionizing radiation for the treatment of food (21 CFR 179.26(b)) be amended to provide for the safe use of a 4.5 kGy maximum dose of ionizing radiation to treat unrefrigerated (as well as refrigerated) uncooked meat, meat products, and certain meat food products to reduce levels of foodborne pathogens and extend shelf-life. The current regulations in § 179.26(b) provide for the use of a maximum dose of 4.5 kGy to treat refrigerated products only.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 3, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–33093 Filed 12–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA).

Name of Committee: Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 20, 2000, 9:45 a.m. to 6:30 p.m., and January 21, 2000, 8 a.m. to 4:30 p.m.

Location: Corporate Bldg., conference rm. 020B, 9200 Corporate Blvd., Rockville, MD.

Contact: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 20, 2000, the committee will discuss, make recommendations, and vote on six premarket approval applications (PMA's) for in vitro diagnostic qualitative devices to detect hepatitis B serological markers in human sera or plasma. The following hepatitis B serological marker assays, when used appropriately in combination, are indicated as an aid in the diagnosis and monitoring of disease and therapy in acute and chronic hepatitis B virus infection (HBV) in both low and high risk adult populations:

1. Hepatitis B surface antigen (HBsAg) (HBsAg assay may be used alone as an indicator of HBV infection when performing prenatal testing);

2. Antibodies to hepatitis B surface antigen (anti-HBs) (anti-HBs assay may be used alone to determine the immune status of HBV vaccine recipients);

3. Hepatitis B e antigen (HBeAg);

4. Antibodies to hepatitis B e antigen (anti-HBe);

5. Hepatitis B core antigen (anti-HBc); and

6. Immunoglobulin M antibodies to hepatitis B core antigen (IgM anti-HBc).

These tests are not intended for blood donor screening.

Also, on January 20, 2000, the committee will discuss and make recommendations on issues concerning the use of characterized hepatitis panels in assessing the performance of in vitro diagnostic devices for the determination of hepatitis infection as an alternative to conducting intensive prospective clinical trials.

The following draft questions are proposed for discussion and may be subject to changes prior to the committee meeting:

1. Will the use of characterized hepatitis panels provide assurance of the safety and effectiveness of the assay in various populations?

2. What criteria should be used to include specimens in these panels?

3. Will panels be sufficient to support claims for the diagnosis of HBV infection or immunity for all indicated populations?

4. Who should control panel distribution and evaluation, e.g., device manufacturers, FDA, or an independent third party?

FDA will consider these recommendations in the future development of review criteria for in vitro diagnostic devices, for the detection of hepatitis antigen or antibodies to hepatitis antigen, as valid scientific evidence to determine whether there is reasonable assurance that these devices are safe and effective.

On January 21, 2000, the committee will discuss, make recommendations, and vote on a PMA for an in vitro diagnostic qualitative device for the detection of antibody to hepatitis C virus in human serum or plasma. This device is not intended for use in blood or plasma donor screening.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 12, 2000. On January 20, 2000, oral presentations from the public will be scheduled between approximately 12 noon and 12:30 p.m., 3 p.m. and 3:30 p.m., and 5:30 p.m. and 6 p.m. On January 21, 2000, oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:15 p.m., and 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 12, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–33122 Filed 12–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5424]

Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements." The guidance is based on the report of an FDA Food Advisory Committee (FAC) Working Group that was asked to advise the agency on interpretation of the scientific standard "significant scientific agreement," which FDA applies in its review of scientific data for health claims. This action is being taken to provide guidance to industry and to comply with a recent court decision that instructed FDA to clarify the meaning of the significant scientific agreement standard.

DATES: Written comments should be submitted by February 22, 2000, to ensure adequate consideration in the preparation of a revised guidance, if warranted. However, written comments may be submitted at anytime.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the guidance entitled "Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements" to the Office of Special Nutritionals (HFS–450), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-addressed adhesive label to assist that office in processing your request, or include a fax number to which the guidance may be sent. Alternatively, you may request a copy of the guidance by calling 202–205–4168, or you may fax your request to 202–205–5295. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Sharon A. Ross, Center for Food Safety and Applied Nutrition (HFS–450), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

I. Background

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 (NLEA), which amended the Federal Food, Drug, and Cosmetic Act (the act), authorized FDA to allow food labels to carry statements that describe the relationship between a food substance and a disease or health-related condition ("health claims") (section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B))). To ensure the scientific validity of health claims, NLEA required that FDA authorize a health claim in the labeling of conventional foods only if the agency "determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence" (section 403(r)(3)(B)(i) of the act (21 U.S.C. 343(r)(3)(B)(i))). By regulation, FDA adopted the same standard for health claims in the labeling of dietary supplements (§ 101.14(c)(21 CFR 101.14(c)).

In 1996, FDA asked its FAC to convene a working group to develop a guide for preparing petitions for health claims. In response to the recent decision of the Court of Appeals for the District of Columbia Circuit in *Pearson* v. *Shalala*, 164 F.3d 650 (D.C. Cir. 1999), which required FDA to clarify the meaning of "significant scientific agreement," the focus of the FAC Working Group shifted to the scientific review of data for health claims and the interpretation of the significant scientific agreement standard. The working group's final report entitled "Interpretation of Significant Scientific Agreement in the Review of Health Claims" was made public during the FAC meeting of June 24 and 25, 1999. FDA concurs with the conclusions of the working group and is issuing a guidance based on the working group's final report.

This guidance represents the agency's current thinking on the meaning of the significant scientific agreement standard in section 403(r)(3) of the act (21 U.S.C. 343(r)(3)) and § 101.14(c). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

This guidance is a Level 1 guidance under FDA's good guidance practices (GGP's) (62 FR 8961, February 27, 1997). Consistent with GGP's, the agency is soliciting public comment, but is implementing the guidance immediately to promptly comply with the decision in *Pearson* v. *Shalala*.

II. Comments

Interested persons should submit written comments on the guidance to the Dockets Management Branch (address above), by February 22, 2000, to ensure adequate consideration in the preparation of a revised guidance, if warranted. However, written comments may be submitted at anytime. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of the guidance also is available on the Internet at http://www.cfsan.fda.gov/~dms/guidance.html#lab.

Dated: December 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33279 Filed 12–20–99; 1:04 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4959]

Draft Guidance for Industry on Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related

to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000." This document is intended to provide guidance to sponsors of applications that are the subject of an open advisory committee meeting convened by the Center for Drug Evaluation and Research (CDER), beginning January 1, 2000. The draft guidance describes procedures that will be adopted by CDER for making information provided to advisory committee members in connection with such meetings publicly available. The draft guidance also describes how a sponsor should prepare its submission to an advisory committee.

DATES: Submit written comments on the draft guidance document by February 22, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000." This draft guidance is intended to provide guidance to sponsors of applications that are the subject of an open advisory committee meeting convened by CDER, beginning January 1, 2000. The draft guidance describes procedures that will be adopted by CDER for making information that is provided to advisory committee members in connection with such meetings publicly available. The draft guidance also describes how a sponsor should prepare its submission to an advisory committee.

In the **Federal Register** of November 30, 1999 (64 FR 66920), FDA announced the availability of a guidance document entitled "Disclosure of Materials Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000" (the disclosure policy guidance). The disclosure policy guidance provided guidance on how FDA interprets the Federal Advisory Committee Act (the FACA) (5 U.S.C. app. 2) and § 314.430 (21 CFR 314.430) with respect to the disclosure of materials provided to advisory committees and how FDA will exercise its discretion under § 314.430(d)(1) in connection with open advisory committee meetings convened by CDER beginning on January 1, 2000. In the disclosure policy guidance, FDA stated that the agency construes the FACA to require that, with respect to any open advisory committee meeting convened pursuant to the FACA, whenever practicable and subject to any applicable exemptions of the Freedom of Information Act (the FOIA) (5 U.S.C. 552), those materials that are provided to the members of an advisory committee in connection with that meeting must be made available for public inspection and copying before or at the time of the advisory committee meeting. The agency also stated in the disclosure policy guidance that FDA interprets § 314.430 to be consistent with the FACA and therefore will exercise its discretion under § 314.430(d)(1) in a manner consistent with the FACA and the FOIA as described in the previous sentence to make available for public inspection and copying materials provided to the members of an advisory committee in connection with open advisory committee meetings convened by CDER, beginning on January 1, 2000. In the disclosure policy guidance, FDA stated its intention to provide further guidance on what sponsors may expect concerning the disclosure of this information.

The draft guidance entitled "Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000," that FDA is making available today, is intended to provide the procedural information referenced in the disclosure policy guidance. The procedures in this guidance are intended to make the process of complying with the disclosure requirements of the FACA as efficient as possible. The procedures address: (1) The content and organization of a sponsor submission for an advisory committee; (2) the timing of the sponsor submission to CDER; (3) the process by which CDER will review and redact the sponsor submission and the related CDER submission; and (4) the effect this process may have on the time allotted to a review cycle in which an advisory committee meeting occurs.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the implementation by CDER of the disclosure provisions of the FACA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000.

Description: FDA is issuing a draft guidance on procedures that will be adopted by CDER for making information that is provided to advisory committee members in connection with open advisory committee meetings publicly available. The procedures address: (1) The content and organization of a sponsor submission for an advisory committee; (2) the timing of the sponsor submission to CDER; (3) the process by which CDER will review and redact the sponsor submission and the related CDER submission; and (4) the effect this process may have on the time allotted to a review cycle in which an advisory committee meeting occurs. Under existing regulations in 21 CFR 14.35(a), sponsors routinely submit information to the agency that will be provided to advisory committee members in connection with advisory committee meetings. A sponsor may submit a package that the sponsor states should be fully disclosed to the public or a package that contains information the sponsor asserts should be withheld from public disclosure under the FOIA. This draft guidance describes the submission of information to the agency that will be provided to the members of an advisory committee in connection with an open advisory committee meeting related to the testing or approval of a new drug and convened by CDER, beginning on January 1, 2000.

FDA construes the FACA to require that, with respect to any open advisory committee meeting convened pursuant to the FACA, whenever practicable and subject to any applicable exemptions of the FOIA, those materials that are provided to the members of a CDER advisory committee in connection with that meeting must be made available for public inspection and copying before or at the time of the advisory committee meeting. Therefore, under the draft guidance, a sponsor may submit two types of packages of materials for an advisory committee in connection with an open advisory committee meeting convened by CDER: (1) A package that the sponsor states should be fully disclosed to the public because it does not contain information that should be withheld from public disclosure under an exemption under the FOIA; and (2) a package that contains information the sponsor asserts should be withheld from public disclosure under the FOIA and that, therefore, must be reviewed by the agency's Freedom of Information staff to ensure that the appropriate information is redacted. The procedures for submitting the two collections of information are described in the draft guidance.

A. Fully Releasable Submissions

In the guidance, sponsors are strongly encouraged to submit advisory committee packages that may be publicly disclosed in their entirety (i.e., that do not contain any information that the sponsor wishes to assert is exempt from disclosure under the FOIA because it is trade secret or confidential commercial information, or because it is information whose disclosure would constitute an unwarranted invasion of personal privacy, for example, by clearly identifying individual subjects). Sponsors are also encouraged to submit an electronic version of the package.

B. Submissions That Contain Material the Sponsor Asserts is Exempt From Disclosure

A sponsor may believe that it is necessary to include material in an advisory committee package that it believes is exempt from disclosure. As described in the guidance, the agency recommends in this circumstance that the sponsor segregate the material it believes is exempt from disclosure from the disclosable material, clearly designate the material that the sponsor believes is exempt from disclosure, and provide a detailed justification of both why that specific information is necessary for the advisory committee's consideration and why it is exempt from disclosure. Sponsors are also encouraged to submit an electronic version of the package.

1. Description of Respondents

A sponsor of an unapproved new drug application (NDA), NDA supplement, abbreviated new drug application (ANDA), biological license application (BLA), or premarket approval application for a device (PMA) that is the subject of an open advisory committee convened by CDER, beginning January 1, 2000, to the extent permitted under applicable law and unless the unapproved BLA or PMA is being discussed at a segregable portion of a CDER advisory committee meeting (for example, during the afternoon session) and not in conjunction with an NDA, NDA supplement, or ANDA.

2. Burden Estimate

Table 1 of this document provides an estimate of the annual reporting burden for the submission under the guidance of information to CDER that will be provided to the members of an advisory committee in connection with an open advisory committee meeting related to the testing or approval of a new drug and convened by CDER, beginning on January 1, 2000.

a. *Fully releasable submissions*. In calendar year 1998, 30 different sponsors (respondents) submitted background information for open advisory committee meetings regarding the testing or approval of new drugs. CDER expects that annually, approximately the same total number of respondents (i.e., 30 respondents) will submit information for similar open advisory committee meetings. The procedures for submitting this information that are set forth in the draft guidance document were not in place in calendar year 1998. However, based on CDER's experience with the advisory committee process, and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately two-thirds of the total number of respondents (i.e., 20 respondents) will submit packages that may be disclosed in their entirety. In calendar year 1998, CDER received a total of 38 submissions from sponsors in connection with open advisory committee meetings. The agency expects that this number will remain the same. However, based on CDER's experience with the advisory committee process and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately two-thirds of the submissions it receives (i.e., 25 responses) will be fully releasable, averaging 1.25 responses per respondent. Therefore, FDA estimates that the total annual responses (i.e., the

total number of fully releasable sponsor submissions that will be provided to advisory committees) will be 25. The hours per response is the estimated number of hours that a respondent would spend under the guidance preparing a fully releasable submission in connection with an open advisory committee meeting, including submitting an electronic version of the package. Based on FDA experience and information provided to the agency by the Pharmaceutical Research and Manufacturing Association (PhRMA), FDA estimates that approximately 700 hours on average would be needed per response. Therefore, FDA estimates that 17,500 hours will be spent per year under the guidance by respondents submitting fully releasable information in connection with open advisory committee meetings.

b. *Submissions that contain material the sponsor asserts is exempt from disclosure.* In calendar year 1998, 30 different sponsors (respondents) submitted background information for open advisory committee meetings regarding the testing or approval of new drugs. CDER expects that annually, approximately the same total number of respondents (i.e., 30 respondents) will submit information for similar open advisory committee meetings. The procedures for submitting this information that are set forth in the draft guidance document were not in place in calendar year 1998. However, based on CDER's experience with the advisory committee process, and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately one-third of the total number of respondents (i.e., 10 respondents) will submit packages that contain material that the sponsor asserts is exempt from disclosure. In calendar year 1998, CDER received a total of 38 submissions from sponsors in connection with open advisory committee meetings. The agency expects that this number will remain the same. However, based on CDER's experience with the advisory committee process, and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately one-third of the submissions it receives (i.e., 13 responses) will contain information that the sponsor asserts is exempt from disclosure, averaging 1.3 responses per respondent. Therefore, the total annual response (i.e., the total number of sponsor submissions that will be provided to advisory committees and that the sponsors assert is exempt from disclosure) is estimated to be 1.3. The hours per response is the estimated number of hours under the guidance that a respondent would spend preparing a submission that contains information that the respondent asserts is exempt from disclosure, including the time FDA expects it will take a sponsor to submit an electronic version of the package and to work with the agency to redact any information that is appropriately exempt from disclosure under the FOIA. Based on FDA experience and information provided to the agency by PhRMA, FDA estimates that approximately 1,400 hours on average would be needed per response. Therefore, FDA estimates that under the guidance, 18,200 hours will be spent per year in connection with open advisory committee meetings by respondents submitting packages that contain information that the respondents assert is exempt from disclosure. The total estimated burden hours under the draft guidance are 35,700.

FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Submissions	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Fully releasable submissions	20	1.25	25	700	17,500
Submissions that contain material that is claimed to be exempt from disclosure	10	1.3	13	1,400	18,200
Total	30		38		35,700

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this draft guidance to OMB for review. Interested persons are requested to send comments on this information collection by February 22, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

Dated: December 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33092 Filed 12–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0588]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently Approved collection; *Title of Information Collection:* Authorization agreement for electronic forms transfer; *Form No.:* HCFA–0588 (OMB# 0938–0626); *Use:* The information is needed

to allow providers to receive funds electronically in their bank accounts; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 1,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 13, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–33185 Filed 12–21–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–15]

Notice of Proposed Information Collection for Public Comment: Assessment of the American Housing Survey Metropolitan Sample

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 22, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Rm. 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David A. Vandenbroucke, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8218, Washington, DC 20410, telephone (202) 708–1060 (Ext. 5890 (this is not a toll-free number). A copy of the proposed forms and other available documents to be submitted to OMB may be obtained from Mr. Vandenbroucke.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of burden of the proposed collection of information; (3) Enhance the quality, utility; and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assessment of the American Housing Survey Metropolitan Sample.

Description of the need for the information and proposed use: HUD is seeking to better understand how the American Housing Survey Metropolitan Sample (AHS–MS) data is used, and by whom. The information collected will enable the Office of Policy Development and Research to balance geographic coverage, timeliness, and cost considerations in designing the surveys, in order to develop an optimal data set for use by HUD, public agencies, education institutions, nonprofits, planners, and other interested organizations. The information collection intends to address these questions: (1) What is the current usefulness of the AHS–MS? (2) What potential additional uses does the AHS–MS have? (3) What steps can we take to achieve the survey's potential? (4) What changes in the AHS–MS would make it more useful?

Agency Form Numbers, if Applicable: None.

Members of the affected public: Users and potential users of the AHS–MS, including academic researchers, local government workers, and private sector research workers.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 200. The frequency of response is 1 per respondent. The time per respondent is 10 minutes. The total hours to respond is 33.

Status of proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 3, 1999.

Lawrence L. Thompson,

Deputy Assistant, Secretary for Policy Development.

[FR Doc. 99–33109 Filed 12–21–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4434–N–06]

Quality Housing and Work Responsibility Act of 1998; PIH Policy for Dealing With FY 1997 and Prior FY Unobligated Modernization Funds

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice of PIH Policy for dealing with FY 1997 and prior unobligated funds.

SUMMARY: This notice provides the public with information on how HUD will deal with public housing agencies (PHAs) with FY 1997 and prior unobligated modernization funds in violation of the Public Housing Reform Act.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339. Program specialists

for more specific HUD program areas are listed on the HUD web page at http://hudweb.hud.gov/offices.html.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461) (the "Public Housing Reform Act") as part of the fiscal year (FY) 1999 HUD appropriations act. The Public Housing Reform Act makes extensive amendments to the United States Housing Act of 1937 (the "1937 Act"), which generally governs HUD's public housing and tenant-based Section 8 housing assistance programs.

This notice announces what action HUD will take with respect to section 9(j)(4)(B) of the 1937 Act, established under section 519(a) of the Public Housing Reform Act, which states that:

> Notwithstanding subparagraph (A), any funds appropriated to a public housing agency for fiscal year 1997 or prior fiscal year shall be fully obligated by the public housing agency not later than September 30, 1999.

There was no language in this paragraph that allowed HUD to grant exceptions to the provision. Based on the sanctions statement in a letter dated July 23, 1999 that provided notice to all PHAs affected by 9(j)(4)(B), after October 1, 1999, all PHAs with FY 1997 and prior unobligated public housing modernization funds will be subject to the following sanctions:

1. HUD will not release any FY 2000 funds for modernization activities to a PHA that has unobligated FY 1997 and prior FY modernization funds until all such unobligated funds are obligated by the PHA and HUD has reviewed and confirmed the obligation documents.

2. If these unobligated FY 1997 and prior FY funds are not fully obligated by March 30, 2000, an additional final sanction of the loss of all unobligated FY 1997 and prior FY public housing modernization funds, through notification of annual contributions contract (ACC) default and recapture of outstanding unobligated funds, shall be implemented.

PHAs are advised that they may use unobligated FY 1997 and prior FY public modernization funds for any eligible activity under section 9(d) of the 1937 Act, and are encouraged to do so to avoid the recapture of these funds.

This policy for dealing with section 9(j)(4)(B) provides PHAs a generous opportunity for compliance, given the strict language of the Congressional mandate. The Public Housing Reform Act, which enacted this provision, was passed more than a year ago; more than nine months have passed since an initial communication on this subject in a February **Federal Register** Notice; and more than four months have passed since HUD's letter of July 23, 1999, explaining there will be sanctions if funding were not obligated by September 30, 1999, as required.

Dated: December 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–33107 Filed 12–21–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4434–N–05]

Quality Housing and Work Responsibility Act of 1998; Status of Implementation; Guidance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (the "Public Housing Reform Act"). This statute embodies many of the reforms of the HUD 2020 Management Reform Plan that are directed at revitalizing and improving HUD's public housing and Section 8 assistance programs. This notice updates the public on HUD's overall implementation of the Public Housing Reform Act and identifies where existing implementation guidance may be found, with respect to the provisions regarding public housing and tenant-based assistance. This notice also provides further implementation guidance on those provisions of the Public Housing Reform Act that are effective on October 1, 1999 or on October 21, 1999.

FOR FURTHER INFORMATION CONTACT: For further information regarding public housing and the Section 8 certificate, voucher and moderate rehabilitation programs contact Stephen I. Holmquist, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC, 20410; telephone (202) 708–0713 (this is not a toll-free number).

Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Program specialists for more specific HUD program areas are listed on the HUD web page at http://hudweb.hud.gov/offices.html.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, 112 Stat. 2461) (the "Public Housing Reform Act") as part of the fiscal year 1999 HUD appropriations act. The Public Housing Reform Act makes extensive amendments to the United States Housing Act of 1937 (the "1937 Act"), which generally governs HUD's public housing and tenant-based Section 8 housing assistance programs. Certain provisions of the Public Housing Reform Act became effective immediately on enactment (October 21, 1998). Most provisions, however, became effective on October 1, 1999, although some provisions become effective on October 21, 1999 (one year from enactment) or on other specified dates.

On February 18, 1999 (64 FR 8192), HUD published a Notice of Initial Guidance on the Public Housing Reform Act to advise the public of those provisions that were effective immediately and of action that may or should be taken at that point. The Notice also provided guidance on certain other provisions in the fiscal year 1999 HUD appropriations act that affect the public housing and Section 8 programs. Since publication of the February 18, 1999 notice, HUD has published numerous other notices and proposed, interim, and final rules to implement the Public Housing Reform Act.

This notice updates the public on HUD's overall implementation of the Public Housing Reform Act and identifies where existing implementation guidance may be found, with respect to the provisions regarding public housing and tenant-based assistance. The notice also provides further implementation guidance on those provisions of the Public Housing Reform Act that became effective on October 1, 1999, or on October 21, 1999.

Some of the Public Housing Reform Act provisions do not require HUD rulemaking, while others are the subject of rulemaking that is still in progress. For rulemaking that is still in progress, this notice provides guidance that Public Housing Agencies (PHAs) should follow until HUD completes rulemaking. Unless provided otherwise in this Notice published today, PHAs that follow HUD's guidance will not be

penalized for any changes made later in the rulemaking process. If changes are made later in the rulemaking process, HUD will provide adequate time for PHAs to adjust their policies accordingly.

II. Summary of Rulemakings Undertaken Under the Public Housing Reform Act

In addition to the Notice of Initial Guidance, published on February 18, 1999, and an update to that Notice, published on April 30, 1999 (64 FR 23344), the following rulemaking has occurred under the Public Housing Reform Act. (The reference to public comments received on the rules refer to written comments received on the rules by the public comment deadline. The number of comments does not include the comments raised at the public forums held on the Public Housing Agency Plan rule and the Section 8 Certificate and Voucher Merger rule. Additionally, the number does not include late comments. Although comments were received late on several rules, HUD made every effort to look at all comments and consider all issues raised.)

Final Rules

1. *Public Housing Agency Plans.* The final rule was published on October 21, 1999 (64 FR 56844). HUD received 52 public comments on the interim rule published on February 18, 1999 (64 FR 8170); in addition, public forums were held in Atlanta, GA, Omaha, NE, Syracuse, NY, and Washington, DC.

2. *Statutory Merger of the Section 8 Certificate and Voucher Programs (Housing Choice Voucher Program).* The final rule was published on October 21, 1999 (64 FR 56894). An amendment to the final rule was published on November 3, 1999 (64 FR 59620). HUD received 93 public comments on the interim rule published on May 14, 1999 (64 FR 26632); in addition, public forums were held in Omaha, NE; Syracuse, NY; and Washington, DC.

3. *Renewals of Section 8 Tenant-Based Assistance Contracts.* The final rule for Renewals of Section 8 Tenant-Based Assistance Contracts, developed through negotiated rulemaking, was published on October 21, 1999 (64 FR 56882). (The preamble to the October 21, 1999 final rule includes a discussion of the negotiated rulemaking process, lists the committee members, and provides the twelve dates of the negotiated rulemaking committee meetings.) The notice for calendar year 1999 renewals was published on February 18, 1999 (64 FR 8188). This notice followed a direct notice issued by HUD's Office of Public and Indian Housing on December 31, 1998, in accordance with the statute.

4. *Revised Restrictions on Assistance to Noncitizens.* The final rule was published on May 12, 1999 (64 FR 25726). HUD received 22 public comments on the interim rule published on November 29, 1996 (61 FR 60535).

5. *Comprehensive Improvement Assistance Program (CIAP).* The final rule was published on June 23, 1999 (64 FR 33636). This allowed HUD to distribute the funds by formula in fiscal year 1999, one year before the statute required the distribution of funds by formula. HUD received 18 public comments on the proposed rule published on April 30, 1999 (64 FR 23484). The final rule covers funding distribution for fiscal year 1999.

6. *Public Housing Drug Elimination Program (PHDEP) Formula Allocation.* The final rule was published on September 14, 1999 (64 FR 49900). This allowed HUD to distribute the funds by formula in fiscal year 1999, one year before the statute required distribution of funds by formula. HUD received 26 public comments on the proposed rule published on May 12, 1999 (64 FR 25736). HUD received 60 public comments on the Advance Notice of Proposed Rulemaking published on February 18, 1999 (64 FR 8210).

7. *Required Resident on the PHA Board of Commissioners or Similar Governing Body.* The final rule was published on October 21, 1999 (64 FR 56870). HUD received 71 public comments on the proposed rule published on June 23, 1999 (64 FR 33644).

Proposed Rules (Final Rule Not Yet Published)

1. *Changes to Admissions, Rents and Occupancy Requirements in the Public Housing and Section 8 Programs.* The proposed rule was published on April 30, 1999. HUD received 113 public comments on the proposed rule.

2. *Section 8 Homeownership Vouchers.* The proposed rule was published on April 30, 1999 (64 FR 23488). HUD received 93 public comments on this proposed rule.

3. *Amendments to the Public Housing Assessment System (PHAS).* The proposed rule was published on June 22, 1999 (64 FR 33348). HUD received 29 public comments on the proposed rule. On October 21, 1999 (64 FR 56676), HUD published a notice advising that HUD would provide transition assistance to the PHAS for PHAs with fiscal years ending September 30, 1999, or December 31, 1999. For these PHAs, no PHAS score would be issued for fiscal years ending September 30, 1999, and December 31, 1999. Instead these PHAs would receive an assessment solely on the basis of their management operations in accordance with subpart D of the PHAS regulation (24 CFR part 902). PHAs with fiscal years ending after December 31, 1999, would be issued PHAS scores.

4. *Pet Ownership in Public Housing.* The proposed rule was published on June 23, 1999 (64 FR 33640). HUD received 3,777 public comments on the proposed rule. In addition to comments received by the public comment deadline, HUD continued to receive public comments on this rule several weeks after the deadline. These post-deadline comments numbered approximately 3,000.

5. *One Strike Screening and Eviction for Drug Abuse and Other Criminal Activity.* The proposed rule was published on July 23, 1999 (64 FR 40262). HUD received 29 public comments on the proposed rule.

6. *Required Conversion of Developments from Public Housing Stock.* The proposed rule was published on July 23, 1999 (64 FR 40232). HUD received 5 public comments on the proposed rule.

7. *Voluntary Conversion of Developments from Public Housing Stock.* The proposed rule was published on July 23, 1999 (64 FR 40240). HUD received 6 public comments on the proposed rule.

8. *Allocation of Funds Under the Capital Fund.* The proposed rule was developed through negotiated rulemaking and published on September 14, 1999 (64 FR 49924). (The preamble to the September 14, 1999 proposed rule includes a discussion of the negotiated rulemaking process, lists the committee members, and provides the sixteen dates of the negotiated rulemaking committee meetings.) HUD received 10 public comments on the proposed rule.

9. *Consortia of Public Housing Agencies and Joint Ventures.* The proposed rule was published on September 14, 1999 (64 FR 49940). The public comment period for this rule closed on November 15, 1999. HUD received 6 public comments on the proposed rule.

10. *Public Housing Homeownership Program.* The proposed rule was published on September 14, 1999 (64 FR 49932). The public comment period for this rule closed on November 15, 1999. HUD received 12 public comments on the proposed rule.

11. *Direct Funding of Resident Management Corporations.* The proposed rule was published on October

21, 1999 (64 FR 56890). The proposed rule provides for a 60-day public comment period.

Proposed Rules Under Development

The following proposed rules are under development and have not yet been published:

1. *Public Housing Capital Fund.* This rule will establish regulatory provisions concerning the Public Housing Capital Fund other than the formula.

2. *Public Housing Mixed Finance.* This rule will implement section 539 of the Public Housing Reform Act, as further discussed below.

3. *Public Housing Demolition/ Disposition.* This rule will implement more fully section 531 of the Public Housing Reform Act, as further discussed below.

4. *Allocation of Funds Under the Public Housing Operating Fund.* This is a proposed rule to be developed using negotiated rulemaking procedures.

In addition to these proposed rules, HUD also expects to publish a proposed rule on tenant participation in public housing, which will amend the existing tenant participation regulations in 24 CFR part 964, and may determine that other rulemakings related to the Public Housing Reform Act are desirable.

III. Summary Chart of Status and Guidance

The following chart summarizes the HUD guidance issued to date on each section of the Public Housing Reform Act covered by this Notice. The chart should be read in conjunction with the narrative which follows in the next section.

Statutory section	Implemented by February 18, 1999—Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 503(c) Technical Recommendations.					Report containing proposals for technical and conforming legislative changes was submitted to the Congress on July 23, 1999.
Sec. 503(d) List of Obsolete Documents.					The required FEDERAL REGISTER notice was published on October 1, 1999 (64 FR 53400).
Sec. 505 Declaration of Policy and Public Housing Agency Organization.		June 23, 1999 (64 FR 33644).		October 21, 1999 (64 FR 56870).	Rulemaking implemented the statutory requirement that the governing board of each PHA, with certain exceptions, contain at least one member who is directly assisted by the PHA.
Sec. 506 Definitions					Statutory changes were incorporated in HUD rulemakings implementing the Public Housing Reform Act, as appropriate.
Sec. 507 Minimum Rent.	Yes	Part of Admissions and Occupancy proposed rule published on April 30, 1999 (64 FR 23459).		In development.	Section 507 was effective upon enactment.
Sec. 508 Determination of Adjusted Income and Median Income.		Part of Admissions and Occupancy rulemaking.		In development.	Partial implementation was required by August 6, 1999 Notice of Guidance on Public Housing Rent Policies (64 FR 42956).
Sec. 509 Family Self-Sufficiency Program.	Yes	Part of Admissions and Occupancy rulemaking.		In development.	
Sec. 510 Prohibition on Use of Funds.					Self-implementing; no rulemaking required.
Sec. 511 Public Housing Agency Plans.			February 18, 1999 (64 FR 8170).	October 21, 1999 (64 FR 56844).	Additional guidance provided in PIH Notices 99–33 and 99–51. HUD expects to provide further information and direction.
Sec. 512 Community Service and Family Self-Sufficiency Requirements.	Yes, as to changes to welfare-related programs requirements (see amended subsection 12(d) of the 1937 Act).	Part of Admissions and Occupancy rulemaking.		In development.	

Statutory section	Implemented by February 18, 1999—Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 513 Income Targeting for Public Housing and Tenant-Based Section 8 Assistance.	Yes	Part of Admissions and Occupancy rulemaking.	Part of PHA Plan rulemaking, with regard to deconcentration (see section 511). Part of Section 8 Merger Interim rule with regard to Section 8 vouchers. The interim rule was published on May 14, 1999 (64 FR 26632) (see section 545).	Admissions and Occupancy final rule in development. Part of PHA Plan rulemaking, with regard to deconcentration (see section 511). Final Section 8 Merger rule published on October 21, 1999 (64 FR 56894) (see section 545).	—
Sec. 514 Repeal of Federal preferences.	Yes	Part of Admissions and Occupancy rulemaking (for public housing and Section 8 project based assistance).	Part of Section 8 Merger rulemaking (for Section 8 tenant-based vouchers) (See section 545).	Admissions and Occupancy final rule in development. Part of Section 8 Merger rulemaking (See section 545).	
Sec. 515 Joint Ventures and Consortia of PHAs.		September 14, 1999 (64 FR 49940).		In development.	See specific additional guidance below.
Sec. 516 Public Housing Agency Mortgages and Security Interests.					Rulemaking in development. See specific additional guidance below.
Sec. 517 Mental Health Action Plan.					Development of action plan and compliance with other statutory requirements has begun.
Sec. 518(b) Local Notification					No rulemaking necessary, but additional elaboration may be provided in Capital Fund program (non formula) rulemaking (see section 519).
Sec. 519:					
1. Capital Fund formula		September 14, 1999 (64 FR 49924).		In development.	See specific additional guidance below.
2. Capital Fund program (non-formula).		In development.			See specific additional guidance below.
Sec. 519 Operating Fund.	Yes (transition provisions).	Negotiated proposed rule in development.			See specific additional guidance below.
Sec. 519 Other Provisions.	Yes				See specific additional guidance below.
Sec. 520 Total Development Cost.		In development			Guidance also provided in PIH Notice 99–17.
Sec. 521 Sanctions for Improper Use of Amounts.					HUD will cross-reference this sanction authority in its program regulations, as appropriate.

Statutory section	Implemented by February 18, 1999—Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 522 Repeal of Modernization Fund.					Guidance provided in the March 23, 1999 HUD-CPD memorandum on the "Impacts of the 1999 Appropriations Act on HOME and SHOP", and the March 25, 1999 clarifying memorandum on the same subject. See specific additional guidance below.
Sec. 523 Family Choice of Rental Payment.	Discussed but not implemented.	Part of Admissions and Occupancy rulemaking.		In development.	Implementation required by the August 6, 1999 Notice of Guidance on Public Housing Rent Policies.
Sec. 524 Occupancy by Police Officers and Over-Income Families.	Yes	Part of Admissions and Occupancy rulemaking.		In development.	
Sec. 525 Site-Based Waiting Lists.			Part of PHA Plan rulemaking (see section 511).	Part of PHA Plan rulemaking (see section 511).	
Sec. 526 Pet Ownership.		June 23, 1999 (64 FR 33640).		In development.	
Sec. 529 Contract Provisions.					No rulemaking required; to be implemented through amendments to Annual Contributions Contracts (ACCs).
Sec. 530 Housing Quality Requirements.	Yes				No rulemaking required; to be implemented through ACC amendments.
Sec. 531 Demolition and Disposition of Public Housing.	Yes	In development.	Part of PHA Plan rulemaking (see section 511).	Part of the PHA Plan rulemaking (see section 511).	Additional guidance provided in PIH Notice 99–19.
Sec. 532 Resident Councils and Resident Management Corporations.		October 21, 1999 (64 FR 56890) (provides for the direct funding of RMCs); more comprehensive proposed rule in development.		Final rule for October 21, 1999 proposed rule in development.	
Sec. 533 Voluntary Conversion of Public Housing to Vouchers.		July 23, 1999 (64 FR 40240).		In development.	See specific additional guidance below.
Sec. 534 Transfer of Management of Certain Housing.					No rulemaking necessary or anticipated. See specific additional guidance below.
Sec. 535 Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance Grants for Projects (HOPE VI).					Substantially implemented by the FY 1999 notice of Funding Availability (NOFA) for the HOPE VI program; published on February 26, 1999 (64 FR 9618). HUD may undertake rulemaking in FY 2000.
Sec. 536 Public Housing Homeownership.		September 14, 1999 (64 FR 49932).		In development.	
Sec. 537 Required Conversion of Public Housing to Vouchers.		July 23, 1999 (64 FR 40232).		In development.	

Statutory section	Implemented by February 18, 1999—Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 538 Linking Services to Public Housing Residents.					Implemented through FY 1999 NOFA on the Resident Opportunities and Self-Sufficiency (ROSS) program; published on August 10, 1999 (64 FR 43530). HUD may undertake rulemaking in FY 2000.
Sec. 539 Mixed-Finance Public Housing.		In development.			
Sec. 545 Merger of Certificate and Voucher Programs.			May 14, 1999 (64 FR 26632).	October 21, 1999 (64 FR 56894). An amendment to the final rule was published on November 3, 1999 (64 FR 59620).	
Sec. 546 Public Housing Agencies.			Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 547 Administrative Fees.	Yes				Initial guidance will be supplemented by annual notices.
Sec. 548 Law Enforcement and Security Personnel in Assisted Housing.	Yes	Part of Admissions and Occupancy rulemaking.		In development.	
Sec. 549 Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Assistance Contracts.	Yes		Part of Section 8 merger rulemaking (see section 545)..	Part of Section 8 merger rulemaking (see section 545).	Additional guidance provided in PIH Notice 98–64.
Sec. 550 Technical and Conforming Amendments.					No rulemaking necessary or anticipated.
Sec. 551 Funding and Allocation.	Yes.				
Sec. 553 Portability			Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 554 Leasing to Voucher Holders.	Yes		Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 555 Homeownership Option.		April 30, 1999 (64 FR 23488).		In development.	
Sec. 556 Renewals				Negotiated final rule published on October 21, 1999 (64 FR 56894).	Consistent with statutory requirement, the October 21, 1999 final rule was preceded by an implementing PIH Notice (98–65). For the convenience of the public, the PIH notice was also published in the FEDERAL REGISTER on February 18, 1999 (64 FR 8188).
Sec. 557 Manufactured Housing Demonstration Program.					Implemented by letter to the participating housing authorities.
Sec. 559 Rulemaking and Implementation.			Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 561 Home Rule Flexible Grant Demonstration.	Yes.				

Statutory section	Implemented by February 18, 1999—Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 563 Performance Evaluation Study.					HUD has entered into the statutorily required contract, with the National Academy of Public Administration (NAPA), and the study is proceeding.
Sec. 564 Public Housing Management Assessment Program.		June 22, 1999 (64 FR 33348).		In development.	Partial implementation (regarding independent assessment of small troubled PHAs) provided in the April 30, 1999 Initial Implementation Guidance Update Notice (64 FR 23344). Further details were also provided in a FEDERAL REGISTER notice published on October 21, 1999 (64 FR 33348).
Sec. 565 Expansion of Powers for Dealing with Public Housing Agencies in Substantial Default.	Yes	Part of the PHAS rulemaking (see section 564).		In development.	
Sec. 566 Audits					To be implemented through ACC amendment.
Sec. 567 Advisory Council for Housing Authority of New Orleans.					No rulemaking is necessary or anticipated.
Sec. 568 Troubled PHAs and Consolidated Plans.					Effective on October 1, 1999. Will be implemented through rulemaking on Consolidated Plans.
Sec. 575 Provisions Applicable Only to Public Housing and Section 8 Assistance.	Yes (the provision regarding obtaining information from drug abuse treatment facilities).	The remaining provisions are part of the "One Strike" rulemaking (64 FR 40262, July 23, 1999).		In development.	
Sec. 576 Screening of Applicants for Federally Assisted Housing.		Part of the "One Strike" rulemaking.		In development.	
Sec. 577 Termination of Tenancy and Assistance.		Part of the "One Strike" rulemaking.		In development.	
Sec. 578 Ineligibility of Dangerous Sex Offenders for Public Housing.		Part of the "One Strike" rulemaking.		In development.	
Sec. 579 Definitions					These definitions are applicable to the requirements described in sections 575–578.
Sec. 581 Annual Report.					The first annual report was submitted to the Congress in accordance with the required schedule.
Sec. 582 Repeals					Effective on October 1, 1999. No rulemaking is necessary or anticipated.
Sec. 583 Consolidated Plans.					Effective October 1, 1999. Will be implemented through rulemaking on Consolidated Plans.
Sec. 584 Use of American Products.	Yes.				

Statutory section	Implemented by February 18, 1999—Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 585 GAO Study on Housing Assistance Programs.					The study required by this section is under way.
Sec. 586 Drug Elimination Program.		May 12, 1999 (64 FR 25736).		September 14, 1999 (64 FR 49900).	Proposed rule was preceded by Advance Notice of Proposed Rulemaking published on February 18, 1999 (64 FR 8210).
Sec. 587 Report on Drug Elimination Contracts.					Report was submitted to Congress as required.
Sec. 589 Notice on Treatment of Occupancy Standards.					Required FEDERAL REGISTER notice published on December 18, 1998 (63 FR 70256). No further regulation is necessary.
Sec. 592 Use of Assisted Housing by Aliens.				May 12, 1999 (64 FR 25726).	
Sec. 595 Native American Housing Assistance.					Implemented by notice. No rulemaking is necessary or anticipated.
Sec. 596 Community Development Block Grant Public Services Cap.					No rulemaking is necessary or anticipated.
Sec. 597 Moderate Rehabilitation Terms for Contract Renewals.	Yes				Additional guidance provided in PIH Notice 98–62. No rulemaking is necessary or anticipated.
Sec. 599 Tenant participation.		June 17, 1999 (64 FR 32782).		In development.	
Sec. 599H Miscellaneous.					No rulemaking is necessary or anticipated.

IV. Section-by-Section Narrative of Status of Public Housing Reform Act Implementation and Guidance

The following narrative clarifies and elaborates upon the information provided in the preceding chart, and is organized by section number from the Public Housing Reform Act. Several statutory sections of the Public Housing Reform Act were effective upon enactment. HUD's February 18, 1999 Notice of Initial Guidance provided notification of those sections of the Public Housing Reform Act that were immediately effective and HUD provided guidance concerning the action, if any, that was required to be taken. Therefore, reference in this narrative to a statutory section being "implemented by the February 18, 1999 Notice of Initial Guidance" is a reference to the notification and guidance provided in this February 18, 1999 notice. Also, dates on which rules were published, and which were listed in Section II of this notice, are not always restated below.

Section 503(c)—Technical Recommendations. Section 503(c) requires HUD to submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives recommended technical and conforming legislative changes necessary to carry out the Public Housing Reform Act. HUD submitted its recommendations to the appropriate committees on July 23, 1999. One of the important recommended sections, regarding income eligibility adjustment, was enacted in the HUD/VA Independent Appropriations Act for Fiscal Year 2000 (Pub.L. 106–74, approved October 20, 1999).

Section 503(d)—List of Obsolete Documents. Section 503(d) requires HUD to publish in the **Federal Register**, by October 1, 1999, a list of all rules, regulations, and orders (including all handbooks, notices, and related requirements) pertaining to public housing or Section 8 tenant-based programs issued or promulgated under the 1937 Act before enactment of the Public Housing Reform Act that are or will be obsolete because of the enactment of the Public Housing Reform Act or are otherwise obsolete. The required list was published in the **Federal Register** on October 1, 1999 (64 FR 53400).

Section 505—Declaration of Policy and Public Housing Agency Organization. Section 505 of the Public Housing Reform Act, which became effective October 1, 1999, amends section 2(b) of the 1937 Act to require that the membership of the board of directors or similar governing body of each PHA, with certain exceptions, contain not less than one member who is directly assisted by the PHA. The resident board member may, if provided in the PHA plan, be elected by the residents directly assisted by the PHA. The final rule implementing section 505 of the Public Housing Reform Act was published on October 21, 1999.

Section 506—Definitions. Section 506 of the Public Housing Reform Act became effective October 1, 1999, and amends section 3(b) of the 1937 Act to modify definitions relating to the terms "public housing," "single persons," and "person with disabilities" (the latter definition is also included in the "One Strike" proposed rule). This section also adds definitions of the terms "drug-

related criminal activity," "mixed-finance project," "public housing agency plan," "Capital Fund," and "Operating Fund." Conforming amendments have been and will be made to applicable HUD regulations to reflect the statutory revisions to these terms.

Section 507—Minimum Rent. Section 507 of the Public Housing Reform Act became effective October 21, 1998, and was implemented by the February 18, 1999 Notice of Initial Guidance, which provided guidance on how PHAs should comply until publication of the Admissions and Occupancy final rule. Publication of this rule is expected within the next several weeks.

Section 508—Determination of Adjusted Income and Median Income. Section 508 of the Public Housing Reform Act amends section 3(b)(5) of the 1937 Act to provide the manner in which adjusted income and median income will be determined, and provides certain mandatory exclusions. This section was effective beginning on October 1, 1999 (except that the provision relating to income limits in Rockland County, New York was effective October 21, 1998). In anticipation of the final rule on Admissions and Occupancy, HUD published a Notice of Guidance on Public Housing Rent Policies in the **Federal Register** on August 6, 1999 (64 FR 42956), which made clear that the choice of rent and mandatory disregard of increased earned income provisions were to be implemented by PHAs on October 1, 1999. As the August 6, 1999 notice stated, any PHAs which followed that guidance will not be penalized for any changes made by HUD at the final rule stage.

Section 509—Family Self-Sufficiency Program. Section 509 of the Public Housing Reform Act amends section 23 of the 1937 Act, regarding the Family Self-Sufficiency program, and was effective beginning on October 21, 1998. This section was implemented by the February 18, 1999 Notice of Initial Guidance and will be elaborated on in the Admissions and Occupancy final rule.

Section 510—Prohibition on Use of Funds. Section 510 of the Public Housing Reform Act is effective beginning on October 1, 1999. Section 510 amends section 5 of the 1937 Act by adding a new subsection (l) that provides as follows:

> None of the funds made available to the Department of Housing and Urban Development to carry out [the Public Housing Reform Act], which are obligated to State or local governments, public housing agencies, housing finance agencies, or other public or quasi-public housing agencies, shall be used to indemnify contractors or subcontractors of the government or agency against costs associated with judgments of infringement of intellectual property rights.

No rulemaking is necessary to implement this section.

Section 511—Public Housing Agency Plan. Section 511 of the Public Housing Reform Act adds a new section 5A to the 1937 Act that requires each PHA, beginning with Federal Fiscal Year 2000 funds, to submit a PHA Plan consisting of a 5-Year Plan and an Annual Plan. Section 511 was implemented by the interim rule published on February 18, 1999. On July 30, 1999, HUD issued Notice PIH 99–33, which provides the electronic template for PHA Plan submissions. HUD published the final rule on the PHA Plan on October 21, 1999. On November 24, 1999 (64 FR 66106), HUD published a **Federal Register** notice announcing optional extensions for first PHA Plan due dates for PHAs with fiscal years beginning on January 1, 2000 and April 1, 2000. On December 14, 1999, HUD issued PIH Notice 99–51, which supplements the initial electronic template. HUD expects to provide further information and direction.

Section 512—Community Service and Family Self-Sufficiency Requirements. The portion of section 512 which prevents reductions in assisted housing rents where a family has had its welfare benefits reduced for fraud or failure to comply with self-sufficiency requirements was implemented in the February 18, 1999 Notice of Initial Guidance and will be elaborated on in the Admissions and Occupancy final rule. Those documents also implemented the requirement that PHAs use best efforts to enter into cooperation agreements with local agencies, both to target services which will help housing assistance recipients become self-sufficient and to provide information needed to administer the new rent and community service provisions.

The remainder of section 512 became effective beginning on October 1, 1999. Section 512 amends section 12 of the 1937 Act by adding a new subsection (c) that imposes a requirement on adult public housing residents, with important exceptions, to participate for at least 8 hours per month in a community service or economic self-sufficiency program. In some cases, PHAs must not renew a resident's 12-month lease for failure to satisfy this requirement. Each PHA must include in its PHA Plan a detailed description of the manner in which the agency intends to implement and administer the community service requirement.

Although section 12(c) was effective beginning on October 1, 1999, PHAs must have sufficient time to develop community service programs and include detailed descriptions in their PHA Plan as the law requires. Accordingly, PHAs that are required to submit their PHA Plans for the fiscal years commencing January 1, 2000 or April 1, 2000 are not required to include community service programs in those Plans. HUD's final rule on Admissions and Occupancy will assist PHAs with their planning of the community service programs.

Section 513—Income Targeting for Public Housing and Tenant-Based Section 8 Assistance. Section 513 of the Public Housing Reform Act, which was effective beginning on October 21, 1998, amends section 16 of the 1937 Act to establish, among other things, public housing deconcentration and income mixing requirements and income targeting requirements for public housing and tenant-based Section 8 assistance, including annual requirements for admitting families with incomes below 30% of area median income. The deconcentration and income mixing requirements were initially implemented by the February 18, 1999 Notice of Initial Guidance and the PHA Plan interim rule, and are included in the PHA Plan final rule (for which further direction will be provided as indicated above).

The income targeting requirements were implemented by the February 18, 1999 Notice of Initial Guidance and are contained in the final rule on the statutory merger of the Section 8 certificate and voucher programs (for Section 8 tenant-based assistance), and will be contained in the Admissions and Occupancy final rule (for public housing as well as section 8 project-based assistance).

Section 514—Repeal of Federal Preferences. Section 514 of the Public Housing Reform Act was effective as of October 21, 1998, and was initially implemented by the February 18, 1999 Notice of Initial Guidance. Final guidance is now provided in the final rule implementing the statutory merger of the Section 8 Certificate and Voucher programs (for Section 8 tenant-based assistance) and will be provided in the Admissions and Occupancy final rule (for public housing as well as section 8 project-based assistance).

Section 515—Joint Ventures and Consortia of PHAs. Section 515 of the Public Housing Reform Act creates a new section 13 of the 1937 Act, and was effective beginning on October 1, 1999. New section 13(a) authorizes PHAs to administer any or all of their housing

programs through a consortium of PHAs. New section 13(b) authorizes PHAs to use subsidiaries, joint ventures, partnerships or other business arrangements to administer their housing programs or to provide supportive or social services. As noted earlier in this notice, a proposed rule implementing section 515 was published on September 14, 1999 (64 FR 49940).

In the September 14, 1999 proposed rule, HUD noted that before enactment of section 13, some PHAs had established cooperative arrangements for carrying out some of their responsibilities. A principal difference between such arrangements and consortia as authorized under new section 13, is that under section 13 funding may be directed to a representative of the consortium on behalf of several PHAs instead of being paid to the PHAs separately. Another major difference is that under a section 13 consortium, a joint PHA plan is submitted on behalf of participating PHAs. Enactment of section 13, however, does not restrict the ability of PHAs to continue to establish cooperative arrangements under which they receive funding separately and submit separate PHA plans.

HUD also noted that with respect to joint ventures, partnerships, affiliates, subsidiaries, and other business arrangements, the September 14, 1999 proposed rule only covered the public housing program. PHAs engaged in Section 8 program administration have been and continue to be free to engage in such arrangements without any new regulatory restrictions.

HUD's final rule implementing section 515 is under development. PHAs that wish to form consortia may indicate this in PHA Plans that are submitted prior to the effective date of the final rule. PHAs then, after the final rule is effective, may propose consortia through "significant amendments" to their PHA Plans.

Section 516—Public Housing Agency Mortgages and Security Interests. Section 516 of the Public Housing Reform Act, which was effective beginning on October 1, 1999, provides that HUD may, upon such terms and conditions as HUD may prescribe, authorize a PHA to mortgage or otherwise grant a security interest in any public housing project or other property of the PHA. In making any such authorization, HUD may consider the ability of the PHA to use the proceeds of the mortgage or security interest for low-income housing uses; the ability of the PHA to make payments on the mortgage or security interest; and other criteria. Section 516 also provides that no action taken under this provision shall result in any liability to the Federal government.

Until rulemaking is done, PHAs wishing to use the authority of section 516 may submit requests to HUD headquarters, Office of Public Housing Investments, Room 4130. HUD will review such requests and provide approvals on a case-by-case basis if appropriate. However, HUD's review of such requests will take into account the fact that rulemaking is pending and that these regulatory requirements, once established, will guide implementation of section 516. To minimize the risk of loss of public housing property, HUD also will encourage full collateralization of any debt secured by such a mortgage, independent of and at risk before the public housing property. In addition, until rulemaking is completed, the regulations in 24 CFR part 941, subpart F (mixed finance development) continue to govern.

Section 517—Mental Health Action Plan. Section 517 of the Public Housing Reform Act was effective beginning on October 1, 1999. Section 517 provides that HUD, in consultation with the Department of Health and Human Services, the Department of Labor, and State and local officials, shall develop an action plan and a list of recommendations for improving severe mental illness treatment to families and individuals receiving housing assistance under the 1937 Act. Additionally, HUD is required to develop and disseminate a list of current practices that serve to benefit persons in need of mental health care. HUD has met with the other Federal agencies involved and has begun the process of developing the action plan and fulfilling other requirements.

Section 518(b)—Local Notification. Section 518(b) of the Public Housing Reform Act was effective beginning on October 1, 1999. Section 518(b) amends section 5(e)(2) of the 1937 Act to provide, generally, that HUD shall require each local cooperation agreement to provide that, notwithstanding any order, judgment, or decree of any court (including any settlement order), before making any amounts available for use for the development of any housing or other property not previously used as public housing, the PHA shall: (1) notify the appropriate local government official of such use, and (2) pursuant to the request of such local government, provide such information as may reasonably be requested by the local government regarding the public housing to be so assisted (except to the extent otherwise prohibited by law). PHAs must comply with the requirements of section 518(b) beginning on October 1, 1999, and should endeavor to have cooperation agreements amended accordingly. HUD may provide further elaboration on this provision in the forthcoming rulemaking on the Capital Fund program (the non-formula rulemaking) and eventually may make it an amendment to the Annual Contributions Contract (ACC).

Section 519—Public Housing Capital and Operating Funds. Section 519 of the Public Housing Reform Act amends section 9 of the 1937 Act to establish a Capital Fund and an Operating Fund for public housing. Section 519 also provides that HUD shall develop the formulas for allocating such funds through negotiated rulemaking procedures.

1. *Capital Fund.* As noted earlier in this notice, a final rule has been published allowing fiscal 1999 Comprehensive Improvement Assistance Program (CIAP) funds to be distributed by formula. In addition, negotiated rulemaking on the Capital Fund formula has been completed and the proposed rule, as also noted earlier in this notice, was published on September 14, 1999. Federal Fiscal Year 2000 Capital Funds will be distributed pursuant to the final rule on the Capital Fund formula. Upon the effective date of the final rule implementing the Capital Fund formula, PHAs may begin to undertake the eligible activities listed in section 9(d)(1) of the 1937 Act.

HUD intends soon to publish a proposed rule on all aspects of the Capital Fund program (other than the formula), with a final rule to follow in the first half of calendar year 2000. Until completion of that rulemaking, the regulations at 24 CFR part 968 continue to apply to assistance made available to PHAs through the Comprehensive Grant Program (CGP) or CIAP under section 14 of the 1937 Act for Federal fiscal year 1999 and prior years unless this Notice provides otherwise. In addition, the regulations at 24 CFR part 941 continue to apply to assistance made available under those provisions.

Effective October 21, 1998, new section 9(g)(2) of the 1937 Act allows PHAs with less than 250 dwelling units (small PHAs), to use capital or operating funds for any eligible capital or operating expense subject to certain conditions. This provision was implemented in the February 18, 1999 Notice of Initial Guidance. PHAs should follow that guidance until completion of rulemaking on the Capital Fund program.

Section 9(g)(3)(A) states that, with certain exceptions, a PHA may not use any of the amounts allocated for the PHA from the Capital Fund or Operating Fund for the purpose of constructing any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the PHA on October 1, 1999, including any public housing units demolished as part of any revitalization effort. HUD's current regulations at 24 CFR part 941 require HUD authorization for such PHA activity. Until rulemaking on the new law is completed, HUD will provide the necessary authorization where consistent with the standards of the new law.

Section 9(m) allows the commitment of capital assistance only (as well as operating assistance only, as discussed later in this notice) to public housing units in appropriate circumstances. This will be the subject of rulemaking in the near future. Until that time, PHAs wishing to use this provision for the development of public housing must request HUD approval. Until rulemaking is completed, public housing units developed and operated using capital assistance only shall be subject to all public housing laws and regulations.

2. *Operating Fund.* Negotiated rulemaking on the Operating Fund formula is still underway, and the current operating formula may continue as section 519 permits. Upon the effective date of the final rule implementing the Operating Fund formula, PHAs may begin to undertake the eligible activities listed in section 9(e)(1) of the 1937 Act (except use of the Operating Fund for repayment of debt service incurred to finance rehabilitation or development of public housing, which the statute makes subject to reasonable requirements set by HUD; such requirements will be the subject of rulemaking).

Except as otherwise provided in this Notice, the Performance Funding System and current program rules at 24 CFR part 990 will continue to apply to operating subsidy provided to PHAs under section 9 of the 1937 Act, as in effect prior to October 21, 1998. Section 9(l), however, provides that income from nonrental sources (as determined by the Secretary) is to be retained by PHAs and used only for low-income housing or to benefit assisted residents. This subsection therefore will be put in effect for Federal Fiscal Year 2000, by the funding notice regarding fiscal year 2000 operating subsidy.

Sections 519(d) and (e) of the Public Housing Reform Act include provisions relating to ceiling rents, transitional funding before implementation of the new Operating Fund formula, and the adoption of rental amounts other than ceiling rents or optional earned income disregards. These provisions were discussed in the February 18, 1999 Notice of Initial Guidance. PHAs should continue to follow that guidance until rulemaking on the Operating Fund or Admissions and Occupancy, as applicable, is completed.

Commencing October 1, 1999, PHAs are required to give residents a choice on an income-based rent or a flat rent. Until the new Operating Fund formula is implemented, flat rents set comparable to market (as provided by the August 6, 1999 **Federal Register** Notice of Guidance on Public Housing Rent Policies and as will be provided by the Admissions and Occupancy final rule) shall be treated in the same manner as ceiling rents were treated in the past. This will be elaborated on in the Federal Fiscal Year 2000 funding notice referenced above.

Section 9(m) allows for public housing assistance using operating assistance only. This will be the subject of rulemaking. Until rulemaking is completed, PHAs wishing to use this provision must request HUD approval and the housing assisted in this manner will be subject to all public housing laws and regulations.

3. *Other Provisions.* Section 9(h) of the 1937 Act, regarding technical assistance and related activities, is effective immediately and needs no regulations. Section 9(n)(2) and 9(n)(3), regarding New York City Housing Authority programs, were implemented by the Notice of Initial Guidance.

Section 520—Total Development Costs. Section 520 of the Public Housing Reform Act, effective October 1, 1999, amends sections 3(c)(1) and 6(b) of the 1937 Act, which govern Total Development Costs for the development of public housing. HUD expects to conduct rulemaking on section 520. Until rulemaking is completed, PHAs should follow PIH Notice 99–17, issued March 15, 1999, which is consistent with section 520.

Section 521—Sanctions for Improper Use of Amounts. Section 521 of the Public Housing Reform Act was effective beginning on October 1, 1999. Section 521 amends section 6(j) of the 1937 Act to provide for sanctions which HUD may impose on a PHA receiving amounts from the Capital Fund or Operating Fund for public housing if the PHA has failed to comply substantially with any provision of the 1937 Act relating to the public housing program. Section 521 also contains provisions regarding the termination of such sanctions. Rulemaking is not necessary to implement this section. However, HUD will reference this sanction authority in appropriate program regulations.

Section 522—Repeal of Modernization Fund. Section 522(a) of the Public Housing Reform Act, which repeals section 14 of the 1937 Act, was effective beginning on October 1, 1999 (for guidance see the discussion of section 519 of the Public Housing Reform Act, above). Sections 522(b)(1) through 522(b)(4) of the Public Housing Reform Act contain conforming amendments which were effective October 1, 1999. Section 522(b)(5) contains a conforming amendment regarding the use of HOME program funds for public housing (see the HUD Office of Community Planning and Development memorandum on the "Impacts of the 1999 Appropriations Act on HOME and SHOP" dated November 23, 1998, and the clarifying memorandum on the same subject dated March 25, 1999). Section 522(c) was effective on October 21, 1998 and provides that, before implementation of the Capital Fund and Operating Fund formulas, PHAs may continue to use the authority in section 14(q) of the 1937 Act, as amended (including the amendment made by section 208 of the fiscal year 1999 HUD appropriations act), notwithstanding the repeal of the modernization fund by section 522(a).

Section 523—Family Choice of Rental Payment. Section 523 of the Public Housing Reform Act is effective October 1, 1999. Section 523 amends section 3(a) of the 1937 Act to provide that each family can elect annually whether the rent payment is a flat rate or income based. Guidance on how to implement this provision was discussed in the February 18, 1999 Notice of Initial Guidance and in the August 6, 1999 **Federal Register** Notice of Guidance on Public Housing Rent Policies.

Final guidance on section 523 will be contained in the Admissions and Occupancy final rule. The final guidance on flat rents may result in somewhat different flat rents from those PHAs have implemented if they followed the August 6, 1999 **Federal Register** guidance. If so, PHAs must change their flat rents accordingly, in time to include such flat rents in PHA Plans for fiscal years commencing on and after July 1, 2000.

Section 524—Occupancy by Police Officers and Over-Income Families. Section 524 of the Public Housing Reform Act became effective on October 21, 1998 and was originally implemented in the February 18, 1999

Notice of Initial Guidance. Section 524 allows PHAs, under certain conditions, to allow police officers who are not otherwise eligible for public housing, and over-income families, to occupy a public housing unit. Section 524 is being implemented by the final rule on Admissions and Occupancy.

Section 525—Site-Based Waiting Lists. Section 525 of the Public Housing Reform Act, effective October 1, 1999, amends section 6 of the 1937 Act to allow PHAs to establish a system of site-based waiting lists, subject to applicable civil rights laws. Section 525 was initially implemented in the PHA Plan interim rule published on February 18, 1999. Implementation of this provision is made final by the PHA Plan final rule published on October 21, 1999.

Section 526—Pet Ownership. Section 526 of the Public Housing Reform Act provides that public housing residents may have pets, subject to the reasonable requirements of PHAs and other conditions. This section will be effective on completion of the rulemaking that is now in progress.

Section 529—Contract Provisions. Section 529 of the Public housing Reform Act, effective October 1, 1999, amends section 6 of the 1937 Act to make technical and conforming changes to the contents of ACC for the public housing program. No rulemaking is necessary or anticipated.

Section 530—Housing Quality Requirements. Effective October 1, 1999, Section 530 amends section 6 of the 1937 Act to add a new subsection (f), which requires ACCs to include a requirement that a PHA maintain its public housing units in compliance with safety and habitability standards specified by HUD. For implementation guidance, PHAs should refer to the discussion of section 530 in the February 18, 1999 Notice of Initial Guidance. No rulemaking is necessary or anticipated. However, HUD will issue an amendment to the ACC to reflect this provision.

Section 531—Demolition and Disposition of Public Housing. Section 531 of the Public Housing Reform Act amends section 18 of the 1937 Act. Section 531 became effective on October 21, 1998 and was implemented by the February 18, 1999 Notice of Initial Guidance, the PHA Plan interim rule, and PIH Notice 99–19 issued on April 20, 1999. PHAs should rely on that guidance and on the PHA Plan final rule until HUD completes its rulemaking revising 24 CFR part 970. Until HUD completes rulemaking on section 531, PHAs also must comply with the regulations in 24 CFR part 970 except to the extent that these regulations have been revised by section 531 and the revisions were implemented by the February 18, 1999 Notice of Initial Guidance and PIH Notice 99–19.

Section 532—Resident Councils and Resident Management Corporations. Section 532 of the Public Housing Reform Act revises section 20 of the 1937 Act and was effective October 1, 1999. HUD issued a proposed rule implementing section 532, published on October 21, 1999, which provides for the direct payment of operating and capital funds from HUD to Resident management Corporations (RMCs). HUD expects to conduct comprehensive rulemaking on resident participation during Federal Fiscal Year 2000.

Section 533—Voluntary Conversion of Public Housing to Vouchers. Section 533 of the Public Housing Reform Act became effective October 1, 1999. Section 533 amends section 22 of the 1937 Act to allow PHAs to convert public housing to tenant-based assistance under certain conditions. As noted earlier in this notice, HUD published a proposed rule to implement this section on July 23, 1999. The public comment period on this rule closed September 21, 1999. PHAs that wish to commence the conversion assessment of all their properties required by section 22(b) (2) and (3), may begin that assessment by following the process for certifications under § 972.207(b)(1) of the proposed rule. Because the "cost test" may change at the final rule stage, PHAs should not begin to apply that test with respect to assessments or possible voluntary conversions.

Section 534—Transfer of Management of Certain Housing. Section 534 which became effective October 1, 1999 amends section 25 of the 1937 Act to provide that HUD may transfer the management of public housing from a PHA to another management entity in accordance with certain requirements. Residents may use this authority by making a request to the HUD field office. No rulemaking is necessary or anticipated.

Section 535—Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance Grants for Projects (HOPE VI). Section 535 of the Public Housing Reform Act amends section 24 of the 1937 Act to provide continued authority for the HOPE VI program, and establishes application selection and grant requirements. This provision was effective beginning on October 21, 1998 and was substantially implemented by HUD's Fiscal Year 1999 Notice of Funding Availability (NOFA) for the HOPE VI program (which was part of HUD's Fiscal Year 1999 SuperNOFA, published in the **Federal Register** on February 26, 1999 (64 FR 9618)). HUD may undertake rulemaking on section 535 in Federal Fiscal Year 2000.

Section 536—Public Housing Homeownership. Section 536 of the Public Housing Reform Act, which became effective October 1, 1999, adds section 32 to the 1937 Act, which authorizes a new public housing homeownership program that replaces, but is substantially based on, the former "Section 5(h) program." As noted earlier in this notice, HUD published a proposed rule to implement section 536 on September 14, 1999. The public comment period for this rule closed November 15, 1999.

Until the final rule is published, HUD will process public housing homeownership proposals under its Section 5(h) program regulations at 24 CFR part 906. As noted, the Congress modeled section 32 on the Section 5(h) program, and there are many similarities between section 32 and the part 906 regulations. Accordingly, the use of 24 CFR part 906 until rulemaking on section 32 is completed is consistent with Congressional intent. Further, the use of the part 906 regulations will permit HUD to process homeownership proposals using well established regulatory requirements.

Section 537—Required Conversion of Public Housing to Vouchers. Section 537 of the Public Housing Reform Act, effective October 1, 1999, adds a new section 33 to the 1937 Act concerning the removal of public housing units identified as distressed from the public housing inventory and the ACC. As noted earlier in this notice, HUD published a proposed rule on section 537 on July 23, 1999. The public comment period on this rule closed on September 21, 1999. While the final rule is being completed, PHAs should prepare for required conversion by determining if the PHA has developments that would fail the vacancy rate test included in part 972.104(b) of the proposed rule and, if so, devoting appropriate attention to the situation of any such development.

Although section 202 of the fiscal year 1996 HUD Appropriations Act (the forerunner to section 537) is repealed, it continues to apply to public housing identified by HUD or a PHA prior to October 21, 1998 for conversion or for assessment of whether conversion is required under section 202.

Section 538—Linking Services to Public Housing Residents. Section 538 of the Public Housing Reform Act became effective October 21, 1998. Section 538 adds a new section 34 to the 1937 Act, which authorizes a program of

supportive services and resident empowerment activities to assist public housing residents in becoming self-sufficient. Section 34 was implemented through a Fiscal Year 1999 NOFA (Resident Opportunities and Self-Sufficiency (ROSS) Program) published on August 10, 1998 (64 FR 43530). HUD may undertake a rulemaking to codify its implementation of section 534 in Federal Fiscal Year 2000.

Section 539—Mixed-Finance Public Housing. Section 539 of the Public Housing Reform Act, effective October 1, 1999, authorizes PHAs to own, operate, assist or otherwise participate in one or more mixed-finance projects, in accordance with certain requirements. HUD will undertake a rulemaking to implement section 539 in Federal Fiscal Year 2000. Until this future rulemaking is completed, parties proposing to use these provisions must notify HUD. The existing regulations at 24 CFR part 941, subpart F will continue to apply to mixed-finance transactions to the extent they are consistent with section 539.

Section 545—Merger of Certificate and Voucher Programs. Section 545 of the Public Housing Reform Act amends section 8(o) of the 1937 Act to merge the Section 8 tenant-based Certificate and Voucher programs into a new Housing Choice Voucher Program. As noted earlier in this notice, HUD published an interim rule implementing section 545 on May 14, 1999. The May 14, 1998 interim rule provided for an effective date of August 14, 1999. By **Federal Register** notice published on August 11, 1999 (64 FR 43613), HUD extended the effective date to October 1, 1999. On September 14, 1999 (64 FR 49656), HUD published a technical correction to the May 14, 1999 interim rule. The final rule was published on October 21, 1999. Additionally, on November 3, 1999 (64 FR 59620), HUD published an amendment to the final rule concerning initial rent burden of certain voucher holders.

Section 546—Public Housing Agencies. Section 546 of the Public Housing Reform Act amends the definition of the term "public housing agency" and is implemented by the Housing Choice Voucher Program final rule.

Section 547—Administrative Fees. Section 547 of the Public Housing Reform Act amends section 8(q) of the 1937 Act relating to Section 8 administrative fees, and is effective for fiscal year 1999 and subsequent fiscal years. Section 547 was implemented by the February 18, 1999 Notice of Initial Guidance and will be supplemented by annual notices. As discussed in the Notice of Initial Guidance, PHAs may propose fee adjustments where they incur additional expenses to serve persons with disabilities more fully.

Section 548—Law Enforcement and Security Personnel in Assisted Housing. Section 548 of the 1998, which became effective October 1, 1999, provides, that for purposes of increasing security, Section 8 project-based assistance may be provided to police officers and other security personnel who are not otherwise eligible for assistance. This section is addressed in HUD's proposed rule on Admissions and Occupancy.

Section 549—Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Assistance Contract. Section 549 of the Public Housing Reform Act was effective as of October 21, 1998. This provision was implemented for the Section 8 tenant-based assistance program by the February 18, 1999 Notice of Initial Guidance and by PIH Notice 98–64, and is elaborated on in the Housing Choice Voucher Program interim and final rules.

Section 550—Technical and Conforming Amendments. Section 550 of the Public Housing Reform Act, which became effective beginning on October 1, 1999, contains various technical and conforming amendments relating to the statutory merger of the tenant-based Section 8 certificate and voucher programs. No rulemaking is necessary or anticipated.

Section 551—Funding and Allocation. Section 551 of the Public Housing Reform Act was implemented and made effective by the February 18, 1999 Notice of Initial Guidance, to which PHAs should refer for guidance. In general, section 551 provides that local government comments with respect to affected PHA applications for Section 8 and public housing funds are no longer required.

Section 553—Portability. Section 553 of the Public Housing Reform Act amends section 8(r) of the 1937 Act with respect to the portability of tenant-based Section 8 assistance. Section 553 is made effective by the Housing Choice Voucher Program interim and final rules.

Section 554—Leasing to Voucher Holders. Section 554 permanently repeals the so-called "take one, take all" provision in the Section 8 tenant-based assistance program as of October 21, 1998. Section 554 is also discussed in the February 18, 1999 Notice of Initial Guidance and in the Housing Choice Voucher Program interim and final rules.

Section 555—Homeownership Option. Section 555 of the Public Housing Reform Act amends section 8(y) of the 1937 Act, effective October 21, 1998, to authorize a PHA to provide tenant-based Section 8 assistance for an eligible family that purchases a dwelling unit that will be occupied by the family. As noted earlier in this notice, HUD published a proposed rule to implement section 555 on April 30, 1999, and expects to issue a final rule within the next several months. HUD has demonstration authority under section 555 and has approved several demonstrations which are consistent with the proposed rule.

Section 556—Renewals. Section 556 of the Public Housing Reform Act amends the 1937 Act by adding subsection 8(dd), which directs HUD to establish an allocation baseline amount of assistance to cover the renewal of expiring tenant-based Section 8 ACCs, and to apply an inflation factor (based on local or regional factors) to the baseline. Section 556 also required HUD to implement this provision through notice not later than December 31, 1998, and to issue final regulations on the allocation of tenant-based Section 8 ACC renewal funding that are developed through negotiated rulemaking no later than October 21, 1999. Consistent with the statutory requirement, HUD issued PIH Notice 98–65 on December 30, 1999. This notice was published for the convenience of the public on February 18, 1999 (64 FR 8188). The required final rule was published on October 21, 1999.

Section 557—Manufactured Housing Demonstration Program. Section 557 of the Public Housing Reform Act became effective October 21, 1998 and requires HUD to carry out a program during Federal Fiscal Years 1999, 2000, and 2001 to demonstrate the effectiveness of providing tenant-based Section 8 assistance directly to eligible families that own manufactured homes and rent real property on which their homes are located. This demonstration program was implemented by letter to the participating housing authorities.

Section 559—Rulemaking and Implementation. Section 559 of the Public Housing Reform Act, effective October 21, 1998, requires HUD to issue any interim regulations necessary for the merger of tenant-based Section 8 certificate and voucher assistance. Section 559 also requires HUD to issue final regulations not later than one year after enactment of the Public Housing Reform Act. As discussed previously in this notice, HUD issued its interim rule on the Housing Choice Voucher Program on May 14, 1999. The final rule was published on October 21, 1999.

Section 561—Home Rule Flexible Grant Demonstration. Section 561 adds a demonstration program in which eligible jurisdictions, typically units of general local government, could receive public housing and tenant-based assistance for up to five years to meet specified performance goals. The demonstration became effective on October 21, 1998, and was implemented in the February 18, 1999 Notice of Initial Guidance.

As the February 18, 1999 Notice of Initial Guidance stated, any eligible jurisdiction wishing to participate in the demonstration may follow the statute's requirements and submit an application to HUD. HUD will not approve such an application, however, unless the application presents a compelling case that the eligible jurisdiction's participation and proposal would achieve the goals of the statute (which include the underlying program management and performance goals of the public housing and tenant-based assistance programs) in a superior manner to continuation of program management with the affected PHA.

Section 563—Performance Evaluation Study. Section 563 of the Public Housing Reform Act, effective October 21, 1998, directs HUD to provide for a study to be conducted to determine the effectiveness of various alternative methods of evaluating the performance of PHAs and other providers of federally assisted housing. Section 563 also requires HUD to request that the National Academy of Public Administration (NAPA) enter into a contract to conduct the study. HUD has entered into such a contract with NAPA and the study is proceeding.

Section 564—Public Housing Management Assessment Program. Section 564 of the Public Housing Reform Act, effective October 1, 1999, amends section 6(j) of the 1937 Act to modify and add to the indicators HUD uses to evaluate PHA management performance. These provisions are addressed in the June 22, 1999 PHAS proposed rule, and will be included in the final rule. Notification that the provisions amending requirements for independent assessment of newly troubled PHAs were in effect was provided by the Initial Guidance Update Notice, published on April 30, 1999 (64 FR 23344). As noted earlier in Section II of this Notice, further details regarding the phase-in of the Public Housing Assessment System (PHAS) were published in a **Federal Register** notice on October 21, 1999.

Section 565—Expansion of Powers for Dealing with Public Housing Agencies in Substantial Default. Effective October 21, 1998, section 565 of the Public Housing Reform Act provides for an expansion of various powers to be exercised by HUD or receivers and requires HUD to petition for court-ordered receivership (or to implement an administrative receivership, in the case of PHAs with fewer than 1,250 public housing units), with respect to certain troubled PHAs where the PHA remains troubled longer than the specified time period. This provision was implemented in the February 18, 1999 Notice of Initial Guidance, was elaborated on in the June 22, 1999 PHAS proposed rule, and will be part of the PHAS final rule.

Section 566—Audits. Section 566 of the Public Housing Reform Act, which became effective October 1, 1999, adds section 5(h) to the 1937 Act to require each ACC to provide that HUD, the HUD Inspector General, and the Comptroller of the United States shall have access to PHA records, and that HUD may withhold assistance from PHAs to pay for audit costs in some circumstances. HUD will begin a process of amending such contracts accordingly.

Section 567—Advisory Council for Housing Authority of New Orleans. Section 567 of the Public Housing Reform Act requires appointment of such an Advisory Council. No regulation is necessary to implement this section.

Section 568—Troubled PHAs and Consolidated Plans. Section 568 of the Public Housing Reform Act requires local jurisdictions with troubled PHAs to describe in their Consolidated Plans the manner in which they will assist the PHA in improving its operations to remove the troubled designation. Section 568 became effective October 1, 1999, and will be addressed in rulemaking on Consolidated Plans.

Section 575—Provisions Applicable Only to Public Housing and Section 8 Assistance. Section 575 of the Public Housing Reform Act contains provisions regarding public housing grievance procedures, termination of tenancy in public housing, availability of criminal records in connection with project-based assisted housing and obtaining information from drug abuse treatment facilities. These provisions generally became effective October 1, 1999. The provision concerning obtaining information from drug abuse treatment facilities, however, was implemented in the February 18, 1999 Notice of Initial Guidance. The remaining provisions are found in HUD's July 23, 1999 "One Strike" proposed rule. The public comment period on this proposed rule closed September 21, 1999.

Section 576—Screening of Applicants for Federally Assisted Housing. Section 576 of the Public Housing Reform Act, effective October 1, 1999, is covered by HUD's July 23, 1999 "One Strike" proposed rule.

Section 577—Termination of Tenancy and Assistance. Section 577 of the Public Housing Reform Act, which became effective October 1, 1999, is covered by the "One Strike" proposed rule.

Section 578—Ineligibility of Dangerous Sex Offenders for Public Housing. Section 578 of the Public Housing Reform Act, which became effective October 1, 1999, is covered by HUD's July 23, 1999 "One Strike" proposed rule.

Section 579—Definitions. The definitions in Section 579 of the Public Housing Reform Act are applicable to the requirements described in section 575–578.

Section 581—Annual Report. Section 581 of the Public Housing Reform Act requires an annual report on the impact of the Public Housing Reform Act on the demographics of assistance recipients and the economic viability of PHAs, as well as the employment status and earned income of public housing residents. The first such annual report was submitted to the Congress in accordance with the required schedule.

Section 582—Repeals. No regulation is necessary to effectuate these repeals, which became effective October 1, 1999.

Section 583—Consolidated Plans. Section 583 of the Public Housing Reform Act, which became effective October 1, 1999, requires Consolidated Plans to describe the manner in which the plans will help address the needs of the jurisdiction's public housing. This section will be implemented through rulemaking on Consolidated Plans.

Section 584—Use of American Products. Section 584 of the Public Housing Reform Act was implemented in the February 18, 1999 Notice of Initial Guidance. No further regulation is necessary.

Section 585—GAO Study on Housing Assistance Programs. The study required by this section is under way.

Section 586—Drug Elimination Program. These amendments were implemented by the Public Housing Drug Elimination Program (PHDEP) final rule, published on September 14, 1999, which among other things, provides for formula funding commencing with fiscal year 1999 funding.

Section 587—Report on Drug Elimination Contracts. This report was submitted to Congress as required.

Section 589—Notice on Treatment of Occupancy Standards. This notice was developed and published in the **Federal Register** on December 18, 1998 (63 FR 70256) as required. No further regulation is necessary.

Section 592—Use of Assisted Housing by Aliens. Section 592 of the Public Housing Reform Act, which clarified the scope of PHA "opt outs" for determining alien status, was implemented by the final rule on "Revised Restriction on Assistance to Noncitizens," published on May 12, 1999.

Section 595—Native American Housing Assistance. Section 595 of the Public Housing Reform Act made various changes affecting public housing and other housing assistance for Native Americans. The provisions of this section have been implemented by notice. No regulations are necessary or anticipated.

Section 596—Community Development Block Grants Public Services Cap. Section 596 of the Public Housing Reform Act extends a waiver from the cap on public services spending for Los Angeles. No regulations are necessary.

Section 597—Moderate Rehabilitation Terms for Contract Renewals. These terms were implemented in the February 18, 1999 Notice of Initial Guidance and by Notice PIH 98–62. No regulations are necessary or anticipated.

Section 599—Tenant Participation. Section 599 of the Public Housing Reform Act largely covers project-based assisted housing tenant participation rules, but also covers moderate rehabilitation projects and certain projects which receive enhanced vouchers. A proposed rule was published on June 17, 1999 (64 FR 32782). HUD received 73 public comments on the proposed rule.

Section 599H—Miscellaneous. Section 599H of the Public Housing Reform Act covers various matters largely relating to particular communities. This section was effective October 21, 1998. None of the matters covered require further regulations.

Conclusion

Implementation of the Public Housing Reform Act has presented a challenge to HUD and its partners. HUD appreciates the comments submitted to date on its proposed and interim rules (over 600 apart from the proposed rule on pet policies), and those provided at the public forums. HUD also appreciates the hard work of the three negotiated rulemaking committees that were formed to assist in the development of three important formula rules. The input of HUD's partners, program participants and other interested members of the public has greatly assisted HUD in the promulgation of the rules and notices issued to date under the Public Housing Reform Act.

HUD is committed to working closely with its public housing and Section 8 partners to make the changes in its public housing and Section 8 programs a success. HUD will continue to provide additional guidance and seek public involvement through all appropriate means, so that the purposes and promise of this important legislation may be fulfilled.

Dated: December 15, 1999.

Rod Solomon,

Deputy Assistant Secretary for Policy, Program and Legislative Initiatives.

[FR Doc. 99–33106 Filed 12–21–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Dates and Location for Public Scoping Meetings

AGENCY: Fish and Wildlife Service, Interior, New York State Department of Environmental Conservation; Vermont Fish and Wildlife Department.

ACTION: Notice of dates and locations for public scoping meetings on supplemental environmental impact statement for a sea lamprey control proposal in Lake Champlain.

SUMMARY: The U.S. Fish and Wildlife Service in cooperation with the Vermont Department of Fish and Wildlife and the New York State Department of Environmental Conservation announces its intention to hold four public scoping meetings on the Supplemental Environmental Impact Statement for sea lamprey control in Lake Champlain. The SEIS will evaluate a proposal to continue sea lamprey control in Lake Champlain, to maintain reduced levels of sea lamprey and achieve further reductions. The SEIS will be prepared pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, in accordance with the Council on environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). The Service invites other Federal agencies, states, Indian tribes, local governments, and the general public to attend the meetings and submit comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be addressed in the Draft Supplemental Environmental Impact Statement. Oral and written comments will be considered equally in preparation of the DSEIS. Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the DSEIS for review, should send a request to Mr. Dave Tilton at the address given below.

DATES AND LOCATIONS: All written comments related to the scope and content of the DSEIS should be submitted to the Service by February 4, 2000, to the address given below. The scoping meetings will be held at the following times and locations. All meetings will start at 7 p.m. and run until 9:30 p.m.

New York Locations

Date: January 5, 2000.

Location: Clinton County Government Center, Old Court House, 2nd Floor Meeting Room, 1333 Margaret Street, Plattsburgh, NY 12901.

Date: January 6, 2000.

Location: Ticonderoga High School, Calkins Place, Ticonderoga, NY 12883.

Vermont Locations

Date: January 10, 2000

Location: Middlebury Union High School, 73 Charles Avenue, Middlebury, VT 05753.

Date: January 11, 2000

Location: Milton High School, 17 Rebecca Lander Drive, Milton, VT 05468.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in receiving the DSEIS should be sent to Mr. Dave Tilton, Project Leader, U.S. Fish and Wildlife Service Lake Champlain Office, 11 Lincoln St., Essex Junction, Vermont 05452. Alternatively, comments may be submitted electronically to the following address: dave__tilton@fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Tilton, Project Leader, USFWS Lake Champlain Office, 11 Lincoln St., Essex Junction, Vermont 05452, 802–951–6313. FAX 802–951–6315. New York contact person is Mr. Lary Nashett, Supervising Aquatic Biologist, New York Department of Environmental Conservation, Region, 5, P.O. Box 296, Ray Brook, New York 12977, 518–897–1333. Vermont contact person is Mr. Tim Hess, Director of Fisheries, Vermont Department of Fish and Wildlife, 103 South Main Street, Waterbury, Vermont 05671, 802–241–3700.

SUPPLEMENTARY INFORMATION:

Background

Sea lamprey are primitive marine invaders to Lake Champlain. They are parasitic fish that feed on the body fluid of other fish resulting in reduced growth and often the death of host fish. A substantial body of information collected on Lake Champlain indicates sea lamprey have a profound negative impact upon the lake's fishery resources and have suppressed efforts to establish new and historical sportfisheries. In 1990, the Service, NYSDEC, and VTDFW initiated an eight-year experimental sea lamprey control program for Lake Champlain. The experiment program treated tributaries and deltas of Lake Champlain with the chemical lampricides TFM and Bayer 73, which substantially reduced larval sea lamprey numbers in treated waters. The program included monitoring and assessment of the effects of sea lamprey reduction on the characteristics of certain fish populations, the sport fishery and the area's growth and economy. A set of thirty evaluation standards were established. Overall, the experimental sea lamprey control program met or exceeded the majority of the standards. In addition to this evaluation, the cooperating agencies assessed the effects of the program on nontarget organisms.

Two rounds of treatments were planned for each significantly infested stream and delta. From 1990 through 1996 24 TFM treatments were conducted on 14 Lake Champlain tributaries, and 9 Bayer 73 (5% granular) treatments were conducted on five deltas. A cumulative total of approximately 141 miles and 1,220 delta acres were treated.

In summary, trap catches of spawning-phase sea lamprey declined by 80–90%; nest counts were reduced by 57%. Sixteen of twenty-two TFM treatments reduced ammocoetes at index stations to less than 10% of pre-treatment levels. Eight of the 9 Bayer treatments resulted in mean mortality rates over 85% among caged ammocoetes. Relatively small numbers of nontarget amphibian and fish species were killed. Adverse effects on nontarget species were higher for Bayer treatments than TFM. Native mussels, snails and some other macroinvertebrates were significantly affected after the 1991 Bayer 73 treatments of the Ausable and Little Ausable deltas in New York. However, they recovered to pre-treatment levels within 4 years. American brook lamprey also experienced substantial treatment-related mortality. Yet, the finding of dead American brook lamprey in second-round treatments in each stream where they were negatively affected during the first-round suggested survival or immigration was adequate to maintain their populations. Wounding rates on lake trout and landlocked Atlantic salmon were reduced in the main lake basin, and catches of both species increased. A significant increase in survival of 3–4 year lake trout was noted; survival of older fish improved but did not change significantly. Returns of Atlantic salmon to tributaries increased significantly after treatment. Changes in wounding rates on brown and rainbow trout could not be evaluated, but angler catches increased since 1990. Catch per unit effort of rainbow smelt, the major forage species for salmonids, decreased significantly at 1 or 2 sampling stations in the main lake basin and in Malletts Bay, but not at other locations; length-at-age also decreased at most sites. Evaluation of angler responses to the program indicated a favorable, 3.5:1 economic benefit:cost ratio.

A comprehensive Evaluation of an Eight-Year Program of Sea Lamprey Control in Lake Champlain provides a detailed description of the results of the project. It is available on the FWS web-sites at—

www.fws.gov/r51cfwro/lamprey/lamprey.html., or from any of the contacts for further information listed above.

Decision To Be Made

The responsible officials in the FWS, NYSDEC, and VTDFW must decide whether to continue sea lamprey control for Lake Champlain. In addition, if sea lamprey control will continue, the agencies must also consider the following:

(1) Should the following list be established as the long-term program objectives?

(a) Maintain reduced levels of sea lamprey on Main Lake and South Lake portions of Lake Champlain and achieve further Main Lake-South Lake reductions by targeting new areas where sea lamprey infestations are found.

(b) Augment sea lamprey control activities in Mallets Bay and Inland Sea areas of Lake Champlain and reduce sea lamprey population levels and associated impacts there.

(c) Employ an integrated approach to continuing sea lamprey control using lampricides and nonchemical means.

(2) What mitigation and monitoring measures are required for sound resource management?

(3) Is sea lamprey control in the best interest for the resource and citizens of the states of New York and Vermont?

The Final Environmental Impact Statement and Record of Decision is expected to be released by April, 2001. The Responsible Officials will make a decision regarding this proposal after considering public comments, and the environmental consequences displayed in the Final Supplemental Environmental Impact Statement, applicable laws, regulations, and policies. The decision and supporting reason will be documented in the Record of Decision.

Dated: December 9, 1999.

Ronald E. Lambertson,

Acting Regional Director.

[FR Doc. 99–33186 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Yuchi Tribal Organization

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: Notice is hereby given that the Assistant Secretary—Indian Affairs declines to acknowledge that the Yuchi Tribal Organization, P.O. Box 1803, Sapulpa, Oklahoma 74067, exists as an Indian tribe within the meaning of Federal law. This notice is based on the determination that the group does not satisfy one of the criteria set forth in 25 CFR 83.7, namely 83.7(f), and therefore does not meet the requirements for a government-to-government relationship with the United States. Pursuant to 25 CFR 83.10(l)(2), this notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

DATES: This determination is final and will become effective 90 days after its publication in the **Federal Register**, unless a request for reconsideration is filed by the petitioner or any interested party with the Interior Board of Indian Appeals no later than 90 days after publication.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592. A request for a copy of the report which summarizes the evidence and analyses that are the basis for this Final Determination should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street NW, Mailstop 4660–MIB, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: A notice of the Proposed Finding to decline to acknowledge the Yuchi Tribal Organization (YTO) was published in the **Federal Register** on October 24, 1995 (60 FR 54506). The Proposed Finding concluded that the YTO did not meet criterion 83.7(f) of the acknowledgment regulations. The requirement of criterion 83.7(f) is that the membership of a petitioning group be composed "principally of persons who are not members of any acknowledged North American Indian tribe" (25 CFR 83.7(f)). The Proposed Finding concluded that the YTO failed to meet this criterion because almost all of its members are also enrolled members in a federally-recognized tribe, the Muscogee (Creek) Nation (MCN).

The acknowledgment regulations provide, however, for an exception in which a petitioner may be acknowledged even though its members are predominantly members of a federally-recognized tribe. In order to benefit from this exception, a petitioner must demonstrate that it satisfies three conditions: that it has functioned throughout history as an autonomous tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group (25 CFR 83.7(f)). The Proposed Finding concluded that the YTO did not meet any of these three conditions, and thus did not qualify for the exception to the basic requirement of criterion 83.7(f).

The YTO petition for Federal acknowledgment was evaluated under the section of the acknowledgment regulations (25 CFR 83.10(e)) which provides for an expedited Proposed Finding on a single criterion when the documented petition and the petitioner's response to the preliminary technical assistance review of the petition by the Bureau of Indian Affairs (BIA) indicates that there is little or no evidence that the petitioner can meet criterion 83.7(f). An expedited Proposed Finding is made after the petitioner has responded to the BIA's technical assistance review of the petition and before the petition is placed under "active consideration" (25 CFR 83.10(e)). Under the regulations (25 CFR 83.5(c), 83.6), the petitioner has the burden of establishing that it is entitled to be acknowledged as existing as an Indian tribe. The petitioner's failure to meet any one of the mandatory criteria in section 83.7 results in a finding against acknowledgment (25 CFR 83.10(m)). If the Assistant Secretary's review of the petition finds that the evidence "clearly establishes" that the group does not meet one of the mandatory criteria in paragraphs 83.7(e), (f), or (g), the Assistant Secretary shall issue an expedited Proposed Finding denying acknowledgment (25 CFR 83.10(e)(1)).

Publication of the expedited Proposed Finding gives notice that the petition is now under "active consideration" (25 CFR 83.10(f)), and starts the process and time periods established in paragraphs 83.10(h) through (l). The expedited Proposed Finding limits the inquiry for the Final Determination to a single criterion. In response to an expedited Proposed Finding, the petitioner or third parties must provide evidence for the Final Determination that the petitioner meets the criterion in question under the "reasonable likelihood of the validity of the facts" standard (25 CFR 83.6(d)), the standard which applies to the evaluation of petitions under active consideration. The ultimate burden of establishing that the petitioner is entitled to be acknowledged as an Indian tribe always remains on the petitioner. This Final Determination on the YTO petition is issued based on the conclusion that neither the YTO nor the third parties have shown that the YTO meets criterion 83.7(f) under the "reasonable likelihood of the validity of the facts" standard. Because the petitioner and third parties did not provide sufficient evidence that the petitioner meets criterion 83.7(f) under this standard, it was not necessary for the BIA to undertake a full evaluation of the YTO petition under all seven of the mandatory criteria.

This Final Determination is based upon an evaluation of all the materials utilized for preparation of the Proposed Finding, the information submitted by the petitioner in response to the Proposed Finding and in response to third party comments, the public comments on the Proposed Finding, and the evidence collected by the BIA staff for evaluation purposes. The YTO and two members of the public submitted timely comments on the Proposed Finding. The YTO also submitted a timely response to the public comments. Neither the comments of the petitioner nor the public comments disputed the basic conclusion of the Proposed Finding that almost all YTO members are also enrolled members of a federally-recognized tribe. None of these comments demonstrated, or even attempted to demonstrate, that the petitioner satisfies all three conditions necessary to achieve an exception to the basic requirement of criterion 83.7(f). A review of the comments on the Proposed Finding reveals that the YTO petitioner and the public commenters have offered no evidence and no arguments which refute or revise the Proposed Finding.

The YTO petitioner represents only a portion of a larger Yuchi ethnic group, and this Final Determination applies to this petitioner rather than to all the ethnic Yuchi. Independent scholars have estimated the current population of ethnic Yuchi at about 2,000 persons, while a 1956 list of the Yuchi included 1,299 names. The Proposed Finding was based on an evaluation of a membership list submitted by the YTO which contained 165 names. Neither the petitioner nor the public commenters disputed the conclusion of the Proposed Finding that 92 percent of these individuals were enrolled members of the MCN. This Final Determination is based on an evaluation of a revised membership list submitted by the YTO which contains 327 names. The BIA compared the names on the membership list of the YTO to the names in the citizenship database of the MCN. The evidence indicates that 278 of the 327 individuals on the YTO membership list, or 85 percent of them, are members of the MCN. The evidence also indicates that 93 percent of YTO adults are MCN members. These data reveal that the membership of the YTO petitioner is composed principally of members of a federally-recognized tribe.

The provisions of criterion 83.7(f) provide an exception to the basic requirement of the criterion if the petitioner can demonstrate that, despite the inclusion of its members on the MCN roll, it meets three conditions. The petitioner and commenters have not demonstrated that the YTO is a politically autonomous entity at present, as required by the first condition. The petitioner's leaders have conceded that the YTO is not the governing body of a Yuchi tribe. The petitioner and commenters have not challenged the conclusion of the Proposed Finding on the second condition that YTO members have a bilateral political relationship with the MCN because of the reciprocal consent involved in applying for MCN membership and being accepted as members by the MCN. Also, the evidence indicates that individual YTO members have participated extensively in the MCN political and judicial systems since 1962, which confirms the existence of a bilateral political relationship between YTO members and a recognized tribe. The petitioner and commenters have not claimed that the YTO has met the third condition of providing written confirmation from its members of their intention to belong to

the petitioning group. The evidence indicates that such confirmation can be implied for only a small minority of YTO members. Thus, the YTO petitioner does not meet any of the three conditions which provide an exception to the basic requirement of criterion 83.7(f).

The comments on the Proposed Finding have offered no basis for reversing the Proposed Finding on the petition for Federal acknowledgment of the YTO. The evidence reveals that the petitioner fails to meet the requirement of criterion 83.7(f) that it be composed principally of individuals who are not members of a federally-recognized tribe. The evidence does not show that the petitioner meets all three of the conditions necessary to achieve an exception to the essential requirement of criterion 83.7(f). Neither the petitioner nor the commenters have demonstrated, by the standard of a "reasonable likelihood of the validity of the facts," that the YTO meets the requirements of criterion 83.7(f). Therefore, the Proposed Finding is affirmed. Under 25 CFR 83.10(m), because the Yuchi Tribal Organization fails to meet criterion 83.7(f), a mandatory requirement for Federal acknowledgment, the Assistant Secretary—Indian Affairs declines to acknowledge that the YTO is an Indian tribe.

This determination is final and will become effective 90 days after the date of its publication in the **Federal Register** (25 CFR 83.10(l)(4)), unless a request for reconsideration of this determination is filed by the petitioner or any interested party with the Interior Board of Indian Appeals (IBIA) pursuant to 25 CFR 83.11. The request for reconsideration by the petitioner or interested party must be received by the IBIA no later than 90 days after publication of this determination in the **Federal Register** (25 CFR 83.11(a)(2)).

Dated: December 15, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–33117 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Final Base Membership Roll of the Catawba Indian Nation (Formerly Known as the Catawba Tribe of South Carolina) and Appeal Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the proposed final base membership roll and membership appeal procedures of the Catawba Indian Nation of South Carolina (formerly known as the Catawba Tribe of South Carolina). This notice is published pursuant to Section 7 of the Act of October 27, 1993 (Pub. L. 103–116; 107 Stat. 1124).

FOR FURTHER INFORMATION CONTACT: Leann Bennett, Bureau of Indian Affairs, Tribal Relations Branch, Eastern Region, Mailstop 260–VA SQ, 3701 North Fairfax Drive, Arlington, VA 22203. Telephone number: (703) 235–3006.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Section 7 of the Act of October 27, 1993 (Act), Pub. L. 103–116, 107 Stat. 1124, directs the Secretary of the Department of the Interior (Secretary) to compile a proposed final base membership roll of members of the Catawba Indian Nation and to publish it in the **Federal Register** and in three newspapers of general circulation in the Catawba Indian Nation's service area. The purpose of the proposed final base membership roll is to identify individuals eligible for participation in the distribution of funds from the Per Capita Trust Fund established under Section 11(h) of the Act. To be eligible for inclusion on the proposed final base membership roll, individuals must have been living on October 27, 1993, must be listed on or be lineal descendants of persons listed on the membership roll published by the Secretary in the **Federal Register** on February 25, 1961, or the Catawba Executive Committee must have determined that a particular individual, or his or her lineal ancestors, should have been listed on the 1961 membership roll, but was not.

An appeal may be filed with the Catawba Executive Committee on or before Febraury 22, 2000 under appeal procedures made by the Executive Committee in consultation with the Secretary. The Appeal Procedures are published below.

An appeal may be filed by a member with respect to the inclusion of any name on the proposed final base membership roll and by any person with respect to the exclusion of his or her name from the proposed final base membership roll. The Executive Committee shall review such appeals and render a decision, subject to the Secretary's approval. If the Executive Committee and the Secretary disagree, the Secretary's decision will be final. All appeals will be resolved on or before March 22, 2000 and the final base membership roll of the Catawba Indian Nation will subsequently be published in the **Federal Register**, and in three newspapers of general circulation in the Catawba Indian Nation's service area. Distribution of funds from the Per Capita Trust Fund will commence using the list of names on the Catawba Indian Nation's final base membership roll.

Following the Appeal Procedures, which are published below, is the proposed final base membership roll of the Catawba Indian Nation of South Carolina certified by resolution of the Catawba Executive Committee as a true and correct listing of all persons eligible for enrollment pursuant to the Act.

Appeal Procedures

Section 1. Who May Appeal

(a) Any member of the Catawba Indian Nation may appeal the inclusion of any name on the proposed final base membership roll;

(b) Any person may appeal the exclusion of his or her name from the final base membership roll; and

(c) Any parent, guardian or next of kin of any minor or incompetent individual may appeal the exclusion of the minor's or incompetent's name from the final base membership roll.

Section 2. Filing an Appeal

(a) Failure to file an appeal postmarked on or before February 22, 2000 shall be conclusive evidence of non-interest and the applicant has no further recourse.

(b) The appeal shall be in written form and addressed to the Catawba Indian Nation Executive Committee, Post Office Box 188, Catawba, South Carolina 29704.

(c) The burden of proof that an individual should have been listed on the proposed final base membership roll, but was not, lies with the appealing party. If an individual is listed on the proposed final base membership roll and an appeal is filed seeking to exclude the listed person, the burden of proof is on the party seeking to show grounds for exclusion.

(d) The appeal shall be supported by official documents and may be supported by other relevant documents. Such documents include, but are not limited to, birth certificates, death certificates, marriage licenses, probate records, conveyance records, notarized church records, and state and federal censuses.

(e) Where more than one person appeals the inclusion of a name, all appeals and the supporting

documentation will be consolidated for review and only one decision will be issued concerning that name.

Section 3. Executive Committee Action on Appeals

(a) The Executive Committee shall review and render a decision on all appeals from individuals seeking to be included on the final base membership roll as well as those seeking to exclude individuals listed on the proposed final base membership roll from the final base membership roll.

(b) As soon as the Executive Committee concludes an enrollment appeal determination, the Committee shall immediately forward its written decision to the appealing parties by certified mail, with notification that the appealing party may appeal to the Secretary within five (5) days of his or her receipt, by certified mail, of the Executive Committee's decision. All documents submitted by the appealing party will be returned with the Committee's decision. The Executive Committee shall conclude all enrollment appeal determinations no later than March 13, 2000.

(c) An individual who is denied eligibility for inclusion on the final base membership roll has a right to review all pertinent records, affidavits, and other written documents relied upon by the Executive Committee.

(d) The Executive Committee's decision on appeal shall be based on one or more of the following reasons:

(1) Failure to file an appeal within established time frames;

(2) The appealing party has or has not established that he or she is eligible for listing on the proposed final base membership roll;

(3) The appealing party has or has not established that he or she is the lineal descendant of a person or persons listed on the 1961 membership roll; and,

(4) The appealing party has or has not established that an individual listed on the proposed final base membership roll should be excluded from the final base membership roll.

(e) Upon completion of Executive Committee review and mailing of decision letters to the appealing parties, the Executive Committee shall forward copies of all unsuccessful appeal documents to the Secretary, or his authorized representative, along with all supporting documents relied upon by the Executive Committee in arriving at its decision.

Section 4. Secretarial Action on Appeal

(a) If an appealing party is dissatisfied with the Executive Committee's decision, he or she may write to the Regional Director, Eastern Region, Bureau of Indian Affairs, 3701 North Fairfax Drive, Arlington, VA 22203, and request that the Secretary, or his authorized representative, review the Executive Committee's decision. The Secretary, or his authorized representative, shall complete such review and forward a written decision to the appealing party by certified mail.

(b) If the Executive Committee and the Secretary disagree, the Secretary's decision will be final.

Dated: December 16, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

Proposed Final Base Membership Roll of the Catawba Indian Nation of South Carolina

1. Adams, Aaron
2. Adams, Amanda Brooke
3. Adams, Andre Darris
4. Adams, Christina Elizabeth
5. Adams, Clarence Roddey
6. Adams, Dewey Lee
7. Adams, Franklin Douglas Jr.
8. Adams, Franklin Douglas Sr.
9. Adams, Glenda Naomi
10. Adams, Jaimie Shè
11. Adams, James Robert
12. Adams, Kimberly Denise
13. Adams, Laura Elizabeth
14. Adams, Mammie Blue
15. Adams, Nelson Judson (Judd)
16. Adams, Thomas Chadwick Jr.
17. Adams, Tyler Lee
18. Adams, Vicky Michelle
19. Adkins, Judy Gail
20. Adkins, Robert Alvin Jr.
21. Adkins, Sharon Gwen
22. Albertson, Brandon Lee
23. Aldridge, Charles Anthony
24. Aldridge, Christopher Lee
25. Alexander, Nona Medlin
26. Allen, Brittany
27. Allen, Devin Michael
28. Allen, Henry Lester Jr.
29. Allen, Kristin
30. Allen, Pheobia Lucinda
31. Anderson, Betty Jo
32. Aos, Angela Marie
33. Armenta, Ana Sopia
34. Armenta, Holly Diana
35. Armenta, Jose Javier
36. Atkinson, Aletta Michele
37. Austin, Hollie Leigh
38. Austin, Jason Eugene
39. Auten, Amy Carrie
40. Auten, Shirley Mae
41. Ayers, Alan Don
42. Ayers, Amy Lynn
43. Ayers, April Leigh
44. Ayers, Ashley Elizabeth
45. Ayers, Avery Stuart
46. Ayers, Claude Kenneth (J.C.)
47. Ayers, Dennis Ervin
48. Ayers, Ernest Wade Jr.
49. Ayers, Foxx E.
50. Ayers, Jacob Mitchell
51. Ayers, Jessica Lynne
52. Ayers, John
53. Ayers, Johnnie Nelson Jr.
54. Ayers, Johnnie Nelson Sr.
55. Ayers, Ralph Lewis
56. Ayers, Robert Heber
57. Ayers, Roger Dale
58. Ayers, Sara H.
59. Ayers, William Frell Jr.
60. Bagley, Doniece
61. Bagley, Jacqueline Diane
62. Bagley, John Wayne
63. Bailey, Amanda Marie
64. Bailey, Dain Adrain
65. Bailey, Fanchon Alicia
66. Bailey, Jan
67. Bailey, Jason Wade
68. Bailey, Karen Angela
69. Bailey, Michael LeRoy Jr.
70. Bailey, Robert Wayne
71. Bailey, Tamara Shannon Nicole
72. Baird, April Marie
73. Baird, Kimberly Denise
74. Baird, McRandall Laurance Jr.
75. Baker, Ashley Mechele
76. Baker, Cindy Renee
77. Baker, Jonathan Wayne
78. Baker, Kathy Evonne
79. Baker, Matthew Bradley
80. Baker, Robert Dale
81. Baker, Sally Elaine
82. Barber, David Kyle
83. Barber, Trina Kaye
84. Barker, Barbara Jean
85. Barker, Brandon Luke
86. Barnes, Cory Neil
87. Barnes, Justin Mark
88. Barnes, Sharon Jean
89. Barnes, Tiffany Michelle
90. Basha, Shelby Nicole
91. Bauer, JoAnn Carol Jean
92. Bauer, Lawrence Peter III
93. Baumgardner, Amanda Nicole
94. Baumgardner, Ashlie Kay
95. Baumgardner, Cheryl Ann
96. Baumgardner, Harlie Kristina
97. Baumgardner, Robert Dale
98. Baumgardner, Teresa Marie
99. Baumgardner, William Arthur Jr.
100. Beck, Calvin Trevor
101. Beck, Daniel Tyler
102. Beck, Donald Jeffery
103. Beck, Duane Early
104. Beck, Fletcher B.
105. Beck, Fletcher Calvin
106. Beck, Gerald Sr.
107. Beck, Gerald Leon III
108. Beck, Gerald Leon Jr.
109. Beck, Jason Roderick
110. Beck, Jennifer Ann
111. Beck, Jeremy Ryan
112. Beck, John C.
113. Beck, John Clarence Jr.
114. Beck, John Henry
115. Beck, Karen Beth
116. Beck, Kellon Taylor
117. Beck, Kimberly Lynn

118. Beck, Lula S.
119. Beck, Major H.
120. Beck, Margaret Helen
121. Beck, Matthew Kyle
122. Beck, Michael Trey
123. Beck, Mindy Sue
124. Beck, Randall Scott
125. Beck, Roderick Neil
126. Beck, Ronald Lee Jr.
127. Beck, Ronald Lee Sr.
128. Beck, Ronnie Lee
129. Beck, Samuel John
130. Beck, Samuel Michael
131. Beck, Samuel Mitchell
132. Beck, Steven Ryan
133. Beck, Tammy Rae
134. Beck, Tara Michele
135. Beck, Tiffanie Denise
136. Beck, Tony Leon
137. Bell, Amber Delora
138. Bell, Colette Williams
139. Bennett, Timothy Wade
140. Bibb, Garrett Spenser
141. Bibb, Patricia Dawn
142. Bibb, Sean Andrew
143. Bibb, Wanda Sue
144. Bickett, Mary Leigh Ann
145. Biggers, Lewis Steven
146. Biggerstaff, Alicia Beth
147. Bishop, Lillie
148. Bjorklund, Cheryl June
149. Black, Christopher Steven
150. Black, Dicy Anna
151. Black, Dustin Shane
152. Black, Jerry Kieth Jr.
153. Blackmon, Baer Brian
154. Blackmon, Donna Lynn
155. Blackmon, Marissa Ann
156. Blackwell, Brandon Dean
157. Blackwell, James Harold
158. Blackwell, Tammy Anise
159. Blackwell, Tammy Lynn
160. Blackwood, Elizabeth Cabaniss
161. Blue, Andrew Gene
162. Blue, Arnold Lee Jr.
163. Blue, Betty
164. Blue, Bobby Everette
165. Blue, Bobby Reid
166. Blue, Carson Taylor
167. Blue, Charles Patrick
168. Blue, Christopher Larson
169. Blue, Christy Shanon
170. Blue, Danna Lynn
171. Blue, Douglas Keith
172. Blue, Gilbert B.
173. Blue, Glenn Taylor
174. Blue, Gracia Kathleen
175. Blue, Harry Reid
176. Blue, Heather Ashley
177. Blue, Henry Leroy
178. Blue, Herbert Roosevelt
179. Blue, Jeffrey Travis
180. Blue, Jessica Leann
181. Blue, Jonathan Aaron
182. Blue, Kalah Danielle
183. Blue, Karen Denise
184. Blue, Kelly Labrian
185. Blue, Mildred Louise
186. Blue, Nathan Taylor
187. Blue, Nathan Timothy
188. Blue, Randall Lavon Jr.
189. Blue, Randall Lavon Sr.
190. Blue, Rebecca Dyann
191. Blue, Samuel Andrew Wheelock
192. Blue, Steven Shawn
193. Blue, Timothy Everett
194. Boatwright, Tanya Marie
195. Bodiford, Bruce Marvin
196. Bodiford, Donald Bruce
197. Bodiford, Hazel Dewey
198. Bodiford, Ted Dewey
199. Bodiford, Terriol James (Terry)
200. Bolick, Beronica Lynn
201. Bolick, Kimberly Michelle
202. Bolick, Robert Eugene III
203. Boone, Brandy LeShaè
204. Boone, Cynthia Dawn
205. Boone, Jimmy David
206. Boone, Joshua Wayne
207. Bouler, Thomas Dean
208. Bouler, Tony Alan Jr.
209. Bowers, Melinda Lou
210. Boyd, Debora Darlene
211. Boyd, Shannon Nicole
212. Brackett, Tehra Jansen
213. Brackett, Tyson Wade
214. Brackett, Vicky Jane
215. Bradburn, Edwin Scott
216. Bradburn, Jamie Gayle
217. Braddy, Bryan Reid
218. Braddy, Shayne Michelle
219. Bradley, Clifford Dean Jr.
220. Bradley, Crystal Renee
221. Bradley, Desmon Ryan
222. Bradley, Louise Michele
223. Bradley, Robert Dwayne
224. Bradley, Susan D.
225. Brady, Michael Scott
226. Branham, Anna Maria
227. Branham, Charlotte Ann
228. Branham, Kristopher Lee
229. Branham, Oliver Lee
230. Branham, Rodney Holden
231. Branham, William Lamont
232. Brazell, Della Melissa
233. Brazell, Edward Howard Jr.
234. Brazell, Patsy Denise
235. Brazell, Patty Darnell
236. Breakfield, Laura Kay
237. Brezeale, Christy Lee
238. Bridges, Ellen
239. Brindle, Carl
240. Brindle, Frank Wayne
241. Brindle, Jason Carl
242. Brindle, Jennifer Lynn
243. Brindle, Lorinda Ann
244. Brindle, Melvin Lester
245. Brindle, Missouri Elizabeth
246. Brindle, Patrica Lucille
247. Brindle, Walter Andrew Jr.
248. Brindle, Walter Andrew Sr.
249. Brooks, Arthur Dale
250. Brooks, Christopher Thomas
251. Brooks, Janice Amelia
252. Brooks, Joseph Lee
253. Brown, Arnold Dean
254. Brown, Bobby Norman
255. Brown, Brandon Tyler
256. Brown, Chelsee Ann
257. Brown, Christopher Ethan
258. Brown, David Lee
259. Brown, David Warren
260. Brown, Donald Lester Jr.
261. Brown, Donald Lester Sr.
262. Brown, Donald Richard
263. Brown, Drequanna Marie
264. Brown, Eric Lee
265. Brown, Gary Wayne
266. Brown, Gary William
267. Brown, Harold Dean
268. Brown, Hazel Edward Jr.
269. Brown, Hazel Edward Sr.
270. Brown, James Vernon
271. Brown, Janet
272. Brown, Jessica Elizabeth
273. Brown, Jessica Wenonah
274. Brown, Jessie Thomas
275. Brown, Joel Lee
276. Brown, John Edward
277. Brown, John Jeffrey
278. Brown, John Samuel Jr.
279. Brown, Jonathan Richard
280. Brown, Joshua Wayne
281. Brown, Karen Diane
282. Brown, Kathleen Rogers
283. Brown, Kayla Michelle
284. Brown, Kelly Marie
285. Brown, Leola George
286. Brown, Lewis Herman II
287. Brown, Lewis Herman Sr.
288. Brown, Mandy Marie
289. Brown, Mary Lynn
290. Brown, Melissa Michelle
291. Brown, Michael Edward Jr.
292. Brown, Michael Edward Sr.
293. Brown, Michael Wayne
294. Brown, Mildred Leona
295. Brown, Morgan Ramsey
296. Brown, Myra Edith
297. Brown, Nancy Mae
298. Brown, Otis Roddey
299. Brown, Otis Wayne
300. Brown, Owen Keith
301. Brown, Patrick Neal
302. Brown, Paula Delores
303. Brown, Robbie Lee
304. Brown, Robert Stephen
305. Brown, Roddey Alan
306. Brown, Sally Edith
307. Brown, Sandy Michelle
308. Brown, Scotty Eugene
309. Brown, Stephanie Nicole
310. Brown, Tammy Ann
311. Brown, Teresa Diane
312. Brown, Tommy Clyde
313. Brown, Troy Dean
314. Brown, Troy Gene
315. Brown, Whitney Marie
316. Brown, William
317. Brown, William Clifford
318. Brown, William Larry
319. Brown-Gunderson, Sue
320. Bruce, Donna Jo
321. Bryson, Ina Mahovie
322. Bryson, Kevin Ray
323. Bryson, Myrtle Blanche
324. Bryson, Sanford Anzle Jr.

325. Bryson, Stanley Anzle
326. Bryson, Tasha Lynn
327. Bryson, Trisha Anzle
328. Bucca, Connie Patricia
329. Buckaloo, Eula Kay
330. Buckaloo, Mark Anthony Jr.
331. Buckaloo, Nicholas Cody
332. Buckley, Micheal Loraine
333. Bullin, Jai Anne
334. Burciago, Carol O.
335. Burgess, Angela Renee
336. Burgess, Tondia Carol
337. Burnett, Patricia Ann
338. Burnett, Teresa Mae
339. Burns, Andrew Scott
340. Burns, Christopher
341. Burns, Janie Rose
342. Burns, Kenneth Allen Jr.
343. Burns, Lizzie Jane
344. Burns, Scott Dennis
345. Burris, Brittany Susan
346. Burris, Kimberly Susan
347. Burris, Matthew Douglas
348. Burrows, Stephen Courtney Jr.
349. Burton, Angela Deniece
350. Burton, Jacqueline Louise
351. Burton, Matthew David
352. Byers, Daniel William
353. Byers, Roger James
354. Byrd, Marsha
355. Byrd, Timothy James
356. Cabaniss, Amanda Jo
357. Cabaniss, Courtney Paige
358. Cabaniss, Daniel Hargrove
359. Cabaniss, Jennifer Dawn
360. Cabaniss, Marcille
361. Cabaniss, Mary Cathryn
362. Cabaniss, Nicole Beth
363. Cabaniss Thomas
364. Cabaniss, William Forrest Jr.
365. Cabaniss, William Heath
366. Cabaniss, Zoe Marie
367. Cagle, Angela Delphine
368. Cameron, Jessica Ann
369. Cameron, Sandra K.
370. Cameron, Walter Joseph
371. Campbell, Damien Allen
372. Campbell, Edwin
373. Campbell, Edwin Alan
374. Campbell, Ella Ricky
375. Campbell, Nola
376. Campbell, Paul Edward
377. Campbell, Phillip Christopher
378. Campbell, Rita Fay
379. Campbell, Susan Juanita
380. Campbell, Zachery Lee
381. Canfield, Steven Terrivo
382. Canty, Alonzo George Jr.
383. Canty, Alva B.
384. Canty, Alvin Huey
385. Canty, Amelia Brooke
386. Canty, Angel Marie
387. Canty, Anthony Scott
388. Canty, April Denise
389. Canty, Billy Huey
390. Canty, Billy Jack
391. Canty, Bobby Dean
392. Canty, Carolyn Denise
393. Canty, Catherine
394. Canty, Cecil
395. Canty, Charles Ray
396. Canty, Cheyenne
397. Canty, Christopher Chad
398. Canty, Christopher Lance
399. Canty, Christopher Lee
400. Canty, Clifford Troy
401. Canty, Colond Lee George
402. Canty, Curtis Ray Jr.
403. Canty, Curtis Ray Sr.
404. Canty, Diane Renee
405. Canty, Eddie Henderson
406. Canty, Edwin Bruce
407. Canty, Emily Louise
408. Canty, Eric Jerome
409. Canty, Erica Rose
410. Canty, Erin Melissa
411. Canty, Heyward Jackson Jr.
412. Canty, Huey Columbus
413. Canty, James Eugene
414. Canty, James Henry
415. Canty, Jamie Dawn
416. Canty, Jared Scott
417. Canty, Jarom Dean
418. Canty, Jeffrey Neal
419. Canty, Jessica Lynn
420. Canty, Jessica Mishelle
421. Canty, Jessica Suzan
422. Canty, Johnathon Kyle
423. Canty, Jonathan Jered
424. Canty, Kathryn Ryan
425. Canty, Kathy Elizabeth
426. Canty, Lawrence Laverne Jr.
427. Canty, Lawrence Laverne Sr.
428. Canty, Leonard James
429. Canty, Leonard Taylor
430. Canty, Lisa Marie
431. Canty, Marcus LaCurt
432. Canty, Marion Thomas
433. Canty, Martha Nicole
434. Canty, Natalie Shawnte
435. Canty, Quinlan Russell Schutte
436. Canty, Rebecca Ann
437. Canty, Rhonda Renee
438. Canty, Robert Kirk
439. Canty, Roger B.
440. Canty, Ronald Vance
441. Canty, Scott Dell
442. Canty, Shaun Travis
443. Canty, Stephanie Britt
444. Canty, Steven Ray
445. Canty, Suzanne Marie
446. Canty, Teresa Diane
447. Canty, Timothy Dean
448. Canty, Timothy Joseph
449. Canty, Wallace Lee Jr.
450. Canty, Wallace Lee Sr.
451. Caponis, Jennifer Anne
452. Caponis, John Alvin
453. Caponis, Reina
454. Carlton, Johni Rae
455. Carnwath, Danielle Nicole
456. Carpenter, Christopher Sylvanus Jr.
457. Carpenter, Jane Dilling
458. Carpenter, Paul Michael
459. Carpenter, Timothy Joseph
460. Carroll, Amber Nichole
461. Carroll, Ernest Haskel III
462. Carroll, Karen Elaine
463. Carter, Janice Dorenda
464. Cartwright, Jeremy Shawn
465. Carver, Hailey Nicole
466. Carver, Jack Monroe Jr.
467. Carver, Jacqueline Delores
468. Carver, Kenneth Wayne
469. Carver, Kristen Danielle
470. Carver, Mary Delores
471. Carver, Tracy Lynn
472. Casler, Crystal
473. Castagna, Loren Naomi
474. Castagna, Matthew Joseph
475. Castagna, Rachel Loren
476. Castagna, Samuel Beck
477. Castagna, Zachary Michael
478. Catoe, Christopher Joseph
479. Catoe, Cierra LeAnn
480. Catoe, Donald Lloyd Jr.
481. Catoe, Herbert Pascal
482. Catoe, Leslee June
483. Catoe, Richard David Jr.
484. Catoe, Thomas Lee
485. Catoe, William Brad
486. Caudle, April Leann
487. Caudle, Cammie Lynn
488. Caudle, Daniel Lee
489. Caudle, Edward Chris
490. Caudle, Jason Christopher D.
491. Caudle, Jennifer Rebecca
492. Caudle, Kenneth Darrell
493. Caudle, Mickem James
494. Caudle, Suzanne Nicole
495. Caudle, Sylvia
496. Cauthen, Angela Michele
497. Cauthen, Buster Ray
498. Cauthen, Kandis Brooke
499. Charles, Lyda
500. Cherry, Alice Elaine
501. Cherry, Donald Ray
502. Cherry, Eula May
503. Cherry, Heather Rene
504. Cherry, James Columbus Jr.
505. Cherry, Jennifer Elaine
506. Cherry, Jimmy Dean
507. Cherry, Scotty Ray
508. Childers, Stacy Paige
509. Childers, Teressa Annette
510. Cinqmars, Beverly Francine
511. Cinqmars, Brian Matthew
512. Cinqmars, Ryan Daniel
513. Clark, Nathan Lee Jr.
514. Cline, Damaris Ruth
515. Cline, James Patrick Jr.
516. Cline, Michael Paul
517. Cline, Shirley Lynn
518. Colley, Andrew Steven
519. Colley, Jose Sandoval III
520. Colley, Kristine Elizabeth
521. Colley, Mary Elizabeth
522. Collins, Daniel Howard
523. Collins, James David
524. Colter, Jessica Rey
525. Cookson, Christene Lee
526. Cookson, Christian Darryl
527. Cookson, Corey A
528. Cookson, Jeremy R.
529. Cookson, Jewell Shirley
530. Cookson, Ricardo Harris
531. Cooper, David Lee

532. Cooper, Erica Shawta
533. Cooper, Lisa Maureen
534. Coppersmith, Amy Nadine
535. Corbridge, Nicole Leigh
536. Corbridge, Sandra Marlene
537. Corder, Audrianna Christine
538. Corder, Cecil Idus
539. Corder, Christopher W.
540. Corder, James Ralph Jr.
541. Corder, Joyce I.
542. Corder, Joyce M.
543. Cornwell, Hollis Jordan
544. Cornwell, Tonya Nichol
545. Crawford, Julia May
546. Crawford, Justin Bryant
547. Crawford, Tammy Renee
548. Creel, Mary-Jo Anne
549. Crisco, Deborah Mae
550. Croft, James Franklin
551. Croft, John Pearley
552. Crytser, James Oliver
553. Crytser, Melissa Dawn
554. Crytser, Randy Wayne
555. Crytser, Wayne Alexander
556. Culbertson, Jason Eric
557. Culbertson, Mark Warren Jr.
558. Curtis, Carl Nathan
559. Curtis, Derrick John
560. Curtis, Donna Beck
561. Curtis, Michael Shannon
562. Curtis, Naomi Christine
563. Dabney, Aaron John
564. Dabney, Alan Dwayne
565. Dabney, Jessica Danielle
566. Dabney, Meredith Lindsay
567. Davis, Andrew Wayne
568. Davis, Barry Joseph
569. Davis, Carlene Renee
570. Davis, Christina Renee
571. Davis, Danelle Hazel
572. Davis, Desiree Melinda
573. Davis, Frances L.
574. Davis, Freddie D. Horne
575. Davis, Jayson Lee
576. Davis, Kimberly Denise
577. Davis, Laura Mae
578. Davis, Lilly Ann
579. Davis, Ronald Lee Jacob
580. Davis, Shane Christopher
581. Davis, Sharon Melinda
582. Davis, Tiffany Nicole
583. Deal, Dayton Gene
584. Deal, Stephen Brian
585. Deal, Susan
586. Deal, Waylon Dean
587. Dietrich, Shana Nicole
588. Dietrich, Wanda Jean
589. Dixon, Olivia Grace
590. Dodrill, Tamara Lynn
591. Dorman, Valerie Francine
592. Dorsey-Beck, Eric Mitchell
593. Doster, Teresa Louise
594. Doster, Wanda Renee
595. Dresser, Seth Martin
596. Dresser, Victoria Yvonne
597. Driggers, Angela Marie
598. Driggers, Betty
599. Driggers, Judy Patricia
600. Driggers, Marvin Henry Jr.
601. Dunnells, Amanda Michelle
602. Dunnells, Jeffery Allan
603. Dunnells, Kenneth Wesley
604. Eagan, Tonya Marie Ensley
605. Edgar, Sandra
606. Edington, Patricia Lynn
607. Edwards, Amanda Lynne
608. Edwards, Cara Michelle
609. Edwards, Cindy Lee
610. Edwards, Robert Daniel
611. Edwards, Robert Tyler
612. Ehman, Dean Michael
613. Elkins, Mary Jane
614. Ellison, Elizabeth Leigh-Ann
615. Ellison, Richard William II
616. Esplin, Alice Kris
617. Esplin, Colton Harris
618. Esplin, Kelsey Caroline
619. Evans, David Dewayne Jr.
620. Evans, Holley Amanda
621. Evans, Kelly Wayne
622. Faile, Brittany Ann
623. Farmer, Clyde Eric
624. Farmer, Kathryn
625. Ferrell, Alberta Lavinia
626. Ferrell, Jerri Lee
627. Ferrell, Saleshia Zandora
628. Fincher, Annette Marie
629. Fincher, Sharon Dale
630. Fincher, Stephen Anthony Jr.
631. Fleming, Dana Meshelle
632. Ford, Branden Ray
633. Ford, Katura Ann
634. Fowler, Bobby Lee
635. Fowler, Candy Cleo
636. Fowler, Kathy Marie
637. Fowler, Nettie Jane
638. Fowler, Patrick Thorne
639. Fowler, Ricky Dean
640. Fowler, Robbie Colel
641. Fowler, Stacey Michelle
642. Fowler, Teressa Diane
643. Foxx, Antonio Basil III
644. Foxx, Antonio Basil Jr.
645. Foxx, Brittany Dawn
646. Foxx, Charles Winifred II
647. Foxx, Charles Winifred
648. Foxx, Danny Ray Jr.
649. Foxx, Danny Ray Sr.
650. Foxx, Ernest B.
651. Foxx, Ernest Ryan
652. Foxx, Jimmy Coy
653. Foxx, Joey Edward
654. Foxx, Kari Anne
655. Foxx, Kristen Michelle
656. Foxx, Leshea Breeon
657. Foxx, Lewis Angelo Basil
658. Foxx, Louis Russell
659. Foxx, Michael Wayne
660. Foxx, Nicole Cherise
661. Foxx, Steven Lewis
662. Foxx, Terrill Dwayne Jr.
663. Foxx, Terrill Dwayne Sr.
664. Foxx, Tiffany Jo
665. Foxx, William C Basil
666. Foxx, William Coon Basil Jr.
667. Foxx, William Edward Basil
668. Foxx, Willie Ray
669. Frances Hurn, Brian Jay Robert
670. Francisco, Shirley Ann
671. Franks, Tolani Rochelle
672. Frary, Christopher Paul
673. Frary, Dot Mirian
674. Funderburk, Melissa Shrake
675. Gable, Allen Wayne Jr.
676. Gaddy, Carol Ann
677. Gaillard, Angela Faye
678. Gaillard, Nancy Marie
679. Gantt, Alina Elvina
680. Gantt, Bobby Brian Jr.
681. Gantt, Jessica LeeAnn
682. Gantt, Stacy Renee'
683. Garcia, Ben Jr.
684. Garcia, Betty Juanita
685. Garcia, Bonnie
686. Garcia, Edward Guy
687. Garcia, Irene Minerva
688. Garland, Steven E.
689. Garland, Vivian A.
690. Garris, Joan S.
691. Garris, Jonathan Hazel
692. Garris, Shana Louise
693. Gassert, Rita Faye
694. Gaston, Devon Michael
695. Geist, Betty Jean
696. Geist, Brian Keith
697. Geist, Nicole Lynn
698. George, Amanda Leigh
699. George, Amber Leslie
700. George, April Leigh
701. George, Audrey Dale
702. George, Brently Clark
703. George, Brooklyn Nicole
704. George, Bryan Wayne
705. George, Charles Edward
706. George, Charles Lewis
707. George, Christopher Evans
708. George, Claude Leonard
709. George, Courtney Elizabeth
710. George, Crystal Lee
711. George, Curtis Edward
712. George, Cynthia Amanda
713. George, Cynthia Annette
714. George, Eddie Mac
715. George, Elsie Blue
716. George, Emily Wycie
717. George, Evans M. (Buck) Jr.
718. George, Evelyn B.
719. George, Flonnie Evelyn
720. George, Fred Calvin
721. George, Gregory Tige
722. George, Hayley Danyale
723. George, Jennifer Annette
724. George, John Albert
725. George, John Christopher
726. George, John Earl
727. George, John Early
728. George, John Marvin
729. George, Jonathan Nikita
730. George, Joshua Edward
731. George, Kevin Wade Jr.
732. George, Kevin Wade Sr.
733. George, Kristen Nicole
734. George, Landrum L.
735. George, Laverne Randolph Jr.
736. George, Laverne Randolph
737. George, Lawrence Howard
738. George, Leonard Chadwick

739. George, Lewis Brently
740. George, Linda Faye
741. George, Lisa Michelle
742. George, Lynda DeAnn
743. George, Marion Phillip
744. George, Marvin Kelly
745. George, Matthew Asher
746. George, Megan Nicole
747. George, Michael Allen
748. George, Moroni Taylor
749. George, Nathan Charles
750. George, Nyeoka Iona
751. George, Phillip Anthony
752. George, Phillip Dekota Two Bears
753. George, Phillip Keith
754. George, Rachel Lee
755. George, Robert Neil
756. George, Roger Wayne
757. George, Sara Louise
758. George, Shannon Leigh
759. George, Summer Lyne
760. George, Susan M.
761. George, Susan Marie
762. George, Thomas Clark
763. George, Thomas Howard
764. George, Tina Ann
765. George, Tracy Alan
766. George, William Joseph Corrichee
767. George Warren, DeLesslin Evans
768. George Warren, K. C.
769. George Warren, Wanda
770. Gibson, Annette Maurice
771. Gibson, Fannie Lavina
772. Gibson, Frances Virginia
773. Gibson, Jason Matthew
774. Gibson, Joshua Dakota
775. Gibson, Mary
776. Gibson, Robert Reid
777. Giles, Catherine Renee
778. Giles, Christopher Ray
779. Giles, Shannon Leigh
780. Gillilan, John Strickland Jr.
781. Gillilan, Jon Allen
782. Gillilan, Matthew Ryan
783. Gillis, Dwana Menjon
784. Glenn, Tina Michelle
785. Gonzales, Donna Leola
786. Gonzales, Katrina Larae
787. Gonzales, Kimberly Dawn
788. Goodwin Frances Inez
789. Gordon, Carson Matthew
790. Gordon, Sheryl
791. Gordon, Wesley Olin
792. Graham, Jason Gregory
793. Graham, Jillian Gayle
794. Graham, Jonathon Yates
795. Graham, Joseph Gartman
796. Graham, Joshua Garrison
797. Graham, Karen Rebecca
798. Graham, Karl Ray
799. Graham, Kevin Ross
800. Graham, Kimberly Rebecca
801. Graham, Kurtis Randall
802. Green, Aaryn Rae
803. Green, Caitlin Elizabeth
804. Green, Edwin Brian
805. Green, Emma Karie
806. Green, Frederick Dane.
807. Green, Hal Ephraim
808. Green, Joyce M.
809. Green, Justin Adam
810. Green, Kelli Katherine
811. Green, Lindsay Joyce
812. Green, Norah Nicole
813. Gregory, Beverly Nicole
814. Gregory, Karen Yvonne
815. Greiner, Hazel Faye
816. Grice, Melissa Dawn
817. Grice, Robert Caelum
818. Griggs, Bonita Sue
819. Griggs, Brandon Charles
820. Griggs, Brandy Michelle
821. Griggs, Christopher Charles
822. Griggs, Miranda Christian
823. Grobusky, Charles Christopher
824. Grobusky, Joseph Stanley
825. Guinn, James Dylan
826. Gunn, Andrew Paul
827. Gunn, Angela Denine
828. Gunn, David Howard III
829. Gunn, David Howard Jr.
830. Gunn, Floyd Lee Jr.
831. Gunn, Floyd Lee Sr.
832. Gunn, Lou Ella
833. Gunn, Mary Faye
834. Gunn, Nancy Jane
835. Gunn, Nellie Faye
836. Gunn, Patricia Lucille
837. Gunn, Richard A. Jr.
838. Gunn, Richard A.
839. Gunn, Susan
840. Gunn, Wanda Diane
841. Gunton, Fannie Ellen
842. Gunton, Geneva Geraldine
843. Hafner, Christian David
844. Hafner, Myra June
845. Haire, Chrystal Louisa
846. Haire, Wenonah Caitlin
847. Haire, Wenonah George
848. Hall, Victoria Shelle
849. Hamacher, Anna Marie
850. Hamacher, Heather Elizabeth
851. Hamacher, Jerry Wayne II
852. Hamm, Raymond Edward
853. Hamm, Robert Leroy
854. Hamm, Tabatha Avery
855. Hamm, Tad Allen Jr.
856. Hammond, Bobby Ray
857. Hammond, Christopher Ian
858. Hammond, David Kenneth
859. Hammond, Gerald James III
860. Hammond, Gerald James Jr.
861. Hammond, Nora Lee
862. Hanebrink, Adam Michael
863. Hanebrink, Erika Lynn
864. Hanebrink, Robyn Jolene
865. Hansen, Billie Jo
866. Harrell, Joseph Ryan
867. Harris, Adam Kenneth
868. Harris, Alfred Kenneth
869. Harris, Alfred Neal
870. Harris, Alice Loretta
871. Harris, Amanda Renee
872. Harris, Amanda Reola
873. Harris, April Lynn
874. Harris, Arzada Marie Itu'se
875. Harris, Barry Dean
876. Harris, Barry Dean James
877. Harris, Barry Phillip Jr.
878. Harris, Barry Phillip Sr.
879. Harris, Bertha
880. Harris, Bethany Michelle
881. Harris, Beulah
882. Harris, Billy Ray
883. Harris, Bradley Scott
884. Harris, Brandi Michelle
885. Harris, Brandon Beaumont
886. Harris, Brian Adam
887. Harris, Calvin Wayne
888. Harris, Carl Bazil
889. Harris, Carl Elbert Jr.
890. Harris, Charles Roger
891. Harris, Christopher Loran
892. Harris, Cleadous O'Neal
893. Harris, Cody Darryl
894. Harris, Curtis Douglas
895. Harris, Dale Wallace
896. Harris, Darryl Kent
897. Harris, David Adam
898. Harris, David Loran
899. Harris, David Steve
900. Harris, Dewey Wallace
901. Harris, Donald Brian
902. Harris, Donald Wilford
903. Harris, Donnie Ray
904. Harris, Donnie Ray Edward
905. Harris, Dwaine Gilbert
906. Harris, Dwaine Gregory
907. Harris, Dwayne Phillip
908. Harris, Elizabeth Lauren
909. Harris, Ellen Deloria
910. Harris, Emily Joann
911. Harris, Eric Loran
912. Harris, Ethan Lloyd William
913. Harris, Floyd William Jr.
914. Harris, Floyd William
915. Harris, Franklin Carlisle
916. Harris, Furman George
917. Harris, Garfield C.
918. Harris, Garland Wesley Jr.
919. Harris, Garland Wesley Sr.
920. Harris, Georgia H.
921. Harris, Glenda Diane
922. Harris, Grady Crawford
923. Harris, Heather Lynn
924. Harris, Heather Nicole
925. Harris, Holly Dawn
926. Harris, Homer Vernon
927. Harris, Jacob Kent
928. Harris, James Anthony
929. Harris, James Loren Jr.
930. Harris, James Michael
931. Harris, James Wade Jr.
932. Harris, James Wade Sr.
933. Harris, James Wesley
934. Harris, James William
935. Harris, Jason Matthew
936. Harris, Jason Maurice
937. Harris, Jefferson W. C.
938. Harris, Jeffrey Charles
939. Harris, Jessica Hope
940. Harris, Jodi Kay
941. Harris, John Rella Jr.
942. Harris, John Rella Sr.
943. Harris, Jonathon David
944. Harris, Joseph Dakota
945. Harris, Joseph Franklin

946. Harris, Joseph W.
947. Harris, Joshua Paul
948. Harris, Justin Bryant
949. Harris, Kalum Douglas Reed
950. Harris, Karen Ann
951. Harris, Kelly Aaron
952. Harris, Kelly Neal
953. Harris, Kevin Leonard
954. Harris, Kimberly Ann
955. Harris, Lester Nathaniel
956. Harris, Lester Neal
957. Harris, Linda Sue
958. Harris, Lorna F.
959. Harris, Luther Morgan
960. Harris, Lynda Annette
961. Harris, Martin Raymond
962. Harris, Melvin Howard
963. Harris, Michael Dwayne
964. Harris, Michael Shane
965. Harris, Michael Wayne Jr.
966. Harris, Michael Wayne Sr.
967. Harris, Michael William
968. Harris, Mitchell Oliver
969. Harris, Paul Christopher
970. Harris, Paul Kenneth Jr.
971. Harris, Paul Kenneth Sr.
972. Harris, Peggy Elizabeth
973. Harris, Philip Lee
974. Harris, Randolph Gerard
975. Harris, Reece O'Neil
976. Harris, Robert Curtis
977. Harris, Roger Bazil
978. Harris, Roger Curtis
979. Harris, Roger Gerard (Jerry)
980. Harris, Ronald Floyd
981. Harris, Shaun Mychal
982. Harris, Stanley Spencer
983. Harris, Tara Marie
984. Harris, Theresa Lee
985. Harris, Thomas Edward
986. Harris, Timmy Loran
987. Harris, Timothy Dale
988. Harris, Timothy Neal
989. Harris, Tina Oveda
990. Harris, Tracy Irene
991. Harris, Tracy Marie
992. Harris, Travis William
993. Harris, Victor Lee
994. Harris, Vonda Darlene
995. Harris, Walter Lloyd Jr.
996. Harris, Walter Lloyd Sr.
997. Harris, Wendell Loran II
998. Harris, Wendell Loran
999. Harris, Wilburn
1000. Harris, Wilford Phillip
1001. Harris, Willard Leon Jr.
1002. Harris, Willard Leon Sr.
1003. Harris, William Bryan
1004. Harris, Woodrow
1005. Harris-Adams, Teresa
1006. Harrison, Daniel Hutchinson
1007. Harrison, Marilyn Ann
1008. Harsey, Frances
1009. Harsey, Lacey Jaye
1010. Harsey, Samantha Renee
1011. Hawkins, Pamela Jean
1012. Haywood, Ryan Cheyene
1013. Hedgepath, Ashley Nicole
1014. Hedgepath, Cody Lee
1015. Hedgepath, Cora Paulette
1016. Hedgepath, Robert Daniel
1017. Hedgepath, Ronald Wayne Jr.
1018. Hedgepath, Ronald Wayne
1019. Hedgepath, Sherman Dale Jr.
1020. Hellewell, Shauna
1021. Hellewell, Tamara Nicole
1022. Helms, Jason Keith
1023. Helms, Rhonda Denine
1024. Hemby, Aaron Wade
1025. Henderson, Amy Michelle
1026. Henderson, Nicholas Shane
1027. Hendrix, Justin Derrick
1028. Hendrix, Robert Floyd Jr.
1029. Hendrix, Thelma Canty
1030. Henson, Cynthia Lynn
1031. Henson, Emily Suzanne
1032. Herring, Andria Kristi
1033. Herring, Angel Rebecca
1034. Herring, Anthoney David
1035. Herring, Belinda Faye
1036. Herring, Cathy Paulette
1037. Herring, Jamie Faye
1038. Herring, Katherine Suzanne
1039. Herring, Lenny Dwayne
1040. Herring, Victoria Kaye
1041. Hines, Autumn Lamareal
1042. Hines, Clayton Thomas
1043. Hines, Kevin Taylor Scott
1044. Hinson, Anita Canty
1045. Hinson, Carrie Lynn
1046. Hodge, Hazel Elizabeth
1047. Hodge, Jeffrey Allen
1048. Hodge, Joshua David
1049. Hodge, Lisa Anne
1050. Hodge, Matthew Steven
1051. Hodge, Nicholas Blair
1052. Honaker, April Renee
1053. Honaker, Barbara Allen
1054. Honaker, Nicole Danielle
1055. Honeycutt, Ashley Brooke
1056. Honeycutt, Earl Henry III
1057. Honeycutt, Jacqueline Marie
1058. Honeycutt, John Timothy
1059. Honeycutt, Robert Wayne II
1060. Honeycutt, Roberta
1061. Honeycutt, Sandy Kay
1062. Honeycutt, Trisha Suzanne
1063. Honeycutt, Troy T
1064. Honeycutt, Troy Thomas Jr.
1065. Hooks, Constance V.
1066. Hooks, Wendy Leigh
1067. Hooper, Karen Tennille
1068. Horne, Melissa
1069. Hosmer, Allison Leigh
1070. Hosmer, Anthony Ryan
1071. Hosmer, Brian Phillip
1072. Hosmer, Ila Gail
1073. Houskeeper, Jay Dee
1074. Hovis, Kimberly Nicole
1075. Howard, Billy Joe
1076. Howard, Cassie Lynn
1077. Howard, Charles James
1078. Howard, David Wayne
1079. Howard, Debbie Ann
1080. Howard, James Moore Jr.
1081. Howard, James Travis Sr.
1082. Howard, Jessica Ann
1083. Howard, John Leslie Jr.
1084. Howard, Tom Williams
1085. Howard, Victoria Elizabeth
1086. Howard, William Paul
1087. Howe, Steven Wayne III
1088. Howington, Angela Talley
1089. Hubbard, Amanda Michelle
1090. Hubbard, Barbara Annette
1091. Hubbard, Brandon Edward
1092. Hubbard, Michael Tracy
1093. Hubbard, Richard Dustin
1094. Huddleston, Lori Anne
1095. Hudson, Jeffrey William Jr.
1096. Hudson, Mallory Paige
1097. Hudson, Rebecca Carleen
1098. Hueitt, Mark William II
1099. Hueitt, Richard Daniel
1100. Huffstetler, Kayce Douglas
1101. Huffstetler, Whitney Ayers
1102. Humphries, Corey Michael
1103. Humphries, Jennifer Alane
1104. Humphries, Rosa H.
1105. Hungate, Caitlyn Jayne
1106. Hungate, Caryn Louise
1107. Hungate, Lauren Ashley
1108. Hungate, Mederith Trimnal
1109. Hunter, Elizabeth Ashley
1110. Hunter, Jenna Camille.
1111. Hunter, Josephine
1112. Hunter, Jude Alan
1113. Hunter, Julius Calvin
1114. Hunter, Lillie Viola
1115. Hunter, Marsha Rene
1116. Hunter, Matthew Calvin
1117. Hunter, Paige
1118. Hunter, Raegan
1119. Hunter, Shelly Jeannine
1120. Hurn, Joseph Emery Darrell
1121. Hutchinson, Sandra Delores
1122. Hyatt, Cheryl Ann.
1123. Hyatt, David Wayne
1124. Hyatt, John Curtis
1125. Hyatt, Tiffany Marie
1126. Hyman, Aaron DuPree
1127. Hyman, Angela Paulette
1128. Hyman, Joshua Kenneth
1129. Jackson, Teresa Lynn
1130. James, Anthony Eugene
1131. James, Pamela Sue
1132. Johnson, Amber Courtney
1133. Johnson, Amber Shavon
1134. Johnson, Amy Ray
1135. Johnson, Courtney Amanda
1136. Johnson, Crystal Renee
1137. Johnson, Destiny Marie
1138. Johnson, Gary Brent
1139. Johnson, Hadden Delano
1140. Johnson, James Durrand
1141. Johnson, Jane A.
1142. Johnson, Jeccica Brooke
1143. Johnson, Jessica Brooke
1144. Johnson, Joseph Hadden
1145. Johnson, Kimberly Gay
1146. Johnson, Lanie India
1147. Johnson, Marty Adam
1148. Johnson, Pamela Sue
1149. Johnson, Priscilla Blue
1150. Johnson, Robert Lee
1151. Johnson, Ruthie Mae
1152. Johnson, Santana Danielle

1153. Johnson, Scott Leroy
1154. Johnson, Spencer Glenn
1155. Johnson, Trey Michael
1156. Joiner, Beverly Allyn
1157. Joiner, Jared Nathaniel
1158. Joiner, Jason Matthew
1159. Joiner, Justin Allen
1160. Jones, Angela Marie
1161. Jones, Angelica Sheree
1162. Jones, Daniel Jacob
1163. Jones, James Anthony (Tony)
1164. Jones, Kerri Elizabeth
1165. Jones, Stacy Marie
1166. Jordan, Debra Kay
1167. Jordan, Jody Shawn
1168. Jordan, Kevin James
1169. Jordan, Melanie Rose
1170. Jose, Andrew Reid
1171. Kaidbey, Naomi
1172. Keasler, Sabrina Dawn
1173. Keener, James Vester
1174. Keener, Marsha Diane
1175. Keesee, Amber Nicole
1176. Keesee, Charles Edward
1177. Keesee, Jennepher Michelle
1178. Keesee, Robert Lewis
1179. Keim, Shannon Marie
1180. Kekoolani, Henry Paakik Naumanuh III
1181. Kekoolani, Jenne Rene,
1182. Kekoolani, Rene Noelani,
1183. Kellam, Sonja N
1184. Kennedy, Anita Michele
1185. Kennington, Amanda Nicolle
1186. Kennington, Donald Wayne
1187. Kersey, Meagan Nicholle
1188. Kertzel, Carol Crytser
1189. Kertzel, Gordon Frederick IV
1190. Kertzel, Gregory Vernon
1191. Killian, Jessica Blaine
1192. Kimble, Bryan Kenneth
1193. Kimble, Michelle Veronica
1194. Kimbrell, Brandy Michelle
1195. Kimbrell, Cynthia Ann
1196. Kimbrell, Daniel Ray
1197. Kimbrell, Nettie Lou
1198. Kimbrell, Ronnie Lee
1199. Kimbrell, Shannon Nicole
1200. Kimbrell, Susan Darlene
1201. Kirk, Christopher Jacob
1202. Kirk, Clarence Grover III
1203. Kirk, Evelyn A.C.
1204. Kitchen, Elizabeth Ann
1205. Kitchen, Gary Eugene
1206. Kitchen, Wanda Kay
1207. Knight, Anthony Dakota
1208. Knight, Anthony Glenn
1209. Knight, Chasity Christine
1210. Knight, Dana Ivan
1211. Knight, Everett Dupree
1212. Knight, Leah Michele
1213. Knight, Melanie Denise
1214. Knight, Rodney Bill Logan
1215. Knight, Tammy Renee,
1216. Knight, Thomas Wayne,
1217. Knight, Tommy Seth
1218. Konsul, Pamela Antoinette
1219. Korver, Jonathan Tyler
1220. Korver, Ryan Tomas
1221. Korver, Tanya Michele
1222. Kuck, Alaina Justine
1223. Kuck, Amanda Mae
1224. Kuck, Jennifer Leigh
1225. Kuck, Lise Kristine
1226. Lail, Jeremy Allen
1227. Lail, Tanda Michelle
1228. Lail, Zachery James
1229. Lambiasi, Amanda Fern
1230. Lambiasi, Anthony Daniel Jr.
1231. Lambiasi, Elizabeth Joann
1232. Lambiasi, Olene Fern
1233. Largo, Jason Jermie
1234. Largo, Jeanette Guynell
1235. Largo, Lisa Jane
1236. Largo, Mark Anthony
1237. Lawson, Christopher Peyton
1238. Lawson, Kimberly Dawn
1239. Lawther, Tiffany Ayers
1240. Leach, Brandon Gene
1241. Leach, Maranda Kimberly
1242. Leach, Patricia Ann
1243. Lear, Margaret Faye
1244. Lewis, Laurie Ann
1245. Lloyd, Cynthia Wade
1246. Long, Cora Lee
1247. Long, Kimberly Dawn
1248. Love, Christopher Ray Carr
1249. Love, Darryl Lynn
1250. Love, Harley Desiree
1251. Love, Jonathan Todd
1252. Love, Joseph Nicholas Brady
1253. Love, Joshua Lewis Carr
1254. Love, Jutanna C
1255. Love, Jutanna Suzette
1256. Love, Kevin Ray
1257. Love, Melissa Faye
1258. Love, Sylvia Elizabeth
1259. Lovingood, Steven Tyler
1260. Lowder, Vivian
1261. Lowery, Jeremy William
1262. Lowery, Sharon Rose
1263. Lyda, Sandra Diahnne
1264. Lyell, Richard
1265. Lyell, Sylvia Margaret
1266. Lynch, Teresa Deloria
1267. Mackey, Christopher Lee
1268. Mackey, David Windell Jr.
1269. Mackey, Joshua
1270. Mackey, Windell David Sr.
1271. Mancill, Kenneth Earl
1272. Mancill, Mary Frances
1273. Maness, Buddy Ray
1274. Maness, Rebecca
1275. Maness, Robert Allen
1276. Maness, Roger Benton Jr.
1277. Maness, Winona Lee
1278. Manuma, Matthew L.
1279. Margiotta, Brittaney Dianne
1280. Marnach, Elizabeth Marie
1281. Marshall, Melissa Nicole
1282. Martin, Bryan Keith
1283. Martin, Cassondra Felice
1284. Martin, Daniel Earl
1285. Martin, Derrick Nicholas
1286. Martin, Heather Celeste
1287. Martin, Jackie Wesley
1288. Martin, Kimberlee Eula
1289. Martin, Louise Renee Honeycutt
1290. Martin, Malcome
1291. Martin, Melissa Kay
1292. Mason, Janet Renee
1293. Mason, Kristy Louise Odell
1294. Mason, Wanda Denise
1295. Mayfield, Ashley Michelle
1296. Mayfield, Kandice Alicia
1297. Mayfield, Kelly Cheri
1298. Mayne, Alyssa Nicole
1299. Mayne, Dawn Michelle
1300. Maynor, Briana Michelle
1301. Maynor, Rebecca Lynn
1302. Maynor, Rose Marie
1303. McAteer, Felicia Dawn
1304. McAteer, Jessica Lynn
1305. McCall, Jessica Leigh
1306. McCall, Kailen Paige
1307. McCall, Patricia Renee
1308. McCraw, Deborah Kay
1309. McCraw, Magan Elizabeth
1310. McCraw, Matthew David
1311. McDaniel, Daphene Delois
1312. McDaniel, Jannie Canty
1313. McDaniel, Jeremy Dean
1314. McDaniel, Rachel Celeste
1315. McGinnis, Elizabeth Jane
1316. McGinnis, Tammy Louise
1317. McGinnis, Tracy Ann
1318. McGraw, Amanda Kay
1319. McGraw, Daryl Owens Jr.
1320. McHugh, Kimberly Sue
1321. McHugh, Stephanie Lynn
1322. McKellar, Billie Anne
1323. McKellar, Jessica Lauren
1324. McKellar, Steve Eugene Jr.
1325. McKinney, Bryan Patrick
1326. McKinney, Evan Joel
1327. McKinney, Joyce Pamela
1328. McKinney, Justin Everett
1329. McKinney, Lauren Celeste
1330. McKinney, Seth Williamson
1331. McManus, Bryan Douglas Jr.
1332. McManus, Deborah Mae
1333. McManus, Edward Dron
1334. McManus, Eryn Celeste
1335. McManus, James Cory
1336. McManus, Karrie Celeste
1337. McManus, Timothy Daniel
1338. Medlin, Charles Robert
1339. Medlin, Jason Charles
1340. Medlin, Tonda Marjean
1341. Medlin, William Lamont
1342. Medlock, Alisa Kay
1343. Medlock, Doris Kay
1344. Medlock, Jared Ray
1345. Melech, Patricia Charlene
1346. Melton, Ashley
1347. Melton, Cynthia Denise
1348. Melton, Justin Kyle
1349. Melton, Kristina Janette
1350. Melton, Steven Andrew
1351. Mercer, Bryan Anthony
1352. Mercer, Leesa Louise
1353. Mercer, Mark Allen Jr.
1354. Merritt, Adrienne Marie
1355. Merritt, James Matthew
1356. Merritt, Patricia
1357. Miller, Ester
1358. Miller, Larry Timothy

1359. Miller, Shelly Renee
1360. Mills, Dorenda Michelle
1361. Mills, Howard Adam
1362. Mitchell, Heather Cecelia
1363. Mitchell, John
1364. Mitchell, Katherine Marie
1365. Mitchell, Misti Lynn
1366. Mixon, Shannon Janice
1367. Mock, Dustin Kyle
1368. Mock, Vickie Renee
1369. Molony, Audrey Leigh
1370. Molony, Melissa Lauren
1371. Molony, Tammy Kay
1372. Moore, Ashley
1373. Moore, Atuake Ann
1374. Moore, Joann
1375. Moore, Kristy Denise
1376. Moore, Roger Dale Jr.
1377. Morgan, Jefferson Scott Jr.
1378. Morgan, Jennette
1379. Morgan, Laurie Lynette
1380. Morgan, Michelle Lu Raye
1381. Morgan, Timothy Scott
1382. Morris, Ann Garnet
1383. Morris, Ashley Brooke
1384. Morris, Bonnie Leverne Jr.
1385. Morris, Dalton Andrew
1386. Morris, Donald Jr.
1387. Morris, Donald D'Angelo
1388. Morris, Robert Lee
1389. Moser, Jennifer Michele
1390. Moss, Billy Odell Jr.
1391. Moss, Billy Odell
1392. Moss, Helen
1393. Moss, Matthew Dell
1394. Moss, Travis Steele
1395. Mullis, Nancy Elizabeth
1396. Mundy, Sandra Faye
1397. Murray, Toy
1398. Nash, Denise Rena
1399. Neely, Lisa Adell
1400. Neely, Steven Wayne
1401. Neely, Wesley Ryan
1402. Nichols, Anthony Wayne
1403. Nichols, Brooklyn Michele Lavinia
1404. Nichols, Haley Denise Michele
1405. Nichols, Karen Denise
1406. Norris, David LaFayette III
1407. Oates, Dorothy Elizabeth
1408. Oates, Nicholas Campbell
1409. Oglesbee, Natlie Nicole
1410. Oglesby, Candis Reagan
1411. Oglesby, Cassandra Leah
1412. Oglesby, Kari Morgan
1413. Oglesby, Rhonda Delores
1414. Oliver, Amanda Renee
1415. Oliver, Jessica Anne Alyssa
1416. Oliver, Justin Emory
1417. Oliver, Margaret Ann
1418. Oliver, Randy Lester
1419. Oliver, Sidney Jerome
1420. Osborn, Alex Todd
1421. Osborn, Clinton Berlin
1422. Osborn, David Todd
1423. Osborn, Dawn Renee
1424. Osborn, Jason Wade
1425. Osborn, Milton Gregg
1426. Osborn, Ruth Danielle
1427. Osborn, Sherry Geraldine
1428. Osborne, Sheila
1429. Osborne, Susan Marlene
1430. Osment, Glenn Ryan
1431. Oswald, Anthony Lee
1432. Oswald, Brittney April Leigh
1433. Oswald, Charles Michael
1434. Outen, Robert Edward Jr.
1435. Owens, Lula Annette
1436. Owens, Randall Chadwick
1437. Owens, Robin Rene
1438. Owens, Samuel Herbert III
1439. Oxendine, Aaron Blake
1440. Oxendine, Della Eleanor
1441. Oxendine, Phillip Drew
1442. Oxendine, Ralph Guy Jr.
1443. Oxendine, Stephen Daniel
1444. Oxendine, Waylon Keith
1445. Page, Kimberly Ann
1446. Parker, Ann
1447. Parker, Heather Nicole
1448. Parker, Jessica Rebecca
1449. Parker, Kelly Michelle
1450. Parker, Toni Kay
1451. Parks, Cody Great Bear
1452. Parks, Jack Big Bear
1453. Parks, Kris Littlebear
1454. Parks, Lauren Alyssa
1455, Parks, Paula Leigh
1456. Parnell, Rhonda Kimberly
1457. Patterson, Christine Leola
1458. Patterson, Salena Marie
1459. Payne, Evonne
1460. Perdue, Benjamin McClure
1461. Perdue, Billy James Jr.
1462 Perdue, Elizabeth Blair
1463. Perdue, Mary Frances
1464. Petrini, Caroline Dianne
1465. Petty, Buddy
1466. Petty, Christine
1467. Petty, Cory D'Wayne
1468. Petty, George Samuel
1469. Petty, Jackie Alton Jr.
1470. Petty, Jackie Alton
1471. Petty, Jackie Lynn
1472. Petty, John Wayne
1473. Petty, Johnnie William
1474. Petty, Le-Anne Nicole
1475. Petty, Patricia Ann
1476. Petty, Ronald Vance
1477. Petty, Ronald William
1478. Petty, Wanda Kay
1479. Phillips, Andrea Marie
1480. Phillips, Ashley Nicole
1481. Phillips, Catherine Denise
1482. Phillips, Crystal Nichole
1483. Phillips, Jonathan Corey
1484. Phillips, Robert Dean II
1485. Phillips, Ryan Heath
1486. Phillips, Wanda Kaye
1487. Pittman, Tommy Shane
1488. Pittman, Velma Marlene
1489. Plyler, Arthur Terrance Jr.
1490. Plyler, Arthur Terrance
1491. Plyler, Bruce Allen
1492. Plyler, Charles Martin
1493. Plyler, Donald Olin
1494. Plyler, Gerald Hubert Jr.
1495. Plyler, Gerald Hubert Sr.
1496. Plyler, Jennifer Jean
1497. Plyler, Jordan Violet
1498. Plyler, Joshua
1499. Plyler, Joshua Olin
1500. Plyler, Justin Allen
1501. Plyler, Kassidy Maeghan
1502. Plyler, Leonard
1503. Plyler, Linda Rebecca
1504. Plyler, Mark Jeffery
1505. Plyler, Matthew Joseph
1506. Plyler, Michael Dakota
1507. Plyler, Michael Wayne
1508. Plyler, Norman Lynn
1509. Plyler, Olin Flow Jr.
1510. Plyler, Phillip Keith
1511. Plyler, Sallie Elizabeth
1512. Porter, Frank Delano III
1513. Porter, Jennifer Lauren
1514. Porter, Joshua Wade
1515. Porter, Joy Maudine
1516. Porter, Kevin Christopher
1517. Porter, Lindsay Kimber
1518. Porter, Robin
1519. Poteet, Charlotte Yvonne
1520. Pottenger, Ashley May
1521. Pottenger, Kressent Monique
1522. Pottenger, Shelley Maxine
1523. Potts, Alisha Rae
1524. Potts, Alton Amos
1525. Potts, Alton Dwayne
1526. Potts, Bryant Neal
1527. Potts, Calvin Lee
1528. Potts, Christian Tess
1529. Potts, Johnny Ray
1530. Potts, Krista Leann
1531. Potts, Michael Aaron
1532. Potts, Noah Steven
1533. Potts, Renda
1534. Powell, Jennifer Ellis
1535. Preslar, Jarhett Wade
1536. Price, Cheryl Ann
1537. Price, Jessie Elaine
1538. Price, Jessie Lynn
1539. Price, John Gregory
1540. Price, Kristi Sierra
1541. Price, Kyle Chadwick
1542. Price, Linda Diane
1543. Price, Michael Kalib
1544. Price, Sandra
1545. Price, Timothy John
1546. Price, Valerie Lynn
1547. Privette, Jason Lee
1548. Privette, Jeremy James
1549. Pruitt, Jonathan Lee
1550. Pruitt, Lottie Juanita Vernell
1551. Pryor, Alan Mark
1552. Pryor, Wanda Sue
1553. Pryor, William Eric
1554. Puckett, Ashley Denise
1555. Puckett, Carrie Nicole
1556. Puckett, Constantine
1557. Puckett, James Albert II
1558. Rabon, Emily Elizabeth
1559. Railey, Ka-Laney Dee
1560. Ramey, Robin Crystal
1561. Ramey, Tiffany Dawn
1562. Ramsey, Amanda Lynn
1563. Ramsey, Brandon Lee
1564. Ramsey, Brenda Jean

1565. Ramsey, Christopher Thomas
1566. Ranucci, Susanne
1567. Ratterree, Audrey Bernice
1568. Ratterree, Audrey Reola
1569. Ratterree, Christy Gayle
1570. Ratterree, Kristie Caudle
1571. Ratterree, Tonya Michelle
1572. Ravan, Betty Ruth
1573. Ray, Audrie Christine
1574. Ray, Stacy Simmers
1575. Rayfield, Chanse Robert
1576. Rayfield, Lillian Ann
1577. Rayfield, Robert Dow
1578. Raymond, Zan Marie
1579. Reid, Katherine LeeAnne
1580. Reynders, John David
1581. Reynders, Pieter Benjamin Jr.
1582. Reynders, Ryan Scott
1583. Reynders, Spencer
1584. Reynders, Victoria Yvonne
1585. Rider, Anthoney Micheal
1586. Ridley, Melina Sharee
1587. Ridley, Nina Marae
1588. Riley, Amanda Diana
1589. Riley, Jessica Michelle
1590. Riley, Jill Renee
1591. Riley, Kimberly Christina
1592. Riley, Tammy Renee
1593. Robbins, Barney C.
1594. Robbins, Bradley Earl
1595. Robbins, Bradley M.
1596. Robbins, Earl
1597. Robbins, Flint
1598. Robbins, Frank E.
1599. Robbins, Viola
1600. Roberts, Rosemary
1601. Robertson, Donna Marie
1602. Robertson, Wesley Adam
1603. Robinson, Russell Ramon
1604. Rochester, Cynthia Dianne
1605. Rochester, Jacob Lee
1606. Rochester, James Nicholas
1607. Rochester, Jessica Laine
1608. Rochester, Joseph Tyler
1609. Rodgers, Benjamin Joe
1610. Rodgers, Donald Wayne
1611. Rodgers, Freddie Grace
1612. Rodgers, John Alvin Jr.
1613. Rodgers, John Alvin Sr.
1614. Rodgers, Kim Lee
1615. Rodgers, Marcie Lynn
1616. Rodgers, Timothy Lee
1617. Rogers, Amy Nicole
1618. Rogers, Autumn Nicole
1619. Rogers, Beau Dallas
1620. Rogers, Brooke Elizabeth
1621. Rogers, Dakota Preston
1622. Rogers, Daniel Wayne
1623. Rogers, Ernest D. III
1624. Rogers, Fred Kelly
1625. Rogers, Hannah Danielle
1626. Rogers, James Kelly
1627. Rogers, Jason Daniel
1628. Rogers, Jerry Daniel
1629. Rogers, Jimmie
1630. Rogers, Kaitlyn Miranda
1631. Rogers, Keith Preston
1632. Rogers, Kelly Elizabeth
1633. Rogers, Larry Dwayne II
1634. Rogers, Larry Dwayne
1635. Rogers, Mary Katherine
1636. Rogers, Ronnie
1637. Rogers, Sharon Marie
1638. Rogers, Steven Jarrett
1639. Rogers, Steven Otho
1640. Rogers, Tod Loren
1641. Rogers, William Bradford
1642. Rollins, Amy Michelle
1643. Rollins, Eric Dwayne
1644. Rowe, Adam Thomas
1645. Rowe, Merri
1646. Rowe, Wyatt Dale
1647. Rowley, James Michael II
1648. Rowley, Lisa Ann
1649. Rutland, Kristen Nicole
1650. Sanders, Ada
1651. Sanders, Adrienne Lucretia
1652. Sanders, Albert H. Sr.
1653. Sanders, Albert Henderson III
1654. Sanders, Albert Henderson Jr.
1655. Sanders, Alexis Irene
1656. Sanders, Amanda Brooke
1657. Sanders, Andrew Clark Jr.
1658. Sanders, Andrew Clark Sr.
1659. Sanders, Angela Lea
1660. Sanders, Brenda Cornelia
1661. Sanders, Brooke Lyn
1662. Sanders, Calvin Ray
1663. Sanders, Cecil Glenn
1664. Sanders, Charles Richard
1665. Sanders, Cheryl Darlene
1666. Sanders, Christopher Louis
1667. Sanders, Christy Lee
1668. Sanders, Curtis Allen
1669. Sanders, David Neal
1670. Sanders, Deborah Jean
1671. Sanders, Delta Dawn
1672. Sanders, Donald Wayne
1673. Sanders, Early Fred
1674. Sanders, Elizabeth Denise
1675. Sanders, Franklin Thomas
1676. Sanders, Fred Eugene
1677. Sanders, Jackie Scott
1678. Sanders, John Jack Jr.
1679. Sanders, John Patrick
1680. Sanders, Johnny Shaleko
1681. Sanders, Joshua Derek
1682. Sanders, Justin Charles
1683. Sanders, Kelly Renee
1684. Sanders, Kriston Elaine
1685. Sanders, Lacey Rhea
1686. Sanders, Marcus Emory Jr.
1687. Sanders, Marcus Emory
1688. Sanders, Marilyn
1689. Sanders, Mary Caroleen
1690. Sanders, Michael Glenn
1691. Sanders, Misty Dawn
1692. Sanders, Nikkita Danielle
1693. Sanders, Rachel Nichole
1694. Sanders, Randall Dean
1695. Sanders, Randolph Edward II
1696. Sanders, Randolph Edward Sr.
1697. Sanders, Rikki D.
1698. Sanders, Rodney Wayne
1699. Sanders, Ronald William
1700. Sanders, Scotty Dewayne
1701. Sanders, Shannon Wayne
1702. Sanders, Thomas Burton
1703. Sanders, Thomas Cornelius
1704. Sanders, Thomas Lester
1705. Sanders, Thomas McCloud
1706. Sanders, Tracy Michelle
1707. Sanders, Verdie
1708. Sanders, Warren Brian
1709. Sanders, William Ashley
1710. Sanders, William Louie
1711. Sanders, William Max
1712. Sanders, William Scott
1713. Sanders, Willie Mack
1714. Santillon, Melanie Louise
1715. Schutte, Dawn Wahilani
1716. Schutte, Garth Kaleikini
1717. Scott, Colleen
1718. Scruggs, Jonathan Bradley
1719. Scruggs, Tammy Renee
1720. Shankle, Patricia Ann
1721. Sharpe, Angela
1722. Sharpe, Christopher Wayne
1723. Sharpe, Melissa Renee
1724. Shealy, Barbara Lynn
1725. Shealy, Britanie Margaret
1726. Shealy, Kailyn Marie
1727. Shehan, Lynette
1728. Shehan, Shawn Wesley
1729. Shingler, Anna Danielle
1730. Shingler, Dustin Ashley
1731. Shingler, Sheila
1732. Shirah, Christopher Lee
1733. Shirah, Jamie Allen
1734. Shirah, Reba Louise
1735. Shrake, Freida Marilyn
1736. Shugart, Bethany Rhiannon
1737. Shugart, Helen Louise
1738. Shugart, Jeffery Adams
1739. Shugart, Jennifer Michelle
1740. Shugart, Kenneth Eugene Jr.
1741. Shugart, Rita Shown
1742. Shugart, Steven
1743. Shugart, William Dean II
1744. Shuler, Daniel Scott
1745. Shuler, Joel Christopher
1746. Sigmon, Reba Maxine
1747. Simmers, Brittany Nashea
1748. Simmers, Daniel Ray
1749. Simmers, Daniel Taylor
1750. Simmers, Erika Nicole
1751. Simmers, Garrett Jason
1752. Simmers, James Leon
1753. Simmers, Jason Edward
1754. Simmers, Lisa Louise Marie
1755. Simmers, Rocky Vernon
1756. Simmers, Shelly Jeanette
1757. Sims, Linda Gail
1758. Skar, Eric Tyler
1759. Skar, Letha
1760. Sloat, Patsy Blue
1761. Smeltzer, Katrina Carol
1762. Smith, Anthony Glenn
1763. Smith, Brandon Chaz
1764. Smith, Brandy Michelle
1765. Smith, Candace Natasha
1766. Smith, Cheryl Melissa
1767. Smith, Cinda Darnell
1768. Smith, Dana Marlene
1769. Smith, Deborah Ann
1770. Smith, Doris Jean
1771. Smith, Jonathan Blade

1772. Smith, Joshua Shane
1773. Smith, Kristen Nicole
1774. Smith, Margaret Rebecca
1775. Smith, Robert Earl Jr.
1776. Smith, Robert Earl Sr.
1777. Smith, Sandra Darnell
1778. Smith, Shari Wilson
1779. Smith, Sherri Lynn
1780. Smith, Thomas Franklin Jr.
1781. Smith, Tiffany Lynn
1782. Sotolongo, Amber Mechelle
1783. Sotolongo, Miranda Lynn
1784. Sox, Paul Samuel
1785. Sox, Robert Wesley
1786. Spell, Mary Beth
1787. Spinks, Christopher Allen
1788. Spinks, Debra Lee
1789. Spinks, Thomas Dale Jr.
1790. Spivey, Alisha Danielle
1791. Spivey, Juanita Marie
1792. Spivey, Samantha Victoria
1793. Spivey, Timothy Joe
1794. Stargel, Brittany Michele
1795. Stargel, Shannon Terriol
1796. Starnes, Cynthia
1797. Steiniger, Shirley
1798. Stephenson, Lacey Michelle
1799. Stevens, Barbara Ann
1800. Stevens, Dawn Michelle
1801. Stevens, Melinda Lynn
1802. Stewart, Mary Evelyn
1803. Stewart, Randall Matthew
1804. Stewart, Steven Andrew
1805. Stokes, Barry Dean
1806. Stokes, Billy Joe Jr.
1807. Stokes, Billy Joe
1808. Stokes, Curtis Wayne
1809. Stokes, Daniel Leroy
1810. Stokes, Glenn Edward Jr.
1811. Stokes, Glenn Edward Sr.
1812. Stokes, James Allen
1813. Stokes, Jonathon Coland
1814. Stokes, Joseph Coland Jr.
1815. Stokes, Kenneth R
1816. Stokes, Lisa Nicole
1817. Stokes, Michael Shane
1818. Stokes, Robert Lee Sr.
1819. Stokes, Stella B.
1820. Stokes, Stella Marie
1821. Stokes, Windy Faye
1822. Strickland, Pearlie
1823. Stroud, Brittany Amanda
1824. Stroud, Christopher Dale Jr.
1825. Stroud, Kimberly H.
1826. Sutphin, Iris Lucinda
1827. Sutton, Teresa Diane
1828. Sutton, William Curtis Ayers
1829. Swett, Malinda Darlene
1830. Tadlock, Michael Jason
1831. Talley, Amber Renea
1832. Talley, Barbara Annette
1833. Talley, Curtis Brent Sr.
1834. Talley, Dessa Darlene
1835. Talley, James Heyward II
1836. Talley, Michael Warren
1837. Talley, Myleah Breanne
1838. Talley, Tabitha Darlene
1839. Talley, Warren Edward
1840. Tanner, Brooke Michele
1841. Tanner, Kacey Danielle
1842. Tanner, William Travis
1843. Taylor, Amber Nichole
1844. Teaster, Carrie Christine
1845. Teaster, Etta D.
1846. Teaster, Jimmy Eugene Jr.
1847. Teaster, Jimmy Eugene Sr.
1848. Teaster, Justin Ransom
1849. Teaster, Ransom
1850. Teaster, William Glenn
1851. Teaster, William Harry
1852. Terry, Michelle Lynn
1853. Tessner, Ruth Robbins
1854. Thatcher, Harold Lloyd
1855. Thatcher, Jason Lloyd
1856. Thatcher, Matthew Tyler
1857. Thatcher, Megan Elaine
1858. Thatcher, Rebecca Leigh Ann
1859. Thatcher, Stephen Keith
1860. Therrell, Joyce Ann
1861. Thomas, Amber Lennette
1862. Thomas, Angela Marie
1863. Thomas, Anica Nicole
1864. Thomas, Ashley Nicole
1865. Thomas, Brian Andrew
1866. Thomas, Chrissy Alene
1867. Thomas, Christopher Dwayne
1868. Thomas, Emory Randolph
1869. Thomas, Ericka Leigh
1870. Thomas, Jeffery McDonald
1871. Thomas, Jeremy David
1872. Thomas, Jessica Elaine
1873. Thomas, Kaitlyn Victoria
1874. Thomas, Kristine Elizabeth
1875. Thomas, Larry Allen
1876. Thomas, Louis Scott
1877. Thomas, Marvin Donald III
1878. Thomas, Michael Shannon
1879. Thomas, Michael Steven
1880. Thomas, Ollie Mae
1881. Thomas, Pamela Michelle
1882. Thomas, Peggy
1883. Thomas, Taylor Renee
1884. Thomas, Tiffany Marie
1885. Thomas, Timothy Dale Jr.
1886. Thomas, Timothy Randolph
1887. Thomas, William Byron
1888. Thomas, William Michael
1889. Thompson, Adam Quintin
1890. Thompson, Anna Leigh
1891. Thompson, Clyde Samuel
1892. Thompson, Jessica Lynn
1893. Thompson, Latasha Ann
1894. Thompson, Lois Elvina
1895. Thompson, Rose Maria
1896. Thompson, Scotty Alexander Jr.
1897. Thompson, Scotty Alexander Sr.
1898. Thompson, Stephanie Michelle
1899. Thompson, Virginia Claudette
1900. Thrash, Rita Shawn
1901. Threatt, Josephine Branham
1902. Thurman, Kimberly Dawn
1903. Tinker, Geraldine
1904. Tinker, Matthew David
1905. Tinker, Rebecca Kathryn
1906. Tinker, Stuart Jason
1907. Totherow, Ernest Randall
1908. Totherow, Richard C
1909. Totherow, Shannon Leslie
1910. Townsend, Casey Daniel
1911. Trimnal, Ashley Carol
1912. Trimnal, Becky Christine
1913. Trimnal, Bob Kenneth
1914. Trimnal, Heather Elizabeth
1915. Trimnal, Kathrin Gloria
1916. Trimnal, Samuel Taylor,
1917. Trimnal, Thomas Woodrow
1918. Troublefield, Christopher Lee
1919. Troublefield, Joseph Martin
1920. Troublefield, Vanessa Lee
1921. Troxel, David Trent
1922. Troxel, Samuel Neil
1923. Troxel, Shasta Ilene
1924. Troxel, Suzette Michele
1925. Tucker, Margaret Robbins
1926. Tucker, Matthew Earl
1927. Tucker, William Shane
1928. Turney, Carol Lynn
1929. Usher, Jerry Dell
1930. Usher, Norma Jean
1931. Valkenburgh, Rachel Eleanora
1932. Varnadore, Brandon Trent
1933. Varnadore, Brandy Leigh
1934. Varnadore, Christopher Lee
1935. Varnadore, Cory West
1936. Varnadore, Edward Glenn
1937. Varnadore, James Dustin
1938. Varnadore, James Ronald
1939. Varnadore, Jennifer Renea
1940. Varnadore, Kenneth Charles
1941. Varnadore, Laura Merrill
1942. Varnadore, Mathew Chantz
1943. Vincent, Ruby Ayers
1944. Vinson, Elic Wheeler
1945. Wade, Audrea Lynn
1946. Wade, Baxter Bruce
1947. Wade, Beauford,
1948. Wade, Brandon Paul
1949. Wade, Christopher Steve
1950. Wade, Cleave Harrison
1951. Wade, Connie Steve Jr.
1952. Wade, Connie Steve Sr.
1953. Wade, Daniel Benjamin
1954. Wade, Dara Danielle
1955. Wade, Edith Frances
1956. Wade, Florence R.
1957. Wade, Glenn Hampton
1958. Wade, Heather Suzanne
1959. Wade, Horace Gary Jr.
1960. Wade, Horace Gary Sr.
1961. Wade, Jason Blair
1962. Wade, Justin Heath
1963. Wade, Krissi Maree
1964. Wade, Michael Gregg
1965. Wade, Michael Lee
1966. Wade, Natalie Renee
1967. Wade, Regina Suzanne
1968. Wade, William Christopher
1969. Wade, William Eric
1970. Wade, William Perry Jr.
1971. Wade, William Perry Sr.
1972. Walker, Darien Matthew
1973. Walker, Lora Anne
1974. Wall, Corey Allen
1975. Wall, Stephanie Nicole
1976. Wall, Winona Lyne
1977. Walsh, Bessie Valoy
1978. Ward, Katelyn Paige

1979. Ward, Kathryn Evonne
1980. Ward, Lisa Michelle
1981. Warner, Brian Dale
1982. Warner, Cora Ethel
1983. Warner, Jason Lee
1984. Warner, Oliver Dale
1985. Watts, Brent William
1986. Watts, Caitlyn Eve
1987. Watts, Clifford O'Dell Jr.
1988. Watts, Clifford O'Dell Sr.
1989. Watts, Davin Blue
1990. Watts, Edwin Larsen
1991. Watts, Jenelle Sunshine
1992. Watts, Matthew Todacheeni
1993. Watts, Milton Everett
1994. Watts, Nellie Leone
1995. Watts, Paul Bradley
1996. Watts, Rodney Allan
1997. Watts, Sarita Janine
1998. Watts, Tristan Wade
1999. Watts, William D. Jr.
2000. Weathers, Mendy Jo
2001. Weaver, Sheryl Lynn
2002. Webb, Elizabeth Ashley
2003. Webb, Sharon Marlene
2004. Webster, Krista Marie
2005. Webster, Morgan Alyshia
2006. Wells, Kenneth Chad Varnadore
2007. Wells, Lou Gene
2008. Wheeler, Ashlin Nicole
2009. Wheeler, Bobbie Jean
2010. Wheeler, Chase Russell
2011. Wheeler, Tyson Robert
2012. White, Angela Dionne
2013. White, Deena Ann
2014. White, Eber Walter II
2015. White, Eber Walter
2016. White, Gail Blue
2017. White, Rocky Anthony II
2018. White, Rocky Anthony
2019. White, Sarah Elizabeth
2020. Whitesides, Keith Bernard
2021. Whitesides, Robert Charles
2022. Whitesides, Velma
2023. Whitlock, Sadie
2024. Wilburn, Amber Suzanne
2025. Wilburn, Brittany Paige
2026. Wilburn, Cecil Jr.
2027. Wilburn, Christopher Douglas
2028. Wilburn, David Adam Jr.
2029. Wilburn, David Adam Sr.
2030. Wilburn, Herman Franklin Jr.
2031. Wilburn, Jacqueline Nicole
2032. Wilburn, Ryan Anthony
2033. Wilburn, Stephanie Lauren
2034. Wilkinson, Benjamin Bruce
2035. Wilkinson, Kristin Lynn
2036. Wilkinson, Neil Gordon
2037. Wilkinson, Tarah Jean
2038. Wilkinson, Theresa J.
2039. Williams, Amy Carol
2040. Williams, Brent Lee
2041. Williams, Keith Eloit
2042. Williams, Mae Carol
2043. Williams, Phyllis DeLora
2044. Williams, Randy Alan
2045. Williams, Russell Shane
2046. Williford, Cecily Nicole
2047. Williford, David Cecil Jr.
2048. Williford, John Timothy
2049. Willis, Alice Grace
2050. Wilson, Billy Oliver
2051. Wilson, Brandy Jenny Rebecca
2052. Wilson, Brittany Morena
2053. Wilson, Christin Nicole
2054. Wilson, Claire
2055. Wilson, David Wayne
2056. Wilson, Donald Wayne Jr.
2057. Wilson, Donald Wayne Sr.
2058. Wilson, Edwin Keith
2059. Wilson, Heather Ann
2060. Wilson, Jeffrey Randall
2061. Wilson, Joseph Matthew
2062. Wilson, Joshua Michael
2063. Wilson, Kim Lyle
2064. Wilson, Kristy Nicole
2065. Wilson, Matthew David
2066. Wilson, Roy O'Dell Jr.
2067. Wilson, Roy O'Dell III
2068. Wilson, Stephanie Nicole
2069. Wilson, Steve Randall
2070. Wilson, Tanaja Carol
2071. Wilson, Todd L.
2072. Wilson, Travis Ronald
2073. Wilson, Violet
2074. Windham, Edd Leilon III
2075. Windham-Forbis, Shana Marie
2076. Woodell, Jennifer Kaitlyn
2077. Woolsey, Amber Jewell
2078. Wright, Carolyn Marie
2079. Wright, Christopher Allen
2080. Wright, Lewis Allen Jr.
2081. Wright, Nancy Deandrea
2082. Wright, Rose Mary
2083. Wright, Stephanie Brooke
2084. Wurdemann, Aaron Cole
2085. Wurdemann, Heyward Stone
2086. Wurdemann, John David Jr.
2087. Wurdemann, John David Sr.
2088. Wurdemann, Kenneth Wayne Jr.
2089. Wurdemann, Linda Ann
2090. Wurdemann, Lynn Canty
2091. Wurdemann, Natalie Ann
2092. Yates, Christopher Michael
2093. Yates, Courtney Michelle
2094. Yates, Rachel Beck
2095. Yonce, Michael Brandon
2096. Yonce, Patricia Groff
2097. Young, Amanda Elizabeth
2098. Young, Benjamin Michael
2099. Young, Jacob Yates
2100. Young, Jesse Alexander
2101. Young, Jonothan Howard
2102. Young, Kathryn Rachel
2103. Young, Kathryn Valerie
2104. Young, Laurie Michele
2105. Young, Pamela Jean
2106. Young, Peter William
2107. Young, Susan Gayle

[FR Doc. 99–33118 Filed 12–21–99; 8:45 am]
BILLING CODE 4310–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–00–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the January 20 and 21, 2000 meeting includes: Field Manager reports, approval of minutes of the previous meetings, Standards and Guidelines for wild horses, clean water action plan, 3809 Regulations, sage grouse, identification of additional issues to be resolved and determination of the subject matter for future meetings. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the Field Office Manager at the Battle Mountain District Office, 50 Bastion Road, Battle Mountain, Nevada, 89820, telephone (775) 635–4000.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Battle Mountain District Office, 50 Bastion Road, Battle Mountain, Nevada, 89820; January 20, starting at 10 a.m.; public comments will be at 11 a.m. and 3 p.m.; January 21, starting at 8 a.m.; public comments will be at 11 a.m.; tentative adjournment for the day at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 775–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: December 10, 1999.

Helen Hankins,

Field Manager, Elko.

[FR Doc. 99–33187 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP0–0012; OR–53486]

Public Land Order No. 7413; Withdrawal of Public Lands for the Protection of Four Recreation Sites; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In Public Land Order No. 7413, 64 FR 54637–38, published February 20, 1997, as FR Doc. 99–26186, make the following corrections:

On page 54638, paragraph 1, "T. 31 N., R., 7 W., Soc. 4, NE¼NE¼,", is hereby corrected to read, "T. 31 S., R., 7 W., Sec. 4, NE¼SE¼". "Revested Oregon and California Railroad Grant Lands Island Creek Recreation Site, T. 31 N., R. 7 W.,", is hereby corrected to read, "Island Creek Recreation Site, T 31 S., R. 7 W.". "T. 32 N., R. 7 W.,", is hereby corrected to read, " T. 32 S., R. 7 W.,". "T. 30 S., R. 7 W., Sec. 5, SW¼NE¼NE¼SW¼,", is hereby corrected to read, "T. 30 S., R. 7 W., Sec. 5, SW¼NE¼SW¼,".

On page 54638, paragraph 2, "T. 30 N., R. 7 W.,", is hereby corrected to read, "T. 30 S., R. 7 W.,". Also, "T. 31 S., R. 7 W., Sec. 4, that portion of the NE¼SW¼", is hereby corrected to read, "Iron Mountain Gold Panning Area, T. 31 S., R. 7 W., Sec. 4, that portion of the NE¼SE¼".

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 99–33202 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Final Cooperative Management Plan/ Environmental Impact Statement, Vancouver National Historic Reserve, Washington

AGENCY: National Park Service, DOI.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The final Cooperative Management Plan/Environmental Impact Statement (CMP/EIS) is a description of a vision, shared by four public agencies and their partners, for the coordinated management of the Vancouver National Historic Reserve. The plan analyzes three possible alternatives for future management and recommends a proposed action. The proposed action can be summarized in three broad goals: Preservation of historic structures, physical assets, and cultural landscapes, Education and interpretation of the significance and history of the area, and Public Use of and accessibility to the Historic Reserve. These overlapping goals will be reached through public and private involvement and funding to ensure economic balance and sustainability for all new endeavors.

The CMP/EIS is composed of three parts: the revised abstract/cover sheet, revisions to the plan, and comments and responses on the draft CMP/EIS. The revised abstract outlines the status of the document, briefly describes the alternatives, and lists the responsible agencies and contact persons. The "Revisions" section shows changes made in the draft document. The most significant changes are (1) a revision of the "U.S. Army Reserve" paragraph in the "Issues beyond the Scope of this Planning Process" section, (2) the rewording of three primary interpretive themes, and (3) the incorporation of more recent development cost information in alternative A.

This document is presented in an abbreviated format. It must be integrated with a copy of the draft CMP/EIS issued in July 1999 to be considered a complete document reflecting the full proposal, alternatives, and all significant environmental impacts. The abbreviated format has been used because the changes to the draft document were minor and confined primarily to factual corrections.

Approximately 350 copies of the draft CMP/EIS were distributed to the public. It was also available on the Internet, at local libraries, and at the office of the Reserve Partners. Four public meetings were held. The review and comment period began on July 23, 1999, and ended September 21, 1999. All comments received were reviewed and considered by the NPS in the preparation of the final CMP/EIS.

SUPPLEMENTARY INFORMATION: The no-action period on this final CMP/EIS will expire 30 days after the Environmental Protection Agency has accepted the document and published a notice of availability in the **Federal Register**. Following the no-action period, a record of decision to implement the proposed action will be signed by the National Park Service. The Vancouver National Historic Reserve Partners will then distribute a final Comprehensive Management Plan that integrates all of the changes to the document based on public review and comment but will not include alternatives B and C or the "Environmental Consequences" section.

All who submitted substantive comments on the draft CMP/EIS will receive a copy of the final. Public reading copies of the final CMP/EIS will be available for review at the following locations: Office of Public Affairs, National Park Service, 1849 C St., NW, Washington, DC 20240; Fort Vancouver National Historic Site, 612 E. Reserve Street, Vancouver, WA 98661–3811; General O.O. Howard House, 750 Anderson Street, Vancouver, WA 98661; Vancouver Barracks Headquarters, 638 Hathaway Road, Vancouver, WA 98433–9500; and Washington State Office of Archaeology and Historic Preservation, 420 Golf Club Road SE, Suite 201, Lacey, WA 98503. For further information, contact Superintendent, Fort Vancouver National Historic Site, (360) 696–7655, ext. 13, or Historic Reserve Manager for the City of Vancouver, (360) 992–1832.

Dated: November 29, 1999.

Rory D. Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 99–33110 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 11, 1999.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC

20240. Written comments should be submitted by January 6, 2000.

Carol D. Shull,

Keeper of the National Register.

Colorado

Routt County

Howelsen Hill, 845 Howelsen Parkway, Steamboat Springs, 99001634

Florida

Brevard County

Central Instrumentation Facility (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001635
Crawlerway (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001641
Headquarters Building (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001644
Launch Complex 39—Pad A (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001638
Launch Complex 39—Pad B (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001639
Launch Control Center (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001645
Missile Crawler Transporter Facilities (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001643
Operations and Checkout Building (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001636
Press Site—Clock and Flag Pole (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001637
Vehicle Assembly Building—High Bay and Low Bay (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001642

Orange County

All Saints Episcopal Church, 338 E. Lyman Ave., Winter Park, 99001647

Volusia County

City Island, 108 E. Orange Ave., Daytona Beach, 99001646

Georgia

Richmond County

United States Post Office and Courthouse, 500 E. Ford St., Augusta, 99001648

Kansas

Pratt County

Rice, J.R., Farmstead, NE4, SE4, SE4, NE4, 3–28–15, Cullison vicinity, 99001649

Michigan

Eaton County

Powers Highway—Battle Creek Bridge (Highway Bridges of Michigan MPS), Powers Hwy. over Battle Cr., Brookfield Township, 99001653
Residential Drive—Townline Brook Bridge (Highway Bridges of Michigan MPS), Residential Drive over Townline Br., Walton Township, 99001652

Grand Traverse County

American Legion Memorial Bridge (Highway Bridges of Michigan MPS), S. Cass St. over Boardman R., Traverse City, 99001650
South Union Street—Boardman River Bridge (Highway Bridges of Michigan MPS), S. Union St. over Boardman R., Traverse City, 99001651

Minnesota

Goodhue County

Cannon Falls Commerical Historic District, Fourth St. bet. Mill St. and Main St., Cannon Falls, 99001654

New York

Broome County

Goodwill Theatre, 36 Willow St., Johnson City, 99001655

Greene County

Weldon House, NY 145, East Durham, 99001658

New York County

New York Savings Bank, 81 Eighth Ave., New York, 99001657

Westchester County

First United Methodist Church, 226 E. Lincoln Ave., Mount Vernon, 99001656

South Dakota

Pennington County

Calumet Hotel, Ash and B Ave., Wasta, 99001659

Wisconsin

Door County

Clafin Point Site (Graves Stone Buildings TR), Address Restricted, Gardner vicinity, 99001660

Eau Claire County

Hoover, James Stephen and Borland, Elizabeth, Memorial Chapel (Eau Claire MRA), Lakeview Cemetery, Buffington Dr., Eau Claire, 99001662
Putnam, Jane E., Memorial Chapel (Eau Claire MRA), Forest Hill Cemetery, Emery St., Eau Claire, 99001663
Saint Edward's Chapel (Eau Claire MRA), 1129 Bellevue Ave., Eau Claire, 99001661
Second Ward School (Eau Claire MRA), 1105 Main St., Eau Claire, 99001664

[FR Doc. 99–33098 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Issues Subcommittee Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable Issues Subcommittee will meet on January 10, 1999 to discuss the long-term water acquisition framework and revisions to next year's proposal solicitation package. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12 p.m. on Monday, January 10, 2000.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1118, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program),

is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: December 13, 1999.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 99–32835 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP), and two technical training program course effectiveness evaluation forms. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0061 and –0110, respectively.

DATES: Comments on the proposed information collection activities must be received by February 22, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for renewed approval. These collection are contained in (1) 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (1029–0061); and (2) OSM's Technical Training Program Course Effectiveness Evaluations (1029–0110). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029–0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Frequency of Collection: Once per application.

Description of Respondents: Small operators, laboratories, and State regulatory authorities.

Total Annual Responses: 160.

Total Annual Burden Hours: 10,635 hours.

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029–0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 650.

Total Annual Burden Hours: 110 hours.

Dated: December 17, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–33195 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310 and 520–521 (Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on butt-weld pipe fittings from Brazil, China,

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on May 3, 1999 (64 FR 23672, May 3, 1999) and determined on August 5, 1999 that it would conduct expedited reviews (64 FR 44536, August 16, 1999).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 22, 1999. The views of the Commission are contained in USITC Publication 3263 (December 1999), entitled Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand: Investigations Nos. 731–TA–308–310 and 520–521 (Review).

Issued: December 16, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33191 Filed 12–21–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–863 (Preliminary)]

Citric Acid and Sodium Citrate From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–863 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of citric acid and sodium citrate, provided for in subheadings 2918.14.00 and 2918.15.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by January 31, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by February 7, 2000.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Joanna Bonarriva (202–708–4083), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on December 15, 1999, by Archer Daniels Midland Co., Decatur, IL, Cargill, Inc., Naperville, IL, and Tate & Lyle Citric Acid, Decatur, IL.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 5, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Joanna Bonarriva (202–708–4083) not later than December 30, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 10, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

[2] Commissioner Crawford dissenting with respect to Brazil, Taiwan, and Thailand and Commissioner Askey dissenting with respect to Brazil.

pursuant to § 207.12 of the Commission's rules.

Issued: December 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33192 Filed 12–21–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; National Administrative Office, National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open teleconference January 25, 2000.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on January 25, 2000 from 3 p.m. to 5 p.m.

ADDRESS: U.S. Department of Labor, 200 Constitution Avenue NW., Conference Room 2 at C–5515, Washington, DC 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C–4327, Washington, DC 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC, on December 15, 1999.

Lewis Karesh,

Deputy Secretary, U.S. National Administrative Office.

[FR Doc. 99–33138 Filed 12–21–99; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–162]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Flight Research Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Flight Research Subcommittee meeting.

DATES: Monday, January 24, 2000, 2:00 p.m. to 5:00 p.m., Tuesday, January 25, 2000, 8:00 a.m. to 5:00 p.m., and Wednesday, January 26, 2000, 8:00 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Center, Building 4800, Executive Conference Room 2100, Edwards, CA 93535.

FOR FURTHER INFORMATION CONTACT: Ms. Dennie Gonia, National Aeronautics and Space Administration, Dryden Flight Research Center, Edwards, CA, 93523, 661/258–2380.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda topics for the meeting are as follows:

—Review of Flight Research Base R&T Program
—Review of the Costs Associated with Varying Types of Flight Research
—High Altitude, Long Endurance Aircraft
—Advanced Systems Concepts
—Revolutionary Concepts (REVCON)
—Atmospheric Flight of Space Systems
—Innovative Transport and Testbed Experiments
—Flight Research Productivity

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 16, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–33111 Filed 12–21–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the addition of the following item to the previously announced closed meeting (Federal Register, Vol. 64, No. 239, page 69802, Tuesday, December 14, 1999) scheduled for Thursday, December 16, 1999.

5. Delegation of Authority. Closed pursuant to exemptions (2), (6) and (7).

The Board voted unanimously that agency business required that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items were:

1. Field of Membership Appeal. Closed pursuant to exemption (8).
2. Insurance Appeal. Closed pursuant to exemptions (6) and (8).
3. Proposed Modification to NCUA's Indemnification Policy. Closed pursuant to exemptions (2), (6) and (7).
4. Two (2) Personnel Matters. Closed pursuant to exemptions (2), (5), (6) and (7).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–33387 Filed 12–20–99; 3:42 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

In the Matter of North Atlantic Energy Service Corporation, et al. (Seabrook Station, Unit 1); Order Approving Application Regarding Merger of New England Electric System and the National Grid Group PLC

I

North Atlantic Energy Service Corporation is authorized to act as agent for the joint owners of the Seabrook

Station, Unit 1 (Seabrook), and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Facility Operating License No. NPF–86. New England Power Company (NEP), one of the joint owners, holds a 9.9-percent possessory interest in Seabrook. The U.S. Nuclear Regulatory Commission issued Operating License NPF–86 on March 15, 1990, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Seabrook Township, Rockingham County, on the southeast coast of the State of New Hampshire.

II

Under cover of a letter dated March 15, 1999, NEP, a subsidiary of New England Electric System (NEES), and National Grid Group plc (National Grid) submitted an application requesting approval of the transfer of control of the license, to the extent held by NEP in connection with its 9.9-percent ownership interest in Seabrook, regarding a change in the economic ownership of NEES. The application was supplemented May 20 and June 17, 1999 (collectively hereinafter "the application").

NEP is incorporated in the Commonwealth of Massachusetts. NEES owns all of NEP's common stock and 99.71 percent of its voting securities, with the other 0.29 percent being owned by the public in the form of preferred stock with common voting rights. The requested transfer approval relates to a proposed merger in which NEES is to be acquired by National Grid, a British company. NEES and National Grid entered into a merger agreement on December 11, 1998.

National Grid is a public limited company incorporated under the laws of England and Wales. It is the only transmission company in England and Wales and is an independent company created as a result of the privatization and restructuring of the British electric system in 1990. The application states that National Grid, with its United Kingdom assets and through interconnections with Scotland and France and through its acquisitions of interests in transmission systems in other nations, is the largest privately owned transmission company in the world.

National Grid has formed NGG Holdings LLC (NGG Holdings), a U.S. entity that is a limited liability company organized in Massachusetts and a wholly owned subsidiary of National Grid. NGG Holdings will merge with and into NEES, with NEES being the surviving entity from that transaction and maintaining its status as a U.S. entity subject to all applicable U.S. laws and regulations. The application states that, for tax purposes, immediately after the merger, NEES will be converted from a Massachusetts business trust into a corporation; specifically, NEES will be merged into a Massachusetts corporation to be named NEES Holdings, Inc., which will then be the surviving entity. The post-acquisition capital structure of NEES Holdings, Inc., will be identical to the capital structure of NEES, and NEES Holdings, Inc., will become a wholly owned indirect subsidiary of National Grid, with NEP being a subsidiary of NEES Holdings, Inc., and thus also becoming a subsidiary of National Grid. The application also provides details regarding several companies that will be created for various business reasons as intermediates between National Grid and NEES Holdings, Inc., after the merger is approved, and all of these companies will be either directly or indirectly wholly owned by National Grid. National Grid will register as a public utility holding company under the Public Utility Holding Company Act of 1935.

Approval of the indirect license transfer that would result from the foregoing transactions was requested pursuant to 10 CFR 50.80. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on June 30, 1999 (64 FR 35190). Pursuant to such notice, joint Seabrook owners Connecticut Light and Power Company (CL&P) and North Atlantic Energy Corporation (NAEC) filed a timely intervention petition and hearing request. Following the submission of further pleadings by the applicants and petitioners, the Commission found that the petitioners had demonstrated standing and proffered two admissible issues (regarding foreign ownership and financial qualifications). The Commission set the case for hearing and issued a schedule for the proceeding. Subsequently, on November 4, 1999, the petitioners filed a notice of withdrawal of their petitions to intervene, and the petitioners and the applicants jointly moved for termination of the proceeding due to a settlement reached between the parties. The Commission granted the motion on November 19, 1999. In doing so, it noted that the staff, in its review of transfer applications, examines financial qualifications and foreign ownership issues, and should consider concerns specifically raised in the proceeding relating to those matters when it takes action on the transfer application. North Atlantic Energy Service Corp., et al. (Seabrook, Unit 1 and Millstone Station, Unit 3), CLI–99–28, 50 NRC ____, slip op. (Nov. 19, 1999). The staff has considered those concerns, which are addressed in the safety evaluation supporting this Order.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that the proposed merger of National Grid and NEES will not affect the qualifications of NEP as a holder of Facility Operating License NPF–86, and that the indirect transfer of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The foregoing findings are supported by a safety evaluation dated December 10, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954 (AEA), as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the indirect license transfer referenced above is approved, subject to the following conditions:

(1) No later than the time the proposed merger with National Grid is consummated, NEP shall establish and make operational a Special Nuclear Committee, as described in the application, having the composition, authority, responsibilities, and obligations specified in the application, provided, however, the Special Nuclear Committee may also have exclusive authority on behalf of NEP over taking any action which is ordered by the NRC or any other agency or court of competent jurisdiction. No material changes with respect to the Special Nuclear Committee may be made without the prior written consent of the Director, Office of Nuclear Reactor Regulation. The foregoing provisions may be modified by the Commission upon application and for good cause shown.

(2) The Special Nuclear Committee shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of NEP with respect to the Seabrook license are at all times conducted in a manner consistent with the protection

of the public health and safety and common defense and security of the United States.

(3) NEP shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from NEP to its direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10 percent) of NEP's consolidated net utility plant, as recorded on its books of account.

(4) Should the proposed merger not be completed by December 30, 2000, this Order shall become null and void, provided however, upon application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated March 15, 1999, and the supplements dated May 20 and June 17, 1999, and the safety evaluation dated December 10, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site http://www.nrc.gov.

Dated at Rockville, Maryland, this 10th day of December 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33143 Filed 12–21–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

ACTION: Notice extending comment period.

SUMMARY: On October 20, 1999, OMB published a Notice (64 FR 56628–56644) requesting comments on recommendations that it had received from the Metropolitan Area Standards Review Committee (MASRC) for changes to OMB's metropolitan area standards. By this Notice, OMB is extending the time period for public comment from December 20, 1999 to December 30, 1999.

DATES: To ensure consideration during the final decision making process, written comments must be received no later than December 30, 1999.

ADDRESSES: Written comments on the recommendations should be submitted to James D. Fitzsimmons, U.S. Bureau of the Census, IPC-Population Division, Washington, DC 20233–8860; fax (301) 457–3034.

Electronic Data Availability: This **Federal Register** Notice and the October 20, 1999 Notice are available electronically from the OMB home page: <<http://www.whitehouse.gov/OMB/fedreg/index.html>>. **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: <<http://www.access.gpo.gov/su_docs/aces/aces140.html>>.

FOR FURTHER INFORMATION CONTACT: James D. Fitzsimmons, Chair, Metropolitan Area Standards Review Committee, (301) 457–2419; or E-mail <<pop.frquestion@ccmail.census.gov>>.

SUPPLEMENTARY INFORMATION: On October 20, 1999, OMB published a Notice (64 FR 56628–56644) requesting comments on recommendations that it had received from the Metropolitan Area Standards Review Committee (MASRC) for changes to OMB's metropolitan area standards. MASRC's report and recommendations were published in their entirety in that Notice. To allow additional time for public comment, OMB is extending the comment period on the recommended standards from December 20, 1999 to December 30, 1999. The final standards will be published prior to Census 2000.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 99–33219 Filed 12–21–99; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, January 10, 2000; 8:30 a.m., Tuesday, January 11, 2000.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: January 10 (Closed); January 11 (Open).

MATTERS TO BE CONSIDERED:

Monday, January 10—1 p.m. (Closed)

1. Rate Case Briefing.
2. Financial Performance—FY 2000, Accounting Period 3 Results.
3. Personnel Matters.
4. Compensation Issues.

Tuesday, January 11—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 6–7, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Board Resolution on Capital Funding.
4. Annual Report on Government in the Sunshine Act Compliance.
5. Capital Investment.
   a. Singulate, Scan, Induction Units.
6. Election of Chairman and Vice Chairman of the Board of Governors.
7. Tentative Agenda for the February 7–8, 2000, meeting in Miami, Florida.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–33338 Filed 12–20–99; 2:50 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employee's Certification.

(2) *Form(s) submitted:* G–346.

(3) *OMB Number:* 3220–0140.

(4) *Expiration date of current OMB clearance:* 2/29/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Program planning or management.

(7) *Estimated annual number of respondents:* 5,400.

(8) *Total annual responses:* 5,400.

(9) *Total annual reporting hours:* 450.

(10) *Collection description:* Under Section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains

information from the employee about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Lori Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–33189 Filed 12–21–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42239; File No. SR–CHX–99–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Minimum Net Capital and Excess Net Capital Requirements for Members

December 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 24, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On December 8, 1999, the CHX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing the notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] In Amendment No. 1, the CHX clarified Interpretation .01 to Rule 3 of Article XI and made technical amendments to the proposed rule language. *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, dated December 7, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XI, Rule 3 of the Exchange's rules to modify the minimum net capital and excess net capital requirements applicable to members of the Exchange who are specialists or who carry accounts of specialists. Below in the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Article XI—Financial Responsibility and Reporting Requirements

* * * * *

Net Capital and Aggregate Indebtedness

Rule 3. (a)(1) Except as otherwise provided below, a member or member organization shall at all times—

(i) maintain net capital not less than that prescribed by SEC 15C3–1 (17 CFR 240.15c3–1) and

(ii) maintain subordinated cash borrowing and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowings are part of the debt equity total.

* * * * *

(3) a member or member organization that is registered as a specialist on the Exchange [in less than 200 securities] and that clears its own specialist account(s) shall at all time—

(i) maintain[,] *(A)* at a minimum, net capital that is *equal to* the greater of *(1)*[a] *$100,000* [$250,000, subject to the phase-in period set forth in Interpretation and Policy .01, below] or *(2)*[(b)] the amount prescribed by SEC 15c3–1 (17 CFR 240.15c3–1); *and (B) excess net capital equal to the greater of (1) $500,000 (or the minimum amount required by National Securities Clearing Corporation ("NSCC") for such direct participants), subject to the phase-in-period set forth in Interpretation and Policy .01, below or (2) the amount prescribed by SEC 15c3–1.*

* * * * *

[(4) A member or member organization that is registered as a specialist on the Exchange in 200 or more securities and that clears its own specialist account(s) shall at all times—

(i) maintain, at a minimum, net capital that is the greater of (a) $350,000, subject to the phase-in period set forth in Interpretation and Policy .01, below, or (b) the amount prescribed by SEC 15c3–1) (17 CFR 240.15c3–1); and

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowing are part of the debt equity total.]

(4) [5] A member or member organization that clears the specialist accounts of another member or member organization registered as a specialist on the Exchange shall, at all times—

(i) maintain[,] *(A)* at a minimum, net capital that is *equal to* the greater of *(1)*[a] *$250,000* [$500,000, subject to the phase-in period set forth in Interpretation and Policy .01, below] or *(2)*[(b)] the amount prescribed by SEC 15c3–1 (17 CFR 240.15c3–1); *and (B) excess net capital equal to the greater of (1) $1,000,000 (or the minimum amount required by NSCC for such direct participants), subject to the phase-in period set forth in Interpretation and Policy .01, below or (2) the amount prescribed by SEC 15c3–1.*

* * * * *

(5) [6] * * *

(6) [7] * * *

Interpretations and Policies

.01 Phase-In Periods for Minimum Capital Standards for Self-Clearing Specialists and Firms Clearing Specialist Accounts.

On [May 31, 1999] *(insert date 30 days after date of SEC approval order)*, the Exchange adopted separate minimum net capital *and excess net capital* standards for self-clearing specialists and firms clearing other specialist accounts, as specified in subsections (a)(3) *and* (a)(4) [and (a)(5) above. These minimum capital standards are to be phased in over a 12 month *(or other time period based on date of SEC approval order)* period.

Self-Clearing Specialists [Registered as Specialist in Less Than 200 Securities: $250,000 Standard]

The amount specified in Rule 3(a)(3)(i)(B)*(1)* above shall be [$150,000 effective on May 31, 1999;] $200,000 effective on November 30, 1999; [and $250,000] *$350,000* effective on May 31, 2000; *and $500,000 effective on June 30, 2000.*

[Registered as a Specialist in 200 or More Securities: $350,000 Standard].

The amount specified in Rule 3(a)(4)(i)(a) above shall be $200,000 effective on May 31, 1999; $275,000 effective on November 30, 1999; and $350,000 effective on May 31, 2000.]

Firms Clearing Other Specialist Accounts: [$500,000 Standard].

The amount specified in Rule 3(a)(4)(i)(B)*(1)* above shall be [$350,000 effective on May 31, 1999;] $425,000 effective on November 30, 1999; [and] $500,000 effective on May 31, 2000; *and $1,000,000 effective on June 30, 2000.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose rule change is intended to ensure that the Exchange's members who are specialists or who carry accounts of specialists meet the financial responsibility requirements imposed by qualified clearing agencies [4] as well as the Commission. The Exchange's current rules, and the rules of the MCC, permit floor members of the Exchange to establish "sponsored accounts" pursuant to which the MCC provides sponsored participants with access to clearance, settlement and delivery via a qualified clearing agency such as the National Securities Clearing Corporation ("NSCC"). The Exchange in turn provides a guaranty to the NSCC (and through the NSCC to the Depository Trust Company ("DTC")) from time to time to guarantee the obligations of the MCC with respect to liabilities that could be generated in sponsored accounts.[5] In order to minimize the Exchange's exposure through sponsored accounts and in keeping with capital requirements imposed by the Act, the Exchange's rules governing members' financial responsibility and reporting requirements contain provisions establishing minimum net capital requirements for specialists and those who carry accounts of specialists.[6]

The Exchange and the MCC have determined to discontinue the sponsored account program, effective June 30, 2000, after which time the MCC will be dissolved and the Exchange will no longer guarantee the MCC's obligations to qualified clearing agencies. Accordingly, it will be necessary for all current sponsored participants to become direct participants in qualified clearing agencies such as NSCC and DTC. The Exchange thus proposes to amend Article XI, Rule 3 to incorporate the minimum net capital and excess net capital requirements currently required for direct participation in NSCC, subject to the amended phase-in periods set forth in Interpretation and Policy .01 to the amended rule. It is anticipated that the proposed phase-in periods will ameliorate any financial burden that might otherwise be placed on members who are specialists or who carry accounts of specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) [7] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–20 and should be submitted by January 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33177 Filed 12–21–99; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Midwest Clearing Corporation ("MCC") Rules, Art. XI, Rule 1.

[5] *See* CHX Rules, Art. XXI, Rule 14.

[6] *See* CHX Rule, Art. XI, Rule 3.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42238; File No. SR–NASD–99–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. to Allow NASD Members to Give Proxies in the Absence of Written Instructions from Beneficial Owners

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASDR" or "NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, Ii, and III below, which Items have been prepared by NASD Regulation. On November 15, 1999, NASDR filed Amendment No. 1 to the proposal with the Commission.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASDR withdrew its request that the proposal be reviewed and approved

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR seeks to amend Rule 2260 of the Conduct Rules of the Association to permit NASD members to give proxies in the absence of written instructions from beneficial owners, provided that certain requirements are satisfied.

The text of NASD Rule 2260, as modified by the proposal, appears below. Proposed additions are *italicized* and proposed deletions are [bracketed].

Rule of the Association Conduct Rules

2260. Forwarding of Proxy and Other Materials

(a)–(b) No change.

(c)(1) Whenever an issuer or stockholder of such issuer soliciting proxies shall timely furnish to a member:

(A) sufficient copies of all soliciting material which such person is sending to registered holders, and

(B) satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member in connection with such solicitation.

such member shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) which is in its possession or control and registered in a name other than the name of the beneficial owner, *the material furnished.*

(2) Such member shall transmit with such material either:

(A) a request for voting instructions and, as to matters which may be voted without instructions under paragraph(d)(4), a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(B) a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols of the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEC Rule 17a–4 under the Act.

([2]*3*) Notwithstanding the provisions of subparagraph (1), a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

([3]*4*) This paragraph shall not apply to beneficial owners residing outside of the United States of America, although members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

(d)(1)–(3) No Change.

(4) A member which has transmitted proxy soliciting material to the beneficial owner of stock or the beneficial owner's designated investment adviser and solicited voting instructions in accordance with subparagraph (c) of this Rule, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided that:

(A) the person in the member firm giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting; and

(B) such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

(e)–(g) No Change.

* * * * *

IM–2260–2 Giving a Proxy To Vote Stock

(a) A member may give a proxy to vote stock provided that:

(1) It has transmitted proxy soliciting material to the beneficial owner of stock or from the beneficial owner's designated investment adviser, in accordance with Rule 2260(c), and

(2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and

(3) the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation of any matter which may affect substantially the rights or privileges of such stock.

(b) Generally speaking, a member may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14–A of the Securities Exchange Act;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management (e.g., a contest);

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal;

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;

(9) involves waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12));

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding;

(13) authorizes:

(A) a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or

(B) the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exceptions may be made in cases of

(A) retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and

(B) any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union-negotiated plan;

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets, or a company, where the

---

under Section 19(b)(3)(A) of the Act. Instead, NASDR has requested that the Commission review the proposal under Section 19(b)(2) of the Act. See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 10, 1999 ("Amendment No. 1").

consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction.

(17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;

(18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 2260 specifies when NASD members must furnish proxy and other materials to beneficial owners, and governs when NASD members may vote proxies on behalf of beneficial owners. Rule 2260 differs in certain respects from the proxy rules of the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). Most notably, the NYSE and Amex proxy rules permit exchange members to give proxies on behalf of beneficial owners without written instructions from the beneficial owners, so long as certain requirements are satisfied.[4] NASDR believes that the differences in the proxy rules maintained by the NASD, NYSE, and Amex may cause confusion for some members and issuers. The purpose of the proposed amendments is to conform the NASD rule to the NYSE and Amex rules.

a. Summary of Current NASD Rules

NASD Rule 2260 requires NASD members to forward proxy and other materials to beneficial owners of stock held in "street name" by the member when certain conditions are met. Proxy materials must be accompanied by signed proxies and information regarding when the proxies must be returned to the issuer. NASD Rule 2260 currently provides that NASD members may give proxies on beneficial owners when the member holds the stock in a fiduciary capacity. Rule 2260 also provides that a NASD member may give proxies to vote pursuant to the rules of any exchange to which the member is also responsible, provided that the records of the member clearly indicate which procedure it is following.

The NYSE and Amex proxy rules likewise require exchange members to forward proxy materials to beneficial owners. Unlike the NASD's rules, however, the NYSE and Amex proxy rules state that an exchange member may accompany the materials with either: (a) Signed proxies and information specifying when the proxies must be returned to the issuer, or (b) A request for voting instructions. The NYSE and Amex proxy rules also allow exchange members to vote the proxies in certain circumstances if the beneficial owner fails to respond to the request for written instructions. Specifically, an exchange member may vote the shares without instruction if, to the knowledge of the member, the action in question is not contested and the action does not involve authorization for a merger, change of control, or other that could substantially affect the rights and privileges of the stock. With respect to matters not satisfying those requirements, the member may not vote the proxies absent written instructions from the beneficial owner. Supplemental materials to the NYSE and Amex proxy rules list corporate matters that may not be voted on without written instruction (*e.g.*, matters involving changes of control, mergers, voting rights, and mortgaging of property).

Under the NYSE and Amex proxy rules, if an exchange member chooses to a send a request for written instructions with the proxies and the proxies involve matters that may be voted on without written instruction, the member must inform the beneficial owner that proxies may be given at the member's discretion unless written instructions are received within a specified time.

b. Summary of Proposed Rule Change

NASDR believes that the current NASD proxy rule, in conjunction with the existing NYSE and Amex proxy rules, has caused confusion among some members and issuers regarding when proxies can be voted by members without instruction from beneficial owners, particularly by a broker who is only a member of the NASD. NASDR believes that this confusion would be eliminated if the NASD's rules were amended to conform to the NYSE and Amex proxy rules.

Conforming NASD Rule 2260 to the NYSE and Amex proxy rules would require amending the NASD rule to: (a) give NASD members the option of requesting voting instructions instead of simply sending signed proxies to beneficial owners; and (b) in certain circumstances, permit NASD members to vote proxies if the beneficial owner fails to provide written instructions, as long as the member notifies the beneficial owner of that possibility.

Under the proposal, NASD Rule 2260(c)(2) would be amended to provide that, when an issuer satisfies the requirements in the rule that obligate NASD members to forward proxy material to the issuer's beneficial owners, each NASD member shall transmit with the proxy material either: (a) a request for voting instructions and, where the rule would permit the member to give the proxy without written instructions, notice to that effect; or (b) a signed proxy. In addition, a new subparagraph (d)(4) would specify the criteria governing when NASD members could vote proxies without written instructions from beneficial owners. Specifically, the new language would state that NASD members may give proxies without written instructions, provided that the person in the member firm giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting; and such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation, or any other matter which may affect substantially the rights or privileges of such stock.

The proposed rule change would not alter the current obligations of NASD members to give and send proxies, because under the proposal, NASD members would have the option of continuing to treat proxy materials as currently required under rule 2260. NASDR believes that the proposal will eliminate confusion by clarifying that NASD members may give proxies without written instructions from beneficial owners in the same manner they are permitted to do so under NYSE and Amex proxy rules.

c. Adoption of IM–2260–2

Supplemental materials to the NYSE and Amex proxy rules provide specific guidance to exchange members regarding application of the proxy rules.

[4] *See* NYSE Rule 452, "Giving Proxies by Member Organization," and Amex Rule 577, "Giving Proxies by Member Organization."

The supplemental materials summarize the NYSE and Amex proxy rules, and enumerate specific instances where exchange members may not give proxies without instructions from the beneficial owner. Under the proposal, that same guidance would be incorporated into the rules of the NASD in the form of a new IM–2260–2. The text of proposed IM–2260–2 is substantially identical to the language in the supplemental materials to the NYSE and Amex proxy rules.

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which require that the rules of a registered securities association must be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. NASDR also believes that the proposed change eliminates confusing and potentially conflicting requirements that affect investors, issuers, and the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASDR did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NASDR consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–63 and should be submitted by January 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33175 Filed 12–21–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 700–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42235; File No. SR–PCX–99–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Composition of the PCX Board of Governors

December 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 19, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On December 2, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is issuing this order approving the amended proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its Constitution to provide that fifty percent of the Exchange's Board will be representatives of the public. The text of the proposed rule change, as amended, follows. Additions are italicized; deletions are bracketed.

PCX CONSTITUTION

* * * * *

Article II

GOVERNMENT

Board of Governors

Sec. 1(a). The government of the Exchange shall be vested in a Board of Governors (herein sometimes called "the Board") consisting of twenty-*one* elected Governors, *and* the Chairman of the Board [and the President of the Exchange], provided that [seven] *eleven* of the elected Governors shall be representatives of the public and shall

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael D. Pierson, Director Regulatory Policy, PCX, to Sharon M. Lawson, Division of Market Regulation ("Division"), SEC, dated November 18, 1999 ("Amendment No. 1"). In Amendment No. 1, the Exchange defined the terms "office member" and "office allied member," which are used in Article III, Section 2(b) of the Exchange Constitution. The Exchange stated that it intends to codify these definitions in the PCX Constitution by the summer of 2000. In addition, the Exchange explained that it intends to stagger the implementation of the revised structure of the Board of Governors ("Board"). As a result, two new public governors will be added in the 2000 term. In addition two additional public governors will attend meetings of the PCX Board in a non-voting advisory capacity during the 2000 term. The Exchange explained that this should enable them to familiarize themselves with the business of the Exchange. Finally, the Exchange clarified the use and composition of three classes of governors elected to the Board and clarified that full implementation of the changes shall be reflected on the PCX's 2001 Board.

[4] Letter from Robert Pacileo, Staff Attorney, PCX to Sharon M. Lawson, Division, SEC, dated December 1, 1999. In Amendment No. 2, the Exchange added Commentary .01 to Article III, Section 2(b) to explain the staggered implementation of the fifty percent public governor requirement. In addition, the Exchange deleted its proposal to require a minimum of five floor members on the Board at all times. Finally, Amendment No. 2 corrected an incorrect statement in Amendment No. 1, which provided that the Board will have nine non-public elected members under the proposal when in fact it will consist of ten.

not be, or be affiliated with, a broker or dealer in securities. If at any time the position of the Chairman [or President] is unfilled by a person duly appointed to such position by the Board of Governors, the number of members of the Board of Governors shall be deemed to be reduced accordingly until such position or positions are filled. The Board shall hold regular and special meetings at such times and at such places as it may determine. Notice of meetings of the Board shall be given as provided in Section 8 of this Article II. The Board may act on any matter affecting or concerning this Exchange, except as otherwise provided by the Certificate of Incorporation or this Constitution. Except where a larger vote is required under any provisions of the Certificate of Incorporation or this Constitution, the Board may act on any matter within its jurisdiction by vote of not less than a majority of the Governors voting at a meeting at which a quorum is present or by written consent of a majority of all Governors.

* * * * *

Chairman of the Board of Governors and President

Sec. 2(a). The Chairman of the Board of Governors and the President of the Exchange shall be appointed by the Board of Governors to serve at its pleasure and for such compensation as it may from time to time fix. Neither the Chairman of the Board nor the President shall engage in any other business during his *or her* incumbency except with approval of the Board, and acceptance of the office shall be deemed to be agreement to uphold the Constitution and Rules of the Exchange. The Chairman of the Board and the President of the Exchange shall be members, ex officio, of all committees of the Exchange except the Nominating Committee. [The President shall be a member of the Board of Governors.]

* * * * *

Article III

ELECTIONS, MEETINGS, TERMS OF OFFICE, PROXIES

Annual Election of Governors

Sec. 2(a). The elected Governors shall be divided into three classes, *each* [two] of which shall be composed of seven Governors. [, and one of which shall be composed of six Governors.] The *seven* [six] Governors composing Class I shall have terms expiring at the Annual Meeting in *2002* [1993], and the terms of Governors in Class I shall expire each three years thereafter. The seven Governors composing Class II shall have terms expiring at the Annual Meeting in *2003* [1994], and the terms of Governors in Class II shall expire each three years thereafter. The seven Governors composing Class III shall have terms expiring at the Annual Meeting in *2004* [1995], and the terms of Governors in Class III shall expire each three years thereafter. Also at each Annual Meeting, the Vice Chairman elect shall become Vice Chairman and a Vice Chairman elect shall be elected to serve for one year from the date of election, and until his or her successor is elected and qualified. The Vice Chairman elect shall be one of the Governors presently in office with at least two years remaining in his or her term, or one of the newly elected Governors.

Eligibility of Governors

Sec. 2(b). Any member, allied member or person who is an officer or director of the parent or subsidiary corporation of a member firm, or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm or of a participant firm or any subsidiary of the Exchange performing depository or clearing functions, or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the Board of Governors. Of the Governors in each of the classes specified in Sec. 2(a) above, at least one shall be a member of the Exchange, at least [two] *one* shall be *an* office member[s] or office allied member[s] of the Exchange, and [one] *at least three* shall be [a] representatives of the public and shall not be, or be affiliated with, a broker or dealer in securities. There shall be at least two floor members on the Board at all times.

Commentary

.01 Pursuant to a letter from the Commission's director of Market Regulation dated June 10, 1999, the Exchange will stagger implementation of the fifty-percent public governors over a two-year period. The Exchange will add two new public governors, for a total of nine public governors, in the year 2000. The Exchange will add two new governors, for a total of eleven public governors, in the year 2001. Beginning in year 2001, there will be 11 representatives of the public on the Board at all times.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A. Introduction

The PCX[5] proposes to amend Article II, Sections 1(a) and 2(a), and Article III, Sections 2(a) and 2(b) of the PCX Constitution to increase the number of public representatives on the PCX Board of Governors ("Board") to fifty percent.[6] The Exchange believes that this change will make the Board more balanced, fair and effective.[7] The Exchange is also proposing to remove the President of the Exchange from the Board.

B. Number of Public Governors

Pursuant to Article II, section 1(a) of the PCX Constitution, the current Board

[5] The PCX is a non-stock membership corporation registered in the State of Delaware. Its corporate structure and the general parameters of its corporate governance are defined in the PCX Certificate of Incorporation. The Exchange's By-laws, composed of the PCS Constitution and PCX Rules, contain the specific requirements for the composition of the Board, PCX Committees and the daily operations of the Exchange.

[6] The Exchange will partially implement this rule change in January 2000 at the annual election of PCX Governors, as prescribed by proposed Commentary .01 to Article III, Section 2(b), of the PCX Constitution. Full implementation will conclude with the January 2001 Board elections.

[7] The Exchange notes that in 1997, it took an initial step towards a more balanced Board composition by increasing, from six to seven, the number of public representatives on the Board, and also by increasing, from one to two, the number of public governors permitted to serve on the Exchange's Executive Committee. *See* Exchange Act Release No. 38945 (August 18, 1997), 62 FR 44999 (August 25, 1997). In its approval order, the Commission stated that "significant representation by public governors on the Board is desirable and should ensure better protection of public investors and the public interest. Public governors are likely to have little or no stake in internal Exchange politics, and, if carefully selected, public governors should bring diverse experience and increased ethical sensitivity to the Board, thus enhancing the confidence of members and of the public in the Exchange's ability to govern its members appropriately."

consist of twenty elected Governors, the Chairman of the Board and the President of the Exchange. The twenty elected Governors currently include seven representatives of the public.[8]

The Exchange proposes to modify Article II, sections 1(a) to increase the total number of governors on the Board to twenty-one elected governors, of which at least eleven shall be representatives of the public. The eleven public governors will equal fifty percent of the twenty-two governors ("Governors"), who include twenty-one governors elected by PCX members plus the Chairman of the Board, who is appointed by the Board.[9]

C. President of the Exchange

The Exchange proposes to change Article II, sections 1(a) and 2(a) of the Constitution by removing the President of the Exchange from the Board. The Exchange proposes this change to accommodate the increase in the number of public governors. The Exchange notes that the Exchange's President can attend Board meetings and participate without being a voting member of the Board.

D. Eligibility of Governors

The Exchange proposes to amend Article III, section 2(b) of the PCX Constitution, relating to the eligibility of Governors. As amended, this provision will require that, of the Governors in each of the classes specified in Section 2(a),[10] at least one shall be a member of the Exchange, at least one shall be an office member or office allied member of the Exchange,[11] and at least three shall be representatives of the public.[12] The Exchange proposes this rule change to make Article II, section 1(a) consistent with Article III, section 2(b), which sets minimum requirements for the composition of the Board.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[13] of the Act, in general, and furthers the objectives of Section 6(b)(3)[14] in particular, because it is designed to assure a fair representation of its members in the selection of its directors and administration of its affairs and to assure that one or more directors shall be representatives of issuers and investors and not be associated with a member of the Exchange, broker, or dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–33 and should be submitted by January 12, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposal is consistent with the requirements of Sections 6(b)(1), 6(b)(3) and 6(b)(5) of the Act.[16]

Section 6(b)(3) of the Act provides, among other things, that one or more directors of an exchange shall be representative of issuers and investors and not associated with a member of the exchange, broker, or dealer. The Commission believes that representation of the public on exchange governing bodies that have decision-making authority is critical to ensuring that the exchange works to protect the public interest.[17] Further, public representation helps to ensure that no single group of investors has the ability to systematically disadvantage other market participants through the exchange governance process.

The proposed change amends the composition of the PCX Board by increasing the number of public directors from seven to eleven. As a result, public governors will comprise fifty percent of the Board. The Commission believes that increasing the number of public governors should substantially further the public's interest and voice on the Board, consistent with Section 6(b)(3). Public governors should bring knowledge of the interests of investors to the governance of the Exchange and should balance the composition of the Board. The Commission further believes that public governors possess a unique perspective, which should enhance the ability of the Board to address Exchange issues in a non-discriminatory fashion. In this way, the public governors may help to prevent unfair discrimination between customers, issuers, brokers, or

---

[8] A representative of the public is an individual who is not affiliated with a broker or dealer in securities. PCX Const., Art. II, Section 1(a). The Exchange notes that it considers "public representatives" to be persons who are not employed in the securities industry, and that in the recent past, the Exchange's appointments of public representatives to the Board has been generally consistent with this meaning. *See infra* note 16.

[9] As described above, the revised structure including eleven public representatives will be staggered so that in 2000 the PCX Board will consist of nine public governors and in 2001 the PCX Board will consist of the required eleven public governors. During the 2000 Board term, there will be nine elected public governors and two non-elected, non-voting advisory public governors who will stand for election in 2001.

[10] PCX Constitution, Article III, Section 2(a) currently states that "[t]he elected Governors shall be divided into three classes, two of which shall be composed of seven Governors, and one of which shall be composed of six Governors."

[11] In Amendment No. 1, the Exchange defined an office member as a natural person in whose name a membership is held and who does not exercise trading privileges on a floor of the Exchange on behalf of the member organization and defined an office allied member as an allied member (as defined in PCX Constitution, Article V, Section 6) who does not conduct business while on a floor of the Exchange on behalf of the member organization. *See supra* note 3.

[12] This provision currently states, in relevant part, that "at least one shall be a member of the Exchange, at least two shall be office members or office allied members of the Exchange, and one shall be a representative of the public."

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(3).

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(1), 78f(b)(3) and 15 U.S.C. 78f(b)(5), respectively.

[17] *See* Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70884 (December 22, 1998).

dealers in the administration of the Exchange, and protect investors and the public interest, consistent with Section 6(b)(5).

Section 6(b)(1) of the Act requires that an exchange be so organized and have the capacity to carry out the purposes of the Act. The Commission believes that increasing public representation on the PCX Board will also further Section 6(b)(1) of the Act by enabling the Exchange to discharge its regulatory responsibilities and fairly enforce compliance by its members with its rules, the Act and the rules thereunder.

The proposed composition of the Board also furthers Section 6(b)(1) and 6(b)(3) of the Act because it helps to ensure that each member constituency is adequately represented in the governing process of the Exchange.[18] A national securities exchange has many self-regulatory functions, such as, among other things, the discipline of members. Recognizing and providing each member community with representation on the governing Board should protect the members' interests from unfair or uneven assertions of regulatory authority. Further fifty-percent public representation should ensure that the interests of one group of members will not dominate the Exchange and that investor interests will be represented on the Board.

The Commission further believes that the PCX's current application of its definition of public representative is consistent with the requirements of the Act. The current definition, which is not amended by this proposal, states that a public representative is a person who is not a broker-dealer in securities or affiliated with a broker-dealer in securities. This definition, however, permits other securities industry participants to be public governors. The Exchange stated that the recent past appointments of public representatives have usually not included persons employed in the securities industry.[19] The Commission encourages the Exchange to codify this practice by amending its definition of public representatives to exclude those persons that may have an affiliation with the securities industry.[20]

To assist in the transition to eleven public representatives of the Board, the Exchange proposes to have only 9 public governors on the Board in 2000. Two additional public governors will be nominated in 2000 who will stand for election in 2001. During 2000, these governors will attend Board meetings in a non-voting, advisory capacity. The Commission believes that this proposed change should help to ensure a smooth transition to the amended Board composition. This should provide the new public governors with exposure to the unique issues of the securities industry in general, as well as the specific issues that the PCX faces before they are expected to participate in the governance of the Exchange.

The Commission notes that the requirement to have eleven public representatives on the Board will not be fully implemented until 2001 as a result of PCX's desire to implement the change in two steps. Nevertheless, the Exchange is required, pursuant to its Constitution, to ensure that there are eleven public governors on its Board beginning in the year 2001. The Commission therefore expects PCX to have fifty-percent public representation on its Board as of 2001.

In summary, for the reasons discussed above, the Commission believes that the change to fifty-percent public governors should further improve oversight of the Exchange, which should benefit all investors. The Commission continues to urge the PCX to codify its application of the definition of public governor.

The Commission finds good cause to accelerate approval of the proposed rule change as amended prior to the thirtieth day after publication in the **Federal Register.** The Commission believes that the proposed rule change provides significant benefits to investors and the members of the Exchange, as discussed above. By increasing the number of public governors on the PCX Board, the PCX should be governed by a more balanced corporate body.

The Commission notes that the PCX is required to begin its election process for the 2000 election to be held during the annual meeting in January. The Commission believes that it is in the public interest to have the first phase of the staggered implementation of the proposed changes in place for the next election. Further, since the first phase of the implementation has a direct correlation to the full implementation of the proposed rule change by 2001, the Commission believes that it is in the public interest to approve the entire proposed rule change on an accelerated basis. The two non-voting advisory public governors will be nominated in 2000 and will then stand for election to the 2001 Board. Therefore, the Commission believes that good cause exists, consistent with Sections 6(b)(1), (b)(3), and (b)(5)[21] and 19(b)[22] of the Act, to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[23] that the proposed rule change, as amended, (SR–PCX–99–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33176 Filed 12–21–99; 8:45 am]

BILLING CODE 8010–01–M

---

[18] Each class of governors provides for a minimum of one upstairs firm and one floor member. The Exchange should consider codifying a maximum number of member representation on the Board so that no member constituency can dominate the Board.

[19] Conversation between Kathryn Beck, General Counsel, Exchange, and Mandy S. Cohen, Special Counsel, Division of Market Regulation, Commission on November 23, 1999. *See supra* note 7.

[20] The Commission notes that the National Association of Securities Dealers ("NASD") and the Chicago Stock Exchange ("CHX") currently classify their board members as industry/member, non-industry—which would be comparable to the PCX definition of public, and public—which is defined as persons that have no material business relationship with a broker or dealer or the Association or the Exchange, as the case may be. *See* NASD By-laws Article I; CHX Constitution, Sections 2 and 10.

[21] 15 U.S.C. 78f(b)(1); 15 U.S.C. 78f(b)93); 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter TA covers the Office of the Deputy Commissioner for Disability and Income Security Programs. Notice is hereby given that Subchapter TAH, Office of Hearings and Appeals, is being amended to reflect changes in the organization designations in the Office of Hearings and Appeals, Office of Policy, Planning and Evaluation and functional responsibilities in the Office of Hearings and Appeals, Special Counsel Staff. The changes are as follows: Section TAH.10 *The Office of Hearings and Appeals*—(Organization):

G. The Office of Policy, Planning and Evaluation (TAHC). Delete:

1. Division of Litigation Analysis and Implementation (TAHC1).

Renumber:

"2" to "1" and "3" to "2".

Section TAH.20 *The Office of Hearings and Appeals*—(Functions):

C. The immediate Office of the Associate Commissioner for Hearings and Appeals (TAH).

2. The Special Counsel Staff (TAH–2).

Amend as follows:

The Special Counsel Staff (SCS) (TAH–2) consists of attorneys and appropriate support staff. The attorneys serve as professional advisors to the Associate Commissioner for Hearings and Appeals, and to other members of the Office of Hearings and Appeals (OHA) Executive Staff on matters pertaining to the legislative process; labor and employee relations; ethics; and administrative procedures, with special emphasis on administrative issues raised by the Administrative Procedure Act (APA), Freedom of Information Act and Privacy Act. SCS, in consultation with the Office of General Counsel (OGC), evaluates any potential disciplinary action involving Administrative Law Judges (ALJs). This responsibility includes interviewing all witnesses and compiling and weighing other evidence and recommending a course of action to the Associate Commissioner for Hearings and Appeals. Based on the SCS recommendation, the Associate Commissioner for Hearings and Appeals will decide the appropriate action and undertake action administratively, or if warranted, direct the filing of a complaint against an ALJ with the Merit Systems Protection Board (MSPB). The SCS assists OGC in trying administrative disciplinary proceedings against ALJs before the MSPB. The SCS also functions as agency representative in actions against attorney and non-attorney representatives of claimants before Social Security Administration (SSA) ALJs and the Appeals Council. SCS will investigate potential violations of the law and regulations governing the qualifications and conduct of such representatives. SCS will present its recommendations to the Deputy Commissioner for Disability and Income Security Programs (DCDISP). If the DCDISP agrees with the recommendation, SCS will present such matters in administrative hearings conducted by ALJs selected by the Associate Commissioner for Hearings and Appeals. SCS is responsible for any appeals on such cases taken to the Appeals Council. Conducts or coordinates investigations of allegations of misconduct, waste, fraud or abuse by OHA headquarters and field employees. Maintains records of, provides advice on the handling of and, upon request, investigates allegations of bias or misconduct against ALJs. Serves as liaison with the Office of Inspector General in matters of a criminal nature. Reviews regulations and procedures for conformity to SSA/OHA policy and provides recommendations for modifications of prospective legislation which could adversely affect the hearings and appeals process. When requested, represents OHA as liaison with the Congress, American Bar Association, and other governmental and private organizations, with special emphasis on pending, proposed, and prospective legislation pertaining to the APA. Develops, in conjunction with other OHA components, a recommended appeals strategy that identifies the issues and types of cases which OHA believes should be appealed. With OGC clearance, develops and maintains a compendium of circuit court case law and court trend data, with systems-based access. Tracks pending class actions and makes recommendations regarding potential workload impact. Advises OHA officials of significant cases and trends and of litigation issues which may require revision of operating instructions, and assists with the preparation of the instructions. Coordinates OHA's views on proposed Social Security Acquiescence Rulings. In response to OHA-identified cases and to requests for appeal recommendations, obtains the views of affected OHA components and formulates an OHA position regarding the viability of an appeal. Acts as liaison with the Department of Health and Human Services' Departmental Appeals Board and SSA OGC and Litigation Staff, Office of the Deputy Commissioner for Disability and Income Security Programs (ODCDISP), to coordinate OHA's involvement in class action litigation, settlements and implementation; and when requested, with other governmental agencies. In coordination with other OHA components, develops instructions for OHA implementation of class action orders, monitors implementation and serves as a focal point for questions from OHA adjudicators. Responds to requests from OGC and ODCDISP regarding information about OHA operations requested in the course of litigation and drafts affidavits and declarations to be signed by OHA officials. Coordinates OHA's response to discovery requests.

G. The Office of Policy, Planning and Evaluation (TAHC).

Amend first sentence as follows:

The Office of Policy, Planning and Evaluation (TAHC) plans, analyzes and develops OHA-wide policy for the hearings and appeals process.

Delete last two sentences.

Add as last sentence:

Administers and coordinates the Freedom of Information Act and Privacy Act provisions for OHA.

Delete:

1. Division of Litigation Analysis and Implementation (TAHC).

Renumber:

"2" to "1" and "3" to "2".

Dated: December 14, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–33132 Filed 12–21–99; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–99–067]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its two Subcommmittees (Waterways and Navigation) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Friday, January 28, 2000 from 9 a.m. to approximately 1 p.m. The meeting of the Navigation Subcommittee will be held on Thursday, January 13, 2000 at 9 a.m. and immediately following, the Waterways Subcommittee will meet. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots' Office, 8150 South Loop East, Houston, Texas. The subcommittee meetings will be held at the Houston Port Authority, 111 East Loop South, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Wayne Gusman, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Peter Simons, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Pluta) (or the Committee Sponsor's representative), Executive Director (CAPT Gusman) and Chairman (Tim Leitzell).

(2) Approval of the November 23, 1999 minutes.

(3) Report from the Waterways Subcommittee.

(4) Report from the Navigation Subcommittee.

(5) Status reports on Baytown Tunnel removal, Army Corps of Engineers' dredging projects and pipeline safety, and comments and discussions from the floor.

(6) New business.

Subcommittee on Waterways. The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Subcommittee on Navigation. The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: December 10, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–33211 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Communications/Surveillance Operational Implementation Team (C/SOIT); Cancellation of Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Communications/Surveillance Operational Implementation Team (C/SOIT); Cancellation of Meeting.

SUMMARY: Notice is hereby given of the cancellation of the Communications/Surveillance Operational Implementation Team (C/SOIT) meeting.

DATES: January 11–13, 2000, 8:30 a.m. to 5 p.m.

ADDRESSES: Holiday Inn Rosslyn WestPark Hotel, 1900 Fort Myer Drive, Arlington, VA, (703) 807–2000.

FOR FURTHER INFORMATION: E-mail Don Streeter at *donald.w.streeter@faa.gov.* Notification will be published regarding future C/SOIT activities.

Issued in Washington, DC, on December 16, 1999.

Donald W. Streeter,

C/SOIT Co-Chairman.

[FR Doc. 99–33218 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 22, Notice No. 1]

Oregon Pacific Railroad; Emergency Order To Prevent Operation of Trains on the Railroad Bridge Crossing Johnson Creek in the City of Milwaukie, Oregon

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Oregon Pacific Railroad Company (OPR) to discontinue operation of trains or any railroad on-track equipment on a railroad bridge it owns spanning Johnson Creek (hereinafter designated as the "Johnson Creek Bridge") in the City of Milwaukie, Oregon. The bridge shall remain out of service until it has been properly repaired and its capacity determined by a registered professional engineer licensed to practice in the State of Oregon and who is technically proficient in the field of timber railroad bridge engineering.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. Sec. 20104. These orders may impose such "restrictions and prohibitions * * * that may be necessary to abate the situation." (Ibid.)

Background

The Oregon Pacific Railroad Company, a common carrier, is a part of the general railroad system of transportation and operates two principal segments of track. The segment in which the Johnson Creek Bridge is located consists of 4.28 miles of main track and 2.11 miles of secondary or yard trackage, or a total trackage of 6.39 miles, extending from milepost 0.26 (at its connection with Union Pacific Railroad Company's Portland-Eugene mainline at UP MP 769) at or near East Portland, Oregon, to milepost 4.54 at Milwaukie, all of which is located in Clackamas County, Oregon. The Oregon Pacific Railroad acquired this segment from East Portland Traction Company on January 1, 1997, and commenced railroad operation on that date.

The other segment of railroad operated by the Oregon Pacific Railroad is not contiguous with the first. It extends 9.93 miles from Canby to Molalla, Oregon, and includes a total of 11.38 miles of trackage. The Oregon Pacific Railroad likewise commenced railroad operations on that segment on January 1, 1997.

The President, Chief Executive Officer and General Manager of the Oregon Pacific Railroad is Mr. Richard A. Samuels, whose office mailing address is Oregon Pacific Railroad Company, P.O. Box 22548, Portland, Oregon 97269. Mr. Samuels is also the principal stockholder of the company.

The Oregon Pacific Railroad crosses Johnson Creek in Milwaukie, Oregon, on a timber trestle bridge not identified by number and located approximately one-half mile upstream from the point where Johnson Creek empties into the Willamette River. The location is also approximately 300 feet west of S.E. McLoughlin Boulevard (Oregon State Highway 99E) between its intersections with S.E. Harrison Street and S.E. Jackson Street. Geographic coordinates are 45°26′41″ North latitude and 122°38′38″ West longitude. There is no commercial water traffic on Johnson Creek.

The Oregon Pacific Railroad crosses the bridge to serve one shipper, AmeriCold Logistics, located south of the bridge. AmeriCold Logistics transports frozen food products in mechanical refrigerator cars at a rate of

about two cars per week, typically hauled in one train. Each refrigerator car has a gross weight of 220,000 pounds. The Oregon Pacific Railroad uses a small locomotive whose weight is undetermined.

Condition of the Bridge

The bridge is 127 feet long and consists of a nine-span open-deck timber trestle carrying a single track in a twelve-degree curve to the west. For reference in this emergency order and other documents relating to this emergency order, the bridge components are numbered from north to south and from east to west, with the north dump bent or abutment numbered as 0.

Intermediate bents one through seven nominally consist of four driven timber piles. Bent 8 is framed on a mud sill. Caps measure 14 inches by 14 inches by 12 feet on bents 1 through 5, and bent 8. Caps in bents 6 and 7 are 14 inches by 13 inches by 12 feet, with the large side horizontal. Each span has eight stringers, with four stringers essentially centered under each rail, 8 inches by 18 inches by 32 feet, with stringer joints alternating between bents. The clear space under the bridge is approximately six feet above the water level of the stream.

Track ties of 7 inches by 9 inches by 9 feet rest directly on top of the stringers, and support in turn tie plates and the two running rails, 75 pounds per yard, one 75-pound-per-yard guard rail connected to the west running rail, and two 55-pound-per-yard inner guard rails. The track is of conventional bolted rail construction.

Bent 5 is missing piles 1 and 2, and is supported by only piles 3 and 4, both under its west side. An outrigger beam has been placed under span 5, under the stringers and directly against the north face of the cap of bent 5. This beam consists of several timbers, 8 inches by 16 inches in cross section, placed vertically. These timbers are packed in four plies. Plies 1 and 3 each consist of two 16-foot timbers butt joined at the center of the beam. Plies 2 and 4 each consist of one 30-foot timber and one 2-foot timber, butt joined two feet from the west end of the beam, nearest the bridge. The beam is oriented with its individual plies placed on their short edges.

The outrigger beam is supported on its east end by a track tie resting on the ground on the south bank of Johnson Creek where the creek makes a sharp bend to the north on the east side of the bridge. The outrigger beam is supported on its west end by a ⅜-inch diameter chain wrapped once around two track ties. Wooden blocks and wedges are placed between the bottoms of the stringers and the top of the outrigger beam. The east, or "free" end of the cap of bent 5 has settled approximately five inches from the bottoms of stringers 1 through 4.

Stringer 1 over spans 5 and 6 has essentially failed, with a deep shear crack near its neutral axis for its full length. The cap of bent 6 is demonstrating severe crushing over piles 3 and 4. The bridge shows signs of heavy vertical deflection under load on the east side.

On December 1, 1999, a track safety inspector and a bridge inspector from the Oregon Department of Transportation (ODOT), and a track safety specialist from FRA inspected the bridge. On December 2, 1999, they advised Mr. Samuels of the unsafe condition of the bridge. Mr. Samuels verbally agreed to immediately remove the bridge from service until it could be properly repaired. This discussion and agreement were memorialized in a letter dated December 6, 1999, to Mr. Samuels from FRA's regional administrator for Region 8, Dick L. Clairmont. Subsequent investigation by FRA has revealed, however, that the Oregon Pacific Railroad did not take the bridge out of service, but instead placed more blocking and wedges between the stringers and the top of the outrigger beam and continued to operate railroad rolling stock over the bridge.

The ODOT inspectors, along with an FRA inspector who has received specialized training in timber bridge inspection, then performed a more detailed measurement of the components of the bridge which are summarized in the paragraphs above. Using those measurements, FRA has determined that the Johnson Creek Bridge is in danger of imminent, catastrophic failure at any time that a railroad load passes over the bridge. The configuration of the outrigger beam arrangement overly stresses the stringers, caps, and piles of piers 4, 5 and 6 far beyond their normal capacity, and even the outrigger beam itself could fail at any time. Depending on the amount and direction of deflection of the bridge components, the ⅜-inch diameter chain which secures the west end of the outrigger beam also may become stressed far beyond its ultimate capacity. Merely replacing or reinforcing the chain would not correct the unstable condition created by the lack of piles 1 and 2 in bent 5.

Failure of the bridge under load could have very serious consequences. The bridge failure could cause the train to fall into Johnson Creek, killing or injuring any railroad crew members operating rolling stock, killing or injuring any innocent bystanders using Johnson Creek or its banks, and possibly blocking the creek resulting in widespread flooding in the immediate area. Locomotive diesel fuel and/or fuel and contents of a mechanical refrigerator car could cause severe environmental damage to Johnson Creek and the nearby Willamette River.

Finding and Order

FRA has concluded that any future railroad use of the Johnson Creek Bridge on the Oregon Pacific Railroad poses an imminent and unacceptable threat to public and employee safety. The past failure of the Oregon Pacific Railroad to voluntarily remove the bridge from service and perform proper repairs persuades FRA that the agency cannot rely upon the cooperation of the railroad to protect public safety in relation to the Johnson Creek Bridge. I find that these unsafe conditions create an emergency situation involving a hazard of death or injury to persons.

Accordingly, pursuant to the authority of 49 U.S.C. 20104 delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered that the Oregon Pacific Railroad Company shall discontinue, and shall not permit, the operation of trains or any railroad on-track equipment over the Johnson Creek Bridge while this Emergency Order remains in effect.

Relief

The Oregon Pacific Railroad Company may obtain relief from this Emergency Order by providing the Federal Railroad Administrator with a report of inspection and evaluation of repairs, indicating to FRA's satisfaction that the Johnson Creek Bridge has been acceptably repaired. The report shall be prepared and sealed by a registered professional engineer who is licensed to practice in the State of Oregon and is technically proficient in the field of timber railroad bridge engineering. The report shall state that the capacity of the bridge to carry safely railroad cars and locomotives has been restored. The configuration and weights of the loads for which the determination has been made shall be stated in the report, together with all calculations upon which that determination is based. The original of the engineer's report, bearing the embossed imprint of the seal of the engineer, shall be provided to the regional administrator of FRA's Region 8 before the report will be considered by FRA. Upon FRA's approval of the engineer's assessment of the bridge restoration, and following an inspection

by FRA in which the agency finds the bridge properly repaired to safe condition, the Administrator will rescind this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. Sec. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 12:01 a.m. (PST) on December 17, 1999 and apply to all operations of trains or railroad on-track equipment on the Johnson Creek Bridge on or after that time. Notice of this Emergency Order will be provided by publishing it in the **Federal Register**. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to Mr. Richard A. Samuels, President, Chief Executive Officer and General Manager, Oregon Pacific Railroad Company, P.O. Box 22548, Portland, Oregon 97269; the Union Pacific Railroad Company; the City of Milwaukie, Oregon; AmeriCold Logistics; Oregon Department of Transportation; the Association of American Railroads; and the American Short Line and Regional Railroad Association.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on December 16, 1999.

Jolene M. Molitoris,

Administrator.

[FR Doc. 99–33209 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–5756]

Canadian National Railway; Public Hearing

Canadian National Railway (CN) has petitioned the Federal Railroad Administration (FRA) seeking a permanent waiver of compliance with the Locomotive Safety Standards, Title 49, Code of Federal Regulations, § 229.47(a), which requires each car body type road locomotive be equipped with an emergency brake valve attached to the wall adjacent to the end exit door. CN seeks this waiver for 178 car body locomotives built between 1985 and 1990 and used to haul freight that have never been equipped with an emergency brake valve at the rear exit door.

This proceeding is identified as FRA–1999–5756. FRA issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal, letters of protest, and field report, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on Thursday, January 27, 2000, at FRA headquarters located at 1120 Vermont Avenue, NW, Washington, DC, 7th floor, Conference Room 1. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of FRA's rules of practice (49 CFR 211.25) by a representative designated by FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. FRA's representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–33208 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Extension of Comment Period; Petition for Grandfathering of Non-compliant Equipment National Railroad Passenger Corporation

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant passenger equipment for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 59230. Interested parties were invited to comment on the petition before the end of the comment period of December 2, 1999.

On December 2, 1999, FRA extended the comment period in this proceeding until December 15, 1999, following a Freedom of Information Act request that certain items in FRA files referenced in Amtrak's petition be made available for review (see 64 FR 68195, Dec. 6, 1999). FRA is currently processing this request, and has provided, in part, such information to the requestor in accordance with the provisions of the Freedom of Information Act. FRA has also submitted to the public docket in this proceeding such information provided to the requestor, and FRA will further submit to the public docket any such additional information that may be provided to the requestor pursuant its request.

FRA's processing of the request is not complete, however, and FRA is further extending the comment period in this proceeding until 10 a.m. on December 27, 1999 in order to provide the requestor, and other interested parties, an opportunity to review any additional information that may be submitted to the public docket in this proceeding. Comments received after that date will be considered to the extent possible. Amtrak's petition and all written communications concerning this proceeding are available for examination during regular business hours (9 a.m. to 5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, D.C. on December 16, 1999.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 99–33210 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 6, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7765–M		Carleton Technologies, Inc., Orchard Park, NY (See Footnote 1).	7765
8995–M		BASF Corporation, Mount Olive, NJ (See Footnote 2)	8995
9001–M		UEF Chesterfield Cylinders, Chesterfield, Derbyshire, EN (See Footnote 3).	9001
9894–M		Luxfer Gas Cylinders, Riverside, CA (See Footnote 4)	9894
10684–M		MVE, Inc., New Prague, MN (See Footnote 5)	10684
10938–M		Westvaco, Richmond, VA (See Footnote 6)	10938
12098–M	RSPA–1998–3994	Carleton Technologies, Inc., Orchard Park, NY (See Footnote 7).	12098
12263–M	RSPA–1999–5597	Orbital Sciences Corporation, Dulles, VA (See Footnote 8)	12263
12376–M	RSPA–1999–6573	BBI—Biotech Research Laboratories, Inc., Gaithersburg, MD (See Footnote 9).	12376

[1] To modify the exemption to allow a design change to increase the rated service pressure to 8,900 psig for non-DOT specification cylinders transporting Division 2.2 hazardous materials.
[2] To modify the exemption to eliminate special provisions regarding driver instruction and display of exemption number on the transport vehicle or freight container.
[3] To modify the exemption to allow for an additional Division 2.1 material in non-DOT specification cylinders.
[4] To modify the exemption to allow passenger-carrying aircraft as an authorized mode for the transportation of certain Division 2.2 hazardous materials.
[5] To modify the exemption to allow for vacuum readings to determine leakage and the use of nitrogen as a test medium for non-DOT specification insulated portable tanks.
[6] To modify the exemption to authorize the transportation of an additional Class 9 material in DOT specification tank cars.
[7] To modify the exemption to authorize an increased volume to 180 cubic inches for the non-DOT specification welded sphere.

[FR Doc. 99–33214 Filed 12–21–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transporation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 21, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipts of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of

Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12377–N	RSPA–1999–6567	Essex Cryogenics of MO, Inc., St. Louis, MO.	49 CFR 178.47	To authorize the manufacture, marking and sale of 4DS cylinder that are exempt from third party inspection to be used for air sampling. (modes 1, 2, 3, 4)
12378–N	RSPA–1999–6568	Federal Express Corp. (FedEx), Memphis, TN.	49 CFR 175.33	To authorize the transportation in commerce of dry ice not meeting the exceptions identified in 175.10. (mode 4)
12379–N	RSPA–1999–6563	Western Farm Service, Inc., Walnut Grove, CA.	49 CFR 174.67(j)	To authorize tank cars to remain standing with transfer fitting from the bottom discharge valve attached to remain standing without the physical presence of an unloader. (mode 2)
12380–N	RSPA–1999–6562	Sullivan & Guldin, Inc., Athens, OH.	49 CFR 173.186	To authorize the transportation in commerce of specially designed device equipped with limited quantities of strike anywhere matches rolled within 2.5″ cylinders intended for personal use to be classified as ORM–D products. (mode 1)
12381–N	RSPA–1999–6564	Ideal Chemical & Supply Co., Memphis, TN.	49 CFR 172.203(a), 172.302(c), 177.834(h).	To authorize the unloading of combustible liquid, n.o.s., from UN31A intermediate bulk containers without removal from the transport vehicle on which it is transported. (mode 1)
12382–N	RSPA–1999–6565	Air Transport International, L.L.C., Little Rock, AR.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities presently authorized. (mode 4)
12383–N	RSPA–1999–6566	Sealift Inc., Oyster Bay, NY.	49 CFR 176	To authorize the transportation in commerce of Class 1 explosives on board cargo vessel to be exempt from stowage requirements. (mode 3)
12385–N	RSPA–1999–6570	Maine Yankee Atomic Power Co., Wiscasset, ME.	49 CFR 173.403, 173.427(b)(1).	To authorize the transportation in commerce of steam generators and pressurizer packages containing radioactive components. (modes 1, 3)
12386–N	RSPA–1999–6571	Maine Yankee Atomic Power Co., Wiscasset, ME.	49 CFR 173.427(a)(1), 173.465.	To authorize the transportation in commerce of an atomic power station reactor pressure vessel. (modes 1, 2)
12388–N	RSPA–1999–6618	Mountain Safety Research, Seattle, WA.	49 CFR 173.304(d)(3)(il), 178.33.	To authorize the transportation in commerce of a non-DOT specification container conforming to DOT specification 2P, except for size, testing requirements, and markings, for use in transporting Division 2.1 material. (modes 1, 2, 3, 4)
12390–N	RSPA–1999–6619	Industrial Metals, Beaumont, TX.	49 CFR 178.270–11(b)(i)	To authorize the transportation in commerce of IM–101 portable tanks equipped with alternative relief valve for use in transporting Class 3 material. (modes 1, 3)
12391–N	RSPA–1999–6617	Airgas Mgmt., Inc., Cheyenne, WY.	49 CFR 172.203(a), 173.34(e)(16), 173.34(e)(16)(i)(A).	To authorize the transportation in commerce of certain Division 2.1 and 2.2 gases in DOT Specification 3A or 3AA, and ICC 3, 3A or 3AA cylinders manufactured on or before December 31, 1945, and which have been retested at least every 10 years. (modes 1, 2, 3, 4, 5)
12392–N	RSPA–1999–6621	Consani Engineering, Elsies River, SA.	49 CFR 178.245	To authorize the transportation in commerce of non-DOT specification steel portable tanks permanently fixed within ISO frames, which are similiar to DOT 51 portable tanks for use in transporting all hazardous materials presently authorized. (modes 1, 2, 3)
12395–N	RSPA–1999–6674	Pennzoil-Quaker State Company, Houston, TX.	49 CFR 173.306	To authorize the transportation in commerce of overpressurized 2P cans improperly filled with tire inflator product. (mode 1)

[FR Doc. 99–33215 Filed 12–21–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 14, 1999,

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

Departmental Offices/International Trade Data System Project Office

OMB Number: 1505–0162.
Form Number: CF–3461, CF–3461 ALT, CF–7501, CF–7512, CF–7533 ad FDA701.
Type of Review: Extension Title: International Trade Data System (formerly North American Trade Automation Prototype Data).
Description: The requested data is from volunteer trading community participants in the pilot test to improve the electronic exchange of data among traders and to the Federal Government for international commercial trade transactions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 120.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–33144 Filed 12–21–99; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 14, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems/ Office of Program Services

OMB Number: 1505–0016.
Form Number: International Capital Form BQ–1, Parts 1 and 2.
Type of Review: Extension.
Title: Treasury International Capital Form BQ–1, Part 1: Reporting Banks' Own Claims, and Selected Claims of Broker or Dealer, on Foreigners; and Part 2: Domestic Customers' Claims on Foreigners Held by Reporting Bank, Broker or Dealer, Denominated in Dollars.
Description: Form BQ–1 is required by law and is designed to collect timely information on international portfolio capital movements, including claims of U.S. persons on foreigners. This information is necessary for compiling the U.S. balance of payments, for calculating the U.S. international investment position, and for formulating U.S. financial and monetary policies.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 9,600 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–33145 Filed 12–21–99; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0067.
Form Number: FMS 5902 and 5903.
Type of Review: Extension.
Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement (FMS 5902); and, Depositary, Financial Agency, and Collateral Agreement (FMS 5903).
Description: Financial Institutions are required to complete an Agreement and Resolution to become a depositary of the Government. The approved applications designate the depositary as an authorized recipient of deposits of public money and to perform other services.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 15.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (one-time application).
Estimated Total Reporting Burden: 7 hours.
OMB Number: 1510–0073.
Form Number: FMS–111.
Type of Review: Extension.
Title: Financial Agency Agreement.
Description: This information collection is necessary to acquire data from financial institutions on the number of accounts Electronic Transfer Accounts (ETAs℠) on a month basis.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 36,000 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–33146 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 14, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: New.

Form Number: PD F 5410.

Type of Review: New collection.

Title: Application for Refund of Purchase Price of United States Savings Bonds for Organizations..

Description: PD F 5410 is used by an organization to request refund of purchase price of United States Savings Bonds.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 500 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–33147 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21,2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1356.

Regulation Project Number: REG–248770–96 Final.

Type of Review: Extension.

Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Description: The regulations provide guidance with respect to the recovery of administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Procedures that must be followed to recover such costs are set forth.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.

Estimated Number of Respondents: 38.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 86 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–33148 Filed 12–21–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[ATF Order 1130.15]

Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275 and 296

1. *Purpose.* This order delegates certain of the authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents. Specifically, this order specifies the appropriate ATF officers that are designated in Treasury Decision ATF____, which revised sections of Parts 270, 275 and 296 of Title 27 of the Code of Federal Regulations (CFR).

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to tobacco products and cigarette papers and tubes. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in certain sections of Parts 270, 275 and 296 of Title 27 CFR to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom documents required by certain sections of Parts 270, 275 and 296 of Title 27 CFR, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates and the positions involved in this delegation order has been attached.

John W. Magaw,

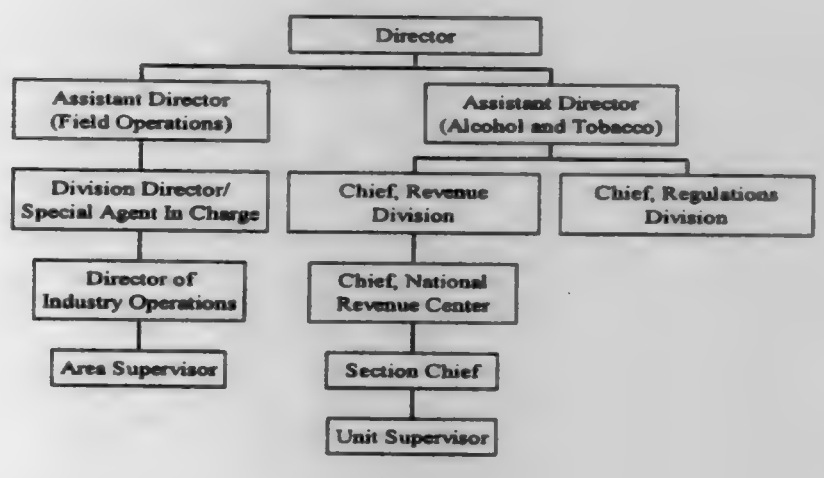
Director.

Attachment—Table and Chart

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS

Regulatory section	Officer(s) authorized to act or receive document
§ 270.22(b)(1)	Chief, Regulations Division.
§ 270.22(b)(2)(C)	Unit Supervisor, National Revenue Center.
§ 275.181(d)	Area Supervisor.
§ 296.77	Unit Supervisor, National Revenue Center.

ATF Organization



This is not a complete organizational chart of ATF.

[FR Doc. 99–33173 Filed 12–21–99; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2000 and ending on June 30, 2000 the prompt payment interest rate is 6.75 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from the http://www.publicdebt.treas.gov.

DATES: This notice announces the applicable interest rate for the January 1, 2000 to June 30, 2000 period.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, Debt Accounting Branch Manager, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5181; Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5166, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3692, or Robin E. Dunlop, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3698.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub.L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Pub.L. 95–563, 92 Stat. 2389 and the Prompt Payment Act of 1982 Sec. 2, Pub.L. 97–177, 96 Stat. 85 provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3902(a).

Therefore, notice is given that, the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning January 1, 2000 and ending on June 30, 2000, is 6.75 per centum per annum. This rate is determined pursuant to the above mentioned sections for the purpose of said sections.

Dated: December 17, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–33135 Filed 12–17–99; 12:30 pm]
BILLING CODE 4810–39–P

Corrections

Federal Register
Vol. 64, No. 245
Wednesday, December 22, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00-6-000]

Gulfstream Natural Gas System, L.L.C; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Gulfstream Pipeline Project, Request for comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

Correction

In notice document 99–32008 beginning on page 69253 in the issue of Friday, December 10, 1999, make the following corrections:

1. On page 69253, in the first column, the subagency name should appear as noted above.

2. On the same page, in the same column, the docket line should appear as noted above.

[FR Doc. C9–32008 Filed 12–21–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6478-8]

RIN 2060-AG91

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT)

Correction

In rule document 99–30229, beginning on page 63702, in the issue of Monday, November 22, 1999, make the following correction:

Table 5. To § 63.1103(d)-[Corrected]

On page 63707, in Table 5 to § 631103(d), in the second column, in the first line "≥5" should be added after "contacts".

[FR Doc. C9–30229 Filed 12–21–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSON

[Release No. 34-42189; File No. SR-CHX-99-12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. To Modify the Recommended Fine Schedule for the Submission of Late Financial and Operational Reports

Correction

In notice document 99–31786, beginning on page 68709, in the issue of Wednesday, December 8, 1999, make the following correction:

On page 68710, in the first column, under the heading **III Discussion** , in the first line, remove the number "1" before the word "After".

[FR Doc. C9–31786 Filed 12–21–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42195; File No. SR-OCC-99-09]

Self-Regulatory Organizations the Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend OCC's By-Laws and Rules to Merge the Currently Separated Equity and Non-Equity Elements of the OCC's Clearing Fund

December 1, 1999.

Correction

In notice document 99–31785, beginning on page 68712, in the issue of Wednesday, December 8, 1999, make the following correction:

On page 68712, in the first column, the date line is added to read as set forth above.

[FR Doc. C9–31785 Filed 12–21–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Wednesday
December 22, 1999

Part II

Consumer Product Safety Commission

16 CFR Parts 1145 and 1212
Safety Standard for Multi-Purpose Lighters; Final Rule
Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Multi-Purpose Lighters That Can Be Operated by Children; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1212

Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues performance requirements for the child resistance of multi-purpose lighters. These requirements address unreasonable risks of injury and death associated with multi-purpose lighters that can be operated by children under age 5. Multi-purpose lighters are hand-held flame-producing products that operate on fuel and have an ignition mechanism. They typically are used to light devices such as charcoal and gas grills and fireplaces. Devices intended primarily for igniting smoking materials are excluded; many such products are already subject to a child-resistance standard at 16 CFR Part 1210.

DATES: The rule will become effective December 22, 2000 and apply to multi-purpose lighters manufactured in the United States or imported on or after that date.

ADDRESSES: Copies of documents relevant to this rulemaking can be obtained from the Commission's Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207–0001, Telephone (301) 504–0800, fax (301) 504–0127, e-mail cpsc_os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477, ext. 1368; e-mail mbogumill@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. *The product.* Multi-purpose lighters are defined in § 1212.2(a)(1) of the rule issued below as follows:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, *etc.*) means: A hand-held, flame-producing product that operates on fuel, incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

(2) The following products are not multi-purpose lighters:

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR 1210).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Matches.

Most multi-purpose lighters have an extended nozzle from which the flame is emitted. The nozzle is typically four to eight inches in length, but can be longer or shorter. Some multi-purpose lighters include a burner that operates at a higher flame temperature than other multi-purpose lighters. These lighters are sometimes referred to as micro-torches. Most micro-torches do not have extended nozzles, but have relatively long, thin, and steady flames that can be directed to their targets. Some micro-torches may have a control that allows the lighter to remain lit after the user lets go of the lighter. This, in conjunction with a stable base or stand, allows hands-free operation of the lighter during operations such as soldering.

Most multi-purpose lighters use butane fuel. The more expensive multi-purpose lighters are refillable. Many of the less expensive Asian imports are also refillable.

Multi-purpose lighters are operated by applying pressure to a trigger, button, or sliding mechanism. This action releases the fuel and activates a spark at the end of the nozzle that ignites the fuel. Because the fuel must travel from the reservoir, usually located in the handle, to the end of the nozzle, the spark is sometimes activated before the fuel reaches the end of the nozzle. When this happens, the fuel will not be ignited. Users of multi-purpose lighters sometimes have to make more than one ignition attempt before successfully producing a flame. Some higher-priced multi-purpose lighters overcome this problem by using a battery that causes a spark to be continuously generated. This is less of a problem with micro-torch lighters because they do not have a long nozzle.

Most multi-purpose lighters now sold include some type of on/off switch. Usually, this is a two-position slider-type switch that must be in the "on," or unlocked, position before the lighter can be activated.

2. *Procedural background.* On July 12, 1993, the Commission published a consumer product safety standard that requires disposable and novelty *cigarette* lighters to have a child-resistant mechanism that makes the lighters difficult for children under 5 years old to operate.[1] 16 CFR 1210. The cigarette lighter standard excludes lighters that are primarily intended for igniting materials other than cigarettes, cigars, and pipes.

In February 1996, Judy L. Carr petitioned the Commission to "initiate Rulemaking Proceedings to amend 16 CFR 1210 *Safety Standard for Cigarette Lighters* to include the Scripto® Tokai Aim 'n Flame™ disposable butane 'multi-purpose' lighter within the scope of that standard and its child resistant performance requirements."

On May 7, 1996, the Commission published a **Federal Register** notice soliciting comments on topics related to issues raised by the petition. 61 FR 20503. After considering the comments received in response to that notice and the other available information, the Commission granted the petition.

On January 16, 1997, the Commission commenced a rulemaking proceeding by publishing an advance notice of proposed rulemaking (ANPR) in the **Federal Register**: 62 FR 2327. The ANPR solicited comments on the risks of injury and death associated with multi-purpose lighters, the regulatory alternatives, and the economic impacts of the regulatory alternatives. The Commission also invited interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the identified risks.

On January 8, 1998, the Commission published a **Federal Register** notice extending the period for issuing a notice of proposed rulemaking until September 30, 1998. 63 FR 1077. This extension was required so the staff could complete the technical work necessary for a Commission decision on whether to issue a proposed rule.

On September 30, 1998, the Commission published a notice of proposed rulemaking (NPR) that proposed a safety standard to address the risk of death and injury associated with multi-purpose lighters that could be operated by children under age 5. 63 FR 52397. This notice extended the period for issuing a final rule or withdrawing the NPR until June 30, 1999.

Also on September 30, 1998, the Commission published a **Federal Register** notice proposing a rule finding that it is in the public interest to issue a standard, or take other regulatory action on multi-purpose lighters, under the Consumer Product Safety Act (CPSA). Elsewhere in today's issue of

[1] 58 FR 37554. The standard became effective July 12, 1994.

the **Federal Register**, the Commission issues a final rule, under Section 30(d) of the CPSA, making this determination.

On October 29, 1998, the staff sent a copy of the proposed safety standard, with a cover letter outlining the Commission's action, to small importers and manufacturers that could be subject to the standard. The letter invited interested parties to submit comments during the comment period.

On January 20, 1999, the Commission met so interested parties could present oral comments. Mr. Don Cooke, Attorney at Law; Dr. Carol Pollack-Nelson, President, Independent Safety Consulting; and Mr. David Baker, General Counsel of the Lighter Association, Inc. presented oral comments at that meeting.

On August 4, 1999, the Commission published a **Federal Register** notice proposing that the child-panel tests be conducted with the lighter on/off switch in the "on," or unlocked, position, instead of in the "off," or locked, position as originally proposed. 64 FR 42302. This change in the test procedure would protect children in situations where the users of the lighters do not return the switch to the "off" position after use. The comment period closed on October 18, 1999. The notice provided an opportunity for oral comments on the proposed change to be presented on September 15, 1999. The Commission received one written comment and no requests for presentation of oral comments. The notice also extended the time for issuing a final rule or withdrawing the NPR until December 31, 1999.

B. Incident Data

Overall, the Commission's staff has identified a total of 340 fires occurring from January 1, 1988, through October 15, 1999, that were reportedly started by children playing with multi-purpose lighters. These fires caused 65 deaths and 138 injuries. For the incidents where the age of the fire starter was known, children under age 5 ignited 237 of these fires, which resulted in 45 deaths and 103 injuries. Twenty-eight of the 45 fatalities were children younger than age 5.

In addition to the fatalities, these fires resulted in severe injuries. Among the fires caused by children younger than age 5, four surviving children received burns over 70% or more of their bodies. These burns will require extensive long-term treatment.

The high proportion of fatalities that were children younger than age 5, and the severity of the injuries, illustrate the hazard associated with children playing with multi-purpose lighters. Because the data are incidents reported to CPSC rather than national estimates, the full extent of the problem may be greater.

Many of the children found the multi-purpose lighters in easily accessible locations, such as on kitchen counters or furniture tops. Others, however, obtained the lighters from more inaccessible locations, such as high shelves or cabinets, where parents tried to hide them.

C. Description of the Final Standard

1. Scope and Definition

Multi-purpose lighters subject to the standard are also known as grill lighters, fireplace lighters, utility lighters, micro-torches, or gas matches. The rule's definition of multi-purpose lighters is given in Section A of this notice. Both refillable and non-refillable lighters are covered, regardless of their cost.

2. Requirements

Most of the provisions of the standard are essentially the same as the Safety Standard for Cigarette Lighters, including a required child resistance of 85%. The child resistance of a multi-purpose lighter would be determined by tests using panels of children. To avoid harming the children in the test panels, the lighters used for the tests are modified so they will not produce a flame when operated. Rather, the lighters are modified (if necessary) to produce a signal that can be seen or heard when the lighter is operated in a manner that would produce a flame in a production lighter. The child-resistant mechanism would be required to: operate safely when used in a normal and convenient manner, comply with the rule's requirements for the reasonably expected life of the lighter, and not be easily deactivated or prevented from complying with the rule's requirements.

The child-resistant mechanisms in multi-purpose lighters must reset automatically, either (1) after each operation of the lighter or (2) after multiple operations but when or before the user lets go of the lighter. This differs from the Safety Standard for Cigarette Lighters, which requires the child-resistant mechanism to reset after each operation. Some multi-purpose lighters, however, allow the lighter to remain lit after it is released by the user. This can allow hands-free operation during operations such as soldering. To address the child-resistance issue with respect to lighters that have this hands-free feature, the rule contains two requirements that are not in the cigarette lighter standard.

The first additional requirement (§ 1212.3(b)(2)) will help prevent the dangerous situation where a child who operates the child-resistant mechanism and lights the lighter could create a flame that would not go out when the lighter is released, even if it is dropped. The rule specifies that, after the lighter is lit, an additional manual operation must be performed to activate any feature that allows the lighter to burn without being held by the user.

The second additional requirement is that a lighter that remains lit after it is released need not return automatically to the child-resistant condition when it is released. It must automatically reset, however, when or before the user lets go of the lighter after turning off the flame.

3. Recordkeeping and Reporting Requirements

The final standard has recordkeeping and reporting requirements that will allow the staff to ensure that lighters comply. The standard also requires manufacturers and importers to provide a certificate of compliance to any distributor or retailer to whom the lighters are delivered.

4. Anti-Stockpiling Provisions

The final rule contains anti-stockpiling provisions to prohibit excessive production or importation of noncomplying lighters during the 12-month period between the final rule's publication and its effective date. The provision limits the production or importation of noncomplying products to 120% of the amount produced or imported in the 1-year period before the publication of the rule. To help assure compliance, manufacturers or importers must provide supporting information to CPSC to establish the number of lighters made or imported during the base period. They must also report shipments of non-child-resistant lighters to CPSC within 10 days after the end of each calendar month during the anti-stockpiling period.

5. Effective Date

The final rule will become effective [insert date that is 12 months after publication] (12 months after it is published), and will apply to all multi-purpose lighters manufactured in, or imported into, the United States on or after that date. Based on its experience with the Safety Standard for Cigarette Lighters, the Commission concludes that this will provide firms with sufficient time to design child-resistant multi-purpose lighters and bring them to market. The Commission is aware of one such lighter already on the market,

and additional lighters are in the final stages of development and testing.

D. Statutory Authority for This Proceeding

Three of the statutes administered by the Commission have at least some relevance to the risk posed by non-child-resistant multi-purpose lighters. These are the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084; the Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471–1476; and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278. The Commission has decided to use the authority of the CPSA to issue the standard for the child resistance of multi-purpose lighters. A full explanation of the Commission's reasons for that decision is published in this issue of the **Federal Register** in a notice, under Section 30(d) of the CPSA, that issues a rule determining that it is in the public interest to regulate this risk under the CPSA, rather than the FHSA or the PPPA. 15 U.S.C. 2079(d).

E. Discussion of Comments on the Proposed Standard

The Commission received 23 written comments on the proposed standard. Three individuals presented oral comments to the Commission on January 20, 1999. Copies of all comments and a transcript of the January 20, 1999, public hearing are available from the Office of the Secretary. The major issues raised in the comments and the Commission's responses are discussed in this section.

Overall Description of Comments

The American Academy of Pediatrics wrote in support of the Commission's action to require multi-purpose lighters to be child-resistant, stating that in addition to the quantitative benefits, the rule will reduce the pain and heartache that result from the death and injury caused by children playing with multi-purpose lighters.

The Executive Director of the National Fire Protection Association Center for High-Risk Outreach wrote in support of CPSC's efforts to reduce the number of deaths and injuries associated with children playing with fires. She stated that preschool age children are at more than twice the risk of fire death than the population at large. She also commented on the August 4, 1999, **Federal Register** notice that proposed a change to the test protocol.

Douglas Lant, Chairman of the British Standards Institute Technical Committee on Matches and Lighters, wrote in support of the Commission's action. He stated that the European Standards Organization (CEN) was considering improvements to the Lighter Standard for Europe, including requirements for child-resistance.

The Chairman of the Coalition for Consumer Health & Safety wrote to urge the Commission to publish a final rule on multi-purpose lighters. This organization is a partnership of consumer, health, and insurer groups working to educate the public and to identify and promote policy solutions to a broad range of health and safety threats.

The Lighter Association, Inc. (Lighter Association), and several member firms, BIC Corporation (BIC), The Colibri Group, Scripto-Tokai Corporation (Scripto), Zippo Manufacturing Company (Zippo), and Swedish Match, wrote in general support of child-resistance for multi-purpose lighters but requested that the Commission address certain concerns about the definition and requirements for multi-purpose lighters (discussed below).

Several small firms, Donel, Inc. (Donel), SNC Group, and Zelco Industries, Inc. (Zelco), commented that a standard for multi-purpose lighters would have adverse impacts on small businesses because of the expense of developing and certifying a child-resistant design and because some manufacturers have already applied for, or obtained, broad patents that limit the number of design options. These firms asked the Commission for relief, either in the form of funding to offset their development and testing expenses or in the form of an extension of the effective date of the rule.

Blazer Corporation, a company that specializes in the distribution of micro-torches, wrote that it agrees in principle that lighters likely to be handled by children should be child-resistant. It also expressed concern that the definition of multi-purpose lighters would include micro-torches used by professionals.

Vinson & Elkins, the law firm that filed the original petition on behalf of Judy L. Carr, and four other law firms, Joseph P. Moschetta and Associates, McDermott and Hansen, Don Cooke, and Sugarman and Sugarman, P.C., provided information on incidents involving multi-purpose lighters. Mr. Cooke appeared before the Commission at the January 20, 1999, meeting to present information about a fire started by a two-year-old boy with a multi-purpose lighter that resulted in the death of the child and his mother. Another 4-year-old child was severely injured in the fire.

Independent Safety Consulting presented comments about children's fire knowledge and attraction to fire and lighters, parental perceptions regarding the hazard and storage of lighters, parental supervision, and the appropriateness of a warning label as a hazard avoidance strategy.

Ms. Lorraine Daly and Ms. Eve Mallett, both consumers, questioned the need for child resistance for products in homes without small children.

Milford Consulting Associates, a testing agency with experience testing child-resistant packaging, cigarette lighters, and multi-purpose lighters, requested certain changes to the procedures for evaluating the child-resistance of multi-purpose lighters.

Particular issues that the comments raised are discussed below.

1. Issue: Effectiveness of the Cigarette Lighter Standard

Scripto stated that there are insufficient data to conclude that the Cigarette Lighter Standard has proven effective in reducing the number of child-play fire losses associated with lighters.

Response: National fire loss estimates show a reduction in the number of estimated residential structure fires caused by children playing with all types of lighters. This reduction is occurring in spite of the fact that these estimates include fires started with multi-purpose lighters (which are not subject to a standard) and fires started by children 5 years old and older (who are older than the children addressed by child-resistant features). The estimated number of lighter child-play fires decreased from 10,600 in 1994, the year the cigarette lighter standard took effect, to 7,200 in 1996. During the same period, estimated deaths decreased from 230 to 130 and estimated injuries decreased from 1,560 to 1,090 (Ault, K., Singh, H., & Smith, L., "1996 Residential Fire Loss Estimates," 10/15/98). Comparing 1996 to 1994, there was a greater percentage reduction in child-play lighter fires (32%) than the reduction in residential structure fires overall (5%). The Commission believes this reduction indicates that child-resistant cigarette lighters are preventing child-play fires. Because there was also a reduction in child-play fires started with matches, other factors, such as fire safety education or general improvements in fire safety (e.g., use of smoke detectors), are also likely to have contributed to the decrease. However, the reduction for child-play lighter fires (32%) is greater than the reduction for child-play match fires (21%). The Commission believes that the available information supports the conclusion that the Safety Standard for Cigarette

Lighters is effective in reducing child-play fires started by children under age 5 with lighters. The Commission expects child-play lighter fires to continue to decline.

Even if these data were not available, the Commission would be justified in issuing the standard. The Commission has estimated the effectiveness of the standard based on test results with children, as it did in issuing the cigarette lighter standard. As discussed in Section H of this notice, the rule is expected to reduce the number of child-play fires associated with multi-purpose lighters by at least 75%.

2. Issue: Relative Risk of Injury

Swedish Match commented that the Commission provided no data to show relative risk rates between matches and non-child-resistant multi-purpose lighters. Zelco commented that the number of fires resulting from matches is surely higher than those from multi-purpose lighters, yet matches are specifically excluded from the rule. Scripto recommended that the CPSC vigorously pursue regulatory action on matches. It stated that the societal benefits of regulating matches would far exceed those of regulating multi-purpose lighters.

Response: Comparisons between child-play fires with matches and with multi-purpose lighters are not valid, because they largely involve children of different age groups. A study of 551 juvenile fire setters conducted in Portland, Oregon, found that use of matches by children younger than age 5 was rare, but was relatively common among children of ages 6 to 11 (Porth, 1999). This is consistent with the differences in motor development for the two age groups. Using a match requires two-hand coordination, a combination of force and precision, and the control to maintain a flame long enough to light something. These factors make it a challenging task for a 3- or 4-year-old child, but much less so for older children. In short, regulating matches would have little impact on child-play fires involving children under 5. Further, the overlap in the abilities of elementary school children and adults makes it impractical to modify the design of matches so they cannot be used by older children.

In contrast, based on CPSC incident data for the period January 1, 1988, through October 15, 1999, about 70 percent of the fires started with multi-purpose lighters were started by children under 5. These fires could be effectively reduced by a requirement that multi-purpose lighters be child-resistant. In baseline testing with children 42 to 51 months of age, the child-resistance of current multi-purpose lighters ranged from 4 to 41 percent. The standard would increase the level of child-resistance to a minimum of 85 percent. The feasibility of making lighters child-resistant, yet acceptable to adults, has been demonstrated by the experience with the Safety Standard for Cigarette Lighters.

In any event, the fact that the Commission might investigate or regulate other products, which present their own feasibility and cost-benefit issues, does not counsel against action on multi-purpose lighters.

3. Issue: Definition of Multi-Purpose Lighters

a. *Exclude high-end multi-purpose lighters.* Zelco commented that the scope should be narrowed to exclude higher-end multi-purpose lighters.

Response: The Safety Standard for Cigarette Lighters excluded luxury lighters (customs or ex-factory value greater than $2.00) because they differed from disposable cigarette lighters in certain characteristics affecting risk. The staff stated that because of their cost, consumers would be less likely to leave luxury cigarette lighters in household locations accessible to young children.

Unlike luxury cigarette lighters, the more expensive multi-purpose lighters are as likely to be involved in child-play fires as the less expensive models because they are stored and used in the same manner. In fact, some of the more expensive multi-purpose lighters are relatively large and may be more difficult to store out of the reach of children. At least one expensive multi-purpose lighter is appropriate for display near the fireplace.

In addition, luxury cigarette lighters often have unusual ignition mechanisms that may be difficult for young children to operate. In the case of multi-purpose lighters, most ignition mechanisms are similar and easy for young children to operate. Multi-purpose lighters are activated by applying pressure to a trigger or button, which initiates fuel flow and causes a spark. Baseline testing indicates that one expensive lighter is as easy for children to operate as less expensive models.

Therefore, the Commission concludes that excluding the more expensive lighters would reduce the benefits of a rule for multi-purpose lighters.

b. Exclude micro-torch lighters. Both the Lighter Association and Swedish Match question the inclusion of micro-torch lighters within the scope of the rule because they do not consider micro-torches to be comparable to the grill-type or "utility" multi-purpose lighters. The commenters argued that micro-torches are more suited for use in activities such as soldering, welding, heat shrinking, and household repairs.

The Lighter Association, Swedish Match, and The Colibri Group suggested that the term "micro-torch" be deleted in order to prevent lighters primarily intended for igniting smoking materials from being incorrectly identified as multi-purpose lighters.

Blazer Corporation, a company that specializes in the distribution of micro-torches, expressed concerns that the broad definition of multi-purpose lighter in the proposed rule may be interpreted to apply to micro-torch products used by professional tradesmen or in industrial settings.

Response: The Commission considers micro-torches comparable to other types of multi-purpose lighters. As stated in the proposal, "micro-torches" are marketed for multiple purposes that overlap those of "grill" or "utility" lighters (*e.g.*, lighting fireplaces, camp fires, barbecues, camp stoves, etc.). All types of multi-purpose lighters are likely to be used and stored in the home in locations accessible to young children. For example, there is an incident where a child under the age of 5 started a fire with a micro-torch. It appears the child found the lighter near a gas furnace where it was used to light the pilot light.

The Commission clarified the definition of multi-purpose lighters to specifically exclude devices intended primarily for igniting smoking materials, whether or not they are subject to the requirements of the Safety Standard for Cigarette Lighters.

Regarding Blazer Corporation's concern about the application of a safety standard for micro-torch lighters to products used by professional tradesmen or in industrial settings, products intended and sold only for professional or industrial use would not be subject to a rule promulgated under the CPSA. 15 U.S.C. 2052(a)(1). If, however, a particular micro-torch model was advertised in general-circulation media (*e.g.*, consumer magazines, catalogs, newspapers, television programs, consumer-oriented Internet web sites, etc.), or was sold in hardware or other stores open to the general public, it would be considered a consumer product subject to the standard. Therefore, if Blazer's products are available to consumers, they will need to comply with the rule.

c. *Define multi-purpose lighters on the basis of length.* The Lighter Association recommended alternative language that would define multi-purpose lighters as

"a hand-held, flame producing device, * * * four inches or greater in length when in the fully extended position * * *" It maintained that the obvious distinguishing characteristic of a grill lighter is the length of the product, which is designed to "reach over fire or into inaccessible places." Zippo also supported a dimensional limitation.

Response: The Commission did not use length to define multi-purpose lighters. There are micro-torch designs that are less than 4 inches long. The hotter, directional flame of a micro-torch compensates to an extent for its shorter nozzle, making it useful for many of the same purposes as "grill" lighters. CPSC staff members found micro-torches convenient to use for lighting a gas grill, a gas stove burner, candles, and a water heater pilot light. Other types of multi-purpose lighters could also be designed to be under 4 inches in length and still be functionally equivalent to longer lighters.

d. *Specify the type of fuel used by multi-purpose lighters.* The Lighter Association and Zippo supported including only those lighters that use a gaseous fuel. Both indicated that it is not technologically or commercially feasible to create a utility lighter that uses liquid fuel. The Lighter Association states that they believe no liquid-fuel utility lighters are produced anywhere in the world and question the Commission's authority to regulate products that do not exist.

Response: As proposed, a multi-purpose lighter was defined as a "flame-producing product that operates on fuel." There is no reference to any specific type of fuel, liquid or otherwise. The Commission concludes that any lighter that is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, and the like should be required to be child-resistant, regardless of the type of fuel, since these lighters would all present the same risk.

e. *Change the words "self-igniting" to "manually operated."* The Lighter Association recommended changing "self-igniting" in the definition of multi-purpose lighter to "manually operated ignition mechanism" since the term "self-igniting" is not accurate because some action is required to ignite a lighter.

Response: The Commission agrees that the term "self-igniting" is imprecise. Therefore, the Commission revised the definition of multi-purpose lighters in the final rule to read "A hand-held, flame-producing product that operates on fuel [and] incorporates an ignition mechanism. * * *"

f. *Delete the exclusion for lighters with more than 10 ounces of fuel.* The Lighter Association, BIC, and Scripto objected to the exclusion of multi-purpose lighters that contain more than 10 ounces of fuel. They question the basis for this exclusion and express concern that an arbitrary cut-off invites the introduction of products that will fall outside of the scope of the rule. The Lighter Association and BIC state that there should be no limit on the amount of fuel because there are lighter attachments sold without any fuel or fuel reservoir that work with any quantity of fuel. In support of this argument, they provided a lighter attachment, with an ignition mechanism, that accommodates a 14.1 ounce propane cylinder.

Response: The final rule continues to exclude lighters that contain more than 10 ounces of fuel. As the Lighter Association recognized in its comments, this provision's purpose is to distinguish multi-purpose lighters from large propane torches, which are also used for soldering and brazing. Most multi-purpose lighters contain less than 2 ounces of fuel. A lighter with a fuel capacity of more than 10 ounces would be quite large—on the order of 3 inches in diameter by 7 inches high. Such a lighter would not be convenient for the typical uses of the lighters within the scope of the final rule. Therefore, such lighters would not likely be stored in the same locations as the smaller lighters that have been involved in child-play fires, and thus may not present the same risks.

A lighter mechanism designed to accommodate a fuel cylinder with a capacity of 10 ounces or less would clearly be subject to the requirements of the final rule. The mechanism cannot function as a multi-purpose lighter without a fuel source being attached. This is true whether the attachment is sold with or without a fuel cylinder. For example, there are currently micro-torch multi-purpose lighters that utilize disposable butane cigarette lighters as the fuel source. Some of these micro-torches are sold with the cigarette lighter and some are sold without the cigarette lighter. Both products would be subject to the requirements for child-resistance.

4. Issue: The Proposal to Require Multiple Operation Capability is Design-Restrictive

The Lighter Association, BIC, Scripto, Zippo, Swedish Match, and SNC Group strongly opposed the requirement that a multi-purpose lighter must allow multiple operations of the ignition mechanism (§ 1212.3 (b)). They characterize this provision as a design requirement that would reduce competition by narrowing the scope of complying designs and would result in wasteful patent disputes. The Lighter Association and SNC Group indicate that, as proposed, this requirement essentially mandates a design that is currently marketed by a single company. BIC reported that they have patent applications pending in the United States and in countries around the world for a multi-purpose lighter that allows for multiple operations of the ignition mechanism. BIC commented that finalizing the requirement as proposed would invite multiple patent infringement suits and severely hinder the design and implementation of creative child-resistant mechanisms. Scripto provided a test method for evaluating the lighting reliability of a lighter. The Lighter Association proposed alternative language that they believe would not limit design options.

Response: The Commission acknowledges that the multiple-operation requirement is design restrictive. For example, designs for child-resistant lighters that did not increase the risk of flashback hazard because they had a high degree of lighting efficiency and would light on the first try, but did not allow for multiple operations of the ignition mechanism, would not have been allowed.

The Commission proposed the requirement for multiple operations in response to a concern raised by Scripto and the Lighter Association that adding a child-resistant feature that resets after each operation of the ignition mechanism would create the potential for flashback in situations such as igniting a gas grill. Flashback in this context is the sudden ignition of excess fuel that has accumulated while the user is trying to light the device to be used to ignite the fuel. This is largely due to the inherent unreliability of some multi-purpose lighters to ignite with each operation of the ignition mechanism. With designs that allow multiple operation attempts before the child-resistant mechanism resets, the lighting efficiency of a child-resistant multi-purpose lighter should be essentially the same as that of the non-child-resistant lighters currently in use. Scripto's suggested lighting efficiency test was rejected because of insufficient data to show that the test represented the conditions under which consumers would use the lighters.

The central issues concerning this risk of flashback are:

1. Would a child-resistant mechanism that resets after each operation, and thus must be manipulated again before another ignition attempt can be made, delay successful ignition of a gas appliance to the extent that a flashback would result when the lighter finally ignites?

2. And if so, would the flashback have the potential to produce a serious burn injury?

The Directorate for Laboratory Sciences (lab), Division of Engineering (LSE), conducted a number of tests using gas-fired grills. The testing was conducted to determine the duration of "delayed ignition" that could be permitted without resulting in a "flashback" that could cause a serious burn injury.

Preliminary tests were conducted with three sizes of grills. The lab found that the smallest grill presented the worst-case condition. When the accumulated propane gas was ignited in the shallow well of the smallest grill, the resulting flashback reached the highest level above the cooking surface of the three grills tested. The lab used cheesecloth sleeves to determine whether clothing would ignite as a result of the flashback. The lab found that allowing the propane gas to accumulate for 20 seconds could result in a flashback that would ignite the cheesecloth sleeve. The sleeve did not ignite with a 15-second accumulation of gas.

The lab conducted 15 additional tests using the smallest grill. The gas was turned on and allowed to accumulate for 15 seconds before ignition. The tests were conducted with the cheesecloth sleeves touching the cooking surface of the grill directly above the ignition point. The cheesecloth sleeves did not ignite. Videotapes of the testing showed that the duration of the flashback events ranged from 0.6 to 1.1 seconds.

The Directorate for Health Sciences used the laboratory test results and information from the published literature on flash fires to evaluate the potential for serious burn injury. Health Sciences concluded that exposure to a very short duration flashback from propane fuel is unlikely to cause serious injury (i.e., second-or third-degree burns). Furthermore, the Division of Human Factors concluded that the actual exposure to the flashback would be even shorter than the measured duration because of the user's normal reflex to withdraw from the flashback. A shorter period of exposure would further reduce the potential for injury.

The Directorate for Engineering Sciences, Division of Mechanical Engineering (ESME), tested six brands of non-child-resistant multi-purpose lighters to determine the number of times a consumer might need to operate the ignition mechanism to produce a flame. In 50 of 53 trials, a flame was obtained in 5 or fewer attempts and, in 47 of 53 trials, in 3 or fewer attempts. The number of attempts averaged less than 3 for all brands of lighters.

The Division of Human Factors conducted a study to determine if users are capable of operating child-resistant lighters that reset after each operation at least 5 times within 15 seconds. Disposable child-resistant cigarette lighters were used for this study because, at that time, the staff was not aware of any multi-purpose lighters with child-resistant mechanisms that reset after each operation attempt. For the 7 lighters tested, the minimum number of operations achieved in 15 seconds ranged from 4 to 8. The maximum ranged from 14 to 24 operations. In most of the trials (195/209), the subjects operated the lighters 6 or more times.

The Directorate for Epidemiology, Division of Hazard Analysis, reviewed the incident data on flashback incidents associated with igniting gas appliances such as ranges, grills, water heaters, etc. The NEISS data from 1996–1998 indicated that, of the estimated 1,500 victims treated each year for burn injuries related to flashback, the majority were treated and released. About 8% of the injuries required hospitalization. Malfunction of the products being ignited, fuel leaks, and user error appeared to be contributing factors in incidents that resulted in serious injury. Although delays in ignition apparently caused several incidents, the available data provide no evidence that delay caused by difficulty in operating multi-purpose lighters results in flashback that causes serious injury.

The staff found that a flashback resulting from a 15-second accumulation of propane gas is unlikely to ignite clothing or cause a serious burn injury. The tests showed that a flame can be produced with most non-child-resistant multi-purpose lighters in 5 or fewer operations. Cigarette lighters with child-resistant features that reset after every operation were operated at least 6 times within 15 seconds in most of the trials. Therefore, the staff concluded that a child-resistant mechanism that resets after each operation of a multi-purpose lighter would not prevent a user from successfully producing a flame and igniting a gas appliance before a hazardous flashback condition could occur.

The staff found insufficient evidence to conclude that current multi-purpose lighters pose a risk of injury due to flashback, or that the addition of a child-resistant mechanism that resets after each operation would pose such a risk.

Even without the results of these tests, however, the Commission would be justified in eliminating the requirement for multiple-operation capability from the rule. First, the commenters who first raised the issue of flashback provided no persuasive data to support their concern. Second, the injury data from flashback incidents do not reveal any injuries due to small delays such as might result from child-resistant mechanisms. (The only exception to this was one incident where the person put his face over a grill to see why it did not light and kept operating the (non-child-resistant) lighter.)

Third, market pressures likely will act to reduce the risk of flashback. The only child-resistant multi-purpose lighter now on the market is capable of multiple operations without operating the child-resistant feature each time. This lighter is easy to use and is made by BIC, a large manufacturer with an extensive distribution network. This lighter is likely to bring a competitive pressure for other manufacturers to make their child-resistant multi-purpose lighters easy to use. Thus, any risk of flashback would be reduced. In addition, repeat sales of a lighter model that is hard to light would suffer. The Commission concludes that the proportion of multi-purpose lighters with inefficient ignition mechanisms that will be marketed, if any, will be small. Of this small percentage, some persons would be cautious, or follow the instructions of some appliance manufacturers, and light the flame before turning on the gas; these persons would not be at risk of flashback. The Commission notes that of the non-child-resistant multi-purpose lighters that staff tested, one manufacturer had two models that were significantly less efficient in lighting than most of the other models. While this rule contains no lighting efficiency test, should any child-resistant multi-purpose lighter's poor lighting performance result in a flashback problem, the Office of Compliance would consider appropriate action.

Therefore, the Commission is unable to support a requirement in the final rule that multi-purpose lighters must allow multiple operation attempts before the child-resistant mechanism resets. The Commission revised the requirement for multi-purpose lighters in the final rule to allow a child-

resistant feature to reset after one or more operations of the ignition mechanism.

For the reasons given above, the requirements for multi-purpose lighters in § 1212.3 of the final rule read as follows:

(a) A multi-purpose lighter subject to this part 1212 shall be resistant to successful operation by at least 85% of the child-test panel when tested in the manner prescribed by § 1212.4.

(b) The child-resistant mechanism of a multi-purpose lighter subject to this Part 1212 must:

(1) Operate safely when used in a normal and convenient manner,

(2) Comply with this § 1212.3 for the reasonably expected life of the lighter,

(3) Not be easy to deactivate or prevent from complying with this § 1212.3.

(4) Except as provided in subparagraph (b)(5) of this section, automatically reset when or before the user lets go of the lighter.

(5) The child-resistant mechanism of a multi-purpose lighter subject to this Part 1212 that allows hands-free operation must:

(i) Require operation of an additional feature (e.g., lock, switch, etc.) after a flame is achieved before hands-free operation can occur;

(ii) Have a manual mechanism for turning off the flame when the hands-free function is used; and either

(iii) Automatically reset when or before the user lets go of the lighter when the hands-free function is not used; or

(iv) Automatically reset when or before the user lets go of the lighter after turning off the flame when the hands-free feature is used.

5. Discussion of "easily deactivated"

The Lighter Association, BIC, and Scripto objected to language in the discussion of comments on the ANPR in the preamble of the proposal that states that the Commission considers an "easily deactivated" child-resistant mechanism to be one that can be easily disabled with a common household tool. The Lighter Association stated that this is a very significant issue because no lighter is designed to this standard and that such a requirement would mean that a lighter must be tamper-proof. BIC stated that this interpretation is unreasonable and unworkable. Scripto commented that no standard can prevent a consumer's intentional destruction or alteration of a product's safety features, and that a "tamper-proof" requirement is unreasonable and impractical. Scripto suggested establishment of performance criteria to determine what would constitute "easily deactivated."

Response: Disabling or removing the child-resistant mechanism was a common problem in the first 2 or 3 years after the effective date of the Safety Standard for Cigarette Lighters. In part, this was due to general consumer resistance to something new and less convenient. In addition, some of the early child-resistant cigarette lighter designs were difficult to operate. Effective enforcement of the standard, including pursuit of firms who purposely disabled child-resistant mechanisms on cigarette lighters offered for sale, and design changes by manufacturers to make mechanisms easier for consumers to use, appear to have reduced this problem for cigarette lighters.

The Commission expects that manufacturers will use their experience with cigarette lighters to design child-resistant mechanisms for multi-purpose lighters that will be easy for consumers to operate. In addition, many consumers have had experience with child-resistant mechanisms on other types of lighters.

The Commission is expressing no position at this time on any criterion for when a lighter is easily deactivated. If the staff identifies either a cigarette lighter or a multi-purpose lighter model with a child-resistant mechanism that it believes can be easily deactivated, the Office of Compliance would consider appropriate action.

6. Issue: Impact of a Rule on Small Companies

Donel, a small U.S. manufacturer of more expensive multi-purpose lighters, wrote that the cost and time to redesign and certify a lighter will make it very difficult for it to continue in the marketplace. It requested an additional 2-year grace period to comply with the regulations. The purpose of its request was its understanding that other firms were actively pursuing patent applications for child-resistant technology and that it needed to see what these patents covered before beginning to work on its own technology. They stated that, once the pending patents are issued, it would be able to proceed with redesigning or licensing to comply with the requirements.

SNC Group, a small U.S. firm, commented that patents filed by some companies may restrict competition, create hardship on small companies, and ultimately raise the cost to consumers. SNC Group suggested a number of possible ways to reduce the burden of a rule on small firms, including CPSC-mandated design standards in which no one manufacturer or importer has intellectual property rights, free legal counsel and testing for small businesses with proprietary designs, and providing loans to small businesses to lessen the financial hardship associated with legal advice and retooling.

Response:

Effective date. The costs of developing and testing lighters that would meet the rule's requirements may have a significant impact on some small firms that have proprietary or exclusive rights to a non-child-resistant multi-purpose lighter design. The rule provides an effective date of 12 months from the date of publication in the **Federal Register**, as to products manufactured in; or imported into, the United States on or after that date. However, an additional 2-year grace period for small firms is not appropriate.

In order to issue a rule with an effective date of more than 180 days or less than 30 days, the Commission has to find that the longer or shorter date is in the public interest. 15 U.S.C. 2058(g)(1). The 12-month effective date lessens the economic burden of the rule, especially on small firms, while providing protection to consumers in a reasonably expeditious manner.

Based on experience with the Cigarette Lighter Safety Standard, the Commission estimates that it will take an average of 12 months to develop, test, retool for production, perform production tests, and manufacture and ship the product. The results of the conformance testing must be reported to CPSC at least 30 days in advance of the importation or distribution of the lighters. In addition, the time required for importing complying lighters into the United States will be a significant consideration for many firms.

Some manufacturers, especially those that have been following this rulemaking proceeding, may have already begun developing child-resistant models. Manufacturers who have had experience with developing child-resistant cigarette lighters may be able to take advantage of that experience and be able to manufacture and market child-resistant lighters sooner than 12 months. In fact, at least one model is already on the market and we are aware of other manufacturers that are working on child-resistant designs.

Manufacturers who have not followed, or only very recently started following, this rulemaking proceeding may not have begun any development work. Additionally, manufacturers that do not also produce cigarette lighters, such as some micro-torch

manufacturers, do not have prior experience developing child-resistant designs. These manufacturers may be adversely affected by an effective date shorter than 12 months.

Based on the Commission's experience with the Safety Standard for Cigarette Lighters, firms will continue to file new patents for child-resistant designs. New firms will enter the market, and others will continue working on technology for new or improved child-resistant designs. The commenters did not explain why they would not face similar issues on the delayed effective date as they will face on the proposed effective date.

Existing or pending patents may make entry into the market more difficult. However, any negative impact regarding patent infringement issues will be minimized because the standard is a performance standard rather than a design standard. Revising the requirements in the final rule to allow the child-resistant mechanism to reset either after one or more operations should also reduce some patent infringement concerns by allowing a wider variety of designs to comply with the standard.

A 12-month effective date does not mean that no benefits will occur until 1 year after the publication of the final rule. Indeed, one manufacturer already has a child-resistant multi-purpose lighter on the market. Other manufacturers can be expected to introduce their own models as they are developed. Therefore, CPSC expects that the number of child-resistant multi-purpose lighters on the market will increase prior to the effective date of the rule. For the reasons, stated above, the Commission concludes that a 12-month effective date is in the public interest.

Other actions. The Consumer Product Safety Act requires that consumer product safety standards be expressed in terms of performance requirements. This may prevent the Commission from mandating a single design. Also, mandating a single design would stifle the creativity of individual manufacturers and preclude future design improvements. The Commission does not have the authority or the funding to provide loans or subsidies for legal counsel, retooling, or testing.

As noted above, the rule will adversely affect some small businesses. Nevertheless, these impacts are justified by the overwhelming fire-prevention benefits expected from the rule.

7. Costs of Testing and Certifying

Zelco commented that the Commission has failed to make allowances for small business. Zelco stated that the cost of testing and certification is exorbitant and an unnecessary burden on small companies. Zelco requested that the testing requirements be reduced or that the Commission subsidize the costs for small businesses. Donel commented that there are enormous costs involved in redesigning and certifying a child-resistant lighter.

Response: The Commission did consider the impact of testing and certifying on small businesses. The Preliminary Regulatory Analysis in the proposal estimated the average cost of testing at about $25,000 per model. However, testing and certification are necessary to ensure that all multi-purpose lighters on the market are child-resistant.

8. Issue: Supervision

Zelco commented that lighters are adult products and that, if children were supervised and taught to respect them, there would be no need for these regulations. Scripto stated that child-resistant mechanisms are not a substitute for proper adult supervision. Scripto stated that, in their experience, most instances of serious injury associated with child-play fires involved gross parental neglect.

Independent Safety Consulting commented that incidents involving multi-purpose lighters demonstrate the normal and expected range of parental behavior when it comes to supervision; accidents happen even when children are appropriately supervised. The American Academy of Pediatrics commented that adult supervision can never be perfect.

Response: Proper adult supervision is very important. Teaching children to "respect" adult items, and otherwise avoid hazards, is a necessary component of child rearing. It is, however, an unreliable strategy for injury prevention. Three-and 4-year-old children are fully capable of verbalizing rules repeated to them by adult caretakers. This is simple mimicry to a large extent, and does not imply either that children have a full understanding of the potential consequences of their behavior, or that they have developed sufficient control of their impulses to obey the rules with 100-percent consistency.

Congress addressed the general issue of adult responsibility in its passage of the Poison Prevention Packaging Act. The Report of the Senate Committee on Commerce (1970) stated that negligence is not the principal cause of poisoning incidents, and that there are too many potential hazards to expect that children will be adequately protected from all of them solely through adult intervention. S. Rep. No. 91–845 at 3 (1972).

The fire incident reports show that children generally were under reasonable levels of supervision at the time they started the fires. While child-resistant mechanisms do not substitute for parental supervision, they can provide a valuable measure of safety.

9. Issue: Labeling

Zelco commented that labeling requirements would be sufficient. The American Academy of Pediatrics stated that product labeling is very important, but that it will not be as effective as making the lighters child-resistant. Independent Safety Consulting commented that a label is not likely to significantly reduce these fires and that warning labels cannot affect behavior nearly as well as can a technical design change.

Response: The Commission does not believe that warning labels alone can effectively address the risks associated with multi-purpose lighters. Labeling of multi-purpose lighters (including "Keep out of reach of children") has always been required under the FHSA, and this has clearly been insufficient to prevent child-play fires. Since most caregivers are fully aware of the dangers of young children playing with lighters, and since incident information shows that children access these lighters in spite of attempts to store them out of reach, the Commission concludes that additional or different warning statements would not reduce the incidence of child-play fires with multi-purpose lighters.

10. Issue: Education

Zelco stated that the aim of these regulations could be accomplished just as easily through education. Scripto commented that the Commission must consider the need for concomitant education efforts. Swedish Match recommended that the Commission fund a strong education program to "address consumer behavior in leaving their lighters and their young children unattended."

The American Academy of Pediatrics commented that consumer education is very important but that it will not be as effective as making the lighters child-resistant. Independent Safety Consulting states that an education campaign is not likely to significantly reduce these fires. Child-resistant mechanisms should be coupled with information and education so that parents can be aware of the limitations of a child-resistant feature.

The Lighter Association provided information about education programs they developed with the Learn Not to Burn Foundation and the National Fire

Protection Association. The programs warn preschoolers and adults of the risk of lighters and matches. The Lighter Association also submitted an article from the January/February 1999 National Fire Protection Association (NFPA) Journal reporting that the Portland, Oregon, program showed a 36-percent decline in juvenile fire-setting as a result of use of the Youth Education Program.

BIC submitted a copy of their "play safe! be safe!"® safety program, which was developed in 1994 in cooperation with Fireproof Children of Pittsford, New York. This program teaches young children the basics of fire prevention and shows them how to respond to specific situations in case of fire. The program is being utilized in hundreds of pre-school classrooms in the U.S. and Canada.

Response: The Commission does not believe that education alone can effectively address the risks associated with multi-purpose lighters. As an injury prevention strategy, education is less effective than product modifications, which do not rely on behavior changes. Education serves to provide the public with accurate information. For example, it may be appropriate to advise consumers that child-resistant does not mean child-proof, and that child-resistant mechanisms are intended to prevent lighter use by most children under 5.

The incident data, however, show little need for an education program to "address consumer behavior in leaving their lighters and their young children unattended." The data show that, in general, children were not "unattended," and that in many cases, lighters were placed where they could be thought to be "out of reach" but were nevertheless reached.

The effectiveness of the Youth Education Program is unsubstantiated because there are important confounding factors that preclude a valid inference of a direct cause-effect relationship between the program and any statistically significant change in fires set by juveniles. Furthermore, it is not clear that the Youth Education Program addressed the age group targeted by a standard for child resistance.

The Safety Standard for Cigarette Lighters was issued in 1993 and became effective in 1994. It is possible that the use of child-resistant cigarette lighters contributed to the drop in the proportion of fires attributable to juveniles over the 4-year period (1993/1994 to 1996/1997) cited in the NFPA Journal article (if, as noted above, children under 5 are included in the age group studied).

Given the lack of consistent evidence of their effectiveness, the Commission concludes that education programs are an inadequate substitute for the a standard that requires multi-purpose lighters to be child resistant.

11. Issue: Provisions of Test Protocol

a. *Position of on/off switch.* BIC contended that multi-purpose lighters with on/off switches should be tested with the switch in the unlocked position, rather than in the locked position, as proposed. BIC stated that many consumers would leave the lighter in the unlocked position. Further, BIC pointed out that a manufacturer could design a lighter with an on/off switch that is very difficult for a child to unlock, and with a very simple child-resistance mechanism which, in itself, would not meet the 85% child-resistance requirement.

Response: The Commission agrees with BIC's recommended modification to the test protocol because on/off switches are not adequate to serve as part of the child-resistance mechanism. First, as the Commission's baseline testing demonstrated, most children in the panel age group (42 to 51 months old) can operate the switches, which are similar to those used on many types of toys. Second, when practical, safety devices should function automatically. When in the locked position, the switch may help delay or deter some proportion of children. This protection, however, is not reliable. To provide this protection, intended users must return the switch to the locked position every time the lighter is used. For a variety of reasons, even careful adults may fail to do so. Thus, as BIC points out, test results for lighters tested with the switch in the locked position may not reflect the true child-resistance of the product as actually used by consumers.

Therefore, on August 4, 1999, the Commission published a notice in the **Federal Register** to propose that the test protocol should require that lighters with on/off switches that do not automatically reset to the locked position be tested with the switch in the on, or unlocked, position. The Commission also provided an opportunity for interested parties to present oral comments on this issue on September 15, 1999. The Executive Director of the National Fire Protection Association Center for High-Risk Outreach commented that conducting the protocol test with the lighter on/off switch in the unlocked position would add an important element of realism to the test.

Accordingly, the Commission revised the test procedure at § 1212.4(f)(1) in the final rule to provide:

Note: For multi-purpose lighters with an "on/off" switch that does not automatically reset to the locked position, the surrogate lighter shall be given to the child with the switch in the "on," or unlocked, position.

b. *Participation of children in multiple tests.* Milford Consulting Associates endorses the provision that allows the same children to test child-resistant packaging, cigarette lighters, and multi-purpose lighters, so long as the children participate in each test on a different day. It stated that the cross learning from test to test would be negligible, but that the children's familiarity with the test setting would be facilitated by multiple tests, making the test less intimidating to the children.

Response: The Commission agrees that the cross learning from one type of test to another would be negligible. The test procedure in § 1212.4(a)(7) of both the proposal and the final rule allows children to participate in tests of different products, provided that the tests are conducted on different days.

c. *Tester quotas and lighter quotas.* Milford Consulting Associates requested some changes to the requirements for the number of children who are tested by each tester and in the number of tests conducted with each surrogate lighter. They requested that when two central location test sites are used and a tester or a surrogate lighter drops out, the remaining tests be allocated equally to the remaining testers at that one test site.

Response: Currently, the test procedure has very specific requirements for the number of children who can be tested by each tester and the number of times each surrogate lighter can be used in testing. The reason for these requirements is to minimize the impact of any one tester or any one lighter on the final test results. Based on the staff's experience with the standard for cigarette lighters, tester variability can influence the test results. In addition, surrogate lighters may vary in operation forces. Because exceeding the proposed quotas could introduce test bias, the Commission did not make any changes.

d. *Participation.* Milford Consulting Associates requested that children who refuse to attempt to operate the surrogate multi-purpose lighter throughout the entire test period should be counted in the test results, provided they are not disruptive. They stated that in a real-life situation some children would refuse to touch a lighter even while a companion is doing so.

Response: The Commission believes that refusing children should continue to be eliminated from the test results because it provides a more appropriate

test for the lighter. A child's refusal in a test may be related to the circumstances of the test and does not necessarily mean that the child would not attempt to operate a lighter in the home. The Commission believes that the 85% acceptance criterion should be based on the number of children who attempt to operate the lighter and are unable to do so. This is the procedure used in the Safety Standard for Cigarette Lighters.

e. *Orientation of lighter during demonstration.* BIC Corporation and Milford Consulting Associates requested a change in § 1212.4(f)(3) of the test protocol. In the proposed rule, during the demonstration of lighter operation to the children, the tester was instructed to hold the surrogate multi-purpose lighter in a vertical position in one hand with the child-resistant feature exposed. BIC pointed out that the normal operating position of multi-purpose lighters for many purposes is horizontal.

Response: The Commission agrees that this requirement should be changed because some multi-purpose lighters are operated in a vertical position and some are operated in a horizontal position. The final rule eliminates reference to any specific orientation. Instead, the rule provides that the tester should hold the lighter in a comfortable operating position in one hand so both children can see the operation of the child-resistant mechanism and the ignition mechanism during each demonstration. The purpose of this provision is to assure that the children are able to clearly see the operation of the lighter. As long as the children can see the operation, there is no need to hold the lighter in any particular position.

12. Issue: Anti-Stockpiling Reporting

Scripto recommends a change to the anti-stockpiling provision. This change would require information used to establish the number of lighters made or imported during the year following publication of the final rule to be filed with CPSC at the end of each calendar month instead of within 10 days of shipment, as proposed. Scripto states that this would reduce the reporting requirements and provide the Commission with better visibility and control of these shipments.

Response: Because industry members reported abuses of the similar anti-stockpiling requirement in the Safety Standard for Cigarette Lighters, the Commission proposed a reporting requirement for this rule. The Commission agrees with Scripto's recommendation, in the interest of reducing the paperwork burden on manufacturers and the staff without compromising the ability of the Commission to effectively enforce the anti-stockpiling provision. The final rule requires reporting within 10 days of the end of each calendar month, for lighters shipped within that month, instead of within 10 days of lighter shipment.

13. Issue: In-Bond Shipments

Scripto reported problems it has experienced with seizures by customs and delays at foreign ports of shipments of non-child-resistant lighters that are imported into the U.S. in bond for export to other nations. It requested CPSC to review this transit-and-export process in order to reduce unnecessary delays and paperwork in the future.

Response: Scripto refers to the process of moving noncomplying cigarette lighters manufactured in Mexico through the United States, in bond, for export to foreign countries that do not require the lighters to be child-resistant. This process is a program of the U.S. Customs Service. If contacted in advance of such shipments, the Office of Compliance is able to work with manufacturers and importers to facilitate the smooth movement of in-bond shipments.

14. Issue: Households Without Young Children

Ms. Lorraine Daly, a consumer, wrote that there is a very large percentage of older citizens in the country who don't have children in their homes and therefore don't need the protection of child-resistance on medicines or lighters. Similarly, Ms. Eve Mallett wrote, "We can't child proof the world at the expense of childless or older people."

Response: Available data indicate that both lighter child-play fires and accidental ingestions of medicines have occurred in the homes of older consumers. These incidents commonly occur while grandparents are baby-sitting or during family visits. The Poison Prevention Packaging Act has provisions that allow for availability of non-child-resistant packaging for medicines otherwise required to be in child-resistant packaging. These provisions allow handicapped or arthritic consumers to have ready access to their medicines. However, there is no comparable need for a consumer to have a non-child-resistant multi-purpose lighter.

In addition, unlike multi-purpose lighters, the particular design of child-resistant packaging for medicines is selected by the manufacturer or the pharmacist, not the consumer. Like child-resistant cigarette lighters, there will be a number of different multi-purpose lighter designs to choose from. The Commission believes that older consumers who can operate a current multi-purpose lighter will find a child-resistant multi-purpose lighter that they are able to operate with little or no difficulty.

Therefore, there is no need to forego the lifesaving benefits of the rule to accommodate the special needs of elderly or handicapped persons.

F. Environmental Considerations

Pursuant to the National Environmental Policy Act and CPSC's procedures, the Commission considered the potential environmental effects of the rule. Under CPSC's regulations, this rule falls within a category of actions that normally have little or no potential for affecting the human environment, and for which neither an environmental impact assessment nor an environmental impact statement is required. 16 CFR 1021.5(c)(1).

Less than 1% of the non-child-resistant multi-purpose lighters that are sold in this country are manufactured domestically. The rule is not expected to significantly alter the amount of materials, energy, or waste generated during production of the lighters. Nor should the rule cause manufacturers to shift production to other countries or locations. Molds and other tools used by manufacturers in the production of multi-purpose lighters or their components are periodically replaced. Potentially, the rule may cause some manufacturers to replace the molds and other tools earlier than they would have otherwise.

The rule does not require any recall of non-child-resistant lighters manufactured or imported before the effective date; therefore, there are no disposal issues with regard to such lighters. The rule is not expected to affect the manner in which multi-purpose lighters are packaged for sale, or to affect the amount of butane or other fuel used in the operation of the lighters.

The Commission concludes, from the available information, that the rule will not significantly affect raw material usage, air or water quality, manufacturing processes, or disposal practices in a way that will significantly impact the environment.

G. Statutory Findings

The CPSA also requires the Commission to make the following findings before it promulgates a rule:

(A) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable

risk of injury associated with such product;

(B) That the promulgation of the rule is in the public interest;

(C) That the benefits expected from the rule bear a reasonable relationship to its costs; and

(D) That the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated. 15 U.S.C. 2058(f)(3).

The Commission has made the required findings, which are published as Appendix A to the final rule.

H. Regulatory Analysis

Before issuing a final rule, the CPSA requires the Commission to consider and make appropriate findings for inclusion in the rule with respect to:

(A) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) The need of the public for the consumer products subject to such rule, and the probable effect of such rule, upon the utility, cost, or availability of such products to meet such need; and

(D) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety. 15 U.S.C. 2058(f)(1). These findings are also published in the appendix to the final rule.

Based on these findings, the Commission must, if it issues a final rule, publish a final regulatory analysis with the rule, containing:

(A) A description of the potential benefits and the potential costs of the rule, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs;

(B) A description of any alternatives to the final rule which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen; and

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues. 15 U.S.C. 2058(f)(2).

The Commission's final regulatory analysis of the rule on multi-purpose lighters is published below.

Final Regulatory Analysis

Requirements of the Rule

The rule addresses the risk of death and injury caused by children under the age of 5 playing with multi-purpose lighters, including micro-torches. Manufacturers or importers of products meeting the definition of "multi-purpose lighters" will have to certify that their products comply with the rule and provide evidence of a reasonable testing program, as required by 15 U.S.C. 2063, to support the certification. The rule specifies minimum requirements and features of the required testing program.

The test protocol is intended to determine the percentage of children in a specified age range that could be expected to be able to operate the lighter. It requires surrogates that will not produce a flame be used in the tests in place of production lighters. Up to two panels of 100 children are used to test the surrogates. If a child succeeds in operating a surrogate, a visual or audible signal is produced. If at least 85% of the children in the test panels are unable to operate the surrogates, the production lighters comply with the child-resistance requirements.

The rule also establishes certain minimum recordkeeping and reporting obligations for manufacturers, importers, and distributors. The effective date of the rule is December 22, 2000. All multi-purpose lighters manufactured in the U.S. or imported on or after this date will have to comply with the requirements of the rule.

Product and Market Information

The Product

The product subject to this rule, multi-purpose lighters, is described in Section A of this notice.

Sales, Retail Prices and Useful Product Life

Multi-purpose lighters, including micro-torches, were introduced around 1985. Sales of multi-purpose lighters increased rapidly after their introduction. Scripto-Tokai, the firm that introduced multi-purpose lighters, reports that it sold one million units the first year. Industry sources estimate that sales of multi-purpose lighters were about 20 million units in 1998 and will be approximately 21 million units in 1999. Industry sources are divided over their expectations for future sales. Some expect sales to continue to increase at the rate of 5 to 10% annually over the next several years. Others believe that the market for multi-purpose lighters is becoming satiated and that sales are likely to increase at a slower pace than in the past.

Retail prices of multi-purpose lighters have declined over the last couple of years. Currently, retail prices for multi-purpose lighters start at less than $2.50, and most sell for less than $6.00. However, some high-end multi-purpose lighters retail for $20 to $40 or more. Micro-torches have been observed retailing for as little as $12, but they more frequently retail for around $20 to more than $100. Micro-torches and other high-end multi-purpose lighters combined probably have less than 5% of the market for multi-purpose lighters.

The useful life of a multi-purpose lighter depends on how often and for what purpose it is used. If a typical multi-purpose lighter contains enough fuel for an average of 1,000 lights, a multi-purpose lighter that is used several times a day would be expected to last less than 1 year. On the other hand, a lighter that is used less than once a day, or only seasonally, could last longer.

The fuel supply is not the only thing that limits the useful life of a multi-purpose lighter. A multi-purpose lighter can break or wear out, the piezo crystals can become dirty or misaligned, the fuel lines can become clogged, and the O-rings may fail and allow fuel to leak out of the lighter. Since most multi-purpose lighters are relatively inexpensive, some may simply be misplaced by consumers.

According to industry sources, more than 18 million lighters were sold in 1997. At the same time, a study based on a panel of 20,000 households indicated that fewer than 8 million U.S. households purchased multi-purpose lighters between October 1996 and October 1997. This suggests that most multi-purpose lighters have a useful life of less than one year, and/or that a large proportion of households that have multi-purpose lighters use more than one lighter over the course of a year.

The useful life of the more expensive models and micro-torches can be longer. These lighters are refillable and retail for $20 to more than $100. Although the unit sales of the more expensive lighters account for only a small portion of the annual sales of multi-purpose lighters, the number in use at any given time, because of their longer expected life, is likely to be somewhat higher than their share of the annual sales.

Based on the assumption that the average useful life of multi-purpose lighters is approximately one year or less, the Commission estimates that the number of multi-purpose lighters used during a given year is roughly equal to the estimated annual sales. Thus, in the period 1995 through 1998, the number

of multi-purpose lighters in use in a given year was probably in the range of 16 million to 20 million.

Manufacturers

CPSC has identified about 40 firms that manufacture, import, or privately label multi-purpose lighters. There are likely other firms, especially small importers or private labelers, that have not been identified. The number of firms participating in the market has increased as sales have increased.

Four manufacturers are members of the Lighter Association Inc., a trade association representing manufacturers of cigarette lighters. In 1997, the Lighter Association estimated that its members had more than 90% of the market for multi-purpose lighters in the United States. However, the market share of the Lighter Association members appears to be declining as competition from Asian and other imports is increasing.

The manufacturer with the largest market share is Scripto-Tokai Corporation. Although Scripto once had over 90% of the market, industry sources indicate that its share has fallen, and probably is now in the range of 80 to 90%. Most of the remaining 10 to 20% are manufactured by companies such as BIC, Swedish Match, Ronson, and various Asian manufacturers.

BIC Corporation manufactures its multi-purpose lighter in South Carolina. Only one other manufacturer, Donel, a manufacturer of high-end lighters, is known to produce multi-purpose lighters domestically. Scripto-Tokai imports its lighters from Mexico. Flamagas (Clipper brand) lighters are produced in Spain. Most other lighters are manufactured in Asia.

There are a handful of small U.S.-based companies that have proprietary designs for multi-purpose lighters. These companies generally work with Asia-based manufacturers to manufacture their products. However, the U.S.-based companies have often borne the research and development costs. Other small U.S.-based companies are known to import and privately label multi-purpose lighters for which they do not hold proprietary designs.

Substitutes for Multi-Purpose Lighters

There are a number of products that can be used for the same purposes as multi-purpose lighters. The most likely and versatile substitute is probably ordinary box or book matches. Compared with about 8 million households purchasing multi-purpose lighters in 1997, a 1991 study for the CPSC indicated that more than 60 million households had matches (either book or box matches). Cigarette lighters can also be used for many of the purposes for which multi-purpose lighters are used. The retail prices of the substitutes are reasonably close to the retail prices of multi-purpose lighters. However, since sales of multi-purpose lighters have climbed rapidly from approximately 1 million units in 1985 to 20 million in 1998, we can infer that some consumers perceive that they receive greater utility from multi-purpose lighters than they would from the substitutes in some applications.

There are also reasonable substitutes for micro-torches when they are used in applications such as soldering. The closest substitutes would likely be butane or propane torches that do not have internal ignition mechanisms. These are functionally nearly identical to micro-torches when used for torch applications, except that they must be ignited with a match or other external lighter. Electric soldering irons can also be used for many of the same applications. The cost to consumers of these substitutes may be reasonably similar to the cost of micro-torches.

Potential Benefits of the Rule

Societal Costs of Child-Play Fires

The rule is intended to reduce fires resulting from children under the age of 5 playing with multi-purpose lighters. The benefits to society of the rule will be the expected reduction in the societal costs of the deaths, injuries, and property damage associated with these fires.

The Commission is aware of 196 fires from 1995 through 1998 started by children under age 5 playing with multi-purpose lighters. These incidents resulted in 35 deaths, 81 injuries, and substantial property damage. The societal costs of these fires are discussed below. The analysis is limited to this 4-year period because the data available for other years are less complete.

Deaths: If we assume a cost of $5 million for each fatality, an estimate that is consistent with the existing literature, a point estimate of the societal costs of the known fatalities between 1995 and 1998 is $175 million.

Injuries: Many of the 81 non-fatal injuries were severe. At least 43 involved burn injuries. Fire burns are among the most costly of injuries in terms of the cost of medical treatment and the pain and suffering of the victim. A CPSC study estimated that: the average cost of a hospitalized fire burn injury was $898,000; the average cost of a burn injury where the victim was treated and released was estimated to be $15,000; and the average cost of a burn injury treated elsewhere was $2,000. These costs include medical and transportation costs, lost productivity, and pain and suffering. Of the 43 burn injuries, at least 15 were hospitalized and 12 were treated and released. The remaining 16 burn victims were either treated at the scene or the treatment they received is unknown. Based on the average societal costs from these types of injuries, the total cost of the burn injuries known to have occurred during this period is estimated to be at least $13.7 million (15 × $898,000 + 12 × $15,000 + 16 × $2,000).

At least 20 of the 81 injuries involved smoke inhalation. The CPSC study referenced above estimated that the average societal cost of a smoke inhalation injury was about $130,000 if the victim was hospitalized, and $13,000 if the victim was treated and released. If the victim was treated at the scene or received other treatment, the average societal cost was estimated to be $2,000. At least one of the smoke inhalation victims was hospitalized, and 12 were treated and released. If we assume that the remaining 7 victims were treated at the scene, the total societal costs associated with the smoke inhalation cases are estimated to be about $0.3 million (1 × $130,000 + 12 × $13,000 + 7 × $2,000).

The remaining 18 victims either had other types of injuries, such as broken bones or lacerations, or the type of injury was not reported. The treatment of these 18 victims was either unknown or not reported. Based on the above referenced CPSC study, the average societal costs of other non-hospitalized injuries is estimated to be $13,000. Therefore, the total societal costs of the 16 victims who had injuries other than burns or smoke inhalation can be estimated at $.2 million (18 × $13,000).

Based on the above discussions, the Commission estimates that the total societal costs of the injuries associated with children playing with multi-purpose lighters that we know to have occurred during the 1995 through 1998 period to be $13.4 million. This is a conservative estimate, as it includes only the incidents of which the CPSC is aware.

Property Damage: The total property damages from the 196 child-play fires known to have occurred from 1995 through 1998 exceeded $5 million. This number is conservative because it only includes the fires known to CPSC. And, of those known fires, it only includes fires where a property damage estimate was reported to CPSC.

Total Societal Costs: Summarizing all of the above costs (deaths, injuries, and property damage), the total estimated societal costs of the known incidents for

the 4-year period 1995 through 1998 is about $194.2 million, or $48.6 million annually. This comes to about $2.43 per year for each multi-purpose lighter in use. It is important to note that these cost estimates are based only on the incidents reported to CPSC, not on national fire loss estimates. There are likely to be other incidents of which CPSC is not aware.

Expected Reduction in Societal Costs

The rule is not expected to eliminate all fire incidents involving children under the age of 5. Some children in that age range will be able to operate multi-purpose lighters that meet the requirements of the rule. Indeed, a multi-purpose lighter will meet the requirements of the rule even if up to 15% of the subjects in the test panel can operate the lighter.

On the other hand, some children under the age of 5 cannot operate the non-child-resistant multi-purpose lighters currently on the market. CPSC baseline testing indicates that, depending on the model, 4 to 41% of test subjects cannot operate non-child-resistant multi-purpose lighters. Therefore, the rule for multi-purpose lighters is expected to reduce the number of children under the age of 5 that can operate multi-purpose lighters by 75 to 84%.[2]

Additionally, the overall effectiveness of the standard may be higher than the 75 to 84% estimated above for two reasons. First, manufacturers may achieve an average level of child-resistance greater than 85% to ensure that their design will always achieve at least the minimum level of child resistance required by the rule. The experience with cigarette lighters, for example, indicates that most manufacturers achieve 90% or higher child resistance.

Second, CPSC probably over-estimated the baseline child-resistance of the non-child-resistant multi-purpose lighters in use. This is because CPSC tested lighters with on/off switches in the off, or locked, position. If the lighter had been tested with the switch in the on, or unlocked, position, as required by the final rule, the baseline child-resistance would have been much lower than the 41% estimated above. We expect that some multi-purpose lighters will at times be stored with the switch in the unlocked position.

Using the lower end of the range of the estimated effectiveness of the rule, during the 1995 through 1998 time frame, societal costs of child-play fires involving multi-purpose lighters would have been reduced by about $36.5 million annually had all multi-purpose lighters been child-resistant.[3] Assuming that an average of 20 million multi-purpose lighters were used each year, the gross benefit per lighter would have been about $1.82. If there were child-play fires involving multi-purpose lighters during this period of which CPSC is not aware, or if a substantial number of consumers store multi-purpose lighters unlocked, the estimated benefits would have been higher.

Potential Costs of the Rule

Manufacturing costs. Manufacturers will incur costs to modify their products to comply with the rule. In general, costs that would be incurred by the manufacturers in developing, producing, and selling new complying lighters include the following:

- Research and development toward finding the most promising approaches to improving child resistance, including building prototypes and surrogate lighters for preliminary child-panel testing;
- Retooling and other production equipment changes required to produce child-resistant multi-purpose lighters, beyond normal periodic changes made to the plant and equipment;
- Labor and material costs of the additional assembly steps, or of the modification of assembly steps, in the manufacturing process;
- The additional labeling, recordkeeping, certification, testing, and reporting that will be required for each model.
- Various administrative costs of compliance, such as legal support and executive time spent at related meetings and activities; and
- Lost revenue if the child-resistant features adversely affect sales.

Industry sources have not provided firm estimates of these costs. However, the Lighter Association stated that its members believed the costs would average between $0.25 and $0.75 per lighter. One major manufacturer, BIC, has introduced a child-resistant multi-purpose lighter. Because BIC did not previously manufacture a non-child-resistant lighter, a spokesman was unable to estimate the incremental cost of developing and manufacturing child-resistant multi-purpose lighters.

Research and Development Costs. One manufacturer speculated that the costs of developing, testing, and retooling for production of multi-purpose lighters might be $1 million per manufacturer, if it is possible to adapt the same technology used to make cigarette lighters child-resistant. However, the manufacturer stated that, if it were not possible to adapt the cigarette lighter technology, the costs could be as high as $5 million per manufacturer. Two other manufacturers provided lower estimates of the costs. They expected to spend $100,000 to $1 million. However, they stressed that these were guesses and that unforeseen problems, such as problems stemming from patents owned by others, could increase the costs. After evaluating this conflicting information from some manufacturers, it seems likely that the average investment in research, development, and retooling would be no more than $2 million.

If, as discussed above, there are 20 manufacturers of multi-purpose lighters and research and development costs are as high as $2 million per manufacturer, then the total industry-wide research, development, and retooling costs will be about $40 million. If these costs are amortized over 10 years and sales increase at an annual rate of 1% from a base of 21 million units in 1999, then the research, development and retooling costs will average about $0.23/unit. For a manufacturer with a large market share (*i.e.*, selling several million units annually) the cost per unit for research, development and retooling may be significantly lower than this. On the other hand, for manufacturers with a small market share, such as the manufacturers of high-end lighters and micro-torch lighters, the per-unit development costs could be substantially greater, because these costs would be amortized over a significantly lower production volume. However, the information available is insufficient to provide a reliable estimate of the cost per unit for the higher-end and micro-torch-type lighters.

Material and Labor Costs. In addition to the research, development, and retooling costs, material and labor costs are likely to increase. For example, additional labor will be required to add the child-resistant mechanism to the

[2] The estimated minimum improvement in child resistance due to the rule for any given non-child-resistant lighter is calculated by dividing the percentage improvement in child resistance (the 85% minimum requirement of the rule minus the baseline child resistance of the non-child-resistant lighter) by the percentage of children that can operate the non-child-resistant lighter (100% minus the baseline %). For example, the least child-resistant lighter in the baseline testing (4% child resistance) would show an estimated 84% improvement in child resistance, and the same percent reduction in child-play fires [(85 − 4)/(100 − 4) = 81/96 = 84%]. The most child-resistant lighter in the baseline testing would show a 75% improvement [(85 − 41)/(100 − 41) = 44/59 = 75%].

[3] Calculated by multiplying the estimated $48.6 million in societal costs by 0.75 (the expected reduction in such fires).

lighter during assembly. Additional materials may also be needed to produce the child-resistant mechanism. While CPSC was unable to get reliable estimates, some industry sources indicated that these costs would be low, probably less than $0.25 per unit.

Multi-purpose lighters will also be required to have a label that identifies the manufacturer and the approximate date of manufacture. However, virtually all products are already labeled in some way. Since the requirement in the rule allows substantial flexibility to the manufacturer for things such as color, size, and location, this requirement is not expected to increase the costs significantly.

Certification and Testing Costs. Certification and testing costs include the costs of producing the surrogates needed in the testing, conducting the child-panel tests, and issuing and maintaining records for each model. These costs could average $25,000 per model. However, the cost for any individual firm may be different. The cost for conducting child-panel tests for one model could be substantially lower if only one panel is required. The cost could be higher if the manufacturer must use a second panel or redesign a model that failed the initial test. The cost of designing surrogates could range from virtually nothing (if the production lighter has an audible signal, such as a click, that occurs when it has been operated successfully) to several thousand dollars (if surrogates must be designed and built).

These costs are incurred only once, and would therefore, be amortized over the entire production of the model. Based upon the estimates described above, the amortized certification and testing costs are expected to average less than one cent per unit. However, for models with small market shares, the cost per unit for certification and testing may be higher.

Administrative Costs. There may be some additional and ongoing administrative expenses associated with compliance and related activities. While these expenses are difficult to quantify, they are expected to be slight and have little impact on the unit costs.

Multi-purpose lighters are sold in countries other than the United States. Some manufacturers may develop lighters that meet the requirements of the rule for distribution in the United States, but may continue to distribute the current, non-child-resistant models in other countries. Thus, some manufacturers may incur the incremental costs associated with producing multiple lines of similar products. These costs could include extra administrative costs required to maintain different lines and the incremental costs of producing different lines of similar products, such as using different molds or different assembly steps. These costs would be mitigated if other countries adopted similar standards.

Total Manufacturing Costs. The rule will likely increase the total cost of manufacturing multi-purpose lighters by about $0.48 per unit. This estimate is in the $0.25 to $0.75 per unit range provided by the Lighter Association in response to the ANPR. The low end of the range provided by the Lighter Association may be more accurate if the additional material and labor costs are significantly less than estimated above.

The increased cost of manufacturing multi-purpose lighters will, for the most part, ultimately be borne by consumers. Generally, the increased cost of production will be passed on to the consumer in the form of higher prices. Assuming a 100% markup over the incremental cost to manufacturers (estimated at $0.48/unit) the rule may be expected to increase the retail price of multi-purpose lighters by $0.96 per unit. However, some manufacturers may be unable to pass all of the incremental costs directly to the consumers. This may be especially true in the case of the up-front research and development costs. In these cases, the costs may be indirectly borne by consumers in such forms as generally higher prices on the range of products produced by the manufacturer. The retail prices for high-end and micro-torch multi-purpose lighters will probably increase by more than $0.96 per unit, since their costs per unit are greater. However, since the high-end and micro-torch lighters comprise such a small portion of the market, this should not significantly affect the average cost of producing multi-purpose lighters.

Net Benefits

As previously discussed, the rule is expected to produce a gross societal benefit of $1.82 per lighter and to increase the cost to consumers by about $0.96 per unit. Therefore, the expected net benefit of the rule is $0.86 per multi-purpose lighter sold ($1.82—$0.96). Since annual sales of multi-purpose lighters exceed 20 million units, the rule should result in net societal benefits of at least $17.2 million annually ($0.86 × 20 million = $17.2 million). As discussed previously, the actual net benefits may differ from the estimates if some of the assumptions used in computing the estimates prove inaccurate.

Other Impacts of the Rule

Stockpiling. The rule contains anti-stockpiling provisions, authorized by section 9(g)(2) of the CPSA, to prohibit excessive production or importation of noncomplying lighters during the 12-month period between the publication date and the effective date of the rule. The provision would limit the production or importation of noncomplying products to 120% of the amount produced or imported in the most recent calendar year before the issuance of the final rule.

While the anti-stockpiling provision should have little impact on the market as a whole, it may adversely impact any small importers or manufacturers that were just entering the market. Such firms may have had low sales volume in their first year or two of operation, and thus their base volume would be low. In the absence of the anti-stockpiling provisions, they may have been able to increase their sales volume by a greater proportion than would be allowed under the anti-stockpiling provision. There is no limit on the number of child-resistant multi-purpose lighters that may be imported, manufactured, or sold during this period.

Effects on Competition and International Trade

The rule is not likely to have a significant adverse impact on competition. Scripto-Tokai Corporation introduced multi-purpose lighters in 1985 and for many years maintained a market share of 90% or more. Although Scripto-Tokai is still the dominant manufacturer, its market share has dropped in the face of increased competition from other manufacturers and importers. BIC has already introduced a multi-purpose lighter that meets the requirements of the rule. Moreover, the Commission is aware of several other manufacturers, including some small firms that are actively developing child-resistant multi-purpose lighters. These multi-purpose lighters are expected to be on the market by the time the rule becomes effective.

Impact on Small Business

CPSC has identified about 40 manufacturers, importers, and private labelers of multi-purpose lighters. Although the dominant firms are not small, a significant number of the remaining firms are considered to be small businesses according to guidelines established by the Small Business Administration (SBA). The rule may have a significant impact on some of the small firms.

The small businesses that are most likely to be impacted by the rule are

those that market multi-purpose lighters to which they have proprietary or exclusive rights. These firms will likely have to bear the up-front costs of developing the child-resistant features, as well as the retooling and certification costs. As noted, these costs could exceed $100,000 even if few problems are encountered. If problems are encountered (*e.g.*, designs that infringe upon patents held by others or initial designs that fail the certification tests) the costs could exceed $2 million.

Of the small firms known to the Commission, seven have proprietary or exclusive rights to particular multi-purpose lighter models. Some of these firms are actively developing child-resistant models, and one is already marketing a multi-purpose lighter that it believes to be child-resistant (although it has not been tested). Thus the added burden is not insurmountable by small firms. However, some small firms may decide that the added costs are too great and cease marketing their proprietary designs. Other small businesses that currently market multi-purpose lighters and micro-torches do not have proprietary or exclusive rights to any multi-purpose lighter model. These companies either import or privately label lighters produced by other firms. In these cases, the manufacturer or firm that actually owns the design will likely bear most of the research, development, retooling, and certification costs. Since these manufacturers often supply product to more than one importer or private labeler, the costs are likely spread over a higher production volume. Moreover, multi-purpose lighters usually account for only a small percentage of many of the importers' and private labelers' sales. Therefore, even if a small importer or private labeler stopped importing or distributing multi-purpose lighters, it is not likely to suffer a significant adverse effect if multi-purpose lighters accounted for a small percentage of its total sales.

Although there will be adverse effects on some small businesses, these effects are justified by the greater safety benefits expected from the rule.

Impact on Utility to the Consumer

The rule may reduce the utility that consumers receive from multi-purpose lighters if child-resistant multi-purpose lighters are more difficult to operate than are non-child-resistant models. This could result in some consumers switching to substitute products, such as cigarette lighters or matches. However, as was the case with child-resistant cigarette lighters, manufacturers are likely to develop child-resistant multi-purpose lighters that are at most only slightly more difficult for adults to operate than are non-child-resistant lighters. Therefore, the number of consumers who stop using multi-purpose lighters because of the child-resistant mechanisms is expected to be small. Moreover, even if some consumers do switch to other products, the risk of fire is not expected to increase significantly. Most cigarette lighters must already meet the same child-resistance standard that multi-purpose lighters will have to meet. Although consumers that switch to matches (as opposed to using child-resistant cigarette or multi-purpose lighters) may increase the risk of child-play fires from matches somewhat, matches are inherently more child-resistant than non-child-resistant multi-purpose lighters. Thus, even if some consumers did switch to using matches, the risk of child-play fires would still likely be less than if they continued to use non-child-resistant multi-purpose lighters.

Some manufacturers of micro-torches may respond to the rule by no longer offering micro-torches that have internal ignition mechanisms. The consumer would, therefore, have to use an external ignition source to light the torch. Although this option could decrease manufacturing costs, it could reduce the convenience and utility of the micro-torches. Consumers will have to provide external ignition sources, such as matches, to ignite the torches. It will also take more time to ignite such a torch, since both hands will be required and the worker or consumer will have to put down what they were working with to pick up the ignition source.

Alternatives Considered to the Rule

The Commission considered several possible alternatives to the rule. These alternatives included (1) not taking any action and relying on voluntary efforts, (2) issuing labeling requirements instead of performance requirements, and (3) narrowing the scope of the rule. The Commission also considered different effective dates and some alternatives aimed at reducing the burden on certain small businesses.

No Action/Rely on Voluntary Efforts. The Commission considered the impact of taking no action to reduce the occurrence of fires started by children playing with multi-purpose lighters. If no mandatory rule is issued, some manufacturers may still introduce child-resistant multi-purpose lighters. While these manufacturers can emphasize the safety of their product, they would be at a competitive price disadvantage compared to manufacturers who continued to sell non-child-resistant lighters. This would result in a lower level of benefits than would be obtained with the rule.

Although the portion of the market that would be captured by manufacturers of child-resistant lighters is not known, it is reasonable to assume it would be substantially less than 100%. Thus, the benefits to society of taking no action or relying on voluntary efforts would be lower than they would be under a mandatory rule.

Currently, there is no voluntary standard for child-resistant multi-purpose lighters, and no apparent industry interest in adopting one. The Commission potentially could work with appropriate standards-setting organizations to try to develop such a standard, but it is not clear that an acceptable voluntary standard could be developed with sufficient speed, or that conformance would be adequate.

Labeling Requirements

The Commission considered the impact of not issuing a performance standard, but to instead require additional warning labels on multi-purpose lighters. However, the FHSA already requires multi-purpose lighters to be labeled "Keep out of reach of children." The effectiveness of additional labeling would be low.

Narrowing the Scope

The Commission considered the impact of exempting the more expensive multi-purpose lighters from the rule. This would have been analogous to the exemption in the cigarette lighter standard for the more expensive non-novelty cigarette lighters. In that case, however, there was little evidence of involvement of those expensive lighters in child-play fires.

There are 3 firms that are known to market high-end multi-purpose lighters; all 3 of these firms have fewer than 100 employees and are considered to be small businesses. (One firm claims that its multi-purpose lighter has features that should make it child-resistant.) Of the 6 firms that are known to distribute micro-torches, 3 have fewer than 100 employees and are considered to be small businesses.

For the reasons given in the response to comments on the proposal, Section E of this notice, the Commission believes that the more expensive multi-purpose lighters are as likely to be involved in child-play fires as are the less expensive models and should not be excluded.

The Commission also considered the impact of excluding micro-torches from the rule. As noted, the Commission

received several comments from the lighter industry, in response to the NPR, encouraging the Commission to exclude micro-torches. For the reasons given in the response to comments in Section E of this notice, the Commission believes that micro-torches will be stored around the home in the same way that multi-purpose lighters are. Therefore, they will be accessible to small children and should not be excluded from the standard.

The Commission is aware of one incident involving a fire started by a child under the age of 5 with a micro-torch-type lighter. The lighter was being used to light the pilot light of a gas furnace, a use more characteristic of multi-purpose lighters than of torches. However, micro-torch lighters represent only a small portion of the multi-purpose lighters in use. Micro-torches probably account for significantly less than 5% of sales of multi-purpose lighters. Therefore, the lack of other incidents involving micro-torches may be related to the low number of these products in use.

Alternatives To Reduce the Burden on Small Businesses

The Commission considered several exemptions or special provisions to reduce the regulatory burden on certain small businesses. These provisions would have applied only to businesses that met the SBA definition of a small business and were not owned by or a subsidiary of a larger company, unless the combined employment would still meet the SBA criteria.

Alternative Effective Date. The Commission considered establishing an effective date of more than the proposed 12 months after the date of publication of the final rule in the **Federal Register**, for some small manufacturers. The intent of such an extension would be to reduce the burden of the rule on small firms by giving them extra time to develop child-resistant lighters and bring them to market. However, for the reasons given in Section E of this notice, the Commission decided that an effective date exceeding 1 year from the rule's publication was not in the public interest.

Exemption from testing. The Commission considered exempting some small businesses from the requirement to conduct the child-panel certification tests, if the firm had a reasonable basis to believe that the multi-purpose lighter would pass the tests if they were conducted. However, the Commission concluded that conducting these tests is necessary to ensure that the lighter is child-resistant. The actual child-panel tests are a small part of the entire cost of designing and bringing a child-resistant lighter to market. Although the average cost of this testing per model may be about $25,000, the costs may vary among firms. On the low end, the costs may be as low as $10,000 if surrogates do not have to be designed, only one panel of children is required, and the company can conduct much of the testing internally. On the other hand, the costs could exceed $40,000 if the company has to design surrogates, use more than one child-panel for the tests or has to redesign the lighter because it fails the test. If a manufacturer is confident that its design is child-resistant, it should also be confident that the cost of the certification testing will be on the low side of the estimated range of costs. Furthermore, the testing is a one-time cost. Once a design passes the qualification test, it does not have to be tested again for child-resistance.

If certain small firms were exempted from the testing, and one of their models was later found not to be child-resistant, the cost to the manufacturer of a recall could exceed the cost of the testing. Moreover, if an exemption from testing were granted and a lighter model were in fact not child-resistant, it could lead to hundreds of thousands, or even millions, of non-child-resistant multi-purpose lighters being introduced into commerce. Just one additional child-play fire incident associated with such a lighter could result in societal costs that greatly exceed the cost of the certification testing. Therefore, the Commission does not believe that it is in the public interest to exempt small firms from the testing requirements of the rule.

I. Final Regulatory Flexibility Analysis

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the RFA, as stated in § 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations.[4] The Commission's initial regulatory flexibility analysis (IRFA) was published with the proposed rule.

The final regulatory flexibility analysis (FRFA) is to contain:

(1) A succinct statement of the need for, and objectives of, the rule;

(2) A summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) A description of, and an estimate of the number of, the small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and a description of the type of professional skills necessary for preparation of the report or record; and

(5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The Need for and Objectives of the Rule

The rule addresses the risk of death and injury from residential fires started by young children under the age of 5 playing with multi-purpose lighters. Since 1988, the Commission has identified 237 fires that were started by children under age 5 who were playing with multi-purpose lighters. These fires resulted in a total of 45 deaths and 103 injuries. Because these are only the incidents known to the CPSC, the actual numbers may be higher. The societal cost of these fires is about $48.6 million annually. Requiring that multi-purpose lighters be child-resistant, as defined in the rule, will significantly reduce the number of fires started by children under the age of 5.

Firms Subject to the Rule

The rule covers manufacturers, importers, private labelers, distributors, and retailers of multi-purpose lighters, including micro-torches, intended for sale to consumers. All firms that manufacture or import multi-purpose lighters will have to certify that their

[4] The Regulatory Flexibility Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

multi-purpose lighters are child-resistant. These firms will also be subject to the reporting and recordkeeping requirements in the rule.

The number of firms that manufacture, import, or privately label these lighters is increasing. While about 40 firms have been identified, there may be other companies that have not been identified. Except for two manufacturers (one large and one small), all firms are believed to be importers rather than domestic manufacturers. Several of the importers are subsidiaries of larger firms or foreign manufacturers. Although the dominant firms are not small, as many as 20 of the remaining firms may be considered to be small businesses according to the SBA.

The small businesses that are most likely to be substantially impacted by the rule are those that have proprietary or exclusive rights to specific multi-purpose lighter models. These firms will likely have to bear the up-front costs of developing the child-resistant features, retooling, and certification. These costs could exceed $100,000, even if few problems are encountered. The costs could be as high as $2 million if problems are encountered, such as designs that infringe upon patents held by others or initial designs that fail the certification tests.

Of the small firms known to the Commission, seven are believed to have proprietary or exclusive rights to particular multi-purpose lighter models. Some of these firms are actively working on developing child-resistant models. One is already marketing a multi-purpose lighter that it believes to be child-resistant, although it has not been certified in accordance with the requirements of the rule. Thus, although the rule will impose costs on small firms, this burden is not insurmountable, and some small firms with proprietary designs should be able to compete successfully after the rule goes into effect. However, some firms may decide that the added costs are too great and cease marketing their proprietary non-child-resistant designs.

Many of the small businesses that market multi-purpose lighters and micro-torches do not have proprietary or exclusive rights to any multi-purpose lighter model. These companies either import or privately label lighters produced by other firms. The impact on these companies is not likely to be significant. The manufacturers or firms that actually own the designs will likely bear most of the research, development, retooling, and certification costs. Since these manufacturers often supply product to more than one importer or private labeler, the costs are likely to be spread over a higher production volume. Furthermore, even if a small importer or private labeler stopped importing or distributing multi-purpose lighters, it is not likely to suffer a significant adverse effect if multi-purpose lighters account for a small percentage of its total sales, as is thought to be the case with many of the importers.

Some small importers may experience some disruption in their supply of multi-purpose lighters if some of the foreign suppliers opt not to develop child-resistant multi-purpose lighters. However, the 12-month period between the publication of the final rule and its effective date should allow time for most importers to take action to ensure that they have a source for child-resistant multi-purpose lighters.

Issues Raised by the Public Comments on the IRFA

Several issues were raised in the public comments on issues relating to the IRFA. These issues include: the proposed requirement for multiple operations, money for legal counsel and testing, that CPSC should mandate a specific design, that the effective date should be longer, that the cost of certification testing is excessive, and alternatives to be considered to the proposed rule. The Commission's responses to these comments are given in Section E of this notice.

Reporting and Recordkeeping Requirements

All manufacturers and importers of multi-purpose lighters will be required to keep certain records regarding the certification testing and production (quality control) testing of their multi-purpose lighters. The preparation of the records should not require any skills that would not typically be possessed by or available to a manufacturer or importer. For example, the production testing is very similar to the quality control testing that most manufacturers undertake routinely. There are also independent quality control and engineering laboratories and other professional consultants with which firms can contract for these services.

In order to perform the certification tests, the manufacturers will have to supply at least 6 empty surrogates. Most manufacturers will probably be able to use empty production lighters for the surrogates (if the lighter makes an audible "click" when the ignition mechanism is operated properly). Other manufacturers may have to develop surrogates for use in the certification tests that produce an audible or visual signal when the ignition mechanism is successfully operated. This may involve technical knowledge of miniature electronics that some small firms may not have in-house. However, there are independent engineering firms with this expertise with which small firms may contract.

Conducting the certification tests and preparing the supporting documentation does not require any special technical skill or extensive training. Manufacturers could conduct the conformance tests with in-house personnel, but it is likely that many will employ private consulting or testing services. The records of the testing would likely be compiled by the firm conducting the testing and maintained by the manufacturer or importer. Manufacturers or importers would keep copies of other reports or certification records.

The rule also allows importers to rely on testing by or for a foreign manufacturer to support the rule's certification and reporting requirements, provided that the records (1) are in English, (2) are complete, (3) can be provided to the Commission within a reasonable time, if requested, and (4) provide reasonable assurance the multi-purpose lighters are child-resistant. This provision may reduce the testing burden on some small importers (indeed, on any importer), to the extent manufacturers supply lighters to more than one importer.

At least 30 days before it first imports or distributes a multi-purpose lighter model, the manufacturer or importer must provide written notice to the CPSC. Among other things, this report is to include basic identifying information as to the manufacturer or importer, a description of the lighter model and its child-resistance features, a description and summary of the certification testing, and the location where the other required records will be kept. The manufacturer or importer must also supply the CPSC with a prototype or production unit of the lighter model.

The reporting requirements of the rule are necessary for the CPSC to monitor compliance. The Commission is not aware of any method by which the reporting burden on small businesses could be reduced while still accomplishing the purpose of the rule. The estimated reporting burden, however, is low—less than 100 hours per model in the initial production year (including the certification testing) and significantly less than this in subsequent years.

Assuming that approximately 20 manufacturers, with 1 to 2 models each, introduce child-resistant multi-purpose lighters during the first year after the

publication of the final rule, the total paperwork and reporting burden for all manufacturers will be 2,000 to 4,000 hours. In subsequent years, the total paperwork and reporting burdens should be significantly less. For example, if three new models are introduced annually, the total burden will be approximately 300 hours.

Other Alternatives Considered

The Commission considered four basic alternatives to certain elements of the rule. Specifically, the Commission considered (1) narrowing the scope to exclude high-end and/or micro-torch multi-purpose lighters, (2) requiring only additional labeling, (3) taking no action and relying on voluntary efforts, and (4) alternative effective dates. These alternatives were rejected for the reasons given in the Commission's Regulatory Analysis in Section H of this notice.

Summary and Conclusions

The rule will affect all manufacturers and importers of multi-purpose lighters, including a number of manufacturers and importers that are small businesses. The small firms that import or manufacture multi-purpose lighters will be impacted by the rule's performance, certification, recordkeeping, and reporting requirements. The higher costs of manufacturing child-resistant lighters that their suppliers incur will likely be passed on to these firms as well. Some of the firms may have temporary disruptions in their supply of multi-purpose lighters because of the rule. However, it is unlikely that any of these effects would be significant.

In addition to the small importers, there are a few small firms that manufacture their own multi-purpose lighters or have their own proprietary designs manufactured for them. The rule may have a more significant impact on these firms since they will likely bear most of the cost of developing and certifying the child-resistant mechanisms for their multi-purpose lighters.

The Commission considered some alternatives to the rule that might have reduced the burden on small manufacturers. However, these alternatives were rejected since the level of safety that would be achieved was lower under these alternatives than under the rule. These alternatives included taking no action, requiring additional labeling only, exempting the high-end multi-purpose lighters from the scope of the rule, and extending the effective date.

J. Effects on the Elderly and Handicapped

Section 9(e) of the CPSA requires that, in promulgating a consumer product safety rule, "the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule." 15 U.S.C. 2058(e). The following discussion examines the potential effect of the rule on elderly and handicapped persons.

The rule is unlikely to have a significant impact on the elderly or handicapped who can operate non-child-resistant multi-purpose lighters. The lighter industry now has several years experience in the design of child-resistant mechanisms for cigarette lighters, and it is reasonable to expect that this experience will be applied to child-resistant devices for multi-purpose lighters. Early designs for cigarette lighters were somewhat cumbersome and often inconvenient to use, leading to customer complaints and to intentional defeat of some types of child-resistant mechanisms by some persons. Since the Safety Standard for Cigarette Lighters became effective, child-resistant mechanisms have evolved. Although some types are less than ideal, others are transparent, or nearly so, to the user.

Current multi-purpose lighters typically are operated by a trigger (operated with the forefinger) or a button (operated with the thumb), and are easy to use with one hand. Child-resistant versions of these lighters will probably require some additional action or force, and thus may be at least somewhat more complex or less convenient to operate than non-child-resistant lighters. However, because ease of use is critical to consumer acceptance, it is likely that multi-purpose lighters will continue to be operable with one hand, and that the child-resistant devices will not be overly difficult to use.

The staff reviewed three child-resistant multi-purpose lighter designs. The child-resistant device on each product is a latch that blocks the operating mechanism. Two have trigger-style operating mechanisms. These have devices built into the top side of the handle, in line with the expected placement of the user's thumb. One trigger-style lighter requires that the user apply a force of 1.25 kg or 2.75 kg (depending on placement) with the thumb to unlatch the operating mechanism. This requires both knowledge of how the device works and a level of strength below the average for a tested sample of subjects aged 60 to 89 years of age for a similar task (Imrhan, 1989). The other requires the user to first slide a button backward (toward the palm) approximately ⅛ inch before pulling the trigger. The latter requires only knowledge, because the action of sliding the button backwards is counter to the normal motion when holding and operating the lighter, but requires only nominal force and dexterity.

The third lighter has a slide-button operating mechanism positioned on the top of the handle. It requires that a second slide latch on the reverse side of the handle be pushed sideways before the lighter can be operated. Although simple in principle, this third lighter does not fit the user's hand, and requires coordination to operate. Provided clear instructions are included on the packaging, the first two types should be usable by handicapped and elderly persons who can operate current non-child-resistant lighters. The third is likely to be difficult for users in general. Competitive forces should ensure that elderly and handicapped consumers will find one or more products they are able to use.

K. Paperwork Reduction Act

As explained above, the standard and the certification provisions will require manufacturers and importers of multi-purpose lighters to test surrogate and production lighters, maintain records, and report data to the Commission relating to the multi-purpose lighters that they produce or import. For this reason, the rule published below contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Therefore, the proposed rule was submitted to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) and implementing regulations codified at 5 CFR 1320.11.

Based on estimates made in the course of developing the cigarette lighter standard and on information obtained from industry sources, the Commission estimates that complying with the testing, recordkeeping, and reporting requirements of the rule will require approximately 100 hours per model for the first year, and substantially less in subsequent years. The time required for testing is expected to average about 80 hours per model. The time required for recordkeeping and reporting is expected to be about 10 hours for each model per year. The exact number of manufacturers and importers is not known. However, the number of manufacturers and importers

appears to be increasing. Currently, the Commission believes that there may be as many as 40 different models of multi-purpose lighters on the market. With a few exceptions, most manufacturers and importers have only one model. Therefore, the total amount of time that will be required for complying with the testing, recordkeeping, and reporting requirements of the rule is approximately 4,000 hours in its initial year or so, and substantially less in later years.

L. Executive Orders

This rule has been evaluated in accordance with Executive Order No. 13,132, and the rule has no substantial federalism implications.

Executive Order No. 12,988 requires agencies to state the preemptive effect, if any, to be given to the regulation. The preemptive effect of this rule is established by 15 U.S.C. 2075(a), which states:

(a) Whenever a consumer product safety standard under the CPSA applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or continue in effect any provision of a safety standard or regulation which prescribed any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such products which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

Subsection (b) of 15 U.S.C. 2075 provides a circumstance under which subsection (a) does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety standard applicable to a consumer product for its own [governmental] use, and which is not identical to the consumer product safety standard applicable to the product under the CPSA. This occurs if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the consumer product safety standard.

Subsection (c) of 15 U.S.C. 2075 authorizes a State or a political subdivision of a State to request an exemption from the preemptive effect of a consumer product safety standard. The Commission may grant such a request, by rule, where the standard or regulation of the State or political subdivision (1) provides a significantly higher degree of protection from such risk of injury than does the consumer product safety standard and (2) does not unduly burden interstate commerce.

List of Subjects in 16 CFR Part 1212

Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as set forth below.

1. A new Part 1212 is added to read as follows:

PART 1212—Safety Standard for Multi-Purpose Lighters

Subpart A—Requirements for Child-Resistance

Sec.
1212.1 Scope and application.
1212.2 Definitions.
1212.3 Requirements for multi-purpose lighters.
1212.4 Test protocol.
1212.5 Findings.

Subpart B—Certification Requirements

Sec.
1212.11 General.
1212.12 Certificate of compliance.
1212.13 Certification tests.
1212.14 Qualification testing.
1212.15 Specifications.
1212.16 Production testing.
1212.17 Recordkeeping and reporting.
1212.18 Refusal of importation.

Subpart C— Stockpiling

Sec.
1212.20 Stockpiling.
Appendix A to Part 1212—Findings Under the Consumer Product Safety Act

Subpart A—Requirements for Child-Resistance

Authority: 15 U.S.C. 2056, 2058, 2079(d).

§ 1212.1 Scope, application, and effective date.

This part 1212, a consumer product safety standard, prescribes requirements for multi-purpose lighters. These requirements are intended to make the multi-purpose lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all multi-purpose lighters, as defined in § 1212.2, that are manufactured in the United States, or imported, on or after December 22, 2000.

§ 1212.2 Definitions.

As used in this part 1212:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, etc.) means: A hand-held, flame-producing product that operates on fuel, incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

(2) The following products are not multi-purpose lighters:

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Matches.

(b) *Successful operation* means one signal of any duration from a surrogate multi-purpose lighter within either of the two 5-minute test periods specified in § 1212.4(f).

(c)(1) *Surrogate multi-purpose lighter* means a device that

(i) Approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child resistance (including operation and the force(s) required for operation), within reasonable manufacturing tolerances, to, a multi-purpose lighter intended for use by consumers,

(ii) Has no fuel,

(iii) Does not produce a flame, and

(iv) produces an audible, or audible and visual, signal that will be clearly discernible when the surrogate multi-purpose lighter is activated in each manner that would produce a flame in a fueled production multi-purpose lighter.

(2) This definition does not require a multi-purpose lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a multi-purpose lighter without fuel as a surrogate multi-purpose lighter if a distinct audible signal, such as a "click," can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production multi-purpose lighter without the signal. But see § 1212.4(f)(1).

(d) *Child-resistant mechanism* means the mechanism of a multi-purpose lighter that makes the lighter resist successful operation by young children, as specified in § 1212.3.

(e) *Model* means one or more multi-purpose lighters from the same manufacturer or importer that do not differ in design or other characteristics in any manner that may affect child

resistance. Lighter characteristics that may affect child resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

§ 1212.3 Requirements for multi-purpose lighters.

(a) A multi-purpose lighter subject to this part 1212 shall be resistant to successful operation by at least 85% of the child-test panel when tested in the manner prescribed by § 1212.4.

(b) The child-resistant mechanism of a multi-purpose lighter subject to this part 1212 must:

(1) Operate safely when used in a normal and convenient manner,

(2) Comply with this § 1212.3 for the reasonably expected life of the lighter,

(3) Not be easy to deactivate or prevent from complying with this § 1212.3.

(4) Except as provided in paragraph (b)(5) of this section, automatically reset when or before the user lets go of the lighter.

(5) The child-resistant mechanism of a multi-purpose lighter subject to this part 1212 that allows hands-free operation must:

(i) Require operation of an additional feature (e.g., lock, switch, etc.) after a flame is achieved before hands-free operation can occur;

(ii) Have a manual mechanism for turning off the flame when the hands-free function is used; and either

(iii) Automatically reset when or before the user lets go of the lighter when the hands-free function is not used; or

(iv) Automatically reset when or before the user lets go of the lighter after turning off the flame when the hands-free feature is used.

§ 1212.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a multi-purpose lighter is resistant to successful operation by children uses a panel of children to test a surrogate multi-purpose lighter representing the production multi-purpose lighter. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1212.4(f).

(3) The children for the test panel shall live within the United States.

(4) The age and sex distribution of each 100-child panel shall be:

(i) 30 ± 2 children (20 ± 1 males; 10 ± 1 females) 42 through 44 months old;

(ii) 40 ± 2 children (26 ± 1 males; 14 ± 1 females) 45 through 48 months old;

(iii) 30 ± 2 children (20 ± 1 males; 10 ± 1 females) 49 through 51 months old.

Note to paragraph (a)(4): To calculate a child's age in months: Subtract the child's birth date from the test date. The following calculation shows how to determine the age of the child at the time of the test. Both dates are expressed numerically as Month-Day-Year.

Example: Test Date (*e.g.*, 8/3/94) minus Birth Date—(*e.g.*, 6/23/90). Subtract the number for the year of birth from the number for the year of the test (*i.e.*, 94 minus 90 = 4). Multiply the difference in years by 12 months (*i.e.*, 4 years × 12 months = 48 months). Subtract the number for the month of the birth date from the number of the month of the test date (*i.e.*, 8 minus 6 = 2 months). Add the difference in months obtained above to the number of months represented by the difference in years described above (48 months + 2 months = 50 months). If the difference in days is greater than 15 (*e.g.*, 16, 17 . . .), add 1 month. If the difference in days is less than −15 (*e.g.*, −16, −17), subtract 1 month (*e.g.*, 50 months − 1 month = 49 months). If the difference in days is between −15 and 15 (*e.g.*, −15, −14, . . . 14, 15), do not add or subtract a month.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate multi-purpose lighter shall participate.

(6) Two children at a time shall participate in testing of surrogate multi-purpose lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate multi-purpose lighter. No child shall participate in both surrogate multi-purpose lighter testing and either surrogate cigarette lighter testing or child-resistant package testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate multi-purpose lighters shall be tested within the United States at 5 or more test sites throughout the geographical area for each 100-child panel if the sites are the customary nursery schools or day care centers of the participating children. No more than 20 children shall be tested at each site. In the alternative, surrogate multi-purpose lighters may be tested within the United States at one or more central locations, provided the participating children are drawn from a variety of geographical locations.

(2) Testing of surrogate multi-purpose lighters shall be conducted in a room that is familiar to the children on the test panel (for example, a room the children frequent at their customary nursery school or day care center). If the testing is conducted in a room that initially is unfamiliar to the children (for example, a room at a central location), the tester shall allow at least 5 minutes for the children to become accustomed to the new environment before starting the test. The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate multi-purpose lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate multi-purpose lighters. The children shall be seated side by side in chairs approximately 6 inches apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be "child size."

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from the 100-child test panel (20 ± 2 children each for 5 testers and 17 ± 2 children each for 6 testers).

Note: When a test is initiated with five testers and one tester drops out, a sixth tester may be added to complete the testing. When a test is initiated with six testers and one tester drops out, the test shall be completed using the five remaining testers. When a tester drops out, the requirement for each tester to test an approximately equal number of children does not apply to that tester. When testing is initiated with five testers, no tester shall test more than 19 children until it is certain that the test can be completed with five testers.

(c) *Surrogate multi-purpose lighters.* (1) Six surrogate multi-purpose lighters shall be used for each 100-child panel. The six multi-purpose lighters shall represent the range of forces required for operation of multi-purpose lighters intended for use. All of these surrogate multi-purpose lighters shall have the same visual appearance, including color. The surrogate multi-purpose lighters shall be labeled with sequential numbers beginning with the number one. The same six surrogate multi-purpose lighters shall be used for the entire 100-child panel. The surrogate multi-purpose lighters may be used in more than one 100-child panel test. The surrogate multi-purpose lighters shall not be damaged or jarred during storage or transportation. The surrogate multi-

purpose lighters shall not be exposed to extreme heat or cold. The surrogate multi-purpose lighters shall be tested at room temperature. No surrogate multi-purpose lighter shall be left unattended.

(2) Each surrogate multi-purpose lighter shall be tested by an approximately equal number of children in a 100-child test panel (17 ± 2 children). Note: If a surrogate multi-purpose lighter is permanently damaged, testing shall continue with the remaining multi-purpose lighters. When a multi-purpose lighter is dropped out, the requirement that each multi-purpose lighter be tested by an approximately equal number of children does not apply to that lighter.

(3) Before each 100-child panel is tested, each surrogate multi-purpose lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production multi-purpose lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child resistance to verify that they are within reasonable operating tolerances for the corresponding production multi-purpose lighter.

(5) Before and after testing surrogate multi-purpose lighters with each child, each surrogate multi-purpose lighter shall be operated outside the presence of any child participating in the test to verify that it produces a signal. If the surrogate multi-purpose lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate multi-purpose lighter does not produce a signal when it is operated after the test, the results for the preceding test with that multi-purpose lighter shall be eliminated. An explanation shall be recorded on the data collection record. The multi-purpose lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate multi-purpose lighter at any time (either verbally or with body language such as facial expressions), unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of multi-purpose lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate multi-purpose lighter for a period of approximately one minute, the tester shall encourage the child to try by saying "keep trying for just a little longer."

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say "that's right—never touch a real lighter—but your [parent, etc.] said it was OK for you to try to make a noise with this special lighter because it can't hurt you."

(6) The children in a pair being tested may encourage each other to operate the surrogate multi-purpose lighter and may tell or show each other how to operate it. (This interaction is not considered to be disruption as described in paragraph (e)(2) of this section.) However, neither child shall be allowed to touch or operate the other child's multi-purpose lighter. If one child takes the other child's surrogate multi-purpose lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say "No. He (she) has to try to do it himself (herself)."

(e) *Children who refuse to participate.* (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than 1 minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate multi-purpose lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say "I have a special lighter that will not make a flame. It makes a noise like this." Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate multi-purpose lighter, so that the surrogate multi-purpose lighter cannot be seen by the child, and shall operate the surrogate multi-purpose lighter once to produce its signal. The tester shall say "Your parents said it is OK for you to try to make that noise with your lighter." The tester shall place a surrogate multi-purpose lighter in each child's hand and say "now you try to make a noise with your lighter. Keep trying until I tell you to stop."

Note: For multi-purpose lighters with an "off/on" switch, the surrogate lighter shall be given to the child with the switch in the "on," or unlocked, position.

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate multi-purpose lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say "that's a spark—it won't hurt you—try to make a noise with your lighter." If any child successfully operates the surrogate multi-purpose lighter during this first 5-minute period, the lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate multi-purpose lighter during the 5-minute period specified in § 1212.4(f) (3), the adult tester shall demonstrate the operation of the surrogate multi-purpose lighter. To conduct the demonstration, secure the children's full attention by saying "Okay, give me your lighter(s) now." Take the surrogate multi-purpose lighters and place them on the table in front of you out of the children's reach. Then say, "I'll show you how to make the noise with your lighters. First I'll show you with (child's name) lighter and then I'll show you with (child's name) lighter." Pick up the first child's surrogate multi-purpose lighter. Hold the lighter approximately 2 feet in front of the children at their eye level. Hold the surrogate multi-purpose lighter in a comfortable operating position in one hand so both children can see the operation of the child-resistant mechanism and the ignition mechanism during each demonstration. Say "now watch the lighter." Look at each child to verify that they are both looking at the lighter. Operate the multi-purpose lighter one time in a normal manner according to the manufacturer's instructions. Do not exaggerate operating movements. Do not verbally

describe the lighter's operation. Place the first child's lighter back on the table in front of you and pick up the second child's lighter. Say, "Okay, now watch this lighter." Repeat the demonstration as described above using the second child's multi-purpose lighter.

Note to paragraph (f)(3): The demonstration is conducted with each child's lighter, even if one child has successfully operated the lighter. Testers shall conduct the demonstration in a uniform manner, including the words spoken to the children, the way the multi-purpose lighter is held and operated, and how the tester's hand and body is oriented to the children. All testers must be able to operate the surrogate multi-purpose lighters using only appropriate operating movements in accordance with the manufacturer's instructions. If any of these requirements are not met during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate multi-purpose lighter in the first 5 minutes is then given another 5 minutes in which to attempt to complete the successful operation of the surrogate multi-purpose lighter. After the demonstrations, give the same surrogate multi-purpose lighter back to each child who did not successfully operate the surrogate multi-purpose lighter in the first 5 minutes by placing the multi-purpose lighter in the child's hand. Say "Okay, now you try to make the noise with your lighter(s)—keep trying until I tell you to stop." If any child successfully operates the surrogate multi-purpose lighter during this period, the surrogate multi-purpose lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. If the other child has not yet successfully operated the surrogate multi-purpose lighter, the tester shall ask the successful child to remain until the other child is finished.

Note: Multi-purpose lighters with an on/off switch shall have the switch returned to the position the child left it at the end of the first 5-minute test period before returning the lighter to the child.

(5) At the end of the second 5-minute test period, take the surrogate multi-purpose lighter from any child who has not successfully operated it.

(6) After the test is over, ask the children to stand next to you. Look at the children's faces and say: "These are special lighters that don't make fire. Real lighters can burn you. Will you both promise me that if you find a real lighter you won't touch it and that you'll tell a grownup right away?" Wait for an affirmative response from each child; then thank the children for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate multi-purpose lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to a parent or guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters or matches, and shall remind the parent or guardian to keep all lighters and matches, whether child-resistant or not, out of the reach of children. For children who operated the surrogate multi-purpose lighter, the notification shall state that the child was able to operate the child-resistant multi-purpose lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the multi-purpose lighters, so that the tester's full attention is on the children during the test period. If actual testing is videotaped, the camera shall be stationary and shall be operated remotely in order to avoid distracting the children. Any photographs shall be taken after actual testing and shall simulate actual test procedure(s) (for example, the demonstration). The following data shall be collected and recorded for each child in the 100-child test panel:

(1) Sex (male or female).

(2) Date of birth (month, day, year).

(3) Age (in months, to the nearest month).

(4) The number of the multi-purpose lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, and the name of the site).

(7) The name of the tester who conducted the test.

(8) The elapsed time at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(10) For a single pair of children from each 100-child test panel, photograph(s) or video tape to show how the multi-purpose lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate multi-purpose lighter resists operation by at least 85% of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered to be resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate multi-purpose lighter, the test results are inconclusive, and the surrogate multi-purpose lighter shall be tested with a second 100-child test panel in accordance with this § 1212.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. (2)(i) If additional testing of the surrogate multi-purpose lighter is required by paragraph (h)(1) of this section, conduct the test specified by this § 1212.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered resistant to successful operation by at least 85% of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate shall be considered not resistant to successful operation by 85% of the child test panel, and no further testing is conducted.

(ii) Thus, for the first panel of 100 children, the surrogate passes if there are 0–10 successful operations by the children; the surrogate fails if there are 19 or greater successful operations; and testing is continued if there are 11–18 successes. If testing is continued with a

second panel of children, the surrogate passes if the combined total of the successful operations of the two panels is 30 or less, and it fails if there are 31 or more.

§ 1212.5 Findings.

(a) Before issuing a final rule, the Consumer Product Safety Act (CPSA), 15 U.S.C. 2058(f)(1), requires the Commission to consider and make appropriate findings for inclusion in the rule with respect to:

(1) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(2) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(3) The need of the public for the consumer products subject to such rule, and the probable effect of such rule, upon the utility, cost, or availability of such products to meet such need; and

(4) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety

(b) The CPSA, 15 U.S.C. 2058(f)(3), also requires the Commission to make the following findings before it promulgates a rule, and to include such findings in the rule:

(1) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(2) That the promulgation of the rule is in the public interest;

(3) That the benefits expected from the rule bear a reasonable relationship to its costs; and

(4) That the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

(c) The required findings are included as Appendix A to this part 1212.

Subpart B—Certification Requirements

Authority: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

§ 1212.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1212 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Multi-purpose lighters. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1212.12 Certificate of compliance.

(a) *General requirements.* (1) *Manufacturers (including importers).* Manufacturers of any multi-purpose lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1212.13, 1212.14, and 1212.16. Manufacturers must also label each multi-purpose lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1212.15 and 1212.17. For purposes of this requirement, an importer of multi-purpose lighters shall be considered the "manufacturer."

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the multi-purpose lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of multi-purpose lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* (i) If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that:

(A) The importer is a resident of the United States or has a resident agent in the United States and

(B) The records are in English and the records and the surrogate multi-purpose lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1212.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1212.17(a)(3).

(ii) The importer is responsible for ensuring that:

(A) The foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1212.14–1212.16),

(B) The records provide a reasonable assurance that all multi-purpose lighters imported comply with the standard (§ 1212.13(b)(1)),

(C) The records exist in English (§ 1212.17(a)),

(D) The importer knows where the required records and multi-purpose lighters are located and that records required to be located in the United States are located there,

(E) Arrangements have been made so that any records required to be kept in the United States will be provided to the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1212.17(a)), and

(F) The information required by § 1212.17(b) to be provided to the Commission's Office of Compliance has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product "complies with the Consumer Product Safety Standard for Multi-purpose lighters (16 CFR part 1212)",

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (b)(2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each multi-purpose lighter with the following information, which may be in code.

(1) An identification of the period of time, not to exceed 31 days, during which the multi-purpose lighter was manufactured.

(2) An identification of the manufacturer of the multi-purpose lighter, unless the multi-purpose lighter bears a private label. If the multi-purpose lighter bears a private label, it shall bear a code mark or other label that will permit the seller of the multi-purpose lighter to identify the

manufacturer to the purchaser upon request.

§ 1212.13 Certification tests.

(a) *General.* As explained in § 1212.11 of this subpart, certificates of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), must be based on a reasonable testing program.

(b) *Reasonable testing programs.*

(1) *Requirements.* (i) A reasonable testing program for multi-purpose lighters is one that demonstrates with a high degree of assurance that all multi-purpose lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1212.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any multi-purpose lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include: (A) Qualification tests, which must be performed on surrogates of each model of multi-purpose lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1212.14) and

(B) Production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1212.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all multi-purpose lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each multi-purpose lighter or multi-purpose lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1212.17 of this subpart.

§ 1212.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of multi-purpose lighters distributes multi-purpose lighters in commerce in the United States, surrogate multi-purpose lighters of each model shall be tested in accordance with § 1212.4 to ensure that all such multi-purpose lighters comply with the standard. However, if a manufacturer has tested one model of multi-purpose lighter, and then wishes to distribute another model of multi-purpose lighter that differs from the first model only by differences that would not have an adverse effect on child resistance, the second model need not be tested in accordance with § 1212.4.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could adversely affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed multi-purpose lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a multi-purpose lighter design after it has been in production, this may be done by following the testing procedures at § 1212.4.

§ 1212.15 Specifications.

(a) *Requirement.* Before any multi-purpose lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate multi-purpose lighters used for qualification testing under § 1212.14 are described in a written product specification. (Section 1212.4(c) requires that six surrogate multi-purpose lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the multi-purpose lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the multi-purpose lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information, including, but not limited to, model names or numbers, necessary to adequately describe the multi-purpose lighters and any child-resistant features.

§ 1212.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of multi-purpose lighters subject to the standard as they are manufactured, to demonstrate that the multi-purpose lighters meet the specifications, required under § 1212.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other multi-purpose lighters produced during the interval will meet the standard.

(c) *Test failure.* (1) *Sale of multi-purpose lighters.* If any test yields results which indicate that any multi-purpose lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of multi-purpose lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the multi-purpose lighters or perform additional tests to ensure that only complying multi-purpose lighters are distributed in commerce. Multi-purpose lighters from other production intervals having test results showing that multi-purpose lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all multi-purpose lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all multi-purpose lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could adversely affect its child-resistance, the multi-purpose lighter must undergo new qualification tests in accordance with § 1212.14.

§ 1212.17 Recordkeeping and reporting.

(a) Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with

section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as provided in paragraph (a)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, photograph(s) or a video tape for a single pair of children from each 100-child test panel to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration, the dates of the tests, the data required by § 1212.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept for a period of 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1212.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualifications tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept for a period of 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for a period of 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by this paragraph (a)(3) outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1212.15 shall be kept for 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Office of Compliance, Consumer Product Safety Commission, 4330 East-West Highway, Room 610, Bethesda, Maryland 20814–4408. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) a detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) a description of the qualification testing, including a description of the surrogate lighters tested (including a description of the point in the operation at which the surrogate will signal operation—e.g., the distance by which a trigger must be moved), the specification of the surrogate lighter required by § 1212.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) an identification of the place or places that the lighters were or will be manufactured,

(5) the location(s) where the records required to be maintained by paragraph (a) of this section are kept, and

(6) a prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1212.18 Refusal of Importation

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1212. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart, or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard or for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product either fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

Authority: 15 U.S.C. 2058(g)(2), 2065(b), 2079(d)

§ 1212.20 Stockpiling.

(a) *Definition.* "Stockpiling" means to manufacture or import a product that is subject to a consumer product safety rule between the date of issuance of the rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base period.* For purposes of this rule, "base period" means the 1-year period ending December 21, 1999.

(c) *Prohibited act.* Manufacturers and importers of multi-purpose lighters shall not manufacture or import such lighters that do not comply with the requirements of this part between December 22, 1999 and December 22, 2000, at a rate that is greater than the rate of production or importation during the base period plus 20 per cent of that rate.

(d) *Reporting and recordkeeping requirements.* All firms and persons who make or import multi-purpose lighters, after the date of publication of this rule, that do not meet the requirements of this standard, shall

supply the Commission's Office of Compliance with:

(1) Supporting information to establish the number of multi-purpose lighters made or imported during the base period. This information shall be submitted by January 21, 2000.

(2) Supporting information to establish the number of lighters made or imported during the year following publication of the final rule. This information shall be submitted within 10 days of the end of each calendar month, for lighters shipped within that month.

(3) Supporting information shall be sufficient to identify the manufacturer or importer, the party to which the lighters were sold, the destination of the lighters, and shall include copies of relevant invoices and importation documents.

Appendix A to Part 1212—Findings Under the Consumer Product Safety Act

Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule. Because the findings are required to be published in the rule, they reflect the information that was available to the Consumer Product Safety Commission ("CPSC" or "Commission") when the standard was issued on December 22, 1999.

A. *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with multi-purpose lighters. The Commission has identified 196 fires that occurred from 1995 through 1998 that were started by children under age 5 playing with multi-purpose lighters. These fires resulted in a total of 35 deaths and 81 injuries. Fire-related injuries include thermal burns—many of high severity—as well as anoxia and other, less serious injuries. The societal costs of these fires is estimated to include $175 million in deaths, $13.7 million in injuries, and over $5 million in property damage. Because these data are from known fires rather than national estimates, the extent of the total problem may be greater. Fires started by children under age 5 are those which the standard would most effectively reduce.

B. *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as multi-purpose lighters, that are defined in § 1212.2(a) of 16 CFR Part 1212. This definition includes products that are referred to as micro-torches. Multi-purpose lighters may use any fuel and may be refillable or nonrefillable. Approximately 21 million multi-purpose lighters are expected to be sold to consumers in the U.S. during 1999. Multi-purpose lighters manufactured in the United States, or imported, on or after December 22, 2000 will be required to meet child-resistance requirements. The following products are not multi-purpose lighters: devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210); devices that contain more than 10 oz. of fuel; and matches:

C. *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use multi-purpose lighters primarily to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, or fuel-fired appliances or devices or their pilot lights.

1. There will be several types of costs associated with the rule. Manufacturers would have to devote some resources to the development or modification of technology to produce child-resistant multi-purpose lighters. Before being marketed, the lighters must be tested and certified to the new standard. It is also possible that manufacturing child-resistant lighters may require more labor or material than non-child-resistant lighters.

2. Manufacturers will have to modify their existing multi-purpose lighters to comply with the rule. In general, costs that manufacturers would incur in developing, producing, and selling new complying lighters include the following:

- Research and development toward finding the most promising approaches to improving child resistance, including building prototypes and surrogate lighters for preliminary child panel testing;
- Retooling and other production equipment changes required to produce more child-resistant multi-purpose lighters, beyond normal periodic changes made to the plant and equipment;
- Labor and material costs of the additional assembly steps, or modification of assembly steps, in the manufacturing process;
- The additional labeling, recordkeeping, certification, testing, and reporting that will be required for each new model;
- Various administrative costs of compliance, such as legal support and executive time spent at related meetings and activities; and
- Lost revenue if sales are adversely affected.

3. Industry sources have not been able to provide firm estimates of these costs. One major manufacturer has introduced a child-resistant multi-purpose lighter. However, because that company did not previously manufacture a non-child-resistant lighter, it was unable to estimate the incremental cost of developing and manufacturing child-resistant multi-purpose lighters.

4. Assuming that there are 20 manufacturers and that each invests an average of $2 million to develop and market complying lighters, the total industry cost for research development, retooling, and compliance testing would be approximately $40 million. If amortized over a period of 10 years, and assuming a modest 1% sales growth each year, the average of these costs would be about $0.23 per unit. For a manufacturer with a large market share (i.e., selling several million units or more a year) the cost per unit of the development costs could be lower than the estimated $0.23 per unit, even at the high end of the estimates. On the other hand, for manufacturers with a small market share, the per-unit development costs would be greater. Some manufacturers with small market shares may even drop out of the market (at least temporarily) or delay entering the market.

5. In addition to the research, development, retooling, and testing costs, material and labor costs are likely to increase. For example, additional labor will be required to add the child-resistant mechanism to the lighter during assembly. Additional materials may also be needed to produce the child-resistant mechanism. While CPSC was unable to obtain reliable estimates, some industry sources indicated that they believed that these costs would be relatively low, probably less than $0.25 per unit.

6. Multi-purpose lighters will also be required to have a label that identifies the manufacturer and the approximate date of manufacture. However, virtually all products are already labeled in some way. Since the requirement in the rule allows substantial flexibility to the manufacturer in terms of things such as color, size, and location, this requirement is not expected to increase the costs significantly.

7. Certification and testing costs include costs of producing surrogate lighters; conducting child panel tests; and issuing and maintaining records for each model. The largest component of these costs is believed to be building surrogates and conducting child panel tests, which, based on CPSC experience, may cost about $25,000 per lighter model. Administrative expenses associated with the compliance and related activities are difficult to quantify, since many such activities associated with the rule would probably be carried out anyway and the marginal impact of the recommended rule is probably slight.

8. Multi-purpose lighters are sold in countries other than the United States. Some manufacturers may develop lighters that meet the requirements of the rule for distribution in the United States, but continue to distribute the current, non-child-resistant models in other countries. Thus, some manufacturers may incur the incremental costs associated with producing multiple lines of similar products. These costs could include extra administrative costs required to maintain different lines and the incremental costs of producing different lines of similar products, such as using different molds or different assembly steps. These costs would, however, be mitigated if similar or identical standards were adopted by other countries. In total, the rule will likely increase the cost of manufacturing multi-purpose lighters by about $0.48 per unit.

9. At the present time, one manufacturer has about 80–90% of the market for multi-purpose lighters. The other manufacturers, importers, and private labelers divide up the remaining 10–20% of the market. Thus, there is already a very high degree of concentration in the market. Even so, at least two

manufacturers have already entered the market with models that are believed to meet the requirements of the rule and at least one other firm is believed to be actively developing a child-resistant lighter. Therefore, the rule is not expected to have any significant impact on competition. Moreover, other firms are expected to enter the market for multi-purpose lighters, and thereby increase competition, as the market expands. Firms that market child-resistant multi-purpose lighters before the standard's effective date may gain an initial competitive advantage. However, any differential impact is likely to be slight and short-lived. Other manufacturers can be expected to have child-resistant multi-purpose lighters developed and ready to market before or soon after the rule goes into effect.

D. *Impact on consumers.* Aside from increased safety, the rule is likely to affect consumers in two ways. First, the increased cost for producing the child-resistant models will likely result in higher retail prices for multi-purpose lighters. Second, the utility derived from child-resistant lighters may be decreased if complying lighters are less easy to operate.

1. Assuming a 100% markup over the incremental cost to manufacturers (estimated at $0.48/unit), the rule may be expected to increase the retail price of multi-purpose lighters by $0.90 per unit. The per-unit price increase for micro-torches and other high-end multi-purpose lighters may be higher due to the smaller numbers of such lighters produced.

2. The utility that consumers receive from multi-purpose lighters may be reduced if the rule makes the lighters more difficult to operate. This could result in some consumers switching to substitute products, such as matches. However, as with child-resistant cigarette lighters, the increased difficulty of operating child-resistant multi-purpose lighters is expected to be slight. Moreover, even if some consumers do switch to other products, the risk of fire is not expected to increase significantly. Most cigarette lighters (one possible substitute) must already meet the same child-resistant standard as those applicable to multi-purpose lighters. Although consumers that switch to matches may increase the risk of child-play fires somewhat, matches seem to be inherently more child resistant than are non-child-resistant multi-purpose lighters. Previously, the CPSC determined that non-child-resistant cigarette lighters were 1.4 times as likely as matches to be involved in child-play fires and 3.9 times as likely to be involved in a child-play death. Thus, even if some consumers did switch to using matches, the risk of child-play fires would still likely be less than if they continued to use non-child-resistant multi-purpose lighters.

3. The total societal costs of fires known to have been started during 1995 through 1998 by children under age 5 playing with multi-purpose lighters was approximately $194.2 million, or $48.6 million per year. This is probably an underestimate, since it only includes the cases of which CPSC is aware. During the same period, an estimated 20 million multi-purpose lighters were available for use each year. The societal costs of the fires started by young children attempting to operate multi-purpose lighters is, therefore, about $2.43 per lighter ($48.6 million ÷ 20 million lighters) per year. The rule is expected to reduce this cost by 75 to 84%. Therefore, the expected societal benefit of the rule in terms of reduced fires, deaths, injuries, and property damage is expected to be at least $1.82 per complying lighter sold.

4. As discussed above, the rule may increase the cost of manufacturing multi-purpose lighters by $0.48 and may increase the retail prices by as much as $0.96. Therefore, assuming that sales of multi-purpose lighters remain the same, the net benefit (benefits minus costs) of the rule to consumers is expected to be at least $0.86 per unit ($1.82—$0.96). Based on annual sales of approximately 20 million units per year, the rule would result in an annual net benefit to consumers at least $17.2 million (20 million × $0.86) annually.

5. The actual level of benefits observed could be higher if some multi-purpose lighters are stored with the on/off switch in the "on" position. If a significant number of consumers commonly store multi-purpose lighters with the switch on, the effective level of child resistance of multi-purpose lighters currently in use may be lower than indicated by CPSC's baseline testing. This would increase the effectiveness of the rule and the value of the net benefits.

E. *Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* 1. The performance requirements of this part 1212 are based on the Commission's Safety Standard for Cigarette Lighters, 16 CFR part 1210. In developing that standard, the Commission considered the potential effects on competition and business practices of various aspects of the standard, and incorporated some burden-reducing elements into the standard.

2. One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to the requirements of the standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however. Although some of the largest firms may market some child-resistant multi-purpose lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the provisions of this part 1212 would not adequately reduce the unreasonable risk associated with multi-purpose lighters.

F. *The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury.* The Commission's hazard data and regulatory analysis demonstrate that multi-purpose lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective (one year after publication of the final rule) will provide manufacturers and importers of most products adequate time to design, produce, and market safer multi-purpose lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with multi-purpose lighters.

G. *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with multi-purpose lighters. The cost of these accidents, which is estimated to be greater than $48.6 million annually, will also be greatly reduced. The rule is expected to reduce this societal cost by 75–84%, or by greater than $36.5 million. The estimated annual costs to the public are expected to be less than $20 million. Therefore, substantial net benefits will accrue to consumers. Thus, the Commission finds that a reasonable relationship exists between the expected benefits and the expected costs of the standard.

H. *The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.* 1. The Commission incorporated a number of features from the cigarette lighter standard, 16 CFR part 1210, in order to minimize the potential burden of the rule on industry and consumers. The Commission also considered alternatives involving different performance and test requirements and different definitions determining the scope of coverage among products. Alternatives that would be more burdensome to industry would have higher costs to consumers. Less burdensome alternatives would have lowered the risk-reduction benefits to consumers. No alternative has been identified that would result in a higher level of net benefits to consumers.

2. A less stringent acceptance criterion of 80% (rather than the standard's 85%) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90%) acceptance criterion was also considered. This higher performance level may not be commercially or technically feasible for many firms, however. The Commission believes that this more stringent alternative would have substantial adverse effects on manufacturing and competition, and would increase costs disproportionate to benefits. The Commission believes that the requirement that complying multi-purpose lighters not be operable by at least 85% of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

3. The standard becomes effective 12 months after it is issued December 22, 2000. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. Although most multi-purpose lighters sold in the U.S. could probably be made child-resistant within 6 months, the supply of some imported multi-purpose lighters would be disrupted. The 12-month period in the standard would minimize this potential effect, and would allow more time for firms to design, produce, and import complying multi-purpose lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of multi-purpose lighters for the U.S. market. A longer effective date was deemed unsuitable because it would unduly delay the lifesaving benefits of the standard and would penalize firms that have already begun to develop child-resistant multi-purpose lighters.

I. *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the potential benefits and costs of the standard and various alternatives. The standard provides substantial net benefits to society. Although certain alternatives to the final rule were estimated to also have net benefits to consumers, they would decrease the level of safety. Therefore, the Commission finds that the standard is in the public interest.

Dated: December 13, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(**Note:** This list of relevant documents will not be printed in the Code of Federal Regulations.

1. Letter from J. Carr, to Honorable Ann Brown, Chairman, U.S. Consumer Product Safety Commission, petitioning the Commission to initiate rulemaking proceedings to amend the Safety Standard for Cigarette Lighters to include the Scripto Aim 'n Flame® disposable butane "multi-purpose lighter." (Received by CPSC February 15, 1996)

2. Letter from T. Stevenson, Deputy Secretary and Freedom of Information Officer, Office of the Secretary, CPSC, to J. Carr, February 23, 1996.

3. **Federal Register** Notice, (Requesting Comment on Petition) "Petition CP 96–1 Requesting a Child-Resistance Standard for Multi-Purpose Lighters," May 7, 1996.

4. Petition Comment CC 96–3–1, F. Hon, President, Calico Brands, Inc, May 30, 1996.

5. Petition Comment CC 96–3–2, B. Radnofsky, Esq., and C. Guthrie, Vinson & Elkins, L.L.P., June 12, 1996.

6. Petition Comment CC 96–3–3, M. Reynolds, Group Vice President, Colibri Corporation, June 17, 1996.

7. Petition Comment CC 96–3–4, J. Geremia, Ph.D., June 17, 1996.

8. Petition Comment CC 96–3–5, D. Denton, July 2, 1996.

9. Petition Comment CC 96–3–6, M. Forys, Senior Vice President, Administration, Scripto-Tokai Corporation, July 3, 1996.

10. Petition Comment CC 96–3–7, D. Baker, General Counsel, Lighter Association, Inc., July 5, 1996.

11. Petition Comment CC 96–3–8, D. Carson, Esq., Carson, Carson, & Carson, July 5, 1996.

12. Petition Comment CC 96–3–9, M. McLoughlin, Customer Relations Manager, Pinkerton Group Inc. (A Swedish Match Company), July 8, 1996.

13. Briefing Package, "Multi-Purpose Lighter Petition," November 26, 1996.

14. "Petition to initiate rulemaking proceeding to amend 16 CFR 1210 Safety Standard for Cigarette Lighters to include the Scripto Aim 'n Flame[®] disposable butane 'multi-purpose' lighter within the scope of the Safety Standard for Cigarette Lighters" (CP 96–1), February 1996 (Tab A of 11/26/96 Briefing Package).

15. **Federal Register** Notice, Petition CP 96–1 Requesting a Child-Resistance Standard for Multi-Purpose Lighters, May 7, 1996. (Tab B of 11/26/96 Briefing Package).

16. Smith., L., "Fire Incidents Involving Multi-Purpose Lighters," CPSC, Division of Hazard Analysis, November 12, 1996 (Tab C of 11/26/96 Briefing Package).

17. Karels, T., "Economic Consideration of the Petition on Multipurpose Lighters," CPSC, Directorate for Economic Analysis, November 25, 1996 (Tab D of 11/26/96 Briefing Package).

18. Meiers, C., "Attractiveness and Appeal of Multi-Purpose Lighters to Children (Petition CP 96–1)," CPSC, Division of Human Factors, September 19, 1996 (Tab E of 11/26/96 Briefing Package).

19. Smith., L., "Response to Public Comments, Multi-Purpose Lighter Petition-CP 96–1," CPSC, Division of Hazard Analysis, November 12, 1996. (Tab F of 11/26/96 Briefing Package).

20. Perry, E., "Response to Comments on Multi-Purpose Lighters," CPSC, Directorate for Engineering Sciences, September 6, 1996 (Tab G of 11/26/96 Briefing Package).

21. Meiers, C., "Response to Public Comments on Requiring Multi-Purpose Lighters to be Child-Resistant (Petition CP 96–1), CPSC, Division of Human Factors, September 16, 1996 (Tab H of 11/26/96 Briefing Package).

22. Poth, R., "Comments In Response to Petition CP 96–1 For Child-Resistant Multi-Purpose Lighters, CPSC, Office of Compliance, September 18, 1996 (Tab I of 11/26/96 Briefing Package).

23. **Federal Register** Notice, "Multi-Purpose Lighters; Advance Notice of Proposed Rulemaking; Request for Comments and Information," 62 Fed. Reg. 2327 (January 16, 1997).

24. **Federal Register** Notice, "Multi-Purpose Lighters; Extension of Period for Issuing a Notice of Proposed Rulemaking," 63 Fed. Reg. 1077 (January 8, 1998).

25. ANPR Comment CH 97–1–1, G. Phelps, President, International Association of Arson Investigators, Inc., August 26, 1996.

26. ANPR Comment CH 97–1–2, B. Radnofsky, Esq. and C. Guthrie, Vinson & Elkins, LLP, October 17, 1996.

27. ANPR Comment CH 97–1–2a, B. Radnofsky, Esq. and C. Guthrie, Vinson & Elkins, LLP, January 6, 1997.

28. ANPR Comment CH 97–1–2b, B. Radnofsky, Esq. and C. Guthrie, Vinson & Elkins, LLP, March 11, 1997.

29. ANPR Comment CH 97–1–3, C. Craig, March 4, 1997.

30. ANPR Comment CH 97–1–4, M. Forys, Senior Vice President, Administration, Scripto-Tokai Corporation, March 13, 1997.

31. ANPR Comment CH 97–1–5, M. McLoughlin, Customer Relations Manager, Swedish Match (Cricket®), March 14, 1997.

32. ANPR Comment CH 97–1–6, D. Baker, General Counsel, The Lighter Association, Inc., March 17, 1997.

33. ANPR Comment CH 97–1–7, R. McLeod, MSN, RN, CS, CPNP, President, National Association of Pediatric Nurse Associates & Practitioners, Inc., March 17, 1997.

34. ANPR Comment CH 97–1–8, C. Guthrie, Vinson & Elkins, January 7, 1998.

35. ANPR Comment CH 97–1–9, D. Bruce Kehoe, Esq., Wilson Kehoe & Winingham, March 4, 1998.

36. ANPR Comment CH 97–1–10, M. Collmer, Esq., McDowell Collmer, L.L.P., March 17, 1997.

37. Briefing Package, "Proposed Standard for Multi-Purpose Lighters," CPSC, July 15, 1998.

38. Draft **Federal Register** Notice, "Utility Lighters; Notice of Proposed Rulemaking," (Tab A of 7/15/98 Briefing Package).

39. Franklin, R., "Preliminary Regulatory Analysis of Multi-Purpose Lighters," CPSC, Directorate for Economic Analysis, July 14, 1998 (Tab B of 7/15/98 Briefing Package).

40. Letter from T. Kelleher, Senior Vice President-Administration, General Counsel and Secretary, BIC, to B. Jacobson, CPSC, "BIC® SureStart™ Utility Lighter," May 8, 1998 (Tab C of 7/15/98 Briefing Package).

41. Smith, L., "Fire Incidents Involving Multi-Purpose Lighters," CPSC, Division of Hazard Analysis, July 9, 1998 (Tab D of 7/15/98 Briefing Package).

42. Franklin, R., "Initial Regulatory Flexibility Analysis of Multi-Purpose Lighters," CPSC, Directorate for Economic Analysis, July 14, 1998 (Tab E of 7/15/98 Briefing Package).

43. Jacobson, B., "Advance notice of proposed rulemaking," CPSC, Division of Health Sciences, July 2, 1998 (Tab F of 7/15/98 Briefing Package).

44. Sushinsky, G., "Gas Grill Ignition Tests," CPSC, Directorate for Laboratory Sciences, June 29, 1998 (Tab G of 7/15/98 Briefing Package).

45. Meiers, C., "Response to public Comments on Advance Notice of Proposed Rulemaking (ANPR) Requiring Multi-Purpose Lighters to be Child-Resistant," CPSC, Division of Human Factors, April 28, 1998 (Tab H of 7/15/98 Briefing Package).

46. Franklin, R., "Response to Comments Concerning Economic Issues Raised by Comments to the ANPR on Multi-Purpose Lighters, "CPSC, Directorate for Economic Analysis, July 14, 1998 (Tab I of 7/15/98 Briefing Package).

47. Bogumill, M., "Response to Comments on Multi-Purpose Lighter ANPR," CPSC, Office of Compliance, June 5, 1998, (Tab J of 7/15/98 Briefing Package).

48. Briefing Package, "Supplemental Information—Proposed Standard for Multi-

Purpose Lighters," CPSC, September 10, 1998.

49. Smith, L., "Fire Incidents Involving Multi-Purpose Lighters," CPSC, Division of Hazard Analysis, August 20, 1999 (Tab A of 9/10/98 Briefing Package).

50. Perry, E., and C. Paul, "Feasibility of Making Multi-Purpose Lighters Child-Resistant," CPSC, Division of Mechanical Engineering, August 19, 1998 (Tab B of 9/10/98 Briefing Package).

51. Meiers, C., "Micro-torches," CPSC, Division of Human Factors, August 6, 1998 (Tab C of 9/10/98 Briefing Package).

52. Franklin, R., "Multi-Purpose Lighters: Preliminary Regulatory Analysis," CPSC, Directorate for Economic Analysis, August 21, 1998 (Tab D of 9/10/98 Briefing Package).

53. Franklin, R. "Proposed Rule on Multi-Purpose Lighters: Initial Regulatory Flexibility Analysis," CPSC, Directorate for Economic Analysis, August 21, 1998 (Tab E of 9/10/98 Briefing Package).

54. Perry, E., and C. Paul, "Flash-Back Prevention," CPSC, Division of Mechanical Engineering, August 26, 1998 (Tab F of 9/10/98 Briefing Package).

55. Draft **Federal Register** Notice, "Multi-Purpose Lighters; Notice of Proposed Rulemaking," (Tab G of 9/10/98 Briefing Package).

56. Draft **Federal Register** Notice, "Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated with Multi-Purpose Lighters That Can Be Operated by Children," (Tab H of 9/10/98 Briefing Package).

57. **Federal Register** Notice, "Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated with Multi-Purpose Lighters That Can Be Operated by Children" 63 Fed. Reg. 52394 (September 30, 1998).

58. **Federal Register** Notice, "Multi-Purpose Lighters; Notice of Proposed Rulemaking," 63 Fed. Reg. 52397 (September 30, 1998).

59. NPR Comment CC 99–1–1, C. Horn, Esq., Joseph P. Moschetta and Associates, October 8, 1998.

60. NPR Comment CC 99–1–2, N. Zeller, Chairman, Zelco Industries, Inc., October 9, 1998.

61. NPR Comment CC 99–1–2a, N. Zeller, Chairman, Zelco Industries, Inc., October 12, 1998.

62. NPR Comment CC 99–1–3, T. Moran, President, SNC Group, L.L.C., November 11, 1998.

63. NPR Comment CC 99–1–4, D. Cooke, Esq., November 18, 1998.

64. NPR Comment CC 99–1–5, M. McLoughlin, Customer Relation Manager, Swedish Match (Cricket®), November 30, 1998.

65. NPR Comment CC 99–1–6, M. Forys, Senior Vice President, Administration, Scripto-Tokai Corporation, December 4, 1998.

66. NPR Comment CC 99–1–7, M. Schuler, President and CEO, Zippo Manufacturing Co., December 11, 1998.

67. NPR Comment CC 99–1–8, G. Cavallo, Ph.D., Managing Director, Milford Consulting Associates, December 14, 1998.

68. NPR Comment CC 99–1–9, J. Alpert, MD, FAAP, President, American Academy of Pediatrics, December 14, 1998.

69. NPR Comment CC 99–1–10, D. Baker, General Counsel, Lighter Association, Inc., December 14, 1998.

70. NPR Comment CC 99–1–11, T. Kelleher, Senior Vice President-Administration, General Counsel & Secretary, BIC Corporation, December 17, 1998.

71. NPR Comment CC 99–1–12, M. LeBlanc, Esq., Sugarman and Sugarman, P.C., August 19, 1998.

72. NPR Comment CC 99–1–13, D. Lant, Chairman, BSI Technical Committee—Matches & Lighters, November 10, 1998.

73. NPR Comment CC 99–1–14, S. Brobeck, Chairman, The Coalition For Consumer Health & Safety, January 20, 1999.

74. NPR Comment CC 99–1–15, R. Ducharme, Quality Control Manager, The Colibri Group, January 20, 1999.

75. NPR Comment CC 99–1–16, R. Stephenson, President, DONEL, Inc.

76. NPR Comment CC 99–1–17, L. Daly, February 26, 1999.

77. NPR Comment CC 99–1–18, P. Simon, President, Blazer Corporation, July 2, 1999.

78. NPR Comment CC 99–1–19, B. Radnofsky, Esq., and C. Guthrie, D.C., J.D., September 20, 1999.

79. NPR Comment CC 99–1–19a, B. Radnofsky, Esq., and C. Guthrie, Legal Assistant, March 19, 1999.

80. NPR Comment CC 99–1–20, E. Mallett, June 1, 1999.

81. NPR Comment CC 99–1–21, Gamache, Executive Director, National Fire Protection Association Center for High-Risk Outreach, October 18, 1999.

82. NPR Comment CC 99–1–22, W. Hansen, Esq., McDermott and Hansen, August 16, 1999.

83. **Federal Register** Notice, "Multi-Purpose Lighters; Notice of Opportunity for Oral Presentation of Comments," 63 Fed. Reg. 69030 (December 15, 1998).

84. Summary of oral comments, D. Baker, General Counsel, Lighter Association, Inc., "Multi-Purpose Lighter Rulemaking," January 7, 1999.

85. Summary of oral comments, C. Pollack-Nelson, Ph.D., Independent Safety Consulting, "NPR for Multi-Purpose Lighters," January 11, 1999

86. Summary of oral comments, D. Cooke, Esq., "January 20, 1999 hearing on Multi Purpose Lighters," January 11, 1999.

87. Summary of oral comments, D. Baker, General Counsel, Lighter Association, Inc., "Supplemental Comments of Lighter Association, Inc.," February 12, 1999.

88. Transcript, "Hearing on Multi-Purpose Lighters," January 20, 1999.

89. Letter from M. Forys, Senior Vice President, Administration and Corporate Secretary, Scripto, to B. Jacobson, CPSC, "Aim 'n Flame Consumer Claims Potentially Involving 'BackFlash,'" March 29, 1999.

90. **Federal Register** Notice, "Multi-Purpose Lighters; Request for Additional Comment," (Proposal to conduct the child-panel tests with the on/off switch in the on, or unlocked, position.) 64 Fed. Reg. 42302 (August 4, 1999).

91. Briefing Package, "Final Standard for Multi-Purpose Lighters," CPSC, November 19, 1999.

92. Smith, L., "Fire Incidents Involving Multi-Purpose Lighters," CPSC, Directorate for Epidemiology, November 3, 1999 (Tab A of 11/19/99 Briefing Package).

93. Sedney, C., "Response to Comments on Notice of Proposed Rulemaking for Multi-Purpose Lighters," CPSC, Division of Human Factors, November 18, 1999 (Tab B of 11/19/99 Briefing Package).

94. Bogumill, M., "Response to Comments on NPR for Multi-Purpose Lighters," CPSC, Office of Compliance, November 4, 1999 (Tab C of 11/19/99 Briefing Package).

95. Sedney, C., "Child-Resistant Lighter Mechanisms and the Risk of Flashback Injuries," CPSC, Division of Human Factors, October 29, 1999 (Tab D of 11/19/99 Briefing Package).

96. Rowe, W., "Flashback associated with gas grills," CPSC, Division of Engineering, August 22, 1999 (Tab E of 11/19/99 Briefing Package).

97. Nakamura, S., Ph.D., "Severity of burns resulting from flash fire," CPSC, Division of Health Sciences, August 11, 1999 (Tab F of 11/19/99 Briefing Package).

98. Perry, F, and C. Paul, "Multi-Purpose Lighter Ignition Tests," CPSC, Division of Mechanical Engineering, July 7, 1999 (Tab G of 11/19/99 Briefing Package).

99. Smith, L., "Burn Hazard Associated with Lighting Gas-Fueled Products," CPSC, Division of Hazard Analysis, June 17, 1999 (Tab H of 11/19/99 Briefing Package).

100. Franklin, R., "Response to Economic Issues Raised in Public Comments," CPSC, Directorate for Economic Analysis, November 3, 1999 (Tab I of 11/19/99 Briefing Package).

101. Franklin, R., "Final Regulatory Analysis and Final Regulatory Flexibility Analysis," CPSC, Directorate for Economic Analysis, November 18, 1999 (Tab J of 11/19/99 Briefing Package).

102. Sedney, C., "Effect of the Proposed Rule on Elderly and Handicapped Persons," CPSC, Division of Human Factors, October 29, 1999 (Tab K of 11/19/99 Briefing Package).

103. Draft **Federal Register** Notice, "Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated with Multi-Purpose Lighters That Can Be Operated by Children," (Tab L of 11/19/99 Briefing Package).

104. Draft **Federal Register** Notice, "Safety Standard for Multi-Purpose Lighters," (Tab M of 11/19/99 Briefing Package). 3

[FR Doc. 99–32677 Filed 12–21–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Rule To Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Multi-Purpose Lighters That Can Be Operated by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Commission issues a safety standard for multi-purpose lighters to reduce risks of injury that are associated with the lighters because they can be operated by young children. In this final rule the Commission determines, under section 30(d) of the Consumer Product Safety Act, that it is in the public interest to issue the safety standard, or to take any other regulatory action to address risks of injury that are associated with multi-purpose lighters due to the fact that they can be operated by children, under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act.

DATES: This rule is effective January 21, 2000.

ADDRESSES: Copies of documents relevant to this rulemaking can be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207–0001, Telephone (301)504–0800, fax (301) 504–504–0127, email cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Concerning legal aspects: Harleigh Ewell, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0980, ext. 2217.

Concerning the Safety Standard for Multi-Purpose Lighters: Michael Bogumill, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1206; email mbogumill@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Commission determines by rule that it will regulate those risks of death and injury that are associated with multi-purpose lighters, and that are due to the fact that the lighters can be operated by young children, under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051–2084. Young children do not appreciate all of the consequences of using the product. Those consequences can include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the multi-purpose lighter, or other persons. These risks will be regulated under the CPSA, rather than under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1277, or the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471–1476.

Section 30(d) of the CPSA, 15 U.S.C. 2079(d), provides that a risk of injury associated with a consumer product that could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. Elsewhere in this issue of the **Federal Register**, the Commission issues a rule under the CPSA that will impose child-resistance requirements on multi-purpose lighters. Information on the safety hazards associated with the use of multi-purpose lighters by young children, and on other aspects relating to the need for and provisions of the Safety Standard for Multi-Purpose Lighters can be found in the portion of this issue of the **Federal Register** that issues the standard.

As discussed below, it might be possible to adequately reduce those risks by action taken under the FHSA or the PPPA. Nevertheless, the Commission has determined that it is in the public interest to regulate those risks of injury under the CPSA rather than the FHSA or the PPPA because the authority of the CPSA is more appropriate to address risks of injury associated with a mechanical, flame-producing device than are the authorities of the FHSA or the PPPA.

In the rule issued elsewhere in this issue of the **Federal Register**, to be codified at 16 CFR 1212.2, multi-purpose lighters are defined as follows:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, *etc.*) means: A hand-held, flame-producing product that operates on fuel, incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

(2) The following products are not multi-purpose lighters:

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Matches.

B. Choice of Statute

Of the statutes administered by the CPSC, the CPSA, the FHSA, and the PPPA provide potential authority for a child-resistance requirement for multi-purpose lighters. The possible regulatory options include issuing a consumer product safety standard under the CPSA, a banning rule under the FHSA, and a rule to establish requirements to make multi-purpose lighters "significantly difficult for children under five years of age" to operate under the PPPA.

The risks of injury associated with multi-purpose lighters that can be operated by children arise because multi-purpose lighters are mechanical devices intended to produce flame and can be operated by children.

The CPSA includes provisions authorizing the Commission to issue performance and labeling requirements applicable to multi-purpose lighters when such requirements are "reasonably necessary" to eliminate or reduce an unreasonable risk of injury associated with that product. This authority is suitable for issuing requirements to address hazards associated with young children starting fires with multi-purpose lighters.

Part of the rule for multi-purpose lighters that is issued elsewhere in this issue of the **Federal Register** is a certification rule that requires the manufacturer or importer to conduct tests to ensure that the lighters comply with the safety requirements of the rule. This testing is necessary to ensure the effectiveness of the rule, because the complex and time-consuming child-panel tests in the standard make it impractical for the Commission to routinely test for compliance. It is possible that similar testing requirements could be promulgated under the authority of section 10(a) of the FHSA, 15 U.S.C. 1269(a), that the Commission may issue "regulations for the efficient enforcement" of the FHSA. However, the authority of the CPSA is explicit in this regard and, thus, is preferable.

The Commission has determined that a stockpiling rule is in the public interest because it will help ensure the effectiveness of any standard for multi-purpose lighters. Neither the FHSA or the PPPA explicitly authorizes such a rule.

The FHSA includes provisions that authorize the Commission to require special labeling for, and in some circumstances to ban, a household product that is or contains a "hazardous substance." The FHSA authorizes the Commission to regulate multi-purpose lighters because they are containers of lighter fuel, which is a "hazardous substance" as that term is defined in the FHSA. However, no provision of the FHSA expressly authorizes the Commission to address a hazard that is associated with the mechanical operation of a multi-purpose lighter as a flame-producing device. The changes needed to reduce the risk of child-play fires also involve the mechanical characteristics of the lighter's operating mechanism. Thus, the CPSA is a more appropriate statute for regulating the mechanical risk of child resistance.

Under the PPPA, the Commission may issue a rule requiring the "package"—that is, the multi-purpose lighter—to be "significantly difficult" for children younger than 5 years of age "to open or obtain a toxic or harmful amount of the substance contained therein." However, the ability of young children "to open" the fuel-containing portion of the multi-purpose lighter or "obtain a toxic or harmful amount" of the fuel are not the risks of injury associated with multi-purpose lighters that the Commission is now addressing. Rather, it is the risk of death and injury from fires started by children with multi-purpose lighters. This risk arises from the mechanical operation of the multi-purpose lighter, and from the ability of young children to manipulate the multi-purpose lighter to produce a flame.

Additionally, the PPPA allows the manufacturer of a substance subject to special-packaging requirements to use packaging that is not child-resistant if (1) the substance is also distributed in child-resistant packages and (2) the packages that are not child resistant are labeled "This package for households without young children." This provision, by allowing the marketing of non-child-resistant multi-purpose lighters of the types covered by the rule, could significantly impair the effectiveness of the rule to reduce the risk of injury.

The Commission received one comment on the proposed rule to issue child-resistance requirements for multi-purpose lighters under the CPSA. BIC Corporation disagreed with the Commission's characterization of a multi-purpose lighter as a "package" for butane, as that term is used in the PPPA. BIC cited two court decisions that support its contention.

The Commission has not changed its view that a lighter can be a package for the fuel it is sold with, and at least one court has agreed with this view. *See Carlson* v. *BIC Corp.*, 840 F. Supp. 457, 467 (E.D. Mich. 1993). However, even if BIC were correct that multi-purpose lighters are not packages of butane under the PPPA, this simply would provide further support for the Commission's decision to regulate the risk arising from children's operation of these lighters under the CPSA. Thus, no change to the proposed rule is required in response to this comment.

Therefore, for the reasons given above, the Commission is issuing a rule to determine that it is in the public interest to regulate under the CPSA any risks of injury associated with the fact that multi-purpose lighters can be operated by young children. This finding will be codified at 16 CFR 1145.17. The rule shall become effective immediately upon its publication in the **Federal Register**. 5 U.S.C. 553(d)(3). (There is a 1-year delayed effective date for the safety standard itself.)

C. Impact on Small Entities

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603–612, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. A final regulatory analysis is required when a final rule is issued. 5 U.S.C. 604. The RFA further provides, however, that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The regulation issued below does not by itself impose any legal or other obligation on any person or firm. The rule simply expresses the Commission's determination that any action taken to eliminate or reduce risks of injury associated with multi-purpose lighters due to the fact that they can be operated by children will be taken under the authority of the CPSA rather than the FHSA or the PPPA. In issuing the safety standard for multi-purpose lighters, the Commission followed all applicable provisions of the CPSA. The RFA also applies to the safety standard, and the Commission has certified that the Safety Standard for Multi-Purpose Lighters will not have a significant economic impact on a substantial number of small entities. Because this final rule under section 30(d) of the CPSA imposes no obligation on any person or firm, the Commission hereby certifies that this 30(d) rule will not have a significant economic impact on a substantial number of small entities.

D. Environmental Considerations

The rule issued below falls within the categories of Commission action described in 16 CFR 1021.5(c) as having little or no potential for affecting the human environment, and the Commission has no information that would indicate otherwise. Therefore, neither an environmental assessment nor an environmental impact statement is required.

E. Conclusion

After consideration of the information discussed above, the Commission finds that for any regulatory action needed to address risks of injury associated with multi-purpose lighters due to the fact that they can be operated by children, it is in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. This determination does not affect other hazards associated with multi-purpose lighters, such as that some lighters are subject to FHSA labeling because the lighters contain fuel that is flammable or toxic or generates pressure. Provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a multi-purpose lighter because the fuel is a "hazardous substance" as that term is defined by the FHSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Fire prevention, Infants and children, Packaging and containers.

For the reasons given above, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for Part 1145 is revised to read as follows:

Authority: 15 U.S.C. 2079(d).

2. A new § 1145.17 is added to read as follows:

§ 1145.17 Multi-purpose lighters that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that multi-purpose lighters can be operated by young children, rather than to regulate such risks under the Federal

Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with multi-purpose lighters because the lighters can be operated by young children shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks that are associated with such lighters, and that are based solely on the fact that the lighters contain a hazardous substance, shall continue to be regulated under the Federal Hazardous Substances Act.

Dated: December 13, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–32678 Filed 12–21–99; 8:45 am]

BILLING CODE 6355–01–P

OL

64

ISS

2
4
5

DE

22

999

MI

federal register

Wednesday
December 22, 1999

Part III

Consumer Product Safety Commission

16 CFR Parts 1213, 1500, and 1513
Safety Standard for Bunk Beds; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1213, 1500, and 1513

Safety Standard for Bunk Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) has determined that unreasonable risks of injury and death are associated with bunk beds that are constructed so that children can become entrapped in the beds' structure or become wedged between the bed and a wall.

This document issues the final rules mandating bunk bed performance requirements to reduce this hazard. The rules are issued under both the Federal Hazardous Substances Act (FHSA), for bunk beds intended for use by children, and the Consumer Product Safety Act (CPSA), for bunk beds not "intended" for (but often used by) children.

DATES: These rules will become effective June 19, 2000 and will apply to all bunk beds manufactured in the United States, or imported, on or after that date.

ADDRESSES: Documents relating to these rules can be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or inspected at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Pamela Major, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0608, ext. 1373; email pmajor@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In this document, the Commission issues rules mandating requirements to protect against the entrapment of children in bunk beds.[1] Without proper guardrails and safe dimensions for openings in the bed's structure, a bunk bed may allow a child to be entrapped, and thus strangle or suffocate. This can occur when the child becomes wedged between the bed and the wall, when the child slips his or her torso through an opening in the bed that is too small for its head to pass through (torso-first entrapment), or when the child places his or her head in an opening, then moves to a narrower area of the opening where the head cannot pull out, and then falls or loses his/her footing (head-first entrapment).

There is a voluntary standard for bunk beds, ASTM F1427–96, that contains provisions to protect children from entrapment. The ASTM standard requires:

- Guardrails on both sides of the upper bunk, except for up to 15 inches at each end of the bed. The upper edge of the guardrails shall be no less than 5 inches above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.
- That openings in the structure surrounding the upper bunk be small enough to prevent passage of a tapered block having a base measuring 3.5 inches by 6.2 inches.
- That openings in the end structures within 9 inches above the sleeping surface of the lower bunk mattress be either small enough to prevent passage of the 3.5 by 6.2 inch block or large enough to permit passage of a 9-inch diameter sphere (the space needed to withdraw a child's head).
- Labels and instructions.

Because of continued reports of deaths and other incidents associated with entrapment in bunk beds, and because of indications there might not be adequate compliance with the voluntary ASTM standard, the CPSC published an advance notice of proposed rulemaking (ANPR) to begin a rulemaking proceeding that could result in performance or other standards to address the risk of entrapment associated with bunk beds.[2] 63 FR 3280 (January 22, 1998); 64 FR 3456 (January 22, 1999) (extension of time to issue proposed rule). After considering the comments received in response to the ANPR, the Commission voted 2–0–1[3] to publish a notice of proposed rulemaking (NPR) to propose a new 16 CFR Part 1213 under the Consumer Product Safety Act (CPSA) and a new 16 CFR Part 1513 under the Federal Hazardous Substances Act (FHSA). 64 FR 10245 (March 3, 1999); 64 FR 14158 (March 24, 1999) (notice of opportunity for presentation of oral comments). The entrapment provisions of these two rules are identical. As discussed below in Section E of this notice, the CPSA rule addresses hazards associated with adult bunk beds (those not specifically intended for use by children, although they are often used for that purpose), and the FHSA rule addresses hazards associated with bunk beds intended for use by children.

After the original proposal, discussions at ASTM meetings indicated that requirements in addition to those originally proposed are needed to adequately address fatalities due to entrapment of children's necks in the end structures of bunk beds. The Commission voted 2–1 to propose these additional requirements. 64 FR 37051 (July 9, 1999).

B. Incident Data

Deaths

From January 1990 through August 9, 1999, CPSC received reports of 91 bunk-bed-related deaths of children under age 15 (see Table 1 below).

TABLE 1.—FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY YEAR AND HAZARD PATTERN

[January 1990 to August 9, 1999]

Year	Total[1]	Entrap.	Hanging	Falls
1990	7	5	2	.....
1991	15	10	2	3
1992	4	3	1	.....
1993	19	10	7	2
1994	10	6	3	1
1995	12	5	5	2
1996	12	11	1	.....
1997[2]	8	6	2	.....
1998[2]	3	1	1	1
1999[2]	1	.....	1	.....
Total	91	57	25	9

Source: CPSC data files, January 1990–August 9, 1999.

[1] These deaths are neither a complete count of all that occurred during this time period nor a sample of known probability of selection. However, they provide a minimum number of deaths occurring during this time period and illustrate the circumstances involved in some bunk-bed-related fatalities.

[2] The Death Certificate files for 1997 through August 9, 1999, are not complete.

Of the 91 fatalities, 57 resulted from entrapment. An additional 25 children died when they inadvertently were hung from the bed by such items as belts, ropes, clothing, and bedding, and 9 children died in falls from bunk beds.

As shown in Table 2, over 96% (55 of 57) of those who died in entrapment incidents were age 3 and younger, and

[1] The Commission voted 2–1 to issue this rule. Chairman Ann Brown and Commissioner Thomas H. Moore voted to issue the rule. Commissioner Mary Sheila Gall voted against. Statements of the Commissioners concerning this vote are available from the Office of the Secretary.

[2] The ANPR was approved by a 2–1 vote of the Commission. Chairman Ann Brown and Commissioner Thomas H. Moore voted to approve the ANPR; Commissioner Mary Sheila Gall voted not to publish the ANPR.

[3] Chairman Ann Brown and Commissioner Thomas H. Moore voted to publish the NPR; Commissioner Mary Sheila Gall abstained.

all but one were younger than 5. In contrast, about 76% (19 of 24) of those who died in hanging incidents were age 6 and older. Fall deaths were split among children 4 years of age and younger and children 9 and older.

TABLE 2.—FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY VICTIM AGE AND HAZARD PATTERN

[January 1990–August 9, 1999]

Age (years)	Total	Entrap.	Hanging	Falls
<1	18	16	1	1
1	20	19	1	.....
2	16	13	2	1
3	8	7	.....	1
4	4	1	1	2
5	1	.....	1	.....
6	3	.....	3	.....
7	3	1[1]	2	.....
8	2	.....	2	.....
9	3	.....	2	1
10+	13	.....	10	3
Total	91	57	25	9

Source: CPSC data files, January 1990–August 9, 1999.

[1] Child was blind and confined to upper bunk by removal of the ladder.

Using statistical methodology (capture-recapture), about 10 bunk-bed-related entrapment deaths are estimated to have occurred in the United States each year since 1990.

Injuries

From hospital emergency room data reported through the National Electronic Injury Surveillance System (NEISS), the Commission estimates that about 34,300 bunk-bed-related injuries to children under the age of 15 were treated in U.S. hospital emergency rooms during 1998. Forty-one percent of the victims were younger than 5 years. A review of the descriptive comments received for each injury revealed that falls from the bed were involved in a majority of the incidents. There were a few reports of limb entrapment incidents, and one incident involved a 2-year-old male who was found hanging from a bunk bed with a sheet wrapped around his neck; he was admitted to the hospital with a head injury.

Entrapment Incidents

The Commission reviewed entrapment-related incidents, which accounted for the majority of deaths, in further detail to obtain additional information about the circumstances involved. Both fatal and "near-miss" incidents were included. The "near-miss" incidents, usually reported through consumer complaints, were those in which a child became entrapped in the bed, often requiring rescue by the parent or caregiver. In these cases, there were generally no injuries or injuries were minor (contusions/abrasions). However, the Commission examined "near-miss" incidents because they have the potential for death or serious injury.

There were 122 entrapment incidents from January 1990 through August 9, 1999, of which 57 were fatalities and 65 were "near-misses." Table 3 illustrates the location in the bunk bed where the child was entrapped.

TABLE 3.—LOCATION IN BUNK BED OF FATAL AND "NEAR-MISS" ENTRAPMENT INCIDENTS

Location of entrapment	Type of incident		
	Total	Fatal	Near-Miss
Top Bunk	77	39	38
Guardrail	51	27	24
Bed/Wall	11	9	2
End structure	12	1	11
Add-on rail	1	1	0
Other	1	0	1
Unknown	1	1	0
Bottom Bunk	27	12	15
Guardrail	1	0	1
Bed/Wall	6	6	0
End structure	14	3	11
Add-on rail	2	2	0
Other	4	1	3
Ladder	7	2	5
Unknown Bunk	11	4	7
Guardrail	2	0	2
Bed/Wall	1	1	0
End structure	4	0	4
"Safety rails"	1	1	0
Other	1	0	1
Unknown	2	2	0
Total	122	57	65

Source: CPSC data files, January 1990—August 9, 1999.

Based on a review of the 57 bunk bed entrapment deaths, the Commission concludes that 39 deaths could have been prevented if the beds had conformed to the current ASTM standard and that 42 could have been prevented by the Commission's bunk bed rules. Of the three incidents that occurred in bunk beds conforming to the ASTM standard, two involved entrapment in the upper bunk. In these separate incidents, an 18-month-old infant and a child who was almost 5 years old slipped through the space between the end of the guardrail and the end structure of the bed and became wedged between the bed and a wall. In the third incident, a 22-month-old child became entrapped by the head in an opening. The opening was between the underside of the upper bunk foundation

support and a curved structural member in the bunk bed end structure.

C. The Rule's Requirements

The final rule defines a bunk bed as any bed in which the underside of any foundation is over 30 inches from the floor.

Any bunk bed shall provide at least two upper bunk guardrails, at least one on each side of the bed. One guardrail shall be continuous between each of the bed's end structures. The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches (380 mm) between either end of the guardrail and the nearest bed end structure. For bunk beds designed to have a ladder attached to one side of the bed, the continuous guardrail shall be on the other side of the bed. Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

There has been some question about how to interpret the requirement that the guardrail shall be "continuous" between the end structures. The Commission will tolerate a gap between the guardrail and end structure of up to 0.22 inches (so as to not cause a finger entrapment hazard for a child). Moreover, the guardrail need not necessarily be fastened to the end structure (as by bolting or welding).

The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. The Commission does not intend for this requirement to prohibit designs where the wall-side guardrail terminates in a quarter-circle bend and attaches to the side rail of the upper bunk foundation.

With no mattress on the bed, there shall be no openings in the structure between the lower edge of the uppermost member of the guardrail and the underside of the upper bunk's foundation that would permit passage of the wedge block (representing a child's torso) shown in Figure 1 of Parts 1213 and 1513.

The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for at least 50 percent of the distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed.

With no mattress on the bed, there shall be no openings in the end structures above the foundation of the upper bunk that will permit the free passage of the wedge block shown in Figure 1 of Parts 1213 and 1513.

There shall be no openings in the end structures between the underside of the foundation of the upper bunk and upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1, unless the openings are also large enough to permit the free passage of a 9-inch (230-mm) diameter rigid sphere (representing a child's head).

In order to protect against head-first entrapment in a bed's end structure, the Commission's staff developed a test procedure using the template shown in Figure 2 of Parts 1213 and 1513. This template and procedure are similar to those that were developed to address neck entrapment hazards in playground equipment structures and that are specified in ASTM F 1487–98, "Standard Specification for Playground Equipment for Public Use." The ASTM standard for bunk beds does not contain a comparable provision.

Any portion of an opening in the bed's end structure below the foundation of the upper bunk that is required to be probed by the wedge-block probe shown in Figure 1 of Parts 1213 and 1513, and that will allow free passage of a 9-inch diameter sphere, must satisfy the new neck entrapment provisions in the rules.

The template of Figure 2 embodies the following principles. First, a child will not be able to insert his or her neck sideways into an opening of less than 1.88 inches. (This dimension represents the neck breadth of 2.5 inches for a 5th percentile 2-year-old child, minus an allowance of 0.62 inches for tissue compression.)

Second, there is a minimal likelihood of entrapment when the boundaries of an opening converge on the neck at an included angle of greater than 75°. See CPSC memorandum from Shelley Waters Deppa to John Preston, "Voluntary Standards for Gates and Enclosures," January 15, 1985. This angle was chosen because it is slightly larger than the angles involved in neck entrapment accidents with baby gates and expandable enclosures.

In addition, in some boundary configurations, a child who slips while his/her head is in the opening will be removed from the opening by the force of gravity. In the final rule, an opening that indicates a neck entrapment potential when tested with the template of Figure 2 is nevertheless allowed if its lower boundary slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

The template is used to protect against head-first entrapment as follows. First, all portions of the boundary of the opening are probed with the "A" section of the test template of Figure 2. The template is inserted into the opening, with the plane of the template in the plane of the opening and with the "top" of the template perpendicular to the centerline of the portion of the boundary being probed. (It may be necessary to detach the "B" section of the template to fit the "A" section into the opening.) The "A" section of the template is then moved along the centerline of the portion of the boundary being probed until it is stopped by contact with the boundaries of the opening (see Figure 3 of Parts 1213 and 1513).

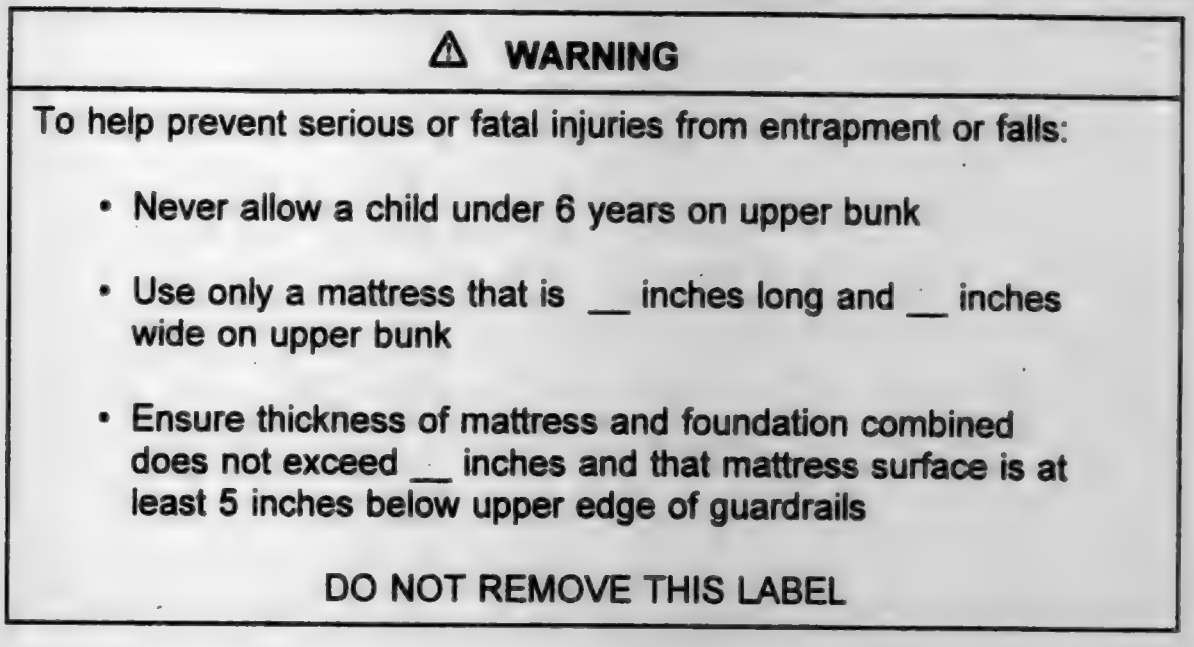
If there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template, the boundary is converging on a potential neck entrapment point at an angle of less than 75°, and further investigation is required. (Contact at an upper corner of the template, as shown in Figure 2, is not considered to be contact with a "side.")

To check further for the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with the template's plane perpendicular to both the plane of the opening and the centerline of the opening (see Figure 4 of Parts 1213 and 1513). If the neck portion can completely enter the opening (pass 0.75 inch or more beyond the points where contact with the sides of the "A" section of the template occurred), the opening may present a neck entrapment hazard. Such an opening is not allowed unless the lower boundary of the opening slopes downward at 45" or more for the whole distance from the narrowest part of the opening the neck can reach to the larger (greater than 9-inch) part of the opening.

There shall be a permanent label or marking on each bed stating the name and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

The following warning label shall be permanently attached to the inside of an upper bunk bed end structure in a location that cannot be covered by the bedding, but that may be covered by the placement of a pillow.

BILLING CODE 6355-01-P



BILLING CODE 6355–01–C

Instructions shall accompany each bunk bed set, and shall include the following information.

(a) *Size of mattress and foundation.* The length and width of the intended mattress and foundation shall be clearly stated, either numerically or in conventional terms such as twin size, twin extra-long, *etc.* In addition, the maximum thickness of the mattress and foundation required for compliance with § 1213.3(a)(5) and (b)(1) shall be stated.

(b) *Safety warnings.* The instructions shall provide the following safety warnings:

(1) Do not allow children under 6 years of age to use the upper bunk.

(2) Use guardrails on both sides of the upper bunk.

(3) Prohibit horseplay on or under beds.

(4) Prohibit more than one person on upper bunk.

(5) Use ladder for entering or leaving upper bunk.

D. The ASTM Standard

The entrapment requirements in the final rules being issued are identical to those in the ASTM standard, with the following exceptions.

1. *Definition of bunkbed:* In the ASTM standard, a bunk bed is defined as a bed in which the underside of the foundation is over 35 inches from the floor, rather than the 30 inches in the final rule. Neither of these definitions requires that there be two separate sleeping surfaces.

2. *Guardrails:* The final rule provides that one guardrail (the wall side) shall be continuous between the bed's end structures. The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches between either end of the guardrail and the nearest bed end structure. The current ASTM standard permits both guardrails to end 15 inches from the nearest bed end structure. Compared to the final rule, this permits two areas where a child could become entrapped between the bed and the wall.

3. *Bunk end structures:* (a) The final rule provides that there shall be no openings in the end structures between the underside of the foundation of the upper bunk and the upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1 (representing a child's torso) unless the openings are also large enough to permit the free passage of a 9-inch diameter sphere (to ensure the head can also pass through). In the ASTM standard, these passage requirements apply only to that portion of the end structure that is between the level of the lower bunk foundation support system and 9.0 inches (230 mm) above the sleeping surface of the maximum thickness mattress and foundation combined as recommended by the manufacturer.

During 1999, there were three meetings of the ASTM subcommittee at which changes to the ASTM standard were voted upon or discussed. The following discussion describes how these potential changes relate to how close the voluntary standard might have ultimately resembled the final rules if they were not now being issued by the Commission.

The ASTM subcommittee approved a motion to define a bunk bed as a bed in which the underside of the foundation is over 30 inches from the floor, as in the mandatory rule. After discussing the meaning of the term "continuous guardrail," the subcommittee approved a revision that would require one guardrail on the upper bunk to terminate no greater than 1.5 inches from the end structures, as opposed to the proposed requirement that the guardrail be continuous between the end structures. As noted above, the 1.5 inch space approved by the subcommittee would not comply with the final rule's requirement that the wall-side guardrail be continuous between the end structures.

The revision approved by the ASTM subcommittee also clarified that the 15-inch space between the ends of the other upper bunk guardrail must be measured 5 inches above the sleeping surface of the maximum thickness mattress specified. This clarification agrees with the final rule.

In addition, the subcommittee approved a change to the instructions that must accompany a bunk bed to inform consumers that a bunk bed placed adjacent to a wall must have the continuous guardrail on the wall-side of the bed. This requirement agrees with the final rule.

The ASTM subcommittee voted to expand the current entrapment requirements to include the entire end structure between the level of the upper and lower bunk foundation support systems, as provided in the final rule. Further, it did not oppose adding a neck entrapment requirement to the ASTM standard. However, the members present questioned the need for a 75° angle on the test probe, when a 55° angle on a similar probe in the ASTM public playground equipment standard appeared to have been effective in addressing neck entrapment incidents in openings. A working group was established to draft a recommendation

for the subcommittee on whether the probe to be used in the ASTM bunk bed standard should have a 75° angle as in the proposed rule or a 55° angle as in the playground equipment standard. A motion was approved to accept the recommendation of the working group and to forward it, together with the other previously approved revisions, to ASTM for a ballot by the full subcommittee. At the request of ASTM, CPSC staff searched CPSC playground incident data and verified that no neck entrapments were reported in structures conforming to the requirements in the voluntary playground standards.

A September 9, 1999 letter from the ASTM working group was submitted as a comment on the July 9, 1999 NPR. The letter stated that the working group had recommended to the ASTM subcommittee that the neck entrapment requirement to be added to the ASTM standard for bunk beds will specify the probe in the ASTM public playground equipment standard, which uses a 55° angle.

After the ASTM working group's decision to use the 55° playground equipment probe, manufacturers discussed limiting the revision of the requirements for lower bunk end structures in the ASTM standard to metal bunk beds only. Their rationale for such a limitation is that there have been no known neck entrapment incidents in wooden bunk beds and that it is not likely that a wooden bunk bed would be manufactured with openings of a shape that would present neck entrapment. At the present time, the Commission does not know whether the lower bed end structure requirements in the ASTM standard will apply only to metal beds.

The revisions to the voluntary standard that were approved during the meetings of the ASTM bunk bed subcommittee have not been sent for balloting by the entire subcommittee. The Commission does not know when the ballot will be mailed or what new requirements will be approved.

E. Statutory Authorities for This Proceeding

The FHSA authorizes the regulation of unreasonable risks of injury associated with articles intended for use by children that present mechanical (or electrical or thermal) hazards. FHSA § 2(f)(D), 15 U.S.C. 1261(f)(D). The hazards associated with bunk beds that are described above are mechanical. *See* FHSA § 2(s), 15 U.S.C. 1261(s). The CPSA authorizes the regulation of unreasonable risks of injury associated with "consumer products," which include bunk beds"whether intended for the use of children or adults. CPSA § 3(a)(1), 15 U.S.C. § 2052(a)(1).

Thus, bunk beds intended for the use of adults can be regulated only under the CPSA, while bunk beds intended for the use of children potentially could be regulated under either the FHSA or the CPSA. The Commission considers a bunk bed to be intended for use by children if it has smaller than twin-size mattresses or incorporates styling or other features especially intended for use by children. The available data do not indicate whether the known deaths and injuries are occurring on beds intended for use by children. Nevertheless, any regulation for bunk beds should include beds intended for children, since there is no reason why such beds, to the extent they exist, do not present the same risks to children as do adults' bunk beds.

Section 30(d) of the CPSA, however, provides that a risk associated with a consumer product that can be reduced to a sufficient extent by action under the FHSA can be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to do so. 15 U.S.C. 2079(d). Because the risks of bunk beds can be addressed with the two-pronged approach (*i.e.*, by both statutes), there appears to be no strong reason why it would be in the public interest to regulate bunk beds only under the CPSA. Accordingly, the requirements were proposed, and are issued, as two separate rules, one under the CPSA for "adult" bunk beds and the other under the FHSA for beds intended for use by children.

F. Statutory Findings Relating to the Voluntary Standard

The Commission may not issue a standard under either the CPSA or the FHSA if an industry has adopted and implemented a voluntary standard to address the risk, unless the Commission finds that "(i) compliance with such voluntary * * * standard is not likely to result in the elimination or adequate reduction of such risk of injury; or (ii) it is unlikely that there will be substantial compliance with such voluntary * * * standard." See 9(f)(3)(D) of the CPSA, 15 U.S.C. 2058(f)(3)(D), and 3(i)2) of the FHSA, 15 U.S.C. 1262(i)(2). The percentage of currently produced bunk beds that conform to the ASTM standard could be as high as 90% or more. This raises the questions of whether the ASTM standard is substantively adequate and, if so, whether it will command "substantial compliance."

The rule goes beyond the provisions of the ASTM voluntary standard. First, it eliminates the voluntary standard's option to have an opening of up to 15 inches at each end of the wall-side guardrail. Second, the voluntary standard protects against entrapment only within the 9-inch space immediately above the upper surface of the lower bunk's mattress. The mandatory standard extends this area of protection upward to the level of the underside of the upper bunk foundation. Third, the mandatory standard contains protection against neck entrapment that the voluntary standard lacks. Finally, the mandatory rule applies to bunk beds having a foundation over 30 inches from the floor, rather than the 35 inches in the ASTM standard. These provisions, which are in the rule but not in the voluntary standard, address fatalities and, as noted below, have benefits that bear a reasonable relationship to their costs.

Therefore, the Commission finds that compliance with the voluntary standard is unlikely to eliminate or adequately reduce the risk of entrapment injury or death. For this reason, the voluntary standard does not bar issuance of a rule.

Even if the voluntary and mandatory standards were identical, however, there is the issue of whether there will be substantial compliance with the voluntary standard. Neither the CPSA nor the FHSA define "substantial compliance." The March 3, 1999 Notice of Proposed Rulemaking summarized an interpretation of "substantial compliance" that the Office of General Counsel provided to the Commission. 64 Fed. Reg. 10245, 10248–49 (March 3, 1999). The Commission specifically invited public comment on that interpretation from "all persons who would be affected by such an interpretation." *Id.* at 10249. The Commission received more than 20 comments on the interpretation.

Having now considered all the evidence that the staff has presented, the comments from the public, and the legal advice from the Office of General Counsel, the Commission concludes that there is not "substantial compliance" with the ASTM voluntary standard for bunk beds within the meaning of the Consumer Product Safety Act and the Federal Hazardous Substances Act. See, *e.g.*, 15 U.S.C. 2058(f)(3)(D)(ii); 15 U.S.C. 1262(i)(2)(A)(ii). However, the Commission does not adopt a general interpretation of "substantial compliance" focusing on whether the level of compliance with a voluntary standard could be improved under a mandatory standard. Rather, the grounds for the Commission's decision

focus on the specific facts of this rulemaking and are stated below.

The legislative history regarding the meaning of "substantial compliance" indicates that the Commission should consider whether compliance is sufficient to eliminate or adequately reduce the risk of injury in a timely fashion and that, generally, compliance should be measured in terms of the number of complying products, rather than the number of manufacturers who are in compliance. E.g., Senate Report No. 97–102, p. 14 (May 15, 1981); House Report No. 97–158, p. 11 (June 19, 1981); H. Conf. Rep. No. 97–208, 97th Cong., 1st Sess. 871, reprinted in 1981 U.S. Code Cong. & Admin. News 1010, 1233.

Given this Congressional guidance, the Commission believes it appropriate to examine the number of conforming products as the starting point for analysis. However, the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents. Thus, the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

There are certain factors the agency considers before it initiates regulatory action, such as the severity of the potential injury, whether there is a vulnerable population at risk, and the risk of injury. See 16 CFR 1009.8. These and other factors also appropriately inform the Commission's decision regarding whether a certain level of conformance with a voluntary standard is substantial. In the light of these factors, industry's compliance rate with the voluntary standard for bunk beds is not substantial.

In this case, the Commission deals with the most severe risk—death—to one of the most vulnerable segments of our population—infants and young children. While the risk of death is not high, it exists whenever a young child is in a residence with a nonconforming bunk bed.

Additionally, some products, such as hairdryers without shock protection devices, require some intervening action (dropping the hair dryer into water) to create the hazard. By contrast, deaths in bunk beds occur during the intended use of the product—a child rolling over in bed or climbing in or out of it—without any intervening action.

The Commission must also consider that bunk beds have a very long product life, frequently being passed on to several families before being discarded. Thus, a number of children may be exposed to a bed during its useful life. Every noncomplying bed that poses an entrapment hazard presents the potential risk of death to any young child in the house. It is a risk that is hard for a parent to protect against, as children find their way onto these beds even if they are not put to sleep in them.

Bunk beds are products that can be made relatively easily by very small companies, or even by a single individual. The Office of Compliance believes smaller entities will always present a compliance problem, because new manufacturers can enter the marketplace relatively easily and need little expertise to make a wooden bunk bed. The evidence seems to support the view that there will always be an irreducible number of new, smaller bunk bed manufacturers who will not follow the voluntary standard.

What constitutes substantial compliance is also a function of what point in time the issue is examined. In 1989, the Commission denied a petition for a mandatory bunk bed rule. At that time, industry was predicting that by April of 1989, 90% of all beds being manufactured would comply with the voluntary guidelines. But that was in the context of years of steadily increasing conformance and the hope that conformance would continue to grow and that deaths and near-misses would begin to decline. But the conformance level never grew beyond the projection for 1989 and deaths and near-misses have not dropped.

Even with the existing compliance rate, the Commission is contemplating the prospect of perhaps 50,000 nonconforming beds a year (or more) entering the marketplace, with many beds remaining in use for perhaps 20 years or longer. Under these circumstances, a 10% rate of noncompliance is too high.

It is now clear that the bunk bed voluntary standard has not achieved an adequate reduction of the unreasonable risk of death to infants and children in a timely fashion, and it is unlikely to do so. Accordingly, the Commission finds that substantial compliance with the voluntary standard for bunk beds is unlikely.

Products that present some or all of the following factors might not be held to as strict a substantial compliance analysis. Those which:

—Rarely or never cause death;
—Cause only less severe injuries;
—Do not cause deaths or injuries principally to a vulnerable segment of the population;
—Are not intended for children and which have no special attraction for children;
—Have a relatively short life span;
—Are made by a few stable manufacturers or which can only be made by specialized manufacturers needing a significant manufacturing investment to produce the product;
—Are covered by a voluntary standard which continues to capture an increasing amount of noncomplying products; or
—Require some additional intervening action to be hazardous.

And, in analyzing some other product, there could be other factors that would have to be taken into consideration in determining what level of compliance is adequate to protect the public. The tolerance for nonconformance levels has to bear some relationship to the magnitude and manageability of the hazard addressed.

The Commission emphasizes that its decision is not based on the argument that a mandatory rule provides more powerful enforcement tools. If this were sufficient rationale, mandatory rules could always displace voluntary standards, and this clearly was not Congress's intent. But, with a mandatory standard, the necessity of complying with a mandatory federal regulation will be understandable to small manufacturers. State and local governments will have no doubt about their ability to help us in our efforts to locate these manufacturers.

G. Response to Comments

The Commission received 21 written comments in response to the NPR published in the **Federal Register** on March 3, 1999. In addition, six people gave oral testimony in a public hearing held on May 6, 1999. Also, five comments were received in response to the revised entrapment requirements published in the July 9, 1999, **Federal Register**. The Commission's responses to these comments are given below:

1. Comments on the March 3, 1999, NPR

a. *Favoring a mandatory rule:* Seven commenters responding in writing to the March 3, 1999, NPR, and three persons at the May 6, 1999, public hearing, favored a mandatory rule addressing entrapment in bunk beds. Their reasons were varied and included:

- Reports of deaths show there is an unreasonable risk;
- A mandatory standard will improve compliance;
- The benefits show a reasonable relationship to costs;

• A mandatory rule permits the Commission to seek penalties from violators;

• There is increased awareness of mandatory standards; and

• A mandatory standard removes the cost advantage of producing nonconforming beds.

b. *Reference the ASTM standard:* Two comments on the NPR neither opposed nor favored a mandatory rule. The President of ASTM and the chairman of the ASTM F15.30 subcommittee for bunk beds requested that, if the Commission elects to proceed with a mandatory standard, it should reference the ASTM F1427 voluntary standard. At the present time, there are some significant differences in the entrapment requirements in the ASTM standard and those in the mandatory rule. Although the ASTM subcommittee for bunk beds has agreed to make certain revisions to the voluntary standard, these revisions would not make the entrapment requirements in the ASTM standard identical to those in the rule (see additional discussion below in the response to comments on the July 9, 1999 NPR). Further, the Commission does not know that these revisions will be approved by the formal ASTM ballot process. Therefore, the mandatory rule does not reference the ASTM standard, but instead contains specific requirements addressing entrapment.

c. *Substantial compliance:* As noted, where there is a voluntary standard in place, both the CPSA and the FHSA prohibit the Commission from issuing a mandatory standard unless the Commission finds either that the voluntary standard is not likely to eliminate or adequately reduce the risk or that it is unlikely that there will be "substantial compliance" with the voluntary standard.

For the reasons stated in Section F of this notice, the Commission has found both that the voluntary standard will not adequately reduce the risk of injury from bunk beds and that it is unlikely that there will be substantial compliance with the voluntary standard. Therefore, the voluntary standard is not a bar to issuance of a rule.

d. *OMB Circular No. A–119:* One commenter noted that OMB Circular No. A–119 directs agencies to use voluntary standards in lieu of government-unique standards except where they are inconsistent with law or otherwise impractical. However, Circular No. A–119 states that it should not "be construed to commit any agency to the use of a voluntary standard which * * * is, in its opinion, inadequate * * * or is otherwise inappropriate." The Commission determines that, in this case, reliance on the voluntary standard is "inappropriate" for the reasons stated in Section H of this notice. Thus, Circular No. A–119 does not prevent issuance of a final rule.

e. *Entrapment incidents:* A bunk bed manufacturer claimed that the extra cost and major design changes required to comply with the proposed rule's provisions for a continuous guardrail do not reduce or eliminate the potential hazards. The manufacturer also claimed that there were no incidents of entrapment between a bunk bed and a wall prior to the inception of the 1996 ASTM standard.

However, CPSC is aware of 9 fatalities resulting from entrapment between a top bunk and a wall from 1990 through August 9, 1999. Two of these fatalities occurred in beds conforming to the ASTM standard's requirement for a wall-side guardrail that permits gaps up to 15 inches in width between each end of the guardrail and the bed's end structures. One of these deaths occurred in 1994 and the other in 1996. In both, the victims slipped through the unprotected area between the end of the guardrail and bed end structure. The requirement in the rule for a continuous wall-side guardrail will prevent future incidents of this type.

f. *Hazards in other types of beds:* It was noted by one commenter that other types of beds, such as small single beds and trundle beds, could have the same entrapment hazards as bunk beds if they are used by preschool age children. The commenter, therefore, suggested that any bed intended for preschool age children, and adult beds (since it is predictable that young children will be placed in these beds), should be subject to a mandatory standard.

The Commission did not extend the scope of the standard to cover beds other than bunk beds, because this would involve different considerations of risk, cost, and benefits, and is outside the scope of the present proceeding.

This commenter also recommended that both adult and children's bunk beds should be covered by a single standard, and that the standard should be issued under the CPSA.

As explained in the proposal and in Section E of this notice, the CPSA provides that a risk that can be adequately regulated under the FHSA can be regulated under the CPSA only if the Commission determines, by rule, that regulating the risk under the CPSA is in the public interest. Bunk beds intended for use by children, but not other bunk beds, could adequately be regulated under the FHSA, and the Commission did not find reasons why it would be in the public interest to regulate the risk from children's bunk beds under the CPSA. Accordingly, the Commission proposed to regulate bunk beds intended for use by children under the FHSA and to regulate other (adult) bunk beds under the CPSA. Although this does not comply with the commenter's recommendation that both categories of bunk beds be regulated under the CPSA, it does comply with the recommendation that the standard's requirements apply to both adults' and children's beds.

g. *Bunk beds for institutional use:* Two comments addressed the issue of whether the rule should apply to bunk beds sold for institutional use, such as school or college dormitories, prisons, and military facilities. One comment, from a trade association representing a number of major producers of bunk beds, states that to include institutional beds in the scope of the rule would be a departure from past CPSC practice. The association asserts that the regulation of public accommodations has traditionally been accomplished through state and municipal building codes. The other comment, from a manufacturer of college dormitory furniture, strongly objects to a regulation that is unsupported by any data to show that there is a high risk for adults or college students. Institutional bunk beds are generally not provided with guardrails, and the manufacturer claims that to add such rails, and comply with other provisions in the proposed rule, would add $225 to the cost of each of his beds and be of no benefit to an adult user.

Although the Commission cannot confirm the commenter's cost estimate, it agrees that the cost of compliance with the rule would be substantially higher for institutional bunk beds than for residential beds, in part because institutional beds typically do not have any guardrails (since they are intended for teenagers or adults). Furthermore, of the two known fatalities of children that occurred in beds that were originally sold for institutional use, one was an entrapment between the lower bunk mattress and a wall, a scenario not addressed by the rule. The other incident was an entrapment in a gap between the end structure and a mattress that was too short to fit properly on the lower bunk. This incident would be addressed by a label and the instructions for proper mattress size if institutional beds were included in the scope of the rule.

According to information supplied by industry, there are about 200,000 bunk beds sold for the institutional market each year for use by colleges and

boarding schools, the military, mental health facilities, and correctional facilities. The expected useful life of these institutional products is estimated by industry at 7 to 10 years. Therefore, there may be about 1.7 million institutional beds in use. Manufacturers projected that the cost of compliance for institutional bunk beds would be considerably higher than that of residential bunk beds, due to the addition of two guard rails (rather than one for residential) and the heavier-duty materials used in institutional bunk beds. For comparison purposes, if the only significant cost was the addition of two guardrails (equivalent to rails used in residential beds), the cost of compliance for institutional bunk beds would be twice that of residential units, or $30 to $80 per bed.

Given that one death would have been addressed during the last 9.5 years, and that an average of about 1.7 million institutional bunk beds may have been in use during those years, the risk addressed by inclusion of institutional beds in the mandatory standard would be about 0.06 deaths per million beds in use per year ((1 death/9.5 years)/1.7 million beds). Assuming a societal cost of $5 million per death, the annual societal value of averting this risk is about $0.30 per bed per year. If we assume a useful life of 10 years, and a discount rate of 3%, the estimated present value of averting this risk would be about $2.55 per bed over its entire useful life. Thus, based on available information, the benefits of the rule, if applied to institutional bunk beds, would likely be substantially less than the costs. Because of this, and because the likelihood that consumers will purchase institutional beds in the future is not known, the Commission decided not to include institutional bunk beds within the scope of the rule. For the purposes of this rule, facilities intended for use by children under age 6 are not considered to be institutions.

h. *Effective date:* The Commission proposed an effective date of 180 days (6 months) after the final rule is published. A trade association representing a number of major bunk bed producers commented that there should be an 18-month lead time before the rule becomes effective; the association reiterated this in its comments on the July 9, 1999, NPR. A time line showing the tasks needed to comply with the proposed rule was included in the association's comments. The trade association stated that between 5 and 10 months of time were needed to allow manufacturers, distributors, and retailers to sell their inventories.

An allowance of lead time to deplete inventory is not necessary, because the rule will apply only to bunk beds manufactured or imported after the rule's effective date. Deletion of the time allotted for inventory depletion from the trade association's time line would result in an effective date of 8 to 13 months after publication.

The CPSA provides that an effective date shall not exceed 180 days unless the Commission finds that a longer period is in the public interest. Although the schedule provided by the association might be reasonable for a high-volume manufacturer with numerous models affected by the rule, the Commission considers the schedule to be unnecessarily long for the minor changes imposed by the rule on the small manufacturers likely to be affected. Thus, the Commission cannot conclude it is in the public interest to extend the effective date past the proposed 180-day period. The Commission concludes that the 180-day period between publication of the final rule and its effective date is reasonable and adequate to allow manufacturers time to make any necessary product changes.

2. Comments on the July 9, 1999, NPR

a. *Support for the rule:* One commenter, who had previously submitted a comment supporting the rule in the March 3, 1999, NPR, also supports the revised rule on the grounds that "these requirements are necessary to address fatalities due to entrapment of children's necks in end structures of bunk beds." The commenter also believes "that the Commission should not defer to the ASTM voluntary standard because of widespread lack of compliance and because the current voluntary standard is inadequate." As previously stated, the Commission is not relying on the voluntary standard.

b. *Neck entrapment probe:* Two comments from bunk bed manufacturers that are members of the ASTM F15.30 subcommittee addressed the angle incorporated into the probe in the revised proposed rule. One of the comments, submitted on behalf of the entire subcommittee, stated that the lower bunk end-structure requirements in the ASTM standard would be revised in accordance with the requirements in the proposed rule (§§ 1213.3(b)(3) & (4), 1213.4, 1513.3(b)(3) & (4), and 1513.4)), except that the sides of the probe (see Figure 2) would have a 55° angle relative to the centerline of the probe instead of the 75° angle of the probe in the revised proposed rule. The comment from the other manufacturer, a member of the ASTM bunk bed subcommittee, also addressed the angle on the end-structure probe and stated that, while he could accept a probe with either angle, it was his opinion that the 55° angle should be adopted. Both of these comments supported a 55° angle based on its apparent success in preventing neck entrapment incidents in playground equipment.

Another comment, from a trade association representing major manufacturers of bunk beds, reiterated the association's comment on the March 3, 1999 NPR that it was not opposed to a mandatory rule for bunk beds, and supported a provision to address neck entrapment in lower bunk end structures. It also takes no position on the appropriate probe for this purpose, but recommends "a probe which eliminates or adequately reduces the risk of neck entrapment."

In drafting the neck entrapment requirements, the CPSC staff initially considered using a probe identical to that in the ASTM F1487 standard for public playground equipment (with a 55° angle). The rationale for the 55° angle stems from a recommendation by a committee, convened in 1976 by the National Recreation and Park Association (NRPA), that developed requirements for a possible CPSC mandatory standard for playground equipment. The angle requirement was "intended to eliminate dangerous angles that could form openings tending to entrap or strangle the user." The rationale for the committee's recommendation stated: "[I]t is best engineering judgement at this point, and takes into consideration the fact that most angles present in current equipment are 60° or greater." Based on this NRPA committee recommendation, the CPSC Handbook for Public Playground Safety, first published in 1981, also addresses neck entrapment in angles on public playground equipment by recommending that angles be greater than 55°.

The Commission decided that the angle on the neck entrapment probe in the bunk bed standard should be 75°, instead of 55°, for a number of reasons. First, in 1985, following a number of deaths resulting from neck entrapment in accordion-style baby gates and enclosures, the staff worked with industry to draft requirements for a voluntary standard for these products. The staff developed a probe that had an angle of 75° at its base, because an 11-month-old child had become fatally entrapped in a diamond-shaped opening in a baby gate having a 71° angle at its base. The probe was designed to protect children two years of age and younger. It was accepted by the ASTM gate and

enclosure subcommittee and eliminated V-shaped openings with angles less than 75°.

Second, the lack of injury data involving public playground equipment having angles greater than 55° does not convince the Commission that a 55° probe would adequately protect children. The potential for children to become entrapped in an angle between 55° and 75° depends on the type of equipment. The pieces of public playground equipment most likely to have angles between 55 and 75° that could cause neck entrapment are dome climbers and handrails on ladders. Public playground equipment is generally intended for children from 2 through 12 years of age. Dome climbers are not appropriate for children under 5 years of age. Children 5 years of age and older who use dome climbers are more likely to be able to call out for assistance or pull themselves up and out if they become entrapped. As for ladder handrails, the angles that potentially could be an entrapment hazard are generally located at the bottom of the ladder below the neck level of even small children.

Finally, children under 2 years of age are almost always supervised when playing in public playgrounds, and adult assistance would be readily available if needed. This is not the case with bunk beds, where children are left to sleep unattended.

For the above reasons, the Commission concludes that a 75° angle on the neck entrapment probe is necessary to adequately address the risk of entrapment in bunk bed end structures to protect children under 2 years of age.

H. The Need for a Mandatory Standard

As noted in Section F of this notice, a mandatory standard is needed to provide requirements that are not now in the voluntary standard. In deciding to issue this rule, the Commission also considered carefully the particular characteristics of the bunk bed industry. This industry is highly diverse and fragmented, with differing levels of sophistication relating to product safety. Firms can easily enter and leave the bunk bed manufacturing business. This fragmentation and diversity contributes to difficulties in achieving more complete compliance with the voluntary standard.

Because it is difficult to identify all firms in the industry, it is difficult for voluntary standards organizations and trade associations to conduct outreach and education efforts regarding the voluntary standard. By contrast, in industries with a smaller number of firms (and particularly large firms), it is easier to find the firms and educate them about the existence and importance of voluntary standards. Mandatory standards—codified in the accessible Code of Federal Regulations—are easier to locate, and their significance is more obvious.

These generalizations about the industry are supported by the staff's enforcement experience. The CPSC's Office of Compliance (EXC) is aware of 167 firms who currently either manufacture or import bunk beds. Between November 1994 and October 1997, CPSC staff participated in eight recalls of bunk beds that did not comply with the voluntary standard. The recalls involved 41 manufacturers and importers, and affected approximately 531,000 bunk beds. In early 1998, CPSC Compliance staff conducted limited retail surveillance of bunk beds for compliance with the voluntary standard. Twenty-three firms had at least one model of bunk bed that did not conform, and six of these firms were repeat violators. This surveillance resulted in five recalls, involving approximately 37,000 beds.

Later in 1998, a consumer complaint and a report under Section 15 of the CPSA sparked investigations that resulted in recalls of 58,000 bunk beds and 5,400 bunk bed kits. To date, the total number of bunk beds and kits recalled since 1994 has risen to more than 630,000, involving 48 firms.

Since 1994, at the completion of each round of surveillance and follow-up action, CPSC staff believed that the known bunk bed manufacturers complied with the voluntary standard. This is the case today. Yet, each time, the staff later discovered more manufacturers, and some of their beds had to be recalled because they presented a risk of entrapment. The Commission believes that, in the absence of a mandatory rule, this pattern would continue.

Some manufacturers contacted by Compliance did not see an urgency to comply with a "voluntary" standard, and they did not recognize the hazards associated with noncompliance. Other manufacturers were not even aware of the standard. As a result, in the absence of a mandatory standard, entrapment hazards would continue to exist on beds in use and for sale.

For the foregoing reasons, the Commission believes that a mandatory bunk bed entrapment standard is needed and has, therefore, decided to issue the mandatory rule.

A mandatory bunk bed entrapment standard will bring the following benefits:

1. A mandatory standard will increase the awareness and sense of urgency of manufacturers in this industry regarding compliance with the entrapment provisions, thereby increasing the degree of conformance to those provisions.

2. A mandatory standard will allow the Commission to seek penalties for violations. Publicizing fines for noncompliance with a mandatory standard will deter other manufacturers from making noncomplying beds.

3. A mandatory standard will allow state and local officials to assist CPSC staff in identifying noncomplying bunk beds and taking action to prevent the sale of these beds.

4. Under a mandatory standard, retailers and distributors will violate the law if they sell noncomplying bunk beds. Retailers and retail associations will then insist that manufacturers and importers provide complying bunk beds.

5. The bunk bed industry is extremely competitive. Manufacturers who now conform to the ASTM standard have expressed concern about those firms that do not. Nonconforming beds can undercut the cost of conforming beds. A mandatory standard will take away any competitive cost advantage for unsafe beds.

6. A mandatory standard will help prevent noncomplying beds made by foreign manufacturers from entering the United States. CPSC could use the resources of the U.S. Customs Service to assist in stopping hazardous beds at the docks.

I. Other Statutory Requirements and Findings

The Commission is issuing the requirements for bunk beds not intended for use by children as a consumer product safety standard under the CPSA. This requires a finding that the requirements are reasonably necessary to eliminate or adequately reduce an unreasonable risk of injury presented by bunk beds. This finding is made in the appendix to Part 1213.

Section 9(e) of the CPSA requires that, in promulgating a consumer product safety rule, "the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule." 15 U.S.C. 2058(e).

The requirements for end-structure openings and, except as noted below, for a continuous guardrail on the wall side of bunk beds do not entail any inconvenience for the user. The requirement that guardrails cannot be

removed without either intentionally releasing a fastening device or applying forces sequentially in different directions also is expected to not have a significant adverse effect on the elderly or handicapped. First, the voluntary standard has required this safety feature for many years, and many currently manufactured bunk beds already have this feature. Second, handicapped or elderly persons rarely use the top bunk. Third, once installed, guardrails are likely to be left in place. Finally, the actions needed to use guardrails with these features would present little or no additional difficulty for elderly or handicapped persons who can remove guardrails without these features. Therefore, after considering the effects of the rule on elderly and handicapped persons, the Commission concludes that the life saving benefits of the rule clearly warrant whatever small adverse effect it may cause on the use of bunk beds by the elderly or handicapped, if any.

The regulation for bunk beds intended for the use of children requires a determination under FHSA Section 3(a)(1) that bunk beds that do not comply with the rule present mechanical hazards, as provided in FHSA Section 3(a)(1), and are thus hazardous substances. See FHSA Sections 2(f)(1)(D) and 2(s). Under the FHSA, a product that is a hazardous substance and intended for use by children is banned. FHSA Section 2(q)(1). This finding is made in the appendix to Part 1513.

To issue a final rule under either the CPSA or the FHSA, the Commission must publish the text of the final rule and a final regulatory analysis that includes the elements stated in 3(i)(1) of the FHSA or section 9(f)(2) of the CPSA. 15 U.S.C. 1262(i)(1), 2058(f)(2). The required final regulatory analysis is in Section J of this notice.

Before issuing a final regulation under either the CPSA or the FHSA, the Commission must make other statutory findings. These concern voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. CPSA § 9(f)(3), 15 U.S.C. 2058(f)(3); FHSA § 3(i)(2), 15 U.S.C. 1262(i)(2). These findings are made in the appendices to Parts 1213 and 1513, respectively.

J. Final Regulatory Analysis

Introduction: The rules issued in this notice are under the authority of both the CPSA and the FHSA. Both statutes require that the Commission publish a final regulatory analysis of the rule. The Commission's final regulatory analysis is published below. (Since the technical requirements of the rule under the CPSA and the rule under the FHSA are identical, this analysis will refer to "the rule.")

Product and market information: The retail prices of bunk beds range from about $100 to over $700; manufacturers estimate the average retail price to be about $300. Some models now have a lower double bed with a twin upper bunk.

The American Furniture Manufacturers Association (AFMA) represents manufacturers of bunk beds. According to AFMA, 40 firms, either AFMA members or members of the existing ASTM bunk bed subcommittee, account for 75–80% of total known annual sales of bunk beds. Through Compliance staff activities, the Commission is now aware of 167 manufacturers of bunk beds. The share of the market accounted for by the 127 manufacturers or distributors who are not AFMA members or members of the ASTM subcommittee is not known, but is believed to account for a majority of the remaining 20–25% of annual sales.

Bunk beds are a category of bedroom furniture, and every manufacturer of bedroom furniture is a potential producer of bunk beds. Further, because of their straightforward design, other types of businesses (and individuals) can also produce these products. Thus, it is likely that there are other unidentified manufacturers, each producing small numbers of bunk beds.

Industry sources estimate that about 500,000 bunk beds are sold annually for household use, and that the expected useful life of these products is 13–17 years. Based on this information, the CPSC's Product Population Model (a computer-generated statistical program) estimates that there may be about 8 million bunk beds in household use.

AFMA sources indicate that imports of bunk beds by its members appear to be increasing. Industry sources indicate that most, if not all, metal bunk beds sold are imported. Metal bunk beds are estimated to account for about 20% of the sales of bunk beds.

Conformance with the existing voluntary standard: There is an existing voluntary standard for bunk beds, ASTM F1427. There are no known government or industry data describing the extent of conformance to this standard. However, based on its knowledge of industry practices, the Commission's Engineering Sciences staff (ES) estimated that roughly 50% of production from 1979 to 1986 conformed to the standard's upper bunk entrapment requirements. Staff estimates that, as the industry publicized the guidelines and CPSC staff became involved in the standards process, conformance increased to roughly 75% of production during the period 1986 to 1992. The conformance was estimated to have increased further after 1992, when ASTM published its bunk bed standard and the staff (EXC) became active in monitoring for conformance to the standard. Staff estimates that up to 90% or more of production since 1992 conforms to the ASTM standard.

EXC reported that the bunk beds produced by the 40 firms that are either members of AFMA or the ASTM subcommittee all conform to the existing voluntary standard. EXC staff also examined the product lines of the remaining 127 identified firms, and believes that, after a number of recall activities, all of the beds produced by these firms were in conformance with the standard.

Costs and Benefits

Potential Costs. The costs associated with the mandatory rule include the cost of adapting to the provisions of the rule for any firms not now meeting those requirements. The cost factors affected by these requirements are any increases in the cost of materials, and any redesign costs necessary to comply with the mandatory rule.

Four manufacturers that previously had modified their production stated that the additional materials needed to address entrapment were nominal compared to overall materials costs in bunk bed production. They also stated that any redesign costs would not be significant on a per-unit basis. The most significant cost was the addition of a continuous guardrail to the top bunk, which might add $15 to $40 to the average retail price of bunk beds (or 5% to 13% of the average retail price). This cost will apply only to bunk beds in current production that do not now meet the voluntary standard.

There are also costs to some of the firms that now conform to the voluntary standard requirement for a wall-side guardrail, because the current voluntary standard allows for a 15-inch gap at either or both ends of this guardrail. A spokesman for a major independent bunk bed testing lab estimated that bunk bed models conforming to the voluntary standard are split about equally between those having a continuous wall-side rail (about 72 inches in length) and those having a 15-inch gap on one or both ends of the wall-side rail.

Thus, about 50% of all models that meet the current voluntary standard may require some change in design, as well as additional materials, to meet the requirements in the mandatory

standard. The incremental cost of closing the gap (or gaps) in the wall-side top rail is unknown. However, because a continuous rail is merely an extension of the existing rail already in place, the increase in the retail price is probably less than proportional to the increase in length. Thus, if a continuous rail adds $15 to $40 to the price of a bunk bed, closing the gap on the wall-side rail may cost consumers no more than about $5 to $10.

For a small number of firms, the rule may also result in costs associated with modifications of some bottom bunk end structures. Such modifications to openings may be required to prevent the free passage of a wedge block (simulating a child's torso) if they do not allow the free passage of a sphere (simulating a child's head). The requirement also addresses the shape of openings that could admit a child's neck, and entrap the head in the end structure. The Commission is aware of few current designs that will be affected by this latter requirement. However, if these one-time redesign costs are amortized over the entire production runs for these firms, the per-unit costs are expected to be small.

Potential benefits. The expected societal costs of bunk bed entrapment deaths represent the potential benefits of preventing these deaths. Epidemiology staff reported that there were 57 entrapment deaths associated with bunk beds from 1990 through August 9, 1999. Based on a review of the circumstances of the reports, staff concluded that the voluntary standard would have addressed 37 of the 39 top bunk entrapment deaths and 2 of the 3 bottom bunk end structure entrapment deaths. Altogether, the Commission concludes that the voluntary standard would have addressed 68% (39/57) of the reported fatalities due to entrapment in both the top and bottom bunk locations. Additionally, conformance to the final rule (as opposed to the voluntary standard) will address another 3 of the 57 (about 5%) entrapment deaths, including the 2 top-bunk deaths that would not have been addressed by the voluntary standard, and 1 bottom bunk end-structure death.

The Commission projects that about 10 bunk bed entrapment fatalities have occurred annually since 1990. Thus, for the segment of bunk beds that do not conform to the voluntary standard, the rule will address about 7 deaths per year. For the segment of bunk beds that conform to the requirements of the voluntary standard but not the rule, the rule will address an additional death every other year, or about 0.5 deaths per year.

To determine the expected benefits of the rule, it is necessary to estimate the risk of entrapment death associated with bunk beds not conforming to the requirements of the mandatory rule. In this case, the risk computation requires information on the number of bunk beds that did not conform to the voluntary standard and on the number of bunk beds that conformed to the voluntary standard but not the mandatory rule.

Since an estimated 1.2 to 2.4 million bunk beds in use since 1990 did not conform to the voluntary standard, the risk of entrapment addressed by the rule for this group of beds ranges from about 2.9 to 5.8 deaths per million nonconforming beds (7 deaths per 2.4 million beds to 7 deaths per 1.2 million beds). At an assumed societal cost of $5 million per death, a useful life of about 15 years for a bunk bed, and a discount rate of 3%, the estimated present value of averting entrapment fatalities on beds that did not conform to the voluntary standard ranges from about $175 to $350 per noncomplying bed.

The rule will also address another 0.5 entrapment deaths annually that would not have been addressed by the voluntary standard. Assuming that about one-half of the 5.6 to 6.8 million bunk beds would have conformed to the voluntary standard but not the mandatory rule, the risk of entrapment for these beds would have ranged from about 0.15 to 0.18 deaths per million beds (0.5 deaths per 3.4 million beds to 0.5 deaths per 2.8 million beds). Using the assumptions stated above, the estimated present value of averting entrapment fatalities not addressed by the voluntary standard ranges from $9 to $11 per noncomplying bed.

Comparison of costs and benefits. The above analysis evaluated the costs and benefits of the rule for two market segments: bunk beds that do not conform to the voluntary standard, and bunk beds that conform to the requirements of the voluntary standard but not to the requirements of the mandatory rule. For the segment of bunk beds that does not conform to the voluntary standard, the expected benefits of the rule (about $175 to $350 per bed) are substantially greater than the expected costs of the rule (about $15 to $40 per bed). Thus, if the standard prevents all of the deaths addressed on bunk beds not conforming to the voluntary standard, the expected net benefits per bed sold will range from a low of about $135 ($175 − $40) to about $335 ($350 − $40), and will average about $235 per bed. The effectiveness of the standard is preventing the injuries and deaths it addresses is expected to be very high.

For the second segment, those beds that meet the requirements of the voluntary standard but not those of the rule, the expected benefits range from about $9 to $11 per bed and the costs range from about $5 to $10.

Institutional bunk beds. The Commission also considered applying the rule to bunk beds produced for the institutional market (such as for colleges, the military, etc.). As described in Section G of this notice, the Commission excluded institutional bunk beds from the rule.

K. Final Regulatory Flexibility Act Certification

The Commission is required by the Regulatory Flexibility Act of 1980 (RFA) to address and give particular consideration to the economic effects of the rule on small entities.

The precise number of firms manufacturing bunk beds is not known. Commission staff has identified 167 firms that have produced bunk beds: these were identified through the trade association, national and regional trade shows, industry contacts, the Internet, and retail inspections. Small Business Administration guidelines classify firms in the furniture industry as small if they have less than 500 employees, are independently owned, and are not dominant in the field; thus, most of the identified firms would be classified as small businesses. It is likely that there are additional unidentified firms that produce relatively small numbers of bunk beds. These remaining producers are also likely to be small businesses.

Even though there is a substantial number of small firms, the Commission does not expect that there will be a significant effect on these firms. As noted earlier, after the extensive recall activities conducted by the Commission's staff, the 167 firms identified by the staff apparently conform to the existing voluntary standard, and will require only slight modifications to comply with the mandatory rule. For firms not conforming to the voluntary standard, the requirements are expected to result in cost increases that are small and likely to be passed on to consumers.

The mandatory rule will not require third-party testing, and it is anticipated that firms themselves will do the testing required to certify that their products comply with the mandatory standard.

There are no reporting or recordkeeping requirements under the rule. There are no Federal rules that the rule will duplicate, or with which it will overlap or conflict.

Accordingly, the Commission certifies that the rule will not have a significant

economic impact on a substantial number of small entities.

L. Environmental Assessment

The rule will not cause manufacturers to dispose of existing construction materials or packaging. Sale of inventories of finished noncomplying products (including those at retail) will not be prohibited, since the rule will apply only to units produced or imported after the effective date.

The rule is not expected to have a significant effect on the materials used in the production and packaging of subject bunk beds, or in the number of units discarded after the rule.

Therefore, no significant environmental effects are expected to be caused by the rule for bunk beds.

M. Executive Orders

Executive Order No. 12,988 requires agencies to state the preemptive effect, if any, to be given the regulation. The preemptive effects of these rules are established by Section 26 of the CPSA, 15 U.S.C. 2075, and Section 18 of the FHSA. Section 26(a) of the CPSA states:

> (a) Whenever a consumer product safety standard under [the CPSA] applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or continue in effect any provision of a safety standard or regulation which prescribed any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such products which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

Subsection (b) of 15 U.S.C. 2075 provides a circumstance under which subsection (a) does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety standard applicable to a consumer product for its own [governmental] use, and which is not identical to the consumer product safety standard applicable to the product under the CPSA. This occurs if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the consumer product safety standard.

Subsection (c) of 15 U.S.C. 2075 authorizes a State or a political subdivision of a State to request an exemption from the preemptive effect of a consumer product safety standard. The Commission may grant such a request, by rule, where the State or political subdivision standard or regulation (1) provides a significantly higher degree of protection from such risk of injury than does the consumer product safety standard and (2) does not unduly burden interstate commerce.

Similar preemption provisions are in the FHSA. See FHSA Section 18(b), 15 U.S.C. 1261 note.

This rule has been evaluated in light of the principles stated in Executive Order No. 13,132 concerning federalism, even though that Order does not apply to independent regulatory agencies, such as CPSC. The only substantial federalism concern associated with this rule is preemption of non-identical state standards. The Commission is aware of standards in California and Oklahoma that differ from the final rule in minor ways. In fact, the Commission understands that the intent of the California standard was to duplicate the anticipated Federal rule.

By establishing findings the Commission must make to issue these types of rules and expressly providing for preemption of non-identical state standards, Congress clearly intended preemption of state law in these circumstances. Further, the preemption is the minimum required to carry out the purposes of the CPSA and the FHSA. In view of the minor differences between these two state rules and the Federal rule, the Commission concludes that the Federal rule will have no adverse effect on the safety of the citizens of these two states.

Further, to the extent that these state rules differ from each other and from the voluntary standard, manufacturers who would like to provide bunk beds to either of these states and to another state may have to sell different versions of their beds to satisfy the conflicting standards. Thus, these state rules, if not preempted, could have an adverse economic effect on manufacturers and distributors.

List of Subjects in 16 CFR Parts 1213, 1500, and 1513

Bunk beds, Consumer protection, Infants and children, Reporting and recordkeeping requirements.

Effective date. These rules will become effective June 19, 2000.

For the reasons set out in the preamble, the Commission amends Title 16, Chapter II, Subchapters B and C, of the Code of Federal Regulations as set forth below.

1. A new Part 1213 is added to Subchapter B, to read as follows:

PART 1213—SAFETY STANDARD FOR ENTRAPMENT HAZARDS IN BUNK BEDS

Sec.

1213.1 Scope, application, and effective date.
1213.2 Definitions.
1213.3 Requirements.
1213.4 Test methods.
1213.5 Marking and labeling.
1213.6 Instructions.
1213.7 Findings.
Figures 1–4

Appendix to Part 1213—Findings Under the Consumer Product Safety Act

Authority: 15 U.S.C. 2056, 2058.

§ 1213.1 Scope, application, and effective date.

(a) *Scope, basis, and purpose.* This part 1213, a consumer product safety standard, prescribes requirements for bunk beds to reduce or eliminate the risk that children will die or be injured from being trapped between the upper bunk and the wall, in openings below guardrails, or in other structures in the bed.

(b) *Application and effective date.* The standard in this part applies to all bunk beds, except those manufactured only for institutional use, that are manufactured in the United States, or imported, on or after June 19, 2000. (Facilities intended for use by children under age 6 are not considered to be institutions.) Bunk beds intended for use by children are subject to the requirements in 16 CFR 1500.18(a)(18) and 16 CFR part 1513, and not to this part 1213. However, those regulations are substantively identical to the requirements in this part 1213.

§ 1213.2 Definitions.

As used in this part 1213:

Bed. See *Bunk bed.*

Bed end structure means an upright unit at the head and foot of the bed to which the side rails attach.

Bunk bed means a bed in which the underside of any foundation is over 30 inches (760 mm) from the floor.

Foundation means the base or support on which a mattress rests.

Guardrail means a rail or guard on a side of the upper bunk to prevent a sleeping occupant from falling or rolling out.

§ 1213.3 Requirements.

(a) *Guardrails.* (1) Any bunk bed shall provide at least two guardrails, at least one on each side of the bed, for each bed having the underside of its foundation more than 30 inches (760 mm) from the floor.

(2) One guardrail shall be continuous between each of the bed's end

structures. "Continuous" means that any gap between the guardrail and end structure shall not exceed 0.22 inches (5.6 mm) (so as to not cause a finger entrapment hazard for a child).

(3) The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches (380 mm) between either end of the guardrail and the nearest bed end structures.

(4) For bunk beds designed to have a ladder attached to one side of the bed, the continuous guardrail shall be on the other side of the bed.

(5) Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

(6) The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. This requirement does not prohibit a wall-side guardrail that terminates in a quarter-circle bend and attaches to the side rail of the upper bunk foundation.

(7) With no mattress on the bed, there shall be no openings in the structure between the lower edge of the uppermost member of the guardrail and the underside of the upper bunk's foundation that would permit passage of the wedge block shown in Figure 1 of this part when tested in accordance with the procedure at § 1213.4(a).

(b) *Bed end structures.* (1) The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for at least 50 percent of the distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed.

(2) With no mattress on the bed, there shall be no openings in the end structures above the foundation of the upper bunk that will permit the free passage of the wedge block shown in Figure 1 when tested in accordance with the procedure at § 1213.4(b).

(3) When tested in accordance with § 1213.4(c), there shall be no openings in the end structures between the underside of the foundation of the upper bunk and upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1, unless the openings are also large enough to permit the free passage of a 9-inch (230-mm) diameter rigid sphere.

(4) All portions of the boundary of any opening required by §§ 1213.4(c)(1) and (2) to be probed by the wedge block of Figure 1, and that permits free passage of a 9-inch diameter sphere, must conform to the neck entrapment requirements of § 1213.4(c)(3).

§ 1213.4 Test methods.

(a) *Guardrails* (see § 1213.3(a)(6)). With no mattress on the bed, place the wedge block shown in Figure 1, tapered side first, into each opening in the bed structure below the lower edge of the uppermost member of the guardrail and above the underside of the upper bunk's foundation. Orient the block so that it is most likely to pass through the opening (*e.g.*, the major axis of the block parallel to the major axis of the opening) ("most adverse orientation"). Then gradually apply a 33-lbf (147–N) force in a direction perpendicular to the plane of the large end of the block. Sustain the force for 1 minute.

(b) *Upper bunk end structure* (see § 1213.3(b)(2)). Without a mattress or foundation on the upper bunk, place the wedge block shown in Figure 1 into each opening, tapered side first, and in the most adverse orientation. Determine if the wedge block can pass freely through the opening.

(c) *Lower bunk end structure* (see § 1213.3(b)(3)). (1) Without a mattress or foundation on the lower bunk, place the wedge block shown in Figure 1, tapered side first, into each opening in the lower bunk end structure in the most adverse orientation. Determine whether the wedge block can pass freely through the opening. If the wedge block passes freely through the opening, determine whether a 9-inch (230-mm) diameter rigid sphere can pass freely through the opening.

(2) With the manufacturer's recommended maximum thickness mattress and foundation in place, repeat the test in paragraph (c)(1) of this section.

(3) All portions of the boundary of any opening that is required to be probed by the wedge block of Figure 1 by paragraphs (c)(1) and (c)(2) of this section, and that permits free passage of a 9-inch diameter sphere, must satisfy the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section addressing neck entrapment.

(i) Insert the "A" section of the test template shown in Figure 2 of this part into the portion of the boundary of the opening to be tested, with the plane of the template in the plane of the opening and with the centerline of the top of the template (as shown in Figure 2) aligned parallel to the centerline of the opening, until motion is stopped by contact between the test template and the boundaries of the opening (see Figure 3 of this part). By visual inspection, determine if there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template. If simultaneous contact occurs, mark the contact points on the boundary of the opening and conduct the additional test described in paragraph (c)(3)(ii) of this section.

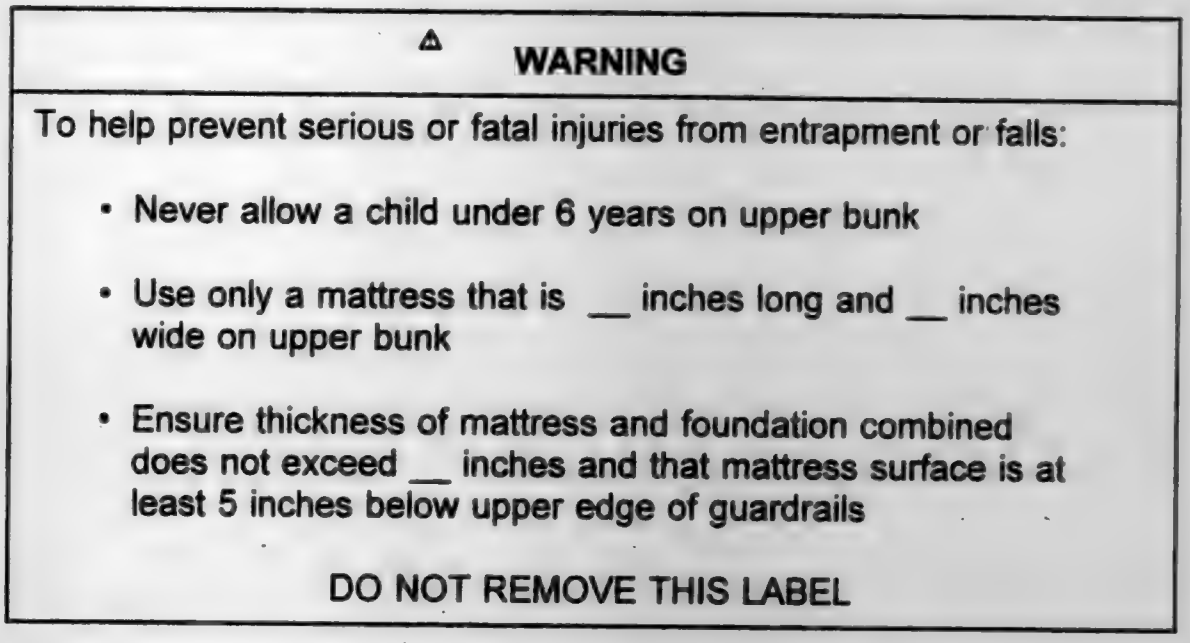
(ii) To check the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with its plane perpendicular to both the plane of the opening and the centerline of the opening (see Figure 4 of this part). If the neck portion of the "B" section of the template completely enters the opening (passes 0.75 inch or more beyond the points previously contacted by the "A" section of the template), the opening is considered to present a neck entrapment hazard and fails the test, unless its lower boundary slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

§ 1213.5 Marking and labeling.

(a) There shall be a permanent label or marking on each bed stating the name and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

(b) The following warning label shall be permanently attached to the inside of an upper bunk bed end structure in a location that cannot be covered by the bedding but that may be covered by the placement of a pillow.

BILLING CODE 6355–01–P



BILLING CODE 6355-01-C

§ 1213.6 Instructions.

Instructions shall accompany each bunk bed set, and shall include the following information.

(a) *Size of mattress and foundation.* The length and width of the intended mattress and foundation shall be clearly stated, either numerically or in conventional terms such as twin size, twin extra-long, *etc.* In addition, the maximum thickness of the mattress and foundation required for compliance with § 1213.3(a)(5) and (b)(1) shall be stated.

(b) *Safety warnings.* The instructions shall provide the following safety warnings:

(1) Do not allow children under 6 years of age to use the upper bunk.

(2) Use guardrails on both sides of the upper bunk.

(3) Prohibit horseplay on or under beds.

(4) Prohibit more than one person on upper bunk.

(5) Use ladder for entering or leaving upper bunk.

(6) If the bunk bed will be placed next to a wall, the guardrail that runs the full length of the bed should be placed against the wall to prevent entrapment between the bed and the wall. (This applies only to bunk beds without two full-length guardrails.)

§ 1213.7 Findings.

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3). These findings are contained in the Appendix to this Part 1213.

(a) The rule in this part (including its effective date of June 19, 2000 is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

[These findings are contained in the Appendix to this part 1213.]

(b) Promulgation of the rule is in the public interest.

(c) Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury; or it is unlikely that there will be substantial compliance with such voluntary standard.

(d) The benefits expected from the rule bear a reasonable relationship to its costs.

(e) The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

BILLING CODE 6355-01-P

Figure 1 to Part 1213—Wedge Block for Tests in § 1213.4(a), (b), and (c)

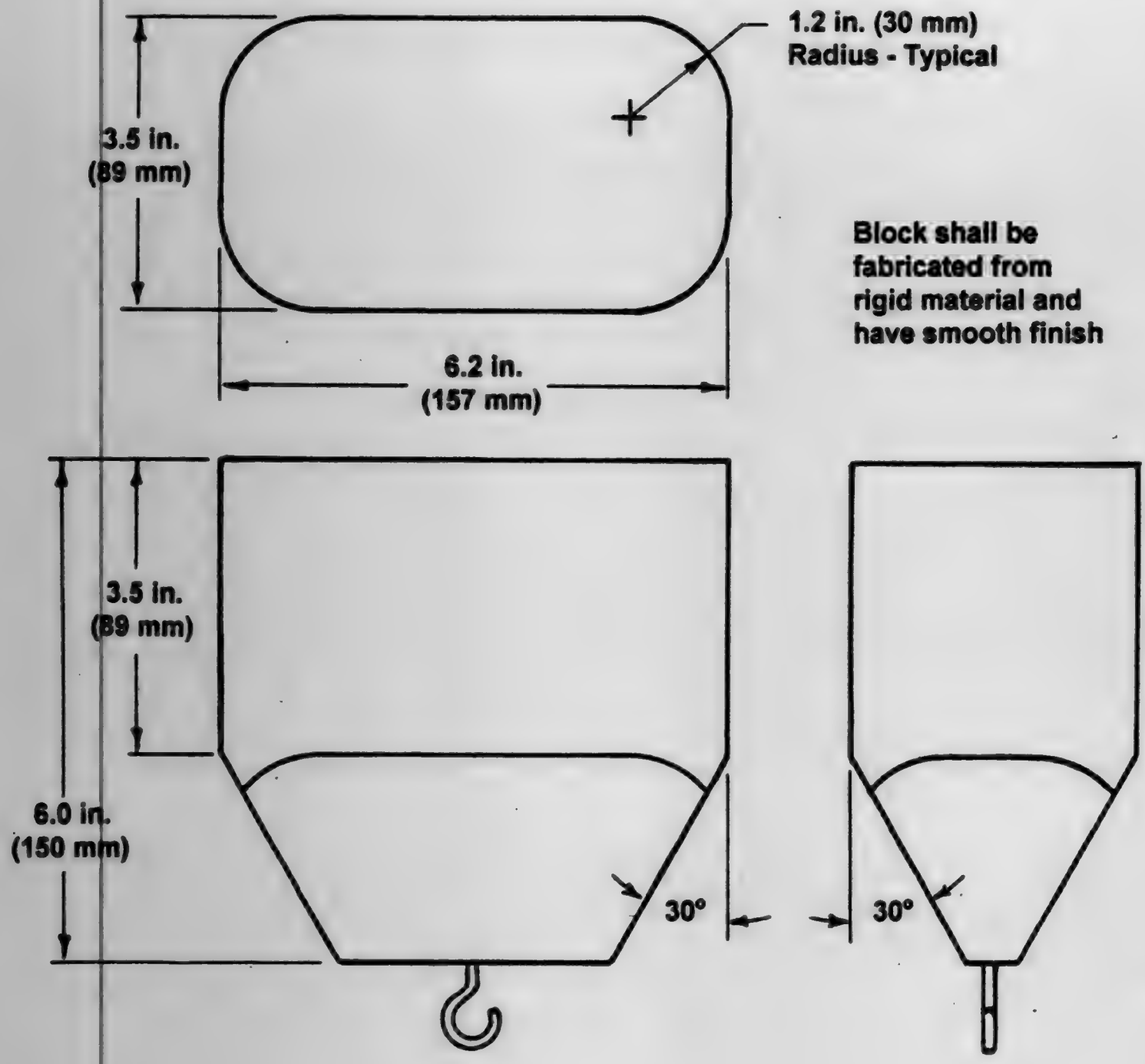
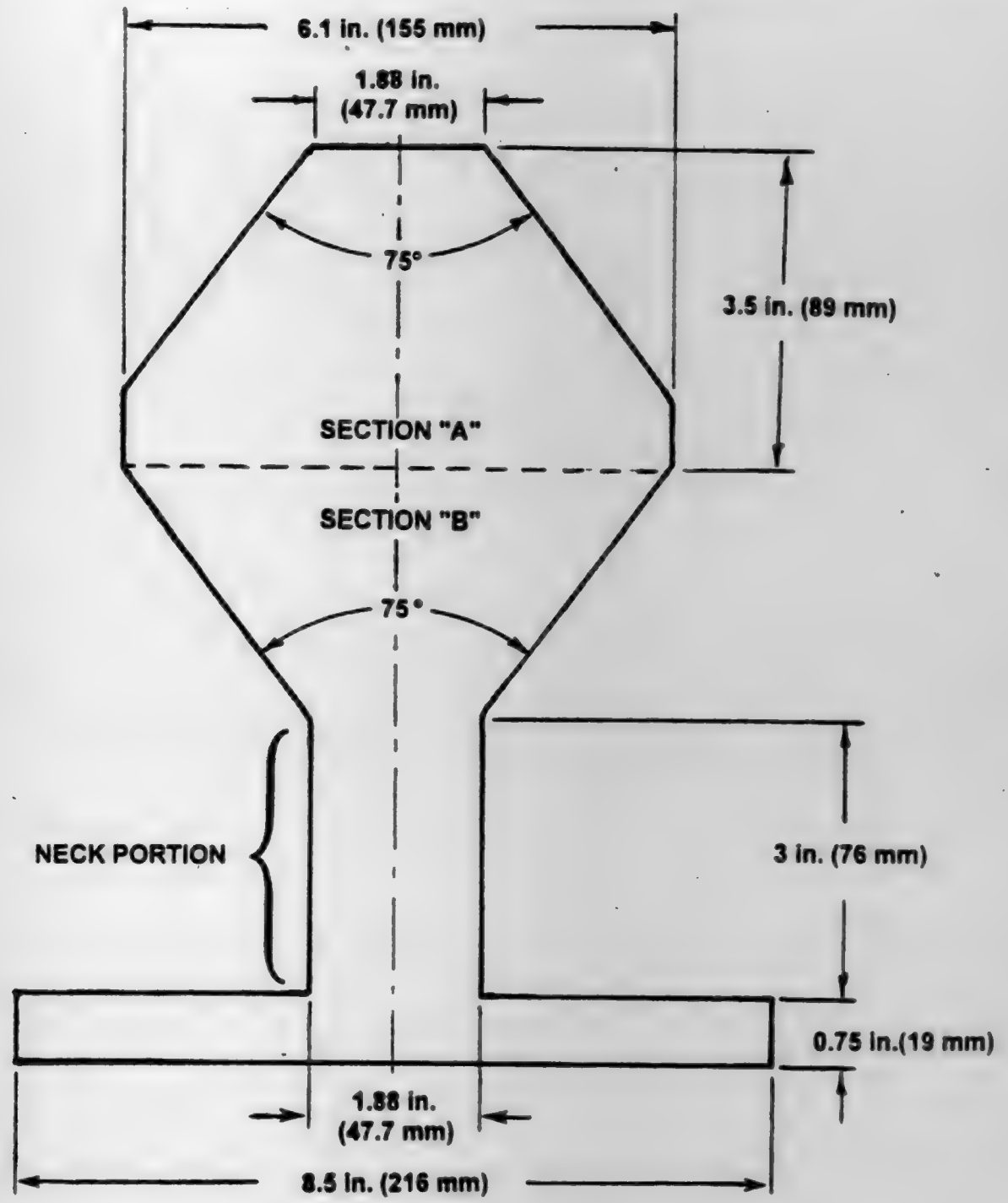


Figure 1 to Part 1213 - Wedge Block for Tests in § 1213.4(a), (b) and (c)

Figure 2 to Part 1213—Test Template for Neck Entrapment



NOTE – Probe to be constructed from any rigid material 0.75 in. (19 mm) thick

Fig. 2 – Test Probe for Neck Entrapment

Figure 3 to Part 1213—Motion of Test Template Arrested by Simultaneous Contact With Both Sides of "A" Section and Boundaries of Opening

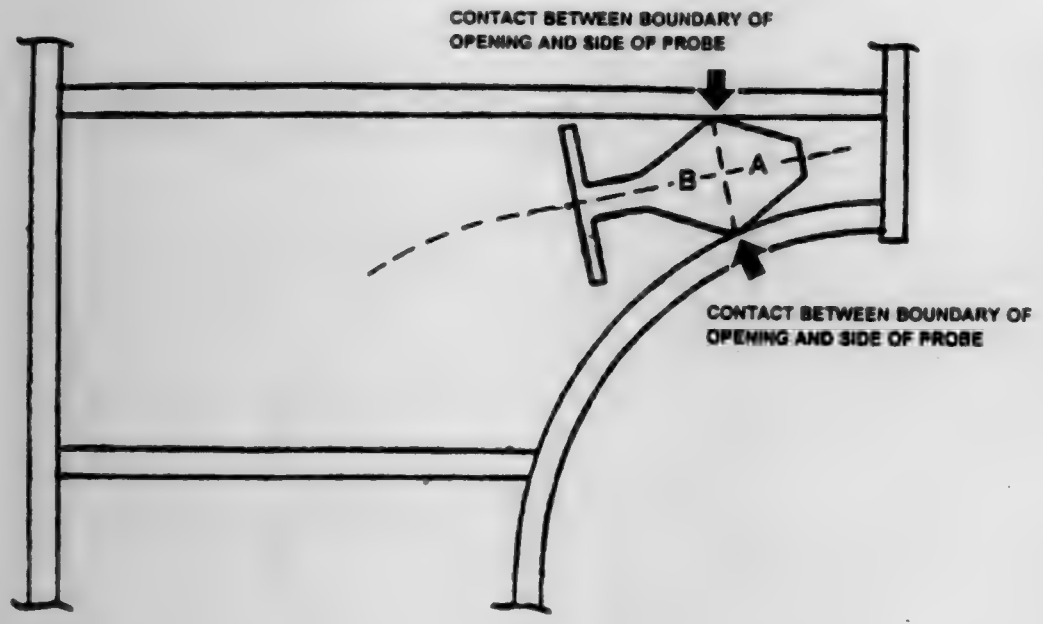


Fig. 3 – Motion of Test Probe Arrested by Simultaneous Contact With Both Sides of "A" Section of Probe and Boundaries of Opening

Figure 4 to Part 1213—Neck Portion of "B" Section of Template Enters Completely Into Opening

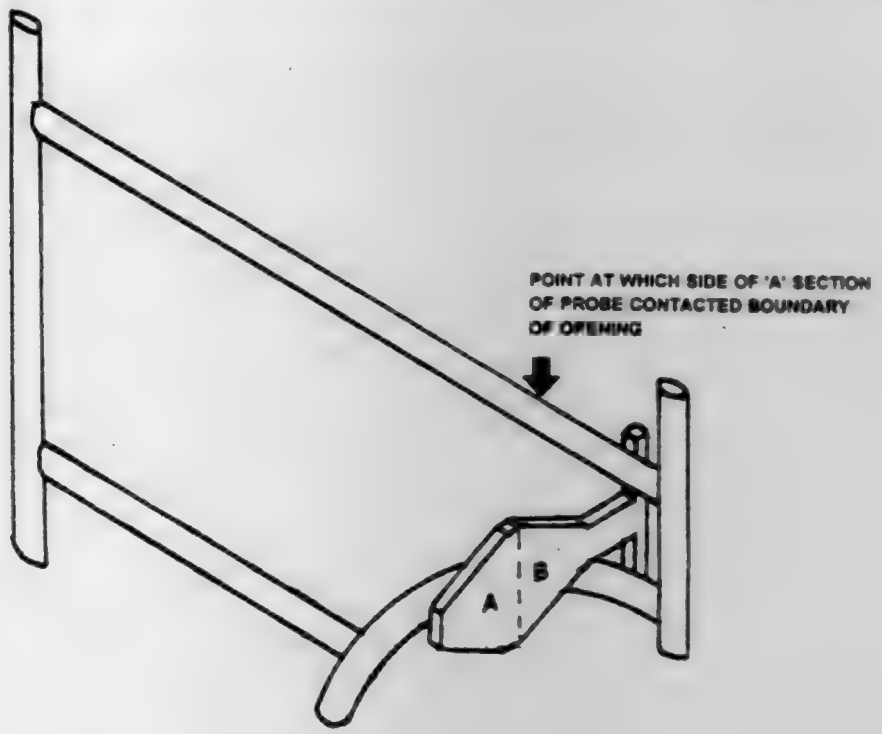


Fig 4 – Neck Portion of "B" Section of Probe Enters Completely into Opening

BILLING CODE 6355–01–C

Appendix to Part 1213—Findings Under the Consumer Product Safety Act

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3). Because of this, the facts and determinations in these findings apply as of the date the rule was issued, December 22, 1999.

A. *The rule in this part (including its effective date of June 19, 2000) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.*

1. For a recent 9.6-year period, the CPSC received reports of 57 deaths of children under age 15 who died when they were trapped between the upper bunk of a bunk bed and the wall or when they were trapped in openings in the bed's structure. Over 96% of those who died in entrapment incidents were age 3 or younger. On average, averting these deaths is expected to produce a benefit to society with a present value of about $175 to $350 for each bed that otherwise would not have complied with one or more of the rule's requirements.

2. This increased safety will be achieved in two ways. First, all bunk beds will be required to have a guardrail on both sides of the bed. If the bed is placed against a wall, the guardrail on that side is expected to prevent a child from being entrapped between the bed and the wall. The guardrail on the wall side of the bed must extend continuously from one end to the other. Second, the end structures of the bed must be constructed so that, if an opening in the end structure is large enough so a child can slip his or her body through it, it must be large enough that the child's head also can pass through.

3. For the reasons discussed in paragraph D. of this Appendix, the benefits of the changes to bunk beds caused by this rule will have a reasonable relationship to the changes' costs. The rule addresses a risk of death, and applies primarily to a vulnerable population, children under age 3. The life-saving features required by the rule are cost-effective and can be implemented without adversely affecting the performance and availability of the product. The effective date provides enough time so that production of bunk beds that do not already comply with the standard can easily be changed so that the beds comply. Accordingly, the Commission finds that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

B. *Promulgation of the rule is in the public interest.* For the reasons given in paragraph A. of this Appendix, the Commission finds that promulgation of the rule is in the public interest.

C. *Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury; or it is unlikely that there will be substantial compliance with such voluntary standard.*

1. *Adequacy of the voluntary standard.* i. In this instance, there is a voluntary standard addressing the risk of entrapment in bunk beds. However, the rule goes beyond the provisions of the voluntary standard. First, it eliminates the voluntary standard's option to have an opening of up to 15 inches at each end of the wall-side guardrail. Second, it requires more of the lower bunk end structures to have entrapment protection. The voluntary standard protects against entrapment only within the 9-inch space immediately above the upper surface of the lower bunk's mattress. The mandatory standard extends this area of protection upward to the level of the underside of the upper bunk foundation. Both of these provisions, which are in the rule but not in the voluntary standard, address fatalities and, as noted in paragraph D of this Appendix, have benefits that bear a reasonable relationship to their costs.

ii. Therefore, the Commission finds that compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk of entrapment injury or death.

2. *Substantial compliance.* i. Neither the CPSA nor the FHSA define "substantial compliance." The March 3, 1999 Notice of Proposed Rulemaking summarized an interpretation of "substantial compliance" that the Office of General Counsel provided to the Commission. 64 Fed. Reg. 10245, 10248–49 (March 3, 1999). The Commission specifically invited public comment on that interpretation from "all persons who would be affected by such an interpretation." *Id.* at 10249. The Commission received more than 20 comments on the interpretation.

ii. Having now considered all the evidence that the staff has presented, the comments from the public, and the legal advice from the Office of General Counsel, the Commission concludes that there is not "substantial compliance" with the ASTM voluntary standard for bunk beds within the meaning of the Consumer Product Safety Act and the Federal Hazardous Substances Act. See, *e.g.*, 15 U.S.C. 2058(f)(3)(D)(ii); 15 U.S.C. 1262(i)(2)(A)(ii). However, the Commission does not adopt a general interpretation of "substantial compliance" focusing on whether the level of compliance with a voluntary standard could be improved under a mandatory standard. Rather, the grounds for the Commission's decision focus on the specific facts of this rulemaking and are stated below.

iii. The legislative history regarding the meaning of "substantial compliance" indicates that the Commission should consider whether compliance is sufficient to eliminate or adequately reduce the risk of injury in a timely fashion and that, generally, compliance should be measured in terms of the number of complying products, rather than the number of manufacturers who are in compliance. *E.g.*, Senate Report No. 97–102, p. 14 (May 15, 1981); House Report No. 97–158, p. 11 (June 19, 1981); H. Conf. Rep. No. 97–208, 97th Cong., 1st Sess. 871, reprinted in 1981 U.S. Code Cong. & Admin. News 1010, 1233.

iv. Given this Congressional guidance, the Commission believes it appropriate to examine the number of conforming products as the starting point for analysis. However, the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents. Thus, the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

v. There are certain factors the agency considers before it initiates regulatory action, such as the severity of the potential injury, whether there is a vulnerable population at risk, and the risk of injury. See 16 CFR 1009.8. These and other factors also appropriately inform the Commission's decision regarding whether a certain level of conformance with a voluntary standard is substantial. In the light of these factors, industry's compliance rate with the voluntary standard for bunk beds is not substantial.

vi. In this case, the Commission deals with the most severe risk—death—to one of the most vulnerable segments of our population—infants and young children. While the risk of death is not high, it exists whenever a young child is in a residence with a nonconforming bunk bed.

vii. Additionally, some products, such as hairdryers without shock protection devices, require some intervening action (dropping the hair dryer into water) to create the hazard. By contrast, deaths in bunk beds occur during the intended use of the product—a child rolling over in bed or climbing in or out of it—without any intervening action.

viii. The Commission must also consider that bunk beds have a very long product life, frequently being passed on to several families before being discarded. Thus, a number of children may be exposed to a bed during its useful life. Every noncomplying bed that poses an entrapment hazard presents the potential risk of death to any young child in the house. It is a risk that is hard for a parent to protect against, as children find their way onto these beds even if they are not put to sleep in them.

ix. Bunk beds are products that can be made relatively easily by very small companies, or even by a single individual. The Office of Compliance believes smaller entities will always present a compliance problem, because new manufacturers can enter the marketplace relatively easily and need little expertise to make a wooden bunk bed. The evidence seems to support the view that there will always be an irreducible number of new, smaller bunk bed manufacturers who will not follow the voluntary standard.

x. What constitutes substantial compliance is also a function of what point in time the issue is examined. In 1989, the Commission denied a petition for a mandatory bunk bed rule. At that time, industry was predicting that by April of 1989, 90% of all beds being manufactured would comply with the voluntary guidelines. But that was in the context of years of steadily increasing conformance and the hope that conformance would continue to grow and that deaths and near-misses would begin to decline. But the

conformance level never grew beyond the projection for 1989 and deaths and near-misses have not dropped.

xi. Even with the existing compliance rate, the Commission is contemplating the prospect of perhaps 50,000 nonconforming beds a year (or more) entering the marketplace, with many beds remaining in use for perhaps 20 years or longer. Under these circumstances, a 10% rate of noncompliance is too high.

xii. It is now clear that the bunk bed voluntary standard has not achieved an adequate reduction of the unreasonable risk of death to infants and children in a timely fashion, and it is unlikely to do so. Accordingly, the Commission finds that substantial compliance with the voluntary standard for bunk beds is unlikely.

xiii. Products that present some or all of the following factors might not be held to as strict a substantial compliance analysis. Those which:

—Rarely or never cause death;
—Cause only less severe injuries;
—Do not cause deaths or injuries principally to a vulnerable segment of the population;
—Are not intended for children and which have no special attraction for children;
—Have a relatively short life span;
—Are made by a few stable manufacturers or which can only be made by specialized manufacturers needing a significant manufacturing investment to produce the product;
—Are covered by a voluntary standard which continues to capture an increasing amount of noncomplying products; or
—Require some additional intervening action to be hazardous.

xiv. And, in analyzing some other product, there could be other factors that would have to be taken into consideration in determining what level of compliance is adequate to protect the public. The tolerance for nonconformance levels has to bear some relationship to the magnitude and manageability of the hazard addressed.

xv. The Commission emphasizes that its decision is not based on the argument that a mandatory rule provides more powerful enforcement tools. If this were sufficient rationale, mandatory rules could always displace voluntary standards, and this clearly was not Congress's intent. But, with a mandatory standard, the necessity of complying with a mandatory federal regulation will be understandable to small manufacturers. State and local governments will have no doubt about their ability to help us in our efforts to locate these manufacturers.

D. *The benefits expected from the rule bear a reasonable relationship to its costs.*

1. *Bunk beds that do not comply with ASTM's requirements for guardrails.* The cost of providing a second guardrail for bunk beds that do not have one is expected to be from $15–40 per otherwise noncomplying bed. If, as expected, the standard prevents virtually all of the deaths it addresses, the present value of the benefits of this modification are estimated to be from $175–350 per otherwise noncomplying bed. Thus, the benefit of this provision is about 4–23 times its cost.

2. *Bunk beds that comply with ASTM's requirements for guardrails.* The voluntary standard allows up to a 15-inch gap in the coverage of the guardrail on the wall side of the upper bunk. Additional entrapment deaths are addressed by requiring that the wall-side guardrail be continuous from one end of the bed to the other. The estimated present value of the benefits of this requirement is $2.40 to $3.50 per otherwise noncomplying bed. The Commission estimates that the materials cost to extend one guardrail an additional 30 inches (760 mm) will be less than the present value of the benefits of making the change. Further, the costs of any design changes can be amortized over the number the bunk beds manufactured after the design change is made. Thus, the costs of any design change will be nominal.

3. *Lower bunk end structures.* The Commission is aware of a death, involving entrapment in the end structures of the lower bunk, occurring in a scenario not currently addressed by the voluntary standard. This death would be addressed by extending the voluntary standard's lower bunk end structures entrapment provisions from 9 inches above the lower bunk's sleeping surface to the bottom of the upper bunk and by also including a test for neck entrapment in this area. The Commission expects the costs of this requirement to be design-related only, and small. Indeed, for some bunk beds, materials costs may decrease since less material may be required to comply with these requirements than is currently being used. Again, the design costs for these modifications to the end structures can be amortized over the subsequent production run of the bed.

4. *Effect on market.* The small additional costs from any wall-side guardrails and end-structure modifications are not expected to affect the market for bunk beds, either alone or added to the costs of compliance to ASTM's provisions.

5. *Conclusion.* The Commission has no reason to conclude that any of the standard's requirements will have costs that exceed the requirement's expected benefits. Further, the total effect of the rule is that the benefits of the rule will exceed its costs by about 4–23 times. Accordingly, the Commission concludes that the benefits expected from the rule bear a reasonable relationship to its costs.

E. *The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.* 1. The Commission considered relying on the voluntary standard, either alone or combined with a third-party certification program. However, the Commission concluded that a mandatory program will be more effective in reducing these deaths, each of which is caused by an unreasonable risk of entrapment. Accordingly, these alternatives would not prevent or adequately reduce the risk of injury for which the rule is being promulgated.

2. The Commission also considered a suggestion that bunk beds that conformed to the voluntary standard be so labeled. Consumers could then compare conforming and nonconforming beds at the point of purchase and make their purchase decisions with this safety information in mind. This, however, would not necessarily reduce injuries, because consumers likely would not know there is a voluntary standard and thus would not see any risk in purchasing a bed that was not labeled as conforming to the standard.

3. For the reasons stated in this Appendix, no alternatives to a mandatory rule have been suggested that would adequately reduce the deaths caused by entrapment of children in bunk beds. Accordingly, the Commission finds that this rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

2. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

3. Section 1500.18 is amended by adding paragraph (a)(18) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) * * *

(18)(i) Any bunk bed (as defined in § 1513.2(c) of this chapter) that does not comply with the requirements of part 1513 of this chapter.

(ii) *Findings.* In order to issue a rule under Section 3(e) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1262(e), classifying a toy or other article intended for use by children as a hazardous substance on the basis that it presents a mechanical hazard (as defined in Section 2(s) of the FHSA), the FHSA requires the Commission to make the following findings and to include these findings in the regulation: Bunk beds present a mechanical hazard; Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury, or it is unlikely that there will be substantial compliance with such voluntary standard; The benefits expected from the rule bear a reasonable relationship to its costs; and The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated. These findings are made in the Appendix to Part 1513.

4. A new part 1513 is added to Subchapter C to read as follows:

PART 1513—REQUIREMENTS FOR BUNK BEDS

Sec.

1513.1 Scope, application, and effective date.
1513.2 Definitions.
1513.3 Requirements.
1513.4 Test methods.
1513.5 Marking and labeling.
1513.6 Instructions.

Figures 1–4

Appendix to Part 1513—Findings Under the Federal Hazardous Substances Act

Authority: 15 U.S.C. 1261(f)(1)(D), 1261(s), 1262(e)(1), 1262(f)–(i).

§ 1513.1 Scope, application, and effective date.

(a) *Scope, basis, and purpose.* This part 1513 prescribes requirements for bunk beds to reduce or eliminate the risk that children will die or be injured from being trapped between the upper bunk and the wall or in openings below guardrails or in other structures in the bed. Bunk beds meeting these requirements are exempted from 16 CFR 1500.18(a)(18).

(b) *Application and effective date.* This part applies to all bunk beds, except those manufactured only for institutional use, that are manufactured in the United States, or imported, on or after June 19, 2000. (Facilities intended for use by children under age 6 are not considered to be institutions.) Bunk beds, as described in this section, that are not intended for use by children are subject to the requirements in 16 CFR part 1213, and not to 16 CFR 1500.18(a)(18). However, the provisions of 16 CFR 1213 are substantively identical to the requirements in this part 1513.

§ 1513.2 Definitions.

As used in this part 1513:

Bed. See Bunk bed.

Bed end structure means an upright unit at the head and foot of the bed to which the side rails attach.

Bunk bed means a bed in which the underside of any foundation is over 30 inches (760 mm) from the floor.

Foundation means the base or support on which a mattress rests.

Guardrail means a rail or guard on a side of the upper bunk to prevent a sleeping occupant from falling or rolling out.

§ 1513.3 Requirements.

(a) *Guardrails.* (1) Any bunk bed shall provide at least two guardrails, at least one on each side of the bed, for each bed having the underside of its foundation more than 30 inches (760 mm) from the floor.

(2) One guardrail shall be continuous between each of the bed's end structures. "Continuous" means that any gap between the guardrail and end structure shall not exceed 0.22 inches (5.6 mm) (so as to not cause a finger entrapment hazard for a child).

(3) The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches (380 mm) between either end of the guardrail and the nearest bed end structure.

(4) For bunk beds designed to have a ladder attached to one side of the bed, the continuous guardrail shall be on the other side of the bed.

(5) Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

(6) The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the manufacturer's instructions is on the bed. This requirement does not prohibit a wall-side guardrail that terminates in a quarter-circle bend and attaches to the side rail of the upper bunk foundation.

(7) With no mattress on the bed, there shall be no openings in the structure between the lower edge of the uppermost member of the guardrail and the underside of the upper bunk's foundation that would permit passage of the wedge block shown in Figure 1 of this part when tested in accordance with the procedure at § 1513.4(a).

(b) *Bed end structures.* (1) The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for at least 50 percent of the distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed.

(2) With no mattress on the bed, there shall be no openings in the rigid end structures above the foundation of the upper bunk that will permit the free passage of the wedge block shown in Figure 1 when tested in accordance with the procedure at § 1513.4(b).

(3) When tested in accordance with § 1513.4(c), there shall be no openings in the end structures between the underside of the foundation of the upper bunk and upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1, unless the openings are also large enough to permit the free passage of a 9-inch (230-mm) diameter rigid sphere.

(4) All portions of the boundary of any opening required by §§ 1513.4(c)(1) and (2) to be probed by the wedge block of Figure 1, and that permits free passage of a 9-inch diameter sphere, must conform to the neck entrapment requirements of § 1513.4(c)(3).

§ 1513.4 Test methods.

(a) *Guardrails* (see § 1513.3(a)(6)). With no mattress on the bed, place the wedge block shown in Figure 1, tapered side first, into each opening in the rigid bed structure below the lower edge of the uppermost member of the guardrail and above the underside of the upper bunk's foundation. Orient the block so that it is most likely to pass through the opening (*e.g.*, the major axis of the block parallel to the major axis of the opening) ("most adverse orientation"). Then, gradually apply a 33-lbf (147–N) force in a direction perpendicular to the plane of the large end of the block. Sustain the force for 1 minute.

(b) *Upper bunk end structure* (see § 1513.3(b)(2)). Without a mattress or foundation on the upper bunk, place the wedge block shown in Figure 1 into any opening, tapered side first, and in the most adverse orientation. Determine if the wedge block can pass freely through the opening.

(c) *Lower bunk end structure* (see § 1513.3(b)(3)). (1) Without a mattress or foundation on the lower bunk, place the wedge block shown in Figure 1, tapered side first, into each opening in the lower bunk end structure in the most adverse orientation. Determine whether the wedge block can pass freely through the opening. If the wedge block passes freely through the opening, determine whether a 9-inch (230-mm) diameter rigid sphere can pass freely through the opening.

(2) With the manufacturer's recommended maximum thickness mattress and foundation in place, repeat the test in paragraph (c)(1) of this section.

(3) All portions of the boundary of any opening that is required to be probed by the wedge block of Figure 1 by paragraphs (c)(1) and (c)(2) of this section, and that permits free passage of a 9-inch diameter sphere, must satisfy the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section addressing neck entrapment:

(i) Insert the "A" section of the test template shown in Figure 2 of this part into the portion of the boundary to be tested, with the plane of the template in the plane of the opening and with the centerline of the top of the template (as shown in Figure 2) aligned parallel to the centerline of the opening, until motion is stopped by contact between the test template and the boundaries of the opening (see Figure 3 of this part). By visual inspection, determine if there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template. If simultaneous contact occurs, mark the contact points on the boundary of the

opening and conduct the additional test described in paragraph (c)(3)(ii) of this section.

(ii) To check the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with its plane perpendicular to both the plane of the opening and the centerline of the opening (see Figure 4 of this part). If the neck portion of the "B" section of the template can completely enter the opening (passes 0.75 inch or more beyond the points previously contacted by the "A" section of the template), the opening is considered to present a neck entrapment hazard and fails the test, unless its lower boundary slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

§ 1513.5 Marking and labeling.

(a) There shall be a permanent label or marking on each bed stating the name and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

(b) The following warning label shall be permanently attached to the inside of an upper bunk bed end structure in a location that cannot be covered by the bedding but that may be covered by the placement of a pillow.

BILLING CODE 6358-01-P

⚠ **WARNING**

To help prevent serious or fatal injuries from entrapment or falls:

- Never allow a child under 6 years on upper bunk
- Use only a mattress that is __ inches long and __ inches wide on upper bunk
- Ensure thickness of mattress and foundation combined does not exceed __ inches and that mattress surface is at least 5 inches below upper edge of guardrails

DO NOT REMOVE THIS LABEL

BILLING CODE 6355-01-C

§ 1513.6 Instructions

Instructions shall accompany each bunk bed set, and shall include the following information.

(a) *Size of mattress and foundation.* The length and width of the intended mattress and foundation shall be clearly stated, either numerically or in conventional terms such as twin size, twin extra-long, etc. In addition, the maximum thickness of the mattress and foundation required for compliance with § 1513.3 (a)(5) and (b)(1) of this part shall be stated.

(b) *Safety warnings.* The instructions shall provide the following safety warnings:

(1) Do not allow children under 6 years of age to use the upper bunk.

(2) Use guardrails on both sides of the upper bunk.

(3) Prohibit horseplay on or under beds.

(4) Prohibit more than one person on upper bunk.

(5) Use ladder for entering or leaving upper bunk.

(6) If the bunk bed will be placed next to a wall, the guardrail that runs the full length of the bed should be placed against the wall to prevent entrapment between the bed and the wall. (This applies only to bunk beds without two full-length guardrails.)

BILLING CODE 6355-01-P

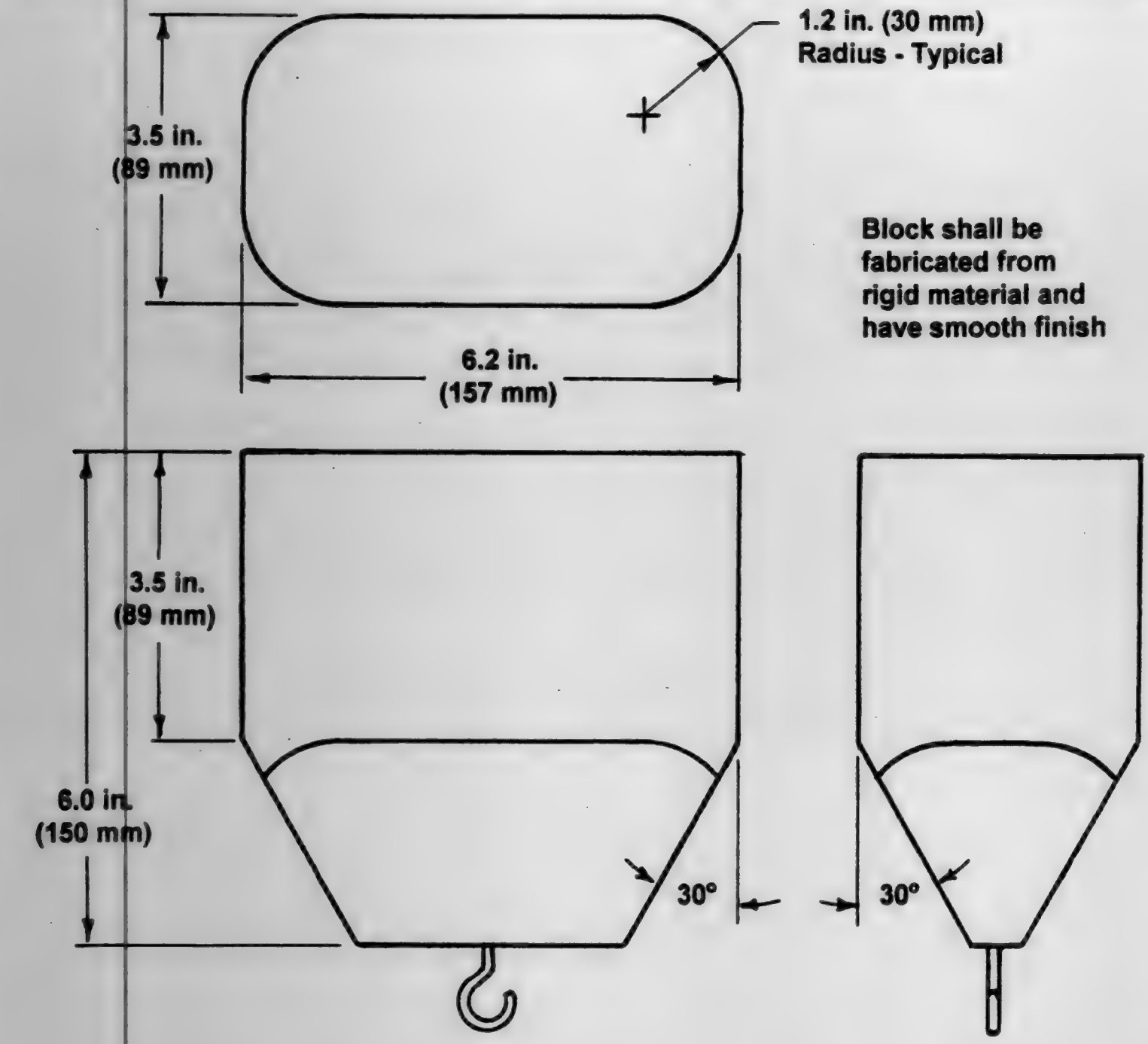
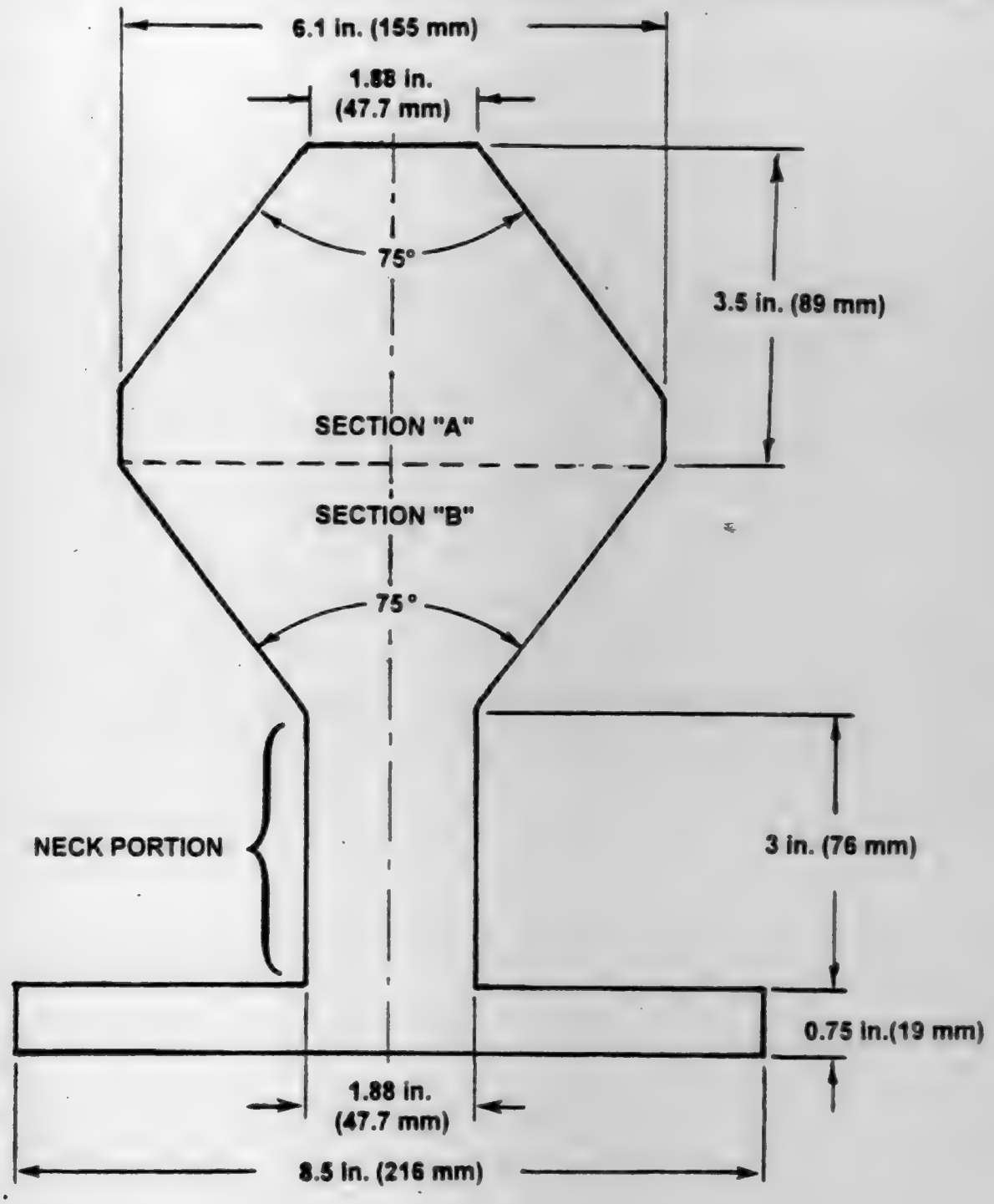


Figure 1 to Part 1513 - Wedge Block for Tests in § 1513.4(a), (b) and (c)



NOTE – Probe to be constructed from any rigid material 0.75 in. (19 mm) thick

Fig. 2 – Test Probe for Neck Entrapment

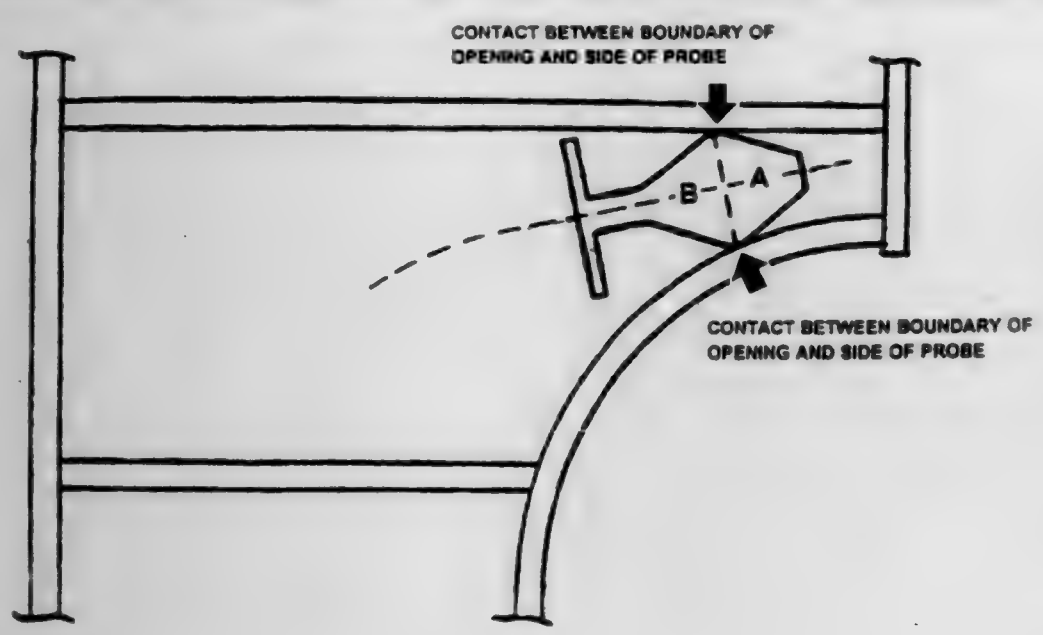


Fig. 3 – Motion of Test Probe Arrested by Simultaneous Contact With Both Sides of "A" Section of Probe and Boundaries of Opening

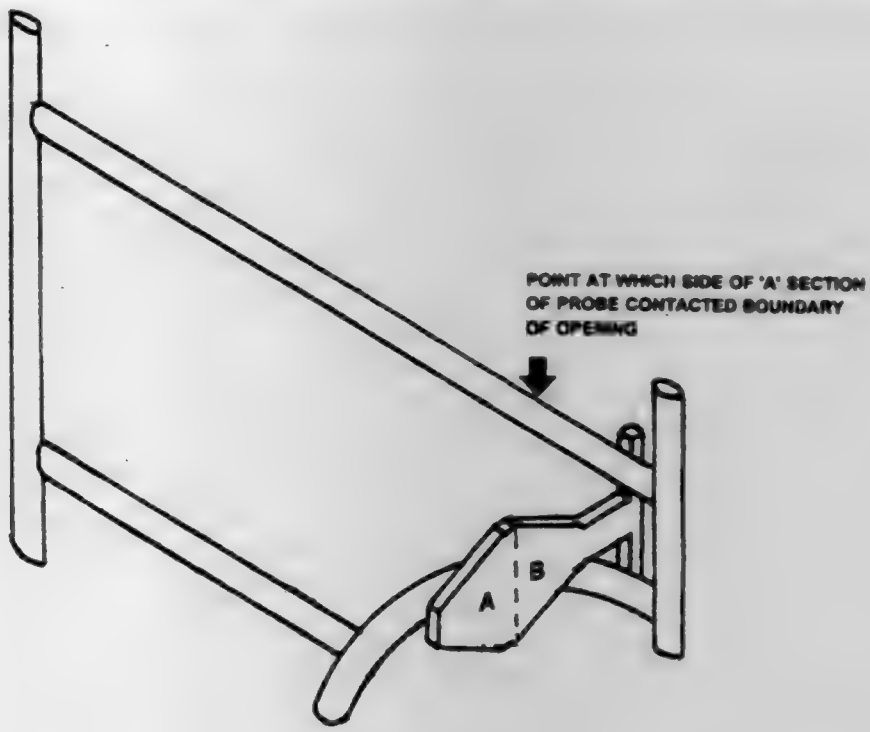


Fig 4 – Neck Portion of "B" Section of Probe Enters Completely into Opening

BILLING CODE 6355–01–C

Appendix to Part 1513—Findings Under the Federal Hazardous Substances Act

The Federal Hazardous Substances Act (FHSA) requires that the Commission, in order to issue Part 1513, make the following findings and include them in the rule. 15 U.S.C. 1261(s), 1262(i). Because of this, the facts and determinations in these findings apply as of the date the rule was issued, December 22, 1999.

A. *Bunk beds present a mechanical hazard.* Section 2(s) of the FHSA states that an "article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness * * * (3 from * * * surfaces, edges, openings, or closures * * * , or (9) because of any other aspect of the articles design or manufacture." 15 U.S.C. 1261(s).

2. For a recent 9.6-year period, the CPSC received reports of 57 deaths of children under age 15 who died when they were trapped between the upper bunk of a bunk bed and the wall or when they were trapped in openings in the bed's structure. Over 96% of those who died in entrapment incidents were age 3 or younger. On average, averting these deaths is expected to produce a benefit to society with a present value of about $175 to $350 for each bed that otherwise would not have complied with one or more of the rule's requirements.

3. This increased safety will be achieved in three main ways. First, all bunk beds will be required to have a guardrail on both sides of the bed. If the bed is placed against a wall, the guardrail on that side is expected to prevent a child from being entrapped between the bed and the wall. The guardrail on the wall side of the bed must extend continuously from one end to the other. Second, the end structures of the bed must be constructed so that, if an opening in the end structure is large enough so a child can slip his or her body through it, it must be large enough that the child's head also can pass through. Third, this area must also be constructed so that a child cannot insert his or her head into an opening and move to another part of the opening where the head cannot be pulled out and the neck can become entrapped.

4. For the reasons discussed in paragraph C of this Appendix, the benefits of the changes to bunk beds caused by this rule will have a reasonable relationship to the changes' costs. The rule addresses a risk of death, and applies primarily to a vulnerable population, children under age 3. The life-saving features required by the rule are cost-effective and can be implemented without adversely affecting the performance and availability of the product. The effective date provides enough time so that production of bunk beds that do not already comply with the standard can easily be changed so that the beds comply. Accordingly, the Commission finds that there is an unreasonable risk of entrapment injury associated with bunk beds that do not comply with Part 1513.

B. *Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury, or it is unlikely that there will be substantial compliance with such voluntary standard.*

1. *Adequacy of the voluntary standard.* In this instance, there is a voluntary standard addressing the risk of entrapment in bunk beds. However, the rule goes beyond the provisions of the voluntary standard. First, it eliminates the voluntary standard's option to have an opening of up to 15 inches at each end of the wall-side guardrail. Second, it requires more of the lower bunk end structures to have entrapment protection. The voluntary standard protects against entrapment only within the 9-inch space immediately above the upper surface of the lower bunk's mattress. The mandatory standard extends this area of protection upward to the level of the underside of the upper bunk foundation. Both of these provisions, which are in the rule but not in the voluntary standard, address fatalities and, as noted in this paragraph (a)(18), have benefits that bear a reasonable relationship to their costs.

Therefore, the Commission finds that compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk of entrapment injury or death.

2. *Substantial compliance.* i. The FHSA does not define "substantial compliance." The March 3, 1999 Notice of Proposed Rulemaking summarized an interpretation of "substantial compliance" that the Office of General Counsel provided to the Commission. 64 FR 10245, 10248–49 (March 3, 1999). The Commission specifically invited public comment on that interpretation from "all persons who would be affected by such an interpretation." Id. at 10249. The Commission received more than 20 comments on the interpretation.

ii. Having now considered all the evidence that the staff has presented, the comments from the public, and the legal advice from the Office of General Counsel, the Commission concludes that there is not "substantial compliance" with the ASTM voluntary standard for bunk beds within the meaning of the Consumer Product Safety Act and the Federal Hazardous Substances Act. See, e.g., 15 U.S.C. 2058(f)(3)(D)(ii); 15 U.S.C. 1262(i)(2)(A)(ii). However, the Commission does not adopt a general interpretation of "substantial compliance" focusing on whether the level of compliance with a voluntary standard could be improved under a mandatory standard. Rather, the grounds for the Commission's decision focus on the specific facts of this rulemaking and are stated below.

iii. The legislative history regarding the meaning of "substantial compliance" indicates that the Commission should consider whether compliance is sufficient to eliminate or adequately reduce the risk of injury in a timely fashion and that, generally, compliance should be measured in terms of the number of complying products, rather than the number of manufacturers who are in compliance. E.g., Senate Report No. 97–102, p. 14 (May 15, 1981); House Report No. 97–158, p. 11 (June 19, 1981); H. Conf. Rep. No. 97–208, 97th Cong., 1st Sess. 871, reprinted in 1981 U.S. Code Cong. & Admin. News 1010, 1233.

iv. Given this Congressional guidance, the Commission believes it appropriate to examine the number of conforming products as the starting point for analysis. However, the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents. Thus, the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

v. There are certain factors the agency considers before it initiates regulatory action, such as the severity of the potential injury, whether there is a vulnerable population at risk, and the risk of injury. See 16 CFR 1009.8. These and other factors also appropriately inform the Commission's decision regarding whether a certain level of conformance with a voluntary standard is substantial. In the light of these factors, industry's compliance rate with the voluntary standard for bunk beds is not substantial.

vi. In this case, the Commission deals with the most severe risk—death—to one of the most vulnerable segments of our population—infants and young children. While the risk of death is not high, it exists whenever a young child is in a residence with a nonconforming bunk bed.

vii. Additionally, some products, such as hairdryers without shock protection devices, require some intervening action (dropping the hair dryer into water) to create the hazard. By contrast, deaths in bunk beds occur during the intended use of the product—a child rolling over in bed or climbing in or out of it—without any intervening action.

viii. The Commission must also consider that bunk beds have a very long product life, frequently being passed on to several families before being discarded. Thus, a number of children may be exposed to a bed during its useful life. Every noncomplying bed that poses an entrapment hazard presents the potential risk of death to any young child in the house. It is a risk that is hard for a parent to protect against, as children find their way onto these beds even if they are not put to sleep in them.

ix. Bunk beds are products that can be made relatively easily by very small companies, or even by a single individual. The Office of Compliance believes smaller entities will always present a compliance problem, because new manufacturers can enter the marketplace relatively easily and need little expertise to make a wooden bunk bed. The evidence seems to support the view that there will always be an irreducible number of new, smaller bunk bed manufacturers who will not follow the voluntary standard.

x. What constitutes substantial compliance is also a function of what point in time the issue is examined. In 1989, the Commission denied a petition for a mandatory bunk bed

rule. At that time, industry was predicting that by April of 1989, 90% of all beds being manufactured would comply with the voluntary guidelines. But that was in the context of years of steadily increasing conformance and the hope that conformance would continue to grow and that deaths and near-misses would begin to decline. But the conformance level never grew beyond the projection for 1989 and deaths and near-misses have not dropped.

xi. Even with the existing compliance rate, the Commission is contemplating the prospect of perhaps 50,000 nonconforming beds a year (or more) entering the marketplace, with many beds remaining in use for perhaps 20 years or longer. Under these circumstances, a 10% rate of noncompliance is too high.

xii. It is now clear that the bunk bed voluntary standard has not achieved an adequate reduction of the unreasonable risk of death to infants and children in a timely fashion, and it is unlikely to do so. Accordingly, the Commission finds that substantial compliance with the voluntary standard for bunk beds is unlikely.

xiii. Products that present some or all of the following factors might not be held to as strict a substantial compliance analysis. Those which:

—Rarely or never cause death;
—Cause only less severe injuries;
—Do not cause deaths or injuries principally to a vulnerable segment of the population;
—Are not intended for children and which have no special attraction for children;
—Have a relatively short life span;
—Are made by a few stable manufacturers or which can only be made by specialized manufacturers needing a significant manufacturing investment to produce the product;
—Are covered by a voluntary standard which continues to capture an increasing amount of noncomplying products; or
—Require some additional intervening action to be hazardous.

xiv. And, in analyzing some other product, there could be other factors that would have to be taken into consideration in determining what level of compliance is adequate to protect the public. The tolerance for nonconformance levels has to bear some relationship to the magnitude and manageability of the hazard addressed.

xv. The Commission emphasizes that its decision is not based on the argument that a mandatory rule provides more powerful enforcement tools. If this were sufficient rationale, mandatory rules could always displace voluntary standards, and this clearly was not Congress's intent. But, with a mandatory standard, the necessity of complying with a mandatory federal regulation will be understandable to small manufacturers. State and local governments will have no doubt about their ability to help us in our efforts to locate these manufacturers.

C. *The benefits expected from the rule bear a reasonable relationship to its costs.*

1. *Bunk beds that do not comply with ASTM's requirements for guardrails.* The cost of providing a second guardrail for bunk beds that do not have one is expected to be from $15–40 per otherwise noncomplying bed. If, as expected, the standard prevents virtually all of the deaths it addresses, the present value of the benefits of this modification are estimated to be from $175–350 per otherwise noncomplying bed. Thus, the benefit of this provision is about 4–23 times its cost.

2. *Bunk beds that comply with ASTM's requirements for guardrails.* The voluntary standard allows up to a 15-inch gap in the coverage of the guardrail on the wall side of the upper bunk. Additional entrapment deaths are addressed by requiring that the wall-side guardrail be continuous from one end of the bed to the other. The estimated present value of the benefits of this requirement will be $2.40 to $3.50 per otherwise noncomplying bed. The Commission estimates that the materials cost to extend one guardrail an additional 30 inches (760 mm) will be less than the present value of the benefits of making the change. Further, the costs of any design changes can be amortized over the number of bunk beds produced after the design change is made. Thus, any design costs are nominal.

3. *Lower bunk end structures.* The Commission is aware of a death, involving entrapment in the end structures of the lower bunk, occurring in a scenario not currently addressed by the voluntary standard. This death is addressed by extending the upper limit of the voluntary standard's lower bunk end structures entrapment provisions from 9 inches above the lower bunk's sleeping surface to the bottom of the upper bunk and by also including a test for neck entrapment in this area. The Commission expects the costs of this requirement to be design-related only, and small. Indeed, for some bunk beds, material costs may decrease since less material may be required to comply with these requirements than are currently being used. Again, the design costs for these modifications to the end structures can be amortized over the subsequent production run of the bed.

4. *Effect on market.* The small additional costs from any wall-side guardrail and end-structure modifications are not expected to affect the market for bunk beds, either alone or added to the costs of compliance to ASTM's provisions.

5. *Conclusion.* The Commission has no reason to conclude that any of the standard's requirements have costs that exceed the requirement's expected benefits. Further, the total effect of the rule is that the benefits of the rule will exceed its costs by about 4–23 times. Accordingly, the Commission concludes that the benefits expected from the rule will bear a reasonable relationship to its costs.

D. *The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.* 1. The Commission considered relying on the voluntary standard, either alone or combined with a third-party certification program. However, the Commission concludes that a mandatory program will be more effective in reducing these deaths, each of which is caused by an unreasonable risk of entrapment. Accordingly, these alternatives would not prevent or adequately reduce the risk of injury for which the rule is being promulgated.

2. The Commission also considered a suggestion that bunk beds that conformed to the voluntary standard be so labeled. Consumers could then compare conforming and nonconforming beds at the point of purchase and make their purchase decisions with this safety information in mind. This, however, would not necessarily reduce injuries, because consumers likely would not know there is a voluntary standard and thus would not see any risk in purchasing a bed that was not labeled as conforming to the standard.

Dated: December 13, 1999.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–32676 Filed 12–21–99; 8:45 am]

BILLING CODE 6355–01–F

OL

64

ISS

2
4
5

DE

22

999

MI

federal register

Wednesday
December 22, 1999

Part IV

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 200, et al.

Implementation of Public Law 105–33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions, etc.; Final and Proposed Rules

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 200, 270, 275 and 290

[T.D. ATF–421]

RIN 1512–AB99

Implementation of Public Law 105–33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions (98R–369P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements several provisions of the Balanced Budget Act of 1997. Section 9302 of the new law: places restrictions on the importation of previously exported tobacco products, requires markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provides penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorizes the Secretary to prescribe minimum capacity or activity requirements as a criteria for issuance of a manufacturer's permit.

The temporary rule implements these changes in law by providing new and amended regulations in parts 200, 270, 275 and 290 of title 27 of the Code of Federal Regulations (CFR). Additionally, the Bureau of Alcohol, Tobacco and Firearms (ATF) has made several other clarifying changes to the tobacco regulations. This temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking that invites comments on this temporary rule for a 60-day period following the publication of this temporary rule.

DATES: These temporary regulations are effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers or Mr. Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8210, or *alcohol/tobacco@atfhq.atf.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements several provisions in section 9302 of the Balanced Budget Act of 1997 (Act), Pub. L. 105–33, 111 Stat. 672. Section 9302 amends the Internal Revenue Code of 1986 (IRC) at sections 5704(b), 5712, 5754 and 5761(c). These new provisions relate to tobacco products, cigarette papers and tubes importation restrictions, markings, minimum manufacturing requirements and penalty provisions concerning tobacco products, and cigarette papers and tubes.

Congress amended the IRC so that the Secretary of the Treasury can more effectively enforce the collection of Federal excise taxes on such products. These provisions protect the Federal excise tax revenues derived from tobacco products, and cigarette papers and tubes. The Joint Committee on Taxation's "General Explanation of Tax Legislation Enacted in 1997" stated that the purpose of the amendments was to impose "expanded compliance measures designed to prevent the diversion of non-taxpaid tobacco products nominally destined for export to use within the United States." As the delegate of the Secretary of the Treasury (*See* Treasury Department Order 120–01 (formerly 221), dated June 6, 1972) ATF is implementing these new provisions by regulation.

Marks, Labels and Notices

Current Law

The Federal excise tax on tobacco products, and cigarette papers and tubes is due on their removal from bonded premises. *See* 26 U.S.C. 5703. There are several exemptions from the Federal excise tax, under section 5704. Section 5704(b) allows a manufacturer of tobacco products, cigarette papers or tubes, or an export warehouse proprietor to transfer tobacco products and cigarette papers and tubes, without payment of tax to the bonded premises of another manufacturer or export warehouse proprietor. As defined in section 5702, a manufacturer of tobacco products means any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco. This term does not include a person who produces such products solely for the person's own consumption or use, or a proprietor of a customs bonded warehouse. A manufacturer of cigarette papers and tubes means a person who makes up cigarette paper and tubes, except for personal consumption. 26 U.S.C. 5702(h). An export warehouse proprietor means one who operates an export warehouse, which is a bonded internal revenue warehouse for the storage of tobacco products, and cigarette papers and tubes. *See* 26 U.S.C. 5702(i), (j).

Section 5704(b) also allows a manufacturer of tobacco products, and cigarette papers and tubes, or an export warehouse proprietor to remove tobacco products, and cigarette papers and tubes for shipment to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. In addition, manufacturers may remove such articles for use of the United States without payment of the excise tax. Current ATF regulations which implement these provisions are located in 27 CFR part 290.

Furthermore, under 26 U.S.C. 5723(b), ATF is authorized to require certain marks, labels and notices on every package of tobacco products or cigarette papers. Based on this authority, for those products that are intended for export, 27 CFR 290.185 requires that every package of tobacco product that is deemed for export be marked with the words "Tax-exempt. For use outside U.S." or the words, "U.S. Tax-exempt. For use outside U.S." or a stamp, sticker or notice required by a foreign country or a possession of the United States, which identifies such country or possession. In addition, where taxpaid tobacco products are to be exported and a drawback of the tax paid to the manufacturer, 27 CFR 290.222 requires these packages to be marked with the words, "For Export with Drawback of Tax". These regulations serve two purposes. They enable us to clearly and easily identify packages of tobacco product that have been removed tax-free under section 5704(b) or subject to drawback under section 5706. In addition, the export marking requirement helps us to determine which tobacco products are intended for export. The regulations are a valuable enforcement mechanism that helps to prevent jeopardy of the revenue, because we can easily determine which products have been exempt from taxation and intended for export. When we identify a package of tobacco product in the U.S. market with tax-exempt export markings, we become concerned as to whether it has been Federally taxpaid.

New Law

Congress specifically requires, under section 9302(h)(1)(A) of the Act, that tobacco products, and cigarette papers and tubes may not be transferred or removed under 26 U.S.C. 5704(b) unless they bear the proper marks, labels and

notices as required by the Secretary of the Treasury. Thus, the Secretary of the Treasury is authorized to prescribe the type of marks, labels and notices required on products that are exempt from taxation under 26 U.S.C. 5704(b). Congress wanted to specifically authorize ATF to determine, for products exempt from taxation under section 5704(b), required marks, labels and notices to ensure protection of the Federal excise tax revenue. Congress wanted to ensure that non-taxpaid products intended for exportation bear the proper markings. Congress also wanted to require that taxpaid products that are ultimately sold on the domestic market must not bear exportation markings. Allowing products with export markings on the domestic U.S. market would hinder ATF enforcement of lawfully due taxes, and cause confusion as to whether the product has been taxpaid.

Thus, based on this authority, ATF has amended three sections of the regulations. We are now requiring that tobacco products, and cigarette papers and tubes bear the required marks, labels and notices in order to qualify for transfer or removal of the product without payment of tax. Accordingly, we have amended 27 CFR 270.233, 290.61 and 290.181. Thus, under amended § 270.233, tobacco products may not be transferred in bond unless they bear all required marks, labels and notices. In addition, under amended § 290.61, tobacco products, and cigarette papers and tubes may not be removed for exportation without payment of tax unless they bear all required marks, labels and notices. We have also amended § 290.181 to require that all tobacco products, cigarette papers and tubes must, before removal or transfer, bear the required marks, labels, or notices.

Finally, we have amended § 290.181 to clarify that the "package", upon which the marking, labeling and notice requirements are to appear, does not include any cellophane wrapping material that may enclose a package. A package, thus, is only intended to include the actual material that holds and encloses the tobacco products, and cigarette papers or tubes. This amended definition clarifies placement of the marking, labeling and notice requirements. In keeping with Congressional intent to prevent diversion of tobacco products, we wanted to ensure that markings, labels and notices on products destined for export are clear and not easily destroyed.

Minimum Manufacturing Activity Requirements

Current Law

Section 5712 currently requires that every person, before commencing business as a manufacturer of tobacco products or as an export warehouse proprietor, shall apply for and obtain a permit to engage in such business. *See also* 26 U.S.C. 5713. (Effective January 1, 2000 importers will also be required to obtain a permit.) Under current law, the application may be rejected and the permit denied if, after notice and opportunity for hearing, we find that: (1) The proposed premises are not adequate to protect the revenue, (2) the applicant's business experience, financial standing or trade connections demonstrates that the applicant is not likely to comply with the law or (3) the applicant failed to disclose required material information or made a material false statement on the application. These factors enable ATF to ensure that those engaged in the business of manufacturing tobacco products will adequately protect the revenue and comply with the law and regulations.

New Law

In section 9302 of the Act, Congress amended 26 U.S.C. 5712 by adding an additional factor for rejecting and denying an application for a permit. The new law provides that the an application may also be denied if "the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe." Based on this new language, ATF is authorized to establish minimum capacity or activity requirements, and will deny a permit application based on a failure to meet such minimum capacity or activity requirements. Congress enacted this provision to ensure that those who apply for a permit actually intend to engage in the bona fide business of manufacturing tobacco products in a way that will adequately protect the revenue and comply with the law and regulations.

In promulgating regulations that establish minimum capacity or activity requirements, ATF has considered several issues. ATF does not want to establish criteria that would effectively exclude small tobacco products manufacturers from obtaining a permit. In addition, ATF wants to establish criteria that will ensure that only those actually engaged in the business of manufacturing tobacco products are able to obtain a permit. Thus, ATF wants to establish criteria that would effectively exclude any persons who are not legitimate manufacturers and whose primary interest in obtaining a manufacturer's permit is to obtain the tax deferral benefits that a permit might facilitate.

Small Manufacturers

Section 5712 requires that prior to engaging in the business of manufacturing tobacco products, a person must obtain a permit from ATF. We believe that any manufacturer who proposes to engage in the business of manufacturing of tobacco products, regardless of size, should be eligible to receive a permit, so long as they meet the definition of a manufacturer as defined in section 5702(d) and have fulfilled the other conditions in the law and regulations. In the past, ATF has issued permits to some small manufacturers of tobacco products, such as those who manufacture hand-rolled cigars. Thus, we did not want to establish minimum capacity or activity criteria that would exclude small tobacco products manufacturers.

Downstreaming of Taxes

As stated, ATF needs to ensure that only those persons who fit within the definition of manufacturer at section 5702(d) are eligible to receive a permit. We would like to ensure that permits are not issued to persons who intend to use the permit to delay tax payment. In recent years, ATF has received inquiries from those who would like to obtain a permit and establish bonded premises for the primary purpose of receiving tobacco products in bond and delaying payment of Federal excise taxes.

The Federal excise tax on tobacco products attaches to the products as soon as they are produced. The manufacturer is liable for the tax on tobacco products held in bond. The manufacturer actually pays the tax when the tobacco product is removed from bond. *See* 26 U.S.C. 5703. Generally, tobacco products are distributed under a three-tier distribution system. Once the manufacturer pays Federal excise tax after removal from bonded premises, the products are transferred to a wholesaler, which is the second level in the distribution system. The retailer is the third level in this tier system, and is a customer of the wholesaler.

As discussed previously, section 5704 provides that tobacco products may be transferred from a manufacturer or export warehouse proprietor to another manufacturer or export warehouse proprietor without payment of tax. Because of this exemption from taxation, a business could attempt to set up one or more wholesale warehouses

with some *de minimis* production capability, and obtain a manufacturer's permit for each wholesale warehouse. Using the in bond transfer provision provided by section 5704, each warehouse would then be eligible to receive tobacco products in bond at each wholesale warehouse, without payment of the excise tax. The taxes on the product would not be due until the product was distributed from the wholesale level to the retail level. This approach is referred to as "downstreaming of taxes," since it moves the collection point for the excise tax from the production level to the wholesale level. This is potentially beneficial for manufacturers, since they can effectively delay taxpayment until the product is removed from essentially the wholesale level. At the same time, it has an adverse effect on Federal tax receipts, since it delays payment of the Federal excise tax.

We would like to prevent the downstreaming of taxes. It undermines the effect and purpose of obtaining a permit to engage in the business of manufacturing tobacco products. It also contravenes the safeguards in obtaining a permit: to protect and collect the Federal excise tax revenue. ATF is also concerned with the potential number of new taxpayers (*i.e.*, wholesalers qualifying as manufacturers) and the proliferation of tax payment points, if this approach becomes widely used. We have found that the collection of excise taxes is best achieved at the highest level within the distribution chain—the manufacturer level. Collected at the manufacturer level, we have fewer taxpayers to monitor, and thus have more efficient tax collections and fewer administrative costs. By ensuring that tax payment is made at the true manufacturing level, we can decrease the likelihood that taxable product will evade proper tax payment.

Recognizing these concerns, ATF wants to ensure that the new minimum manufacturing criteria would prevent issuance of a permit to businesses that want to receive tobacco products in bond and delay Federal excise tax payments. In summary, we have amended the regulations whereby we will continue to issue permits to small manufacturers of tobacco products, despite limited production capacity, and to deny permits to persons who seek a permit for the principal purposes of receiving in-bond untaxed cigarettes.

Minimum Manufacturing Activity Criteria for Tobacco Products Manufacturers

Accordingly, ATF has amended the regulations at 27 CFR 270.61, by requiring that a permit will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose proposed principal activity under such permit will be to receive or transfer non-taxpaid tobacco products in-bond. Furthermore, to qualify for a permit, the amount of tobacco products manufactured under a permit must exceed the amount transferred or received in-bond under such permit. For example, a person who only manufactures 1,000 cigarettes per month, may receive a maximum of 999 cigarettes in bond during the month under that permit. Likewise, a person who manufactures 10,000,000 cigarettes a month could receive up to 9,999,999 cigarettes in bond during the month under that permit. As stated, the quantity of tobacco products received or transferred in bond under a particular permit may not exceed the quantity of tobacco products manufactured under that permit for any given month.

Again, this criteria is intended to ensure that only those persons, whose primary activity is the manufacture of tobacco products, receive a manufacturer's permit. We believe that these changes to the regulations effectively accommodate small producers, while protecting the timely assessment and collection of the Federal excise tax revenue. We have also amended regulations in 27 CFR 200.49b to include this new activity criterion as a basis for rejecting an application for a permit. We have not amended 27 CFR 200.46, regarding revocation or suspension of tobacco permits, because we already require compliance with regulations issued under the IRC.

Importers and Export Warehouse Proprietors

Effective January 1, 2000, the IRC also requires that importers obtain a permit prior to engaging in the business. *See* 26 U.S.C. 5712. We have considered the issue very carefully, and have decided that we will not impose minimum capacity or activity criteria for importers at this time. In addition, we will not impose this type of requirement on export warehouse proprietors. We do not think that either of these permittees will, or can engage in possible similar misuse of their permits. However, ATF will consider imposing minimum manufacturing or activity criteria on importers and export warehouse proprietors if the need should arise.

Import Restrictions on Previously Exported Tobacco Products, Cigarette Papers and Tubes

Section 9302 of the Act also added new section 26 U.S.C. 5754, entitled "Restriction on importation of previously exported tobacco products." This new section places severe limitations on the conditions under which previously exported tobacco products, and cigarette papers and tubes may be imported or brought back into the United States. This new section states that such products may only be imported or brought into the United States as provided in section 5704(d).

Section 5704(d) allows previously exported tobacco products and cigarette papers and tubes to be released from Customs custody, without payment of tax, for transfer to a manufacturer of tobacco products or cigarette papers and tubes, or to the proprietor of an export warehouse. We note that section 5704(d) allows previously exported tobacco products to be lawfully transferred to any manufacturer of tobacco products or cigarette papers and tubes, or to any export warehouse proprietor. The law does not mandate that the previously exported products return to its original manufacturer or export warehouse proprietor.

Thus, under section 5754, the only condition under which previously exported tobacco products and cigarette papers and tubes may be imported or brought into the United States is by release from Customs custody to a manufacturer or an export warehouse proprietor as an in-bond transfer. New section 5754 precludes the importation and tax payment of such products by an importer. The law is very clear and leaves no discretion to ATF in this regard. Section 5754 clearly states that such products may only be imported or brought into the United States by the method provided in section 5704(d); that is, a transfer, without payment of tax, to a manufacturer or export warehouse.

Based on the restrictive language of section 5754, ATF has amended several sections of the regulations in 27 CFR Part 275. Specifically, new or amended regulations now appear at 27 CFR 275.1, 275.81 and 275.82.

Under amended 27 CFR 275.1, the importation of tobacco products, and cigarette papers and tubes is generally discussed. In addition, 27 CFR 275.81 distinguishes between tobacco products and cigarette papers and tubes that are imported, and those that have been previously exported from the United States and returned to the US. Furthermore, 27 CFR 275.82 discusses

the new restrictions on the return of exported products.

Penalty and Forfeiture Provisions

In addition to the above restrictions on importations, section 9302 of the Act also imposes a new civil penalty on persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. The civil penalty is the greater of $1,000 or five times the amount of tax imposed on the product. Thus, a larger penalty is imposed where the amount of the Federal excise tax on the product is greater than $200. In addition to the civil penalty, criminal penalties and forfeiture of the product and any vessel, vehicle or aircraft involved in relanding or removing such product may be imposed. *See* 26 U.S.C. 5761(c).

Exemptions

The civil penalties do not apply to a manufacturer or export warehouse proprietor qualified under Chapter 52 of the IRC. *See* 26 U.S.C. 5704(b), 5704(d).

Application of Effective Dates

Section 9302(i) of the Act provides that the amendments to the IRC apply to "articles removed" after December 31, 1999. The Act amends the term "removed" to mean: "the removal of tobacco products or cigarette papers or tubes from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such article into the United States."

The new civil and forfeiture penalty in section 5761(c) applies only to tobacco products, and cigarette papers and tubes bearing export markings that have been "removed" on or after January 1, 2000. Accordingly, section 5761(c) applies to these products that are marked for export and removed from a manufacturer or export warehouse proprietor, released from Customs custody, or smuggled into the United States on or after January 1, 2000.

Articles that are removed on or before December 31, 1999 are not subject to the new penalty in section 5761(c). Tobacco products in packages bearing export marks that were lawfully removed from Customs custody and entered into the United States prior to January 1, 2000 are lawful products and not subject to the civil penalty under section 5761(c), or other criminal provisions of Chapter 52 of the IRC. These new penalty provisions have been added to 27 CFR 275.83.

ATF has carefully considered ways to enforce section 5761(c), since the domestic market will contain tobacco products that have been lawfully removed on or before December 31, 1999, and products marked for export that have been unlawfully introduced into the domestic market after December 31, 1999 and subject to the civil penalty. To differentiate between the products that have been lawfully removed and unlawfully removed, we considered whether or not to change the export marking requirements under 27 CFR 290.185 for products manufactured after December 31, 1999. We have initially rejected this possibility, since it would impose major burdens on tobacco manufacturers. ATF has decided that voluntary commercial marks placed on packages by the tobacco industry will enable us to distinguish between these products. However, we will, under section 5704(b) authority, change the export marking on products manufactured after December 31, 1999 to differentiate between products removed if future investigations disclose the need to do so.

Repackaging

As noted, Congress enacted a new section 5754 in the IRC. Under this section, tobacco products and cigarette papers and tubes previously exported from the United States may only be imported or brought into the United States as provided in section 5704(d). Section 5704(d) provides that tobacco products and cigarette papers and tubes exported and returned may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax, for delivery to a manufacturer of tobacco products or cigarette papers and tubes or to an export warehouse proprietor. Except for a qualified manufacturer of tobacco products or cigarette papers and tubes and an export warehouse proprietor, section 5761(c) imposes penalties for the selling, relanding, and receiving of tobacco products that are labeled or shipped for export. In effect, section 5761(c) prohibits the sale of reland tobacco product bearing export markings.

Although manufacturers and export warehouse proprietors are authorized to receive relanded tobacco products or cigarette papers or tubes from customs custody without payment of the Federal excise tax, there are limitations on what manufacturers and export warehouse proprietors may do with such product. As discussed below, the products may be destroyed, re-exported, or in the case of a manufacturer, the product may be repackaged and removed for sale in the domestic market.

Export Warehouses

Section 5702 defines "export warehouse" to mean "a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States." An export warehouse proprietor is one who owns an export warehouse. Export warehouse proprietors are authorized to store non-taxpaid tobacco products, and cigarette papers and tubes for subsequent exportation. Under the IRC, an export warehouse proprietor is not authorized to pay excise tax on tobacco products, including relanded tobacco products for distribution into the domestic U.S. market. Export warehouses are specifically established under the law to facilitate the exportation of tobacco products without payment of the excise tax. Thus, by definition, an export warehouse can only receive tobacco products in bond and export them or return them to a manufacturer. Because there is no authority for the export warehouse proprietor to pay the excise tax and distribute tobacco products onto the domestic U.S. market, an export warehouse proprietor may lawfully receive relanded tobacco products, transfer relanded tobacco products to a qualified manufacturer, or re-export the relanded tobacco products. Export warehouse proprietors may also destroy these relanded tobacco products.

Manufacturers

Manufacturers are authorized under the IRC to pay excise tax on and distribute tobacco products into the domestic market. *See* 26 U.S.C. 5703. However, the IRC also requires that before removal from a manufacturer's factory, tobacco products must be put up in packages and bear the marks, labels, and notices required by the Secretary.

As stated above, the Secretary has the general authority to prescribe packaging and marking requirements for tobacco products. *See* 26 U.S.C. 5723(a) and (b). Under this authority, ATF has prescribed regulations under 27 CFR 290.185 which require that products removed for exportation exempt from taxation must bear export markings. Again, such markings include the words, "Tax-exempt. For use outside of

U.S." or "U.S. Tax-exempt. For use outside U.S." These export markings signify that the product is not subject to Federal taxes and that it is not intended for distribution within the United States. We rely on these markings to identify these products as a tax-exempt export for enforcement purposes. In addition, ATF has prescribed regulations under 27 CFR 290.222 which require that tobacco products and cigarette papers and tubes on which tax has been paid and a drawback claim has been made must have a label affixed reading "For Export With Drawback of Tax."

However, previously exported products that are relanded in the United States also bear the export markings required under § 290.185 and § 290.222 and may be intended for distribution in the domestic market. Because we cannot tell if a particular product on the market has been lawfully taxpaid and removed from Customs custody, or if it was smuggled into the U.S., the efficacy of the export marking requirements is severely reduced if these products are allowed in the domestic market. ATF has concluded that since relanded tobacco products are marked in accordance with the tobacco export regulations at 27 CFR 290.185 and bear a statement that says "Tax-exempt. For use outside of U.S." or "U.S. Tax-exempt. For use outside U.S." or in accordance with 290.222 and bear a statement that says "For Export With Drawback of Tax," they are not properly marked for distribution on the domestic U.S. market. Further, if products with export markings were allowed on the domestic market, this practice would hinder ATF enforcement of the IRC and pose a jeopardy of the revenue. Our goal is to protect the revenue, and to determine whether the Federal excise tax on a relanded product has been paid. ATF has considered various options for removing these export markings and bringing relanded products into compliance with the domestic marking and labeling requirements. We have considered allowing such products to be over-stamped, allowing the obliteration of the tax-exempt marking, or allowing stickers to be placed over the markings. However these options of over-stamping, obliteration or stickers would negate the value of these markings as a tax enforcement tool. Over-stamping, obliteration, or placing stickers over the tax-exempt notice would not necessarily mean that the Federal excise tax had been paid on the relanded product. Any person could obtain product that had not been Federally taxpaid, and place stickers over the "tax exempt" notice on packages and distribute them in the domestic market.

After careful consideration of the issue, we have concluded that a manufacturer who distributes relanded tobacco products onto the domestic market, must remove the product from its original packages (bearing export markings) and repackage them into new packages with the proper mark and notice requirements for domestic U.S. distribution as prescribed in 27 CFR part 270. ATF has determined that in order to protect the Federal excise tax revenue, it is essential to require the repackaging of these reimported products before they are introduced in domestic commerce.

Thus, under 26 U.S.C. 5761(c), products labeled for export may not be sold on the domestic U.S. market. However, manufacturers are eligible to receive relanded tobacco products, and cigarette papers and tubes and sell them on the domestic market if they are completely repackaged under the laws and regulations for products not intended for exportation. Accordingly, amended 27 CFR 275.82(b) prescribes requirements for repackaging under these circumstances. Also, regulations have been added at 27 CFR 270.213 which notify manufacturers that tobacco products marked for export are not eligible for distribution on the domestic market, and the need to repackage such products.

Finally, similar to an export warehouse proprietor, a manufacturer may also transfer the tobacco products to another manufacturer or export warehouse proprietor, re-export the relanded tobacco products, or destroy these relanded tobacco products.

Miscellaneous Changes

Form Numbers

In addition to the changes to the regulations necessitated by Public Law 105–33, ATF is making several miscellaneous administrative changes that update the references to ATF Form numbers within the regulations. The regulations at 27 CFR 290.61a, 290.142, 290.198 through 290.208, 290.210, 290.213, and 290.256 through 290.267 are also amended to change all references from the obsolete form number ATF F 2149/2150, to the new form number ATF F 5200.14. The regulations in 27 CFR 290.152 through 290.154 are also amended to change all references from the obsolete form number: ATF F 2635, to the new form number: ATF F 5620.8. The regulations in 27 CFR 290.62 are amended to delete obsolete references to a Customs form and regulatory citation.

Record Retention of ATF Forms

Minor changes are being made in the regulations to reflect the correct number of years that ATF forms numbers 5700.14 and 5620.8 must be retained. The regulations are amended to change the records retention period from 2 years to 3 years.

Manufacturer's Record

The record of a manufacturer of tobacco products at 27 CFR 270.183 is amended to include the term "roll-your-own tobacco" and to include a record of transfers to, and receipts from foreign trade zones.

Export Warehouse Records

The records required to be maintained by an export warehouse proprietor at 27 CFR 290.142 have been amended to include several new items of information. Proprietors will now be required to indicate the manufacturer and brand name of products: received, removed, transferred, destroyed, lost, or returned to manufacturers or customs bonded warehouses. In addition, their records must also include the number of containers and unit type (*e.g.*, cartons, cases).

Definitions

To clarify the regulations, several definitions are being added to the "Meaning of terms" sections in 27 CFR 275.11 and 290.11. Section 275.11 is amended by adding definitions for the terms "export warehouse," "export warehouse proprietor," "manufacturer of tobacco products," "manufacturer of cigarette papers and tubes," and "relanding," Section 290.11 is amended by adding a definition for "zone restricted status."

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866 because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512–0367 and 1512–0358. Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is found in 27 CFR 270.183 and 290.142. The collection of this information is required to verify that all tobacco products can be accounted for, thus ensuring that the tax revenue is protected. Without these recordkeeping requirements, no recording of the data elements pertaining to these operations would be prescribed.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published in the proposed rules section of this **Federal Register**.

Administrative Procedure Act

Because this document merely implements sections of the law which were enacted on August 5, 1997, and because immediate guidance is necessary to implement the provisions of the law, it is found to be contrary to the public interest and impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Drafting Information

The principal authors of this document are Ms. Teri Byers and Mr. Daniel Hiland, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF and the Treasury Department also participated in developing this document.

List of Subjects

27 CFR Part 200

Administrative practice and procedure, Authority delegations.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

Authority and Issuance

Accordingly, title 27, Code of Federal Regulations is amended as follows:

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Paragraph 1. The authority citation for part 200 continues to read as follows:

Authority: 26 U.S.C. 7805, 27 U.S.C. 204.

Par 2. Section 200.49b is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows:

§ 200.49b Applications for tobacco permits.

* * * * *

(b) The applicant for a permit does not meet the minimum manufacturing and activity requirements in 27 CFR 270.61; or

* * * * *

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Par 3. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 4. Section 270.61 is revised to read as follows:

§ 270.61 Qualification—General

(a) *Who must qualify.* Every person who produces tobacco products except for his or her own personal consumption or use, shall qualify as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) *Minimum manufacturing and activity requirements.* A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose principal activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must exceed the quantity to be transferred or received in bond under the permit. For the purposes of this section, repackaging or relabeling activities alone do not qualify as a manufacturing activity.

Par. 5. Section 270.183 is revised to read as follows:

§ 270.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco):

(a) Manufactured;

(b) Received in bond by—

(1) Transfer from other factories,

(2) Release from customs custody,

(3) Transfer from export warehouses, and

(4) Transfer from foreign trade zone;

(c) Received by return to bond;

(d) Disclosed as an overage by inventory;

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 270.22);

(f) Removed, in bond, for—

(1) Export,

(2) Transfer to export warehouses,

(3) Transfer to other factories,

(4) Transfer to a foreign trade zone

(5) Use of the United States, and

(6) Experimental purposes off factory premises;

(g) Otherwise disposed of, without determination of tax, by—

(1) Consumption by employees on factory premises,

(2) Consumption by employees off factory premises, together with the number of employees to whom furnished,

(3) Use for experimental purposes on factory premises,

(4) Loss,

(5) Destruction, and

(6) Reduction to materials;

(h) Disclosed as a shortage by inventory; and

(i) On which the tax has been determined and which are—

(1) Received, and

(2) Disposed of.

(Approved by the Office of Management and Budget under control number 1512–0358)

Par. 6. Section 270.213 is added to read as follows:

§ 270.213 Tobacco products labeled for export.

Tobacco products labeled for export are ineligible for removal from the factory and distribution into the domestic U.S. market. Such products may only be sold, transferred or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this section, "repackaging" shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of this subpart.

Par. 7. Section 270.233 is amended by adding a new sentence to the end of the section to read as follows:

§ 270.233 Transfer in bond.

* * * Tobacco products are not eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse unless they bear all required marks, labels, or notices.

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 8. The authority citation for part 275 is revised to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 9. Section 275.1 is revised to read as follows:

§ 275.1 Importation of tobacco products and cigarette papers and tubes.

This part contains regulations relating to tobacco products and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of tobacco products from a customs bonded manufacturing warehouse, class 6; restrictions on the importation of previously exported tobacco products and cigarette papers and tubes; and the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

Par. 10. Section 275.11 is amended by adding in alphabetical order, definitions for the terms "Export warehouse," "Export warehouse proprietor," "Manufacturer of tobacco products," "Manufacturer of cigarette papers and tubes," and "Relanding" to read as follows:

§ 275.11 Meaning of terms.

* * * * *

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco. A manufacturer of tobacco products does not include:

(1) A person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette papers or cigarette tubes, except for personal use or consumption.

Relanding. Any tobacco products, cigarette papers or tubes, which have been labeled or shipped for exportation (including to Puerto Rico) as prescribed in this chapter, previously exported and returned within the jurisdiction of the United States. This term does not apply to any tobacco products, cigarette papers or tubes that are placed in appropriately marked receptacles by travelers or passengers prior to making their declaration to a U.S. Customs officer upon arrival in the United States.

* * * * *

Par. 11. Paragraph (a) of § 275.81 is revised to read as follows:

§ 275.81 Taxpayment.

(a) *General.* The provisions of this section apply to tobacco products, cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States. For provisions relating to the importation of previously exported tobacco products and cigarette papers and tubes, see section 275.82.

* * * * *

Par. 12. Add § 275.82 to subpart F after the undesignated center heading "Release from Customs Custody * * *" to read as follows:

§ 275.82 Return of exported products.

(a) The provisions of this section apply to articles imported or brought into the United States after December 31, 1999. After such date, the importation or bringing in of tobacco products and cigarette papers and tubes that were previously exported from the United States is restricted. Such products may only be imported or brought into the United States by release from customs custody for delivery to a manufacturer of tobacco products or cigarette papers or tubes, or to the proprietor of an export warehouse. These products are transferred in bond and are released from customs custody without payment of that part of the duty attributable to internal revenue tax.

(b) The products described in paragraph (a) of this section may only be sold, transferred, or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this subsection, "repackaging" shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

Par. 13. Add § 275.83 to subpart F after the undesignated center heading "Release from Customs Custody of * * *" to read as follows:

§ 275.83 Penalties and forfeiture for relanded products.

Except for the return of exported products that are specifically authorized under § 275.82:

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in Title 26 U.S.C., be liable for a penalty equal to the greater of $1,000 or 5 times the amount of the tax imposed by Title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This section shall apply only to tobacco products, cigarette papers and tubes removed after December 31, 1999.

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 14. The authority citation for part 290 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 15. Section 290.11 is amended by adding, in alphabetical order, the definition of "Zone restricted status" to read as follows:

§ 290.11 Meaning of terms.

* * * * *

Zone restricted status. Tobacco products, cigarettes papers and cigarette tubes which have been taken into a foreign trade zone from United States Customs territory for the sole purpose of exportation or storage until exported.

* * * * *

Par. 16. Section 290.61 is revised to read as follows:

§ 290.61 Removals, withdrawals, and shipments authorized.

(a) Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse, and cigars may be withdrawn from a customs warehouse, without payment of tax, for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part.

(b) Tobacco products and cigarette papers and tubes are not eligible for removal or transfer in bond under this part unless they bear the marks, labels, or notices required by this part.

§ 290.61a [Amended]

Par. 17. Section 290.61a is amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

Par. 18. In § 290.62 the fifth sentence and the seventh sentence of the section are amended to read as follows:

§ 290.62 Restriction on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft, as supplies.

* * * For this purpose, the customs authorities may require the master of the receiving vessel to submit for customs approval, prior to lading, customs documentation for permission to lade the articles. * * * Deliveries may be made to aircraft clearing through customs en route to a place or places beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between U.S. customs areas as defined in the Air Commerce Regulations (19 CFR part 122).

* * * * *

Par. 19. Section 290.142 is revised to read as follows:

§ 290.142 Records.

Every export warehouse proprietor must keep in such warehouse complete and concise records, containing the:

(a) Number of containers;

(b) Unit type (*e.g.*, cartons, cases);

(c) Kind of articles (*e.g.*, small cigarettes);

(d) Name of manufacturer and brand; and,

(e) Quantity of tobacco products, cigarette papers and tubes received, removed, transferred, destroyed, lost or returned to manufacturers or to customs warehouse proprietors. In addition to such records, the export warehouse proprietor shall retain a copy of each Form 5200.14 received from a manufacturer, another export warehouse proprietor, or customs warehouse proprietor, from whom tobacco products and cigarette papers and tubes are received and a copy of each Form 5200.14 covering the tobacco products, and cigarette papers and tubes removed from the warehouse. The entries for each day in the records maintained or kept under this section shall be made by the close of the business day following that on which the transactions occur. No particular form of records is prescribed, but the information required shall be readily ascertainable. The records and copies of Form 5200.14 shall be retained for 3 years following the close of the calendar year in which the shipments were received or removed and shall be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512–0367)

§ 290.143 [Amended]

Par. 20. Section 290.143(b) is amended by removing the phrase "2 years" and by adding in its place the phrase "3 years".

§ 290.147 [Amended]

Par. 21. Section 290.147 is amended by removing the phrase "2 years" and by adding in its place the phrase "3 years".

§ 290.152 [Amended]

Par. 22. Section 290.152 is amended by removing the reference "Form 2635" and add in its place the reference "Form 5620.8". Section 290.152 is also amended by removing the words "two years" and adding in its place the phrase "3 years".

§ 290.153 [Amended]

Par. 23. Section 290.153 is amended by removing the reference to "Form 2635 (5620.8)" and add in its place the reference "Form 5620.8".

§ 290.154 [Amended]

Par. 24. Section 290.154 is amended by removing the reference to "Form 2635 (5620.8)" and add in its place the reference "Form 5620.8". Section 290.154 is also amended by removing the phrase "2 years" and by adding in its place the phrase "3 years".

Par. 25. Section 290.181 is revised to read as follows:

§ 290.181 Packages.

All tobacco products and cigarette papers and tubes will, before removal or transfer under this subpart, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart. For purposes of this subpart, the package does not include the cellophane wrapping material.

§ 290.198 [Amended]

Par. 26. Section 290.198 is amended by removing the references "Form 2149" and "Form 2150" and adding in their place the reference "Form 5200.14".

§ 290.199 [Amended]

Par. 27. Section 290.199 is amended by removing the reference "Form 2149 or Form 2150" and adding in their place the reference "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

§ 290.200 [Amended]

Par. 28. Section 290.200 is amended by removing the reference to "Form 2149 or 2150, as the case may be," and adding in its place the reference "Form 5200.14".

§ 290.201 [Amended]

Par. 29. Section 290.201 is amended by removing the reference "Form 2150" and adding in its place the reference "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

§§ 290.202 through 290.204 [Amended]

Par. 30. Sections 290.202 through 290.204 are amended by removing the reference "Form 2149 or Form 2150" and adding in its place the reference "Form 5200.14".

§ 290.205 [Amended]

Par. 31. Section 290.205 is amended by removing the reference "Form 2149/2150 (5200.14)" wherever it appears in paragraphs (a)(1) and (d) and adding in its place the reference "Form 5200.14".

§ 290.206 [Amended]

Par. 32. Section 290.206 is amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

§§ 290.207 through 290.208 [Amended]

Par. 33. Sections 290.207 through 206.208 are amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

§ 290.210 [Amended]

Par. 34. Section 290.210 is amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

§ 290.213 [Amended]

Par. 35. Section 290.213 is amended by removing the reference "Form 2150" and adding in its place the reference "Form 5200.14".

§ 290.256 [Amended]

Par. 36. Section 290.256 is amended by removing the reference "Form 2149" and adding in its place "Form 5200.14".

§ 290.257 [Amended]

Par. 37. Section 290.257 is amended by removing the reference "Form 2149" and adding in its place "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

§§ 290.258 through 290.265 [Amended]

Par. 38. Sections 290.258 through 290.265 are amended by removing the reference "Form 2149" each place it appears and adding in its place the reference "Form 5200.14".

§ 290.266 [Amended]

Par. 39. Section 290.266 is amended by removing the reference "Form 2150" and adding in its place "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

§ 290.267 [Amended]

Par. 40. Section 290.267 is amended by removing the reference "Form 2149" and adding in its place "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

Signed: October 12, 1999.

John W. Magaw,

Director.

Approved: November 17, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32598 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 200, 270, 275 and 290

[Notice No. 887]

RIN 1512–AB99

Implementation of Public Law 105–33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions (98R–369P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to implement several provisions of the Balanced Budget Act of 1997. The new law: Places restrictions on the importation of previously exported tobacco products, requires markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provides penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorizes the Secretary to prescribe minimum capacity or activity requirements as a criterion for issuance of a manufacturer's permit. These new provisions of law are effective January 1, 2000.

Clarifying changes are also made to the tobacco regulations. In this notice of proposed rulemaking, ATF invites comments on the temporary rule.

DATES: Written comments must be received by February 22, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221; Notice No. 887. Refer to the Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers or Mr. Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8210, or alcohol/tobacco@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

1. Temporary Regulations

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR Parts 200, 270, 275 and 290. For the text of the temporary regulations see T.D. ATF–421, published in the Rules and Regulations section of this issue of the **Federal Register**.

2. Public Participation

Who May Comment on This Notice?

ATF requests comments on the temporary regulations from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand.

Will ATF Keep My Comments Confidential?

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

How Do I Send Facsimile Comments?

Comments may be submitted by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible
- Be 8½″ x 11″ in size
- Contain a legible written signature
- Be not more than three pages.

We will not acknowledge receipt of FAX transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (e-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice__@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address
- Reference this notice number
- Be legible when printed on not more than three pages 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

Comments may be submitted electronically using ATF's web site. You may comment on this proposed notice by using the form provided through ATF's web site. You can reach this notice and comment form through the address *http://www.atf.treas.gov/core/tobacco/rules/rules.htm*.

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 60-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

3. Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

These proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection(s) of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF), Office of Information and Regulatory

Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is in 27 CFR 270.183 (control number 1512–0358) and 27 CFR 290.142 (control number 1512–0367). The collection of this information is required to verify that all tobacco products can be accounted for, thus ensuring that the tax revenue is protected. Without these recordkeeping requirements, no recording of the data elements pertaining to these operations would be prescribed. No additional burden hours are required.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

4. Drafting Information

This notice was written by Ms. Teri Byers and Mr. Daniel Hiland, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

Signed: October 12, 1999.

John W. Magaw,

Director.

Approved: November 17, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32599 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295, 296

[T.D. ATF—424]

RIN 1512–AB92

Implementation of Public Law 105–33, Section 9302, Relating to the Imposition of Permit Requirements on the Manufacturer of Roll-Your-Own Tobacco (98R–370P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements the provision of the Balanced Budget Act of 1997 relating to the new permit requirements on the manufacture of roll-your-own tobacco. This temporary rule also removes references to forms which have previously been made obsolete, and renumbers certain forms to reflect the current ATF numbering system. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 60-day period following the publication of this temporary rule.

DATES: Effective date: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert P. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927–8210; or alc/tob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements the provision of the Balanced Budget Act of 1997, Public Law 105–33 ("the Act"), enacted on August 5, 1997 relating to roll-your-own tobacco. Section 9302 of the Act amends the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5701 and 5702 by imposing new permit requirements on the manufacture of roll-your-own tobacco.

This temporary rule also makes minor changes to remove references to obsolete forms and to replace old form numbers with current ATF form numbers. This rule also corrects the title of part 270 of title 27 CFR to include manufacturers of cigarette papers and tubes.

Roll-Your-Own Tobacco

Roll-your-own tobacco is defined in the Act to mean "any tobacco which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes." On or after January 1, 2000, manufacturers of roll-your-own tobacco are required to hold a permit. Section 9302(i)(2) of the Act also contains a transitional rule which allows those who on the date of enactment, August 5, 1997, were engaged in the manufacture of roll-your-own tobacco and who make an application for a permit prior to January 1, 2000, to continue to engage in such business pending final action on the application. In addition, by amending the definitions of the terms "Tobacco products" and "Manufacturer of tobacco products" to include roll-your-own tobacco, the Act subjects manufacturers of such products to all the statutory and regulatory controls set forth in chapter 52 of IRC. These controls include tax payment, permit qualification, bonding, recordkeeping, and civil and criminal sanctions. This rule contains temporary regulations implementing the provisions of section 9302 of the Balanced Budget Act of 1997 described above. In addition, this temporary rule prescribes the packages, marks, labels, and notice requirements for roll-your-own tobacco.

Specifically, these regulations require that every package of roll-your-own tobacco shall, before removal subject to tax, have imprinted thereon or on a label securely affixed to the package the designation "roll-your-own tobacco," as well as a statement of the pounds and ounces of the product contained in the package. As an alternative to the designation "roll-your-own tobacco," the package may be designated "Tax Class J." The Bureau believes that allowing the use of this alternative designation will adequately protect the revenue by distinguishing the roll-your-own tobacco class from the other classes of tobacco products. This also facilitates the relabeling of many tobacco products which are subject to tax but which are currently labeled as "smoking tobacco" rather than roll-your-own tobacco.

This document also contains a use-up rule for packages for roll-your-own tobacco. It allows manufacturers to place roll-your-own tobacco in packages that do not meet the mandatory marking requirements. Under this use-up rule, until April 1, 2000, a manufacturer may continue to place roll-your-own tobacco in packages that were in use prior to January 1, 2000.

Title Change of Part 270

The title of 27 CFR part 270 is being changed to properly reflect the contents of this part. On October 17, 1996, Treasury Decision ATF–384 was published in the **Federal Register** (61 FR 54084). This decision eliminated Part 285, Manufacturers of Cigarette Papers and Tubes, by merging the contents into part 270 under a new subpart K. As a result of this action, the title to part 270 should have been changed to properly reflect regulations on the manufacture of tobacco products and the manufacture of cigarette papers and tubes.

Obsolete Forms

Changes to the regulations are being made to remove references to obsolete forms. First this removes the reference to ATF Form 2988 (5200.8), Deferred Tax Return—Puerto Rican Cigars and Cigarettes. This form was eliminated by Treasury Decision ATF–277 published in the **Federal Register** on November 9, 1988 (53 FR 45266) with the implementation of ATF Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico). References to ATF Form 2137 (5230.7), Monthly Tax Return—Manufacturer of Cigarette Papers and Tubes, and ATF Form 3071 (5210.7), Tax Return-Manufacturer of Tobacco Products, are also removed from the regulations. These forms were made obsolete by Treasury Decision ATF–219 published in the **Federal Register** on December 17, 1985 (50 FR 51386) with the implementation of ATF Form 5000.24, Excise Tax Return, for domestic producers. References to ATF Forms 3065, Record of Large Cigars, and 3066, Record of Small Cigars, are removed as these forms were inadvertently not removed from the regulations when such recordkeeping requirements were deemed no longer necessary.

Renumbered ATF Forms

Minor changes are made to reflect the correct ATF form number on certain forms. The regulation citation and form changes are as follows:

Reglation cite in 27 CFR	Old form number	New form number
290.147	2140	5220.4
275.86	2145	5200.11

Reglation cite in 27 CFR	Old form number	New form number
290.222, 290.224 through 290.227, 290.232	2147	5620.7
270.201	3067	5210.9
270.202, 275.141	3068	5210.5
270.311, 270.476, 275.170, 275.172	3069 (5200.7)	5200.7

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512–0358 and 1512–0502. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection information in this regulation is found in 27 CFR 270.182, 270.183, 270.216a, 275.72b, and 295.45b. This information is required to ensure proper payment of excise tax on roll-your-own tobacco products.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published in the proposed rules section of this **Federal Register**.

Administrative Procedure Act

This document merely implements sections of the law that were enacted on August 5, 1997, and immediate guidance is necessary to implement the provisions of the law. Therefore, it is found to be unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation under 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Jackie White, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Excise taxes, Labeling, Packaging and containers, Tobacco products.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Claims, Disaster assistance, Excise taxes, Floor stocks tax, Penalties, Seizures and forfeitures, Surety bonds, Tobacco products.

Authority and Issuance

Accordingly, title 27 of the Code of Federal Regulations is amended as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The heading of part 270 is revised to read as set forth above:

Par. 2. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 3. Section 270.11 is amended by adding the definition for "Roll-your-own tobacco" and by revising the definitions "Manufacturer of tobacco products" and "Tobacco products" to read as follows:

§ 270.11 Meaning of terms.

* * * * *

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

Par. 4. Subpart E is amended by removing § 270.61b and by revising § 270. 61a to read as follows:

Subpart E—Qualification Requirements for Manufacturers

§ 270.61a Transitional rule.

Any person who:

(a) On August 5, 1997, was engaged in business as a manufacturer of roll-your-own tobacco, and

(b) Before January 1, 2000, submits an application as provided in this part to engage in such business, may continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture roll-your-own tobacco under such chapter 52.

§ 260.61b [Removed]

Par. 5. Section 270.133 is amended by revising the third sentence to read as follows:

§ 270.133 Amount of individual bond.

* * * The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed $250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed $150,000 for a manufacturer producing or receiving cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco in bond; and need not exceed $250,000 for a manufacturer producing or receiving, any combination of tobacco products in bond. * * *

Par. 6. Section 270.181 is revised to read as follows:

§ 270.181 General.

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in § § 270.182 and 270.183. For this purpose *day* shall mean calendar day, except that the regional director (compliance) may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by another application approved by the regional director (compliance). No specific form is required. The manufacturer may use commercial records from which the required information may be readily ascertained for this purpose. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled and shall keep supporting records, as specified in § § 270.184 and 270.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in § § 270.184 and 270.186, the entries in the commercial records so maintained or kept shall be made not later than the close of the next business day following the day on which the transaction(s) occurred. As used in this section the term *business day* shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

Par. 7. Section 270.182 is amended by revising paragraph (a) to read as follows:

§ 270.182 Record of tobacco.

* * * * *

(a) Received (including tobacco resulting from reduction of cigars and cigarettes, and unpackaging of smokeless tobacco, pipe tobacco and roll-your-own tobacco), together with the name and address of the person from whom received;

* * * * *

Par. 8. Section 270.183 is amended by revising the introductory text to read as follows:

§ 270.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco): * * *

* * * * *

§ 270.201 [Amended]

Par. 9. Section 270.201 is amended by removing the reference to "Form 3067" and adding in its place the reference "Form 5210.9" wherever it appears.

§ 270.202 [Amended]

Par. 10. Section 270.202, introductory text, is amended by removing the reference to "Form 3068" and adding in its place the reference "Form 5210.5" wherever it appears.

§ 270.216a [Removed]

§ 270.216b [Redesignated as § 270.216a]

Par. 11. Section 270.216a is removed, § 270.216b is redesignated as § 270.216a and a new § 270.216b is added to read as follows:

§ 270.216b Notice for roll-your-own tobacco.

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "roll-your-own tobacco." As an alternative, packages of roll-your-own tobacco may be designated "Tax Class J."

(b) *Product weight.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual weight in pounds and ounces of the product contained therein.

(Approved by the Office of Management and Budget under control number 1512–0502)

Par. 12. Section 270.216c is revised to read as follows:

§ 270.216c Package use-up rule.

Until April 1, 2000, manufacturers of roll-your-own tobacco, may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of § § 270.212 and 216b. The manufacturer must have used such packaging for roll-your-own tobacco before January 1, 2000.

Par. 13. The second sentence of § 270.231 is revised to read as follows:

§ 270.231 Consumption by employees.

* * * Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or one retail package of chewing tobacco, snuff, pipe tobacco or roll-your-own tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. * * *

* * * * *

Par. 14. The second sentence of § 270.252 is revised to read as follows:

§ 270.252 Reduction of tobacco products to materials.

* * * If the tobacco products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the quantity of pipe tobacco or roll-your-own tobacco and the kind and quantity of cigars, cigarettes, and smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. * * *

Par. 15. The first sentence of § 270.255 is revised to read as follows:

§ 270.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (i.e., small cigars, large cigars, chewing tobacco, snuff,

pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the records required by § 270.183. * * *

* * * * *

§ 270.311 [Amended]

Par. 16. Section 270.311 is amended by removing the reference "Form 3069 (5200.7)" and adding in its place the reference "Form 5200.7" wherever it appears.

§ 270.476 [Amended]

Par. 17. Section 270.476 is amended by removing the reference "Form 3069 (5200.7)" and adding in its place the reference "Form 5200.7" wherever it appears.

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 18. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703–5705, 5708, 5722, 5723, 5741, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 19. Section 275.11 is amended by revising the definitions of "Computation or computed," "Manufacturer of tobacco products," and "Tobacco products," and by adding a definition for "Roll-your-own tobacco" to read as follows:

§ 275.11 Meaning of terms.

* * * * *

Computation or computed. When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco) of tobacco products and the sale price of large cigars being shipped to the United States; that adequate bond has been posted to cover the payment, in Puerto Rico, of the tax on such products to be deferred under subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

Par. 20. A new § 275.72b is added to read as follows:

§ 275.72b Notice for roll-your-own tobacco.

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "roll-your-own tobacco." As an alternative, packages of roll-your-own tobacco may be designated "Tax Class J."

(b) *Product weight.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual weight in pounds and ounces of the product contained therein.

(Approved by the Office of Management and Budget under control number 1512–0502)

Par. 21. Section 275.81 is amended by adding a new paragraph (c)(7) to read as follows:

§ 275.81 Taxpayment.

* * * * *

(c) * * *

(7) *For roll-your-own tobacco:* The importer will show the designation "roll-your-own" or "Tax Class J", the number of pounds and ounces, the rate of tax and the amount of tax due.

* * * * *

§ 275.86 [Amended]

Par. 22. Section 275.86 is amended by removing the reference to "Form 2145" and adding in its place the reference "Form 5200.11" wherever it appears.

Par. 23. Section 275.107 is revised to read as follows:

§ 275.107 Procedures at port of entry.

(a) The port director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075 in his possession, and indicate on each copy any exceptions found at the time of release.

(b) The statement of exceptions shall identify each shipping container which sustained a loss; the tobacco products and cigarette papers and tubes reported shipped in such container; and the tobacco products and cigarette papers and tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage.

(c) Where the statement is made on the basis of tobacco products or cigarette papers or tubes missing or damaged, the port director of customs shall show:

(1) The numbers of small cigarettes, large cigarettes, and small cigars.

(2) The number and total sale price of large cigars with a sale price of not more than $235.294 per thousand,

(3) The number of large cigars with a sale price of more than $235.294 per thousand,

(4) The number of books or sets of cigarette papers of each different numerical content.

(5) The number of cigarette tubes,

(6) The pounds and ounces of chewing tobacco and snuff,

(7) The pounds and ounces of pipe tobacco, and roll-your-own tobacco.

(d) If the port director of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the tobacco products and cigarette papers and tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the port director of customs, the shipment may be released.

Par. 24. Section 275.110 is amended by revising paragraph (e) to read as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

* * * (e) the pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped, * * *

* * * * *

Par. 25. Section 275.117 is amended by revising paragraph (e) to read as follows:

§ 275.117 Procedure at port of entry.

* * * (e) the pounds and ounces of pipe tobacco or roll-your-own tobacco.

* * * * *

Par. 26. Section 275.121 is amended by revising the first sentence, and the last sentence to read as follows:

§ 275.121 Amount of bond.

In order that tobacco products may be shipped to the United States on computation of tax under the provisions of this subpart, the total amount of the bond or bonds shall at all times be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond: Provided, That the amount of any such bond need not exceed $250,000 where payment of tax on cigarettes or on any combination of tobacco products is deferred; and need not exceed $150,000 where the tax on cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco is deferred. * * * The manufacturer shall charge such account with the amount of tax that was agreed to be paid on Form 2987. The manufacturer must credit the account for the amount paid on Form 5000.25, at the time the tax return is filed.

Par. 27. Section 275.139 is amended by revising paragraph (a) to read as follows:

§ 275.139 Records.

* * * * *

(a) Date, quantity, kind of cigars, cigarettes, smokeless tobacco, pipe tobacco and roll-your-own tobacco (number of small cigars—large cigars; number of small cigarettes—large cigarettes; pounds and ounces of chewing tobacco—snuff; pounds and ounces of pipe tobacco—roll-your-own tobacco).

* * * * *

Par. 28. Section 275.140 is amended by revising the last sentence and adding a sentence to read as follows:

§ 275.140 Taxpayment in the United States.

* * * * *

Such tobacco products and cigarettes papers and tubes shall be separately listed and identified as articles of Puerto Rican manufacture on Form 5000.24. The amount of tax paid on such articles shall be separately stated on Form 5000.24.

§ 275.141 [Amended]

Par. 29. Section 275.141 is amended by removing the reference "Form 3068" and adding in its place the reference "Form 5210.5" wherever it appears.

§§ 275.170 and 275.172 [Amended]

Par. 30. Remove the reference "Form 3069 (5200.7)" and add in place of it the reference "Form 5200.7" wherever it appears in the following sections:

(a) 275.170; and

(b) 275.172.

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 31. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 32. Section 290.11 is amended by adding the definition for "Roll-your-own tobacco," and by revising the definitions for "Manufacturer of tobacco products," and "Tobacco products" to read as follows:

§ 290.11 Meaning of terms.

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

Par. 33. Section 290.143 is amended by revising paragraph (a) to read as follows:

§ 290.143 General.

(a) Every export warehouse proprietor shall at the times specified in this subpart make a true and accurate inventory of products held on ATF Form 5220.3 (3373). This inventory must be submitted to the Regional Director (Compliance), and must specify the following:

(1) The number of small cigars, large cigars, small cigarettes, large cigarettes, cigarette papers, and cigarette tubes held by such proprietor at the times specified in this subpart.

(2) The pounds and ounces of chewing tobacco, snuff, pipe tobacco and roll-your-own tobacco held by such proprietor at the times specified in this subpart.

(b) * * *

* * * * *

§ 290.147 [Amended]

Par. 34. Section 290.147 is amended by removing the reference to "Form 2140" and add in its place the reference "Form 5220.4".

§§ 290.222, 290.224, 290.225, 290.226, 290.227, and 290.232 [Amended]

Par. 35. Remove the reference to "Form 2147" and add in its place the reference "Form 5620.7" wherever it appears in the following sections:

(a) Section 290.222;

(b) Section 290.224;

(c) Section 290.225;

(d) Section 290.226;

(e) Section 290.227; and

(f) Section 290.232.

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT FOR USE OF THE UNITED STATES

Par. 36. The authority citation for part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 37. Section 295.11 is amended by adding the definition for "Roll-your-own tobacco", and by revising the definitions for "Manufacturer of tobacco products," and "Tobacco products" to read as follows:

§ 295.11 Meaning of terms.

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

Par. 38. Section 295.45b is revised to read as follows:

§ 295.45b Notice for roll-your-own tobacco.

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "roll-your-own tobacco." As an alternative, packages of roll-your-own tobacco may be designated "Tax Class J".

(b) *Product weight.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual weight in pounds and ounces of the product contained therein.

(Approved by the Office of Management and Budget under control number 1512–0502)

Par. 39. Section 295.45c is added to read as follows:

§ 295.45c Package use-up rule.

Until April 1, 2000, manufacturers of roll-your-own tobacco, may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of §§ 270.212 and 216b. The manufacturer must have used such packaging for roll-your-own tobacco before January 1, 2000.

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 40. The authority citation for part 296 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

Par. 41. Section 296.72 is amended by revising the definitions for "Tobacco Products" to read as follows:

§ 296.72 Meaning of Terms.

* * * * *

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

§ 296.74 [Amended]

Par. 42. The second sentence of § 296.74 is amended by adding the words "and roll-your-own-tobacco" after the term "pipe tobacco".

Par. 43. Section 296.163 is amended by revising the definitions for "Manufacturer of tobacco products" and "Tobacco products" to read as follows:

§ 296.163 Meaning of terms.

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

Signed: August 13, 1999.

John W. Magaw,

Director.

Approved: October 27, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32602 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295 and 296

[Notice No. 889]

RIN 1512–AB92

Implementation of Public Law 105–33, Section 9302, relating to the Imposition of Permit Requirements on the Manufacture of Roll-Your-Own Tobacco (98R–370P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to implement section 9302 of the Balanced Budget Act of 1997. The new law enacted new permit requirements for manufacturers of roll-your-own tobacco. In addition, the temporary rule corrects the title to 27 CFR part 270, renumbers certain forms to reflect the current ATF numbering system, and removes references to forms that were previously made obsolete. Clarifying changes are made to parts 270, 275, 290, 295, and 296. In this notice of proposed rulemaking, ATF invites comments on the temporary rule.

DATES: Written comments must be received on or before February 22, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221. (Attention: Notice Number 889). See the Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Jackie White, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927–8210 or alcohol/tobacco@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

1. Temporary Regulations

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR parts 270, 275, 290, 295, and 296. For the text of the temporary regulations see T.D. ATF–424, published in the Rules and Regulations section of this issue of the **Federal Register**.

2. Public Participation

Who May Comment on This Notice?

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so. However assurance of consideration cannot be given except as to comments received on or before the closing date.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. Comments may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comment. We may also disclose the name of any person who submits a comment.

Can I Review Comments Received?

Yes. You may view and copy written comments on this project during normal business hours in the ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226, telephone (202) 927–8480. For information on filing a Freedom of Information Act request for a copy of the comments, please refer to the internet address *http://www.atf.treas.gov/about/foia/foia.htm.*

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages of facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible
- Be 8½″ x 11″ in size
- Contain a legible written signature
- Be not more than three pages

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (e-mail) Comments?

You may submit comments by e-mail by sending the comments to *nprm.notice__@atfhq.atf.treas.gov.* You must follow these instructions.

E-mail comments must:

- Contain your name, mailing address, and e-mail address
- Reference this notice number
- Be legible when printed on not more than three pages 8½″ x 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

Comments may be submitted electronically using ATF's web site. You may comment on this proposed notice by using the form provided through ATF's web site. You can reach this notice and the comment form through the address *http://www.atf.treas.gov/core/tobacco/rules/rules.htm.*

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 60-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

3. Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

These proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection(s) of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF), Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services

Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is in 27 CFR 270.182, 270.183, 270.216b, 275.72b, and 295.45b. This information is required to ensure proper excise payment of taxes on roll-your-own tobacco products. This information will be used to determine whether or not such excise taxes have been properly paid. The collection of information is mandatory. The likely respondents include small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden under control numbers 1512–358 and 1512–502 for the first year is 385 hours for initiating and obtaining required permits. For subsequent years, the total annual reporting and/or recordkeeping burden under 1512–0358 is 1,650 hours and under 1512–0502 the burden is 1 hour. Estimated average annual burden hours per respondent and/or recordkeeper under 1512–0358 is 150 hours; and under 1512–0502 the burden is 1 hour. The estimated number of respondents and/or recordkeepers are 11.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

4. Drafting Information

The principal author of this document is Jackie White, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

Signed: August 13, 1999.

John W. Magaw,

Director.

Approved: October 27, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32603 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295 and 296

[T.D. ATF–420]

RIN: 1512–AB88

Increase in Tax on Tobacco Products and Cigarette Papers and Tubes [99R–88P]

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This document implements the January 1, 2000 and January 1, 2002 tax increases on tobacco products and cigarette papers and tubes imposed by section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105–33). ATF is amending existing regulations to show the new tax rates. This document also makes additional changes of a technical nature.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8202, mdruhf@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Tax Increases

Public Law 105–33, entitled "The Balanced Budget Act of 1997" (the Act) was enacted on August 5, 1997. Section 9302 (a) through (f) (111 Stat. 671) increases the tax imposed by the Internal Revenue Code of 1986 relating to tobacco products and cigarette papers and tubes in two increments. The first tax increase applies to articles removed from ATF or customs bond on or after January 1, 2000. The second tax increase applies to such articles removed on or after January 1, 2002. Section 9302(g) imposes a new tax on "roll-your-own" tobacco. In this document, we are simply listing the new tax rates in the appropriate sections of the regulations. In separate rulemaking documents, we will make other changes to the tobacco regulations to administer the new tax on "roll-your-own" tobacco, the floor stocks tax, and other provisions of section 9302.

Tobacco regulations in 27 CFR parts 270, 275, 290, 295 and 296 that specified only the pre-2000 tax rates are amended to show the new rates. Examples of calculations in these regulations have been amended to show the current and future tax rates.

Excise Tax on Cigarette Papers

The Act modifies the tax imposed on cigarette papers manufactured in or imported into the United States. Sections 9302(c) of the Act raises the rate of tax. Section 9302(h)(3) of the Act revises how the excise tax on cigarette papers is applied. Previously, the excise tax only applied to books or sets of cigarette papers that contained more than 25 papers. As of January 1, 2000, all cigarette papers manufactured in or imported into the United States must be taxed without regard to the size of the book or set. The tax continues to be computed on each 50 papers or fractional part thereof, so in the following examples of tax computation, fractions of 50 papers are treated as a full 50 papers:

Quantity	Computation using tax rate applicable:		
	Prior to 1/1/2000	1/1/2000 to 12/31/2001	1/1/2002 and after
1,000 books of 20 papers each	No tax	$4.24 (20,000 papers ÷ 50 = 400); (400 × 1.06¢ = $4.24).	$4.88 (20,000 papers ÷ 50 = 400); (400 × 1.22¢ = $4.88)
1,007 books of 30 papers each	$4.5375 (30,210 papers ÷ 50 = 605); (605 × 0.75¢ = $4.5375).	$6.413 (30,210 papers ÷ 50 = 605); (605 × 1.06¢ = $6.413).	$7.381 (30,210 papers ÷ 50 = 605); (605 × 1.22¢ = $7.381)
1,007 books of 60 papers each	$9.0675 (60,420 papers ÷ 50 = 1209); (1209 × 0.75¢ = $9.0675).	$12.8154 (60,420 papers ÷ 50 = 1209); (1209 × 1.06¢ = $12.8154).	$14.7498 (60,420 papers ÷ 50 = 1209); (1209 × 1.22¢ = $14.7498)

Sale Price for Large Cigars

Regulations that refer to the wholesale price of large cigars have been removed or amended to refer to the sale price. Before January 1, 1991, the excise tax on large cigars was based on the wholesale price, but after that date, Public Law 101–508 changed the tax so it was based on the sale price. Since it is unlikely ATF or industry members will need to compute tax at the pre-1991 rates, we are deleting all references to those rates in the regulations. Should the need arise, we will refer to regulations that were in force at the time of removal. In this document, we have expanded the sale price regulations to include information contained in the old wholesale price regulations where this information is applicable to sale price. For example, we adopt rules for pricing of combination packages and cigars sold as "seconds."

Delegations of Authority

Pursuant to Treasury Decision 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of ATF, the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by ATF delegation orders, regional directives, or similar delegation documents. In addition, the Secretary has placed delegations to specific ATF officials in some of the regulations issued pursuant to the IRC. As a result, to ascertain what particular officer is authorized to perform a particular function under chapter 52, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all redelegations of the Director's authority in the revised or amended sections of the regulations. The regulations, which specified an ATF officer by title, are being replaced with delegations to the "appropriate ATF officer." Along with this final rule, ATF is publishing a delegation order, in which we give the organizational titles

of the individuals who have authority to carry out each of the specified duties. The effect of these changes is to consolidate all delegations of authority into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the event of a change in delegation or in the event of a restructuring. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition to the above, this final rule also eliminates all references in the affected regulatory sections which identify the ATF officer with whom an ATF form is filed. Thus, in lieu of identifying the authorized officer in the regulations, the form itself will indicate the officer with whom it must be filed. Similarly, this final rule also amends the affected sections of the various parts to provide that documents other than ATF forms (such as letterhead applications, notices and reports) will be filed with the "appropriate ATF officer." The "appropriate ATF officer" is the Director's delegate and will be identified in the accompanying Delegation Order. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed in the event that authority to receive such submissions, or the title of the officer, changes.

Consistent with the above, this final rule makes various technical amendments to the affected parts of 27 CFR. Specifically, new sections are added to recognize the authority of the Director to delegate regulatory authorities in each part and to identify the appropriate delegation order as the instrument reflecting such delegations. Also, each part affected by this document is amended to provide that the instructions on an ATF form identify the ATF officer with whom it is filed.

Since ATF is issuing this Treasury decision to implement Public Law 105–33, we are amending only the sections that were affected by the law change. We intend to make similar changes in delegations to the remainder of parts 270, 275, 290, 295 and 296 in future technical correction documents. We plan to amend each part of Title 27 of the Code of Federal Regulations through a separate rulemaking. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Administrative Corrections

Minor changes are also made to remove references to obsolete OMB Control Number 1512–0362 and to reflect current ATF form numbers. The locations in the regulations regarding the form changes are as follows:

Regulation citation in 27 CFR	Old Form No.	New Form No.
270.431	2132	5230.2
270.422, 275.141	2138	5230.3

"Plain Language" Changes

When we were revising the regulations to make the changes in the tax rates, we also tried to simplify and clarify the language of the affected regulations. We did not change any requirements of these sections. Although we are not making a formal request for comments as part of this rulemaking, we welcome suggestions for improving the readability of these regulations at any time.

Administrative Procedure Act

This document merely implements parts of section 9302 of the Balanced Budget Act of 1997 that are effective on January 1, 2000. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to section 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Executive Order 12866

This document is not a significant regulatory action within the meaning of Executive Order 12866.

Paperwork Reduction Act

This document does not contain any new collections of information nor does it revise existing collections of information to impose new burdens. Consequently, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this document. Three sections of the regulations that contain paperwork requirements are amended, but there are no changes of burden as a result of these changes:

- 27 CFR 275.181 is revised to eliminate the requirement for records of wholesale price; the requirement for records of sale price is retained (1512–0368).
- 27 CFR 295.51 is revised to change "wholesale" price to "sale" price, and the section is reorganized to make it easier to read (1512–0363).
- 27 CFR 296.74 is amended to give current and future tax rates, to clarify the wording, and to display the number of the current OMB approval (1512–0492).

Drafting Information

Marjorie Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

27 CFR Part 296

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance,

Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

Issuance

Title 27 CFR is amended as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The heading of part 270 is revised to read as set forth above.

Pars. 2–3. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 4. Section 270.11 is amended by removing the definitions for the terms "Determined or determination" and "Wholesale price," and adding definitions for the terms "Appropriate ATF officer," "ATF," "Determine" and "Sale price" to read as follows:

§ 270.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

* * * * *

ATF. The Bureau of Alcohol, Tobacco and Firearms.

* * * * *

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before January 1, 2000 or sale price of large cigars), that information must also be established as part of tax determination.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with § 270.22 and used for computation of the tax.

* * * * *

Par. 5. Section 270.21 is revised to read as follows:

§ 270.21 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the years:		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars per thousand	$1.125	$1.594	$1.828
Large cigars per thousand*			
• percentage of sale price	12.75%	18.063%	20.719%
• but not to exceed—	$30	$42.50	$48.75

*For large cigars, the percentage tax rate applies when the sale price is $235.294 per thousand or less, and the flat tax rate applies when the sale price is more than $235.294 per thousand.

(b) See § 270.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

§ 270.22 [Removed]

Par. 6. Section 270.22 is removed.

§ 270.22a [Redesignated as § 270.22 and revised]

Par. 7. Section 270.22a is redesignated as § 270.22, and newly redesignated § 270.22 is revised to read as follows:

§ 270.22 Determination of sale price of large cigars.

(a) *General rule.* The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) *Special cases.*—(1) *In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate ATF officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)–1 through 48.4216(b)–4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate ATF officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If ATF decides it is necessary, we will publish constructive sale price determinations in the ATF Bulletin in accordance with § 70.701(d) of this chapter.

(2) *Adjustments in sale price.*—(i) *Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of an ATF determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) *Time of adjustment.* If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased retroactively (during a later return period), either by the manufacturer or by ATF's determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) *Amount of adjustment.* The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate ATF officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) *Pricing for different packaging.* If different bona fide sale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes

of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections, (ii) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

Par. 8. Section 270.23 is revised to read as follows:

§ 270.23 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	$12	$17	$19.50
Large cigarettes up to 6½" long	25.20	35.70	40.95
Large cigarettes over 6½" long	Taxed at the rate for small cigarettes, counting each 2¾ inches or fraction thereof of the length of each as one cigarette.		

Par. 9. Section 270.25 is revised to read as follows:

§ 270.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound * for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Snuff	$0.36	$0.51	$0.585
Chewing tobacco	0.12	0.17	0.195

* Prorate tax for fractions of a pound.

Par. 10. Section § 270.25a is revised to read as follows:

§ 270.25a Pipe tobacco and roll-your-own tobacco tax rates.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound * for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco	$0.675	$0.9567	$1.0969
Roll-your-own tobacco	* No tax	0.9567	1.0969

* Prorate tax for fractions of a pound.

Par. 11. A new § 270.49 is added to read as follows:

§ 270.49 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 270. Some of the authorities in this part are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (*http://www.atf.treas.gov*).

Par. 12. Section 270.183 is amended by revising paragraph (e) to read as follows:

§ 270.183 Record of tobacco products.

* * * * *

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 270.22, except cigars that cost more than $235.294 may optionally be

shown as if the price were $236 per thousand);

* * * * *

Par. 13. Section 270.184 is revised to read as follows:

§ 270.184 Record of removals subject to tax.

(a) *Requirement.* Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

(1) The date of removal,

(2) The name and address of the person to whom shipped or delivered,

(3) The kind and quantity of tobacco products removed, and

(4) For large cigars, show the sale price (If the sale price is more than $235.294 per thousand, you may place a note to that effect in the record instead of the actual price).

(b) *Exceptions.* (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are still acceptable if they contain adequate information for an ATF officer to readily ascertain the applicable tax.

(2) Where tobacco products are delivered within the factory directly to the consumer, the record need not show the name and address of the consumer.

§ 270.187 [Removed]

Par. 14. Section 270.187 is removed. and adding, in its place, a reference to § 270.22.

§ 270.187 Record of sales prices of large cigars.

Par. 16. Section 270.311 is amended by revising paragraph (b) to read as follows:

§ 270.311 Action by claimant.

* * * * *

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see § 270.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 3069 (5200.7) or Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

Par. 17. Section 270.351 is revised to read as follows:

§ 270.351 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers[1] for removals during the years:		
	1993 to 1999[2]	2000 and 2001	2002 and after
Cigarette papers up to 6½" long	$0.0075	$0.0106	$0.0122
Cigarette papers over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

[1] Tax rate for less than 50 papers is the same. The tax is not prorated.
[2] Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

Par. 18. Section 270.352 is revised to read as follows:

§ 270.352 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6½" long	$0.015	$0.0213	$0.0244
Cigarette tubes over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

*Tax rate for less than 50 tubes is the same. The tax is not prorated.

Par. 19. Section 270.421 is revised to read as follows:

§ 270.421 General.

(a) Every manufacturer of cigarette papers and tubes must keep records of daily operations and transactions. Records maintained must reflect the date and number of cigarette papers and the date and number of cigarette tubes:

(1) Manufactured;

(2) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;

(3) Removed, subject to tax;

(4) Removed, without payment of tax, for export purposes, use of the United States or transfer in bond pursuant to § 270.451; or

(5) Lost or destroyed.

(b) The entries for each day in the records maintained or kept under this subpart must be made by the close of the business day following that on

which the operations or transactions occur. No particular form of records is prescribed, but the information required must be readily ascertainable from the records kept.

(c) Records maintained under this section prior to January 1, 2000, must reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes.

(26 U.S.C. 5741.)

Par. 20. Section 270.422 is revised to read as follows:

§ 270.422 General.

Every manufacturer of cigarette papers and tubes must prepare a report on ATF Form 5230.3 in accordance with instructions for the form. The report must be prepared at the times specified in this subpart and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(a) *Reports for periods on or after January 1, 2000.* Reports submitted must reflect the total number of cigarette papers and cigarette tubes manufactured, received and lost or destroyed.

(b) *Reports for periods prior to January 1, 2000.* Reports submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes manufactured, received, removed and lost or destroyed.

(26 U.S.C. 5722)

Par. 21. Section 270.431 is revised to read as follows:

§ 270.431 General.

Every manufacturer of cigarette papers and tubes must provide a true and accurate inventory on ATF Form 5230.2 in accordance with instructions for the form. Such inventory is subject to verification by an ATF officer. The manufacturer must retain a copy of each inventory completed on ATF Form 5230.2 in accordance with this subpart.

(a) *Reports of inventory for periods on or after January 1, 2000.* Reports of inventory submitted must reflect the total number of cigarette papers and cigarette tubes held at the times specified in the subpart.

(b) *Reports of inventory for periods prior to January 1, 2000.* Reports of inventory submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart.

(26 U.S.C. 5721)

PART 275—[AMENDED]

Par. 22. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 20. Section 275.11 is amended by removing the definitions for the terms "Determined or determination" and "Wholesale price" and by adding definitions for the terms "Appropriate ATF officer," "ATF," "Determine" and "Sale price" to read as follows:

§ 275.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

* * * * *

ATF. The Bureau of Alcohol, Tobacco and Firearms.

* * * * *

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before 1/1/2000 or sale price of large cigars), that information must also be established as part of tax determination.

* * * * *

Sale price. The price for which large cigars are sold by the importer or manufacturer, determined in accordance with § 275.39 and used for computation of the excise tax.

* * * * *

Par. 23. A new § 275.29 is added to read as follows:

§ 275.29 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 275. Some of the authorities in this part are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (*http://www.atf.treas.gov*).

Par. 24. Section 275.30 is revised to read as follows:

§ 275.30 Pipe tobacco and roll-your-own tobacco.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound [1] for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco	$0.675	$0.9567	$1.0969
Roll-your-own tobacco	No tax	0.9567	1.0969

[1] Prorate tax for fractions of a pound.

Par. 25. Section 275.31 is revised to read as follows:

§ 275.31 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Product	Tax rate for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars (per thousand)	$1.125	$1.594	$1.828
Large cigars [1]			
percentage of sale price	12.75%	18.063%	20.719%
but not to exceed per thousand	$30	$42.50	$48.75

[1] For large cigars, the percentage tax rate applies when the sale price is $235.294 per thousand or less, and the flat tax rate applies when the sale price is more than $235.294.

(b) See § 275.39 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

Par. 26. Section 275.32 is revised to read as follows:

§ 275.32 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	$12	$17	$19.50
Large cigarettes up to 6½" long	25.20	35.70	40.95
Large cigarettes over 6½" long	Use tax rates for small cigarettes, but count each 2¾ inches or fraction thereof of the length of each as one cigarette.		

Par. 27. Section 275.33 is revised to read as follows:

§ 275.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound [1] for removals during the years		
	1993 to 1999	2000 or 2001	2002 and after
Snuff	$0.36	$0.51	$0.585
Chewing tobacco	$0.12	$0.17	$0.195

[1] Prorate tax for fractions of a pound.

Par. 28. Section 275.34 is revised to read as follows:

§ 275.34 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers [1] for removals during the years		
	1993 to 1999 [2]	2000 or 2001	2002 and after
Cigarette papers up to 6½" long	$0.0075	$0.0106	$0.0122
Cigarette papers over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

[1] Tax rate for less than 50 papers is the same. The tax is not prorated.
[2] Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

Par. 29. Section 275.35 is revised to read as follows:

§ 275.35 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes[1] for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6½" long	$0.015	$0.0213	$0.0244
Cigarette tubes over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

[1] Tax rate for less than 50 tubes is the same. The tax is not prorated.

Par. 30. Section 275.39 is amended to read as follows:

§ 275.39 Determination of sale price of large cigars.

The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the importer or manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price. See § 270.22(b) of this chapter for information on determining the sale price in special cases.

Par. 31. Section 275.81 is amended by revising paragraphs (c)(1), (c)(4)(ii) and (c)(4)(iii) to read as follows:

§ 275.81 Taxpayment.

* * * * *

(c) * * *

(1) *For cigarette papers:* For cigarette papers imported on or after January 1, 2000, the importer will show the total number of cigarette papers, the rate of tax, and the amount of tax due. For cigarette papers imported prior to January 1, 2000, the importer will show the number of books or sets, the number of papers in each book or set, the rate of tax, and the amount of tax due.

* * * * *

(4) * * *

(ii) For large cigars with a sale price of not more than $235.294 per thousand, the number and total sale price of such cigars;

(iii) For large cigars with a sale price of more than $235.294 per thousand, the number of cigars;

* * * * *

Par. 32. Section 275.107 is amended by revising paragraph (c)(4) to read as follows:

§ 275.107 Procedures at port of entry.

* * * * *

(c) * * *

(4) The number of cigarette papers. If imported prior to January 1, 2000, the number of books or sets of cigarette papers of each different numerical content.

* * * * *

Par. 33. Section 275.110 is amended by revising paragraphs (b) and (c) to read as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

* * * (b) the number and total sale price of large cigars with a price of not more than $235.294 per thousand to be shipped; (c) the number of large cigars with a sale price of more than $235.294 per thousand to be shipped.

* * * * *

Par. 34. Section 275.117 is amended by revising paragraphs (b) and (c) to read as follows:

§ 275.117 Procedure at port of entry.

* * * (b) the number and sale price of large cigars with a sale price of not more than $235.294 per thousand, (c) the number of large cigars with a sale price of more than $235.294 per thousand, * * *

* * * * *

Par. 35. Section 275.139 is amended by revising paragraphs (b) and (c) to read as follows:

§ 275.139 Records.

* * * * *

(b) The sale price of large cigars removed subject to tax, except that if the price is more than $235.294 per thousand, it may be shown as if it were $236 per thousand.

(c) Cigarette papers:

(1) Before January 1, 2000, the date and number of books or sets of cigarette papers of each numerical content.

(2) On and after January 1, 2000, the date and number of cigarette papers.

* * * * *

Par. 36. Section 275.170 is amended by revising the section heading and paragraph (b) to read as follows:

§ 275.170 Reduction of tobacco products to materials; ATF action.

* * * * *

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the importer must include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

Par. 37. Section 275.172 is amended by revising paragraph (b) to read as follows:

§ 275.172 Return to nontaxpaid status; action by taxpayer.

* * * * *

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the importer must include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

Par. 38. Section 275.181 is revised to read as follows:

§ 275.181 Records of large cigars.

Every person who imports large cigars for sale within the United States must keep such records as are necessary to establish and verify the sale price that applies to large cigars removed (entered or withdrawn).

(a) *Basic record.* The importer must keep a record to show each sale price (as determined under § 275.39), which is applicable to large cigars removed. No later than the tenth business day in

January of each year the importer must prepare such a record to show the sale price in effect on the first day of that year for each brand and size of large cigars. The importer must note any change in a price from that shown in the record within ten business days after such change in price. The record must be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained. If an importer removes new types of large cigars after the beginning of the year, the importer must enter the sale price and its effective date for such large cigars in the basic record within ten business days after such removal.

(b) *Copies of price announcements.* The importer must keep a copy of each general announcement that is issued internally or to the trade about establishment or change of large cigar sale prices. If the copy does not show the actual date when issued it must be annotated to show this information.

(c) *Copies of entry and withdrawal forms.* The importer must keep a copy of each customs entry or withdrawal form on which internal revenue tax for large cigars is declared pursuant to § 275.81.

(d) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of sale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and sale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the appropriate ATF officer finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he or she may so notify the importer in writing, after which time the importer must keep the record required under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1512–0368)

PART 290—[AMENDED]

Par. 39. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 40. Section 290.11 is amended by removing the definition for the term "wholesale price" and adding a definition for the term "sale price" to read as follows:

§ 290.11 Meaning of terms.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with § 270.22 or § 275.39.

* * * * *

PART 295—[AMENDED]

Par. 41. The authority citation for part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 42. Section 295.11 is amended by removing the definition for the term "Wholesale price" and adding a definition for the term "Sale price" to read as follows:

§ 295.11 Meaning of terms.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with § 270.22 or § 275.39 and used in computation of the tax.

* * * * *

Par. 43. Section 295.51 is revised to read as follows:

§ 295.51 Supporting records.

(a) *Records of removals.* Every manufacturer who removes tobacco products, and cigarette papers and tubes under this part must, in addition to the records kept under part 270 of this chapter, keep a supporting record of such removals and must make appropriate entries therein at the time of removal. The supporting record for each removal must show:

(1) The date of removal;

(2) The name and address of the Federal agency to which shipped or delivered;

(3) The kind and quantity and,

(4) for large cigars, the sale price.

(b) *Records of returns.* If any tobacco products, or cigarette papers or tubes removed under this part are returned to the factory, such returns must be noted in the supporting record.

(c) *Commercial records.* Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(d) *Retention period.* The manufacturer must retain the supporting record for 3 years following the close of the year covered therein. The record must be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512–0363)

(See 26 U.S.C. 5741)

PART 296—[AMENDED]

Par. 44. The authority citation for part 296 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

Par. 45. The heading of subpart C is revised to read as follows:

Subpart C—Disaster Loss Claims

Par. 46. Section 296.72 is amended by removing the definition for the term "Wholesale price" and adding definitions for the terms "Appropriate ATF officer" and "Sale price" to read as follows:

§ 296.72 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with § 270.22 or 275.39 and used in computation of the tax.

* * * * *

Par. 47. Sections 296.74 through 296.77 are revised to read as follows:

§ 296.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

§ 296.75 Required information for claim.

The claim should contain the following information:

(a) That the tax on such tobacco products, or cigarette papers or tubes

has been paid or determined and customs duty has been paid;

(b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;

(c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;

(d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;

(e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,

(f) That the claimant is entitled to payment under this subpart, and

(g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products, substantially as shown in the examples below:

[Example using 1993–1999 Rates]

	Quantity	Article	Rate of tax	Amount
20,000		Small cigars	$1.125 per thousand	$22.50
1,000		Large cigars—sale price $100/thousand	12.75% of sale price	12.75
500		Large cigars—sale price $236/thousand	$30 per thousand	15.00
10,000		Small cigarettes	$12 per thousand	120.00
5,000		Large cigarettes	$25.20 per thousand	126.00
2,000 sets		Cigarette papers—50 per set	$0.0075 per set	15.00
1,000 sets		Cigarette papers—100 per set	$0.015 per set	15.00
1,000		Cigarette tubes	$0.015 per 50 tubes	0.30
100 lbs		Chewing tobacco	$0.12 per pound	12.00
200 lbs		Snuff	$0.36 per pound	72.00
100 lbs		Pipe tobacco	$0.675 per pound	67.50
300 lbs		Roll-your-own tobacco	$0 per pound	
Total claimed				478.05

[Example using 2000–2001 Rates]

	Quantity	Article	Rate of tax	Amount
20,000		Small cigars	$1.594 per thousand	$31.88
1,000		Large cigars—sale price $100/thousand	18.063% of sale price	18.06
500		Large cigars—sale price $236/thousand	$42.50 per thousand	21.25
10,000		Small cigarettes	$17.00 per thousand	170.00
5,000		Large cigarettes	$35.70 per thousand	178.50
199,975		Cigarette papers	$0.0106 per 50 papers	42.40
1,000		Cigarette tubes	$0.0213 per 50 tubes	0.43
100 lbs		Chewing tobacco	$0.17 per pound	17.00
200 lbs		Snuff	$0.51 per pound	102.00
100 lbs		Pipe tobacco	$0.9567 per pound	95.67
300 lbs		Roll-your-own tobacco	$0.9567 per pound	287.01
Total claimed				964.20

[Example using rates for 2002 and After]

	Quantity	Article	Rate of tax	Amount
20,000		Small cigars	$1.828 per thousand	36.56
1,000		Large cigars—sale price $100/thousand	20.719% of sale price	20.72
500		Large cigars—sale price $236/thousand	$48.75 per thousand	24.38
10,000		Small cigarettes	$19.50 per thousand	195.00
5,000		Large cigarettes	$40.95 per thousand	204.75
199,975		Cigarette papers	$0.0122 per 50 papers	48.80
1,000		Cigarette tubes	$0.0244 per 50 tubes	0.49
100 lbs		Chewing tobacco	$0.195 per pound	19.50
200 lbs		Snuff	$0.585 per pound	117.00
100 lbs		Pipe tobacco	$1.0969 per pound	109.69
300 lbs		Roll-your-own tobacco	$1.0969 per pound	329.07
Total claimed				1,105.96

§ 296.76 Supporting evidence.

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

296.77 Time and place of filing.

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for duty on imported products, must be filed with the appropriate ATF officer.

Par. 48. A new undesignated centerheading and § 296.81 are added to the end of subpart C to read as follows:

Administrative Provisions

§ 296.81 Delegations of the Director.

The Director has general authority to take action on all matters under this subpart. Some of the authorities in this subpart are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each section is listed in ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (http://www.atf.treas.gov).

Signed: October 5, 1999.

John W. Magaw,

Director.

Approved: October 27, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32605 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[T.D. ATF—422; Re: Notice No. 888]

RIN 1512–AC07

Implementation of Public Law 105–33, Section 9302, Requiring the Qualification of Tobacco Product Importers (98R–316P) And Miscellaneous Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements some of the provisions of the Balanced Budget Act of 1997. The new law sets forth the requirement that, beginning January 1, 2000, importers of tobacco products qualify for a permit to conduct that activity. Implementing changes, including a transitional rule, are made to part 275. In addition, clarifying changes are made to part 275. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 60-day period following the publication of this temporary rule.

DATES: Effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen by writing to Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, by phone at 202–927–8210, or by e-mail at alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements some of the provisions of the Balanced Budget Act of 1997, Public Law 105–33 ("the Act"). These provisions amended the Internal Revenue Code of 1986 (IRC) to require that, beginning January 1, 2000, importers of tobacco products qualify for a permit to conduct that activity.

Current Regulation of Tobacco Products Importation

The Bureau of Alcohol, Tobacco and Firearms (ATF) regulates the importation of tobacco products under the IRC, and in the Code of Federal Regulations, 27 CFR part 275. Before the enactment of the Act, no permit qualification requirement existed for importers of tobacco products.

The Act amended sections 5712 and 5713 of the IRC to require, in part, that importers of tobacco products apply for and obtain a permit before commencing business as an importer. The Act also provided a transitional rule to allow existing importers of tobacco products or cigarette papers and tubes, who file an application for a permit with ATF before January 1, 2000, to continue in such business pending final action on their application.

Under the temporary rule, persons who are already engaged in the business as an importer of tobacco products may continue in such business after January 1, 2000, provided they file an application for a permit with ATF before January 1, 2000. Such persons will be issued a temporary permit, which will remain valid for a period of one year or until a final determination is made on their application, if a final determination has not been made within that time. All others must obtain a permit before engaging in the business as an importer of tobacco products or cigarette papers and tubes beginning January 1, 2000.

Only manufacturers and export warehouse proprietors may import tobacco products in bond. Therefore, no bond need be filed by any other importer of tobacco products in conjunction with the permit, because such importers are not authorized to import tobacco products without payment of tax upon release from customs custody.

Fully qualified applicants will be issued a permit limited to a three-year duration. A three-year permit duration was determined to be a reasonable method to avoid the proliferation of numerous unused permits, which would pose administrative difficulties and potential jeopardy to the revenue. Keeping track of unused permits would strain limited resources, and such permits could eventually fall into the hands of unqualified persons who would be unknown and unaccountable to ATF. Administrative controls will be put in place to facilitate timely renewals by permittees.

In addition, Part 275, Subpart G—Puerto Rican Tobacco Products and Cigarette Papers and Tubes, brought into the United States, contains obsolete requirements for the release of Puerto Rican tobacco products and cigarette papers and tubes from Customs custody without payment of tax. Accordingly, subpart G is being amended to eliminate the obsolete requirements under this temporary rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)), and pending receipt and evaluation of

public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0398. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information initiated by this document is found in 27 CFR 275.204 and 275.205. This information is required to ensure proper payment of excise taxes on imported tobacco products and cigarette papers and tubes.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

"Plain Language" Changes

During the revision of the regulations in this document, we also tried to simplify and clarify the language of the affected regulations. Any suggestions for improving the readability of these regulations may be submitted as comments to the cross-referenced notice of proposed rulemaking.

Delegations

In the sections of the regulations that are affected by this document, we have changed obsolete ATF titles to read "the appropriate ATF officer" and referred to a delegation order that specifies the current title of the ATF official responsible for each activity. The titles of responsible persons in the remaining sections of these parts will be updated by a future technical amendment.

Administrative Procedure Act

Because this document merely implements sections of the law which are effective on January 1, 2000, and because immediate guidance is necessary to implement the provisions of the law, it is not found to be necessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in section 553(d).

Drafting Information

The principal author of this document is Clifford A. Mullen, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

List of Subjects in 27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and record keeping requirements, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

Authority and Issuance

Par. 1. The authority citation for 27 CFR part 275 is revised to read:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5706, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 18 U.S.C. 2342.

Par. 2–3. Section 275.11 is amended by removing the definition of "District director of customs," revising the definition of "Removal or Remove," and adding the definitions for "Appropriate ATF officer," "Customs officer, "Port director of Customs," and "Records" to read in alphabetical order as follows:

§ 275.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.16, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 275, Importation of Tobacco Products and Cigarette Papers and Tubes.

* * * * *

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

* * * * *

Port Director of Customs. The director of any port or port of entry as defined in 19 CFR 101.1. A list of ports is set forth in 19 CFR 101.3.

* * * * *

Records. Statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices (*e.g.*, magnetic discs and tapes), computer programs necessary to retrieve information in a usable form, and other documents that:

(1) Pertain to any importation of tobacco products or cigarette papers or tubes, or to the information contained in the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the importation of merchandise; and

(2) Are of the type normally kept in the ordinary course of business; and

(3) Are sufficiently detailed to:

(i) Establish the right to make the importation;

(ii) Establish the correctness of any importation;

(iii) Determine the liability of any person for duties and taxes due, or which may be due, to the United States;

(iv) Determine the liability of any person for fines, penalties, and forfeitures; and

(v) Determine whether the person has complied with the laws and regulations administered by ATF and the Customs Service, and any other documents required under laws or regulations administered by ATF and the Customs Service.

* * * * *

Removal or Remove. The removal of tobacco products or cigarette papers or tubes from the factory or release from internal revenue bond under 26 U.S.C. 5704, or release from customs custody, including conditional release in accordance with 19 CFR 141.0a(i), and shall also include the smuggling or other unlawful importation of such articles into the United States.

* * * * *

Par. 4. The fourth sentence of § 275.25 is revised to read as follows:

§ 275.25 Disposal of forfeited, condemned, and abandoned tobacco products and cigarette papers and tubes.

* * * Except where the tax is to be paid to the Port Directors of Customs or other authorized customs officer in accordance with Customs regulations (19 CFR part 127) on sales of articles by customs officers, the payment of tax on such articles must be evidenced by presentation, to the officer having custody of the articles, of a receipt from the appropriate ATF officer showing such payment. * * *

* * * * *

§ 275.39 [Removed and reserved]

Par. 5. Section. 275.39 is removed and reserved.

Par. 6. Section 275.40 is revised to read as follows:

§ 275.40 Persons liable for tax.

The importer of tobacco products or cigarette papers and tubes will be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: *Provided,* That tobacco products or cigarette papers or tubes (other than those previously exported and returned)

imported or brought into the United States, may be released from customs custody without payment of tax, for delivery to the proprietor of an export warehouse, to a manufacturer of tobacco products, or to a manufacturer of cigarette papers or tubes (except for tobacco products), if such articles are not put up in packages (see § 275.11). Under these circumstances the transferee will become liable for the internal revenue tax on such articles upon release from customs custody and the importer will thereupon be relieved of the liability for such tax. If the transferee is also the importer, then the importer will not be relieved of the liability for such tax.

Par. 7. Section 275.41 is revised to read as follows:

§ 275.41 Determination and payment of tax.

Tobacco products and cigarette papers and tubes, imported or brought into the United States, on which internal revenue taxes are due and payable, must not be released from customs custody until such taxes have been determined and paid.

Par. 8. The last sentence of § 275.50 and the undesignated centerheading preceding it are revised to read as follows:

Exemptions From Taxes and Permits

§ 275.50 Exemptions.

* * *. These exemptions include, but are not limited to, certain importations in passengers' baggage, for use of crew members, and by foreign officials. Those persons importing tobacco products and cigarette papers or tubes as described in this section are not required to obtain a permit.

Par. 9. Section 275.62 is revised to read as follows:

§ 275.62 Customs' collection of internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States.

Internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States, which are to be paid to the Port Director of Customs or other authorized customs employee, in accordance with this part, must be collected, accounted for, and deposited as internal revenue collections by the Port Director of Customs, in accordance with customs procedures and regulations.

Par. 10. Paragraphs (a), (b), and (c), introductory text, of § 275.81 are revised to read as follows:

§ 275.81 Taxpayment.

(a) *General.* The provisions of this section apply to tobacco products, cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States.

(b) *Method of payment.* Except in the case of articles imported or brought into the United States under § 275.85 and 275.85a, the internal revenue tax must be determined and paid to the Port Director of Customs before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax must be paid on the basis of a return on the customs form or by authorized electronic transmission by which the tobacco products, cigarette papers, or cigarette tubes are duty and taxpaid to Customs.

(c) *Required information.* When tobacco products, cigarette papers, or cigarette tubes enter the United States for consumption, or when they are removed for consumption, the importer must include on the customs form or authorized electronic transmission the following internal revenue tax information.

(1) * * *

* * * * * *

Par. 11. Section 275.85 is revised to read as follows:

§ 275.85 Release from customs custody of imported tobacco articles.

(a) The provisions of this section apply only to tobacco products, cigarette papers, and cigarettes tubes, which are not put up in packages, i.e., not placed by the manufacturer or importer in packages in which the products will be sold to consumers. Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer to the factory of any manufacturer of tobacco products under the internal revenue bond of the manufacturer to whom such articles are released. Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer, under the internal revenue bond of the manufacturer to whom such articles are released, to the factory of a manufacturer of cigarette papers and tubes; or a manufacturer of tobacco products solely for use in the manufacture of cigarettes. Releases under this section must be in accordance with § 275.86: *Provided, however,* that in the case of products exported from the Virgin Islands, in order for a manufacturer of tobacco products or a manufacturer of cigarette papers and tubes to remove such products from customs custody in the United States under the manufacturer's internal revenue bond without payment of internal revenue tax, the manufacturer must file an extension of coverage of the internal revenue bond on ATF Form 2105, and receive a notice of approval from the appropriate ATF officer. The extension of coverage must be executed by the principal and the surety and must be in the following form:

"Whereas the purpose of this extension is to bind the obligors for the purpose of the tax imposed by 26 U.S.C. 7652(b), on tobacco products and tubes exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax, for delivery to the principal on said bond."

"Now, therefore, the said bond is further specifically conditioned that the principal named therein must pay all taxes imposed by 26 U.S.C. 7652(b) plus penalties, if any, and interest, for which he may become liable with respect to these products exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax thereon, and must comply with all provision of law and regulations with respect thereto."

(b) Articles received into the factory of a manufacturer under the provision of this section are subject to the provisions of part 270 of this chapter.

Par. 12. Section 275.85a is revised to read as follows:

§ 275.85a Release from customs custody of returned articles.

(a) Domestically produced tobacco products (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping container may be released, under the bond of the manufacturer or export warehouse proprietor to whom such articles are released, from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery to the factory of any tobacco products manufacturer or to the permit premises of an export warehouse proprietor.

(b) Domestically produced cigarette papers and tubes (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping

container may be released from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery, under the bond of the manufacturer to whom such articles are released, to the factory of:

(1) A manufacturer of cigarette papers and tubes; or

(2) A manufacturer of tobacco products solely for use in the manufacture of cigarettes.

(c) Releases under this section must be in accordance with the procedures set forth in § 275.86. Once released, the tobacco products and cigarette papers and tubes will be subject to the tax and all other provisions of 26 U.S.C. chapter 52, and, as applicable, subject to the provisions of the regulations in part 270 of this chapter as if they had not been exported or otherwise removed from internal revenue bond.

Par. 13. Section 275.86 is revised to read as follows:

§ 275.86 Procedure for release.

(a) Every manufacturer of tobacco products and cigarette papers and tubes and every export warehouse proprietor who desires to obtain the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under its internal revenue bond, as provided in § 275.85 or § 275.85a, must prepare a notice of release, Form 2145, in triplicate, and file the three copies of the form with the appropriate ATF officer. The appropriate ATF officer will not certify Form 2145 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under part 270 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form.

(b) Importers who are either manufacturers of tobacco products and cigarette papers and tubes or export warehouse proprietors, or their authorized agents, who request the release of tobacco products or cigarette papers and tubes from customs custody in the United States under this section, using customs electronic filing procedures, must not request such release until they have received the ATF Form 2145 certified by the appropriate ATF officer. Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 2145 along with a copy of the electronic filing and customs release to the appropriate ATF officer at the address shown thereon. The importer will retain one copy of the ATF Form 2145 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

(c) Importers or their authorized agents requesting release of tobacco products or cigarette papers and tubes from customs custody in the United States under any other authorized procedure will submit all copies of the ATF Form 2145 to the appropriate customs officer along with their request for release. The customs officer will verify that the ATF Form 2145 has been certified by the appropriate ATF officer and return all copies to the importer or the importer's authorized representative.

(d) Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 2145 along with a copy of the customs release to the appropriate ATF office at the address shown thereon. The importer will retain one copy of the ATF Form 2145 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

§ 275.101 [Amended]

Par. 14. Section 275.101 is amended by removing paragraphs (d) and (e).

Par. 15. Section 275.106 is revised to read as follows:

§ 275.106 Inspection of shipment and certification of prepayment by ATF officer.

The taxpayer will prepare ATF Form 3075 (5200.9), in triplicate, identifying the tobacco products and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid. The ATF officer assigned to inspect the shipment must obtain the receipted copy of the tax return from the taxpayer and verify on ATF Form 3075 (5200.9) that the proper tax has been prepaid. After verification of the tax return on ATF Form 3075 (5200.9), the ATF officer will return the receipted copy of the tax return to the taxpayer. The ATF officer will then present one copy of ATF Form 3075 (5200.9) to the taxpayer for attachment to the bill of lading to accompany the shipment, mail one copy to the appropriate ATF officer, and retain the remaining copy. The ATF officer will then prepare for each shipping container, a statement on ATF Form 3074 (5200.6) that the tax has been prepaid, and show the other information required by that form. The shipper must affix the completed ATF Form 3074 (5200.6) to the outside of each shipping container in which the articles are packed. Such statement, ATF Form 3074 (5200.6), must be affixed to the outside container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not to the individual cartons, cases, etc., included in such outer container. Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

§ 275.107 [Removed and reserved]

Par. 16. Section 275.107 is removed and reserved.

§ 275.108 [Removed and reserved]

Par. 17. Section 275.108 is removed and reserved.

Par. 18. Section 275.110 is amended by revising the first sentence to read as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

Where tobacco products are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred taxpayment), the bonded manufacturer must calculate the tax and must prepare an original and two copies of Form 2987 (5210.8).

* * * * *

Par. 19. Section 275.111 is amended by revising the introductory text, paragraphs (a), (b), and (c) to read as follows:

§ 275.111 Inspection of shipment and certification by ATF officer.

On receipt of the original and two copies of the Form 2987 (5210.8) completed and executed by the bonded manufacturer in accordance with § 275.110, an ATF officer will inspect the tobacco products covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the tobacco products for shipment to the United States. Such officer will then promptly distribute the certified Form 2987 by:

(a) Mailing one copy to the appropriate ATF officer;

(b) Returning one copy to the bonded manufacturer and

(c) Submitting the original to the Chief, Puerto Rico Operations.

* * * * *

Par. 20. Section 275.115a, paragraph (e), is revised to read as follows:

§ 275.115a Payment of tax by electronic fund transfer.

* * * * *

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate ATF officer will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part.

§ 275.117 [Removed and reserved]

Par. 21. Section 275.117 is removed and reserved.

§ 275.118 [Removed and reserved]

Par.22. Section 275.118 is removed and reserved.

Par. 23. The undesignated center heading preceding § 275.135 is removed.

§§ 275.135—275.138 [Removed and reserved]

Par. 24. Sections 275.135 through 275.138 are removed and reserved.

Par. 25. The first sentence in § 275.140 is revised to read as follows:

§ 275.140 Taxpayment in the United States.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products or cigarette papers or tubes without payment of internal revenue tax, under his bond, and subsequently removes such products, subject to tax, must pay the tax imposed on such products by 26 U.S.C. 7652(a), at the rates prescribed in 26 U.S.C. 5701, on the basis of a return under the provisions of part 270 of this chapter applicable to the taxpayment of tobacco products. * * *

Par. 26. The first sentence in § 275.141 is revised to read as follows:

§ 275.141 Reports.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products, or cigarette papers or tubes without payment of internal revenue tax, under his bond, must report the receipt and disposition of such tobacco products and cigarette papers and tubes on supplemental monthly reports. * * *

Par. 27. Subpart K is added to read as follows:

Subpart K—Tobacco Products Importers

Sec.

275.190 Persons required to qualify.
275.191 Application for permit.
275.192 Transitional rule.
275.193 Corporate documents.
275.194 Articles of partnership or association.
275.195 Trade name certificate.
275.196 Power of attorney.
275.197 Additional information.
275.198 Investigation of applicant.
275.199 Notice of Contemplated Disapproval.
275.200 Issuance of permit.
275.201 Duration of permit
275.202 Renewal of permit.
275.203 Retention of permit and supporting documents.

Required Records and Reports

275.204 General.
275.205 Recordkeeping requirements.

Filing and Retention of Records and Reports

275.206 Reports.
275.207 Filing.
275.208 Retention.

Subpart K—Tobacco Products Importers

§ 275.190 Persons required to qualify.

Any person who engages in the business as an importer of tobacco products must qualify as an importer of tobacco products in accordance with the provisions of this part. Any person eligible for the exemption in § 275.50 is not engaged in the business as an importer of tobacco products.

Persons importing tobacco products and cigarette papers and tubes for personal use, in such quantities as may be allowed by Customs without payment of tax, do not require an importer's permit.

§ 275.191 Application for permit.

Except as provided in § 275.192, every person, before commencing business as an importer of tobacco products as defined in § 275.11, must make application for, and obtain, the permit provided by this subpart K. Such application must be made on ATF Form 5230.4, according to the instructions for the form. All documents required under this part to be furnished with such application must be made a part thereof.

§ 275.192 Transitional rule.

Any person who—

(a) Was engaged in the business as an importer of tobacco products before January 1, 2000, and

(b) Who files an application with ATF before January 1, 2000, may continue to import tobacco products and cigarette papers and tubes pending action on their application by ATF. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 will apply to such applicant.

§ 275.193 Corporate documents.

Every corporation, before commencing business as an importer of tobacco products, must furnish with its application for permit, required by § 275.191, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate ATF officer, and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

§ 275.194 Articles of partnership or association.

Every partnership or association, before commencing business as an importer of tobacco products, must furnish with its application for permit required by § 275.191 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the appropriate ATF officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

§ 275.195 Trade name certificate.

Every person, before commencing business under a trade name as an importer of tobacco products, must furnish with his application for a permit, required by § 275.191, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such true copy of the certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

§ 275.196 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other

document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 must be furnished to the appropriate ATF officer. (For power of attorney in connection with conference and practice requirements see subpart E, part 70 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 275.194. Form 1534 does not have to be filed again with the appropriate ATF officer if such form has previously been submitted to ATF and is still in effect.

§ 275.197 Additional information.

The appropriate ATF officer may require such additional information as may be deemed necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant must, when required by the appropriate ATF officer, furnish as a part of his application for such permit such additional information as the appropriate ATF officer deems necessary to determine whether the applicant is entitled to a permit.

§ 275.198 Investigation of applicant.

Appropriate ATF officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with 26 U.S.C. chapter 52, and regulations thereunder; whether the applicant has disclosed all material information required, or whether the applicant has made any material false statement in the application for such permit.

§ 275.199 Notice of Contemplated Disapproval.

If the appropriate ATF officer has reason to believe that the applicant is not entitled to a permit, the appropriate ATF officer will promptly give to the applicant a notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 200 of this chapter. If, after such notice and opportunity for hearing, the appropriate ATF officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

§ 275.200 Issuance of permit.

If the application for permit, together with the required supporting documents, is approved, the appropriate ATF officer will issue a permit on ATF F 5200.24 to the applicant as an importer of tobacco products.

§ 275.201 Duration of permit.

(a) Permits other than temporary permits issued under paragraph (b) of this section will be valid for a period of three years from the effective date shown on the permit, ATF F 5200.24.

(b) Temporary permits will be issued for a one-year period to those applicants described in § 275.192.

§ 275.202 Renewal of permit.

Importers wishing to continue operations beyond the expiration of their current permit must renew their permit by making application within 30 days of such expiration on ATF F 5200.24, in accordance with instructions for the form. The expiring permit will continue in effect until final action is taken by ATF on the application for renewal, provided a timely application for renewal is filed.

§ 275.203 Retention of permit and supporting documents.

The importer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this part are kept. The permit and supporting documents must be made available for inspection by any appropriate ATF officer upon request.

Required Records and Reports

§ 275.204 General.

Every tobacco products importer must keep such records and, when required by this part, submit such reports, of the physical receipt and disposition of tobacco products. Records and reports will not be required under this part with respect to tobacco products while in customs custody.

§ 275.205 Recordkeeping requirements.

Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any tobacco product or cigarette papers or tubes must make and keep records. A person purchasing a tobacco product from the importer in a domestic transaction and who does not knowingly cause merchandise to be imported is not required to make and keep records unless:

(a) The terms and conditions of the importation are controlled by the person placing the order with the importer (e.g., the importer is not an independent contractor but the agent of the person placing the order).

(b) The tobacco products purchased from the importer include more than 60,000 cigarettes, in which case the importer and the person placing the order with the importer must keep the records required by 27 CFR Part 296, Subpart F, Distribution of Cigarettes. Dividing a single shipment of more than 60,000 cigarettes into smaller components of 60,000 cigarettes or less does not exempt any person from the recordkeeping requirements of this subpart.

Filing and Retention of Records and Reports

§ 275.206 Reports.

(a) Importers must file a monthly report on ATF F 5220.6 in accordance with the format and instructions for the form.

(b) The first report(s) must be submitted by the 15th day of the month following the month in which the permit is issued; all previous months beginning January 1, 2000, must also be reported at that time.

For example:

An importer who is issued a permit with a date of August 17, 2000, would be required to submit by September 15, 2000, a total of eight reports for the months January–August, 2000.

(c) Reports with the notation "No Activity" must be made for those months in which no activity occurs.

(d) When a transfer of ownership of the business of an importer of tobacco products described in § 275.224, or when a change in control of a corporation described in § 275.226 occurs, a concluding report with the notation "Concluding Report" must be made for the month or partial month during which the transfer of ownership or change in control becomes effective.

§ 275.207 Filing.

All records and reports required by this part will be maintained separately, chronologically by transaction or reporting date, at the importer's place of business. The appropriate ATF officer may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely transmittal of any documents required to be submitted.

§ 275.208 Retention.

(a) All records and reports required by this part, documents or copies of documents supporting these records or reports, and file copies of reports required by this part to be submitted to ATF must be retained for not less than three years following the close of the calendar year in which filed or made, and during this period must be available for inspection and copying by ATF during business hours.

(b) Furthermore, the appropriate ATF officer may require these records to be kept for an additional period of not more than three years in any case where it is determined that such record retention is necessary to protect the revenue. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, must also be made available for inspection and copying.

Par. 28. Subpart L is added to read as follows:

Subpart L—Changes After Original Qualification of Importers

Changes in Name

Sec.

275.220 Change in individual name.
275.221 Change in trade name.
275.222 Change in corporate name.

Changes in Ownership and Control

275.223 Fiduciary successor.
275.224 Transfer of ownership.
275.225 Change in officers, directors, or stockholders of a corporation.
275.226 Change in control of a corporation.

Changes in Location or Address

275.227 Change in location.
275.228 Change in address.

Subpart L—Changes After Original Qualification of Importers

Changes in Name

§ 275.220 Change in individual name.

Where there is a change in the name of an individual operating as an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

§ 275.221 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by an importer of tobacco products in connection with operations authorized by the permit, the importer must make application on ATF Form 5230.5 for an amended permit to reflect such change within 30 days of such change. The importer must also furnish a true copy of any new trade name certificate or document issued to the business, or statement in lieu thereof, required by § 275.195.

§ 275.222 Change in corporate name.

Where there is a change in the corporate name of an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change. The importer must also furnish such documents as may be necessary to establish that the corporate name has been changed.

Changes in Ownership and Control

§ 275.223 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of an importer of tobacco products, as a continuing operation, such fiduciary must make application for permit, before commencing operations as required by subpart K of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary. However, where a fiduciary intends only to liquidate the business, qualification as an importer of tobacco products will not be required if the fiduciary promptly files with the appropriate ATF officer a written statement to that effect.

§ 275.224 Transfer of ownership.

If a transfer is to be made in ownership of the business of an importer of tobacco products (including a change of any member of a partnership or association), such importer must give notice, in writing, to the appropriate ATF officer, naming the proposed successor and the desired effective date of such transfer. The proposed successor must qualify as an importer of tobacco products, before commencing operations, in accordance with the applicable provisions of subpart K of this part. The importer must give such notice of transfer, and the proposed successor must make application for permit in ample time for examination and approval thereof before the desired date of such change. The predecessor must make a concluding report, in accordance with the provisions of § 275.205, and surrender the permit with such report. The successor must make a commencing report, in accordance with the provisions of § 275.206.

§ 275.225 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of an importer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the importer must, within 30 days of such action, so notify the appropriate ATF officer in writing, giving the identity of such person. In the event that the acquisition of ten or more percent in aggregate of the outstanding stock of such corporation results in a change of control of such corporation, the provisions of § 275.226 will apply. When there is any change in the authority furnished under § 275.196 for officers to act on behalf of the corporation the importer must immediately so notify the appropriate ATF officer in writing.

§ 275.226 Change in control of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation operating as an importer of tobacco products results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate importer must make application on ATF Form 5230.4 for a new permit within 30 days after the change occurs. Otherwise, the present permit will be automatically terminated at the expiration of such 30-day period, and the importer will dispose of all tobacco products on hand, in accordance with this part, make a concluding report, in accordance with the provisions of § 275.206, and surrender his permit with such report. If the application for a new permit is timely made, the present permit will continue in effect pending final action with respect to such application.

Changes in Location or Address

§ 275.227 Change in location.

Whenever an importer of tobacco products intends to relocate the principal business office, the importer must, before commencing operations at the new location, make application on ATF Form 5230.5 for, and obtain, an amended permit.

§ 275. 228 Change in address.

Whenever any change occurs in the address, but not the location, of the principal business office of an importer of tobacco products, as a result of action of local authorities, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

Signed: November 18, 1999.

John W. Magaw,

Director.

Approved: December 7, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32600 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[Notice No. 888]

RIN 1512–AC07

Implementation of Public Law 105–33, Section 9302, Requiring the Qualification of Tobacco Products Importers

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to implement section 9302 of the Balanced Budget Act of 1997. The new law requires importers of tobacco products to qualify for a permit to conduct such operations. These regulations also make clarifying changes to part 275. In this notice of proposed rulemaking, ATF invites comments on the temporary rule.

DATES: Written comments must be received on or before February 22, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attention: Notice Number 888.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen by writing to the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, by telephone at 202–927–8210, or by sending an e-mail to alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The economic impact of this rulemaking on small businesses flows directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking and the associated temporary rule have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Bureau of Alcohol, Tobacco and Firearms at the address previously specified. Because OMB must complete its review of the collections of information between 30 and 60 days after publication, comments on the information collection should be submitted not later than January 21, 2000. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collections of information (see below);
- How to enhance the quality, utility and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of the capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The information collection initiated by this document is in 27 CFR 275.204 and 275.205. The Bureau of Alcohol, Tobacco and Firearms will use this information to protect the revenue. The collection of information is mandatory. The likely recordkeepers are businesses and small businesses. The recordkeeping requirement has been submitted to OMB for review and has been granted a temporary emergency approval by OMB under control number 1512–0555. ATF believes the recordkeeping represents usual and customary business records, so we estimate the total annual burden for the 1500 tobacco products importers as 1 hour.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

Comments may be submitted by facsimile transmission (FAX) to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size; (3) contain a written signature; and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR part 275. For the text of the temporary regulations see T.D. ATF–422, published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The principal author of this document is Clifford A. Mullen, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

Signed: November 18, 1999.

John W. Magaw,

Director.

Approved: December 7, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32601 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 296

[T.D. ATF–423]

RIN 1512–AB95

Floor Stocks Tax for Cigarettes (99R–259P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final Rule (Treasury decision).

SUMMARY: This document implements section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105–33). This document prescribes regulations covering the computation and payment of floor stocks tax on Federally taxpaid or tax determined cigarettes which are held for sale on January 1, 2000 and January 1, 2002. This document also provides regulations for conducting inventories and for maintaining required records associated with the floor stocks tax.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8210, e-mail, *alc/tob@atfhq.atf.treas.gov*.

SUPPLEMENTARY INFORMATION:

General Requirements

Section 9302(j) of the Balanced Budget Act imposes a floor stocks tax on all cigarettes. This floor stocks tax is to be computed on Federally taxpaid or tax determined large and small cigarettes held for sale on the first moment of January 1, 2000 and January 1, 2002.

The floor stocks tax applies to anyone who holds cigarettes for sale on the tax increase dates. This applies to manufacturers, importers, wholesalers and retailers. The tax applies to cigarettes only; the floor stocks tax does not apply to other tobacco products (including cigars, smokeless tobacco, pipe tobacco, and roll-your-own tobacco) or cigarette papers and tubes. Cigarettes that are in vending machines in accordance with 27 CFR 296.212 on the tax increase dates are not subject to the tax.

Inventory Requirements

Liability for the floor stocks tax is determined on the basis of an inventory of cigarettes held for sale. Each person will be required to make either a record of the physical inventory or a book or record inventory supported by the appropriate source records. The inventory must be taken sometime between December 26th and January 10th.

The inventory must separately account for any cigarettes held for sale that have been marked for export from the United States. A package of cigarettes marked for export from the United States has been imprinted or has been labeled with the words "Tax-exempt. For use outside U.S" or "U.S. Tax-Exempt. For use outside U.S." or has a stamp, sticker or notice, required by a foreign country or a possession of the United States, which identifies the foreign country or possession. If a person is required to file a return, that person will report the quantities of these export cigarettes separately on the tax return.

ATF believes that the requirements of a separate inventory and a separate reporting of cigarettes on the tax return marked for export are necessary to enforce the provisions of 26 U.S.C. 5761(c). Section 5761(c) of the IRC penalizes persons who sell, reland or receive cigarettes that have been labeled or shipped for export on or after January 1, 2000. We note that any person who has cigarettes with such export markings that are held on the first moment of January 1, 2000, and are tax paid or tax determined may continue to sell these cigarettes without incurring the penalties of section 5761(c).

The requirements to take a separate inventory of cigarettes that have been marked for export from the United States, and if required, a separate report on the tax return, will identify those who hold such cigarettes and the quantities involved. By identifying the quantities of cigarettes that have been marked for export before January 1, 2000, and the persons holding such cigarettes, ATF can more effectively conduct inspections to ensure compliance with the provisions of 26 U.S.C. 5761(c).

Filing Requirements

Any person holding Federally taxpaid or tax determined cigarettes on January 1, 2000 or January 1, 2002 may have to file a tax return and make payment. Each person is allowed a credit of $500 or the amount of the tax liability, whichever is less. Therefore, a person whose liability is $500 or less will not be required to file a return. However, all persons must maintain an inventory record establishing that the tax liability is $500 or less.

Where tax is due, payment in full must accompany the return. For the tax increases on January 1, 2000, and January 1, 2002, persons must file the floor stocks return and pay the floor stocks tax no later than March 31, 2000, or April 1, 2002, respectively.

Delegations

In the sections of the regulations that are affected by this document, we have replaced obsolete ATF titles with the "appropriate ATF officer" and referred to a delegation order that specifies the current title of the ATF official for each activity. The titles of responsible persons in the remaining sections of regulations in this part will be updated by future technical amendments.

Administrative Procedure Act

This document merely implements sections of the law that were enacted on August 5, 1997. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to 26 U.S.C. 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses pursuant to section 7805(f).

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866.

Paperwork Reduction Act of 1995

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection information for OMB number 1512–0504 is found in 27 CFR 296.196 and 296.262. The collection information for OMB number 1512–0141 is found in 27 CFR 296.253. This information is required to ensure proper

records and payment of floor stocks tax on cigarettes. The collection of information is mandatory for respondents who are primarily businesses or otherwise operate for profit. The estimated average burden of this information collection is 4 hours per respondent for a small business and 12 hours per respondent for a large business. The overall burden of this information collection is estimated at 2 million hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document is Jackie White of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 296

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

PART 296—[AMENDED]

Paragraph 1. The authority citation for part 296 is revised to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

Par. 2. Subpart I is revised to read as follows:

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

General

Sec.

296.191 Purpose of this subpart.
296.192 Terms used in this subpart.
296.193 Floor stocks tax defined.
296.194 Persons liable for this tax.
296.195 Persons not liable for this tax.
296.196 Floor stocks requirements.

Inventories

296.201 Establish quantities of cigarettes.
296.202 Inventory for cigarettes with export markings.
296.203 How to identify cigarettes with export markings.
296.204 When to take inventory.
296.205 Physical inventory requirements.
296.206 Book or record inventory requirements.
296.207 Cigarettes in transit.
296.208 Guidelines to determine title of cigarettes in transit.
296.209 Cigarettes in a foreign trade zone.
296.210 Cigarettes held in bond.
296.211 Unmerchantable cigarettes.
296.212 Cigarettes in vending machines.
296.213 Cigarettes marked "not for sale" or "complimentary."

Compute Tax Liability

296.221 Determine amount of tax due.
296.222 Floor stocks tax rates.
296.223 Apply tax credit.

Filing Requirements

296.231 How to obtain a tax return.
296.232 Prepare tax return.
296.233 How to pay.
296.234 Tax return due dates.
296.235 Filing requirements for multiple locations.
296.236 Cigarettes in a warehouse.
296.237 Controlled group members.

Records

296.241 Required records.
296.242 Period for maintaining records.
296.243 Cigarettes at multiple locations.
296.244 Where records must be maintained.
296.245 Errors in records.

Claims

296.251 Before filing a claim.
296.252 When to file a claim for errors on return.
296.253 How to file a claim for errors on return.
296.254 Destruction of cigarettes by a Presidentially-declared major disaster.
296.255 Additional reasons for filing a claim.

Alternate Methods or Procedures

296.261 Purpose of an alternate method or procedure.
296.262 How to apply for approval.
296.263 Conditions for approval.
296.264 Withdrawal of an alternate method or procedure.

ATF Authorities

296.270 Delegations of the Director
296.271 Entry, examination and testimony.
296.272 Issuance of summons.
296.273 Refusing entry or examination.
296.274 Penalties for failure to comply.

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

Authority: Section 9302, Pub.L. 105–33, 111 Stat. 251, unless otherwise noted.

General

§ 296.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

§ 296.192 Terms used in this subpart.

(a) *Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart by ATF Order 1130.14, Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296.

(b) *Controlled group.* Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1 (a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563–1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(d) *Large cigarettes.* Cigarettes weighing more than three pounds per thousand.

(e) *Person.* When the term "person" is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

(f) *Small cigarettes.* Cigarettes weighing not more than three pounds per thousand.

(g) *Tax increase dates.* For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

§ 296.193 Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

§ 296.194 Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid or tax determined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to §§ 296.207 and 296.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 296.209).

§ 296.195 Persons not liable for this tax.

If you do not hold any taxpaid or tax determined cigarettes for sale at the moment a tax increase is effective, you are not liable for this tax.

§ 296.196 Floor stocks requirements.

(a) *Take an inventory.* Establish the quantity of cigarettes subject to the floor stocks tax held for sale at the beginning of the tax increase dates (January 1, 2000 and January 1, 2002). You may take a physical inventory or you may use a book or record inventory, as specified in §§ 296.205 and 296.206.

(b) *Compute tax amount.* Compute the amount of tax for the cigarettes held for sale at the start of each of the tax increase dates. Refer to the table shown in § 296.222. Apply the tax credit as provided by § 296.223.

(c) *File tax return.* After you have computed the floor stocks tax, you must file a return for each tax increase date if tax is due.

(d) *Maintain records.* Maintain all records used to determine the quantity of cigarettes on hand at the start of each tax increase date. You must also maintain all computations used to determine the amount of tax owed. Refer to § 296.241.

(Approved by the Office of Management and Budget under control number 1512–0554)

Inventories

§ 296.201 Establish quantities of cigarettes.

You must take an inventory to establish the quantity of cigarettes subject to the floor stocks tax. You may take a physical inventory or a book or record inventory.

§ 296.202 Inventory for cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

§ 296.203 How to identify cigarettes with export markings.

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words "Tax-exempt. For use outside U.S." or "U.S. Tax Exempt. For use outside U.S."; or

(b) A stamp, sticker, or notice, required by a foreign country or possession of the United States, which identifies such country or possession.

§ 296.204 When to take inventory.

You must take your physical inventory or book or record inventory during the periods noted in the table to this section.

Date of floor stocks tax	Not earlier than	No later than
January 1, 2000	December 26, 1999	January 10, 2000.
January 1, 2002	December 26, 2001	January 10, 2002.

§ 296.205 Physical inventory requirements.

Your physical inventory must include a written record of:

(a) *Quantity and Type.* You must record the quantity and type of cigarettes in sufficient detail to determine the tax rate as stated in § 296.222 and whether the cigarettes have export markings as stated in § 296.203. The following chart provides the type of cigarette and method to use to determine quantities:

Type or kind	Inventory method
Small cigarettes (Class A) ...	Count the: • Number of cigarettes without export markings. • Number of cigarettes with export markings.
Large cigarettes (Class B) ...	Count the: • Number of large cigarettes 6.5″ or less in length without export markings. • Number of large cigarettes 6.5″ or less in length with export markings. • Number of each size of large cigarettes more than 6.5″ in length without export markings. • Number of each size of large cigarettes more than 6.5″ in length with export markings.

(b) *Date.* Date(s) the inventory was taken.

(c) *Name.* Name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.

(d) *Location.* Record where the inventory was taken (street address, city and State).

(e) *Time.* The physical inventory must be taken between the dates shown in § 296.204. If you do not take the physical inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled. The inventory records must be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 2000 and January 1, 2002, respectively. These records must include all supporting records of receipt and disposition.

§ 296.206 Book or record inventory requirements.

You may use a book or record inventory if you have source records that show:

(a) The quantity of receipts and dispositions of all cigarettes.

(b) The actual type and quantities of cigarettes on hand as if a physical inventory had taken place the moment the tax increase became effective. Refer to § 296.205(a).

(c) The name and address of the consignor and consignee.

(d) The date of receipt or disposition of the cigarettes.

(e) The brand name of each product.

(f) If you do not take the inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled as described in § 296.205(e).

§ 296.207 Cigarettes in transit.

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the

title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

§ 296.208 Guidelines to determine title of cigarettes in transit.

You may use the following guidelines to establish who holds title to cigarettes in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.

(1) *Freight on board (F.O.B.) destination.* The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.

(2) *Freight on board (F.O.B.) shipping point.* The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

§ 296.209 Cigarettes in a foreign trade zone.

You are liable for the tax and must take an inventory when either of the following conditions apply:

(a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or

(b) Cigarettes are held by a Customs officer pursuant to the second proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

§ 296.210 Cigarettes held in bond.

If you are a manufacturer or an export warehouse proprietor and hold cigarettes in ATF bond on the tax increase dates, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

§ 296.211 Unmerchantable cigarettes.

Any cigarettes that you hold for return to a supplier because of some defect are not subject to the floor stocks tax. You must prepare a separate list of these items. You cannot include as unmerchantable any items that may be held because of poor market demand or to reduce your inventory.

§ 296.212 Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

(a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and

(b) The cigarettes are ready to be dispensed by a consumer.

§ 296.213 Cigarettes marked "not for sale" or "complimentary."

Cigarettes marked "not for sale" or "complimentary" that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by §§ 296.205 and 296.206. Cigarettes that are marked "not for sale" or "complimentary" and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

Compute Tax Liability

§ 296.221 Determine amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in § 296.222. Multiply the amount of each type of cigarette by the applicable tax rate.

§ 296.222 Floor stocks tax rates.

Type or kind	January 1, 2000	January 1, 2002
Small Cigarettes (3 pounds or less per 1,000)	$5 per 1,000 or 10 cents per 20	$2.50 per 1,000 or 5 cents per 20
Large Cigarettes (more than 3 pounds per 1,000)	$10.50 per 1,000 or 21 cents per 20	$5.25 per 1,000 or 10.5 cents per 20

Special rule: For large cigarettes over 6½ inches long determine the rate for each length. Multiply the rate prescribed for small cigarettes by the whole number that represents the addition of each 2¾ inches and any fraction of the length, as one (1).

§ 296.223 Apply tax credit.

You are allowed a credit against your floor stocks tax of up to $500. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

Filing Requirements

§ 296.231 How to obtain a tax return.

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

(a) ATF web site (www.atf.treas.gov);

(b) ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5950, telephone (703) 455–7801; or

(c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202–3263, telephone (800) 398–2282 or (513) 684–7151.

§ 296.232 Prepare tax return.

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 296.233 How to pay.

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (a) of this section.

(a) *Electronic fund transfer.* If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

(1) ATF web site (www.atf.treas.gov);

(2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, telephone (703) 455–7801; or

(3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202–3263, telephone (800) 398–2282 or (513) 684–7151.

(b) [Reserved]

§ 296.234 Tax return due dates.

Tax increase date	File tax return no later than:
January 1, 2000.	March 31, 2000 [1]
January 1, 2002.	April 1, 2002

[1] Section 9302(j) of P.L. 105–33 states that the due date is April 1, 2000. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax for this period is due on March 31, 2000 since April 1, 2000, falls on a Saturday.

§ 296.235 Filing requirements for multiple locations.

You may file a consolidated return if all locations or places of business have the same employer identification number. You also have the option of filing a separate return for each place of business or location.

§ 296.236 Cigarettes in a warehouse.

(a) Cigarettes warehoused at one or more locations must be reported on the tax return representing the location where the cigarettes will be offered for sale.

(b) Cigarettes offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The cigarettes can be reported by a single location or apportioned among several locations.

§ 296.237 Controlled group members.

If you are a member of a controlled group, you must file if the combined liability with other members is more than $500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in § 296.223 if it is apportioned to you as a member of the controlled group.

Records

§ 296.241 Required records.

You must maintain:

(a) Inventory records.

(b) Tax computations.

(c) Names, addresses and employer identification number of all controlled group members, if applicable.

(d) Copy of tax return, if you filed one.

(e) List of locations and warehouses covered by the tax return.

(f) Any approved alternate method or procedure under 296.263.

§ 296.242 Period for maintaining records.

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown in the table to this section.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return	3 years from the tax increase date.
Filed a tax return on or before the due date of the return	3 years from the due date of the tax return, as specified in § 296.234.
Filed a tax return after the due date of the tax return	3 years from the date of filing the tax return.

§ 296.243 Cigarettes at multiple locations.

You must maintain a list of each place where you hold cigarettes subject to the floor stocks tax. This list must include:

(a) Address.

(b) Name of the proprietor (if different).

(c) The employer identification number (if different).

(d) Quantity and classification of all cigarettes held at each location.

§ 296.244 Where records must be maintained.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

§ 296.245 Errors in records.

If your inventory records or tax computation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax computation records contain an error that resulted in an underpayment of tax, you must file an additional tax return on which you show and pay the additional tax, interest and any applicable penalties.

Claims

§ 296.251 Before filing a claim.

Before you can file a claim for refund, you must have paid your floor stocks tax on ATF F 5200.28T and subsequently determined that you overpaid the tax.

§ 296.252 When to file a claim for errors on return.

You must file the claim within 3 years from the due date of filing the tax return or 2 years from the time the tax was paid, whichever is later.

§ 296.253 How to file a claim for errors on return.

Your claim must be filed on ATF Form 2635 (5620.8). The claim must include detailed and sufficient evidence to support why you believe the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1512–0554)

§ 296.254 Destruction of cigarettes by a Presidentially-declared major disaster.

After you have paid the floor stocks tax, you may file a claim for refund of tax on cigarettes lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Refer to subpart C of this part for the time, evidence and procedures for filing a claim.

§ 296.255 Additional reasons for filing a claim.

(a) *Manufacturer.* 27 CFR part 270, subparts I and K state the times, reasons and procedures for filing a claim for refund.

(b) *Export warehouse proprietor.* 27 CFR part 290, subpart G, states the time, evidence and procedures for filing a claim for refund.

(c) *Exported taxpaid.* If cigarettes are shipped from the United States, you may file a claim for drawback of taxes under subpart K of 27 CFR part 290.

(d) *Importer.* An importer may follow the procedures for filing a claim as described in 27 CFR part 275, subpart I.

Alternate Methods or Procedures

§ 296.261 Purpose of an alternate method or procedure.

An alternate method or procedure is a different way of performing a requirement than is provided in this subpart of regulations. You would only make a request if you wanted to perform a requirement in a different way than is provided in this subpart.

§ 296.262 How to apply for approval.

You must apply in writing to the National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202–3263. You must describe the alternate method or procedure and reasons you wish to use it. You cannot use the alternate method until you receive written approval from ATF.

(Approved by the Office of Management and Budget under control number 1512–0554)

§ 296.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

(a) There is good cause for its use.

(b) It is consistent with the purpose and effect intended by the prescribed method or procedure.

(c) It affords equivalent security to the revenue.

(d) It is not contrary to any provision of law.

(e) It will not result in an increase in cost to the Government.

(f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes.

(g) It is not a method or procedure that relates to the payment or collection of tax.

§ 296.264 Withdrawal of an alternate method or procedure.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. ATF will give you a written notice of the withdrawal.

ATF Authorities

§ 296.270 Delegations of the Director.

The regulatory authorities of the Director contained in this subpart are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.14, Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR part 296. ATF delegation orders, such as ATF O 1130.14, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

§ 296.271 Entry, examination and testimony.

Appropriate ATF officers, in performing official duties, may enter any premises to examine cigarettes subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate ATF officers may audit and examine all cigarettes, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining or collecting floor stocks tax. They may take testimony (under oath) of any person when inquiring as to proper payment of floor stocks taxes.

§ 296.272 Issuance of summons.

Appropriate ATF officers can issue summonses when there is no Justice Department referral under the authority stated in 27 CFR 70.22. The summons will state a place and time for such items or person to appear. ATF will issue a summons to require:

(a) Any books of account or other data pertaining to liability of floor stocks tax.

(b) Any person liable for the floor stocks tax or having possession of books of account or other data.

(c) Any other appropriate person in connection with the books or tax liability.

§ 296.273 Refusing entry or examination.

If you or another person in charge of the premises refuses to admit any appropriate ATF officer or prevents any appropriate ATF officer from examining the records or cigarettes, you may be liable for the penalties described in 26 U.S.C. 7342 and 7212, respectively.

§ 296.274 Penalties for failure to comply.

If you fail to follow these regulations, ATF may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against you if you do not timely file your tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.

Signed: October 13, 1999.

John W. Magaw,

Director.

Approved: October 27, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–32604 Filed 12–21–99; 8:45 am]

BILLING CODE 4810–31–P

federal register

Wednesday
December 22, 1999

Part V

Department of Education

34 CFR Part 76
State-administered Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 76

State-administered Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) governing State-administered programs. These final regulations are necessary to implement a recent statutory change that affects all elementary and secondary education programs administered by the United States Department of Education (Department) under which the Secretary allocates funds to States on a formula basis. The regulations will ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under these programs.

DATES: These regulations are effective January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie Hankerson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C120, Washington, DC 20202–6140. Telephone: (202) 205–8524. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On May 18, 1999, the Secretary published in the **Federal Register** (64 FR 27152) a notice of proposed rulemaking (NPRM) proposing to revise sections in EDGAR governing State-administered programs. These proposed amendments were designed to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under these programs.

Prior to publishing the NPRM, the Department took a number of steps to consult with State and local officials regarding the statutory provision that these final regulations implement, and the specific measures the Secretary proposed to undertake to assist States and localities in meeting their obligations under it. In December 1998, the Department sent two letters to chief State school officers informing them of changes to the Public Charter Schools Program (PCSP) as a result of passage of the Charter School Expansion Act of 1998 (Act). The second letter specifically highlighted the requirement in section 10306 of the Act that the Secretary and States take measures to ensure that charter schools receive the Federal-to-State formula funds for which they are eligible within five months of opening for the first time or expanding their enrollment. In March 1999, Department officials discussed the new provision and our plans for implementing it with State and local officials, as well as charter school operators and developers, at our national conference on charter schools.

Since publication of the NPRM, we have consulted with State officials through an SEA chat room on the Department's internet web site, and at several meetings, including two national Title I meetings. In addition, we sent two letters to chief State school officers and State program directors specifically requesting comments on the NPRM.

In the preamble to the NPRM, the Secretary discussed on pages 27152 and 27153 the major provisions in the proposed regulations. These provisions would amend Part 76 of EDGAR by redesignating subpart H as subpart I, and adding a new subpart H. The proposed provisions included the following:

- For covered programs in which States and local educational agencies (LEAs) allocate funds by formula, a requirement that States and LEAs implement procedures that ensure that each charter school opening for the first time or significantly expanding its enrollment on or before November 1 of an academic year receives the full amount of funds for which it is eligible within five months of the date the charter school opens or significantly expands its enrollment.
- For each charter school opening or significantly expanding its enrollment after November 1 but before February 1 of an academic year, a requirement that States and LEAs implement procedures that ensure that the charter school receives at least a *pro rata* portion of the funds for which the charter school is eligible within five months of the date the charter school opens or significantly expands its enrollment.
- For each charter school opening or significantly expanding its enrollment on or after February 1, a provision permitting, but not requiring, States and LEAs to implement procedures to provide the charter school with a *pro rata* portion of the funds for which the charter school is eligible under a covered program.
- For covered programs in which States and LEAs award funds through a competitive process, a requirement that States and LEAs implement procedures that ensure that each eligible charter school scheduled to open during the academic year has a full and fair opportunity to compete to participate in the program.
- A general prohibition against States and LEAs relying on enrollment or eligibility data from a prior year in determining a charter school's eligibility to receive funds under a covered program during an academic year in which the charter school opens for the first time or significantly expands its enrollment, even if allocations to other LEAs or public schools are based on a prior year's data.
- An exemption from the proposed regulations for SEAs and LEAs that do not allocate funds by formula or hold competitions among eligible applicants under a covered program.

These final regulations contain several significant changes from the NPRM. These changes are fully explained in the "Analysis of Comments and Changes" attached as an appendix to these final regulations. The changes pertain to the meaning of the term *significant expansion of enrollment;* the time period within which SEAs and LEAs are required to make allocations to charter schools that open or expand between November 1 and February 1; the entities that can provide the required 120-day notice to an SEA or LEA; and the penalty for a charter school's failure to comply with the 120-day notice requirement.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

Some of the programs that are affected by these final regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

Dated: December 16, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 76 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, 6511(a), and 8065a, unless otherwise noted.

2. Subpart H of part 76 is redesignated as subpart I.

3. A new subpart H is added to part 76 to read as follows:

Subpart H—How Does a State or Local Educational Agency Allocate Funds to Charter Schools?

General

76.785 What is the purpose of this subpart?
76.786 What entities are governed by this subpart?
76.787 What definitions apply to this subpart?

Responsibilities for Notice and Information

76.788 What are a charter school LEA's responsibilities under this subpart?
76.789 What are an SEA's responsibilities under this subpart?

Allocation of Funds by State Educational Agencies

76.791 On what basis does an SEA determine whether a charter school LEA that opens or significantly expands its enrollment is eligible to receive funds under a covered program?
76.792 How does an SEA allocate funds to eligible charter school LEAs under a covered program in which the SEA awards subgrants on a formula basis?
76.793 When is an SEA required to allocate funds to a charter school LEA under this subpart?
76.794 How does an SEA allocate funds to charter school LEAs under a covered program in which the SEA awards subgrants on a discretionary basis?

Adjustments

76.796 What are the consequences of an SEA allocating more or fewer funds to a charter school LEA under a covered program than the amount for which the charter school LEA is eligible when the charter school LEA actually opens or significantly expands its enrollment?
76.797 When is an SEA required to make adjustments to allocations under this subpart?

Applicability of This Subpart to Local Educational Agencies

76.799 Do the requirements in this subpart apply to LEAs?

Subpart H—How Does a State or Local Educational Agency Allocate Funds to Charter Schools?

General

§ 76.785 What is the purpose of this subpart?

The regulations in this subpart implement section 10306 of the Elementary and Secondary Education Act of 1965 (ESEA), which requires States to take measures to ensure that each charter school in the State receives the funds for which it is eligible under a covered program during its first year of operation and during subsequent years in which the charter school expands its enrollment.

(Authority: 20 U.S.C. 8065a)

§ 76.786 What entities are governed by this subpart?

The regulations in this subpart apply to—

(a) State educational agencies (SEAs) and local educational agencies (LEAs) that fund charter schools under a covered program, including SEAs and LEAs located in States that do not participate in the Department's Public Charter Schools Program;

(b) State agencies that are not SEAs, if they are responsible for administering a covered program. State agencies that are not SEAs must comply with the provisions in this subpart that are applicable to SEAs; and

(c) Charter schools that are scheduled to open or significantly expand their enrollment during the academic year and wish to participate in a covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.787 What definitions apply to this subpart?

For purposes of this subpart—

Academic year means the regular school year (as defined by State law, policy, or practice) and for which the State allocates funds under a covered program.

Charter school has the same meaning as provided in title X, part C of the ESEA.

Charter school LEA means a charter school that is treated as a local educational agency for purposes of the applicable covered program.

Covered program means an elementary or secondary education program administered by the Department under which the Secretary allocates funds to States on a formula basis, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis.

Local educational agency has the same meaning for each covered program as provided in the authorizing statute for the program.

Significant expansion of enrollment means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that the SEA determines to be significant.

(Authority: 20 U.S.C. 8065a)

Reponsibilities for Notice and Information

§ 76.788 What are a charter school LEA's responsibilities under this subpart?

(a) *Notice.* At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide its SEA with written notification of that date.

(b) *Information.* (1) In order to receive funds, a charter school LEA must provide to the SEA any available data or information that the SEA may reasonably require to assist the SEA in estimating the amount of funds the charter school LEA may be eligible to receive under a covered program.

(2)(i) Once a charter school LEA has opened or significantly expanded its enrollment, the charter school LEA must provide actual enrollment and eligibility data to the SEA at a time the SEA may reasonably require.

(ii) An SEA is not required to provide funds to a charter school LEA until the charter school LEA provides the SEA with the required actual enrollment and eligibility data.

(c) *Compliance.* Except as provided in § 76.791(a), or the authorizing statute or implementing regulations for the applicable covered program, a charter school LEA must establish its eligibility and comply with all applicable program requirements on the same basis as other LEAs.

(Approved by the Office of Management and Budget under control number 1810–0623)

(Authority: 20 U.S.C. 8065a)

§ 76.789 What are an SEA's responsibilities under this subpart?

(a) *Information.* Upon receiving notice under § 76.788(a) of the date a charter school LEA is scheduled to open or significantly expand its enrollment, an SEA must provide the charter school LEA with timely and meaningful information about each covered program in which the charter school LEA may be eligible to participate, including notice of any upcoming competitions under the program.

(b) *Allocation of Funds.* (1) An SEA must allocate funds under a covered program in accordance with this subpart to any charter school LEA that—

(i) Opens for the first time or significantly expands its enrollment during an academic year for which the State awards funds by formula or through a competition under the program;

(ii) In accordance with § 76.791(a), establishes its eligibility and complies with all applicable program requirements; and

(iii) Meets the requirements of § 76.788(a).

(2) In order to meet the requirements of this subpart, an SEA may allocate funds to, or reserve funds for, an eligible charter school LEA based on reasonable estimates of projected enrollment at the charter school LEA.

(3)(i) The failure of an eligible charter school LEA or its authorized public chartering agency to provide notice to its SEA in accordance with § 76.788(a) relieves the SEA of any obligation to allocate funds to the charter school within five months.

(ii) Except as provided in § 76.792(c), an SEA that receives less than 120 days' actual notice of the date an eligible charter school LEA is scheduled to open or significantly expand its enrollment must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under the applicable covered program for the succeeding academic year.

(iii) The SEA may provide funds to the charter school LEA from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Approved by the Office of Management and Budget under control number 1810–0623)

(Authority: 20 U.S.C. 8065a)

Allocation of Funds by State Educational Agencies

§ 76.791 On what basis does an SEA determine whether a charter school LEA that opens or significantly expands its enrollment is eligible to receive funds under a covered program?

(a) For purposes of this subpart, an SEA must determine whether a charter school LEA is eligible to receive funds under a covered program based on actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA opens or significantly expands its enrollment.

(b) For the year the charter school LEA opens or significantly expands its enrollment, the eligibility determination may not be based on enrollment or eligibility data from a prior year, even if the SEA makes eligibility determinations for other LEAs under the program based on enrollment or eligibility data from a prior year.

(Authority: 20 U.S.C. 8065a)

§ 76.792 How does an SEA allocate funds to eligible charter school LEAs under a covered program in which the SEA awards subgrants on a formula basis?

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives the proportionate amount of funds for which the charter school LEA is eligible under each covered program.

(b) For each eligible charter school LEA that opens or significantly expands its enrollment after November 1 but before February 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives at least a *pro rata* portion of the proportionate amount of funds for which the charter school LEA is eligible under each covered program. The *pro rata* amount must be based on the number of months or days during the academic year the charter school LEA will participate in the program as compared to the total number of months or days in the academic year.

(c) For each eligible charter school LEA that opens or significantly expands its enrollment on or after February 1 of an academic year, the SEA may implement procedures to provide the charter school LEA with a *pro rata* portion of the proportionate amount of funds for which the charter school LEA is eligible under each covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.793 When is an SEA required to allocate funds to a charter school LEA under this subpart?

Except as provided in §§ 76.788(b) and 76.789(b)(3):

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must allocate funds to the charter school LEA within five months of the date the charter school LEA opens or significantly expands its enrollment; and

(b)(1) For each eligible charter school LEA that opens or significantly expands its enrollment after November 1, but before February 1 of an academic year, the SEA must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under the applicable covered program for the succeeding academic year.

(2) The SEA may provide funds to the charter school LEA from the SEA's allocation under the program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Authority: 20 U.S.C. 8065a)

§ 76.794 How does an SEA allocate funds to charter school LEAs under a covered program in which the SEA awards subgrants on a discretionary basis?

(a) *Competitive programs.* (1) For covered programs in which the SEA awards subgrants on a competitive basis, the SEA must provide each eligible charter school LEA in the State that is scheduled to open on or before the closing date of any competition under the program a full and fair opportunity to apply to participate in the program.

(2) An SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or significantly expanded its enrollment to compete for funds under a covered program.

(b) *Noncompetitive discretionary programs.* The requirements in this subpart do not apply to discretionary programs or portions of programs under which the SEA does not award subgrants through a competition.

(Authority: 20 U.S.C. 8065a)

Adjustments

§ 76.796 What are the consequences of an SEA allocating more or fewer funds to a charter school LEA under a covered program than the amount for which the charter school LEA is eligible when the charter school LEA actually opens or significantly expands its enrollment?

(a) An SEA that allocates more or fewer funds to a charter school LEA than the amount for which the charter school LEA is eligible, based on actual enrollment or eligibility data when the charter school LEA opens or significantly expands its enrollment, must make appropriate adjustments to the amount of funds allocated to the charter school LEA as well as to other LEAs under the applicable program.

(b) Any adjustments to allocations to charter school LEAs under this subpart must be based on actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA first opens or significantly expands its enrollment, even if allocations or adjustments to allocations to other LEAs in the State are based on enrollment or eligibility data from a prior year.

(Authority: 20 U.S.C. 8065a)

§ 76.797 When is an SEA required to make adjustments to allocations under this subpart?

(a) The SEA must make any necessary adjustments to allocations under a covered program on or before the date the SEA allocates funds to LEAs under the program for the succeeding academic year.

(b) In allocating funds to a charter school LEA based on adjustments made in accordance with paragraph (a) of this section, the SEA may use funds from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Authority: 20 U.S.C. 8065a)

Applicability of This Subpart to Local Educational Agencies

§ 76.799 Do the requirements in this subpart apply to LEAs?

(a) Each LEA that is responsible for funding a charter school under a covered program must comply with the requirements in this subpart on the same basis as SEAs are required to comply with the requirements in this subpart.

(b) In applying the requirements in this subpart (except for §§ 76.785, 76.786, and 76.787) to LEAs, references to SEA (or State), charter school LEA, and LEA must be read as references to LEA, charter school, and public school, respectively.

(Authority: 20 U.S.C. 8065a)

Appendix to the Preamble—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Need for Final Regulations

Comments: Five commenters expressed strong support for the issuance of final regulations in order to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the Federal-to-State formula funds for which they are eligible in a timely fashion. Two commenters objected to the issuance of final regulations as premature and inconsistent with the Department's regulatory principles. These commenters recommended that the Secretary issue the proposed regulations as nonregulatory guidance to determine whether final regulations are absolutely necessary.

Discussion: The Secretary believes that these final regulations are necessary to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under the covered programs in accordance with the requirements of section 10306 of the Act. A number of State and local officials as well as charter school operators have raised questions about the proper interpretation of section 10306 of the Act, and have requested guidance from the Department regarding implementation of the provision. Due to a number of factors, including the importance of the statutory requirement and the high level of uncertainty regarding its interpretation, the Secretary believes that final regulations are necessary to ensure a uniform interpretation of the law among States. Also, consistent with the Department's Principles for Regulating, the provisions in these final regulations are intended to allow SEAs and LEAs maximum flexibility to develop procedures that will enable them to comply with the statutory requirement in a manner that minimizes any disruption in State and local administration of the covered programs.

Changes: None.

Need for Nonregulatory Guidance

Comments: Six commenters recommended that the Secretary issue nonregulatory guidance to assist States in implementing these final regulations. Three commenters specifically requested guidance on the effect of the regulations on State administration of funds under Part B of the Individuals with Disabilities Education Act (IDEA), including the funding formulas in the Grants to States Program and the Preschool Grants Program.

Discussion: The Secretary agrees that the issuance of nonregulatory guidance would be useful to assist States in implementing these final regulations. Accordingly, within the next several months, we intend to issue guidance that will address specific implementation issues relating to the various covered programs, including allocation issues under Part B of IDEA and Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965 (ESEA). For a discussion of the effect of these final regulations on Part B of IDEA, see "Allocation of Funds" in this "Analysis of Comments and Changes."

Changes: None.

Information Collection Requirements

Comments: One commenter requested that the Secretary describe in the final regulations the specific types of information SEAs and LEAs will be expected to collect under the regulations.

Discussion: The two provisions in these regulations that impose information collection requirements on SEAs, LEAs, and charter schools are §§ 76.788 and 76.789(a). Section 76.788 requires new and expanding charter schools to notify their SEA or LEA of the date the charter school is scheduled to open or expand, and to provide the SEA or LEA with eligibility and enrollment data.

Under § 76.789(a), SEAs and LEAs must provide timely and meaningful information to new and expanding charter schools.

In light of the potential administrative burden that compliance with the statutory requirement may place on States and localities, we believe it is important to allow States and LEAs as much flexibility as possible in determining the specific information they will need to collect from and provide to charter schools, and in developing the necessary procedures for transferring that information. We believe it would be counterproductive to include any additional specifications for the collection of information in these final regulations.

Changes: None.

Definition of Academic Year (§ 76.787)

Comment: One commenter recommended that the Secretary define *academic year* in the final regulations.

Discussion: We agree that defining *academic year* in these final regulations is useful, and considered several factors in crafting the definition. First, while all State laws require a minimum number of days that school districts must provide academic instruction, most States give their districts discretion to establish the actual opening dates and calendar of the school year. In a few cases, States establish the school calendar year for its LEAs. In either case, the opening dates of the school or *academic year* typically range from mid-August to mid-September. Another important factor that is incorporated into the definition is the use of the term *academic year* as a placeholder reference for the fiscal year or budget period for which a State allocates funds under a covered program.

Changes: We have revised § 76.787 to add a definition for the term *academic year*. The definition preserves State and local flexibility in establishing an academic year calendar, but references the fiscal period for which the State allocates funds under a covered program.

Definition of Charter School LEA (§ 76.787)

Comments: Two commenters objected to the definition of *charter school LEA* set forth in the proposed regulations because it would allow charter schools to be treated as an LEA for purposes of some covered programs but not others. Three commenters expressed concern that charter schools will manipulate the system by claiming to be an LEA or a public school within an LEA for different programs, depending on whether the charter school deems it to be convenient. One commenter recommended that the definition of *charter school LEA* be based on State law.

Discussion: We disagree that allowing a charter school to be treated as an LEA for purposes of some covered programs and a public school within an LEA for purposes of other covered programs will lead to widespread manipulation of the system by charter schools. Each of the Federal statutes governing the covered programs defines *LEA* for purposes of the programs authorized under the statute. Because these definitions are broad and rely heavily on State law, the Secretary generally will defer to the State on the question of whether a charter school is an LEA or a public school within an LEA.

As a general rule, however, a charter school cannot be an LEA and a public school within an LEA under the same Federal definition. Title XIV of the ESEA defines *LEA* for purposes of programs authorized under the ESEA. Because both the Title I Program and the Safe and Drug-Free Schools and Communities Program are authorized under the ESEA, for example, a charter school could not be an LEA for purposes of Title I and a school within an LEA for purposes of Safe and Drug-Free Schools. Likewise, because the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) adopts the ESEA definition of *LEA*, a charter school could not be treated differently for purposes of ESEA programs and programs authorized under Perkins III.

IDEA, on the other hand, contains its own definition of *LEA*. Therefore, it is conceivable that a charter school could be treated as an LEA for purposes of ESEA and Perkins III programs, and a public school within an LEA for purposes of programs authorized under Part B of IDEA. The charter school would have to be treated consistently, however, under the Preschool Grants Program and the Grants to States Program, since both of these programs are authorized under Part B of IDEA.

One possible exception to the general rule that a charter school cannot be treated as an LEA and a public school within an LEA under different covered programs that rely on the same Federal definition of *LEA*, is where a State law provision specifically authorizes charter schools to elect to be treated as an LEA or a public school within an LEA for purposes of a particular program. In such a case, the Secretary generally will defer to State law.

Changes: None.

Definition of Significant Expansion of Enrollment (§ 76.787)

Comments: Six commenters requested that the Secretary include in the final regulations a definition for *significant expansion of enrollment* in order to avoid unnecessary conflict between States and charter schools. Two of these commenters recommended that the term be defined based on congressional intent and the Secretary's considerations in the preamble to the proposed regulations. One commenter opposed defining the term in the final regulations but suggested, instead, that the final regulations include a provision specifically authorizing States to define the term.

Discussion: We agree that defining *significant expansion of enrollment* in these final regulations is necessary to clarify a major component of the regulations. Consistent with the overall intent of these final regulations, however, we believe that the term should be defined in a manner that gives meaning to the statutory provision upon which these regulations are based, while allowing States maximum flexibility in implementing the statutory and regulatory requirements. The requirements in these final regulations are not triggered by minor increases in enrollment caused by normal turnover. Rather, these regulations apply to substantial increases in enrollment that are caused by significant, or abnormal, events.

A charter school for the performing arts, for example, may offer two educational programs that focus on music and art. If the charter school were to add a third educational program in dance, and the addition of that educational program resulted in a substantial increase in the number of students attending the charter school, then the SEA or LEA serving the charter school would be required to comply with these final regulations when providing funds to the charter school under a covered program. It is not enough for a charter school to experience a significant event, but the event must also result in a substantial increase in the number of students attending the charter school.

Changes: We have revised § 76.787 to define the term *significant expansion of enrollment*. The definition is similar to the definition set forth in the preamble to the proposed regulations, but is broader in that it focuses on substantial increases in a charter school's overall enrollment without regard to student eligibility for program funds. In addition, SEAs are given flexibility to treat any expansion of enrollment as significant.

120–Day Notice Requirement (§ 76.788(a))

Comments: One commenter supported the 120-day notice requirement, but recommended that charter schools also be required to provide auditable enrollment information to the State or LEA at the time the charter school provides the notice. Another commenter opposed the 120-day notice requirement because of the delay that many charter schools encounter in receiving approval of their charters. This commenter recommended that the regulations be revised to require charter schools to notify the State or LEA of the date the charter school is scheduled to open or expand 60 days before the charter school opens or expands, or within 30 days of the date the charter school receives its charter.

Discussion: We believe that it is unreasonable to expect a charter school that has not yet opened or expanded to be able to provide auditable enrollment information to its SEA or LEA. It is not unreasonable, however, to expect a charter school to know, at least 120 days in advance, the date the charter school anticipates opening or expanding. Most successful charter schools will spend at least 120 days planning prior to opening for the first time or significantly expanding their enrollment. Because SEAs and LEAs may be required to reserve a portion of funds under each covered program for eligible charter schools that open or expand during the academic year, SEAs and LEAs will need to know as early as possible the number of charter schools that are scheduled to open or expand. Moreover, these final regulations do not preclude a prospective charter school from notifying its SEA or LEA of the date the charter school is scheduled to open, pending final approval of its charter.

Changes: None.

Penalty for Charter School's Failure to Provide Notice (§ 76.789(b)(3))

Comments: One commenter objected to the language in the proposed regulations that would allow an entity other than the charter school to notify the State or LEA of the date the charter school is scheduled to open or expand. A second commenter recommended that the regulations be revised to require a charter school that fails to meet the 120-day notice requirement to wait for the next grant cycle to receive funds under the applicable covered program.

Discussion: We agree that the charter school should bear primary responsibility for notifying the SEA or LEA of the date the charter school is scheduled to open or expand. Allowing an unspecified number of entities other than the charter school to place the SEA or LEA on notice could lead to unnecessary conflict between SEAs and LEAs and charter schools. In some cases, however, it may be more efficient for the responsible authorized public chartering agency to notify the SEA or LEA of the scheduled opening or expansion dates for its charter schools, rather than require each charter school to provide the notice individually.

We also agree that SEAs and LEAs should not be required to meet the five-month funding requirement with respect to charter schools that open or expand on or before November 1, if the charter school fails to comply with the 120-day notice requirement. As stated above, SEAs and LEAs will need to know as early as possible the number of charter schools that may be eligible to receive funds under a covered program in order to ensure that the funds are available for the charter school when it actually opens or expands.

Changes: We have revised § 76.788(a) to specify that a charter school or its authorized public chartering agency must notify the SEA or LEA of the date the charter school is scheduled to open or expand. We have revised proposed § 76.788(a)(2) (§ 76.789(b)(3) in these final regulations) further to specify the time period within which SEAs and LEAs must provide funds to charter schools that open or expand before November 1, but fail to provide 120 days' notice. Finally, we have revised § 76.789 to delete the reference to notice provided through some means other than § 76.788(a).

Estimates of Projected Enrollment (§§ 76.788(b)(1) and 76.789(b)(2))

Comments: One commenter recommended that the regulations require States and LEAs to rely on reasonable and objective data in estimating the amount of funds to reserve for charter schools under a covered program, and specifically authorize SEAs and LEAs to gather the data or require the charter school to provide it. Another commenter proposed that the final regulations include a new provision requiring estimates of projected enrollment to be based on the characteristics of the currently enrolled population, previous year enrolled population, or existing applications for enrollment at the charter school. Several commenters expressed opposition to the use of assumed proportionality (*i.e.*, surrounding LEAs' proportionate demographic characteristics) in projecting enrollment at a charter school that is scheduled to open or expand. Another commenter objected to the use of the term "available" in the provision requiring charter schools to provide to the SEA or LEA any available data or information that the SEA or LEA may reasonably require to assist it in estimating the amount of funds to reserve for the charter school. This commenter stated that SEAs and LEAs should be able to collect any data that they may reasonably require.

Discussion: Section 76.789(b)(2) authorizes an SEA or LEA to reserve an appropriate amount of funds or make an initial allocation to eligible charter schools based on projected data. Accordingly, § 76.788(b)(1) requires a charter school to provide its SEA or LEA with any "available" data or information that the SEA may reasonably require to make these projections.

We agree that any data upon which an SEA or LEA relies to estimate the amount of funds to reserve for a new or expanding charter school should be reasonable. We believe that adoption of the remaining suggestions in the comments, however, would add unnecessary prescription to these final regulations. It is important to understand that these provisions concern only projected data that would be used until actual data are available. Under § 76.796, any allocations based on projected data that are inaccurate must be adjusted. Obviously, an SEA or LEA would want any projected data it uses to be as accurate as possible in order to reduce the need to make adjustments. Although these provisions require the new or expanding charter school to provide any available data to its SEA or LEA, there is nothing in these final regulations that would preclude an SEA or LEA from collecting the data itself.

It should also be noted that SEAs and LEAs are not required to use projected data. Rather, the SEA or LEA could reserve funds off the top of its total allocation and wait until actual data are available before making any allocations to charter schools.

Changes: We have revised § 76.789(b)(2) to require any estimates of a charter school's projected enrollment to be reasonable.

Actual Enrollment and Eligibility Data (§ 76.788(b)(2))

Comments: One commenter recommended that charter schools be required to provide the SEA or LEA with actual enrollment and eligibility data within 60 days of opening or expanding.

Discussion: Section 76.788(b)(2) requires a charter school to provide actual enrollment and eligibility data to the SEA or LEA at a time the SEA or LEA may reasonably require. We do not believe it would be appropriate to prescribe a specific period in the regulations for submitting the data. In many instances, 60 days would be unnecessarily long and might create difficulties for SEAs and LEAs in making funds available to eligible charter schools within five months. In other instances, depending on the specific circumstances, 60 days may not be sufficiently long. We believe these final regulations appropriately provide flexibility to each SEA and LEA to set a reasonable timeframe for collecting actual enrollment and eligibility data from charter schools.

Changes: None.

Timely and Meaningful Information (§ 76.789)

Comments: One commenter recommended that the Secretary define *timely and meaningful information* in the final regulations, while another commenter requested clarification of the meaning of the term in either the regulations or nonregulatory guidance.

Discussion: Section 76.789 requires SEAs and LEAs to provide charter schools with timely and meaningful information about each covered program in which the charter school may be eligible to participate, including notice of any upcoming competitions. We have refrained from defining *timely and meaningful* information in these final regulations because we do not believe that a single definition can comprehensively address all covered programs. Essentially, this provision requires SEAs and LEAs to provide charter schools with the information they reasonably need to know in order to make an informed decision about whether to apply to participate in a particular covered program, and the steps they need to take to do so. For example, for each covered program, we would expect an SEA to provide basic program information, such as the program's purpose, target population, eligibility requirements, application packages, dates of any competitions, copies of the statute, relevant regulations and guidance, etc. In terms of timing, the SEA should provide the information as early as possible to afford the charter school a genuine opportunity to apply to participate in the applicable covered program.

Changes: None.

Eligibility (§§ 76.788(c) and 76.789(b)(1)(ii))

Comments: Several commenters recommended that the Secretary clarify that charter schools must meet the same program and eligibility requirements as other LEAs and public schools in order to receive funds under an applicable covered program, and that the proposed regulations would not require a State or LEA to provide funds to charter schools if the State or LEA does not provide funds to other LEAs and public schools under the program. Two of these comments were made with specific reference to Title I and Part B of IDEA.

Discussion: Based on section 10306 of the Act, which these regulations implement, and its legislative history, it is clear that charter schools must receive the proportionate amount of funds for which they are eligible under the covered programs. In the absence of statutory or other regulatory language to the contrary, these final regulations should not be interpreted to afford any special rights or privileges to charter schools with regard to program eligibility. Thus, an SEA or LEA is not required to comply with these final regulations with respect to a new or expanding charter school that does not meet the eligibility and other program requirements of the applicable covered program. In determining a charter school's eligibility to receive funds under a covered program during an academic year in which

the charter school opens for the first time or significantly expands its enrollment, however, SEAs and LEAs may not rely on enrollment or eligibility data from a prior year, even if allocations to other LEAs or public schools are based on a prior year's data.

Nor do these final regulations require an SEA or LEA to provide funds to an eligible charter school if the SEA or LEA does not provide funds to other eligible LEAs or public schools under the program. Under Title I, for example, an LEA may choose to provide funds or services to eligible public schools in its district. If the LEA opts to provide services, rather than funds, to the Title I-eligible public schools in its district, these regulations would not require the LEA to provide funds to new or expanding charter schools. For a discussion of whether these final regulations require LEAs to provide funds to new and expanding charter schools under Part B of IDEA if the LEA does not provide funds to other eligible public schools, see "Allocation of Funds" in this "Analysis of Comments and Changes."

Changes: We have revised proposed §§ 76.788(b)(1)(ii) and 76.790(a)(2) (§§ 76.788(c) and 76.789(b)(1)(ii), respectively, in these final regulations) to clarify that a charter school must establish its eligibility and comply with all applicable program requirements in order to receive funds under these final regulations.

Date on Which a Charter School Opens or Expands (§§ 76.792–76.793)

Comments: Two commenters expressed support for the provisions in the regulations that require States and LEAs to provide funds to charter schools that open or expand prior to February 1. One of these commenters noted that its State law requires charter schools to open between August 15 and September 15. Another commenter recommended that the regulations be revised either to eliminate any requirement that States provide funding to charter schools that open after November 1, or to give States more flexibility in providing funds to charter schools that open after that date. Another commenter stated that the *pro rata* calculation should be flexible enough to allow States to use days rather than months.

Discussion: We agree that February 1 is a reasonable cut-off date for States to be required to provide some funding to eligible charter schools under the covered programs. Because these final regulations require States to provide only a *pro rata* portion of funds to eligible charter schools that open or expand between November 1 and February 1, charter schools will have an incentive to open or expand before November 1, thereby easing the potential administrative burden on States.

On the other hand, some charter schools may be unable to open or expand prior to November 1. While it would be unfair to require these charter schools to forgo entirely the funds for which they are otherwise eligible under a covered program, States should be given additional flexibility in providing funds to the charter schools. Such flexibility will ease further the potential administrative burden that funding charter schools opening or expanding late in the academic year poses for States and local school districts.

Changes: We have revised § 76.792(b) to allow States to use days to calculate the *pro rata* allocation for charter schools that open or expand between November 1 and February 1 of an academic year. We have also revised § 76.793 to require SEAs and LEAs to provide funds to charter schools that open or expand on or before November 1 within five months, and to give SEAs and LEAs additional flexibility in providing funds to charter schools that open after November 1. Specifically, for charter schools that open or expand between November 1 and February 1, we have added a new paragraph requiring SEAs and LEAs to provide funds to those charter schools on or before the date the SEA or LEA provides funds to LEAs and public schools under the program for the succeeding academic year.

Comments: One commenter stated that the final regulations should apply only to charter schools that have actually opened or significantly expanded their enrollment, rather than to charter schools that are scheduled to open or expand.

Discussion: Many States and LEAs make allocations under the covered programs, particularly Title I and Part B of IDEA, in the spring or summer preceding the academic year for which the allocations are made. Therefore, in order to give meaning to section 10306 of the Act, which these final regulations implement, and ensure that funds are available for charter schools that open or expand during the academic year, it may be necessary for SEAs and LEAs to reserve a portion of funds under a particular covered program. In the absence of some advance notification to the SEA or LEA of a charter school's plans to open or expand, the SEA or LEA would have no way of knowing whether to reserve funds, or the amount of funds to reserve, for a charter school. Likewise, while it may be appropriate in some cases, a charter school should not be required to wait until after it opens to receive information about upcoming application deadlines or ongoing competitions under the covered programs in which the charter school is eligible to apply to participate.

On the other hand, it is important to note that these final regulations do not require SEAs or LEAs to provide any funds to charter schools before the charter school actually opens or significantly expands its enrollment. Under § 76.789(b)(2), for example, SEAs and LEAs may either allocate funds to or reserve funds for charter schools based on estimates of projected enrollment. Moreover, § 76.788(b)(2)(ii) specifically states that an SEA or LEA is not required to provide funds to a charter school that fails to provide the enrollment or eligibility data the SEA or LEA reasonably requires. Thus, although an SEA or LEA may provide funds to a charter school before the charter school actually opens or expands, nothing in these final regulations requires them to do so.

Changes: We have revised § 76.792 to clarify further that SEAs and LEAs are not required to provide any funds to a charter school that has not yet opened or expanded.

Use of Term Full Amount of Funds (§ 76.792)

Comments: One commenter recommended that the Secretary replace the term *full amount of funds* in § 76.792(a) of the regulations with the term *commensurate share of funds* in order to eliminate any ambiguity that use of the former term may cause. This commenter and a second commenter also stated that the Secretary should define or clarify the meaning of the term *commensurate share.*

Discussion: The intent of these final regulations is to require SEAs and LEAs to provide to each eligible charter school the amount of funds the charter school would receive under each program's statutory allocation formula if the charter school is included in the SEA or LEA's initial allocation. Under many of the covered programs, LEAs and public schools receive the proportionate amount of funds for which they are eligible, based on the total amount of funds that are available under the program and the program's statutory allocation formula.

These regulations are not intended to guarantee each charter school a particular funding level, or entitlement, that may be conditional based upon the appropriation level for any covered program. We agree that use of the term *full amount* does not convey this intent clearly, but are concerned that the term *commensurate share* may lack clarity as well. We believe that the term *proportionate amount* best conveys the intent of these final regulations. *Changes:* We have replaced the term *full amount of funds* in § 76.792(a) with the *term proportionate amount of funds.* We have also inserted the term *proportionate amount of funds* in §§ 76.792(b) and 76.792(c) to clarify further the purpose of these final regulations as discussed above.

Allocation of Funds (§§ 76.792–76.794)

Comments: One commenter stated that the final regulations should clarify that SEAs and LEAs are not required to send 100 percent of the funds for which a charter school is eligible to the charter school within the time periods specified in the regulations, but that they are required only to ensure that the appropriate amount of funds flow to the charter school. We believe the commenter meant that the SEA or LEA is not required to make one lump sum payment to the charter school at the beginning of the grant period.

Discussion: The commenter is correct in that these final regulations do not require SEAs and LEAs to send 100 percent of the funds for which a charter school is eligible to the charter school within the prescribed time periods. Department regulations prohibit recipients of Federal funds from earning excess interest on those funds. Therefore, when awarding subgrants under the covered programs, SEAs and LEAs are generally required only to ensure that the appropriate amount of grant funds are made available for draw down by the subgrant recipient—in this case, the charter school. The subgrant recipient, in turn, draws down funds on an as needed basis. Thus, while SEAs and LEAs are not actually required to send funds to the charter school, they are required to ensure that the proportionate

amount of funds for which the charter school is eligible is made available to the charter school within the time periods specified in these final regulations.

Changes: None.

Comments: One commenter requested that language be included in the final regulations specifically authorizing States to use non-Federal funds to supplement allocations to LEAs. Although this comment was made with specific reference to Part B of IDEA, the discussion that follows is applicable to all of the covered programs.

Discussion: States must follow applicable program requirements when allocating funds to LEAs under a covered program. While an SEA may use non-Federal funds to supplement LEA allocations that are reduced as a result of the SEA's compliance with section 10306 of the Act and these final regulations, the State may not substitute non-Federal funds for Federal funds when awarding subgrants under a covered program.

Changes: None.

Comments: One commenter requested that the Secretary revise the regulations to make the provisions governing competitive discretionary grant programs applicable to noncompetitive discretionary grant programs, so that prospective charter school applicants that fail to meet the application deadline for either type of discretionary grant program would be required to wait for the next grant cycle in order to receive funds under the program.

Discussion: Under § 76.794(b), SEAs and LEAs are completely exempt from the requirements of these final regulations when allocating funds under noncompetitive discretionary programs. Therefore, as a practical matter, SEAs and LEAs could require any school, including new and expanding charter schools, that fail to meet the application deadline to wait until the next grant cycle to apply for funds under these programs. Two of the covered programs under which SEAs or LEAs have total discretion either to provide services directly or award funds to subgrantees on a noncompetitive basis are Migrant Education and Neglected and Delinquent Children. In addition, a number of programs, such as Part B of IDEA and Safe and Drug-Free Schools, require SEAs to allocate a majority of funds on a formula basis, but also allow a portion of funds to be distributed on a discretionary basis. For these programs, the SEA would not be required to comply with these final regulations when distributing the discretionary portion of the funds on a noncompetitive basis. If the SEA distributes the discretionary portion of the funds on a competitive basis, § 76.794(a) would apply.

As stated in the preamble to the NPRM, the Secretary encourages SEAs and LEAs to consider charter schools on the same basis as other LEAs and public schools when providing funds on a discretionary, but noncompetitive, basis. Nevertheless, it is not the intent of these regulations to restrict in any way the discretionary authority of SEAs and LEAs with respect to these funds.

Changes: We have revised the definition of *covered program* in § 76.787 to clarify that noncompetitive discretionary programs are not covered by these final regulations, even though funds are allocated to the State on a formula basis. We have also revised § 76.794(b) accordingly.

Comments: One commenter requested guidance on how LEAs can meet the requirements of these final regulations when allocating funds to new or expanded charter schools under Part B of IDEA.

Discussion: There is nothing in section 10306 of the Act, these final regulations, or the IDEA Amendments of 1997 that would compel an LEA to make allocations of Part B funds to charter schools that are public schools of that LEA, if the LEA does not make allocations of such funds to its other schools. Under section 613(a)(5) of IDEA, if an LEA provides Part B funds or services to public schools of the LEA, it must provide those funds or services in the same manner to charter schools that are public schools of the LEA. Likewise, if the LEA has eligibility criteria that its public schools must meet in order to receive Part B funds and the charter school meets those criteria, the LEA must provide Part B funds to the new or expanded charter school in the same manner that the LEA provides such funds to its other public schools. If an LEA allocates Part B funds to its public schools on a formula basis, in accordance with § 76.791 of these final regulations, the eligibility determination for the new or expanded charter school may not be based on enrollment or eligibility data from a prior year. In addition, funding allocations made on a formula basis must be made within the time periods specified in § 76.793 of these final regulations.

As stated in the Office of Special Education Programs (OSEP) Memorandum 99–12, if an LEA provides Part B funds to charter schools that are public schools within the LEA, a State can require that allocations of Part B funds be transferred from the LEA where the child was previously served and counted, or would have been served, to the LEA that distributes Part B funds to the charter school where the child is attending. In addition, the State can require that the funds be transferred from the public school of the LEA where the child was previously served and counted, or would have been served, to the charter school of the same LEA where the child is attending.

Changes: None.

Comments: One commenter requested guidance on how SEAs can meet the requirements of these final regulations when providing funds to new or expanded charter school LEAs under the current formula in the IDEA Preschool Grants Program and the permanent formula that will become effective for the IDEA Grants to States program when the appropriation for that program exceeds $4,924,672,200.

Discussion: Under the formula at sections 611(g)(2)(B) and 619(g)(1) of Part B of IDEA, the State allocation to each eligible LEA is the total of three amounts—the base payment, the population payment, and the poverty payment. The base payment is the amount the LEA would have received for the base year had the State allocated 75 percent of its award to the local level (for the Grants to States Program, the base year is the fiscal year preceding the first fiscal year in which the amount appropriated for the program is more than $4,924,672,200; for the Preschool Grants Program, the base year is Federal fiscal year 1997). Therefore, the amount of Part B funds that a State must use to make base payments is set at 75 percent of the State's base year grant, and remains the same for each subsequent fiscal year. Federal regulations at 34 CFR 300.712(b)(2) and 34 CFR 301.31(b) provide information on when base payments must be adjusted. Because of section 10306 of the Act and these final regulations, base payments must also be adjusted when a charter school experiences a significant expansion of enrollment as defined in § 76.787 of these final regulations.

When calculating base payments for new or expanded charter school LEAs, States must use the method described in 34 CFR 300.712(b)(2)(i) and 34 CFR 301.31(b)(1). Thus, if a charter school LEA opens for the first time or significantly expands its enrollment, the State must divide the base allocation for LEAs that would have been responsible for serving children with disabilities now being served by the charter school LEA, among the charter school LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs. Once the base payment for affected LEAs and the charter school LEA is calculated using the method described above, the State may use its State set-aside funds to supplement the subgrant of an LEA whose base payment is decreased as a result of having its base allocation divided. However, supplements provided for this purpose do not change the amount of the base payment the LEA is entitled to receive, and the SEA is not required to continue to provide these supplemental funds in future years.

The population payment (85 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction. The population payment should be allocated to new or expanded charter schools based on the number of elementary and secondary school children enrolled in the charter school. Under § 76.791 of these final regulations, the State may not rely on enrollment data from a prior year in calculating the new or expanded charter school's population payment, even if population payments to other LEAs are based on a prior year's enrollment data.

The poverty payment (15 percent of the remaining flow through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children living in poverty, as determined by the SEA. The poverty factor chosen must be applied uniformly to all eligible subgrantees. For example, if the State uses aggregate data on children who are eligible for free or reduced-price meals under the United States Department of Agriculture's National School Lunch Program, this data must be applied to the new or expanded charter school LEA to determine its poverty payment. Under § 76.791, the State may not rely on enrollment or eligibility data from a prior year in calculating the new or expanded charter school LEA's poverty payment, even

if poverty payments to other LEAs are based on data from a prior year.

Section 76.790(b)(2) of these final regulations provides the SEA with flexibility to allocate funds to eligible charter school LEAs based on reasonable estimates of projected enrollment at the charter school LEA. Under § 76.796, the SEA would be required to make appropriate adjustments to the subgrants of the new or expanded charter school LEA and affected LEAs based on actual enrollment and eligibility data. Under § 76.797(a), any required adjustments would have to be made on or before the date the SEA allocates funds to LEAs for the succeeding academic year.

The requirements in section 10306 of the Act and these final regulations apply only when a State or LEA allocates funds under a covered program to a charter school during its first year of operation or during subsequent years when the charter school significantly expands its enrollment. In all other years, an SEA or LEA allocates Part B funds to charter schools in the same manner as it allocates funds to other eligible LEAs and public schools. The only entities that are eligible to receive Part B funds under IDEA are entities that are established as LEAs under State law and those charter schools that are public schools of an LEA where that LEA distributes Part B funds to its other public schools.

Changes: None.

Comments: One commenter requested guidance on how an SEA or LEA reallocates funds if a charter school closes. Although this comment was made with specific reference to Part B of IDEA, the discussion that follows is applicable to all of the covered programs.

Discussion: Neither section 10306 of the Act nor these final regulations prescribe closeout or reallocation procedures for SEAs or LEAs to follow if and when a charter school closes. Therefore, as a general rule, if a charter school that has received funds in accordance with these final regulations closes, SEAs and LEAs should follow the same procedures that are used to close out subgrants and reallocate funds for other eligible entities under the applicable program.

Changes: None.

Adjustments (§§ 76.796–76.797)

Comments: Three commenters expressed support for the requirement in the proposed regulations that States and LEAs make adjustments to allocations to charter schools based on actual enrollment and eligibility data. One of these commenters recommended that the regulations include a provision specifically authorizing charter schools to challenge the amount of the SEA or LEA's allocation, while another commenter recommended that the regulations prescribe additional remedies for States to recover overpayments. A fourth commenter opposed any requirement that States make adjustments for underpayments to charter schools, and a fifth commenter recommended that the Secretary delete the provision authorizing States and LEAs to make adjustments to allocations in the succeeding year. The fifth commenter questioned the usefulness of § 76.797, in light of the ability of States to recover overpayments from charter schools through offset of subsequent allocations.

Discussion: If an SEA or LEA has allocated more or fewer funds to a charter school than the amount for which the charter school is eligible based on actual enrollment or eligibility data, § 76.796 requires the SEA or LEA to make appropriate adjustments. The purpose of this provision is to ensure that charter schools receive the amount of funds they are eligible to receive—no more and no less. Accordingly, it requires SEAs and LEAs to make adjustments to charter school allocations for both overpayments and underpayments, as well as appropriate adjustments to the allocations of other LEAs and public schools. For example, if projected enrollment data result in an SEA allocating too few funds to a charter school LEA, the SEA would be required to adjust upward the charter school LEA's allocation when actual enrollment data are available. Similarly, if the SEA reserves more funds off the top of its total allocation than are needed to make allocations to eligible charter school LEAs, the SEA must return the excess funds to its other LEAs in proportion to their initial allocations. Our nonregulatory guidance will provide program-specific examples of how adjustments can be made.

If a charter school LEA believes its allocation under a covered program is inaccurate, it, like any other LEA, may appeal to the SEA under section 432(a) of the General Education Provisions Act. Moreover, nothing in § 76.796 is intended to limit the remedies otherwise available by law to SEAs or LEAs to recoup overpayments of funds.

Section 76.797 requires SEAs and LEAs to make any necessary adjustments on or before the date the SEA or LEA allocates funds to LEAs for the succeeding academic year. In other words, an SEA may make adjustments immediately, when it makes the next year's allocations, or anytime in between. This provision affords SEAs and LEAs flexibility to make adjustments when it is most convenient, provided those adjustments are made no later than when the SEA or LEA provides funds to LEAs and public schools for the succeeding academic year.

Changes: None.

Applicability of Provisions to LEAs (§ 76.799)

Comments: One commenter stated that the regulations should be expanded to address LEA-specific circumstances.

Discussion: Section 76.799(a) specifies that LEAs that are responsible for funding charter schools under a covered program are subject to the same requirements as SEAs. In § 76.799(b), we also explain that the terms *LEA*, *charter school*, and *public school* should be read in place of the terms *SEA* (or State), *charter school LEA*, and *LEA*, respectively, in these regulations to accomplish the requirement. When these substitute references are applied, these regulations already instruct LEAs on their responsibilities to new and expanding charter schools when allocating funds under the covered programs. Within the next several months, the Department also expects to issue nonregulatory guidance that will provide additional program-specific guidance for SEAs, LEAs, and charter schools.

Finally, as noted in the preamble to the NPRM, States are directly responsible for ensuring that LEAs meet the requirements of section 10306 of the Act and these final regulations. Accordingly, the Department expects that some SEAs may also provide guidance to LEAs on these matters. The Secretary believes that all of these measures are a satisfactory means of providing the expanded LEA-specific guidance that the commenter seeks, and that further regulations on this issue are unnecessary at this time.

Changes: None.

[FR Doc. 99–33119 Filed 12–21–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Wednesday
December 22, 1999

Part VI

Environmental Protection Agency

Water Quality Criteria; Notice of Availability; 1999 Update of Ambient Water Quality Criteria for Ammonia; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6513–6]

Water Quality Criteria; Notice of Availability; 1999 Update of Ambient Water Quality Criteria for Ammonia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 304(a)(1) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) announces the publication and availability of the *1999 Update of Ambient Water Quality Criteria for Ammonia* (1999 Update), containing EPA's recommended ammonia criteria for the protection of freshwater aquatic life. These criteria are EPA's recommendations for States, Territories, and authorized Tribes to use as guidance in adopting water quality standards. Water quality standards form the basis for establishing enforceable, water quality-based effluent limitations in CWA permits. These criteria constitute the Agency's current recommended Section 304(a) criteria for ammonia, and will continue to serve as such until EPA publishes a revision. In August 1998, EPA published the *1998 Update of Ambient Water Criteria for Ammonia* and asked for public comment. The 1999 Update published today incorporates revisions made in response to comment on the 1998 Update, and supercedes all previous freshwater ammonia criteria.

ADDRESSES: "Obtaining the Document." A copy of the document, 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA–822–R–99–014) may be obtained from the U. S. Environmental Protection Agency, by contacting: National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, Ohio, USA 45242–2419, Phone: 1–800/490–9198; International: 1/513–489–8190, E-mail: ncepi.mail@epamail.epa.gov.

The document, and a fact sheet that provides an overview of the criteria document, may be viewed on the Internet at http://www.epa.gov/ost/standards/amonsub.html.

"Examining the Administrative Record." The Administrative Record supporting EPA's recommended ammonia criteria for the protection of freshwater aquatic life is available under docket number W–98–20 at the Water Docket, Room EB–57, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 4:00 p.m. For access to docket materials call (202) 260–3027 for an appointment. The record contains material that EPA relied on to support the recommended criteria contained in the 1999 update. A reasonable fee will be charged for photocopies.

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Standards and Applied Science Division (4305), U.S. EPA, Office of Science and Technology, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–3809; *thompson.brian@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background on Criteria Program
II. Background on Development of this Criteria Document
III. Response to Comments on 1998 Update
  A. Ammonia pH Relationship
  B. Ammonia Temperature Relationship
IV. Summary of the 1999 Ammonia Criteria
V. Implementation of the Final 1999 Ammonia Criteria
  A. Design Flow and Averaging Period
  B. Early Life Stage Absent (ELS-Absent) Provision
  C. State and Tribal Adoption of Ammonia Criteria
VI. Threatened or Endangered Species

I. Background on Criteria Program

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) directs EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation. These criteria serve as guidance to States, Territories, and authorized Tribes in adopting water quality standards under Section 303(c) of the CWA that protect aquatic life from acute and chronic effects of ammonia. Water quality standards provide a basis for controlling discharges or releases of pollutants. Under the CWA, States and Tribes are to establish water quality criteria to protect designated uses. State and tribal decision makers retain the discretion to adopt water quality criteria on a case-by-case basis that differ from this guidance when appropriate and where supported by local data. In this notice EPA is announcing the publication and availability of the Agency's most recent calculation of water quality criteria for freshwater ammonia.

Ambient water quality criteria developed under Section 304(a) are based on data and scientific judgments on the relationship between pollutant concentrations and effects on aquatic life, human health, and the environment. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

II. Background on Development of the Ammonia Criteria Document

In 1985, EPA published Ambient Water Quality Criteria for Ammonia—1984, which contained criteria concentrations for protection of freshwater aquatic life. The Criterion Maximum Concentration or CMC, which applied to short (acute) exposure, and the Criterion Continuous Concentration or CCC, which applied to longer (chronic) exposure, varied primarily with pH and the type of fishery involved. On July 30, 1992, EPA revised its recommended value for the CCC through a memorandum "Revised Tables for * * * Freshwater Ammonia Concentrations."

In late 1996 EPA undertook a review and revision of the CCC for ammonia, in response to public interest in the criterion. As part of this process, EPA undertook peer review of a draft criterion (June 5, 1997). The results of this peer review are included in Peer Review Report for EPA's Addendum to Ambient Water Quality Criteria Document for Ammonia, dated October 9, 1997. On August 18, 1998, EPA published the *1998 Update of Ambient Water Quality Criteria for Ammonia* and solicited public comment. Today, EPA is publishing the *1999 Update of Ambient Water Quality Criteria for Ammonia,* which incorporates changes made in response to public comment on the 1998 Update. The ammonia criteria published today supersede all previous freshwater aquatic life ammonia criteria.

The water quality criteria in the 1999 Update pertain only to fresh waters. They do not change or supersede the EPA criterion for ammonia in salt water, published in *Ambient Water Quality Criteria for Ammonia (Saltwater)—1989.*

EPA aquatic life criteria consist of acute and chronic criteria concentrations, applicable averaging periods (i.e., the duration used in comparing ambient water concentration to water quality criteria), and allowable excursion frequencies. The criteria published today are based on a revised temperature dependency of the CCC (chronic criterion), and modification of the 4-day criterion provision from 2.0 to 2.5 times the CCC. As a result, the acute criterion for ammonia remains dependent on pH and fish species (i.e., salmonids versus non-salmonids), and the chronic criterion for ammonia is now dependent on pH and temperature. In addition, at lower temperatures the chronic criterion is also dependent on

the presence or absence of early life stages of fish.

III. Response to Comments on 1998 Update

EPA considered all comments submitted on the 1998 Update. Responses to comments are contained in the document *Response to Comment on the 1998 Update of Ambient Water Quality Criteria for Ammonia*. The two most significant issues raised in the comments were the pH relationship and the temperature relationship used for the chronic criterion (CCC); that is, how the CCC changes as a function of pH and as a function of temperature.

A. Ammonia pH Relationship

In the 1998 Update, the pH relationship of the CCC was different than the pH relationship of the CMC. Notably, in the pH range from 8.0 to 6.5, the CCC increased less quickly with decreases in pH than did the CMC. Some commentors expressed concern that because so much more data are available to derive the acute relationship than the chronic relationship, it would be better to apply the acute relationship to the chronic criterion.

EPA does not agree that the chronic pH relationship should be the same as that of the acute pH. The data for smallmouth bass and for daphnia unequivocally demonstrate that the acute-chronic ratio changes with pH, and therefore that the chronic relationship should not be the same as the acute relationship. While there may be alternative ways of accounting for this difference, EPA believes that the approach it has taken, to derive the chronic relationship directly from the available chronic data for smallmouth bass and daphnia, is scientifically appropriate and reasonable. Thus, for the 1999 Update, EPA has not changed the chronic pH relationship.

B. Ammonia Temperature Relationship

In the derivation of the 1998 Update, the data used by EPA indicated that the sensitivity of fish does not change significantly with temperature, either for acute or chronic exposure. However, some commentors expressed concern that the 1998 chronic criterion would change with temperature if invertebrates are considered.

In response to these comments, EPA re-examined the available data for invertebrates, which were from a study by Arthur et al. (1987), as referenced in the 1998 and 1999 Updates. The Arthur et al. data suggested a temperature relationship for invertebrates but not for fish. In the 1998 Update, EPA did not use the Arthur et al. data because the authors were concerned that other variable factors in their tests might have had a potential to confound their results. In re-examining their data in response to comments, however, EPA found that the *fish* data from Arthur et al. showed behavior quite similar to that from numerous other investigators, that is, little relationship with temperature. Consequently, EPA concluded that the *potential* confounding factors were *unlikely* to have much effect on the results, and that the Arthur et al. (1987) results could be used to define a temperature relationship for invertebrates.

In contrast to the fish data, the invertebrate data from Arthur et al. (1987) show a significant and consistent relationship of increasing lethal concentration (decreasing toxicity) with decreasing temperature. Because the two most sensitive species in the chronic data set are invertebrates, a temperature dependency for the effect concentrations for these species results in an overall temperature dependency for the ammonia chronic criterion. Therefore, EPA's 1999 Update contains a temperature dependent chronic criterion for ammonia. This temperature dependency does not affect the acute criterion, because none of the acutely sensitive species in the acute data set are invertebrates.

IV. Summary of the 1999 Ammonia Criterion

In natural waters ammonia exists in two forms, un-ionized NH_3, and ionized NH^{+4}, with equilibrium controlled by temperature and pH. Whereas the 1984/1985 criteria were derived based on un-ionized ammonia, which required a relationship with temperature, the criteria published today are expressed only as total (un-ionized plus ionized) ammonia.

Based on differences in species acute sensitivity, different CMC values were derived for waters where salmonids (e.g., trout and salmon) are present and waters where salmonids are not present. Such distinctions in species *chronic* sensitivity were not apparent, however. Consequently the CCC does not vary with the type of fish present.

The acute criterion or CMC is unchanged from 1998. The values vary as a continuous function of pH and are not dependent on temperature. For example, as seen in Table 1 below, at pH=7 the values are 24.1 mg N/L for salmonid fish (trout and salmon) present, and 36.1 mg N/L for salmonids absent. Whereas at pH=8 the values are 5.62 mg N/L for salmonids present, and 8.40 mg N/L for salmonids absent.

TABLE 1.—AMMONIA CMC VALUES BASED PH AND FISH SPECIES

pH	CMC mg N/L	
	Salmonids present	Salmonids absent
7	24.1	36.1
8	5.62	8.40

The chronic criterion or CCC varies as continuous functions of temperature and pH. At lower temperatures, the values also depend on whether early life stages of fish are present or absent. To illustrate its general behavior, the table below (Table 2) shows example values of the CCC under a few different temperature and pH conditions.

TABLE 2.—AMMONIA CCC VALUES BASED ON TEMPERATURE, PH, AND EARLY LIFE STAGES OF FISH

Temperature	CCC mg N/L			
	Early life stages of fish present		Early life stages of fish absent	
	pH=7	pH=8	pH=7	pH=8
0° C	5.91	2.43	9.60	3.95
10° C	5.91	2.43	7.91	3.26
20° C	4.15	1.71	4.15	1.71
30° C	2.18	0.897	2.18	0.897

V. Implementation of the Final 1999 Ammonia Criteria

A. Design Flow and Averaging Period

The use of aquatic life criteria for developing water quality based permit limits and for designing waste treatment facilities requires the selection of an appropriate waste load allocation model. Dynamic models are preferred for the application of aquatic life criteria in order to make best use of the specified concentrations, durations, and frequencies. If dynamic models cannot be used, then an alternative is steady-state modeling. Because steady-state modeling is based on various simplifying assumptions, it is less complex, and might be less realistic, than dynamic modeling. However, since steady-state models are easier to apply, they are used more often than dynamic models.

An important step in the application of steady-state modeling to streams is calculating the design flow. States and Tribes can refer to Appendix D of the *Technical Support Document for Water Quality-based Toxics Control* (TSD) for EPA's recommended design flow, as well as EPA's basis for its design flow recommendations.

In the TSD, for aquatic life, EPA recommends design flows for both the criterion maximum concentration (CMC, *or* acute criterion) and the criterion continuous concentration (CCC, *or* chronic criterion). For the CMC, EPA recommends the 1B3 (the lowest one-day flow based on a three-year return interval when flow records are analyzed using EPA's 1986 DFLOW procedure) or the 1Q10 (the lowest one-day flow based on a ten-year return interval when flow records are analyzed using extreme-value statistics). For the CCC, EPA recommends the 4B3 (the lowest four-day flow based on a three-year return interval when flow records are analyzed using EPA's 1986 DFLOW procedure) or the 7Q10 (the lowest seven-day flow based on a ten-year return interval when flow records are analyzed using extreme-value statistics).

For ammonia, EPA continues to recommend the 1B3 or the 1Q10 as the design flow for the CMC. Even though EPA's recommended design flow for the CCC, as stated in the TSD, is based on a 4-day average, EPA's design flow guidance can be applied to the 30-day averaging period of ammonia. Therefore, for the CCC for ammonia, EPA recommends the 30B3 for the design flow, if flow records are analyzed using EPA's 1986 DFLOW procedure. In addition, EPA believes that the 30Q10 and the 30Q5 are at least as protective as the 30B3. Therefore, if flow records are analyzed using extreme-value statistics, EPA also recommends the 30Q10 or the 30Q5 as the design flow for the CCC for ammonia. As explained in the 1999 Update, within this 30-day period, no 4-day average concentration should exceed 2.5 times the CCC. Consequently, the design flow should also be protective of any 4-day average at 2.5 times the CCC. EPA believes that in the vast majority of cases, the 30Q10 is protective of both the CCC (which, for ammonia, is associated with a 30-day average) and any 4-day average at 2.5 times the CCC. If the ammonia CCC is implemented using the 30Q10, no further conditions are necessary. However, if a State or Tribe specifies the use of the 30Q5, then the State or Tribe should demonstrate that a 7Q10 (the lowest average 7-day once-in-ten-year flow using extreme-value statistics) is protective of 2.5 times the CCC, to ensure that any short term (4-day) flow variability within the 30-day averaging period does not lead to shorter-term chronic toxicity. Since the 7Q10 approximates the 4B3 (the lowest average 4-day once-in-three year flow using EPA's 1986 DFLOW procedure), EPA recommends the 7Q10 be used to evaluate if any 4-day average within the 30-day averaging period will exceed 2.5 times the CCC. The comparison of the 30Q5 at one times the CCC to the 7Q10 at 2.5 times the CCC is stream-specific; a State or Tribe utilizing this approach should adopt both the 30Q5 at one times the CCC and the 7Q10 at 2.5 times the CCC into its standards and specify that the more stringent be used.

In adopting a freshwater aquatic life CCC for ammonia, based on the 30-day averaging period recommended in the 1999 Update, the procedures for calculating NPDES permit limits should be modified from those described in the TSD. The equations (and corresponding "multiplier tables") presented in the TSD assume a 4-day averaging period and are summarized below:

The acute long term average (LTA_a) is determined from the acute wasteload allocation (WLA_a) using the equation:

$$LTA_a = WLA_a e^{[0.5\sigma^2 - z\sigma]}$$
$$\text{where } \sigma^2 = \ln (CV^2 + 1)$$

The chronic long term average (LTA_c) is determined from the chronic wasteload allocation (WLA_c) using the equation:

$$LTA_c = WLA_c e^{[0.5\sigma_4^2 - z\sigma_4]}$$
$$\text{where } \sigma_4^2 = \ln (CV^2/4 + 1)$$

A comparison of the LTA_a and LTA_c is then performed and the minimum value is selected (LTA_{MIN}). The maximum daily limit (MDL) is then calculated from the LTA_{MIN} using the equation:

$$MDL = LTA_{MIN} e^{[z\sigma - 0.5\sigma^2]}$$
$$\text{where } \sigma^2 = \ln (CV^2 + 1)$$

The average monthly limit (AML) is calculated from the LTA_{MIN} using the equation:

$$AML = LTA_{MIN} e^{[z\sigma_n - 0.5\sigma_n^2]}$$
$$\text{where } \sigma_n^2 = \ln (CV^2/n + 1)$$

The value of "n" in the calculation of the AML is based on an assumed monthly effluent monitoring frequency for the permittee. In general, the "n" value should be set equal to the actual monitoring frequency that will be required of the permittee. However, if the AML is based on the LTA_c (i.e., $LTA_{MIN} = LTA_c$), the TSD recommends that the value of "n" be set no lower than 4 (corresponding to the 4-day CCC) to ensure that the AML does not exceed the WLA_c.

Since the 1999 Update recommends a 30-day averaging period for deriving the CCC, the equation for determining the LTA_c should be modified as follows:

$$LTA_c = WLA_c e^{[0.5\sigma_{30}^2 - z\sigma_{30}]}$$
$$\text{where } \sigma_{30}^2 = \ln (CV^2/30 + 1)$$

The comparison of the LTA_a and LTA_c is then performed in the same manner and the MDL and AML are calculated from the LTA_{MIN}.

Consistent with the guidance regarding the calculation of an AML using a 4-day CCC, the value of "n" (assumed monitoring frequency) used in the AML calculation should not be less than the averaging period upon which the criterion value is based. For a more detailed discussion of the selection of an appropriate value for "n" in limit development, refer to Section 5.5.3 of the TSD.

B. Early Life Stage Absent (ELS-Absent) Provision

EPA is establishing a provision in its ammonia criteria that allows for a relaxation of the CCC when early life stages (ELS) of fish are not present, since, at low ambient water temperatures, adult and juvenile fish are less sensitive to ammonia toxicity than are early life stages of fish. EPA has concluded that it would be appropriate to relax the ammonia CCC, as ambient water temperature decreases, in waterbodies where early life stages are not present. This provision, based on ELS absent, applies only to the recommended aquatic life chronic criterion for ammonia, and any new or

revised water quality standard incorporating such a provision is subject to review and approval by EPA.

The 1999 Update constitutes EPA's scientific recommendations regarding ambient concentrations of ammonia that protect freshwater aquatic life. EPA will review, and approve and disapprove, State and Tribal water quality standards for ammonia, pursuant to section 303(c) of the CWA and the implementing regulations at 40 CFR 131.

EPA has identified the following list of issues regarding the implementation of the ELS-absent provision. These issues have been raised to EPA since the August 1998 update. EPA is posing the issues in a question and answer format to provide clarification on implementing the ELS-absent provision. In the event that States, territories, and authorized Tribes need further clarification on implementing the ELS-absent provision, they should consult with their local EPA Regional office.

1. What is the early life stage-absent (ELS-absent) provision?

Under specific conditions, States and Tribes may adjust their water quality standards to reflect the decrease in ammonia toxicity to adult and juvenile fish as water temperature decreases. Because ammonia toxicity to early life stages of fish does not appear to decrease as water temperature decreases, the ELS-absent provision is not allowed at times of the year when early life stages are present. *This ELS-absent provision applies only to the aquatic life chronic criterion for ammonia*, and the adoption of this provision, as is the case for any new or revised standard, is subject to approval by EPA.

The magnitude of the ELS-absent adjustment is dependent on temperature, and can be found in EPA's 1999 Update of Ambient Water Qaulity Criteria (1999 Update). In the 1999 Update, the ammonia chronic criterion is presented in two separate tables, one for periods when fish early life stages are present and one for periods when fish early life stages are absent. Therefore, when early life stages of fish are present, States and Tribes should use the ELS-present table, and when early life stages of fish are absent, States and Tribes may use the ELS-absent table.

2. How does EPA envision States and Tribes implementing the ELS-absent provision?

States and Tribes should clearly identify in their water quality standards the applicable ammonia criteria for all State or Tribal surface waters for all times of the year. The approach a State or Tribe may choose will differ depending on how its water quality program is structured.

Some factors to consider in implementing the ELS-absent provision are the resources available for State and Tribal Agencies to administer site-specific risk management decisions; the variety of watersheds and eco-regions within a State or Tribe; the diversity of fisheries within the State or Tribe; and the geographic location of the State or Tribe. For example, a State or Tribe in the Pacific Northwest may choose not to modify criteria for ammonia at all, based on the absence of early life stages of fish, because the State or Tribe is dominated by salmonid fisheries with different species spawning throughout the year. Another State or Tribe may choose to make ELS-absent adjustments to the ammonia criteria site-specifically, when data or information is provided which justifies a different, more appropriate ammonia criterion. Many States and Tribes already have provisions in their water quality standards which authorize site-specific criteria modifications when new information becomes available. States and Tribes that have invested resources in mapping the distribution of different species within the State or Tribe may choose to determine which waterbodies warrant the ELS-absent provision and adopt seasonal ammonia criteria just for those waters as appropriate.

EPA believes that tailoring the ammonia criteria to different classes of waterbodies would be the most efficient means of administering the ammonia criteria ELS-absent provision. State and Tribal programs with refined, biologically-based designated use classification systems are best structured for this approach. Refining the designated use to reflect the presence or absence of sensitive life stages may involve an upfront investment of resources but in the long term, EPA believes it significantly reduces the administrative burden of having to repeatedly revise the standards site-specifically. Refined, biologically-based use classification systems enable States and Tribes to efficiently tailor numerous criteria to waterbodies with shared characteristics. Refined, biologically-based use classification systems also more clearly communicate the intended water quality goals of a waterbody to the public.

Any approach a State or Tribe chooses to implement the ammonia criteria must be reflected in the State's or Tribe's water quality standards and submitted to EPA for review and approval. In order for EPA to determine the scientific defensibility of a State's or Tribe's approach as part of the Clean Water Act section 303(c) review and approval/disapproval process, EPA would want to review information concerning the geographic areas and the times of the year the ELS-absent provision applies, and would want the State or Tribe to provide all of the data and information the State or Tribe relied on for its rationale.

3. Is the ELS-absent provision considered a site-specific criterion or could a State or Tribe establish an eco-regional ELS-absent provision? Could a State adopt an ELS-absent provision state wide? If a State or Tribe uses an eco-region approach, what factors should it consider in determining the ELS-absent provision for its waterbodies?

The ELS-absent provision could be done on either a site-specific basis, or it may be more efficient to provide the adjustment on a watershed or eco-regional basis if sufficient information and data exist. If a State or Reservation is sufficiently small or homogenous, it could apply the same provision on the same-schedule state or reservation-wide.

When establishing an ELS-absent provision on an eco-region basis, the objective should be that waters within each eco-region have similar periods when there is an absence of early life stages of fish. There are a number of factors that a State or Tribe could use to define its eco-regions. For example, if the spawning period of a given species of fish and the ambient water temperature vary with latitude, then a State or Tribe could use latitude to define its eco-regions. Other factors that a State or Tribe could use to define its eco-regions include watershed, elevation, and stream order. For smaller States or Reservations, geographic variations are likely to be less extreme, and will have a smaller effect on ambient water temperature and spawning periods. As the size of a State or Reservation increases, it becomes increasingly important to consider the effects of geographic variation on ambient water temperature and spawning periods, and it becomes more difficult to generalize about the level of protection afforded to the aquatic communities. The larger the area of consideration for the ELS-absent provision, the greater is the need for data or conservatism in its application.

4. Which stages of fish development are included in the term "early life stages?"

The early life stages include the pre-hatch embryonic period, the post-hatch free embryo or yolk-sac fry, and the

larval period, during which the organism feeds. Juvenile fish, which are anatomically rather similar to adults, are not considered an early life stage.

The duration of the early life stages extends from the beginning of spawning through the end of the early life stages. Since the duration of early life stages can vary according to fish species, EPA recommends that any ELS-absent provision reflect such variations. A good source for determining the duration of early life stages is *The American Society for Testing and Materials (ASTM) Standard E–1241*, "Standard Guide for Conducting Early Life-Stage Toxicity Tests with Fishes", which uses the following durations when testing for toxicity on early life stages (Table 3).

TABLE 3.—DURATION OF EARLY LIFE STAGE DEVELOPMENT OF SELECTED FISH SPECIES

Taxon	End of early life stage development
Fathead minnow	34 days after spawning.
Channel catfish	34 days after spawning.
Bluegill	34 days after spawning.
White Sucker	34 days after spawning.
Northern pike	34 days after spawning.
Striped bass	46 days after spawning.
Trout, salmon, char	30 days after swim-up (swim-up is the stage when fry leave the nest and swim up to the surface to catch food).

For taxa not listed above, the period for early life stage development should be based on taxonomic and life history similarity.

5. To allow the ELS-absent provision, should there be a complete absence of sensitive life stages or is the presence of very low densities acceptable, as long as there is no threat to the overall population? What should a State's or Tribe's determination of absence of fish sensitive life stages consist of? Is actual biological survey data required, or can a finding be based on expert opinion from fisheries biologists? Is EPA going to specify any minimum biological data requirements?

To be most protective of aquatic life in a waterbody being considered for the ELS-absent provision, knowing that there is a "complete absence", or "very low densities" of sensitive life stages of fish, would provide a high level of confidence in allowing for the adjustment. However, actually measuring the "complete absence" of sensitive life stages of fish in a waterbody may be very difficult, if not impossible, even with rigorous, scientifically designed sampling efforts. Most field sampling methods are not designed to sample for these sensitive life stages. In addition, "very low densities" are difficult to accurately measure without extensive fish population sampling at critical times of the year. Further, because the conditions for implementing an ELS-absent provision apply to all fish species rather than to only game fish species, there may be less field data readily available for all fish species comprising the aquatic community at any given site. Therefore, the objective should be to best identify the timeframes during the year when sensitive life stages are most likely not to be present in numbers that, if chronic toxicity did occur, would affect the long-term success of the fish population.

To best determine when the ELS-absent provision should be applied, all readily available information regarding the fish species distributions, spawning periods, nursery periods and the duration of sensitive life stages found in the waterbody should be considered. Information on waterbody temperature might also be useful. Expert opinions from fisheries biologists and other scientists should be considered, and where it can be obtained, the consensus opinion from a diverse body of experts may be heavily relied upon.

The determination of the timeframe during the year when sensitive life stages are most likely not to be present in numbers that, if chronic toxicity did occur, would affect the long-term success of the fish populations, should include a record of information adequate to withstand public scrutiny. EPA will use this record as the basis upon which to approve or disapprove the standard. The record should clearly explain all the factors and information considered in arriving at the determination. EPA does not have minimum data requirements for these determinations; however, States and Tribes should rely on the preponderance of available information. Without adequate and reliable information, EPA would make the judgment that sensitive life stages are present and must be protected at all times of the year.

6. Is the evaluation of the presence or absence of early life stages of fish limited to what exists in a water body currently, or should historical data on aquatic communities be considered?

According to the Clean Water Act, States and Tribes are to protect existing uses, and therefore should protect for the most sensitive uses that have occurred in a given waterbody since November, 1975. 40 CFR 131.12(a)(1) and 40 CFR 131.3(e). Hence, States and Tribes should consider both current and historical species that have used a waterbody for spawning and rearing since November, 1975. Even where water quality is protective of designated uses, the current species composition in a waterbody may not reflect all species that have used the waterbody for spawning or rearing since 1975. It is EPA's position that any ELS-absent provision should not prevent the return of any species associated with an existing or designated use. Therefore, States and Tribes should evaluate both current and historical data back to November, 1975, in determining a presence or absence of sensitive life stages.

7. In specifying in its water quality standards when the ELS-absent provision applies, can a State or Tribe rely on the same date every year based on average annual ambient water temperatures, or should a State or Tribe rely on ambient water temperature thresholds that would trigger the ELS-absent provision?

EPA believes that the best way for a State or Tribe to implement its ELS-absent provision is to establish in its water quality standards a fall and a spring date based on historical spawning and early life stage data. Alternatively, a State or Tribe may

specify ambient water temperature thresholds that would serve as surrogates for expected spawning and expected absence of early life stages of fish. Upon reaching the temperature thresholds in the fall and spring, the ELS-absent provision would go into effect.

Either approach may be suitable, however, EPA recommends the establishment of a fall and spring date in a State's or Tribe's water quality standards, because such an approach is simpler to implement in NPDES (National Pollutant Discharge Elimination System) permits. Alternatively if a State or Tribe establishes an ambient water temperature threshold approach, it may specify the fall and spring temperature thresholds in its water quality standards. These thresholds would subsequently be implemented through water quality control measures (e.g., NPDES permitting, TMDLs). EPA, in its review and approval/disapproval of State and Tribal water quality standards, may request that States and Tribes submit detailed procedures addressing the implementation of this alternate approach. If the dates are decided at the time of permit issuance, then the ambient water temperature record (or other condition record) for the site would be evaluated (along with the pH and flow record) as part of the permit issuance process. The final NPDES permit would include fixed dates specifying the seasonally varying water quality-based effluent limit (WQBEL).

Regardless of the approach taken, States and Tribes should keep in mind the following concepts in determining the beginning and end of the ELS-absent period. In the spring, a State or Tribe should consider when (or at what ambient water temperature) early spring spawning is likely to occur, and set the spring cut-off date (or temperature threshold) accordingly. Setting a fall start date (or temperature threshold) is more complicated because in addition to considering when the late summer and early fall spawners are likely to stop spawning, a State or Tribe should also consider the duration of the early life stages of the late summer/early fall spawners. For instance, if the temperature threshold was triggered for the latest fall spawner on October 15, and its early life stage is expected to last 30 days, then the ELS-absent provision would begin as early as November 15. However, if in the same waterbody, the temperature threshold for spawning was triggered for an earlier spawner on October 1, and its early life stage lasted 60 days, then the ELS-absent provision could begin no earlier than December 1. Hence when using temperature thresholds a State or Tribe needs to consider both expected spawning, as well as the expected duration of early life stages of fish. Safety factors are also appropriate where a State or Tribe is less confident in its data for a particular site or where there might be late spawning populations.

8. Can a State or Tribe apply the ELS-absent provision to an underlying site-specific ammonia criterion?

Applying the ELS-absent provision to a site-specific criterion depends on the procedure used for determining the site-specific criterion. At sites where the Water-Effect Ratio (WER) procedure is used, the WER would apply to both ELS-absent and ELS-present criteria values. (However, it has been EPA's experience that the WER procedure has yielded ratios close to 1.0 for ammonia.) At sites where the Recalculation or Resident Species procedure is used, a State or Tribe should consider the effects of having eliminated species from the data set before applying the ELS-absent provision. In many instances, site-specific criteria are developed for small tributary streams and headwater streams with lower species diversity and fewer game fish species. States and Tribes considering the ELS-absent provision must protect early life stages of all fish species, not just species considered to be of value to a fishery. Because the Recalculation Procedure involves a re-derivation of the criterion, and not merely a factor adjustment of the criterion, a re-derivation of a ELS-absent criteria table should follow procedures similar to those used in the 1999 Update.

C. State and Tribal Adoption of Ammonia Criteria

EPA recommends that States and Tribes adopt numeric ammonia criteria applicable at all times of the year for all waters designated for the protection of aquatic life or for waters whose existing uses include aquatic life. Numeric criteria may be adopted based on EPA's ambient water quality criteria for ammonia, such criteria modified to reflect site-specific conditions, or other scientifically defensible methods. 40 CFR 131.11(b)(1). States and Tribes should adopt narrative criteria where numeric criteria cannot be established or to supplement numeric criteria. 40 CFR 131.11(b)(2). Because EPA has issued section 304(a) criteria for ammonia, numeric criteria for ammonia can be established. Ammonia is a pollutant that is routinely found in the wastewater effluent of publicly-owned treatment works and landfill leachate, as well as run-off from agricultural fields where commercial fertilizers and animal manure are applied. Ammonia is frequently identified as a pollutant causing or contributing to water quality impairment when states assemble their lists of impaired surface waters under section 303(d). Because ammonia has known toxic effects to aquatic life, as is demonstrated in EPA's 1999 Update of Ambient Water Quality Criteria for Ammonia, the Office of Water finds that control of ammonia discharges is necessary to protect aquatic life uses of surface water across the United States. Numeric criteria for ammonia are much easier to implement in NPDES permits than are narrative criteria because they form a concrete basis for calculating the need for and the substance of any needed effluent limitations. In the TMDL program, such criteria serve as a definitive benchmark for determining impairment of waters for listing purposes and then as a concrete starting point for establishing TMDL's, wasteload allocations for point sources and load allocations for nonpoint sources. Further, because water quality criteria are commonly implemented through regulatory mechanisms such as TMDLs and NPDES permits, State and Tribal adoption of numeric criteria does not have a direct impact on any given discharger. In the case of NPDES permits, a water quality based effluent limit would apply to a given discharger only if the discharge has the reasonable potential to cause an exceedance of a water quality criterion. In addition under section 303(d) of the CWA, waterbodies would be listed and TMDLs established only where the ambient concentrations in the water exceed the ammonia criteria.

The adoption of numeric criteria for ammonia will be a priority for the triennial reviews of water quality standards that will occur in FY2001–2003. Beginning with FY2001, EPA Headquarters and Regional Offices will develop management agreements with the states and tribes that will include commitments to have states and tribes adopt numeric criteria for ammonia. Where a state does not amend its water quality standards to include water quality criteria for ammonia that will ensure protection of designated uses, EPA's Office of Water will recommend to the Administrator that she act under Section 303(c) of the Clean Water Act to promulgate numeric criteria with the goal of assuring that protective criteria for ammonia apply in all states not later than 2004.

VI. Threatened or Endangered Species

Because ambient criteria are generally designed to protect 95 percent of all fish and aquatic invertebrate taxa, there remains a small possibility that the criteria will not protect all listed endangered or threatened species. Consequently, EPA recommends that States and Tribes develop more stringent, site-specific modifications of the criteria as necessary to protect threatened and endangered species.

In adopting ammonia criteria for specific water bodies, States and Tribes may need to develop more stringent, site-specific modifications of the criteria to protect listed endangered or threatened species, where sufficient data exist indicating that endangered or threatened species are more sensitive to a pollutant than the species upon which the criteria are based. Such modifications may be accomplished using either of the following two procedures.

1. More stringent, site-specific modifications may be calculated to protect a listed endangered or threatened species by using the Species Mean *Acute* Value (SMAC) and Species Mean Chronic Value (SMCV). *Resetting the CMC:* If the CMC is greater than 0.5 times the Species Mean Acute Value for a listed threatened or endangered species, or a surrogate for such species, obtained from flow-through, measured-concentration tests, then the CMC should be reset equal to 0.5 times that Species Mean Acute Value. (The empirical factor 0.5 converts from a 50 percent lethality concentration to a minimal-lethality concentration.) *Resetting the CCC:* If the CCC is greater than the Species Mean Chronic Value of a listed threatened or endangered species or surrogate, then the CCC should be reset to that Species Mean Chronic Value. If the Species Mean Chronic Value is not available, then the CCC can be reset by dividing the Species Mean Acute Value by the Acute to Chronic Ratio (ACR) in accord with EPA's "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses (1985)," for deriving a CCC for commercially and recreationally important species; or,

2. More stringent, site-specific modifications may be calculated to protect a listed endangered or threatened species by using the recalculation procedure for site-specific modifications described in Chapter 3 of the U.S. EPA Water Quality Standards Handbook, Second Edition—Revised (1994).

Dated: December 15, 1999.

Dana D. Minerva,

Acting Assistant Administrator for Water.

[FR Doc. 99–33152 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–U

federal register

Wednesday
December 22, 1999

Part VII

Committee for the Implementation of Textile Agreements

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 2000 and Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus; Notices

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 2000

December 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: The Committee for the Implementation of Textile Agreements (CITA) announces that the 2000 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available in December 1999 as part of the Office of Textiles and Apparel (OTEXA) CD–Rom publications.

The CD ROM may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Barbara Anderson, at a cost of $25. Checks or money orders should be made payable to the U.S. Department of Commerce. The Correlation is also available on the OTEXA website at http://otexa.ita.doc.gov.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33226 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

December 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on September 27, 1999 (64 FR 51962) announced that the Government of the United States had requested consultations with the Government of Belarus with respect to glass fiber fabric in Category 622, produced or manufactured in Belarus, and that, if no solution was agreed upon in consultations with the Government of Belarus, the Government of the United States reserved its right to establish a twelve-month limit of not less than 6,480,552 square meters for the entry for consumption and withdrawal from warehouse for consumption of glass fiber fabric in Category 622, produced or manufactured in Belarus.

As no solution was agreed upon in consultations, the Government of the United States has decided to limit imports in this category for the twelve-month period beginning on September 17, 1999 and extending through September 16, 2000.

The United States remains committed to finding a mutual solution concerning Category 622. Should such a solution be reached in consultations with the Government of Belarus, further notice will be published in the **Federal Register**.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States which is published elsewhere in this issue of the **Federal Register**.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period beginning on September 17, 1999 and extending through September 16, 2000, in excess of 6,480,552 square meters.[1].

Textile products in Category 622 which have been exported to the United States prior to September 17, 1999 shall not be subject to this directive.

Textile products in this category which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33227 Filed 12–21–99; 8:45 am]

BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any import exported after September 16, 1999.

Reader Aids

Federal Register

Vol. 64, No. 245

Wednesday, December 22, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468	1
67469–67692	2
67693–67996	3
67997–68274	6
68275–68614	7
68615–68930	8
68931–69164	9
69165–69370	10
69371–69628	13
69629–69882	14
69883–70172	15
70173–70562	16
70563–70984	17
70985–71266	20
71267–71632	21
71633–71982	22

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7256	67691
7257	68269
7258	69161
7259	69163
7260	70563
7261	71629
7262	71631

Executive Orders:

June 24, 1914 (Revoked in part by PLO 7416)	67295
April 28, 1917 (Revoked in part by PLO 7416)	67295
February 11, 1918 (Revoked in part by PLO 7416)	67295
July 10, 1919 (Revoked in part by PLO 7416)	67295
May 25, 1921 (Revoked in part by PLO 7416)	67295
April 17, 1926 (Revoked in part by PLO 7416)	67295
February 7, 1930 (Revoked in part by PLO 7416)	67295
13143	68273

Administrative Orders:

Memorandums:

November 29, 1999	68275

5 CFR

410	69165
530	69165
531	69165
532	69183
534	68931
536	69165
550	69165, 69936
551	69165
575	69165, 71633
591	69165
610	69165
1205	71267
1630	67693
6801	68615

7 CFR

29	67469
246	67997, 70173, 71635
301	71267
319	68001, 69629
457	71270
761	69322
905	69371
906	69375
915	69380
1000	70868
1001	70868
1002	70868
1004	70868
1005	70868
1006	70868
1007	70868
1012	70868
1013	70868
1030	70868
1032	70868, 70985
1033	70868
1036	70868
1040	70868
1044	70868
1046	70868
1049	70868
1050	70868
1064	70868
1065	70868
1068	70868
1076	70868
1079	70868
1106	70868
1124	70868
1126	70868
1131	70868
1134	70868
1135	70868
1137	70868
1138	70868
1139	70868
1407	67470
1703	69937

Proposed Rules:

272	70920
273	70920
301	71322
955	69419
985	69421
989	69204
1032	67201
1703	69937
1744	69946
1980	70124
3555	70124
4280	69937

8 CFR

103	69983
235	68616

Proposed Rules:

100	68638
103	71323
214	71323
299	71323

9 CFR

78	67695
94	67695
130	67697, 67699

Proposed Rules:

54	70608

79.....70608
301.....70200
318.....70200
320.....70200

10 CFR

51.....68005
72.....67700
709.....70962
710.....70962
711.....70962
850.....68854

Proposed Rules:

26.....67202
71.....71331
73.....71331
431.....69598
960.....69963
963.....69963

11 CFR

Proposed Rules:

100.....68951

12 CFR

22.....71272
24.....70986
203.....70991
208.....71272
327.....70178
339.....71272
503.....69183
505.....69183
557.....69183
559.....69183
563.....69183
572.....69183
614.....71272
760.....71272
932.....71275
934.....71275
935.....71275

Proposed Rules:

202.....69963
205.....69963
213.....69963
226.....69963
230.....69963
935.....71689

13 CFR

107.....70992
300.....69868
301.....69868
302.....69868
303.....69868
304.....69868
305.....69868
306.....69868
307.....69868
308.....69868
314.....69868
316.....69868
317.....69868
318.....69868

Proposed Rules:

120.....67205, 69964

14 CFR

25.....67147, 67701, 67705, 69383
39.....67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394, 69629, 69964, 69967, 70181, 70997, 71001, 71003, 71004, 71006, 71007, 71009, 71010, 71012, 71278, 71280, 71282
65.....68916, 71635
71.....67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932, 69631, 69632, 70565, 70566, 70567, 70568, 70570, 71014, 71637
91.....70571
254.....70573
97.....67473, 67476, 71015, 71017

Proposed Rules:

11.....69856
25.....67804, 69425
39.....67206, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336, 71689, 71694, 71696
71.....67525, 67810, 69430, 69431, 70610, 70611, 70612
450.....69628
1261.....71339
1267.....71339

15 CFR

303.....67148
806.....67716
902.....68228, 68932, 69888
2015.....67152

Proposed Rules:

280.....69969

16 CFR

0.....71283
4.....69397
305.....71019
1145.....71854
1212.....71854
1213.....71888
1500.....71888
1513.....71888

17 CFR

3.....68011
32.....68011
211.....67154, 68936
270.....68019

Proposed Rules:

Ch. II.....69074
4.....68304
240.....69975, 70613
250.....71341

19 CFR

12.....67479
132.....67481
163.....67481

20 CFR

404.....67719

Proposed Rules:

222.....68647
325.....67811
330.....67811
335.....67811
336.....67811
604.....67811, 67972, 71346

21 CFR

10.....69188
12.....69188
176.....68629, 69898
177.....71637
178.....67483, 71639
179.....69190
203.....67720
205.....67720
510.....69188, 69191
520.....68289
522.....71640
529.....71640
558.....70576
1401.....69901

Proposed Rules:

10.....69209
12.....69209
16.....70202, 70203
314.....67207
330.....71062
510.....69209
601.....67207
807.....71347
1309.....67216

23 CFR

130.....71284
480.....71284
620.....71284
630.....71284
635.....71284
645.....71284
710.....71284
712.....71284
713.....71284

Proposed Rules:

655.....71354, 71358

24 CFR

985.....67982

Proposed Rules:

990.....71698

26 CFR

1.....67763, 69903, 71641
20.....67763, 67767, 71021
25.....67767
301.....67767
601.....69398
602.....67767, 69903, 71641

Proposed Rules:

1.....71082

27 CFR

200.....71918
270.....71918, 71929, 71937
275.....71918, 71929, 71937, 71947
290.....71918, 71929, 71937
295.....71929, 71937
296.....71929, 71937, 71957

Proposed Rules:

200.....71927
270.....71927, 71935
275.....71927, 71935, 71955
290.....71927, 71935
295.....719351
296.....719351

28 CFR

0.....68307
91.....71022
551.....68264

29 CFR

403.....71622
4011.....67163
4022.....67163
4044.....67165, 69922

Proposed Rules:

2520.....67436
2700.....68649

30 CFR

250.....69923
740.....70766
745.....70766
761.....70766, 70838
762.....70766
772.....70766
773.....70766
778.....70766
780.....70766
784.....70766, 71652
817.....71652
913.....68024
914.....70578
918.....68289
936.....70584
946.....69399

Proposed Rules:

280.....68649
931.....71698, 71700
938.....70644

31 CFR

285.....71228

Proposed Rules:

28.....69432
285.....71233

32 CFR

287.....67166
296.....71297
299.....71299

Proposed Rules:

199.....67220, 69981

33 CFR

26.....69633
100.....67168, 67169, 69192, 70184
117.....67169, 67773, 68291, 71653
127.....67170
154.....67170
155.....67170
159.....67170
161.....69633
164.....67170
165.....70587, 71023, 71655
183.....67170
207.....69402

Proposed Rules:

100.....70650
140.....68416
141.....68416
142.....68416
143.....68416
144.....68416
145.....68416
146.....68416
147.....68416
165.....70650

34 CFR

76.....71964

304.....69138
606.....70146
607.....70146
Proposed Rules:
694.....71552

35 CFR

7.....71025
1220.....67662
1222.....67662
1228.....67662, 67634, 68945
Proposed Rules:
217.....69446, 70204
219.....69446, 70204
251.....70204

37 CFR

1.....67486, 67774
2.....67486, 67774
253.....67187
258.....71659
Proposed Rules:
201.....71086

38 CFR

Proposed Rules:
3.....67528

39 CFR

3001.....67487
Proposed Rules:
111.....68965, 71702

40 CFR

9.....68546, 68722, 69636
51.....71026
52.....67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404, 70589, 70592, 70593, 71026, 71027, 71031, 71035, 71038, 71304, 71660, 71663, 71666
62.....70595
63.....67789, 67793, 69637, 71852
70.....71038
82.....68039
122.....68722
123.....68722
124.....68722
141.....67450
143.....67450
144.....68546, 70316
145.....68546
146.....68546
180.....68044, 68046, 68631, 69407, 69409, 70184, 70599, 71670
243.....70602
300.....68052
Proposed Rules:
2.....71366
50.....68659
52.....67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332 70347, 70364, 70380, 70397, 70412, 70428, 70443, 70459, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087, 71704, 71705
62.....70665
70.....68066
80.....70121
81.....68659, 70660
85.....68310, 70121
86.....68310, 70121, 70665
141.....71366
142.....71367
165.....71367
180.....71708
194.....68661
243.....70666
260.....68968
372.....68311
761.....69358

41 CFR

Ch. 301.....67670
300-3.....67670
301-10.....67670

42 CFR

121.....71317
422.....71673
1001.....71626
Proposed Rules:
68c.....69213
433.....67223
438.....67223
1001.....69217

44 CFR

61.....71317
64.....71317, 71678
65.....69644, 69646, 69647, 69649
67.....69652, 69655, 69657
Proposed Rules:
67.....69676

45 CFR

61.....71041
1302.....69924
1641.....67501
Proposed Rules:
160.....69981
161.....69981
162.....69981
163.....69981
164.....69981
270.....68202
2522.....67235
2525.....67235

46 CFR

28.....67170
30.....67170
32.....67170
34.....67170
35.....67170
38.....67170
39.....67170
54.....67170
56.....67170
58.....67170
61.....67170
63.....67170
76.....67170
77.....67170
78.....67170
92.....67170
95.....67170
96.....67170
97.....67170
105.....67170
108.....67170
109.....67170
110.....67170
111.....67170
114.....67170
119.....67170
125.....67170
151.....67170
153.....67170
154.....67170
160.....67170
161.....67170
162.....67170
163.....67170
164.....67170
170.....67170
174.....67170
175.....67170
182.....67170
190.....67170
193.....67170
195.....67170
199.....67170

47 CFR

Ch. 1.....68053
1.....68946, 69926
2.....69926
36.....67372, 67416
51.....68637
54.....67372, 67416
69.....67372
73.....70606, 71041
76.....67193, 67198
90.....67199, 71042
95.....69926
Proposed Rules:
0.....71369
1.....71088
2.....71088
73.....67236, 67535, 68662, 68663, 68664, 68665, 70670, 70671, 70672, 71097, 71098, 71712
80.....71369
90.....71369
101.....71088, 71373

48 CFR

808.....69934
812.....69934
813.....69934
852.....69934
853.....69934
1815.....69415
Proposed Rules:
1.....67986
2.....70158
12.....67992
13.....67992
16.....70158
22.....67986, 67992
25.....67446
30.....67814
37.....70158
52.....67446, 67986, 67992
919.....68072
952.....68072
1815.....70208
1819.....70208
1852.....70208

49 CFR

192.....69660
195.....69660
211.....70193
219.....69193
225.....69193
235.....70193
238.....70193
240.....70193
571.....69665
Proposed Rules:
40.....69076
106.....71098
107.....71098
171.....71098
192.....71713
195.....71713
571.....70672, 71377

50 CFR

17.....68508, 69195, 71680
20.....71236
21.....71236
222.....69416, 70196
223.....69416, 70196
300.....69672
600.....67511
622.....68932, 71056
635.....70198
648.....71060, 71320, 71687
649.....68228
660.....69888
679.....68054, 68228, 68949, 69673, 70199, 71688
Proposed Rules:
17.....67814, 69324, 70209, 71714
18.....68973
216.....70678, 71722
226.....67536, 69448
622.....70678, 71388
635.....69982
648.....67551
660.....70679
679.....67555, 69219, 69458, 71390, 71396

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 22, 1999

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management
Northeastern United States fisheries—
Summer flounder; published 12-21-99

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Myclobutanil; published 12-22-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Communications Assistance for Law Enforcement Act; implementation; telecommunications carrier interceptions; published 9-23-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Atipamezole; published 12-22-99
Sevoflurane; published 12-22-99
Food additives:
Adjuvants, production and aids, and sanitizers—
Di(n-octyl)phosphite; published 12-22-99
Polymers—
4-methylpentene-1; published 12-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Grants:
National Institutes of Health construction grants; published 11-22-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Community development block grants:
Expenditure documentation; clarification; published 11-22-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Zapata bladderpod; published 11-22-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Surface coal mining and reclamation operations:
Underground coal mining subsidence; court order compliance; published 12-22-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Cape Cod Canal; Year 2000 reporting requirements for transiting vessels; published 12-22-99

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Cigarette floor stock tax; published 12-22-99
Qualification of tabacco product importers; technical amendments; published 12-22-99
Roll-your-own tobacco permit requirements; published 12-22-99

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural and vegetable seeds; inspection and certification:
Fee increase; comments due by 12-28-99; published 10-29-99
Olives grown in—
California; comments due by 12-27-99; published 10-26-99
Onions grown in—
Texas; comments due by 12-27-99; published 11-26-99
Tomatoes grown in—
Florida; comments due by 12-27-99; published 10-25-99

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Scrapie in sheep and goats; movement restrictions and indemnity program; comments due by 12-30-99; published 11-30-99

COMMERCE DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

COMMERCE DEPARTMENT
Export Administration Bureau
Export administration regulations:
Foreign policy-based export controls; effects; comments due by 12-30-99; published 11-30-99
Export licensing:
Commerce control list—
Microprocessors controlled by ECCN 3A001 and graphics accelerators controlled by ECCN 4A003; License Exception CIV eligibility level expansion; comments due by 12-27-99; published 11-26-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic snapper-grouper; comments due by 12-27-99; published 10-26-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 12-27-99; published 11-24-99

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Fee schedule; comments due by 12-27-99; published 11-26-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Family member dental plan; comments due by 12-27-99; published 11-24-99
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99
Federal Acquisition Regulation (FAR):
Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

ENERGY DEPARTMENT
Western Area Power Administration
Energy Planning and Management Program:
Integrated resource planning approval criteria; comments due by 12-30-99; published 11-17-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Transportation conformity rule; grace period deletion; comments due by 12-30-99; published 11-30-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 12-27-99; published 11-26-99
Massachusetts; comments due by 12-30-99; published 11-30-99
Confidential business information; elimination of special treatment for certain category; comments due by 12-27-99; published 10-25-99
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by

12-28-99; published 10-29-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Local exchange carrier price cap productivity offset (X-factor); prescription; comments due by 12-30-99; published 11-26-99

Radio stations; table of assignments:

Kentucky; comments due by 12-27-99; published 12-2-99

FEDERAL EMERGENCY MANAGEMENT AGENCY

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

FEDERAL HOUSING FINANCE BOARD

Agency regulations reorganization; comments due by 12-27-99; published 9-27-99

Federal home loan bank system:

Financial management and mission achievement; comments due by 12-27-99; published 9-27-99

GENERAL SERVICES ADMINISTRATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Federal Acquisition Regulation (FAR):

Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human cellular and tissue-based products:

Donors suitability determination; comments due by 12-29-99; published 9-30-99

Medical devices:

General hospital and personal use devices—

Subcutaneous, implanted, intravascular infusion port and catheter, and percutaneous, implanted long-term intravasuclar catheter; classification; comments due by 12-30-99; published 10-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Carrier determinations that supplier fails to meet requirements for Medicare billing privileges; appeals; comments due by 12-27-99; published 10-25-99

Home health agencies; prospective payment system; comments due by 12-27-99; published 10-28-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Quarantine, inspection, and licensing:

Interstate shipments—

Centers for Disease Control; infectious substances and select agents; packaging and handling; comments due by 12-27-99; published 10-28-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:

Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 12-29-99; published 11-30-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Findings on petitions, etc.—

Columbian sharp-tailed grouse; comments due by 12-27-99; published 10-26-99

INTERIOR DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 12-29-99; published 11-29-99

JUSTICE DEPARTMENT

Education programs and activities receiving Federal financial assistance; noneiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

LABOR DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Export controlled technology; standard clause; comments due by 12-27-99; published 10-28-99

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Federal Acquisition Regulation (FAR):

Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

ARTS AND HUMANITIES, NATIONAL FOUNDATION

National Foundation on the Arts and the Humanities

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex:

Institute for Museum and Library Services; comments due by 12-28-99; published 10-29-99

National Endowment for the Arts; comments due by 12-28-99; published 10-29-99

National Endowment for the Humanities; comments due by 12-28-99; published 10-29-99

NATIONAL SCIENCE FOUNDATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Freedom of Information Act and Privacy Act; implementation; comments due by 12-27-99; published 11-24-99

NUCLEAR REGULATORY COMMISSION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

POSTAL RATE COMMISSION

International mail services; cost, revenue, and volume data analysis; comments due by 12-27-99; published 11-26-99

SECURITIES AND EXCHANGE COMMISSION

Securities:

Short sales; limits lifted, etc.; comments due by 12-27-99; published 10-28-99

SMALL BUSINESS ADMINISTRATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Government contracting programs:

Contract bundling and SBA's authority to appeal adverse decisions made by procuring agency; comments due by 12-27-99; published 10-25-99

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old age, survivors, and disability insurance—

Title II benefits under family maximum provisions; reduction in cases of dual entitlement; comments due by 12-27-99; published 10-27-99

STATE DEPARTMENT

Education programs and activities receiving Federal financial assistance;

nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Visas; immigrant and nonimmigrant documentation:

Immigrant visa fees; change in payment procedures; comments due by 12-27-99; published 10-28-99

TENNESSEE VALLEY AUTHORITY

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

TRANSPORTATION DEPARTMENT

Coast Guard

Vessel inspection:

Frequency, passenger vessel alternate hull examination program, and passenger, nautical school, and sailing school vessel underwater surveys; comments due by 12-30-99; published 11-15-99

TRANSPORTATION DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

BMW Rolls-Royce GmbH; comments due by 12-27-99; published 11-19-99

Boeing; comments due by 12-27-99; published 11-12-99

British Aerospace; comments due by 12-27-99; published 11-24-99

Dornier; comments due by 12-27-99; published 11-26-99

General Electric Co.; comments due by 12-27-99; published 10-26-99

Pratt & Whitney; comments due by 12-27-99; published 10-27-99

Airworthiness standards:

Special conditions—

Piper Cheyenne PA-31T2 airplane; comments due by 12-30-99; published 11-30-99

Raytheon Model 390 airplane; comments due by 12-30-99; published 11-30-99

Class C airspace; comments due by 12-27-99; published 11-15-99

Class D airspace; comments due by 12-30-99; published 11-15-99

Class E airspace; comments due by 12-27-99; published 11-24-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Air bag requirements for passenger cars and light trucks; upgrade; comments due by 12-30-99; published 11-5-99

TREASURY DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

VETERANS AFFAIRS DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

LIST OF PUBLIC LAWS

This is a completes the listing of public laws enacted during the first session of the 106th of Congress. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

The list will resume when bills are enacted into public law during the second session of the 106th Congress, which convenes on January 24, 2000. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1999.

H.R. 1180/P.L. 106–170

Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

Last List December 17, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: PENS will resume service when bills are enacted into law during the second session of the 106th Congress. This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Order Now!

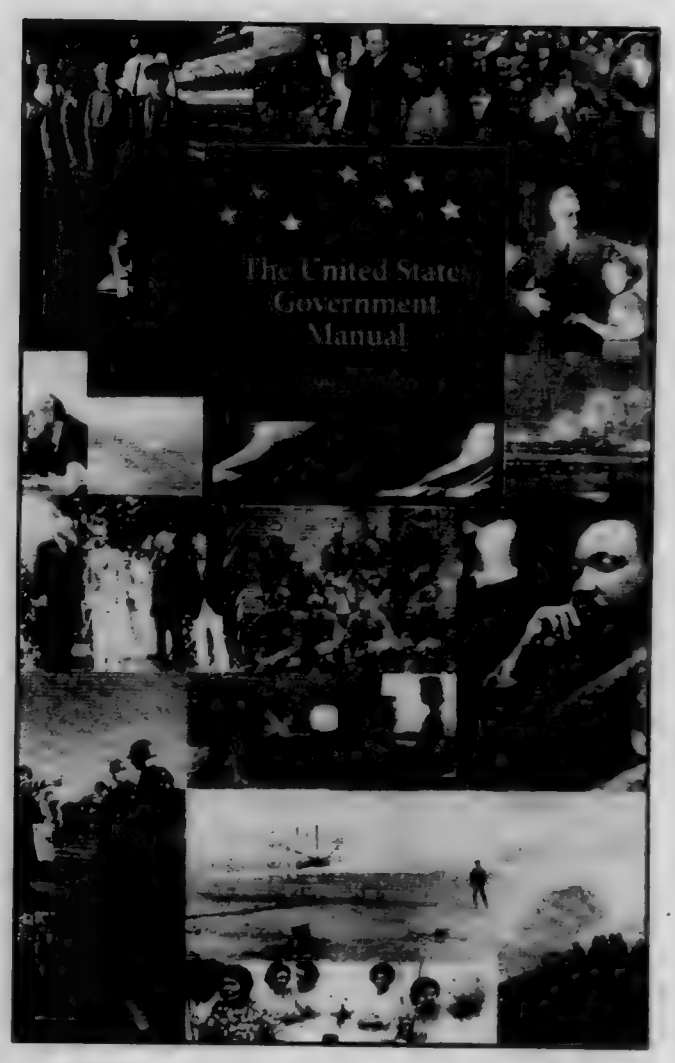
The United States Government Manual 1999/2000

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$46 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1999/2000, S/N 069–000–00109–2 at $46 ($57.50 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

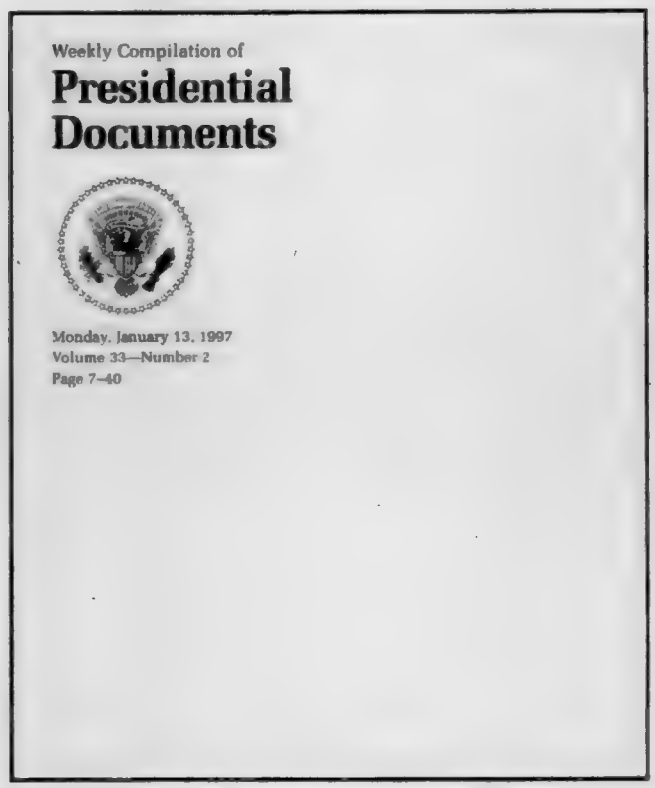
Thank you for your order!

Authorizing signature 9/99

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

——— **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
——— **Federal Register Index** (FRUS) $25 per year.

Charge your order. It's Easy! MasterCard VISA
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                      DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling,** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

E

A

250
800

s

for
er!

1/97

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–23–99
Vol. 64 No. 246

federal register

Thursday
December 23, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

OL

64

ISS

2
4
6

DE

23

999

MI

12–2
Vol.
Page

12–23–99
Vol. 64 No. 246
Pages 71983–72248

federal register

Thursday
December 23, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Printed on recycled paper.

Contents

Federal Register

Vol. 64, No. 246

Thursday, December 23, 1999

Agricultural Marketing Service
NOTICES
Meetings:
Flue-Cured Tobacco Advisory Committee, 72063

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service
See Rural Business-Cooperative Service

Air Force Department
RULES
Privacy Act; implementation, 72031–72032
NOTICES
Privacy Act:
Systems of records, 72072

Army Department
NOTICES
Meetings:
Science Board, 72072–72073

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72082–72083

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Connecticut, 72068–72069
Idaho, 72069
Oregon, 72069

Commerce Department
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 72070

Commodity Credit Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 72148

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72070–72072
Grants and cooperative agreements; availability, etc.:
Training and technical assistance providers; correction, 72072

Defense Department
See Air Force Department
See Army Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Maternity care; nonavailability statement requirement, 72030–72031
Personnel:
Ready Reserve screening, 72027–72030
NOTICES
Committees; establishment, renewal, termination, etc.:
Joint Military Intelligence College Board of Visitors, 72072
Environmental statements; availability, etc.:
National Missile Defense System; deployment; correction, 72148

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 72073

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72073–72074

Emergency Oil and Gas Guaranteed Loan Board
RULES
National Environmental Policy Act; implementation:
Loan guarantee decisions; information availability, 72022–72026

Emergency Steel Guarantee Loan Board
RULES
National Environmental Policy Act; implementation:
Loan guarantee decisions; information availability, 72019–72022

Employment and Training Administration
NOTICES
Adjustment assistance:
Arrow Automotive Industries, 72102
Conoco, Inc., 72102
Crouse-Hinds Division of Cooper Industries, 72106–72107
Fred P. Saunders Co., 72103
Hempfield Foundries et al., 72103–72104
Huffy Bicycle Co., 72104
Interplast Universal Industries, 72104
Invensys Appliance Controls, 72104
Matador Petroleum Corp., 72104–72105
Pendleton Woolen Mills, 72105
Ray-Ban Sun Optics, 72105
Sensory Devices, Inc., 72105
Suckle Corp., 72105–72106
Trinity Industries, Inc., 72106
Unger Fabrik, 72106
Weiser Lock et al., 72106–72107
NAFTA transitional adjustment assistance:
Moltrup Steel Products Co., Inc., 72107
Robotex, Inc., 72107–72108
Sensory Devices, Inc., 72106

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 72032–72035
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 72045
Sewage sludge; use or disposal standards:
Dioxin and dioxin-like compounds; numeric concentration limits, 72045–72062
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 72077–72078
Weekly receipts, 72078–72079
Superfund; response and remedial actions, proposed settlements, etc.:
Groveland Wells Nos. 1 and 2 Site, MA, 72079–72080

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Organization; and funding and fiscal affairs, loan policies and operations, and funding operations—
Stock issuances, 72041–72044

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 72076–72077
Practice and procedure:
Off-the-record communications, 72077
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 72074
KN Marketing, LP, 72075
Panhandle Eastern Pipe Line Co., 72075
PG&E Gas Transmission, Northwest Corp., 72075
Trunkline Gas Co., 72075–72076

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
Denver, Arapahoe, and Douglas Counties, CO, 72139–72140

Federal Maritime Commission
NOTICES
Agreements filed, etc., 72080
Casualty and nonperformance certificates:
American Classic Voyages Co. et al., 72080–72081
Clipper Cruise Line, Inc., et al., 72081

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 72081
Formations, acquisitions, and mergers; correction, 72081–72082
Permissible nonbanking activities, 72082

Federal Transit Administration
NOTICES
Environmental statements; availability, etc.:
Denver, Arapahoe, and Douglas Counties, CO, 72139–72140

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety and reinsuring companies; application and renewal fees increase, 72142–72143
Surety companies acceptable on Federal bonds:
Service Insurance Co., Inc., 72143

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 72098

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Diclazuril, 72026–72027
NOTICES
Reports and guidance documents; availability, etc.:
Antimicrobial new animal drugs for use in food-producing animals—
Human health impact of microbial effects; industry guidance; correction, 72148
Microbial effects; human food safety evaluation and assurance framework; agency response, 72084–72085
Microbial effects; human food safety evaluation and assurance framework; agency response; republication, 72083–72084
Medical devices—
Acupuncture devices and accessories; compliance policy guide revocation, 72085–72086

Food and Nutrition Service
PROPOSED RULES
Food stamp program:
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation—
Work provisions, 72195–72223
NOTICES
Child nutrition programs:
Summer food service program; reimbursement rates (2000 CY), 72063–72064

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Accurate weights, repairs, adjustments, and replacement after inspection; scale requirements, 71989–71990
Food ingredients and radiation sources listed or approved for use, 72167–72194
Irradiation of refrigerated or frozen uncooked meat, meat byproducts, etc., 72149–72166

Forest Service
NOTICES
Environmental statements; availability, etc.:
White River National Forest, CO, 72064–72065
Environmental statements; notice of intent:
Medicine Bow-Routtt National Forests, WY, 72066–72067

Ochoco National Forest, OR, 72065–72066
Jurisdictional transfers:
Toiyabe National Forest, NV; Hawthorne Army Depot New Bomb Project Interchange, 72067–72068
Meetings:
Northwest Sacramento Provincial Advisory Committee, 72068

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72082

Health Care Financing Administration
NOTICES
Meetings:
Competitive Pricing Advisory Committee, 72086

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 72096–72097

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Justice Department
See Parole Commission

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Zion Nationa Park, UT, 72098–72099
Public land orders:
Arizona, 72099
Colorado, 72076–72077
Utah, 72100
Realty actions; sales, leases, etc.:
Nevada, 72100–72101

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72140

Merit Systems Protection Board
PROPOSED RULES
Practice and procedure:
Attorney fees; reimbursement, 72040–72041

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72108

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 72108–72109

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 72086–72087
National Center for Complementary and Alternative Medicine, 72087
National Heart, Lung, and Blood Institute, 72087–72088
National Human Genome Research Institute, 72088
National Institute of Child Health and Human Development, 72089
National Institute of Diabetes and Digestive and Kidney Diseases, 72088–72089
National Institute on Deafness and Other Communication Disorders, 72089
Scientific Review Center, 72089–72090
Reports and guidance documents; availability, etc.:
Biomedical research resources; principles and guidelines for research grant and contract recipients, 72090–72096

National Oceanic and Atmospheric Administration
RULES
International fisheries regulations:
Northwest Atlantic Fisheries Organization Regulatory Area; U.S. fish quota allocations, 72035–72036
NOTICES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Reporting and recordkeeping requirements; individual fishing quota requirements, 72069
Meetings:
New England Fishery Management Council, 72069–72070

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 72101
Reports and guidance documents; availability, etc.:
Federal Land Managers' Air Quality Related Values Work Group (FLAG); Phase I Report, 72101–72102

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 72109–72110

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Telecommunications Facilities Program, 72225–72234

Nuclear Regulatory Commission
RULES
Early site permits standard design certifications and combined licenses for nuclear power plants:
AP600 design certification, 72002–72019
Production and utilization facilities; domestic licensing:
Nuclear power plants—
Alternative source terms use, 71990–72002

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions Withdrawn, 72019
NOTICES
Meetings; Sunshine Act, 72110

Office of United States Trade Representative
See Trade Representative, Office of United States

Parole Commission
NOTICES
Meetings; Sunshine Act, 72102

Personnel Management Office
RULES
Group life insurance, Federal employees:
New premium rates, 71983–71984
PROPOSED RULES
Health and counseling programs, Federal employees:
Child care costs for lower income employees; appropriated funds use, 72037–72040

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Plant Verified Drop Shipment (PVDS) mailings; loading requirements, 72044–72045

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Pay rates (EO 13144), 72235–72247

Public Debt Bureau
See Fiscal Service

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Rural Business-Cooperative Service
RULES
Grants:
Rural Business Opportunity Program, 71984–71989

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72110–72111
Investmet Company Act of 1940:
Deregistration applications—
Empirical Growth Fund et al., 72122–72123
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board, 72123–72125
National Association of Securities Dealers, Inc., 72125–72129
Applications, hearings, determinations, etc.:
Aetna Life Insurance and Annuity Co. et al., 72111–72114
Hartford Life & Annuity Insurance Co. et al., 72114–72118
Public utility holding company filings, 72118–72120
Security Equity Fund et al., 72120–72122

Sentencing Commission, United States
See United States Sentencing Commission

Social Security Administration
NOTICES
Disability determination procedures:
Testing modifications—
Single decisionmaker model and full process model with rationale summary; tests extension, 72134–72135

State Department
NOTICES
Art objects; importation for exhibition:
Crowning Glories: Two Centuries of Tiaras, 72135–72136

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Substance Abuse Prevention Center National Advisory Council, 72096

Surface Transportation Board
NOTICES
Rail carriers:
Cost recovery procedures—
Adjustment factor, 72140–72141
Railroad operation, acquisition, construction, etc.:
Arkansas Short Line Railroads, Inc., 72141
Columbiana County Port Authority, 72142
Union Pacific Railroad Co., 72141–72142

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Annual product and country eligibility practices review (1999)—
Petitions accepted, etc., 72136–72138
South Africa; beneficiary developing country designation criteria, 72138–72139

Transportation Department
See Federal Highway Administration
See Federal Transit Administration
See Maritime Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 72129–72134

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72143–72145
Submission for OMB review; comment request, 72145–72147

Separate Parts In This Issue

Part II
Department of Agriculture, Food Safety and Inspection Service, 72149–72166

Part III
Department of Agriculture, Food Safety and Inspection Service, 72167–72194

Part IV
Department of Agriculture, Food Nutrition Service, 72195–72223

Part V
Department of Commerce, National Telecommunications and Information Administration, 72225–72234

Part VI
The President, 72235–72247

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13106 (superceded by EO 13144)....72237
13144....72237

5 CFR
870....71983
Proposed Rules:
792....72037
1201....72040

7 CFR
4284....71984
Proposed Rules:
271....72196
272....72196
273....72196

9 CFR
310....72170
317....71989
381 (2 documents)....71989, 72150
424....72150

10 CFR
21....71990
50....71990
52....72002
54....71990
72....72019

12 CFR
Proposed Rules:
611....72041
615....72041

13 CFR
400....72019
500....72022

21 CFR
558....72026

32 CFR
44....72027
199....72030
806b....72031

39 CFR
Proposed Rules:
111....72044

40 CFR
52....72032
70....72032
Proposed Rules:
52....72045
70....72045
503....72045

50 CFR
300....72035

Rules and Regulations

Federal Register
Vol. 64, No. 246
Thursday, December 23, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AI54

Federal Employees' Group Life Insurance Program: New Premiums

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to incorporate new provisions resulting from the Federal Employees Life Insurance Improvement Act, enacted October 30, 1998. The regulation changes the premium rates for Basic and Optional coverages, changes the effective date of the birthday rule for moving from one premium-rated age band to another under Optional coverage, and establishes new age bands for Option C.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Neuner (202) 606–0004.

SUPPLEMENTARY INFORMATION: On April 27, 1999, OPM issued an interim regulation in the **Federal Register** (64 FR 22543) that amends 5 CFR part 870, the Federal Employees' Group Life Insurance (FEGLI) Program. The interim regulation published new rates for Basic and Optional coverages (Option A—Standard, Option B—Additional, and Option C—Family), removed the maximum cap on Basic and Option B, increased the number of multiples of coverage under Option C, expanded post-65 coverage options for Options B and C for annuitants and compensationers, and changed the birthday rule which determines the effective date an employee, annuitant, or compensationer begins to pay a new age-based premium under Optional coverages. Previously, an individual was considered to have reached age 35, 40, 45, 50, 55, or 60 on the first day of the first pay period beginning on or after the January 1 following his or her corresponding birthday. Effective April 24, 1999, the date for age-based premium changes is the first day of the pay period following your birthday.

OPM received comments from one Federal employee who expressed concern regarding present and future FEGLI premium rate increases for Optional coverage in the face of improved mortality for the population as a whole and the dissemination of information to employees and retirees on the new expanded coverage options. The premium rates for all coverage categories within the FEGLI Program are specific to the experience of the group and are not based on mortality rates within the general population. The rates represent actuarial estimates of premium income necessary to pay future expected benefits costs.

The Federal Employees Life Insurance Improvement Act provides expanded choices for employees, retirees, and compensationers under Options B and C coverage. The final age band of 60 and over was expanded to 60–64, 65–69, and 70 and over for Option C to reflect the change made in the law allowing eligible employees upon retirement or entitlement to receipt of compensation to elect unreduced Option C coverage at retirement by paying the full premium for unreduced coverage after age 65. The new age bands for this coverage become effective on the first day of the pay period on or after April 24, 2000. The rates are higher for these two new age bands because: (1) former rates for Option C were based on coverage declining by 2 percent per month for 50 months after an annuitant's 65th birthday, and; (2) the higher probability of mortality for individuals who elect full coverage after age 65. We were able to reduce the rates for most age bands up to age 60 in Options B and C because employees, annuitants, and compensationers will begin paying higher premiums sooner because of the birthday rule change.

Improved mortality was responsible for the reduction in the Basic insurance premiums for those under 65. Increases in Basic premiums for annuitants 65 and older who elect to retain unreduced or partially reduced Basic coverage are based on actuarial estimates of the premium income needed to cover the eventual benefits costs. Basic coverage is not age-based.

Under the new provisions of the law, employees who retire or become entitled to receipt of compensation may now elect Option B that is unreduced upon attaining age 65 by continuing to pay the full cost of the premiums after age 65. Prior to Public Law 105–311, Option B coverage reduced by 2 percent per month beginning on the 2nd month following the annuitant's 65th birthday for 50 months until coverage stopped. Because of the expanded option to continue coverage following attainment of age 65, OPM will be studying the need to add new age bands and associated rates to accommodate this new provision. The earliest that any increases would be effective is April 24, 2001, and any increases resulting from these changes would be phased in over a three-year period starting on that date.

New program information was provided to employees during the open enrollment period and annuitants received a special mailing. Although not covered in this regulation, new implementing regulations will be published in the near future describing the eligibility requirements for continuing existing and new Option B and C coverages upon retirement or becoming entitled to receipt of compensation. Open enrollment elections will not be effective until on or after the first pay period beginning on April 23, 2000. Employees retiring or becoming entitled to receipt of compensation prior to that effective date will be eligible to continue existing coverage as retirees or compensationers if they meet the five years of coverage or first opportunity rule of 5 U.S.C 8714b(c)(2) and 8714c(c)(2). Employees electing new coverage will be subject to the five year or first opportunity rule.

Annuitants and compensationers who have Basic and Optional coverage have been notified of the changes. Annuitants and compensationers with Option B coverage who retired or became entitled to the receipt of compensation prior to April 24, 1999 and who are 65 or older will be given up to 5 months in which to elect to freeze their coverage to the amount in effect as of April 24, 1999. Current retirees and compensationers under age 65 with Option B coverage will get a notice prior to their 65th birthday notifying them of their right to

elect coverage that will remain unreduced after age 65.

Due to an inadvertent error, the supplementary information for the interim regulation contained an incorrect effective date for open enrollment changes of April 24, 2000. The correct date is the first day of the pay period on or after April 23, 2000.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and annuitants only.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Accordingly, under the authority of 5 U.S.C. 8716, OPM is adopting its interim regulations under 5 CFR part 870 as published on April 27, 1999 [64 FR 22543], as a final rule without change.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–33366 Filed 12–22–99; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4284

RIN 0570–AA05

Rural Business Opportunity Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is issuing new regulations for the Rural Business Opportunity Grant (RBOG) Program. This action is needed to implement a new program authorized by section 741 of the Federal Agriculture Improvement and Reform Act of 1996 to assist economic development in rural areas. The intended effect of this action is to implement the RBOG program.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW, Washington, DC 20250, Telephone (202) 720–6819. The TTD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.773, Rural Business Opportunity Grants.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0024 in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule does not revise or impose any new information collection or recordkeeping requirements.

Intergovernmental Review

Rural Business Opportunity Grants are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," and in 7 CFR 3015, subpart V.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. chapters 17A and 25, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Background

RBS is implementing a grant program to fund technical assistance and planning activities in rural areas for the purpose of improving economic conditions in the areas. This action is necessary to comply with section 741 of the Federal Agriculture Improvement and Reform Act of 1996. Grants will be available to public bodies, nonprofit corporations, Indian tribes, and cooperatives. Grants may be used for technical assistance for business development and economic development planning; identifying and analyzing business opportunities that will use local rural materials or human resources, including opportunities in export markets as well as feasibility and business plan studies; identifying, training, and providing technical assistance to existing or prospective rural entrepreneurs and managers; establishing business support centers and otherwise assisting in the creation of new rural businesses; conducting local community or multi-county economic development planning;

establishing centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets; and conducting leadership development training of existing or prospective rural entrepreneurs and managers.

Discussion of Comments

This rule was published in the **Federal Register** as a proposed rule on February 3, 1998 (60 FR 5474). Six comment letters were received, most of which contained comments on several issues. A summary of the comments follows.

Two respondents commented on the definition of rural and rural area. Both thought the 10,000 population limit proposed was too low. This limit is statutory and cannot be changed.

A respondent was concerned that a provision stating that grant funds may not be used to duplicate, replace, or substitute for current services might exclude organizations seeking to expand. We have added language to clarify that this restriction is not intended to prevent assistance for expanding the level of effort or services when the current level is insufficient.

Respondents suggested that the terms sustainability and sustainable development should be defined. We agree, and have provided a definition consistent with Secretary's Memorandum 9500–6, "Sustainable Development," dated September 13, 1996.

A respondent objected to limiting grants to one or two years funding. The respondent believes two years is too short for capacity building projects. We are also concerned that there may be needed projects that cannot be completed in two years. However, we expect the appropriations for this program to be small and we do not want to commit limited funds to projects that cannot be expected to be completed within two years. Longer term projects may be funded, but funds will only be committed for one year at a time. Such projects will have to compete again for additional funds from future years appropriations. This provision of the rule is unchanged.

We received three comments about the priority scoring criteria. One respondent stated that the RBOG should not be used as a disaster relief program and objected to giving priority points based on natural disasters. One of the goals of the Rural Development mission area is to target assistance to communities of greatest need, including communities that are experiencing trauma due to a major natural disaster. This criterion is not changed.

The respondent also questioned the awarding of priority points to communities that have remained consistently poor for 60 years or more. The respondent felt data may not be reliable and the 60-year standard would penalize communities in the West, where communities are younger. Communities that have been persistently poor over a long term have also been identified as target communities for Rural Development and 60 years has been used before as a rule-of-thumb. However, we agree that 60 years is an excessive standard. For two other factors, population decline and job deterioration, the proposed rule only required the condition be "long-term." In the final rule, we have also adopted the term "long-term" instead of "60 years" for the condition of consistently poor. We have defined "long-term," to be the period of time covered by the three most recent decennial censuses to the present.

Another respondent requested priority points for communities that have been adversely affected by changes in transportation. Although this is a concern in some rural areas, we do not believe it warrants special priority. The suggestion was not adopted.

A respondent asked for "business incubator" to be added to the definition of Business Support Centers. Although some business incubators perform many of the services of a business support center, we believe including the term as suggested would imply that grant funds could be used to provide building space. That is not the intent of the RBOG program. The suggestion is not adopted.

A respondent suggested "National nonprofit organizations" be included as eligible. We see no need to change the language that was used in the proposed rule. Nonprofit corporations were already listed as eligible, without regard to whether they are National, regional, or local.

A respondent was concerned because the proposed rule did not require a detailed budget as part of the application. The application form required is Standard Form 424, "Application for Federal Assistance (For Non-Construction)." The form contains a budget format which we believe is adequate. No change is made in this regard from the proposed rule.

A respondent was concerned because there is no reference to a grant agreement document. We believe a grant agreement document is unnecessary and have made no change as a result of the comment. Grant projects will be defined by the Scope of Work and Letter of Conditions. Grantees will be required to sign a Request for Obligation of Funds form containing a certification that the grantee will comply with all applicable regulations, including 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052. Most of the material that might be put in a grant agreement document is contained in those regulations.

A respondent suggested clarifying whether grants can support indirect costs. Allowable costs are set out in 7 CFR parts 3015, 3016, and 3019 and in applicable OMB circulars referenced in 7 CFR parts 3015, 3016, and 3019. We have purposely avoided restating material from those regulations to avoid repetition, the possibility of misstating requirements, and the need to amend this regulation if 7 CFR parts 3015, 3016, or 3019 is amended. Therefore, we have not adopted the suggestion. Generally, indirect costs are allowable.

A respondent correctly pointed out that the proposed rule made references to 7 CFR part 3051, "Audits of Institutions of Higher Education and other Nonprofit Institutions," which has been replaced by 7 CFR part 3052, "Audits of States, Local Governments, and Non-profit Organizations." We have made the appropriate corrections.

In addition to responding to public comments, we have removed a provision that would have prevented material developed with grant funds from being copyrighted because it conflicted with 7 CFR 3016 and 3019.

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall comply with 5 U.S.C. 553, notwithstanding the exemption of that section with respect to such rules. Accordingly, this rule has previously been published as a proposed rule, on February 3, 1998 (63 FR 5474), for public comment, and will be effective 30 days after publication of this final rule in the **Federal Register**.

List of Subjects in 7 CFR Part 4284

Business and industry, Economic development, Grant programs—Housing and community development, Rural areas.

Therefore, chapter XLII, title 7, Code of Federal Regulations, is amended as follows:

PART 4284—GRANTS

1. The authority citation for part 4284 is amended to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Subpart G of part 4284, consisting of §§ 4284.601 through 4284.700, is added to read as follows:

PART 4284—GRANTS

Subpart G—Rural Business Opportunity Grants

Sec.

4284.601 Purpose.
4284.602 Policy.
4284.603 Definitions.
4284.604–4284.619 [Reserved]
4284.620 Applicant eligibility.
4284.621 Eligible grant purposes.
4284.622–4284.628 [Reserved]
4284.629 Ineligible grant purposes.
4284.630 Other considerations.
4284.631–4284.637 [Reserved]
4284.638 Application processing.
4284.639 Grant selection criteria.
4284.640 Appeals.
4284.641–4284.646 [Reserved]
4284.647 Grant approval and obligation of funds.
4284.648 Fund disbursement.
4284.649–4284.655 [Reserved]
4284.656 Reporting.
4284.657 Audit requirements.
4284.658–4284.666 [Reserved]
4284.667 Grant servicing.
4284.668 Programmatic changes.
4284.669–4284.683 [Reserved]
4284.684 Exception authority.
4284.685–4284.698 [Reserved]
4284.699 Member delegate clause.
4284.700 OMB control number.

Subpart G—Rural Business Opportunity Grants

§ 4284.601 Purpose.

This subpart outlines Agency policies and authorizations and sets forth procedures for making grants to provide technical assistance for business development and conduct economic development planning in rural areas. The purpose of this program is to promote sustainable economic development in rural communities with exceptional needs by:

(a) Promoting economic development that is sustainable over the long term through local effort without subsidies or external support and that leads to improvements in quality as well as the quantity of economic activity in the community;

(b) Catalyzing economic development projects by providing critical investments that enable effective development projects to be undertaken by rural communities that, with the Rural Business Opportunity Grants (RBOG) assistance, will be able to identify their needs and take full advantage of available resources and opportunities;

(c) Focusing assistance on priority communities (defined in § 4284.603); and

(d) Sponsoring economic development activities with significant potential to serve as examples of "best practices" that merit implementation in rural communities in similar circumstances.

§ 4284.602 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity, along with other rural residents, to participate in the benefits of these programs.

§ 4284.603 Definitions.

Agency. The Federal agency within the United States Department of Agriculture (USDA) with responsibility assigned by the Secretary of Agriculture to administer the RBOG Program. At the time of publication, that agency is the Rural Business-Cooperative Service.

Best practice project. An action that has potential applicability in other rural communities and which potentially has instructional value when shared with those communities.

Business support centers. Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a rural area, but must provide assistance to businesses located in rural areas.

Economic development. The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels, or gains in other measurements of economic activity, such as land values.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

Planning. A process to coordinate economic development activities, develop guides for action, or otherwise assist local community leaders in the economic development of rural areas.

Priority communities. Communities targeted for Agency assistance as determined by the USDA Under Secretary for Rural Development. Priority communities are those that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor, or have experienced long-term population decline or job deterioration.

Project. The result of the use of grant funds provided under this subpart through technical assistance or planning relating to the economic development of a rural area.

Rural and rural area. Any area of a State that is not within the boundaries of a city with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Sustainable development. Development planned and designed to consider and balance environmental quality, economic needs, and social concerns.

Technical assistance. A nonconstruction, problem solving activity performed for the benefit of a business or community to assist in the economic development of a rural area. The Agency will determine whether a specific activity qualifies as technical assistance.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

§§ 4287.604–4287.619 [Reserved]

§ 4284.620 Applicant eligibility.

(a) Grants may be made to public bodies, nonprofit corporations, Indian tribes on Federal or State reservations and other Federally recognized tribal groups, and cooperatives with members that are primarily rural residents and that conduct activities for the mutual benefit of the members.

(b) Applicants must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(1) Financial strength will be analyzed by the Agency based on financial data provided in the application. The

analysis will consider the applicant's tangible net worth, which must be positive, and whether the applicant has dependable sources of revenue or a successful history of raising revenue sufficient to meet cash requirements.

(2) Expertise will be analyzed by the Agency based on the applicant staff's training and experience in activities similar to those proposed in the application and, if consultants will be used, on the staff's experience in choosing and supervising consultants.

(c) Any delinquent debt to the Federal Government shall cause the applicant to be ineligible to receive any RBOG funds until the debt has been paid.

§ 4284.621 Eligible grant purposes.

(a) Grant funds may be used to assist in the economic development of rural areas by providing technical assistance for business development and economic development planning. Grant funds may be used for, but are not limited to, the following purposes:

(1) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies.

(2) Identify, train, and provide technical assistance to existing or prospective rural entrepreneurs and managers;

(3) Establish business support centers and otherwise assist in the creation of new rural businesses;

(4) Conduct local community or multi-county economic development planning;

(5) Establish centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets;

(6) Conduct leadership development training of existing or prospective rural entrepreneurs and managers; or

(7) Pay reasonable fees and charges for professional services necessary to conduct the technical assistance, training, or planning functions.

(b) Grants may be made only when there is a reasonable prospect that the project will result in the economic development of a rural area.

(c) Grants may be made only when the proposal includes a basis for determining the success or failure of the project and individual major elements of the project and outlines procedures that will be taken to assess the project's impact at its conclusion.

(d) Grants may be made only when the proposed project is consistent with local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area and consistent with any USDA Rural Development State Strategic Plan.

(e) A grant may be considered for the amount needed to assist with the completion of a proposed project, provided that the project can reasonably be expected to be completed within 2 full years after it is begun. If grant funds are requested to establish or assist with an activity of more than 2 years duration, the amount of a grant approved in any fiscal year will be limited to the amount needed to assist with no more than 1 full year of operation. Subsequent grant requests may be considered in subsequent years, if needed to continue the operation, but funding for 1 year provides no assurance of additional funding in subsequent years.

§§ 4284.622–4287.628 [Reserved]

§ 4284.629 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the effective date of the grant made under this subpart;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States; or

(g) Pay costs of real estate acquisition or development or building construction.

§ 4284.630 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 and part 1901, subpart E of this title.

(b) *Environmental review.* All grants made under this subpart are subject to the requirements of subpart G of part 1940 of this title. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333 of this title provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable;

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments, and Non-profit Organizations.

§§ 4284.631–4284.637 [Reserved]

§ 4284.638 Application processing.

(a) *Applications.*

(1) Applicants will file an original and one copy of "Application For Federal Assistance (For Nonconstruction)," with the Agency State Office (available in any Agency office).

(2) All applications shall be accompanied by:

(i) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(ii) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation;

(iii) A written narrative which includes, at a minimum, the following items:

(A) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant selection criteria;

(B) Area to be served, identifying each governmental unit, i.e., town, county, etc., to be affected by the project;

(C) Description of how the project will coordinate economic development activities with other economic development activities within the project area;

(D) Business to be assisted, if appropriate; economic development to be accomplished;

(E) An explanation of how the proposed project will result in increased or saved jobs in the area and the number of projected new and saved jobs;

(F) Description of the applicant's demonstrated capability and experience in providing the proposed project assistance or similar economic development activities, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(G) Method and rationale used to select the areas and businesses that will receive the service;

(H) Brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(I) Other information the Agency may request to assist it in making a grant award determination.

(iv) The latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include the most recent balance sheet and an income statement. A current audited report is required if available;

(v) An evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished; and

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372.

(b) *Letter of conditions.* The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return a "Letter of Intent to Meet Conditions," to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

§ 4284.639 Grant selection criteria.

Agency officials will select projects to receive assistance under this program according to the following criteria:

(a) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which economic development resulting from the proposed project will be sustainable over the long term by local efforts, without the need for continued subsidies by governments or other organizations outside the community.

(b) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which the project should lead to improvements in the quality of economic activity within the community, such as higher wages, improved benefits, greater career potential, and the use of higher levels of skills than currently are typical within the economy.

(c) If the grant will fund a critical element of a larger program of economic development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows based on the percentage of the cost of the overall program that will be funded by the grant.

(1) Less than 20 percent—30 points;

(2) 20 but less than 50 percent—20 points;

(3) 50 but less than 75 percent—10 points; or

(4) More than 75 percent—0 points.

(d) Points will be awarded for each of the following criteria met by the community or communities that will receive the primary benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (d)(1) through (d)(5) of this section, total points awarded under paragraph (d) must not exceed 40.

(1) Experiencing trauma due to a major natural disaster that occurred not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(2) Undergoing fundamental structural change in the local economy, such as that caused by the closing or major downsizing of a military facility or other major employer not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(3) Has experienced long-term poverty—10 points;

(4) Has experienced long-term population decline—10 points; and

(5) Has experienced long-term job deterioration—10 points.

(e) A score of 0 to 10 points will be awarded based on the Agency determination of the extent of the project's usefulness as a new best practice as defined in § 4284.603.

(f) The State Director may assign up to 15 discretionary points to an application. If allocation of funds under National Office control is being considered, the Agency Administrator may assign up to 20 additional discretionary points. Assignment of discretionary points by either the State Director or the Agency Administrator must include a written justification. Permissible justifications are geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, or extraordinary potential for success due to superior project plans or qualifications of the grantee.

§ 4284.640 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11. If the Agency makes a determination that a decision is not appealable, a request for a determination of appealability may be made to the National Appeals Staff.

§§ 4284.641–4287.646 [Reserved]

§ 4284.647 Grant approval and obligation of funds.

(a) The following statement will be entered in the comment section of the Request For Obligation of Funds, which must be signed by the grantee:

> The grantee certifies that it is in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 7 CFR part 4284, subpart G, and 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052 in effect on the date of grant approval; and the approved Letter of Conditions.

§ 4284.648 Fund disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016, and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. A Request for Advance or Reimbursement, (available in any Agency office) must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

§§ 4284.649–4284.655 [Reserved]

§ 4284.656 Reporting.

(a) A Financial Status Report (available in any Agency office) and a project performance activity report will

be required of all grantees on a quarterly basis. The grantee will cause said program to be completed within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency. A final project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and saved as a result of the grant. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to the Agency. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) Within 1 year after the conclusion of the project, the grantee will provide a project evaluation report based on criteria developed in accordance with §§ 4284.621(c) and 4284.638(a)(2)(v).

(c) The Agency may also require grantees to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a "best practice," to describe that "best practice."

(d) The grantee will provide for Financial Management Systems which will include:

(1) Accurate, current, and complete disclosure of the financial result of each grant.

(2) Records which identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall assure that funds are used solely for authorized purposes.

(e) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

§ 4284.657 Audit requirements.

Grantees must provide an annual audit in accordance with 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished that will be paid for with grant funds.

§§ 4284.658–4284.666 [Reserved]

§ 4284.667 Grant servicing.

Grants will be serviced in accordance with part 1951, subparts E and O, of this title. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

§ 4284.668 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

§§ 4284.669–4284.683 [Reserved]

§ 4284.684 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 4284.685–4284.698 [Reserved]

§ 4284.699 Member delegate clause.

No member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

§ 4284.700 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0024 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Dated: December 13, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–33203 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 99–016F]

Scale Requirements for Accurate Weights, Repairs, Adjustments, and Replacement After Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On October 1, 1999, the Food Safety and Inspection Service (FSIS) published a direct final rule, "Scale Requirements for Accurate Weights, Repairs, Adjustments, and Replacement After Inspection." This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to update references to the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." The 1999 edition of NIST Handbook 44 was published in November 1998 and is the most current edition of the handbook. FSIS is amending the provisions in its regulations that reference NIST Handbook 44 to reflect this most recent edition. Because FSIS did not receive

any adverse comments, or expressions of intent to submit adverse comments, within the scope of the rulemaking, FSIS is affirming the November 30, 1999 effective date for this direct final rule.

EFFECTIVE DATES: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1999, FSIS published a direct final rule, "Scale Requirements for Accurate Weights, Repairs, Adjustments, and Replacement After Inspection" (64 FR 53186). This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to update references to the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." The 1999 edition of NIST Handbook 44 was published in November 1998 and is the most current edition of the handbook. FSIS is amending the provisions in its regulations that reference NIST Handbook 44 to reflect this most recent edition.

After publication of the direct final rule, the American Meat Institute (AMI), a national trade association representing packers and processors of meat and poultry products, contacted FSIS to express a minor concern associated with the rulemaking. AMI noted that Section 2.24 Automatic Weighing Systems of the 1999 edition of NIST Handbook 44 is a tentative code, has only a trial or experimental status, and is not intended to be enforced by weights and measures officials. AMI expressed concern that FSIS inspection program employees would not interpret Section 2.24 as tentative and would enforce the requirements of Section 2.24 against existing equipment in meat and poultry plants before it is adopted as a permanent code. AMI requested that, prior to the effective date of the rule, FSIS issue some kind of notification to its inspection program personnel explaining that Section 2.24 is a tentative code and is not enforceable against existing equipment.

The direct final rule updates a document, NIST Handbook 44, that has previously been approved for incorporation by reference in the Code of Federal Regulations. The current FSIS regulations reference the 1994 edition of NIST Handbook 44, published in November 1993. The 1994 edition of the handbook does not include Section 2.24 Automatic Weighing Systems. In the 1999 edition of Handbook 44, it is clearly stated that Section 2.24 has only a trial or experimental status, and that it is not intended to be enforced by weights and measures officials. However, Section 2.24 is intended to be used by the National Type Evaluation Program for type evaluation of automatic weighing systems, which permits these devices to be tested to ensure conformance with a nationally accepted standard.

When FSIS issues new regulations, it provides the new or revised regulations to inspection program employees. The Agency also provides inspection program employees with the necessary implementing instructions. Therefore, FSIS will issue notification to the field employees explaining that Section 2.24 Automatic Weighing Systems is a tentative code, and that it is not to be enforced until it is upgraded to become a permanent code.

Because FSIS did not receive any adverse comments or intent to submit adverse comments in response to the direct final rule, the effective date remains as November 30, 1999.

Done at Washington, DC, on: December 14, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–33205 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21, 50, and 54

RIN 3150–AG12

Use of Alternative Source Terms at Operating Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow holders of operating licenses for nuclear power plants to voluntarily replace the traditional source term used in design basis accident analyses with alternative source terms. This action will allow interested licensees to pursue cost beneficial licensing actions to reduce unnecessary regulatory burden without compromising the margin of safety of the facility. The NRC is announcing the availability of a draft regulatory guide and a draft Standard Review Plan section on this subject for public comment. The NRC is also amending its regulations to revise certain sections to conform with the final rule published on December 11, 1996, concerning reactor site criteria.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1081; or by Internet electronic mail to sfl@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of Public Comments
III. Section-by-Section Analysis
IV. Draft Regulatory Guide; Issuance, Availability
V. Draft Standard Review Plan Section; Issuance, Availability
VI. Referenced Documents
VII. Finding of No Significant Environmental Impact; Availability
VIII. Paperwork Reduction Act Statement
IX. Regulatory Analysis
X. Regulatory Flexibility Act Certification
XI. Backfit Analysis
XII. Small Business Regulatory Enforcement Fairness Act
XIII. National Technology Transfer and Advancement Act

I. Background

A holder of an operating license (i.e., the licensee) for a light-water power reactor is required by regulations issued by the NRC (or its predecessor, the U.S. Atomic Energy Commission, (AEC)) to submit a safety analysis report (or, for early reactors, a hazard summary report) that contains assessments of the radiological consequences of potential accidents and an evaluation of the proposed facility site. The NRC uses this information in its evaluation of the suitability of the reactor design and the proposed site as required by its regulations contained in 10 CFR Parts 50 and 100. Section 100.11, which was adopted by the AEC in 1962 (27 FR 3509; April 12, 1962), requires an applicant to assume (1) a fission product release from the reactor core, (2) the expected containment leak rate, and (3) the site meteorological conditions to establish an exclusion area and a low population zone. This fission product release is based on a major accident that would result in substantial release of appreciable quantities of fission products from the core to the containment atmosphere. A note to § 100.11 states that Technical Information Document (TID) 14844, "Calculation of Distance Factors for

Power and Test Reactors," may be used as a source of guidance in developing the exclusion area, the low population zone, and the population center distance. Changes to the design of the facility and the procedures for operating the facility are evaluated in part by determining whether there are changes to the calculated fission product release.

The fission product release from the reactor core into containment is referred to as the "source term" and it is characterized by the composition and magnitude of the radioactive material, the chemical and physical properties of the material, and the timing of the release from the reactor core. The accident source term is used to evaluate the radiological consequences of design basis accidents (DBAs) in showing compliance with various requirements of the NRC's regulations. Although originally used for site suitability analyses, the accident source term is a design parameter for accident mitigation features, equipment qualification, control room operator radiation doses, and post-accident vital area access doses. The measurement range and alarm setpoints of some installed plant instrumentation and the actuation of some plant safety features are based in part on the accident source term. The TID–14844 source term was explicitly stated as a required design parameter for several Three Mile Island (TMI)-related requirements.

The NRC's methods for calculating accident doses, as described in Regulatory Guide 1.3, "Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss of Coolant Accident for Boiling Water Reactors"; Regulatory Guide 1.4, "Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss of Coolant Accident for Pressurized Water Reactors"; and NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," were developed to be consistent with the TID–14844 source term and the whole body and thyroid dose guidelines stated in § 100.11. In this regulatory framework, the source term is assumed to be released immediately to the containment at the start of the postulated accident. The chemical form of the radioiodine released to the containment atmosphere is assumed to be predominantly elemental, with the remainder being small fractions of particulate and organic iodine forms. Radiation doses are calculated at the exclusion area boundary (EAB) for the first 2 hours and at the low population zone (LPZ) for the assumed 30-day duration of the accident. The whole body dose comes primarily from the noble gases in the source term. The thyroid dose is based on inhalation of radioiodines. In analyses performed to date, the thyroid dose has generally been limiting. The design of some engineered safety features, such as containment spray systems and the charcoal filters in the containment, the building exhaust, and the control room ventilation systems, are predicated on these postulated thyroid doses. Subsequently, the NRC adopted the whole body and thyroid dose criteria in Criterion 19 of 10 CFR Part 50, Appendix A (36 FR 3255; February 20, 1971).

The source term in TID–14844 is representative of a major accident involving significant core damage and is typically postulated to occur in conjunction with a large loss-of-coolant accident (LOCA). Although the LOCA is typically the maximum credible accident, NRC experience in reviewing license applications has indicated the need to consider other accident sequences of lesser consequence but higher probability of occurrence. Some of these additional accident analyses may involve source terms that are a fraction of those specified in TID–14844. The DBAs were not intended to be actual event sequences but, rather, were intended to be surrogates to enable deterministic evaluation of the response of the plant engineered safety features. These accident analyses are intentionally conservative in order to address uncertainties in accident progression, fission product transport, and atmospheric dispersion. Although probabilistic risk assessments (PRAs) can provide useful insights into system performance and suggest changes in how the desired defense in depth is achieved, defense in depth continues to be an effective way to account for uncertainties in equipment and human performance. The NRC's policy statement on the use of PRA methods (60 FR 42622; August 16, 1995) calls for the use of PRA technology in all regulatory matters in a manner that complements the NRC's deterministic approach and supports the traditional defense-in-depth philosophy.

Since the publication of TID–14844, significant advances have been made in understanding the timing, magnitude, and chemical form of fission product releases from severe nuclear power plant accidents. Many of these insights developed out of the major research efforts started by the NRC and the nuclear industry after the accident at Three Mile Island (TMI). In 1995, the NRC published NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants," which utilized this research to provide more physically based estimates of the accident source term that could be applied to the design of future light-water power reactors. The NRC sponsored significant review efforts by peer reviewers, foreign research partners, industry groups, and the general public (request for public comment was published in 57 FR 33374; July 28, 1992).

The information in NUREG–1465 presents a representative accident source term ("revised source term") for a boiling-water reactor (BWR) and for a pressurized-water reactor (PWR). These revised source terms are described in terms of radionuclide composition and magnitude, physical and chemical form, and timing of release. Where TID–14844 addressed three categories of radionuclides, the revised source terms categorize the accident release into eight groups on the basis of similarity in chemical behavior. Where TID–14844 assumed an immediate release of the activity, the revised source terms have five release phases that are postulated to occur over several hours, with the onset of major core damage occurring after 30 minutes. Where TID–14844 assumed radioiodine to be predominantly elemental, the revised source terms assume radioiodine to be predominantly cesium iodide (CsI), an aerosol that is more amenable to mitigation mechanisms.

For DBAs, the NUREG–1465 source terms (up to and including the early in-vessel phase) are comparable to the TID–14844 source term with regard to the magnitude of the noble gas and radioiodine release fractions. However, the revised source terms offer a more representative description of the radionuclide composition and release timing. The NRC has determined (SECY–94–302, December 19, 1994) that design basis analyses will address the first three release phases—coolant, gap, and in-vessel. The ex-vessel and late in-vessel phases are considered to be inappropriate for design basis analysis purposes. These latter releases could only result from core damage accidents with vessel failure and core-concrete interactions.

The objective of NUREG–1465 was to define revised accident source terms for regulatory application for future light water reactors (LWRs). The NRC's intent was to capture the major relevant insights available from severe accident research to provide, for regulatory purposes, a more realistic portrayal of the amount of the postulated accident source term. These source terms were derived from examining a set of severe accident sequences for LWRs of current

design. Because of general similarities in plant and core design parameters, these results are considered to be applicable to evolutionary and passive LWR designs. The revised source term has been used in evaluating the Westinghouse AP600 standard design certification application. (A draft version of NUREG–1465 was used in evaluating Combustion Engineering's (CE's) System 80+ design.)

The NRC considered the applicability of the revised source terms to operating reactors and determined that the current analytical approach based on the TID–14844 source term would continue to be adequate to protect public health and safety, and that operating reactors licensed under this approach would not be required to reanalyze accidents using the revised source terms. The NRC concluded that some licensees may wish to use an alternative source term in analyses to support operational flexibility and cost-beneficial licensing actions and that some of these applications could provide concomitant improvements in overall safety and in reduced occupational exposure. The NRC initiated several actions to provide a regulatory basis for operating reactors to voluntarily amend their facility design bases to enable use of the revised source term in design basis analyses. First, the NRC solicited ideas on how an alternative source term might be implemented. In November 1995, the Nuclear Energy Institute (NEI) submitted its generic framework, Electric Power Research Institute Technical Report TR–105909, "Generic Framework for Application of Revised Accident Source Term to Operating Plants." This report and the NRC response were discussed in SECY–96–242 (November 25, 1996). Second, the NRC initiated an assessment of the overall impact of substituting the NUREG–1465 source terms for the traditionally used TID–14844 source term at three typical facilities. This was done to evaluate the issues involved with applying the revised source terms at operating plants. SECY–98–154 (June 30, 1998) described the conclusions of this assessment. Third, the NRC accepted license amendment requests related to implementation of the revised source terms at a small number of pilot plants. Experience has demonstrated that evaluation of a limited number of plant-specific submittals improves regulation and regulatory guidance development. The review of these pilot projects is currently in progress. Insights from these pilot plant reviews have been incorporated into the regulatory guidance that was developed in conjunction with this rulemaking. Fourth, the NRC initiated an assessment on whether rulemaking would be necessary to allow operating reactors to use an alternative source term. This final rule and the supporting regulatory guidance have resulted from this assessment.

This final rulemaking for use of alternative source terms is applicable to holders of operating licenses issued prior to January 10, 1997, under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and to holders of renewed licenses under 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," whose initial operating license was issued prior to January 10, 1997. The regulations of Part 50 are supplemented by those in other parts of Chapter I of Title 10, including Part 100, "Reactor Site Criteria." Part 100 contains language that qualitatively defines a required accident source term and contains a note that discusses the availability of TID–14844. With the exception of § 50.34(f), there are no explicit requirements in Chapter I of Title 10 to use the TID–14844 accident source term. Section 50.34(f), which addresses additional TMI-related requirements, is only applicable to a limited number of construction permit applications pending on February 16, 1982, and to applications under Part 52.

An applicant for an operating license is required by § 50.34(b) to submit a final safety analysis report (FSAR) that describes the facility and its design bases and limits, and presents a safety analysis of the structures, systems, and components of the facility as a whole. Guidance in performing these analyses is given in regulatory guides. In its review of the more recent applications for operating licenses, the NRC has used the review procedures in NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (SRP). These review procedures reference or provide acceptable assumptions and analysis methods. The facility FSAR documents the assumptions and methods actually used by the applicant in the required safety analyses. The NRC's finding that a license may be issued is based on the review of the FSAR, as documented in the Commission's safety evaluation report (SER). Fundamental assumptions that are design inputs, including the source term, were required to be included in the FSAR and became part of the design basis [1] of the facility. From a regulatory standpoint, the requirement to use the TID–14844 source term is expressed as a licensee commitment (typically to Regulatory Guide 1.3 or 1.4) documented in the facility FSAR, and is subject to the requirements of § 50.59.

In 1996 (61 FR 65175; December 11, 1996), the NRC amended its regulations in 10 CFR Parts 21, 50, 52, 54, and 100. That regulatory action produced site criteria for future sites, presented a stable regulatory basis for seismic and geologic siting and the engineering design of future nuclear power plants to withstand seismic events, and relocated source term and dose requirements for future plants into Part 50. Because these dose requirements tend to affect reactor design rather than siting, they are more appropriately located in Part 50. This decoupling of siting from design is consistent with the future licensing of facilities using standardized plant designs, the design features of which have been or will be certified in a separate design certification rulemakings. This decoupling of siting from design was directed by Congress in the 1980 Authorization Act for the NRC. Because the revised criteria would not apply to operating reactors, the non-seismic and seismic reactor site criteria for operating reactors were retained as Subpart A and Appendix A to Part 100, respectively. The revised reactor site criteria were added as Subpart B in Part 100, and revised source term and dose requirements were moved to § 50.34. The existing source term and dose requirements of Subpart A of Part 100 will remain in place as the licensing bases for those operating reactors that do not elect to use an alternative source term.

In relocating the source term and dose requirements for future reactors to § 50.34, the NRC retained the requirements for the exclusion area and the low population zone, but revised the associated numerical dose criteria to replace the two different doses for the whole body and the thyroid gland with a single, total effective dose equivalent (TEDE) value. The dose criteria for the whole body and the thyroid, and the

[1] As defined in § 50.2, design bases means that information which identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be (1) restraints derived from generally accepted "state of the art" practices for achieving functional goals, or (2) requirements derived from analysis (based on calculation and/or experiments) of the effects of a postulated accident for which a structure, system, or component must meet its functional goals. The NRC considers the accident source term to be an integral part of the design basis because it sets forth specific values (or range of values) for controlling parameters that constitute reference bounds for design.

immediate 2-hour exposure period were largely predicated by the assumed source term being predominantly noble gases and radioiodines instantaneously released to the containment and the assumed "single critical organ" method of modeling the internal dose used at the time that Part 100 was originally published. However, the current dose criteria, by focusing on doses to the thyroid and the whole body, assume that the major contributor to doses will be radioiodine. Although this may be appropriate with the TID–14844 source term, as implemented by Regulatory Guides 1.3 and 1.4, it may not be true for a source term based on a more complete understanding of accident sequences and phenomenology.

The postulated chemical and physical form of radioiodine in the revised source terms is more amenable to mitigation and, as such, radioiodine may not always be the predominant radionuclide in an accident release. The revised source terms include a larger number of radionuclides than did the TID–14844 source term as implemented in regulatory guidance. The whole body and thyroid dose criteria ignore these contributors to dose. The NRC amended its radiation protection standards in Part 20 in 1991 (56 FR 23391; May 21, 1991) replacing the single, critical organ concept for assessing internal exposure with the TEDE concept that assesses the impact of all relevant nuclides upon all body organs. TEDE is defined to be the deep dose equivalent (for external exposure) plus the committed effective dose equivalent (for internal exposure). The deep dose equivalent (DDE) is comparable to the present whole body dose; the committed effective dose equivalent (CEDE) is the sum of the products of doses (integrated over a 50-year period) to selected body organs resulting from the intake of radioactive material multiplied by weighting factors for each organ that are representative of the radiation risk associated with the particular organ.

The TEDE, using a risk-consistent methodology, assesses the impact of all relevant nuclides upon all body organs. Although it is expected that in many cases the thyroid could still be the limiting organ and radioiodine the limiting radionuclide, this conclusion cannot be assured in all potential cases. The revised source terms postulate that the core inventory is released in a sequence of phases over 10 hours, with the more significant release commencing at about 30 minutes from the start of the event. The assumption that the 2-hour exposure period starts immediately at the onset of the release is inconsistent with the phased release postulated in the revised source terms. The final rule adopts the future LWR dose criteria for operating reactors that elect to use an alternative source term.

An accidental release of radioactivity can result in radiation exposure to control room operators. Normal ventilation systems may draw this activity into the control room where it can result in external and internal exposures. Control room designs differ but, in general, design features are provided to detect the accident or the activity and isolate the normal ventilation intake. Emergency ventilation systems are activated to minimize infiltration of contaminated air and to remove activity that has entered the control room. Personnel exposures can also result from radioactivity outside of the control room. However, because of concrete shielding of the control room, these latter exposures are generally not limiting. The objective of the control room design is to provide a location from which actions can be taken to operate the plant under normal conditions and to maintain it in a safe condition under accident conditions. General Design Criterion 19 (GDC–19), "Control Room," of Appendix A to 10 CFR Part 50 (36 FR 3255; February 20, 1971), establishes minimum requirements for the design of the control room, including a requirement for radiation protection features adequate to permit access to and occupancy of the control room under accident conditions. The GDC–19 criteria were established for judging the acceptability of the control room design for protecting control room operators under postulated design basis accidents, a significant concern being the potential increases in offsite doses that might result from the inability of control room personnel to adequately respond to the event.

The GDC–19 criteria are expressed in terms of whole body dose, or its equivalent to any organ. The NRC did not revise the criteria when Part 20 was amended (56 FR 23391; May 21, 1991) instead deferring such action to individual facility licensing actions (NUREG/CR–6204, "Questions and Answers Based on the Revised 10 CFR Part 20"). This position was taken in the interest of maintaining the licensing basis for those facilities already licensed. The NRC is replacing the current dose criteria of GDC–19 for future reactors and for operating reactors that elect to use an alternative source term with a criterion expressed in terms of TEDE. The rationale for this revision is similar to the rationale, discussed earlier in this preamble, for revising the dose criteria for offsite exposures.

On January 10, 1997 (61 FR 65157), the NRC amended 10 CFR Parts 21, 50, 52, 54, and 100 of its regulations to update the criteria used in decisions regarding power reactor siting for future nuclear power plants. The NRC intended that future licensing applications in accordance with Part 52 utilize a source term consistent with the source term information in NUREG–1465 and the accident TEDE criteria in Parts 50 and 100. However, during the final design approval (FDA) and design certification proceeding for the Westinghouse AP600 advanced light-water reactor design, the NRC staff and Westinghouse determined that exemptions were necessary from §§ 50.34(f)(2)(vii), (viii), (xxvi), and (xxviii) and 10 CFR Part 50, Appendix A, GDC–19. This final rule would eliminate the need for these exemptions for future applicants under Part 52 by making conforming changes to Part 50, Appendix A, GDC–19 and § 50.34.

II. Analysis of Public Comments

The NRC published a proposed rule in the **Federal Register** (64 FR 12117, March 31, 1999); that would provide a regulatory framework for the voluntary implementation of alternative source terms as a change to the design basis at currently licensed power reactors, while retaining the existing regulatory framework for currently licensed power reactor licensees who choose not to implement an alternative source term. The rule proposed relocating source term and dose requirements that apply primarily to plant design into 10 CFR Part 50 for operating reactors that choose to implement an alternative source term. The rule also proposed conforming changes to § 50.34(f) and Part 50, Appendix A, GDC–19 to eliminate the need for exemptions for future applicants under Part 52.

The NRC received seven letters commenting on the proposed rule. All comments including those received by the NRC after the expiration of the public comment period but before June 25, 1999, were considered. The commenters included two State regulatory agencies, two nuclear industry groups and three utilities. The State of Florida Department of Community Affairs indicated that they had no comments on the proposed rule. The State of New Jersey Department of Environmental Protection concurred with the NRC's position on the use of an AST in emergency preparedness applications and stated a desire to review the draft regulatory guidance when issued. Winston & Strawn

submitted comments on behalf of the Nuclear Utility Backfitting and Reform Group (NUBARG). The Nuclear Energy Institute (NEI) submitted comments on behalf of the nuclear industry. Two of the utilities provided comments, while the third endorsed the comments submitted by NEI. Copies of these letters are available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

1. NUBARG Comments

NUBARG supports the rule, noting that the rule as proposed defines an acceptable regulatory process for implementing more realistic accident source terms. NUBARG requested clarification in the final rule of situations in which an alternative source term (AST) may be applied in future backfitting [2] decisions. First, NUBARG suggests that the NRC clarify the extent it intends to use the revised source term in assessing whether new generic requirements provide a cost-justified, substantial increase in safety in accordance with NRC's backfitting rule, § 50.109. NUBARG believes that continued use of the source term in TID–14844 for this purpose in spite of its known limitations would be inappropriate and could lead to overly conservative estimates of the safety impact of proposed new requirements. Second, NUBARG suggests a similar clarification for plant-specific backfit decisions for plants that have not opted to implement the revised source term. NUBARG believes that the NRC has discretion to take all relevant factors into account in making its safety benefit assessment of the proposed backfit, including the current state of knowledge concerning the accident source term. NUBARG suggested that the statements of considerations accompanying the final rule address these issues. NUBARG also suggests that relevant NRC guidance should also be revised to reflect NRC policy in these areas.

NRC Response. When radiological consequence analyses are involved, the NRC expects to use a technically appropriate AST in evaluating generic and plant-specific backfitting analyses, including those proposed for facilities that have not implemented an AST. The NRC agrees with the NUBARG position that the NRC has discretion to take all new information on accident source terms into account. The NRC's guidance for evaluating proposed NRC regulatory actions (including backfitting) are contained in NUREG/BR–0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," and NUREG/BR–0184, "Regulatory Analysis Technical Evaluation Handbook." These documents state that value and impact (including adverse effects on health and safety) parameters are to be best estimates, preferably mean or expected values. These documents also provide that analyses are to be based largely on risk considerations.

2. NEI Comment 1

NEI stated that the Section-by-Section Analysis in the proposed rule notice is consistent with the NRC's intent to permit limited application of the new research results. NEI noted that these limited applications are of two types: (1) application of alternative source term radiological composition and magnitude in a quantitative analysis relative to the effect on the performance of a given engineered safety feature; or (2) application of only the timing aspects in conjunction with the original TID–14844 source term. NEI stated that proposed § 50.67 appears to apply to applications where a licensee would use a completely new source term such as NUREG–1465 in all aspects of the plant design. The NEI comment acknowledged that further guidance in a subsequent regulatory guide and standard review plan is helpful and necessary. Nonetheless, NEI is concerned that licensee pursuit of either of these limited applications might ultimately require seeking an exemption to § 50.67, or require extensive analysis. NEI recommended that the NRC should: (1) revise the proposed rule language to accommodate limited application of an alternative source term as done in the Section-By-Section Analysis; (2) provide clarification in the Statement of Consideration (SOC) for the rule; and (3) for applications that continue to use the TID source term but incorporate attributes of newer technical insights such as timing of releases, specify that the provisions of the proposed rule do not apply.

NRC Response. The language of § 50.67(b) requires an evaluation of the consequences of applicable design basis accidents. The NRC believes that the use of the modifier applicable provides the basis for processing selective implementations. Design basis accidents not applicable to a particular selective implementation would not be required to be evaluated. The NRC expects that the licensee will evaluate all applicable impacts of the proposed AST implementation. While a selective implementation may result in a reduced scope of evaluation, the licensee must still demonstrate that the AST implementation and any associated proposed modifications will not result in accident conditions exceeding the criteria specified in § 50.67. Therefore, these criteria are applicable to full and selective implementations alike. The scope of the required re-analyses will depend on the specific application proposed by the licensee. Guidance with regard to this scope is properly provided in the draft regulatory guide prepared for this rule. Therefore, the NRC has decided against revising the rule language as suggested by NEI. Consistent with the second NEI recommendation, the NRC has modified paragraph D of the section-by-section analysis to clarify this issue.

3. NEI Comment 2

In its second comment, NEI noted that the SOC provides that licensees may need to perform additional evaluations of equipment qualifications (§ 50.49). The SOC should discuss the circumstances when such an evaluation may be necessary. NEI recommended that the SOC should be amended to state that regardless of source term used, the licensee would be required to re-evaluate the equipment qualification only when a plant modification alters the plant configuration so that the underlying assumptions, with respect to dose distribution and effects, are materially altered. NEI summarized conclusions of several references in support of its position. NEI stated that there is no basis to require or expect additional analyses of equipment qualification if a licensee applied the alternative source term in limited scope applications, absent a plant configuration change that materially alters the dose distribution and effects assumed in existing analyses.

NRC Response. The re-baselining study prepared by the NRC staff (SECY–98–154, June 30, 1998) considered the impact of an AST on analyses of the postulated integrated radiation doses for plant components exposed to containment atmosphere radiation sources and those exposed to containment sump radiation sources. The staff's conclusions regarding the atmosphere sources are consistent with those identified by NEI in its comment. However, the re-baselining study also concluded that the increased concentration of cesium in the containment sump water could result in

[2] As provided in § 50.109, Backfitting is defined as the modification of or addition to systems, structures, components, or the design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position.

an increase in the postulated integrated radiation doses for certain plant components subject to equipment qualification. It is because of this conclusion that the NRC included the discussion in the SOC regarding re-evaluation of equipment environmental qualification. The NEI comment provides no additional information that would cause the NRC to change its position on this matter. Further, the NRC has determined that it is necessary to consider the potential impact of the postulated cesium concentration in the containment sump water as it applies to all operating power reactors, not just to those licensees amending their design basis to use an AST. Since the postulated increase in the integrated dose occurs only following an accident, there is no adverse effect on equipment relied upon to perform safety functions immediately following an accident. Rather, this issue affects equipment that is required to be operable longer than about 30 days to 4 months after an accident. As such, the NRC determined that continued plant operation does not pose an immediate threat to public health and safety. Also, should such long-term equipment fail there will not be an undue threat to public health and safety as protective actions for the public would have already been implemented by the time the postulated failure could occur. In addition, the time period between the onset of the event and the projected failure allows compensatory measures to be taken to prevent the equipment failure or to restore the degraded safety function. The NRC will evaluate this issue as a generic safety issue to determine whether further regulatory actions are justified. The final regulatory guide, or subsequent revisions thereto, is expected to reflect the resolution of this generic safety issue.

4. NEI Comment 3

NEI recommends that the definition of Source Term in § 50.2 be revised to "Source term refers to the magnitude and mix of radionuclides released from the fuel, their physical and chemical form, and the timing of their release." NEI stated that the language in the proposed rule would prohibit the use of § 50.67 for accidents such as the fuel handling accident.

NRC Response. The NRC agrees with the proposed revision. The proposed definition was consistent with the definition of source term as used in NUREG–1465, which was written primarily to address loss of coolant accidents (LOCA). The regulatory guidance for this rule extends the NUREG–1465 source terms to other accidents which involve core damage. The definition suggested by NEI is consistent with the proposed use of the AST. The § 50.2 definition has been revised in the final rule to reflect the change suggested by NEI and that suggested by Arizona Public Service Comment 1 below.

5. NEI Comment 4

NEI stated that the proposed rule does not permit new test reactors to use an alternative source term. New test reactors would have to use the Part 100 Subpart A, "Evaluation Factors for Stationary Power Reactor Site Applications Before January 10, 1997, and for Testing Reactors," even though their application for an operating license would be filed after January 10, 1997. The use of Section 50.67, "Accident Source Term," is limited to holders of operating licenses issued before January 10, 1997. This wording prohibits new test reactors from using the alternative source term. NEI recommended that § 50.67 be amended to allow new test reactors to use an alternative source term.

NRC Response. Section 50.67 applies only to holders of licenses for operating reactors, including test reactors, whose licenses were issued before January 10, 1997. There is no regulatory requirement for a specific source term for reactors to be licensed in the future, including test reactors. Accordingly, no regulatory action is necessary to accommodate the NEI recommendation.

6. Duke Energy Corporation Comment

Duke Energy Corporation (Duke) endorsed the comments submitted on behalf of the industry by NEI. Duke stated that the proposed § 50.67(b)(1) was not clear regarding whether licensees will be allowed to use a revised source term on a limited basis (e.g., for analyses of a specific accident or function), or whether they will be required to review the entire radiological consequence analyses to apply for the new source term. Duke suggested that necessary guidance be provided in the draft regulatory guidance to allow for limited use of the new source terms where such use can be justified.

NRC Response. This comment is similar to NEI Comment 1 addressed previously. As stated in the SOC, the NRC will consider justifiable limited (i.e., selective) applications of an AST. Although a selective implementation may result in a reduced scope of evaluation, the licensee must still demonstrate that the AST implementation and any associated proposed modifications will not exceed the criteria specified in § 50.67. The scope of the required re-analyses will depend on the specific application proposed by the licensee. Regulatory guidance on selective implements and the scope of required re-analyses has been included in the draft guide and are available as announced in this **Federal Register** notice.

7. Arizona Public Service Company Comment 1

Arizona Public Service Company (APS) noted that the SOC statement, "a subsequent change to the source term must be made through a license amendment" could be interpreted as requiring prior NRC approval for any change in the magnitude and mix of radionuclides released from the reactor core. APS stated that this interpretation could place additional restrictions on licensee efforts at economical fuel management, including reload design.

NRC Response. The NRC agrees with the APS comment. The NRC had intended the phrase "magnitude and mix" to refer to the fractions of the fission product inventory of the radionuclides released from the reactor fuel. The NRC intent for the provision in question was to require approval for changes in the radioactivity release fractions, the radionuclides released, their physical and chemical form, and the timing of their release. Since "magnitude and mix" could be a source of confusion, the NRC has modified the § 50.2 definition of Source Term in the final rule to read: "Source term refers to the magnitude and mix of the radionuclides released from the fuel, expressed as fractions of the fission product inventory in the fuel, as well as their physical and chemical form, and the timing of their release." This is consistent with NUREG–1465 when it refers to "magnitude and mix," since the NUREG–1465 presents these data in the form of tables of release fractions and radionuclides. This revised language also addresses NEI Comment 3 above.

8. Arizona Public Service Company Comment 2

In its second comment, APS noted that NUREG–1465 contains a disclaimer that the accident source terms provided therein may not be applicable to fuel irradiated in excess of 40 GWD/MTU. The NRC has licensed core designs with fuel irradiations of up to 62 GWD/MTU. APS questioned whether the NRC staff was going to address the affect of high burnups on a generic basis, or on a facility-by-facility basis.

NRC Response. The AST tabulated in the draft regulatory guidance, which

differs in some aspects from that provided in NUREG–1465, is applicable to peak rod average irradiations up to 62 GWD/MTU. Attachment 1 to the regulatory analysis for this rulemaking describes the bases of this extension in fuel irradiation as it applies to the AST. There are some facility-by-facility considerations. For example, the increase in core inventory for some long-lived radionuclides and the change in isotopic mix due to the increase in plutonium fission as the fuel ages is addressed by the Draft Guide-1081 provision that licensees re-analyze the core inventory based on current operating parameters, including fuel burnup.

III. Section-by-Section Analysis

A. Section 50.2

The general "definitions" section for Part 50 is supplemented by adding a definition of source term for the purpose of § 50.67. In NUREG–1465, the source term is defined by five projected characteristics: (1) magnitude of radioactivity release, (2) radionuclides released, (3) physical form of the radionuclides released, (4) chemical form of the radionuclides released, and (5) timing of the radioactivity release. The definition of source term in § 50.2 embodies the NUREG–1465 definition; however, the § 50.2 definition includes the clarifying phrase, "expressed as fractions of the fission product inventory in the fuel," (see prior response to Arizona Public Service Comment 1). Although all five characteristics should be addressed in applications proposing the use of an alternative source term, there may be technically justifiable applications in which all five characteristics need not be addressed. The NRC intends to allow licensees flexibility in implementing alternative source terms consistent with maintaining a conservative, clear, logical, and consistent plant design basis. The regulatory guidance that supports this final rule describes an acceptable basis for defining the characteristics of an alternative source term.

B. Section 50.67(a)

This paragraph defines the licensees that may seek to revise their current radiological source term with an alternative source term. The final rule is applicable to holders of operating licenses that were issued under 10 CFR Part 50 before January 10, 1997, and to holders of renewed licenses issued under 10 CFR Part 54 whose initial operating license was issued prior to January 10, 1997. The final rule does not require licensees to revise their current source term. The NRC considered the acceptability of the TID–14844 source term at current operating reactors and determined that the analytical approach based on the TID–14844 source term would continue to be adequate to protect public health and safety, and that operating reactors licensed under this approach should not be required to reanalyze design basis accidents using a new source term. The final rule does not explicitly define an alternative source term. In lieu of an explicit reference to NUREG–1465, Footnote 1 to the final rule identifies the significant attributes of an accident source term. The regulatory guidance that is being issued to support this final rule will identify ASTs (based on the NUREG–1465 source terms) that are acceptable alternatives to the source term in TID–14844, and will provide implementation guidance. This approach will provide for future revised source terms if they are developed and will allow licensees to propose additional alternatives for NRC consideration.

C. Section 50.67(b)(1)

This paragraph of § 50.67 identifies the information that a licensee must submit as part of a license amendment application to use an alternative source term. Because of the extensive use of the accident source term in the design and operation of a power reactor and the potential impact on postulated accident consequences and margins of safety of a change of such a fundamental design assumption, the NRC has determined that any change to the design basis to use an alternative source term should be reviewed and approved by the NRC in the form of a license amendment. Changes to the source term, by itself, would ordinarily constitute a no significant hazards consideration. In addition, generic analyses performed by the NRC staff in support of this final rule have indicated that there are potential changes to the facility as documented in the FSAR that will constitute a no significant hazards consideration. However, these determinations will have to be made for each proposed change based upon facility-specific evaluations. The procedural requirements for processing a license amendment are presented in §§ 50.90 through 50.92.

The NRC's regulations provide a regulatory mechanism for a licensee to effect a change in its design basis in § 50.59[3] that allows a licensee to make changes to the facility as described in the final safety analysis report (FSAR) without prior NRC approval, if the proposed change meets certain criteria specified in § 50.59. If the criteria are not met, the licensee must request NRC approval of the change using the license amendment process detailed in § 50.90. Significant to this final rule is the criterion that NRC review is required if the proposed change would result in a greater than minimal increase in consequences of an accident or malfunction. In many applications, alternative source terms may reduce the postulated consequences of the accident or malfunction. For this reason, the NRC determined that the regulatory framework of § 50.59 might not provide assurance that this change in the design basis would be recognized by the licensee as needing review by the NRC staff.

After a licensee has been authorized to substitute an alternative source term in its design basis, subsequent changes to the facility that involve an alternative source term may be processed under § 50.59 or § 50.90, as appropriate. However, a subsequent change to the fractions of the fission product inventory of the radionuclides released from the reactor fuel, their chemical and physical form, or the timing of their release as tabulated in the regulatory guidance (with deviations proposed by the licensee and approved by the NRC) could not be implemented under § 50.59. This provision applies only to these tabulated parameters.

The final rule will require the applicant to perform analyses of the consequences of applicable design basis accidents previously analyzed in the safety analysis report and to submit a description of the analysis inputs, assumptions, methodology, and results of these analyses for NRC review. Applicable evaluations may include, but are not limited to, those previously performed to show compliance with § 100.11, § 50.49, Part 50 Appendix A GDC–19, § 50.34(f), and NUREG–0737, "Clarification of TMI Action Plan Requirements," requirements II.B.2, II.B.3, III.D.3.4. The regulatory guidance that supports this final rule will provide guidance on the scope and extent of analyses used to show compliance with this rule and on the assumptions and methods used therein. It is not the NRC's intent that all of the design basis radiological analyses for a facility be

[3] Section 10 CFR 50.59 is being amended in a parallel, but separate, rulemaking action. That rulemaking, when implemented is expected to replace the unreviewed safety question (USQ) concept. Further, the criteria for consequences are being revised from "may be increased" to "result in more than a minimal increase." Those changes are not expected to invalidate the conclusions drawn in this analysis.

performed again as a prerequisite for approval of the use of an alternative source term. Nor is it the NRC's intent that EAB, LPZ, and control room dose calculations be performed for all applications under § 50.67. The NRC does expect that the applicant will perform sufficient evaluations, supported by calculations as warranted, to demonstrate the acceptability of the proposed amendment.

D. Sections 50.67(b)(2)(i),(ii), (iii)

These subparagraphs contain the three criteria for NRC approval of the license amendment to use an alternative source term. A detailed rationale for the use of 0.25 Sv (25 rem) TEDE as an accident dose criterion and the use of the 2-hour exposure period resulting in the maximum dose for future LWRs is provided at 61 FR 65157 (December 11, 1996). The same considerations that formed the basis for that rationale are similarly applicable to operating reactors that elect to use an alternative source term. The NRC believes that it is technically appropriate and logical to extend the philosophy of decoupling of design and siting, and the dose criteria established for future LWRs to operating reactors that elect to use an alternative source term.

The NRC is replacing the current GDC–19 dose criteria for operating reactors that elect to use an alternative source term with a criterion of 0.05 Sv (5 rem) TEDE for the duration of the accident. This criterion is included in § 50.67 as well as in GDC–19 in order to co-locate all of the dose requirements associated with alternative source terms. The bases for the NRC's decision are: first, that the criteria in GDC–19 and that in the final rule are based on a primary occupational exposure limit. Second, the language in GDC–19: "5 rem whole body, or its equivalent to any part of the body" is subsumed by the definition of TEDE in § 20.1003 and by the 0.05 Sv (5 rem) TEDE annual limit in § 20.1201(a). Although the weighting factors stated in § 20.1003 for use in determining TEDE differ in magnitude from the weighting factors implied in the 0.3 Sv (30 rem) thyroid criteria used for showing compliance with GDC–19, these differences are the result of improvement in the science of assessing internal exposures and do not represent a reduction in the level of protection. Third, as discussed earlier, the use of TEDE in conjunction with alternative source terms has been deemed appropriate and necessary. Fourth, the use of TEDE for the control room dose criterion is consistent with the use of TEDE in the accident dose criteria for offsite exposure.

The NRC has not included a "capping" limitation, an additional requirement that the dose to any individual organ not be in excess of some fraction of the total as provided for routine occupational exposures. The bases for the NRC's decision are: first, that this non-inclusion of a "capping" limitation is consistent with the final rule published in December 11, 1996 (61 FR 65157), with regard to doses to persons offsite. Second, the use of 0.05 Sv (5 rem) TEDE as the control room criterion does not imply that this would be an acceptable exposure during emergency conditions, or that other radiation protection standards of Part 20, including individual organ dose limits, might not apply. This criterion is provided only to assess the acceptability of design provisions for protecting control room operators under postulated DBA conditions. The DBA conditions assumed in these analyses, although credible, generally do not represent actual accident sequences but are specified as conservative surrogates to create bounding conditions for assessing the acceptability of engineered safety features. Third, § 20.1206 permits a once-in-a-lifetime planned special dose of five times the annual dose limits. Also, Environmental Protection Agency (EPA) guidance sets a limit of five times the annual dose limits for workers performing emergency services such as lifesaving or protection of large populations.

Considering the individual organ weighting factors of § 20.1003 and assuming that only the exposure from a single organ contributed to TEDE, the organ dose, although exceeding the dose specified in § 20.1201(a), would be less than that considered acceptable as a planned special dose or as an emergency worker dose. The NRC is not suggesting that control room dose during an accident can be treated as a planned special exposure or that the EPA emergency worker dose limits are an alternative to GDC–19 or the final rule. However, the NRC does believe that these provisions offer a useful perspective that supports the conclusion that the organ doses implied by the 0.05 Sv (5 rem) criterion can be considered to be acceptable due to the relatively low probability of the events that could result in doses of this magnitude.

Although the dose criteria in the final rule supersede the dose criteria in GDC–19, the other provisions of GDC–19 remain applicable.

There may be technically justifiable implementations of an AST that would not require calculation of the EAB, LPZ, or control room doses. For example, a proposed modification to change the closure time of a containment isolation valve from 2 seconds to 5 seconds may be based on the timing insights of the AST. Although a specific calculation might not be necessary in this case, the licensee is still required to affirm with reasonable assurance that the doses would comply with these stated criteria.

E. 10 CFR Part 50, Appendix A, GDC–19

GDC–19 is changed to include the TEDE dose criterion for control room design for applicants for construction permits, design certifications, and combined licenses that submitted applications after January 10, 1997 (the effective date of the 1996 rulemaking adopting the TEDE criterion), and for those licenses using an alternative source term under § 50.67. The change to GDC–19 addresses the use of alternative source terms at operating reactors and a deficiency identified in the regulatory framework for early site permits, standard design certifications, and combined licenses under Part 52. Sections 52.18, 52.48, and 52.81 establish that applications filed under Part 52, Subparts A, B, and C, respectively, will be reviewed according to the standards given in 10 CFR Parts 20, 50, 51, 55, 73, and 100 to the extent that those standards are technically relevant to the proposed design. Therefore, GDC–19 is pertinent to applications under Part 52.

The final rule that became effective on January 10, 1997 (61 FR 65157; December 11, 1996), established accident TEDE criteria (in § 50.34) for applicants under Part 52 but did not change the existing control room whole body (or equivalent) dose criterion in GDC–19. Thus, exemptions from the dose criteria in the current GDC–19 were necessary in the design certification process for the Westinghouse AP600 advanced LWR in order to use the 0.05 Sv (5 rem) TEDE criterion deemed necessary for use with alternative source terms. Exemptions will arguably be necessary for future applicants for construction permits, design certifications, and combined licenses. This amendment will eliminate the need for these exemptions.

F. Sections 21.3, 50.2, 50.49(b)(1)(i)(C), 50.65(b)(1), and 54.4(a)(1)(iii)

These sections are revised to conform with the relocation of accident dose criteria from § 100.11 to § 50.67 for operating reactors that have amended their design bases to use an alternative source term.

G. Section 50.34

A new footnote to § 50.34 has been added to define what constitutes an accident source term. This new footnote is identical to the existing footnote 1 to § 100.11, and was added to provide for consistency between Parts 50 and 100.

H. Sections 50.34(f)(2)(vii), (viii), (xxvi) and (xxviii)

These paragraphs are revised to replace an explicit reference to the "TID–14844 source term" with a more general reference to "accident source term." These changes potentially affect three classes of applicants. The first affected class is comprised of applicants for design certification under Part 52, Subpart B. Section 52.47(a)(1)(ii) states that applications for combined licenses must contain, inter alia, "demonstration of compliance with any technically-relevant portions of the Three Mile Island requirements set forth in § 50.34(f)." Section 50.34(f) contains several references to the TID–14844 source term. These references were modified to delete the reference to TID–14844. This change makes it clear that applicants for combined licenses should not use the TID–14844 source term but should use the source term in the referenced design certification, or a source term that is justified in the combined license application. The second affected class is comprised of applicants for combined licenses under Part 52, Subpart C. Section 52.79(b) makes the requirements of 52.47(a)(1)(i) applicable if a certified design is not referenced. Thus, the combined license applicant is also subject to the requirements of Section 50.34(f).

The third affected class is the small subset of plants that had construction permits pending on February 16, 1982. With the proposed change, these plants could use either the TID–14844 source term or an alternative source term in their operating license applications.

IV. Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission is issuing for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public information such as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the NRC staff in its review of applications for permits and licenses. Copies of the draft guide may be obtained as described in Section VI, "Referenced Documents," of these statements of consideration. You may also download copies from the NRC's interactive rulemaking forum website through the NRC home page (http://ruleforum.llnl.gov/cgi-bin/rulemake).

The draft guide, temporarily identified by its task number DG–1081 (which should be mentioned in all correspondence concerning this draft guide) is titled "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors." This guide is intended for Division 1, "Power Reactors." This draft guide is being developed to provide regulatory guidance on the implementation of an alternative source term at an operating reactor. The guide addresses issues involving limited or selective implementation of an alternative source term and probabilistic risk assessment (PRA) issues related to plant modifications based on an alternative source term, and provides guidance on the scope and extent of affected design basis accident (DBA) radiological analyses and associated acceptance criteria. The guide includes revised assumptions and methods for each affected DBA in a series of appendices. These appendices supersede the guidance in Regulatory Guides 1.3, 1.4, 1.5, 1.25, and 1.77, and supplement guidance in Regulatory Guide 1.89 for those facilities using an alternative source term.

The draft guide has not received complete NRC staff review and does not represent an official NRC staff position.

Previous draft versions of DG–1081 have been made publicly available to support technical interactions with the public. This **Federal Register** announcement provides an opportunity for the public to provide comments on the DG–1081 guidance. The NRC staff will consider the public comments in its efforts to finalize the regulatory guidance.

The Commission invites advice and recommendations on the content of the draft regulatory guide. Comments and suggestion are particularly requested on the following questions.

A. Scope of Implementation

1. The guidance provided in the draft regulatory guide is intended to allow licensees the maximum flexibility in pursuing technically justifiable AST implementations provided that a clear, consistent, and logical design basis is maintained. Comments are specifically requested on the following questions.

A. Does the proposed guidance provide the desired flexibility while providing reasonable assurance that a clear, consistent, and logical design basis will be maintained?

B. Is there a less complex alternative approach that would provide the desired flexibility while maintaining a clear, consistent, and logical design basis?

C. Should the Commission allow licensees that have received approval for a selective implementation to extend the AST and the TEDE criteria to other design basis applications (that do not involve reanalysis of the DBA LOCA) under § 50.59 rather than under § 50.67 as currently proposed?

2. The guidance would allow selective implementation of the characteristics (i.e., the fractions of fission product inventory of the radionuclides released from the reactor fuel, their chemical and physical form, and the timing of their release) of an AST. The Commission believes that implementations based only on the timing insights of an AST may be technically justifiable. The Commission believes that the other combinations may be internally inconsistent. Comments are specifically requested on the following questions.

A. What other combinations of AST characteristics are technically consistent?

B. What plant modifications might be based on these combinations?

B. Scope of Re-Analyses

1. The draft regulatory guide provides guidance on the scope of the re-analyses that should be performed to support an AST implementation. Comments are requested on the following questions.

A. Is the proposed guidance on the scope of re-analyses technically appropriate and clear? How could it be improved?

B. The guidance allows licensees to disposition certain impacts of an AST on the basis of the NRC staff's re-baselining study. Does this study or other documents provide a sufficient basis for the Commission to generically disposition these impacts?

2. It may be possible for licensees to demonstrate that the doses from certain affected analyses assessed using the prior source term and dose methodology would be greater than the doses obtained using a proposed AST and the TEDE methodology. The proposed guidance would allow the licensee to disposition these affected analyses without re-calculation. Nonetheless, the design basis would now include the approved AST and TEDE criteria. The guidance in the draft regulatory guide would require the licensee to update the calculation to be consistent with the approved AST and dose methodology described in the facility design basis in

the event of a subsequent re-calculation. Comments are requested on the following questions.

A. Should the Commission allow licensees to continue to use the prior source term and dose criteria for these analyses and not require that they be updated on subsequent revisions?

B. If the analyses are not updated, how will licensees assure that the earlier conclusion that the analyses are limiting remains valid following subsequent revisions?

3. Analyses of the integrated radiation doses for environmental qualification of certain equipment important to safety will be affected by the increased concentration of radioactive cesium in the containment sump water. The Commission has been considering the position that licensees proposing to implement an AST must address all impacts of the proposed implementation, including the impact of the increased cesium concentration. However, the Commission now believes it may be necessary for all operating power reactors to address the postulated increase in the cesium concentration. The Commission will consider this issue as a generic safety issue. Comments are requested on the following questions.

A. Is there information that should be considered by the Commission in resolving this generic issue?

B. If the Commission should conclude that there is safety significance but that the costs of implementing corrective actions are not justified on a generic basis, should licensees who are voluntarily proposing to amend their design basis to use an AST be required to address the impact of the increased cesium concentration?

C. If a licensee proposes a change in the plant configuration that would result in an increase in the integrated dose for one or more components and this licensee is also proposing, or has already implemented an AST, should the re-analysis of the integrated dose be based on that AST or on the prior TID14844 source term?

Comments may be accompanied by relevant information or supporting data. Written comments may be mailed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Mail Stop O16C1. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 7, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://ruleforum.llnl.gov/cgi-bin/rulemake). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; or by internet electronic mail to cag@nrc.gov. For information about the draft guide, contact Mr. Stephen F. LaVie, (301) 415–1081; Internet electronic mail sfl@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

V. Draft Standard Review Plan Section; Issuance, Availability

The Nuclear Regulatory Commission is issuing for public comment a draft of a new section to NUREG–0800, "Standard Review Plan." Standard review plan (SRP) sections are prepared for the guidance of the Office of Nuclear Reactor Regulation staff responsible for the review of applications to construct and operate nuclear power plants. These documents are made available to the public as part of the Commission's policy to inform the nuclear industry and the general public of regulatory procedures and policies. The draft SRP Section 15.0.1, is titled "Radiological Consequence Analyses Using Alternative Source Terms." The SRP section complements draft regulatory guide DG–1081. The draft SRP section has not received complete NRC staff review and does not represent an official NRC staff position.

Copies of the draft SRP section may be obtained as described in Section VI, "Referenced Documents," of these statements of consideration. You may also download copies from the NRC's interactive rulemaking forum website through the NRC home page (http://ruleforum.llnl.gov/cgi-bin/rulemake).

Comments on the content of the draft SRP section are invited. Comments may be accompanied by relevant information or supporting data. Comments should be submitted as described above for the draft regulatory guide. Although a time limit is given for comments on this draft SRP section, comments and suggestions in connection with items for inclusion in SRP sections currently being developed or improvements in all published SRP sections are encouraged at any time.

VI. Referenced Documents

Copies of NUREG–0737, NUREG–0800, NUREG–1465, NUREG/BR–0058, NUREG/BR–184, and NUREG/CR–6204 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies also are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy also is available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Single copies of regulatory guides, both active and draft may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, USNRC, Washington DC 20555–0001, or by fax to (301) 415–2289, or by email to distribution@nrc.gov. Active guides may also be purchased from the National Technical Information Service on a standing order basis. Details of this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of active and draft guides are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington DC.

Copies of SECY–94–302, SECY–96–242, SECY–98–154, SECY–98–289, TID–14844, and TR–105909 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

VII. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this regulation is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule allows operating reactors to replace the traditional TID–14844 source term with a more realistic source term based on the insights gained from extensive accident research activities. The actual accident sequence and progression are not changed; it is the regulatory assumptions regarding the accident that would be affected by the change. The use of an alternative source term alone cannot increase the core damage frequency (CDF) or the large early release frequency (LERF) or actual offsite or onsite radiation doses. An alternative source term could be used to justify changes in the plant design that might have an impact on CDF or LERF or that might increase offsite or onsite doses. Those plant changes that do not

require prior NRC review and approval pursuant to § 50.59 are not likely to involve any significant increase in environmental impacts. The § 50.59 criteria are sufficiently stringent that any potential change in plant design that could have an adverse environmental impact in all likelihood could not be made by the licensee without prior NRC review and approval. Every plant change that requires NRC review and approval under § 50.59 requires a license amendment and, therefore, the preparation of an environmental assessment to determine whether the proposed change involves any significant environmental impact. Thus, this final rule, by itself, will not result in plant changes that involve any significant increase in environmental impacts. The final rule does not affect non-radiological plant effluents.

The NRC requested public comments on any environmental justice considerations that may be related to this rule. No public comments relevant to the draft environmental assessment or environmental justice considerations were received. The NRC requested the views of the States on the environmental assessment for this rule. No comments relevant to the draft environmental assessment or environmental justice considerations were received.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory NRC, Washington, DC 20555–0001, telephone: (301) 415–1081, or by Internet electronic mail to sfl@nrc.gov.

VIII. Paperwork Reduction Act Statement

This final rule increases the burden on licensees by requiring that when seeking to revise their current accident source term in design basis radiological consequence analyses, they apply for an amendment under § 50.90. The public burden for this information collection is estimated to average 609 hours per request. Because the burden for this information collection is insignificant relative to the total burden estimated, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

IX. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis are available from Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1081, or by Internet electronic mail to sfl@nrc.gov.

X. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the definition of "small entities" found in the Regulatory Flexibility Act or within the size standards established by the NRC (April 11, 1995; 60 FR 18344).

XI. Backfit Analysis

The NRC has determined that the backfit rule in 10 CFR 50.109 does not apply to this final rule, and that a backfit analysis is not required for this rulemaking because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). This final rule amends the NRC's regulations by establishing alternate requirements that may be voluntarily adopted by licensees, and makes changes to the regulations to conform them to a 1996 rulemaking.

XII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

XIII. National Technology Transfer and Advancement Act

The National Technology Transfer Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule the NRC is establishing a government-unique standard in Section 50.67(b)(2) by specifying accident radiation dose criteria. These criteria were issued for use by future license applicants by an earlier rulemaking (61 FR 65157, December 11, 1996) and, by this final rule, are being applied to operating reactors that voluntarily use an alternative source term. No voluntary consensus standard has been identified that could be used instead of the government-unique standard.

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons noted in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing the following amendments to 10 CFR Parts 21, 50, and 54:

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

2. Section 21.3 is amended by republishing the introductory text and revising paragraph (1)(i)(C) of the

definition of Basic Component to read as follows:

§ 21.3 Definitions.

As used in this part:

Basic component. (1)(i) * * *

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–9601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–9190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–9190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–9415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

4. Section 50.2 is amended by republishing the introductory text and revising paragraph (1)(iii) of the definition of Basic component, and by adding in alphabetical order the definition for Source term to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

Basic component * * *

(1) * * *

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

Source term refers to the magnitude and mix of the radionuclides released from the fuel, expressed as fractions of the fission product inventory in the fuel, as well as their physical and chemical form, and the timing of their release.

* * * * *

5. Section 50.34 is amended by revising paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(f) * * *

(2) * * *

(vii) Perform radiation and shielding design reviews of spaces around systems that may, as a result of an accident, contain accident source term [11] radioactive materials, and design as necessary to permit adequate access to important areas and to protect safety equipment from the radiation environment. (II.B.2)

(viii) Provide a capability to promptly obtain and analyze samples from the reactor coolant system and containment that may contain accident source term [11] radioactive materials without radiation exposures to any individual exceeding 5 rems to the whole body or 50 rems to the extremities. Materials to be analyzed and quantified include certain radionuclides that are indicators of the degree of core damage (e.g., noble gases, radioiodines and cesiums, and nonvolatile isotopes), hydrogen in the containment atmosphere, dissolved gases, chloride, and boron concentrations. (II.B.3)

* * * * *

(xxvi) Provide for leakage control and detection in the design of systems outside containment that contain (or might contain) accident source term [11] radioactive materials following an accident. Applicants shall submit a leakage control program, including an initial test program, a schedule for re-testing these systems, and the actions to be taken for minimizing leakage from such systems. The goal is to minimize potential exposures to workers and public, and to provide reasonable assurance that excessive leakage will not prevent the use of systems needed in an emergency. (III.D.1.1)

* * * * *

(xxviii) Evaluate potential pathways for radioactivity and radiation that may lead to control room habitability problems under accident conditions resulting in an accident source term [11] release, and make necessary design provisions to preclude such problems. (III.D.3.4)

* * * * *

6. Section 50.49 is amended by revising paragraph (b)(1)(i)(C) to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) The capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guidelines in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

7. Section 50.65 is amended by revising paragraph (b)(1) to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

* * * * *

(b) * * *

(1) Safety-related structures, systems and components that are relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

8. Part 50 is amended by adding § 50.67 to read as follows:

§ 50.67 Accident source term.

(a) *Applicability.* The requirements of this section apply to all holders of operating licenses issued prior to January 10, 1997, and holders of renewed licenses under part 54 of this chapter whose initial operating license was issued prior to January 10, 1997, who seek to revise the current accident source term used in their design basis radiological analyses.

(b) *Requirements.* (1) A licensee who seeks to revise its current accident source term in design basis radiological

---

[11] The fission product release assumed for these calculations should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release of appreciable quantities of fission products.

consequence analyses shall apply for a license amendment under § 50.90. The application shall contain an evaluation of the consequences of applicable design basis accidents [1] previously analyzed in the safety analysis report.

(2) The NRC may issue the amendment only if the applicant's analysis demonstrates with reasonable assurance that:

(i) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 0.25 Sv (25 rem) [2] total effective dose equivalent (TEDE).

(ii) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage), would not receive a radiation dose in excess of 0.25 Sv (25 rem) total effective dose equivalent (TEDE).

(iii) Adequate radiation protection is provided to permit access to and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 0.05 Sv (5 rem) total effective dose equivalent (TEDE) for the duration of the accident.

9. Part 50, Appendix A, section II, "Protection by Multiple Fission Product Barriers," "Criterion 19—Control room" is revised to read as follows:

Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

* * * * *

II. Protection by Multiple Fission Product Barriers

* * * * *

Criterion 19—Control room. A control room shall be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions, including loss-of-coolant accidents. Adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident. Equipment at appropriate locations outside the control room shall be provided (1) with a design capability for prompt hot shutdown of the reactor, including necessary instrumentation and controls to maintain the unit in a safe condition during hot shutdown, and (2) with a potential capability for subsequent cold shutdown of the reactor through the use of suitable procedures.

Applicants for and holders of construction permits and operating licenses under this part who apply on or after January 10, 1997, applicants for design certifications under part 52 of this chapter who apply on or after January 10, 1997, applicants for and holders of combined licenses under part 52 of this chapter who do not reference a standard design certification, or holders of operating licenses using an alternative source term under § 50.67, shall meet the requirements of this criterion, except that with regard to control room access and occupancy, adequate radiation protection shall be provided to ensure that radiation exposures shall not exceed 0.05 Sv (5 rem) total effective dose equivalent (TEDE) as defined in § 50.2 for the duration of the accident.

* * * * *

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

10. The authority citation for Part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842), E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

11. Section 54.4 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 54.4 Scope.

(a) * * *

(1) * * *

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

Dated at Rockville, Maryland, this 17th day of December 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–33283 Filed 12–22–99; 8:45 am]

BILLING CODE 7590–01–P

[1] The fission product release assumed for these calculations should be based upon a major accident, hypothesized for purposes of design analyses or postulated from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release of appreciable quantities of fission products.

[2] 2 The use of 0.25 Sv (25 rem) TEDE is not intended to imply that this value constitutes an acceptable limit for emergency doses to the public under accident conditions. Rather, this 0.25 Sv (25 rem) TEDE value has been stated in this section as a reference value, which can be used in the evaluation of proposed design basis changes with respect to potential reactor accidents of exceedingly low probability of occurrence and low risk of public exposure to radiation.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AG23

AP600 Design Certification

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify the AP600 standard plant design under Subpart B of 10 CFR part 52. This action is necessary so that applicants or licensees intending to construct and operate an AP600 design may do so by referencing this regulation [AP600 design certification rule (DCR)]. The applicant for certification of the AP600 design was Westinghouse Electric Company LLC (hereinafter referred to as Westinghouse).

EFFECTIVE DATE: The effective date of this rule is January 24, 2000. The incorporation by reference of certain documents listed in this regulation is approved by the Director of the Office of the Federal Register as of January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Mail Stop O–12 G15, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or telephone (301) 415–3145, or e-mail: *jnw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background.
II. Public comment.
III. Section-by-section discussion.
  A. Introduction.
  B. Definitions.
  C. Scope and contents.
  D. Additional requirements and restrictions.
  E. Applicable regulations.
  F. Issue resolution.
  G. Duration of this appendix.
  H. Processes for changes and departures.
  I. Inspections, tests, analyses, and acceptance criteria.
  J. Records and Reporting.
IV. Finding of no significant environmental impact: availability.
V. Paperwork Reduction Act statement.
VI. Regulatory analysis.
VII. Regulatory Flexibility Act certification.
VIII. Backfit analysis.
IX. Small Business Regulatory Enforcement Fairness Act.
X. National Technology Transfer and Advancement Act.

I. Background

The NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR part 52 established the process for obtaining design certifications. On June 26, 1992, Westinghouse tendered its application for certification of the AP600 design with the NRC. Westinghouse submitted this application in accordance with Subpart B and Appendix O of 10 CFR part 52. The NRC formally accepted the application as a docketed application for design certification (Docket No. 52–003) on December 31, 1992 (58 FR 3982, January 12, 1993). Information submitted before that date can be found under Project No. 676.

The NRC staff issued a final safety evaluation report (FSER) related to certification of the AP600 standard plant design in September 1998 (NUREG–1512, 63 FR 48772). The FSER documents the results of the staff's safety review of the AP600 design against the requirements of 10 CFR part 52, subpart B, and delineates the scope of the technical details considered in evaluating the design. The final design approval for the AP600 design was issued on September 3, 1998, and published in the **Federal Register** on September 11, 1998 (63 FR 48772). Subsequently, Westinghouse submitted the AP600 Design Control Document (DCD) on November 30, 1998, and four revisions to the DCD. The NRC staff reviewed these revisions and determined that they did not affect the findings in the FSER. The NRC's evaluation of the DCD is discussed in Supplement No. 1 to the FSER. A notice of availability for Supplement No. 1 will be published in the **Federal Register**. The FSER and Supplement No. 1 provide the bases for the Commission's approval of the AP600 standard plant design through design certification. A copy of the FSER may be obtained from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 or the National Technical Information Service, Springfield, VA 22161–0002.

II. Public Comment

Subpart B of 10 CFR part 52 provides for Commission approval of standard designs for nuclear power facilities (e.g., design certification) through rulemaking. In accordance with the Administrative Procedure Act (APA), Part 52 provides the opportunity for the public to submit written comments on the proposed design certification rule. However, Part 52 goes beyond the requirements of the APA by providing the public with an opportunity to request a hearing before the Atomic Safety and Licensing Board Panel in a design certification rulemaking. Therefore, on May 20, 1999, the NRC published a proposed rule in the **Federal Register** (64 FR 27626) that invited public comment and provided the public with the opportunity to request an informal hearing before an Atomic Safety and Licensing Board.

The period for requesting an informal hearing or submitting comments on the proposed DCR, AP600 DCD, or draft environmental assessment expired on August 3, 1999. The NRC did not receive any requests for an informal hearing during this period, but it did receive a comment from a member of the public. This individual did not comment on the AP600 DCD, draft environmental assessment, or proposed DCR. Rather, the commenter expressed views on new nuclear power plants and nuclear waste. Therefore, the Commission did not change the proposed DCR, AP600 DCD, or draft environmental assessment [except for editorial revisions and updates to the supplementary information on applicable regulations] and has adopted this rule [Appendix C to 10 CFR Part 52] as final.

III. Section-by-Section Discussion of Design Certification Rule

The final rule for the AP600 standard plant design is nearly identical to the two design certification rules (DCRs) for the U.S. ABWR and the System 80+ designs, which the NRC previously adopted. These DCRs are set forth in 10 CFR part 52, appendix A (U.S. ABWR, 62 FR 25800, May 12, 1997) and appendix B (System 80+, 62 FR 27840, May 21, 1997). The AP600 DCR emulates the U.S. ABWR and System 80+ DCRs, inasmuch as the three designs were reviewed contemporaneously against the same technical requirements. Furthermore, many of the procedural issues and their resolutions for the ABWR and the System 80+ DCRs (e.g., the two-tier structure, Tier 2*, the scope of issue resolution) were developed after extensive discussions with nuclear industry representatives, and Westinghouse participated in those discussions. It was the NRC's intent and Westinghouse's expectation that the resolutions for these issues in the ABWR and System 80+ rulemakings would also be applied to the AP600 design certification. Accordingly, the NRC has modeled the AP600 DCR on the existing DCRs for the ABWR and System 80+ designs, with certain departures. These departures were necessary to acknowledge that Westinghouse is the applicant for the AP600 DCR, and to account for differences in the AP600 design documentation (including Tier 2* information), design features, and environmental assessment (including severe accident mitigation design alternatives). The only significant change was the inclusion of the investment protection short-term availability controls in Sections II, III, and VI of the AP600 DCR.

The following discussion sets forth the purpose and key aspects of each portion of the final AP600 design certification rule. All section, paragraph, and subparagraph references are to the provisions in Appendix C to 10 CFR part 52.

A. Introduction

The purpose of Section I of appendix C to 10 CFR part 52 ("this appendix") is to identify the standard plant design that is approved by this design certification rule and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a combined license (COL) contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide this information, then the COL applicant must meet the requirements in 10 CFR 52.63(c). Also, subparagraph X.A.1 of this appendix imposes a requirement on the design certification applicant to maintain the generic DCD throughout the time period in which this appendix may be referenced.

B. Definitions

The terms Tier 1, Tier 2, Tier 2*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR part 52 was developed. The design certification applicants and the NRC staff used these terms in implementing the two-tiered rule structure that was proposed by representatives of the nuclear industry after issuance of 10 CFR part 52. During consideration of the comments received on Appendices A and B to Part 52, the Commission determined that it would be useful to distinguish between the "plant-specific DCD" and the "generic DCD," the latter of which is incorporated by reference into this

appendix and remains unaffected by plant-specific departures. This distinction is necessary in order to clarify the obligations of applicants and licensees that reference this appendix. Also, the technical specifications that are located in Section 16.1 of the generic DCD are designated as "generic technical specifications" in order to facilitate the special treatment of this information under this appendix. Therefore, appropriate definitions for these additional terms are included in this appendix.

The Tier 1 portion of the design-related information contained in the DCD is certified by this appendix and, therefore, subject to the special backfit provisions in paragraph VIII.A of this appendix. An applicant who references this appendix is required to incorporate by reference and comply with Tier 1, under paragraph III.B and subparagraph IV.A.1 of this appendix. This information consists of an introduction to Tier 1, the system based and non-system based design descriptions and corresponding inspections, tests, analyses, and acceptance criteria (ITAAC), significant interface requirements, and significant site parameters for the design. The design descriptions, interface requirements, and site parameters in Tier 1 were derived entirely from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information is provided in Section 14.3 of the FSER. Changes to or departures from the Tier 1 information must comply with paragraph VIII.A of this appendix.

The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification. The ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility must comply with the design descriptions in the plant-specific DCD unless changes are made in accordance with the change process in Section VIII of this appendix. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii) and must be met by the site-specific design features of a facility that references this appendix. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii). An application that references this appendix must demonstrate that the site parameters (both Tier 1 and Tier 2) are met at the proposed site (refer to III.D of this SOC).

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this appendix but is not certified. Tier 2 information is subject to the backfit provisions in paragraph VIII.B of this appendix. Tier 2 includes the information required by 10 CFR 52.47 (with the exception of generic technical specifications, conceptual design information, and the evaluation of severe accident mitigation design alternatives) and the supporting information on inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. As with Tier 1, paragraph III.B and subparagraph IV.A.1 of this appendix require an applicant who references this appendix to incorporate Tier 2 by reference and to comply with Tier 2, except for the COL action items, including the investment protection short-term availability controls in Section 16.3 of the generic DCD. The definition of Tier 2 makes clear that Tier 2 information has been determined by the Commission, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved ("sufficient") method for meeting Tier 1 requirements. However, there may be other acceptable ways of complying with Tier 1. The appropriate criteria for departing from Tier 2 information are specified in paragraph VIII.B of this appendix. Departures from Tier 2 do not negate the requirement in paragraph III.B to reference Tier 2.

A definition of "combined license (COL) action items" (combined license information), which is part of the Tier 2 information, has been added to clarify that COL applicants, who reference this appendix, are required to address these matters in their license application, but the COL action items are not the only acceptable set of information. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or combined license, these items are not requirements for the licensee unless such items are restated in its FSAR.

The investment protection short-term availability controls, which are set forth in Section 16.3 of the generic DCD, were added to the list of information that is part of Tier 2. This set of requirements was added to Tier 2 to make it clear that the availability controls are not operational requirements for the purposes of paragraph VIII.C of this appendix. Rather, the availability controls are associated with specific design features, and the availability controls may be changed in the same manner as other Tier 2 information.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as "Tier 2*" information and, as discussed in greater detail in the section-by-section explanation for paragraph VIII.B, a plant-specific departure from Tier 2* information requires prior NRC approval. However, the Tier 2* designation expires for some of this information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2* information and the time at which its status as Tier 2* expires is set forth in subparagraph VIII.B.6 of this appendix. Some Tier 2* requirements, concerning special preoperational tests, are designated to be performed only for the first plant or first three plants referencing the AP600 DCR. The Tier 2* designation for these selected tests will expire after the first plant or first three plants complete the specified tests. However, a COL action item requires that subsequent plants shall also perform the tests or justify that the results of the first-plant-only or first-three-plants-only tests are applicable to the subsequent plant. The Commission is interested in comments addressing whether the first-plant-only or first-three-plants-only limitations should be part of the Tier 2* information for these specified tests.

During development of Appendices A and B to Part 52, the Commission decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs, maintained by each applicant and licensee who references this appendix.The generic DCDs (identical to each other) would reflect generic changes to the version of the DCD approved in this design certification rulemaking. The generic changes would occur as the result of generic rulemaking by the Commission (subject to the change criteria in Section VIII of this appendix). In addition, the Commission understood that each applicant and licensee referencing this appendix would be required to submit and maintain a plant-specific DCD. This plant-specific DCD would contain (not

just incorporate by reference) the information in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, any plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chose to make in accordance with the relevant processes in Section VIII of this appendix. Thus, the plant-specific DCD would function akin to an updated Final Safety Analysis Report, in the sense that it would provide the most complete and accurate information on a plant's licensing basis for that part of the plant within the scope of this appendix. Therefore, this appendix defines both a generic DCD and plant-specific DCD. Also, the Commission decided to treat the technical specifications in Section 16.1 of the generic DCD as a special category of information and to designate them as generic technical specifications. A COL applicant must submit plant-specific technical specifications that consist of the generic technical specifications, which may be modified under paragraph VIII.C of this appendix, and the remaining plant-specific information needed to complete the technical specifications, including bracketed values. The Final Safety Analysis Report (FSAR) that is required by § 52.79(b) will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific technical specifications.

C. Scope and Contents

The purpose of Section III of this appendix is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph A of this section is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications into this appendix and paragraph B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly-issued regulation, has the force and effect of law: Tier 1 and Tier 2 information, as well as the generic technical specifications, have been combined into a single document called the generic design control document, in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the requirements of the OFR for incorporation by reference (1 CFR Part 51). One of the requirements of OFR for incorporation by reference is that the design certification applicant must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A of this appendix identifies a representative of Westinghouse who can be contacted to obtain a copy of the generic DCD.

Paragraphs A and B of Section III also identify the investment protection short-term availability controls in Section 16.3 of the generic DCD as part of the Tier 2 information. During its review of the AP600 design, the NRC determined that residual uncertainties associated with passive safety system performance increased the importance of non-safety-related active systems in providing defense-in-depth functions that back-up the passive systems. As a result, Westinghouse developed some administrative controls to provide a high level of confidence that active systems having a significant safety role are available when challenged. Westinghouse named these additional controls "investment protection short-term availability controls," and the Commission included this statement in Section III to ensure that these availability controls are binding on applicants and licensees that reference this appendix and will be enforceable by the NRC. The NRC's evaluation of the availability controls is provided in Chapter 22 of the FSER.

The generic DCD (master copy) for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date generic DCD will also be available at the NRC's Public Document Room. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section VIII of this appendix, then at the completion of the rulemaking the NRC will request approval of the Director, OFR for the changed incorporation by reference and change its copies of the generic DCD and notify the OFR and the design certification applicant to change their copies. The Commission is requiring that the design certification applicant maintain an up-to-date copy under subparagraph X.A.1 of this appendix because it is likely that most applicants intending to reference the standard design will obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD will be maintained by the applicant or licensee that references this appendix in a plant-specific DCD, under subparagraph X.A.2.

In addition to requiring compliance with this appendix, paragraph B clarifies that the conceptual design information and Westinghouse's evaluation of severe accident mitigation design alternatives are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are intermingled throughout Tier 2. As provided by 10 CFR 52.47(a)(1)(ix), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant does not need to conform with the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. Section 1.8 of Tier 2 identifies the location of the conceptual design information. Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents does not constitute design requirements. The Commission's assessment of this information is discussed in Section IV of this SOC on environmental impacts. The detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), were not included in the generic DCD, as requested by NEI and the applicant for design certification. The NRC agreed with the request to delete this information because conformance with the deleted portions of the PRA is not necessary. Also, the NRC's position is predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that will require a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA supporting this rulemaking and maintain it throughout the operational life of the facility.

Paragraphs C and D of section III set forth the manner in which potential conflicts are to be resolved. Paragraph C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph D establishes the generic DCD as the controlling document in the event

of an inconsistency between the DCD and either the application for certification of the AP600 design (AP600 Standard Safety Analysis Report) or the final safety evaluation report for the certified standard design.

Paragraph E makes it clear that design activities that are wholly outside the scope of this design certification may be performed using site-specific design parameters, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision applies to site-specific portions of the plant, such as the administration building. Because this statement is not a definition, the Commission decided that the appropriate location is in Section III of this appendix.

D. Additional Requirements and Restrictions

Section IV of this appendix sets forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A sets forth the information requirements for these applicants. This appendix distinguishes between information and/or documents which must actually be included in the application or the DCD, versus those which may be incorporated by reference (*i.e.*, referenced in the application as if the information or documents were actually included in the application), thereby reducing the physical bulk of the application. Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, and the page number(s) and table(s) containing the relevant information to be incorporated by reference.

Subparagraph A.1 requires an applicant who references this appendix to incorporate by reference this appendix in its application. The legal effect of such incorporation by reference is that this appendix is legally binding on the applicant or licensee. Subparagraph A.2.a is intended to make clear that the initial application must include a plant-specific DCD. This assures, among other things, that the applicant commits to complying with the DCD. This paragraph also requires the plant-specific DCD to use the same format as the generic DCD and to reflect the applicant's proposed departures and exemptions from the generic DCD as of the time of submission of the application. The Commission expects that the plant-specific DCD will become the plant's final safety analysis report (FSAR), by including within its pages, at the appropriate points, information such as site-specific information for the portions of the plant outside the scope of the referenced design, including related ITAAC, and other matters required to be included in an FSAR by 10 CFR 50.34 and 52.79. Integration of the plant-specific DCD and remaining site-specific information into the plant's FSAR, will result in an application that is easier to use and should minimize "duplicate documentation" and the attendant possibility for confusion. Subparagraph A.2.a is also intended to make clear that the initial application must include the reports on departures and exemptions as of the time of submission of the application.

Subparagraph A.2.b requires that the application include the reports required by paragraph X.B of this appendix for exemptions and departures proposed by the applicant as of the date of submission of its application. Subparagraph A.2.c requires submission of plant-specific technical specifications for the plant that consists of the generic technical specifications from Section 16.1 of the DCD, with any changes made under paragraph VIII.C of this appendix, and the technical specifications for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification. The applicant must also provide the plant-specific information designated in the generic technical specifications, such as bracketed values.

Subparagraph A.2.d makes it clear that the applicant must provide information demonstrating that the proposed site falls within the site parameters for this appendix and that the plant-specific design complies with the interface requirements, as required by 10 CFR 52.79(b). If the proposed site has a characteristic that exceeds one or more of the site parameters in the DCD, then the proposed site is unacceptable for this design unless the applicant seeks an exemption under Section VIII of this appendix and justifies why the certified design should be found acceptable on the proposed site. Subparagraph A.2.e requires submission of information addressing COL Action Items, which are identified in the generic DCD as Combined License Information, in the application. The Combined License Information identifies matters that need to be addressed by an applicant that references this appendix, as required by Subpart C of 10 CFR part 52. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in its application (FSAR). Subparagraph A.2.f requires that the application include the information required by 10 CFR 52.47(a) that is not within the scope of this rule, such as generic issues that must be addressed, in whole or in part, by an applicant that references this rule. Subparagraph IV.A.3 requires the applicant to physically include, not simply reference, the proprietary and safeguards information referenced in the DCD, or its equivalent, to assure that the applicant has actual notice of these requirements.

Paragraph IV.B reserves to the Commission the right to determine in what manner this design certification may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this design certification rule, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary because the previous design certifications were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was created. The Commission's concern is with the manner in which ITAAC were developed and the lack of experience with design certifications in license proceedings. Therefore, it is appropriate to have some uncertainty regarding the manner in which this appendix could be referenced in a 10 CFR part 50 licensing proceeding.

E. Applicable Regulations

The purpose of Section V of this appendix is to specify the regulations that were applicable and in effect at the time that this design certification was approved. These regulations consist of the technically relevant regulations identified in paragraph V.A, except for the regulations in paragraph V.B that are not applicable to this certified design (exempt).

Paragraph V.A identifies the regulations in 10 CFR parts 20, 50, 73, and 100 that are applicable to the AP600 design. After the NRC staff issued its FSER for the AP600 design (NUREG–1512, September 1998), the Commission amended several existing regulations and adopted new regulations. The Commission has reviewed these regulations to determine if they are applicable to this design and, if so, to determine if the design meets these regulations. The Commission finds that the AP600 design either meets the requirements of these regulations or that these regulations are not applicable to the design, as discussed below. The Commission's determination of the applicable regulations was made as of the date specified in paragraph V.A of

this appendix. The specified date is the date that this appendix was approved by the Commission and signed by the Secretary of the Commission.

10 CFR 20, Transfer for Disposal and Manifests; Minor Technical Conforming Amendment (63 FR 50127; September 21, 1998)

This amendment to Part 20 removed expired provisions from the regulations on low-level waste shipment manifest information. The previous regulation included dual implementation procedures that allow use of one of two manifesting procedures. This is a procedural requirement that applies to licensees and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 30 and 50, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors (63 FR 50465; September 22, 1998)

This amendment to the regulations requires power reactor licensees to report periodically on the status of their decommissioning funds, and on changes in their external trust agreements and other financial assurance mechanisms. This regulation applies to licensees and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50 and 70, Criticality Accident Requirements (63 FR 63127; November 12, 1998)

This amendment to the regulations provides licensees of light-water nuclear reactors with greater flexibility in meeting the requirement to maintain a criticality monitoring system in each area in which special nuclear material is handled, used, or stored. The criticality monitoring system is not considered to be part of the plant design and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50, Changes to Quality Assurance Programs (64 FR 9030; February 23, 1999)

This amendment to 10 CFR 50.54(a) allows licensees to make routine or administrative quality assurance (QA) program changes, which do not have an adverse impact on the effectiveness of their QA program, without obtaining NRC approval in advance. This is a procedural requirement that can be utilized after issuance of a license and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50 and 73, Frequency of Reviews and Audits for Emergency Preparedness Programs, Safeguards Contingency Plans, and Security Programs for Nuclear Power Reactors (64 FR 14814; March 29, 1999)

This amendment to the regulations allows licensees to change the frequency of independent reviews and audits of their emergency preparedness programs, safeguards contingency plans, and security programs. This is a procedural requirement that can be utilized after issuance of a license and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50, Codes and Standards: IEEE National Consensus Standard (64 FR 17944; April 13, 1999)

This amendment to 10 CFR 50.55a(h) incorporates IEEE Std. 603–1991 by reference, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. The NRC staff reviewed the AP600 design against this IEEE standard, as described in the FSER, and the Commission has determined that the AP600 design meets the applicable portions of this new requirement [10 CFR 50.55a(h)].

10 CFR 50, Industry Codes and Standards; Amended Requirements (64 FR 51370; September 22, 1999)

This amendment to 10 CFR 50.55a incorporates by reference more recent editions and addenda of the ASME Boiler and Pressure Vessel Code (ASME Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants. The amended requirements in 10 CFR 50.55a apply to both design and operation of nuclear plants.

The requirements that apply to the AP600 design [10 CFR 50.55a(a)(2)] are addressed in the exemption discussion below. The other amended requirements in 10 CFR 50.55a, e.g. inservice inspection and testing, are not applicable to either NRC issuance of design certification or applicants for design certification.

In paragraph V.B of this appendix, the Commission identified the regulations that do not apply to the AP600 design. The Commission has determined that the AP600 design should be exempt from portions of 10 CFR 50.34, 50.55a, 50.62, and Appendix A to Part 50, as described in the FSER (NUREG–1512) and/or summarized below:

(1) Paragraph (a)(1) of 10 CFR 50.34—Whole Body Dose Criterion

This regulation sets forth dose criteria to be used in siting determinations. The NRC staff performed its evaluation of the radiological consequences of postulated design basis accidents for the AP600 design against the dose criterion specified in 10 CFR 50.34(a)(1)(ii)(D) because it was the Commission's intent that the new dose criterion be used for future nuclear power plants. However, when the NRC codified the new reactor site criteria for nuclear power plants (61 FR 65157; December 11, 1996), it made an error in the assignment of applicants that could use the new dose criterion [25 rem TEDE], versus those that must use the whole body criterion. The assignment of applicants in 10 CFR 50.34(a)(1), who must use the whole body criterion, should not have included applicants for a design certification or combined license who applied prior to January 10, 1997 (refer to 61 FR 65158). The Commission adopted 25 rem TEDE as the new dose criterion for future plant evaluation purposes, because this value is essentially the same level of risk as the current criterion (61 FR 65160). Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that application of the 25 rem whole body criterion is not necessary to achieve the underlying purpose of the rule because 25 rem TEDE is essentially the same level of risk. On this basis, the Commission concludes that the AP600 design review can be performed pursuant to the new dose criterion [25 rem TEDE] and an exemption from the requirements of 10 CFR 50.34(a)(1) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(2) Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console

10 CFR 50.34(f)(2)(iv) requires that an application provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, be capable of displaying a full range of important plant parameters and data trends on demand, and be capable of indicating when process limits are being approached or exceeded. Westinghouse answered this requirement, in Section 18.8.2 of the DCD, with an integrated design rather than a stand-alone, add-on system, as is used at most current operating plants. Specifically, Westinghouse integrated the SPDS requirements into the design requirements for the alarm and display systems. In NUREG–0800, the NRC staff indicated that, for applicants who are in the early stages of the control room

design, the "function of a separate SPDS may be integrated into the overall control room design" (p. 18.0–1). Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the requirement for an SPDS console need not be applied in this particular circumstance to achieve the underlying purpose because Westinghouse has provided an acceptable alternative that accomplishes the intent of the regulation. On this basis, the Commission concludes that an exemption from the requirements of 10 CFR 50.34(f)(2)(iv) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(3) Paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms in TID 14844

Pursuant to 10 CFR 52.47(a)(ii), an applicant for design certification must demonstrate compliance with any technically relevant TMI requirements in 10 CFR 50.34(f). The TMI requirements in 10 CFR 50.34(f)(2)(vii), (viii), (xxvi), and (xxviii) refer to the accident source term in TID 14844. Specifically, 10 CFR 50.34(f)(2)(xxviii) requires the evaluation of pathways that may lead to control room habitability problems "under accident conditions resulting in a TID 14844 source term release." Similar wording appears in requirements (vii), (viii), and (xxvi). Westinghouse has adopted the new source term technology summarized in NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants," dated February 1995, not the old TID 14844 source term cited in 10 CFR part 50.34(f). The new source term is a more realistic representation of the source term resulting from postulated design basis accidents, therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that these regulations need not be applied in this particular circumstance to achieve the underlying purpose because Westinghouse has adopted acceptable alternatives that accomplish the underlying intent of the regulations that specify TID 14844. On this basis, the Commission concludes that a partial exemption from the requirements of paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(4) Paragraph (a)(2) of 10 CFR 50.55a—ASME Boiler and Pressure Vessel Code

This regulation mandates that the AP600 design meet the addenda and edition of the ASME Boiler and Pressure Vessel Code (ASME Code) specified in paragraph (b)(1) of 10 CFR 50.55a. The NRC recently amended the version of the ASME Code that is incorporated by reference in paragraph (b)(1), as discussed above.

For the AP600 standard plant, Westinghouse designed the ASME Code Class 1, 2, and 3 components to the 1989 Edition of the ASME Code, Section III (including the 1989 Addenda with certain limitations), as discussed in Section 5.2.1.1 of the AP600 Design Control Document (DCD). However, the amended design requirements incorporate by reference the 1995 Edition up to and including the 1996 Addenda to the ASME Code, Section III. The NRC concluded in its FSER (NUREG–1512) that the use of the 1989 Edition (including the 1989 Addenda with certain limitations as discussed in Section 5.2.1.1 of the DCD) for the design of the ASME Code Class 1, 2, and 3 components in the AP600 plant meets the requirements of 10 CFR 50.55a. The Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(iii) exist in that the 1989 Edition provides an acceptable level of safety that ensures adequate protection to public health and safety, and that the benefits of redesigning the AP600 standard plant to meet the 1995 Edition and 1996 Addenda of the ASME Code, Section III, are outweighed by the substantial costs and delays that redesign would entail at this late date. On this basis, the Commission concludes that an exemption from the requirements of 10 CFR 50.55a(a)(2) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(5) Paragraph (c)(1) of 10 CFR 50.62—Auxiliary Feedwater System

The AP600 design relies on the passive residual heat removal system (PRHR) in lieu of an auxiliary or emergency feedwater system as its safety-related method of removing decay heat. Westinghouse requested an exemption from a portion of 10 CFR 50.62(c)(1), which requires auxiliary or emergency feedwater as an alternate system for decay heat removal during an ATWS event. The NRC staff concluded that Westinghouse met the intent of the rule by relying on the PRHR system to remove the decay heat and, thereby, met the underlying purpose of the rule. Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the requirement for an auxiliary or emergency feedwater system is not necessary to achieve the underlying purpose of 10 CFR 50.62(c)(1), because Westinghouse has adopted acceptable alternatives that accomplish the intent of this regulation, and the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(6) Appendix A to 10 CFR Part 50, GDC 17—Offsite Power Sources

Westinghouse requested a partial exemption from the requirement in GDC 17 for a second offsite power supply circuit. The AP600 plant design relies on safety-related "passive" systems. Unlike operating plants with active safety-related systems, the AP600 safety-related systems only require a small amount of electric power for valves and related instrumentation. The onsite Class 1E batteries and associated dc and ac distribution systems can provide the power for these valves and instrumentation. In addition, if no offsite power is available, it is expected that the non-safety-related onsite diesel generators would be available for important plant functions; however, this non-safety-related ac power is not relied on to maintain core cooling or containment integrity. Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the requirement need not be applied in this particular circumstance to achieve the underlying purpose of having two offsite power sources because the AP600 design includes an acceptable alternative approach to accomplish safety functions that does not rely on power from the offsite system and, therefore, accomplishes the intent of the regulation. On this basis, the Commission concludes that a partial exemption from the requirements of GDC 17 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(7) Appendix A to 10 CFR Part 50, GDC 19—Whole Body Dose Criterion

The NRC staff used a criterion of 5 rem TEDE for evaluating the radiological consequences of design basis accidents in the control room of the AP600 design. The NRC staff used the 5 rem TEDE criterion to be consistent with the new reactor site criteria in 10 CFR 50.34(a)(1) [61 FR

65157], although GDC 19 specifies * * * "5 rem whole body, or its equivalent to any part of the body"* * * The Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that application of the 5 rem whole body criterion is not necessary to achieve the underlying purpose of the rule because a TEDE dose provides essentially the same level of risk as a whole body dose (see 61 FR 65160). On this basis, the Commission concludes that a partial exemption from GDC 19 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

F. Issue Resolution

The purpose of Section VI of this appendix is to identify the scope of issues that are resolved by the Commission in this rulemaking and; therefore, are "matters resolved" within the meaning and intent of 10 CFR 52.63(a)(4). The section is divided into five parts: (A) the Commission's safety findings in adopting this appendix, (B) the scope and nature of issues which are resolved by this rulemaking, (C) issues which are not resolved by this rulemaking, (D) the backfit restrictions applicable to the Commission with respect to this appendix, and (E) the availability of secondary references.

Paragraph A describes in general terms the nature of the Commission's findings, and makes the finding required by 10 CFR 52.54 for the Commission's approval of this design certification rule. Furthermore, paragraph A explicitly states the Commission's determination that this design provides adequate protection of the public health and safety.

Paragraph B sets forth the scope of issues which may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remainder of paragraph B describes the categories of information for which there is issue resolution. Specifically, subparagraph B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (NUREG–1512) and Supplement No. 1, the Tier 1 and Tier 2 information (including the availability controls in Section 16.3 of the generic DCD), and the rulemaking record for this appendix are resolved within the meaning of § 52.63(a)(4). These issues include the information referenced in the DCD that are requirements (i.e., "secondary references"), as well as all issues arising from proprietary and safeguards information which are intended to be requirements. Subparagraph B.2 provides for issue preclusion of proprietary and safeguards information. Subparagraphs B.3, B.4, B.5, and B.6 clarify that approved changes to and departures from the DCD which are accomplished in compliance with the relevant procedures and criteria in Section VIII of this appendix continue to be matters resolved in connection with this rulemaking. Subparagraph B.7 provides that, for those plants located on sites whose site parameters do not exceed those assumed in Westinghouse's evaluation of severe accident mitigation design alternatives (SAMDAs), all issues with respect to SAMDAs arising under the National Environmental Policy Act of 1969 associated with the information in the Environmental Assessment for this design and the information regarding SAMDAs in Appendix 1B of the generic DCD are also resolved within the meaning and intent of § 52.63(a)(4). In the event an exemption from a site parameter is granted, the exemption applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site parameters but, if the exemption is approved, requests for litigation at the COL stage must meet the requirements of § 2.714 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter exemption.

Paragraph C reserves the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision reflects the fact that operational requirements, including generic technical specifications in Section 16.1 of the DCD, were not completely or comprehensively reviewed at the design certification stage. Therefore, the special backfit provisions of § 52.63 do not apply to operational requirements. However, all design changes will be controlled by the appropriate provision in Section VIII of this appendix. Although the information in the DCD that is related to operational requirements was necessary to support the NRC staff's safety review of this design, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under § 52.63. As a result, if the NRC wanted to change a temperature limit and that operational change required a consequential change to a design feature, then the temperature limit backfit would be controlled by Section VIII (paragraph A or B) of this appendix. However, changes to other operational issues, such as in-service testing and in-service inspection programs, post-fuel load verification activities, and shutdown risk that do not require a design change would not be restricted by § 52.63 (see paragraph VIII.C of this appendix). Paragraph VI.C does allow the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification, e.g. start-up and power ascension testing, are not restricted by § 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed after design certification. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving the right to impose license conditions by rule for post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph D reiterates the restrictions (contained in Section VIII of this appendix) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to structures, systems or components, design features, design criteria, and ITAAC (subparagraph VI.D.3 addresses ITAAC) within the scope of the certified design.

Paragraph E provides the procedure for an interested member of the public to obtain access to proprietary or safeguards information for the AP600 design, in order to request and participate in proceedings identified in paragraph VI.B of this appendix, viz., proceedings involving licenses and applications which reference this appendix. As set forth in paragraph VI.E, access must first be sought from the design certification applicant. If Westinghouse refuses to provide the information, the person seeking access

shall request access from the Commission or the presiding officer, as applicable. Access to the proprietary or safeguards information may be ordered by the Commission, but must be subject to an appropriate non-disclosure agreement.

G. Duration of This Appendix

The purpose of Section VII of this appendix is in part to specify the time period during which this design certification may be referenced by an applicant for a combined license, under 10 CFR 52.55. This section also states that the design certification remains valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to or plant-specific departures from information in the plant-specific DCD must be made pursuant to the change processes in Section VIII of this appendix for the life of the plant.

H. Processes for Changes and Departures

The purpose of Section VIII of this appendix is to set forth the processes for generic changes to or plant-specific departures (including exemptions) from the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this design certification rule. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and Operational requirements. The language of Section VIII distinguishes between generic changes to the DCD versus plant-specific departures from the DCD. Generic changes must be accomplished by rulemaking because the intended subject of the change is the design certification rule itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(2), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change ["modification" in the language of § 52.63(a)(2)] "technically irrelevant." By contrast, plant-specific departures could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), similar to a § 50.59 departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, Section X of this appendix requires an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as "change processes."

Both Section VIII of this appendix and this SOC refer to an "exemption" from one or more requirements of this appendix and the criteria for granting an exemption. The Commission cautions that where the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 50.12.

Tier 1 Information

The change processes for Tier 1 information are covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemaking that amends the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. The rulemakings must include an opportunity for hearing with respect to the proposed change, as required by 10 CFR 52.63(a)(1), and the Commission expects such hearings to be conducted in accordance with 10 CFR part 2, Subpart H. Departures from Tier 1 may occur in two ways: (1) the Commission may order a licensee to depart from Tier 1, as provided in subparagraph A.3; or (2) an applicant or licensee may request an exemption from Tier 1, as provided in subparagraph A.4. If the Commission seeks to order a licensee to depart from Tier 1, subparagraph A.3 requires that the Commission find both that the departure is necessary for adequate protection or for compliance, and that special circumstances are present. Subparagraph A.4 provides that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.97(b), which provide an opportunity for a hearing. In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design.

Tier 2 Information

The change processes for the three different categories of Tier 2 information (Tier 2, Tier 2*, and Tier 2* with a time of expiration) are set forth in paragraph VIII.B. The change processes for Tier 2 have the same elements as the Tier 1 change processes, but some of the standards for plant-specific orders and exemptions are different. The Commission adopted a "50.59-like" change process (similar to 10 CFR 50.59) in accordance with its SRMs on SECY–90–377 and SECY–92–287A. However, the Commission plans to revise the change process in 10 CFR 50.59 (64 FR 53582). As a result, the Commission will determine whether similar revisions should be made to the "50.59-like" change process in subparagraph VIII.B.5, as part of an upcoming 10 CFR part 52 rulemaking (refer to SECY–98–282), of the design certification rules (Appendices A, B, and C to Part 52). Any backfitting implications for future revisions to subparagraph VIII.B.5 of the design certification rules were covered in the 10 CFR 50.59 rulemaking (64 FR 53612).

The process for generic Tier 2 changes (including changes to Tier 2* and Tier 2* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in subparagraph B.1, generic Tier 2 changes are accomplished by rulemaking amending the generic DCD, and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to assure adequate protection of the public health and safety or common defense and security. If a generic change is made to Tier 2* information, then the category and expiration, if necessary, of the new information would also be determined in the rulemaking and the appropriate change process for that new information would apply.

Departures from Tier 2 may occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in subparagraph B.3; (2) an applicant or licensee may request an

exemption from a Tier 2 requirement as set forth in subparagraph B.4; (3) a licensee may make a departure without prior NRC approval in accordance with subparagraph B.5 [the "50.59-like" process]; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in subparagraph B.5 as provided in subparagraph B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2* information under subparagraph B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures cannot be imposed except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in subparagraph B.3. However, the special circumstances for the Commission-ordered Tier 2 departures do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by 10 CFR 52.63(a)(3). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63(a)(3) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2, which by its nature is not as safety significant as Tier 1.

An applicant or licensee may request an exemption from Tier 2 information as set forth in subparagraph B.4. The applicant or licensee must demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design. However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption is subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR 52.63(b)(1). If the exemption is requested by a licensee, then the exemption is subject to litigation in the same manner as a license amendment.

Subparagraph B.5 allows an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to or departure from Tier 1 or Tier 2* information, technical specifications, or involves an unreviewed safety question (USQ) as defined in B.5.b and B.5.c of this paragraph. The technical specifications referred to in B.5.a and B.5.b of this paragraph are the technical specifications in Section 16.1 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific technical specifications are controlling under subparagraph B.5. The bases for the plant-specific technical specifications will be controlled by the bases control procedures for the plant-specific technical specifications (analogous to the bases control provision in the Improved Standard Technical Specifications). The definition of a USQ in B.5.b of this paragraph is similar to the definition in 10 CFR 50.59 and it applies to all information in Tier 2 except for the information that resolves the severe accident issues. The process for evaluating proposed tests or experiments not described in Tier 2 will be incorporated into the change process for the portion of the design that is outside the scope of this design certification. Although subparagraph B.5 does not specifically state, the Commission has determined that departures must also comply with all applicable regulations unless an exemption or other relief is obtained.

The Commission believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the Commission has adopted separate criteria in B.5.c for determining whether a departure from information that resolves severe accident issues constitutes a USQ. For purposes of applying the special criteria in B.5.c, severe accident resolutions are limited to design features when the intended function of the design feature is relied upon to resolve postulated accidents where the reactor core has melted and exited the reactor vessel and the containment is being challenged (severe accidents). These design features are identified in Section 1.9.5 of the DCD, with other issues, and are described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for severe accident issues. However, the special procedure in B.5.c does not apply to design features that resolve so-called beyond design basis accidents or other low probability events. The important aspect of this special procedure is that it is limited solely to severe accident design features, as defined above. Some design features may have intended functions to meet "design basis" requirements and to resolve "severe accidents." If these design features are reviewed under subparagraph VIII.B.5, then the appropriate criteria from either B.5.b or B.5.c are selected depending upon the function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under subparagraph VIII.B.5, must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications, as explained above. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review. The evaluation of the relevant matters needs to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, design basis accidents, and severe accidents. The evaluation must also include a review of all relevant secondary references from the DCD because Tier 2 information intended to be treated as requirements is contained in the secondary references. The evaluation should consider Tables 14.3–1 through 14.3–8 and 19.59–29 of the generic DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the safety analyses and probabilistic risk assessment in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key analyses for the AP600 design. Westinghouse provided more detailed cross-references for important analysis assumptions that are included in Tier 1 in its revised response to RAI 640.60 (DCP/NRC 1440—September 15, 1998).

If a proposed departure from Tier 2 involves a change to or departure from Tier 1 or Tier 2* information, technical

specifications, or otherwise constitutes a USQ, then the applicant or licensee must obtain NRC approval through the appropriate process set forth in this appendix before implementing the proposed departure. The NRC does not endorse NSAC–125, "Guidelines for 10 CFR 50.59 Safety Evaluations," for performing safety evaluations required by subparagraph VIII.B.5 of this appendix. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for processing proposed changes under paragraph VIII.B of this appendix.

A party to an adjudicatory proceeding (*e.g.*, for issuance of a combined license) who believes that an applicant or licensee has not complied with subparagraph VIII.B.5 when departing from Tier 2 information, may petition to admit such a contention into the proceeding under B.5.f. This provision was included because an incorrect departure from the requirements of this appendix essentially places the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. Therefore, it follows that properly-founded contentions alleging such incorrectly-implemented departures cannot be considered "resolved" by this rulemaking. As set forth in B.5.f of paragraph VIII.B, the petition must comply with the requirements of § 2.714(b)(2) and show that the departure does not comply with subparagraph B.5. Any other party may file a response to the petition. If on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing has been made, the matter shall be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging non-conformance with subparagraph B.5 requirements applicable to Tier 2 departures will be treated as petitions for enforcement action under 10 CFR 2.206.

Subparagraph B.6 provides a process for departing from Tier 2* information. The creation of and restrictions on changing Tier 2* information resulted from the development of the Tier 1 information for the ABWR design. During this development process, the applicants for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references this appendix. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain significant information only exists in Tier 2 and the Commission does not want this significant information to be changed without prior NRC approval. This Tier 2* information is identified in the generic DCD with italicized text and brackets.

Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2* information could expire when the plant first achieves full (100%) power, after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the facility. The determining factors were the Tier 1 information that would govern these areas after first full power and the NRC's judgement on whether prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2* information listed in B.6.c of paragraph VIII.B ceases to retain its Tier 2* designation after full power operation is first achieved following the Commission finding in 10 CFR 52.103(g). Thereafter, that information is deemed to be Tier 2 information that is subject to the departure requirements in subparagraph B.5. By contrast, the Tier 2* information identified in B.6.b of paragraph VIII.B retains its Tier 2* designation throughout the duration of the license, including any period of renewal.

Certain preoperational tests in B.6.c of paragraph VIII.B are designated to be performed only for the first plant or first three plants that reference this appendix. Westinghouse's basis for performing these "first-plant-only" and "first-three-plants-only" preoperational tests is provided in Section 14.2.5 of the DCD. The NRC staff found Westinghouse's basis for performing these tests and its justification for only performing the tests on the first-plant or first-three-plants acceptable. The NRC staff's decision was based on the need to verify that plant-specific manufacturing and/or construction variations do not adversely impact the predicted performance of certain passive safety systems, while recognizing that these special tests will result in significant thermal transients being applied to critical plant components. The NRC staff believes that the range of manufacturing or construction variations that could adversely affect the relevant passive safety systems will be adequately disclosed after performing the designated tests on the first plant, or the first three plants, as applicable. The COL action item in Section 14.4.6 of the DCD states that subsequent plants shall either perform these preoperational tests or justify that the results of the first-plant-only or first-three-plant-only tests are applicable to the subsequent plant. The Tier 2* designation for these tests will expire after the first plant or first three plants complete these tests, as indicated in B.6.c of paragraph VIII.B.

If Tier 2* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If a plant-specific departure is made from Tier 2* information, then the new designation would apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2* information, the new information is subject to litigation in the same manner as other plant-specific issues in the licensing hearing. If a licensee makes a departure, it will be treated as a license amendment under 10 CFR 50.90 and the finality is in accordance with VI.B.5 of this appendix. Any requests for departures from Tier 2* information that affect Tier 1 must also comply with the requirements in paragraph VIII.A of this appendix.

Operational Requirements

The change process for technical specifications and other operational requirements in the DCD is set forth in paragraph VIII.C of this appendix. This change process has elements similar to the Tier 1 and Tier 2 change process in paragraphs VIII.A and VIII.B, but with significantly different change standards. Because of the different finality status for technical specifications and other operational requirements (refer to III.F of this SOC), the Commission decided to designate a special category of information, consisting of the technical specifications and other operational requirements, with its own change process in paragraph VIII.C. The key to using the change processes in Section VIII is to determine if the proposed change or departure requires a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B applies. However, if a proposed change to the technical specifications or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C applies. The language in paragraph VIII.C also distinguishes between generic (Section 16.1 of DCD) and plant-specific technical specifications to account for the different treatment and

finality accorded technical specifications before and after a license is issued.

The process in subparagraph VIII.C.1 for making generic changes to the generic technical specifications in Section 16.1 of the DCD or other operational requirements in the generic DCD is accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic technical specifications and other operational requirements were completely reviewed and approved in the design certification rulemaking is based upon the extent to which an NRC safety conclusion in the FSER is being modified or changed. If it cannot be determined that the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then there is no backfit restriction under 10 CFR 50.109 because no prior position was taken on this safety matter. Some generic technical specifications contain bracketed values, which clearly indicate that the NRC staff's review was not complete. Generic changes made under subparagraph VIII.C.1 are applicable to all applicants or licensees (refer to subparagraph VIII.C.2), unless the change is irrelevant because of a plant-specific departure.

Plant-specific departures may occur by either a Commission order under subparagraph VIII.C.3 or an applicant's exemption request under subparagraph VIII.C.4. The basis for determining if the technical specification or operational requirement was completely reviewed and approved for these processes is the same as for subparagraph VIII.C.1. If the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there is no restriction on plant-specific changes to the technical specifications or operational requirements, prior to issuance of a license, provided a design change is not required. Although the generic technical specifications were reviewed by the NRC staff to facilitate the design certification review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific technical specifications. The process for petitioning to intervene on a technical specification or operational requirement is similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present (subparagraph VIII.C.5).

Finally, the generic technical specifications will have no further effect on the plant-specific technical specifications after the issuance of a license that references this appendix. The bases for the generic technical specifications will be controlled by the change process in paragraph VIII.C of this appendix. After a license is issued, the bases will be controlled by the bases change provision set forth in the administrative controls section of the plant-specific technical specifications.

I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

The purpose of Section IX of this appendix is to set forth how the ITAAC in Tier 1 of this design certification rule are to be treated in a license proceeding. Paragraph A restates the responsibilities of an applicant or licensee for performing and successfully completing ITAAC, and notifying the NRC of such completion. Subparagraph A.1 makes it clear that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been successfully completed. Subparagraph A.2 requires the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met.

Subparagraphs B.1 and B.2 essentially reiterate the NRC's responsibilities with respect to ITAAC as set forth in 10 CFR 52.99 and 52.103(g). Finally, subparagraph B.3 states that ITAAC do not, by virtue of their inclusion in the DCD, constitute regulatory requirements after the licensee has received authorization to load fuel or for renewal of the license. However, subsequent modifications must comply with the design descriptions in the DCD unless the applicable requirements in 10 CFR 52.97 and Section VIII of this appendix have been complied with. As discussed in paragraph III.D of this SOC, the Commission will defer a determination of the applicability of ITAAC and their effect in terms of issue resolution in 10 CFR Part 50 licensing proceedings to such time that a Part 50 applicant decides to reference this appendix.

J. Records and Reporting

The purpose of Section X of this appendix is to set forth the requirements for maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix is similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements, as discussed in V of this SOC. Subparagraph X.A.1 of this appendix requires that a generic DCD and the proprietary and safeguards information referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD was developed, in part, to meet the requirements for incorporation by reference, including availability requirements. Therefore, the proprietary and safeguards information could not be included in the generic DCD because it is not publicly available. However, the proprietary and safeguards information was reviewed by the NRC and, as stated in subparagraph VI.B.2 of this appendix, the Commission considers the information to be resolved within the meaning of 10 CFR 52.63(a)(4). Because this information is not in the generic DCD, the proprietary and safeguards information, or its equivalent, is required to be provided by an applicant for a license. Therefore, to ensure that this information will be available, a requirement for the design certification applicant to maintain the proprietary and safeguards information was added to subparagraph X.A.1 of this appendix. The acceptable version of the proprietary and safeguards information is identified (referenced) in the version of the DCD that is incorporated into this rule. The generic DCD and the acceptable version of the proprietary and safeguards information must be maintained for the period of time that this appendix may be referenced.

Subparagraphs A.2 and A.3 place record-keeping requirements on the applicant or licensee that references this design certification to maintain its plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix. The term "plant-specific" was added to paragraph A.2 and other Sections of this appendix to distinguish between the generic DCD that is incorporated by reference into this appendix, and the plant-specific DCD that the applicant is required to submit under paragraph IV.A of this appendix. The requirement to maintain the generic changes to the generic DCD is explicitly

stated to ensure that these changes are not only reflected in the generic DCD, which will be maintained by the applicant for design certification, but that the changes are also reflected in the plant-specific DCD. Therefore, records of generic changes to the DCD will be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Paragraph X.A of this appendix does not place record-keeping requirements on site-specific information that is outside the scope of this rule. As discussed in III.D of this SOC, the final safety analysis report required by 10 CFR 52.79 will contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase "site-specific portion of the final safety analysis report" in X.B.3.d of this appendix refers to the information that is contained in the final safety analysis report for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by paragraph IV.A of this appendix). Therefore, this rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule, because the plant-specific DCD is part of the final safety analysis report for the facility.

Subparagraphs B.1 and B.2 of this appendix establish reporting requirements for applicants or licensees that reference this rule that are similar to the reporting requirements in 10 CFR part 50. For currently operating plants, a licensee is required to maintain records of the basis for any design changes to the facility made under 10 CFR 50.59. Section 50.59(b)(2) requires a licensee to provide a summary report of these changes to the NRC annually, or along with updates to the facility final safety analysis report under 10 CFR 50.71(e). Section 50.71(e)(4) requires that these updates be submitted annually, or 6 months after each refueling outage if the interval between successive updates does not exceed 24 months.

The reporting requirements in subparagraph B.3 of this appendix vary according to four different time periods during a facilities' lifetime. Under B.3.a of paragraph X.B, if an applicant that references this rule decides to make departures from the generic DCD, then the departures and any updates to the plant-specific DCD must be submitted with the initial application for a license. Under B.3.b of paragraph X.B, the applicant may submit any subsequent reports and updates along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than once a year, this should not be an excessive burden on the applicant. Under B.3.c of paragraph X.B, summary reports must be submitted quarterly during the period of facility construction. This increase in frequency of summary reports of departures from the plant-specific DCD is in response to the Commission's guidance on reporting frequency in its SRM on SECY–90–377, dated February 15, 1991.

Quarterly reporting of design changes during the period of construction is necessary to closely monitor the status and progress of the construction of the plant. To make its finding under 10 CFR 52.99, the NRC must monitor the design changes made in accordance with Section VIII of this appendix. The ITAAC verify that the as-built facility conforms with the approved design and emphasizes design reconciliation and design verification. Quarterly reporting of design changes is particularly important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during preoperational testing. The frequency of updates to the plant-specific DCD is not increased during facility construction. After the facility begins operation, the frequency of reporting reverts to the requirement in X.B.3.d of paragraph X.B, which is consistent with the requirement for plants licensed under 10 CFR part 50.

IV. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the Commission's regulations in 10 CFR part 51, subpart A, that this design certification rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the final environmental assessment, is that this amendment to 10 CFR part 52 does not authorize the siting, construction, or operation of a facility using the AP600 design; it only codifies the AP600 design in a rule. The NRC will evaluate the environmental impacts and issue an EIS, as appropriate, in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the final environmental assessment for the AP600 design, the NRC reviewed Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents in Appendix 1B of the AP600 Standard Safety Analysis Report (SSAR). The Commission finds that Westinghouse's evaluation provides a reasonable assurance that certifying the AP600 design will not exclude severe accident mitigation design alternatives for a future facility that would prove cost beneficial had they been considered as part of the original design certification application. These issues are considered resolved for the AP600 design.

The final environmental assessment (EA), upon which the Commission's finding of no significant impact is based, and the AP600 SSAR are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the EA are also available from Jerry N. Wilson, Mailstop O–12 G15, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

V. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB) on August 10, 1999 (OMB #3150–0151). If an application is submitted, the additional public reporting burden for this information collection is estimated to average 8 person-hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VI. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

VII. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant economic impact upon a substantial number of small entities. The final rule provides for certification of a nuclear power plant design. Neither the design certification applicant, nor prospective nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

VIII. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this amendment because it does not impose new or changed requirements on existing 10 CFR Part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

IX. Small Business Regulatory Enforcement Fairness Act

As required by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, OMB.

X. National Technology Transfer and Advancement Act

The National Technology and Transfer Act of 1995 (Act), Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. This rule provides for certification of a nuclear power plant design. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. For these reasons, the Commission concludes that the Act does not apply to this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 52.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

1. The authority citation for 10 CFR Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.51, 52.57, 52.63, 52.75, 52.77, 52.78, 52.79, 52.89, 52.91, 52.99, and appendices A, B, and C.

3. A new Appendix C to 10 CFR Part 52 is added to read as follows:

Appendix C to Part 52—Design Certification Rule for the AP600 Design

I. Introduction

Appendix C constitutes the standard design certification for the AP600 [1] design, in accordance with 10 CFR Part 52, Subpart B. The applicant for certification of the AP600 design is Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information;

[1] AP600 is a trademark of Westinghouse Electric Company LLC.

2. Information required for a final safety analysis report under 10 CFR 50.34;

3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

4. Combined license (COL) action items (combined license information), which identify certain matters that shall be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

5. The investment protection short-term availability controls in Section 16.3 of the DCD.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in VIII.B.6 of this appendix. This designation expires for some Tier 2* information under VIII.B.6.

G. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications in the AP600 DCD (12/99 revision) are approved for incorporation by reference by the Director of the Office of the Federal Register on January 24, 2000 in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the generic DCD may be obtained from Mr. Brian A. McIntyre, Manager, Advanced Plant Safety and Licensing, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, PA 15230–0355. A copy of the generic DCD is available for examination and copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001. Copies are also available for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20852; and the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in Appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP600 design or NUREG–1512, "Final Safety Evaluation Report Related to Certification of the AP600 Standard Design," (FSER), then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the AP600 DCD, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary and safeguards information referenced in the AP600 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under Part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP600 design are in 10 CFR Parts 20, 50, 73, and 100, codified as of December 16, 1999, that are applicable and technically relevant, as described in the FSER (NUREG–1512) and the supplementary information for this section.

B. The AP600 design is exempt from portions of the following regulations:

1. Paragraph (a)(1) of 10 CFR 50.34—whole body dose criterion;

2. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;

3. Paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Term in TID 14844;

4. Paragraph (a)(2) of 10 CFR 50.55a—ASME Boiler and Pressure Vessel Code;

5. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system;

6. Appendix A to 10 CFR Part 50, GDC 17—Offsite Power Sources; and

7. Appendix A to 10 CFR Part 50, GDC 19—whole body dose criterion.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP600 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP600 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(4) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held pursuant to 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3), and the rulemaking record for certification of the AP600 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP600 design;

3. All generic changes to the DCD pursuant to and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD pursuant to and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that proceeding;

5. All departures from the DCD that are approved by license amendment, but only for that proceeding;

6. Except as provided in VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in VIII.B.5 of this appendix that do not require prior NRC approval;

7. All environmental issues concerning severe accident mitigation design alternatives (SAMDAs) associated with the information in the NRC's environmental assessment for the AP600 design and Appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the SAMDA evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP600 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, http://www.nrc.gov, and/or at the NRC's Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from January 24, 2000, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and § 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 information.

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or involves an unreviewed safety question as defined in paragraphs B.5.b and B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the plant-specific DCD may be increased;

(2) A possibility for an accident or malfunction of a different type than any evaluated previously in the plant-specific DCD may be created; or

(3) The margin of safety as defined in the basis for any technical specification is reduced.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure involves an unreviewed safety question as defined in paragraph B.5 of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2*

matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.
(2) Fuel principal design requirements.
(3) Fuel criteria evaluation process.
(4) Fire areas.
(5) Human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.
(2) ASME Boiler and Pressure Vessel Code, Section III, and Code Case N–284.
(3) Design Summary of Critical Sections.
(4) ACI 318, ACI 349, and ANSI/AISC–690.
(5) Definition of critical locations and thicknesses.
(6) Seismic qualification methods and standards.
(7) Nuclear design of fuel and reactivity control system, except burn-up limit.
(8) Motor-operated and power-operated valves.
(9) Instrumentation and control system design processes, methods, and standards.
(10) PRHR natural circulation test (first plant only).
(11) ADS and CMT verification tests (first three plants only).

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.758(b) are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.714(b)(2) and must demonstrate why special circumstances as defined in 10 CFR 2.758(b) are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.99 and 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a Section 103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.97 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written safety evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the safety evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its

plant-specific DCD, which reflect the generic changes to the generic DCD and the plant-specific departures made pursuant to Section VIII of this appendix. These updates shall be filed in accordance with the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs B.1 and B.2 of this section must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application shall include the report and any updates to the plant-specific DCD.

b. During the interval from the date of application to the date of issuance of a license, the report and any updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. During the interval from the date of issuance of a license to the date the Commission makes its findings under 10 CFR 52.103(g), the report must be submitted quarterly. Updates to the plant-specific DCD must be submitted annually.

d. After the Commission has made its finding under 10 CFR 52.103(g), reports and updates to the plant-specific DCD may be submitted annually or along with updates to the site-specific portion of the final safety analysis report for the facility at the intervals required by 10 CFR 50.71(e), or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 16th day of December, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–33142 Filed 12–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG36

List of Approved Spent Fuel Storage Casks: (VSC–24) Revision; Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Pacific Sierra Nuclear Associates (PSNA) VSC–24 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published with the direct final rule.

FOR FURTHER INFORMATION CONTACT: Stan Turel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6234 (E-mail: spt@nrc.gov).

SUPPLEMENTARY INFORMATION: On September 22, 1999 (64 FR 51187), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the PSNA VSC–24 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 modifies the present cask system design to permit a licensee to store burnable poison rod assemblies in VSC–24 casks along with the spent fuel under the provisions of the general license issued under 10 CFR 72.210. The direct final rule was to become effective on December 6, 1999. The NRC also concurrently published an identical proposed rule on September 22, 1999 (64 FR 51270).

In the September 22, 1999, direct final rule, NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the **Federal Register**. As a result, the direct final rule would not take effect.

On December 3, 1999, the NRC published a document extending the effective date of the direct final rule from December 6, 1999 to January 5, 2000 (64 FR 67700). The NRC received significant adverse comments on the direct final rule; therefore, the NRC is withdrawing the direct final rule. As stated in the September 22, 1999, direct final rule, NRC will address the comments received on the September 22, 1999, companion proposed rule in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 17th day of December, 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 99–33350 Filed 12–22–99; 8:45 am]

BILLING CODE 7590–01–P

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Part 400

RIN 3004–ZA00

Loan Guarantee Decisions; Availability of Environmental Information

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Interim final rule and request for comments.

SUMMARY: In accordance with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act ("NEPA"), the Emergency Steel Guarantee Loan Board ("Board") is adopting NEPA procedures. Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities under NEPA. The purpose of these procedures is to ensure that environmental information is available to the Board as it makes decisions concerning applications for loan guarantees. In addition, these amendments add language to clarify the collateral and security interests necessary for each guarantee and extend the deadline for the submission of applications.

DATES: *Effective Date:* This rule is effective December 23, 1999.

Comments: Comments may be submitted no later than February 22, 2000.

ADDRESSES: Comments may be submitted to: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Council on Environmental quality's regulations, 40 CFR Parts 1500 to 1508, implementing the National Environmental Policy Act ("NEPA"), the Emergency Steel Guarantee Loan Board is adopting NEPA procedures. The NEPA process is intended to help public officials make decisions based on an understanding of the environmental consequences of their actions. The purpose of the Board's procedures is to ensure that necessary environmental information is available to the Board as it makes loan guarantee decisions.

Pursuant to the Emergency Steel Guarantee Loan Program, 13 CFR 400.206, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of NEPA. Environmental data or documentation concerning the use of the proceeds of any loan guaranteed

under this Program must be provided by the Lender to the Board. Once this information is received, an environmental assessment of the proposed project will be completed by the Board. This information will accompany each applicant's loan guaranteed application during the Board's review and selection process.

These procedures enumerate the types of actions that will trigger the Board's NEPA procedures. Any action classified as a "major Federal action" is subject to NEPA review. Typically, a government loan guarantee involving actions such as any project involving construction and/or installations; any project involving ground disturbing activities; and any project supporting renovation, other than remodeling, are considered major Federal actions. Such actions will require the preparation of an environmental assessment providing a description of the existing environment, a description of the future of the environment without the project, supporting documentation concerning the project and its environmental affects, an analysis of viable alternatives throughout the proposed project area, and mitigation measures designed to alleviate the environmental consequences of the proposed project. However, the Board has determined that certain actions, that are otherwise major Federal actions, normally do not have a significant impact on the quality of the human environment and are, therefore, categorically excluded from the environmental impact statement requirements of NEPA. For instance, guarantees for loans for the working capital needs of the Borrower and guarantees for the refinancing of outstanding indebtedness of the Borrower are categorically excluded from the need to prepare an environmental assessment or an environmental impact statement under NEPA.

In addition to setting forth the Board's NEPA procedures, these amendments make one change to the substantive program regulations contained in subpart C of part 400. As currently written, the Board's regulations could be interpreted to require a borrower to provide a security interest in all of its property, even if the value of that property far exceeds the amount of the loan. These amendments clarify that the Board requires a first lien on any property purchased, refinanced, or substantially improved with the proceeds of the guaranteed loan and a minimum security interest of equal status with the highest security interest in any other property of the Borrower's pledged to secure the loan. The borrower would have discretion to determine which of its other property it would pledge. A key factor in the Board's decision-making will be the priority of the security interest in collateral, as well as the quality of the collateral. Thus, applications giving the government a higher security interest on higher quality collateral will be evaluated higher in the application review process than those applications providing a lesser level of security interest.

Finally, in response to industry concerns over the time frame for the submission of completed applications, the deadline for the submission of applications has been extended to January 31, 2000. The current regulations establish a deadline of December 30, 1999, for the filing of a complete application with the Board.

Administrative Law Requirements

Executive Order 12866

This interim final rule has been determined not to be a significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Environmental impact statement, Freedom of Information, Loan Programs—Steel, Reporting and recordkeeping requirements.

Jay E. Dittus,

Executive Director, Emergency Steel Guarantee Loan Board.

For the reasons set forth in the preamble, the Emergency Steel Loan Guarantee Board amends 13 CFR part 400 as follows:

PART 400—[AMENDED]

1. The authority citation for part 400 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 252 (15 U.S.C. 1841 note).

2. Section 400.204(c)(2) is revised to read as follows:

§ 400.204 Loan terms.

* * * * *

(c) * * *

(2) Without limiting the Lender's or Borrower's obligations under paragraph (c) of this section, at a minimum, the loan shall be secured by:

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property acquired, improved, refinanced, or derived from the loan funds;

(ii) A fully perfected and enforceable security interest and/or lien in any other property of the Borrower's pledged to secure the loan, including accessions, replacements, proceeds, or property given by a third party as Security for the loan, the priority of which shall be, at a minimum, equal in status with the existing highest voluntarily granted or acquired interest or lien;

* * * * *

3. Section 400.205(a) is revised to read as follows:

§ 400.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 8 p.m. EST, January 31, 2000, in the U.S. Department of Commerce, Washington, DC 20230. Applications which have been provided to a delivery service on or before January 30, 2000, with "delivery guaranteed" before 8 p.m. on January 30, 2000, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of January 30, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

* * * * *

4. Section 400.206 is amended by removing paragraphs (b) and (c), redesignating paragraph (d) as paragraph (b), adding paragraph (c) and revising paragraph (a) to read as follows:

§ 400.206 Environmental requirements.

(a)(1) *In general.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as "major Federal actions" subject to NEPA procedures are discussed generally in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any project, permanent or temporary, that will involve construction and/or installations;

(B) Any project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. (ii) Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form XYZ, "Environmental Assessment and Compliance Findings for Related Environmental Laws;" and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

* * * * *

(c) *National Environmental Policy Act.* (1) *Purpose.* The purpose of this paragraph (c) is to adopt procedures for compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply:

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

Environmental assessment means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

EIS means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

FONSI means a finding of no significant impact on the quality of the human environment after the completion of an environmental assessment.

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Working capital loan means money used by an ongoing business concern to fund its existing operations.

(3) *Delegations to Executive Director.* (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Executive Director. The Executive Director will prepare or, at his or her discretion, coordinate replies to such correspondence.

(ii) With respect to actions of the Board, the Executive Director will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (1) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word "normally" is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Borrower, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential

addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) the Executive Director will request that the Lender and Borrower provide information concerning all potentially significant environmental impacts of the Borrower's proposed project pursuant to 13 CFR 400.206. The Executive Director, consulting at his discretion with CEQ, will review the information provided by the Lender and Borrower. Though no specific format for an environmental assessment is prescribed, it shall be a separate document, suitable for public review and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed project, should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. These sources should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the proposed project.

(ii) The Executive Director, in preparing an environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the project for which the proceeds of the loan sought to be guaranteed under the Program will be used, as describe in 40 CFR 1506.3.

(iii) Because of the statute's admonition to the Board to make its decisions as soon as possible after receiving applications, the Board will not:

(A) Publish notice of intent to prepare an environmental assessment, as describe in 40 CFR 1501.7;

(B) Conduct scoping, as described in 40 CFR 1501.7; and

(C) Seek comments on the environmental assessment, as described in 40 CFR 1503.1.

(iv) If, on the basis of an environmental assessment, it is determined that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Executive Director shall remain a record of these decisions, making them available to interested parties upon request. Requests should be directed to the Executive Director, Emergency Steel Guarantee Loan Program, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Prior to a final loan guarantee decision, a copy of the NEPA documentation shall be sent to the Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after an environmental assessment has been completed, it is determined that an EIS is necessary, it and other related documentation will be prepared by the Executive Director in accordance with section 102(2)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Executive Director may seek additional information from the applicant in preparing the EIS. Once the document is prepared, it shall be submitted to the Board. If the Board considers a document unsatisfactory, it shall be returned to the Executive Director for revision or supplementation prior to a loan guarantee decision; otherwise the Board will transmit the document to the Environmental Protection Agency.

(ii)(A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(*1*) The format and contents of the draft and final EIS shall be as discussed in 40 CFR 1502.

(*2*) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(*3*) The Executive Director, consulting at his discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(*4*) NEPA requires that the decision making "utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts." 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(*1*) Have an adverse environmental impact; or

(*2*) Limit the choice of reasonable alternatives.

(*3*) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking "major Federal actions." A loan guarantee shall not be made before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal; will be prepared. This record of decision will be prepared at the time the decision is made.

[FR Doc. 99–33378 Filed 12–22–99; 8:45 am]

BILLING CODE 1310–FP–M

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Part 500

RIN 3003–ZA00

Loan Guarantee Decision; Availability of Environmental Information

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Interim final rule; request for comments.

SUMMARY: In accordance with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act ("NEPA"), the Emergency Oil and Gas Guaranteed Loan Board ("Board") is adopting NEPA procedures. Environmental data or

documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities under NEPA. The purpose of these procedures is to ensure that environmental information is available to the Board as it makes decisions concerning applications for loan guarantees. In addition to setting forth the Board's NEPA procedures, these amendments make three changes. First, language is added to clarify the collateral and security interests necessary for each guarantee. Second, language is added creating a tiered system for the submission of financial statements for Borrowers based on the type of qualified oil and gas company applying and the amount of the loan sought. Third, these amendments extend the deadline for the submission of applications.

DATES: *Effective Date:* This rule is effective December 23, 1999.

Comments: Comments may be submitted no later than February 22, 2000.

ADDRESSES: Comments may be submitted to: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Council on Environmental Quality's regulations 40 CFR Parts 1500 to 1508, implementing the National Environmental Policy Act ("NEPA"), the Emergency Oil and Gas Guaranteed Loan Board is adopting NEPA procedures. The NEPA process is intended to help public officials make decisions based on an understanding of the environmental consequences of their actions. The purpose of the Board's procedures is to ensure that necessary environmental information is available to the Board as it makes loan guarantee decisions.

Pursuant to the Emergency Oil and Gas Guaranteed Loan Program, 13 CFR 500.206, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of NEPA. Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board. Once this information is received, an environmental assessment of the proposed project will be completed by the Board. This information will accompany each applicant's loan guarantee application during the Board's review and selection process.

These procedures enumerate the types of actions that will trigger the Board's NEPA procedures. Any action classified as a "major Federal action" is subject to NEPA review. Typically, a government loan guarantee involving actions such as any project involving construction and/or installations; any project involving ground disturbing activities; and any project supporting renovation, other than remodeling, are considered major Federal actions. Such actions will require the preparation of an environmental assessment providing a description of the existing environment, a description of the future of the environment without the project, supporting documentation concerning the project and its environmental affects, an analysis of viable alternatives throughout the proposed project area, and mitigation measures designed to alleviate the environmental consequences of the proposed project. However, the Board has determined that certain actions, that are otherwise major Federal actions, normally do not have a significant impact on the quality of the human environment and are, therefore, categorically excluded from the environmental impact statement requirements of NEPA. For instance, guarantees for loans for the working capital needs of the Borrower and guarantees for the refinancing of outstanding indebtedness of the Borrower are categorically excluded from the need to prepare an environmental assessment or an environmental impact statement under NEPA.

In addition to setting forth the Board's NEPA procedures, these amendments make three changes to the substantive program regulations contained in Subpart C of part 500. First, as currently written, the Board's regulations could be interpreted to require a borrower to provide a security interest in all of its property, even if the value of that property far exceeds the amount of the loan. These amendments clarify that the Board requires a first lien on any property purchased, refinanced, or substantially improved with the proceeds of the guaranteed loan and a minimum security interest of equal status with the highest security interest in any other property of the Borrower's pledged to secure that loan. The borrower would have discretion to determine which of its other property it would pledge. A key factor in the Board's decision-making will be the priority of the security interest in collateral, as well as the quality of the collateral. Thus, applications giving the government a higher security interest on higher quality collateral will be evaluated higher in the application review process than those applications providing a lesser level of security interest.

Second, the Board's current regulations require the submission of three years of independently audited financial statements as part of the application. While public companies are required to have independent audits performed annually, many small private companies do not have such audits performed. Some lenders may not require audited financial statements to determine that a borrower is credit worthy. To address this issue, the Board is amending its regulations to create a tiered system for the submission of financial statements for Borrowers based on the type of qualified oil and gas company applying and the amount of the loan sought. For independent oil and gas companies, a two tiered system is created. For loan proposals under $5 million, the Applicant is required to submit three years for financial statements for the Borrower reviewed by a certified public accountant prepared following generally accepted accounting principles (GAAP). For loan proposals greater than $5 million, the Applicant is required to submit a financial statement for the Borrower of the most recent year audited by an independent certified public accountant and financial statements from the two prior years reviewed by a certified public accountant prepared following GAAP. Service companies, in contrast, will be required to submit consolidated financial statements for the previous three years audited by an independent certified public accountant. Failure to submit full audited statements for the three years historical period may affect the risk assigned to a loan and will be part of the evaluation criteria the Board uses in making their decisions.

Third, in response to industry concerns over the time frame for the submission of completed applications, the deadline for the submission of applications has been extended to January 31, 2000. The current regulations establish a deadline of December 30, 1999, for the filing of complete application with the Board.

Administrative Law Requirements

Executive Order 12866

This interim final rule has been determined not to be a significant for purposes of Executive Order 12866.

Administration Procedure Act

This rule is exempt from the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preperataion of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Environmental impact statement, Freedom of Information, Loan Programs—Oil and Gas, Reporting and recordkeeping requirements.

Charles E. Hall,

Executive Director, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set forth in the preamble, the Emergency Oil and Gas Guaranteed Loan Board amends 13 CFR part 500 as follows:

PART 500—[AMENDED]

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.204(c)(2) is revised to read as follows:

§ 500.204 Loan terms.

* * * * *

(c) * * *

(2) Without limiting the Lender's or Borrower's obligations under paragraph (c) of this section, at a minimum, the loan shall be secured by:

(i) A fully perfected and enforceable security interest and or lien, with first priority over conflicting security interests or other liens in all property acquired, improved, or derived from the loan funds; and

(ii) A fully perfected and enforceable security interest and or lien in any other property of the Borrower's pledged to secure the loan, including accessions, replacements, proceeds, or property given by a third party as Security for the loan, the priority of which shall be, at a minimum, equal in status with the existing highest voluntarily granted or acquired interest or lien;

* * * * *

3. Section 500.205 is amended by revising paragraphs (a) and (b)(8) to read as follows:

§ 500.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 8 p.m. EST, January 31, 2000, in the U.S. Department of Commerce, Washington, DC 20230. Applications which have been provided to a delivery service on or before January 30, 2000, with "delivery guaranteed" before 8 p.m. on January 30, 2000, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of January 30, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

(b) * * *

(8)(i) An independent oil and gas company, as defined in section 201(c)(3)(A)(i) of the Act, is required to submit:

(A) For loans less than $5 million, three years of financial statements reviewed by a certified public accountant following generally accepted accounting principles, as well as any interim financial statements; or

(B) For loans of $5 million or greater, three years of financial statements must be submitted. The most recent year's statement must be audited by an independent certified public accountant. Statements from the prior two years must be reviewed by a certified public accountant following generally accepted accounting principles. In addition, any interim financial statements and associated notes must be submitted as well.

(ii) A service company, as defined in section 201(c)(3)(A)(ii) of the Act, is required to submit consolidated financial statements of the Borrower for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes.

* * * * *

4. Section 500.206 is amended by removing paragraphs (b) and (c), redesignating paragraph (d) as paragraph (b), adding paragraph (c) and revising paragraph (a) to read as follows:

§ 500.206 Environmental requirements.

(a)(1) *In General.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as "major Federal actions" subject to NEPA procedures are discussed generally in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any project, permanent or temporary, that will involve construction and/or installations;

(B) Any project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form XYZ, "Environmental Assessment and Compliance Findings for Related Environmental Laws;" and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

* * * * *

(c) *National Environmental Policy Act.* (1) *Purpose.* The purpose of this paragraph (c) is to adopt procedures for compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply:

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

Environmental assessment means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

EIS means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

FONSI means a finding of no significant impact on the quality of the human environment after the completion of an environmental assessment.

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Working Capital Loan means money used by an ongoing business concern to fund its existing operations.

(3) Delegations to Executive Director. (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Executive Director. The Executive Director will prepare or, at his or her discretion, coordinate replies to such correspondence.

(ii) With respect to actions of the Board, the Executive Director will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (i) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word "normally" is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Borrower, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) The Executive Director will request that the Lender and Borrower provide information concerning all potentially significant environmental impacts of the Borrower's proposed project pursuant to 13 CFR 500.206. The Executive Director, consulting at his discretion with CEQ, will review the information provided by the Lender and Borrower. Though no specific format for an environmental assessment is prescribed, it shall be a separate document and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed project, should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. Such references should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or

irretrievable commitments of resources to the proposed project.

(ii) The Executive Director, in preparing an environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the project for which the proceeds of the loan sought to be guaranteed under the Program will be used, as described in 40 CFR 1506.3.

(iii) Because of the statute's admonition to the Board to make its decisions as soon as possible after receiving applications, the Board will not:

(A) Publish notice of intent to prepare an environmental assessment, as described in 40 CFR 1501.7;

(B) Conduct scoping, as described in 40 CFR 1501.7; and

(C) Seek comments on the environmental assessment, as described in 40 CFR 1503.1.

(iv) If, on the basis of an environmental assessment, it is determined that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Executive Director shall maintain a record of these decisions, making them available to interested parties upon request. Requests should be directed to the Executive Director Emergency Oil and Gas Guarantee Loan Program, 14th Street and Constitution Avenue, NW., Washington DC 20230. Prior to a final loan guarantee decision, a copy of the NEPA documentation shall be sent to their Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after an environmental assessment has been completed, it is determined that an EIS is necessary, it and other related documentation will be prepared by the Executive Director in accordance with section 102(*2*)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Executive Director may seek additional information from the applicant in preparing the EIS. Once the document is prepared, it shall be submitted to the Board. If the Board considers a document unsatisfactory, it shall be returned to the Executive Director for revision or supplementation prior to a loan guarantee decision; otherwise the Board will transmit the document to the Environmental Protection Agency.

(ii)(A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(*1*) The format and contents of the draft and final EIS shall be as discussed in 40 CFR 1502.

(*2*) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(*3*) The Executive Director, consulting at his discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and depth.

(*4*) NEPA requires that the decision making "utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts." 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(*1*) Have an adverse environmental impact; or

(*2*) Limit the choice of reasonable alternatives.

(*3*) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking "major Federal actions." A loan guarantee shall not be make before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal; will be prepared. This record of decision will be prepared at the time the decision is made.

[FR Doc. 99–33379 Filed 12–22–99; 8:45 am]

BILLING CODE 1310–FP–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Diclazuril

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for medicated feed applications to add an entry stating the maximum Type B level and assay limits for diclazuril Type B and C medicated feeds. The **Federal Register** document that reflected approval of Schering-Plough Animal Health Corp.'s new animal drug application (NADA) for use of diclazuril Type A medicated articles for making Type C medicated broiler feeds failed to provide that entry.

DATES: This regulation is effective December 23, 1999.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 2, 1999 (64 FR 35923), FDA published a final rule that reflected the approval of Schering-Plough Animal Health Corp.'s NADA 141–951. The NADA provides for use of a Type A medicated article containing 0.2 percent of diclazuril (CLINACOX™) to make Type C broiler feeds used for the prevention of coccidiosis. The final rule added 21 CFR 556.175 and 558.198 to reflect the approval, but failed to amend § 558.4 (21 CFR 558.4) to add an entry stating the maximum Type B level and assay limits for diclazuril Type B and C medicated feeds. At this time, § 558.4 is amended in paragraph (d) in the table "Category I" accordingly.

As provided in 21 CFR part 20 and 514.11(e)(2)(ii), a freedom of information summary of safety and effectiveness data and information required to support approval of the application was placed on file in the Dockets Management Branch, Food and Drug Administration, upon publication of the approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.4 is amended by adding an entry alphabetically to the Category I table in paragraph (d) to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent[1] type A	Type B maximum (200x)	Assay limits percent[1] type B/C[2]
*	*	*	*
Diclazuril	90–110	182 g/t (0.02%)	85–115/70–120
*	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drug that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

Dated: December 14, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–33281 Filed 12–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 44

[DoD Directive 1200.7]

RIN 0790–AF57

Screening the Ready Reserve

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule provides guidance governing screening of Reserve component members of the U.S. military departments relative to their civilian employment. The purpose of the screening program is to ensure availability of Ready Reserve members for military mobilization purposes. The intended effect of the screening is to preclude conflicts between Reserve mobilization obligations and Federal civilian employment requirements during times of war or national emergency.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Dan Kohner, (703) 693–7479.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this is not a significant regulatory action. The rule does not:

1. Have an annual effect to the economy of $100 million or more, or otherwise have material adverse economic effects.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or,

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601). The Department of Defense is not subject to the RFA when making rules related to a "military or foreign affairs function of the United States" or to Executive Order 12866 for those regulations that "pertain to a military or foreign affairs function of the United States [other that procurement functions or import-export of non-defense articles]."

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. Interagency Report Control Number 0192–DOD–AN remains in effect, with a current expiration date of September 30, 1998.

List of Subjects in 32 CFR Part 44

Armed forces reserves.

Accordingly, 32 CFR part 44 is revised to read as follows:

PART 44—SCREENING THE READY RESERVE

Sec.

44.1 Purpose.
44.2 Applicability.
44.3 Definitions.
44.4 Policy.
44.5 Responsibilities.
Appendix A to Part 44—Guidance

Authority: 10 U.S.C. 10145.

§ 44.1 Purpose.

Updates DoD policy and responsibilities for the screening of Ready Reservists under 10 U.S.C. 1003, 1005, and 1209.

§ 44.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard, when it is not operating as a Military Service in the Navy by agreement with the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components"). The term "Military Services" as used in this part, refers to the Army, the Navy, the Air Force and the Marine Corps.

§ 44.3 Definitions.

For purposes of this part, the following definitions apply:

Extreme community hardship. A situation that, because of a Reservist's mobilization, may have a substantially adverse effect on the health, safety, or welfare of the community. Any request for a determination of such hardship shall be made by the Reservist and must be supported by documentation, as required by the Secretary concerned.

Extreme personal hardship. An adverse impact on a Reservist's dependents resulting from his or her mobilization. Any request for a determination of such hardship shall be made by the Reservist and must be supported by documentation, as required by the Secretary concerned.

Individual Ready Reserve. Within the Ready Reserve of each of the Reserve Components there is an Individual Ready Reserve. The Individual Ready Reserve consists of members of the Ready Reserve who are not in the Selected Reserve or the Inactive National Guard.

Key employee. Any Federal employee occupying a key position.

Key position. A Federal position that shall not be vacated during a national emergency or mobilization without SERIOUSLY impairing the capability of the parent Federal Agency or office to function effectively. The four categories of Federal key positions are set out in this paragraph. The first three categories are, by definition, key positions. However, the third category, Article III Judges, provides for exceptions on a case-by-case basis. The fourth category requires a case-by-case determination and designation as described in the following:

(1) The Vice President of the United States or any official specified in the order of presidential succession as in 3 U.S.C. 19.

(2) The members of the Congress and the heads of the Federal Agencies appointed by the President with the consent of the Senate. For this part, the term "the heads of the Federal Agencies" does not include any person appointed by the President with the consent of the Senate to a Federal Agency as a member of a multimember board or commission. Such positions may be designated as key positions only in accordance with paragraph (4) of this definition.

(3) *Article III Judges.* However, each Article III Judge, who is a member of the Ready Reserve and desires to remain in the Ready Reserve, must have his or her position reviewed by the Chief Judge of the affected Judge's Circuit. If the Chief Judge determines that mobilization of the Article III Judge concerned will not seriously impair the capability of the Judge's court to function effectively, the Chief Judge will provide a certification to that effect to the Secretary of the Military Department concerned. Concurrently, the affected Judge will provide a statement to the Secretary concerned requesting continued service in the Ready Reserve and acknowledging that he or she may be involuntarily called to active duty (AD) under the laws of the United States and the Directives and Regulations of the Department of Defense and pledging not to seek to be excused from such orders based upon his or her judicial duties.

(4) Other Federal positions determined by the Federal Agency heads, or their designees, to be key positions in accordance with the guidelines in the appendix to this part.

Mobilization. Involuntary call-up of Reserve component members in accordance with 10 U.S.C. 12301, 12302, or 12304. That includes full mobilization, partial mobilization and, selective mobilization (Presidential Reserve Call-Up Authority).

Ready reserve. Reserve unit members or individual Reserve and National Guard members, or both, liable for AD, as provided in 10 U.S.C. 12301, 12302, and, for some members, 10 U.S.C. 12304. It consists of the Selected Reserve, the Individual Ready Reserve, and the Inactive National Guard.

Selected reserve. A category of the Ready Reserve in each of the Reserve components. The Selected Reserve consists of units, and, as designated by the Secretary concerned, of individual Reserve members, trained as prescribed in 10 U.S.C. 10147(a)(1) or 32 U.S.C. 502(a), as appropriate.

Standby reserve. The Standby Reserve consists of those units or members, or both, of the Reserve components, other than those in the Ready Reserve or the Retired Reserve, who are liable for active duty only as provided for in 10 U.S.C. 12301 and 12306. The Standby Reserve consists of personnel who are maintaining their military affiliation without being in the Ready Reserve, but have been designated "key civilian employees," or have a temporary hardship or disability. Those individuals are not required to perform training and are not part of the Ready Reserve. The Standby Reserve is a pool of trained individuals who may be mobilized as needed to fill manpower needs in specific skills. The Standby Reserve consists of the active status list and the inactive status list categories.

§ 44.4 Policy.

It is DoD policy that:

(a) Members of the Ready Reserve shall be screened (see the appendix to this part for specific screening guidance) at least annually to meet the provisions of 10 U.S.C. 10149 and to provide a Ready Reserve force composed of members who:

(1) Meet Military Service wartime standards of mental, moral, professional, and physical fitness.

(2) Possess the military qualifications required in the various ranks, ratings, and specialties.

(3) Are available immediately for active duty (AD) during a mobilization or as otherwise required by law.

(b) On mobilization under 10 U.S.C. 12301(a) or 10 U.S.C. 12302, all personnel actions relating to the screening program shall be held in abeyance, and all members remaining in the Ready Reserve shall be considered immediately available for AD service. After such a mobilization is ordered, no deferment, delay, or exemption from mobilization shall be granted to Ready Reservists because of their civilian employment. On involuntary activation of Reserve members under 10 U.S.C. 12304 (Presidential Reserve Call-Up Authority), the Secretary of Defense, or designee, shall make a determination regarding the continuation or cessation of personnel actions related to the screening program.

(c) All Ready Reservists shall be retained in the Ready Reserve for the entire period of their statutory obligation or voluntary contract. Exceptions to that policy are made in paragraphs (g), (h), and (i) of this section, or may be made by the Secretaries concerned, in accordance with 10 U.S.C. 10145 and 10146.

(d) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other applicable authority of the State, commonwealth, or territory concerned (including the District of Columbia) in accordance with 10 U.S.C. 10146.

(e) Any eligible member of the Standby Reserve may be transferred back to the Ready Reserve when the reason for the member's transfer to the Standby Reserve no longer exists in accordance with 10 U.S.C. 10150 and DoD Instruction 1200.15.[1]

(f) Ready Reservists whose immediate recall to AD during an emergency would create an extreme personal or community hardship shall be transferred to the Standby Reserve or the Retired Reserve, or shall be

[1] Copies may be obtained at http://web7.whs.osd.mil/corres.htm.

discharged, as applicable, except as specified in paragraph (b) of this section.

(g) Ready Reservists who are designated key employees or who occupy key positions, as defined in this section, shall be transferred to the Standby Reserve or the Retired Reserve, or shall be discharged, as appropriate, except as specified in paragraph (b) of this section.

(h) Ready Reservists who are also DoD civilian employees may not hold a mobilization assignment to the same positions that they fill as civilian employees. Those Ready Reservists shall be reassigned or transferred, as applicable. Reserve component military technicians (dual status), as members of Reserve units, are excluded from this provision.

(i) Ready Reservists who are preparing for the ministry in an accredited theology or divinity school cannot be involuntarily called to AD or required to participate in inactive duty training (IDT) in accordance with 10 U.S.C. 12317. Accordingly, such Ready Reservists (other than those participating in a military Chaplain Candidate or Theology Student Program) shall be transferred to the Standby Reserve (active status list) for the duration of their ministerial studies and duties at accredited theology or divinity schools. Ready Reservists participating in a military Chaplain Candidate or Theology Student Program may continue their Ready Reserve affiliation and engage in AD and IDT.

(j) Ready Reservists may not be transferred from the Ready Reserve solely because they are students, interns, residents, or fellows in the healthcare professions. On mobilization, they either shall be deferred or shall be mobilized in a student, intern, resident, or fellow status until qualified in the applicable medical specialty, as prescribed by the Secretaries of the Military Departments.

(k) The Secretaries concerned, or their designees, shall make determinations for mobilization availability on a case-by-case basis, consistent with this part, and not by class or group determinations.

§ 44.5 Responsibilities.

(a) The *Deputy Secretary of Defense* shall adjudicate, before mobilization, conflicts between the mobilization manpower needs of the civilian sector and the military that the Ready Reserve Screening process has identified, but has not resolved.

(b) The *Assistant Secretary of Defense for Reserve Affairs*, under the *Under Secretary of Defense for Personnel and Readiness*, shall:

(1) Provide oversight and policy support to the overall Ready Reserve screening program, and manage and control the Federal sector screening program in accordance with 10 U.S.C. 10149, Executive Order 11190, and pp. 63–66 of House Appropriations Committee Report 95–451, which is available from the Government Printing Office, Washington, DC 20401.

(2) Annually, provide Federal Agencies with a listing of all Federal employees who are also Ready Reservists to assist them in conducting employer screening activities.

(3) Prepare an annual report on the status of Ready Reservists employed by the Federal Government.

(4) Employ the guidance in appendix A of this part in coordinating the screening program with employers of Ready Reservists.

(5) Coordinate conflicts between the mobilization manpower needs of the civilian sector and the military identified but not resolved through the Ready Reserve Screening process.

(c) The *Secretaries of the Military Departments* shall:

(1) Screen, at least annually, all Ready Reservists under their jurisdiction to ensure their immediate availability for active duty (AD) and to ensure compliance with 10 U.S.C. 10149.

(2) Ensure coordination with the Assistant Secretary of Defense for Reserve Affairs to resolve conflicts (identified, but not resolved through the Ready Reserve screening process) between the mobilization manpower needs of the civilian sector and the military.

(3) Review recommendations for removal of both Federal and other civilian employees from the Ready Reserve submitted by employers and take applicable action.

(4) After making a removal determination in response to a petition for such action, promptly transmit the results of that determination to the Ready Reservist concerned and his/her employer.

(5) Transfer Ready Reservists identified as occupying key positions to the Standby Reserve or the Retired Reserve, or discharge them, as applicable.

(6) Ensure that Ready Reservists not on AD are examined as to physical fitness in accordance with DoD Directive 1332.18.[2]

(7) Process members of the Ready Reserve who do not participate satisfactorily in accordance with DoD Instruction 1200.15 and DoD Directive 1215.13.[3]

(8) Ensure that all Ready Reservists have a favorably completed background check for military service suitability on file (*e.g.*, Entrance National Agency Check (ENTNAC), NAC).

(9) Ensure that personnel records systems incorporate information on any factors that limit the mobilization availability of a Ready Reservist.

(10) Develop and maintain current information pertaining to the mobilization availability of Ready Reservists.

Appendix A to Part 44—Guidance

Deputy Secretary of Defense

The Deputy Secretary of Defense shall adjudicate, before mobilization, conflicts between the mobilization manpower needs of the civilian sector and the military that the Ready Reserve screening process has identified, but has not resolved.

Employers of Ready Reservists

(a) Federal Employers

(1) To ensure that Federal employees essential to the continuity of the Federal Government are not retained as members of the Ready Reserve, the following guidance is provided:

(i) Conduct annual screening program as provided for by the Assistant Secretary of Defense for Reserve Affairs.

(ii) Responses from Federal Agencies shall be reported under Interagency Report Control Number 0912–DoD–AN, "Ready Reservists in the Federal Government," in accordance with DoD 8910.1–M.[4]

(iii) Federal Agency heads, or their designees, concerned shall designate those positions that are of essential nature to, and within, the organization as "key positions," and shall require that they shall NOT be filled by Ready Reservists to preclude such positions from being vacated during a mobilization. Upon request from Federal Agencies, Secretaries of the Military Departments shall verify the essential nature of the positions being designated as "key," and shall transfer Ready Reservists occupying key positions to the Standby Reserve or the Retired Reserve or shall discharge them, as applicable, under 10 U.S.C. 10149, except as specified in § 44.4 (b).

(iv) In determining whether or not a position should be designated as a "key position," the following questions should be considered by the Federal Agency concerned:

(A) Can the position be filled in a reasonable time after mobilization?

(B) Does the position require technical or managerial skills that are possessed uniquely by the incumbent employee?

(C) Is the position associated directly with defense mobilization?

(D) Does the position include a mobilization or relocation assignment to an

[2] See footnote 1 to § 44.4(e).

[3] See footnote 1 to § 44.4(e).

[4] See footnote 1 to § 44.4(e).

Agency having emergency functions, as designated by Executive Order 12656?

(E) Is the position directly associated with industrial or manpower mobilization, as designated in Executive Orders 12656 and 12919?

(F) Are there other factors related to the national defense, health, or safety that will make the incumbent of the position unavailable for mobilization?

(2) [Reserved]

(b) *Non-Federal Employers of Ready Reservists.* Non-Federal employers of Ready Reservists, particularly in the fields of public health and safety and defense support industries, are encouraged to adopt personnel management procedures designed to preclude conflicts between the emergency manpower needs of civilian activities and the military during a mobilization. Employers also are encouraged to use the Federal key position guidelines contained in this appendix for making their own key position designations and, when applicable, for recommending key employees for removal from the Ready Reserve.

(c) All employers who determine that a Ready Reservist is a key employee, in accordance with the guidelines in this appendix, should promptly report that determination, using the letter format at the end of this appendix, to the applicable Reserve personnel center, requesting the employee be removed from the Ready Reserve.

Individual Ready Reservists

(a) Each Ready Reservist who is not a member of the Selected Reserve is obligated to notify the Secretary concerned of any change of address, marital status, number of dependents, or civilian employment and any other change that would prevent a member from meeting mobilization standards prescribed by the Military Service concerned (10 U.S.C. 10205).

(b) All Ready Reservists shall inform their employers of their Reserve military obligation.

List of Reserve Personnel Centers to Which Reserve Screening Determination and Removal Requests Shall be Forwarded

Army Reserve

Army Reserve Personnel Command
1 Reserve Way
ATTN: ARPC–PSP–T
St. Louis, MO 63132

Naval Reserve

Commander
Navy Personnel Command (Pers 91)
5720 Integrity Drive
Millington, TN 38055–9100

Marine Corps Reserve

Commanding General
Marine Corps Reserve Support Command
ATTN: IRR Division
15303 Andrews Road
Kansas City, MO 64147–1207

Air Force Reserve

Commander
Air Reserve Personnel Center/DPAF
6760 E. Irvington Pl. #2600
Denver, CO 80280–2600

Army and Air National Guard

Submit requests to the adjutant general of the applicable State, commonwealth, or territory (including the District of Columbia).

Coast Guard Reserve

Commander (CGPC–RPM)
U.S. Coast Guard Personnel Command
2100 Second St. S.W.
Washington, DC 20593

Letter Format to Reserve Personnel Centers Requesting That Employee be Removed From the Ready Reserve

From: (Employer-Agency or Company)
To: (Appropriate Reserve Personnel Center)
Subject: Request for Employee to Be Removed from the Ready Reserve

This is to certify that the employee identified below is vital to the nation's defense efforts in (his or her) civilian job and cannot be mobilized with the Military Services in an emergency for the following reasons: [STATE REASONS]

Therefore, I request that (he/she) be removed from the Ready Reserve and that you advise me accordingly when this action has been completed.

The employee is:

1. Name of employee (last, first, M.I.):
2. Military grade and Reserve component:
3. Social security number:
4. Current home address (street, city, State, and ZIP code):
5. Military unit to which assigned (location and unit number):
6. Title of employee's civilian position:
7. Grade or salary level of civilian position:
8. Date (YYMMDD) hired or assigned to position:

Signature and Title of Agency or Company Official.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–32307 Filed 12–22–99; 8:45 am]

BILLING CODE 5000–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Tricare; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Nonavailability Statement Requirement for Maternity Care

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65), which requires that a nonavailability-of-health-care statement shall be required for a non-enrolled beneficiary for TRICARE cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The Act reestablishes a requirement which was previously eliminated under the broad direction of The National Defense Authorization Act of FY 1997, section 734, which removed authority for nonavailiability statements (NASs) for outpatient services. Therefore, the Act changes the existing provisions require an NAS for inpatient delivery but do not require an NAS for outpatient prenatal and post-partum care. The change will significantly contribute to continuity of care for maternity patients. In furtherance of that principle, and consistent with the previous policy, an NAS for maternity care shall not be required when a beneficiary has other health insurance for primary coverage. This is being issued as an interim final rule in order to comply with the statutory mandate. Public comments, however, are invited and will be considered in connection with possible revisions to this rule.

DATES: This rule is effective October 5, 1999 (the effective date of Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65) which imposes the requirement). Written comments will be accepted until February 22, 2000.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3801.

SUPPLEMENTARY INFORMATION: This interim final rule implements section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65) which requires that a nonavailability-of-health-care statement shall be required for TRICARE/CHAMPUS cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The nonavailability statement requirement applies to non-enrolled TRICARE beneficiaries who live in a catchment area of a military treatment facility (MTF). Except for an emergency or when there is other primary health insurance coverage, these beneficiaries are required to obtain all maternity care from the MTF. If care is unavailable at the MTF, an NAS will be issued for the

beneficiary. The Act changes the existing provisions that require a nonavailability statement (NAS) for inpatient delivery but do not require an NAS for outpatient prenatal, outpatient delivery and post-partum care. The change will provide for continuity of care for maternity patients. Beneficiaries will need one NAS for the entire episode of maternity care that shall remain valid until 42 days following termination of the pregnancy.

Regulatory Procedure

Executive order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This Interim Final Rule is not a significant regulatory action under E.O. 12866, nor would it have a significant impact on small entities. The changes set forth in the interim final rule are minor revision to the existing regulation.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This determination is based on several factors. First, this change directly implements a statutory amendment enacted by Congress expressively for this purpose. Second, this rule implements the statutory policy without embellishment. All public comments are invited.

List of Subject in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. Chapter 55.

2. Section 199.4(a) is amended by revising paragraphs (a)(9) and (a)(9)(i)(B).

§ 199.4 Basic program benefits.

(a) * * *

* * * * * *

(9) *Nonavailability Statements within a 40-mile catchment area.* In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required medical care can be provided through a Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) * * *

(A) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with non-emergency inpatient hospital care and outpatient and inpatient maternity care if such services are available at a facility of the Uniformed Services located within a 40-mile radius of the residence of the beneficiary, except that an NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. For maternity care, an NAS is required for services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit that confirms the pregnancy. The requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

* * * * * *

Dated: December 16, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33246 Filed 12–22–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37-132]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adopting the exemption rule published on October 18, 1999, at 64 FR 56181 as final. No comments were received during the sixty day comment period.

EFFECTIVE DATE: December 17, 1999.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588-6187.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that this Privacy Act rule is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, 'Regulatory Flexibility Act' (5 U.S.C. 601)

It has been certified that this Privacy Act rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, 'Paperwork Reduction Act' (44 U.S.C. Chapter 35)

It has been certified that this Privacy Act rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of subjects in 32 CFR part 806b

Privacy.

Accordingly, 32 CFR part 806b is revised to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR Part 806b continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix C to Part 806b is amended by adding paragraph (b)(21) as follows:

* * * * *

b. Specific exemptions.* * *

(21) *System identifier and name:* F036 AF DP G, Military Equal Opportunity and Treatment.

(i) *Exemption:* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2)

(iv) *Reasons:* (1) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement. In addition, granting individuals access to information collected while an Equal Opportunity and Treatment clarification/investigation is in progress conflicts with the just, thorough, and timely completion of the complaint, and could possibly enable individuals to interfere, obstruct, or mislead those clarifying/investigating the complaint.

(2) From subsection (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (k) of the Privacy Act of 1974.

(3) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(4) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force—s Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.

Dated: December 16, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33244 Filed 12–22–99; 8:45 am]

BILLING CODE 5001–10–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[Region VII Tracking No. MO 083–1083a; FRL–6510–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve certain portions of the State Implementation Plan (SIP) revisions submitted by the state of Missouri and as revisions to the part 70 (operating permits) program. These revisions established emission and service fees for 1997 and 1998 and clarify language regarding reporting requirements, emission calculations and verification.

DATES: This direct final rule is effective on February 22, 2000 without further notice, unless EPA receives adverse comment by January 24, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7975.

SUPPLEMENTARY INFORMATION:

Background

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter (PM), and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

The CAA requires each state to have a Federally approved SIP which protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be

addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52 entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violators as described in the CAA.

What is the Part 70 (Operating Permits) Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 (operating permits) program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment, and EPA approval.

What are the Changes that EPA is Approving?

The revisions include two separate amendments to the Missouri "Submission of Emission Data, Emission Fees and Process Information" rule which were adopted by the Missouri Air Conservation Commissions approximately one year apart.

The first revision, with a state effective date of December 30, 1997, requires companies to report capture efficiency and control efficiency on control devices and to calculate emissions using MDNR's acceptable estimation methods as guidance. This revision also requires Emission Inventory Questionnaires to be submitted on state forms, clarifies language regarding reporting frequency and emission fees, and revises the installation classification to match the permitting classification.

The second revision, with a state effective date of December 30, 1998, is an annual update to establish emission and service fees for 1997 and 1998 and clarifies the language regarding fee obligations for charcoal kilns to reflect state statutory requirements.

What Action is EPA Taking?

EPA is taking final action to approve, as an amendment to the SIP and the part 70 program, the revisions to Missouri rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees and Process Information." Section (5), relating solely to the assessment of fees for sources subject to the operating permit program, is part of the part 70, Title V program and will not be approved into the SIP. The remainder of the revisions to Rule 10–6.110, which clarifies reporting requirements, methodology for emission calculations, and verification of emissions, is approved into the SIP.

Conclusion

EPA is taking final action to approve, as an amendment to the SIP and the part 70 program, the revisions to Missouri rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees and Process Information," effective December 30, 1998. Section (5) is part of the Title V program and will not be approved into the SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 22, 2000 without further notice unless the Agency receives adverse comments by January 24, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 22, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation.

EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and permit program approvals under the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320 the entry in paragraph (c), table titled EPA-Approved Missouri Regulations, Missouri Citation 10–6.110 is revised to read as follows:

§ 52.1320 Identification of Plan.

* * * * * * *

(c) EPA-approved regulations.

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA Approval date	Explanations
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Submission of Emission Data, Emission Fees and Process Information.	12/30/98	12/23/99	Section (5), Emission Fees, is part of the Title V program and has not been approved as part of the SIP.
*	*	*	*	*

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 741 *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (e) to the entry for Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

Missouri

* * * * *

(e) The Missouri Department of Natural Resources submitted on July 8, 1999, revisions to Missouri rules 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information," effective on December 30, 1998.

* * * * *

[FR Doc. 99–32758 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 120999F]

Notification of U.S. Fish Quota Allocations in the Northwest Atlantic Fisheries Organization Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of U.S. fish quota allocations.

SUMMARY: NMFS announces that fish quota allocations are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area.

DATES: Fish quotas are effective January 1, 2000, through December 31, 2000.

ADDRESSES: For more information regarding the High Seas Fishing Compliance Act (HSFCA) Permit and NAFO requirements, please contact the Office of the Regional Administrator, NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9226, fax: 978–281–9371).

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713-2276.

SUPPLEMENTARY INFORMATION: NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation allocations. The principal species managed are cod, flounders, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 1999 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks to be fished during 2000. In addition, the United States received an effort allocation for shrimp in NAFO Division 3M, which will be addressed in a separate notice. The species, fish quota allocation (in metric tons), and location of these U.S. fishing opportunities are as follows:

(1) Redfish 69 mt NAFO Division 3M

(2) Shrimp 67 mt NAFO Division 3L

(3) Squid 453 mt NAFO Subareas 3 & 4

All U.S. fish quota allocations in NAFO are available, on a first-come-first-served basis, to be taken by U.S. vessels in possession of a valid High Seas Fishing Compliance Act (HSFCA) permit and NAFO reporting forms, both of which are available from the NMFS Northeast Regional Office. Note that

vessels issued valid High Seas Fishing Compliance permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. EEZ with multispecies on board the vessel or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.81(e); and

(4) The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence with all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements can be found in the current NAFO Conservation and Enforcement Measures, available on the World Wide Web at <http://www.nafo.ca>.

As the United States Government is required to notify NAFO with information regarding vessels intending to fish in the NAFO Regulatory Area, interested parties are encouraged to express their interest to the Office of the Regional Administrator, NMFS, Northeast Regional Office (see **ADDRESSES**) as soon as possible.

NMFS has received inquiries regarding the possibility of making U.S. fishing opportunities available to U.S. fishing interests using foreign vessels under contractual arrangements. To be consistent with domestic policies and practices under the Magnuson-Stevens Fishery Conservation and Management Act, in particular the provisions relating to the total allowable level of foreign fishing and joint venture fishing, and, in light of the apparent capacity of U.S. vessels to take advantage of NAFO fishing opportunities, NMFS has determined that NAFO fish allocations to the United States will not be made available, at this time, to chartered fishing vessels registered to foreign governments.

In the interests of expanding fishing opportunities for U.S. vessels, the United States has begun seeking additional fishing opportunities in the 3L shrimp fishery by requesting that NAFO members that did not fish their shrimp allocation in 1999 transfer such allocations for use by U.S. vessels. Information regarding any additional fishing opportunities resulting from transfers from other NAFO members will be published in the **Federal Register**.

Dated: December 16, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–33354 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 246
Thursday, December 23, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206–AI93

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a rule to set forth how agencies may use appropriated funds to reduce child care costs for lower income Federal employees. The intended effect of this rule is to enable lower income Federal employees to better afford child care.

DATES: Comments must be received on or before January 24, 2000.

ADDRESSES: Send written comments to Anice V. Nelson, Office of Personnel Management, Room 7315, 1900 E St. N.W., Washington, DC 20415–1300.

FOR FURTHER INFORMATION CONTACT: Patricia Kinney, Office of Personnel Management, 1900 E St. N.W., Room 7315, Washington, DC 20415–1300; Phone: (202) 606–1313; Fax: (202) 606–2091.

SUPPLEMENTARY INFORMATION: Federal families are more challenged than ever before to meet the expenses of child care. Child care is a labor-intensive service that requires adequate, trained staff to provide child care services that are safe and appropriate for children and their families. An increasing number of Federal families are funding that affordable child care is getting more difficult to find even when their own agencies sponsor on or near-site child care centers. Vacancy rates in Federally sponsored child care centers have steadily grown due to the affordability problem. Despite efforts of non-profit organizations to raise funds through charitable contribution, the affordability of child care for lower income Federal employees sometimes remains out-of-reach since child care costs can translate up to 50 percent of a Federal family's total family income.

Reduced child care tuition, as a result of agency contributions permitted by this law, can have significant impact on employees' ability to utilize safe and reliable child care. Benefits to the agencies include better recruitment and retention of qualified personnel, lower absenteeism, and improved morale. Improved retention can result in significant recruitment and training cost savings to agencies. Over the past ten years, anecdotal evidence from on-site Federally sponsored child care centers has shown that more and more employees consider the availability of affordable child care as a major reason for choosing one job over another.

An added benefit for agencies that sponsor on-site child care centers at some of their locations is that they can expect to see improved Federal employee participation in their centers. For small agencies that have been unable to provide agency-sponsored on-site child care centers, this law would permit them to assist their employees with a variety of other child care choices.

Sec. 643 of Pub. L. 106–58 authorizes the use of appropriated funds to assist lower income Federal workers to access child care services. This law, enacted by Congress, became effective on September 29, 1999, and remains in effect for one year. The law enables Federal agencies, for the first time, to assist their civilian employees with costs of child care. Until now, the only financial remedy for Federal employees was through limited fundraising conducted by non-profit boards of directors for Federal child care centers. That type of assistance has been inadequate for lower income Federal employees. Financial assistance for Federal employees in non-Federal child care and for family child care has been virtually non-existent.

Child care exists in a variety of forms. Because child care is not universally available through agency-sponsored child care centers, Pub. L. 106–58 permits agencies to work with a broad range of child care providers to ensure that child care is more affordable to lower income Federal employees.

In summary, the rule authorizes Federal agencies to use appropriated funds from their salaries and expense accounts to assist their lower income Federal employees with the costs of child care in child care centers and family child care homes. Agencies can choose from a number of models for determining employee eligibility and the amount of the tuition assistance subsidy. In light of the fact that agencies have differing needs from one location to another, the proposed rule allows for maximum flexibility so that agencies can take different approaches for making those determinations. Forthcoming guidance from OPM instructs agencies on certain basic tuition assistance program requirements; provides specific steps for implementing the regulation; and includes direction for OPM's reporting requirements. OPM will be interested in learning whether or not the range of flexibilities and sample models were helpful to agencies in determining their definitions of *lower income Federal employees.*

E.O. 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Drug abuse, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 792 of title 5 of the Code of Federal Regulations as follows:

PART 792—FEDERAL EMPLOYEES' HEALTH AND COUNSELING PROGRAMS

1. The authority citation for part 792 is revised to read as follows:

Authority: Sec. 201 of Pub. L. 91–616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2(b)(13) of Pub. L. 98–24 (42 U.S.C. 290dd–1) and sec. 413 of Pub. L. 92–255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Service Act by sec. 2(b)(16)(A) of Pub. L. 98–24 (42 U.S.C.

290ee–1); sec. 643, Pub. L. 106–58, 113 stat. 477.

2. Subpart B is added to read as follows:

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What is the new child care legislation and to whom does it apply?

Sec.

792.200 To whom do "we", "you", and their variants refer?
792.201 What does the new law permit?
792.202 What is the purpose of the new law?
792.203 Should we notify anyone of our intention to make such a disbursement?
792.204 Are there sample memoranda and other documents available to assist us with this process?
792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?
792.206 What are the benefits to an agency of providing such assistance to its lower income employees?
792.207 Which agency funds can be used for the purpose of this law?
792.208 Is the use of appropriated funds for this purpose mandatory?
792.209 How can agencies take advantage of this new law and when does this law become effective?
792.210 What is the definition of Executive agency?
792.211 What is the definition of tuition assistance program?
792.212 What is the definition of civilian employee?
792.213 What is the definition of a Federally sponsored child care center?
792.214 What is the definition of contractor?
792.215 What is the definition of a child?
792.216 What children are eligible for this subsidy??
792.217 Are children enrolled in summer programs and part-time programs eligible?
792.218 Are part-time Federal employees eligible?
792.219 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?
792.220 What is the process for helping lower income employees with child care tuition?
792.221 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?
792.222 Are there any conditions which the child care provider must meet in order to participate in this program?
792.223 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?
792.224 What is the definition of a lower income Federal employee and how is the amount of the tuition assistance subsidy determined?
792.225 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?
792.226 Do child care subsidies get paid to the Federal employee using the child care?
792.227 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee utilizing the reduced tuition has enrolled his or her child in the child care center or family child care home?
792.228 How will this work where there is a Federally sponsored child care center in a multi-tenant building?
792.229 For how long will tuition assistance be in effect for a Federal employee?
792.230 Can these funds be used for children of Federal employees who are already enrolled in child care?
792.231 Can we place special restrictions or requirements on the use of these funds, how else can we use these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?
792.232 May we use the funds to improve the physical space of the family child care homes or child care centers?
792.233 For how long is the law effective?
792.234 Who will oversee the disbursement and use of these funds?

Subpart B—Agency Use of Appropriate Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does It Apply?

§ 792.200 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this part refers to the agency. OPM is always referred to as "OPM".

§ 792.201 What does the new law permit?

Public Law 106–58 (the law) permits agencies to use appropriated funds from their salaries and expense accounts to assist lower income Federal employees with the costs of child care. Employees can benefit from reduced tuition rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

§ 792.202 What is the purpose of the new law?

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

§ 792.203 Should we notify anyone of our intention to make such a disbursement?

Yes, you must provide prior notice to the House Subcommittee on Treasury, Postal Service and General Government and to the Senate Subcommittee on Treasury and General Government and to your appropriations subcommittees. This is a Congressional notification requirement. You must also notify OPM of your intention.

§ 792.204 Are there sample memoranda and other documents available to assist us with his process?

Yes, when you notify OPM of your intent to initiate a program, OPM will provide you with guidance that contains sample memoranda of understanding, sample marketing tools, sample tuition assistance applications, and models for determining tuition assistance eligibility. OPM will also provide agencies with the mandatory reporting form.

§ 792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?

Yes, you are responsible for tracking the utilization of your funds and reporting the results to OPM. OPM will provide you with a mandatory reporting form. OPM is required to provide a report to the appropriations committees no later than September 1, 2000. Therefore, you are required to report your results to OPM no later than August 1, 2000. OPM will provide you with guidance on this subpart.

§ 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?

There are several benefits for the agencies beginning with improved recruitment and retention. Cost savings in recruitment and training costs can be significant. In addition, absenteeism rates related to child care problems can be reduced. Providing such subsidies can also increase morale, particularly among families who cannot afford the child care located at or near a child care center that is sponsored by their agency. The use of funds for lower income families who are enrolled or wish to enroll in Federal child care centers will increase the Federal participation rates where there is a regulatory requirement that at least 50 percent of the children enrolled have parents or guardians who are Federal employees.

§ 792.207 Which agency funds can be used for the purpose of this law?

You are permitted to use funds from your salaries and expense account for the purpose of this law

§ 792.208 Is the use of appropriated funds for this purpose mandatory?

No, the decision to use appropriated funds for the purpose of this law is left to the discretion of the agency.

§ 792.209 How can agencies take advantage of this new law and when does this law become effective?

The law became effective as of September 29, 1999. Agencies are permitted to spend funds beginning on [effective date of final rule].

§ 792.210 What is the definition of Executive agency?

The term *Executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

§ 792.211 What is the definition of tuition assistance program?

The term *tuition assistance program,* for the purposes of this regulation, means the program that results from the expenditure of agency funds to assist lower income Federal employees with child care costs, including, but not limited to, such activities as: determining which employees receive a subsidy, and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee utilization of the program.

§ 792.212 What is the definition of civilian employee?

The term *civilian employee,* for the purposes of this regulation, means all appointive positions in an executive agency.

§ 792.213 What is the definition of a Federally sponsored child care center?

A *Federally sponsored child care center* is a child care center that is located in a building or space that is owned or leased by the Federal government.

§ 792.214 What is the definition of contractor?

Sec. 643 of Pub. L. 106–58 says that child care services provided by contract are covered by this provision. The term *contractor* applies to an organization or individual who provides child care services for which Federal families are eligible. The definition includes center-based child care and family child homes. The term *provider* is typically used to denote contractor in the child care industry. For the purposes of this subpart, the term *provider* is used to denote both center-based child care and family child care homes.

§ 792.215 What is the definition of a child?

For the purposes of this subpart, a *child* is considered to be:

(a) A recognized natural child who lives with the Federal employee in a regular parent-child relationship;

(b) An adopted child;

(c) A stepchild;

(d) A foster child;

(e) A recognized natural child for whom a judicial determination of support has been obtained; or

(f) A recognized natural child to whose support the Federal employee makes regular and substantial contributions.

§ 792.216 What children are eligible for this subsidy?

The law covers Federal employees' children from birth through age 13.

§ 792.217 Are children enrolled in summer programs and part-time programs eligible?

Yes, employees with school-age children (13 years of age and younger) who are enrolled in summer school programs and part-time programs are eligible.

§ 792.218 Are part-time Federal employees eligible?

Yes, Federal employees who work part-time are eligible.

§ 792.219 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?

No. The bill is broad in scope and includes non-Federal center-based child care as well as care in family child care homes, as long as they are licensed and/or regulated by the State and/or local regulating authorities.

§ 792.220 What is the process for helping lower income employees with child care tuition?

(a) OPM guidance includes further explanation, but the process can be summarized in 8 steps:

(1) After completing your collective bargaining obligations, where applicable, notify the Congressional committees and OPM of your decision to use a specific amount of appropriated funds for this purpose;

(2) Determine how you will structure the program and which tuition assistance model you will use;

(3) Determine how you will administer the program;

(4) Advertise the program;

(5) Conduct the application process;

(6) Make the tuition assistance determinations and notify the employees (parents are then charged a reduced tuition rate by the provider);

(7) Provide the funds to the provider or to an organization that will administer the program for you; and

(8) Report the results to OPM on the mandatory reporting form.

(b) [Reserved]

§ 792.221 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?

You are reminded of your obligation to negotiate or consult, as appropriate, with the exclusive representatives of your employees on the implementation of these regulations under 5 U.S.C. 7117.

§ 792.222 Are there any conditions which the child care provider must meet in order to participate in this program?

Yes, the provider, whether center-based or family child care, must be licensed and/or regulated by the State and/or local authorities where the child care service is delivered.

§ 792.223 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?

No, the law does not specify a cap.

§ 792.224 What is the definition of a lower income Federal; employee and how is the amount of tuition assistance subsidy determined?

Each agency makes the determination of the definition of lower income Federal employee. Lower income Federal employee can be defined by an agency in a number of ways. The process for determining both eligibility and the amount of tuition assistance subsidy for each family involves consideration of total family income along with other factors, depending on the tuition assistance model you use. In their guidance to the regulations, OPM will provide examples of models with detailed explanations.

(a) If the model or models you select includes a total family income threshold, you can use criteria such as those from:

(1) The Child Care Development Block Grant as defined (42 U.S.C. § 9858);

(2) A formula based on a percentage of the State poverty level (as many States do for certain programs); or

(3) A set amount of total family income the agency chooses depending on the agency demographics and need to assist lower income Federal employees.

(b) Some models do not require a threshold amount, since eligibility is determined as a function of the relationship between total family income, actual child care tuition costs, and an amount or percentage the agency is willing to pay.

(c) In order to determine the amount of tuition assistance subsidy by which tuition will be reduced for a Federal employee, a number of approaches can be taken. The size of the subsidy is dependent on different income levels. It

can be based on a tuition sliding scale such as that used in the military formula (10 U.S.C. 1791–1798); a formula based on a specific percentage of total family income the family is expected to pay with the agency paying the remaining amount; or a formula based on a specific percentage of child care tuition the family is expected to pay with the agency paying the remaining amount. Each of these approaches is based on different philosophical assumptions and it will be up to the agency to determine which model or models best fits its needs. The models are described in detail in OPM's guidance.

(d) Besides total family income, you may consider extraordinary financial situations to determine eligibility and the subsidy amount.

§ 792.225 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?

The agency or another appropriately identified organization determines eligibility using certain income and/or tuition criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the tuition assistance eligibility and the amount of the subsidy is always determined by the Federal agency.

§ 792.226 Do child care subsidies get paid to the Federal employee using the child care?

No. The child care subsidy is paid to the child care provider. If you choose to have an organization administer your program (see § 792.225), the subsidy is paid to the organization and they, in turn, pay the provider. In any case, the provider will invoice the organization that administers the program.

§ 792.227 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee utilizing the reduced tuition has enrolled his or her child in the child care center or family child care home?

Yes, you may wish to disburse one lump sum to the organization administering the tuition assistance program and they will be responsible for tracking the utilization and providing you with regular reports.

§ 792.228 How will the disbursement covered by § 792.227 work where there is a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies would be pooled together for the benefit of the employees qualified for tuition assistance and whose children are enrolled at the Federally sponsored child care center. The designated organization administering the program (§ 792.225) would then make the individual tuition assistance determinations for the eligible Federal employees based on the tuition assistance model chosen by the agencies. Agencies in the multi-tenant space must agree on the selection of one tuition assistance model for that particular child care center. If an agency chooses to administer its own program, it would not be required to pool its funds with the other agencies or use the model they have chosen for pooled funds. In either case, because the law requires that your funds be used for your civilian employees, the tracking system must include information about the number and income level of your employees who were able to make use of child care services as a result of this law.

§ 792.229 For how long will the tuition assistance be in effect for a Federal employee?

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2000.

§ 792.230 Can these funds be used for children of Federal employees who are already enrolled in child care?

Yes, the funds can be used for children currently enrolled in child care as long as their families meet the tuition assistance eligibility requirements established by your agency.

§ 792.231 Can we place special restrictions or requirements on the use of these funds, how else can we use these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?

(a) Yes, depending on your staffing needs and your employees' situations, including the local availability of child care, you may choose to place restrictions on the use of your funds in one of the following ways:

(1) Fund Federal employees using family child care homes;

(2) Fund Federal employees using your on-site child care center;

(3) Fund Federal families using community, non-Federal child care centers; or

(4) Restrict the use of such funds to one or more locations.

(b) It is up to you to determine whether there will be any restrictions on the use of your appropriated funds for child care tuition costs.

§ 792.232 May we use the funds to improve the physical space of the family child care homes or child care centers?

No, the legislation specifically addresses making the child care more affordable for lower income Federal employees.

§ 792.233 For how long is the law effective?

The law is effective for one year, ending September 30, 2000.

§ 792.234 Who will oversee the disbursement and use of funds?

You will be responsible for tracking the utilization of these funds. OPM's guidance contains details about the oversight of this program and the mandatory reporting requirements.

[FR Doc. 99–33150 Filed 12–20–99; 4:37 pm]
BILLING CODE 6325–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule; request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) proposes to amend its rules of practice and procedure with respect to attorney fee proceedings to provide reimbursement to a prevailing appellant's attorney at his customary billing rate if that rate is consistent with the prevailing community rate where the attorney ordinarily practices. The intent of the proposed amendment is to provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

DATES: Submit comments by February 7, 2000.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board requests comments on a proposal to amend its rule at 5 CFR 1201.203, which governs attorney fee proceedings, to provide that

reimbursement of a prevailing appellant's attorney fees will be at the attorney's customary billing rate if that rate is consistent with the prevailing community rate for similar services where the attorney ordinarily practices. The Board also invites suggestions as to alternatives that might carry out the Board's intent of establishing a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

The current regulation at 5 CFR 1201.203(a)(3) requires submission of evidence of "the prevailing community rate for similar services that will establish a market value for the attorney's services." The regulation does not define the "community" to be used in determining the prevailing community rate. Under Board precedent, the prevailing community rate is based on the geographic location where the hearing was held. *Manley* v. *Department of the Air Force*, 67 M.S.P.R. 467, 472–473 (1995).

Applying the general rule that the hearing location determines the reimbursement rate for the attorney can result in inequitable reimbursement. An attorney may be reimbursed at a lower rate than that which prevails at the location of his practice if the prevailing rate for similar services in the community where the hearing is (or would have been) held is lower than that at the location of his practice. It is also possible that an attorney could be reimbursed at a higher rate than that which prevails at the location of his practice if the prevailing rate for similar services at the hearing location is higher than that at the location of his practice. But see *Brown* v. *Department of Health and Human Services*, 50 M.S.P.R. 523 (1991).

The Board's current rule is akin to the Federal courts' "forum rule." In Federal court litigation, the place where the district court sits and where the appeal is filed is one location, and, in that context, that forum makes sense as the relevant community for determining rates. That model, however, no longer fits MSPB cases. In addition to an in-person hearing before an administrative judge, MSPB proceedings currently may be conducted by telephone, mail, facsimile, or video conference. In some cases, no hearing is held. In such situations, the parties, their representatives, and the administrative judge may all be in different geographic locations, and the attorney's work may well be done primarily in a location other than that in which an in-person hearing would have been held.

To reflect the realities of practice before the Board and provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees, the Board is considering changing its regulation at 5 CFR 1201.203(a)(3) to reimburse a prevailing appellant's attorney at his customary billing rate, with evidence that the rate is consistent with the prevailing rate for similar services in the community in which the attorney ordinarily practices. The proposed rule is similar to the model rule recommended by the Administrative Conference of the United States in implementing the Equal Access to Justice Act (EAJA), 46 FR 32900, 32904–32906 (October 2, 1981) ("prevailing market rate" for determining allowable attorney fees).

The Board is publishing this rule as a proposed rule pursuant to 5 U.S.C. 1204(h). The Board has made a determination under the Regulatory Flexibility Act, Pub. L. 96–354, 95 Stat. 1164, 5 U.S.C. 601–612, that this proposed regulatory action would not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 1201.

Administrative practice and procedure, Civil rights, Government employees, Accordingly, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 would continue to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Amend § 1201.203 by revising paragraph (a)(3) to read as follows:

§ 1201.203 Proceedings for attorney fees.

(a) * * *

(3) A statement of the attorney's customary billing rate for similar work, with evidence that that rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices; and

* * * * *

Dated: December 20, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–33357 Filed 12–22–99; 8:45 am]

BILLING CODE 7400–01–U

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 615

RIN 3052–AB91

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Stock Issuances

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration is proposing to amend regulations to allow Farm Credit System (System) service corporations to sell stock to non-System entities; and System institutions to adopt bylaws allowing the issuance of unlimited amounts of certain classes of equities.

The purpose of our proposal is to provide System institutions additional opportunities to fulfill their borrowers' needs through service corporations and more efficient issuance of equities related to earnings distributions and transfers of capital. We are also taking this opportunity to make a technical change to one of our regulations pertaining to disclosure requirements.

DATES: Please send your comments to us by January 24, 2000.

ADDRESSES: You may send comments by electronic mail to "reg-com@fca.gov" through the Pending Regulations section of our website at "www.fca.gov." You may also mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Joy Strickland, Senior Counsel, or Howard Rubin, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed rule are to:

- Increase the flexibility and usefulness of service corporations;
- Provide adequate disclosures to investors in service corporations organized to exercise the authorities

granted by title VIII of the Farm Credit Act of 1971, as amended (Act); and

• Provide flexibility for the efficient distribution of a System institution's earnings and timely transfers of capital to a System association.

II. Background

A. Incorporation of Service Corporations

On August 18, 1998, we published a notice in the **Federal Register** that invited System institutions to identify existing regulations and policies that impose unnecessary burdens on the FCS. (*See* 63 FR 44176, Aug. 18, 1998.)[1] We received comments from an agricultural credit bank (ACB) and a Farm Credit Bank (FCB) on § 611.1135, which allows only System banks and associations to own stock in service corporations. CoBank, ACB, commented that we should allow more flexibility in creating and operating service corporations to allow non-System institutions to own part of the service corporation. CoBank, ACB, asserted that this flexibility would foster joint endeavors and alliances and create more products and services for System borrowers. The FCB of Texas commented that the Act does not limit service corporation stock ownership to only banks or associations. The FCB further commented that limiting stock ownership may lessen the usefulness of these corporations to System institutions.

B. Capitalization Bylaws

Section 615.5220(a)(3) of our regulations requires that System institutions' bylaws specify the number of shares that will be issued for each class of equities.[2] As System institutions merge, change their charters, or modify their bylaws, we note they experience difficulty in quantifying in their bylaws the amounts of certain equities that may be issued. Those equities include non-voting equities that may be issued in the event the institution requires financial assistance and equities issued to distribute earnings. Several institutions have indicated that the requirements of § 615.5220(a)(3) often result in burden on System institutions' boards because they must estimate the number of these equities necessary in the future. They point out that since these types of equities do not dilute a System institution's shareholder equity, the bylaws should not be required to specify the number authorized.

C. Technical Change

Currently § 615.5250(c)(2) regarding disclosure statements for issuance of stock contains a typographical reference error. The correct reference is to paragraph § 615.5250(c)(1) rather than § 615.5250(d)(1).

III. Analysis of Proposed Changes by Section

A. Section 611.1135

We are proposing to amend § 611.1135 to allow service corporations formed by System banks or associations to issue equity to persons or entities who are not System institutions. We propose that non-voting stock may be issued in unlimited amounts as long as the issuance is consistent with the service corporation's bylaws. We are proposing a limit, however, on the amount of voting stock that can be issued to non-System persons.

We believe that as federally chartered instrumentalities, System institutions should control their service corporations because they are also federally chartered instrumentalities. Therefore, we are proposing that System institutions hold at least 80 percent of the voting stock of their service corporations at all times. We considered various other percentages in deciding what voting stock control percentage to propose. However, we arrived at this proposed percentage for the following reasons:

• An 80 percent voting stock requirement, rather than a simple majority, provides more assurance of System control even when not all System stockholders vote in the same manner.

• It is consistent with voting stock control requirements in § 611.1137, which pertain to service corporations that act as agricultural mortgage marketing facilities.

• Control of a service corporation or subsidiary is also consistent with other banking laws governing non-System service corporations and operating subsidiaries.[3]

We seek your comments on the voting stock control requirement and the appropriate amount of System control that also provides adequate flexibility and usefulness of service corporations.

Congress originally provided authority for formation of corporate subsidiaries in 1980. Congress wanted System institutions to be able to develop the most efficient and effective means for delivery of services to borrowers and other System entities.[4] We have noted that in recent years there has been an increase in System institutions forming alliances to offer a variety of services to their borrowers. This proposed rule will allow System institutions, for example, to purchase an existing service entity and charter it as a service corporation under the Act as a means of offering a new service. This rule would permit the existing service provider to retain an ownership interest.

We are further proposing that service corporations must provide adequate disclosure when issuing stock to persons other than System institutions. The proposed regulations would apply the requirements of § 615.5250(c) and (d) to such stock issuances.

B. Section 611.1137

We are proposing to amend § 611.1137, which allows service corporations to be organized to act as agricultural mortgage marketing facilities by selling loans in the secondary market. We are proposing that these service corporations that issue stock to non-System persons provide adequate disclosures pursuant to the disclosure requirements in § 615.5250(c) and (d).

Section 611.1137 requires that System institutions hold at least 80 percent of the voting stock of their title VIII service corporations at all times. We seek your comments on the voting stock control requirement and the appropriate System control amount that also provides adequate flexibility and usefulness of title VIII service corporations.

While amending §§ 611.1135 and 611.1137, we are taking the opportunity to write them in plain language using a question and answer format. Additionally, we are writing § 611.1136 in plain language. That section pertains to our regulation and examination of

---

[1] On November 18, 1998, we extended the comment period to January 19, 1999. *See* 63 FR 64013 (Nov. 18, 1998).

[2] There are two current exceptions to this requirement: (1) Stock that is required to be purchased when obtaining a loan; and (2) non-voting stock that is converted from voting stock after the repayment of a loan.

[3] Under the Bank Services Company Act, all of the stock of a bank service company must be owned by one or more insured banks. 12 U.S.C. 1861(b). Federal savings associations may also invest in service corporations only if 100 percent of the corporation's stock is held by other savings associations having offices in the same state. 12 U.S.C. 1464(b)(4)(B). A national bank may establish or acquire an operating subsidiary as long as the parent bank owns more than 50 percent of the voting stock or the parent bank controls the subsidiary and no other party owns more than 50 percent of the voting stock. 12 CFR 5.34. A Federal savings association can have an operating subsidiary as long as the association owns more than 50 percent of the voting shares and no other person exercises effective operating control. 12 CFR 559.2. In addition, pursuant to 12 U.S.C. 1841, which defines terms in connection with bank holding companies, a company has control over a bank or other entity if the company has power to vote 25 percent or more of any class of voting stock.

[4] *See* H.R. Rep. No. 1267, 96th Cong., 2nd Sess., 23 (1980).

incorporated service corporations and unincorporated service organizations.

C. Section 615.5220

We are proposing to amend § 615.5220(a)(3) to allow System institutions to adopt bylaws that provide for issuance of certain equities in unlimited amounts. Current law requires that bylaws, approved by voting shareholders, set forth the number of each class of equities that can be issued, with two exceptions. Those equities that can be issued in unlimited amounts are:

- Equities required to be purchased as a condition of obtaining a loan; and
- Non-voting stock that results when voting stock is converted after the repayment of a loan.

We are proposing to also allow bylaws to provide for the issuance of unlimited amounts of:

- Non-voting stock that an association issues to its funding bank in exchange for the bank transferring capital pursuant to § 615.5171; and
- Equities that institutions provide to borrowers for the sole purpose of distributing that institution's earnings.

We are proposing this change to assure timely transfers of capital to an association as well as the flexibility for the efficient distribution of an institution's earnings. This proposal will not dilute a shareholder's voting rights in an institution or affect a shareholder's preference in the event of an institution liquidation. Any issuance of preferred stock would still require that all shareholders affected by the preference vote on the issuance as described in § 615.5230(b)(1). We note that this proposal does not prevent System institutions' boards and shareholders from stipulating in their institutions' bylaws the amount of capital that may be transferred and earnings distribution equities authorized to be issued.

List of Subjects in 12 CFR Parts 611 and 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, we propose to amend parts 611 and 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Revise subpart I to read as follows:

Subpart I—Service Organizations

Sec:

611.1135 Incorporation of service corporations.
611.1136 Regulation and examination of service organizations.
611.1137 Title VIII service corporations.

Subpart I—Service Organizations

§ 611.1135 Incorporation of service corporations.

(a) *What is the process for chartering a service corporation?* A Farm Credit bank or association (you or your) may organize a corporation with other Farm Credit banks or associations to perform, for you or on your behalf, any function or service that you are authorized to perform under the Act and Farm Credit Administration (we, us, or our) regulations, with two exceptions. Those exceptions are that your corporation may not extend credit or sell insurance services. To organize a service corporation, you must submit an application to us following the applicable requirements of paragraph (c) of this section. If what you propose in your application meets the requirements of the Act, our regulations, and any other conditions we may impose, we may issue a charter for your service corporation making it a federally chartered instrumentality of the United States. Your service corporation will be subject to examination, supervision, and regulation by us.

(b) *Who may own equities in your service corporation?* All Farm Credit banks and associations are eligible to become stockholders in your service corporation. Your service corporation may also issue non-voting and voting stock to persons that are not Farm Credit institutions, provided that at least 80 percent of the voting stock is at all times held by Farm Credit institutions. For the purposes of this subpart, we define persons as individuals or legal entities organized under the laws of the United States or any State or territory thereof.

(c) *What must be included in your application to form a service corporation?* Your application for a corporate charter must include:

(1) The certified resolution of the board of each organizing bank or association authorizing the incorporation;

(2) A request signed by the president(s) of the organizing bank(s) or association(s) to us to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity; and

(3) The proposed articles of incorporation addressing, at a minimum, the following:

(i) The name of your corporation;

(ii) The city and State where the principal offices of your corporation are to be located;

(iii) The general purposes for the formation of your corporation;

(iv) The general powers of your corporation;

(v) The procedures for a Farm Credit bank or association or persons that are not Farm Credit institutions to become a stockholder;

(vi) The procedures to adopt and amend your corporation's bylaws;

(vii) The title, par value, voting and other rights, and authorized amount of each class of stock that your corporation will issue and the procedures to retire each class;

(viii) The notice and quorum requirement for a meeting of shareholders, and the vote required for shareholder action on various matters;

(ix) The procedures and shareholder voting requirements for the merger, voluntary liquidation, or dissolution of your corporation or the distribution of corporate assets;

(x) The standards and procedures for the application and distribution of your corporation's earnings; and

(xi) The length of time your corporation will exist.

(4) The proposed bylaws, which must include the provisions required by § 615.5220(b) of this chapter;

(5) A statement of the proposed amounts and sources of capitalization and operating funds;

(6) Any agreements between the organizing banks and associations relating to the organization or the operation of the corporation; and

(7) Any other supporting documentation that we may request.

(d) *What will we do with your application?* If we approve your completed application, we will issue a charter for your service corporation as a corporate body and a federally chartered instrumentality. We may condition the issuance of a charter, including imposing minimum capital requirements, as we deem appropriate. For good cause, we may deny your application.

(e) *Once your service corporation is formed, how are its articles of incorporation amended?* Your service corporation's articles of incorporation may be amended in either of two ways:

(1) The board of directors of the corporation may request that we amend

the articles of incorporation by sending us a certified resolution of the board of directors of the service corporation and stating:

(i) The section(s) to be amended;

(ii) The reason(s) for the amendment;

(iii) The language of the articles of incorporation provision, as amended; and

(iv) That the requisite shareholder approval has been obtained. The request will be subject to our approval as stated in paragraphs (a) and (c) of this section.

(2) We may at any time make any changes in the articles of incorporation of your service corporation that are necessary and appropriate for the accomplishment of the purposes of the Act.

(f) *When your service corporation issues equities, what are the disclosure requirements?* Your service corporation must provide the disclosures described in § 615.5250(c) and (d) of this chapter.

§ 611.1136 Regulation and examination of service organizations.

(a) *What regulations apply to a service organization?* Because a service organization is formed by banks and associations, it is subject to applicable Farm Credit Administration (we, our) regulations.

(b) *Who examines a service organization?* We examine service organizations.

(c) *What types of service organizations are subject to our regulations and examination?* Incorporated service corporations and unincorporated service organizations formed by banks and associations are subject to our regulations and examination.

§ 611.1137 Title VIII service corporations.

(a) *What is a title VIII service corporation?* A title VIII service corporation is a service corporation organized for the purpose of exercising the authorities granted under title VIII of the Act to act as an agricultural mortgage marketing facility.

(b) *How do I form a title VIII service corporation?* A title VIII service corporation is formed and regulated in the same manner as a service corporation formed under § 611.1135, with one exception. The Federal Agricultural Mortgage Corporation or its affiliates may not form or own stock in a title VIII service corporation.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

4. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart I—Issuances of Equities

5. Amend § 615.5220 by revising paragraph (a)(3) to read as follows:

§ 615.5220 Capitalization bylaws.

* * * * *

(a) * * *

(3) The number of shares and par value of equities authorized to be issued for each class of equities. However, the bylaws need not state a limit for these equities:

(i) Equities that are required to be purchased as a condition of obtaining a loan.

(ii) Non-voting stock resulting from the conversion of voting stock due to repayment of a loan.

(iii) Non-voting equities that are issued to an association's funding bank in conjunction with any agreement for a transfer of capital between the association and the bank.

(iv) Equities issued solely for the purpose of distributing an institution's earnings.

* * * * *

§ 615.5250 [Amended]

6. Amend § 615.5250(c)(2) by removing the reference to "(d)(1)" and adding in its place, the reference "(c)(1)".

Dated: December 16, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–33104 Filed 12–22–99; 8:45 am]

BILLING CODE 6705–01–P

POSTAL SERVICE

39 CFR Part 111

Loading Requirements for PVDS Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is seeking comments on a proposed revision to the Domestic Mail Manual to require that if Periodicals mail is on the same vehicle as Standard Mail prepared for Plant Verified Drop Shipment (PVDS), then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

DATES: Comments must be received on or before January 24, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC 20260–1540 between 9 a.m. and 4 p.m., Monday through Friday. Photocopies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, (202) 268–6351 or Anne Emmerth, (202) 268–2363.

SUPPLEMENTARY INFORMATION: The Postal Service has been working closely with the National Mailers Technical Advisory Committee (MTAC) Periodicals Service Improvement Team to resolve service issues related to the processing and delivery of Periodicals mail. One item discussed in these meetings was the proper positioning of Periodicals mail in vehicles when it is part of a mixed load (*i.e.*, loaded in the same vehicle as Standard Mail) for destination entry. For service reasons, the Postal Service generally handles Periodicals mail before Standard Mail. Some members of the National Periodicals Service Improvement Team were in favor of adding a requirement mandating that, for vehicles containing both Standard Mail and Periodicals mail prepared for destination entry, the Periodicals mail be loaded toward the tail of the vehicle to allow the Periodicals mail to be offloaded first. This could improve service and also allow the Postal Service to more readily track the arrival and unloading of the Periodicals mail. This issue was also recently discussed at a Periodicals Advisory Group (PAG) meeting, which consisted of both publishers and printers. The PAG also voiced a majority opinion in support of a policy that would require such loading of vehicles containing both Periodicals and Standard Mail.

In view of the support expressed by a number of Periodicals publishers and printers, the Postal Service is hereby soliciting comments on a proposed Domestic Mail Manual revision for PVDS mail to require that if Periodicals mail is on the same vehicle as Standard Mail, then the Periodicals mail must be loaded toward the tail of the vehicle so

that, for each destination entry, Periodicals mail can be offloaded first.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following revisions of the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

2.0 VERIFICATION

* * * * *

2.2 Mail Separation and Presentation

[Revise item 2.2c to read as follows:]

c. For destination entry of PVDS mail, if Periodicals mail is on the same vehicle as Standard Mail (A), then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

* * * * *

E652 Parcel Post

* * * * *

4.0 DEPOSIT

* * * * *

4.2 Mail Separation and Presentation

[Revise item 4.2e to read as follows:]

e. For destination entry of PVDS mail, if Periodicals mail is on the same vehicle as Parcel Post, then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

* * * * *

P750 Plant-Verified Drop Shipment (PVDS)

* * * * *

2.0 PROGRAM PARTICIPATION

* * * * *

[Amend 2.12 to add the following as the next to last sentence:]

2.12 Mailer Transport of PVDS

* * * If Periodicals mail is on the same vehicle as Standard Mail, then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first. * * *

[Amend 2.13 to add the following as the last sentence:]

2.13 Separation of PVDS Mailings

* * * If Periodicals mail is on the same vehicle as Standard Mail, then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–33339 Filed 12–22–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 083–1083b; FRL–6511–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of approving certain portions of the SIP revisions submitted by the state of Missouri and as revisions to the part 70 (operating permits) program. These revisions established emission and service fees for 1997 and 1998 and clarify language regarding reporting requirements, emission calculations, and verification. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by January 24, 2000.

ADDRESSES: Comments may be mailed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–32759 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 503

[FRL–6513–3]

RIN 2040–AC25

Standards for the Use or Disposal of Sewage Sludge

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend management standards for sewage sludge by adding a numeric concentration limit for dioxin and dioxin-like compounds ("dioxins") in sewage sludge that is applied to the land, and monitoring, record keeping and reporting requirements for dioxins in sewage sludge that is land applied. Today's action also presents the results of risk assessments for dioxins in sewage sludge that is applied to the land, placed in surface disposal units, or incinerated. Based on these risk assessments, the Agency is not proposing additional numeric standards or management practice requirements

for dioxins in sewage sludge that is placed in surface disposal units or incinerated.

EPA is proposing a standard for dioxins in sewage sludge that is applied to the land in order to protect public health and the environment from unreasonable risks of exposure to dioxins. The Agency's risk assessment for land application of sewage sludge estimates that sewage sludge with concentrations of dioxins above the proposed limit may present an unreasonable cancer risk to specific highly exposed individuals. The purpose of this standard would be to prohibit land application of sewage sludge containing concentrations of dioxins above the limit, and thereby protect the health of highly exposed individuals as well as the health of the general population.

We are also proposing to exclude from the proposed numeric limit and monitoring requirements treatment works with a flow rate equal to or less than one million gallons per day and certain sludge-only entities that receive sewage sludge for further processing prior to land application. This exclusion is based on the relatively small amount of sewage sludge that is prepared by these facilities and entities and, therefore, the low probability that land application of these materials could significantly increase risk from dioxins to human health or the environment.

Finally, we are proposing technical amendments to the frequency of monitoring requirements. These amendments are intended to clarify but, with one exception, not alter the monitoring schedule in the existing sludge rule. The one exception would require preparers of material derived from sewage sludge to determine the appropriate monitoring schedule based on quantity of material derived rather than quantity of sewage sludge received for processing.

DATES: Comments must be received or postmarked on or before midnight February 22, 2000.

ADDRESSES: Written comments and enclosures should be mailed or hand-delivered to: Part 503 Sewage Sludge Use or Disposal Rule; Docket Number W–99–18, Comment Clerk, Water Docket MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments may also be submitted electronically to *OW-Docket@epamail.epa.gov*. For additional information see Additional Docket Information section below.

FOR FURTHER INFORMATION CONTACT: Arleen Plunkett, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304), 401 M Street, SW, Washington, DC 20460. (202) 260–3418.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities
II Additional Docket Information
III. Legal Background
A. Legal Authority Under Which EPA is Proposing to take Action
B. Prior Regulation of Sewage Sludge Use or Disposal Under the Clean Water Act
IV. Proposed Round Two Sewage Sludge Regulation
A. Selection of Dioxins for Round Two
B. Proposed Requirements for Sewage Sludge That Is Land Applied
1. Overview of Proposed Requirements
2. Definition of Dioxins
3. Analytical Methods
4. Frequency of Monitoring Requirements
5. Small Preparer Exclusion
C. Proposal for Sewage Sludge That Is Placed in a Surface Disposal Unit or Incinerated in a Sewage Sludge Incinerator
D. Estimate of Costs
V. Risk Assessment Methodologies and Results
A. Approach and Assumptions in EPA's Risk Assessments for Exposure to Dioxins Resulting from Sewage Sludge Use or Disposal Practices
B. Description of Land Application Risk Assessment
1. Land Application Exposure Pathways
2. Key Assumptions for the Land Application Risk Assessment
3. Land Application Risk Characterization
C. Description of Surface Disposal Risk Assessment
1. Surface Disposal Exposure Pathways
2. Key Assumptions for the Surface Disposal Risk Assessment
3. Surface Disposal Risk Characterization
D. Description of Incineration Risk Assessment
1. Incineration Exposure Pathways
2. Key Assumptions for the Incineration Risk Assessment
3. Incineration Risk Characterization
VI. Other Options that EPA Considered
A. Numeric Standards for All Use or Disposal Practices
B. Require all Sewage Sludge To Be Landfilled or Surface Impounded
C. No Further Regulation of Sewage Sludge for any Use or Disposal Practice
VII. Request for Public Comments
VIII. Regulatory Assessment Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
C. Paperwork Reduction Act
D. Unfunded Mandate Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act
X. List of References

I. Regulated Entities

Entities potentially regulated by this proposed action are those that prepare sewage sludge and/or use or dispose of the sewage sludge through application to the land. Regulated categories and entities include:

Category	Examples of regulated entities
State/Local/Tribal Government	Publicly owned treatment works and other treatment works that treat domestic sewage, that prepare sewage sludge and/or apply sewage sludge to the land.
Federal Government	Federal Agencies with treatment works that treat domestic sewage, that prepare sewage sludge and/or apply sewage sludge to the land.
Industry	Privately-owned treatment works that treat domestic sewage, and persons who receive sewage sludge and change the quality of the sewage sludge before it is used or disposed.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or company is regulated by this action, you should carefully examine the applicability criteria in §§ 503.1 and 503.10 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Additional Docket Information

The record for this rulemaking has been established under docket number W–99–18 and includes supporting documentation as well as the printed paper versions of electronic materials. When submitting written comments to the Water Docket, (see **ADDRESSES** section above) please reference docket number W–99–18 and submit an original and three copies of your comments and enclosures (including references). For an acknowledgment that we have received your information, please include a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes). Comments may also be submitted electronically to: *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by docket number W–99–18. Comments and data will also be accepted on discs in WP5.1, WP6.1, WP8, or ASCII file format. To ensure that EPA can read, understand, and, therefore, properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commentors should use a separate paragraph for each issue.

The record is available for inspection from 9:00 am to 4:00 pm Eastern Standard or Daylight time, Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, please call 202–260–3027 to schedule an appointment.

For information on the existing rule in 40 CFR Part 503, you may obtain a copy of A Plain English Guide to the EPA Part 503 Biosolids Rule on the Internet at *http://www.epa.gov/owm/bio.htm* or request the document (EPA publication number EPA/832/R–93/003) from: Municipal Technology Branch, Office of Wastewater Management (4204), Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

III. Legal Background

A. Legal Authority Under Which EPA Is Proposing To Take Action

EPA is proposing regulatory amendments to 40 CFR part 503 under section 405(d) and (e) of the Clean Water Act (CWA), 33 U.S.C. 1345(d), (e). In 1987, Congress amended section 405 and, for the first time, set forth a comprehensive program for reducing the potential environmental risks and maximizing the beneficial use of sewage sludge. As amended, section 405(d) of the CWA requires us to establish numeric limits and management practices that protect public health and the environment from the reasonably anticipated adverse effects of toxic pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge from a publicly owned treatment works (POTW) or other treatment works treating domestic sewage through any use or disposal practice for which regulations have been established pursuant to section 405 except in compliance with the section 405 regulations.

Amended section 405(d) also established a timetable for the development of the sewage sludge use or disposal regulations. H. Rep. No. 1004, 99th Cong. 2d. Sess. 158 (1986). Section 405(d) calls for two rounds of sewage sludge regulations. The first round required EPA to establish numeric limits and management practices for toxic pollutants we identified which, based on "available information on their toxicity, persistence, concentration, mobility, or potential for exposure may be present in sewage sludge in concentrations which may adversely affect public health or the environment." CWA section 405(d)(2)(A). The second round concerns toxic pollutants not regulated in the first round "which may adversely affect public health or the environment." CWA Section 405(d)(2)(B).

EPA did not meet the timetable in section 405(d) for promulgating the first round of regulations, and a citizen's suit was filed to require EPA to fulfill this mandate. (*Gearhart* v. *Browner*, Civ. No. 89–6266–HO (D. Ore.)). In accordance with the consent decree entered by the court in this case, EPA promulgated the first round of sewage sludge regulations, 40 CFR Part 503. 58 FR 9248 (Feb. 19, 1993) ("Round One"). The consent decree also established a schedule for identifying additional toxic pollutants in sewage sludge and completing the second round of regulation under section 405(d)(2)(B) ("Round Two"). First, in May 1993, EPA identified 31 pollutants not regulated in Round One that we were considering for regulation. In November 1995, EPA notified the court that it was revising the original list of 31 pollutants and considering two pollutant groups for the second round: polychlorinated dibenzo-p-dioxins/dibenzofurans (PCDD/F) and dioxin-like coplanar polychlorinated biphenyls (PCBs). Under the consent decree as modified by court order signed January 5, 1994, the Administrator is required to sign a notice for publication proposing such regulations no later than December 15, 1999, and to sign a notice taking final action on the proposal no later than December 15, 2001.

B. Prior Regulation of Sewage Sludge Use or Disposal Under the Clean Water Act

As noted above, CWA section 405(d)(2)(A) required the first round of regulation to be based on "available information on [the] toxicity, persistence, concentration, mobility, or potential for exposure" of toxic pollutants in sewage sludge. After extensive consultation, EPA initially selected a list of some 50 pollutants to analyze. We then collected available data on those pollutants and developed further information on their toxicity, persistence, means of transport, and environmental fate. For 40 pollutants, we also developed preliminary information on the relative frequency of concentration by analyzing their concentrations in the sewage sludge of 43 to 45 POTWs in 40 cities, which we presented in the report Fate of Priority Pollutants in Publicly Owned Treatment Works (the "40 Cities Study"). Based on this information and a screening assessment to determine whether any or all of the pollutants may adversely affect human health or the environment, we sorted the pollutants into three groups: (1) those which did not exceed a human health or environmental criterion at the highest concentrations shown in the 40 Cities Study; (2) those for which we lacked sufficient data, and (3) those which warranted further risk analysis for possible regulation under section 405(d)(2)(A) (58 FR 9263–9265).

For the final Round One regulation, we conducted a National Sewage Sludge Survey (NSSS) (Notice of Data Availability, 55 FR 47210 (Nov. 9, 1990)) (USEPA, 1990). We gathered data from sewage sludge samples taken at 180 POTWs, as well as survey data from 475 public treatment facilities with at least secondary wastewater treatment. We designed the NSSS to produce national estimates of (1) concentrations of toxic pollutants in municipal sewage sludge, (2) sewage sludge generation and treatment processes, (3) sewage sludge use or disposal practices and alternative use or disposal practices, and (4) sewage sludge treatment and disposal costs. We analyzed the samples of sewage sludge for a total of 412 pollutants, including every organic, pesticide, dibenzofuran, dioxin and PCB analyte for which EPA had gas

chromatography and mass spectrometry (GC/MS) standards (58 FR 9268–9269).

EPA published the Round One standards (40 CFR part 503) on February 19, 1993. These regulations established requirements for the final use or disposal of sewage sludge under three circumstances:

- When it is applied to the land for a beneficial purpose, including use in home gardens;
- When it is placed in a surface disposal site, including sewage sludge-only landfills; and
- When it is incinerated.

For land application, Part 503 set numeric limits for nine heavy metals in sewage sludge; established operational standards to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction; and established management practices to restrict the application rate and placement of sewage sludge on the land. Regarding surface disposal, part 503 set numeric limits for three metals in sewage sludge, established requirements for the placement and management of a surface disposal site, and established operational standards to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction. For incineration in a sewage sludge incinerator (SSI), part 503 established limits for five pollutants in the sewage sludge fed to a SSI and adopted standards under the Clean Air Act for two additional pollutants. We also established performance standards for SSIs through an operational standard for total hydrocarbon or carbon monoxide emissions. Part 503 also allows disposal of sewage sludge in a municipal solid waste landfill in accordance with 40 CFR part 258. The final rule also requires some monitoring, record keeping and reporting. Standards apply to publicly- and privately-owned treatment works that generate or treat domestic sewage sludge and to anyone who uses or disposes of sewage sludge.

EPA has amended part 503 several times since its initial publication in February 1993. Following promulgation of the Round One rule, several petitions for review were filed challenging various aspects of the rule. In one petition, several mining and chemical concerns challenged the land application molybdenum limits. EPA amended Part 503 to delete the cumulative loading rate and pollutant concentration rate for molybdenum in sewage sludge to be land applied (59 FR 9095, Feb. 25, 1994). Also in that **Federal Register** notice, EPA added continuous monitoring of carbon monoxide as an alternative to continuous monitoring of total hydrocarbons in the sewage sludge incinerator requirements. In another case, *Leather Industries of America* v. *EPA*, 40 F.3d 392 (D.C. Cir. 1994), the court remanded several of the land application requirements. As a result of that decision, EPA deleted all numerical standards for chromium in sewage sludge to be land applied and adjusted the Table 3 limit for selenium. (60 FR 54764, Oct. 25, 1995). EPA is considering further amendments to address the issues remaining from the partial remand as well as other issues. EPA most recently amended part 503 to make a number of technical amendments, provide some regulatory flexibility, and make the sewage sludge incinerator standards self-implementing. (64 FR 42552, Aug. 4, 1999).

For a detailed discussion of the Part 503 Rule, see A Plain English Guide to the EPA Part 503 Biosolids Rule, which is available as stated in the **ADDRESSES** section of this preamble.

IV. Proposed Round Two Sewage Sludge Regulation

A. Selection of Dioxins for Round Two

Chlorinated dioxins are unintentional byproducts of certain manufacturing processes and incomplete combustion of organic waste. Dioxins are not created in the sewage treatment process; rather, treatment works concentrate those dioxins that enter the sewage treatment system from other sources. Dioxins present in the influent to a wastewater treatment works are partially concentrated in sewage sludge and partially discharged in the effluent. The few sewage treatment works that incinerate sewage sludge may generate small amounts of dioxins and coplanar PCBs during the process of combustion. Dioxins are biologically active organic compounds that cause a variety of health impacts on mammalian species, including humans, at very low and chronic doses. They are found in extremely small quantities in air, water and soil; however, they are persistent in the environment and bioaccumulate in the foodchain. (USEPA, 1994)

As described in Section III.B above, when EPA undertook the 40 Cities Study, we identified one group of pollutants, for which we lacked sufficient data. That group included polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans.

In the subsequent National Sewage Sludge Survey (NSSS) (EPA 1990), we obtained additional data, which we used to perform an initial statistical screening of 412 additional toxic pollutants detected in sewage sludge. We then reviewed the scientific literature for toxicity, fate, effect, and transport information for the pollutants identified in the initial screening. We decided what pollutants to consider for possible regulation by comparing the calculated levels associated with adverse effects to the actual level and occurrence data from the NSSS.

The screening yielded a list of 31 pollutants or pollutant groups to be considered for the future regulation. We then conducted a Comprehensive Hazard Identification Study (USEPA, 1996), a screening type analysis that included dose-response evaluation, exposure assessment, and risk characterization. Our goal for the study was to identify pollutants that, based on very conservative or worst case assumptions, might pose human health risks for a hypothetical individual with the greatest possible exposure through any of ten pathways. Based on this evaluation, we considered further assessment and possible regulation for dioxins/dibenzofurans and coplanar PCBs only.

B. Proposed Requirements for Sewage Sludge That Is Land Applied

1. Overview of Proposed Requirements

Today's action proposes to amend 40 CFR 503.8, 503.9, 503.10, 503.13, and 503.16 to prohibit land application of sewage sludge that contains greater than 300 parts per trillion (ppt) toxic equivalents (TEQ) of dioxins. This proposed numeric standard would be expressed as 0.0003 milligrams TEQ per kilogram dry sewage sludge in § 503.13(b)(1) and (b)(3), Tables 1 and 3. See Section V.B. below, for an explanation of the risk assessment and how EPA determined that a limit of 300 ppt TEQ dioxins in sewage sludge that is land applied is protective of public health and the environment.

We are proposing to define "dioxins" to mean 29 specific congeners of polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, and coplanar PCBs. Today's proposed rule also requires monitoring, record keeping, and reporting to ensure that this numeric limit (300 ppt TEQ) is met. The proposal specifies two analytical methods that would be used to analyze sewage sludge to determine the level of dioxins/dibenzofurans and coplanar PCBs in sewage sludge. The Agency is proposing two alternative monitoring schedules based on the level of dioxins measured in sewage sludge. EPA is also proposing to exclude from compliance with the standards for dioxins and the monitoring requirement, treatment works that treat domestic sewage and

that have a flow rate of one million gallons per day or less and certain small entities that derive material from sewage sludge received from sewage treatment works ("sludge-only entities"). These proposed provisions are discussed in detail in the following sections.

2. Definition of Dioxins

The proposal includes a definition of "dioxins" to specify the seven 2,3,7,8,-substituted congeners of polychlorinated dibenzo-p-dioxins (PCDDs), the ten 2,3,7,8-substituted congeners of polychlorinated dibenzofurans (PCDFs), and the twelve coplanar PCB congeners to which the numeric standard applies. The vast majority of information on the toxicity of dioxins relates to the congener 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). Animals exposed to 2,3,7,8–TCDD exhibit a variety of biological responses and adverse effects. These include both carcinogenic and non-carcinogenic effects. These effects are primarily classified as chronic effects and consequently they are generally associated with long term exposure over years and decades. Relatively speaking, these exposures and effects are observable at very low levels in the laboratory and in the environment when compared with other environmental toxicants (USEPA, 1994).

Studies to elucidate the mechanism of toxicity for 2,3,7,8–TCDD in mammalian species have indicated that the overall shape and chlorine substitution of this congener are keys to its biological potency. The fact that all of the lateral positions (the 2,3,7,8 positions) on the multi-ring system are substituted with chlorine and that the overall molecule assumes a flat or planar configuration apparently are essential factors that make this congener biologically active. Other congeners with a similar structure and chlorine substitution pattern are assumed to exhibit similar biological properties. These include the other six 2,3,7,8-chlorinated substituted dibenzo-p-dioxin congeners, the ten 2,3,7,8-chlorinated substituted dibenzofuran congeners and the 12 coplanar PCB congeners. Coplanar PCB congeners are those congeners with no more than one ortho position and both para positions substituted with chlorine in the biphenyl ring system and the molecule assumes a relatively planar (i.e. flat) configuration.

The 300 ppt TEQ numeric limit would apply to these 29 congeners in ppt TEQ or nanograms TEQ per kilogram of dry sewage sludge. The TEQ concentration is calculated by multiplying the concentration of each congener in the sewage sludge by its corresponding "toxicity equivalent factor," or TEF, and then summing the resulting products from this calculation for all 29 congeners. The TEF schemes to be used are the International scheme described in USEPA, 1989, for the 17 2,3,7,8-substituted polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans and the World Health Organization's TEF scheme (Van den Berg, 1998) for the 12 coplanar PCBs. We invite comment on the this proposed definition of dioxins.

3. Analytical Methods

EPA is proposing two methods for analyzing dioxins in sewage sludge to be land applied. One method, EPA Method No. 1613, Revision B (1613B) would be required for monitoring for the seven dioxin and ten dibenzofuran congeners. EPA Method No. 1668 would be required for the 12 coplanar PCB congeners.

EPA proposes to use Method 1613, Revision B, "Tetra-Through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS." Method 1613B is an approved test method (40 CFR part 136) for use in EPA's wastewater program for determining dioxins and furans. This test method is applicable to both aqueous and solid samples, but was fully validated through an interlaboratory study prior to its promulgation only for use in wastewater. Method 1613B has not been approved in part 136 for sewage sludge (62 FR 48394, Sept. 15, 1997).

EPA proposes to use Method 1668, "Chlorinated Biphenyl Congeners in Water, Soil, Sediment, and Tissue by HRGC/HRMS." Method 1668 was developed by EPA to analyze coplaner PCBs in a variety of matrices, including sewage sludge. Method 1668 was validated in a single laboratory and tested in a second laboratory. These data were published in the draft method "Toxic Poly-Chlorinated Biphenyls by Isotope Dilution High Resolution Gas Chromatography/High Resolution Mass Spectrometry," EPA–821–R–97–001, March 1997. EPA revised the original version of this method to address additional PCB congeners. Method 1668A is the state-of-the-art test method for the measurement of PCB congeners, including coplanar PCBs; however it is still in draft. Method 1668A was validated in a single laboratory and peer reviewed by 21 laboratories, including EPA's laboratory in Bay St. Louis, Mississippi. Although Method 1668A has not gone through a full interlaboratory validation study yet, EPA has used this test method in monitoring surveys. Both Method 1668 and 1668A are in the docket for this rulemaking. If EPA finalizes Method 1668A before EPA takes final action on this proposed rulemaking, then the final rule would require use of Method 1668A. However, because Method 1668A is not final at this time, EPA is proposing the original version of Method 1668 to be used to analyze coplanar PCBs in sewage sludge.

EPA requests public comment on the use of these two test methods for compliance with monitoring requirements for sewage sludge. EPA also specifically requests comment on the use of Method 1668A for coplanar PCBs.

4. Frequency of Monitoring Requirements

As stated above, EPA is proposing two alternative monitoring schedules based on the level of dioxins in sewage sludge to be land applied. According to existing information on the amounts of dioxins present in sewage sludge, levels can vary considerably from one source to another. However, we believe that the level of dioxins in sewage sludge, both nationally and from specific sources, is relatively constant over time and may possibly be decreasing (U.S. Conference of Mayors, 1999). This observation is derived from comparisons of dioxin concentrations found in the 1988 NSSS (USEPA, 1990) and the more recent Association of Metropolitan Sewerage Agencies (AMSA) survey (Green, et. al., 1995), together with anecdotal information from several locations.

We therefore believe it is appropriate to establish two monitoring schedules for dioxins in § 503.16, depending upon the level of dioxins found in the initial two years of testing of the sewage sludge. Treatment works and other sewage sludge preparers (defined in § 503.9(r)) that find the level of dioxin in their sewage sludge to be between 300 ppt TEQ and 30 ppt TEQ would be required to monitor annually. Treatment works and sludge preparers that measure dioxin levels of 30 ppt TEQ or less for two consecutive years would be required to monitor every five years thereafter.

We selected 30 ppt TEQ as the level to allow less frequent monitoring since it is a full order of magnitude less than the proposed numeric standard of 300 ppt TEQ (*i.e.*, one-tenth). Given the observed trends described above, we believe it is unlikely that sewage sludge with 30 ppt TEQ or less will exceed the 300 ppt TEQ limit. This observation is consistent with: (1) our assumption that dioxins primarily enter sewage treatment facilities from diffuse background sources which inherently are less subject to short-term spikes in

pollutant levels than point sources, and (2) a significant measured reduction in air emissions of dioxins, which are the principal contributors to these diffuse sources, according the Agency's United States Dioxin Inventory (USEPA, 1998). Furthermore, any health risks associated with dioxin exposure from land application of sewage sludge would not be significantly affected over a short period of time such as five years, but rather would require long-term exposure at these levels to potentially present unreasonable health risks. For these reasons we believe a five-year monitoring frequency is appropriate for sewage sludge which was last measured at or below 30 ppt TEQ. We are specifically requesting comments and additional data on the validity of our assumptions concerning rates and degree of changes in levels of dioxins in sewage sludge and the reasonableness of the proposed monitoring schedule.

A treatment works or other person who prepares sewage sludge for land application would be able to switch to the reduced monitoring schedule if tests show that its sewage sludge contained 30 ppt TEQ or less in two consecutive annual tests. We believe that two consecutive annual tests are reasonable in order to ensure that the level of dioxins in the sewage sludge is consistently at or below the 30 ppt TEQ level. This is consistent with the existing provision in § 503.16(a)(2), which allows the permitting authority to reduce the frequency of monitoring after sewage sludge has been monitored for two years. We are proposing these frequency of monitoring requirements for dioxins to be in a new paragraph (a)(3) in § 503.16. We also specifically request comments on whether two consecutive years of monitoring results under 30 ppt TEQ should be required before allowing a reduced monitoring schedule.

We are also proposing to amend § 503.16(a) to clarify, but not alter, existing frequency of monitoring requirements. We propose to separate the existing requirements contained in § 503.16(a)(1) into two paragraphs, (a)(1) and (a)(2). Paragraph (a)(1) would contain the requirements for monitoring concentrations of pollutants except dioxins, and paragraph (a)(2) would contain the requirements for monitoring compliance with pathogen reduction and vector attraction reduction requirements. Existing § 503.16(a)(2) would be renumbered as § 503.16(a)(4), but would be otherwise unchanged. These amendments are solely for the purpose of clarity and for expressing existing regulatory requirements in plain language, and they are not intended to reopen these requirements for comment. We invite comment on whether these proposed amendments unintentionally change the substance of the frequency of monitoring provisions currently in § 503.16(a)(1).

Finally, we are proposing to amend footnote 1 to Table 1 in § 503.16. Currently this footnote states that a person who prepares material derived from sewage sludge received from another preparer must determine the frequency of monitoring based on the quantity of sewage sludge received. Sewage sludge is often mixed with other materials to produce the material derived from sewage sludge that is ultimately applied to the land. We believe that the frequency of monitoring should be based on the quantity of product that is actually applied to the land. We therefore propose to amend the footnote to Table 1 to require the monitoring schedule to be based on the amount of sewage sludge or material derived from sewage sludge to be land applied.

5. Small Preparer Exclusion

We are proposing in today's action to exclude from the proposed requirements relating to dioxins, sewage treatment works with a wastewater flow of one million gallons per day (MGD) or less and sludge-only entities which prepare 290 dry metric tons or less of sewage sludge annually for land application. We estimate that a one MGD treatment works produces approximately 290 dry metric tons of sewage sludge annually. Sewage sludge from these small preparers would be excluded from the limitation on dioxins in sewage sludge; thus these small preparers would not be required to monitor for dioxins. Such preparers could continue to land apply their sewage sludge with no further restriction due to the sludge's dioxin content. Septage pumpers and haulers would also not be required to comply with the limitation on dioxins and the associated monitoring requirements. (See 58 FR 9362 for a discussion of requirements applicable to septage haulers and under part 503.)

We believe that this exclusion is appropriate for several reasons. First, the vast majority of land-applied sewage sludge is produced by sewage treatment works with flow rates higher than one MGD. According to the 1988 NSSS, treatment works with flow rates of one MGD or less produce only 135,911 dry metric tons of sewage sludge annually for land application, or less than eight percent of the total sewage sludge that is land applied on an annual basis. Of the amount of land applied sewage sludge produced by those small treatment works, we estimate approximately 6800 dry metric tons (5%) contained in excess of the 254 ppt TEQ PCDD and PCDF. This estimate is based on PCDD and PCDF only since the NSSS did not measure coplanar PCBs. Our data indicates that sewage sludge containing 300 ppt TEQ dioxins typically would have 254 ppt TEQ PCDD and PCDF (USEPA, 1990; Green, *et al.*, 1995). Second, the probability that this small amount of sewage sludge (*i.e.*, 42 dry metric tons per facility annually) could unreasonably increase health risks for any individual is extremely small. As further explained in Section V.B. of this preamble, the risk assessment assumes a much greater amount of sewage sludge is applied to the same piece of land over a long period of time. At this much higher application rate, the risk assessment estimates unacceptable increase in cancer risk only to "high-end" receptors. We have, therefore, concluded that the amounts of land-applied sewage sludge with dioxins in excess of 300 ppt TEQ produced by a treatment works with a flow rate of one MGD or less or by small sludge-only entities does not pose an unreasonable risk. We request comment on our proposal to exclude small preparers from the limit for dioxins in sewage sludge to be land applied. We specifically invite comment on our proposal to exclude small entities which receive and further process sewage sludge prior to land application. We also specifically invite comment on how we propose to define such small entities.

We are, however, reserving the option of requiring initial monitoring and applying the limit for dioxins for small preparers (treatment works and sludge-only entities) which land apply sewage sludge. We are requesting information on the dioxin content and land application practices (e.g., annual application rates, numbers and sizes of sites and the number of applications per site) for sewage sludge from treatment works with a flow rate of one MGD or less. We specifically invite public comment on whether the Agency should promulgate such a requirement.

We are also proposing to exempt septage pumpers and haulers from the proposed limit for dioxins. Septage pumpers and haulers are generally small businesses. A typical septage pumper and hauler removes between 500 and 1,000 gallons of septage from a residential septic or holding tank once every three to five years. The typical maximum capacity of a septic tanker that is hauling septage for land application is between 2,000 and 4,000

gallons. The solids content of septage is less than five percent. Using the same reasoning as that for sewage treatment works with flows of one MGD or less, the maximum amount of septage solids that could be land applied on any given area of land on an annual basis would be small. Even if this septage contained in excess of 300 ppt TEQ dioxins on a dry matter basis, the quantity of dioxins being land applied would be insignificant.

C. Proposal for Sewage Sludge That Is Placed in a Surface Disposal Unit or Incinerated in a Sewage Sludge Incinerator

EPA is proposing to take no action to regulate current surface disposal or incineration practices for dioxins. As explained below in Sections V.C. and D., we do not predict an unreasonable risk of adverse effects to human health from cancer as a consequence of either placement in a surface disposal unit or incineration in a sewage sludge incinerator. Therefore, no additional numeric limit or operational standard or monitoring is being proposed for part 503, subparts C and E. We invite comment on proposing no action to regulate dioxins in sewage sludge that is placed in a surface disposal unit or incinerated in a sewage sludge incinerator.

D. Estimate of Costs

The increased costs which would be imposed by this proposed regulation are the costs for initially monitoring for dioxins by all land applying treatment works greater than one MGD, annual monitoring at those facilities with dioxin levels between 30 ppt TEQ and 300 ppt TEQ, and switching to co-disposal with municipal solid waste for current land appliers whose sewage sludge contains over 300 ppt TEQ of dioxins. We assume that the cost of measuring dioxins in sewage sludge is $2000 per sample and the cost to switch to co-disposal with municipal solid waste is $189 per dry metric ton in 1998 dollars. We estimate that the annualized cost of this regulation nationwide would be approximately $18 million. Of this amount, 13 percent is for monitoring, and the balance is for switching use or disposal practices.

The permitting authority, whether Federal or State, should not accrue any significant permitting burden as a result of these proposed part 503 amendments. The part 503 standards were designed to be self implementing and independently enforceable in the absence of a Federal permit. These proposed amendments merely add an additional numerical standard to the original part 503 rule which was promulgated in 1993.

V. Risk Assessment Methodologies and Results

A. Approach and Assumptions in EPA's Risk Assessments for Exposure to Dioxins Resulting from Sewage Sludge Use or Disposal Practices

The four steps of the risk assessment process include hazard identification, dose-response assessment, exposure assessment, and risk characterization. We conducted risk assessments for land application of sewage sludge, surface disposal of sewage sludge, and incineration of sewage sludge in a sewage sludge incinerator. All three risk assessments used the same hazard identification and dose-response data and assumptions. However, the risk assessments examined different exposure pathways and have different risk characterizations. The following presents an overview of the approach used for these risk analyses and a general description of the assumptions common to all three risk assessments.

Today's proposal is based on assessments of the risks to human health posed by dioxins that might be in sewage sludge or sewage sludge incinerator emissions using a deterministic risk analysis. A deterministic risk analysis produces a point estimate of risk or hazard for each person based on using a single value for each parameter in the analysis. A parameter is any one of a number of inputs or variables, such as soil to plant dioxin uptake coefficients, required for the fate and transport and exposure models and equations that EPA uses to assess risk. In some cases EPA selects a single set of multiple parameters for the purpose of conducting our analyses. We do this to prevent inadvertently combining parameters in our analyses in ways that are unrealistic. For example, EPA treats environmental setting (location) parameters such as climate, depth to groundwater, and aquifer type as a single set of parameters. We believe that, for example, allowing the climate from one location to be paired with the depth to groundwater for another location could result in a scenario that would not occur in nature.

EPA conducts both "central tendency" and "high end" deterministic risk assessments to attempt to quantify the potential cancer risk for the "average" person in the population (the central tendency risk) and the risk or hazard for individuals in small, but definable "high end" segments of the population (the high end risk). For central tendency deterministic risk analyses, we set all parameters at their central tendency values. For the sewage sludge risk assessments, the central tendency values generally are either mean (average) or 50th percentile (median) values.

We use high end deterministic risk analysis to estimate potential risks and hazards for those individuals exposed at the upper range of the distribution of exposures. EPA's Guidance For Risk Characterization (USEPA, 1995) advises that "conceptually, high end exposure means exposure above about the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest exposure," and recommends that "the assessor should approach estimating high end by identifying the most sensitive variables and using high end values for a subset of these variables, leaving others at their central values." For the sewage sludge high end deterministic risk analyses, EPA used exposure pathways that we consider to represent how people may encounter the most potential exposure to dioxin; chose the 95th percentile concentration (USEPA, 1999e) of dioxins in sewage sludge and the highest dioxin emitting incinerators; and used one other high end exposure factor from the Agency's Exposure Factors Handbook (USEPA, 1997) to perform a conservative public health analysis.

The hazard identified for these risk assessments is cancer as a human health endpoint from the compounds assessed. We took into account the impacts on human cancer risk nationwide. We examined the cancer toxicity of 2,3,7,8-TCDD and estimated several dose-response relationships for this congener (USEPA, 1994). The toxicity of the other congeners included in the current risk assessment are expressed in relation to the cancer toxicity of 2,3,7,8-TCDD using guidance we published (USEPA, 1989) and from information published in the scientific literature (Van den Berg, *et. al.*, 1998).

Regarding exposure pathways, our evaluation of land application considered, among other things, risks of human exposure to dioxins through (a) inhaling or ingesting soil fertilized with sewage sludge, (b) eating crops grown on this soil or animal products from livestock grazed on this soil, and (c) ingesting ground or surface water or edible aquatic organisms contaminated as a result of applying sewage sludge to land. For surface disposal of sewage sludge, we evaluated the human health risks associated with drinking ground water contaminated by dioxins or breathing air affected by volatilized dioxins. For incineration in a sewage

sludge incinerator, we evaluated human exposure to dioxins directly through inhalation of gases and particles in the emissions from sewage sludge incinerators and indirectly by consumption of crops and animal products produced on agricultural lands and home gardens affected by the deposition of particles from sewage sludge incinerator emissions. We were unable to assess the ecological effects for any of the practices due to the scarcity of relevant information and evaluation methods.

As indicated above, we attempted to assess the risk both for average exposed individuals (AEI) in the population and high end exposed individuals (HEI) in the population. In these analyses for the hypothetical AEI, average values were used for all parameters to capture average risk. For the hypothetical HEI, no more than two high end values for exposure variables, such as ingestion rates and inhalation rates, were used in the assessment to estimate high end risk. These values were obtained in large part from EPA's Exposure Factors Handbook (USEPA, 1997).

You will find below descriptions of routes of exposure (called the exposure pathways) through land application, surface disposal, and incineration of sewage sludge that we assessed. We then calculated risks associated with these pathways by comparing exposures with dose-response information for the pollutants. The Technical Support Documents for this rule making (USEPA, 1999b; USEPA, 1999c; USEPA, 1999d) contain more details on the final comprehensive exposure pathway analyses, including the modeling algorithms and default parameters as well as descriptions of major uncertainties and variability.

Agency experts reviewed the risk assessments used for land application and surface disposal. EPA will submit these risk assessments to an external peer review panel in accordance with the Agency's Peer Review Guidelines during the public comment period for this proposed rule. The risk assessment used for incineration was submitted to an external peer review panel in accordance with the Agency's Peer Review Guidelines. We will consider and address peer review comments and public comments on these risk assessments.

B. Description of Land Application Risk Assessment

We evaluated both agricultural and non-agricultural application sites associated with the land application pathways. Agricultural sites, which include rangeland and pasture, are land on which a food, feed, or fiber crop is grown. Non-agricultural sites include reclamation, public contact, and forest sites. The term "reclamation sites," defined in 40 CFR 503.11(n), refers to drastically-disturbed land that is reclaimed using sewage sludge, including strip mines and construction sites. "Public contact sites" are those that people frequent where contact is likely. Examples of public contact sites are parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses (40 CFR 503.11(l)).

1. Land Application Exposure Pathways

We considered 15 exposure pathways for land application of sewage sludge. Five of these pathways were not evaluated since there was insufficient data. The pathways that were not evaluated included exposure and subsequent toxicity risks from ingestion of feedstuffs grown on sewage sludge-amended soils and fed to domesticated farm animals (animals commercially produced for human consumption), exposure and subsequent toxicity risks from incidental ingestion of sewage sludge-amended soils by domesticated farm animals during pasturing and grazing, phytotoxicity effects from dioxins in sewage sludge-amended soils, and exposure of soil macro organisms and their animal predators to dioxins from sewage sludge-amended soils. We invite public comment and any information regarding the exposure pathways not evaluated in the land application risk assessment.

Exposure pathways that we fully evaluated for exposure to dioxins from land application of sewage sludge include:

- Consumption of commercially grown crops by the general population
- Consumption of home-grown crops by home gardeners
- Incidental ingestion of sewage sludge-amended soil by children
- Consumption of locally produced meat and dairy products by families living outside urban areas (taking into account both forage fed to the animals and incidental ingestion of soil by the animals)
- Inhalation of dust from sewage sludge-amended soils by farm workers
- Consumption of groundwater, surface water, and aquatic organisms affected by leachate and runoff from sewage sludge-amended soil
- Inhalation of volatilized pollutants from sewage-sludge amended soil
- And ingestion of breast milk by infants in families living outside of urban areas

2. Key Assumptions for the Land Application Risk Assessment

As stated above, we evaluated pathways which represent ways in which people can be most exposed to dioxin, in combination with a concentration of 300 ppt TEQ of dioxins in sewage sludge and one other conservative exposure factor, to ensure a true high-end deterministic risk assessment. Some of the exposure factors for land application were more conservative than those used for similar incineration pathways. We did this because nationwide there are 145 known sewage treatment works with sewage sludge incinerators compared to an estimated 4,250 land application operations. We estimated the highest concentrations of dioxins for land applied sewage sludge from a statistically valid sampling of sewage sludge nationwide, while we were able to identify and directly monitor the highest dioxin emitting incinerators for this risk assessment.

For land application, we assumed that the highly exposed individual lives on the same site for 58 consecutive years. We also assumed that sewage sludge at the 95th percentile of concentration of dioxins of 300 ppt TEQ as estimated in the NSSS and in a data base from a survey conducted by the Association of Metropolitan Sewerage Agencies (AMSA) (Green, et. al., 1995) is applied to the land every other year for 100 years at the rate of 10 metric tons per hectare. We note that the AMSA survey analyzed for only four of the 12 twelve coplanar PCB congeners. However, three of these congeners typically dominate the coplanar PCB TEQ values in most environmental samples and are considered adequate for generalizing dioxin-like coplanar PCB risk in support of this proposed rule. For assessing risks from individual facilities and for complying with the provisions of this proposed rule, a full 12 congener coplanar PCB analysis is required.

The risk assessment also assumes that land-applied sewage sludge is incorporated into the soil to a depth of 15 centimeters. Our assumption is that incorporation into the soil occurs either mechanically at the time of application or "naturally" over time due primarily to the effects of weather and the activity of soil organisms such as worms and grubs. The pathways which are based on direct ingestion by grazing animals or humans assume that a sludge-soil mixture is ingested. The existing part 503 regulation requires a 30-day waiting period prior grazing animals after sludge application. We are requesting comment on whether we should require

mechanical incorporation of sewage sludge into the soil, whether 30 days is a sufficient waiting period to assure adequate natural incorporation into the soil, or whether the rule should require a longer waiting period.

Other key assumptions include the following:

- Crops grown on sewage sludge-amended soil are 2.5% of the lifetime diet for the general population.
- For a family living in a rural area, 10% of their beef diet, 10% of their beef liver diet, 10% of their lamb diet, and 3% of their dairy diet comes from local farms that raise animals on sewage sludge amended soils.
- Produce grown on sewage sludge-amended soil are 43% to 59% of a home gardener's diet.
- Children from ages 1–6 incidentally ingest 0.4 gram of sewage sludge-amended soil daily.
- People consume two liters of water and 39 grams of aquatic organisms daily from the same source over their lifetimes.
- The nursing period for infants is six months.

All of the assumptions for the land application risk assessment and the basis for these assumptions are described in the land application Technical Support Document (TSD) (USEPA, 1999b).

3. Land Application Risk Characterization

The risk assessment for the exposure pathways described above estimates high end risks. Given these conservative assumptions, the highest exposure pathways for the hypothetical highly exposed individuals for land application are rural families which consume products made from locally raised livestock that incidentally ingest sewage sludge-amended soil and nursing infants having breast milk from hypothetically highly exposed rural family mothers. The resulting high end estimate of cancer risk for any such person is 1.7 per 100,000 (1.7×10^{-5}), which is well within the Agency's range of acceptable risk of one in one million to one in ten thousand (1×10^{-6} to 1×10^{-4}). However, we estimate that a very small percentage of the sewage sludge produced nationwide may exceed 300 ppt TEQ dioxin. In order to ensure that any risks associated with land application of sewage sludge remain negligible, we propose to place a numeric limit of 300 ppt TEQ on the concentration of dioxins in sewage sludge which is land applied.

C. Description of Surface Disposal Risk Assessment

Sewage sludge surface disposal facilities are of two types: (1) monofill and (2) surface impoundment. The monofill is a sewage sludge-only trench fill receiving dewatered sludge with a solids content greater than 20%. The surface impoundment receives a continuous inflow of sewage sludge with a low solids content of between 2% and 5%. Both of these types of surface disposal facilities were subjected to the risk assessment for dioxins. The surface impoundment clearly offered the greater potential to emit dioxins to the environment and subsequently expose an individual to these pollutants. The results of the risk assessment with estimated incremental risks to the highly exposed individual are based, therefore, on the surface impoundment.

1. Surface Disposal Exposure Pathways

The only two possible exposure pathways to an HEI are volatilization of dioxins from the facility with subsequent inhalation of these pollutants and the leaching of dioxins to groundwater with subsequent consumption of this groundwater. Based on the required management practices of these facilities, there is an insignificant chance that dioxins would be released to surface waters even during extreme wet weather conditions. Food chain pathways which are critical in the land application risk assessment are not relevant.

2. Key Assumptions for the Surface Disposal Risk Assessment

The HEI for exposure to surface disposal facilities is a person who resides in immediate proximity (within 150 meters) to the site. We assumed that this person spends his/her entire life at this site. We also assumed that this person inhales outdoor air from this site 16 hours per day and indoor air from within his/her residence adjacent to this site for eight hours per day. We set water consumption at two liters per day of groundwater obtained within 150 meters from the edge of this site at an assumed depth to groundwater of one meter. We assumed moderately porous soils for the surface impoundment with no synthetic liner to retain leachate (USEPA, 1999a).

3. Surface Disposal Risk Characterization

The maximum incremental cancer risk to the HEI did not exceed one in ten million (1×10^{-7}) for either exposure pathway (USEPA, 1999b). Dioxins have extremely low volatility and would not be expected to offer significant exposure to the HEI through inhalation. Also, dioxins do not dissolve readily in water. Even in the absence of a liner, combined with high porosity soil and a short distance to ground waters as assumed in the risk assessment, only insignificant amounts of dioxins could ever reach the groundwater. For these reasons, we are proposing no action to regulate dioxins for sewage sludge surface disposal.

D. Description of Incineration Risk Assessment

We used four steps to estimate risks from firing sewage sludge in sewage sludge incinerators. First, we estimated the rate at which pollutants are emitted from incinerator stacks. Next, we estimated the movement of pollutants in air near incinerators, including how much pollutant plumes overlap. We then overlaid maps of expected ground-level concentrations of pollutants and human populations. Finally, we determined the extent and nature of resulting health risks of human exposure to emitted dioxins.

The last step was a multi-pathway risk assessment for exposure to dioxins that result from the firing of sewage sludge in a sewage sludge incinerator. The risk assessment estimated hypothetical average and high end risks to the highly exposed sub-populations of farmers and home gardeners. We evaluated the risk to the hypothetical highly-exposed individual who is exposed by both a direct route like inhalation and other routes through eating contaminated food. In addition, we conducted a probabilistic analysis of uncertainty for the home gardener and for the farmer to quantify uncertainty and estimate the range of calculated risks possible for the facilities modeled.

We considered multiple hearth units without afterburners to be the worst case technology for sewage sludge incineration and likely the highest emitters of dioxins and coplanar PCBs. To provide a high end to estimate of the risk from sewage sludge incineration, the analysis focused on the six highest emitting incinerators for dioxins/dibenzofurans and coplanar PCBs in the United States from an initial screen of 135 incinerators.

1. Incineration Exposure Pathways

The assessment considered, but did not evaluate, all 15 exposure pathways considered in the land application risk assessment. We evaluated those pathways expected to result in the highest risk estimates for which data were available. We selected two exposure scenarios to represent highly exposed sub-populations that reside

near sewage sludge incinerators: (1) beef and dairy farmers consuming, at recreational fisher levels, fish caught near sewage sludge incinerators, and (2) home gardeners consuming as a portion of their diet home-grown produce grown near a sewage sludge incinerator. For both scenarios, we estimated average and high end exposures for children and adults at locations where they are expected to reside. We used a geographical information system to identify land uses and terrain around facilities, to identify watershed and water body parameters to estimate fish and drinking water ingestion risks, and to provide census information about farmers and residents exposed to incinerator emissions. We estimated numbers of individuals exposed and the associated risks for six population age groups.

2. Key Assumptions for the Incineration Risk Assessment

Many important factors in estimating exposure vary from one facility to the next, and as a result, the highest emitting facility will not always produce the highest risk. We therefore selected the six highest emitting incinerators that also resulted in the highest potential inhalation exposures from the initial screening assessment of 135 incinerators. The variables that are important for exposure assessment and considered in the screen include, for example, distance to exposed population, activities of the exposed population, effective release height of pollutants, and meteorological conditions. We also considered emission rates, emission release characteristics, and actual populations near the facilities in the initial screening assessment.

To address high end risk, plausible ranges of values for key exposure and model variables were modeled via Monte Carlo procedures to estimate the range of possible risk values and their probability of occurring. The variables considered for the Monte Carlo modeling were identified by sensitivity analyses. The variables were exposure duration, beef and dairy consumption, beef and dairy biotransfer factors, air to plant transfer, dry sludge throughput, adult inhalation rate, and fraction of time an adult is indoors and outdoors.

The large number of exposure values used in the risk assessment are shown in Appendix B of the TSD for incineration (USEPA, 1999c). The following is a summary of a few key values:

- Adult body weight of 71.8 kilograms (kg)
- Body weight of a 3–5 year old is 17.5 kg
- Exposure duration for farmer is 17.3 years
- Exposure duration for home gardener is 12 years
- Adult inhalation rate of 13.3 cubic meters each day
- Child 3–5 years old inhalation rate is 8.3 cubic meters each day
- Child daily soil ingestion rate of 0.1 grams each day
- Adult daily soil ingestion rate of 0.05 grams each day
- Adult daily fish ingestion rate of 0.162 grams per kg. body weight per day

For the farmer exposure pathway, we evaluated the inhalation of vapor and particle-bound pollutants released from the incinerator stack(s), soil ingestion, ingestion of homegrown fruits and vegetables, ingestion of home-produced beef and dairy products, ingestion of drinking water from nearby surface water bodies, and ingestion of fish at recreational fisher levels from those water bodies. The home gardener pathway included inhalation of vapor and particle-bound pollutants, soil ingestion, ingestion of homegrown fruits and vegetables, and ingestion of drinking water from surface water bodies. For infants in both pathways, breast milk ingestion from an adult's exposure to the above pathways is included. Dermal exposure to soil and water and consumption of other animal products were not quantified since exposures from these pathways are expected to be significantly less than the pathways evaluated.

3. Incineration Risk Characterization

We found that average and high-end risks were higher for the farmer than for the home gardener. Estimated risks were higher for individuals closer to the facility than farther away. The most significant pathway for the farmer was ingestion of home-grown beef and dairy products and for the home gardener ingestion of home-grown produce. For infants of farmers, the breast milk ingestion pathway is often the most significant. For the six facilities, at locations where farmers and home gardeners are likely to reside, none of the estimated risk exceeded 1×10^{-6}, including the estimated risk for infants. Based on census data, only extremely small numbers of farm families are predicted to be exposed to risk levels near the upper end of the predicted range.

Additionally, the concentration of dioxins in sewage sludge being fed into sewage sludge incinerators does not influence the amounts of dioxins being emitted from the incinerator. The key factors influencing the amount of dioxins being emitted are the combustion conditions in the incinerator, incinerator design, and the efficiency and operational conditions of any air pollution control devices used on the incinerator. The Agency's most recent publicly available Dioxin Source Inventory associated with the Draft Dioxin Reassessment (USEPA, 1998) estimated that total dioxins (chlorinated dioxins and chlorinated dibenzofurans only) being emitted from all of the Nation's sewage sludge incinerators was approximately 14.6 grams TEQ per year, a very minor fraction of the total North American dioxin inventory. These amounts are expected to be further reduced over the next several years as the requirement for all sewage sludge incinerators to comply with either 100 parts per million (ppm) total hydrocarbons (THC) or 100 ppm carbon monoxide (CO) in their emissions is implemented.

We investigated plans for any future changes for the six multiple hearth incinerators (MHI) used in the risk assessment to determine if any significant reductions in emissions of dioxin and dioxin-like compounds might be expected in the future. Three of the six incineration facilities indicated that no changes that might reduce emissions were planned in the foreseeable future. They are currently meeting the total hydrocarbon emission limitation of 100 ppm.

Two of the six incineration facilities indicated replacement of the existing multiple hearth incinerators is taking place. One of these facilities is bringing a fluidized bed incinerator (FBI) on line in the first quarter of 2000, which will operate as the primary incinerator. The currently operating MHI will be shut down and will remain as a backup incinerator, with only occasional use. Tests of FBIs has demonstrated more complete destruction of organic compounds than in MHI. The other facility expects to shut down its incineration operation completely in 2001 and start drying sewage sludge instead. Drying involves lower temperatures and no combustion of the sewage sludge, so this facility will significantly reduce or eliminate emissions of organic pollutants.

The largest and highest emitting of the incineration facilities plans to start to eliminate incineration of sewage sludge in their multiple hearth incinerators over the next four to five years. The facility is working to evaluate a new high temperature process that will convert sludge to a glass-like aggregate. The facility expects to submit a permit application within three years to build

the first aggregate unit. If this initial unit is successful, they will submit another permit application to build additional units to replace the entire multiple hearth incineration facility. However, if the new aggregate process does not prove to be feasible, then this facility will continue to use the existing multiple hearth incinerators. The facility may consider building FBIs to start replacing aging MHIs.

On August 4, 1999, we promulgated amendments to the incineration subpart of the part 503 standards, 64 FR 42552. The amendments included a provision making all sewage sludge incineration requirements self-implementing. All incinerator owners/operators must now continuously monitor for either THC or CO emissions and operate their incinerators to limit either THC or CO emissions to 100 ppm or less (40 CFR 503.40(c), 503.44, 503.45(a)). We will continue to inspect the operations and records of these incinerators to assure attainment of THC or CO limits.

Based on the results of the risk assessment for dioxins in sewage sludge fired in sewage sludge incinerators and the information we have regarding actual and projected incineration of sewage sludge in sewage sludge incinerators, we are proposing no national standard for incineration of sewage sludge in sewage sludge incinerators. We seek comment on this proposal.

VI. Other Options that EPA Considered

A. Numeric Standards for All Use or Disposal Practices

Under this option, we would propose comprehensive risk-based regulations setting numeric standards for dioxins, as well as monitoring requirements, reporting, and record keeping provisions for all sewage sludge use or disposal practices. We are not proposing this option for surface disposal or incineration in a sewage sludge incinerator. As previously explained, the risk assessments for surface disposal and incineration did not show that the risk from placing sewage sludge on a surface disposal site or firing sewage sludge in a sewage sludge incinerator, including the highest emitting type of sewage sludge incinerator, posed an unreasonable risk to human health. We invite public comment on whether EPA should establish numeric limits for dioxins in sewage sludge for all use or disposal methods.

B. Require all Sewage Sludge to be Landfilled or Surface Impounded

Under this option, we would propose a rule under part 503 that would require all sewage sludge to be placed in a landfill or surface impoundment. The rule would be based on total containment of dioxins in sewage sludge and would virtually eliminate all exposure to dioxins from sewage sludge. The risk assessments performed did not indicate unreasonable risk from exposure to land applied sewage sludge with dioxins content of 300 ppt TEQ or less or from exposure to emissions from sewage sludge incinerators with any level of dioxins in the incinerated sewage sludge. Therefore, we are not proposing this option.

C. No Further Regulation of Sewage Sludge for Any Use or Disposal Practice

We considered this option for land application, as well as for surface disposal and incineration. As discussed above, the risk assessment shows that sewage sludge with 300 ppt TEQ dioxins that is land-applied poses a human cancer risk in excess of one in one hundred thousand (1×10^{-5}) cancer risk only for highly exposed subpopulations using conservative assumptions. The estimated risk of 1.7×10^{-5} is approximately one-fifth of the background risk posed by dioxins from all other sources (USEPA, 1994). However, data from the NSSS (USEPA, 1990) show that some treatment works produced sewage sludge containing dioxin/dibenzofurans (not including coplanar PCBs) as high as 1700 ppt TEQ. Although we have not done a detailed risk assessment of the potential impacts of this highest concentration, we believe that the incremental cancer risk would likely be on the order of one in ten thousand (1×10^{-4}) for highly exposed subpopulations using conservative assumptions. This level of risk would be within the Agency's acceptable range of 1×10^{-6} to 1×10^{-4}. Nevertheless, we believe the better course of action is to propose a numeric limit for dioxins in sewage sludge that is applied to the land at a level which limits the incremental risk to approximately 1×10^{-5} to 2×10^{-5}. This approach limits incremental risks for dioxins to levels well below background, because of concern with multiple sources and possible cumulative exposures. The Agency recognizes that its use of "highly exposed individuals" and other conservative assumptions also builds in some margin of safety. Therefore, we request comment on taking no action with respect to regulating dioxins for land application of sewage sludge.

VII. Request for Public Comments

While we are requesting comments on all aspects of this proposed rule, we hope that public comments will also focus specifically on the following aspects of this proposal:

(1) Establishing of a cap of 300 ppt TEQ dioxins for land applied sewage sludge that will protect a highly exposed individual from an incremental cancer risk of not greater than 1.7×10^{-5} (IV.B.1).

(2) Using EPA Analytical Method 1613B for the chlorinated dioxin and dibenzofuran congeners and EPA Analytical Method 1668 or 1668A for co-planar PCB congeners (IV.B.3).

(3) Requiring two consecutive years of monitoring results under 30 ppt TEQ before allowing a reduced monitoring schedule (IV.B.4).

(4) Our assumption that the level of dioxins in sewage sludge is relatively constant over time and may possibly be decreasing (IV.B.4).

(5) Whether we have clarified existing monitoring requirements by separating § 503.16(a) into two paragraphs or if our proposed change unintentionally changes the substance of the frequency of monitoring provisions currently in § 503.16(a)(1) (IV.B.4).

(6) Requesting information on the dioxin content, annual application rates, numbers and sizes of sites, and applications per site for sewage sludge from treatment works with a flow rate of one MGD or less and whether to exempt small treatment works from both the initial monitoring requirements and the dioxin limit for land application.

(7) Our proposed designation of small treatment works as one with a flow rate of one MGD or less, and our proposed designation of other small sludge preparers that are not treatment works as those preparing sewage sludge for land application in an amount of 290 dry metric tons or less annually (IV.B.5).

(8) Requesting information on exposure pathways not evaluated, including direct risks to livestock, soil organisms, wildlife, and plants, resulting from dioxins in sewage sludge that is land applied or incinerated (V.B.1, V.D.1).

(9) Proposing no action in regulating dioxins in sewage sludge that is placed in a surface disposal unit or incinerated in a sewage sludge incinerator (V.C.3, V.D.3).

(10) Whether EPA should establish numeric limits for dioxins in sewage sludge for all use or disposal methods (VI.A).

(11) Proposing no action for dioxins in sewage sludge that is land-applied (VI.C).

(12) Whether there are any privately-owned treatment works with flows greater than one MGD that also have revenues less than $6 million. If such facilities are operating, we request information on flow, revenues, and sludge disposal methods (VIII.B).

(13) Data on the cost to switch from land application to alternative use or disposal practices (compared to our assumption of $189 per dry metric ton

to switch to co-disposal with municipal solid waste) (VIII.B).

(14) Potential impacts of the proposed rule on small entities and on issue related to such impacts (VIII.B).

(15) The use of the proposed alternative definition of small entity—both for this proposed rule and for subsequent rulemakings (VIII.B).

(16) Consensus methods that are suitable for compliance monitoring for determining concentrations of dioxins, furans, and coplanar PCBs in sewage sludge (VIII.H).

VIII. Regulatory Assessment Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Today's proposal affects two categories of entities: (1) publicly-owned treatment works (POTWs) owned by local governmental jurisdictions, and (2) privately-owned treatment works and sludge-only preparers, which are businesses. For this proposal, EPA first assessed the effects on small entities using the small entity definition for each category as defined in the RFA. EPA also assessed the effects of the proposal using the alternative definition for each category of small entity that EPA is proposing to establish for this rule. (See the discussion under "Use of Alternative Definition" later in this section.)

For purposes of assessing the impact of today's proposal on small entities, small entities are defined as (1) a small business that meets RFA default definitions based on SBA size standards found in 13 CFR 121.201 (i.e., small refuse systems that have less than $6 million in annual revenues); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

To evaluate the economic impact on small governmental jurisdictions subject to today's rule, EPA looked at the effect on municipalities owning a POTW that services a population of 50,000 or fewer with complete jurisdiction over all indirect discharges to and discharges from a treatment works. EPA considers this an appropriate surrogate for small governmental jurisdictions. (EPA recognizes that, to the extent a governmental jurisdiction may own more than one POTW serving a population of 50,000, this evaluation may overstate the number of small governmental jurisdictions.)

Based upon average domestic sewage loadings, a POTW serving a population of 50,000 or fewer would correspond to one processing approximately five million gallons per day (five MGD) of wastewater. EPA's data, however, do not permit it to accurately estimate the number of POTWs in a one to five MGD range because EPA collected information for the flow range of one MGD to ten MGD. Therefore, in order to determine the impact on small governmental jurisdictions, EPA first looked at the economic impact of today's proposal on those POTWs with one to ten MGD flows who land apply their sewage sludge because the proposed dioxin limit would apply only to those POTWs that land apply their sewage sludge. EPA estimates that there are approximately 890 POTWs in the one to ten MGD flow range who land applied their sewage sludge. EPA estimated costs for these facilities to comply with the proposed monitoring requirements, as described in Section IV.D. EPA estimates annual monitoring costs of $2,000 to test for the parameters included in today's proposal. The frequency of this monitoring varies, depending on the outcome of the test, as explained in Section IV.B.4. EPA also estimated incremental disposal costs for between 40 and 50 facilities in the one to ten MGD flow range with sewage sludge that might exceed the proposed 300 ppt TEQ numeric limit for dioxins in sewage sludge. EPA estimates that the costs of the proposal would not exceed $6 million for the group of POTWs in the one to ten MGD flow range.

For purposes of evaluating the economic impact of this rule on small governmental jurisdictions, EPA compared costs with average annual revenues for small governmental jurisdictions obtained from the 1992 Census of Governments. The Census data are reported at a level of detail that allow EPA to focus on the small governmental jurisdictions, as defined in the RFA. The data further allow EPA to limit the revenue information to populations between 10,000 and 50,000, which correspond to the small POTWs covered by the proposed rule. (POTWs with flows at or below one MGD are exempt from this rule.) The revenues for the governmental jurisdictions in the 10,000 to 50,000 population group are approximately $57 billion. The costs of the proposed rule represent less than 0.01 percent of the entities' revenues. In other words, when EPA divided the total compliance costs for the group of POTWs (i.e., costs of $6 million) by the revenues for the group of small governmental jurisdictions (i.e., revenues of $57 billion), those costs are only one, one-hundredth of the revenues. EPA concludes that the rule will not have a significant impact on a substantial number of small governmental jurisdictions owning these POTWs.

For privately-owned treatment works, the RFA definition of small entity is a small business as defined in U.S. Small Business Administration (SBA) regulations at 13 CFR 121.201. Those regulations define small refuse systems (Standard Industrial Classification 4953) as having less than $6 million in annual revenues. In the Regulatory Impact Analysis for the previous Part 503 regulations (EPA 821–R–93–006, March 1993), EPA concluded that the universe of privately-owned treatment works is limited to facilities with wastewater

flows below one MGD. Today's proposed regulation excludes treatment works with flows at or below one MGD; thus, EPA concludes that the proposed rule imposes no requirements on small, privately-owned treatment works. Although EPA estimates that a privately-owned treatment works with annual revenues near $6 million (if one exists) corresponds to flows much greater than one MGD, EPA has not identified any such treatment works. Theoretically, any privately-owned treatment works with flows greater than one MGD and also having revenues less than $6 million would be small entities, as defined by the RFA. EPA solicits comment on whether such treatment works are operating, and if so, requests information on flow, revenues, and sludge disposal methods.

For sludge-only preparers, under the RFA definition cited above, a small entity is a preparer with annual revenues of less than $6 million. EPA data suggest that there are substantially fewer than 100 sludge-only preparers that are small entities. EPA first considered the potential impacts to a subset of small preparers—those with annual revenues less than $80,000, which corresponds to production of approximately 290 dry metric tons of sewage sludge. EPA equates a production level of 290 dry metric tons of sewage sludge to a wastewater flow of one MGD. Today's proposed rule excludes this subset of very small sludge-only preparers (see section IV.B.5.). Thus, this analysis suggests for sludge-only preparers with annual revenues less than $80,000, today's proposed rule imposes no requirements. For the remaining sludge-only preparers that are also small businesses (by RFA definition), i.e., those with annual revenues between $80,000 and $6 million, EPA estimated the potential impacts as additional monitoring costs (see section IV.D.). For the small preparers with revenues between $80,000 and $6 million, the estimated impacts will range from 0.03 to 2.5 percent of revenues. Thus, EPA estimates that there is not a significant economic impact on a substantial number of small sludge-only preparers.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impacts on a substantial number of small entities. EPA nonetheless has tried to reduce the impacts of this rule on small entities. For example, the proposed rule imposes no requirements on treatment works (public or private) with flows less than or equal to one MGD. This regulatory exclusion markedly limits the number of treatment works with monitoring requirements. These smallest POTWs and privately-owned treatment works will face no changes in their sludge disposal operations. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

Use of Alternative Definition. As noted, EPA is certifying that the proposed rule will not have a significant economic impact on a substantial number of small entities, using the RFA definitions for small entities. However, the RFA authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative definition for small business, agencies must consult with SBA's Chief Counsel for Advocacy.

In today's rule, EPA is proposing to define "small entity" for purposes of its regulatory flexibility assessments under the RFA as follows: EPA is proposing to define "small governmental jurisdiction" as any municipality or special district operating a POTW with a capacity of one MGD or less. Generally flows in this size range correspond to service populations of 10,000 or less. EPA also is proposing to define "small business" as a privately-owned treatment works with a capacity of one MGD or less and sludge-sonly preparers with finished product amounts of 290 dry metric tons or less of sewage sludge. EPA will initiate consultation with the SBA on the alternative definition for "small business" shortly.

EPA is proposing these alternative definitions for the purpose of consistency within the sewage sludge use or disposal program. When EPA published the Standards for the Use and Disposal of Sewage Sludge in 1993, the Agency used the one MGD definition for its regulatory flexibility assessment. At that time (and in the 1990 Notice of Data Availability, 55 FR 47210 (Nov. 9, 1990) (USEPA, 1990)), EPA noted the well-accepted and frequent use of this definition for small POTWs. The existing part 503 land application rule differentiates between treatment works with flow rates of one MGD or less and larger treatment works. Treatment works with flow rates of one MGD or less are required to monitor less frequently and they are excluded from reporting requirements.

In addition to proposing to establish these alternative definitions for this rule, EPA also is proposing to establish and use these alternative definitions of "small entity" for purposes of its regulatory flexibility assessments under the RFA for any subsequent rulemakings pursuant to section 405 of the Clean Water Act, 33 U.S.C. 1345 and amendments to 40 CFR 503.

The Agency is interested in receiving comments on the use of this alternative definition of small entity—both for this proposed rule and for subsequent rulemakings.

If EPA had used the alternative definitions in its RFA assessment of the impact of today's proposed rule on small entities that would be subject to the requirements of the rule, the analysis would have supported the same conclusions; i.e., EPA would certify that there is no significant economic impact on a substantial number of small entities. The proposed rule would not impose any requirements on POTWs and privately-owned treatment works with wastewater flows at or below one MGD. Consequently, the proposed rule would not have any economic impact on small governmental jurisdictions and small businesses that are treatment works under the alternative definitions. Similarly, for sludge-only preparers, with a small entity definition based on 290 dry metric tons of sewage sludge, the proposed rule would not have any economic impact on small businesses that are sludge preparers.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements for existing 40 CFR part 503 under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) and assigned OMB Control No. 2040–0004.

The information collection requirements in this proposed rule have been submitted for approval to OMB under the PRA. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 0229.14) and a copy may be obtained from Sandy Farmer by mail at OP Collection Strategies Division; U.S. Environmental Protection Agency (2822); 401 M St., SW., Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. For technical information contact Arleen Plunkett by calling (202) 260–3418. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

This proposed rule will require certain sewage treatment plants which produce sewage sludge that is applied to the land and other preparers of sewage sludge for application to the land to monitor their sewage sludge for dioxins

and keep records of the analytical results. Entities which monitor for dioxin in their sewage sludge will be required to submit these records to the permitting authority. This information is needed by the permitting authority to ensure compliance with the proposed numerical standard for dioxins, thereby assuring that the acceptable incremental risk to the highly exposed individual from exposure to dioxins from land application of sewage sludge is not exceeded. The responses to the collection of information will be mandatory pursuant to section 405(d) of the CWA, 33 U.S.C. 1345(d).

The Agency has estimated the total respondent burden hours and costs for these requirements of the proposed rule. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The Agency estimates that each respondent, when required to monitor for dioxins, will expend a total of one hour to sample their sewage sludge, submit this sample to a laboratory for dioxins analysis, receive the analytical result from the laboratory, record the result, and for certain size entities, report this result to the permitting authority. EPA estimates that in the first year that this rule is in effect, 1154 facilities will perform dioxin monitoring. The total national burden is, therefore, estimated to be 1154 hours. During the second year that this rule is in effect, 1096 facilities will be performing monitoring for a total burden of 1096 hours. From the third year on, the Agency estimates that annually 754 facilities will be monitoring for dioxins for a total burden of 754 hours per year.

Analytical costs per sample are estimated to be $2,000. Therefore in year one, total analytical costs to the 1154 respondents are estimated to be $2,308,000. Total analytical costs for the 1096 respondents in year two are estimated to be $2,192,000. Total analytical costs for the 754 respondents in year three and beyond are estimated to be $1,508,000 annually.

For the permitting authorities, whether they are the EPA Regional Offices or the three States that have received authority to administer the part 503 regulatory program (i.e., Utah, Oklahoma, and Texas), the Agency estimates that each will be required to spend one hour to review the analytical information submitted by the respondents. Therefore, the three States identified above and the 10 EPA Regions will expend a total of 13 hours annually due to these dioxin monitoring, recordkeeping, and reporting requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

D. Unfunded Mandate Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate or to the private sector of $100 million or more in any one year. Before EPA can promulgate a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with other applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The highest estimated total costs in any one year (1998 dollars) of today's proposed rule are $18 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

As indicated in the Regulatory Flexibility Act discussion (see section VIII. B.), we have determined that this rule will not have a significant impact on a substantial number of small governments. Additionally, this rule will not uniquely impact small governments because it applies to both large and small entities. Today's proposed rule exempts wastewater treatment works with flows of less than one MGD from the provisions of this proposed rule including monitoring requirements. This exemption for these low flow wastewater treatment works, therefore, will not create any costs for the small size municipalities or small private sector firms that own and operate these facilities. Thus, today's proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the

process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States; on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal would add a regulated pollutant to one part of the existing regulatory program, however it would not change the existing relationship between federal, State, and local officials. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

This proposed rule will preempt State and or local law that is less stringent or inconsistent with these provisions, consistent with CWA section 510, 33 U.S.C. 1370. By publishing and inviting comment on this proposed rule, EPA hereby is providing State and local officials notice and an opportunity for appropriate participation. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

F. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal governments provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the community of Indian tribal governments nor does it impose substantial direct compliance costs on them. As indicated in the Regulatory Flexibility Act discussion (see section VIII. B.), we have determined that this rule will not have a significant impact on a substantial number of small governments. The impact on Tribal governments would similar to that on small governments. We, therefore, don't expect this rule to have a significant impact on tribal governments. Neither do we expect this rule will impose substantial direct compliance costs on them. Additionally, this rule will not uniquely impact the communities of Indian tribal governments because it applies to all entities which land apply sewage sludge. Today's proposed rule exempts small wastewater treatment works with flows of less than one MGD from the provisions of this proposed rule including monitoring requirements. This exemption for these low flow wastewater treatment works, therefore, will not create any costs for the small size tribal governments that own and operate these facilities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not "economically significant" as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. Nevertheless, under EPA policy (EPA Policy on Evaluating Health Risks to Children), the risk assessment for this rule has addressed potential risk to breast-feeding infants and toddlers and the effects of exposure to dioxins. Two pathways of exposure are most important in addressing the risk potential for children. In the pathway which assumes incidental ingestion, we assumed that the toddler from ages one to six eats 0.4 gram of soil mixed with sewage sludge every day for five years. In the breast-feeding infant pathway, the hypothetical highly exposed individual is the nursing infant (the nursing period is six months) of the rural family mother who eats, on a yearly basis, 10% of her beef, 10% of her beef liver, 10% of her lamb and 3% of her dairy products from animals raised on the farm and fed forage grown on sewage sludge-amended soils. Moreover, the animals are exposed through ingestion of sewage sludge and soils through grazing on pasture. The breast-feeding infant pathway was one of the pathways used for setting the proposed numeric limit.

Our assessment of these pathways does not reveal a disproportionate environmental health or safety risks to children. Incremental dioxins exposure and subsequent cancer risks from sewage sludge use or disposal practices are within the risks that would normally be expected and within EPA's range of acceptable risk.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to dioxins.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no consensus methods for determination of dioxins, furans or PCBs in solid matrices such as sewage sludge. Therefore, EPA proposes to use Method 1613B and Method 1668. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards for determination of dioxins in sewage sludge and to explain why such standards should be used in this regulation.

IX. List of References

Green, *et al.* 1995. Comments on Estimating Exposure to Dioxin-Like Compounds: Review Draft and Addendum.

US Conference of Mayors 1999. The United States Conference of Mayors/ Urban Water Council Biosolids Land Application-The Dioxin Situation.

USEPA 1989. Interim Procedures for Estimating Risks Associated with Exposure to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update. Washington, DC Risk Assessment Forum. EPA/625/3–89.016.

USEPA 1990. National Sewage Sludge Survey; Availability of Information and Data, and Anticipated Impacts on Proposed Regulations; Proposed Rule. **Federal Register** 55 (218): 47210–47283.

USEPA 1994. Health Assessment for 2,3,7,8–TCDD and Related Compounds. External Review Draft. EPA/600/BP–92/001a–c, and, Estimating Exposure to Dioxin-Like Compounds. Volume I. Executive Summary. Volume II. Properties, Sources, Occurrence, and Background Exposures. Volume III. Site-Specific Assessment Procedures. External Review Draft. EPA/600/6–88/005Ca–c. National Center for Environmental Assessment. Washington, DC.

USEPA 1995. Policy for Risk Characterization. Memorandum of Carol M. Browner, Administrator, March 21, 1995, Washington, DC.

USEPA 1996. Technical Support Document for the Round Two Sewage Sludge Pollutants. Office of Science and Technology. Washington, DC. EPA–822–R–96–003.

USEPA 1997. Exposure Factors Handbook. National Center for Environmental Assessment. Washington, DC. EPA/600/P–95/002F(a–c).

USEPA 1998. The Inventory of Sources of Dioxin in the United States. National Center for Environmental Assessment. External Review Draft. Washington, DC. EPA/600/P–98/002Aa.

USEPA 1999a. Incremental Costs Associated with Regulating Dioxins and PCBs in Biosolids. Office of Science and Technology. Washington, DC.

USEPA 1999b. Risk Analysis for the Round Two Biosolids Pollutants. Office of Science and Technology. Washington, DC.

USEPA 1999c. Sewage Sludge Incinerators' Dioxin-Like Compound Risk Analysis-Draft Technical Documentation. Office of Air Quality Planning and Standards. Research Triangle Park, N.C.

USEPA 1999d. Sewage Sludge Incinerators' Dioxin-Like Compound Risk Analysis-Draft Addendum with PCB Emissions. Office of Air Quality Planning and Standards. Research Triangle Park, N.C.

USEPA 1999e. Pollutant Concentration Percentile Estimates to Support Phase II Regulations for Biosolids Use or Disposal. Office of Science and Technology. Washington, D.C.

Van den Berg M, *et al.* 1998. Toxic Equivalent Factors (TEFs) for PCBs, PCDDs, and PCDFs for Humans and Wildlife. Environ. Health Perspect. 106, 775–792.

List of Subjects in 40 CFR Part 503

Environmental protection, Frequency of monitoring, Incineration, Intergovernmental relations, Land application, Management practices, Pathogens, Pollutants, Reporting and recordkeeping requirements, Surface disposal, Vector attraction reduction.

Dated: December 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 503—STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

1. The authority citation for part 503 continues to read as follows:

Authority: Sections 405(d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, Sec 54(d), 91 Stat. 1591 (33 U.S.C. 1345(d) and (e)); and Pub. L. 100–4 Title IV, Sec. 406(a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 *et seq.*).

2. Add new paragraph (b)(8) to § 503.8 as follows:

§ 503.8 Sampling and analysis.

* * * * *

(b) * * *

(8) *Dioxins.* EPA Method No. 1613B for the seven dioxin and ten dibenzofuran congeners. EPA Method No.1668 for the 12 coplanar polychlorinated biphenyl congeners. You can purchase a copy of EPA Method No. 1613B from the National Technical Information Service (NTIS) by requesting NTIS publication number NTIS#: PB93–236024 at 1–800–553–NTIS (or online at http://www.ntis.gov/). You can also obtain this document through the Educational Resources Information Center by requesting ERIC publication number W–105 at 1–800–443–ERIC (or online at http://www.accesseric.org/). EPA Method Number 1668 (EPA No.821/C–97–005821/C–97–005) is available on the Office of Water Methods and Guidance Diskette 2#. You can request a copy from the EPA Office of Water Resource Center at (202) 260–7786 or by sending an e-mail to: center.water-resource@epa.gov.

3. Redesignate paragraphs (f) through (bb) as (g) through (cc) in and add a new paragraph (f) as follows:

§ 503.9 General definitions.

* * * * *

(f) *Dioxins* means all of the seven 2,3,7,8 chlorinated dibenzo-p-dioxin congeners, ten 2,3,7,8 chlorinated dibenzofuran congeners, and 12 coplanar polychlorinated biphenyl congeners as follows:

CAS No	Congener
1746–01–6	2,3,7,8-Tetrachlorodibenzo-p-dioxin
40321–76–4	1,2,3,7,8-Pentachlorodibenzo-p-dioxin
39227–28–6	1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin
57653–85–7	1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin
19408–74–3	1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin
35822–46–9	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin
3268–87–9	1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin

CAS No.	Congener
51207–31–9	2,3,7,8-Tetrachlorodibenzofuran
57117–41–6	1,2,3,7,8-Pentachlorodibenzofuran
57117–31–4	2,3,4,7,8-Pentachlorodibenzofuran
70648–26–9	1,2,3,4,7,8-Hexachlorodibenzofuran
57117–44–9	1,2,3,6,7,8-Hexachlorodibenzofuran
72918'21–9	1,2,3,7,8,9-Hexachlorodibenzofuran
60851–34–5	2,3,4,6,7,8-Hexachlorodibenzofuran
67562–39–4	1,2,3,4,6,7,8-Heptachlorodibenzofuran
55673–89–7	1,2,3,4,7,8,9-Heptachlorodibenzofuran
39001–02–0	1,2,3,4,6,7,8,9-Octachlorodibenzofuran
32598–13–3	3,3',4,4'-Tetrachlorobiphenyl
70362–50–4	3,4,4',5-Tetrachlorobiphenyl
57465–28–8	3,3',4,4',5-Pentachlorobiphenyl
32598–14–4	2,3,3',4,4'-Pentachlorobiphenyl
31508–00–6	2,3',4,4',5-Pentachlorobiphenyl
65510–44–3	2',3,4,4',5-Pentachlorobiphenyl
74472–37–0	2,3,4,4',5-Pentachlorobiphenyl
32774–16–6	3,3',4,4',5,5'-Hexachlorobiphenyl
38380–08–4	2,3,3',4,4',5-Hexachlorobiphenyl
69782–90–7	2,3,3',4,4',5'-Hexachlorobiphenyl
52663–72–6	2,3',4,4',5,5'-Hexachlorobiphenyl
39635–31–9	2,3,3',4,4',5,5'-Heptachlorobiphenyl

* * * * *

4. Amend § 503.10 by redesignating paragraph (a) as (a)(1) and adding a title to paragraph (a) before (a) (1); and adding paragraph (a)(2) as follows:

§ 503.10 Applicability.

(a) General applicability of Subpart B—Land Application.

* * * * *

(2) The pollutant limits in § 503.13(a)(1), (a)(2)(ii), (a)(3), and (a)(4)(i) do not apply to sewage sludge prepared by, and the monitoring requirements in § 503.16(a)(3) do not apply to:

(i) A treatment works that treats domestic sewage with a flow rate equal to or less than one million gallons per day or;

(ii) A person who prepares sewage sludge or who derives a material from sewage sludge in an amount equal to or less than 290 dry metric tons per year.

* * * * *

§ 503.13 [Amended]

5. Amend § 503.13 by adding a sentence after the header to paragraph (a) and adding an entry for "Dioxins" in alphabetical order in paragraph (b)(1) and adding an entry for "Dioxins" in alphabetical order in paragraph (b)(3) as follows:

§ 503.13 Pollutant limits.

(a) Sewage sludge. Except as provided in § 503.10(a)(2), the following pollutant limits apply to sewage sludge that is applied to the land.

* * * * *

(b) * * *

(1) * * *

TABLE 1 OF § 503.13—CEILING CONCENTRATIONS

Pollutant	Ceiling concentration (milligrams per kilogram) [1]
* * * * *	
Dioxins (defined in § 503.9(f)	0.003 TEQ
* * * * *	

[1] Dry weight basis.

* * * * *

(3) * * *

TABLE 3 OF § 503.13—POLLUTANT CONCENTRATIONS

Pollutant	Monthly average concentration (milligrams per kilogram) [1]
* * * * *	
Dioxins (defined in § 503.9(f))	0.0003 TEQ
* * * * *	

[1] 1 Dry weight basis.

* * * * *

6. Revise (a) of § 503.16 as follows:

§ 503.16 Frequency of monitoring.

(a) *Sewage sludge.* You must monitor for pollutants in sewage sludge, pathogen density and vector attraction reduction according to the following schedule:

(1) For all pollutants except dioxins listed in § 503.13(b)(1) Table 1 and (b)(3) Table 3 and all pollutants listed in § 503.13(b)(2) Table 2 and (b)(4) Table 4, you must monitor as provided in Table 1 of this section.

(2) For pathogen density requirements in § 503.32(b)(2) through (b)(4) and the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8), you must monitor as provided in Table 1 of this section.

Table 1 of § 503.16

Amount of sewage sludge[1] (metric tons per 365 day period)	Frequency
Greater than zero but less than 290	Once per year.
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year).
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year).
Equal to or greater than 15,000	Once per month (12 times per year).

[1] Either the amount of bulk sewage sludge applied to the land (dry weight basis), or the amount of sewage sludge or material derived from sewage sludge sold or given away in a bag or other container prepared by a person who prepares sewage sludge for application to the land (dry weight basis).

(3) Except as provided in § 503.10(a)(2), for dioxins listed in § 503.13(b)(1) and (3), you must monitor your sewage sludge annually, as of [one year after effective date of final rule].

(i) If the level of dioxins in your sewage sludge is above 30 ppt TEQ but below 300 ppt TEQ, then you must monitor for dioxins annually.

(ii) If the level of dioxins in your sewage sludge is at or below 30 ppt TEQ for any two consecutive years, then you may reduce the frequency of monitoring to once every five years.

(iii) If you have reduced the frequency of monitoring under paragraph (a)(3)(ii) of this section and the level of dioxins in your sewage sludge exceeds 30 ppt TEQ, you must resume monitoring your sewage sludge annually.

(4) After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the permitting authority may reduce the frequency of monitoring for the pollutant concentrations and for the pathogen density requirements in § 503.32(a)(5)(ii) and (a)(5)(iii).

* * * * *

[FR Doc. 99–33033 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–U

Notices

Federal Register
Vol. 64, No. 246
Thursday, December 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–00–01]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: January 20, 2000.

Time: 9 a.m.

Place: United States Department of Agriculture, (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To consider recommendations on the inspection certificate, discuss the bale experiment for the upcoming marketing season, and other related matters for the 2000 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by January 12, 2000, and inform us of your needs.

Dated: December 16, 1999.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 99–33349 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 2000

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa A. Rothstein, Section Chief, Summer Food Service Program and Child and Adult Care Food Program, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

In accordance with section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2000. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 1998 through November 1999.

Section 104(a) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) amended section 12(f) of the NSLA (42 U.S.C. 1760(f)) to allow adjustments to SFSP reimbursement rates to reflect the higher cost of providing meals in the SFSP in Alaska and Hawaii. Therefore, this notice contains adjusted rates for Alaska and Hawaii. This change was made in an effort to be consistent with other Child Nutrition Programs, such as the National School Lunch Program and the School Breakfast Program, which already had the authority to provide higher reimbursement rates for programs in Alaska and Hawaii.

The 2000 reimbursement rates, in dollars, for all states, excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (BUT ALASKA OR HAWAII)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.25	$.1250	$.0975
Lunch or Supper	2.18	.2275	.1900
Supplement	.50	.0625	.0500

The 2000 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.02	$.2000	$.1600
Lunch or Supper	3.53	.3700	.3075
Supplement	.82	.1000	.0800

The 2000 reimbursement rates in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.46	$.1450	$.1150
Lunch or Supper	2.55	.2675	.2225
Supplement	.59	.0725	.0575

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 2.4 percent increase during 1999 (from 162.6 in November 1998 to 166.5 in November 1999) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by Section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759(a)(3)(B)).

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33099 Filed 12–18–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of the comment period for the Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement.

SUMMARY: The comment period has been extended for the proposed revised Land and Resource Management Plan (Forest Plan), the Draft Environmental Impact Statement (DEIS), and associated documents. The original Notice of Availability was published in the **Federal Register**, Vol. 64, No. 151 on August 6, 1999 (64 FR 42900) as FR Doc. 99–19922. The first extension of the comment period was published in the **Federal Register**, Volume 64, No. 210 on November 1, 1999 (64 FR 58807) as FR Doc. 99–28461.

DATES: Public comment began on August 6, 1999, and will end May 9, 2000.

ADDRESSES: Interested parties are invited to send written comments regarding the proposed revised Forest Plan and Draft EIS to the address below: Forest Supervisor, Forest Plan Revision Comments, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Questions about this action or requests for the documents listed above should be addressed to: Carolyn Upton, Team Leader, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602, Telephone Number: (970) 945–3226.

SUPPLEMENTARY INFORMATION: The public comment period originally began

on August 6, 1999 and ended on November 4, 1999. The first extension to the comment period extended it to February 9, 2000. The FY 2000 Appropriations Bill (Public Law 106–113, passed on November 29, 1999) contains an amendment specific to the White River National Forest. The amendment reads: The Forest Service shall extend the public comment period on the White River National Forest plan revision for 90 days beyond February 9, 2000. To comply with that direction, the comment period has been extended.

Dated: December 10, 1999.

Martha Ketelle,

Forest Supervisor.

[FR Doc. 99–33368 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–BW–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deep Vegetation Management Project, Ochoco National Forest, Crook and Wheeler Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposed Action to complete silvicultural treatments, including commercial harvest, pre-commercial thinning, and prescribed fire, to improve the health and diversity of forest stands in the Deep Creek Watershed. The Deep Creek Watershed is located approximately 60 miles northeast of Prineville, Oregon and covers approximately 55,400 acres. Approximately 97 percent of the watershed is National Forest System land. The project is proposed for fiscal years 2000 through 2004. The Ochoco National Forest invites written comment on this proposal and the scope of analysis. The agency will give notice of the full environmental analysis and decision making process for the proposal so interested and affected people may participate and contribute to the final decision.

DATES: Send written comments and concerns on the issues and management of this area by February 15, 2000.

ADDRESSES: Send written comments to Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754, or Eugene Skrine, District Ranger, Paulina Ranger District, 7803 Beaver Creek Road, Paulina, Oregon 97751.

FOR FURTHER INFORMATION CONTACT: Tom Mafera, Deep Project Leader, Paulina, Ranger District, 7803 Beaver Creek Road, Paulina, OR 97751, phone (541) 477–6910.

SUPPLEMENTARY INFORMATION: The Forest Service Proposed Action will conduct management activities, including commercial timber harvest, pre-commercial thinning, and prescribed fire, in the Deep Creek Watershed. Based on an analysis of existing vegetation conditions in the Deep Creek Watershed, opportunities were identified to conduct silvicultural treatments to improve the health and diversity of forested stands. Silvicultural treatments include approximately 8,000 acres of thinning/selection harvest and approximately 25,000 acres of low intensity prescribed burning. This Proposed Action will to develop opportunities for post/pole/chip/firewood products from small-sized trees. The proposal will develop habitat improvement projects for a variety of wildlife, fish, and sensitive plant species. There will be road development and/or repair to access the treatment areas. Approximately 10 miles of currently existing roads will be decommissioned or obliterated. Roads currently closed will be re-assessed.

The purpose and need for action is to provide landscape-level health and diversity within the project area. Also to provide multiple use benefits: such as wildlife and fish habitat restoration; riparian and watershed restoration; visual quality; and timber products.

All activities will be consistent with the 1989 Ochoco National Forest Land and Resource Management Plan as amended by the 1995 Inland Native Fish Strategy and the Regional Foresters Forest Plan Amendment #2. This project will also be guided by the recommendations in the Deep Creek Watershed Analysis.

The decision-to-be-made will include whether, where, and/or how much of each proposed vegetation activity should occur, and/or how much road and where decommissioning, repair, obliteration, or construction should occur.

The northern edge of the project area follows the ridgeline north of Forest Road (FR) 2630 east from the western district boundary through Buck Point, and Camp Weston Point. The eastern edge follows the ridgeline from Camp Weston Point southeasterly to Alder Springs. From Alder Springs it goes south and follows FR 1200 to the junction of FR 1200/1250, southeasterly to Bear Mountain and south to FR 42. FR 42 bounds the southern edge west to Dry Reservoir, southwest through Twin Springs to the North Fork Crooked River. The western boundary is from the North Fork Crooked River north along the Paulina/Big Summit Ranger District boundary to just north of FR 2630. The project area includes portions of the following streams: Deep Creek, Little Summit Creek, Happy Camp Creek, Jackson Creek, Double Corral Creek, Chamberlin Creek, Toggle Creek, Buck Hollow Creek, Derr Creek, Haypress Creek, Big Spring Creek, and branches of Crazy and Thorton Creeks.

Preliminary issues have been identified: landscape level pattern and vegetative diversity; water quality and fish habitat; fuels and fire hazard, effects on soils, and effects on proposed endangered, threatened or sensitive species.

Alternatives to be considered will include the no action alternative, plus action alternatives that will be developed in response to key issues. The action alternatives will include various levels of commercial harvest, pre-commercial thinning, prescribed fire, road work, and fish, wildlife and riparian habitat improvement projects.

Initial scoping began in October 1999. The public is invited to offer suggestions and comments in writing. Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d); any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS expected to be completed in April 2000. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court ruling related to public participation in the environmental review process. First,

reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in June 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Deep Vegetation Management Project.

The Forest Service is the lead agency. Thomas A. Schmidt, Forest Supervisor, is the Responsible Official. The Responsible Official will determine which alternative best meets the purpose and need of this project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. The decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: December 7, 1999.

Thomas A. Schmidt,

Forest Supervisor.

[FR Doc. 99–32830 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

State Road Use Permit To Access Damfino Section 16, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY

AGENCY: USDA, Forest Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of issuing a Road Use Permit to the State of Wyoming to access its lands in Section 16, T. 12 N., R. 83 W., 6th P.M.; across National Forest System lands. The State of Wyoming has completed application for a Forest Road Special Use Permit to exercise its right under the *Alaska National Interest Lands Conservation Act* of December 2, 1980. The permit would allow the State of Wyoming to transport logs from a commercial timber sale on its land across National Forest System lands over existing Forest Development Roads. The analysis area is southeast of Encampment, Wyoming. All roads across National Forest System lands needed to access the State of Wyoming lands in School Section 16 already exist as Forest Development Roads, which are in suitable condition and capable of supporting the proposed use. No new road construction or reconstruction on National Forest System lands would be needed for the state to access its lands.

This Notice of Intent is being issued under the authority of the Medicine Bow National Forest Land and Resource Management Plan and Final EIS of October 1985. The Medicine Bow National Forest formally initiated plan revision on October 7, 1999 with a Notice of Intent published in the **Federal Register**. It is anticipated that the 1985 Forest Plan will still be in effect when the Record of Decision for this EIS is issued.

DATES: Public scoping for a Road Use Permit to Louisiana Pacific, an agent of the State of Wyoming, was initiated on January 28, 1999. A total of 83 comment letters were received. Additional scoping was initiated on August 10, 1999 for a Road Use Permit to the State of Wyoming. A total of 53 comment letters were received. All comments received from these previous scoping efforts related to the issuance of a Road Use Permit to access State of Wyoming lands in Damfino Section 16 will be combined with comments received as a result of this Notice of Intent and reviewed to identify potential issues for this analysis. Since these previously received comments will be incorporated into this analysis, individuals who responded to either the January 28, 1999 or August 10, 1999 scoping requests need provide comment at this time only if they wish to provide additional information to what they previously submitted. Written comments and suggestions should be postmarked by January 21, 2000 to receive consideration. The estimated time for filing the draft EIS is March 2000 followed by the final decision in May 2000.

ADDRESSES: The Responsible Official is Don Carroll, District Ranger; Brush Creek/Hayden Ranger District; Medicine Bow-Routt National Forests; PO Box 249; South HWY 130/230; Saratoga, WY 82331. Written comments and suggestions concerning the scope of the analysis may be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: John Baumchen, Interdisciplinary Team Leader. Phone: 307–326–5258.

SUPPLEMENTARY INFORMATION:

Background: Under authorities provided for in 36 CFR 261.12 and 36 CFR 261.54, Forest Supervisor Jerry Schmidt issued Supervisor's Order 98–10 on July 8, 1998. This order requires written authorization for commercial use of any Forest Development Road on the Medicine Bow-Routt National Forest. In response to this requirement, the State of Wyoming, has applied for a Forest Road Special Use Permit for commercial haul related to a timber sale on State lands over Forest Development Roads (FDR's) 409, 416, 416.1D and 416.2D. The Wyoming lands are located adjacent to the Wyoming border with Colorado in Section 16, T.12N., R.83W., 6th P.M. The State of Wyoming would thus exercise its right under the *Alaska National Interest Lands Conservation Act* of December 2, 1980 (ANILCA) to access these lands. The Forest Road Special Use Permit is not a general authorization. The permit would provide specific authority to the permittee for the activities listed, subject to stipulations included in the permit.

Forest Development Roads suitable for commercial haul already exist to a termination point within School Section 16. The National Forest roads to be used include both roads that are open system roads as well as roads originally constructed as part of the Coon Creek Pilot Project, which are normally closed.

Scoping process: All comments received from previous scoping efforts related to the issuance of a Road Use Permit to access State of Wyoming lands in Damfino Section 16 will be combined with comments received as a result of this Notice of Intent and reviewed to identify potential issues for this analysis. Since previously received comments will be incorporated into this analysis, individuals who responded to either the January 28, 1999 or August 10, 1999 scoping requests need to provide comment at this time only if they wish to provide information additional to what they previously submitted.

Proposed Action: The proposed action is to issue a Road Use Permit to the State of Wyoming for commercial haul over National Forest Roads from State of Wyoming land in Section 16 in T.12N., R.83W.

Potential alternatives: The Interdisciplinary Team will review scoping comments from all three scoping processes to identify key issues and will develop a recommendation concerning alternatives to the Proposed Action warranting analysis in the Environmental Impact Statement. As a minimum, the alternatives to be analyzed in the EIS would include the No Action Alternative (do not issue a Road Use Permit); and the Proposed Action (issue a road use permit to the State of Wyoming over the requested route).

Preliminary Issues: The following preliminary issues have been identified through past scoping of projects in the area:

What are the FS authorities and Wyoming's rights under ANILCA concerning the issuance of a Road Use Permit to Section 16?

Under what conditions would a Road Use Permit needed for commercial haul for a commercial timber sale be issued to the State of Wyoming?

What would be the effects of a timber sale on lands owned by the State of Wyoming to adjacent National Forest System resources, particularly, what are the effects to recreation, wildlife, soil and water?

What are appropriate alternatives for the analysis?

What interpretations and positions concerning effects to resources, roadless character, fragmentation and environmental laws should be used to analyze activities on lands not under the jurisdiction of the U.S. Forest Service?

Decision to be made: The Responsible Official will decide which alternative of those considered in the draft Environmental Impact Statement to select. Based on the decision that is made, he will also decide what mitigation measures and permit stipulations will be required. The issues and alternatives developed from public comment and Interdisciplinary Team analysis will be clearly disclosed in the Environmental Impact Statement. From the project record, the Responsible Official and others who may review the decision will be able to fully understand the consequences of implementing the selected alternative.

Reviewer Obligations: The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Release of Names: Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Responsible Official: Don Carroll, District Ranger; Brush Creek/Hayden Ranger District; Medicine Bow-Routt National Forests; P.O. Box 249; Saratoga, WY 82331.

As the Responsible Official, I will decide which, if any of the alternatives to be described in the draft Environmental Impact Statement will be implemented. I will document the decision and reasons for my selection of the decision in the Record of Decision.

Dated: December 16, 1999.

Don G. Carroll,

District Ranger.

[FR Doc. 99–33284 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–GM–M

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction: Hawthorne Army Depot New Bomb Project Interchange, Toiyabe National Forest, Nevada

AGENCY: Forest Service, USDA.

ACTION: Notice of land interchange.

SUMMARY: On September 15, 1999, and November 4, 1999, the Secretary of the Army and the Secretary of Agriculture, respectively, signed a joint interchange order authorizing the transfer of administrative jurisdiction of 3,183.418 acres, more or less, lying within the Toiyabe National Forest, Mineral County, Nevada, from the Department of Agriculture to the Department of the Army. Furthermore, the order transfers from the Department of the Army to the Department of Agriculture 487.96 acres, more or less, lying adjacent to the exterior boundaries of the Los Padres National Forest, Monterey County, California, for inclusion in the Los Padres National Forest. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b) has been met. A copy of the Joint Order, as signed, and Exhibits A–1 and B–1, which describe the lands and interests therein being conveyed, are set out at the end of this notice.

EFFECTIVE DATE: The order is effective December 23, 1999.

FOR FURTHER INFORMATION CONTACT: David M. Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, Telephone: (202) 205–1362.

Dated: December 2, 1999.

James R. Furnish,

Deputy Chief.

Ft. Hunter Liggett Lands To Be Transferred from the Department of the Army to the Forest Service

That portion of the Fort Hunter Liggett Military Reservation situated within Sections 33, 34, and 35; Township 24 South, Range 7 East, Mount Diablo Base Meridian, Monterey County, California, being more particularly described as follows:

Beginning at the northwest corner of Section 34; thence easterly along said section line to the westerly edge of the Salmon Creek Road; thence southeasterly along the westerly edge of said road to the Monterey County Line; thence westerly along said County Line to the westerly boundary of the Fort Hunter Liggett Military Reservation; thence; northwesterly along said boundary to the north line of Section 33; thence, along said line to the point of beginning.

Containing 487.96 acres more or less.

Hawthorne Army Depot—Lands to be Transferred From the Forest Service to the Department of the Army

A parcel of land situated in portions of Sections 26, 27, 28, 29, 32, 33, 34, and 35, Township 5 North, Range 30 East, Mount Diablo Base and Meridian, and Sections 3, 4, and 5 Township 4 North, Range 30 East, Mount Diablo Base and Meridian, County of Mineral, State of Nevada, according to the attached Record of Survey, and more particularly described as follows:

COMMENCING for reference at the southeast corner of said Section 34;
Thence, N 26°38′29″ W, a distance of 1333.26 feet, to the TRUE POINT OF BEGINNING;
Thence, from said TRUE POINT OF BEGINNING, N 26°53′09″ E, a distance of 530.03 feet;
Thence, N 08°52′56″ W, a distance of 26.77 feet;
Thence, N 31°49′19″ E, a distance of 523.98 feet;
Thence, N 28°44′15″ E, a distance of 1670.81 feet;
Thence, N 28°04′37″ E, a distance of 432.97 feet;
Thence, N 22°59′00″ E, a distance of 1006.98 feet;
Thence, N 17°04′17″ W, a distance of 803.47 feet;
Thence, N 07°00′03″ W, a distance of 1135.47 feet;
Thence, N 29°34′33″ E, a distance of 574.20 feet;
Thence, N 47°40′04″ W, a distance of 865.29 feet;
Thence, N 86°54′23″ W, a distance of 9686.49 feet;
Thence, S 39°46′28″ W, a distance of 5303.45 feet;
Thence, S 00°59′45″ W, a distance of 6514.70 feet;
Thence, S 57°01′14″ E, a distance of 3911.76 feet;
Thence, S 73°00′55″ E, a distance of 117.69 feet;
Thence, N 86°37′18″ E, a distance of 1461.68 feet;
Thence, S 89°20′52″ E, a distance of 2208.65 feet;
Thence, N 76°48′58″ E, a distance of 1251.50 feet;
Thence, N 72°39′18″ E, a distance of 1151.81 feet;
Thence, N 28°43′31″ E, a distance of 5448.58 feet, more or less, to the TRUE POINT OF BEGINNING.

CONTAINING, 3183.42 Acres, more or less.

The Basis of Bearing for this legal description is the line between Monuments MIV 011 and MIV 012 taken from NDOT record information ASP 116 State Route 31, N 46°25′24″ E, a distance of 10415.66 feet.

END OF DESCRIPTION

[FR Doc. 99–33304 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, January 12, 2000, at the North State Blood Center, 1880 Park Marina Drive, Redding, California. The meeting will start at 9 a.m. and adjourn at 4 p.m. Topics for the meeting are: (1) Discussion of a fuels reduction project; (2) Clear Creek Watershed implementation; (3) discussion of the draft policy letter to CALFED regarding upper watershed restoration; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 11263 N. Highway 3, Fort Jones, California 96032; telephone 530–468–1281; TDD (530) 468–2783; email: chendryx/r5_klamath@fs.fed.us.

Dated: December 10, 1999.

Constance J. Hendryx,

PAC Support Staff.

[FR Doc. 99–33369 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on February 3, 2000, at the Catholic Charities, Conference Room, 467 Bloomfield Avenue, Bloomfield, Connecticut 06002. The Committee will review its report, "Civil Rights Issues in Connecticut: A Summary Report of the 1997 Civil Rights Conference", and plan a community forum in Spring 2000 in Bridgeport, Connecticut.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Neil Macy, 860–242–7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting

and require the service of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–33370 Filed 12–22–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on January 28, 2000, at the Double Tree Hotel, the Opal Room, 29th and Chinden, Boise, Idaho 83714. The purpose of the meeting is to review civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–33371 Filed 12–22–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5 p.m. on February 11, 2000, at the Double Tree Inn-Columbia River, 1401 North Haden Island Drive, Portland, Oregon 92717. The purpose of the meeting is to review civil rights developments in the State and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–33372 Filed 12–22–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121799D]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Individual Fishing Quota Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of effectiveness of data collection.

SUMMARY: NMFS is announcing that the information collection requirement contained in § 679.5(l)(2)(vi) of 50 CFR part 679 was approved by the Office of Management and Budget.

DATES: Effective November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Hale, 907-586-7228.

Dated: December 17, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33353 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121499E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings for its Groundfish Advisory Panel and Groundfish Committee in January, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held Thursday, January 13, 2000, and Friday, January 14, 2000. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535–4600.

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950–2866.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, January 13, 2000, at 10 a.m.—Groundfish Advisory Panel Meeting

The Advisory Panel will review options and analyses for the groundfish annual adjustment (Framework 33) and develop preferred alternatives to recommend to the Groundfish Committee. The options for the annual adjustment include: management measures to achieve fishery management plan (FMP) objectives for Gulf of Maine and Georges Bank cod stocks, including area closures, trip limits, increase in the minimum fish size and adjustments to the days-at-sea (DAS) system; adjustment of the Georges Bank haddock trip limit; decreasing the minimum mesh size for otter trawl vessels in the Large Mesh Permit Category and allowing for exit from the

program after one month; revision of the definition of exempted midwater trawl gear; an exemption for raised footrope trawl gear in part of the Gulf of Maine closed areas and for small scallop dredges in the Western Gulf of Maine Closed Area; a program to allow limited scallop dredge vessel access to Closed Areas I and II and the Nantucket Lightship Closed Area, including an exemption for General Category vessels to fish for scallops in Closed Areas I and II; and a requirement that multispecies party/charter vessels obtain an exemption certificate to fish in any or all of the Gulf of Maine closed areas. The Advisory Panel will also elect a chairman to serve for 2000–01.

Friday, January 14, 2000, at 9:30 a.m.—Groundfish Committee Meeting

The Groundfish Committee will review options, Plan Development Team analyses, and Advisory Panel recommendations for the groundfish annual adjustment (Framework 33) and develop preferred alternatives to recommend to the Council. The options for the annual adjustment include: management measures to achieve FMP objectives for Gulf of Maine and Georges Bank cod stocks, including area closures, trip limits, increase in the minimum fish size and adjustments to the DAS system; adjustment of the Georges Bank haddock trip limit; decreasing the minimum mesh size for otter trawl vessels in the Large Mesh Permit Category and allowing for exit from the program after one month; revision of the definition of exempted midwater trawl gear; an exemption for raised footrope trawl gear in part of the Gulf of Maine closed areas and for small scallop dredges in the Western Gulf of Maine Closed Area; a program to allow limited scallop dredge vessel access to Closed Areas I and II and the Nantucket Lightship Closed Area, including an exemption for General Category vessels to fish for scallops in Closed Areas I and II; and a requirement that multispecies party/charter vessels obtain an exemption certificate to fish in any or all of the Gulf of Maine closed areas.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notie that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard at the Council (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 17, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33355 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 666–P is being increased for special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 22, 1999, you are directed to increase the current limit for Category 666–P to 1,019,333 kilograms [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33475 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot,

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998; Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Description

The 2000 Application Guidelines for AmeriCorps National, State, and Indian Tribes and U.S. Territories provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for funds to operate AmeriCorps programs.

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page all AmeriCorps National, State, and Indian Tribes and U.S. Territories can use. The budget form and title page have been revised so that information is asked for one place and does not need to be copied to some other part of the form as in the past. Form instructions are clearer and are written in plain language.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for AmeriCorps National, State and Indian Tribes and U.S. Territories.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 2000.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 20,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 20, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33334 Filed 12–22–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Description

AmeriCorps Education Awards Program 2000 Application Guidelines provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for education awards for community service programs that can support most or all of the AmeriCorps member and program costs from sources other than the Corporation. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Education Awards Program.2000 Application Guidelines.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 300.

Frequency: Once per year.

Average Time Per Response: Eight (8) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 20, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33335 Filed 12–22–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for National Providers of Training and Technical Assistance to Corporation for National and Community Service Programs; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds; correction.

SUMMARY: The Corporation for National and Community Service published a notice in the **Federal Register** of December 3, 1999, concerning the availability of funds for organizations to provide training and technical assistance to grantees and subgrantees supported by the Corporation funds. The part of the notice concerning the provision of assistance to increase participation of persons with disabilities in national service contained extraneous information and omitted information about a matching funds requirement.

FOR FURTHER INFORMATION CONTACT: Jim Ekstrom or Margie Legowski at the Corporation for National and Community Service, telephone (202) 606–5000, ext. 414, T.D.D. (202) 565–2799. This Notice is available on the Corporation's web site, *http://www.nationalservice.org/research.*

Correction

In the **Federal Register** of December 3, 1999, in 64 FR 67889, in the first column, correct the first paragraph to read: "The funds that the Corporation provides may not exceed 75 percent of the cost of carrying out activities under the cooperative agreement. The provider may provide for the remaining share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services. The provider may use State sources, local sources, or other Federal sources (other than those funds made available under the national service laws) for this purpose."

Dated: December 20, 1999.

William Beetley,

Director, Department of Evaluation and Effective Practices, Corporation for National and Community Service.

[FR Doc. 99–33340 Filed 12–22–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Joint Military Intelligence College Board of Visitors

ACTION: Notice.

SUMMARY: The Joint Military Intelligence College (JMIC) Board of Visitors was renewed effective November 27, 1999, in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, the "Federal Advisory Committee Act."

The JMIC Board of Visitors will continue to provide the Director, Defense Intelligence Agency, and the President, JMIC with advice on matters related to mission, policy, accreditation, faculty, students, facilities, curricula, educational methods, research and administration. The Board will continue to be composed of 11 members who are experts in the national intelligence community and who are former high ranking military officers and civilian government officials, and distinguished representatives from academia. Efforts will be made to ensure that there is a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

For further information regarding the JMIC Board of Visitors, please contact Mr. Ronald Garst, (202) 231–3322.

Dated: December 16, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33243 Filed 12–23–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend Record System.

SUMMARY: On August 24, 1999, at 64 FR 46185, the Air Force amended the system of records notice F044 AF DP B, entitled Substance Abuse Reorientation and Treatment Case Files. Two of the changes made to the system of records notice at that time were to the system identifier and the system name. They were changed to 'F044 AF SG B', entitled 'Alcohol and Drug Abuse Prevention and Treatment Program', respectively.

It has come to the attention of the Air Force that the new system identifier (F044 AF SG B) already existed. Therefore, the system of records notice published on August 24, 1999, should carry the system identifier of 'F044 AF SG S', while retaining the system name of 'Alcohol and Drug Abuse Prevention and Treatment Program'.

DATES: The amendment will be effective on December 23, 1999.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

On August 24, 1999, at 64 FR 46185, the Air Force amended the system of records notice F044 AF DP B, entitled 'Substance Abuse Reorientation and Treatment Case Files'. Two of the changes made to the system of records notice were to the system identifier and the system name. They were changed to 'F044 AF SG B', entitled 'Alcohol and Drug Abuse Prevention and Treatment Program', respectively.

It has come to the attention of the Air Force that the new system identifier (F044 AF SG B) already existed. Therefore, the system of records notice published on August 24, 1999, should carry the system identifier of 'F044 AF SG S', entitled 'Alcohol and Drug Abuse Prevention and Treatment Program'.

Dated: December 16, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33245 Filed 12–22–99; 8:45 am]

BILLING CODE 5001–10–F–

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 13–14 January 2000.

Time of Meeting: 0800–1700.

Place: IDA Building, 1801 Beauregard, Alexandria, VA.

Agenda: The Army Science Board's (ASB) membership will receive briefings on ongoing studies, plan forthcoming studies and will receive presentations regarding major Army initiatives and issues. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Wayne Joyner at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 99–33377 Filed 12–22–99; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting Pursuant to the Provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), Notice Is Hereby Given of the Defense Nuclear Facilities Safety Board's (Board) Meeting Described Below

TIME AND DATE OF MEETING: 9:00 a.m., January 20, 2000.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board ("Board") will convene the twelfth quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plan for the Board's Recommendations 95–2, Integrated Safety Management ("ISM"). Specific ISM status matters will include recent and planned site verification reviews, actions needed to achieve full implementation by September 2000, and progress on developing performance indicators. Presentations on site implementation status will be made by the DOE Albuquerque and Idaho Operations Offices. DOE will also present the status of implementing Recommendation 98–1, Integrated Safety Management (Response to Issues Identified by the Office of Internal Oversight). Specific matters related to Recommendation 98–1 will include the status of the corrective action plans, the corrective action tracking system, and the implementation verification process.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: December 21, 1999

John T. Conway,

Chairman.

[FR Doc. 99–33459 Filed 12–21–99; 12:01 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 17, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Technology Innovation Challenge Grant Program Online Annual Performance Reporting System.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 96;

Burden Hours: 2,400.

Abstract: The proposed interactive, on-line database provides the U.S. Department of Education and funded Technology Innovation Challenge Grant projects with up-to-date information on a number of key issues that include: basic characteristics of the project and key contact information; project partners; project participants; the project focus; project goals and activities; professional development activities; dissemination of project products; lessons learned from the project; and the project's budget.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33258 Filed 12–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 17, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: Revision.

Title: 2000 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52,500 Burden Hours: 506,250.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is a biennial survey which collects data from schools and school districts on issues, including emerging issues, of interest to the Office for Civil Rights, U.S. Department of Education. Data from the Compliance Report is used by OCR to aid in identifying sites for compliance reviews and tracking trends and issues related to civil rights compliance. The Compliance Report collects data related to Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin), Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex) and Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap). For the 2000 Compliance Report, data will be collected from all districts and schools.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33259 Filed 12–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–255–005]

Columbia Gas Transmission Corporation; Notice of Status of Compliance Report

December 17, 1999.

Take notice that on December 10, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following status of compliance filing.

Columbia states that this filing is being made regarding compliance with Section 284.10(c)(2)(i) of the Commission's Regulations, as required by the Commission's order "Compliance with OBA Requirements," issued October 13, 1999 in Docket No. RP98–255–004.

By the instant filing, Columbia reports that it has executed an Operational Balancing Agreement with Transcontinental Gas Pipe Line Corporation effective as of December 1, 1999. Thus Columbia is now in full compliance with the provisions of Section 284.10(c)(2)(i) of the Commission's Regulations.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 27, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33264 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–139–000]

KN Marketing, LP v. El Paso Natural Gas Company; Notice of Complaint

December 17, 1999.

Take notice that on December 16, 1999, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), KN Marketing, LP (KNMLP) filed a Section 5 complaint against El Paso Natural Gas Company (El Paso), requesting the Commission to require El Paso to change the manner in which it allocates firm mainline capacity on its system.

Specifically, KNMLP requests the Commission to order El Paso to cease and desist the overselling of firm mainline capacity from the San Juan Basin to Texas (East End), which results in firm shippers' volumes being constantly allocated. KNMLP requests that this complaint be given Fast Track processing, pursuant to Rule 206(h).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests must be filed on or before January 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before January 6, 2000.

David P. Boergers,

Secretary.

[FR Doc. 99–33268 Filed 12–22–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–137–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1999.

Take notice that on December 15, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to be effective January 15, 2000.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to modify certain of Panhandle's pro forma service agreements so that discount agreements may provide for adjustments to rate components upward or downward to achieve an agreed upon overall rate so long as all rate components remain within the applicable minimum and maximum rates specified in the tariff.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33266 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–006]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 17, 1999.

Take notice that on December 10, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Original Sheet No. 8A. PG&E GT–NW requests that the above-referenced tariff sheet become effective December 2, 1999.

PG&E GT–NW states that this sheet is being filed to correct a typographical error contained on Original Sheet No. 8A as filed on December 2, 1999.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33265 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–138–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1999.

Take notice that on December 15, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised

Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing to be effective January 15, 2000.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to modify certain of Trunkline's pro forma service agreements so that discount agreements may provide for adjustments to rate components upward or downward to achieve an agreed upon overall rate so long as all rate components remain within the applicable minimum and maximum rates specified in the tariff.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33267 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Comments, Final Terms and Conditions, Recommendations and Prescriptions

December 17, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Original major License.

b. Project No.: 11588–001.

c. Date filed: October 29, 1999.

d. Applicant: Alaska Power and Telephone Co.

e. Name of Project: Otter Creek Hydroelectric Project.

f. Location: On Kasidaya Creek, about 3 miles from the City of Skagway, on Taiya Inlet, in the First Judicial District of the State of Alaska. The project would use about 6.0 acres of Federal land within the Tongass National Forest.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Alaska Power & Telephone Company, Glen D. Martin, Project Manager, 191 Otto Street, P.O. Box 3222, Port Townsend, WA 98368, (360) 385–1733.

i. FERC Contact: Gaylord W. Hoisington, gaylord.hoisington@ferc.fed.us, or (202) 219–2756.

j. Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would consist of the following new facilities: (1) An 80-foot-long, 10-foot-high impoundment structure at approximately 550 feet above mean sea level; (2) an 0.18-acre reservoir with a total storage capacity of 0.92 acre feet; (3) an intake at the impoundment structure; (4) an orifice to continuously release 5 cubic feet per second at the impoundment structure; (5) a 3,500-foot-long, 40-inch-diameter penstock; (6) a 60-foot-long, 80-foot-wide metal powerhouse structure to house a 3.0-megawatt Turgo turbine; (7) a 200-foot by 100-foot staging area around the powerhouse; (8) a 50-foot-long to 75-foot-long tailrace; (9) a pad-mounted step-up transformer; (10) a 200-foot-long underground cable; (11) 3 helicopter pads; and (12) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Comments, Protest, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protest or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Response Documents—The Commission is requesting final comments, final reply comments, final recommendations, terms and conditions and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–33263 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 17, 1999.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. Project No. 4515–014—12–1–99—Elliott Sutto.
2. CP98–150–000 and CP98–151–000—12–3–99—Christopher Pryslopski.
3. CP98–150–000 and CP98–151–000—12–3–99—Steve C. Resler.
4. CP99–163–000—11–8–99—L.J. Sauter, Jr.
5. Project No. 1981–000—11–11–99—Thomas F. Thuemler.
6. Project No. 2741–000—11–10–99—Brian D. Conway.
7. Project No. 2609–013—11–19–99—Judith M. Stolfo.
8. Project No. 2566–010 and Project No. 11616–000—11–29–99—Chris Freiburger.
9. CP99–94–000—12–8–99—Wayne E. Daltry.
10. Project No. 10942–000—12–6–99—Don Beyer.
11. CP98–150–000 and CP98–151–000—12–9–99—Gordon P. Buckley.
12. Project No. 2659–000—12–10–99—Bob Easton.
13. CP98–150–000 and CP98–151–000—12–14–99—Matthew J. Brower.
14. CP00–36–000—12–17–99—Stanley Hlaban.

David P. Boergers,

Secretary.

[FR Doc. 99–33333 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 6, 1999 through December 10, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7176.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J60020–00 Rating EC2, Yellowstone Pipeline Missoula to Thompson Falls Reroute, Construction and Operation, Special-Use-Permit and Right-of-Way Easement, Missoula, Sanders and Mineral Counties, MT and Shoshone County, ID.

Summary: EPA supports the preferred alternative, however EPA expressed environmental concerns regarding potential surface and ground water quality impacts from potential pipeline spills and recommended using an industry state-of-the-art pipeline leak detection system. EPA recommends including protective measures for the existing pipeline west of Thompson Falls.

ERP No. D–FHW–C40149–NY Rating EC2, Albany Shaker Road and Watervliet Shakey Road Improvement Project, Construction and Reconstruction, Funding and COE Section 404 Permit, Town of Colonie, Albany County, NY.

Summary: EPA expressed environmental concerns regarding potential impacts to wetlands and air quality. EPA requested that additional information regarding the minimization

measures and proposed mitigation plans for wetlands, as well as a more thorough cumulative impacts evaluation for wetlands and air quality should be included in the final EIS.

ERP No. D–FRC–E03008–00 Rating EC2, Florida Gas Transmission Phase IV Expansion Project (Docket No. CP99–94–000), To Deliver Natural Gas to Electric Generator, FL and MS.

Summary: EPA expressed environmental concern regarding the impact of 297 acres of wetlands including 100 acres of forested wetlands, 72 perennial waterways and 62 residences within 50 ft of the construction ROW, and that the project would induce secondary development impacts. EPA requested additional information on certain alternatives/variations and of Environmental Justice.

ERP No. D–FTA–C40150–NY Rating EC2, Manhattan East Side Transit Alternatives Study, (MESA), Improve Transit Access Lower Manhattan, Lower East Side, East Midtown, Upper East Side and East Harlem, Major Investment Study, New York, NY.

Summary: EPA expressed environmental concerns regarding the air quality analysis and alternatives. EPA requested that this issue be clarified and be included in the next document.

ERP No. D–NPS–C61010–NJ Rating EC2, Great Egg Harbor National Scenic and Recreation River, Comprehensive Management Plan, Implementation, Atlantic Gloucester, Camden and Cape May Counties, NJ.

Summary: EPA expressed environmental concerns with the CMP recommendations to enhance and protect the River's water quality. The final EIS should include a funding plan, and a detailed plan for periodic evaluation of the implementation and success of the CMP.

ERP No. D–NPS–F39038–00 Rating EC2, Lower Saint Croix National Scenic Riverway Cooperative Management Plan, Implementation, MN and WI.

Summary: EPA expressed concerns regarding potential water quality impacts and the lack of baseline data/indicators. EPA requested that these issues be clarified in the final document.

ERP No. D–USN–C11016–NY Rating EC2, Brooklyn Naval Station Disposal and Reuse, Implementation, King County, NY.

Summary: EPA expressed environmental concerns regarding impacts to the Brooklyn/Queens Aquifer System and historic resources, and requested that additional information be presented in the final EIS to address these issues.

Final EISs

ERP No. F–AFS–K65307–CA Herger-Feinstein Quincy Library Group Forest Recovery Act, Establishing and Conducting a Pilot Project, Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA.

Summary: EPA expressed environmental objections with the designation of Alternative 3 as the "environmentally preferable alternative," given Alternative 5 would provide maximum level of resource protection with the minimum level of new disturbance. EPA suggested that the ROD specify mitigation for the new road construction and provide a map of spotted owl habitat excluded from harvest.

ERP No. F–COE–L90028–WA Programmatic EIS—Puget Sound Confined Disposal Site Study, Implementation, WA.

Summary: No formal comment letter sent to the preparing agency.

ERP No. FS–AFS–L82015–ID St. Joe Noxious Weed Control Project, Implementation, St. Maries River, St. Joe River and Little North Fork Clearwater River, Benewah, Shoshone and Latah Counties, ID.

Summary: No formal comment letter sent to the preparing agency.

ERP No. F1–AFS–L61218–ID Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID.

Summary: No formal comment letter was sent the preparing agency.

Dated: December 20, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33358 Filed 12–22–99; 8:45 am]

BILLING CODE 6550–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa. Weekly receipt of Environmental Impact Statements Filed December 13, 1999 Through December 17, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990476, Draft EIS, AFS, AZ, Williams Ski Area Expansion on Bill Williams Mountain, Implementation, Special-Use-Permit, Kaibab National Forest, Williams Ranger District, Coconino County, AZ, Due: February 22, 2000, Contact: Teri Cleeland (520) 635–5620.

EIS No. 990477, Final EIS, AFS, UT, Snowbird Ski and Summer Resort Master Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit, Salt Lake and Lake Counties, Salt Lake City, UT, Due: January 21, 2000, Contact: Rob Cruz (801) 733–2685.

EIS No. 990478, Draft EIS, COE, AZ, Tres Rios Feasibility Study Project, Ecosystem Restoration, Located at the Salt, Gila and Agua Fria Rivers, City of Phoenix, Maricopa County, AZ, Due: February 07, 2000, Contact: Alex Watt (213) 452–3860.

EIS No. 990479, Draft EIS, COE, CA, Lower Mission Creek Flood Control Project, Proposed Plan for Flood Control, City of Santa Barbara, Santa Barbara County, CA, Due: February 07, 2000, Contact: Joy Jaiswal (213) 452–3871.

EIS No. 990480, Final EIS, FHW, CO, Southeast Corridor Multi-Modal Project, To Improve Travel between Central and Southeast Corridors, Light Rail Transit (LRT), Colorado Metropolitan Area, Denver, CO, Due: January 21, 2000, Contact: Vince Barone (303) 969–6730.

EIS No. 990481, Final EIS, NRC, SC, Generic EIS—License Renewal of Nuclear Plants for the Oconee Nuclear Station, Units 1, 2 and 3, Implementation, Oconee County, SC, Due: January 21, 2000, Contact: James H. Wilson (301) 415–1108.

EIS No. 990482, Final EIS, NPS, DC, The White House and President's Park Comprehensive Design Plan, Implementation of a Framework for Future Management, Washington, DC, Due: January 21, 2000, Contact: James I. McDaniel (202) 619–6344.

EIS No. 990483, Draft EIS, NRS, Programmatic EIS—Emergency Watershed Protection Program, Improvements and Expansion, To Preserve Life and Property Threatened by Disaster-Caused Erosion and Flooding, US 50 States and Territories except Coastal Area, Due: February 15, 2000, Contact: Donald Gohmert (202) 720–3534.

EIS No. 990484, Final EIS, USA, NJ, Military Ocean Terminal (MOTBY), Disposal and Reuse, Implementation, in the City of Bayonne, Bergen, Essex and Hudson Counties, NJ, Due: January 21, 2000, Contact: Theresa Persick-Arnold (703) 697–0216.

EIS No. 990485, Final EIS, USN, CA, Marine Corp Air Station (MCAS) Tustin Disposal and Reuse Plan, Cities of Tustin and Irvine, Orange County, CA, Due: January 21, 2000, Contact: Dana Ogdon (714) 573–3116.

EIS No. 990486, Draft EIS, FHW, OH, Lancaster Bypass (FAI–US 22/US 33–9.59/9.95) Construction, Funding, Greenfield, Hocking, Berne and Pleasant Townships, Fairfield County, OH, Due: February 11, 2000, Contact: Leonard E. Brown (614) 280–6869.

EIS No. 990487, Final EIS, FTA, MD, Metrorail Extension—Addison Road Station to the Largo Town Center, Transportation Improvements, Prince George's County, MD, Due: January 31, 2000, Contact: Gail McFadden-Roberts (215) 656–7100.

Amended Notices

EIS No. 990461, Draft EIS, COE, NY, Fire Island Inlet to Montauk Point, Implementation, Reach 1—Fire Island Inlet to Moriches Inlet Interim Storm Damage Protection Project, Long Island, NY, Due: January 31, 2000, Contact: Pete Weppler (212) 264–0195. Published (FR 12–17–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990462, Draft EIS, FHW, TN, Interstate 40 (I–40) Transportation Improvements from I–75 to Cherry Street in Knoxville, Funding, NPDES and COE Section 404 Permits, Knox County, TN, Due: January 31, 2000, Contact: Charles Boyd (615) 781–5770. Published (FR 12–17–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990463, Draft EIS, BOP, SC, South Carolina—Federal Correctional Institution, Construct and Operate, Possible Sites: Andrew, Bennettsville, Oliver and Salters, SC, Due: January 31, 2000, Contact: David J. Dorworth (202) 514–6470. Published (FR 12–17–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990465, Final EIS, COE, AR, Grand Prairie Area Demonstration Project, Implementation, Water Conservation, Groundwater Management and Irrigation Water Supply, Prairie, Arkansas, Monroe and Lonoke Counties, AR, Due: January 17, 2000, Contact: Edward P. Lambert (901) 544–0707. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–31–2000.

EIS No. 990467, Final EIS, FHW, IN, US 231 Transportation Project, New Construction from CR–200 N to CR–1150 S, Funding, Right-of-Way Permit and COE Section 404 Permit, Spencer and Dubois Counties, IN, Due: January 17, 2000, Contact: John R. Baxter (317) 226–7445. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990468, Regulatory Final EIS, OSM, Valid Existing Rights—Proposed Revisions to the Permanent Program Regulations Implementing Section 522(E) of the Surface Mining Control and Reclamation Act of 1977 and Proposed Rulemaking Clarifying the Applicability of Section 522(E) to Subsidence from Underground Mining, Due: January 17,.2000, Contact: Andy F. DeVito (202) 208–2701. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990469, Draft EIS, COE, TX, Programmatic EIS—Upper Trinity River Basin Feasibility Study, To Provide Flood Damage Reduction, Environmental Restoration, Water Quality Improvement and Recreational Enhancement, Trinity River, Dallas-Fort Worth Metroplex, Dallas, Denton and Tarrant Counties, TX, Due: February 7, 2000, Contact: Gene T. Rice, Jr (817) 978–2110. Published (FR 12–17–99) Correction to Telephone Number.

EIS No. 990470, Draft EIS, TVA, TN, Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Construction and Operation of Combustion Turbines (CTs), Haywood County, TN, Due: January 31, 2000, Contact: Gregory L. Askew, P.E. (865) 632–6418. Published (FR 12–23–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990471, Final EIS, FTA, WA, Everett-to-Seattle Communter Rail Project, Construction and Operation, To Link the Cities of Everett, Mukilteo, Edmonds, Shoreline, and the Seattle Waterfront, U.S. Coast Guard, COE Section 10 and 404 Permits, Snohomish County, WA, Due: January 17, 2000, Contact: David Phillip Beal (206) 684–1883. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990472, Final EIS, COE, NJ, Barnegat Inlet to Little Egg Inlet Hurricane and Storm Damage Protection, Implementation, Long Beach Island, Ocean County, NJ, Due: January 17, 2000, Contact: Randy Piersol (215) 656–6577. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990474, Draft Supplement, NOA, Fishery Management Plan (FMP), Regulatory Impact Review, Snapper-Grouper Complex, South Atlantic Region, Due: January 31, 2000, Contact: William T. Hogarth (202) 482–5916. Published (FR 12–23–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990475, Draft EIS, FHW, NC, Western Wake Freeway, Transportation Improvements from NC–55 at NC–1172 (Old Smithfield Road) to NC–55 near NC–1630 (Alston Avenue), Funding and COE 404 Permit, Wake County NC, Due: February 3, 2000, Contact: Nicholas L. Graf, P.E. (919) 856–4350. The Notice for the above DEIS should have appeared in the 12–17–99 **Federal Register**. The 45-day Comment Period is Calculated from 12–17–99.

Dated: December 20, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33359 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6514–8]

Proposed CERCLA Administrative Settlement; the Roman Catholic Archbishop of Boston

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement between the United States Environmental Protection Agency ("Agency") and the Roman Catholic Archbishop of Boston ("Settling Party") in connection with the Groveland Wells Nos. 1 and 2 Superfund Site located in Groveland, Massachusetts ("Site"). Pursuant to the settlement, the Settling Party will agree to allow the Agency to build, operate and maintain a groundwater treatment facility on it's property. The Settling Party will also provide Institutional Controls prohibiting the extraction of groundwater from it's property and restricting certain uses of the property that may interfere with remedial actions at the Site. Upon completion of remedial actions, ownership of the building housing the treatment facility will revert to the Settling Party. The settlement includes a determination that the Settling Party is to have *de minimis* status with respect to the Site under

section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B), and includes a covenant not to sue for the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Langley Adams Library, 185 Main Street, Groveland, Massachusetts, and U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Boston, MA 02114.

DATES: Comments must be submitted on or before January 24, 2000.

ADDRESSES: The proposed settlement is available for public inspection at U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Boston, MA 02114. A copy of the proposed settlement may be obtained from Derrick Golden, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBO), Boston, MA 02114, (617) 918–1448. Comments should reference the Groveland Wells Nos. 1 and 2 Superfund Site, Groveland, Massachusetts and EPA Docket No. CERCLA I–99–0070 and should be addressed to Derrick Golden, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBO), Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Derrick Golden, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBO), Boston, MA 02114, (617) 918–1448.

Dated: December 14, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration, Region 1.

[FR Doc. 99–33328 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011517–006.

Title: APL/Crowley/Lykes Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd., APL Co. PTE Ltd., Crowley American Transport, Inc., Lykes Lines Limited, LLC.

Synopsis: The proposed amendment deletes the Caribbean Service, Gulf Express Service, and Pacific South America Service from the geographic scope of the agreement; changes the name of Crowley American Transport to Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft Eggert & Amsinck d/b/a/Crowley American Transport; deletes outdated references; and makes other conforming changes based on the forgoing.

Agreement No.: 202–011528–015.

Title: Japan/United States Eastbound Freight Conference.

Parties: American President Lines, Ltd., Hapag-Lloyd Container Line GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., A.P. Moller-Maersk Sealand, Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., P&O Nedlloyd B.V., P&O Nedlloyd Limited, Wallenius Wilhelmsen Lines AS.

Synopsis: The parties are amending their conference agreement to extend the current suspension for an additional six months, through July 31, 2000.

Agreement No.: 207–011682.

Title: ATL/Signet Joint Service Agreement.

Parties: Associated Transport Line, L.L.C. (ATL), Signet SeaFreight Shipping Company (Signet), Texpress American Line, L.L.C. (Joint Service).

Synopsis: The proposed agreement authorizes ATL and Signet to establish a joint service, to be known as Texpress American Line, L.L.C., that will operate in the trade between U.S. Gulf ports and ports in Guyana, Suriname, Trinidad, and Venezuela. The parties request expedited review.

Dated: December 17, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33240 Filed 12–22–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) 46 CFR Part 540, as amended:

American Classic Voyages Company, Two North Riverside Plaza, Suite 200, Chicago, IL 60606, Vessel: PATRIOT

Cunard Line Limited (d/b/a Cunard), 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126, Vessel: CARONIA

Cunard Line Limited (d/b/a Seabourn Cruise Line), 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126, Vessel: SEABOURN SUN

Hapag-Lloyd Kreuzfahrten GmbH, Ballindamn 25, D–20079 Hamburg, Germany, Vessel: c. COLUMBUS, EUROPA and HANSEATIC

Holland America Line-Westours Inc. (d/b/a Holland America Line), Holland America Line N.V. and HAL Nederland N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: MAASDAM, ROTTERDAM RYNDAM and STATENDAM

Holland America Line-Westours Inc. (d/b/a Holland America Line), Holland America Line N.V. and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: NIEUW AMSTERDAM, NOORDAM, VOLENDAM, WESTERDAM and ZAANDAM

Holland America Line-Westours Inc. (d/b/a Holland America Line), HAL Cruises Limited and Wind Surf Limited, 300 Elliott Avenue West, Seattle, WA 98119, Vessel: VEENDAM

Holland America Line-Westours Inc. (d/b/a Windstar Cruises), Wind Spirit Limited, Windstar Sail Cruises Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessel: WIND SPIRIT

Holland America Line-Westours Inc. (d/b/a Windstar Cruises), Wind Star Limited, Windstar Sail Cruises Limited and HAL Antillen N.V., 300 Elliott Avenue, Seattle, WA 98119, Vessel: WIND STAR

Japan Cruise Line, Inc. (d/b/a Venus Cruise), 2–5–25, Umeda, Kita-ku, Osaka 530–0001, Japan, Vessels: ORIENT VENUS and PACIFIC VENUS

Dated: December 17, 1999.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 99–33242 Filed 12–22–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Clipper Cruise Line, Inc., New World Ship Management Company, LLC and NACL, LLC, 7711 Bonhomme Avenue, St. Louis, MO 63105–1965, Vessel: NANTUCKET CLIPPER
Clipper Cruise Line, Inc., New World Ship Management Company, LLC and YOCL, LLC, 7711 Bonhomme Avenue, St. Louis, MO 63105–1965, Vessel: YORKTOWN CLIPPER
Cunard Line Limited, 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126, Vessels: CARONIA, QUEEN ELIZABETH 2 and SEABOURN SUN
Hapag-Lloyd Kreuzfahrten GmbH, Hapag-Lloyd Seetouristik (Cruises) GmbH, Hapag-Lloyd (Bahamas) Ltd. and Conti 1 Kreuzfahrt GmbH & Co. KG MS COLUMBUS, Ballindamm 25, D–20079 Hamburg, Germany, Vessel: c. COLUMBUS
Hapag-Lloyd Kreuzfahrten GmbH, Columbia Shipmanagement Ltd., Hapag-Lloyd (Bahamas) Ltd., and Kommanditgesellschaft MS "EUROPA" der Bremer Aktiengesellschaft & Co. KG, Ballindamm 25, D–20079 Hamburg, Germany, Vessel: EUROPA
Hapag-Lloyd Kreuzfahrten GmbH, Hapag-Lloyd Seetouristik (Cruises) GmbH, Hapag-Lloyd (Bahamas) Ltd., and Bunnys Adventure and Cruise Shipping Company Ltd., Ballindamm 25, D–20079 Hamburg, Germany, Vessel: HANSEATIC
Holland America Line-Westours Inc., Holland America Line N.V. and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: VOLENDAM and ZAANDAM
Japan Cruise Line, Inc. (d/b/a Venus Cruise), Kanko Kisen Co., Ltd., Hankyu Ferry Co. Ltd. and Shin-Nihonkai Ferry Co., Ltd., 2–5–25 Umeda, Kita-ku, Osaka 530–0001, Japan, Vessel: ORIENT VENUS
Japan Cruise Line, Inc. (d/b/a Venus Cruise), Kanko Kisen Co., Ltd., Kyowashoji Co., Ltd. and Shin Nihonkai Ferry Co., Ltd., 2–5–25 Umeda, Kita-ku, Osaka 530–0001, Japan, Vessel: PACIFIC VENUS
New Commodore Cruise Lines Limited, Crown Cruises Ltd. and Crown Dynasty Inc., 4000 Hollywood Blvd., Suite 385, South Hollywood, FL 33021, Vessel: CROWN DYNASTY
Radisson Seven Seas Cruises, Inc., Radisson Worldwide, Inc. and Finship Italy S.r.l., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334, Vessel: SEVEN SEAS NAVIGATOR
Royal Caribbean Cruises Ltd. and Voyager of the Seas Inc., 1050 Caribbean Way, Miami, FL 33132–2096, Vessel: VOYAGER OF THE SEAS

Dated: December 17, 1999.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 99–33241 Filed 12–22–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Mountain Company Profit Sharing/401k Plan, Montrose, Colorado; to acquire 40 percent of the voting shares of First Mountain Company, Montrose, Colorado, and thereby indirectly acquire voting shares of MontroseBank, Montrose, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Midland Bancshares, Inc., Midland, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Midland, Texas.

Board of Governors of the Federal Reserve System, December 20, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–33381 Filed 12–22–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-32406) published on page 69765 of the issue for Tuesday, December 14, 1999.

Under the Federal Reserve Bank of Boston heading, the entry for Port Financial Corp., Cambridge, Massachusetts, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Port Financial Corp., Cambridge, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cambridgeport Bank, Cambridge, Massachusetts, and 5.3 percent of Cambridge Bancorp, Cambridge, Massachusetts, and thereby indirectly acquire control shares of Cambridge Trust Company, Cambridge, Massachusetts.

Comments on this application must be received by January 7, 2000.

Board of Governors of the Federal Reserve System, December 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33382 Filed 12–22–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *UBS AG*, Zurich, Switzerland; to acquire, through its wholly owned indirect subsidiary, North Street Finance LLC, New York, New York, the telephone and answering machine leasing business of Lucent Technologies Consumer Products L.P., Murray Hill, New Jersey, and thereby engage in certain leasing activities, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33383 Filed 12–22–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Recordkeeping Requirements for Government Owned/Contractor Held Property and Report of Accounting Personal Property (HHS–565)—0990–0015—Extension—The recordkeeping requirements are needed to assure accountability and control for government owned/contractor held property for HHS contracts. Form 565 is used to report all accountable personal property purchased or fabricated by contractors and billed to HHS.

Respondents: State or local governments, business or other for-profit, non-profit institutions, small business;

Burden Information for Form HHS–565:

Annual Number of Respondents: 3,600;

Annual Frequency of Response: One time;

Average Burden per Response: 30 minutes;

Total Annual Burden: 1,800 hours;

Burden Information for Recordkeeping Requirements: Annual;

Number of Responses: 4,500;

Average Burden per Response: 30 minutes;

Total Annual Burden: 2250 hours;

Total Burden: 4050 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Ages Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: December 10, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–33262 Filed 12–22–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Child Care Annual Aggregate Report.

OMB No.: 0970–0150.

Description: This legislatively mandated report collects program and participant's data on all children and families receiving direct Child Care and Development Fund services. Aggregate data is collected and will be used to determine the scope, type, and methods of child care delivery, and to provide a report to Congress. The revisions in this report are proposed to further clarify existing information upon which the report is based and to provide data for GPRA performance measures.

Respondents: State, local or tribal government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	40	2,240

Estimated Total Annual Burden Hours: 2,240.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: Reports Clearance Officer. This information collection and an electronic comment form are also available at the following Child Care Bureau Web Site: *http://www.acf.dhhs.gov/programs/ccb/systems/index.htm.*

The Department specifically requests comments on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 20, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–33384 Filed 12–22–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0963]

Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals (GFI #78); Availability; Republication

Editorial Note: FR Doc. 99–32324 was originally published at page 70716 in the **Federal Register** of Friday, December 17, 1999. The companion Framework document was inadvertently not published. At the request of the agency, FR Doc. 99–32324 is republished below in its entirety together with the companion Framework document.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance document entitled "Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (GFI #78). After the agency considered public comments on a draft of this guidance, announced in the **Federal Register** of November 18, 1998, it determined that revision of the draft guidance was necessary. GFI #78 addresses how under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) FDA intends to consider the potential human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs. For additional information regarding the subject matter dealt with in GFI #78, see the notice of availability of the document entitled "FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" that appears elsewhere in this issue of the **Federal Register**.

DATES: Submit comments at any time.

ADDRESSES: Submit written comments on GFI #78 to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852.

FDA will also accept electronic comments. Persons who wish to submit electronic comments should go to the FDA home page at www.fda.gov and select "Dockets" and follow the instructions.

Submit written requests for single copies of the document entitled "Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (GFI #78) to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See section III. Electronic Access of this document for information on electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sharon Thompson, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 18, 1998 (63 FR 64094), FDA announced the availability of a draft guidance entitled "Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (GFI #78). This draft guidance announced that FDA believed that it is necessary to evaluate the human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs. The publication of the draft of GFI #78 was the first step in the agency's consideration of the issues related to the use of antimicrobial new animal drugs in food-producing animals. The draft of GFI #78 laid out the agency's rationale for its current thinking about its authority under section 512 of the act to consider the human health impact of the microbial effects associated with the use of antimicrobial new animal drugs in food-producing animals.

In the **Federal Register** of January 6, 1999 (64 FR 887), FDA announced the availability of a discussion paper entitled "A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (Framework Document). The Framework Document was the second step in the agency's consideration of issues related to the use of antimicrobial new animal drugs in food-producing animals. FDA made the Framework Document available to the public to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying concepts to be used to develop microbial safety policies protective of the public health. The Framework Document is related to GFI #78 in that it sets out a conceptual risk-based framework for evaluating the microbial safety (related to human health impact) of antimicrobial new animal drugs intended for use in food-producing animals.

After considering comments received by the public for both the draft of GFI #78 and the Framework Document, FDA determined that it was necessary to make some revisions to GFI #78. The revisions are intended to make GFI #78

more clearly reflect the agency's intentions regarding this issue. For example, the words "evaluate" and "evaluation" have been changed to "consider" and "consideration," and other changes have been made to indicate that additional testing would not always be needed to determine the potential human health impact of the microbial effects associated with antimicrobial new animal drugs intended for use in food-producing animals.

GFI #78 represents the agency's current thinking on how under section 512 of the act it intends to consider the potential human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs. It does not create or confer any right for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Comments

Interested persons may, at any time, submit written or electronic comments on GFI #78 to the Dockets Management Branch (address above). Two copies of written comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document. GFI #78 and written and electronic comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain copies of "Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (GFI #78) at http://www.fda.gov/cvm.

Dated: December 8, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

Editorial Note: FR Doc. 99–32324 was originally published at page 70716 in the **Federal Register** of Friday, December 17, 1999. The companion Framework document was inadvertently not published. At the request of the agency, FR Doc. 99–32324 is republished in its entirety together with the companion Framework document.

[FR Doc. 99–32324 Filed 12–14–99; 4:09 pm]

BILLING CODE 1505–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0969]

FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals." The comments were received in response to a document entitled "Discussion Paper: 'A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals' " (the Framework Document) that FDA made public and discussed at the Veterinary Medicine Advisory Committee (VMAC) meeting in January 1999. FDA intends to revise the Framework Document in response to the comments. Specific aspects of the Framework Document are to be discussed at two workshops scheduled for December 9 and 10, 1999, and February 22 and 23, 2000, and at later workshops currently being considered. For additional information, see the notice of availability of the guidance document entitled "Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (GFI #78) that appears elsewhere in this issue of the **Federal Register**.

DATES: Submit comments at any time.

ADDRESSES: Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852.

FDA will also accept electronic comments. Persons who wish to submit electronic comments should go to the FDA home page at http://www.fda.gov, select "Dockets", and follow the instructions for submitting electronic comments.

Submit written requests for single copies of the guidance document entitled "FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" and other documents discussed in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** notice to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Enclose one self-addressed adhesive label to assist that office in processing your requests. See section **III. Electronic Access** of this document for information on electronic access to the guidance document and its related documents.

FOR FURTHER INFORMATION CONTACT: Marcia R. Larkins, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0137, e-mail: mlarkins@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 18, 1998 (63 FR 64094), FDA published a notice of availability of a draft guidance document entitled "Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (GFI #78). The publication of this draft guidance for industry (GFI #78) was the first step in the agency's consideration of the issues related to the use of antimicrobial new animal drugs in food-producing animals. GFI #78 lays out the agency's rationale for its current thinking about its authority under the Federal Food, Drug, and Cosmetic Act to consider the human health impact of the microbial effects associated with the use of antimicrobial new animal drugs in food-producing animals. Elsewhere in this issue of the **Federal Register** is a notice of availability of the final revised guidance.

In the **Federal Register** of January 6, 1999 (64 FR 887), FDA announced the availability of a discussion paper called the Framework Document, which was the second step in the agency's consideration of issues related to the use of antimicrobial new animal drugs in food-producing animals. FDA made the Framework Document available to the public to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying

concepts to be used to develop microbial safety policies protective of the public health. The Framework Document is related to GFI #78 in that it sets out a conceptual risk-based framework for evaluating the microbial effects (related to human health impact) of antimicrobial new animal drugs intended for use in food-producing animals.

The agency invited comment on both GFI #78 and the Framework Document. FDA received more than 50 comments to these documents. These comments originated from a number of sources including individual members and committees of Congress (3); individual physicians, microbiologists, and hospitals (6); individual citizens and organizations representing consumers (16); animal drug and feed industries (3); individual veterinarians and organizations representing veterinarians (5); environmental organizations (3); individual producers and organizations representing producers (14); and another Federal agency (1).

In addition to requesting comment from the public, the agency also consulted with the VMAC on this issue. In a meeting held on January 25 and 26, 1999, the VMAC provided input on the Framework Document and addressed five specific questions from the agency regarding its contents. The goal of the meeting was "to find the balance that protects human health and gives veterinarians the tools they need to treat animals." A transcript of this meeting is available on the CVM home page at the Internet address provided below in section **III. Electronic Access.**

FDA stated it would review the transcript of the VMAC meeting and any comments on GFI #78 and the Framework Document that were submitted to the agency, publish the analysis, and then appropriately revise GFI #78 and the Framework Document. This guidance document entitled "FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" contains the analysis of the transcript, the comments received regarding GFI #78 and the Framework Document, and provides responses to the comments.

In the **Federal Register** of September 27, 1999 (64 FR 52099), the agency announced a general public meeting and two public workshops to discuss issues related to antimicrobial resistance in food-producing animals. The general public meeting was held on October 4, 1999. The first workshop called the "Risk Assessment and the Establishment of Resistance Thresholds Workshop" is scheduled for December 9 and 10, 1999. The second workshop called "Preapproval Studies in Antimicrobial Resistance" is scheduled for February 22 and 23, 2000. The agency intends for the document entitled "FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals," along with the Framework Document, to serve as a basis for discussion at the two workshops and at future workshops.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written or electronic comments regarding this response to comments. Two copies of any written comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the response to comments and all received electronic and written comments may be seen in the office above between 9 a.m. and 5 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain copies of the document entitled "FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals," the Framework Document, GFI #78, and transcripts from the VMAC meeting at http://www.fda.gov/cvm.

Dated: December 8, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33386 Filed 12–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5002]

Acupuncture Devices and Accessories; Revocation of Compliance Policy Guide 7124.11

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the Compliance Policy Guide (CPG) entitled "Sec. 305.100 Acupuncture Devices and Accessories (CPG 7124.11)" to eliminate obsolete compliance policy. In general, this CPG no longer reflects current agency policy because acupuncture needles have been reclassified from class III to class II (special controls).

DATES: Effective January 24, 2000.

ADDRESSES: Submit written requests for single copies of the CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411 or FAX your request to 301–827–0482. A copy of the CPG may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Governale, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued the CPG entitled "Sec. 305.100 Acupuncture Devices and Accessories (CPG 7124.11)" on June 15, 1976. This CPG considered acupuncture devices and accessories as investigational devices subject to the investigational device exemptions (IDE) regulations (21 CFR part 812). As such, these class III devices were permitted to be distributed only for the purpose of conducting clinical studies to establish their safety and effectiveness. In the absence of an approved premarket approval application, the sale, promotion, and commercial distribution of these acupuncture devices and accessories were prohibited.

In response to a reclassification petition that was submitted to FDA by the Acupuncture Coalition, the agency reclassified acupuncture needles from class III to class II (special controls) in the **Federal Register** of December 6, 1996 (61 FR 64616). The classification regulation (21 CFR 880.5580) for solid, stainless steel, acupuncture needles requires that these class II devices must comply with special controls for single use labeling, prescription labeling, biocompatibility, and sterility.

Currently, an acupuncture needle that is intended to pierce the skin in the practice of acupuncture may be

commercially distributed if it is the subject of a cleared premarket notification (510(k)), complies with the special controls, and meets all other applicable statutory and regulatory requirements.

Given the reclassification of acupuncture needles, FDA is revoking CPG 7124.11, in its entirety, to eliminate obsolete compliance policy.

II. Electronic Access

Prior to January 24, 2000, a copy of the CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs (ORA) Home Page includes the referenced document that may be accessed at http://www.fda.gov/ora/compliance_ref/cpg/cpgdev/cpg305-100.html.

Dated: December 7, 1999.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 99-33282 Filed 12-22-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-1109-N]

Medicare Program; January 12, 2000, Meeting of the Competitive Pricing Advisory Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) on January 12, 2000. The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on demonstration area designation and appropriate research designs for the project. The CPAC meetings are open to the public.

DATES: The meeting is scheduled to meet on January 12, 2000, from 1 p.m. until 5 p.m., e.s.t.

ADDRESSES: The meeting will be held at the Embassy Suites, 1250 22nd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard, C4-14-17, Baltimore, Maryland 21244-1850, (410) 786-6451.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) (Public Law 105-33), requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research design for implementing the project. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, May 13, 1999, July 22, 1999, September 16, 1999, and October 29, 1999.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program; and representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, HCFA; John Bertko, Actuary Principal, Humana Inc.; David Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., Healthcare Consultant; Samuel Havens, Healthcare Consultant; Margaret Jordan, Healthcare Consultant; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President and CEO, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, President, The Urban Institute; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL-CIO; and Jay Wolfson, Director, The Florida Information Center, University of South Florida. The chairperson is James Cubbin and the co-chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5)of the BBA, the CPAC will terminate on December 31, 2004.

The agenda for the January 12, 2000, meeting will include an overview and discussion of the recent legislation that affected the Medicare competitive pricing demonstration, Public Law 106-113, referred to as the Appropriations Act for FY 2000.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issue should contact the Executive Director, by 12 noon, January 7, 2000, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director, no later than 12 noon, January 10, 2000. Anyone who is not scheduled to speak, may submit written comments to the Executive Director, by 12 noon, January 10, 2000.

The meeting is open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Public Law 105-33 (42 U.S.C.1395w-23 note) and section 10(a) of Public Law 92-463 (5 U.S.C. App. 2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99-33260 Filed 12-22-99; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel—Quick Trials for Prostate Cancer Therapy Grants.

Date: January 7, 2000.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Boulevard, 8th Floor, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Brian E. Wojcik, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33297 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel: Flexible System To Advance Innovative Research for Cancer Drug Discovery By Small Businesses.

Date: January 6–7, 2000.

Time: 7:30 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Palladian West, Chevy Chase, MD 20815.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33299 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel—Special Emphasis Panel.

Date: January 4, 2000.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Bldg. 31, Room 5B50, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheryl Brining, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, National Institutes of Health, Building 31, Room 5B50, Bethesda, MD 20892, 301–496–7498.

Dated: December 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33293 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—Research Career Development Award.

Date: January 18–19, 2000.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Diane M. Reid, MD, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—Ischemic Heart Disease in Blacks

Date: January 27, 2000.

Time: 10:00 AM to 5:30 PM.

Agenda: To review and evaluate grant applications—

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: S. Charles Selden, PhD., Scientific Review Administrator, HIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—Thalassemia (Cooley's Anemia) Clinical Research Network

Date: January 27–28, 2000

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Terry Bisbop, Ph.D., Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7210, Bethesda, MD 20892–7924, (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33294 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee Special Review Panel.

Date: January 11, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Grand Westin Hotel, 2350 M Street, N.W., Washington, DC 20037–1417.

Contact Person: Nancy Pearson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

(Catalog of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33300 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 10–11, 2000.

Open: January 10, 2000, 7:00 pm to 9:00 pm.

Agenda: To discuss matters of program relevance.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Closed: January 11, 2000, 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33302 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: January 14, 2000.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Conference Room B2B32/BLDG 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 99–33303 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and /Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB B J2 S

Date: January 10, 2000

Time: 3:00 PM to 4:00 PM

Agenda: To review and evaluate grant applications

Place: Natcher Building, 45 Center Drive, Room 6AS.25S, Bethesda, Maryland, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS25s, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33296 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communications Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National deafness and Other Communication Disorders Advisory Council.

Date: January 21, 2000.

Open: 9:30 a.m. to 11:30 a.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33298 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 24–25, 2000.

Open: January 24, 2000, 10:00 AM to 5:00 PM.

Agenda: The agenda includes: Report of the Director, NICHD, A presentation by the Pregnancy and Perinatology Branch, CRMC, and other business of the Council.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: January 25, 2000, 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: January 25, 2000, 1:00 PM to Adjournment.

Agenda: The meeting will reopen to discuss any policy issues that were raised.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33301 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 1, 1999, 3:00 PM to December 1, 1999, 4:00 PM, NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on November 22, 1999, 64FR63824.

The meeting will be held January 6, 2000. The time will be 11:00 AM to 12:00 PM. The place remains the same.

The meeting is closed to the public.

Dated: December 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33295 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Principles and Guidelines for Recipients of NIH Research Grants and Contracts on Obtaining and Disseminating Biomedical Research Resources: Final Notice

AGENCY: National Institutes of Health (NIH), Public Health Service, DHHS.

SUMMARY: On May 25, 1999 the National Institutes of Health (NIH) published for public comment in the **Federal Register** a proposed policy entitled SHARING BIOMEDICAL RESEARCH RESOURCES: Principles and Guideline for Recipients of NIH Research Grants and Contracts [64 FR 28205]. This policy is designed to provide recipients of NIH funding with guidance concerning appropriate terms for disseminating and acquiring unique research resources developed with federal funds and is intended to assist recipients in complying with their obligations under the Bayh-Dole Act and NIH funding policy. Comments on the Principles and Guidelines were requested by August 23, 1999. This Notice presents the final Principles and Guidelines together with NIH's response to the public comments received.

Background

The Present policy represents part of the overall implementation of recommendations made by the Advisory Committee to the Director (ACD) to Dr. Harlod Varmus, Director, NIH. Dr. Varmus requested that a Working Group of the ACD look into problems encountered in the dissemination and use of proprietary research tools, the competing interests of intellectual property owners and research users underlying these problems, and possible NIH responses. One of the recommendations in the Report was that NIH issue guidance to the recipients of NIH funding.

Purpose

The present policy is a two-part document, consisting of Principles setting forth the fundamental concepts and Guidelines providing specific information to patent and license professionals and sponsored research administrators for implementation. The purpose of these Principles and Guidelines is to assist NIH funding recipients in determining. (1) Reasonable terms and conditions for making NIH-funded research resources available to scientists in other institutions in the public and private sectors (disseminating research tools): and (2) restrictions to accept as a condition of receiving access to research tools for use in NIH-funded research (acquiring research tools). The intent is to help Recipients ensure that the conditions they impose and accept on the transfer of research tools will facilitate further biomedical research, consistent with the requirements of the Bayh-Dole Act and NIH funding agreements. It is also hoped that these Principles and Guidelines will be adopted by the wider research community so that all biomedical research and development can be synergistic and accelerated.

Comments and Agency Response

The National Institutes of Health (NIH) recognizes the importance of public involvement in the development of policy and sought widespread comment and participation by the various stakeholders in the biomedical research and development communities regarding the proposed policy. To this end, NIH sought comment not only from NIH grantees, but also from academic, not-for-profit, government, and private sector participants in biomedical research and development. In order to involve as many stakeholders as possible in the comment process, the proposed policy was advertised and comments solicited in a wide variety of venues. In addition to its publication on May 25, 1999, in the **Federal Register,** the proposed policy was made available on several different websites including the Federal Register Online, numerous NIH websites (Edison, NIH Office of Technology Transfer, NIH Office of Extramural Research and the NIH Director's Policy Forum), the Association of University Technology Managers (AUTM) website and Recombinant Capital's Signals Magazine. The proposed policy was also advertised on a variety of e-mail lists (including Techno-L) as well as in direct letters and e-mail to various stakeholders. In addition, the proposed policy was profiled in articles appearing in a variety of journals and magazines, including Science, Nature and Nature Biotechnology.

In response to the May 25 proposal, NIH received 45 letters, each of which contained one or more comments. Comments were received from academic institutions, scientific foundations, pharmaceutical companies, biotechnology companies (including providers of research instruments, biological reagents and genomic data), an industry trade association, professional societies, individual researchers and other individual commenters. Below is NIH's response to comments offered, organized by the section of the proposed policy to which they pertain.

Introduction

Several commenters suggested that sponsored research administrators be included within the target audience to which this policy is addressed. This suggestion has been adopted in the final policy.

Several commenters suggested that the policy is a de facto regulation and should either be promulgated in accordance with regulatory process or withdrawn. Several other commenters suggested that as a policy the Principles/Guidelines are not enforceable as law and that NIH should issue them as a regulation to ensure compliance. The NIH does not believe that a regulation, enforceable as law, is required at this time to facilitate sharing and access to research tools for its Recipients. Although the final policy is issued as a grants policy, to be incorporated into the NIH Grants Policy Statement, the NIH has not precluded the possibility of engaging in the regulatory process if widespread problems continue in access to NIH-funded research tools by NIH Recipients. In addition, on a case-by-case basis, the expectations set forth in the Principles and Guidelines may be imposed as specific requirements of NIH funding awards where the Recipient has failed to demonstrate sufficient progress in implementing the Principles and Guidelines.

Some commenters suggested that the policy should not be applicable to all projects that include NIH grant funds, but that NIH should set a minimum level of NIH funding that would trigger application of the policy. NIH has determined that the establishment of such a threshold would not be consistent with NIH's objective of ensuring that broad availability of research tools.

One commenter expressed concern that the proposed policy, if applied to recipients of Small Business Innovation Research (SBIR) grants, would place SBIR recipients under conflicting directives. The commenter suggests that because SBIR recipients are required, as a condition of their grant, to focus on the commercialization of technology, they would be unable to disseminate

research tools with the minimal intellectual property encumbrances advocated by the proposed policy. SBIR Recipients, like other NIH grantees, are subject to the dual obligations of disseminating unique research resources while promoting utilization, commercialization and public availability of their inventions. The NIH does not see a conflict between these obligations. The NIH invites its SBIR grantees to consult with their project officer in the event they encounter difficulty in the interpretation or implementation of this policy, either in general or with respect to particular unique research resources developed under their grant.

Principles

1. Ensure Academic Freedom and Publication

Several commenters suggested that language be added to the guidelines to prohibit recipients from making coauthorship a condition of providing research tools. There appears to be general consensus within the research community that authorship is properly based upon significant intellectual contribution to the published paper. In most cases, simply making available research materials will not, in the absence of other contributions, justify coauthorship. (See *e.g.*, Responsible Science, Volume I: Ensuring the Integrity of the Research Process, Panel on Scientific Responsibility and the Conduct of Research, National Academy Press, 1992, p. 52). The final policy has been amended to reflect this view.

Several commenters expressed concern that the definition of "Recipient" in the proposed policy might not include individuals or entities receiving NIH funds through "cooperative agreements." The policy is applicable to cooperative agreements and this has been clarified in the Principles and Guidelines.

2. Ensure Appropriate Implementation of the Bayh-Dole Act

Virtually all commenters requested clarification on how this policy would preserve incentives for the development and production of research tools that are ultimately sold as products to the research community. The policy has been clarified to ensure that where patent protection is necessary for development of a research tool as a potential product for sale and distribution to the research community. Recipients are not discouraged from seeking such protection, but should license the intellectual property in a manner that maximizes the potential for broad distribution of the research tool. The policy is not intended to require Recipient scientists to develop of maintain tools for widespread distribution, to discourage development of research tool products, nor to set or influence the price for research tools that are commercial products.

3. Minimize Administrative Impediments to Academic Research

One commenter suggested that reach-through rights should not be discouraged because they are sometimes helpful to Recipients by allowing them to obtain materials and equipment at reduced or nominal upfront cost. NIH is aware of this rationale for a Recipient agreeing to reach-through but finds that such practices contribute not only to specific restriction of access to subsequent tools arising out of the NIH-funded work, but also to the general proliferation of multiple ties and competing interests that is the source of the current access problems. NIH does not support the coupling of procurement with intellectual property rights and restrictions and expects Recipients to ensure that NIH-funded tools are not restricted as a result of such agreements. Therefore, Recipients should engage in such interactions on an infrequent, case-by-case, and highly controlled and monitored basis.

4. Ensure Dissemination of Research Resources Developed with NIH Funds

Numerous comments were received concerning the conditions under which research tools developed by recipients of NIH funds are to be transferred to for-profit entities. The comments received reflected the wide range of opinions present within the life sciences community on this point. On the one hand, some commenters urged that transfer of research tools to for-profit entities be carried out under the same terms as transfers to nonprofits/ academic institutions. These commenters argue that because of the increasingly important role research tools play in the discovery and development of new therapeutic compounds, it is critical that these tools be made available to for-profit entities free of onerous contractual provisions. They argue that by adopting a transfer policy similar to that proposed for transfers to academic laboratories, NIH will ensure that the public will reap the benefit of its investment in government research in the form of new and improved pharmaceuticals. Other commenters opposed the general idea that the terms for transferring tools to for-profit entities should be identical to those for transfers of tools to academic and non-profit organizations. They argue that the fundamental differences in mission between for-profit entities and academic institutions justify different treatment with respect to the terms under which each obtains and uses tools.

In the final policy, the NIH has left considerable discretion to Recipients in determining how to achieve the principle of ensuring appropriate distribution of NIH-funded tools. As articulated by the policy, imposing reach-through royalty terms as a condition of use of a research tool is inconsistent with this principle. When transferring an NIH-funded research tool to a for-profit entity that intends to use the tool for its own internal purposes, Recipients are entitled to capture the value of their invention. Arrangements such as execution or annual fees are an appropriate way for Recipients to do so. Royalties on the sale of a final product that does not embody the tool, or other reach-through rights directed to a final product that does not embody the tool, discourage use of tools and are not appropriate in these circumstances. Royalties on the sale of final products are more appropriate to situations where a for-profit entity seeks to commercialize the tool, *e.g.*, by developing a marketable product or service, or incorporating the tool into a marketable product or service.

Appendix A Guidelines for Implementation

The final policy has been clarified with regard to NIH intent in attaching the more specific Guidelines to the general Principles. The Principles set forth the policy that NIH is issuing to its funding Recipients to assist them in fulfilling the dual obligations imposed by NIH grants policy with respect to the dissemination of unique research resources, and the Bayh-Dole Act with respect to utilization, commercialization and public availability of government funded inventions. These dual obligations must be thoughtfully managed. The Guidelines provide further information, model language, and suggested strategies for implementing the principles. The model language and strategies provided by the Guidelines are not intended as the sole means by which Recipients may implement the articulated Principles. It is the nature of advancing science and technology to present unique factual circumstances, and NIH expects that Recipients will determine the most appropriate means to achieve the Principles for unique technologies when the Guidelines do not provide a workable strategy.

Several commenters suggested that research tools be better defined and that more examples be used to assist in determining whether the policy should be applied and if so, what licensing strategy is appropriate. For example, one commenter suggested that the policy draw a distinction between "broad platform technologies" and "product-specific technologies" when determining whether an exclusive license is appropriate. The final policy provides clarification of the criteria that Recipients might apply in determining how to handle a particular technology.

One commenter requested that the definition of research tools be expanded to include diagnostic genetic tests performed with "home-brew" reagents. The commenter suggested that the patenting and exclusive licensing of such tests is having a deleterious effect on clinical education, clinical research, and patient care. NIH declines to expand the definition of research tools to include diagnostic genetic tests. Where such tests are patented and licensed to for-profit entities, academic medical centers wishing to use such licensed tests in their clinical programs should negotiate terms of use with the commercial licensee.

Many commenters were of the opinion that the thirty-day time limit for disclosure of research findings was too short. The final policy has been amended to state that a delay of 30–60 days is generally viewed as reasonable. This amendment is in accord with previous NIH guidance on sponsored research agreements, Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts, 59 FR 55674.

Comments were received in favor of adopting the Simple Letter Agreement as a free-standing, one page, uniform material transfer agreement. If used by the NIH intramural program and NIH grantees, commenters believe that the majority of transfers among and between not-for-profits and government laboratories would be greatly simplified. In response to specific comments, the Simple Letter Agreement has been significantly edited and updated. Recipients are encouraged to adopt the Simple Letter Agreement as their institution's model Material Transfer Agreement (MTA), and are expected to use the terms of the Simple Letter Agreement, or no more restrictive terms, for transfers of unpatented materials developed with NIH funding to other NIH grantees.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGarey, J.D., NIH Office of Technology Transfer, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Fax: (301) 402–3257; E-mail: NIHOTT@od.nih.gov.

Dated: December 14, 1999.

Maria C. Freire,

Director, Office of Technology Transfer, National Institutes of Health.

Sharing Biomedical Research Resources: Principles and Guidelines for Recipients of NIH Research Grants and Contracts

Introduction

The National Institutes of Health is dedicated to the advancement of health through science. As a public sponsor of biomedical research, NIH has a dual interest in accelerating scientific discovery and facilitating product development. In 1997, Dr. Harold Varmus, Director, NIH requested that a Working Group of the Advisory Committee to the Director look into problems encountered in the dissemination and use of unique research resources, the competing interests of intellectual property owners and research tool users, and possible NIH responses.[1] The Working Group found that intellectual property restrictions can stifle the broad dissemination of new discoveries and limit future avenues of research and product development. At the same time, reasonable restrictions on the dissemination of research tools are sometimes necessary to protect legitimate proprietary interests and to preserve incentives for commercial development. One of the recommendations of the Working Group was that NIH issue guidance to its funding recipients to help them achieve the appropriate balance. That guidance is provided in this two-part document, consisting of Principles setting forth the fundamental concepts and Guidelines that provide specific information to patent and license professionals and sponsored research administrators for implementation. A copy of the full Report of the Working Group, with more detailed background information, is available at the NIH web site, www.nih.gov/welcome/forum, or from the NIH Office of the Director.

[1] The term "unique research resource" is used in its broadest sense to embrace the full range of tools that scientists use in the laboratory, including cell lines, monoclonal antibodies, reagents, animal models, growth factors, combinatorial chemistry and DNA libraries, clones and cloning tools (such as PCR), methods, laboratory equipment and machines. The terms "research tools" and "materials" are used throughout this document interchangeably with "unique research resources." Databases and materials subject to copyright, such as software, are also research tools in many contexts. Although the information provided here may be applicable to such resources, the NIH recognizes that databases and software present unique questions which cannot be fully explored in this document.

Principles

1. Ensure Academic Freedom and Publication

Academic research freedom based upon collaboration, and the scrutiny of research findings within the scientific community, are at the heart of the scientific enterprise. Institutions that receive NIH research funding through grants, cooperative agreements or contracts ("Recipients") have an obligation to preserve research freedom, safeguard appropriate authorship, and ensure timely disclosure of their scientists' research findings through, for example, publications and presentations at scientific meetings. Recipients are expected to avoid signing agreements that unduly limit the freedom of investigators to collaborate and publish, or that automatically grant co-authorship or copyright to the provider of a material.

Reasonable restrictions on collaboration by academic researchers involved in sponsored research agreements with an industrial partner that avoid conflicting obligations to other industrial partners, are understood and accepted. Similarly, brief delays in publication may be appropriate to permit the filing of patent applications and to ensure that confidential information obtained from a sponsor or the provider of a research tool is not inadvertently disclosed. However, excessive publication delays or requirements for editorial control, approval of publications, or withholding of data all undermine the credibility of research results and are unacceptable.

2. Ensure Appropriate Implementation of the Bayh-Dole Act

When a Recipient's research work is funded by NIH, the activity is subject to various laws and regulations, including the Bayh-Dole Act (35 U.S.C. 200 *et seq.*). Generally, Recipients are expected to maximize the use of their research findings by making them available to the research community and the public, and through their timely transfer to industry for commercialization.

The right of Recipients to retain title to inventions made with NIH funds comes with the corresponding obligations to promote utilization, commercialization, and public availability of these inventions. The Bayh-Dole Act encourages Recipients to patent and license subject inventions as one means of fulfilling these obligations.

However, the use of patents and exclusive licenses is not the only, nor in some cases the most appropriate, means of implementing the Act. Where the subject invention is useful primarily as a research tool, inappropriate licensing practices are likely to thwart rather than promote utilization, commercialization and public availability of the invention.

In determining an intellectual property strategy for an NIH-funded invention useful primarily as a research tool, Recipients should analyze whether further research, development and private investment are needed to realize this primary usefulness. If it is not, the goals of the Act can be met through publication, deposit in an appropriate databank or repository, widespread non-exclusive licensing or any other number of dissemination techniques. Restrictive licensing of such an invention, such as to a for-profit sponsor for exclusive internal use, is antithetical to the goals of the Bayh-Dole Act.

Where private sector involvement is desirable to assist with maintenance, reproduction, and/or distribution of the tool, or because further research and development are needed to realize the invention's usefulness as a research tool, licenses should be crafted to fit the circumstances, with the goal of ensuring widespread and appropriate distribution of the final tool product. Exclusive licensing of such an invention, such as to a distributor that will sell the tool or to a company that will invest in the development of a tool from the nascent invention, can be consistent with the goals of the Bayh-Dole Act.

3. Minimize Administrative Impediments to Academic Research

Each iteration in a negotiation over the terms of a license agreement or materials transfer agreement delays the moment when a research tool may be put to use in the laboratory. Recipients should take every reasonable step to streamline the process of transferring their own research tools freely to other academic research institutions using either no formal agreement, a cover letter, the Simple Letter Agreement of the Uniform Biological Materials Transfer Agreement (UBMTA), or the UBMTA itself. The Appendix contains an updated free-standing version of the Simple Letter Agreement that is strongly encouraged for transfers of unpatented research materials among Recipients.

Where they have not already done so, Recipients should develop and implement clear policies which articulate acceptable conditions for acquiring resources, and refuse to yield on unacceptable conditions. NIH acknowledges the concern of some for-profit organizations that the concept of purely academic research may be diluted by the close ties of some not-for-profit organizations with for-profit entities, such as research sponsors and spin-off companies in which such organizations take equity. Of concern to would-be providers is the loss of control over a proprietary research tool that, once shared with a not-for-profit Recipient for academic research, results in commercialization gains to the providers' for-profit competitors. Recipients must be sensitive to this legitimate concern if for-profit organizations are expected to share tools freely.

For-profit organizations, in turn, must minimize the encumbrances they seek to impose upon not-for-profit organizations for the academic use of their tools. Reach-through royalty or product rights, unreasonable restraints on publication and academic freedom, and improper valuation of tools impede the scientific process whether imposed by a not-for-profit or for-profit provider of research tools. While these Principles are directly applicable only to recipients of NIH funding, it is hoped that other not-for-profit and for-profit organizations will adopt similar policies and refrain from seeking unreasonable restrictions or conditions when sharing materials.

4. Ensure Dissemination of Research Resources Developed With NIH Funds

Progress in science depends upon prompt access to the unique research resources that arise from biomedical research laboratories throughout government, academia, and industry. Ideally, these new resources flow to others who advance science by conducting further research. Prompt access can be accomplished in a number of ways, depending on the type of resource that has been developed, whether it has broad or specific uses, and whether it is immediately useful or private sector investment is needed to realize its usefulness. The goal is widespread, timely distribution of tools for further discovery. When research tools are used only within one or a small number of institutions, there is a great risk that fruitful avenues of research will be neglected.

Unique research resources arising from NIH-funded research are to be made available to the scientific research community. Recipients are expected to manage interactions with third parties that have the potential to restrict Recipients' ability to disseminate research tools developed with NIH funds.[2] For example, a Recipient might use NIH funds with funds from one or more third party sponsors, or acquire a research tool from a third party provider for use in an NIH-funded research project. Either situation may result in a Recipient incurring obligations to a third party that conflict with Recipient's obligations to the NIH. To avoid inconsistent obligations, Recipients are encouraged to share these Principles with potential co-sponsors of research projects and third party providers of materials.

Recipients should also examine and, where appropriate, simplify the transfer of materials developed with NIH funds to for-profit institutions for internal use by those institutions. NIH endorses distinguishing internal use by for-profit institutions from the right to commercial development and sale or provision of services. In instances where the for-profit institution is seeking access for internal use purposes, Recipients are encouraged to transfer research tools developed with NIH funding to such institutions without seeking option rights or royalties on the final product.

Summary

Access to research tools is a prerequisite to continuing scientific advancement. Ensuring broad access while preserving opportunities for product development requires thoughtful, strategic implementation of the Bayh-Dole act. The NIH urges Recipients to develop patent, license, and material sharing policies with this goal in mind, realizing both product development as well as the continuing availability of new research tools to the scientific community.

Appendix—Guidelines for Implementation

The following Guidelines provide specific information, strategies, and model language for patent and license professionals and sponsored research administrators at Recipient institutions to assist in implementing the Principles on Obtaining and Disseminating Biomedical Resources. Recipients are encouraged to use the strategies below, other strategies developed at their own institutions, or any other appropriate means of achieving the Principles.

---

[2] Research tools obtained or derived from human tissues constitute a special case. Certain restrictions on the use and further dissemination of such tools may be appropriate to ensure consistency with donor consent and human subjects protection. See 45 CFR Part 46.

Guidelines for Disseminating Research Resources Arising Out of NIH-Funded Research

Definition of Research Tools

The definition of research tools is necessarily broad, and it is acknowledged that the same material can have different uses, being a research tool in some contexts and a product in others. In determining how an NIH-funded resource that falls within the definition should be handled, Recipients should determine whether: (1) The Primary usefulness of the resource is as a tool for discovery rather than an FDA-approved product or integral component of such a product; (2) the resource is a broad, enabling invention that will be useful to many scientists (or multiple companies in developing multiple products), rather than a project or product-specific resource; and (3) the resource is readily useable or distributable as a tool rather than the situation where private sector involvement is necessary or the most expedient means for developing or distributing the resource. Recipients should ensure that their intellectual property strategy for resources fitting one or more of the above criteria enhances rather than restricts the ultimate availability of the resource. If Recipient believes private sector involvement is desirable to achieve this goal, Recipient should strategically license the invention under terms commensurate with the goal.

Use of Simple Letter Agreement

Recipients are expected to ensure that unique research resources arising from NIH-funded research are made available to the scientific research community. The majority of transfers to not-for-profit entities should be implemented under terms no more restrictive than the UBMTA. In particular, Recipients are expected to use the Simple Letter Agreement provided below, or another document with no more restrictive terms, to readily transfer unpatented tools developed with NIH funds to other Recipients for use in NIH-funded projects. If the materials are patented or licensed to an exclusive provider, other arrangements may be used, but commercialization option rights, royalty reach-through, or product reach-through rights back to the provider are inappropriate.

Similarly, when for-profit entities are seeking access to NIH-funded tools for internal use purposes, Recipients should ensure that the tools are transferred with the fewest encumbrances possible. The Simple Letter Agreement may be expanded for use in transferring tools to for-profit entities, or simple internal use license agreements with execution or annual use fees may be appropriate.

Simple Letter Agreement for the Transfer of Materials

In response to RECIPIENT's request for the MATERIAL [insert description] _____ the PROVIDER asks that the RECIPIENT and the RECIPIENT SCIENTIST agree to the following before the RECIPIENT receives the MATERIAL:

1. The above MATERIAL is the property of the PROVIDER and is made available as a service to the research community.

2. THIS MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS.

3. The MATERIAL will be used for teaching or not-for-profit research purposes only.

4. The MATERIAL will not be further distributed to others without the PROVIDER's written consent. The RECIPIENT shall refer any request for the MATERIAL to the PROVIDER. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agree to make the MATERIAL available, under a separate Simple Letter Agreement to other scientists for teaching or not-for-profit research purposes only.

5. The RECIPIENT agrees to acknowledge the source of the MATERIAL in any publications reporting use of it.

6. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Unless prohibited by law, Recipient assumes all liability for claims for damages against it by third parties which may arise from the use, storage or disposal of the Material except that, to the extent permitted by law, the Provider shall be liable to the Recipient when the damage is caused by the gross negligence or willful misconduct of the Provider.

7. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.

8. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested, the amount will be indicated here: _____

The PROVIDER, RECIPIENT and RECIPIENT SCIENTIST must sign both copies of this letter and return one signed copy to the PROVIDER. The PROVIDER will then send the MATERIAL.

Provider Information and Authorized Signature

Provider Scientist: _____
Provider Organization: _____
Address: _____
Name of Authorized Official: _____
Title of Authorized Official: _____
Certification of Authorized Official: This Simple Letter Agreement ____ has ____ has not [check one] been modified. If modified, the modification are attached.

_____
(Signature of Authorized Official) (Date)

Recipient Information and Authorized Signature

Recipient Scientist: _____
Recipient Organization: _____
Address: _____
Name of Authorized Official: _____
Title of Authorized Official: _____
Signature of Authorized Official: _____
Date: _____
Certification of Recipient Scientist: I have read and understood the conditions outlined in this Agreement and I agree to abide by them in the receipt and use of the MATERIAL.

_____
(Recipient Scientist) (Date)

Ensuring Consistent Obligations

Recipients must ensure that obligations to other sources of funding of projects in which NIH funds are used are consistent with the Bayh-Dole Act and NIH funding requirements. Unique research resources generated under such projects are expected to be made available to the research community. Recipients are encouraged to share these Guidelines with potential co-sponsors. Any agreements covering projects in which NIH funds will be used along with other funds are expected to contain language to address the issue of dissemination of unique research resources. Examples of possible language follow. The paragraphs are presented in a "mix and match" format:

"The project covered by this agreement is supported with funding from the National Institutes of Health. Provider agrees that upon publication, unpatented unique research resources arising out of this project may be freely distributed."

"In the event an invention is primarily useful as a research tool, any option granted shall either be limited to a non-exclusive license or the terms of any resulting exclusive license shall include provisions that ensure that the research tool will be

available to the academic research community on reasonable terms."

"Provider agrees that Recipient shall have the right to make any materials and inventions developed by Recipient in the course of the collaboration (including materials and inventions developed jointly with Provider, but not including any Provider materials (or parts thereof) or Provider sole inventions available to other scientists at not-for-profit organizations for use in research, subject to Provider's independent intellectual property rights."

"Subject to Recipient's obligations to the U.S. government, including 37 CFR Part 401, the NIH Grants Policy Statement, and the NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources, Recipient grants to Sponsor the following rights: * * *"

Limiting Exclusive Licenses to Appropriate Field of Use

Exclusive licenses for research tools (where no further research and development is needed to realize the invention's usefulness as a tool) should generally be avoided except in cases where the licensee undertakes to make the research tool widely available to researchers through unrestricted sale, or the licensor retains rights to make the research tool widely available. When an exclusive license is necessary to promote investment in commercial applications of a subject invention that is also a research tool, the Recipient should ordinarily limit the exclusive license to the commercial field of use, retaining rights regarding use and distribution as a research tool. Examples of possible language include:

"Research License" means a nontransferable, nonexclusive license to make and to use the Licensed Products or Licensed Processes as defined by the Licensed Patent Rights for purposes of research and not for purposes of commercial manufacture, distribution, or provision of services, or in lieu of purchase, or for developing a directly related secondary product that can be sold. Licensor reserves the right to grant such nonexclusive Research Licenses directly or to require Licenses on reasonable terms. The purpose of this Research License is to encourage basic research, whether conducted at an academic or corporate facility. In order to safeguard the Licensed Patent Rights, however, Licensor shall consult with Licensee before granting to commercial entities a Research License or providing to them research samples of the materials."

"Licensor reserves the right to provide the Biological Materials and to grant licenses under Patent Rights to not-for-profit and governmental institutions for their internal research and scholarly use."

"Notwithstanding anything to the contrary in this agreement, Licensor shall retain a paid-up, nonexclusive, irrevocable license to practice, and to sublicense other not-for-profit research organizations to practice, the Patent Rights for internal research use."

"The grant of rights provided herein is subject to the rights of the United States government pursuant to the Bayh-Dole Act and is limited by the right of the Licensor to use Patent Rights for its own research and educational purposes and to freely distribute Materials to not-for-profit entities for internal research purposes."

"Licensor reserves the right to supply any or all of the Biological materials to academic research scientists, subject to limitation of use by such scientists for research purposes and restriction from further distribution."

"Licensor reserves the right to practice under the Patent Rights and to use and distribute to third parties the Tangible Property for Licensor's own internal research purposes."

Guidelines for Acquiring Research Resources for Use in NIH-Funded Research

Prompt Publication

Agreements to acquire materials for use in NIH-funded research are expected to address the timely dissemination of research results. Recipients should not agree to significant publication delays, any interference with the full disclosure of research findings, or any undue influence on the objective reporting of research results. A delay of 30–60 days to allow for patent filing or review for confidential proprietary information is generally viewed as reasonable.

Definition of Materials

Under the Bayh-Dole Act and its implementing regulations, agreements to acquire materials for use in NIH-funded projects cannot require that title to resulting inventions be assigned to the provider. For this reason, definitions of "materials" that include all derivatives or modifications are unacceptable. Other unacceptable variations include definitions of "materials" that include any improvements, or any other materials that could not have been made without the provided material. Conversely, it is important for providers of materials to be aware that a Recipient does not gain any ownership or interest in a provider's material by virtue of the Recipient using the material in an NIH-funded activity. Examples of acceptable definitions for "materials" include:

"'Materials' means the materials provided as specified in this document."

"'Materials' means the materials provided as specified in this document. Materials may also include Unmodified Derivatives of the materials provided, defined as substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original materials, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line."

"'Materials' means the materials provided as specified in this document. Materials may also include Progeny and Unmodified Derivatives of the materials provided. Progeny is an unmodified descendant from the original material, such as virus from virus, cell from cell, or organism from organism. Unmodified Derivatives are substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line."

"'Materials' means the materials being transferred as specified in this document. Materials shall not include: (a) Modifications, or (b) other substances created by the recipient through the use of the Material which are not Modifications, Progeny, or Unmodified Derivatives. Progeny is an unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism. Unmodified Derivatives are substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original Material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line." [Source: Uniform Biological Materials Transfer Agreement; terms defined therein]

Ensuring Consistent Obligations

Recipients are expected to avoid signing agreements to acquire research tools that are likely to restrict Recipients' ability to promote broad dissemination of additional tools that may arise from the research. This might occur when an agreement gives a provider an exclusive license option to any new intellectual property arising out of the project. A new transgenic mouse developed during the project could fall under this license option and become unavailable to third party scientists as a result. Examples of agreements to examine include material transfer agreements (MTAs), memoranda of understanding (MOU), research or collaboration agreements, and sponsored research agreements. Recipients should consider adopting standard language to place in such agreements to address this issue. The following are examples of possible language to include in MTAs, sponsored research agreements, and other agreements that either acquire materials from or co-mingle funds with non-government sources. The paragraphs are presented in a "mix and match" format:

"The project covered by this agreement is supported with funding from the National Institutes of Health. Provider agrees that after publication, unpatented unique research resources arising out of this project may be freely distributed."

"In the event an invention is primarily useful as a research tool, any option granted shall either be limited to a non-exclusive license or the terms of any resulting exclusive license shall include provisions which insure that the research tool will be available to the academic research community on reasonable terms."

"Provider agrees that Recipient shall have the right to make any materials and inventions developed by Recipient in the course of the collaboration (including materials and inventions developed jointly with Provider, but not including any Provider materials (or parts thereof) or Provider sole inventions available to other scientists at not-for-profit organizations for use in research, subject to Provider's independent intellectual property rights."

"Subject to Recipient's obligations to the U.S. government, including 37 CFR Part 401, the NIH Grants Policy Statement, and the NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources, Recipient grants to Sponsor the following rights: * * *"

Grantbacks and Option Rights

• Agreements to acquire materials from for-profit entities for use in NIH-funded research may provide a grant back of non-exclusive, royalty-free rights to the provider to use improvements and new uses of the material that, if patented, would infringe any patent claims held by the provider. They may also provide an option for an exclusive or non-exclusive commercialization license to new inventions arising directly from use of the material. These should be limited to circumstances where the material sought to be acquired is unique, such as a patented proprietary material, and not reasonably available from any other source. A non-exclusive "grant-back" might be used, for example, to protect a for-profit entity that provides a proprietary compound from being blocked from using new uses or improvements of that compound discovered during the NIH-funded project. In providing license options, Recipients must ensure that licenses granted to providers under such options are consistent with Bayh-Dole requirements, including the preference for U.S. industry requirements and reservation of government rights under 47 CFR part 401.

• In determining the scope of license or option rights that are granted in advance to a provider of materials, Recipient should balance the relative value of the provider's contributions against the value of the rights granted, cost of the research, and importance of the research results. The rights granted to providers should be limited to inventions that have been made directly through the use of the materials provided. In addition, Recipients should reserve the right to negotiate license terms that will ensure: (1) continuing availability to the research community if the new invention is a unique research resource; (2) that the provider has the technical and financial capability and commitment to bring all potential applications to the marketplace in a timely manner; and (3) that if an exclusive license is granted, the provider will provide a commercial development plan and agree to benchmarks and milestones for any fields of use granted.

• It is expected that agreements to acquire NIH-funded materials from not-for-profit entities for use in NIH-funded research will not include commercialization option rights, royalty reach-through, or product reach-through rights back to the provider. Such materials should be acquired under the Simple Letter Agreement or UBMTA, or, if the materials are patented,a simple license agreement that does not request reach-through to either future products or royalties. If the providing not-for-profit organization is constrained in sharing the material due to a pre-existing sponsored research agreement or license, NIH expects that not-for-profit provider to negotiate a suitable resolution with the private research sponsor or licensee. The co-mingling of NIH and sponsored research funds is allowed, however, Recipient is responsible for ensuring that conditions on the use of the sponsored funds do not interfere with the open dissemination of research tools.

[FR Doc. 99–33292 Filed12–22–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in January 2000.

The meeting will be open. The agenda will include presentations and updates on CSAP's programs, the SAMHSA Administrator's Report, a CSAP budget update, and discussions of administrative matters and announcements. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting, a roster of committee members, and substantive program information may be obtained from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council

Meeting Dates: January 10, 2000, 9 a.m.–5 p.m. (Open)

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20841.

Contact: Yuth Nimit, Ph.D., 5600 Fishers Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Dated: December 17, 1999.

Sandra Stephens,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–33306 Filed 12–22–99; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–51]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled

by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) Its intention to declare the property excess to the agency's needs, or (3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: December 17, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Fedeal Register Report for 12/23/99

Suitable/Available Properties

Buildings (by State)

Texas

Formerly Naval Rsv Center
1818 N. Confederate St.
Tyler Co: Smith TX 75702–
Landholding Agency: GSA
Property Number: 54199940019
Status: Surplus
Comment: 11,370 sq. ft. bldg./.96 acres, most recent use—reserve center/office, subject to existing easements
GSA Number: 7–N–TX–984A

Land (by State)

Utah

Monticello Mill Tailings Site
Monticello Co: San Juan UT 00000–
Landholding Agency: GSA
Property Number: 54199940020
Status: Excess
Comments; 383.24 acres, listed as an EPA NPL Site—clean up in process, floodplain
GSA Number: 7–B–UT–431–M

Unsuitable Properties

Buildings (by State)

California

Bldg. Q100
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940067
Status: Excess
Reason: Extensive deterioration

Bldg. Q102
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940068
Status: Excess
Reason: Extensive deterioration

Bldg. 106
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940069
Status: Excess
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

California

Bldg. 111
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940070
Status: Excess
Reason: Extensive deterioration

Bldg. 112
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940071
Status: Excess
Reason: Extensive deterioration

Bldg. 613
NAS, North Island
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940072
Status: Excess
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

California

Bldg. 55
Naval Amphibious Base
Imperial Beach Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940073
Status: Excess
Reason: Extensive deterioration

Florida

Bldg. 3451
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199940066
Status: Unutilized
Reason: Secured Area

[FR Doc. 99–33141 Filed 12–22–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 020555

Applicant: Ohio Historical Center, Columbus, Ohio (Principal Investigators Robert Glotzhober and Dwight Moody)

The applicant requests a permit to take (collect, salvage) endangered Hine's emerald dragonfly (*Somatochlora hineana*) in the States of Ohio and Alabama. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5350); FAX: (612/713–5292).

Dated: December 17, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–33286 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–045–1610–00]

Availability of a Draft Environmental Impact Statement and General Management Plan for Zion National Park Incorporating a Land Use Plan Amendment for the Bureau of Land Management (BLM) St. George Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM, St. George Field Office, Utah announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Zion National Park, Utah. The DEIS/GMP incorporates a land use plan amendment for the BLM St. George Field Office Resource Management Plan (1999).

On February 17, 1998, the St. George Field Office published in the **Federal Register** a notice of intent to conduct a plan amendment within the Dixie Resource area (now known as St. George Field Office), Washington County, Utah. Further, the notice indicated that BLM initiated the plan amendment through a joint planning effort with Zion National Park for the purpose of conducting wild and scenic river studies of five specific tracts on BLM-managed land contiguous to the Zion National Park's boundary. The St. George Field Office and Zion National Park prepared a Memorandum of Understanding regarding this joint planning effort.

DATES: Comments on the land use plan amendment to the St. George Resource Management Plan (incorporated within the DEIS/GMP) will be accepted through March 23, 2000. Comments specific to the DEIS/GMP for Zion National Park are due by February 11, 2000 (see **Federal Register** Volume 64, Number 233, Pages 68114–68115). Public meetings concerning both the DEIS/GMP and BLM's land use plan amendment will be held at the following locations and dates:

All meetings will run from 7–10 p.m.

—January 6, 2000, Sharwan Smith Center, SUU, 351 W. Center Street, Cedar City, UT

—January 10, 2000, Town Offices, Public Assembly Hall, 118 Lion Boulevard, Springdale, UT

—January 11, 2000, Kanab City Library, 374 N. Main Street, Kanab, UT

—January 12, 2000, Interagency Offices and Information Center, 345 E. Riverside Road, St. George, UT

—January 13, 2000, Utah Department of Natural Resources, 1594 W. North Temple, Salt Lake City, UT

ADDRESSES: Comments and information regarding river values on the specific public land tracts identified in this notice should be submitted on or before March 23, 2000, and sent to, Jim Crisp, St. George Field Office Manager, 345 East Riverside Drive, St. George, Utah 84790.

Comments, including names and street addresses of respondents, will be available for public review at the BLM St. George Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Final EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, will be made available for public inspection in their entirety.

Public reading copies of the DIES/GMP will be available for review at the following locations: Office of the Superintendent, Zion National Park, Springdale, Utah 84767–1099; Telephone (435) 772–0211; Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, PO Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 or (303) 969–2377; Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843. The DEIS/GMP is also available for review on the National Park Service's Internet site at www.nps.gov/planning.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, BLM St. George Field Office Manager, (435) 688–3201.

SUPPLEMENTARY INFORMATION: Federal land management agencies are directed by Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 to consider the potential for national wild, scenic and recreational river areas in all planning for the use and development of water and related land resources. The BLM's St. George Field Office, during their past planning effort, learned that when river segments on three, small, isolated tracts of BLM-managed public land contiguous to Zion National Park were evaluated in the early 1990's as part of the St. George planning effort, they were determined by BLM not be eligible for further study. These river segments are Willis Creek (T. 38 S., R. 11 W., Sec. 27: SWSW—40 acres affected), Beartrap Canyon (T. 39 S., R. 11 W., Sec. 3: SWNW—40 acres affected), and Goose Creek (T. 39 S., R. 10 W., Sec. 31: NESE, S2SE—120 acres affected). Additionally, contiguous river segments within the Park were not evaluated at that time. The BLM's St. George Field Office also learned that Zion National Park was preparing a General Management Plan and as part of that effort was conducting a wild and

scenic study of river segments within the Park. Consequently, BLM determined that the Park's study provided a timely, efficient way for BLM and the National Park Service to evaluate the streams throughout their reaches across contiguous Federal lands. Thus, for purposes of wild and scenic river study only, BLM through a memorandum of understanding with Zion National Park, served as a co-lead agency in the development of the General Management Plan for Zion National Park and preparation of any associated environmental document. BLM and Zion National Park will cooperate as partners and strive to reach a joint conclusion as to eligibility, tentative classification, and suitability for each river segment where public lands are involved. It is recognized that although the BLM-managed river segments identified above may not be eligible for further study when considered on their own, they may be eligible when considered in conjunction with contiguous segments in the Park.

Two additional public land parcels at the head of the Middle Fork of Taylor Creek (T. 38 S., R. 11 W., Sec. 30: SWNW—40 acres), and at the head of Kolob Creek Narrows (T. 39 S., R. 10 W., Sec. 30: portions thereof—80 acres), may also be affected should the streams (that are within the Park) be determined suitable for Congressional designation into the National Wild and Scenic River System. Thus, river values involving these parcels have been addressed in the DEIS/GMP. Wild and scenic evaluations will be made by Zion National Park, the BLM, and other experts in accordance with the interagency guidelines of July 1996 titled "Wild and Scenic River Review in the State of Utah, Process and Criteria for Interagency Use."

BLM will prepare its own Record of Decision regarding stream segments that cross or otherwise affect BLM-managed public lands. Such decision will constitute a plan amendment for the St. George Resource Management Plan.

Sally Wisely,

Utah State Director.

[FR Doc. 99–33287 Filed 12–22–99; 8:45 am]

BILLING CODE 1610–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 13441, AZAR 035063, AZA 13014, AZA 30075]

Public Land Order No. 7426; Revocation of Bureau of Reclamation Order dated March 17, 1952, Partial Revocation of Public Land Order No. 4172, and Partial Revocation of Secretarial Order dated July 2, 1902; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Bureau of Reclamation order in its entirety, and partially revokes a public land order and a Secretarial order insofar as they affect 1,818.20 acres of National Forest System lands withdrawn for the Orme Dam and Reservoir Project, State Highway 87 Roadside Zone, and Salt River Survey. The lands are no longer needed for the purposes for which they were withdrawn and the revocations are needed to accommodate a proposed Forest Service land exchange. Of the 1,818.20 acres being revoked, 599.28 acres are temporarily closed by the proposed exchange and 957.82 acres are included within other existing Bureau of Reclamation withdrawals. The remaining 261.10 acres will be opened to mining and to such forms of disposition as may by law be made of National Forest System lands. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Bureau of Reclamation Order dated March 17, 1952, which withdrew lands for the Bureau of Reclamation's Orme Dam and Reservoir Project, is hereby revoked in its entirety. The area involved contains 1,806.62 acres, plus the area between the meanders of the left and right bank of the Verde River, in Maricopa County, as shown on the plats of survey officially filed July 29, 1964.

2. Public Land Order No. 4172 and the Secretarial Order dated July 2, 1902, which withdrew lands for State Highway 87 Roadside Zone, and Salt River Survey respectively, are hereby revoked insofar as they affect the following described lands:

Gila and Salt River Meridian

Tonto National Forest

T. 3 N., R. 7 E.,
sec. 27, lots 2, 3, and 5;
sec. 28, lots 13 and 15.
T. 4 N., R. 7 E.,
sec. 27, lot 13.

The areas described aggregate 51.62 acres in Maricopa County.

3. The lands described in Paragraph 2, and the following described lands are hereby made available for exchange under the General Exchange Act of 1922:

Gila and Salt River Meridian

Tonto National Forest

T. 3 N., R.7 E.,
sec. 16, lots 9 to 12, inclusive;
sec. 21, lots 9 to 12, inclusive, and E½E½;
sec. 22, W½W½.

The lands made available for exchange aggregate 631.71 acres in Maricopa County.

4. At 10 a.m. on January 24, 2000, the land described below shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Gila and Salt River Meridian

Tonto National Forest

T. 3 N., R. 7 E.,
sec. 27, lot 6, and SW¼NW¼;
sec. 28, lots 10, 11, 14, and 16, SE¼NE¼, and NE¼SE¼.

The area described contains 261.10 acres in Maricopa County.

Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 14, 1999.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 99–33375 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COC–28627]

Public Land Order No. 7424; Opening of Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 42.90 acres of National Forest System lands withdrawn by a Secretarial order which established the Bureau of Land Management's Power Site Classification No. 88. This action will permit consummation of pending Forest Service land exchanges and retain the waterpower rights to the United States. The lands have been and will continue to be open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determinations of the Federal Regulatory Commission in DVCO–549–000 and DVCO-549–001, it is ordered as follows:

1. At 9 a.m. on January 24, 2000, the following described National Forest System lands withdrawn by Secretarial Order dated February 24, 1925, which established Power Site Classification No. 88, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determinations DVCO–549–000 and DVCO–549–001, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

Arapaho National Forest

T. 4 S., R. 78 W.,
sec. 26, lot 15;
T. 2 S., R. 80 W.,
sec. 13, SE¼SW¼.

The areas described aggregate 42.90 acres in Summit County.

Dated: December 7, 1999.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 99–33374 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–1430–01; UTU 42993, UTU 74299]

Public Land Order No. 7425; Partial Revocation of Secretarial Order dated April 10, 1946; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 157.68 acres of public land withdrawn for the Bureau of Land Management's Power Site Classification No. 377. The withdrawal is no longer needed, and the revocation is necessary to facilitate a land exchange. This action will open the land to surface entry subject to valid existing rights. The land has been and will remain open to mineral leasing, and to mining under the provisions of the Mining Claims Rights Restoration Act of 1955. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated April 10, 1946, which established Power Site Classification No. 377, is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 24 S., R. 23 E.,
sec. 21, SE¼SE¼;
sec. 22, NE¼SW¼ and SW¼SE¼;
sec. 27, lot 4.

The area described contains 157.68 acres in Grand County.

2. At 10 a.m. on January 24, 2000, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. January 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since this act applies only to land withdrawn for power purposes, the provisions of the act are no longer applicable.

4. The State of Utah has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1994).

Dated: December 8, 1999.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 99–33373 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–65760]

Realty Action: Lease/Purchase For Recreation and Public Purposes In White Pine County, Nevada.

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Realty Action.

SUMMARY: The following described public land in White Pine County, Nevada has been identified and examined and will be classified under Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), as suitable for lease/purchase under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The described lands are hereby classified as suitable for lease/purchase under the authority of Section 212 of the Act of October 21, 1976; 43 U.S.C. 1761.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed Conveyance for classification of the lands to the Assistant Field, Nonrenewable Resources.

ADDRESSES: Written Comments should be addressed to: Bureau of Land Management, Gene L. Drais Assistant Field Manager, Nonrenewable Resources, HC 33 Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Doris Metcalf, Land Law Examiner, at the above address or telephone (775) 289–1852.

SUPPLEMENTARY INFORMATION:

The following described parcel of land, situated in White Pine County is

being offered for lease/purchase under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*).

Mount Diablo Meridian, Nevada

T. 21 N., R. 70 E.
Sec. 21, NW¼SE¼.
Containing 40 acres, more or less.

The lands are hereby classified for public purpose use as school sites and/or other school facilities, 43 CFR 2410, 2430.4 (a) and (c). The White Pine County School District intends to use the land to construct and operate a kindergarten through twelfth grade school for residents in Pleasant Valley. A right-of-way would also be acquired to access the proposed site.

The lease and/or patent, when finalized, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

2. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

The land is not required for any federal purpose. The classification for lease/purchase is consistent with the Bureau's planning for this area. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land law except for Recreation and Public Purposes.

Dated: November 22, 1999.

For further information contact: Doris Metcalf (775) 289–1852.

Gene A. Kolkeman,

Field Manager BLM, Ely, NV.

[FR Doc. 99–32251 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts, Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 14, 2000.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore. The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—November 19, 1999
3. Reports of Officers
4. Subcommittee Report—Personal Watercraft
5. Subcommittee Report:
   Community-oriented Problem Solving
   Community Values Day—Provincetown
   Salt Pond Visitor Center
   Penniman House
   Hatches Harbor
   News from Washington
6. Old Business
7. New Business
8. Agenda for next meeting
9. Date for next meeting
10. Public comment
11. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: December 16, 1999.

Maria Burks,

Superintendent.

[FR Doc. 99–33255 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Federal Land Managers' Air Quality Related Values Work Group (FLAG)

AGENCY: National Park Service, Interior.

ACTION: Notice of comment period extension.

SUMMARY: On November 8, 1999 (64 FR 60831) the National Park Service, in cooperation with the U.S. Fish and Wildlife Service and the U.S. Department of Agriculture Forest Service, announced the availability of, and solicited comments on, the draft *FLAG Phase I Report*. The purpose of this notice is to announce that FLAG has extended the public comment period by 30 days (until February 7, 2000).

The Federal Land Managers' Air Quality Related Values Work Group (FLAG) was formed to develop a more consistent approach for the Federal Land Managers (FLMs), *i.e.*, National Park Service, U.S. Fish and Wildlife Service, and U.S. Department of Agriculture Forest Service, to evaluate air pollution effects on their resources. The FLAG effort focuses on the effects of the air pollutants that could affect the health and status of resources in areas managed by the three agencies, primarily such pollutants as ozone, particulate matter, nitrogen dioxide, sulfur dioxide, nitrates, and sulfates. In Phase I, FLAG formed subgroups that concentrated on four issues: (1) Terrestrial effects of ozone; (2) aquatic and terrestrial effects of wet and dry pollutant deposition; (3) visibility; and (4) process and policy issues. The draft report contains issue-specific technical and policy analyses, recommendations for evaluating air quality related values, and guidelines for completing and evaluating new source review permit applications. These recommendations and guidelines are intended for use by the FLMs, permitting authorities, permit applicants, and other interested parties. The FLMs conducted a public meeting to discuss the FLAG report on December 15, 1999. FLAG presentations made at the public meeting can be downloaded from the FLAG website referenced below.

DATES: Written comments on the FLAG report must be received by February 7, 2000.

ADDRESSES: A copy of the draft *FLAG Phase I Report* can be obtained from John Bunyak or downloaded from the Intenet at: http://www.aqd.nps.gov/ard/flagfree/

Mail comments to: John Bunyak, Air Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado, 80225. Email comments can be sent to john__bunyak@nps.gov.

FOR FURTHER INFORMATION CONTACT: John Bunyak at the above address or by calling (303) 969–2818.

Dated: December 16, 1999.

Christine Shaver,

Chief, Air Resources Division.

[FR Doc. 99–33356 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Thursday, December 16, 1999, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide two appeals from the National Commissioners' decisions pursuant to 28 CFR Section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Edward F. Reilly, Jr., John R. Simpson, Marie F. Ragghianti, and Janie Jeffers.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 16, 1999.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 99–33442 Filed 12–21–99; 10:46 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,769]

Arrow Automotive Industries Morrilton, Arkansas; Notice of Negative Determination on Reconsideration

On August 17, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The company presented new evidence that indicated the Department had not done a full customer survey. The notice was published in the **Federal Register** on August 31, 1998 (64 FR 47521).

The Department initially denied TAA to workers of Arrow Automotive because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of repairing, rebuilding, and remanufacturing automotive parts.

On reconsideration, the Department requested the names of additional customers. The Department conducted a survey of the additional customers, all of which reported no purchases of imported remanufactured automotive parts.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for worker adjustment assistance for workers and former workers of Arrow Automotive Industries, Morrilton, Arkansas.

Signed at Washington, D.C., this 13th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33316 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,025 et al.]

Conoco, Inc., Natural Gas and Gas Products Division, Houston, TX, and Operating at Various Locations; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) and application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Conoco, Inc., Natural Gas and Gas Products Division, Houston, Texas and operating at various locations in Louisiana (TA–W–36, 025A), New Mexico (TA–W–36,025B), Oklahoma (TA–W–36,025C), Texas (TA–W–36,025D), Virginia (TA–W–36,025E) and West Virginia (TA–W–36,025F). The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,025; Conoco, Inc., Natural Gas and Gas Products Div., Houston, TX and Operating at Various Locations in Louisiana (TA–W–36,025A), New Mexico (TA–W–36,025B), Oklahoma (TA–W–36,025C), Texas (TA–W–36,025D), Virginia (TA–W–36,025E), and West Virginia (TA–W–36,025F), (December 7, 1999)

Signed at Washington, DC this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33324 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,824]

Crouse-Hinds Division of Cooper Industries Syracuse, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 18, 1999, the International Brotherhood of Electrical Workers (IBEW), Local 2084, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Trade Adjustment Assistance (TA–W–36,824), applicable to workers of the subject firm. The denial notice was signed on

October 20, 1999, and will soon be published in the **Federal Register.**

The IBEW presents evidence that warrant examination of imports of articles competitive with the EMT electrical steel fittings produced by workers of the subject firm.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C. this 2nd day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 33326 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,876]

Fred P. Saunders Company, Bridgton, Maine; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 27, 1999 in response to a worker petition which was filed on behalf of all workers at Fred P. Saunders Company, located in Bridgton, Maine (TA–W–36,876).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33308 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/22/1999]

TA–W	Subject firm (petitioners) and location	Date of petition	Product(s)
37,083	Hempfield Foundries (Wkrs)—Greensburg, PA	11/09/1999	Flanged pipe fittings
37,084	Stanley Hand Tools (IAMAW)—New Britain, CT	10/26/1999	Tape rulers
37,085	Tulon Co (Wkrs)—Irving, CA	11/10/1999	Printed circuit board drills
37,086	Garden State Tanning (UNITE)—Adrian, MI	11/05/1999	Leather seats
37,087	Gaudette Leather Goods (Co.)—No. Attleboro, MA	11/10/1999	Specialty leather goods
37,088	Master Foam, Inc (Co.)—North Hollywood, CA	11/09/1999	Foam cutting (packaging)
37,089	K2 Corporation (Co.)—Vashon, WA	11/11/1999	Downhill snow skies, snowboards
37,090	Sas'sa Ltd (Co.)—Sylvester, GA	11/04/1999	Westernwear
37,091	Morgan Adhesive Co (IBT)—Stow, OH	01/12/1999	Adhesives
37,092	Industrial Motor (Wkrs)—El Paso, TX	11/03/1999	Repair motors
37,093	Duckhead Apparel (Wkrs)—Monroe, GA	11/02/1999	Pressed pants for inventory
37,094	Lear Corp. (IBEW)—Zanesville, OH	11/04/1999	Battery die casts (wiring harnesses)
37,095	Leggett and Platt (Co.)—Springfield, MO	11/05/1999	Wood headboards, beds, nightstands
37,096	Royal Oak Enterprises (Wkrs)—Salem, MO	11/06/1999	Charcoal briquetts
37,097	Reliable Machine & Supply (Co.)—Odessa, TX	11/02/1999	Repair engine & pump crankshafts
37,098	Cedarapids (Wkrs)—Glasgow, MO	11/05/1999	Asphalt machinery
37,099	Schuylkill Haven (Wkrs)—Schuylkill Have, PA	10/31/1999	Bleached & dyed knitted, woven fabrics
37,100	Maine Yankee Atomic Power (Co.)—Wiscassett, ME	11/01/1999	Electric power
37,101	Royal Coat (Wkrs)—Clifton, NJ	10/28/1999	Ladies' coats
37,102	Fisher Price Inc (Wkrs)—East Aurora, NY	11/10/1999	Children's toys
37,103	Alaska Anvil Consulting (Wkrs)—Anchorage, AK	11/10/1999	Oilfield exploration & engineering
37,104	F.N. Burt Co., Inc (GCIU)—Buffalo, NY	11/09/1999	Paperboard packaging

[FR Doc. 99–33322 Filed 12–22–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,919]

Huffy Bicycle Company, Farmington, MO, Huffy Bicycle Company Tech Center, Springboro, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 19, 1999, applicable to workers of Huffy Bicycle Company, located in Farmington, Missouri. The notice was published in the **Federal Register** on December 2, 1999 (64 FR 67594).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur at the Huffy Bicycle Company Tech Center, Springboro, Ohio location when it closes in December, 1999. The workers at the Springboro, Ohio location provide engineering and support function services for Huffy's production facility in Farmington, Missouri which is also closing in December, 1999. The workers are engaged in the production of bicycles.

The intent of the Department's certification is to include all workers of Huffy Bicycle Company who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Huffy Bicycle Company Tech Center, Springboro, Ohio.

The amended notice applicable to TA–W–36,919 is hereby issued as follows:

All workers of Huffy Bicycle Company, Farmington, Missouri (TA–W–36,919), and Huffy Bicycle Company Tech Center, Springboro, Ohio (TA–W–36,919A) who became totally or partially separated from employment on or after September 29, 1998 through October 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33311 Filed 12–22–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,623]

Interplast Universal Industries Lodi, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

By letters of November 1 and 4, 1999, a petitioner and the Northeast District Council of the United Food and Commercial Workers (UFCW), respectively, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Trade Adjustment Assistance, applicable to workers of the subject firm (TA–W–36,623). The denial notice was signed on October 7, 1999 and published in the **Federal Register** on November 4, 1999 (64 FR 60230).

The petitioners present evidence that warrant further examination of imports of articles competitive with the expanded vinyl produced by workers of the subject firm.

Conclusion

After careful review of the application. I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 6th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33314 Filed 12–22–99; 8:45 am]
BILLING CODE 1510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,708]

Invensys Appliance Controls, New Stanton, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Invensys Appliance Controls, New Stanton, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination, Therefore, dismissal of the application was issued.

TA–W–36,708; Invensys Appliance Controls, New Stanton, Pennsylvania (December 7, 1999).

Signed at Washington, D.C. this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33323 Filed 12–22–99 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,219]

Matador Petroleum Corporation, Dallas, Texas; Notice of Negative Determination on Reconsideration

By application dated August 20, 1999, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 30, 1999, and published in the **Federal Register** on September 11, 1999 (64 FR 43723).

The June 30, 1999, denial of TAA for workers engaged in employment related to the exploration and production of crude oil and natural gas at Matador Petroleum Corporation, Dallas, Texas, was based on the finding that criteria (2) and (3) of group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, were not met. Employment levels and revenues derived from the sale of articles produced at the subject firm increased during the relevant time period.

The company provided new information regarding employment at the subject firm, showing that the number of workers did decline in January through March 1999 and that there is a threat of additional layoffs. Based on this new information criterion (1) is met.

The company explains that the revenues derived from the sale of crude oil and natural gas increased because the company found significant amounts of oil and gas. Profits of the subject firm, however, declined because they were forced to sell the products at a price lower than the associated costs of production; the low price of imported products drove the price down.

The Trade Act of 1974 does not provide for working group certification based on the cost of producing products. Price is not a criterion for worker group certification.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Matador Petroleum Corporation, Dallas, Texas.

Signed at Washington, D.C. this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33317 Filed 12–22–99 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,453; TA–W–35,453I]

Pendleton Woolen Mills; Fremont, Nebraska; and Nebraska City Facility, Nebraska City, Nebraska; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1999, applicable to workers of Pendleton Woolen Mills, Fremont, Nebraska. The notice was published in the **Federal Regiister** on April 6, 1999 (64 FR 16753).

At the request of the company, the Department reviewed the certification for workers of the subject firms. New information shows that worker separations are occurring at the Nebraska City Facility, of Pendleton Woolen Mills, Nebraska City, Nebraska. The workers are engaged in employment related to the production of women's woolen pants and skirts.

Accordingly, the Department is amending the certification to cover workers of Pendleton Woolen Mills, Nebraska City Facility, Nebraska City, Nebraska.

The intent of the Department's certification is to include all workers of Pendleton Wool Mills adversely affected by increased imports.

The amended notice applicable to TA–W–35,453 is hereby issued as follows:

"All workers of Pendleton Woolen Mills, Fremont, Nebraska (TA–W–35,453) and Nebraska City Facility, Nebraska City, Nebraska (TA–W–35,453I) who became totally or partially separated from employment on or after December 21, 1997 through March 2, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33310 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,730]

Ray-Ban Sun Optics Formerly Known as Eyewear Division of Bausch & Lomb, Rochester, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 2, 1999, applicable to workers of Ray-Ban Sun Optics, Rochester, New York. The notice was published in the **Federal Register** on December 2, 1999 (64 FR 67594).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sunglasses. Findings show that the subject firm, which was originally named the Eyewear Division of Bausch & Lomb, was sold in June, 1999 to Luxottica and was renamed Ray-Ban Sun Optics. The Department is amending the certification determination to correctly identify the new title name to read "Ray-Ban Sun Optics, (formerly known as Eyewear Division of Bausch & Lomb)", Rochester, New York.

The amended notice applicable to TA–W–36,730 is hereby issued as follows:

All workers of Ray-Ban Sun Optics (formerly known as Eyewear Division of Bausch & Lomb), Rochester, New York who became totally or partially separated from employment on or after August 11, 1998 through November 2, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33313 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,125]

Sensory Devices, Inc., Waukesha, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 29, 1999, in response to a worker petition which was filed on behalf of workers at Sensor Devices, Inc., Waukesha, Wisconsin.

The petitioning group of workers has requested that its petition for Trade Adjustment Assistance be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 14th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33309 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 935]

Suckle Corporation, Scranton, PA; Notice of Negative Determination on Reconsideration

On September 17, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented a list of additional customers decreasing purchases from the subject firm. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52545).

The Department initially denied TAA to workers producing computer chassis at Suckle Corporation, Scranton, Pennsylvania because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that none of the major customers were decreasing purchases from Suckle Corporation while increasing import purchases of computer chassis during the period under investigation.

The Department attempted to survey those customers identified by the petitioners as no longer buying computer chassis from the subject firm. Of those firms that were not included in the initial customer survey, the

Department found that some customers did not purchase from the subject firm in the time period relevant to the investigation, and others were no longer in business. The Department was unable to locate any information from the customers that were out of business.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for workers adjustment assistance for workers and former workers of Suckle Corporation, Scranton, Pennsylvania.

Signed at Washington, DC this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33315 Filed 12–22–99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,118]

Trinity Industries, Incorporated, Plant No. 102, Greenville, PA; Notice of Negative Determination on Reconsideration

By letter of August 17, 1999, United States Automobile, Aerospace, Agricultural Implement Workers of America (UAW), Local No. 1653, requested administrative reconsideration of the Department's denial of Eligibility for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm.

The Department initially denied TAA to workers of Trinity Industries, Incorporated, Plant No. 102, Greenville, Pennsylvania because the criterion (3) of the worker group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. Employment increased from 1997 to 1998. Layoffs at the plant were attributable to the company's decision to transfer production of cement cars from the Greenville plant to another domestic facility. Although the petitioners alleged that Trinity imported railcars, the investigation revealed that the railcars produced by Trinity offshore served foreign markets and were not returned to the United States for marketing to the subject firm's customers.

The UAW request for reconsideration states that worker layoffs continue at the Greenville plant; the company has built production facilities in foreign locations and those products may be coming into the U.S.

On petition reconsideration, the Department contacted Trinity officials to determine if layoffs occurred after June 30, 1999, the expiration date of the TAA certification, TA–W–33,544, covering all workers separated from Trinity Industries, Incorporated, Plant #102–Railcar Division, Greenville, Pennsylvania. The Department also asked if Trinity in importing any products like or directly competitive with those that were produced at the Greenville, Pennsylvania plant.

The company confirms that workers have been separated since June 30, 1999. Those layoffs were caused by senior employees returning to work.

The company reiterates that the gondola cars built in Mexico serve that market. Grain cars are being delivered from Mexico to a U.S. customer. Since workers at the Greenville plant no longer produce grain cars, any worker separations caused as the result of those imports would be covered by TA–W–33,544.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Trinity Industries, Inc., Greenville, Pennsylvania.

Signed at Washington, D.C., this 14th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33321 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,319]

Unger Fabrik A/K/A Michel Palini, Los Angeles, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 28, 1999, applicable to workers of Unger Fabric, Los Angeles, California. The notice was published in the **Federal Register** on July 20, 1999 (64 FR 38921).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of apparel (male and female). Findings show that correct spelling of the subject firm is "Unger Fabrik". Findings also show that some workers separated from employment at Unger Fabrik had their wages reported under a separate unemployment insurance (UI) tax account for Michel Palini, Los Angeles, California.

The intent of the Department's certification is to include all workers of Unger Fabrik who were adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–36,319 is hereby issued as follows:

All workers of Unger Fabrik, also known as Michel Palini, Los Angeles, California who became totally or partially separated from employment on or after May 3, 1998 through June 28, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33312 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than January 3, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, D.C. this 29th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/29/99]

TA–W	Subject firm (petitioners) and location	Date of petition	Product(s)
37,105	Weiser Lock (Comp)—Tucson, AZ	11/19/1999	Residential door hardware.
37,106	Oxford Automotive (Wrks)—Argos, IN	11/12/1999	Steel.
37,107	Dana Corp, Heavy Truck (USWA)—Reading, PA	11/15/1999	Heavy truck side rail.
37,108	Umetco Minerals Corp (Wrks)—Gas Hills, WY	11/01/1999	Reclamation of Uranium Mine.
37,109	DMI, Plant #4 USWA)—Ferdinand, IN	11/09/1999	Office furniture & occasional furniture.
37,110	VF Workwear, Inc (COMP)—Cookeville, TN	11/15/1999	Men's work clothing.
37,111	Crown, Cork and Seal (GMP)—Connellsville, PA	11/12/1999	Metal, paper lined closures.
37,112	Sourceone Mfg Services (UNITE)—Baltimore, MD	11/01/1999	Men's shirts, trousers & sport coats.
37,113	Alliance Machine Co. (USWA)—Alliance, OH	11/09/1999	Machinery & equipment for steel mills.
37,114	Asarco, Inc (Wrks)—Leadville, CO	11/10/1999	Lead and zinc concentrate.
37,115	Neles Automation (Comp)—Shrewsbury, MA	11/15/1999	Control valves.
37,116	Falcon Foundry Co (Comp)—Lowellville, OH	11/15/1999	Copper & bronze castings.
37,117	Irwin Manufacturing Corp (Comp)—Fitzgerald, GA	11/09/1999	Infants sleepwear & outerwear.
37,118	Hoppe Cutting, Inc (Wrks)—Allentown, PA	11/01/1999	Women's sportswear.
37,119	Slatington Fashions (UNITE)—Slatington, PA	11/15/1999	Ladies' Apparel.
37,120	Sonat Exploration Co (Wrks)—Oklahoma City, OK	11/16/1999	Oil.
37,121	Quantegy, Inc (Comp)—Opelika, AL	11/10/1999	Magnetic tape.
37,122	Williams Cutting Service (Comp)—Brownsville, TX	11/16/1999	Garments.
37,123	Midland County Housing (Wrks)—Midland, TX	11/18/1999	Public Rental Assistance Program.
37,124	Arco Permian (Comp)—White Oak, TX	11/19/1999	Oil and gas.
37,125	Sensor Devices, Inc (Wrks)—Waukeska, WI	11/18/1999	Sensor devices.
37,126	Spartan Mills (Wrks)—Spartanburg, SC	11/15/1999	Yarn.
37,127	Carter Footwear, Inc (UFCW)—Wilkes Barre, PA	11/19/1999	Casual footwear.
37,128	Nucor Fastener (Comp)—Conway, AR	11/12/1999	Screws, bolts and nuts.
37,129	Boeing Company (The) (IAMAW)—Seattle, WA	11/03/1999	Commercial aircraft.
37,130	Hamilton Sundstrand (IAMAW)—Windsor Locks, CT	11/04/1999	Controls for aircraft surfaces.

[FR Doc. 99–33326 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03609]

Moltrup Steel Products Company, Inc. Beaver Falls, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 2, 1999 in response to a petition filed on behalf of workers at Moltrup Steel Products Company, Incorporated, Beaver Falls, Pennsylvania.

The three petitioners were separated from the subject firm more than a year prior to the date of the petition (September 29, 1998). Section 223(b)(1) of the Act of 1974, as amended, specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. This requirement is applicable to NAFTA–TAA petitions. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, D.C., this 17th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33318 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03512]

Robotex, Incorporated, Lumberton, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 12, 1999, in response to a petition filed on behalf of workers at Robotex, Incorporated, Lumberton, North Carolina.

The petitioner has requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 17th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33319 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA 3593]

Sensory Devices, Inc. Waukesha, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 22, 1999, in response to a petition filed on behalf of workers at Sensory Devices, Inc., Waukesha, Wisconsin.

The petitioning group of workers has requested that its petition for Transitional Trade Adjustment Assistance be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 14th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33321 Filed 12–22–99 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–154)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13: 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before February 22, 2000.

ADDRESSES: All comments should be addressed to Mr. John Yadvish, Code RW National Aeronautics and Space Administration, Washington, DC 20546. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports:

Title: NASA Small Business Innovative Research Commercial Metrics

OMB Number: 2700–0095

Type of review: Extension

Need and Uses: Collection is to assess the contribution of NASA funded SBIR Technology to the national economy in accordance with NASA's obligations under the Government Performance and Results Act of 1993 to contribute to the nation's economic well being and to measure the contribution.

Affected Public: Business or other for-profit

Number of Respondents: 897

Responses Per Respondent: 1

Annual Responses: 200

Hours Per Request: 1 hr

Annual Burden Hours: 200

Frequency of Report: Annually

Dr. David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 99–33271 Filed 12–22–99; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 5, 2000.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Music & Arts/Conferences, submitted to the Division of Research Programs at the September 1, 1999 deadline.

2. *Date:* January 7, 2000.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Social Sciences, submitted to the Division of Research Programs at the September 1, 1999 deadline.

3. *Date:* January 10, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Literature, submitted to the Division of Research Programs at the September 1, 1999 deadline.

4. *Date:* January 10, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education at the October 1, 1999 deadline.

5. *Date:* January 10, 2000.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the November 1, 1999 deadline.

6. *Date:* January 12, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Long-Term Editions, submitted to the Division of Research Programs at the September 1, 1999 deadline.

7. *Date:* January 12, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

8. *Date:* January 14, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

9. *Date:* January 14, 2000.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the November 1, 1999 deadline.

10. *Date:* January 18, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

11. *Date:* January 18–19, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs at the September 1, 1999 deadline.

12. *Date:* January 20, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 99–33272 Filed 12–22–99; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.
ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications January 14, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas (formerly called Specially Protected Areas and Sites of Special Scientific Interest).

The application received is as follows:

1. *Applicant:* Mimi Wallace, 3564 Breckenridge, El Paso, TX 79936; Permit Application No. 2000–023.

Activity for Which Permit is Requested

Import into the U.S.A.

The applicant proposes to opportunistically collect specimens (*e.g.*, bones, feathers, beaks, *etc.*) from dead animals such as seabirds and marine mammals for educational purposes and to import these to the United States. No animals will be killed to obtain specimens. The applicant is participating in an educational outreach program (Teachers Experiencing Antarctica-TEA) that is associated with the Palmer Long Term Ecological Research Program (LTER). The collection will be used in teaching high school students about Antarctica.

Location: Antarctic Peninsula Region.
Dates: January 1 to March 31, 2000.

2. *Applicant:* Christian H. Fritzen, 2215 Raggio Parkway, Reno, Nevada 89512; Permit Application No. 2000–024.

Activity for Which Permit is Requested

Take; Enter Antarctic Specially Protected Area

The applicant proposes to enter the Canada Glacier, Lake Fryxell Antarctic Specially Protected Area (ASPA #131) to collect five samples (5 grams each) of cyanobacterial mats in ephemeral stream areas. The Cyanobacterial assemblages in ice covers on Antarctic lakes are believe to originate from terrestrial areas and ephemeral streams. The applicant proposes to exam the physiological responses and community structures that are selected by the ice-cover environment to determine if these source organisms possess the characteristics that make them suited for growth in ice covers on the lakes and the glaciers in the Taylor Valley. The samples will be autoclaved after use and destroyed.

Location: Canada Glacier, Lake Fryxell, Taylor Valley Antarctic Specially Protected Area #131.
Dates: October 15, 1999 to February 15, 2000.

Nadene G. Kennedy,
Permit Officer, Office of Polar Programs.
[FR Doc. 99–33269 Filed 12–22–99; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.
ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit modifications requested.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by January 14, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National

Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested:

1. The Foundation issued a permit (99–010) to Dr. Rennie S. Holt on September 25, 1998. The issued permit allows for the censuring, capture, handling and release of up to 80 adult and 1500 Antarctic fur seal *(Arctocephalus gazella)* pups. In addition, up to 40 female/pup pairs would be captured for measurements of energy expenditure, foot intake, dive depth, duration, time of day and dive frequency, swim speed and foraging location, as well as attendance-related factors of pup growth using milk extraction and gastric lavage. The permit holder requests to modify his permit to include teeth extractions for age determinations, involving up to 100 adults per annum. To minimize the number of takes, effort will be made such that the majority of tooth extractions will be from animals already captured for other permitted procedures. Also, specimens may be collected opportunistically; animals will not be killed for any collection purposes (i.e.: samples may be collected from dead animals found on the beach or washed ashore). A further modification request is for import of samples collected opportunistically from cetacean species found dead. All specimens will be imported to the United States and inventoried with the Antarctic Marine Living Resources Program in La Jolla, CA.

Location

Cape Shirreff, Livingston Island (SSSI #32), Byers Peninsula (SSSI #6), South Shetland Islands, Antarctic Peninsula.

Dates

January 10, 2000 to April 2, 2001.

Nadene G. Kennedy

Permit Officer, Office of Polar Programs.

[FR Doc. 99–33270 Filed 12–22–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 20 and 27, 1999, January 3 and 10, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 20

Wednesday, December 22
11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of December 27—Tentative

There are no meetings scheduled for the week of December 27

Week of January 3—Tentative

Wednesday, January 5
9:55 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of January 10—Tentative

Monday, January 10
10:00 a.m.—Meeting with D. C. Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

Tuesday, January 11
9:30 a.m.—Briefing on Status of Research Programs, Performance, and Plans (including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Wednesday, January 12
9:55 a.m.—Affirmation Session (Public Meeting) (if needed)
10:00 a.m.—Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1134)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 20, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–33460 Filed 12–21–99 2:39 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Rule 204–3, SEC File No. 270–42, OMB Control No. 3235–0047

Extension:

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 204–3 requires investment advisers to deliver, or offer to deliver, to their clients a written disclosure statement, or "brochure," of specified information concerning the background and business practices of the adviser. Investors use this information to determine whether to retain or continue to employ the investment adviser. There are currently approximately 8,300 investment advisers subject to this rule; the estimated burden resulting from the rule is 203,350 total annual hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 13, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33347 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24204; File No. 812–11814]

Aetna Life Insurance and Annuity Company, et al.

December 16, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of bonuses applied to purchase payments made under certain deferred variable annuity contracts.

APPLICANTS: Aetna Life Insurance and Annuity Company ("ALIAC") and its Variable Annuity Account B ("VA B"), Aetna Insurance Company of America ("AICA" together with ALIAC, "Aetna"), and any other separate accounts of ALIAC or AICA ("Future Accounts") that support in the future deferred variable annuity and certificates that are substantially similar in all material respects to the VA B contracts described herein (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of bonuses applied to purchase payments made under: (i) deferred variable annuity contracts and certificates that ALIAC will issue through VA B (the contracts and certificates, including certificate data pages and endorsements, are collectively referred to herein as the "VA B Contracts"), and (ii) deferred variable annuity contracts and certificates, that Aetna may issue in the future through VA B or any Future Account (collectively, the "Accounts"), that are substantially similar to the VA B Contracts in all material respects (the "Future Contracts" together with the VA B Contracts, "Contracts"). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Aetna, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively "Aetna Broker-Dealers").

FILING DATE: The application was filed on October 15, 1999, and amended and restated on December 14, 1999 ("Application").

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 2000 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156, Attn: J. Neil McMurdie, Esq.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. ALIAC is a stock life insurance company organized under the laws of the State of Connecticut. ALIAC serves as depositor for VA B, which was established in 1976 pursuant to authority granted under a resolution of ALIAC's Board of Directors. ALIAC also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. ALIAC may establish one or more additional Future Accounts for which it will serve as depositor.

2. AIAC is a stock life insurance company organized under the laws of the State of Connecticut. AIAC serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. AIAC may establish one or more additional Future Accounts for which it will serve as depositor.

3. ALIAC is the principal underwriter of VA B. ALIAC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "1934 Act") and is a member of the NASD. ALIAC will enter into arrangements with one or more registered broker-dealers, which may be affiliated with ALIAC, to offer and sell VA B Contracts. ALIAC also may enter into these arrangements with banks that may be acting as broker-dealers without separate registration under the 1934 Act pursuant to legal and regulatory exceptions. Further, ALIAC may distribute VA B Contracts directly. ALIAC may enter into similar arrangements for Future Contracts. ALIAC may act as principal underwriter for Future Accounts and distributor for Future Contracts. A successor entity also may act as principal underwriter for any of the Accounts and distributor for any of the Contracts.

4. VA B is a segregated asset account of ALIAC. VA B is registered with the Commission as a unit investment trust under the Act. VA B will fund the variable benefits available under the VA B Contracts. Units of interest in VA B will be registered under the Securities Act of 1933 (the "1933 Act"). ALIAC may issue Future Contracts through VA B. ALIAC and AICA also may issue Future Contracts through Future Accounts. The assets of VA B that are equal to the reserves and VA B Contract liabilities are not chargeable with liabilities arising out of any other business of ALIAC. Any income, gains or losses, realized or unrealized, from assets allocated to VA B are, in accordance with the VA B's Contracts, credited to or changed against VA B, without regard to other income, gains or losses of ALIAC. The same will be true of any Future Account of ALIAC or AICA.

5. The following is a discussion of the VA B Contracts. Future Contracts funded by VA B or any Future Account of ALIAC or AICA will be substantially

similar in all material respects to the VA B Contracts. Certain anticipated differences between VA B Contracts and Future Contracts are noted below. VA B Contracts will be sold by registered representatives of ALIAC and affiliated or unaffiliated broker-dealers with which ALIAC enters into selling agreements, as indicated above. ALIAC may issue VA B Contracts as individual or group flexible premium tax deferred variable annuity contracts. ALIAC may issue VA B Contracts in connection with retirement plans that qualify for favorable federal income tax treatment under Section 403 as a tax sheltered annuity or Section 408 of the Internal Revenue Code as an individual retirement plan ("Qualified Contract"). ALIAC also may issue VA B Contracts on a non-tax qualified basis ("Non-Qualified Contract"). VA B Contracts may be used for other purposes in the future, or offered only as Qualified Contracts or Non-Qualified Contracts.

6. A Non-Qualified Contract may be purchased with an initial payment of at least $15,000. The minimum initial purchase payment for a Qualified Contract is $1,500. Subsequent purchase payments must be at least $50. ALIAC may impose maximum limitations on purchase payments. The maximum age of any annuitant as of the issue date is 85 (Death Benefit Option I) or 75 (Death Benefit Option II). ALIAC does not accept subsequent purchase payments after the annuity date.

7. An owner can allocate purchase payments or account value to one or more sub-accounts of VA B, each of which will invest in a corresponding portfolio of a mutual fund. In addition, VA B Contracts will permit purchase payments to be allocated to fixed interest options funded through the ALIAC Guaranteed Account (the "Guaranteed Account") and the fixed account (the "Fixed Account") which provide a guarantee of the purchase payment allocated thereto and interest for specified periods. A positive or negative adjustment, or "market value adjustment" ("MVA"), will be made to the account value in the Guaranteed Account upon a withdrawal, surrender or transfer from the Guaranteed Account prior to the end of the guaranteed term. When a death benefit is paid under a VA B Contract within six months of the date of death, only a positive aggregate MVA amount, if any, is applied to the account value attributable to amounts withdrawn from the Guaranteed Account. Because of the MVA feature, fixed interest option interests are registered under the 1933 Act pursuant to a Form S–2 Registration Statement. Contract owners may receive annuity payments after annuitization on a fixed or variable basis.

8. VA B currently consists of 65 sub-accounts, 29 of which will be available under the VA B Contracts. Each sub-account will invest in shares of a corresponding portfolio ("Portfolio") of an open-end, diversified series management investment company registered under the Act (each a "Fund," collectively, the "Funds"). The Funds currently available are managed by various entities affiliated and unaffiliated with Aetna.

9. ALIAC, at a later date, may determine to create additional sub-accounts to invest in additional Portfolios. In addition, sub-accounts of VA B may be combined or eliminated from time to time. Future Contracts may offer Funds managed by the same or other investment advisers.

10. VA B Contracts provide for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Options, dollar cost averaging, death benefit and other features. VA B Contracts have the following charges: (i) a withdrawal charge as a percentage of purchase payments declining from 8% in years one, two, and three to 0% in year nine and thereafter, with a 10% "free withdrawal" amount; (ii) asset-based mortality and expense risks charges at the annual rates of 1.25% for Death Benefit Option I and 1.45% for Death Benefit Option II (1.25% during the income phase) assessed against the net assets of each sub-account; and (iii) an asset-based administrative expense charge at an annual rate of 0.15% for administration expenses (0.25% during the income phase, but currently not deducted) assessed against the net assets of each sub-account. Also, each year during the accumulation phase, a $30 annual maintenance fee is deducted proportionately from each Investment Option. The annual maintenance fee will be waived if the Contract owner's account value is $50,000 or greater on the date this fee is due. The underlying Funds impose investment management fees and charges for other expenses.

11. ALIAC will credit a premium bonus ("Bonus") under VA B Contracts to an owner's account whenever the owner makes an eligible purchase payment. The amount of the Bonus is a percentage of the eligible purchase payment. Withdrawals reduce on a dollar-for-dollar basis the eligibility of subsequent purchase payments to receive the Bonus. The Bonus percentage is based upon the sum of all purchase payments made, less withdrawals ("net cumulative purchase payments"), as follows:

Net cumulative purchase payments	Bonus percentage
$1,500 to $14,999	2.00
$15,000 to $2,499,999	4.00
$2,500,000 or more	5.00

An owner's initial purchase payment will be eligible for the Bonus at the rates shown above. The amount of a subsequent purchase payment eligible for a Bonus is the amount of net cumulative purchase payments minus the sum of purchase payments upon which a Bonus has previously been paid. No Bonus will be credited on amounts reinvested following a full withdrawal. In the future, ALIAC (or AICA) may credit Bonuses of up to 5% of eligible purchase payments under Future Contracts according to different purchase payment breakpoint schedules. ALIAC will allocate Bonuses among the Investment Options (defined below) in the same proportion as the corresponding purchase payments are allocated by the owner. ALIAC will fund Bonuses from its general account assets. The Bonuses are vested when applied, except under the following circumstances: (i) ALIAC will recapture all Bonuses if the owner returns a VA B Contract to ALIAC for a refund during the 10-day (or longer, if required) "free look" period; (ii) any Bonus credited to an owner's account within 24 months of electing an income phase payment option will be forfeited and not included in an owner's account value when calculating the payment amount; and (iii) the amount of any death benefit will not include any Bonus credited to an owner's account after or within 12 months of the date of death.

12. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Aetna to issue Contracts that permit Aetna to recapture (i) all Bonuses if the owner returns the Contract to Aetna for a refund during the 10-day (or longer, if required) "free look" period; (ii) any Bonus credited to an owner's account within 24 months of electing an income phase payment option so that such Bonuses will be forfeited and not included in an owner's account value when calculating the payment amount; and (iii) any Bonus credited to an owner's account after or within 12 months of the date of death so that the amount of any death benefit will not include such Bonuses.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the VA B Contracts and any Future Contracts funded by VA B or Future Accounts, that are issued by Aetna and underwritten or distributed by ALIAC or any Aetna Broker-Dealers. Applicants undertake that Future Contracts funded by VA B or any Future Account, in the future, will be substantially similar in all material respects to the VA B Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that it is not administratively feasible to track the Bonus amount in the Accounts after the Bonus is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the Accounts, including the Bonus amount, during the period when the owner's interest in the Bonus is not completely vested. Therefore, during such periods, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Bonus.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Bonus recapture provisions summarized herein would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Bonus allocated to his or her annuity account upon receipt of an initial purchase payment is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the amount of any Bonus allocated upon receipt of eligible purchase payments during the two years before the owner annuities or during the 12 months prior to the date of death also is not vested. Until or unless the amount of any Bonus is vested, Applicants submit that Aetna retains the right and interest in the Bonus amount, although not in any earnings attributable to that amount. Thus, Applicants argue that, when Aetna recaptures any Bonus, it is simply retrieving its own assets and, because an owner's interest in the Bonus is not vested, the owner has not been deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the owner's annuity account value (including the Bonus).

5. In addition, with respect to Bonus recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Bonus amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that, if Aetna could not recapture the Bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of a Bonus relating to purchase payments made within two years of annuitization or within twelve months of death is designed to provide Aetna with a measure of protection against "anti-selection." Applicants state that the risk here is that, rather than spreading purchase payments over a number of years, an owner will make very large payments shortly before annuitizing, or death, thereby leaving Aetna less time to recover the cost of Bonus, to its financial detriment. Aetna intends to recover the cost of the Bonus through a portion of the early withdrawal charge and the mortality and expense risks charge imposed under the Contracts. Aetna may use any excess to recover distribution costs relating to the Contracts and as a source of profit. The amounts recaptured equal the Bonuses provided by Aetna from its own general account assets, buy any gain would remain part of the Contract's value.

7. Applicants represent that the Bonus will be attractive to and in the interest of investors because it will permit owners to put an amount greater than their purchase payments (depending on the net cumulative purchase payments) of work for them in the selected Investment Options. Also, owners will retain any earnings attributable to the Bonus and, unless any of the contingencies summarized above apply, the principal amount of the Bonus.

8. Applicants submit that the provisions for recapture of any applicable Bonus under the VA B Contracts do not, and any such Future Contract provisions will not, violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Bonus under the circumstances described herein with respect to the Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computer after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Arguably, Aetna's recapture of the Bonus might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Bonus is not violative

of Section 22(c) and Rule 22c–1. Applicants argue that the recapture of the Bonus does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. See Adoption of Rule 22c–1 under the Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Bonus, Aetna will redeem interest in an owner's annuity account at a price determined on the basis of the current net asset value of the respective Accounts. The amount recaptured will equal the amount of the Bonus that Aetna paid out of its general account assets. Alhough owners will be entitled to retain any investment gain attributable to the Bonus, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Thus, no dilution will occur upon the recapture of the Bonus. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Bonus. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Bonus under the Contracts.

Conclusion:

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33348 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24205; File No. 812–11708]

Hartford Life and Annuity Insurance Company, et al.; Notice of Application

December 17, 1999.

AGENCY: The Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to section 26(b) and 17(b) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts to substitute shares of Evergreen Variable Annuity Trust's ("Evergreen Trust") Evergreen VA Capital Growth Fund for shares of Mentor Variable Investment Portfolios' ("Mentor Trust") Mentor VIP Capital Growth Portfolio, shares of Evergreen Trust's Evergreen VA Growth Fund for shares of Mentor Trust's Mentor VIP Growth Portfolio, shares of Evergreen Trust's Evergreen VA High Income Fund for shares of Mentor Trust's Mentor VIP High Income Portfolio and shares of Evergreen Trust's Evergreen VA Perpetual International Fund for shares of Mentor Trust's Mentor VIP Perpetual International Portfolio currently held by those unit investment trusts to support certain deferred premium variable annuity contracts ("Contracts"). Applicants also request an order exempting them from Section 17(a) of the Act to the extent necessary to permit certain in-kind redemption and purchase transactions in connection with the substitutions.

APPLICANTS: Hartford Life and Annuity Insurance Company ("Hartford Life and Annuity"), Hartford Life and Annuity Insurance Company Separate Account One ("Hartford Life and Annuity Account"), Hartford Life Insurance Company ("Hartford Life"), Hartford Life Insurance Company Separate Account Two ("Hartford Life Account"), PFL Life Insurance Company ("PPL") and PFL Retirement Builder Variable Annuity Account ("PFL Account", and together with Hartford Life and Annuity Account and Hartford Life Account, the "Accounts"), Mentor Variable Investment Portfolios and Evergreen Variable Annuity Trust.

FILING DATE: The application was filed on July 23, 1999 and amended on December 9, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Marianne O'Doherty, Counsel, Hartford Life and Annuity Insurance Company, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, Connecticut 06089; Frank A. Camp, PFL Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499; Michael H. Koonce, Mentor Variable Investment Portfolios, Evergreen Variable Annuity Trust, 200 Berkeley Street, Boston, Massachusetts 02116. Copies to Robert N. Hickey, Sullivan & Worcester LL, 1025 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20542–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Hartford Life and Annuity is a stock life insurance company incorporated in Connecticut. Hartford Life and Annuity is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states except New York. Hartford Life and Annuity is the depositor and sponsor of the Hartford Life and Annuity Account. Hartford Life and Annuity is ultimately controlled by Hartford Financial Services Group, Inc.

2. Hartford Life is a stock life insurance company incorporated in Connecticut. Hartford Life is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states. Hartford Life is the depositor

and sponsor of the Hartford Life Account. Hartford Life is ultimately controlled by Hartford Financial Services Group, Inc.

3. PFL is a stock life insurance company incorporated in Iowa. PFL is principally engaged in the sale of life insurance and annuity policies in the District of Columbia, Guam, and all states except New York. PFL is the depositor and sponsor of the PFL Account. PFL is a wholly-owned indirect subsidiary of AEGON USA, Inc., which in turn is indirectly owned by AEGON, N.V.

4. The Hartford Life and Annuity Account is registered under the Act as a unit investment trust (File No. 811–7426). The assets of the Hartford Life and Annuity Account support certain Contracts, and interests in the Hartford Life and Annuity Account offered through such Contracts have been registered under the Securities Act of 1933 ("1933 Act") on Form N–4 (File No. 333–69487). The Hartford Life and Annuity Account currently has eighteen subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio ("Fund") of one of two series-type management investment companies ("Management Companies") and twelve separate management investment companies. One of these Management Companies is Mentor Trust.

5. The Hartford Life Account is registered under the Act as a unit investment trust (File No. 811–4732). The assets of the Hartford Life Account support certain Contracts, and interests in the Hartford Life Account offered through such Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–69485). The Hartford Life Account currently has eighteen sub-accounts. Each sub-account invests exclusively in shares of a corresponding Fund of one of two Management Companies and twelve separate investment management companies. One of the Management Companies is Mentor Trust.

6. The PFL Account is registered under the Act as a unit investment trust (File No. 811–7689). The assets of the PFL Account support certain Contracts, and interests in the PFL Account offered through such policies have been registered under the 1933 Act on Form N–4 (File No. 333–7509). The PFL Account currently has sixty-two sub-accounts. Each sub-account invests exclusively in shares of a corresponding Fund of one of thirteen Management Companies. Two of these Management Companies are Mentor Trust and Evergreen Trust.

7. Mentor Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company (File No. 811–8153). Mentor Trust comprises five Funds, four of which currently offer shares to the Hartford Life and Annuity Account and the Hartford Life Account and three of which currently offer shares to the PFL Account. Such Funds would be involved in the proposed substitutions. Mentor Trust issues a separate series of shares of beneficial interest in connection with each Fund. Those shares are registered under the 1993 Act on Form N–1A (File No. 333–23939). Mentor Investment Advisors, LLC ("Mentor Advisors") serves as the investment adviser to Mentor VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio and Mentor VIP High Income Portfolio. Mentor Perpetual Advisors, LLC ("Mentor Perpetual") serves as the investment adviser to the Mentor VIP Perpetual International Portfolio.

8. Mentor Advisors is an indirect wholly-owned subsidiary of First Union Capital Markets Corp. First Union Capital Markets Corp. is a wholly-owned subsidiary of First Union Corporation ("First Union").

9. Mentor Perpetual is owned equally by Perpetual PLC and Mentor Advisors.

10. Mentor VIP Capital Growth Portfolio seeks capital growth and current income. Mentor VIP Growth Portfolio seeks long-term capital growth. Mentor VIP High Income Portfolio seeks high current income; capital growth is a secondary objective when consistent with the objective of seeking high current income. Mentor VIP Perpetual International Portfolio seeks long-term capital appreciation.

11. Evergreen Trust, a Delaware business trust, is registered under the Act as a diversified, open-end management investment company (File No. 811–8716). Evergreen Trust currently comprises fifteen Funds. Evergreen Trust issues a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A (File No. 33–83100). Investment advisory affiliates of First Union serve as investment advisers to Evergreen Trust.

12. As part of the process of combining the Mentor fund family with the Evergreen fund family, Evergreen Trust has filed a post-effective amendment to its registration statement to register the shares of four new series: Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund. The investment objective(s) and policies of each of these new series are substantially identical to those of the corresponding series of Mentor Trust. Mentor Advisors or Mentor Perpetual, as the case may be, is the investment adviser of each new Evergreen Trust series.

13. Mentor Advisors and Mentor Perpetual, as affiliates of First Union, have received an order from the Commission (the "Multi-Manager Order") that permits each investment adviser, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the Act) with Mentor Advisors or Mentor Perpetual, subject to certain conditions, including approval of the Board of Trustees of Evergreen Trust, and without the approval of shareholders to: (a) Employ a new sub-adviser or adviser for any portfolio pursuant to the terms of a new subadvisory agreement, in each case either as a replacement for an existing sub-adviser or as an additional sub-adviser; (b) change the terms of any sub-advisory agreement; and (c) continue the employment of an existing sub-adviser on the same contract terms where a contract has been assigned because of a change of control to the sub-advisers.[1] In such circumstances, contract owners would receive notice of any such action, including information concerning any new-subadviser that normally is provided in proxy materials.

14. The Contracts are flexible premium individual and group flexible premium deferred variable annuity contracts. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide for settlement or annuity payment options on a variable basis, fixed basis, or both. Under the Contracts issued by Hartford Life and Annuity and Hartford Life, a Contract owner or certificate owner (together, "Contract owner") may make

[1] See Evergreen Equity Trust, et al., Investment Company Act Rel. No. 23636 (January 8, 1999) (order) and Investment Company Act Rel. No. 23605 (December 16, 1998) (notice). Before any of the new Evergreen Trust Funds may rely on the Multi-Manager Order, the operation of such Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved following the substitutions proposed in this application, by a majority of that Fund's outstanding voting securities in a manner consistent with an order received from the Commission granting exemptions from the Act to permit shares of Evergreen Trust to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts. *See* Evergreen Variable Annuity Trust, et al., Investment Company Act Rel. No. 21806 (March 5, 1996) (order) and Investment Company Act Rel. No. 21734 (February 5, 1996) (notice.)

unlimited transfers of at least $500 between the sub-accounts available under the Contract or the relevant insurance company's general account. Although there is no charge for transfers, Hartford Life and Annuity and Hartford Life each reserves the right to limit the number of such transfers to twelve per Contract year. Under the PFL Contracts, an unlimited amount of transfers of cash value can be made between the sub-accounts available under the Contracts without the imposition of a transfer charge. Transfers are subject to a minimum amount of the lesser of $500 or the entire sub-account value. All of the PFL Contracts reserve to PFL the right to restrict transfers, or to charge up to $10 for any transfer in excess of twelve per Contract year.

15. Except with respect to Mentor Perpetual, the investment advisers to the Funds comprising the Evergreen Trust and Mentor Trust are, or are in the process of becoming, wholly-owned subsidiaries of First Union. Mentor Perpetual is owned 50% by an unaffiliated person and 50% by a subsidiary of First Union. First Union has determined to consolidate the fund operations of Mentor Advisors and Mentor Perpetual with those of its other affiliates. In connection with this consolidation, it has been determined that the First Union mutual fund organization needs only one Management Company as an investment vehicle for variable life insurance and variable annuity contracts and that Evergreen Trust, rather than Mentor Trust, should be that vehicle. As a result, Mentor Trust will be terminated and will therefore be unable to continue to offer its shares to the Accounts.

16. Under the Contracts, Hartford Life and Annuity, Hartford Life and PFL reserve the right to substitute shares of one Fund for shares of another, including a Fund of a different Management Company. The prospectuses for the Contracts issued through Hartford Life and Annuity and Hartford Life, and the Statement of Additional Information for the Contracts issued through PFL, disclose this right.

17. Hartford Life and Annuity, Hartford Life and PFL propose, as applicable, to substitute shares of Evergreen Trust's Evergreen VA Capital Growth Fund for shares of Mentor Trust's Mentor VIP Capital Growth Portfolio, shares of Evergreen Trust's Evergreen VA Growth Fund for shares of Mentor Trust's Mentor VIP Growth Portfolio, shares of Evergreen Trust's Evergreen VA High Income Fund for shares of Mentor Trust's VIP High Income Portfolio and shares of Evergreen Trust's Evergreen Perpetual International Fund for shares of Mentor Trust's Mentor VIP Perpetual International Portfolio. Hartford Life and Annuity, Hartford Life and PFL propose to carry out the substitutions by redeeming shares issued by the Mentor Trust Funds in kind and using the redemption proceeds to purchase shares issued by the counterpart Evergreen Trust Funds.

18. With respect to the proposed substitutions, Applicants assert that in anticipation of Mentor Trust's termination, Evergreen Trust has established four new investment portfolios, the Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund. Each of these Funds has been designated as a replacement for its Mentor Trust counterpart. As such, each has an investment objective (or objectives) that is virtually or substantially identical to that of its Mentor Trust counterpart and pursues such objective(s) using substantially identical investment policies. The effect of the foregoing four proposed substitutions would be to "transfer" these Mentor Trust Funds intact to the Evergreen Trust. Each of the new Evergreen Trust Funds will be advised by the same investment adviser which provided investment advisory services to the former Funds comprising Mentor Trust. Mentor Advisors and Mentor Perpetual have informed the Applicants that the contractual advisory fees for each of the new Evergreen Trust Funds will be the same percentage of assets as that for its Mentor Trust Fund counterpart.

19. For the fiscal year ended December 31, 1998, the total operating expenses of each of the Mentor Trust Funds, after waivers and reimbursements, were as follows: Mentor VIP Capital Growth Portfolio, 1.05%; Mentor VIP Growth Portfolio, .97%; Mentor VIP Perpetual International Portfolio, 1.60%. Mentor VIP High Income Portfolio commenced operations on June 30, 1999 and its expenses for the fiscal year ended December 31, 1999, after waivers and reimbursements are estimated to be 1.00%. Without waivers and reimbursements, for the fiscal year ended December 31, 1998, the total operating expenses of each of the Mentor Trust Funds were as follows: Mentor VIP Capital Growth, 1.36%; Mentor VIP Growth Portfolio, 1.77%; mentor VIP Perpetual International Portfolio, 2.79%. Without waivers and reimbursements, the total annual operating expenses of Mentor VIP High Income Portfolio are estimated to be 1.77% for the fiscal year ended December 31, 1999.

20. Without waivers and reimbursements, for the fiscal year ended December 31, 2000, the total operating expenses of each of the Evergreen Trust Funds are anticipated to be as follows: Evergreen VA Capital Growth Fund, 1.14%; Evergreen VA Growth Fund, 1.04%; Evergreen VA Perpetual International Fund, 1.45%; and Evergreen VA High Income Fund, 1.31%.

21. Applicants state that each investment adviser has undertaken to waive its management fee and/or reimburse expenses for the counterpart Evergreen Trust Fund during the Fund's first year of operations to the extent necessary to limit the Fund's total expenses for the fiscal year ended December 31, 2000, to the amounts set forth above (after waivers and reimbursements) for the fiscal year ended December 1998 for the Mentor VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio and Mentor VIP Perpetual International Portfolio and, in the case of the counterpart to the Mentor VIP High Income Portfolio, 1.00%.

22. By supplements to the various prospectuses for the Contracts and the Accounts, Hartford Life and Annuity, Hartford Life and PFL will each notify all owners of the Contracts of its intention to take the necessary actions, including seeking the order requested by the application, to substitute shares of the Funds as described herein. The prospectus supplements for the Accounts will advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected sub-accounts to another sub-account available under a Contract other than one of the other affected sub-accounts without that transfer counting as a "free" transfer permitted under a Contract. The supplements will also inform Contract owners that Hartford Life and Annuity, Hartford Life and PFL will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitution.

23. Before the date of the proposed substitutions, affected Contract owners will also be provided with a prospectus for the Evergreen VA Capital Growth, Evergreen VA Growth, Evergreen VA High Income and Evergreen VA Perpetual International Funds. Thus, any owner affected by the substitutions will have received prospectus disclosure for the Evergreen VA Capital

Growth, Evergreen VA Growth, Evergreen VA High Income and Evergreen VA Perpetual International Funds in advance of the proposed substitutions.

24. On the date of the proposed substitutions, shares of each Mentor Trust Fund held by the Accounts will be redeemed by Hartford Life and Annuity, Hartford Life and PFL, as applicable. The proceeds of such redemptions, which to the extent practical will be effected substantially inkind, will then be used to purchase the appropriate number of shares of each counterpart Evergreen Trust Fund. The Accounts will redeem all of their shares of the Mentor Trust Funds. Each Mentor Trust Fund will transfer the redemption proceeds (securities and cash) to the Evergreen Trust, and shares of each Evergreen Trust Fund, as the case may be, of equal value will be issued to the Accounts. The purpose of transferring assets in-kind is to avoid commission expenses.

25. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the substitutions, or will their rights or Hartford Life and Annuity's, Hartford Life's or PFL's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by First Union or one of its advisory affiliates. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Neither Hartford Life and Annuity, Hartford Life nor PFL will exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the proposed substitutions.

26. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the proposed substitutions will be sent a written notice informing them that the proposed substitutions were carried out and that they may transfer all Contract value or cash value under a Contract invested in each of the affected sub-accounts to other available sub-account(s). The notice will also reiterate the fact that neither Hartford Life and Annuity, Hartford Life nor PFL will exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states may also explain that, under the insurance regulations in those states, Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts issued by Hartford Life and Annuity, Hartford Life or PFL (or one of the affiliates) during the 60 days following the proposed substitutions. The notices will be accompanied by current prospectuses for Evergreen Trust.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states: It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the proposed substitutions.

3. The Contracts expressly reserve for Hartford Life and Annuity, Hartford Life and PFL the right, subject to Commission approval, to substitute shares of another Management Company for shares of a Management Company held by a subaccount of the Accounts. Applicants assert that the statements of additional information and prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

4. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by Hartford Life and Annuity, Hartford Life and PFL. Applicants assert that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants assert that in the cases of the proposed substitution of shares of Evergreen Trust's Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund for shares of Mentor Trust's VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio, Mentor VIP High Income Portfolio and Mentor VIP Perpetual International Portfolio, respectively, the Mentor Trust Funds would be replaced by essentially the same Fund under a different name. As noted above, Evergreen Trust has established four new Funds to mirror the current investment objectives and policies of each of the Mentor Trust Funds. Not only will the investment objectives, investment adviser, portfolio managers and fees of each of the new Evergreen Trust Funds be identical to those of the replaced counterpart mentor Trust Fund, but also, following the in-kind redemption and purchase procedure described herein, the investment securities held by each new Evergreen Trust Fund on the substitution date will be substantially similar in composition to those held by the counterpart Mentor Trust Fund on the previous business day.

6. Applicants assert that they anticipate that Contract owners will be at least as well off with the array of sub-accounts offered after the proposed substitutions as they have been with the array of sub-accounts offered prior to the substitutions. Applicants assert that the proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among the same number of sub-accounts as they could before the proposed substitutions.

7. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide that

each Contract owner has the right to exercise his or her own judgment and transfer Contract or cash value into other sub-accounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. Applicants assert that the proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

8. Section 17(a)(1) of the Act prohibits any affiliated person, or an affiliate of an affiliated person, of a registered investment company from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

9. Section 17(b) of the Act authorizes the Commission to issue an order exempting any transaction from the prohibitions of Section 17(a) if: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

10. Mentor Trust, Evergreen Trust, Hartford Life and Annuity, Hartford Life and Annuity Account, Hartford Life and Hartford Life Account (the "Section 17 Applicants") request an order pursuant to Section 17(b) of the Act exempting them, Mentor Trust and Evergreen Trust from the provisions of Section 17(a) to the extent necessary to permit Hartford Life and Annuity and Hartford Life to carry out the proposed substitutions.

11. The Section 17 Applicants assert that the terms of the proposed substitutions by Hartford Life and Annuity and Hartford Life including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also assert that the proposed substitutions by Hartford Life and Annuity and Hartford Life are consistent with the policies of: (1) Mentor trust and of its Mentor VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio, Mentor VIP High Income Portfolio and Mentor VIP Perpetual International Portfolio; and (2) Evergreen Trust and of its Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund, as recited in the current registered statements and reports filed by each under the Act. Finally, the Section 17 Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

12. The boards of trustees of Mentor Trust and Evergreen Trust have adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the Funds of each may purchase and sell securities to and from their affiliates. Hartford Life and Annuity, Hartford Life, Mentor Trust and Evergreen Trust will carry out the proposed Hartford Life and Annuity and Hartford Life substitutions in conformity with all of the conditions of Rule 17a–7 and each Trust's procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. The Section 17 Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a–7. The Section 17 Applicants assert that to the extent that the proposed transactions do not comply fully with all of the conditions of Rule 17a–7 and each Trust's procedures thereunder, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Fund of Mentor Trust and the affected Funds of Evergreen Trust from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business.

13. The Section 17 Applicants assert that because of the circumstances surrounding the proposed Hartford Life and Annuity and Hartford Life substitutions, Mentor Trust could not "dump" undesirable securities on Evergreen Trust or have their desirable securities transferred to other advisory client of First Union and its advisory affiliates or to Funds other than those in Evergreen Trust supporting the Accounts. Nor can Hartford Life and Annuity and Hartford Life (or any of their affiliates) effect the purpose transactions at a price that is disadvantageous to any Mentor Trust Fund or Evergreen Trust Fund. Although the transactions may not be entirely for cash, each will be effected based upon: (a) The indepdent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7; and (b) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in the respective Trust's registration statement and as required by Rule 22c–1 under the Act. The Section 17 Applicants assert that no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the Section 17 Applicants assert that the boards of trustees of each Trust will subsequently review and proposed substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

14. the Section 17 Applicants assert that the proposed transactions are consistent with the general purposes of the Act and that the proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the proposed substitutions are consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33341 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27115]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 16, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 10, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with

the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 10, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–7561)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, its public utility generating subsidiary, System Energy Resources, Inc. ("SERI"), 1340 Echelon Parkway, Jackson, Mississippi 39213, and Entergy's other public utility operating subsidiaries, Entergy Arkansas, Inc. ("Arkansas"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy Mississippi, Inc. ("Mississippi"), 308 East Pearl Street, Jackson, Mississippi 39201, Entergy Louisiana, Inc. ("Louisiana"), 639 Loyola Avenue, New Orleans, Louisiana 70113, and Entergy New Orleans, Inc. ("New Orleans"), 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 to a declaration previously filed under the Act.

By order dated December 23, 1988 (HCAR No. 24791), SERI was authorized to enter into two arrangements, expiring on July 15, 2015 ("Lease Term"), for the sale and leaseback of undivided portions of its interest in Unit No. 1 of the Grand Gulf Steam Electric Generating Station. In connection with the equity funding portion of the arrangements, SERI also was authorized to enter into reimbursement agreements in connection with obtaining letters of credit in amounts of up to $130 million in support of its lease payment obligations.[1] By subsequent order dated November 6, 1996 (HCAR No. 26601) ("Order"), SERI was authorized to pay fronting and annual fees ("Fees") to banks for these letters of credit, up to an aggregate of 1.4375% *per annum* on the aggregate amount of letters of credit outstanding.

SERI now requests authority to increase the Fees that it may pay in connection with obtaining replacement letters of credit. Specifically, it proposes to pay Fees during the Lease Term not exceeding an aggregate of 3.75% *per annum* on the aggregate amount of letters of credit outstanding.

Wisconsin Energy Corporation (70–9571)

Wisconsin Energy Corporation ("WEC"), 231 West Michigan Street, P.O. Box 2949, Milwaukee, WI 53201, an exempt holding company under section 3(a)(1) of the Act, has filed a declaration under sections 9(a)(2) and 10 of the Act.

WEC proposes to acquire, by means of a merger ("Transaction"), all of the issued and outstanding common stock of WICOR, Inc. ("WICOR"), a Wisconsin corporation and an exempt holding company under section 3(a)(1) of the Act, pursuant to an Agreement and Plan of Merger dated as of June 27, 1999, and as amended on September 9, 1999 ("Merger Agreement"). WEC proposes to cause the formation of a wholly-owned subsidiary ("CEW Acquisition") solely for the purposes of facilitating the merger between WEC and WICOR.

As a result of the Transaction, WICOR will become a wholly-owned subsidiary of WEC, and WICOR's subsidiaries will be indirect subsidiaries of WEC. The means of accomplishing such a result will depend on whether the entire merger consideration is paid in cash or in a combination of cash and WEC stock. If the former, CEW Acquisition will be merged with and into WICOR, with WICOR surviving as a wholly-owned subsidiary of WEC. If the latter, WICOR will be merged with and into CEW Acquisition, with CEW Acquisition remaining a wholly-owned subsidiary of WEC. The name of CEW Acquisition then would be changed to WICOR. WEC requests that after the Transaction, WEC, and each of its subsidiary companies, will be exempt from all provisions of the Act, other than section 9(a)(2), under section 3(a)(1) of the Act.

Under the Merger Agreement, the consideration to the received for each outstanding share of WICOR common stock, par value $1.00 per share ("WICOR Common Stock") will be $31.50 per share of WICOR Common Stock, provided the Transaction occurs on or before July 1, 2000. In the event the Transaction occurs after July 1, 2000, the consideration will be increased by an amount equivalent to daily simple interest on $31.50 at the rate of six percent per annum for each day after July 1, 2000, through the closing date ("Exchange Value"). The consideration will be paid in the form of cash, common stock of WEC, par value $0.01 per share ("WEC Common Stock"), or a combination of cash and WEC Common Stock. Prior to the closing date, WEC will select the percentage of the consideration to be paid in WEC Common Stock, which may be not less than 40% nor more than 60% the balance of the consideration will be paid in cash. The exchange ratio for each share of WICOR Common Stock converted into WEC Common Stock will be determined by dividing the Exchange Value by the average of the closing prices of the WEC Common Stock on the New York Stock Exchange for the 10 trading days ending with the fifth trading day prior to the closing date ("Average WEC Price"). Each WICOR shareholder may elect to receive cash, WEC Common Stock or a combination thereof, subject to proration if the cash or stock elections exceed the maximum amounts permitted. Cash will be paid in lieu of any fractional shares of WEC Common Stock, which holders of WICOR Common Stock otherwise would receive. If the Average WEC Price is less than $22.00 per share, WEC may elect to pay the entire Merger Consideration in cash.[2]

WEC is an exempt public utility holding company by order of the Commission dated May 21, 1998 (HCAR No. 26877). WEC owns all of the common stock of two public utility companies: Wisconsin Electric Power Company ("WEPCOR"), a combination electric and gas utility company and Edison Sault Electric Company ("Edison Sault"), an electric utility company.

WEPCO is authorized to provide retail electric in designated territories in Wisconsin, and in certain territories in Michigan. WEPCO also sells wholesale electric power. WEPCO generates, transmits, distributes, and sells electric energy in a territory of 12,000 square miles in southeastern, east central and northern Wisconsin and in the Upper Peninsula of Michigan. WEPCO also purchases, distributes, and sells natural gas to retail customers and transports customer-owned gas in four distinct service areas of about 3,800 square miles in Wisconsin.[3]

Edison Sault is authorized to provide retail electric service in certain territories in Michigan. Edison Sault generates, transmits, distributes, and sells electric energy in a territory of

[1] To secure its obligations under the reimbursement agreement, including the payment of fees, SERI was required to assign, for the benefit of the letter of credit bank, the administrating bank and the participating banks, its right under: (1) the Availability Agreement, dated as of June 21, 1974, as amended, among SERI, Arkansas, Mississippi, Louisiana and New Orleans; and (2) the Capital Funds Agreement, dated as of June 21, 1974, as amended, between SERI and Entergy.

[2] The Transaction is expected to be accounted for a purchase of WICOR by WEC in accordance with generally accepted accounting principles.

[3] At December 31, 1998, WEPCO had total assets of $4.8 billion and approximately 989,000 electric customers and 1,200,000 gas customers. During 1998, WEPCO had electric operating revenues of $1.64 billion and gas operating revenues of $296 million. WEPCO had total operating revenues of $1.96 billion, and net income of $183 million after dividends on preferred stock.

approximately 2,000 square miles in the eastern Upper Peninsula of Michigan. Edison Sault also provide whole sale electric service under contract with one rural cooperative.[4]

At December 31, 1998, WEC had 5,404 employees, of which 5,333 were utility employees. On a consolidated basis at the end of 1998, WEC had total assets of $5.4 billion, total operating revenues of $2.0 billion and net income of $188 million. At September 30, 1999, there were 117,681,613 shares of WEC Common Stock outstanding.

WICOR owns one public utility subsidiary, Wisconsin Gas Company ("Wisconsin Gas") that distributes gas to residential, commercial and industrial customers throughout Wisconsin.[5]

On a consolidated basis at the end of 1998, WICOR had total assets of $1 billion, total operating revenues of $944 million and net income of $45 million. At September 30, 1999, there were 37,619,133 shares of WICOR Common Stock outstanding.

Conectiv, et al. (70–9573)

Conectiv, a registered holding company, and its nonutility subsidiaries, Conectiv Solutions LLC ("Solutions"), ATE Investment, Inc. ("ATE") and King Street Assurance Ltd. ("KSA"), all located at 800 King Street, Wilmington Delaware 19899, have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rules 45 and 54.

By order dated February 25, 1998 (HCAR No. 26832) ("Merger Order"), the Commission authorized Conectiv to organize itself as a registered holding company and retain certain nonutility subsidiaries, including Solutions. Solutions were authorized to provide, directly and indirectly, a variety of energy-related goods and to furnish service line repairs, extended warranties and other services, including risk management services. Subsequently, KSA was organized as an indirect subsidiary of Solutions to provide risk management services for Solutions.

Solution now plans to expand the products offered to customers beyond the current offering of heating, ventilating and air conditioning ("HVAC") warranties and to offer a selection of additional insurance products to customers, including surge protection and "whole house" appliance protection. KSA now requests authorization for KSA to reinsure a portion of the exposure under all of these programs. KSA also proposed to provide reinsurance covering the Convectiv system's transmission and distribution lines and for general liability, workers' compensation and other system risks.

GPU, Inc. (70–9565)

GPU, Inc. ("GPU"), 300 Madison Avenue, Morristown, New Jersey 07960, a registered holding company,has filed an application-declaration under sections 6(a), 7, 9(a) 10 and 12(b) of the Act and rules 45 and 54 under the Act.

GPU proposes to organize a new, wholly owned subsidiary company, ("Newco"), as a Delaware corporation whose initial purpose will be to acquire from time to time limited partner interests in EnerTech Capital Partners II, L.P., a Delaware limited partnership formed under an Agreement of Limited Partnership ("Partnership Agreement"), and any successor or affiliated limited partnership having substantially similar investment objectives and terms (EnerTech Capital Partners, II L.P., and all successor or affiliated limited partnerships are collectively referred to as the "EnerTech Partnership"). The aggregate amount of investments in the EnerTech Partnership will not exceed $5 million.

The targeted size of the EnerTech Partnership's investment pool is $100 million, with a minimum commitment of $30 million necessary for an initial closing. Additional commitments may be added until the investment pool reaches a maximum not to exceed $150 million, unless otherwise approved by a majority in interest of the Limited Partners. The interests to be acquired by Newco will in the aggregate represent not more than 9.9% of the Limited Partner interests in any EnerTech Partnership.

The sole general partner of the EnerTech Partnership ("General Partner") will be ECP II Management L.P., a Delaware limited partnership of which EnerTech Capital Partners II LLC is the managing general partner. The EnerTech Partnership fund will be managed by EnerTech Capital Partners ("EnerTech"), a group of experienced investment professionals associated with Safeguard Scientifics, Inc. and TL Ventures. The EnerTech Partnership fund is the second fund managed by EnerTech.

The EnerTech Partnership is being formed to invest in companies ("Portfolio Companies") engaged in activities primarily related to the electric and natural gas utilities and their convergence into the broader energy, communications and other utility-like services industries. The Portfolio Companies (none of which will be an affiliate of GPU) may be involved in the development of technologies in one or more of the following categories: Information Technology and Systems Integration; Communications and Networking; Customer Premise Products and Services; Industry Specific Content and Consulting Services; and Asset Utilization and Efficiency Improvement.

The term of the Partnership Agreement will continue until December 31, 2009. The General Partner may extend the term for up to two one-year periods to permit the orderly liquidation of the EnerTech Partnership's assets, upon written consent of the Limited Partners holding a majority in interest of the commitments of all Limited Partners. Profits, gains and losses will generally be allocated 80% to all the Limited Partners, pro rata in accordance with their capital contributions, and 20% to the General Partner.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33342 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

[4] At December 31, 1998, Edison Sault had total assets of $70.1 million and approximately 21,000 electric customers. During 1998, Edison Sault had electric operating revenues of $22 million and net income of $2 million.

[5] At December 31, 1998, Wisconsin Gas had total assets of $651 million and approximately 529,000 electric customers. During 1998, Wisconsin Gas had total operating revenues of $429 million, and net income of $23 million.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24206; 812–11674]

Security Equity Fund et al.; Notice of Application

December 17, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

APPLICANTS: Security Equity Fund, Security Growth and Income Fund, Security Ultra Fund, Security Income Fund, Security Municipal Bond Fund, Security Cash Fund, SBL Fund, (each a "Fund" and collectively, the "Funds"),

and Security Management Company, LLC ("SMC").

FILING DATES: The application was filed on July 1, 1999 and amended on October 29, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0609. Applicant, 700 SW Harrison, Topeka, Kansas 66636.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Funds, each a Kansas corporation, are registered under the Act as open-end management investment companies. Each of the Funds is authorized to offer shares of one or more series, each with its own investment objectives, policies and restrictions. Currently each of the Funds, other than SBL Fund, is offered to the public. SBL Fund serves as the funding vehicle for certain variable annuity and variable life insurance policies issued by the Security Benefit Life Insurance Company.

2. SMC, a Kansas limited liability company, serves as the investment adviser to the Funds, and is registered under the Investment Advisers Act of 1940 ("Adviser Act"). SMC is an indirectly wholly-owned subsidiary of Security Benefit Mutual Holding Company, a Kansas mutual insurance company.[1]

3. SMC serves as investment adviser to the Funds pursuant to an investment advisory agreement between each Fund and SMC that was approved by the board of directors of each Fund (the "Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), and the shareholders of the Funds ("Investment Advisory Agreements"). Under the Investment Advisory Agreements, SMC has overall general supervisory responsibility for the investment program of the Funds and, subject to Board approval, can select one or more subadvisers (each a "Subadviser" and collectively, "Subadvisers") to provide one or more of the Funds with day-to-day portfolio management services ("Subadviser Structure"). Each Subadviser is (or will be) an investment adviser registered or exempt from registration under the Advisers Act, and performs (or will perform) services pursuant to a written agreement with SMC (the "Subadvisory Agreement"). Subadvisers' fees are paid by SMC out of the fees it receives from the Funds at rates negotiated with the Subadvisers by SMC. Each Fund that currently uses Subadvisers has a single Subadviser.

4. SMC makes qualitative evaluations of each Subadviser's skills and demonstrated performance in managing assets under particular investment styles. SMC recommends to the Board for selection those Subadvisers that have consistently distinguished themselves and demonstrated a high level of service and responsibility to investors. SMC reviews, monitors and reports to the Board regarding the performance and procedures of the Subadvisers. SMC may recommend to the Board reallocations of assets of a Fund among Subadvisers, if necessary, and also may recommend hiring additional Subadvisers or the termination of Subadvisers in appropriate circumstances.

5. Applicants request relief to permit SMC to enter into and materially amend Sub-Advisory Agreements without shareholder approval.[2] The requested relief will not extend to a Subadviser that is an "affiliated person", as defined in section 2(a)(3) of the Act, of the Funds or SMC, other than by reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Sub-Advisory Agreements without shareholder approval.

3. Applicants assert that under the Subadviser Structure, the Funds' shareholders rely on SMC to select and monitor one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants contend that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements would impose expenses and unnecessary delays on the Funds, and may preclude SMC from promptly acting in a manner considered advisable by the Board. Applicants note that the Management Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

---

[1] Applicants also request relief with respect to future series of the Funds and all future registered open-end management investment companies that are (a) advised by SMC or any entity controlling, controlled by, or under common control with SMC, and (b) which operate in substantially the same manner as the Funds and comply with the terms and conditions contained in the application. All registered open-end management investment companies that currently intend or rely on the requested order are named as applicants.

[2] The term "shareholder" includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which the Funds serve as a funding medium.

1. No fund will enter into a subadvisory agreement with an Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, then pursuant to voting instructions by the unitholders of the sub-account).

2. At all times, a majority of each Fund's Board will be persons who are Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

3. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Fund's Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Fund's Board minutes, that such change of Subadviser is in the best interests of the Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and the unitholders of any sub-account) and that the change does not involve a conflict of interest from which SMC or the Affiliated Subadviser derives an inappropriate advantage.

4. SMC will provide management services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund, and, subject to review and approval by the applicable Fund's Board will (a) set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the investment performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Fund's investment objectives, policies, and restrictions.

5. Within 90 days of the hiring of any new Subadviser, SMC will furnish shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, SMC will furnish the unit holders of the sub-account) with respect to the appropriate Fund with all information about the new Subadviser that would be included in a proxy statement. Such information will include any changes caused by the addition of a new Subadviser. To meet this condition, SMC will provide shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

6. Any Fund relying on the requested relief will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, any such Fund will hold itself out as employing the management structure described in the application. The prospectus will prominently disclose that SMC has ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

7. Before a Fund may rely on the order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or in the case of a Fund whose public shareholders (or variable contract owners through a separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by Condition 6 above, by the sole initial shareholder(s) before the shares of such Fund are offered to the public (or the variable contract owners through a separate account).

8. No director or officer of the Funds or director or officer of SMC will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such director or officer) any interest in a Subadviser except or (a) ownership of interests in SMC or any entity that controls, is controlled by, or is under common control with SMC; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of a publicly-traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33343 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24207]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 17, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, by lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Empirical Growth Fund [File No. 811–8493]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 26, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of approximately $1,500 incurred in connection with the liquidation were paid by Worldwide Financial Management Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on November 30, 1999.

Applicant's Address: 300 South Pointe Dr., #4306, Miami Beach, Florida 33139.

American Association of Homes for the Aging Tax-Free Trust, High Income Series 1 [File No. 811–5249]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On August 7, 1998, applicant made a final liquidating distribution to its unitholders at the net asset value per unit. As of December 1, 1999, applicant had 1 account totaling 5 units that had not surrendered its certificate. Funds representing the aggregate liquidation value of applicant's remaining units are being held by Chase Manhattan Bank, N.A. Expenses of approximately $2,600 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on May 25, 1999, and amended on December 14, 1999.

Applicant's Address: 1221 Post Road East, Westport, CT 06880.

WPG Growth Fund [File No. 811–4446]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 30, 1998, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $3,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on December 7, 1999.

Applicant's Address: One New York Plaza, New York, New York 10004.

Bear Stearns Investment Trust [File No. 811–7290]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 29, 1999, applicant transferred its assets to Emerging Markets Debt Portfolio, a series of The Bear Stearns Funds ("Acquiring Fund"), in exchange for shares of the Acquiring Fund based on net asset value per share. Expenses of approximately $105,300 were incurred in connection with the reorganization, of which the Acquiring Fund paid 70% and applicant paid the remaining 30%.

Filing Date: The applicant was filed on November 10, 1999.

Applicant's Address: 575 Lexington Avenue, New York, New York 10022.

LifeUSA Funds, Inc. [File No. 811–7865] IAI Investment Funds V, Inc. [File No. 811–4463]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 30, 1998, each applicant had made a final liquidating distribution to its shareholders based on net asset value. Expenses of $3,897 and $11,933, respectively, incurred in connection with the liquidations were paid by Investment Advisers, Inc., the investment adviser for each applicant.

Filing Date: Each application was filed on December 3, 1999.

Applicants' Address: 3700 U.S. Bank Place, 601 Second Street South, Minneapolis, Minnesota 55402.

The Alabama Tax-Exempt Bond Trust, Series 5 [File No. 811–5044]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On August 1, 1998, applicant made a final liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on November 30, 1999.

Applicant's Address: 1901 Sixth Avenue North, Birmingham, Alabama 35203.

The Fahnestock Funds [File No. 811–6166]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 29, 1999, applicant transferred its assets to Ivy US Emerging Growth Fund, based on net asset value. Expenses of $160,000 incurred in connection with the reorganization were paid by Fahnestock & Co. Inc., applicant's principal underwriter.

Filing Date: The application was filed on November 18, 1999.

Applicant's Address: 125 Broad Street, New York, New York 10004.

Lexington Convertible Securities Fund [File No. 811–4925]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 1999, applicant transferred all of its assets and liabilities to Ariston Convertible Securities Fund, a newly created series of AmeriPrime Funds, based on net asset value. Expenses of approximately $14,327 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 27, 1999, and amended on November 19, 1999.

Applicant's Address: Lexington Funds, Park 80 West Plaza Two, Saddle Brook, New Jersey 07663.

Lexington Strategic investments Fund, Inc. [File No. 811–2506]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 1999, applicant transferred all of its assets and liabilities to Lexington Goldfund, Inc., based on net asset value. Expenses of $128,338 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 27, 1999, and amended on November 19, 1999.

Applicant's Address: Lexington Funds, Park 80 West Plaza Two, Saddle Brook, New Jersey 07663.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33344 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42241; File No. SR–MSRB–99–8]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

December 16, 1999.

I. Introduction

On September 7, 1999, the Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to produce a daily report containing information on individual transactions in frequently traded municipal securities.

The proposed rule change was published for comment in the **Federal Register** on November 8, 1999,[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Board proposed to institute a service ("Service") to produce a daily public report containing information on individual transactions in frequently traded municipal securities ("Daily Transaction Report" or "Report"). The transaction information in the Report will come from dealer reports made to the Board pursuant to MSRB Rule G–14, which governs reports of sales or purchases.

Currently, the MSRB publishes transaction data in the Combined Daily Report and the Inter-Dealer Report. Like

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42090 (November 2, 1999), 64 FR 60865.

these other reports, the Daily Transaction Report will contain information about transactions made in "frequently traded" municipal issues. As with the current reports, the phrase "frequently traded" will be defined as issues trading at least four or more times on a business day for which the prices are reported. In addition, like the current transaction reports, the proposed Report will be produced and made available electronically by approximately 7:00 a.m. on the business day following the trade date. The main difference between the proposed Daily Transaction Report and the current reports is that the proposed Report will provide transaction detail on each reported trade in a frequently traded issue, rather that merely providing the high, low, and average prices.

The Daily Transaction Report will be available by subscription. Subscribers will be required to sign a subscription agreement, but will not be charged a fee for the Report.

As described above, the proposed Report will provide information on individual transactions in frequently traded municipal securities. In particular, the Report will contain, for each transaction, the CUSIP number, a short description of the issue, the par value traded, the time of the trade reported by the dealer, and the price of the transaction.[4] The Report will classify transactions into three categories: (1) Sales by dealers to customers, (2) purchases by dealers from customers, and (3) inter-dealer trades. The Report will be organized by issue, with the most frequently traded issues listed first. Within each issue, trades will be listed in order of the time of trade, from the earliest reported to the latest.

The Board will provide details on how to subscribe to the report via the Internet before the Report becomes operations.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board.[5] In particular, the Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C),[6] which requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Commission finds that the proposed Daily Transaction Report should enhance and increase transparency in the municipal securities market. The proposed Report will provide municipal securities investors with more transaction information about the issues that are currently being traded. In particular, investors will now have access to specific price information, trade size information and information about the parties involved. Further, this expanded information will be provided to investors in a timely fashion, by 7:00 a.m. on the date following the reported trade. Upon approval of this proposed rule change, municipal securities investors will have detailed information about actual transactions that occurred the previous trading day. This detailed Report will allow investors to monitor and analyze individual trades in frequently traded municipal securities, which should assist municipal securities investors in making informed investment decisions.

The Report should help investors in the price discovery process. The proposed Report will contain detailed price information in frequently traded issues. In addition, the Report will identify what type of transaction occurred, such as whether a frequently traded issue was traded in the inter-dealer market or involved customer trading. The Report should provide a more complete picture of the municipal securities market, which could enhance liquidity in the municipal securities market.

One of the Commission's main objectives is to increase transparency in our securities markets. The Commission believes that transparency in the securities markets helps to preserve the market's integrity, assists in the price discovery process, and enhances liquidity. The Commission commends the MRSB's efforts to increase municipal market transparency by looking for means to update its reporting programs and systems.

The Commission is satisfied with the current definition of "frequently traded." The Commission appreciates that such a definition has been appropriate given the extensive number of municipal securities issues that trade very infrequently and concerns about the market impact of reporting trades in such securities. The Commission, however, believes that MSRB should consider whether to lower the frequently traded threshold in the future to further increase municipal securities transparency. In addition, the Commission agrees that the MSRB should continue to consider the feasibility of a real-time transaction reporting system for municipal securities in the near future.[7]

In conclusion, the Commission believes that the proposed rule change is consistent with the Act because it provides investors with more detailed market data upon which the municipal securities investors will be able to make better informed investment decisions. The Daily Transaction Report should further enhance the integrity of the municipal securities market because it provides a view of the transactions occurring in the market. As a result, the municipal securities market should enjoy greater transparency and liquidity.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–MSRB–99–08) is approved.

---

[4] A dollar price is given for each transaction listed on the report. If the dealer submits a yield with the transaction report, the yield is included with the dollar price. There are instances, however, when a yield is not reported. For example, dealers for secondary market inter-dealer transactions do not submit yields because the automated comparison system used to report inter-dealer trades cannot accept yield information on those transactions. In addition, dealers cannot report a yield for customer transactions done on a dollar price basis that involve defaulted or variable rate securities. Transactions including customers or dealers in new issues without a determined settlement date may be effected and reported by dealers wither with a dollar price or yield. The MSRB Transaction Reporting System will calculate a dollar price from yields submitted for these transactions, using an assumed settlement date if necessary. There must be, however, sufficient securities data available to make this calculation (*e.g.*, coupon, dated date, maturity date, first interest payment date, etc.). For additional information, *see* "Public Reporting of Transactions in Municipal Securities: Rule G–14," *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 25–27.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] The Commission notes that the MSRB recently submitted a proposed rule change, which demonstrated possible methods for dissemination of real-time transactions reports based on the transactions information collected via the Board's Transaction Reporting System. *See* Exchange Act Release No. 41916 (September 27, 1999), 64 FR 53759 (October 4, 1999).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33345 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42240; File No. SR–NASD–99–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Public Disclosure Program

December 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On December 1, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice of the rule change, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend Interpretive Material 8310–2(a), which concerns the Public Disclosure Program. Proposed new language is italicized; proposed deletions are in brackets.

IM–8310–2. Release of Disciplinary Information

(a) [The Association shall, in response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U–4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or U–4; and all criminal indictments, information or convictions that are required to be reported on Form BD or Form U–4. The Association will also release information required to be reported on Form BD or Form U–4 concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of investment-related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.]

In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, the Association shall release certain information contained in the Central Registration Depository regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through the Public Disclosure Program. Such information shall include:

(1) the person's employment history and other business experience required to be reported on Form U–4;

(2) currently approved registrations for the member or associated person;

(3) the main office, legal status, and type of business engaged in by the member; and

(4) an event or proceeding—

(A) required to be reported under Item 23 on Form U–4;

(B) required to be reported under Item 11 on Form BD; or

(C) reported on Form U–6.

The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation's Public Disclosure Program is described in Interpretive Material 8310–2 of the NASD Rules ("the Interpretation"). Under the Public Disclosure Program, NASD Regulation releases to the public certain information reported on uniform forms[4]

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 1, 1999. In Amendment No. 1, NASD Regulation clarifies certain proposed changes to the Public Disclosure Program and submits Form U–6 as an exhibit ("Amendment No. 1"). The Commission notes that the Form U–6 is being submitted to help the public determine what additional information will be disclosed through the Public Disclosure Program and is not the subject matter of this rule filing.

[4] The uniform forms are Form BD (the Uniform Application for Broker-Dealer Registration); Form BDW (the Uniform Request for Broker-Dealer Withdrawal); Form U–4 (the Uniform Application for Securities Industry Registration or Transfer); Form U–5 (the Uniform Termination Notice for Securities Industry Registration); and Form U–6 (the Uniform Disciplinary Action Reporting Form). Except for the Form U–6, all of these forms have been approved by the Commission. *See* Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999) (order adopting the amended Form BD); Securities Exchange Act Release No. 41356 (April 30, 1999), 64 FR 25144 (May 10, 1999) (order adopting the amended Form BDW); Securities Exchange Act Release No. 41560

Continued

to the Central Registration Depository ("CRD") regarding the employment history, other business experience[5] and disciplinary history of NASD members and associated persons. The NASD's practice is and will continue to be to provide such information on a per associated person or per member basis. The primary purpose of the Public Disclosure Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business.

NASD Regulation has determined that the Interpretation governing the Public Disclosure Program should be amended to ensure that disclosure practices are clearer and fairer to NASD members, associated persons, and the public.[6] The proposed rule change would affect only information released through the Public Disclosure Program. NASD Regulation is not proposing any change to the uniform forms or requesting authority to delete or change any information in CRD records that would require agreement from state regulators.

Persons Subject to the Interpretation. Since the inception of the Public Disclosure Program, NASD Regulation's practice has been to release information about a *current or former* member or associated person. The current Interpretation, however, refers to the release of information about "members" or "their associated persons," which the NASD By-Laws define as current members and persons currently associated with members.[7] The Interpretation does not explicitly address the issue of disclosure regarding former members and associated persons.

The proposed rule change would explicitly address disclosure on former members and associated persons. Persons who would be subject to disclosure under the Program would include: (1) Current and former NASD members; (2) persons currently associated with an NASD member; and (3) persons who have been associated with an NASD member within the preceding two years. NASD Regulation believes that it is inappropriate to continue public disclosure indefinitely for an individual who has chosen to leave the securities industry. Instead, NASD Regulation believes it should strike a balance between an investor's interest in being easily able to obtain information about a former associated person and that person's desire for privacy once he has left the securities industry. A two-year disclosure period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to the jurisdiction of the Association.[8] NASD Regulation notes, however, that with the exception of part II of the Form U–5 Internal Review Disclosure Reporting Page ("DRP"),[9] there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record. Accordingly, NASD Regulation intends to clearly identify the scope of the disclosure information for former associated persons or members.

Release of Information Reported on Forms U–5 and U–6. NASD Regulation currently releases under the Public Disclosure Program those events and proceedings that are *required to be reported* on Form U–4 and Form BD. The Interpretation currently does not explicitly address events and proceedings reported on Form U–5 or Form U–6.

Form U–6 is filed by state securities regulators and self-regulatory organizations ("SRO") to report disciplinary and other matters that are also required to be reported on Form U–4 or Form BD.[10] Form U–6 includes DRPs in five categories: (1) Bankruptcy/SIPC/Compromise with Creditors; (2) Civil Judicial; (3) Criminal; (4) Regulatory Action; and (5) SRO Arbitration/Reparation. The format of the Form U–6 DRPs parallels the format of the DRPs used for the Forms U–4, U–5, and BD for those categories. Generally speaking, the Form U–6 reports the identifying information on the subject of the filing (*i.e.*, the individual or entity), the regulator reporting the action, and a brief description of the matter being reported, including its status or final solution.

Until 1996, the NASD only released information actually reported on Form U–4 or Form BD. In 1996, the NASD proposed and the Commission approved a rule change that permitted the NASD to release information "required to be reported" on Form U–4 or Form BD.[11] NASD Regulation proposed the change because in some instances, it possessed information about a currently registered person that should have been reported on the person's Form U–4, but the amended Form U–4 had not yet been submitted. NASD Regulation proposed the rule change so that it could release all information that it possessed that was required to be reported on the Forms U–4 and BD, even if the registered person or firm was not current in its filings, thereby ensuring that investors received more complete information.

NASD Regulation currently interprets the "required to reported" standard as follows. For current members and associated persons, NASD Regulation interprets the "required to be reported" standard to include all information reported on Form U–4 or Form BD, as well as information that has been reported on a Form U–5 or Form U–6 that should be, but has not yet been, reported on a Form U–4 or Form BD. For example, a former employer of a currently registered representative may report a customer complaint against that registered representative by amending his Form U–5. NASD Regulation includes information about this complaint in any public disclosure report it issues about the registered representative, even if the current employer of the registered person has not updated his Form U–4 to reflect the complaint.

(June 25, 1999), 64 FR 36059 (July 2, 1999) (order approving the new Forms U–4 and U–5).

[5] Employment experience includes the last ten years of full- and part-time work, self-employment, military service, unemployment, and full-time education. The Form U–4 also requires registered persons to report certain other business experience on page 2 of the Form.

[6] To that end, the Interpretation has been reformatted to make it easier to read and understand. The Interpretation has been amended to conform to style and grammatical conventions followed in the NASD Rules, *e.g.*, using singular nouns. In addition, certain words and phrases in the Interpretation have been conformed to usage in the uniform forms. All of these changes are clarifying, non-substantive amendments.

[7] *See* Articles I(q) and (ee) of the NASD By-Laws.

[8] *See* NASD Rules 1021(c) and 1031(c); NASD By-Laws Article V, Section 4. Article V, Section 4 of the By-Laws provides that a person whose association with a member has been terminated or revoked shall continue to be subject to the NASD's jurisdiction for certain specified purposes. Under that provision, the two-year period begins on the effective date of the termination, and may be extended under certain circumstances. For purposes of disclosure under the Public Disclosure Program, the two-year period would begin on the effective date of the termination and would not be extended beyond the initial two-year period. The effective date of termination is the date that the Form U–5 is captured by the CRD system. Conversation between Mary Dunbar, Office of General Counsel, NASD Regulation, and Joseph P. Corcoran, Attorney, Division, Commission on December 10, 1999.

[9] Part II of the Form U–5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U–5 by a former employer.

[10] If a state securities regulator or SRO chooses to report regulatory information to CRD, it must use a Form U–6 for the information to be available through the Public Disclosure Program. Regulators also are able to report on Form U–6 matters involving individuals or entities that are not currently registered, provided the events being reported to CRD would be required to be reported if the individuals or entities were registered or attempted to become registered.

[11] *See* Securities Exchange Act Release No. 37797 (October 9, 1996), 61 FR 53984 (October 16, 1996).

For former members and associated persons, the "required to be reported" standard has a different result because once an association or membership is terminated, there is no longer a *requirement to report* on Form U–4 or Form BD, respectively. Consequently, when NASD Regulation receives a public disclosure request for a former associated person or member, NASD Regulation releases all information reported to CRD *up to* the date of the termination of association or membership. However, events and proceedings reported on an initial or amended Form U–5 or Form BDW,[12] or on Form U–6 *after* an individual has terminated his association or *after* termination of a firm's membership, are not released under the Program. If a former associated person or member reapplies and is approved for NASD registration or membership, NASD Regulation resumes public disclosure under the "required to be reported" standard, which includes releasing all information reported on any uniform form during any period of active or inactive registration or membership.

Under the proposed rule change, NASD Regulation would begin releasing information reported on Form U–6 for former members and associated persons, subject to the two-year time limitation discussed above. There are several reasons for this change. First, the information reported on Form U–6 is provided by regulators and SROs, and therefore NASD Regulation believes that it is highly reliable. Second, the information reported on Form U–6 may be particularly valuable to a public investor who who done business with a former member of associated person who has recently left the industry. Third, the proposed rule change would make disclosure of Form U–6 information more consistent between currently registered members and associated persons and former members and associated persons. Finally, the proposed rule change would result in more consistent disclosure by the Program and the states; some of which currently release information reported on all uniform forms, whether or not it is currently reportable on a uniform form.

NASD Regulation does not release information that has been reported on a Form U–5 regarding former registered persons because that information may not have been reviewed by such individuals and may not, as a result, include their comments on, or concurrence with, the information. NASD Regulation does not propose any change to this policy in this filing.

Release of Arbitration Decisions Involving Members. NASD Regulation makes all arbitration awards rendered in its forum available pursuant to NASD Rule 10330(f). Interested persons may obtain hard copies of such awards upon request by contacting the Office of Dispute Resolution. In addition, for the convenience of investors, NASD Regulation makes available through the Public Disclosure Program information on awards rendered in the arbitration forum administered by the NASD that involve securities or commodities disputes between members and public customers.[13]

Clarification of Information Not Released Through Program. A number of members and associated persons have asked whether social security numbers, home addresses, or physical description information reported on the uniform forms are released through the Public Disclosure Program. NASD Regulation does not release such information, and the proposed rule change clarifies this policy.

The proposed rule change also clarifies that NASD Regulation will not release information through the Public Disclosure Program that it is otherwise prohibited from releasing under Federal law, *e.g.*, criminal history record information provided by the Federal Bureau of Investigation.[14] The criminal history information that is released through the Public Disclosure Program is the information provided by the associated person or the member on the uniform forms.

Disconintinuing Release of Certain *Factually Incorrect Information*. NASD Regulation also would like to inform the Commission of NASD Regulation's intention to exercise discretion in discontinuing public disclosure of a limited category of factually incorrect information that may be contained in the CRD. NASD Regulation occasionally receives requests to expunge an event from CRD where the person who was the subject of the CRD filing can demonstrate that it was factually impossible for him to have been involved in the event (*e.g.*, a person was named in an arbitration as a branch manager of a firm, and the person was working at a different firm at that time). NASD Regulation and the North American Securities Administrators Association ("NASAA") agree that such information can be expunged from the CRD if the person obtains a court order of expungement. However, obtaining a court order can be time-consuming and expensive. NASD Regulation believes that information that can be proven to be factually incorrect should be expunged from the CRD system without a court order and is discussing this issue with NASAA. NASD Regulation and NASAA also are currently discussing other circumstances in which expungement orders are appropriately honored.[15] Until an agreement is reached with NASAA on expunging factually incorrect information from the CRD system, NASD Regulation intends to discontinue releasing such information via the Public Disclosure Program. NASD Regulation will develop guidelines to implement this policy. The policy will provide some measure of assurance that this type of factually incorrect information is not provided to investors or other members of the public.

Automation of Public Disclosure Reports. Currently, when NASD Regulation receives a public disclosure request, NASD Regulation staff reviews the CRD record of the subject of the request, identifies events that must be disclosed under the Interpretation, and manually prepares a summary report for the requester. With the deployment of Web CRD,[16] NASD Regulation's Internet-based registration system, the staff plans to discontinue the manual preparation of these reports. Instead, staff will use a computer program that automatically generates a report after drawing information directly from the Web CRD data base. The computer program will draw the information from specified fields in WEB CRD that parallel fields on the Forms U–4, U–6,, and BD (and Form U–5 in the limited circumstances discussed above). The report then will be sent by regular or electronic mail to the requester. This approach removes the NASD Regulation staff from the preparation of the reports, provides for consistent disclosure without manual intervention, and allows the information that is actually reported to Web CRD on the uniform forms or from the NASD Regulation Office of Dispute Resolution [17] to be reported to the public.[18]

---

[12] The Commission notes that copies of a firm's Form BDW is available to the public through the Commission's Public Reference Room.

[13] CRD obtains information regarding awards involving members from its Office of Dispute Resolution because members are not required to report arbitration awards on Form BD.

[14] 28 CFR 50.12(b).

[15] *See* Notices to Members 99–09 and 99–54.

[16] *See* Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (April 30, 1999)(notice of filing of SR–NASD–98–96, which describes Web CRD).

[17] *See supra* note 13.

[18] As part of the transition from Legacy CRD to Web CRD, information that was reported prior to

Continued

One significant consequence of this approach is that the automatically generated reports will include verbatim any comment submitted by a registered representative, firm, or regulator in response to the last question on the Disclosure Reporting Pages of the uniform forms. This question typically asks for a summary of the circumstances or details relating to the disclosure event. These comments are not currently included in the manual reports prepared by the staff and may contain customer names. They also may contain confidential account information or language that is offensive or potentially defamatory, although that is far less likely.

Because these comments have not been included previously in the manual reports, NASD Regulation does not intend to begin using these automated reports until the SEC approves this proposed rule change. Upon approval, NASD Regulation will inform members and registered persons via a Notice to Members and other communications that it is inappropriate, and may subject members to regulatory sanctions or civil liability, to submit offensive or potentially defamatory language on the uniform forms.[19] NASD Regulation also is considering developing electronic notices that would appear on the electronic screen when forms are being completed on-line advising Web CRD users of this issue. NASD Regulation would undertake to conduct a continuing program to educate members and registered persons on this issue.

After implementation of automated reports, NASD Regulation will address objections to disclosure of customer names, confidential customer information, or offensive or potentially defamatory language on a case-by-case basis as follows. After receiving an objection, NASD Regulation will identify the filer of the uniform form (*i.e.*, a member firm, regulator, or self-regulatory organization) containing the language in controversy and notify the filer of the objections. NASD Regulation will provide the filer with the opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or defamation claims.[20] Based on the outcome of this test, NASD Regulation may determine to redact the language in controversy from reports prepared under the Public Disclosure Program. NASD Regulation will inform any requester of a report that has been redacted of the reasons for the redaction. NASD Regulation staff anticipates that objections to disclosure will be infrequent. If objections are more frequent than anticipated, NASD Regulation staff will consider alternative approaches.

Other. In Notice To Members 98–71, the NASD requested comment on whether public disclosure of certain non-investment-related crimes should be discontinued after ten years. In response, the NASD received nearly 100 comments. The NASD is still considering this issue in light of the comments, and therefore the issue is not addressed in this filing.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[21] of the Act, which requires, among other things, that the Association's rules must designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6)[22] because it strikes an appropriate balance between: (1) Investor's interest in obtaining accurate and up-to-date information about current or former members or associated persons; and (2) members' and associated persons' interests in having accurate information provided through the Public Disclosure Program; and (3) former associated persons' interest in protecting their privacy after leaving the securities industry. By expanding the availability of Form U–6 information, the proposed rule change also will provide investors and the public with additional information about former associated persons with whom they have done business. NASD Regulation also believes that the proposed rule change is consistent in all respects with Section 15a(i),[23] particularly the provision for immunity from liability for actions taken or omitted in good faith with respect to the Public Disclosure Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were nether solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

---

the deployment of Web CRD was converted from the Legacy CRD system and brought into the Web CRD database structure. Because of differences between the current and previous uniform registration forms, data was necessarily reformatted. In nearly all cases, information was converted as filed (*i.e.*, information reported on a Form U–4 in Legacy CRD was converted to Web CRD as Form U–4 information, albeit reformatted). In certain circumstances, however, information submitted on different uniform forms relating to the same disclosure event was combined in the data conversion; this occurred only if there were inconsistencies reported regarding such event. For example, of a Form U–4 reported that a regulatory action became final but did not report the date of the final action, and a Form U–6 reported both the regulatory action and the date, the date of the final action was populated to the Form U–4 on Web CRD. NASD Regulation will include an explanation of the data conversion process in all public disclosure reports provided pursuant to the Program.

[19] For example, if a Form contained egregiously offensive language, NASD Regulation may take disciplinary action against the member and/or registered person under NASD Rule 2110, which requires them to observe just and equitable principles of trade and high standards of commercial honor.

[20] If its impossible for a filer to amend, *e.g.*, the firm is defunct and the person is no longer registered, then NASD Regulation also will apply the balancing test and proceed as described above.

[21] 15 U.S.C. 78o–3(b)(6).

[22] *Id.*

[23] This Section requires the NASD to establish and maintain a public disclosure program. 15 U.S.C. 78o–3(i).

rule change that refiled with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. JR–NASD–99–45 and should be submitted by January 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33346 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of: (1) Proposed options for promulgating a temporary, emergency guideline amendment revising the guideline for offenses involving electronic copyright infringement; and (2) intent to re-promulgate as a permanent amendment to the sentencing guidelines the temporary emergency guideline amendment relating to telemarketing fraud offenses. Request for Comment. Notice of public hearing.

SUMMARY: (1) The Commission is preparing to promulgate a temporary, emergency guideline amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark) and accompanying commentary to implement the directive contained in section 2(g) of the No Electronic Theft (NET) Act of 1997. This notice sets forth three options for implementing that directive.

The proposed amendment is presented in one of two formats. First, the amendment is proposed as specific revisions to guideline § 2B5.3 and accompanying commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, a bracketed specific offense characteristic means that the Commission invites comment on whether the provision is appropriate as a specific offense characteristic, or whether it should be considered as a departure factor, or not at all. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

Recently, Congress clarified the Commission's emergency amendment authority to implement the directive in the NET Act. The Commission must implement that directive within 120 days of the enactment of the Digital Theft Deterrence and Copyright Damages Improvement Act of 1999 (not later than April 6, 2000).

(2) The Commission proposes to make permanent the temporary, emergency guideline amendment to § 2F1.1 (Fraud and Deceit) and § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) promulgated by the Commission in September 1998. This emergency amendment was issued to implement section 6 of the Telemarketing Fraud Prevention Act of 1998. The Commission proposes to re-promulgate as a permanent amendment the temporary emergency telemarketing fraud amendment without change.

DATES: (1) The NET Act temporary, emergency amendment.—Comment on the proposed amendment should be received by the Commission not later than January 26, 2000. After considering any public comment, the Commission plans to promulgate a temporary emergency amendment not later than April 6, 2000. (2) The telemarketing fraud amendment.—Comment on the proposed re-promulgation of the telemarketing fraud amendment should be received not later than March 10, 2000. (3) Public hearing.—The Commission has scheduled a public hearing for March 23, 2000, at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20002–8002 (time to be announced). The scope of the hearing is expected to include the proposed re-promulgation of the telemarketing fraud amendment described herein and any other permanent amendments that may be proposed for action in this amendment cycle ending May 1. (The Commission may promulgate a temporary, emergency guideline amendment to implement the NET Act before the public hearing on March 23.) A person who desires to testify at the public hearing should notify Michael Courlander, Public Affairs Officer, at (202) 502–4590 not later than March 10, 2000. Written testimony for the hearing must be received by the Commission not later than March 16, 2000. Submission of written testimony is a requirement for testifying at the public hearing.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500 South, Washington, DC 20002–8002, Attention: Public Information—Public Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Reports and other additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov*.

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 4.3, 4.4.

Diana E. Murphy,

Chair.

Proposed Temporary, Emergency Guideline Amendment

1. *Synopsis of Proposed Amendment:* The No Electronic Theft (NET) Act of 1997, Pub. L. 105–147, directs the Commission to: (1) Ensure that the applicable guideline range for a crime committed against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime; and (2) ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed.

This proposal presents three options for implementing the congressional directives. Each option implements the directives by changing the monetary calculation currently found in the copyright and trademark infringement guideline, § 2B5.3, to provide for consideration of the retail value of the infringed item. (Currently, § 2B5.3(b)(1) contains an enhancement based on a calculation of the retail value of the infringing item multiplied by the quantity of infringing items.) Some or all of a number of aggravating and mitigating factors could be incorporated into the guideline as an additional means of implementing the directive to provide sufficient deterrence. (These factors, or some combination thereof, are presented in Options 2 and 3 but

[24] 17 CFR 200.30–3(a)(12).

could be added to Option 1 as well. In addition, any number of these factors could form the basis for a departure provision.)

The NET Act gave the Commission emergency authority to promulgate temporary amendments necessary to implement the Act's directives. The recently enacted Digital Theft Deterrence and Copyright Damages Improvement Act of 1999 requires the Commission to promulgate the emergency amendments within 120 days after the date of the enactment of that Act, *i.e.*, by April 6, 2000.

(A) Option 1

Option 1 provides the most direct and straightforward manner for implementing the directive to provide for consideration of the retail value of the infringed item. Option 1 amends the copyright and trademark infringement guideline to provide a sentencing enhancement based on a calculation of the retail value of the infringed item multiplied by the quantity of infringing items for all copyright and trademark offenses. As presented, it does not incorporate any additional enhancements or adjustments for aggravating or mitigating factors, nor does it propose any change in the base offense level (although this, too, could be made a part of that option).

An arguable disadvantage of Option 1 is that it likely would overstate the pecuniary harm caused to copyright and trademark owners in the majority of cases currently sentenced under the guideline because it presumes: (1) a one-to-one correlation between the sale of infringing items and the displaced sale of legitimate infringed items, which is unlikely in most cases, and (2) that the pecuniary harm resulting from each lost sale is equal to the retail value of the infringed item. Proposed Application Note 3 would address substantial overstatement of pecuniary harm through an invited downward departure provision. That proposed application note would also provide an upward departure provision for cases in which the pecuniary harm is substantially understated.

Proposed Amendment—Option 1: Strike § 2B5.3 in its entirety and insert the following:

§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: 6

(b) Specific Offense Characteristic

(1)(A) Except as provided in subdivision (B), if the retail value of the infringed items multiplied by the quantity of infringing items exceeded $2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

(B) If (i) the defendant was convicted of an offense under 18 U.S.C. 2319A; and (ii) the retail value of the infringing items multiplied by the quantity of infringing items exceeded $2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

Commentary

Statutory Provisions: 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Definitions.—For purposes of this guideline:

"Infringed items" means the copyrighted or trademarked items with respect to which the crime against intellectual property was committed.

"Infringing items" means the items that violate the copyright or trademark laws (not the legitimate items that are infringed upon).

2. In a case involving the illegal interception of a satellite cable transmission in violation of 18 U.S.C. 2511, the "retail value of the infringed items", for purposes of subsection (b)(1)(A), is the price the user of the transmission would have paid to lawfully receive that transmission. (In such a case, the "infringed items" are the satellite transmissions rather than the intercepting devices.)

[3. Departure Provision.—There may be cases in which the offense level determined under subsection (b)(1) substantially understates or substantially overstates the pecuniary harm caused by the offense. In such cases, an upward departure or a downward departure, as appropriate, may be warranted.]

Background: Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act of 1997, which directs the Commission to ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

(B) Option 2

Option 2 is a revised proposal submitted by the Department of Justice in August 1998 in response to the Commission's May 1998 **Federal Register** notice (see 63 FR 28202 (1998)) and has not previously been published in the **Federal Register**. Like Option 1, Option 2 amends the copyright and trademark infringement guideline to provide an enhancement based on a calculation of the retail value of the infringed items multiplied by the quantity of infringing items for all copyright and trademark offenses (except offenses involving a copyright violation of 18 U.S.C. 2319A, for which there is no infringed item). In contrast to Option 1, the Department proposed a 2-level reduction in offense level (but not less than offense level 6) for offenses involving infringing goods with a price less than 10% of the average retail price of the infringed item. According to the Department of Justice, this downward adjustment is proposed to address the likelihood that "relying on the price of the infringed-upon item may lead to an inappropriately high economic harm calculation where there is a dramatic price differential between the genuine and illegal products." The Commission has bracketed options for this reduction that would provide a 2-level downward adjustment for cases in which the price of the infringing item is [10%] [20%] [30%] [40%] [50%] of the retail price of the infringed item.

In addition, Option 2 includes adjustments for two aggravating factors and one mitigating factor. It provides a 2-level increase for offenses involving "online electronic infringement," and a 2-level increase for offenses involving a "reasonably foreseeable risk to public health or safety," with a minimum offense level of level 13. It also provides a 2-level decrease (but not less than offense level 6) if the offense was not committed for purposes of commercial advantage or private financial gain.

Proposed Amendment—Option 2: Strike § 2B5.3 in its entirety and insert the following:

§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) Except as provided in subsection (2), if the infringed value exceeded $2,000, increase by the number of levels from the monetary table in § 2F1.1 (Fraud and Deceit) corresponding to that value.

(2) If (A) the offense involved a copyright violation under 19 U.S.C. 2319A; and (B) the infringing value exceeded $2,000, increase by the number of levels from the monetary table in § 2F1.1 corresponding to that value.

(3) If the offense involved online electronic infringement, increase by 2 levels.

(4) If (A) the offense was not committed for commercial purpose or private financial gain, or (B) subsection (1) applies and the offense involved greatly discounted merchandise, decrease by 2 levels, but not below level 6.

(5) If the offense involved a reasonably foreseeable risk to public health or safety, increase by 2 levels. If the resulting offense level is less than level [13], increase to level [13].

Commentary

Statutory Provisions: 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. For purposes of this guideline—

"Infringed value" means the average retail price of the infringed-upon item multiplied by the number of the infringing items. Average retail price of the infringed-upon item means the average price in the retail market at the time of the offense, which may be different from the Manufacturer's Suggested Retail Price. In cases involving the interception of a communication in violation of 18 U.S.C. 2511, the infringed value means the price the user would have paid if that communication had been obtained lawfully.

"Infringing value" means the price of the infringing item multiplied by the number of infringing items.

"Greatly Discounted Merchandise" means infringing goods whose price is less than [10%][20%][30%][40%][50%] of the average retail price of the infringed-upon item.

"Online Electronic Infringement" includes the unlawful producing, reproducing, distributing, selling, performing, or trafficking in copyrighted or trademarked articles or services via an electronic bulletin board, a worldwide web site or any online facility.

"Commercial advantage or private financial gain" includes receipt, or expectation of receipt, of anything of value, including the receipt of other protected works or products.

2. In some cases a 2-level enhancement may not reflect the seriousness of the risk to public health or safety. In such cases, an upward departure may be warranted.

Background: This guideline treats copyright and trademark violations much like fraud. The enhancements in subsections (b)(1) and (2) are intended as an approximate determination of the aggregate pecuniary harm resulting from trafficking in goods or services that violate the copyright or trademark laws. The reduction in subsection (b)(4) for greatly discounted merchandise is appropriate because in such cases there is some reduced likelihood of loss of legitimate sales.

The Electronic Communications Privacy Act of 1986 prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

(C) Option 3

Like Options 1 and 2, Option 3 amends the copyright and trademark infringement guideline to provide for consideration of the retail value of the infringed item in all copyright and trademark cases, but that value ultimately might not be used in every case. For some cases, the retail value of the infringing item is used to calculate the monetary adjustment because that value is the more accurate measure of the pecuniary harm to the intellectual property owner for those cases.

Option 3 directs the court to use the retail value of the infringed item multiplied by the quantity of infringing items in any case in which: (1) the quality and performance of the infringing item are identical to, or substantially indistinguishable from, the infringed item; (2) the retail value of the infringing item is difficult or impossible to determine; or (3) the offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. 2511; or any other case in which the government provides sufficient information to demonstrate that the retail value of the infringed item provides a more accurate assessment of pecuniary harm to the copyright or trademark owner than the retail value of the infringing item. The court would use the retail value of the infringing item multiplied by the quantity of infringing items (the calculation that currently exists in § 2B5.3) for all other copyright and trademark offenses.

Option 3 implements the second directive of the NET Act (to provide for consideration of the retail value of the infringed item) by permitting the government to show, for any intellectual property offense, that such value is the more accurate assessment of lost sales to the intellectual property owner than is the use of the retail value of the infringing item. An arguable advantage of Option 3 over Options 1 and 2 is that, by using the retail value of the infringing item in some cases, such as those involving obviously inferior counterfeited goods, it reduces the likelihood that the pecuniary harm would be overstated when the sale of a counterfeit item is not likely to displace the sale of a legitimate item on a one-to-one basis.

Option 3 also presents a number of enhancements and adjustments that, as mentioned above, take into account aggravating and mitigating factors that may be present in an infringement case. For ease and clarity of presentation, they are presented for the most part as specific offense characteristics. However, there is an issue for comment following Option 3 that addresses whether the Commission should adopt these as departure provisions, or not at all.

The possible additional enhancements and adjustments are as follows:

1. Increase the base offense level from level 6 to level 8. A 2-level increase in the base offense level would bring the infringement guideline more in line with the fraud guideline, § 2F1.1. Both guidelines have a base of offense level of level 6; however, the fraud guideline contains a 2-level enhancement for more than minimal planning, which applies in the great majority of fraud offenses. A similar enhancement does not exist in the infringement guideline, but, based on a review of cases sentenced under the guideline, if a more than minimal planning enhancement did exist, it similarly would apply in the majority of infringement cases. Thus, the majority of fraud offenses effectively start at an offense level of level 8, whereas infringement cases start at an offense level of level 6.

2. Provide an enhancement of 2 offense levels (or suggested upward departure) if the infringing item was distributed by the offender before the copyright or trademark owner commercially released the infringed item. If the infringing item is a close substitute for the infringed item, the harm is exacerbated by denying the copyright or trademark owner the front end of the market. If the infringing item is substantially inferior, the harm is exacerbated by damaging the reputation of the copyright or trademark owner.

3. Provide an enhancement of 2 offense levels (or suggested upward departure) if purchasers of the infringing item were deceived to believe that they were purchasing the legitimate infringed item. This enhancement takes into account harm to the consumer who is actually deceived, over and above the harm to the copyright or trademark owner. However, this enhancement may present significant proof problems. An attempt to ameliorate those problems by lowering the standard for triggering the enhancement to something less than actual deception, such as the reasonable likelihood of deception, risks promulgating an enhancement that is triggered merely by an element of the offense (see 18 U.S.C. 2320(e)).

4. Provide a downward adjustment of 2 offense levels, but not less than the base offense level, (or suggested downward departure) if the offense was not committed for commercial advantage or private financial gain. This proposed adjustment is identical to one included in Option 2 and takes into account the different statutory penalty structures established for these offenses by the NET Act. The Commission has been unable to determine the frequency with which such a downward adjustment would apply because the statutory change criminalizing such conduct was enacted in December 1997, and has formed the basis for a very limited number of prosecutions.

5. Provide an enhancement of 2 offense levels (and a minimum offense level of level 12) if the offense involved the manufacture, importation, or uploading of infringing items. The uploading prong is somewhat similar to the 2-level enhancement proposed in Option 2 for online electronic infringement. The Commission estimates that this enhancement would

apply in approximately 60% of the cases currently sentenced under § 2B5.3. Defendants who manufacture, import, or upload infringing items arguably are more culpable because they initially place infringing items in the stream of commerce, thereby enabling many others to infringe the copyright or trademark.

6. Provide an enhancement of 2 offense levels [and minimum offense level of level 13 as proposed in Option 2] (or suggested upward departure) if the offense involved the conscious or reckless risk of serious bodily injury. The Commission's review of cases sentenced under the guideline suggests that this enhancement rarely would apply, which might argue for taking this factor into account as a departure provision, if at all.

7. Provide an application note that expressly provides that § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) will apply if the defendant engaged in de-encryption or circumvented some other technological security measure in order to gain initial access to copyrighted material. Alternatively, the Commission could suggest an upward departure or specific offense characteristic for such cases. As stated in the background commentary to § 3B1.3, persons who use a special skill to facilitate or commit a crime generally are viewed as more culpable. Based on the Commission's review of cases sentenced under the copyright and trademark infringement guideline, it is anticipated that this adjustment rarely would be applied.

Proposed Amendment—Option 3: Strike § 2B5.3 in its entirety and insert the following:

§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: [8]

(b) Specific Offense Characteristics

(1) If the infringement amount exceeded $2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

[(2) If the infringing item was distributed before the infringed item was commercially released by the copyright or trademark owner, increase by [2] levels.]

[(3) If a purchaser of an infringing item actually believed such item was the infringed item, increase by [2] levels.]

[(4) If the offense was not committed for commercial advantage or private financial gain, decrease by [2] levels[, but not less than level [6][8]].]

[(5) If the offense involved the manufacture, importation, or uploading of infringing items, increase by [2] levels. If the resulting offense level is less than level [12], increase to level [12].]

[(6) If the offense involved the conscious or reckless risk of serious bodily injury, increase by [2] levels.] If the resulting offense level is less than level [13], increase to level [13].]

Commentary

Statutory Provisions: 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Definitions.—For purposes of this guideline:

"Commercial advantage or private financial gain" means the receipt, or expectation of receipt, of anything of value, including other protected works.

"Infringed item" means the copyrighted or trademarked item with respect to which the crime against intellectual property was committed.

"Infringement amount" means the approximate pecuniary harm to the copyright or trademark owner caused by the offense.

"Infringing item" means the item that violates the copyright or trademark laws.

"Uploading" means making an infringing item available by electronic means with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item.

2. Determination of Infringement Amount.—This note applies to the determination of the infringement amount for purposes of subsection (b)(1).

(A) Use of Retail Value of Infringed Item.—The infringement amount is the retail value of the infringed item, multiplied by the number of infringing items, in a case involving any of the following:

(i) The quality and performance of the infringing item are identical to, or substantially indistinguishable from, the infringed item.

(ii) The retail value of the infringing item is (I) difficult to determine without unduly complicating or prolonging the sentencing proceeding; or (II) impossible to determine.

(iii) The offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. § 2511. (In a case involving such an offense, the 'retail value of the infringed item' is the price the user of the transmission would have paid to lawfully receive that transmission, and the 'infringed item' is the satellite transmission rather than the intercepting device.)

(iv) The government provides sufficient information to demonstrate that the retail value of the infringed item provides a more accurate assessment of the pecuniary harm to the copyright or trademark owner than does the retail value of the infringing item.

(B) Use of Retail Value of Infringing Item.—The infringement amount is the retail value of the infringing item, multiplied by the number of infringing items, in any case not covered by subdivision (A) of this Application Note, including a case involving the unlawful recording of a musical performance in violation of 18 U.S.C. 2319A.

(C) Determination of Infringement Amount in Cases Involving a Variety of Infringing Items.—In a case involving a variety of infringing items, the infringement amount is the sum of all calculations made for those items under subdivisions (A) and (B). For example, if the defendant sold both counterfeit videotapes that are identical in quality to the infringed videotapes and obviously inferior counterfeit handbags, the infringement amount, for purposes of subsection (b)(1), is the sum of the infringement amount calculated with respect to the counterfeit videotapes under subdivision (A)(i) (i.e., the quantity of the infringing videotapes multiplied by the retail value of the infringed videotapes) and the infringement amount calculated with respect to the counterfeit handbags under subdivision (B) (i.e., the quantity of the infringing handbags multiplied by the retail value of the infringing handbags).

(D) Determination of Retail Value.—For purposes of this Application Note, the 'retail value' of an infringed item or an infringing item usually is the retail price of that item in the market in which it is sold.

3. Pre-Release Infringement.—Subsection (b)(2) applies to the distribution of an infringing item before the infringed item is commercially released by the copyright or trademark owner. For example, if the defendant unlawfully videotaped a film at a movie theater, then distributed copies of that videotape before lawful copies of the film were commercially available in videotape form, the enhancement will apply.

4. Manufacturing, Importing, and Uploading Enhancement.—With respect to uploading, subsection (b)(5) applies only to uploading with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item. For example, this subsection applies in the case of illegally uploading copyrighted software to an Internet site, but it does not apply in the case of downloading or installing that software on a hard drive on the defendant's personal computer.

5. Application of § 3B1.3.—If the defendant engaged in de-encryption or circumvented some other technological security measure in order to gain initial access to an infringed item, an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) will apply.

Background: This guideline treats copyright and trademark violations much like theft and fraud. Similar to the sentences for theft and fraud offenses, the sentences for defendants convicted of intellectual property offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, similar to the loss enhancement in the theft and fraud guidelines, the infringement amount in subsection (b)(1) serves as a principal factor in determining the offense level for intellectual property offenses.

Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act by using the retail value of the infringed items, multiplied by the number of infringing items, to determine the pecuniary harm for cases in which use of the retail value of the infringed item is a reasonable estimate of that harm. For cases referred to in Application Note 2(B), the Commission determined that use of the retail value of the infringed item would overstate the pecuniary harm or otherwise be impracticable or inappropriate. In these types of cases, use of the retail value of the

infringing item, multiplied by the number of those items, is a more reasonable estimate of the resulting pecuniary harm.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

Issue for Comment: The Commission has bracketed specific offense characteristics (b)(2) through (b)(6) in Option 3 to indicate that any or all of these factors, or any combination thereof, could form the basis for an enhancement. The Commission specifically invites comments on which, if any, of these specific offense characteristics, or combination of these specific offense characteristics, should be incorporated into the guideline. The Commission also specifically invites comment on whether, if the Commission were to adopt either Option 1 or Option 2, any or all of these specific offense characteristics, or any combination of these specific offense characteristics, should be incorporated into the adopted Option.

The Commission also invites comment on whether, as an alternative to proposed specific offense characteristics (b)(2) through (b)(6), the factors which form the bases for those specific offense characteristics should be expressed as bases for departure from the guideline range.

Proposed Re-Promulgation as Permanent Guideline Amendment

2. *Synopsis of Proposed Amendment:* This amendment proposes to re-promulgate as a permanent amendment the emergency telemarketing fraud amendment adopted by the Commission on September 23, 1998. It implements the directives to the Commission in section 6 of the Telemarketing Fraud Prevention Act of 1998, Pub. L. 105–184 (the "Act"), but in a somewhat broader form than that required by the directives.

The Act directs the Commission to provide for "substantially increased penalties" for telemarketing fraud offenses. It also more specifically requires that the guidelines provide "an additional appropriate sentencing enhancement, if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States," and "an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to [telemarketing fraud victims over age 55], are affected by a fraudulent scheme or schemes."

This amendment responds to the directives by building upon the amendments to the fraud guideline, § 2F1.1, that were submitted to Congress on May 1, 1998. (See Amendment 577 in USSC Guidelines Manual, Appendix C Supplement.) The May 1, 1998 amendments added a specific offense characteristic for "mass-marketing." Under that amendment, the definition of "mass-marketing" would include, but not be limited to, telemarketing fraud. The May 1, 1998 amendments also added a specific offense characteristic for sophisticated concealment.

This amendment broadens the "sophisticated concealment" enhancement to cover "sophisticated means" of executing or concealing a fraud offense. In addition, the amendment increases the enhancement under the vulnerable victim guideline, § 3A1.1, for offenses that impact a large number of vulnerable victims.

In designing enhancements that may apply more broadly than the Act's above-stated directives minimally require, the Commission acts consistently with other directives in the Act (e.g., section 6(c)(4) (requiring the Commission to ensure that its implementing amendments are reasonably consistent with other relevant directives to the Commission and other parts of the sentencing guidelines)) and with its basic mandate in sections 991 and 994 of title 28, United States Code (e.g., 28 U.S.C. 991(b)(1)(B) (requiring sentencing policies that avoid unwarranted disparities among similarly situated defendants)).

Proposed Amendment: Amendment 587 (See USSC Guidelines Manual, App. C Supplement; see also 63 FR 55912 (1998)) is re-promulgated without change as follows:

Section 2F1.1(b), as amended by amendment 577, is further amended by striking subdivision (3) and all that follows through the end of the subsection and inserting the following:

"(3) If the offense was committed through mass-marketing, increase by 2 levels.

(4) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (B) violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(5) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(6) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

(7) If the offense—

(A) Substantially jeopardized the safety and soundness of a financial institution; or

(B) Affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,

increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by amendment 577, is further amended by striking Application Note 14 and all that follows through the end of the Application Notes and inserting the following:

"15. For purposes of subsection (b)(5)(B), 'United States' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(5)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

The enhancement for sophisticated means under subsection (b)(5)(C) requires conduct that is significantly more complex or intricate than the conduct that may form the basis for an enhancement for more than minimal planning under subsection (b)(2)(A).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis for an adjustment under §.3C1.1

(Obstruction of Justice), do not apply an adjustment under § 3C1.1.

16. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. 20, 656, 657, 1005–1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and 'any health, medical, or hospital insurance association,' as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

17. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if, as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above.

18. 'The defendant derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(7)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

19. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

20. If subsection (b)(7)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by amendment 577, is further amended by redesignating Notes 3 through 13 as Notes 4 through 14, respectively; and by inserting after Note 2 the following new Note 3:

"3. 'Mass-marketing,' as used in subsection (b)(3), means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply, for example, if the defendant conducted or participated in a telemarketing campaign that solicited a large number of individuals to purchase fraudulent life insurance policies.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 1 by striking "§ 2F1.1(b)(3)" and inserting "§ 2F1.1(b)(4)"; in redesignated Note 5 (formerly Note 4), by striking "(b)(3)(A)" and inserting "(b)(4)(A)"; and in redesignated Note 6 (formerly Note 5), by striking "(b)(3)(B)" and inserting "(b)(4)(B)".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting after the fifth paragraph the following new paragraph:

"Subsection (b)(5) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.".

Section 3A1.1 is amended by striking subsection (b) in its entirety and inserting:

"(b)(1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.

(2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by 2 additional levels.".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the first paragraph by striking " 'victim' includes any person" before "who is" and inserting " 'vulnerable victim' means a person (A)"; and by inserting after "(Relevant Conduct)" the following:

"; and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the second paragraph by striking "where" each place it appears and inserting "in which".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the third paragraph by striking "offense guideline specifically incorporates this factor" and inserting "factor that makes the person a vulnerable victim is incorporated in the offense guideline".

The Commentary to § 3A1.1 captioned "Background" is amended by adding at the end the following additional paragraph:

"Subsection (b)(2) implements, in a broader form, the instruction to the Commission in section 6(c)(3) of Public Law 105–184.".

The Commentary to § 2B5.1 captioned "Application Notes" is amended in Note 1 by inserting "United States" before "Virgin Islands".

[FR Doc. 99–33380 Filed 12–22–99; 8:45 am]
BILLING CODE 2210–40–P; 2211–01–P

SOCIAL SECURITY ADMINISTRATION

Testing Modifications to the Disability Determination Procedures; Extension of Single Decisionmaker Model and Full Process Model With Rationale Summary

AGENCY: Social Security Administration.

ACTION: Notice of extension of tests involving a single decisionmaker and Full Process Model.

SUMMARY: The Social Security Administration (SSA) is announcing the extension of two tests being conducted under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test, individually or in any combination, several modifications to the disability determination procedures we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income (SSI) payments based on disability under title XVI of the Act. Under these rules, SSA is testing the use of a single decisionmaker who may make the initial disability determination without requiring the signature of a medical consultant in all cases. SSA is also testing integrated model procedures which will focus on certain SSA requirements for preparing a rationale for the adjudicator's disability determination to see if these modifications have any effect on how these requirements are met.

DATES: Selection of cases to be included in these tests is being extended through

December 31, 2001. If the Agency decides to continue these tests beyond this date, another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Landis, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–5388.

SUPPLEMENTARY INFORMATION: Current rules codified at 20 CFR 404.906 and 416.1406 authorize us to test modifications to the disability determination procedures individually or in any combination. On July 16, 1997 (62 FR 38182–38183), we announced the locations of sites where we would conduct tests involving a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. On October 30, 1998 (63 FR 5844), we announced the locations of sites for additional testing of the full process model which would focus on whether integrated model procedures have any effect on how the requirements for preparing a rationale for the disability determination are met. We are announcing the extension of case selection for these two tests through December 31, 2001.

The following is a listing of site locations at which these tests are being conducted:

State of Florida, Office of Disability Determinations, 4140 Woodcock Drive, Dew Building, Suite 100, Jacksonville, FL 32207.

State of Florida, Office of Disability Determinations, 9495 Sunset Drive, Sunset Square, Suite B100, Miami, FL 33173.

State of Florida, Office of Disability Determinations, 3438 Lawton Road, Chandler Building, Suite 127, Orlando, FL 32803.

State of Florida, Office of Disability Determinations, 2729 Fort Knox Boulevard, Building 2, Suite 300, Tallahassee, FL 32399–9994.

State of Florida, Office of Disability Determinations, 2729 Fort Knox Boulevard, Building 2, Suite 301, Tallahassee, FL 32399–9994.

State of Florida, Office of Disability Determinations, 1321 Executive Center Drive, Ashley Building, Suite 200, Tallahassee, FL 32399–6512.

State of Florida, Office of Disability Determinations, 3450 West Busch Boulevard, Buschwood Park II, Suite 395, Tampa, FL 33618.

State of Idaho, Disability Determination Services, 1505 McKinney Street, Boise, ID 83704.

State of Kansas, Department of Social and Rehabilitation Services, Disability Determination Services, Docking State Office Building, Room 1016, 915 SW Harrison Street, Topeka, KS 66612–1596.

State of Kentucky, Division of Disability Determinations, 102 Athletic Drive, Frankfort, KY 40602.

Social Security Administration, District Office, 1460 Newton Pike, Lexington, KY 40511.

State of Kentucky, Division of Disability Determinations, 7th and Jefferson Streets, Louisville, KY 40201.

State of Maine, Department of Human Services, Bureau of Rehabilitation, Disability Determination Services, Arsenal Street Extension, State House Station #116, Augusta, ME 04333.

State of Nevada, Department of Employment, Training and Rehabilitation, Bureau of Disability Adjudication 1050 East William Street, Room 300, Carson City, NV 89710.

State of North Carolina, Division of Social Services, Disability Determination Services, 321 Chapanoke Street, Raleigh, NC 27603.

State of Vermont, Disability Determination Services, 2 Pilgrim Park Road, Second Floor, Waterbury, VT 05676.

State of Washington, Department of Social and Health Services, Division of Disability Determination Services, Airindustrial Way, Building 12, Tumwater, WA 98502.

State of Washington, Department of Social and Health Services, Division of Disability Determination Services, 5221 East Third Street, Spokane, WA 99212.

State of Washington, Department of Social and Health Services, Division of Disability Determination Services, 1119 SW Seventh Street, Renton, WA 98055.

State of West Virginia, Division of Rehabilitation Services, Disability Determination Section, 1206 Quarrier Street, Suite 200, Charleston, WV 25301.

State of West Virginia, Division of Rehabilitation Services, Disability Determination Section, 153 West Main Street, Suite 607, Clarksburg, WV 26301.

State of Arizona, Department of Economic Security, Disability Determination Service Administration, 3655 East Second Street, Suite 105, Tucson, AZ 85716.

State of Georgia, Division of Rehabilitation, Disability Adjudication Section, Clark Harrison Building, 330 West Ponce de Leon Avenue, Decatur, GA 30030.

Department of Vocational Rehabilitation, Disability Determination Service, Central Avenue, Building 1313, Tiyan, Guam 96913.

State of Oregon, Division of Vocational Rehabilitation, Disability Determination Services, 500 Summer Street NE, Ground Floor, Salem, OR 97310.

Not all cases received in the sites listed above will be selected for handling under the test procedures. However, if a claim is selected as part of one of these tests, the claim will be handled under the procedures established under the final rules noted above.

Dated: December 16, 1999.

Sue C. Davis,

Director, Disability Process Redesign Team.

[FR Doc. 99–33307 Filed 12–22–99; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3184]

Culturally Significant Objects Imported for Exhibition Determinations: "Crowning Glories: Two Centuries of Tiaras"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations:

Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, "Crowning Glories: Two Centuries of Tiaras," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at The Museum of Fine Arts, Boston, from on or about March 1, 2000, to on or about June 25, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and

the address is Room 700, United States Department of State, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: December 16, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 99–33351 Filed 12–22–99; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice Regarding the 1999 Product Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the petitions that were accepted for the 1999 GSP Annual Review for modifications of GSP product eligibility; lists the schedule for the public hearing on these petitions, for requesting participation in the hearing, and for submitting pre-hearing and post-hearing briefs.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The GSP program is authorized by Title V the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 *et seq.*), and administered in accordance with GSP regulations (15 CFR Part 2007) which provide for a GSP annual review.

In a notice dated April 23, 1999, USTR initiated the 1999 GSP Annual Review and announced a deadline of June 16, 1999 for the filing of petitions (63 FR 18963). The product petitions that we received requested changes in the eligibility of products by adding or removing products, or the waiver of "competitive need limitations" (CNLs) for eligible articles. Authorization for granting CNL waivers is set forth in section 503(d) of the Trade Act (19 U.S.C. 2464(d)).

The GSP Subcommittee of the TPSC has reviewed the 28 product petitions that were received and has decided that 9 of these petitions involving 7 products should be accepted for consideration in the 1999 GSP Annual Review. The annex to this notice sets forth the case number, product identification, the change requested and the petitioner for each product included in the 1999 GSP Annual Review.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR Part 2007, including sections 2007.0, and 2007.1. All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States ("HTS") nomenclature.

Comments should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW, Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "nonconfidential"). Comments should be submitted no later than 5 p.m. on January 14, 2000.

Notice of Public Hearings

Hearings will be held on February 1, 2000 beginning at 10 a.m. at the Office of the United States Trade Representative, 1724 F Street, NW, Washington, DC 20508. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witnesses representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by fourteen (14) copies, in English, of a written brief or statement, and should be received by 5 p.m. on January 14, 2000. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted in fourteen (14) copies, in English, no later than 5 p.m. February 24, 2000. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5 p.m. on January 14, 2000, and post-hearing and rebuttal written briefs or statements by February 24, 2000. Comments by interested persons on the USITC Report prepared as part of the product review should be submitted in fourteen (14) copies, in English, by 5 p.m. April 14, 2000.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3901–01–M

Annex

Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences.		
		Ferroalloys: Other: Other:	
99-1	7202.99.10 1/	Ferrozirconium	Victoria Alloys, Inc., Cleveland, OH; Italmagnesio Nordeste S/A, Brazil; Trablin-Trading Brasileira de Ligas e Inoculantes S/A, Brazil
		Magnesium and articles thereof, including waste and scrap: Unwrought magnesium: [Containing at least 99.8 percent by weight of magnesium]	
99-2	8104.19.00	Other	Polymet Alloys, Inc., Calera, AL; Rima Industrial S/A, Brazil
99-3	8104.30.00	Raspings, turnings and granules, graded according to size; powders	do.
B.	Petitions to remove duty-free status from beneficiary developing country/countries for a product on the list of eligible articles for Generalized System of Preferences. 2/		
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Other polyhydric alcohols:	
99-4	2905.42.00 (Brazil)	Pentaerythritol	Hercules Incorporated, Wilmington, DE
C.	Petition to determine whether products like or directly competitive with an eligible article were being produced in the United States on January 1, 1995.		
		Mixed alkylbenzenes and mixed alkylnaphthalenes, other than those of heading 2707 or 2902: Mixed alkylbenzenes: [Mixed linear alkylbenzenes]	
99-5	3817.10.50	Other	Shrieve Chemical Products, Inc., Houston, TX

1/ The petitioner also requests a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Brazil on the articles provided for in subheading 7202.99.10.

2/ The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well the GSP status of the entire article.

Annex
-2-

Case No.	HTS Subheading	Article	Petitioner
D. Petitions for waiver of competitive need limits for a product on the list of eligible products for the Generalized System of Preferences.			
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Saturated monohydric alcohols: Methanol (Methyl alcohol): [Imported only for use in producing synthetic natural gas (SNG) or for direct use as a fuel]	
99-6	2905.11.20 (Chile)	Other	Government of Chile; Methanex Methanol Company, Dallas, TX
		Ferroalloys:	
99-7	7202.50.00 (Russia)	Ferrosilicon chromium	PMI Alloys, Inc., Charleston, SC; Chelyabinsk Electrometallurgical Plant, Russia

[FR Doc. 99-32220 Filed 12-22-99; 8:45 am]
BILLING CODE 3901-01-C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Preferential Tariff Treatment Under the Generalized System of Preferences for Certain Articles From South Africa

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Implementation of preferential tariff treatment under the Generalized System of Preferences (GSP) for three articles from South Africa.

FOR FURTHER INFORMATION CONTACT: Jon Rosenbaum, Assistant United States Trade Representative for Trade and Development, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: Pursuant to section 503(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. 2463 (c)(2)), beneficiary developing countries are subject to competitive need limitations on the preferential tariff treatment afforded under the GSP. Presidential Proclamation 7107 of June 30, 1998 (63 FR 36531; July 6, 1998), in relevant part, proclaimed the waiver of competitive need limitations and the granting of GSP preferential tariff treatment with respect to certain articles from South Africa, with an effective date to be determined and announced by the United States Trade Representative by publication of a notice in the Federal Register. These included four articles in Harmonized Tariff Schedule of the United States ("HTS") subheadings 7108.12.50 (unwrought gold, for electronics, dental), HTS 7108.13.70 (semi-manufactured gold), HTS 8704.10.50 (articulated dump trucks), and HTS 2849.90.50 (carbides). Since that time, the normal tariff for one of these items, articles in subheading HTS 8704.10.50 (articulated dump trucks) has been reduced to zero in accordance with the Annex to Presidential Proclamation 6763 of December 23, 1994 (60 FR 1007, 1614; January 4, 1995), implementing U.S. commitments under the Uruguay Round agreements.

Granting GSP preferential tariff treatment for the articles listed above was held in abeyance because of concerns regarding South Africa's Medicines Act and its protection of patent rights for pharmaceuticals. Section 503 of the Trade Act of 1974 requires the President to consider the program's eligibility requirements, including a country's protection of intellectual property rights, before granting waivers or extending GSP benefits (19 U.S.C. 2463). On September 17, 1999, the Governments of the United States and South Africa came to an understanding with respect to South Africa's urgent need to provide better, more affordable health care while ensuring that intellectual property rights are protected. Both Governments reaffirmed their shared objective of fully protecting intellectual property rights, including their commitment to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

Pursuant to authority vested in the United States Trade Representative by the laws of the United States, including but not limited to sections 503 and 604 of the Trade Act of 1974 and Proclamation 7107 of June 30, 1998, and in order to (1) grant GSP preferential tariff treatment to articles in HTS subheadings 7108.12.50 (unwrought gold, for electronics, dental) and 7108.13.70 (semi-manufactured gold), and (2) provide GSP preferential tariff treatment to articles from South Africa in HTS subheading 2849.90.50 (carbides), the HTS is modified as specified in the Annex to this notice, effective with respect to articles entered, or withdrawn from warehouse, on or

after the day of publication of this notice.

Charlene Barshefsky,

United States Trade Representative.

Annex

Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States ("HTS") is modified by deleting the country set out opposite the following HTS subheading:

2849.90.50 South Africa

Section B. Modifications to the Harmonized Tariff Schedule of the United States ("HTS") of an article's preferential tariff treatment under the Generalized System of Preferences ("GSP").

For the following HTS subheadings, the Rates of Duty 1-special subcolumn is modified by deleting the symbol "A+," in the parentheses following the "Free" rate and by inserting the symbol "A," in lieu thereof.

7108.12.50
7108.13.70

Section C. A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to imports of eligible articles from South Africa that are provided for in HTS subheading 2849.90.50.

[FR Doc. 99–33385 Filed 12–22–99; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Final Environmental Impact Statement; Denver, Arapahoe, and Douglas Counties

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA and the FTA, in cooperation with the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD), have jointly prepared a Final Environmental Impact Statement (EIS) for proposed transportation improvements in the Southeast Corridor of the Denver, Colorado metropolitan area. The project is within the municipalities of Denver, Arapahoe and Douglas Counties. The Final EIS identifies a preferred alternative and the associated environmental impacts of the proposed preferred alternative. Interested citizens are invited to review the Final EIS and submit comments. Copies of the Final EIS may be obtained by telephoning or writing the contact person list below under Addresses. Public reading copies of the Final EIS are available at the locations listed under Supplementary Information.

DATES: A 30-day public review period will begin on December 23, 1999, and conclude on January 28, 2000. Written comments on the preferred alternative and impacts to be considered must be received by CDOT by January 28, 2000. A public hearing to receive oral comments on the Final EIS will be held in one location in Denver. See **SUPPLEMENTARY INFORMATION** section for hearing date and location.

ADDRESSES: Written comments on the Final EIS should be addressed to Jim Bumanglag, Project Manager, Colorado Department of Transportation, Southeast Corridor, 4201 East Arkansas, Denver, CO 80222. Requests for a copy of the Final EIS may be addressed to Mr. Bumanglag at the address above. Please see **SUPPLEMENTARY INFORMATION** section for a listing of the available documents and formats in which they may be obtained. Copies of the Final EIS are also available for public inspection and review. See Supplementary Information section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Final EIS or for additional information, contact: Mr. Vincent P. Barone, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone (303) 969–6730, extension 369; or Mr. David L. Beckhouse, FTA Region VIII, 216 16th Street Mall, Suite 650, Denver, CO 80202, Telephone (303) 844–3242.

SUPPLEMENTARY INFORMATION:

Hearing Date and Location:

- January 12, 2000, Most Precious Blood Catholic School, 2250 South Harrison Street, Denver, CO 80237, 4:00 p.m. to 7:30 p.m.

Copies of the Final EIS are available in hard copy format for public inspection at:

- CDOT Region 6 Office, 2000 South Holly Street, Denver, CO 80222, 303–757–9372.
- CDOT Environmental Services, 1325 S. Colorado Boulevard, Denver, CO 80222, 303–757–9259.
- RTD Administrative Services, 1600 Blake Street, Denver, CO 80202, 303–299–2484.
- Denver Public Library, 10 West 14th Avenue, Denver, CO 80203, 303–640–6220.
- Castlewood Public Library, 6739 South Uinta Street, Denver, CO 80237, 303–771–3197.
- Southeast Corridor Project Office (Carter & Burgess), 216 16th Street Mall, Suite 1700, Denver CO 80202, 303–820–5278.
- Aurora Central Library, 14949 East Alameda Drive, Aurora, CO 80012, 303–739–6600.
- Aurora Planning Office, 1470 South Havana St., Room 608, Aurora, CO 80012, 303–739–7250.
- Douglas Public Library District-Philip S. Miller Branch, 961 South Plum Creek Blvd., Castle Rock, CO 80104, 303–688–5157.

Copies of supporting technical reports and engineering plan sheets are available at:

- CDOT Region 6 Office, 2000 South Holly Street, Denver, CO 80222, 303–757–9372.
- Southeast Corridor Project Office (Carter & Burgess), 216 16th Street Mall, Suite 1700, Denver CO 80202, 303–820–5278.

Background

The Final EIS evaluated a No-Action, and a Preferred Alternative (including transportation management solutions) in the Southeast Corridor and determined the estimated costs and potential impacts associated with each. The project study limits are on I–25 from Broadway Avenue to Lincoln Avenue, which includes I–225 from I–25 to Parker Road. CDOT was the local lead agency for the preparation of the Final EIS.

The FHWA, the FTA, the CDOT, the RTD and other local agencies invite interested individuals, organizations, and Federal, State and local agencies to comment on the identified preferred alternative and associated social, economic, or environmental impacts related to the alternatives.

The preferred alternative is generally consistent with the Southeast Corridor Major Investment Study completed in July 1997. It begins at approximately I–25 and Broadway Avenue and proceeds south and southeast to Lincoln Avenue following the general alignment of I–25. Also included is a segment along I–225 from I–25 to Parker Road. The preferred alternative excludes any proposed roadway improvements near I–25 from 6th Avenue to approximately the Logan Street crossing including the I–25 interchanges at Alameda, Santa Fe, and Broadway. The primary purpose of the Southeast Corridor Multi-Modal Project is to improve travel time and enhance safety along these two transportation corridors, while causing the least disruption to neighboring residents, businesses, and commuters. The Southeast Corridor is the most heavily congested corridor on a daily basis, in the State of Colorado. It has been the focus of study for twenty years. These studies have consistently recommended

that improvements be made to the highway system and that public transit be provided.

The alternatives evaluated in the Final EIS include the following:

1. The No-Action alternative served as the baseline for environmental analysis and consists of the existing transit and highway systems and all projects contained in the federally approved Transportation Improvement Program (TIP) for the Denver metropolitan area.

2. The Preferred Alternative generally will use the I–25 right-of-way between Broadway Avenue and Lincoln Avenue, and the I–225 right-of-way between I–25 and Parker Road. There are 19.12 miles of double tracked light rail transit beginning at the existing Broadway Station and ending at Lincoln Avenue on the west side of I–25. Light rail will also be added to the median of I–225, from I–25 to the existing Nine Mile park-n-Ride. Thirteen light rail stations are planned. Improvements to I–25 and I–225 consist of one additional lane in each direction on I–25 from Logan Avenue to I–225, two additional lanes in each direction on I–25 from I–225 to C–470/E–470 and one additional lane in each direction on I–225 from I–25 to Yosemite. This alternative is designed to accommodate future transportation needs and includes improvements to the highway, transportation systems management, and pedestrian and bicycle facilities in the study area.

The FHWA, the FTA, the CDOT and the RTD evaluated all significant social, economic, and environmental impacts of the alternatives. The primary areas of examination included transit ridership, the capital outlays needed to construct the recommended alternative, the cost of operating and maintaining facilities created by the project, and the financial requirements on the funding agencies. Environmental and social impacts evaluated in the analysis included land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, hazardous material impacts, impacts on cultural and paleontological resources, and noise and vibration impacts. Impacts on natural areas, threatened and endangered species, air and water quality, and groundwater are also covered. Right-of-way impacts are also identified. Impacts were also evaluated both for the construction period and for the long-term period of operation. Measures to mitigate adverse impacts were developed.

In accordance with the Federal Transit Act, as amended, (49 U.S.C. 5301 *et seq.*) and FHWA and FTA policy, the Final EIS was prepared with required engineering design studies necessary to complete the document. On the basis of the Final EIS and the comments received, a Record of Decision will proceed. (23 U.S.C. 315; 49 U.S.C. 107, 5301 *et seq.*; 49 CFR 1.48 and 1.51)

James Daves,

Division Administrator, Federal Highway Administration, Lakewood, Colorado.

Louis F. Mraz Jr.,

Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.

[FR Doc. 99–32984 Filed 12–22–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6669]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled, "Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report."

DATES: Comments should be submitted on or before February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones, Jr., Director, Office of Maritime Labor, Training and Safety, MAR–250, Room 7302, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone number: 202–366–5755 or fax 202–493–2288. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: "Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report."

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0509.

Form Number: MA–930.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: Every student and graduate of the USMMA and subsidized State maritime academy student and graduate incurs a mandatory service obligation in the U.S. merchant marine.

Need and Use of the Information: The information collection is necessary to determine if a graduate of the USMMA or subsidized State maritime academy graduate is complying with the requirement to submit annually a form to MARAD. This form is used to determine if a graduate has complied with the terms of the service obligation for that year.

Description of Respondents: Every student and graduate of the USMMA and subsidized State maritime academy student incurs a mandatory service obligation in the U.S. merchant marine.

Annual Responses: 3000 responses.

Annual Burden: 1500 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: December 20, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 99–33352 Filed 12–22–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2000–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2000 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2000 RCAF (Unadjusted) is 1.043. The first quarter 2000 RCAF (Adjusted) is 0.594. The first quarter 2000 RCAF–5 is 0.581.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: (202)565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33337 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33817]

Arkansas Short Line Railroads, Inc.—Continuance in Control Exemption—Central Columbiana & Pennsylvania Railway, Inc.; Dardanelle & Russellville Railroad, Inc.; and the Ouachita Railroad

Arkansas Short Line Railroads Inc. (ASR), has filed a notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Central Columbiana & Pennsylvania Railway, Inc. (CCPR), upon CCPR's becoming a Class III railroad.[1] This transaction is related to STB Finance Docket No. 33818, *Central Columbiana & Pennsylvania Railway, Inc.—Lease and Operation Exemption—Columbiana County Port Authority*, wherein CCPR seeks to lease and operate 35.7 miles of rail line.[2]

ASR states that consummation of the transaction is contingent on the approval and acceptance of the OFA filed by CCPA to acquire the line that CCPR will operate and that CCPR has agreed to commence operations on the line at the earliest possible date after all approvals have been acquired and/or granted. The earliest date that the transaction could have been consummated was November 30, 1999, the effective date of the exemption.[3]

According to ASR, it is the controlling corporate owner of the stock of D&RR and Ouachita and, following consummation of the transactions, it will control, through stock ownership and management, D&RR, Ouachita, and CCPR. ASR states that: the railroads will not connect with one another; the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and the transaction involves only Class III rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323–25. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33817, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33182 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33834]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company between Roseville, CA, in the vicinity of UP's milepost 106.6 (Valley Subdivision), and Binney Junction, CA, in the vicinity of UP's milepost 141.9 (Valley Subdivision).

The transaction is scheduled to be consummated on December 21, 1999.

The purpose of the trackage rights is to facilitate southbound directional train operations between Roseville and Binney Junction.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

---

[1] ASR controls Dardanelle & Russellville Railroad, Inc. (D&RR), and the Ouachita Railroad (Ouachita). It is not clear from prior filings with the Interstate Commerce Commission (ICC), the Board's predecessor, that appropriate approval was authorized by the ICC, of the control by ASR of D&RR and Ouachita. Therefore, to ensure that ASR is in compliance with the Board's statutory provisions, exemption for ASR's control of D&RR and Ouachita will also be covered by this notice.

[2] The Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Railroad Ventures, Inc., of the 35.7-mile line extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by The Ohio & Pennsylvania Railroad Company (OHPA). *See Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Docket No. AB–556 (Sub-No. 2X), et al. (STB served Sept. 3, 1999). On November 8, 1999, Columbiana County Port Authority (CCPA) filed an offer of financial assistance (OFA) to purchase the entire line of railroad. This proceeding is currently pending. The OFA does not cover a connecting 3-mile line segment from milepost 0.0 to milepost –3.0 between Youngstown and Struthers, OH. Portions of this 3-mile segment are apparently owned separately by OHPA, Allied Erecting and Dismantling Company, Inc., and Darlington Pipe Company, Inc./Matteson Equipment. CCPA has a tentative agreement with OHPA concerning the portion of the 3-mile segment that OHPA owns and intends to negotiate with other property owners to obtain the right to operate over their respective portions.

[3] Under 49 CFR 1150.32(b), notices of exemption become effective 7 days after being filed. Here, the effective date is calculated from November 23, 1999, when supplemental information was filed by CCPR.

a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33834, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Yolanda Grimes Brown, Esq, The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161-0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 17, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33336 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33818]

Central Columbiana & Pennsylvania Railway, Inc.—Lease and Operation Exemption—Columbiana County Port Authority

Central Columbiana & Pennsylvania Railway, Inc. (CCPR), a noncarrier and wholly owned subsidiary of Arkansas Short Line Railroads, Inc. (ASR), has filed a notice of exemption under 49 CFR 1150.31 to lease and operate 35.7 miles of rail line from Columbiana County Port Authority (CCPA) extending from milepost 0.0 at or near Youngstown, OH, to milepost 35.7 at or near Darlington, PA.[1] CCPR states that a tentative agreement has been reached with OHPA that will allow CCPR to operate over the 35.7-mile line and the portion of the connecting 3-mile segment that is owned by OHPA. In order for CCPR to interchange with CSX Transportation, Inc., at milepost −3.0 at or near Struthers and with Norfolk Southern Railway Company at milepost −1.5 at Haselton Yard, CCPR states that it hopes to take advantage of the existing easements whereby OHPA is operating over the portions of the line that it does not own. If it is unable to do so, CCPR will seek to negotiate agreements with other property owners[2] so that it will be able to perform railroad operations over the entire line of railroad.[3]

CCPR states that consummation of the transaction is contingent on the approval and acceptance of the OFA filed by CCPA to acquire the line and that CCPR has agreed to commence operations on the line at the earliest possible date after all approvals have been acquired and/or granted. The earliest date that the transaction could have been consummated was November 30, 1999, the effective date of the exemption.[4]

This transaction is related to STB Finance Docket No. 33817, *Arkansas Short Line Railroads, Inc.—Continuance in Control Exemption—Central Columbiana & Pennsylvania Railway, Inc.; Dardanelle & Russellville Railroad, Inc.; and the Ouachita Railroad,* wherein ASR seeks to continue in control of Dardanelle & Russellville, Inc., the Ouachita Railroad, and CCPR, upon CCPR's becoming a Class III railroad.

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33818, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33181 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Railroad Ventures, Inc., of the 35.7-mile line and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by The Ohio & Pennsylvania Railroad Company (OHPA). *See Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA,* STB Docket No. AB–556 (Sub-No. 2X), *et al.* (STB served Sept. 3, 1999). On November 8, 1999, CCPA filed an offer of financial assistance (OFA) to purchase the entire line of railroad. This proceeding is currently pending. The OFA does not cover a connecting 3-mile line segment from milepost 0.0 to milepost −3.0 between Youngstown and Struthers, OH. Portions of this 3-mile segment are apparently owned separately by OHPA, Allied Erecting and Dismantling Company, Inc. (Allied Erecting), and Darlington Pipe Company, Inc./Matteson Equipment (Matteson).

[2] CCPR states that Matteson has indicated a willingness to negotiate with CCPR and that CCPR will seek to negotiate an agreement with Allied Erecting in the near future.

[3] In issuing this notice, the Board is making no ruling on the contractual rights of the parties. Therefore, by invoking the class exemption, CCPR has the right to perform common carrier service to the extent that it has or obtains the property rights to enable it to carry out the service.

[4] Under 49 CFR 1150.32(b), notices of exemption become effective 7 days after being filed. Here, the effective date is calculated from November 23, 1999, when supplemental information was filed by CCPR.

DEPARTMENT OF THE TREASURY

Fiscal Service

Application Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed.

SUMMARY: Effective December 31, 1999, the Department of the Treasury, Financial Management Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch, (202) 874–6765.

SUPPLEMENTARY INFORMATION: The fees imposed and collected, as referred to in 31 CFR 223.22, cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business. These fees are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$4,950.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$2,900.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,750.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$1,235.

Questions concerning this notice should be directed to the Surety Bond Branch, Financial Accounting and Services Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, Telephone (202) 874–6850.

Dated: December 15, 1999.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 99–33257 Filed 12–22–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: The Service Insurance Company, Inc.

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury .

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 3 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35888 to reflect this addition *The Service Insurance Company, Inc.* Business Address: 80 Main Street, West Orange, New Jersey 07052. Phone: (973) 731–7650. Underwriting Limitation b/: $122,000. Surety Licenses c/: NJ. Incorporated In: New Jersey.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 15, 1999.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–33256 Filed 12–22–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the reasonable value of properties proposed as security for guaranteed or direct home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0045" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–8310 or FAX (202) 275–4884.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: VA Request for Determination of Reasonable Value, VA Form 26–1805.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1805 is used to collect data necessary for VA compliance with the requirements of Title 38, U.S.C. 3710 (b)(4), (5), and (6). These requirements prohibit the VA guaranty or making of any loan unless the suitability of the security property for dwelling purposes is determined, the loan amount does not exceed the reasonable value, and if the loan is for purposes of alteration, repair, or improvements, the work substantially improves the basic livability of the property. The data supplied by persons and firms completing VA Form 26–1805 is used by VA personnel to identify and locate properties for appraisal and to make assignments to appraisers. VA is required to notify potential veteran-purchasers of such properties of the VA-established reasonable value. VA will also use VA Form 26–1843, Certificate of Reasonable Value, (included in the VA Form 1805 Package) as a notice to requesters of the reasonable (appraised) value or an authorized lender will issue a notice of value in connection with the Lender Appraisal Processing Program.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33247 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if a veteran has established entitlement to an automobile allowance or adaptive equipment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0067" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Automobile or other Conveyance and Adaptive Equipment, VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C. 3901–3904 authorized assistance in providing an automobile and adaptive equipment for disabled veterans under certain conditions. VA Form 21–4502 is used to gather the necessary information to determine if the veteran has established entitlement to an automobile allowance or adaptive equipment benefits.

Affected Public: Individuals and households.

Estimated Annual Burden: 375.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 1,500.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33248 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0335]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to authorize a veteran to seek a private dentist for dental examination and treatment plan and to authorize payment for such dental services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0335" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Dental Record Authorization and Invoice for Outpatient Services, VA Form 10–2570d.

OMB Control Number: 2900–0335.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 10–2570d is used to serve the following multi-purposes: (1) VA authorization to the veteran to seek a private dentist for examination; (2) Fee dentist's record of examination

findings; (3) Dentist's treatment plan and listing of services needed; (4) Listing of dentist's usual and customary fees for specific services involved in treatment plan; (5) VA review, verification and authorization of treatment to the fee dentist; (6) Dentist's certification of services completed; (7) VA's permanent record of treatment provided for veterans and statement of exhaustion of benefits, if indicated; VA's approval of dental services and total fees for payment; and (8) Fiscal approval and certification of payment and amount. Without this information, veterans' dental treatment needs could not be identified, fees for services could not be established, the veterans could not receive treatment, and the fee dentist could not be reimbursed.

Affected Public: Business or other for profit.

Estimated Total Annual Burden: 14,333 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 43,000.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33249 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–NEW."

SUPPLEMENTARY INFORMATION:

Title: Ecclesiastical Endorsing Organization Verification/Reverification Information, VA Form 10–0379.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: This information is used by VHA's Chaplain Service to determine whether organizations seeking recognition as ecclesiastical endorsing organizations meet VA requirements for such recognition. To assure that individuals employed by VA as chaplains are qualified to provide for constitutional rights of veterans to free exercise of religion, VA requires that each applicant for Chaplaincy submit an official statement ("ecclesiastical endorsement") from their religion or faith group, certifying that the applicant is in good standing with the faith group and is qualified to perform the full range of ministry required in the VA setting. VA must obtain information from the faith groups which supply these endorsements in order to determine: (1) Who the faith group designates as its endorsing official(s); (2) whether the faith group provides ministry to a lay constituency; and (3) what is the constituency to which persons endorsed by this group may minister.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 23, 1999, at page 51584.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 3 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 11.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33250 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8135 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0004."

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

OMB Control Number: 2900–0004.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to gather the necessary information to determine the spouse's and children's eligibility, dependency and income, as applicable, for the death benefits sought.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on

September 23, 1999, at pages 51584–51585.

Affected Public: Individuals or households.

Estimated Annual Burden: 79,125 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 63,300.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0004" in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary:

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33251 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0006]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0006."

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614.

OMB Control Number: 2900–0006.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–614 is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 1, 1999 at page 47892.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0006" in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary:

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33252 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0205."

SUPPLEMENTARY INFORMATION:

Titles and Form Number:

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists.

c. VA Form 10–2850b, Application for Residents.

d. VA Form 10–2850c, Application for Associated Health Occupations.

e. VA Form FL 10–341a, Appraisal of Applicant.

OMB Control Number: 2900–0205

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Forms 10–2850 and 10–2850a through c are applications designed specifically to elicit appropriate information about each candidate's qualifications for employment with VA. VHA officials use the information to evaluate education, professional experience and credentials and to determine suitability and grade level of applications of physicians, dentists, podiatrists, optometrists, nurses and nurse anesthetists, residents, and associated health occupations, and appraisal of applicants. The forms require disclosure of details about all licenses ever held, Drug Enforcement Administration certification, board certification, clinical privileges, revoked certification or registrations, liability insurance history, and involvement in malpractice proceedings. Form Letter 10–341a is a pre employment reference form used to elicit information concerning the prior education and/or performance of the Title 38 applicant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 20, 1999, at pages 50868–50869.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden: 68,610 hours.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—6,450 hours.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—25,800 hours.

c. VA Form 10–2850b, Application for Residents—13,760 hours.

d. VA Form 10–2850c, Application for Associated Health Occupations—8,600 hours.

e. VA Form FL 10–341a, Appraisal of Applicant—14,000 hours.

Estimated Average Burden Per Respondent: 27 minutes.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—30 minutes.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—30 minutes.

c. VA Form 10–2850b, Application for Residents—30 minutes.

d. VA Form 10–2850c, Application for Associated Health Occupations—30 minutes.

e. VA Form FL 10–341a, Appraisal of Applicant—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 151,220.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—12,900.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—51,600.

c. VA Form 10–2850b, Application for Residents—27,520.

d. VA Form 10–2850c, Application for Associated Health Occupations—17,200.

e. VA Form FL 10–341a, Appraisal of Applicant—42,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0205" in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33253 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0368."

SUPPLEMENTARY INFORMATION:

Title: Monthly Statement of Wages Paid to Trainee VA, Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Establishments training veterans on the job or in apprenticeship programs use VA Form 28–1917, to report each veteran's wages during the preceding month. The veteran's case manager reviews the form and uses the information to determine whether the veteran is receiving the appropriate wage increases and to ensure the veteran is receiving the correct rate of subsistence allowance. Without this information, there would be a high risk of large overpayments of VA vocational rehabilitation benefits to this class of trainees.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 20, 1999 at page 50869.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 3,600.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0368" in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33254 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–U

Corrections

Federal Register

Vol. 64, No. 246

Thursday, December 23, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

Correction

In notice document 99–32731, appearing on page 70687, in the issue of Friday, December 17, 1999, make the following correction:

On page 70687, in the first column, under the heading **SUPPLEMENTARY INFORMATION**, the OMB Number, "0551-0227" should read "0551-0027".

[FR Doc. C9–32731 Filed 12-22-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of The National Missile Defense Deployment Draft Environmental Impact Statement

Correction

In notice document 99–32878 appearing on page 71123 in the issue of Monday, December 20, 1999, make the following correction:

In the third column, under **COMMENTS**, in the second line "[insert 30 days from date of publication]" should read "January 19, 2000".

[FR Doc. C9–32878 Filed 12–22–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0969]

Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals (GFI #78); Availability

Correction

FR Doc. 99-32313 which was published at page 70715 in the **Federal Register** of Friday, December 17, 1999, was an uncorrected version of the document published at page 70716 in the same issue. It was inadvertently published.

[FR Doc. C9–32313 Filed 12–22–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
December 23, 1999

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 381 and 424
Irradiation of Meat Food Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 424

[Docket No. 97–076F]

Irradiation of Meat Food Products

AGENCY: Food Safety and Inspection Service

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to permit the use of ionizing radiation for treating refrigerated or frozen, uncooked meat, meat byproducts, and certain other meat food products to reduce levels of foodborne pathogens and to extend shelf-life. FSIS also is revising the regulations governing the irradiation of poultry products so that they will be as consistent as possible with the regulations for the irradiation of meat food products.

EFFECTIVE DATES: February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulation Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1999, the Food Safety and Inspection Service (FSIS) published a proposal (64 FR 9089) to permit the use of ionizing radiation for treating refrigerated or frozen uncooked meat, meat byproducts, and certain other meat food products (hereafter referred to as "meat food products" when discussed as a group) to reduce levels of foodborne pathogens and to extend shelf-life. FSIS also proposed to revise the regulations governing the irradiation of poultry products so that they will be as consistent as possible with the regulations for the irradiation of meat food products. FSIS initially provided 60 days for public comment, ending the comment period on April 26, 1999. Because of the great interest in this proposal, FSIS reopened the comment period for 15 days on June 2, 1999 (64 FR 29602). FSIS announced that it would consider all comments received between April 27, 1999 and June 17, 1999. In this document, FSIS makes final the proposed regulations, with some revision in response to comments.

Food Irradiation

Food irradiation is the process of exposing food to high levels of radiant energy. Forms of radiant energy include: microwave and infrared radiation that heat food during cooking; visible light or ultraviolet light used to dry food or kill surface microorganisms; and ionizing radiation, resulting from cobalt-60, cesium-137, x-ray machines, or electron accelerators, that penetrates deeply into food, killing insect pests and microorganisms without raising the temperature of the food significantly. Food is most often irradiated commercially to extend shelf-life, eliminate insect pests, or reduce numbers of pathogenic microorganisms. Food irradiation for these purposes is practiced in many countries, including the United States.

Section 201(s) of the Federal Food, Drug and Cosmetic Act (FFDCA) defines sources of radiation used to treat food as food additives:

> The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized * * * to be safe under the conditions of its intended use * * *.

The Food and Drug Administration (FDA) of the Department of Health and Human Services has the primary responsibility for determining whether food additives are safe for particular uses. FDA lists uses of food additives it has concluded are safe in 21 CFR parts 172 through 179.

On August 25, 1994 (59 FR 43848), FDA announced that it had received a petition from Isomedix, Inc., requesting that FDA amend the food additive regulations in 21 CFR part 179 (Irradiation in the Production, Processing and Handling of Food). The petition requested that FDA authorize the safe use of sources of ionizing radiation to:

> control microbial pathogens in raw, fresh-chilled, and frozen intact and comminuted edible tissue of the skeletal muscle and organ meat of domesticated mammalian food sources; with concomitant control of infectious parasites, and, extension of acceptable edible/marketable life of chilled/refrigerated and defrosted meat through the reduction in levels of spoilage microorganisms.

The petition further specified that the proposed foods were to be "primarily from bovine, ovine, porcine, and equine sources." Also, Isomedix requested that a maximum dose of 4.5 kiloGray (kGy) be established for the irradiation of refrigerated meat, and that a maximum dose of 7.0 kGy be established for the irradiation of frozen meat.

After an evaluation of available data, FDA concluded that there was a reasonable certainty of no harm from the irradiation of meat food products under the conditions requested in the petition and that irradiation would not adversely affect the nutritional adequacy of these products. On December 3, 1997, FDA published a final rule (FDA Docket No. 94F–0289; 62 FR 64107) granting the Isomedix petition. In that publication, FDA expanded the list of products (21 CFR 179.26(b)) for which ionizing irradiation may be safely used to include: refrigerated and frozen uncooked meat, as defined by FSIS in 9 CFR 301.2(rr); meat byproducts (e.g., edible organs, such as the liver and the kidneys), as defined by FSIS in 9 CFR 301.2(tt); and certain meat food products (e.g., ground beef and hamburger) within the meaning of 9 CFR 301.2(uu), with or without nonfluid seasoning, that are otherwise composed solely of intact or ground meat or meat byproducts, or of both.

The FSIS Proposal

As stated above, on February 24, 1999, FSIS proposed regulations governing the irradiation of refrigerated and frozen, uncooked meat food products and also proposed to revise the poultry irradiation regulations for consistency. Specifically, FSIS proposed the following:

Dosage

FSIS proposed that the defined meat food products could be treated with ionizing irradiation at dosages of up to 4.5 kiloGrays (kGy), if refrigerated, and 7 kGy, if frozen. FSIS proposed no minimum dosage.

Process Control

FSIS proposed to require that official establishments irradiate meat food products for food uses only in accordance with a Hazard Analysis and Critical Control Point (HACCP) system or, if not yet operating under HACCP requirements, in accordance with a process schedule validated by a process authority.

Dosimetry

FSIS proposed to require that official establishments that irradiate meat food products have in place a dosimetry system to measure the absorbed dose of radiation. The dosimetry system would

ensure that each lot of treated product has received the dose defined in the process schedule or HACCP plan. The proposed requirements mandated that each dosimetry system included:

- Procedures for determining the absorbed radiation dose value from the dosimeter;
- Procedures for calibrating dosimeters and other means of measurement (e.g., time clocks and weight scales);
- Procedures for ensuring specific absorbed dosages of irradiation by product unit and product lot; and
- Procedures for verifying the integrity of the radiation source and the processing procedure.

Documentation

FSIS proposed to require official establishments that irradiate meat food products to have on file the following documents that relate to the establishment's compliance with other Federal requirements concerning irradiation:

- Documentation that an irradiation facility that possesses gamma radiation sources is licensed with the Nuclear Regulatory Commission (NRC) or the appropriate State government acting under authority granted by the NRC, and that a worker safety program addressing OSHA regulations is in place;
- Documentation that an irradiation facility that uses machine radiation sources is registered with the appropriate State government, if applicable;
- Citations or other documents that relate to the instances in which the establishment was found not to comply with Federal or State agency requirements for irradiation facilities;
- Certification by the operator that the irradiation facility's personnel are operating under the supervision of a person who has successfully completed a course of instruction for operators of food irradiation facilities;
- Certification by the operator that the key irradiation personnel have been trained in food technology, irradiation processing, and radiation health and safety; and
- Guarantees from the suppliers of all food-contact packaging materials that may be subject to irradiation, that those materials comply with the FFDCA (21 U.S.C. 301 *et seq.*).

Labeling

FSIS proposed that labeling for packaged meat food products irradiated in their entirety bear the radura logo along with a statement such as "Treated with radiation" or "Treated by irradiation." FSIS proposed that the logo be placed prominently and conspicuously in conjunction with the required statement and that the statement appear as a qualifier contiguous to the product name. Also, FSIS proposed to require that inclusion of an irradiated meat food product ingredient in any multi-ingredient product be reflected in the ingredient statement on the finished product labeling. Finally, FSIS stated that it would allow optional labeling statements about the purpose for radiation processing to be included on the product label in addition to the above stated requirements. Statements indicating a specific reduction in microbial pathogens would have to be substantiated by processing documentation.

FSIS proposed to require that for unpackaged meat food products irradiated in their entirety, the required logo and a statement must be prominently and conspicuously displayed to purchasers either through labeling on a bulk container or some other appropriate device.

Poultry

FSIS also proposed to revise the existing regulations governing the irradiation of poultry products to make them as consistent as possible with the regulations proposed for meat food products. FSIS proposed to eliminate the regulations requiring that establishments irradiate poultry products only in accordance with Partial Quality Control programs and to instead require that poultry establishments, like meat establishments, irradiate product in accordance with HACCP plans or process schedules. FSIS also proposed to eliminate the provision that stated that only packaged poultry products may be treated with irradiation. FSIS had adopted this requirement to ensure that the antimicrobial effects of irradiation would be maintained throughout the processing and distribution of the poultry products. However, because under the proposal all poultry establishments would be required to develop and implement HACCP plans, this prescriptive packaging requirement would no longer be necessary.

FSIS could not, however, propose to rescind the FDA requirement in 21 CFR 179.26(b)(6) that if packaged poultry product is irradiated, that packaging be air permeable: "* * * any packaging used shall not exclude oxygen." FSIS originally requested that FDA establish this requirement for control of the pathogen *C. botulinum*. In light of the new HACCP requirements, this prescriptive requirement is no longer necessary. Under HACCP, poultry establishments have both the responsibility and the flexibility to determine the best means for controlling any hazards resulting from the irradiation of product in anaerobic packaging. FSIS submitted a petition to FDA on August 19, 1999, to eliminate this packaging requirement.

FSIS proposed to eliminate the minimum dose requirement for irradiated poultry products contained in § 381.147(f)(4). FSIS adopted this requirement to ensure that the irradiation of poultry product, which may occur only after the product is packaged for retail sale, does in fact achieve a specific reduction in pathogens. However, FDA and FSIS have concluded that different doses of ionizing radiation can be appropriate, in different circumstances, for achieving different technical effects and, therefore, that to continue to require a minimum dose of irradiation for poultry products would limit the flexibility needed for the successful implementation of HACCP. FSIS considers irradiation to be just one of many treatments that could be used within a HACCP system to achieve a reduction in pathogens.

FSIS could not propose to revise the FDA limits on the maximum absorbed radiation dose for poultry products. However, it is possible that poultry products could be safely treated with higher doses of radiation than those that are currently allowed. Higher doses could achieve greater reductions in pathogens. In the August 19, 1999, petition mentioned above, FSIS asked FDA to reconsider and raise the limit on the maximum absorbed dose of radiation in poultry products.

FSIS proposed to eliminate two of the labeling requirements in § 381.135(a): the requirement that the radura logo on irradiated poultry product labels be colored green and the requirement that "letters used for the qualifying statement shall be no less than one-third the size of the largest letter in the product name." The elimination of these requirements will make FSIS requirements consistent with FDA requirements and provide more flexibility for labeling irradiated poultry products, without affecting the information content of such labels.

Because FSIS proposed to allow unpackaged poultry product to be irradiated, it also proposed labeling requirements for unpackaged, irradiated poultry product sold at the retail level (proposed § 318.135(b)). The proposed labeling requirements are consistent with those proposed for unpackaged,

irradiated meat food products and with FDA labeling requirements for irradiated products sold in bulk (21 CFR 179.26(c)(2)).

Also, because FSIS proposed to allow irradiated poultry products to be used as ingredients in further processed products, FSIS also proposed to require that the ingredient statement on such products reflect the inclusion of irradiated poultry products (§ 381.135(b)). For example, under the proposal, an ingredient statement for a sausage product containing irradiated poultry would be required to include an entry such as, "irradiated poultry" or "poultry, treated by irradiation."

Comments and Responses

By the close of the comment period, FSIS received about 1,100 comments from consumers, consumer advocacy organizations, academia, trade and professional associations, scientific organizations, the meat and poultry products industries, the irradiation equipment industry, industry consultants, and State governments. Generally, industry, academia, and professional organizations supported the proposal. These commenters expressed concerns about the proposed labeling requirements, which they believe are too prescriptive, about the length of time it took to publish the proposal, and made recommendations for broadening the scope of the proposal. Consumer advocacy groups, for the most part, expressed qualified support for the proposal. All expressed concern that establishments will use irradiation to treat product produced under insanitary conditions and all wanted FSIS to require explicit and conspicuous product labeling. Many of the individual consumers and a few organizations opposed the irradiation of meat food products altogether, but demanded explicit and conspicuous product labeling in the event FSIS allowed it. Summaries of issues raised by commenters and Agency responses follow.

Safety of Irradiation

Comment: Numerous consumers questioned the research regarding the safety of irradiated food. Some demanded more research before irradiation is allowed; some opposed irradiation altogether. Several opposed irradiation because they believe it will significantly degrade the nutritional quality of treated food.

A few commenters opposed irradiation because, they asserted, its use would increase the risk of accidents involving radioactive material. Some raised concerns about worker safety and environmental issues related to irradiation. One consumer advocacy group argued that the rule's potential impact on the environment must be reviewed under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*). Finally, a few consumers requested that parents be asked to give their permission before their children are served irradiated food in the school lunch program.

Response: The safety and efficacy of food irradiation, as demonstrated by numerous experiments and studies, is widely accepted by Federal regulatory agencies and national and international food and public health organizations. Before listing the uses of sources of ionizing radiation permitted on meat food products, as well as on other foods, FDA examined numerous studies on the chemical effects of radiation, the impact of radiation on nutrient content of foods, potential toxicity concerns, and effects on microorganisms in or on irradiated products. FDA concluded that irradiation is safe in reducing disease-causing microbes in or on meat food products and that it does not compromise the nutritional quality of treated products. Furthermore, the World Health Organization, the Food and Agriculture Organization, the American Medical Association, and the American Dietetic Association endorse food irradiation.

FSIS has examined the potential impacts of food irradiation in a review of risk analysis literature made available with the proposed rule. This literature review is available from the FSIS Docket Clerk's Office (see **ADDRESSES** above) and from the FSIS Internet world wide web page at http://www.fsis.usda.gov/OA/topics/irrad-risk.htm.

From this review of recent studies, FSIS concluded that the proposed regulations permitting the irradiation of meat food products and the revision of the regulations governing the irradiation of poultry products would pose no significant risk to worker or transportation safety. FSIS concluded that oversight by other Federal and State agencies will ensure the safety of food irradiation facilities:

> In summary, proper design and operating procedures of commercial irradiators have been shown to operate without significant radiation risk to workers or the public. NRC [Nuclear Regulatory Commission] has set stringent environmental protection requirements for any facilities that use radionuclide sources (10 CFR Parts 20, 30, 51, and 71). There are special carrier requirements for transport of hazardous materials (such as the radionuclides used at the facility) set by the DOT [Department of Transportation]. Any extraneous radiation from radionuclides would be contained in plants by shielding required by the NRC and the Bureau of Radiological Health at FDA. The risk of radiation exposure to workers is very low with adherence to the required NRC, OSHA, and other safety requirements. And finally, FSIS ensures that the risks from food irradiation are insignificant by its requirement that all irradiation facilities adhere to the safety regulations of the NRC, DOT, and FDA.

Furthermore, FSIS employees will receive training from FSIS in radiation health and safety and will be required to wear dosimetry devices. The Agricultural Research Service (ARS) will issue the devices as part of their radiological safety program for all USDA employees. Radiation exposure records for FSIS employees will be maintained and monitored by ARS, and kept indefinitely.

Concerning NEPA, USDA has determined that FSIS programs and activities have been found to have no individual or cumulative effect on the human environment. Accordingly FSIS is categorically excluded from the preparation of an Environmental Assessment (EA) or Environmental Impact Statement unless the Administrator determines that an action may have a significant environmental effect (7 CFR 1b.4). The irradiation of various food products has been permitted and safely conducted for over 30 years. The irradiation of poultry products has been permitted and safely conducted since 1992. Therefore, the Administrator has not determined that circumstances dictate the need for preparation of an EA for the voluntary use of irradiation in meat food products.

FSIS works closely with the other agencies within USDA responsible for the school lunch program. Should USDA or individual school districts choose to purchase irradiated products for the school lunch program, FSIS would support that decision. Irradiation can significantly reduce the levels of pathogenic microorganisms in treated meat food and poultry products. Therefore, irradiated food products would be ideal for the school lunch program, which serves children, a population particularly vulnerable to foodborne illness. FSIS sees no need for any special notification of the parents of children participating in a school lunch program that serves irradiated meat food or poultry products because FSIS agrees with FDA's finding that food irradiation poses no toxicological or microbiological risks for consumers and does not affect the nutritional adequacy of treated product.

Efficacy of Irradiation

Comment: Several commenters from industry and academia requested that FSIS either maintain a minimum absorbed dose requirement or, if there is to be no required minimum dose, require establishments that irradiate product to achieve a minimum level of pathogen reduction (one irradiator suggested 1-log[10] reduction of the pathogen of concern in a product). One commenter argued that unscrupulous processors could irradiate product with a minimal dosage, achieving an insignificant antimicrobial effect, merely to accrue the benefit of the label and extended product shelf-life. This commenter also maintained that consumers would be misled by product labeled as irradiated, but treated with only a negligible dose. Another industry commenter maintained that although FSIS should not mandate irradiation, FSIS should mandate that all official establishments achieve the level of pathogen reduction resulting from irradiation, regardless of the antimicrobial intervention they use.

Several consumer advocacy organizations recommended that FSIS maintain the minimum dose requirement for treated poultry and establish a minimum dose for meat food products so as to ensure specific reductions in pathogens.

Response: FSIS will allow meat and poultry establishments to determine what level of irradiation (subject to a maximum level) and what consequent reduction of pathogens is appropriate within their HACCP systems. Depending on the processing environment, the type of meat food or poultry product, and the type of radiation source employed, varying dosages of radiation will be appropriate. A required minimum dosage would undercut the flexibility needed for the successful implementation of HACCP.

Furthermore, FSIS finds that it is unnecessary to establish a minimum level of pathogen reduction to be achieved by irradiation or by any other specific antimicrobial intervention. Establishments must determine what level of pathogen reduction is necessary from a particular intervention based on the results of the hazard analysis they conduct when developing their HACCP plan. Establishments are required to meet specific pathogen reduction performance standards for numerous meat food and poultry products and FSIS plans to propose more standards to eventually cover every processing category. FSIS will ensure that safe meat food and poultry products are produced through compliance with these standards, but need not hinder processing innovation by mandating the use of specific antimicrobial interventions, or specific results from specific interventions.

Comment: Several consumer advocacy organizations argued that FSIS should require establishments that irradiate product, and especially establishments not yet under HACCP, to conduct regular micro-testing prior to irradiation. One organization requested that FSIS require end-product microbial testing of irradiated product. This testing would discourage establishments from using irradiation to treat "dirty" product or operate under insanitary conditions. Another suggested that FSIS clarify in the final rule that irradiation would in no way satisfy the "zero-fecal" policy. Finally, another organization argued that FSIS should allow meat food products to be irradiated only after final packaging, to prevent any recontamination of the treated product.

Response: Irradiation is just one of the many antimicrobial interventions available to establishments. As with other interventions, its use in no way exempts establishments from meeting statutory sanitation requirements. Moreover, FSIS emphasizes that establishments that employ irradiation still must meet the zero-tolerance requirements for visible fecal matter on meat or poultry carcasses.

FSIS will neither require special microbial testing nor conduct such testing in establishments that irradiate product (although FSIS may conduct microbial testing to verify pathogen reduction claims or for enforcement purposes). Compliance with the HACCP requirements, along with other FSIS requirements governing sanitation, will preclude the irradiation of product produced under insanitary conditions, as well as the adulteration of product after an irradiation treatment.

Finally, in order to promote processing flexibility and innovation that will lead to improvements in food safety, FSIS did not propose to require that meat food products be irradiated only after final packaging. Using a HACCP system, an establishment must control the conditions under which product is held from initial processing through irradiation and packaging to ensure and preserve the intended antimicrobial effects of irradiation. By law, establishments must produce unadulterated meat food and poultry products regardless of whether or when they irradiate within their processing systems.

Comment: Numerous commenters opposed irradiation of meat food and poultry products because they believe irradiation will allow establishments to clean up insanitary meat food and poultry products resulting from "factory farming" (concentrated animal production methods), which they believe is unethical and inhumane. They argue, therefore, that irradiation would indirectly promote the expansion of "factory farming."

Response: As stated above, the use of irradiation in no way exempts establishments from meeting statutory and regulatory sanitation requirements. Establishments are not permitted to produce meat food or poultry products under insanitary conditions, regardless of whether they irradiate. Furthermore, FSIS prohibits the inhumane handling and slaughter of livestock. Under the Humane Slaughter Act (7 U.S.C. 1901–1906), FSIS personnel may suspend inspection of an official establishment if the Agency determines that the method by which livestock is slaughtered is inhumane, as defined by the Humane Slaughter Act.

As part of its "farm-to-table" food safety strategy, FSIS is interested in effects of concentrated animal production methods on food safety, as well as humane handling and slaughter. Notably, no data was submitted that supported comments concerning concentrated animal production. FSIS would welcome and thoroughly review any such data.

Comment: One consumer advocate organization requested that FSIS provide information on how it intends to redeploy inspection program employees to irradiation facilities.

Response: As stated in the proposal, facilities that irradiate meat food and poultry products are considered by FSIS to be official establishments. As such, they are subject to inspection as provided for by the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act (PPIA). FSIS will deploy inspection program employees to irradiation facilities based on a number of factors, such as inspection force workload and the type of activities conducted at the individual facilities (e.g., product irradiation only, irradiation and additional processing, slaughter and irradiation) Assignment of FSIS program personnel to irradiation facilities will not differ from assignment to other types of official establishments.

Irradiation and HACCP

Comment: A few establishments and trade associations argued that FSIS should not mandate a critical control point (CCP) for irradiation, as they believed that the preamble implied that FSIS will mandate a CCP for irradiation.

Response: FSIS did not mandate any specific CCP or critical limit in the proposed rule language, although the Agency did give some examples. Because most, if not all, establishments will irradiate product specifically to reduce microbial pathogens (identified hazards), they would include irradiation as a CCP in their HACCP plans. A CCP is a point, step, or procedure at which control can be applied so that a food safety hazard can be prevented, eliminated, or reduced to an acceptable level. Dosage, ambient temperature, oxygen levels or other factors that affect the antimicrobial efficacy of irradiation will likely be monitored to determine if the critical limits for an irradiation CCP are being met.

In accordance with the FDA regulation on the use of irradiation, establishments could irradiate product solely to extend shelf-life. In its proposal to provide for the use of irradiation on meat food products, FSIS stated that it therefore might be possible for an establishment to irradiate product solely to extend shelf-life and not account for effects of the treatment on pathogens in its HACCP plan:

> Were an establishment to irradiate meat food products solely for the purpose of extending shelf-life, it is conceivable, although highly unlikely, that the establishment could disregard any amount of pathogen reduction achieved by the irradiation and therefore not list irradiation as a CCP in its HACCP plan. However, such an establishment still would have to meet the other requirements for irradiation facilities promulgated by FSIS and other Federal and State agencies, such as requirements for dosimetry and documentation. FSIS does not anticipate that any establishment will irradiate product solely to extend shelf-life and not account for the antimicrobial effects of irradiation in its HACCP plan.

(64 FR 9091-9092)

FSIS still maintains this position, but notes that there is a safety factor inherent in product shelf-life determination. Pathogenic and non-pathogenic microorganisms, including spoilage organisms, compete for nutrients in food products. Non-pathogenic and spoilage organisms generally are more plentiful than pathogenic organisms. Increasing the shelf-life of a product involves reducing the levels of the spoilage organisms. Although most antimicrobial treatments, including irradiation, reduce microbial levels fairly proportionately, an establishment must ensure that its treatment does not give a competitive advantage to pathogenic organisms, allowing for their disparate growth.

More specifically, irradiation can affect the levels and projected growth of microbial pathogens, which would be identified by establishments as hazards. Establishments should take into account the levels and projected growth of microbial pathogens in meat food and poultry products when determining product shelf-life. Therefore, in its HACCP plan, an establishment would need to account for the reduction of pathogens (and possibly the reduction of competing microorganisms) resulting from irradiation conducted solely to extend product shelf-life. Nonetheless, FSIS is not mandating the specific CCP or critical limit to be employed.

Comment: Numerous industry groups and establishments argued that facilities that only irradiate packaged product should not be considered official establishments, since, in their view, such establishments would not be processing product (traditionally considered to be grinding, salting, etc.). A few of these commenters noted that FSIS does not currently consider certain warehouses that freeze packaged meat food and poultry products to destroy parasites to be official establishments. One commenter suggested that third party irradiators be required to implement HACCP anyway; several suggested that irradiation conducted at a remote facility be considered under the HACCP plan of the establishment that provides the meat food or poultry products for irradiation.

Response: FSIS disagrees and will consider any facility that irradiates meat food or poultry products to be an official establishment. Sources of radiation used to treat food are defined as food additives under § 201(s) of the FFDCA. FSIS believes that the act of using any food additive constitutes processing, and the processing of meat food and poultry products may only take place in official establishments subject to FSIS inspection and regulation.

In regard to the freezing of meat food and poultry products to kill internal parasites, it is true that FSIS has allowed certain warehouses to freeze beef and pork for this purpose, without being designated as official establishments. FSIS is now reviewing this policy decision to determine whether this freezing constitutes processing and will designate these facilities as official establishments if it concludes that it does.

Because facilities that irradiate product will be designated as official establishments, FSIS will not permit such establishments to operate under other establishments' HACCP plans. Each official establishment must develop and implement its own.

Comment: Several commenters contended that the validation requirement for process schedules is inadequate, since irradiation is so complicated and relatively new to the meat food product industry. They suggested FSIS require that radiation specialists review process schedules and HACCP plans. One consumer advocacy organization suggested that FSIS should validate HACCP plans that include irradiation.

Response: FSIS disagrees. Food irradiation has been practiced in the United States for over 30 years. Further, the irradiation of poultry products has been permitted and safely conducted since 1992. Industry possesses the expertise and the resources to safely and effectively irradiate meat food products.

FSIS is requiring certain employees of official establishments conducting irradiation to be trained in various aspects of food irradiation and radiation safety (new § 424.22(c)(3)(v) and (vi)); FSIS already requires this training for personnel at establishments that irradiate poultry.

In regard to the proposed requirements for process schedule validation, because all official meat and poultry establishments will be operating under the HACCP requirements by the time the regulations are in effect, FSIS has not carried forward the proposed process schedule requirements (meant for establishments not yet operating under HACCP) into this final rule. FSIS does not validate establishment HACCP plans, regardless of the processing systems employed. In accordance with § 417.4(a) of the regulations, it is the responsibility of an establishment to validate its HACCP plan's adequacy in controlling the identified food safety hazards. FSIS does review HACCP plans for conformance with the HACCP regulations. Further, FSIS and establishments are responsible for verifying that HACCP plans are adequate and working on a day-to-day basis. Establishments must monitor and verify the performance of the controls in their HACCP plans and maintain records of this monitoring and verification. FSIS evaluates the HACCP plan's adequacy and successful operation as part of the inspection process.

Scope of Meat Food and Poultry Products That May Be Irradiated

Comment: Several commenters requested that FSIS specifically provide for irradiation as an acceptable treatment for raw, non-intact beef products contaminated with *Escherichia coli* O157:H7.

Response: On January 19, 1999, FSIS published a notice in the **Federal Register** (54 FR 2803; "Beef Products Contaminated With Escherichia Coli

O157:H7") clarifying that non-intact beef products, as well as intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption, that are contaminated with *E. coli* O157:H7 are adulterated under the Federal Meat Inspection Act unless the products are further processed to destroy this pathogen. Also in that notice, FSIS stated that it was considering irradiation as an option for effectively eliminating *E. coli* O157:H7 from contaminated beef products, since the only type of effective processing available at the time of the notice was cooking. Now, under the regulations in this final rule, establishments may use irradiation as a means of eliminating *E. coli* O157:H7 from contaminated beef products.

An establishment that irradiates beef product known to be contaminated with *E. coli* O157:H7 and intended for distribution as a non-intact product must have controls in place to ensure that the pathogen is eliminated from the product prior to its distribution for consumption. The establishment also must document its actions to eliminate *E. coli* O157:H7 from the product in accordance with applicable regulations. Establishments should refer to the above mentioned notice, as well as guidance available from the FSIS Internet site (www.fsis.usda.gov), for further clarification on the Agency's policy in regard to the treatment of beef products containing *E. coli* O157:H7.

Comment: Consumer and industry groups asked FSIS to broaden the scope of the final rule to provide for the irradiation of processed products, especially ready-to-eat products. Many commenters believed that the FDA finding in regard to the Isomedix petition allows FSIS to do this without petitioning FDA again. Also, several commenters criticized FSIS and FDA for failing to cooperate more closely in regard to approving the irradiation for various products. They suggested that:

- FSIS should act quickly to petition FDA to make the regulations for irradiating poultry consistent with those for meat and to allow for the irradiation of hot-boned meat.
- FSIS and FDA should expedite the approval of new packaging materials for product irradiated while packaged.
- FSIS should make final and implement Docket No. 88–026P ("Substances Authorized for Use in the Preparation of Meat and Poultry Products"; 60 FR 67459) so as to end the need for duplicative rulemaking by FDA and FSIS when approving food additives, including the use of sources of ionizing radiation.

Response: FDA's authority to regulate the uses of ionizing radiation on food is clear under § 409 of the FFDCA. FDA has approved the use of sources of ionizing radiation only on the uncooked meat food products described above. Until FDA approves the use of ionizing radiation on other meat food products, including processed or cooked products, FSIS will not provide for the irradiation of such products.

In August 23, 1999, a consortium of organizations, including the National Food Processor's Association (NFPA), petitioned FDA to allow for the use of approved sources of ionizing radiation on processed meat food and poultry products. Because the irradiation treatment is intended to significantly reduce the levels of pathogens in food, FDA is reviewing this petition in an expedited clearance process. FSIS will cooperate with FDA in reviewing this petition. Further, On August 19, 1999, FSIS petitioned FDA to clarify that sources of ionizing radiation may be used on "hot-boned" (unrefrigerated) meat food products and to revise the dosage and packaging restrictions on the irradiation of poultry products for consistency. FDA also is reviewing these petitions in an expedited clearance process.

FDA is also working to expedite the process for reviewing packaging materials to be used during food product irradiation and FSIS will cooperate with FDA in reviews of such packaging for poultry and meat food products. Under its new Premarket Notification Program, FDA will continue to review all food contact substances, including food packaging materials intended for use during irradiation, but will no longer necessarily list those permitted in the Code of Federal Regulations.

In regard to the approval of food additives in meat food and poultry products, elsewhere in this issue of the **Federal Register**, FSIS has published a final rule (FSIS Docket No. 88–026F; "Substances Authorized for Use in the Preparation of Meat and Poultry Products") that ends duplicative approval by both FDA and FSIS. Requests to approve the use of food additives in or on meat food and poultry products not permitted now must be sent to FDA. Although FDA will receive and review such petitions, FDA also intends to amend its regulations to provide for FSIS review of petitions for uses of food additives in or on meat food or poultry products. These actions will eliminate the need for separate FSIS rulemakings. FSIS will limit substance-specific rulemakings to those necessary to establish prohibitions or limitations on the use of substances in meat food or poultry products that are necessary to protect public health or to achieve other consumer protection benefits, such as to prevent product misbranding.

In this final rule, FSIS is consolidating its regulations governing irradiation into a single set of generic regulations under new § 424.22(c), applicable to the irradiation of all types of meat food and poultry products (FSIS proposed separate, but identical sets of regulations for meat and poultry). Therefore, in the future, when FDA lists new uses of ionizing radiation on various types of meat food and poultry products, unless FSIS needs to establish a prohibition or restriction, establishments may immediately take advantage of the newly approved usage of irradiation without waiting for additional FSIS rulemaking.

Consumer Acceptance of Irradiation

Comment: Numerous industry groups argued that FSIS should actively promote irradiation and implement a consumer education program regarding its benefits.

Response: Recognizing the diversity of meat food and poultry products and processing environments, FSIS does not mandate or actively promote any single intervention or antimicrobial technology. The meat food and poultry product industries, as well as consumer and public health organizations, have the primary responsibility for promoting irradiation and educating the public about the benefits and limitations of irradiation. However, FSIS recognizes the potential of irradiation to safely and effectively reduce foodborne pathogens in meat food and poultry products and therefore is eager to provide for its use as one of the many antimicrobial treatments that may be used within a HACCP system.

Labeling

Comment: Numerous commenters requested that FSIS make its labeling requirements for irradiated meat food and poultry products identical with FDA's requirements. Several commenters noted that the proposed labeling requirements regarding placement of the statement and radura, as well as the proposed disclosure requirements for irradiated meat food or poultry ingredients contained in multi-ingredient products, are inconsistent with FDA labeling requirements and with the Food and Drug Administration Modernization Act (FDAMA) of 1997 (Pub. L. 105–115). Many commenters argued that the proposed requirements are unworkable and expensive and

therefore will prevent the wide scale adoption of irradiation. A few trade associations maintained that establishments producing multi-ingredient meat food and poultry products will have to maintain two sets of labeling, since they will not always be using irradiated meat food or poultry products as ingredients.

Commenters suggested numerous and varied revisions to the proposed labeling requirements:

- One trade association requested that FSIS require the radura but not the statement on product irradiated in its entirety;
- An irradiator suggested that FSIS not require the irradiation statement to be contiguous to the product name and argued that the radura should be voluntary;
- A few commenters requested that FSIS require "irradiated" to be part of the product name. One commenter suggested that FSIS should then eliminate other labeling requirements, while another suggested this be an additional requirement;
- Several commenters asked that FSIS require the radura with a qualified statement indicating the beneficial effects of irradiation;
- One commenter requested that FSIS allow labeling that indicates the source of radiation, i.e., gamma or machine source;
- One trade association suggested that multi-ingredient products containing irradiated meat food or poultry product ingredients be labeled with the radura and statement such as "contains beef products treated with irradiation;".
- One company maintained that the proposed labeling requirements for multi-ingredient products are inconsistent with FDA requirements in 21 CFR 101.100(a)(3)(i), which exempt from labeling disclosure "Substances that have no technical or functional effect but are present in a food by reason of having been incorporated into the food as an ingredient in another food, in which the substance did have a functional or technical effect."
- An irradiator suggested that there be no required disclosure in multi-ingredient products unless the irradiated component makes up more than 50% of the total product;
- One scientific organization argued that no irradiation labeling should appear on product irradiated before its final packaging. They contended that the treated product would not maintain the antimicrobial effects of irradiation and therefore, that any labeling implying otherwise would be misleading;
- Numerous individual consumers and consumer advocacy organizations commented in favor of explicit and conspicuous labeling disclosing that product has been irradiated or contains an irradiated ingredient. Two organizations submitted poll results suggesting that a majority of consumers are in favor of explicit and conspicuous disclosure of irradiation. Many of these commenters generally supported the labeling requirements FSIS proposed and opposed efforts at consistency with FDA regulations and the requirements of the FDAMA.
- Consumer advocacy groups and numerous consumers argued that, in the interest of the visually impaired, FSIS should not rescind the existing letter size requirements for the irradiation statement on treated poultry and should apply this same requirement to irradiated meat food products.
- One consumer advocacy group argued that multi-ingredient products with an irradiated poultry or meat food product ingredient making up more than 50% of the total weight should be labeled with the irradiation statement, as well as disclosure in the ingredient statement.

Response: FSIS proposed to require that the radura be contiguous to the irradiation statement and the statement to be contiguous to the name. In § 317.2(c)(1) of the regulations, FSIS requires that product names be on the principal display panel. Therefore, under the proposed regulations the statement and the radura would be required to be on the principal display panel. FDA, however, in response to the FDAMA, recently amended its regulations to clarify that the statement does not have to be any more prominent than the ingredients statement; that is, the statement and the radura can appear somewhere other than the principal display panel.

In response to comments and as part of an effort to make FSIS labeling requirements more consistent with those of FDA, FSIS will not require, as proposed, that the irradiation statement and the radura be any more prominent than the ingredients statement on the labeling of irradiated meat food and poultry products. Thus, the statement and the radura may appear somewhere other than on the principal display panel. The requirement in § 317.2(b) that any statement must be placed and in such terms so as to "render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use" will still apply to the irradiation statement, however. This requirement prohibits labeling of irradiated product in a manner that would intentionally mislead consumers.

FSIS disagrees with the comment that it should have letter size requirements for irradiation disclosure statements in the interest of the visually impaired. FSIS is working with FDA and other agencies to make food labeling regulations consistent. Maintaining the existing or proposing new letter size requirements solely for irradiated meat food and poultry products would counter these efforts. However, FSIS will continue to examine methods for improving the communication of food safety and other relevant information to all consumers.

Also in response to public comment, FSIS will allow the word "irradiated" to be part of the name of irradiated meat food or poultry product. FSIS will not require the irradiation statement on the labeling of product that has the word "irradiated" as part of its name. Having "irradiated" in a product name will be as meaningful to consumers as labeling irradiated product with the statement.

Although FDA does not exempt irradiated product from being labeled with the statement when "irradiated" is included in the product name, it is considering this issue as part of its ongoing reexamination of labeling requirements for irradiated foods. FDA recently solicited comment on possible revisions to the labeling requirements for irradiated food in an advance notice of proposed rulemaking ("Irradiation in the Production, Processing, and Handling of Food"; February 17, 1999; 64 FR 7834). During the comment period on for this notice, FSIS informed FDA of this revision to the labeling requirements for irradiated meat food and poultry products. If FDA ultimately does not adopt this labeling approach, FSIS will reassess its labeling requirements for irradiated products to determine how to best improve consistency between the requirements of the two agencies.

FSIS will allow labeling statements and claims regarding the beneficial effects of irradiation, provided they are truthful and not misleading. FSIS already has approved such claims for the labeling of irradiated poultry and FDA allows for such claims on the labeling of other irradiated foods. As proposed, any claims must be substantiated by processing documentation. The specificity and complexity of the documentation required will vary and depend on the specificity of the claim. For example, a general labeling claim, such as a statement that product was irradiated "to reduce pathogens such as *Salmonella*," could be easily

substantiated by the establishment's HACCP plan and monitoring records. *Salmonella* and other microbial pathogens would need to be identified as a hazard in the establishment's HACCP plan and plan validation and monitoring records would demonstrate the claimed reduction. If an establishment wished to claim that a particular pathogen had been eliminated from the product as a result of irradiation, more specific documentation substantiating this would be required. This type of claim is discussed further below in the response to comments concerning the claimed elimination of *E. coli* O157:H7 from an irradiated product.

FSIS will allow labeling statements disclosing the specific source of radiation (gamma or machine source). FDA already allows such statements on irradiated food (e.g. "Treated by electron beam irradiation").

FSIS is making final the proposed requirement that inclusion of an irradiated meat food product ingredient in any multi-ingredient product be reflected in the ingredient statement on the finished product labeling. The FMIA and PPIA, like the FFDCA, require that food labeling not be false or misleading. In determining whether labeling is false or misleading under these statutes, FSIS must consider not only representations made or suggested by elements of the label, but also the failure to reveal material facts in light of such representations.

FSIS views the irradiation of meat and poultry products as a "material fact" that must be disclosed in product labeling, even if the irradiated meat and poultry products are used as ingredients in multi-ingredient products. Under this final rule, establishments may irradiate meat food or poultry products only to control foodborne pathogens or to extend product shelf-life. In FSIS's view, effects on pathogen levels or product shelf-life, whether achieved in single-ingredient or multi-ingredient meat or poultry products, are material facts that would not be evident to consumers in the absence of labeling. Moreover, some, and probably much, of the antimicrobial effect and extension of shelf-life achieved through irradiation is likely to persist in irradiated meat and poultry used as ingredients in multi-ingredient products, especially considering that FSIS anticipates that products in which irradiated meat or poultry are likely to be used as ingredients are also likely to contain a significant amount of these ingredients.

Thus, FSIS concludes that irradiation of a meat or poultry ingredient in a multi-ingredient product must be disclosed. FSIS will, however, continue to monitor how irradiation is used. As new information based on experience in the marketplace becomes available, and should FDA approve other uses of irradiation for meat and poultry products, FSIS may revisit whether irradiation of ingredients for those uses is a material fact that requires disclosure.

FSIS disagrees with the comment that disclosure of the irradiated ingredient will mislead consumers about the product's safety because, according to the commenter, multi-ingredient products with irradiated meat or poultry ingredients would be no different microbiologically than those without. FSIS acknowledges that the antimicrobial effects of irradiation will be maintained at varying levels in a multi-ingredient meat food or poultry product, depending on the type of product, how it is processed, whether it is combined with other non-irradiated ingredients, or if specific microorganisms are reintroduced. However, some antimicrobial effect from the irradiation would be maintained in the irradiated meat food or poultry product ingredient and that would not be apparent to consumers without labeling.

FSIS disagrees with the comment that the this disclosure requirement is inconsistent with FDA regulations in 21 CFR 101.100(a)(3)(i), which exempt from labeling disclosure "Substances that have no technical or functional effect but are present in a food by reason of having been incorporated into the food as an ingredient in another food, in which the substance did have a functional or technical effect." FDA applies this requirement only to food ingredients. FDA consider sources of radiation to be additives, but not ingredients.

In regard to the possibility of requiring this disclosure on the basis of the percentage of the irradiated meat food or poultry product ingredient in a multi-ingredient product, FSIS, in cooperation with FDA, will continue to examine the issue. Although numerous commenters suggested labeling disclosure options based on a percentage, no data was submitted. FSIS is aware that Canada requires labeling disclosure only if the irradiated ingredient comprises more than 15 percent of a multi-ingredient product. FSIS is reviewing this Canadian policy.

FSIS could revise the labeling requirements in the future. In fact, as discussed in the next two comments and response, FSIS and FDA are considering the option of eventually revising some of the labeling requirements.

Comment: Numerous industry groups requested that FSIS plan to sunset all labeling requirements related to irradiation within 5 years or sooner. They note that FDA discusses this possibility in the recent notice (64 FR 7834).

Response: FSIS is consulting with FDA on this issue and will review the comments on the FDA notice. Central to the option of revising any of the labeling requirements will be consumer awareness and understanding of food irradiation. FSIS also will continue to assess the impact and effectiveness of its labeling requirements for irradiated meat food and poultry products. Interested persons may wish to submit information on this issue to FSIS.

Comment: A few commenters argued that labeling of irradiated product should be voluntary. They argued that demand for irradiated products will give producers and retailers incentive to disclose that their products were irradiated. Further, numerous commenters claimed that consumers will regard the statement and radura as a warning and not purchase the product and argued that irradiation, therefore, will not be widely adopted by industry. A few commenters claimed that if irradiation is not widely employed by the food industry as result of labeling requirements and other perceived regulatory impediments, significant reductions in foodborne illness will not occur.

Response: As explained above, to prevent misleading labeling, the FMIA, PPIA, and FFDCA require disclosure of facts material to food products. Irradiation can affect food in a manner that is not obvious to consumers in the absence of labeling. Antimicrobial effects, changes in product shelf-life, and in some cases, changes in characteristics of food (taste, smell, texture) can result from irradiation. FSIS views irradiation of meat and poultry, therefore, as a material fact that must be disclosed in product labeling. However, both FSIS and FDA are continuing to examine their labeling requirements and the options for revising these requirements so as to better convey information to consumers.

Although FSIS acknowledges that labeling may initially have some effect on consumer acceptance of irradiated meat food and poultry products, FSIS expects that as consumer awareness increases, the demand for these products will expand and the labeling will serve to promote these products. FSIS will continue to examine ways to remove regulatory impediments to

advances in food safety technologies, including irradiation, but it is the responsibility of industry to promote irradiated meat food and poultry products. FSIS does not agree that its labeling requirements will decrease the level of possible reductions in foodborne illness that may result from the use of irradiation. Potential reduction in foodborne illness are examined in detail below in the discussion of the economic impact of these regulations.

Comment: FSIS noted in the proposed rule that it had received a petition from NFPA regarding labeling requirements for irradiated food. In the petition, NFPA requested that FSIS address whether labeling requirements concerning the disclosure of irradiation are warranted for meat food and poultry products and how such labeling affects consumer acceptance of irradiation. In a subsequent comment on the irradiation proposal, NFPA demanded that FSIS publicly respond to each issue raised in its petition and ask for public comment on each issue, although they added that the FSIS's actions should not delay a final rule.

In its petition and subsequent comment, NFPA requested that FSIS address several labeling issues discussed elsewhere in this document, including: whether labeling of irradiated product is "constitutionally, statutorily, and scientifically unwarranted;" whether disclosure of radiation would contribute to unfounded apprehension among consumers and therefore preclude widespread use of irradiation; and whether FSIS and FDA labeling requirements for irradiated products should be identical. NFPA cited case law (*International Dairy Food Association* v. *Amestoy*, 92 F.3d 67, 73 (2d. Cir. 1996) and *Central Hudson Gas & Elec. Corp.* v. *Public Service Commission*, 447 U.S. 557 (1980)) in support of its argument that consumer desire to know how food was processed is not alone sufficient to justify mandatory disclosure of the processing. NFPA also requested that FSIS address whether irradiation is a material fact under section 403(a)(1) of the FFDCA; that is, should irradiated meat food or poultry products be labeled as such since otherwise, consumers would be unaware of the material fact that the products had been processed with radiation?

Response: All the labeling issues raised by NFPA in its petition and in its subsequent comment were also raised in other comments and FSIS has responded to them in this document. Furthermore, FDA has requested comment on these and other labeling issues in its recent notice and FSIS will review those comments. FSIS sees no need, therefore, to again solicit public comment on these labeling issues, and, NFPA did request that the response to their petition not delay any final regulations.

In response to NFPA questions regarding the legal basis for requiring disclosure, FSIS has reviewed the Supreme Court standards for governmental regulation of commercial speech as announced in *Central Hudson Gas & Elec. Corp.* v. *Public Service Commission* and summarized in the dissenting opinion in *International Dairy Food Association* v. *Amestoy:*

> At the outset, commercial speech enjoys no First Amendment protection at all unless it is not misleading (and related to lawful activity). If the speech passes that test, it is nonetheless subject to regulation if the government has a substantial interest in regulating the speech, the regulation directly advances that interest, and it is no more intrusive than necessary to accomplish its goal. 447 U.S. at 566, 100 S.Ct. at 2351. The Supreme Court later clarified that government's power to regulate commercial speech includes the power to compel such speech. *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626, 651, 105 S.Ct. 2265, 2281–82, 85 L.Ed.2d 652 (1985).
>
> *International Dairy Food Association* v. *Amestoy*, 92 F.3d 67, 77 (2d. Cir. 1996).

FSIS does have a substantial interest in requiring the disclosure that meat or poultry products have been irradiated; such irradiation is a material fact that must be disclosed to consumers through labeling to avoid deception, since it can affect the meat or poultry products in a manner that is not obvious to consumers in the absence of labeling. Disclosure of irradiation through labeling is the most direct way to advance this interest. FSIS believes that the labeling requirements contained in this regulation are the least intrusive possible, but still accomplish the goal of disclosure. Therefore, FSIS is requiring labeling that indicates meat and poultry products have been treated with irradiation.

Comment: Numerous industry and academic commenters requested that FSIS allow alternative, euphemistic statements on irradiated products that would be more appealing to consumers, such as "cold," "electronic," and "ionizing" pasteurization. Several of these commenters cited or submitted consumer polling data to support the use of their claims. One food processor suggested that any euphemistic labeling statements containing the word "pasteurization" be contingent upon specific levels of pathogen reductions. Consumers and consumer advocacy organizations, for the most part, maintained that alternative and euphemistic statements would be misleading and erroneous and opposed them.

Response: FSIS will review, on a case-by-case basis, labels with alternative or euphemistic statements regarding irradiation. FSIS is requiring, however, that labels of meat food or poultry products that have been irradiated in their entirety be labeled with statements such as "Treated with irradiation" or "Treated by irradiation," or, that the word "Irradiated" be part of the product name. FSIS will allow the terms "cold," "electronic," and "ionizing" to be used in conjunction with term "irradiation," if truthful.

At this time, however, labeling statements or claims for irradiated product that include the term "pasteurization" probably would be misleading. "Pasteurization" implies the destruction of all vegetative microorganisms in the product as a result of irradiation. At the maximum dosages allowed by FDA and FSIS, it would be highly unlikely that all of the vegetative microorganisms in irradiated product would be destroyed.

For example, an establishment irradiates refrigerated, raw beef round or chuck using a gamma radiation source. They determine that they will achieve a 2:1 overdose ratio [1] using the maximum allowed dosage of 4.5 kGy. That is, the irradiation treatment will achieve at least a minimum absorbed dosage of 2.25 kGy throughout the product.

According to the International Consultative Group on Food Irradiation [2], the dosage necessary to eliminate 90 percent of *Salmonella* sp. in a gram of product (the "D value," which is equivalent to 1-$\log_{10}$), ranges from 0.48 kGy to 0.7 kGy. Therefore, this establishment, by achieving a minimum absorbed dosage of 2.25 kGy throughout the product, also would effect a minimum reduction of *Salmonella* sp. ranging between 4.7-$\log_{10}$ and 3.2-$\log_{10}$ per gram of product, throughout the product. These hypothetical reductions are significant

[1] Product shape, density, and its distance from the source of radiation, as well as other factors, influence the absorbed dosage in an irradiated product. Therefore, it is difficult to achieve a uniform absorbed dosage in irradiated products, especially if the product is densely packed in large quantities. To achieve specific absorbed dosages of radiation in treated products, irradiators calculate a maximum/minimum "overdose ratio." Using this ratio they are able to irradiate product so as to accurately predict that while some of the treated product will have absorbed the maximum dosage, all will have absorbed at least the minimum dosage.

[2] International consultative Group on Food Irradiation, "Irradiation of red meat: A compilation of technical data for its authorization and control," August 1996.

and would greatly reduce the risk of foodborne illness from treated product. However, these reductions are well below the levels necessary to achieve a ready-to-eat roast beef product. FSIS recently established that it is necessary to achieve at least a 6.5-$\log_{10}$ reduction of *Salmonella* sp. throughout a roast beef product to consider that product ready-to-eat (64 FR 732; 9 CFR 318.17).

FSIS acknowledges that if an establishment were to greatly minimize the pathogen load on incoming whole muscle meat product, it could possibly use irradiation combined with stringent process controls to produce a ready-to-eat, though uncooked, meat product, such as steak tartar. In such a case, irradiation would effectively pasteurize the product. FSIS would allow "pasteurized" to be in the labeling statement on such a product. However, under the current regulations, FSIS would require that the product also be labeled with statements such as "Treated with irradiation" or "Treated by irradiation," or, that the word "Irradiated" be part of the product name. FSIS will continue to examine these requirements in light of developments in irradiation technology and FDA policy.

Comment: Commenters from industry overwhelmingly supported incentive labeling (labeling claims regarding the benefits of irradiation) and most suggested that FSIS clarify what types of substantiating documentation would be required for using it. Most consumer advocacy groups expressed concerns about incentive labeling and requested that FSIS require stringent levels of pathogen reduction as prerequisites for making any claims, as well as regular microbial testing. One group argued that FSIS should allow claims only on product irradiated in its final packaging.

All of the consumer advocacy groups that commented, as well as a few industry commenters, opposed the use of labels claiming that a product is "free" of any pathogen as a result of irradiation treatment. Many cited concerns about post-processing contamination of treated and labeled product. Several commenters argued that consumers, misled by labeling claims, would mishandle treated product, believing that it is free of all pathogens.

One consumer advocacy organization suggested that FSIS put in place special "trace back" mechanisms for irradiated product. The organization is concerned that consumers, misled by claims concerning the efficacy of irradiation, may mishandle irradiated product that still contains pathogens. Special "trace back" mechanisms would ensure that establishments label irradiated products so as not to mislead consumers regarding the safety of those products.

Response: As proposed, FSIS will allow labeling statements on irradiated meat food and poultry products that indicate general or specific reductions in microbial pathogens, provided they can be substantiated by processing documentation. The amount and specificity of the required documentation will vary depending on the statement or claim.

Also in the proposal, FSIS discussed the possibility of product being labeled as "free" of the pathogen *E. coli* O157:H7:

> Several representatives of the meat and poultry industries have stated to FSIS that they would like to label product as being free of certain pathogens as a result of irradiation, *e.g.*, "Free of *E. coli* O157:H7." It may be possible for an establishment to determine the pathogen load on incoming product, irradiate the product to completely eliminate those pathogens with an appropriate margin of safety, and ensure that the product remains free of that pathogen until it reaches the consumer. FSIS requests comment on whether to allow this type of incentive labeling. Specifically, FSIS is interested in whether it should establish performance standards for labeling statements that reflect a specific reduction of pathogens. For example, FSIS could require that to use such labeling, establishments must achieve, through a validated HACCP system incorporating irradiation, a specific reduction of a pathogen of concern (*e.g.*, an x-$\log_{10}$ reduction of *E. coli* O157:H7).
>
> (64 FR 9094)

Irradiation, as provided for in this rule, could eliminate *E. coli* O157:H7 from products with an appropriate margin of safety. Therefore, FSIS will allow labeling of sufficiently irradiated product to state that processing has been conducted to eliminate *E. coli* O157:H7. As with any labeling statement that claims a specific reduction of pathogens resulting from irradiation, FSIS is requiring establishments claiming that *E. coli* O157:H7 has been eliminated from their products to have processing documentation substantiating this.

FSIS agrees with commenters that stringent processing controls (probably including monitoring of pathogen load on incoming product and the prevention of product recontamination and post processing temperature abuse) would be needed to substantiate a label claiming that a product was "free" of *E. coli* O157:H7. FSIS will expect establishments that treat product known to be adulterated with *E. coli* O157:H7 to implement such controls. FSIS emphasizes that it will closely assess any requests for labeling that a product is free of *E. coli* O157:H7 and, through inspection, will verify that processes to eliminate the pathogen are under control.

FSIS does not now have the data necessary to establish in the regulations a minimum level of reduction of *E. coli* O157:H7 that establishments must achieve in order to label products as being free of *E. coli* O157:H7. The FSIS Office of Public Health and Science currently is conducting a risk assessment concerning *E. coli* O157:H7. Using the results of this risk assessment, as well as other data that may be developed, FSIS may, in the future, propose to require that any such labeling claims be used only if establishments achieve a specific, minimum level of reduction of *E. coli* O157:H7 within treated product.

In the interim, establishments may want to note that for certain ready-to-eat products, establishments have been processing to achieve a 5-$\log_{10}$ reduction in *E. coli* O157:H7. For example, the cooking requirements for meat patties in § 318.23 of the regulations achieve an approximate 5-$\log_{10}$ reduction in *E. coli* O157:H7 and that compliance with the regulations in this section results in the production of a ready-to-eat meat patty. Further, since 1995, FSIS has encouraged establishments manufacturing ready-to-eat fermented sausage products to implement processes validated to achieve at least a 5-$\log_{10}$ reduction of *E. coli* O157:H7. Several outbreaks of food borne illness attributable to *E. coli* O157:H7 in fermented, shelf-stable sausage products led FSIS, in cooperation with the Agricultural Research Service, meat and poultry industry representatives, and members of the National Advisory Committee on Microbiological Criteria for Food (NACMCF) to develop a policy for ensuring the safety of ready-to-eat fermented sausages. This group developed several processing options that would ensure a 5-$\log_{10}$ reduction of *E. coli* O157:H7 in fermented sausages. In an August 21, 1995 correspondence, FSIS wrote to establishments producing fermented sausages and strongly encouraged that they implement one of the validated processing options contained in the document or that they validate their processes to ensure the processing used achieves at least a 5-$\log_{10}$ reduction of *E. coli* O157:H7. This specific level of reduction may not be adequate for all products or processes and establishments should carefully evaluate the specific product and processes at issue when developing treatments to eliminate *E. coli* O157:H7 from meat products.

In regard to consumer perceptions regarding pathogen reduction claims,

irradiated raw ground beef still must carry the safe handling instruction, regardless of the claimed pathogen reduction. FSIS recognizes that it may be asked to reconsider its requirements regarding safe handling instructions in the event establishments develop methods to pasteurize raw meat food and poultry products through irradiation or other means.

Comment: One commenter requested that FSIS permit irradiated meat and poultry to be labeled as being "organic." A comment from an organic food cooperative opposed any such designation.

Response: The Organic Foods Production Act (OFPA) of 1990 requires USDA to develop national standards and regulations for organically produced agricultural products and to assure consumers that agricultural products marketed as "organic" are consistent with these standards. The OFPA also provides for USDA to establish an organic certification program based on recommendations received from a 14-member National Organic Standards Board (NOSB). Although the OFPA did not specifically address the use of irradiation, the NOSB has recommended, consistent with most existing State and private certification agency organic standards, that the use of irradiation be prohibited in handling organic products. This issue is most appropriately resolved in the agency rulemaking process under OFPA.

Comment: Several industry groups recommended that FSIS explicitly allow product irradiated at a separate establishment to be fully labeled before shipment to that facility. One trade organization asked that FSIS no longer require such product to be shipped under seal. Several industry commenters requested that FSIS specifically exempt irradiation facilities from using their marks of inspection over those of the originating plant and instead allow the irradiator to use a separate stamp, so as to facilitate trace-back.

Response: Meat food or poultry products may be packaged and labeled as being irradiated before shipment to an irradiation facility, provided that the shipping establishment implements controls to prevent the labeled, but as yet not irradiated, product from being distributed to consumers. Most establishments could control the shipment of such product through the maintenance and verification of records, such as bills of lading. FSIS inspection personnel will verify that these controls are implemented.

FSIS does not and will not require irradiators or other processors to place their marks of inspection over those of the establishments from which the product originated. In regard to which inspection legend and establishment number would be placed on an irradiated product, different scenarios are possible. For example, if bulk shippers of trimmings or cuts are received by an irradiator, irradiated, and then repackaged in smaller units such as retail trays, the irradiator will be required to declare its establishment number on the retail package. However, if an irradiator receives packaged and labeled products for irradiation, the legend and number of the originating establishment will be declared on the retail package label. FSIS would expect that the irradiator would place its legend on the shipper container in which it packs the product, even if the irradiator uses the same shipper in which the product was received. In all cases, every establishment that processes the product must maintain records, as part of its HACCP paperwork, showing where the product originated, where it was processed, and where it was distributed for consumption. Any necessary trace-back will be facilitated by review of these records.

Comment: Numerous consumers requested that FSIS extend required disclosure to restaurants and institutions that serve irradiated meat food and poultry products.

Response: Historically, FSIS has not extended its regulations regarding meat food and poultry product labeling or misbranding to restaurant and institutional menus. Requiring and enforcing disclosure that restaurant or institutional food has been irradiated would require a heavy expenditure of Agency resources for as yet indeterminate benefits. FSIS will continue to examine this issue. FSIS is aware that a restaurant in Florida has been disclosing on its menu that it serves irradiated poultry products. Possibly, other restaurants and institutions may want to disclose this information for marketing or other purposes.

Technical Concerns

Comment: One commenter stated that the hypothetical reduction of *E. coli* O157:H7 given in the preamble is misleading, as it does not take minimum/maximum ratios into account.

Response: The example of pathogen reduction given in the preamble was hypothetical and intended to emphasize the potential effectiveness of irradiation against pathogens. This level of reduction would be possible under the permitted dosages, though costly and probably unnecessary.

Comment: Several commenters requested that FSIS clarify its proposed training requirements for irradiation facility managers and "key personnel." One commenter claimed that existing short courses available in North America are inadequate because they either concern only electron beam irradiation or are too simplistic and argued that "in-house" training should satisfy the intent proposed requirement. Another requested clarification as to who "key personnel" are and suggested that the "key personnel" include the facility manager, QC manager, an external consultant, or corporate management.

Response: FSIS proposed to require establishments that irradiate meat food products to have on file "certification by the operator that the irradiation facility personnel would operate under supervision of a person who has successfully completed a course of instruction for operators of food irradiation facilities," as well as "certification by the operator that the key irradiation personnel have been trained in food technology, irradiation processing, and radiation health and safety." These requirements already are in effect for poultry establishments.

The intent of the first training requirement is to ensure that supervisors of irradiation facilities gain an understanding about the process controls necessary when irradiating food, as well as the requirements set forth in FSIS regulations. FSIS is aware of numerous irradiation facilities that plan to irradiate meat food and poultry products, but that have previously irradiated only medical devices and other non-food products. Supervisors of such establishments certainly need and would benefit from food irradiation training.

The second training requirement is intended to ensure that "key" personnel in an establishment also have instruction in the safe and proper operation of an irradiation facility. Key personnel would include managers, supervisors, or other personnel of the facility who monitor or control daily operations. Key personnel must be knowledgeable about the environmental safeguards and worker safety precautions necessary in any irradiation facility and required by other Federal and State agencies. FSIS is revising § 424.22(c)(3)(vi) to clarify the term "key irradiation personnel."

FSIS is aware of several available food irradiation training courses, but does not intend to review or endorse any specific training course. Further, FSIS

agrees that in-house training in food irradiation or radiation safety could be adequate to meet the requirements. FSIS will verify that establishments have records confirming that the required training was received by the establishment personnel.

Comment: One irradiator objected to proposed §§ ((318.11(b)(6) and 381.149(b)(6) which appear to prescriptively specify minimum dosimeter placements. They suggested FSIS instead allow for statistically based validation and dose mapping to determine the number and placement of dosimeters.

Response: FSIS agrees and will revise the requirement in § 424.22(c)(2)(vi) accordingly. FSIS recommends that establishments consult some of the various technical guides on dosimetry when developing their systems. The American Society for Testing and Materials and the International Consultative Group on Food Irradiation both have published guides on food irradiation dosimetry.

Comment: Another irradiator asked that FSIS revise proposed §§ 318.11(b)(7) and 381.149(b)(7) to account for dosimetry from machine sources of radiation.

Response: The proposed provisions (a single provision in this final rule, § 424.22(c)(2)(vii)) did account for machine sources of irradiation in that they required establishments to have in place "Procedures for verifying the relationship of absorbed dose as measured by the dosimeter to time exposure of the product unit to the radiation source." The radiation source could be a machine source of radiation, such as an electron beam accelerator. This requirement remains unchanged.

Comment: One commenter suggested that establishments employing irradiation be exempted from pathogen reduction (*Salmonella*) and process control microbial testing (generic *E. coli*) requirements for raw meat food and poultry products. This commenter argued that irradiation will reduce pathogens to immeasurable levels and testing would therefore be unnecessary. The commenter also maintained that such an exemptions would bring about cost savings to industry in excess of $100 million.

Response: FSIS disagrees. The microbial testing requirements are still necessary for measuring an establishment's performance in process control and pathogen reduction, even if an establishment irradiates its product. Establishments may irradiate product at any point in their processing system, including before the required testing for *Salmonella* or generic *E. coli*. Irradiation of raw product before testing could not only significantly improve a single establishment's performance, but also could lower the national baselines, compelling improvements in process control and pathogen reduction by all establishments. Although rescission of these testing requirements (or any regulatory requirements, for that matter) might result in cost savings to the regulated industry, FSIS has determined that these requirements are a necessary and cost-effective means for improving the safety of meat food and poultry products.

Costs and Benefits of Irradiation

Comment: A few commenters recommended revisions to the Agency's cost/benefit and economic impact analyses in the proposal. One commenter questioned FSIS's estimate of the cost of shipping irradiated products, arguing that the Agency underestimated the costs by an order of magnitude. Several commenters maintained that the required labeling would be perceived by consumers as a warning and, as discussed, would prevent the wide-scale acceptance of irradiated product. Many of these commenters argued that labeling should be voluntary, since demand for irradiated products would create adequate incentives for labeling.

Response: FSIS addresses the comments and reviews the submitted cost data below in the economic impact analyses.

Summary of the Final Rule

FSIS is amending it regulations to provide for irradiation of uncooked meat food and poultry products under the following conditions:

- Meat food products may be treated with ionizing irradiation, for purposes of reducing pathogens and extending shelf-life, at dosages up to 4.5 kiloGrays (kGy), if refrigerated, and 7 kGy, if frozen.
- Establishments may irradiate meat food and poultry products only in accordance with a HACCP system.
- Establishments that irradiate meat food products must have in place a dosimetry system to measure the absorbed dose of radiation.
- Establishments that irradiate meat food products must have on file documents that relate to other compliance with the requirements of Federal Agencies with jurisdiction over irradiation, such as NRC and OSHA.
- Labeling of meat food and poultry products irradiated in their entirety must bear the international radura logo. Also, either the product name must include the word "Irradiated" or the labeling must bear a disclosure statement such as "Treated with radiation" or "Treated by irradiation." The logo must be placed in conjunction with the disclosure statement, if the disclosure statement is used. The radiation disclosure statement is not required to be more prominent than the declaration of ingredients.
- The inclusion of irradiated meat food or poultry product in a multi-ingredient product must be reflected in the ingredient statement on the finished product labeling.
- Optional labeling statements about the purpose for radiation processing may be included on the product label in addition to the above stated requirements. Statements that there has been a specific reduction in microbial pathogens must be substantiated by processing documentation.
- The regulations governing the irradiation of poultry products are now entirely consistent with the regulations governing the irradiation of meat food products but for the maximum dosage allowed (3 kGy) and the requirement that if packaged poultry product is irradiated, that packaging must be air permeable.

Risk Analysis

Section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (P.L. 103–354) requires any regulation published by USDA concerning human health, safety, or the environment, and having an annual economic impact of at least $100 million in 1994 dollars, contain a risk assessment and cost-benefit analysis. The risk assessment and cost-benefit analysis must be "performed consistently and use reasonably obtainable and sound scientific, technical, economic, and other data." The USDA Office of Risk Assessment and Cost-Benefit Analysis (ORACBA), also established by the 1994 Act, must ensure that major rules include such analyses.

ORACBA and FSIS have agreed that FDA has already conducted a definitive risk analysis concerning the safety of meat food products treated with ionizing radiation in developing their final rule, "Irradiation in the Production, Processing and Handling of Food" (62 FR 64107; December 3, 1997). Therefore, FSIS and ORACBA are adopting the FDA finding as their risk assessment. Further, FSIS and ORACBA also have agreed that the cost-benefit and economic impact analyses that FSIS has performed for this final rule, as required by E.O. 12866 and the Regulatory Flexibility Act, satisfy the cost-benefit analysis requirements of the

Reorganization Act. Consequently, FSIS, with assistance from ORACBA, has produced only an analytical literature review addressing existing research and risk assessments on the safety of food irradiation for consumers and the related risks posed by irradiation, including worker safety and environmental concerns. This literature review is available from the FSIS Docket Clerk's Office (see ADDRESSES above) and from the FSIS Internet world wide web page at http://www.fsis.usda.gov/OA/topics/irrad-risk.htm.

In this document, FSIS is revising the current regulations governing the irradiation of poultry to make them more consistent with the proposed regulations for meat and with HACCP. These revisions to the poultry regulations would pose no new risks to human health or worker safety and do not concern the environment. Therefore, FSIS has not addressed these changes in a separate risk assessment or in the above mentioned literature review.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect.

Under this rule, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves a decision of an FSIS program employee relating to inspection provided under the FMIA and the PPIA.

Compliance With Executive Order 12866—Final Analysis

This action has been reviewed for compliance with Executive Order 12866. As this action is determined to be economically significant for purposes of Executive Order 12866, the Office of Management and Budget has reviewed it.

FSIS is amending its meat inspection regulations to allow for the safe use of ionizing radiation for the treatment of meat, meat byproducts, and certain other meat food products. FSIS also is revising the existing regulations governing the irradiation of poultry so as to render them more consistent with the proposed regulations for meat. In the proposal preceding this final action, FSIS requested comment concerning the potential economic effects of the proposed regulations, as well as data concerning the costs of and benefits from irradiation of meat and poultry. FSIS received only a few comments that included economic data or questioned the economic analysis included in the proposal. These comments are addressed below.

FSIS believes that the net benefits of this action will be positive. As discussed in the preamble, irradiation can reduce the levels of pathogens in meat food and poultry products significantly. Further, the use of irradiation is voluntary. If an establishment chooses to irradiate its meat food products, it can be assumed from the establishment's decision to incur the expense of irradiation that it expects the economic benefits of the investment in irradiation to exceed the costs of that investment. However, the current lack of quantification of both the benefits and costs of irradiation make comparison difficult.

FSIS endeavors to develop regulations that set forth performance objectives, rather than prescribe specific processing methods. For the irradiation of meat food products, and where possible, for the irradiation of poultry products, FSIS proposed requirements that allow for significant flexibility in integrating irradiation into processing operations. In this final rule, FSIS has been able to provide for even greater flexibility through revisions based upon the comments received in response to proposal.

Although FSIS recognizes the capability of irradiation treatment to reduce pathogens below current regulatory performance standards for pathogen reduction, these regulations do not change the existing performance standards. With standards unchanged, the primary benefit of the regulations to establishments is the increased processing flexibility they are allowed with this rule.

Alternatives

Executive Order 12866 requires that FSIS identify and assess alternative forms of regulation. FSIS considered two alternatives to the proposed regulation: (1) Not allowing for the irradiation of meat food products and (2) allowing the irradiation of meat food products only under very limited conditions, similar to those previously prescribed for the irradiation of poultry products. FSIS rejected these two alternatives for reasons explained below.

FSIS did not consider alternatives that would not be permissible under current FDA regulations, such as allowing irradiation at higher doses or allowing the irradiation of ready-to-eat meat and poultry products. FSIS believes that the regulations in this final rule are the most permissive possible under current FDA regulations. Also, as explained in the preamble above, FSIS has petitioned FDA to raise the allowable absorbed dosage for poultry, to remove certain requirements regarding the packaging for irradiated poultry, and to specifically allow the irradiation of unrefrigerated ("hot-boned") meat food products. Further, an industry consortium has petitioned FDA to allow the irradiation of processed meat and poultry products.

No Action

Central to the FSIS food safety strategy are efforts to reduce the level of microbiological pathogens in raw meat and poultry products. Irradiation has been shown to be a highly effective method for reducing the levels of microbiological pathogens in raw meat food products. Further, FDA has concluded that irradiation of meat food products, under the conditions requested by Isomedix, Inc. and granted by FDA, would not present toxicological or microbiological hazards and would not adversely affect the nutritional adequacy of these products. FSIS, therefore, sees compelling reasons to provide for the irradiation of meat food products and has rejected the option of disallowing irradiation.

Notably, the irradiation of meat food products is voluntary. Although it is an effective antimicrobial treatment, irradiation may not be appropriate, feasible, or affordable in certain processing environments. Also, in certain situations, other antimicrobial treatments may be more effective. FSIS, therefore, is not requiring that raw meat food products be irradiated.

Irradiation of Meat Food Products Under Limited Conditions

The previous requirements governing the irradiation of poultry were fairly prescriptive in that they mandated a minimum dosage and required that only packaged product be irradiated. FSIS could have proposed similar requirements for the irradiation of meat food products. However, as explained above, FSIS believes that the previous requirements mandating minimum dosages and packaging for irradiated poultry products, originally intended to ensure that the effects of irradiation were maintained, are no longer necessary in light of the new HACCP requirements. Therefore, FSIS is making final no minimum irradiation dose and no specific packaging requirements for meat food products, rescinding the minimum dose requirements for irradiated poultry, and revising the packaging requirements for poultry, where possible.

Benefits

FSIS has concluded that the meat industry may accrue numerous benefits from the use of irradiation. As with other antimicrobial treatments, FSIS is allowing irradiation to be used at any point within a HACCP system and is requiring no minimum dosage. Establishments employing irradiation may accrue benefits from this flexibility. For example, slaughter establishments will gain added flexibility in treating products so as to meet pathogen reduction performance standards. Similarly, processors may use irradiated meat in further processed products.

Further, through the use of irradiation, product shelf-life can be increased. Andrews, *et al.* (1998), reviewed five studies encompassing shelf lives of different types of red meat products.[3] Their results suggest that shelf life of products treated with irradiation increase considerably compared to untreated products.

Society also may realize benefits from these final regulations if the use of irradiation results in a reduction of illnesses beyond what is achieved by current technologies. Several types of harmful microbial pathogens can be present in meat food products, including *E. coli* O157:H7, *Salmonella*, *Clostridium perfringens*, and the protozoan parasite *Toxoplasma gondii*. Irradiation at the dose levels allowed by this action can reduce the levels of these pathogens substantially. Economic benefits associated with these reductions would be decreases in the diseases associated with these pathogens. The reductions in the disease rates would translate into a reduction in the number of visits to physicians and hospitals.

FSIS believes that ground beef is likely to be the first meat product irradiated in great quantity. It is likely that ground beef will be irradiated in relatively large quantities initially because irradiation is a means for establishments to effectively eliminate *E. coli* O157:H7 from raw ground beef without cooking it. Following a 1993 outbreak of food borne illness associated with *E. coli* O157:H7 in hamburger, FSIS implemented a policy under which it considers raw ground beef containing *E. coli* O157:H7 to be adulterated. Until now, establishments could distribute ground beef containing *E. coli* O157:H7 only after they had thoroughly cooked it, so as to eliminate the pathogen. Establishments, therefore, are likely to benefit from the availability of irradiation as an additional treatment for rendering adulterated raw ground beef product safe. Of course, other types of raw meat and poultry products also may be irradiated to reduce or eliminate pathogens.

To give some sense of the potential benefit from the reduction of illnesses that may occur as a result of the irradiation of ground beef, a USDA Economic Research Service study on the use of irradiation to reduce *E. coli* O157:H7 and *Salmonella* in ground beef, conducted before the implementation of HACCP, is instructive. In that study, Morrison, *et al.* (1997), estimated the annual pre-HACCP economic value of the health costs and productivity losses attributable to *E. coli* O157:H7 and salmonellosis to be between $226 and $552 million.[4] If 25 percent of all ground beef were irradiated, the benefits could range between $56.5 and $138 million.

An assumption that only 25% of ground beef will be irradiated may be conservative in light of a 1993 survey, conducted by the American Meat Institute Foundation, which reported that 54 percent of respondents said that they would buy irradiated beef rather than non-irradiated beef after being told that irradiation can kill pathogens in raw meat.[5] This survey also reported that 60 percent of respondents said that they were willing to pay ten cents more per pound for hamburger sold at $2/lb. if bacteria levels were "greatly reduced by irradiating the meat."

One consumer advocacy organization requested clarification regarding FSIS use of the estimates of benefits from Morrison (1997). The group questioned whether Morrison assumed that ground beef would be irradiated only after final packaging, as was required for poultry irradiated at the time of the study. The group suggested that if Morrison made such an assumption, the estimated reductions in foodborne illness would be inflated if applied to the proposed regulations, which allow ground beef to be irradiated before final packaging. The group claimed that because the ground beef could be re-contaminated after irradiation and before final packaging, reductions in pathogens and consequently, foodborne illness, would not be so high.

FSIS disagrees. Morrison did not specify whether their estimates of benefits applied only to ground beef irradiated in its final packaging. However, FSIS is allowing meat and poultry product to be irradiated only in accordance with a HACCP system of process controls, regardless of when it is packaged. HACCP controls will considerably lessen, and likely prevent, the possibility that meat and poultry product will be re-contaminated after irradiation and before packaging. Therefore, these estimates of reductions in foodborne illness are applicable to these final regulations.

Another commenter suggested that the proposed labeling requirements could prevent the wide-scale acceptance of irradiated products by consumers, who will view the required labeling as a warning, and therefore diminish the potential benefits from reductions in foodborne illnesses. This commenter suggested the use of voluntary instead of mandatory labeling and argued that demand for irradiated product will give producers and retailers incentive to disclose that their products were irradiated.

As discussed above, disclosure of facts material to food products is required by the FMIA, PPIA, and the FFDCA. Irradiation can affect food in a manner that is not obvious to consumers in the absence of labeling and therefore is a material fact that must be disclosed to consumers to prevent misleading labeling. FSIS is requiring that irradiation of meat or poultry products be disclosed in product labeling. FSIS will consider, however, revising some or all of its labeling requirements as consumer awareness grows.

FSIS has made some revisions to the proposed labeling requirements that

[3] Andrews, L.S., *et al.* "Food Preservation Using Ionizing Radiation," *Review of Environmental Contaminant Toxicology*, Vol. 154, 1998, pp. 1–53.

[4] Morrison, R.M., *et al.*, "Irradiating Ground Beef to Enhance Food Safety," *Food Review*, January–April 1997, pp. 33–37.

[5] American Meat Institute Foundation, "Consumer Awareness, Knowledge, and Acceptance of Food Irradiation," November, 1993.

will increase flexibility for processors and could represent some minimal cost savings. First, FSIS is requiring that single ingredient meat or poultry products irradiated in their entirety be labeled with a radura and either a statement indicating that the product was irradiated or the inclusion of the word "irradiated" in the product name. Allowing establishments to use the word "irradiated" as part of the product name instead of including a labeling statement was suggested in industry comments as a means of providing more labeling flexibility.

Also, in response to comments and as part of an effort to make FSIS labeling requirements more consistent with those of FDA, FSIS will not require, as proposed, that the irradiation statement and the radura be any more prominent than the ingredients statement on the labeling of irradiated meat food and poultry products. Thus, the statement and the radura may appear somewhere other than on the principal display panel.

Finally, the same commenter estimated the annual net social welfare gains from irradiation, without HACCP, to be $900 million, *i.e.*, almost ten times the benefits presented above. This higher estimate of benefits was based on an assumption that demand for irradiated ground beef would be similar to the potential demand for irradiated poultry as estimated by Fox and Olson (1998) from market surveys conducted between 1995 and 1996.[6] FSIS views this comment as further evidence that there could be benefits in excess of the health costs savings estimated by Morrison (1997).

Incremental Costs

In the proposed rule, using estimates from Morrison (1997) and other sources, FSIS estimated the incremental costs of irradiation to range from 2 to 6 cents/lb. of ground beef in 1995 dollars. These estimates included the cost of labels and of transportation of the ground beef products from establishments to third-party irradiators. Assuming that 25 percent of the total annual sales of ground beef (1.75 billion lbs.) would be irradiated, FSIS estimated the annual cost of irradiation to range from $35 to $105 million in 1995 dollars.

These costs are likely to be overestimated for two reasons. First, the cost estimates are based on the assumption that irradiation of ground beef would take place in the smallest plants, which have the capacity to irradiate only 52 million pounds per year. Second, FSIS assumed that only 25 percent of ground beef would be irradiated. Any increase in the irradiated quantity would tend to reduce costs considerably.

Buzby and Morrison[7] (1999) recently published updated cost estimates for ground beef for irradiation. They employed two estimates of costs, 1.6 cents/lb. and 5.0 cents/lb. in 1996 dollars. Again assuming that 25 percent of ground beef would be irradiated, they estimated that the costs of irradiation would range from $28.6 million to $89.3 million. Their new estimates fall within the range of costs estimated by FSIS in the proposed rule.

In the analysis included with the proposal, FSIS assumed the costs of transporting ground beef from slaughter houses or processing plants to and from irradiating facilities to be 0.2 cents/lb. A commenter suggested that this estimate was "too low by more than one order of magnitude." In response to this comment, FSIS recalculated the transportation costs to be twice the amount originally estimated, that is 0.4 cents/lb. instead of 0.2 cents/lb. This assumption would increase the irradiation costs to range from 2.2 to 6.2 cents/lb. FSIS believes that these possible cost increases are too small to significantly decrease the net benefits of meat irradiation.

In conclusion, although FSIS has incomplete data regarding the costs and benefits of the rule, FSIS believes that the net benefits of this action will be positive. As discussed above, irradiation can reduce the levels of pathogens in meat food and poultry products significantly. Further, the meat industry may accrue numerous benefits from the use of irradiation.

Compliance With Regulatory Flexibility Act of 1996

The Administrator has determined that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–612), this final rule will not have a significant economic impact on a substantial number of small entities.

Data from the U.S. Bureau of Census, Survey of Industries, 1994, indicate that the beef industry is predominated by small firms and establishments. For example, based on the U.S. Small Business Administration definition of small business by the number of employees (fewer than 500), 96% of 1,226 firms comprising this industry are small. Similarly, 90% of individual meat establishments or plants in this industry are small. In 1994, these small businesses accounted for 19% of total employment in the industry. Their share of payroll was 18% of the total payroll of $2.8 billion and their revenues were 16% of the total revenues of $55.8 billion. FSIS believes that these small businesses will not be affected adversely by the irradiation requirements because the use of irradiation is voluntary.

The industry may be able to pass through the cost of irradiation to consumers without losing its market share significantly because demand for beef products is very inelastic. Huang (1993) analyzed a group of meats and other animal proteins consisting of products including beef and veal, pork, other meats, chicken, turkey, fresh and frozen fish, canned and cured fish, eggs and cheese. He concluded that price elasticity of demand for this group of products was (−0.3611), *i.e.*, a one percent increase in price of these products would reduce demand by only 0.3611 percent.[8]

Review of about a dozen recent studies annotated by William Hahn of the Economic Research Service reveals that estimates of price elasticity of demand for most beef products (ground beef, steak, chuck roast, etc.) is less than one.[9] An increase in price of any one these products by one percent would result in a decrease in its demand by less than one percent. In short, consumers are unlikely to reduce their demand for beef significantly when beef price is increased by a few pennies a pound.

In the long term, small establishments may have to irradiate their products to keep their market shares. In so doing, they may be affected relative to large size establishments because of economies of scale in irradiation. For example, bulk discounts provided by irradiating facilities would be realized mainly by the large size establishments. However, FSIS believes that eventually technological innovations may reduce the cost of in-plant accelerators and that the increased availability of such devices could help small firms compete with the larger firms.

This final rule may have a negligible economic impact on other small organizations or entities that are not engaged in the business of processing meat and meat products. To the extent

[6] Fox, John A. and Dennis G. Olson, "Market Trials of Irradiated Chicken," *Radiation Physical Chemistry*, 52 (1–6), 1998, pp. 63–66.

[7] Buzby, Jean C. and Rosanna M. Morrison, "Food Irradiation—An Update" *Food Review*, May–August 1999, p. 21–22.

[8] Huang, Kao S., *A Complete System of U.S. Demand for Food*, ERS Technical Bulletin No. 1821, 1993, p. 24.

[9] Hahn, William F., *An Annotated Bibliography of Recent Elasticity and Flexibility Estimates for Meat and Livestock*, Staff Paper, Commercial Agriculture Division, Economic Research Service, July 1996, pp. 1–19.

that these entities purchase irradiated meat products, they could be affected somewhat by an increase in price.

Finally, FSIS is revising the regulatory requirements concerning the irradiation of poultry for consistency with HACCP and with the requirements proposed for meat food products. Significantly, FSIS is eliminating the minimum dosage requirements, certain packaging requirements, and the requirement that poultry establishments develop and implement PQC's addressing irradiation. All poultry establishments are required to develop and implement HACCP; the costs of HACCP will probably offset any benefits from the elimination of the PQC requirements. However, FSIS assumes that large and small poultry establishments will realize benefits from the reduction in the cost of compliance with some of the packaging requirements and the minimum dosage for irradiated poultry.

Executive Order 12898

Pursuant to Executive Order 12898 , "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," FSIS has considered potential impacts of this rule on environmental and health conditions in low-income and minority communities.

This rule allows the use of ionizing radiation for treating fresh or frozen uncooked meat, meat byproducts, and certain meat food products to reduce levels of pathogens. As explained in the economic impact analysis above, the regulations should generally benefit consumers and the regulated industry. The regulations would not require or compel meat or poultry establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low-income and minority communities. Further, this rule does not exclude any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin.

Establishments choosing to irradiate meat or meat products are required to comply not only with FSIS and FDA requirements regarding the safety of irradiated product, but also with NRC, EPA, OSHA, DOT, and State and local government requirements governing the operation of irradiation facilities. Compliance with these requirements ensures the maintenance of appropriate environmental, worker safety, and public health protections, thus further reducing the probability that this rule would have any disparate impact on low-income or minority communities. FSIS currently is investigating the possibility of developing stronger partnerships with these Federal, State, and local agencies so as to better ensure the maintenance of environmental, worker safety, and public health protections.

Public Notification and Request for Data

FSIS requests information regarding the impact of this final rule on minorities, women, and persons with disabilities, including information on the number of minority-owned meat and poultry establishments, the makeup of establishment workforces, and the communities served by official establishments.

Public involvement in all segments of rulemaking and policy development are important. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Paperwork Requirements

In response to comments and as part of an effort to make FSIS labeling requirements more consistent with those of FDA, FSIS will not require, as proposed, that the irradiation statement and the radura be any more prominent than the ingredients statement on the labeling of irradiated meat food and poultry products. Thus, the statement and the radura may appear somewhere other than on the principal display panel. Because of this change the 2-hour label development that FSIS included in the original paperwork analysis has been decreased to 1 hour. This change will decrease the overall burden estimate by 100 hours. Therefore, FSIS resubmitted an information collection request to OMB requesting approval for 2,601 burden hours, not 2,701.

The Office of Management and Budget (OMB) has approved the reporting and recordkeeping requirements associated with this final rule under OMB control number 0582–0115.

List of Subjects

9 CFR Part 381

Food labeling, Poultry and poultry products, Reporting and recordkeeping requirements, Signs and symbols.

9 CFR Part 424

Food additives, Food packaging, Meat inspection, Poultry and poultry products.

Accordingly, title 9, chapter III, of the Code of Federal Regulations is amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.19 [Removed]

2. Section 381.19 is removed.

§ 381.135 [Removed]

3. Section 381.135 is removed.

4. In § 424.22, paragraph (c) is added to read as follows:

§ 424.22 Certain other permitted uses.

* * * * *

(c) Irradiation of meat food and poultry products.

(1) *General requirements.* Meat food and poultry products may be treated to reduce foodborne pathogens and to extend product shelf-life by the use of sources of ionizing radiation as identified in 21 CFR 179.26(a). Official establishments must irradiate meat food and poultry products in accordance with 21 CFR 179.26(b), the Hazard Analysis and Critical Control Point (HACCP) system requirements in part 417 of this chapter, and the provisions of this section.

(2) *Dosimetry.* Official establishments that irradiate meat food and poultry products must have the following procedures in place:

(i) Laboratory operation procedures for determining the absorbed dose value from the dosimeter.

(ii) Calibration criteria for verifying the accuracy and consistency of any means of measurement (*e.g.*, time clocks and weight scales).

(iii) Calibration and accountability criteria for verifying the traceability and accuracy of dosimeters for the intended

purpose, and the verification of calibration at least every 12 months. To confirm traceability, establishments must relate, through documentation, the end point measurement of a dosimeter to recognized standards.

(iv) Procedures for ensuring that the product unit is dose mapped to identify the regions of minimum and maximum absorbed dose and such regions are consistent from one product unit to another of like product.

(v) Procedures for accounting for the total absorbed dose received by the product unit (e.g., partial applications of the absorbed dose within one production lot).

(vi) Procedures for verifying routine dosimetry, i.e., assuring each production lot receives the total absorbed dose. Establishments may either position one dosimeter at the regions of minimum and maximum absorbed dose (or at one region verified to represent such) on at least the first, middle, and last product unit in each production lot or use statistically based validation and dose mapping to determine the number and placement of dosimeters in each production lot.

(vii) Procedures for verifying the relationship of absorbed dose as measured by the dosimeter to time exposure of the product unit to the radiation source.

(viii) Procedures for verifying the integrity of the radiation source and processing procedure. Aside from expected and verified radiation source activity decay for radionuclide sources, the radiation source or processing procedure must not be altered, modified, replenished, or adjusted without repeating dose mapping of product units to redefine the regions of minimum and maximum absorbed dose.

(3) *Documentation.* Official establishments that irradiate meat food or poultry products must have the following documentation on premises, available to FSIS:

(i) Documentation that the irradiation facility is licensed or possesses gamma radiation sources registered with the Nuclear Regulatory Commission (NRC) or the appropriate State government acting under authority granted by the NRC.

(ii) Documentation that the machine radiation source irradiation facility is registered with the appropriate State government, if applicable.

(iii) Documentation that a worker safety program addressing OSHA regulations (29 CFR chapter XVII) is in place.

(iv) Citations or other documents that relate to incidences in which the establishment was found not to comply with Federal or State agency requirements for irradiation facilities.

(v) A certification by the operator that the irradiation facility personnel will only operate under supervision of a person who has successfully completed a course of instruction for operators of food irradiation facilities.

(vi) A certification by the operator that the key irradiation personnel, who monitor or control daily operations, have been trained in food technology, irradiation processing, and radiation health and safety.

(vii) Guarantees from the suppliers of all food-contact packaging materials that may be subject to irradiation that those materials comply with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*).

(4) *Labeling.*

(i) The labels on packages of meat food and poultry products irradiated in their entirety, in conformance with this section and with 21 CFR 179.26(a) and (b), must bear the logo shown at the end of this paragraph (c)(4)(i). Unless the word "Irradiated" is part of the product name, labels also must bear a statement such as "Treated with radiation" or "Treated by irradiation." The logo must be placed in conjunction with the required statement, if the statement is used. The statement is not required to be more prominent than the declaration of ingredients required under § 317.2(c)(2). Any label bearing the logo or any wording of explanation with respect to this logo must be approved as required by Section 317.4. of this chapter or subparts M and N of part 381.

(ii) For meat food or poultry products that have been irradiated in their entirety, but that are not sold in packages, the required logo must be displayed to the purchaser with either the labeling of the bulk container plainly in view or a counter sign, card, or other appropriate device bearing the information that the product has been treated with radiation. In either case, the information must be prominently and conspicuously displayed to purchasers. Unless the word "Irradiated" is part of the product name, the labeling counter sign, card, or other device also must bear a statement such as "Treated with radiation" or "Treated by irradiation." The logo must be placed in conjunction with the required statement, if the statement is used.

(iii) The inclusion of an irradiated meat food or poultry product ingredient in any multi-ingredient meat food or poultry product must be reflected in the ingredient statement on the finished product labeling.

(iv) Optional labeling statements about the purpose for radiation processing may be included on the product label in addition to the stated requirements elsewhere in this section, provided that such statements are not false or misleading. Statements that there has been a specific reduction in microbial pathogens must be substantiated by processing documentation.

Done in Washington, DC, on December 13, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–32660 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–DM–P

federal register

Thursday
December 23, 1999

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 310, et al.
Food Ingredients and Sources of Radiation Listed or Appproved for Use in the Production of Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310, 318, 319, 381 and 424

[Docket No. 98–026F]

RIN 0583–AB02

Food Ingredients and Sources of Radiation Listed or Approved for Use in the Production of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to harmonize and improve the efficiency of the procedures used by FSIS and the Food and Drug Administration (FDA) for reviewing and listing or approving the use of food ingredients and sources of radiation in the production of meat and poultry products. Except in very limited circumstances, FDA will list in its regulations in title 21 of the Code of Federal Regulations (CFR) food ingredients and sources of radiation that are safe for use in the production of meat and poultry products. Requests for approval to use food ingredients and sources of radiation not currently permitted under title 9 or title 21 of the CFR in the production of meat and poultry products will have to be submitted to FDA.

This action will eliminate the need for separate FSIS rulemakings. FSIS will limit substance-specific rulemakings under the authority of the Federal Meat Inspection Act (FMIA) or the Poultry Products Inspection Act (PPIA) to those necessary to establish specific prohibitions or limitations on the use of food ingredients and sources of radiation in the production of meat or poultry products. Such rulemakings might be necessary where a standard of identity or composition prohibits or limits the use of an ingredient, when use of the ingredient is not expected in the product, *e.g.*, adding milk to hamburger, or use of the ingredient would result in the product being adulterated or misbranded.

FSIS is also consolidating various existing regulations on food ingredients and sources of radiation into a single, new part, 9 CFR Part 424, applicable to both meat and poultry establishments. This will include combining the separate listings of food ingredients approved for use in meat and poultry products into a single table (9 CFR 424.22(c)) and eliminating unnecessary differences in the listings. FSIS has not made any substantive changes in the consolidated language.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Current FDA/FSIS Process for Listing Food Ingredients and Sources of Radiation for Use in the Production of Meat and Poultry Products

Food ingredients and sources of radiation used during the production of meat and poultry products are subject to regulation by FDA under the Federal Food, Drug, and Cosmetic Act (FFDCA). However, FSIS also has jurisdiction to regulate the use of those food ingredients and sources of radiation used in the production of meat and poultry products under the FMIA and the PPIA (*see* 21 U.S.C. 601(m)(2) and 21 U.S.C. 453(g)(2)).

Under the current system, someone interested in using a new food additive or color additive, or a new use or use level of a regulated food ingredient or source of radiation in the production of a meat or poultry product, must submit a petition to FDA requesting the listing of that use. The petition must contain data demonstrating the safety of the intended use of the food ingredient or source of radiation. FDA reviews the petition to determine the safety of the use of the food ingredient or source of radiation, and considers whether it has its intended technical effect at the requested level of use. After completing its review, FDA provides FSIS with an advisory opinion on whether the food ingredient or source of radiation is safe for the requested use in the production of meat or poultry products. At that point, FSIS reviews the suitability of the food ingredient or source of radiation for use in the production of meat or poultry products and conducts notice-and-comment rulemaking.

The process being adopted in this final rule will provide the same level of consumer protection without the delays inherent in the current system. It was in recognition of these delays that FSIS and FDA initiated this rulemaking and the companion FDA rulemaking.

Background

On December 29, 1995, FSIS published a proposed rule in the **Federal Register** titled "Substances Approved for Use in the Preparation of Meat and Poultry Products" (60 FR 67459). In it, FSIS proposed to amend the Federal meat and poultry products inspection regulations containing the procedures for reviewing the safety and suitability of substances used in meat and poultry products so they would correspond with the procedures used by FDA. Under the proposal, FSIS's regulations would have reflected the fact that it and FDA would simultaneously review petitions for the listing of substances for use in the production of meat and poultry products. In the same issue of the **Federal Register** (60 FR 67490), FDA proposed to make parallel changes to its regulations.

FSIS proposed to stop adding, in most cases, to its own regulations that list substances suitable for use in the production of meat and poultry products. Instead, the proposal envisioned that future FDA regulations would specify whether a substance listed or approved for use in foods under the FFDCA could be used in the production of meat or poultry products. In addition, under the proposal, current FDA regulations that list the use of a substance in foods generally, and that do not preclude meat and poultry product uses, would confer authority to use those substances in the production of meat and poultry products unless expressly prohibited by FSIS. In place of its own regulations, FSIS proposed to amend 9 CFR Parts 310, 318, 319, and 381 to include appropriate cross-references to the listings of substances permitted for use in the production of meat and poultry products in title 21 of the CFR.

FSIS stated that, as a matter of policy, all substances listed by FDA as Generally Recognized as Safe (GRAS) for general use in food in 21 CFR Parts 182 and 184 would be considered by USDA to be acceptable for use in meat and poultry products, unless restricted for such use by FSIS. For substances not listed by FDA as GRAS in 21 CFR Parts 182 or 184, FSIS proposed to continue to evaluate, in consultation with FDA, a manufacturer's basis for claiming that the food ingredient is GRAS and is suitable for use in meat or poultry products. FSIS also proposed to continue to offer advice to manufacturers regarding the suitability for specific uses of substances listed in title 21 of the CFR for general use in the production of foods or for use in meat or poultry products only. Except for formulation and processing procedure data for proprietary mixtures, which would be kept confidential, FSIS stated

that it intended to make its responses and related correspondence available to the public.

Under the proposal, all petitions for rulemaking to permit new substances or new uses or use levels of substances in the production of foods—including meat and poultry products—would be sent to FDA. The proposal reflected the fact that a petition needs to be submitted when a substance: (1) is not expressly listed for meat or poultry product uses in title 9 of the CFR, or in title 21 of the CFR, Parts 172–180; (2) is not a GRAS substance listed in Part 182 or 184 of title 21 of the CFR for general use in foods; or (3) cannot be demonstrated to FSIS, which consults with FDA as necessary, to be GRAS for particular meat or poultry product uses. It stated that FDA would evaluate the petitions in consultation with FSIS if any prospective use of a food additive, color additive, or GRAS substance, would be in meat or poultry products.

FSIS stated that it intended to review its listings in title 9 of the CFR of substances, within three to five years of a final rule in this proceeding, to eliminate those listings that duplicate FDA's listings in title 21 of the CFR. Because of current and anticipated resource constraints, FDA proposed to amend its regulations in title 21 of the CFR to provide that it would include meat and poultry product uses only in response to a petition, *i.e.*, a food additive, color additive, or GRAS affirmation petition, and that it would not move wholesale FSIS's listings of substances from title 9 of the CFR to title 21 of the CFR.

FSIS proposed to continue regulating the use of substances in meat and poultry products and to conduct the same reviews that it has been conducting, if and when necessary. For example, FSIS standards of identity or composition, in specific cases, could restrict uses of substances, or FSIS could determine that the use of a substance could adulterate a particular product or lead to a misbranded product. FSIS tentatively found that its ability to continue to regulate food ingredients was important so that it could prohibit or restrict the use of specific food ingredients in meat or poultry products. However, FSIS does not expect that it will have to take such action regularly because FDA's statutory authority, exercised according to the Memorandum of Understanding (MOU) between FDA and FSIS, will provide a means of imposing appropriate limitations on uses of food ingredients in meat and poultry products. (A draft version of the MOU was published as an appendix to the proposal. *See* 60 FR 67467.)

To provide direction to its inspection program personnel, FSIS proposed to maintain a comprehensive listing in its directive system of substances authorized for use in the production of meat and poultry products under title 9 or title 21 of the CFR. FSIS proposed to include in the listing:

a. Substances listed in title 9 of the CFR;

b. Substances listed for meat or poultry product uses in FDA food additive, color additive, GRAS, or prior-sanction listings;

c. Approved color additives in 21 CFR Parts 73, 74, and 82, food additives listed in 21 CFR Parts 172–173 and 180, prior-sanctioned substances approved by part 181, and GRAS substances approved by 21 CFR 182 and 184, if permitted for general use in or on foods (including meat and poultry products) in accordance with good manufacturing practice, unless meat or poultry product uses of these additives or substances are otherwise precluded; and

d. FDA food additive, color additive, GRAS, and prior-sanctioned substance listings that provide for meat and poultry product uses and are promulgated after the proposal becomes final.

FSIS also proposed to provide similar information to inspected establishments and other interested persons in the form of guidelines.

Memorandum of Understanding

FDA and FSIS have entered into an MOU establishing procedures to jointly respond to petitions to use food ingredients and sources of radiation in the production of meat and poultry products. Under the terms of the MOU, petitions to use a food or color additive or GRAS substance in the production of meat or poultry products will be evaluated for safety by FDA and for suitability by FSIS. FDA will be the submitter's regulatory contact. A copy of the MOU is appended to this final rule.

Discussion of Comments

FSIS received 22 comments in response to the proposed rule. Trade associations submitted eleven, industry eight, and a governmental organization, professional association, and consulting firm each submitted one. Most commenters generally favored the proposal and supported the efforts of FSIS and FDA to streamline the system to list or approve food ingredients used in meat and poultry products. Two commenters opposed the proposal. The following is a discussion of the relevant issues raised in the comments.

1. Despite the general support for the proposal, many commenters took issue with FSIS's proposal to prohibit the use of GRAS substances in meat and poultry products unless the substance is listed in parts 182 or 184 of title 21 of the CFR or in title 9 of the CFR. They stated that FSIS's prohibition of the use of unlisted GRAS substances in meat and poultry products is unreasonable because FDA has said that it is impractical to list all such substances in FDA regulations. The commenters maintained that all GRAS food substances, whether or not listed in FDA or FSIS regulations, should be permitted in meat and poultry products, provided that they are used in accordance with good manufacturing practice. One commenter requested that the policy currently in place for the self-determination of GRAS status of substances used in FDA-regulated foods be applied to food ingredients used in FSIS-regulated meat and poultry products. Another commenter expressed concern that permitting firms to make GRAS self-determinations would allow the use of unknown food ingredients in meat and poultry products.

Self-determinations of GRAS status present significantly different problems for FSIS than FDA. FDA's regulatory authority over products that contain an ingredient that a manufacturer views as GRAS begins when such products enter commerce and requires that FDA find that such products are adulterated. In contrast, FSIS must be able to find that a product is not adulterated *before* it will apply the mark of inspection that is necessary for the product to enter commerce. Thus, while a manufacturer of an FDA-regulated product may determine that use of a substance is GRAS, taking a calculated risk that FDA will not disagree, the manufacturer of an FSIS-regulated product which uses the same substance will not be eligible for the mark of inspection if FSIS has no basis for concluding that use of the substance would not adulterate the product. To be eligible for the mark of inspection for its products, a manufacturer must show that the use of the ingredients in its products has been shown to be safe under some provision of FDA law or has a history of safe use.

On April 17, 1997, FDA published in the **Federal Register** a proposal to replace the current GRAS affirmation petition process with a notification procedure. Under the proposed notification procedure, any person may notify FDA that he/she has determined that a particular use of a substance is GRAS. Upon receiving such a notification, FDA will evaluate whether the submitted notice provides a sufficient basis for a determination that

the use is GRAS, and whether information in the notice or otherwise available to FDA raises issues that lead FDA to question whether use of the substance is GRAS. If FDA elects not to question the determination, it will send the person a letter to that effect.

In the near future, FSIS intends to publish a proposal that will reflect FDA's GRAS notification proposal as it implicates GRAS food ingredients permitted for use in meat and poultry products. If both proposals are adopted, FSIS will accept self-determinations of GRAS status if an establishment that relies on the determination has on file in the establishment a copy of a letter from FDA that states that FDA does not question the determination, and the establishment makes the letter available to FSIS inspection program personnel. However, FSIS is retaining the right to evaluate self-determinations of GRAS status for suitability and will do so if it deems such an evaluation is required for any reason. FSIS is currently continuing to perform evaluations of self-determined GRAS substances to ascertain that the substances are suitable for use in meat and poultry products.

2. Many commenters asserted that food ingredients listed or approved for general food use under FDA regulations should be permitted for use in meat and poultry products unless otherwise restricted by other FDA or FSIS regulations.

FSIS agrees. As stated in the proposal, color additives approved by 21 CFR Parts 73, 74, and 82; food additives listed in 21 CFR Parts 172–173 and 180; prior-sanctioned substances approved by part 181; and GRAS substances approved in 21 CFR 182 and 184 may be used in meat and poultry products provided that the food ingredient is permitted for general use in or on foods (which includes meat and poultry products) and is used in accordance with good manufacturing practice, unless the meat or poultry product uses of the food ingredient are otherwise specifically precluded or not specifically allowed by product standards.

3. Many commenters that supported the efforts of FSIS and FDA to streamline the system for listing or approving food ingredients used in meat and poultry products stated that FSIS should participate in FDA's process to regulate food ingredients to ensure that such ingredients listed or approved for use in or on meat and poultry products are appropriate for such use. However, a few felt that FSIS should be completely eliminated from this process. One commenter stated that FSIS is not equipped to perform a separate safety evaluation for food ingredients, and that FSIS's review would be inconsistent with the goal of streamlining the review process. Others felt that dual evaluations would significantly lengthen the review process, and therefore, one agency or the other should conduct evaluations entirely, but not both.

Most commenters felt that FDA, not FSIS, should be responsible for reviewing food ingredient petitions, despite concerns that "the FDA petition process system is burdensome and slow, because FDA is required to evaluate all substances for use in food, including meat and poultry products." One commenter lamented the loss of a quick response by FSIS to submitters, while another suggested that FSIS accept "informal advisory letters" from FDA. This commenter suggested that FSIS could use these letters, which prescribe the appropriate use of food ingredients, to determine the appropriate use of such ingredients without requiring a rulemaking proceeding to be completed before the ingredient may be used in meat and poultry products.

FDA has broad jurisdiction over all food, except to the extent exceptions have been created by statute, and primary authority for determining the safety of food ingredients for use in meat and poultry products. FSIS's jurisdiction is more specific: It is limited to regulating the production and distribution of meat, poultry, and egg products. Because of its extensive statutory authority to regulate the safety of food ingredients and sources of radiation that may be used the production of food, FDA has developed the scientific staff, the institutional expertise, and the regulatory structure to ensure that food ingredients and sources of radiation that may be used in the production of foods are safe. Therefore, FDA and FSIS have agreed that FDA is the agency to whom manufacturers should submit petitions for the use of food ingredients and sources of radiation.

Requiring petitions to be submitted to FDA will not delay the listing of food ingredients or sources of radiation for use in meat and poultry products. Instead, the single petition, joint review, and single rulemaking procedure should decrease the time it takes to list or approve a food ingredient or source of radiation for use in meat or poultry products by eliminating the current time-consuming, duplicative, sequential rulemaking process.

Currently, food additives, as defined in 21 U.S.C. 321(s), may not be used in meat or poultry products unless they are listed for use under the FFDCA. A manufacturer is first required to petition FDA to list the food additive for its intended conditions of use or for use in food in general. In response to the petition, FDA amends its regulations in title 21 of the CFR to provide for the use of the substance. Once FDA has acted, the manufacturer must then petition FSIS for approval of the food additive for use specifically in meat or poultry products, unless the manufacturer has submitted data supporting its use in such products in its original petition to FDA (*see* 9 CFR 318.7(a)(2)). In such a case, use is generally permitted unless a standard of identity or other regulation precludes it. After FSIS has completed its evaluation and approved the food additive for use in meat and poultry products, FSIS must amend its regulations in title 9 to include the permitted use before the food additive can actually be used in a meat or poultry product.

Sometimes, however, a manufacturer does not submit a food additive petition to FDA for use of a substance in meat or poultry products. Instead, it contacts FSIS directly, asking that FSIS approve the use of the food additive in meat or poultry products. When this happens, FSIS, rather than the submitter, is put in the position of having to approach FDA to obtain approval for the use of the food additive in food generally under the FFDCA. Therefore, though FSIS, and not the submitter, approaches FDA, FDA still conducts a safety evaluation of the food additive and amends its regulations as necessary under the FFDCA before FSIS begins its own process. Duplicative reviews and rulemaking cannot be avoided under the current system.

The new system will eliminate the need for a manufacturer to submit two petitions, one to each agency, for the listing or approval to use a food additive or color additive, or source of radiation, in the production of meat or poultry products. Manufacturers will tender only one petition, to FDA, as they have always had to do under the tenets of the FFDCA. After FDA has completed its general food safety evaluation, it will inform FSIS of its determination. Consistent with the requirements that FDA's statutory authority has always necessitated, FDA, not FSIS, will amend its regulations to provide for the use of the food or color additive or other substance, when such regulation is necessary. FSIS will, as indicated, modify its directive and guidelines to reflect the new food ingredient or source of radiation or its new use or level. These new procedures will speed up the review process and eliminate the need

for duplicative listings in FSIS's regulations.

4. One commenter asked why inquiries regarding substances that are not affirmed or listed as GRAS in title 21 of the CFR should be sent to FSIS if FDA will ultimately be required to issue a GRAS regulation before the substance may be used.

At the time of the proposal, FDA and FSIS determined that FSIS is best suited to provide advice regarding whether a substance could be used in meat or poultry products. Therefore, the agencies tentatively decided that inquiries about the use of unlisted or unaffirmed GRAS substances in meat and poultry products should be directed to FSIS.

After further discussions with FDA, the two agencies have decided that because the statutes under which FDA operates require FDA approval of ingredients whose use is not GRAS, FDA is better suited than FSIS to provide advice regarding whether a substance not listed as GRAS is safe for use in meat or poultry products. Therefore, inquiries concerning the use in specific meat or poultry products of substances that are not affirmed by FDA as GRAS or otherwise listed in 21 CFR Part 182 or 184, or of food and color additives listed or approved in title 21 regulations for general use in foods, or for use in meat or poultry products generally, including mixtures of such food and color additives, should be addressed in writing to FDA.

5. In the proposed rulemaking, FSIS stated that it would review its lists of food ingredients and sources of radiation approved for use in meat and poultry products in title 9 of the CFR over the next three to five years and eliminate those that duplicate FDA's listing in title 21 of the CFR. However, FSIS also declared its intention to retain those regulations that prohibit uses of specific food ingredients to protect the public health and consumers from product adulteration and misbranding under the FMIA and PPIA; and to promulgate new prohibitions or limitations as necessary.

While one commenter favored this dual approach, five others felt that FDA should cover all past, present, and "future ingredient approvals and restrictions" for use in meat and poultry products in title 21 of the CFR. A third group of commenters requested that FSIS maintain a comprehensive listing of food ingredients approved for use in meat and poultry products either under title 9 of the CFR or in another FSIS publication as guidance to inspection program personnel and industry. One commenter who opposed the proposal stated that while the "new food additive approval system" might decrease the bureaucracy involved in getting food ingredients listed for use in meat and poultry products, it could also negatively affect traditional products produced by smaller processors because such processors rely on FSIS staff to guide them in properly using FDA-approved food ingredients in their products.

FSIS generally agrees with those commenters who stated that FSIS's tables of approved substances in title 9 of the CFR should be eliminated because they are not as complete as FDA's food ingredient listings. FSIS has decided, however, to retain them in title 9 of the CFR until FDA completes the amendments of its regulations in title 21 of the CFR to include all food ingredient and sources of radiation uses in meat and poultry products. While this may not happen for some time, due to current and anticipated resource constraints within FDA, FSIS believes it is the best way to ensure that food ingredients not listed or approved for use in meat and poultry products will not be used. FSIS will also publish a directive for inspection program personnel, and a set of guidelines for members of both the meat and poultry industry and the public, that will contain the food ingredients listed or approved for use in meat and poultry products.

6. One commenter recommended that FSIS conduct a total review of all existing "food additive" limitations and restrictions before the proposal is finalized, to determine their efficacy. All current food additive limitations and restrictions are based on scientific data that were reviewed by FSIS and FDA before each additive was listed or approved for use in meat and poultry products. The commenter presented no basis for concern about the reviews that were done. Therefore, there is no basis for changes to the limitations or restrictions unless new data are presented that support modifying a listed or approved use. It would take years of effort to review all of the actual data supporting each limitation or restriction, and FSIS has no intention of conducting a total review of existing substance limitations and restrictions.

7. A commenter stated that it was unclear whether FSIS's review process for processing chemicals not regulated under the FFDCA, such as sanitizing and cleaning agents for food-contact equipment and utensils, will continue once this final rule is adopted.

It will not. On February 13, 1998, FSIS announced in the **Federal Register** that it is eliminating its prior approval requirements for nonfood compounds and proprietary substances. "Proprietary substances" contain a combination of ingredients, some of which are not identified on the containers by common or chemical name, or by some other means. While approval of nonfood compounds and proprietary substances before their intended use provides some assurance to meat and poultry product processors that the use of these compounds and substances would not result in the adulteration of food products, provided they are properly used, this type of prior approval program is inconsistent with the new food safety strategy and approach set forth in the "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806).

Under these regulations, meat and poultry establishments are responsible for developing and implementing HACCP plans incorporating the controls necessary and appropriate to produce safe meat and poultry products. Consequently, establishments, not FSIS, will be responsible for ensuring that the nonfood compounds and proprietary substances they use are lawful, safe, and effective.

FSIS intends to maintain a small staff with expertise in nonfood compounds and proprietary substances. This staff will be responsible for issuing technical guidance, particularly to small and very small meat and poultry establishments, as the need arises. FSIS began eliminating the prior approval system for nonfood compounds and proprietary substances in autumn 1998.

8. A commenter suggested that FSIS eliminate the Proprietary Mix Committee (PMC) and set up third-party review of "food additives." The PMC provides a voluntary identification service to ingredient manufacturers. The PMC evaluates the proprietary formula and process for making an ingredient mix, confirms the identity and regulatory use status of the ingredients, and identifies appropriate labeling and use requirements for the mix. The PMC then sends the information, in writing, back to the requestor. This "PMC letter," which is used during the prior label approval process by meat and poultry product processors manufacturing products containing proprietary mixes, provides verification of the appropriate ingredient labeling information to FSIS.

Ingredient manufacturers are not required by the meat and poultry regulations to have a PMC letter before getting meat and poultry product labels approved by FSIS. It is a voluntary service offered by FSIS. For this reason, and because the PMC works in

conjunction with the prior label approval system, it will continue to function as long as FSIS has a prior label approval system. If, and when, FSIS eliminates that system and replaces it with a generic label approval system (which was discussed in the final rule on prior label approval, 60 FR 67443), FSIS will also consider eliminating the PMC.

9. One commenter, who provided qualified support for the proposal, felt that 9 CFR 318.1(d), which would require labels for preparations containing "chemicals" limited by 21 CFR 73, etc., or by 9 CFR Chapter III, Subchapter A, to show the percentage of the "chemical" in the preparation, was unnecessary and should be deleted. The commenter contended that such a requirement conflicts with FDA's regulations for labeling GRAS substances (21 CFR 184.1(f)(2)), which permit proprietary composition information to be excluded from the label if other information on the label will enable the user to comply with the given regulatory limitations. According to the commenter, proposed 9 CFR 318.1(d) would require the manufacturer to reveal confidential information to FSIS-inspected establishments or to decline to sell the preparation to them. The commenter asserted that if the information on the label instructs the user how to properly use the product and to comply with the regulatory limits, then public health and safety are not compromised. Therefore, the commenter contended, the regulation is not necessary. The commenter suggested that deletion of 9 CFR 318.1(d) will make FDA's and FSIS's regulations consistent and will allow manufacturers to use the same label on identical products destined for both FSIS-inspected establishments and FDA-regulated establishments.

To some extent, FSIS agrees with the commenter. Contrary to the commenter's assertion, however, section 318.1(d) does *not* require the ingredient manufacturer to disclose proprietary information to FSIS-inspected establishments. It requires that labels on containers of preparations used in hog scalding water or the denuding of tripe bear the common or chemical name of the preparation. If the preparation contains a chemical that is specifically limited by current section 318.7(c)(4), the label must show the percentage of the chemical in the preparation.

After further consideration, FSIS believes that 9 CFR 318.1(d), as currently written, is a command-and-control provision because it tells chemical manufacturers what information they must provide on the labels of their products. This is inconsistent with FSIS's announced policy of removing command-and-control provisions wherever feasible.

Therefore, FSIS has decided to amend section 318.1(d) to require that labels or labeling on containers of hog scald water or tripe denuding preparations bear adequate directions to ensure use in compliance with any limitations prescribed in 9 CFR or 21 CFR. This action will make FDA's and FSIS's regulations consistent and will allow manufacturers to use the same label on identical products destined for both FSIS-inspected establishments and FDA-regulated establishments.

10. The commenters that did not support the proposal expressed concern that FDA's petition system is more complicated and confusing than FSIS's system. One commenter stated that it would be confusing and time-consuming to have to search through five parts of title 21 of the CFR to find the status of a food ingredient.

While FDA and FSIS acknowledge that some confusion may arise from the placement of listed or approved food ingredients and sources of radiation in different parts of title 21 of the CFR, the public will be better served by having the permitted uses consolidated in one title of the CFR. Rather than searching through two separate titles of the CFR, 9 *and* 21, to find the permitted uses of a food ingredient or source of radiation, interested parties will only have to survey one, title 21.

Combined Language

For the past several years, FSIS has been reviewing its regulatory procedures and requirements to determine which are still needed and which ought to be modified, streamlined or eliminated (*see* FSIS Docket No. 95–008A, "FSIS Agenda for Change: Regulatory Review"; 60 FR 67469). This review is an integral part of FSIS's initiative to modernize its food safety regulations and reflects FSIS's commitment to achieving its goal of having fewer, clearer, and user-friendly regulations.

In the course of drafting this final rule, FSIS identified various meat and poultry regulations that, within the context of FSIS's regulatory streamlining initiative, need revision. FSIS decided to consolidate some of those regulations. The consolidation did not involve any substantive changes.

FSIS added a new Part 424, titled Preparation and Processing Operations. This new part, to the extent possible, combines the meat and poultry products inspection regulations affected by this rule. As a result, these rules are the same for both meat and poultry products, unless there is a specific reason for having different rules or language.

The Final Rule

Under this final rule, FSIS is ending duplicative rulemaking activities regarding the use of food ingredients and sources of radiation in the production of meat and poultry products. FSIS is amending the Federal meat and poultry products inspection regulations in 9 CFR Parts 310, 318, 319, and 381 to include appropriate cross-references to title 21 (Chapter I, Subchapter A and Subchapter B) listings of food additives, GRAS substances, color additives, and prior-sanctioned substances permitted for use in meat and poultry products.

As amended, 9 CFR 310.20 includes appropriate references to food ingredient listings and approvals in title 21 of the CFR. The requirements governing the saving of livestock blood have not been changed. The new amendment to 9 CFR 318.1 eliminates the requirement that labels on hog scalding or tripe denuding preparation containers show the percentage of chemicals in the preparations that are specifically limited as to amount permitted to be used, if any, by 21 CFR or 9 CFR. The labels will need to bear only adequate use directions to ensure that such use is in compliance with all provisions of 21 CFR or 9 CFR.

Section 318.7(d)(2) of 9 CFR is amended to add a reference to title 21 of the CFR. In addition, this section has now been transferred to a new part and renumbered. (*See* Part 424, Preparation and Processing Operations, section 424.23, Prohibited uses, paragraph (a)(3).) As in the proposal, the paragraph does not change the prohibitions of and restrictions on the food ingredient uses in meat.

Proposed 9 CFR 318.7(a)(4) and 381.147(f)(2)(iv) listed addresses for inquiries concerning the status of food ingredients intended for use in or in contact with meat or poultry products. Proposed 9 CFR 318.7(a)(5) and 381.147(f)(2)(v) listed addresses for inquiries concerning the use in meat or poultry products of food ingredients not listed in the title 21 regulations. In this final rule, these provisions have been combined and moved to section 424.21, Use of substances, paragraphs (b)(5) and (b)(6). No substantive changes have been made to these provisions.

Proposed 9 CFR 318.7(a)(1)–(3) and 9 CFR 381.147(f)(1) and (2) have also been combined in this final rule and placed in section 424.21, paragraphs (b)(1)–(3).

Again, no substantive changes have been made.

Section 318.7(b), Use of nitrite and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon, has been moved in its entirety to section 424.22, Certain other permitted uses, paragraph (b), while section 318.7(c) has been moved in its entirety to section 424.22(c) and combined with section 381.147(f)(4) to create one list of food ingredients approved for use in meat and poultry products. Where possible, FSIS has combined meat and poultry listings for a specific chemical into one listing. No substantive changes have been made to these provisions.

New part 424 prescribes the rules for the preparation or processing of meat and poultry products (*see* section 424.1, Purpose and Scope). The rules are intended to prevent the adulteration and misbranding of meat and poultry products at official establishments. The statements contained in section 424.1 merely advise the public of the purpose and scope of the rules FSIS administers.

FSIS is also including in Part 424 section 424.22 (formerly 9 CFR 318.7(b) and (c), and 9 CFR 381.147(f)(4)), which covers certain other permitted uses of ingredients in meat, and section 424.23, which lists prohibited uses of ingredients in meat and poultry products (formerly 9 CFR 318.7(d)).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different from, those imposed by the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect.

Under this rule, administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be significant and has been reviewed by OMB under Executive Order 12866. In accordance with 5 U.S.C. 603, FSIS has also conducted a regulatory flexibility analysis regarding the impact of the rule on small entities.

This final rule will replace the current government process for listing or approving the use of food ingredients and sources of radiation in meat and poultry products, which involves consecutive rulemakings by FDA and FSIS, with a "one-stop" procedure under which sponsors of new food or color additives, other substance uses, or sources of radiation in meat and poultry products will have to petition only FDA under the requirements of the FFDCA. FDA has always had the statutory authority for approving ingredients. FDA will conduct any required rulemaking on the matter in consultation with FSIS. FDA's rule will specify any uses or use restrictions unique to meat or poultry products.

This final rule modifies existing FSIS regulations concerning the listing or approval of food ingredients and sources of radiation used in the production of meat and poultry products that needlessly duplicate effort and expenditures by government and the regulated industry. These existing regulations require sequential rulemakings by FDA and FSIS to permit a new food ingredient and source of radiation, or a new use of a previously approved food ingredient or source of radiation to be used in meat or poultry products. The cost to industry and government of these rulemaking procedures includes the costs to industry arising from the delay in the introduction of new ingredients, or new food products. These costs create a disincentive for technological innovation and new product development. The existing process, therefore, negatively affects economic growth.

Benefit-Cost Assessment

The public benefits conferred by this rulemaking include, principally, those associated with the more timely regulatory listing or approval of food ingredients and sources of radiation used in the production of foods and those associated with having the ingredients themselves available for use more quickly. The benefits of ingredients added to meat and poultry products include the technical effects on the characteristics of food products, the uses of the ingredients in food processing, and a greater variety of foods in the marketplace. Public health benefits include the greater availability of food through preservation techniques and improved food safety through, for example, antimicrobial treatments of raw product and the use of curing solutions in processed products. The benefits conferred by the availability of ingredients and this rulemaking will marginally increase the ingredients' uses.

The public benefits of regulating food ingredients and sources of radiation, generally, will not change. These include, principally, the prevention of adulteration or misbranding of food products. Consumers are provided assurances that the products they buy do not contain food ingredients whose use(s) ought, for various reasons, to be prohibited, and food ingredients that have been listed or approved have not been used improperly in foods. This final rulemaking will not affect such benefits because (1) FDA will continue to approve food ingredients and sources of radiation, and conduct safety reviews (when required by the FFDCA) of food ingredients and sources of radiation proposed for use in the production of foods, including—in consultation with FSIS—meat and poultry products, and (2) FSIS will continue to exercise its in-plant inspection and other regulatory authorities to prevent the marketing of adulterated or misbranded meat and poultry products. Therefore, elimination of the duplicative FSIS rulemaking process involved in listing or approving food ingredients or sources of radiation for use in meat and poultry products will probably save the regulated industry between $400,000 and $600,000 a year over and above the savings the government itself will realize in administrative costs. (According to industry representatives, the cost of filing one food ingredient petition is approximately $100,000. This includes research and administrative costs.)

Other less calculable benefits arise through the removal of a disincentive to innovate. With the potential expansion of uses of listed or approved food ingredients that will result from the easing of the current regulatory burden, new product development and marketing are encouraged.

This final rule will not have a significant economic impact on a substantial number of small entities. Obtaining approval for the use in the production of meat and poultry products of new food ingredients or sources of radiation, or for new uses of previously listed or approved food ingredients or sources of radiation, will

be simpler, faster, and less costly for both industry and the Federal government than under the current system.

Under the final rule, separate petitions to FSIS will no longer have to be submitted. FSIS will permit food ingredients and sources of radiation to be used in products under its jurisdiction based on FDA's title 21 regulations permitting such uses. Those food additives and color additives *not* approved for meat and poultry product use under current FDA regulations will require only one petition for rulemaking—to FDA.

FSIS currently receives only four to six petitions per year for the listing or approval of food ingredients for use in meat and poultry products. Approximately 75 percent of these petitions are from large commercial entities. Therefore, the final rule will not have a significant effect on a substantial number of small entities. Furthermore, all users of the Federal regulations concerning the addition of food ingredients to foods will benefit by having fewer, clearer regulations. Thus, there will be a reduction in the duplication of effort and attendant costs for all concerned.

Public Notification and Request for Data

The public is asked to provide additional information on the effect of this final rule on minority ownership and operation of affected establishments, employment, and consumers, and other related impacts. The information being requested includes professional journal articles, research reports, industry data, and other similarly reliable information. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce the publication of this final rule in the **Federal Register** in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Paperwork Requirements

No new paperwork requirements are associated with this final rule. The effect of the rulemaking will be to substantially reduce the information collection from private sources concerning proposed uses of food ingredients in meat or poultry products. Persons seeking Federal government listing or approval of food additives and color additives for use in the production of meat or poultry products will have to petition only FDA, rather than both FDA and FSIS, as they now do. Thus, the current, duplicative information collection requirement will be eliminated.

List of Subjects

9 CFR Part 310

Meat inspection.

9 CFR Part 318

Food additives, Food packaging, Meat inspection.

9 CFR Part 381

Food additives, Food packaging, Poultry and poultry products.

9 CFR Part 424

Food additives, Food packaging, Meat inspection, Poultry and poultry products.

For the reasons set out in the preamble, 9 CFR parts 310, 318, 319 and 381, are amended, and part 424 is added, to read as follows:

PART 310—POST-MORTEM INSPECTION

1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 310.20 is revised to read as follows:

§ 310.20 Saving of blood from livestock as an edible product.

Blood may be saved for edible purposes at official establishments provided it is derived from livestock, the carcasses of which are inspected and passed, and the blood is collected, defibrinated, and handled in a manner so as not to render it adulterated under the Federal Meat Inspection Act and regulations issued pursuant thereto. The defibrination of blood intended for human food purposes shall not be done with the hands. Anticoagulants may be used in accordance with 21 CFR Chapter I, Subchapter A and Subchapter B, or by regulation in 9 CFR Chapter III, Subchapter A or Subchapter E.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

4. Section 318.1(d) is revised to read as follows:

§ 318.1 Products and other articles entering official establishments.

* * * * *

(d) To ensure the safe use of preparations used in hog scalding water or in the denuding of tripe, the label or labeling on containers of such preparations shall bear adequate directions to ensure use in compliance with any limitations prescribed in 21 CFR Chapter I, Subchapter A or Subchapter B, or 9 CFR Chapter III, Subchapter A or Subchapter E.

* * * * *

§ 318.7 [Removed]

5. Section § 318.7 is removed.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

6. The authority citation for 9 CFR Part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 319.100 [Amended]

7. The first sentence of § 319.100 is amended by removing "§ 318.7(c)(1) and (4) of this subchapter" and adding in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

§ 319.106 [Amended]

8. Paragraph (d)(2) of § 319.106 is amended by removing "in accordance with § 318.7(c)(4) of this subchapter" and adding in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

§ 319.140 [Amended]

9. The second and third sentences of § 319.140 are amended by removing "§ 318.7(c)(4) of this subchapter" and adding in its place "a regulation permitting that use in this subchapter or in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

§ 319.145 [Amended]

10. Section 319.145 is amended as follows:

A. In paragraph (a)(4), remove "in the chart following § 318.7(c)(4)," and add in its place "in a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B";

B. In paragraph (b)(6), remove "the chart of substances in § 318.7(c)(4) of this subchapter." and add in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

§ 319.180 [Amended]

11. Section 319.180 is amended as follows:

A. In the first sentence of paragraph (a), remove "§ 318.7(c)(4) of this chapter," and add in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.";

B. In the first sentence of paragraph (b), remove "§ 318.7(c)(4) of this chapter," and add in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.";

C. In the first sentence of paragraph (e), remove "§ 318.7(c)(4) of this subchapter." and add in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

§ 319.303 [Amended]

12. The second sentence of paragraph (a)(3) of § 319.303 is amended by removing "§ 318.7(c)(4) of this subchapter" and adding in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

§ 319.700 [Amended]

13. Section 319.700 is amended as follows:

A. In paragraphs (a)(4), (a)(5), and (a)(6), remove "§ 318.7(c)(4) of this chapter" and add in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.";

B. In the first sentence of paragraph (a)(7), remove "§ 318.7(c)(4) of this chapter," and add in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Parts 73, 74, 81, or 82,";

C. In the first sentences of paragraphs (a)(9) and (a)(10), remove "§ 318.7(c)(4) of this chapter," and add in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

14. The authority citation for 9 CFR Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.120 [Amended]

15. The fourth and sixth sentences of § 381.120 are amended by removing "§ 381.147" and adding in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

16–17. Section 381.145, paragraph (i), is revised to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.

* * * * *

(i) To ensure the safe use of preparations used in poultry scald water, the label or labeling on containers of such preparations shall bear adequate directions to ensure use in compliance with any limitations prescribed in 21 CFR Chapter I, Subchapter A or Subchapter B or 9 CFR Chapter III, Subchapter A or Subchapter E.

§ 381.147 [Removed]

18. Section 381.147 is removed.

§ 381.171 [Amended]

19. The first and second sentences of § 381.171, paragraph (b), are amended by removing "§ 381.147 of this part" and adding in its place "a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B."

SUBCHAPTER E—REGULATORY REQUIREMENTS UNDER THE FEDERAL MEAT INSPECTION ACT AND THE POULTRY PRODUCTS INSPECTION ACT

20. Subchapter E is amended by adding a new Part 424 to read as follows:

PART 424—PREPARATION AND PROCESSING OPERATIONS

Subpart A—General

Sec.
424.1 Purpose and scope.

Subpart C—Food Ingredients and Sources of Radiation

424.21 Use of food ingredients and sources of radiation.
424.22 Certain other permitted uses.
424.23 Prohibited uses.

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

Subpart A–General

§ 424.1 Purpose and scope.

This part of the regulations prescribes rules for the preparation of meat and the processing of poultry products. The rules in this part further the purposes of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) by, among other things, preventing the adulteration or misbranding of meat and poultry products at official establishments. 9 CFR Chapter III, Subchapter A, Parts 318 and 319, Subpart C of this part, and 21 CFR Chapter I, Subchapter A or Subchapter B, specify rules for the use of certain food ingredients (e.g., food additives and color additives) and sources of radiation that may render meat or poultry products adulterated or misbranded.

Subpart C—Food Ingredients and Sources of Radiation

424.21 Use of food ingredients and sources of radiation.

(a)(1) *General.* No meat or poultry product shall bear or contain any food ingredient that would render it adulterated or misbranded, or which is not approved in this part, part 318 or part 319 of this chapter, or by the Administrator in specific cases.

(2)(i) Poultry products and poultry broth used in the processing of poultry products shall have been processed in the United States only in an official establishment or imported from a foreign country listed in § 381.196(b), and have been inspected and passed in accordance with the regulations. Detached ova and offal shall not be used in the processing of any poultry products, except that poultry feet may be processed for use as human food in

a manner approved by the Administrator in specific cases and detached ova may be used in the processing of poultry products if the processor demonstrates that such ova comply with the requirements of the Federal Food, Drug, and Cosmetic Act.

(ii) Liquid, frozen, and dried egg products used in the processing of any poultry product shall have been prepared under inspection and be so marked in accordance with the Egg Products Inspection Act.

(3)(i) Carcasses, parts thereof, and products of cattle, sheep, swine, goats, or equines may be used in the processing of poultry products only if they were prepared in the United States in an official meat packing establishment or imported from a foreign country listed in § 327.2(b), were inspected and passed in accordance with the Federal Meat Inspection Act and the regulations under such Act (subchapter A of this chapter), and are so marked.

(ii) Pork from carcasses or carcass parts used as an ingredient in poultry products that has been found free of trichinae, as described under § 318.10 (a)(2), (e) and (f) of the Federal meat inspection regulations (9 CFR 318.10 (a)(2), (e) and (f)), is not required to be treated for the destruction of trichinae.

(iii) Poultry products containing pork muscle tissue which the Administrator determines at the time the labeling for the product is submitted for approval in accordance with part 381 of the regulations in subchapter A or upon subsequent reevaluation of the product would be prepared in such a manner that the product might be eaten rare or without thorough cooking because of the appearance of the finished product or otherwise, shall be effectively heated, refrigerated, or cured to destroy any possible live trichinae, as prescribed in § 318.10(c) of this chapter, at the official establishment where such products are prepared. In lieu of such treatment of poultry products containing pork, the pork ingredient may be so treated.

(b)(1) *Food ingredients and sources of radiation.* Food ingredients and sources of radiation listed or approved for use in the production of meat or poultry products in 21 CFR Chapter I, Subchapter A or Subchapter B, shall be listed for such use under this chapter, subject to declaration requirements in parts 316 and 317, or Subparts M and N, of Part 381 of this chapter, unless precluded from such use or further restricted in parts 318 or 319, or Subparts O and P, of Part 381 of this chapter, or unless such use otherwise results in the adulteration or misbranding of meat or poultry products. Food ingredients and sources of radiation listed or approved for use in the production of meat or poultry products in 21 CFR Chapter I, Subchapter A or Subchapter B, may be listed or approved for such use under this chapter by the Administrator in § 424.21, subject to declaration requirements in parts 316 and 317, or Subparts M and N, of Part 381 of this chapter.

(2) No food ingredients or sources of radiation may be used in the preparation of any meat or poultry product, for any purpose, unless the use is listed or approved in 21 CFR Chapter I as a direct food additive (21 CFR Part 172), a secondary direct food additive (21 CFR Part 173), indirect food additive (21 CFR Parts 174–178), radiation source (21 CFR Part 179), an interim-listed direct food additive (21 CFR Part 180), a prior-sanctioned substance (21 CFR Part 181), a Generally Recognized As Safe (GRAS) substance (21 CFR Parts 182 or 184), or by a regulation in this chapter. Part 319 of this chapter also specifies other food ingredients that are acceptable in preparing specified products.

(3) No food ingredient, the intended use of which is to impart color in any meat or poultry product, shall be used unless such use is approved in 21 CFR Chapter I as a color additive (21 CFR Parts 73, 74, 81, and 82) or in a regulation in this chapter.

(4) Petitions to amend 21 CFR Chapter I to provide for uses of food additives, or other substances or sources of radiation necessary in the preparation of meat or poultry products, or food ingredients used to impart color to product, should be sent to the Food and Drug Administration, in accordance with the provisions of 21 CFR Parts 71 or 171, as appropriate.

(5) Inquiries concerning the regulatory status under the Federal Food, Drug, and Cosmetic Act of any articles intended for use as components of, or in contact with, meat or poultry products, may be addressed to the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 200 C Street, SW, Washington, DC 20204, or the Department of Agriculture, Food Safety and Inspection Service, Office of Policy, Program Development and Evaluation, Washington, DC 20250–3700.

(6) Inquiries concerning the use in specific meat or poultry products of substances that are not affirmed by the Food and Drug Administration as Generally Recognized as Safe (GRAS) or otherwise listed in 21 CFR Part 182 or Part 184, or of food or color additives listed in 21 CFR regulations for general use in foods or for use in meat, or poultry products, generally, including mixtures of such substances or additives, should be addressed to the Department of Agriculture, Food Safety and Inspection Service, Office of Policy, Program Development and Evaluation, Washington, DC 20250–3700.

(c) The food ingredients specified in the following chart are approved for use in the preparation of meat products, provided they are used for the purposes indicated, within the limit of the amounts stated, and under other conditions specified in this part and Part 317 of this chapter. Part 319 of this chapter specifies other food ingredients that are acceptable in preparing specified meat products. This chart also contains food ingredients that are acceptable for use in poultry products, provided they are used for the purpose indicated, within the limits of the amounts stated and under other conditions specified in this part. No meat or poultry product shall bear or contain any food ingredient that would render it adulterated or misbranded, or which is not approved in this part, or by the Administrator in specific cases.

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Acetic acid	To adjust acidity	Various meat and poultry products [2].	Sufficient for purpose.[3]
	Citric acid	do	do	Do.
	Glucono delta-lactone	do	do	Do.
	Lactic acid	do	do	Do.
	Phosphoric acid	do	do	Do.
	Tartaric acid	do	do	Do.

Class of substance	Substance	Purpose	Products	Amount	
Anti-coagulants	Citric acid	To prevent clotting	Fresh blood of livestock	0.2 percent with or without water. When water is used to make a solution of citric acid added to the blood of livestock, not more than 2 parts of water to 1 part of citric acid shall be used.	
	Sodium citrate	do	do	Not to exceed 0.5 percent based on the ingoing weight of the product. When water is used to make a solution of sodium citrate added to livestock blood, not more than 2 parts of water to 1 part of sodium citrate shall be used.	
Antifoaming agent	Methyl polysilicone	To retard foaming	Soups (meat and poultry)	10 ppm.	
		do	Rendered fats (meat and poultry).	Do.	
		do	Curing pickle (meat and poultry).	50 ppm.	
Antimicrobial agents	Trisodium phosphate	To reduce microbial levels	Raw, chilled poultry carcasses	8 to 12 percent; solution to be maintained at 45 °F. to 55 °F. and applied by spraying or dipping carcasses for up to 15 seconds when used in accordance with 21 CFR 182.1778.	
Antioxidants and oxygen interceptors.	Ascorbyl palmitate	To retard rancidity	Margarine or oleomargarine	0.02 percent (by wt. of finished product) individually or in combination with other antioxidants approved for use in margarine.	
	Ascorbyl stearate.				
	BHA (butylated hydroxyanisole)	do	Dry sausage	0.003 based on total weight.	0.006 percent in combination with other antioxidants for use in meat.
		do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
		do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination with other antioxidants for use in meat, based on fat content.
		do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination with other antioxidants for use in meat.
		do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	

		.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry) based on fat content.	
	BHT (butylated hydroxytoluene)	.....do	Dry sausage	0.003 percent based on total weight.	0.006 percent in combination with other antioxidants for use in meat.
		.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
		.....do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination with other antioxidants for use in meat, based on fat content.
		.....do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination with other antioxidants for use in meat.
		.....do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
		.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry) based on fat content.	
	Dodecyl gallate	.....do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
	Glycine	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
	Octyl gallate	.....do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
	Propyl gallate	.....do	Dry sausage	0.003 percent based on total weight.	0.006 percent in combination with other antioxidants for use in meat.

		.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
		.....do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination with other antioxidants for use in meat, based on fat content.
		.....do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination with other antioxidants for use in meat.
		.....do	Margarine or oleo-margarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
		.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry, except TBHQ, based on fat content).	
	Resin guaiac	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
	TBHQ (tertiary butylhydroquinone).	.....do	Dry sausage	0.003 percent based on weight.	0.006 percent in combination only with BHA and/or BHT.
		.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination only with BHA or BHT.
		.....do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination only with BHA and/ or BHT, based on fat content.
		.....do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination only with BHA and/or BHT.
		.....do	Margarine or oleo-margarine ...	0.02 percent alone or in combination only with BHA and/or BHT, based on oil or fat content.	
		.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination only with BHA and/or BHT, based on fat content).	

	Tocopherols	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.03 percent. A 30 percent concentration of tocopherols in vegetable oils shall be used when added as an antioxidant to products designated as "lard" or "rendered pork fat."
		.....do	Dry sausage, semidry sausage, dried meats, uncooked or cooked fresh sausage made with beef and/or pork, uncooked or cooked Italian sausage products, uncooked or cooked meatballs, uncooked or cooked meat pizza toppings, brown and serve sausages, pregrilled beef patties, and restructured meats.	Not to exceed 0.03 percent based on fat content. Not used in combination with other antioxidants.
		.....do	Various poultry products	0.03 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry, except TBHQ, based on fat content).
Artificial Sweeteners	Saccharin	To sweeten product	Bacon	0.01 percent.
Binders and Extenders	Agar-agar	To stabilize and thicken	Thermally processed canned and jellied meat food products.	0.25 percent of finished product.
	Algin	To extend and stabilize product.	Breading mix; sauces (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
	A mixture of sodium alginate, calcium carbonate and calcium lactate/lactic acid (or glucono delta lactone).	To bind meat pieces	Restructured meat food products.	Sodium alginate not to exceed 1.0 percent; calcium carbonate not to exceed 0.2 percent; and lactic acid/calcium lactate (or glucono delta-lactone) not to exceed 0.3 percent of product formulation. Added mixture may not exceed 1.5 percent of product at formulation. Mixture ingredients must be added dry.
	A mixture of sodium alginate, calcium carbonate, lactic acid, and calcium lactate.	To bind poultry pieces	Ground and formed raw or cooked poultry pieces.	Sodium alginate not more than 0.8 percent, calcium carbonate not more than 0.15 percent; lactic acid and calcium lactate, in combination, not more than 0.6 percent of product formulation. Added mixture may not exceed 1.55 percent of product at formulation. The mixture must be added in dry form.
	Bread	To bind and extend product	Bockwurst	3.5 percent individually or collectively with other binders for use in meat.
		.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
		.....do	Spaghetti with meat balls and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders for use in meat.
	Carboxymethyl cellulose (cellulose gum).	To extend and stabilize product.	Baked pies (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
	Carrageenan	To extend and stabilize product.	Breading mix; sauces (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
		To prevent purging of brine solution.	Cured pork products as provided in 9 CFR 319.104(d).	Not to exceed 1.5 percent of product formulation; permitted in combination only with soy protein concentrate, combination not to exceed 1.5 percent of product formulation; in accordance with 21 CFR 172.620, 172.623, and 172.626.

Carrageenan, Locust bean gum, and Xanthan gum blend.	.....do	.....do	In combination, not to exceed 0.5 percent of formulation; not permitted in combination with other binders approved for use in cured pork products; in accordance with 21 CFR 172.620, 172.623, 172.626, 184.1343. and 172.695.
Cereal	To bind and extend product ...	Sausages as provided in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders for use in meat.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
Dried milk	.....do	Sausages as provided for in 9 CFR Part 319.	3.5 percent individually or collectively with other binders for use in meat
Dried skim milk, calcium reduced.	.....do	Sausages as provided in 9 CFR 9 CFR Part 319.	Do.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
Enzyme (rennet) treated with calcium reduced dried skim milk and calcium lactate.	.....do	Sausages as provided for in 9 CFR Part 319.	3.5 percent total finished product (calcium lactate required at rate of 10 percent of binder.)
	.....do	Imitation sausages; nonspecific loaves; soups, stews (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5 (calcium lactate required at a rate of 10 percent of binder).
Enzyme (rennet) treated with sodium caseinate and calcium lactate.	.....do	Imitation sausages; nonspecific loaves; soups, stews (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5 (calcium lactate required at a rate of 25 percent of binder).
Food starch modified	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 2 percent of product formulation in "Ham Water Added" and "Ham with Natural Juices" products; not to exceed 3.5 percent of product formulation in "Ham and Water Product—X percent of Weight is Added Ingredients" products; permitted in combination only with soy protein concentrate, with combination of modified food starch at 3 percent of product formulation and soy protein concentrate at 0.5 percent of product formulation; in accordance with 21 CFR 172.892.
Gelatin	To bind and extend product ...	Various poultry products	Sufficient for purpose in accordance with 21 CFR 172.5.
Gums, vegetable	.....do	Egg roll (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
Isolated soy protein	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	2 percent.
	.....do	Imitation sausages; nonspecific loaves; soups; stews (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
	.....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat.
	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 2 percent of product formulation, not permitted in combination with other binders approved for use in cured pork products.

Methyl cellulose	To extend and stabilize product (also carrier).	Meat and vegetable patties; various poultry products.	0.15 percent.
Sodium caseinate	To bind and extend product	Imitation sausages, nonspecific loaves, soups, stews (meat only).	Sufficient for purpose in accordance with 21 CFR 182.1748 and 21 CFR 172.5.
	do	Sausages as provided for in 9 CFR Part 319.	2 percent in accordance with 21 CFR 182.1748.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat in accordance with 21 CFR 182.1748.
	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat in accordance with 21 CFR 182.1748.
	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 2 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products, in accordance with 21 CFR 182.1748.
	To bind and extend product	Various poultry products	3 percent in cooked product, 2 percent in raw product, in accordance with 21 CFR 172.5 and 182.1748.
Soy flour	do	Sausages as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.
	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat.
Soy protein concentrate	do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.
	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat.
	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 3.5 percent of product formulation; permitted in combination only with modified food starch, with combination of modified food starch at 3 percent of product formulation and soy protein concentrate at 0.5 percent of product formulation; in combination only with carrageenan, combination not to exceed 1.5 percent of product formulation.
Starchy vegetable flour	To bind and extend product	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.

Tapioca dextrin	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1277.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat, in accord ance with 21 CFR 184.1277.
	.....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1277.
	.....do	Various poultry products	Sufficient for purpose in accordance with 21 CFR 184.1277.
Vegetable starch	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.
Wheat gluten	To bind and extend product	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1322.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat, in accordance with 21 CFR 184.1322.
	.....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1322.
	.....do	Various poultry products	Sufficient for purpose in accordance with 21 CFR 184.1322.
Whey, Dry or dried	To bind or thicken	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Imitation sausages, nonspecific loaves, soups, stews (meat only).	8 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Various poultry products	Sufficient for purpose in accordance with 21 CFR 184.1322.
Whey, Reduced lactose	To bind or thicken	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Imitation sausages, nonspecific loaves, soups, stews (meat only).	Sufficient for purpose in accordance with 21 CFR 172.5.
	.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat.
Whey, Reduced minerals	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Imitation sausages, nonspecific loaves, soups, stews (meat only).	Sufficient for purpose in accordance with 21 CFR 172.5.
	.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat.

	Whey protein concentrate	.....do	Sausage as provided in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1979c.
		.....do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 184.1979c.
		.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1979c
		To bind meat pieces	Restructured meat food products, whole muscle meat cuts.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1979c.
	Xanthan gum	To maintain: uniform viscosity; suspension of particulate matter, emulsion stability; freeze-thaw stability.	Meat sauces, gravies or sauces and meats, canned or frozen and/or refrigerated meat salads, canned or frozen meat stews, canned chili or chili with beans, pizza topping mixes and batter or breading mixes.	Sufficient for purpose in accordance with 21 CFR 172.5.
		.....do	Various poultry products, except uncooked products or sausages or other products with a moisture limitation established by Subpart P of Part 381.	Sufficient for purpose
Bleaching Agent	Hydrogen peroxide	To remove color	Tripe (substance must be removed from product by rinsing with clear water).	Sufficient for purpose.
Catalysts (substances must be eliminated during process).	Nickel	To accelerate chemical reaction.	Rendered animal fats or a combination of such fats and vegetable fats.	Do.
	Sodium amide	Rearrangement of fatty acid radicals.	.....do	Do.
	Sodium methoxide	.....do	.....do	
Chilling Media	Salt (NaCl)	To aid in chilling	Raw poultry products	700 lbs. to 10,000 gallons of water.
Coloring Agents (artificial)	Coal tar dyes (FD&C certified)	To color products	Various poultry products	Sufficient for purpose.
	Color additives listed in 21 CFR Part 74, Subpart A of Part 82, Subpart B (operator must furnish evidence to inspector in charge that color additive has been certified for use in connection with foods by the Food and Drug Administration).	To color casings or rendered fats; marking and branding product.	Sausage casings, oleomargarine, shortening, marking or branding ink on product (meat only).	Sufficient for purpose (may be mixed with approved natural coloring matters or harmless inert material such as common salt and sugar).
	Titanium oxide	To whiten	Canned ham salad spread and creamed-type canned meat products. Poultry salads and poultry spreads.	0.5 percent.
Coloring Agents (natural)	Alkanet, annatto, carotene, cochineal, green chlorophyll, saffron and tumeric.	To color casings or rendered fats; marking and branding product.	Sausage casings, oleomargarine, shortening, marking or branding ink on product (meat only).	Sufficient for purpose (may be mixed with approved artificial dyes or harmless inert material such as common salt and sugar).
	Annatto, carotene	To color products	Various poultry products	Sufficient for purpose.
Curing accelerators (must be used only in combination with curing agents).	Ascorbic acid	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured poultry, cured comminuted poultry and meat food products.	75 oz to 100 gal pickle at 10 percent pump level; ¾ oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product).

	Citric acid or sodium citrate ...	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured comminuted meat food product, cured comminuted poultry or poultry products.	May be used in cured meat products or in 10 percent solution used to spray surfaces of cured meat cuts prior to packaging to replace up to 50 percent of the ascorbic acid, erythorbic acid, sodium ascorbate, or sodium erythorbate that is used. May be used in cured poultry products to replace 50 percent of the ascorbic acid or sodium ascorbate that is used.
	Erythorbic acid	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured poultry, cured comminuted poultry and meat food products.	75 oz to 100 gal pickle at 10 percent pump level; 3/4 oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product).
	Fumaric acid	.....do	Cured, comminuted meat, poultry or meat and poultry products.	0.065 percent (or 1 oz to 100 lb) of the weight of the meat, poultry or the meat or poultry byproducts before processing.
	Glucono delta lactone	.....do	Cured, comminuted meat or meat food product.	8 oz to each 100 lb of meat or meat byproduct.
		.....do	Genoa salami	16 oz to 100 lb of meat (1.0 percent).
	Sodium acid pyrophosphate ...	.....do	Frankfurters, wieners, vienna, bologna, garlic bologna, knockwurst and similar products.	Not to exceed alone or in combination with other curing accelerators for use in meat the following: 8 oz in 100 lb of meat, or meat and meat byproducts, content of the formula; nor 0.5 percent in the finished product.
	Sodium ascorbate	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured comminuted meat food product, cured comminuted poultry or poultry products.	87.5 oz to 100 gal pickle at 10 percent pump level; ⅞ oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product).
	Sodium erythorbate	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured comminuted meat food products, cured comminuted poultry or poultry products.	87.5 oz to 100 gal pickle at 10 percent pump level; ⅞ oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product.)
	Curing Agents	Sodium or potassium nitrate ..	Source of nitrite	Cured meat products other than bacon. Nitrates may not be used in baby, junior, and toddler foods. Cured, comminuted poultry or poultry products.	7 lb to 100 gal pickle; 3½ oz to 100 lb meat or poultry product (dry cure); 2¾ oz to 100 lb chopped meat or poultry.

	Sodium or potassium nitrite (supplies of sodium nitrite and potassium nitrite and mixtures containing them must be kept under the care of a responsible employee of the establishment. The specific nitrite content of such supplies must be known and clearly marked accordingly).	To fix color	Cured meat and poultry products. Nitrites may not be used in baby, junior, or toddler foods.	2 lb to 100 gal pickle at 10 percent pump level; 1 oz to 100 lb meat or poultry product (dry cure); ¼ oz to 100 lb chopped meat, meat byproduct or poultry product. The use of nitrites, nitrates or combination shall not result in more than 200 ppm of nitrite, calculated as sodium nitrite in finished product, except that nitrites may be used in bacon only in accordance with paragraph (b) of this section.
Denuding Agents (may be used in combination. Must be removed from tripe by rinsing with potable water.).	Lime (calcium oxide, calcium hydroxide).	To denude mucous membranes.	Tripe	Sufficient for purpose.
	Sodium carbonate	.....do	.....do	Do.
	Sodium citrate	.....do	.....do	Do.
	Sodium gluconate	.....do	.....do	Do.
	Sodium hydroxide	.....do	.....do	Do.
	Sodium persulfate	.....do	.....do	Do.
	Sodium silicates (ortho, meta, and sesqui).	.....do	.....do	Do.
	Trisodium phosphate	.....do	.....do	Do.
Emulsifying Agents	Actylated monoglycerides	To emulsify product	Shortening and various poultry products.	Sufficient for purpose.
	Diacetyl tartaric acid esters of mono-and diglycerides.	.....do	.....do	Do.
	Glycerol-lacto stearate, oleate, or palmitate.	.....do	.....do	Do.
	Lecithin	To emulsify product (also as an antioxidant).	Oleomargarine, shortening, various meat and poultry products.	0.5 percent in oleomargarine, use in other products—sufficient amount for emulsification.
	Mono and diglycerides (glycerol palmitate, etc.).	To emulsify product	Rendered animal fat or a combination of such fat with vegetable fat; oleomargarine.	Sufficient for purpose in lard and shortening; 0.5 percent in oleomargarine.
		.....do	Various poultry products	Sufficient for purpose.
	Mono and diglycerides of fatty acids esterified with any of the following acids: acetic, acetyltartaric, citric, lactic, tartaric, and their sodium and calcium salts; the sodium sulfoacetate derivatives of these mono and diglycerides.	.....do	Margarine or oleomargarine	0.5 percent.
	Polyglycerol esters of fatty acids (polyglycerol esters of fatty acids are restricted to those up to and including the decaglycerol esters and otherwise meeting the requirements of § 172.854(a) of the Food Additive Regulations).	.....do	Rendered animal fat or a combination of such fat with vegetable fat when use is not precluded by standards of identity of composition; oleomargarine.	Sufficient for purpose for rendered animal fat or combination with vegetable fat; 0.5 percent for oleomargarine.
	Polysorbate 60 (polyoxyethylene (20) sorbitan monostearate).	.....do	Shortening for use in nonstandardized baked goods, baking mixes, icings, fillings, and toppings and in the frying of foods (meat only). Rendered poultry fat or a combination of such fat with vegetable fat.	1 percent when used alone. If used with polysorbate 80 the combined total shall not exceed 1 percent.
	Polysorbate 80 (polyoxyethylene (20) sorbitan monooleate).	.....do	Shortening for use in nonstandardized baked goods, baking mixes, icings, fillings, and toppings and in the frying of foods (meat only). Various poultry products.	1 percent when used alone. If used with polysorbate 60 the combined total shall not exceed 1 percent.
	1,2-propylene glycol esters of fatty acids.	.....do	Margarine or oleomargarine	2.0 percent.
	Propylene glycol mono and diesters of fats and fatty acids.	.....do	Rendered animal or poultry fat or a combination of such fat with vegetable fat.	Sufficient for purpose.
	Stearyl-2-lactylic acid	.....do	Shortening to be used for cake icings and fillings (meat only).	3.0 percent.

Film Forming Agents	Stearyl monoglyceridyl citrate	.....do	Shortening	Sufficient for purpose
	A mixture consisting of water, sodium alginate, calcium chloride, sodium carboxymethyl-cellulose, and corn syrup solids.	To reduce cooler shrinkage and help protect surface.	Freshly dressed meat carcasses. Such carcasses must bear a statement "Protected with a film of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethyl-cellulose.".	Formulation may not exceed 1.5 percent of hot carcass weight when applied. Chilled weight may not exceed hot weight.
Flavoring Agents; Protectors and Developers.	Artificial smoke flavoring	To flavor product	Various (meat and poultry)[2]	Sufficient for purpose.
	Autolyzed yeast extract	.....do	.....do	Do.
	Benzoic acid (sodium, potassium and calcium salts).	To retard flavor reversion	Margarine or oleomargarine	0.1 percent individually, or if used in combination with other flavoring agents for use in meat or with sorbic acid and its salts, 0.2 percent (expressed as the acids in the wt. of the finished foods).
	Calcium lactate	To protect flavor	Cooked semi-dry and dry products including sausage, imitation sausage, and nonspecific meat food sticks.	0.6 percent in product formulation.
	Citric acid	.....do	Various poultry products	Sufficient for purpose.
		Flavoring	Chili con carne	Do.
	Corn syrup solids; corn syrup; glucose syrup.	To flavor product	Various poultry products, sausage, hamburger, meat loaf, luncheon meat, chopped or pressed ham.	Do.
	Dextrose	.....do	Sausage, ham and cured products.	Do.
	Diacetyl	.....do	Oleomargarine	Do.
	Disodium guanylate	.....do	Various meat and poultry products.[2]	
	Disodium inosinate	.....do	.....do	Do.
	Harmless bacteria starters of the acidophilus type, lactic acid starter or culture of *Pediococcus cerevisiae.*	To develop flavor	Dry sausage, pork roll, thuringer, lebanon bologna, cervelat, and salami.	0.5 percent.
	Harmless lactic acid producing bacteria.	To prevent the growth of *Clostridium botulinum.*	Bacon	Sufficient for purpose.
	Hydrolyzed plant protein	To flavor product	Various meat and poultry products.[2]	Do.
	Isopropyl citrate	To protect flavor	Oleomargarine	0.02 percent.
	Malt syrup	To flavor product	Cured meat products	2.5 percent.
		.....do	Various poultry products	Sufficient for purpose.
	Milk protein hydrolysate	.....do	Various meat and poultry products.[2]	Do.
	Monoammonium glutamate	.....do	.....do	Do.
	Monosodium glutamate	.....do	.....do	Do.
	Potassium lactate	.....do	Various meat and meat food products, poultry and poultry food products, except infant formula and infant food.[2]	Not to exceed 2 percent of formulation; in accordance with 21 CFR 184.1639.
	Smoke flavoring	To flavor product	Various meat and poultry products.	Sufficient for purpose.
	Sodium acetate	.....do	Various meat and poultry products.	Not to exceed 0.12 percent of formulate in accordance with 21 CFR 184.1721.
	Sodium diacetate	.....do	.....do	Not to exceed 0.1 percent of formulate in accordance with 21 CFR 184.1754.
	Sodium lactate	.....do	Various meat and meat food products, poultry and poultry food products, except infant formula and infant food.[2]	Not to exceed 2 percent of formulation in accordance with 21 CFR 184.1768.
	Sodium sulfoacetate derivative of mono and diglycerids.	.....do	Various meat and poultry products.[2]	0.5 percent.
	Sodium tripolyphosphate	To help protect flavor	"Fresh Beef,"[2] "Beef for further cooking, "Cooked Beef," Beef Patties, Meat Loaves, Meat Toppings, and similar products derived from pork, lamb, veal, mutton, and goat meat which are cooked or frozen after processing.	0.5 percent of total product.

	Sodium tripolyphosphate and sodium mixtures, metaphosphate, insoluble; and sodium polyphosphates, glassy.	.....do	.....do	Do.
	Sorbitol	To flavor, to facilitate the removal of casings from product, and to reduce caramelization and charring.	Cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst; cured pork and pork products, as provided for in 9 CFR Part 319.	Not to exceed 2 percent of the weight of the formula excluding the formula weight of water or ice, when used in accordance with 21 CFR 184.1835.
	Starter distillate	To help protect flavor	Oleomargarine	Sufficient for purpose.
	Stearyl citrate	.....do	.....do	0.15 percent.
	Sugars (sucrose and dextrose)	To flavor product	Various meat and poultry products.	Sufficient for purpose.
Gases	Carbon dioxide liquid	Contact freezing	Various poultry products	Do.
	Carbon dioxide solid (dry ice)	To cool product	Chopping of meat, packing of product.	Sufficient for purpose.
		To cool product or facilitate chopping or packaging.	Various poultry products	Do.
	Nitrogen	To exclude oxygen from sealed containers.	Various meat and poultry products.	Do.
	Nitrogen, liquid	Contact freezant	.....do	Do.
Hog Scald Agents (must be removed by subsequent cleaning operations).	Caustic soda	To remove hair	Hog carcasses	Sufficient for purpose.
	Dicotyl sodium sulfosuccinate	.....do	.....do	Do.
	Dimethylpolysiloxane	.....do	.....do	Do.
	Disodium-calcium ethylenediaminetetra-acetate.	.....do	.....do	Do.
	Disodium phosphate	.....do	.....do	Do.
	Ethylenediaminetetra-acetic acid (sodium salts).	.....do	.....do	Do.
	Lime (calcium oxide, calcium hydroxide).	.....do	.....do	Do.
	Potassium hydroxide			Do.
	Propylene glycol	.....do	.....do	Do.
	Soap (prepared by the reaction of calcium, potassium, or sodium with rosin or fatty acids of natural fats and oils).	.....do	.....do	Do.
	Sodium acid pyrophosphate	.....do	.....do	Do.
	Sodium carbonate	.....do	.....do	Do.
	Sodium dodecylbenzene sulfonate.	.....do	.....do	Do.
	Sodium gluconate	.....do	.....do	Do.
	Sodium hexametaphosphate	.....do	.....do	Do.
	Sodium lauryl sulfate	.....do	.....do	Do.
	Sodium mono and dimethylnaphthalene sulfonate (molecular weight 245–260).	.....do	.....do	Do.
	Sodium n-alkylbenzene sulfonate (alkyl group predominantly C12 and C13 and not less than 95 percent C10 and C16).	.....do	.....do	Do.
	Sodium pyrophosphate	.....do	.....do	Do.
	Sodium silicates (ortho, meta, and sesqui).	.....do	.....do	Do.
	Sodium sulfate	.....do	.....do	Do.
	Sodium tripolyphosphate	.....do	.....do	Do.
	Sucrose	.....do	.....do	Do.
	Triethanolamine dodecylbenzene sulfonate.	.....do	.....do	Do.
	Trisodium phosphate	.....do	.....do	Do.
Miscellaneous	Adipic acid	To acidify	Margarine or oleomargarine	Sufficient for purpose.

Ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate singly or in combination, under quality control.	To delay discoloration	Fresh beef cuts, fresh lamb cuts, fresh pork cuts.	Not to exceed, singly or in combination, 500 ppm or 1.8 mg/sq. inch of product surface of ascorbic acid (in accordance with 21 CFR 182.3013), erythorbic acid (in accordance with 21 CFR 182.3041) or sodium ascorbate (in accordance with 21 CFR 182.3731); and/or not to exceed, singly or in combination, 250 ppm or 0.9 mg/sq. inch of product surface of citric acid (in accordance with 21 CFR 182.6033), or sodium citrate (in accordance with 21 CFR 182.6751).
Calcium disodium, EDTA (calcium disodium ethylenediaminetetraacetate.	To preserve product and to protect flavor.	Margarine or oleomargarine	75 ppm by weight of the finished oleomargarine or margarine.
Calcium propionate	To retard mold growth	Pizza crust	0.32 percent alone or in combination based on weight of the flour brace used.
	do	Fresh pie dough (poultry only)	0.3 percent of calcium propionate or sodium propionate alone, or in combination, based on weight of flour used.
Citric acid	To preserve cured color during storage.	Cured pork cuts	Not to exceed 30 percent in water solution used to spray surfaces of cured cuts, prior to packaging, in accordance with 21 CFR 184.1033. (The use of such solution shall not result in the addition of a significant amount of moisture to the product and shall be applied only once to product).
Citric acid (sodium and potassium salts).	To acidify	Margarine and oleomargarine	Sufficient for purpose.
d- and dl-alpha-tocopherol	To inhibit nitrosamine formation.	Pump-cured bacon	500 ppm; by injection or surface application.
Dipotassium phosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry food products, 0.5 percent of total product.
Disodium phosphate	do	do	Do.
Glycerine	Humectant	Shelf stable meat snacks	Not to exceed 2 percent of the formulation weight of the product in accordance with 21 CFR 182.1320.
Hydrochloric acid	To acidify	Margarine or oleomargarine	Sufficient for purpose.
Lactic acid (sodium and potassium salts).	do	do	Do.
L-Tartaric acid (sodium and sodium potassium salts).	do	do	Do.
Monopotassium phosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
Monosodium phosphate	do	do	Do.
Phosphoric acid	To acidify	Margarine or oleomargarine	Sufficient for purpose.
Potassium bicarbonate	To alkalize	Margarine or oleomargarine	Sufficient for purpose.
Potassium carbonate	do	do	Do.

Potassium pyrophosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry food products, 0.5 percent of total product.
Potassium sorbate	To retard mold growth	Dry sausage	10 percent in water solution may be applied to casings after stuffing or casings may be dipped in solution prior to stuffing.
Potassium tripolyphosphate ...	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations.	5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry food products, 0.5 percent of total product.
Propyl paraben (propyl p-hydroxy-benzoate).	To retard mold growth	Dry sausage	3.5 percent in water solution may be applied to casings after stuffing or casings may be dipped in solution prior to stuffing.
Silicon dioxide	Processing aid/dispersant	Tocopherol containing bacon curing mixes.	At level not to exceed 4.0 percent in the dry mix.
Sodium acid pyrophosphate ...	To decrease the amount of cooked out juices.	Meat food products except where other prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
Sodium bicarbonate	To neutralize excess acidity, cleaning vegetables.	Rendered fats, soups, curing pickle (meat and poultry).	Sufficient for purpose.
	To alkalize	Margarine or oleomargarine	Do.
Sodium carbonate	.....do	.....do	Do.
Sodium citrate buffered with citric acid to a pH of 5.6.	To inhibit the growth of micro-organisms and retain product flavor during storage.	Cured and uncured, processed whole muscle meat and poultry food products, e.g., ham, chicken breasts.	Not to exceed 1.3 percent of the formulation weight of the product in accordance with 21 CFR 184.1751.
Sodium hydroxide	To alkalize	Margarine or oleomargarine	Sufficient for purpose.
	To decrease the amount of cooked out juices.	Poultry food products containing phosphates.	May be used only in combination with phosphate in a ratio not to exceed one part sodium hydroxide to four parts phosphate.
	.....do	Meat food products containing phosphates.	May be used only in combination with phosphates in a ratio not to exceed one part sodium hydroxide to four parts phosphate; the combination shall not exceed 5 percent in pickle at 10 percent pump level; 0.5 percent in product.
Sodium metaphosphate, insoluble.	.....do	Meat food products except where other prohibited by the meat inspection regulations, and poultry food products except where otherwise prohibited by the poultry products inspection regulations.	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
Sodium polyphosphate, glassy	.....do	.....do	Do.
Sodium proprionate	To retard mold growth	Pizza crust	0.32 percent alone or in combination based on weight of the flour brace used.

		.....do	Fresh pie dough (poultry only)	0.3 percent of calcium proprionate or sodium proprionate alone, or in combination, based on weight of flour used.
	Sodium pryophosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations.	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
	Sodium tripolyphosphate	.....do	.....do	Do.
	Sorbic acid (sodium, potassium, and calcium salts).	To preserve product and to retard mold growth.	Margarine or oleomargarine	0.1 percent individually, or if used in combination or with benzoic acid or its salts, 0.2 percent (expressed as the acids in the wt. of the finished foods).
	Tricalcium phosphate	To preserve product color during dehydration process.	Mechanically deboned chicken to be dehydrated.	Not to exceed 2 percent of the weight of the mechanically deboned chicken prior to dehydration, in accordance with 21 CFR 182.1217.
Poultry scald agents (must be removed by subsequent cleaning operations).	Alpha-hydro-omega-hydroxy-poly (oxyethylene) poly (oxypropylene) (minimum 15 moles) poly (oxyethylene) block copolymer (poloxamer).	To remove feathers	Poultry carcasses	Not to exceed 0.05 percent by weight in scald water.
	Dimethylpolysiloxane	.....do	.....do	Sufficient for purpose.
	Dioctyl sodium sulfosuccinate	.....do	.....do	Do.
	Dipotassium phosphate	.....do	.....do	Do.
	Ethylenediaminetetra-acetic acid (sodium salts).	.....do	.....do	Do.
	Lime (calcium oxide, calcium hydroxide).	.....do	.....do	Do.
	Polyoxyethylene (20) sorbitan monooleate.	.....do	.....do	Not to exceed 0.0175 percent in scald water.
	Potassium hydroxide	.....do	.....do	Sufficient for purpose.
	Propylene glycol	.....do	.....do	Do.
	Sodium acid phosphate	.....do	.....do	Do.
	Sodium acid pyrophosphate ...	.....do	.....do	Do.
	Sodium bicarbonate	.....do	.....do	Do.
	Sodium carbonate	.....do	.....do	Do.
	Sodium dodecylbenzene-sulfonate.	.....do	.....do	Do.
	Sodium-2-ethylhexyl sulfate ...	.....do	.....do	Do.
	Sodium hexametaphosphate ...	.....do	.....do	Do.
	Sodium hydroxide	.....do	.....do	Do.
	Sodium lauryl sulfate	.....do	.....do	Do.
	Sodium phosphate (mono-, di-, tribasic).	.....do	.....do	Do.
	Sodium pyrophosphate	.....do	.....do	Do.
	Sodium sesquicarbonate	.....do	.....do	Do.
	Sodium sulfate	.....do	.....do	Do.
	Sodium tripolyphosphate	.....do	.....do	Do.
	Tetrasodium pyrophosphate ...	.....do	.....do	Do.
Proteolytic Enzymes	Aspergillus flavus oryzae group.	To soften tissue	Raw poultry muscle tissue of hen, cock, mature turkey, mature duck, mature goose, and mature guinea, and raw meat cuts.	Solutions consisting of water and approved proteolytic enzyme applied or injected into raw meat or poultry tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Aspergillus oryzae	.....do	.....do	Do.
	Bromelin	.....do	.....do	Do.
	Ficin	.....do	.....do	Do.
	Papain	.....do	.....do	Do.
Refining Agents (must be eliminated during process of manufacturing).	Acetic acid	To separate fatty acids and glycerol.	Rendered fats (meat only)	Sufficient for purpose.
	Bicarbonate of soda	.....do	.....do	Do.
	Carbon (purified charcoal)	To aid in refining of animal fats.	.....do	Do.
	Caustic soda (sodium hydroxide).	To refine fats	.....do	Do.
	Diatomaceous earth; Fuller's earth.	.....do	.....do	Do.

	Sodium carbonate	.....do	.....do	Do.
	Tannic acid	.....do	.....do	Do.
Rendering agents	Tricalcium phosphate	To aid rendering	Animal fats	Do.
	Trisodium phosphate	.....do	.....do	Do.
Synergists (used in combination with antioxidants).	Citric acid	To increase effectiveness of antioxidants.	Any meat product permitted to contain antioxidants as provided for in this part.	Not to exceed 0.01 percent based on fat content.
		.....do	Poultry fats	0.01 percent alone or in combination with antioxidants in poultry fats.
	Malic acid	.....do	Lard and shortening	0.01 percent based on total weight in combination with antioxidants for use in meat products only.
		.....do	Poultry fats	0.01 percent alone or in combination with antioxidants in poultry fats.
	Monoglyceride citrate	.....do	Lard, shortening, fresh pork sausage, dried meats and poultry fats.	0.02 percent.
	Monoisopropyl citrate	.....do	Lard, shortening, oleomargarine, fresh pork sausage, dried meats.	Do.
		.....do	Poultry fats	0.01 percent poultry fats.
	Phosphoric acid	.....do	Lard, shortening, and poultry fats.	0.01 percent.
Tenderizing agents	Aspergillus flavus oryzae group.	To soften tissue	Raw poultry muscle tissue of hen, cock, mature turkey, mature duck, mature goose, and mature guinea, and raw meat cuts.	Solutions consisting of water and approved proteolytic enzyme applied or injected into raw meat or poultry tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Aspergillus oryzae	.....do	.....do	Not more than 3 percent of a of a 0.8 molar solution.
	Bromelin	.....do	.....do	Do.
	Calcium chloride	.....do	.....do	Do.
	Magnesium chloride	.....do	.....do	Do.
	Papain	To soften tissue	Raw poultry muscle tissue of hen, cock, mature turkey, mature duck, mature goose, and mature guinea, and raw meat cuts.	Solutions consisting of water and approved proteolytic enzyme applied or injected into raw meat or poultry tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Potassium chloride	.....do	.....do	Not more than 3 percent of a 2.0 molar solution.
	Potassium, magnesium or calcium chloride.	.....do	.....do	A solution of approved inorganic chlorides injected into or applied to raw meats or poultry cuts shall not result in a gain of more than 3 percent above the weight of the untreated product.

[1] [RESERVED]
[2] Information as to the specific products for which use of this additive is approved may be obtained upon inquiry addressed to the Labeling and Additives Policy Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.
[3] Provided, that its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases prior to label approval under §§ 317.4 or 381.32.
[4] Special labeling requirements are prescribed in 381.120 for raw poultry chilled in a medium with more than 70 lbs. of salt to 10,000 gals. of water.

§ 424.22 Certain other permitted uses.

(a) Under appropriate declaration as required in parts 316 and 317 of this chapter, the following substances may be added to meat:

(1) *General.* Common salt, approved sugars (sucrose, cane or beet sugar), maple sugar, dextrose, invert sugar, honey, corn syrup solids (corn syrup, glucose syrup and fructose), wood smoke, vinegar, flavorings, spices, sodium nitrate, sodium nitrite, potassium nitrate, potassium nitrite, and other food and color additives specified in the chart in paragraph (c) of this section may be added to meat under conditions, if any, specified in this part or in part 317 of this chapter.

(2) *Artifical flavorings.* Other harmless artificial flavorings may be added to meat, with the approval of the Administrator in specific cases.

(3) *Coloring matter and dyes.* Coloring matter and dyes, other than those specified in a regulation permitting that use in this chapter or in 21 CFR Chapter I, Subchapter A and Subchapter B, may be applied to meat mixed with rendered fat, applied to natural and artificial casings, and applied to such casings enclosing products, if approved by the Administrator in specific cases. When any coloring matter or dye is applied to casings, there shall be no penetration of coloring into the product.

(b) *Use of nitrite and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon.*

(1) *Pumped bacon.* With respect to bacon injected with curing ingredients and massaged bacon, sodium nitrite shall be used at 120 parts per million (ppm) ingoing or an equivalent amount of potassium nitrite shall be used (148 ppm ingoing); and 550 ppm of sodium

ascorbate or sodium erythorbate (isoascorbate) shall be used. Sodium ascorbate or sodium erythorbate have a molecular weight of approximately 198. Hydrated forms of these substances shall be adjusted to attain the equivalent of 550 ppm of sodium ascorbate or sodium erythorbate.

(i) The Department shall collect samples of pumped bacon from producing plants and analyze them for the level of nitrosamines by the Thermal Energy Analyzer (TEA). In the event that a TEA analysis indicates that a confirmable level of nitrosamines might be present, additional samples shall be collected and analyzed by gas chromatography. Presumptive positive results must be confirmed by mass spectrometry before being considered positive. If during the interval required for the Department to analyze the confirmatory samples by gas chromatography and mass spectrometry, changes are made in processing procedures which are expected to result in no confirmable levels of nitrosamines in pumped bacon produced by these new procedures, an establishment may submit samples to USDA for analysis upon prior notification and arrangements with USDA. If, however, an establishment furnishes USDA with laboratory results from testing five consecutive lots of pumped bacon produced under the new procedures and the testing is performed by the USDA methodology and procedures, those results will be utilized in making the determination concerning the product produced under the new procedures. Should the results of these tests reveal that confirmable levels of nitrosamines are not indicated in any of the five consecutive lots, the confirmation analysis by USDA shall be terminated and the establishment shall revert to normal monitoring status. In the event the test results continue to indicate nitrosamines, however, USDA shall proceed in its confirmation analysis on the original samples taken for confirmation. If any one of the original samples collected by USDA for confirmation is found to contain confirmable levels of nitrosamines, all pumped bacon in the producing establishment and all future production will be retained. The Department shall sample and analyze such retained pumped bacon for nitrosamines on a lot by lot basis. A production lot shall be that pumped bacon produced by the establishment in any single shift. Samples from any lot of pumped bacon under retention found to contain nitrosamines at a confirmable level shall cause the lot of pumped bacon to be disposed of in a manner to ensure it will not form nitrosamines when cooked. Such disposal may include incorporation of the uncooked pumped bacon as an ingredient of another meat provided it is processed for eating without further preparation in a manner to preclude the formation of nitrosamines. Bacon subsequently produced shall not be retained because of nitrosamines if the operator of the establishment makes adjustments in the processing of the product and laboratory results obtained by TEA analysis of samples from five consecutive normal sized lots of pumped bacon indicates that the product being produced contains no confirmable levels of nitrosamines. These tests from five consecutive normal sized lots of pumped bacon shall be conducted by the Department. However, if the establishment furnishes the Department with the results of tests conducted under the methodology and procedures used by the Department, such test results will be utilized in making the determination concerning the nitrosamine content of the product. All tests of pumped bacon for nitrosamines under this paragraph (b)(1)(i) shall be made on pumped bacon cooked at 340 degrees F. for 3 minutes on each side. In order to determine that no confirmable levels of nitrosamines are present in a sample tested, the testing must be performed by methodology and procedures that would detect the presence of any nitrosamines at 10 ppb.

(ii) Notwithstanding the provisions of paragraph (b)(1)(i) of this section, sodium nitrite may be used at:

(A) 100 ppm ingoing (potassium nitrite at 123 ppm ingoing); and 500 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used, provided the establishment has a partial quality control program as provided in Sec. 318.4(d) that results in compliance with this provision, or

(B) A predetermined level between 40 and 80 ppm (potassium nitrite at a level between 49 and 99 ppm); 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); and additional sucrose or other similar fermentable carbohydrate at a minimum of 0.7 percent and an inoculum of lactic acid producing bacteria such as *Pediococcus acetolactii* or other bacteria demonstrated to be equally effective in preventing the growth of botulinum toxin at a level sufficient for the purpose of preventing the growth of botulinum toxin, provided the establishment has a partial quality control program as provided in Sec. 318.4(d) that results in compliance with this provision.

(C) The Department shall collect samples of bacon from establishments producing under paragraph (b)(1)(ii) of this section and analyze them for the level of nitrosamines. Samples shall be randomly selected throughout the production of a lot. The actual sampling plans and methods of analysis that are used will result in approximately the same likelihood as under paragraph (b)(1)(i) of this section of having a presumptive positive result when the true mean level of nitrosamines in a production lot is 10 ppb. In the event of a presumptive positive result, the establishment shall become subject to the provisions of paragraph (b)(1)(i) of this section.

(2) *Immersion cured bacon.* Immersion cured bacon may be placed in a brine solution containing salt, nitrite and flavoring material or in a container with salt, nitrite and flavoring material. Sodium nitrite shall not exceed 120 ppm ingoing or an equivalent amount of potassium nitrite (148 ppm ingoing) based on the actual or estimated skin-free green weight of the bacon bellies.

(3) *Bacon made with dry curing materials.* With respect to bacon made with dry curing materials, the product shall be cured by applying a premeasured amount of cure mixture to the bacon belly surfaces, completely covering the surfaces. Sodium nitrite shall not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

§ 424.23 Prohibited uses.

(a) *Substances that conceal damage or inferiority or make products appear better or of greater value.* No substance may be used in or on any meat if it conceals damage or inferiority or makes the product appear to be better or of greater value than it is. Therefore:

(1) Paprika or oleoresin paprika may not be used in or on fresh meat, such as steaks, or comminuted fresh meat, such as chopped and formed steaks or patties; or in any other meat consisting of fresh meat (with or without seasoning).

(2) Paprika or oleoresin paprika may be used in or on chorizo sausage and other meat in which paprika or oleoresin paprika is permitted as an ingredient in a standard of identity or composition in part 319 of this subchapter.

(3) Sorbic acid, calcium sorbate, sodium sorbate, and other salts of sorbic acid shall not be used in cooked sausages or any other meat; sulfurous acid and salts of sulfurous acid shall not be used in or on any meat; and niacin

or nicotinamide shall not be used in or on fresh meat product; except that potassium sorbate, propylparaben (propyl p-hydroxybenzoate), calcium propionate, sodium propionate, benzoic acid, and sodium benzoate may be used in or on any product, only as provided in 9 CFR Chapter III.

(b) *Nitrates.* Nitrates shall not be used in curing bacon.

Done at Washington, DC, on December 13, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–32659 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–DM–P

federal register

Thursday
December 23, 1999

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

RIN 0584–AC45

Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Food and Nutrition Service (FNS) proposes to amend its regulations to implement several work-related provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This proposed rule makes significant changes to current work rules, including requirements for the Food Stamp Employment and Training Program and the optional workfare program. These changes streamline Food Stamp Program work requirements, simplify the disqualification requirements for failure to comply with work rules, and provide greater flexibility for States to operate their employment and training programs.

DATES: Send your comments to reach us by February 22, 2000.

ADDRESSES: You may mail comments to Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, attention Program Design Branch. You may FAX comments to us at (703) 305–2486, attention Program Design Branch. You may also hand-deliver comments to us on the 7th floor at the above address. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under Electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Program Design Branch, Program Development Division, Food Stamp Program, FNS, at (703) 305–2519. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at http://www.fns.usda.gov/fsp/. You may also comment via the Internet at the same address. Please include "Attention: RIN 0584–AC45" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at (703) 305–2519.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section of paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 7th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays. We will also post all comments on the Internet at http://www.usda.gov/fsp at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Since 1971, able-bodied food stamp recipients have been required to register for work and accept suitable jobs as a condition for receiving benefits. In 1982 Congress passed legislation creating workfare, a food stamp work-for-benefits program. States and local jurisdictions were afforded the option of requiring most able-bodied recipients to work in public service jobs in exchange for their food stamps. In 1987 States implemented the Food Stamp Employment and Training (E&T) Program, designed to improve food stamp recipients' ability to gain employment, increase earnings, and reduce their dependency on public assistance.

In August 1996, President Clinton signed into law "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996," or PRWORA (Pub. L. 104–193). PRWORA—popularly known as "welfare reform"—contained several Food Stamp Program (FSP) work-related provisions that strengthen work requirements, promote personal responsibility, streamline E&T requirements, and greatly increase State flexibility.

Section 815 of PRWORA revised FSP work requirements by amending section 6(d)(1) of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2015(d)(1)). It dealt with disqualification for noncompliance with FSP work requirements. It added to the list of ineligible individuals at section 6(d)(1)(A) those who: (1) refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability; (2) voluntarily and without good cause quit their job (previously limited to heads of households); (3) voluntarily and without good cause reduce their work effort and, after the reduction, work less than 30 hours a week; and (4) fail to comply with the workfare rules in section 20 of the Act (7 U.S.C. 2029). Section 815 deleted, as an explicit good cause for refusal to accept an offer of employment, the lack of adequate child care for children above age five and under age 12. The provision removed the requirement that the entire food stamp household be disqualified if the head of the household is disqualified. Instead, it provided States the option to disqualify the entire household if the head of the household is disqualified. Section 815 established new mandatory minimum disqualification periods for individuals who fail to comply with work requirements. It required the Secretary of Agriculture (the Secretary) to determine the meanings of good cause, voluntary quit, and reduction of work effort. It required States to determine: (1) the meaning of other terms related to FSP work requirements; (2) the procedures for determining compliance with work requirements; and (3) whether an individual is actually complying with work requirements. Lastly, Section 815 specified that States may not use meanings, procedures, or determinations that are less restrictive on food stamp recipients than comparable meanings, procedures, or determinations are on recipients of assistance under State programs funded

under part A of title IV of the Social Security Act (title IV–A), 42 U.S.C. 601 *et seq.*

Section 817 of PRWORA amended Act language at section 6(d)(4) relating to the E&T Program. It streamlined administrative requirements for States by: (1) requiring E&T components to be delivered through a statewide workforce development system, if available; (2) expanding the existing State option to apply E&T requirements to applicants (previously limited to job search); (3) eliminating the requirement that job search components be comparable with those operated under title IV–A; (4) removing requirements for work experience components that mandated they serve a useful public service and that they use a participant's prior training, experience, and skills; (5) removing specific Federal rules as to States' authority to exempt categories of individuals and individuals from E&T requirements, as well as removing the requirement that such exemptions be evaluated no less often than at each certification or recertification of the affected food stamp case; (6) deleting outdated language concerning applications by States to provide priority service to volunteer E&T participants; (7) removing the requirement that States permit, to the greatest practicable extent, work registrants exempted from E&T, as well as E&T participants who comply with or are in the process of complying with program requirements, to participate in E&T, while maintaining the States' option to permit voluntary participation; (8) removing the requirement for conciliation procedures to resolve disputes involving participation in E&T; (9) removing the requirement that States' limits for payments or reimbursements of dependent care expenses to E&T participants must be at least as high as the FSP dependent care deduction cap; (10) removing the requirements for E&T performance standards; (11) adding the provision that the amount of funds States use to provide E&T services to participants receiving benefits under a State program funded under title IV–A cannot exceed the amount of funds, if any, States used in fiscal year 1995 to provide E&T services to participants who were receiving benefits under title IV–A; and (12) removing the Secretary's authority to withhold funds from States for failure to comply without good cause with E&T requirements.

PRWORA also contained major changes in the requirements for Federal financial participation in the E&T program. Subsequently, the Balanced Budget Act of 1997 (Pub. L. 105–33) further amended those requirements. Federal financial participation is addressed in a separate rulemaking.

Three other PRWORA provisions added new language to the Act. Section 816 permitted certain States to lower the age at which a child exempts a parent/caretaker from food stamp work rules. Section 849 provided States the option of using a household's food stamp benefits to subsidize a job for a household member participating in a work supplementation program. Section 852 permitted qualifying States to provide certain households with cash in lieu of food stamps.

Additionally, PRWORA made significant changes to the workfare provisions at section 20 of the Act. It removed the States' ability to comply with section 20 by operating a workfare program under title IV–A. It removed the provision that permitted States to combine the value of a household's food stamp allotment with the value of assistance received by the household from a program under title IV–A in order to determine the number of monthly hours of participation required of those households in a title IV–A community work experience program. Lastly, it eliminated disqualification provisions specific to the optional workfare program and incorporated noncompliance with workfare into the disqualification provisions governing noncompliance with FSP work requirements.

Lastly, as part of the Department's ongoing regulation streamlining and reform initiative, this rule proposes to consolidate the workfare regulations at 7 CFR 273.22 with FSP work requirements contained in 7 CFR 273.7.

III. Discussion of Proposed Rule

Program Work Requirements

Current regulations at 7 CFR 273.7 require that all physically and mentally fit food stamp recipients over the age of 15 and under the age of 60 who are not otherwise exempted be registered for work by the State agency at the time of application and once every 12 months thereafter. Work registrants are required to participate in an E&T program if assigned by the State agency, provide information regarding employment status and availability for work, report to an employer if referred, and accept a bona fide offer of suitable employment at a wage no less than the applicable State or Federal minimum wage, whichever is highest.

Failure to meet these requirements without good cause results in a two-month disqualification. If the noncompliant individual is the head of the household, the entire household is disqualified for two months. Otherwise, only the individual is disqualified.

Additionally, if the head of the household voluntarily quits a job of 20 or more hours a week without good cause 60 days or less prior to applying for food stamps, or at any time thereafter, the entire household is disqualified for 90 days.

Eligibility may be reestablished by the household during a disqualification period if the head of the household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the requirement in question. Disqualified individuals may reestablish eligibility by becoming exempt from the work registration requirement or by complying with the requirement in question.

Certain food stamp recipients are exempt from work registration requirements. Among these exempt individuals are those currently subject to and complying with a work registration requirement under title IV–A or the Federal-State unemployment compensation system. If these individuals fail to comply with any work requirement to which they are subject that is comparable to a FSP work requirement, they are subject to disqualification.

In accordance with section 815 of PRWORA, which contains amendments to section 6(d)(1) of the Act, this rulemaking proposes the following changes to current regulations.

Work Registrant Requirements

The current regulation at 7 CFR 273.7(a) contains the work registration requirement for nonexempt food stamp household members.

Current regulations at 7 CFR 273.7(e) list the responsibilities and requirements for work registrants.

Section 815 of PRWORA amended section 6(d)(1) of the Act by adding to the list of reasons for disqualification the refusal without good cause by an individual to provide a State agency with sufficient information to determine his or her employment status or job availability. Note, however, that 7 CFR 273.7(e) already contains the requirement that a work registrant respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work. Therefore, no action is required to amend current regulations in this regard.

Current regulations at 7 CFR 273.22 contain FSP workfare participation requirements for households. 7 CFR

273.22(f)(6) provides for penalties for failure to comply with workfare requirements.

Section 815 aligned workfare penalties with other work penalties. It amended section 20 of the Act by removing workfare disqualification provisions, and further amended section 6(d)(1) by including refusal without good cause to comply with section 20 of the Act as a reason for disqualification.

Therefore, this rule proposes to amend 7 CFR 273.22(f) by removing paragraph (6), Failure to Comply, and to amend 7 CFR 273.7(e) by adding as a work registrant requirement participation in a workfare program if assigned.

This rule further proposes to incorporate the work registrant requirements listed in 7 CFR 273.7(e) into 7 CFR 273.7(a), which will be redesignated 7 CFR 273.7(a)(1) and renamed *work requirements.*

This rule also proposes to incorporate the participation requirements for strikers listed in 7 CFR 273.7(j); the requirements for registration of certain PA, GA, and refugee households listed in 7 CFR 273.7(k); and the provisions for applicants applying for SSI and food stamps under § 273.2(k)(1)(i), listed in 7 CFR 273.7(l), into 7 CFR 273.7(a). They will be redesignated 7 CFR 273.7(a)(4), (a)(5), and (a)(6) respectively.

Lastly, this rule proposes to make the following changes to 7 CFR 273.7: (1) the current provisions at 7 CFR 273.7(f), (g), (h), (i), (m), and (n) will be redesignated 7 CFR 273.7(e), (f), (g), (h), (i), and (j) respectively; (2) the current provisions at 7 CFR 273.7(o) and (p) will be deleted and new provisions, designated 7 CFR 273.7(k) and (l) will be added; (3) the provisions for the optional workfare program at 273.22 will be redesignated 7 CFR 273.7(m); and (4) 7 CFR 273.22 will be removed.

Administrative Responsibilities

Current regulations at 7 CFR 273.7(m) assign to State agencies the responsibility for determining the existence of good cause in instances when an individual fails or refuses to comply with FSP work requirements. 7 CFR 273.7(n) assigns to State agencies the responsibility for determining whether or not a voluntary quit occurred.

Section 815 of PRWORA amended the Act by adding a new provision, section 6(d)(1)(D), Administration. While assigning to the Secretary responsibility for determining the meanings of good cause, voluntary quit, and reduction of work effort, section 6(d)(1)(D) assigns to State agencies the responsibility for determining: (1) the meaning of all other terms relating to work requirements; (2) the procedures for determining whether an individual is in compliance with work requirements; and (3) whether an individual is actually in compliance with work requirements.

However, section 6(d)(1)(D) prohibits State agencies from assigning a meaning, procedure, or determination that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under a State program funded under title IV–A.

This rule proposes to amend 7 CFR 273.7(a) by assigning to the State agency responsibility for determining the meaning of all terms related to FSP work requirements (other than good cause, voluntary quitting, and reducing work effort); for establishing the procedures for determining whether an individual is in compliance with FSP work requirements; and for determining whether an individual is in actual compliance with FSP work requirements. The State agency may not use a meaning, procedure, or determination that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination is on recipients of a State program funded under title IV–A. These provisions will be incorporated in a new paragraph, 7 CFR 273.7(a)(2).

Household Ineligibility

Current regulations at 7 CFR 273.7(g)(1) require that an individual, other than the head of household, who fails or refuses without good cause to comply with FSP work requirements be disqualified from FSP participation. However, if the head of household fails or refuses without good cause to comply, the entire household must be disqualified.

Section 815 of PRWORA amended section 6(d)(1)(B) of the Act by removing the requirement that the entire household be disqualified if the head of the household fails or refuses without good cause to comply. Instead, section 815 provided State agencies the option to disqualify the entire household if the head of household fails or refuses without good cause to comply with FSP work requirements. It limited the length of such an optional household disqualification to the duration of the disqualification period applied to the individual or 180 days, whichever is shorter.

This rule proposes to amend redesignated 7 CFR 273.7(f) by eliminating the requirement in paragraph (1) that the entire household be disqualified if the head of the household fails to comply, and by adding a new paragraph (4), *Household Ineligibility.* 7 CFR 273.7(f)(4) will provide that a State agency has the option to disqualify the entire household if the head of the household becomes ineligible to participate in the FSP for failure to comply with work requirements. If the State agency chooses this option, it may disqualify the household for the duration of ineligibility of the head of the household, or for 180 days, whichever is less.

Disqualification Periods

Current regulations at 7 CFR 273.7(g)(1) establish a two-month disqualification period to be imposed for failure or refusal without good cause to comply with FSP work requirements.

Section 815 of PRWORA amended sections 6(d)(1) (a) and (b) of the Act to establish mandatory disqualification periods—based on the frequency of the violation—for individuals who fail to comply with FSP work requirements. For the first violation, the individual is disqualified until he or she complies with the requirement, one month, or, at State agency option, up to three months, whichever is later. For the second violation, until the later of the date the individual complies, two months, or a period—determined by the State agency—not to exceed six months. For the third or subsequent violation, until the later of the date the individual complies with the requirement; six months; a date determined by the State agency; or, at the option of the State agency, permanently.

This rule proposes to amend redesignated 7 CFR 273.7(f) by deleting reference to a 2-month disqualification period and by inserting a new paragraph, 7 CFR 273.7(f)(2), *Disqualification Periods.* The new paragraph (2) will provide for minimum mandatory disqualification periods for individuals who fail or refuse without good cause to comply with FSP work requirements. State agencies are free to elect which disqualification period they institute for each level of noncompliance. However, each State agency must apply its disqualification policy uniformly, statewide.

We further propose to add a new paragraph (d)(xiii) under 7 CFR 272.2, *Plan of operation.* Paragraph (d)(xiii) will contain the requirement for each State agency's disqualification policies.

Ending Disqualification

Current regulations at 7 CFR 273.7(h) provide that, at the end of the 2-month disqualification period, participation may resume if the disqualified individual or household reapplies for benefits and is determined eligible.

Eligibility may be reestablished by a household during the disqualification period if the head of household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the appropriate work requirement. A disqualified individual may resume participation during the disqualification period by becoming exempt from work registration or by complying with the appropriate requirement.

As discussed previously, section 815 of PRWORA assigned to State agencies responsibility for establishing the procedures for determining whether an individual is in compliance with work requirements, as well as the actual determination of compliance.

The Department believes that Congress intended for State agencies to have maximum flexibility in implementing and administering their disqualification policies. Thus, when determining whether a disqualified individual or household has complied with the FSP work requirement in question, a State agency may use its established procedures, as long as these procedures are no less restrictive than the State agency's title IV–A process.

Since section 815 of PRWORA called for mandatory disqualification periods (the *later* of the date of compliance or end of disqualification), a disqualified individual will no longer be able to comply with the requirement during the disqualification period and end or "cure" the disqualification early.

Congress clearly intended to end this practice of curing of a disqualification. Section 815 amended section 6(d)(1)(B)(ii) of the Act by deleting the following provision: "Any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated."

Thus, PRWORA removed a policy that provoked criticism in the past: the possibility of reestablishing eligibility during a disqualification by complying with a work requirement. This ability to cure a disqualification was viewed as providing a "revolving door" through which noncompliant participants could continuously reenter the FSP to avoid serious penalty.

In light of this prohibition against curing a disqualification, several State agencies have asked whether PRWORA also changed the previous policy of ending a disqualification when, during the disqualification period, a disqualified individual became exempt from FSP work requirements. This policy is unchanged.

Section 6(d)(2) of the Act provides that a person who must otherwise comply with the FSP work requirements in section 6(d)(1), and who is subject to the penalties for noncompliance, is exempt from those requirements if he or she is: (1) subject to and complying with a title IV–A or Federal–State unemployment compensation work requirement; (2) a parent or other household member caring for a dependent child under age six or an incapacitated person; (3) a student; (4) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (5) working 30 hours a week or earning the minimum wage equivalent; or (6) between the age of 16 and 18 and not head of a household, or between 16 and 18 and attending school or training on a half-time basis. Also exempt are those under 16 or 60 and over and those who are physically or mentally unfit.

In the Department's view, the language of section 6(d)(2) must be interpreted to include disqualified individuals who meet one of the exemption criteria. In such cases, that individual is no longer subject to the work requirements or to the attendant penalties for noncompliance. For instance, if a disqualified individual gains responsibility for the care of a dependent child under six during his or her disqualification period, that individual is no longer subject to FSP work requirements. The disqualification must terminate and the individual, if otherwise eligible, must be allowed to resume participation.

Therefore, this rule proposes to amend redesignated 7 CFR 273.7(g) by deleting reference to a 2-month disqualification period and by providing that, at the end of the applicable minimum mandatory disqualification period (except in cases of permanent disqualification), participation may resume if the disqualified individual reapplies for food stamps and is determined by the State agency to be in compliance with work requirements. This rule proposes to further amend redesignated 7 CFR 273.7(g) by removing the provision for curing a disqualification.

Good Cause

The current regulations at 7 CFR 273.7(m) assign to State agencies responsibility for determining good cause when an individual fails to comply with FSP work registration, E&T, and voluntary quit requirements. The regulations include as good cause circumstances beyond the individual's control. One example cited is the lack of adequate child care for children ages 6 to 12.

The current regulations at 7 CFR 273.7(n)(3) contain the good cause requirements specifically concerning voluntary quit, as well as the procedures for verifying questionable information concerning voluntary quit.

Section 815 of PRWORA amended section 6(d)(1) of the Act by deleting language that included the lack of adequate child care for children between 6 and 12 as good cause for refusing to accept an offer of employment, and by assigning to the Secretary specific authority to define the meaning of good cause. We believe that Congress did not intend to eliminate lack of adequate child care as a valid good cause reason, thereby forcing parents to choose between the well-being of their children and the demands of FSP work requirements. Instead, by deleting this reference to a very specific, single instance of noncompliance, we believe Congress intended to eliminate any confusion about applying good cause criteria equitably across-the-board to all FSP work requirements. Therefore, lack of adequate child care remains as a good cause reason for noncompliance.

Although current good cause regulations remain basically unchanged, we propose to take this opportunity to amend redesignated 7 CFR 273.7(i) and redesignated 7 CFR 273.7(j) by combining the provisions under the specific heading "Good Cause" at redesignated 7 CFR 273.7(i). We also propose to add language to redesignated 7 CFR 273.7(i) reminding State agencies that it is not possible for the Department to enumerate each individual circumstance that should or should not be considered good cause. State agencies must consider all facts and circumstances in each individual case concerning the determination of good cause.

Voluntary Quit

Current regulations at 7 CFR 273.7(n) contain the procedures for disqualifying a household whose head voluntarily quits a job without good cause 60 days or less before applying for food stamps, or at any time thereafter. For purposes of establishing voluntary quit, a "job" is considered employment of 20 or more hours per week, or employment that provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. A Federal, State or local government employee dismissed from employment because of participation in a strike is considered to have voluntarily quit without good cause.

In the case of applicant households, if the State agency determines that a voluntary quit by the head of household was without good cause, the household's application for benefits will be denied and it will not be eligible for benefits for 90 days, starting with the date of the quit.

In the case of participating households, if the State agency determines that a head of household voluntarily quit a job while participating in the FSP, or discovers that a quit occurred within 60 days prior to application or between application and certification, the household will be disqualified from participation for 90 days, beginning with the first of the month after all normal adverse action procedures are completed.

Following the end of a voluntary quit disqualification, a household may reapply and, if otherwise eligible, begin participation in the FSP. Eligibility may be reestablished during a disqualification period and the household may, if otherwise eligible, resume participation if the head of household secures new employment comparable to the job that was quit, or leaves the household. Eligibility may also be reestablished if the head of household becomes exempt from work registration. If the disqualified household splits, the disqualification follows the head of household. If that individual becomes head of a new household, that household must serve out the balance of the disqualification period.

If a disqualified household applies for participation in the third month of its disqualification, it does not have to reapply in the next month. The State agency must use the same application to deny benefits in the remaining month of disqualification and to certify the household for any subsequent month(s) if it is otherwise eligible.

Section 815 of PRWORA amended section 6(d)(1) of the Act by removing the requirement that only the head of household is subject to voluntary quit. As with all the other sanctionable actions listed in section 6(d)(1)(A), each individual household member was made subject to disqualification for a voluntary quit. The State agency was afforded the option of disqualifying the entire household if the quitter is the head of household.

Section 6(d)(1) was further amended by eliminating the 90-day disqualification period for voluntary quit. Penalties for voluntary quit are based on the minimum mandatory disqualification provisions contained in PRWORA.

Lastly, section 815 of PRWORA amended section 6(d)(1) by adding the provision that an individual who voluntarily and without good cause reduces work effort and, after the reduction, works less than 30 hours per week, must be disqualified.

We propose to retain the 60-day pre-application period for establishing voluntary quit and to apply the same standard when determining reduction of work effort for applicants. The voluntary quit and reduction in work effort provisions aim to deter individuals with reasonable income from intentionally ending or reducing that income to qualify for food stamps or to increase coupon allotments. We believe that 60 days is a reasonable time span to use to gauge intent.

We also propose to increase the 20 hour/equivalent Federal minimum wage figure used in defining voluntary quit to 30 hours. Increasing the number of hours to 30 provides a logical connection between voluntary quit and the reduction of work effort threshold mandated by Congress. The 30 hour figure also conforms to the number of hours of work required to exempt an employed recipient from Program work requirements. The Department welcomes comments on this issue.

Lastly, Congress clearly stated that any reduction in hours of employment to less than 30 hours a week without good cause must be penalized. We do not believe Congress intended that a minimum wage equivalent of 30 hours be considered when establishing voluntary reduction in work hours. The Department proposes to make this clear in the rule. We also propose to incorporate good cause for reduction of work effort into the good cause provision at redesignated 7 CFR 273.7(i).

Accordingly, the following amendments to redesignated 7 CFR 273.7(j) are proposed. Any individual who, 60 days or less before applying for food stamps, or at any time after application, without good cause quits a job of 30 hours or more a week or a job that provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours, or who is employed 30 or more hours per week but without good cause reduces his or her work effort to less than 30 hours, must be disqualified for a period specified by the State agency's minimum mandatory disqualification provisions. The disqualified individual must be considered an ineligible household member. The individual's income and resources must continue to be counted to determine eligibility and level of benefits for the remaining household members. If the individual who voluntarily quit his or her job, or who reduced his or her work effort without good cause, is the head of household the State agency may, at its option, disqualify the entire household. Because the ability to cure a disqualification was eliminated, the provision for reestablishing eligibility during a disqualification if the individual secures new, comparable employment is removed.

Failure To Comply With a Title IV–A or Unemployment Compensation Work Requirement

Current regulations at 7 CFR 273.7(g)(2) provide that an individual who is exempt from FSP work requirements because he or she is registered for work under title IV–A or unemployment compensation but fails to comply with a title IV–A or unemployment compensation requirement *comparable* to a food stamp work requirement must be treated as though the individual failed to comply with the corresponding food stamp requirement. Comparability exists if the title IV–A or unemployment compensation requirement places responsibilities on the individual similar to food stamp work requirements.

In the past, this comparability issue created controversy and confusion among State agencies. How can a requirement in one program be "comparable" to one in another program with different rules, different caseloads, and different operating procedures? The "similar responsibilities" explanation only added to the confusion. If a title IV–A work program contained a training component not available to food stamp work registrants, did this mean that participation in that component placed a greater responsibility on the title IV–A household than on the food stamp household, even if the food stamp household had another component available; one that, while not the same, provided opportunities for training?

A conforming amendment to section 819 of PRWORA deleted the comparability language in section 6(d)(2)(A) of the Act relating to failure to comply with a title IV–A or unemployment compensation work requirement.

With the striking of the comparability requirement, State agencies are now able to impose FSP disqualifications on individuals (and-optionally-households) who fail to comply with title IV–A or unemployment compensation work requirements, without regard to the existence of "similar responsibilities" among programs.

The regulation continues to make it clear that the noncomplying individual will not be subject to FSP disqualification if he or she meets one of the other exemption criteria listed at 7 CFR 273.7(b) (excluding participation in title IV–A work activities or receipt of unemployment compensation). For example, an individual responsible for the care of a child under six who is disqualified under a title IV–A program for failure to comply with its work requirements would not be subject to a FSP disqualification because that individual remains exempt under another FSP criteria.

Note: Section 819 of PRWORA, titled "Comparable Treatment for Disqualification," added a new paragraph (i) to section 6 of the Act. Section 6(i) provided that, if a food stamp recipient is disqualified for failure to comply with a requirement of a Federal, State, or local means-tested public assistance program, the State agency may opt to impose the same disqualification on the recipient under the FSP. Thus, in the example above, the State agency could, under the comparable disqualification provision of section 6(i), disqualify the individual who is responsible for the care of a child under six, using title IV–A rules and procedures. It is important to note that the language of section 6(i) specifically limits this option to individuals. Therefore, State agencies may not impose comparable treatment for disqualification on the entire household.

The Department is proposing to amend redesignated 7 CFR 273.7(f)(6) accordingly by deleting the comparability requirement for imposing FSP disqualifications on individuals who are not otherwise exempt FSP work requirements and who fail to comply with the work registration requirements of title IV–A or of the Federal-State unemployment compensation system. The Department further proposes to add the option of allowing State agencies to disqualify individuals who meet other FSP exemption criteria by using the same rules and procedures that apply under title IV–A for failure to comply with a title IV–A work requirement. Such a disqualification must be in accordance with the comparable disqualification provisions at 7 CFR 273.11(l).

Caretaker Exemption

Current regulations at 7 CFR 273.7(b)(iv), pursuant to section 6(d)(2)(B) of the Act, exempt from FSP work requirements a parent or other household member who is responsible for the care of a dependent child under six. Prior to the enactment of PRWORA, Eight State agencies had submitted requests to waive this regulation to require caretakers of children less than six years old to participate in their proposed welfare reform demonstration projects. The purpose of these waivers was to conform FSP and title IV–A work requirements in order to provide the State agencies maximum flexibility in the operation of their demonstrations. The Department believed that the States' requests violated section 17(b) of the Act, which prohibited the approval of a waiver that would lower or further restrict the benefit levels of food stamp recipients. The Department concluded that the approval of these waivers would subject food stamp recipients to work requirements and possible sanctions that they would not be subject to under regular program rules. Therefore, the waivers were denied.

Section 816 of PRWORA amended section 6(d)(2) of the Act by adding an option to allow State agencies that previously requested a waiver to lower the age of the qualifying dependent child to less than six. Under this option, State agencies that had requested such a waiver, but were denied before August 1, 1996, may lower the age of a qualifying dependent child to between one and six years. This option may be exercised for a period of not more than three years.

This rule proposes to amend 7 CFR 273.7(b)(iv) to include a provision offering this option to the State agencies of Alabama, Kansas, Maryland, Michigan, North Dakota, Virginia, Wisconsin, and Wyoming. According to FNS records, these were the State agencies that were denied the exemption waivers before August 1, 1996. These State agencies, upon submission of written notification to the Department, may, for a maximum of three years, lower the age of a dependent child that qualifies a parent or other household member for an exemption to between one and six.

Employment and Training Program

Since April 1987 State agencies have been required to operate a Food Stamp Employment and Training Program. The E&T program seeks to improve food stamp recipients' ability to obtain regular employment, increase earnings, and reduce their dependency on public assistance.

State agencies may choose to operate one or more of a variety of E&T components. The components may vary from State to State, and may include job search, job search training, workfare, work experience, self-employment activities, and vocational and basic education components. Job search has by far been the most prevalent activity, because of its relatively low cost.

The Department funds the E&T Program in three categories. An annual 100% Federal grant is allocated to State agencies to operate their programs. The Department matches allowable operational E&T costs that exceed the 100% Federal grant. USDA also matches 50% of the costs incurred by participants in fulfilling their E&T obligations by contributing half of the costs for dependent care (within certain limits), and half of up to $25 per month for transportation and other costs. All funding passes from USDA directly to State agencies.

Prior to the enactment of PRWORA, the Department allocated an annual 100% Federal grant of $75 million to State agencies. In accordance with section 16(h) of the Act, $60 million was distributed according to each State's proportion of work registrants nationwide, and the remaining $15 million was distributed based on State agency performance in placing people into E&T activities.

The Food Security Act of 1985 (Pub. L. 99–198), which created the E&T Program, mandated that the Department establish performance standards requiring State agencies to place at least 50 percent of their mandatory participants into E&T programs. Mandatory participants are work registrants not exempted from E&T by a State agency. Congress lowered the 50 percent performance requirement to 10 percent, effective FY 1992, to encourage State agencies to begin utilizing more substantive interventions or to target service to certain groups.

Each State agency must have in place conciliation procedures for the resolution of disputes involving the participation of individuals in the E&T Program.

In accordance with section 817 of PRWORA, which contains amendments to section 6(d)(4) of the Act, this rulemaking proposes the following changes to current regulations.

Statewide Workforce Development System

Section 817 of PRWORA amended section 6(d)(4) of the Act to require that each component of a State agency's E&T program be delivered through a statewide workforce development system, unless the component is not available locally through such a system.

A statewide workforce development system is an interconnected strategy for providing comprehensive labor market and occupational information to jobseekers, employers, providers of one-stop delivery of core services, providers of other workforce employment activities, and providers of workforce education activities.

This rule proposes to add, at 7 CFR 273.7(c), a new paragraph (5), which will contain the requirement that each component of a State agency's E&T program be delivered through its statewide workforce development system. If the component is not available locally through such a system, the State agency may use another source.

Acceptable Level of Effort of E&T Components

Current regulations at 7 CFR 273.7(f)(1) require that any E&T component offered by a State agency entail a certain level of effort on the part of participants. The Department established a minimum level of effort that is comparable to spending 12 hours a month for two months (or less in workfare or work experience components) making job contacts. The Department based this level on the pre-E&T food stamp job search requirement that a participant contact 24 employers in an eight-week period in an effort to locate suitable employment. The Department intends to maintain this level as the acceptable level of component effort.

Section 824 of PRWORA established a new work requirement under which nonexempt ABAWDs become ineligible if, during a 36-month period, they receive benefits for three months in which they do not meet specific conditions. One such condition is participation for 20 or more hours a week in a work program, such as E&T—excluding job search or job search training activities. The 20-hour requirement does not apply to workfare or work experience components of E&T programs. Participation in those components is limited to the number of monthly hours equal to the result obtained by dividing a household's food stamp allotment by the higher of the applicable Federal or State minimum wage.

The Department urges State agencies to plan their E&T component participation requirements with the ABAWD provisions in mind. By establishing sufficient levels of effort for their non-work, non-job search/job search training E&T program components, or by judicious scheduling of simultaneous participation in a combination of components to meet the ABAWD provisions, State agencies can contribute significant—and valuable—resources to permit ABAWDs to maintain their food stamp eligibility. State agencies must keep in mind, however, the maximum individual or household participation requirements specified in section 6(d)(4)(F) of the Act. The total monthly work hours in an E&T program required of a household, together with the hours of work in a optional workfare program, may not exceed the number of hours equal to the household's food stamp allotment divided by the higher of the applicable Federal or State minimum wage. The total hours of individual participation in E&T, together with any hours worked for compensation in cash or in kind (including workfare), cannot exceed 120 hours per month.

Applicant Work Requirements

Current regulations at 7 CFR 273.7(f)(1) allow a State agency to require an individual to conduct a job search from the time an application is filed for an initial period of up to eight consecutive weeks. This State agency option was provided to conform FSP policy with title IV–A applicant job search requirements.

Section 817 of PRWORA amended section 6(d)(4) of the Act by expanding this existing State agency option. In addition to job search, a State agency may require non-exempt food stamp applicants to participate in any of its E&T program components as a condition of eligibility.

This rulemaking proposes to amend redesignated 7 CFR 273.7(e)(1) to authorize a State agency to require FSP applicants, at its option, to participate in and comply with any component it offers in its E&T program for an initial period beginning at the time of application. In order to assure the maximum success of applicant participation, the Department further proposes to remove the eight-week time limit for this initial period of applicant participation. Thus, a State agency may require applicant participation for any initial period it determines to be adequate to meet program goals. However it was not the intent of Congress to permit State agencies to delay the determination of an individual's eligibility for benefits or the issuing of benefits to an otherwise eligible household until initial participation is completed. Therefore, the Department proposes to maintain the requirement at redesignated 7 CFR 273.7(e)(1)(i) that, as long as the applicant is complying with the E&T requirement, the State agency not delay the determination of the individual's eligibility for benefits or the issuance of benefits to an otherwise eligible household pending completion of an applicant E&T requirement.

Job Search

Current regulations at 7 CFR 273.7(f)(1)(i) authorize a State agency to offer a job search component comparable to that required of a program under title IV–A. Aside from the initial applicant job search period, discussed above, the work registrant can be required to conduct a job search of up to eight weeks (or an equivalent period) in any consecutive 12-month period. The first such 12-month period begins at any time following the close of the initial period.

Section 817 of PRWORA amended section 6(d)(4)(B) of the Act by deleting the title IV–A comparability requirement for job search.

Therefore, we propose to amend redesignated 7 CFR 273.7(e)(1)(i) by deleting the requirement that a State agency's E&T job search component must be comparable to its title IV–A job search component.

The legislative history of the Act indicates that, while Congress did not place a minimum or maximum limit on job search, it did expect the Department to develop and implement reasonable requirements. The only limitation Congress placed on the Department was that it not initiate a mandatory continual job search. Congress did not intend that work registrants actively engage in a systematic and sustained effort to obtain work every month and provide tangible evidence to the State agency of such effort. It feared that such a system would create administratively complex and cumbersome reporting systems that would flood State agency offices with paperwork, but would not produce jobs. At the time of the publication of the original job search rule in January 1981, the Department chose the eight-week job search period to conform with the requirements of the Aid to Families with Dependent Children (AFDC) Program. Job search under AFDC's Work Incentive Program (WIN) was mandated to be no more than eight weeks a year.

In keeping with the State agency flexibility offered under PRWORA, the Department further proposes to amend redesignated 7 CFR 273.7(e)(1)(i) by removing the annual eight week job search limitation. Each State agency will be free to conform its E&T job search to that of its title IV–A work program, or to establish job search requirements that, in the State agency's estimation, will provide participants a reasonable opportunity to find suitable employment. However, the Department believes that Congress' initial concern about the length of job search still applies. If a reasonable period of job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive.

The Department welcomes comments on this issue.

Lastly, the Department proposes to amend redesignated 7 CFR 273.7(e)(1)(i) by adding that, in accordance with section 6(o)(1)(A) of the Act and 7 CFR 273.24 of the regulations, a job search program operated as a component of a State's E&T program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. This same notice will be added at redesignated 7 CFR 273.7(e)(1)(ii), which describes job search training programs. These additions will also specify that the prohibitions against E&T job search and job search training do not apply to such programs operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*) (the WIA), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) (the Trade Act). Further, we propose to amend redesignated 7 CFR 273.7(e)(1) to add that job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the required time spent in the other components.

Workfare

Current regulations at 7 CFR 273.7(f)(1)(iii) authorize assignment to workfare components operated in accordance with section 20 of the Act and 7 CFR 273.22. As part of a workfare program, the Act permits operating agencies to establish a job search period of up to 30 days following certification prior to making a workfare assignment. During this period, the participant is expected to look for a job. The job search period may only be conducted at certification, not at recertification. This job search activity is part of the workfare assignment and not a job search "program." Therefore, participants are to be considered as participating in and complying with the requirements of workfare, thereby satisfying the ABAWD work requirement.

We propose to amend redesignated 7 CFR 273.7(e)(1)(iii) to include a statement that makes clear that the job search period authorized by State agencies for workfare components does meet the work requirement for able-bodied adults.

Work Experience Programs

Current regulations at 7 CFR 273.7(f)(1)(iv) authorize assignment to a work experience component to improve the employability of participants through training and/or actual work experience. In accordance with sections 6(d)(4)(B)(i)(I) and (II) of the Act, assignments are limited to ones that serve a useful public purpose in fields such as health, social service, environmental protection, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. Additionally, assignments are to use, to the greatest extent possible, a participant's prior training, experience, and skills.

Section 817 of PRWORA amended section 6(d)(4) by deleting the above limitations imposed on work experience assignments. In taking this action, the Department believes that Congress meant to expand State agency flexibility to place individuals not only in public or private non-profit assignments, but also in work experience positions with private sector, for-profit employers. However, the Act and other Federal laws—including the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, *et seq.*)—govern the rights of participants assigned to positions with for-profit employers as well as those in non-profit positions. State agencies must exercise great caution to comply with those laws and to ensure those rights when establishing and operating private sector work experience components.

This flexibility does not extend to workfare assignments, in which participants are required to work off the value of their household's monthly food stamp allotment. Workfare assignments may only be in public or private non-profit agencies.

We propose to amend redesignated 7 CFR 273.7(e)(1)(iv) by deleting the requirements that work experience assignments serve a useful public purpose, and that they use, to the greatest extent possible, a participant's prior training, experience, and skills. Thus, assignments can be made to any available public or private non-profit project, as well as with any private, for-profit employer, regardless of prior training, experience, or skills, as long as such assignments, pursuant to section 6(d)(4)(B)(iv), do not serve to replace a worker not participating in the program; and as long as they provide the same benefits and working conditions to E&T participants as those provided to regular employees performing comparable work for comparable hours.

"Other Programs, Projects, and Experiments"

In accordance with section 16(h)(4) of the Act, the Federal 100 percent E&T grant may only be used by State agencies to operate an E&T program under section 6(d)(4). Section 6(d)(4)(B)(vii) of the Act includes as an allowable component of an E&T program other employment, educational and training programs, projects, and experiments aimed at accomplishing the purpose of the E&T program. Such components must be approved by the Secretary, or by the State under regulations issued by the Secretary. These components include work programs under section 824 of PRWORA that allow ABAWDs to maintain eligibility for food stamps. These work programs are defined as (1) a program under the WIA; (2) a program under section 236 of the Trade Act; and (3) a program of employment and training operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under subsection (d)(4), other than a job search program or a job search training program. Therefore, in order to qualify for Federal financial participation, all WIA, Trade Act and State/local employment and training programs must be fully described in the State E&T plan; must guarantee all the rights and meet all the requirements of regular E&T program components; and must be approved by the Secretary.

Exemptions

Current regulations at 7 CFR 273.7(f)(2) permit State agencies, subject to approval by the Department, to exempt from E&T certain individual work registrants or categories of work registrants for which participation is impracticable. Factors listed which may lead to the impracticability of participation in some geographic areas, for some groups of work registrants, include availability of job opportunities and the cost-effectiveness of participation. For individuals, personal circumstance such as lack of job readiness, the remote location of work opportunities, physical condition, and the unavailability of dependent care are listed. Additionally, with approval from the Secretary, persons who have participated in the FSP for 30 days or less may be exempted from participation.

Although State agencies are afforded a certain amount of flexibility in determining who will or will not participate in E&T, they are required to justify proposed exemptions in their E&T State plans. The Department can accept or reject the proposed exemptions, based on the validity of the State agency's claim.

Individual exemptions must be reevaluated at each recertification.

Categorical exemptions should be reviewed no less frequently than annually to determine whether they remain valid.

Current regulations at 7 CFR 273.7(c)(4) detail the State agency's responsibilities for preparing and submitting an E&T plan. Paragraph (c)(4)(iii) requires the State agency to list the categories and types of individuals it seeks to exempt from E&T participation, the basis used to determine these exemptions, including any cost information, and the estimated percentages of work registrants the State plans to exempt.

Section 817 of PRWORA amended section 6(d)(4)(D) of the Act to remove the requirements that: (1) individual and categorical exemptions from E&T be based on impracticability; (2) State agencies require the approval of the Secretary to exempt household members that have participated in the FSP for 30 days or less; and (3) individual exemptions be reevaluated no less often than at each certification or recertification.

Accordingly, the Department proposes to amend redesignated 7 CFR 273.7(e)(2) by removing restrictions on State agency flexibility in determining E&T exemptions. The State agency may, at its discretion, exempt individual work registrants and categories of work registrants. Although the validity of exemptions must be periodically reevaluated, each State agency may establish the frequency of its evaluation.

The Department also proposes to amend 7 CFR 273.7(c)(6)(iii) by removing the requirement that the State agency list the basis, including cost information, it uses to determine its exemptions; and by adding the requirement that it include the frequency with which it plans to reevaluate the validity of its exemptions.

Voluntary Participation

Current regulations at 7 CFR 273.7(f)(4) contain two provisions for volunteers. First, that a State agency "may operate program components in which individuals elect to participate." Second, a State agency "shall permit, to the extent it deems practicable, persons exempt from the work registration or employment and training requirements," as well as those who have complied or are in the process of complying with E&T requirements, to participate in any E&T component it offers.

While the purpose of the two provisions appears to be similar but contradictory—one is an option, the other a mandate—they were based on Congressional intent to provide for two different circumstances.

The term volunteer must first be defined. A volunteer is an individual who is exempt from FSP work requirements or who is a work registrant exempted by the State agency from participation who elects to participate in E&T. A mandatory participant who elects to participate in an E&T component while or after completing a required component is considered a volunteer in the subsequent component.

In the first instance, Congress, recognizing its potential effectiveness, permitted State agencies to allow any individual food stamp recipient who elected to participate to volunteer. For example, persons with a child under 6—and therefore exempt from work registration—who wished to receive training and assistance in finding a full-time job would benefit, and long term Federal costs might be lowered.

In the second instance, Congress required State agencies to allow, to the greatest practicable extent, work registrants exempted from E&T, as well as E&T participants who had complied with or were in the process of complying with program requirements, access to any E&T program component available.

Section 817 of PRWORA amended section 6(d)(4)(G) by removing the requirement that State agencies shall—to the extent deemed practicable—permit both exempt and nonexempt work registrants to participate in any E&T component offered. State agencies retain, however, the option to operate E&T components in which individuals volunteer to participate.

This rule proposes to amend redesignated 7 CFR 273.7(e)(4) by removing the requirement placed on State agencies to permit exempt work registrants and participants to take part in any component offered. While the Department encourages and supports such participation in E&T activities, it believes State agencies should be afforded maximum flexibility in determining who may participate in their programs and to what degree. State agencies continue to have the option to offer E&T components in which volunteers may participate. We do not believe, however, that volunteers should be subjected to the same penalties for noncompliance as mandatory participants. We also do not believe that a distinction should be drawn between volunteer and regular E&T participants concerning maximum hour restrictions on participation. Accordingly, the Department proposes that the current regulatory requirements concerning disqualification and hours of work or participation for volunteers continue to apply.

Conciliation

Current regulations at 7 CFR 273.7(g)(ii) contain requirements for a State agency to establish conciliation procedures to be used when an individual fails to comply with an E&T Program requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide him or her with an opportunity to comply prior to issuing a notice of adverse action. The conciliation period begins the day after the State agency learns of the noncompliance and continues for at least 30 days. In this time the State agency is expected to contact the noncompliant individual to determine the reason for the noncompliance, establish whether good cause exists, and advise the individual on what actions need to be taken to avoid disqualification. The noncompliant individual must perform a verifiable act of compliance within the 30-day period to avoid receiving a notice of adverse action.

Current regulations at 7 CFR 273.7(g)(iv) and (v) detail the adverse action procedures that a State agency must follow as soon as it learns about an act of noncompliance with a FSP work requirement other than an E&T Program requirement. First, the State agency must establish if good cause for the noncompliance exists. Then, within 10 days of establishing that good cause does not exist, the State agency must issue the noncompliant individual a notice of adverse action.

The notice of adverse action details the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may reapply at the end of the disqualification period. Information must be included on or with the notice describing the action that can be taken to avoid the sanction. The disqualification period begins the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

Section 817 of PRWORA amended section 6(d)(4)(H) of the Act by deleting the conciliation requirement.

Accordingly, we propose to amend redesignated 7 CFR 273.7(f) by removing the requirements imposed on State agencies to establish and operate a conciliation procedure for the resolution of disputes involving the participation of an individual in E&T. However, a State agency may opt to incorporate an informal conciliation process into its E&T program. In such cases the State

agency must comply with the adverse action procedures at the end of the conciliation period.

Performance Standards and State Compliance With Employment and Training Requirements

Current regulations at 7 CFR 273.7(o) set forth the requirements for State agencies to meet an annual performance standard for the minimum number of participants that a State agency must place in its E&T program. Since FY 1992 the performance standard has been set at 10 percent of a State agency's mandatory E&T participants plus volunteers.

In order to calculate its performance standard at the end of the fiscal year, a State agency is required to collect information on its total work registrants, the number of work registrants it exempts from E&T, and the number of non-exempt work registrants (mandatory participants) and volunteers it places in E&T components during the fiscal year.

The current regulation at 7 CFR 273.7(p)(2) provides that if a State agency fails to meet the required performance standard without good cause, the Department may disallow administrative funding for the State agency's E&T program, as well as withholding the State agency's performance-based allocation. Further, the current regulation at 7 CFR 273.7(p)(1) applies the provisions of § 276.1(a)(4) to State agencies that fail to efficiently and effectively administer their E&T programs. That regulation authorizes FNS to seek injunctive relief and/or suspension or disallowance of the Federal share of a State agency's administrative funds if the State agency fails to efficiently and effectively administer any part of the Food Stamp Program, including E&T.

Section 817 of PRWORA amended section 6(d) of the Act by removing paragraph (K), which directed the Secretary to establish performance standards to measure the extent of State implementation of E&T. Section 817 further amended section 6(d) by removing paragraph (L)(ii), which authorized the Secretary—in cases where a State agency fails, without good cause, to comply with E&T requirements, including failing to meet performance standards—to withhold administrative funding, including the 100 percent Federal E&T grant.

Accordingly, we propose to amend 7 CFR 273.7 by removing paragraph (o), Performance Standards. It is possible that Congress will, in the future, mandate some type of performance measurement system—either process or outcome based—for the E&T Program. In the interim, State agencies are free to use the resources of their E&T programs to serve their at-risk populations in the most effective manner possible.

We also propose to amend 7 CFR 273.7 by deleting paragraph (p), State noncompliance with Employment and Training requirements. The former paragraph (p)(1), which, as explained above, details the consequences of States not complying with E&T requirements, will be redesignated as paragraph (c)(14).

Federal Financial Participation

Current regulations at 7 CFR 273.7(d) require the Department to allocate an annual 100 percent Federal E&T grant to States, based in part on the number of work registrants in each State compared to the number of work registrants nationwide; and in part on each State agency's program performance. Each State agency must receive at least $50,000 in unmatched Federal funds. The State agency is required to use the E&T grant to fund the administrative costs of planning, implementing and operating its E&T program. The Department will pay 50 percent of all other administrative costs above those covered by the 100 percent Federal grant that the State agency incurs in operating its E&T program.

The Department matches half the amount State agencies spend to reimburse E&T participants for the actual costs of transportation and other costs (excluding dependent care) that are determined by the State agency to be necessary and directly related to E&T participation, up to $25 per month. Thus, the Department will pay up to $12.50 a month of each participant's costs. The State agency may supplement this amount, but without Federal matching funds.

State agencies must also provide payments or reimbursements to E&T participants for dependent care expenditures, up to a statewide limit set by the State agency. This statewide limit may not be less than the limit set for the dependent care deduction at 7 CFR 273.9(d)(4), that is, $200 per month for each dependent under age 2 and $175 per month for each other dependent. However, the reimbursement may not exceed the applicable local market rate as determined by procedures consistent with the JOBS Program. Thus, the State agency must reimburse actual costs of dependent care up to either the local market rate or the statewide limit set by the State agency, whichever is lower. The Department matches State agency expenditures for reimbursements at the 50 percent level.

Section 817 of PRWORA amended sections 6(d)(4) and 16(h) of the Act concerning the funding of, and Federal financial participation in, the E&T Program. Subsequently, the Balanced Budget Act of 1997 (Pub. L. 105–33) substantially amended those requirements. Therefore, the majority of amendments dealing with funding are addressed in a separate rule. However, section 817 amended section 6(d)(4) of the Act in two significant areas that will be addressed in this proposed rule.

Section 817 of PRWORA amended section 6(d)(4) of the Act by removing the requirement that reimbursements for dependent care expenses incurred due to participation in E&T must equal at least the amount of the dependent care deduction established for determining household eligibility and benefit amounts. We propose to amend 7 CFR 273.7(c), *State agency responsibilities*, by removing the provision that requires State agencies, in their State plans, to include a statewide limit for dependent care reimbursements established by the State agency that must not be less than the dependent care deduction amounts specified under § 273.9(d)(4).

Section 817 of PRWORA further amended section 6(d) of the Act by adding the provision that limits the amount of money State agencies may spend to provide E&T program services to food stamp recipients who also receive benefits under a State program funded under title IV–A. The limit is the amount of Federal E&T funds the State agency spent on E&T services for the same category of recipients in fiscal year 1995. This rule proposes, therefore, to add, at 7 CFR 273.7(d)(1)(i)(F), the provision that, notwithstanding any other provision of the paragraph, the amount of E&T funds, including participant and dependent care reimbursements, a State agency uses to serve participants who are receiving benefits under a State program funded under title IV–A may not exceed the amount of funds the State agency used in FY 1995 to serve participants who were receiving benefits under a State program funded under title IV–A.

Based on information provided by each State agency, the Department established claimed Federal E&T expenditures on this category of recipients in fiscal year 1995 for the State agencies of Colorado ($318,613), Utah ($10,200), Vermont ($1,484,913), and Wisconsin ($10,999,773). These State agencies may spend a like amount each fiscal year to serve food stamp recipients who also receive title IV–A assistance, if they choose. Other State agencies are prohibited from expending

any Federal E&T funds on title IV–A recipients.

Employment Initiatives Program

Section 852 of PRWORA amended section 17 of the Act (7 U.S.C. 2026) to add provisions for an employment initiatives program under which an eligible household in a qualifying State may elect to receive the cash equivalent of its food stamp coupon allotment.

This rule proposes to add, at 7 CFR 273.7, a new paragraph (k), containing the following requirements for the employment initiatives program.

A State agency qualifies to operate an employment initiatives program if, during the summer of 1993, at least half of its food stamp households also received benefits from a State program funded under title IV–A. Qualified State agencies are Alaska, California, Connecticut, the District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia, and Wisconsin.

A food stamp household in one of the 10 qualified State agencies may receive cash benefits if it elects to participate and an adult member of the household (1) has worked in regular (i.e., unsubsidized) employment for the last 90 days, earning a minimum of $350 per month; (2) is receiving cash benefits under a State program funded under title IV–A; or (3) was receiving cash benefits from the State program but, while participating in the employment initiatives program, became ineligible because of earnings and continues to earn at least $350 a month from unsubsidized employment.

As required by section 852, A qualifying State agency operating an employment initiatives program must agree to pay for an increase in cash benefits to compensate participating households for any State or local sales taxes on food purchases.

Also as required by section 852, a State agency that operates an employment initiatives program for two years must evaluate the impact of providing cash assistance in lieu of a food stamp coupon allotment to participating households. The State agency must provide the Department with a written report of its evaluation findings. The State agency, with the concurrence of the Department, will determine the content of the evaluation. The Department expects the evaluation to address, at a minimum, questions concerning the effects of providing cash assistance on household food expenditures, food use, and nutrient availability. Additionally, related issues such as households' experiences in running out of food and expenditure shifts from food to other goods and services should be addressed.

Work Supplementation Program

Section 849 of PRWORA amended section 16(b) of the Act (7 U.S.C. 2025(b)) to give State agencies the option to implement work supplementation (or support) programs. In these programs the cash value of public assistance benefits, plus FSP benefits, is provided to an employer as a wage subsidy to be used for hiring and employing public assistance recipients. The goal of work supplementation is to promote self-sufficiency by providing public assistance recipients with work experience to help them move into non-subsidized jobs.

Prior to the enactment of PRWORA, about a dozen States were approved to operate demonstration projects in local jurisdictions that included a work supplementation component. In July 1997, FNS sent a letter to all States about the work supplementation program including a set of questions and answers. These guidelines were provided to facilitate the implementation of these programs under PRWORA. These guidelines placed no requirements on States beyond those of federal law and other federal regulations governing reporting on and accounting for financial and participation data. Because of the limited experience with the work supplementation programs, the Department does not intend to propose additional requirements or restrictions. The Department hopes that this flexibility encourages more States to develop partnerships with private employers in an environment that supports innovation and experimentation within the limits of the law.

This rule proposes to add, at 7 CFR 273.7, a new paragraph (l), containing the following requirements for the work supplementation or support program.

We further propose to add a new paragraph (d)(1)(xiv) under 7 CFR 272.2, *Plan of operation*. Paragraph (d)(1)(xiv) will contain the requirement for a planning document from each State agency that operates a work supplementation program.

A State agency that proposes to implement a work supplementation program must submit its plan for FNS approval. This plan must address the requirements for a work supplementation or support program listed this proposed rule. Once its plan is approved, FNS will provide the State agency with the cash value of recipients' food stamp benefits to be used as wage subsidies for work supplementation programs and to reimburse the State for related administrative costs.

PRWORA established the following parameters for work supplementation programs:

- The individual must be receiving public assistance, but must not be employed by the employer at the time the individual enters the work supplementation program.
- The wage subsidy received under the work supplementation program must be excluded from household income and resources during the time the individual is participating in work supplementation.
- The household must not receive a separate food stamp allotment while participating in the work supplementation program.
- An individual participating in a work supplementation program must be excused from meeting any other work requirements.
- The work supplementation program must not displace any persons currently employed who are not supplemented or supported.
- The wage subsidy must not be considered income or resources under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, or public assistance programs, and the household's food stamp allotment must not be effectively decreased due to taxation or any other reason because of its use as a wage subsidy.
- The earned income deduction must not be applied to the subsidized portion of wages earned in a work supplementation program.
- State agencies must specify how public assistance recipients in the proposed work supplementation and support program will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

The Department solicits comments in the following areas that are not mandated by PRWORA but are necessary to comply with other laws or for accounting and reporting purposes.

- States must ensure that work supplemented or supported employees are treated the same as other non-subsidized employees and that all subsidized positions comply with the Fair Labor Standards Act.
- States must outline State agency, employer and recipient obligations and responsibilities in the proposed work supplementation program. They must also describe procedures for providing wage subsidies to participating employers and for monitoring the use of the funds.

• At the same time the plan is submitted for approval, the State must also submit an operating budget for the proposed program. Additionally, before the plan is approved, the State must agree to comply with certain reporting and monitoring requirements. State agencies operating work supplementation and support programs are required to comply with all FNS reporting requirements, including reporting the amount of benefits contributed to all employers as a wage subsidy on the FNS 388. State Issuance and Participation Estimates; FNS–388A, Participation and Issuance Project Area; FNS–46. Issuance Reconciliation Report; and SF–269, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS–366A, Budget Projection and SF–269, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

• The proposed rule asks States to include in their plan amendments whether food stamp allotments and public assistance grants will be frozen at the time a recipient begins a subsidized job. The Department is particularly interested in public comments on the desirability of a Federal standard for issuing supplemental allotments when earnings unexpectedly fall and, secondly, whether there should be a time limit on freezing benefit levels (i.e., not counting any unsubsidized wages from the employer).

• Once the work supplementation program plan is approved, the State agency must incorporate it into the State Plan of Operation and include its operating budget in the State agency budget. After approval, the Department will pay the cash value of a recipient's food stamp benefits to the State agency so they may be paid directly to an employer as a wage subsidy. The State agency will also be reimbursed for administrative costs related to the operation of the work supplementation program as provided by Section 16 of the Food Stamp Act.

• For Quality Control purposes, cases in which a household member is participating in a work supplementation program will be coded as not subject to review.

Workfare

Since 1982 the Department has afforded State agencies and political subdivisions the option to establish a workfare program. In Workfare, nonexempt food stamp household members are required to accept public service job offers and work in return for the household's food stamp allotment. The number of hours of work required of household member is calculated by dividing the household's monthly benefit by the higher of the applicable Federal or State minimum wage. Workfare helps ensure that only those who are willing to work receive benefits; it provides useful public services; and it provides valuable work experience.

Under current rules, household members subject to the work registration requirements of 7 CFR 273.7(a) are also subject to workfare. Additionally, recipients of benefits under title IV–A are subject to workfare if they are currently involved less than 20 hours a week in title IV–A work activities and are not otherwise exempt. Applicants for, or recipients of, unemployment compensation are also subject to workfare.

Workfare is a household responsibility. Legislative history (Conference Report No. 97–290 on the Agriculture & Food Act of 1981, December 10, 1981, page 226) established Congressional intent that the household's workfare responsibility be shared by all nonexempt members: "Upon a household member's failure to comply with workfare requirements, the household would be ineligible for food stamps * * *, unless someone in the household satisfies all outstanding workfare obligations. * * *" Failure of a household to comply with workfare requirements without good cause results in the disqualification of the entire household until the workfare obligation is met, or for two months, whichever is less.

The workfare provisions of section 20 (7 U.S.C. 2029) of the Act entitle a political subdivision operating a workfare program to share in the benefit reductions that occur when a workfare participant begins employment while engaged in workfare for the first time, or within 30 days of ending the first participation in workfare. This provision is available only for workfare programs operated under section 20.

Workfare may also be offered as a component of a State agency's E&T program. However, workfare savings are not available for E&T workfare components.

State agencies and political subdivisions may also operate workfare programs in which participation by food stamp recipients is voluntary. In a voluntary program, disqualification for failure to comply does not apply. The number of hours of work will be negotiated between the volunteer household and the agency operating the workfare program.

Section 815 of PRWORA amended section 20 of the Act to: (1) eliminate the requirement for conformance with workfare programs under title IV–A ; (2) eliminate the provision for combining the food stamp and title IV–A assistance grants to determine the number of hours a title IV–A food stamp household can be required to participate in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609); and (3) conform disqualification penalties for failure to comply with workfare requirements with those under section 6(d)(1) of the Act. Thus, while still a household responsibility, State agencies have the option of disqualifying the individual or, if the individual is a head of household, the entire household.

This rulemaking proposes to amend 7 CFR 273.22 to incorporate PRWORA changes as well as making other technical corrections. Lastly, in keeping with the Department's ongoing regulation streamlining and reform initiative, and to create a more logical union of food stamp work requirements and the optional workfare program, we propose to move the amended 7 CFR 273.22 to 7 CFR 273.7, *Work provisions*, and to designate it paragraph (m), *Optional workfare program*.

Comparable Workfare

Section 824 of PRWORA established the provision that non-exempt individuals will become ineligible if, in the preceding 36-month period, they receive food stamps for three months during which they do not meet a required work or training obligation. One of the qualifying activities is to "participate in and comply with the requirements of a [workfare] program under section 20 or a comparable program established by a State or political subdivision of a State * * *"

Several State agencies are operating—or have expressed an interest in operating—programs that, while comparable to workfare in that they require the participant to work for his or her household's food stamp allotment, vary greatly from the requirements of workfare under section 20 of the Act. The purpose of these comparable programs is to assist ABAWDs in fulfilling their work requirement and maintaining eligibility for benefits. Although there are variations, these comparable programs, for the most part, provide that the ABAWDs voluntarily participate and find their own public service placements. They are also responsible for arranging to have their participation reported to their

caseworkers and for verifying their workfare hours. Participation requirements range from three hours a week to 25 hours per month. Additionally, these "self-inititated" programs may or may not offer reimbursement for transportation or other costs of participation. The work site is responsible for providing work benefits and/or protections.

The Department initially determined that, since self-initiated programs do not meet the requirements of section 20 of the Act, they are not eligible for Federal financial participation. However, the Balanced Budget Act of 1997 contained a "use of funds" requirement for 100 percent Federal E&T grant allocations. State agencies must use at least 80 percent of their E&T grants to serve nonexempt ABAWDs who are placed in and comply with the requirements of an approved work program, a workfare program under section 20 or a comparable workfare program established by a State or political subdivision. Thus comparable self-initiated workfare programs are now eligible for Federal financial participation.

This rule proposes to add a new paragraph (10) to the newly designated paragraph 273.7(m). The new paragraph, (m)(10), will contain the provisions relating to comparable workfare programs.

IV. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice to (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley Watkins, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and recipients who are subject to FSP work requirements. The rulemaking also affects State and local welfare agencies that administer the Food Stamp Program.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) which impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Regulatory Impact Analysis

Need for Action

This action is needed to implement the work provisions of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). These provisions would: (1) establish new disqualification penalties for noncompliance with Food Stamp Program work requirements; (2) permit certain States to lower the age at which a child exempts a parent or caretaker from food stamp work rules; (3) revise and streamline the Food Stamp Employment and Training (E&T) Program; (4) provide States the option of using a household's food stamp benefits to subsidize a job for a household member participating in a work supplementation or support program; and (5) permit qualifying States to provide certain households with cash in lieu of food stamps.

Benefits

State agencies will benefit from the provisions of this rule because they streamline Food Stamp Program work requirements, simplify the disqualification requirements for failure to comply with work rules, and provide greater flexibility for State agencies to operate their employment and training programs.

Costs

Changes brought about by this rule will reduce Program costs for the five-year period FY 99 through FY 03 by approximately $101.7 million. The savings are realized from section 815, disqualification. They are the result of new disqualification penalties for noncompliance with Food Stamp Program work requirements. For FY 1999–2003, the estimated yearly dollar savings (in millions) are $30.9, $25.9, $19.5, $13.3, and $12.1 respectively. The costs/savings of the other four provisions cannot be determined because they either do not affect eligibility for food stamps or their effect on eligibility cannot be determined. They will not be discussed in this analysis.

Section 815—Disqualification. This provision deals with disqualification for noncompliance with Food Stamp Program work requirements. It adds to the list of ineligible individuals those who refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability; voluntarily and without good cause quit their job (previously limited to heads of households); voluntarily and without good cause reduce their work effort to less than 30 hours a week; and fail to comply with the workfare rules in section 20 of the Food Stamp Act.

The disqualification provision deletes the lack of adequate child care for children above age five and under age 12 as an explicit good cause for refusal to accept a job offer and removes the requirement that the entire food stamp household be disqualified if the head of

the household is disqualified. Instead, if the head of the household is disqualified, States have the option of disqualifying the entire household for the duration of the head of the household's disqualification, or for 180 days, whichever is less.

The provision establishes new mandatory minimum disqualification periods for individuals who fail to comply with work requirements. The length of the disqualification is based on the frequency of the occurrence. The State agency has the option to choose the length for each occurrence: (1) for the first violation, one to three months; (2) for the second violation, two to six months; and (3) for the third or subsequent violation, six months, a date determined by the State agency, or—at State agency option—permanently. In each instance, the individual must complete the disqualification period before he or she is allowed to comply with the work requirement and establish eligibility.

The disqualification provision requires the Secretary to determine the meaning of: (1) good cause; (2) voluntarily quitting; and (3) reducing work effort; requires States to determine: (1) The meaning of other terms; (2) the procedures for establishing compliance; and (3) whether individuals are complying; and requires that none of such determinations be less restrictive than comparable determinations under title IV–A of the Social Security Act.

This provision affects participants who fail to comply with Program work requirements by requiring minimum disqualification periods, with no provision to "cure" or end the disqualification by complying. It affects households whose heads fail to comply, if the State agency opts to disqualify the entire household. It also affects households in which a member is disqualified because the disqualified individual's income is considered available to the household in calculating household benefits.

We estimate FY 99 savings to be $30.9 million and the five-year savings for FY 99 through FY 03 to be $101.7 million. The provisions in this section vary only slightly from the work requirements that PRWORA imposed on ABAWDs (for example, age ranges varied only slightly—from 16–60 as opposed to the 18–50 year old range specified for ABAWDs). We derived our estimates using a percentage of FSP participants (mostly ABAWDs) who may be required to meet PRWORA work requirements but who would turn down qualifying work or training opportunities and be sanctioned. We estimate that 22,000 persons will be sanctioned in FY 99 for refusing a work opportunity of some sort. We multiplied this number by the average monthly food stamp benefit level for this group (estimated to be $118.68 in 1999) times 12.

Paperwork Reduction Act

Sections 272.2 and 273.7 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Food and Nutrition Service is submitting a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Operating Guidelines, Forms, and Waivers.

The regulations at 7 CFR 272.2 require that State agencies plan and budget program operations and establish objectives for each year. Section 273.7 contains requirements for the State Employment and Training (E&T) Plan, one of the required planning documents. In the interest of State flexibility, the PRWORA provisions addressed in this rule deleted State E&T planning requirements for describing the intensity of E&T services, conciliation procedures, and Statewide limits for dependent care reimbursements, while adding the requirement that State agencies provide a description of their mandatory disqualification procedures and periods for noncompliance with Food Stamp Program work requirements.

The respondents are 53 State agencies and they are required to respond once a year. It is estimated that the total annual reporting burden is 3,768 hours.

The PRWORA provisions addressed in this rule deleted reporting burdens in the interest of State flexibility, while adding a new burden associated with each State agency's mandatory disqualification procedures. Thus, the overall reporting and recordkeeping burden for this proposed information collection is unchanged.

PRWORA provided State agencies the option of implementing work supplementation or support programs. In these programs the cash value of public assistance benefits, plus food stamps, is provided to an employer as a wage subsidy to be used for hiring and employing public assistance recipients. This rule proposes to add the work supplementation or support plan, as required at § 273.7(l)(1), to the planning requirements at 7 CFR 272.2.

The potential respondents are any of the 53 State agencies that may opt to initiate a work supplementation or support program. The one-time burden associated with a State agency creating a plan for a work supplementation or support program is estimated to be 100 hours. However, since no State agency has opted to initiate a work supplementation or support program since the enactment of PRWORA, it is anticipated that this provision will not change the burden associated with this information collection.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention Desk Officer for the Food and Nutrition Service.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and the information to be collected; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs-social programs.

7 CFR Part 272

Administrative practice and procedures, Food stamps, Grant programs-social programs.

7 CFR Part 273

Administrative practice and procedures, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping.

Accordingly, 7 CFR Parts 271, 272, and 273 are proposed to be amended as follows:

1. The authority citation for parts 271, 272, and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. Remove the definition of "Base of eligibles".

b. Amend the definition of "Exempted:" by removing the reference to "§ 273.7(f)" and adding in its place a reference to "§ 273.7(e)".

c. Revise the definition of "Placed in an employment and training (E&T) program" to read as follows:

§ 271.2 Definitions.

* * * * *

Placed in an employment and training (E&T) program means a State agency may count a person as "placed" in an E&T program when the individual commences a component.

* * * * *

PART 272–REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.2, new paragraphs (d)(1)(xiii) and (d)(1)(xiv) are added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) *Planning documents.* * * *

(1) * * *

(xiii) The State agency's disqualification plan, in accordance with § 273.7(f)(3) of this chapter.

(xiv) If the State agency chooses to implement the provisions for a work supplementation or support program, the work supplementation or support program plan, in accordance with § 273.7(l)(1) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. Revise § 273.7 to read as follows:

§ 273.7 Work Provisions.

(a) *Work requirements.* (1) As a condition of eligibility for food stamps, each household member not exempt under paragraph (b)(1) of this section must comply with the following Food Stamp Program work requirements:

(i) Register for work or be registered by the State agency at the time of application and every 12 months after initial registration. The registration form need not be completed by the member required to register.

(ii) Participate in an employment and training (E&T) program if assigned by the State agency, to the extent required by the State agency;

(iii) Participate in a workfare program if assigned by the State agency, to the extent required by the State agency;

(iv) Provide the State agency or its designee with sufficient information regarding employment status or availability for work;

(v) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (h) of this section;

(vi) Accept a bona fide offer of suitable employment, as defined in paragraph (h) of this section, at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the Federal or State minimum wage or 80 percent of the wage that would have governed had the minimum hourly rate under section 6(a)(1) of the Fair Labor Standards Act of 1938 (U.S.C. 206(a)(1)) been applicable to the offer of employment.

(vii) Do not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week.

(2) The Food and Nutrition Service (FNS) will determine the meaning of "good cause," "voluntary quit," and "reduction of work effort" as used in paragraph (a)(1) of this section.

(3) Each State agency will determine the meaning of any other terms used in paragraph (a)(1) of this section; the procedures for establishing compliance with Food Stamp Program work requirements; and whether an individual is complying with Food Stamp Program work requirements. A State agency must not use a meaning, procedure, or determination that is less restrictive on food stamp recipients than is a comparable meaning, procedure required to comply with, or determination under the State agency's program funded under title IV–A of the Social Security Act.

(4) Strikers whose households are eligible under the criteria in § 273.1(g) are subject to Food Stamp Program work requirements unless they are exempt under paragraph (b)(1) of this section at the time of application.

(5) State agencies may request approval from FNS to substitute State or local procedures for work registration for PA households not subject to the work requirements under title IV of the Social Security Act or for GA households. However, the failure of a household member to comply with State or local work requirements that exceed the requirements listed in this section must not be considered grounds for disqualification. Work requirements imposed on refugees participating in refugee resettlement programs may also be substituted, with FNS approval.

(6) Household members who are applying for SSI and for food stamps under § 273.2(k)(1)(i) will have Food Stamp Program work requirements waived until they are determined eligible for SSI and become exempt from Food Stamp Program work requirements, or until they are determined ineligible for SSI, at which time their exemptions from Food Stamp Program work requirements will be reevaluated.

(b) *Exemptions from work requirements.* (1) The following persons are exempt from Food Stamp Program work requirements:

(i) A person younger than 16 years of age or a person 60 years of age or older. A person age 16 or 17 who is not the head of a household or who is attending school, or is enrolled in an employment training program, on at least a half-time-basis, is exempt. If the person turns 16 (or 18 under the preceding sentence) during a certification period, the State agency must register the person as part of the next scheduled recertification process, unless the person qualifies for another exemption.

(ii) A person physically or mentally unfit for employment. For the purposes of this paragraph (b), a State agency will define physical and mental fitness; establish procedures for verifying; and will verify claimed physical or mental unfitness when necessary. However, the State agency must not use a definition, procedure for verification, or verification that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under the State agency's program funded under title IV–A of the Social Security Act.

(iii) A person subject to and complying with any work requirement under title IV of the Social Security Act. If the exemption claimed is questionable, the State agency is responsible for verifying the exemption.

(iv) (A) A parent or other household member responsible for the care of a dependent child under 6 or an incapacitated person. If the child has its 6th birthday during a certification period, the State agency must work register the individual responsible for the care of the child as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(B) The State agencies of Alabama, Kansas, Maryland, Michigan, North Dakota, Virginia, Wisconsin, and Wyoming may opt to lower the age of

a dependent child that qualifies a parent or other household member for an exemption to between 1 and 6. The age may be lowered for a maximum three-year period. The eligible State agencies must notify FNS, in writing, when they decide to initiate their option. Only the State agencies listed are authorized this option.

(v) A person receiving unemployment compensation. A person who has applied for, but is not yet receiving, unemployment compensation is also exempt if that person is complying with work requirements that are part of the Federal-State unemployment compensation application process. If the exemption claimed is questionable, the State agency is be responsible for verifying the exemption with the appropriate office of the State employment services agency.

(vi) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(vii) An employed or self-employed person working a minimum of 30 hours weekly or earning weekly wages at least equal to the Federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farmworkers under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this will not prevent individuals from seeking additional services from the State employment services agency). For work registration purposes, a person residing in areas of Alaska designated in § 274.10(a)(4)(iii) of this chapter, who subsistence hunts and/or fishes a minimum of 30 hours weekly (averaged over the certification period) is considered exempt as self-employed. An employed or self-employed person who voluntarily and without good cause reduces his or her work effort and, after the reduction, is working less than 30 hours per week, is ineligible to participate in the Food Stamp Program under paragraph (j) of this section.

(viii) A student enrolled at least half time in any recognized school, training program, or institution of higher education. Students enrolled at least half time in an institution of higher education must meet the student eligibility requirements listed in § 273.5. A student will remain exempt during normal periods of class attendance, vacation, and recess. If the student graduates, enrolls less than half time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), the State agency must work register the individual, unless the individual qualifies for another exemption.

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) must register for employment when the change is reported. If the State agency does not use a work registration form, it must annotate the change to the member's exemption status. If a work registration form is used, the State agency is responsible for providing the participant with a work registration form when the change is reported. Participants are responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the participant fails to return the form, the State agency must issue a notice of adverse action stating that the participant is being terminated and why, but that the termination can be avoided by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of § 273.12 must register for employment at their household's next recertification.

(c) *State agency responsibilities.* (1) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section. As part of the work registration process, the State agency must explain to the individual the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency must provide a written statement of the above to each individual in the household who is registered for work. A notice must also be provided when a previously exempt individual or new household member becomes subject to a work requirement, and at recertification. The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency's criteria, to refer the individual to an E&T program, and if appropriate, referring the individual to an E&T program component. Upon entry into each component, the State agency must inform the participant, either orally or in writing, of the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. A State agency may, with FNS approval, use intake and sanction systems that are compatible with its title IV–A work program. Such systems must be proposed and explained in the State agency's E&T State Plan.

(3) The State agency must issue a notice of adverse action to an individual, or to a household if appropriate, within 10 days after learning of the individual's noncompliance with Food Stamp Program work requirements. The notice of adverse action must meet the timeliness and adequacy requirements of § 273.13. If the individual complies before the end of the advance notice period, the State agency will cancel the adverse action. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(4) The State agency must design and operate an E&T program that may consist of one or more or a combination of employment and/or training components as described in paragraph (e)(1) of this section. The State agency must ensure that it is notified by the agency or agencies operating its E&T components within 10 days if an E&T mandatory participant fails to comply with E&T requirements.

(5) Each component of a State agency's E&T program must be delivered through a statewide workforce development system, unless the component is not available locally through such a system.

(6) In accordance with § 272.2(e)(9) of this chapter, each State agency must prepare and submit an Employment and Training Plan to its appropriate FNS Regional Office and to the FNS National Office. The E&T Plan must be available for public inspection at the State agency headquarters. In its E&T Plan, the State agency will detail the following:

(i) The nature of the E&T components the State agency plans to offer and the reasons for such components, including cost information. The methodology for State agency reimbursement for education components must be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State agency that requests 50 percent Federal reimbursement for State agency E&T administrative costs, other than for participant reimbursements, must include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed, including the costs for case management and casework to facilitate the transition from economic dependency to self-sufficiency through work. Costs in excess of the Federal grant will be allowed only with the prior approval of FNS and must be adequately documented to assure that they are necessary, reasonable and properly allocated;

(iii) The categories and types of individuals the State agency intends to exempt from E&T participation, the estimated percentage of work registrants the State plans to exempt, and the frequency with which the State agency plans to reevaluate the validity of its exemptions;

(iv) The characteristics of the population the State agency intends to place in E&T;

(v) The estimated number of volunteers the State agency expects to place in E&T;

(vi) The geographic areas covered and not covered by the E&T Plan and why, and the type and location of services to be offered;

(vii) The method the State agency uses to count all work registrants the first month of each fiscal year;

(viii) The method the State agency uses to report work registrant information on the quarterly Form FNS–583.

(ix) The method the State agency uses to prevent work registrants from being counted twice within a Federal fiscal year. If the State agency universally work registers all food stamp applicants, this method must specify how the State agency excludes those exempt from work registration under paragraph (b)(1) of this section. If the State agency work registers nonexempt participants whenever a new application is submitted, this method must also specify how the State agency excludes those participants who may have already been registered within the past 12 months as specified under paragraph (a)(1)(i) of this section.

(x) The organizational relationship between the units responsible for certification and the units operating the E&T components, including units of the Statewide workforce development system, if available. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within 10 working days after the noncompliance occurs;

(xi) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services, including organizations in the Statewide workforce development system, if available. Copies of contracts must be available for inspection;

(xii) The availability, if appropriate, of E&T programs for Indians living on reservations.

(xiii) If an informal conciliation process is planned, the procedures that will be used when an individual fails to comply with an E&T program requirement. Include the length of the conciliation period.

(xiv) The payment rates for child care established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, which require the State agency to ensure that eligible children receive child care services equal to the services provided to children not funded through Block Grant assistance or through child care assistance under any other Federal, State, or Tribal programs.

(7) State agencies will submit E&T Plans biennially, at least 45 days before the start of the Federal fiscal year. State agencies must submit plan revisions to the appropriate FNS regional office for approval if they plan to alter the nature or location of their components or the number or characteristics of persons served. The proposed changes must be submitted for approval at least 30 days prior to planned implementation.

(8) The State agency will submit quarterly reports to FNS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

(i) Participants newly work registered;

(ii) Work registrants exempted by the State agency from participation in E&T;

(iii) Participants who volunteer for and commence participation in an approved E&T component;

(iv) E&T mandatory participants who commence an approved E&T component, including Food Stamp Program applicants if the State agency chooses to operate a component for applicants.

(9) State agencies will submit annually, on their first quarterly report, the number of work registered persons in that State in October of the new fiscal year.

(10) State agencies will submit annually, on their final quarterly report, the following information:

(i) The number of work registrants exempted from E&T participation as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

(ii) The number of mandatory and volunteer participants placed in each E&T component offered by the State agency.

(11) Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State agency's E&T Plan regarding the type of components offered and the characteristics of persons served.

(12) State agencies must ensure, to the maximum extent practicable, that E&T programs are provided for Indians living on reservations.

(13) If a benefit overissuance is discovered for a month or months in which a mandatory E & T participant has already fulfilled a work component requirement, the State agency must follow the procedure specified in paragraph (m)(6)(v) of this section for a workfare overissuance.

(14) If a State agency fails to efficiently and effectively administer its E&T program, the provisions of § 276.1(a)(4) of this chapter will apply.

(d) *Federal financial participation.* (1) *Employment and training grants.* (i) Each State agency will receive an E&T program grant for each fiscal year to operate an E&T program. The grant requires no State matching. The grant will remain available until expended.

(A) No State agency will receive less than $50,000 in Federal 100 percent funds in a fiscal year.

(B) If a State agency will not expend all of the funds allocated to it for a fiscal year, FNS will reallocate the unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year.

(C) State agencies must use E&T program grants to fund the administrative costs of planning, implementing and operating food stamp E&T programs in accordance with approved State agency E&T plans. E&T grants may not be used for the process of determining whether an individual must be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity that takes place after the operator of an E&T component reports noncompliance without good cause. For purposes of this paragraph (d), the certification process is considered ended when an individual is referred to an E&T component for assessment or participation. E&T grants may also not be used to subsidize the wages of

participants, or to reimburse participants under paragraph (d)(1)(ii) of this section.

(D) A State agency's receipt of the E&T program grant as allocated under paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section is contingent on FNS's approval of the State agency's E&T plan. If an adequate plan is not submitted, FNS may reallocate a State agency's grant among other State agencies with approved plans. Non-receipt of an E&T program grant does not release a State agency from its responsibility under paragraph (c)(4) of this section to operate an E&T program.

(E) Federal funds made available to a State agency to operate a component under paragraph (e)(1)(vi) of this section must not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an E&T program.

(F) In accordance with section 6(d)(4)(K) of the Food Stamp Act, and notwithstanding any other provision of this paragraph (d), the amount of Federal E&T funds, including participant and dependent care reimbursements, a State agency uses to serve participants who are receiving benefits under a State program funded under part A of title IV of the Social Security Act must not exceed the amount of Federal E&T funds the State agency used in FY 1995 to serve participants who were receiving benefits under a State program funded under part A of title IV of the Social Security Act.

(*1*) Based on information provided by each State agency, FNS established claimed Federal E&T expenditures on this category of recipients in fiscal year 1995 for the State agencies of Colorado ($318,613), Utah ($10,200), Vermont ($1,484,913), and Wisconsin ($10,999,773). These State agencies may spend up to a like amount each fiscal year to serve food stamp recipients who also receive title IV assistance.

(*2*) All other State agencies are prohibited from expending any Federal E&T funds on title IV recipients.

(ii) *Participant reimbursements.* The State agency must provide payments to participants in its E&T program, including applicants and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency must inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs must not include the cost of meals away from home. If applicable, any allowable costs incurred by a noncompliant E&T participant after the expiration of the noncompliant participant's minimum mandatory disqualification period, as established by the State agency, that are reasonably necessary and directly related to reestablishing eligibility, as defined by the State agency, are reimbursable under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section, however, only costs that are up to but not in excess of those amounts are subject to Federal cost sharing. Reimbursement must not be provided from E&T grants allocated under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section is not deductible under § 273.10(d)(1)(i). Reimbursements will be provided as follows:

(A) The costs of dependent care determined by the State agency to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, or the applicable payment rate for child care, whichever is lowest. The payment rate for child care is determined in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, which require the State agency to ensure that eligible children receive child care services equal to the services provided to children not funded through Block Grant assistance or through child care assistance under any other Federal, State, or Tribal programs. The State agency will provide a dependent care reimbursement to an E&T participant for all dependents requiring care unless otherwise prohibited by this section. The State agency will not provide a reimbursement for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or under court supervision. The State agency must provide a reimbursement for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. The State agency will obtain verification of the physical and/or mental incapacity for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, the State agency will verify a court imposed requirement for the supervision of a dependent age 13 or older if the need for dependent care is questionable. If more than one household member is required to participate in an E&T program, the State agency will reimburse the actual cost of dependent care, the applicable payment rate for child care, or the Statewide limit, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. An individual who is the caretaker relative of a dependent in a family receiving benefits under title IV–A of the Social Security Act in a local area where an employment, training, or education program under title IV–A is in operation is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service, e.g., five hours per day, five days per week for two weeks. A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local law, including requirements designed to ensure basic health and safety protections, e.g., fire safety. An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with

participation in the E&T program as required by the State agency. A State agency may claim 50 percent of actual costs for dependent care services provided or arranged for by the State agency up to the actual cost of dependent care, the applicable payment rate for child care, or the Statewide limit, whichever is lowest.

(B) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T program up to $25 per participant per month. Such costs are the actual costs of participation unless the State agency has a method approved in its E&T Plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses that exceed the standard, up to $25 or such other maximum level of reimbursements established by the State agency.

(C) No participant cost that has been reimbursed under a workfare program under paragraph (m)(7)(i) of this section, title IV of the Social Security Act or other work program will be reimbursed under this section.

(D) Any portion of dependent care costs that are reimbursed under this section may not be claimed as an expense and used in calculating the dependent care deduction under § 273.9(d)(4) for determining benefits.

(E) The State agency must inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section are not required to participate in that component. These individuals will be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals will be exempt from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the State agency. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(1)(ii)(B) of this section will be considered in determining a dependent care deduction under § 273.9(d)(4).

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating E&T programs, above the costs referenced in paragraph (d)(1)(i) of this section, will be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under paragraph (m)(7)(iv) of this section at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* E&T program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of this chapter. The State agency must ensure that records are maintained that support the financial claims being made to FNS.

(3) *Fiscal recordkeeping and reporting requirements.* Total E&T expenditures are reported on the Financial Status Report (SF–269) in the column containing "other" expenses. E&T expenditures are also separately identified in an attachment to the SF–269 to show, as provided in instructions, total State and Federal E&T expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for E&T costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and paragraph (m)(7) of this section. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program will be submitted in accordance with paragraph (m)(7)(iv) of this section.

(e) *Employment and training programs.* Work registrants not otherwise exempted by the State agency are subject to the E&T program participation requirements imposed by the State agency. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency will result in disqualification as specified in paragraph (f)(2) of this section.

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency must entail a certain level of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months (or less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount) making job contacts; however, FNS may approve components which do not meet this guideline which it determines will advance program goals. An initial screening by an eligibility worker to determine whom to place in an E&T program does not constitute a component. The State agency may require Food Stamp Program applicants to participate in any component it offers in its E&T program at the time of application. The State agency must not impose requirements that would delay the determination of an individual's eligibility for benefits or in issuing benefits to any household that is otherwise eligible. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24 of these regulations, job search and job search training, when offered as components of an E&T program *do not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the required time spent in the other components. An E&T program offered by a State agency must include one or more of the following components:

(i) A job search program. The State agency may require an individual to participate in job search from the time an application is filed for an initial period established by the State agency. Following this initial period (which may extend beyond the date when eligibility is determined) the State agency may require an additional job search period in any period of 12 consecutive months. The first such period of 12 consecutive months will begin at any time following the close of the initial period. The State agency may establish a job search period, that in its estimation, will provide participants a reasonable opportunity to find suitable employment. The State agency should not, however, establish a continuous, year-round job search requirement. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24 of these regulations, a job search program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, such a program, when

operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) does meet the definition of work program.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved. In accordance with section 6(o)(1) and (2) of the Food Stamp Act and § 273.24 of these regulations, a job search program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, such a program, when operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) does meet the definition of work program.

(iii) A workfare program as described in paragraph (m) of this section. In accordance with section 20(e) of the Food Stamp Act and paragraph (m)(6)(ii) of this section, the State agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment. This job search activity is part of the workfare assignment, and not a job search "program." Participants are considered to be participating in and complying with the requirements of workfare, thereby meeting the work requirement for able-bodied adults.

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience must:

(A) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(B) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a WIA or State or local program aimed at accomplishing the purpose of the E&T program.

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

(vii) A program designed to improve the self-sufficiency of recipients through self-employment. Included are programs that provide instruction for self-employment ventures.

(2) *Exemptions.* Each State agency may, at its discretion, exempt individual work registrants and categories of work registrants from E&T participation. Each State agency must periodically reevaluate its individual and categorical exemptions to determine whether they remain valid. Each State agency will establish the frequency of its periodic evaluation.

(3) *Time spent in an employment and training program.* (i) Each State agency will determine the length of time a participant spends in any E&T component it offers. The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an E&T work program including, but not limited to those carried out under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section, combined with any hours worked that month in a workfare program under paragraph (m) of this section must not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation in an E&T component for any household member individually in any month, together with any hours worked in a workfare program under paragraph (m) of this section and any hours worked for compensation (in cash or in kind), must not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency must not disqualify voluntary participants in an E&T component for failure to comply with E&T requirements.

(iii) The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants, as specified in paragraph (e)(3) of this section.

(f) *Failure to comply.* (1) *Ineligibility for failure to comply.* A nonexempt individual who refuses or fails without good cause, as defined in paragraphs (i)(2) and (i)(3) of this section, to comply with the Food Stamp Program work requirements listed under paragraph (a)(1) of this section; or who, in accordance with paragraph (j) of this section, voluntarily and without good cause quits a job or reduces work effort and, after the reduction, is working less than 30 hours per week, is ineligible to participate in the Food Stamp Program, and will be considered an ineligible household member, pursuant to § 273.1(b)(2).

(i) As soon as the State agency learns of the individual's noncompliance it must determine whether good cause for the noncompliance exists, as discussed in paragraph (i) of this section. Within 10 days of establishing that the noncompliance was without good cause, the State agency must provide the individual with a notice of adverse action, as specified in § 273.13. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(ii) The notice of adverse action must contain the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may, if appropriate, reapply at the end of the disqualification period. Information must be included on or with the notice describing the action that can be taken to avoid the sanction. The disqualification period must begin with the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

(2) *Disqualification periods.* The following disqualification periods will be imposed:

(i) For the first occurrence of noncompliance, the individual will be disqualified until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) One month; or

(C) Up to three months, at State agency option.

(ii) For the second occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Three months; or

(C) Up to six months, at State agency option.

(iii) For the third or subsequent occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Six months;

(C) A date determined by the State agency; or

(D) At the option of the State agency, permanently.

(3) *Disqualification plan.* In accordance with § 272.2(d)(1)(xiii) of this chapter, each State agency must prepare and submit a plan detailing its disqualification policies. The plan must include the length of disqualification to be enforced for each occurrence of noncompliance, how compliance is determined by the State agency, and the State agency's household disqualification policy.

(4) *Household ineligibility.* (i) If the individual who becomes ineligible to participate under paragraph (f)(1) of this section is the head of a household, the State agency, at its option, may disqualify the entire household from Food Stamp Program participation.

(ii) The State agency may disqualify the household for a period that does not exceed the lesser of:

(A) The duration of the ineligibility of the noncompliant individual under paragraph (f)(2) of this section; or

(B) 180 days.

(iii) A household disqualified under this provision may reestablish eligibility if:

(A) The head of the household leaves the household; or

(B) A new and eligible person joins the household as the head of the household, as defined in § 273.1(d)(2).

(iv) If the head of the household joins another household as its head, that household will be disqualified from participating in the Food Stamp Program for the remaining period of ineligibility.

(5) *Fair hearings.* Each individual or household has the right to request a fair hearing, in accordance with § 273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with Food Stamp Program work requirements. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component must receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency must be available through one of these means. A household must be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (that may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the fair hearing are binding on the State agency.

(6) *Failure to comply with a work requirement under title IV of the Social Security Act, or an unemployment compensation work requirement.* An individual exempt from Food Stamp Program work requirements by paragraphs (b)(1)(iii) or (b)(1)(v) of this section because he or she is subject to work requirements under title IV–A or unemployment compensation who fails to comply with a title IV–A or unemployment compensation work requirement will be treated as though he or she failed to comply with the Food Stamp Program work requirement.

(i) When a food stamp household reports the loss or denial of title IV–A or unemployment compensation benefits, or if the State agency otherwise learns of a loss or denial, the State agency must determine whether the loss or denial resulted when a household member refused or failed without good cause to comply with a title IV–A or unemployment compensation work requirement.

(ii) If the State agency determines that the loss or denial of benefits resulted from an individual's refusal or failure without good cause to comply with a title IV or unemployment compensation requirement, the individual (or household if applicable under paragraph (f)(4) of this section) must be disqualified in accordance with the applicable provisions of this paragraph (f). However, if the noncomplying individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section (other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of this section) the individual (or household if applicable under paragraph (f)(4) of this section) will not be disqualified.

(iii) If the State agency determination of noncompliance with a title IV–A or unemployment compensation work requirement leads to a denial or termination of the individuals or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of paragraph (f)(1) of this section.

(iv) In cases where the individual is disqualified from the title IV–A program for refusal or failure to comply with a title IV–A work requirement, but the individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of this section, the State agency may, at its option, apply the identical title IV–A disqualification on the individual under the Food Stamp Program. The State agency must impose such optional disqualifications in accordance with section 6(i) of the Food Stamp Act and with the provisions of § 273.11(l) of these regulations.

(g) *Ending disqualification.* Except in cases of permanent disqualification, at the end of the applicable mandatory disqualification period for noncompliance with Food Stamp Program work requirements, participation may resume if the disqualified individual applies again and is determined by the State agency to be in compliance with work requirements. A disqualified individual may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work requirements.

(h) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment will be considered unsuitable if:

(i) The wage offered is less than the highest of the applicable Federal minimum wage, the applicable State minimum wage, or eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (h)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been

enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(2) In addition, employment will be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment will not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor will employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs. For example, a Sabbatarian could refuse to work on the Sabbath.

(i) *Good cause.* (1) The State agency is responsible for determining good cause when a food stamp recipient fails or refuses to comply with FSP work requirements. Since it is not possible for the Department to enumerate each individual situation that should or should not be considered good cause, the State agency must take into account the facts and circumstances, including information submitted by the household member involved and the employer, in determining whether or not good cause exists.

(2) Good cause includes circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(3) Good cause for leaving employment includes the good cause provisions found in paragraph (i)(2) of this section, and resigning from a job that does not meet the suitability criteria specified in paragraphs (h)(1) and (h)(2) of this section. Good cause for leaving employment also includes:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance of employment by the individual, or enrollment by the individual in any recognized school, training program or institution of higher education on at least a half time basis, that requires the individual to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision that requires the household to move and thereby requires the individual to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment that becomes unsuitable by not meeting the criteria specified in paragraphs (h)(1) and (h)(2) of this section after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours that, because of circumstances beyond the individual's control, subsequently either does not materialize or results in employment of less than 20 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 20 hours; and

(viii) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment must be considered as with good cause if it is part of the pattern of that type of employment.

(4) *Verification.* To the extent that the information given by the household is questionable, as defined in § 273.2(f)(2), State agencies must request verification of the household's statements. The primary responsibility for providing verification, as provided in § 273.2(f)(5), rests with the household.

(j) *Voluntary quit and reduction of work effort.* (1) *Individual ineligibility.* An individual is ineligible to participate in the Food Stamp Program if, in the 60 days before applying for food stamp benefits or at any time thereafter, the individual:

(i) Voluntarily and without good cause quits a job of 30 hours a week or more; or

(ii) Reduces his or her work effort voluntarily and without good cause and, after the reduction, is working less than 30 hours per week.

(2) *Determining whether a voluntary quit or reduction of work effort occurred and application processing.* (i) When a household files an application for participation, or when a participating household reports the loss of a source of income or a reduction in household earnings, the State agency must determine whether any household member voluntarily quit his or her job or reduced his or her work effort. Benefits must not be delayed beyond the normal processing times specified in § 273.2 pending the outcome of this determination.

(ii) The voluntary quit provision applies if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this paragraph (j). An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, will be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own, loses the new job, the individual must not be disqualified for the earlier quit.

(iii) The reduction of work effort provision applies if, before the reduction, the individual was employed 30 hours or more per week; the reduction occurred within 60 days prior to the date of application or anytime thereafter; and the reduction was voluntary and without good cause. The minimum wage equivalency does not

apply when determining a reduction in work effort.

(iv) In the case of an applicant household, the State agency must determine if any household member subject to Food Stamp Program work requirements voluntarily quit his or her job or reduced his or her work effort within the last 60 days. If the State agency learns that a household has lost a source of income or experienced a reduction in income after the date of application but before the household is certified, the State agency must determine whether a voluntarily quit or reduction in work effort occurred.

(v) Upon determining that an individual voluntarily quit employment or reduced work effort, the State agency must determine if the voluntary quit or reduction of work effort was with good cause as defined in paragraph (i)(3) of this section.

(vi) In the case of an individual who is a member of an applicant household, if the voluntary quit or reduction in work effort was without good cause, the individual will be determined ineligible to participate and will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(2). The disqualification is effective upon the determination of eligibility for the remaining household members. If the individual who becomes ineligible is the head of the household, as defined in § 273.1(d)(2), the State agency may choose to disqualify the entire household, in accordance with paragraph (f)(3) of this section. If the State agency chooses to disqualify the household, the State agency must provide the applicant household with a notice of denial in accordance with § 273.2(g)(3). The notice must inform the household of the proposed period of disqualification; its right to reapply at the end of the disqualification period; and of its right to a fair hearing. The household's disqualification is effective upon the issuance of the notice of denial.

(vii) In the case of an individual who is a member of a participating household, if the State agency determines that the individual voluntarily quit his or her job or reduced his or her work effort without good cause while participating in the program or discovers that the individual voluntarily quit his or her job or reduced his or her work effort without good cause within 60 days prior to application for benefits or between application and certification, the State agency must provide the individual with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit or reduction in work effort. The notification must contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions that may be taken to avoid the disqualification, and it must specify that the individual may resume participation at the end of the disqualification period, if applicable. The individual will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(2). The disqualification period will begin the first month following the expiration of the 10 day adverse notice period, unless the individual requests a fair hearing. If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate mandatory disqualification period, beginning with the day after the last certification period ends. If the individual does not apply for food stamp benefits by the end of the certification period, the State agency must establish a claim for the benefits received by the individual, for up to the entire appropriate mandatory disqualification period, beginning the first of the month after the month in which the voluntary quit or reduction in work effort occurred. If there are fewer days than the appropriate mandatory disqualification period from the first of the month after the month in which the voluntary quit or reduction in work effort occurred to the end of the certification period, a claim must be imposed, and the individual must remain ineligible for benefits for a prorated number of days, with the end result that a claim is established or the individual is ineligible for the full mandatory disqualification period. Each individual has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the individual voluntarily quit his or her job or reduced his or her work effort without good cause. If the participating individual's benefits are continued pending a fair hearing and the State agency determination is upheld, the disqualification period must begin the first of the month after the hearing decision is rendered.

(viii) If the individual who voluntarily quit his or her job, or who reduced his or her work effort without good cause is the head of a household, as defined in § 273.1(d), the State agency, at its option, may disqualify the entire household from Food Stamp Program participation in accordance with paragraph (f)(3) of this section.

(3) *Ending a voluntary quit or a reduction in work disqualification.* Except in cases of permanent disqualification, following the end of the mandatory disqualification period for voluntarily quitting a job or reducing work effort without good cause, an individual may begin participation in the program if he or she reapplies and is determined eligible by the State agency. Eligibility may be reestablished during a disqualification and the individual, if otherwise eligible, may be permitted to resume participation if the individual becomes exempt from Program work requirements under paragraph (b)(1) of this section.

(4) *Application in the final month of disqualification.* Except in cases of permanent disqualification, if an application for participation in the Program is filed in the final month of the mandatory disqualification period, the State agency must, in accordance with § 273.10(a)(3), use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

(k) *Employment initiatives program.* (1) *General.* In accordance with section 17(d)(1)(B) of the Food Stamp Act, qualified State agencies may elect to operate an employment initiatives program, in which an eligible household can receive the cash equivalent of its food stamp coupon allotment.

(2) *State agency qualification.* A State agency qualifies to operate an employment initiatives program if, during the summer of 1993, at least half of its food stamp households also received cash benefits from a State program funded under part A of title IV of the Social Security Act.

(3) *Qualified State agencies.* Alaska, California, Connecticut, DC, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia, and Wisconsin meet the qualification. These 10 State agencies may operate an employment initiatives program.

(4) *Eligible households.* A food stamp household in one of the 10 qualified State agencies may receive cash benefits in lieu of a food stamp coupon allotment if it meets the following requirements:

(i) The food stamp household elects to participate in an employment initiatives program;

(ii) An adult member of the household:

(A) Has worked in unsubsidized employment for the last 90 days, earning a minimum of $350 per month;

(B) Is receiving cash benefits under a State program funded under part A of title IV of the Social Security Act; or

(C) Was receiving cash benefits under the State program but, while participating in the employment initiatives program, became ineligible because of earnings and continues to earn at least $350 a month from unsubsidized employment.

(5) *Program provisions.* (i) Cash benefits provided in an employment initiatives program will be considered an allotment, as defined at § 271.2 of this chapter.

(ii) An eligible household receiving cash benefits in an employment initiatives program will not receive any other food stamp benefit during the period for which cash assistance is provided.

(iii) A qualified State agency operating an employment initiatives program must increase the cash benefit to participating households to compensate for any State or local sales tax on food purchases, unless FNS determines that an increase is unnecessary because of the limited nature of items subject to the State or local sales tax.

(iv) Any increase in cash assistance to account for a State or local sales tax on food purchases must be paid by the State agency.

(6) *Evaluation.* After two years of operating an employment initiatives program, a State agency must evaluate the impact of providing cash assistance in lieu of a food stamp coupon allotment to participating households. The State agency must provide FNS with a written report of its evaluation findings. The State agency, with the concurrence of FNS, will determine the content of the evaluation.

(l) *Work supplementation program.* In accordance with section 16(b) of the Food Stamp Act, States may operate work supplementation (or support) programs that allow the cash value of food stamp benefits and public assistance, such as cash assistance authorized under title IV–A of the Social Security or cash assistance under a program established by a State, to be provided to employers as a wage subsidy to be used for hiring and employing public assistance recipients. The goal of these programs is to promote self-sufficiency by providing public assistance recipients with work experience to help them move into unsubsidized jobs. In accordance with § 272.2(d)(1)(xiv) of this chapter, State agencies that wish to exercise their option to implement work supplementation programs must submit to FNS for approval a plan that complies with the provisions of this paragraph (l). Work supplementation programs may not be implemented without prior approval from FNS.

(1) *Plan.* (i) *Assurances.* The plan must contain the following assurances:

(A) The individual participating in a work supplementation program must not be employed by the employer at the time the individual enters the program.

(B) The wage subsidy received under the work supplementation program must be excluded from household income and resources during the term the individual is participating in work supplementation.

(C) The household must not receive a separate food stamp allotment while participating in the work supplementation program.

(D) An individual participating in a work supplementation program is excused from meeting any other work requirements.

(E) The work supplementation program must not displace any persons currently employed who are not supplemented or supported.

(F) The wage subsidy must not be considered income or resources under any Federal, State or local laws, including but not limited to, laws relating to taxation, welfare, or public assistance programs, and the household's food stamp allotment must not be decreased due to taxation or any other reason because of its use as a wage subsidy.

(G) The earned income deduction does not apply to the subsidized portion of wages received in a work supplementation program.

(H) All work supplemented or supported employees must receive the same benefits (sick and personal leave, health coverage, workmen's compensation, etc.) as similarly situated coworkers who are not participating in work supplementation and wages paid under a wage supplementation or support program must meet the requirements of the Fair Labor Standards Act.

(ii) *Description.* The plan must also describe:

(A) The procedures the State agency will use to ensure that the cash value of food stamp benefits for participating households are not subject to State or local sales taxes on food purchases. The costs of increasing household food stamp allotments to compensate for such sales taxes must be paid from State funds.

(B) State agency, employer and recipient obligations and responsibilities.

(C) The procedures the State agency will use to provide wage subsidies to employers and to ensure accountability.

(D) How public assistance recipients in the proposed work supplementation program will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

(E) Whether the food stamp allotment and public assistance grant will be frozen at the time a recipient begins a subsidized job.

(F) The procedures the State agency will use to ensure that work supplementation program participants do not incur any Federal, State, or local tax liabilities on the cash value of their food stamp benefits.

(2) *Budget.* In addition to the plan described in paragraph (l)(1) of this section, an operating budget for the proposed work supplementation program must be submitted to FNS.

(3) *Approval.* FNS will review the initial plan and any subsequent amendments. Upon approval by FNS, the State agency must incorporate the approved work supplementation program plan or subsequent amendment into its State Plan of Operation and its operating budget must be included in the State agency budget. No plan or amendment may be implemented without approval from FNS.

(4) *Reporting.* State agencies operating work supplementation and support programs are required to comply with all FNS reporting requirements, including reporting the amount of benefits contributed to employers as a wage subsidy on the FNS–388, State Issuance and Participation Estimates; FNS–388A, Participation and Issuance by Project Area; FNS–46, Issuance Reconciliation Report; and SF–269, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS–366A, Budget Projection and SF–269, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

(5) *Funding.* FNS will pay the cash value of a participating household's food stamp benefits to a State agency with an approved work supplementation program to pay to an employer as a wage subsidy, and will also reimburse the State agency for related administrative costs, in accordance with Section 16 of the Food Stamp Act.

(6) *Quality control.* Cases in which a household member is participating in a work supplementation program will be coded as not subject to review.

(m) *Optional workfare program.* (1) *General.* This paragraph (m) contains the rules to be followed in operating a food stamp workfare program. In workfare, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled. The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(2) *Program administration.* (i) A food stamp workfare program may be operated as a component of a State agency's E&T program, or it may be operated independently. If the workfare program is part of an E&T program it must be included as a component in the State agency's E&T plan in accordance with the requirements of paragraph (c)(4) of this section. If it is operated independent of the E&T program, the State agency must submit a workfare plan to FNS for its approval. For the purpose of this paragraph (m) a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State agency's workfare or E&T plan.

(ii) Political subdivisions are encouraged, but not required, to submit their plans to FNS through their respective State agencies. At a minimum, however, plans must be submitted to the State agencies concurrent with their submission to FNS. Workfare plans and subsequent amendments must not be implemented prior to their approval by FNS.

(iii) When a State agency chooses to sponsor a workfare program by submitting a plan to FNS, it must incorporate the approved plan into its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FNS, the State agency is responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (m)(4) of this section. When it is notified that FNS has approved a workfare plan submitted by a political subdivision in its State, the State agency must append that political subdivision's workfare plan to its own State Plan of Operations.

(iv) The operating agency is the administrative organization identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this paragraph (m). The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision that submitted the workfare plan is responsible for monitoring the operating agency's compliance with the requirements of this paragraph (m) or of the workfare plan. The Department may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision that submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies, have failed to comply with the requirements of this paragraph (m) or of the workfare plan.

(v) State agencies or other political subdivisions must describe in detail in the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, will fulfill the provisions of this paragraph (m). The plan will be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(vi) State agencies or political subdivisions submitting a workfare plan must submit with the plan an operating budget covering the period from the initiation of the workfare program's implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operation must be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget must be included in the State agency's budget.

(vii) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department will determine which political subdivision will have its plan approved. Under no circumstances will a food stamp recipient be subject to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(3) *Operating agency responsibilities.* (i) *General.* The operating agency, as designated by the State agency or other political subdivision that submits a plan, is responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this paragraph (m).

(ii) *Establishment of job sites.* Workfare job slots may only be located in public or private nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs that include, but are not limited to, designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(iii) *Notifying State agency of noncompliance.* The operating agency must notify the State agency of noncompliance by an individual with a workfare obligation when it determines that the individual did not have good cause for the noncompliance. This notification must occur within five days of such a determination so that the State agency can make a final determination as provided in paragraph (m)(4)(iv) of this section.

(iv) *Notifications.* (A) State agencies must establish and use notices to notify the operating agency of workfare-eligible households. The notice must include the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, it must also include this in the notice. If the operating agency is computing the hours to be worked, include the monthly allotment amount.

(B) Operating agencies must establish and use notices to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(C) Operating agencies must establish and use notices to notify the State agency of failure by a household to meet its workfare obligation.

(v) *Recordkeeping requirements.* (A) Files that record activity by workfare participants must be maintained. At a minimum, these records must contain job sites, hours assigned, and hours completed.

(B) Program records must be maintained, for audit and review purposes, for a period of 3 years from

the month of origin of each record. Fiscal records and accountable documents must be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph (m), means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph (m), means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records must be kept in a manner that will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (m)(6)(ii) of this section.

(vi) *Reporting requirements.* The operating agency is responsible for providing information needed by the State agency to fulfill the reporting requirements contained in paragraph (m)(4)(v) of this section.

(vii) *Disclosure.* The provisions of § 272.1(c) of this chapter restricting the use and disclosure of information obtained from food stamp households is applicable to the administration of the workfare program.

(4) *State agency responsibilities.* (i) If a political subdivision chooses to operate a workfare program, the State agency must cooperate with the political subdivision in developing a plan.

(ii) The State agency must determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (m)(5)(i) of this section must be referred to the organization which is the operating agency. The information identified in paragraph (m)(3)(iv)(A) of this section must be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(iii) The State agency must inform the household and the operating agency of the effect of any changes in a household's circumstances on the household's workfare obligation. This includes changes in benefit levels or workfare eligibility.

(iv) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency must make a final determination as to whether or not the failure occurred and whether there was good cause for the failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction must be processed as provided in paragraph (f)(1)(i) and (f)(1)(ii) of this section. The State agency must immediately inform the operating agency of the months during which the sanction will apply.

(v) The State agency must submit quarterly reports to FNS within 45 days of the end of each quarter identifying for that quarter for that State:

(A) The number of households with workfare-eligible recipients referred to the operating agency. A household will be counted each time it is referred to the operating agency.

(B) The number of households assigned to jobs each month by the operating agency.

(C) The number of individuals assigned to jobs each month by the operating agency.

(D) The total number of hours worked by participants.

(E) The number of individuals against which sanctions were applied. An individual being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(vi) The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FNS. Should the State agency assume this responsibility, it would act as agent for FNS, which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or FNS directs otherwise.

(5) *Household responsibilities.* (i) *Participation requirement.* Participation in workfare, if assigned by the State agency, is a Food Stamp Program work requirement for all nonexempt household members, as provided in paragraph (a) of this section. In addition:

(A) Those recipients exempt from Food Stamp Program work requirements because they are subject to and complying with any work requirement under title IV of the Social Security Act are subject to workfare if they are currently involved less than 20 hours a week in title IV work activities. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision.

(B) Those recipients exempt from Food Stamp Program work requirements because they have applied for or are receiving unemployment compensation are subject to workfare.

(ii) *Household obligation.* The maximum total number of hours of work required of a household each month is determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month.

(6) *Other program requirements.* (i) *Conditions of employment.* (A) Participants may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a workfare participant, together with any other hours worked in any other compensated capacity, including hours of participation in a title IV work program, by that participant on a regular or predictable part-time basis, must not exceed 30 hours a week. With the participant's consent, the hours to be worked may be scheduled in such a manner that more than 30 hours are worked in one week, as long as the total for that month does not exceed the weekly average of 30 hours.

(B) No participant will be required to work more than eight hours on any given day without his or her consent.

(C) No participant will be required to accept an offer of workfare employment if it fails to meet the criteria established in paragraphs (h)(1)(iii), (h)(1)(iv), (h)(2)(i), (h)(2)(ii), (h)(2)(iv), and (h)(2)(v) of this section.

(D) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements; other Food Stamp Program work requirements established in paragraph (a)(1) of this section; or the job search requirements established in paragraph (e)(1)(i) of this section, that inability must not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency must, if possible, reschedule the missed activity. If the rescheduling cannot be completed before the end of the month, that must not be considered as cause for disqualification.

(E) The operating agency must assure that all persons employed in workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These are benefits related to the actual work being performed, such as workers'

compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit that requires a cash contribution by the participant will be optional at the discretion of the participant.

(F) The operating agency must assure that all workfare participants experience the same working conditions that are provided to non-workfare employees similarly employed.

(G) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89–286), relating to health and safety conditions, apply to the workfare program.

(H) Operating agencies must not place a workfare participant in a work position that has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies due to hiring freezes, terminations, or lay-offs must not be filled by workfare participants unless it can be demonstrated that the vacancies are a result of insufficient funds to sustain former staff levels.

(I) Workfare jobs must not, in any way, infringe upon the promotional opportunities that would otherwise be available to regular employees.

(J) Workfare jobs must not be related in any way to political or partisan activities.

(K) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (m)(7) of this section. However, whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site).The Department does not assume liability for any injury to or death of a workfare participant while on the job.

(L) The nondiscrimination requirement provided in § 272.6(a) of this chapter applies to all agencies involved in the workfare program.

(ii) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under this section during this time.

(iii) *Participant reimbursement.* The operating agency must reimburse participants for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs may not include the cost of meals away from home. No participant cost reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program may be reimbursed under the food stamp workfare program. Only reimbursement of participant costs up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (m)(7) of this section. Reimbursed child care costs may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. In accordance with paragraph (m)(4)(i) of this section, a State agency may decide what its reimbursement policy shall be.

(iv) *Failure to comply.* When a workfare participant is determined by the State agency to have failed or refused without good cause to comply with the requirements of this paragraph, (m), the provisions of paragraph (f) of this section will apply.

(v) *Benefit overissuances.* If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency must apply the claim recovery procedures contained in paragraphs (m)(6)(v)(A) and (m)(6)(v)(B) of this section.

(A) If the person who performed the work is still subject to a work obligation, the State must determine how many extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future work obligations.

(B) If a workfare or work component requirement does not continue, the State agency must determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency must determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper benefit level been used in calculating the number of hours to work. A claim must be established for the amount of the overissuance not "worked off," if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim will be established. No credit for future work requirements will be given.

(7) *Federal financial participation*—(i) *Administrative costs.* Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program will be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to $25 per month for any participant, as indicated in paragraph (m)(6)(iii) of this section. Such costs do not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of $25 per month for any participant.

(ii) *Funding mechanism.* The State agencies have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency must also assure that records are being maintained which support the financial claims being made to FNS. This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(iii) *Fiscal recordkeeping and reporting requirements.* Workfare-related costs must be identified by the State agency on the Financial Status Report (Form SF–269) as a separate column. All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to workfare program funds must be maintained in accordance with § 277.12 of this chapter.

(iv) *Sharing workfare savings*—(A) *Entitlement.* A political subdivision is entitled to share in the benefit reductions that occur when a workfare participant begins employment while participating in workfare for the first time, or within thirty days of ending the first participation in workfare.

(*1*) To begin employment means to appear at the place of employment and to begin working.

(*2*) First participation in workfare means performing work for the first time in a particular workfare program. The only break in participation that does not end the first participation will be due to

the participant's taking a job which does not affect the household's allotment by an entire month's wages and which is followed by a return to workfare.

(B) *Calculating the benefit reductions.* The political subdivision will calculate benefit reductions from each workfare participant's employment as follows.

(*1*) Unless the political subdivision knows otherwise, it will presume that the benefit reduction equals the difference between the last allotment issued before the participant began the new employment and the first allotment that reflects a full month's wages, earned income deduction, and dependent care deduction attributable to the new job.

(*2*) If the political subdivision knows of other changes besides the new job that affect the household's allotment after the new job began, the political subdivision will obtain the first allotment affected by an entire month's wages from the new job. The political subdivision will then recalculate the allotment to account for the wages, earned income deduction, and dependent care deduction attributable to the new job. In recalculating the allotment the political subdivision will also replace any benefits from a State program funded under part A of title IV of the Social Security Act received after the new job with benefits received in the last month before the new job began. The difference between the first allotment that accounts for the new job and the recalculated allotment will be the benefit reduction.

(*3*) The political subdivision's share of the benefit reduction is three times this difference, divided by two.

(*4*) If, during these procedures, an error is discovered in the last allotment issued before the new employment began, that allotment must be corrected before the savings are calculated.

(C) *Accounting.* The reimbursement from workfare will be reported and paid as follows:

(*1*) The political subdivision will report its enhanced reimbursement to the State agency in accordance with paragraph (m)(7)(iii) of this section.

(*2*) The Food and Nutrition Service will reimburse the political subdivision in accordance with paragraph (m)(7)(ii) of this section.

(*3*) The political subdivision will, upon request, make available for review sufficient documentation to justify the amount of the enhanced reimbursement.

(*4*) The Food and Nutrition Service will reimburse only the political subdivision's reimbursed administrative costs in the fiscal year in which the workfare participant began new employment and which are acceptable according to paragraph (m)(7)(i) of this section.

(8) *Coordination with other workfare-type programs.* State agencies and political subdivisions may operate workfare programs as provided in this section jointly with a workfare program operated under Title IV of the Social Security Act to the extent that provisions and protections of the statute are maintained or with other workfare programs operated by the subdivision to the extent that the provisions and protections of this paragraph (m) are maintained. Statutory provisions include, but are not limited to, eligible recipients as provided in paragraph (m)(5)(i) of this section, maximum hours of work per week as provided in paragraph (m)(6)(i)(A) of this section and the penalties for noncompliance as provided in paragraph (f) of this section. When a household receives benefits from more than one program with a workfare requirement and the household is determined to have a food stamp workfare obligation, the food stamp obligation may be combined with the obligation from the other program. However, this may be done only to the extent that eligible food stamp workfare participants are not required to work more than 30 hours a week in accordance with paragraph (m)(6)(i)(A) of this section. Any intent to coordinate programs should be described in the plan. Waivers of provisions in this section, for the purpose of operating workfare jointly with local general assistance workfare-type programs, may be requested and provided in accordance with § 272.3(c) of this chapter. Statutory provisions shall not be waived.

(9) *Voluntary workfare program.* State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalties for failure to comply, as provided in paragraph (f) of this section, will not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (m)(5)(ii) of this section. In addition, all protections provided under paragraph (m)(6)(i) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criteria, the Department reserves the right to withdraw approval.

(10) *Comparable workfare programs.* In accordance with section 6(o)(2)(C) of the Food Stamp Act, State agencies and political subdivisions may establish programs comparable to workfare under this paragraph (m) for the purpose of providing able-bodied adults without dependents affected by the participation time limits specified at § 273.24 a means of fulfilling the work requirements in order to remain eligible for food stamps. While comparable to workfare in that they require the participant to work for his or her household's food stamp allotment, these programs may or may not conform to other workfare requirements. State agencies or political subdivisions desiring to operate a comparable workfare program must meet the following conditions:

(i) The maximum number of hours worked weekly in a comparable workfare activity, combined with any other hours worked during the week by a participant for compensation (in cash or in kind) in any other capacity, must not exceed 30.

(ii) Participants must not receive a fourth month of food stamp benefits (the first month for which they would not be eligible under the time limit) without having secured a workfare position or without having met their workfare obligation. Participation must be verified timely to prevent issuance of a month's benefits for which the required work obligation is not met.

(iii) The State agency or political subdivision must maintain records to support the issuance of benefits to comparable workfare participants beyond the third month of eligibility.

(iv) The State agency or political subdivision must provide a description of its program, including a methodology for ensuring compliance with (m)(10)(ii) of this section. The description should be submitted to the appropriate Regional office, with copies forwarded to the Food Stamp Program National office.

§ 273.22 [Removed]

5. Remove § 273.22.

Dated: December 16, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–33131 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–30–U

OL

64

ISS

2
4
6

DE

23

999

ML

federal register

Thursday
December 23, 1999

Part V

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 991210330–9330–01]

RIN 0660–ZA10

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Availability of Funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP).

DATES: Pursuant to 15 CFR 2301.8(b), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for FY 2000 is February 17, 2000. Applications must be received prior to 8 p.m. on or before February 17, 2000. Applications submitted by facsimile or electronic means are not acceptable.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (http://www.ntia.doc.gov/otiahome/ptfp).

SUPPLEMENTARY INFORMATION:

I. Application Forms and Regulations

Applicants for matching grants under the PTFP must file their applications on or before Thursday, February 17, 2000. NTIA anticipates making grant awards by September 30, 2000. NTIA shall not be liable for any proposal preparation costs.

Approximately $26 million is available for FY 2000 for PTFP grants pursuant to Pub. L. 106–113, the "Consolidated Appropriations Act, Fiscal Year 2000". The amount of a grant award by NTIA will vary, depending on the approved project. For fiscal year 1999, NTIA awarded $21.7 million in funds to 99 projects. The awards ranged from $5,538 to $1,028,450.

The applicable Rules for the PTFP were published on November 8, 1996 (61FR 57966). Copies of the 1996 Rules will be posted on the NTIA Internet site and NTIA will make printed copies available to applicants. NTIA is hereby notifying potential applicants of the procedures that will be used to process applications for digital television conversion projects in the FY 2000 grant round. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on a current form approved by the Agency. Applicants for television projects in the Broadcast Other category (15 CFR 2301.4(b)(6)) are requested to supply one additional copy of their application (an original and six copies), if this does not create a hardship on the applicant. The current application form will be provided to applicants as part of the application package. This form expires on November 30, 2000, and no previous versions of the form may be used. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) Significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current grant round and will be returned to the applicant. See 15 CFR 2301.8(c); but see also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

All persons and organizations on the PTFP's mailing list will be sent a notification of the FY 2000 Grant round. Copies of the application forms, Final Rules, Closing Date notification and application guidelines will be available on the NTIA Internet site: *www.ntia.doc.gov/otiahome/ptfp*. Those not on the mailing list or who desire a printed copy of these materials may obtain copies by contacting the PTFP at the telephone and fax numbers, at the Internet site, or at mailing address listed above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred in FY 1999 will be mailed information regarding the reactivation of their applications. Applicants whose *television* projects were deferred from FY 99 should carefully review Section III, Television Broadcasting and Digital Conversion, regarding changes in policies which may apply to the reactivation of their applications.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

Special Note: NTIA has established a policy which is intended to encourage stations to increase from 25 percent to 50 percent the matching percentage for those proposals that call for equipment replacement, improvement, or augmentation (PTFP Policy Statement, 56 FR 59168 (1991)). The presumption of 50 percent funding will be the general rule for the replacement, improvement or augmentation of equipment. (This 50 percent presumption, however, does not apply to digital television projects as explained in Section III. Television Broadcasting and Digital Conversion.) A showing of extraordinary need (*i.e.* small community-licensee stations or a station that is licensed to a large institution (*e.g.*, a college or university) documenting that it does not receive direct or in-kind support from the larger institution) or an emergency situation

will be taken into consideration as justification for grants of up to 75 percent of the total project cost for such projects.

A point of clarification is in order: NTIA expects to continue funding projects to activate stations or to extend service at up to 75 percent of the total project cost. NTIA will do this because applicants proposing to provide first service to a geographic area ordinarily incur considerable costs that are not eligible for NTIA funding. The applicant must cover the ineligible costs including those for construction or renovation of buildings and other similar expenses.

Since NTIA has limited funds for the PTFP program, the PTFP Final Rules (published November 8, 1996) modified NTIA's policy regarding the funding of planning applications. Our policy now includes the general presumption to fund planning projects at no more than 75 percent of the project costs. NTIA notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. The new NTIA policy, therefore, codifies what already has become PTFP practice. NTIA, however, is mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new facilities in unserved areas. We, therefore, will continue to award up to 100 percent of total project costs in cases of extraordinary need (*e.g.* small community group proposing to initiate new public telecommunication service).

We take this opportunity to restate the policy published in the November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)), regarding applicants' use of funds from the Corporation for Public Broadcasting (CPB) to meet the local match requirements of the PTFP grant. NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another Federally supported grant program for local matching funds. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of "clear and compelling need" (15 CFR 2301.6(c)(2)). NTIA intends to maintain that standard and to apply it on a case-by-case basis.

II. Radio Broadcasting

During the FY 2000 grant round, NTIA is proposing no changes from prior years in its support of radio applications. The policies implemented in the next section of this document on Television Broadcasting and Digital Conversion apply only to digital television applications. The eligibility or priority of radio projects, eligibility of radio equipment and the 50% presumption of funding for radio equipment replacement applications remain as they were in the FY 99 grant round. NTIA will take great care to ensure that its funding of radio applications reflects its responsibilities under 47 U.S.C. 393(c) that "a substantial amount" of each year's PTFP funds should be awarded to public radio.

NTIA encourages the use of digital technologies for public radio facilities. NTIA has funded projects for digital STLs and audio production equipment which will assist public radio stations as they prepare for conversion to digital technologies. These digital projects are funded as equipment replacement, improvement or augmentation projects with the presumption of a 50 percent Federal share as discussed earlier in Section I of this document, Application Forms and Regulations, unless a showing of extraordinary need for a higher percentage has been made pursuant to § 2301.6(b)(ii) of the PTFP Rules.

For fiscal year 1999, NTIA awarded $2.1 million in funds to 35 grants for public radio projects. The awards ranged from $5,538 to $251,461.

III. Television Broadcasting and Digital Conversion

As outlined in this section, NTIA is establishing new policies in the FY 2000 grant round that will apply only to FY 2000 applications for projects to convert public television stations to digital transmission capability. The FCC's adoption of the *Fifth Report and Order* in April 1997 requires that all public television stations begin the broadcast of a digital signal by May 1, 2003. This deadline is so close that NTIA decided that the new policies should be applied in the FY 2000 grant round. At the same time, NTIA wishes to invite comment on these policies. All comments received will be considered carefully for possible modification of the policies in subsequent years. They will be printed or summarized in the Notice for the next grant round. Please do not include your comments with any application you may submit, but rather send them directly to the PTFP Director. Comments may be submitted to William Cooperman, Director, Public Broadcasting Division, by mail (see the **ADDRESS** section), by fax at (202) 482–2156, or by e-mail to wcooperman@ntia.doc.gov.

NTIA recognizes that meeting the FCC's deadline is one of the greatest challenges facing America's public television stations. Over 350 stations must overcome both technical and financial challenges in order to complete conversion to digital broadcasting within the FCC's timetable.

In February 1999, the Administration proposed a major expansion of the PTFP and recommended that $355 million be appropriated to NTIA over a five-year period. These funds would primarily be used to assist public television stations in meeting the FCC's deadline. While these sums are significant, NTIA anticipates that the majority of funds required to convert all the nation's public television stations will actually come from non-Federal sources.

For fiscal year 1999, NTIA awarded $15.7 million in funds to 43 projects which assisted public television stations in the conversion to digital technologies. The awards ranged from $25,252 to $1,028,450. NTIA awarded approximately $5.4 million from the Broadcast Other category to complete the digital conversion of eight public television stations. NTIA also awarded an additional $5.3 million in equipment replacement funds to seven projects which completed major phases of digital conversion projects, such as the funding of two digital statewide interconnection projects and eight replacement transmitters. Further, an additional $5 million was awarded to 28 projects to purchase digital television equipment required for the orderly conversion of a station to digital broadcasting.

NTIA has considered how best to efficiently implement the distribution of digital conversion funds to public television stations through the PTFP. NTIA has received recommendations on this subject from several public broadcasting organizations, including the Corporation for Public Broadcasting's Task Force on Digital Television Funding, the Association of America's Public Television Stations and its Legislative Advisory Group, and the Organization of State Broadcasting Executives. NTIA has also discussed with many individual public television stations the challenges presented by the May 2003 deadline.

One of NTIA's goals during the FY 2000 grant round is to ensure that PTFP's administrative procedures as well as its funds can support public television's needs in meeting the FCC's 2003 deadline. Another of NTIA's goals is to maintain an acceptable balance between equipment replacement projects and digital television conversion projects. As a result of these discussions, NTIA is implementing several new policies/procedures which will assist public television stations in

the application for and use of PTFP funds for digital conversion projects.

These new policies/procedures are summarized here and then are discussed fully in parts A through G later in this section:

(A) Digital television conversion projects and digital equipment replacement. NTIA has established a "Digital TV List" which includes the equipment eligible for PTFP funding under the Broadcast Other category. NTIA will also use the "Digital TV List" for most television equipment replacement projects and modifies the way it views television replacement applications.

(B) Multi-year funding. NTIA will accept applications under the Broadcast Other category for phased projects requesting funding for up to four years and which are intended to enable all of the applicant's public television stations to meet the FCC's May 2003 digital broadcasting deadline.

(C) Effective date for expenditure of local matching funds. Applicants for digital conversion projects in the Broadcast Other category may include eligible equipment from the Digital TV List in their projects when that equipment is purchased with non-Federal funds after July 1, 1999.

(D) Subpriorities for digital conversion projects. NTIA is creating three Subpriorities to aid in the processing of digital conversion applications.

(E) Funding levels for television projects. NTIA has revised the presumption of funding from 50% Federal share for most television projects to 40%, has established simplified procedures so stations can qualify for hardship grants up to a 67% Federal share, and will provide incentives for applicants who request only 25% Federal funding.

(F) Use of CPB funds. Applicants may use CPB funds as part of their local non-Federal match in cases of clear and compelling need.

(G) Partnerships; urgency. NTIA encourages partnerships with commercial as well as noncommercial organizations and clarifies its consideration of urgency for digital conversion applications. NTIA believes that digital conversion applications should be afforded high urgency when they document time-sensitive partnerships, time-sensitive funding opportunities, or which include the replacement of equipment required to maintain existing service.

In developing these policies for the FY 2000 grant round, NTIA intends to remain responsive to the equipment replacement needs of public television stations. NTIA's balancing of equipment replacement and digital conversion applications is discussed in the following sections.

In order to assist public television stations in meeting the FCC's May 2003 deadline and to facilitate a station's raising non-Federal matching funds required for digital conversion projects. NTIA is adopting new application procedures in the following areas.

(A) Digital Television Conversion Projects and Digital Equipment Replacement. For FY 2000, NTIA will support the equipment necessary for a public television station to comply with the FCC's 2003 deadline. This includes equipment required for digital broadcast of programs produced locally in analog format as well as the broadcast of digital programming received from national sources. NTIA is posting on its Internet site a listing of transmission and distribution equipment (as contained in the "Digital TV List") which is eligible for PTFP digital television conversion funding. Printed copies of this list are also available from PTFP at the address shown in the **ADDRESS** section of this document. This list was developed in conjunction with the Public Broadcasting Service and is similar to equipment lists PTFP used during last year's grant round. The Digital TV List includes transmission equipment (transmitters, antennas, STLs, towers, etc.) as well as distribution equipment located in a station's master control (routing switchers, video servers, PSIP generators, digital encoders, etc.). Applications seeking funding for the equipment necessary to meet the FCC's 2003 deadline will, as in FY 98 and FY 99, be placed in the Broadcast Other category.

NTIA believes that many stations must replace obsolete equipment in order to complete their digital conversion projects. NTIA is now revising its policies to permit the replacement of obsolete equipment as part of digital conversion projects. If the conversion to digital transmission includes the urgent replacement of an existing item of equipment, the application will be considered as a Broadcast Other, rather than as replacement under Priorities 2 or 4. Replacement of existing equipment then is a normal part of a digital conversion application.

If the purpose of an application is just for replacement of urgently needed equipment, even though the equipment is drawn from the Digital TV List, the application will be classified as a Priority 2 or 4, as appropriate.

Any application which includes equipment replacement as a justification for the urgency criterion should submit documentation of downtime or other evidence in support of the urgency evaluation criterion as contained in § 2301.17 of the PTFP Final Rules. The need to replace current equipment in order to maintain existing services will, in many cases, strengthen the urgency criterion of a digital conversion application.

Because of the requirement that all public television stations begin their digital broadcasts by May 2003, all public television applications, whether submitted for Priority 2, Priority 4 or the Broadcast Other category, should include the station's comprehensive plan for digital conversion to meet the FCC's deadline and explain how the requested equipment is consistent with that plan. If the applicant is still developing its plan for digital conversion, the application should address how the requested equipment will be consistent with the overall objective of converting the facility for digital broadcasting. Failure to provide detailed information on the applicant's proposed or existing digital conversion plan will place a television application at a competitive disadvantage during the evaluation of the technical qualification criterion as described in 15 CFR 2301.17 of the PTFP Rules.

NTIA calls applicants' attention to the fact that television production equipment is not included on the Digital TV List but will be found on other equipment lists posted on the NTIA Internet site or available from NTIA by mail. NTIA notes that while a television station must use digital transmission and distribution equipment to begin digital broadcasting, digital production equipment is not required to meet the FCC's May 2003 deadline. As the FCC deadline approaches, NTIA has reluctantly concluded that, with the funds available to it in FY 2000, it cannot fund television production equipment at the same level as it has in the past. Television production equipment will continue to be eligible for PTFP funding under Priority 2 and Priority 4, as appropriate. However, for the FY 2000 grant round NTIA will fund television production equipment replacement applications only for those projects that present a "clear and compelling" case for the urgency of such replacement. NTIA anticipates funding television production replacement projects in FY 2000, though fewer than in recent years.

When making the final selection of awards under the procedures of § 2301.17, NTIA will take care to ensure that there is an acceptable balance between projects awarded for

equipment replacement projects and those awarded for digital conversion projects. Further, NTIA will consider as part of this balance those stations in the Broadcast Other category (1) Which request digital conversion projects and (2) Which also include elements of equipment replacement. NTIA will not fund applications in the Broadcast Other category requesting digital conversion to the exclusion of those Broadcast Other applications which include documentation supporting equipment replacement as part of their urgency justification. Further, in making funding decisions for FY 2000, NTIA will limit its support of television replacement applications for production equipment to those applications which present a "clear and compelling" justification for funding during the current grant round.

A complete listing of equipment eligible for funding during the FY 2000 grant round is posted on the NTIA Internet site and printed copies are available from PTFP.

(B) Multi-year funding. NTIA anticipates that it will take many public television licensees several years to complete their digital conversion projects. The time required to complete a digital conversion project will be determined by several factors. In some instances, it will take a station several years to raise the local funds required to complete the project. Even if a station has accumulated all the funds required for its digital conversion project, the technical complexity of some projects (such as the construction of a 1,000-foot tower) will probably require several years to complete. Finally, many public television licensees operate several stations and are, therefore, responsible for the conversion of multiple broadcast facilities.

NTIA recognizes that the construction period for many of these digital conversion projects must, of necessity, be longer than the typical one to two years of the usual PTFP grant. Further, NTIA acknowledges that, with the funds available for award, the PTFP would be unable to fully fund more than a few of the digital conversion applications it could receive in FY 2000.

Therefore, for FY 2000, the PTFP will accept construction applications within the Broadcast Other category for digital television conversion projects which propose multi-year funding.

Applicants may submit project plans and budgets for up to four years. A multi-year application must contain the applicant's entire digital conversion plan. The plan must be divided into annual phases, with each year's request a severable phase of the project. The application must identify the Federal funds requested for each year. Projects will be funded for no more than one year at a time.

Once a project is approved for first year funding, applicants will not be required to compete each year for funding of subsequent phases. Funding for each subsequent year will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project(s).

Projections based on previous experience indicate availability of between $10 million and $15 million to support multi-year digital television projects in FY 2000. The exact level of funding available for multi-year awards will be determined by NTIA after a review of applications submitted for multi-year awards and those radio, television and distance learning applications requesting a regular award.

NTIA believes that initiating multi-year funding for digital television awards has significant benefits for both public television licensees and NTIA.

- Submission of a multi-year application particularly should help applicants which must convert multiple broadcast transmitters. NTIA understands that many stations have already begun to raise significant non-Federal funds with which they can begin to implement their digital conversion plans. Upon submission of a multi-year application, an applicant could begin spending its local match—at its own risk. An applicant, therefore, might be able to complete a portion of its digital conversion project using its local non-Federal funds for which Federal matching funds may not be available for several years. (For example, a future phase of a statewide project might be the conversion of two repeater stations; one might be constructed with available non-Federal funds, the second constructed if Federal funds are received). Applicants are cautioned, however, that while expenditure of the local match is permitted, PTFP Rules (§ 2301.6(d)) prohibit a grantee from obligating funds from the eventual Federal share of an award before a grant is actually awarded.
- NTIA believes that a multi-year award will reduce the administrative burden on both grantees and the PTFP. Grant recipients will submit only one application to cover the multiple years of their award, saving both the grantee and the PTFP the administrative tasks required to process applications during the annual grant round.
- Multi-year applications and awards will also assist both NTIA and public broadcasting licensees in the advance planning required to complete the conversion of almost 350 television facilities by May 2003.
- By issuing multi-year grants, NTIA would be able to fund the initial phases of more digital conversion projects with the monies available in FY 2000 than if PTFP funded fewer entire digital conversion plans.

NTIA believes that multi-year funding through the Broadcast Other category also is appropriate for projects which include urgent replacement of equipment, since, as noted earlier, most television equipment replacement requests can be viewed as one phase of a station's conversion to digital broadcasting.

Since NTIA for the first time is supporting multi-year funding for digital conversion applications, applicants who are reactivating applications deferred from the FY 99 grant round will be permitted to revise their applications to include their full digital conversion plans. This includes those applications which were submitted during the FY 1999 grant round as Priority 2 or Priority 4 equipment replacement applications, which may be reactivated as Broadcast Other digital conversion applications. Applications which are reactivated for the FY 2000 grant round must comply with the guidelines included in this notice, including the funding levels for television projects discussed later in this document.

Applicants submitting projects for consideration under the Broadcast Other category have a choice and may request either multi-year funding or a single grant. However, applications submitted for consideration under Priority 2 or Priority 4 may only request a single grant for a project, as in the past. NTIA anticipates that a majority of the television grants funded in FY 2000 will include multi-year projects.

(C) Effective date for expenditure of local matching funds for digital conversion projects. NTIA recognizes that many public television stations have begun to raise significant non-Federal funds for their digital conversion projects. State or local governments may have appropriated funds to initiate digital conversion projects that, by local law, must be expended during the fiscal year in which they are awarded. Public television licensees that have raised significant non-Federal funds may desire to take advantage of unique opportunities (such as partnering with other stations to share broadcast

antennas or towers). Some stations may be anxious to begin digital conversion projects with long lead times for completion, or may desire to begin digital broadcasting on the same timetable as commercial stations in their market. Within the limitations of Federal regulations, NTIA supports efforts undertaken by public television stations which bring the benefits of digital television broadcasting to their communities as quickly as possible.

In order to facilitate the raising of non-Federal funds for digital television projects and to also permit stations to begin construction of their digital facilities as soon as possible, NTIA will permit an applicant for a Broadcast Other project to include equipment in a PTFP application if the equipment was purchased with non-Federal funds after July 1, 1999. This date was selected to coincide with the beginning of the 2000 fiscal year used by many state and local governments. NTIA also anticipates that July 1, 1999 will be the effective date in the FY 2001, FY 2002 and FY 2003 grant rounds for the expenditure of non-Federal funds for projects in the Broadcast Other category. Applicants who desire to use equipment purchased prior to July 1, 1999 as part of their local match must submit a "clear and compelling justification" supporting their request.

Applicants who are reactivating applications deferred from the FY 99 grant round will be permitted to use the closing date of their original applications.

(D) Subpriorities for Digital Conversion Projects. As almost 350 public television stations are required to convert to digital broadcasting by May 2003, NTIA anticipates a significant increase in the number of applications in the Broadcast Other category for digital conversion projects. In order to process these applications in an orderly manner and to provide guidance to potential applicants for the FY 2000 grant round, NTIA will divide the applications received for digital conversion projects in the Broadcast Other category into three subpriorities; Broadcast Other-A; Broadcast Other-B, and Broadcast Other-C.

These three divisions are intended to reflect the priorities NTIA has used in the evaluation of traditional broadcast applications and to place a premium on projects either to assist stations providing sole service, to encourage cooperative efforts among different stations, or to support licensees facing the requirement to convert multiple transmission facilities in several television markets. NTIA notes that in the past it has been able to fund applications each year in most if not all of the five traditional broadcast Priorities and anticipates that it will be able to fund applications in FY 2000 in most if not all of the subpriorities for applications received under the Broadcast Other category.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the first subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority A.

— A single applicant providing the sole service in an area unserved by a digital public television signal. This reflects PTFP's funding priority for equipment replacement projects for sole service stations (PTFP Priority 2).
— Cooperative applications by two or more licensees for the first digital public television service to an area. This is intended to encourage cooperation and efficiencies among stations in overlap markets (as listed by CPB) in constructing digital facilities. It would provide stations in overlap markets the opportunity, if they work collaboratively, to be eligible for the highest priority in funding within this category.
— A statewide staged plan for the conversion of multiple stations, whether a state network, or other appropriate statewide organization, or a staged plan from a licensee with stations in several markets. This is intended to encourage licensees that must convert multiple stations and also to encourage groups of stations to work collaboratively in developing a digital conversion project.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the second subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority B.

— An applicant in a multi-PTV station market providing first public television service in an area. An applicant in a multi-PTV station market who chooses to file separately, rather than in conjunction with another licensee in the same area, receives a second priority for funding.
— A cooperative application by two or more licensees in an area already served by a digital public television station. The application is given a priority over Broadcast Other—C to encourage efficiency and cooperation. Since this is not the first service in the area, it is given a second priority.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the third subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority C.

— Individual applicants proposing a second digital public television service in an area already receiving a digital public television signal. This reflects PTFP's funding priority for equipment replacement applications in served areas (Priority 4).
— All other public television digital conversion applications.

(E) Funding Levels for Television Projects. As noted earlier in Section I of this document, NTIA has published several policies regarding the presumed Federal share of a requested project. These policies are intended to aid applicants in the planning of their applications. The policy for PTFP support of equipment replacement applications has long been the presumption of a 50 percent Federal share, although applicants are permitted to submit justification for a Federal grant of up to 75 percent of project costs. Those policies are contained in § 2301.6(b) of the PTFP Final Rules.

In reviewing the projected costs to convert all the public television stations in the country, NTIA has concluded that it cannot continue its 50 percent presumption of Federal funding for television equipment replacement or digital conversion projects. Furthermore, NTIA believes that many public television facilities will be unable to raise 50 percent of the project costs. A significant number of stations may need Federal funding of 67 percent of a project's cost, or even up to the legal maximum of 75 percent of a project's cost, in order for them to meet the FCC's deadline.

In order to ensure that sufficient Federal funds are available to support the conversion of the nation's public television stations, NTIA is establishing a new policy regarding the presumed Federal funding level for television equipment. As noted earlier in this section, NTIA recognizes that equipment on the PTFP Digital TV List may be included in either Broadcast Other digital conversion applications or in Priority 2 or Priority 4 equipment replacement applications. In order to treat all applicants equitably, NTIA's new policy will be the presumption of a 40 percent Federal share of the eligible project costs for television equipment for digital conversion or equipment replacement, improvement or

augmentation projects. This 40 percent presumption will apply whether the application requests consideration under the two equipment replacement priorities (Priority 2 or 4) or under the digital conversion category (Broadcast Other). As noted earlier, NTIA will fund the replacement of production equipment upon a showing of clear and compelling need. However, since the deadline for digital conversion is rapidly approaching and Federal funds are limited, NTIA will fund replacement of production equipment at the same level of Federal support as digital conversion or equipment replacement projects. The presumption of a 40 percent Federal share will extend to all television projects to replace or upgrade equipment. However, because of the emphasis NTIA places on the extension of broadcast services to unserved areas, NTIA has retained the 75 percent level of Federal funding applications proposing new television facilities in Priority 1 (§ 2301.4(b)(1)).

Applicants who are reactivating applications deferred from the FY 99 grant round will be permitted to request the same percentage of Federal support as requested in the FY 99 application as long as the scope of their application remains the same. Applicants who wish to revise their deferred application to include their full digital conversion plans, however, will be subject to the new policies presented in this section.

As already noted, NTIA recognizes that many small stations, primarily in rural areas, will be unable to raise even a 50 percent local share of the funds required for their PTFP projects. NTIA has long permitted stations to request more than the standard level of Federal support upon a showing of "extraordinary need" per § 2301.6(b)(ii) of the PTFP Rules. NTIA will permit applicants to qualify for hardship funding and receive a 67 percent Federal share of their project costs. An applicant can qualify for 67% Federal funding by certifying that it is unable to match at least 60 % of the eligible project costs, and either (a) by providing documentation that its average annual cash revenue for the previous four years is $2 million or less, or (b) by providing documentation that the eligible project costs are greater than the applicant's average annual cash revenue for the previous four years.

In addition, NTIA will continue to permit any applicant to provide justification that it has an "extraordinary need" for Federal funding up to the legal limit of 75 percent of eligible project costs.

In order to gather additional funds to award to stations which qualify under the hardship criteria, NTIA encourages financially able applicants to request a smaller share of Federal funds for digital equipment projects than the standard 40 percent. NTIA will add three additional points to the application evaluations from the independent review panel for applicants who request no more than 25 percent Federal funding. This provision will give extra credit to applications already highly reviewed, and, based on NTIA's previous experience, is often sufficient to move applications into the range for funding.

However, when making the final selection of awards, NTIA will take care to ensure that there is an acceptable balance between projects awarded to stations requesting a 25 percent Federal share and those requesting a higher Federal share. NTIA will not fund applications requesting a 25 percent Federal share to the exclusion of applications meeting the hardship criteria or to the exclusion of those requesting the standard 40 percent Federal share.

(F) Use of CPB funds. As discussed earlier in this document at the conclusion of Section I. Application Forms and Regulations, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of "clear and compelling need" (15 CFR 2301.6(c)(2)). NTIA recognizes that it will be difficult for many public television stations to raise the funds required to meet the FCC's digital broadcasting deadline. Therefore, NTIA continues its past policy that applicants may submit justification under this section for the use of CPB funds as part of their local match. Any request for the use of CPB funds must be accompanied by a statement regarding any limitations that CPB has placed on the expenditure of those funds.

(G) Miscellaneous Items. As discussed earlier in this section, part (D) on New Subpriorities, NTIA encourages efforts which promote efficiency within the public television system in order to save both current conversion costs and future operating costs. NTIA, therefore, also encourages public television stations to partner with commercial entities when this is in the best interests of the public station and the Federal government. In cases of public television partnerships with commercial entities, the PTFP project will be limited to the public television station's ownership share or use rights in the equipment. NTIA believes that such partnerships with commercial organizations comply with current PTFP regulations and PTFP has funded several projects for joint use of towers and broadcast antennas.

The urgency of an application is one of the criteria under which all PTFP applications are evaluated. (The evaluation criteria are listed in § 2301.17 of the PTFP Rules). NTIA suggests that there are at least three situations in which Broadcast Other applications may present high degrees of urgency. As we have just noted, applications containing proposals for joint use/ownership partnerships with other organizations may demonstrate a high urgency due to a time-sensitive opportunity. NTIA encourages these applicants to document the time-sensitive nature of the partnership opportunity in their response to the urgency criterion.

NTIA also recognizes that some applicants may be presented with time-sensitive funding opportunities and, therefore, encourages these applicants to document the time sensitive nature of these funding opportunities in their response to the urgency criterion. Finally, as already noted, NTIA expects that some applications will request urgent replacement of existing equipment as part of a Broadcast Other application. NTIA encourages such applicants to provide documentation of their need to replace their equipment during the current grant round. This documentation might include maintenance logs, letters from manufacturers, reports from independent engineers, photos etc.

NTIA will instruct the panels evaluating the FY 2000 Broadcast Other applications that they should award the highest score under the urgency criterion to those applications which fully justify and document either (1) The time sensitive nature of partnerships, (2) the time sensitive nature of funding opportunities, or (3) the need for equipment replacements that must be accomplished during this grant round in order to maintain existing services.

IV. Distance Learning Projects

Since 1979, NTIA has funded nonbroadcast distance learning projects through the "Special Applications" category as established in § 2301.4(a) of the PTFP Rules. In 1996, NTIA established a similar category for broadcast projects, "Broadcast/other" in § 2301.4(b)(6). NTIA encourages applications in either category for innovative or unique distance learning projects which address demonstrated and substantial community needs. For fiscal year 1999, NTIA awarded $1.7 million in funds to nine grants for distance learning projects. The awards ranged from $50,000 to $450,000.

The growth of digital technologies provides new opportunities for distance learning projects using both broadcast or nonbroadcast facilities. NTIA encourages applicants to consider the use of digital technologies in proposing unique or innovative distance learning projects for funding in FY 2000. Examples of innovative digital applications might include projects (1) Which use broadband technologies for distance learning, (2) which distribute educational or informational programming via Direct Broadcast Satellite technologies, or (3) which use the multi-channel capabilities of a digital public television station. All distance learning applications must address substantial and demonstrated needs of the communities being served. NTIA is particularly interested in distance learning projects which benefit traditionally underserved audiences, such as projects serving minorities or people living in rural areas.

As discussed in Section III of this document, NTIA anticipates that, in FY 2000, it will receive numerous digital conversion applications in the Broadcast/ Other category. NTIA recognizes that, due to the multi-channel capability of digital television, distance learning components may well be a part of a digital conversion application. NTIA will, therefore, consider such distance learning proposals under the subpriorities established in Section III. If NTIA determines that a broadcast distance learning project is not part of a digital conversion application, NTIA will evaluate the application pursuant to §§ 2301.4(b)(6) and 2301.17.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) mentioned in the Application Forms and Regulations section discussed a number of issues of particular relevance to applicants proposing *nonbroadcast* educational and instructional projects and potential improvement of nonbroadcast facilities. These policies remain in effect and will be available to all PTFP applicants as part of the Guidelines for preparing FY 2000 PTFP applications.

V. Eligible and Ineligible Costs

Eligible equipment for the FY 2000 grant round includes the apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

A complete listing of equipment eligible for funding during the FY 2000 grant round is posted on the NTIA Internet site and printed copies are available from PTFP.

Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain "pre-operational expenses" are eligible for funding. (See 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. 392(c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $300,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will, therefore, fund audit costs only in exceptional circumstances.

VI. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a notice in the **Federal Register** listing all applications received by the Agency. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. This listing does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The notice will also include a request for comments on the applications from any interested party. NTIA will also publish more complete information about all the applications received by the Agency on the NTIA Internet site and will make this information available by mail. The address of the NTIA Internet site is: www.ntia.doc.gov/otiahome/ptfp.

VII. Evaluation Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

VIII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval. The PTFP Director recommends the funding order for applications in three categories: "Recommended for Funding," "Recommended for Funding if Funds Available," and "Not Recommended for Funding." See 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then

be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of FCC licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

IX. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods for grants in the five broadcast Priorities and nonbroadcast Special Applications category commonly range from one to two years. Construction projects funded in the Broadcast Other category would commonly be awarded for a one to two year period with the expectation that they would be extended annually in subsequent years dependent on the availability of Federal funds. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

X. NTIA Policies on Procedural Matters

Based upon NTIA's experience during the PTFP 1999 grant round, NTIA has determined that it is in the best interest of NTIA and applicants to continue recent policies regarding three procedural matters. The following policies are applicable only to the FY 2000 PTFP grand round and resulting awards.

Applications Resulting From Catastrophic Damage or Emergency Situations.

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision.

For FY 2000 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. NTIA limits this request to equipment essential to a station's continued operation such as transmitters, towers, antennas, STLs or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

When submitting an emergency application, the applicant should describe the circumstances that prompt the request and should provide appropriate supporting documentation. NTIA requires that applicants claiming significant failure of equipment will document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

NTIA will grant an award only if it determines that (1) The emergency satisfies this policy, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

Applications filed and accepted for emergency applications must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

NTIA will evaluate the application according to the evaluation criteria set forth in § 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at § 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application fulfills the requirements for an emergency award and satisfies the program's stated purposes set forth at § 2301.1(a) and (c).

Service of Applications

For the FY 2000 PTEP, applicants are not required to submit copies of their PTFP applcations to the FCC, nor will they be required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of projects submitted for funding which require FCC authorizations.

For the FY 2000 PTFP, applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. Many distance learning applications propose projects which are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will notify the state telecommunication agencies in the states in which they are located.

Federal Communications Commission Authorizations

For the FY 2000 PTFP, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

For the FY 2000 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

For the FY 2000 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the

other organization's name. NTIA believes that such circumstances will be rare and, in its experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

As noted above, for the FY 2000 PTFP applications, NTIA does not require that the FCC applications be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) construction of broadcast station, (including a digital broadcasting facility) or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

For those applicants whose projects require authorization by the Federal Communications Commission (FCC), NTIA reminds applicants that the mailing address for the Federal Communications Commission has changed to: 445 12th St. SW, Washington DC 20554.

XI. Department of Commerce Application Requirements

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before February 17, 2000. Applicants are encouraged to contact the appropriate SPOC well before the PTFP closing date. A listing of the state SPOC offices may be found with the PTFP application materials at the NTIA Internet site. A list of the SPOC offices is available from NTIA (see the **ADDRESS** section above).

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, § 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, § 605) are subject to 15 CFR part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applicants/bidders for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," (OMB Control Number 0348–0046) as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) the delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department are made.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they have received, there is no obligation on the part of the Department to cover preaward costs.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. 390–393, 397–399(b). (Catalog of Federal Domestic Assistance No. 11.550).

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 99–33327 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–60–P

federal register

Thursday
December 23, 1999

Part VI

The President

Executive Order 13144—Adjustments of Certain Rates of Pay

OL
64
ISS
2
4
6
DE
23
999
MI

Tit

Th

Federal Register
Vol. 64, No. 246
Thursday, December 23, 1999

Presidential Documents

Title 3—

The President

Executive Order 13144 of December 21, 1999

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), in accordance with section 646(a) of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306; 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601(a)–(b) of Public Law 106–65, the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, and in accordance with section 646(a) of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective on January 1, 2000. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2000.

Sec. 8. *Prior Order Superseded.* Sections 1 through 7 of Executive Order 13106 of December 7, 1998, are superseded.

William J. Clinton

THE WHITE HOUSE,
December 21, 1999.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

	1	2	3	4	5	6	7	8	9	10
GS-1	$13,870	$14,332	$14,794	$15,252	$15,715	$15,986	$16,440	$16,900	$16,918	$17,351
2	15,594	15,964	16,481	16,918	17,107	17,610	18,113	18,616	19,119	19,622
3	17,015	17,582	18,149	18,716	19,283	19,850	20,417	20,984	21,551	22,118
4	19,100	19,737	20,374	21,011	21,648	22,285	22,922	23,559	24,196	24,833
5	21,370	22,082	22,794	23,506	24,218	24,930	25,642	26,354	27,066	27,778
6	23,820	24,614	25,408	26,202	26,996	27,790	28,584	29,378	30,172	30,966
7	26,470	27,352	28,234	29,116	29,998	30,880	31,762	32,644	33,526	34,408
8	29,315	30,292	31,269	32,246	33,223	34,200	35,177	36,154	37,131	38,108
9	32,380	33,459	34,538	35,617	36,696	37,775	38,854	39,933	41,012	42,091
10	35,658	36,847	38,036	39,225	40,414	41,603	42,792	43,981	45,170	46,359
11	39,178	40,484	41,790	43,096	44,402	45,708	47,014	48,320	49,626	50,932
12	46,955	48,520	50,085	51,650	53,215	54,780	56,345	57,910	59,475	61,040
13	55,837	57,698	59,559	61,420	63,281	65,142	67,003	68,864	70,725	72,586
14	65,983	68,182	70,381	72,580	74,779	76,978	79,177	81,376	83,575	85,774
15	77,614	80,201	82,788	85,375	87,962	90,549	93,136	95,723	98,310	100,897

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$77,614	$62,890	$50,960	$41,292	$33,459	$29,911	$26,740	$23,905	$21,370
2	79,942	64,777	52,489	42,531	34,463	30,808	27,542	24,622	22,011
3	82,341	66,720	54,063	43,807	35,497	31,733	28,368	25,361	22,671
4	84,811	68,722	55,685	45,121	36,562	32,685	29,220	26,122	23,352
5	87,355	70,783	57,356	46,475	37,658	33,665	30,096	26,905	24,052
6	89,976	72,907	59,077	47,869	38,788	34,675	30,999	27,712	24,774
7	92,675	75,094	60,849	49,305	39,952	35,715	31,929	28,544	25,517
8	95,455	77,347	62,674	50,784	41,150	36,787	32,887	29,400	26,282
9	98,319	79,667	64,555	52,307	42,385	37,890	33,873	30,282	27,071
10	100,897	82,057	66,491	53,877	43,656	39,027	34,890	31,191	27,883
11	100,897	84,519	68,486	55,493	44,966	40,198	35,936	32,126	28,719
12	100,897	87,054	70,541	57,158	46,315	41,404	37,014	33,090	29,581
13	100,897	89,666	72,657	58,873	47,705	42,646	38,125	34,083	30,469
14	100,897	92,356	74,836	60,639	49,136	43,925	39,269	35,105	31,383

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)*

Deputy Under Secretary for Health	$131,811 **
Associate Deputy Under Secretary for Health	126,250 ***
Assistant Under Secretaries for Health	122,529 ***

	Minimum	Maximum	
Medical Directors	$104,542	$118,484	***
Service Directors	91,028	113,050	
Director, National Center for Preventive Health	77,614	113,050	

Physician and Dentist Schedule

Director Grade	$91,028	$113,050
Executive Grade	84,055	107,125
Chief Grade	77,614	100,897
Senior Grade	65,983	85,774
Intermediate Grade	55,837	72,586
Full Grade	46,955	61,040
Associate Grade	39,178	50,932

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$77,614	$100,897
Senior Grade	65,983	85,774
Intermediate Grade	55,837	72,586
Full Grade	46,955	61,040
Associate Grade	39,178	50,932

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$77,614	$100,897
Assistant Director Grade	65,983	85,774
Chief Grade	55,837	72,586
Senior Grade	46,955	61,040
Intermediate Grade	39,178	50,932
Full Grade	32,380	42,091
Associate Grade	27,864	36 225
Junior Grade	23,820	30 966

---

* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $122,400.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $114,500.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

ES-1	$106,200
ES-2	111,200
ES-3	116,300
ES-4	122,200
ES-5	122,400
ES-6	122,400

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

level I	$157,000
level II	141,300
level III	130,200
level IV	122,400
level V	114,500

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Vice President	$181,400
Senators	141,300
Members of the House of Representatives	141,300
Delegates to the House of Representatives	141,300
Resident Commissioner from Puerto Rico	141,300
President pro tempore of the Senate	157,000
Majority leader and minority leader of the Senate	157,000
Majority leader and minority leader of the House of Representatives	157,000
Speaker of the House of Representatives	181,400

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Chief Justice of the United States	$181,400
Associate Justices of the Supreme Court	173,600
Circuit Judges	149,900
District Judges	141,300
Judges of the Court of International Trade	141,300

SCHEDULE 8—PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 2000)

Part I—MONTHLY BASIC PAY

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
						YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)									
						COMMISSIONED OFFICERS									
O-10 **	$8,214.90	$8,503.80	$8,503.80	$8,503.80	$8,503.80	$8,830.20	$8,830.20	$9,319.50	$9,319.50	$9,986.40	$9,986.40	$10,655.10	$10,655.10	$10,655.10	$11,318.40*
O-9	7,280.70	7,471.50	7,630.50	7,630.50	7,630.50	7,824.60	7,824.60	8,150.10	8,150.10	8,830.20	8,830.20	9,319.50	9,319.50	9,319.50	9,986.40
O-8	6,594.30	6,792.30	6,953.10	6,953.10	6,953.10	7,471.50	7,471.50	7,824.60	7,824.60	8,150.10	8,503.80	8,830.20	9,048.00	9,048.00	9,048.00
O-7	5,479.50	5,851.80	5,851.80	5,851.80	6,114.60	6,114.60	6,468.90	6,468.90	6,792.30	7,471.50	7,985.40	7,985.40	7,985.40	7,985.40	7,985.40
O-6	4,061.10	4,461.60	4,754.40	4,754.40	4,754.40	4,754.40	4,754.40	4,754.40	4,916.10	5,693.10	5,983.80	6,114.60	6,468.90	6,687.30	7,015.50
O-5	3,248.40	3,813.90	4,077.90	4,077.90	4,077.90	4,077.90	4,200.30	4,427.10	4,723.80	5,077.50	5,368.20	5,531.10	5,724.60	5,724.60	5,724.60
O-4	2,737.80	3,333.90	3,556.20	3,556.20	3,622.20	3,781.80	4,040.40	4,267.50	4,461.60	4,658.10	4,785.90	4,785.90	4,785.90	4,785.90	4,785.90
O-3 ***	2,544.00	2,844.30	3,041.10	3,364.80	3,525.90	3,652.20	3,850.20	4,040.40	4,139.10	4,139.10	4,139.10	4,139.10	4,139.10	4,139.10	4,139.10
O-2 ***	2,218.80	2,423.10	2,910.90	3,009.00	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10
O-1 ***	1,926.30	2,004.90	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10
						COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER									
O-3E	-	-	-	$3,364.80	$3,525.90	$3,652.20	$3,850.20	$4,040.40	$4,200.30	$4,200.30	$4,200.30	$4,200.30	$4,200.30	$4,200.30	$4,200.30
O-2E	-	-	-	3,009.00	3,071.10	3,168.60	3,333.90	3,461.40	3,556.20	3,556.20	3,556.20	3,556.20	3,556.20	3,556.20	3,556.20
O-1E	-	-	-	2,423.10	2,588.40	2,683.80	2,781.30	2,877.60	3,009.00	3,009.00	3,009.00	3,009.00	3,009.00	3,009.00	3,009.00

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $10,850.10 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $12,488.70 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $10,850.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8—PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	–	–	–	–	–	–	–	–	–	–	–	$4,423.80	$4,591.20	$4,724.10	$4,923.30
W-4	$2,592.00	$2,781.30	$2,781.30	$2,844.30	$2,974.20	$3,105.00	$3,235.50	$3,461.40	$3,622.20	$3,745.40	$3,850.20	3,974.10	4,107.00	4,235.10	4,427.10
W-3	2,355.90	2,555.40	2,555.40	2,588.40	2,618.70	2,818.40	2,974.20	3,071.10	3,168.00	3,263.40	3,364.80	3,495.90	3,622.20	3,622.20	3,749.40
W-2	2,063.40	2,232.60	2,232.60	2,297.40	2,423.10	2,555.40	2,652.60	2,749.80	2,844.30	2,944.50	3,041.10	3,136.80	3,263.40	3,263.40	3,263.40
W-1	1,719.00	1,971.00	1,971.00	2,135.70	2,232.60	2,328.00	2,423.10	2,522.70	2,618.70	2,716.20	2,810.40	2,910.90	2,910.90	2,910.90	2,910.90
ENLISTED MEMBERS															
E-9 *	–	–	–	–	–	–	$3,015.30	$3,083.40	$3,152.70	$3,225.60	$3,298.20	$3,361.50	$3,537.90	$3,675.60	$3,882.60
E-8	–	–	–	–	–	$2,528.40	2,601.60	2,669.70	2,739.00	2,811.60	2,875.50	2,946.30	3,119.40	3,258.00	3,467.10
E-7	$1,765.80	$1,906.20	$1,976.10	$2,045.70	$2,115.60	2,182.80	2,252.70	2,323.20	2,427.90	2,496.50	2,566.20	2,599.50	2,774.40	2,912.40	3,119.40
E-6	1,518.90	1,655.70	1,724.40	1,797.60	1,865.40	1,932.60	2,003.40	2,106.60	2,172.90	2,242.80	2,277.00	2,277.00	2,277.00	2,277.00	2,277.00
E-5	1,332.60	1,450.50	1,521.00	1,587.30	1,691.70	1,761.00	1,830.00	1,898.10	1,932.60	1,932.60	1,932.60	1,932.60	1,932.60	1,932.60	1,932.60
E-4	1,242.90	1,312.80	1,390.20	1,497.30	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70
E-3	1,171.50	1,235.70	1,284.60	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90
E-2	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40
E-1 **	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60
E-1 ***	930.30	–	–	–	–	–	–	–	–	–	–	–	–	–	–

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,719.00 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II–RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $600.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Locality Pay Area[1]	Rate
Atlanta, GA	7.66%
Boston-Worcester-Lawrence, MA-NH,ME,CT	10.72%
Chicago-Gary-Kenosha, IL-IN-WI	11.49%
Cincinnati-Hamilton, OH-KY-IN	9.52%
Cleveland-Akron, OH	8.05%
Columbus, OH	8.55%
Dallas-Fort Worth, TX	8.59%
Dayton-Springfield, OH	7.63%
Denver-Boulder-Greeley, CO	10.54%
Detroit-Ann Arbor-Flint, MI	11.64%
Hartford, CT	11.25%
Houston-Galveston-Brazoria, TX	14.79%
Huntsville, AL	7.22%
Indianapolis, IN	6.99%
Kansas City, MO-KS	7.42%
Los Angeles-Riverside-Orange County, CA	12.76%
Miami-Fort Lauderdale, FL	9.80%
Milwaukee-Racine, WI	7.83%
Minneapolis-St. Paul, MN-WI	9.11%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	12.09%
Orlando, FL	6.79%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	9.55%
Pittsburgh, PA	7.61%
Portland-Salem, OR-WA	9.06%
Richmond-Petersburg, VA	7.60%
Sacramento-Yolo, CA	9.50%
St. Louis, MO-IL	7.08%
San Diego, CA	9.97%
San Francisco-Oakland-San Jose, CA	15.01%
Seattle-Tacoma-Bremerton, WA	9.20%
Washington-Baltimore, DC-MD-VA-WV	9.05%
Rest of U.S.	6.78%

[1]Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10–ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

AL-3/A	$ 79,900
AL-3/B	86,000
AL-3/C	92,200
AL-3/D	98,300
AL-3/E	104,500
AL-3/F	110,600
AL-2	116,800
AL-1	122,400

[FR Doc. 99–33511
Filed 12–22–99; 8:45 a.m.]
Billing Code 6325–01–C

OL

64

SS

2
4
6

DE

23

999

MI

R

CU

Fed
Ger
a

Law

Pre
Exe
The

Oth
Ele
Priv
Pub
TTY

ELE

Wo
Full
pub

Fed
Insp

E-m

PEN
serv
subs

with

Use
PEN

Refe
Fede

The
regu

FED

6714
6746
6769
6799
6827
6861
6893
6916
6937
6962
6988
7017
7056
7098
7126
7163
7198

Reader Aids

Federal Register

Vol. 64, No. 246

Thursday, December 23, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468	1
67469–67692	2
67693–67996	3
67997–68274	6
68275–68614	7
68615–68930	8
68931–69164	9
69165–69370	10
69371–69628	13
69629–69882	14
69883–70172	15
70173–70562	16
70563–70984	17
70985–71266	20
71267–71632	21
71633–71982	22
71983–72248	23

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7256	67691
7257	68269
7258	69161
7259	69163
7260	70563
7261	71629
7262	71631

Executive Orders:

June 24, 1914 (Revoked in part by PLO 7416)	67295
April 28, 1917 (Revoked in part by PLO 7416)	67295
February 11, 1918 (Revoked in part by PLO 7416)	67295
July 10, 1919 (Revoked in part by PLO 7416)	67295
May 25, 1921 (Revoked in part by PLO 7416)	67295
April 17, 1926 (Revoked in part by PLO 7416)	67295
February 7, 1930 (Revoked in part by PLO 7416)	67295
13106 (superceded by EO 13144)	72237
13143	68273
13144	72237

Administrative Orders:

Memorandums:

November 29, 1999	68275

5 CFR

410	69165
530	69165
531	69165
532	69183
534	68931
536	69165
550	69165, 69936
551	69165
575	69165, 71633
591	69165
610	69165
1205	71267
1630	67693
6801	68615
870	71983

Proposed Rules:

792	72037
1201	72040

7 CFR

29	67469
246	67997, 70173, 71635
301	71267
319	68001, 69629
457	71270
761	69322
905	69371
906	69375
915	69380
1000	70868
1001	70868
1002	70868
1004	70868
1005	70868
1006	70868
1007	70868
1012	70868
1013	70868
1030	70868
1032	70868, 70985
1033	70868
1036	70868
1040	70868
1044	70868
1046	70868
1049	70868
1050	70868
1064	70868
1065	70868
1068	70868
1076	70868
1079	70868
1106	70868
1124	70868
1126	70868
1131	70868
1134	70868
1135	70868
1137	70868
1138	70868
1139	70868
1407	67470
1703	69937
4284	71984

Proposed Rules:

271	72196
272	70920, 72196
273	70920, 72196
301	71322
955	69419
985	69421
989	69204
1032	67201
1703	69937
1744	69946
1980	70124
3555	70124
4280	69937

8 CFR

103	69983
235	68616

Proposed Rules:

100	68638
103	71323

214.....71323
299.....71323

9 CFR

78.....67695
94.....67695
130.....67697, 67699
310.....72170
317.....71989
381.....71989, 72150
424.....72150

Proposed Rules:

54.....70608
79.....70608
301.....70200
318.....70200
320.....70200

10 CFR

21.....71990
50.....71990
51.....68005
52.....72002
54.....71990
72.....67700, 72019
709.....70962
710.....70962
711.....70962
850.....68854

Proposed Rules:

26.....67202
71.....71331
73.....71331
431.....68598
960.....69963
963.....69963

11 CFR

Proposed Rules:

100.....68951

12 CFR

22.....71272
24.....70986
203.....70991
208.....71272
327.....70178
339.....71272
503.....69183
505.....69183
557.....69183
559.....69183
563.....69183
572.....69183
614.....71272
760.....71272
932.....71275
934.....71275
935.....71275

Proposed Rules:

202.....69963
205.....69963
213.....69963
226.....69963
230.....69963
611.....72041
615.....72041
935.....71689

13 CFR

107.....70992
300.....69868
301.....69868
302.....69868
303.....69868
304.....69868
305.....69868
306.....69868
307.....69868
308.....69868
314.....69868
316.....69868
317.....69868
318.....69868
400.....72019
500.....72022

Proposed Rules:

120.....67205, 69964

14 CFR

25.....67147, 67701, 67705, 69383
39.....67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394, 69629, 69964, 69967, 70181, 70997, 71001, 71003, 71004, 71006, 71007, 71009, 71010, 71012, 71278, 71280, 71282
65.....68916, 71635
71.....67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932, 69631, 69632, 70565, 70566, 70567, 70568, 70570, 71014, 71637
91.....70571
254.....70573
97.....67473, 67476, 71015, 71017

Proposed Rules:

11.....69856
25.....67804, 69425
39.....67206. 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336, 71689, 71694, 71696
71.....67525, 67810, 69430, 69431, 70610, 70611, 70612
450.....69628
1261.....71339
1267.....71339

15 CFR

303.....67148
806.....67716
902.....68228, 68932, 69888
2015.....67152

Proposed Rules:

280.....69969

16 CFR

0.....71283
4.....69397
305.....71019
1145.....71854
1212.....71854
1213.....71888
1500.....71888
1513.....71888

17 CFR

3.....68011
32.....68011
211.....67154, 68936
270.....68019

Proposed Rules:

Ch. II.....69074
4.....68304
240.....69975, 70613
250.....71341

19 CFR

12.....67479
132.....67481
163.....67481

20 CFR

404.....67719

Proposed Rules:

222.....68647
325.....67811
330.....67811
335.....67811
336.....67811
604.....67811, 67972, 71346

21 CFR

10.....69188
12.....69188
176.....68629, 69898
177.....71637
178.....67483, 71639
179.....69190
203.....67720
205.....67720
510.....69188, 69191
520.....68289
522.....71640
529.....71640
558.....70576, 72026
1401.....69901

Proposed Rules:

10.....69209
12.....69209
16.....70202, 70203
314.....67207
330.....71062
510.....69209
601.....67207
807.....71347
1309.....67216

23 CFR

130.....71284
480.....71284
620.....71284
630.....71284
635.....71284
645.....71284
710.....71284
712.....71284
713.....71284

Proposed Rules:

655.....71354, 71358

24 CFR

985.....67982

Proposed Rules:

990.....71698

26 CFR

1.....67763, 69903, 71641
20.....67763, 67767, 71021
25.....67767
301.....67767
601.....69398
602.....67767, 69903, 71641

Proposed Rules:

1.....71082

27 CFR

200.....71918
270.....71918, 71929, 71937
275.....71918, 71929, 71937, 71947
290.....71918, 71929, 71937
295.....71929, 71937
296.....71929, 71937, 71957

Proposed Rules:

200.....71927
270.....71927, 71935
275.....71927, 71935, 71955
290.....71927, 71935
295.....719351
296.....719351

28 CFR

0.....68307
91.....71022
551.....68264

29 CFR

403.....71622
4011.....67163
4022.....67163
4044.....67165, 69922

Proposed Rules:

2520.....67436
2700.....68649

30 CFR

250.....69923
740.....70766
745.....70766
761.....70766, 70838
762.....70766
772.....70766
773.....70766
778.....70766
780.....70766
784.....70766, 71652
817.....71652
913.....68024
914.....70578
918.....68289
936.....70584
946.....69399

Proposed Rules:

280.....68649
931.....71698, 71700
938.....70644

31 CFR

285.....71228

Proposed Rules:

28.....69432
285.....71233

32 CFR

44.....72027
199.....72030
287.....67166
296.....71297
299.....71299
806b.....72031

Proposed Rules:

199.....67220, 69981

33 CFR

26.....69633
100.....67168, 67169, 69192, 70184
117.....67169, 67773, 68291, 71653
127.....67170

154.....67170
155.....67170
159.....67170
161.....69633
164.....67170
165.....70587, 71023, 71655
183.....67170
207.....69402

Proposed Rules:

100.....70650
140.....68416
141.....68416
142.....68416
143.....68416
144.....68416
145.....68416
146.....68416
147.....68416
165.....70650

34 CFR

76.....71964
304.....69138
606.....70146
607.....70146

Proposed Rules:

694.....71552

36 CFR

7.....71025
1220.....67662
1222.....67662
1228.....67662, 67634, 68945

Proposed Rules:

217.....69446, 70204
219.....69446, 70204
251.....70204

37 CFR

1.....67486, 67774
2.....67486, 67774
253.....67187
258.....71659

Proposed Rules:

201.....71086

38 CFR

Proposed Rules:

3.....67528

39 CFR

3001.....67487

Proposed Rules:

111.....68965, 71702, 72044

40 CFR

9.....68546, 68722, 69636
51.....71026
52.....67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404, 70589, 70592, 70593, 71026, 71027, 71031, 71035, 71038, 71304, 71660, 71663, 71666, 72032
62.....70595
63.....67789, 67793, 69637, 71852
70.....71038, 72032
82.....68039
122.....68722
123.....68722
124.....68722
141.....67450
143.....67450
144.....68546, 70316
145.....68546
146.....68546
180.....68044, 68046, 68631, 69407, 69409, 70184, 70599, 71670
243.....70602
300.....68052

Proposed Rules:

2.....71366
50.....68659
52.....67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332 70347, 70364, 70380, 70397, 70412, 70428, 70443, 70459, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087, 71704, 71705, 72045
62.....70665
70.....68066, 72045
80.....70121
81.....68659, 70660
85.....68310, 70121
86.....68310, 70121, 70665
141.....71366
142.....71367
165.....71367
180.....71708
194.....68661
243.....70666
260.....68968
372.....68311
503.....72045
761.....69358

41 CFR

Ch. 301.....67670
300-3.....67670
301-10.....67670

42 CFR

121.....71317
422.....71673
1001.....71626

Proposed Rules:

68c.....69213
433.....67223
438.....67223
1001.....69217

44 CFR

61.....71317
64.....71317, 71678
65.....69644, 69646, 69647, 69649
67.....69652, 69655, 69657

Proposed Rules:

67.....69676

45 CFR

61.....71041
1302.....69924
1641.....67501

Proposed Rules:

160.....69981
161.....69981
162.....69981
163.....69981
164.....69981
270.....68202
2522.....67235
2525.....67235

46 CFR

28.....67170
30.....67170
32.....67170
34.....67170
35.....67170
38.....67170
39.....67170
54.....67170
56.....67170
58.....67170
61.....67170
63.....67170
76.....67170
77.....67170
78.....67170
92.....67170
95.....67170
96.....67170
97.....67170
105.....67170
108.....67170
109.....67170
110.....67170
111.....67170
114.....67170
119.....67170
125.....67170
151.....67170
153.....67170
154.....67170
160.....67170
161.....67170
162.....67170
163.....67170
164.....67170
170.....67170
174.....67170
175.....67170
182.....67170
190.....67170
193.....67170
195.....67170
199.....67170

47 CFR

Ch. 1.....68053
1.....68946, 69926
2.....69926
36.....67372, 67416
51.....68637
54.....67372, 67416
69.....67372
73.....70606, 71041
76.....67193, 67198
90.....67199, 71042
95.....69926

Proposed Rules:

0.....71369
1.....71088
2.....71088
73.....67236, 67535, 68662, 68663, 68664, 68665, 70670, 70671, 70672, 71097, 71098, 71712
80.....71369
90.....71369
101.....71088, 71373

48 CFR

808.....69934
812.....69934
813.....69934
852.....69934
853.....69934
1815.....69415

Proposed Rules:

1.....67986
2.....70158
12.....67992
13.....67992
16.....70158
22.....67986, 67992
25.....67446
30.....67814
37.....70158
52.....67446, 67986, 67992
919.....68072
952.....68072
1815.....70208
1819.....70208
1852.....70208

49 CFR

192.....69660
195.....69660
211.....70193
219.....69193
225.....69193
235.....70193
238.....70193
240.....70193
571.....69665

Proposed Rules:

40.....69076
106.....71098
107.....71098
171.....71098
192.....71713
195.....71713
571.....70672, 71377

50 CFR

17.....68508, 69195, 71680
20.....71236
21.....71236
222.....69416, 70196
223.....69416, 70196
300.....69672, 72035
600.....67511
622.....68932, 71056
635.....70198
648.....71060, 71320, 71687
649.....68228
660.....69888
679.....68054, 68228, 68949, 69673, 70199, 71688

Proposed Rules:

17.....67814, 69324, 70209, 71714
18.....68973
216.....70678, 71722
226.....67536, 69448
622.....70678, 71388
635.....69982
648.....67551
660.....70679
679.....67555, 69219, 69458, 71390, 71396

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 23, 1999

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

National Environmental Policy Act:

Loan Guarantee decision; availability of information; comment request; published 12-23-99

EMERGENCY STEEL GUARANTEE LOAN BOARD

National Environmental Policy Act:

Loan Guarantee decisions; availability of information; comment request; published 12-23-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Personal communications services—

Communications Assistance for Law Enforcement Act; implementation; published 9-24-99

Radio stations; table of assignments:

California; published 11-19-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Diclazuril; published 12-23-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

BFGoodrich; published 12-8-99

Boeing; published 12-8-99

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Agricultural and vegetable seeds; inspection and certification:

Fee increase; comments due by 12-28-99; published 10-29-99

Olives grown in—

California; comments due by 12-27-99; published 10-26-99

Onions grown in—

Texas; comments due by 12-27-99; published 11-26-99

Tomatoes grown in—

Florida; comments due by 12-27-99; published 10-25-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Scrapie in sheep and goats; movement restrictions and indemnity program; comments due by 12-30-99; published 11-30-99

COMMERCE DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

COMMERCE DEPARTMENT

Export Administration Bureau

Export administration regulations:

Foreign policy-based export controls; effects; comments due by 12-30-99; published 11-30-99

Export licensing:

Commerce control list—

Microprocessors controlled by ECCN 3A001 and graphics accelerators controlled by ECCN 4A003; License Exception CIV eligibility level expansion; comments due by 12-27-99; published 11-26-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

South Atlantic snapper-grouper; comments due by 12-27-99; published 10-26-99

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 12-27-99; published 11-24-99

COMMODITY FUTURES TRADING COMMISSION

Contract markets:

Contract market designation applications—

Fee schedule; comments due by 12-27-99; published 11-26-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Family member dental plan; comments due by 12-27-99; published 11-24-99

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Federal Acquisition Regulation (FAR):

Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

ENERGY DEPARTMENT

Western Area Power Administration

Energy Planning and Management Program:

Integrated resource planning approval criteria; comments due by 12-30-99; published 11-17-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Transportation conformity rule; grace period deletion; comments due by 12-30-99; published 11-30-99

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-27-99; published 11-26-99

Massachusetts; comments due by 12-30-99; published 11-30-99

Confidential business information; elimination of special treatment for certain category; comments due by 12-27-99; published 10-25-99

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Local exchange carrier price cap productivity offset (X-factor); prescription; comments due by 12-30-99; published 11-26-99

Radio stations; table of assignments:

Kentucky; comments due by 12-27-99; published 12-2-99

FEDERAL EMERGENCY MANAGEMENT AGENCY

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

FEDERAL HOUSING FINANCE BOARD

Agency regulations reorganization; comments due by 12-27-99; published 9-27-99

Federal home loan bank system:

Financial management and mission achievement; comments due by 12-27-99; published 9-27-99

GENERAL SERVICES ADMINISTRATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Federal Acquisition Regulation (FAR):

Indian organizations and Indian-owned economic enterprises; utilization;

comments due by 12-27-99; published 10-27-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human cellular and tissue-based products:

Donors suitability determination; comments due by 12-29-99; published 9-30-99

Medical devices:

General hospital and personal use devices—

Subcutaneous, implanted, intravascular infusion port and catheter, and percutaneous, implanted long-term intravasuclar catheter; classification; comments due by 12-30-99; published 10-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Carrier determinations that supplier fails to meet requirements for Medicare billing privileges; appeals; comments due by 12-27-99; published 10-25-99

Home health agencies; prospective payment system; comments due by 12-27-99; published 10-28-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Quarantine, inspection, and licensing:

Interstate shipments—

Centers for Disease Control; infectious substances and select agents; packaging and handling; comments due by 12-27-99; published 10-28-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:

Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 12-29-99; published 11-30-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Findings on petitions, etc.—

Columbian sharp-tailed grouse; comments due by 12-27-99; published 10-26-99

INTERIOR DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 12-29-99; published 11-29-99

JUSTICE DEPARTMENT

Education programs and activities receiving Federal financial assistance; noneiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:

Rescission guidelines; comments due by 12-31-99; published 11-3-99

LABOR DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Export controlled technology; standard clause; comments due by 12-27-99; published 10-28-99

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Federal Acquisition Regulation (FAR):

Indian organizations and Indian-owned economic enterprises; utilization; comments due by 12-27-99; published 10-27-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

ARTS AND HUMANITIES, NATIONAL FOUNDATION

National Foundation on the Arts and the Humanities

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex:

Institute for Museum and Library Services; comments due by 12-28-99; published 10-29-99

National Endowment for the Arts; comments due by 12-28-99; published 10-29-99

National Endowment for the Humanities; comments due by 12-28-99; published 10-29-99

NATIONAL SCIENCE FOUNDATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Freedom of Information Act and Privacy Act; implementation; comments due by 12-27-99; published 11-24-99

NUCLEAR REGULATORY COMMISSION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

POSTAL RATE COMMISSION

International mail services; cost, revenue, and volume data analysis; comments due by 12-27-99; published 11-26-99

SECURITIES AND EXCHANGE COMMISSION

Securities:

Short sales; limits lifted, etc.; comments due by 12-27-99; published 10-28-99

SMALL BUSINESS ADMINISTRATION

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Government contracting programs:

Contract bundling and SBA's authority to appeal adverse decisions made by procuring agency; comments due by 12-27-99; published 10-25-99

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old age, survivors, and disability insurance—

Title II benefits under family maximum provisions; reduction in cases of dual entitlement; comments due by 12-27-99; published 10-27-99

STATE DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

Visas; immigrant and nonimmigrant documentation:

Immigrant visa fees; change in payment procedures; comments due by 12-27-99; published 10-28-99

TENNESSEE VALLEY AUTHORITY

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

TRANSPORTATION DEPARTMENT

Coast Guard

Vessel inspection:

Frequency, passenger vessel alternate hull examination program, and passenger, nautical school, and sailing school vessel underwater surveys; comments due by 12-30-99; published 11-15-99

TRANSPORTATION DEPARTMENT

Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
BMW Rolls-Royce GmbH; comments due by 12-27-99; published 11-19-99
Boeing; comments due by 12-27-99; published 11-12-99
British Aerospace; comments due by 12-27-99; published 11-24-99
Dornier; comments due by 12-27-99; published 11-26-99
General Electric Co.; comments due by 12-27-99; published 10-26-99
Pratt & Whitney; comments due by 12-27-99; published 10-27-99
Airworthiness standards:
Special conditions—
Piper Cheyenne PA-31T2 airplane; comments due by 12-30-99; published 11-30-99
Raytheon Model 390 airplane; comments due by 12-30-99; published 11-30-99
Class C airspace; comments due by 12-27-99; published 11-15-99
Class D airspace; comments due by 12-30-99; published 11-15-99
Class E airspace; comments due by 12-27-99; published 11-24-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Air bag requirements for passenger cars and light trucks; upgrade; comments due by 12-30-99; published 11-5-99

TREASURY DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

VETERANS AFFAIRS DEPARTMENT
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex; comments due by 12-28-99; published 10-29-99

LIST OF PUBLIC LAWS

This is a completes the listing of public laws enacted during the first session of the 106th of Congress. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

The list will resume when bills are enacted into public law during the second session of the 106th Congress, which convenes on January 24, 2000. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1999.

H.R. 1180/P.L. 106–170

Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

Last List December 17, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: PENS will resume service when bills are enacted into law during the second session of the 106th Congress. This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Printed on recycled paper

VOL
64
ISS
2
4
7
DE
27
1999
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12-
Vol
Un
Go
Pri
SUP
OF
Was
OFFI
Pena

12–27–99
Vol. 64 No. 247

federal register

Monday
December 27, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U S Government Printing Office
(ISSN 0097–6326)

VOL
64
ISS
2
4
7
DE
27
999
UMI

12-27-99
Vol. 64 No. 247
Pages 72249–72456

federal register

Monday
December 27, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register

Vol. 64, No. 247

Monday, December 27, 1999

Agricultural Marketing Service
RULES
Onions (Vidalia) grown in—
Georgia, 72265–72269

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service

Animal and Plant Health Inspection Service
RULES
Export certification:
Solid wood packing materials exported to China; heat treatment, 72262–72265
PROPOSED RULES
Noxious weeds:
Weed and seed lists; update, 72293–72296

Army Department
See Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Fort Hutachuca, AZ; real property master plan; land use and real estate investment, 72319–72320

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72353–72354

Coast Guard
RULES
Ports and waterways safety:
Willamette River, OR; safety zone, 72281–72282
NOTICES
Committees; establishment, renewal, termination, etc.:
Navigation Safety Advisory Council, 72371

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72313–72314

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 72311–72313

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
Macedonia; correction, 72319

Defense Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Federal Acquisition Regulation (FAR):
Award fee determinations; review, 72448–72450
Civilian Agency Acquisition Council and Defense Acquisition Regulations Council issuances; introduction, 72413–72415
Contract bundling, 72441–72444
Deobligation authority, 72444–72445
Document availability, 72446
Financial Management System Software Program; transition, 72445–72446
Foreign acquisition; policies and procedures, 72416–72441
Nondisplacement of qualified workers, 72450
Pollution control and clean air and water, 72415–72416
SBA's 8(a) Business Development Program, 72447
Small entity compliance guide, 72451–72453
Special simplified procedures for purchases of commercial items in excess of simplified acquisition threshold, 72447–72448
Technical amendments, 72450–72451

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Neujahr, Theodore A., D.V.M., 72362–72365

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Preparing Tomorrow's Teachers to Use Technology Program, 72455–72456
Privacy Act:
Systems of records, 72383–72408

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 72365–72366

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Missouri National Recreational River, NE and SD; recreational river management alternatives, 72359–72360

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glufosinate ammonium, 72284–72287
Maneb, 72282–72284
NOTICES
Committees; establishment, renewal, termination, etc.:
National Drinking Water Advisory Council, 72341–72342

Meetings:
Science Advisory Board, 72342
Pesticide registration, cancellation, etc.:
Novaratis Crop Protection, Inc., et al., 72342–72346
Whitmire Micro-Gen, Research Laboratories, Inc., et al., 72346–72348
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Whitmire Micro-Gen, Research Laboratories, Inc., et al., 72348–72350
Project XL (excellence and leadership) innovative technologies projects:
Denton, TX; pretreatment final project agreement availability, 72350

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas; correction, 72270–72272
NOTICES
Exemption petitions; summary and disposition, 72371–72373

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72350–72352
Reporting and recordkeeping requirements, 72352
Submission for OMB review; comment request, 72352–72353

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
PP&L Resources, Inc. et al., 72334–72337
Southern Co. Services, Inc., et al., 72337–72340
Hydroelectric applications, 72340–72341
Applications, hearings, determinations, etc.:
Allegheny Energy Unit 1 and Unit 2, L.L.C. et al., 72332
Commonwealth Edison Co. et al., 72332
CU Power Canada Ltd., 72332
GPU Advanced Resources, Inc., 72333
PECO Energy Co. et al., 72333
Puget Sound Energy, Inc. et al., 72333
Tennessee Gas Pipeline Co., 72333–72334
Trans-Union Interstate Pipeline, L.P., 72334

Federal Railroad Administration
RULES
Alcohol and drug use control:
Random drug and alcohol testing—
Minimum testing rate; 2000 determination, 72289–72290

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Sacramento Mountains checkerspot butterfly, 72300–72302
NOTICES
Endangered and threatened species permit applications, 72357
Environmental statements; availability, etc.:
Incidental take permits—
Clark County, WA; Columbia River steelhead, etc., 72318–72319
Trinity River Mainstem Fishery Restoration, 72357

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
4,5-dichloro-2-((5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)benzenesulfonic acid, etc., 72274–72275
Propanoic acid, etc., 72272–72273
Tetradecanoic acid, lithium salt, 72273–72274
NOTICES
Meetings:
Biological Response Modifiers Advisory Committee, 72354–72355
Peripheral and Central Nervous System Drugs Advisory Committee, 72355
Reports and guidance documents; availability, etc.:
Selegiline hydrochloride tablets; in vivo bioequivalence and dissolution testing; industry guidance withdrawn, 72355–72356

Food and Nutrition Service
RULES
Child nutrition programs:
Child and adult care food program—
Meal pattern requirements; overclaim authority and technical changes, 72257–72262
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72311

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Award fee determinations; review, 72448–72450
Civilian Agency Acquisition Council and Defense Acquisition Regulations Council issuances; introduction, 72413–72415
Contract bundling, 72441–72444
Deobligation authority, 72444–72445
Document availability, 72446
Financial Management System Software Program; transition, 72445–72446
Foreign acquisition; policies and procedures, 72416–72441
Nondisplacement of qualified workers, 72450
Pollution control and clean air and water, 72415–72416
SBA's 8(a) Business Development Program, 72447
Small entity compliance guide, 72451–72453
Special simplified procedures for purchases of commercial items in excess of simplified acquisition threshold, 72447–72448
Technical amendments, 72450–72451

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72356–72357

Housing and Urban Development Department
RULES
HUD-owned properties:
Up-front grants and loans in disposition of multifamily projects, 72409–72412

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service
See Surface Mining Reclamation and Enforcement Office
RULES
Assistance programs; administrative and audit requirements and cost principles:
On-the-job seat belt use, 72287–72289

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72377–72381

International Trade Administration
NOTICES
Antidumping:
Carbon steel wire rope from—
Mexico, 72314–72315
Corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from—
Canada, 72315
Large newspaper printing presses and components, assembled or unassembled, from—
Japan, 72315–72316
Non-frozen apple juice concentrate from—
China, 72316–72318

International Trade Commission
NOTICES
Import investigations:
Ethyl alcohol for fuel use; imports base quantity determination, 72361
Excimer laser systems for vision correction surgery and components and methods for performing such surgery, 72362
Granular ploytetrafluoroethylene resin from—
Italy and Japan, 72362

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Gila Box Riparian National Conservation Area Advisory Committee, 72357–72358

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Award fee determinations; review, 72448–72450
Civilian Agency Acquisition Council and Defense Acquisition Regulations Council issuances; introduction, 72413–72415
Contract bundling, 72441–72444
Deobligation authority, 72444–72445
Document availability, 72446
Financial Management System Software Program; transition, 72445–72446
Foreign acquisition; policies and procedures, 72416–72441
Nondisplacement of qualified workers, 72450
Pollution control and clean air and water, 72415–72416
SBA's 8(a) Business Development Program, 72447
Small entity compliance guide, 72451–72453
Special simplified procedures for purchases of commercial items in excess of simplified acquisition threshold, 72447–72448
Technical amendments, 72450–72451

National Credit Union Administration
RULES
Credit unions:
Organization and operations—
Low-income designated credit unions; secondary capital accounts, 72269–72270
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Development Revolving Loan Program, 72367

National Indian Gaming Commission
PROPOSED RULES
Indian Gaming Regulatory Act:
Classification of games, 72296–72297

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Western Pacific Region pelagic, 72290–72291
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Halibut and sablefish; Individual Fishing Quota Program, 72302–72310
Ocean and coastal resource management:
Marine sanctuaries—
Gray's Reef National Marine Sanctuary, GA; management plan/regulations review; scoping meetings, 72296
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Clark County, WA; Columbia River steelhead, etc., 72318–72319
Meetings:
Pacific Fishery Management Council; correction, 72319

National Park Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72358–72359
Environmental statements; availability, etc.:
Missouri National Recreational River, NE and SD; recreational river management alternatives, 72359–72360
Meetings:
San Francisco Maritime National Historical Park Advisory Commission, 72360

Navy Department
NOTICES
Environmental statements; availability, etc.:
Eastern North Carolina; Second Marine Aircraft Wing; V-22 introduction, 72320–72331

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Florida Power & Light Co., 72367
Northeast Nuclear Energy Co. et al., 72367–72369

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72366–72367

Office of Motor Carrier Safety
NOTICES
Motor carrier safety standards:
Hours of service of drivers—
Van Wyk Freight Lines, Inc.; exemption application, 72373–72376

Personnel Management Office
RULES
Absence and leave:
Emergency leave transfer program, 72250–72256
Prevailing rate systems, 72249–72250
Retirement:
Voluntary early retirement authority
Technical amendment, 72256–72257
PROPOSED RULES
Prevailing rate systems, 72292–72293
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 72369–72370

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration

Small Business Administration
NOTICES
Disaster loan areas:
North Carolina, 72370
Oregon, 72370–72371
Interest rates; quarterly determinations, 72371

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 72275–72277
Virginia, 72277–72281
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 72297–72300
NOTICES
Grants and cooperative agreements; availability, etc.:
Watershed Cooperative Agreement Program, 72360–72361

Surface Transportation Board
NOTICES
Railroad services abandonment:
Norfolk Southern Railway Co., 72376–72377

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Office of Motor Carrier Safety
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Meetings:
International Financial Institution Advisory Commission, 72377

Separate Parts In This Issue

Part II
Education Department, 72383–72408

Part III
Housing and Urban Development Department, 72409–72412

Part IV
General Services Administration, Department of Defense, National Aeronautics and Space Administration, 72413–72453

Part V
Education Department, 72455–72456

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532.....72249
630.....72250
831.....72256
842.....72256
Proposed Rules:
532.....72292

7 CFR
226.....72257
353.....72262
955 (2 documents).....72265, 72267
Proposed Rules:
360.....72293
361.....72293

12 CFR
701.....72269

14 CFR
39.....72270

15 CFR
Proposed Rules:
922.....72296

21 CFR
178 (3 documents).....722272, 72273, 72274

24 CFR
290.....72410

25 CFR
Proposed Rules:
504.....72296

30 CFR
913.....72275
946.....72277
Proposed Rules:
938.....72297

33 CFR
165.....72281

40 CFR
180 (2 documents).....72282, 72284

43 CFR
12.....72287

48 CFR
Ch. 1 (2 documents).....72414, 72451
1 (2 documents).....72415, 72416
2 (3 documents).....72416, 72441, 72450
4 (2 documents).....72441, 72444
5 (3 documents).....72416, 72441, 72450
6.....72416
7.....72441
8.....72445
9.....72416
10.....72441
11.....72446
12 (3 documents).....72415, 72416, 72447
13 (2 documents).....72416, 72447
14 (2 documents).....72416, 72450
15 (3 documents).....72416, 72441, 72450
16.....72448
17.....72416
19 (4 documents).....72416, 72441, 72447, 72450
23.....72415
25.....72416
32.....72450
33.....72450
36 (2 documents).....72416, 72450
39.....72445
42 (2 documents).....72444, 72450
48.....72448
52 (7 documents).....72415, 72416, 72446, 72447, 72448, 72450

49 CFR
219.....72289

50 CFR
660.....72290
Proposed Rules:
17.....72300
679.....72302

VOL
64
ISS
2
4
7
DE
27
999
MI

Th
co
ap
ar
Fe
50

Th
the
ne
RE

OF
MA

5 C

RIN

Pr
of
No

AG
Ma

AC
co

SU
Ma
tha
no
Wa
est
FW
Wa
est
are
of
ins
has
wit
are
wa
lon
sta

DA
is e
Co
26,

AD
con
Ass
Ad
Co
Off
7H3
DC
426

FOR
Jen
284
ema

Rules and Regulations

Federal Register
Vol. 64, No. 247
Monday, December 27, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI97

Prevailing Rate Systems; Abolishment of the Washington, MD, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule that will abolish the Washington, MD, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, and establish a new Frederick, MD, NAF FWS wage area. The abolishment of the Washington, MD, wage area and the establishment of a new Frederick wage area is necessary because of the closure of the Washington, MD, wage area's host installation, Fort Ritchie. This closure has left the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys. In addition, there are no longer any NAF FWS employees stationed in Washington County.

DATES: *Effective date:* This interim rule is effective on December 31, 1999. Comments must be received by January 26, 2000.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Washington, MD, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey county, Washington County, and two area of application counties, Frederick County, MD, and Berkeley County, WV. The closure of the Washington, MD, wage area's host activity, Fort Ritchie, left the Department of Defense (DOD) without an activity in the survey area with the capability to conduct annual local NAF wage surveys. Fort Ritchie ceased operations on October 1, 1998. Since this closure, there are no longer any NAF FWS employees stationed in Washington County. However, the area of application counties, Frederick and Berkeley, continue to have NAF FWS employment. Under section 5343(a)(1)(B)(i) of title 5, United States Code, NAF wage areas "shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed." Therefore, Washington County should not be defined as part of an NAF wage area. DOD recommended that the Office of Personnel Management (OPM) abolish the Washington, MD, NAF wage area and establish a new Frederick, MD, NAF wage area. The new Frederick, MD, NAF wage area will be composed of one survey county, Frederick County, MD, and one area of application county, Berkeley County, WV.

Under section 532.219(b) of title 5, Code of Federal Regulations, NAF wage areas are established when there are a minimum of 26 NAF wage employees in the survey area, the local activity has the capability to host annual local wage surveys, and there are within the survey area a minimum of 1,800 private enterprise employees in establishments within survey specifications. Frederick County meets the regulatory requirements to be established as a separate NAF survey area. There are approximately 36 NAF FWS employees stationed in Frederick County, and a local Federal installation, Fort Detrick, has the capability to host annual local wage surveys. Furthermore, Frederick County has more than the required minimum number of private enterprise employees in establishments within survey specifications. There are approximately 10 NAF FWS employees stationed in Berkeley County, WV, which does not meet the criteria to be established as a separate NAF wage area. Therefore, the county must be defined as an area of application.

When defining NAF wage areas, OPM evaluates several factors under section 532.219 of title 5, Code of Federal Regulations. OPM considers the following criteria when defining NAF wage area boundaries:

(i) Proximity of largest activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

The closest major Federal installation to Fort Ritchie is Fort Detrick. Fort Ritchie is approximately 42 km (26 miles) from Fort Detrick. Commuting patterns indicate that 9 percent of the Washington County resident workforce commutes to Frederick County. Transportation facilities consist of major interstate and State highways and do not favor one county more than another. Also, a review of the similarities of the counties in terms of overall population, employment, and kinds and sizes of industrial establishments does not favor one county more than another.

The closest major Federal installation to the Department of Veterans Affairs Medical Center, Martinsburg, located in Berkeley County, WV, is Fort Detrick. The VA Medical Center is approximately 70 km (42 miles) from Fort Detrick. Commuting patterns indicate that approximately 2 percent of the Berkeley County resident workforce commutes to Frederick County and approximately 2 percent of the Berkeley County resident workforce commutes to the Prince George—Montgomery County survey area. Transportation facilities consist of major interstate and State highways and do not favor one county more than another. Also, a review of the similarities of the counties in terms of overall population, employment, and kinds and sizes of industrial establishments does not favor one county more than another.

Based on an analysis of these regulatory criteria, OPM proposes to establish Frederick, MD, as a new NAF wage area and define Berkeley County, WV, as an area of application. Full-scale wage surveys will be ordered in the

Frederick, MD, NAF wage area in January of even fiscal years, with the first full-scale wage survey for the Frederick wage area beginning in January 2000. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with these changes.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because the Washington, MD, NAF wage survey would have been ordered in January 2000.

By issuing the interim rule, the new Frederick, MD, NAF wage area will be ordered in January 2000, and preparations for the wage survey must begin immediately.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix B to subpart B of part 532 is amended for the State of Maryland by removing the entry for "Washington" and by adding alphabetically a new entry for "Frederick" with a beginning survey month of "January" and a fiscal year of full-scale survey of "Even".

3. Appendix D to subpart B is amended by removing the wage area listing for Washington, Maryland, and by adding alphabetically a new entry for Frederick, Maryland, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Maryland

* * * * *

Frederick

Survey Area

Maryland:
Frederick

Area of Application. Survey area plus:

West Virginia:
Berkeley

[FR Doc. 99–33363 Filed 12–23–99; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AI03

Emergency Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations governing the establishment of an emergency leave transfer program. These regulations permit Federal employees to transfer their unused annual leave to other Federal employees adversely affected by a major disaster or emergency, as declared by the President. This program provides Federal employees with a special opportunity to help their fellow workers in times of need.

EFFECTIVE DATE: The regulations are effective on December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin Kitchelt, (202) 606–2858, FAX: (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Section 9004 of Public Law 105–18, June 12, 1997, added section 6391 to title 5, United States Code, to provide that in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program under which an employee in any Executive agency may donate annual leave for transfer to employees of his or her agency or to employees in other agencies who are adversely affected by such disaster or emergency. The Act also permits agency leave banks established under 5 U.S.C. 6362 to donate leave under an emergency leave transfer program established by OPM.

The emergency leave transfer program is in addition to the voluntary leave transfer and leave bank programs established under 5 U.S.C. 6332 and 6362. Under the current voluntary leave transfer program, an employee may donate unused annual leave for transfer to other Federal employees who have medical emergencies and who have exhausted their own leave. In contrast, the emergency leave transfer program will permit an employee to donate annual leave to employees who have been adversely affected by disasters or emergencies, such as a flood or an earthquake that has destroyed an employee's property, or by an emergency situation such as that created by the bombings of the Alfred P. Murrah Federal Building in Oklahoma City and the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania. In addition, an employee approved as an emergency leave recipient may use donated annual leave without having to exhaust his or her own leave.

On November 3, 1997, OPM published proposed regulations (62 FR 59301) to establish the emergency leave transfer program. Under the proposed regulations, OPM would be responsible for establishing and administering an emergency leave bank for each disaster or emergency declared by the President. Each emergency leave bank would contain the aggregate amount of annual leave donated by emergency leave donors throughout the Government for a specific disaster or emergency. OPM would facilitate the transfer of donated annual leave from the emergency leave bank to agencies with employees affected by the disaster or emergency for distribution to their approved emergency leave recipients.

We received comments from 9 agencies, 1 labor organization, and 1 individual, for a total of 11 comments. A summary of the comments received and the changes made in the regulations is presented below.

OPM's Role

One agency recommended that individual agencies be responsible for administering an emergency leave transfer program. After the proposed regulations were published, the President directed OPM to establish an emergency leave transfer program to assist employees affected by the

bombing of the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania; Hurricane Georges in Puerto Rico and the U.S. Virgin Islands; and the tornadoes in Oklahoma and Kansas. The experience gained from these emergencies led us to the conclusion that while the President must direct OPM to establish an emergency leave transfer program, OPM should delegate responsibility for administering an emergency leave transfer program to the agencies with employees affected by the emergency. The affected agencies are in the best position to determine whether, and how much, donated annual leave is needed by their employees and can quickly facilitate the transfer of donated annual leave within their agencies. Therefore, in the final regulations, OPM has delegated responsibility for administering an emergency leave transfer program to the affected agencies.

OPM remains committed to providing effective and efficient customer service to the Federal Government community. Staff of OPM's Workforce Compensation and Performance Service (WCPS) will be available to assist agencies in administering an emergency leave transfer program and coordinating efforts among affected agencies. WCPS staff may be reached on (202) 606–2858, by fax on (202) 606–0824, or by email at payleave@opm.gov. In addition, when a Federal agency notifies OPM that the amount of annual leave donated by its employees is not sufficient to meet the needs of its approved emergency leave recipients, we will coordinate a Governmentwide transfer of annual leave from donating agencies to affected agencies for crediting to their emergency leave recipients. OPM will make the determination to solicit and accept donated annual leave from agencies Governmentwide for this purpose.

The Agency's Role

To expedite the transfer of leave in disaster situations, each agency will be responsible for—

(1) Determining whether, and how much, donated annual leave is needed by affected employees;

(2) Approving leave donors and/or leave recipients within the agency; and

(3) Facilitating the distribution of donated annual leave from approved leave donors to approved leave recipients within the agency.

Agencies are authorized to distribute donated annual leave to approved emergency leave recipients as they see fit. It would not be productive for OPM to attempt to regulate the many needs and situations that may occur as a result of a major disaster or emergency. Individual agencies are best suited to make determinations on the hardship faced by each employee based on evidence administratively acceptable to the agency. Agencies may wish to establish committees or emergency leave boards to administer emergency leave donations. However, this is not an OPM requirement. OPM's final regulations provide agencies with maximum flexibility in approving donated annual leave for those individuals in need.

If an agency does not receive sufficient donated annual leave to meet the needs of its approved emergency leave recipients, the agency's designated emergency leave transfer coordinator should contact OPM for assistance. OPM will solicit and coordinate the transfer of donated annual leave from other Federal agencies to affected agencies who may have a shortfall of donated emergency leave. (See § 630.1107(a).)

Emergency Leave Recipient

Two agencies asked for clarification as to whether an emergency leave recipient must exhaust his or her own leave before receiving donated annual leave from an emergency leave transfer program. Emergency leave recipients are not required to exhaust their accrued annual or sick leave before receiving donated annual leave under an emergency leave transfer program. This is an important distinction from the voluntary leave transfer and leave bank programs, which require leave recipients to use all their available paid leave before using donated leave. Therefore, § 630.1105(d) of the final regulations provides that an emergency leave recipient is not required to exhaust his or her accrued annual or sick leave before receiving donated annual leave under the emergency leave transfer program.

Family Member

One agency asked whether donated annual leave received from the emergency leave transfer program can be used to assist family members adversely affected by a major disaster or emergency. Section 630.1104(b) of the final regulations permits an emergency leave recipient to use donated annual leave to care for a family member who has been adversely affected by a major disaster or emergency. Section 630.1102 of the final regulations includes a definition of "family member." The definition of "family member" is the same definition used in the voluntary leave transfer and leave bank programs. Employees may use donated annual leave to assist a family member adversely affected by a major disaster or emergency, provided the family member has no reasonable access to other forms of assistance. Agencies are responsible for ensuring that annual leave donated under the emergency leave transfer program is used appropriately. (See § 630.1106(i) of the final regulations.)

Limitations on Donating Annual Leave

The proposed regulations provide that an emergency leave donor may not contribute more than 104 hours of annual leave in a leave year. An agency questioned why the limit was fixed at 104 hours, while the limitation for the existing leave transfer program varies based on the leave donor's annual leave accrual rate (*i.e.*, 4, 6, or 8 hours). Another agency suggested abolishing all limitations on donating annual leave. OPM believes the 104-hour limitation provides each potential emergency leave donor with the opportunity to make a significant annual leave donation. Completely eliminating the limitation on the donation of annual leave may create additional costs to the Federal Government by allowing annual leave to be donated that might otherwise be forfeited. This suggestion was not adopted. However, § 630.1106(b) of the final regulations permits each agency to establish written procedures for waiving the 104-hour limitation on donating annual leave in appropriate circumstances.

Under the proposed regulations, an emergency leave donor could not donate annual leave directly to a specific emergency leave recipient. Two agencies suggested that emergency leave donors be permitted to donate annual leave directly to an employee adversely affected by a major disaster or emergency. This suggestion was not adopted. The intent of the emergency leave transfer program is to allow an employee to assist his or her fellow Federal employees in the event of a major disaster or emergency. The program has been designed to provide mass transfers of leave to affected employees. This is the quickest and most efficient way to provide relief to all those in need. If an employee wishes to donate annual leave directly to an individual, he or she may contact the local personnel office to inquire about donating annual leave under his or her agency's voluntary leave transfer program, if the recipient meets eligibility requirements for that program.

One agency requested that OPM provide an estimate of the amount of leave needed for an emergency before any donated annual leave is actually transferred between agencies. In the

event there is a need to transfer emergency donated leave between agencies, OPM will attempt to quickly obtain estimates from agency representatives concerning the amount of donated annual leave an agency may need. We believe this will reduce the administrative burden of unnecessarily transferring leave when specific needs have not been identified.

Under the proposed regulations, the minimum amount of annual leave that an employee could donate is 1 hour. An agency requested that the minimum donation limit be raised to 8 hours for administrative convenience. We believe an 8-hour minimum is too high and would reduce the potential pool of leave donors. This suggestion was not adopted. Section 630.1106(b) of the final regulations imposes a minimum donation of 1 hour of annual leave under the emergency leave transfer program.

Limitations on Receiving Donated Leave

The proposed regulations provided that an emergency leave recipient could receive no more than 240 hours of donated annual leave at any one time from an emergency leave transfer program for each disaster or emergency. An agency asked to waive the 240-hour limit on the receipt of donated leave. A waiver is not necessary. An agency may authorize additional donated annual leave whenever needed, as long as an emergency leave recipient receives no more than 240 hours at any one time. In contrast, another agency commented that the 240-hour limit was too high. OPM's regulations do not guarantee that an emergency leave recipient adversely affected by a major disaster or emergency will receive 240 hours of donated annual leave. Each employing agency must make a determination based on administratively acceptable evidence as to how much donated annual leave each approved emergency leave recipient may receive.

Distributing Donated Leave

Three agencies asked whether OPM will issue additional guidance for administering and distributing donated annual leave to affected individuals. We believe the final regulations provide agencies with broad guidance on administering an emergency leave transfer program. In addition, staff of OPM's Workforce Compensation and Performance Service stand ready to serve as advisors, facilitators, and/or coordinators in any emergency affecting Federal employees.

Retroactive Substitution of Donated Leave

The proposed regulations provided that donated annual leave could be substituted retroactively for any period of annual leave, sick leave, or leave without pay used as a result of a disaster or emergency. However, in OPM's recent guidance on establishing an emergency leave transfer program for Hurricane Georges and the tornadoes in Oklahoma and Kansas, an emergency leave recipient could not retroactively substitute donated annual leave for periods of annual and sick leave used during the disaster or emergency. An agency asked for clarification of OPM's policy.

The legislation establishing the emergency leave transfer program (5 U.S.C. 6391) does not authorize the substitution of donated annual leave retroactively for periods of annual and sick leave. However, under the voluntary leave transfer and leave bank programs, Congress did permit the substitution of donated annual leave retroactively for any period of leave without pay used as a result of the emergency or to liquidate an indebtedness incurred by an employee for advance annual or sick leave used as a result of the emergency. Based on this precedent, § 630.1106(f) of the final regulations provides that an emergency leave recipient may substitute donated annual leave retroactively (beginning no earlier than the date of the disaster or emergency) for any period of *leave without pay* used as a result of the emergency or to liquidate an indebtedness incurred by an employee for advance annual or sick leave used as a result of the emergency.

For the immediate emergency, affected employees typically will be granted excused absence. To further assist employees, the final regulations provide that agencies may advance annual leave or sick leave, as appropriate, to approved emergency leave recipients (even if an employee has available annual and sick leave), so that the emergency leave recipient is not forced to use his or her accrued leave before donated annual leave becomes available. Affected employees may then substitute donated annual leave retroactively for advance annual or sick leave.

Further, § 630.1104(e) of the final regulations provides that agencies may administratively determine a time period by which employees must apply to become an emergency leave recipient after the occurrence of a major disaster or emergency.

Restoration of Unused Donated Leave

The proposed regulations provided that any annual leave donated to the emergency leave transfer program that is not used by an approved emergency leave recipient must be returned to the emergency leave donor(s). Two agencies and one organization suggested that the proposed regulations be changed to permit unused donated leave to remain in the emergency leave transfer program for future use in the event that another major disaster or emergency occurs. One agency suggested that unused donated leave be restored only to those employees currently employed by the agency from which they donated leave. Another agency suggested that unused donated leave be restored in 1-hour increments.

Although these suggested changes might relieve some of the administrative burden of returning unused donated leave to emergency leave donors, we believe it would be unfair to the employees who generously donated their annual leave to have the leave remain in the emergency leave transfer program indefinitely and without purpose. Also, it would be inappropriate to retain unused donated leave simply because the leave donor has transferred to another Federal agency. Therefore, § 630.1108(b) of the final regulations provides that the amount of unused donated annual leave to be restored to the emergency leave donor(s) will be proportional to the amount of annual leave donated by the employee to the emergency leave transfer program for each disaster or emergency. The unused donated annual leave must be restored to the leave donor(s) in the lowest increment that the agency payroll system can accommodate.

Under the proposed regulations, emergency leave donors would be permitted to elect to have any unused donated annual leave restored in the current leave year or on the first day of the first leave year beginning after the date of election. One agency requested clarification of the phrase "date of election" as described above. We agree that clarification is needed. Therefore, § 630.1108(c)(2) of the final regulations permits the emergency leave donor to elect to have his or her unused donated annual leave restored in the current leave year or on the first day of the following leave year.

Family and Medical Leave

An agency asked whether OPM's regulations in 5 CFR part 630, subpart L, on the Family and Medical Leave Act of 1993 (FMLA) could be expanded to

permit the use of FMLA leave for cleanup or recovery efforts for a major disaster or emergency situation. The purposes for which FMLA leave may be used are cited in law, and include caring for a spouse, son, daughter, or parent with a serious health condition. OPM does not have authority to expand the purposes for which FMLA leave may be used.

Forms for Donating/Receiving Annual Leave

OPM has developed the following forms to facilitate the transfer of donated annual leave under the emergency leave transfer program:

(1) OPM Form 1637, "Application to Become a Leave Recipient Under the Emergency Leave Transfer Program";

(2) OPM Form 1638, "Request to Donate Annual Leave Under the Emergency Leave Transfer Program"; and

(3) OPM Form 1639, "Transfer of Donated Annual Leave To/From the Emergency Leave Transfer Program".

These forms can be accessed on OPM's internet web site at *http://www.opm.gov/forms/html/emerg.htm.*

Voluntary Leave Transfer and Leave Bank Programs

One agency recommended merging the emergency leave transfer program established for emergencies or major disasters with the existing voluntary leave transfer and leave bank programs established for medical emergencies. A separate law was enacted to establish the emergency leave transfer program, and the program provides benefits for different purposes and with fewer requirements. It would not be feasible to merge the emergency leave transfer program with the voluntary leave transfer and leave bank programs.

Miscellaneous

One agency noted that the word "voluntary" is not used in the Emergency Leave Transfer Program. Participation in the emergency leave transfer program is strictly voluntary. Section 630.1109 of the final regulations provides that an employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using donated annual leave.

One agency perceived an inequity for Federal employees in small rural areas because disasters that may occur in these areas may not receive a Presidential emergency declaration and employees in these areas therefore may not receive donated annual leave from an emergency leave transfer program.

If an emergency leave transfer program is not established in a small rural area, employees affected by a major disaster may continue to participate in their agency's existing voluntary leave transfer and leave bank programs. We believe these programs will be sufficient to cover the needs of most employees in the event of a major disaster or emergency. Further, the existing voluntary leave transfer program permits agencies to receive donations of annual leave from employees in other agencies when it is determined that such a transfer of leave would further the purpose of the program. (See § 630.906(f)(3).)

One individual suggested that employees be allowed to "cash out" donated leave to use for expenses related to emergency situations. There is no legal authority to provide cash to employees in lieu of donated annual leave.

One agency asked whether the emergency leave transfer program applies to Foreign Service employees. The law governing the emergency leave transfer program defines "agency" as an Executive agency and "employee" as an employee covered by chapter 63 of title 5, United States Code. Therefore, the emergency leave transfer program applies to any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position that requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980. (See 5 U.S.C. 6391(a)(2) and 6301(2).)

Recordkeeping

Two agencies suggested that OPM establish a Governmentwide tracking system to identify and track annual leave donations under the emergency leave transfer program. Since payroll systems vary from agency to agency, a uniform tracking and record maintenance system is not feasible.

Technical Corrections

We are also taking advantage of the publication of these final regulations to correct two erroneous citations in § 630.310 concerning the scheduling of annual leave by employees deemed necessary for year 2000 computer conversion efforts.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart C—Annual Leave

§ 630.310 [Amended]

2. In § 630.310(b), "630.208" is corrected to read "630.308."

3. In § 630.310(d), "630.308" is corrected to read "630.306."

[Subpart K—Redesignated as Subpart M]

4. In part 630, subpart K (consisting of §§ 630.1101 through 630.1109) is redesignated as subpart M (consisting of §§ 630.1301 through 630.1309), and a new subpart K (consisting of §§ 630.1101 through 630.1109) is added to read as follows:

Subpart K—Emergency Leave Transfer Program

Sec.

630.1101 Purpose, applicability, and administration.
630.1102 Definitions.

630.1103 Establishment of an emergency leave transfer program.
630.1104 Application to become an emergency leave recipient.
630.1105 Approval of application to become an emergency leave recipient.
630.1106 Limitations on donation and use of annual leave.
630.1107 Governmentwide transfer of emergency leave.
630.1108 Termination of disaster or emergency.
630.1109 Prohibition of coercion.

§ 630.1101 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement section 6391 of title 5, United States Code, and must be read together with section 6391. Section 6391 of title 5, United States Code, provides that in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program under which an employee may donate unused annual leave for transfer to employees of his or her agency or to employees in other Executive agencies who are adversely affected by such disaster or emergency.

(b) *Applicability.* This subpart applies to any individual who is defined as an "employee" in 5 U.S.C. 6331(1) and who is employed in an Executive agency.

(c) *Administration.* The head of each agency having employees subject to this subpart is responsible for the proper administration of this subpart. Each Federal agency must establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

§ 630.1102 Definitions.

In this subpart—

Agency means an "Executive agency," as defined in 5 U.S.C. 105.

Disaster or emergency means a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees (e.g., loss of life or property, serious injury, or mental illness as a result of a direct threat to life or health).

Emergency leave donor means a current employee whose voluntary written request for transfer of annual leave to an emergency leave transfer program is approved by his or her employing agency.

Emergency leave transfer program means a program established by OPM that permits Federal employees to transfer their unused annual leave to other Federal employees adversely affected by a disaster or emergency, as declared by the President.

Emergency leave recipient means a current employee for whom the employing agency has approved an application to receive annual leave from an emergency leave transfer program.

Employee has the meaning given that term in 5 U.S.C. 6331(1).

Family member has the meaning given that term in § 630.902.

Leave year has the meaning given that term in § 630.201.

Paid leave status under subchapter I has the meaning given that term in § 630.902.

§ 630.1103 Establishment of an emergency leave transfer program.

(a) When directed by the President, OPM will establish an emergency leave transfer program that permits an employee to donate his or her accrued annual leave to employees of the same or other Executive agencies who are adversely affected by such a disaster or emergency.

(b) OPM will notify agencies of the establishment of an emergency leave transfer program for a specific disaster or emergency, as declared by the President. Once notified, each agency affected by the disaster or emergency is authorized to do the following:

(1) Determine whether, and how much, donated annual leave is needed by affected employees;

(2) Approve leave donors and/or leave recipients in their agencies, as appropriate;

(3) Facilitate the distribution of donated annual leave from approved leave donors to approved leave recipients within their agencies; and

(4) Determine the period of time for which donated annual leave may be accepted for distribution to approved leave recipients.

(c) A leave bank established under subchapter IV of chapter 63 of title 5, United States Code, and subpart J of part 630 may, with the concurrence of the leave bank board established under § 630.1003, donate annual leave to an emergency leave transfer program administered by the leave bank's employing agency.

§ 630.1104 Application to become an emergency leave recipient.

(a) An employee who has been adversely affected by a disaster or emergency may make written application to his or her employing agency to become an emergency leave recipient. If an employee is not capable of making written application, a personal representative of the potential leave recipient may make written application on his or her behalf.

(b) An employee who has a family member who has been adversely affected by a disaster or emergency may also make written application to his or her employing agency to become an emergency leave recipient. An emergency leave recipient may use donated annual leave to assist an affected family member, provided such family member has no reasonable access to other forms of assistance.

(c) For the purpose of this subpart, an employee will be considered to be adversely affected by a major disaster or emergency if the disaster or emergency has caused severe hardship to the employee or a family member of the employee to such a degree that the employee's absence from work is required.

(d) The employee's application must be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential emergency leave recipient;

(2) A statement describing his or her need for leave from the emergency leave transfer program;

(3) Any additional information that may be required by the potential leave recipient's employing agency.

(e) Agencies may administratively determine a time period by which employees must apply to become an emergency leave recipient after the occurrence of a major disaster or emergency.

§ 630.1105 Approval of application to become an emergency leave recipient.

(a) The potential emergency leave recipient's employing agency will review the application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave recipient is or has been affected by the major disaster or emergency.

(b) If the application is approved, the employing agency must notify the leave recipient (or his or her personal representative) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later).

(c) If the application is not approved, the employing agency must notify the applicant (or the personal representative who made application on behalf of the potential emergency leave recipient) within 10 calendar days (excluding

Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency establishes its administrative procedures, if that date is later). The agency must give the reasons for its disapproval.

(d) An approved emergency leave recipient is not required to exhaust his or her accrued annual and sick leave before receiving donated leave under the emergency leave transfer program.

§ 630.1106 Limitations on donation and use of annual leave.

(a) An employee may voluntarily submit a written request to his or her employing agency that a specified number of hours of his or her accrued annual leave, consistent with the limitations in paragraph (b) of this section, be transferred from his or her annual leave account to an emergency leave transfer program established under § 630.1103(b). An emergency leave donor may not donate annual leave for transfer to a specific emergency leave recipient under this subpart.

(b) An emergency leave donor may not contribute less than 1 hour nor more than 104 hours of annual leave in a leave year. Each agency may establish written criteria for waiving the 104-hour limitation on donating annual leave in a leave year.

(c) Annual leave donated under this subpart may not be applied against the limitations on the donation of annual leave under the voluntary leave transfer or leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

(d) An emergency leave recipient may receive a maximum of 240 hours of donated annual leave at any one time from an emergency leave transfer program for each disaster or emergency.

(e) Each emergency leave recipient must use the donated annual leave for purposes related to the disaster or emergency for which the emergency leave recipient was approved.

(f) Annual leave transferred under this subpart may be—

(1) Substituted retroactively for any period of leave without pay used because of the adverse effects of the disaster or emergency; or

(2) Used to liquidate an indebtedness incurred by the emergency leave recipient for advance annual or sick leave used due to the adverse effects of the disaster or emergency. An agency may advance an emergency leave recipient annual or sick leave, as appropriate (even if the employee has available annual and sick leave), so that the emergency leave recipient is not forced to use his or her accrued leave before donated annual leave becomes available.

(g) While an emergency leave recipient is using donated annual leave from an emergency leave transfer program, annual and sick leave will accrue to the credit of the employee at the same rate as if the employee were in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, and will be subject to the limitations imposed by 5 U.S.C. 6304(a), (b), (c), and (f) at the end of the leave year in which the transferred annual leave is received.

(h) Annual leave transferred under this subpart may not be—

(1) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552;

(2) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency; or

(3) Used to establish initial eligibility for immediate retirement or acquire eligibility to continue health benefits into retirement under 5 U.S.C. 6302(g).

(i) Agencies are responsible for ensuring that annual leave donated under the emergency leave transfer program is used appropriately.

§ 630.1107 Governmentwide transfer of emergency leave.

(a) If an agency does not receive sufficient amounts of donated annual leave to meet the needs of approved emergency leave recipients within the agency, the agency may contact OPM for assistance. The agency must notify OPM of the total amount of donated annual leave needed for transfer to its approved emergency leave recipients. OPM will solicit and coordinate the transfer of donated annual leave from other Federal agencies to affected agencies who may have a shortfall of donated annual leave. OPM will determine the period of time for which donations of accrued annual leave may be accepted for transfer to affected agencies.

(b) Each Federal agency contacted by OPM for the purpose of providing donated annual leave to an agency in need will—

(1) Approve leave donors under the conditions specified in § 630.1106(a) and (b) and determine how much donated annual leave is available for transfer to an affected agency;

(2) Maintain records on the amount of leave donated by each emergency leave donor to the emergency leave transfer program (for the purpose of restoring unused transferred annual leave under § 630.1108(c));

(3) Report the total amount of annual leave donated to the emergency leave transfer program to OPM; and

(4) When OPM has accepted the donated annual leave, debit the amount of annual leave donated to the emergency leave transfer program from each emergency leave donor's annual leave account.

(c) OPM will notify each affected agency of the aggregate amount of donated annual leave that will be credited to the agency for transfer by the agency to its approved emergency leave recipient(s). The affected agency will determine the amount of donated annual leave to be transferred to each emergency leave recipient (an amount that may vary according to individual needs).

(d) The affected agency must credit the annual leave account of each approved emergency leave recipient as soon as possible after the date OPM notifies the agency of the amount of donated annual leave that will be credited to the agency under paragraph (b) of this section.

(e) Any annual leave donated to an emergency leave transfer program that is not used by the approved emergency leave recipients will be returned by OPM to the donating agencies for restoring to their emergency leave donors under § 630.1108(b). The donating agencies must determine the amount of donated annual leave to be returned to each of their emergency leave donors consistent with the provisions in § 630.1108(c).

§ 630.1108 Termination of disaster or emergency.

(a) The disaster or emergency affecting an emergency leave recipient terminates—

(1) When the employing agency or OPM determines that the disaster or emergency has terminated;

(2) When the emergency leave recipient's Federal service terminates;

(3) At the end of the biweekly pay period in which the emergency leave recipient, or his or her personal representative, notifies the employing agency that he or she is no longer affected by such disaster or emergency;

(4) At the end of the biweekly pay period in which the employing agency determines, after written notice from the agency and an opportunity for the emergency leave recipient or his or her personal representative to answer orally or in writing, that the emergency leave recipient is no longer affected by such disaster or emergency; or

(5) At the end of the biweekly pay period in which the emergency leave recipient's employing agency receives notice that OPM has approved an application for disability retirement for the emergency leave recipient under the

Civil Service Retirement System or the Federal Employees' Retirement System, as appropriate.

(b) When a disaster or emergency affecting an emergency leave recipient is terminated, any annual leave donated to an emergency leave transfer program that is not used by an approved emergency leave recipient must be returned to the emergency leave donors. The amount of remaining annual leave to be returned to each emergency leave donor must be proportional to the amount of annual leave donated by the employee to the emergency leave transfer program for such disaster or emergency. Annual leave donated to an emergency leave transfer program for a specific disaster or emergency may not be transferred to another emergency leave transfer program established for a different disaster or emergency.

(c) Under procedures established by the donating agency, the agency will determine the amount of annual leave returned under paragraph (b) of this section to be restored to each of the emergency leave donors who, on the date leave restoration is made, is employed by a Federal agency. At the election of the emergency leave donor, unused transferred annual leave restored to the emergency leave donor may be restored by—

(1) Crediting the restored annual leave to the emergency leave donor's annual leave account in the current leave year; or

(2) Crediting the restored annual leave to the emergency leave donor's annual leave account effective as of the first day of the following leave year.

§ 630.1109 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

5. In the newly redesignated subpart M, for each section indicated in the left column, the citations in the middle column are removed wherever they appear in the section, and the citations in the right column are added to read as follows:

§§ 630.1304, 630.1308, and 630.1309 [Amended]

Section	Remove	Add
630.1304	§ 630.1109(b)(1)	§ 630.1309(b)(1)
630.1308	§ 630.1107	§ 630.1307
630.1309	§ 630.1104(c)	§ 630.1304(c)
630.1309	§ 630.1103(b)	§ 630.1303(b)

[FR Doc. 99–33361 Filed 12–23–99; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–A125

Retirement; Technical Amendment

AGENCY: Office of Personnel Management.

ACTION: Amendment to interim regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending the October 4, 1999, interim regulations concerning voluntary early retirement authority. The amendment removes paragraphs from 5 CFR 831.114 and 842.213 which were inadvertently retained when the interim regulations were published.

DATES: These regulations are effective October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Gray at (202) 606–0960, FAX (202) 606–2329, e-mail cwgray@opm.gov.

SUPPLEMENTARY INFORMATION

Background

On October 4, 1999, OPM published interim regulations (64 FR 53581) which (1) Removed the September 30, 1999, sunset date for agencies to request voluntary early retirement authority, and (2) Made the regulations at 5 CFR 831.114 and 842.213 permanent. Comments on these interim regulations are due on December 3, 1999. However, 5 CFR 831.114(i) and 842.213(i), were inadvertently retained. They make reference to the September 30, 1999, sunset date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations only affect Federal employees.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The general notice of proposed rulemaking and delay in the effective date are being waived because the technical amendment to these regulations allows OPM to fully implement statutory language in Sec. 651 of the Treasury and General Government Appropriations Act for Fiscal Year 2000 governing voluntary early retirements which was effective May 1, 1998, and to give full effect to benefits extended by that statute.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 831 and 842 of title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also

issued under 5 U.S.C. 552a; § 831.114 also issued under 5 U.S.C. 8336(d)(2) and section 7001 of Pub. L. 105–174, 112 Stat. 58, as amended by section 651 of Pub. L. 106–58, 113 Stat. 430; § 831.201(b)(1) also issued under 5 U.S.C. 8347(g); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; § 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; § 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. P. 317; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; § 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; subpart L also issued under 5 U.S.C. 8337; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

§ 831.114 [Amended]

2. In § 831.114, paragraph (i) is removed.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; § 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; § 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 7001 of Pub. L. 105–174, 112 Stat. 58, as amended by section 651 of Pub. L. 106–58, 113 Stat. 430; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; § 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; § 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104.

Subpart B—Eligibility

§ 842.213 [Amended]

4. In § 842.213, paragraph (i) is removed.

[FR Doc. 99–33365 Filed 12–23–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AB19

Child and Adult Care Food Program: Overclaim Authority and Technical Changes to the Meal Pattern Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Child and Adult Care Food Program (CACFP) regulations to explicitly authorize the Department and State agencies to assess overclaims against institutions that fail to abide by CACFP recordkeeping requirements. This authority has been successfully challenged in past judicial rulings on the grounds that such authority was not specifically established in program regulations. This rule affirms the Department's authority to assess overclaims for recordkeeping infractions, and clarifies any regulatory ambiguities or inconsistencies regarding overclaims authority. In addition, this rule makes minor changes to the meal pattern requirements. These changes include a technical correction to the supper meal pattern for adults; a modification to the egg and meat/meat alternate equivalencies in the meal patterns to conform to the standards used in the National School Lunch Program and the School Breakfast Program; and a correction to the infant meal pattern to remove an erroneous footnote for breakfast for infants 8 through 11 months.

EFFECTIVE DATE: The amendment to § 226.20(b)(4) is effective December 15, 1999. The remaining provisions are effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie or Ms. Melissa Rothstein, 703–305–2620.

SUPPLEMENTARY INFORMATION:

Background

The CACFP is authorized by section 17 of the National School Lunch Act (42 U.S.C. 1766). As discussed in the preamble to the proposed rule published in the **Federal Register** on December 5, 1995 (60 FR 62227), section 17(m) of that Act stipulates that "States and institutions participating in the program under this section shall keep accounts and records as may be necessary to enable the Secretary (of Agriculture) to determine whether there has been compliance with the requirements of this section."

Furthermore, the current CACFP regulations at 7 CFR Part 226 include a number of requirements relating to recordkeeping: § 226.7(m) requires State agencies to establish standards for institutional recordkeeping; § 226.15(e) prescribes the minimum recordkeeping requirements for institutions in the CACFP; § 226.10(c) requires institutions to certify that records are available to support reimbursement claims; and § 226.10(d) establishes timeframes for record retention. In addition, § 226.6(f)(1) requires that the Program agreement between the State agency and each institution stipulate that the institution must agree to comply with all regulatory requirements, including these recordkeeping requirements. Finally, the importance with which the Department views an institution's recordkeeping responsibilities is found in § 226.6(c)(4), where failure to maintain adequate records is specifically listed as a serious deficiency for which termination of an institution's participation may be appropriate.

The December 5, 1995, rulemaking proposed to amend various sections of the CACFP regulations to clarify that failure to adhere to CACFP recordkeeping requirements may be used as a basis for State agencies to assess overclaims against institutions. The Department received a total of 12 comments from the public on the proposed rule. Eleven comments were from State administering agencies; one

was from a sponsoring organization of Head Start centers that participate in the CACFP. Four State agencies provided comments supporting the proposal without changes. The remaining commenters were generally in support of the proposal with minor recommended changes. These comments and the Department's responses to them are discussed in further detail in this preamble.

Response to Comments on Proposed Rule

The December 5, 1995, rulemaking proposed to amend § 226.15(e) to require that "Each institution shall establish procedures to collect and maintain all necessary program records." One commenter suggested that the phrase be changed to "* * * all necessary program and financial records" in order to alleviate uncertainties as to the type of records required. Another commenter indicated that the use of the word "necessary" is subjective and open to interpretation by program participants, State agencies, appeals officers and the courts, and recommended clarifying language to minimize the need for interpretation of what records are needed.

In response to these comments, we are adding language to the regulation to clarify that necessary Program records include all records required under Part 226, as well as any additional records required by the State agency. This would include financial records.

Proposed § 226.15(e) further stated that, "Failure to maintain such records shall be grounds for denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records." One State agency expressed concern that use of the word "shall" in this section, and similarly in §§ 226.16(e), 226.17(c), 226.19(c) and 226.19a(c), would require a State agency to recover funds for missing documents, such as training documentation, that do not directly influence a claim for reimbursement. The commenter recommended that the word "may" be substituted for the word "shall" in the proposed sections mentioned. Our intent in using the word "shall" in the proposed language was to provide State agencies with very clear authority to assess an overclaim when an institution's records do not support its claim for reimbursement. We believe that a State agency's authority to assess overclaims could be diminished if these suggested changes are made. Therefore, this final rule retains the proposed language in §§ 226.16(e), 226.17(c), 226.19(c) and 226.19a(c).

In addition, proposed § 226.14(a) stated that "State agencies may consider claims for reimbursement not properly payable if an institution does not comply with the recordkeeping requirements contained in this part." This proposed revision was intended to provide State agencies with the needed flexibility to determine the grounds for assessing an overclaim against an institution. Taken together, this proposed revision and the proposed revisions to §§ 226.16(e), 226.17(c), 226.19(c) and 226.19a(c) discussed above were meant to provide State agencies with both the authority and the flexibility to assess overclaims against institutions when they determine it is appropriate to do so. Nevertheless, we believe that the proposed language in § 226.14(a) may not provide enough specificity with regard to situations in which State agencies must assess overclaims. Therefore, this final rule adds a sentence to § 226.14(a) to require State agencies to assess overclaims in situations in which institutions fail to comply with recordkeeping requirements for records that pertain to records directly supporting claims for reimbursement. These records include, but are not limited to, daily meal counts, documentation of compliance with meal patterns, and enrollment and attendance records.

The December 5 rulemaking proposed to amend § 226.15(e) by adding new paragraphs (e)(10) and (e)(12) to the list of the minimum records that must be collected and maintained by institutions. These paragraphs were previously located in § 226.16(e)(1) and (2), "Sponsoring Organization Provisions." One commenter questioned the proposed language for paragraph (e)(10), which states that institutions must collect and maintain "Information concerning the dates and amounts of disbursement to each child care facility or adult day care facility with which it has a program agreement." The commenter correctly pointed out that current regulations do not explicitly require sponsoring organizations to enter into program agreements with the day care centers that they sponsor, though many do. Rather, only sponsoring organizations of day care homes, in accordance with § 226.18(b), must enter into these program agreements. To correct this oversight, this final rule amends § 226.15(e)(10) by clarifying that the information must be collected and maintained by the institution for "each child care facility or adult day care facility under its auspices."

Another commenter pointed out that proposed paragraphs (e)(10) and (e)(12) of § 226.15 do not pertain to all institutions, but only to sponsoring organizations. To provide the necessary clarification, this final rule adds the words "If applicable" before each of these paragraphs.

Accordingly, § 226.15(e) is amended in this final rule as discussed above.

Proposed § 226.16(e) stated that, "Each sponsoring organization shall comply with the recordkeeping requirements established in § § 226.10(d) and 226.15(e) and any recordkeeping requirements established by the State agency * * *" One commenter indicated that the proposed language is not strong enough to establish the authority of a State agency to set definitive and enforceable recordkeeping requirements. The commenter suggested clarifying this section to emphasize in § 226.16(e) that all of the additional recordkeeping requirements established by a State agency as part of its financial management responsibilities are covered under this section. However, an amendment to § 226.16(e) is unnecessary since authority for a State agency to establish additional recordkeeping requirements that exceed the minimum requirements in Part 226 already exists in current regulations under § 226.25(b). Therefore, no change is being made to § 226.16(e) in this final rule.

Proposed § 226.18(g) indicated that day care homes "shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section." One commenter correctly pointed out that day care homes are not subject to the requirements of § 226.15, "Institution provisions," since day care homes do not meet the definition of an "institution." Rather, sponsoring organizations of day care homes are "institutions" which are subject to the requirements of § 226.15. As suggested by the commenter, the intent of the proposed change, to ensure that the regulations underscore State agencies' authority to assess overclaims against day care homes that do not comply with all recordkeeping requirements, is still accomplished by deleting reference to this section. Accordingly, this final rule removes the inappropriate reference to § 226.15(e) in § 226.18(g), but retains the remainder of the paragraph as proposed.

Similarly, proposed §§ 226.17, 226.19 and 226.19a contain language requiring that child care centers, outside-school-hours care centers, and adult day care centers comply with the recordkeeping

requirements of § 226.15(e). However, the requirements of § 226.15, "Institution provisions," would not be applicable to those centers operating under the auspices of a sponsoring organization. Accordingly, this final rule amends §§ 226.17(c), 226.19(c), and 226.19a(c) to add the words "if applicable" to the requirement to comply with § 226.15(e). As a general comment, a State agency commenter recommended that, in addition to requiring maintenance of records, the regulations be further amended to require institutions to make records available upon request. This change is unnecessary since § 226.10(d) of current regulations already requires that "All accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place."

Proposed § 226.14(a) indicates that a claim for reimbursement can be considered "not properly payable" if an institution does not comply with program recordkeeping requirements. Similarly, proposed §§ 226.15(e), 226.16(e), 226.17(c), 226.18(g), 226.19(c), and 226.19a(c) indicate that "Failure to maintain such records shall be grounds for the denial of reimbursement * * *" For clarification, one commenter recommended amending the proposed language of § 226.14(a) to include after the words "not properly payable," the words "or assessed as an overclaim." The commenter also recommended adding similar language to the end of each of the sections listed above. We believe the proposed regulations are sufficiently clear and that the suggested rewording is unnecessary. Therefore, we are not making the suggested change in this final rule.

One commenter was opposed to State agencies having the authority to assess overclaims for meals already served to income-eligible children. We want to point out, however, that the service of meals to eligible children cannot be demonstrated unless institutions and facilities maintain the records necessary to document such service.

Finally, a commenter remarked that State agencies would benefit from the authority to recover funds for undocumented, allowable costs claimed and reimbursed. This authority already exists, and is contained in 7 CFR Part 3015 and OMB Circulars A–87 and A–122, which require all costs claimed be properly documented.

Other Comments on the Proposed Rule

The Department also received several comments which are generally related to recordkeeping, but that fall outside the scope of this rulemaking. For example, one commenter recommended that, in addition to assessment of an overclaim, another possible consequence of insufficient recordkeeping should be denial of application renewal. Another commenter suggested that CACFP should have an overpayment disregard amount consistent with the National School Lunch Program, and that meal production records should be required of institutions and facilities to enable monitoring of food quantities as well as components. We cannot address these issues as part of this final rule. However, a forthcoming proposed rule on Improving Management and Program Integrity in CACFP may address them.

Technical Corrections to the Adult Meal Pattern

This rule amends § 226.20(c)(3) to restore 8 footnotes under the supper meal pattern chart that were inadvertently eliminated in a previous final rulemaking on the CACFP adult meal pattern requirements.

We published a proposed rule on August 27, 1990 (55 FR 34935) that introduced separate meal patterns for lunch and for supper for adults. The proposed meal pattern requirements were developed based on the Department's evaluation of the nutritional requirements specific to adults attending adult day care centers participating in CACFP. The proposed meal pattern requirements were to replace those that had been established in an earlier interim rulemaking.

The final rule published on July 14, 1993 (58 FR 37847) adopted without change the adult meal patterns from the 1990 proposed rule. (We encourage readers to consult the July 14, 1993, publication for a complete discussion on the comments received concerning the proposed adult meal.) Unfortunately, the final rule inadvertently eliminated all footnotes for the supper meal pattern due to a technical error in the amendatory language. This final rule restores the eight footnotes for the supper meal pattern as set forth in the 1990 proposed rule.

Changes to the Meal Patterns for Egg and Meat/Meat Alternate Equivalencies

Finally, minor adjustments are made in this rulemaking to the equivalencies for eggs and meat/meat alternates in the lunch, supper, and supplemental meal pattern requirements in § 226.20(c), and to the additional food allowed to be served at breakfast, described in § 226.20(d).

These changes are made to reduce confusion and establish consistency among the meal pattern requirements for the Child Nutrition Programs. As currently provided in the regulations for the National School Lunch Program (NSLP) at § 210.10(k)(2), and the School Breakfast Program (SBP) regulations at § 220.8(g)(iii)(B)(2), the equivalencies for egg and meat/meat alternates for the CACFP will be: one large egg meets the requirement for 2 ounces of meat/meat alternate; one-half large egg meets the requirement for 1 ounce or less of meat/meat alternate. In addition to the changes made to the equivalency amounts, the size of the egg (large) as specified in the NSLP and SBP regulations will also be specified in the CACFP meal patterns. Similar conforming changes will also be made to the Summer Food Service Program in the near future. We believe that this change, though minor in scope, increases consistency in the standards across Child Nutrition Programs. It should also eliminate any confusion that variable equivalencies among the Child Nutrition Programs may have caused.

Correction to the Infant Meal Pattern

This final rule also amends the CACFP infant meal pattern at § 226.20(b)(4) to correct an error that occurred in the interim rule, "National School Lunch Program, School Breakfast Program and Child and Adult Care Food Program: Amendments to the Infant Meal Pattern," published in the **Federal Register** on November 15, 1999 (64 FR 61770). The table that appeared in the **Federal Register** erroneously included a footnote which indicated that infant cereal is an optional component for breakfast for infants 8 through 11 months. This final rule removes this erroneous footnote to ensure that there is no confusion regarding the requirement that infant cereal be included as a component for breakfast for infants 8 through 11 months. We want to emphasize that no change was made in the interim rule to § 226.20(b)(3)(i), where the requirement to serve infant cereal to these children is established.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. There will be no significant impact because this rule represents only a clarification of current procedures, or only minor changes or corrections in the case of the technical amendments to the meal pattern requirements.

Executive Order 12372

CACFP is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

This final rule contains no new information collection requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), current reporting and recordkeeping requirements for Part 226 were approved by the Office of Management and Budget under Control Number 0584–0055.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments. In the CACFP, the administrative procedures are set forth at: (1) 7 CFR 226.6(k), which establishes institution appeal procedures; and (2) 7 CFR 226.22 and 7 CFR 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Food and Nutrition Service generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.14, the introductory text of paragraph (a) is amended by adding three new sentences after the first sentence to read as follows:

§ 226.14 Claims against institutions.

(a) * * * State agencies may consider claims for reimbursement not properly payable if an institution does not comply with the recordkeeping requirements contained in this part. In addition, except with approval from the appropriate FNSRO, State agencies shall consider claims for reimbursement not payable when an institution fails to comply with the recordkeeping requirements that pertain to records directly supporting claims for reimbursement. Records that directly support claims for reimbursement include, but are not limited to, daily meal counts, menu records, and enrollment and attendance records, as required by § 226.15(e). * * *

* * * * *

3. In § 226.15:

a. The introductory text of paragraph (e) is revised;

b. Paragraphs (e)(10), (e)(11) and (e)(12) are redesignated as paragraphs (e)(11), (e)(13) and (e)(14), respectively;

c. New paragraphs (e)(10) and (e)(12) are added;

d. Newly redesignated paragraph (e)(11) is amended by removing the word "and" at the end of the paragraph;

e. Newly redesignated paragraph (e)(13) is amended by adding the word "and" after the semicolon at the end of the paragraph; and

f. Newly redesignated paragraph (e)(14) is amended by removing the words "Maintain documentation" and adding the word "Documentation" in their place.

The additions and revision specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) *Recordkeeping.* Each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records. At a minimum, the following records shall be collected and maintained:

* * * * *

(10) If applicable, information concerning the dates and amounts of disbursement to each child care facility or adult day care facility under its auspices;

* * * * *

(12) If applicable, information concerning the location and dates of each child care or adult day care facility review, any problems noted, and the corrective action prescribed and effected;

* * * * *

4. In § 226.16, paragraph (e) is revised to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(e) Each sponsoring organization shall comply with the recordkeeping requirements established in § § 226.10(d) and 226.15(e) and any

recordkeeping requirements established by the State agency in order to justify the administrative payments made in accordance with § 226.12(a). Failure to maintain such records shall be grounds for the denial of reimbursement.

* * * * *

5. In § 226.17, a new paragraph (c) is added to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(c) Each child care center shall comply with the recordkeeping requirements established in § 226.10(d), in paragraph (b) of this section and, if applicable, in § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

6. In § 226.18, a new paragraph (g) is added to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(g) Each day care home shall comply with the recordkeeping requirements established in § 226.10(d) and in this section. Failure to maintain such records shall be grounds for the denial of reimbursement.

7. In § 226.19, a new paragraph (c) is added to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(c) Each outside-school-hours care center shall comply with the recordkeeping requirements established in § 226.10(d), in paragraph (b) of this section and, if applicable, in § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

8. In § 226.19a, a new paragraph (c) is added to read as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(c) Each adult day care center shall comply with the recordkeeping requirements established in § 226.10(d), in paragraph (b) of this section and, if applicable, in § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

9. In § 226.20:

a. The "Child Care Infant Meal Pattern" table in paragraph (b)(4) is revised.

b. The table in paragraph (c)(2) is amended by revising the entry for "Eggs";

c. The table in paragraph (c)(3) is amended by revising the headings and the entry for "Eggs", and by adding eight footnotes.

d. The table in paragraph (c)(4) is amended by revising the headings and the entry for "Eggs"; and

e. Paragraph (d)(1) is amended by removing the words "an egg" and adding in their place the words "one-half egg".

The revisions and additions read as follows:

§ 226.20 Requirements for meals.

* * * * *

(b) * * *

(4) * * *

CHILD CARE INFANT MEAL PATTERN

	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast	4–6 fl.oz. formula [1] or breast milk [2,3].	4–8 fl.oz. formula [1] or breast milk [2,3];. 0–3 Tbsp. Infant cereal [1,4] 0–3 Tbsp. Fruit and/or vegetable [4].	6–8 fl.oz. formula [1] or breast milk [2,3]; and 2–4 Tbsp. Infant cereal [1]; and 1–4 Tbsp. Fruit and/or vegetable
Lunch or supper	4–6 fl.oz. formula [1] or breast milk [2,3].	4–8 fl.oz. formula [1] or breast milk [2,3];. 0–3 Tbsp. Infant cereal [1,4]; 0–3 Tbsp. Fruit and/or vegetable [4].	6–8 fl.oz. formula [1] or breast milk [2,3]; and 2–4 Tbsp. Infant cereal [1]; and/or 1–4 Tbsp. Meat, fish, poultry, egg yolk, cooked dry beans, or peas; or ½–2 oz. Cheese; or 1–4 Tbsp. Cottage cheese, cheese food, or cheese spread; and 1–4 Tbsp. Fruit and/or vegetable
Supplement (snack)	4–6 fl.oz. formula [1] or breast milk [2,3].	4–6 fl.oz. formula [1] or breast milk [2,3].	2–4 fl.oz. formula [1], breast milk [2,3], or fruit juice [5]; 0–½ bread [4,6] or 0–2 crackers [4,6]

[1] Infant formula and dry infant cereal shall be iron-fortified.
[2] It is recommended that breast milk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.
[4] A serving of this component shall be optional.
[5] Fruit juice shall be full-strength.
[6] Bread and bread alternates shall be made from whole-grain or enriched meal or flour.

(c) * * *

(2) * * *

LUNCH

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
* * * * *				
Eggs (large)	½ egg	¾ egg	1 egg	1 egg
* * * * *				

* * * * *

(3) * * *

SUPPER

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
* * * * * * *				
Eggs (large)	½ egg	¾ egg	1 egg	1 egg
* * * * * * *				

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 through 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour.
[5] Serving size equivalents to be published in guidance materials by FNS.
[6] Edible portion as served.
[7] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[8] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For the purpose of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry, or fish.

SUPPLEMENTAL FOOD

(4) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
* * * * * * *				
Eggs (large)	½ egg	½ egg	½ egg	½ egg
* * * * * * *				

* * * * * * *

Dated: December 16, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33180 Filed 12–23–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 99–100–1]

Export Certification; Heat Treatment of Solid Wood Packing Materials Exported to China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the export certification regulations to provide for the establishment of a program under which softwood (coniferous) packing materials used with goods exported from the United States may be certified as having been heat treated. This program is necessary because the Government of the People's Republic of China has established a requirement that coniferous packing materials exported to China must be accompanied by such certification. This change will affect persons who use coniferous packing materials to export goods from the United States to the People's Republic of China.

DATES: This interim rule is effective December 17, 1999. We invite you to comment on this docket. We will consider all comments that we receive by February 25, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–100–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–100–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Caplen, Economist/Policy Analyst, Policy and Program Development, APHIS, 4700 River Road Unit 119, Riverdale, MD 20737–1236; (301) 734–8537.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted.

Since 1975, APHIS has participated with State governments in the

Cooperative Phytosanitary Export Certification Program, which allows certain State and county officials, as well as APHIS officials, to issue phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. Because the number of Federal inspectors is limited, the use of State and county inspectors is a considerable service to exporters of plants and plant products in terms of both time and convenience.

The Government of the People's Republic of China has established requirements concerning importation of softwood (coniferous) packing materials from the United States in order to prevent the introduction into China of plant pests, specifically the pinewood nematode. This nematode is indigenous to North America and has caused significant damage to conifer forests in Asia.

Effective January 1, 2000, the Government of the People's Republic of China will require goods from the United States to be accompanied either by a statement from the exporter that the shipment does not contain any coniferous packing material or by a certificate signed by a representative of the United States Department of Agriculture (USDA) attesting that the coniferous packing materials in the shipment have been heat treated by being subjected to a minimum core temperature of 56 °C for 30 minutes.

In response to this requirement, we have developed a new certificate of heat treatment and procedures for issuing it to exporters who need to heat treat their packing materials in order to ship goods to China. This new certificate of heat treatment, PPQ Form 553, is divided into two parts and serves as both a certification by the exporter that the required heat treatment was performed and USDA endorsement of industry compliance with the certification requirements.

In the first part of the form, the exporter provides the name and address of both the exporter and the consignee and a description of the consignment. The exporter also signs a statement on the form certifying that the coniferous packing material in the shipment has been heat treated by being subjected to a minimum core temperature of 56 °C for 30 minutes.

In the second part of the form, an inspector endorses the form by applying an official stamp and signing the form, dating it, and recording the work unit, city, and State where the form was endorsed. This work unit could be either an office of Plant Protection and Quarantine (PPQ), APHIS, or the office of a State or county plant protection cooperator that has been designated by the Secretary of Agriculture to certify shipments of plant products for export in accordance with 7 CFR part 353.

This two-part form is designed to simplify the process of obtaining certification of heat treatment and to minimize the paperwork burden for both exporters and inspectors. We plan to make PPQ Form 553 widely available, via the Internet and other means, so that exporters can obtain it without difficulty. We are also engaged in a public outreach to ensure that exporters are aware of the new certification requirement of the Government of the People's Republic of China and to inform exporters as to how they can obtain PPQ Form 553 and where to submit it to an inspector for endorsement. Persons interested in determining the locations of inspectors who can accept and process PPQ Form 553 can find a list of PPQ offices at http://www.aphis.usda.gov/travel/aqi and a list of cooperating State offices at http://www.aphis.usda.gov/npb/npbmemb.

It should be noted that the regulations prior to this interim rule have allowed for industry-issued certification that a plant product has been handled, processed, or inspected in a manner required by a foreign government to be used in lieu of PPQ certification forms. However, the certification requirements of the People's Republic of China do not recognize industry-issued certificates to certify that coniferous packing material has been heat treated. Only PPQ Form 553 will be accepted by the People's Republic of China for this purpose.

In § 353.1 of the regulations, we are defining *certificate of heat treatment* as "A certificate (PPQ Form 553) issued by an inspector endorsing the statement of an exporter that the coniferous packing materials associated with a shipment for export have been heat treated by being subjected to a minimum core temperature of 56 °C for 30 minutes."

Section 353.5 of the regulations describes how to apply for certification under part 353 and states that applicants must apply using PPQ Form 572. We are adding to this section that applicants for a certificate of heat treatment must submit PPQ Form 553 instead.

Section 353.7 of the regulations describes the processing procedures for the various certificates issued in accordance with part 353. We are adding a new paragraph (e) describing the procedures for the new certificate of heat treatment. This paragraph instructs the exporter or his or her representative to complete blocks 1 through 4 of PPQ Form 553 and submit the original form and one copy to an inspector, who will complete and sign both the original form and the copy. The original certificate of heat treatment will then be delivered or mailed to the applicant or a person designated by the exporter. One copy of each certificate will be kept on file in the office of the inspector who endorses it. The exporter or his or her representative must also keep on file at his or her office a copy of each certificate issued in his or her name, as well as documentation showing that heat treatment was performed on packing materials in the shipment referred to in the certificate. The exporter or his or her representative must make these documents available to an inspector upon request for a period of 1 year following the date of issuance of the certificate.

We anticipate that some exporters will apply for a certificate of heat treatment at APHIS or cooperating State offices at or near the port from which they intend to export their goods to China, while others will apply to offices located near the place of origin of the goods, or at intermediate locations where goods are packed and assembled for shipment. We intend to make inspectors available to issue certificates of heat treatment at many different locations in order to accommodate exporter needs and to avoid overwhelming our port offices with new work. Section 353.3 of the current regulations advises our customers on how to contact an APHIS regional office to learn where they can apply for export certificates. We have also established a web page, currently http://www.aphis.usda.gov/oa/chinaswp/hotbutton, where exporters can obtain copies of PPQ Form 553 and other information about this program.

Removal of Authority Citation

In the authority citation for part 553, we are removing the reference to 44 U.S.C. 35 because that section has been repealed.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to provide a means for U.S. exporters to obtain certificates that the Government of the People's Republic of China will require to accompany certain shipments of U.S. goods to China as of January 1, 2000.

Because prior notice and other public procedures with respect to this action

are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule will have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0147 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 99–100–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. Please state that your comments refer to Docket No. 99–100–1, and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to provide for the establishment of a program under which softwood (coniferous) packing materials, used with goods exported from the United States to China, may be certified as having been heat treated. This program is necessary because the Government of the People's Republic of China has established a requirement that coniferous packing materials imported from the United States must be accompanied by such certification. Exporters shipping goods to China that are accompanied by coniferous packing materials will have to complete a new PPQ Form 553 and submit it to an inspector for endorsement and maintain for 1 year at their offices a copy of each certificate issued. Exporters or their agents will also have to keep on file for 1 year at their offices documentation from heat treatment facilities showing that the heat treatment certified by each certificate was performed. Each exporter or his or her representative will have to make copies of these documents available to inspectors upon request.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden and recordkeeping for this collection of information is estimated to average 1 minute per response.

Respondents: Exporters and their representatives or brokers who export commercial shipments packed in coniferous solid wood packing materials to the People's Republic of China.

Estimated annual number of respondents: 6,500.

Estimated annual number of responses per respondent: 25.

Estimated annual number of responses: 162,500.

Estimated total annual burden on respondents: 2,808 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 353 is amended as follows:

PART 353—EXPORT CERTIFICATION

1. The authority citation for part 353 is revised to read as follows:

Authority: 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In 353.1, a definition of *Certificate of heat treatment* is added, in alphabetical order, to read as follows:

353.1 Definitions.

* * * * *

Certificate of heat treatment. A certificate (PPQ Form 553) issued by an inspector endorsing the statement of an exporter that the coniferous packing materials associated with a shipment for export have been heat treated by being subjected to a minimum core temperature of 56 °C for 30 minutes.

* * * * *

§ 353.2 [Amended]

3. In § 353.2, the phrase "or an export certificate for processed plant products (PPQ Form 578)," is removed and the phrase "an export certificate for processed plant products (PPQ Form 578), or a certificate of heat treatment (PPQ Form 553)" is added in its place.

§ 353.5 [Amended]

4. Section 353.5 is amended as follows:

a. In paragraph (a), the phrase "(PPQ Form 572)" is removed and the phrase "(PPQ Form 572, or, to obtain a certificate of heat treatment, PPQ Form 553)" is added in its place, and the word "certification." is removed and the phrase "certification, except that, for

PPQ Form 553, the office of inspection need not be a port." is added in its place.

b. In paragraph (b), the phrase "at the port of certification" is removed.

5. In § 353.7, new paragraph (e) is added to read as follows:

§ 353.7 Certificates.

* * * * *

(e) *Certificate of heat treatment (PPQ Form 553).* For each consignment containing coniferous packing materials for which certification is requested, the exporter or his or her representative shall complete blocks 1 through 4 of PPQ Form 553 and submit the original form and one copy to an inspector. The inspector shall complete and sign both the original form and the copy.

(2) The original certificate of heat treatment shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection.

(4) The exporter or his or her representative must keep on file at his or her office a copy of each certificate issued in his or her name, and documentation showing that heat treatment was perfomed on packing materials in the shipment referred to in the certificate, and make these documents available to an inspector upon request, for a period of 1 year following the date of issuance of the certificate.

(Approved by the Office of Management and Budget under control number 0579–0052)

Done in Washington, DC, this 17th day of December 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33422 Filed 12–23–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV99–955–1 FIR]

Vidalia Onions Grown in Georgia; Fiscal Period Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the fiscal period under the Vidalia onion marketing order (order) to January 1–December 31 from September 16–September 15. It also extends the current fiscal period which began September 16, 1998, through December 31, 1999. The order is administered locally by the Vidalia Onion Committee (Committee), which recommends its program expenses on a fiscal period basis. An assessment rate, levied on fresh Vidalia onion shipments, is established to pay those expenses. When the former fiscal period was established, it coincided with the Vidalia onion marketing season which ran from April through June. Due largely to the use of Controlled Atmosphere (CA) storage, Vidalia onions are now shipped through the fall. This action will continue to make the fiscal period consistent with the current marketing season.

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955) regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect modifications to the language in the order's administrative rules and regulations which changed the fiscal period to January 1 through December 31, making it consistent with the current Vidalia onion marketing season. It also continues to extend the 1998–99 fiscal period, formerly September 16, 1998, through September 15, 1999, through December 31, 1999. Therefore, this rule better reflects current industry practice. These changes were unanimously recommended by the Committee at its November 19, 1998, meeting.

Section 955.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. The order also provides that these expenses be paid by assessments levied on fresh shipments of Vidalia onions. The Committee prepares an annual budget of expenses and recommends an appropriate assessment rate on a fiscal year basis. Section 955.13 of the order defines "fiscal period" to mean September 16 through September 15 of the following year, or such other period that may be recommended by the Committee and approved by the Secretary.

When the order was first issued in 1989, the harvesting and marketing season for Vidalia onions ran from April through June. The September 16 through September 15 fiscal period thus covered the entire marketing season and was appropriate for budget planning purposes. Over the past decade, changes in the industry have extended the marketing season. In particular, the adoption of Controlled Atmosphere (CA) storage by three-fourths of the handlers has allowed them to economically store Vidalia onions

through December. While there are some added storage costs and losses due to shrinkage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

The Committee's budget for 1998–99 (September 16–September 15) was $373,577, and the assessment rate was set at 7 cents per 50-pound bag. Major expenses included $131,600 for marketing and promotion, $75,000 for research, $135,127 for administrative expenses, and $31,850 for compliance. It is appropriate that the Committee plan and finance its activities consistent with the Vidalia onion marketing season.

The Committee will begin operating under the revised fiscal period on January 1, 2000. This rule, therefore, also continues to extend the current fiscal period through December 31, 1999. This will provide for continuous operation of the program. Based on the interim final rule, the Committee increased its budgeted expenses from $373,577 to $475,577 to cover the 3½ months being added to the 1998–99 fiscal period. Budgeted expenses for the major expenditures during 1998–99 (including the 3½ month extension are $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research projects.

The fiscal period change is designed to improve the functioning and operation of the program. The majority of handlers maintain their business records on a calendar year basis. Therefore, this rule will better reflect current industry practices.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 91 handlers of Vidalia onions who are subject to regulation under the order and approximately 133 Vidalia onion producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The change in the number of handlers from 86 listed in the interim final rule is based on more recent Committee data.

During the 1996–97 fiscal year, about 14 percent of the handlers shipped about 2,771,000 50-pound bags of Vidalia onions, for an average of about 197,930 bags. The remaining 86 percent of the handlers shipped about 1,262,940 bags, for an average of about 14,685 bags. Using an average f.o.b. price of $12.80 per bag, the majority of handlers could be considered small businesses under SBA's definition. Likewise, the majority of Vidalia onion growers may be classified as small businesses.

Section 955.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. The order also provides that these expenses be paid by assessments levied on fresh shipments of Vidalia onions. The Committee prepares an annual budget of expenses and recommends an appropriate assessment rate on a fiscal year basis. Section 955.13 of the order defines "fiscal period" to mean September 16 through September 15 of the following year, or such other period that may be recommended by the Committee and approved by the Secretary.

This rule continues in effect the action which changed the fiscal period to January 1 through December 31, making it consistent with the current Vidalia onion marketing season. It also continues to extend the 1998–99 fiscal period, formerly September 16, 1998, through September 15, 1999, through December 31, 1999. These changes were unanimously recommended by the Committee at its November 19, 1998, meeting.

When the order was first issued in 1989, the harvesting and marketing season for Vidalia onions ran from April through June. The September 16 through September 15 fiscal period thus covered the entire marketing season and was appropriate for budget and planning purposes. Over the past decade, changes in the industry have extended the marketing season. In particular, the adoption of Controlled Atmosphere (CA) storage by three-fourths of the handlers has allowed them to economically store Vidalia onions through December. While there are some added storage costs and losses due to shrinkage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

The Committee's 1998–99 (September 16–September 15) budget was $373,577, and the assessment rate was set at 7 cents per 50-pound bag. Major expenses included $131,600 for marketing and promotion, $75,000 for research, $135,127 for administrative expenses, and $31,850 for compliance. Budgeted expenses for these items (including the 3–1/2 month extension for 1998–99) are $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research activities. It is appropriate that the Committee plan and finance its activities consistent with the Vidalia onion marketing season.

The Committee will begin operating under the revised fiscal period on January 1, 2000. The interim final rule also extended the current fiscal period through December 31, 1999.

This rule continues in effect the change in the fiscal period which better reflects Committee and handler operations and would not impose any new requirements on Vidalia onion handlers. It could, on the other hand, simplify handler operations by putting the program fiscal period on the same basis as handlers' internal reporting and recordkeeping procedures.

The Committee discussed the alternative of leaving the fiscal period as it previously existed, but unanimously concluded that this change would improve program operations.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 19, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of nine members: eight producers and one public member.

An interim final rule concerning this action was published in the Federal Register on September 3, 1999. Copies of the rule were mailed by the Committee's staff to all Committee

members and Vidalia onion handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended November 2, 1999. No comments were received during the comment period.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 48243, September 3, 1999) will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period which began on September 16, 1998, ends on December 31, 1999; and (2) Handlers are aware of this action and the interim final rule provided a 60-day comment period and no comments were received.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 64 FR 48243 on September 3, 1999, is adopted as a final rule without change.

Dated: December 20, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33508 Filed 12–23–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV00–955 2 IFR]

Vidalia Onions Grown in Georgia; Changing the Term of Office and Nomination Deadlines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the term of office for the Vidalia Onion Committee (Committee), and the time for conducting and submitting Committee nominations under the Vidalia onion marketing order. The marketing order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Committee. This rule changes the term of office from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. It also changes the month for conducting and submitting Committee producer nominations from August to October of each year, and for the public member and alternate member from November 1 to February 15. These changes are expected to improve Committee and program operations.

DATES: Effective January 1, 2000; comments received by January 26, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955) regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 955.21 of the order provides that the term of office for Committee members and alternates begins on September 16, or such other period as the Committee may recommend and the Secretary approves. In addition, § 955.22 provides that the Committee shall hold or cause to be held not later than August 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate member of the Committee which is vacant, or which is about to become vacant. Nominations for members and alternates are required to be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than August 15 of each year; or by such date as may be specified by the Secretary. That section further provides that the producer members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office. The members and alternates serve two-year terms of office and approximately one-half of the total Committee membership is nominated and selected each year.

Nominations for the public member and alternate member are required to be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1, or such other date as may be specified by the Secretary.

An interim final rule was published in the **Federal Register** on September 3, 1999 (64 FR 48243), which changed the fiscal period established under the order to a calendar year basis (January 1–December 31) from September 16–September 15 to more closely coincide with the Vidalia onion marketing season. That interim final rule has been adopted, without change, in a final rule published in this issue of the **Federal Register**. The new fiscal is specified in § 955.113.

Over the past decade, technological changes in the industry, including the adoption of Controlled Atmosphere (CA) storage of Vidalia onions by three-fourths of the industry handlers, have extended the harvesting and marketing season from April through June to an almost year-round basis. While there are some added storage costs and losses due to shrinkage with CA storage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

On September 30, 1999, the Committee unanimously recommended that the term of office continue to be established on the same basis as the fiscal period. This rule changes the term of office from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. The new fiscal period is established in new § 955.121. Also, for the eight members and alternates whose terms of office were scheduled to end on September 15, 1999, their terms of office will continue through December 31, 1999, or until qualified successors are selected. Nominations for those expiring positions already have been submitted to the Department under existing regulations.

The Committee also recommended changes in the times for conducting and submitting Committee producer member and alternate member nominations to maintain the same approximate nomination deadlines as provided currently. The dates will be changed from August 1 and August 15 to October 1 and October 15, respectively, and are specified in new § 955.122. The deadline for submitting nominations to the Secretary for the public member and alternate will be changed from November 1 to February 15 to provide the same amount of time for submitting nominations as currently provided after the newly selected Committee's first meeting sometime after January 1. These changes are expected to improve Committee and program operations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 133 producers of Vidalia onions in the production area and approximately 86 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Georgia Agricultural Statistical Service and committee data, the average price for fresh Vidalia Onions during the 1998–99 season was $15.45 per 50-pound bag, or equivalent and shipments totaled 3,617,017 bags. Many Vidalia onion handlers ship other vegetable products which are not included in the committee data, but would contribute further to handler receipts.

Using the average price, about 97.4 percent of Vidalia Onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia Onion producers and handlers may be classified as small entities.

This rule adds § 955.121 to change the two-year term of office to January 1–December 31 from September 16–September 15 to keep the term of office on a fiscal year basis. It also adds § 955.122 to modify the deadlines when nominations are to be held and reports of the nominations are to be made to the Secretary. The new deadlines provide the same amount of time for conducting and submitting nominations for producer members and alternates and for the public member and alternate as are provided currently. For producer member and alternate members, the time for conducting nominations will be changed from August 1 to October 1, and the time for submitting the nominations to Secretary will be changed from August 15 to October 15. The time for submitting the public member and alternate public member nominations will be changed from November 1 to February 15 for a new term of office. Also, for the eight Committee members and alternates whose terms of office were scheduled to end on September 15, 1999, their terms of office will continue through December 31, 1999, or until qualified successors are selected.

The changes in the term of office and the nomination deadlines should not impose any additional costs on large or small firms in the Vidalia onion industry. The changes merely bring the term of office and the nomination deadlines into conformity with the recent change in the fiscal period which was changed to a calendar year basis (January 1–December 31) from September 16–September 15.

The Committee discussed the alternative of leaving the term of office and nomination deadlines as they are presently. However, the Committee believes that the term of office and nomination deadlines should continue to be based on the fiscal period, which now is established on a calendar year basis.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned

address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the term of office and nomination deadlines currently prescribed under the Vidalia onion marketing order. A comment period of 30 days is deemed appropriate because January 1, 2000, is the beginning of fiscal period established by a separate action and the term of office prescribed by this action corresponds with that date. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The change in the term of office is January 1, 2000, to correspond with the beginning of the fiscal period recently established in a separate action; and (2) a 30-day comment period is provided and all comments received will be considered in finalizing this action.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 955.121 is added to read as follows:

§ 955.121 Change in term of office.

Pursuant to § 955.21, the term of office for the Committee shall be for two years beginning January 1 and ending December 31, except that, the term of office for members and alternates whose terms expired on September 15, 1999, shall end on December 31, 1999, or until qualified successors are selected.

3. A new § 955.122 is added to read as follows:

§ 955.122 Change in nomination deadlines.

Pursuant to § 955.22, the Committee shall hold or cause to be held not later than October 1 of each year a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate of the Committee which is vacant, or about to become vacant. Such nominations shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than October 15 of each year. The grower members shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office. Nominations for the public member and alternate public member shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than February 15.

Dated: December 20, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33509 Filed 12–23–99; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is issuing a final rule that amends its regulation regarding secondary capital accounts in low-income designated credit unions to specify that interest on these accounts may be accrued in the account, paid directly to the investor, or paid into a separate account from which an investor may make withdrawals. The NCUA believes that these amendments will clarify the permissible alternatives and provide additional flexibility for low-income designated credit unions.

DATES: This rule is effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Federal credit unions that serve predominantly low-income members may be designated by NCUA as low-income credit unions (LICUs). LICUs play an important role in providing financial services to low-income individuals and communities for whom these services are often unavailable. LICUs often find it difficult, however, to accumulate capital due to the limited resources of their members. In response to this obstacle, § 701.34 of NCUA's regulations permits LICUs to offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers.

Section 701.34 makes it clear that funds in the secondary capital account, including accrued interest paid into the account, must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings. Section 701.34 may not have clearly stated, however, that although interest paid into the secondary capital account must remain there until account maturity, credit unions have flexibility to use other permissible alternatives for disposing of accrued interest. To clarify this, NCUA issued a proposed rule that specified that in addition to depositing accrued interest into the secondary capital account, a credit union may pay the interest directly to the investor or deposit it into a separate account from which the investor could make withdrawals. 64 FR 40786 (July 28, 1999). The proposed rule also clarified that net available reserves and undivided earnings, as discussed above, are reserves and undivided earnings exclusive of allowance accounts for loan losses. Allowance accounts for investment losses used to be considered in determining net available reserves and undivided earnings, but are no longer as they are no longer recognized by generally accepted accounting principles or NCUA's regulatory accounting practices.

Summary of Comments

The NCUA Board received five comment letters in response to the proposed rule: four from credit union trade associations and one from a federal credit union. All of the commenters generally supported the proposed rule and made other specific recommendations.

Two commenters suggested that secondary capital accounts, or similar programs, should be made available to all credit unions not just LICUs. Secondary capital accounts are presently and have historically been intended to address the specific needs of LICUs, especially the difficulty many have in accumulating capital. Any change in this approach is not a matter

before the Board in consideration of this proposal.

One commenter suggested that credit unions and their investors with existing secondary capital account agreements should be able to voluntarily modify those agreements to alter the manner in which interest accrued in the future is treated. NCUA does not object to this so long as the secondary capital agreements are properly amended and it only applies to future interest to be accrued and not to interest already paid into the secondary capital account.

Two commenters stated that the disclosures and acknowledgment required in the Appendix to § 701.34 should be modified. Specifically, they suggested including language that would indicate which method of paying accrued interest has been agreed to by the LICU and its investor. We agree and have incorporated this suggestion into the Appendix to § 701.34.

One commenter stated that an investor should have the option of having interest payments directed to accounts outside of the LICU if it wishes. The proposed rule permits interest payments to be directed to a separate account from which an investor may make withdrawals. NCUA intends for this option to include accounts outside of the LICU.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets.

The NCUA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendments to § 701.34 only clarify the permissible alternatives LICUs have in disposing of accrued interest on secondary capital accounts. The amendments provide LICUs with additional flexibility without imposing any costs or significant regulatory requirements. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the amendments to § 701.34 do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." This rule will not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a significant regulatory action for purposes of the executive order.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 16, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.34 is amended by revising paragraph (b)(7) to read as follows:

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) * * *

(7) Funds deposited into the secondary capital account, including interest accrued and paid into the secondary capital account, must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings (*i.e.*, reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall under no circumstances restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the investor or into a separate account from which the secondary capital investor may make withdrawals. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

* * * * *

3. The Appendix to § 701.34 is amended by revising the second paragraph of the next to last bulleted section and adding a third paragraph to that section to read as follows:

Appendix to § 701.34

* * * * *

The funds committed to the secondary capital account and any interest paid into the account may be used by _____ (name of credit union) to cover any and all operating losses that exceed the credit union's reserves and undivided earnings exclusive of allowance accounts for loan losses, and in the event the funds are so used _____ (name of credit union) will under no circumstances restore or replenish those funds to _____ (name of institutional investor).

By initialing below, _____ (name of credit union) _____ and (name of institutional investor) agree that accrued interest will be:

_____ _____ paid into and become part of the secondary capital account;

_____ _____ paid directly to the investor;

_____ _____ paid into a separate account from which the investor may make withdrawals; or

_____ _____ any combination of the above provided the details are specified and agreed to in writing.

* * * * *

[FR Doc. 99–33274 Filed 12–23–99; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–05–AD; Amendment 39–11428; AD 99–24–04 C1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88

airplanes. That AD currently requires a one-time visual inspection to determine whether self-aligning nuts are installed at certain locations of the aft pressure bulkhead tee; and corrective actions, if necessary. This document corrects a typographical error in a service bulletin reference. This correction is necessary to ensure that the appropriate service information is used to accomplish the AD.

DATES: Effective December 27, 1999.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of December 27, 1999. (64 FR 63187, November 19, 1999).

FOR FURTHER INFORMATION CONTACT: Carl Fountain, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 99–24–04, amendment 39–11428, applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, was published in the **Federal Register** on November 19, 1999 (64 FR 63187). That AD requires a one-time visual inspection to determine whether self-aligning nuts are installed at certain locations of the aft pressure bulkhead tee; and corrective actions, if necessary. That AD was prompted by reports of failures of certain Hi-Lok pin fasteners of the aft pressure bulkhead tee due to installation of non-self-aligning nuts. The actions required by that AD are intended to prevent failure of certain Hi-Lok pin fasteners and subsequent gouging of the aft pressure bulkhead tee, which could result in fatigue cracking and reduced structural integrity of the airplane.

Need for the Correction

Information obtained recently by the FAA indicates that paragraph (a) of AD 99–24–04 contains a typographical error. That paragraph references "McDonnell Douglas Service Bulletin MD80–53–201, Revision 02, dated July 20, 1998, as revised by Information Notice MD90–53–201 RO2, dated October 21, 1998," as the appropriate source of service information for accomplishment of the general visual inspection required by paragraph (a) of the AD.

The FAA has determined that a correction to paragraph (a) of AD 99–24–04 is necessary. The correction will reference the appropriate Information Notice as "* * * Information Notice MD80–53–201 * * *".

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains December 27, 1999.

Since this action only a typographical error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

99–24–04 C1 McDonnell Douglas: Amendment 39–11428. Docket 99–NM–05–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletin MD80–53–201, Revision 02, dated July 20, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain Hi-Lok pin fasteners and subsequent gouging of the aft pressure bulkhead tee, which could result in fatigue cracking and reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Within 48 months after the effective date of this AD, perform a one-time general visual inspection to determine whether self-aligning nuts are installed at certain locations of the aft pressure bulkhead tee, in accordance with McDonnell Douglas Service Bulletin MD80–53–201, Revision 02, dated July 20, 1998, as revised by Information Notice MD80–53–201 R02, dated October 21, 1998.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If all nuts installed are self-aligning, no further action is required by this AD.

(2) If any nut is determined to be non-self-aligning, prior to further flight, remove the existing nut and perform a one-time visual inspection to detect gouges in the aft pressure bulkhead tee on station Y=1338.000 and longeron end fitting, as applicable, in accordance with the service bulletin.

(i) If no gouge is detected, prior to further flight, install new self-aligning nuts in accordance with the service bulletin.

(ii) If any gouge is detected that is within the repair limits specified in the service bulletin, prior to further flight, repair the gouge and install new self-aligning nuts in accordance with the service bulletin.

(iii) If any gouge is detected that is outside the repair limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: Inspections, and repair of the aft pressure bulkhead tee longeron end fittings prior to the effective date of this AD, in accordance with McDonnell Douglas Service Bulletin MD80–53–201, dated July 6, 1988, or Revision 1, dated March 22, 1991, are considered acceptable for compliance with the actions required by paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a)(2)(iii) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin MD80–53–201, Revision 02, dated July 20, 1998. This incorporation by reference was approved previously by the Director of the Federal Register as of December 27, 1999 (64 FR 63187, November 19, 1999). Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) The effective date of this amendment remains December 27, 1999.

Issued in Renton, Washington, on December 20, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33484 Filed 12–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–1201]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, compd. with 1,1′,1″-nitrilotris[2-propanol] (1:1) (CAS Reg. No. 221281–21–6) as a pigment dispersant. This action is in response to a petition filed by GEO Specialty Chemicals.

DATES: This rule is effective December 27, 1999; written objections and requests for a hearing by January 26, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 28, 1998 (63 FR 71492), FDA announced that a food additive petition (FAP 9B4636) had been filed by GEO Specialty Chemicals, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the safe use of the salt of dimethylolpropionic acid and triisopropanolamine as a dispersant for pigments intended for food-contact applications. Since the filing notice published, the Chemical Abstracts Service (CAS) Registry number and nomenclature, which is propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, compd. with 1,1′,1″-nitrilotris[2-propanol] (1:1) (CAS Reg. No. 221281–21–6), was provided for the additive, and the agency has determined that the additive should be listed using this nomenclature.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.3725 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4636 (63 FR 71492). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 26, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3725 is amended in the table by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3725 Pigment dispersants.

* * * * *

Substances	Limitations
* * * * * * *	
Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, compd. with 1,1′,1″-nitrilotris [2-propanol] (1:1) (CAS Reg. No. 221281–21–6)	For use only at levels not to exceed 0.45 percent by weight of the pigment. The pigmented articles may contact all food under conditions of use A through H as described in Table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: December 17, 1999.

L. Robert Lake,

Director, Office of Policy, Planning, and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–33398 Filed 12–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–1421]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tetradecanoic acid, lithium salt as a stabilizer for polypropylene and certain polypropylene copolymers intended for use in contact with food. This action is in response to a petition filed by Asahi Denka Kogyo K.K.

DATES: This regulation is effective December 27, 1999. Submit written objections and requests for a hearing by January 26, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 24, 1999 (64 FR 28000), FDA announced that a food additive petition (FAP 9B4665) had been filed by Asahi Denka Kogyo K.K., 5–2–13, Shirahata, Urawa City, Saitama 336–0022, Japan. The petition proposed to amend the food additive regulations to provide for the safe use of tetradecanoic acid, lithium salt as a stabilizer in polypropylene and certain olefin copolymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) that the regulations in 21 CFR 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4665. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 26, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS.

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * *	
Tetradecanoic acid, lithium salt (CAS Reg. No. 20336–96–3)	For use only at levels not to exceed 0.15 percent by weight of polypropylene and polypropylene copolymers complying with § 177.1520(c) of this chapter, items 1.1a, 1.1b, 3.1a, 3.1b, 3.1c, 3.2a, and 3.2b. The finished polymers may only be used in contact with food of Types I, II, IV–B, VII–B, and VIII as described in table 1 of § 176.170(c) of this chapter under conditions of use B through H as described in table 2 of § 176.170(c) of this chapter, and with food of Types III, IV–A, V, VI–A, VI–B, VI–C, VII–A, and IX described in table 1 of § 176.170(c) of this chapter under conditions of use C through G as described in table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: December 17, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–33397 Filed 12–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–1457]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4,5-dichloro-2-((5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)benzenesulfonic acid, calcium salt(1:1), (C.I. Pigment Yellow 183) as a colorant in high density polyethylene and polypropylene resins intended for use in contact with food. This action responds to a petition filed by BASF Corp.

DATES: This regulation is effective December 27, 1999. Submit written objections and requests for a hearing by January 26, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 27, 1999 (64 FR 28825), FDA announced that a food additive petition (FAP 9B4664) had been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposed to amend the food additive regulations to provide for the safe use of 4,5-dichloro-2-((4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)benzenesulfonic acid, calcium salt(1:1), (C.I. Pigment Yellow 183) as a colorant in high density polyethylene and polypropylene resins intended for use in contact with food.

During review of the petition, it was determined that the colorant exists in two tautomeric forms: Keto and enol. As indicated by its infrared spectrum, the colorant exists chiefly in its enol form. It was decided, therefore, that the colorant (C.I. Pigment Yellow 183) should be identified in the regulation by the enol nomenclature and the CAS number. The colorant is listed, accordingly, in the codified section of this document as 4,5-dichloro-2-((5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)benzenesulfonic acid, calcium salt(1:1), (C.I. Pigment Yellow 183, CAS Reg. No. 65212–77–3).

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4664 (64 FR 28825, May 27, 1999). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at anytime on or before January 26, 2000 file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the

heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * * * * *	
4,5-Dichloro-2-((5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)benzenesulfonic acid, calcium salt(1:1), (C.I. Pigment Yellow 183, CAS Reg. No. 65212–77–3).	For use only: 1. At levels not to exceed 1 percent by weight of polypropylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1a, 1.1b, 1.2, 1.3, 3.1a, 3.1b, 3.1c, 3.2a, 3.2b, 3.4, or 3.5. The finished articles are to contact food only under conditions of use E through G, as described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 1 percent by weight of high density polyethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.1c, 3.2a, 3.2b, 3.6 (density not less than 0.94 grams per cubic centimeter), or 5. The finished articles are to contact food only under conditions of use E through G, as described in Table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: December 17, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–33394 Filed 12–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–097–FOR, Part II]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving part of an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions to its program concerning adjustment of performance bond amounts, administrative review, subsidence control, water replacement, release of performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. This final rule document addresses Illinois' revisions concerning adjustments to performance bond amounts and administrative review. The primary focus of these revisions is to provide permittees an opportunity for a formal hearing on adjustments made to performance bonds. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, and to improve operational efficiency.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IL–5044), the Illinois Department of Natural Resources (Department) sent us an amendment to the Illinois program under SMCRA. The Department proposed to amend Title 62 of the Illinois Administrative Code (IAC) in response to our letters dated May 20, 1996, June 17, 1997, and January 15, 1999 (Administrative Record Nos. IL–1900, IL–2000, and IL–5036, respectively), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at the Department's own initiative.

We announced receipt of the amendment in the August 17, 1999, **Federal Register** (64 FR 44674). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment

period closed on September 16, 1999. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to siltation structures, impoundments, performance bonds, and State inspections. We also identified some nonsubstantive editorial errors. We notified Illinois of these concerns and editorial problems by letter dated September 21, 1999 (Administrative Record No. IL–5048). We also separated the amendment into three parts in order to expedite the State program amendment process. Part I concerns revisions to Illinois' regulations relating to subsidence control and water replacement. Because we did not identify any concerns relating to Illinois' revisions for subsidence control and water replacement, we approved them in a final rule on December 6, 1999 (64 FR 68024). Part II concerns revisions to Illinois' regulations relating to adjustment of performance bond amounts and administrative review. On December 2, 1999, the Department requested that we proceed with our decision on its revisions for adjustment of performance bond amounts and administrative review (Administrative Record No. IL–5049). Therefore, this final rule **Federal Register** document addresses the IL–097–FOR, Part II revisions. Part III concerns revisions to Illinois' regulations relating to performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. These revisions will be addressed in a future final rule.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings on Illinois' revisions pertaining to adjustment of performance bond amounts and administrative review.

Administrative Review of Bond Adjustment Determinations

Illinois revised its regulations for performance bond adjustment and administrative review as a result of Court Case No. 99–MR–214, Sangamon County, Illinois. The court found that the Department's rules lacked a mechanism for administrative hearing in the case of bond adjustments. The court ruled that this was in violation of the Illinois Administrative Procedure Act and prohibited the Department from increasing performance bonds under its current regulations.

1. 62 IAC 1800.15 Adjustment of Performance Bond Amounts

In response to the court's decision, Illinois revised subsection (b)(2) to provide the permittee an opportunity for a formal hearing, in accordance with 62 IAC 1847.3, on proposed adjustments to the performance bond amount. Currently, Illinois provides an opportunity for an informal conference.

The counterpart Federal regulation at 30 CFR 800.15(b)(2) also provides the permittee an opportunity for an informal conference on proposed adjustments to the performance bond amount. However, Illinois' allowance for a formal administrative hearing will provide an increased level of due process procedures for the permittees. Therefore, we find that Illinois' regulation at 62 IAC 1800.15(b)(2) is no less effective than the Federal regulation at 30 CFR 800.15(b)(2).

2. 62 IAC 1847.3 Administrative Review and Judicial Review: Permit Hearings

Illinois revised subsection (a) to provide that the hearing procedures outlined in 62 IAC 1847.3 also apply to review of performance bond adjustment determinations under 62 IAC 1800.15.

Illinois' currently approved regulations at 62 IAC Part 1847 consolidate the procedures for all of the formal hearings provided for in the Illinois program. The proposed revision clarifies that administrative review of performance bond adjustment determinations is covered under the hearing procedures at 62 IAC 1847.3. We previously approved the hearing procedures at 62 IAC 1847.3 for review of several types of administrative decisions and determinations, including permit decisions and valid existing right determinations. The Federal regulations specify general adjudicatory provisions that States must include in their administrative review hearing procedures, but allow the States discretion in how to implement these provisions. We find that Illinois' regulations at 62 IAC 1847.3 are consistent with the Federal regulations at 43 CFR part 4 for purposes of administrative hearings on performance bond adjustment determinations.

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program. By letter dated September 2, 1999, the Natural Resources Conservation Services (NRCS) provided comments (Administrative Record No. IL–5047). However, these comments did not pertain to the Illinois program revisions concerning adjustment of performance bond amounts or administrative review. Therefore, we will discuss NRCS's comments in our future final rule document for IL–097–FOR, Part III.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposed amendment from the EPA (Administrative Record No. IL–5045). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. None of the revisions that Illinois proposed to make in this amendment pertain to historic properties. However, on August 10, 1999, we requested comments from both the SHPO and ACHP (Administrative Record No. IL–5045), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the revisions made to 62 IAC 1800.15(b)(2) and 1847.3(a). We approve the regulations that Illinois proposed with the provision that they be published in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois program. We are making this final rule effective immediately to expedite the State

program amendment process and to encourage Illinois to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 14, 1999.

Charles E. Sandberg,

Acting Regional Director Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * * * * *		
August 2, 1999	December 27, 1999	62 IAC 1800.15(b)(2); 1847.3(a).

[FR Doc. 99–33465 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–116–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of the following: a statutory change to the Virginia Act at section 45.1–235 C as enacted in the 1999 session of the Virginia General Assembly; regulation changes at section 4 VAC 25–130–700.5 to the definitions of "government financed construction" and "qualified laboratory;" and regulation changes to section 4 VAC 25–130 Part 795 concerning the small operator assistance program (SOAP). The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal provisions.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's

findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated August 2, 1999 (Administrative Record No. VA–978), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. This amendment is the State's response to changes made to the Federal SOAP regulations at 30 CFR part 795, and to the Federal definition of "government-financed construction" at 30 CFR 707.5.

We announced receipt of the proposed amendment in the August 20, 1999, **Federal Register** (64 FR 45489), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 20, 1999. No one requested to speak at a public hearing, so no hearing was held.

By letters dated October 1, 1999 (Administrative Record Number VA–987), and October 28, 1999 (Administrative Record Number VA–993) the DMME submitted amendments to 4 VAC 25–130–795.11(b). We reopened the public comment period on November 15, 1999 (64 FR 61805), and invited public comment on the additional amendments. The comment period closed on November 30, 1999.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised paragraph notations to reflect organizational changes that result from this amendment.

Statute

Section 45.1–235 of the Code of Virginia.

Subsection 45.1–235 C, concerning SOAP, is amended by deleting the existing language and adding in its place the following language.

> To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

We find this provision to be consistent with the Federal regulations at 30 CFR 795.5 which provides that a State intending to Administer a SOAP program under a grant from OSM may submit a grant application to OSM for funding of the program under the procedures of 30 CFR part 735. Therefore, this provision can be approved.

Regulations

1. 4 VAC 25–130–700.5 Definitions

The definition of "government-financed construction" is amended to provide for less than 50 percent government funding when the construction is an approved Abandoned Mine Lands (AML) reclamation project under Title IV of SMCRA. As amended, "government financed construction" means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

The Federal definition of "government financed construction" at 30 CFR 707.5 was amended on February 12, 1999 (64 FR 7469). As amended, "government-financed construction" means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of SMCRA. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction. We find that the revised Virginia definition is substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 707.5 and can be approved.

The definition of "qualified laboratory" is amended to add the phrase "or other services as specified at 4 VAC 25–130–795.9." With this addition, "qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 4 VAC 25–130–795.9 under the SOAP program and which meets the standards of 4 VAC 25–130–795.10. We find that this revised definition is substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 795.3 and can be approved.

2. 4 VAC 25–130–795.1 Scope and Purpose

This provision is amended by deleting the words "program administrator" and replacing those words with the word "Division." In effect, the "Division" (the DMME) is the program administrator. Therefore, we find that this change does not render the Virginia program less effective than the Federal SOAP provisions at 30 CFR Part 795 and can be approved.

3. 4 VAC 25–130–795.6 Eligibility for Assistance

This provision is amended at subdivision 795.6(a)(2) by changing the qualifying annual tonnage limit from 100,000 tons to 300,000 tons and deleting language that was also deleted from the Federal rules in 1994. In addition, at subdivisions 795.6(a)(2)(i) and (ii), the pro rata share is increased from 5 percent to 10 percent. We find that with these changes, the State provision is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 795.6(a)(2) and can be approved.

4. 4 VAC 25–130–795.7 Filing for Assistance

This provision is amended at subdivision 795.7(e) by deleting subdivisions 795.7(e)(2) and (5), and renumbering the remaining provisions. Deleted subdivision 795.7(e)(2) required the names of property owners in the affected and adjacent areas. Deleted subdivision 795.7(e)(5) required the location of existing structures and developed water resources within the affected and adjacent areas. These deletions are not requirements under 30 CFR 795.7(e). We find that, as amended, subdivision 795.7(e) is substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 795.7(e) and can be approved.

5. 4 VAC 25–130–795.8 Application Approval and Notice

The sole sentence of this provision is deleted and replaced with the following. New subdivision 795.8(a) provides that if the Division finds the applicant eligible, the Division shall inform the applicant in writing that the application is approved. New subdivision 795.8(b) provides that if the Division finds the

applicant ineligible, the Division shall inform the applicant in writing that the application is denied and shall state the reasons for denial. We find that as amended, this provision is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 795.8 and can be approved.

6. 4 VAC 25–130–795.9 Program Services and Data Requirements

In addition to non-substantive changes, the following changes are made to this provision. At subdivision 795.9(a), the phrase "and provide other services" is added. With this change, a "qualified laboratory" may be paid for other services in addition to the determination and statement referenced in subdivision 795.9(b).

At subdivision 795.9(b)(1), the phrase "including the engineering analysis and designs necessary for the determination" is added. Also, the citation "4 VAC 25–130–784.14(g)" is changed to "* * * 784.14(e)."

At subdivision 795.9(b)(2), the words "drilling and" are added immediately following the first word of the sentence.

New subdivisions 795.9(b)(3), (4), (5), and (6) are added. New 795.9(b)(3), provides for the development of cross-section maps and plans required by 4 VAC 25–130–779.25 and 783.25. New 795.9(b)(4) provides for the collection of archaeological and historic information and related plans required by 4 VAC 25–130–779.12(b), 783.12(b), 780.31, 784.17, and any other archaeological and historic information required by the Director. New 795.9(b)(5) provides for pre blast surveys required by 4 VAC 25–130–780.13. New 795.9(b)(6) provides for the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 4 VAC 25–130–780.16 and 784.21, and information and plans for any other environmental values required by the Division under the Act.

We find that with these changes, the State provision is substantively identical to and no less effective than the counterpart Federal provision at 30 CFR 795.9 and can be approved.

7. 4 VAC 25–130–795.10 Qualified Laboratories

Subdivision 4 VAC 25–130–795.10(a)(5) is amended by adding language which provides that other appropriate methods or guidelines for data acquisition may be approved by the Division. Subdivision 795.10(b) is amended to provide that subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division. Prior to this amendment, subdivision 795.10(b) provided that subcontractors had to meet all applicable requirements for area of specialization pursuant to the program and this section. Subdivisions 795.10(c) and (d) are deleted. Subdivision 795.10(c) concerned the qualification of out-of-state firms. Subdivision 795.10(d) provided that review and approval of all laboratory qualifications would be made every 12 months. These deletions are not requirements under 30 CFR 795.10.

We find that with these changes, the State provision is substantively identical to and no less effective than the counterpart Federal provision at 30 CFR 795.10 and can be approved.

8. 4 VAC 25–130–795.11 Assistance Funding

In subdivision 4 VAC 25–130–795.11(b), the phrase "is authorized to" is deleted and replaced by the word "shall." In effect, this change requires the DMME to establish a funding formula to be used for allocating funds to eligible small operators if the available funds are less than those required to provide the services pursuant to 4 VAC 25–130–795. We find that, as amended, this provision is substantively identical to and no less effective than the Federal regulations at 30 CFR 795.11(b) and can be approved.

In addition, Virginia submitted the funding formula it intends to use if the available funds are less than those required to provide the services pursuant to 4 VAC 25–130–795. Virginia stated that "[s]hould available funds ever be insufficient to provide all requested and appropriate assistance to eligible small operators, DMME will provide services on a first come, first serve basis. The funds will be used in order of the application dates for the requested assistance."

The State's funding formula is "an equitable distribution of Federal funds if such funds are insufficient to provide services for all eligible operators." 48 FR 2261, 2271 (January 18, 1983). Thus, we find that the formula is consistent with the Federal regulations at 30 CFR 795.11(b) and can be approved.

9. 4 VAC 25–130–795.12 Applicant Liability

In subdivision 4 VAC 25–130–795.12(a), the term "applicant" is deleted and replaced by the phrase "coal operator who has received assistance pursuant to 4 VAC 25–130–795.9." Also, the phrase "laboratory services performed pursuant to this Part" is changed to read "services rendered."

Subdivision 795.12(a)(2) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that the tonnage will be determined during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Prior to this change, the tonnage was determined during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter.

Subdivision 795.12(a)(3) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that if the mining rights granted under the permit are sold, transferred or assigned to another person, the tonnage will be determined during the 12 months immediately following the date on which the permit was originally issued. Prior to this change, the tonnage was determined during any 12-month period of the remaining term of the permit. The deleted language was also deleted from the Federal regulations in 1994.

Subdivisions 4 VAC 25–130–795.12(b) and (c) are deleted. Subdivision 795.12(b) concerned the submission of notarized production reports. Subdivision 795.12(c) defined the term "attributed production." These deleted subsections are not requirements under 30 CFR 795.12.

We find that with these changes, the State provision addresses all the provisions of and is no less effective than 30 CFR 795.12 and can be approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the amendments are appropriate and there appears to be no conflict with MSHA regulations.

Public Comments

We solicited public comments on the amendment. No comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written

concurrence of the EPA with respect to any provisions of the State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the amendments that Virginia proposed pertain to air or water quality standards. Therefore, EPA's concurrence with the proposed amendment is not necessary.

Pursuant to 732.17(h)(11)(I), we solicited comments on the proposed amendment from EPA. The EPA did not provide any comments.

V. Director's Decision

Based on the above findings, we approve the amendments submitted by Virginia on August 2, 1999, and amended on October 1 and October 28, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR part 946 which codifies decisions concerning the Virginia program. We are making this final rule effective immediately to expedite the State program amendment process, and to encourage Virginia to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 1999.

H. Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 2, 1999	December 27, 1999	Statute: 45.1–235 C of the Code of Virginia. Regulations: 4 VAC 25–130–700.5; 795.1; 795.6(a)(2); 795.7(e)(2) [deleted], and (e)(5) [deleted]; 795.8(a) and (b); 795.9(a), (b)(1) through (b)(6); 795.10(a)(5), (b), (c) [deleted] and (d) [deleted]; 795.11(b); 795.12(a), (a)(2), (a)(3), (b) [deleted], and (c) [deleted].

[FR Doc. 99–33468 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–99–046]

RIN 2115–AA97

Safety Zone Regulation; Fireworks Display, Willamette River, Portland, Oregon

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of Willamette River in the vicinity of Portland, Oregon from 11:30 p.m. (PST) on December 31, 1999 to 12:30 a.m. (PST) January 1, 2000. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. The safety zone will encompass all waters of the Willamette River at Portland, Oregon River from the Hawthorne Bridge (Willamette River Mile 13.1) to the Marquam Bridge (Willamette River Mile 13.6). Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 11:30 p.m. (PST) on December 31, 1999 to 12:30 a.m. (PST) January 1, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–99–046, and are available for inspection or copying at the U.S. Coast Guard Group/MSO Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7:00 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Tom Allan, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240 9327.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the fireworks launching barge. Due to the complex planning and coordination, the event sponsor, the American West Steamboat Co., was unable to provide the Coast Guard with notice of the final details until less than 45 days prior to the date of the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is adopting a temporary safety zone regulation to allow a safe fireworks display. The fireworks display is scheduled to start at midnight on December 31, 1999. This event may result in a number of vessels congregating near the fireworks launching barge. The zone is needed to protect watercraft and their occupants from safety hazards associated with fireworks display. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation would encompass less than one mile of the Willamette River for a period of only one hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River from 11:30 p.m. (PST) on December 31, 1999 to 12:30 a.m. (PST) January 1, 2000. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only one hour in the evening when vessel traffic is low. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from

Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes a safety zone with a duration of one hour. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T13–035 is added to read as follows:

§ 165.T13–035 Safety Zone; Willamette River, Portland, Oregon.

(a) *Location.* The following area is a safety zone: All waters of the Willamette River at Portland, Oregon River from the Hawthorne Bridge (Willamette River Mile 13.1) to the Marquam Bridge (Willamette River Mile 13.6).

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This regulation is effective on December 31, 1999 at 11:30 p.m. (PST) through January 1, 2000 at 12:30 a.m. (PST).

Dated: December 6, 1999.

James D. Spitzer,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 99–33473 Filed 12–23–99; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300954; FRL–6394–9]

RIN 2070–AB78

Maneb; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate and its metabolite ethylenethiourea in or on walnuts at 0.05 part per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on walnuts. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective December 27, 1999. Objections and requests for hearings, identified by docket control number OPP–300954, must be received by EPA on or before February 25, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300954 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300954. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of

the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of March 17, 1999 (64 FR 13097) (FRL–6067–9), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of maneb and its metabolite in or on walnuts at 0.05 ppm, with an expiration date of December 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of maneb on walnuts for this year's growing season due to the continued increase of bacterial blight in California as a result of the development of a tolerance to copper based bactericides. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of maneb on walnuts for control of bacterial blight in California.

EPA assessed the potential risks presented by residues of maneb in or on walnuts. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 17, 1999 (64 FR 13097). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on walnuts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300954 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 25, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300954, to: Public

Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 3, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.110 [Amended]

2. In § 180.110, by amending the table in paragraph (b) by revising the date "12/31/00" to read "12/31/01".

[FR Doc. 99–33454 Filed 12–23–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300953; FRL–6394–5]

RIN 2070–AB78

Glufosinate Ammonium; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for combined residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid in or on sweet corn (kernels and cob with husk removed), sweet corn forage, and sweet corn stover at 4.0 part per million (ppm) for forage, kernels and cobs and 6.0 ppm for stover for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on

sweet corn. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective December 27, 1999. Objections and requests for hearings, identified by docket control number OPP–300953, must be received by EPA on or before February 25, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300953 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300953. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 18, 1999 (64 FR 44829) (FRL–6092–8), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the combined residues of glufosinate ammonium and its metabolites in or on sweet corn (kernels and cob with husk removed) and sweet corn forage at 4.0 ppm and sweet corn stover at 6.0 ppm, with an expiration date of December 1, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA originally established these tolerances based on percent of corn treated in the state of Wisconsin only. After publishing the tolerance, the Minnesota Department of Agriculture requested the use of glufosinate ammonium under section 18 of FIFRA to control weeds in sweet corn. EPA received a request to extend the use of glufosinate ammonium on sweet corn in states other than Wisconsin for this year's growing season due to the fact that there are no effective herbicides available to control weeds in sweet corn in Minnesota. After having reviewed the submission, EPA concurs that emergency conditions exist in Minnesota. EPA has authorized under FIFRA section 18 the use of glufosinate ammonium on sweet corn for control of weeds in sweet corn.

EPA recently assessed the potential risks presented by residues of glufosinate ammonium in or on sweet corn while evaluating the risk for pending section three applications for almonds, grapes, potatoes, corn, transgenic soybeans and the tree nuts group. The aggregate risk assessments conducted for these crops included the sweet corn use authorized under section 18 of FIFRA and assumed 100 percent of the sweet corn crop treated. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 4, 1999 (64 FR 60112) (FRL–6391–5). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in

or on sweet corn after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300953 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 25, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300953, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule extends time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 3, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.473 [Amended]

2. In § 180.473, by amending in the table in paragraph (b) the entries for "corn, sweet, forage"; "corn, sweet, kernels and cobs with husks removed"; and "corn, sweet, stover" by revising the date "12/1/99" to read "12/31/01".

[FR Doc. 99–33453 Filed 12–23–99; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA67

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Office of the Secretary, Interior

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule is in response to the issuance of Executive Order 13043 of April 16, 1997, "Increasing Seat Belt Use in the United States." Section 1(c) requires that each Federal agency, in contracts, subcontracts, and grants entered into after the date of the Order, shall seek to encourage contractors, subcontractors, and grantees to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. Section 2 of the Order directs all agencies of the executive branch to promulgate rules and take other appropriate measures within their existing programs to further the policies of the Order.

The Department is publishing this rule in the absence of a Government-wide implementation of this policy for its applicability to grants awarded, and in order to provide a regulatory basis for the inclusion of a provision in grants and cooperative agreements awarded by the Department. In the event that the Office of Management and Budget chooses to implement this requirement through the issuance of a Government-wide directive, the Department will revise this regulation, as appropriate.

DATES: Effective Date: This rule is effective December 27, 1999.

Comments. Comments must be received by January 26, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by one of several methods. You may mail comments to the U.S. Department of the Interior, Director, Office of Acquisition and Property Management, 1849 C St., NW, Mail Stop 5512, Washington, D.C. 20240. You may also comment via the Internet to http://www.doi.gov/pam/rin1090-aa67.html. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1090–AA67" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 208–6352. Finally, you may hand-deliver comments to 1849 C Street, NW, Mail Stop 5512, Washington, D.C. 20240. We will make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, (Director, Office of Acquisition and Property Management), (202) 208–6431.

SUPPLEMENTARY INFORMATION: On April 16, 1997, Executive Order 13043, "Increasing Seat Belt Use in the United States," was signed by President Clinton. Section 1 (c) directed each Federal agency, in contracts, subcontracts, and grants entered into after the date of the Order, to encourage contractors, subcontractors, and grantees to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned

vehicles. Section 2 directed all agencies of the executive branch to promulgate rules and take other appropriate measures within their existing programs to further the policies of the Order.

The Department is revising Subpart A of 43 CFR Part 12, to implement the requirements of the Executive Order for grants/cooperative agreements awarded by bureaus/offices. The requirements also apply to subawards made under a grant or cooperative agreement.

The Office of Management and Budget (OMB) generally publishes governmentwide administrative requirements for grants and cooperative agreements and agencies implement these requirements in implementing regulations. Agencies have not been officially notified by OMB that they intend to publish governmentwide requirements in response to Executive Order 13043.

Because of the need for an implementation of the requirements, the Department is publishing this regulation to cover its own awards. Furthermore, through this regulation the Department will include a provision in grants and cooperative agreements awarded by the Department encouraging recipients to adopt and enforce on-the-job seat belt use policies and programs consistent with the Executive Order.

Compliance With Laws, Executive Orders, and Department Policy

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule does not raise novel legal or policy issues.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.) The Department has determined that this rule will not have a significant economic impact on small entities since any efforts undertaken by grantees to implement the requirements of the Order are not expected to have a significant economic impact and no additional costs will be imposed as a result of the rule. Most grantees probably already have programs in place to conduct education and awareness programs about the importance of wearing seat belts and the consequences of not wearing them.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. Most grantees probably already have programs in place to conduct education and awareness programs about the importance of wearing seat belts and the consequences of not wearing them.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Grantees are being encouraged to adopt and enforce on-the-job seat belt use policies and programs and no additional costs are expected to be imposed.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the fact that the provision simply encourages Federal grantees to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. Federal grantees are also encouraged to conduct education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Grantees are being encouraged to adopt and enforce on-the-job seat belt use policies and programs and no additional costs are expected to be imposed. Most grantees probably already have programs in place to conduct education and awareness programs about the importance of wearing seat belts and the consequences of not wearing them. No additional costs are expected to be imposed. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq*.) is not required.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Awards to governmental entities are governed by 43 CFR Part 12, Subpart C. Under section 12.76, a State is required to ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Therefore, this requirement will not be considered as interference by the Federal Government with State rights as described in Executive Order 13132. A Federalism Assessment is not required.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, § 12.2 Policy.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule?

What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW,

Washington, DC 20240. You may also e-mail the comments to this address:

Exsec@ios.doi.gov

List of Subjects in 43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: December 13, 1999.

Robert J. Lamb,

Acting Assistant Secretary—Policy, Management and Budget.

PART 12—[AMENDED]

Accordingly, Part 12 of title 43 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq;* Pub. L. 104–256, 110 Stat. 1396; sec. 501, Pub. L. 105–62, 111 Stat. 1338; sec. 503, Pub. L. 105-62, 111 Stat. 1339; sec. 303, Pub. L. 105–83, 111 Stat. 1589; sec. 307, Pub. L. 105–83, 111 Stat.1590; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; E.O. 13043, 62 FR 19217; 3 CFR, 1997 Comp., p. 195; OMB Circular A–102; OMB Circular A–110; and OMB Circular A–133.

Subpart A—Administrative and Audit Requirements and Cost Principles for Assistance Programs

2. Section 12.2 is amended by adding paragraph (e) to read as follows:

§ 12.2 What policies are financial assistance awards and subawards in the form of grants and cooperative agreements subject to?

* * * * *

(e)(1) Executive Order 13043, "Increasing Seat Belt Use in the United States," dated April 16, 1997, do?

(i) If you are a Federal grantee:
You are encouraged to—
(A) Adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally-owned vehicles.
(B) Conduct education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

(2) When does the policy apply?

(i) If a grant or cooperative agreement is being awarded by the bureau/office of the Department—The policy applies.
(ii) If the recipient awards a grant or cooperative agreement to a subrecipient—The policy applies.

(3) What term and condition will be incorporated into the grant/cooperative agreement or sub-award?

Provision

Recipients of grants/cooperative agreements and/or sub-awards are encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

End of Provision.

[FR Doc. 99–33165 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 47]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2000

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 1998 rail industry random testing positive rate was .82 percent for drugs and .21 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2000 through December 31, 2000 will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below .5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will be lowered to 10 percent of covered railroad employees for the period January 1, 2000 through December 31, 2000.

DATES: This notice is effective December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, N.W., Washington, D.C. 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2000 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 602 and 608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates.) FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will stay at 25 percent of covered railroad employees for the period January 1, 2000 through December 31, 2000, since the industry random drug testing positive rate for 1998 was .82 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than .5 percent for two calendar years while testing at a higher rate. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than .5 percent, the rate will remain at 25 percent.

Random alcohol testing was fully implemented at a 25 percent minimum

testing rate on January 1, 1996. In 1998, the industry-wide violation rate for alcohol was .21 percent. Since the industry-wide violation rate for alcohol has remained below .5 percent for the last two years, FRA is lowering the minimum random alcohol testing rate to 10 percent of covered railroad employees for the period January 1, 2000 through December 31, 2000.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, D.C. on December 20, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 99–33401 Filed 12–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 991221344–9344–01; I.D. 121099A]

RIN 0648–AN44

Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; notice of closure; request for comments.

SUMMARY: NMFS issues an emergency rule to prohibit vessels registered for use under a Hawaii longline limited access permit from fishing with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long. NMFS is also prohibiting vessels registered for use with receiving vessel permits from receiving Pacific pelagic management unit species harvested with longline gear while those receiving vessels are in the closed area. No vessel may land or transship, shoreward of the outer boundary of the EEZ, pelagic fish harvested by longline gear in the closed area. The closure is an interim measure in response to the Order Setting Terms of Injunction issued by the U.S. District Court, District of Hawaii, dated November 23, 1999. The intended effect is to implement the court-ordered closure and reduce adverse impacts to sea turtles by curtailing activities of the Hawaiian longline fishery while an environmental impact statement (EIS) is being prepared.

DATES: This rule is effective 12:01 a.m., local time, December 23, 1999, through 12:01 a.m., local time, June 26, 2000. Comments must be received no later than 5:00 p.m., local time, on February 10, 2000.

ADDRESSES: Written comments on this action must be mailed to Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; or faxed to 808–973–2941. Comments will not be accepted if submitted via e-mail or internet. Copies of the environmental assessment prepared for this action may be obtained from Alvin Katekaru or Marilyn Luipold, PIAO.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru or Marilyn Luipold, 808–973–2937.

SUPPLEMENTARY INFORMATION: The Hawaii-based longline fishery is managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The FMP was prepared by the Western Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 660.

On October 6, 1999, NMFS announced its intent to prepare an EIS on management of the fishery for pelagic species in waters of the exclusive economic zone (EEZ) in the Western Pacific Region. Additionally, NMFS announced its intention to prepare an environmental assessment (EA) for that fishery. The scope of the EA includes all activities related to the conduct of the fishery for the 2-year period NMFS anticipates is necessary to prepare the EIS. Both the EIS and the EA examine the impacts of pelagics harvest on, among other things, sea turtles and seabirds.

On November 23, 1999, the U.S. District Court, District of Hawaii, ordered NMFS to prohibit, within 30 days of the date of entry of the Order, "all activities of the Hawaii longline fishery authorized by the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, as amended, within the area encompassed and bounded by the following description: north of 28° N. and between 168° W. and 150° W." To comply with the Court Order, NMFS is implementing the Court-ordered closure by emergency action. This action closes an area to longline fishing that was the source of approximately 30 percent of the revenue received from swordfish landings and approximately 13 percent of the total revenue from all species landed by the Hawaii-based longline fleet.

Accordingly, NMFS prohibits all vessels registered for use under a Hawaii longline limited access permit from fishing with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long. NMFS also prohibits vessels registered for use with receiving vessel permits (issued under the regulations at 50 CFR 660.21(c)) from receiving Pacific pelagic management unit species harvested with longline gear while those receiving vessels are in the closed area. No vessel may land or transship, shoreward of the outer boundary of the EEZ, pelagic fish harvested by longline gear in the closed area.

The closure is being implemented by emergency action under the authority of section 305(c) of the Magnuson-Stevens Act. Under 305(c)(3), the emergency regulation may remain in effect for not more than 180 days after the date of publication, and may be extended for one additional period of not more than 180 days. The emergency regulation may also be terminated at an earlier date.

Criteria for Issuing an Emergency Rule

This emergency rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recent, unforeseen events, or recently discovered circumstances. Also, it realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The Court-ordered closure was issued November 23, 1999, and allows 30 days for implementation. Emergency action is necessary to comply with the Order and implement the closure by December 23, 1999. To be effective by then, an emergency rule is needed.

Immediate Benefits

This rule is not likely to have a significant effect on tuna harvests. Although there are many variables that may confound accurate predictions about the effects upon different sea turtle species, NMFS anticipates the closure will have a positive benefit on sea turtles in general.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to comply with a valid order of the U.S. District Court. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an EA for this rule that describes the impact on the human environment that would result from this rule and found that no significant impact would result. This emergency rule is of limited duration and is expected to result in a reduction of overall sea turtle interactions. Copies of the environmental assessment are available (see **ADDRESSES**).

The AA finds that this rule, which is being implemented under section 305(c) of the Magnuson-Stevens Act, must become effective on December 23, 1999, to comply with the Order issued by the U.S. District Court, District of Hawaii. The Order requires that NMFS implement a longline area closure within 30 days from the date of issuance of the Order (November 23, 1999). Under section 305(c) of the Magnuson-Stevens Act, this rule may remain in effect for not more than 180 days after the date this notification is published, and may be extended for one additional period of not more than 180 days. The AA finds good cause to waive the requirement to provide prior notice and the opportunity for public comment, 5 U.S.C. 553(b)(B), as such procedures would be impracticable. Similarly, the need to implement the Court-ordered measure in a timely manner constitutes good cause under 5 U.S.C. 553(d)(3) to waive delayed effectiveness of the rule.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

Because this rule is not required to be published with notice and opportunity for public comment under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.22, new paragraphs (z) through (bb) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(z) Fish with a vessel registered for use under a Hawaii longline limited access permit using longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(aa) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management unit species that were harvested with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(bb) Use a receiving vessel registered for use under a receiving vessel permit described in § 660.21(c) to receive from another vessel Pacific pelagic management unit species harvested with longline gear, if the fish were harvested or the transfer occurs within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

[FR Doc. 99–33494 Filed 12–21–99; 4:17 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 247
Monday, December 27, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI95

Prevailing Rate Systems; Redefinition of the Southern and Western Colorado Appropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing a proposed rule that would redefine Eagle, Garfield, Lake, Pitkin, Rio Blanco, and Routt Counties, Colorado, from the Southern and Western Colorado appropriated fund Federal Wage System (FWS) wage area to the area of application of the Denver wage area, and redefine Mesa County, CO, from the Southern and Western Colorado FWS wage area to the area of application of the Utah FWS wage area. In addition, we propose to change the name of the Southern and Western Colorado FWS wage area to Southern Colorado.

The redefinition of Eagle, Garfield, Lake, Mesa, Pitkin, Rio Blanco, and Routt Counties, CO, would more accurately reflect the regulatory criteria used to define FWS wage areas. The change in the wage area name to the Southern Colorado FWS wage area would more accurately describe the geographic coverage of the redefined wage area.

DATES: Comments must be received by January 26, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of selected appropriated fund Federal Wage System (FWS) wage areas. The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has recommended by consensus that we redefine Eagle, Garfield, Lake, Pitkin, Rio Blanco, and Routt Counties, Colorado, from the Southern and Western Colorado appropriated fund FWS wage area to the area of application of the Denver FWS wage area, and redefine Mesa County, CO, from the Southern and Western Colorado FWS wage area to the area of application of the Utah FWS wage area. After careful consideration of FPRAC's recommendations, and based on the regulatory criteria for defining FWS wage areas, we have found that it is appropriate to redefine these counties. In addition, FPRAC recommended that the name of the Southern and Western Colorado wage area be changed to Southern Colorado. Although FPRAC carefully considered the possibility of recommending other changes in the Southern and Western Colorado FWS wage area, the Committee did not find that additional changes would be appropriate at this time.

Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria for consideration when OPM defines FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population employment, and the kinds and sizes of private industrial establishments.

The Southern and Western Colorado wage area continues to meet all regulatory requirements to remain a separate wage area: There are currently about 1,800 FWS workers in the wage area. The wage area's host activity, the United States Air Force Academy, still has the capacity to host annual local wage surveys. In addition, local wage surveys in the Southern and Western Colorado survey area find more than sufficient local private industry wage data to satisfy the regulatory criteria for FWS wage survey adequacy under 5 CFR 532.239.

Based on an analysis of the regulatory criteria for defining FWS wage areas, FPRAC found sufficient rationale to recommend that OPM redefine Eagle, Garfield, Lake, Pitkin, Rio Blanco, and Routt Counties to the Denver wage area. The distance criterion for these counties favored the Denver wage area more than the Southern and Western Colorado wage area. The transportation facilities and geographic features criteria for these counties strongly favored the Denver wage area because the most favorable route by road from these counties goes through the present Denver wage area before reaching the Southern and Western Colorado survey area. All other criteria studied did not favor one wage area more than another.

For Mesa County, CO, the distance to the closest city criterion favored the Utah wage area, while the distance to the closest host installation criterion favored the Denver wage area. The transportation facilities and geographic features criteria favored the Utah wage area. The kinds and sizes of industry and population criteria also favored the Utah wage area. All other criteria studied had indeterminate findings. An additional factor taken into consideration for Mesa County was that the Colorado National Monument, located in Mesa County, is administratively in the same National Park Service region as most of the National Parks in Utah. Arches National Park is defined to the Utah wage area and is located just across the State line from the Colorado National Monument. Based on the regulatory criteria analysis and because of the organizational relationships and geographic proximity of National Park Service facilities in the region, FPRAC recommended that we place the Colorado National Monument in the same wage area as the Arches National Park.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B of part 532 is amended for the State of Colorado by removing the wage area listing for "Southern & Western Colorado" and adding alphabetically in its place a listing for "Southern Colorado".

3. Appendix C to subpart B is amended by revising the wage area listings for Denver, Colorado, and Utah, and by removing the wage area listing for Southern & Western Colorado and adding in its place a listing of Southern Colorado to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Colorado

Denver

Survey Area

Colorado:
- Adams
- Arapahoe
- Boulder
- Denver
- Douglas
- Gilpin
- Jefferson

Area of Application. Survey area plus:

Colorado:
- Clear Creek
- Eagle
- Elbert
- Garfield
- Grand
- Jackson
- Lake
- Larimer
- Logan
- Morgan
- Park
- Phillips
- Pitkin
- Rio Blanco
- Routt
- Sedgwick
- Summit
- Washington
- Weld
- Yuma

Southern Colorado

Survey Area

Colorado:
- El Paso
- Pueblo
- Teller

Area of Application. Survey area plus:

Colorado:
- Alamosa
- Archuleta
- Baca
- Bent
- Chaffee
- Cheyenne
- Conejos
- Costilla
- Crowley
- Custer
- Delta
- Dolores
- Fremont
- Gunnison
- Hinsdale
- Huerfano
- Kiowa
- Kit Carson
- Las Animas
- Lincoln
- Mineral
- Montrose
- Otero
- Ouray
- Pitkin
- Prowers
- Rio Grande
- Saguache
- San Juan
- San Miguel

* * * * *

Utah

Survey Area

Utah:
- Box Elder
- Davis
- Salt Lake
- Tooele
- Utah
- Weber

Area of Application. Survey area plus:

Utah:
- Beaver
- Cache
- Carbon
- Daggett
- Duchesne
- Emery
- Garfield
- Grand
- Iron
- Juab
- Millard
- Morgan
- Piute
- Rich
- San Juan (Only includes the Canyonlands National Park portion.)
- Sanpete
- Sevier
- Summit
- Uintah
- Wasatch
- Washington
- Wayne

Colorado:
- Mesa
- Moffat

[FR Doc. 99–33364 Filed 12–23–99; 8:45 am]
BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. 99–064–1]

Noxious Weeds; Update of Weed and Seed Lists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to amend the noxious weeds regulations by adding *Homeria* spp. (Cape tulips) to the list of terrestrial weeds. Listed noxious weeds may be moved into or through the United States or interstate only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action appears to be necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States.

DATES: Consideration will be given only to comments received on or before February 25, 2000. We will also consider comments made at a public hearing to be held on February 1, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–064–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–064–1.

The public hearing will be held at the USDA Center at Riverside, room 3B01, 4700 River Road, Riverdale, MD. Picture identification is required to gain access to the building. Parking is available next to the building for a $3 fee (please have quarters or $1 bills available). The nearest Metro station is the College Park station on the Green Line, which is within walking distance.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtónen, Botanist, Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States and interstate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the US Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS) regulations implementing the provisions of title III of FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

The FNWA defines a noxious weed as "any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health."

In this document we are proposing to amend the regulations by adding *Homeria* spp. (Cape tulips) to the list of terrestrial noxious weeds in § 360.200(c) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Homeria spp. (Cape tulips) are not known to exist in the United States in the wild. However, *Homeria* spp. have been imported into the United States under the Bulb Preclearance Program since 1994, with increasing numbers of imports each year. We estimate that over 1.8 million *Homeria* spp. corms were received in the United States between July 1994 and March 1999. However, data on the distribution of *Homeria* spp. are not available. We are requesting that the public help us determine which species of *Homeria* spp. are being planted and where. If we determine, based on public comments, that some species of *Homeria* spp. have become widespread in the United States, those species will not be included in final listing of noxious weeds.

Because APHIS conducts no weediness screening for nursery stock, we placed no restrictions on the importation of *Homeria* spp. because no evidence was available to suggest it was an invasive genus. However, as explained in detail below, APHIS has recently conducted a pest risk assessment that identifies *Homeria* spp. as a genus that presents a high pest risk to American agriculture.

Homeria spp. as a Contaminant in Australian Oats

Until recently, the importation of Australian oats was prohibited because such shipments often contain wheat seeds, which were prohibited entry into the United States under the wheat diseases regulations, contained in 7 CFR part 319, § § 319.59 through 319.59–2. In December 1998, APHIS decided to stop prohibiting the entry of nonpropagative materials contaminated with disease-free wheat seeds. This change renewed interest in the United States in importing Australian oats for consumption.

As a result, prospective importers submitted seed analysis reports from Australian oats to APHIS to see if any other contaminants, particularly noxious weeds, might present a risk to plant resources in the United States. One of the analysis reports listed *Homeria* spp. as a potentially threatening invasive noxious weed that could be present in shipments of Australian oats. Introduced into Australia as ornamental plants between 1840 and 1850, *Homeria* spp. are now listed by five Australian States as noxious weeds.

Given Australia's identification of *Homeria* spp. as noxious weeds, APHIS conducted a pest risk assessment on the potential effects of *Homeria* spp. on U.S. agriculture and the natural environment. By the time the first shipment of Australian oats reached the United States, APHIS had gathered sufficient information to conclude that *Homeria* spp. present a high pest risk to U.S. agriculture.

APHIS inspectors found seeds of *Homeria* spp. in the initial shipments of Australian oats to the United States. This was problematic. Although *Homeria* spp. nursery stock has been imported into the United States for several years without restriction, the risk to agriculture associated with importations of nursery stock, while high, is not as serious as the risk associated with *Homeria* spp. imported as a contaminant of Australian oats. Since the imported oats are likely to be used as a feed for horses, it is likely that the *Homeria* spp. seeds could be introduced into grazing lands and paddocks, where they could do the following:

- Poison livestock and/or humans. Livestock may die within 12 hours or less after ingesting the leaves.
- Reproduce and persist in prolific fashion, thus crowding out desirable plants and competing with them for soil nutrients, reducing the carrying capacity of pastures and reducing crop yields.

Historical data show that, in the 1980's in South Africa, poisoning from *Homeria* spp. and a related genus resulted in losses of $2.5 to $3 million per year in livestock. All classes of livestock are susceptible, but cattle, sheep, goats, and donkeys are most likely to suffer poisoning under natural conditions. Further, since *Homeria* spp. could grow on cultivated land, they may be cut with forage and cause poisoning in stall-fed animals.

Contaminated oats are likely to introduce *Homeria* spp. into the areas where they pose the greatest threat to U.S. agriculture. Listing this weed would help avert the introduction and help prevent the artificial spread of the weed into noninfested areas of the United States. Therefore, we are proposing to add *Homeria* spp. (Cape tulips) to the list of terrestrial weeds in § 360.200(c) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1). If listed as a noxious weed, all forms of *Homeria* spp., including nursery stock, could be prohibited entry into the United States. However, as stated earlier in this document, if we find evidence that certain species are already widespread due to several years of availability in the nursery trade, we will make exceptions to the *Homeria* spp. noxious weed listing for those species.

Public Hearing

APHIS will host a public hearing to provide interested persons a full opportunity to present their views

regarding this proposal. The hearing will be held on February 1, 2000, at the USDA Center at Riverside, room 3B01, 4700 River Road, Riverdale, MD.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in, listing their names and organizations.

The public hearing will begin at 10 a.m. local time and is scheduled to end at 12 noon local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at a hearing, except to clarify or explain provisions of the proposed rules.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set forth below, regarding the economic effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, we are inviting comments concerning potential economic effects. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with the FNWA, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

This proposed rule would add *Homeria* spp. (cape tulips) to the list of Federal noxious weeds and to the list of seeds with no tolerances applicable to their introduction.

Homeria spp. (Cape tulips) are not known to exist in the United States in the wild. However, *Homeria* spp. have been imported into the United States under the Bulb Preclearance Program since 1994, with increasing numbers of imports each year. We estimate that over 1.8 million *Homeria* spp. corms were received in the United States between July 1994 and March 1999. However, data on the distribution of *Homeria* spp. are not available. If all species of *Homeria* spp. are listed as noxious weeds, persons who import or purchase *Homeria* spp., including those in the nursery trade, could be affected. However, data on the number and location of persons who import or purchase *Homeria* spp. are not available.

As stated above, *Homeria* spp. nursery stock has been imported into the United States for several years without restriction. Recently, APHIS inspectors found seeds of *Homeria* spp. in shipments of Australian oats to the United States. As a result of this finding, APHIS conducted a risk assessment to determine the potential effects of *Homeria* spp. on U.S. agriculture. The risk assessment revealed that *Homeria* spp. may present a high risk to U.S. agriculture and that *Homeria* spp. meet the criteria for listing as a Federal noxious weed.

Since imported Australian oats are likely to be used as a feed for horses and other livestock, it is likely that the *Homeria* spp. seeds could be introduced into grazing lands and paddocks, where they could do the following:

- Poison livestock and/or humans. Livestock may die within 12 hours or less after ingesting the leaves.
- Reproduce and persist in prolific fashion, thus crowding out desirable plants and competing with them for soil nutrients, reducing the carrying capacity of pastures and reducing crop yields.

Historical data show that, in the 1980's in South Africa, poisoning from *Homeria* spp. and a related genus resulted in losses of $2.5 to $3 million per year in livestock. All classes of livestock are susceptible, but cattle, sheep, goats, and donkeys are most likely to suffer poisoning under natural conditions. Further, since *Homeria* spp. could grow on cultivated land, they may be cut with forage and cause poisoning in stall-fed animals. If *Homeria* spp. is introduced into the United States via Australian oats, U.S. livestock producers could be expected to experience livestock losses similar to those experienced by South Africa in the 1980's.

Effects on Small Entities

If listed as a noxious weed, all forms of *Homeria* spp., including nursery stock, could be prohibited entry into the United States. However, as stated earlier in this document, if we find evidence that certain species are already widespread due to several years of availability in the nursery trade, we will make exceptions to the *Homeria* spp. noxious weed listing for those species

The unchecked spread of *Homeria* spp. into the United States can be expected to have a negative economic effect on livestock operations in the United States, whether small or large, given significant negative effects on the regions in Australia and South Africa where *Homeria* spp. are already established. In responding to the potential harm caused by *Homeria* spp. to livestock and grazing lands, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that the proposed rule, if adopted, would help to prevent the need for such expenditures.

We are aware that there are persons in the nursery trade who import and distribute *Homeria* spp. nursery stock, especially bulbs. We have no data available on the location, number, or size of those businesses; however, it is likely that the majority of those businesses could be classified as small entities. We are requesting that the public provide any available data relevant to volumes and distribution of imported *Homeria* spp. nursery stock.

We believe that adding *Homeria* spp. to the list of Federal noxious weeds would help preclude potential economic and ecological consequences that could result from its spread.

Alternatives Considered

The only significant alternative to this proposed rule would be to make no changes in the regulations; i.e., to not add *Homeria* spp. to the list of Federal noxious weeds. We have rejected the alternative of not adding *Homeria* spp. to the list of Federal noxious weeds because of the potential economic and ecological consequences that we believe would result from their spread.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are proposing to amend 7 CFR parts 360 and 361 as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 would continue to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

§ 360.200 [Amended]

2. In § 360.200, paragraph (c) would be amended by adding, in alphabetical order, an entry for "*Homeria* spp.".

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 would continue to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.6 [Amended]

4. In § 361.6, paragraph (a)(1) would be amended by adding, in alphabetical order, an entry for "*Homeria* spp.".

Done in Washington, DC, this 16th day of December 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33423 Filed 12–23–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of Management Plan/Regulations of the Gray's Reef National Marine Sanctuary; Intent To Prepare Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Scoping meetings.

SUMMARY: The Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary) was designated in January 1981, and consists of 17 square nautical miles of open ocean and live bottom habitat approximately 17.5 nautical miles east of Sapelo Island, Georgia. The present management plan for the Sanctuary was completed in 1983. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C 1431 *et seq.*), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates that completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months. NOAA has already conducted five public scoping meetings (as announced in the document in 64 FR 63262, November 17, 1999) to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the sanctuary's management plan and regulations. Because of the interest of individuals in other communities in Georgia, NOAA has decided to conduct three additional scoping meetings.

DATES: Written comments should be received on or before February 1, 2000.

Scoping meetings will be held:

(1) Tuesday, January 11, 2000, 7:00 p.m. in Statesboro, GA

(2) Wednesday, January 12, 2000, 7:00 p.m. in Savannah, GA

(3) Thursday, January 13, 2000, 7:00 p.m. in Savannah, GA

ADDRESSES: Written comments may be sent to the Gray's Reef National Marine Sanctuary (Management Plan Review), 10 Ocean Science Circle, Savannah, Georgia 31411. Comments will be available for public review at the same address.

Scoping meetings will be held at:

(1) William James Education Complex, 150 Williams Road, Statesboro, GA

(2) Georgetown Elementary School, 1516 King George Blvd., Savannah, GA

(3) Marshpoint Elementary School, 135 Whitemarsh Island Road, Savannah, GA

FOR FURTHER INFORMATION CONTACT: Becky Shortland, Planning and Outreach Coordinator, at (912) 598–2381 or 2345; Becky.Shortland@noaa.gov

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 20, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–33424 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–08–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 504

RIN 3141–AA04

Classification of Games

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule; Notice of extension of time and notice of hearing.

SUMMARY: On November 10, 1999, the National Indian Gaming Commission (Commission) issued a Notice of Proposed Rulemaking (64 FR 61234,

November 10, 1999) proposing regulations that will establish a formal process for the classification of games played on Indian lands under the Indian Gaming Regulatory Act (Act). The date for filing comments is being extended and one hearing will be held.

DATES: Comments shall be filed on or before February 24, 2000. A hearing shall be held on January 24, 2000, from 9:30 a.m. to 4 p.m. at the DoubleTree Warren Hotel, 6110 South Yale, Tulsa, Oklahoma.

ADDRESSES: Comments and requests to participate in the hearing may be mailed to: Game Classification Comments, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating class II gaming and certain aspects of class III gaming on Indian lands. The proposed regulations establish a formal, administrative process for deciding whether a game is a Class II or III game and allow the Commission to discontinue the current advisory classification opinion process. Several commenters have requested more time to prepare their comments on the proposed regulations. Several have also requested the opportunity to present their views directly to the Commissioners in a hearing. The Commission has determined that these regulations are of such significance that the commenters should be given additional time to determine and present their views in writing and at a hearing. Persons wishing to present their views at the hearings should contact the Commission.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 99–33428 Filed 12–23–99; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–128–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. Pennsylvania has submitted this proposed amendment to reflect changes made to regulations in the Pennsylvania program through the Department's Regulatory Basics Initiative (RBI). Under this initiative, regulations were revised because they were considered to be unclear, unnecessary or more stringent than the corresponding Federal regulation. The RBI resulted in the following rulemaking:

Coal Mining—Areas Unsuitable for Mining, *Pennsylvania Bulletin*, Vol. 29, No. 41, October 9, 1999.

DATES: Written comments must be received by 4:00 p.m., on January 26, 2000. If requested, a public hearing on the proposed amendment will be held on January 21, 2000. Requests to speak at the hearing must be received by 4:00 p.m., on January 11, 2000.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking [or administrative] record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking [or administrative] record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meeting or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, Post Office Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments, can be found in the July 30, 1982, **Federal Register** (47 FR 33079). Subsequent actions concerning the Pennsylvania program amendments are identified at 30 CFR 938.15.

II. Discussion of the Proposed Amendment

By letter dated November 22, 1999 (Administrative Record No. PA–861.03, the Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program regarding rules related to Areas Unsuitable for Mining because of the department's Regulatory Basics Initiative (RBI). Under the RBI, regulations were revised because they were considered unclear, unnecessary or were more stringent than the corresponding federal regulations.

The changes proposed by PADEP in this amendment apply to the following parts of the Pennsylvania program: 25

PA Code 86.1, 86.101–86.121, and 86.123–86.130. These changes are summarized below. Revisions concerning nonsubstantive wording, format, or organizational changes will not be described in this notice.

1. In 25 PA Code 86.1 (definitions), subsections (i) through (v) which formally defined Valid Existing Rights have been deleted and replaced by the following: "Rights which exist under the definition of 'valid existing rights' in 30 CFR Section 761.5 (relating to areas unsuitable for mining)." The purpose of this change is to make this section more consistent with the Federal regulations at 30 CFR 761.5.

2. In 25 PA Code 86.101 (definitions), the amendment revises the definitions of the following terms: fragile lands; historic lands; public building; public park; renewable resource lands; and significant recreational, timber, economic or other values incompatible with surface mining operations. The objectives of the revisions are consistency with the Federal regulations (at 30 CFR 700.5, 761.5, and 762.5) and, in the case of fragile lands, consistency with Pennsylvania SMCRA, Section 4.5. Specific revisions include the following:

In the definition of fragile lands, "significantly" is inserted in front of the word, "damaged." At the end of the subsection, the amendment deletes the following: "* * * and buffer zones adjacent to the boundaries of areas where surface mining operations are prohibited under section 4.5(h) of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4e(h))."

In the definition of historic lands, the following is deleted: "Historic or cultural districts, places, structures or objects, including archaeological and paleontological sites, National Historic Landmark sites, sites listed * * *". This is replaced by: "Areas containing historic, cultural or scientific resources. Examples of historic lands include archaeological sites, properties listed on * * *".

In the definition of public building, the following is deleted: "* * * by a public agency or used principally * * *". This is replaced by "* * * or leased and principally used by a government agency * * *"

In the definition of public park, "* * * or portion of an area * * *" is inserted after the word, "area" at the beginning of the subsection. In the same sentence, the word "primarily," is inserted before "* * * for public recreational use * * *" The following final sentence has been deleted: "For the purposes of this subchapter, local agency shall include nonprofit organizations owning lands which are dedicated or designated for public recreational use."

The definition of renewable resource lands has been changed to: "Areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas."

In the definition of surface mining operations, the following phrase at the end of the subsection has been deleted: "* * * and activities involved in or related to underground coal mining which are conducted on the surface of the land, produce changes in the land surface, or disturbs the surface, air or water resources of the area."

3. 25 PA Code 86.102 (areas where mining is prohibited or limited) was revised to improve consistency with the Federal regulations (at 30 CFR 761.11 and 761.12), to recognize the role of the newly formed Department of Conservation and Natural Resources, to clarify a legal citation, and insert metric equivalents for barrier distances.

In subsection (1), following the citation, "(16 U.S.C.A. 1276(a))," the following has been inserted: "* * * or study rivers or study river corridors as established in guidelines under the act * * *". In subsection (3), the following phrase after the word, "included," has been deleted: "* * * on or eligible for inclusion * * *". The first part of the subsection now reads: "Which will adversely affect a publicly-owned park or a place included on the National Register of Historic Places * * *". In subsection (4), "* * * the Department of Conservation and Natural Resources and * * *" is inserted before the words, "the Department." In subsection (5), "* * * Department of Conservation and Natural Resources and the * * *" is inserted before the word, "Department."

Subsection (9) has been revised to read as follows:

(9) Within 300 feet (91.44 meters) measured horizontally from an occupied dwelling, unless one or more of the following exist:

(i) The only part of the surface mining operations which is within 300 feet (91.44 meters) of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite to the dwelling.

(ii) The owner thereof has provided a written waiver by lease, deed or other conveyance clarifying that the owner and signatory had the legal right to deny surface mining operations and knowingly waived that right and consented to surface mining operations closer than 300 feet (91.44 meters) of the dwelling as specified.

(A) A valid waiver shall remain in effect against subsequent owners who had actual or constructive knowledge of the existing waiver at the time of purchase.

(B) Subsequent owners shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records or if the surface mining operations have proceeded to within the 300 foot (91.44 meters) limit prior to the date of purchase.

(iii) A new waiver is not required if the applicant for a permit had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet (91.44 meters) of such dwelling.

4. Parts of 25 PA Code 86.103 (procedures) have been revised to increase the clarity of the language and to add metric equivalents. Subsection (d) has been revised to read as follows:

(d) When the proposed surface mining operations would be conducted within 300 feet (91.44 meters) measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver as specified in § 86.102(9) (relating to areas where mining is prohibited or limited).

In subsection (e) the word, "may," following "surface mining operations" has been replaced by, "will." The first part of the subsection now reads: "When the proposed surface mining operations will adversely affect a publicly owned park or a place included on the National Register of Historic Places, * * *". Also, the following has been added to subsection (e)(2):

(i) Upon request by the appropriate agency a 30-day extension may be granted.

(ii) Failure to object within the comment period shall constitute an approval of the proposed permit by that agency.

5. 25 PA Code 86.121 (areas designated unsuitable for surface mining operations) has been revised for clarity and consistency with the Federal regulations (at 30 CFR 762.13). The section's title has been changed to: "Areas exempt from designation as unsuitable for surface mining operations." Also, subsections (a) and (b) have been deleted, and the following added:

(1) Surface mining operations were being conducted on August 3, 1977.

(2) Surface mining operations have been authorized by a valid permit issued under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1–1396.19a), the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51–30.66), The Clean Streams Law (35 P.S. §§ 691.1–691.1001), or the

Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1–1406.21).

(3) A person establishes that substantial legal and financial commitments in surface mining operations were in existence prior to January 4, 1977.

6. In 25 PA Code 86.123 (procedures: petitions), the following language has been added to subsection (c)(5) to make it more consistent with the Federal regulations at 30 CFR 764.13: "A person having an interest which is or may be adversely affected must demonstrate an "injury in fact" by describing the injury to the specific affected interest and demonstrating how they are among the injured."

7. 25 PA Code 86.124 (procedures: initial processing, record keeping and notification requirements) has been revised for clarity and consistency with 25 PA Code 86.126 and the corresponding Federal provisions at 30 CFR 764.15 and 764.17. Following the first sentence of subsection (2), the following has been inserted: "A frivolous petition is one in which the allegations of harm lack serious merit." In subsection (c), the following is inserted after the words, "allegations of facts" for clarity: "* * * describing how the designation determination directly affects the intervenor * * *". Subsection (f) has been revised to read as follows: "The Department will prepare a recommendation on each complete petition received under this section and submit it to the EQB within 12 months of receipt of the complete petition.

8. 25 PA Code 86.125 (procedures: hearing requirements) has been revised for clarity and consistency with the PADEP and EQB regulatory review procedures. The part of subsection (a), beginning with the words, "The hearing shall be" has been separated into a new subsection (b). The last sentence under the original subsection (a), which had required the EQB to make a verbatim transcript of the hearing, has been deleted. The original subsection (b) has been changed to (e), and has been revised. The original subsections (c) and (d) have been changed to (g) and (h) respectively. The new subsections (c) through (d) read as follows:

(c) No person shall bear the burden of proof or persuasion.

(d) A verbatim transcript of the hearing will be made and included in the public record.

The opening statement of subsection (e) has been changed to read as follows: "The department will give notice of the date, time and location of the hearing by first class mail postmarked not less than 30 days before the scheduled hearing to:" Then subsections (e)(2) through (4) have been revised as follows: the original language in (e)(2) ("The petitioner and intervenors") has been deleted; the original language in (3) has been transferred to (2), and has been changed to read, "persons known to the department to have an ownership or other interest in the area covered by the petition"; and (e)(4) has been deleted.

The language originally under subsection (f) is now designated as (k). The new subsection (f) reads as follows: "The Department will give notice of the date, time and location of the hearing by certified mail postmarked not less than 30 days before the scheduled hearing to the petitioner and to the intervenors."

9. 25 PA Code 86.126 (procedures: decision) has been revised for clarity and consistency with PADEP and EQB regulatory review procedures. Under subsection (b) there are new subsections, (1) and (2), which specify actions the EQB is required to take, depending on its decision whether or not to designate an area as unsuitable for surface mining operations.

10. 25 PA Code 86.127 (data base and inventory system requirements) has been revised to correct a misspelling and reflect the dissolution of the Department of Community and Economic Development.

11. 25 PA Code 86.128 (public information) has been revised to correct a misspelling.

12. 25 PA Code 86.129 (coal exploration) has been revised for consistency with the Federal regulations at 30 CFR 762.14. It's title has been changed to: "Coal exploration on areas designated as unsuitable for surface mining operations." The remainder of the revised subsection reads as follows:

(a) Designation of an area as unsuitable for all or certain types of surface mining operations under this chapter does not prohibit coal exploration operations in the area.

(b) Coal exploration may be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The exploration is consistent with the designation.

(2) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration), and the Department has issued written approval for the exploration.

13. 25 PA Code 86.130 (areas designated as unsuitable for mining) has been revised to insert metric equivalents and correct two regulatory references.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administration Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on January 11, 2000. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

If a public hearing is held, it will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and

Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 16, 1999.

Allen D, Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–33462 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding and Commencement of Status Review for a Petition to List the Sacramento Mountains Checkerspot Butterfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U. S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) as an endangered species and designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act). We find the petition provides substantial scientific and commercial information to indicate that listing of this animal may be warranted. Therefore, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this action.

DATES: The finding in this document was made on December 7, 1999. To be considered in the status review and subsequent 12-month finding for the petition, your information and comments must be received by February 25, 2000.

ADDRESSES: You may submit data, information, comments, or questions relevant to this finding to the Field Supervisor, U. S. Fish and Wildlife Service, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Eric Hein, Endangered Species Biologist (see **ADDRESSESS** section) (telephone 505/346–2525, extension 135).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. We base the finding on all the information available to us at the time the finding is made. To the maximum extent practicable, we make the finding within 90-days of receipt of the petition, and promptly publish notice of the finding in the **Federal Register**. If we find that substantial information was presented, we must promptly commence a status review of the species.

The processing of this petition conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. The processing of this 90-day petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

We made a 90-day finding on a petition to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia* [=*chalcedona*] *cloudcrofti*) as endangered with critical habitat. Mr. Kieran Suckling of the Southwest Center for Biological Diversity in Tucson, Arizona, submitted the petition, dated November 1998, which we received on January 28, 1999.

The petitioner requested that we emergency list the Sacramento Mountains checkerspot butterfly as endangered. The petitioner stated that the animal merits listing because of its restricted range, adverse impacts resulting from a proposed U.S. Forest Service (Forest Service) land transfer, improvements to a Forest Service campground, construction of homes and other structures, aggressive non-native weeds that may be affecting the larval foodplants and adult nectar sources, global climate change, and livestock overgrazing. The petitioner requested emergency listing due to the perceived immediate threats to the species' continued existence from a proposed land transfer between the Forest Service and the Village of Cloudcroft in the Sacramento Mountains in Otero County, New Mexico.

Emergency listing is not a petitionable action under the Act. However, our above-mentioned listing priority guidance requires that petitions to list species be screened for the need to emergency list them. Emergency listing is allowed under the Act whenever immediate protection is needed to address a significant risk to the species' well being. Based on currently available information, we determined that emergency listing is not needed for the Sacramento Mountains checkerspot butterfly. The Forest Service modified its proposed land transfer to the Village of Cloudcroft so that the parcels containing the highest number of known butterflies are no longer under consideration. In addition, overcollection of butterflies, a threat not cited by the petitioner, but an activity of which we have extensive knowledge, has been prohibited in portions of the Lincoln National Forest, except under permit, for a period of one year. Therefore, we have determined that the species is not in imminent risk of extinction.

The Sacramento Mountains checkerspot butterfly is a small member of the brush-footed butterfly family (Nymphalidae). The adults have a wingspan of approximately 3 centimeters (1 inch) and they are checkered with dark brown, red, orange, white, and black spots and lines. The taxon was described in 1980 based on 162 adult specimens collected in the vicinity of the Village of Cloudcroft in Otero County, New Mexico (Ferris and Holland 1980); it is only know from this area. The Sacramento Mountains checkerspot butterfly inhabits non-forested openings within the mixed-conifer forest (Lower Canadian Zone) at an elevation between 2,450 and 2,750 meters (8,000 and 9,000 feet) in the vicinity of Cloudcroft. The adult butterfly is often found in association with the larval foodplant, New Mexico penstemon (*Penstemon neomexicanus*), and adult nectar sources such as sneezeweed (*Helium hoopesii*).

The Forest Service is evaluating a request from the Village of Cloudcroft for a transfer of land pursuant to the Townsite Act. The proposed land transfer originally included three parcels in which a number of Sacramento Mountains checkerspot butterflies have been observed by biologists. The Village of Cloudcroft and the Forest Service agreed to eliminate these three parcels from the current land transfer request (Jose Martinez, Lincoln National Forest Supervisor, *in litt.*, 1999). A decision on the other five parcels is being withheld by the Forest Service until we have made the 90-day finding on the petition for this species (Jose Martinez, pers. comm., 1999). Sacramento Mountain checkerspot butterflies have been observed on three of the five parcels that are currently being considered for the land transfer (Forest Service 1999a, 1999b). However, the Forest Service provided information that the vast majority of the habitat in the parcels being considered for exchange is forested and not suitable for the butterfly. We will attempt to gather more information on the amount of actual habitat proposed for exchange, and its importance to the butterfly, during the status review.

The New Mexico State Highway and Transportation Department (NMSHTD) is proposing to improve portions of an approximately 3.38-kilometer (2-mile)-long stretch of State Highway 130 between the Village of Cloudcroft and the intersection of SH 130 and Sunspot Road (Metric Corporation 1996; Steve Reed, NMSHTD, pers. comm., 1999). The project consists of widening the road and shoulders, constructing retaining walls, adding drainage ditches and culverts, and reconstructing a curve. The curve is located adjacent to a campground, where larvae and adult Sacramento Mountains checkerspot butterflies were located in 1998 (Forest Service 1999a, 1999b). This site would be eliminated by the proposed reconstruction of SH 130. However, since this species occupies open, non-forested areas, it is unknown whether this project will ultimately reduce or increase the amount of butterfly habitat.

A campground located near Cloudcroft contains one of the greatest known concentrations of the Sacramento Mountains checkerspot butterfly. Reconstruction activities in the campground are proposed for the year 2003, including replacement of existing bathroom facilities, traffic control barriers, picnic tables, and campfire pits (Jose Martinez *in litt.*, 1999). The potential adverse impacts to the Sacramento Mountains checkerspot butterfly are not known as the proposal remains in a preliminary stage. The Forest Service has stated that it intends to work closely with us in addressing public safety and health issues at the campground in a manner that protects and improves management of the Sacramento Mountains checkerspot butterfly (Mark Crites, Biologist, Sacramento Ranger District, pers comm., 1999; Don DeLorenzo, Wildlife, Fish, Rare Plants, and Forestry Staff Officer, Lincoln National Forest, pers. comm., 1999).

Roadside maintenance was cited by the petitioner as a threat to the Sacramento Mountains checkerspot butterfly. The NMSHTD uses mowing, rather than chemical agents, to control vegetation in the right-of-way (Steve Reed, pers. comm., 1999). The effect on the animal from mowing is unclear at this time.

The petitioner stated that overgrazing by livestock is causing adverse impacts that are affecting the Sacramento Mountains checkerspot butterfly. This activity could result in trampling of the early stages, reduction or elimination of the larval foodplant or adult nectar sources, and degradation of natural habitat. Grazing currently occurs in an allotment (Forest Service 1999a), where butterflies have been observed. The effect of grazing by both wildlife and domestic livestock is not well documented. We are aware of instances where livestock grazing appeared to significantly degrade habitat used by other checkerspot butterflies. Conversely, some areas currently used by the Sacramento Mountains checkerspot have been grazed by wildlife and domestic livestock for a number of years. We intend to further assess this subject during the status review.

The construction of homes and associated infrastructure in the habitat of the Sacramento Mountains checkerspot butterfly could directly affect the species or result in indirect effects, such as the introduction of nonnative plants and animals, loss of

movement corridors, or habitat fragmentation. There are a number of private inholdings within areas containing apparently suitable habitat for the species (Don DeLorenzo, pers. comm., 1999). We are unaware of any surveys conducted on private lands in the area, and available information on the amount of existing habitat and potential for development is insufficient to confidently predict the extent of this threat.

There likely is high interest by some collectors in the Sacramento Mountains checkerspot butterfly due to its extremely restricted distribution and apparent low numbers. High prices for prized species can provide an incentive for illegal take and trade. Listing in itself increases the publicity and interest in a species' rarity, and thus may directly increase the value and demand for specimens. Specimens of other subspecies of the anicia checkerspot butterfly have been offered for sale (Capps 1991; Entomological Clearing House 1986; Kral 1987, 1989).

Collecting from small colonies or repeated handling and marking, particularly of females and in years of low abundance, could seriously damage the populations through loss of individuals and genetic variability (Gall 1984b; Murphy 1988; Singer and Wedlake 1981). Since the known populations of the Sacramento Mountains checkerspot butterfly occur in a public campground, along public roadways, or in other areas readily accessible to the public, the species is easily collected, and the limited numbers and distribution of this species make it attractive to collectors and vulnerable to overcollection.

The Forest Service issued a one-year closure order for the collection of any butterflies without a permit on the Smokey Bear and Sacramento Districts of the Lincoln National Forest due to the threat of overcollection (Jose Martinez, *in litt.*, 1999). This closure order may offer protection from butterfly collecting; however, some butterfly collectors are known to have intentionally violated a similar closure order in the Uncomphagre National Forest in Colorado in order to collect the endangered Uncomphagre fritillary butterfly (*Boloria acrocnema*) (U. S. Department of Justice 1993).

A significant long-term threat to the Sacramento Mountains checkerspot butterfly may be the change in community structure due to invasive exotic plants, and attempts to control them. According to the Forest Service (1999a), a 1993 survey found that approximately 737 hectares (1,822 acres) in the vicinity of Cloudcroft had infestations of noxious weeds. Infestations occurring in non-forested openings and on road rights-of-way expanded and the densities of weeds increased where they have not been treated. These invasive foreign species may out-compete and reduce or eliminate the larvae food plant and adult nectar plants, resulting in adverse effects on the animal. Efforts to control the exotic plants with herbicides may pose a threat to the Sacramento Mountains checkerspot butterfly.

Periodic droughts, such as those that occurred in recent years in New Mexico, may adversely affect the Sacramento Mountains checkerspot butterfly. Drought is known to cause a decrease in the size of the populations of some butterfly species (C. Nagano, pers. obs., 1999). In addition to killing larvae by dessication, drought conditions may—(1) cause the early senescence or death of the larvae food plant prior to the completion of larval development; or (2) lower the nutritional quality of the host plant (e.g., water content). Drought also may reduce the quantity and quality of adult nectar sources. Conversely, the species has evolved in an environment subject to extended droughts. It is unknown whether human-caused habitat changes have increased the species' susceptibility to droughts.

We reviewed the petition, the literature cited in the petition, other literature, and information in our files. Based on the best scientific information available, we find the petition presents substantial information that listing this species may be warranted. Therefore, with the completion of this 90-day finding, we will conduct a status review of the species and subsequently make a finding as to whether the petitioned action is warranted pursuant to section 4(b)(3)(B) of the Act.

We solicit information regarding occurrence and distribution of the species, threats to its continued existence, and any additional data or scientific information from the public, scientific community, Tribal, local, State, and Federal governments, and other interested parties concerning the status of the Sacramento Mountains checkerspot butterfly. Of particular interest is information regarding:

(1) Additional historical and current population data which may assist in determining range and long-term population trends;

(2) Pertinent information on biology and life history;

(3) Additional information about habitat requirements; and,

(4) Information on immediate and future threats to the Sacramento Mountains checkerspot butterfly, and the areas inhabited by the species.

After consideration of additional information received during the comment period (see **DATES** section of this notice), we will prepare a 12-month finding as to whether listing of the species is warranted.

References Cited

You may request a complete list of all references we cited, as well as others, from the New Mexico Ecological Services Field Office (see ADDRESSES section).

Author: Chris Nagano (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 7, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–33481 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325–9325–01; I.D. 100699A]

RIN 0648–AJ52

Fisheries in the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement cost recovery for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska (IFQ Program). Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to collect fees to recover actual costs incurred for Federal management and enforcement of these IFQ fisheries. This action is intended to collect such fees.

DATES: Comments on the proposed rule must be received at the following address not later than January 26, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668 Juneau, AK 99802–1668, Attn: Lori J. Gravel. Hand deliveries or courier deliveries of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Copies of the environmental assessment/regulatory impact review/ initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for this action may be obtained from the address provided here. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer). Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Dr. John T. Sproul, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any * * * individual fishing quota program." Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

The proposed rule would recover costs for the IFQ Program only. NMFS intends to implement cost recovery for the Community Development Quota (CDQ) program through separate rulemaking.

The Magnuson-Stevens Act specifies the following with respect to the imposition of IFQ cost-recovery fees:

1. Fees must recover actual costs directly related to actual enforcement and management of the IFQ Program;
2. Fees must not exceed 3 percent of ex-vessel value;
3. Fees are in addition to any other fees charged under the Magnuson-Stevens Act;
4. With the exception of money reserved for the IFQ loan program, fees must be deposited in the Limited Access System Administrative Fund (LASAF) in the U.S. Treasury; and
5. Fees must be collected at either the time of a legal landing of halibut or sablefish, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

Background

NMFS, Alaska Region, administers the IFQ Program. The IFQ Program is a limited access system authorized by section 303(b) of the Magnuson-Stevens Act and the Northern Pacific Halibut Act of 1982. NMFS implemented the IFQ Program in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1998, NMFS developed this IFQ cost recovery proposal in accordance with the Magnuson-Stevens Act and with participation by the IFQ/CDQ Fee Collection Committee (Committee) comprised of stakeholder representatives appointed by the North Pacific Fishery Management Council (Council), the Council's Advisory Panel (AP), the full Council, and the general public.

In August 1998, NMFS identified an initial preferred alternative for the proposal, which included: (1) imposing on IFQ permit holders the responsibility of collecting and submitting IFQ fees to NMFS, (2) requiring registered buyers to provide NMFS with additional value and volume reports for developing standard prices, and (3) basing cost recovery fees on ex-vessel value as determined by the standard prices developed by NMFS.

NMFS presented a status report of the proposal to the Council and AP at their meetings in October 1998. At that time, the AP expressed concern that standard prices could differ greatly from the actual prices fishermen received for their fish. If the standard price were greater than the actual price received by fishermen, the use of NMFS standard prices would inflate the fees. The AP and Council recommended that NMFS revise the proposal to include a mechanism for basing fees on actual ex-vessel values. The Council also recommended that the proposal include an appeals process.

In response to these recommendations, NMFS has designed this proposed rule to require payment of fees based on standard ex-vessel value unless the IFQ permit holder can demonstrate a different actual ex-vessel value. The proposed rule includes an appeals process. The proposed rule would require IFQ permit holders to collect and submit fees associated with IFQ halibut and IFQ sablefish landings. It would also require IFQ registered buyers to submit information on the value and volume of purchased IFQ landings.

Cost Recovery Program Description

An IFQ permit holder would incur a cost recovery fee liability for every pound of IFQ halibut and sablefish that he or she lands. The IFQ permit holder would be responsible for self-collecting his or her own fee liability for all his or her IFQ halibut and IFQ sablefish landings. The IFQ permit holder would be responsible for submitting this payment to NMFS on or before the due date of January 31 following the year in which the landings were made. The dollar amount of the fee due would be determined by multiplying the IFQ fee percentage (approximately 3 percent) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Fee Percentage

Three percent of the ex-vessel value of fish harvested under an IFQ program is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. This proposed rule would allow the Regional Administrator to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. NMFS will not know the actual annual costs of the IFQ Program until after the end of the Federal fiscal year (September 30). After that time, the Regional Administrator could reduce the fee percentage for that year to reflect more closely the actual IFQ-related management and enforcement costs for the past Federal fiscal year. However, in order to budget, fishermen need to know at the time of sale the maximum fee percentage that could apply to their IFQ landings made from March (season opening) through September (Federal fiscal year-end). The proposed rule would set the applicable fee percentage at 3 at the start of each year but would allow the Regional Administrator to reduce the fee percentage if management and enforcement costs could be recovered for a lessor percentage. During the development of this proposed rule, representatives of the halibut and sablefish fisheries suggested that many IFQ fishermen experience constraints in capital availability during the fishing season. If NMFS were to set a low percentage at the beginning of the fishing season that subsequently had to be increased, small-scale fishermen whose budgets were based on the lower percentage could experience negative economic consequences. Because fees are not due until January 31 of the following year, NMFS believes that for budget purposes it is preferable to establish a 3–percent fee that could be adjusted downward, based upon certain types of information, between October and December to reflect the actual costs incurred during the previous Federal fiscal year.

NMFS seeks public comment on the provision in the proposed rule to establish an initially "high" fee (e.g., 3 percent) that could be adjusted downward by the Regional Administrator in mid-season. NMFS requests public comment comparing this proposed approach with an alternative that would establish an initially "low" fee percentage (e.g., 2 percent) that could be adjusted upward by the Regional Administrator in mid-season.

NMFS would encourage IFQ permit holders to set aside the amount of the fees throughout the fishing year in order to facilitate a lump sum payment by January 31 of the following calendar year. Early payments would be allowed but would not relieve a permit holder of associated reporting requirements.

Calculating Ex-vessel Value

The ex-vessel value of an IFQ landing would equal the sum of all payments of monetary worth made to fishermen for the sale of the fish. This would include any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed halibut or sablefish. Retro-payments would be part of the ex-vessel value and as such have a fee liability. If they were received after the initial payment, but during the same calendar year, the cost recovery fee for those retro-payments also would be due by the following January 31. If retro-payments were received by IFQ permit holders during the year following the IFQ fishing season when those fish were landed, then cost recovery fees associated with those post-season retro-payments would be due the next January 31.

Ex-vessel Value: Standard Versus Actual

Throughout this discussion, "value" refers to the worth, in U.S. dollars, of any amount of landed IFQ halibut or IFQ sablefish as determined by the sale, or potential economic return for the sale, of those fish. "Price" is the worth in U.S. dollars, for 1 lb (0.45 kg) of landed IFQ fish. Therefore, in this context, value and price only mean the same thing when describing the worth of 1 lb (0.45 kg) of IFQ fish when sold.

For purposes of calculating IFQ cost recovery fees, NMFS would distinguish between two types of ex-vessel value: "actual ex-vessel value" and "standard ex-vessel value." "Actual ex-vessel value" would be the amount of money an IFQ permit holder received as payment for his or her IFQ fish sold. This proposed rule would establish "standard ex-vessel values" as the default values on which to base fee liability calculations. However, IFQ permit holders would have the option of using "actual ex-vessel value" if they could satisfactorily document those values.

Fees Based on Standard Ex-vessel Value

In order to calculate standard ex-vessel values, NMFS would require IFQ registered buyers operating as shoreside processors to submit reports on the value and volume of IFQ landings. From the information contained in these reports, NMFS would extract standard prices, broken down by species, port or port group, and date. NMFS would use these standard prices to calculate standard ex-vessel values pursuant to the process described below.

IFQ Buyer Report

An IFQ registered buyer that also operates as a shoreside processor that receives and purchases IFQ fish landings would be required to complete and submit to NMFS by October 15 each year an IFQ registered buyer report (IFQ Buyer Report) that contained information regarding volume and value of IFQ landings by month, port, and IFQ registered buyer. NMFS would use information provided in these report to determine IFQ standard prices.

The IFQ Buyer Report would be based upon a reporting period from October 1 of the previous year to September 30 of the current year in order to allow NMFS to calculate standard prices and ex-vessel values before December 15. The information entered on the IFQ Buyer Report for January and February would relate to retro-payments made during those months by the registered buyer for IFQ landings that actually occurred during the previous calendar year. Similarly, information provided on the IFQ Buyer Report for October, November, and December would pertain to IFQ landings made in the calendar year prior to the report's due date (October 15).

These proposed new recordkeeping and reporting requirements are specified in the proposed regulations at § 679.5(1)(7).

NMFS Standard Price List

Based on the information received in the IFQ Buyers Report, NMFS would annually calculate and publish in the **Federal Register** a list of IFQ standard prices broken down by IFQ species, month, and port or port group.

These standard prices would remain in effect until changed by the Regional Administrator through publication in the **Federal Register** the following year. The Regional Administrator would revise the standard prices annually based on information regarding current volume and value provided by IFQ registered buyers operating as shoreside processors. The IFQ standard prices would be calculated by NMFS to reflect as closely as practical the seasonal and regional variations in the actual ex-vessel prices of IFQ species.

The information that would be reviewed by the Regional Administrator to determine IFQ standard prices would include the following:

(1) Landed pounds by species, port or port-group, and date;

(2) Total ex-vessel value by species, port or port-group, and date; and

(3) Price adjustments based on retro-payments.

Estimated Fee Based on Standard Ex-vessel Value

Using the IFQ Buyer Report and NMFS standard prices, NMFS would calculate standard ex-vessel values for all IFQ landings. Each year by December 31, NMFS would send each IFQ permit holder a multi-paged IFQ Fee Submission Form and a separate one-page IFQ Landing Summary and Estimated Fee Liability Form. The multi-paged Fee Submission Form would be completed by the IFQ permit holder. The one-page fee Estimate Form would be completed by NMFS and would reflect NMFS' calculations of the permit-holder's fee liability based on the amount of pounds landed and NMFS' standard ex-vessel values.

The one-page Fee Estimate Form would specify the number of IFQ pounds landed by species and area, the date of landing, the NMFS standard price per pound for those landings, the calculated standard ex-vessel value of the landings, the IFQ fee percentage, and the estimated fee liability for such landed IFQ pounds. The Fee Estimate Form would document standard ex-vessel values for all recorded IFQ pounds landed, but not necessarily sold, to IFQ registered buyers such as custom processed fish, fish sold by direct marketing, or take-home fish. NMFS would use the appropriate published IFQ standard price(S) to estimate the fee liability of landed IFQ pounds debited from each IFQ permit.

NMFS would base its calculations on the amount of IFQ halibut and IFQ sablefish landed in the pound weight equivalent deducted from an IFQ permit holder's account. This would allow a direct correlation between an IFQ permit holder's fee liability and the recorded number of IFQ pounds landed under his or her IFQ permit(s) as monitored by NMFS' Restricted Access

Management (RAM) Program. RAM would calculate the standard ex-vessel value of a permit holder's landed IFQ fish by multiplying the appropriate standard price (in U.S. dollars) by the weight (in IFQ equivalent pounds) of those fish represented in the IFQ deduction from his or her IFQ permit. The appropriate standard price used by NMFS on the IFQ fee estimate form for a given amount of landed IFQ pounds would be the price that corresponds to the same species, month of landing, and landing location documented on the NMFS standard price list. The IFQ permit holder could revise this estimated fee liability for each IFQ landing, or sub-portion of a landing, based on evidence of actual ex-vessel values.

Fees Based on Actual Ex-vessel Value

Under the proposed regulation, the actual value of landed IFQ fish would be determined when halibut or sablefish are actually sold. The IFQ permit holder could calculate his or her fee liability for landed fish based on the actual monetary value received. The fee amount would be the product (in U.S. Dollars) of multiplying that actual ex-vessel value by the fee percentage (approximately 0.03). The IFQ permit holder would document the calculations of fees based on actual ex-vessel value on the IFQ Fee Submission Form provided by NMFS.

The following example shows how an IFQ permit holder would adjust the calculation by NMFS of fee liabilities.

Example of Actual Ex-vessel Value Determination

An IFQ fisherman makes a landing of IFQ halibut at Sitka in June that results in a debit of 1,000 lbs (0.35 metric tons) from his or her halibut IFQ permit (1,000 IFQ equivalent pounds). He or she sells all the fish, headed and gutted, directly to supermarkets or restaurants. With an IFQ fee percentage of 3 percent and an actual price of $1 per IFQ equivalent pound (IFQ lb.), the IFQ permit holder would bear a total fee liability of $30.00 for the landing, determined as follows:

(IFQ Equivalent Pounds Sold X Price per IFQ lb) X Fee Percentage = Permit Holder Fee

(1,000 IFQ lb X $1.00/IFQ lb) X 0.03 = $ 30.00

Submission Form and Payment

By January 31 of each year, each IFQ permit holder would be required to complete the multi-page IFQ Fee Submission Form and submit it to NMFS along with the fees due.

Payment Compliance

An IFQ permit holder who has incurred a fee liability would be required to pay the fee to NMFS by January 31 of the year following the calendar year in which the landing was made.

If an IFQ permit holder has made a timely payment to NMFS of an amount less than the fee liability NMFS estimated, the IFQ permit holder has the burden of demonstrating that the fee amount submitted is correct. If, upon preliminary review of the accuracy and completeness of a fee payment and the Fee Submission Form, NMFS determines the IFQ permit holder has not paid a sufficient amount, NMFS would notify the IFQ permit holder by letter. NMFS would explain the discrepancy and the IFQ permit holder would have 30 days to either pay the remaining amount that NMFS has determined should be paid or provide evidence that the amount paid is correct. If the IFQ permit holder submits evidence in support of his or her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare an Initial Administrative Determination (IAD). The IAD would set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. An aggrieved IFQ permit holder could appeal an IAD through the Office of Administrative Appeals in NMFS as described in existing IFQ regulations (50 CFR 679.43). An IAD that is appealed within 60 days of issuance to the Office of Administrative Appeals in NMFS, would become a final agency action.

During the pendency of the appeal proceedings outlined here, the following conditions would exist: The IFQ permit holder could not transfer any QS and/or IFQ, and the IFQ permit holder could not receive QS and/or IFQ by transfer. An IFQ permit holder could pay, under protest, the disputed fee difference in order to avoid permit transfer restrictions. If the final agency action determines that the IFQ permit holder owes additional fees and if the IFQ permit holder has not paid such fees, all IFQ permit(s) held by the IFQ permit holder will be invalid until the required payment is received by NMFS. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection.

Limited Access System Administrative Fund (LASAF)

Most of the IFQ fees collected would be deposited in the LASAF established in the U.S. Treasury. Up to 25 percent could be deposited separately in the U.S. Treasury and made available to cover the costs of the IFQ loan program, as required by paragraph 304(d)(2)(C) of the Magnuson-Stevens Act. Separate accounts would be created within the LASAF to ensure that the funds from the IFQ cost recovery are used only to pay for the actual costs directly related to the management and enforcement of the IFQ Program.

Annual Report

NMFS annually would publish a public report about the performance of the IFQ cost recovery. The annual report, which could be included with other reports on the performance of the IFQ Program, would provide information regarding the amount of the fees received by NMFS, the disposition of the fees, the status of the IFQ account in the LASAF, and the IFQ Program costs for the previous year.

Classification

NMFS prepared an EA/RIR/IRFA for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the environmental and socio-economic impacts of the alternatives. A copy of the EA/RIR/IRFA can be obtained from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

As amended October 1996, the Magnuson-Stevens Act requires the Secretary to impose a fee to recover the actual management and enforcement costs of the Alaska IFQ Program. The objective of developing the proposal for IFQ cost recovery is to collect revenue from fishermen participating in the IFQ Program to help recover the costs incurred by the Federal government as a result of the management and enforcement of the IFQ Program.

The proposed rule would apply to persons who possess and use IFQ Registered Buyer Permits or IFQ Permits (fishermen). IFQ registered buyer permit holders who do not operate as shoreside processors or those IFQ permit holders who do not land IFQ fish (i.e., possess unfished permits) would not be subject to this proposed rule. In 1998, approximately 9 percent of IFQ pounds available remained unfished by the end of the season. As for IFQ registered buyers, generally, fewer than 40 percent of those who held IFQ Registered Buyer Permits actually reported landings (i.e.,

active buyer permit users). In addition, imposition of the proposed cost recovery fees could indirectly impact the income of IFQ crew members if IFQ permit holders reduce the income to members of their crews due to the cost recovery fees. Detailed figures for the number of IFQ crew members are not available.

The actions being proposed could directly affect two types of registered small entities as defined by the Small Business Administration: (1) IFQ registered buyers who operate as shoreside processors and purchase IFQ halibut or sablefish from IFQ permit holders, and (2) halibut and sablefish IFQ permit holders. By year-end 1998, 3,978 persons held one or more IFQ permits (fishermen) and reported landings of at least 1 lb (0.45 kg) of IFQ fish. Also in 1998, NMFS issued 859 IFQ registered buyer permits, but only 309 were active IFQ registered buyers. Only 79 of the active IFQ registered buyers operated as shoreside processors that purchased IFQ halibut or sablefish. The 79 IFQ registered buyers identified themselves in 1998 as shoreside processors, and would be the only type of IFQ registered buyers regulated under the proposed action. The number of IFQ permits and IFQ registered buyer permits has decreased each year since 1995 when the program was initiated and is expected to stabilize near 1998 levels. For purposes of the IFRA, all 79 IFQ permits holders are considered small entities. Therefore, the total number of small entities that this rule would apply to IFQ registered buyers and permit holders would be expected to be equal to or less than 4,057. This proposed rule would impose new Recordkeeping and reporting requirements. These are discussed below in the context of the Paperwork Reduction Act burden.

A broad variety of alternatives was considered in the development of the proposed regulations for IFQ cost recovery. The alternatives were considered in the context of combining various options associated with a specific set of necessary program elements. Some of the necessary program elements include the scope of the IFQ cost recovery regulations; identification of the IFQ fishery; the annual fee percentage value; the IFQ fish subject to the IFQ cost recovery fee; the method used to determine ex-vessel values of IFQ halibut and IFQ sablefish landings; the method used to establish standard ex-vessel prices for IFQ halibut and IFQ sablefish; the methods of accounting for post-season ex-vessel price adjustments and other corrections to ex-vessel value; IFQ fee collection and submission mechanisms and schedules; and the implementation date.

In selecting the preferred alternative, NMFS incorporated many elements designed to minimize negative impacts on small entities.

1. The fee would apply only to IFQ halibut and sablefish landings, and not to all species landed by IFQ fishermen.

2. Fishermen would be able to choose whether to use actual or standard ex-vessel value of their IFQ landings whenever possible.

3. Standard prices would be primarily based on current year ex-vessel prices rather than previous year ex-vessel prices, and would be refined to represent ex-vessel prices by species, by month, and by port-group.

4. Registered buyers and IFQ permit holders would be required to submit recordkeeping and reporting information only once a year, rather than multiple mid-season submissions.

NMFS also considered the alternative of not implementing an IFQ cost recovery (status quo). The status quo alternative would minimize economic impacts on small entities in that no new fee would be imposed. However, this alternative would not be in compliance with the Magnuson-Stevens Act. Alternatives to the proposed recordkeeping and reporting requirements could reduce economic impacts on small entities. For instance, implementing an electronic reporting system could reduce the burdens associated with filing annual reports; however, NMFS has not ascertained whether electronic reporting would allow for comparable, easily interpreted data and costs associated with acquiring new software could counterbalance any benefits. NMFS also considered extracting data from reports currently required of AGF&G. The ADF&G reports would not provide all the necessary data in a sufficiently timely manner. NMFS also considered an alternative that would not have assessed a fee on retro-payments. While this approach would benefit permit-holders who accepted retro-payments, it would not be acceptable to those who do not. In addition, this approach might not comply with the spirit of the statute to assess a fee on the full amount of payment.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Authorization for the proposed additional information collected under 50 CFR 679.5(l)(7) for this IFQ cost recovery has been requested from Office of Management and Budget (OMB). Notwithstanding any other provision of law, no person is required to respond to and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

New recordkeeping and reporting requirements are proposed for the IFQ permit holder and for the IFQ registered buyer operating as a shoreside processor and buying halibut or sablefish landed under the IFQ Program. The estimated time for an IFQ permit holder to complete the IFQ payment submission form package is 2.0 hours per response. The time required to complete the buyer report is estimated to be 2.0 hours per report. The estimated response times shown include the time to review the instructions, search existing sources, gather and maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding the necessity of the proposed collection of information for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection, including the use of automated collection techniques or other types of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

None of the alternatives discussed in the EA/RIR/IRFA are likely to significantly affect the quality of the human environment, or are expected to have a significant impact on endangered or threatened species, or marine mammals.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Cost recovery, Fees, Fisheries, IFQ, and Recordkeeping and reporting requirements.

Dated: December 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, definitions for listed terms are added in alphabetical order to read as follows:

§ 679.2 Definitions

* * * * *

IFQ actual ex-vessel value means the U.S. dollar amount of all compensation, monetary or non-monetary, including any IFQ retro-payments received by an IFQ permit holder for the purchase of his or her IFQ halibut or IFQ sablefish landing(s) described in terms of IFQ equivalent pounds.

* * * * *

IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted weight for halibut.

IFQ fee liability means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s) by the appropriate IFQ fee percentage applicable at the time the ex-vessel value, or portion thereof, of such landing(s) is received by the IFQ permit holder.

IFQ fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use to calculate the IFQ cost recovery fee liability for an IFQ permit holder.

* * * * *

IFQ permit holder means the person identified on an IFQ permit, at the time a landing is made, as defined at § 679.4(d)(3)(B).

IFQ program means the individual fishing quota program for the fixed gear fisheries for Pacific halibut and sablefish in waters in and off Alaska and governed by regulations under this part.

IFQ registered buyer means the person identified on a registered buyer permit, as defined at § 679.4(d)(2).

* * * * *

IFQ retro-payment means the U.S. dollar value of a payment, monetary or non-monetary, made to an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landed at some previous time.

* * * * *

IFQ standard ex-vessel value means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

IFQ standard price means a price, expressed in U.S. dollars per IFQ equivalent pound, for landed IFQ halibut and IFQ sablefish determined annually by the Regional Administrator and documented in an IFQ standard price list published by NMFS.

* * * * *

Limited Access System Administrative Fund (LASAF) means the administrative account used for depositing cost recovery fee payments into the U.S. Treasury as described in the Magnuson-Stevens Act under section 304(d)(2)(C)(i) and established under section 305(h)(5)(B).

* * * * *

NMFS Person Identification Number means a unique number assigned by NMFS to any person who applied for, or who has been issued, a Certificate, License, or Permit under any fishery management program administered by the Alaska Region for purposes of the NMFS/Alaska Region Integrated Regional Data System.

* * * * *

3. In § 679.4, revise paragraph (a)(5) and add paragraph (d)(7) to read as follows:

§ 679.4 Permits.

(a) * * *

(5) *Sanctions and denials.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904. Such procedures are required for enforcement purposes, not administrative purposes.

* * * * *

(d) * * *

(7) *Validity.* An IFQ permit issued under this part is valid only if all IFQ fee liability of the IFQ permit holder that is due as a result of final agency action has been paid as specified in §§ 679.45 and 679.(e)(7)(ii).

* * * * *

4. In § 679.5, add paragraph (l)(7) to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(7) *IFQ cost recovery program* —(i) *IFQ buyer report.*

(A) *Applicability.* An IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut annually must submit to NMFS a complete IFQ Buyer Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at § 679.5(1)(7)(i)(E), in which the registered buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than the October 15 following the reporting period in which the IFQ registered buyer receives the IFQ fish.

(C) *Information required.* A complete IFQ Buyer Report must include the following information:

(*1*) *IFQ registered buyer identification*, including:

(*i*) name,

(*ii*) registered buyer number,

(*iii*) social security number or tax identification number,

(*iv*) NMFS person identification number (if applicable),

(*v*) business address,

(*vi*) telephone number,

(*vii*) facsimile telephone number,

(*viii*) primary registered buyer activity,

(*ix*) other registered buyer activity, and

(*x*) landing port location;

(*2*) *Pounds purchased and values paid.* (*i*) The monthly total weights, represented in IFQ equivalent pounds by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*ii*) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*3*) *Value paid for price adjustments.* (*i*) The monthly total U.S. dollar amount of any IFQ retro-payments (correlated by IFQ species, landing month(s), and month of payment) made in the current year to IFQ permit holders for landings made during the previous calendar year;

(*ii*) *Certification*, including the signature of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature.

(D) *Submission address.* A complete IFQ Buyer Report must be received at the following address by mail or facsimile transmission: Administrator Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668, Facsimile: (907) 586–7354.

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall

extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ permit holder Fee Submission Form* —(A) *Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Contents of an IFQ Fee Submission Form.* For each of the sections described below, a permit holder must provide the specified information.

(*1*) *Identification of the IFQ permit holder.*

An IFQ permit holder with an IFQ landing must accurately record on the identification section of the IFQ Fee Submission Form the following information:

(*i*) the printed name of the IFQ permit holder;

(*ii*) the NMFS person identification number;

(*iii*) the social security number or tax ID number of the IFQ permit holder;

(*iv*) the business mailing address of the IFQ permit holder; and

(*v*) the telephone and facsimile number (if available) of the IFQ permit holder.

(*2*) *IFQ landing summary and estimated fee liability*

NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with (2)(i) of this paragraph. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(*i*) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(*ii*) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request.

(*3*) *Fee calculation section* —(*i*) *Information required.* An IFQ permit holder with an IFQ landing must record the following information on the Fee Calculation page: The name of the IFQ permit holder; the NMFS person identification number; the fee liability amount due for each IFQ permit he or she may hold; the IFQ permit number corresponding to such fee liability amount(s) due; the total price adjustment payment value for all IFQ halibut and/or sablefish (e.g., IFQ retro-payments) received during the reporting period for the IFQ Fee Submission Form as described in § 679.5(l)(7)(ii)(D); and the fee liability amount due for such price adjustments.

(*ii*) *Calculation of total annual fee amount.* An IFQ permit holder with an IFQ landing must perform the following calculations and record the results on the Fee Calculation page: add all fee liability amount(s) due for each IFQ permit and record the sum as the sub-total fee liability for all permits; multiply price adjustment payment(s) received for each IFQ species by the fee percentage in effect at the time the payment(s) was received by the IFQ permit holder; add the resulting fee liability amounts due for all price adjustment payments for each IFQ species, then enter the sum as the sub-total fee for price adjustments; add the sub-total fee liability for all permits and the sub-total fee for price adjustments, then enter the resulting sum as the total annual fee amount on the Fee Calculation page and on the Fee Payment page.

(*4*) *Fee payment and certification section* —(*i*) *Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number and must sign and date and have notarized by a Notary Public the Fee Payment section and record the following: (i) his or her printed name; (ii) the total annual fee amount as calculated and recorded on the Fee Calculation page; (iii) the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; (iv) the remaining balance fee; and (v) the enclosed payment amount.

(*ii*) *Calculation of balance fee payment.* An IFQ permit holder with an IFQ landing must perform the following calculation on the Fee Payment section of the Fee Submission Form: Subtract from the total annual fee amount the total of all pre-payments made (if any) to NMFS and any credits held by NMFS that are applicable to that year's total IFQ cost recovery fees, and record the result as the balance fee amount due.

(D) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date described in § 679.5(l)(7)(ii)(B).

* * * * *

5. In § 679.41, revise paragraph (c)(8) and add paragraph (c)(9)to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(8)(i) The person applying to make or receive the IFQ or QS transfer has paid all IFQ fees that have become due as a result of an initial administrative determination.

(ii) The person applying to make or receive the IFQ or QS transfer who has not paid all IFQ fees that are due (as provided under § 679.45(a)) has timely appealed the administrative determination that IFQ fees have not been paid in full and has submitted to NMFS an amount sufficient to satisfy any disputed liability pending a final agency action.

(9) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Administrator.

* * * * *

6. Section 679.45 is added to read as follows:

§ 679.45 IFQ cost recovery program.

(a) *Cost recovery fees* —(1) *Responsibility.* The person documented on the IFQ permit as the permit holder at the time of an IFQ landing must comply with the requirements of this section. Subsequent transfer of QS or IFQ does not affect the permit holder's liability for noncompliance with this section.

(2) *IFQ Fee Liability Determination.* After each IFQ fishing year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ pounds landed during that IFQ fishing year for each permit as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(C)(*2*). The summary will include an estimated IFQ fee liability based on the standard ex-vessel values of the landings. The summary and estimated fee liability will include details of IFQ equivalent pounds landed by permit, port or port-group, species, date, and IFQ standard prices. The permit holder must either accept NMFS' estimate of IFQ liability or revise NMFS' estimate of IFQ fee liability using the Fee Submission Form described at § 679.5(1)(7)(ii). If the permit holder revises NMFS' estimate of his or her fee

liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the permit holder fails to provide adequate documentation by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's fee liability based on standard ex-vessel values.

(3) *Fee Collection.* An IFQ permit holder with an IFQ landing is responsible for self-collecting his or her own fee during the calendar year in which the IFQ fish is harvested.

(4) *Payment*—(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided in this section at paragraph (a)(4)(iii) not later than by January 31 of the year following the calendar year in which the IFQ landings were made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668, Facsimile: (907) 586–7354.

(iv) *Payment method.* Payment must be made by personal check drawn on a U.S. bank account, money order, or bank certified check.

(b) *IFQ ex-vessel value determination and use* — (1) *General.* An IFQ permit holder must use either the IFQ standard ex-vessel value or the IFQ actual ex-vessel value when determining the IFQ fee liability based on ex-vessel value. An IFQ permit holder must base all fee liability calculations on the ex-vessel value that correlates to landed IFQ fish that is recorded in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability must document actual ex-vessel value for each IFQ permit.

(c) *IFQ standard ex-vessel value determination and use*—(1) *Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability as part of a revised IFQ fee liability submission must use the corresponding standard price(s) as published in the **Federal Register**.

(2) *Duty to publish list.*(i) *General.* Each year the Regional Administrator will publish IFQ standard prices in the **Federal Register** during the last quarter of each calendar year. The standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(ii) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(iii) *Determination.* NMFS will calculate the IFQ standard prices to reflect, as closely as practical by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Buyer Reports as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

(d) *IFQ fee percentage.*–(i) *Default percentage.* The IFQ fee percentage is 3 percent (0.03) unless adjusted by the Regional Administrator by publication in the **Federal Register** in accordance with § 679.45(d)(3).

(2) *Calculating fee percentage value.* Each year the Regional Administrator will calculate the fee percentage.–(i) Factors. In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the IFQ fee would apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the IFQ program;

(D) The funds available for the IFQ program in the Limited Access System Administrative Fund (LASAF); and

(E) Nonpayment of fee liabilities.

(ii) *Methodology.* In making the calculation, the Regional Administrator will use the methodology described here.

[100 x (DPC - AB) / V] / (1 -NPR)

where:

DPC is the direct program costs for the IFQ fishery for he previous fiscal year,

AB is the projected end of the year LASAF account balance for the IFQ program,

V is the projected ex-vessel value of the catch subject to the IFQ fee for-the current year, and

NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* (1) *General.* During or before the last quarter of each year, the Regional Administrator will consider adjusting the IFQ fee percentage. Consideration will be based on the calculations described in § 679.45(d)(2). The Regional Administrator may reduce the IFQ fee percentage at any time based on new information of the type set forth in § 679.45(d)(2).

(ii) *In-season effective period.* An in-season reduction in the IFQ fee percentage supersedes the IFQ fee percentage previously in effect for the calendar year and remains in effect through the end of the calendar year in which it was determined unless otherwise adjusted by the Regional Administrator.

(4) *Publication.* The Regional Administrator will publish notification in the **Federal Register** any adjustment of the IFQ fee percentage.

(5) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ landing is made to calculate his or her fee liability for such landed IFQ pounds unless the percentage is subsequently adjusted as described in § 679.45(d)(3). The IFQ permit holder must use the IFQ percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* If an IFQ permit holder does not submit a complete Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(2) and (3), the Regional Administrator may:

(1) at any time thereafter send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2) is the amount of IFQ fee due from the IFQ permit holder.

(2) disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(8)(i). Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount

less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid an sufficient amount, the Regional Administrator may disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(4). The Regional Administrator will notify the IFQ permit holder by letter that an sufficient amount has not been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount. The Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value.

(2) After expiration of the 30-day period, the Regional Administrator will issue and IAD and notify the IFQ permit holder. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal pursuant to § 679.43. In an appeal of an IAD made under this section, the IAD permit holder has the burden of proving his or her claim.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action. Once a fee liability determination becomes final, any IFQ permit held by the IFQ permit holder will be deemed not valid until all IFQ fee liabilities have been paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(g) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in access of the IFQ fee liability determined to be due by the final agency action will be returned to the IFQ permit holder unless the permit holder requests the agency to credit the excess amount against the IFQ permit holder's future IFQ fee liability.

(h) *Appeals and requests for reconsideration.* An IFQ permit holder who receives and IAD may either appeal the IAD pursuant to § 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD or the Regional Administrator may undertake a reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates a reconsideration, the 60-day period for appeal under § 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an IFQ permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an IFQ permit holder has the burden of proving his or her claim.

(i) *Annual report.* NMFS will publish annually a report describing the status of the IFQ Cost Recovery Program.

[FR Doc. 99–33198 Filed 12–23–99; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 247
Monday, December 27, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Forms 83–1, Federal-State Special Supplemental Food Program Agreement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's (FNS) intention to request OMB review of the Federal-State Special Supplemental Food Program Agreement.

DATES: Comments on this notice must be received by February 25, 2000.

ADDRESSES: Send comments and requests for copies of this information collection to: Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

Supplementary Information

Title: Federal-State Special Supplemental Food Program Agreement.

OMB Number: 0584–0332.

Expiration Date: 12–31–99.

Type of Request: Extension of a currently approved collection.

Abstract: The Agreement is the contract between USDA and WIC State agency which empowers the Department to release funds to the State agency for the administration of the WIC or Farmer's Market Nutrition Program in the jurisdiction of the State in accordance with the provisions of 7 CFR Part 246.

The Agreement requires the signature of the agency official and includes a certification/assurance regarding drug-free workplace, a certification regarding lobbying and a disclosure of lobbying activities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: The Chief Health Officer of the State agency or Chief Executive Officer of the State.

Estimated Number of Respondents: 100 respondents.

Estimated Number of Responses Per Respondent: One.

Estimated Time per Response: .25 hours.

Estimated Total Annual Burden on Respondents: 25 hours.

Dated: December 7, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33204 Filed 12–23–99; 8:45 am]
BILLING CODE 3410–30–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED PROCUREMENT LIST

Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 26, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center

Various locations throughout the Mississippi National Guard
NPA: Signature Works, Inc.; Hazlehurst, Mississippi

Janitorial/Custodial

U.S. Coast Guard
Vessel Traffic Service San Francisco, Yerba Buena Island, Building 278, San Francisco, California
NPA: Toolworks, Inc., San Francisco, California
U.S. Coast Guard
Southwest Harbor Building, Southwest Harbor, Maine
NPA: DEH Operating Company, Bar Harbor, Maine

Telephone Switchboard Operations

Department of Veterans Affairs Medical Center, 50 Irving Street, NW, Washington, DC
NPA: Columbia Lighthouse for the Blind, Washington, DC

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Penetrating Fluid
6850–00–985–7180
6850–00–508–0076
Water-Displacing Compound
6850–00–142–9389
6850–00–142–9409
Cleaning Compound, Rug and Upholstery
7930–01–393–6760
Detergent, General Purpose
7930–00–531–9715
7930–00–531–9716
Dishwashing Compound, Hand
7930–01–055–6136
Pad, Parachutists' Helmet
8470–01–092–8494

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–33490 Filed 12–23–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 26, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 13, September 10 and 24, November 5 and 15, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 44198, 49147, 51736, 60407 and 61819) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Tape, Measuring
5210–01–139–7444
Knife, Kitchen
7340–00–686–0863
Tape, Pressure-Sensitive Adhesive
7510–00–297–6655
7510–00–297–6656

Services

Commissary Shelf Stocking, Custodial and Warehousing, Grand Forks Air Force Base, North Dakota
Duplicating Service Program (GPO Program C285–S) Federal Bureau of Investigation, Criminal Justice Information Services Complex, Clarksburg, West Virginia

Janitorial/Custodial

VA Greater Los Angeles Regional Healthcare System, Consolidated Mail Outpatient Pharmacy, 11301 Wilshire Boulevard, Building 222, Los Angeles, California

Janitorial/Custodial

VA Outreach Center, 9737 Haskell Avenue, Sepulveda, California.

Janitorial/Grounds Maintenance

Oxnard Border Patrol Station 275 Skyway Drive Camarillo, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodities are hereby deleted from the Procurement List:

Executive/Personal Time Management System
7510–01–429–7081
7510–01–429–7038
7510–01–429–7065
7510–01–429–7076
7510–01–429–7040
7510–01–429–7053
7510–01–429–7068
7510–01–429–9609
7510–01–429–7841
7510–01–429–7074
7510–01–429–7035
7510–01–429–7046
7510–01–429–7066
7510–01–429–7072
7510–01–429–7078
7510–01–429–7034
7510–01–429–7051
7530–01–429–6938
7510–01–429–7083
7510–01–429–7043
7510–01–429–7059
7530–01–429–6940
7530–01–429–9505
7510–01–429–7843
7510–01–429–9986
7510–01–429–7835
7510–01–429–9985

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–33491 Filed 12–23–99; 8:45 am]

BILLING CODE 8353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1, ACE–1(L), ACE–2, ACE–2(L).

Agency Approval Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden: 139,000 hours.

Number of Respondents: 59,000.

Avg. Hours Per Response: 2 hours and 22 minutes.

Needs and Uses: The Census Bureau plans the continuing information collection for the Annual Capital Expenditures Survey (ACES). The annual survey collects data on fixed assets and depreciation, sales and receipts, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Business spending data are used to evaluate the quality of estimates of gross domestic product, develop monetary policy, analyze business asset depreciation, and improve estimates of capital stock for productivity analysis. Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

The major changes to the ACES are the elimination of our request for detailed types structures and types of equipment data from employer businesses, the elimination of research on new (birth) establishments, and the incorporation of the North American Industry Classification System (NAICS) into the survey.

Affected Public: Businesses or other for-profit organizations, Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 21, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–33466 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2000 Survey of Program Dynamics.

Form Number(s): CAI Automated Instrument.

Agency Approval Number: 0607–0838.

Type of Request: Revision of a currently approved collection.

Burden: 25,150 hours.

Number of Respondents: 42,000.

Avg. Hours Per Response: 36 minutes per respondent, 10 minutes per reinterview.

Needs and Uses: The Census Bureau seeks OMB approval to conduct the 2000 Survey of Program Dynamics (SPD). The SPD provides the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people. This survey simultaneously measures the important features of the full range of welfare programs, including programs that are being reformed and those that are unchanged, and the full range of other important social, economic, demographic, and family changes that will facilitate or limit the effectiveness of the reforms.

The SPD is a longitudinal study that follows a subset of the respondents from the 1992 and 1993 panels of the Survey of Income and Program Participation (SIPP). The SPD was first implemented in the spring of 1997 with a bridge survey that provided a link to baseline data for the period prior to the implementation of welfare reforms. The first full-scale SPD was conducted in 1998. Annual surveys will be conducted through 2002. The data gathered for the 10-year period (1992–2002) will aid in assessing short-to medium-term consequences of outcomes of the welfare legislation.

The majority of questions used in the 2000 SPD will remain the same as those from the 1999 SPD. However, some new questions for 2000 have been requested by policymakers. These include questions on children's residential history and changes to questions about public assistance and work training. Like the 1997 SPD Bridge survey, the 1998 SPD, and the 1999 SPD, the 2000 SPD uses a computer-assisted

interviewing instrument on laptops for personal visits and telephone interviews.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182, and Public Law 104–193, Section 414 (signed 8/22/96), Title 42, United States Code, Section 614.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 21, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–33467 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of the Finances of Public Employee Retirement Systems.

Form Number(s): F–10.

Agency Approval Number: 0607–0143.

Type of Request: Revision of a currently approved collection.

Burden: 408 hours.

Number of Respondents: 102.

Avg Hours Per Response: 1 hour.

Needs and Uses: This survey provides, on a quarterly basis, nationwide data on the cash and security holdings of the 102 largest public-employee retirement systems. These 102 systems control billions of asset dollars and represent 80 percent of the total assets of all public employee retirement systems. The most important information this survey provides is the quarterly change in composition of the securities holdings of this component of the economy. The Federal Reserve Board, the Bureau of Economic Analysis, and others use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.

In this request, we are revising the form to make it compatible with our annual collection of government finance data in the Annual Survey of Government Finances (OMB number 0607–0585). We will also begin asking for both book value and market value of bonds and stocks in an effort to eliminate confusion over which value to report. This is also in-line with reporting in the annual government finance collection.

Affected Public: State, Local, or Tribal Government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 21, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–33468 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope from Mexico: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of Antidumping Duty Administrative Review and New Shipper Review.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482–0666 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR Part 351 (1999).

Background

In accordance with 19 CFR 351.213(b)(2), Aceros Camesa, S.A. de C.V. ("Camesa"), a Mexican producer of subject merchandise, requested that we conduct an administrative review of its sales. Petitioners in the proceeding, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers ("the Committee"), also requested a review of Camesa's sales, in accordance with 19 CFR 351.213(b)(1). We published a notice of initiation of this antidumping administrative review on April 30, 1999 (64 FR 23269).

In accordance with 19 CFR 351.214, Cablesa, S.A. de C.V. ("Cablesa"), a Mexican producer of subject merchandise, requested that we conduct a new shipper review of its sales. We published a notice of initiation of this new shipper review on May 7, 1999 (64 FR 24573). After receiving a waiver of the normal time limits for a new shipper reivew from Cablesa under 19 CFR 351.214(j)(3), we decided to publish the results of this new shipper review simultaneously with the results of the administrative review. *See* 64 FR 61825 (November 15, 1999).

On November 30, 1999, in accordance with section 751(a)(3)(A), the Department issued an extension of the preliminary determination due date of both reviews by 7 days to December 8, 1999.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Act directs the Department to make a preliminary determination within 245 days for each

administrative review. This section provides, however, that "if it is not practicable to complete the review within the foregoing time, the administrative authority may extend that 245-day period to 365 days . . ." Because of the complexities enumerated in the *Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limits for the Preliminary Results of Review of Steel Wire Rope from Mexico,* dated December 7, 1999, the Department has determined that it is not practical to complete these reviews by December 8, 1999.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results of the administrative review and new shipper review by 113 days to March 30, 2000.

Dated: December 8, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–33498 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822; A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for final results of antidumping administrative review.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (1999).

Background

On August 19, 1993, the Department published in the **Federal Register** (58 FR 44162) the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. Based on timely requests by petitioners and respondents in both proceedings, the Department published its initiation of these antidumping duty administrative reviews covering the period of August 1, 1997 through July 31, 1998 on September 29, 1998 (63 FR 51893). On August 19, 1999, the Department published the preliminary results of review (64 FR 45228).

Extension of Time Limits for Final Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Final Results of Antidumping Duty Administrative Reviews of Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* dated December 17, 1999, it is not practical to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review until February 15, 2000.

Dated: December 17, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 99–33499 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order, In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review and intent to revoke antidumping duty order, in part.

SUMMARY: On November 3, 1999, the Department of Commerce published a notice of preliminary results of changed circumstances review and intent to revoke the order, in part, of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan. We gave interested parties an opportunity to comment on the preliminary results. No party opposed the preliminary results. We received comments only from Mitsubishi Heavy Industries, Ltd., requesting that the Department of Commerce clarify the application of the proposed certification requirements with respect to entries of the merchandise covered by the partial revocation.

We are now revoking this order, in part, based on the fact that producers accounting for substantially all production of the domestic like product, as described in our preliminary results of changed circumstances, support the request of Goss Graphic Systems, Inc., the petitioner and a U.S. producer of the subject merchandise, for revocation, in part, of the order with regard to large newspaper printing presses ("LNPP"). and components thereof, whether assembled or unassembled, from Japan, as described below.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Dinah McDougall, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4136 or (202) 482–3773, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the regulations at 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1999, the Department published in the **Federal Register** (64 FR 59739) a notice of preliminary results of changed circumstances

antidumping duty administrative review and intent to revoke antidumping duty order, in part, for large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan. On November 18, 1999, we received comments from Mitsubishi Heavy Industries, Ltd. requesting clarification of the certification requirements.

Scope of Review

The products covered by this changed circumstances review are elements and components of LNPP systems, and additions thereto, imported to fulfill a contract for one or more complete LNPP systems which feature a 22 inch cut-off, 50 inch web width and a rated speed no greater than 75,000 copies per hour. In addition to the specifications set out in this paragraph, all of which must be met in order for the product to fall within this changed circumstances review, the product must also possess all of the specifications detailed in the five (5) numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not within the scope of this changed circumstances review:

1. *Printing Unit:* A printing unit which is a color keyless blanket-to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:

- Each tower consisting of four levels, one or more of which must be populated.
- Plate cylinders which contain slot lock-ups and blanket cylinders which contain reel rod lock-ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in-line with bearers of other cylinders.
- Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non-anilox and non-porous metering roller.
- The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
- The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.

2. *Folder:* A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut-off length of 22 inches. The upper section consists of three-high double formers (total of 6) with six sets of nipping rollers.

3. *RTP:* A component which is of the two-arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back-to-back configuration (left and right hand load pairs).

4. *Conveyance and Access Apparatus:* Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.

5. *Computerized Control System:* A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

The order with regard to imports of other LNPPs is not affected by this request.

Final Results of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d)(1) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 CFR 351.216 provide that the Department will conduct a changed circumstances review based upon changed circumstances sufficient to warrant a review. Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) further provide that the Department may revoke an order, or revoke an order in part, if it determines that the order (or part of the order) under review is no longer of interest to domestic interested parties.

Based on the fact that producers accounting for substantially all production of the domestic like product, as described in our preliminary results of changed circumstances review, support the request of Goss Graphic Systems, Inc., the petitioner, to revoke the antidumping duty order, in part, we have determined that there are changed circumstances sufficient to warrant revocation of the order, in part. Therefore, the Department is revoking, in part, the antidumping duty order on LNPPs from Japan with respect to the import of the elements and components of LNPP systems and additions thereto as described above, in accordance with sections 751(b) and 782(h) of the Act and 19 CFR 351.222(g)(1)(i). This partial revocation will apply to all entries of LNPP systems and additions thereto as described above from Japan entered, or withdrawn from warehouse, for consumption on or after September 4, 1996, as requested by the petitioner.

We have taken into account comments from Mitsubishi Heavy Industries, Ltd. requesting that the Department clarify the Customs certification requirements proposed in the preliminary results.

We will instruct the Customs Service (Customs) to liquidate without regard to antidumping duties, and to refund any cash deposits collected for all entries of the merchandise described above, made on or after September 4, 1996. Further, we will instruct Customs to require that a party requesting a refund of cash deposits collected on entries of the merchandise described above, made on or after September 4, 1996, or a party importing the merchandise described above during this period, submit a certification to Customs stating that the imported merchandise meets the specifications of the merchandise covered by the partial revocation.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33497 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Non-Frozen Apple Juice Concentrate From the People's Republic of China: Notice of Amended Preliminary Determination, Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sally Hastings, Craig Matney or Annika O'Hara, Office I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202)

482–3464, (202) 482–1778 or (202) 482–3798, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 1998).

Scope of Investigation

For purposes of this investigation, the product covered by the scope is all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this investigation are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

Since the publication of the preliminary determination, the Department has ascertained that the Harmonized Tariff Schedule of the United States ("HTSUS") subheading cited therein, does not fully incorporate all products included in the written description of the merchandise under investigation. The merchandise subject to this investigation is classified in the HTSUS at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Postponement of the Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, and 19 CFR 351.210(b)(2), on November 23, 1999, respondents in this investigation (*i.e.*, Yantai North Andre Juice Co. Ltd. ("North Andre"), Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng"), Sanmenxia Lakeside Fruit Juice Co., Ltd ("Lakeside"), Shandong Zhonglu Juice Group Co. ("Zhonglu"), Yantai Oriental Juice Co. ("Oriental"), Qingdao Nannan Foods Co., Ltd. ("Nannan"), Xianyang Fuan Juice Co. ("Fuan"), Xian Asia Qin Fruit Co., Ltd. ("Asia Fruit"), Shaanxi Machinery & Equipment Import & Export Corporation ("SAAME"), Changsha Industrial Products & Minerals Import & Export Corporation ("Changsha"), and Shandong Foodstuffs Import & Export Corporation ("Shandong Foodstuffs")) requested that the Department postpone its final determination 135 days from the date of the publication of the preliminary determination in the **Federal Register**. In accordance with 19 CFR 351.210, because: (1) Our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** (*i.e.*, until April 6, 2000). In addition, pursuant to 19 CFR 351.210(e)(2), respondents agreed to an extension of provisional measures from a 4-month period to not more than 6 months. Suspension of liquidation will be extended accordingly.

Amended Preliminary Determination of Sales at Less Than Fair Value

On November 24, 1999, the respondents alleged that in the preliminary determination the Department made certain ministerial errors in the calculation of SG&A and overhead ratios for all respondents, in the ocean freight value applied for Lakeside, and in the affirmative finding of critical circumstances for non-investigated companies. The petitioners did not allege any ministerial errors.

The Department has reviewed its preliminary calculations for all respondents and agrees that it made certain ministerial errors within the meaning of 19 CFR 351.224(f) (*see Ministerial Error Allegations for Preliminary Determination* memorandum to Richard W. Moreland, Deputy Assistant Secretary, Import Administration, Group I, dated the same day as this notice, on file in room B–099 of the Department's headquarters). A significant ministerial error is defined as a correction which, singly or in combination with other errors, (1) would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa, as defined by 19 CFR 351.224(g). Because the change in Lakeside's margin meets the first alternative of this standard, the Department finds the ministerial errors only with respect to Lakeside to be significant. Therefore, the Department is amending its preliminary determination with respect to Lakeside in accordance with 19 CFR 351.224(e).

As a result of the correction of the significant ministerial errors, the Department has determined that the following weighted-average dumping margins apply for the PRC:

Exporter/manufacturer	Weighted average margin percentage
Yantai North Andre Juice Co., Ltd	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd	18.58
Sanmenxia Lakeside Fruit Juice Co., Ltd	29.89
Shandong Zhonglu Co., Ltd	9.85
Yantai Oriental Juice Co., Ltd	14.97
Qingdao Nannan Foods Co., Ltd	44.24
Shaanxi Machinery & Equipment Import & Export Corp	35.29
Xian Asia Qin Fruit Co., Ltd	28.71
Xian Yang Fuan Juice Co., Ltd	28.71
Changsha Industrial Products & Minerals Import and Export Co., Ltd	28.71
Shandong Foodstuffs Import and Export Corporation	28.71
PRC-wide rate	54.55

ITC Notification

In accordance with section 733(f) of the Act, the Department has notified the ITC of this amended preliminary determination. If the final determination is affirmative, the ITC will determine whether imports of the merchandise under investigation are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after the final determination.

Public Comment

For this investigation, case briefs must be submitted no later than March 9, 2000. Rebuttal briefs must be filed no later than March 14, 2000. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a hearing is requested, it will be held at 9:00 AM on March 17, 2000, at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should

confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department is publishing this notice of postponement of the final determination, extension of provisional measures and amendment to the preliminary determination pursuant to sections 735(a)(2) and 733(d) of the Act and 19 CFR 351.210(g) and 351.224(e).

Dated: December 17, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33496 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 121799C]

Notice of Intent to Prepare an Environmental Impact Statement Regarding Proposed Issuance of an Incidental Take Permit to J. L. Storedahl & Sons, Inc. for Gravel Extraction and Processing and Habitat Enhancement Activities in Clark County, Washington.

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), NMFS and FWS (collectively, the Services) intend to prepare an Environmental Impact Statement (EIS) regarding the proposed issuance of an incidental take permit (Permit) by the Services to J. L. Storedahl & Sons, Inc. (Storedahl) for their gravel extraction and processing and habitat enhancement activities on a portion of Storedahl's fee-owned lands in Clark County, Washington.

The proposed Permit would authorize take of federally listed threatened and endangered species in accordance with the Endangered Species Act of 1973, as amended (ESA), and other species should they become listed in the future. Storedahl intends to request a Permit that includes the following species:

Listed as threatened: Lower Columbia River Evolutionarily Significant Unit (ESU) of steelhead (*Oncorhynchus mykiss*), Lower Columbia River (LCR) ESU of chinook salmon (*Oncorhynchus tshawytscha*), Columbia River ESU of chum salmon (*Oncorhynchus keta*), bull trout (*Salvelinus confluentus*).

Proposed as threatened: Southwestern Washington/Columbia River DPS of coastal cutthroat trout (*Oncorhynchus clarki clarki*).

Candidate species: LCR ESU of coho salmon (*Oncorhynchus kisutch*), Oregon spotted frog (*Rana pretiosa*).

Species of concern: Pacific lamprey (*Lampetra tridentata*), river lamprey (*Lampetra ayresi*).

As required by the ESA, Storedahl is preparing a Habitat Conservation Plan (Plan). The Services are furnishing this notice to advise other agencies and the public of our intentions and to announce the initiation of a 30-day scoping period during which other agencies and the public are invited to provide written comments on the scope of issues and potential alternatives to be included in the EIS.

DATES: Written comments on this proposed action and the environmental review must be received at the appropriate address (See **ADDRESSES**) from interested parties no later than 5:00pm Pacific standard time on January 26, 2000.

ADDRESSES: Written comments should be sent to Tim Romanski, FWS, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503; or Sam Brenkman, NMFS, 510 Desmond Drive SE, Suite 103, Lacey, Washington 98503. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, FWS, telephone (360) 753–5823, e-mail Tim_Romanski@mail.fws.gov; or Sam Brenkman, NMFS, telephone (360) 534–9338, e-mail Sam.Brenkman@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit "take" of species that are listed as endangered or threatened. The term "take" is defined under the ESA to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is defined by FWS to include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, sheltering, spawning, rearing and migrating. Harm is defined by NMFS as significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering.

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. FWS regulations governing permits for endangered species are found in 50 CFR 17.22, and regulations governing permits for threatened species are found in 50 CFR 17.32. NMFS regulations governing permits for threatened and endangered species are found in 50 CFR 222.307.

Background

Storedahl owns and manages approximately 300 acres of land in rural Clark County, Washington adjacent to the lower reaches of the East Fork Lewis River. The property is located approximately 4 miles southeast of La Center, and approximately 1 mile downstream of Clark County's Daybreak Park at 27140 NE 61st Avenue, Battle Ground, Washington. Storedahl proposes to mine and process aggregate on this land in accordance with a variety of conservation measures as specified in the Plan.

Some of Storedahl's management activities have the potential to impact species subject to protection under the ESA. Section 10(a)(2)(B) of the ESA contains provisions for the issuance of incidental take permits to non-Federal landowners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. An applicant for a Permit under section 10 of the ESA must prepare and submit to the Services for approval a Plan containing a strategy for minimizing and mitigating the impacts of take on listed species associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Storedahl initiated discussions with the Services regarding the development of a Plan and attaining a Permit for their activities. Activities proposed for Permit coverage include extraction of sand and gravel; transportation of sand and gravel to a processing area; processing of sand and gravel; all discharges regulated under a National Pollutant Discharge Elimination System permit; construction and maintenance activities; site preparation; tree planting and fertilization; and stream and riparian restoration, rehabilitation and enhancement. The Plan and Permit would also cover certain monitoring activities and related adaptive

management measures set forth in the Plan.

The Services will conduct an environmental review of the Plan and prepare an EIS. The environmental review will analyze the proposal as well as a full range of reasonable alternatives and the associated impacts of each. The Services are currently in the process of developing alternatives for analysis. Alternatives thus far include a No Action alternative and one Plan alternative. The scoping process will be used to identify additional alternatives.

The Plan alternative proposes that the Services issue incidental take permits and that Storedahl implement the Plan on approximately 300 acres. This action would apply various conservation measures and actions that meet or exceed the environmental and conservation standards and guidelines of the Washington Surface Mining Act, other state laws and regulations and applicable county regulations. In effect, the Services would issue a Permit and Storedahl would manage their lands in accordance with the conservation standards, guidelines and regime set forth in the Plan, including conveyance of lands to non-profit organizations or granting of conservation easements, or both.

Under the No Action alternative, a permit would not be issued by the Services and Storedahl would continue ongoing processing activities and undertake to resume mining at the site, implementing both so as to avoid take of federally listed species. However, such an alternative would likely not address long-term conservation measures, such as the granting of conservation easements or conveying real property to non-profit organizations.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to these proposed actions are addressed and that all significant issues are identified. Comments or questions concerning this proposed action and the environmental review should be directed to FWS or NMFS (see **ADDRESSES**).

The environmental review of this project will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 et seq.), Council on Environmental Quality regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations. It is estimated that the draft EIS will be available for public review during the first quarter of calendar year 2000.

Dated: December 13, 1999.

Anne Badgley,

Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

Dated: December 17, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–33512 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102599A]

Pacific Fishery Management Council; Public Meetings; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction of a public meetings notice.

SUMMARY: The Pacific Fishery Management Council's Ad-Hoc Groundfish Strategic Plan Development Committee has scheduled six 2-day work sessions which are open to the public. The notice was published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence D. Six, Executive Director; telephohe: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The original notice was published in the Federal Register on November 4, 1999, 64 FR 60172. The meeting for Tuesday, January 18 and Wednesday, January 19, 2000 has been rescheduled to Monday, January 17, from 10 a.m. until 5 p.m, and Tuesday January 18, from 8 a.m. to 4 p.m.

All other previously published information remains unchanged.

Dated: December 20, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33513 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

mendment of the Export Visa Arrangement to Include the New Certification Stamp for Outward Processed Goods for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia; Correction

December 20, 1999.

In the letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (64 FR 69743), please make the following corrections:

On page 69743, column 2, line 9 in the 1st paragraph under "Visa Requirements", correct "Categories 433, 434, 435, 443 and 448" to read "Categories 200-239, 300-369, 400-469, 600-670 and 800-899".

On page 69744, column 1, line 2 in the 1st paragraph under "Certification Requirements for Outward Processing Program", correct "Categories 433, 434, 435, 442, 443, 444, 447 and 448" to read "Categories 433, 434, 435, 443 and 448".

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33493 Filed 12–23–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) of the Final Environmental Impact Statement for Approval of Land Use and Real Estate Investment Strategies in support of Real Property Master Planning at Fort Huachuca, Arizona

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability (NOA).

SUMMARY: This announces the availability of the Final Environmental Impact Statement (FEIS) which assesses the potential environmental impacts of the approval of updates to three components of the Fort Huachuca Real Property Master Plan (RPMP), and the authorization of the steps leading to project implementation.

DATES: Written comments received within 30 days of the publication of the Environmental Protection Agency's NOA for this action will be considered by the Army during final decision making.

ADDRESSES: To obtain copies of the FEIS, contact Commander, U.S. Army Garrison, Attn: ATZS–ISB (FEIS/Ms.

Chastain), Fort Huachuca, Arizona 85613–6000.

FOR FURTHER INFORMATION CONTACT: Major Dan Williams or Ms. Tanya Linton at (520) 533–1287 or 533–2752.

SUPPLEMENTARY INFORMATION: The Department of the Army prepared a Draft Environmental Impact Statement (DEIS) which assessed the environmental and human health impacts of the proposed action at Fort Huachuca, Arizona, and the surrounding communities. An NOA was published on June 10, 1998, in the **Federal Register** by the U.S. Environmental Protection Agency, which provided notice that the DEIS was available for comment. A public Information meeting was held on June 30, 1998. Comments from the DEIS and public meeting have been considered and included along with responses in the FEIS.

The proposed action is to approve three updates to the Installation RPMP: (1) Long-Range Component, (2) the Short-Range Component, and (3) the Capital Investment Strategy, which will be used to guide real property and facilities management at Fort Huachuca. The alternatives to the proposed action considered in the FEIS are (1) No Action (continuation of current management conditions) and (2) Other Action—approval of the Long-Range Component update but not the Short-Range Component and Capital Investment Strategy updates.

Approval of the three RPMP component updates as discussed in the proposed action would allow Fort Huachuca to establish a framework for managing limited financial and real property resources and ensure installation management is compatible with local community development. Minor positive impact to land use and personnel safety would result from corrections of land use incompatibilities within the cantonment. Minor indirect positive socio-economic impact may occur at Fort Huachuca as a result of approving steps toward the implementation of programmed construction projects.

The FEIS concludes that no significant environmental impacts to cultural resources, air quality, noise, geology and soils, hydrology and water resources, biological resources (including federally listed threatened and endangered species and critical habitat), energy, waste management, or transportation would result from the proposed action or either of the two alternatives.

The FEIS is available for public review at the Sierra Vista Public Library, 2950 E. Tacoma street, Sierra Vista, AZ 85635.

Dated: December 13, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 99–33514 Filed 12–23–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Introduction of the V–22 to the Second Marine Aircraft Wing in Eastern North Carolina

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy, after carefully weighing the operational, environmental, and cost factors associated with the introduction of the V–22 'Osprey' as a replacement for the CH–46E helicopters in present use by the Second Marine Aircraft Wing (2d MAW), announces its Carolina. The squadrons receiving the new aircraft are already decision to base the replacement aircraft at MCAS New River, North based at MCAS New River, so no relocation of personnel and family members will be required.

FOR FURTHER INFORMATION CONTACT: LtCol D.B. Bixler, USMC; Long Range Planner, Installations and Logistics Dept (LFL–3), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington DC 20380–1775; Telephone 703 695–8240.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is attached as follows:

The Department of the Navy (DoN), pursuant to Section 102 (c) of the National Environmental Policy Act (NEPA) of 1969 (42 USC Section 4331 *et. seq.*), and the regulations of the Council of Environmental Quality that implement NEPA procedures (40 CFR Parts (1500–1508), hereby announces its decision to introduce the V–22 "Osprey", a new type of tiltrotor, aircraft, to the Second Marine Aircraft Wing of the US Marine Corps, based at Marine Corps Air Station, New River, North Carolina. The decision includes the replacement or renovation of the facilities used to house and maintain the aircraft, and development within the USMC of the skills needed to employ the new aircraft during wartime.

The introduction of the V–22, as mandated by Congress, is part of a Marine Corps-wide process of replacing the CH–46E and CH–53D helicopters currently used by the USMC MAWs. The USMC relies on a veteran fleet of CH–46Es and CH–53Ds for medium-lift operations, such as the delivery of troops and equipment in amphibious assault operations. These Fleet aircraft will be replaced by the V–22 on an essentially one-to-one basis.

The CH–46E aircraft represent 1960s technology, and are nearing the end of their lifecycles. The CH–46E cannot travel great distances, and is not well equipped for night or adverse weather operations. The V–22 is a tiltrotor aircraft capable of vertical/short takeoffs and landings, and significantly greater flight distances, at a faster speed and with a greater payload than the CH–46Es and CH–53Ds.

The basing and operating of the V–22 by the 2d MAW will be as described in the Final Environment Impact Statement (FEIS) of October, 1999. The FEIS identifies the basing of the V–22 at MCAS New River as the Preferred Alternative. To support the personnel, operations, and maintenance effort associated with basing the V–22 at MCAS New River, four construction projects will be required at that air station. These projects include constructing an aircraft rinse facility, widening taxiways, expanding the aircraft parking apron, and providing an addition to an existing training building to accommodate additional training simulators. Additionally, repavement of the runways at Outlying Landing Field Oak Grove, in Jones County, is planned.

Operations will include training activities by the V–22 Fleet Replacement and Fleet Replacement Enlisted Skills Training (FRS/FREST) squadrons to develop initial capabilities in piloting and maintaining the new aircraft. The action also includes readiness operations by the V–22 tactical squadrons to develop proficiency in use of the V–22 for warfighting. These training and readiness operations are similar to those that have been conducted in Eastern North Carolina by the CH–46 FRS and tactical squadrons in recent years.

Training and readiness operations will be conducted at established outlying landing fields (OLFs); established special use airspace such as military operations areas (MOAs) and restricted areas; established military training routes (MTRs), terrain-following routes (TERFs), and low altitude routes (LATs); established targets and landing zones (LZs); and civilian airports. No new OLFs, MOAS, MTRs, TERFs, LATs, or restricted areas will be required as the result of the proposed action.

The first V–22 aircraft will be delivered to the V–22 Fleet Replacement Squadron (FRS) during fiscal years 2000 and 2001, at which point that squadron will reach Initial Operating Capability.

The V–22 FRS squadron will receive 20 V–22 aircraft during the first five years of the program. The first four 2d MAW CH–46E tactical squadrons will be transitioned to the V–22 by about fiscal year 2006, and will each receive 12 V–22s, for a total of 48 V–22 aircraft.

Ultimately, by about fiscal year 2008, the six 2d MAW tactical squadrons that presently use the CH–46E helicopters will be re-equipped with the V–22. These Fleet squadrons are part of Marine Aircraft Group 26 and 29, currently stationed at MCAS New River. Initiating deployment through MCAS New River will therefore allow the DoN to take advantage of the existing facilities and organizational structure at the site.

The V–22 FRS staff will begin training in the operation and maintenance of the V–22 upon arrival of the first V–22, scheduled for February 2000. The training of these personnel will be completed during March 2001, at which time they will begin to train tactical squadron personnel, starting with the first four of the 2d MAW tactical squadrons that are to be equipped.

The air emissions from sources associated with construction and operation of the proposed action would occur in counties within the Southern Coastal Plain Intrastate Air Quality Control Region. Each of these counties is an air quality area for purposes of National Ambient Air Quality Standards (NAAQS) designations under the Clean Air Act (CAA), and each has been designated as being in attainment for all criteria pollutants (40 C.F.R. 81.334). Thus, the Federal General Conformity Rule implementing the CAA Sec. 176, and the North Carolina General Conformity Rule (15A NCAC 2D.1600) are not applicable.

Process

The NOI to prepare an Environmental Impact Statement (EIS) for the introduction of the V–22 to the 2d MAW was published in the **Federal Register** on August 14, 1998. Four public scoping meetings were held between August 31, 1998 and September 3, 1998 in the four North Carolina communities closest to where V–22 operations would occur: Atlantic, Pollocksville, Jacksonville, and Havelock.

The public scoping meetings were attended by a total of 25 persons, with only one formal comment offered. An additional 13 individuals and state/local agencies submitted comments via letter, facsimile, or electronic mail.

The Draft Environmental Impact Statement (DEIS) was distributed to Congressional members and committees, agencies and officials of federal, state, and local governments, citizen groups and organizations, and other interested parties during the week of June 14–18, 1999.

The Notice of Availability for the DEIS was published in the **Federal Register** on June 25, 1999. The DEIS was subject to public review during a 45-day public comment period. The Marine Corps also held four public hearings during the public comment period as follows: July 19, 1999—Jacksonville, NC; July 20, 1999—Havelock, NC; July 21, 1999—Atlantic, NC; and July 22, 1999—Pollocksville, NC.

Comments on the DEIS were received by letter, by oral statements provided to the court recorder at the public hearings, and written statements received by facsimile. Written and oral statements were received from a total of 21 commentors, including federal, state, regional, and local agencies, and private individuals. All comments received were reviewed and addressed in the FEIS.

The FEIS was distributed for public comment on October 25, 1999. The public comment period ended on December 6, 1999. Two comments were received on the FEIS, and were reviewed before issuing this ROD.

Alternatives Considered

The DoN conducted a two-tiered screening process to identify reasonable alternatives that would fulfull the purpose and need for the proposed action. The first stage identified all DoD aviation facilities that would meet certain fundamental criteria that are essential for the introduction of the V–22 within the 2d NAW. The second stage of the process screened those facilities that met the fundamental criteria against several preferential criteria that would significantly affect the cost and efficiency of the proposed action. The fundamental criteria included location within 200 nautical miles (nm) (370 kilometers [km]) of the ground forces that are supported by the 2d MAW (these ground forces are located at Marine Corps Base (MCB) Camp Lejeune); and the presence at the facility of a Marine Aviation Logistics Squadron (MALS).

The first criterion is based on the specified radius of action (200 nm) for the Marine Corps version of the V–22. It reflects the distance the V–22 can travel and return, without refueling with a full load of 18 to 24 combat troops.

The second criterion is necessary because the V–22 is a new aircraft, and there has been no opportunity to develop a maintenance capability through a MALS. The first opportunity for development of this capability will occur as the new aircraft is introduced to the FRS and initial fleet tactical squadrons. It is important that the V–22 squadrons be home-based at the same air station as a MALS, to avoid significant degradation of the maintenance, logistics, and training support that a MALS provides. Collocation with other USMC aviation assets would also significantly aid the integration of the new aircraft into the overall USMC aviation team.

Under these circumstances, establishing a new MALS at a non-Marine Corps facility would not be reasonable, as it would require the Marine Corps to undertake a change in force structure, necessitating higher support costs, and duplication of personnel and facilities at a time when DoD is streamlining.

Only two sites meet both fundamental criteria: MCAS Cherry Point and MCAS New River. These sites were then evaluated against the preferential criteria, namely operational readiness factors such as: the availability of adequate training areas (MTRs, LATs, TERFs, OLFs, LZs, restricted areas and associated targets, MOAs, and Warning Areas) within a reasonable distance of the home base; collocation of the FRS/FREST squadron with the majority of the V–22 Fleet squadrons; available capacity at the facility to accommodate the aircraft and personnel; costs associated with implementation of the alternative; and, proximity of the selected facility to the Fleet ground combat element (CGEs) requiring rotorcraft support at MCB Camp Lejeune. While MCAS New River is clearly the preferred alternative when evaluated against these factors, full basing at MCAS Cherry Point or partial basing of the FRS/FREST and six tactical squadrons at both New River or Cherry Point would also be reasonable. Thus, the EIS addressed the environmental impacts of these three alternatives.

Because Congress directed replacement, the No Action Alternative was not analyzed in detail.

Environmental Impacts

The DoN analyzed the potential impacts of the selected action on 15 categories of resources, namely: airfields and airspace, land use and coastal zone management, socioeconomics, community facilities and services, ground traffic and transportation, air

quality, noise, infrastructure and utilities, cultural resources, hazardous materials management, topography and soils, vegetation and wetlands, wildlife, water resources, and rare and protected species. The DoN also considered potential cumulative impacts of the proposed action and consistency of the proposed action with federal policies addressing environmental justice. None of the impacts of the preferred alternative are considered to be significant. This record of decision focuses on the issues of most concern to the public or other government agencies.

Noise—Public comments throughout the EIS process have indicated concern for aircraft noise, particularly overflights of national and state parks and other natural areas. The Day-Night Average Sound Level (DNL) was used to assess changes in the noise environment around the air stations and landing fields. The Onset-Rate Adjusted Day-Night Average Sound Level (L_{dnmr}) was used to assess changes along MTRs, within MOAs, and within Restricted Areas/Ranges. The Sound Exposure Level was used for representative sensitive receptor locations.

Full basing of the V–22 at MCAS New River will result in little change in flight patterns or noise levels in the vicinity of the air station. The V–22 is slightly less noisy than the CH–46E helicopter, and will conduct somewhat fewer operations than the CH–46Es. The same will be true for many of the areas to be used for training, including the OLFs, TERFs, MTRs and MOAs. In some areas, there will be a decrease in the noise levels due to a decrease in the number of flight operations projected for not only the V–22 (former CH–46E) squadrons, but also other aircraft squadrons, as well (Executive Summary).

There will be an increase in operations and therefore noise impacts at both OLF Oak Grove and the Albert J. Ellis Airport, in Jacksonville, NC. However, although the area affected by 65-dB DNL or greater will increase at both OLF Oak Grove and the Albert J. Ellis airport, it will not extend beyond the airport property, and will not, therefore, significantly impact people or dwellings.

Noise along the TERF routes will not change significantly. three of the TERF routes are located almost wholly over the Croatan National Forest and Hofmann Forest. The fourth TERF Route (Holly Shelter) is located over forest and agricultural land. The number of operations along the TERF routes will actually decrease. Average noise levels along the Great White and Ellis Lake routes are anticipated to remain the same; the average noise level on the Hofman Forest route will decrease by one dB; and the average level on Holly Shelter route will increase by one dB. Average noise levels would not exceed the 65 dB standard considered to be protective of humans and wildlife along any of the routes. While the number of operations along the MTRs will increase (the CH–46E helicopters do not use MTRs, but the V–22 aircraft will use these routes), these noise levels along these routes would remain below the 55 dB DNL.

Air Quality—The proposed action and alternatives occur in air quality areas (counties), that have always been designated as being in attainment of NAAQS for all criteria pollutants. Given this fact, the DoN selected the major stationary source definition from the CAA prevention of significant deterioration program—250 tons per year (tpy) or more of any air pollutant—that applies in these counties as the criteria for determining the potential significance of air quality impacts.

The DoN carefully analyzed the air quality impacts of the replacement of CH–46E operations with V–22 operations, and has continued to update and refine the analysis as new information has become available.

The most recent refinement (post FEIS) of the air quality impacts analysis included recalculating emissions attributable to CH–46E aircraft using new gaseous and particulate emission factors developed by the Navy's Aircraft Environmental Support Office during November and December 1999. Initial recalculations revealed potentially significant NO_x emissions for Onslow County. However, since all emissions from training areas were attributed in the FEIS analysis to Onslow County, even though they actually partially occur in neighboring counties, the NO_x emissions are still considered to be insignificant. When operational emissions are more accurately attributed among the counties that include the areas north and west of MCAS New River, the conclusion for all counties remains the same. The net increase in emissions for each county within the AQCR resulting from the proposed action and the alternatives (including operations at outlying landing fields and training areas) would be below 250tpy for all criteria pollutants. Thus, neither the proposed action nor any of the alternatives would have a potential significant adverse impact on air quality. The new emissions factors and the results of recalculation of operational emissions are not significant new information requiring re-publication of the FEIS.

Refinements of FEIS Tables 3.6–2; 4.6–2; 4.6–3; E–1 through E–3; E–7; and E–9 through E–1-, incorporating the recent CH–46E emission factors and distributing emissions among the counties that include the areas north and west of MCAS New River, appear in Appendix A of this Record of Decision.

Water Resources—Several agencies expressed concern over the filling of a channelized stream in connection with expansion of the aircraft parking apron at MCAS New River. An Army Corps of Engineers permit will be required under Section 404/401 of the Clean Air Act for relocating or culverting the stream channel. This channel has been previously modified as part of the stormwater conveyance system at MCAS New River. Mitigation for the loss of habitat will be developed as part of the Section 404/401 permitting process. Work at OLF Oak Grove will not directly impact any surface waters. Runoff would be carefully controlled during construction to comply with all applicable state policies, rules and regulations.

Wildlife, Threatened and Endangered Species—No protected (threatened or endangered) or significantly are species are documented as occurring within the construction areas at MCAS New River, MCAS Cherry Point, or OLF Oak Grove. At OLF Atlantic, no federally protected (threatened or endangered) species have been documented as occurring. One state endangered/federal species of concern, the Carolina goldenrod, and four state significantly rare species are present near the runways at OLF Atlantic. While no construction would occur at OLF Atlantic under the proposed action, downdraft from the V–22 could damage fragile species.

The U.S. Fish and Wildlife Service's comments on the DEIS expressed concern over low-level flight exercises, and their impact on bald eagles, red-cockaded woodpeckers, and other federally-listed coastal birds. They also expressed concern over colonial waterbirds and waterfowl. V–22 flights will mainly take place along the MTRs, the Holly Shelter, Hofmann Forest, Great White, and Ellis Lake TERF routes, and the LAT route within R–5306A. These routes have been in use many years. While flights along the MTRs would increase by 548 operations, flights along TERF routes would decrease by about 979 operations as compared to the level of CH–46E operations in recent years. Also, many of the flights on the MTRs occur at higher altitudes (300 ft to over 1,000 ft) [91 m to 305 m] than the operations

along the TERF routes. The DON does not anticipate that the proposed action will cause adverse impacts, such as changes in species distribution or populations within these areas, because the operational patterns and associated noise levels will be similar to current operations.

Response To Comments Received Regarding the Final Environmental Impact Statement

Two written letters were received. One commentor, EPA Region 4, Atlanta restated the Agency's lack of objection to the proposal. The State of North Carolina also submitted a comment which concurred with the proposed action.

Conclusions

In determining where to introduce the V–22 to the 2d MAW, I have considered the following: all DoD air facilities with an existing MALS within the operational radius of the aircraft; environmental impacts; operational readiness factors such as the availability of adequate training areas within a reasonable distance of the home base and collocation of the FRS/FREST squadron with the V–22 Fleet squadrons; available capacity at the selected facility to accommodate the aircraft and personnel; costs associated with implementation of the alternative; proximity of the selected facility to the units of the Ground Combat Element requiring rotorcraft support at MCB Camp Lejeune; and comments received during the DEIS and FEIS public involvement periods.

After carefully weighing all of these factors, analyzing the data presented in the FEIS along with the additional information concerning air emissions, and considering public comments, I have determined that the Preferred Alternative, homebasing of the V–22 at MCAS New River, best meets the operational requirements for the V–22, and is the least costly of the alternatives evaluated. This alternative is also the environmentally preferred alternative. Therefore, on behalf of the Department of the Navy, I have decided to implement the proposed action by basing the V–22 aircraft at MCAS New River.

Dated: December 20, 1999.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

BILLING CODE 3810–01–M

Table 3.6-2
Existing CH-46 Emission Levels

MCAS New River	193.6	12.5	50.1	1.6	15.9
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
Oak Grove	6.0	1.0	0.7	0.1	1.0
Camp Davis	13.1	2.1	1.6	0.3	2.2
Albert J. Ellis Airport	2.0	0.3	0.3	0.0	0.3
MCB Camp Lejeune	43.4	5.4	6.2	0.6	6.1
Other Training Areas	45.7	5.6	6.6	0.6	5.5
Total Emissions	303.8	26.9	65.5	3.2	32.0

along the TERF routes. The DON does not anticipate that the proposed action will cause adverse impacts, such as changes in species distribution or populations within these areas, because the operational patterns and associated noise levels will be similar to current operations.

Response To Comments Received Regarding the Final Environmental Impact Statement

Two written letters were received. One commentor, EPA Region 4, Atlanta restated the Agency's lack of objection to the proposal. The State of North Carolina also submitted a comment which concurred with the proposed action.

Conclusions

In determining where to introduce the V–22 to the 2d MAW, I have considered the following: all DoD air facilities with an existing MALS within the operational radius of the aircraft; environmental impacts; operational readiness factors such as the availability of adequate training areas within a reasonable distance of the home base and collocation of the FRS/FREST squadron with the V–22 Fleet squadrons; available capacity at the selected facility to accommodate the aircraft and personnel; costs associated with implementation of the alternative; proximity of the selected facility to the units of the Ground Combat Element requiring rotorcraft support at MCB Camp Lejeune; and comments received during the DEIS and FEIS public involvement periods.

After carefully weighing all of these factors, analyzing the data presented in the FEIS along with the additional information concerning air emissions, and considering public comments, I have determined that the Preferred Alternative, homebasing of the V–22 at MCAS New River, best meets the operational requirements for the V–22, and is the least costly of the alternatives evaluated. This alternative is also the environmentally preferred alternative. Therefore, on behalf of the Department of the Navy, I have decided to implement the proposed action by basing the V–22 aircraft at MCAS New River.

Dated: December 20, 1999.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

BILLING CODE 3810–01–M

Table 3.6-2
Existing CH-46 Emission Levels

Site	Criteria Pollutant Emissions (tpy)				
	CO	NO_x	VOCs	SO_x	PM10
MCAS New River	193.6	12.5	50.1	1.6	15.9
MCAS Cherry Point	0 0	0.0	0.0	0.0	0.0
Oak Grove	6 0	1.0	0.7	0.1	1.0
Camp Davis	13.1	2.1	1.6	0.3	2.2
Albert J. Ellis Airport	2 0	0.3	0 3	0.0	0 3
MCB Camp Lejeune	43.4	5.4	6.2	0.6	6.1
Other Training Areas	45.7	5 6	6 6	0.6	6 5
Total Emissions	303.8	26 9	65 5	3.2	32.0

Table 4.6-2
Summary of Net Changes in Emissions between CH-46E and V-22 Operations

Area	Criteria Pollutant Emissions (tpy)				
	CO	NO_x	VOCs	SO_2	PM10
Airfield – V-22 Based at MCAS New River					
MCAS New River	-151.0	78.6	-48.4	2.8	0.3
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
Airfield – V-22 Based at MCAS Cherry Point					
MCAS New River	-193.6	-12.5	-50 1	-1.6	-15.9
MCAS Cherry Point	42.6	91.1	1.7	4.4	16 2
Airfield – V-22 Based at Both Air Stations					
MCAS New River	-163 8	51.3	-48.9	1.5	-4.6
MCAS Cherry Point	12.8	27.3	0.5	1.3	4 9
LFs – Common for All Alternatives					
Oak Grove	-5.3	11 6	-0.7	0.3	0.6
Camp Davis	-12.1	17.1	-1.6	0.3	-0.3
Atlantic	0.1	1.1	0.0	0.0	0.1
Bogue	0.0	0.7	0.0	0.0	0.1
Albert J Ellis Airport	-1.5	7 9	0 3	0.3	0.8
Training Areas – Common for All Alternatives					
MCB Camp Lejeune	-38 7	73.7	-6.1	2.0	4.5
Other Areas	-40.1	131.6	-6.2	3.1	9.4
Total Net Emissions	-249.2	322.4	-63 6	9.0	16.1

Note: Refer to Table 4.6-3 for total net emissions of NO_x by county.

Table 4.6-3
Net Changes in NO_x Emissions between CH-46E and V-22 Operations by County

Area	NOx Emissions (tpy)				
	Onslow	Craven	Carteret	Jones	Others Counties
Airfield - V-22 Based at the MCAS New River					
MCAS New River	78.6	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	0.0	0 0	0.0	0 0
LFs	25.0	0.0	1 8	11.6	0.0
Training Areas	120.6	0.0	0 0	13.2	71.5
Total Net Emissions	224.2	0.0	1.8	24 8	71.5
Airfield - V-22 Based at the MCAS Cherry Point					
MCAS New River	-12.5	0.0	0.0	0.0	0 0
MCAS Cherry Point	0.0	91.1	0.0	0.0	0 0
LFs	25.0	0.0	1 8	11.6	0.0
Training Areas	120.6	0.0	0 0	13.2	71 5
Total Net Emissions	133.1	91.1	1 8	24.8	71.5
Airfield - V-22 Based at Both Air Stations					
MCAS New River	51.3	0 0	0 0	0.0	0 0
MCAS Cherry Point	0.0	27.3	0.0	0 0	0.0
LFs	25 0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0 0	13.2	71 5
Total Net Emissions	196 9	27.3	1.8	24.8	71 5

Note: Operational emissions attributable to the areas north and west of MCAS New River were proportionally distributed among the counties in which they occur.

Table 4.6-2
Summary of Net Changes in Emissions between CH-46E and V-22 Operations

[illegible]					
MCAS New River	-151.0	78.6	-48.4	2.8	0.3
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
[illegible] V-22 Based at MCAS Cherry Point					
MCAS New River	-193.6	-12.5	-50.1	-1.6	-15.9
MCAS Cherry Point	42.6	91.1	1.7	4.4	16.2
Alternative V-22 Based at Both Air Stations					
MCAS New River	-163.8	51.3	-48.9	1.5	-4.6
MCAS Cherry Point	12.8	27.3	0.5	1.3	4.9
LTO – Common for All Alternatives					
Oak Grove	-5.3	11.6	-0.7	0.3	0.6
Camp Davis	-12.1	17.1	-1.6	0.3	-0.3
Atlantic	0.1	1.1	0.0	0.0	0.1
Bogue	0.0	0.7	0.0	0.0	0.1
Albert J. Ellis Airport	-1.5	7.9	0.3	0.3	0.8
[illegible] – Common for All Alternatives					
MCB Camp Lejeune	-38.7	73.7	-6.1	2.0	4.5
Other Areas	-40.1	131.6	-6.2	3.1	9.4
Total Net Emissions	-249.2	322.4	-63.6	9.0	16.1

Note: Refer to Table 4.6-3 for total net emissions of NO_x by county.

Table 4.6-3
Net Changes in NO_x Emissions between CH-46E and V-22 Operations by County

Airfield - V-22 Based at the MCAS New River					
MCAS New River	78.6	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	224.2	0.0	1.8	24.8	71.5
Airfield - V-22 Based at the MCAS Cherry Point					
MCAS New River	-12.5	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	91.1	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	133.1	91.1	1.8	24.8	71.5
Airfield - V-22 Based at Both Air Stations					
MCAS New River	51.3	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	27.3	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	196.9	27.3	1.8	24.8	71.5

Note: Operational emissions attributable to the areas north and west of MCAS New River were proportionally distributed among the counties in which they occur.

Table F-1
CH-46E Emissions Calculation Worksheet

Engine Type T58-GE-16 APU Type Solar T-62T-11 Scenario: Existing Condition and No Action Alternative Location MCAS New River

Type of Operation	Operating Mode	Power Setting[1]	Time (hours)[2]	Fuel flow rate(lb/hr)[1]	Emission Factors (lb/1000lb)[1] CO	NOx	VOC	SO2	PM10	No. of Engines	Fuel Usage (tons)	Emission (tons/year) CO	NOx	VOC	SO2	PM10
APUs (4678 LTOs)[3]			1,169.6	160	42.77	3.94	9.04	0.40	0.22	1	80	2.55	0.24	0.54	0.02	0.01
Idling	Taxi/out	70%Q	6,453.0	2,430	72.28	2.28	22.05	0.40	4.00	2	1,742	125.93	3.97	38.41	0.70	6.97
Departure	Hover	45%Q	376.7	4,660	28.51	3.53	4.07	0.40	4.00	2	146	4.15	0.51	0.59	0.06	0.58
	Climbout	58%Q	633.3	570	18.15	4.08	1.52	0.40	4.00	2	361	6.55	1.47	0.55	0.14	1.44
Arrival	Approach	40%Q	1,069.0	420	34.22	3.30	5.82	0.40	4.00	2	449	15.36	1.48	2.61	0.18	1.80
Touch and Go[4]	Approach	40%Q	143.0	420	34.22	3.30	5.82	0.40	4.00	2	60	2.06	0.20	0.35	0.02	0.24
	Climbout	60%Q	226.5	590	16.88	4.17	1.27	0.40	4.00	2	134	2.26	0.56	0.17	0.05	0.53
	Circle	51%Q	226.5	510	22.99	3.79	2.60	0.40	4.00	2	116	2.66	0.44	0.30	0.05	0.46
Ground Controlled Approach (GCA) Pattern[4]	Approach	40%Q	237.3	420	34.22	3.30	5.82	0.40	4.00	2	100	3.41	0.33	0.58	0.04	0.40
	Climbout	60%Q	114.3	590	16.88	4.17	1.27	0.40	4.00	2	67	1.14	0.28	0.09	0.03	0.27
	Circle	51%Q	527.4	510	22.99	3.79	2.60	0.40	4.00	2	269	6.18	1.02	0.70	0.11	1.08
Low Work	Hover/Circle	45%Q	725.0	460	28.51	3.53	4.07	0.40	4.00	2	334	9.51	1.18	1.36	0.13	1.33
In-frame maintenance testing[5]												11.80	0.82	3.52	0.10	0.81
											Emissions Subtotal (tons/year):	193.56	12.50	50.12	1.63	15.93

Note

1. Engine power settings, fuel flow rates and emission indices are provided in AESO report (Report No. 9816, Revision C, December 1999).
2. Time used under each operation type are provided in ATAC report (March 1999).
3. APU usage data was determined by multiplying total LTOs (ATAC, March 1999) excluding hot seat swaps by unit APU time in each LTO (AESO Report No. 9816, Revision C, December 1999).
4. Touch-and-Go and GCA Pattern cycle time are divided into approach, climbout and circle hours based on information provided by ATAC, Huber, December 11, 1998.
5. In-frame maintenance testing emissions were estimated based on the data provided in AESO report (Report No. 9816, Revision C, December 1999).

Table E-2
CH-46E Emissions Calculation Worksheet

Engine Type: T58-GE-16 Scenario: Existing Condition and No Action Alternative Location: Outlying Landing Fields

Type of Operation	Operating Mode	Power Setting[1]	Time[2] (hours)	Fuel flow rate(lb/hr)[1]	Emission Factors (lb/1000lb)[1]					No. of Engines	Fuel Usage (tons)	Emission (tons/year)				
					CO	NOx	VOC	SO2	PM10			CO	NOx	VOC	SO2	PM10
Camp Davis Touch-and-Go[3]	Approach	40%Q	200.2	420	34.22	3.30	5.82	0.40	4.00	2	84	2.88	0.28	0.49	0.03	0.34
	Climbout	60%Q	317.0	590	16.88	4.17	1.27	0.40	4.00	2	187	3.16	0.78	0.24	0.07	0.75
	Circle	51%Q	317.0	510	22.99	3.79	2.60	0.40	4.00	2	162	3.72	0.61	0.42	0.06	0.65
Camp Davis Low Work	Hover/Circle	45%Q	257.9	460	28.51	3.53	4.07	0.40	4.00	2	119	3.38	0.42	0.48	0.05	0.47
Oak Grove Touch-and-Go[3]	Approach	40%Q	95.1	420	34.22	3.30	5.82	0.40	4.00	2	40	1.37	0.13	0.23	0.02	0.16
	Climbout	60%Q	150.6	590	16.88	4.17	1.27	0.40	4.00	2	89	1.50	0.37	0.11	0.04	0.36
	Circle	51%Q	150.6	510	22.99	3.79	2.60	0.40	4.00	2	77	1.77	0.29	0.20	0.03	0.31
Oak Grove Low Work	Hover/Circle	45%Q	106.8	460	28.51	3.53	4.07	0.40	4.00	2	49	1.48	0.17	0.20	0.02	0.20
Albert Ellis Touch-and-Go[3]	Approach	40%Q	25.1	420	34.22	3.30	5.82	0.40	4.00	2	11	0.36	0.03	0.06	0.00	0.04
	Climbout	60%Q	39.8	590	16.88	4.17	1.27	0.40	4.00	2	23	0.40	0.10	0.03	0.01	0.09
	Circle	51%Q	39.8	510	22.99	3.79	2.60	0.40	4.00	2	20	0.47	0.08	0.05	0.01	0.08
Albert Ellis Low Work	Hover/Circle	45%Q	59.3	460	28.51	3.53	4.07	0.40	4.00	2	27	0.78	0.10	0.11	0.01	0.11
											Emissions Subtotal (tons/year):	21.17	3.36	2.63	0.36	3.58

Note

1. Engine power settings, fuel flow rates and emission indices are provided in AESO report (Report No. 9816, Revision C, December 1999).
2. Time used under each operation type are provided in ATAC report (March 1999).
3. Touch-and-Go and GCA Pattern cycle time are divided into approach, climbout and circle hours based on information provided by ATAC, Huber, December 31, 1998.

Table E-1

CH-46E Emissions Calculation Worksheet

Engine Type: T58-GE-16 APU Type: Solar T-62T-11 Scenario: Existing Condition and No Action Alternative Location: MCAS New River

APUs (4678 LTOs)[3]			1,169.6	102	42.77	3.94	9.04	0.40	0.22	1	60	2.55	0.24	0.54	0.02	0.01
Idling	Taxi in/out	20%Q	6,453.0	270	72.28	2.28	22.25	0.40	4.00	2	1742	125.93	3.97	38.77	0.70	6.97
Departure	Hover	45%Q	316.7	460	28.51	3.53	4.07	0.40	4.00	2	146	4.15	0.51	0.59	0.06	0.58
	Climbout	58%Q	633.3	570	18.15	4.06	1.52	0.40	4.00	2	361	6.55	1.47	0.55	0.14	1.44
Arrival	Approach	40%Q	1,069.0	420	34.22	3.30	5.82	0.40	4.00	2	440	15.36	1.46	2.51	0.18	1.80
Touch-and-Go[4]	Approach	40%Q	143.0	420	34.22	3.30	5.82	0.40	4.00	2	60	2.06	0.20	0.35	0.02	0.24
	Climbout	60%Q	226.5	590	16.88	4.17	1.27	0.40	4.00	2	134	2.26	0.56	0.17	0.05	0.53
	Circle	51%Q	226.5	510	22.99	3.79	2.60	0.40	4.00	2	116	2.66	0.44	0.30	0.05	0.46
Ground Controlled Approach (GCA) Pattern[4]	Approach	40%Q	237.3	420	34.22	3.30	5.82	0.40	4.00	2	100	3.41	0.33	0.58	0.04	0.40
	Climbout	60%Q	114.3	590	16.88	4.17	1.27	0.40	4.00	2	67	1.14	0.28	0.09	0.03	0.27
	Circle	51%Q	527.4	510	22.99	3.79	2.60	0.40	4.00	2	269	6.18	1.02	0.70	0.11	1.08
Low Work	Hover/Circle	45%Q	725.8	460	28.51	3.53	4.07	0.40	4.00	2	334	9.51	1.18	1.36	0.13	1.33
In-frame maintenance testing[5]												11.50	0.82	3.52	0.10	0.81

Note:

1. Engine power settings, fuel flow rates and emission indices are provided in AESO report (Report No. 9816, Revision C, December 1999).
2. Time used under each operation type are provided in ATAC report (March 1999).
3. APU usage data was determined by multiplying total LTOs (ATAC, March 1999) excluding hot seat swaps by unit APU time in each LTO (AESO Report No. 9816, Revision C, December 1999)
4. Touch-and-Go and GCA Pattern cycle time are divided into approach, climbout and circle hours based on information provided by ATAC (Huber, December 31, 1998)
5. In-frame maintenance testing emissions were estimated based on the data provided in AESO report (Report No. 9816, Revision C, December 1999) .

Table E-2
CH-46E Emissions Calculation Worksheet

Engine Type: T58-GE-16 **Scenario: Existing Condition and No Action Alternative** **Location: Outlying Landing Fields**

Camp Davis Touch-and-Go[3]	Approach	40%Q	200.2	420	34.22	3.30	5.82	0.40	4.00	2	84	2.88	0.28	0.49	0.03	0.34
	Climbout	60%Q	317.0	500	16.88	4.17	1.27	0.40	4.00	2	167	3.16	0.78	0.24	0.07	0.75
	Circle	51%Q	317.0	510	22.99	3.79	2.60	0.40	4.00	2	162	3.72	0.91	0.42	0.06	0.65
Camp Davis Low Work	Hover/Circle	45%Q	257.9	460	28.51	3.53	4.07	0.40	4.00	2	119	3.38	0.42	0.48	0.05	0.47
Oak Grove Touch-and-Go[3]	Approach	40%Q	95.1	420	34.22	3.30	5.82	0.40	4.00	2	40	1.37	0.13	0.23	0.02	0.16
	Climbout	60%Q	150.6	500	16.88	4.17	1.27	0.40	4.00	2	89	1.50	0.37	0.11	0.04	0.36
	Circle	51%Q	150.6	510	22.99	3.79	2.60	0.40	4.00	2	77	1.77	0.29	0.20	0.03	0.31
Oak Grove Low Work	Hover/Circle	45%Q	108.8	460	28.51	3.53	4.07	0.40	4.00	2	49	1.40	0.17	0.20	0.02	0.20
Albert Ellis Touch-and-Go[3]	Approach	40%Q	28.1	420	34.22	3.30	5.82	0.40	4.00	2	11	0.38	0.03	0.06	0.00	0.04
	Climbout	60%Q	39.8	500	16.88	4.17	1.27	0.40	4.00	2	23	0.40	0.10	0.03	0.01	0.09
	Circle	51%Q	39.8	510	22.99	3.79	2.60	0.40	4.00	2	20	0.47	0.08	0.05	0.01	0.08
Albert Ellis Low Work	Hover/Circle	45%Q	59.3	460	28.51	3.53	4.07	0.40	4.00	2	27	0.78	0.10	0.11	0.01	0.11

Note:

1. Engine power settings, fuel flow rates and emission indices are provided in AESO report (Report No. 9818, Revision C, December 1998).
2. Time used under each operation type are provided in ATAC report (March 1999).
3. Touch-and-Go and GCA Pattern cycle time are divided into approach, climbout and circle hours based on information provided by ATAC (Huber, December 31, 1998)

Table E-3
CH-46E Emissions Calculation Worksheet

Engine Type: T58-GE-16 Scenario: Existing Condition and No Action Alternative Location: Training Areas

Type of Operations	Operating Mode	Power Setting[1]	Time[2] (hours)	Fuel flow rate(lb/hr)[1]	Emission Factors (lb/1000lb)[1]					No. of Engines	Fuel Usage (tons)	Emission (tons/year)				
					CO	NOx	VOC	SO2	PM10			CO	NOx	VOC	SO2	PM10
Camp Lejeune	Cruise	45%Q	3,306.0	460	28.51	3.53	4.07	0.40	4.00	2	1521	43.36	5.37	6.19	0.61	6.08
Great White/Ellis TERF	Cruise	45%Q	503.0	460	28.51	3.53	4.07	0.40	4.00	2	231	6.60	0.82	0.94	0.09	0.93
Hoffmann Forest TERF	Cruise	45%Q	328.0	460	28.51	3.53	4.07	0.40	4.00	2	151	4.30	0.53	0.61	0.06	0.60
Holly Shelter TERF	Cruise	45%Q	368.0	460	28.51	3.53	4.07	0.40	4.00	2	169	4.83	0.60	0.69	0.07	0.68
Area North of MCAS New River	Cruise	45%Q	709.0	460	28.51	3.53	4.07	0.40	4.00	2	326	9.30	1.15	1.33	0.13	1.30
Area West of MCAS New River	Cruise	45%Q	1,135.0	460	28.51	3.53	4.07	0.40	4.00	2	522	14.89	1.84	2.12	0.21	2.09
R-5306A	Cruise	45%Q	264.0	460	28.51	3.53	4.07	0.40	4.00	2	121	3.46	0.43	0.49	0.05	0.49
Transit corridor to/from R-5306A	Cruise	45%Q	178.0	460	28.51	3.53	4.07	0.40	4.00	2	82	2.33	0.29	0.33	0.03	0.33
										Emissions Subtotal (tons/year):		89.06	11.83	12.71	1.24	12.50

Note:

1. Engine power settings, fuel flow rates and emission indices are provided in AESO report (Report No 9816, Revision C, December 1999)
2. Time used under each operation type are provided in ATAC report (March 1999)

Table E-7
Air Emissions Summary for No Action Alternative (Using CH-46E)

Area	Pollutant (tons per year)				
	CO	NO_x	VOC	SO_2	PM10
Airfield					
MCAS New River	193.6	12.5	50.1	1.6	15 9
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
LFs					
Camp Davis	13.1	2.1	1.6	0.3	2.2
Oak Grove	6.0	1.0	0.7	0.1	1.0
Bogue	0.0	0.0	0.0	0.0	0.0
Atlantic	0.0	0.0	0.0	0.0	0.0
Albert J. Ellis Airport	2.0	0.3	0.3	0.0	0.3
Training Areas					
Camp Lejeune	43.4	5.4	6.2	0 6	6.1
Great White/Ellis TERF	6.6	0.8	0.9	0.1	0.9
Hoffman Forest TERF	4.3	0.5	0.6	0.1	0 6
Holly Shelter TERF	4.8	0.6	0.7	0.1	0.7
Area North of MCAS New River	9.3	1.2	1.3	0.1	1.3
Area West of MCAS New River	14.9	1.8	2.1	0.2	2.1
R-5306A	3.5	0.4	0.5	0.1	0 5
Transit Corridor to/from R-5306A	2.3	0.3	0.3	0.0	0 3
Visual MTR	0.0	0.0	0.0	0.0	0 0
Total Emissions for No Action Alternative	303.8	26.9	65.5	3.2	32 0

Table E-3
CH-46E Emissions Calculation Worksheet

Engine Type: T58-GE-16 Scenario: Existing Condition and No Action Alternative Location: Training Areas

Camp Lejeune	Cruise	45%Q	3,306.0	460	28.51	3.53	4.07	0.40	4.00	2	1521	43.36	5.37	6.19	0.61	6.06
Great White/Ellis TERF	Cruise	45%Q	503.0	460	28.51	3.53	4.07	0.40	4.00	2	231	6.60	0.82	0.94	0.09	0.93
Hoffmann Forest TERF	Cruise	45%Q	328.0	460	28.51	3.53	4.07	0.40	4.00	2	151	4.30	0.53	0.61	0.06	0.60
Holly Shelter TERF	Cruise	45%Q	368.0	460	28.51	3.53	4.07	0.40	4.00	2	169	4.83	0.60	0.69	0.07	0.68
Area North of MCAS New River	Cruise	45%Q	709.0	460	28.51	3.53	4.07	0.40	4.00	2	326	9.30	1.15	1.33	0.13	1.30
Area West of MCAS New River	Cruise	45%Q	1,135.0	460	28.51	3.53	4.07	0.40	4.00	2	522	14.89	1.84	2.12	0.21	2.09
R-5306A	Cruise	45%Q	264.0	460	28.51	3.53	4.07	0.40	4.00	2	121	3.46	0.43	0.49	0.05	0.49
Transit corridor to/from R-5308A	Cruise	45%Q	178.0	460	28.51	3.53	4.07	0.40	4.00	2	82	2.33	0.29	0.33	0.03	0.33

Note:

1. Engine power settings, fuel flow rates and emission indices are provided in AESO report (Report No. 9816, Revision C, December 1999).
2. Time used under each operation type are provided in ATAC report (March 1999).

Table E-7
Air Emissions Summary for No Action Alternative (Using CH-46E)

[illegible]					
MCAS New River	193.6	12.5	50.1	1.6	15.9
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
[illegible]					
Camp Davis	13.1	2.1	1.6	0.3	2.2
Oak Grove	5.0	1.0	0.7	0.1	1.0
Bogue	0.0	0.0	0.0	0.0	0.0
Atlantic	0.0	0.0	0.0	0.0	0.0
Albert J. Ellis Airport	2.0	0.3	0.3	0.0	0.3
[illegible]					
Camp Lejeune	43.4	5.4	5.2	0.5	6.1
Great White/Ellis TERF	6.6	0.8	0.9	0.1	0.9
Hoffman Forest TERF	4.3	0.5	0.6	0.1	0.6
Holly Shelter TERF	4.8	0.6	0.7	0.1	0.7
Area North of MCAS New River	9.3	1.2	1.3	0.1	1.3
Area West of MCAS New River	14.9	1.8	2.1	0.2	2.1
R-5306A	3.5	0.4	0.5	0.1	0.5
Transit Corridor to/from R-5306A	2.3	0.3	0.3	0.0	0.3
Visual MTR	0.0	0.0	0.0	0.0	0.0
Total Emissions for No Action Alternative	303.8	26.9	65.5	3.2	32.0

Table E-9
Summary of Net Changes in Emissions between CH-46E and V-22 Operations

Area	Pollutant (tons per year)				
	CO	NO_x	VOC	SO_2	PM10
Airfield - MCAS New River Alternative					
MCAS New River	-151.0	78.6	-48.4	2.8	0.3
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
Airfield - MCAS Cherry Point Alternative					
MCAS New River	-193.6	-12.5	-50.1	-1.6	-15.9
MCAS Cherry Point	42.6	91.1	1.7	4.4	16.2
Airfield - Partial Basing at Both Air Stations					
MCAS New River	-163.8	51.3	-48.9	1.5	-4.6
MCAS Cherry Point	12.8	27.3	0.5	1.3	4.9
LFs - Common to All Action Alternatives					
Camp Davis	-12.1	17.1	-1.6	0.3	0.3
Oak Grove	-5.3	11.6	-0.7	0.3	0.6
Bogue	0.0	0.7	0.0	0.0	0.1
Atlantic	0.1	1.1	0.0	0.0	0.1
Albert J. Ellis Airport	-1.5	7.9	-0.3	0.3	0.8
Training Areas - Common to All Action Alternatives					
Camp Lejeune	-38.7	73.7	-6.1	2.0	4.5
Great White/Ellis TERF	-6.5	0.7	-0.9	0.0	-0.7
Hoffman Forest TERF	-4.2	0.6	-0.6	-0.1	-0.4
Holly Shelter TERF	-4.7	1.0	-0.7	0.0	-0.5
Area North of MCAS New River	-8.0	33.2	-1.3	0.8	2.7
Area West of MCAS New River	-13.3	41.0	-2.1	1.0	2.9
R-5306A	-2.3	33.9	-0.5	0.9	3.4
Preferred Routes	-1.5	10.2	-0.1	0.3	0.8
Visual MTR	0.4	11.0	0.0	0.3	1.2
Total Net Emissions for All Action Alternatives	-249.2	322.4	-63.6	9.0	16.1
Note: Refer to Table E-10 for total net emissions of NO_x by county.					

Table E-10
Net Changes in NO_x Emissions between CH-46E and V-22 Operations by County

Area	NO_x Emissions (tpy)				
	Onslow	Craven	Carteret	Jones	Others Counties
Airfield - V-22 Based at the MCAS New River					
MCAS New River	78.6	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	224.2	0.0	1.8	24.8	71.5
Airfield - V-22 Based at the MCAS Cherry Point					
MCAS New River	-12.5	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	91.1	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	133.1	91.1	1.8	24.8	71.5
Airfield - V-22 Based at Both Air Stations					
MCAS New River	51.3	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	27.3	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	196.9	27.3	1.8	24.8	71.5

Note: Operational emissions attributable to the areas north and west of MCAS New River were proportionally distributed among the counties in which they occur.

[FR Doc. 99–33505 Filed 12–23–99; 8:45 am]
BILLING CODE 3810–01–C

Table E-9
Summary of Net Changes in Emissions between CH-46E and V-22 Operations

MCAS New River	-151.0	78.6	-48.4	2.8	0.3
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
MCAS New River	-193.6	-12.5	-50.1	-1.6	-15.9
MCAS Cherry Point	42.6	91.1	1.7	4.4	16.2
MCAS New River	-163.8	51.3	-48.9	1.5	-4.6
MCAS Cherry Point	12.8	27.3	0.5	1.3	4.9
Camp Davis	-12.1	17.1	-1.6	0.3	0.3
Oak Grove	-5.3	11.6	-0.7	0.3	0.6
Bogue	0.0	0.7	0.0	0.0	0.1
Atlantic	0.1	1.1	0.0	0.0	0.1
Albert J. Ellis Airport	-1.5	7.9	-0.3	0.3	0.8
Camp Lejeune	-38.7	73.7	-6.1	2.0	4.5
Great White/Ellis TERF	-6.5	0.7	-0.9	0.0	-0.7
Hoffman Forest TERF	-4.2	0.6	-0.6	-0.1	-0.4
Holly Shelter TERF	-4.7	1.0	-0.7	0.0	-0.5
Area North of MCAS New River	-8.0	33.2	-1.3	0.8	2.7
Area West of MCAS New River	-13.3	41.0	-2.1	1.0	2.9
R-5306A	-2.3	33.9	-0.5	0.9	3.4
Preferred Routes	-1.5	10.2	-0.1	0.3	0.8
Visual MTR	0.4	11.0	0.0	0.3	1.2
Total Net Emissions for All Action Alternatives	-249.2	322.4	-63.6	9.0	16.1

Note: Refer to Table E-10 for total net emissions of NO_x by county.

Table E-10
Net Changes in NO_x Emissions between CH-46E and V-22 Operations by County

Alternative V-22 Based at the MCAS New River					
MCAS New River	78.6	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	0.0	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	224.2	0.0	1.8	24.8	71.5
Alternative V-22 Based at the MCAS Cherry Point					
MCAS New River	-12.5	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	91.1	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	133.1	91.1	1.8	24.8	71.5
Alternative V-22 Based at Both Air Stations					
MCAS New River	51.3	0.0	0.0	0.0	0.0
MCAS Cherry Point	0.0	27.3	0.0	0.0	0.0
LFs	25.0	0.0	1.8	11.6	0.0
Training Areas	120.6	0.0	0.0	13.2	71.5
Total Net Emissions	196.9	27.3	1.8	24.8	71.5

Note: Operational emissions attributable to the areas north and west of MCAS New River were proportionally distributed among the counties in which they occur.

[FR Doc. 99–33505 Filed 12–23–99; 8:45 am]
BILLING CODE 3810–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–101–000, ER00–443–000, ER00–446–000, ER00–494–000, ER00–571–000, EL00–17–000 (Not consolidated)]

Allegheny Energy Unit 1 and Unit 2, L.L.C., Arco CQC Kiln, Inc., Ogden Martin Systems of Union, Inc., TransAlta Centralia Generation LLC, Jones Black River Services, Inc.; Notice of Issuance of Order

December 20, 1999.

Allegheny Energy Unit 1 and Unit 2, L.L.C., Arco CQC Kiln, Inc., Ogden Martin Systems of Union, Inc., TransAlta Centralia Generation LLC, Jones Black River Services, Inc. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in the wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On December 16, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's December 16, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purpose.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 18, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/online rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33417 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. EL00–25–000]

Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., IES Utilities Inc., Interstate Power Company, and MidAmerican Energy Company; Notice of Filing

December 20, 1999.

Take notice that on December 13, 1999, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., IES Utilities Inc., Interstate Power Company and MidAmerican Energy Company (collectively Petitioners) filed a Petition for Declaratory Order (Petition). Petitioners request that the Commission issue an order finding that: (1) an independent transmission company (ITC), as described in the Petition, coupled with oversight by the Midwest Independent Transmission System Operator (Midwest ISO or MISO), will meet or exceed the minimum characteristics and functions for RTOs proposed in the RTO NOPR or adopted in any final rule issued by the Commission during the pendency of this declaratory order proceeding; (2) the incentive and performance-based rate mechanisms outlined in the Petition are appropriate ratemaking measures for encouraging the voluntary formation of, and enhanced performance by, such an ITC; and (3) it is appropriate to assign to such an ITC the RTO functions outlined in the Petition as contemplated by the recently proposed Appendix I to the Midwest ISO Agreement.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33416 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3282–002]

CU Power Canada Limited; Notice of Filing

December 20, 1999.

Take notice that on November 29, 1999, CU Power Canada Limited filed their quarterly report for the quarter ending September 30, 1999, for information only. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33485 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3666–011]

GPU Advanced Resources, Inc., Notice of Filing

December 20, 1999.

Take notice that on December 15, 1999, GPU Advanced Resources, Inc. filed their quarterly report for the quarter ending September 30, 1999, for information only. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202)208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33486 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC00–38–000, ER00–803–000 and EL00–26–000]

PECO Energy Company; PECO Energy Power Company; Susquehanna Power Company; Notice of Filing

December 20, 1999.

Take notice that on December 16, 1999, PECO Energy Company filed an application under Section 203 of the Federal Power Act for authorization to implement a plan of corporate restructuring.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 18, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc 99–33415 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Project Nos. 3721–004, 4896–000]

Puget Sound Energy, Inc. and Dennis V. McGrew & Associates; Notice of Effective Date of Withdrawal of License Application and Reinstatement of Preliminary Permit Application

December 20, 1999.

On June 17,1981, Dennis V. McGrew and Associates (McGrew) filed a preliminary permit application for the proposed Nooksack Falls Project No. 4896, to be located on the North Fork Nooksack River near Glacier in Whatcom County, Washington. On February 23, 1982, Puget Sound Power and Light Company (Puget) filed a competing license application for the proposed Nooksack Falls Project No. 3721, to be located at the same site as McGrew's proposed project.[1] The Commission accepted both applications for filing and issued public notice of each.

In a subsequent order issued August 15, 1985,[2] the Commission concluded that McGrew had failed to meet the burden of proof for his proposal (*i.e.*, the application failed to substantiate important aspects of the proposal, including technical, environmental, and economic) as a necessary prerequisite to a comparative analysis with Puget's competing application for a license. Accordingly, the Commission dismissed McGrew's preliminary permit application without prejudice, stating that in the event Puget's application is subsequently dismissed or denied, the Commission would reinstate McGrew's permit application with its original filing date and without it being subject to a proceeding inviting new competitive filings.

On August 10, 1999, Puget withdrew its license application. No one filed a motion in opposition to the withdrawal, and the Commission took no action to disallow it. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216, the withdrawal became effective on August 25, 1999.

By letter dated September 29, 1999, McGrew advised the Commission that it remains interested in pursuing its preliminary permit application for the Nooksack Falls Project. The application is therefore reinstated with its original filing date. The Commission will entertain no competing applications for the site.

David P. Boergers,

Secretary.

[FR Doc. 99–33419 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Puget subsequently changed its name to Puget Sound Energy, Inc.

[2] 32 FERC ¶ 61,229.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–48–000]

Tennessee Gas Pipeline Company; Notice of Application

December 20, 1999.

Take notice that on December 10, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, 15 U.S.C. 717f(b) and 717f(c), as amended, and Subpart A of the Commission's regulations thereunder, 18 CFR 157.5 *et seq.*, Subpart A, for authorization to abandon approximately 19.3 miles of certain 8-inch pipeline segment that comprises part of Tennessee's Concord Lateral. Additionally, Tennessee requests that the Commission issue a Certificate of Public Convenience and Necessity authorizing Tennessee to (1) construct, install and operate approximately 19.3 miles of 20-inch replacement pipe commencing in Dracut, Massachusetts and terminating in Londonderry, New Hampshire; and (2) construct, install and operate delivery point facilities, including a meter station, to allow Tennessee to provide firm natural gas transportation service of up to 130,000 dekatherms per day of natural gas to a new industrial end-use customer, AES Londonderry, LLC (AES) (referred to hereinafter as the "Londonderry 20" Replacement Project" or the "Project"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that as a result of an open season conducted between July 29, 1999 and August 11, 1999, Tennessee has entered into a binding precedent agreement with AES for a total of 130,000 dekatherms per day of firm transportation service on the Concord

Lateral from Dracut, Massachusetts to Londonderry, New Hampshire in Zone 6 of Tennessee's system. AES has committed to firm transportation service for a primary term of twenty years. Tennessee further states that transportation for AES will be provided under Tennessee's Rate Schedule FT–A.

After the open season, Tennessee indicates that it polled all of its shippers and did not obtain any permanently relinquished capacity that could be used for the proposed service.

Tennessee notes that AES will pay a negotiated rate that is fixed for the primary term of its FT–A service agreement. Further, Tennessee states that it will waive its right to file to change the negotiated rate pursuant to Section 4 of the NGA and AES will waive its right to request a change in its rate pursuant to Section 5 of the NGA. Tennessee requests any other authorizations, relief and/or waivers as the Commission deems necessary to enable Tennessee to perform the activities identified in its application.

Tennessee states that the total estimated cost for the Project is $32.4 million. Tennessee proposes to place the Project in service by October 1, 2001 and requests that the Commission grant the requested authority by September 1, 2000. Tennessee is not requesting rolled-in rate treatment for the cost of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–33414 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–47–000]

Trans-Union Interstate Pipeline, L.P.; Notice of Application

December 20, 1999.

Take notice that on December 10, 1999, Trans-Union Interstate Pipeline, l.P., (Applicant) 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing, an application, pursuant to Section 7(c) of the Natural Gas Act and Subpart A of Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct, own, and operate a single use natural gas pipeline facility to transport natural gas from Sharon, Louisiana, to El Dorado, Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Applicant indicates that any questions regarding the application herein should be directed to project counsel, Ned Hengerer, at John & Hengerer, 1200 17th Street, N.W., Washington, D.C. 20036, (202) 429–8811.

Applicant proposed to construct, own, and operate, on an end-use basis, 41.7 miles of 30-inch diameter, high pressure natural gas pipeline, beginning at the receipt point interconnections with the interstate system of Texas Gas Transmission Corporation (Texas Gas) at Sharon, Louisiana, and with the extended intrastate system of Gulf States Pipeline (Gulf States) at the same location. Applicant states that the system will first run east out of Claiborne Parish, Louisiana, and then run north through Union Parish, Louisiana, crossing into Union County, Arkansas, just east of Junction City, Arkansas, and continue north, passing to the east of El Dorado, Arkansas. Applicant further states that its system will terminate at its only delivery point, the gas fired 2,700 megawatt electric power generation facility being developed by Union Power Partners (UPP), an affiliated entity, to be located three miles northeast of El Dorado, Arkansas.

Applicant further requests that the Commission waive all the regulatory requirements imposed on Part 284 open-access interstate pipelines, including but not limited to: (1) Commission approved open-access rates and tariffs; (2) § 157.6(b)(8) cost and rate data submission; (3) Part 201 Uniform System of Accounts; and (4) Part 250 and 260 reporting requirements.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by or before January 10, 2000, in accordance with Sections 285.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–33413 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–31–000, et al.]

PP&L Resources, Inc., *et al.*; Electric Rate and Corporate Regulation Filing

December 17, 1999.

Take notice that the following filings have been made with the Commission:

1. PP&L Resources, Inc.; CEP Group, Inc.; PP&L Global, Inc.; PP&L Generation Holdings, LLC; and PP&L Generation, LLC

[Docket No. EC00–31–000]

Take notice that on December 7, 1999, PP&L Resources, Inc., CEP Group, Inc., PP&L Global, Inc., PP&L Generation Holdings, LLC , PPL Generation, LLC

(collectively the Applicants) filed with the Commission a Joint Application for Authorization to Transfer Jurisdictional Facilities in connection with a proposed corporate realignment of PP&L Resources, Inc.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. PP&L Resources, Inc.;CEP Group, Inc.; PP&L, Inc. PP&L EnergyPlus Co., LLC; PPL Generation, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; and PPL Susquehanna, LLC

[Docket No. EC00–32–000]

Take notice that on December 7, 1999, PP&L Resources, Inc., CEP Group, Inc., PP&L, Inc., PP&L EnergyPlus Co., LLC, PPL Generation, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC and PPL Susquehanna, LLC (collectively the Applicants) filed with the Commission a Joint Application for Authorization to Transfer Jurisdictional Facilities and for Acceptance of Related Rate Schedules in connection with a proposed corporate realignment of PP&L Resources, Inc.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power & Light Company

[Docket No. EC00–33–000]

Take notice that on December 8, 1999, Wisconsin Power & Light Company filed an application under Section 203 of the Federal Power Act requesting authorization to transfer ownership and operational control of its jurisdictional transmission facilities to the Wisconsin Transco.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Atlantic City Electric Company; Delmarva Power & Light Company; PECO Energy Company

[Docket No. EC00–34–000]

Take notice that on December 9, 1999, Atlantic City Electric Company (ACE), Delmarva Power & Light Company (DP&L), and PECO Energy Company (PECO) (collectively, Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities in connection with the sale of ACE's and DP&L's interests in Peach Bottom Atomic Power Station to PECO.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Atlantic City Electric Company; Delmarva Power & Light Company; PSEG Nuclear LLC

[Docket No. EC00–35–000]

Take notice that on December 9, 1999, Atlantic City Electric Company (ACE), Delmarva Power & Light Company (DP&L), and PSEG Nuclear LLC (PSEG Nuclear) (collectively, Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities in connection with the sale of ACE's and DP&L's interests in Peach Bottom Atomic Power Station, Salem Nuclear Generating Station, and Hope Creek Generating Station to PSEG Nuclear.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Cleco Utility Group Inc.; Cleco Evangeline LLC

[Docket No. EC00–36–000]

Take notice that on December 10, 1999, Cleco Utility Group Inc. (Cleco Utility) and Cleco Evangeline LLC (Cleco Evangeline) tendered for filing an application under Section 203 of the Federal Power Act for approval of the sale of certain jurisdictional transmission facilities by Cleco Utility to Cleco Evangeline.

Comment date: January 11, 2000, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power, Inc.; Blandin Paper Company

[Docket No. EC00–37–000]

Take notice that on December 10, 1999, Minnesota Power, Inc. (Minnesota Power) and Blandin Paper Company (Blandin) tendered for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a Joint Application for Approval of Disposition of Assets Pursuant to Section 203 of the Federal Power Act (Joint Application), in connection with the sale by Blandin to Minnesota Power of generating assets and other related FERC-jurisdictional facilities.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. IEC Operating Companies

[Docket No. ER99–4513–002]

Take notice that on December 13, 1999, Alliant Energy Corporate Services, Inc., on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), tendered for filing in compliance with the Commission's November 12, 1999, Order in the above-referenced docket. The purpose of Alliant Energy's initial filing in this docket was to reformat and to amend Alliant Energy's OATT to facilitate unbundled retail transmission service in the State of Illinois. The Commission's November 12, 1999 Order directed Alliant Energy to eliminate its proposal to "hold the Eligible Retail Customer liable for energy imbalance payments if the Retail Energy Supplier (RES) defaults."

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, the Public Service Commission of Wisconsin, and its transmission customers.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. ER00–597–000]

Take notice that on December 7, 1999, Central Maine Power Company (CMP), tendered for filing its request to withdraw four executed service agreements filed with the Commission on November 17, 1999, in the above-referenced dockets between CMP and Constellation Power Source, Inc.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER00–756–000]

Take notice that on December 9, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement between PP&L and PG&E Energy Trading-Power, L.P. (PG&E), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PP&L requests an effective date of December 9, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PG&E and to the Pennsylvania Public Utility Commission.

Comment date: December 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–757–000]

Take notice that on December 9, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power

Company (Allegheny Power), tendered for filing Supplement No. 67 to add Edison Mission Marketing & Trading, Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is December 8, 1999 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: December 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. FirstEnergy System

[Docket No. ER00–758–000]

Take notice that on December 9, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for Edison Mission Marketing & Trading, Inc., (the Transmission Customer). Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is December 3, 1999, for the above mentioned Service Agreement in this filing.

Comment date: December 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy System

[Docket No. ER00–759–000]

Take notice that on December 9, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Edison Mission Marketing & Trading, Inc., (the Transmission Customer). Services are being provided under the FirstEnergy System Open Access Transmission Tariff in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is December 3, 1999, for the above mentioned Service Agreement in this filing.

Comment date: December 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER00–760–000]

Take notice that on December 10, 1999, Cinergy Services, Inc. (Cinergy) and NewEnergy, Inc. (NE), are requesting via a Notice of Assignment that NE will replace New Energy Ventures, Inc., of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 205, dated May 1, 1999.

Cinergy and NE are requesting an effective date of one day after this filing.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER00–761–000]

Take notice that on December 10, 1999, Cinergy Services, Inc. (Cinergy) and NewEnergy, Inc. (NE), are requesting via a Notice of Assignment that NE will replace New Energy Ventures, Inc. of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7–MB, Service Agreement No. 208, dated May 1, 1999.

Cinergy and NE are requesting an effective date of one day after this filing.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Minnesota Power, Inc.

[Docket No. ER00–762–000]

Take notice that on December 10, 1999, Minnesota Power, Inc. (MP), tendered for filing its Electric Service Agreement with the City of Nashwauk, Minnesota (Nashwauk). MP states the term of the Agreement is from January 1, 2000 to December 31, 2005.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of Colorado

[Docket No. ER00–763–000

Take notice that on December 10, 1999, Public Service Company of Colorado tendered for filing a revision to Exhibit B to its Power Supply Agreement with the City of Glenwood Springs as contained in Public Service's Rate Schedule FERC No. 85.

Public Service requests an effective date of October 14, 1999, for this filing.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Company of Colorado

[Docket No. ER00–764–000]

Take notice that on December 10, 1999, Public Service Company of Colorado (Public Service), tendered for filing a Power Purchase Agreement with the City of Glenwood Springs (Glenwood). The Agreement allows Public Service to provide wind-generated power service to Glenwood.

Public Service requests an effective date of October 14, 1999, for this filing.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. New Century Services Inc.

[Docket No. ER00–765–000]

Take notice that on December 10, 1999, New Century Services, Inc., on behalf of Public Service Company of Colorado tendered for filing revisions to Exhibits 7, 9, 12, 19, 25, and 26 to its Consolidated Facility Arrangements Contract with the Western Area Power Administration as contained in Public Service's Rate Schedule FERC No. 47.

Public Service requests an effective date of August 6, 1999, for this filing.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Cleco Utility Group Inc.

[Docket No. ER00–766–000]

Take notice that on December 10, 1999, Cleco Utility Group Inc., tendered for filing an Interconnection and Operating Agreement between itself and Cleco Evangeline LLC in connection with Cleco Evangeline LLC's ownership of the Coughlin Units 6 and 7.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Atlantic City Electric Company

[Docket No. ER00–767–000]

Take notice that on December 10, 1999, Atlantic City Electric Company tendered for filing an Interconnection Agreement between Pedricktown Cogeneration Limited Partnership (PCLP) and Atlantic City Electric Company (ACE). The Interconnection Agreement provides for the continuing interconnection of PCLP's cogeneration facility to ACE's transmission system and sets forth the requirements, terms and conditions applicable thereto.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER00–768–000]

Take notice that on December 10, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Old Mill Power Company and a Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia

Electric and Power Company to Old Mill Power Company. The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of December 10, 1999, the date of filing of the Service Agreements.

Copies of the filing were served upon Old Mill Power Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–769–000]

Take notice that on December 10, 1999 Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing a fully executed Netting Agreement between the Companies and El Paso Power Services Company.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Central Maine Power Company

[Docket No. ER00–770–000]

Take notice that on December 10, 1999, Central Maine Power Company (CMP) tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Rules and Regulations (Regulations), 18 CFR Part 35, of the Federal Energy Regulatory Commission (FERC or Commission), four executed agreements, as detailed in the accompanying letter, between CMP and Engage Energy US, L.P., for the purchase of CMP's entitlements to energy, capacity, and certain other benefits associated with its undivested generation assets.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Tucson Electric Power Company

[Docket No. ER00–771–000]

Take notice that on December 10, 1999, Tucson Electric Power Company (Tucson), tendered for filing proposed changes to its Open Access Transmission Tariff (OATT), FERC Electric Service Tariff No. 2. Tucson has filed a revised OATT to include terms and conditions governing the provision of unbundled retail transmission service.

These changes to Tucson's OATT are necessitated by the opening up of Arizona's retail electric markets to competition effective January 28, 2000.

Copies of the filing were served upon the Tucson's jurisdictional customers and the Arizona Corporation Commission.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Company (Minnesota Company)

[Docket No. ER00–772–000]

Take notice that on December 10, 1999, Northern States Power Company (Minnesota) (NSP), tendered for filing an Interconnection Study Agreement dated November 12, 1999 between NSP-Transmission Business Unit and NSP-Generation Business Unit. NSP also requests the Commission clarify that interconnection study agreements are not rate schedules under Part 35, and future interconnection study agreements need not be filed with the Commission.

NSP requests the Agreement be accepted for filing effective November 12, 1999 and requests waiver of the Commission's notice requirements in order for the termination notice to be accepted for filing on the date requested.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33412 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1096–001, et al.]

Electric Rate and Corporate Regulation Filings; Southern Company Services, Inc., et al.

December 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER98–1096–001]

Take notice that on December 3, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing a compliance report pursuant to the Commission's orders dated September 17, 1999 [1] and October 18, 1999 in the above-referenced dockets. Those orders accepted for filing an Offer of Settlement filed by Southern Company on February 1, 1999 that established the rates under its Open Access Transmission Tariff (FERC Electric Tariff, Original Volume No. 5) and established the rates for service provided under Southern Company's preceding "comparability" tariffs (covering service provided since 1994). In the compliance report, Southern Company notified the Commission that it had provided refunds to the affected transmission customers on November 18, 1999 and provided summaries of those refunds and the corresponding billing determinants.

Southern Company served a copy of the compliance report to the parties of record, the affected transmission customers, and the public service commissions for the lower forty-eight (48) States.

2. Canal Emirates Power International, Inc.

[Docket No. EG00–42–000]

Take notice that on December 7, 1999, Canal Emirates Power International, Inc. (Canal), 22 Charles Street, Binghamton, New York 13905–2247, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Canal is a privately-held New York corporation having its principal place of

[1] *Southern Company Services, Inc.*, 88 FERC ¶61,244 (1999).

business at 22 Charles Street, Binghamton, New York 13905–2247. Canal is the owner of a 50 MW cogeneration facility that is located in Binghamton. Canal is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. Canal does not have any affiliate corporations.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Frederickson Power, L.L.C.

[Docket No. EG00–46–000]

On December 10, 1999 Frederickson Power, L.L.C. (Frederickson Power), Stock Exchange Tower, 300 5th Avenue, SW, Suite 1600, P.O. Box 51, Calgary, Alberta, Canada T2P 3C4, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Frederickson Power is a Washington limited liability company. All of the membership interests of Frederickson Power are held by Westcoast Power Marketing Inc., a Delaware corporation which is an indirect wholly owned subsidiary of Westcoast Energy Inc., a Canadian corporation (Westcoast). Upon the closing of the transactions described in the Letter of Intent effective as of September 16, 1999 between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (Bonneville) and Westcoast Power Inc., a Canadian corporation which is an indirect wholly owned subsidiary of Westcoast, Frederickson Power will own a partially constructed natural gas-fired combined cycle combustion turbine electric generation facility located in the Frederickson Industrial Area in Pierce County near Tacoma, Washington (the Frederickson Project). When complete, major plant equipment for the Frederickson Project will consist of one combustion turbine-generator, one heat recovery steam generator with supplemental firing capability, and one steam turbine-generator, with a nominal net plant capacity of 249.5 MW.

The initial fuel supply for the Frederickson Project will be natural gas. No. 2 fuel oil will be used as a back-up fuel supply. The Frederickson Project will be used exclusively for sales at wholesale and includes only those interconnection components necessary to effect such sales.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Fulton Cogeneration Associates, L.P.

[Docket No. EG00–47–000]

Take notice that on December 10, 1999, Fulton Cogeneration Associates, L.P. (Applicant), Nine Greenway Plaza, Houston, Texas filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a New York limited partnership owns power generating facilities in Fulton, New York. These facilities consist of a 47 MW (net) topping cycle cogeneration facility, and facilities necessary to interconnect with Niagara Mohawk Power Corporation.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Great Yarmouth Power Limited

[Docket No. EG00–48–000]

Take notice that on December 13, 1999, Great Yarmouth Power Limited Incorporated in England and Wales, Ventureforth House, South Denes Road, Great Yarmouth, Norfolk, NR 30 3PT (the Applicant), filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged directly or indirectly, through an affiliate as defined in Section 2(a) (11) (B) of the Public Utility Holding Company Act of 1935 (PUHCA), in owning and operating eligible facilities constructed in England: the 440 MW Great Yarmouth power plant located in the Great Yarmouth area, England, consisting of one single shaft GE 9FA turbines and associated equipment and real estate, all of which will be an eligible facility. The turbine will be natural gas-fired only.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Illinois Power Company

[Docket No. ER00–725–000]

Take notice that on December 3, 1999, Illinois Power Company filed their quarterly report for the quarter ending September 30, 1999. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PG&E Power Services Company

[Docket No. ER00–745–000]

Take notice that on December 8, 1999, PG&E Power Services Company (PG&E), tendered for filing notice that effective December 8, 1999, Electric Rate Schedule FERC No. 1, effective August 22, 1994, is to be canceled.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. AmerGen Energy Company, L.L.C.

[Docket No. ER00–746–000]

Take notice that on December 8, 1999, AmerGen Energy Company, L.L.C. (AmerGen), tendered for filing a power sales agreement for wholesale power sales transactions between AmerGen and PECO Energy Company.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER00–747–000]

Take notice that on December 8, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated October 25, 1999, with Alternate Power Source, Inc. (APS), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds APS as an eligible customer under the Tariff.

PP&L requests an effective date of December 8, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to APS and to the Pennsylvania Public Utility Commission.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Light Company

[Docket No. ER00–748–000]

Take notice that on December 8, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for three new customers, Conectiv Energy Supply, Inc., Delmarva

Power & Light Company and Engage Energy US, L.P.

CILCO requested an effective date of November 8, 1999, for the service agreements.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. ISO New England Inc.

[Docket No. ER00–749–000]

Take notice that on December 8, 1999, ISO New England Inc. (the ISO), tendered for filing new Market Rule 15—Monitoring and Correcting For Implementation Errors and Addressing System Emergencies, together with Appendix 15–A thereto.

Copies of said filing have been served upon all Participants in the New England Power Pool (NEPOOL) and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as, on the governors and utility regulatory agencies of the six New England States.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER00–750–000]

Take notice that on December 8, 1999, the transmission-owner members of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), tendered for filing executed signature pages to the "Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation," and the "Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Nontransferred Transmission Facilities" executed by Alliant Energy Corporate Services, Inc., on behalf of South Beloit Water, Gas & Electric Company, IES Utilities, Inc., Interstate Power Company and Wisconsin Power & Light Company.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Deseret Generation and Transmission Co-operative, Inc.

[Docket No. ER00–751–000]

Take notice that on December 8, 1999, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing the following proposed tariff sheets to its FERC Electric Tariff, Original Volume No. 2:

Second Revised Sheet No. 65; Second Revised Sheet No. 66; Second Revised Sheet No. 150; Second Revised Sheet No. 157; Revised Sheet No. 164; Original Sheet No. 164–A; Second Revised Sheet No. 167.

The tariff sheets reflect an update to Attachment E: Index of Point-to-Point Transmission Service Customers as well as Deseret's change of address. Deseret has requested an effective date for the filing of December 19, 1999.

Copies of the filing were served upon all parties taking service under the tariff.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER00–752–000]

Take notice that on December 9, 1999, Commonwealth Edison Company (ComEd), tendered for filing an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and the City of Rochelle, Illinois (Rochelle), and an executed Network Operating Agreement (Operating Agreement) between ComEd and Rochelle. These two agreements will govern ComEd's provision of network service to serve Rochelle under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd requests that the Commission substitute the Service Agreement and the Operating Agreement for the unexecuted agreements with Rochelle filed under the OATT in Docket No. ER99–4290–000 on August 30, 1999, and accepted on October 13, 1999.

ComEd requests that the Commission establish the same effective date as was established in the original filing for the unexecuted agreements for which these agreements are being substituted.

Copies of this filing were served on Rochelle.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER00–753–000]

Take notice that on December 9, 1999, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS" FERC Electric Tariff, Original Volume No. 4, for service to The Energy Authority, Inc., (Energy Authority).

A copy of this filing has been served on the Arizona Corporation Commission and Energy Authority.

Comment date: December 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Avista Corp.

[Docket No. ER00–754–000]

Take notice that on December 9, 1999, Avista Corp., tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an executed long-term service agreement with Public Utility District No. 1, of Pend Oreille County for Dynamic Capacity and Energy Service, Spinning Reserve Service, and Supplemental Reserve Service at cost-based rates under Avista Corp.'s FERC Electric Tariff Volume No. 10 and Generation Exchange Service at market-based rates under Avista Corp.'s FERC Electric Tariff Volume No. 9.

Comment date: December 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Utility Management and Consulting, Inc.

[Docket No. ER96–525–011]

Take notice that on November 30, 1999, Utility Management and Consulting, Inc. filed their quarterly reports for quarters ending March 31, June 30, and September 30, 1999, for information only.

18. AI Energy, Inc.

[Docket No. ER98–3164–005]

Take notice that on December 8, 1999, AI Energy, Inc., tendered for filing notification of change in circumstances to its original application for market-based rate authority filed and accepted by the Commission in the above-referenced docket. The filing notifies the Commission that AI Energy, Inc., will be engaged in retail power marketing and brokering for energy services within the State of Pennsylvania. All other aspects of the Applicant's application remain unchanged at this time.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Western Systems Power Pool

[Docket No. ER91–195–040]

Take notice that on November 1, 1999, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order.

Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33411 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

December 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor new license.

b. *Project No.:* 2064–004.

c. *Date Filed:* November 26, 1999.

d. *Applicant:* North Central Power Company.

e. *Name of Project:* Winter Hydroelectric Project.

f. *Location:* On the East Fork of the Chippewa River near the town of Winter, Sawyer County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John Dahlberg, North Central Power Company, 104 South Pine Street, P.O. Box 167, Grantsburg, Wisconsin 54840 (715) 463–5371

i. *FERC Contact:* Michael Spencer, michael.spencer@FERC.fed.us, (202) 219–2846.

j. *Comment Date:* 60 days from the date of filing of the application.

k. *Description of Project:* The constructed project consists of a diversion dam with a reservoir, a power canal, a penstock and powerhouse containing two generating units with a total installed capacity of 600 kilowatts, and appurtenant facilities. The project generates about 2,130 megawatt-hours per year.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

David P. Boergers,

Secretary.

[FR Doc. 99–33418 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

December 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 11685–001.

c. *Date Filed:* September 10, 1999.

d. *Applicant:* The Stockport Mill Country Inn.

e. *Name of Project:* Stockport Mill Country Inn Water Power Project.

f. *Location:* On the Muskingum River Lock and Dam No. 6 near the town of Stockport, in Morgan County, Ohio. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r)..

h. *Applicant Contact:* David Brown Kinloch, Soft Energy Associates, 414 South Wenzel Street, Louisville, KY 40204, (502) 589–0975.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us* (202) 219–2778.

j. *Deadline for Filing Motions To Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status on Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The proposed project would consist of the following facilities: (1) the existing 20-foot-high, 482-foot-long Muskingum Lock and Dam No. 6; (2) an existing 476-acre reservoir with a normal pool elevation of 640.1 feet msl; (3) an existing 20 foot by 24 foot forebay with a 19-foot-wide vertical trashrack; (4) an existing powerhouse in the basement of the mill containing two proposed generating units with a total installed capacity of 235 kW; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any completing development application

must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready or environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters, the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 99–33420 Filed 12–23–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6514–9]

National Drinking Water Advisory Council Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites all interested persons to suggest individuals to serve as members of the working groups that will be formed under the National Drinking Water Advisory Council (NDWAC) on specific matters relating to implementation of the Safe Drinking Water Act (SDWA). The Advisory Council was established to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions and policies related to the Act as amended. At the November 2–4, 1999, meeting of the Council, it was decided that two new working groups should be formed on the following subjects: (1) Contaminant Identification, Regulation Review, and Occurrence; and (2) Drinking Water Research.

1. Contaminant Identification, Regulation Review, and Occurrence

The Safe Drinking Water Act, as amended, requires EPA to make regulatory determinations for at least five contaminants from the Contaminant Candidate List (CCL) every five years. The SDWA deadline for the first set of contaminant identification regulatory determinations is August 6, 2001. In order to make an affirmative determination to regulate, the SDWA requires three findings be made for each contaminant: (1) It adversely affects public health; (2) is known or likely to occur in public water systems with a frequency and at levels posing a health concern; and (3) regulation of the contaminant must present a meaningful opportunity for reduction of health risks.

SDWA also requires that EPA review all existing National Primary DrinkingWater Regulations (NPDWRs) every six years and revise as appropriate The SDWA deadline for completing the first review of existing NPDWRs is August 6, 2002. In reviewing existing NPDWRs, EPA proposes to subject regulated contaminants to rigorous evaluation based on available data to determine whether the Agency could justify possible rule revisions. According to SDWA, any revision to a regulation must result in an equal or greater level of public health protection. The process by which EPA will review existing regulations will be outlined in a protocol currently under development.

EPA hopes the NDWAC working group members will develop a framework and specific recommended processes to assist the Agency in evaluating the scientific data available to inform regulatory determinations from the CCL and in reviewing and selecting existing NPDWRs for possible revision. Also, the group would be asked to recommend processes in evaluating what occurrence data are needed and how to obtain this information to assist the Agency in its future reviews of NPDWRs.

2. Drinking Water Research

EPA is developing a Comprehensive Research Strategy that considers the broad range of research needed to support the Agency's drinking water regulatory activities. This research strategy will include an assessment of research needs for microbes and disinfection by-products (M/DBPs), arsenic, CCL contaminants, and other critical research issues. Ensuring that EPA has the science needed to make sound regulatory decisions has been an ongoing concern of the Council. A Research working group would be charged with two major activities: (1) Consider the research needs associated with this broad range of issues, including but not limited to those covered by the existing M/DBP and Arsenic Research Plans and the CCL Research Plan that is under development; and (2) consider the overall needs for drinking water research and provide advice to the NDWAC on how the Agency might prioritize research in the context of annual budget allocation demands. The working group will be asked to produce a "white paper" on drinking water research needs and priorities that NDWAC could forward to the Agency for consideration in the development of the Comprehensive Research Strategy.

Because membership on these groups will be limited and must be representative of balanced views, selections will be made by the Director, Office of Ground Water and Drinking Water, based on drinking water expertise and demonstrated interest in drinking water policy. Any interested person or organization may suggest an individual for a position on the working groups. Candidates should be identified by name, occupation, position, address and telephone number and the working group for which they wish to be considered for membership.

Persons selected for membership are responsible for any expenses that would be incurred while attending meetings. Suggestions should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, DC 20460, no later than January 26, 2000. The Agency will not formally acknowledge or respond to nominations. E-Mail your questions to *shaw.charlene@epa.gov* or call 202/260–2285.

Dated: December 17, 1999.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–33450 Filed 12–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6515–1]

Science Advisory Board; Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Integrated Risk Project Peer Review Subcommittee, a subcommittee comprised of members from the Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) and the Board of Scientific Counselors (BOSC) of the Office of Research and Development (ORD), will meet on Wednesday and Thursday, January 12 and 13, 2000 in room 4630 at the U.S. Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC. The meeting will begin at 8:30 am and end no later than 5:30 pm each day. The meeting is open to the public; however, seating is limited and available on a first-come basis.

Purpose of the Meeting

The purpose of this meeting is to review the Office of Research and Development's Science To Achieve Results (STAR) Program.

Proposed Charge

The Subcommittee has been asked to address the following issues: (1) Is the STAR Program structured to support outstanding scientists and technically meritorious research? Is the outreach to potential applicants, the review of proposals, and the management of awards structured to foster high quality science?; (2) Is the STAR Program effectively integrated with ORD's in-house programs and with other EPA programs? Are the topics for STAR solicitations selected consistent with the priorities identified in the Agency's Strategic Plan? Are there other opportunities where the STAR Program could significantly contribute to the Agency's strategic goals?; (3) Is the STAR Program communicating well within the Agency, with the external scientific and regulatory communities, and with other stakeholders? Is there sufficient leveraging and coordination of research efforts?; (4) What systems should be in place to monitor the Program's impacts, costs, credibility, and effectiveness, and to what extent are these in place already? What metrics of success should be developed to determine the effectiveness of grants in terms of impacts on agency decisions? What information should be collected today on metrics of success for the STAR grants? How should program offices and other agency customers for the grant products be involved in the establishment of criteria for measuring the impacts of the program?

For Further Information Concerning the Meeting

Members of the public desiring additional information about the meeting should contact Dr. John R. Fowle III, Designated Federal Officer, Research Strategies Advisory Committee, Science Advisory Board (1400A), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4547; fax at (202) 501–0323; or via e-mail at <*fowle.jack@epa.gov* or Ms. Shirley Hamilton, Designated Federal Officer, Board of Scientific Counselors, Office of Research and Development (8701R), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–6853; fax at (202) 565–2444; or via email at <hamilton.shirley@epa.gov>. A copy of the draft agenda and copies of the background material will be available approximately two weeks prior to the meeting on the SAB website (www.epa.gov/sab) or from Ms. Betty Fortune at the fax or address noted above for Dr. Fowle and or by phone at (202) 564–4533.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Dr. Fowle in writing (by email, by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Tuesday, January 5, 2000 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (*e.g.*, overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Dr. Fowle or Ms. Hamilton at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 20, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–33451 Filed 12–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66273; FRL 6393–3]

Notice of Receipt of Requests to Voluntary Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 26, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66273. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 75 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24 number) in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00587	Metolachlor Technical	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00597	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00673	Dual Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00691	Pennant Liquid Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00710	Bicep II Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
		2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00711	Dual II Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00712	Dual IIG Granular Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00766	Bicep Lite II Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
		2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100 OR–90–0024	Solicam DF Herbicide	4-Chloro-5-(methylamino)-2-(alpha,alpha,alpha-trifluoro-m-tolyl)-3(2*H*)-
000100 WA–90–0032	Solicam DF Herbicide	4-Chloro-5-(methylamino)-2-(alpha,alpha,alpha-trifluoro-m-tolyl)-3(2*H*)-
000239–02426	Pest-B-Gon Insect Bait	*o*-Isopropoxyphenyl methylcarbamate
000264 MI–95–0003	Buctril Herbicide	3,5-Dibromo-4-hydroxybenzonitrile octanoate
000264 WI–92–0008	Buctril Herbicide	3,5-Dibromo-4-hydroxybenzonitrile octanoate
000270–00272	TPC Sevin 5% Dust	1-Naphthyl-*N*-methylcarbamate
000279 ID–77–0009	Thiodan 3 E.C.	6,7,8,9,10-Hexachloro-1,5,5*a*,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
		Xylene range aromatic solvent

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000279 IN–89–0003	Thiodan 3 E.C.	6,7,8,9,10-Hexachloro-1,5,5*a*,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
000279 OR–95–0007	Thiodan 3 EC Insecticide	6,7,8,9,10-Hexachloro-1,5,5*a*1,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
000279 WA–92–0001	Thiodan 3 E.C. Insecticide	6,7,8,9,10-Hexachloro-1,5,5*a*,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
000506–00143	Tat-1 Ant Trap	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
002393 WY–92–0003	Zinc Phosphide Bait	Zinc phosphide (Zn3P2)
004306–00010	Sulfodene Scratchex Power Dust	1-Naphthyl-*N*-methylcarbamate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
007401–00127	Ferti Lome Complete Rose Spray	2,4-Dinitro-6-octyl* phenyl crotonate, 2,6-dinitro-4-octyl* phenyl crotonate and
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
009688–00097	Chemsico Multi-Purpose Fungicide A	Tetrachloroisophthalonitrile
009779–00061	Riverside 50% Concentrate Dust Insecticide	1-Naphthyl-*N*-methylcarbamate
009779–00156	Riverside 5% Sevin Granular	1-Naphthyl-*N*-methylcarbamate
010182–00423	BP–1007 Film Fungicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
		Tetrachloroisophthalonitrile
		Diiodomethyl p-tolyl sulfone
010182 OR–97–0016	Ambush Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
011715–00189	SPI Total Release Aerosol Fogger	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(*S*-(*R**,*R**))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,
028293–00078	Unicorn Pressurized Fogger	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		2,2-Dichlorovinyl dimethyl phosphate
028293–00097	Unicorn Wasp Killer	1-Naphthyl-*N*-methylcarbamate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
032802–00064	1.33 Turcam Plus Granular Insect Control Plus Fertilize	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
050534–00116	Tuffcide 750G	Tetrachloroisophthalonitrile
050534–00157	Bravo 90 DG	Tetrachloroisophthalonitrile
050534–00159	Bravo S	Sulfur
		Tetrachloroisophthalonitrile
050534–00161	Bravo Flowable Fungicide	Tetrachloroisophthalonitrile
050534–00189	Chlorothalonil 75 WP	Tetrachloroisophthalonitrile
050534–00191	Bravo C/M	Manganese ethylenebis(dithiocarbamate)
		Copper oxychloride (Cu2Cl(OH)3)
		Tetrachloroisophthalonitrile
050534–00195	Daconil 2787 WDG	Tetrachloroisophthalonitrile
050534–00205	Bravo W–75 WSB	Tetrachloroisophthalonitrile
050534–00206	Dacobre DG Agricultural Fungicide/bactericide	Copper oxychloride (Cu2Cl(OH)3)
		Tetrachloroisophthalonitrile
050534–00207	Daconil 2787 WSB	Tetrachloroisophthalonitrile
050534–00219	Dacobre (Chlorothalonil)	Copper oxychloride (Cu2Cl(OH)3)
		Tetrachloroisophthalonitrile

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
050534 AL–90–0003		Tetrachloroisophthalonitrile
050534 CA–78–0209	Bravo W–75 Agricultural Fungicide	Tetrachloroisophthalonitrile
050534 CA–85–0067	Bravo W–75 Agricultural Fungicide	Tetrachloroisophthalonitrile
050534 CA–87–0079	Daconil 2787 Flowable Fungicide	Tetrachloroisophthalonitrile
050534 NC–95–0007	Bravo 720	Tetrachloroisophthalonitrile
050534 NC–95–0008	Bravo 825	Tetrachloroisophthalonitrile
050534 OR–77–0060	Bravo 500 Agricultural Fungicide	Tetrachloroisophthalonitrile
050534 OR–77–0061	Daconil 2787 Flowable Fungicide	Tetrachloroisophthalonitrile
050534 OR–81–0032	Bravo 500 Agricultural Fungicide	Tetrachloroisophthalonitrile
050534 OR–86–0005	Bravo 500	Tetrachloroisophthalonitrile
050534 OR–87–0014	Daconil 2787 Flowable Fungicide	Tetrachloroisophthalonitrile
050534 OR–93–0016	Bravo C/M	Manganese ethylenebis(dithiocarbamate) Copper oxychloride (Cu2Cl(OH)3) Tetrachloroisophthalonitrile
050534 OR–96–0001	Bravo 720	Tetrachloroisophthalonitrile
050534 OR–96–0002	Bravo 825	Tetrachloroisophthalonitrile
050534 OR–96–0014	Bravo 720	Tetrachloroisophthalonitrile
050534 OR–96–0015	Bravo 825	Tetrachloroisophthalonitrile
050534 OR–96–0016	Bravo 720	Tetrachloroisophthalonitrile
050534 OR–97–0025	Bravo 720	Tetrachloroisophthalonitrile
050534 OR–97–0026	Bravo 825	Tetrachloroisophthalonitrile
050534 OR–99–0017	Bravo 500	Tetrachloroisophthalonitrile
050534 OR–99–0018	Bravo 500	Tetrachloroisophthalonitrile
050534 PR–83–0002	Bravo 500 Agricultural Fungicide	Tetrachloroisophthalonitrile
050534 WA–77–0033	Daconil 2787 Flowable Fungicide	Tetrachloroisophthalonitrile
050534 WA–87–0043	Daconil 2787 Flowable Fungicide	Tetrachloroisophthalonitrile
050534 WA–88–0023	Daconil 2787 Flowable Fungicide	Tetrachloroisophthalonitrile
050534 WA–93–0017	Bravo Plus (Bravo C/M)	Basic copper chloride Manganese ethylenebis(dithiocarbamate) Tetrachloroisophthalonitrile
050534 WA–94–0013	Daconil 2787 Flowable Fungicide	Tetrachloroisophthalonitrile
050534 WA–96–0015	Bravo 720	Tetrachloroisophthalonitrile
051036–00205	Azinphosmethyl 50W Soluble	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
051036–00207	Azinphosmethyl 2 EC	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
051036 AZ–99–0005	Azinphosmethyl 50W	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
067751 OR–94–0001	Select 2EC Herbicide	2-Cyclohexen-1-one, 2-(1-(((3-chloro-2-propenyl)oxy)imino)propyl)-5-(2-
067760 OR–97–0020	Cheminova Methyl Parathion 4 EC	*O,O*-Dimethyl *O*-p-nitrophenyl phosphorothioate

Unless a request is withdrawn by the registrant within 180 days (30 days when requested by registrant) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant during this comment period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000239	The Scotts Co., D/B/A The Ortho Group, Box 1749, Columbus, OH 43216.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85013.
000279	FMC Corp., Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000506	RegWest Co., Agent For: Walco-Linck Co., Box 2220, Greeley, CO 80632.
002393	HACO, Inc., Box 7190, Madison, WI 53707.
004306	Technology Sciences Group, Inc., Agent For: Combe Inc., 1101 17th St., NW, Suite 500, Washington, DC 20036.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., Box 460, Bonham, TX 75418.
009688	Chemsico, Div of United Industries Corp., Box 15842, St Louis, MO 63114.
009779	Terra International, Inc., 600 Fourth St., Sioux City, IA 51102.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
011715	Speer Products Inc., 4242 B.F. Goodrich Blvd., Memphis, TN 38181.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
032802	Howard Johnson's Enterprises Inc., 700 W. Virginia St., Ste 222, Milwaukee, WI 53204.
050534	GB Biosciences Corp., c/o Zeneca Ag Products, 1800 Concord Pike, Box 15458, Wilmington, DE 19850.
051036	Micro-Flo Co., Box 772099, Memphis, TN 38117.
067751	OMG Meadowfoam Oil Seed Growers, Box 4306, Salem, OR 97302.
067760	Cheminova Inc., Oak Hill Park 1700, Route 23 – Ste. 210, Wayne, NJ 07470.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 26, 2000. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exception to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 9, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–33457 Filed 12–23–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34204; FRL–6391–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by

registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 26, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 224, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34204. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in seven pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000499–00323	Whitmire PT 20 Dairy & Farm Insect Fogger and Repellent	Piperonyl butoxide; Pyrethrins	Use in restaurants / food handling establishments
004816–00559	Permanone Technical Insecticide	Permethrin, mixed *cis, trans*	Use for mosquito control
008278–00003	Metro All Purpose Bug Bait	Metaldehyde; Carbaryl	All food uses
010163–00236	Supracide 2E	Methidation	Use on sorghum, tobacco
010163–00237	Methidation 50S	Methidation	Use on sorghum, tobacco
010163–00238	Supracide Insecticide-Miticide	Methidation	Use on sorghum, tobacco
011715–00278	Speer Neoperm Total Release Indoor Fogger IV	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Use in greenhouses (non-commercial)

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 26, 2000 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
000499	Whitmire Micro-Gen, Research Laboratories, Inc., 3568 Tree Court Industrial Boulevard, St. Louis, MO 63122.
004816	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
008278	Metro Biological Laboratory, c/o Robinson Associates, 1183 Adler Tree Way, Sacramento, CA 95831.
010163	Gowan, P.O. Box 5569, Yuma, AZ 85366.
011715	Speer Products, Inc., P.O. Box 18993, Memphis, TN 38181.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked June 26, 2000.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: November 8, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–33453 Filed 12–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64044; FRL–6397–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 26, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under *"FOR FURTHER INFORMATION CONTACT* section."

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–64044. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of this official record, which includes printed, paper versions of any electronic comments submitted during as applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 10 pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000499–00450	ULD BP–300 Insecticide	Piperonyl butoxide; *N*-Octyl bicycloheptene dicarboximide; Pyrethrins	Use on respirators
000499–00452	ULD BP–100 Insecticide	*N*-Octyl bicycloheptene dicarboximide; Piperonyl butoxide; Pyrethrins	Use on respirators
000499–00453	ULD BP–50 Insecticide	Piperonyl butoxide; Pyrethrins	Use on respirators
002724–00262	Zoecon RF–43 Emulsifiable Liquid	Phosmet	Dip vat applications
007401–00010	Ferti-Lome Malathion Garden Spray	Malathion	Use on beans

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
007401–00255	Hi-Yield 5 lb. Malathion	Malathion	Use on stored grains, residual spray before storing grain; grains going into storage; after grains are stored
007401–00257	Ferti-Lome Malathion Spray	Malathion	Use on beans
007401–00267	Hi-Yield 5% Malathion Dust	Malathion	Use on cabbage, turnips, mustard greens, kale, cauli flower, brussel sprouts, broccoli, collards, lettuce, beans, peas, spinach, carrots, radishes. okra, potatoes, tomatoes, peppers, onions, honeydews, muskmelons, canta loupes, watermelons, cucumbers, squash, pumpkins, sweet potatoes, black berries, boysen berries, dewberries, loganberries, rasp berries, blueberries, strawberries, dogs & cats, cattle (beef & non-milking), cattle (dairy), sheep & goats, swine, chickens, ducks, geese, turkeys & premise treatment
007401–00438	Ferti-Lome Liquid Fruit Tree Spray	Malathion; Captan	Use on plums
034911–00002	Hi-Yield Malathion Insect Spray	Malathion	Use on citrus trees, beans

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 26, 2000 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
000499	Whitmire Micro-Gen, Research Laboratories, Inc., 3568 Tree Court, Industrial Boulevard, St. Louis, MO 63122.
002724	Wellmark International, 1000 Tower Lane, Suite 245, Bensenville, IL 60106.
007401	Voluntary Purchasing Groups Inc., P.O. Box 460, Bonham, TX 75418.
034911	Hi-Yield Chemical Company, P.O. Box 460, Bonham, TX 75418.

III. What is the Agency Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked June 26, 2000.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 9, 1999.

Richard D. Schmit,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–33456 Filed 12–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6515–2]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Denton Pretreatment Project XL Draft Final Project Agreement.

SUMMARY: EPA is today requesting comments on a draft Project XL Final Project Agreement (FPA) for the City of Denton. The FPA is a voluntary agreement developed collaboratively by Denton, stakeholders, the state of Texas, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

Between 1996–1998, the City of Denton Environmental Services Division and the University of North Texas (UNT) Institute of Applied Sciences conducted an 18 month study to assess the feasibility of integrating the industrial pretreatment program activities with those required under the Phase II Stormwater regulations. Funding was made possible by an EPA 104 (b)(3) grant. If implemented, the Denton's draft FPA and a site specific rulemaking would allow Denton to continue implementation of recommendations resulting from that study, which was completed in April of 1998. Denton would like to reduce its monitoring and annual inspections for certain individually approved facilities and focus on pollutants in the urban stormwater drainage. Saved resources will be reapportioned to watershed protection activities including inspections of vehicle maintenance facilities, recycling centers, junkyards, salvage yards, municipal and school district fleet service operations, construction sites, establishment of a remote creek monitoring network, and incorporation of pollution prevention (P2) BMPs into the local code of ordinances. The site specific rulemaking setting forth the specific regulatory flexibility to be implemented will be developed with the assistance of stakeholders.

DATES: The period for submission of comments ends on January 18, 2000.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Adele Cardenas, 6EN-XP, U.S. EPA REGION 6, 1445 Ross Avenue, Suite # 1200, Dallas, TX 75202–2733, or Chad Carbone, U.S. EPA, 401 M Street, SW, Room 1027WT (1802), Washington, DC 20460. Comments may also be faxed to Ms. Cardenas at (214) 665–3177 or Mr. Carbone at (202) 401–2474. Comments will also be received via electronic mail sent to: cardenas.adele@epa.gov or carbone.chad@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact: Adele Cardenas, 6EN–XP, U.S. EPA REGION 6, 1445 Ross Avenue, Suite # 1200, Dallas, TX 75202–2733, or Chad Carbone, U.S. EPA, 401 M Street, SW, Room 1027WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region 6 in Dallas. Questions to EPA regarding the documents can be directed to Adele Cardenas at (214) 665–7210 or Chad Carbone at (202) 260–4296. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL".

Dated: December 10, 1999.

Lisa Lund,

Deputy Associate Administrator for Reinvention Programs, Office of Reinvention.

[FR Doc. 99–33452 Filed 12–23–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 16, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les

Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0242.

Title: Section 74.604 Interference Avoidance.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1.

Estimated time per response: 3 hours.

Total annual burden: 2.

Total annual costs: $600.

Needs and Uses: Licensees assigned a common channel for TV pickup, TV studio transmitter link, or TV relay purposes in the same area, where simultaneous operation is contemplated, shall take such steps as may be necessary to avoid mutual interference. Section 74.604 requires that the Commission be notified if a mutual agreement to avoid interference cannot be reached. The data is used by FCC staff to take such action as may be necessary to assure an equitable distribution of available frequencies, thereby preventing mutual interference.

OMB Control Number: 3060–0241.

Title: Section 74.633 Temporary Authorizations.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 115.

Estimated time per response: 2 hours (1–2 hours respondent; 1 hour consulting engineer or attorney).

Total annual burden: 121 hours.

Total annual costs: $58,362.

Needs and Uses: Section 74.633 requires that licensees of television auxiliary broadcast stations submit an informal request for special temporary authority to operate that station on a temporary basis under certain circumstances. The data is used by FCC staff to ensure that interference will not be caused to other established stations.

OMB Control Number: 3060–0240.

Title: Section 74.651 Equipment Changes.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated time per response: 1 hour/respondent.

Total annual burden: 10.

Total annual costs: $0.

Needs and Uses: Section 74.651(b) requires licensees of TV auxiliary broadcast stations to notify the FCC in writing of equipment changes which may be made at licensee's discretion without use of a formal application form. The data is used by FCC staff to maintain complete technical records regarding a licensee's facilities.

OMB Control Number: 3060–0474.

Title: Section 74.1263 Time of Operation.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 75.

Estimated time per response: 0.5 hours.

Frequency of Response: Reporting on occasion.

Total annual burden: 38 hours.

Total annual cost: $0.

Needs and Uses: Section 74.1263(c) requires licensees of FM translator or booster stations to notify the Commission of its intent to discontinue operations for 30 or more consecutive days. In addition, licensees must notify the Commission within 48 hours of the station's return to operation. Section 74.1263(d) requires FM translator or booster station licensees to notify the Commission of its intent to permanently discontinue operations and to forward the station license to the FCC for cancellation. The data is used by FCC staff to keep records up-to-date. These notifications inform FCC staff that frequencies are not being used for a specified amount of time and that frequencies have become available for other users.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–33388 Filed 12–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

December 17, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Commission Registration System (CORES) Registration Form.

Form No.: FCC Form 160.

Type of Review: New collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 500,000.

Estimated Time Per Response: .166 (10 minutes).

Frequency of Response: One-time filing requirement.

Total Annual Burden: 83,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Used for fees, fines, and debts owed the Commission. This form is used to obtain a FCC registration number. The purpose of the form is implement the concept of a Commission-wide FCC registration number. The Commission-wide identifier will be implemented with a unique entity identifier, which is the FCC Registration Number (FRN). The FRN will be assigned to everyone doing business with the Commission. The

FRN process and data repository will be available through the functionality of the Commission registration system (CORES). The registrant address stored in the CORES will be used as the official mailing address. This information facilitates the efficient and accurate processing of the Commission's goal of verifying fee sufficiency. Since the FCC registration number identifies a registrant across the entire Commission, the licensing systems will be required to utilize the FCC registration number in all inter-system communication that involves identifying a registrant (Example: Fee sufficiency checks with the newly developed Revenue Accounting Management Information System (RAMIS).

OMB Control No.: 3060–XXXX.

Title: Commission Registration System (CORES) Update/Change Form.

Form No.: FCC Form 161.

Type of Review: New collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 250,000.

Estimated Time Per Response: .166 (10 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 41,500 hours.

Total Annual Cost: N/A.

Needs and Uses: Used for fees, fines, and debts owed the Commission. This form is the Commission's registration system (CORES) update/change form and should be utilized to update/change entity name, address, telephone number, fax number, entity contact representative name, address, telephone fax number, e-mail and password. The purpose of the form is to maintain current and accurate information in the Commission registration system (CORES). The Commission-wide registration process and data repository will be available through the functionality of the Commission Registration System (CORES). This information facilitates the efficient and accurate collection of current and update data in CORES for all registrants.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–33390 Filed 12–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

December 8, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214. Federal Communications Commission.

OMB Control No.: 3060–0867.

Expiration Date: 07/31/2002.

Title: Request for Waiver of Section 20.18(c) of the Commission's Rules Regarding Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Estimated Annual Burden: 9,000 burden hours annually, hours per response; 450 responses.

Description: This rule section is necessary to identify users of a shared land mobile radio station. The information is used by the Commission personnel to investigate interference complaints.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–33389 Filed 12–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

December 16, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 26, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0017.

Title: Application for a Low Power TV, TV Translator, or TV Booster Station License.

Form Number: FCC 347.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; State, local, or Tribal government(s).

Number of Respondents: 1,000.

Estimate Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Costs: $110,000.

Needs and Uses: The Commission adopted a Report and Order in MM Docket Nos. 98–43 and 94–149 substantially revising the FCC Form 347 to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also

deleted and narrowed overly burdensome questions from FCC Form 347, which is required to be filed when applying for a Low Power Television, TV Translator, or TV Booster Station License. FCC Form 347 will be supplemented with detailed instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes will streamline the Commission's processing of FCC Form 347 applications. The Commission also adopted a formal program of pre- and post-application grant random audits to preserve the integrity of our streamlined application process.

The FCC staff use data provided in FCC Form 347 to confirm that the TV facility has been built to terms specified in the outstanding construction permit. The data are also included subsequently in the license to operate the station.

OMB Control Number: 3060–0120.
Title: Broadcast Equal Employment Opportunity Model Program Report.
Form Number: 396–A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; Not-for-profit institutions.
Number of Respondents: 2,526.
Estimate Time Per Response: 1.0 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 2,526 hours.
Total Annual Costs: None.
Needs and Uses: FCC Form 396–A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction or license, and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

On September 30, 1998, the Commission suspended the requirement that television and radio broadcast licensees and permittees submit the FCC 396–A with their construction permit, transfer, or assignment applications. This suspension is to remain in effect until the Commission revises the EEO rules to be consistent with the Court of Appeals Lutheran Church decision. The Commission will make such adjustments to the form as necessary to conform to the Lutheran Church decision consistent with the record in the rulemaking. Until such time as the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking concerning the Court of Appeals Lutheran Church decision, the FCC 396–A needs to retain a current OMB Control Number.

The data are reviewed by FCC analysts to determine how stations will provide equal employment opportunity to all qualified persons without regard to race, color, religion, sex, or national origin.

OMB Control Number: 3060–0250.
Title: Section 74.784, Rebroadcasts.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local, or Tribal government(s).
Number of Respondents: 1,080.
Estimate Time Per Response: 1.0 hour.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 1,080 hours.
Total Annual Costs: None.
Needs and Uses: Section 74.784(b) states that a licensee of a low-power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power or TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted. The data are used by FCC staff to ensure compliance with Section 325(a) of the Communications Act of 1934, as amended, which states that no broadcasting station shall rebroadcast the programs or any part thereof from another broadcasting station without the express authority of the originating station.

OMB Control Number: 3060–0390.
Title: Broadcast Station Annual Employment Report.
Form Number: 395–B.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; Not-for-profit institutions.
Number of Respondents: 14,000.
Estimate Time Per Response: 0.88 hours (avg.).
Frequency of Response: Annual reporting requirements.
Total Annual Burden: 12,320 hours.
Total Annual Costs: None.
Needs and Uses: The Annual Employment Report (FCC Form 395–B) was required to be filed by all licensees and permittees of AM, FM, TV, international, and low power TV broadcast stations. It is a data collection device used to assess industry employment trends. The report identifies each staff member by gender, race, color and/or national origin in each of the nine major job categories. The data are used to assess industry employment trends.

On September 30, 1998, the Commission suspended the requirement that television and radio broadcast licensees and permittees submit the FCC Form 395–B. This suspension is to remain in effect at least until the Commission revises the EEO rules to be consistent with the Court of Appeals Lutheran Church decision. If the Commission chooses to reinstate the FCC 395–B, the Commission will make such adjustments to the form as necessary to conform to the Lutheran Church decision consistent with the record in the rulemaking. Until such time as the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking concerning the Court of Appeals Lutheran Church decision, the FCC Form 395–B needs to retain a current OMB Control Number.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

[FR Doc. 99–33469 Filed 12–23–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Head Start Family and Child Experience Survey (FACES).
OMB No.: 0970–0151.
Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting Office of Management and Budget (OMB) clearance for interview instruments to be used in the Head Start Family and Child Experience Survey (FACES). This study is being conducted under contract with Westat, Inc., with Ellsworth Associates as their subcontractor to collect information on Head Start performance measures. This revision is intended as follow-on to the current design in order to follow the

sample through the end of their first grade year of school.

FACES currently involves five phases of data collection. The first phase was a Spring, 1997 field test in which approximately 2400 parents and children were studied in a nationally stratified random sample of 40 Head Start programs. The second and third phases occurred in Fall, 1997 (Wave 1) and Spring, 1998 (Wave 2) when data were collected on a sample of 3200 children and families in the same 40 programs. The Spring, 1998 data collection included assessments of both Head Start children completing the program and former Head Start children completing kindergarten (kindergarten field test), as well as interviews with their parents and ratings by their kindergarten teachers. In the fourth and fifth phases, follow-up continued for a second program year, plus a kindergarten follow-up. The current plan is to extend data collection in Spring of the first-grade year for both cohorts of children, those completing kindergarten in Spring, 1999, and those completing kindergarten in Spring, 2000.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649(d)), which requires assessment of Head Start's quality and effectiveness. These mandates were reinforced by the Head Start Act Reauthorization of October, 1998, which called for planning for a study of Head Start children to continue follow-up through first grade.

Respondents: Individuals or Households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 2000—First grade parents	1987	1	.5	994
Year 2000—First grade children	1987	1	.67	1331
Year 2000—First grade teachers	1987	1	.33	656
Year 2001—First grade parents	1168	1	.5	584
Year 2001—First grade children	1168	1	.67	783
Year 2001—First grade teachers	1168	1	.33	385
Estimated Average Annual Burden Hours				2,367

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 17, 1999.

Bob Driscoll,

Acting Reports Clearance Officer.

[FR Doc. 99–33291 Filed 12–23–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Subcommittee of the Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Subcommittee of the Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 13, 2000, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Gail M. Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Xenotransplantation Subcommittee will discuss the following public health issues concerning xenotransplantation: (1) Update of scientific data concerning porcine endogenous retrovirus, (2) blood donor deferral, and (3) examination of risks posed by different types of xenotransplantation products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 3, 2000. Oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:45 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 3, 2000, and

submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 15, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–33393 Filed 12–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 27 and 28, 2000, 8 a.m. to 5 p.m.

Location: Hilton, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sandra L. Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail TITUSS@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 27, 2000, the committee will consider the safety and efficacy of new drug application (NDA) 20–914, Promem™ (metrifonate, Bayer Corp., Pharmaceutical Division), proposed to treat mild to moderate dementia of the Alzheimer's type. On January 28, 2000, the committee will consider the safety and efficacy of NDA 21–120, Novantrone® (mitoxantrone, Immunex Corp.) proposed to treat secondary progressive multiple sclerosis, including progressive relapsing disease.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 20, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 20, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 16, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–33395 Filed 12–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4461]

Withdrawal of Guidance Document on Selegiline Hydrochloride Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a guidance for industry entitled "Selegiline Hydrochloride Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing." This guidance, which was issued in December 1995, is being withdrawn because it does not represent current agency thinking on in vivo bioequivalence (BE) and in vitro testing for selegiline hydrochloride.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments on agency guidance documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Aida L. Sanchez, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–857–5847.

SUPPLEMENTARY INFORMATION: FDA is withdrawing a guidance for industry entitled "Selegiline Hydrochloride Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing." This guidance addresses BE and dissolution testing for selegiline. This guidance is being withdrawn because it does not include the appropriate acceptance criteria for parent selegiline in plasma. Based on a new understanding of the pharmacokinetics of selegiline hydrochloride developed since the publication of the selegiline guidance, FDA has been requesting applicants to demonstrate that the point estimate of the test to reference ratio for area under plasma concentration-time curve (AUC) and peak blood plasma concentration (Cmax) of the parent falls within 80 to 125 percent. These criteria have been used for the demonstration of bioequivalence of all selegiline tablets and capsules currently on the market. In addition, the guidance, which was issued in December 1995, includes information only on selegiline tablets and not selegiline capsules, which have been approved by FDA since the issuance of the guidance to be withdrawn.

The withdrawal of this guidance is part of a long-term effort in the Office of Generic Drugs (OGD) to review guidance documents on the development of generic drug products with the goal of identifying documents that need to be revised, reformatted, or withdrawn because they are no longer current (64 FR 36886, July 8, 1999). OGD hopes the guidance review process will result in guidances for industry that better reflect the current thinking of the agency on generic drug development and that will eliminate the need for drug-specific bioavailability (BA) and BE guidances. A guidance currently under development on BA and BE studies for orally administered drug products will serve as a core guidance on BA and BE once it has been finalized and will replace most product-specific guidances.

The agency welcomes comments on its efforts to review existing guidances related to the development of drug products and revise, reformat, or withdraw them, as appropriate. This information is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It does not create or confer any rights for or on any

person and does not operate to bind FDA or the public.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on agency guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33390 Filed 12–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Healthcare Integrity and Protection Data Bank for Final Adverse Information on Health Care Providers, Suppliers, and Practitioners—(OMB 0915–0239)—Extension

Section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 specifically directs the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosure of certain final adverse actions taken against health care providers, suppliers, and practitioners. A final rule was published October 26, 1999 in the **Federal Register** to implement the statutory requirements of section 1128E of the Social Security Act (The Act) as added by Section 221(a) of HIPAA. The Act requires the Secretary to implement the national health care fraud and abuse data collection program. This data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB). It contains the following types of information: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary shall establish by regulations. Access to this data bank is limited to Federal and State Government agencies and health plans.

The estimated response burden is as follows:

Regulation citation	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
61.6, Errors & Omissions	1,200	1	1,200	[1] 25	500
61.6, Revisions/Appeal Status	1,000	1	1,000	[1] 75	1,250
61.7, Licensure actions:					
Disclosure by State Licensing Boards	1,836	22	40,400	[1] 75	50,500
Reporting By State Licensing Authorities	216	187	40,400	[1] 15	10,100
61.8, Reporting of State Criminal Convictions	54	13	700	[1] 75	875
61.9, Reporting of Civil Judgments	52	8	500	[1] 75	625
61.11, Reporting of Adjudicated Actions/Decisions	56	12	800	[1] 75	1,000
61.12, Access to Data (Queries/Self Queries):					
State Licensure Boards	1,000	75	75,000	[1] 5	6,250
State Certification Agencies	54	3	162	[1] 5	14
States/District Attorneys & Law Enforcement	2,000	25	50,000	[1] 5	4,166
State Medicaid Fraud Units	47	50	2,350	[1] 5	196
Health Plans	2,500	400	1,000,000	[1] 5	83,333
Health Care Providers, Suppliers and Practitioners (self query)	60,000	1	60,000	[1] 25	25,000
Entity Registration	5,000	1	5,000	[1] 30	2,500
Entity Registration Update	250	1	250	[1] 15	62
Authorized Agent Designation	100	1	100	[1] 10	16
Authorized Agent Designation Update	5	1	5	[1] 5	0.42
61.15, Disputed Reports/ Secretarial Review:					
Initial Request	750	1	750	[1] 10	125
Request for Secretarial Review	37	1	37	[1] 480	296
Total	76,177	.....	1,278,654	.....	186,808

[1] Minutes.

Other forms used in the management of the HIPDB include the following:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Account Discrepancy	2,000	1	2,000	[1]5	166
Electronic Funds Transfer Authorization	850	1	850	[1]5	70
Entity Reactivation	500	1	500	[1]15	125
Total	3,350		3,350		361

[1] Minutes.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 17, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–33399 Filed 12–23–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Johnny Lam Animal Shows, c/o Mitchel Kalmanson, Maitland, FL, PRT–020184.

The applicant requests a permit to import and re-export captive-born Chimpanzees (*Pan troglodytes*) and Orangutans (*Pongo pygmaeus*) and progeny of the animals currently held by the applicant to/from the United States to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: International Center for Gibbon Studies, Santa Clarita, CA, PRT–020342.

The applicant requests a permit to export one male captive-bred capped gibbon (*Hylobates pileatus*) to the Zoo Lisboa, Lisboa, Portugal, for the purpose of enhancing the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice:

Dated: December 20, 1999.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–33408 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Statement/ Environmental Impact Report for the Trinity River Mainstem Fishery Restoration

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice announces the reopening of the public comment period of the draft Environmental Impact Statement/Environmental Impact Report for the Trinity River Mainstem Fishery Restoration. The public comment period will be open until January 20, 2000. As announced in the **Federal Register** on October 19, 1999 (FR, Vol. 64, No. 201, pages 56364–56365), the draft Environmental Impact Statement/ Environmental Impact Report for the Trinity River Mainstem Fishery Restoration is available for public comment.

DATES: Written comments on the draft Environmental Impact Statement/ Environmental Impact Report must be received on or before January 20, 2000.

ADDRESSES: Written comments should be addressed to Mr. Joe Polos, Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Polos, Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521; (707) 822–7201.

Dated: December 20, 1999.

Elizabeth H. Stevens,

Manager, California/Nevada Operations Office, Region 1, Sacramento, California.

[FR Doc. 99–33443 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–00–1040–JF]

Gila Box Riparian National Conservation Area Advisory Committee Meeting

SUMMARY: The purpose of this notice is to announce the next meeting of the Gila Box Riparian National Conservation Area Advisory Committee Meeting. The purpose of the Advisory Committee is to provide informed advice to the Safford Field Manager on management of public lands in the Gila Box Riparian National Conservation Area. The committee meets as needed, generally between two and four times a year.

The meeting will take place at the Bureau of Land Management, Safford Field Office on February 4, 2000 commencing at 9:00 a.m. The meeting will consist of a field trip to Bonita Creek within the NCA to look at the Red Knolls designated road and its condition, road closures, water pumping stations, reengineering of solar powered water pumping station, administrative vehicle access, habitat for proposed endangered native fish, and an update on the Lee Trail water pump diesel spill and cleanup. A public comment period will be provided from 9:15 a.m. to 9:45 a.m. at the BLM Safford Field Office prior to departing for the field trip. The public is invited to participate on the field trip but must provide their own transportation to and from the field. Field trip will depart at 10:00 a.m. and arrive back to the BLM Safford Field Office at 4:00 p.m.

DATES: Meeting will be held on February 4, 2000 starting at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jon Collins, Gila Box NCA Project Coordinator, Safford Field Office, 711 14th Ave., Safford AZ 85546, (520) 348–4400.

Dated: December 14, 1999.

William T. Civish,

Safford Field Manager.

[FR Doc. 99–33495 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments on information collection regarding National Park Service mining regulations.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS) intention to request that the Office of Management and Budget (OMB) extend and revise the currently approved information collection budget for the NPS's minerals management regulatory program inside park boundaries. Under 36 CFR part 9, the NPS regulates mineral development activities in parks associated with mining claims located under the 1872 Mining Law and with non-Federal oil and gas rights.

DATES: Comments on this notice must be received by February 25, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Carol McCoy, Chief, Policy and Regulations Branch, Geologic Resources Division, National Park Service, P.O.Box 25287, Lakewood, Colorado 80225, (303) 969–2096.

SUPPLEMENTARY INFORMATION:

Title: NPS/Minerals Management Program/Mining Claims and Non-federal Oil and Gas Rights.

OMB Number: 1024–0064.

Expiration Date of Approval: January 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: While surprising, outstanding mineral rights exist in many units of the National Park System. In most cases, these rights predate the establishment of the units. Currently, approximately 2,100 mining claims, which were located under the 1872 Mining Law, exist in a total of 20 park units. The majority of these claims are located in Mojave National Preserve that was added to the National Park System through the California Desert Protection Act of 1994 (16 U.S.C. 410aaa). With respect to non-Federal oil and gas rights in park units, 597 non-Federal oil and gas operations exist in 11 park units. The potential for additional non-Federal oil and gas operations in additional units is tied to market forces and the quality and quantity of oil and gas reserves in park boundaries that coincide with the presence of private rights.

The NPS regulates mineral development activities inside park boundaries on mining claims and on non-Federal oil and gas rights under regulations codified at 36 CFR part 9: Subpart A for mining claims and Subpart B for non-Federal oil and gas rights. The NPS promulgated both sets of regulations in the late 1970's. In the case of mining claims, the NPS did so under Congressional authority granted under the Mining in the Parks Act of 1976 (16 U.S.C. 1901 *et seq.*) and individual park enabling statutes. For non-Federal oil and gas rights, the NPS regulates development activities pursuant to authority under the NPS Organic Act of 1916 as amended (16 U.S.C. 1 *et seq.*) and individual enabling statutes. As directed by Congress, the NPS developed the regulations in order to protect park resources and visitor values from the adverse impacts associated with mineral development in park boundaries.

The heart of the regulations is the approved "plan of operations" requirement. Essentially, a plan of operations is a prospective operator's blueprint setting forth all intended activities from access to extraction to reclamation related to developing a particular mineral right in a given park unit. The information required in a plan of operations is set forth in NPS regulations. Before an operator can commence development activities in a park unit, the NPS must approve the plan of operations and the operator must secure a bond in an amount sufficient to cover the cost of reclamation to the Federal Government in the event the operator defaults on his/her obligations.

Usually, an approved plan of operations covers the life of the mine or well, from development and production to reclamation. Under NPS regulations, such plans may be revised. No set form is required for a plan of operations. Each plan is tailored to the intended activities of an operator and the particulars of the environment, e.g., hardwood forest or desert, presence of endangered species or cultural resources, location and extent of water resources including wetlands.

Because of the variability among plans of operations and the duration of such plans, assessing the annual paperwork burden of complying with the NPS's mining regulations is difficult. Below is the NPS's best estimate, pro-rated on an annual basis, as to the number of respondents and number of hours involved in complying with the Service's regulations governing mining claims and non-Federal oil and gas rights.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 80 hours per response.

Respondents: Publicly held companies, private companies and individuals.

Estimate of Number of Respondents: On an annual basis, the NPS estimates that it receives a range of between 15 to 30 plans of operations under its regulations: 5 to 10 plans of operations for mining claims, and 10 to 20 plans of operations for non-Federal oil and gas rights.

Estimated Number of Responses per Respondent: One. To conduct mineral development operations in park units, a prospective operator must submit a proposed plan of operations to the NPS for review and approval. Once approved, such a plan covers the life of the operation. If the plan is for geophysical work associated with private oil and gas rights it may only cover a period of a few months. In contrast, a plan for a production oil and gas well or a hardrock mine may cover a period of 10 or more years.

Estimated Total Annual Burden: 1200 to 2400 hours. The NPS estimates that on an annual basis, it will take operators a range of 400 to 800 hours to prepare complete plans of operations for review and approval under the Service's mining claim regulations at 36 CFR part 9, Subpart A. In the case of non-Federal oil and gas rights, the NPS estimates it will take all operators a range of 800 to 1600 hours to prepare complete plans of operations for review and approval under the Service's non-Federal oil and gas regulations at 36 CFR part 9, Subpart B.

Please send comments regarding the accuracy of the burden estimates, ways to improve them and any other related comments on the collection of information under the NPS's mining regulations at 36 CFR part 9 to the noted addressee above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 3, 1999.

David B. Shaver,

Chief, Geologic Resources Division, Natural Resource Program Center.

[FR Doc. 99–33446 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Record of Decision, Missouri National Recreational River (59-Mile District)

SUMMARY: Pursuant to regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2) and implementing procedures of the National Park Service (NPS) and U.S. Army Corps of Engineers (COE) for the National Environmental Policy Act of 1969 (40 U.S.C. 1501 et seq.), the NPS and COE have prepared this Record of Decision for the general management plan and final environmental impact statement (GMP/FEIS), Missouri National Recreational River (59-Mile District), Nebraska and South Dakota. This Record of Decision describes the recreational river management alternatives considered, mitigating measures adopted to avoid or minimize environmental impacts, and the reasoning behind the decisions reached.

FOR ADDITIONAL INFORMATION: Superintendent, Missouri National Recreational River, P.O. Box 591, O'Neill, Nebraska 68763, 402–336–3970; or Chief, Environmental and Economics Section, Planning Branch, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102, 402–221–4575.

Background Information:

Public Law 95–625 of November 10, 1978, amended section 3(a) of the Wild and Scenic Rivers Act of 1968 by designating a fifty-nine mile reach of the Missouri River between the Gavins Point Dam, Nebraska-South Dakota, and Ponca State Park, Nebraska, as a recreational river in the National Wild and Scenic Rivers System. The amending legislation declared that this segment would be administered by the secretary of the interior, acting through the National Park Service. Accordingly, the segment is considered a unit of the national park system. The Act also directed the secretary of the interior to enter into a written cooperative agreement with the secretary of the army, acting through the Corps of Engineers, for construction and maintenance of bank stabilization work and appropriate recreational development. The NPS and COE jointly produced the GMP/FEIS, updating previous management plans and memoranda written respectively in 1980 by the Heritage Conservation and Recreation Service (HCRS) and Corps of Engineers but only partially implemented.

Decisions for Management and Boundary

The preferred alternative for the Missouri National Recreational River (59-Mile District) is identified in the GMP/FEIS as Alternative 2. The preferred alternative provides for the maintenance and restoration of biologic values within the reach and has the greatest potential to protect and enhance the values for which the river was designated, consistent with the general intent of the Wild and Scenic Rivers Act. It also provides for management activities that emphasize the history and culture of the river and its surroundings. In this preferred alternative, as well as in other alternatives, the NPS and COE will manage the area through a cooperative agreement, with the NPS generally administering land-related resources and the COE generally managing water-related resources. The agencies will work together where responsibilities overlap.

Among specific actions, the preferred alternative encourages the maintenance of the rural scene while allowing development in ways emphasizing the river's natural attributes. Land in fee or less-than-fee title might be acquired to provide new river accesses or for critical habitat preservation, but generally county zoning would be encouraged as the principal landscape protection measure.

Although new visitor use facilities are not specifically included in Alternative 2, the Resource and Education Center proposed by the Nebraska Game and Parks Commission is consistent with the goals for the recreational river. Scenic drives, overlooks, and river trails could be also be developed or enhanced as opportunities allowed, and the safety and appearance of extant access facilities would be enhanced.

Habitat protection, enhancement, and restoration would be encouraged, with the NPS, COE, and other partners cooperating in inventory and monitoring of river-related resources and enhancement of biologic and cultural values. Floodplains and adjacent wetlands would be protected to the greatest extent possible, and endangered and threatened species would continue to be protected in all areas under federal or state jurisdiction.

Additional riverbank stabilization authorized in the enabling legislation will be undertaken as needed so long as all actions are in full conformance with appropriate and required environmental compliance laws, and a federal interest is established and funds are allocated for such construction.

The boundary for the 59–Mile MNRR is described as commencing at the downstream end of the Gavins Point Dam excavated discharge channel (downstream boundary of the Lewis and Clark Project), 59 miles downstream to, and inclusive of, Ponca State Park, and including the river, its islands, and adjacent banks and hills reasonably encompassing the natural and cultural resources of the unit. This boundary is a revision from the 1978 determination by including areas of active erosion and several large archaeological or cultural sites, among them an archaeological site north of St. Helena, Nebraska, and the Spirit Mound north of Vermillion, South Dakota, the latter particularly added to facilitate the preservation of that nationally significant Lewis and Clark landmark. The identified boundary excludes portions of Clay County Park some distance from the river, and certain distant croplands. The total acreage inside the revised boundary is about 17,734.

Mitigating Measures

Alternative 2 proposes limited developments such as boat and canoe accesses and trails consistent with the objectives of the unit. The Alternative also would include additional bank stabilization consistent with congressional authorization. Site-specific environmental compliance would be done when and if such construction occurred. Some increased use, some continued conversion of agricultural land to residential and other private development, and land purchases by the government may have adverse impacts on county government. Preservation of the river environs in a more natural state may be viewed as a beneficial effect of such impacts.

Other Management Alternatives Considered

Two other management alternatives were considered. The no-action alternative (Alternative 1) would have continued actions prescribed in HCRS's 1980 GMP and COE's 1980 General Design Memorandum and would have generally perpetuated existing land use conditions with minimal oversight and

condoned continued reactive rather than proactive federal involvement in all matters of visitor use and development, resource management, and interpretation. Alternative 1 served chiefly as a baseline for comparing the Preferred Alternative and Alternative 3. Alternative 3, the so-called recreation emphasis alternative, would have shifted focus to recreational enhancements and development at the potential occasional expense of resource enhancement and management. Most management actions prescribed therein were also present in alternative 2, but the recreational interests were more heavily weighted.

The boundary in Alternative 1 would have remained the same as described in the 1978 legislation. The boundaries for Alternatives 2 and 3 were identical. Both boundaries include important examples of the river's outstandingly remarkable values.

Public Review

More than 1,000 copies of the Draft GMP/EIS were mailed to federal, state, tribal, and local officials, organizations, and individuals in October 1998, commencing a 60-day public comment period that closed December 16, 1998. Between November 12 and December 10 public meetings were held in Hartington, Ponca, and Newcastle, Nebraska; and Vermillion and Yankton, South Dakota. The Missouri River Bank Stabilization Association was briefed on November 23, Nebraska Game and Parks officials on November 24, the Cedar County Commission on December 8, and Nebraska and South Dakota Congressional staff on December 9.

A total of 836 written comments were received during the public review period, including 779 identical cards from the Sierra Club. A majority of the comments came from Nebraska and South Dakota and suggested attention be given to increased recreational opportunities within the unit, increased protection of the Missouri River's natural landscape, that additional river banks be stabilized, that the "local voice" be heeded in management actions, and expressed concern over perceived loss of landowner rights. Responses to these and other questions were provided in the final EIS.

In October 1999 the Final GMP/EIS was printed and distributed to more than 170 federal, state, tribal, and local officials, public repositories in the project area, and to individuals providing written comments. A thirty-day review period closed on November 15, 1999. In the document the NPS and COE affirmed a preferred alternative and boundary. During the closing review two responses were received, including one from a correspondent whose letter received during the sixty-day public review period was not printed in the final GMP/EIS as it pertained wholly to issues on a separate Missouri River reach; and from Representative Doug Bereuter of Nebraska's First Congressional District, who particularly sought clarification on the matter of cost sharing in project management. While cost sharing is a legislative requirement in most COE projects, and while the NPS endorses the cost share concept because it engenders broad support for projects, NPS does not mandate cost sharing for its projects.

Selection of the Preferred Alternative

Alternatives two and three for management of the Missouri National Recreational River were considered equally acceptable from an environmental standpoint. The Preferred Alternative is selected because it is considered the most effective alternative for protecting river values and maintaining existing economic uses along the river consistent with the Wild and Scenic Rivers Act and the 1978 amending act. The selected alternative is not expected to have any significant effects on natural or cultural values within the designated boundaries. The selected Boundary is preferable environmentally, and is chosen for that reason.

Dated: December 17, 1999.

William W. Schenk,

Regional Director, Midwest Region, National Park Service.

Dated: December 17, 1999.

Mark E. Tillotson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 99–33447 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Agenda for the February 2, 2000 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park

Public Meeting; Fort Mason Building F (Firehouse), 10:00 AM–12:00 PM

10:00 a.m.
- Welcome—Neil Chaitin, Chairman
- Opening Remarks—Neil Chaitin, Chairman
- Approval of Minutes from Previous Meeting

10:15 a.m.
- Update—Haslett Warehouse, William Thomas, Superintendent

10:30 a.m.
- STAFF REPORTS
- Ships, Wayne Boykin
- Operations, Marc Hayman
- Collections, Tom Mulhern
- National Maritime Museum Association, Kathy Lohan

11:30 a.m.
- Public Comments and Questions

11:45 a.m.
- Election of Officers

12:00 p.m.
- Agenda items/Date for next meeting

William Thomas,

Superintendent.

[FR Doc. 99–33507 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Watershed Cooperative Agreement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice of availability of funds for the Watershed Cooperative Agreement Program.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is announcing its intent to solicit applications from eligible, not-for-profit candidates for funding under the Watershed Cooperative Agreement Program to undertake local acid mine drainage reclamation projects.

DATES: Applications for the cooperative agreements should be submitted to the appropriate individual listed under ADDRESSES AND FURTHER INFORMATION starting December 27, 1999. Applications will be accepted until June 1, 2000, or until all available funds have been awarded, whichever is sooner.

ADDRESSES AND FURTHER INFORMATION: Requests for an application package, which includes further information on the program, the application forms and evaluation criteria, should be directed to the appropriate Appalachian Clean Streams Coordinator: *Alabama:* Jeannie O'Dell, Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, AL 35209, Telephone 205–290–7282, ext. 21; *Illinois:* Ken Foit, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, Telephone 317–226–6166 ext 230; *Indiana:* Michael Kalagian, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204,

Telephone 317–226–6166 ext 234; *Iowa:* Stephen Preston, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext 120; *Kentucky:* Dave Beam, Lexington Field Office, 2675 Regency Road, Lexington, KY 40503, Telephone 606–233–2896; *Maryland:* Peter Hartman, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220; Telephone 412–937–2905; *Missouri:* Jeff Gillespie, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext 128; *Ohio:* Max Luehrs, Columbus Area Office, 4480 Refugee Road, Suite 201, Columbus, OH 43232, Telephone 614–866–0578 ext. 110; *Oklahoma:* Daniel Trout, Tulsa Field Office, 5100 East Skelly Drive S–550, Tulsa, OK 74135, Telephone 918–581–6430 ext 25; *Pennsylvania:* David Hamilton, Harrisburg Field Office, 415 Market Street, Suite 3, Harrisburg, PA 17101, Telephone 717–782–2285; *Tennessee:* Danny Ellis, Knoxville Field Office, 530 Gay Street, Suite 500, Knoxville, TN 37902, Telephone 423–545–4103 ext 147; *Virginia:* Ronnie Vicars, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, VA 24219, Telephone 540–523–5053; *West Virginia:* Rick Buckley, Charleston Field Office, 1027 Virginia Street East Charleston, WV 25301, Telephone 304–347–7162 ext 3024.

SUPPLEMENTARY INFORMATION: For Fiscal year 2000, OSM expects to award up to 1.75 million dollars to eligible not-for-profit groups to undertake actual construction projects to clean up streams impacted by acid mine drainage The cooperative agreements will be in the $5,000–$80,000 range in order to assist as many groups as possible. The cooperative agreements will have a performance period of two years.

Eligible applicants are not-for-profit, established organizations with IRS 501(c)(3) status. Applicants must have other partners, contributing either funding or in-kind services; the partners must provide a substantial portion of the total resources needed to complete the project.

Projects in the following States are eligible: Alabama, Illinois, Indiana, Iowa, Kentucky, Maryland, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia and West Virginia. Projects must meet eligibility criteria for coal projects outlined in Section 404 of the Surface Mining Control and Reclamation Act of 1977:

Lands and water eligible for reclamation or drainage abatement expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes * * * and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act [August 3, 1977], and for which there is no continuing reclamation responsibility under State or other Federal laws.

There must be demonstrated public support for the project. The project should propose to use proven or innovative technology that has a high probability of success. The project must produce tangible results, e.g., fishery restored, stream miles improved, educational and community benefits, pollutants removed from the streams. The funds must be used primarily for the construction phase of a project; reimbursement of administrative costs will be carefully scrutinized. There must be a plan to address any ongoing operation/maintenance considerations.

Two copies of a complete application should be submitted to the appropriate Appalachian Clean Streams Coordinator identified under **ADDRESSES AND FURTHER INFORMATION.** Awards are subject to the availability of funds. Applications will receive technical and financial management reviews.

Dated: December 17, 1999.

Kathy Karpan,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 99–33463 Filed 12–23–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of Determination.

EFFECTIVE DATE: December 20, 1999.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market determination made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For the 12-month period ending September 30, 1999, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 1.32 billion gallons. Seven percent of this amount is 92.3 million gallons (these figures have been rounded). Therefore, the base quantity for 2000 should be 92.3 million gallons.

FOR FURTHER INFORMATION CONTACT: Devry Boughner (202) 205–3313 in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at (202) 205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Background

For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations. Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

Issued: December 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33478 Filed 12–23–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–419]

Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by seven (7) days, or until January 28, 2000, the deadline for determining whether to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. ("VISX"), 64 Fed. Reg. 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc. Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patent Nos. 4,718,418 and 5,711,762 ("the '762 patent"). An evidentiary hearing was held from August 18, 1999 to August 27, 1999.

On December 6, 1999, the presiding ALJ (Judge Debra Morriss) issued her final ID finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h)(2) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.42(h)(2).

Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: December 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33479 Filed 12–23–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–385–388 (Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on May 3, 1999 (64 FR 23677, May 3, 1999) and determined on August 5, 1999 that it would conduct expedited reviews (64 FR 44537, August 16, 1999).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 21, 1999. The views of the Commission are contained in USITC Publication 3260 (December 1999), entitled Granular Polytetrafluoroethylene Resin from Italy and Japan: Investigations Nos. 731–TA-385–386 (Review).

Issued: December 14, 1999.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Crawford and Askey dissenting.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33477 Filed 12–23–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–38]

Theodore Neujahr, D.V.M., Continuation of Registration

On July 16, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Theodore A. Neujahr, D.V.M. (Respondent) of Eatonville, Washington, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AN1015331, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification of such registration as a practitioner under 21 U.S.C 823(f), for reason that his registration is inconsistent with the public interest.

By letter dated July 28, 1998, Respondent filed a request for a hearing, and following prehearing procedures, a hearing was held in Tacoma, Washington on March 3, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On July 19, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's registration be continued and any pending applications be granted. Neither party filed exceptions to Judge Bittner's Opinion, and on August 19, 1999, the record was transmitted to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with one noted exception, the Opinion of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent received his degree in veterinary medicine in 1979. In 1981, Respondent started his own practice in Eatonville, Washington, where he continues to practice.

Respondent testified that he developed a chemical dependency problem in 1988 or 1989 while going through a divorce. He further testified that "I found that the pain relievers that I had purchased for animals helped to relieve some of my pain, and I found that the amphetamines made me feel better too." According to Respondent, he took approximately three Dexedrine 5 mg. tablets per week and two or three Percodan tablets per week for a period of more than a year. Both of these drugs are Schedule II controlled substances.

Respondent testified that he became concerned about his drug use and contacted a treatment program. On February 23, 1990, Respondent and his receptionist, who was also a close personal friend, met with the doctor in charge of the program. It was agreed that the doctor and Respondent's receptionist would monitor Respondent by requesting that Respondent submit to a urinalysis if they suspected that he had taken a mood altering substance.

In April 1990, a DEA investigator was reviewing DEA order forms used for purchasing Schedule II controlled substances and noticed that Respondent had purchased Dexedrine, which is not commonly used in veterinary practice, and Percodan, which is occasionally used in veterinary practice. On April 6, 1990, the DEA investigator and an investigator with the Washington Board of Pharmacy went to Respondent's office where they discovered that Respondent kept controlled substances in an unlocked drawer in his office and at his residence, which is an unregistered location. Initially, Respondent told the investigators that he was going to use the Dexedrine to treat obese dogs, but ultimately admitted that he had taken the Dexedrine himself. Respondent also said at some point that he had used the Percodan to treat dogs. However, the record does not indicate whether he admitted to the investigators during this meeting that he had taken the Percodan himself.

At the conclusion of this meeting, the DEA investigator gave Respondent the opportunity to voluntarily surrender his Schedule II and IIN privileges. Respondent signed the voluntary surrender form and checked the box that indicated that he was surrendering his DEA registration in Schedules II and IIN "[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part."

Respondent testified that at the time that he surrendered his Schedule II privileges, he was abstaining from controlled substances and alcohol, but that he felt threatened by the two investigators and signed the voluntary surrender form out of fear. Judge Bittner credited Respondent's testimony on this point and found that Respondent perceived that he was being threatened.

On May 23, 1990, Respondent began an outpatient treatment which he completed on January 16, 1991. At the time Respondent entered the program, he had been drug-free for several months. This program consisted of random urinalysis which were all negative, and counseling sessions.

On January 7, 1991, the Washington State Veterinary Board of Governors (Veterinary Board) issued a Statement of Charges against Respondent seeking suspension or revocation of his license to practice veterinary medicine on grounds that he had possessed Schedule II controlled substances for other than legitimate or therapeutic purposes by possessing them for his own use. It is unclear from the record, but it appears that at some point Respondent entered into a stipulation with the Veterinary Board admitting that he possessed Schedule II controlled substances including, but not limited to, Dexedrine, Percodan, and oxycodone with aspirin for other than legitimate or therapeutic purposes. The Veterinary Board suspended Respondent's license to practice veterinary medicine for at least 24 months, but stayed the suspension subject to various terms of probation. Specifically, the Veterinary Board required Respondent to submit quarterly progress reports on his methods of handling stress, his use of and handling of drugs, his mental and physical health, his methods of dealing with legal charges, professional responsibilities and activities and personal activities relating to his practice; to attend at least two Narcotics Anonymous or Alcoholics Anonymous (12-step) meetings per week; to submit to random and observed biological fluid testing at least once per month; not to possess a Schedule II or IIN registration for two years; and not to submit a request for reinstatement of his license for at least two years.

On April 27, 1992, the Veterinary Board accepted a stipulation between Respondent and the State of Washington Department of Health which provided, among other things, that Respondent would sign a contract with the Washington Health Professional Services (WHPS) program and comply with the terms and conditions of that contract, and that if Respondent failed to comply with that contract his license would be subject to disciplinary action by the Veterinary Board.

The WHPS is a division of the Washington Department of Health and is a monitoring program that provides an alternative to license discipline for various health care professions. The WHPS referred Respondent to a chemical dependency and family therapist who reported to the WHPS monthly on Respondent's progress. The therapist testified that he did not recall making any adverse reports regarding Respondent; that he felt that Respondent "was doing all of the things that a person who is successful in recovery does;" that he did not violate any of the rules of the program; that he was convinced that Respondent was continuing his recovery and was stable in his lifestyle, and that he thought it would be in the public interest for Respondent to have a DEA registration.

Respondent's case manager with WHPS from December 1993 until November 1994 testified that Respondent complied with his contract with the WHPS; that he consistently attended more 12-step meetings than required; and that all of his urinalyses were negative.

On October 5, 1992, Respondent executed a renewal application for his DEA registration, answering "No" to the question, hereinafter referred to as the liability question, which asks, "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" Respondent testified while he knew that he had surrendered a portion of his DEA registration in 1990, he did not know how to answer the liability question. According to Respondent, he asked the instructors at continuing education courses that, "if you voluntarily give up a portion of your DEA registration is that for cause and does that mean that you have to answer that question 'yes' and they told me that it was not true if you voluntarily give it up." Respondent also testified that he relied upon statements of the investigators that his "license" would not be affected if he signed a confession and if he did whatever the treatment program told him to do; that he tended to confuse his

license to practice veterinary medicine and his DEA registration; and that the investigators also told him that he could reapply for registration to handle Schedule II and IIN substances later.

Respondent testified that he was "quite nervous" when he sent off his application but that when he received his updated Certificate of Registration, he concluded that he had answered the question properly. On September 30, 1995, Respondent executed another renewal application for his DEA registration and answered "No" to essentially the same liability question. Respondent testified that in executing this application, he did not give the question "any thought at all" because he knew how he had answered the similar question on the 1992 application and it had been granted with no difficulty. In 1995, Respondent sought registration in Schedules II, IIN, III, IIIN, IV and V.

On November 3, 1995, another DEA investigator telephoned Respondent to verify information on his 1995 renewal application. The investigator testified that she read the liability question from the 1995 application to Respondent and that Respondent said that the answer to the question was "No." According to the investigator, she then asked Respondent, "[Y]ou've never had any action taken?" and Respondent again stated "No."

Respondent testified that the investigator caught him off guard and he was convinced that he had answered the liability question on the 1992 and 1995 renewal applications correctly. Respondent further testified that after he hung up with the investigator he realized that he had made a mistake, but he did not know how to contact the investigator. Respondent also testified that if he remains registered with DEA, he would find someone to help him answer the liability questions properly on his next renewal application.

At the hearing, Respondent testified that he has not had any relapses since he stopped using controlled substances in 1990, and that he has a good support network in place. Respondent's case manager with the WHPS testified that completing an adequate number of years in a monitored recovery program greatly decreases the likelihood of a relapse, and that she was not aware of any reason that Respondent should not be authorized to handle controlled substances.

Pursuant to 21 U.S.C. 824(a)(1), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant has materially falsified an application for registration. DEA had previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See Martha Hernandez, M.D., 62 FR 6145 (1997); Herbert J. Robinson, M.D., 59 FR 6304 (1994).

It is undisputed that Respondent answered "No" to the liability question on his 1992 and 1995 renewal applications despite the fact that his state veterinary license was placed on probation and he had surrendered his Schedule II and IIN privileges. Respondent testified that he did not know how to answer the question, since he did not think that he had surrendered his Schedule II privileges "for cause." However, there is no indication that Respondent even attempted to contact the DEA investigator who obtained the surrender from Respondent for guidance. Yet, even if one were to accept Respondent's explanation, it would not explain why Respondent did not disclose that his state veterinary license was placed on probation.

The Acting Deputy Administrator finds that Respondent knew or should have known that his responses were false. Answers to the liability question are always material because DEA relies on the answers to these questions to determine whether it is necessary to conduct an investigation prior to granting an application. See Bobby Watts, M.D., 58 FR 46995 (1993); Ezzat E. Majd Pour, M.D., 55 FR 47547 (1990). DEA has previously held that it is the registrant's "responsibility to carefully read the question and to honestly answer all parts of the question." Martha Hernandez, M.D., 62 FR at 61147. Therefore, grounds exist to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1).

Also, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive, the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, it is undisputed that Respondent's state veterinary license was suspended for 24 months, with the suspension stayed and his license placed on probation subject to various conditions. It is also undisputed that Respondent entered into a Stipulation with the state where by he agreed to enter into a contract with the WHPS. However, his state license is now unrestricted and he is authorized to handle controlled substances in the State of Washington. But as Judge Bittner noted, "inasmuch as State authorization is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative."

Regarding factor two, it is undisputed that Respondent used his DEA Certificate of Registration and official order forms to obtain Schedule II controlled substances which he then abused himself for about a year in 1988 or 1989. However, this behavior was a result of Respondent's chemical dependency for which he has received treatment. He has not abused controlled substances since 1990, and he has a good support network in place to help prevent any relapse. There is no other evidence that Respondent has improperly dispensed controlled substances.

As to factor three, there is no evidence that Respondent has ever been convicted under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

Regarding factor four, there is evidence in the record that Respondent has failed to comply with applicable laws relating to controlled substances. By furnishing false information on his applications for DEA registration, Respondent violated 21 U.S.C. 843(a)(4)(A). By using DEA order forms to obtain controlled substances for his own use, Respondent violated 21 U.S.C. 828(e), and by dispensing controlled substances for other than legitimate medical purposes, Respondent violated 21 U.S.C. 841(a)(1). Further, Respondent

violated 21 CFR 1301.75(b) by failing to maintain adequate physical security of controlled substances. It also appears from evidence in the record that Respondent violated various provisions of Washington state law.

As to factor five, other than Respondent's material falsification of his applications for registration, there is no evidence that Respondent has engaged in any other conduct that may threaten the public health and safety.

The Acting Deputy Administrator agrees with Judge Bittner's conclusion that the Government has made a *prima facie* case that Respondent's continued registration would be inconsistent with the public interest. Respondent used his privileges as a DEA registrant to obtain controlled substances to support his chemical dependency, and he materially falsified his 1992 and 1995 renewal applications.

However, he has undergone treatment for his chemical dependency and has not abused controlled substances since 1990. Further, evidence in the record suggests that there is little likelihood of Respondent relapsing. The Acting Deputy Administrator finds it noteworthy that Respondent first sought treatment for his chemical dependency on his own and not at the direction of another.

Judge Bittner also found it significant that "there is no evidence that [Respondent] improperly handled controlled substances in any way since 1992, when he regained a DEA registration." However, the Acting Deputy Administrator can find no evidence in the record that Respondent ever completely lost his DEA privileges. It is true that he surrendered his Schedule II and IIN privileges in 1990. But it appears from the evidence in the record that Respondent has had a DEA registration since 1981. Therefore, the Acting Deputy Administrator finds it significant that there is no evidence that Respondent has improperly handle controlled substances in any way since 1990.

Regarding the material falsification of Respondent's renewal applications, the Acting Deputy Administrator agrees with Judge Bittner who noted that "Respondent acknowledged that he falsified his applications, he apparently regretted that conduct, and I believe that he will not repeat it."

Judge Bittner concluded "that the evidence that Respondent has remained drug free for more than eight years prior to the hearing and it remorseful about his prior behavior weighs in favor of continuing his registration." As a result, Judge Bittner recommended that Respondent's DEA registration be continued. The Acting Deputy Administrator agrees.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AN1015331, previously issued to Theodore Neujahr, D.V.M. be, and it hereby is, continued and renewed in Schedules II, IIN, III, IIIN, IV and V.

Dated: December 14, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33506 Filed 12–23–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the Provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "general Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

District of Columbia
DC990001 (MAR. 12, 1999)
Maryland
MD990010 (MAR. 12, 1999)

Volume III

None

Volume IV

Ohio
OH990002 (MAR. 12, 1999)

Volume V

Iowa
IA990004 (MAR. 12, 1999)

Volume VI

None

Volume VII

California
CA990001 (MAR. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 17th day of December 1999.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–33120 Filed 12–23–99; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0129(2000)]

Benzene Standard; Extension of the Office of Management of Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction in, and extension of, the information collection requirements contained in the Benzene Standard (29 CFR 1910.1028).

Request for comment

The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before February 25, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0129(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625,200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Nancy Dorris, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the Benzene Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Nancy Dorris or Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the Benzene Standard, contact OSHA on the Internet at *http://www.osha-slc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). In this regard, the information collection requirements in the Benzene Standard provides protection for employees from the adverse health effects associated with exposure to benzene.

II. Proposed Actions

OSHA proposes to extend the OMB approval for the collection of information (paperwork) contained in the Benzene Standard (29 CFR 1910.1028). The Benzene Standard requires employers to monitor employees' exposure to benzene, monitor employee health, and provide employees with information about their exposures and the health effects of exposure to benzene.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Benzene Standard (29 CFR 1910.1028).

Type of Review: Extension of currently approved information collection requirements.

Title: Benzene Standard.

OMB Number: 1218–0129.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 13,498.

Frequency: On occasion.

Total Responses: 335,944.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 4 hours to complete a referral medical examination.

Estimated Total Burden Hours: 125,195.

Estimated Cost (Operation and Maintenance): $8,179,921.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, D.C., on December 17, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–33480 Filed 12–23–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions throughout calendar year 2000, subject to availability of funds. Application procedures for qualified low-income credit unions are set forth in Part 705, NCUA Rules and Regulations.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Community Development Credit Unions, 1775 Duke Street, Alexandria, VA 22314–3428.

DATES: Applications may be submitted throughout calendar year 2000.

FOR FURTHER INFORMATION CONTACT: The Office of Community Development Credit Unions at the above address or telephone (703)518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to assist officially designated "low-income" credit unions in providing basic financial services to residents in their communities which result in increased income, ownership and employment. The Program makes available low interest loans and deposits in amounts up to $300,000 in the aggregate to qualified participating "low-income" credit unions. Program participation is limited to existing credit unions with an official "low-income" designation. Student credit unions are not eligible to participate in this program.

This notice is published pursuant to Part 705.9 of the NCUA Rules and Regulations which states that NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on December 16, 1999.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 99–33275 Filed 12–23–99; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company, Turkey Point Unit Nos. 3 and 4; Notice of Partial Denial of Amendment to Facility Operating Licenses and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by Florida Power and Light Co. (licensee), for an amendment to Facility Operating License Nos. DPR–31 and DPR–41 issued to the licensee for operation of the Turkey Point Plant, Unit Nos. 3 and 4, located in Dade County, Florida. Notice of Consideration of Issuance of these amendments was published in the **Federal Register** on June 2, 1999.

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to correct the TS Index, remove inconsistencies, and make administrative changes. The NRC staff has concluded that a portion of the licensee's request, related to the proposed deletion of dates for approved security plans, cannot be granted. The basis of the denial is detailed in the safety evaluation related to Amendment Nos. 203 and 197 dated December 20, 1999.

By January 26, 2000, the licensee may demand a hearing with respect to the partial denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Mitchell Ross, General Counsel, Florida Power and Light Company, P.O. Box 14000, Juno Beach, Florida, 33408–0420, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated April 26, 1999, (2) Amendment Nos. 203 and 197 to Facility Operating License Nos. DPR–31 and DPR–41, and (3) the Commission's related safety evaluation.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 20th day of December 1999.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33483 Filed 12–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 3); Order Approving Application Regarding Merger of New England Electric System and the National Grid Group PLC

I

Northeast Nuclear Energy Company is authorized to act as agent for the joint owners of the Millstone Nuclear Power Station, Unit 3 (Millstone 3), and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Facility Operating License No. NPF–49. New England Power Company (NEP), one of the joint

owners, holds a 12.2-percent [1] possessory interest in Millstone 3. The U.S. Nuclear Regulatory Commission issued Facility Operating License No. NPF–49 on January 31, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in New London County, on the southern coast of the State of Connecticut.

II

Under cover of a letter dated March 15, 1999, NEP, a subsidiary of New England Electric System (NEES), and National Grid Group plc (National Grid) submitted an application requesting approval of the transfer of control of the license, to the extent held by NEP in connection with its 12.2-percent ownership interest in Millstone 3, regarding a proposed change in the economic ownership of NEES. The application was supplemented May 20 and June 17, 1999 (collectively hereinafter "the application").

NEP is incorporated in the Commonwealth of Massachusetts. NEES owns all of NEP's common stock and 99.71-percent of its voting securities, with the other 0.29-percent being owned by the public in the form of preferred stock with common voting rights. The requested transfer approval relates to a proposed merger in which NEES is to be acquired by National Grid, a British company. NEES and National Grid entered into a merger agreement on December 11, 1998.

National Grid is a public limited company incorporated under the laws of England and Wales. It is the only transmission company in England and Wales and is an independent company created as a result of the privatization and restructuring of the British electric system in 1990. The application states that National Grid, with its United Kingdom assets and through interconnections with Scotland and France and through its acquisitions of interests in transmission systems in other nations, is the largest privately owned transmission company in the world.

National Grid has formed NGG Holdings LLC (NGG Holdings), a U.S. entity that is a limited liability company organized in Massachusetts and a wholly owned subsidiary of National Grid. NGG Holdings will merge with and into NEES, with NEES being the surviving entity from that transaction and maintaining its status as a U.S. entity subject to all applicable U.S. laws and regulations. The application states that, for tax purposes, immediately after the merger, NEES will be converted from a Massachusetts business trust into a corporation; specifically, NEES will be merged into a Massachusetts corporation to be named NEES Holdings, Inc., which will then be the surviving entity. The post-acquisition capital structure of NEES Holdings, Inc., will be identical to the capital structure of NEES, and NEES Holdings, Inc., will become a wholly owned indirect subsidiary of National Grid, with NEP being a subsidiary of NEES Holdings, Inc., and thus also becoming an indirect subsidiary of National Grid. The application also provides details regarding several companies that will be created for various business reasons as intermediates between National Grid and NEES Holdings, Inc., after the merger is approved, and all of these companies will be either directly or indirectly wholly owned by National Grid. National Grid will register as a public utility holding company under the Public Utility Holding Company Act of 1935.

Approval of the indirect license transfer that would result from the foregoing transactions was requested pursuant to 10 CFR 50.80. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on June 30, 1999 (64 FR 35191). Pursuant to such notice, joint Millstone 3 owners Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO) filed a timely intervention petition and hearing request. Following the submission of further pleadings by the applicants and petitioners, the Commission found that the petitioners had demonstrated standing and proffered two admissible issues (regarding foreign ownership and financial qualifications). The Commission set the case for hearing and issued a schedule for the proceeding. Subsequently, on November 4, 1999, the petitioners filed a notice of withdrawal of their petitions to intervene, and the petitioners and the applicants jointly moved for termination of the proceeding due to a settlement reached between the parties. The Commission granted the motion on November 19, 1999. In doing so, it noted that the staff, in its review of transfer applications, examines financial qualifications and foreign ownership issues, and should consider concerns specifically raised in the proceeding relating to those matters when it takes action on the transfer application. North Atlantic Energy Service Corp., *et al.* (Seabrook, Unit 1 and Millstone Station, Unit 3), CLI–99–28, 50 NRC _____, slip op. (Nov. 19, 1999). The staff has considered those concerns, which are addressed in the safety evaluation supporting this Order.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that the proposed merger of National Grid and NEES will not affect the qualifications of NEP as a holder of Facility Operating License NPF–49, and that the indirect transfer of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The foregoing findings are supported by a safety evaluation dated December 10, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the indirect license transfer referenced above is approved, subject to the following conditions:

(1) No later than the time the proposed merger with National Grid is consummated, NEP shall establish and make operational a Special Nuclear Committee, as described in the application, having the composition, authority, responsibilities, and obligations specified in the application, provided, however, the Special Nuclear Committee may also have exclusive authority on behalf of NEP over taking any action which is ordered by the NRC or any other agency or court of competent jurisdiction. No material changes with respect to the Special Nuclear Committee may be made without the prior written consent of the Director, Office of Nuclear Reactor Regulation. The foregoing provisions may be modified by the Commission upon application and for good cause shown.

(2) The Special Nuclear Committee shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of NEP with respect to the Millstone 3 license are at all times conducted in a manner consistent with the protection of the public health and safety and

[1] A pending merger of New England Electric System with Eastern Utilities Associates, which owns Montaup Electric Company, would result in an increase in NEP's ownership interest in Millstone 3 to approximately 16.2 percent.

common defense and security of the United States.

(3) NEP shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from NEP to its direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10 percent) of NEP's consolidated net utility plant, as recorded on its books of account.

(4) Should the proposed merger not be completed by December 30, 2000, this Order shall become null and void, provided, however, upon application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated March 15, 1999, and the supplements dated May 20 and June 17, 1999, and the safety evaluation dated December 10, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov*.

Dated at Rockville, Maryland, this 10th day of December 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33482 Filed 12–23–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Director, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on November 23, 1999 (64 FR 65738). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1, 1999, and October 31, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, is published each year.

Schedule A

No Schedule A authorities were established or revoked during October 1999.

Schedule B

No Schedule B authorities were established or revoked during October 1999.

Schedule C

The following Schedule C authorities were established during October 1999.

Broadcasting Board of Governors

Staff Director to the Chairman, Advisory Board for Cuba Broadcasting. Effective October 1, 1999.

Writer to the Director, Office of Policy, International Broadcasting Bureau. Effective October 1, 1999.

Confidential Assistant to the Director, Office of Cuba Broadcasting. Effective October 1, 1999.

Public Affairs Officer to the Director, Voice of America. Effective October 1, 1999.

Department of Agriculture

Administrative Assistant to the Administrator, Cooperative State Research, Education, and Extension Service. Effective October 6, 1999.

Associate Administrator to the Administrator, Agricultural Marketing Service. Effective October 7, 1999.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective October 7, 1999.

Special Assistant to the Administrator, Agricultural Research Service. Effective October 12, 1999.

Department of Commerce

Special Assistant to the Director, Office of Business Liaison. Effective October 1, 1999.

Senior Advisor to the Director, Minority Business Development Agency. Effective October 7, 1999.

Director of Communications to the Under Secretary for Technology. Effective October 22, 1999.

Confidential Assistant to the Director, Minority Business Development Agency. Effective October 28, 1999.

Department of Defense

Special Assistant to the Assistant Secretary of Defense, Strategy and Threat Reduction. Effective October 12, 1999.

Foreign Affairs Specialist to the Deputy Assistant Secretary for Peacekeeping and Humanitarian Affairs. Effective October 28, 1999.

Foreign Affairs Specialist to the Deputy Assistant Secretary for Inter-American Affairs. Effective October 29, 1999.

Department of Education

Confidential Assistant to the Special Assistant, Office of the Counselor to the Secretary. Effective October 14, 1999.

Confidential Assistant to the Director, Office of Public Affairs. Effective October 20, 1999.

Special Assistant to the Director, Office of Public Affairs. Effective October 20, 1999.

Special Assistant to the Assistant Secretary, Office for Civil Rights. Effective October 28, 1999.

Department of Energy

Staff Assistant to the Director of Scheduling and Advance. Effective October 12, 1999.

Special Assistant to the Deputy Secretary of Energy. Effective October 15, 1999.

Special Assistant to the Director, Office of Consumer Information. Effective October 20, 1999.

Special Assistant to the Principal Deputy Assistant Secretary. Effective October 20, 1999.

Daily Scheduler to the Director, Office of Scheduling and Advance. Effective October 27, 1999.

Special Assistant to the Assistant Secretary for International Affairs. Effective October 28, 1999.

Senior Policy Advisor to the Assistant Secretary for Defense Programs. Effective October 28, 1999.

Senior Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 28, 1999.

Department of Health and Human Services

Speechwriter to the Director of Speechwriting. Effective October 14, 1999.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective October 22, 1999.

Special Assistant to the Director, Office of Intergovernmental Affairs. Effective October 28, 1999.

Special Assistant to the Principal Deputy Assistant Secretary for Children and Families. Effective October 29, 1999.

Department of Housing and Urban Development

Deputy Director, Office of Executive Scheduling to the Director of Executive Scheduling. Effective October 22, 1999.

Special Assistant to the General Counsel. Effective October 28, 1999.

Special Assistant to the Assistant Secretary for Public Affairs. Effective October 28, 1999.

Department of the Interior

Staff Assistant to the Director, Office of Surface Mining. Effective October 20, 1999.

Special Assistant for Hawaiian Affairs to the Director, Office of Insular Affairs. Effective October 22, 1999.

Department of Justice

Special Assistant to the Chairman, U.S. Parole Commission. Effective October 22, 1999.

Department of Labor

Special Assistant to the Deputy Director of Labor. Effective October 6, 1999.

Chief of Staff to the Assistant Secretary, Employment Standards Administration. Effective October 22, 1999.

Department of State

Special Assistant to the Director, Bureau of Education and Cultural Affairs. Effective October 1, 1999.

Deputy Chief to the Chief, Cultural Programs Division, Bureau of Educational and Cultural Affairs. Effective October 1, 1999.

Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs. Effective October 1, 1999.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective October 1, 1999.

Senior Advisor to the Director, Bureau of Educational and Cultural Affairs. Effective October 1, 1999.

Program Officer to the Director, Bureau of Educational and Cultural Affairs. Effective October 1, 1999.

Senior Technology Advisor to the Director, Office of International Information Programs. Effective October 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective October 1, 1999.

Special Assistant to the Director, Office of International Information Programs. Effective October 1, 1999.

Chief, Voluntary Visitors to the Director, Bureau of Educational and Cultural Affairs. Effective October 1, 1999.

Special Projects Officer to the Director, Bureau of Educational and Cultural Affairs. Effective October 1, 1999.

Special Assistant to the Director, Office of International Information Programs. Effective October 1, 1999.

Senior Advisor to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective October 1, 1999.

Director, New York Foreign Press Center to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective October 1, 1999.

Senior Program Officer to the Director, New York Foreign Press Center. Effective October 1, 1999.

Special Assistant to the Special Assistant, New York Reception Area. Effective October 1, 1999.

Deputy Director to the Director, Intergovernmental Affairs, Bureau of Public Affairs. Effective October 1, 1999.

Special Assistant to the Director, Office of White House Liaison. Effective October 1, 1999.

Staff Assistant to the Senior Advisor, Office of the Under Secretary. Effective October 6, 1999.

Department of the Treasury

Senior Advisor to the Deputy Assistant Secretary, Government Financial Policy. Effective October 14, 1999.

Federal Communications Commission

Special Assistant for Policy and Communication to the Chief, Office of Public Affairs. Effective October 28, 1999.

General Services Administration

Senior Policy Advisor for Congressional and Intergovernmental Affairs to the Associate Administrator, Office of Congressional and Intergovernmental Affairs. Effective October 14, 1999.

Office of Management and Budget

Special Assistant for Policy and Legislation to the Associate Director for Legislative Affairs. Effective October 22, 1999.

Office of Personnel Management

Special Assistant to the Director. Effective October 1, 1999.

Office of the United States Trade Representative

Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative. Effective October 12, 1999.

Securities and Exchange Commission

Public Affairs Specialist to the Director, Office of Public Affairs, Policy Evaluation and Research. Effective October 22, 1999.

Small Business Administration

Special Assistant to the Assistant Administrator Office of International Trade. Effective October 28, 1999.

United States Tax Court

Secretary (Confidential Assistant) to the Judge. Effective October 20, 1999.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–33362 Filed 12–23–99; 8:45 am]

BILLING CODE 6325–01–F

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3212; Amendment #4]

State of North Carolina

In accordance with information received from the Federal Emergency Management Agency dated December 14, 1999, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster from December 14, 1999 to January 18, 2000.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 16, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 14, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–33489 Filed 12–23–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3230]

State of Oregon

Lincoln County and the contiguous counties of Benton, Lane, Polk, and Tillamook in the State of Oregon constitute a disaster area as a result of heavy rain on November 24–26, 1999 that caused flooding and landslides. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 14, 2000 and for economic injury until the close of business on Sept. 14, 2000 at the address listed below or other locally announced locations: U.S. Small Business

Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.500
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.750
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 323006 for physical damage and 9G1900 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 14, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–33488 Filed 12–23–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6.250 (6¼) percent for the January–March quarter of FY 2000.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 99–33487 Filed 12–23–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6684]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC advises the Coast Guard on the prevention of vessel collision, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

DATES: Application forms should reach us on or before February 18, 2000.

ADDRESSES: You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–6164; by faxing 202–267–4700; or by e-mail Jshort@comdt.uscg.mil. Send your application in written form to the above street address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Secretary of Transportation, via the Commandant of the Coast Guard, on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for seven positions that expire or become vacant in June 2000. To be eligible, you should have experience in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups of apply.

If you are selected, we may require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: December 15, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–33471 Filed 12–23–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–45]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified

requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 17, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9__,–NPRM_____,–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 20, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29745.
Petitioner: C&S Aviation, Limited.
Section of the FAR Affected: 14 CFR 135.25(b) and (c).
Description of Relief Sought: To permit C&S to operate under part 135 without having exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized by C&S's operations specifications.

Docket No.: 29742.
Petitioner: National Airlines, Inc.
Section of the FAR Affected: 14 CFR section V.B of appendix I of part 121.
Description of Relief Sought: To permit National employees who perform a safety-sensitive function and who are required to undergo a medical examination under 14 CFR part 67 to be excluded from periodic drug testing.

Dispositions of Petitions

Docket No.: 25233.
Petitioner: Alaska Air Carriers Association.
Section of the FAR Affected: 14 CFR 121.709(b)(3) and 135.443(b)(3).
Description of Relief Sought/Disposition: To permit certificated and appropriately trained pilots employed by an AACA-member airline to remove and reinstall passenger seats in aircraft type certificated for 10 to 19 passenger seats used by that AACA-member airline in operations conducted under part 121 or part 135 and permit those pilots to make required logbook entries. *Grant, 10/20/99, Exemption No. 7048.*

Docket No.: 27819.
Petitioner: Celsius Aerotech, Inc. formerly known as FFV Aerotech, Inc.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Celsius to establish and maintain a number of fixed locations within Celsius for the repair station Inspection Procedures Manual (IPM) and to assign IPM's to key individuals within departments. *Grant, 7/29/99, Exemption No. 6657B.*

Docket No.: 29761.
Petitioner: Champion Air.
Section of the FAR Affected: 14 CFR 121.344(b)(3).
Description of Relief Sought/Disposition: To permit Champion to operate two Boeing 727–200 (B–727–200) airplanes (Registration Nos. N292AS and N295AS; Serial Nos. 21458 and 22147, respectively) without installing, in each airplane, the required digital flight data recorder (DFDR) upgrade until 90 days after the completion of the first heavy maintenance check after August 18, 1999, for each airplane. The two B–727–200 airplanes are scheduled to complete heavy maintenance checks on September 26, 1999, and October 1, 1999, respectively. *Grant, 10/1/99, Exemption No. 7014.*

Docket No.: 29790.
Petitioner: Red Baron Stearman Squadron.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/Disposition: To allow Red Baron to conduct a local sightseeing flight for a charity auction on October 6, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/6/99, Exemption No. 7025.*

Docket No.: 29758.
Petitioner: Taunton Airport Association, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/Disposition: To allow the TAA to conduct local sightseeing flights at the Taunton Municipal Airport for the seventh annual TAA charity fundraising event on October 16, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/7/99, Exemption No. 7030.*

Docket No.: 29807.
Petitioner: Denmark Volunteer Fire Department and Fryeburg Aviation.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/Disposition: To allow Fryeburg Aviation to conduct local sightseeing flights at the Eastern Slope Regional Airport for the annual Denmark Volunteer Fire Department charity airlift on October 16, 1999, with a raindate of October 17, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/15/99, Exemption No. 7039.*

Docket No.: 29656.
Petitioner: Marvin S. Weinreb.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/Disposition: To allow Marvin S. Weinreb to conduct local sightseeing flights to raise funds for tax-exempt charities in his local area, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/14/99, Exemption No. 7043.*

Docket No.: 29668.
Petitioner: Jet Solutions, L.L.C.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Jet Solutions to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 10/14/99, Exemption No. 7045.*

Docket No.: 28289.
Petitioner: Carver Aero, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To allow Carver to continue to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft. *Grant, 10/14/99, Exemption No. 6229B.*

Docket No.: 29611.
Petitioner: Kent State University Flight Operations.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/ Disposition: To allow the Kent State University Flying Club and the Kent State University Intercollegiate Flight Team to conduct local sightseeing flights for Homecoming activities on October 16, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/15/99, Exemption No. 7038.*

Docket No.: 29414.
Petitioner: North American Airlines.
Section of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit pilots of North American Airlines (NAA) to act as pilots in supplemental operations conducted under part 121 after reaching their 60th birthday. *Denial, 9/3/99, Exemption No. 7037.*

Docket No.: 29748.
Petitioner: Gortner Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/ Disposition: To allow GPA to conduct local sightseeing flights at Greater Gortner Airport for the Greater Gortner Airport Fly-In and Open House on October 17, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/7/99, Exemption No. 7031.*

Docket No.: 28918.
Petitioner: Cherry-Air, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Cherry-Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft. *Grant, 10/8/99, Exemption No. 7036.*

Docket No.: 29778
Petitioner: Raytheon Systems Company.
Section of the FAR Affected: 14 CFR 25.815.
Description of Relief Sought/ Disposition: To exempt Raytheon from 25.815 to the extent necessary to allow a movement of passenger seats into the required aisle space under certain circumstances on the Boeing Model 737–700 IGW airplane defined in the Raytheon DAS Project P–581. *Partial Grant, 10/7/99, Exemption No. 7028.*

Docket No.: 29655.
Petitioner: Rolls-Royce plc.
Section of the FAR Affected: 14 CFR 34.21(d)(1)(iv).
Description of Relief Sought/ Disposition: To allow Rolls-Royce to manufacture up to 150 RB211–535E4/ E4B engines with current combustor configurations after the effective compliance date of December 31, 1999, for reduced NO_X standards. *Grant, 10/15/99, Exemption No. 7042.*

[FR Doc. 99–33402 Filed 12–23–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. OMCS–99–6579]

Hours-of-Service of Drivers; Exemption Application from Van Wyk Freight Lines, Inc.

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of application for exemption and proposal to deny exemption; request for comments.

SUMMARY: The OMCS is announcing its proposal to deny the application of Van Wyk Freight Lines, Inc. (Van Wyk) for an exemption from the records of duty status (log book) provisions of the hours-of-service regulations. Van Wyk indicated that its drivers meet all of the maximum driving time limitations in the Federal Motor Carrier Safety Regulations (FMCSRs) and that it satisfies three of the five conditions for using the OMCS' 100 air-mile radius driver exception to the requirement for log books. Van Wyk's drivers exceed the 100 air-mile distance, and the 12 hours on-duty limitations in the exception. Van Wyk believes its computerized payroll records, and compliance with the remaining conditions listed in the 100 air-mile radius driver exception would achieve a level of safety comparable to that provided under the exception. The OMCS proposes to deny the exemption because Van Wyk did not explain how it would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the 100-air mile radius exception to the log book requirements. Also, Van Wyk did not describe the impacts (*e.g.*, inability to test innovative safety management control systems, *etc.*) it could experience if the exemption is not granted by the OMCS. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before January 26, 2000.

ADDRESSES: Submit written, signed comments with the docket number appearing at the top of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009, Office of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590–0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that are submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590-0001, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the

Office of Motor Carriers within the Federal Highway Administration" (Pub. L. 106–69, October 9, 1999, 113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier Safety while part of the FHWA will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs for a person(s) seeking regulatory relief from those requirements. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the exemption.

Section 4007 requires the OMCS to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the OMCS must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures used to process the requests for waivers and applications for exemptions.

As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the OMCS. On October 29, 1999 (64 FR 58355), the OMCS issued a final rule amending the heading for chapter III of title 49 of the Code of Federal Regulations to reflect the organizational changes.

Van Wyk's Application for an Exemption

Van Wyk applied for an exemption from 49 CFR 395.8, which provides requirements concerning drivers' records of duty status or "log books." A copy of the application is in the docket identified at the beginning of this notice. Generally, motor carriers must require each of their CMV drivers to record his/her duty status for each 24-hour period using the methods prescribed in the regulations. The regulation provides motor carriers with two options: manually recording the duty status in a log book, or using an automatic on-board recording device. Section 395.1(e) of the hours-of-service regulations provides an exemption to the requirements of § 395.8 for certain drivers operating CMVs within a 100 air-mile radius of the normal work reporting location. The 100 air-mile radius exemption is applicable if:

(1) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(2) At least 8 consecutive hours off-duty separate each 12 hours on duty;

(3) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off-duty; and,

(4) The motor carrier that employs the driver maintains and retains for a period of six months accurate and true time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on-duty each day;

(iii) The time the driver is released from duty each day; and,

(iv) The total time for the preceding seven days in accordance with § 385.8(j)(2) [1] for drivers used for the first time or intermittently.

Van Wyk believes that its motor carrier operations meet most of the conditions in the 100 air-mile radius exception and that the differences—Van Wyk's drivers exceed the 100 air-mile distance, and the drivers sometimes remain on duty for 15 consecutive hours—should not preclude the company from obtaining relief from the log book requirement. Van Wyk indicated that its drivers normally work a 10-hour day, take at least an 8-hour break between each tour of duty; return to the same point of origin at the end of each shift; do not exceed 10 hours of driving time on any given shift, and do not work on Saturday and Sunday. The company keeps track of drivers' hours through an electronic time clock that indicates the start time, number of hours on-duty, and the time the driver gets off work each day. The company can also show the last 12 months of "activity" through computerized payroll records.

Basis for Proposal to Deny the Exemption

The OMCS has carefully reviewed Van Wyk's application and does not believe that it would be appropriate to grant an exemption solely on the basis that the applicant meets most of the conditions of an existing exception developed through notice-and-comment rulemaking procedures.

On April 3, 1980 (45 FR 22042), as part of the FHWA's effort to reduce the paperwork burden on the drivers and motor carriers while retaining adequate controls over the hours-of-service, the agency published the final rule creating an exception to the log book requirements for drivers who operate commercial motor vehicles within a 100 air-mile radius of the place where the driver reports for work. The preamble to the final rule included a discussion of commenters' concerns about various aspects of the rulemaking. The FHWA received 112 responses to the notice of

[1] Section 395.8(j)(2) requires that motor carriers, when using a driver for the first time or intermittently, must obtain from the driver a signed statement giving the total time on duty during the immediately preceding seven days and the time at which the driver was last relieved from duty prior to beginning work for the motor carriers.

proposed rulemaking published on October 13, 1977 (42 FR 55109). The agency indicated that eight respondents opposed the proposal as written. Fifty-eight respondents supported the proposal as written. Thirty respondents submitted conditionally favorable responses predicated on variations of one or more elements of the proposal and 16 comments were considered beyond the scope of the proposal. The agency stated:

Those respondents who submitted conditionally favorable responses objected to particular elements that would require:

1. The [driver] to prepare a log every day if the driver operates beyond the 100-mile radius more than one day per month;

2. The driver to return (within 12 hours) to the place the driver reported for work; and,

3. Time records related to those exempt operations to be retained at the carrier's principal place of business unless permission is obtained to retain the records at another location.

It is agreed that the one day per month limitation may be overly restrictive. The requirement that the motor carrier prepare and retain true and accurate time records, coupled with the 12-hour limitation, ensures that adequate records are available to determine driver compliance with the hours-of-service regulations.

Therefore, the proposed exemption is being modified to require log preparation on a daily basis by drivers who operate beyond the 100-mile radius more than one time in any 7 consecutive day period. If a driver operates beyond the 100-mile radius more than one time in any 7 consecutive days, a pattern of operation would be established that would require preparation of a log every day. If a motor carrier demonstrates that the driver will no longer be required to operate beyond the 100-mile radius, the exemption could then be reinstated for that particular driver. This action is in harmony with the present interpretation covering operations beyond the 50-mile radius (42 FR 60078).[2]

Many of the commenters who favored the proposal, in general, objected to the 12-hour limitation. Those commenters indicated that there are certain places such as piers, oil refineries, steel mills, etc., where waiting times of 6–7 hours occur frequently and a driver would not exceed the 10-hour driving rule, but because of the delays could exceed the 12-hour limit proposed in the 100-mile exemption rule and on those days not be entitled to the exemption. On the other hand, other commenters pointed out that the 12-hour limitation was fair considering the benefits to be gained by not having to prepare a log.

Another argument raised by certain commenters against the 12-hour limit was that some drivers may now be operating within the 50-mile radius exemption who, under the 100-mile radius exemption, would now have to prepare a log. However, since FHWA is expanding the area of operation four-fold, a limitation is necessary to ensure that the hours-of-service are not violated. This limitation applies only if one wants to take advantage of the 100-mile log exemption. The exemption does not alter or should not be confused with the present hours-of-service limitations set forth in section 395.3 of the Federal Motor Carrier Safety Regulations (FMCSRs). It should be clearly understood that once a driver exceeds that 12-hour limitation, the 100-mile exemption would no longer be applicable for that day and the hours-of-service for that day would have to be recorded on a driver's log. [45 FR 22042, 22043; April 3, 1980]

The preamble to the 1980 final rule thus demonstrates that the FHWA fully considered industry concerns about the time limit for returning to the work-reporting location. Van Wyk has not provided any new information to support increasing either the time or the distance restrictions in the current exception. Expanding both would enable Van Wyk to dispatch drivers a distance of almost 300 statute miles from the work reporting location (if the driver averages approximately 60 miles per hour for 5 hours), perform non-driving tasks for almost 5 hours, and then return to the work-reporting location with no readily apparent means of ensuring that the driver does not exceed 10 hours driving time. The drivers could operate almost anywhere in a geographic area of approximately 282,600 square miles (using a radius (R) of 300 miles from the work reporting location, and the formula Area = 3.14 X (R)2) and not be required to present a log book to their supervisors documenting their total driving time, or to enforcement officials in any of the jurisdictions in which the vehicle operates. By contrast, the current exemption limits the geographic area to 41,527 square miles (using a radius of 115 statute miles[3] and the previous formula) and requires the driver to return to the terminal within 12 hours.

The OMCS believes that allowing Van Wyk to operate its vehicles in an area of approximately 282,600 square miles without requiring log books would make it difficult both for the motor carrier and enforcement officials to ensure compliance with the maximum driving time regulations. Since Van Wyk has requested that its drivers be allowed up to 15 hours to return to the work reporting location, enforcement officials who encounter Van Wyk drivers would have difficulty determining whether the driver has exceeded the 10-hour rule. The driver would not have a log book so the inspector would not be able to determine the time the driver started working, the total amount of driving time before the driver was stopped, the amount of time the driver spent performing non-driving tasks, or the time the driver was supposed to return to the work reporting location. If there were proof of the time the driver started working, the enforcement official would still be unable to determine the total driving time, and time spent on non-driving tasks.

Generally, if the enforcement official contacted the motor carrier, it is unlikely that the carrier could state with certainty the driver's total driving time for the day and the time spent on non-driving tasks. This is especially the case if the carrier had no practicable means of verifying the driver's whereabouts at any given time during the day. The increase in the 12-hour return-to-terminal time limit would provide drivers with three additional hours away from the work reporting location with no apparent safeguards to ensure that the driver adhered to the driving time limitations. The current rule, by contrast, requires that the driver return to the work reporting location within 12 hours. This means the 10-hour rule could be exceeded by substantially less than two hours, considering a 30-minute lunch break for the driver, loading and unloading time, etc.

Irrespective of Van Wyk's intentions, the OMCS does not believe that a motor carrier should be allowed to put itself into a situation in which it could not effectively monitor its drivers' compliance with the maximum driving time restriction. Van Wyk has not indicated how, or even whether, it intends to carefully review drivers' assignments (e.g., look at the specific

[2] On November 26, 1982 (47 FR 53383) the FHWA published a final rule revising the requirements for recording a driver's duty status. Section 395.9 concerning drivers' multi-day logs, which included the log preparation requirements for drivers who operate beyond the 100-mile radius more than once in any 7 consecutive day period, was removed and reserved. The FHWA has since published regulatory guidance about drivers who fail to meet the provisions of the 100 air-mile radius exemption. (62 FR 16370, 16421; April 4, 1997).

[3] The term "air mile" is internationally defined as a "nautical mile" which is equivalent to 6,076 feet or 1,852 meters. Therefore, 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers (62 FR 16370, 16421; April 4, 1997).

locations the driver is dispatched to during the work day, the amount of time required to travel from location to location, the amount of time spent at each location, etc.) to supplement the electronic time records, which typically would only prove when the driver reported for work and when the driver was released from work. Therefore, the OMCS does not believe it is likely that Van Wyk could ensure a level of safety that is equivalent to, or greater than, the level of safety provided by complying with the hours-of-service regulations.

On November 5, 1996 (61 FR 57252), the FHWA published an advance notice of proposed rulemaking (ANPRM) on all aspects of the hours-of-service regulations. The agency indicated that it was nearing the completion of several research projects and was seeking the results of other relevant research, including research, operational tests, or pilot regulatory programs conducted anywhere in the world, that could be used in developing a revised regulatory scheme for CMV drivers' hours-of-service. The OMCS has reviewed all the research reports submitted by commenters to the rulemaking docket, and scientific information obtained through other sources, and is not aware of any data that would support creating a regulatory relief program that, if abused, would enable a person to drive a CMV up to 13 hours, and perhaps even longer. Copies of all known research reports, as well as all comments submitted in response to the ANRPM, are available in FHWA Docket No. FHWA–97–2350.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the OMCS is requesting public comment from all interested persons on the exemption application from Van Wyk. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the OMCS may deny the exemption at any time after the close of the comment period. In addition to late comments, the OMCS will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: December 21, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–33474 Filed 12–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 192X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Anderson and Woodford Counties, KY

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost 0.7–LL, at Lawrenceburg, and milepost 3.5–LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The line traverses United States Postal Service Zip Codes 40342 and 40383.

NSR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 26, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 6, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 18, 2000, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 3, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 27, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 16, 1999.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33183 Filed 12–23–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission; Meeting

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the "Commission") shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation, the World Trade Organization, and the Bank for International Settlements.

DATES: The seventh meeting of the Advisory Commission will be held on January 3, 2000, beginning at 2:00 p.m. and ending tentatively at 6:30 p.m. in the U.S. Capitol, House of Representatives side, room HC5. The eighth meeting of the Advisory Commission will be held on January 4, 2000, beginning at 9:30 a.m. and ending tentatively at 3:00 p.m. The meeting will be held in the U.S. Capitol, House of Representatives side, room HC6.

FOR FURTHER INFORMATION CONTACT:

Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

The Commission members will focus on exchange rate policy, income inequality and debt forgiveness.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the seventh and eighth meetings, 16 copies of any written material should be provided to the Designated Federal Official no later than December 28, 1999.

Dated: December 17, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–33425 Filed 12–23–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission; Meeting

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the "Commission") shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The ninth meeting of the Advisory Commission will be held on January 28, 2000, beginning at 9:00 a.m. and ending tentatively at 3:00 p.m. in the U.S. Capitol, House of Representatives side, room HC6.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.C., 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

The Commission members will focus on discussions about Russia and on corruption in a global context.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business if finished. Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the ninth meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than January 11, 2000.

Dated: December 27, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–33426 Filed 12–23–99 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Wage and Investment Taxpayer Prefiling and Filing Burden Study

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Wage and Investment Taxpayer Prefiling and Filing Burden Study.

DATES: Written comments should be received on or before February 25, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Wage and Investment Taxpayer Prefiling and Filing Burden Study.

OMB Number: To be assigned later.

Abstract: This study is designed to collect the amount of time and money incurred by Wage and Investment taxpayers as a result of the Federal income tax laws and regulations. This information will be a valuable tool in the IRS's ongoing effort to improve customer service, as well as for policy makers to understand the full effect of tax law changes. In particular, it will help the IRS understand the burdens placed on its customers by the Federal tax system its laws, its administration, and changes to those factors. Also, the data collected from this study will be used as an input to the development of a micro-simulation model that measures taxpayer burden.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 8,300.

Estimated Average Time Per Respondent: 20 minutes (for completed interviews).

Estimated Total Annual Burden Hours: 2,230.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–33516 Filed 12–23–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–LTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–LTC, Long-term Care and Accelerated Death Benefits.

DATES: Written comments should be received on or before February 25, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: 1099–LTC.

Abstract: Under the terms of Internal Revenue Code sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Code section 6050Q requires all such amounts to be reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Responses: 71,590.

Estimated Time Per Response: 11 min.

Estimated Total Annual Burden Hours: 13,602.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Reqest for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–33517 Filed 12–23–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–74–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–74–93, (TD 8623), Substantiation Requirement for Certain Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before February 25, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Substantiation Requirement for Certain Contributions.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 (Final).

Abstract: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include de minimis goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Time Per Respondent: 3 hours, 13 minutes.

Estimated Total Annual Burden Hours: 51,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–33518 Filed 12–23–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4029.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

DATES: Written comments should be received on or before February 25, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

OMB Number: 1545–0064.

Form Number: 4029.

Abstract: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Current Actions: There are no changes being made to Form 4029 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,754.

Estimated Time Per Respondent: 1 hr., 4 min.

Estimated Total Annual Burden Hours: 4,017.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–33519 Filed 12–23–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–35–85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–35–85 (TD 8219), Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984 (§ 1.402(a)–20).

DATES: Written comments should be received on or before February 25, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984.

OMB Number: 1545–0928.

Regulation Project Number: EE–35–85.

Abstract: The notices referred to in this Treasury Decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their right under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 750,000.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 385,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–33520 Filed 12–23–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–941–86; INTL–656–87; INTL–704–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–941–86; INTL–656–87; and INTL–704–87, Treatment of Shareholders of Certain Passive Foreign Investment Companies (§ 1.1291–1, 1.1291–2, 1.1291–3, 1.1291–6, and 1.1291–8).

DATES: Written comments should be received on or before February 25, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

OMB Number: 1545–1304.

Regulation Project Number: INTL–941–86; INTL–656–87; and INTL–704–87.

Abstract: This regulation concerns the taxation of shareholders of certain passive foreign investment companies (PFICs) upon payment of distributions by such companies or upon disposition of the stock of such companies. The reporting requirements affect U.S. persons that are direct and indirect shareholders of PFICs. The information is required by the IRS to identify PFICs and their shareholders, administer shareholder elections, verify amounts reported, and track transfers of stock of certain PFICs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–33521 Filed 12–23–99; 8:45 am]

BILLING CODE 4830–01–U

OL

64

SS

2
4
7

DE

27

999

ML

federal register

Monday
December 27, 1999

Part II

Department of Education

Privacy Act of 1974; Systems of Records and Corrections; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of the Chief Information Officer, Department of Education.

ACTION: Notice of new and altered systems of records and corrections.

SUMMARY: The Chief Information Officer for the Department of Education publishes this notice of new and altered systems of records and corrections.

DATES: We must receive your comments on the proposed routine uses for the systems of records included in this notice on or before January 26, 2000. The Department filed a report describing the new and altered systems of records covered by this notice with the Chair of the Committee on Governmental Affairs of the Senate, the Chair of the Committee on Government Reform and Oversight of the House, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 17, 1999. The changes made in this notice will become effective after the 30-day period for OMB review of the systems expires on January 16, 2000; unless OMB gives specific notice within the 30 days that the changes are not approved for implementation or requests an additional 10 days for its review. The routine uses become effective 30 days after publication unless they need to be changed as a result of public comment or OMB review. The Department will publish any changes to the routine uses.

ADDRESSES: Address all comments about the proposed routine uses to Chiquitta Thomas, Office of Chief Information Officer, Information Management Group, U.S. Department of Education, room 5624 Regional Office Building, 400 Maryland Avenue, SW., Washington, DC 20202–4580. Telephone: 202–708–9265. If you prefer to send through the Internet, use the following address: Comments@ed.gov

You must include the term "System of Records" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 5624, Regional Office Building, Seventh and D Streets, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Elizabeth Mackenzie, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW, room 6E103, Washington, DC 20202. Telephone: 202–401–6700. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Introduction

The Act (5 U.S.C. 552a)(e)(4)) requires the Department to publish in the **Federal Register** this notice of new or revised systems of records managed by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, applies to information about individuals that contain individually identifiable information and that may be retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record" and the system, whether manual or computer-based, is called a "system of records." The Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new or "altered" system of records. A system is considered altered whenever certain fundamental changes are made to the system such as changing from a manual to automated system of records or whenever certain disclosures, called "routine uses," are changed in the system of records.

New Systems of Records

The following systems of records have been identified as new:

18–06–04 Satellite Event Participant Registration System
18–11–10 Title IV Wide Area Network (Title IV WAN)
18–11–11 Office of the Student Loan Ombudsman Records
18–11–12 The Department of Education (ED) PIN (Personal Identification Number) Registration System
18–12–05 Graduate Assistance in Areas of National Need (GAANN) Program Assessment System
18–13–05 Education Publications Center (ED PUBS)

Altered Systems of Records

Although they do not describe new systems of records, three additional system notices are included in this **Federal Register** notice. The Department has made a significant number of revisions to these notices. Most of the revisions are technical in nature; for example, the current name and address of the office responsible for each system has been updated. Additionally, every effort has been made to update the notices to make them more "reader friendly," dispensing with traditional bureaucratic language. In particular, the Department has revised the descriptions of each system's routine uses. The intent is not to substantively change any of the routine uses but to make them clearer and consistent. However, because of the risk that these revisions would be viewed as substantive changes, the Chief Information Officer decided to treat these three systems as altered systems of records.

A list of these updated system notices follows:

18–05–03 Federal Personnel Payroll System
18–06–03 Presidential Scholars Files of Selected Participants
18–11–06 National Student Loan Data System (NSLDS)

Clarifications of the June 4, 1999 Publication

In the June 4, 1999 edition of the **Federal Register**, the Department published a Notice of New, Amended, Altered and Deleted System of Records. The Department determined that the June 4, 1999 publication included two system notices containing inaccuracies: Freedom of Information Act and Privacy Act Case Files (18–04–01) and Freedom of Information Act and Privacy Act Tracking System (18–04–02). In an effort to avoid any confusion that these errors may cause, the Department is republishing these two notices in the **Federal Register**. As several routine uses have been added to these notices,

the Department is treating these system notices as "altered" systems of records.

Finally, the Department is also publishing in the **Federal Register** several corrections to the June 4, 1999 publication. These corrections will clarify several ambiguities in the June publication.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov.fedreg.htm http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: December 17, 1999.

Craig B. Luigart,

Chief Information Officer.

For the reasons discussed in the preamble, the Chief Information Officer of the U.S. Department of Education publishes notice of the following systems of records managed by the Department:

18–04–01

SYSTEM NAME:

Freedom of Information Act and Privacy Act Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Information Management Group, Office of the Chief Information Officer, U.S. Department of Education, Seventh and D Streets, Room 5624, ROB–3, Washington, DC 20202–4651. See the Appendix at the end of this notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have submitted requests for information under the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), as well as individuals whose records have been the subject of a FOIA or Privacy Act request.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests made by individuals pursuant to the Freedom of Information Act and the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Freedom of Information Act, 5 U.S.C. 552, as amended; The Privacy Act of 1974, 5 U.S.C. 552a, as amended.

PURPOSE(S):

These records are maintained to process individuals' requests made under the provisions of the Freedom of Information Act and the Privacy Act. The records are also used by the Department of Education (the Department) to prepare its reports to OMB and Congress as required by the Freedom of Information Act and the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or

other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(8) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES: Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and in word processing software.

RETRIEVABILITY:

Records are retrieved by the name of the individual.

SAFEGUARDS:

Records are stored in locked metal filing cabinets or in a secured room, with access limited to personnel whose duties require access. All physical access to the Department's sites, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for an employee or visitor badge.

RETENTION AND DISPOSAL:

Records relating to the agency's implementation of the FOIA and the Privacy Act are disposed of in accordance with the General Records Schedule (GRS) 14 issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Officer, Room 5624, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–4651. Privacy Act Officer, Room 5624, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–4651. See the Appendix at the end of this notice for additional system managers.

NOTIFICATION PROCEDURE:

If you wish to inquire whether a record exists regarding you in this system, you should contact the appropriate system manager at the appropriate office or region where the original FOIA or Privacy Act requests were sent, or from where the response was received. You must provide your name, date of the request, name of organization, and subject matter. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to request access to your records, you should contact the appropriate system manager at the appropriate office or region where the original FOIA or Privacy Act requests were sent, or from where the response was received. You must comply with the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to request an amendment to your records, you should contact the appropriate system manager at the appropriate office or region where the original FOIA or Privacy Act requests were sent, or from where the response was received. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual to whom the information applies, officials of the Department, and official Department documents.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Department has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5),(6), and (7). During the course of processing a Freedom of Information Act or Privacy Act request, exempt materials from those other systems may be included in the Freedom of Information Act and Privacy Act Case Files; these materials maintain their exempt status.

Appendix to 18–04–01

Additional System Locations

Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW, room 7C122, Washington, DC 20202.

Office of the Deputy Secretary, U.S. Department of Education, 400 Maryland Avenue, SW, room 7W310, Washington, DC 20202.

Office of the Under Secretary, U.S. Department of Education, 400 Maryland Avenue, SW, room 6W300, Washington, DC 20202.

Office of Postsecondary Education, U.S. Department of Education, Seventh and D Streets, SW, room 4913, ROB–3, Washington, DC 20202.

Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW, room 4E223, Washington, DC 20202.

Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, room 602E, Capitol Place, Washington, DC 20208.

Office of Special Education and Rehabilitative Services, U.S. Department of Education, 330 C Street, SW, Room 3613, Switzer Building, Washington, DC 20202.

Office of Vocational and Adult Education, U.S. Department of Education, 330 C Street, SW, room 4064, Switzer Building, Washington, DC 20202.

Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW, room 6C142, Washington, DC 20202.

Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW, room 2W211, Washington, DC 20202.

Office of Inspector General, U.S. Department of Education, 330 C Street, SW, room 4200, Switzer Building, Washington, DC 20202.

Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W341, Washington, DC 20202.

Office of Public Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, room 7E201, Washington, DC 20202.

Office of Student Financial Assistance, U.S. Department of Education, Seventh and D Streets, SW, room 4913, ROB–3, Washington, DC 20202.

Office for Civil Rights, U.S. Department of Education, 330 C Street, SW, room 5424, Switzer Building, Washington, DC 20202.

Office of Bilingual Education and Minority Affairs, U.S. Department of Education, 330 C Street, SW, room 5616, Switzer Building, Washington, DC 20202.

Office of Educational Research and Improvement, U.S. Department of Education, 400 Maryland Avenue, SW, room 4W332, Washington, DC 20202.

Office of Legislation and Congressional Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, room 7E307, Washington, DC 20202.

Region I: U.S. Department of Education, John W. McCormack P.O. and Courthouse, Room 540, Post Office Square, Boston, MA 02109–4557.

Region II: U.S. Department of Education, 75 Park Place, 12th Floor, New York, NY 10278–0043.

Region III: U.S. Department of Education, 3535 Market Street, Room 16350, Philadelphia, PA 19104–3398.

Region IV: U.S. Department of Education, 61 Forsyth Street, SW., Suite 19T40, Atlanta, GA 30303.

Region V: U.S. Department of Education, 111 N. Canal Street, Suite 1094, Chicago, IL 60606.

Region VI: U.S. Department of Education, 1200 Main Tower Building, #2260, Dallas, TX 75202–4309.

Region VII: U.S. Department of Education, 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, MO 64153–1367.

Region VIII: U.S. Department of Education, Federal Office Building, 1244 Speer Blvd., Room 300, Denver, CO 80204–3582.

Region IX: U.S. Department of Education, 50 United Nations Plaza, San Francisco, CA 94102.

Region X: U.S Department of Education, room 3362, Mail Code 10–9060, 915 2nd Avenue, Seattle, WA 98174–1099.

Metro Region: U.S. Department of Education, Office for Civil Rights, 1100 Pennsylvania Avenue, NW., Washington, DC 20044.

Additional System Managers

Region I: Deputy Regional Director, U.S. Department of Education, John W. McCormack PO and Courthouse, Room 540, Post Office Square, Boston, MA 02105–4557.

Region II: Secretary's Regional Representative, U.S. Department of Education, 75 Park Place, 12th Floor, New York, NY 10278–0043.

Region III: Assistant to the Secretary's Regional Representative, U.S. Department of Education, 3535 Market Street, Room 16350, Philadelphia, PA 19104–3398.

Region IV: Deputy Secretary's Regional Representative, U.S. Department of Education, 61 Forsyth Street, SW., Suite 19T40, Atlanta, GA 30303.

Region V: Secretary's Regional Representative , U.S. Department of Education, 111 N. Canal Street, Suite 1094, Chicago, IL 60606.

Region VI: Administrative Officer, U.S. Department of Education, 1200 Main Tower Building, #2260, Dallas, TX 75202–4309.

Region VII: Secretary's Regional Representative, U.S. Department of Education, 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, MO 64153–1367.

Region VIII: Secretary's Regional Representative, U.S. Department of Education, Federal Office Building, 1244 Speer Blvd., room 300, Denver, CO 80204–3582.

Region IX: Secretary's Regional Representative, U.S. Department of Education, 50 United Nations Plaza, San Francisco, CA 94102.

Region X: Secretary's Regional Representative, U.S. Department of Education, room 3362, Mail Code 10–9060, 915 2nd Avenue, Seattle, WA 98174–1099.

Metro Region: Program Specialist, Office for Civil Rights, U.S. Department of Education, 1100 Pennsylvania Avenue, NW., Washington, DC 20044.

18–04–02

SYSTEM NAME:

Freedom of Information Act and Privacy Act Tracking System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Chief Information Officer, Information Management Group, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 5624, Washington, DC 20202–4651. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who have submitted requests made under the provisions of the Freedom of Information Act and under the Privacy Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of names, addresses, dates of request and responses, descriptions or identifications of records requested, amount of fees paid, if any; payment delinquencies, if any; final determinations of appeals or denials and summary of log. Copies of requested records are not maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Freedom of Information Act, 5 U.S.C. 552, as amended; The Privacy Act of 1974, 5 U.S.C. 552a, as amended; and 5 U.S.C. 301.

PURPOSE(S):

This system is used to document and track the status of requests made under both the Freedom of Information Act and the Privacy Act. This system is also used to generate the annual report to the Department of Justice (DOJ) as required by the Freedom of Information Act and the biennial report to the Office of Management and Budget (OMB) and Congress as required by the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(7) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not Applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on electronic media.

RETRIEVABILITY:

Records are retrieved by the name of the individual and the control tracking number.

SAFEGUARDS:

All physical access to the Department site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need to know" basis, and controls individual users" ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature, and purpose of request and name and address of requester are destroyed by erasure 6 years after the date of the last entry. (GRS 14, Item 13)

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Officer, Room 5624, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–4651. Privacy Act Officer, Room 5624, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–4651. See the Appendix at the end of this notice for additional system managers.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the appropriate office or region where the original FOIA or Privacy Act requests were sent, or from where the response was received. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records,

contact the system manager at the appropriate office or region where the original FOIA or Privacy Act requests were sent, or from where the response was received. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager at the appropriate office or region where the original FOIA or Privacy Act requests were sent, or from where the response was received. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual who submitted the request, officials of the Department, and official Department documents.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–04–02

Additional System Locations

Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW, room 7C122, Washington, DC 20202.

Office of the Deputy Secretary, U.S. Department of Education, 400 Maryland Avenue, SW, room 7W310, Washington, DC 20202.

Office of the Under Secretary, U.S. Department of Education, 400 Maryland Avenue, SW, room 6W300, Washington, DC 20202.

Office of Postsecondary Education, U.S. Department of Education, Seventh and D Streets, SW, room 4913, ROB–3, Washington, DC 20202.

Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW, room 4E223, Washington, DC 20202.

Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, room 602E, Capitol Place, Washington, DC 20208.

Office of Special Education and Rehabilitative Services, U.S. Department of Education, 330 C Street, SW, Room 3613, Switzer Building, Washington, DC 20202.

Office of Vocational and Adult Education, U.S. Department of Education, 330 C Street, SW, room 4064, Switzer Building, Washington, DC 20202.

Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW, room 6C142, Washington, DC 20202.

Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW, room 2W211, Washington, DC 20202.

Office of Inspector General, U.S. Department of Education, 330 C Street, SW, room 4200, Switzer Building, Washington, DC 20202.

Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W341, Washington, DC 20202.

Office of Public Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, room 7E201, Washington, DC 20202.

Office of Student Financial Assistance, U.S. Department of Education, Seventh and D Streets, SW, room 4913, ROB–3, Washington, DC 20202.

Office for Civil Rights, U.S. Department of Education, 330 C Street, SW, room 5424, Switzer Building, Washington, DC 20202.

Office of Bilingual Education and Minority Affairs, U.S. Department of Education, 330 C Street, SW, room 5616, Switzer Building, Washington, DC 20202.

Office of Educational Research and Improvement, U.S. Department of Education, 400 Maryland Avenue, SW, room 4W332, Washington, DC 20202.

Office of Legislation and Congressional Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, room 7E307, Washington, DC 20202.

Region I: U.S. Department of Education, John W. McCormack P.O. and Courthouse, Room 540, Post Office Square, Boston, MA 02109–4557.

Region II: U.S. Department of Education, 75 Park Place, 12th Floor, New York, NY 10278–0043.

Region III: U.S. Department of Education, 3535 Market Street, Room 16350, Philadelphia, PA 19104–3398.

Region IV: U.S. Department of Education, 61 Forsyth Street, SW., Suite 19T40, Atlanta, GA 30303.

Region V: U.S. Department of Education, 111 N. Canal Street, Suite 1094, Chicago, IL 60606.

Region VI: U.S. Department of Education, 1200 Main Tower Building, #2260, Dallas, TX 75202–4309.

Region VII: U.S. Department of Education, 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, MO 64153–1367.

Region VIII: U.S. Department of Education, Federal Office Building, 1244 Speer Blvd., Room 300, Denver, CO 80204–3582.

Region IX: U.S. Department of Education, 50 United Nations Plaza, San Francisco, CA 94102.

Region X: U.S Department of Education, room 3362, Mail Code 10–9060, 915 2nd Avenue, Seattle, WA 98174–1099.

Metro Region: U.S. Department of Education, Office for Civil Rights, 1100 Pennsylvania Avenue, NW., Washington, DC 20044.

Additional System Managers

Region I: Deputy Regional Director, U.S. Department of Education, John W. McCormack PO and Courthouse, Room 540, Post Office Square, Boston, MA 02105–4557.

Region II: Secretary's Regional Representative, U.S. Department of Education, 75 Park Place, 12th Floor, New York, NY 10278–0043.

Region III: Assistant to the Secretary's Regional Representative, U.S. Department of Education, 3535 Market Street, Room 16350, Philadelphia, PA 19104–3398.

Region IV: Deputy Secretary's Regional Representative, U.S. Department of Education, 61 Forsyth Street, SW., Suite 19T40, Atlanta, GA 30303.

Region V: Secretary's Regional Representative , U.S. Department of Education, 111 N. Canal Street, Suite 1094, Chicago, IL 60606.

Region VI: Administrative Officer, U.S. Department of Education, 1200 Main Tower Building, #2260, Dallas, TX 75202–4309.

Region VII: Secretary's Regional Representative, U.S. Department of Education, 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, MO 64153–1367.

Region VIII: Secretary's Regional Representative, U.S. Department of Education, Federal Office Building, 1244 Speer Blvd., room 300, Denver, CO 80204–3582.

Region IX: Secretary's Regional Representative, U.S. Department of Education, 50 United Nations Plaza, San Francisco, CA 94102.

Region X: Secretary's Regional Representative, U.S. Department of Education, room 3362, Mail Code 10–9060, 915 2nd Avenue, Seattle, WA 98174–1099.

Metro Region: Program Specialist, Office for Civil Rights, U.S. Department of Education, 1100 Pennsylvania Avenue, NW, Washington, DC 20044.

18–05–03

SYSTEM NAME:

Federal Personnel Payroll System

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Department of Interior, Bureau of Reclamation, Management Operations Center, Division of Payroll Operations, 7333 West Jefferson Ave., Academy Place 1, Denver, CO 80235

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

This system contains records on all employees of U.S. Department of Education, the National Commission of Library and Learning and the National Goals Panel.

CATEGORIES OF RECORDS IN THE SYSTEMS:

This system consists of a variety of records relating to pay and leave determinations made about each employee of the Department of Education, the National Commission of Library and Learning and the National Goals Panel, including the name of the employee, the employee's date of birth, social security number, home address, grade, employing organization, timekeeper number, salary, Civil Service retirement fund contributions, pay plan, number of hours worked, annual and sick leave accrual rate and usage, annual and sick leave balance, FICA

withholdings, Federal, state, and local tax withholdings, Federal Employees Government Life Insurance withholdings, garnishment documents, savings allotments, union and management association dues withholding, savings bonds allotments, and Combined Federal Campaign allotments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 5101, et seq; 31 U.S.C. 3512; 20 U.S.C. 3461.

PURPOSE(S):

The records in this system are maintained in order to facilitate fiscal operations for payroll, attendance, leave, insurance, tax, retirement and cost accounting programs; and to prepare related reports to other Federal agencies including the Department of the Treasury and the Office of Personnel Management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, THE DEPARTMENT may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as

required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

(13) *Payroll Disclosure.* The Department may disclose records to the Department of the Treasury for preparation of payroll checks, payroll deductions, U.S. Saving bonds, and other checks to Federal, State, and local government agencies, non-governmental organizations and individuals.

(14) *Tax Disclosure.* The Department may disclose records to the Internal Revenue Service and to state and local government agencies having taxing authority in order to prepare W–2 Forms.

(15) *Personnel Management Disclosure.* The Department may disclose records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and the Federal Labor Relations Authority (including the General Counsel of the Authority and Federal Service Impasses Panel) to carry out their functions.

(16) *Workers' Compensation Disclosure.* The Department may disclose records to the Department of Labor to make a compensation determination in connection with a claim filed by an employee for compensation on account of a job-connected injury or disease.

(17) *Wage Garnishment Disclosure.* The Department may disclose records to the IRS in order to respond to orders from IRS for garnishment of an employee's pay for Federal income tax purposes.

(18) *Unemployment Compensation Disclosure.* The Department may disclose records to state offices of unemployment compensation in connection with claims filed by former Department employees for unemployment compensation.

(19) *Association Dues Disclosure.* The Department may disclose records to financial organizations designated to receive labor organization or management association dues withheld from an employee's pay, in order to account for the amounts of the withheld dues which they receive.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media and in hard copy.

RETRIEVABILITY:

Records are retrieved by the employee's name and Social Security number.

SAFEGUARDS:

Access to and use of these records are limited to personnel whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. All physical access to the Department's sites, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for an employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with user defined password. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records submitted by the individual, such as allotment authorization forms, home address forms, and tax withholding forms are retained until superseded by new updated transactions whether electronically or paper, or until the individual leaves the Department. Some of these records must be retained for an additional period, or forwarded to the new employing agency. Records are retired to the Federal Personnel Records Center and subsequently disposed of in accordance with the General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Systems, Human Resources Group, Office of Management, Department of Education, 400 Maryland Ave., SW, Room 2E108, Washington, DC 20202.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the executive officer in your office. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the executive officer in your office. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the executive officer in your office. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORDS SOURCE CATEGORIES:

Information in this system of records is obtained from individual employees, timekeepers and supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–06–03

SYSTEM NAME:

Presidential Scholars Program—Files of Selected Participants.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

U.S. Department of Education, Office of Intergovernmental and Interagency Affairs, Regional Services, Community Services, 400 Maryland Avenue, SW., Washington, DC 20202–3500.

American College Testing, Inc., Recognition Program Services, 2255 North Dubuque Road, Tyler Building, Iowa City, Iowa 52243–4030.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are participants in the Presidential Scholars Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in the system includes the name, Social Security number, address, and other biographical information provided by the student, such as SAT/ACT scores, school transcripts, and essays.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 11,555, 29 FR 6,909, 3 CFR 198 (1964).

PURPOSE(S):

The Presidential Scholars files are kept for purposes of the annual selection of scholars and for historical archive purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) *The Department, or any component of the Department; or*

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(8) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the

contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(9) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(10) *Media Purposes.* The Department may disclose records from this system of records in order to promote the program and recognition of local students. Partial file disclosures will be made on a case-by-case basis to state and local governments, officials, and institutions; congressional offices; and program sponsors and affiliates.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING AND RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in hard copy in paper files in metal file cabinets and in data files on computers.

RETRIEVEABILITY:

The data is retrieved by name, Social Security number, state, high school, and year of selection.

SAFEGUARDS:

All physical access to the Department site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer systems employed by the Department and contractors offer a high degree of resistance to tampering and circumvention. These security systems limit data access to Department and contract personnel on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of these systems are given a unique user ID and interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records are maintained for four years and are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Presidential Scholars Program, Office of Intergovernmental and Interagency Affairs, U. S. Department of Education, 400 Maryland Avenue, SW., Room 5E223, Washington, DC 20202–3500.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, you should provide the system manager your name, Social Security number, and year of high school graduation. Your requests for notification must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you should contact the system manager and provide information described in the notification procedure. Your requests for access to a record must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in the system of records, you should contact the system manager with the information described in the notification procedure, identify the specific item(s) to be changed, and provide a written request for the change. Your request to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individuals' applications, testing records of the American College Testing, Inc., and the Educational Testing Service and questionnaires completed by school officials at the request of the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

18–06–04

SYSTEM NAME:

Satellite Event Participant Registration System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Information Resource Center, Intergovernmental and Interagency Affairs, U.S. Department of Education, Room 5E233, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202–0498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals and contact persons from organizations that register for participation in selected events hosted by the U.S. Department of Education (such as the monthly Satellite Town Meeting) as well as individuals who have requested regular information on such events.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records including the name of the individual, his or her e-mail address, telephone number, fax number, mailing address, the name of organization with whom the individual is affiliated, name of the technical satellite contact, the name of the event, the event location and broadcast information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. § 1231a.

PURPOSE(S):

The information contained in this system is used to serve those individuals and organizations participating in Department of Education events and satellite broadcast events as well as to provide selected information to the public about such events.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be

made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Press Disclosure.* The Department may disclose information from this system to potential viewers of the event or to the press in order to provide a list of event participants. Such disclosures are made only at the request of the event participants whose information is disclosed.

(2) *Event Planning Disclosure.* The Department may disclose information from this system to government and non-government entities involved with hosting or producing the event in order to assist in the planning of the event.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(6) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(7) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(8) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(9) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(10) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(11) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in electronic form on hard drives and

when appropriate, in hard copy for a short time.

RETRIEVABILITY:

Records are retrievable by all fields in the database.

SAFEGUARDS:

All physical access to the Department site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer systems employed by the Department and contractors offer a high degree of resistance to tampering and circumvention. These security systems limit data access to Department and contract personnel on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of these systems are given a unique user ID and interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records are destroyed after the appropriate revisions are made or after three months, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

System Administrator, Information Resource Center, Intergovernmental and Interagency Affairs, U.S. Department of Education, Room 5E233, FOB–6, 400 Maryland Avenue, SW, Washington, DC 20202–0498.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, you should provide the system manager your name, Social Security number, and year of high school graduation. Your requests for notification must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you should contact the system manager and provide information described in the notification procedure. Your requests for access to a record must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in the system of records, you should contact the system manager with the information described in the notification procedure, identify the specific item(s) to be changed, and provide a written request for the change. Your request to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information contained in the system are obtained from the event participants as well as those individuals who have requested information about the events.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–11–06

SYSTEM NAME:

National Student Loan Data System (NSLDS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Computer Sciences Corporation, 71 Deerfield Lane, Meriden, CT 06450–7151.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The NSLDS contains records on borrowers who have applied for and received loans under the William D. Ford Federal Direct Loan Program, the Federal Family Education Loan (FFEL) Program, the Federal Insured Student Loan (FISL) Program, and the Federal Perkins Loan Program (including National Defense Student Loans, National Direct Student Loans, Perkins Expanded Lending and Income Contingent Loans). The NSLDS also contains records on recipients of Federal Pell Grants and persons who owe an overpayment on a Federal Pell Grant, Federal Supplemental Educational Opportunity Grant or Federal Perkins Loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

The NSLDS contains records regarding: (1) Student/borrower identifier information including Social Security number, date of birth and name; (2) the information on borrowers' loans covering the entire life cycle of a loan from origination through final payment, cancellation, discharge or other final disposition including details regarding each loan received by a student such as information on loan amounts, educational status, disbursements, balances, loan status, collections, claims, deferments, refunds and cancellations; (3) enrollment information including school(s) attended, anticipated completion date, enrollment status and effective dates; (4) student demographic information such as course of study, dependency, citizenship, gender, data on family income, expected family contribution, and address; (5) Federal Pell Grant amounts and dates; and (6) Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, and Federal Perkins Loan Program overpayments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1092b (1993).

PURPOSE(S):

This system of records is used for the following purposes: (1) To provide pre-screening and post-screening for Title IV aid eligibility; (2) to provide default rate calculations for educational institutions, guaranty agencies, and lenders; (3) to report changes in student/borrower enrollment status via a Student Status Confirmation Report (SSCR) or other means; (4) to prepare electronic financial aid history information; (5) to assist guaranty agencies, educational institutions, financial institutions and servicers collect loans; (6) to provide audit and program review planning; (7) to support research studies and policy development; (8) to conduct budget analysis and development; (9) to track loan transfers from one entity to another; (10) to assess Title IV Program administration of guaranty agencies, educational institutions, financial institutions and servicers; (11) to track loan borrowers and overpayment debtors; (12) to provide information that supports Credit Reform Act of 1992 requirements; (13) to provide information to track refunds/cancellations; and (14) to assist in the collection of debts owed to the Department under Title IV of the Higher Education Act, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Program Purposes.* The Department may disclose records for the following program purposes:

(a) To verify the identity of the applicant involved, the accuracy of the record, or to assist with the determination of program eligibility and benefits, the Department may disclose records to the applicant, guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(b) To provide default rate calculations, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to State agencies;

(c) To provide a standardized method for educational institutions to efficiently submit student enrollment status information, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers;

(d) To provide financial aid history information, the Department may disclose records to educational institutions and servicers;

(e) To assist loan holders in the collection of loans and to support pre-claims/supplemental pre-claims assistance, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal, State or Local agencies;

(f) To support auditors and program reviewers in planning and carrying out their assessments of Title IV Program compliance, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal, State and Local agencies;

(g) To support researchers and policy analysts, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal, State and Local agencies; using safeguards to ensure compliance with the Privacy Act, disclosures may also be made to other researchers and policy analysts not associated with guaranty agencies, educational institutions, financial institutions or servicers;

(h) To support budget analysts in the development of budget needs and forecasts, the Department may disclose records to Federal and State agencies;

(i) To assist in locating holders of loan(s), the Department may disclose records to students/borrowers, guaranty agencies, educational institutions, financial institutions and servicers, and to Federal, State or Local agencies;

(j) To assist analysts in assessing Title IV Program administration of guaranty agencies, educational institutions, financial institutions and servicers, the Department may disclose records to Federal and State agencies;

(k) To assist loan holders in locating borrowers and overpayment holders in locating debtors, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal agencies;

(l) To assist with meeting Credit Reform Act of 1992 requirements, the Department may disclose records to Federal agencies;

(m) To assist program administrators with tracking refunds and cancellations, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(n) To enforce the terms of a loan, assist in the collection of a loan and assist in the collection of an aid overpayment, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal, State, or Local agencies.

(2) Litigation and Alternative Dispute Resolution (ADR) Disclosures.

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation, or has an interest in litigation, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any employee of the Department in his or her individual capacity where the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of the Department in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice or attorneys engaged by the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the Department of Justice.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, individual or entity designated by the Department or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to an opposing counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(4) *Contract Disclosure.* If the Department contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records as a routine use to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(5) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose individually identifiable information to OMB as necessary to fulfill CRA requirements. (These requirements currently include transfer of data on lender interest benefits and special allowance payments, defaulted loan balances, and supplemental pre-claims assistance payments information.).

(6) *Employee Grievance, Complaint or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action, the Department may disclose the record in the course of investigation,

fact-finding, or adjudication to any witness, designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(7) *Labor Organization Disclosure.* Where a contract between a component of the Department and a labor organization recognized under 5 U.S.C., Chapter 71, provides that the Department will disclose personal records relevant and necessary to the organization's mission, records in this system of records may be disclosed as a routine use to such an organization.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* In the event that the Department deems it desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(9) *Disclosure to the Department of Justice.* The Department may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an audit, inspection, or other inquiry related to the Department's responsibilities under Title IV of the Higher Education Act of 1965.

(10) *Congressional Member Disclosure.* The Department may disclose information from this system of records to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual; the Member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer-reporting agency information regarding a claim which is determined to be valid and overdue as follows: (1) The name, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(f). A consumer reporting agency to which these the Department may disclose records is defined at 15 U.S.C. 1681a(f), and 31 U.S.C. 3701 (a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISCLOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on magnetic tape and computer disk media.

RETRIEVABILITY:

Student/Borrower data are retrieved by matching Social Security number and, as needed to reliably identify an individual, name and date of birth.

SAFEGUARDS:

All physical access to the sites of the contractor where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention by use of software that requires user access to be defined to specific online functions. This security system limits data access to users on a "need to know" basis and controls individual users' ability to access and alter records within the system. All users of this system are given a unique user ID with a personal identifier. Most data is loaded into NSLDS via a batch process. The security utilized ensures that only data from authorized data providers can add or update records in NSLDS.

RETENTION AND DISPOSAL:

Records of individual closed loans and aid overpayments will be transferred to tape/disk for retention and storage at the system location. All records are retained permanently due to research needs, budget projections, and legislative analysis.

SYSTEM MANAGER AND ADDRESS:

Director, Program Systems Service, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Ave., SW, ROB–3, room 4640, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, you must provide the system manager your name, date of birth, Social Security number, and the name of the school or lender from which the loan or grant was obtained. Requests for notification must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you must contact the system manager and provide information as-described in the notification procedures. Such requests must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in the system of records, you must contact the system manager with the information described in the notification procedures, identify the specific item(s) to be changed, and provide a written justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from guaranty agencies, educational institutions, financial institutions and servicers. Information is also obtained from other Department systems such as the Direct Loan Servicing System, Debt Management Collection System, Pell Grant System, Postsecondary Education Participant System and Central Processing System.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–11–10

SYSTEM NAME:

Title IV Wide Area Network (Title IV WAN).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Computer Systems (NCS), 2510 N. Dodge St, Iowa City, IA 52245.

General Electric Information Services (GEIS), 1001 Windward Concourse, Alpharetta, GA 30005–4154.

Virtual Data Center (VDC), c/o Computer Science Corporation 71 Deerfield Lane, Medriden, CT 06450–7151.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on those individuals who are eligible to enroll in Title IV WAN, which include financial aid administrators, authorized individuals of postsecondary institutions, authorized individuals of third-party servicers, authorized individuals of software providers, authorized individuals of lenders, authorized individuals of guaranty agencies, and authorized individuals of state scholarship programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of demographic contact information that the Title IV WAN customers provide to request electronic access to Title IV Student Aid Systems. Demographic information includes customer name, customer address, authentication information (mother's maiden name, Social Security number, and date of birth), and billing and distribution information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1082, 1085, 1094, 1099C (1993).

PURPOSE(S):

The Title IV WAN is used for the following purposes:

(1) To providing telecommunications support for the delivery and administration of the Title IV student aid programs;

(2) For billing non-Direct Loan users for customer service calls and year-to-date ISIRs data requests;

(3) To handle the processing of the Title IV WAN Enrollment Documents and managing the assignment of Title IV WAN ID numbers;

(4) To provide Title IV WAN users with the capability to query CPS, NSLDS and Title IV WAN systems; and

(5) To coordinate and hosting various conferences and workshops to educate and promote the electronic initiatives sponsored by the Office of Student Financial Assistance (OSFA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim, which is determined to be valid and overdue as follows: (1) The name, address, and other information necessary to establish the identity of the individual responsible for the claim; and (2) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures and the procedures contained in subsection 31 U.S.C. 3711 (f). A consumer-reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701 (a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on a computer database as well as in hard copy.

RETRIEVABILITY:

The records are retrieved by customer name and/or TIV WAN User ID.

SAFEGUARDS:

All physical access to the Department site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need to know" basis, and controls individual users" ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Title IV WAN enrollment documents will be retained for the 6 years and three

months after the final payment of the contract that expires in September 2001.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Systems Service, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW, ROB–3, room 4640, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the following entities: Financial Aid Administrators, Postsecondary Institutions, Third-Party Servicers, Software Providers, Lenders, Guaranty Agencies, and State Scholarship Programs.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

18–11–11

SYSTEM NAME:

Office of the Student Loan Ombudsman Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Student Loan Ombudsman, Student Financial Assistance, 400 Maryland Avenue, SW., ROB–3, Room 3717, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who are, were, or may be participants in any of the Title IV Student Financial Assistance Programs and who request assistance from the Ombudsman.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records that identify the individuals' complaints, requests for assistance, or other inquiries. Records include, but are not limited to: Written documentation of the individual's complaint; request for assistance or other inquiry; and information pertaining to the student's or parent's Title IV student financial assistance program account(s), such as the person's name, Social Security number, date of birth, address, telephone number(s), and personal identification number. Additionally, records will include the name, address, and phone numbers of school(s), lender(s), secondary holder(s) or lender(s), guaranty agency(ies), and servicer(s)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1018(f) (1998).

PURPOSE(S):

The information contained in this system will be used for a number of purposes related to the duties and responsibilities of the SFA Ombudsman, including: Verifying the identities of individuals; recording complaints and problems; tracking individual cases through final resolution; reporting complaint trends; analyzing the data to recommend improvements in student financial assistance programs; and assisting in the informal resolution of disputes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Program Disclosure.* The Department may disclose records to schools, lenders, guaranty agencies, and servicers when it is necessary to obtain further information about the complaint, request for assistance, or other inquiry before it can be resolved.

(2) *Disclosure for Use by Other Law Enforcement Agencies Concerning Possible Violations of the Criminal Laws or Actions Initiated for Civil Fraud.* The Department may disclose information to any Federal, State, local or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of the criminal laws or actions initiated for civil fraud, if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure Concerning Violations of the Criminal Laws or Actions Initiated for Civil Fraud.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of the criminal laws or actions initiated for civil fraud, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR concerning the actions of the Ombudsman's office or its employees, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs: (i) the Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative

litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(6) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records will be maintained either in hard copy or in an electronic database.

RETRIEVABILITY:

Records are indexed by Social Security number, name, date of birth and case tracking number.

SAFEGUARDS:

Access to and use of these records shall be limited to those persons whose official duties require access. This includes staff members of the Office of the Student Loan Ombudsman, other Department offices and agents of the Department. All physical access to the sites where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system offers a high degree of resistance to tampering and circumvention. This security system limits data access to staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given unique user IDs with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

The records on all student loans are retained for a period of five years after the loan has been repaid, cancelled or otherwise forgiven or the account closed. Records pertaining to grants awarded by the Department are destroyed five years after the initial disbursement. Records are maintained for the period of time needed to resolve cases, conduct analyses and prepare reports.

SYSTEM MANAGER(S) AND ADDRESS:

Ombudsman, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 3717, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals (e.g. borrowers) schools, lenders, and guaranty agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

The Department of Education (ED) PIN (Personal Identification Number) Registration System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Computer Systems (NCS), 2510 North Dodge Street, Iowa City, IA 52240.

Virtual Data Center, Meriden Data Center, 71 Deerfield Lane Meriden, CT 06450 (after Spring 2000).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The ED PIN Registration System contains records about former, current and prospective students, and parents who apply for an ED PIN number. The ED PIN number is used for identification purposes when PIN holders access other Department of Education systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains identification information such as name, Social Security Number (SSN), date of birth and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Higher Education Act of 1965, as amended, 20 U.S.C. 1092b.

PURPOSE(S):

This information contained in this system will be used to generate and confirm PIN numbers for those individuals wishing to access various student financial assistance systems (including FAFSA, Access America and the Direct Loan Program) to obtain information about their personal records. The ED PIN number that is generated and stored by this system can

be used by individuals to electronically sign various student aid applications including the FAFSA and the Renewal FAFSA, and to initiate loan deferments or forbearance. The Department has plans to expand the use of the PIN to allow access to student financial aid systems outside of the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be

required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

(13) *Identification Verification Disclosure.* In order to verify the identity of the applicant involved, the accuracy of the record, or to assist with the determination of program eligibility and benefits or potential eligibility or benefits, the Department may disclose records from this system to the applicant, guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically on magnetic tape.

RETRIEVABILITY:

The file is indexed by social security number or name.

SAFEGUARDS:

All physical access to the Department site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records will be retained 3 years after payment of loan, or after audit resolution.

SYSTEM MANAGER(S) AND ADDRESS:

PIN Web Site Development Manager, Program System Services, Office of Student Financial Assistance, 400 Maryland Avenue, SW, ROB–3, room 4640, Washington, D.C. 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth, social security number. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity. You may present your request in person at any of the locations identified for this system of records or address your request to the system manager at the address above.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, you can visit the ED PIN Web site, call the FAFSA on the Web phone number listed on the Web site, or contact the system manager at the address given above. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, you can contact the Customer Service Department at the telephone number listed on the ED PIN web site. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

If your SSN does not match as a result of an incorrect SSN, you will need to contact the local office of the Social Security Administration (SSA) for a SSN correction.

RECORD SOURCE CATEGORIES:

The identifying information (SSN, DOB and name) is currently collected from the ED PIN Registration Web site, from the FAFSA, and the Direct Loan borrower database. In the future, the Department may provide alternate means for collecting the identifying information.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–12–05

SYSTEM NAME:

Graduate Assistance in Areas of National Need (GAANN) Program Assessment System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Department of Education, Office of Postsecondary Education, Program Monitoring and Information Technology Service, 1990 K St., NW, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who apply for fellowships and receive admission to a GAANN project.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information including the individual's name, Social Security number, gender, ethnicity, field of study, source of student's GAANN Fellowship, amount of stipend per year of student's GAANN Fellowship, amount of institutional contribution to tuition per year of student's GAANN Fellowship, amount of support the student received after the GAANN Fellowship, year and term the student entered institution's graduate program, current education status, current employment status, how the fellow's financial need was determined, whether Title IV financial need analysis was used, whether amount of student's financial need is known, cost of education, and financial need.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1135C (1993).

PURPOSE(S):

This system is used to provide performance data about the GAANN Fellowship Program for the Department's use in responding to the

requirements of the GPRA. In addition, information obtained from the system of records may also be used for the general purpose of administering the GAANN Fellowship Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552 (a)(b)(12), the Department may disclose to a consumer reporting agency information regarding any Federal claim which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) after completing the procedures contained in subsection 31 U.S.C. 3711(f). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained in an electronic centralized database on a computer server. Information extracted from the system will be maintained on access-controlled personal computers and in physical file folders.

RETRIEVABILITY:

Records in this system can be retrieved by name and Social Security number.

SAFEGUARDS:

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records on successful applications are destroyed five years after final payment from the Department to the institution, or after completion of audit-related activities or litigation, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Monitoring and Information Technology Service, Office of Postsecondary Education, U.S. Department of Education, 1990 K St., NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, you should provide the system manager with your name, Social Security number or nine-digit identification number. Your request must meet the requirement of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDUREE:

If you wish to gain access to a record in this system of records, you should contact the system manager and provide information as described in the Notification Procedures. Requests for access to a record should reasonably specify the particular record content being sought. Your request must meet

the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest information contained in a record in this system of records, you should contact the system manager. Your request may be made either in writing or in person, and should specify: (1) The system of records from which the record is to be retrieved; (2) the particular record you are seeking to amend; (3) whether you are seeking a deletion, an addition, or a substitution; and (4) the reason(s) for the requested change(s). You should include any appropriate documentation supporting the requested change(s). Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the institutions the fellows attend.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–13–05

SYSTEM NAME:

Education Publications Center (ED PUBS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Education Publications Center, U.S. Department of Education, 8242 Sandy Court, Jessup, MD 20794.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who contact ED PUBS to request products from the U.S. Department of Education.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the name, address, and telephone number of the individuals, as well as what product those individuals request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Goals 2000: Educate America Act, Pub. L. 103–227, 951, 20 U.S.C. 6051 (Supp. I, 1995).

PURPOSE(S):

The information in this system is used to disseminate the Department's products to the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to

one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are retained in hard copy and in a computer database.

RETRIEVABILITY:

The records are retrieved by name and by title of requested product.

SAFEGUARDS:

Access to the ED PUBS records is limited to internal Department designees, warehouse switchboard operators, and ED PUBS management personnel. All physical access to the Department site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records are deleted upon revision or update.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director of the National Library of Education, U.S. Department of Education, 400 Maryland Ave, SW., Suite 4W317, Washington, DC 20202–5523.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to access a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the individuals who contact ED PUBS.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Correction

In the Notice of New, Amended, Altered and Deleted Systems of Records published in the **Federal Register** on June 4, 1999 (30105), make the following corrections beginning on page 30105:

1. On page 30107, in the third column, under the heading "New Numbering System", "18–11–08 Student Account Management System" should read "18–11–08 Student Account Manager."

2. On page 30108, in the first column, under the heading "New Systems of Records," "18–11–07 Student Account Manager" should read "18–11–08" and "18–11–08 Postsecondary Education Participants System (PEPS)" should read "18–11–09."

3. On page 30109, in the second column, in the notice entitled "Secretary's Communication Control System 18–01–01," under the heading "Additional System Locations and System Mangers," "Director, Correspondence and Communications Control Unit" should read "Director, Office of the Executive Secretariat."

4. On page 30117, in the third column, in the notice entitled "Receivables Management System 18–03–03," the information under the heading "System Manager(s) and Address" should read "Director, Financial Improvements and Post-Audit Operations, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4C135, DC 20202."

5. On page 30118, in the second column, in the notice entitled "Files and Lists of Potential and Current Consultants, Grant Application Reviewers, Peer Reviewers and Site Visitors 18–03–04," under the heading "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses," the opening paragraph should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

6. On page 30125, in the third column, in the notice entitled "Grievances Filed Formally Under the Administrative Grievance Procedures 18–05–05," under the heading "System Location," delete "Room 2E200."

7. On page 30127, in the first column, in the notice entitled "Grievances Filed Formally Under the Administrative Grievance Procedures 18–05–05," under the heading "System Manager(s) and Address," "Labor Relations Group" should read, "Human Resources Group," and "Room 2W300" should read "Room 2E314."

8. On page 30142, in the first column, in the notice entitled "Congressional Members" Biographies System 18–06–02," under the heading "Routine Uses," insert the following at the end of the opening paragraph of this section, "These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement."

9. On page 30142, in the third column, in the notice entitled "Congressional Grant Notification Control System 18–07–02," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

10. On page 30149, in the second column, in the notice entitled "Employee Conduct—Government Ethics 18–09–03," the citations under the heading "Authority for Maintenance of the System" should only read "5 U.S.C. 301."

11. On page 30150, in the first and second columns, in the notice entitled "Employee Conduct—Government Ethics 18–09–03," under the heading "Retrievability," delete the second sentence that reads, "In some instances, these records are retrievable by cross-reference to index cards containing the name of the party involved and the subject matter."

12. On page 30150, in the second column, in the notice entitled "Employee Conduct—Government Ethics 18–09–03," under the heading "Safeguards," delete the existing text and add "These records are only accessible to staff of the Ethics Division of the Office of the General Counsel. The filing cabinets in which these records are maintained are locked after the close of the business day."

13. On page 30150, in the second column, in the notice entitled "Employee Conduct—Government Ethics 18–09–03," under the heading "System Manager(s) and Address," delete "Counsel" from "Ethics Counsel Division."

14. On page 30152, in the first column, in the notice entitled "Investigative Files of the Inspector General 18–10–01," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

15. On page 30154, in the second column, in the notice entitled "Investigatory Material Compiled for Personnel Security and Suitability Purposes 18–10–02," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

16. On page 30155, in the last column, in the notice entitled "Non-Federal Auditor Referral, Suspension, and Debarment File 18–10–03," under the heading "Categories of Records in the System," the text should read:

Information relating to the audit activity which led to the referral, suspension or debarment action, including the referral, suspension or debarment documents, and records on the substance, status or outcome of each referral, suspension and debarment, including voluntary exclusion settlement agreements.

17. On page 30156, in the first column, in the notice entitled "Non-Federal Auditor Referral, Suspension, and Debarment File 18–10–03," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

18. On page 30156, in the first column, in the notice entitled "Non-Federal Auditor Referral, Suspension and Debarment File 18–10–03," under the heading "Routine Uses," in subsection (1), "Audit Oversight and Referral Disclosure," the text should read:

A record from this system of records may be disclosed to other Federal agencies, the General Accounting Office, State agencies responsible for audit oversight, State Boards of accountancy, the American Institute of Certified Public Accountants, and other professional accountancy associations, to make and support referrals regarding inadequate audits performed by independent auditors, to track the results of proceedings against those auditors, and to inform these entities if other referrals have been made.

19. On page 30156, in the first column, in the notice entitled "Non-

Federal Auditor Referral, Suspension and Debarment File 18–10–03," under the heading "Routine Uses," in subsection (2), "Suspension and Debarment Disclosure," the text should read:

A record from this system of records may be disclosed to other Federal agencies, the General Accounting Office, State agencies responsible for audit oversight, State Boards of accountancy, the American Institute of Certified Public Accountants, and other professional accountancy associations, to inform these entities of the substance, status or outcome of suspension and debarment proceedings, including settlement, and as authorized under section 3 of Executive Order 12549 for purposes of suspending and debarring an auditor pursuant to 34 CFR part 85.

20. On page 30157, in the third column, in the notice entitled "Hotline Complaint Files of the Inspector General 18–10–04," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

21. On page 30159, in the second column, in the Notice entitled "Federal Student Aid Application File 18–11–01," under the heading "Categories of Records in the System," the first sentence should read:

This system consists of the name, address, birth date, Social Security number, parents' and students' personal identification numbers assigned by the Department, and financial data necessary to identify applicants, verify applicant data, and calculate their expected family contributions for Federal student financial assistance.

22. On page 30161, in the first column, in the notice entitled "Recipient Financial Management System 18–11–02," the paragraph under the heading "Categories of Records in the System," should read, "This system consists of the financial data, personal identification numbers assigned by the Department, and status of award for Pell Grant recipients."

23. On page 30161, in the third column, in the notice entitled "Recipient Financial Management System 18–11–02," under the heading "Safeguards," add the following paragraph:

The computer system employed by the Department of Education offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department of Education and contract staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

24. On page 30162, in the first column, in the notice entitled "Recipient Management System 18–11–02," under the heading "Record Source Categories," the word after "school" should be "and" instead of "or."

25. On page 30162, in the second column, in the notice entitled "Student Financial Assistance Validation File 18–11–03," the paragraph under the heading "Categories of Records in the System," should read: "This system consists of student financial assistance application, award and servicing forms and documentation, and parents' and students' personal identification numbers assigned by the Department."

26. On page 30163, in the second column, in the notice entitled "Title IV Program Files 18–11–05," the paragraph under the heading "Categories of Records in the System," should read:

This system contains records regarding the amount of Pell Grant applicant receives; applicant's demographic background, loan, and educational status; family income; Social Security number; address and telephone number; and employment information on borrowers and co-signers; default claim number; amount of claim; information pertaining to locating a borrower; collection and repayment history; information pertaining to the amount of the loan and repayment obligation; forbearance, cancellation, disability, and deferment information; and a personal identification number assigned by the Department.

27. On page 30163, in the third column, in the notice entitled "Title IV Program Files 18–11–05," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

28. On page 30167, in the first column, in the notice entitled "Student Financial Assistance Collection Files 18–11–07," the paragraph under the heading "Categories of Records in the System," should read:

This system contains records regarding an applicant's demographic background; loan, repayment history; and educational status; family income; social security number; address and telephone numbers; employment information on borrowers and co-signers; collection activity on accounts; default claim number; amount of claim; information pertaining to locating a borrower; collection and repayment obligation; forbearance; cancellation; disability; deferment; administrative wage garnishment; bankruptcy, death; close school discharge; hearings; photocopy of all promissory notes; account collection records; administrative resolutions and litigations; and parents' and students' personal identification numbers assigned by the Department.

29. On page 30169, in the second column, in the notice entitled "Student Account Manager 18–11–08," under the heading "Categories of Records in the System," the first sentence should read: "The Student Account Manager system contains records relating to a student and/or borrower's originated awards and disbursements of Title IV financial assistance and a personal identification number assigned by the Department."

30. On page 30172, in the first column, in the notice entitled "Postsecondary Education Participants System (PEPS) 18–11–09," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

31. On page 30179, in the third column, in the notice entitled "Postsecondary Education Participants System (PEPS) 18–11–09," the

paragraph under the heading "Categories of Records in the System," should read:

The PEPS contains information regarding the eligibility, administrative capability, and financial responsibility of postsecondary schools that participate in the student financial aid programs, including the names, taxpayer identification numbers (Social Security numbers), business addresses, phone numbers of the individuals with substantial ownership interests in, or control over, those institutions, and personal identification numbers assigned by the Department."

32. On page 30186, in the first column, in the notice entitled "Outcomes of Diversity in Higher Education Surveys 18–13–04," under the heading "System Name," "Surveys" should read "Study."

33. On page 30186, in the first column, in the notice entitled "Outcomes of Diversity in Higher Education Surveys 18–13–04," under the heading "Routine Uses," the opening paragraph of this section should read:

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

[FR Doc. 99–33154 Filed 12–23–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Monday
December 27, 1999

Part III

Department of Housing and Urban Development

24 CFR Part 290

Up-Front Grants and Loans in the Disposition of Multifamily Projects; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 290

[Docket No. FR–4310–F–02]

RIN 2502–AH12

Up-Front Grants and Loans in the Disposition of Multifamily Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to establish generally applicable requirements to govern the use of up-front grants and loans in the disposition of HUD-owned multifamily properties by defining the projects, sales, and purchasers eligible for up-front grants and loans, and setting both a maximum per-unit and overall cap for up-front grant amounts.

DATES: Effective Date: January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Marc Harris, Supervisory Project Manager, Office of Portfolio Management in Multifamily Housing, Department of Housing and Urban Development, Room 6164, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2654. Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Statutory Background and Legislative Changes Since the Proposed Rule

As discussed in the preamble of the proposed rule, HUD's statutory authority to manage and dispose of HUD-held multifamily housing projects is contained in section 207(k) and (l) of the National Housing Act, in section 203 of the Housing and Community Development Amendments of 1978 (HCDA 1978) and in section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, (approved September 26, 1996, Pub. L. 104–204), (FY 1997 Appropriations Act). The Department's authority and discretion in matters relating to the disposition of multifamily housing projects was expanded by section 204 to permit HUD to manage and dispose of multifamily properties owned by the Secretary, "on such terms and conditions as the Secretary may determine". Section 213 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (approved October 27, 1997, Pub. L. 105–65) (FY 1998 Appropriations Act) added to the flexible authority under section 204 that the General Insurance Fund (GIF) could be used to provide grants and loans for the necessary costs of rehabilitation or demolition, but limited this use of the GIF to FYs 1997 and 1998. Section 206 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, (approved October 21, 1998, Pub. L. 105–276), (FY 1999 Appropriations Act) and section 537 of the Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000, (approved October 20, 1999, Pub. L. 106–74), (FY 2000 Appropriations Act) extend this authority for FY 1999 and FY 2000, respectively.

Section 537 of the FY 2000 Appropriations Act also adds "construction on the properties (which shall be eligible whether vacant or occupied)" as an eligible activity for a grant or loan provided from the General Insurance Fund. Before this amendment, Section 8 project-based assistance was the only permissible source of up-front grant funding for total rebuilding. As explained in the preamble of the proposed rule, the availability of up-front grants for any eligible activity is dependent upon the funding made available. If Section 8 project-based assistance is not available, or if the authorization to use the General Insurance Fund is not extended beyond FY 2000, up-front grants and loans will not be available as an option in the disposition of multifamily projects.

II. Public Comment on the Proposed Rule

On July 15, 1999 at 64 FR 38284, HUD published a proposed rule to establish generally applicable requirements to govern the use of up-front grants and loans in the disposition of HUD-owned multifamily properties. Four public comments were received on the proposed rule. The comments are summarized below, organized according to the sections of the proposed rule and, as appropriate, to subject areas within individual sections.

Section 290.27(a)

Comment: The preservation of low-income housing should be given as much consideration as cost effectiveness.

HUD response: The goals of cost-effectiveness and preservation of low-income housing are not in conflict, but are complimentary to each other. HUD has a finite amount of resources at its disposal, and the goal of providing low-income housing is best served by using those resources in the most efficient manner. Sales with project-based Section 8 and/or up-front grants are not the only way to preserve affordable housing. Even though a project may not be eligible for an up-front grant, its potential cash flow may be sufficient to allow HUD to sell it with requirements that it be repaired and maintained as affordable housing, without project-based Section 8 or an up-front grant.

Comment: It is not clear if the up-front grant is made available in lieu of project-based rental assistance. The rule should be clarified. If that is the intent of the rule, there should be an exception where the revitalization of the project is sufficiently crucial to the future of the surrounding community to warrant an investment of both up-front grants and project-based assistance.

HUD response: Up-front grants are not made in lieu of project-based rental assistance. Both an up-front grant and project-based assistance may be provided in combination. The rule is clarified to make this point explicit. Up-front grants can also be provided in sales where the project is sold with repair and affordability provisions and tenant based assistance, such as Rental Housing Vouchers, for eligible tenants. The Department prefers the latter option as it provides the residents with choice, which they do not have if project-based Section 8 assistance is used, and assures that the project is repaired and maintained as affordable housing.

Section 290.27(b)

Comment: Project eligibility criteria should allow HUD to provide up-front grants to projects HUD finds to be essential to the revitalization of its community, even where all of the criteria are not strictly met.

HUD response: HUD agrees that this would be an appropriate factor to consider in determining the eligibility of a project for an up-front grant. Section 290.27(b)(1) is revised to provide that a HUD finding that a project is essential, as affordable housing, to the revitalization of its community as an alternative to the requirement that 50% of the units in the project must be occupied by very low-income residents at the time a disposition plan is approved.

Comment: Flexibility should be provided in the manner in which the percentage of very low-income tenants is determined. For example, if information is available on only 70% of

tenants, the 50% requirement should apply only as to them.

HUD response: HUD disagrees with this comment. When HUD owns a project, HUD will have information on all of the tenants. However, this final rule provides additional flexibility by adopting the procedure, discussed immediately above, of finding a project to be essential to the revitalization of its community as an alternative to the 50% low-income tenant requirement.

Comment: The vacancy rate should be 6% rather than 4% because markets can change dramatically over just a few years. Further, the vacancy rate for "tight housing markets" under the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) is 6%, and the same rate should apply in this rule. In addition, the standard is too vague to permit implementation because the relevant market is undefined, and data sources permitting evaluation of "habitable, affordable housing" are not readily available. Overall rental vacancy rates under Census data are generally not useful since they are an inaccurate indicator of housing submarkets where properties are located. The grant is limited to situations where local governments have already determined the need, by virtue of the locality to match HUD's up-front grant.

HUD response: HUD disagrees. The vacancy rate used in this rule is taken from the definition of *sufficient habitable, affordable, rental housing* currently at 24 CFR 290.3, which deals specifically with the disposition of multifamily housing properties and which was subject to public review and comment before being adopted.

Section 290.27(c)

Comment: Up-front grants should also be available in a negotiated sale to an existing tenant group with a viable ownership plan or to tenant-endorsed, non-profit purchasers committed to long-term affordability. To avoid more complicated transactions involving more parties and greater transaction costs, HUD should retain flexibility to offer a nonprofit purchaser an up-front grant or loan in connection with a non-competitive purchase. The proposed rule erodes the preference in sec. 203(c)(2)(D) and § 290.13 for the non-competitive sale of HUD-owned properties to nonprofit organizations. Also, resident council purchasers or nonprofit corporations that have received the endorsement of more than 51% of the occupied households in the project should be eligible to receive up-front grants in negotiated sales without the requirement of a competitive selection process.

HUD response: To the extent possible, the Department seeks to obtain the best purchasers for projects which HUD decides need an up-front grant. In the past, most up-front grants were awarded on a negotiated basis; however, this did not, in all cases, result in the strongest purchasers being obtained. Based on this experience, HUD has determined that the best way to sell these projects with up-front grants is to let potential parties know of the availability of projects, and allow them to compete for their purchase. Tenant-endorsed and non-profit purchasers committed to long-term affordability should be able to prove their track history and provide management and development plans which will rank highly in such competitions.

HUD wants to find the best possible purchaser while at the same time considering the interests of tenants and non-profit parties. The issue of non-competitive sales has always been a difficult one, especially when more than one party is interested in purchasing a property. The Department seeks to establish a process under which it would be evident to everyone that a purchaser was, in fact, the best purchaser, but such a result would not be likely unless HUD seeks proposals from more than a single purchaser. If the Department does not invite competition of some sort, it will never know if a better owner could have been attracted. HUD is willing to spend the time and the effort necessary for competitions to obtain the best purchasers.

The Department is also seeking viable alternatives to shorten the selection process by considering a sales process which would pre-qualify potential non-profit purchasers. Such pre-qualified purchasers might be able to partner up with tenant groups, and limited equity partners, to take ownership of projects.

Section 290.27(d)

Comment: The rule should contain an exception to the limit on the amount of the up-front grant in cases where the property anchors a struggling neighborhood that would suffer if the project were not maintained as affordable housing.

HUD response: The Department is concerned that exceptions would soon become the rule and, therefore, intends to hold fast to the spending limits established in the rule.

III. Changes in the Final Rule

Consistent with the discussion in sections I. and II. of this preamble, above, and as discussed in this section, below, this final rule makes the following changes to the July 15, 1999 proposed rule:

To clarify the applicability of the flexible authority conferred under section 204 of the FY 1997 Appropriations Act, § 290.1 is revised to state that HUD may follow any other method of disposition, as determined by the Secretary, and the U.S. Code citation (12 U.S.C. 1715z–11a) is added to the authority line for part 290.

Section 290.27(a) is revised to clarify that both an up-front grant and project-based assistance may be provided in combination, as long as the result would be more cost-efficient than the use of the maximum permissible project-based assistance alone.

Section 290.27(b)(1) is revised to include a HUD finding that a project is essential, as affordable housing, to the revitalization of its community as an alternative to the requirement that 50% of the units in the project must be occupied by very low-income residents at the time a disposition plan is approved.

Section 290.27(c)(1) is revised to clarify that in a negotiated sale with an up-front grant or loan to a governmental entity, the governmental entity must take title to the project.

Section 290.27(d) is revised to clarify that demolition and environmental hazard remediation are included in the eligible total development costs.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements under 24 CFR part 290 for the disposition of multifamily housing projects have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0204. This rule does not contain additional information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for

public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These requirements address only one aspect (up-front grants) of the requirements governing the management and disposition of HUD-owned multifamily housing projects, and should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell. In the proposed rule, HUD specifically solicited comment to elicit issues of importance to small entities. No comments were received on this issue.

Executive Order 13132, Federalism

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 290

Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 290 of title 24 of the Code of Federal Regulations is amended as follows:

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD–HELD MULTIFAMILY MORTGAGES

1. The part heading for 290 is revised as set forth above.

2. The authority citation for 24 CFR part 290 is revised to read as follows:

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b, 1715z–11a; 42 U.S.C. 3535(d) and 3535(i).

3. Section 290.1 is revised to read as follows:

§ 290.1 Applicability.

The requirements of this part supplement the requirements of 12 U.S.C. 1701z–11 for the management and disposition of multifamily housing projects and the sale of HUD-held multifamily mortgages. The goals and objectives of this part are the same as the goals and objectives of 12 U.S.C. 1701z–11, which shall be referred to in this part as "the Statute." With respect to the disposition of multifamily projects under subpart A, HUD may follow any other method of disposition, as determined by the Secretary.

4. A new section 290.27 is added to subpart A to read as follows:

§ 290.27 Up-front grants and loans.

(a) *General.* HUD may provide up-front grants and loans for rehabilitation, demolition, rebuilding and other related development costs as part of the disposition of a multifamily housing project that is HUD-owned, upon making a determination that such a grant or loan, plus any additional project-based assistance made available, would be more cost-effective than the use of the maximum permissible project-based rental assistance alone.

(b) *Eligible projects.* An up-front grant or loan can be made available in the sale of a HUD-owned multifamily housing project that meets all of the following requirements:

(1) Has more than 50% of the units in the project occupied by very low-income residents at the time a disposition plan is approved by HUD, or that HUD determines is essential, as affordable housing, to the revitalization of its community;

(2) Is located in a housing market or submarket in which there is not sufficient habitable, affordable, rental housing, as defined in § 290.3;

(3) Will generate, after rehabilitation or rebuilding, sufficient rental income in a competitive market to cover all operating expenses, meet after sale debt service requirements, fund required reserves and throw off positive cash flow;

(4) Will provide affordable housing for at least 20 years or the term of the loan, whichever is shorter, after the rehabilitation and/or rebuilding is completed; and

(5) Meets such other requirements, including deed restrictions, loan provisions, and monetary penalties for non-performance, as HUD may determine are appropriate on a case-by-case basis.

(c) *Eligible sales and purchasers.* (1) *Negotiated sales to governmental entities.* A negotiated sale of a project with an up-front grant or loan can only be made to the unit of general local government, which includes public housing agencies, in the area in which the project is located; or a State agency designated by the chief executive officer of the State in which the project is located; or an agency of the Federal government. The governmental entity in such a sale must take title to the project.

(2) *Other sales and purchasers.* All sales which provide up-front grants or loans to entities other than those described in paragraph (c)(1) of this section must be conducted through a competitive selection process. All general and limited partnerships or their nominees, joint ventures or other entities assembled for purposes of purchasing the project and which have a governmental entity as a partner or other participant are considered profit motivated purchasers and not governmental entities, whether or not there is a non-profit, public, corporate or individual general partner.

(d) *Up-front grant or loan amount.* The maximum that HUD will fund per project in an up-front grant or loan is 50 percent of total development cost (TDC), or $40,000 per affordable, finished unit, whichever amount is less. TDC covers demolition, environmental hazard remediation, construction materials, artisan services, professional services, developers services, and overhead, relocation and operating losses that are incurred to plan, perform and complete repairs or rebuilding.

Dated: December 17, 1999.

William Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–33360 Filed 12–23–99; 8:45 am]

BILLING CODE 4210–29–P

federal register

Monday
December 27, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.
Civilian Agency Acquisition Council and Defense Acquisition Regulations Council: Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–15; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–15. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–15 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Pollution Control and Clean Air and Water	97–033	Linfield
I	Foreign Acquisition (Part 25 Rewrite)	97–024	Linfield
III	Contract Bundling (Interim)	1997–306 (97–306)	De Stefano
IV	Deobligation Authority	99–015	Klein
V	Transition of the Financial Management System Software Program	99–602	Nelson
VI	Document Availability	99–018	Moss
VII	SBA's 8(a) Business Development Program	98–011	Moss
VIII	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	99–304	Moss
IX	Review of Award Fee Determinations (Burnside-Ott)	98–017	De Stefano
X	Nondisplacement of Qualified Workers—Commercial Items	99–600	O'Neill
XI	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–15 amends the FAR as specified below:

Item I—Pollution Control and Clean Air and Water (FAR Case 97–033)

This final rule amends the FAR to remove Subpart 23.1, Pollution Control and Clear Air and Water; the provision at 52.223–1, Clean Air and Water Certification; and the clause at 52.223–2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the "GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (GSA List) to ensure that they do not award contracts to ineligible offerors. Excluded parties whose ineligibility is limited by reason of a Clean Air Act (CAA) or Clean Water Act (CWA) conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at http://www.epls.arnet.gov. These FAR changes do not change long-standing policy that a contracting officer cannot award a contract if performance of the contract would be at a facility convicted of a CAA or CWA violation unless the EPA has certified that the facility has corrected the cause giving rise to the conviction.

Item II—Foreign Acquisition (Part 25 Rewrite) (FAR Case 97–024)

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

Item III—Contract Bundling (FAR Case 1997–306) (97–306)

This interim rule amends the FAR to implement Sections 411–417 of the Small Business Reauthorization Act of 1997. Sections 411–417 amend Title 15 of the U.S.C. to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

Item IV—Deobligation Authority (FAR Case 99–015)

This final rule revises FAR 4.804–5 and 42.302 to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

Item V—Transition of the Financial Management System Software Program (FAR Case 99–602)

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedules Contracts Program.

Item VI—Document Availability (FAR Case 99–018)

This final rule amends the Federal Acquisition Regulation (FAR) at 11.201(d) and 52.211–2 to update how the public may obtain Department of Defense specifications and standards.

Item VII—SBA's 8(a) Business Development Program (FAR Case 98–011)

The interim rule published as Item III of FAC 97–12 is converted to a final rule without changes. The rule implements changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation, contained in 13 CFR Parts 121, 124, and 134, regarding the eligibility procedures for admission to

the 8(a)BD and contractual assistance programs.

VIII—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 99–304)

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104–106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding $5,000,000.

Item IX—Review of Award Fee Determinations (Burnside-Ott) (FAR Case 98–017)

This final rule amends the Federal Acquisition Regulation (FAR) to implement rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

Item X—Nondisplacement of Qualified Workers—Commercial Items (FAR Case 99–600)

This final rule amends FAR 52.212–5(c) to add the clause entitled 52.222–50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

Item XI—Technical Amendments

Amendments are being made at sections 2.101, 5.205, 14.201–6, 15.208, 19.702, 32.503–6, 33.213, 36.104, 42.203, 52.215–1, 52.228–14, and 52.236–25 in order to update references and make editorial changes.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular (FAC) 97–15 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–15 are effective February 25, 2000, except for items III, VI, VIII, and XI, which are effective December 27, 1999, and Item VII which is effective December 27, 1999. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: December 20, 1999.

R.D. Kerrins, Jr.,

COL, USA, Acting Director, Defense Procurement.

Dated: December 20, 1999.

J. Les Davison,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 16, 1999.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 99–33429 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 23, and 52

[FAC 97–15; FAR Case 97–033; Item I]

RIN 9000–AI19

Federal Acquisition Regulation; Pollution Control and Clean Air and Water

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule that amends the Federal Acquisition Regulation (FAR) to eliminate the burden on offerors to certify that they do not propose to use a facility for the performance of the contract that is ineligible for award because it is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA List) to ensure that they do not award contracts to ineligible offerors. This change represents no change to the longstanding policy that a contracting officer must not award a contract if performance of the contract would be at a facility that has not corrected the cause that gave rise to a criminal conviction under the Clean Air Act or Clean Water Act.

DATES: *Effective Date:* February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–15, FAR case 97–033.

SUPPLEMENTARY INFORMATION:

A. Background

Section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606) and Section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368) prohibit award of a Federal contract to any person who has been convicted of various violations under the Acts if the convicted person owns, leases, or supervises the facility at which the violations(s) occurred; and any part of the contract will be performed at the violating facility. This ineligibility begins the moment a judgment of conviction is entered. The statutes provide that the ineligibility for contract award remains in effect until the Administrator of the Environmental Protection Agency (EPA) certifies that the conditions giving rise to the conviction have been corrected. Excluded parties whose ineligibility is limited by reason of a CAA or CWA conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at "http://epls.arnet.gov/".

The Councils published a proposed rule in the **Federal Register** at 64 FR 26264, May 13, 1999, that explained how the removal of FAR Subpart 23.1, FAR 52.223–1, and FAR 52.223–2 would not have a detrimental effect on the Government's environmental policy or its ability to enforce CAA and CWA requirements that apply to efforts performed under Federal contracts. Four respondents submitted comments concurring with the proposed rule. The Councils have agreed to convert the proposed rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because generally less than 50 facilities a year are ineligible for contract award as a result of convictions for violations of the CAA or CWA.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because these changes remove an information collection requirement approved under OMB Control Number 9000–0021. The paperwork to remove the collection from the FAR inventory will be submitted to OMB.

List of Subjects in 48 CFR Parts 1, 12, 23, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 12, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 12, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. In section 1.106, amend the introductory text by removing the word "ten" and adding "10"; and in the table following the introductory paragraph remove FAR segment "52.223–1" and its corresponding OMB Control Number, "9000–0021".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. In section 12.503, revise the introductory text of paragraph (b); remove paragraph (b)(1); redesignate paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2), respectively; remove paragraph (b)(4); and redesignate paragraph (b)(5) as (b)(3). The revised text reads as follows:

12.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

* * * * *

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

* * * * *

4. Revise paragraph (b) in section 12.504 to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

* * * * *

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, *et seq.*, (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.1 [Removed and Reserved]

5. Subpart 23.1 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223–1 and 52.223–2 [Reserved]

6. Sections 52.223–1 and 52.223–2 are removed and reserved.

[FR Doc. 99–33430 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52

[FAC 97–15; FAR Case 97–024; Item II]

RIN 9000–AH30

Federal Acquisition Regulation; Foreign Acquisition (Part 25 Rewrite)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

DATES: *Effective Date:* February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–15, FAR case 97–024.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language. DoD, GSA, and NASA published a proposed rule in the **Federal Register** on September 28, 1998 (63 FR 51642). Seven respondents submitted comments. The Councils considered all comments in formulation of the final rule. This final rule differs from the proposed rule as follows:

- Deletes the definitions "components" and "construction" (25.003), defines construction in 2.101, and substitutes the definition of "component" (2.101) in 52.225–1 and 52.225–3.
- Deletes the definition "end product" (25.003), defines "end product" (2.101), and substitutes the definition "end product" in 2.101 in the clauses at 52.225–1, 52.225–3, and 52.225–5.
- Revises the definition "U.S.-made end product" to include unmanufactured articles mined or produced in the United States (25.003).
- Deletes the requirement in some circumstances for a written determination of domestic nonavailability (25.103).
- Clarifies the procedures for preaward determinations of inapplicability of the Buy American Act for construction contracts (25.203).
- Clarifies the application of the Trade Agreements Act in acquisitions with limitations on the use of full and open competition in accordance with Part 6 or 13 (6.303–1, 25.401, and 25.408).
- Addresses excluded services under the Trade Agreements Act as well as NAFTA (25.401).
- Clarifies that the procedures at 25.502(c) apply only if the Buy American Act or Balance of Payments Program apply.

• Revises the examples at 25.504–1 to clarify how the Buy American Act and the Balance of Payments Programs apply to small business set-asides.

• Adds an alternate to the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to provide for waiver of the examination of records (12.301(b), 25.1001, and 52.212–5).

• Adds a definition of "United States" to the clauses at 52.225–1, 52.225–3, 52.225–5, 52.225–9, and 52.225–11.

• Adds a definition of "Customs territory of the United States" to the clause at 52.225–8, Duty-Free Entry.

• Clarifies application of the Balance of Payments Program (25.504–1(b), 25.1101(b)(1)(i)(A), and 25.1101(c)(1)).

The restructuring of Part 25 in the proposed rule has been maintained in the final rule. The following list summarizes the renumbering of the clauses at 52.225, which has not changed from the proposed rule:

Current FAR Section	New FAR Section
52.225–1 and –6	52.225–2
52.225–2	52.225–7
52.225–3 and –7	52.225–1
52.225–4	52.225–17
52.225–5	52.225–9
52.225–8	52.225–6
52.225–9	52.225–5
52.225–10	52.225–8
52.225–11	52.225–13
52.225–12	52.225–10
52.225–13	52.225–12
52.225–14	52.225–14
52.225–15 and –22	52.225–11
52.225–18	52.225–15
52.225–19	52.225–16
52.225–20	52.225–4
52.225–21	52.225–3

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it primarily clarifies existing guidance pertaining to acquisition of foreign supplies, services, and construction.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. The Office of Management and Budget has approved the information collection requirements associated with Part 25 under OMB Control Numbers 9000–0022, 9000–0023, 9000–0024, 9000–0025, 9000–0130, and 9000–0141. The applicable changes to the clause numbers of the provisions and clauses that are covered by these approvals are addressed in the preamble to the proposed rule (63 FR 51642).

List of Subjects in 48 CFR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52:

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by removing the FAR Segment and OMB Control Number in the left columns and adding the FAR Segment and OMB Control Number listed in the right columns as follows:

Remove		Add	
Far segment	OMB Control No.	FAR segment	OMB Control No.
52.225–1	9000–0024	52.225–2	9000–0023 and 9000–0024
52.225–6	9000–0023	52.225–4	9000–0130
52.225–8	9000–0025	52.225–6	9000–0025
52.225–10	9000–0022	52.225–8	9000–0022
52.225–20	9000–0130	52.225–9	9000–0141
		52.225–11	9000–0141

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 by revising the definitions "Component" and "United States", and by adding, in alphabetical order, the definitions "Construction" and "End product" to read as follows:

2.101 Definitions.

* * * * *

Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225–9 and 52.225–11, see the definitions in 52.225–9(a) and 52.225–11(a).

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

* * * * *

End product means supplies delivered under a line item of a Government contract.

* * * * *

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in Subpart 22.8, see the definition at 22.801.

(2) For use in Subpart 22.10, see the definition at 22.1001.

(3) For use in Part 25, see the definition at 25.003.

(4) For use in Subpart 47.4, see the definition at 47.401.

PART 5—PUBLICIZING CONTRACT ACTIONS

4. Amend section 5.301 by revising paragraph (a); and in paragraph (c) by removing "shall" and adding "must" in its place. The revised text reads as follows:

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section, contracting officers must synopsize in the Commerce Business Daily (CBD) awards exceeding $25,000 that are—

(1) Subject to the Trade Agreements Act (see Subpart 25.4); or

(2) Likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

* * * * *

PART 6—COMPETITION REQUIREMENTS

5. Revise paragraph (d) of section 6.303–1 to read as follows:

6.303–1 Requirements.

* * * * *

(d) If the authority of 6.302–3(a)(2)(i) or 6.302–7 is being cited as a basis for not providing for full and open competition in an acquisition that would otherwise be subject to the Trade Agreements Act (see Subpart 25.4), the contracting officer must forward a copy of the justification, in accordance with agency procedures, to the agencys point of contact with the Office of the United States Trade Representative.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

6. Revise paragraph (b) of section 9.205 to read as follows:

9.205 Opportunity for qualification before award.

* * * * *

(b) The activity responsible for establishing a qualification requirement must keep any list maintained of those already qualified open for inclusion of additional products, manufacturers, or other potential sources, including eligible products from designated countries under the terms of the Trade Agreements Act (see Subpart 25.4).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

7. Revise paragraph (c) of section 12.205 to read as follows:

12.205 Offers.

* * * * *

(c) Consistent with the requirements at 5.203(b), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items, unless the acquisition is subject to NAFTA or the Trade Agreements Act (see 5.203(h)).

8. Amend section 12.301 by adding a sentence to the end of paragraph (b)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(4) * * * Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with 25.1001.

* * * * *

12.504 [Amended]

9. Amend section 12.504 by removing paragraphs (a)(2) through (a)(4) and redesignating (a)(5) through (a)(15) as (a)(2) through (a)(12), respectively.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.101 [Amended]

10. Amend section 13.101 at the end of paragraph (a)(2) by adding the word "and"; by removing paragraph (a)(3); and by redesignating paragraph (a)(4) as (a)(3).

11. Revise paragraph (d) of section 13.302–5 to read as follows:

13.302–5 Clauses.

* * * * *

(d)(1) The contracting officer may use the clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see 12.301).

(2) The clause—

(i) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and

(ii) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

(3)(i) When an acquisition for supplies for use within the United States cannot be set aside for small business concerns and trade agreements apply (see Subpart 25.4), substitute the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, used with Alternate I or Alternate II, if appropriate, instead of the clause at FAR 52.225–1, Buy American Act—Balance of Payments Program—Supplies.

(ii) When acquiring supplies for use outside the United States, delete clause 52.225–1 from the clause list at 52.213–4(b).

PART 14—SEALED BIDDING

12. Revise paragraphs (w) and (x) of section 14.201–6 to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(w) Insert the provision at 52.214–34, Submission of Offers in the English Language, in solicitations that include any of the clauses prescribed in 25.1101 or 25.1102. It may be included in other solicitations when the contracting officer decides that it is necessary.

(x) Insert the provision at 52.214–35, Submission of Offers in U.S. Currency, in solicitations that include any of the clauses prescribed in 25.1101 or 25.1102, unless the contracting officer includes the clause at 52.225–17, Evaluation of Foreign Currency Offers, as prescribed in 25.1103(d). It may be included in other solicitations when the contracting officer decides that it is necessary.

14.409–1 [Amended]

13. Amend section 14.409–1 in the introductory text of paragraph (a)(2) by removing "(see 25.405(e))" and adding "(see 25.408(a)(4))" in its place; and by removing "shall" and adding "must" in its place.

PART 15—CONTRACTING BY NEGOTIATION

14. Revise paragraph (b)(4) of section 15.209 to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(4) When the head of the agency has waived the examination of records by

the Comptroller General in accordance with 25.1001, use the clause with its Alternate III.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

15. Revise paragraph (h) of section 17.203 to read as follows:

17.203 Solicitations.

* * * * *

(h) Include the value of options in determining if the acquisition will exceed the Trade Agreements Act and North American Free Trade Agreement thresholds.

PART 19—SMALL BUSINESS PROGRAMS

19.1103 [Amended]

15a. In paragraph (a)(2) of section 19.1103, remove "25.402" and add "25.403" in its place.

19.1307 [Amended]

15b. In paragraph (b)(3) of section 19.1307, remove "25.402" and add "25.403" in its place.

16. Revise Part 25 to read as follows:

PART 25—FOREIGN ACQUISITION

Sec.

25.000 Scope of part.
25.001 General.
25.002 Applicability of subparts.
25.003 Definitions.

Subpart 25.1—Buy American Act—Supplies

25.100 Scope of subpart.
25.101 General.
25.102 Policy.
25.103 Exceptions.
25.104 Nonavailable articles.
25.105 Determining reasonableness of cost.

Subpart 25.2—Buy American Act—Construction Materials

25.200 Scope of subpart.
25.201 Policy.
25.202 Exceptions.
25.203 Preaward determinations.
25.204 Evaluating offers of foreign construction material.
25.205 Postaward determinations.
25.206 Noncompliance.

Subpart 25.3—Balance of Payments Program

25.300 Scope of subpart.
25.301 General.
25.302 Policy.
25.303 Exceptions.
25.304 Procedures.

Subpart 25.4—Trade Agreements

25.400 Scope of subpart.
25.401 Exceptions.
25.402 General.
25.403 Trade Agreements Act.
25.404 Caribbean Basin Trade Initiative.
25.405 North American Free Trade Agreement (NAFTA).
25.406 Israeli Trade Act.
25.407 Agreement on Trade in Civil Aircraft.
25.408 Procedures.

Subpart 25.5—Evaluating Foreign Offers—Supply Contracts

25.501 General.
25.502 Application.
25.503 Group offers.
25.504 Evaluation examples.
25.504–1 Buy American Act/Balance of Payments Program.
25.504–2 Trade Agreements Act/Caribbean Basin Trade Initiative/NAFTA.
25.504–3 NAFTA/Israeli Trade Act.
25.504–4 Group award basis.

Subpart 25.6—Trade Sanctions

25.600 Scope of subpart.
25.601 Policy.
25.602 Exceptions.

Subpart 25.7—Prohibited Sources

25.701 Restrictions.
25.702 Source of further information.

Subpart 25.8—Other International Agreements and Coordination

25.801 General.
25.802 Procedures.

Subpart 25.9—Customs and Duties

25.900 Scope of subpart.
25.901 Policy.
25.902 Procedures.
25.903 Exempted supplies.

Subpart 25.10—Additional Foreign Acquisition Regulations.

25.1001 Waiver of right to examination of records.
25.1002 Use of foreign currency.

Subpart 25.11—Solicitation Provisions and Contract Clauses.

25.1101 Acquisition of supplies.
25.1102 Acquisition of construction.
25.1103 Other provisions and clauses.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.000 Scope of part.

This part provides policies and procedures for acquiring foreign supplies, services, and construction materials. It implements the Buy American Act, the Balance of Payments Program, trade agreements, and other laws and regulations.

25.001 General.

(a) The Buy American Act—

(1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see Subpart 25.1); and

(2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see Subpart 25.2).

(b) The Balance of Payments Program (see Subpart 25.3) is similar to the Buy American Act in its implementation, except that it applies to the purchase of supplies for use outside the United States and construction materials for construction contracts performed outside the United States.

(c) The restrictions in the Buy American Act and the Balance of Payments Program are not applicable in acquisitions subject to certain trade agreements (see Subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in Subpart 25.4.

(d) The test to determine the country of origin for an end product under the trade agreements is different from the test to determine the country of origin for an end product under the Buy American Act (see the various country "end product" definitions in 25.003). The Buy American Act uses a two-part test to define a "domestic end product" (manufacture in the United States and a formula based on cost of domestic components). Under the trade agreements, the test to determine country of origin is "substantial transformation" (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(e) On April 22, 1992, the President made a determination under section 305 of the Trade Agreements Act to impose sanctions against some European Union countries for discriminating against U.S. products and services (see Subpart 25.6).

25.002 Applicability of subparts.

The following table shows the applicability of the subparts. Subpart 25.5 provides comprehensive procedures for offer evaluation and examples.

	Subpart	Supplies for use		Construction		Services performed	
		Inside U.S.	Outside U.S.	Inside U.S.	Outside U.S.	Inside U.S.	Outside U.S.
25.1	Buy American Act—Supplies	X	.....	.....	.....	.....	.....
25.2	Buy American Act—Construction Materials	.....	.....	X	.....	.....	.....
25.3	Balance of Payments Program	.....	X	.....	X	.....	.....
25.4	Trade Agreements	X	X	X	X	X	X
25.5	Evaluating Foreign Offers—Supply Contracts	X	X	.....	.....	.....	.....
25.6	Trade Sanctions	X	X	X	X	X	X
25.7	Prohibited Sources	X	X	X	X	X	X
25.8	Other International Agreements and Coordination	X	X	.....	X	.....	X
25.9	Customs and Duties	X	.....	.....	.....	.....	.....
25.10	Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11	Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

25.003 Definitions.

As used in this part—

Canadian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tobago and Trinidad.

Caribbean Basin country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. The term excludes products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

(i) Textiles and apparel articles that are subject to textile agreements;

(ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(iii) Tuna, prepared or preserved in any manner in airtight containers;

(iv) Petroleum, or any product derived from petroleum; and

(v) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply.

Civil aircraft and related articles means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

Construction material means an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Customs territory of the United States means the States, the District of Columbia, and Puerto Rico.

Designated country means any of the following countries:

Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso,

Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan, Kiribati, Korea, Republic of Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen

Designated country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Domestic end product means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

Domestic offer means an offer of a domestic end product. When the solicitation specifies that award will be made on a group of line items, a domestic offer means an offer where the proposed price of the domestic end products exceeds 50 percent of the total proposed price of the group.

Eligible offer means an offer of an eligible product. When the solicitation specifies that award will be made on a group of line items, an eligible offer means a foreign offer where the combined proposed price of the eligible products and the domestic end products exceeds 50 percent of the total proposed price of the group.

Eligible product means a foreign end product that is not subject to discriminatory treatment under either the Buy American Act or the Balance of Payments Program, due to applicability of a trade agreement to a particular acquisition.

Foreign construction material means a construction material other than a domestic construction material.

Foreign contractor means a contractor or subcontractor organized or existing under the laws of a country other than the United States.

Foreign end product means an end product other than a domestic end product.

Foreign offer means any offer other than a domestic offer.

Israeli end product means an article that—

(1) Is wholly the growth, product, or manufacture of Israel; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Mexican end product means an article that—

(1) Is wholly the growth, product, or manufacture of Mexico; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Noneligible offer means an offer of a noneligible product.

Noneligible product means a foreign end product that is not an eligible product.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Sanctioned European Union country construction means construction to be performed in a sanctioned European Union member state.

Sanctioned European Union country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a sanctioned EU member state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of these incidental services does not exceed that of the article itself.

Sanctioned European Union country services means services to be performed in a sanctioned European Union member state.

Sanctioned European Union member state means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

United States means the 50 States and the District of Columbia, U.S. territories

and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Subpart 25.1—Buy American Act—Supplies

25.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a–10d) and Executive Order 10582, December 17, 1954. It applies to supplies acquired for use in the United States,

(b) The supply portion of a contract for services that involves the furnishing of supplies (*e.g.*, lease) exceeds the micro-purchase threshold.

25.101 General.

(a) The Buy American Act restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American Act uses a two-part test to define a domestic end product.

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed 50 percent of the cost of all the components.

(b) The Buy American Act applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product unless it meets the component test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a foreign end product are listed at 25.103. The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another. Evaluation procedures and examples are provided in Subpart 25.5.

25.102 Policy.

Except as provided in 25.103, acquire only domestic end products for public use inside the United States.

25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American Act:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability.* (1) A nonavailability determination has been made for the articles listed in 25.104.

(2)(i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201–1 in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

(c) *Unreasonable cost.* The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.105 and Subpart 25.5.

(d) *Resale.* The contracting officer may purchase foreign end products specifically for commissary resale.

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b):

Acetylene, black.
Agar, bulk.
Anise.
Antimony, as metal or oxide.
Asbestos, amosite, chrysotile, and crocidolite.
Bananas.
Bauxite.
Beef, corned, canned.
Beef extract.
Bephenium hydroxynapthoate.
Bismuth.
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Castor beans and castor oil.
Chalk, English.
Chestnuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Cover glass, microscope slide.
Crane rail (85-pound per foot).
Cryolite, natural.
Dammar gum.
Diamonds, industrial, stones and abrasives.
Emetine, bulk.
Ergot, crude.
Erythrityl tetranitrate.
Fair linen, altar.
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
Goat and kidskins.
Graphite, natural, crystalline, crucible grade.
Hand file sets (Swiss pattern).
Handsewing needles.
Hemp yarn.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Iodine, crude.
Kaurigum.
Lac.
Leather, sheepskin, hair type.
Lavender oil.
Manganese.
Menthol, natural bulk.
Mica.
Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives (green), pitted or unpitted, or stuffed, in bulk.
Opium, crude.
Oranges, mandarin, canned.
Petroleum, crude oil, unfinished oils, and finished products.
Pine needle oil.
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Quinine.
Rabbit fur felt.
Radium salts, source and special nuclear materials.
Rosettes.

Rubber, crude and latex.
Rutile.
Santonin, crude.
Secretin.
Shellac.
Silk, raw and unmanufactured.
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
Spices and herbs, in bulk.
Sugars, raw.
Swords and scabbards.
Talc, block, steatite.
Tantalum.
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Thread, metallic (gold).
Thyme oil.
Tin in bars, blocks, and pigs.
Triprolidine hydrochloride.
Tungsten.
Vanilla beans.
Venom, cobra.
Wax, carnauba.
Wire glass.
Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Yarn, 50 Denier rayon.

(b) The determination in paragraph (a) of this section does not apply if the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality. The contracting officer must amend the solicitation if purchasing the article, or if purchasing an end product that could contain such an article as a component, and must specify in all new solicitations that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components. In addition, the contracting officer must submit a copy of supporting documentation to the appropriate council identified in 1.201–1 in accordance with agency procedures, for possible removal of the article from the list.

25.105 Determining reasonableness of cost.

(a) The contracting officer—

(1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and

(2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under Subpart 25.4.

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(1) 6 percent, if the lowest domestic offer is from a large business concern; or

(2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see Subpart 19.5).

(c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at Subpart 25.5.)

Subpart 25.2—Buy American Act—Construction Materials

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a–10d) and Executive Order 10582, December 17, 1954. It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Policy.

Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may acquire foreign construction materials without regard to the restrictions of the Buy American Act:

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.104(b) also apply if any of those articles are acquired as construction materials.

(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.204.

(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain foreign construction materials may be used, the contracting officer must list the excepted materials in the contract. The agency must make the findings justifying the exception available for public inspection.

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of $6,909,500 or more, see 25.405. If the acquisition value is $7,143,000 or more, also see 25.403.

25.203 Preaward determinations.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either 52.225–10 or 52.225–12, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225–9 or 52.225–11, whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at 52.225–9, paragraph (b)(2), or 52.225–11, paragraph (b)(3), or excepted under the Trade Agreements Act or NAFTA (paragraph (b)(2) of 52.225–11), must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless the head of the agency specifies a higher percentage, the contracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of

the Buy American Act based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(2) of 52.225–9, or paragraph (b)(3) of 52.225–11), the contracting officer must add the excepted materials to the list in the contract clause.

25.205 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225–9 or 52.225–11 and/or other readily available information.

(c) If a determination, under 25.202(a), is made after contract award that an exception to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.

25.206 Noncompliance.

The contracting officer must—

(a) Review allegations of Buy American Act violations;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of the Buy American Act in accordance with 25.205.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with Subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

Subpart 25.3—Balance of Payments Program

25.300 Scope of subpart.

This subpart provides policies and procedures implementing the Balance of Payments Program. It applies to contracts for the purchase of supplies for use outside the United States, and contracts for construction, alteration, or repair of any public building or public work outside the United States.

25.301 General.

The Balance of Payments Program restricts the purchase of supplies that are not domestic end products, for use outside the United States, and restricts the use of construction materials that are not domestic, for performance of construction contracts outside the United States. Its restrictions are similar to those of the Buy American Act. It uses the same definitions and evaluation procedures, except that a 50 percent factor generally is used to determine unreasonable cost. Exceptions to the Balance of Payments Program, especially for construction materials, are generally determined prior to solicitation and assignment of contracting responsibility. The contracting officer must identify excepted supplies and construction materials in the contract.

25.302 Policy.

Except as provided in 25.303, acquire only domestic end products for use outside the United States, and use only domestic construction materials for construction, repair, or maintenance of real property outside the United States.

25.303 Exceptions.

A foreign end product may be acquired for use outside the United States, or a foreign construction material may be used in construction outside the United States, without regard to the restrictions of the Balance of Payments Program if—

(a) The estimated cost of the end product does not exceed the simplified acquisition threshold;

(b) The end product or construction material is listed at 25.104, or the head of the contracting activity determines that a requirement—

(1) Can only be filled by a foreign end product or construction material (see 25.103(b));

(2) Is for end products or construction materials that, by their nature or as a practical matter, can only be acquired in the geographic area concerned, *e.g.*, ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick; or

(3) Is for perishable subsistence products and delivery from the United States would significantly impair their quality at the point of consumption;

(c) The acquisition of foreign end products is required by a treaty or executive agreement between governments;

(d) The end products are—

(1) Petroleum products; or

(2) For commissary resale;

(e) The end products are eligible products subject to the Trade Agreements Act, NAFTA, or the Israeli Trade Act, or the construction material is subject to the Trade Agreements Act or NAFTA;

(f) The cost of the domestic end product or construction material (including transportation and handling costs) exceeds the cost of the foreign end product or construction material by more than 50 percent, or a higher percentage specifically authorized by the head of the agency; or

(g) The head of the agency has determined that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material or that it is impracticable to apply the restrictions of the Balance of Payments Program to the construction material.

25.304 Procedures.

(a) *Solicitation of offers.* The contracting officer must identify, in the solicitation, supplies and construction materials known in advance to be excepted from the procedures of this subpart.

(b) *Evaluation of offers.* The contracting officer must—

(1) Evaluate offers for supplies in accordance with Subpart 25.5; and

(2) Evaluate offers proposing foreign construction material by using the procedures at 25.204, except that a factor of 50 percent or a higher percentage (see 25.303(f)) must be applied to foreign construction material proposed for exception from the requirements of the Balance of Payments Program on the basis of unreasonable cost of domestic construction materials.

(c) *Other procedures for construction.* For construction contracts, the procedures at 25.203, 25.205, and 25.206, for determinations and noncompliance under the Buy American Act, are also applicable to determinations and noncompliance under the Balance of Payments Program.

Subpart 25.4—Trade Agreements

25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to acquisitions that are subject to

(1) The Trade Agreements Act (the Agreement on Government Procurement, as approved by Congress in the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), and as amended by the Uruguay Round Agreements Act (Pub. L. 103-465));

(2) The Caribbean Basin Trade Initiative (the determination of the U.S. Trade Representative that end products granted duty-free entry under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*) must be treated as eligible products under the Trade Agreements Act);

(3) NAFTA (the North American Free Trade Agreement, as approved by Congress in the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note));

(4) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note)); or

(5) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American Act for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 (19 U.S.C. 2513)).

(b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

25.401 Exceptions.

(a) This subpart does not apply to—

(1) Acquisitions set aside for small businesses;

(2) Acquisitions of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes, including all services purchased in support of military forces located overseas;

(3) Acquisitions of end products for resale;

(4) Acquisitions under Subpart 8.6, Acquisition from Federal Prison Industries, Inc., and Subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled;

(5) Other acquisitions not using full and open competition, if authorized by Subpart 6.2 or 6.3, when the limitation of competition would preclude use of the procedures of this subpart (but see 6.303–1(d)); or sole source acquisitions justified in accordance with 13.501(a); and

(6) Acquisitions of the following excluded services:

(i) Automatic data processing (ADP) telecommunications and transmission services, except enhanced (*i.e.*, value-added) telecommunications services.

(ii) Research and development.

(iii) Transportation services (including launching services, but not including travel agent services).

(iv) Utility services.

(b)(1) Other services not covered by the Trade Agreements Act are—

(i) Dredging; and

(ii) Management and operation contracts to certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers (FFRDCs).

(2) Other services not covered by NAFTA are—

(i) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399) (Federal Service Code from the Federal Procurement Data System Product/Service Code Manual indicated in parentheses);

(ii) Operation of all facilities by the Department of Defense, Department of Energy, or the National Aeronautics and Space Administration; and all Government-owned research and development facilities or Government-owned environmental laboratories;

(iii) Maintenance, repair, modification, rebuilding and installation of equipment related to ships; and

(iv) Nonnuclear ship repair.

25.402 General.

The trade agreements waive the applicability of the Buy American Act or the Balance of Payments Program for some foreign supplies and construction materials from certain countries. The Trade Agreements Act and NAFTA specify procurement procedures designed to ensure fairness. The value of the acquisition is a determining factor in the applicability of the trade agreements. When the restrictions of the Buy American Act or the Balance of Payments Program are waived for eligible products, offers of such products (eligible offers) receive equal consideration with domestic offers. Under the Trade Agreements Act, only U.S.-made end products or eligible products may be acquired (also see 25.403(c)). See Subpart 25.5 for evaluation procedures for supply contracts subject to trade agreements.

25.403 Trade Agreements Act.

(a) *General.* The Agreement on Government Procurement of the Trade Agreements Act—

(1) Waives application of the Buy American Act and the Balance of Payments Program to the end products and construction materials of designated countries;

(2) Prohibits discriminatory practices based on foreign ownership;

(3) Restricts purchases to end products identified in 25.403(c);

(4) Requires certain procurement procedures designed to ensure fairness (see 25.408).

(b) *Thresholds.* (1) Except as provided in 25.401, the Trade Agreements Act applies to an acquisition for supplies or services if the estimated value of the acquisition is $186,000 or more; the

Trade Agreements Act applies to an acquisition for construction if the estimated value of the acquisition is $7,143,000 or more. These dollar thresholds became effective January 1, 1998, and are subject to revision by the U.S. Trade Representative approximately every 2 years (see Executive Order 12260).

(2) To determine whether the Trade Agreements Act applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase), calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract, *i.e.*, the initial ordering period plus any optional ordering periods.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(3) The estimated value includes the value of all options.

(4) If, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, use the total estimated value of these projected awards to determine whether the Trade Agreements Act applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the Trade Agreements Act.

(c) *Purchase restriction.* (1) In acquisitions subject to the Trade Agreements Act, acquire only U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products) unless offers for such end products are either not received or are insufficient to fulfill the requirements.

(2) This restriction does not apply to purchases by the Department of Defense from a country with which it has entered into a reciprocal agreement, as provided in departmental regulations.

25.404 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions subject to the Trade Agreements Act, Caribbean Basin country end products must be treated as eligible products. This determination is effective until September 30, 1999, except that, for products of Panama, this determination is effective until September 30, 2000. The U.S. Trade Representative may extend these dates through a document in the **Federal Register**.

25.405 North American Free Trade Agreement (NAFTA).

(a) An acquisition of supplies is not subject to NAFTA if the estimated value of the acquisition is $25,000 or less. For acquisitions subject to NAFTA, evaluate offers of NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program, except that for acquisitions with an estimated value of less than $53,150, only Canadian end products are eligible products. Eligible products from NAFTA countries are entitled to the nondiscriminatory treatment of the Trade Agreements Act. NAFTA does not prohibit the purchase of other foreign end products.

(b) NAFTA applies to construction materials if the estimated value of the construction contract is $6,909,500 or more.

(c) The procedures in 25.408 apply to the acquisition of NAFTA country services, other than services identified in 25.401. NAFTA country services are services provided by a firm established in a NAFTA country under service contracts with an estimated acquisition value of $53,150 or more ($6,909,500 or more for construction).

25.406 Israeli Trade Act.

Acquisitions of supplies by most agencies are subject to the Israeli Trade Act, if the estimated value of the acquisition is $50,000 or more but does not exceed the Trade Agreements Act threshold for supplies (see 25.403(b)(1)). Agencies other than the Department of Defense, the Department of Energy, the Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision must evaluate offers of Israeli end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Israeli Trade Act does not prohibit the purchase of other foreign end products.

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles, that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.

25.408 Procedures.

(a) If the Trade Agreements Act or NAFTA applies (see 25.401), the contracting officer must—

(1) Comply with the requirements of 5.203, Publicizing and response time;

(2) Comply with the requirements of 5.207, Preparation and Transmittal of Synopses, including the appropriate "Numbered Note" (5.207(e)(2)) for contracts that are subject to the Trade Agreements Act;

(3) Not include technical requirements in solicitations solely to preclude the acquisition of eligible products;

(4) Specify in solicitations that offerors must submit offers in the English language and in U.S. dollars (see 52.214–34, Submission of Offers in the English Language, and 52.214–35, Submission of Offers in U.S. Currency, or paragraph (c)(5) of 52.215–1, Instruction to Offerors—Competitive Acquisitions); and

(5) Provide unsuccessful offerors from designated or NAFTA countries notice in accordance with 14.409–1 or 15.503.

(b) See Subpart 25.5 for evaluation procedures and examples.

Subpart 25.5—Evaluating Foreign Offers—Supply Contracts

25.501 General.

The contracting officer—

(a) Must apply the evaluation procedures of this subpart to each line item of an offer unless either the offer or the solicitation specifies evaluation on a group basis (see 25.503);

(b) May rely on the offeror's certification of end product origin when evaluating a foreign offer;

(c) Must identify and reject offers of end products that are prohibited or sanctioned in accordance with Subparts 25.6 and 25.7; and (d) Must not use the Buy American Act and Balance of Payments Program evaluation factors prescribed in this subpart to provide a preference for one foreign offer over another foreign offer.

25.502 Application.

(a) Unless otherwise specified in agency regulations, perform the following steps in the order presented:

(1) Eliminate all offers or offerors that are unacceptable for reasons other than price; *e.g.*, nonresponsive, debarred or suspended, sanctioned (see Subpart 25.6), or a prohibited source (see Subpart 25.7).

(2) Rank the remaining offers by price.

(3) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in this section and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(b) For acquisitions subject to the Trade Agreements Act (see 25.401 and 25.403(b))—

(1) Consider only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products, unless no offers of such end products were received;

(2) If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic end products, award on the low offer. Otherwise, evaluate in accordance with agency procedures; and

(3) If there were no offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products, make a nonavailability determination (see 25.103(b)(2)) and award on the low offer (see 25.403(c)).

(c) For acquisitions not subject to the Trade Agreements Act, but subject to the Buy American Act or the Balance of Payments Program (NAFTA or the Israeli Trade Act also may apply), the following applies:

(1) If the low offer is a domestic offer or an eligible offer under NAFTA or the Israeli Trade Act, award on that offer.

(2) If the low offer is a noneligible offer and there were no domestic offers (see 25.103(b)(3)), award on the low offer.

(3) If the low offer is a noneligible offer and there is an eligible offer that is lower than the lowest domestic offer, award on the low offer. The Buy American Act and the Balance of Payments Program provide an evaluation preference only for domestic offers.

(4) Otherwise, apply the appropriate evaluation factor provided in 25.105 or 25.304 to the low offer.

(i) If the evaluated price of the low offer remains less than the lowest domestic offer, award on the low offer.

(ii) If the price of the lowest domestic offer is less than the evaluated price of the low offer, award on the lowest domestic offer.

(d) *Ties.* (1) If application of an evaluation factor results in a tie between a domestic offer and a foreign offer, award on the domestic offer.

(2) If no evaluation preference was applied (*i.e.*, offers afforded nondiscriminatory treatment under the Buy American Act or Balance of Payments Program), resolve ties between domestic and foreign offers by a witnessed drawing of lots by an impartial individual.

(3) Resolve ties between foreign offers from small business concerns (under the Buy American Act and Balance of Payments Program, a small business offering a manufactured article that does not meet the definition of "domestic end product" is a foreign offer) or foreign offers from a small business concern and a large business concern in accordance with 14.408–6(a).

25.503 Group offers.

(a) If the solicitation or an offer specifies that award can be made only on a group of line items or on all line items contained in the solicitation or offer, reject the offer—

(1) If any part of the award would consist of sanctioned or prohibited end products (see Subparts 25.6 and 25.7); or

(2) If the Trade Agreements Act applies and any part of the offer consists of items restricted in accordance with 25.403(c).

(b) If an offer restricts award to a group of line items or to all line items contained in the offer, determine for each line item whether to apply an evaluation factor (see 25.504–4, Example 1).

(1) First, evaluate offers that do not specify an award restriction on a line item basis in accordance with 25.502, determining a tentative award pattern by selecting for each line item the offer with the lowest evaluated price.

(2) Evaluate an offer that specifies an award restriction against the offered prices of the tentative award pattern, applying the appropriate evaluation factor on a line item basis.

(3) Compute the total evaluated price for the tentative award pattern and the offer that specified an award restriction.

(4) Unless the total evaluated price of the offer that specified an award restriction is less than the total evaluated price of the tentative award pattern, award based on the tentative award pattern.

(c) If the solicitation specifies that award will be made only on a group of line items or all line items contained in the solicitation, determine the category of end products on the basis of each line item, but determine whether to apply an evaluation factor on the basis of the group of items (see 25.504–4, Example 2).

(1) If the proposed price of domestic end products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a domestic offer. Evaluate all other groups as foreign offers.

(2) For foreign offers, if the proposed price of domestic end products and eligible products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as an eligible offer.

(3) Apply the evaluation factor to the entire group in accordance with 25.502.

25.504 Evaluation examples.

The following examples illustrate the application of the evaluation procedures in 25.502 and 25.503. The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement (see 25.502(a)(1)). Although these examples are generally constructed in terms of the Buy American Act, the same evaluation procedures would apply under the Balance of Payments Program. The evaluation factor may change as provided in agency regulations.

25.504–1 Buy American Act/Balance of Payments Program.

(a)(1) *Example 1.*

Offer A ...	$12,000	Domestic end product, small business.
Offer B ...	11,700	Domestic end product, small business.
Offer C ...	10,000	U.S.-made end product (not domestic), small business.

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Since the acquisition value is less than $25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business, but is not a domestic end product (see 25.502(c)(4)). Since Offer B is a domestic offer, apply the 12 percent factor to Offer C (see 25.105(b)(2)). The resulting evaluated price of $11,200 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see 25.105(c)). Award on Offer C at $10,000 (see 25.502(c)(4)(i)).

(b)(1) Example 2.

Offer A ...	$110,000	Domestic end product, small business.

Offer B ...	107,000	Domestic end product, small business.
Offer C ...	102,000	U.S.-made end product (not domestic), small business.

(2) *Analysis:* This acquisition is for end products for use outside the United States and is set aside for small business concerns. Since the value of the acquisition exceeds the simplified acquisition threshold, the Balance of Payments Program applies. While the acquisition value exceeds $25,000, none of the trade agreements apply because the acquisition is set aside. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business, but is not a domestic end product (see 25.502(c)(4)). After applying the 50 percent factor, the evaluated price of Offer C is $153,000. Award on Offer B at $107,000 (see 25.502(c)(4)(ii)).

25.504–2 Trade Agreements Act/Caribbean Basin Trade Initiative/NAFTA.

Example 1.

Offer A ...	$204,000	U.S.-made end product (not domestic).
Offer B ...	203,000	U.S.-made end product (domestic), small business.
Offer C ...	200,000	Eligible product.
Offer D ...	195,000	Noneligible product (not U.S.-made).

Analysis: Eliminate Offer D because the Trade Agreements Act applies and there is an offer of a U.S.-made or an eligible product (see 25.502(b)(1)). If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic offers, it is unnecessary to determine if U.S.-made end products are domestic (large or small business). No further analysis is necessary. Award on the low remaining offer, Offer C (see 25.502(b)(2)).

25.504–3 NAFTA/Israeli Trade Act.

(a) Example 1.

Offer A ...	$105,000	Domestic end product, small business.
Offer B ...	100,000	Eligible product.

Analysis: Since the low offer is an eligible offer, award on the low offer (see 25.502(c)(1)).

(b) Example 2.

Offer A ...	$105,000	Eligible product.
Offer B ...	103,000	Noneligible product.

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the noneligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see 25.502(c)(2)).

(c) Example 3.

Offer A ...	$105,000	Domestic end product, large business.
Offer B ...	103,000	Eligible product.
Offer C ...	100,000	Noneligible product.

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the noneligible offer. Because the eligible offer (Offer B) is lower than the domestic offer (Offer A), no evaluation factor applies to the low offer (Offer C). Award on the low offer (see 25.502(c)(3)).

25.504–4 Group award basis.

(a) Example 1.

Item	Offers		
	A	B	C
1	DO = $55,000	EL = $56,000	NEL = $50,000
2	NEL = 13,000	EL = 10,000	EL = 13,000
3	NEL = 11,500	DO = 12,000	DO = 10,000
4	NEL = 24,000	EL = 28,000	NEL = 22,000
5	DO = 18,000	NEL = 10,000	DO = 14,000
	121,500	116,000	109,000

Key: DO = Domestic end product; EL = Eligible product; NEL = Noneligible product.

Problem: Offeror C specifies all-or-none award. Assume all offerors are large businesses. The Trade Agreements Act does not apply.

Analysis: (see 25.503)

STEP 1: Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

Item 1: Low offer A is domestic; select A.

Item 2: Low offer B is eligible; do not apply factor; select B.

Item 3: Low offer A is noneligible and Offer B is a domestic offer. Apply a 6 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.

Item 4: Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.

Item 5: Low offer B is noneligible; apply a 6 percent factor to Offer B. Offer A is still higher than Offer B; select B.

STEP 2: Evaluate Offer C against the tentative award pattern for Offers A and B:

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
1	A	DO=$55,000	NEL=$53,000
2	B	EL=10,000	EL=13,000
3	B	DO=12,000	DO=10,000
4	A	NEL=24,000	NEL=22,000
5	B	NEL=10,600	DO=14,000

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
		111,600	112,000

*Offer + 6 percent.

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not subject to the Trade Agreements Act. The evaluated price of Offer C, Item 1, becomes $53,000 ($50,000 plus 6 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is $10,600 ($10,000 plus 6 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of $82,000.

(b) Example 2.

Item	Offers		
	A	B	C
1	DO=$50,000	EL=$50,500	NEL=$50,000
2	NEL=10,300	NEL=10,000	EL=10,200
3	EL=20,400	EL=21,000	NEL=20,200
4	DO=10,500	DO=10,300	DO=10,400
	91,200	91,800	90,800

Problem: The solicitation specifies award on a group basis. Assume the Buy American Act applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the offers are domestic (see 25.503(c)(1)):

	Domestic [percent]	Determination
A	60,500/ 91,200=66.3%.	Domestic
B	10,300/ 91,800=11.2%.	Foreign
C	10,400/ 90,800=11.5%.	Foreign

STEP 2: Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)):

	Domestic + eligible [percent]	Determination
A	N/A	Domestic
B	81,800/ 91,800=89.1%.	Eligible
C	20,600/ 90,800=22.7%.	Noneligible

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business) to Offer C yields an evaluated price of $96,248 ($90,800 + 6 percent). Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see 25.502(c)(3)).

Subpart 25.6—Trade Sanctions

25.600 Scope of subpart.

This subpart implements sanctions imposed by the President pursuant to Section 305(g)(1) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)), on European Union (EU) member states that discriminate against U.S. products or services (sanctioned EU member states). This subpart does not apply to contracts for supplies or services awarded and performed outside the United States, or to the Department of Defense. For thresholds unique to individual agencies, see agency regulations.

25.601 Policy.

(a) Except as provided in 25.602, agencies must not award contracts for—

(1) Sanctioned EU country end products with an estimated acquisition value less than $186,000;

(2) Sanctioned EU country construction with an estimated acquisition value less than $7,143,000; or

(3) Sanctioned EU country services as follows (Federal Service Code or Category from the Federal Procurement Data System Product/Service Code Manual is indicated in parentheses):

(i) Service contracts regardless of acquisition value for—

(A) All transportation services, including launching services (all V codes, J019, J998, J999, and K019);

(B) Dredging (Y216 and Z216);

(C) Management and operation of certain Government or privately owned facilities used for Government purposes, including federally funded research and development centers (all M codes);

(D) Development, production or coproduction of program material for broadcasting, such as motion pictures (T006 and T016);

(E) Research and development (all A codes);

(F) Airport concessions (S203);

(G) Legal services (R418);

(H) Hotel and restaurant services (S203);

(I) Placement and supply of personnel services (V241 and V251);

(J) Investigation and security services (S206, S211, and R423);

(K) Education and training services (all U codes and R419);

(L) Health and social services (all O and G codes);

(M) Recreational, cultural, and sporting services (G003); or

(N) Telecommunications services (encompassing only voice telephony, telex, radio telephony, paging, and satellite services) (S1, D304, D305, D316, D317, and D399).

(ii) All other service contracts with an estimated acquisition value less than $186,000.

(b) Determine the applicability of sanction thresholds in the manner provided at 25.403(b).

25.602 Exceptions.

(a) The sanctions in 25.601 do not apply to—

(1) Purchases at or below the simplified acquisition threshold awarded using simplified acquisition procedures;

(2) Total small business set-asides in accordance with 19.502–2;

(3) Contracts in support of U.S. national security interests; or

(4) Contracts for essential spare, repair, or replacement parts not otherwise available from nonsanctioned countries.

(b)(1) The head of the agency, without power of redelegation, may authorize the award of a contract or class of contracts for sanctioned EU country end products, services, and construction, the purchase of which is otherwise prohibited by 25.601(a), if the head of the agency determines that such action is necessary—

(i) In the public interest;

(ii) To avoid the restriction of competition in a manner that would limit the acquisition in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(iii) Because there would be or are an insufficient number of potential or actual offerors to ensure the acquisition of services, articles, materials, or supplies of requisite quality at competitive prices.

(2) When the head of the agency makes a determination in accordance with paragraph (b)(1) of this section, the agency must notify the U.S. Trade Representative within 30 days after contract award.

Subpart 25.7—Prohibited Sources

25.701 Restrictions.

(a) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, even for overseas use, agencies and their contractors and subcontractors must not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

(1) Cuba (31 CFR part 515);

(2) Iran (31 CFR part 560);

(3) Iraq (31 CFR part 575);

(4) Libya (31 CFR part 550);

(5) North Korea (31 CFR part 500); or

(6) Sudan (31 CFR part 538).

(b) Agencies and their contractors and subcontractors must not acquire any supplies or services from entities controlled by the Government of Iraq or other specially designated nationals (31 CFR Chapter V, Appendix A).

25.702 Source of further information.

Questions concerning the restrictions in 25.701 should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220 (Telephone (202) 622–2520).

Subpart 25.8—Other International Agreements and Coordination

25.801 General.

Treaties and agreements between the United States and foreign governments affect the evaluation of offers from foreign entities and the performance of contracts in foreign countries.

25.802 Procedures.

(a) When placing contracts with contractors located outside the United States, for performance outside the United States, contracting officers must—

(1) Determine the existence and applicability of any international agreements and ensure compliance with these agreements; and

(2) Conduct the necessary advance acquisition planning and coordination between the appropriate U.S. executive agencies and foreign interests as required by these agreements.

(b) The Department of State publishes many international agreements in the "United States Treaties and Other International Agreements" series. Copies of this publication normally are available in overseas legal offices and U.S. diplomatic missions.

(c) Contracting officers must award all contracts with Taiwanese firms or organizations through the American Institute of Taiwan (AIT). AIT is under contract to the Department of State.

Subpart 25.9—Customs and Duties

25.900 Scope of subpart.

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts.

25.901 Policy.

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies must use these exemptions when the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.

25.902 Procedures.

For regulations governing importations and duties, see the Customs Regulations issued by the U.S. Customs Service, Department of the Treasury (19 CFR Chapter 1). Except as provided elsewhere in the Customs Regulations (see 19 CFR 10.100), all shipments of imported supplies purchased under Government contracts are subject to the usual Customs entry and examination requirements. Unless the agency obtains an exemption (see 25.903), those shipments are also subject to duty.

25.903 Exempted supplies.

(a) Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) list supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the Harmonized Tariff Schedule (see 19 CFR 10.102–104, 10.114, and 10.121 and 15 CFR part 301 for requirements and formats).

(b) Supplies (excluding equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, free of duty and internal revenue tax as provided in 19 U.S.C. 1309 and 1317. The contracting activity must cite this authority on the appropriate customs form when making purchases (see 19 CFR 10.59—10.65).

Subpart 25.10—Additional Foreign Acquisition Regulations

25.1001 Waiver of right to examination of records.

(a) *Policy.* The clause at 52.215–2, Audit and Records—Negotiation, prescribed at 15.209(b), and paragraph (d) of the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, prescribed at 12.301(b)(4), implement 10 U.S.C. 2313 and 41 U.S.C. 254d. The basic clauses authorize examination of records by the Comptroller General.

(1) Insert the appropriate basic clause, whenever possible, in negotiated contracts with foreign contractors.

(2) The contracting officer may use 52.215–2 with its Alternate III or 52.212–5 with its Alternate I after—

(i) Exhausting all reasonable efforts to include the basic clause;

(ii) Considering factors such as alternate sources of supply, additional cost, and time of delivery; and

(iii) The head of the agency has executed a determination and findings in accordance with paragraph (b) of this section, with the concurrence of the Comptroller General. However, concurrence of the Comptroller General is not required if the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination.

(b) *Determination and findings.* The determination and findings must—

(1) Identify the contract and its purpose, and identify if the contract is with a foreign contractor or with a

foreign government or an agency of a foreign government;

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

(4) Describe the price and availability of the supplies or services from the United States and other sources; and

(5) Determine that it will best serve the interest of the United States to use the appropriate alternate clause in paragraph (a)(2) of this section.

25.1002 Use of foreign currency.

(a) Unless an international agreement or the Trade Agreements Act (see 25.408(a)(3)) requires a specific currency, contracting officers must determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers in U.S. currency or a specified foreign currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations generally should require all offers to be priced in the same currency. However, if the solicitation permits submission of offers in other than a specified currency, the contracting officer must convert the offered prices to U.S. currency for evaluation purposes. The contracting officer must use the current market exchange rate from a commonly used source in effect as follows:

(1) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(2) For acquisitions conducted using negotiation procedures—

(i) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(ii) On the date specified for receipt of final proposal revisions.

(c) If a contract is priced in foreign currency, the agency must ensure that adequate funds are available to cover currency fluctuations to avoid a violation of the Anti-Deficiency Act (31 U.S.C. 1341, 1342, 1511–1519).

Subpart 25.11—Solicitation Provisions and Contract Clauses

25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a)(1) Insert the clause at 52.225–1, Buy American Act—Balance of Payments Program—Supplies, in solicitations and contracts with a value exceeding $2,500 but not exceeding $25,000; and in solicitations and contracts with a value exceeding $25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3;

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (*e.g.*, nonavailability or public interest); or

(iii) The acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies.

(2) Insert the provision at 52.225–2, Buy American Act—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225–1.

(b)(1)(i) Insert the clause at 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, in solicitations and contracts with a value exceeding $25,000 but less than $186,000, unless—

(A) The acquisition is for the acquisition of supplies, or for services involving the furnishing of supplies, for use outside the United States, and the value of the acquisition is less than the simplified acquisition threshold; or

(B) The acquisition is exempt from the North American Free Trade Agreement and the Israeli Trade Act (see 25.401). For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

(ii) If the acquisition value exceeds $25,000 but is less than $50,000, use the clause with its Alternate I.

(iii) If the acquisition value is $50,000 or more but less than $53,150, use the clause with its Alternate II.

(2)(i) Insert the provision at 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225–3.

(ii) If the acquisition value exceeds $25,000 but is less than $50,000, use the provision with its Alternate I.

(iii) If the acquisition value is $50,000 or more but less than $53,150, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225–5, Trade Agreements, in solicitations and contracts valued at $186,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the Buy American Act or Balance of Payments Program are not applicable to U.S.-made end products, unless the acquisition is to be awarded and performed outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation and does not exceed the increased simplified acquisition threshold of $200,000. If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at 52.225–6, Trade Agreements Certificate, in solicitations containing the clause at 52.225–5.

(d) Insert the provision at 52.225–7, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see 25.407), if the acquisition value is less than $186,000.

(e) Insert the clause at 52.225–8, Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with 25.903(a), if the value of the acquisition—

(1) Exceeds $100,000; or

(2) Is $100,000 or less, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions valued at $100,000 or less, the contracting officer may modify paragraphs (b)(1) and (i)(2) of the clause to reduce the dollar figure.

25.1102 Acquisition of construction.

(a) Insert the clause at 52.225–9, Buy American Act—Balance of Payments Program—Construction Materials, in solicitations and contracts for construction valued at less than $6,909,500.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American Act.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b)(1) Insert the provision at 52.225–10, Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials, in solicitations containing the clause at 52.225–9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program prior to receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, in solicitations and contracts valued at $6,909,500 or more.

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than designated country or NAFTA country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at $6,909,500 or more, but less than $7,143,000, use the clause with its Alternate I.

(d)(1) Insert the provision at 52.225–12, Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225–11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before receipt of offers, use the provision with its Alternate I.

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225–13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding $2,500.

(b) *Translations.* Insert the clause at 52.225–14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

(c) *Sanctions.* (1) Except as provided in paragraph (c)(2) of this section, insert the clause at—

(i) 52.225–15, Sanctioned European Union Country End Products, in solicitations and contracts for supplies valued at less than $186,000; or

(ii) 52.225–16, Sanctioned European Union Country Services, in solicitations and contracts for services—

(A) Listed in 25.601(a)(3)(i); or

(B) Valued at less than $186,000.

(2) Do not insert the clauses in paragraph (c)(1) of this section in—

(i) Solicitations issued and contracts awarded by a contracting activity located outside of the United States, provided the supplies will be used or the services will be performed outside of the United States;

(ii) Purchases at or below the simplified acquisition threshold awarded using simplified acquisition procedures;

(iii) Total small business set-asides;

(iv) Contracts in support of U.S. national security interests;

(v) Contracts for essential spare, repair, or replacement parts available only from sanctioned EU member states; or

(vi) Contracts for which the head of the agency has made a determination in accordance with 25.602(b).

(d) *Foreign currency offers.* Insert the provision at 52.225–17, Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.102 [Amended]

17. Amend section 36.102 by removing the definition "Construction".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Amend section 52.212–3 by revising the date of the provision and paragraphs (f) and (g) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Feb 2000)

* * * * *

(f) *Buy American Act—Balance of Payments Program Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225–1, Buy American Act—Balance of Payments Program—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act—Balance of Payments Program—Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) *Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate.* (Applies only if the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

NAFTA Country or Israeli End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate I (Feb 2000).* If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

Canadian End Products

Line Item No.: _____

(List as necessary)

(3) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate II (Feb 2000).* If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

Canadian or Israeli End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(4) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225–5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

* * * * *

19. Amend section 52.212–5 by revising the date of the clause; by revising paragraph (a); by revising paragraphs (b)(16) through (b)(21); and by adding Alternate I after "(End of clause)" to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Feb 2000)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.222–3, Convict Labor (E.O. 11755).

(2) 52.225–13, Restrictions on Certain Foreign Purchases (E.O.'s 12722, 12724, 13059, and 13067).

(3) 52.233–3, Protest after Award (31 U.S.C. 3553).

(b) * * *

____(16) 52.225–1, Buy American Act—Balance of Payments Program—Supplies (41 U.S.C. 10a–10d).

____(17)(i) 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

____(ii) Alternate I of 52.225–3.

____(iii) Alternate II of 52.225–3.

____(18) 52.225–5, Trade Agreements (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

____(19) 52.225–15, Sanctioned European Union Country End Products (E.O. 12849).

____(20) 52.225–16, Sanctioned European Union Country Services (E.O. 12849).

____(21) [Reserved]

* * * * *

Alternate I (Feb 2000). As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to "paragraphs (a), (b), (c), or (d) of this clause" in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

20. Amend section 52.213–4 by—

a. Revising the date of the clause;

b. Redesignating paragraph (a)(1)(ii) as (a)(1)(iii) and adding a new paragraph (a)(1)(ii);

c. Removing paragraph (a)(2)(i) and redesignating paragraphs (a)(2)(ii) through (a)(2)(viii) as (a)(2)(i) through (a)(2)(vii), respectively; and

d. Revising paragraph (b)(1)(viii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Feb 2000)

(a)(1) * * *

(ii) 52.225–13, Restrictions on Certain Foreign Purchases (Feb 2000) (E.O.'s 12722, 12724, 13059, and 13067).

* * * * *

(b)(1) * * *

(viii) 52.225–1, Buy American Act—Balance of Payments Program—Supplies (Feb 2000) (41 U.S.C. 10a–10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use within the United States if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see 19.502–2), and does not exceed $25,000.)

* * * * *

52.214–34 [Amended]

21. Amend the introductory paragraph of section 52.214–34 by removing "and 25.408(d)".

52.214–35 [Amended]

22. Amend the introductory paragraph of section 52.214–35 by removing "and 25.408(d)".

23. Amend section 52.215–1 by revising the date of the provision and paragraph (c)(5) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisitions (Feb 2000)

(c) * * *

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225–17, Evaluation of Foreign Currency Offers, is included in the solicitation.

* * * * *

24. Revise sections 52.225–1 through 52.225–15; add section 52.225–16 and 52.225–17; and remove sections 52.225–18 through 52.225–22 to read as follows:

Subpart 52.2—Text of Provisions and Clauses

Sec.

* * * * *

52.225–1 Buy American Act—Balance of Payments Program—Supplies.
52.225–2 Buy American Act—Balance of Payments Program Certificate.
52.225–3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.
52.225–4 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate.
52.225–5 Trade Agreements.
52.225–6 Trade Agreements Certificate.
52.225–7 Waiver of Buy American Act for Civil Aircraft and Related Articles.
52.225–8 Duty-Free Entry.
52.225–9 Buy American Act—Balance of Payments Program—Construction Materials.
52.225–10 Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials.
52.225–11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.
52.225–12 Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials under Trade Agreements.
52.225–13 Restrictions on Certain Foreign Purchases.
52.225–14 Inconsistency between English Version and Translation of Contract.
52.225–15 Sanctioned European Union Country End Products.
52.225–16 Sanctioned European Union Country Services.
52.225–17 Evaluation of Foreign Currency Offers.

* * * * *

52.225–1 Buy American Act—Balance of Payments Program—Supplies.

As prescribed in 25.1101(a)(1), insert the following clause:

Buy American Act—Balance of Payments Program—Supplies (Feb 2000)

(a) *Definitions.* As used in this clause—

Component means any item supplied to the Government as part of an end item or of another component.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic end product means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

End product means supplies delivered under a line item of a Government contract.

Foreign end product means an end product other than a domestic end product.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leases bases.

(b) The Buy American Act (41 U.S.C. 10a–10d) provides a preference for domestic end products for supplies acquired for use in the United States. The Balance of Payments Program provides a preference for domestic end products for supplies acquired for use outside the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act—Balance of Payments Program Certificate."

(End of clause)

52.225–2 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 25.1101(a)(2), insert the following provision:

Buy American Act—Balance of Payments Program Certificate (Feb 2000)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act—Balance of Payments Program—Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic and products.

(b) Foreign End Products:

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

52.225–3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.

As prescribed in 25.1101(b)(1)(i), insert the following clause:

Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (Feb 2000)

(a) *Definitions.* As used in this clause—

Component means any item supplied to the Government as part of an end item or of another component.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic end product means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

End product means supplies delivered under a line item of a Government contract.

Foreign end product means an end product other than a domestic end product.

Israeli end product means an article that—

(1) Is wholly the growth, product, or manufacture of Israel; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a–10d), the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note), and the Balance of Payments Program by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate." If the Contractor specified in its offer that the Contractor would supply a NAFTA country end product or an Israeli end product, then the Contractor shall supply a NAFTA country end product, an Israeli end product or, at the Contractor's option, a domestic end product.

(End of clause)

Alternate I (Feb 2000). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

Canadian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another

country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(d) Delivery of end products. The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payment Program Certificate." If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

Alternate II (Feb 2000). As prescribed in 25.1101(b)(1)(iii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

Canadian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payment Program Certificate." If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.

52.225–4 Buy American Act North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate.

As prescribed in 25.1101(b)(2)(i), insert the following provision:

Buy American Act North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate (Feb 2000)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program") and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(b) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

NAFTA Country or Israeli End Products:

Line Item No. _____
Country of Origin _____
(List as necessary)

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.: _____
Country of Origin: _____
(List as necessary)

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

Alternate I (Feb 2000). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

Canadian End Products:

Line Item No. _____
(List as necessary)

Alternate II (Feb 2000). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

Canadian or Israeli End Products

Line Item No.: _____
Country of Origin: _____
List as necessary)

52.225–5 Trade Agreements.

As prescribed in 25.1101(c)(1), insert the following clause:

Trade Agreements (Feb 2000)

(a) Definitions. As used in this clause.

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

Caribbean Basin country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. The term excludes products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

(i) Textiles and apparel articles that are subject to textile agreements;

(ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(iii) Tuna, prepared or preserved in any manner in airtight containers;

(iv) Petroleum, or any product derived from petroleum; and

(v) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply.

Designated country means any of the following countries:

Aruba, Austria, Bangladesh Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea.

Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

End product means supplies delivered under a line item of a Government contract.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed..

(b) *Implementation.* This clause implements the Trade, Agreements Act (19 U.S.C. 2501, *et seq*) and the North American Free Trade Agreement Implementation Act of 1993, (NAFTA) (19 U.S.C. 3301 note), by restricting the acquisition of end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.,

(c) *Delivery of end products.* The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(End of clause)

52.225–6 Trade Agreements Certificate.

As prescribed in 25.1101(c)(2), insert the following provision:

Trade Agreements Certificate (Feb 2000)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(b) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.:

Country of Origin: _____

(List as necessary),

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The, Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

52.225–7 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.1101(d), insert the following provision:

Waiver of Buy American Act for Civil Aircraft and Related Articles (Feb 2000)

(a) *Definition. Civil aircraft and related articles,* as used in this provision, means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

(b) The U.S. Trade Representative has waived the Buy American Act for acquisitions of civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.

(c) For the purpose of this waiver, an article is a product of a country only if—

(1) It is wholly the growth, product, or manufacture of that country; or

(2) In the case of an article that consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

52.225–8 Duty-Free Entry.

As prescribed in 25.1101(e), insert the following clause:

Duty-Free Entry (Feb 2000)

(a) *Definition. Customs territory of the United States* means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation "*UNITED STATES GOVERNMENT*, _____ [*agency*], _____ Duty-free entry to be claimed pursuant to Item No(s) _____ [*from Tariff Schedules*] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [*cognizant contract administration office*] for execution of Customs Forms 7501 and 7501–A and any required duty-free entry certificates.";

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to—

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if—

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.

(End of clause)

52.225–9 Buy American Act—Balance of Payments Program—Construction Materials.

As prescribed in 25.1102(a), insert the following clause:

Buy American Act—Balance of Payments Program—Construction Materials (Feb 2000)

(a) *Definitions.* As used in this clause—

Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Domestic preference.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) and the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows: _____ [Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the

construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) [1]
Item 1			
Foreign construction material	.....	.....	
Domestic construction material	.....	.....	
Item 2			
Foreign construction material	.....	.....	
Domestic construction material	.....	.....	

Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).
List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
Include other applicable supporting information.

(End of clause)

52.225–10 Notice of Buy American Act/ Balance of Payments Program Requirement—Construction Materials.

As prescribed in 25.1102(b)(1), insert the following provision:

Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials (Feb 2000)

(a) *Definitions. Construction material, domestic construction material,* and *foreign construction material,* as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Balance of Payments Program—Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225–9).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act or Balance of Payments Program, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225–9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225–9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225–9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (Feb 2000). As prescribed in 25.1102(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–9.

52.225–11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.

As prescribed in 25.1102(c)(1), insert the following clause:

Buy American Act—Balance of Payments Program—Construction Materials Under Trade Agreements (Feb 2000)

(a) *Definitions.* As used in this clause—

Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an

item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark.

Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:_____

[Contracting Officer to list applicable excepted materials or indicate "none"]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) [1]
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

[1] Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(End of clause)

Alternate I (Feb 2000). As prescribed in 25.1102(c)(3), substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the North American Free Trade Agreement (NAFTA) applies to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for NAFTA country construction materials.

(2) The Contractor shall use only domestic or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.225–12 Notice of Buy American Act/ Balance of Payments Program Requirement—Construction Materials Under Trade Agreements.

As prescribed in 25.1102(d)(1), insert the following provision:

Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials Under Trade Agreements (Feb 2000)

(a) *Definitions. Construction material, designated country construction material, domestic construction material, foreign construction material,* and *NAFTA country construction material,* as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225–11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act or Balance of Payments Program, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225–11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (Feb 2000). As prescribed in 25.1102(d)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–11.

52.225–13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

Restrictions on Certain Foreign Purchases (Feb 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.225–14 Inconsistency between English Version and Translation of Contract.

As prescribed in 25.1103(b), insert the following clause:

Inconsistency Between English Version and Translation of Contract (Feb 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

52.225–15 Sanctioned European Union Country End Products.

As prescribed in 25.1103(c), insert the following clause:

Sanctioned European Union Country End Products (Feb 2000)

(a) *Definitions.* As used in this clause—

Sanctioned European Union country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a sanctioned EU member state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Sanctioned European Union member state means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not deliver any sanctioned European Union country end products under this contract.
(End of clause)

52.225–16 Sanctioned European Union Country Services.

As prescribed in 25.1103(c), insert the following clause:

Sanctioned European Union Country Services (Feb 2000)

(a) *Definition. Sanctioned European Union member state,* as used in this clause, means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not perform services under this contract in a sanctioned European Union member state. This prohibition does not apply to subcontracts.
(End of clause)

52.225–17 Evaluation of Foreign Currency Offers.

As prescribed in 25.1103(d), insert the following provision:

Evaluation of Foreign Currency Offers (Feb 2000)

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using [*Contracting Officer to insert source of rate*] in effect as follows:

(a) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(b) For acquisitions conducted using negotiation procedures—

(1) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(2) On the date specified for receipt of proposal revisions.
(End of provision)

[FR Doc. 99–33431 Filed 12–23–99; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 7, 10, 15, and 19

[FAC 97–15; FAR Case 1997–306 (97–306); Item III]

RIN 9000–AI55

Federal Acquisition Regulation; Contract Bundling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections of the Small Business Reauthorization Act of 1997. The sections of the Act define "contract bundling," and require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 27, 1999.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before February 25, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1997–306@gsa.gov.

Please submit comments only and cite FAC 97–15, FAR case 1997–306 (97–306) in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–15, FAR case 1997–306 (97–306).

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR Parts 2, 4, 5, 7, 10, 15, and 19 to implement Sections 411–417 of the Small Business Reauthorization Act of 1997, Pub. L. 105–135, and the Small Business Administration (SBA) interim rule published in the **Federal Register** at 64 FR 57366, October 25, 1999. Sections 411–417 amend Title 15 of the United States Code to define "contract bundling," and require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because opportunities for participation by small entities in acquisitions involving bundling may increase. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The objective of the interim rule is to establish agency procedures for processing bundled requirements and to ensure maximum small business participation in bundled acquisitions. Agencies must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the SBA procurement center representatives for review; and
- Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors' proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

These objectives are stated in Sections 411–417 of Pub. L. 105–135 and in SBA's implementing regulations.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties

must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–15, FAR Case 1997–306 (97–306)), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

The Councils have made a determination under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this interim rule implements Sections 411–417 of the Small Business Reauthorization Act of 1997, Pub. L. 105–135. Sections 411–417 amend Title 15 of the United States Code to define "contract bundling," and require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts. The SBA published an interim rule in the **Federal Register** at 64 FR 57372, October 25, 1999, with an effective date of December 27, 1999, to implement Sections 411–417 of Pub. L. 105–135. It is necessary to have a December 27, 1999, effective date for this rule to provide contracting regulations that conform with SBA's regulations.

However, pursuant to Pub. L. 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 5, 7, 10, 15, and 19

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 5, 7, 10, 15, and 19 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 7, 10, 15, and 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, add, in alphabetical order, the definitions "bundled contract" and "bundling" to read as follows:

2.101 Definitions.

* * * * *

Bundled contract means a contract that is entered into to meet requirements that are consolidated by bundling, excluding a contract awarded and performed entirely outside the United States.

Bundling means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) *Separate smaller contract,* as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. In section 4.601, redesignate paragraph (e) as paragraph (f); add new paragraph (e); and revise the redesignated paragraph (f) to read as follows:

4.601 Record requirements.

* * * * *

(e) In addition to the information described in paragraphs (b), (c), and (d) of this section, agencies must be able to access information from the computer file to identify bundled contracts with a total contract value, including all options, exceeding $5,000,000.

(f) Agencies must transmit this information to the Federal Procurement Data System in accordance with its procedures.

PART 5—PUBLICIZING CONTRACT ACTIONS

4. Revise the section heading and text of 5.206 to read as follows:

5.206 Notices of subcontracting opportunities.

(a) The following entities may use a CBD notice to seek competition for subcontracts, to increase participation by small, small disadvantaged, and women-owned small business firms, and to meet established subcontracting plan goals:

(1) A contractor awarded a contract exceeding $100,000 that is likely to result in the award of any subcontracts.

(2) A subcontractor or supplier, at any tier, under a contract exceeding $100,000, that has a subcontracting opportunity exceeding $10,000.

(b) The notices must describe—

(1) The business opportunity, following the standard CDB format for items 7, 10, 11, and 17 in 5.207(b)(4);

(2) Any prequalification requirements; and

(3) Where to obtain technical data needed to respond to the requirement.

PART 7—ACQUISITION PLANNING

5. In section 7.103, add paragraph (r) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(r) Ensuring that acquisition planners, to the maximum extent practicable

(1) Structure contract requirements to facilitate competition by and among small business concerns; and

(2) Avoid unnecessary and unjustified bundling that precludes small business participation as contractors (see 7.107) (15 U.S.C. 631(j)).

6. Revise paragraph (b)(1) of section 7.105 to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action—(1) Sources.* Indicate the prospective sources of supplies or services that can meet the need. Consider required sources of supplies or services (see part 8). Include consideration of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19), and the impact of any bundling that might affect their participation in the acquisition (see 7.107) (15 U.S.C. 644(e)). Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

* * * * *

7. Add section 7.107 to read as follows:

7.107 Additional requirements for acquisitions involving bundling of contract requirements.

(a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified (15 U.S.C. 644(e)(2)). Market research may indicate that bundling is necessary and justified if an agency would derive measurably substantial benefits (see 10.001(a)(2)(iv) and (a)(3)(vi)).

(b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to—

(1) Ten percent of the estimated contract value (including options) if the value is $75 million or less; or

(2) Five percent of the estimated contract value (including options) if the value exceeds $75 million.

(c) Without power of delegation, the service acquisition executive for the military departments, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when

(1) The expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency's mission success; and

(2) The acquisition strategy provides for maximum practicable participation by small business concerns.

(d) Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract value (including options) of the bundled requirements.

(e) Substantial bundling is any bundling that results in a contract with an average annual value of $10 million or more. When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must—

(1) Identify the specific benefits anticipated to be derived from bundling;

(2) Include an assessment of the specific impediments to participation by small business concerns as contractors that result from bundling;

(3) Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and

(5) Include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(f) The contracting officer must justify bundling in acquisition strategy documentation.

(g) In assessing whether cost savings would be achieved through bundling, the contracting officer must consider the cost that has been charged or, where data is available, could be charged by small business concerns for the same or similar work.

(h) The requirements of this section do not apply to bundled contracts that are awarded in accordance with OMB Circular A–76 if a cost comparison has been performed under OMB Circular A–76 procedures. However, agencies must comply with the requirements of this section if they have not been met under A–76 procedures.

PART 10—MARKET RESEARCH

8. Amend section 10.001 as follows:

a. In paragraph (a) introductory text, remove "shall" and add "must" in its place;

b. In paragraph (a)(1) remove "which" and add "that" in its place;

c. At the end of paragraph (a)(2)(ii) remove "and";

d. Add paragraph (a)(2)(iv);

e. At the end of paragraph (a)(3)(iv) remove "and";

f. In paragraph (a)(3)(v) remove the period and add "; and";

g. Add paragraph (a)(3)(vi); and

h. Add paragraph (c).

The revised and added text reads as follows:

10.001 Policy.

* * * * *

(a) * * *

(2) * * *

(iv) Before soliciting offers for acquisitions that could lead to a bundled contract (15 U.S.C. 644(e)(2)(A)); and

(3) * * *

(vi) Determine whether bundling is necessary and justified (see 7.107) (15 U.S.C. 644(e)(2)(A)).

* * * * * *

(c) If an agency contemplates awarding a bundled contract, the agency should—

(1) When performing market research, consult with the local Small Business Administration procurement center representative (PCR) or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located; and

(2) At least 30 days before release of the solicitation, notify any affected incumbent small business concerns of—

(i) The Government's intention to bundle the requirement; and

(ii) How the concerns may contact the appropriate Small Business Administration representative.

PART 15—CONTRACTING BY NEGOTIATION

15.101–2 [Amended]

8a. In section 15.101–2, amend paragraph (b)(1) by removing "15.304(c)(3)(iii)" and adding "15.304(c)(3)(iv)" in its place.

9. In section 15.304, amend paragraphs (c)(3)(i) and (c)(3)(ii) by removing "(iii)" and adding "(iv)" in their places; redesignate paragraph (c)(3)(iii) as (c)(3)(iv); and add new paragraphs (c)(3)(iii) and (c)(3)(5) to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(3) * * *

(iii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).

* * * * *

(5) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

* * * * *

10. In section 15.305, add paragraph (a)(5) to read as follows:

15.305 Proposal evaluation.

(a) * * *

(5) *Small business subcontracting evaluation.* Structure solicitations to give offers from small business concerns the highest rating for the evaluation factors in 15.304(c)(3)(iii) and (c)(5).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

11. In section 19.101, revise paragraph (g)(1) to read as follows:

19.101 Explanation of terms.

* * * * *

(g) *Control through contractual relationships*—(1) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(i) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(ii) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(A) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(B) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds $10 million.

* * * * *

12. In section 19.201, redesignate paragraphs (d)(5) through (d)(9) as (d)(6) through (d)(10) respectively; add a new paragraph (d)(5); and amend paragraph (e) by removing "shall" and adding "must" in its place. The added text reads as follows:

19.201 General policy.

* * * * *

(d) * * *

(5) Work with the SBA procurement center representative to—

(i) Identify proposed solicitations that involve bundling;

(ii) Facilitate small business participation as contractors including small business contract teams, where appropriate; and

(iii) Facilitate small business participation as subcontractors and suppliers where participation by small business concerns as contractors is unlikely;

* * * * *

13. Amend section 19.202–1 as follows:

a. At the end of paragraph (e)(1)(i) remove ", or" and add ";" in its place;

b. In paragraph (e)(1)(ii) remove the period and add "; or" in its place;

c. Add paragraph (e)(1)(iii);

d. In the introductory text of paragraph (e)(2) remove "shall also" and add "also must" in its place;

e. At the end of paragraph (e)(2)(iii) remove "or;"

f. In paragraph (e)(2)(iv) remove the period and add "; or" in its place; and

g. Add paragraph (e)(2)(v).

The added text reads as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e) * * *

(1) * * *

(iii) The proposed acquisition is for a bundled requirement.

* * * * *

(2) * * *

(v) Bundling is necessary and justified.

* * * * *

[FR Doc. 99–33432 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 42

[FAC 97–15; FAR Case 99–015; Item IV]

RIN 9000–AI56

Federal Acquisition Regulation; Deobligation Authority

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office.

DATES: Effective Date: February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–15, FAR case 99–015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements a recommendation of the Contract Closeout Working Integrated Process Team chartered by the Deputy Secretary of Defense under the Defense Reform Initiative Directive #32.

The rule revises FAR 4.804–5 and 42.302 to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–15, FAR case 99–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 42:

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 42 as set forth below:

1. The authority citation for 48 CFR parts 4 and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. In section 4.804–5, revise the section heading, the introductory text of paragraph (a), and paragraph (a)(15); and amend the introductory text of paragraphs (b) and (c) by removing "shall" and inserting "must" in its place. The revised text reads as follows:

4.804–5 Procedures for closing out contract files.

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that

* * * * *

(15) Contract funds review is completed and excess funds deobligated.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

3. In section 42.302, revise the introductory text of paragraph (a); and add paragraph (a)(70) to read as follows:

42.302 Contract administration functions.

(a) The contracting officer normally delegates the following contract administration functions to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), and (a)(11) of this section, unless the cognizant Federal agency (see 42.001) has designated the contracting officer to perform these functions.

* * * * *

(70) Deobligate excess funds after final price determination.

* * * * *

[FR Doc. 99–33433 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 39

[FAC 97–15; FAR Case 99–602; Item V]

RIN 9000–AI57

Federal Acquisition Regulation; Transition of the Financial Management System Software Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) agreed to amend the Federal Acquisition Regulation (FAR) to delete the language pertaining to the Financial Management Systems Software Mandatory Multiple Award Schedule Contracts Program because this schedule is no longer mandatory due to changes to OMB Circular A–127.

DATES: Effective Date: February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–15, FAR case 99–602.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedule Contracts Program and to add a reference in Part 39 to OMB Circular A–127. The Office of Management and Budget (OMB) revised OMB Circular A–127, that requires Federal agencies to use a single, integrated financial management system. Agencies now must acquire core financial management software that has been certified by the Joint Financial Management Improvement Program. The Financial Management Systems Software Mandatory Multiple Award Schedules has been eliminated. As of October 1, 1999, agencies may purchase certified financial management software through the Information Technology (FSC Group 70) Federal Supply Schedule using the procedures in FAR Subpart 8.4 or award their own contracts.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, because the rule merely deletes FAR coverage that is no longer necessary due to revisions to OMB Circular A–127, which eliminate the mandatory status of the Financial Management System Software Multiple Award Schedules Contracts Program. Accordingly, publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–15, FAR case 99–602), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 39

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 39 as set forth below:

1. The authority citation for 48 CFR parts 8 and 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 8.9 [Removed and Reserved]

2. Remove and reserve Subpart 8.9.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

3. Revise section 39.000 to read as follows:

39.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring information technology, including financial management systems, consistent with other parts of this regulation, OMB Circular No. A–127, Financial Management Systems and OMB Circular No. A–130, Management of Federal Information Resources.

4. Add paragraph (c) to section 39.101 to read as follows:

39.101 Policy.

* * * * *

(c) Agencies must follow OMB Circular A–127, Financial Management Systems, when acquiring financial management systems. Agencies may acquire only core financial management software certified by the Joint Financial Management Improvement Program.

[FR Doc. 99–33434 Filed 12–23–99; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAC 97–15; FAR Case 99–018; Item VI]

RIN 9000–AI58

Federal Acquisition Regulation; Document Availability

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update how the public may obtain Department of Defense specifications and standards.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 27, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–15, FAR case 99–018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 11.201(d) and the provision at 52.211–2 to update how the public may obtain Department of Defense specifications and standards via the Internet from the ASSIST database or by phone, fax, or mail from the Department of Defense Single Stock Point.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–15, FAR case 99–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 11 and 52 as set forth below:

1. The authority citation for 48 CFR parts 11 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Amend section 11.201 by revising paragraph (d)(2) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d)(1) * * *

(2) The DoDISS may be obtained from the-

(i) ASSIST database via the Internet at http://assist.daps.mil; or

(ii) Department of Defense Single Stock Point (DoDSSP), Building 4, Section D 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 52.211–2 to read as follows:

52.211–2 Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and descriptions listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12–L.

As prescribed in 11.204(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12–L (DEC 1999)

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained—

(a) From the ASSIST database via the Internet at http://assist.daps.mil; or

(b) By submitting a request to the—Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

(End of provision)

[FR Doc. 99–33435 Filed 12–23–99; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 19, and 52

[FAC 97–15; FAR Case 98–011; Item VII]

RIN 9000–AI33

Federal Acquisition Regulation; SBA's 8(a) Business Development Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations pertaining to its 8(a) Business Development (8(a)BD) Program.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 21, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–15, FAR case 98–011.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published an interim rule in the **Federal Register** on June 17, 1999 (64 FR 32742). The rule amended FAR Parts 12, 19, and 52 to conform to recent amendments made by the Small Business Administration (SBA) to their regulations pertaining to the 8(a)BD Program. The SBA published a final rule in the **Federal Register** on June 30, 1998 (63 FR 35726). The SBA rule amended the eligibility procedures for admission to the 8(a)BD and contractual assistance programs. These changes involve administrative matters concerning requirement offerings, contract execution, contract administration, and SBA appeals.

There were no public comments submitted in response to the interim rule. Therefore, the Councils have agreed to convert the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely addresses changes made by the Small Business Administration (SBA) to 13 CFR parts 121, 124, and 134. The SBA has certified that the changes set forth in its rule will not have a significant economic impact on a substantial number of small entities because the changes do not increase the net number of current 8(a) certified small businesses or the net number of current 8(a) participants by more than 500 to 800 businesses, or less than 1 percent of the total universe of small firms seeking Government contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12, 19, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 12, 19, and 52, which was published in the **Federal Register** on June 17, 1999 (64 FR 32742), as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 99–33436 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 97–15; FAR Case 99–304; Item VIII]

RIN 9000–AI59

Federal Acquisition Regulation; Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). Section 806 extends the test of the special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding $5,000,000, until January 1, 2002.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 27, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–15, FAR case 99–304.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104–106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the

simplified acquisition threshold, but not exceeding $5,000,000. This rule also makes plain language editorial revisions.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–15, FAR case 99–304), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 13.500 in paragraph (b) by removing "shall" and adding "must" in its place; and by revising paragraph (d) to read as follows:

13.500 General.

* * * * *

(d) The authority to issue solicitations under this subpart expires on January 1, 2002. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.

3. Amend section 13.501 in the introductory text of paragraphs (a)(1) and (b) by removing "shall" and adding "must" in their place; and by revising paragraph (a)(2)(ii) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(2) * * *

(ii) For a proposed contract exceeding $500,000, the competition advocate for the procuring activity, designated pursuant to 6.501, or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

* * * * *

[FR Doc. 99–33437 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 48, and 52

[FAC 97–15; FAR Case 98–017; Item IX]

RIN 9000–AI35

Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR). The amendment implements rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

DATES: Effective Date: February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–15, FAR case 98–017.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 24472, May 6, 1999, and received no comments. This final rule amends the FAR to implement the rulings of the United States Court of Appeals in *Burnside-Ott Aviation Training Center* v. *Dalton, Secretary of the Navy, 107 F.3d 854 (Fed. Cir. 1997)* and of the United States Court of Federal Claims in *Rig Masters, Inc.* v. *The United States, 42 (Fed. Cl. 369 (1998))*. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. The rule amends FAR 16.405–2(a) by deleting the statement that award-fee determinations are not subject to the disputes clause of the contract and inserting a statement that such determinations and the methodology for determining award fee are unilateral decisions made solely at the discretion of the Government. In addition, the rule amends—

(a) FAR 16.406 to conform with the newly revised 16.405–2(a);

(b) FAR Part 48 to—

(1) Remove references to the Contract Disputes Act;

(2) State that certain unilateral decisions are made solely at the discretion of the Government; and

(3) Insert a statement that the contracting officer's determination of the duration of the sharing period and the contractor's sharing rate is one such decision;

(c) The clauses at 52.248–1 and 52.248–3 to conform with the newly revised Part 48; and

(d) The clauses at 52.219–10, 52.219–26, and 52.226–1 to remove exemptions to the Contract Disputes Act. Also, we made editorial revisions to all affected sections for plain language purposes.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implements court rulings relating to a statute that has been in effect since 1979. This final rule retains the government's unilateral decision

authority in these matters. Therefore, we have not performed a Regulatory Flexibility Analysis. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** at 64 FR 24472, May 6, 1999.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16, 48, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 16, 48, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 16, 48, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

2. Amend section 16.405–2 by revising the last sentence of paragraph (a) to read as follows:

16.405–2 Cost-plus-award-fee contracts.

(a) * * * This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

* * * * *

3. Amend section 16.406 in paragraphs (a), (b), and the introductory text of paragraph (e) by removing "The contracting officer shall insert" and adding "Insert" in their place; and by revising paragraph (e)(3) to read as follows:

16.406 Contract clauses.

* * * * *

(e) * * *

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

PART 48—VALUE ENGINEERING

4. Amend section 48.103 by revising the introductory text of paragraph (c); and by adding a new paragraph (c)(4) to read as follows:

48.103 Processing value engineering change proposals.

* * * * *

(c) The following Government decisions are unilateral decisions made solely at the discretion of the Government:

* * * * *

(4) The contracting officer's determination of the duration of the sharing period and the contractor's sharing rate.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.219–10 by revising the date of the clause; in the first sentence of paragraph (b) by adding "*Contracting Officer to*" following the opening bracket; and by revising the last sentence of paragraph (b) to read as follows:

52.219–10 Incentive Subcontracting Program.

* * * * *

INCENTIVE SUBCONTRACTING PROGRAM (FEB 2000)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

6. Amend section 52.219–26 by revising the date of the clause and the last sentence of paragraph (b) to read as follows:

52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

* * * * *

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—INCENTIVE SUBCONTRACTING (FEB 2000)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

7. Amend section 52.226–1 by revising the date of the clause and paragraph (d) to read as follows:

52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

* * * * *

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (FEB 2000)

* * * * *

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

8. Amend section 52.248–1—

a. By revising the date of the clause;

b. In paragraphs (e)(1) and (e)(2), by removing "shall" each time it is used (3 times and 1 time, respectively) and adding "will" in its place;

c. By revising the last sentence of paragraph (e)(3);

d. By revising paragraph (j); and

e. In Alternate II, by revising the date and adding a sentence to the end of paragraph (a) to read as follows:

52.248–1 Value Engineering.

* * * * *

VALUE ENGINEERING (FEB 2000)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or $100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

* * * * *

Alternate II (Feb 2000). * * *

(a) * * * The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

* * * * *

9. Amend section 52.248–3 by revising the date of the clause; in paragraphs (e)(1) and (e)(2) by removing "shall" each time it is used (3 times and 1 time, respectively) and adding "will" in its place; and by revising the last sentence of paragraph (e)(3) and paragraph (g) to read as follows:

52.248–3 Value Engineering—Construction.

* * * * *

VALUE ENGINEERING—CONSTRUCTION (FEB 2000)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(g) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20

percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or $100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

* * * * *

[FR Doc. 99–33438 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 52

[FAC 97–15; FAR Case 99–600; Item X]

RIN 9000–AI38

Federal Acquisition Regulation; Nondisplacement of Qualified Workers—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add the clause, Nondisplacement of Qualified Workers, to the list of clauses the contracting officer may, when applicable, incorporate by reference in the clause concerning contractor terms and conditions required to implement statutes or executive orders—commercial items.

DATES: *Effective Date:* February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–15, FAR case 99–600.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994. To obtain public comment and assist in development of implementing regulations, the Department of Labor (DoL) invited comments through a notice of proposed rulemaking in the **Federal Register** at 60 FR 36756, July 18, 1995. The final DoL rule was published in the Federal Register at 62 FR 28175, May 22, 1997. DoD, GSA, and NASA published an interim FAR rule implementing DoL's rule under FAR case 94–610 (FAC 97–01, 62 FR 44802, August 22, 1997).

During consideration of the public comments submitted in response to the interim rule, the Councils identified this additional issue and proposed change. The Councils considered this additional change significant enough to warrant additional public comments. The Councils received no public comments in response to the proposed rule published in the **Federal Register** at 64 FR 32738, June 17, 1999. This final rule amends the FAR clause at 52.212–5(c) to add the clause 52.222–50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only identifies the FAR clause at 52.222–50, Nondisplacement of Qualified Workers, as appropriate for incorporation by reference in certain service contracts when determined so by the contracting officer.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.212–5 by revising the date of the clause; by removing from the parenthetical following the introductory text of paragraphs (b) and (c) the parentheses and adding brackets in their place; and by adding paragraph (c)(6) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (FEB 2000)

* * * * *

(c) * * *

____ (6) 52.222–50, Nondisplacement of Qualified Workers (Executive Order 12933).

* * * * *

[FR Doc. 99–33439 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52

[FAC 97–15; Item XI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend the definition "simplified acquisition threshold" in section 2.101 by removing "10 U.S.C. 2302(7)" and adding "10 U.S.C. 2302(8)" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Revise paragraph (f)(3) of section 5.205 to read as follows:

5.205 Special situations.

* * * * *

(f) * * *

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

* * * * *

PART 14—SEALED BIDDING

4. Revise paragraph (r) of section 14.201–6 to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(r) Insert the provision at 52.214–23, Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

15.208 [Amended]

5. Amend the first sentence of paragraph (a) in section 15.208 by removing "or withdrawals,"; and the first sentence of paragraph (b)(1) by removing "revision, or withdrawal" and inserting "or revision," in its place.

PART 19—SMALL BUSINESS PROGRAMS

6. Amend section 19.702 by revising the last sentence in paragraph (d) to read as follows:

19.702 Statutory requirements.

* * * * *

(d) * * * However, the mentor-protégé agreement must have been approved by the—

Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), 1777 N. Kent Street, Suite 9100, Arlington, VA 22209

before developmental assistance costs may be credited against subcontracting goals. A list of approved agreements may be obtained at http://www.acq.osd.mil/sadbu/mentor_protege/ or by calling 1–800–553–1858.

PART 32—CONTRACT FINANCING

32.503–6 [Amended]

7. Amend paragraph (e)(3) of section 32.503–6 by removing "52.232–6" and adding "52.232–16" in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.213 [Amended]

8. Amend paragraph (a) of section 33.213 by removing "paragraph (h)" and adding "paragraph (i)" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.104 [Amended]

9. Amend section 36.104 by removing "(41 U.S.C. 541, *et seq.*)" and adding "(40 U.S.C. 541, *et seq.*)" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.203 [Amended]

10. Amend section 42.203 by removing "DCMCC–F" and adding "DCMC–BD" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215–1 [Amended]

11. Amend section 52.215–1 by revising the date of the provision to read "(DEC 1999)"; in the first sentence of paragraph (c)(3)(i) of the provision by removing ", revisions, or withdrawals," and adding "or revisions," in its place; and in the first sentence of paragraph (c)(3)(ii)(A) of the provision by removing "revision, or withdrawal" and adding "or revision," in its place.

52.228–14 [Amended]

12. Amend section 52.228–14 by revising the date of the clause to read "(DEC 1999)"; and in paragraphs (f) and (g) of the clause by removing "____, 19__" and inserting "(Date)____" in their place.

[FR Doc. 99–33440 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–15 which amend the FAR. The rules marked with an asterisk (*) indicate that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–15 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–15

Item	Subject	FAR case	Analyst
I	Pollution Control and Clean Air and Water	97–033	Linfield
II	Foreign Acquisition (Part 25 Rewrite)	97–024	Linfield
III	* Contract Bundling (Interim)	1997–306 (97–306)	De Stefano
IV	Deobligation Authority	99–015	Klein
V	Transition of the Financial Management System Software Program	99–602	Nelson
VI	Document Availability	99–018	Moss
VII	SBA's 8(a) Business Development Program	98–011	Moss
VIII	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	99–304	Moss
IX	Review of Award Fee Determinations (Burnside-Ott)	98–017	De Stefano
X	Nondisplacement of Qualified Workers—Commercial Items	99–600	O'Neill

Item I—Pollution Control and Clean Air and Water (FAR Case 97–033)

This final rule amends the FAR to remove Subpart 23.1,

Pollution Control and Clear Air and Water; the provision at 52.223–1, Clean Air and Water Certification; and the clause at 52.223–2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the "GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (GSA List) to ensure that they do not award contracts to ineligible offerors. Excluded parties whose ineligibility is limited by reason of a Clean Air Act (CAA) or Clean Water Act (CWA) conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at http://www.epls.arnet.gov. These FAR changes do not change long-standing policy that a contracting officer cannot award a contract if performance of the contract would be at a facility convicted of a CAA or CWA violation unless the EPA has certified that the facility has corrected the cause giving rise to the conviction.

Item II—Foreign Acquisition (Part 25 Rewrite) (FAR Case 97–024)

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

Item III—Contract Bundling (FAR Case 1997–306) (97–306)

This interim rule amends the FAR to implement Sections 411–417 of the Small Business Reauthorization Act of 1997. Sections 411–417 amend Title 15 of the U.S.C. to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

Item IV—Deobligation Authority (FAR Case 99–015)

This final rule revises FAR 4.804–5 and 42.302 to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

Item V—Transition of the Financial Management System Software Program (FAR Case 99–602)

This final rule amends the FAR to delete Subpart 8.9,

Financial Management Systems Software Mandatory Multiple Award Schedules Contracts Program.

Item VI—Document Availability (FAR Case 99–018)

This final rule amends the Federal Acquisition Regulation (FAR) at 11.201(d) and 52.211–2 to update how the public may obtain Department of Defense specifications and standards.

Item VII—SBA's 8(a) Business Development Program (FAR Case 98–011)

The interim rule published as Item III of FAC 97–12 is converted to a final rule without changes. The rule implements changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation, contained in 13 CFR Parts 121, 124, and 134, regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

VIII—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 99–304)

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104–106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding $5,000,000.

Item IX—Review of Award Fee Determinations (Burnside-Ott) (FAR Case 98–017)

This final rule amends the Federal Acquisition Regulation (FAR) to implement rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

Item X—Nondisplacement of Qualified Workers—Commercial Items (FAR Case 99–600)

This final rule amends FAR 52.212–5(c) to add the clause entitled 52.222–50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–33441 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

OL

64

SS

2
4
7

DE

27

999

ML

federal register

Monday
December 27, 1999

Part V

Department of Education

Preparing Tomorrow's Teachers To Use Technology; Notice

DEPARTMENT OF EDUCATION

Preparing Tomorrow's Teachers To Use Technology

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of technical assistance workshops.

SUMMARY: The Department of Education has tentatively scheduled eight regional technical assistance workshops between January 18, 2000 and February 8, 2000 to help prospective applicants better understand the Department's approach to implementing the competitive grant process to be held in spring 2000 under the Preparing Tomorrow's Teachers to Use Technology (PT3) Grant Program, authorized by Title III, section 3122 of the Improving America's Schools Act of 1994.

Available Guidelines: Application guidelines will be available on January 7, 2000. Guidelines may be obtained in downloadable format from the program web site http://www.ed.gov/teachtech/ or by contacting the Education Publications Center: ED Pubs, PO Box 1398, Jessup, MD 20794–1398; 1–877–4ED Pubs (1–877–433–7827); TDD: 1–877–576–7734; Fax: 301–470–1244; web site: http://www.ed.gov/pubs/edpubs.html; email: edpubs@inet.ed.gov.

DATES: Applications from consortia must be received by March 7, 2000.

SUPPLEMENTARY INFORMATION: At these workshops, the public will be able to learn more about the purposes and requirements of this program, how to apply for funds, program eligibility requirements, the application selection process, and considerations that might help them to improve the quality of their grant applications. Department of Education staff with expertise on these and other issues related to the Preparing Tomorrow's Teachers to Use Technology Program will be available to answer any questions on these topics.

Date, Time, and Location of Technical Assistance Workshops:

The workshops are tentatively scheduled to be held in:

Burlington, VT: Tuesday, January 18, 2000 from 9:00 a.m. to 1:30 p.m.

Hartford, CT: Wednesday, January 19, 2000 from 9:00 a.m. to 1:30 p.m.

Atlanta, GA: Friday, January 21, 2000 from 8:30 a.m. to 1:00 p.m.; Club Hotel by DoubleTree, Atlanta Airport North, 3400 Norman Berry Drive, Atlanta, GA 30344; Phone: 404–763–1600; Fax: 404–765–0200.

Minneapolis, MN: Wednesday, January 26, 2000 from 9:00 a.m. to 1:30 p.m.

Albuquerque, NM: Wednesday, January 26, 2000 from 9:00 a.m. to 1:30 p.m.

Little Rock, AR: Friday, January 28, 2000 from 9:00 a.m. to 1:30 p.m.

Seattle, WA: Friday, January 28, 2000 from 9:00 a.m. to 1:30 p.m.

San Diego, CA: Tuesday, February 8, 2000 from 1:30 p.m. to 4:30 p.m. San Diego Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, CA 92108; Telephone: 1–800–842–5329 or 619–692–3800; Fax: 619–692–0769.

Any interested parties are invited to attend these workshops.

The meeting sites will be accessible to individuals with disabilities. The Department will provide a sign language interpreter at each of the scheduled workshops. An individual with a disability who will need an auxiliary aid or service other than an interpreter to participate in the meeting (*e.g.*, assistive listening device, or materials in an alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

For Additional Information Contact: The precise locations for all of the workshops have not yet been finalized. You may contact Erika Kirby (at the phone number listed in the "For additional Information" section of the notice for precise locations, or check the web site http://www.ed.gov/teachtech/.

Participants should register for these workshops online at http://www.ed.gov/teachtech, or by printing a copy of the registration form from the web site and faxing the completed form to the attention of Erika Kirby at (202) 502–7775.

FOR FURTHER INFORMATION CONTACT: Kelly E. Green, Policy, Planning and Innovation, Office of Postsecondary Education, Preparing Tomorrow's Teachers to use Technology, 1990 K Street, NW, Suite 6655, Washington, D.C. 20006–8256: Telephone: (202) 502–7788. Inquiries may be sent by e-mail to Teacher__Technology@ed.gov (please type in the subject line: PT3 APPLICATION WORKSHOP) or by fax to: (202) 502–7775.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: December 20, 1999.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33392 Filed 12–23–99; 8:45 am]

BILLING CODE 4000–01–U

Reader Aids

Federal Register

Vol. 64, No. 247

Monday, December 27, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468	1
67469–67692	2
67693–67996	3
67997–68274	6
68275–68614	7
68615–68930	8
68931–69164	9
69165–69370	10
69371–69628	13
69629–69882	14
69883–70172	15
70173–70562	16
70563–70984	17
70985–71266	20
71267–71632	21
71633–71982	22
71983–72248	23
72249–72456	27

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7256	67691
7257	68269
7258	69161
7259	69163
7260	70563
7261	71629
7262	71631

Executive Orders:

June 24, 1914 (Revoked in part by PLO 7416)	67295
April 28, 1917 (Revoked in part by PLO 7416)	67295
February 11, 1918 (Revoked in part by PLO 7416)	67295
July 10, 1919 (Revoked in part by PLO 7416)	67295
May 25, 1921 (Revoked in part by PLO 7416)	67295
April 17, 1926 (Revoked in part by PLO 7416)	67295
February 7, 1930 (Revoked in part by PLO 7416)	67295
13106 (superceded by EO 13144)	72237
13143	68273
13144	72237

Administrative Orders:

Memorandums:

November 29, 1999	68275

5 CFR

410	69165
530	69165
531	69165
532	69183, 72249
534	68931
536	69165
550	69165, 69936
551	69165
575	69165, 71633
591	69165
610	69165
630	72250
831	72256
842	72256
1205	71267
1630	67693
6801	68615
870	71983

Proposed Rules:

532	72292
792	72037
1201	72040

7 CFR

29	67469
226	72257
246	67997, 70173, 71635
301	71267
319	68001, 69629
353	72262
457	71270
761	69322
905	69371
906	69375
915	69380
955	72265, 72267
1000	70868
1001	70868
1002	70868
1004	70868
1005	70868
1006	70868
1007	70868
1012	70868
1013	70868
1030	70868
1032	70868, 70985
1033	70868
1036	70868
1040	70868
1044	70868
1046	70868
1049	70868
1050	70868
1064	70868
1065	70868
1068	70868
1076	70868
1079	70868
1106	70868
1124	70868
1126	70868
1131	70868
1134	70868
1135	70868
1137	70868
1138	70868
1139	70868
1407	67470
1703	69937
4284	71984

Proposed Rules:

271	72196
272	70920, 72196
273	70920, 72196
301	71322
360	72293
361	72293
955	69419
985	69421
989	69204
1032	67201
1703	69937
1744	69946
1980	70124
3555	70124

4280.....69937

9 CFR

103.....69983
235.....68616

Proposed Rules:

100.....68638
103.....71323
214.....71323
299.....71323

9 CFR

78.....67695
94.....67695
130.....67697, 67699
310.....72170
317.....71989
381.....71989, 72150
424.....72150

Proposed Rules:

54.....70608
79.....70608
301.....70200
318.....70200
320.....70200

10 CFR

21.....71990
50.....71990
51.....68005
52.....72002
54.....71990
72.....67700, 72019
709.....70962
710.....70962
711.....70962
850.....68854

Proposed Rules:

26.....67202
71.....71331
73.....71331
431.....69598
960.....69963
963.....69963

11 CFR

Proposed Rules:

100.....68951

12 CFR

22.....71272
24.....70986
203.....70991
208.....71272
327.....70178
339.....71272
503.....69183
505.....69183
557.....69183
559.....69183
563.....69183
572.....69183
614.....71272
701.....72269
760.....71272
932.....71275
934.....71275
935.....71275

Proposed Rules:

202.....69963
205.....69963
213.....69963
226.....69963
230.....69963
611.....72041
615.....72041
935.....71689

13 CFR

107.....70992
300.....69868
301.....69868
302.....69868
303.....69868
304.....69868
305.....69868
306.....69868
307.....69868
308.....69868
314.....69868
316.....69868
317.....69868
318.....69868
400.....72019
500.....72022

Proposed Rules:

120.....67205, 69964

14 CFR

25.....67147, 67701, 67705, 69383
39.....67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394, 69629, 69964, 69967, 70181, 70997, 71001, 71003, 71004, 71006, 71007, 71009, 71010, 71012, 71278, 71280, 71282, 72270
65.....68916, 71635
71.....67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932, 69631, 69632, 70565, 70566, 70567, 70568, 70570, 71014, 71637
91.....70571
254.....70573
97.....67473, 67476, 71015, 71017

Proposed Rules:

11.....69856
25.....67804, 69425
39.....67206, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336, 71689, 71694, 71696
71.....67525, 67810, 69430, 69431, 70610, 70611, 70612
450.....69628
1261.....71339
1267.....71339

15 CFR

303.....67148
806.....67716
902.....68228, 68932, 69888
2015.....67152

Proposed Rules:

280.....69969
922.....72296

16 CFR

0.....71283
4.....69397
305.....71019
1145.....71854
1212.....71854
1213.....71888
1500.....71888
1513.....71888

17 CFR

3.....68011
32.....68011
211.....67154, 68936
270.....68019

Proposed Rules:

Ch. II.....69074
4.....68304
240.....69975, 70613
250.....71341

19 CFR

12.....67479
132.....67481
163.....67481

20 CFR

404.....67719

Proposed Rules:

222.....68647
325.....67811
330.....67811
335.....67811
336.....67811
604.....67811, 67972, 71346

21 CFR

10.....69188
12.....69188
176.....68629, 69898
177.....71637
178.....67483, 71639, 72272, 72273, 72274
179.....69190
203.....67720
205.....67720
510.....69188, 69191
520.....68289
522.....71640
529.....71640
558.....70576, 72026
1401.....69901

Proposed Rules:

10.....69209
12.....69209
16.....70202, 70203
314.....67207
330.....71062
510.....69209
601.....67207
807.....71347
1309.....67216

23 CFR

130.....71284
480.....71284
620.....71284
630.....71284
635.....71284
645.....71284
710.....71284
712.....71284
713.....71284

Proposed Rules:

655.....71354, 71358

24 CFR

290.....72410
985.....67982

25 CFR

Proposed Rules:

504.....72296
990.....71698

26 CFR

1.....67763, 69903, 71641
20.....67763, 67767, 71021
25.....67767
301.....67767
601.....69398
602.....67767, 69903, 71641

Proposed Rules:

1.....71082

27 CFR

200.....71918
270.....71918, 71929, 71937
275.....71918, 71929, 71937, 71947
290.....71918, 71929, 71937
295.....71929, 71937
296.....71929, 71937, 71957

Proposed Rules:

200.....71927
270.....71927, 71935
275.....71927, 71935, 71955
290.....71927, 71935
295.....719351
296.....719351

28 CFR

0.....68307
91.....71022
551.....68264

29 CFR

403.....71622
4011.....67163
4022.....67163
4044.....67165, 69922

Proposed Rules:

2520.....67436
2700.....68649

30 CFR

250.....69923
740.....70766
745.....70766
761.....70766, 70838
762.....70766
772.....70766
773.....70766
778.....70766
780.....70766
784.....70766, 71652
817.....71652
913.....68024, 72275
914.....70578
918.....68289
936.....70584
946.....69399, 72277

Proposed Rules:

280.....68649
931.....71698, 71700
938.....70644, 72297

31 CFR

285.....71228

Proposed Rules:

28.....69432
285.....71233

32 CFR

44.....72027

199.....72030
287.....67166
296.....71297
299.....71299
806b.....72031

Proposed Rules:
199.....67220, 69981

33 CFR

26.....69633
100 .....67168, 67169, 69192, 70184
117 .....67169, 67773, 68291, 71653
127.....67170
154.....67170
155.....67170
159.....67170
161.....69633
164.....67170
165 .....70587, 71023, 71655, 72281
183.....67170
207.....69402

Proposed Rules:
100.....70650
140.....68416
141.....68416
142.....68416
143.....68416
144.....68416
145.....68416
146.....68416
147.....68416
165.....70650

34 CFR

76.....71964
304.....69138
606.....70146
607.....70146

Proposed Rules:
694.....71552

36 CFR

7.....71025
1220.....67662
1222.....67662
1228 .....67662, 67634, 68945

Proposed Rules:
217.....69446, 70204
219.....69446, 70204
251.....70204

37 CFR

1.....67486, 67774
2.....67486, 67774
253.....67187
258.....71659

Proposed Rules:
201.....71086

38 CFR

Proposed Rules:
3.....67528

39 CFR

3001.....67487

Proposed Rules:
111 .....68965, 71702, 72044

40 CFR

9 .....68546, 68722, 69636
51.....71026
52 .....67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404, 70589, 70592, 70593, 71026, 71027, 71031, 71035, 71038, 71304, 71660, 71663, 71666, 72032
62.....70595
63 .....67789, 67793, 69637, 71852
70.....71038, 72032
82.....68039
122.....68722
123.....68722
124.....68722
141.....67450
143.....67450
144.....68546, 70316
145.....68546
146.....68546
180 .....68044, 68046, 68631, 69407, 69409, 70184, 70599, 71670, 72282, 72284
243.....70602
300.....68052

Proposed Rules:
2.....71366
50.....68659
52 .....67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332 70347, 70364, 70380, 70397, 70412, 70428, 70443, 70459, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087, 71704, 71705, 72045
62.....70665
70.....68066, 72045
80.....70121
81.....68659, 70660
85.....68310, 70121
86 .....68310, 70121, 70665
141.....71366
142.....71367
165.....71367
180.....71708
194.....68661
243.....70666
260.....68968
372.....68311
503.....72045
761.....69358

41 CFR

Ch. 301 67670
300-3.....67670
301-10.....67670

42 CFR

121.....71317
422.....71673
1001.....71626

Proposed Rules:
68c.....69213
433.....67223
438.....67223
1001.....69217

43 CFR

12.....72287

44 CFR

61.....71317
64.....71317, 71678
65 .....69644, 69646, 69647, 69649
67 .....69652, 69655, 69657

Proposed Rules:
67.....69676

45 CFR

61.....71041
1302.....69924
1641.....67501

Proposed Rules:
160.....69981
161.....69981
162.....69981
163.....69981
164.....69981
270.....68202
2522.....67235
2525.....67235

46 CFR

28.....67170
30.....67170
32.....67170
34.....67170
35.....67170
38.....67170
39.....67170
54.....67170
56.....67170
58.....67170
61.....67170
63.....67170
76.....67170
77.....67170
78.....67170
92.....67170
95.....67170
96.....67170
97.....67170
105.....67170
108.....67170
109.....67170
110.....67170
111.....67170
114.....67170
119.....67170
125.....67170
151.....67170
153.....67170
154.....67170
160.....67170
161.....67170
162.....67170
163.....67170
164.....67170
170.....67170
174.....67170
175.....67170
182.....67170
190.....67170
193.....67170
195.....67170
199.....67170

47 CFR

Ch. 1 68053
1.....68946, 69926
2.....69926
36.....67372, 67416
51.....68637
54.....67372, 67416
69.....67372
73.....70606, 71041
76.....67193, 67198
90.....67199, 71042
95.....69926

Proposed Rules:
0.....71369
1.....71088
2.....71088
73 .....67236, 67535, 68662, 68663, 68664, 68665, 70670, 70671, 70672, 71097, 71098, 71712
80.....71369
90.....71369
101.....71088, 71373

48 CFR

Ch. 1.....72414, 72451
1.....72415, 72416
2 .....72416, 72441, 72450
4.....72441, 72444
5 .....72416, 72441, 72450
6.....72416
7.....72441
8.....72445
9.....72416
10.....72441
11.....72446
12 .....72415, 72416, 72447
13.....2416, 72447
14.....72416, 72450
15 .....72416, 72441, 72450
16.....72448
17.....72416
19 .....72416, 72441, 72447, 72450
23.....72415
25.....72416
32.....72450
33.....72450
36.....72416, 72450
39.....72445
42.....72444, 72450
48.....72448
52 .....72415, 72416, 72446, 72447, 72448, 72450
808.....69934
812.....69934
813.....69934
852.....69934
853.....69934
1815.....69415

Proposed Rules:
1.....67986
2.....70158
12.....67992
13.....67992
16.....70158
22.....67986, 67992
25.....67446
30.....67814
37.....70158
52 .....67446, 67986, 67992
919.....68072
952.....68072
1815.....70208
1819.....70208
1852.....70208

49 CFR

192.....69660
195.....69660
211.....70193
219.....69193, 72289
225.....69193
235.....70193
238.....70193

240.....70193
571.....69665

Proposed Rules:
40.....69076
106.....71098
107.....71098
171.....71098
192.....71713
195.....71713
571.....70672, 71377

50 CFR

17 .....68508, 69195, 71680
20.....71236
21.....71236
222.....69416, 70196
223.....69416, 70196
300.....69672, 72035
600.....67511
622.....68932, 71056
635.....70198
648 .....71060, 71320, 71687
649.....68228
660.....69888, 72290
679 .....68054, 68228, 68949, 69673, 70199, 71688

Proposed Rules:
17 .....67814, 69324, 70209, 71714, 72300
18.....68973
216.....70678, 71722
226.....67536, 69448
622.....70678, 71388
635.....69982
648.....67551
660.....70679
679 .....67555, 69219, 69458, 71390, 71396, 72302

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 27, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Oranges, grapefruit, tangerines, and lemons; grade standards; published 11-24-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Government in Sunshine Act; implementation; published 11-26-99

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Contract bundling; published 12-27-99

Document availability; published 12-27-99

SBA's 8(a) Business Development Program; published 12-27-99

Special simplified procedures for purchases of commercial items in excess of simplified acquisition threshold; published 12-27-99

Technical amendments; published 12-27-99

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

Emergency Oil and Gas Guaranteed Loan Program; implementation; published 10-27-99

EMERGENCY STEEL GUARANTEE LOAN BOARD

Emergency Steel Guarantee Loan Program; implementation; published 10-27-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Pennsylvania; published 10-27-99

Air quality implementation plans; approval and promulgation; various States:

California; published 10-28-99

Texas; published 10-28-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Glufosinate ammonium; published 12-27-99

Maneb; published 12-27-99

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Private land mobile services—

Dedicated short range communications of intelligent transportation services; published 11-26-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contract bundling; published 12-27-99

Document availability; published 12-27-99

SBA's 8(a) Business Development Program; published 12-27-99

Special simplified procedures for purchases of commercial items in excess of simplified acquisition threshold; published 12-27-99

Technical amendments; published 12-27-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adjuvants, production aids, and sanitizers—

4,5-dichloro-2-((5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)benzenesulfonic acid, etc.; published 12-27-99

Propanoic acid, etc.; published 12-27-99

Tetradecanoic acid, lithium salt; published 12-27-99

Medical devices:

Cardiac pacemaker registry; revocation; published 11-24-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Methods to improve Medicare efficiency; suggestion program establishment; published 11-26-99

INTERIOR DEPARTMENT

Assistance programs; administrative and audit requirements and cost principles:

On-the-job seat belt use; published 12-27-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Illinois; published 12-27-99

Virginia; published 12-27-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contract bundling; published 12-27-99

Document availability; published 12-27-99

SBA's 8(a) Business Development Program; published 12-27-99

Special simplified procedures for purchases of commercial items in excess of simplified acquisition threshold; published 12-27-99

Technical amendments; published 12-27-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Credit union service organizations—

Real estate brokerage services; grandfather exemption; published 11-26-99

PENSION BENEFIT GUARANTY CORPORATION

Premium payments:

Self-correction of premium underpayments; published 11-26-99

PERSONNEL MANAGEMENT OFFICE

Absence and leave:

Emergency leave transfer program; published 12-27-99

SMALL BUSINESS ADMINISTRATION

Government contracting programs:

Contract bundling and SBA's authority to appeal adverse decisions made by procuring agency; published 10-25-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospatiale; published 11-22-99

BMW Rolls-Royce GmbH; published 11-19-99

Boeing; published 11-19-99

Bombardier; published 11-22-99

British Aerospace; published 11-22-99

CASA; published 11-22-99

Dornier; published 11-22-99

Fairchild; published 11-22-99

Fokker; published 11-22-99

General Electric Aircraft Engines; published 10-26-99

Gulfstream American; published 11-22-99

Jetstream; published 11-22-99

Lockheed; published 11-22-99

McDonnell Douglas; published 11-19-99

McDonnell Douglas; correction; published 12-27-99

Mitsubishi; published 11-22-99

Saab; published 11-22-99

Sabreliner; published 11-22-99

Short Brothers; published 11-22-99

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Alcohol and drug use control:

Random drug and alcohol testing—

Minimum testing rate; 2000 determination; published 12-27-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Fire ant, imported; comments due by 1-4-00; published 11-5-99

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning

Supplemental information; comments due by 1-4-00; published 12-13-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—
Community development quota program; at-sea scales; comments due by 1-3-00; published 12-2-99
Pollock; comments due by 1-5-00; published 12-21-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico Fishery Management Council; meetings; comments due by 1-3-00; published 11-26-99
Northeastern United States fisheries—
Dealer and vessel reporting requirements; comments due by 1-3-00; published 12-2-99
Marine mammals:
Dolphin-safe tuna labeling; official mark; comments due by 1-5-00; published 12-22-99

ENERGY DEPARTMENT

Acquisition regulations:
Mentor-Protege Program; comments due by 1-5-00; published 12-6-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Ethylene oxide commercial sterilization and fumigation operations; chamber exhaust and aeration room vents; requirements suspended; comments due by 1-3-00; published 12-3-99
Air programs:
Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply
Findings rescission; comments due by 1-3-00; published 12-8-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 1-3-00; published 12-17-99
Connecticut; comments due by 1-3-00; published 12-1-99
Georgia; comments due by 1-3-00; published 12-2-99
Montana; comments due by 1-5-00; published 12-6-99
Pennsylvania; comments due by 1-5-00; published 12-6-99
Rhode Island; comments due by 1-3-00; published 12-2-99
Utah; comments due by 1-5-00; published 12-6-99
Radiation protection programs:
Hanford Site; transuranic radioactive waste proposed for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability; comments due by 1-7-00; published 12-8-99
Water supply:
National primary drinking water regulations—
Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 11-2-99
Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 0-0- 0

FEDERAL ELECTION COMMISSION

Internet use for campaign activity; inquiry; comments due by 1-4-00; published 11-5-99

FEDERAL MEDIATION AND CONCILIATION SERVICE

Freedom of Information Act; implementation; comments due by 1-3-00; published 11-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Adjuvants, production aids, and sanitizers—
7-oxa-3,20-diazadispiro-[5.1.11.2]-heneicosan-21-one,2,2,4,4-tetramethyl-,hydrochloride, reaction products; comments due by 1-3-00; published 12-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:
Children's Health Insurance Program; State allotments and grants; comments due by 1-7-00; published 11-8-99
Medicare:
Physician fee schedule (2000 CY); payment policies and relative value unit adjustments; comments due by 1-3-00; published 11-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 1-3-00; published 11-3-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Santa Ana sucker; comments due by 1-3-00; published 12-16-99
Scaleshell mussel; comments due by 1-7-00; published 11-29-99

LABOR DEPARTMENT

Employment Standards Administration

Federal Coal Mine Health and Safety Act of 1969, as amended:
Black Lung Benefits Act—
Individual claims by former coal miners and dependents processing and adjudication; regulations clarification and simplification; comments due by 1-6-00; published 11-18-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
Employee choice between appeal procedure and grievance procedure; agency requirement to provide notice when it takes appealable action against employee; comments due by 1-3-00; published 11-1-99

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 1-3-00; published 11-3-99

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:
New York; comments due by 1-4-00; published 11-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 1-6-00; published 12-7-99
Bell Helicopter Textron Canada; comments due by 1-3-00; published 11-4-99
BFGoodrich; comments due by 1-7-00; published 12-8-99
Boeing; comments due by 1-6-00; published 11-22-99
British Aerospace; comments due by 1-6-00; published 12-7-99
Eurocopter France; comments due by 1-4-00; published 11-5-99
Fokker; comments due by 1-5-00; published 12-6-99
McDonnell Douglas; comments due by 1-6-00; published 11-22-99
New Piper Aircraft, Inc.; comments due by 1-4-00; published 11-5-99
Raytheon; comments due by 1-3-00; published 11-16-99
Rolls-Royce plc; comments due by 1-3-00; published 11-2-99
Class E airspace; comments due by 1-3-00; published 11-19-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Controlled corporations; recognition of gain on certain distributions of stockor securities in connection with an acquisition; comments due by 1-5-00; published 8-24-99

LIST OF PUBLIC LAWS

This is a completes the listing of public laws enacted during the first session of the 106th of Congress. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/

index.html. Some laws may not yet be available.

The list will resume when bills are enacted into public law during the second session of the 106th Congress, which convenes on January 24, 2000. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1999.

H.R. 1180/P.L. 106–170

Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

Last List December 23, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: PENS will resume service when bills are enacted into law during the second session of the 106th Congress. This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-038-00001-6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869-038-00002-4)	20.00	[1] Jan. 1, 1999
4	(869-038-00003-2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1-699	(869-038-00004-1)	37.00	Jan. 1, 1999
700-1199	(869-038-00005-9)	27.00	Jan. 1, 1999
1200-End, 6 (6 Reserved)	(869-038-00006-7)	44.00	Jan. 1, 1999
7 Parts:			
1-26	(869-038-00007-5)	25.00	Jan. 1, 1999
27-52	(869-038-00008-3)	32.00	Jan. 1, 1999
53-209	(869-038-00009-1)	20.00	Jan. 1, 1999
210-299	(869-038-00010-5)	47.00	Jan. 1, 1999
300-399	(869-038-00011-3)	25.00	Jan. 1, 1999
400-699	(869-038-00012-1)	37.00	Jan. 1, 1999
700-899	(869-038-00013-0)	32.00	Jan. 1, 1999
900-999	(869-038-00014-8)	41.00	Jan. 1, 1999
1000-1199	(869-038-00015-6)	46.00	Jan. 1, 1999
1200-1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600-1899	(869-038-00017-2)	55.00	Jan. 1, 1999
1900-1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940-1949	(869-038-00019-9)	34.00	Jan. 1, 1999
1950-1999	(869-038-00020-2)	41.00	Jan. 1, 1999
2000-End	(869-038-00021-1)	27.00	Jan. 1, 1999
8	(869-038-00022-9)	36.00	Jan. 1, 1999
9 Parts:			
1-199	(869-038-00023-7)	42.00	Jan. 1, 1999
200-End	(869-038-00024-5)	37.00	Jan. 1, 1999
10 Parts:			
1-50	(869-038-00025-3)	42.00	Jan. 1, 1999
51-199	(869-038-00026-1)	34.00	Jan. 1, 1999
200-499	(869-038-00027-0)	33.00	Jan. 1, 1999
500-End	(869-038-00028-8)	43.00	Jan. 1, 1999
11	(869-038-00029-6)	20.00	Jan. 1, 1999
12 Parts:			
1-199	(869-038-00030-0)	17.00	Jan. 1, 1999
200-219	(869-038-00031-8)	20.00	Jan. 1, 1999
220-299	(869-038-00032-6)	40.00	Jan. 1, 1999
300-499	(869-038-00033-4)	25.00	Jan. 1, 1999
500-599	(869-038-00034-2)	24.00	Jan. 1, 1999
600-End	(869-038-00035-1)	45.00	Jan. 1, 1999
13	(869-038-00036-9)	25.00	Jan. 1, 1999
14 Parts:			
1-59	(869-038-00037-7)	50.00	Jan. 1, 1999
60-139	(869-038-00038-5)	42.00	Jan. 1, 1999
140-199	(869-038-00039-3)	17.00	Jan. 1, 1999
200-1199	(869-038-00040-7)	28.00	Jan. 1, 1999
1200-End	(869-038-00041-5)	24.00	Jan. 1, 1999
15 Parts:			
0-299	(869-038-00042-3)	25.00	Jan. 1, 1999
300-799	(869-038-00043-1)	36.00	Jan. 1, 1999
800-End	(869-038-00044-0)	24.00	Jan. 1, 1999
16 Parts:			
0-999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000-End	(869-038-00046-6)	37.00	Jan. 1, 1999
17 Parts:			
1-199	(869-038-00048-2)	29.00	Apr. 1, 1999
200-239	(869-038-00049-1)	34.00	Apr. 1, 1999
240-End	(869-038-00050-4)	44.00	Apr. 1, 1999
18 Parts:			
1-399	(869-038-00051-2)	48.00	Apr. 1, 1999
400-End	(869-038-00052-1)	14.00	Apr. 1, 1999
19 Parts:			
1-140	(869-038-00053-9)	37.00	Apr. 1, 1999
141-199	(869-038-00054-7)	36.00	Apr. 1, 1999
200-End	(869-038-00055-5)	18.00	Apr. 1, 1999
20 Parts:			
1-399	(869-038-00056-3)	30.00	Apr. 1, 1999
400-499	(869-038-00057-1)	51.00	Apr. 1, 1999
500-End	(869-038-00058-0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1-99	(869-038-00059-8)	24.00	Apr. 1, 1999
100-169	(869-038-00060-1)	28.00	Apr. 1, 1999
170-199	(869-038-00061-0)	29.00	Apr. 1, 1999
200-299	(869-038-00062-8)	11.00	Apr. 1, 1999
300-499	(869-038-00063-6)	50.00	Apr. 1, 1999
500-599	(869-038-00064-4)	28.00	Apr. 1, 1999
600-799	(869-038-00065-2)	9.00	Apr. 1, 1999
800-1299	(869-038-00066-1)	35.00	Apr. 1, 1999
1300-End	(869-038-00067-9)	14.00	Apr. 1, 1999
22 Parts:			
1-299	(869-038-00068-7)	44.00	Apr. 1, 1999
300-End	(869-038-00069-5)	32.00	Apr. 1, 1999
23	(869-038-00070-9)	27.00	Apr. 1, 1999
24 Parts:			
0-199	(869-038-00071-7)	34.00	Apr. 1, 1999
200-499	(869-038-00072-5)	32.00	Apr. 1, 1999
500-699	(869-038-00073-3)	18.00	Apr. 1, 1999
700-1699	(869-038-00074-1)	40.00	Apr. 1, 1999
1700-End	(869-038-00075-0)	18.00	Apr. 1, 1999
25	(869-038-00076-8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1-1.60	(869-038-00077-6)	27.00	Apr. 1, 1999
§§ 1.61-1.169	(869-038-00078-4)	50.00	Apr. 1, 1999
§§ 1.170-1.300	(869-038-00079-2)	34.00	Apr. 1, 1999
§§ 1.301-1.400	(869-038-00080-6)	25.00	Apr. 1, 1999
§§ 1.401-1.440	(869-038-00081-4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501-1.640	(869-038-00083-1)	27.00	[7] Apr. 1, 1999
§§ 1.641-1.850	(869-038-00084-9)	35.00	Apr. 1, 1999
§§ 1.851-1.907	(869-038-00085-7)	40.00	Apr. 1, 1999
§§ 1.908-1.1000	(869-038-00086-5)	38.00	Apr. 1, 1999
§§ 1.1001-1.1400	(869-038-00087-3)	40.00	Apr. 1, 1999
§§ 1.1401-End	(869-038-00088-1)	55.00	Apr. 1, 1999
2-29	(869-038-00089-0)	39.00	Apr. 1, 1999
30-39	(869-038-00090-3)	28.00	Apr. 1, 1999
40-49	(869-038-00091-1)	17.00	Apr. 1, 1999
50-299	(869-038-00092-0)	21.00	Apr. 1, 1999
300-499	(869-038-00093-8)	37.00	Apr. 1, 1999
500-599	(869-038-00094-6)	11.00	Apr. 1, 1999
600-End	(869-038-00095-4)	11.00	Apr. 1, 1999
27 Parts:			
1-199	(869-038-00096-2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
26 Parts:			
0–42	(869–038–00098–9)	39.00	July 1, 1999
43–end	(869–038–00099–7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[6] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87–135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
*44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
*500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869-038-00047-4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

Public Laws

106th Congress, 2nd Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 2nd Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 2nd Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

12/99

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

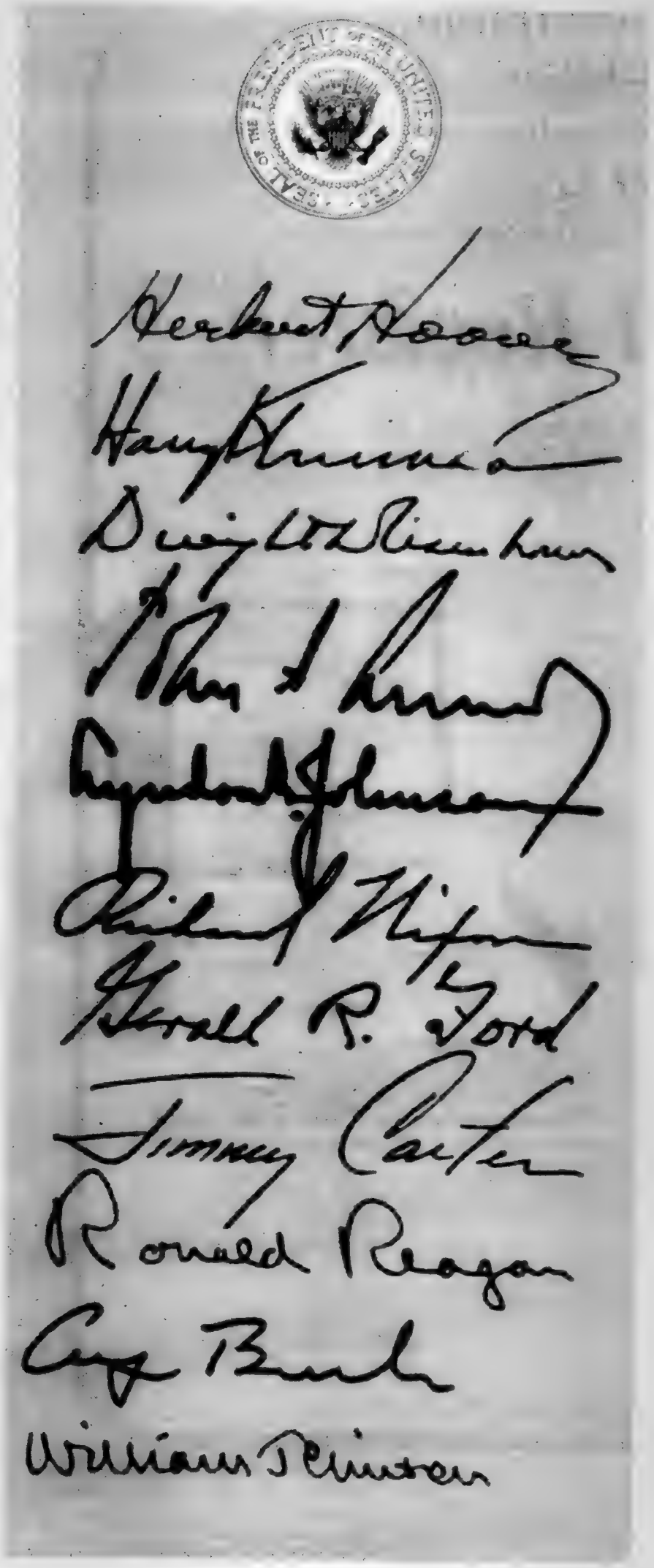
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00

1993
(Book II) $51.00

1994
(Book I) $56.00

1994
(Book II) $52.00

1995
(Book I) $60.00

1995
(Book II) $65.00

1996
(Book I) $66.00

1996
(Book II) $72.00

1997
(Book I) $69.00

1997
(Book II) $78.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 9/23/99)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

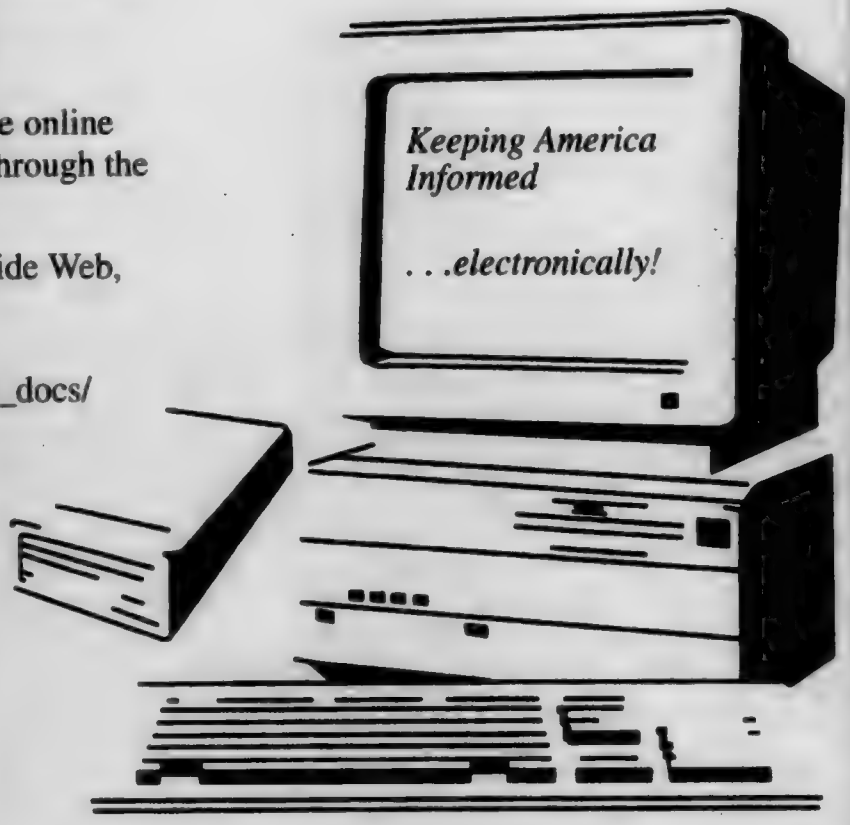
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Order Now!

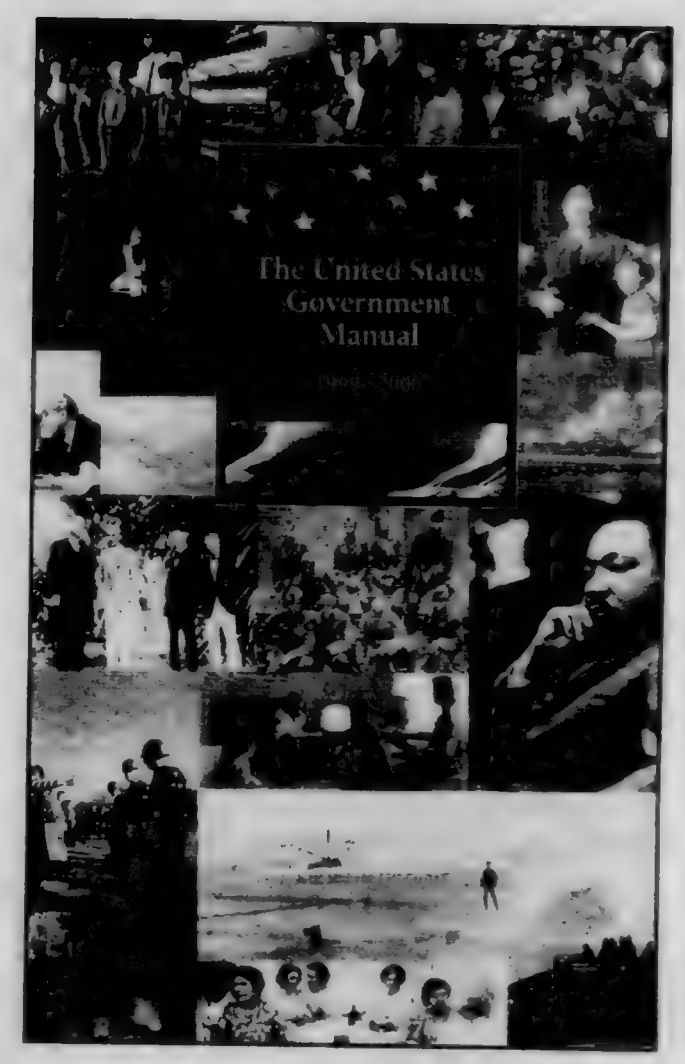
The United States Government Manual 1999/2000

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$46 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1999/2000,
S/N 069–000–00109–2 at $46 ($57.50 foreign) each.

Total cost of my order is $ _____ . **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

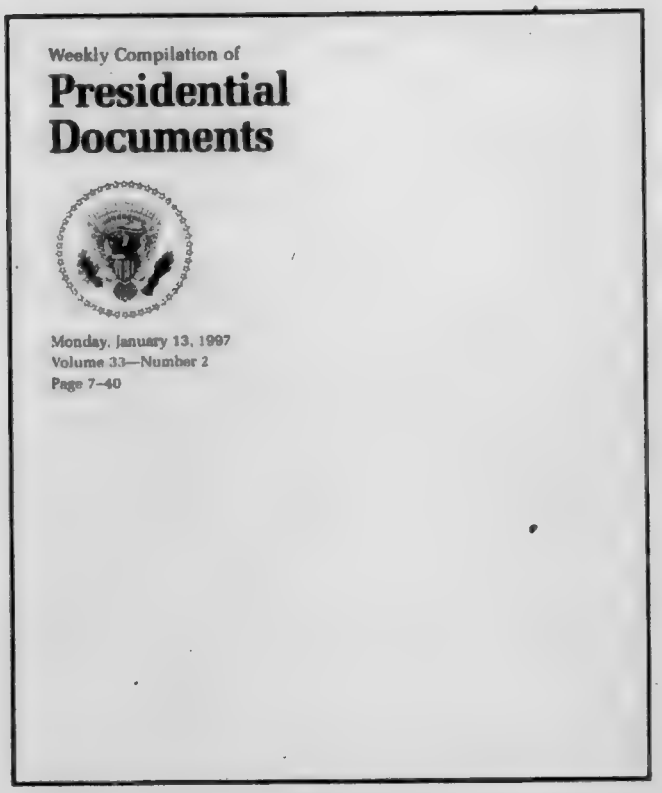
Thank you for your order!

Authorizing signature 9/99

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 5420**

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

VOL
64
ISS
2
4
8
DE
28
1999
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–28–
Vol. 64

Unite
Gove
Print
SUPER
OF DO
Washing

OFFICI
Penalty

12–28–99
Vol. 64 No. 248

federal register

Tuesday
December 28, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S Government Printing Office
(ISSN 0097–6326)

VOL
64
ISS
2
4
8
DE
28
999
UMI

12-
Vol
Pag

12-28-99
Vol. 64 No. 248
Pages 72457-72886

federal register

Tuesday
December 28, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register

Vol. 64, No. 248

Tuesday, December 28, 1999

Agricultural Marketing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72638–72640

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service
See Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72638

Air Force Department
RULES
Freedom of Information Act Program; implementation, 72807–72825
PROPOSED RULES
Sales and services:
Release, dissemination, and sale of visual information materials, 72621–72622
NOTICES
Meetings:
Scientific Advisory Board, 72653

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Wine; labeling and advertising—
Flavored wine products, 72612–72617

Army Department
See Engineers Corps
NOTICES
Meetings:
Army School of the Americas, Training and Doctrine Command, 72653–72654

Census Bureau
NOTICES
Survey, determinations, etc.:
Pollution abatement costs and expenditures, 72641–72642

Centers for Disease Control and Prevention
NOTICES
Meetings:
Director's Advisory Committee, 72669

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Social services (Title XX) block grants—
State allotments (2000 FY), 72669

Coast Guard
RULES
Ports and waterways safety:
Eagle Harbor, Bainbridge Island, WA; regulated navigation area, 72559–72561
Lake Erie—Maumee River, OH; safety zone, 72558–72559

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Privacy Act:
Systems of records, 72640–72641

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Insider trading regulations, 72587–72590
NOTICES
Meetings; Sunshine Act, 72650

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72650–72652
Submission for OMB review; comment request, 72652–72653

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
See Uniformed Services University of the Health Sciences
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Construction Industry Payment Protection Act; implementation, 72827–72829

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
2000 aggregate, 72686–72689
Applications, hearings, determinations, etc.:
Celgene Corp., 72678
Guilford Pharmaceuticals, Inc., 72678
Harline, Wesley G., M.D., 72678–72685
Knoll Pharmaceuticals, 72685
Medeva Pharmaceuticals CA, Inc., 72685–72686
Polaroid Corp., 72686
Pressure Chemical Co., 72686

Education Department
RULES
Post secondary eduction:
Preparing Tomorrow's Teachers to Use Technology Program, 72801–72804
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72654–72655
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
State grant program, 72831–72850
Postsecondary education—
Preparing Tomorrow's Teachers to Use Technology Program, 72805

Employment and Training Administration
NOTICES
Adjustment assistance:
Eagle Ottawa Leather Co., 72693–72694
Adjustment assistance and NAFTA transitional assistance:
Woodward Governor Co. et al., 72690–72693
Agency information collection activities:
Proposed collection; comment request, 72694
NAFTA transitional adjustment assistance:
Phillips Joanna et al., 72695–72696

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Ultra-clean transportation fuels program, 72655

Engineers Corps
NOTICES
Base realignment and closure:
Surplus Federal property—
Walson Army Hospital, Fort Dix, NJ, 72654

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Perchloroethylene emissions from dry cleaning facilities—
Florida, 72568–72570
Air quality implementation plans; approval and promulgation; various States:
Delaware et al., 72564–72568
Indiana, 72561–72564
PROPOSED RULES
Air pollutants, hazardous; national emmission standards:
Perchloroethylene emissions from dry cleaning facilities—
Florida, 72633
Air quality implementation plans; approval and promulgation; various States:
Delaware et al., 72632–72633
Indiana, 72632
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72657–72658
Meetings:
Clean Air Act Advisory Committee, 72658
Pesticide registration, cancellation, etc.:
KHH BioSci, Inc. et al., 72658–72660
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 72660–72667

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 72533–72534
Bombardier, 72528–72530
British Aerospace, 72522–72524, 72530–72533
New Piper Aircraft, Inc., 72524–72528
PROPOSED RULES
Airworthiness directives:
Alexander Schleicher Segelflugzeugbau, 72584–72586
Boeing, 72575–72584
Dowty Aerospace Propellers, 72586–72587

Federal Bureau of Investigation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72689–72690

Federal Communications Commission
RULES
Common carrier services:
Ex Parte presentation in commission proceedings, 72570–72571
Frequency allocations and radio treaty matters:
Radio frequency devices capable of causing harmful interference; importation, 72571–72572

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72667–72668

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Rate schedules filing—
Section 205 filings; intervention and protesting time frame, 72535–72537
Practice and procedure:
Major Electric Utilities, Licensees, and Others annual report; electronic filing instructions, 72537–72540
NOTICES
Applications, hearings, determinations, etc.:
Clear Creek Storage Co., L.L.C., 72655–72656
Dominion Resources, Inc. and Consolidated Natural Gas Co., 72656
Family Fiber Connection, Inc., 72656
Natural Gas Pipeline Co. of America, 72656
Transwestern Pipeline Co. et al., 72657
Williams Gas Pipelines Central, Inc.; correction, 72720

Federal Financial Institutions Examination Council
RULES
Appraisal subcommittee:
Appraisal policy; disclosure of information, 72494–72501

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
Pottawattamie County, IA, 72716–72717
Environmental statements; notice of intent:
Kittitas County, WA, 72717–72718

Federal Housing Enterprise Oversight Office
RULES
Practice and procedure:
Hearings on record, 72501–72522

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 72668
Meetings; Sunshine Act, 72668

Federal Transit Administration
NOTICES
Best Practices Procurement Manual; updates, 72718

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
General Accident Insurance Company of America, 72718
Pennsylvania General Insurance Co., 72718–72719

Food and Drug Administration
NOTICES
Prescription drugs; user fees (2000 FY), 72669–72673

Food and Nutrition Service
RULES
Child nutrition programs:
National school lunch program, etc.—
State agency-school food authority/child care institution agreements and direct certification, 72466–72474
Summer food service program—
Legislative reform implementation, 72474–72488

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Fee increase, 72492–72494
Nutrient content claims; "healthy" definition, 72490–72492

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California, 72642
Nevada, 72642
New Jersey, 72642–72643
Ohio
Milacron, Inc.; plastics processing machinery manufacturing facility, 72643
Texas
BASF Corp.; polycaprolactam manufacturing facility, 72643–72644
Dell Computer Corp.; computer manufacturing facility, 72643

Forest Service
NOTICES
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 72640

General Services Administration
RULES
Federal property management:
Utilization and disposal—
Excess personal property; reporting criteria, 72570
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Constuction Industry Payment Protection Act; implementation, 72827–72829

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Vital and Health Statistics National Committee, 72668–72669

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
RULES
Fair housing:
Fair Housing Act violations; civil penalties, 72725–72728
Low income housing:
Housing assistance payments (Section 8)—
Contract rent annual adjustment factors, 72729–72754
Fair market rent for manufactured home spaces, 72721–72723
Mortgage and loan insurance programs:
Single family mortgage insurance—
Appraiser roster; placement and removal procedures, 72867–72869
NOTICES
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Disaster Recovery Initiative, 72851–72866, 72871–72874
Regulatory waiver requests; quarterly listing, 72875–72886

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau
NOTICES
San Carlos Apache Tribe water Rights SettlementAct; implementation, 72674

Internal Revenue Service
RULES
Income taxes:
Estates; applicability of separate share rules, 72540–72545
Foreign partnerships—
Information reporting requirements, 72545–72554
U.S. persons owning interests in; return requirements, 72555–72558
NOTICES
Agency information collection activities:
Proposed collection; comment request
Correction, 72720

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Industrial nitrocellulose from—
France, 72645
Welded ASTM A-312 stainless steel pipe from—
Korea, 72645–72649
Antidumping and countervailing duties:
Five-year sunset reviews—
Initiation of reviews, 72644–72645
Applications, hearings, determinations, etc.:
University of—
Massachusetts, 72649

Justice Department
See Drug Enforcement Administration
See Federal Bureau of Investigation
See Prisons Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72677–72678

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Meetings:
Arkansas; planning analysis for 12 tracts of public land, 72674–72675
Public land orders:
California; correction, 72675
Survey plat filings:
Wyoming, 72675

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Postlease operations safety; update and clarification, 72755–72795

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Flame-resistant conveyor belts, 72617–72619
Underground coal mines—
Electric motor-driven mine equipment and accessories and high-voltage longwall equipment, 72620–72621
NOTICES
Mining products; testing, evaluation, and approval:
User fee adjustments, 72696

National Aeronautics and Space Administration
RULES
Information security program, 72534–72535
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Construction Industry Payment Protection Act; implementation, 72827–72829
NOTICES
Meetings:
Space Science Advisory Committee, 72699

National Institute for Literacy
NOTICES
Meetings:
Advisory Board, 72699–72700

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and red king crab, 72572–72574
PROPOSED RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic pelagic longline fishermen; time/area closures; hearings and Advisory Panel meetings, 72636–72637
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72649
Meetings:
National Sea Grant Review Panel, 72650

National Park Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Urban park and recreation recovery program, 72675–72676

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 72701–72702
Meetings:
Decommissioning standard review plan; workshop, 72702–72703
Nuclear Waste Advisory Committee, 72703
Reactor Safeguards Advisory Committee, 72703–72704
Reports and guidance documents; availability, etc.:
Nuclear power reactors—
Occupational radiation exposure, 72704
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 72700–72701
Sequoyah Fuels Corp., 72701

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Overseas Private Investment Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72677

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72696–72699

Personnel Management Office
RULES
Group life insurance; Federal employees:
Life insurance improvements, 72459–72466
Pay administration:
Back pay, holidays, and physicians' comparability allowances, 72457–72459
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72704–72705
Privacy Act:
Systems of records, 72705

Postal Rate Commission
PROPOSED RULES
Practice and procedure:
Procedings; efficiency improvement, 72622–72632

Prisons Bureau
RULES
Inmate control, custody, care, etc.;
Inmate financial responsibility program; spending limitations, 72797–72799

Public Debt Bureau
See Fiscal Service

Public Health Service
See Centers for Disease Control and Prevention

See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 72705

Reclamation Bureau
NOTICES
Water resources planning; discount rate change, 72676–72677

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Hazardous materials transportation—
Compatibility with International Atomic Energy Agency regulations, 72633–72636

Rural Utilities Service
RULES
Electric loans:
Insured and guaranteed loans; post-loan policies and procedures, 72488–72490
PROPOSED RULES
Electric loans:
Insured and guaranteed loans; post-loan policies and procedures, 72575

Securities and Exchange Commission
PROPOSED RULES
Securities:
Selective disclosure and insider trading, 72590–72611
NOTICES
Investment Company Act of 1940:
Exemption applications—
Evergreen Select Fixed Income Trust et al., 72705–72707
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 72707–72709
Depository Trust Co., 72709–72710
National Association of Securities Dealers, Inc., 72710–72712
Pacific Exchange, Inc., 72712–72714

State Department
NOTICES
Meetings:
International Communications and Information Policy Advisory Committee, 72714
Shipping Coordinating Committee, 72714–72715

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 72673–72674

Trade Representative, Office of United States
NOTICES
Free Trade Area of the Americas; market access negotiations, 72715–72716

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Research and Special Programs Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Internal Revenue Service

U.S. Trade Deficit Review Commission
NOTICES
Hearings, 72719

Uniformed Services University of the Health Sciences
NOTICES
Meetings; Sunshine Act, 72654

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 72721–72723

Part III
Department of Housing and Urban Development, 72725–72728

Part IV
Department of Housing and Urban Development, 72729–72754

Part V
Department of Interior, Minerals Management Service, 72755–72795

Part VI
Department of Justice, Prisons Bureau, 72797–72799

Part VII
Department of Education, 72801–72805

Part VIII
Department of Defense, Air Force Department, 72807–72825

Part IX
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 72827–72829

Part X
Department of Education, 72831–72850

Part XI
Department of Housing and Urban Development, 72851–72866

Part XII
Department of Housing and Urban Development, 72867–72869

Part XIII
Department of Housing and Urban Development, 72871–72874

Part XIV
Department of Housing and Urban Development, 72875–72886

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
550.....72457
595.....72457
610.....72457
870.....72459

7 CFR
210.....72466
225.....72474
245.....72466
1721.....72488

Proposed Rules:
1721.....72575

9 CFR
317.....72490
381.....72490
391.....72492

12 CFR
1102.....72494
1780.....72501

14 CFR
39 (6 documents).....72522, 72524, 72528, 72530, 72531, 72533
1203.....72534

Proposed Rules:
39 (5 documents).....72575, 72579, 72582, 72584, 72586

17 CFR

Proposed Rules:
1.....72587
230.....72590
240.....72590
243.....72590
249.....72590

18 CFR
35.....72535
141.....72537

24 CFR
180.....72726
200.....72868
888 (2 documents).....72722, 72730

26 CFR
1 (3 documents).....72540, 72545, 72555
602 (2 documents).....72545, 72555

27 CFR

Proposed Rules:
4.....72612

28 CFR
545.....72798

30 CFR
218.....72756
250.....72756
252.....72756
253.....72756
256.....72756
282.....72756

Proposed Rules:
14.....72617
18 (2 documents).....72617, 72620
75 (2 documents).....72617, 72620

32 CFR
806.....72808

Proposed Rules:
811.....72621

33 CFR
165 (2 documents).....72558, 72559

34 CFR
614.....72802

39 CFR

Proposed Rules:
3001.....72622

40 CFR
52 (2 documents).....72561, 72564
63.....72568

Proposed Rules:
52 (2 documents).....72632
63.....72633

41 CFR
Ch. 101.....72570

47 CFR
1.....72570
2.....72571

48 CFR

Proposed Rules:
28.....72828
52.....72828

49 CFR

Proposed Rules:
171.....72633
172.....72633
173.....72633
174.....72633
175.....72633
176.....72633
177.....72633
178.....72633
179.....72633
180.....72633

50 CFR
679.....72572

Proposed Rules:
635.....72636

Rules and Regulations

Federal Register
Vol. 64, No. 248
Tuesday, December 28, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550, 595, and 610

RIN 3206–AI61

Pay Administration; Back Pay; Holidays; and Physicians' Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to reflect changes in law which clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies, change the designation of holidays for certain Federal employees working overseas, and increase the maximum physicians' comparability allowance from $20,000 to $30,000 per year for employees who have served as a Government physician for more than 24 months. The changes in law are already effective.

DATES: *Effective Date:* The regulations are effective on December 28, 1999.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after December 28, 1999.

Comments Date: Comments must be received on or before February 28, 2000.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: These interim regulations reflect changes in law clarifying the statute of limitations for back pay, raising the maximum physicians' comparability allowance for employees with more than 24 months of service as Government physicians, and designating holidays for certain employees at duty posts outside the United States.

Statute of Limitations for Back Pay

Section 1104 of Public Law 105–261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), amended the back pay law (5 U.S.C. 5596(b)). Section 1104 added a new provision to clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies. This amendment clarifies that the 6-year limitation period in the Tucker Act (28 U.S.C. 2402 *et seq.*) and the Barring Act (31 U.S.C. 3702) applies to cases under the back pay law. Section 1104 also adds a new provision to 5 U.S.C. 7121 to clarify that settlements of grievances and arbitration awards under 5 U.S.C. 7121 are subject to the same 6-year statute of limitations. Note that this amendment does not modify the current 2-year statute of limitations (3 years for willful violations) provided by the Portal-to-Portal Act of 1947 for claims under the Fair Labor Standards Act of 1938, as amended, that are filed on or after June 30, 1994. These changes became effective on October 17, 1998, and are reflected in a new paragraph (e) in 5 CFR 550.804.

Maximum Physicians' Comparability Allowance

Section 7 of Public Law 105–266, the Federal Employees Health Care Protection Act of 1998 (October 19, 1998), amended 5 U.S.C. 5948(a) to increase the maximum physicians' comparability allowance (PCA) from $20,000 to $30,000 per year for an employee who has served as a Government physician for more than 24 months. We are revising 5 CFR 595.105(b) to reflect the higher maximum allowance rate. We are also correcting references to title 38, United States Code, in § 595.105(c). In addition, we are making other changes to clarify the language in § 595.105 generally. As part of these clarifying changes, the last sentence in § 595.105(c) has been edited and moved to § 595.102.

Section 7 also provides that agencies may modify any PCA service agreement in effect on the effective date of the Act to increase the PCA for a physician up to the new maximum amount during the time remaining under the service agreement. However, section 7 provides that any modification of an existing service agreement to increase a PCA cannot cause the total PCA paid to the employee during the calendar year to exceed the new $30,000 maximum or any other applicable limitation (e.g., the aggregate limitation on pay under 5 U.S.C. 5307).

These changes became effective on October 19, 1998. However, the Office of Management and Budget advises that before agencies may authorize a PCA in excess of $20,000, they must submit new or updated PCA plans and obtain OMB approval of the changes. See 5 CFR 595.107(a) and the criteria for revised Physicians' Comparability Allowance plans in OMB's Memorandum for the Heads of Departments and Agencies (M–99–04, December 11, 1998).

Holidays at Duty Posts Outside the United States

Section 1107 of Public Law 105–261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), adds a new provision to 5 U.S.C. 6103 which changes the designation of holidays for certain Federal employees who work at duty posts outside the United States. For this purpose, the Office of Personnel Management has determined that "outside the United States" refers to an employee's official duty station (or temporary duty station while traveling) that is not in (1) a State of the United States; (2) the District of Columbia; (3) Puerto Rico; (4) the U.S. Virgin Islands; (5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462); (6) American Samoa; (7) Guam; (8) Midway Atoll; (9) Wake Island; (10) Johnston Island; or (11) Palmyra. This is parallel to the definition of exempt area in 5 CFR 551.104 for the purpose of administering the foreign exemption from the minimum wage, overtime pay, and child labor provisions of the Fair Labor Standards Act of 1938, as amended.

Section 1107 provides that whenever Monday is designated as a holiday

under 5 U.S.C. 6103(a), the first regularly scheduled workday in the week is the holiday for a Federal employee at a duty post outside the United States whose basic workweek includes Monday, but is not the typical Monday through Friday work schedule found in the United States. The intent of this new provision of law is to create a 3-day weekend with a holiday on Sunday for Federal employees who work Sunday through Thursday with nonworkdays on Friday and Saturday. Thus, if the regularly scheduled administrative workweek designated by an agency for an employee is Sunday through Saturday midnight, and the employee's basic workweek is Sunday through Thursday, this provision will have the effect of moving the employee's holiday from Monday to Sunday (the day before) and providing a 3-day weekend (Friday, Saturday, and Sunday) to the employee. However, when employees working overseas do not have Sunday through Thursday work schedules, the new law will usually not have the desired effect unless the agency makes an adjustment in the administrative workweek.

This change in law became effective on October 17, 1998. See the conforming revisions in 5 CFR 610.201 and 610.202. Section 610.202 has also been revised to reflect the fact that employees on alternative work schedules may have a basic work requirement, as defined in 5 U.S.C. 6121(3).

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**. This waiver is appropriate because the attached changes in regulations update Office of Personnel Management regulations to make them consistent with changes in law that are already effective.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 550, 595, and 610

Administrative practice and procedure, Claims, Government employees, Health professions, Holidays, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 550, 595, and 610 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart H—Back Pay

3. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

4. In § 550.804, paragraph (e) is added to read as follows:

§ 550.804 Determining entitlement to back pay.

* * * * *

(e)(1) The pay, allowances, and differentials paid as back pay under this subpart (including payments made under any grievance or arbitration decision or any settlement agreement) may not exceed that authorized by any applicable law, rule, regulation, or collective bargaining agreement, including any applicable statute of limitations.

(2) An agency may not authorize pay, allowances, and differentials under this subpart in any case for a period beginning more than 6 years before the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay, consistent with 31 U.S.C. 3702(b). (See also § 178.104 of this chapter.)

(3) For back pay claims dealing with payments under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207, *et seq.*), an agency must apply the 2-year statute of limitations (3 years for willful violations) in 29 U.S.C. 255a. (See also § 551.702 of this chapter.)

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

7. The authority citation for part 595 continues to read as follows:

Authority: 5 U.S.C. 5948; E.O. 12109, 44 FR 1067, Jan. 3, 1979.

8. In § 595.102, paragraph (c) is added to read as follows:

§ 595.102 Coverage and exclusions.

* * * * *

(c) Physicians employed and paid under title 38, United States Code, and Commissioned Corps officers of the Public Health Service under title 42, United States Code, are not eligible for physicians' comparability allowances.

9. In § 595.105, paragraphs (b) and (c) are revised to read as follows:

§ 595.105 Determination of amount of comparability allowance.

* * * * *

(b) A physician with 24 months or less of service as a Government physician may not be paid a physicians' comparability allowance in excess of $14,000 per annum. A physician with more than 24 months of service as a Government physician may not be paid a physicians' comparability allowance in excess of $30,000 per annum.

(c) In determining length of service as a Government physician, agencies must exclude periods of leave without pay. However, agencies may credit any prior service as a Government physician, including—

(1) Prior service as a physician under sections 7401 and 7405 of title 38, United States Code; and

(2) Prior active service as a medical officer in the Commissioned Corps of the Public Health Service under title II of the Public Health Service Act (42 U.S.C. chapter 6A).

* * * * *

PART 610—HOURS OF DUTY

Subpart B—Holidays

10. The authority citation for part 610, subpart B, continues to read as follows:

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

11. Section 610.201 is revised to read as follows:

§ 610.201 Identification of holidays.

Holidays are determined under section 6103 of title 5, United States Code, and Executive Order 11582 of February 11, 1971.

12. In § 610.202, paragraph (a) is revised, and paragraph (d) is added to read as follows:

§ 610.202 Determining the holiday.

* * * * *

(a) Except when a different holiday is designated by section 6103(b)(3) of title 5, United States Code, when a holiday falls on a day during which part of the employee's basic workweek (as defined in § 610.102) or basic work requirement (as defined in 5 U.S.C. 6121(3)) is scheduled to be completed, that workday is the employee's holiday.

* * * * *

(d) The provisions of section 6103(b)(3) of title 5, United States Code, on determining holidays for certain

employees at duty posts outside the United States apply to covered employees who are working outside the United States at a permanent or temporary station or under travel orders. For the purpose of section 6103(b)(3), *United States* includes—

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The U.S. Virgin Islands;
(5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Midway Atoll;
(9) Wake Island;
(10) Johnston Island; and
(11) Palmyra.

[FR Doc. 99–33587 Filed 12–27–99; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN: 3206–AI64

Federal Employees' Group Life Insurance Program: Life Insurance Improvements

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Life Insurance Improvement Act, which was enacted October 30, 1998. This law made numerous changes to the Federal Employees' Group Life Insurance (FEGLI) Program. These changes include the elimination of maximums on Basic insurance and Option B, coverage of foster children under Option C, making the contractual incontestability provision statutory, providing for the direct payment of premiums for all employees and annuitants whose pay is too small for premium withholdings, allowing retiring employees to elect unreduced Option B and Option C coverage, establishing a three-year demonstration project for the portability of Option B, and increasing the coverage available under Option C.

DATES: Interim rules are effective January 27, 2000. Comments must be received on or before February 28, 2000.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3425, 1900 E Street, NW, Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On October 30, 1998, Public Law 105–311, 112 Stat. 2950, was signed into law. This law, the Federal Employees Life Insurance Improvement Act, changed many parts of the FEGLI Program. These regulations put the various new statutory provisions into place.

1. Elimination of Maximums

An employee's Basic Insurance Amount is his/her annual rate of basic pay, rounded to the next higher thousand, plus $2,000. Each multiple of Option B coverage is equal to an employee's annual pay, rounded to the next higher thousand.

Before the enactment of Public Law 105–311, the law limited both Basic insurance and the multiples of Option B insurance to the annual rate of pay for Level II Executive Schedule positions, rounded up (plus $2,000 for Basic). The maximum amount of Basic insurance was $139,000, and the maximum amount of an Option B multiple was $137,000.

The new law removed those maximums. These regulations also provide that Option A coverage, which increased for employees in this situation, will no longer exceed $10,000.

This provision of the law became effective the first pay period beginning on or after October 30, 1998.

2. Coverage of Foster Children

Before the enactment of Public Law 105–311, foster children were not eligible for coverage under Option C. They became eligible as covered family members effective October 30, 1998.

For ease of administration, we have made the requirements for coverage of foster children under Option C the same as the requirements for coverage of foster children under the Federal Employees Health Benefits Program. Those requirements are that the child be unmarried and under the age of 22 (or if over 22, incapable of self-support because of a disabling condition that started before the 22nd birthday), that the child be living with the employee or annuitant in a regular parent-child relationship, that the employee/annuitant be the principal source of support for the child, and that the employee/annuitant expect to raise the child to adulthood. The employee/annuitant must certify in writing that the child meets these requirements. Grandchildren can qualify as foster children only if they meet all the requirements.

3. Incontestability

This provision allows an erroneous enrollment to stand if it has been in effect for at least 2 years. There was already such a provision in the FEGLI contract, but it did not apply if the employee or annuitant was excluded from coverage by law or if the employee's position was excluded by regulation. The contractual provision also did not require that the individual have paid premiums for the erroneous coverage before incontestability could apply. The new statutory provision applies to all situations in which an administrative error allows an employee or annuitant to be insured when the law or regulations would otherwise prohibit the election. If the erroneous coverage and applicable premium withholdings have been in place for at least 2 years before the error is discovered, the coverage is allowed to stand.

This provision was effective for any findings of erroneous coverage made on or after October 30, 1998.

4. Direct Payment of Premiums

Before the enactment of Public Law 105–311, all employees and compensationers and most annuitants whose pay/compensation/annuity was too small for premium withholdings had to terminate their FEGLI coverage. The only exception to this was FERS (Federal Employees' Retirement System) annuitants; these annuitants were allowed to make direct premium payments.

Public Law 105–311 extends the right to make direct payment of FEGLI premiums to anyone with insufficient pay, compensation, or annuity. These regulations provide that this applies when the "pay," after all other deductions, is insufficient on an ongoing basis, *i.e.*, when the situation is expected to continue for at least 6 months.

Insured individuals in this situation can choose either to terminate their FEGLI coverage or to make direct payments. Employees who choose to make direct payments must pay on a current basis; if they do not make the payments, the coverage cancels. Employees who choose to terminate are entitled to the 31-day extension of coverage and the right to convert. When the employee's pay again becomes sufficient for the premium withholdings, premiums will again be withheld from the employee's pay. Any

coverage that was terminated is automatically restored; coverage that was cancelled for nonpayment, however, will remain cancelled.

Annuitants and compensationers who elect to make direct premium payments will remain on direct pay, even if their "pay" increases enough to allow withholdings.

This provision became effective the first pay period beginning on or after October 30, 1998.

5. Election of Unreduced Options B and C at Retirement

Before the enactment of Public Law 105–311, Option B and C coverage began to reduce for annuitants when they reached age 65. Both coverages reduced by 2% per month until there was no coverage left. This reduction was automatic, and annuitants had no choice about it. Because their coverage was reducing, annuitants paid no premiums after age 65.

Public Law 105–311 allows annuitants to make an election at retirement as to whether they want their Option B and Option C coverage to reduce. (This also applies to persons becoming insured as compensationers.) If they choose No Reduction, they will continue to pay premiums appropriate to their age beyond age 65. OPM has set April 24, 1999, as the effective date for this provision. This applies to persons separating for retirement or becoming insured as compensationers on or after that date.

Under these regulations, retiring employees (and persons becoming insured as compensationers) will choose how many of the Option B multiples for which they are eligible and how many of the Option C multiples for which they are eligible they actually want to continue. They will also elect either Full Reduction or No Reduction for all of their multiples of each type of Optional coverage. Shortly before an individual's 65th birthday, he/she will receive a reminder notice, showing what coverage the annuitant/compensationer elected and what the premiums will be for coverage beyond age 65. The individual will then have an opportunity to change his/her election, including choosing to have some multiples reduce and others not reduce. For persons who are already over age 65 at the time of retirement or becoming insured as a compensationer, the reminder notice will be sent as soon as the retirement processing is complete.

Public Law 105–311 also allows for an election opportunity for those who are already retired or insured as compensationers and who still have Option B coverage on the effective date (April 24, 1999). Those who are over age 65 and whose Option B coverage has already started reducing will elect whether to freeze their remaining Option B at the amount in force on the effective date. These annuitants/compensationers will not have an election opportunity for Option C.

6. Portability

Public Law 105–311 set up a 3-year demonstration project for the portability of Option B coverage which would otherwise terminate. This provision allows certain individuals to continue their group coverage at the group rate plus an administrative surcharge. Those eligible for portability of their Option B are separating employees and employees exceeding 12 months in nonpay status, who meet the same 5-year/1st opportunity requirement as employees who are retiring. Ported coverage reduces by 50% when the insured individual reaches age 70 and terminates when the individual reaches age 80.

These regulations put in place the requirements and procedures for portability. OPM has set April 24, 1999, as the effective date for this provision.

7. Increased Option C Coverage

Before the enactment of Public Law 105–311, Option C coverage was $5,000 for a spouse and $2,500 for each eligible child.

Public Law 105–311 increased the coverage available under Option C to up to 5 multiples of the previous amounts. OPM has set April 24, 1999, as the effective date for this provision.

New employees and employees newly eligible on or after the effective date can elect the higher amounts within 31 days of becoming eligible. Employees who have a life event on or after April 24, 1999, can elect the higher amounts within 60 days after the life event. Employees who had a life event between October 30, 1998, and April 23, 1999, were allowed to elect the increased coverage within 60 days of April 24, 1999; their increased coverage was effective April 24, 1999.

8. Open Season

Public Law 105–311 required OPM to conduct an open season no later than 180 days after the date of enactment, with coverage elected during the open season effective 365 days after the start of the open season.

OPM held an open enrollment period from April 24, 1999, through June 30, 1999. All eligible employees were able to elect or increase coverage. The effective date of open enrollment elections is the first pay period beginning on or after April 23, 2000, which follows a pay period in which the employee was in pay and duty status for the required amount of time.

9. Study and Report

Public Law 105–311 also required OPM to conduct a study and submit a report to Congress on Federal employees' interest in other types of life insurance, specifically group universal life insurance, group variable universal life insurance, and additional voluntary accidental death and dismemberment insurance. OPM completed the study, which showed that there is some interest in these other life insurance products. OPM submitted its report to Congress May 4, 1999.

Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. This notice is being waived in order to implement legislation which has become effective.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect life insurance benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 870 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. Revise the authority citation for part 870 to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under section 599C of Public Law 101–513, 104 Stat. 2064, as amended; § 870.302(a)(3)(ii) also issued under sec. 153 of Public Law 104–134, 110 Stat. 1321; § 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Public Law 105–33, 111 Stat. 251 and section 7(e) of Public Law 105–274, 112 Stat. 2419.

2. In § 870.101, revise the definition of the first appearance of *Child* and add the definitions *Portability Office*, *Ported coverage*, and *Regular parent-child relationship* in alphabetical order to read as follows:

§ 870.101 Definitions.

* * * * *

Child, as used in the definition of *Family member* for Option C coverage, means a legitimate child, an adopted child, a stepchild or foster child who lives with the employee or former employee in a regular parent-child relationship, or a recognized natural child. It does not include a stillborn child or a grandchild (unless the grandchild meets all the requirements of a foster child). The child must be under age 22 or, if age 22 or over, must be incapable of self-support because of a mental or physical disability which existed before the child reached age 22.

* * * * *

Portability Office means the office OPM designates to manage ported coverage and to collect premiums for ported coverage.

Ported coverage means continued coverage that would otherwise have terminated.

* * * * *

Regular parent-child relationship means that the employee or former employee is exercising parental authority, responsibility, and control over the child by caring for, supporting, disciplining, and guiding the child, including making decisions about the child's education and medical care.

* * * * *

§ 870.104 [Redesignated as § 870.105]

3. Redesignate § 870.104 as § 870.105 and amend it by revising paragraph (a), and add a new § 870.104 to read as follows:

§ 870.104 Incontestability.

(a) If an individual erroneously becomes insured, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the individual has paid applicable premiums during that time. This applies to errors discovered on or after October 30, 1998.

(b) If an employee is erroneously allowed to continue insurance into retirement or compensation, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the annuitant or compensationer has paid applicable premiums during that time. This applies to such errors discovered on or after October 30, 1998.

(c) If an individual who is allowed to continue erroneous coverage because of incontestability does not want the coverage, he/she may cancel the coverage on a prospective basis. There is no refund of premiums.

§ 870.105 Initial decision and reconsideration.

(a) An individual may ask his/her agency or retirement system to reconsider its initial decision denying life insurance coverage, the opportunity to change coverage, the opportunity to assign insurance, or the opportunity to elect portability for Option B coverage.

* * * * *

4. Revise § 870.202(a)(1)(ii) to read as follows:

§ 870.202 Basic insurance amount (BIA).

(a)(1) * * *

(ii) $10,000; whichever is higher, unless an employee has elected a Living Benefit under subpart K of this part. Effective for pay periods beginning on or after October 30, 1998, there is no maximum BIA.

* * * * *

5. Revise § 870.205(a), (b)(1), and (c) to read as follows:

§ 870.205 Amount of Optional insurance.

(a) Option A coverage is $10,000. Effective for pay periods beginning on or after October 30, 1998, Option A cannot exceed this amount. Exception: This does not apply to annuitants who retired with a higher amount of Option A before the removal of the maximum on Basic insurance (the first pay period beginning on or after October 30, 1998).

(b)(1) Option B coverage comes in 1, 2, 3, 4, or 5 multiples of an employee's annual pay (after the pay has been rounded to the next higher thousand, if not already an even thousand). Effective for pay periods beginning on or after October 30, 1998, there is no maximum amount for each multiple.

* * * * *

(c) Effective April 24, 1999, Option C coverage comes in 1, 2, 3, 4, or 5 multiples of the following amounts: $5,000 on the death of a spouse and $2,500 on the death of an eligible child. Payments are made to the insured individual.

6. Revise § 870.301(b) and add a new § 870.303 to subpart C to read as follows:

Subpart C—Eligibility

§ 870.301 Eligibility for life insurance.

* * * * *

(b)(1) Optional insurance must be specifically elected; it is not automatic.

(2) An employee may elect one or more types of Optional insurance if:

(i) He/she has Basic insurance; and

(ii) He/she does not have a waiver of that type (or types) or Optional insurance still in effect.

* * * * *

§ 870.303 Eligibility of foster children under Option C.

(a) Effective October 30, 1998, foster children are eligible for coverage as family members under Option C.

(b) To qualify for coverage as a foster child, the child must meet the following requirements:

(1) The child must live with the insured employee, annuitant, or compensationer;

(2) The parent-child relationship (as defined in § 870.101) must be with the insured employee, annuitant, or compensationer, not the biological parent;

(3) The employee, annuitant, or compensationer must be the primary source of financial support for the child; and

(4) The employee, annuitant, or compensationer must expect to raise the child to adulthood.

(c) A child placed in an insured individual's home by a welfare or social service agency under an agreement by which the agency retains control of the child or pays for maintenance does not qualify as a foster child.

(d)(1) An insured individual wishing to cover a foster child must sign a certification stating that the child meets all the requirements and that he/she will notify the employing office or retirement system if the child marries, moves out of the home, or stops being financially dependent on the employee, annuitant, or compensationer.

(2) The employing office or retirement system must keep the signed certification in the insured individual's file, along with other life insurance forms.

(e) A foster child who moves out of the insured individual's home to live with a biological parent loses eligibility and cannot again be covered as a foster child unless:

(1) The biological parent dies;

(2) The biological parent is imprisoned;

(3) The biological parent becomes unable to care for the child due to a disability; or

(4) The employee, annuitant, or compensationer obtains a court order taking parental responsibility away from the biological parent.

7. Revise § 870.402(c) to read as follows:

§ 870.402 Withholdings for Optional insurance.

* * * * *

(c)(1) Subject to the provisions for reemployed annuitants in § 870.707, the full cost of Optional insurance must be withheld from the annuity of an annuitant and from the compensation of a compensationer.

(2) The withholdings for Option A stop the month after the month in which an annuitant or compensationer reaches age 65.

(3) For an annuitant or compensationer who elects Full Reduction for any Option B or Option C multiples, the withholdings for those multiples stop the month after the month in which he/she reaches age 65.

(4) For an annuitant or compensationer who elects No Reduction for any Option B or Option C multiples, the withholdings for those multiples continue, as long as he/she remains insured.

* * * * *

8. Revise § 870.405 to read as follows:

§ 870.405 Direct premium payments.

(a) Since January 1, 1988, annuitants who retired under 5 U.S.C. chapter 84 (Federal Employees' Retirement System) have been able to make direct premium payments if their annuity became too small to cover the premiums. Effective the first pay period beginning on or after October 30, 1998, all employees, annuitants, and compensationers whose pay, annuity, or compensation is insufficient to cover the withholdings can make direct premium payments.

(b)(1) For an individual to be eligible to make direct premium payments, the employing office or retirement system must determine that the pay, annuity, or compensation, after all other deductions, is expected to be insufficient on an ongoing basis, *i.e.*, for the next 6 months or more.

(2) This section does not apply to employees in nonpay status. Employees in nonpay status are governed by § 870.404(c).

(c)(1) When the employing office or retirement system determines that the pay, annuity, or compensation is insufficient, and will be insufficient on an ongoing basis, it must notify the insured individual (or the assignee, if the individual has assigned his/her insurance under subpart I of this part) in writing and inform him/her of the available choices.

(2) Within 31 days of receiving the notice (45 days for individuals living overseas), the insured individual (or assignee) must return the notice to the employing office or retirement system, choosing either to terminate some or all of the insurance or to make direct premium payments. An employee, annuitant, or compensationer is considered to receive a mailed notice 5 days after the date of the notice.

(3) If an individual does not return the notice within the required time frames, the employing office or retirement system will terminate the insurance.

(d)(1) Terminated coverage stops at the end of the last pay period for which premiums were withheld.

(2) An individual whose insurance terminates, either by choice or by failure to return the notice, gets the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(3)(i) When an employee's pay again becomes sufficient to allow premium withholdings, the employing office will automatically reinstate the terminated coverage.

(ii) An annuitant or compensationer whose coverage terminates cannot have the coverage reinstated when the annuity or compensation becomes sufficient to cover withholdings.

(e)(1) Employing offices and retirement systems must establish a method for accepting premium payments for insured individuals who choose to pay directly.

(2) Individuals who are paying directly must send the required premium payment to the employing office or retirement system for every pay period during which coverage continues. The insured individual must make the payment after each pay period, according to the schedule established by the employing office or retirement system.

(3)(i) When an employee's pay again becomes sufficient to allow premium withholdings, he/she must stop making direct payments. The employing office will begin to withhold premiums automatically.

(ii) An annuitant or compensationer who is making direct premium payments must continue to pay directly, even if the annuity or compensation becomes sufficient to allow withholdings.

(f) The employing office or retirement system must submit all direct premium payments, along with its regular life insurance premiums, to OPM according to procedures set by OPM.

(g)(1) If an individual on direct pay fails to make the required premium payment on time, the employing office or retirement system must notify the individual. The individual must make the payment within 15 days after receiving the notice (45 days if living overseas). An individual is considered to receive a mailed notice 5 days after the date of the notice.

(2) If an insured individual fails to make the overdue payment, his/her insurance cancels. Cancellation is effective at the end of the last pay period for which payment was received.

(3) An individual whose insurance cancels for nonpayment does not get the 31-day extension of coverage or the right to convert provided in subpart F of this part.

(4) Coverage that cancels for nonpayment is not reinstated when the individual's pay, annuity, or compensation becomes sufficient to allow withholdings, except as provided by paragraph (g)(5) of this section.

(5) If, for reasons beyond his/her control, an insured individual is unable to pay within 15 days of receiving the past due notice (45 days if living overseas), he/she may request reinstatement of coverage by writing to the employing office or retirement system within 30 days from the date of cancellation. The individual must provide proof that he/she was prevented from paying within the time limit for reasons beyond his/her control. The employing office or retirement system will decide if the individual is eligible for reinstatement of coverage. If the employing office or retirement system approves the request, the coverage is reinstated back to the date of cancellation, and the individual must pay the back premiums.

9. Revise § 870.506(a) to read as follows:

§ 870.506 Optional insurance: cancelling a waiver.

(a) *When there is a change in family circumstances.* (1) An employee cannot cancel a waiver of Option A due to a change in family circumstances.

(2) An employee who has waived Option B coverage can elect it, and an employee who has fewer than 5 multiples of Option B can increase the number of multiples, upon his/her marriage or divorce, upon a spouse's death, or upon acquiring an eligible child. Exception: Acquiring a foster child does not qualify an employee to elect or increase Option B coverage.

(3) The number of multiples of Option B coverage that an employee can obtain or add (which cannot exceed a total of 5) is limited to the following:

(i) For marriage, the number of additional family members (spouse and eligible children) acquired with the marriage;

(ii) For acquisition of children, the number of eligible children acquired; and

(iii) For divorce or death of a spouse, the total number of eligible children of the employee.

(4)(i) An employee who has waived Option C coverage can elect it, and an

employee who has fewer than 5 multiples of Option C can increase the number of multiples, upon his/her marriage or upon acquiring an eligible child. An employee can also elect Option C coverage upon divorce or death of a spouse, if the employee has any eligible children.

(ii) An employee electing or increasing Option C coverage may elect any number of multiples, as long as the total number of multiples does not exceed 5.

(5)(i) Except as stated in paragraph (a)(5)(iii) of this section, the employee must file an election under paragraph (a)(2) or (a)(4) of this section with the employing office, in a manner designated by OPM, along with proof of the event, no later than 60 days following the date of the event that permits the election; the employee may instead file the election before the event and provide proof no later than 60 days following the event.

(ii) This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event or if the individual separates from covered service prior to the end of the 60-day time limit. This extension cannot exceed the 31-day time limit for electing insurance following employment in a covered position or, for an election under paragraph (a)(4) of this section, the 31-day period following the 1st day on which the individual becomes eligible to cancel a waiver of Basic insurance.

(iii) An employee making an election under paragraph (a)(4)(i) of this section because of acquiring an eligible foster child must file the election with the employing office no later than 60 days after completing the required certification.

(iv) Employees who had a change in family circumstances between October 30, 1998, and April 23, 1999, had until June 23, 1999, to make an election under this section.

(6)(i) The effective date of Option B insurance elected under paragraph (a)(1) of this section is the 1st day the employee actually enters on duty in pay status on or after the day the employing office receives the election.

(ii) The effective date of Option C coverage elected because of marriage, divorce, death of a spouse, or acquiring an eligible child other than a foster child is the day the employing office receives the election, or the date of the event, whichever is later. Exception: Coverage elected under paragraph (a)(5)(iv) of this section was effective April 24, 1999.

(iii) The effective date of Option C coverage elected because of acquiring a foster child is the date the employing office receives the election or the date the employee completes the certification, whichever is later.

10. Add new paragraph (e) to § 870.601 to read as follows:

§ 870.601 Termination of Basic insurance.

* * * * *

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405 of this part, Basic insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of Basic insurance.

11. In § 870.602 revise paragraphs (a), (c), and (e) to read as follows:

§ 870.602 Termination of Optional insurance.

(a)(1) The Optional insurance of an insured employee stops when his/her Basic insurance stops, subject to the same 31-day extension of coverage.

(2) An employee who meets the requirements for portability, as provided in subpart L of this part, may elect portability for his/her Option B coverage, instead of having it terminate.

* * * * *

(c)(1) If an insured employee is not eligible to continue Optional coverage as an annuitant or compensationer as provided by § 870.701, the Optional insurance stops on the date that his/her Basic insurance is continued or reinstated under the provisions of § 870.701, subject to a 31-day extension of coverage.

(2) A compensationer who meets the requirements for portability, as provided in subpart L of this part, may elect portability for his/her Option B coverage, instead of having it terminate.

* * * * *

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405 of this part, Optional insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of the Optional insurance. If an individual has more than one type of Optional insurance and his/her pay, annuity, or compensation is sufficient to cover some but not all of the insurance, the multiples of Option C terminate first, followed by Option A, and then the multiples of Option B.

§ 870.703 [Removed]

§ 870.702 [Redesignated as § 870.703]

12. Remove § 870.703, redesignate § 870.702 as § 870.703, and add a new § 870.702 to read as follows:

§ 870.702 Amount of Basic insurance.

(a) The amount of Basic insurance an annuitant or compensationer can continue is the BIA on the date insurance would otherwise have stopped because of the individual's separation from service or completion of 12 months in nonpay status. The amount of Basic insurance in force is the BIA minus any reductions applicable under § 870.703(a).

(b)(1) For the purpose of paying benefits upon the death of an insured individual under age 45 who is retired or receiving compensation, the BIA will be multiplied by the appropriate age factor shown in § 870.202(c) of this part. Exceptions:

(i) If the insured individual retired or became insured as a compensationer before October 10, 1980, or

(ii) If the insured individual elected a partial Living Benefit as an employee under subpart K of this part.

(2)(i) For an annuitant or compensationer who elected a partial Living Benefit as an employee, the amount of Basic insurance he/she can continue is the post-election BIA, as shown in § 870.203(a)(2) of this part.

(ii) For the purpose of paying benefits upon the death of an insured annuitant or compensationer under age 45 who elected a partial Living Benefit as an employee, the BIA will be multiplied by the age factor in effect on the date OFEGLI received the completed Living Benefit application.

13. Redesignate §§ 870.704, 870.705, and 870.706 as §§ 870.706, 870.707, and 870.708 respectively, and add new §§ 870.704 and 870.705 to read as follows:

§ 870.704 Amount of Option A.

(a) The amount of Option A coverage an annuitant or compensationer can continue is $10,000.

(b) An annuitant's or compensationer's Option A coverage reduces by 2 percent of the original amount each month up to a maximum reduction of 75 percent. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the date of the insured's 65th birthday, whichever is later.

§ 870.705 Amount and election of Option B and Option C.

(a) The number of multiples of Option B and Option C coverage an annuitant or compensationer can continue is the highest number of multiples in force during the applicable period of service required to continue Option B and Option C.

(b)(1)(i) At the time an employee retires or becomes insured as a compensationer, he/she must elect the number of allowable multiples he/she wishes to continue during retirement or while receiving compensation.

(ii) An employee who elects to continue fewer multiples than the number for which he/she is eligible is considered to have cancelled the multiples that are not continued.

(iii) Employees separating for retirement and employees becoming insured as compensationers on or after April 24, 1999, must also elect either Full Reduction or No Reduction for all of the multiples being continued.

(iv) An employee who does not make a reduction election is considered to have chosen Full Reduction.

(2)(i) Prior to reaching age 65, an annuitant or compensationer can change from No Reduction to Full Reduction at any time. Exception: If the individual has assigned his/her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage.

(ii) Prior to reaching age 65, an annuitant or compensationer can change from Full Reduction to No Reduction at any time.

(3)(i) After reaching age 65, an annuitant or compensationer can change from No Reduction to Full Reduction at any time. Exception: If the individual has assigned his/her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage. If an individual age 65 or over changes to Full Reduction, the amount of insurance in force is computed as if he/she had elected Full Reduction initially. There is no refund of premiums.

(ii) Except as provided in paragraph (b)(4) of this section, after reaching age 65, an annuitant or compensationer cannot change from Full Reduction to No Reduction.

(4)(i) Shortly before an annuitant or compensationer's 65 birthday, the retirement system will send a reminder about the election he/she made and will offer the individual a chance to change the election. At that time, the annuitant or compensationer can choose to have some multiples of Option B and Option C reduce and some not reduce.

(ii) If the individual is already 65 or older at the time of retirement or becoming insured as a compensationer, the retirement system will send the reminder and give the opportunity to change the election as soon as the retirement processing or compensation transfer is complete.

(iii) If the individual assigned his/her insurance as provided in subpart I of this part, and if the employee elected No Reduction for Option B coverage at the time of retirement or becoming insured as a compensationer, the retirement system will send the reminder notice for Option B coverage to the assignee.

(iv) An annuitant or compensationer who wishes to change his/her reduction election must return the notice by the end of the month following the month in which the individual turns 65, or if already over age 65, by the end of the 4th month after the date of the letter. An annuitant or compensationer who does not return the election notice will keep his/her initial election.

(c)(1) For each multiple of Option B and/or Option C for which an individual elects Full Reduction, the coverage reduces by 2 percent of the original amount each month. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the insured's 65th birthday, whichever is later. At 12:00 noon on the day before the 50th reduction, the insurance stops, with no extension of coverage or conversion right.

(2) For each multiple of Option B and/or Option C for which an individual elects No Reduction, the coverage in force does not reduce. After age 65 the annuitant or compensationer continues to pay premiums appropriate to his/her age.

(d)(1) Employees who were already retired or insured as compensationers on April 24, 1999, and who had Option B, were given an opportunity to make an election for Option B.

(i) Annuitants and compensationers who were under age 65 were notified of the option to elect No Reduction. The retirement system will send these individuals an actual election notice before their 65th birthday, as provided in paragraph (b)(4) of this section.

(ii) Annuitants and compensationers who were age 65 or older, and who still had some Option B coverage remaining, were given the opportunity to stop further reductions. These individuals had until October 24, 1999, to make the No Reduction election. The amount of Option B coverage retained was the amount in effect on April 24, 1999. Those annuitants and compensationers who elected No Reduction were required to pay premiums retroactive to April 24, 1999.

(2) Employees who were already retired or insured as compensationers on April 24, 1999, could not elect No Reduction for Option C.

14. Add § 870.801(d)(3)(v) to read as follows:

§ 870.801 Order of precedence and payment of benefits.

* * * * *

(d) * * *

(3) * * *

(v) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

* * * * *

15. Revise § 870.802(b) and (g)(1) to read as follows:

§ 870.802 Designation of beneficiary.

* * * * *

(b) A designation of beneficiary must be in writing, signed by the insured individual, and witnessed and signed by 2 people. The appropriate office must receive the designation before the death of the insured.

(1) For employees, the appropriate office is the employing office.

(2) For annuitants and compensationers, the appropriate office is OPM.

(3) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

* * * * *

(g)(1) A designation of beneficiary is automatically cancelled 31 days after the individual stops being insured. Exception: If the individual elects portability for Option B, a valid designation remains in effect.

* * * * *

16. Revise § 870.902 to read as follows:

§ 870.902 Making an assignment.

(a) To assign insurance, an insured individual must complete an approved assignment form. Only the insured individual can make an assignment; no one can assign on behalf of an insured individual.

(b) The individual must submit the completed and signed form to the appropriate office indicating the intent to irrevocably assign all ownership of the insurance. The form must also be witnessed and signed by 2 people.

(1) For employees, the appropriate office is the employing office.

(2) For annuitants and compensationers, the appropriate office is OPM.

(3) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

17. Revise § 870.907(c) to read as follows:

§ 870.907 Termination and conversion.

* * * * *

(c) An assignment terminates 31 days after the insurance terminates, unless the insured individual is reemployed in or returns to a position in which he/she is entitled to coverage under this part within 31 days after the insurance terminates. Exception: If an employee elects portability for Option B coverage, an assignment remains in effect. If the individual returns to Federal service, Basic insurance and any Option A insurance acquired through returning to service is subject to the existing assignment.

18. A new subpart L is added to read as follows:

Subpart L—PORTABILITY

870.1201 Portability permitted.
870.1202 Eligibility.
870.1203 Amount of insurance.
870.1204 Cost of insurance.
870.1205 Electing portability for Option B.
870.1206 Termination and cancellation of ported coverage.
870.1207 Designations, assignments, and court orders.
870.1208 Return to active service.

Subpart L—Portability

§ 870.1201 Portability permitted.

(a) Effective April 24, 1999, until April 24, 2002, eligible employees may elect portability for Option B coverage that would otherwise terminate.

(b) An individual cannot elect portability for Basic insurance, Option A, or Option C.

§ 870.1202 Eligibility.

(a) An employee is eligible to elect portability for Option B if:

(1) His/her coverage is terminating due to separation or completion of 12 months in nonpay status; and

(2) He/she has had Option B for the 5 years of service immediately before the date the coverage would otherwise terminate, or for the full period(s) of service during which he/she was eligible to have Option B, if less than 5 years.

(b) If the employee has assigned his/her coverage as provided in subpart I of this part, it is the assignee who has the right to elect portability.

§ 870.1203 Amount of insurance.

(a) An employee can elect portability for up to the highest number of Option B multiples that meet the requirements of § 870.1202(a)(2).

(b)(1) An individual with ported coverage can reduce the number of multiples at any time. Exception: If the individual assigned his/her coverage as provided in subpart I of this part, only the assignee has the right to reduce the number of multiples.

(2) An individual with ported coverage cannot increase the number of multiples.

(c) Salary changes have no effect on the amount of Option B coverage in force for an individual with ported coverage.

(d) The amount of ported coverage in force reduces by 50 percent at the beginning of the 2nd calendar month after the individual reaches age 70 or, if the individual is 70 or older at the time he/she elects portability; the 2nd month after the effective date of the ported coverage.

§ 870.1204 Cost of insurance.

(a)(1) The cost of ported coverage is the cost shown in § 870.402(e).

(2) In addition to the premium payments for Option B, individuals with ported coverage must pay a monthly administrative fee, in an amount set by OPM.

(b) The Portability Office will establish a schedule for the premium payments. An individual with ported coverage must make payment to the Portability Office on a timely basis.

§ 870.1205 Electing portability for Option B.

(a) The employing agency must notify the employee/assignee(s) of the loss of coverage and the right to elect portability for Option B either before or immediately after the event causing the loss of coverage.

(b)(1) The employee/assignee(s) must submit the request to elect portability to the employing office and to the Portability Office within 60 days following the date of the terminating event (74 days if living overseas). A mailed notification or request is considered to be received 5 days after the date of the notification/request.

(2) An employee/assignee who fails to request portability within the required time frame is considered to have refused coverage.

(3) Ported coverage is effective the day after coverage as an employee ends.

§ 870.1206 Termination and cancellation of ported coverage.

(a)(1) Ported coverage stops April 24, 2002, subject to the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(2) Ported coverage stops at the beginning of the 2nd calendar month after the individual reaches age 80 or, if the individual is age 80 or older at the time he/she elects portability, the 2nd month after the effective date, subject to the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(b)(1) An individual with ported coverage can cancel coverage at any time. Exception: If the individual assigned his/her coverage as provided in subpart I of this part, only the assignee can cancel coverage.

(2) If an individual with ported coverage does not make a premium payment on time, the Portability Office will send him/her a notice stating that coverage will continue only if the individual makes payment within 15 days after receiving the notice (45 days if living overseas). If the individual does not make payment within this time frame, Option B coverage cancels.

(3) An individual whose ported coverage cancels, whether voluntarily or for nonpayment, does not get the 31-day extension of coverage or the right to convert.

§ 870.1207 Designations, assignments, and court orders.

(a)(1) If an employee has a valid designation of beneficiary on file at the time he/she elects portability, that designation remains in effect.

(2) An individual with ported coverage who wishes to file a designation of beneficiary must submit the form to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any designation of beneficiary remains in effect.

(b)(1) If an employee assigns his/her coverage before electing portability for Option B, that assignment remains in effect.

(2) If an individual with ported coverage wishes to make an assignment, he/she must submit the form to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any assignment of coverage remains in effect. Basic insurance and any Option A coverage acquired through the return to service are subject to the existing assignment.

(c)(1) If the employing office received a valid court order on or after July 22, 1998, that court order remains valid for the ported coverage.

(2) Anyone wishing to submit a court order relating to an individual with ported coverage must submit it to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any valid court order on file remains in effect.

(d) When an individual submits a request to elect portability for Option B coverage, the employing office must send the originals of all designations, assignments, and court orders on file to the Portability Office.

§ 870.1208 Return to active service.

(a)(1) When an individual with ported coverage returns to Federal service, the agency must notify the Portability Office.

(2) The Portability Office must terminate the ported coverage and send the originals of all designations, assignments, and court orders to the new employing office.

(b) The employee will get back the number of multiples of Option B he/she had before the terminating event. Exceptions:

(1) A person who cancels a multiple or multiples of Option B coverage after electing portability will get back only the number of multiples remaining.

(2) A person whose ported coverage cancels for nonpayment of premiums will not get back any Option B coverage automatically.

[FR Doc. 99–33367 Filed 12–27–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 245

RIN 0584–AB35

Direct Certification of Eligibility for Free and Reduced Price Meals and Free Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the determination of eligibility for free and reduced price school meals under the National School Lunch Program and School Breakfast Program or free milk in schools participating in the Special Milk Program. The rule codifies procedures that allow school food authorities and State agencies to certify children eligible for free meals or free milk based on information obtained directly from the appropriate State or local agency administering the Food Stamp Program, the Food Distribution Program on Indian Reservations or the Temporary Assistance for Needy Families Program (previously the Aid to Families with Dependent Children Program). This rule affects State agencies and participating school food authorities and households. These amendments respond to certain provisions in the Child Nutrition and WIC Reauthorization Act of 1989, comments received on the proposed rule published on May 28, 1991 (56 FR 24033), and provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. These amendments are intended to reduce administrative paperwork burdens, simplify the certification process for free and reduced price benefits, and facilitate the feeding of needy children.

EFFECTIVE DATE: These provisions are effective January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or phone (703) 305–2620.

SUPPLEMENTARY INFORMATION:

What Is the Background of This Rule?

Section 323 of Public Law (Pub. L.) 99–500 (Oct. 18, 1986) added section 9(b)(6) to the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.) (NSLA) to make children from food stamp households and children from Aid to Families with Dependent Children (AFDC) assistance units in States where the standard of eligibility for the assistance did not exceed 130 percent of the Federal poverty level automatically eligible for free meals or free milk. In keeping with this provision, households have been permitted to list their food stamp or AFDC case number on the free and reduced price application for school meals or milk in lieu of providing detailed household size and income information and a social security number for the adult household member signing the application. The statute also specified that proof of participation in the Food Stamp Program or the AFDC Program would be sufficient to verify eligibility. The regulations implementing these provisions are currently found at 7 CFR 245.5, 7 CFR 245.6 and 7 CFR 245.6a.

Subsequently, section 202(b)(1) of the Child Nutrition and WIC Reauthorization Act of 1989, Pub. L. 101–147, enacted on November 10, 1989, amended section 9(b)(2)(C) of the NSLA to allow school food authorities to certify children eligible for free or reduced price lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation that the children are members of either a household receiving food stamps or an assistance unit receiving AFDC. This certification process is commonly referred to as "direct certification." That provision also specified that school food authorities that obtain such information shall use the information *only* for the purpose of determining eligibility for participation in programs under the NSLA and the Child Nutrition Act (42 U.S.C. 1771 et seq.) (CNA). Additionally, a statement adopted by key members of the House and Senate indicated their intent that school food authorities should provide parents the opportunity to decide whether or not they want their children to receive free meals by notifying parents that their children are eligible for free meal benefits and asking them to inform the school if they do not want their children to receive free meals. (135 Cong. Rec. H 6866 (Oct. 10, 1989) and S 14027 (Oct. 24, 1989)). The legislative history further indicated that school officials are to assume consent if they do not hear from the household within a certain number of days as specified by the Secretary.

On May 28, 1991, we published a proposed rule at 56 FR 24033 to amend 7 CFR part 245 to include direct certification. Moreover, we proposed to extend the direct certification provisions to include certification for free milk under the Special Milk Program operated in schools to maintain consistency between the school meal programs and the Special Milk Program in schools. Other institutions participating in the Special Milk Program are not authorized to use direct certification, because the statute limited direct certification to school food authorities. Further, although the law provided that the food stamp information or information provided under the AFDC Program may be used to determine eligibility for free or reduced price meals, under the proposed rule and this final rule, we deleted the references to reduced price meals because children who are members of food stamp households or members of households certified eligible for AFDC are automatically eligible only for free meal benefits under section 9(b)(6) of the NSLA.

We received fifty comments on the proposed rule during the 60-day public comment period. The majority viewed direct certification as a burden reduction measure and as a means to reach greater numbers of children. Please note that the May 28, 1991, rule also proposed to make the agreement

between the State agency and institutions operating the child nutrition programs and the school food authority's free and reduced price policy statement permanent documents. We addressed the permanency of the agreement and policy statement under a separate rulemaking published on September 20, 1999 at 64 FR 50735. This final rule addresses the direct certification provisions.

Is There Still an AFDC Program?

Since publication of the proposed rule, section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) replaced the AFDC Program, the Job Opportunities and Basic Skills Program and the Emergency Assistance Program with a block grant program under part A of title IV of the Social Security Act. Section 109(g) of PRWORA also made a conforming amendment to sections 9(b)(2)(C)(ii)(II) and (b)(6)(A)(ii) of the NSLA to remove references to AFDC and insert in its place, "the State program funded under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995." The new program is generally known as Temporary Assistance for Needy Families (TANF), although some States call the program by another name.

Thus, the automatic eligibility provisions and direct certification provisions that applied to AFDC households now apply to households certified eligible to participate in TANF in States in which the Secretary has determined that the standards under the State's TANF program are "comparable to or more restrictive than those in effect [for AFDC] on June 1, 1995." We asked State agencies to notify the appropriate Food and Nutrition Service (FNS) regional office, in writing, whether the new program in their State is comparable to or more restrictive than their AFDC Program that was in effect on June 1, 1995, and indicate the information used to make the comparison. We also asked State agencies to inform FNS when there is a change that would no longer make households participating in TANF automatically eligible for free school meals. This final rule amends § 245.11(g) to include these requirements.

In States in which the State standards for TANF are comparable to or more restrictive than those for the AFDC program that was in effect on June 1, 1995, school officials may determine free meal or milk eligibility based on a TANF case number in lieu of detailed household size and income information and may also directly certify children in TANF households. Additionally, proof of participation in TANF is sufficient to satisfy any verification of eligibility efforts.

This rule also makes a number of changes throughout parts 210 and 245 to replace the term "AFDC" with the term "TANF." Additionally, although not proposed, this rule removes the definition, "AFDC assistance unit" in § 245.2(a–1) and adds a new definition "TANF" at § 245.2(k). To avoid confusion, when describing the proposed rule, we will use TANF rather than AFDC as if TANF had been proposed.

The change from AFDC to TANF is required by PRWORA and is nondiscretionary. Additionally, in accordance with the NSLA, the change in programs will not affect current policies and provisions relating to automatic free meal eligibility in States in which the new program is comparable to or more restrictive than the AFDC program it replaced. Therefore, the FNS Administrator has determined that taking comments on this change is unnecessary in accordance with 5 U.S.C. 553.

How Is "Documentation" Defined?

Section 245.2(a–4) currently defines "documentation" as the completion of specific information on a free and reduced price application. For direct certification, we proposed to amend § 245.2(a–4) to include (1) a list of names of children, (2) a statement certifying that the children are members of households currently certified to receive food stamps or TANF benefits, (3) information in sufficient detail to match the children attending schools in the school food authority with the names of children identified as currently certified to receive food stamps or TANF benefits, (4) the signature of the official of the food stamp or TANF office, and (5) the date. Proposed § 245.6(b) also included these documentation provisions.

Several commenters were concerned that the proposed definition of documentation implies that the only way direct certification may be accomplished is through a computer match. They believed that flexibility is needed in the regulation to allow a variety of ways to "directly certify" in addition to a computer match. Other commenters suggested that the definition be rewritten to include a notice of eligibility originating from the food stamp/TANF office that is brought to the school by the household. Commenters stated that if this method were used, there would be no need for the school to provide households with a notice of approval and information about the opportunity to decline benefits, as required under proposed § 245.6(c)(1), since households would take the notice to the school only if they wanted benefits for their children.

The goal of direct certification is to reduce paperwork burdens while maintaining program integrity. We concur with commenters that flexibility is needed in the direct certification process. The proposed rule did not intend to limit direct certification to computer matches. This final regulation amends proposed §§ 245.2(a–4) (now § 245.2(a–3)) and 245.6(b) to make clear that school food authorities and food stamp or TANF offices without sophisticated computer systems may participate in direct certification. The amendments allow a member of a food stamp household or TANF household to deliver a letter or notice directly to the school containing the required documentation, as long as the required information is completed by officials from the food stamp or TANF office. In these instances, the household member would be acting as a conduit of information between the food stamp or TANF offices and the school, and the household would not be required to submit any additional information concerning eligibility.

One commenter suggested that we allow the food stamp or TANF office to notify households of their eligibility for free meals or free milk and include an abbreviated application for the household to complete and return to the school. We wish to emphasize that this is allowed, but is not considered a direct certification procedure. Rather, the household would simply be submitting a variation on the school's application. Requiring any kind of application is inconsistent with the direct certification procedure, because the food stamp or TANF office would not be able to certify that the information is accurate. Under direct certification, information is obtained from the agency administering the food stamp or TANF program.

Eight commenters maintained that the requirement that documentation include the signature of a food stamp or TANF official is too restrictive and that a signature may not always be available, particularly in the case of computer matches. Several commenters suggested that the requirement for a signature be expanded to include a signed agreement between the food stamp/TANF office or a signature facsimile like that produced

by a reproduction. We agree with these commenters. Therefore, this final rule (§ 245.2(a–3)(2)) specifies that the requirement for the signature of the food stamp or TANF official who certifies that the child is a member of a food stamp household or TANF household may be fulfilled with a copy of the individual's signature.

The proposed rule would have required documentation in sufficient detail to match the names of the children identified as receiving food stamp or TANF benefits with the names of children attending school in the school food authority. Two commenters believed that no further information beyond children's names and addresses is necessary, and one commenter asked that we more clearly define "sufficient detail." We did not define the exact type of identifiers that would be required because we still believe that officials in the school food authority can best determine appropriate identifiers. Therefore, this final rule continues to allow school food authorities to determine which identifiers they will use. However, because several children in a large school may have similar or nearly similar names, we emphasize that it is essential that documentation include some type of specific identifying information that is available to both the school and the food stamp or TANF office to ensure that benefits are directed to the correct children. This information may include children's addresses, parents' names, birth dates, or other types of information, including social security numbers.

What About the Distribution of Letters/Notices and Applications to Households About the Availability of Free and Reduced Price School Meals or Free Milk?

Section 9(b)(2)(B) of the NSLA and current § 245.5(a)(1) require school food authorities to distribute free and reduced price meal or free milk applications and letters announcing the availability of benefits to parents/guardians of all children in attendance at the school at the beginning of the school year. We recognized, however, that there could be confusion and duplication if households with children directly certified for free meals or free milk later receive these applications and letters. To avoid this confusion and possible overlapping of activity, we proposed to amend §§ 245.5(a)(1) and 245.6(b)(3) to exempt school food authorities that implement direct certification from the requirement to send the notice or letter and application to those households determined eligible under direct certification. Rather, these households would receive a notice that their children had been determined eligible for free meals or free milk by direct certification. We cautioned that school food authorities that do not distribute the letter and application in such a way as to prevent overt identification of children determined eligible under direct certification would have to distribute the letter and application to *all* households.

One commenter suggested that the distribution of the letter to households and the application be limited to households of children who were eligible for benefits the previous year. All other households would receive a letter notifying them that applications are available and explaining how an application may be obtained, if necessary. According to this commenter, this procedure would greatly reduce paperwork. Another commenter advised that the proposed provision created a burden since the school food authority would have to personalize the distribution of letters/notices and applications and the notices of eligibility under direct certification. According to this commenter, the best use of the direct certification provision would be to reach children whose parents/guardians did not complete an application. Therefore, the letters or notices and applications should continue to be distributed to all households. School officials could then use direct certification after the application process to increase participation among eligible children whose households did not apply for school meals or milk. Two other commenters believed that it would be difficult to prevent overt identification unless direct certification is done prior to the new school year.

We believe that distributing the notice or letter and application only to households with children who were eligible the prior year and only notifying all other households of how to obtain an application would be contrary to the statute. Section 9(b)(2)(B) of the NSLA requires that applications be distributed to all parents or guardians of children in attendance at the school. We believe when a school food authority uses direct certification to supplement the application process that the notice of eligibility satisfies this requirement. The intent of the provision is to simplify the certification process. Neither the proposal nor this final rule prohibits the distribution of applications to households with children who are directly certified. Rather, this is just one implementation option. Therefore, school officials have a great deal of flexibility in deciding how to use direct certification. For these reasons, we are adopting the provision regarding the distribution of letters and applications as proposed. This provision is found at § 245.5(a)(1) and § 245.6(b)(2).

Must the State Agency Approve of School Food Authorities' Use of Direct Certification?

Proposed § 245.6(b) specifies that school food authorities may implement direct certification with State agency approval. Two commenters objected to the need for State agency approval because this implies that the State agency could decide to approve or disapprove school food authorities' use of direct certification. We agree with these commenters. Section 9 (b)(2)(C)(ii) of the NSLA specifically gives the option of implementing the direct certification provision to school food authorities, although State agencies may assume this responsibility for their school food authorities or otherwise assist in the direct certification process. Therefore, we have removed the proposed reference to State agency approval from § 245.6(b) in this final rule. However, as with the distribution and acceptance of applications, State agencies are responsible for the *manner* in which direct certification is implemented. Therefore, this final rule amends § 245.10(a)(3) to stipulate that a school food authority's procedures for direct certification must be made a part of its permanent policy statement, which may be amended as necessary.

Must Households Be Notified That They Have Been Directly Certified?

Under current § 245.6(b) and proposed § 245.6(c)(1), all households that submit *applications* for free and reduced price meals or free milk must be promptly notified of the approval or denial of their application for benefits. Households whose applications are denied, however, must be notified in writing. They also must be provided with information about how to appeal the determination and how to reapply should their circumstances change. Proposed § 245.6(c)(1) further specified that households with children determined eligible based on direct certification be provided with the following information in writing: (1) That the household does not have to complete a free and reduced price application at this time to establish the children's eligibility; (2) that the household must notify the school if they do not want their children to receive free meal or milk benefits; and (3) that the household must notify the school when they are no longer eligible for food stamps or TANF for their children.

Additionally, under the proposal, school officials would have to discontinue benefits as soon as possible if notified by the household that they do not want benefits for their children. Moreover, should the household subsequently notify school officials that they are no longer eligible for food stamps or TANF for their children, school officials would follow the notice procedures specified in § 245.6a(e). The notice informs the household that their free meal benefits will stop 10 days from the date the notice is sent and contains other pertinent information, such as appeal procedures. The household would also be informed that if it wishes to continue to receive free or reduced price benefits for its children, the household must complete an application giving household size and detailed income information.

A few commenters misinterpreted the notification requirements in proposed § 245.6(c)(1). They believed that the proposed rule expanded the notification requirements to require written notification of eligibility status to *all* households. We would like to clarify that, although we encourage school food authorities to notify all households in writing of the approval of their applications, school officials are required to provide *written* notification only to households approved under direct certification and to households who are denied benefits. For households determined eligible based on an application, school food authorities may provide notification in another manner, for example, by telephone or with the issuance of a free or reduced price ticket. The proposed regulation did not change this option.

We proposed that school food authorities notify households certified eligible under direct certification through written notification for the following reasons. First, because the household does not submit an application, the household could be confused when the child automatically receives free meals. Second, unless the household is specifically advised not to submit an application, it is likely to do so, which undermines the value of direct certification. Finally, a written notification is the only means to inform households that they may decline the benefits.

We recognize, however, that if households are provided a written document by the food stamp or TANF office to take to the school, a notice from the school notifying them of their eligibility may not be necessary. Additionally, the submission of the document by the household makes it clear that the household wishes to receive benefits. Thus, this final rule amends § 245.6(c)(1) to provide an exception to the written notification requirement. The school food authority is not required to provide a written notice of eligibility to households that transmit the documentation provided by the food stamp or TANF office to the school.

Must Households Be Notified That They Can Decline Benefits?

Several commenters addressed the possibility that households may decline free benefits. A few commenters did not believe that school food authorities should have to advise households that they may decline benefits, because this requirement is burdensome and expensive. Rather, they suggested that the names of all children certified under direct certification should be placed on the roster. Then if households really do not want meals for their children, the child can decline to pick up meal tickets. If households later decide that they do want free meals, the benefits are still available for the child without the need for the household to apply. One commenter asked for clarification of the type of documentation necessary to substantiate that households have declined benefits. Another commenter recommended that the number of days a school food authority has to terminate benefits after the household has notified the school that they do not want free benefits be a local decision. Finally, several commenters noted that they have concerns about providing benefits prior to consent, but most agreed that households will appreciate not having to complete another form to receive free meal or milk benefits for their children.

As noted previously, Congress intends that households are notified of their children's eligibility under direct certification and that they are given the opportunity to decline benefits. We do not believe it is sufficient to put this responsibility with the child by allowing the child to decline to pick up a ticket or token. Additionally we believe that a household's right to decline benefits must be honored by the school as expeditiously as possible. Therefore, in § 245.6(c)(1), the final rule maintains the proposed requirement to terminate benefits if the household indicates they do not want these benefits.

With respect to the method the household uses to decline benefits, the ideal method would be for the school to request that the household return the notice of eligibility under direct certification with an indication that the household does not want free benefits. However, if the household verbally declines benefits, this should be documented and be available for review. We are only mandating that the school maintain documentation for households that decline benefits, but not stipulating the form of that documentation. If the household notifies the school that it does not want benefits, a notice of adverse action is not needed. However, in accordance with § 210.7(c)(1)(ii), the school must make the change as soon as possible, but no later than 10 operating days from the date it receives the household's notification. In response to commenters who expressed concern about providing benefits prior to consent, we agree that this creates a potentially sensitive situation. Our experiences to date, however, indicate that households' refusals of benefits are rare, and we believe the participation of eligible children should not be delayed for this reason.

What Happens When a Household Notifies the School That They Are No Longer Eligible for Food Stamps or TANF Benefits?

When the household or the State or local agency administering the Food Stamp or TANF Program notifies the school that the household is no longer eligible for the Food Stamp or TANF program, § 245.6(c)(1) of this final rule requires the school food authority to follow the procedures in § 245.6a(e) *Adverse action* and inform the household that they must submit an application with income information to establish continued eligibility. The children must be provided free benefits during the 10-day advance notice of the pending change and through the appeal process.

What Records Must Be Kept?

The recordkeeping provisions in §§ 210.9(b)(17), 215.7(d)(8) and 220.7(e)(14) require school food authorities to maintain free and reduced price applications on file for 3 years after the end of the fiscal year to which they pertain. Thus, we proposed to amend § 245.6(b) to require that school food authorities maintain the documentation obtained from the food stamp/TANF office for 3 years, because this documentation substantiates children's eligibility for benefits in lieu of the free and reduced price application. Consistent with other recordkeeping requirements, this information also shall be maintained beyond the 3 year period for as long as required to resolve issues raised if the school is audited. Only one commenter addressed this provision, and this commenter concurred with the 3 year retention provision. This final rule

maintains the 3 year requirement, although it can now be found at § 245.6(e).

We would like to remind readers that, when documentation substantiating eligibility determinations under direct certification is maintained at the school food authority level, the documentation must be retrievable by school. This is currently specified in § 210.9(a)(18).

Are There Any Confidentiality Concerns?

Proposed § 245.6(b)(2) specified that school food authorities must maintain the confidentiality of information obtained under the direct certification process. Such information could be used solely for the determination of eligibility for free meal or milk benefits.

Nine commenters addressed the issue of confidentiality of information under direct certification. For the most part, these commenters believed that school officials should be allowed to use the information obtained under direct certification for other purposes, such as for free books or vocational education. Four commenters stated that school food authorities should be allowed to add a release to the notice of eligibility sent to households, giving parents the option of allowing school officials to use the eligibility information for other purposes. One commenter believed that the release more appropriately should be included on the application households complete to receive food stamp or TANF benefits. This option would assure recipients that their personal information does not move from agency to agency without their knowledge or consent. Finally, one commenter asked that school officials be allowed to use aggregate data for school purposes which benefit the child.

Section 202(b)(1) of Pub. L. 101–147 amended section 9(b)(2)(C) of the NSLA to specify that school food authorities may use the information obtained directly from food stamp/TANF offices only for the purpose of determining eligibility for participation in programs under the NSLA and the CNA. However, section 108 of Pub. L. 103–448 further amended section 9(b)(2)(C) of the NSLA to allow limited use or disclosure of any information obtained from the free and reduced price application or information obtained from food stamp or TANF officials. We provided guidance on the use and disclosure of information about children eligible for free and reduced price meals in December 1998. A proposed rule on the issue will be published soon. Therefore, § 245.6(b)(1) of this final rule specifies that information about the child or household obtained directly from food stamp or TANF officials must be kept confidential and may only be used to determine free meal or milk eligibility or as otherwise permitted under section 9 of the NSLA.

How does Direct Certification Affect the Verification of Eligibility Requirement?

Current § 245.6a(a) requires school food authorities to verify a sample of approved *applications*. Under the proposed § 245.6a(a)(5), eligibility determinations based on direct certification obtained directly from the food stamp or TANF office would not be subject to this verification requirement. Although several commenters agreed that determinations made under direct certification should not be included in the verification requirement, one commenter believed that these certifications should still be counted as part of the universe for the purpose of calculating the sample size. We made this proposal because the client certification process for food stamps and TANF is more detailed than the process for applying for free/reduced price meal benefits and consequently may eliminate some of the need for verification.

We do not believe that direct certifications should be included in the formula when determining the number of applications which must be verified because under direct certification, there is no school meal or milk application and, therefore, nothing to select for verification. Consequently, the result of the commenter's suggestion would be to artificially inflate the number of applications to verify by including a large number of determinations not currently subject to verification. For these reasons, we did not accept this suggestion. We do note, however, that local officials may always verify more than the minimum number of applications and could elect to adopt this suggestion at the local level.

Are There Any Technical Amendments?

Subsequent to the publication of the proposed rule, we determined that households that participate in the Food Distribution Program on Indian Reservations (FDPIR) should be categorically eligible for free school meals or free milk. The FDPIR is authorized by Section 4(b) of the Food Stamp Act of 1977. Under this section, eligible households may elect to participate in either the Food Stamp Program or the FDPIR, but may not participate in both programs at the same time. Thus, since eligible households are afforded the option to participate in either program and may switch from one program to the other, we believe that households participating in FDPIR should be treated the same as if they were participating in the Food Stamp Program. Therefore, when applying for free and reduced price meals for their children, a household participating in the FDPIR may submit the child's name, their FDPIR case number or an equivalent identifier used by FDPIR and the signature of an adult household member to establish free meal or free milk eligibility. Additionally, documentation of participation in FDPIR is adequate to verify eligibility for free meals or free milk. In lieu of free and reduced price applications, the direct certification procedures described in this rulemaking may be extended to households certified to receive benefits under FDPIR.

To implement categorical eligibility for households participating in FDPIR, this rulemaking adds a definition of FDPIR to § 245.2. This rule will also add a reference to FDPIR to all provisions affecting food stamp and TANF households. We notified State agencies of our interpretation that the categorical eligibility and direct certification provisions extend to children from households participating in FDPIR through policy memoranda dated January 3, 1992 and August 27, 1992. We believe that this action is technical in nature and that prior notice and comment would be unnecessary and contrary to the public interest. For these reasons, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and (d), that good cause exists to waive the solicitation of public comments prior to codifying these amendments.

This rulemaking also corrects an omission in section 245.6a(a), which specifies the minimum number of applications that school officials must verify. In accordance with that paragraph, school officials using the focused sampling technique must verify a minimum of the lesser of 1 percent or 1000 applications selected from non-food stamp households claiming income within a specified amount and the lesser of one half of 1 percent or 500 applications of food stamp households that provide a case number. When Pub. L. 99–500 mandated the categorical eligibility of TANF households, we inadvertently neglected to amend section 245.6a(a) to include applications from households that provide an TANF case number when determining sample sizes. This rule corrects that omission and also references FDPIR. This correction is technical in nature and does not result in a substantive change.

Proposed § 245.6(c) included a provision that school officials may seek verification of eligibility and that school officials would take the income and frequency information provided by the household and calculate the household's total current income. This section also set forth the criteria under which school officials would approve households for free and reduced price meals or free milk. Three commenters suggested that the statement regarding verification appeared to be inappropriately placed in § 245.6(c). We concur with this observation and note that when the regulation implementing the Coordinated Review Effort was published in the **Federal Register** on July 17, 1991 (56 FR 32920), this statement was moved to § 245.6a(a), Verification requirements. Secondly, a final rule establishing requirements for free and reduced price applications published on July 24, 1991, (56 FR 33857) eliminated the requirement for households to indicate the frequency with which they receive individual income amounts, such as monthly, weekly, every 2 weeks and etc. Households are asked to report their monthly income by household member and source of the income. Accordingly, the language in § 245.6 of this final rule reflects this change.

Executive Order 12866

This final rule was determined non significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes a requirement for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have "Federal mandates" which may result in expenditures of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates of $100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. Most affected by this rulemaking will be State agencies and school food authorities. This rulemaking will increase administrative options for those entities and help streamline the overall free and reduced price eligibility administrative process.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program, School Breakfast Program and Special Milk Program the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures established pursuant to 7 CFR 210.18(q) and 220.14(e); school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process established pursuant to 7 CFR 235.11(f).

Executive Order 12372

This rule affects the School Breakfast Program, National School Lunch Program and Special Milk Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.553, 10.555 and 10.556, respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the reporting and recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) for parts 210 and 245 under control numbers 0584–0006 and 0584–0026, respectively.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—social programs, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 210 and 245 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

§ 210.9 [Amended]

2. In § 210.9(b)(18), remove the words "Food Stamp or the Aid to Families with Dependent Children Programs" at the end of the first sentence and add the words "Food Stamp Program, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF)" in their place.

3. In § 210.18:

a. Revise paragraph (g)(1)(i)(A)(4); and

b. Amend the last sentence of paragraph (g)(1)(i)(B) by removing the words "food stamp or AFDC" and add in their place the words "food stamp, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF)".

The revision reads as follows:

§ 210.18 Administrative reviews.

* * * * *

(g) *Critical areas of review.* * * *

(1) *Performance Standard 1 (All free, reduced price and paid lunches claimed*

for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.) * * *

(i) * * *

(A) * * *

(*4*) In the case where children are determined eligible for free lunches based on documentation from the local food stamp, Food Distribution Program on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF) office which certifies that the children are currently members of households receiving benefits under the Food Stamp Program, FDPIR or TANF, determine that the certification from the Food Stamp Program, FDPIR or TANF is official; all the information required under § 245.6 of this part is complete; and such children were enrolled in the school under review during the review period.

* * * * *

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 is revised to read as follows:

Authority: 42 U.S.C. 1772, 1773, 1779; and 42 U.S.C. 1751–60.

2. In § 245.2:

a. Remove paragraph (a–1) and redesignate paragraphs (a–2), (a–3) and (a–4) as paragraphs (a–1), (a–2) and (a–3), respectively.

b. Revise newly redesignated paragraph (a–3);

c. Redesignate paragraph (b–1) as paragraph (b–2) and add a new paragraph (b–1);

d. Redesignate paragraph (k) as paragraph (l) and add a new paragraph (k); and

e. Revise the last sentence of newly designated paragraph (l).

The revisions and additions read as follows:

§ 245.2 Definitions.

* * * * * * *

(a–3) *Documentation means:*

(1) The completion of a free and reduced price school meal or free milk application which includes:

(i) For households applying on the basis of income and household size, names of all household members; income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income); the signature of an adult household member; and the social security number of the adult household member who signs the application or an indication that he/she does not possess a social security number; or

(ii) For a child who is a member of a food stamp, FDPIR or TANF household: the child's name and appropriate food stamp or TANF case number or FDPIR case number or other identifier; and the name and signature of an adult household member; and

(2) In lieu of completion of the free and reduced price application, information obtained from the State or local agency responsible for the Food Stamp Program, FDPIR or TANF which includes the name of the child; a statement certifying that the child is a member of a currently certified food stamp, FDPIR or TANF household; information in sufficient detail to match the child attending school in the school food authority with the name of the child certified as a member of a food stamp, FDPIR or TANF household; the signature or a copy of the signature of the individual authorized to provide the certification on behalf of the Food Stamp, FDPIR or TANF office, as appropriate; and the date. When the signature is impracticable to obtain, such as in a computer match, other arrangements may be made to ensure that a responsible official can attest to the data.

* * * * *

(b–1) *FDPIR* means the food distribution program for households on Indian reservations operated under part 253 of this title.

* * * * *

(k) *TANF* means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

(l) * * * However, if a food stamp or TANF case number or a FDPIR case number or other identifier is provided for a child, verification for such child shall only include confirmation that the child is included in a currently certified food stamp, TANF or FDPIR household.

3. In § 245.5:

a. Revise the first sentence of paragraph (a)(1) introductory text;

b. Remove the reference to "§ 245.2(a–4)" in paragraph (a)(1)(iii), and add a reference to "§ 245.2(a–3) in its place;

c. Revise paragraphs (a)(1)(iv) and (a)(1)(vi).

The revisions read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) Except as provided in § 245.6(b), a letter or notice and application distributed on or about the beginning of each school year, to the parents of all children in attendance at school. * * *

* * * * *

(iv) An explanation that households with children who are members of currently certified food stamp, FDPIR or TANF households may submit applications for these children with the abbreviated information described in § 245.2(a–3);

* * * * *

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over $50 per month or $600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or TANF case number or a FDPIR case number or other identifier to establish eligibility for free meals or free milk for a child, of any termination of benefits for such children under the Food Stamp, FDPIR or TANF Programs.

* * * * *

4. In § 245.6:

a. Revise the section heading;

b. Revise the seventh sentence of introductory paragraph (a);

c. Revise paragraph (a)(1);

d. Redesignate paragraph (b) introductory text, paragraphs (b)(1) and (b)(2) and paragraph (c) as paragraph (c) introductory text, paragraphs (c)(2) and (c)(3) and paragraph (d) respectively;

e. Add new paragraphs (b) and (c)(1);

f. Revise newly redesignated paragraph (c) introductory text; and

g. Add a new paragraph (e).

The additions and revisions read as follows:

§ 245.6 Certification of children for free and reduced price meals and free milk.

(a) * * * However, if application is being made for a child who is a member of a food stamp, FDPIR or TANF household, the application shall enable the household to provide the appropriate food stamp or TANF case number or FDPIR case number or other identifier in lieu of names of all household members, household income information and social security number.

* * *

(1) "Section 9 of the National School Lunch Act requires that, unless your

child's food stamp case number/FDPIR case number or other identifier or TANF case number is provided, you must include the social security number of the adult household member signing the application or indicate that the household member signing the application does not have a social security number. Provision of a social security number is not mandatory, but if a social security number is not given or an indication is not made that the signer does not have such a number, the application cannot be approved. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp, TANF or FDPIR office to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims or legal actions if incorrect information is reported." State agencies and School Food Authorities shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974); and

* * * * *

(b) *Direct certification.* In lieu of determining eligibility based on information provided by the household on the free and reduced price meal or milk application specified in paragraph (a) of this section, school food authorities may determine children eligible for free meals or milk based on documentation obtained from the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or the TANF Program, hereafter referred to as direct certification. The documentation for direct certification shall include the information specified in § 245.2(a–3)(2). The food stamp, FDPIR or TANF office may provide school officials with a list which includes all required documentation, or documentation may be obtained through a computerized match in which computerized lists of names of children from food stamp, FDPIR or TANF households and other identifying information are matched against a list of names and other identifying information of schoolchildren. When computer matches are used or the signature of the food stamp, FDPIR or TANF official is otherwise impracticable to obtain, the signature of the food stamp, FDPIR or TANF official is not required. However, other arrangements must be made to ensure that a responsible official can attest to the data. Additionally, the food stamp, FDPIR and/or TANF office may provide food stamp, FDPIR and/or TANF households with individual notices which contain all required documentation. The household may then transmit the notice to the school.

(1) Information about the child or the household obtained directly from the food stamp, FDPIR or TANF office must be kept confidential and shall be used solely for the purpose of determining the child's eligibility for school meal or milk benefits, or as otherwise permitted by section 9 of the National School Lunch Act.

(2) School food authorities are not required to provide the letter specified in § 245.5(a) to the parents of children who are eligible for free meals under paragraph (b) of this section when the school food authorities distribute the letters or notices with application forms and the notice to households concerning eligibility for benefits under direct certification, specified in paragraph (c)(1) of this section, through the mail, individualized student packets, or other method which prevents the overt identification of children eligible for direct certification.

(c) *Determination of eligibility.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year may be served reimbursable free and reduced price meals or free milk. However, applications and documentation of direct certification from the preceding year may be used to determine eligibility only during the 30 operating days following the first operating day at the beginning of the school year, or during a timeframe established by the State agency, provided that any State agency timeframe does not exceed the 30 operating day limit. The school food authority must take the income information provided by the household on the application and calculate the household's total current income. When a household submits an application containing complete documentation, as specified in § 245.2(a–3)(1)(i), and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household must be approved for free or reduced price benefits, as applicable. When a household submits an application containing the required food stamp, FDPIR or TANF documentation, as specified in § 245.2(a–3)(1)(ii), the children in that household must be approved for free benefits. Additionally, when the school food authority obtains documentation from the State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or TANF Program that children are members of currently certified food stamp, FDPIR or TANF households, as specified in § 245.2(a–3)(2), the school food authority must approve such children for free benefits without applications from the households.

(1) *Notice of approval.* The school food authority must promptly notify the household of their children's eligibility and provide them the benefits to which they are entitled. Households approved for benefits based on documentation provided by the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program must be notified, in writing, that their children are eligible for free meals or free milk, that households must contact the school when their children are no longer eligible for food stamp, FDPIR or TANF benefits, and that no application for free and reduced price school meals is required at this time. The notice of eligibility must also inform households that they must notify the school if they do not want their children to receive free benefits. When the household transmits the notice of eligibility containing the above information and the documentation provided by the food stamp, FDPIR or TANF office to the school, the school food authority is not required to provide a separate notice of eligibility. Children from households that notify the school that they do not want free benefits must have their benefits discontinued as soon as possible. Any notification from the household declining benefits must be documented and maintained on file, in accordance with paragraph (e) of this section. Additionally, a school food authority that is notified by the household that they are no longer eligible to receive food stamp, FDPIR or TANF benefits must follow the procedures specified in § 245.6a(e), and inform the household that it must submit an application with income information to establish continued eligibility.

* * * * *

(e) The school food authority must maintain documentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.

5. In § 245.6a,

a. Amend the seventh sentence of paragraph (a) by removing the words "of food stamp households that provided food stamp case numbers" and add the words "of food stamp, FDPIR or TANF households that provided a food stamp or TANF case number or FDPIR case number or other identifier" in their place;

b. Revise paragraph (a)(2)(i);

c. Revise the second sentence of paragraph (a)(2)(iv);

d. Revise the fourth sentence of paragraph (a)(2)(v);

e. Revise the heading and first three sentences of paragraph (a)(3);

f. Add a sentence at the end of paragraph (a)(5); and

g. Revise the second sentence of paragraph (b)(3).

The revisions and addition read as follows:

§ 245.6a Verification requirements.

(a) * * *

(2) *Notification of selection.* * * *

(i) Section 9 of the National School Lunch Act requires that unless the child's food stamp case number/FDPIR case number or other identifier or TANF case number is provided, households selected for verification must provide the social security number of each adult household member;

* * * * *

(iv) * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting a food stamp, FDPIR or TANF office to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received and checking documentation produced by household members to prove the amount of income received. * * *

(v) * * * Selected households must also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp, FDPIR or TANF certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp, FDPIR or TANF household. * * *

(3) *Food stamp, FDPIR or TANF recipients.* On applications where households have furnished food stamp or TANF case numbers or FDPIR case numbers or other identifiers, verification shall be accomplished either by confirming with the local food stamp, FDPIR, or TANF office that each child, for whom application was made and a case number or other identifier was provided, is a member of a currently certified food stamp, FDPIR or TANF household; or by obtaining from the household a copy of a current "Notice of Eligibility" for the Food Stamp Program, FDPIR or TANF Program or equivalent official documentation issued by the food stamp, FDPIR or TANF office which confirms that the child is a member of a currently certified food stamp, FDPIR or TANF household. An identification card for either program is not acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp, TANF or FDPIR household, the procedures for adverse action specified in paragraph (e) of this section must be followed. * * *

* * * * * *

(5) * * * Verification of eligibility is not required of households when the determination of eligibility was based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program, as described in § 245.6(b).

(b) *Sources of information.* * * *

(3) *Agency records.* * * * Information concerning income, household size, or food stamp, FDPIR, or TANF eligibility maintained by other government agencies to which the State agency, school food authority or school can legally gain access may be used to confirm a household's income, size, or receipt of benefits. * * *

* * * * * *

6. In § 245.10, revise paragraph (a)(3) to read as follows:

§ 245.10 Action by School Food Authorities.

(a) * * *

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, if the school food authority has opted to determine eligibility for children from food stamp, FDPIR or TANF households based on documentation obtained from the State or local agency responsible for the Food Stamp, FDPIR or TANF Program, in lieu of an application, the school food authority shall include the specific procedures it will use to obtain the required documentation. Additionally, school food authorities that have implemented direct certification and that must provide households a notice of eligibility, as specified in § 245.6(b), must also include in their policy statement a copy of the notice to households regarding their children's eligibility under the direct certification provision.

* * * * * *

6. In § 245.11, add a new paragraph (g) to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * * *

(g) The State agency must notify FNS whether the TANF Program in their State is comparable to or more restrictive than the State's Aid to Families with Dependent Children Program that was in effect on June 1, 1995. Automatic eligibility and direct certification for TANF households is allowed only in States in which FNS has been assured that the TANF standards are comparable to or more restrictive than the program it replaced. State agencies must inform FNS when there is a change in the State's TANF Program that would no longer make households participating in TANF automatically eligible for free school meals.

Dated: December 16, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33179 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

RIN 0584–AC23

Summer Food Service Program; Implementation of Legislative Reforms

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule, with request for comments.

SUMMARY: This interim rule amends Summer Food Service Program (SFSP) regulations to incorporate nondiscretionary changes made by the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. Program changes include easing restrictions of participation by private nonprofit

organizations and food service management companies, streamlining rules for schools to encourage Program sponsorship, reducing paperwork burdens for State agencies, and other provisions to improve Program operations. As required by law, these changes were implemented by the dates mandated by the statutes. This rule updates the SFSP regulations. In addition, this rule makes minor technical changes to the meal pattern requirements to conform the standards to those used in the National School Lunch Program and the School Breakfast Program.

DATES: This rule becomes effective January 27, 2000. We will consider comments that are submitted by the public. To be assured of consideration, comments must be postmarked on or before June 25, 2000.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302–1594. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m.–5 p.m. Comments will also be accepted via electronic mail submission at the following Internet address: CND Proposals@FNS.USDA.GOV. Since comments are being accepted on several rules at the same time, please refer to the title of this rule in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein or Linda Jupin at the above address or by telephone at (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Background

The Summer Food Service Program (SFSP) is authorized under section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761). Its primary purpose is to provide nutritious meals to children from low-income areas during periods when schools are closed for vacation.

In 1994, 1996, and 1998, substantive changes to the SFSP were made with the enactment of three public laws. These laws are briefly discussed below.

- The Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448) was signed on November 2, 1994. This law reauthorized the SFSP through Fiscal Year 1998 and amended a number of provisions in section 13 of the NSLA. These provisions were implemented by the Department via guidance issued to State agencies on December 8, 1994.
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) was signed on August 22, 1996. This statute, which made landmark changes to the Federal public assistance program known as the Aid to Families with Dependent Children (AFDC), also amended the NSLA and the Child Nutrition Act of 1966 (CNA). The Department informed State agencies of impending changes on August 13, 1996 and implemented the provisions relating to the SFSP on January 27, 1997, in the form of guidance provided to State agencies.
- The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) was signed on October 31, 1998. One provision affecting the SFSP amended the CNA and the remaining provisions amended the NSLA. The Department implemented the provisions affecting the SFSP on December 3, 1998 in the form of guidance provided to State agencies.

The following chart summarizes the statutory provisions of Pub. L. 103–448, Pub. L. 104–193, and Pub. L. 105–336 that are addressed in this interim rule:

Statute	Provision	Regulatory section affected
Pub. L. 103–448:		
Section 114(a)	Revised sponsor priority system	§ 225.6(b)(5).
Section 114(b)	Eliminated one-year waiting period for private nonprofit organizations (PNOs)	§§ 225.2 definition of PNOs, 225.6(a)(3)(iv)(B), and 225.14(d)(7)(iv).
Section 114(f)	Eliminated warning from PNO applications	§ 225.6(a)(5).
Section 114(e)	Reduced requirements States must include in their Management and Administration Plans (MAPs).	§ 225.4(d).
Section 114(d)	Reduced report of food management service companies (FSMC) to just the seriously deficient.	§ 225.8(d).
Pub. L 104–193:		
Section 703	Reduced frequency of submission of Free & Reduced Price Policy Statement	§ 225.6(c)(3).
Section 706(c)(1)	Reduced the number of meals that can be served each day at camps and migrant sites from 4 meals to 3 meals or 2 meals and 1 snack.	§ 225.16(b)(1)(i) and (b)(5).
Section 706(d)	Eliminated academic-year National Youth Sports Program (NYSP); allows NYSP site eligibility based on residence in "area where poor economic conditions exist".	§ 225.2 (definition of NYSP feeding site); and § 225.6(c)(2)(v).
Section 706(e)	Removed requirement that school food authorities conduct training before receiving the second month's advance program payment.	§ 225.9(c)(1)(i).
Section 706(f)	Provided new language on inspections for bacteria levels in meals	§ 225.6(h)(2)(v).
Section 706(g)	Allowed school sponsors to use offer versus serve option in school site locations.	§ 225.16(g).
Sections 706(j)	Removed requirements in MAPs	§ 225.4(d).
Section 706(k)	Removed specific training for PNOs	§ 225.7(a).
Section 109(g)	Permitted categorical eligibility for participants in State-funded programs that replace AFDC (i.e., TANF).	§§ 225.2 (definitions of "documentation" and "TANF"), 225.6(c)(3), 225.15(e), and 225.15(f).
Pub. L. 105–336:		
Section 104(b)	Increased the maximum fine for program abuse from $10,000 to $25,000	§ 225.6(a)(5)(i)(A)–(C).
Section 105(a)	Increased the number of sites and total number of children that PNOs may serve.	§§ 225.2 (definition of PNO), 225.6(b)(6)(ii), and 225.14(d)(7)(ii).
Section 105(b)	Allowed PNOs to use commercial food vendors	§§ 225.2 (definition of PNO), 225.6(a)(3)(iii), 225.14(d)(7)(iii), and 225.15(g)(3).
Section 105(b)	Eliminated indication of sponsor interest requirement	§ 225.14(d)(7)(iv).
Section 105(c)	Expanded offer versus serve to all school sponsor sites	§ 225.16(g).

Statute	Provision	Regulatory section affected
Section 102(d) ...	Required single agreement and common claim form requirements for schools that operate multiple child nutrition programs, including the SFSP.	§§ 225.6(e) and 225.9(d).
Section 105(b) ...	Removed Federal requirement for FSMC registration and report of seriously deficient FSMCs.	§§ 225.6(g), 225.8(d), and 225.13(a).
Section 107(j)	Transferred authority of emergency shelters (homeless) from SFSP to CACFP	§§ 225.2, 225.6(c)(2)(ii), 225.6(d), 225.8(e), 225.14(d)(5), and 225.16.(b)(2).
Section 104(a) ...	Allowed higher SFSP reimbursement rates in Alaska and Hawaii	§ 225.9(d)(8).

The rest of this preamble discusses the specific statutory changes and the corresponding revisions to the SFSP regulations. The statutory changes are discussed under the program areas affected.

I. Private Nonprofit Organizations (PNOs)

Significant changes were made in the SFSP statutory framework governing PNO sponsorship and participation with the enactment of Pub. L. 103–448, Pub. L. 104–193, and Pub. L. 105–336. These revisions represent an acknowledgment that PNO sponsors, with adequate training and monitoring, can successfully operate the SFSP. The 1994 amendments (Pub. L. 103–448) sought to facilitate participation in SFSP by PNOs and to acknowledge their efforts to operate quality programs. These amendments to the NSLA revised the sponsor eligibility priority list, eliminated the one-year waiting period for PNO participation in certain areas, and ended the practice of including a criminal penalty warning statement on PNO application materials. With respect to PNO sponsors, the 1996 amendments (Pub. L. 104–193) lifted the mandate that State agencies must conduct training specifically for PNO sponsors participating in SFSP. The provisions in the 1998 amendments to the NSLA (Pub. L. 105–336) eliminated a number of restrictions that had been placed on PNO sponsors. By easing restrictions on PNOs to sponsor the Program, it was hoped that more low-income children would have access to nutritious meals during the summer months.

Following is a discussion of each statutory change made to PNO participation in the Program. Corresponding changes made to regulatory language are noted.

1. Sponsor Selection—Priority System

Section 114(a) of Pub. L. 103–448 amended section 13(a)(4) of the NSLA to revise the sponsor eligibility priority system. Previously, when more than one SFSP sponsor or potential sponsor proposed to provide meal service at the same site or in the same area, the regulations required that State agencies consider PNOs last behind other eligible applicants. This lack of priority given PNOs reflected the view that PNOs tended to be the most problematic of potential SFSP sponsors. The results of monitoring PNOs revealed that experienced PNO sponsors are as able in their administration of the SFSP as are other sponsors. In view of this information, Congress adopted a new priority system. With this revision, State agencies must consider eligible SFSP sponsor applicants in the following order: (1) Local school food authorities; (2) all other government sponsors and PNOs that have demonstrated successful program performance in a prior year; (3) new government sponsors; and (4) new PNOs. If a government agency and a PNO apply to serve the same area, we believe that State agencies should have the flexibility to make the approval determination.

Accordingly, this rule conforms the SFSP regulations at § 225.6(b)(5) to mirror the new order of priority established in the law that State agencies must use in approving applicants seeking to serve the same area or the same group of enrolled children. We also clarify in this section that State agencies must approve or deny applications on a case-by-case basis, when experienced government and PNO sponsors both apply to serve the same area.

2. Eliminating the One-Year Waiting Period

Section 114(b) of Pub. L. 103–448 struck the provision in section 13(a)(7)(C) of the NSLA requiring a one-year waiting period with respect to the participation of PNOs in certain areas. Previously, PNOs were under a prohibition from serving a site or an area during the 12 months after that area had been served by a school food authority or a government sponsor. Under the regulations, a waiver was allowed provided the State agency had determined that an experienced sponsor was discontinuing meal service to an area, regardless of the availability of a PNO to serve that area. Opponents of the waiting period maintained that a geographical area in critical need of SFSP meal service could remain unserved for 12 months with its imposition.

Accordingly, this rule conforms the regulations to the statutory elimination of a waiting period before a PNO may apply to operate SFSP sites previously operated by schools or government sponsors. In doing so, we have removed references to the one-year waiting period in the definition of a PNO at § 225.2, and in §§ 225.6(a)(3)(iv)(B) and 225.14(d)(7)(iv).

3. Eliminating Warnings on PNO Application Materials

In earlier years of Program operation, large PNO sponsors, particularly those contracting with commercial food service companies and serving sizable numbers of children at many sites, were found to have committed Program fraud. Concern about fraudulent PNO sponsors prompted Congress to mandate that a warning of the criminal provisions, penalties, and termination procedures for Program violations must be printed in bold lettering on applications provided to PNOs. More recent monitoring showed that PNO sponsors administer SFSP with similar levels of error as other types of sponsors with comparable experience. In view of this updated information, section 114(f) of Pub. L. 103–448 deleted the requirement in section 13(q)(2) of the NSLA for the warning statement on applications provided to PNOs. State agencies may include warning statements on application materials, as long as the warning appears on all sponsor applications. However, State agencies may not single out PNO sponsors to receive warnings about Program misconduct and the consequences on application materials. It should be noted, however, that the required certification statements specified at § 225.6(a)(4) and the procedures for program termination of any site or sponsor determined to be seriously deficient in its administration of the SFSP continue to apply.

Accordingly, to conform with the revision in the statute, we have deleted specific references to PNOs at § 225.6(a)(5) of the SFSP regulations. We

have made two other changes to § 225.6(a)(5):

- To indicate a State agency's option to include criminal provisions, penalties, and termination procedures in application and preapplication materials; and,
- To quote the most current statutory language containing maximum fines that may be levied against violators.

Fines for having been criminally convicted of fraud, embezzlement or similar improprieties in connection with Program activities have been revised upward from $10,000 to $25,000 in accordance with section 104(b) of Pub. L. 105–336, which amended section 12(g) of the NSLA. We note with interest that Congress did not amend section 13(o) of the NSLA, which provides language for criminal fines and penalties in connection with submitting false information on applications and other program-related reports. The maximum fine at section 13(o) of the NSLA for these crimes remains at $10,000. However, section 12(g) of the NSLA specifically includes all programs covered under the NSLA and the CNA. In the absence of any reference to this apparent conflict in any conference or committee reports, we have decided to include the language from section 12(g) rather than section 13(o) of the NSLA. The statutory language at section 12(g) of the NSLA contains the most recent Congressional statement with regard to criminal fines and penalties that may be levied against program violators. In addition, it is preferable, in our view, to maintain consistency across all Child Nutrition Programs in this matter.

4. Monitoring and Training

Prior to the 1994 amendments to the NSLA, State agencies were required to establish and implement an ongoing training and technical assistance program specifically for PNOs. The training focused on program requirements, procedures, and accountability for PNO sponsors. Section 706(k) of Pub. L. 104–193 struck the requirement in section 13(q) of the NSLA for special PNO sponsor training.

Accordingly, this rule removes the special training requirements outlined in § 225.7(a) of the SFSP regulations for PNO sponsors. However, State agencies remain responsible for providing training and technical assistance to all SFSP sponsors, including PNOs, as described in this paragraph of the Program regulations.

5. Numbers of Sites and Children Served

A priority of the 1998 reauthorization statute was to increase SFSP participation and aid eligible sponsors in reaching more needy children. Thus, section 105(a) of Pub. L. 105–336 amended section 13(a)(7)(B)(i) of the NSLA to modify the limit on the number of sites a PNO may operate as well as the number of children a site may serve. With this modification, a PNO may be approved by a State agency to operate up to 25 SFSP sites, in any combination of urban or rural sites. Also, the previous 2,500 limit on the total daily attendance for all PNO sponsor sites was lifted. However, Congress kept both the statutory limit of 300 children that PNOs may serve at any one site, and the provision allowing State agencies to waive that limit and allow up to 500 children to be served by PNOs at any one site.

Accordingly, this rule conforms the SFSP regulations at §§ 225.2 (the definition of a PNO), 225.6(b)(6)(ii), and 225.14(d)(7) to the statutory revisions concerning the number of sites and number of children that PNOs may serve with State agency approval.

6. Authority to Obtain Meals From Commercial Vendors

Section 105(b) of Pub. L. 105–336 removed section 13(a)(7)(B)(ii) and amended section 13(l)(1) of the NSLA. The effect of these changes is to end prohibition on PNO sponsors from contracting with food service management companies for the furnishing of meals. Ending the prohibition on commercial contracting should improve program access. In particular, rural areas should benefit from increased access to commercial vendors, since non-commercial vendors are more limited in those localities. With this action, PNO sponsors have the options of preparing meals themselves, or purchasing unitized meals from schools, public facilities, or commercial vendors.

Accordingly, to conform to this revision in the NSLA, we have revised the following sections in the SFSP regulations: §§ 225.2 (the definition of a PNO), 225.6(a)(3), 225.14(d)(7), and 225.15(g)(3).

7. Indication of Interest Requirement

Section 105(b) of Pub. L. 105–336 also struck the requirement in section 13(a)(7)(B)(iii) of the NSLA that limited PNO sponsors to SFSP participation only in areas where a school food authority or a government sponsor had not indicated an interest in operating the Program by March 1 of each year. As with the previous two amendments, improving access to nutritious meals for poor children was the goal of eliminating this qualifying condition for PNO sponsors.

Accordingly, we have eliminated reference to the March 1 indication of interest requirement in §§ 225.2 (the definition of a PNO) and 225.14(d)(7)(iv)

II. Paperwork Reduction

1. Management and Administration Plans

In an ongoing effort to simplify the administration of the SFSP and reduce paperwork burdens, Pub. L. 103–448 and Pub. L. 104–193 amended section 13(n) of the NSLA to decrease the number of areas that State agencies must address in their management and administration plans. The laws eliminated the following eight criteria from the management and administrative plan:

- The State's schedule for application by sponsors;
- The actions to be taken to maximize the use of meals prepared by sponsors and the use of school food service facilities;
- The State's plan and schedule for registering food service management companies;
- The State's plan for determining the amounts of program payments to sponsors and for disbursing such payments;
- The State procedure for granting a hearing and prompt determination to any sponsor wishing to appeal a State's ruling denying the sponsor's application for program participation or for program reimbursement;
- The State's needs assessment plan;
- The best estimate of the number of sponsors and children expected to participate; and
- The *schedule* for providing technical assistance and training to eligible sponsors.

With this action, paperwork was reduced without compromising the operational and financial management of the Program.

Accordingly, this rule makes conforming revisions to § 225.4(d) of the SFSP regulations. This rule also makes a technical change to this paragraph of the regulations due to the expiration of an outreach requirement made by Pub. L. 101–147. That law deleted the requirement that each State agency include a description of its plans to inform private nonprofit organizations of their potential eligibility to participate in SFSP. Finally, outdated references to implementation of procurement monitoring requirements, health inspections, and meal quality tests are also deleted from this section. With these revisions, eight criteria remain for inclusion in management and administration plans. They are:

- The State's administrative budget for the fiscal year;
- The State's plans to use Program funds and any additional State funds to reach needy children;
- The State's plans for providing technical assistance and training eligible sponsors;
- The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies;
- The State's plan for action against Program violators;
- The State's plan for ensuring fiscal integrity of sponsors not subject to auditing requirements.;
- Tthe State's plan for ensuring compliance with the food service management company procurement monitoring requirements; and
- An estimate of the State's need, if any, for funds to pay for health inspections and meal quality tests.

2. Free and Reduced Price Policy Statement

In a statutory change applicable only to school food authority SFSP sponsors, Section 703 of Pub. L. 104–193 amended section 9(b)(2)(D) of the NSLA to eliminate the requirement for annual submission of a free and reduced price policy statement to the State agency by a school food authority. After the initial submission, the school food authority need not submit a policy statement in subsequent years unless there is a substantive change in the free and reduced price policy of the school food authority.

As specified in the amendment, a routine policy change, such as an annual adjustment of the income eligibility guidelines for free and reduced price meals, would not necessitate the submission of a policy statement by the school food authority. However, a State agency may determine which changes are significant enough to justify a policy statement revision. Circumstances that might trigger a resubmission include when a sponsor designates new approval or hearing officials, when application collection procedures change, or when significant revisions are made in the media release, the notice to households, or the income eligibility statements.

Accordingly, this rule revises § 225.6(c)(3) of the SFSP regulations to reflect the change in the free and reduced price policy statement submission requirement. The revised regulations state that each new applicant sponsor must submit a statement of its policy for serving free meals at all sites under its jurisdiction. After the initial submission, a school food authority sponsor applying to continue program participation need revise its statement only when one or more substantive changes have been made in its nondiscrimination policies.

III. Food Service Management Companies

1. Registration Requirement

Section 105(b)(2)(A)(i)(II) of Pub. L. 105–336 removed the Federal requirement for registering food service management companies and the specific standards for the registration in section 13(l)(2) of the NSLA. However, Congress allowed States the discretion to require registration and to implement their own registration procedures. Section 105 (b)(2)(C) of Pub. L. 105–336 also removed the requirement formerly in section 13(l)(3) of the NSLA that the Secretary maintain a list of food service management companies that have been seriously deficient while participating in the SFSP.

Accordingly, this rule revises § 225.6(g) to make the registration of food service management companies optional rather than mandatory. Also, the State agency reporting requirement concerning food service management companies at § 225.8(d) is removed. To conform the appeal procedure requirements to the optional nature of registration, we have revised paragraph (a) of § 225.13.

2. Food Service Management Company Contract Requirements

Section 706(f) of Pub. L. 104–193 amended section 13(f)(5) of the NSLA by making a technical change to existing language on requirements for inspections of bacteria levels in SFSP meals. The new, more general language requires that contracts between SFSP sponsors and food service management companies include mandatory periodic inspections of meals in order to determine bacteria levels present in meals and conformance with standards set by independent agencies or the local health department for the locality in which the meals are served.

Accordingly, this rule revises § 225.6(h)(2)(v) to reflect this technical change in the inspections and certifications included in contracts between SFSP sponsors and food service management companies.

IV. School Food Authorities

1. Advance Program Payments

Section 706(e)(2) of Pub. L. 104–193 amended section 13(e)(1) of the NSLA to alter the policy governing advance reimbursement payments for SFSP school sponsors. The amendment to the NSLA exempts school food authorities from the requirement that sponsors and sites conduct training before receiving an advance of program payments for their second month of operation.

Before this amendment, a State agency was required to certify that all sponsors had conducted training for SFSP personnel on program requirements before releasing the second month's advance operating costs' payment. Providing the payments helps sponsors to meet program expenses, as they occur, and aids them in maintaining a positive cash flow.

This provision in Pub. L. 104–193 has simplified reporting for school food authorities and State agencies. However, the training requirements that school food authorities must fulfill were not affected. In addition, this exemption does not apply to requests for advances on administrative costs. To qualify for a second advance payment for administrative costs, all sponsors, including schools, must continue to certify that their programs operate in accordance with their approved administrative budget.

Accordingly, this rule revises SFSP regulations at § 225.9(c)(1)(i) to exclude school food authorities from the requirement that sponsors must have conducted training for all sponsor and site personnel to be eligible for their second advance operating payments.

2. Offer Versus Serve

The 1996 and 1998 statutes extended the "offer versus serve" provision to school food authorities that are operating SFSP sites. The offer versus serve option has long been a fixture in the National School Lunch Program (42 U.S.C. 1758(a)(3)). Section 706(g) of Pub. L. 104–193 amended section 13(f)(7) of the NSLA to permit school SFSP sponsors to use the offer versus serve option only at school sites, on the same basis as the option is used during the school year under the NSLP. Later, section 105(c) of Pub. L. 105–336 amended the same section of the NSLA to expand the offer versus serve option further by allowing its use at any site operated by a school food authority.

This meal planning option provides children the opportunity to refuse either one or two food items they do not intend to consume. Its use has aided schools in reducing plate waste and food costs in the school meals programs. The option can also promote choice and menu variety as well as enhance food service productivity. Schools with adequate cafeteria facilities and proper supervision are especially able to increase their productivity under offer versus serve.

In implementing the offer versus serve option in SFSP, lunches and suppers served in schools must meet the appropriate meal service requirements and nutrition standards of their NSLP, and breakfasts must conform with SBP meal service requirements. The option is not permitted for snacks. In addition, schools must have utilized the option during the school year when serving school meals in order to use it under SFSP. Each child must be offered a complete meal and the serving size of each item must equal the minimum quantities specified in NSLP and SBP regulations. SFSP participants may refuse one or more items of a meal, but they may not be encouraged to decline offered items.

With respect to reimbursement, SFSP meals served under the offer versus serve option are eligible for the same reimbursement as other SFSP meals. This option does not alter the requirement that school sites with accredited summer school programs should participate in the NSLP and in that event are not eligible to operate SFSP. A SFSP site operated in a school must open its food service to all children residing in the area served by the site.

Accordingly, we have added a new paragraph to § 225.16(g) that permits a school food authority to use the "offer versus serve" option at the SFSP sites it operates. This means that a child may refuse one or more items of a meal that he/she does not intend to consume. A school food authority must apply this option under its school meal program rules. The regulatory language also clarifies that the amount of payments made to a school for a meal will not be affected by the refusal of an offered item.

3. Single Permanent Agreement/ Common Claims Form

Section 102(d) of Pub. L. 105–336 added section 9(i) to the NSLA to establish two requirements with respect to school food authorities which administer any combination of the Child Nutrition Programs under the same State administering agency. First, the State agency must use a single State/ local agreement for all programs operated by the school food authority under that State agency. This also means that multiple programs operated under an alternate State agency must be combined into a single agreement. While these agreements are permanent, they may be amended as necessary. Second, a State agency must use a common reimbursement form to claim meals under all of the programs. Previously, single agreements and common claim forms were permitted at State agency option for school food authorities administering multiple Child Nutrition Programs under a single State agency.

Congress intended these provisions to provide both State agencies and school districts with additional administrative flexibility. In the Conference Report for Pub. L. 105–336, the Conference Committee stated that when the same school food service personnel administer the SFSP as well as the school meal programs, the State agency need not conduct a review of the summer program in the same year in which the school food service operations have been reviewed and determined to be satisfactory. The Conference Committee expected this flexibility to result in savings at the State level, but noted that States may conduct additional reviews when they deem it appropriate.

Implementing this provision, we notified State agencies in December 1998 of a general waiver for two years for this provision as it pertains to claims, because many State agencies have insufficient computer resources to make the necessary changes due to the potential difficulties rising from the preparations for the year 2000. We also provided a waiver of the requirement for single agreements until the school year 1999–2000, since agreements for the 1998–1999 school year had already been signed prior to the passage of Pub. L. 105–336.

This rule revises § 225.6(e) to require the use of single permanent agreements for SFSP school sponsors that report to a single State administering agency. We have also revised § 225.9(d) to require the use of a single claim form for requesting reimbursement for meals or snacks served under multiple child nutrition programs. In addition, we have revised)225.7(d)(2) to include the provision for State agency review of SFSP sites that are operated by school food authorities also operating NSLP.

V. Temporary Assistance for Needy Families (TANF)

Section 109(g) of Pub. L. 104–193 struck all references in the NSLA to the former Aid to Families with Dependent Children (AFDC) program, and inserted the term "State program-funded". This new terminology referred to the block grant program, TANF, that replaced AFDC. The summary effect of this provision is that children who had been categorically eligible for free SFSP meals under AFDC, continue that same eligibility if they are now receiving State-funded (TANF) benefits. The stipulation is that the State-funded program has to have the same or more restrictive eligibility rules than the AFDC program had in effect on June 1, 1995.

Establishing categorical eligibility for TANF households requires the completion of an abbreviated income eligibility statement. Sponsors are allowed to determine free meal eligibility using information obtained from the TANF agency. The movement to a block grant assistance program does not modify existing SFSP eligibility procedures for households receiving benefits under the State-funded program. However, as stated earlier, the State-funded program eligibility rules must be comparable or more restrictive than the AFDC rules that were in effect on June 1, 1995.

In addition to the name change from AFDC to TANF, we are amending the list of program benefits that trigger automatic eligibility to receive free meals in the SFSP to include the Food Distribution Program on Indian Reservations (FDPIR). The FDPIR has the same income standards as the Food Stamp Program; the primary difference between the two programs is that FDPIR participants receive USDA commodities instead of food stamps. Procedurally, FDPIR households apply for SFSP benefits by providing their FDPIR identification numbers on the free and reduced price application forms, in lieu of family and income information.

Accordingly, this interim rule makes the following revisions: The definition of "AFDC assistance unit" is removed at § 225.2 and all references to AFDC are removed in this part; new definitions of "documentation", "FDPIR household", and "TANF" are added at § 225.2; §§ 225.6(c)(3), 225.15(e), and 225.15(f) are amended to indicate that children of families receiving food stamp, FDPIR, or TANF benefits are automatically eligible for free meals in SFSP. Finally, we have revised § 225.15(f) by simplifying the language where possible and reorganizing the information to improve the readability of information that must be printed on the application for Program benefits or must be given in written materials to applicant households. A conforming change is made to the definition of "current income" in § 225.2.

VI. National Youth Sports Program (NYSP)

Section 706(d) of Pub. L. 104–193 struck the provision in section 13(c) of the NSLA allowing SFSP participation by NYSP participants during the academic year. The NSLA was further amended to specify that NYSP children are eligible for free meals on showing

residence in areas in which poor economic conditions exist or by showing income eligibility statements enrolling them in the NYSP.

The NYSP is a program of supervised sports training for low-income youths, administered by the National Collegiate Athletic Association through grant awards by the U.S. Department of Health and Human Services. In 1988, Congress extended SFSP sponsor eligibility to public and private nonprofit colleges and universities that participate in NYSP. The following year, Congress allowed year-round SFSP participation by college and university sponsors that had implemented drug awareness and counseling projects as part of NYSP. These sponsors could receive SFSP reimbursement for as many as two meals per day on no more than thirty days between October 1 and April 30.

With the enactment of section 706(d) of Pub. L. 104–193, effective August 22, 1996, authority expired for academic-year participation in SFSP by NYSP sponsors. Thus, NYSP sponsors may participate in the SFSP only during the months of May through September and are subject to the same rules governing other sponsors.

This rule removes the definition in § 225.2 of "Academic-Year NYSP" and all references to "academic year" or "NYSP sponsors participating during the months of October through April" from this part.

With regard to the issue of NYSP site eligibility, section 706(d) of Pub. L. 104–193 amended the NSLA to specify that all participants at a NYSP site may receive reimbursable SFSP meals, if at least 50 percent reside in areas where poor economic conditions exist, or if at least 50 percent are individually determined to meet income eligibility guidelines. With this modification in the eligibility criteria, NYSP sponsors may qualify a potential site for program participation using either school data or census data. Such data would reveal that at least 50 percent of the children in the local area from which the site would draw its attendance are eligible for free and reduced price meals. NYSP sponsors may also collect free and reduced price program applications to document the site's eligibility.

Accordingly, this rule revises the definition of "NYSP feeding site" at § 225.2 and the application requirements at § 225.6(c)(2)(v) to specify that sites may be qualified for program participation by means of enrollment or area conditions.

VII. Consolidated Benefits for Homeless Children

Section 107(j)(2)(A) of Pub. L. 105–336 amended sections 13(a)(3)(C) and 17 of the NSLA by transferring authority over SFSP homeless sites to the Child and Adult Care Food Program (CACFP). Section 107(j)(2)(C)(i) of Pub. L. 105–336 also abolished the Homeless Children Nutrition Program under section 17B of the NSLA. Section 107(g) and added a new paragraph (q), "Participation by emergency shelters", to section 17 of the NSLA to consolidate the administration and delivery of benefits to homeless children under a single program. Moving homeless sites from SFSP into CACFP has provided an opportunity to expand the delivery of important nutrition benefits to children through the age of 12 because CACFP benefits are provided year-round. It allows sponsors to serve each eligible child up to three meals or two meals and one snack, each day.

This change was effective July 1, 1999. We issued guidance to State agencies on March 30, 1999, on the implementation of provisions concerning homeless children in CACFP and the transition of program authority from the SFSP to CACFP. We urged State agencies to encourage sponsors of homeless sites participating in the SFSP to apply to participate in CACFP in order to continue receiving meal benefits for children after June 30, 1999. It should be clarified, however, that a homeless shelter may still operate the SFSP, but it must meet other criteria as an open or enrolled SFSP site, as described in § 225.6(c) of the regulations. There no longer exists a special category of homeless SFSP sites.

This rule implements the transfer of homeless provisions from the SFSP to the CACFP by deleting references to homeless emergency shelters found at §§ 225.2, 225.6(c)(2), 225.6(d), 225.8(e), 225.14(c)(3), 225.14(d)(5), 225.15(a)(2), and 225.16(b)(2).

VIII. Program Payments

1. Per-Meal Reimbursements

Section 706(b) of Pub. L. 104–193 amended section 13(b) of the NSLA to set the reimbursement rates for each breakfast, lunch, snack, and supper served in the SFSP. It also required an adjustment in the rates on January 1, 1997, and each January 1 thereafter to the nearest lower cent increment, based on the changes in the Consumer Price Index for all Urban Consumers for the previous 12-month period (ending November 30). The stipulation of the law that reimbursement rates be adjusted to the nearest lower cent represents a change from the previous requirement of rounding down to the nearest quarter cent.

The per-meal payment changes made by Pub. L. 104–193 do not require a corresponding amendment of the SFSP regulations. The adjustment of the reimbursement rates was reflected in the SFSP Rates Notice that was published in the **Federal Register** on January 9, 1997 (63 FR 71616).

2. Adjustments to Program Reimbursement Rates for Alaska and Hawaii

Section 104(a)(1) of Pub. L. 105–336 amended section 12(f) of the NSLA to allow adjustments to SFSP rates for sponsors in Alaska and Hawaii. The Department has long had the statutory authority to make these adjustments in the other child nutrition programs. The State agencies in Alaska and Hawaii have already demonstrated the higher cost of providing meals in those areas in the context of the other Child Nutrition Programs, and the Department has adjusted rates for those States.

Through the 1998 reauthorization statute, this authority was extended to SFSP. Beginning January 1, 1999, SFSP operating and administrative rates were adjusted upward to reflect the higher cost of providing meals in Alaska and Hawaii. The adjustments were announced in the annual SFSP Rate Notice that was published in the **Federal Register** on December 29, 1998 (63 FR 71616).

Accordingly, this rule revises § 225.9(d)(8) to reference the higher reimbursement rates that are provided to Alaska and Hawaii.

IX. Number of Meals and Meal Pattern Requirements

1. Number of Meals for Camps and Migrant Sites

Section 706(c)(1) of Pub. L. 104–193 amended section 13(b)(2) of the NSLA to reduce the number of meals per day that camps and migrant feeding sites may claim for reimbursement. Congress stipulated that these sites may only be reimbursed for up to three meals or two meals and one snack per day. Previously, these sites were eligible for up to four meals per child per day. This reduction more closely aligns reimbursable meals for sponsors of camps and migrant sites with the reimbursements that sponsors of other SFSP sites may claim on a daily basis. We notified State agencies of this change on August 13, 1996 by a guidance memorandum.

Accordingly, we have revised paragraphs (b)(1)(i) and (b)(5) in

§ 225.16 to conform to this statutory change.

2. Conforming Changes in Nomenclature and Meal Pattern Requirements

Finally, we are making two revisions in this rule to update the language in this part to conform to changes in other Child Nutrition Programs.

First, we have changed the use of the word "supplement" or "supplements" to "snack" or "snacks", which are the preferred terms to use in reference to the light meal that is served between lunch and supper in the SFSP. While the NSLA uses the term supplement, we believe most people are more familiar with the term snack. This change is made wherever these terms appear throughout this part. This language conforms to the new Child Nutrition Program that was authorized by sections 107(h) and 108(a)(1) and (2) of Pub. L. 105–336 and that is referred to the "Afterschool Snack Program" within the NSLP, section 17A(a) of the NSLA (42 U.S.C. 1766a(a)), and the "At-Risk Afterschool Care Program" within the CACFP, section 17(r) of the NSLA (42 U.S.C. 1766(r).

The second change we have made in this rule is to conform the egg to meat or meat alternative equivalencies in the SFSP meal patterns for breakfast, lunch, snack, and supper to those equivalencies used in the NSLP at § 210.10(k)(2) or the School Breakfast Program (SBP) at § 220.8(g)(iii)(B)(a). A similar revision is being made to these equivalencies in the CACFP in another rulemaking. These minor revisions to the meal pattern requirements have been made in § 225.16 of the SFSP Regulations.

Currently, the egg to meat/meat alternate equivalencies at § 225.16(d) of the SFSP regulations, allow one large egg to equal either one ounce or two ounces of meat/meat alternates, depending on the meal being served. However, the regulations for the NSLP and the SBP include the following standard egg to meat/meat alternate equivalencies: one large egg to two ounces of meat/meat alternate and one-half large egg to one ounce of meat/meat alternate. Accordingly, we have revised § 225.16(d) to reflect these equivalencies. We believe that this change, though minor in scope, increases consistency in the standards across child nutrition programs. It should also eliminate any confusion that variable equivalencies among the child nutrition programs may have caused.

X. Procedural Matters

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance under No. 10.559. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notices (48 FR 29114 and 49 FR 2276), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. Simplifying and streamlining the administration of the SFSP is the intended effect of this rule when implemented.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "**DATES**" section of the preamble of the rule. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures available through State or local governments. SFSP administrative procedures are set forth at: (1) 7 CFR 225.13, which outlines appeals procedures for use by a sponsor or a food service management company; and (2) 7 CFR 225.17 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and sponsors.

Paperwork Reduction Act

This interim rule seeks to reduce the reporting requirements for State agencies and service institutions administering the SFSP. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Food and Nutrition Service announces its intention to request the Office of Management and Budget's (OMB) review of the information collections associated with the implementation of the interim rule, Summer Food Service Program: Implementation of Legislative Reforms.

Written comments on this notice must be received by February 28, 2000, to be assured of consideration.

Comments concerning the information collection aspects of this interim rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Lori Schack, Desk Officer for FNS. A Copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commentors are asked to separate their comments on the information collection requirements from their comments on the remainder of this interim rule.

OMB is required to make a decision concerning the collection of information contained in this interim rule between 30 and 60 days after the publication of this document in the **Federal Register**.

Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Title: Summer Food Service Program.
OMB Number: 0584–0280.
Expiration Date: 12/31/99.
Type of Request: Revision of a currently approved collection.
Abstract: The interim rule, Summer Food Service Program: Implementation of Legislative Reforms, amends the regulations for the Summer Food Service Program (SFSP) to incorporate changes made by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), the Personal Responsibility and Work Reconciliation Act of 1996 (Pub. L. 104–193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336). Section 114(e) of Public Law 103–448 significantly decreased the number of requirements to be included in each State's management and administration plan. Section 703 of Public Law 104–193 prohibits requiring the annual submission of a free and reduced price policy statement after the initial submission, unless there is a substantive change. Section 102(d) of Public Law 105–336 amended section 9 of the National School Lunch Act to require State agencies to use a single State/local agreement for all programs operated by the same school food authority under the administration of the State agency. The Section also requires State agencies to use a common reimbursement form to claim meals served under the programs. The affected SFSP requirements and their applicable burden changes are listed in the table below:

ESTIMATED ANNUAL REPORTING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agencies (SAs), by Feb 15 of each year, submit to FNSRO a program Management and Administration Plan for that fiscal year:					
Total Existing	7 CFR 225.4 (a)	50 SAs	1	80	4,000
Total Proposed	7 CFR 225.4 (a)	50 SAs	1	40	2,000
Sponsor must submit a statement of its policy for serving free meals:					
Total Existing	7 CFR 225.6(c)(3)	3,616 sponsors	1	1	3,616
Total Proposed	7 CFR 225.6(c)(3)	0	0	0	0
Sponsors approved for participation in SFSP enter into written agreements with SAs to operate program in accordance with regulatory requirements (FNS–80):					
Total Existing	7 CFR 225.6 (e)	3,616 sponsors	1	.123	445
Total Proposed	7 CFR 225.6 (e)	3,000 sponsors	1	.123	369
SAs forward the final claim form for reimbursement:					
Total Existing	7 CFR 225.9(b) (5)	50 SAs	3	1	150
Total Proposed	7 CFR 225.9(b) (5)	40 SAs	3	1	120
Total Existing Burden for 7 CFR Part 225.					301,404
Total Proposed Burden for 7 CFR Part 225.					295,682
Difference					−5,722

Good Cause Determination

This interim rule is being issued without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(a) and (b). On December 8, 1994, and September 26, 1995, guidance memoranda were issued to State agencies on implementing SFSP provisions of the Healthy Meals for Healthy Americans Act of 1994, Pub. L. 103–448. To aid the State agencies in implementing the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, guidance memoranda were issued on August 13, 1996, January 27, 1997, and May 19, 1997. Finally, on December 3, 1998, a guidance memorandum was issued for use by State agencies in implementing SFSP provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Pub. L. 105–336. In each instance, the guidance memoranda were implementing statutory provisions that made nondiscretionary changes to the SFSP. Based upon this determination, the Administrator of FNS finds good cause to adopt this rule on an interim basis without prior public comment because such comment is unnecessary. In developing final rulemaking, however, the Administrator believes a

solicitation of public comment would be beneficial given that States and local entities have acquired substantial operational experience to date. As stated earlier in this preamble, comments received within 180 days of publication will be considered.

List of Subjects in 7 CFR Part 225

Food and Nutrition Service, Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 225 is amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13, and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. In § 225.2:

a. Remove the definitions of *Academic-Year NYSP, AFDC assistance unit,* and *Homeless feeding site*;

b. Revise the definitions of *Current income, Documentation, NYSP feeding site, Private nonprofit organization,* and *Sponsor*; and

c. Add in alphabetical order the new definitions of *FDPIR household* and *TANF.*

The additions and revisions read as follows:

§ 225.2 Definitions.

* * * * *

Current income means income, as defined in § 225.15(f)(4)(vi), received during the month prior to application for free meals. If such income does not accurately reflect the household's annual income, income must be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

* * * * *

Documentation means:

(a) The completion of the following information on a free meal application:

(1) Names of all household members;

(2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; or

(b) For a child who is a member of a household receiving food stamp, FDPIR, or TANF benefits, "documentation" means completion of only the following information on a free meal application:

(1) The name(s) and appropriate food stamp, FDPIR, or TANF case number(s) for the child(ren); and

(2) the signature of an adult member of the household.

* * * * *

FDPIR household means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

* * * * *

NYSP feeding site means a site at which all of the children receiving Program meals are enrolled in the NYSP and which qualifies for Program participation on the basis of documentation that the site meets the definition of "areas in which poor economic conditions exist" as provided in this section.

* * * * *

Private nonprofit organization means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) which meets the definition of "private nonprofit" in this section and which:

(a) Administers the Program:

(1) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site; or

(2) With a waiver granted by the State in accordance with § 225.6(b)(ii), not more than 500 children being served at any approved meal service at any one site;

(b) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(c) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(d) Provides ongoing year-round activities for children or families;

(e) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(f) Meets applicable State and local health, safety, and sanitation standards.

* * * * *

Sponsor means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are referred to in the Act as "service institutions"..

* * * * *

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

* * * * *

3. In § 225.3, amend paragraph (b) by removing the third sentence and by revising the second sentence to read as follows:

§ 225.3 Administration.

* * * * *

(b) * * * Each State agency must notify the Department by November 1 of the fiscal year regarding its intention to administer the Program.* * *

* * * * *

4. In § 225.4, revise paragraph (d) to read as follows:

§ 225.4 Program management and administration plan.

* * * * *

(d) The Plan must include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plan to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plan for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children;

(3) The State's plans for providing technical assistance and training to eligible sponsors;

(4) The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(5) The State's plan for timely and effective action against Program violators;

(6) The State's plan for ensuring the fiscal integrity of sponsors not subject to auditing requirements prescribed by the Secretary;

(7) The State's plan for ensuring compliance with the food service managment company procurement monitoring requirements set forth at § 225.6(h); and

(8) An estimate of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests.

5. In § 225.6:

a. Revise the last sentence in paragraph (a)(2);

b. Remove paragraph (a)(3) and redesignate paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4), respectively;

c. Revise newly redesignated paragraph (a)(4);

d. Revise paragraph (b)(1), (b)(5), and (b)(6);

e. Amend paragraph (c)(2)(ii) introductory text by removing the words "or a homeless feeding site";

f. Revise paragraph (c)(2)(iv) and (c)(2)(v), paragraph (c)(3) introductory text, paragraph (c)(3)(i), paragraph (c)(3)(ii) introductory text, and paragraph (c)(3)(ii)(B);

g. Remove the words "or a homeless feeding site," from paragraph (d)(1)(i);

h. Revise paragraph (e) introductory text and paragraphs (e)(1) and (e)(2);

i. Redesignate paragraphs (e)(3) through (e)(15) as paragraphs (e)(4) through (e)(16), and add a new paragraph (e)(3);

j. Revise paragraph (g); and

k. Revise paragraph (h)(2)(v).

The revisions and addition read as follows:

§ 225.6 State agency responsibilities.

(a) * * *

(2) * * * State agencies shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas.

* * * * *

(4) In addition to the warnings specified in paragraph (a)(3) of this section, State agencies may include the following information on applications and pre-application materials distributed to prospective sponsors:

(i) The criminal penalties and provisions established in section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)) that states substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(ii) The procedures for termination from Program participation of any site or sponsor which is determined to be seriously deficient in its administration of the Program. In addition, the application may also state that appeals of sponsor or site terminations will follow procedures mandated by the State agency and will also meet the minimum requirements of 7 CFR 225.13.

(b) *Approval of sponsor applications.* (1) Each State agency must inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency must require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline for the Program application submission.

* * * * *

(5) The State agency must use the following priority system in approving applicants to operate sites that propose to serve the same area or the same enrolled children:

(i) Public or nonprofit private school food authorities;

(ii) Public agencies and private nonprofit organizations that have demonstrated successful program performance in a prior year;

(iii) New public agencies; and

(iv) New private nonprofit organizations.

(v) If two or more sponsors that qualify under paragraph (b)(5)(ii) of this section apply to serve the same area, the State agency must determine on a case-by-case basis which sponsor or sponsors it will select to serve the needy children in the area. The State agency should consider the resources and capabilities of each applicant.

(6) The following limitations apply on the number of sites and children that may be served per day:

(i) The State agency must not approve any school food authority or public agency to operate more than 200 sites or to serve more than an average of 50,000 children per day. However, the State agency may approve exceptions if the applicant can demonstrate that it has the capability of managing a program larger than these limits.

(ii) The State agency must not approve any private nonprofit organization to operate more than 25 sites. In addition, the State agency must not approve any private nonprofit organization to serve more than 300 children at any one site for any approved meal service. However, the State agency may grant a waiver to allow up to 500 children served at any one site operated by a private nonprofit organization. To be approved for the waiver, the private nonprofit organization must demonstrate that it is fully capable of managing a site with more than 300 children and that there are no other sponsors capable of serving the children in excess of 300.

* * * * *

(c) * * *

(2) * * *

(iv) For sites that serve homeless children, information sufficient to demonstrate that the sites are not residential child care institutions, as defined in paragraph (c) of the definition of *School* in § 210.2 of this chapter. If cash payments, food stamps, or any in-kind service are required of any meal recipient at these sites, sponsors must describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children. In addition, sponsors must certify that these sites employ meal counting methods to ensure that reimbursement is claimed only for meals served to children.

(v) For NYSP sites, certification from the sponsor that all the children who will receive Program meals are enrolled participants in the NYSP.

* * * * *

(3) Each applicant must submit a statement of nondiscrimination in its policy of serving meals to children. The statement must consist of an assurance that all children are served the same meals and that there is no discrimination in the course of the food service. A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced price policy, a revised policy statement must be provided at the State agency's request.

(i) In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants except camps must include a statement that the meals served are free at all sites.

(ii) In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants that are camps that charge separately for meals must include the following:

* * * * *

(B) A description of the method or methods to be used in accepting applications from families for Program meals. Such methods must ensure that households are permitted to apply on behalf of children who are members of households receiving food stamp, FDPIR, or TANF benefits using the categorical eligibility procedures described in § 225.15(f).

* * * * *

(e) *State-Sponsor Agreement.* A sponsor approved for participation in the Program must enter into a written agreement with the State agency. If the sponsor is a school food authority that operates more than one child nutrition program (e.g., the National School Lunch Program, the School Breakfast Program, or the Child and Adult Care Food Program) under a single State agency, a single permanent agreement that includes all the child nutrition programs must be executed with the State agency, as described in § 210.9(b) of this chapter. All sponsors must agree in writing to:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation; or, at any time of the year, in the case of sponsors administering the Program under a continuous school calendar system;

(2) For school food authorities, offer meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and offer the same meals to all children;

(3) For all other sponsors, serve meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and serve the same meals to all children;

* * * * *

(g) Food service management company registration. A State agency may require each food service management company, operating within the State, to register based on State procedures. A State agency may further require the food service management company to certify that the information submitted on its application for registration is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(h) * * *

(2) * * *

(v) The food service management company must have State or local health certification for the facility in which it proposes to prepare meals for use in the Program. It must ensure that health and sanitation requirements are met at all times. In addition, the food service management company must ensure that meals are inspected periodically to determine bacteria levels present in the meals and that the bacteria levels found to be present in the meals conform with the standards set by local health authorities. The results of the inspections must be submitted promptly to the sponsor and to the State agency.

* * * * *

6. In § 225.7:

a. Remove the last sentence in paragraph (a);

b. Amend paragraph (d)(2) introductory text by adding a sentence before the last sentence;

c. Remove paragraph (d)(2)(ii); and

d. Redesignate paragraph (d)(2)(iii) as paragraph (d)(2)(ii).

The addition reads as follows:

§ 225.7 Program monitoring and assistance.

* * * * *

(d) * * *

(2) *Sponsor and site reviews.* * * * When the same school food authority personnel administer this Program as well as the National School Lunch Program (part 210 of this chapter), the State agency is not required to conduct a review of the Program in the same year in which the National School Lunch Program operations have been reviewed and determined to be satisfactory. * * *

* * * * *

§ 225.8 [Amended]

7. In § 225.8, remove paragraphs (d) and (e).

8. In § 225.9:

a. Amend paragraph (c)(1)(i) by removing the second sentence and adding in its place two new sentences;

b. Remove paragraph (d)(10);

c. Redesignate paragraphs (d)(1) through (d)(9) as paragraphs (d)(2) through (d)(10);

d. Add a new paragraph (d)(1);

e. Revise newly redesignated paragraphs (d)(7), (d)(8) and (d)(9); and

f. Amend the second sentence in paragraph (f) by removing the words "paragraph (d)(4)" and adding in their place "paragraph (d)(5)".

The revisions read as follows:

§ 225.9 Program assistance to sponsors.

* * * * *

(c) * * *

(1) *Operating costs.* (i) * * * Except for school food authorities, sponsors must conduct training sessions before receiving the second advance payment. Training sessions must cover Program duties and responsibilities for the sponsor's staff and for site personnel.* * *

* * * * *

(d) * * *

(1) School food authorities that operate the Program, and operate more than one child nutrition program under a single State agency, must use a common claim form (as provided by the State agency) for claiming reimbursement for meals served under those programs.

* * * * *

(7) Payments to a sponsor for operating costs must equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor; or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current rates for each meal type, as adjusted in accordance with paragraph (d)(9) of this section.

(8) Payments to a sponsor for administrative costs must equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current administrative rates for each meal type, as adjusted in accordance with paragraph (d)(9) of this section. Sponsors must be eligible to receive additional administrative reimbursement for each meal served to participating children at rural or self-preparation sites, and the rates for such additional administrative reimbursement must be adjusted in accordance with paragraph (d)(9) of this section.

(9) On each January 1, or as soon thereafter or as practicable, FNS will publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraphs (d)(7)(ii) and (d)(8)(iii) of this section. Adjustments will be based

upon changes in the series for food away from home of the Consumer Price Index(CPI) for all urban consumers since the establishment of the rates. Higher rates will be established for Alaska and Hawaii, based on the CPI for those States.

* * * * *

§ 225.13 [Amended]

9. In § 225.13, amend the first sentence of paragraph (a) by adding the words ", if applicable" after the word "registration" wherever it appears.

10. In § 225.14:

a. Amend paragraphs (c)(3) and (d)(1) by removing the words "or a homeless feeding site";

b. Redesignate paragraphs (d)(6) through (d)(7) as paragraphs (d)(5) through (d)(6), respectively; and revise them to read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(d) * * *

(5) If the sponsor administers NYSP sites, it must ensure that all children at such sites are enrolled participants in the NYSP.

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Administers the Program:

(A) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site or,

(B) With a waiver granted by the State agency in accordance with § 225.6(b)(ii), not more than 500 children being served at any approved meal service at any one site;

(ii) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(iii) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(iv) Provides ongoing year-round activities for children or families;

(v) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(vi) Meets applicable State and local health, safety, and sanitation standards.

11. In § 225.15:

a. Amend paragraph (a)(2) by removing the second sentence and by adding in its place two new sentences;

b. Amend the last sentence of paragraph (e) by removing the words "food stamp households or AFDC assistance units" and adding in their place "households receiving food stamp, FDPIR, or TANF benefits";

c. Revise paragraph (f);

d. Remove paragraph (g)(2) and redesignate paragraphs (g)(3) through (g)(8) as paragraphs (g)(2) through (g)(7), respectively;

e. Amend newly redesignated paragraph (g)(2) by removing the words "except a private nonprofit organization" in the first sentence;

f. Remove newly redesignated paragraph (g)(4)(x) and redesignate newly redesignated paragraphs (g)(4)(xi) through (g)(4)(xiii) as paragraphs (g)(4)(x) through (g)(4)(xii), respectively.

The revisions and addition read as follows:

§ 225.15 Management responsibilities of sponsors.

(a) * * *

(2) * * * In addition, the sponsor must ensure that records of any site serving homeless children accurately reflect commodity allotments received as a "charitable institution", as defined in §§ 250.3 and 250.41 of this chapter. Commodities received for Program meals must be based only on the number of eligible children's meals served. * * *

* * * * *

(f) *Application for free Program meals.*—(1) *Purpose of application form.* The application is used to determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of "areas in which poor economic conditions exist", in § 225.2. In these situations, parents or guardians of children enrolled in camps or these other sites must be given application forms to provide information described in paragraph (f)(2) or (f)(3) of this section, as applicable. Applications are not necessary if other information sources are available and can be used to determine eligibility of individual children in camps or sites.

(2) *Application procedures based on household income.* The household member completing the application on behalf of the child enrolled in the Program must provide the following information:

(i) The names of all children for whom application is made;

(ii) The names of all other household members;

(iii) The social security number of the adult household member who signs the application or an indication that the household member does not have a social security number;

(iv) The income received by each household member identified by source of income;

(v) The signature of an adult household member;

(vi) The date the application is completed and signed.

(3) *Application based on the household's receipt of food stamp, FDPIR, or TANF benefits.* Households may apply on the basis of receipt of food stamp, FDPIR, or TANF benefits by providing the following information:

(i) The name(s) and food stamp, FDPIR, or TANF case number(s) of the child(ren) who are enrolled in the Program; and

(ii) The signature of an adult household member.

(4) *Information or notices required on application forms.* Application forms or descriptive materials given to households about applying for free meals must contain the following information:

(i) The family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals (Note: The income levels for free school meal eligibility must not be included on the application or in other materials given to the household).

(ii) A statement that a child who is a member of a household that receives food stamp, FDPIR, or TANF benefits is automatically eligible to receive free meals in the Program;

(iii) A statement that reads, "In certain cases, foster children are eligible for free meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us.";

(iv) The following statement that provides notice to the household member whose social security number is disclosed: "We are required by the National School Lunch Act in section 9 to ask for a social security number. Unless a food stamp, FDPIR, or TANF case number is provided for your child, the application cannot be approved without either the social security number of the person who signs the application or an indication that he or she does not have a social security number. The social security number provided may be used to identify the person in checking the correctness of the information provided on the application. This may occur during reviews, audits or investigations of the Program, and it may involve contacting employers to determine income. It also may involve contacting the food stamp or welfare office to determine if your household is receiving benefits. It may be necessary to check with the State employment security office to determine the amount of benefits your household

is receiving. Other income information provided by you may be checked. If the information you provide is incorrect, your household may lose benefits and/or claims or legal action may be taken against your household."

(v) The statement used to inform the household about the use of social security numbers must comply with the Privacy Act of 1974 (Pub. L. 93–579). If a State or local agency plans to use the social security numbers for uses not described in paragraph (f)(4)(iv) of this section, the notice must be revised to explain those uses.

(vi) Examples of income that should be provided on the application, including: Earnings, wages, welfare benefits, pensions, support payments, unemployment compensation, social security, and other cash income;

(vii) A notice placed immediately below the signature block stating that the person signing the application certifies that all information provided is correct, that the household is applying for Federal benefits in the form of free Program meals, that Program officials may verify the information on the application, and that purposely providing untrue or misleading statements may result in prosecution under State or Federal criminal laws; and

(viii) A statement that if food stamp, FDPIR, or TANF case numbers are provided, they may be used to verify the current food stamp, FDPIR, or TANF certification for the children for whom free meals benefits are claimed.

(5) *Verifying information on Program applications.* Households selected to verify information on their Program applications must be notified in writing. State agencies must ensure that the notice of information about the use of social security numbers provided on applications complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). Households must be informed of the following:

(i) They must provide a social security number for each adult household member, or indicate that an adult household member does not have a social security number, or provide proof that they are receiving food stamp, FDPIR, or TANF benefits;

(ii) They will lose Program benefits or be terminated from participation if they do not cooperate with the verification process;

(iii) Social security numbers may be used to determine the correctness of information on applications and continued eligibility for Program benefits;

(iv) They will be given the name and phone number of an official who can assist in the verification process;

(v) Verification may occur during program reviews, audits, and investigations;

(vi) Verification may include contacting employers, food stamp or welfare offices, or State employment offices to determine the accuracy of statements on the application about income, receipt of food stamp, FDPIR, TANF, or unemployment benefits; and

(vii) They may lose benefits or face claims or legal action if incorrect information is reported on the application.

* * * * *

12. In § 225.16:

a. Revise paragraph (b) introductory text and paragraph (b)(1)(i);

b. Remove paragraph (b)(2) and redesignate paragraphs (b)(3), (b)(4), and (b)(5) as paragraphs (b)(2), (b)(3), and (b)(4), respectively;

c. Revise newly redesignated paragraphs (b)(2), (b)(3), and the first sentence of (b)(4);

d. Revise the first sentence in paragraph (c)(1);

e. Amend the introductory text of paragraph (d) by adding a sentence at the end;

f. Revise paragraph (d)(1) introductory text;

g. Revise the entry for "Eggs" in the table under Meat and Meat Alternates (Optional) in paragraph (d)(1);

h. Revise paragraph (d)(2) introductory text;

i. Revise the centered heading and the introductory text of paragraph (d)(3);

j. Revise the entry for "Eggs" in the table under Meat and Meat Alternates in paragraph (d)(3);

k. Remove paragraph (e) and redesignate paragraphs (f) and (g) as paragraphs (e) and (f), respectively; and

l. Revise newly redesignated paragraph (f)(1).

The revisions and addition read as follows:

§ 225.16 Meal service requirements.

* * * * *

(b) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplements, referred to from this point as "snacks". No sponsor may be approved to provide more than two snacks per day. A sponsor may only be reimbursed for meals served in accordance with this section.

(1) * * *

(i) Each day a camp may serve up to three meals or two meals and one snack;

* * * * *

(2) *NYSP Sites.* Sponsors of NYSP sites shall only be reimbursed for meals served to enrolled NYSP participants at these sites.

(3) *Restrictions on the number and type of meals served.* Food service sites other than camps and sites that primarily serve migrant children may serve either:

(i) One meal each day, a breakfast, a lunch, or snack; or

(ii) Two meals each day, if one is a lunch and the other is a breakfast or a snack.

(4) *Sites which serve children of migrant families.* Food service sites that primarily serve children from migrant families may be approved to serve each day up to three meals or two meals and one snack. * * *

(c) *Time restrictions for meal service.* (1) Three hours must elapse between the beginning of one meal service, including snacks, and the beginning of another, except that 4 hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. * * *

* * * * *

(d) * * * Children age 12 and up may be served larger portions based on the greater food needs of older boys and girls.

(1) The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
* * * * *	
Meat and Meat Alternates (Optional)	
* * * * *	
Eggs	½ large egg.
* * * * *	

* * * * *

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

* * * * * *

Snacks

(3) The minimum amounts of food components to be served as snacks are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
* * * * *	
Eggs	½ large egg.
* * * * *	

* * * * *

(f) *Exceptions to and variations from the meal pattern.*—(1) *Meals provided by school food authorities.*—(i) *Meal pattern substitution.* School food authorities that are Program sponsors and that participate in the National School Lunch or School Breakfast Program during any time of the year may substitute the meal pattern requirements of the regulations governing those programs (Parts 210 and 220 of this chapter, respectively) for the meal pattern requirements in this section.

(ii) *Offer versus serve.* School food authorities that are Program sponsors may permit a child to refuse one or more items that the child does not intend to eat. The school food authority must apply this "offer versus serve" option under the rules followed for the National School Lunch Program, as described in part 210 of this chapter. The reimbursements to school food authorities for Program meals served under the "offer versus serve" must not be reduced because children choose not to take all components of the meals that are offered.

* * * * *

§ 225.18 [Amended]

13. In § 225.18, remove paragraph (i).

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33503 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1721

Post-Loan Policies and Procedures for Insured Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: As a part of its ongoing program to streamline regulations, the Rural Utilities Service (RUS) is amending its regulation on the advance of funds to reflect an increase in the threshold limit from $25,000 to $100,000 for which plant investments may be made in the borrowers' systems and be eligible for insured loan fund financing without being included in an RUS-approved construction work plan (CWP). In addition, RUS has determined to no longer limit borrowers to 130 percent of the project cost estimate for projects in the CWP or amendment and approved loan, as amended, for which prior RUS approval must be obtained. These changes will have the effect of reducing the number of actions by borrowers that would otherwise require RUS approval and will reduce administrative costs to borrowers and to the agency.

DATES: This rule will become effective February 11, 2000 unless we receive written adverse comments or notice of intent to submit adverse comments on or before January 27, 2000. If we receive such comments or notice, we will publish a timely withdrawal of the Direct Final Rule in the **Federal Register** stating that the rule will not become effective until we have addressed the comments received and published a final rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Charles M. Philpott, Chief, Engineering Branch, Northern Regional Division, U.S. Department of Agriculture , Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Ave., SW., Washington, DC 20250–1522. Telephone: (202) 720–1432. E-mail: cphilpot@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule relating to RUS' electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining federal financing, received economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The Office of Management and Budget has approved the reporting and recordkeeping requirements contained in 7 CFR part 1721 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned control number 0572–0032. This rule contains no additional information collection or recordkeeping requirements.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State local, and tribal governments or the private sector. A final rule related notice entitled, "Department Programs and Activities Excluded from Executive

Order 12372," (50 FR 47034) determined that RUS loans and loan guarantees were not covered by Executive Order 12372.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments, or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

RUS is amending its regulations to change the definition of a minor project from the current threshold level of $25,000 or less, to a project costing $100,000 or less. Section 1721.1 restricts borrowers to advances of insured loan funds for projects, except for minor projects, that are included in an RUS approved borrower's construction work plan (CWP) or CWP amendment. A minor project is defined as a project costing $25,000 or less. A minor project is eligible for insured loan funding without being included in an RUS-approved CWP or amendment. In RUS' review of the impact of this rule on borrowers, we have determined that the $25,000 limit for a minor project is creating unneeded paperwork and cost burdens on borrowers requiring unnecessary CWP amendments to be approved by RUS, without producing significant benefits. The increase to $100,000 for a minor project will allow borrowers greater flexibility in their construction programs and reduce the number of CWP amendments requiring RUS approval. The level of $100,000 is considered reasonable and adequate for purposes of monitoring borrowers' construction programs and will provide sufficient safeguards to assure that RUS loan funds are being used for intended loan purposes.

RUS is further amending its regulations to eliminate the requirement that funding requests from borrowers not exceed 130 percent of the project cost estimate, previously approved by RUS in the borrowers' CWP or CWP amendment and in an approved loan.

Under § 1721.1, the "130 percent rule" applies to each major project included in the borrower's CWP and RUS approved loan. In RUS' review of compliance with this rule, we have determined that the majority of cases of noncompliance occur when borrowers exceed 130 percent of the cost estimate for projects coded in the 100 and 600 series. These project codes relate to the construction of distribution line extensions and the installation of miscellaneous line equipment required to provide electric service to new customers. Since a borrower cannot accurately predict the number of new customers, significant cost variations can and do occur in these projects from the time the cost estimates were originally prepared in the CWP. In view of this, RUS is amending the rule to remove the 130 percent limitation for the projects coded 100 and 600.

Further, in reviewing the 130 percent rule as applied to the remaining major project codes in the CWP and approved loan, most borrowers are either providing good cost estimates for the projects in the CWP and loan or are amending the CWP, as needed, based on factors other than an increase in cost. Therefore, RUS is amending the regulation to eliminate the "130 percent rule" in its entirety for all major projects included in the borrowers' CWPs and RUS-approved insured loans.

RUS believes that the changes under this rule will reduce administrative costs to borrowers and to the Government and will relax the RUS requirements under which borrowers may qualify for RUS insured fund financing.

List of Subjects in 7 CFR Part 1721

Electric power, Loan programs—energy, Rural areas.

For the reasons set forth in the preamble, RUS amend 7 CFR chapter XVII as follows:

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

1. The authority citation for part 1721 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; and 6941 *et seq.*

2. Section 1721.1 is revised to read as follows:

§ 1721.1 Advances.

(a) *Purpose and amount.* With the exception of minor projects, insured loan funds will be advanced only for projects which are included in an RUS approved borrower's construction work plan (CWP) or approved amendment and in an approved loan, as amended. Loan fund advances can be requested in an amount representing actual costs incurred.

(b) *Minor project.* Minor project means a project costing $100,000 or less. Such a project qualifies for advance of loan funds even though it may not have been included in an RUS-approved borrower's CWP, amendment to such CWP, or approved loan. Total advances requested shall not exceed the total loan amount. All projects for which loan fund advances are requested must be constructed to achieve purposes permitted by terms of the loan contract between the borrower and RUS.

(c) *Certification.* Pursuant to the applicable provisions of the RUS loan contract, borrowers shall certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and shall also provide for those that cost in excess of $100,000, a contract or work order number as applicable and a CWP cross-reference project coded identification number. For a minor project not included in an RUS approved borrower's CWP, the Borrower shall describe the project and do one of the following to satisfy RUS' environmental requirements (see 7 CFR part 1794).

(1) If applicable, state that the project is a categorical exclusion of a type described in § 1794.21(b), which normally does not require preparation of an Environmental Report (ER); or

(2) If applicable, state that the project is a categorical exclusion of a type that normally requires an ER and then:

(i) Submit the ER with the request for funds to be approved for advance, or

(ii) If applicable, certify that it has analyzed the minor project with respect to a comprehensive service area environmental map and data base collected and used in preparing the ER for its RUS-approved borrower's CWP, and that on the basis of that information, the minor project will not be located in an environmentally sensitive area or location.

(d) *Noncompliance.* Where insured loan funds are found to have been advanced in noncompliance with this section, borrowers will be required to deposit the appropriate amount of the over-advance in the construction fund-trustee account and pay any accrued and unpaid interest to RUS. The Administrator will require borrowers, in order to remedy such noncompliance, to pay an additional amount equal to the interest on the funds over-advanced for the period such funds were outstanding, calculated at a rate equal to the difference between the RUS loan interest rate and the most recent rate at which RUS sold Certificates of Beneficial Ownership (CBO's). While RUS will generally permit the amount of over-advance deposited in the construction fund-trustee account to be subsequently used by the borrower for RUS approved projects, nothing in this section shall be construed to preclude RUS from exercising any rights or

remedies which RUS may have pursuant to the loan contract.

Dated: December 21, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–33639 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 99–050IF]

RIN 0583–AC65

Food Labeling; Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending until January 1, 2003, the effective date of the requirements that, to bear the claim "healthy" or any other derivative of the term "health," individual meat and poultry products can contain no more than 360 milligrams (mg) sodium, and that meal-type products can contain no more than 480 mg sodium.

DATES: *Effective date:* December 28, 1999.

Comment date: Written comments should be received by January 27, 2000.

ADDRESSES: Submit one original and two copies of written comments to the FSIS Docket Clerk, Docket #99–050IF, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. All comments will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William J. Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation; telephone (202) 205–0495 or FAX (202) 401–1760.

SUPPLEMENTARY INFORMATION:

Background

In the May 10, 1994 **Federal Register** (59 FR 24220), FSIS published a final rule to establish a definition of the term "healthy" or any other derivative of the term "health" and similar terms on meat and poultry product labeling. The final rule provided a definition for the implied nutrient content claim "healthy" for individual meat and poultry products and for meal-type products. The rule defined two separate timeframes in which different criteria for sodium content would be effective. According to the regulations, the first timeframe would last through the first 24 months of implementation (i.e., through November 10, 1997), and the second would begin after the first 24 months of implementation (after November 10, 1997).

Before November 10, 1997, under §§ 317.363(b)(3) and 381.463(b)(3), for an individual meat or poultry product to qualify to bear the term "healthy" or a derivative of the term "health" on the labeling, the product could contain no more than 480 mg of sodium (first-tier sodium level): (1) Per reference amount customarily consumed (RACC) per eating occasion; (2) Per labeled serving size; and (3) Per 50 grams (g) for products with small RACC's (i.e., 30 g or less or 2 tablespoons or less). With regard to the last provision, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount of all nutrients, the per-50-gram criterion refers to the prepared form. After November 10, 1997, to qualify to bear this term, the product could contain no more than 360 mg of sodium (second-tier sodium level) per RACC, per labeled serving size, and per 50 g for products with small RACC's. Under 317.363(b)(3)(i) and 381.463(b)(3)(i), a meal-type product could contain no more than 600 mg of sodium per labeled serving size before November 10, 1997, and no more than 480 mg of sodium per labeled serving size after November 10, 1997.

Also in the **Federal Register** of May 10, 1994 (59 FR 24232), the Food and Drug Administration (FDA) published a final rule to define the term "healthy" under section 403(r) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 343(r)). FDA's rule also defined two separate timeframes in which different criteria for sodium content associated with the use of the "healthy" claim would be effective. FDA's rule established the same sodium levels that the FSIS rule established for two separate timeframes; however, the timeframes in FDA's rule were different (i.e., before January 1, 1998, and after January 1, 1998).

On December 7, 1996, FSIS received a petition from ConAgra, Inc., requesting that §§ 317.363(b)(3) and 381.463(b)(3) be amended to "eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second tier levels of 360 mg sodium requirements for individual foods and 480 mg sodium for meal-type products." As an alternative, the petitioner requested that the effective date of November 10, 1997 be delayed until food technology can develop acceptable products with reduced sodium content, and until there is a better understanding of the relationship between sodium and hypertension.

In response to the petition, FSIS issued an interim final rule on February 13, 1998, (63 FR 7279) to amend §§ 317.363(b)(3) and 381.463(b)(3) to extend the effective date for the lower sodium standards associated with the term "healthy" until January 1, 2000. The extension of the effective date was intended: (1) To allow time for FSIS to reevaluate the standard, including the data contained in the petition and any additional data that the Agency might receive; (2) to conduct any necessary rulemaking; and (3) to allow time for industry to respond to the rule or to any change in the rule that may result from the Agency's reevaluation.

FDA also received a petition from ConAgra, Inc., requesting that the lower sodium standards associated with use of the term "healthy" be removed from the regulations. In the **Federal Register** of April 1, 1997 (62 FR 15390), FDA announced a stay until January 1, 2000, of the provisions relating to the lower sodium standards.

In its February 13, 1998, interim final rule, FSIS asked for data concerning the technological feasibility of reducing the sodium content of individual foods to 360 mg per RACC and of meal-type dishes to 480 mg sodium per labeled serving and for additional information or views on consumer acceptance of meat and poultry foods with such sodium levels. With regard to technological feasibility, the Agency asked for information about the availability or lack of availability of acceptable sodium substitutes, the difficulties in manufacturing different lines of meat and poultry products with lowered sodium levels, and the impact of these sodium levels on the shelf-life stability and the safety of the food. The Agency also asked for comments on other approaches to reduce the amount of sodium in meat and poultry products labeled "healthy."

FSIS received 20 responses to the interim final rule. The comments responding to the rule presented strong and opposing views on whether FSIS should let the second-tier sodium levels take effect. They also contained a significant amount of data relating to use of the term "healthy."

FSIS has reviewed the comments and has also made an independent assessment of the number of foods labeled as "healthy." Based on the information available, the Agency tentatively concludes that, in some cases, the second-tier sodium levels may

be overly restrictive, thereby eliminating a term that may potentially assist consumers in maintaining a healthy diet. The Agency has been unable to complete its reevaluation of the definition of the term "healthy" or to consider fully options that preserve the public health intent while permitting manufacturers to use this term on foods that are consistent with dietary guidelines.

FSIS has not completed its reevaluation of sodium levels associated with the term "healthy" in the time allowed by the February 13, 1998, interim final rule because of: (1) Other Agency priorities; and (2) the need to investigate independently the validity of the strong opposing positions expressed in the comments. Because FSIS needs additional time to consider whether to propose a change in the definition, the Agency is extending the effective date until January 1, 2003.

FSIS also recognizes, as mentioned in the petition, that manufacturers must begin very soon to revise the formulations and labeling, if they have not already done so, for those products that do not comply with the requirement that must be met after January 1, 2000, to bear the claim "healthy." FSIS needs time to consider the supporting and opposing positions and to conduct any necessary rulemaking on the issues raised.

Given these factors, the Agency is persuaded that it is in the public interest to extend the effective date of the provisions for the lower standards for sodium in the definition of "healthy." This action is being taken to: (1) Allow FSIS time to reevaluate the information that supports and opposes the petition, (2) conduct any necessary rulemaking to revise the sodium limits for the term "healthy," and (3) provide time for companies to respond to any changes that may result from Agency rulemaking.

In the **Federal Register** of March 16, 1999, FDA published a final rule that extended the stay of the provisions relating to the lower sodium levels associated with the term "healthy" until January 1, 2003 (64 FR 12886). FDA's reasons for extending the stay of these provisions were largely the same as those that FSIS set out above.

Interested persons may submit comments regarding the appropriateness of the basis for this extension of the effective date of the lower sodium standards in the definition of the term "healthy." FSIS encourages manufacturers who can meet the lower sodium levels for particular foods and still produce an acceptable product to do so even as the Agency reevaluates the issues discussed.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This interim final rule is not intended to have retroactive effect.

If this interim final rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Executive Order 12866 and the Regulatory Flexibility Act

This interim final rule has been determined to be non-significant and was not reviewed by OMB under Executive Order 12866.

The Administrator has made an initial determination that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This interim final rule will impose no new requirements on small entities.

FSIS needs additional time to evaluate the impact of further reducing limits on sodium contents of foods labeled as "healthy" to determine if the costs of such an action exceed the benefits. The petitioner requesting the extension has presented data to support that lowering the sodium content on foods labeled as "healthy" could result in fewer "healthy" foods being consumed or consumers adding table salt to improve the products' palatability. In addition, the petitioner suggested that lack of available substitutes for sodium would impair the industry's ability to continue manufacturing "healthy" foods as currently defined. If these impacts were to occur, the rule would not have the intended effect of improving diets. Some commenters to the previous FSIS interim final rule agreed with the petitioner. In addition to these comments, other commenters provided arguments supporting the implementation of the lower sodium limits. Based on comments received, FSIS believes that further benefits could be achieved by lowering the sodium content of foods labeled as "healthy. However, FSIS has also determined that it is in the public interest to extend the effective date for the lower sodium standards in the definition of "healthy" to provide the Agency additional time to determine if the more restrictive limits would have a negative effect. Unless the effective date is changed, meat and poultry products labeled as "healthy" would have to meet the more restrictive sodium standards on January 1, 2000, which could possibly deprive consumers of these products.

Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629; February 16, 1994), "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," FSIS has considered potential impacts of this interim final rule on environmental and health conditions in low-income and minority communities.

The interim final regulations would not require or compel meat and poultry product establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low-income and minority communities. Further, this interim final rule would not exclude any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this interim final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which

is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedures Act, 5 U.S.C 553, it is the practice of the Administrator to offer interested parties the opportunity to comment on proposed regulations. However, the extended effective date in this interim final rule does not establish any new rules. In addition, this interim final rule must be published in the **Federal Register** prior to January 1, 2000, because that is the current effective date in the regulations. Therefore, the Administrator has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Administrator waives the 30-day delayed effective date under 5 U.S.C. 553(d).

Paperwork Requirements

There is no paperwork associated with this action.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection, Nutrition.

9 CFR Part 381

Food labeling, Nutrition, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is amending parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 317.363 [Amended]

2. Section 317.363 is amended by removing the phrase "through January 1, 2000" in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with "through January 1, 2003".

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.463 [Amended]

4. Section 381.463 is amended by removing the phrase "through January 1, 2000" in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with "through January 1, 2003".

Done at Washington, DC, on: December 21, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–33530 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 99–045F]

Fee Increase for Meat and Poultry Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees that FSIS charges meat and poultry establishments, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These fee increases reflect the increased cost of inspection, the national and locality pay raise for Federal employees (proposed 4.8 percent effective January 2000), the increased laboratory costs, and the applicable travel and operating costs. The fee increases will be effective January 1, 2000. At this time, FSIS is not amending the fee for the Accredited Laboratory Program.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130–S, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3552.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1999, FSIS published a proposed rule (64 FR 61223) to increase the fees that FSIS charges meat and poultry establishments, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services and laboratory services. FSIS provided 30 days for public comment, ending the comment period on December 10, 1999.

FSIS received one comment from a Canadian firm in response to the proposal. The concerns raised by the commenter addressed inspections performed by the Animal and Plant Health Inspection Service, and therefore, do no fall within the scope of this rulemaking.

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory inspection by Federal inspectors of meat and poultry slaughtered or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry. The cost of mandatory inspection (excluding such services performed on holidays or on an overtime basis) is borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection, certification, and identification services for meat and poultry. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts not subject to the FMIA

or the PPIA. These services include the certification of technical animal fats and the inspection of exotic animal products. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

FSIS also provides certain voluntary laboratory services that establishments or others may request FSIS to perform. The cost of these services, which are provided under the Agricultural Marketing Act of 1946, must be recovered by FSIS. Laboratory services are provided for four types of analytic testing. These are: Microbiological testing, residue chemistry tests, food composition tests, and pathology testing.

FSIS is making final the proposed regulations by amending 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $37.00 per hour per program employee to $37.88 per hour per program employee (an increase of 2.38%). FSIS is also amending § 391.3 to increase the rate for providing meat and poultry overtime and holiday inspection services from $36.84 per hour per program employee to $39.76 per hour per program employee (an increase of 7.93%). Additionally, FSIS is amending § 391.4 to increase the rate for meat and poultry laboratory services from $50.88 per hour per program employee to $58.52 per hour per program employee (an increase of 15.02%).

The increase in base time and overtime and holiday time rates is proportional to the salary increase and the inflation index rate recommended by the Office of Management and Budget for overhead costs (applicable travel and operating costs). The increase in laboratory services relative to the other two fees is due to (1) an increase in the direct costs of laboratory services and (2) a decrease in the hours of activity. The lower the usage, the higher the fee, because there are less hours over which to distribute the overhead costs.

To recover the increased costs in an expeditious manner, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**. Therefore, the fee increases will be effective January 1, 2000.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, it was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

The Administrator, FSIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the *Regulatory Flexibility Act* (5 U.S.C. 601). The fee increases provided for in this document reflect a small increase in the costs currently borne by those entities which elect to utilize certain inspection services *voluntarily*. These voluntary services are generally sought by larger establishments because of larger production volume or because of greater complexity and diversity in the products they produce; the small establishments do not seek these services perhaps because they cannot afford them. Therefore, the small establishments are not likely to be affected adversely by the increases.

The extent of incremental adverse impact is estimated from the percentage increases in base time and overtime and holiday rates. The increase in base time rate from $37.00/hour to $37.88/hour amounts to 2.38 percent. The overtime and holiday services rate from $36.84 to $39.76 amounts to 7.93 percent or about 8 percent. These increases are consistent with similar increases in wages and overtime rates in the private sector. For example, according to the Bureau of Labor Statistics web site, the average wage, including overtime, in the poultry slaughtering and processing industry (SIC 2015) increased by about 5 percent (from $344.73 per week in July 1998 to $361.70 in July 1999). The average hourly wage, excluding the overtime rate, increased by 4 percent during the same period. The increase in laboratory fees of 15.02 percent (from $50.88/hour to $58.52/hour) reflects an increase in the direct cost of these services to FSIS, coupled with lower usage by industry.

The economic impact of the increase in the fees on small businesses in the meat and poultry industries would depend on the structure of these industries. Data from the U.S. Bureau of the Census, Survey of Industries, 1994, indicate that the meat industry is dominated by small firms and establishments relative to the poultry industry. For example, based on the U.S. Small Business Administration's (SBA) definition of small business by the number of employees (fewer than 500), 96 percent of 1,226 firms comprising the meat industry (SIC 2011) are small. Similarly, 90 percent of individual meat establishments or plants in this industry are small. In 1994, these small businesses accounted for 19 percent of total employment in this industry. Their share of payroll was 18 percent of the total payroll of $2.777 billion and their revenues were 16 percent of the total revenues of $55.814 billion. In contrast, the poultry industry is comprised of relatively larger firms and establishments. For example, 51 percent of 567 establishments in this industry are large, according to the SBA definition. This industry has 332 firms with 207,875 workers and a payroll of $3.5 billion. The estimated revenue of this industry amounted to $27.111 billion in 1994.

FSIS believes that the small establishments in the meat and poultry industry will not be affected adversely by the increases in the fees for four reasons. First, the fee increases are voluntary so that the establishments do not have to seek the services of FSIS inspector program personnel. Second, establishments that seek FSIS services are likely to have calculated that the incremental costs of voluntary inspection services would be less than the incremental expected benefits of additional revenues they would realize from additional production. Third, the industry is likely to pass through the costs to consumers without significantly losing its market because price elasticity of demand for meat and poultry is inelastic. For example, Huang (1993) analyzed demand for meats and other products containing meat and poultry. Huang concluded that the price elasticity was −0.36, i.e., an increase in price of meat or poultry products by one percent would be associated with a decrease in its demand by only 0.36 percent. (Huang, Kao S., *A Complete System of U.S. Demand for Food*. USDA/ERS Technical Bulletin No. 1821, 1993, p.24). In short, consumers are unlikely to reduce their demand for meat and poultry significantly when meat or poultry prices are increased by a few pennies a pound. Finally, the supply of beef and poultry products is likely to be very price elastic because, as noted above, there are hundreds of firms in these industries. Any single producer cannot raise the price of its products without losing its market share significantly.

Executive Order 12988

This final rule has been reviewed by FSIS under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 of the FMIA and PPIA regulations, respectively, must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an

FSIS employee relating to inspection services provided under the FMIA or PPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY SERVICES

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $37.88 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 shall be $39.76 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12 and 362.5 shall be $58.52 per hour per program employee.

* * * * *

Done in Washington, DC on December 21, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–33667 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS99–1]

Appraisal Subcommittee; Appraiser Regulation; Disclosure of Information

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council ("ASC").

ACTION: Final rules.

SUMMARY: The ASC is adopting amendments to its regulations governing the public disclosure of information to reflect changes to the Freedom of Information Act ("FOIA") as a result of the enactment of the Electronic Freedom of Information Act Amendments of 1996 ("E–FOIA"). among other things, the new rules implement expedited FOIA processing procedures; implement processing deadlines and appeal rights created by E–FOIA; and describe the expanded range of records available to the public through the ASC's Internet World Wide Web site (*http://www.asc.gov*).

EFFECTIVE DATE: January 12, 2000.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, at (202) 872–7520 or marcwl@asc.gov; Appraisal Subcommittee; 2000 K street, NW, Suite 310; Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Authority and Section-by-Section Analysis

E–FOIA, Public Law 104–231, amended the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Among other things, E–FOIA requires agencies to promulgate regulations that provide for expedited processing of certain requests for records. On October 22, 1999, the ASC proposed for comment these amendments to its related regulations in 12 CFR part 1102, subpart D (1999) ("subpart") to implement E–FOIA. In addition, the ASC proposed changes to the subpart on fees and fee waivers, and portions of this subpart have been reorganized. These proposals were published for comment on November 1, 1999, at 64 FR 58800. No comments were received, and the ASC is adopting the proposed amendments as published, with the exception of a few minor stylistic and non-substantive changes.

Section 1102.300 has been expanded to clarify the purpose and scope of the various sections found within the subpart. Section 1102.301 has been amended to incorporate several E–FOIA definitions. Section 1102.302 remains unchanged. Section 1102.303 has been updated to reflect changes in the ASC's office address and staff organization. Current § 1102.304, which incorporated by reference the FOIA regulations of the Federal Financial Institutions Examination Council ("FFIEC"), has been deleted. New § 1102.304 specifies records that must be published in the **Federal Register** under FOIA. Section 1102.305 identifies the ASC's Internet World Wide Web site as the primary source of ASC information and describes the information that is made available over the Internet as required by E–FOIA. The section also sets out the categories of information that are publicly available upon request. The ASC notes that the records provided over the Internet cover a much smaller scope than those available by request. E–FOIA only requires the ASC to place on the Internet records created after November 1, 1996. The ASC, however, is increasing the resources available over the Internet on its World Wide Web site.

Section 1102.306 describes the ASC's procedures for processing FOIA requests. This section essentially is new because it no longer incorporates by reference the FFIEC's FOIA rules. It also reflects the changes required by E–FOIA. Because of the small size of the ASC and the dearth of FOIA requests received, the ASC has determined not to provide multitrack processing. The amendments, however, would provide expedited processing where a requester has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response. The time limit for expedited processing is set at ten business days, with expedited procedures available for an appeal of the ASC's determination not to provide expedited processing. Under E–FOIA, there are only two types of circumstances that can meet the compelling need standard: Where failure to obtain the records

expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the amendments use the term "representative of the news media" to describe a person primarily engaged in disseminating information. To demonstrate a compelling need, a requester must submit a certified statement, a sample of which may be obtained from the ASC.

All information requests that do not meet expedited processing standards will be handled under regular processing procedures, as required by FOIA and E–FOIA. The statutory time limit for regular-track processing would be extended to twenty business days, pursuant to E–FOIA, from the previous ten business days.

Section 1102.306(e) contains the FOIA fees and the standards for waiver of fees. The fee provisions have been revised to clarify that the processing time of a FOIA request does not begin until: (1) Payment is received when payment in advance is required, or (2) a person has requested a fee waiver and has not agreed to pay the fees if the waiver request is denied.

New § 1102.307 covers the disclosure of exempt records. The section prohibits the disclosure of exempt records, and, at the same time, authorizes the ASC, through its Chairman or Executive Director, to release certain types of otherwise exempt records upon receipt of a written request specifically identifying the subject records and providing sufficient information for the ASC to evaluate whether good cause for disclosure exists.

The next two sections, 1102.308 and 1102.309, carry over unchanged current 1102.30 and 1102.306, respectively.

The final section, 1102.310, is new. The section describes the procedures for serving subpoenas or other legal process on the ASC.

The ASC notes that the substantive portions of these amendments are based on 12 CFR part 309, the Federal Deposit Insurance Corporation's regulations concerning the disclosure of information.

II. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements regarding this collection of information were submitted to, and approved by, the Office of Management and Budget (OMB). A copy of this Information Collection Request document (OMB control number 3139–0006) may be obtained from Marc L. Weinberg, General Counsel; Appraisal Subcommittee; 2000 K Street, NW, Suite 310; Washington, DC 20006, or by calling (202) 872–7520. Today's action has no impact on the information collection burden estimates made previously. This change does not impose new requirements. In fact, by implementing E–FOIA, this change reduces existing burdens.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the ASC must determine whether the regulatory action is "significant" and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, it reduces the burden on information requestors implementing E–FOIA's broad electronic disclosure provisions. Consequently, under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by OMB.

C. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the ASC to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the ASC may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the ASC consults with State and local officials early in the process of developing the proposed regulation. The ASC also may not issue a regulation that has federalism implications and that preempts State law unless the ASC consults with State and local officials early in the process of developing the proposed regulation.

If the ASC complies by consulting, Executive Order 13132 requires the ASC to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement ("FSIS"). The FSIS must include a description of the extent of ASC's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when ASC transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the ASC must include a certification from the agency's Federalism Official stating that ASC has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action has minimal, if any, impacts associated with this action; thus, the requirements of § 6 of the Executive Order do not apply to this rule.

D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act, Pub. L. 96–354, whenever a Federal agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis ("REA") that describes the impact of the rule on small entities (*i.e.*, small businesses, organizations, and

governmental jurisdictions). That analysis is not necessary if the agency determines that the rule will not have a significant economic impact on a substantial number of small entities.

The ASC believes that promulgation of this rule, rather than imposing additional requirements, reduces previous requirements because it implements E–FOIA's broad public disclosure provisions. Because the impacts are anticipated to be insignificant or beneficial, ASC has concluded that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, an RFA is not required.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under § 202 of the UMRA, ASC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, this rule relieves previous burdens by implementing E–FOIA. Because the rule is not expected to result in the expenditure by State, local, and tribal governments or the private sector of $100 million or more in any one year, the ASC has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the ASC is not required to develop a plan with regard to small governments. For the reasons stated above, the requirements of the UMRA do not apply to this section.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, banking, Freedom of Information, Mortgages, Reporting and recordkeeping requirements.

Text of the Rule

For the reasons set forth in the preamble, title 12, chapter XI, of the Code of Federal Regulations is amended as follows:

PART 1102—APPRAISER REGULATION

Subpart D—Description of Office, Procedures, Public Information

1. The authority citation for part 1102, subpart D continues to read as follows:

Authority: 5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p 235).

2. Section 1102.300 is revised to read as follows:

§ 1102.300 Purpose and scope.

This part sets forth the basic policies of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") regarding information it maintains and the procedures for obtaining access to such information. This part does not apply to the Federal Financial Institutions Examination Council. Section 1102.301 sets forth definitions applicable to this part 1102, subpart D. Section 1102.302 describes the ASC's statutory authority and functions. Section 1102.303 describes the ASC's organization and methods of operation. Section 1102.304 describes the types of information and documents typically published in the **Federal Register**. Section 1102.305 explains how to access public records maintained on the ASC's World Wide Web site and at the ASC's office and describes the categories of records generally found there. Section 1102.306 implements the Freedom of Information Act ("FOIA") (5 U.S.C. 552). Section 1102.307 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 1102.308 provides anyone with the right to petition the ASC to issue, amend, and repeal rules of general application. Section 1102.309 sets out the ASC's confidential treatment procedures. Section 1102.310 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the ASC.

3. Section 1102.301 is revised to read as follows:

§ 1102.301 Definitions.

For purposes of this subpart:

(a) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) *Commercial use request* means a request from, or on behalf of, a requester who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the ASC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(c) *Direct costs* means those expenditures the ASC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(d) *Disclose or disclosure* mean to give access to a record, whether by producing the written record or by oral discussion of its contents. Where the ASC member or employee authorized to release ASC documents makes a determination that furnishing copies of the documents is necessary, these words include the furnishing of copies of documents or records.

(e) *Duplication* means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (*e.g.*, magnetic tape or computer disk).

(f) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(g) *Field review* includes, but is not limited to, formal and informal investigations of potential irregularities occurring at State appraiser regulatory agencies involving suspected violations of Federal or State civil or criminal laws, as well as such other investigations as may conducted pursuant to law.

(h) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in paragraph (b) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i) *Record* includes records, files, documents, reports correspondence, books, and accounts, or any portion thereof, in any form the ASC regularly maintains them.

(j) *Representative of the news media* means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast

news to the public. The term news means information that is about current events or that would be of current interest to the general public.

(k) *Review* means the process of examining documents located in a response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g,* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(m) *State appraiser regulatory agency* includes, but is not limited to, any board, commission, individual or other entity that is authorized by State law to license, certify, and supervise the activities or persons authorized to perform appraisals in connections with federally related transactions and real estate related financial transactions that require the services of a State licensed or certified appraiser.

4. Section 1102.303 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1102.303 Organization and methods of operation.

(a) * * *

(b) *ASC members and staff.* The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy, and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by an Executive Director.

(c) * * *

(d) *ASD Address* ASC offices are located at 2000 K Street, NW, Suite 310; Washington, DC 20006.

5. Section 1102.304 is revised to read as follows:

§ 1102.304 Federal Register publication.

The ASC publishes the following information in the **Federal Register** for the guidance of the public:

(a) Description of its organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or re nests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the ASC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rulemaking.

6. Section 1102.305 is amended by revising the the section heading and paragraphs (a) and (c) to read as follows:

§ 1102.305 Publicly available records.

(a) *Records available on the ASCs World Wide Web site*—(1) Discretionary release of documents. The ASC encourages the public to explore the wealth of resources available on the ASC's Internet World Wide Web site, located at: *http://www.asc.gov.* The ASC has elected to publish a broad range to materials on its Web site.

(2) *Documents required to be made available via computer telecommunications.* (i) The following types of documents created on or after November 1, 1996, and required to be made available through computer telecommunications, may be found on the ASC's Internet World Wide Web site located at: *http://www.asc.gov:*

(A) Final opinions, including concurring and dissenting opinions, as well as final orders, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the ASC that are not published in the **Federal Register**;

(C) Administrative staff manuals and instructions to staff that affect a member of the public;

(D) Copies of all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under § 1102.306 that, because of the nature of their subject matter, the ASC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the ASC may delete identifying details when it makes available or publishes any records. If reduction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

* * * * *

(c) *Applicable fees.* (1) If applicable, fees for furnishing records under this section are as set forth in § 1102.306(e).

(2) Information on the ASC's World Wide Web site is available to the public without charge. If, however, information available on the ASC's World Wide Web site is provided pursuant to a Freedom of Information Act request processed under g 1102.306 then fees apply and will be assessed pursuant to § 1102.306(e).

§§ 1102.306 and 1102.307 [Redesignated as §§ 1102.309 and 1102.308]

7. Sections 1102.306 and 1102.307 are redesignated as §§ 1102.309 and 1102.308 respectively.

8. A new § 1102.306 is added to read as follows:

§ 1102.306 Procedures for requesting records.

(a) *Making a request for records.* (1) The request shall be submitted in writing to the Executive Director:

(i) By facsimile clearly marked "Freedom of Information Act Request" to (202) 872–7501;

(ii) By letter to the Executive Director marked "Freedom of Information Act Request"; 2000 K Street, NW, Suite 301; Washington, DC 20006; or

(iii) By sending Internet e-mail to the Executive Director marked "Freedom of Information Act Request" at his or her e-mail address listed on the ASC's World Wide Web site.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, non-commercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (e)(1)(x) of this section; and

(ii) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the ASC's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any ASC operations.

(b) *Defective requests.* The ASC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this subpart. The ASC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(c) *Processing requests.* (1) *Receipt of requests.* Upon receipt of any request that satisfies paragraph (a) of this section, the Executive Director shall assign the request to the appropriate processing track pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Executive Director actually receives the request.

(2) *Expedited processing.* (i) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response, the ASC shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(A) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) The requester can establish that it is primarily engaged in information dissemination as its main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the re request; and

(C) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(ii) The formality of the certification required to obtain expedited treatment may be waived by the Executive Director as a matter of administrative discretion.

(3) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (g) of this section, and the ASC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(4) *Priority of responses.* Consistent with sound administrative process, the ASC processes requests in the order they are received. However, in the ASC's discretion, or upon a court order in a matter to which the ASC is a party, a particular request may be processed out of turn.

(5) *Notification.* (i) The time for response to requests will be twenty (20) working days except:

(A) In the case of expedited treatment under paragraph (c)(2) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the ASC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed $250 as provided for in paragraph (e)(1)(iv) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to the paragraph (c)(5)(i)(B) and (e)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (c)(5)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (c)(5)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the ASC when the ASC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities that are not located at the ASC's Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the ASC having a substantial interest in the determination.

(6) *Response to request.* In response to a request that satisfies the requirements of paragraph (a) of this section, a search shall be conducted of records maintained by the ASC in existence on the date of receipt of the request, and a review made of any responsive information located. To the extent permitted by law, the ASC may redact identifying details when it makes available or publishes any records. If redaction is appropriate, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The ASC shall notify the requester of:

(i) The ASC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the ASC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the Chairman of the ASC within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(d) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the ASC or makes other acceptable arrangements, or the ASC deems it appropriate to send the documents by another means.

(2) The ASC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the ASC in that form or format, but the ASC need not provide more than one copy of any record to a requester.

(3) By arrangement with the requester, the ASC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be provided.

(e) *Fees* (1) *General rules.* (i) Persons requesting records of the ASC shall be charged for the direct costs of search, duplication, and review as set forth in paragraphs (e)(2) and (e)(3) of this section, unless such costs are less than the ASC's cost of processing the requester's remittance.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if

located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the ASC determines that the estimated costs of search, duplication, or review of requested records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the ASC will advise the requester of the estimated costs. The requester must agree in writing to pay the costs of search, duplication, and review prior to the ASC initiating any records search.

(v) If the ASC estimates that its search, duplication, and review costs will exceed $250, the requester must pay an amount equal to 20 percent of the estimated costs prior to the ASC initiating any records search.

(vi) The ASC ordinarily will collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The ASC may require any requester who has previously failed to pay charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The ASC also may require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the ASC initiating any additional records search.

(viii) The ASC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in § 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the ASC to respond to a request will not begin to run until the ASC has received the requester's written agreement under paragraph (e)(1)(iv) of this section, and advance payment under paragraph (e)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (e)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the ASC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Director (or designee), and the requester will be notified in writing of his or her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the ASC's Chairman pursuant to the procedure set forth in paragraph (g) of this section.

(2) *Chargeable fees by category of requester.* (i) Commercial use requesters shall be charged search, duplication, and review costs.

(ii) Educational institutions, noncommercial scientific institutions, and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (e)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the ASC may charge to records requesters will be established by the Executive Director. The ASC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change. The fee schedule will be published periodically on the ASC's Internet World Wide Web site (*http://www.asc.gov*) and will be effective on the date of publication. Copies of the fee schedule may be obtained by request at no charge by contacting the Executive Director by letter, Internet email or facsimile.

(i) *Manual searches for records.* The ASC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportioned to the search multiplied by the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is $.25.

(B) For other methods of reproduction or duplication, the ASC will charge the actual direct costs of reproducing or duplicating the documents, including each involved employee's basic rate of pay plus 16 percent to cover employee benefit costs.

(iv) *Review of records.* The ASC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. The ASC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the ASC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services, other than a readily produced electronic form or format, is at the ASC's discretion. The ASC may recover the full costs of providing such services to the requester.

(4) *Use of contractors.* The ASC may contact with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the ASC has determined that the ultimate cost to the requester will be no greater than it would be if the ASC performed these tasks itself. In no case will the ASC contract our responsibilities which FOIA provides that the ASC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(f) *Exempt information.* A request for records may be denied if the requested record contains information that falls into one or more of the following categories.[1] If the requested record contains both exempt and nonexempt information, the nonexempt portions, which may reasonable be segregated from the exempt portions, will be released to the requester. If redaction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The categories of exempt records are as follows:

(1) Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the ASC;

(3) Records specifically exempted from disclosure by statute, provided that such statute:

---

[1] Classification of a record as exempt from disclosure under the provisions of this paragraph (f) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other Federal statute, any applicable regulation of ASC or any other Federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the ASC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trail or an impartial adjudication;

(ii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the ASC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(g) *Appeals.* (1) Appeals should be addressed to the Executive Director; ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (e)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the ASC's Chairman (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (c)(3) of this section, the ASC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the ASC will notify the appellant within ten business days after receipt of the appeal of the ASC's disposition.

(5) Complete payment of any outstanding fee invoice will be required before an appeal is processed.

(h) *Records of another agency.* If a requested record is the property of another Federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the ASC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

(9) A new § 1102.307 is added to read as follows:

§ 1102.307 Disclosure of exempt records.

(a) *Disclosure prohibited.* Except as provided in paragraph (b) of this section or by 12 CFR part 1102, subpart C, no person shall disclose or permit the disclosure of any exempt records, or information contained therein, to any persons other than those officers, directors, employees, or agents of the ASC or a State appraiser regulatory agency who has a need for such records in the performance of their official duties. In any instance in which any person has possession, custody or control of ASC exempt records or information contained therein, all copies of such records shall remain the property of the ASC and under no circumstances shall any person, entity or agency disclose or make public in any manner the exempt records or information without written authorization from the Executive Director, after consultation with the ASC General Counsel.

(b) *Disclosure authorized.* Exempt records or information of the ASC may be disclosed only in accordance with the conditions and requirements set forth in this paragraph (b). Requests for discretionary disclosure of exempt records of information pursuant to this paragraph (b) may be submitted directly to the Executive Director. Such administrative request must clearly state that it seeks discretionary disclosure of exempt records, clearly identify the records sought, provide sufficient information for the ASC to evaluate whether there is good cause for disclosure, and meet all other conditions set forth in paragraph (b)(1) through (3) of this section. Authority to disclose or authorize disclosure of exempt records of the ASC is delegated to the Executive Director, after consultation with the ASC General Counsel.

(1) *Disclosure by Executive Director.* (i) The Executive Director, or designee, may disclose or authorize the disclosure of any exempt record in response to a valid judicial subpoena, court order, or other legal process, and authorize any current or former member, officer, employee, agent of the ASC, or third party, to appear and testify regarding an exempt record or any information obtained in the performance of such person's official duties, at any administrative or judicial hearing or proceeding where such person has been served with a valid subpoena, court order, or other legal process requiring him or her to testify. The Executive Director shall consider the relevancy of such exempt records or testimony to the ligation, and the interests of justice, in determining whether to disclose such records or testimony. Third parties seeking disclosure of exempt records or testimony in litigation to which the ASC is not a party shall submit a request for discretionary disclosure directly to the Executive Director. Such requests shall specify the information sought with reasonable particularity and shall be accompanied by a statement with supporting documentation showing in detail the relevance of such exempt information to the litigation, justifying good cause for disclosure, and a commitment to be bound by a protective order. Failure to exhaust such administration request prior to service of a subpoena or other legal process may, in the Executive Director's discretion, serve as a basis for objection to such subpoena or legal process.

(ii) The Executive Director, or designee, may in his or her discretion and for good cause, disclose or

authorize disclosure of any exempt record or testimony by a current or former member, officer, employee, agent of the ASC, or third party, sought in connection with any civil or criminal hearing, proceeding or investigation without the service of a judicial subpoena, or other legal process requiring such disclosure or testimony. If he or she determines that the records or testimony are relevant to the hearing, proceeding or investigation and that disclosure is in the best interests of justice and not otherwise prohibited by Federal statute. Where the Executive Director or designee authorizes a current or former member, officer, director, empl9oyee or agent of the ASC to testify or disclose exempt records pursuant to this paragraph (b)(1), he or she may, in his or her discretion, limit the authorization to so much of the record or testimony as is relevant to the issues at such hearing, proceeding or investigation, and he or she shall give authorization only upon fulfillment of such conditions as he or she deems necessary and practicable to protect the confidential nature of such records or testimony.

(2) *Authorization for disclosure by the Chairman of the ASC.* Except where expressly prohibited by law, the Chairman of the ASC may, in his or her discretion, authorize the disclosure of any ASC records. Except where disclosure is required by law, the Chairman may direct any current or former member, officer, director, employee or agent of the ASC to refuse to disclose any record or to give testimony if the Chairman determines, in his or her discretion, that refusal to permit such disclosure is in the public interest.

(3) *Limitations on disclosure.* All steps practicable shall be taken to protect the confidentiality of exempt records and information. Any disclosure permitted by paragraph (b) of this section is discretionary and nothing in paragraph (b) of this section shall be construed as requiring the disclosure of information. Further, nothing in paragrah (b) of this section shall be construed as restricting, in any manner, the authority of the ASC, the Chairman of the ASC, the Executive Director, the ASC General Counsel, or their designees, in their discretion and in light of the facts and circumstances attendant in any given case, to require conditions upon, and to limit, the form, manner, and extent of any disclosure permitted by this section. Wherever practicable, disclosure of exempt records shall be made pursuant to a protective order and redacted to exclude all irrelevant or non-responsive exempt information.

10. Section 1102.310 is added as follows:

§ 1102.310 Service of process.

(a) *Service.* Any subpoena or other legal process to obtain information maintained by the ASC shall be duly issued by a court having jurisdiction over the ASC, and served upon the Chairman ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006. Where the ASC is named as a party, service of process shall be made pursuant to the Federal Rules of Civil Procedure upon the Chairman at the above address. The Chairman shall immediately forward any subpoena, court order or legal process to the General Counsel. If consistent with the terms of the subpoena, court order or legal process, the ASC may require the payment of fees, in accordance with the fee schedule referred to in § 1102.306(e) prior to the release of any records requested pursuant to any subpoena or other legal process.

(b) *Notification by person served.* If any current or former member, officer, employee or agent of the ASC, or any other person who has custody of records belonging to the ASC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the ASC, such person shall promptly advise the Executive Director of such service, the testimony and records described in the subpoena, and all relevant facts that may assist the Executive Director, in consultation with the ASC General Counsel, in determining whether the individual in question should be authorized to testify or the records should be produced. Such person also should inform the court or tribunal that issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) *Appearance by person served.* Absent the written authorization of the Executive Director or designee to disclose the requested information, any current or former member, officer, employee, or agent of the ASC, and any other person having custody of records of the ASC, who is required to respond to a subpoena or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Counsel.

Dated: December 20, 1999.

Herbert S. Yolles,

Chairman.

[FR Doc. 99–33476 Filed 12–27–99; 8:45 am]

BILLING CODE 6201–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1780

RIN 2550–AA04

Rules of Practice and Procedure

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule that establishes the rules of procedure to be followed when OFHEO conducts hearings on the record and rules of practice before OFHEO. The rule implements the provisions of title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, regarding hearings on the record in certain enforcement actions against the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or directors or executive officers of the Enterprises. The rule provides OFHEO personnel, the Enterprises, the Enterprises' directors and executive officers, and other interested parties with the guidance necessary to prepare for and participate in such hearings.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: David A. Felt, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3829 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Supplementary Information is organized according to this table of contents:

I. Background
II. Comments on the Proposed Rules of Practice and Procedures
III. Synopsis of the Final Rule
IV. Regulatory Impact

I. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial

Safety and Soundness Act of 1992 (1992 Act), established OFHEO as an independent office within the Department of Housing and Urban Development (HUD) to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operated in a safe and sound manner. Subsection 1313(b) of the 1992 Act refers to certain authorities that the Director of OFHEO (Director) may exercise exclusive of the Secretary of HUD (Secretary) [1] and other authorities that are subject to review and approval by the Secretary.[2] The Secretary's roles, duties, and responsibilities may be delegated to the Director. Among the exclusive authorities of the director is the authority to issue regulations to carry out the duties of the Director under Subtitle C of the Act.[3] Prior to issuing a cease-and-desist order, OFHEO must conduct hearings on the record and provide the subjects of the order with notice and the opportunity to participate in such hearings.[4] Prior to imposing civil money penalties, OFHEO must provide notice and the opportunity for a hearing to the persons subject to the penalties.[5] This final rule provides the rules of practice and procedure that will be applied in these hearings and any other hearings on the record that may be conducted by the Director.

Fannie Mae and Freddie Mac are Government-sponsored enterprises with important public purposes. These purposes include providing liquidity to the residential mortgage market and increasing the availability of mortgage credit benefiting low- and moderate-income families, rural areas, central cities, and areas that are underserved by lending institutions. The Enterprises engage in two principal businesses: investing in residential mortgages and guaranteeing residential mortgage securities. The securities they guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States.[6] Despite the absence of such Federal backing, prices of Enterprise debt securities reflect a market perception that the U.S. Government has a strong interest in preventing a default by either Enterprise. This perception principally arises from the public purposes of the Enterprises, their Federal charters, their potential access to a U.S. Treasury line of credit and the statutory exemptions of their debt and mortgage-backed securities from otherwise mandatory investor protection provisions.[7] This perception is bolstered by concern that the insolvency of either Enterprise would have serious consequences for the nation's housing markets and financial system.

On September 24, 1998 (63 FR 51031), OFHEO published a Notice of Proposed Rulemaking (NPR) that included proposed Rules of Practice and Procedure. The NPR proposed rules of procedure for hearings on the record before OFHEO and rules of practice governing individuals who practice before OFHEO. The comment period closed December 23, 1998.

OFHEO received comments from each Enterprise in response to the proposed rulemaking. A discussion of those comments follows.

II. Comments on the Proposed Rules of Practice and Procedure

General Comments

Fannie Mae fully supported OFHEO's efforts to formalize the rules of practice and procedure governing the conduct of hearings on the record. Fannie Mae stated its belief that any such hearing in the future would occur only in the most extraordinary of circumstances and emphasized its commitment to working with OFHEO in a good faith, constructive relationship. Fannie Mae offered various comments and recommended a number of changes that Fannie Mae asserts would make the rules more consistent with the Administrative Procedure Act (APA) [8] and with the practices in place at the Federal banking agencies. Although, as explained below, OFHEO does not share the view that anything in the proposed rule was inconsistent with the APA, OFHEO found that some of the recommended changes added clarity to the rule and has incorporated them. Each of the recommendations is discussed in detail below.

Freddie Mac expected that administrative enforcement proceedings would occur rarely, if ever, and that OFHEO would not consider initiating such a proceeding until both sides have sought cooperatively to resolve the matters at issue through alternative means. Freddie Mac stated that if OFHEO were to initiate a hearing on the record, the rules of practice and procedure should conform with OFHEO's statutory enforcement authority and be suited to the potential issues and parties to such a proceeding. In this regard, Freddie Mac recommended a number of changes that would, in its view, improve the rules by fostering early resolution, streamlining the provisions addressing sanctions to limit sanctions against individuals to those necessary to conduct an adjudicatory hearing or related proceedings, and ensuring fairness and due process. As explained below, OFHEO has considered each of these recommendations and, in response to some of them, has made changes in the final rule.

Utilize Pre-Filing Submissions To Foster Early Resolution

Freddie Mac's comments encouraged OFHEO to adopt a procedure that would allow a potential respondent to submit a written statement of its position, prior to filing a formal notice of charges. Freddie Mac felt that a prior submission could provide the agency with additional facts, allow prompt and early correction of any miscommunication and point out weaknesses in the agency's preliminary position. In these and other ways, Freddie Mac suggests, the submission would assist OFHEO in making a well-reasoned decision about whether to pursue an alternative resolution or initiate a formal enforcement action. Freddie Mac cited a statement by the Securities and Exchange Commission (SEC) as an example of successful use of such prior submissions, which that agency has used for more than 20 years to help determine whether to file or otherwise initiate a formal proceeding.[9]

OFHEO shares Freddie Mac's desire to foster early resolution of enforcement matters and to ensure well-reasoned decision-making in determining whether to pursue formal enforcement actions. OFHEO has reviewed the cited SEC release and the practices of other

---

[1] 12 U.S.C. 4513(b).

[2] Any determinations, actions or functions of the Director that are not referred to in subsection 1313(b) are subject to the review and approval of the Secretary. 1992 Act, section 1313(c) (12 U.S.C. 4513(c)).

[3] 1992 Act, section 1313(b) (12 U.S.C. 4513(b)).

[4] 1992 Act, section 1371 (12 U.S.C. 4631).

[5] 1992 Act, section 1376 (12 U.S.C. 4636).

[6] Federal Home Loan Mortgage Corporation act, sections 301(4) and 306(h)(2), (12 U.S.C. 1451 *note* (b)(3)–(4), 12 U.S.C. 1455(h)(2)); Federal National Mortgage Association Charter Act, sections 301(4) and 304(b) (12 U.S.C. 1716(3)–(4), 12 U.S.C. 1719(b)); and 1992 Act, section 1302(4) (12 U.S.C. 4501(4)).

[7] *See, e.g.*, 12 U.S.C. 24 (authorizing unlimited investment by national banks in obligations of, or issued by, the Enterprises); 12 U.S.C. 1455(g), 1719(d) and 1723c (exempting Enterprise securities from oversight from Federal regulators); 15 U.S.C. 77r–l(a) (preempting State law that would treat Enterprise securities differently from obligations of the United States for investment purposes); and 15 U.S.C. 77r–l(c) (exempting Enterprise securities from State securities laws).

[8] 5 U.S.C. 500–559.

[9] Securities Act Release No. 5310, 38 FR 5457, Mar. 1, 1973.

agencies. None of those agencies has published a regulation providing for submissions prior to a notice of charges. OFHEO will permit persons involved in an investigation to present a statement to OFHEO setting forth their interests and position. However, OFHEO cannot put itself in a position where, as a result of the establishment of formal procedural requirements, it would lose its ability to respond timely to actionable activities or conditions. Accordingly, OFHEO will not include among its procedural regulations a requirement that OFHEO obtain or solicit views or statements from persons against which notices of charges are soon to be issued.

Section 1780.1 Scope

Fannie Mae recommended that the term "director of any Enterprise" at § 1780.1(b) be defined in order to "clarify that the term 'directors' means members of the board of directors." The term, as used in this section of the final rule, refers to sections 1371 and 1376 of the 1992 Act and is intended to have the same meaning as the same term in the Act. Accordingly, OFHEO found it unnecessary to define the term in the final rule.

Freddie Mac recommended that § 1780.1 be amended to list civil money penalty hearings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a, among the hearings subject to the regulation. Although, as Freddie Mac noted, such hearings would be covered by the catchall provision in the section, OFHEO has incorporated the recommended change to make that coverage explicit.

Section 1780.3 Definitions

Both Enterprises commented about proposed § 1780.3(h), which defined the term "presiding officer" to be "an administrative law judge or any other person designated by the Director to conduct a hearing." Fannie Mae recommended that OFHEO specify that only an ALJ should be permitted to conduct administrative hearings. Fannie Mae included a description of the administrative law judge (ALJ) program and opined that the APA does not contemplate that an agency head appoint "any person" to preside over hearings conducted on the record. Fannie Mae stated that the rule does "not set forth any justification for OFHEO's departure from the commonly understood rules of the APA or from the practice of other safety and soundness regulators." Fannie Mae asserts that allowing persons other than ALJs to preside over hearings under the APA is inconsistent with accepted APA principles and with the uniform practice of the Federal banking agencies and HUD.

The use of the term "any other person" in § 1780.3(h) of the proposed rules was not intended to suggest that the Director might ignore the APA or other applicable law in appointing presiding officers. It was intended as a recognition that the APA includes exceptions to the general rule that the agency (in the case of boards or commissions), the agency head or an ALJ shall preside at a hearing.[10] For example, the regulations of the United States Office of Personnel Management relating to ALJs also allow temporary appointment of qualified Federal annuitants, described as "senior administrative law judges" under certain circumstances.[11] However, in addressing Fannie Mae's comment, OFHEO has modified the language permitting persons other than ALJs to act as presiding officers, as discussed below.

The use of the term "any other person" was not intended to imply that the circumstances that would require these other types of presiding officers are likely to occur in OFHEO enforcement proceedings. Neither was it intended to take a legal position that OFHEO did not consider its hearings to be governed by the APA or other applicable laws (such as those listed at § 1780.1). However, because these rules are intended to have broad applicability to any hearings that are required to be on the record, including any that might be added by future legislation, OFHEO chose to provide maximum flexibility under whatever law is applicable, now or in the future. To clarify this point, OFHEO has replaced the phrase "designated by the Director" with "appointed by the Director under applicable law."

OFHEO agrees that the practice of the agencies cited by Fannie Mae is to utilize ALJs. That would generally be OFHEO's practice also. However, in drafting the definition of presiding officer, OFHEO looked to the Uniform Rules of the Federal bank and thrift regulators. The Uniform Rules, which use the term "administrative law judge" where the OFHEO rules use "presiding officer," define "administrative law judge" to mean "one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556." As explained above, that person or body of persons need not always be an administrative law judge. OFHEO has followed the same general approach, allowing for persons other than an administrative law judge to preside, but only where they can be appointed under applicable law.

Freddie Mac recommended that, to help ensure the fairness and impartiality of administrative proceedings, the rule be changed to insert the word "neutral" to describe the ALJ or other person. OFHEO concurs with the Enterprises that any presiding officer should be impartial and fair. However, OFHEO disagrees with Freddie Mac that adding the word "neutral" to the regulation would further this goal. The provisions of the APA that govern selection of presiding officers and the conduct of hearings apply to proceedings under this final rule and are sufficient to insure impartiality and fairness.

Sections 1780.5 Authority of the Presiding Officer and 1780.6 Public Hearings

Each Enterprise commented that § 1780.6(c) should be modified to allow any party to request that documents be filed under seal. Fannie Mae explained its view that confidentiality goes to the heart of the fairness of a hearing and that allowing an agency, but not the other parties, to file confidential documents is unfair. Freddie Mac also felt that a change to allow all parties to request that a document be filed under seal was necessary to ensure fairness to all parties.

OFHEO concurs with the need to ensure confidentiality of some documents and testimony in adjudicatory proceedings and agrees that all parties should be able to request confidentiality. Moreover, OFHEO believes that the authority to order documents to be filed under seal is among the inherent powers of the presiding officer under § 1780.5 to conduct a hearing and to rule on motions or procedural matters. However, in response to the comments, OFHEO has included some additional language in the final rule. This language, which is drawn from the Uniform Rules of the Federal financial institution regulatory agencies, emphasizes the authority of the presiding officer to maintain confidentiality of documents where appropriate. Specifically, § 1780.5(b)(5) now includes expressly the authority to issue protective orders and § 1780.5(b)(15) now includes expressly the authority to establish time, place and manner limitations on the attendance of the public and the media for any public hearing. These changes clarify that the presiding officer may issue a protective order to maintain

[10] 12 U.S.C. 556(a).

[11] 5 CFR 930.216.

confidentiality of documents a party seeks to file or is required to disclose in discovery. Further, these changes make explicit the authority of the presiding officer to maintain confidentiality of those documents by excluding the public from portions of a hearing where those documents may be introduced or discussed.

Section 1780.10 Service of Papers

The Enterprises each commented upon proposed § 1780.10. Freddie Mac recommended that OFHEO customize the language of this section to the Enterprises by requiring service by OFHEO upon the Enterprises or other respondents at a designated office within each Enterprise. Freddie Mac suggested that language in the rule that allows service by delivery to a person of suitable age and discretion at the physical location where the individual resides or works was unnecessary, because service of all such individuals could be made at the designated office of the appropriate Enterprise. Freddie Mac further recommended that OFHEO designate a hearing clerk to receive and log in papers in situations where a presiding officer has not yet been assigned. Fannie Mae asked that OFHEO clarify proposed § 1780.10(f), asserting that the following language was confusing: "Failure to make proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party." Fannie Mae asked why it was necessary to supply proof of service at all if failure to do so does not affect validity of service.

OFHEO does not believe it necessary to adopt the service rules recommended by Freddie Mac. OFHEO retains discretion to determine how best to serve a notice of charges against an Enterprise under particular circumstances. After initial service, OFHEO anticipates that counsel for the Enterprise would enter an appearance and service of all documents would be upon counsel. With respect to service upon individuals against whom charges are brought, the service rules are tailored to make reasonably certain that the individual receives notice of the documents served. OFHEO's enforcement authorities are not limited to current Enterprise employees and the service rules must reach all possible recipients of documents in an enforcement action, including those who might seek to avoid service. Moreover, OFHEO does not wish to preclude service by various reasonable means should circumstances require it. Therefore, OFHEO has not modified the language in the final rule to allow the Enterprises to designate a particular office for service upon the Enterprise and individuals.

OFHEO finds it unnecessary to specify by rule an individual or an office within OFHEO for service or filing of documents related to a hearing. In enforcement proceedings, the Director will be represented by enforcement counsel upon whom service may be made. If a presiding officer is not named in the notice of charges, an appropriate address for filing of an answer to the notice will be provided in the notice.

OFHEO concurs with Fannie Mae that § 1780.10(f) of the proposed rules could be clarified. The final rule, therefore, makes clear that a party may contest service only by claiming that actual service was not made. The term "proof of service" is used to mean an affidavit by a nonattorney or a declaration of counsel, filed and served with the pleading or other document, stating when and by what means the document was served. Such an affidavit or declaration establishes prima facie that service was made and shifts the burden to a party contesting service to come forward with evidence that service did not occur. The failure of a party to include a proof of service with the document would not alone be sufficient to prove lack of service or cause the filing of such a document to be ineffective. Service could, if necessary, be proven by other means. However, a proof of service must be filed before the presiding officer can take action upon a filing, such as a motion, that seeks such action. This rule prevents action being taken without notice being provided to the nonmoving parties.

Section 1780.15 OFHEO's Right To Conduct Examinations

Freddie Mac recommended that § 1780.15 be revised to provide that OFHEO's examination authority not be used for after-the-fact gathering of evidence to support a notice of charges that has already been issued. Freddie Mac stated that the Director must have reasonable cause to believe that grounds exist for initiating an action by the time the Director serves the notice.

OFHEO decided not to accept Freddie Mac's recommendation to modify § 1780.15 for a number of reasons. First, it would be inappropriate and unprecedented for a Federal financial institution regulatory agency to prevent itself from using the most recent factual information available. The language in § 1780.15 is drawn directly from the Uniform Rules of the bank and thrift regulators and reflects normal examination and enforcement practices. As a matter of practice, Federal financial institution regulatory agencies generally do not issue notices of charges until a supporting factual record is adequately developed. In this regard, OFHEO would be no different from these other regulatory agencies. However, OFHEO does not consider it unfair or improper to allow relevant information to be introduced at hearing that may have come to light from an examination conducted after the notice of charges. Any such information would be available to all parties through discovery. OFHEO's rules anticipate that additional facts may come to light during the prehearing phase and the rules allow for liberal amendments to notices of charges and answers to reflect those newly discovered facts.

Further, because the purpose of cease and desist orders is largely remedial, it is especially important in fashioning such an order that the presiding officer and the Director understand any steps an Enterprise may have undertaken (or not undertaken) to deal with the problems at issue since the filing of the notice of charges. Current practices at an Enterprise could also be relevant in determining the appropriateness and size of civil money penalties. Examinations are an important means of providing current information.

OFHEO is also concerned that any rule that limits the use of current examination findings at hearing could tend to chill the examination process. Examiners might be reluctant to examine areas at issue in the hearing out of concern that their work might raise issues about whether facts introduced at hearing were discovered after service of the notice of charges. The result could be that OFHEO would be hindered in its ability to examine those areas that were experiencing the worst problems at the Enterprise.

Finally, a rule such as Freddie Mac suggests would require discovery and collateral hearings to determine the source of much of OFHEO's evidence. In OFHEO's view, such collateral proceedings would be inappropriate, because the proper issue is whether parties have had sufficient time to consider new evidence, not whether OFHEO obtained it in an examination after a notice of charges was filed. Further, the appropriate remedy in the event that there has been insufficient time is to extend the hearing date, not to exclude the evidence.

Section 1780.20 Commencement of Proceeding and Contents of Notice of Charges

Fannie Mae and Freddie Mac each recommended that OFHEO modify § 1780.20(b) to delete the proposed language requiring the notice of charges to state "the matters of fact or law showing that OFHEO is entitled to relief" and replace it with a requirement that the notice of charges include "a statement of the facts constituting the alleged conduct or violation." Fannie Mae stated that the recommended language, which is drawn directly from the 1992 Act, 12 U.S.C. 4631(c), would require greater specificity in the initial notice, ensure more fairness, and better enable the respondent to answer the charges.

OFHEO decided not to modify the language of § 1780.20(b). This NPR language is virtually identical to the Uniform Rules of the Federal bank and thrift regulators.[12] The governing statute for those regulatory agencies, 12 U.S.C. 1818(b)(1), uses language identical in relevant part to that of the 1992 Act. OFHEO intends its procedures in regard to notices of charges to be the same as those of the Federal bank and thrift regulators and, accordingly, is utilizing the same language to describe the requirements for those notices.

Further, OFHEO does not understand the language of § 1780.20(b) to be narrower than the statutory language. The regulatory language merely clarifies a level of specificity that is adequate to meet the statutory requirement. The notice of charges is not intended to provide a full and complete factual explication of the case against a respondent. Respondents may use discovery to obtain additional details. The notice of charges is intended simply to place respondents on notice of the nature of the charges against them, with sufficient specificity to allow them to prepare an answer and frame discovery requests. More complex and technical pleading requirements would, in OFHEO's view, add unnecessary and inefficient burden to the hearing process.

Fannie Mae recommended that § 1780.20(d) be amended to include language from section 1373(a)(2) of the 1992 Act (12 U.S.C. 4633(a)(2)) that requires hearings on cease and desist orders to be fixed for a date not earlier than 30 days nor later than 60 days after service of notice of charges. OFHEO disagrees with this recommendation. Like the Uniform Rules, OFHEO's rule covers proceedings that arise under various statutory provisions. It is not the purpose of this rule to catalogue the requirements of all these statutes. It would also be inappropriate, and potentially misleading, to include the requirements of only one.The language of § 1780.20(d) is virtually identical to that of the Uniform Rules. That language does not negate section 1373(a)(2) of the 1992 Act any more than the Uniform Rules negate identical requirements in 12 U.S.C. 1818(b)(1), which govern cease and desist proceedings involving banks and thrifts.

Section 1780.22 Amended Pleadings

Fannie Mae recommended that certain language from the Uniform Rules be added to the second sentence in § 1780.22(b). However, OFHEO modified the language of the Uniform Rules[13] by splitting one long sentence into two sentences. No language from the Uniform Rules has been dropped in this modification. OFHEO did not intend to change the meaning of the Uniform Rules, but to clarify that the presiding officer will admit evidence freely if it will assist in the adjudication of the merits and will not prejudice an objecting party's action or defense on the merits.

Accordingly, OFHEO found it unnecessary to change the language in the proposed rule.

Section 1780.26 Discovery

Both Enterprises recommended that OFHEO modify the rule to provide for interrogatories and discovery depositions, in addition to document discovery. Freddie Mac pointed out that there is a split among the regulations of the Federal financial institution regulatory agencies on the availability of these discovery tools. Fannie Mae believes that discovery depositions of experts and factual witnesses would promote efficiency in any hearing, improve fact finding and lead to earlier resolution of complex matters.

OFHEO recognizes that some regulatory agencies allow for discovery depositions and interrogatories and some do not. The experiences of the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) and the Board of Governors of the Federal Reserve System (Board of Governors) led those agencies to find that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. However, even at those agencies, discovery depositions are limited to witnesses that have factual, direct and personal knowledge of matters at issue and expert witnesses. The Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA) determined that the interests of respondents in further pretrial disclosure were satisfied by the availability of extensive document discovery that complements the document intensive nature of those agencies' proceedings.[14]

OFHEO considered carefully the scope of discovery that would be permitted under its regulations. OFHEO has determined that broad document discovery should be permitted, but has recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings.[15] Further, the APA contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings.[16] Instead, each agency determines the extent of discovery to which a party in an administrative hearing is entitled.[17]

OFHEO's regulations strike a balance between the due process interest of respondents in obtaining pretrial disclosure, including discovery depositions, and OFHEO's need for swift adjudication while preserving its limited resources. Further, OFHEO believes that, like the FDIC and the NCUA, its enforcement actions generally would be document-intensive and that respondents could, therefore, obtain sufficient discovery through document requests.

Section 1780.28 Document Subpoenas to Nonparties

Fannie Mae commented that § 1780.28(a)(3) gives too much discretion to the presiding officer to refuse to issue or to modify a document subpoena. That provision governs applications for subpoenas that do not set forth a valid basis for the issuance of a subpoena or that request subpoenas with terms that are unreasonable, oppressive, excessive in scope, or unduly burdensome. If presented with such an application, the presiding

[12] *See* 12 CFR 19.18(b)(2).

[13] *See* 12 CFR 19.20(b).

[14] *See* 56 FR 37969, Aug. 9, 1991.

[15] *Sims* v. *National Transportation Safety Board*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *N.L.R.B.*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm.*, 549 F.2d 28, 33 (7th Cir. 1977).

[16] *Kenwich Petrochemicals, Inc.* v. *N.L.R.B.*, 893 F.2d 1468, 1484 (3d Cir. 1990); *N.L.R.B.* v. *Valley Mold Co., Inc.*, 503 F.2d 693, 695 (6th Cir. 1976); *Frillette* v. *Kimberlin*, 506 F.2d 205 (3d Cir. 1974) *cert. denied*, 421 U.S. 980 (1975).

[17] McClelland v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

officer may refuse to issue the subpoena or may issue it in a modified form upon such conditions "as may be determined by the presiding officer." Fannie Mae preferred the language of the Uniform Rules, which is virtually identical except that, in lieu of the quoted language, they state "as may be consistent with the Uniform Rules." In a subsequent telephone conversation initiated by OFHEO to seek clarification of this comment, Fannie Mae explained that it hoped that OFHEO rules could go farther than the Uniform Rules and provide more specific standards governing the modification of or refusal to issue subpoenas.

OFHEO declines to modify the language. Although OFHEO does not intend any meaning different from the Uniform Rules, OFHEO does not find a general reference to the practice and procedure rules to be helpful. Any ruling by the presiding officer should be consistent with the practice and procedure rules. The wording chosen by OFHEO clarifies that the presiding officer has discretion under the rule to make modifications to a subpoena and to place conditions upon its issuance. The language in the rule does not grant unlimited discretion to the presiding officer, but conditions action upon a determination that no valid basis for the subpoena has been set forth or that the terms of the subpoena are unreasonable, oppressive, excessive in scope or unduly burdensome. To OFHEO's knowledge this language has not led to unreasonable suppression of discovery requests in hearings conducted by other Federal financial institution regulatory agencies. For these reasons, OFHEO sees no need to add additional conditions or requirements to guide the rulings of presiding officers.

Section 1780.30 Interlocutory Review

Fannie Mae commented that the sentence in § 1780.30(c) that expressly allows the presiding officer to indicate an opinion about the appropriateness of interlocutory review is highly prejudicial. Fannie Mae stated that it is equivalent to allowing a trial court to express an opinion to an appellate court on the arguments of a party that brings an interlocutory appeal during a trial. Fannie Mae asserted that the Federal financial institution regulatory agencies and HUD do not allow presiding officers to comment upon the appropriateness of interlocutory review.

OFHEO finds nothing prejudicial about allowing the presiding officer to comment upon whether a motion for interlocutory appeal meets the standards for such review. Except in a very narrow class of interlocutory appeals,[18] interlocutory appeals are available in the Federal courts (and most State courts): (1) only at the discretion of the appellate court and (2) *only* if the trial judge is of the opinion that such an appeal is appropriate [19] and so certifies in an order.[20] The purpose of this requirement is to prevent piecemeal review of actions. OFHEO's rules do not go this far, but merely allow the presiding officer to opine as to whether an interlocutory appeal is appropriate. Unlike in the Federal courts, parties are free to request interlocutory review even if the presiding officer believes the review would not be appropriate.

OFHEO disagrees with Fannie Mae's view that the Uniform Rules prohibit an administrative law judge from opining upon the appropriateness of a motion for interlocutory review. Nothing in those rules can be read to prohibit such an opinion. As in OFHEO's rules, under the Uniform Rules, parties file their motions and responses for interlocutory review with the ALJ, who "refers" them to the agency head. The ALJ may use this referral as an opportunity to state views upon whether particular issues merit that review.

It is important to distinguish between the presiding officer's opining on the appealability of a matter and opining on its merits. Parties seeking interlocutory review are appealing from a matter on which the presiding officer has ruled and, presumably, placed an opinion on the record. Section 1780.30(c) provides the Director discretion to consider the matter prior to the review of the entire hearing if (1) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion, (2) immediate review of the ruling may materially advance the ultimate termination of the proceeding, (3) subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy, or (4) subsequent modification of the ruling would cause unusual delay or expense. The presiding official is in an excellent position to advise the Director on whether these grounds for interlocutory review are met and it is no more prejudicial to allow him to express an opinion than for judges in the courts to do so. The fact that a presiding officer has decided an issue against a particular party does not mean that the presiding officer will feel that the issue does not warrant interlocutory review. Where a novel legal issue is involved or a final decision on the matter could clearly expedite the resolution of the entire case, the presiding officer could have a strong interest in supporting interlocutory review.

Fannie Mae also requested that the text of § 1780.30(c) be clarified to indicate that a party opposing a motion for interlocutory review may file a response to such a motion. In OFHEO's view, such clarification is unnecessary, because § 1780.25(d), which governs motions generally, applies. Section 1780.25(d) provides for responses to all motions, except as otherwise provided. Section 1780.30 does not contain an exception to § 1780.25(d).

Section 1780.50 Conduct of Hearings

Freddie Mac commented that OFHEO should include a reference to either the 1992 Act or, more generally, to applicable law in the rules for conduct of hearings in § 1780.50. Freddie Mac observed that laws other than the APA may govern the conduct of hearings under the rules.

OFHEO concurs with this comment and has therefore added a reference to "other applicable law" at § 1780.50(a).

Subpart D—General Comments

Both Enterprises provided detailed comments regarding subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight. This subpart contains rules governing practice by parties or their representatives before OFHEO. These rules include sanctions that may be imposed in the course of an adjudicatory proceeding and censure, suspension, and disbarment proceedings that may be brought against individual practitioners.

Fannie Mae recognized and supported OFHEO's need to conduct orderly hearings on the record. However, Fannie Mae felt that most of the provisions of subpart D are outside the scope of OFHEO's authority to conduct orderly hearings on the record. In addition, Fannie Mae commented that many provisions were vague and confusing and that OFHEO had not provided any "legal explanation" for this subpart. For these reasons, Fannie Mae believes that subpart D "is fraught with potential for abuse and misunderstanding." Fannie Mae requested that OFHEO clarify the scope of the subpart's applicability, provide specific definitions for certain unspecified terms in the subpart and provide an analysis of the statutory justification for the provisions in the subpart, in particular those that do not relate to enforcement proceedings under the 1992 Act. Fannie Mae believed that "virtually any conduct" could be characterized by a presiding officer as

[18] 28 U.S.C. 1292(a).
[19] 28 U.S.C. 1292(b).
[20] Fed. R. Civ. P. 5(a).

"contemptuous" and that a presiding officer could find any sanction "appropriate" under this regulation.

Freddie Mac stated that the presiding officer must be able to maintain order to accomplish the purposes of an adjudicatory hearing and related proceedings. Freddie Mac agreed with the subpart in the sense that the existence of sanctions would be helpful to accomplishing those purposes. However, Freddie Mac stated that the scope of the subpart should be limited to adjudicatory hearings and related proceedings and to conduct by the parties and their representatives in those hearings. Freddie Mac also recommended that lack of competence be eliminated as a ground for sanctions and that the definition of "practice before OFHEO" be deleted.

Fannie Mae's comment suggests that OFHEO may lack authority to issue rules governing practice beyond those necessary to control the conduct of adjudicatory proceedings. OFHEO disagrees. OFHEO has an interest in ensuring that individuals that it permits to represent the interests of others before it can do so ethically and competently. The authority to do so is incident to the authority of any agency to control its internal operations, to insure that issues that must be resolved by the agency are presented competently, that facts and law are represented accurately, and that persons purporting to represent others have appropriate authority. Further, OFHEO has chosen to allow persons to practice before it who are not attorneys or other licensed professionals subject to professional codes of conduct. Particularly as to such individuals, who could not be referred to a licensing authority for sanctions, OFHEO needs a means to ensure that their conduct and competence meets normal professional standards.

OFHEO does not share the view of the Enterprises that the rules of practice are too vague and too broad. OFHEO based its rules of practice on those of the other Federal financial institution regulatory agencies. Sections 1780.72 and 1780.73, which govern appearance and practice in adjudicatory proceedings and conflicts of interest, are modeled upon the Uniform Rules. The Enterprises raised no objection to these sections. However, the Uniform Rules do not address expressly the subjects of sanctions ordered in the course of a hearing or of censure, suspension and disbarment. Each of the Federal financial institution regulatory agencies that is subject to the Uniform Rules found it necessary to address these subjects in separate Local Rules. Most of these rules are similar to §§ 1780.74 and 1780.75 of OFHEO's rules of practice.[21] Likewise, the Local Rules of most of these regulators define the term "practice," which OFHEO defines at § 1780.71.[22]

Although it is difficult to draw bright lines to describe what conduct is contemptuous and what level of competence is sufficient, OFHEO believes that the rule provides sufficient guidance in these areas. If it should be necessary to impose sanctions under subpart D, OFHEO will look to case law and the practices of other Federal agencies, as well as any of OFHEO's own precedents that may exist, in determining the appropriateness of particular sanctions.

Section 1780.70 Scope

Freddie Mac recommended that OFHEO limit the scope of subpart D to practice in adjudicatory proceedings. Fannie Mae likewise commented that parts of subpart D are outside the scope of OFHEO's authority to conduct orderly hearings on the record. Freddie Mac suggested deleting the phrase "any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities" in describing the scope of the subpart. Freddie Mac also commented that the rules lack a bright line to determine what matters are covered by subpart D.

OFHEO disagrees that its rules of practice should be more limited. The quoted language is typical of that used by other Federal financial institution regulatory agencies to describe the scope of their practice rules.[23] OFHEO chose the language in recognition of the fact that counsel and other professionals frequently represent clients before regulatory agencies in numerous types of matters. These matters include rulemakings, investigations, and review of executive compensation matters. OFHEO has an interest in insuring that the individuals with whom it deals on such matters, in addition to formal adjudications, meet minimal professional standards of competency and conduct. Moreover, the conduct of individuals in these other types of proceedings is relevant to their fitness to practice before OFHEO in formal adjudications. Accordingly, OFHEO has not changed the scope of subpart D. Although a "bright line" test, such as limiting the scope to adjudications, might be simpler to administer, it would be, in OFHEO's view, too narrow and rigid. Therefore, OFHEO prefers to define the scope more broadly, to encompass various types of matters and various types of representation.

Section 1780.71 Definitions

Freddie Mac stated that "the expansive definition of 'practice before OFHEO' contained in Subpart D * * * is unclear." This statement was made in the context of Freddie Mac's broader comment that the scope of subpart D is overbroad and unclear and that the NPR "fails to address the potential problems that this expanded scope is best suited to address." Freddie Mac suggested that OFHEO may seek to test every presenter for the presence of adequate qualifications or subject every presenter to potential sanctions based upon his character. Freddie Mac states that such a process "would serve no useful purpose and could tend to impair what has been an open cooperative working relationship between Freddie Mac and OFHEO."

OFHEO likewise seeks open, cooperative working relationships with the Enterprises, but does not interpret subpart D in a way that would impair such relationships. It is not OFHEO's intention to require everyone who conducts a presentation to OFHEO personnel to demonstrate adequate qualifications. Rather, OFHEO intends to apply its practice regulations in a manner similar to the practices of other Federal financial institution regulatory agencies. Accordingly, OFHEO has made no changes to § 1780.71.

Section 1780.74 Sanctions

Fannie Mae stated that the conduct and sanctions specified in proposed § 1780.75(g) appeared redundant to similar conduct and sanctions in proposed § 1780.74. The provisions are not intended to be redundant. Proposed § 1780.75(g) specified that representatives or individuals representing themselves who engage in contemptuous conduct could be summarily suspended from a proceeding or subjected to any other appropriate sanction. By contrast, proposed § 1780.74 provided for sanctions that would be imposed after a hearing. However, OFHEO found that the two provisions were better placed in the same section, because they dealt with sanctions imposed by a presiding

---

[21] Rules of practice for these agencies are found at 12 CFR 19.190–19.201 (OCC); 12 CFR 263.90–263.99 (Board of Governors); 12 CRF 308.108–308.109 (FDIC); 12 CFR 513.1–513.7 (OTS); 12 CFR 747.302 (NCUA—limited to certain suspension and prohibition proceedings).

[22] 12 CFR 19.191(a) (OCC); 12 CFR 263.92(b)(1) (Board of Governors); 12 CFR 308.109(e) (FDIC); 12 CFR 513.2(e) (OTS). NCUA does not define "practice" in its regulations.

[23] See 12 CFR 19.190 (OCC); 12 CFR 263.90, 253.92(b)(1) (Board of Governors); 12 CFR 513.1 (OTS).

officer during the course of an adjudicatory proceeding. Therefore, in response to the comment, OFHEO has clarified the purposes of the two provisions by combining them, incorporating the language from § 1780.75(g) into §§ 1780.74(a)(1) and 1780.74(d).

Fannie Mae recommended that the summary procedure be eliminated altogether and Freddie Mac recommended that any summary sanction occur only after a written finding by the presiding officer that the particular sanction is necessary. OFHEO believes that the authority to expel individuals summarily from a hearing is inherent in and necessary to the role and duties of presiding officer. Contemptuous conduct may undermine the ability of the presiding officer to conduct a hearing. To be effective, a presiding officer must have the ability to sanction immediately anyone who engages in such conduct. Section 1780.74(d), therefore, makes explicit an authority that is implicit in any event. Requiring prior written findings by a presiding officer is inconsistent with this type of authority, because these sanctions ordinarily would be imposed immediately upon the occurrence of the contemptuous conduct. Moreover, written findings may be unnecessary because hearings ordinarily would be transcribed.

Section 1780.75 Censure, Suspension, Disbarment and Reinstatement

Freddie Mac recommended that OFHEO eliminate character and incompetence as grounds for censure, suspension or disbarment. Freddie Mac commented further that OFHEO should limit the scope of § 1780.75 to adjudicatory hearings and related proceedings and to conduct by the parties and their representatives in those hearings. Freddie Mac explained:

> As drafted, § 1780.75 of the Proposed Rules would provide for censure, suspension or disbarment of an individual based on a wide variety of failings or prior conduct without any showing that the underlying failing or conduct had resulted in, or would be likely to result in, any adverse impact to an OFHEO adjudicatory hearing or related proceeding. As such, it goes well beyond the disciplinary authority that is a necessary incident to the authority to conduct adjudicatory hearings and related proceedings (unnecessary sanctions are simply punishment), and the exercise of that authority would likely create a substantial burden [on] the proceedings and OFHEO.

OFHEO disagrees with Freddie Mac that character and prior conduct of an individual is not relevant to that person's fitness to practice. OFHEO has a major interest in ensuring that individuals who represent others before it are honest and competent and have proper authority. Moreover, as explained above, "practice" before OFHEO encompasses more than appearances in adjudicatory proceedings. OFHEO can see no reason to limit sanctions to conduct that impacts a specific adjudicatory proceeding, as suggested by Freddie Mac. OFHEO should not be required to review the same issues each time an individual whose conduct warrants a suspension or disbarment appears. For these reasons, OFHEO has chosen the approach of most other Federal financial institution regulatory agencies and adopted a procedure that allows persons who appear before OFHEO to be censured, suspended or disbarred.

Freddie Mac agreed with OFHEO that individuals appearing in an adjudicatory hearing or related proceedings should be competent. However Freddie Mac recommended that OFHEO rely upon the qualifications requirements in § 1780.72 to ensure competency, rather than allowing incompetent representatives to be sanctioned. OFHEO has not accepted this recommendation, because that section provides no effective means to regulate the competence of individuals who appear. Section 1780.72 is intended primarily to ensure that individuals purporting to represent other persons before OFHEO have the requisite authority. It includes no requirement that representatives be competent nor any means to deal with representatives who are incompetent.

Freddie Mac also argues that sanctions such as censure, suspension and disbarment "could effectively impose punishment beyond that authorized by Congress for [violations of an Enterprise charter, the 1992 Act or any other law or regulation governing Enterprise operations]." According to Freddie Mac, because Congress gave OFHEO authority to bring civil money penalties only against directors and executive officers, OFHEO lacks authority to levy sanctions upon other individuals. Under this theory, preventing an individual from practice before OFHEO amounts to "severe substantive punishment" that goes beyond actions necessary to control a particular hearing.

OFHEO disagrees with this interpretation of the 1992 Act. Incident to the authority to manage its operations, any Federal agency has the inherent authority to regulate reasonably the authority, qualifications and competence of individuals who represent other persons before the agency. As to adjudicatory proceedings involving individuals representing themselves, the authority to maintain order and integrity in those proceedings is inherent in the agency and the presiding officer. This authority necessarily includes the authority to levy appropriate sanctions. There is no legal basis to assert that these authorities may only be used on a case by case basis. If the evidence is sufficient to convince the Director that an individual should be suspended from practice for a period of time or disbarred permanently from appearing before OFHEO, the Director has the same inherent authority to prevent that individual from practicing before OFHEO on future matters as to suspend the individual from a current proceeding.

III. Synopsis of the Final Rule

The 1992 Act[24] requires OFHEO to conduct its hearings pertaining to cease-and-desist orders and civil money penalties in accordance with the APA.[25] Thus, the rules of practice and procedure supplement the APA provisions governing agency adjudications and include provisions unique to OFHEO's mission. These rules apply not only to enforcement hearings, but also to any other adjudication required by statute to be determined by the Director on the record after opportunity for hearing.

The final rule includes provisions relating to prehearing procedures and activities, the conduct of the hearing itself, and the qualifications and disciplinary rules for practice before OFHEO. The rule establishes that hearings are open to the public unless the Director determines that a public hearing would be contrary to the public interest. The disciplinary rules of practice in subpart D apply not only to adjudicatory hearings under the APA, but also to all matters that involve representation of others before OFHEO. The rules also define important terms and describe the authority of the Director and the presiding officer.

Under subparts A, B, and C of this part, the Director commences the hearing process by issuing and serving a notice of charges on a respondent. A presiding officer, appointed by the Director, presides over the course of the hearing from the time of the appointment until the presiding officer files a recommended decision and order, along with the hearing record, with the Director for a final decision. During the course of the hearing, the

[24] 1992 Act, section 1373(a)(3) (42 U.S.C. 4633(a)(3)).

[25] 5 U.S.C. 500–559.

presiding officer controls virtually all aspects of the proceeding. The presiding officer: determines the hearing schedule; presides over any prehearing conferences; rules on motions, discovery, and evidentiary issues; and ensures that the proceeding is fair, equitable, and impartial. The presiding officer does not, however, have the authority to make a ruling that disposes of the proceeding. Only the Director has the authority to dismiss the proceeding or to make a final determination of the merits of the proceeding.

Under this rule, the parties to the proceeding have the right to present evidence and witnesses at the hearing and to examine and cross-examine the witnesses. At the completion of the hearing, the parties may submit proposed findings of fact and conclusions of law and a proposed order. The presiding officer then submits the complete record to the Director for consideration and action. The record includes the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order. The record also includes all prehearing and hearing transcripts, exhibits, rulings, motions, briefs and memoranda, and all supporting papers filed in connection with the hearing. The Director shall issue a final ruling within 90 days of the date the Director serves notice on the parties that the record is complete and the case has been submitted for final decision.

Subpart D of this rule contains rules governing practice by parties or their representatives before OFHEO. This subpart addresses the imposition of sanctions by the presiding officer or the Director against parties or their representatives in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or disbarment—against individuals who appear before OFHEO in a representational capacity either in an adjudicatory proceeding under part 1780 or in any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of OFHEO are not subject to disciplinary proceedings under this subpart.

The final rule incorporates certain changes from the proposed regulation. Section 1780.1 has been modified to include, among the examples of proceedings covered by the rule, civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973. The definition of "presiding officer" at § 1780.3(h) has been clarified in response to a comment discussed above. Section 1780.5 has been modified to list among the express authorities of the presiding officer, the authority to issue protective orders and regulate public and media access to hearings. Section 1780.10(f) has been modified to clarify the purpose of a proof of service declaration or affidavit. Section 1780.50 was modified to clarify that hearings would be conducted not only in accordance with the APA, but also any other applicable law. Section 1780.74 was modified to incorporate the provisions of § 1780.75(g) and to clarify that the presiding officer may decide what notice and responses are appropriate where sanctions are at issue in an adjudicatory proceeding. Slight modifications were made to the language of § 1780.75(a) to clarify which individuals may be subject to sanctions under the section. Section 1780.75(g) was deleted and its provisions incorporated into § 1780.74. In addition, the final rule includes a number of minor corrections that create no substantive change in the rule.

IV. Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. "Federalism implications" is defined to specify regulations or actions that have substantial, direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities between Federal and State Government. OFHEO has determined that this final rule has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

OFHEO has determined that this final rule is not a significant regulatory action as such term is defined in Executive Order 12866, has so indicated to the Office of Management and Budget (OMB) and was not notified by OMB that the rule must be reviewed by OMB.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This final rule meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule does not include a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Consequently, the final rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include a regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impacts of the rule under the Regulatory Flexibility Act. The rule does not have a significant economic impact on a substantial number of small entities, because it is applicable only to the Enterprises, which are not small entities. Therefore, OFHEO's General Counsel, acting under delegated authority, has certified that the rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that regulations involving the collection of information receive clearance from OMB. This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, OFHEO is amending 12 CFR part 1780 as follows:

PART 1780—RULES OF PRACTICE AND PROCEDURE

1. Revise the heading for part 1780 to read as set forth above.

2. Revise the authority citation for part 1780 to read as follows:

Authority: 12 U.S.C. 4513, 4631–4641.

Subpart E also issued under 28 U.S.C. 2461 *note.*

Subpart E—[Amended]

3. Redesignate §§ 1780.70 and 1780.71 as §§ 1780.80 and 1780.81, respectively.

4. Add subparts A through D to part 1780 to read as follows:

Subpart A—General Rules

Sec.

1780.1 Scope.
1780.2 Rules of construction.
1780.3 Definitions.
1780.4 Authority of the Director.
1780.5 Authority of the presiding officer.
1780.6 Public hearings.
1780.7 Good faith certification.
1780.8 Ex parte communications.
1780.9 Filing of papers.
1780.10 Service of papers.
1780.11 Computing time.
1780.12 Change of time limits.
1780.13 Witness fees and expenses.
1780.14 Opportunity for informal settlement.
1780.15 OFHEO's right to conduct examination.
1780.16 Collateral attacks on adjudicatory proceeding.

Subpart B—Prehearing Proceedings

1780.20 Commencement of proceeding and contents of notice of charges.
1780.21 Answer.
1780.22 Amended pleadings.
1780.23 Failure to appear.
1780.24 Consolidation and severance of actions.
1780.25 Motions.
1780.26 Discovery.
1780.27 Request for document discovery from parties.
1780.28 Document subpoenas to nonparties.
1780.29 Deposition of witness unavailable for hearing.
1780.30 Interlocutory review.
1780.31 Summary disposition.
1780.32 Partial summary disposition.
1780.33 Scheduling and prehearing conferences.
1780.34 Prehearing submissions.
1780.35 Hearing subpoenas.

Subpart C—Hearing and Posthearing Proceedings

1780.50 Conduct of hearings.
1780.51 Evidence.
1780.52 Post hearing filings.
1780.53 Recommended decision and filing of record.
1780.54 Exceptions to recommended decision.
1780.55 Review by Director.
1780.56 Exhaustion of administrative remedies.
1780.57 Stays pending judicial review.

Subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight

1780.70 Scope.
1780.71 Definitions.
1780.72 Appearance and practice in adjudicatory proceedings.
1780.73 Conflicts of interest.
1780.74 Sanctions.
1780.75 Censure, suspension, disbarment and reinstatement.

Subpart A—General Rules

§ 1780.1 Scope.

This subpart prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(a) Cease and desist proceedings under sections 1371 and 1373, title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4631, 4633).

(b) Civil money penalty assessment proceedings against the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), or any executive officer or director of any Enterprise under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633, 4636).

(c) Civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a.

(d) All other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided in the regulations specifically governing such an adjudication.

§ 1780.2 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 1780.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary—

(a) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation;

(b) *Decisional employee* means any member of the Director's or the presiding officer's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Director or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this subpart.

(c) *Director* means the Director of OFHEO.

(d) *Enterprise* means the Federal National Mortgage Association and any affiliate thereof and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(e) *OFHEO* means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(f) *Party* means OFHEO and any person named as a party in any notice.

(g) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, or other entity or organization.

(h) *Presiding officer* means an administrative law judge or any other person appointed by the Director under applicable law to conduct a hearing.

(i) *Representative of record* means an individual who is authorized to represent a person or is representing himself and who has filed a notice of appearance in accordance with § 1780.72.

(j) *Respondent* means any party other than OFHEO.

(k) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(l) The *1992 Act* is title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4501–4641).

§ 1780.4 Authority of the Director.

The Director may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of any act that could be done or ordered by the presiding officer.

§ 1780.5 Authority of the presiding officer.

(a) *General rule.* All proceedings governed by this subpart shall be conducted in accordance with the provisions of 5 U.S.C. chapter 5. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay and assure that a record of the proceeding is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, subpoenas *duces tecum*, and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in an adjudicatory proceeding, except that only the Director shall have the power to grant any motion to dismiss the proceeding or make a final determination of the merits of the proceeding;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse himself upon motion made by a party or on his own motion;

(14) Prepare and present to the Director a recommended decision as provided in this part;

(15) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 1780.6 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Director, in his discretion, determines that holding an open hearing would be contrary to the public interest. The Director may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within 20 days of service of the notice of charges, any party may file with the presiding officer a motion for a private hearing and any party may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Director, who shall make a final determination. Such motions and replies are governed by § 1780.25.

(c) *Filing documents under seal.* OFHEO's counsel of record, in his discretion, may file any document or part of a document under seal if such counsel makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 1780.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Director shall be signed by at least one representative of record in his individual name and shall state that representative's address and telephone number and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.

(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—

(i) The representative of record or party has read the filing or submission of record;

(ii) To the best of his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, nonfrivolous argument for the extension, modification, or reversal of existing law; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of his knowledge, information, and belief, formed after reasonable inquiry, his statements are well-grounded in fact and are warranted by existing law or a good faith, nonfrivolous argument for the extension, modification, or reversal of existing law and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 1780.8 Ex parte communications.

(a) *Definition.* (1) Ex parte communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between—

(i) An interested person outside OFHEO (including the person's representative); and

(ii) The presiding officer handling that proceeding, the Director, a decisional employee assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of an adjudicatory proceeding, such as a request for status of the proceeding, does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice commencing the proceeding is issued by the Director until the date that the Director issues his final decision pursuant to § 1780.55, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an ex parte communication. The Director, presiding officer, or a decisional employee shall not knowingly make or cause to be made an ex parte communication.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by any person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for a party who makes an ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Director or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of ex parte matters as authorized by law, the presiding officer may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for OFHEO in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Director review under § 1780.55 of the recommended decision, except as witness or counsel in public proceedings.

§ 1780.9 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

(b) *Manner of filing.* Unless otherwise specified by the Director or the presiding officer, filing shall be accomplished by:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized by and upon any conditions specified by the Director or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 1780.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of OFHEO and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Director or the presiding officer, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 1780.10 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 1780.9(c).

(c) *By the Director or the presiding officer.* (1) All papers required to be served by the Director or the presiding officer upon a party who has appeared in the proceeding in accordance with § 1780.72 shall be served by any means specified in paragraph (b) of this section.

(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with § 1780.72, the Director or the presiding officer shall make service upon the party by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party; or

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.

(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as *prima facie* evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 1780.11 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is 10 days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective—

(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon

deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing in the case of filing, and as agreed among the parties in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Director or the presiding officer in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits shall be calculated as follows:

(1) If service was made by first class, registered, or certified mail, or by delivery to the U.S. Postal Service for longer than overnight delivery service, add three calendar days to the prescribed period for the responsive filing.

(2) If service was made by U.S. Postal Service or reliable commercial overnight delivery service, add 1 calendar day to the prescribed period for the responsive filing.

(3) If service was made by electronic media transmission, add one calendar day to the prescribed period for the responsive filing, unless otherwise determined by the Director or the presiding officer in the case of filing, or by agreement among the parties in the case of service.

§ 1780.12 Change of time limits.

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or order issued in the proceedings. After the referral of the case to the Director pursuant to § 1780.53, the Director may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties, or on the Director's or the presiding officer's own motion.

§ 1780.13 Witness fees and expenses.

Witnesses (other than parties) subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where OFHEO is the party requesting the subpoena. OFHEO shall not be required to pay any fees to or expenses of any witness not subpoenaed by OFHEO.

§ 1780.14 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to OFHEO's counsel of record written offers or proposals for settlement of a proceeding without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any OFHEO representative other than OFHEO's counsel of record. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 1780.15 OFHEO's right to conduct examination.

Nothing contained in this part limits in any manner the right of OFHEO to conduct any examination, inspection, or visitation of any Enterprise or affiliate, or the right of OFHEO to conduct or continue any form of investigation authorized by law.

§ 1780.16 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

Subpart B—Prehearing Proceedings

§ 1780.20 Commencement of proceeding and contents of notice of charges.

Proceedings under this subpart are commenced by the issuance of a notice of charges by the Director, which must be served upon the respondent. Such notice shall state all of the following:

(a) The legal authority for the proceeding and for OFHEO's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that OFHEO is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) The time, place and nature of the hearing;

(e) The time within which to file an answer;

(f) The time within which to request a hearing; and

(g) The address for filing the answer and/or request for a hearing.

§ 1780.21 Answer.

(a) *When.* Unless otherwise specified by the Director in the notice, respondent shall file an answer within 20 days of service of the notice.

(b) *Content of answer.* An answer must respond specifically to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, OFHEO's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the presiding officer shall file with the Director a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Director based upon a respondent's failure to answer is deemed to be an order issued upon consent.

§ 1780.22 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer,

unless the Director or presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 1780.23 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized representative constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Director a recommended decision containing the findings and the relief sought in the notice.

§ 1780.24 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 1780.25 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the presiding officer directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the presiding officer, except that following the filing of a recommended decision, motions must be filed with the Director.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Director. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 1780.31 and 1780.32.

§ 1780.26 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs (b), (d), and (e) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term "documents" may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 1780.27.

(c) *Forms of discovery.* Discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories is not permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 1780.27 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must

describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by OFHEO at § 1710.22(b)(2) of this chapter for requests for documents filed under the Freedom of Information Act, 12 U.S.C. 552. The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 1780.25 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 1780.25 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer has discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 1780.25 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may, within five days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses to motions pursuant to this section has expired, the presiding officer shall rule promptly on all such motions. If the presiding officer determines that a discovery request or any of its terms calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he may deny or modify the request and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the presiding officer its intention to file a timely motion for interlocutory review of the presiding officer's order to produce the documents, until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the presiding officer issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 1780.28 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for production in response to the subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 1780.27. The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The presiding officer shall issue promptly any document subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be determined by the presiding officer.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 1780.27 and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other

aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§ 1780.29 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section to the presiding officer for the issuance of a subpoena, including a subpoena *duces tecum*, requiring the attendance of the witness at a deposition. The presiding officer may issue a deposition subpoena under this section upon a showing that—

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness, or infirmity, or will be otherwise unavailable;

(ii) The witness' unavailability was not produced or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States and its possessions and territories in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) Subpoenas must be issued promptly upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. Before making a determination that there is no valid basis for issuing the subpoena, the presiding officer shall require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than 10 days' notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its possessions or territories on any person doing business anywhere within the United States or its possessions or territories, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion under § 1780.25 with the presiding officer to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than 10 days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers and objections must be recorded.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 1780.30 Interlocutory review.

(a) *General rule.* The Director may review a ruling of the presiding officer prior to the certification of the record to the Director only in accordance with the procedures set forth in this section.

(b) *Scope of review.* The Director may exercise interlocutory review of a ruling of the presiding officer if the Director finds that—

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within ten days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Director for final disposition. In referring the matter to the Director, the presiding officer may indicate agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Director under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Director.

§ 1780.31 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Director issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in

connection with a motion for summary disposition show that—

(1) There is no genuine issue as to any material fact; and

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Director, under § 1780.53. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion.

§ 1780.32 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he shall defer submitting a recommended decision to the Director as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 1780.33 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as the parties may agree, the presiding officer shall direct representatives for all parties to meet with him in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The presiding officer may, in addition to the scheduling conference, on his own motion or at the request of any party, direct representatives for the parties to meet with him (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The presiding officer, in his discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at such party's expense.

(d) *Scheduling or prehearing orders.* Within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the presiding officer shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 1780.34 Prehearing submissions.

(a) Within the time set by the presiding officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party the serving party's—

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 1780.35 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any State, commonwealth, possession, territory of the United States, or the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are

unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with this subpart. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than 10 days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 1780.28(c). A party's right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

Subpart C—Hearing and Posthearing Proceedings

§ 1780.50 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted in accordance with 5 U.S.C. chapter 5 and other applicable law and so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* OFHEO's counsel of record shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. OFHEO's counsel of record shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order or presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) *Examination of witnesses.* Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer's own motion.

§ 1780.51 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Director shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by OFHEO or by another Federal or State financial institutions regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Director.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 1780.29, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the

depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 1780.52 Post hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A posthearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) Any party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings and conclusions and proposed order are due. Reply briefs must be limited strictly to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a posthearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party's filing of its brief.

§ 1780.53 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 1780.52(b), the presiding officer shall file with and certify to the Director, for decision, the record of the proceeding. The record must include the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) *Filing of index.* At the same time the presiding officer files with and certifies to the Director, for final determination, the record of the proceeding, the presiding officer shall furnish to the Director a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 1780.54 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 1780.53, a party may file with the Director written exceptions to the presiding officer's recommended decision, recommended findings and conclusions, or proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Director if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Director on motion.

(3) One reply brief may be submitted by each party within ten days of service of exceptions and briefs in support of exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Director on motion.

§ 1780.55 Review by Director.

(a) *Notice of submission to the Director.* When the Director determines that the record in the proceeding is complete, the Director shall serve notice upon the parties that the proceeding has been submitted to the Director for final decision.

(b) *Oral argument before the Director.* Upon the initiative of the Director or on the written request of any party filed with the Director within the time for filing exceptions under § 1780.54, the Director may order and hear oral argument on the recommended findings, conclusions, decision and order of the presiding officer. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Director's final decision. Oral argument before the Director must be transcribed.

(c) *Director's final decision.* (1) Decisional employees may advise and assist the Director in the consideration and disposition of the case. The final decision of the Director will be based upon review of the entire record of the proceeding, except that the Director may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Director shall render a final decision and issue an appropriate order within 90 days after notification of the parties that the case has been submitted for final decision, unless the Director orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings. Copies of the final decision and order of the Director shall be served upon each party

to the proceeding and upon other persons required by statute.

§ 1780.56 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer's recommendations, a party must file exceptions with the Director under § 1780.54. A party must exhaust administrative remedies as a precondition to seeking judicial review of any decision issued under this subpart.

§ 1780.57 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Director may not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Director may, in his discretion and on such terms as he finds just, stay the effectiveness of all or any part of an order of the Director pending a final decision on a petition for review of that order.

Subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight

§ 1780.70 Scope.

This subpart contains rules governing practice by parties or their representatives before OFHEO.

This subpart addresses the imposition of sanctions by the presiding officer or the Director against parties or their representatives in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or disbarment—against individuals who appear before OFHEO in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of OFHEO are not subject to disciplinary proceedings under this subpart.

§ 1780.71 Definitions.

Practice before OFHEO for the purposes of this subpart, includes, but is not limited to, transacting any business with OFHEO as counsel, representative or agent for any other person, unless the Director orders otherwise. Practice before OFHEO also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with OFHEO in any certification, notification, application, report, or other document, with the consent of such counsel, representative or agent. Practice before OFHEO does not include work prepared for an Enterprise solely at the request of the Enterprise for use in the ordinary course of its business.

§ 1780.72 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before OFHEO or a presiding officer.* (1) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession, territory of the United States, or the District of Columbia and who is not currently suspended or disbarred from practice before OFHEO.

(2) *By nonattorneys.* An individual may appear on his own behalf. A member of a partnership may represent the partnership and a duly authorized officer, director, employee, or other agent of any corporation or other entity not specifically listed herein may represent such corporation or other entity; provided that such officer, director, employee, or other agent is not currently suspended or disbarred from practice before OFHEO. A duly authorized officer or employee of any Government unit, agency, or authority may represent that unit, agency, or authority.

(b) *Notice of appearance.* Any person appearing in a representative capacity on behalf of a party, including OFHEO, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraphs (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a pro se basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 1780.73 Conflicts of interest.

(a) *Conflict of interest in representation.* No representative shall represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be limited materially by that representative's responsibilities to a third person or by that representative's own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel or other representative represents two or more parties to an adjudicatory proceeding or also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 1780.72—

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 1780.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any adjudicatory proceeding;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just;

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, and after such notice and responses as may be directed by the presiding officer, may impose any sanction authorized by this section. The presiding officer shall submit to the Director for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Director from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

(d) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction.

§ 1780.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Director may censure any individual who practices or attempts to practice before OFHEO or suspend or revoke the privilege to appear or practice before OFHEO of such individual if, after notice of and opportunity for hearing in the matter, that individual is found by the Director—

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the 1992 Act, the Federal Home Loan Mortgage Corporation Act, the Federal National Mortgage Association Charter Act or the rules or regulations issued under those statutes or any other law or regulation governing Enterprise operations;

(v) To have engaged in contemptuous conduct before OFHEO;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last 10 years, to have been convicted of an offense involving moral turpitude, dishonesty or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of *nolo contendere* or on consent, regardless of whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii), (iii), (iv), (v), (vi) and (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Director for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) If the final order against the respondent is for censure, the individual may be permitted to practice before OFHEO, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in OFHEO's files.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession, territory of the United States or the District of Columbia; any accountant or other licensed expert whose license to practice has been revoked in any State, commonwealth, possession, territory of the United States or the District of Columbia; any person who has been and remains suspended or barred from practice before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Board, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before OFHEO. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before OFHEO under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) *Notices to be filed.* (1) Any individual appearing or practicing before OFHEO who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Director a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before OFHEO who is or within the last 10 years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 shall file a notice promptly with the Director. The notice shall include a copy of the order imposing the sentence or fine,

together with any related opinion or statement of the court involved.

(d) *Reinstatement.* (1) Unless otherwise ordered by the Director, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. An applicant for reinstatement under this paragraph (d)(1) may, in the Director's sole discretion, be afforded a hearing.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than 1 year after the applicant's most recent application. An applicant for reinstatement for good cause under this paragraph (d)(2) may, in the Director's sole discretion, be afforded a hearing. However, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated by OFHEO upon written application notifying OFHEO that the grounds have been removed.

(e) *Conferences.* (1) *General.* Counsel for OFHEO may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, disbarment or suspension, regardless of whether a proceeding for censure, disbarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(2) *Resignation or voluntary suspension.* In order to avoid the institution of or a decision in a disbarment or suspension proceeding, a person who practices before OFHEO may consent to censure, suspension or disbarment from practice. At the discretion of the Director, the individual may be censured, suspended or disbarred in accordance with the consent offered.

(f) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this part, provided that in proceedings to terminate an existing OFHEO suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof and that the Director may, in the Director's sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by OFHEO be limited to written submissions. All hearings held under this section shall be closed to the public unless the Director, on the Director's own motion or upon the request of a party, otherwise directs.

Dated: December 21, 1999.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 99–33461 Filed 12–27–99; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–331–AD; Amendment 39–11454; AD 99–25–11]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 series airplanes and certain British Aerospace Model Avro 146–RJ series airplanes, that requires repetitive eddy current inspections to detect fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil aviation authority. The actions specified by this AD are intended to detect and correct fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall, which could result in premature extension of the nose landing gear or depressurization of the airplane.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 series airplanes and certain British Aerospace Model Avro 146–RJ series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34586). That action proposed to require repetitive eddy current inspections to detect fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Change the Statement of Unsafe Condition

One commenter states that the description of the unsafe condition, as stated in the notice of proposed rulemaking (NPRM), is incorrect. The commenter requests that, instead of stating "such fatigue cracking, if not corrected, could result in failure of the nose landing gear during take-off and landing," the consequence of such fatigue cracking should be stated as "premature extension of the nose landing gear and/or * * * a depressurization of the aircraft."

The FAA concurs with the commenter's request. Therefore, the statement of unsafe condition has been revised in the summary and the body of the final rule to correctly state the unsafe condition.

Request To Allow Contact of Manufacturer if Cracks Are Found

One commenter requests that the final rule be revised to state, "If cracks are found, before further flight[,] either[;]

contact BAe Customer Support for further advice or repair in accordance with a method approved by the FAA." The commenter states that the proposed requirement for repair prior to further flight in accordance with a method approved by the FAA or Civil Aviation Authority (CAA), is too restrictive and could force operators to ground airplanes with cracks along the face of the retraction attachment boss in the nose landing gear sidewall, regardless of crack length. The commenter states that it has demonstrated by test that ultimate loads can be sustained if a crack has extended to the edge of the retraction attachment boss.

The FAA does not concur with the commenter's request. To require operators to contact the manufacturer for repair instructions, as suggested by the commenter, would be delegating the FAA's rulemaking authority to the manufacturer. In addition, because specific repair instructions were not included in the referenced service bulletin and have not been provided to the FAA by the manufacturer, the FAA cannot include specific repair instructions in the final rule. Also, although the manufacturer has advised that it plans to revise the service bulletin to include repair instructions, the FAA does not consider it appropriate to delay issuance of the final rule while awaiting the revised service bulletin.

However, the FAA recognizes that the requirement to repair any crack prior to further flight, regardless of the length of the crack, could be, in this case, unnecessarily restrictive. As stated by the commenter, tests have shown that cracked structure within defined limits can sustain limit loads without failure. Thus, the FAA finds that a stringent repetitive inspection program, acceptable to the FAA or CAA, may provide an acceptable level of safety that would allow for deferment of a permanent repair for a certain period of time. Because the manufacturer has not provided the FAA with such a repetitive inspection program nor criteria to allow a temporary deferral of permanent repair, such instructions cannot be included in the final rule. However, to allow for the possibility of a temporary deferral of repair, paragraph (b) of this final rule has been revised to require, if any crack is detected, repair or reinspection prior to further flight in accordance with a method approved by the FAA or CAA.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry will be affected by this required AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $2,640, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–25–11 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–11454. Docket 98–NM–331–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, as listed in British Aerospace Service Bulletin SB.53–152, dated October 8, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall, which could result in premature extension of the nose landing gear or result in depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Prior to the accumulation of 8,000 total flight cycles, or within 200 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking along the face of the retraction attachment boss in the nose landing gear sidewall, in accordance with British Aerospace Service Bulletin SB.53–152, dated October 8, 1998. Thereafter, repeat the eddy current inspection at intervals not to exceed 2,600 flight cycles.

Repair

(b) If any crack is detected, prior to further flight, repair or reinspect in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as

required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The inspections shall be done in accordance with British Aerospace Service Bulletin SB.53–152, dated October 8, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 015–10–98.

(f) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 1, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31676 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–13–AD; Amendment 39–11479; AD 99–26–19]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. J–2 Series Airplanes That Are Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) J–2 series airplanes equipped with wing lift struts. This AD requires repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. This AD also requires incorporating a "NO STEP" placard on the lift strut. This AD is the result of the Federal Aviation Administration (FAA) inadvertently omitting the J–2 series airplanes from the applicability of AD 99–01–05. The actions specified by this AD are intended to prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane.

DATES: Effective February 14, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the F. Atlee Dodge supplemental type certificate (STC) may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen Aircraft, Inc., 9225 County Road 140, Salida, Colorado 81201. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper J–2 series airplanes of the same type design that are equipped with wing lift struts was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 12, 1999 (64 FR 37465). The NPRM proposed to require repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. The NPRM also proposed to require installing a placard on the lift strut, and would provide the option of installing certain wing lift strut and wing lift strut fork assemblies, as terminating action for repetitive inspection and replacement requirements. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Piper Service bulletin No. 528D, dated October 19,1990.

The NPRM was the result of the Federal Aviation Administration (FAA) inadvertently omitting the J–2 series airplanes from the applicability of AD 99–01–05.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 91 airplanes in the U.S. registry will be affected by this AD.

It will take approximately 8 workhours per airplane to accomplish the initial inspection, and the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $43,680, or $480 per airplane. These figures are based only on the cost of the initial inspection and do not take into account the costs of any repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator will incur over the life of the airplane.

It will take approximately 4 workhours per airplane to accomplish the initial wing lift strut fork replacements, and the average labor rate is approximately $60 an hour. Fork assemblies cost approximately $110 each and four are required for each airplane. Based on these figures, the total cost impact of the initial wing lift strut fork replacements on U.S. operators is estimated to be $61,880, or $680 per airplane.

Airplane operators who do not incorporate the improved design wing lift strut assemblies will have to repetitively replace the wing lift strut forks. The FAA has no way of determining how many airplanes do not have the improved design wing lift strut assemblies installed and will need repetitive strut fork replacements.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–26–19 The New Piper Aircraft, Inc.: Amendment 39–11479; Docket No. 99–CE–13–AD.

Applicability: J–2 series airplanes, serial numbers 500 through 1975, certificated in any category; that are equipped with wing lift struts.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), *etc.*
Level 2: (1), (2), (3), *etc.*
Level 3: (i), (ii), (iii), *etc.*
Level 4: (A), (B), (C), *etc.*

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) Within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished per AD 93–10–06, whichever occurs later, remove the wing lift struts in accordance with Piper Service Bulletin (SB) No. 528D, and accomplish one of the following (the actions in either paragraph (a)(1), (a)(2), (a)(3), or (a)(4), including subparagraphs, of this AD):

(1) Inspect the wing lift struts for perceptible dents (as defined in the service bulletin referenced below) and corrosion in accordance with the "INSTRUCTIONS" section in part I of Piper SB No. 528D, dated October 19, 1990.

(i) If no perceptible dents are found in the wing lift strut and no corrosion is externally visible, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If a perceptible dent is found in the wing lift strut or external corrosion is found, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraph (a)(3) or (a)(4) of this AD.

(2) Inspect the wing lift struts for corrosion in accordance with the Appendix to this AD. The inspection procedures in this Appendix must be accomplished by a Level 2 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410.

(i) If no corrosion is found that is externally visible and all requirements in the Appendix to this AD are met, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If external corrosion is found or if any of the requirements in the Appendix of this AD are not met, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraph (a)(3) or (a)(4) of this AD.

(3) Install original equipment manufacturer (OEM) part number wing struts (or FAA-approved equivalent part numbers) that have been inspected in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD, and are found to be airworthy according to the inspection requirements included in these paragraphs. Thereafter, inspect these wing lift struts at intervals not to exceed 24 calendar months in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD.

(4) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in part II of the above-referenced SB. These sealed wing lift strut assemblies also include the wing lift strut forks. Installation of these assemblies constitutes terminating action for the inspection and replacement requirements of both paragraphs (a) and (b) of this AD.

(b) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within 500 hours TIS after the last inspection, whichever is later, remove the wing lift strut forks and accomplish one of the following (the actions in either paragraph (b)(1), (b)(2) or (b)(3); including subparagraphs, of this AD):

(1) Inspect the wing lift strut forks for cracks using FAA-approved magnetic particle procedures.

(i) If no cracks are found, reinspect at intervals not to exceed 500 hours TIS provided that the replacement requirements of paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C) of this AD have been met.

(ii) Replace the wing lift strut forks at whichever of the following is applicable:

(A) *If cracks are found on any wing lift strut fork:* Prior to further flight;

(B) *If the airplane is equipped with floats or has been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 1,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; or

(C) *If the airplane has not been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 2,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.

(iii) Replacement parts shall be of the same part numbers of the existing part (or FAA-approved equivalent part numbers) and shall be manufactured with rolled threads. Lift strut forks manufactured with machined (cut) threads shall not be utilized.

(iv) The 500-hour TIS interval repetitive inspections are still required when the above replacements are accomplished.

(2) Install new OEM part number wing lift strut forks (or FAA-approved equivalent part numbers). Reinspect and replace these wing lift strut forks at the intervals specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), including all subparagraphs, of this AD.

(3) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in part II of the above-referenced SB.

(i) This installation may have "already been accomplished" through the actions specified in paragraph (a)(4) of this AD.

(ii) No repetitive inspections are required after installing these sealed wing lift strut assemblies.

(c) If holes are drilled in wing lift strut assemblies installed in accordance with (a)(4) or (b)(3) of this AD to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in paragraph (a)(1) or (a)(2), including all subparagraphs, of this AD.

(d) Within 1 calendar month after the effective date of this AD and thereafter prior to further flight after the installation of any lift strut assembly, accomplish one of the following:

(1) Install "NO STEP" decal, Piper part number (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft; or

(2) Paint the statement "NO STEP" approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft. Use a minimum of 1-inch letters utilizing a color that contrasts with the color of the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) The removals, inspections, modifications, and installations required by this AD shall be done in accordance with Piper Service Bulletin No. 528D, dated October 19, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Appendix to Docket No. 99–CE–13–AD—Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to accomplish this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of +/−0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch, and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

• **Note:** Couplant is defined as "a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface."

• **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

Instrument Setup

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the **Equipment Requirements.** Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to "ring" the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. "Ring" the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and "ring" the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/−0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

Inspection Procedure

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the **Equipment Requirements** section.

2. Using a flexible ruler, draw a ¼-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D or 910A, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every ¼-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first ¼-inch mark on the ruler and "ring" the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at ¼-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

• **Note:** A reading shall not exceed .041-inch. If a reading exceeds .041-inch, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

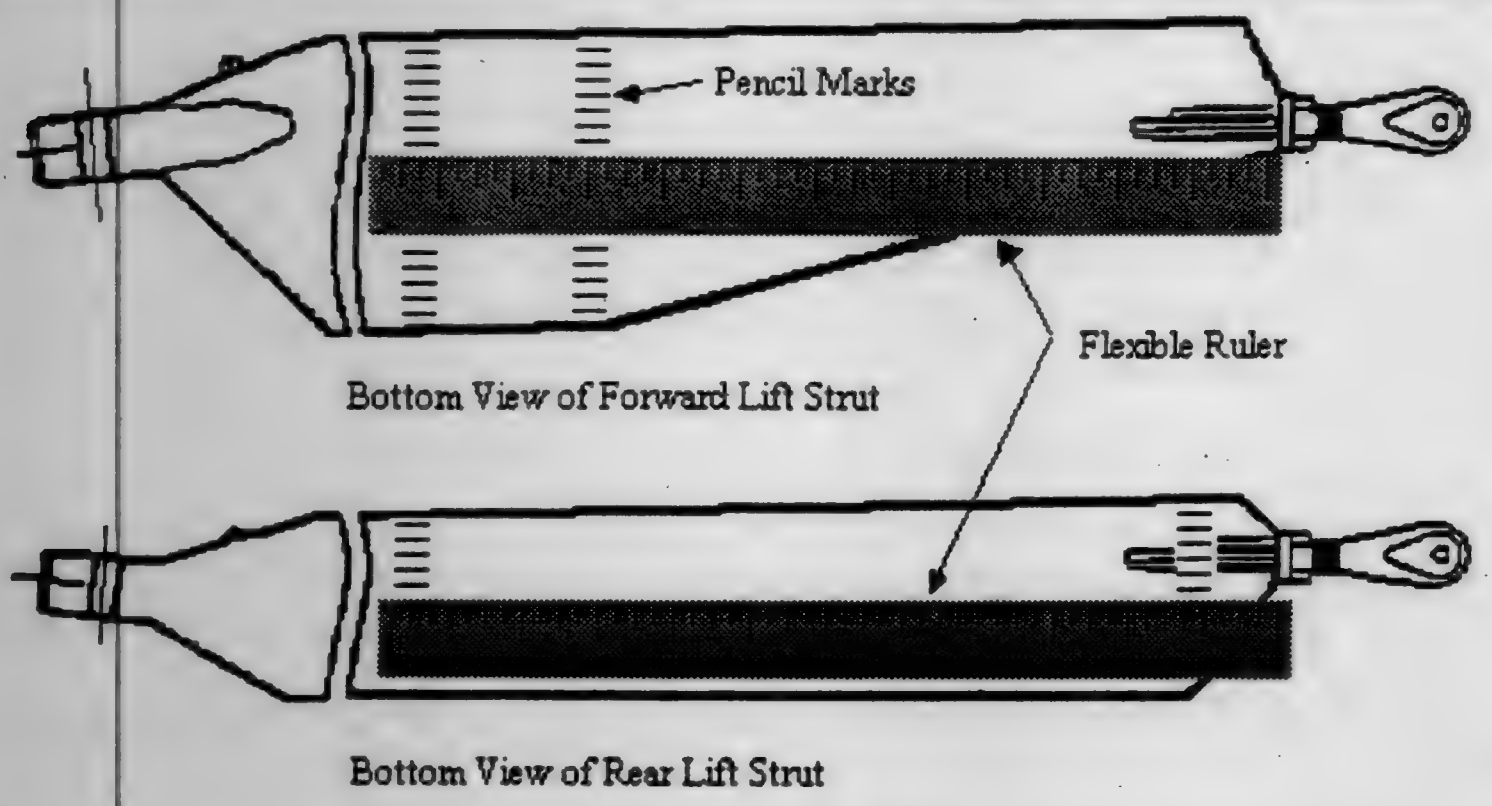
7. In areas where obstructions are present, take a data point as close to the correct area as possible.

• **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule "Fabric Tester" as specified in Piper Service Bulletin No. 528D or 910A.

10. Record the lift strut inspection in the aircraft log book.



(h) This amendment becomes effective on February 14, 2000.

Issued in Kansas City, Missouri, on December 16, 1999.

James Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33166 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–166–AD; Amendment 39–11476; AD 99–26–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes, that requires, for certain airplanes, removing the hydraulic tube assemblies from the main landing gear (MLG) bay, installing new re-routed hydraulic tube assemblies, and repositioning a fuel line, as applicable. For certain other airplanes, this amendment requires a general visual inspection to determine the routing of certain hydraulic and fuel lines, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent damage to hydraulic and fuel lines resulting from failure of an MLG, which could cause a fire in the MLG wheel well.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes was published in the **Federal Register** on October 27, 1999 (64 FR 57798). For certain airplanes, that action proposed to require removing the hydraulic tube assemblies from the main landing gear (MLG) bay, installing new re-routed hydraulic tube assemblies, and repositioning a fuel line, as applicable. For certain other airplanes, that action proposed to require a general visual inspection to determine the routing of certain hydraulic and fuel lines, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 249 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that 231 Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) series airplanes will be affected by this proposed AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $277,200, or $1,200 per airplane.

The FAA estimates that 18 Model CL–600–2B16 (CL–604) series airplanes will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $1,080, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–16 **Bombardier, Inc.** (Formerly Canadair): Amendment 39–11476. Docket 99–NM–166–AD.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes, serial numbers 5001 through 5194 inclusive, and 5301 through 5317 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to hydraulic and fuel lines resulting from failure of a main landing gear (MLG), which could cause a fire in the MLG wheel well, accomplish the following:

Inspection and Modification

(a) Within 300 landings or 12 months after the effective date of this AD, whichever occurs first, accomplish the actions in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model CL–600–1A11 (CL–600) series airplanes: Remove the five existing hydraulic tube assemblies from the MLG bay, install six new re-routed hydraulic tube assemblies, and reposition a fuel line, in accordance with Bombardier Service Bulletin 600–0671, dated August 4, 1997.

(2) For Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and –3R) series airplanes: Remove the five existing hydraulic tube assemblies from the MLG bay, and install six new re-routed hydraulic tube assemblies, in accordance with Bombardier Service Bulletin 601–0482, dated April 15, 1997.

(3) For Model CL–600–2B16 (CL–604) series airplanes: Perform a general visual inspection of the routing of the hydraulic and fuel lines in the MLG bay in accordance with Bombardier Service Bulletin 604–29–001, dated December 20, 1996.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(i) If all hydraulic lines are routed in accordance with the service bulletin, no further action is required by this paragraph.

(ii) If any hydraulic line is not routed in accordance with the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided in paragraph (a)(3)(ii), the actions shall be done in accordance with Bombardier Service Bulletin 600–0671, dated August 4, 1997; Bombardier Service Bulletin 601–0482, dated April 15, 1997; and Bombardier Service Bulletin 604–29–001, dated December 20, 1996, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue,

SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–99–14, dated May 7, 1999.

(e) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 16, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33168 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–201–AD; Amendment 39–11477; AD 99–26–17]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs. Damage to system wiring or contamination of the electrical connectors or plugs could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on October 26, 1999 (64 FR 57600). That action proposed to require modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 56 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $33,600, or $3,360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–17 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11477. Docket 99–NM–201–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs; which could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout, accomplish the following:

Modification

(a) Within 180 days after the effective date of this AD, accomplish the modification of the engine intake ducts (including inspection of the cable looms, wires, electrical connectors, and associated hardware for damage; replacement of damaged parts with new or serviceable parts; rerouting and modification of the flexible duct cable loom and inlet duct power loom; and installation of new connector boots and backshells on electrical connectors on the engine intake de-icing system) to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system, in accordance with British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999.

Note 2: British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999, references Dunlop Limited Aviation Division Service Bulletin ACA1324–30–96, dated June 11, 1999, as an additional source of service information to accomplish the modification.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The modification shall be done in accordance with British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 007–06–99.

(e) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 17, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33288 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–302–AD; Amendment 39–11478; AD 99–26–18]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that requires repetitive inspections to detect loose or migrated levers of the elevator cable tension regulators, and replacement of the regulator assembly with a new assembly, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct loose or migrated regulator levers of the elevator cable tension regulators, which could result in reduced controllability of the airplane.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on October 19, 1999 (64 FR 56281). That action proposed to require repetitive inspections to detect loose or migrated levers of the elevator cable tension regulators, and replacement of the regulator assembly with a new assembly, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Change Made to the Final Rule

Note 4 of the final rule has been added to include British airworthiness directive 005–09–99, which the Civil Aviation Authority issued in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,840, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–18 **British Aerospace Regional Aircraft** [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11478. Docket 99–NM–302–AD.

Applicability: Model Jetstream 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct loose or migrated regulator levers of the elevator cable tension regulators, which could result in reduced controllability of the associated elevator, accomplish the following:

(a) Within 7 weeks after the effective date of this AD, perform a detailed visual inspection of the elevator cable tension regulator lever assembly to detect discrepancies (including looseness and migration along the splines of the elevator cable tension regulator assembly), in accordance with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999. Repeat the inspection thereafter at intervals not to exceed 1,500 flight hours.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If no discrepancy is detected during the initial inspection required by paragraph (a) of this AD, perform a detailed visual inspection of the bolt and castellated nut for signs of the bolt being threadbound, in accordance with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999.

(1) If the nut and bolt are serviceable, as specified by the alert service bulletin, prior to further flight, reinstall and retorque the nut, in accordance with the alert service bulletin.

(2) If the nut and bolt are not serviceable, as specified by the alert service bulletin, prior to further flight, replace with a new nut and bolt and torque the nut, in accordance with the alert service bulletin.

(c) If any discrepancy is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, replace the elevator cable tension regulator assembly with a new assembly, in accordance with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999. (d) For each inspection performed as required by paragraph (a) of this AD: Submit a report of the inspection findings (both positive and negative findings) to Information Services, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(e) As of the effective date of this AD, no person shall install any elevator cable tension regulator lever unless that lever has been inspected and applicable corrective actions have been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 005–09–99.

(i) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 17, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33289 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–92–AD; Amendment 39–11481; AD 99–26–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes, that requires repetitive inspections to detect cracking and delamination of the containers in which the off-wing emergency evacuation slides are stored, and corrective actions, if necessary. The AD also requires eventual modifications of the slides, which terminates the requirement for repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the loss of the escape slides during flight, which could make the emergency exits located over each wing unusable and result in damage to the fuselage.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airubus Model A319 and A320 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 14, 1999 (64 FR 55642). That action proposed to require repetitive inspections to detect cracking and delamination of the containers in which the off-wing emergency evacuation slides are stored, and corrective actions, if necessary. That action also proposed to require eventual modifications of the slides, which would terminate the requirement for repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for Terminating Modification

Two commenters agree with the proposal to mandate eventual modifications of the off-wing escape slides within 5 years in order to terminate the repetitive inspections.

Request To Allow Flight With Certain Discrepancies

Two commenters request that paragraph (b) of the proposed AD be revised to allow continued flight if discrepancies are detected that do not exceed the limits specified in Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999. The commenters state that the intent of the Airbus service bulletin and the related Air Cruisers Service Bulletin 004–25–38 is to allow further flight until the next scheduled maintenance of the airplane, provided cracks (or delamination) in the enclosure and door do not exceed the limits specified.

The FAA partially concurs. The FAA acknowledges the manufacturer's conclusion that continued flight with cracking or delamination within the limits specified in the referenced service bulletins is acceptable for a period of time. The FAA has determined that discrepancies within the specified limits would not constitute a hazard to the airplane for a short period of time prior to repair. However, the FAA does not concur with the commenters' suggestion that such repair may be performed at the next scheduled maintenance interval, since no definitive time is specified by which the repair must be accomplished. The FAA has determined that, following detection of discrepancies within specified limits, repair must be accomplished within 90 days, and has revised paragraph (b) of the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 121 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $36,300, or $300 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $170 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $64,130, or $530 per airplane, The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–22 Airbus Industrie: Amendment 39–11481. Docket 96–NM–92–AD.

Applicability: Model A319 and A320 series airplanes, certificated in any category; except airplanes on which Airbus Modifications 24850 and 25844 have been installed in production, or on which Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the escape slides during flight, which could make the emergency exits located over each wing unusable and result in damage to the fuselage, accomplish the following:

Inspections and Corrective Actions

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable: Perform a detailed visual inspection to detect cracking and delamination of each off-wing escape slide container, including the container door, in accordance with Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999. Repeat the inspection thereafter at intervals not to exceed 18 months, until accomplishment of the actions required by paragraph (d) of this AD.

(1) Within 500 flight hours after the effective date of this AD.

(2) Within 18 months after the last inspection in accordance with Airbus All Operator Telex 25–09, dated January 2, 1995, or Revision 1, dated February 16, 1995; or Airbus Service Bulletin A320–25–1161, dated June 21, 1995; if accomplished prior to the effective date of this AD.

(3) Within 18 months after modification of the off-wing escape slides in accordance with Airbus Service Bulletin A320–25–1156, dated June 21, 1995; if accomplished prior to the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If any crack or delamination is found during any inspection required by paragraph (a) of this AD that does not exceed the limits specified in Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999: Within 90 days after detection of the crack or delamination, repair in accordance with the service bulletin, and continue inspecting in accordance with paragraph (a) of this AD.

(c) If any crack or delamination is found during any inspection required by paragraph (a) of this AD that exceeds the limits specified in Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999: Prior to further flight, replace the discrepant container with a serviceable container in accordance with the service bulletin, and continue inspecting in accordance with paragraph (a) of this AD.

Terminating Modification

(d) Within 5 years after the effective date of this AD, modify the off-wing escape slides (i.e., modifications, inspection, repair, and repacking) in accordance with Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999. Modification of the escape slides constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 3: Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999, references Air Cruisers Service Bulletins 004–25–37, Revision 2, dated May 29, 1996, and 004–25–42, dated September 16, 1996, as additional sources of service information for accomplishment of the modification of the off-wing escape slides.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999, and Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–232–132(B), dated June 2, 1999.

(h) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 17, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33290 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

[Notice 99–166]

RIN 2700–AC26

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending the regulations on its Information Security

Program, to reflect the correct citation of the applicable Executive Order, a change in the title designation of one NASA office, and an update of the membership list of the NASA Information Security Program Committee.

EFFECTIVE DATE: December 28, 1999.

ADDRESSES: Director, NASA Security Management Office, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: John C. Hagan, 202–358–2308.

List of Subjects in 14 CFR Part 1203

Classified information, Foreign relations.

PART 1203—INFORMATION SECURITY PROGRAM

For reasons set out in the preamble, 14 CFR Part 1203 is amended as follows:

1. The authority citation for part 1203 is revised to read as follows:

Authority: 42 U.S.C. 2451 *et seq.* and E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Section 1203.100 is amended by revising paragraph (a) to read as follows:

§ 1203.100 Legal basis.

(a) Executive Order 12958 (hereinafter referred to as "the Order"). The responsibilities and authority of the Administrator of NASA with respect to the original classification of official information or material requiring protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States (hereinafter collectively termed "national security"), and the standards for such classification, are established by "the Order" (E.O. 12958, 3 CFR, 1996 Comp., p. 333), as amended (See, Order of October 13, 1995, 3 CFR, 1996 Comp, p. 513), and the Information Security Oversight Office Directive No. 1, as amended (32 CFR part 2001, "Classified National Security Information");

* * * * *

3. Section 1203.202 is amended by revising paragraph (g) to read as follows:

§ 1203.202 Responsibilities.

* * * * *

(g) The Director, NASA Security Management Office, is responsible for establishing procedures for the safeguarding of classified information or material (e.g., accountability, control, access, storage, transmission, and marking) and for ensuring that such procedures are systematically reviewed; and those which are duplicative or unnecessary are eliminated.

* * * * *

4. Section 1203.900 is revised to read as follows:

§ 1203.900 Establishment.

Pursuant to Executive Order 12958, "National Security Information" and the National Aeronautics and Space Act of 1958, as amended, there is established a NASA Information Security Program Committee (hereinafter referred to as the Committee) as part of the permanent administrative structure of NASA. The Director, NASA Security Management Office, is designated to act as the Chairperson of the Committee. The Senior Security Specialist, NASA Security Management Office, is designated to act as the Committee Executive Secretary.

5. Section 1203. 902 is amended by revising the introductory text and paragraph (a) as follows:

§ 1203.902 Membership.

The Committee will consist of the Chairperson and Executive Secretary. In addition, each of the following NASA officials will nominate one person to Committee memberships:

(a) Associate Administrator for:

(1) Aero-Space Technology.

(2) Space Science.

(3) Space Flight.

(4) External Relations.

(5) Life and Microgravity Sciences and Applications.

* * * * *

Daniel S. Goldin,

Administrator.

[FR Doc. 99–33643 Filed 12–27–99; 8:45 am]

BILLING CODE 2510–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM00–2–000; Order No. 612]

Time Frame for Intervening in and Protesting Federal Power Act Section 205 Filings

Issued December 21, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to provide that, absent a notice providing some other time period, a twenty-one (21) calendar day time period from the date a Federal Power Act (FPA) section 205 rate filing is filed, amended, or supplemented will be provided for interested parties to file any protest or intervention in the proceeding. The final rule thus will give, in most cases, interested parties a date certain to file protests and interventions. The final rule will also provide consistency with already existing Natural Gas Act (NGA) section 4 natural gas rate filing procedures.

EFFECTIVE DATE: This final rule is effective January 27, 2000.

FOR FURTHER INFORMATION CONTACT:

Michael J. McGehee (Technical Information), Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2257

Julia A. Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2019

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents

should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us)* or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us).*

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to provide that, absent a notice providing some other time period, a twenty-one (21) calendar day time period from the date a Federal Power Act (FPA) section 205 rate filing is filed, amended, or supplemented will be provided for interested parties to file any protest or intervention in the proceeding. The final rule thus will give, in most cases, interested parties a date certain to file protests and interventions. The final rule will also provide consistency with already existing Commission procedures for noticing Natural Gas Act (NGA) section 4 natural gas rate filings.

II. Background

Section 205 of the Federal Power Act requires that, absent a grant of waiver of the prior notice requirement, public utilities must provide at least 60 days prior notice to the Commission and to the public before new or revised tariffs or rate schedules can go into effect.[1] The Commission's regulations currently do not provide any specific time frame during that 60-day period for interested parties to intervene in or protest the public utilities' rate filings. Public utilities and the public are uncertain of the due date for filing interventions and protests until the Commission issues its notice of filing.

III. Discussion

Amending the Commission's regulations to provide, in most cases, a date certain for protests or interventions to be filed will provide the industry with specific guidelines as to the date such filings are due. This certainty will enhance the efficiency of the section 205 rate filing and review process. The Commission also believes that the 21-day notice period will provide adequate time for the public to prepare and file any notices of intervention, motions to intervene, or protests.

The 21-day time period will give interested parties a date certain to file protests and interventions. To help determine the date such filings are due, parties can ascertain the filing date of the section 205 rate filing and the content of that filing through the Commission's website (http://www.ferc.fed.us/online/rims/htm). In addition, parties can obtain the text of formal documents issued by the Commission, such as notices of filings, on the Commission Issuance Posting System (CIPS) and the Commission's Records and Information Management System (RIMS), which are also accessible through the Commission's website (http://www.ferc.fed.us). These avenues will provide parties with alternatives to the **Federal Register** to aid them in determining when comments are due.

The final rule essentially codifies current internal Commission practice.[2] Moreover, by establishing a 21-day time period for protests and interventions, rather than some other time period, the final rule will still allow adequate time for the Commission to act on the section 205 rate filings within the 60-day statutory time period for Commission action. In addition, consistent with past practice for noticing purposes, amendments and supplements to section 205 rate filings will be treated the same as the initial section 205 rate filings and noticed for a 21-day time period.

By providing a date certain for interventions, the final rule will provide consistency with already existing Natural Gas Act section 4 natural gas rate filing notice procedures. The Commission's regulations already establish a specific notice period (12 days) for NGA section 4 gas rate filings (on which the Commission must act within a 30-day statutory time period).[3] For noticing purposes, amendments to gas rate filings are also treated the same as initial applications, and trigger a new intervention time period.

In addition, the final rule will provide the Commission flexibility to adjust the 21-day time frame to allow for a different notice period as warranted, since the Commission has the authority to establish a notice period other than 21 days. An instance in which the Commission might establish a notice period other than 21 days could occur when an application is filed that requires Commission authorization pursuant to different sections of the FPA (*e.g.*, section 203 and section 205). In such an instance, the Commission's notice would as a general matter specify that a longer notice period would prevail.

The choice of a 21-day time period rather than a 20-day time period, for example, eliminates the prospect that the final day to protest or intervene will fall on a weekend; where the last day of the notice period falls on a federal holiday, the due date would be the next business day.[4]

In enacting this rule, the Commission has considered the interests of all affected parties and concludes that changing the section 205 noticing procedures is in the public interest. The Commission has balanced the need to allow sufficient time for interested parties to review a filing with the need for the proceeding to progress swiftly. The use of a 21-calendar day standard achieves this balance.

A notice and comment rulemaking procedure is not necessary because the Commission is not proposing a change to substantive rate policies or data collections. Rather the final rule is one of agency organization, procedure or practices for which notice and comment are not required.[5]

IV. Regulatory Flexibility Certification Statement

The Regulatory Flexibility Act[6] requires rulemakings either to contain a description and analysis of the impact the rule will have on small entities, or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[7]

The regulations adopted in this final rule would revise the Commission's regulations to include specific time frames for filing protests and interventions for FPA section 205 rate filings. In so doing, the rule essentially codifies current internal Commission practice. The Commission therefore certifies that this final rule will not have a significant economic impact on small entities.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action

[1] 16 U.S.C. 824d.

[2] Current agency practice generally is to provide a 20-day time period for noticing purposes.

[3] *See* 18 CFR 154.210.

[4] *See* 18 CFR 385.2007(b)(2).

[5] *See* 5 U.S.C. 553(b)(A).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 605b.

that may have a significant adverse effect on the human environment.[8] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are proposals for rules that are procedural.[9] The final rule falls under this exception; consequently, no environmental consideration is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rules.[10] The information collection requirements for section 205 rate filings are approved under OMB Control No. 1902–0096. This final rule does not add or modify the information collection requirements in OMB Control No. 1902–0096. A copy of this final rule will be sent to OMB for informational purposes only.

VII. Effective Date and Congressional Review

The provisions of 5 U.S.C. 801 regarding Congressional review of rulemaking, do not apply to this final rule because the rule concerns agency procedure and practice. The final rule will not substantially affect the rights and obligations of non-agency parities.[11] Therefore, this final rule is effective January 27, 2000.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, and Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, of the *Code of Federal Regulations* as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.8 is revised to read as follows:

[8] 18 CFR Part 380.

[9] 18 CFR 380.4(a)(2)(ii).

[10] 5 CFR Part 1320.

[11] 5 U.S.C. 804(3)(C).

§ 35.8 Protests and interventions by interested parties and form for Federal Register notice.

(a) *Protests or interventions.* Unless the notice issued by the Commission provides otherwise, any protest or intervention to a rate filing made pursuant to this part must be filed in accordance with §§ 385.211 and 385.214 of this chapter, on or before 21 days after the subject rate filing. A protest must state the basis for the objection. A protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant a party to the proceeding. A person wishing to become a party to the proceeding must file a motion to intervene.

(b) *Form of notice for* **Federal Register**. The public utility must file a form of notice suitable for publication in the **Federal Register**, as well as a copy of the same notice in electronic format (in ASCII text or WordPerfect 8.0 format) on a 3½″ diskette marked with the name of the applicant and the words "Notice of Filing," which must be in the following form:

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

(Name of Utility) Docket No.

NOTICE OF FILING

Take notice that (name of public utility), on (date), tendered for filing proposed changes in its FERC Electric Service Tariff, (Volume Nos.), [The following language in the first paragraph applies only to increased rate filings.] The proposed changes would increase revenues from jurisdictional sales and service by (amount) based on the 12-month period ending (date). [If changes other than increased rates and charges are proposed, the public utility must concisely state the nature of these changes.]

[The public utility must briefly describe the reasons for the proposed changes in the second paragraph.]

Copies of the filing were served upon the public utility's jurisdictional customers, [other parties the public utility served, *inter alia*, state public service commissions, other government agencies, etc.].

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed in accordance with § 35.9 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

[FR Doc. 99–33593 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM00–3–000; Order No. 611]

Updates to Instructions for FERC Form No. 1 Filings

Issued December 21, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is updating and correcting its regulations for filings by major electric utilities, licensees, and others. More specifically, this Final Rule updates and corrects the Commission's FERC Form No. 1 filing instructions to: Provide for submission of data over the Internet rather than by diskette; revise certain routing symbols, office numbers, and a title; add a sentence to note that penalty for failure to file only applies if there is a valid control number; and correct typographical errors.

EFFECTIVE DATE: This final rule is effective on January 1, 2000.

FOR FURTHER INFORMATION CONTACT:
Hadas Z. Kozlowski (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Telephone: (202) 208–1029
Brian A. Holmes (Technical Information), Office of Finance, Accounting, and Operations, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Telephone: (202) 219–2618

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting

System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208–1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission is updating and correcting the filing instructions for FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees, and Others (Form No. 1), which is prescribed by Part 141 of the Commission's regulations,[1] to make them consistent with current practice. The Final Rule provides for submitting data electronically over the Internet rather than by diskette, revises certain routing symbols, office numbers, and a title, adds a new sentence noting that penalty for failure to file only applies if there is a valid control number, and corrects various typographical errors.

II. Background

The Commission, in the exercise of its authority under the Federal Power Act, collects data pertaining to the electric utility industry in the United States.[2] One of the principal forms used for collection of this information is Form No. 1, which is submitted annually by some 209 electric utilities and licensees. Form No. 1 consists of cover pages, four pages of general information and instructions, and 117 pages of schedules incorporating financial and operational information pertaining to the respondent companies. Form No. 1 also requires that certain financial information be certified by an independent certified public accountant[3] as conforming to the Commission's Uniform System of Accounts.[4]

Prior to last year, the Commission's Form No. 1 software provided for submitting data files on diskette. Last year, however, the Commission developed a Windows 95 version of the Form No. 1 software, which was used by respondents to submit data files over the Internet. Upgraded software, a Windows 95/98/NT version which replaces the DOS version previously used, is now available; the submission format was changed to facilitate data entry and data base loading, improve data integrity, and to provide Y2K compliance.

This Final Rule conforms the instructions to Form No. 1 at pages i, ii, and iii to reflect editorial changes and existing practice.

III. Discussion

As currently written, the instructions sections of the Form No. 1 provide for the filing of data by diskette. Because the Commission's Form No. 1 software now provides for the electronic submission of data over the Internet, Instruction III, What and Where to Submit, on Page i will be revised to state that entities shall "Submit this form electronically through the Form 1 Submission Software" instead of the phrase "on electronic media consisting of two (2) duplicate data diskettes." Similarly, the words "contained on the electronic media" will be revised to read "the electronic filing," the words "electronic media filing" will be revised to read "electronic filing," and the words "on the electronic media" will be revised to read "electronic filing." In addition, the Office of the Secretary's room number will be revised to read "Room 1A" and the Chief Accountant's room number will be deleted.

On Page ii, the words "(c) Continued Reference" will be revised to read "(c) Continued," the words "Use the following form" will be revised to read "Use the following format." In addition, the Public Reference and Files Maintenance Branch room and route symbol will be revised to read "Room 2A, CI–1."

The Final Rule also corrects, on Page ii, Instruction V, Where to Send Comments on Public Reporting Burden. The routing symbol for Mr. Michael Miller will now read "CI–1," and his correct title is "Clearance Officer" not "Desk Officer."

In addition, the public is protected against a collection of information that does not meet the requirements of the Paperwork Reduction Act (P.L. 104–13) (1995). Specifically, if a collection of information does not display a currently valid Office of Management and Budget (OMB) control number, fails to inform the respondent that a response is not required unless the collection of information displays a valid OMB control number, or has been disapproved by the OMB, then the public is not obligated to respond. Accordingly, the Final Rule adds, after the words "Clearance Officer for the Federal Energy Regulatory Commission" the words "No person shall be subject to any penalty if this collection of information does not display a valid control number. (44 U.S.C. 3512(a). 5 CFR 1320.6a.)"

Finally, Instruction VII, of Page iii, provides guidance on what and where to make Form No. 1 resubmissions, and the Final Rule provides that this also be done electronically, by revising it to provide:

> For any resubmissions, submit the electronic filing using the Form 1 Submission Software and an original and six (6) conformed paper copies of the entire Form, as well as the appropriate number of copies of the subscription statement indicated at instruction III(a). Resubmissions must be numbered sequentially on the cover page of the paper copies of the Form. In addition, the cover page of each paper copy must indicate that the filing is a resubmission. Send the resubmissions to the address indicated at instruction III(a).

IV. Information Collection Statement

The OMB regulations require OMB to approve certain reporting and recordkeeping (collections of information) imposed by agency rule.[5] The information collection requirements in this Final Rule are contained in Form No. 1, "Annual Report of Major electric utilities, licensees, and others" (OMB Control No. 1902–0021). Because this Final Rule does not involve new information requirements, will have a minimal effect on current information collections, and codifies existing practice, there is no need to obtain OMB approval. However, the Commission is

[1] 18 CFR Part 141.
[2] 16 U.S.C. 825, 825c.
[3] 18 CFR 41.11.
[4] 18 CFR Part 101.
[5] 5 CFR 1320.12.

sending a copy to OMB for informational purposes only.

Title: FERC Form No. 1 Annual Report of Major Electric Utilities, Licensees, and Others.

Action: Proposed Data Collection

OMB Control No. 1902–0021

Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to this collection of information, unless the collection of information displays a valid OMB control number.

Respondents: Major electric utilities, licensees, and certain defined others.

Frequency of Responses: Annually.

Reporting Burden: While the reporting burden for Form No. 1 is 254,353 hours for all respondents, this Final Rule merely conforms the filing instructions to existing practice.

Necessity of Information: The Final Rule revises the filing instructions for Form No. 1, which is required by 18 CFR Part 141, and which is necessary for fulfilling the requirements of the Federal Power Act, including that the Commission may collect data pertaining to the electric utility industry in the United States.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415), or send comments to the Office of Management and Budget, Room 10202 NEOB, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395–3087, fax: (202) 395–7285).

V. National Environmental Policy Act Analysis

The Commission concludes that promulgating this Final Rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[6] This Final Rule is procedural in nature and does not substantially change the effect of the regulation being amended. In addition, the Final Rule involves information gathering, analysis, and dissemination. Therefore, this Final Rule falls within the categorical exemptions provided in the Commission's regulations.[7] Consequently, neither an environmental impact statement nor an environmental assessment is required.

[6] 42 U.S.C. 4332.

[7] 18 CFR 380.4(a)(2)(ii), (a)(5).

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most respondents do not fall within the definition of "small entity," as defined by the RFA.[9] Therefore, the Commission certifies that promulgating this Final Rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities.

VII. Administrative Findings and Effective Date

Because this rule does not itself alter the substantive rights or interests of any interested persons, but rather is merely procedural and ministerial in nature, the Commission finds that prior notice and comment are unnecessary under the Administrative Procedure Act.[10]

Because this rule does not alter the substantive rights or interests of any interested persons but rather modifies the submission process and otherwise corrects and updates errors, the Commission finds good cause to allow this rule to become effective upon less than 30 days' notice.[11] This Final Rule therefore will be made effective January 1, 2000.[12]

VIII. Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[13] That reporting requirement does not apply to this Final Rule, however. The Commission finds that this Final Rule does not substantially affect the rights or obligations of non-agency parties, and therefore falls within a statutory exception for rules relating to agency procedures or practices that do not substantially affect the rights or obligations of non-agency parties.[14]

List of Subjects in 18 CFR Part 141

Electric power, reporting and recordkeeping requirements.

[8] 5 U.S.C. 601–612.

[9] See 5 U.S.C. 601(3).

[10] 5 U.S.C. 553(b)(B).

[11] 5 U.S.C. 553(d)(3).

[12] The Form No. 1 filings are not due to be submitted until on or before April 30. 2000.

[13] 5 U.S.C. 801.

[14] 5 U.S.C. 804(3)(C).

By the Commission.

David P. Boergers,

Secretary.

Instructions for Filing the FERC Form No. 1

GENERAL INFORMATION

I. Purpose

This form is a regulatory support requirement (18 CFR 141.1). It is designed to collect financial and operational information from major electric utilities, Licensees and others subject to the jurisdiction of the Federal Energy Regulatory Commission. This report is also secondarily considered to be a nonconfidential public use form supporting a statistical publication (Financial Statistics of Selected Electric Utilities), published by the Energy Information Administration.

II. Who Must Submit

Each major electric utility, licensee, or other, as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject To the Provisions of The Federal Power Act (18 CFR 101), must submit this form.

Note: Major means having, in each of the three previous calendar years, sales or transmission service that exceeds one of the following:

(1) one million megawatt hours of total annual sales,

(2) 100 megawatt hours of annual sales for resale,

(3) 500 megawatt hours of annual power exchanges delivered, or

(4) 500 megawatt hours of annual wheeling for others (deliveries plus Losses).

III. What and Where to Submit

(a) Submit this form electronically through the Form 1 Submission Software and an original and six (6) conformed paper copies, properly filed in and attested, to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Retain one copy of this report for your files.

Include with the original and each conformed paper copy of this form the subscription statement required by 18 CFR 385.2011(c)(5). Paragraph (c)(5) of 18 CFR 385.2011 requires each respondent submitting data electronically to file a subscription stating that the paper copies contain the same information as the electronic filing, that the signer knows the contents of the paper copies and electronic filing, and that the contents as stated in the copies and electronic filing are true to the best knowledge and belief of the signer.

(b) Submit, immediately upon publication, four (4) copies of the Latest annual report to stockholders and any annual financial or statistical report regularly prepared and distributed to bondholders, security analysts, or industry associations. (Do not include monthly and quarterly reports. Indicate by checking the appropriate box on Page 4, List of Schedules, if the reports to stockholders will be submitted or if no annual report to stockholders is prepared.) Mail these reports to: Chief Accountant, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

(c) For the CPA certification, submit with the original submission, or within 30 days after the filing date for this form: a Letter or report (not applicable to respondents classified as Class C or Class D prior to January 1, 1984):

(i) Attesting to the conformity, in all material aspects, of the below listed (schedules and) pages with the Commission's applicable Uniform Systems of Accounts (including applicable notes relating thereto and the Chief Accountant's published accounting releases), and

(ii) Signed by independent certified public accountants or an independent Licensed public accountant certified or Licensed by a regulatory authority of a State or other political subdivision of the U.S. (See 18 CFR 41.10–41.12 for specific qualifications.)

Schedules	Reference pages
Comparative Balance Sheet	110–113
Statement of Income	114–117
Statement of Retained Earnings ..	118–119
Statement of Cash Flows	120–121
Notes to Financial Statements	122–123

When accompanying this form, insert the Letter or report immediately following the cover sheet. When submitting after the filing date for this form, send the letter or report to the office of the Secretary at the address indicated at III (a).

Use the following format for the Letter or report unless unusual circumstances or conditions, explained in the Letter or report, demand that it be varied. Insert parenthetical phrases only when exceptions are reported.

In connection with our regular examination of the financial statements of for the year ended on which we have reported separately under date of We have also reviewed schedules of FERC Form No. 1 for the year filed with the Federal Energy Regulatory Commission, for conformity in all material respects with the requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Based on our review, in our opinion the accompanying schedules identified in the preceding paragraph (except as noted below) conform in all material respects with the accounting requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases.

State in the letter or report, which, if any, of the pages above do not conform to the Commission's requirements. Describe the discrepancies that exist.

(d) Federal, State and Local Governments and other authorized users may obtain additional blank copies to meet their requirements free of charge from: Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 888 First Street, NE. Room 2A ES–1 Washington, DC 20426, (202) 208–2474.

IV. When To Submit

Submit this report form on or before April 30th of the year following the year covered by this report.

V. Where to Send Comments on Public Reporting Burden.

The public reporting burden for this collection of information is estimated to average 1,217 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data-needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426 (Attention: Mr. Michael Miller, CI–1); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). No person shall be subject to any penalty if this collection of information does not display a valid control number. (44 U.S.C. 3512(a).)

I. Prepare this report in conformity with the Uniform System of Accounts (18 CFR 101) (U.S. of A.). Interpret all accounting words and phrases in accordance with the U. S. of A.

II. Enter in whole numbers (dollars or MWH) only, except where otherwise noted. (Enter cents for averages and figures per unit where cents are important. The truncating of cents is allowed except on the four basic financial statements where rounding is required.) The amounts shown on all supporting pages must agree with the amounts entered on the statements that they support. When applying thresholds to determine significance for reporting purposes, use for balance sheet accounts the balances at the end of the current reporting year, and use for statement of income accounts the current year's amounts.

III. Complete each question fully and accurately, even if it has been answered in a previous annual report. Enter the word "None" where it truly and completely states the fact.

IV. For any page(s) that is not applicable to the respondent, omit the page(s) and enter "NA," "NONE," or "Not Applicable" in column (d) on the List of Schedules, pages 2, 3, and 4.

V. Enter the month, day, and year for all dates. Use customary abbreviations. The "Date of Report" included in the header of each page is to be completed only for resubmissions (see VII. below). The date of the resubmission must be reported in the header for all form pages, whether or not they are changed from the previous filing.

VI. Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported as positive. Numbers having a sign that is different from the expected sign must be reported by enclosing the numbers in parentheses.

VII. For any resubmissions, submit the electronic filing using the Form 1 Submission Software and an original and six (6) conformed paper copies of the entire form, as well as the appropriate number of copies of the subscription statement indicated at instruction III (a). Resubmissions must be numbered sequentially on the cover page of the paper copies of the form. In addition, the cover page of each paper copy must indicate that the filing is a resubmission. Send the resubmissions to the address indicated at instruction III (a).

VIII. Do not make references to reports of previous years or to other reports in lieu of required entries, except as specifically authorized.

IX. Wherever (schedule) pages refer to figures from a previous year, the figures reported must be based upon those shown by the annual report of the previous year, or an appropriate explanation given as to why the different figures were used.

Definitions

I. Commission Authorization (Comm. Auth.)—The authorization of the Federal Energy Regulatory Commission, or any other Commission. Name the commission whose authorization was obtained and give date of the authorization.

II. Respondent—The person, corporation, licensee, agency, authority, or other Legal entity or instrumentality in whose behalf the report is made.

[FR Doc. 99–33592 Filed 12–27–99; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8849]

RIN 1545–AW57

Section 663(c); Separate Share Rules Applicable to Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning separate share rules applicable to estates under section 663(c) of the Internal Revenue Code. These regulations provide that substantively separate and independent shares of different beneficiaries are to be treated as separate estates for purposes of computing distributable net income and applying the distribution provisions of sections 661 and 662. These regulations also provide that a surviving spouse's statutory elective share of a decedent's estate and a pecuniary formula bequest are separate shares. Further, a revocable trust that elects to be treated as part of a decedent's estate is a separate share.

DATES: *Effective Date:* December 28, 1999.

Applicability Dates: For dates of applicability of these regulations, see § 1.663(c)–6.

FOR FURTHER INFORMATION CONTACT: Laura Howell, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1999, a notice of proposed rulemaking was published in the **Federal Register** (64 FR 790) relating to the application of the separate share rules to estates under section 663(c). Written comments were received on the proposed regulations, and a public hearing was held on April 22, 1999. After consideration of all the comments, the proposed regulations under section 663(c) are adopted as revised by this Treasury decision.

Explanation of Provisions

General Separate Share Rules

The proposed regulations define a separate share as a separate economic interest in one beneficiary or class of beneficiaries of the decedent's estate such that the economic interests of the beneficiary or class of beneficiaries (for example, rights to income or gains from specified items of property) are not affected by economic interests accruing to another beneficiary or class of beneficiaries. The proposed regulations conclude that there are separate shares in an estate when a beneficiary or class of beneficiaries has an interest in a decedent's estate (whether corpus or income, or both) that no other beneficiary or class of beneficiaries has.

Two commentators suggested a narrower definition of a separate share. One commentator suggested that separate shares exist only when the estate is administered as two or more well-defined shares that could be separate estates. Another commentator suggested that separate share treatment should apply only where the existence of separate shares is clear and the funding thereof does not require burdensome adjustments due to disproportionate distributions.

Generally, the final regulations clarify the definition and narrow the application of the separate share rules that are in the proposed regulations. The final regulations generally define a separate share as a separate economic interest in one beneficiary or class of beneficiaries of the decedent's estate such that the economic interests of the beneficiary or class of beneficiaries neither affect nor are affected by economic interests accruing to another beneficiary or class of beneficiaries. The final regulations add "nor are affected by" to clarify the definition of a separate share. Under this revised definition, a separate share generally exists only if it includes both corpus and the income attributable thereto and is independent from any other share. Thus, income earned on assets in one share (first share) and appreciation and depreciation in the value of those assets have no effect on any other share. Similarly, the income and changes in value of any other share have no effect on the first share.

Effect on Section 663(a)(1)

The proposed regulations provide that the separate share rules do not change the rules involving bequests of specific sums of money or specific property described in section 663(a)(1).

Commentators asked for clarification concerning whether the separate share rules apply to bequests described in section 663(a)(1). One commentator recommended that separate share treatment should apply to these bequests. Another commentator suggested that while revising § 1.663(c) to apply to estates, the IRS and the Treasury Department should reconsider and amend § 1.663(a)–1(b)(1) to permit principal distributions that are made to fund both pecuniary formula bequests and surviving spouses' elective shares to be recognized as coming within the definition of excluded gifts or bequests described in section 663(a)(1).

The final regulations provide that bequests described in section 663(a)(1) are not separate shares. The separate share rules are applicable only to determine the distributable net income of each share when applying the distribution provisions of sections 661 and 662 to the trust or estate and its beneficiaries. Bequests described in section 663(a)(1) are not subject to the distribution provisions and therefore are not separate shares.

Surviving Spouse's Elective Share

The proposed regulations provide that a surviving spouse's statutory elective share constitutes a separate share of an estate. As a result, the surviving spouse may be taxed on the estate's gross income only to the extent of the surviving spouse's share of that income under state law.

One commentator recommended that separate share treatment for a surviving spouse's elective share should be reconsidered. Elective shares should be a matter of further study because they are forced by state law, differ from state to state, and usually are part of an acrimonious conflict. Another commentator requested clarification of whether a surviving spouse's statutory elective share is included in the subchapter J estate. Further, this commentator recommended that an elective share that is not entitled to income or appreciation should be excluded from the subchapter J estate, but an elective share that is entitled to income and appreciation should be included in the subchapter J estate.

Conversely, other commentators agreed that separate share treatment should apply to a surviving spouse's statutory elective share regardless of whether the surviving spouse is entitled to income and shares in appreciation or depreciation. One commentator suggested that the separate share examples in the proposed regulations be revised to track more closely the Uniform Probate Code model because it will likely be adopted by most states.

These final regulations do not change the result of the proposed regulations. However, under these final regulations, a surviving spouse's elective share that under local law is entitled to income and to share in appreciation or depreciation constitutes a separate share under the general definition. Further, under a special rule in the final regulations, a surviving spouse's elective share that is not entitled to income or does not share in appreciation or depreciation is also a separate share.

Revocable Trust as à Part of Estate

The proposed regulations provide that a qualified revocable trust that elects under section 645 to be treated as part of the decedent's estate for income tax purposes constitutes a separate share. In response to comments, these final regulations include a reference that the electing revocable trust itself may have two or more separate shares. These final regulations further provide that qualified revocable trusts within the definition of section 645(b)(1) are subject to the separate share rules applicable to estates rather than trusts whether or not an election is made to be part of the estate.

Pecuniary Formula Bequests

The preamble to the proposed regulations requests comments concerning the treatment of pecuniary formula bequests as separate shares. Several commentators, noting that pecuniary formula bequests are similar to a surviving spouse's statutory elective share, suggested that such bequests be treated as separate shares. Commentators disagreed, however, on whether pecuniary formula bequests not entitled to income should be separate shares.

Under these final regulations, any pecuniary formula bequest that is entitled to income and to share in appreciation or depreciation under the governing instrument or local law constitutes a separate share under the general definition. Further, under a special rule, a pecuniary formula bequest that is not entitled to income or to share in appreciation or depreciation is also a separate share if the governing instrument does not provide that it is to be paid or credited in more than three installments. This provision regarding three or fewer installments parallels the specific bequest requirements in section 663(a)(1).

Administrative Rules

Commentators requested guidance concerning several administrative matters. Commentators asked for guidance concerning when separate shares come into existence. The final regulations provide that separate shares come into existence at the earliest moment that a fiduciary may reasonably determine, based upon the known facts, that a separate share exists.

Two commentators expressed concern about the need to readjust the separate shares as a result of an IRS examination. One commentator suggested that separate share treatment should apply to pecuniary formula bequests only if no amended returns and no adjustments to any tax periods would be required when the tax returns were filed in good faith. Another commentator recommended that separate share treatment should not apply to residuary bequests unless or until the regulations provide simple and practical methods of compliance for possible adjustments made during IRS examinations.

These final regulations do not adopt either suggestion. The regulations provide that the fiduciary must use a reasonable and equitable method to determine the value of each separate share and the allocation of taxable income to each share. This approach gives the fiduciary flexibility, within limits, in applying the separate share rules. However, redeterminations in value of those separate shares must be taken into account.

Commentators asked for a clarification of whether gross income of an estate must be allocated to a separate share based upon the amount of income each share is entitled to under the terms of the governing instrument or applicable local law. These final regulations clarify that, in computing the distributable net income for each separate share, the portion of gross income that is income within the meaning of section 643(b) must be allocated to each share based upon the amount of income each share is entitled to under the terms of the governing instrument or applicable local law. A similar allocation rule is provided for the amount of gross income that is not attributable to cash received by a trust or estate, such as a distributive share of a partnership's tax items, or the pro rata share of an S corporation's tax items.

Commentators asked whether the general rule for allocating gross income is applicable for income in respect of a decedent under section 691(a). These final regulations clarify that such gross income is allocated among the separate shares that could potentially be funded with these amounts irrespective of whether a share is entitled to receive any income under the terms of the governing instrument or applicable local law. The amount allocated to each share is based upon the relative value of each of those shares that could potentially be funded with such amounts.

One commentator requested clarification concerning the allocation of expenses to a separate share. These final regulations do not change the long standing rule under § 1.663(c)–2 of the Income Tax Regulations that any expense which is applicable solely to one separate share of a trust is not available as a deduction to any other share of the same trust. The IRS and the Treasury Department are not aware of any issues that have arisen in applying this rule.

Interest on Pecuniary Bequests or Delayed Estate Distributions

Commentators questioned why the proposed regulations take the position that interest, imposed by state law, on a pecuniary bequest or a delayed estate distribution is a payment of interest by the estate and not a distribution for purposes of sections 661 and 662. These same commentators indicated that alternatively such interest payments should be deductible administrative expenses if the interest was required to be paid by state law as part of the distribution and settlement of the estate. The final regulations retain the position taken in the proposed regulations because the IRS and the Treasury Department view this result as compelled by section 163(h) which disallows a deduction for personal interest as described in section 163(h)(2).

Requests Concerning Applicable Dates

One commentator suggested that either the applicable date of these final regulations should be retroactive to the date that section 1307 of the Tax Reform Act of 1997 became applicable, or the regulations should provide that during the interim period before final regulations are published, the IRS will accept any reasonable interpretation of the separate share rules, including those rules provided in the proposed regulations.

Another commentator requested that the final regulations, to the extent applicable to trusts, apply prospectively and apply either only to trusts that become irrevocable after the date the regulations are finalized or only to taxable years of trusts beginning after the date the regulations are finalized.

The final regulations have taken these comments into account as noted below.

Effective Dates

These final regulations are applicable for estates and qualified revocable trusts within the meaning of section 645(b)(1) with respect to decedents who die after December 28, 1999. However, for estates and qualified revocable trusts with respect to decedents who died after the date that section 1307 of the Tax Reform Act of 1997 became effective but before December 28, 1999, the IRS will accept any reasonable interpretation of the separate share provisions, including those provisions provided in 1999–11 I.R.B. 41 (see § 601.601(d)(2)(ii)(b)). For trusts other than qualified revocable trusts, § 1.663(c)–2 is applicable for taxable years of such trusts beginning after December 28, 1999.

Effect on Other Documents

The following publications are obsolete as of December 28, 1999:
Rev. Rul. 64–101 (1964–1 C.B. 77).
Rev. Rul. 71–167 (1971–1 C.B. 163).

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these final regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Laura Howell of the Office of Assistant Chief Counsel (Passthroughs and Special

Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and Recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.663(c)–1, 1.663(c)–2, 1.663(c)–3, 1.663(c)–4, 1.663(c)–5, and 1.663(c)–6 also issued under 26 U.S.C. 663(c). * * *

Par. 2. In § 1.663(a)–1, paragraph (b)(3) is amended by revising *Example 1*, *Example 2*, and *Example 3* to read as follows:

§ 1.663(a)–1 Special rules applicable to sections 661 and 662; exclusion; gifts, bequests, etc.

* * * * *

(b) * * *

(3) * * *

Example 1. Under the terms of a will, a legacy of $5,000 was left to A, 1,000 shares of X company stock was left to W, and the balance of the estate was to be divided equally between W and B. No provision was made in the will for the disposition of income of the estate during the period of administration. The estate had income of $25,000 during the taxable year 1954, which was accumulated and added to corpus for estate accounting purposes. During the taxable year, the executor paid the legacy of $5,000 in a lump sum to A, transferred the X company stock to W, and made no other distributions to beneficiaries. The distributions to A and W qualify for the exclusion under section 663(a)(1).

Example 2. Under the terms of a will, the testator's estate was to be distributed to A. No provision was made in the will for the distribution of the estate's income during the period of administration. The estate had income of $50,000 for the taxable year. The estate distributed to A stock with a basis of $40,000 and with a fair market value of $40,000 on the date of distribution. No other distributions were made during the year. The distribution does not qualify for the exclusion under section 663(a)(1), because it is not a specific gift to A required by the terms of the will. Accordingly, the fair market value of the property ($40,000) represents a distribution within the meaning of sections 661(a) and 662(a) (see § 1.661(a)–2(c)).

Example 3. Under the terms of a trust instrument, trust income is to be accumulated for a period of 10 years. During the eleventh year, the trustee is to distribute $10,000 to B, payable from income or corpus, and $10,000 to C, payable out of accumulated income. The trustee is to distribute the balance of the accumulated income to A. Thereafter, A is to receive all the current income until the trust terminates. Only the distribution to B would qualify for the exclusion under section 663(a)(1).

* * * * *

Par. 3. Section 1.663(c)–1 is amended as follows:

1. The section heading is revised.

2. Paragraph (a) is amended by revising the words "trust" and "trusts" to read "trust (or estate)" and "trusts (or estates)", respectively, in the first through fourth sentences.

3. Paragraph (b)(2) is removed and paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively.

4. Paragraphs (b) through (d) are amended by revising the words "trust" and "trusts" to read "trust (or estate)" and "trusts (or estates)", respectively.

The revision reads as follows:

§ 1.663(c)–1 Separate shares treated as separate trusts or as separate estates; in general.

* * * * *

Par. 4. Section 1.663(c)–2, is revised to read as follows:

§ 1.663(c)–2 Rules of administration.

(a) *When separate shares come into existence.* A separate share comes into existence upon the earliest moment that a fiduciary may reasonably determine, based upon the known facts, that a separate economic interest exists.

(b) *Computation of distributable net income for each separate share*—(1) *General rule.* The amount of distributable net income for any share under section 663(c) is computed as if each share constituted a separate trust or estate. Accordingly, each separate share shall calculate its distributable net income based upon its portion of gross income that is includible in distributable net income and its portion of any applicable deductions or losses.

(2) *Section 643(b) income.* This paragraph (b)(2) governs the allocation of the portion of gross income includible in distributable net income that is income within the meaning of section 643(b). Such gross income is allocated among the separate shares in accordance with the amount of income that each share is entitled to under the terms of the governing instrument or applicable local law.

(3) *Income in respect of a decedent.* This paragraph (b)(3) governs the allocation of the portion of gross income includible in distributable net income that is income in respect of a decedent within the meaning of section 691(a) and is not income within the meaning of section 643(b). Such gross income is allocated among the separate shares that could potentially be funded with these amounts irrespective of whether the share is entitled to receive any income under the terms of the governing instrument or applicable local law. The amount of such gross income allocated to each share is based on the relative value of each share that could potentially be funded with such amounts.

(4) *Gross income not attributable to cash.* This paragraph (b)(4) governs the allocation of the portion of gross income includible in distributable net income that is not attributable to cash received by the estate or trust (for example, original issue discount, a distributive share of partnership tax items, and the pro rata share of an S corporation's tax items). Such gross income is allocated among the separate shares in the same proportion as section 643(b) income from the same source would be allocated under the terms of the governing instrument or applicable local law.

(5) *Deductions and losses.* Any deduction or any loss which is applicable solely to one separate share of the trust or estate is not available to any other share of the same trust or estate.

(c) *Computations and valuations.* For purposes of calculating distributable net income for each separate share, the fiduciary must use a reasonable and equitable method to make the allocations, calculations, and valuations required by paragraph (b) of this section.

Par. 5. Section 1.663(c)–3 is amended by revising the section heading and the first sentence of paragraph (a), and removing paragraph (f) to read as follows:

§ 1.663(c)–3 Applicability of separate share rule to certain trusts.

(a) The applicability of the separate share rule provided by section 663(c) to trusts other than qualified revocable trusts within the meaning of section 645(b)(1) will generally depend upon whether distributions of the trust are to be made in substantially the same manner as if separate trusts had been created.

* * * * *

§ 1.663(c)–4 [Redesignated as § 1.663(c)–5]

Par. 6. Section 1.663(c)–4 is redesignated as § 1.663(c)–5.

Par. 7. A new § 1.663(c)–4 is added to read as follows:

§ 1.663(c)–4 Applicability of separate share rule to estates and qualified revocable trusts.

(a) *General rule.* The applicability of the separate share rule provided by section 663(c) to estates and qualified revocable trusts within the meaning of section 645(b)(1) will generally depend upon whether the governing instrument and applicable local law create separate economic interests in one beneficiary or class of beneficiaries of such estate or trust. Ordinarily, a separate share exists if the economic interests of the beneficiary or class of beneficiaries neither affect nor are affected by the economic interests accruing to another beneficiary or class of beneficiaries. Separate shares include, for example, the income on bequeathed property if the recipient of the specific bequest is entitled to such income and a surviving spouse's elective share that under local law is entitled to income and appreciation or depreciation. Furthermore, a qualified revocable trust for which an election is made under section 645 is always a separate share of the estate and may itself contain two or more separate shares. Conversely, a gift or bequest of a specific sum of money or of property as defined in section 663(a)(1) is not a separate share.

(b) *Special rule for certain types of beneficial interests.* Notwithstanding the provisions of paragraph (a) of this section, a surviving spouse's elective share that under local law is determined as of the date of the decedent's death and is not entitled to income or any appreciation or depreciation is a separate share. Similarly, notwithstanding the provisions of paragraph (a) of this section, a pecuniary formula bequest that, under the terms of the governing instrument or applicable local law, is not entitled to income or to share in appreciation or depreciation constitutes a separate share if the governing instrument does not provide that it is to be paid or credited in more than three installments.

(c) *Shares with multiple beneficiaries and beneficiaries of multiple shares.* A share may be considered as separate even though more than one beneficiary has an interest in it. For example, two beneficiaries may have equal, disproportionate, or indeterminate interests in one share which is economically separate and independent from another share in which one or more beneficiaries have an interest. Moreover, the same person may be a beneficiary of more than one separate share.

Par. 8. Newly designated § 1.663(c)–5 is amended by:

1. Revising the section heading and introductory text.

2. Redesignating the *Example* as *Example 1* and, in newly designated *Example 1*, redesignating paragraphs (a) through (e) as paragraphs (i) through (v), respectively.

3. Adding *Example 2*, *Example 3*, *Example 4*, *Example 5*, *Example 6*, *Example 7*, *Example 8*, *Example 9*, *Example 10*, and *Example 11*.

The revisions and additions read as follows:

§ 1.663(c)–5 Examples.

Section 663(c) may be illustrated by the following examples:

Example 1. * * *

Example 2 (i) *Facts.* Testator, who dies in 2000, is survived by a spouse and two children. Testator's will contains a fractional formula bequest dividing the residuary estate between the surviving spouse and a trust for the benefit of the children. Under the fractional formula, the marital bequest constitutes 60% of the estate and the children's trust constitutes 40% of the estate. During the year, the executor makes a partial proportionate distribution of $1,000,0000, ($600,000 to the surviving spouse and $400,000 to the children's trust) and makes no other distributions. The estate receives dividend income of $20,000, and pays expenses of $8,000 that are deductible on the estate's federal income tax return.

(ii) *Conclusion.* The fractional formula bequests to the surviving spouse and to the children's trust are separate shares. Because Testator's will provides for fractional formula residuary bequests, the income and any appreciation in the value of the estate assets are proportionately allocated between the marital share and the trust's share. Therefore, in determining the distributable net income of each share, the income and expenses must be allocated 60% to the marital share and 40% to the trust's share. The distributable net income is $7,200 (60% of income less 60% of expenses) for the marital share and $4,800 (40% of income less 40% of expenses) for the trust's share. Because the amount distributed in partial satisfaction of each bequest exceeds the distributable net income of each share, the estate's distribution deduction under section 661 is limited to the sum of the distributable net income for both shares. The estate is allowed a distribution deduction of $12,000 ($7,200 for the marital share and $4,800 for the trust's share). As a result, the estate has zero taxable income ($20,000 income less $8,000 expenses and $12,000 distribution deduction). Under section 662, the surviving spouse and the trust must include in gross income $7,200 and $4,800, respectively.

Example 3. The facts are the same as in *Example 2*, except that in 2000 the executor makes the payment to partially fund the children's trust but makes no payment to the surviving spouse. The fiduciary must use a reasonable and equitable method to allocate income and expenses to the trust's share. Therefore, depending on when the distribution is made to the trust, it may no longer be reasonable or equitable to determine the distributable net income for the trust's share by allocating to it 40% of the estate's income and expenses for the year. The computation of the distributable net income for the trust's share should take into consideration that after the partial distribution the relative size of the trust's separate share is reduced and the relative size of the spouse's separate share is increased.

Example 4 (i) *Facts.* Testator, who dies in 2000, is survived by a spouse and one child. Testator's will provides for a pecuniary formula bequest to be paid in not more than three installments to a trust for the benefit of the child in the amount needed to reduce the estate taxes to zero and a bequest of the residuary to the surviving spouse. The will provides that the bequest to the child's trust is not entitled to any of the estate's income and does not participate in appreciation or depreciation in estate assets. During the 2000 taxable year, the estate receives dividend income of $200,000 and pays expenses of $15,000 that are deductible on the estate's federal income tax return. The executor partially funds the child's trust by distributing to it securities that have an adjusted basis to the estate of $350,000 and a fair market value of $380,000 on the date of distribution. As a result of this distribution, the estate realizes long-term capital gain of $30,000.

(ii) *Conclusion.* The estate has two separate shares consisting of a formula pecuniary bequest to the child's trust and a residuary bequest to the surviving spouse. Because, under the terms of the will, no estate income is allocated to the bequest to the child's trust, the distributable net income for that trust's share is zero. Therefore, with respect to the $380,000 distribution to the child's trust, the estate is allowed no deduction under section 661, and no amount is included in the trust's gross income under section 662. Because no distributions were made to the spouse, there is no need to compute the distributable net income allocable to the marital share. The taxable income of the estate for the 2000 taxable year is $214,400 ($200,000 (dividend income) plus $30,000 (capital gain) minus $15,000 (expenses) and minus $600 (personal exemption)).

Example 5. The facts are the same as in *Example 4*, except that during 2000 the estate reports on its federal income tax return a pro rata share of an S corporation's tax items and a distributive share of a partnership's tax items allocated on Form K–1s to the estate by the S corporation and by the partnership, respectively. Because, under the terms of the will, no estate income from the S corporation or the partnership would be allocated to the pecuniary bequest to child's trust, none of the tax items attributable to the S corporation stock or the partnership interest is allocated to the trust's separate share. Therefore, with respect to the $380,000 distribution to the trust, the estate is allowed no deduction under section 661, and no amount is included in the trust's gross income under section 662.

Example 6. The facts are the same as in *Example 4*, except that during 2000 the estate receives a distribution of $900,000 from the

decedent's individual retirement account that is included in the estate's gross income as income in respect of a decedent under section 691(a). The entire $900,000 is allocated to corpus under applicable local law. Both the separate share for the child's trust and the separate share for the surviving spouse may potentially be funded with the proceeds from the individual retirement account. Therefore, a portion of the $900,000 gross income must be allocated to the trust's separate share. The amount allocated to the trust's share must be based upon the relative values of the two separate shares using a reasonable and equitable method. The estate is entitled to a deduction under section 661 for the portion of the $900,000 properly allocated to the trust's separate share, and the trust must include this amount in income under section 662.

Example 7 (i) *Facts.* Testator, who dies in 2000, is survived by a spouse and three adult children. Testator's will divides the residue of the estate equally among the three children. The surviving spouse files an election under the applicable state's elective share statute. Under this statute, a surviving spouse is entitled to one-third of the decedent's estate after the payment of debts and expenses. The statute also provides that the surviving spouse is not entitled to any of the estate's income and does not participate in appreciation or depreciation of the estate's assets. However, under the statute, the surviving spouse is entitled to interest on the elective share from the date of the court order directing the payment until the executor actually makes payment. During the estate's 2001 taxable year, the estate distributes to the surviving spouse $5,000,000 in partial satisfaction of the elective share and pays $200,000 of interest on the delayed payment of the elective share. During that year, the estate receives dividend income of $3,000,000 and pays expenses of $60,000 that are deductible on the estate's federal income tax return.

(ii) *Conclusion.* The estate has four separate shares consisting of the surviving spouse's elective share and each of the three children's residuary bequests. Because the surviving spouse is not entitled to any estate income under state law, none of the estate's gross income is allocated to the spouse's separate share for purposes of determining that share's distributable net income. Therefore, with respect to the $5,000,000 distribution, the estate is allowed no deduction under section 661, and no amount is included in the spouse's gross income under section 662. The $200,000 of interest paid to the spouse must be included in the spouse's gross income under section 61. Because no distributions were made to any other beneficiaries during the year, there is no need to compute the distributable net income of the other three separate shares. Thus, the taxable income of the estate for the 2000 taxable year is $2,939,400 ($3,000,000 (dividend income) minus $60,000 (expenses) and $600 (personal exemption)). The estate's $200,000 interest payment is a nondeductible personal interest expense described in section 163(h).

Example 8. The will of Testator, who dies in 2000, directs the executor to distribute the X stock and all dividends therefrom to child A and the residue of the estate to child B. The estate has two separate shares consisting of the income on the X stock bequeathed to A and the residue of the estate bequeathed to B. The bequest of the X stock meets the definition of section 663(a)(1) and therefore is not a separate share. If any distributions, other than shares of the X stock, are made during the year to either A or B, then for purposes of determining the distributable net income for the separate shares, gross income attributable to dividends on the X stock must be allocated to A's separate share and any other income must be allocated to B's separate share.

Example 9. The will of Testator, who dies in 2000, directs the executor to divide the residue of the estate equally between Testator's two children, A and B. The will directs the executor to fund A's share first with the proceeds of Testator's individual retirement account. The date of death value of the estate after the payment of debts, expenses, and estate taxes is $9,000,000. During 2000, the $900,000 balance in Testator's individual retirement account is distributed to the estate. The entire $900,000 is allocated to corpus under applicable local law. This amount is income in respect of a decedent within the meaning of section 691(a). The estate has two separate shares, one for the benefit of A and one for the benefit of B. If any distributions are made to either A or B during the year, then, for purposes of determining the distributable net income for each separate share, the $900,000 of income in respect of a decedent must be allocated to A's share.

Example 10. The facts are the same as in *Example 9*, except that the will directs the executor to fund A's share first with X stock valued at $3,000,000, rather than with the proceeds of the individual retirement account. The estate has two separate shares, one for the benefit of A and one for the benefit of B. If any distributions are made to either A or B during the year, then, for purposes of determining the distributable net income for each separate share, the $900,000 of gross income attributable to the proceeds from the individual retirement account must be allocated between the two shares to the extent that they could potentially be funded with those proceeds. The maximum amount of A's share that could potentially be funded with the income in respect of decedent is $1,500,000 ($4,500,000 value of share less $3,000,000 to be funded with stock) and the maximum amount of B's share that could potentially be funded with income in respect of decedent is $4,500,000. Based upon the relative values of these amounts, the gross income attributable to the proceeds of the individual retirement account is allocated $225,000 (or one-fourth) to A's share and $675,000 (or three-fourths) to B's share.

Example 11. The will of Testator, who dies in 2000, provides that after the payment of specific bequests of money, the residue of the estate is to be divided equally among the Testator's three children, A, B, and C. The will also provides that during the period of administration one-half of the income from the residue is to be paid to a designated charitable organization. After the specific bequests of money are paid, the estate initially has three equal separate shares. One share is for the benefit of the charitable organization and A, another share is for the benefit of the charitable organization and B, and the last share is for the benefit of the charitable organization and C. During the period of administration, payments of income to the charitable organization are deductible by the estate to the extent provided in section 642(c) and are not subject to the distribution provisions of sections 661 and 662.

Par. 9. Section 1.663(c)–6 is added to read as follows:

§ 1.663(c)–6 Effective dates.

Sections 1.663(c)–1 through 1.663(c)–5 are applicable for estates and qualified revocable trusts within the meaning of section 645(b)(1) with respect to decedents who die after December 28, 1999. However, for estates and qualified revocable trusts with respect to decedents who died after the date that section 1307 of the Tax Reform Act of 1997 became effective but before December 28, 1999, the IRS will accept any reasonable interpretation of the separate share provisions, including those provisions provided in 1999–11 I.R.B. 41 (see § 601.601(d)(2)(ii)(b) of this chapter). For trusts other than qualified revocable trusts, § 1.663(c)–2 is applicable for taxable years of such trusts beginning after December 28, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 13, 1999.

Jonathan Talisman,

Acting Assistant Secretary for the Treasury.

[FR Doc. 99–32694 Filed 12–27–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8850]

RIN 1545–AV69

Information Reporting With Respect to Certain Foreign Partnerships and Certain Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6038 of the Internal Revenue Code relating to information reporting requirements for United States persons owning interests in controlled foreign partnerships (CFPs). This document also contains

amendments to the final regulations under section 6038 relating to the reporting requirements of U.S. shareholders of certain foreign corporations and amendments to the final regulations under section 6038B relating to the reporting requirements with respect to transfers of property to foreign partnerships and to foreign corporations.

DATES: *Effective Dates:* These regulations are effective December 29, 1999, except that § 1.6038B–2(a)(5) is effective January 1, 2000.

Applicability Dates: For dates of applicability, see §§ 1.6038–2(l), 1.6038–3(l), and 1.6038B–2(c)(4) and (j)(3).

FOR FURTHER INFORMATION CONTACT: Eliana Dolgoff, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1545–1615, 1545–1017, and 1545–1317. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865.

The burden of complying with the collection of information required to be reported on Form 5471 is reflected in the burden for Form 5471.

The burden of complying with the collection of information required to be reported on Form 926 is reflected in the burden for Form 926.

The estimated annual burden per respondent of complying with the collection of information in § 1.6038–3(c)(1)(ii)(B) and (2)(ii)(B) varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 9, 1998, the IRS published in the **Federal Register** (63 FR 48144) proposed regulations relating to the reporting requirements under section 6038 of United States persons that are direct or indirect partners of CFPs. A public hearing on the proposed regulations was held on November 10, 1998, even though no requests to speak at the hearing were received. Though no comments were made at the hearing, written comments were received. After consideration of all of the written comments, the proposed regulations under section 6038 are adopted as revised by this Treasury decision. The revisions are discussed in the Summary of Public Comments and Explanation of Revisions section of this preamble. This document also contains amendments to certain other final regulations. These amendments are also discussed below.

Summary of Public Comments and Explanation of Revisions

A. General Comments Regarding the Proposed Section 6038 CFP Regulations

Some commentators suggested that the final regulations should exempt state and local government employee retirement plans from the section 6038 reporting requirements. The final regulations provide that trusts relating to state and local government employee retirement plans are not required to report under section 6038, unless required to do so in the instructions to Form 8865, "Return of U.S. Persons with Respect to Certain Foreign Partnerships."

One commentator asserted that the reasonable cause exception to the section 6038 penalties appears to apply only to failures to file Form 8865 and therefore would not protect a taxpayer who files an incomplete Form 8865 because the taxpayer was unable to obtain all the required information from the foreign partnership. The reasonable cause exception has been modified to make clear that it applies to both a failure to file Form 8865 and to a failure to submit all information required to be submitted.

Commentators requested that the final regulations provide that the section 6038 penalties do not apply when there is minor noncompliance with the reporting requirements under section 6038. The commentators expressed concern that taxpayers will be subject to penalties for small discrepancies in the information reported and suggested that the penalties apply only if there is a substantial failure to report the required information, or if materially false or inaccurate information is submitted. Because the IRS and Treasury believe adding such a standard might encourage taxpayers to submit incomplete Forms 8865, the standard was not added to the final regulations. A taxpayer may, nonetheless, avoid application of the section 6038 penalties because of minor noncompliance with the section 6038 reporting requirements by demonstrating reasonable cause. See § 1.6038–3(k)(4).

Commentators also requested that the IRS add additional, specific reasonable cause exceptions to the section 6038 penalties. For example, one commentator requested a specific exception be provided for controlling ten-percent partners (see definition in § 1.6038–3(a)(2)) that are unable to obtain all information required to be reported by controlling ten-percent partners. The final regulations do not contain additional, specific reasonable cause exceptions. Whether there is reasonable cause depends on all the facts and circumstances of the particular case. Any person who is unable to obtain information may apply for a reasonable cause determination specific to that person's situation.

Finally, a commentator asked that in the case of an affiliated group of corporations filing a consolidated income tax return, the final regulations not require the members to file separate Forms 8865 if one member of the group files Form 8865. The final regulations adopt this recommendation. The common parent corporation of an affiliated group of corporations filing a consolidated income tax return may file one Form 8865 on behalf of all other members of the group required to file Form 8865 pursuant to section 6038 with respect to a particular foreign partnership.

B. Section 6038/Section 6031 Overlap

Some commentators requested that the final regulations address the potential overlap between section 6031 and section 6038. In general, section 6031(e) provides that a foreign partnership must file Form 1065, "U.S. Partnership Return of Income," if it has gross income derived from sources within the United States or gross income that is effectively connected

with the conduct of a trade or business within the United States.

Section 6038 provides generally that a U.S. partner of a foreign partnership must file Form 8865 with respect to that partnership if the partner individually, or collectively with other ten-percent or greater U.S. partners, owns more than a fifty-percent interest in the partnership. Therefore, in some cases, both Forms 1065 and 8865 would be required to be filed with regard to the same partnership for the same tax year of the partnership. Although the two forms are not identical, and one is filed by the partnership while the other is filed by the relevant partners, the information required by the two forms is substantially the same.

Additionally, some confusion may result from the fact that the two forms contain similarly titled schedules. In particular, each form has a Schedule K–1 on which information about a partner's distributive share of partnership income, deductions, etc., is to be reported. The IRS is working to eliminate discrepancies between the two schedules. However, even if the discrepancies are eliminated, it is still possible the two schedules will not contain identical information because one schedule will be prepared by a partner and one will be prepared by the partnership.

In response to the comments that the overlap between section 6031 and section 6038 reporting will be burdensome to taxpayers when both sets of requirements apply, and to help avoid any confusion on the part of taxpayers with respect to which Schedule K–1 they should use to compute their tax liabilities, the final section 6038 regulations reduce the burden imposed by section 6038 in the case of an overlap. They provide that if a foreign partnership completes and files Form 1065, a U.S. person required to report under section 6038 must use a copy of the filed Form 1065, including the Schedules K–1, in conjunction with fulfilling the person's section 6038 reporting obligation. Specifically, the instructions to Form 8865 will state which schedules on Form 1065 are considered equivalent to schedules on Form 8865. A U.S. partner must attach to the partner's Form 8865 a copy of the Form 1065 schedules that are considered equivalent to the schedules the partner is required to complete on Form 8865 as a controlling fifty-percent partner (see definition in § 1.6038–3(a)(1)) or as a controlling ten-percent partner. A partner should not complete a schedule on Form 8865 when the partner attaches a copy of the equivalent Form 1065 schedule to its Form 8865. Should a schedule on Form 8865 ask for information that is not required to be reported on the equivalent Form 1065 schedule, the partner is not required to report that information on its Form 8865 if a copy of the completed equivalent Form 1065 schedule is attached to its Form 8865. A partner attaching copies of schedules from Form 1065 to its Form 8865 must still complete the parts of Form 8865 that the person is required to complete as a controlling fifty-percent partner, or as a controlling ten-percent partner, and for which there is no equivalent Form 1065 schedule (for example, a partner must still complete the first page of Form 8865 and certain schedules on page two of the form).

An example of how a person will use a completed Form 1065 to fulfill its section 6038 filing obligation is as follows. Section 1.6038–3(g)(2)(iii) requires a controlling fifty-percent partner to report aggregate information about the partners' distributive shares of income, gain, losses, deductions and credits. Such information is reported on Schedule K of Form 8865. The same information is also required to be submitted on Schedule K of Form 1065. The instructions to Form 8865 will provide that Schedules K on Forms 1065 and 8865 are equivalent. Accordingly, if the partnership completes and files a Form 1065, a controlling fifty-percent partner filing Form 8865 must attach a copy of the Schedule K from the Form 1065 to the partner's Form 8865 and should not complete Schedule K on Form 8865. The partner must also attach all other Form 1065 schedules that are considered equivalent to Form 8865 schedules that the partner must complete as a controlling fifty-percent partner. Additionally, the partner must still complete page one of Form 8865 and Schedules A "Constructive Ownership of Partnership Interest," A–1 "Certain Partners of Foreign Partnership," A–2 "Affiliation Schedule," and N "Transactions Between Controlled Foreign Partnership and Partners or Other Related Entities" of Form 8865.

Similarly, a controlling ten-percent partner must submit on Schedule K–1 of Form 8865 a statement of the income, gain, losses, deductions and credits allocated to the partner's direct interest in the partnership. See § 1.6038–3(g)(1)(i). The same information is also required to be reported on Schedule K–1 of Form 1065. Therefore, if the partnership completes and files Form 1065, the partner must attach to its Form 8865 a copy of its Schedule K–1 from the Form 1065 completed by the partnership and should not complete Schedule K–1 on Form 8865. The partner is still required to complete the portions of pages one and two of Form 8865 applicable to controlling ten-percent partners, as well as Schedule N.

Another comment asserted that the proposed regulations imposed an excessive reporting burden on taxpayers and that they had the effect of nullifying the section 6031(e) limitation on reporting required of foreign partnerships. The comment suggested that the IRS require only those items specifically enumerated in section 6038(a)(1) to be reported under section 6038.

Section 6038 grants the IRS authority to require taxpayers to submit more than the items enumerated in section 6038(a)(1). Section 6038 provides that the Secretary may require the furnishing of any other information that is similar or related in nature to that specified in the first sentence of section 6038(a)(1), or which the Secretary determines to be appropriate to carry out the provision of Title 26. The IRS has determined that all of the information that the final section 6038 regulations require taxpayers to submit is necessary for the IRS to carry out the provisions of Title 26.

Additionally, as explained above, section 6031(e) and section 6038 differ with respect to whom they require to report and when the reporting obligation applies. Section 6031(e) applies only to the requirement that a Form 1065 be filed, to the application of the TEFRA partnership-level audit procedures, and to the requirement that a partnership report information about its operations, even when there is limited U.S. ownership in the partnership. In contrast, section 6038 requires certain U.S. partners to report information when the foreign partnership in which they own an interest has substantial U.S. ownership. Section 6031(e) was added to the Internal Revenue Code at the same time that section 6038 was amended to apply to CFPs. See Taxpayer Relief Act of 1997, Public Law 105–34, sections 1141–1142 (111 Stat. 983) (1997). Therefore, rather than intending section 6031(e) to limit the amount of information required to be reported pursuant to section 6038, Congress intended the two provisions to work together to ensure that the IRS receives sufficient information about foreign partnerships.

C. Tiered Partnerships

Commentators requested that section 6038 reporting apply only to first-tier CFPs, *i.e.*, section 6038 reporting should only be required of U.S. persons with respect to foreign partnerships in which

they own a direct interest. However, section 6038(e)(3)(B) provides that rules similar to the rules of section 267(c) shall apply when determining whether a person owns a fifty-percent interest in a foreign partnership. Additionally, the statute does not require that a U.S. person own its interest in the CFP directly. Therefore, the final regulations require section 6038 reporting of United States persons whose ownership interests are entirely the result of constructive ownership from other persons.

Nevertheless, certain exceptions and modifications to this rule may apply. Persons that do not own direct interests may qualify for a reduced reporting obligation pursuant to the exception for constructive owners in § 1.6038–3(c)(2). Additionally, certain information required by the final section 6038 regulations must be submitted only if the partner owns a direct interest in the foreign partnership. For example, § 1.6038–3(g)(1)(i) provides that the person reporting under section 6038 must provide a statement of the income, gain, losses, deductions and credits allocated to that person's direct interest in the partnership. Accordingly, if a person is reporting under section 6038 but owns no direct interest in the partnership, that person will not have to submit information under § 1.6038–3(g)(1)(i). Finally, the final regulations require attribution from nonresident alien family members only if the person to whom the interest is being attributed already owns a direct or indirect (under the rules of section 267(c)(1) or (5)) interest in the partnership. See § 1.6038–3(b)(4).

D. Failure To Recognize That an Arrangement Is a Partnership or That a Partnership Is a Foreign Partnership

Commentators expressed concern that taxpayers might fail to report under section 6038 because they failed to recognize that their arrangement constituted a partnership. Additionally, if no entity is formed under foreign law, but a partnership is determined to exist, it may be difficult to determine whether the partnership is foreign or domestic. Some commentators recommended that the IRS exclude partnerships not formed under a foreign law statute from the reporting requirements, subject to an anti-abuse rule. The final regulations do not adopt this recommendation and additional guidance on these issues is beyond the scope of this document. They do, however, provide that the section 6038 reporting requirements do not apply to any United States person with respect to a foreign partnership that has validly elected (or is deemed to have elected) to be excluded from the application of subchapter K. See § 1.6038–3(e). Additionally, a taxpayer that does not comply with section 6038 because it mistakenly concluded that its arrangement was not a partnership, or that it was not a foreign partnership, may apply for a reasonable cause determination. See § 1.6038–3(k)(4).

E. Section 6038 (CFPs) Effective Date

Section 1.6038–3 is applicable to CFP tax years ending on or after December 31, 2000. United States persons are not required to report under section 6038 for CFP tax years ending before December 31, 2000.

F. Availability of Form 8865

A United States person required to report information pursuant to section 6038 must do so by completing and filing Form 8865. A final version of Form 8865 will be released prior to January 1, 2000. Taxpayers will be able to download a copy of the form and its instructions from the IRS Internet website located at www.irs.ustreas.gov.

G. Clarification of Section 6501(c)(8)

Section 6501(c)(8) provides that in the case of information required to be reported under section 6038, 6038A, 6038B, 6046, 6046A, or 6048, the time for assessment of any tax imposed by Title 26 with respect to any event or period to which such information relates shall not expire before the date that is three years after the date on which the Secretary is furnished the information required to be reported under such section. Taxpayers have expressed uncertainty about the application of this rule in the context of a failure to properly report information required under sections 6038, 6038B, or 6046A, with respect to an interest in a foreign corporation or a foreign partnership, as applicable. The IRS and Treasury wish to clarify that if a U.S. person fails to comply with sections 6038, 6038B, or 6046A, the extended statute of limitations provided by section 6501(c)(8) shall apply only to the tax consequences related to the information required to be reported under the relevant reporting section and not to all transactions within the U.S. person's tax year at issue. For example, if a U.S. person with a calendar tax year fails to comply with section 6038 for a controlled foreign partnership's 2001 calendar tax year, section 6501(c)(8) will only extend the statute of limitations applicable to the U.S. person's 2001 tax year with respect to any tax consequences associated with the U.S. person's interest in the foreign partnership during the partnership's 2001 tax year.

H. Amendment to Final Section 6038 Foreign Corporation Regulations

In order to reduce the burden that section 6038 imposes on taxpayers, this document also amends the final regulations under section 6038 applicable to shareholders of certain foreign corporations. The regulations provide that if a United States person does not own a direct or indirect interest in the foreign corporation, but is attributed an interest from a nonresident alien, the person is not required to report under section 6038. This amendment is effective for tax years of foreign corporations ending on or after December 29, 1999.

I. Amendments to Final Section 6038B Regulations Applicable to Transfers of Property to Foreign Partnerships

On February 5, 1999, the IRS published in the **Federal Register** final regulations under section 6038B relating to the information reporting requirements for certain contributions of property by United States persons to foreign partnerships. See 64 FR 5713. This document makes several amendments to those final regulations. Each amendment either reduces the burden that section 6038B imposes on taxpayers, or does not affect the burden imposed by section 6038B.

First, the amount of information required to be submitted by a person reporting a transfer of property to a foreign partnership is reduced. Rather than submit the names and addresses of all the foreign partnership's partners, the person reporting the transfer (the transferor) must provide only the names and addresses of the United States partners that owned a ten-percent or greater direct interest in the foreign partnership during the transferor's tax year in which the reportable transfer occurred, and the names and addresses of any other United States or foreign persons that were direct partners in the partnership during that tax year and that were related to the transferor under section 6038B during that tax year. A person who transferred solely cash and who did not own a ten-percent or greater interest after the transfer is still not required to report the names and addresses of any of the foreign partnership's other partners. This amendment applies to tax years of U.S. persons required to report under section 6038B beginning on or after January 1, 2000.

Second, this document changes the time for filing Form 8865 to report a transfer to a foreign partnership in

certain instances. Currently, § 1.6038B–2(a)(5)(ii) provides that if a United States person required to report a transfer to a foreign partnership is also required to report pursuant to section 6038 for the period in which the transfer occurred, then the United States person must report the transfer on the Form 8865 completed for the partnership's tax year in which the transfer occurred. This document deletes the section 6038B/section 6038 overlap rule, so that a United States person must always report with its tax return for a particular tax year all of its section 6038B transfers that took place during that year, regardless of whether any of the transfers occurred during a period for which section 6038 reporting is also required. This amendment applies to tax years of U.S. persons required to report under section 6038B beginning on or after January 1, 2000.

The following example illustrates this amendment. Assume the tax year of *FPS*, a foreign partnership, ends on Sept 30. *US*, a United States person and calendar year taxpayer, owns a sixty-percent interest in *FPS* and therefore is a controlling fifty-percent partner of *FPS*. Accordingly, *US* must report under section 6038 with respect to *FPS*. On October 15, 2001, *US* transfers property to *FPS* in a section 721 transaction. *US* is required to report this transfer under section 6038B because *US* owns at least a ten-percent interest in the partnership immediately after the transfer. See § 1.6038B–2(a)(1)(i). Under the existing section 6038B regulations, *US* is required to report the October 15, 2001 property transfer on the Form 8865 for *FPS*'s tax year ending September 30, 2002, that will be filed with *US*'s 2002 income tax return.

Under the amendments to section 6038B contained in this document, *US* must attach to its 2001 income tax return a Form 8865 on which is reported the October 15, 2001 property transfer and information about *FPS* for *FPS*'s tax year ending September 30, 2001. Assuming *US* is also a controlling fifty-percent partner during *FPS*'s tax year ending September 30, 2002, when *US* files its 2002 income tax return, *US* must attach to that return Form 8865 on which is reported information about *FPS* for *FPS's* tax year ending September 30, 2002. *US* should not report the October 15, 2001, property transfer on the Form 8865 filed with *US*'s 2002 income tax return.

The third and final amendment to the section 6038B regulations provides an additional opportunity for United States persons to timely report certain transfers to foreign partnerships. Even if not reported in accordance with the rules provided in § 1.6038B–2(a)(5) or (j)(1) or (2), a transfer to a foreign partnership that occurred before January 1, 2000, will nevertheless be considered timely reported if the transferor reports it on a Form 8865 attached to an amended tax return for the transferor's tax year in which the transfer occurred, provided such amended return is filed no later than September 15, 2000.

Additionally, since issuing the section 6038B regulations in February 1999, certain tax-exempt organizations have contacted the IRS and Treasury to request that they be specifically excluded from the obligation under section 6038B to report their property transfers to foreign partnerships. The IRS and Treasury invite comments regarding the extent to which section 6038B reporting should be required of tax-exempt organizations.

J. Amendment to Final Section 6038B Regulations Applicable to Transfers of Property to Foreign Corporations

This document makes one amendment to the final section 6038B regulations governing the reporting requirements with respect to transfers to foreign corporations. The amendment reduces the burden that section 6038B imposes on taxpayers.

Pursuant to § 1.367(a)–3(c)(8), section 367(a) does not apply to a domestic corporation's transfer of its own stock or securities in connection with the performance of services, if the transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1). Section 1.83–6(d)(1) provides that if a shareholder of a corporation transfers property to an employee of such corporation in consideration of services performed for the corporation, the transaction is considered to be a contribution of such property to the capital of such corporation by the shareholder, and immediately thereafter a transfer of such property by the latter corporation to the employee.

The final regulations under section 6038B do not contain an exception to the reporting requirements that corresponds to the rule in § 1.367(a)–3(c)(8). Therefore, a transfer by a domestic corporation of its stock or securities to an employee of the domestic corporation's foreign subsidiary may be excluded from the application of section 367(a), yet still reportable under section 6038B. This document provides that such a transfer is not required to be reported under section 6038B if the transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000. This amendment is effective as if it had been included in TD 8770 (63 FR 33550), and therefore applies to transfers occurring on or after July 20, 1998.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations. It is hereby certified that the collections of information contained in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the number of small entities that will be required to file the form is not substantial. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting information. The principal author of these regulations is Eliana Dolgoff, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6038–2 also issued under 26 U.S.C. 6038.

Section 1.6038–3 also issued under 26 U.S.C. 6038. * * *

Par. 2. In § 1.367(a)–3, paragraph (c)(8) is amended by adding a sentence

to the end of the paragraph to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(c) * * *

(8) * * * The transfer may still, however, be reportable under section 6038B. See § 1.6038B–1(b)(2)(i)(A)(*4*) and (b)(2)(i)(B)(*4*).

* * * * *

Par. 3. Section 1.6038–2 is amended as follows:

1. A sentence is added to the end of paragraph (j)(2)(i)(C).

2. Paragraph (l) is added.

The revised and added provisions read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(C) * * * (For a rule regarding attribution from a nonresident alien, see paragraph (l) of this section).

* * * * *

(l) *Other persons excepted from filing.* For tax years of foreign corporations ending on or after December 29, 1999, any person required to furnish information under this section with respect to a foreign corporation does not have to furnish that information if the following conditions are met—

(1) Such person does not own a direct or indirect interest in the foreign corporation; and

(2) Such person is required to furnish information solely by reason of attribution of stock ownership from a nonresident alien(s) under paragraph (c) of this section.

Par. 4. Section 1.6038–3 is added to read as follows:

§ 1.6038–3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).

(a) *Persons required to make return*—(1) *Controlling fifty-percent partners.* The term *controlling fifty-percent partner* means a United States person that controlled (as defined in paragraph (b)(1) of this section) the foreign partnership at any time during the partnership's tax year (as defined in paragraph (b)(8) of this section). Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a foreign partnership during which the partnership has one or more controlling fifty-percent partners, each controlling fifty-percent partner must complete and file Form 8865, "Return of U.S. Persons With Respect To Certain Foreign Partnerships," containing the information described in paragraph (g) of this section.

(2) *Controlling ten-percent partners.* If at any point during a foreign partnership's tax year (as defined in paragraph (b)(8) of this section) a United States person owned a ten-percent or greater interest in the partnership while the partnership was controlled by United States persons owning ten-percent or greater interests, such United States person is a controlling ten-percent partner. See paragraph (b)(1) of this section for the definition of control. However, a United States person is not a controlling ten-percent partner with respect to a particular foreign partnership for a particular tax year of the foreign partnership if at any point during that year the partnership had a controlling fifty-percent partner, as defined in paragraph (a)(1) of this section. Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a partnership during which the partnership has controlling ten-percent partners, each controlling ten-percent partner must complete and file Form 8865 containing the information described in paragraph (g)(1) of this section.

(3) *Separate returns for each partnership.* A United States person required to report under this paragraph (a) must file a separate Form 8865 for each foreign partnership with respect to which the person is a controlling fifty-percent partner or a controlling ten-percent partner.

(b) *Ownership determinations and definitions*—(1) *Control.* Control of a foreign partnership is ownership of more than a fifty-percent interest in the partnership.

(2) *Fifty-percent interest.* A fifty-percent interest in a partnership is an interest equal to fifty percent of the capital interest in such partnership, an interest equal to fifty percent of the profits interest in such partnership, or an interest to which fifty percent of the deductions or losses of such partnership are allocated.

(3) *Ten-percent interest.* A ten-percent interest in a partnership is an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(4) *Constructive ownership rules.* For purposes of determining an interest in a partnership, the constructive ownership rules of section 267(c) (other than section 267(c)(3)) apply, taking into account that such rules refer to corporations and not to partnerships. However, an interest will be attributed from a nonresident alien under the family attribution rules of section 267(c)(2) and (4) only if the person to whom the interest is attributed owns a direct or indirect (under the rules of 267(c)(1) or (5)) interest in the foreign partnership.

(5) *Determination of amount of interest.* Whether a person owns a fifty-percent interest, or a ten-percent interest, as described in paragraphs (b)(2) and (3) of this section, is determined for each tax year of the foreign partnership by reference to the agreement of the partners relating to such interests during that tax year.

(6) *Definition of United States person.* The term *United States person* is defined in section 7701(a)(30).

(7) *Definition of a foreign partnership.* A foreign partnership is a partnership described in section 7701(a)(5).

(8) *Tax year of a foreign partnership.* The tax year of a foreign partnership is determined under section 706.

(9) *Examples.* The rules of paragraph (a) of this section and this paragraph (b) are illustrated by the following examples:

Example 1. Sole U.S. partner does not own more than a fifty-percent interest. No United States person owns any interest (directly or constructively) in *FPS*, a foreign partnership whose tax year under section 706 is the calendar year. On January 1, 2001, *US*, a United States person with the calendar year as its tax year, contributes property to *FPS* in exchange for a 40% interest in a section 721 transaction. No United States persons acquire directly or constructively any other interests in *FPS* during *FPS*'s 2001 tax year. *US* is not a controlling fifty-percent partner during *FPS*'s 2001 tax year. *US* did not own during that tax year, either directly or constructively, more than a 50% interest in the partnership under paragraphs (b)(2) and (4) of this section. Also, *US* is not a controlling ten-percent partner; although *US* owned a 10% or greater interest, *US* persons owning at least 10% interests did not control *FPS*. Therefore, *US* does not have to file with its 2001 income tax return a Form 8865 with respect to *FPS* under section 6038. (But see section 6038B for the reporting obligations of *US* with respect to its transfer of property to *FPS* and section 6046A for the reporting obligation of *US* with respect to its acquisition of an interest in *FPS*. See also § 1.6046A–1(e)(1) regarding the overlap between sections 6038B and 6046A).

Example 2. Controlling ten-percent partners. Assume the same facts as in *Example 1*. In addition, on January 1, 2002, *US1*, a United States person unrelated to *US* and a calendar year taxpayer, purchases a 15% interest in *FPS* from a foreign partner of *FPS*. Neither *US* nor *US1* is a controlling fifty-percent partner during *FPS*'s 2002 tax

year because neither one owns more than a 50% percent interest in *FPS* during that year. However, *US* and *US1* are controlling ten-percent partners for that year because each owns at least a 10% interest (*US* owns a 40% interest and *US1* owns a 15% interest) and together they control *FPS* because collectively they own more than a 50% interest in *FPS*. As controlling ten-percent partners, under section 6038, each is required to file a Form 8865 with its 2002 income tax return. (*US1* must also report its acquisition of the 15% interest in *FPS* under section 6046A on its Form 8865 filed with its 2002 income tax return.)

Example 3. Constructive ownership rules. Assume the same facts as in *Example 2*. In addition, on January 1, 2003, *US2*, a United States person and the brother of *US*, purchases 50% of the stock of *FC*, a foreign corporation. *FC* owns a 20% interest in *FPS*. Thus, under sections 6038(e)(3) and 267(c)(1), *US2* indirectly owns a 10% interest in *FPS* (10% is *US2*'s proportionate share of *FC*'s 20% interest in *FPS*), and under sections 6038(e)(3) and 267(c)(2), *US2* is attributed *US*'s 40% interest. Additionally, *US* directly owns a 40% interest in *FPS* and is attributed *US2*'s 10% interest pursuant to section 6038(e)(3) and section 267(c)(2). Therefore, *US2* is considered to own a 50% interest (10% indirectly and 40% from *US*) in *FPS*, and *US* is considered to own a 50% interest in *FPS* (40% directly and 10% from *US2*). *FPS* has no controlling fifty-percent partners, because neither *US*, *US1*, nor *US2*, owns a greater than 50% interest. However, *US*, *US1*, and *US2* are each controlling ten-percent partners and each must file Form 8865 pursuant to section 6038 for *FPS*'s 2003 tax year ending December 31, 2003. Each must attach Form 8865 to its tax return for its 2003 tax year.

Example 4. Controlling fifty-percent partners. Assume the same facts as in *Example 3*. In addition, on June 1, 2004, *US* acquires an additional 1% direct interest in *FPS*. *US* is now a controlling fifty-percent partner of *FPS*, because *US* owns a 41% interest directly and a 10% interest constructively from *US2*. *US2* is also a controlling fifty-percent partner, because *US2* owns 10% indirectly and 41% constructively from *US*. Both *US* and *US2* are required to file Form 8865 containing all the information required to be submitted by controlling fifty-percent partners. (But see paragraph (c)(1) of this section, which contains filing exceptions when there are multiple controlling fifty-percent partners). *US1* is no longer a controlling ten-percent partner because *FPS* now has at least one controlling fifty-percent partner, and *US1* does not qualify as a controlling fifty-percent partner. Therefore, *US1* is not required to file Form 8865 under section 6038.

Example 5. Constructive ownership from a nonresident alien. US, a United States person, does not own directly or constructively an interest in *FPS*, a foreign partnership. The tax year of *FPS* is the calendar year. *NRA*, a nonresident alien, is the mother of *US*. In 2002, *NRA* acquires a 55% interest in *FPS*. Because *US* owns neither a direct nor a constructive interest in *FPS* under sections 6038(e)(3) and 267(c)(1) or (5), *NRA*'s interest is not attributed to *US* under sections 6038(e)(3) and 267(c)(2). If in 2003 *NRA* becomes a United States person, *NRA*'s interest will be attributed to *US*. However, *US* is excused from filing Form 8865 if *US* satisfies the requirements of the constructive owners exception in paragraph (c)(2) of this section. In 2003, *NRA* is a controlling fifty-percent partner and must file a Form 8865 under section 6038 for *FPS*'s 2003 tax year.

(c) *Exceptions when more than one United States person is required to file Form 8865 pursuant to section 6038*—(1) *Multiple controlling fifty-percent partners*—(i) *In general.* If, with respect to the same foreign partnership for the same tax year, more than one United States person is a controlling fifty-percent partner, then in lieu of each controlling fifty-percent partner filing a separate Form 8865, only one Form 8865 from one of the controlling fifty-percent partners is required, provided all of the requirements of paragraph (c)(1)(ii) of this section are satisfied. A person that is a controlling fifty-percent partner solely because of an interest to which deductions or losses are allocated may file the single return only if there is no United States person that is a controlling fifty-percent partner by reason of an interest in capital or profits.

(ii) *Requirements*—(A) The person undertaking the filing obligation must file Form 8865 with that person's income tax return in the manner provided by Form 8865 and the accompanying instructions. The return must contain all of the information that would have been required to be reported by this section if each controlling fifty-percent partner had filed its own Form 8865.

(B) Any controlling fifty-percent partner not filing Form 8865 must file with its income tax return a statement titled "Controlled Foreign Partnership Reporting" containing the following information—

(*1*) A statement that the person qualified as a controlling fifty-percent partner, but is not submitting Form 8865 pursuant to the multiple controlling fifty-percent partners exception;

(*2*) The name, address, and taxpayer identification number (if any) of the foreign partnership of which the person qualified as a controlling fifty-percent partner;

(*3*) A representation that the filing requirement has been or will be satisfied;

(*4*) The name and address of the person filing the single return;

(*5*) The Internal Revenue Service Center where the single return is required to be filed; and

(*6*) Any additional information that Form 8865 and the accompanying instructions require.

(iii) *Penalties.* If the requirements listed in paragraph (c)(1)(ii) of this section are not satisfied, a United States person that did not file a Form 8865 pursuant to this paragraph will be subject to the penalties in paragraph (k) of this section, unless the reasonable cause provision in paragraph (k)(4) of this section is satisfied.

(2) *Certain constructive owners excepted from furnishing information*—(i) *In general.* A United States person that does not own a direct interest in the foreign partnership and that is required to file Form 8865 under this section solely by reason of constructive ownership from a United States person(s) pursuant to paragraph (b)(4) of this section (an indirect partner) is not required to file Form 8865 if all of the requirements listed in paragraph (c)(2)(ii) of this section are met.

(ii) *Requirements*—(A) The United States person(s) whose interest the indirect partner constructively owns reports all the information such person(s) is required to submit under this section, unless such person also is required to file solely by reason of constructive ownership from a United States person(s) pursuant to paragraph (b)(4) of this section, or another person reports the information pursuant to paragraph (c)(1) of this section.

(B) The indirect partner files with its income tax return a statement titled "Controlled Foreign Partnership Reporting" containing the following information—

(*1*) A representation that the indirect partner was required to file Form 8865, but is not doing so pursuant to the constructive owners exception;

(*2*) The names and addresses of the United States persons whose interests the indirect partner constructively owns;

(*3*) The name and address of the foreign partnership with respect to which the indirect partner would have had to have filed Form 8865 but for this exception; and

(*4*) Any additional information that Form 8865 and the accompanying instructions require.

(iii) *Penalties.* A United States person that pursuant to this paragraph (c)(2) does not file a return will be subject to the penalties in paragraph (k) of this section if the requirements listed in paragraph (c)(2)(ii) of this section are not satisfied, unless such failure is due to reasonable cause, as defined in paragraph (k)(4) of this section.

(iv) *Overlap with multiple controlling fifty-percent partners exception*—(A) If a

United States person qualifies for both the exception in paragraph (c)(1) of this section and the exception in this paragraph (c)(2), such person may only utilize the multiple controlling fifty-percent partners exception in paragraph (c)(1) of this section to avoid filing Form 8865.

(B) *Example.* The following example illustrates the operation of this paragraph (c)(2)(iv):

Example. US is a U.S. citizen. *US* owns 100% of the stock of *DC*, a domestic corporation. *DC* owns a 60% direct interest in *FPS*, a foreign partnership. *DC* and *US* are the only U.S. persons that own interests directly or constructively in *FPS*. *DC* owns directly a greater than 50% interest in *FPS*. *US* constructively owns *DC*'s interest pursuant to sections 6038(e)(3) and 267(c)(1). Therefore, both *DC* and *US* are controlling fifty-percent partners. *US* qualifies for both the exception in paragraph (c)(1) of this section (multiple controlling fifty-percent partners) and the exception in paragraph (c)(2) of this section (constructive owner exception). *US* may only utilize the paragraph (c)(1) exception to avoid its filing obligation. Accordingly, *DC* may file a single Form 8865 on behalf of *US* and itself. However, that form must contain all the information that would have been submitted had *DC* and *US* each submitted a separate Form 8865.

(3) *Members of an affiliated group of corporations filing a consolidated return.* If one or more members of an affiliated group of corporations filing a consolidated return are required under section 6038 to file a Form 8865 for a particular foreign partnership, the common parent corporation may file one Form 8865 on behalf of all of the members of the group required to report under section 6038. Except with respect to group members who also qualify under the exception in paragraph (c)(2) of this section, the Form 8865 must contain all the information that would have been required to be submitted if each group member were required to file its own Form 8865.

(d) *Exception for certain trusts.* Trusts relating to state and local government employee retirement plans are not required to report under this section, unless the instructions to Form 8865 provide otherwise.

(e) *Reporting under this section not required with respect to partnerships excluded from the application of subchapter K.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in § 1.761–2(a) if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in § 1.761–2(b)(2)(i), or such partnership is deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of § 1.761–2(b)(2)(ii).

(f) *Period covered by return.* The information required under this section must be furnished for the tax year of the foreign partnership ending with or within the United States person's tax year. See section 706 for rules regarding tax years of partnerships.

(g) *Contents of return*—(1) *Information required to be submitted by controlling fifty-percent partners and controlling ten-percent partners.* All controlling fifty-percent partners and all controlling ten-percent partners must submit the following information on Form 8865 in the form and manner and to the extent prescribed by Form 8865 and its instructions—

(i) A statement of the income, gain, losses, deductions and credits allocated to the direct interest in the partnership of the person reporting under section 6038;

(ii) A list of all partnerships (foreign or domestic) in which the foreign partnership owned a direct interest, or owned a constructive interest of ten percent of more under the rules of section 267(c)(1) or (5), during the partnership's tax year for which the Form 8865 is being filed;

(iii) Information about all foreign entities that were disregarded as entities separate from their owner under §§ 301.7701–2 and 301.7701–3 that were owned by the foreign partnership during the partnership's tax year for which the Form 8865 is being filed;

(iv) A summary of the transactions that took place during the partnership's tax year between the partnership and the person filing the return, between the partnership and any other partnership of which the person filing the return is a controlling fifty-percent partner, and between the partnership and any corporation controlled (under section 6038(e)(2) and the regulations thereunder) by the person filing the return; and

(v) Any other information that Form 8865 or its accompanying instructions require to be submitted.

(2) *Additional information required to be submitted by controlling fifty-percent partners.* In addition to the information required pursuant to paragraph (g)(1) of this section, controlling fifty-percent partners must also submit the following information in the form and manner and to the extent required by Form 8865 and its instructions—

(i) A list of the names, addresses and tax identification numbers (if any) of each United States person that owned a direct interest of ten percent or more in the partnership during the partnership's tax year, and of each United States and foreign person whose interests in the partnership the controlling fifty-percent partner constructively owned under paragraph (b)(4) of this section during the partnership's tax year;

(ii) A list of transactions between the partnership and any United States person owning at the time of the transaction at least a 10-percent direct interest (as defined in paragraph (b)(3) of this section) in the foreign partnership;

(iii) A statement of the aggregate of the partners' distributive shares of items of income, gain, losses, deductions and credits;

(iv) A statement of income, gain, losses, deductions and credits allocated to each United States person holding a direct interest in the foreign partnership of ten percent or more; and

(v) Any other information Form 8865 or its accompanying instructions require controlling fifty-percent partners to submit.

(h) *Method of reporting.* Except as otherwise provided on Form 8865 or the accompanying instructions, all amounts required to be furnished on Form 8865 must be expressed in United States dollars. All statements required on or with Form 8865 pursuant to this section must be in English.

(i) *Time and place for filing return*—(1) *In general.* Form 8865 must be filed with the United States person's income tax return on or before the due date (including extensions) of that return. If the United States person is not required to file an income tax return for its tax year with which or within which the foreign partnership's tax year ends, but is required to file an information return for that year (for example, Form 1065, "U.S. Partnership Return of Income," or Form 990, "Return of Organization Exempt from Income Tax"), the Form 8865 must be filed with the United States person's information return filed on or before the due date (including extensions) of that return.

(2) *Duplicate return.* If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(j) *Overlap with section 6031*—(1) *In general.* A partner may be required to file Form 8865 under this section and the foreign partnership in which it is a partner may also be required to file a Form 1065 under section 6031(e) for the same partnership tax year. However, if a foreign partnership completes and files Form 1065, the United States partner must use a copy of the relevant

parts of Form 1065 to fulfill certain of its filing obligations under section 6038. Specifically, instead of completing the Form 8865 schedules that the person would otherwise be required to complete as a controlling fifty-percent or a controlling ten-percent partner, the person must instead attach to its Form 8865 copies of the relevant schedules from Form 1065 that the instructions to Form 8865 state are considered equivalent to schedules on Form 8865. Should a schedule on Form 8865 ask for information that is not required to be reported on the equivalent Form 1065 schedule, the partner is not required to report that information on its Form 8865 if a copy of the completed equivalent Form 1065 schedule is attached to its Form 8865. A person attaching copies of schedules from Form 1065 to its Form 8865 must still complete the parts of Form 8865 that the person is required to complete as a controlling fifty-percent partner, or a controlling ten-percent partner, and for which there is no equivalent Form 1065 schedule (for example, the first page of Form 8865).

(2) *Example.* The following example illustrates the application of this paragraph (j):

Example. US, a United States citizen, owns a 55% interest in *FPS*, a foreign partnership and calendar year taxpayer. Because US owns more than a 50% interest in *FPS*, *US* is a controlling fifty-percent partner of *FPS* and must file a Form 8865 with respect to *FPS*. During 2001, *FPS* earns gross income that is effectively connected with the conduct of a trade or business within the United States. Therefore, pursuant to section 6031(e)(2)(B), *FPS* must file Form 1065 for its 2001 tax year. If *FPS* completes and files Form 1065, *US* must use copies of the relevant schedules from Form 1065 to complete *US*'s Form 8865 for *FPS*'s 2001 tax year. If *FPS* instead had a September 30 tax year pursuant to section 706, then *US* must attach to its Form 1040 for *US*'s 2001 tax year a Form 8865 completed with respect to *FPS*'s tax year ending September 30, 2001. If *FPS* filed a Form 1065 for its tax year ending September 30, 2001, then *US* must use that Form 1065 to fulfill in part its reporting obligations under section 6038 by attaching the relevant schedules from the Form 1065 to *US*'s Form 8865.

(k) *Failure to comply with reporting requirement*—(1) *In general.* Any United States person required to file Form 8865 under Section 6038 and this section that fails to comply (as defined in paragraph (k)(2) of this section) with the reporting requirements of this section, will be subject to the penalties described in paragraph (k)(3) of this section.

(2) *Failure to comply.* A failure to comply is separately determined for each foreign partnership for which a United States person has a section 6038 reporting obligation. A failure to comply with the requirements of section 6038 includes the following—

(i) The failure to report at the proper time and in the proper manner any information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section.

(3) *Penalties.* A United States person that fails to comply (as defined in paragraph (k)(2) of this section) with the reporting requirements of this section must pay the following penalties, subject to the reasonable cause exception in paragraph (k)(4) of this section:

(i) *Dollar amount penalty*—(A) *$10,000 penalty.* A penalty of $10,000 shall be imposed for each tax year of each foreign partnership with respect to which a failure to comply occurs.

(B) *Increase in penalty.* If a failure to comply with the applicable reporting requirements of section 6038 and this section continues for more than 90 days after the date on which the Commissioner or the Commissioner's delegate mails notice of the failure to the United States person required to file Form 8865, the person must pay an additional penalty of $10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90-day period has expired.

(C) *Limitation.* The additional penalty imposed on any United States person by section 6038(b)(2) and paragraph (k)(3)(i)(B) of this section is limited to a maximum of $50,000 for each partnership for each tax year with respect to which the failure occurs.

(ii) *Penalty of reducing foreign tax credit*—(A) *Effect on foreign tax credit.* Failure to comply with the reporting requirements of section 6038 and this section may cause a reduction of foreign tax credits under section 901 (taxes of foreign countries and of possessions of the United States). In applying section 901 to a United States person for any tax year with or within which its foreign partnership's tax year ended, the amount of taxes paid (and deemed paid under sections 902 and 960) by the United States person will be reduced by 10 percent if the person fails to comply. However, no tax deemed paid under section 904(c) will be reduced under the provisions of this paragraph (k)(3)(ii).

(B) *Reduction for continued failure.* If a failure to comply with the reporting requirements of section 6038 and this section continues for more than 90 days after the date on which the Commissioner or the Commissioner's delegate mails notice of the failure to the person required to file Form 8865, then the amount of the reduction in paragraph (k)(3)(ii)(A) of this section will be 10 percent, plus an additional 5 percent for each 3-month period (or fraction thereof) during which the failure continues after the 90-day period has expired.

(C) *Limitation on reduction.* The amount of the reduction under paragraphs (k)(3)(ii)(A) and (B) of this section for each failure to furnish information required under this section will not exceed the greater of $10,000, or the gross income of the foreign partnership for its tax year with respect to which the failure occurred.

(D) *Offset for dollar amount penalty imposed.* The total amount of the reduction which, but for this paragraph (k)(3)(ii)(D), may be made under this paragraph (k)(3)(ii) with respect to any separate failure, may not exceed the maximum amount of the reductions that may be imposed, reduced (but not below zero) by the dollar amount penalty imposed by paragraph (k)(3)(i) of this section with respect to the failure.

(4) *Reasonable cause limitation.* The time prescribed for filing a complete Form 8865, and the beginning of the 90-day period after the Commissioner or the Commissioner's delegate mails notice under paragraphs (k)(3)(i)(B) and (ii)(B) of this section, will be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information. The United States person may show reasonable cause by providing a written statement to the Commissioner's delegate having jurisdiction over the person's return to which the Form 8865 should have been attached, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause will be determined by the Commissioner, or the Commissioner's delegate, under all the facts and circumstances.

(5) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6038, see section 6501(c)(8).

(l) *Effective date.* This section applies to tax years of a foreign partnership ending on or after December 31, 2000.

Par. 5. Section 1.6038B–1 is amended as follows:

1. The heading is revised.
2. The first three sentences of paragraph (b)(1)(i) are removed and four sentences are added in their place.
3. Paragraph (b)(2)(i)(A)(*4*) is added.
4. Paragraph (b)(2)(i)(B)(*3*) is revised.
5. Paragraph (b)(2)(i)(B)(*4*) is added.
6. Paragraph (g) is revised.

The added and revised provisions read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) * * * (1) * * * (i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of paragraph (b)(2) of this section, and certain exchanges described in section 354 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of this section and must attach the required information to Form 926, "Return by Transferor of Property to a Foreign Corporation." For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see paragraphs (b)(3) and (g) of this section.

For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of § 1.367(a)-1T(c) and § 1.367(a)-3(d) shall apply with respect to a transfer described in section 367(a), and the rules of § 1.367(a)-1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a), then the U.S. person exchanging stock is not required to report under section 6038B. * * *

* * * * *

(2) * * *

(i) * * *

(A) * * *

(*4*) The transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000; or

(B) * * *

(*3*) The transferor properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer; or

(*4*) The transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000.

* * * * *

(g) This section applies to transfers occurring on or after July 20, 1998, except for transfers of cash made in tax years beginning on or before February 5, 1999, which are not required to be reported under section 6038B, and except for paragraph (e) of this section, which applies to transfers that are subject to §§ 1.367(e)-1(f) and 1.367(e)-2(e). See § 1.6038B–1T for transfers occurring prior to July 20, 1998. See also § 1.6038B–1T(e) in effect prior to August 9, 1999 (as contained in 26 CFR part 1 revised April 1, 1999), for transfers described in section 367(e) that are not subject to §§ 1.367(e)-1(f) and 1.367(e)-2(e).

Par. 6. Section 1.6038B–2 is amended as follows:

1. Paragraph (a)(5) is revised.
2. Paragraph (c)(4) is revised.
3. Paragraph (c)(6) is amended by removing the period at the end and adding "; and" in its place.
4. Paragraph (j)(1) introductory text is amended by revising the first sentence.
5. Paragraph (j)(3) is added.

The revised and added provisions read as follows:

§ 1.6038B–2 Reporting of certain transfers to foreign partnerships.

(a) * * *

(5) *Time for filing Form 8865.* The Form 8865 on which a transfer is reported must be attached to the transferor's timely filed (including extensions) income tax return for the tax year that includes the date of the transfer. If the person required to report under this section is not required to file an income tax return for its tax year during which the transfer occurred, but is required to file an information return for that year (for example, Form 1065, "U.S. Partnership Return of Income," or Form 990, "Return of Organization Exempt from Income Tax"), the person should attach the Form 8865 to its information return.

* * * * *

(c) * * *

(4) The names and addresses of the other partners in the foreign partnership, unless the transfer is solely of cash and the transferor holds less than a ten-percent interest in the transferee foreign partnership immediately after the transfer. However, for tax years of U.S. persons beginning on or after January 1, 2000, the person reporting pursuant to section 6038B (the transferor) must provide the names and addresses of each United States person that owned a ten-percent or greater direct interest in the foreign partnership during the transferor's tax year in which the transfer occurred, and the names and addresses of any other United States or foreign persons that were direct partners in the foreign partnership during that tax year and that were related to the transferor during that tax year. See paragraph (i)(4) of this section for the definition of a related person;

* * * * *

(j) * * * (1) *In general.* Except as otherwise provided in this section, this section applies to transfers made on or after January 1, 1998. * * *

* * * * *

(3) *Special rule for transfers made before January 1, 2000.* Even if not reported in accordance with the rules provided in paragraph (a)(5) of this section, or paragraph (j) (1) or (2) of this section, a transfer that occurred before January 1, 2000 will nevertheless be considered timely reported if the transferor reports it on a Form 8865 attached to an amended tax return for the transferor's tax year in which the transfer occurred, provided such amended return is filed no later than September 15, 2000.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 1.602.101, paragraph (b) is amended by revising the entries for § 1.6038–2, § 1.6038(B)–1, and § 1.6038B–2 and adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6038–2	1545–1617
* * * * *	
1.6038–3	1545–1617
* * * * *	
1.6038B–1	1545–1617
* * * * *	
1.6038B–2	1545–1617
* * * * *	

Approved: December 9, 1999.

Robert Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–32695 Filed 12–27–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8851]

RIN 1545–AK75

Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6046A of the Internal Revenue Code relating to the requirement that United States persons, in certain circumstances, file a return if they acquire or dispose of an interest in a foreign partnership, or if their proportional interest in a foreign partnership changes.

DATES: *Effective Date:* December 29, 1999.

Applicability Dates: For dates of applicability of § 1.6046A–1, see § 1.6046A–1(j).

FOR FURTHER INFORMATION CONTACT: Eliana Dolgoff, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1646. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865, "Return of U.S. Persons With Respect to Certain Foreign Partnerships."

Suggestions for reducing the burden associated with this rule should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 9, 1998, the IRS published in the **Federal Register** (63 FR 48154) proposed regulations under section 6046A. A public hearing on the proposed regulations was held on November 10, 1998, even though no requests to speak at the hearing were received. Though no comments were made at the hearing, written comments were received. After consideration of all of the written comments, the proposed regulations under section 6046A are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

Commentators requested that section 6046A reporting not be required of United States persons that are indirect partners in a partnership. For example, a United States person would not be required to report under section 6046A with respect to an interest in a foreign partnership that the person owned indirectly through another partnership. Unlike section 6038, section 6046A reporting may apply with respect to any foreign partnership, not just foreign partnerships controlled by U.S. persons. Accordingly, the IRS agrees that reporting should not be required for indirect acquisitions, dispositions, and changes in proportional foreign partnership interests, because it would be burdensome and difficult for some partners to discover and keep track of such events. Additionally, if section 6046A reporting were required for changes in indirectly owned foreign partnership interests, then a transfer of an interest in one entity in a chain of entities at the bottom of which is a foreign partnership could result in multiple, duplicative, section 6046A reporting obligations.

Thus, the final regulations substantially reduce the burden section 6046A would have imposed on taxpayers under the proposed regulations. The final regulations provide that under § 1.6046A–1(a)(1), a United States person is only required to report pursuant to section 6046A if that person has a "reportable event." A person can only have a reportable event with respect to a particular foreign partnership if that person owns a direct interest in the partnership. More specifically, the United States person must acquire or dispose of a direct interest in the foreign partnership, or have a change in its direct proportional interest, in order to have a reportable event under section 6046A. See § 1.6046A–1(b)(1).

Some commentators also requested that the final regulations exempt state and local government employee retirement plans from the section 6046A reporting requirements. The final regulations provide that trusts relating to state and local government employee retirement plans are not required to report under section 6046A, unless required to do so in the instructions to Form 8865, "Return of U.S. Persons With Respect To Certain Foreign Partnerships." The IRS and Treasury invite comments regarding whether the section 6046A reporting obligation should also be reduced for other tax-exempt entities.

A United States person required to report information pursuant to section 6046A must do so by completing and filing Form 8865. A final version of Form 8865 will be released prior to January 1, 2000. Taxpayers will be able to download a copy of the form and its instructions from the IRS Internet website located at www.irs.ustreas.gov.

The final regulations apply to reportable events that occur on or after January 1, 2000. Acquisitions and dispositions of foreign partnership interests, and changes in proportional foreign partnership interests, occurring before January 1, 2000, are not required to be reported under section 6046A.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

This Treasury decision finalizes a notice of proposed rulemaking published September 9, 1998. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the final regulations issued pursuant to the notice of proposed rulemaking published on September 9, 1998. It is hereby certified that this Treasury decision will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time required to complete the form and file the information required under these regulations is brief and will not have a significant impact on those small entities that are required to provide notification. Furthermore, the

number of small entities that will be required to file the form is not substantial. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these final regulations is Eliana Dolgoff of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6046A–1 also issued under 26 U.S.C. 6046A. * * *

Par. 2. Section 1.6046A–1 is added to read as follows:

§ 1.6046A–1 Return requirement for United States persons who acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes substantially.

(a) *Return requirement*—(1) *General rule.* If a United States person has a reportable event (as defined in paragraph (b)(1) of this section) during the person's tax year, then, except as provided in paragraph (f) of this section, the United States person is required to complete and file Form 8865, "Return of U.S. Persons With Respect To Certain Foreign Partnerships," containing the information described in paragraph (c) of this section.

(2) *Separate return for each partnership.* If a United States person has a reportable event with respect to an interest in more than one foreign partnership, the United States person must file a separate Form 8865 for each foreign partnership.

(b) *Definitions*—(1) *Reportable event.* There are three categories of reportable events under section 6046A: acquisitions, dispositions, and changes in proportional interests.

(i) *Acquisitions.* A United States person that acquires a foreign partnership interest has a reportable event if—

(A) The person did not own a ten-percent or greater direct interest in the partnership and as a result of the acquisition the person owns a ten-percent or greater direct interest in the partnership. For purposes of this paragraph (b)(1)(i)(A), an acquisition includes an increase in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the acquisition the person's direct interest has increased by at least a ten-percent interest.

(ii) *Dispositions.* A United States person that disposes of a foreign partnership interest has a reportable event if—

(A) The person owned a ten-percent or greater direct interest in the partnership before the disposition and as a result of the disposition the person owns less than a ten-percent direct interest. For purposes of this paragraph (b)(1)(ii)(A), a disposition includes a decrease in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the disposition the person's direct interest has decreased by at least a ten-percent interest.

(iii) *Changes in proportional interests not otherwise reportable as acquisitions or dispositions under paragraph (b)(1)(i)(A) or (b)(1)(ii)(A) of this section.* A United States person has a reportable event if, subject to paragraph (b)(2) of this section, compared to the person's direct proportional interest the last time the person had a reportable event, the person's direct proportional interest has increased or decreased by at least the equivalent of a ten-percent interest.

(2) *Special rule for foreign partnership interests owned on December 31, 1999.* If a United States person owned a ten-percent or greater direct interest in a foreign partnership on December 31, 1999, then to determine whether the person has a reportable event under paragraph (b)(1)(i)(B), (b)(1)(ii)(B), or (b)(1)(iii) of this section, the comparison should be made to the person's direct interest on December 31, 1999. Once the person has a reportable event after December 31, 1999, future comparisons should be made by reference to the last reportable event.

(3) *Change in a proportional interest.* A partner's proportional interest in a foreign partnership may change for a number of reasons, for example, the change may be caused by changes in other partners' interests resulting from a partner withdrawing from the partnership. A proportional change may also occur by operation of the partnership agreement, for example, if the partnership agreement provides that a partner's interest in profits will change on a set date or when the partnership has earned a specified amount of profits and one of those events occurs.

(4) *Ten-percent interest.* Under section 6046A(d) and this section, a *ten-percent interest* in a foreign partnership, as described in section 6038(e)(3)(C) and the regulations thereunder, means an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(5) *United States person. United States person* means a person described in section 7701(a)(30).

(6) *Foreign partnership. Foreign partnership* means any partnership that is a foreign partnership under sections 7701(a)(2) and (5).

(7) *Examples.* The rules of paragraph (a) of this section and this paragraph (b) are illustrated by the following examples:

Example 1. Acquisition of an indirect interest. FP, a foreign partnership, has two partners, *FC1* and *FC2*, both foreign corporations. *FC1* owns a 40% interest in *FP*, and *FC2* owns a 60% interest in *FP*. No United States person owns an interest in *FP*, either directly, or constructively under section 6038(e)(3)(C) and section 267(c). On January 1, 2001, *US*, a United States person and calendar year taxpayer, acquires by purchase 100% of *FC2's* stock. *US* has acquired an indirect interest of 60% in *FP*. See sections 6038(e)(3)(C) and 267(c)(1). However, *US* is not required to report the January 1, 2001 indirect acquisition under section 6046A. *US* did not own a 10% or greater direct interest in *FP* before the acquisition, and *US* does not own a 10% or greater direct interest as a result of the acquisition. (*US* must, however, comply with the reporting requirements under section 6038 (controlled foreign corporation and controlled foreign partnership reporting) with respect to *FC2* and *FP*.)

Example 2. Acquisition of direct interests. (i) Assume the same facts as *Example 1*. In addition, on June 1, 2001, *US* purchases a 5% direct interest in *FP* from *FC1*. *US* did not own a 10% or greater direct interest in *FP* before the acquisition. After the acquisition,

US does not own a direct interest of 10% or more. *US* owns a 10% or greater total interest (direct and indirect), but only a 5% direct interest. Therefore, *US* is not required to report the June 1, 2001, acquisition under section 6046A.

(ii) On September 1, 2001, *US* purchases a 7% direct interest in *FP* from *FC1*. The September 1, 2001 acquisition constitutes a reportable event under paragraph (b)(1)(i)(A) of this section. Before the September 1 acquisition, US did not own a 10% or greater direct interest in *FP*. After the September 1 acquisition, *US* owns a 12% direct interest, and therefore, as a result of the September 1 acquisition, *US* now owns a 10% or greater direct interest in *FP*. Consequently, *US* must report its September 1 acquisition under section 6046A on Form 8865 filed with *US's* 2001 income tax return.

(iii) On December 1, 2001, *US* acquires an additional 4% direct interest in *FP* from *FC1*, so that *US's* total direct interest has increased from 12% to 16%. This acquisition does not constitute a reportable event. Compared to *US's* direct interest when *US* last had a reportable event (12% on September 1, 2001), after acquiring the 4% interest *US's* direct interest has not increased by at least a 10% direct interest (i.e., its direct interest increased by only 4%). Therefore, *US* does not have to report the December 1, 2001, acquisition under section 6046A. On April 1, 2002, *FC2* distributes a 6% direct interest in *FP* to *US*. *US* now owns a 22% direct interest in *FP*. Compared to *US's* direct interest when *US* last had a reportable event (12% on September 1, 2001), after the April 1 acquisition *US's* direct interest has increased by at least a 10% interest (12% to 22%). *US* must report the April 1, 2002 acquisition on a Form 8865 attached to *US's* 2002 income tax return.

Example 3. Change in proportional interest resulting from withdrawal of a partner. Assume the same facts as *Example 3*. In addition, on January 5, 2003, *FC2* withdraws entirely from *FP*. As a result, the direct interests of *US* and *FC1* in *FP* each increase by at least the equivalent of 10% interests. Compared to *US's* direct interest the last time *US* had a reportable event (22% on April 1, 2002), *US's* direct interest has increased by at least the equivalent of a ten percent interest. Therefore, *US* has had a reportable event pursuant to paragraph (b)(1)(iii) of this section, and *US* must report the change in its interest resulting from *FC2's* withdrawal from the partnership on *US's* Form 8865 filed with *US's* 2003 tax year income tax return.

Example 4. Change in proportional interest constituting an acquisition. FP is a foreign partnership that has no United States persons as direct or constructive partners. *US* is a United States person and a calendar year taxpayer. On January 1, 2001, *US* purchases an 8% direct interest in *FP*. *US* is not required to report this acquisition. US did not own a 10% or greater direct interest in *FP*, and *US* does not own a 10% or greater direct interest as a result of the acquisition. On March 1, 2001, *FC*, a foreign partner of *FP*, withdraws from *FP*, and as result, *US's* direct interest in *FP* increases by a 7% interest. The increase in *US's* direct interest is considered an acquisition of an interest under paragraph (b)(1)(i)(A) of this section. *US* did not own a 10% or greater direct interest in *FP* before *FC* withdrew, and as a result of the increase in *US's* direct interest because of *FC's* withdrawal from *FP*, *US* now owns a 10% or greater direct interest in *FP*. Therefore, *US* must report under section 6046A the increase in *US's* direct interest resulting from the withdrawal of *FC* from *FP* on Form 8865 filed with *US's* tax return for *US's* 2001 tax year.

(c) *Content of return.* The Form 8865 that must be filed under paragraph (a)(1) of this section must contain the following information in such form and manner and to the extent that Form 8865 and its instructions prescribe—

(1) The name, address, and taxpayer identification number of the United States person required to file the return;

(2) Information about other persons (foreign or domestic) whose interests in the foreign partnership the person reporting under section 6046A is considered to own under section 6038(e)(3)(C) and section 267(c);

(3) Information about all foreign entities that were disregarded as entities separate from their owners under §§ 301.7701–2 and 301.7701–3 of this chapter that were owned by the foreign partnership during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A;

(4) For each reportable event, the date of the event, the type of event (acquisition, disposition, or change in proportional interest), and the United States person's direct percentage interest in the foreign partnership immediately before and immediately after the event;

(5) The fair market value of the interest acquired or disposed of;

(6) Information about partnerships (foreign and domestic) in which the foreign partnership owned a direct interest, or a constructive interest of ten percent or more under sections 267(c)(1) and (5) and the regulations thereunder, during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A; and

(7) Any other information required to be submitted by Form 8865 and its instructions.

(d) *Time and manner for filing returns.* The Form 8865 must be filed with the timely filed (including extensions) income tax return of the United States person for the tax year in which the reportable event occurs. If the United States person is not required to file an income tax return for its tax year in which the reportable event occurs, but is required to file an information return for that year (for example, Form 1065, "U.S. Partnership Return of Income," or Form 990, "Return of Organization Exempt from Income Tax"), the United States person should attach the Form 8865 to its information return filed for that tax year.

(e) *Duplicate returns.* If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(f) *Persons excepted from filing return*—(1) *Section 6038B overlap.* If a United States person acquires an interest in a foreign partnership as a result of a section 721 contribution required to be reported under section 6038B, and the person properly reports the contribution under section 6038B, then the United States person is not required to report the acquisition of the partnership interest under section 6046A(a) should it constitute a reportable event under paragraph (b)(1) of this section. The acquisition will still constitute a reportable event for purposes of making future comparisons pursuant to paragraphs (b)(1)(i)(B), (b)(1)(ii)(B) and (b)(1)(iii) of this section. A person that fails to properly report the section 721 contribution under section 6038B and the regulations thereunder and that fails to properly report the acquisition of the partnership interest under section 6046A may be subject to the penalties applicable to a failure to comply with the requirements of section 6038B, as well as the penalties applicable for a failure to comply with the requirements of section 6046A. See paragraph (h) of this section for more information about the penalties for failure to comply with the requirements of section 6046A.

(2) *Trusts relating to state and local government employee retirement plans.* The return requirement of section 6046A does not apply to trusts relating to state and local government employee retirement plans, unless the instructions to Form 8865 provide otherwise.

(3) *Reporting under this section not required of partnerships excluded from the application of subchapter K.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in § 1.761–2(a) in which that United States person is a partner, if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in § 1.761–2(b)(2)(i), or is deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of § 1.761–2(b)(2)(ii).

(4) *Exclusion for satellite organizations.* The return requirement of section 6046A does not apply to the International Telecommunications Satellite Organization (or a successor organization) or the International Maritime Satellite Organization (or a successor organization).

(g) *Method of reporting.* Except as otherwise provided on Form 8865, or the accompanying instructions, any amounts required to be reported under section 6046A and this section must be expressed in United States dollars, with a statement of the exchange rates used. All statements required on or with Form 8865 pursuant to this section must be in English.

(h) *Penalties for violating section 6046A.* For penalties for violating section 6046A, see sections 6679 and 7203.

(i) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6046A, see section 6501(c)(8).

(j) *Effective date.* This section applies to reportable events occurring after December 31, 1999. No reporting under section 6046A is required for reportable events occurring on or before December 31, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3 The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6046A	1545–1646
* * * * *	

Robert Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 9, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–32696 Filed 12–27–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–99–065]

RIN 2115–AA97

Safety Zone: Lake Erie—Maumee River, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River in the state of Ohio. This zone restricts the entry of vessels into the area designated for the December 31st *First Night* fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of faulty fireworks mortar rounds. Entry of vessels into this zone is prohibited unless specifically authorized by the Captain of the Port.

DATES: This rule is effective from 8:30 a.m. December 31, 1999, to 12:30 a.m. January 1, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public docket for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 a.m. and 2 p.m., Monday through Friday, except federal holidays. The Marine Safety Office is located at 234 Summit Street, Room 501, Toledo, Ohio 43604, (419) 259–6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 234 Summit Street, Room 501, Toledo, OH 43604, (419) 259–6372.

SUPPLEMENTARY INFORMATION: No notice of proposed rulemaking (NPRM) was published for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with firework displays. Due to extreme cold weather and expected lack of vessel traffic during this time frame, publication of an NPRM was deemed impractical.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the City of Toledo's First Night Fireworks. Entry into the safety zone without permission of the Captain of the Port is prohibited. The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF–FM Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic at this time of year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic is expected to be non-existent due to extremely cold weather. Vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary section 165.T09085 is added to read as follows:

§ 165.T09085 Safety Zone: Lake Erie, Maumee River, Ohio

(a) *Location:* The following area is a temporary safety zone: The waters and adjacent shoreline extending from the bow of the museum ship SS WILLIS B BOYER then NNE to the south end of the City of Toledo Streets, Harbors and Bridges Building, then SW to the red nun buoy #64, then SSE to the bow of the museum ship SS WILLIS B BOYER. A triangle as formed by positions 41°38′35″ N by 83°31′54″ W, 41°38′51″ N by 83°31′50″ W, 41°38′48″ N by 83°31′58″ W (NAD 1983).

(b) *Effective dates.* This regulation is effective between the hours of 8:30 a.m. on December 31, 1999 to 12:30 a.m. January 1, 2000, unless terminated earlier by the Captain of the Port.

(c) *Restrictions:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or the designated on-scene-patrol personnel.

Dated: December 13, 1999.

D.L. Scott,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 99–33579 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

RIN 2115–AE84

[CGD13–98–004]

Regulated Navigation Area, Eagle Harbor, Bainbridge Island, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area on a portion of Eagle Harbor, Bainbridge Island, Washington. This regulated navigation area is required to preserve the integrity of a clean sediment cap placed over contaminated seabed as part of the remediation process at a U.S. Environmental Protection Agency (USEPA) Superfund site. It is being established at the request of the USEPA and the Washington State Department of Natural Resources. It prohibits activities that would disturb the seabed, such as anchoring, dredging, or laying cable, with the exception of EPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Wyckoff/Eagle Harbor Superfund Site. It would not affect transit or navigation of the area.

DATES: Effective: January 27, 2000.

ADDRESSES: Unless otherwise indicated, comments and material received from the public, as well as documents referred to in this preamble, are part of docket CGD13–98–004 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Paul M. Stocklin, Jr., c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 23, 1999, we published a notice of proposed rulemaking entitled Regulated Navigation Area, Eagle Harbor, Bainbridge Island, WA, in the **Federal Register** (64 FR 8764). We received two letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

The Wyckoff/Eagle Harbor Superfund site is located on the East Side of Bainbridge Island, in Central Puget Sound, Washington. The site includes a former 40-acre wood-treating facility, contaminated sediments in adjacent Eagle Harbor, and other upland sources of contamination to the harbor, including a former shipyard.

Part of the remediation process for this site consists of covering the contaminated sediments in Eagle Harbor with a layer of clean medium-to-coarse grained sand approximately one-meter (3-feet) thick. This cap is used to isolate contaminants and limit their vertical migration and release into the water column. The cap will also limit the potential for marine organisms to reach the contaminated sediment.

This rule establishes a permanent regulated navigation area, which prohibits activities such as anchoring, salvage, or dredging which would disturb the sediment cap covering the contaminated seabed. The regulation does not affect normal transit or navigation of the area. The Wyckoff facility is located on the point of land that forms the southeastern border of Eagle Harbor. The sediment cap includes approximately 2600 feet of shoreline and extends approximately 2800 feet into the harbor. This area is seldom used as an anchorage site as it is in relatively unprotected water near the mouth of the harbor.

Discussion of Comments and Changes

The Coast Guard received two letters commenting on the notice of proposed rulemaking (NPRM). The following paragraphs contain a discussion of comments received and an explanation of changes, if any, to the proposed regulations.

Comment: One comment strongly supports the prohibition of dredging and laying of cable, but opposes the prohibition of anchoring. The comment offers the opinion that the purpose of the ban on anchoring is not to preserve the integrity of the clean sediment cap, but rather to support wealthy homeowners wishing to rid the harbor of unsightly vessels. The comment states a concern the rule will establish precedent leading to additional bans on anchoring to conform to the wishes of property owners.

Response: We disagree with this comment. It has been clearly stated that the purpose of this rule is to preserve the integrity of a clean sediment cap placed over contaminated seabed as part of the remediation process at a USEPA Superfund site. The dropping and setting of anchors clearly threaten the integrity of the cap. The rule applies only to the area defined by the boundaries of the regulated navigation area. This area is in relatively unprotected water near the mouth of the harbor and seldom used as an anchorage site.

Comment: The comment states the area has been commercial property for over one hundred years and is ideally situated for the building of docks, piles to be driven and anchors to be dropped. The comment indicates the rule will make the area totally unusable and commercial use of the entire harbor would be lost. The comment adds that as the area grows, they will need more marine facilities—not less.

Response: As previously stated, the rule does not affect normal transit or navigation of the area. The rule includes a waiver process that will permit otherwise prohibited activity if the EPA and the Washington State Department of Natural Resources determine the proposed activity can be performed in a manner that ensures the integrity of the sediment cap. The need for placing and preserving the clean sediment cap has been well established by the USEPA and supported by the Washington State Department of Natural Resources. The listing of the site as a Superfund site and its suitability for future commercial development are outside the scope of this rulemaking and will not be addressed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed rule would not affect normal transit or navigation of the area and the only property involved is that of the former Wyckoff facility. The area is not a designated anchorage ground nor special anchorage area and was seldom used as an anchorage site as it is in relatively unprotected water immediately adjacent the harbor entrance.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612.), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to engage in one of the prohibited activities in the regulated area. This proposed rule would not affect transit or navigation of the area. Rather, it would prohibit activities that would disturb the seabed, such as anchoring, dredging, or laying cable. The area is not a designated anchorage ground nor special anchorage area and was seldom used as an anchorage site as it is relatively unprotected water immediately adjacent the harbor entrance.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environmental Analysis

The Coast Guard considered the environmental impact of this rule and has concluded that, under figure 2–1, paragraph (34)(g), of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for regulations establishing Regulated Navigation Areas. This particular regulated navigation area is proposed for the purpose of preserving the remediation efforts at a USEPA Superfund Site. The rule itself will not cause nor introduce any environmental impacts and will be transparent in all regards except for prohibiting activities which could disturb the seabed within the established boundaries of the site.

The USEPA has determined that there will be no significant environmental impact arising from the creation of a RNA designed to protect the sediment cap. The actual placement of the cap in Eagle Harbor was determined by USEPA to provide an environmental benefit to the area by allowing organisms to colonize the clean sediments of the cap ("The Proposed Plan for Cleanup of Eagle Harbor"—December 16, 1991). USEPA's authority to place the cap is expressed in a publicly available document known as a "Removal Action Memorandum" dated June 15, 1993, and additional information is available at the Marine Safety Office at the address under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1 (g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new § 165.1309 is added to read as follows:

§ 165.1309 Eagle Harbor, Bainbridge Island, WA.

(a) *Regulated area.* A regulated navigation area is established on that portion of Eagle Harbor bounded by a line beginning at: 47° 36′ 56″ N, 122° 30′ 36″ W; thence to 47° 37′ 11″ N, 122° 30′ 36″ W; thence to 47° 37′ 25″ N, 122° 30′ 17″ W; thence to 47° 37′ 24″ N, 122° 30′ 02″ W; thence to 47° 37′ 16″ N, 122° 29′ 55″ W; thence to 47° 37′ 03″ N, 122° 30′ 02″ W; thence returning along the shoreline to point of origin. [Datum NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the seabed in the designated area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port, Puget Sound, upon advice from the U.S. EPA Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if it is determined that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests should be submitted in triplicate, to facilitate review by U.S. EPA, Coast Guard, and Washington State Agencies. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Wyckoff/Eagle Harbor Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: December 15, 1999.

Paul M. Blayney,

Rear Admiral, USCG 13th District Commander.

[FR Doc. 99–33581 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[IN110–1a, FRL–6483–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revised source specific lead (Pb) emissions limits for the Hammond Group—Halstab Division (Halstab) facility located in Hammond, Indiana which is located in Lake County. This requested revision to the Indiana State Implementation Plan (SIP) was submitted by the State of Indiana on May 18, 1999.

DATES: This rule is effective on February 28, 2000, unless EPA receives adverse written comments by January 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the material submitted by the State in support of this request are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used we mean EPA.

Table of Contents

I. What is the Background for This Action?
II. How do the Requested Emission Limits Compare to the Present SIP Requirements?
III. How Will the Lead Emission Reductions be Achieved?
IV. How Will the Revised Lead Emission Limits Affect Air Quality?
V. EPA Rulemaking Action
VI. Administrative Requirements
A. Executive Order 12866

B. Executive Orders on Federalism
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

I. What Is the Background for This Action?

Halstab manufactures lead stabilizers for use in plastics, wire and cable applications. Halstab requested a rule change from the currently applicable SIP-approved lead emission limits. The current emission limits are codified at title 326 of the Indiana Administrative Code, Article 15, Rule 1, Section 2 (326 IAC 15–1–2). The current rule limits emissions by regulating the allowable pounds of lead per hour, as well as the hours of operation per quarter, at 15 emission points: stacks s–1, and s–4 through s–17. In order to meet its current marketing demands, Halstab requested that Indiana revise Halstab's emission limits by removing all the operating hour restrictions while lowering the hourly emission limits.

II. How Will the Lead Emission Rate Reductions Be Achieved?

Halstab is installing high efficiency particulate air (HEPA) filters at all emission points listed in the proposed SIP in order to lower its emissions.

III. How do the Requested Emission Limits Compare to the Current Federally Approved Emission Limits?

The current federally-approved lead emission rates range from a high of 1 pound per hour to a low of 0.12 pound per hour at the various listed emission points. The proposed lead rule incorporates limits at two additional emission points which range from a high of 0.07 pounds per hour to a low of 0.03 pounds per hour. Total annual allowable lead emissions under the current SIP requirements are 31,546 pounds. Under the revised requirement, Halstab's actual annual lead emissions should not exceed 6,832.8 pounds.

IV. How Will the Revised Emission Limits Affect Air Quality?

Indiana required an air quality modeling demonstration as a part of this rule change request. The modeling analysis used was the Industrial Source Complex Long Term (ISCLT) Model Version 96113. Halstab modeled a series of discrete receptor grids along with three discrete receptors representing the three lead monitors in the area. Halstab took background concentrations from the closest lead monitor which is located at 2325 Sumner Street in Hammond, Indiana. The modeled concentrations of the proposed allowables added with the background data are below the lead National Ambient Air Quality Standards (NAAQS). This demonstrated that the decreased allowable emission limitations along with the removal of all operating hour restrictions at Halstab should not result in a violation of the lead NAAQS.

V. EPA Rulemaking Action

EPA has examined the State's SIP revision request and the supporting documentation provided by the State. Based on the merits of the information supplied, EPA approves the incorporation of 326 IAC 15–1–2(a)(7)(A) through (G) into the Indiana SIP.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by January 27, 2000. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 28, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the E.O. to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a

separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: November 19, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(129) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c)* * *

(129) On May 18, 1999, the Indiana Department of Environmental Management submitted revised site-specific lead emission limits for Hammond Group—Halstab Division located in Hammond (Lake County), Indiana. The revised emission limits are expressed as pounds-per-hour limits ranging from 0.04 to 0.07 applicable to sixteen separate emissions points. The revised emission limits will result in the reduction of total allowable lead emissions from 31,546 pounds per year as provided for in the current federally-approved State Implementation Plan to 6,832.8 pounds per year.

(i) Incorporation by reference.

(A) Indiana Administrative Code 326: Air Pollution Control Board, Article 15 Lead, Rule 1 Lead Emissions

Limitations, Section 2—Source Specific Provisions, subsection (a), subdivision 7, clauses (A) through (G). Amended at 22 Indiana Register 1427, effective February 5, 1999.

[FR Doc. 99–33025 Filed 12–27–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE 047–1024a, MD 089–3042a, PA 140–4092a, VA 104–5043a; FRL–6483–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, Pennsylvania, and Virginia; Approval of National Low Emission Vehicle Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the Commonwealths of Pennsylvania and Virginia, and by the States of Maryland and Delaware. These SIP revisions formalize each of the respective State's commitments to accept sales of motor vehicles that comply with the requirements of the National Low Emission Vehicle (National LEV) program. Delaware originally submitted its National LEV SIP revision to EPA on February 25, 1999, but later revised the SIP on September 1, 1999 to supercede the prior submittal. Maryland submitted its National LEV SIP revision to EPA on March 3, 1999, and amended the plan on March 24, 1999. Pennsylvania submitted its National LEV SIP revision to EPA on January 8, 1999. Virginia submitted its National LEV SIP revision to EPA on May 27, 1999.

Delaware, Maryland, Pennsylvania, and Virginia have agreed to the sale of National LEV compliant vehicles within their borders, in lieu of implementing a California LEV program. Under the National LEV Program, auto manufacturers have agreed to sell cleaner vehicles meeting the National LEV standards throughout these states for the duration of the manufacturers' commitments to the National LEV Program. A SIP revision from each participating state is required as part of the agreement between states and automobile manufacturers to ensure the continuation of the National LEV Program to supply clean cars throughout most of the country. The sale of vehicles complying with National LEV program standards began with 1999 model year vehicles in Northeast states, and will extend to other states outside the Northeast beginning with 2001 model year vehicles.

DATES: This rule is effective on February 28, 2000 without further notice, unless EPA receives adverse comment by January 27, 2000. If we receive such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of state-specific materials may be reviewed at each respective state's offices, at: the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19903; the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; or at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, or by e-mail at Rehn.Brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Low Emission Vehicle (National LEV) program is a voluntary, nationwide clean car program, designed to reduce ground level ozone (or smog) and other air pollution emitted from newly manufactured motor vehicles. On June 6, 1997 (62 FR 31192) and on January 7, 1998 (63 FR 926), the Environmental Protection Agency (EPA) promulgated rules outlining the framework for the National LEV program. These National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA could otherwise mandate under the authority of the Clean Air Act. The regulations provided that the program would come into effect only if Northeast states and auto manufacturers agreed to participate. On March 9, 1998 (63 FR 11374), EPA published a finding that the program was in effect. Nine northeastern states (Connecticut, Delaware, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, and the District of Columbia) and 23 auto manufacturers (BMW, Chrysler, Fiat, Ford, General Motors, Honda, Hyundai, Isuzu, Jaguar, Kia, Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Nissan, Porsche, Rolls-Royce, Saab, Subaru, Suzuki, Toyota, Volkswagon, and Volvo) had opted to participate in the National LEV program. Once in effect, the National LEV Program became enforceable in the same manner as any other Federal new motor vehicle emission control program. The National LEV Program will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of Federal and California new motor vehicle standards and test procedures, which enables manufacturers to move towards the design and testing of vehicles to satisfy one set of nationwide standards. The National LEV Program demonstrates how cooperative partnership efforts can produce a smarter, cheaper emissions control program, which reduces regulatory burden while increasing protection of the environment and public health.

The National LEV Program will result in substantial reductions in non-methane organic gases (NMOG) and nitrous oxides (NOx), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently. National LEV vehicles were estimated to cost an additional $76 above the price of vehicles otherwise required today, but the actual per vehicle cost is now expected to be even lower, due to factors such as economies of scale and historical trends related to emission control costs. This predicted incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV Program will help ozone nonattainment areas across the country improve their air quality, as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to take effect, and will remain in effect, only if the

participating auto manufacturers and Northeastern States commit to the program and abide by their commitments. The states and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the state commitments are to be made through SIP revisions that incorporate those state commitments to National LEV into state regulations. EPA will then take rulemaking action to approve each state's regulation into its respective federally-enforceable SIP. The National LEV regulations laid out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve that revision as adequately committing the state to the National LEV Program. In today's action, EPA is approving the National LEV SIP revisions for Delaware, Maryland, Pennsylvania and Virginia as adequately committing those states to the program. In the near future, EPA expects to take similar actions for the remaining Northeast states that have elected to join the National LEV Program.

II. EPA's Evaluation of the States' Submittals

At present, Delaware, Maryland, and Virginia have not exercised their option, pursuant to section 177 of the Clean Air Act, to adopt state standards to regulate new motor vehicles identical to California's LEV program. Pennsylvania has adopted California's LEV program concurrently with its National LEV Program regulation. Adopted by the Commonwealth under section 177 of the Clean Air Act and entitled the "Pennsylvania's Clean Vehicle program", this program serves as a "backstop" measure to the National LEV Program. Pennsylvania's Clean Vehicle program would take effect in the event that the National LEV program terminates due to opt-out by auto manufacturers or participating states, or at the conclusion of the NLEV program.

Delaware, Maryland, Pennsylvania, and Virginia have each adopted National LEV regulations that provide that for the duration of each respective State's participation in the National LEV program, manufacturers may comply with National LEV or equally stringent mandatory Federal standards in lieu of compliance with any state-adopted California LEV program pursuant to section 177 of the Clean Air Act. Delaware, Maryland, Pennsylvania, and Virginia have each adopted regulations that accept National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. Each state's regulation provides for participation in National LEV extends until model year 2006. However, if by December 15, 2000, EPA does not adopt mandatory national standards at least as stringent as the National LEV standards that apply to new motor vehicles beginning in model year 2004, 2005 or 2006, the states' participation in the National LEV Program would extend only until model year 2004. Through their regulations, which were submitted to EPA as SIP revisions, Delaware, Maryland, Pennsylvania, and Virginia have adequately committed to the National LEV Program, as provided in the final National LEV rule.

EPA's final National LEV rule stated that if states submit SIP revisions containing regulatory language substantively identical to the language in EPA's regulation without additional conditions, and if such submissions otherwise meet the Clean Air Act requirements for approvable SIP submissions, EPA would not need to conduct notice-and-comment rulemaking to approve those SIP revisions. In its National LEV rulemaking, EPA provided full opportunity for public comment on the language to be contained in each state's subsequent SIP revision. Thus, as discussed in more detail in the EPA National LEV final rule, the requirements for EPA approval are easily verified objective criteria (see 63 FR 936, January 7, 1998). While we could appropriately approve the submissions from Delaware, Maryland, Pennsylvania, and Virginia without providing for additional notice and requesting comments, we have nonetheless decided to take this action in the form of a direct final rulemaking, which allows an opportunity for further public comment. In this instance, EPA is not under a timing constraint that would support a shorter rulemaking process, and thus we have decided there was no need to deviate from the Agency's usual procedures for SIP approvals.

III. Final Action

EPA has evaluated the SIP revisions submitted by Delaware, Maryland, Pennsylvania, and Virginia, the Agency has determined that these SIP revisions are consistent with the EPA National LEV regulations and satisfy the general SIP approval requirements of section 110 of the Clean Air Act. Therefore, EPA is approving the Delaware low emission vehicle rule submitted on September 1, 1999 into the Delaware SIP. EPA is approving the Maryland low emission vehicle rule submitted on March 3, 1999 (as amended on March 24, 1999) into the Maryland SIP. EPA is approving the Pennsylvania's National LEV rule that was submitted to EPA on January 8, 1999 into the Pennsylvania SIP. Finally, EPA is approving Virginia's low emission vehicle rule submitted to EPA on May 27, 1999 into the Virginia SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective February 28, 2000 without further notice, unless the Agency receives adverse comment by January 27, 2000.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments received in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have

federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and; (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so

would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this approval action for four states' National Low Emission Programs must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 18, 1999.

Alvin R. Morris,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, the entry for Regulation 40, Delaware's National Low Emission Program, in the table in paragraph (c) is added in numerical order to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Regulation No. 40—National Low Emission Vehicle Program				
Section 1	Applicability	October 11, 1999	December 28, 1999 ...	Issued on September 1, 1999, by Secretary's Order No. 99–A–0046.
Section 2	Definitions	October 11, 1999	December 28, 1999 ...	Issued on September 1, 1999, by Secretary's Order No. 99–A–0046.
Section 3	Program Participation	October 11, 1999	December 28, 1999 ...	Issued on September 1, 1999, by Secretary's Order No. 99–A–0046.

Subpart V—Maryland

3. Section 52.1070 is amended by adding paragraph (c)(146) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(146) Revisions to the Maryland Regulations, through the addition of COMAR 26.11.20.04, adopting the National Low Emission Vehicle Program. This revision was submitted on March 3, 1999 by the Maryland Department of the Environment, and was amended on March 24, 1999:

(i) Incorporation by reference.

(A) Letter of March 3, 1999 from the Maryland Department of the Environment transmitting a revision to the Maryland State Implementation Plan for a National Low Emission Vehicle program.

(B) Letter of March 24, 1999 from the Maryland Department of the Environment revising Maryland's State Implementation Plan for a National Low Emission Vehicle program.

(C) Maryland regulation COMAR 26.11.20.04, entitled "National Low Emission Vehicle Program", effective March 22, 1999.

(ii) Additional Material.—Remainder of March 3, 1999 and March 24, 1999 submittals pertaining to COMAR 26.11.20.04.

Subpart NN—Pennsylvania

4. Section 52.2020 is amended by adding paragraph (c)(141) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(141) Revisions to the Pennsylvania Regulations for a Clean Vehicles Program regulation submitted on January 8, 1999 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of January 8, 1999 from the Department of Environmental Protection transmitting the National Low Emission Vehicles Program, and a Pennsylvania Clean Vehicles Program as a "backstop" to the National Low Emissions Vehicle Program.

(B) Amendments to Chapter 121 of Title 21 of the Pennsylvania Code, effective on December 5, 1998, to include definitions for the following terms: CARB, CARB Executive Order, California Code of Regulations, Dealer, Debit, Emergency Vehicle, Fleet Average, GVWR, LDT, LDV, Model Year, Motor Vehicle, Motor Vehicle Manufacturer, NLEV, NLEV Program, NMOG, New Motor Vehicle / New Light-Duty Vehicle, Offset Vehicle, Passenger Car, Ultimate Purchaser, Zero-Emission Vehicle

(C) Amendments to Chapter 126 of Title 21 of the Pennsylvania Code, effective December 5, 1998, to add new sections: 126.401, 126.402, 126.411, 126.412, 126.413, 126.421, 126.422, 126.423, 126.424, 126.425, 126.431, 126.432, and 126.441.

(ii) Additional Material.—Remainder of January 8, 1999 submittal pertaining to the National Low Emissions Vehicle Program and the Pennsylvania Clean Vehicles Program.

Subpart VV—Virginia

5. Section 52.2420 is amended by adding paragraph (c)(135) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(135) Revisions to the Virginia Regulations for the adoption of the National Low Emission Vehicle Program

submitted on May 27, 1999 by the Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of May 27, 1999 from the Department of Environmental Quality transmitting Virginia's plan for adoption of a National Low Emission Vehicle Program.

(B) Regulation for a National Low Emission Program, codified at 9 VAC 5–200 of the Virginia Code, effective on April 14, 1999, to add: 9 VAC 5–200–10, Paragraphs A, B, and C; and 9 VAC 5–200–20; and 9 VAC 5–200–30.

(ii) Additional Material.—Remainder of May 27, 1999 submittal pertaining to the National Low Emissions Vehicle Program.

[FR Doc. 99–33027 Filed 12–27–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6514–5]

Section 112(l) Approval of the State of Florida's Rule Adjustment to the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 9, 1999, the State of Florida, through the Florida Department of Environmental Protection (FDEP) submitted a request for adjustment of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities," (PERC) National Emission Standards for Hazardous Air Pollutants (NESHAP). This Request was submitted through the procedures outlined in 40 CFR 63.92 and 63.91 of section 112 of the Clean Air Act as Amended in 1990. The requested adjustment by FDEP would allow the Periodic Startup, Shutdown, and Malfunction reports as required in 40 CFR 63.10(d)(5) of the General Provisions, to be retained on site at PERC NESHAP affected facility instead of submitting them to the delegated agency. EPA has reviewed this 112(l) adjustment request, and determined that the State has satisfied the necessary criteria of a complete submittal as specified in §§ 63.92 and 63.91. EPA believes this 112(l) adjustment request by the State of Florida is approvable due to the State's consistent compliance and inspection rate of these specific area source PERC NESHAP affected facilities. EPA is hereby granting the State of Florida the authority to adjust its Periodic Startup, Shutdown, and Malfunction reports, to accommodate area source PERC NESHAP affected facilities through 40 CFR 63.92(b)(3)(viii) and 63.10(f)(2). Today's action is taken to modify the delegated PERC NESHAP to the State of Florida to accommodate sources classified by this PERC NESHAP as affected area sources as listed in 58 FR 49345 (September 22, 1993).

DATES: This direct final rule modification is effective February 28, 2000 without further notice, unless EPA receives adverse comment by January 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104 ; ceron.leonardo@epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303, Phone: (404) 562–9129; ceron.leonardo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 1996, The State of Florida notified the EPA of its adoption by reference of the PERC NESHAP located at 40 CFR 63.320, and the applicable sections of 40 CFR 63.1, (the General Provisions) both of which were adopted into the Florida Administrative Code (F.A.C.) 62–213.300(3)(1), and 62–204.800. Subsequently on February 11, 1998, the State of Florida, through the FDEP submitted a request for an adjustment of the PERC NESHAP through the procedures outlined in 40 CFR 63.92 and 63.91 of section 112 of the Clean Air Act as Amended in 1990. Based on discussions between the EPA Region 4 and FDEP, the State of Florida revised its initial request for adjustment and resubmitted a request on April 9, 1999. The revised 112(l) request was reviewed and deemed complete based on the criteria listed in 40 CFR 63.92 and 63.91. This adjustment will allow area source PERC NESHAP affected facilities the flexibility of retaining periodic startup, shutdown and malfunction reports required in 40 CFR 63.10(d)(5), on site, instead of submitting them on a periodic or biannual basis. However, this adjustment does not exempt or delay any Title V recordkeeping and compliance reporting requirements required of all Title V and general permit sources in the State of Florida. This regulatory flexibility for area source PERC NESHAP affected facilities is consistent with EPA's requirements for area sources subject to 40 CFR 63.340, 63.360, and 63.460. Accordingly, this determination is consistent with the applicability of the general provisions to 40 CFR 63.340, 63.360, and 63.460 which specifically exempt § 63.10(d)(5). EPA's decision to approve this adjustment is further supported by FDEP's compliance effectiveness at area source PERC NESHAP affected facilities within the State of Florida. The State of Florida has provided EPA with a letter submitted on August 20, 1999. The letter submitted by FDEP provided evidence of the State wide compliance rate for the area source PERC NESHAP affected facilities, of at least 82%, based on compliance inspections by FDEP. This compliance rate has consistently improved since 1996 from 61%, to 1997 with 77%, to 1998 with 82%. The compliance rate is based on the percentage of "in-compliance" inspection reports versa the "non-compliance" inspection reports by FDEP personnel on a 12 month basis. Compliance inspections are the most effective route to assert the requirements of NESHAPs as required in 40 CFR 63.320. The physical inspection of records and operations at each affected facility permitted by the State of Florida has allowed FDEP to achieve the above stated level of compliance. According to the State of Florida, inspections of PERC NESHAP affected facilities will continue to provide an increasing compliance rate and a verification of the periodic reporting which will be maintained on site in lieu of the flexibility provided by this adjustment today. The NESHAP adjustment provided herein will also assist small businesses in the reduction of cost associated with submitting biannual reports for the associated regulatory requirements, by allowing affected facilities to maintain records on site. Based on the review of the above documented request for flexibility to area source PERC NESHAP affected facilities, the State of Florida, through the FDEP, has satisfied all the requirements of 40 CFR 63.91 and 63.92. EPA therefore, is granting approval of this 112(l) request through the authority

listed in §§ 63.92(b)(3)(viii) and 63.10(f)(2). The approved 112(l) adjustment is adopted by the State of Florida in F.A.C. 62–213.300(3)(1).

II. Final Action

In this action, EPA is approving modifications to provisions of Florida's delegated PERC requirements for dry cleaning facilities as they pertain to periodic startup, shutdown, and malfunction reports listed in 40 CFR 63.1 for area source PERC NESHAP affected facilities within the State of Florida.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 112(l) revision should adverse comments be filed. This rule will be effective February 28, 2000 without further notice unless the Agency receives adverse comments by January 27, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 28, 2000 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because section 112(l) approvals of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the section 112(l) approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 3, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–33329 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. H–29]

RIN 3090–AF39

Criteria for Reporting Excess Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Temporary regulation; extension of expiration date.

SUMMARY: The General Services Administration (GSA) is extending Federal Property Management Regulations provisions regarding criteria for reporting excess personal property to GSA.

DATES: Effective December 28, 1999, the expiration date of the temporary regulations published at 62 FR 2022 is extended through July 31, 2000.

SUPPLEMENTARY INFORMATION: FPMR Temporary Regulation H–29 was published in the Federal Register on January 15, 1997, 62 FR 2022. The expiration date of the temporary regulation was January 15, 1998. A supplement published in the **Federal Register** on December 31, 1997, 62 FR 68216, extended the expiration date through December 31, 1998. Another supplement was published in the **Federal Register** on January 8, 1999, 64 FR 1139, that extended the expiration date through January 15, 2000. This supplement further extends the expiration date through July 31, 2000.

List of Subjects in 41 CFR Chapter 101

Archives and records, Computer technology, Government procurement, Property management, Records management, Telecommunications. Federal information processing resources activities.

Therefore the expiration date for Temporary Regulation H–29 amending the appendix to subchapter H of chapter 101 and published at 62 FR 2022, January 15, 1997, extended until January 15, 1999 at 62 FR 68216, and January 15, 2000 at 64 FR 1139, is further extended through July 31, 2000.

Dated: December 15, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–33421 Filed 12–27–99; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 99–2788]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document contains an editorial amendment to the Commission's regulations concerning ex parte presentations. It consolidates amendments made in two separate Commission actions into a corrected text.

DATES: Effective January 28, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is the full text of the Order of the Commission's Managing Director, DA 99–2788, adopted on December 14, 1999, and released December 17, 1999.

1. By this order, we correct the language of 47 CFR 1.1202(d)(2) of the Commission's ex parte rules. This provision was amended by two separate actions of the Commission. The first was the Commission's Report and Order in WT Docket No. 96–198, FCC 99–181, released September 29, 1999. Notice of this action was published in the **Federal Register** at 64 FR 63235 (Nov. 19, 1999), to become effective on January 28, 2000. The second was the Commission's Memorandum Opinion and Order in GC Docket No. 95–21, FCC 99–322, released November 9, 1999. Notice of this second action was published in the **Federal Register** at 64 FR 68946 (Dec. 9, 1999), to become effective on January 10, 2000. Each of the two actions fails to take into account the amendment made by the other. To cure this oversight, we will amend the rule to consolidate the amendments made by the two actions into a single corrected text.

2. Additionally, the text of the rule set forth in 64 FR 63235 contains a typographical error. That text refers to §§ 6.17 and 7.17 instead of the correct sections, 6.21 and 7.21. We will make an appropriate correction.

3. Pursuant to the authority delegated under 47 CFR 0.231(b), 47 CFR 1 IS AMENDED as set forth effective on January 28, 2000 and substituting for and superseding the corresponding

amendment to part 1 contained in 64 FR 63235 otherwise effective on that date.

Andrew S. Fishel,

Managing Director.

Rule Change

Part 1 of Title 47 of the Code of Federal regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), and 309.

2. Section 1.1202 (d)(2) is revised to read as follows:

§ 1.1202 Definitions.

* * * * * *

(d) * * *

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter;

* * * * *

[FR Doc. 99–33470 Filed 12–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[CI Docket 98–69; FCC 99–326]

Importation of Devices Capable of Causing Harmful Interference

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules in order to prevent the importation of illegal radio frequency (RF) devices. It also eliminates the need for importers to file a duplicate FCC Form 740 with the FCC when importing devices into the United States.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: David Sturdivant, Enforcement Bureau, 202–418–1160.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Report and Order,* CI Docket 98–69, adopted October 29, 1999 and released November 5, 1999.

The full text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, D.C. 20036; phone (202) 857–3800, facsimile (202) 857–3805.

Synopsis of the Second Report and Order

The Second Report and Order amends the Commission's rules concerning the importation of devices capable of causing harmful interference. These rule amendments simplify the process importers use to import radio frequency devices into the United States.

The Federal Communications Commission (FCC) requires that radio frequency (RF) devices imported into the United States comply with FCC rules. The FCC released an *Order and Notice of Proposed Rule Making* [63 FR 53901] on June 5, 1998. This document sought to clarify rule language that could allow the importation of illegal RF devices. The FCC, working in conjugation with the United States Customs Service, help to prevent the importation of illegal RF devices. The FCC Form 740 is used by importers to declare that imported RF devices comply with applicable FCC technical requirements. This form, along with its electronic equivalent, is filed with the U.S. Customs Service.

In order to curtail abuse of the import-for-export provision of the Commission's rules, we have modified the rule to prevent the entry of illegal RF devices. This rule allows the importation of devices that do not have FCC authorization under the condition the devices will be exported. A provision of the rule prevented a device from being marketed or offered for sale for use in the United States. It was the Commission experience that some unscrupulous importers would take advantage of this provision in order to import and sell illegal RF devices to customers for use in the United States. By using simple collusion to exploit the rule provision, the importer could increase his likelihood of avoiding punitive action from the Commission. Our amended import-for-export rule will continue to allow non-authorized devices to enter the U.S. solely for export but does not allow the devices to be offered for sale in the U.S. The rule does make an exemption for cellular phones and similar telephone devices that operate on standards not used in the U.S. and, as a result, are unable to function in the U.S. These types of devices may continue to be imported and marketed for use outside of the U.S. This rule amendment makes it less problematic for importers, U.S. Customs officials and FCC officials, to determine when importation of a radio frequency device is illegal. It will also minimize any effect on vendors that legitimately import devices for export.

Our rule amendments also streamline the declaration process for importers unable to file the FCC Form 740 electronically. Due to the successful implementation of U.S. Custom's electronic filing system, the FCC will eliminate the requirement for importers to file a duplicate FCC Form 740 with the Commission when they are unable to file electronically. Although the majority of FCC Form 740 filings occur electronically via U.S. Custom's electronic filing system, importers must currently file a paper FCC Form 740 with U.S. Customs and with the FCC when they are unable to use the electronic system. FCC Form 740 information is available to the FCC via the U.S. Customs Service upon request. Thus, requiring the duplicative filing of the FCC Form 740 with the FCC puts an unnecessary burden on the importer. We will no longer require an importer to file the FCC Form 740 with the FCC when an importer is unable to use the electronic system provided by the U.S. Customs Service. Importers will continue to submit the FCC Form 740 to the U.S. Customs Service.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the *Second Report and Order* contains a final regulatory flexibility analysis. No comments were submitted in response to the Initial Regulatory Flexibility Analysis. The Commission does not anticipate any adverse economic impact on small business entities resulting from these rule amendments. This *Second Report and Order* will reduce the burden on small entities. This item eliminates the duplicative filing of the FCC Form 740 and, as a result, should reduce administrative overhead, such as processing and mailing costs for small businesses. Secondly, revisions to the rule to amend language in order to improve enforcement by prohibiting entry of devices that are not approved for use in the United States is essential. The Commission had originally

intended to delete the words "for use" from § 2.1204(a)(5). Instead, after comment on this proposed revision, the Commission deleted the words "for use" but added a qualifier to allow for the importation of foreign standard cellular handsets that are incapable of operating in the United States. It is believed that this amendment of the rule both closes the "loophole" and allows businesses to conduct business such as the importing and selling of cellular handsets to the United States.

Legal Basis

Pursuant to the authority contained in sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302a, 303(b), 303(f), 303(g), 303(r), part 2, subpart K, §§ 2.1204(a)(5), 2.1205(a), 47 CFR 2.1204(a)(5) and 2.1205(a) are amended.

List of Subjects in 47 CFR Part 2

Imports.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 2 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 is amended to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.1204 is revised by amending paragraph (a)(5) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(5) The radio frequency device is being imported solely for export. The device will not be marketed or offered for sale in the U.S., except:

(i) If the device is a foreign standard cellular phone solely capable of functioning outside the U.S.

(ii) If the device is a multi-mode wireless handset that has been certified under the Commission's rules and a component (or components) of the handset is a foreign standard cellular phone solely capable of functioning outside the U.S.

* * * * *

3. Section 2.1205 is revised by removing the note and revising paragraph (a) to read as follows:

§ 2.1205 Filing of required declaration.

(a) For points of entry where electronic filing with Customs has not been implemented, use FCC Form 740 to provide the needed information and declarations. Attach a copy of the completed FCC Form 740 to the Customs entry papers.

* * * * *

[FR Doc. 99–33582 Filed 12–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 2000

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2000. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), January 20, 2000, through 2400 hours, A.l.t., June 30, 2000. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 26, 2000.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries appear at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch rate standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 2000 effective from January 20, 2000, through June 30, 2000.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(1) Previous years' average observed bycatch rates;

(2) Immediately preceding season's average observed bycatch rates;

(3) The bycatch allowances and associated fishery closures specified under §§ 679.20 and 675.21;

(4) Anticipated groundfish harvests;

(5) Anticipated seasonal distribution of fishing effort for groundfish; and

(6) Other information and criteria deemed relevant by the Regional Administrator.

At its October 1999 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1994–1999. Based on this and other information presented here, the Council recommended halibut and red king crab bycatch rate standards for the first half of 2000. These standards are unchanged from those specified for the past 5 years. The Council's recommended bycatch rate standards are listed in Table 1 to this part.

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2000 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2000 bycatch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock	
Qt 1	7.5
Qt 2	5.0
BSAI Yellowfin sole	
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl	
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock	
Qt 1	1.0
Qt 2	1.0
GOA Other trawl	
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl	
Qt 1	2.5
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

The BSAI pollock roe season currently begins January 20 and ends April 15, although pollock seasons in 2000 are expected to change under proposed regulations implementing new Steller sea lion conservation measures. In 1999, the inshore and offshore component fisheries for pollock were closed 6 to 8 weeks prior to April 15, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries did not reopen until August 1, the start of the pollock non-roe season. Directed fishing for pollock by vessels participating in the community development quota program could continue after the end of roe season. However, the community development quota pollock fishery did not resume until just prior to August 1. As in past years, the directed fishing allowances specified for the 2000 pollock roe season likely will be reached before the end of the roe season.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

In 1999, directed fishing for pollock by vessels using nonpelagic trawl gear in the BSAI was prohibited under § 679.20(a)(5)(i)(B). In spite of this prohibition, the catch composition in observed hauls on board some vessels still was attributed to the BSAI botttom pollock fishery with an average halibut bycatch rate in the first calendar quarter fishery equal to 2.49 kg halibut/mt groundfish. The Council has again proposed that the amount of pollock that may be taken in the 2000 directed fishery for pollock using non-pelagic trawl gear be set at zero metric tons under § 679.20(a)(5)(i)(B). Although this prohibition will be effective for 2000, the recommended halibut bycatch rate standard remains at 7.5 kg halibut/mt groundfish and will not likely be a factor in the directed pollock fishery. The bycatch rate standard for the second quarter remains at 5 kg halibut/mt groundfish even though little fishing for pollock is anticipated during this period.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the 2000 allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the yellowfin sole fishery during the first and second quarters of 1999 showed an average bycatch rate of 5.05 and 7.44 kg halibut/mt of groundfish, respectively. These rates are similar to past years, so the Council and NMFS have presumed that a bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue to encourage vessel operators to take action to avoid

excessively high bycatch rates of halibut.

For the "other trawl" fisheries, the Council recommended a 30 kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 1999 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 21.44 and 33.05 kg halibut/mt of groundfish, respectively. Observer data collected from the 1999 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 32.48 and 58.87 kg halibut/mt of groundfish, respectively.

With the exception of the BSAI and GOA second quarter "other trawl" fisheries, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries have been lower than the Council's recommended bycatch rate standards for these fisheries. The Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries, including the second quarter BSAI and GOA fisheries, would continue to provide an incentive to vessel operators to avoid unusually high halibut bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries.

Furthermore, these standards would provide some leniency to those vessel operators who choose to use large mesh trawl gear or other device as a means to reduce groundfish discard amounts. The bycatch rates of halibut and crab could increase for those vessels using large mesh sizes, but the Council recommended maintaining the current bycatch rate standards for the "other trawl" fisheries until data become available that could provide a basis for bycatch rate standards for vessels using large mesh trawl gear.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the yellowfin sole fishery in Zone 1 during the first and second quarters of 1999 averaged 0.04 and 0.03 crab/mt of groundfish, respectively. The average bycatch rates of red king crab experienced in the "other trawl" fishery during the first and second quarter of 1999 were 0.13 and 0.05 crab/mt groundfish, respectively. The low 1999 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

For the period January through October 1999, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 98,000 crab, considerably less than the 200,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2000 red king crab bycatch in Zone 1 will be similar to 1999 because the crab bycatch reduction measures and the bycatch limit of 200,000 crab will remain the same.

In spite of anticipated 2000 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at this level to avoid unusually high crab bycatch rates while providing some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 2000 as set forth in Table 1 to this part. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 2000 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through January 29;

Month 2: January 30 through February 26;

Month 3: February 27 through April 1;

Month 4: April 2 through May 6;

Month 5: May 7 through June 3;

Month 6: June 4 through July 1;

Month 7: July 2 through July 29;

Month 8: July 30 through September 2;

Month 9: September 3 through September 30;

Month 10: October 1 through October 28;

Month 11: October 29 through December 2; and

Month 12: December 3 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: December 21, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33633 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 248
Tuesday, December 28, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1721

Post-Loan Policies and Procedures for Insured Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: As a part of its ongoing program of streamlining regulations, the Rural Utilities Service (RUS) is proposing to amend its regulation on the advance of funds to reflect an increase in the threshold limit from $25,000 to $100,000, for which plant investments may be made in the borrowers' systems and be eligible for insured loan fund financing without being included in an RUS approved construction work plan (CWP). In addition, RUS is proposing to no longer limit borrowers to 130 percent of the project cost estimate for projects in the CWP or amendment and approved loan, as amended, for which prior RUS approval must be obtained. These changes would have the effect of reducing the number of actions by borrowers that would otherwise be required and would reduce administrative costs to borrowers and to the agency.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received on or before January 27, 2000.

ADDRESSES: Written comments should be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHUR INFORMATION CONTACT: Charles M. Philpott, Chief, Engineering Branch, Northern Regional Division, U.S. Department of Agriculture, Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Ave., SW., Washington, DC 20250–1522. Telephone: (202) 720–1432. E-mail: cphilpot@rus.usda.gov.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this section.

Dated: December 21, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–33640 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–79–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200 and –300 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This action would require installation of a terminating modification, and would add repetitive functional tests of that installation, and repair, if necessary. This proposal is prompted by the results of a safety review of the thrust reverser systems on Model 747 series airplanes. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by February 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the

proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 12, 1999, the FAA issued AD 99–15–08, amendment 39–11227 (64 FR 39003, July 21, 1999), applicable to certain Boeing Model 747–200 and –300 series airplanes, to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. That AD superseded, and retained certain requirements of AD 95–06–01, which was prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that could result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–15–08, the FAA specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following a 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–78–2144, Revision 1, dated April 1, 1996, which describes procedures for accomplishment of certain thrust reverser wiring modifications of the wings, strut, and fuselage. Boeing Service Bulletin 747–78–2144 references the following service bulletins:

- Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, and Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998, which describe procedures for adding an actuation system lock bracket and fastening hardware to each thrust reverser; and
- Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, and Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998, which describe procedures for installation of an actuation system lock (also called an electro-mechanical lock or electro-mechanical brake) on each thrust reverser.

Accomplishment of Boeing Service Bulletin 747–78–2144 requires prior or concurrent accomplishment of Lockheed Martin Service Bulletin 78–1007, Revision 1, or Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2; and Lockheed Martin Service Bulletin 78–1020, Revision 2, or Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3.

The modification procedures described by Boeing Service Bulletins 747–78–2144 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletin 747–78–2144, Revision 1, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and therefore proposes that this modification be required. Several airplanes have been successfully modified in accordance with the service bulletins, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–15–08 to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This proposed AD would require installation of a terminating modification, and would add repetitive functional tests of that installation, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Service Bulletins and This Proposed AD

Operators should note that, although the service bulletins described previously recommend no specific compliance time for accomplishment of the actuation system lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition

in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that this AD proposes to mandate, within 36 months, accomplishment of the actions specified for installation of the actuation system lock as described in Lockheed Martin Service Bulletin 78–1007, Revision 1; Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2; Lockheed Martin Service Bulletin 78–1020, Revision 2; Middle River Aircraft Systems Bulletin 78–1020, Revision 3; and Boeing Service Bulletin 747–78–2144, Revision 1; as terminating action for the requirements of AD 99–15–08, and paragraph (b) of AD 95–06–01. Following accomplishment of the installation, the FAA has determined that repetitive functional tests of the CDU cone brake and actuation system lock on each thrust reverser will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The actions originally required by AD 95–06–01, and retained in this proposed AD, take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,960, or $1,980 per airplane, per inspection/test cycle.

The other actions (repeating the functional test of the cone brake required by AD 95–06–01 at reduced intervals) that are currently required by AD 99–15–08, and retained in this proposed AD, would not add any additional economic burden on affected operators.

The bracket installation proposed in this new AD would take approximately 64 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the bracket installation proposed by this AD on U.S. operators is estimated to be $7,680, or $3,840 per airplane.

The actuation system lock installation proposed in this new AD would take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the lock installation proposed by this AD on U.S. operators is estimated to be $1,920, or $960 per airplane.

The functional test proposed in this new AD would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $240, or $120 per airplane, per test cycle.

The wiring modifications proposed in this new AD would take approximately 833 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modifications proposed by this AD on U.S. operators is estimated to be $99,960, or $49,980 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11227 (64 FR 39003, July 21, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–79–AD. Supersedes AD 99–15–08, amendment 39–11227.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines with Power Management Control engine controls, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of the Original Requirements of AD 95–06–01

Repetitive Tests and Inspections

(a) Within 90 days after April 13, 1995 (the effective date of AD 95–06–01, amendment 39–9171), perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service until the functional test required by paragraph (d) of this AD is accomplished.

(b) Within 9 months after April 13, 1995, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Corrective Action

(c) If any of the inspections and/or functional tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

Restatement of Requirements of AD 99–15–08

Repetitive Tests/Terminating Action

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after August 25, 1999 (the effective date of AD 99–15–08, amendment 39–11227), whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the functional test thereafter at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of such functional test constitutes terminating action for the repetitive test of the CDU cone brake required by paragraph (a) of this AD; the position switch module tests and the bullnose seal inspections continue to be required as specified in paragraph (a) of this AD.

(1) For airplanes equipped with thrust reversers NOT modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 650 hours time-in-service.

(2) For airplanes equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 1,000 hours time-in-service.

Corrective Action

(e) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (e)(1) or (e)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

Terminating Action

(f) Accomplish the requirements of paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs. Accomplishment of the actions required by paragraph (f)(1) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), (d), and (e) of this AD.

(1) Within 36 months after the effective date of this AD, accomplish the requirements of paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Install an actuation system lock bracket and fastening hardware to each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, or Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998.

(ii) Install an actuation system lock (also called an electro-mechanical lock or electro-mechanical brake) on each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, or Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998.

(2) Prior to or concurrent with the accomplishment of the requirements of paragraph (f)(1) of this AD, perform the thrust reverser wiring modifications of the wings, strut, and fuselage, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996.

Repetitive Tests

(g) Within 1,000 hours time-in-service after accomplishment of paragraph (f) of this AD, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the CDU cone brake and actuation system lock on each thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747 Maintenance Manual. Repeat the functional tests thereafter at intervals not to exceed 1,000 hours time-in-service.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–15–08, amendment 39–11227, are approved as alternative methods of compliance with the corresponding requirements specified in this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Appendix 1—Thrust Reverser Electro-Mechanical Brake and CDU Cone Brake Test

1. General

A. This procedure contains steps to do two checks:

(1) A check of the holding torque of the electro-mechanical brake.

(2) A check of the holding torque of the CDU cone brake.

2. Electro-Mechanical Brake and CDU Cone Brake Torque Check

A. Prepare to do the checks:

(1) Open the fan cowl panels.

B. Do a check of the torque of the electro-mechanical brake:

(1) Do a check of the running torque of the thrust reverser system:

(a) Manually extend the thrust reverser six inches and measure the running torque.

(1) Make sure the torque is less than 10 pound-inches.

(2) Do a check of the electro-mechanical brake holding torque:

(a) Make sure the thrust reverser translating cowl is extended at least one inch.

(b) Make sure the CDU lock handle is released.

(c) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip.

Note: This will lock the electro-mechanical brake.

(d) With the manual drive lockout cover removed from the CDU, install a ¼-inch extension tool and dial-type torque wrench into the drive pad.

Note: You will need a 24-inch extension to provide adequate clearance for the torque wrench.

(e) Apply 90 pound-inches of torque to the system.

(1) The electro-mechanical brake system is working correctly if the torque is reached before you turn the wrench 450 degrees (1¼ turns).

(2) If the flexshaft turns more than 450 degrees before you reach the specified torque, you must replace the long flexshaft between the CDU and the upper angle gearbox.

(3) If you do not get 90 pound-inches of torque, you must replace the electro-mechanical brake.

(f) Release the torque by turning the wrench in the opposite direction until you read zero pound-inches.

(1) If the wrench does not return to within 30 degrees of initial starting point, you must replace the long flexshaft between the CDU and upper angle gearbox.

(3) Fully retract the thrust reverser.

C. Do a check of the torque of the CDU cone brake:

(1) Pull up on the manual release handle to unlock the electro-mechanical brake.

(2) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(3) Return the manual brake release lever to the locked position to engage the cone brake.

(4) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(5) Install a ¼-inch drive and a dial type torque wrench into the CDU drive pad.

CAUTION: DO NOT USE MORE THAN 100 POUND-INCHES OF TORQUE WHEN YOU DO THIS CHECK. EXCESSIVE TORQUE WILL DAMAGE THE CDU.

(6) Turn the torque wrench to try to manually extend the translating cowl until you get at lease 15-pound inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(a) If the torque is less than 15-pound-inches, you must replace the CDU.

D. Return the airplane to its usual condition:

(1) Re-install the lockout plate.

(2) Fully retract the thrust reverser (unless already accomplished).

(3) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on December 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33568 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This proposal is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions specified by the proposed AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by February 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–66–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 26, 1991, a Boeing Model 767–300ER series airplane was involved in an accident as a result of an uncommanded in-flight deployment of a thrust reverser. Following that accident, a study was conducted to evaluate the potential effects of an uncommanded thrust reverser deployment throughout the flight regime of the Boeing Model

747 series airplane. The study included a re-evaluation of the thrust reverser control system fault analysis and airplane controllability. The results of the evaluation indicated that, in the event of thrust reverser deployment during high-speed climb using high engine power, these airplanes also could experience control problems. This condition, if not corrected, could result in possible failure modes in the thrust reverser control system, inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following the 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Other Relevant Rulemaking

This proposed AD is related to AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), which is applicable to all Boeing Model 747–400 series airplanes, and requires various inspections and tests of the thrust reverser control and indication system, and correction of any discrepancy found. Accomplishment of the actions proposed in this AD would terminate certain inspections and tests required by AD 94–15–05.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

- 747–78–2155, Revision 2, dated November 5, 1998, which describes procedures for installation of an additional locking system on the thrust reversers;
- 747–45–2016, Revision 1, dated May 2, 1996, which describes procedures for modifications to the central maintenance computer system hardware and software;
- 747–31–2245, dated June 27, 1996, which describes procedures for modifications of the integrated display system software; and
- 747–78–2154, Revision 3, dated December 11, 1997, which describes procedures for the installation of provisional wiring for an additional thrust reverser locking device. This service bulletin references the Boeing Standard Wiring Practices Manual, which describes wire installation and separation procedures.

Accomplishment of Boeing Service Bulletin 747–78–2155, Revision 2, requires prior or concurrent accomplishment of Boeing Service Bulletins 747–45–2016, Revision 1, 747–31–2245; and 747–78–2154, Revision 3. Accomplishment of these actions would eliminate the need for certain repetitive inspections and tests.

The modification procedures described by Boeing Service Bulletins 747–78–2154 and 747–78–2155 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletins 747–78–2154, Revision 3, and 747–78–2155, Revision 2, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and therefore proposes that this modification be required. Several airplanes have been successfully modified in accordance with the service bulletins, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Repetitive functional tests to detect discrepancies of the actuation system lock on each thrust reverser would be required to be accomplished in accordance with the procedure included in Appendix 1 of this AD. Correction of any discrepancy detected would be required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual.

Differences Between Service Bulletin and This Proposed AD

Operators should note that, although Boeing Service Bulletin 747–78–2155, Revision 2, does not recommend a specific compliance time for accomplishment of the actuation system lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify functional testing of the actuation system lock installation following accomplishment of that installation, the FAA has determined that repetitive functional tests of the actuation system lock on each thrust reverser will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 177 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2, (45 airplanes) it would take approximately 510 work hours per

airplane, to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $1,377,000, or $30,600 per airplane.

For all airplanes (53 airplanes) it would take approximately 2 work hours per airplane, to accomplish the proposed functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $6,360, or $120 per airplane, per test cycle.

The cost impact figures discussed below refer to actions in other service bulletins for the airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2 (affects 45 U.S.-registered airplanes), that must be accomplished prior to or concurrent with the installation specified in Boeing Service Bulletin 747–78–2155, Revision 2.

It would take approximately 3 work hours per airplane to accomplish the central maintenance computer system modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification is estimated to be $8,100, or $180 per airplane.

It would take approximately 2 work hours per airplane to accomplish the changes to the integrated display system, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification is estimated to be $5,400, or $120 per airplane.

It would take approximately 346 work hours per airplane to accomplish wiring provisions for the thrust reverser sync locks, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification is estimated to be $934,200, or $20,760 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–66–AD.

Applicability: Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Modifications

(a) For airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD at the times specified in those paragraphs. Accomplishment of these actions constitutes terminating action for the inspections and tests required by paragraph (a) of AD 94–15–05, amendment 39–8976.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998.

(2) Prior to or concurrent with the installation required by paragraph (a)(1) of this AD, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD:

(i) Modify the central maintenance computer system hardware and software in accordance with Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996.

(ii) Modify the integrated display system software in accordance with Boeing Service Bulletin 747–31–2245, dated June 27, 1996.

(iii) Install the provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletin 747–78–2154, Revision 3, dated December 11, 1997.

Repetitive Functional Tests

(b) Within 4,000 hours time-in-service after accomplishment of paragraph (a) of this AD, or production equivalent; or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the additional locking system on each engine thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual. Repeat the functional test thereafter at intervals not to exceed 4,000 hours time-in-service.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Appendix 1—Thrust Reverse Sync-Lock—Adjustment/Test

1. *General.*

A. There are two sync-locks for each engine thrust reverser. The sync-lock is installed on the lower non-locking hydraulic actuator of each thrust reverser sleeve.

B. The Thrust Reverser Sync-Lock Integrity Test has two tasks:

(1) The first task does a test of the electrical circuit which controls the operation of the sync-lock on each thrust reverser sleeve.

(2) The second task does a test of the mechanical function of the sync-lock on each thrust reverser sleeve.

C. The thrust reverser sync-lock is referred to as "the sync-lock" in this procedure.

2. *Thrust Reverser Sync-Lock Integrity Test.*

A. Equipment—Multi-meter, Simpson 260 or equivalent—commercially available

B. Prepare to do the integrity test for the sync-locks

(1) Supply electrical power

(2) For the applicable engine, make sure these circuit breakers on the Main Power Distribution Panel P6, are closed:

6F12 ENG 1 T/R IND
6E12 ENG 2 T/R IND
6D12 ENG 3 T/R IND
6C12 ENG 4 T/R IND
6F13 ENG 1 T/R CONT
6E13 ENG 2 T/R CONT
6D13 ENG 3 T/R CONT
6C13 ENG 4 T/R CONT
6F11 ENG 1 T/R LOCK CONT
6E11 ENG 2 T/R LOCK CONT
6D11 ENG 3 T/R LOCK CONT
6C11 ENG 4 T/R LOCK CONT

(3) Open the fan cowl panels for the applicable engine.

C. Do the electrical integrity test for the sync-locks.

(1) Do these steps, for the applicable engine, to make sure there are no "hot" short circuits in the electrical system which can accidentally supply power to the sync-locks:

(a) Remove the electrical connector, D20194, from the sync-lock, V170, on the left sleeve of the thrust reverser.

(b) Remove the electrical connector, D20196, from the sync-lock, V171, on the right sleeve of the thrust reverser.

(c) Use a multi-meter on the plug end of the applicable electrical connector to make sure that these conditions are correct:

D20194 PIN 1 D20194 PIN 2 −3 to +1 VDC and continuity (less than 5 ohms)
D20196 PIN 1 D20196 PIN 2 −3 to +1 VDC and continuity (than 5 ohms)

(d) If you find the correct conditions, do the mechanical integrity test for the sync-locks.

(e) If you did not find these conditions to be correct, you must do these steps:

(1) Make a careful visual inspection of all the electrical wires and connectors between the sync-lock and its power circuit.

(2) Repair all the unserviceable electrical wire and connectors that you find.

(3) Use the multi-meter again to make sure there are no "hot" short circuits in the electrical system which can accidentally supply power to the sync-locks.

D. Do the mechanical integrity test for the sync-locks.

(1) Supply hydraulic power.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR IF THE SYNC-LOCKS DO NOT OPERATE CORRECTLY AND THE THRUST REVERSER EXTENDS.

(2) Move the applicable reverser thrust lever aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves do not extend, the sync-locks are serviceable. If the thrust reverser sleeves extend, the applicable sync-lock did not operate correctly.

(3) Replace the sync-lock(s) on the thrust reverser sleeve(s) that did extend when you moved the reverse thrust levers. Repeat steps 2.D.(1) and 2.D.(2) to verify that functional sync-locks are installed.

(4) Move the applicable thrust reverser lever forward to the stow position.

(5) Install the electrical connector, D20194, on the sync-lock, V170 on the left sleeve of the thrust reverser.

(6) Install the electrical connector, D20196, on the sync-lock, V171, on the right sleeve of the thrust reverser.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR WHEN THE THRUST REVERSERS ARE EXTENDED.

(7) Move the applicable thrust reverser aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves extended, the sync-locks are serviceable. If the thrust reverser sleeves did not extend, the applicable sync-lock is not serviceable.

(8) Replace the sync-lock(s) on the thrust reverser sleeve that did not extend when you moved the reverse thrust levers. Repeat steps 2.D.(4) through 2.D.(7) to verify that functional sync-locks are installed.

(9) Repeat steps 2.A. through 2.D. for all other engine positions.

E. Put the airplane back to its usual condition.

(1) Move the reverse thrust levers forward to fully retract the thrust reversers on the applicable engine.

(2) Remove the hydraulic power if it is not necessary.

(3) Remove the electrical power if it is not necessary.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on December 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33569 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require a one-time inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, and replacement of any H–11 steel bolt with an Inconel bolt. This proposal is prompted by reports of fracture or cracking of H–11 steel bolts at the flap transmissions. The actions specified by the proposed AD are intended to prevent loss of a flap transmission, which could reduce lateral controllability of the airplane.

DATES: Comments must be received by February 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport

Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–206–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that H–11 steel bolts on trailing edge flap transmissions installed on certain Boeing Model 747 series airplanes have fractured or cracked due to stress corrosion. Bolts made of H–11 steel are known to be susceptible to such stress corrosion cracking. The presence of moisture leads to stress corrosion and, combined with other factors such as preload and shank corrosion, can result in fractured or cracked bolts. Broken bolts could lead to loss of a flap transmission, which could result in flap asymmetry, flap skew, or collateral system damage. This condition, if not corrected, could result in reduced lateral controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2376, dated July 1, 1999, which describes procedures for a one-time general visual inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions. If an H–11 steel bolt is installed, the alert service bulletin describes procedures for replacement with an Inconel bolt. Accomplishment of the replacement specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time general visual inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, and replacement of any H–11 steel bolt with an Inconel bolt. The actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, if any H–11 steel bolt is detected during the inspection specified in this proposed AD, the proposed AD would require replacement of any H–11 steel bolt with an Inconel bolt prior to further flight. The alert service bulletin describes an option to defer replacement of an H–11 steel bolt by performing a torque inspection to determine whether the H–11 steel bolt is broken. If an H–11 steel bolt is not broken, the alert service bulletin allows replacement of the H–11 steel bolt to be deferred for up to 18 months after accomplishment of the inspection. The FAA has determined that such a compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the replacement (approximately four hours per affected flap transmission). In light of these factors, the FAA finds a requirement to replace any H–11 steel bolt with an Inconel bolt prior to further flight to be warranted, in order to ensure the continued safety of the transport airplane fleet.

Cost Impact

There are approximately 775 airplanes of the affected design in the worldwide fleet. The FAA estimates that 226 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 6 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $81,360, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–206–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, and 747SR series airplanes; line positions 1 through 871 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of a flap transmission, which could reduce lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 1 year after the effective date of this AD, perform a one-time general visual inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, in accordance with Boeing Alert Service Bulletin 747–27A2376, dated July 1, 1999.

(1) If no H–11 steel bolt is found, no further action is required by this AD.

(2) If any H–11 steel bolt is found, prior to further flight, replace with an Inconel bolt, in accordance with the alert service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33570 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–70–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Model ASW–27 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher GmbH & Co. (Alexander Schleicher) Model ASW–27 sailplanes. The proposed AD would require inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide), and adjusting any clearance that does not meet the criteria. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect interference in the elevator control circuit, which, if not corrected, could result in the elevator control jamming with possible loss of control of the sailplane.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++49 6658 89–0; facsimile: ++49 6658 89–40. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–70–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules

Docket No. 99–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASW–27 sailplanes. The LBA reports an incident where the elevator controls jammed during takeoff. Investigation of this incident revealed that the 90-degree lever with its attached mass balance lead weight and connecting bolt contacted and rubbed against the cut-out of the lower fin rib.

This condition, if not detected and corrected in a timely manner, could result in the elevator control jamming with possible loss of control of the sailplane.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 5, dated July 16, 1999, which specifies procedures for inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide), and adjusting any clearance that does not meet the criteria.

The LBA classified this service bulletin as mandatory and issued German AD 1999–283, Effective Date: September 9, 1999, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASW–27 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 mm (1/10-inch wide), and adjusting any clearance that does not meet the criteria. Accomplishment of the proposed actions would be required in accordance with Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed inspection, that it would take approximately 1 workhour per sailplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $1,800, or $60 per sailplane.

The FAA estimates that it would take approximately 2 workhours per sailplane to accomplish the proposed adjustment, if necessary, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed adjustment on U.S. operators is estimated to be $3,600, or $120 per sailplane.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS).

When proper clearance is not provided inside the fuselage tail boom to the fin intersection, the 90-degree lever of the elevator controls rubs against the cut-out of the lower fin rib. Although the consequential jamming of the elevator controls is a result of sailplane operation, improper clearance would be prevalent at the time of manufacture. Sailplane operation varies among operators. For example, one operator may utilize the sailplane 50 hours TIS in 3 months while it may take another 12 months or more to accumulate 50 hours TIS. In order to assure that improper clearance is detected and corrected in a timely manner, the compliance time is proposed as "within the next 90 calendar days after the effective date of this AD."

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher GmbH & Co. Segelflugzeugbau: Docket No. 99–CE–70–AD.

Applicability: Model ASW–27 sailplanes, serial numbers 27002 through 27104, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect interference in the elevator control circuit, which, if not corrected, could

result in the elevator control jamming with possible loss of control of the sailplane, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, inspect the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide). Prior to further flight, adjust any clearance that does not meet the criteria. Accomplish these actions in accordance with the Action section of Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 5, dated July 16, 1999, should be directed to Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++49.6658.89–0; facsimile: ++49.6658.89–40. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 1999–283, Effective Date: September 9, 1999.

Issued in Kansas City, Missouri, on December 20, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33571 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers R391–6–132–F/3 Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers R391–6–132–F/3 series propellers. This proposal would require installation of an improved overspeed governor. This proposal is prompted by reports of overspeed governor failure. The actions specified by the proposed AD are intended to prevent overspeed governor failure, which could result in propeller overspeed, vibration, possible loss of propeller integrity, and loss of control of the airplane.

DATES: Comments must be received by January 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, United Kingdom; telephone +44 (0) 1452 716000, fax +44 (0) 1452 716001. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–38–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Dowty Aerospace Propellers R391–6–132–F/3 series propellers. The CAA advises that they have received reports of overspeed governor, part numbers (P/N) 697052002 and 697052003, failure. Investigation has revealed premature wear of the overspeed governor weight bushings due to excessively soft material, leading to wear of the bushings and eventual failure of the overspeed governor flyweights. This condition, if not corrected, could result in overspeed governor failure, which could result in propeller overspeed, vibration, possible loss of propeller integrity, and loss of control of the airplane.

Dowty Aerospace Propellers has issued Service Bulletin (SB) No. C130J–61–26, Revision 1, dated April 13, 1999, that specifies procedures for installation of an improved overspeed governor. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 007–09–98 in order to assure the airworthiness of these propellers in the UK.

This propeller model is manufactured in the UK and is type certificated for operation in the United States under the

provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, the proposed AD would require installation of an improved overspeed governor, P/N 697052004. Overspeed governors, P/N 697052003, must be replaced within 480 hours time-in-service (TIS), or 3 months after the effective date of this AD, whichever occurs first, due to their higher wear rate. Overspeed governors, P/N 697052002, must be replaced within 2,000 hours TIS after the effective date of this AD. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 163 propellers of the affected design in the worldwide fleet. There are currently no domestic propellers of the affected design that would be affected by this proposed AD, but if one were imported, it would take approximately 4 work hours per propeller to accomplish the proposed actions. The average labor rate is $60 per work hour. Required parts would cost approximately $2,500 per propeller. Based on these figures, the total cost impact of the proposed AD on a U.S. operator, if a propeller were imported, is estimated to be $2,740 per propeller.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dowty Aerospace Propellers: Docket No. 99–NE–38–AD.

Applicability: Dowty Aerospace Propellers R391–6–132–F/3 series propellers s, installed on but not limited to Lockheed Martin 382J (C130J military) airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overspeed governor failure, which could result in propeller overspeed, vibration, possible loss of propeller integrity, and loss of control of the airplane, accomplish the following:

(a) For propellers with overspeed governors, part number (P/N) 697052003, install an improved overspeed governor, P/N 697052004, within 480 hours time-in-service (TIS), or 3 months after the effective date of this AD, whichever occurs first, in accordance with Dowty Aerospace Propellers Service Bulletin (SB) No. C130J–61–26, Revision 1, dated April 13, 1999.

(b) For propellers with overspeed governors, P/N 697052002, install an improved overspeed governor, P/N 697052004, within 2,000 hours TIS after the effective date of this AD in accordance with Dowty Aerospace Propellers SB No. C130J–61–26, Revision 1, dated April 13, 1999.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 21, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–33572 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB35

Proposed Rulemaking Concerning Amendments to Insider Trading Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") proposes to amend Commission Regulation 1.59 which addresses various trading prohibitions imposed on persons associated with self-regulatory organizations ("SROs"). Regulation 1.59 presently requires SROs to adopt rules prohibiting employees, governing board members, and members of committees from certain trading activities and from disclosing material, non-public information. The Commission proposes to amend Regulation 1.59 so that governing board members, and individuals serving as the "functional equivalent" of governing board members, would be clearly excluded from the definition of "employee" for Regulation 1.59 purposes. The Commission also seeks to clarify the

meaning of Regulation 1.59(b)(1)(i) regarding the scope of the SRO employee trading prohibition, as its current punctuation may create some confusion. Finally, the Commission is requesting public comment regarding the application of Regulation 1.59 to non-paid advisors and paid consultants.

DATES: Comments must be submitted by January 27, 2000.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Associate Director, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission Regulation 1.59 generally requires SROs to adopt rules prohibiting employees, governing board members, and committee members from trading commodity interests on the basis of material, non-public information obtained in the course of their official duties (hereinafter referred to as "material, non-public information"). The Commission is proposing to amend Regulation 1.59 to provide greater clarity by resolving certain ambiguities in the current provision. The following sections of this release analyze the Commission's proposed rulemaking. Each section describes a provision of the Commission's proposed rulemaking and the Commission's rationale for proposing the amendment. The release also poses certain questions as to other aspects of the regulation in order to encourage comment from industry participants.

II. Proposed Rulemaking

A. Background

Currently, there are two categories of individuals subject to Regulation 1.59: (1) SRO employees, including those employed by the SRO on a salaried or contract basis; and (2) SRO governing board and/or committee members. Under Regulation 1.59, SRO employees are subject to stricter prohibitions against trading than SRO governing board or committee members.

Specifically, employees are absolutely prohibited from trading any commodity interest traded on or cleared by the employing contract market or clearing organization, or any related commodity interest. Additionally, employees having access to material, non-public information concerning a commodity interest are prohibited from trading in any such commodity interest that is traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization, or traded on or cleared by a linked exchange.

Governing board and committee members, on the other hand, are prohibited from using material, non-public information for any purpose other than the performance of their official duties. The possession of material, non-public information, therefore, does not bar these individuals from trading commodity interests. Rather, under Regulation 1.59(c), governing board and committee members are prohibited from trading for their own account, or for or on behalf of any other account, based on this material, non-public information.

B. Technical Amendments

1. Definition of "Employee"

a. *Governing Board Members.* Current Regulation 1.59(a)(2) defines "employee" as "any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization." In 1986, when this definition was originally adopted, members of governing boards generally were not salaried. Since that time, the industry trend has been to give stipends or payments to governing board members for their service. As such, the Commission believes there may be a need to clarify the "employee" definition since salaried governing board members are potentially subject to two inconsistent insider trading restrictions: one for governing board members and another for employees.

The Commission believes that including salaried governing board members in the definition of "employee" might create disincentives for those individuals to serve in this capacity, thus preventing SROs from taking advantage of their expertise. The Commission therefore proposes to amend the definition of "employee" to exclude explicitly governing board members. This would make clear that persons who receive a salary from the SRO solely for their governing board activities would be excluded from the "employee" restrictions against trading. Accordingly, under Regulation 1.59(c), all governing board members, regardless of a salary received solely for their governing board activities, would be prohibited only from using material, non-public information for any purpose other than the performance of their official duties.

b. *Individuals Serving as the Functional Equivalent of Governing Board Members.* There are certain types of individuals salaried by SROs that work closely with governing boards but are not technically governing board members. Specifically, some exchange governing boards permit *ex officio* or *emeritus* members to participate in board deliberations. The Commission understands that such individuals can provide valuable assistance and counsel. Under current Regulation 1.59, such individuals are technically "employees" since they are compensated by the exchange and are not bona fide governing board members. However, because *ex officio* and *emeritus* members are paid solely for their governing board activities, the Commission believes they are more analogous to governing board members than to SRO employees and should be treated as such for purposes of Regulation 1.59. As current Regulation 1.59 does not define "governing board member," the Commission proposes to amend it by defining the term specifically to include individuals who solely perform the functions of governing board members, even if they are not technically members of the exchange's governing board. The definition would therefore include those individuals serving the "functional equivalent" of governing board members.

2. Clarification That SRO Employees With Access to Material, Non-Public Information are Prohibited From Trading in any Commodity Interest Traded on or Cleared by: (1) Contract Markets or Clearing Organizations Other Than the Employing SRO; or (2) Linked Exchanges

Regulation 1.59(b) establishes four types of trading prohibitions for SRO employees. This paragraph, however, does not distinctly enumerate each trading prohibition. It merely provides a list, separating each prohibition with a comma. Specifically, the paragraph requires SROs to maintain in effect rules which, at a minimum, prohibit employees from trading in the following four scenarios:

> In any commodity interest traded on or cleared by the employing contract market or clearing organization, in any related commodity interest, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization, and in any commodity interest traded on or cleared by a linked exchange *where the employee has access to material nonpublic information concerning such commodity interest*;

Regulation 1.59(b)(1)(i) (emphasis added).

The Commission believes that the present structure of this paragraph may

create confusion as to which trading prohibitions the underlined clause modifies. In particular, because no punctuation precedes the clause "where the employee has access to material nonpublic information concerning such commodity interest" (hereinafter referred to as the "access clause"), this precondition for the application of the trading restriction would appear to apply to only one trading scenario—the trading scenario that immediately precedes it. However, an examination of this provision as it existed prior to the 1993 amendments to Regulation 1.59 ("1993 Amendments") and of the **Federal Register** releases promulgating those amendments confirms that the "access clause" should also apply to the prohibition on trading "in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization."[1]

Prior to the 1993 Amendments, the insider trading regulation for employees required SROs to adopt rules which, at a minimum, prohibited employees from trading in the following three scenarios:

> In any commodity interest traded on or cleared by the employing contract market or clearing organization, in any related commodity interest, and in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization *where the employee has access to material nonpublic information concerning such commodity interest.*

51 FR 44866, 44869 (Dec. 12, 1986) (emphasis added).

In that release, the three scenarios were individually numbered at one point in the narrative,[2] rather than merely separated by commas as done in the text of the regulation, and thus made clear that the "access clause" applied only to the last trading scenario.

In 1993, the fourth prohibited trading scenario relating to "any commodity interest traded on or cleared by a linked exchange" (hereinafter referred to as the "linked exchange prohibition") was added immediately before the "access clause." [3] The **Federal Register** release proposing the addition stated it "would make clear that SRO rules must prohibit SRO employees from trading in commodity interests traded on or cleared by linked exchanges where the employee has access to material, non-public information."[4] As a result of inserting this fourth trading scenario, without further altering the paragraph in any other way, the "access clause" reads as applying only to the "linked exchange prohibition." Notably, neither the proposing release nor the adopting release of the 1993 Amendments indicated that a change of policy was intended with respect to the treatment of trading a commodity interest "traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization."

In order to correct this, the Commission proposes to amend Regulation 1.59(b)(1)(i) by subdividing each prohibition into a separate subparagraph.[5] The Commission believes that these proposed amendments to paragraph (b)(1)(i) would clearly distinguish the situations in which employees of SROs are absolutely prohibited from trading commodity interests from the situations in which they are prohibited from trading only if they have access to material, non-public information.

C. Clarification of the Treatment of "Consultants"

The Commission is aware that SROs employ consultants in a variety of capacities. Furthermore, Commission staff understands that, in general, consultants are mostly used in the field of information technology. Depending on the nature of work being done, a consultant may or may not have access to material, non-public information.

Regulation 1.59 provides that consultants are SRO "employees" since Regulation 1.59(a)(2) defines an employee as "any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization." Indeed, the Commission specifically indicated its intention that such consultants be considered "employees" for Regulation 1.59 purposes when it originally promulgated the regulation in 1986.[6] Nonetheless, Commission staff has learned that some exchanges may retain consultants that they do not consider "employees." The Commission requests comment on whether Regulation 1.59 should be amended in any way in order to clarify the treatment of these consultants.

D. Request for Comments on Use of Non-Paid Advisors by Governing Boards and Committees

The Commission also seeks comment concerning the application of Regulation 1.59 to non-paid advisors of SRO governing boards and committees. Presently, these individuals are not subject to Regulation 1.59 requirements as they are neither "employees"—since they are not compensated—nor actual members of an SRO governing board or committee. The Commission believes that such advisors may merit special treatment under Regulation 1.59. Towards that end, the Commission requests comment on the extent to which such individuals are utilized by SRO governing boards and committees and their level of participation in these bodies' deliberations. In particular, the Commission seeks comment on whether these individuals are merely solicited for their opinions or integrally involved in various matters being addressed by the SRO governing board or committees.

E. Conclusion

The Commission believes that the proposed amendments to Regulation 1.59 would clarify existing ambiguities as well as adapt, as appropriate, to changes in the industry since the regulation was last amended.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[7] requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission previously has determined that contract markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets.[8] Furthermore, the Acting Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals affecting registered futures associations, if adopted, would not have a significant economic impact on a substantial number of small entities.[9]

This proposed rulemaking would impact SROs, both contract markets and registered futures associations, and their employees, governing board members and committee members. The

---

[1] *See* 58 FR 44470 (Aug. 23, 1993); 58 FR 54966 (Oct. 25, 1993). The 1993 Amendments were made in order to, among other things, implement the felony standard of Section 214 of the Futures Trading Practices Act of 1992 and to update the definitions of "linked exchange" and "material information" due to certain industry developments since Regulation 1.59 was revised last.

[2] 51 FR 44866, 44867 (Dec. 12, 1986).

[3] 58 FR 54966, 54971, 54974 (Oct. 25, 1993).

[4] 58 FR 44470, 44472 (Aug. 23, 1993).

[5] As proposed, Regulations 1.59(b)(1)(i)(A), (B), (C) and (D) would each be styled to prohibit an employee "from trading, directly or indirectly," certain commodity contracts in various circumstances.

[6] 51 FR 44866, 44867 at note 6 (Dec. 12, 1986). "It should be noted that consultants and independent contractors employed by the self-regulatory organization would be included within the definition of 'employee' under [R]egulation 1.59 and, therefore, would be subject to the same restrictions applicable to all other exchange employees."

[7] 5 U.S.C. 601 *et seq.* (1994).

[8] 47 FR 18618, 18619 (Apr. 30, 1982).

[9] *See* 58 FR 13565, 13569 (Mar. 12, 1993).

Commission has previously determined that the establishment of Regulation 1.59, as well as subsequent amendments to the regulation, have not created significant economic impact for affected entities or persons.[10]

The Commission does not believe that the proposed amendments would have a significant economic impact on SROs or employees, governing board members and committee members. The proposed amendments merely clarify the existing rule. The obligations and prohibitions which would be established by the proposed amendments are essentially the same obligations and prohibitions that are created by SRO rules promulgated pursuant to existing Regulation 1.59.

Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA,[11] that the proposed rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities: Proposed Collection; Comment Request

The Paperwork Reduction Act of 1980 ("PRA")[12] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission believes the proposed amendments to Regulation 1.59 would not impose a paperwork burden on self-regulatory organizations.

Copies of the information collection submission to the Office of Management and Budget are available from Stacy Dean Yochum, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5157.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract markets.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission hereby proposes to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.59 would be amended as follows:

A. Paragraphs (a)(3) through (a)(8) are redesignated as paragraphs (a)(4) through (a)(9).

B. Paragraph (a)(2)is redesignated as paragraph (a)(3) and revised and new paragraph (a)(2) is added;

C. Paragraph (b)(1) introductory text and paragraph (b(1)(i) are revised to read as follows:

§ 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.

(a) *Definitions.* For purposes of this section:

* * * * *

(2) *Governing board member* means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(3) *Employee* means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization, but does not include any governing board member compensated by the exchange solely for governing board activities.

* * * * *

(b) Employees of self-regulatory organizations: Self-regulatory organization rules.

(1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission regulation 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) Employees of the self-regulatory organization:

(A) From trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market or clearing organization;

(B) From trading, directly or indirectly, in any related commodity interest;

(C) From trading, directly or indirectly, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization where the employee has access to material, nonpublic information concerning such commodity interest; and

(D) From trading, directly or indirectly, in any commodity interest traded on or cleared by a linked exchange where the employee has access to material, nonpublic information concerning such commodity interest; and

* * * * *

Issued in Washington, DC on December 15, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33305 Filed 12–27–99; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 243, and 249

[Release Nos. 33–7787, 34–42259, IC–24209, File No. S7–31–99]

RIN 3235–AH82

Selective Disclosure and Insider Trading

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing new rules to address three issues: the selective disclosure by issuers of material nonpublic information; whether insider trading liability depends on a trader's "use" or "knowing possession" of material nonpublic information; and when the breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The proposals are designed to promote the full and fair disclosure of information by issuers, and to clarify and enhance existing prohibitions against insider trading.

DATES: Public comments are due on or before March 29, 2000.

ADDRESSES: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments can also be sent electronically to the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–31–99. If e-mail is used, include this file number on the subject line. Anyone can inspect and copy the comment letters in the Commission's Public Reference Room at 450 5th St., NW,

---

[10] *See* 47 FR 18618 (Apr. 30, 1982); 50 FR 24533 (June 11, 1985); 51 FR 44866 (Dec. 12, 1986); 52 FR 32568 (Aug. 28, 1987); 52 FR 48974 (Dec. 29, 1987); 58 FR 44470 (Aug. 23, 1993); 58 FR 54966 (Oct. 25, 1993).

[11] 5 U.S.C. 605(b) (1994).

[12] 44 U.S.C. 3501 *et seq.* (1988).

Washington, DC 20549. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Assistant General Counsel, Sharon Zamore, Senior Counsel, or Elizabeth Nowicki, Attorney, Office of the General Counsel, at (202) 942–0890.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (Commission) today is proposing for comment new rules: Regulation FD,[1] Rule 181 under the Securities Act,[2] Rule 10b5–1,[3] Rule 10b5–2,[4] and amendments to Forms 8–K[5] and 6–K.[6]

I. Executive Summary

Information is the lifeblood of our securities markets. Congress enacted the federal securities laws to promote fair and honest securities markets, and a critical purpose of these laws is to promote full and fair disclosure of important information by issuers of securities to the investing public. The Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), as implemented by Commission rules and regulations, provide for systems of mandatory disclosure of certain material information in securities offerings and in periodic reports.

The antifraud provisions of the federal securities laws also play a very important role in furthering full and fair disclosure. Among other things, the antifraud provisions prohibit insider trading, or the fraudulent misuse of material nonpublic information. Unlike the law underlying the issuer disclosure requirements, which generally has been developed through statutes and rules, the law of insider trading has largely been developed through a series of Commission and judicial decisions in civil and criminal enforcement cases involving fraud charges. As a result, a few areas of insider trading law have been marked by disagreement among the courts.

Today's proposals address several issues related to full and fair disclosure of information, and insider trading law. The proposed rules are the following:

- **Regulation FD** (Fair Disclosure), a new issuer disclosure rule, deals with the problem of issuers making selective disclosure of material nonpublic information to analysts, institutional investors, or others, but not to the public at large. Although analysts play an important role in gathering and analyzing information, and disseminating their analysis to investors, we do not believe that allowing issuers to disclose material information selectively to analysts is in the best interests of investors or the securities markets generally. Instead, to the maximum extent practicable, we believe that all investors should have access to an issuer's material disclosures at the same time. Regulation FD, therefore, would require that: (1) When an issuer intentionally discloses material information, it do so through public disclosure, not through selective disclosure; and (2) whenever an issuer learns that it has made a non-intentional material selective disclosure, the issuer make prompt public disclosure of that information.

- **Rule 10b5–1** addresses an important unsettled issue in insider trading law: whether the Commission must show in its insider trading cases that the defendant "used" the inside information in trading, or merely that the defendant traded while in "knowing possession" of the information. The Rule would state the general principle that insider trading liability arises when a person trades while "aware" of material nonpublic information, but also provides four exceptions to liability. In these four situations, where a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith, it will be clear that the trader did not use the information he or she was aware of.

- **Rule 10b5–2** addresses another unsettled issue in current insider trading law: what types of family or other non-business relationships can give rise to liability under the misappropriation theory of insider trading. The Rule would set forth three non-exclusive bases for determining that a duty of trust or confidence was owed by a person receiving information: (1) When the person agreed to keep information confidential; (2) when the persons involved in the communication had a history, pattern, or practice of sharing confidences that resulted in a reasonable expectation of confidentiality; and (3) when the person who provided the information was a spouse, parent, child, or sibling of the person who received the information, unless it were shown affirmatively, based on the facts and circumstances of that family relationship, that there was no reasonable expectation of confidentiality.

II. Selective Disclosure: Regulation FD

A. Background

Full and fair disclosure of information by issuers of securities to the investing public is a cornerstone of the federal securities laws. In enacting the mandatory disclosure system of the Exchange Act, Congress sought to promote disclosure of "honest, complete, and correct information"[7] to facilitate the operation of fair and efficient markets.[8]

Despite this well-recognized principle, the federal securities laws do not generally require an issuer to make public disclosure of all important corporate developments when they occur. Periodic reports (*e.g.*, Forms 10–K and 10–Q) call for disclosure of specified information on a regular basis, and domestic issuers are additionally required to report some types of events on a Form 8–K soon after they occur. However, in the absence of a specific duty to disclose, the federal securities laws do not require an issuer to publicly disclose all material events as soon as they occur. While we encourage prompt disclosure of material information as the best disclosure practice,[9] and self-regulatory organization (SRO) rules often require this,[10] issuers retain some control over the precise timing of many important corporate disclosures.

In practice, issuers also retain control over the audience and forum for some important disclosures. If a disclosure is made at a time when no Commission filing is immediately required, the issuer determines how and to whom to make its initial disclosure. As a result, issuers sometimes choose to disclose information selectively—*i.e.*, to a small group of analysts or institutional investors—before making broad public disclosure by a press release or Commission filing.

Many recent cases of selective disclosure have been reported in the media.[11] In some cases, selective

---

[1] 17 CFR 243.100 and 243.101.

[2] 17 CFR 230.181.

[3] 17 CFR 240.10b5–1.

[4] 17 CFR 240.10b5–2.

[5] 17 CFR 249.308.

[6] 17 CFR 249.306.

[7] S. Rep. No. 73–1455, at 68 (1934).

[8] "The idea of a free and open public market is built upon the theory that competing judgments of buyers and sellers as to the fair price of a security brings about aq situation where the market price reflects as nearly as possible a just price. . . . [T]he hiding and secreting of important imformation obstructs the operation of the markets as indices of real value." H.R. Rep. No. 73–1383, at 11 (1934). *See also* S. Rep. No. 73–792, at 10–11, 19–20 (1934).

[9] *See* Timely Disclosure of Material Corporate Developments, Securities Act Release No. 5092 (Oct. 15, 1970) (35 FR 16733).

[10] *See, e.g.*, NYSE Listed Company Manual, para. 202.05 (Timely Disclosure of Material News Developments); NASD Rules 4310(c)(16), 4320(e)(14), and IM–4120–1 (Disclosure of Material Information).

[11] *See, e.g.*, Susan Pulliam and Gary McWilliams, *Compaq Is Criticized for How It Disclosed PC*

Continued

disclosures have been made in conference calls or meetings that are open only to analysts and/or institutional investors, and exclude other investors, members of the public, and the media. In other cases, company officials have made selective disclosures directly to individual analysts. Commonly, these situations involve advance notice of the issuer's upcoming quarterly earnings or sales figures—figures which, when announced, have a predictable and significant impact on the market price of the issuer's securities.

We are troubled by the many recent reports of selective disclosure and the potential impact of this practice on market integrity. As the Supreme Court has recently emphasized, promoting investor confidence in the fairness of our securities markets is an "animating purpose" of the Exchange Act.[12] Clearly, one critical component of that mission is protecting investors from the prospect that others in the market possess "unerodable informational advantages" [13] obtained through superior access to corporate insiders.

In our view, the current practice of selective disclosure poses a serious threat to investor confidence in the fairness and integrity of the securities markets. We have recognized that benefits may flow to the markets from the legitimate efforts of securities analysts to "ferret out and analyze information" [14] based on their superior diligence and acumen. But we do not believe that selective disclosure of material nonpublic information to analysts—or to others, such as selected investors—is beneficial to the securities markets. As a recent academic study indicated, selective disclosure has the immediate effect of enabling those privy to the information to make a quick profit (or quickly minimize losses) by trading before the information is disseminated to the public.[15] Indeed, while issuer selective disclosure is not a new practice,[16] the impact of such selective disclosure appears to be much greater in today's more volatile, earnings-sensitive markets. Accordingly, we think that a continued practice of selective disclosure by issuers inevitably will lead to a loss of public confidence in the fairness of the markets.

Even apart from the issue of fundamental fairness to all investors, selective disclosure poses other real threats to the health and integrity of our securities markets. Corporate managers should be encouraged to make broad public disclosure of important information promptly. If, however, they are permitted to treat material information as a commodity that can be parceled out selectively, they may delay general public disclosure so that they can selectively disclose the information to curry favor or bolster credibility with particular analysts or institutional investors.[17]

Moreover, if selective disclosure were to go unchecked, opportunities for analyst conflicts of interests would flourish. We are greatly concerned by reports indicating a trend toward less independent research and analysis as a basis for analysts' advice, and a correspondingly greater dependence by analysts on access to corporate insiders to provide guidance and "comfort" for their earnings forecasts.[18] In this environment, analysts are likely to feel pressured to report favorably about particular issuers to avoid being "cut * * * off from access to the flow of non-public information through future analyst conference phone calls" or other means of selective disclosure.[19] This raises troubling questions about the degree to which analysts may be pressured to shade their analysis in

---

Troubles, Wall St. J., Mar. 2, 1999, at C1; Susan Pulliam, *Abercrombie & Fitch Ignites Controversy Over Possible Leak of Sluggish Sales Data*, Wall St. J., Oct. 14, 1999, at C1; Randall Smith, *Conference Calls to Big Investors Often Leave Little Guys Hung Up*, Wall St. J., June 21, 1995, at C1; George Anders and Robert Berner, *Webvan to Delay IPO in Response to SEC Concerns*, Wall St. J., Oct. 7, 1999, at C16 (disclosure to institutional investors in road-show presentations). In addition, a recent study of corporate disclosure practices by the National Investor Relations Institute reported that 26% of responding companies stated that they engaged in some types of selective disclosure practices. National Investor Relations Institute, *A Study of Corporate Disclosure Practices, Second measurement*, 18 (May 1998) (NIRI Corporate Disclosure Study).

[12] *United States* v. *O'Hagan*, 521 U.S. 642, 658 (1997).

[13] *Id.* (citing Brudney, *Insiders, Outsiders, and Informational Advantages Under the Federal Securities Laws*, 93 Harv. L. Rev. 322, 356 (1979)).

[14] *Raymond L. Dirks*, 47 S.E.C. 434, 441(1981). This concern about protecting the legitimate functions of securities analysts was a basis for the Supreme Court's decision in *Dirks* v. *SEC*, 463 U.S. 646 (1983), which addressed an analyst's liability under Rule 10b-5 insider trading law. *See also* Daniel R. Fischel, *Insider Trading and Investment Analysts: An Economic Analysis of Dirks* v. *Securities and Exchange Commission*, 13 Hofstra L. Rev. 127, 142 (1984). *But see* Donald C. Langevoort, *Investment Analysts and The Law of Insider Trading*, 76 Va. L. Rev. 1023, 1044 (1990) (stating that the argument favoring special treatment for analyst disclosures is "substantially overstated"). We discuss the *Dirks* case in greater detail at *infra* pp. 12–13.

[15] *See* Richard Frankel, Marilyn Johnson, and Douglas J. Skinner, *An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium*, 37 J. Acct. Res. 133 (Spring 1999). This study revealed that, during and immediately following teleconference calls between analysts and issuers, trading volume in the issuers' stock increased, average trade size increased, and stock price volatility increased. This led the researchers to conclude that material information is released during these selective disclosure periods, which is immediately filtered to a subset of large investors who are able to trade on the information before it is fully disseminated to the market.

[16] The NIRI Corporate Disclosure Study indicates that a higher percentage of issuers engaged in possible selective disclosure practices in 1995 than in 1998. *See* NIRI Corporate Disclosure Study, *supra* note 11 at 18.

[17] *See SEC* v. *Phillip J. Stevens*, Litigation Release No. 12813 (Mar. 19, 1991).

[18] Fred Barbash, *Companies, Analysts A Little Too Cozy*, Wash. Post, Oct. 31, 1999, at H1 ("Companies coddle analysts to obtain the most favorable coverage, which is critical to their stock price. Analysts covet their access to companies, because special knowledge is the only thing they have to offer clients."); Andrew Hill, *Let the buyer beware*, Fin. Times, Oct. 27, 1999, at 14 ("The death of the 'sell' note is perhaps the clearest signal that big securities houses are suppressing or toning down negative analysis of companies that are clients or potential clients. In a snapshot of 27,700 individual analyst reports, taken at the beginning of this month, First Call/Thomson Financial, the research company, found nearly 70 per cent recommended that investors buy the stock, and just under 1 per cent advised they should sell."); Gretchen Morgenson, *The Earnings Waltz: Is the Music Stopping?*, N.Y. Times, Oct. 24, 1999, at 3 ("As quarterly earnings numbers became paramount, analysts grew more dependent upon company management for 'guidance' to the correct earnings forecast. The more help they received, the less work they did."); Robert McGough, *One Analyst Anticipated IBM News*, Wall St. J., Oct. 22, 1999, at C1 ("Too often analysts rely on executives at the companies they cover to let them know what's going on in the business."); Jonathan Weil, *In Stock Ratings, Many Analysts Say 'Sell' Is a Four-Letter Word*, Wall St. J., May 6, 1998, at T2 (attributing analysts' "speak no evil" motto to fact that "most analysts don't want to risk offending corporate executives, who have been known to retaliate by restricting access to information or selecting competitors' corporate-finance departments to do lucrative investment-banking deals. So analysts issue watered-down critiques, and shareholders have to read between the lines for suggestions on when to get out of a stock."); Jeffrey M. Landerman, *Who Can You Trust? Wall Street's Spin Game, Stock Analysts Often Have a Hidden Agenda*, Bus. Wk., Oct. 5, 1998, at 148 (referencing a recent survey of Wall Street research, sales, and trading practices in which nearly one-third of the 272 responding large U.S. companies said that in response to an analyst's sell recommendation they would " 'reduce communications and reduce access' . . . . The great fear of the analyst when he or she goes calling on a company is to find the door shut.").

[19] John C. Coffee, Jr., *Is Selective Disclosure Now Lawful?*, N.Y.L.J., July 31, 1997, at 5. Professor Coffee also argues that selective disclosure may impair market efficiency in one other respect. If market efficiency is measured by the width of bid/asked spreads, market makers will widen spreads to protect themselves if they fear that others possess and will exploit asymmetric informational advantages. *See also* Amitabh Dugar, Siva Nathan, *Analysts' Research Reports: Caveat Emptor*, 5 J. Investing 13 (1996) ("Analysts depend on corporate management for accurate and timely information about the companies they follow. It is no secret that companies wield restriction of access as a weapon against analysts who issue a negative research report on their stock. Retribution ranges from refusing the analyst's calls for information, to barring the analysts from mailings, conference calls, and meetings, and even threats of legal action and physical harm." (citations and footnote omitted)).

order to maintain their access to corporate management. We believe that these pressures would be reduced if issuers were clearly prohibited from selectively disclosing material information to favored analysts.

These concerns about selective disclosure are widely shared, as reflected both in stock exchange listing standards and in "best practices" guidelines of investor relations and analyst groups. The New York Stock Exchange Listed Company Manual and the NASD Rules both require listed issuers to disclose promptly "to the public" information about material developments.[20] The National Investor Relations Institute (NIRI) guidance in this area also states that an issuer "should not disclose in selective situations—such as conference calls and analyst meetings—information that it is unwilling to make available for general public use."[21] Similarly, the Association of Investment Management and Research Standards of Practice Handbook states that if an analyst selectively receives disclosure of information that he deems material, "the member must encourage the public dissemination of that information and abstain from making investment decisions on the basis of that information unless and until it is broadly disseminated to the marketplace."[22]

Finally, revolutions in communications and information technologies have made it much easier for issuers today to disseminate important information broadly and swiftly. A generation ago, issuers may have relied on conferences attended by a handful of interested parties, or news releases that led to delayed, indirect retransmission of information to the public. Lacking effective means to communicate directly to large numbers of investors, issuers may have relied on analysts to serve as information intermediaries. In the last few years, however, new, effective methods for mass communications have become widely available. Today, issuers can—and many do—use a variety of these new methods to communicate with the market, including: live transmissions of annual meetings and news conferences on the Internet or closed circuit television; listen-only telephone transmission of meetings and analyst conferences; and company websites.[23] With the availability of these new technologies, issuers can much more easily reach a wide investor audience with their disclosures, and do not need to rely on analysts as heavily as in the past to serve as information intermediaries.[24]

Nevertheless, issuers are continuing to engage in selective disclosures of material nonpublic information, perhaps due in part to the uncertainty in current law about when selective disclosures are prohibited. For at least the past 30 years, the issue of potential liability for selective disclosure has been addressed under the principles of fraud law, particularly the law of insider trading. Under early insider trading case law, which appeared to require that traders have equal access to corporate information,[25] selective disclosure of material information to securities analysts could lead to liability.[26]

This changed with the Supreme Court's decisions in *Chiarella* v. *United States*[27] *and Dirks* v. *SEC.*[28] *In Chiarella,* the Court rejected the "parity of information" approach, which considered trading to be fraudulent whenever the trader possessed material information not generally available. The Court instead held that there must be a breach of a fiduciary or other relationship of trust and confidence before the law imposes a duty to disclose information or refrain from trading.

In *Dirks,* the Supreme Court addressed the disclosure, or "tipping," of material nonpublic information by an insider to an analyst.[29] The Court rejected the idea that a person is prohibited from trading whenever he knowingly receives material nonpublic information from an insider. Instead, it stated that a recipient of inside information is prohibited from trading only when the information has been made available to him "*improperly*"—that is, in breach of the insider's fiduciary duty to shareholders. To determine whether a breach of duty occurred, "courts [must] focus on objective criteria, *i.e.*, whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings."[30]

After *Dirks,* there have been very few insider trading cases based on disclosure to, or trading by, securities analysts. In some situations, an insider's selective disclosure can be viewed as improper, because the disclosure was motivated by a desire for some type of personal benefit.[31] In other cases, however, the evidence to support the "personal benefit" argument under *Dirks* is less clear. As a result, many have viewed *Dirks* as affording considerable protection to insiders who make selective disclosures to analysts, and to the analysts (and their clients) who receive selectively disclosed information.[32]

Although the antifraud provisions of the securities laws do not require that all traders possess equal information when they trade, we believe that our disclosure rules should promote fair

---

[20] *See supra* note 10.

[21] National Investor Relations Institute, *Standards of Practice for Investor Relations,* 30 (Apr. 1998).

[22] Association for Investment Management and Research, *Standards of Practice Handbook, 232 (8th ed. 1999).*

[23] *See, e.g.,* National Investor Relations Institute, Executive Alert, *Investor Relations Officers Report Dramatic Change in Ways Companies Communicate With Key Audiences* (June 18, 1999); Lynn Cowan, *Internet Broadcast of Conference Calls Creates Buzz and Niche for Businesses,* Wall St. J., May, 24, 1999, at B9D.

[24] We also have greater flexibility and improved technology for widespread dissemination of information. The Commission's EDGAR system permits investors to access issuer information almost as soon as it is filed with us.

[25] *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833, 849 (2d Cir. 1968) (en banc), *cert. denied,* 394 U.S. 976 (1969.

[26] *See SEC* v. *Bausch & Lomb, Inc.,* 565 F.2d 8 (2d Cir. 1977). At the same time, however, issuers were encouraged to divulge tidbits of non-material information to analysts to help them piece together more informed opinions. *Id.* The courts reasoned that although giving analysts direct, nonpublic, material information was prohibited, the law should permit "[a] skilled analyst with knowledge of [a] company and the industry [to] piece seemingly inconsequential data together with public information into a mosaic which reveals material non-public information." *Elkind* v. *Liggett & Myers, Inc.,* 635 F.2d 156, 165 (2d Cir. 1980). This theory is known as the "mosaic theory." The resulting tension between prohibited material disclosures and acceptable non-material disclosures led one judge to compare the corporate official's encounter with an analyst to a "fencing match conducted on a tightrope." *Bausch & Lomb,* 565 F.2d at 9.

[27] 445 U.S. 222 (1980).

[28] 463 U.S. 646 (1983).

[29] In *Dirks,* a securities analyst had been informed about a major fraud at Equity Funding of America by a former officer of the company. Although Dirks made an effort to make the fraud public, he also told his clients, enabling them to sell their Equity Funding securities and avoid losses when the fraud became publicly known. The Commission charged that Dirks was a "tippee" of the insider, and in turn tipped his clients.

[30] 463 U.S. at 663. On the facts of the case, the Court found that Dirks' source did not breach a duty in disclosing information to Dirks because he did not receive a personal benefit from the disclosure and was clearly motivated by a desire to expose the fraud. Because a tippee's duty is "derivative" from the duty of the tipper, and the insider source did not breach a duty, the Court held that Dirks did not violate Section 10(b) of the Exchange Act or Rule 10b-5.

[31] *SEC* v. *Phillip J. Stevens, supra* note 17 (allegation of personal benefit based on corporate official's desire to protect and enhance his reputation).

[32] *See, e.g.,* Paul P. Brountas Jr., *Note: Rule 10b–5 and Voluntary Corporate Disclosures to Securities Analysts,* 92 Colum. L. Rev. 1517, 1529 (1992).

treatment of large and small investors by, among other things, giving all investors timely access to the material information an issuer chooses to disclose. Therefore, we are today proposing new rules, which use a different legal approach, to address selective disclosure.

The approach we propose does not treat selective disclosure as a type of fraudulent conduct or revisit the insider trading issues addressed in *Dirks*. Rather, we propose to use our authority to require full and fair disclosure from issuers, primarily under Section 13(a) of the Exchange Act, as a basis for proposed Regulation FD. This Regulation is designed as an issuer disclosure rule, similar to existing Commission rules under Exchange Act Sections 13(a) and 15(d).[33] We believe this approach would further the full and fair public disclosure of material information, and thereby promote fair dealing in the securities of covered issuers.

B. Description of Proposed Regulation FD

Rule 101 of Regulation FD sets forth the basic rule regarding "selective disclosure." Under this Rule, whenever:

(1) an issuer, or any person acting on its behalf,

(2) discloses material nonpublic information

(3) to any other person outside the issuer,

(4) the issuer must

(a) simultaneously (for intentional disclosures), or

(b) "promptly" (for non-intentional disclosures)

(5) make public disclosure of that same information.

Several definitional and other provisions in the Regulation establish the scope and effect of the general rule. As a whole, the Regulation would require that whenever an issuer makes an intentional disclosure of material nonpublic information, it must do so in a manner that provides general public disclosure, rather than through a selective disclosure. In the case of an unintentional selective disclosure, the issuer must make full public disclosure promptly after it learns of the selective disclosure. Regulation FD does not mandate that issuers make public disclosure of all material developments when they occur. What it does require, however, is that when an issuer chooses to disclose material nonpublic information, it must do so broadly to the investing public, not selectively to a favored few.

[33] 15 U.S.C. 78m(a) and 78o(d).

The key provisions of the Regulation are discussed in greater detail below.

1. Disclosures by "An Issuer or Person Acting on its Behalf"

Regulation FD applies to all issuers with securities registered pursuant to Section 12 of the Exchange Act, and those issuers required to file reports under Section 15(d) of the Exchange Act, including closed-end investment companies but not including other investment companies.[34] It would apply not only to a selective disclosure formally made in the name of the issuer, but also to a selective disclosure made by a "person acting on behalf of an issuer." This term is defined by Rule 101(c) as any officer, director, employee, or agent of the issuer who discloses material nonpublic information while acting within the scope of his or her authority.

The definition of "person acting on behalf of an issuer" distinguishes between cases where a properly authorized employee or agent of the issuer makes a selective disclosure, and cases where an employee or agent discloses material nonpublic information for his or her own benefit—*i.e.*, provides a "tip" that would violate Rule 10b–5 if securities trading ensued. This distinction means that the issuer would not automatically be liable under Regulation FD (or be responsible for making simultaneous or prompt public disclosure) whenever one of its employees or agents improperly trades or tips.[35] The Rule also would not apply if an official disclosed information to another person who owed him or her a duty of trust or confidence—such as a medical professional. By focusing on employees and agents acting within the scope of their authority, the Rule would make an issuer responsible only for the disclosures of company officials, employees, or agents who are properly authorized or designated to speak to the media, the analyst community, and/or investors.

We request comment on this approach. Is the definition of "person acting on behalf of an issuer" appropriate? Should it be narrower—for example, limited to executive officers and directors, and persons acting on their behalf? Or should it be broader, to prevent evasion—for example, covering any person authorized to act on behalf of the issuer?

[34] *See* Proposed Rule 101(b).

[35] The proper response in this type of case is to hold the employee or agent responsible for illegal insider trading, not to force the issuer to make a public disclosure due to the misconduct of one of its employees or agents.

2. Disclosure of Material Nonpublic Information

Regulation FD addresses the selective disclosure of "material nonpublic information." The Regulation does not define the term "material," but instead relies on the same definition as is generally applicable under the federal securities laws: information is material if "there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision, or if it would have "significantly altered the 'total mix' of information made available."[36]

We recognize that materiality judgments can be difficult. Corporate officials may therefore become more cautious in communicating with analysts or selected investors, or may feel compelled to consult with counsel more frequently about their ability to respond to questions from analysts and investors. We understand that these communications take many forms, including unrehearsed question-and-answer sessions, and responses to unsolicited inquiries. We are mindful of the potential burdens of requiring instant materiality judgments to be made by those put in the position of responding immediately to questions.

We believe that these concerns are significant but can be mitigated in several ways, many of which involve practices already in place at many issuers.[37] First, issuers can designate a limited number of persons who are authorized to make disclosures or field inquiries from analysts, investors, or the media. Second, issuers can make sure that some record is kept of the substance of private communications with analysts or selected investors—for example, by having more than one person present during these contacts or by recording conversations. Third, issuer personnel can decline to answer questions that raise issues of materiality until they have had an opportunity to consult with others. Fourth, issuer personnel can secure the agreement of analysts not to make use of certain information for a limited time until they have had the opportunity to review their notes of the conversation and engage in whatever consultation they deem necessary to reach a conclusion as to

[36] *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976); *see Basic v. Levinson*, 485 U.S. 224, 231 (1988); *see also* Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b–2, 17 CFR 240.12b–2; Staff Accounting Bulletin No. 99 (Aug. 12, 1999) (64 FR 45150) (discussing materiality for purposes of financial statements).

[37] *See NIRI Corporate Disclosure Study, supra* note 11.

materiality;[38] then, if the issuer determines that public disclosure of the information is necessary, it can do so. Finally, and most importantly, as described in greater detail below, the Regulation recognizes that issuers may sometimes unintentionally make a selective disclosure of material nonpublic information, and it treats such unintentional disclosures differently from cases in which the issuer makes a planned selective disclosure.

We also believe that a heightened awareness of materiality issues may well have overall benefits to the disclosure process. Senior corporate officials who are responsible for dealing with analysts, investor relations, and disclosure issues already should be sensitive to materiality questions. When particularly difficult issues arise, responsible officials should seek the advice of counsel. Though it is likely that this Regulation will require corporate officials to consider more thoughtfully precisely what to disclose, it is unlikely, given the robust, active capital market, that the flow of information to the market will be significantly chilled.

Although materiality issues do not lend themselves to a bright-line test, we believe that the majority of cases are reasonably clear. At one end of the spectrum, we believe issuers should avoid giving guidance or express warnings to analysts or selected investors about important upcoming earnings or sales figures; such earnings or sales figures will frequently have a significant impact on the issuer's stock price. At the other end of the spectrum, more generalized background information is less likely to be material. We request comment on whether use of the procedures discussed above or similar procedures can significantly reduce the risk of "chilling" the flow of corporate information to the marketplace.

The Regulation also does not specifically define the term "nonpublic." It is well established that information is nonpublic if it has not been disseminated in a manner making it available to investors generally.[39] In order to make information public, "it must be disseminated in a manner calculated to reach the securities market place in general through recognized channels of distribution, and public investors must be afforded a reasonable waiting period to react to the information."[40] The Regulation does specify means by which "public disclosure" is to be made.[41] We request comment on whether to rely on existing standards for the term "nonpublic." Should we provide further guidance, or is the specific definition of "public disclosure" provided in Rule 101(e) sufficient?

3. Selective Disclosure "To Any Other Person Outside the Issuer"

Rule 100(a) covers selective disclosures made to "any person or persons outside the issuer." Therefore, the Rule would not apply to communications of confidential information by officials and employees of issuers to each other. Only selective disclosures to outsiders, such as analysts or selected investors, are covered by the Regulation.

To make clear the scope of the Regulation, paragraph (b) of Rule 100 expressly states that the Rule does not apply to disclosures of material information to persons who are bound by duties of trust or confidence not to disclose or use the information for trading. Paragraph (b) expressly refers to several types of persons whose misuse of the information would subject them to insider trading liability under Rule 10b–5: (1) "temporary" insiders of an issuer—*e.g.*, outside consultants, such as its attorneys, investment bankers, or accountants;[42] and (2) any other person who has expressly agreed to maintain the information in confidence, and whose misuse of the information for trading would thus be covered either under the "temporary insider" or "misappropriation" theory.[43]

This approach recognizes that issuers and their officials may properly share material nonpublic information with outsiders when those outsiders agree to keep the information confidential. This would permit issuers to discuss confidential strategies or plans with outsiders, as necessary for business purposes, without need to make public disclosure under this Rule. For example, issuers could share material nonpublic information with other parties to a business combination transaction or with a purchaser in a private placement without having to make public disclosure if the party receiving the information agrees to hold the information in confidence. Similarly, if it served an issuer's corporate interests to make disclosure of material information to selected analysts—for example, to give the analysts sufficient time to analyze complex information before its public release, or to solicit analysts' views on a business strategy under consideration—it could do so, provided that the recipients of the information expressly agreed not to use the information and to keep it confidential prior to public disclosure. Such a confidentiality agreement would also include an agreement not to trade on the nonpublic information.

We request comment on whether the proposed Regulation covers the appropriate categories of persons. Should other types of persons be enumerated in Rule 100(b) as proper recipients of material nonpublic information? By permitting disclosures to outsiders who agree to confidentiality requirements, does the Regulation adequately permit issuers to engage in legitimate business communications with customers or suppliers, potential co-venturers, and others? Would purchasers in private offering who receive material nonpublic information be willing to sign confidentiality agreements? How would this affect the resale market for private offerings and the flow of information in these transactions? Would the proposals reduce liquidity in the 144A market? How should the Regulation account for practices in this market? Should we require that confidentiality agreements take any specific form—i.e., be written—or include certain required provisions?

4. Timing of Public Disclosure Required by Regulation FD

An important provision of Regulation FD is that the timing of required public disclosure differs depending on whether the issuer has made an "intentional" or a "non-intentional" selective disclosure.

When an issuer makes an "intentional" disclosure of material nonpublic information, Rule 100(a)(1) requires the issuer to publicly disclose the same information simultaneously. In effect, this requirement for simultaneous disclosure means that issuers cannot engage in an intentional selective disclosure consistent with the terms of Regulation FD.

Under the definition provided in Rule 101(a), a selective disclosure is

---

[38] If a person receives material nonpublic information subject to such a confidentiality agreement, the use or disclosure of the information for securities trading purposes will lead to insider trading liability under Rule 10b–5.

[39] *See, e.g., Texas Gulf Sulphur*, 401 F.2d at 854; *In re Investors Management Co.*, 44 S.E.C. 633, 643 (1971).

[40] *Faberge, Inc.*, 45 S.E.C. 249, 255 (1973). Thus, for purposes of insider trading law, insiders must wait a "reasonable" time before trading. What constitutes a reasonable time prior to trading depends on the circumstances of the dissemination. *Id., citing Texas Gulf Sulphur*, 401 F.2d at 854.

[41] *See, infra* Section II.B.5.

[42] "Classical" insiders—an issuer's officers, directors, or employees—are of course also subject to duties of trust and confidence and to Rule 10b–5 insider trading liability if they trade or tip.

[43] *United States* v. *O'Hagan*, 521 U.S. 642 (1997); *Dirks*, 463 U.S. at 655 n.14.

"intentional" when the individual making the disclosure either knew prior to making the disclosure, or was reckless in not knowing, that he or she would be communicating information that was material and nonpublic. This definition would cover, for example, situations where an issuer official determined to hold a conference call or meeting that excluded the public, or selectively contacted a particular analyst or investor, to disclose material nonpublic information. The individual making the disclosure must know (or be reckless in not knowing) that the information he or she is going to disclose is both material and nonpublic. Thus, for example, a communication would not be "intentional" under this Rule if it was disclosed inadvertently through an honest slip of the tongue, or because the individual mistakenly (but not in reckless disregard of the truth) believed that the information had already been made public.

Under Rule 100(a)(2), when this type of "non-intentional" disclosure of material nonpublic information occurs, the issuer is required to make public disclosure promptly. In this situation, because the disclosure was unplanned, the Rule does not require simultaneous public disclosure. Instead, the Rule requires "prompt" public disclosure, with "promptly" defined to mean "as soon as reasonably practicable" (but no later than 24 hours) after a senior official of the issuer knows (or is reckless in not knowing) of the non-intentional disclosure.[44] "Senior official" is defined as any executive officer of the issuer, any director of the issuer, any investor relations officer or public relations officer, or any employee possessing equivalent functions.[45]

By creating a separate requirement for "prompt" public disclosure in the case of a non-intentional selective disclosure, the Rule recognizes that corporate officers may sometimes make mistakes without the intent to selectively disclose material nonpublic information. When mistakes are made, absent intent or recklessness, we do not believe that the issuer should be held in violation of Regulation FD for not having made simultaneous public disclosure.[46]

If, however, an inadvertent selective disclosure of material information occurs, the issuer must take prompt "corrective" action when it knows (or is reckless in not knowing) that the disclosure of material information has occurred. The requirement to take corrective action arises when a senior official of the issuer (as defined above) becomes aware of the selective disclosure.[47] When that occurs, the issuer is required to act "as soon as reasonably practicable" to make full public disclosure of the information that has been selectively disclosed.[48]

We request comment on the distinction between "intentional" and "non-intentional" disclosures for purposes of the timing of public disclosure. Does the proposed definition of "intentional" disclosure draw the appropriate distinction? Does the definition of "promptly" provide an appropriate time period for the required public disclosure? Should the time period be shorter (*e.g.*, same trading day); or longer (*e.g.*, next business/trading day or 48 hours later)? Is the definition of senior official appropriate, or should it be narrower (*e.g.*, executive officers only) or broader (*e.g.*, all employees)?

5. Definition of "Public Disclosure"

Rule 101(e) defines the type of "public disclosure" that will satisfy the requirements of the Regulation. This definition provides issuers with considerable flexibility in determining how to make the required public disclosure.

In general, the Rule states that issuers can comply with the "public disclosure" requirement by filing a Form 8–K with the Commission containing the information (or, in the case of foreign private issuers, by filing a Form 6–K).[49] We are proposing to add a new Item 10 to Form 8–K for disclosures made under Regulation FD. Should we permit issuers to make Regulation FD disclosures on existing Item 5 of Form 8–K as an alternative to proposed new Item 10? Item 5 is not confined to material disclosures; accordingly, if a registrant used Item 5 it would not acknowledge that the information disclosed was necessarily material. Is this a preferable approach?

As alternatives to making a Commission filing, the Rule permits an issuer to choose other methods of public disclosure. Under Rule 101(e)(2), an issuer will be exempt from the filing requirement if it uses one of the following alternative methods of public disclosure:

- First, an issuer could make public disclosure by disseminating a press release containing the information through a widely circulated news or wire service. Under current practice and SRO rules, corporate issuers typically provide press releases to services such as Dow Jones, Bloomberg, Business Wire, PR Newswire, or Reuters. Any of these services would continue to be a satisfactory means of making public disclosure.
- Second, an issuer could make public disclosure by disseminating information through any other method of disclosure that is reasonably designed to provide broad public access, and does not exclude access to members of the public—such as announcement at a press conference to which the public is granted access (for example, by personal attendance or by telephonic or electronic transmission). In order to afford broad public access, an issuer must provide notice of the disclosure in a form that is reasonably available to investors.

As noted above, current technology provides various means that issuers can use to transmit announcements and press conferences to the public. The Rule would not require use of any particular technological means, but would give issuers their choice of any method that did not limit public access to announcements and conferences.

An additional method for issuer dissemination of material information is posting the information on the issuer's website.[50] We encourage issuers who maintain websites to post information

[44] Proposed rule 101(d)(1). Although requirements for "prompt" disclosure exist elsewhere in the securities laws—*e.g.*, the requirement that amendments to Schedules 13D be filed "promptly"—Proposed Rule 101(d)(1) defines "prompt" disclosure for purposes of Regulation FD. This definition is not meant to apply in any other contexts.

[45] *See* Proposed Rule 1010(d)(2). For closed-end investment companies that are subject to Regulation FD, the term "senior official" would also cover directors, officers, and employees of the fund's investment adviser.

[46] Of course, a pattern of "mistaken" selective disclosures would make less credible the claim that any particular disclosure was not intentional.

[47] For example, a senior official may become aware of his mistake when he sees a significant change in the market price and/or trading volume of his company's securities. Alternatively, a senior official might learn that a lower-level employee mistakenly disclosed material information, because an analyst or investor who received the information called the officer to confirm the information.

[48] Proposed Rule 101(d)(1) states that the required public disclosure must be made no later than 24 hours after the issuer or a senior official of the issuer knows (or is reckless in not knowing) of the selective disclosure. The 24-hour period takes into account the issuer's potential difficulty in making the disclosure any sooner because of the need to marshal all the information necessary, and reach the appropriate personnel. In other cased, however, the issuer may well be able to make public disclosure before the maximum allowable 24-hour disclosure period. In such cases, the requirement to disclose "as soon as reasonably practicable" means that the issuer should act sooner than 24 hours later.

[49] Proposed Rule 101(e)(1).

[50] *See NIRI Corporate Disclosure Study, supra* note 11, at 9, 21 (finding that 82% of responding issuers used their websites to post disclosures of quarterly finanical results).

on their websites whenever they make public disclosure through one of the means described above. However, the proposed Rule would not consider a website posting by itself to be a sufficient means of public disclosure.[51] Will this limitation make issuers less willing to post information on their websites?

We request comment on the proposal's approach for making public disclosure. We acknowledge that filings on EDGAR may only be made during specified hours, and only on business days of the Commission. In the case of filings permitted to be made in paper (as in the case of foreign private issuers), there are similar constraints because of our filing desk hours. Therefore, when an issuer is required to make public disclosure within 24 hours, the timing of a weekend or holiday may mean that EDGAR filing is not an available method of public disclosure. Issuers would therefore have to use one of the other methods. We solicit comment on whether this approach is workable, or whether we should alter the timing requirements of the Rule so that filing is always an available method. How else can we promote issuer flexibility and investor access?

We are also considering whether to require a delayed filing of a Form 8–K (within two business days) when an issuer chooses one of the other methods of making public disclosure. This would ensure that the information is part of the Commission's public files. Should we adopt this alternative approach? If so, is two business days the appropriate time period, or should it be shorter (*e.g.*, one business day) or longer (*e.g.*, five business days)?

Are the current technologies that we discuss available to all issuers? Are they prohibitively costly? Would they provide all investors with sufficient access? Are there other methods of public disclosure that might be as effective as a press release or an open press conference? Should these methods be specified in the Rule? Would an open press conference alone provide adequate dissemination of information in all circumstances (*e.g.*, for smaller companies with less media or analyst coverage)? Should we require that information be posted on an issuer's website, if it has one, in addition to the other methods of publicizing the information?

[51] Despite the rapid expansion of Internet access, a significant number of households do not have access. Moreover, simply putting information on a website does not alert investors that it is available.

6. Issuers Covered by the Regulation

Regulation FD would apply to all issuers with securities registered under Section 12 of the Exchange Act, and all issuers required to file reports under Section 15(d) of the Exchange Act, including closed-end investment companies but not including other investment companies. Are there any categories of issuers that should not be included? Should we have different and/or modified rules for small business issuers? If so, what modifications are warranted?

We are proposing to apply Regulation FD to foreign private issuers that are subject to the reporting requirements of the Exchange Act, although these foreign issuers would be permitted to make filings under the Regulation on Form 6–K rather than Form 8–K.[52] The vast majority of these issuers have subjected themselves to such reporting requirements by their election to access U.S. markets. Most of the issuers have a class of securities listed on the New York or American Stock Exchanges, or are admitted to trading on the Nasdaq Stock Market. The listing standards of these markets make no distinction between domestic and foreign issuers in requiring timely disclosure of material information.[53]

The content and timing of submissions on Form 6–K currently are based on a foreign private issuer's disclosure obligations and practices in its home jurisdiction and in any other jurisdiction where its securities are listed. We recognize that this Rule proposes for the first time to add a substantive disclosure requirement to Form 6–K, thereby changing the fundamental character of the form. We understand that some foreign issuers may view Regulation FD as requiring a change in what they consider to be normal communications with major shareholders, analysts, the press, labor unions, and other constituencies. In many cases, the disclosure requirements of Regulation FD also will impose a translation requirement on the information disclosed to the public and/or filed on Form 6–K. On the other hand, the benefits of the proposal to shareholders in all markets, not just the U.S. capital markets, may warrant the additional steps required of foreign issuers.

Regulation FD permits issuers to use other means for publicly disseminating non-intentional selective disclosures as alternatives to Forms 8–K or 6–K. Under current Form 6–K requirements, however, foreign private issuers are required to submit a Form 6–K containing any material information that is disseminated publicly, promptly after the dissemination. As proposed, foreign private issuers would not have to file a Form 6–K if they use one of the alternative means of disclosure permitted by Regulation FD.

We note that Forms 6–K are not currently required to be filed on EDGAR, which may impede investor access to information. Does this limitation make the requirement to file on Form 6–K less useful? If so, how should we address this issue?

We request comment on the proposed coverage of Regulation FD. Would it be appropriate to exempt all foreign private issuers from compliance with Regulation FD? If so, what would be the basis for this exemption and how would we address the impact on U.S. investors of having different requirements for selective disclosures by U.S. issuers and foreign private issuers? Would it be more appropriate to limit the application of Regulation FD to only certain foreign private issuers, such as those issuers with equity securities listed on a registered national securities exchange or the Nasdaq Stock Market National Market System, or foreign private issuers whose number of U.S. shareholders or volume of trading in our capital markets exceeds certain levels? If so, what levels should trigger the application of Regulation FD? Are there other ways the proposal could be modified to reduce the burden on foreign private issuers? Should foreign and domestic issuers be treated similarly with respect to the application of Section 18 to Regulation FD disclosure?

We are proposing to apply Regulation FD to closed-end investment companies, but not other types of investment companies. Investment companies that are continually offering their securities to the public already are required to update their prospectuses to disclose material changes subsequent to the effective date of the registration statement or any post-effective amendment, and are not permitted to sell, redeem, or repurchase their securities except at a price based on their securities' net asset value. While we believe that Regulation FD would offer little additional protection to investors in these types of investment companies and therefore they should be excluded from its coverage, these considerations do not apply in the case of closed-end investment companies.

[52] As is the case currently, Form 6–K used to mkae Regulation FD disclosure would not be deemed to be "filed" for purposes of Section 18 of the Exchange Act or subject to liability under that section.

[53] *See supra* note 10.

We are thus proposing to include closed-end investment companies within the requirements of Regulation FD.

At present, no form used by registered closed-end investment companies is equivalent to Form 8–K. In order to provide closed-end investment companies with the same disclosure options under Regulation FD available to operating companies, we propose to permit registered closed-end investment companies to file on Form 8–K for the sole purpose of making the public disclosure required by Regulation FD. The Commission does not intend by this rule proposal to otherwise require registered investment companies to file on Form 8–K.[54]

We request comment on whether any investment companies should be covered by Regulation FD, and if so, which types of investment companies should be covered. Commenters should address whether there are specific types of information relating to investment companies that could be the subject of problematic selective disclosure (*e.g.*, the impending departure of a portfolio manager who is primarily responsible for day-to-day management of the fund, or information relating to the fund's portfolio investments). We also request comment on whether it is appropriate for closed-end investment companies to file on Form 8–K for purposes of making disclosure under Regulation FD, and whether there should be a separate Item 11 for closed-end investment companies making disclosure on Form 8–K, so that members of the public can easily distinguish filings by closed-end investment companies from those of operating companies. Commenters that oppose the use of Form 8–K by closed-end investment companies should discuss other methods for obtaining equivalent disclosure from those companies.

7. Liability Issues and Securities Act Implications

Regulation FD is an issuer disclosure rule that is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act. It is not an antifraud rule, and unlike other Section 13(a) and 15(d) reporting requirements, it is not intended to create duties under Section 10(b) of the Exchange Act or any other provision of the federal securities laws. As a result, no private liability will arise from an issuer's failure to file or make public disclosure.[55]

If an issuer fails to comply with Regulation FD, however, it will be subject to an SEC enforcement action.[56] We could bring an administrative action seeking a cease and desist order, or a civil action seeking an injunction and/or civil money penalties.[57] In appropriate cases, we could also bring an enforcement action against the individual(s) at the issuer responsible for the violation, either as "a cause of" the violation in a cease and desist proceeding,[58] or as an aider and abetter of the violation in an injunctive action.[59]

In addition, Regulation FD does not affect or undermine any existing bases of liability under Rule 10b–5. Thus, for example, liability for "tipping" under Rule 10b–5 may still exist if a selective disclosure is made in circumstances that meet the *Dirks* "personal benefit" test.[60] In addition, an issuer's failure to make a public disclosure still may give rise to liability under a "duty to correct" or "duty to update" theory in certain circumstances.[61] And in other cases, an issuer's contacts with analysts may lead to liability under the "entanglement" or "adoption" theories.[62]

Moreover, if an issuer's filing or public disclosure made under Regulation FD contained false or misleading information, or omitted material information, the issuer could incur liability for those misstatements or omissions. Rule 10b–5 would apply to any materially false or misleading statements made to the public, and if an issuer had filed a Form 8–K containing false or misleading information, Section 18 of the Exchange Act[63] would apply as well. If a Form 8–K filed under Regulation FD was required to be incorporated into an issuer's registration statement, it would be subject to liability under Section 11 of the Securities Act.[64] If the public disclosure is not filed on a Form 8–K, it may nevertheless be subject to Section 11 liability if the information is otherwise required to be included in a registration statement subject to Section 11.

As noted above, Regulation FD applies only to issuers that have securities registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of that Act. Accordingly, the Regulation would not apply during an issuer's initial public offering (IPO) of its securities prior to effectiveness of the registration statement.[65]

The proposed Regulation would, however, apply to disclosures made by reporting issuers while they have pending registration statements for securities offerings. For example, the Regulation would apply to statements made in a "roadshow" for a reporting issuer's offering. In that situation, if an issuer made oral selective disclosure of material information, Regulation FD would require the issuer also to make public disclosure of the same information. This would be a departure from current distinctions in the Securities Act between oral and written communications around the time of an offering.[66]

The required public disclosure could also be considered an "offer" of the securities for purposes of Section 5 of

---

[54] Business development companies ("BDCs"), a category of closed-end investment companies not required to register under the Investment Company Act, are already required to file reports on Form 8–K. Under this proposal, BDCs would continue to be subject to Form 8–K filing obligations, including those imposed by Regulation FD.

[55] Courts have held that there is no implied private right of action under Section 13(a) of the Exchange Act. *Lamb* v. *Phillip Morris, Inc.*, 915 F.2d 1024 (6th Cir. 1990), *cert. denied*, 498 U.S. 1086 (1991); *J.S. Service Center Corp.* v. *General Electric Technical Services Co.*, 937 F. Supp. 216 (S.D.N.Y. 1996).

[56] In addition, eligibility to file on a number of "short-form" Securities Act registration statements requires, in part, that the registrant be timely in filing its Exchange Act reports. The obligation to be timely in these filings includes the filing of a required Form 8–K. As such, any required Form 8–K filing under proposed Item 10 would have to be made in a timely manner for the registrant to be eligible to file such a short-form registration statement. If, under today's proposals, the registrant would not be required to file under Item 10 of Form 8–K because it uses an alternative means of public dissemination, the failure to file an Item 10 Form 8–K would not affect that registrant's form eligibility.

[57] Regulation FD does not expressly require insurers to adopt policies and procedures to avoid violations, but we expect that most issuers will consider implementing appropriate disclosure policies to guard against selective disclosure. We are aware that many, if not most, issuers already have policies and procedures regarding disclosure practices, the dissemination of material information, and the question of which issuer personnel are authorized to speak to analysts, the media, or investors. The existence of this type of policy, and the issuer's general adherence to it, may often be relevant to determining the issuer's intent with regard to a selective disclosure.

[58] Section 21C of the Exchange Act, 15 U.S.C. 78u–3.

[59] Section 20(e) of the Exchange Act, 15 U.S.C. 78t(e).

[60] *See SEC* v. *Phillip J. Stevens*, *supra* note 17.

[61] *See generally Backman* v. *Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990); *In re Phillips Petroleum Sec. Litig.* 881 F.2d 1236 (3rd Cir. 1989).

[62] *See, e.g., Elkind* v. *Ligget & Myers, Inc.*, 635 F.2d 156 (2d Cir. 1980); *In the Matter of Presstek, Inc.* Exchange Act Release No. 39472 (Dec. 22, 1997).

[63] 15 U.S.C. 78r.

[64] 15 U.S.C. 77k. This proposal is not intended to change existing liability for forms incorporated by reference.

[65] After the registration statement for the IPO becomes effective, however, and the issuer becomes subject to Section 15(d) of the Exchange Act, it would be subject to Regulation FD.

[66] Our staff is currently engaged in a more comprehensive review of the regulatory issues raised by "roadshows."

that Act,[67] and when made by writing or broadcast could be considered a "prospectus" for purposes of section 2(a)(10) of the Act.[68] This creates the possibility that an issuer may violate sections 5(c) or 5(b)(1) of the Securities Act by making the public disclosures required by Regulation FD.

To permit an issuer that has already filed a registration statement to make the required public disclosure without violating section 5(b)(1) of the Securities Act, we are proposing new Rule 181 under the Securities Act. Under this Rule, any public disclosure required by Rule 100(a) of Regulation FD would not be required to satisfy the requirements of section 10 of the Securities Act[69] for a prospectus, as long as the disclosure was made in compliance with Regulation FD. We request comment on whether this Rule should apply only to non-intentional disclosures. Should we place other conditions on the use of this Rule—for example, requiring the material information to be included in the registration statement at the time it is declared effective?

A more difficult situation arises when a reporting company is planning an offering, but has not yet filed a registration statement. A company may find itself in the position of being required by Regulation FD to disclose to the public information which could constitute an "offer" of its securities prior to the filing of a registration statement, contrary to section 5(c). While companies are not supposed to make offers to anyone prior to filing a registration statement, an inadvertent disclosure of material nonpublic information to one person could result in an obligation to disclose information to the public, thus resulting in offers being made to many persons. If the company complies with the Regulation FD requirement in that situation, its disclosure would violate section 5(c), and subject it to liability under section 12(a)(1) if it proceeds with its offering. The public disclosure also could constitute a general solicitation and therefore preclude the company from undertaking a private exempt offering.

If the Commission were to adopt an exemption from section 5(c) for Regulation FD-required disclosure, however, companies could abuse that exemption to make public communications that hype an offering before filing a registration statement with the Commission. In that event, the balanced full disclosure, against which to test the hyping information, would not be available. The protections of section 5 could thus be eroded. While we have published proposals that, if adopted, would allow offers to be made prior to the filing of a registration statement in some offerings, those proposals did not extend to offerings by unseasoned companies to less sophisticated investors.[70] We proposed to retain the pre-filing prohibition on offers in those cases because of the continued need for this aspect of investor protection.

We request comment on whether we should also adopt an exemption from liability under section 5(c) of the Securities Act for communications made before the filing of a registration statement. If we do so, should the exemption apply only to non-intentional disclosures? Do the same reasons for providing a section 5(b)(1) exemption also apply to section 5(c), either for all issuers, or for offerings made by very large issuers or to more sophisticated investors? Or could a section 5(c) exemption provide issuers with such freedom to make public disclosures prior to filing a registration statement that issuers could engage in the hyping of an offering that Section 5(c) is designed to prevent?

With respect to the interplay between Regulation FD and the Securities Act, we request comment on the proposed approach described above. Should the Regulation also apply to issuers engaged in IPOs? Alternatively, given the liability questions under the Securities Act for these disclosures and the pending proposals in the Securities Act Reform release, should the Regulation not cover communications made as part of securities offerings under the Securities Act?

In our recent release on business combinations,[71] we adopted non-exclusive exemptions under the Securities Act, proxy rules, and tender offer rules that permit communications with respect to business combinations[72] for an unrestricted length of time without a cooling-off period between the end of communications and the filing of definitive disclosure documents. Those communication exemptions apply regardless of materiality, so long as the conditions to the exemption are satisfied. All written communications must be filed on the date of first use. Those communications must contain a prominent legend advising investors to read the registration, proxy, or tender offer statement, as applicable, when it becomes available. Under those rules, oral statements are not required to be reduced to writing and filed.

Proposed Regulation FD would impose requirements on material communications, written and oral, that are in addition to the filing and legend requirements of the new business combination rules. Any material information disclosed to the public, whether oral or written, would be required to be publicly disseminated by filing, press conference, news release, or otherwise.[73] Issuers may use confidentiality agreements to protect communications in the context of business combinations or other transactions which the issuers expressly mean to reserve from public disclosure. Early discussions among parties negotiating a transaction that are subject to confidentiality agreements among the parties and are kept confidential generally would not be subject to disclosure requirements of Regulation FD or the communications exemptions. Similarly, discussions between a party to a transaction and a security holder regarding a possible "lock-up" or other agreement generally would not be subject to these requirements so long as a confidentiality agreement is in effect.

Under current practice, parties negotiating a transaction do not always enter a confidentiality agreement, so Regulation FD may effect a change to current practice. Does this provide a practicable solution for parties seeking to negotiate transactions or to discuss "lock-ups"?

III. Insider Trading Issues

The prohibitions against insider trading in our securities laws play an essential role in maintaining the fairness, health, and integrity of our markets. We have long recognized that the fundamental unfairness of insider trading harms not only individual investors, but also the very foundations of our markets, by undermining investor confidence in the integrity of the markets. Congress, by enacting two separate laws providing enhanced

---

[67] 15 U.S.C. 77e.

[68] 15 U.S.C. 77b(a)(10).

[69] 15 U.S.C. 77j.

[70] The Regulation of Securities Offerings, Securities Act Release No. 7606A (Nov. 13, 1998) (63 FR 67174). As discussed below, we also have adopted rules that allow offers in the business combination context to be made before filing a registration statement.

[71] Regulation of Takeovers and Security Holder Communications, Securities Act Release No. 7760 (Oct. 22, 1999) (64 FR 61408) (effective date Jan. 24, 2000).

[72] The proxy rule amendments are not limited to communications concerning business combinations.

[73] Written information must be disseminated by filing in order to satisfy the communication exemptions. A news release or other means of dissemination would not meet the requirements of the business combination rules.

penalties for insider trading,[74] has expressed its strong support for our insider trading enforcement program. And the Supreme Court in *United States* v. *O'Hagan* has recently endorsed a key component of insider trading law, the "misappropriation" theory, as consistent with "an animating purpose" of the federal securities laws: "to insure honest securities markets and thereby promote investor confidence."[75]

Neither we nor Congress have expressly defined insider trading in a statute or rule. Instead, insider trading law has developed on a case-by-case basis under the antifraud provisions of the federal securities laws, primarily Section 10(b) of the Exchange Act and Rule 10b–5. As a result, from time to time there have been issues on which various courts have disagreed. With the Supreme Court's *O'Hagan* decision, the fundamental issues in insider trading law are now settled. Today's proposals address two issues on which disagreement remains.

A. Rule 10b5–1: Trading "On the Basis of" Material Nonpublic Information

1. Background

One unsettled issue in insider trading has been what, if any, causal connection must be shown between the trader's possession of inside information and his or her trading. In enforcement cases, we have argued that a trader may be liable for trading while in "knowing possession" of the information. The contrary view is that a trader will not be liable unless it is shown that he or she "used" the information for trading.

Until recent years, there has been little case law discussing this issue. Although the Supreme Court has variously described an insider's violations as involving trading "on"[76] or "on the basis of"[77] material nonpublic information, it has not addressed the use/possession issue. Three recent court of appeals cases address the issue, but have reached different results.

The three court of appeals cases recognize the practical difficulty of divorcing a trader's knowing possession, or awareness, of inside information from its "use" in a trade. In *United States* v. *Teicher*,[78] the Second Circuit suggested that "knowing possession" is sufficient to trigger insider trading liability, for precisely this reason.[79] In *SEC* v. *Adler*, the Eleventh Circuit held that "use" was the ultimate issue, but that proof of "possession" provides a "strong inference" of "use" that suffices to make out a *prima facie* case.[80] In *United States* v. *Smith*, the Ninth Circuit required that "use" be proven in a criminal case.[81]

The *Adler* court suggested that we could adopt a new rule or amend existing Rule 10b–5 to adopt a presumption approach or to provide for liability for trading while in "knowing possession" of material nonpublic information.[82] In view of the differing opinions expressed in the three cases discussed above, we agree that it would be useful to define the scope of Rule 10b–5, as it applies to the use/possession issue.

In our view, the goals of insider trading prohibitions—protecting investors and the integrity of securities markets—are best accomplished by a standard closer to the "knowing possession" standard. Whenever a person purchases or sells a security while aware of material nonpublic information that has been improperly obtained, that person has the type of unfair informational advantage over other participants in the market that insider trading law is designed to prevent.[83] As a practical matter, in most situations it is highly doubtful that a person who knows inside information relevant to the value of a security can completely disregard that knowledge when making the decision to purchase or sell that security. In the words of the Second Circuit, "material information can not lay idle in the human brain."[84] Indeed, even if the trader could put forth purported reasons for trading other than awareness of the inside information, other traders in the market place would clearly perceive him or her to possess an unfair advantage.

On the other hand, we recognize that an absolute standard based on knowing possession, or awareness, could be overbroad in some respects. Sometimes a person may reach a decision to make a particular trade without any awareness of material nonpublic information, but then come into possession of such information before the trade actually takes place. A rigid "knowing possession" standard would lead to liability in that case. We believe, however, that for many cases of this type, a reasonable standard would not make such trading automatically illegal.

The *Adler* case attempted to balance these considerations by means of a "use" test with a strong inference of use from "possession." We propose a somewhat different approach today: A general rule based on "awareness" of the material nonpublic information, with several carefully enumerated exceptions. We believe our proposed Rule would lead to the same outcome as *Adler* in almost all insider trading cases, but will provide greater clarity and certainty than a presumption or "strong inference" approach. Our proposed approach will better enable insiders and issuers to conduct themselves in accordance with the law.

2. Proposed Rule 10b5–1

Proposed Rule 10b5–1 is designed to address only the use/possession issue in insider trading cases under Rule 10b–5.

---

[74] Insider Trading Sanctions Act of 1984, Pub. L. No. 98–376, 98 Stat. 1264; Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677.

[75] *O'Hagan*, 521 U.S. at 658.

[76] *See Dirks*, 463 U.S. at 654.

[77] *See O'Hagan*, 521 U.S. at 651–52.

[78] 987 F.2d 112 (2d Cir), *cert. denied*, 510 U.S. 976 (1993).

[79] *Teicher* was a criminal case premised on the misappropriation theory of insider trading. The court reasoned, in *dicta*, that the simplicity of a "knowing possession" standard recognizes the informational advantage that a trader with inside information has over other traders. "Unlike a loaded weapon which may stand ready but unused, material information can not lay idle in the human brain." *Id.* at 120.

[80] 137 F.3d 1325 (11th Cir. 1998). *Adler* was a civil action under "classical" insider trading theory. The court stated that trading while "in possession of" the material nonpublic information gives rise to a "strong inference" that the defendant "used" the information in trading, thereby allowing the Commission to establish a *prima facie* case based on possession of the information. The court reasoned that this inference addresses the Commission's proof difficulties by allowing the Commission to make out a *prima facie* case without establishing direct proof of a causal connection between possession of the information and its use. *Id.* at 1337–38. The defendant, however, has the opportunity to rebut this inference by introducing evidence to establish that the information was not used in making the trade. It is left to the fact finder to weigh the evidence to determine whether the information was used. *Id.* at 1337.

[81] 155 F.3d 1051 (9th Cir. 1998), *cert. denied*, 119 S. Ct. 804 (1999). *Smith* was a criminal case under "classical" insider trading theory. The court expressed no view on whether the *Adler* presumption could be permitted in a civil enforcement case. *Id.* at 1069 & n.27.

[82] "We note that if experience shows that this approach unduly frustrates the SEC's enforcement efforts, the SEC could promulgate a rule adopting the knowing possession standard, as the SEC has done in the context of tender offers * * * or a rule adopting a presumption approach in which proof that an insider traded while in possession of material nonpublic information would shift the burden of persuasion on the use issue to the insider." *Adler*, 137 F.3d at 1337 n.33 (citation omitted).

[83] Under the classical theory, there is an additional argument why trading in "possession" of inside information is fraudulent. A "classical" insider has a fiduciary duty to the corporation's shareholders. The insider violates this duty, and thereby commits fraud, if he or she trades in the company's securities while in possession of inside information without disclosing the information to the other party. The insider violates this duty regardless of whether he or she "uses" the insider information. *See* Brief of the Securities and Exchange Commission at 22–24, *SEC* v. *Soroosh* (9th Cir. 1998) (No. 98–35006); Brief of the Securities and Exchange Commission at 18, *SEC* v. *Adler* (11th Cir. 1997) (No. 96–6084).

[84] *Teicher*, 987 F.2d at 120.

As the Preliminary Note states, the Rule does not modify or address any other aspect of insider trading law, which has been established by case law under Rule 10b–5.

Paragraph (a) sets forth the general prohibition of insider trading contained in existing case law. Under existing law, it is illegal to trade a security "on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information."[85] This language incorporates all theories of insider trading liability under the case law—classical insider trading, temporary insider theory, tippee liability, and trading by someone who misappropriated the inside information.[86]

Paragraph (b) defines trading "on the basis of" material nonpublic information. A trade is on the basis of material nonpublic information if the trader "was aware of" the information when he or she made the purchase or sale. Thus, the general rule is that "awareness" of the inside information inevitably leads to use of the information, and provides a sufficient basis for liability.

Paragraph (c) provides specific affirmative defenses against liability. A purchase or sale is not "on the basis of" information when a person can establish that one of four exclusive situations is true. These four defenses cover situations in which a person can show that the information he or she possessed was not a factor in the trading decision.

First, an affirmative defense is available if, before becoming aware of material nonpublic information, a person had entered into "a binding contract" to trade "in the amount" and "at the price" and on the date at which he or she ultimately traded.[87] This defense permits persons to carry out pre-existing contracts to purchase or sell a specified number (or dollar amount) of shares of a particular security at a specified price (or at the market price), as long as the person was not aware of material nonpublic information when he or she entered into the contract.[88]

Second, an affirmative defense is similarly available if, before becoming aware of material nonpublic information, a person "had provided instructions to another person to execute" a trade for the instructing person's account, "in the amount, at the price, and on the date" at which that trade was ultimately executed.[89] This defense would apply, for example, to an insider who instructs his or her broker to execute a plan to sell stock in accordance with Rule 144 at the expiration of a required holding period. If the insider provides the instructions without awareness of any material nonpublic information, the Rule would permit him or her to complete the previously instructed sales plan even if he or she later became aware of inside information.

Third, the Rule provides an affirmative defense if, before becoming aware of material nonpublic information, a person "[h]ad adopted, and had previously adhered to, a written plan specifying purchases or sales of the security in the amounts, and at the prices, and on the dates at which the person purchased or sold the security."[90] This provision is designed to apply in the case of an insider who wishes to establish a regular, pre-established program of buying or selling his or her company's securities. If the plan is established before the insider is aware of material nonpublic information, and provides for specified trades at specified times, the insider will be permitted to engage in those trades even if he or she later becomes aware of material nonpublic information. As discussed below, plans of this type must be entered into in good faith, and not as part of a plan or scheme to evade insider trading prohibitions.[91]

Fourth, the Rule provides an affirmative defense for purchases or sales that result from a written plan for trading securities that is designed to track or correspond to a market index, market segment, or group of securities.[92] This defense would permit trading by an index fund, for example, where the fund's trading strategy was pre-established by the fund or its manager, even if the manager later became aware of material nonpublic information regarding one of the securities in the index. The defense would be available if the plan was sufficiently circumscribed to prevent trading decisions from being affected by the manager's later awareness of material nonpublic information.

The Rule provides one important limitation on the availability of all of the affirmative defenses. Paragraph (c)(1)(ii) states that a defense would be available only if a contract, plan, or instruction to trade relied on for a defense was entered into in good faith, and not as part of a plan or scheme to evade the prohibitions of this Rule. If a person changes a previous contract, plan, or instruction in any respect after becoming aware of material nonpublic information, he or she will lose any defense against liability. Thus, for example, if an insider enters into a contract or plan to sell 1,000 shares of his or her company's stock without being aware of material nonpublic information, then learns negative material nonpublic information and doubles his or her planned sale to 2,000 shares, he or she will lose the defense for the entire sale of 2,000 shares. Similarly, if the insider accelerates the timing of a planned sale in order to complete it before the release of negative corporate news that he or she has recently learned, he or she will have no defense for the transaction.

---

[85] Proposed Rule 10b5–1(a).

[86] *See United States* v. *O'Hagan*, 521 U.S. 642 (1997); *Dirks* v. *SEC*, 463 U.S. 646 (1983); *Chiarella* v. *United States*, 445 U.S. 222 (1980). In *O'Hagan*, the Supreme Court recognized that under the misappropriation theory of insider trading liability, the fraud is consummated when the defendant, without proper disclosure to the source, "uses the information to purchase or sell securities." Proposed Rule 10b5–1 is consistent with this view in that it provides for no liability when a trader can meet one of the stated defenses in paragraph (c) demonstrating lack of use.

[87] Proposed para. (c)(1)(i)(A).

[88] Proposed para. (c)(1)(iii) defines the terms "[i]n the amount(s)" and "[a]t the price(s)" for purposes of all of paragraph (c)(1)(i)'s affirmative defenses. These definitions are designed to ensure that a contract, plan, or instruction is sufficiently defined to foreclose the use of any inside information of which the person later becomes aware. A trade specified "in an amount" must specify either the number of securities to be traded or the total monetary proceeds to be realized from or spent on the securities to be traded. Thus, a person could plan a sale of, for example, either 1,000 shares or $10,000 worth of stock; however, the person could not plan a trade within a range—for example, a sale of between 1,000 and 2,000 shares. The term "at the price(s)" includes a purchase or sale at the market price for a particular date. Therefore, persons would not be required to commit to trading at a particular price, but could merely contract, plan, or provide instructions to trade at the market price on the date of the trade.

Under the Rule, a defense would not be available for a contract, plan, or instruction to trade that used a limit order. By using a limit order, the person would not firmly be committing to make a trade, because if the market price at the relevant date exceeded the limit order price, the trade would not be made. We request comment on whether this restriction on the use of limit orders is necessary.

[89] Proposed para. (c)(1)(i)(B).

[90] Proposed para. (c)(1)(i)(C).

[91] This exception does not cover trading for a person's account through a "blind trust." We have not included any express defenses for blind trust trading, because we do not believe this trading creates difficulties under existing insider trading law. When a person places securities in a blind trust, by definition he or she does not make the decisions to purchase or sell securities in that account. Therefore, those trading decisions (which are made by the trustee of the blind trust) should not be attributed to the person for purposes of potential insider trading liability.

[92] Proposed para. (c)(1)(i)(D).

Paragraph (c)(1)(ii) also specifies that a person will lose any defense for a trade if he or she enters into or alters a "corresponding or hedging transaction or position" with respect to the planned securities trade. This requirement is designed to prevent persons from devising schemes to exploit inside information by setting up pre-existing hedged trading programs, and then canceling execution of the unfavorable side of the hedge, while permitting execution of the favorable transaction. By altering the corresponding position, the insider would lose any defense for the transaction that he or she permitted to be executed.[93]

The Rule provides an additional, separate affirmative defense designed solely for entities that trade.[94] This defense is derived from the defense against liability currently provided in Exchange Act Rule 14e-3(b)[95] regarding insider trading in a tender offer situation. To meet this defense, an entity must demonstrate two things: first, that the individual(s) making the decision on behalf of the entity was not aware of the inside information; and second, that the entity had implemented reasonable policies and procedures (*e.g.*, informational barriers, restricted lists) to prevent insider trading.

3. Request for Comments

We request comments on all aspects of proposed Rule 10b5–1. Is the approach we propose—a general standard of "awareness" of the information, with specific affirmative defenses—the appropriate one? Are the proposed affirmative defenses appropriate? Should we provide additional defenses to liability, and if so, what should they be? Are the provisions defining the "amount" and "price" of pre-planned trades specific enough to permit plans to be made? Should we require written plans or instructions in all cases? Should we require that contracts, instructions, or trading plans be approved by counsel?

We also request comment on whether the defense for institutional traders is appropriate and adequate. Has this provision worked effectively for entities subject to Rule 14e-3? Is there any reason the same type of provision would not be adequate for this Rule?

[93] As a general matter, the Rule requires that any written plan specifying trading at a particular time must be made in good faith. Similarly, paragraph (c)(1)(i)(C) requires that a person have "previously adhered to" the written plan, as a means of demonstrating its bona fides.

[94] Proposed para. (c)(2).

[95] 17 CFR 240.14e–3(b).

B. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases

1. Background

In *United States* v. *O'Hagan*, the Supreme Court upheld the misappropriation theory of insider trading.[96] Under that theory, a person commits fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5 by misappropriating material nonpublic information for securities trading purposes, in breach of a duty of loyalty and confidence.

Certain types of business relationships by themselves provide the duty of trust or confidence necessary in a misappropriation theory case. In *O'Hagan*, for example, the attorney-client relationship established the duty of confidence. In other cases, the agency relationship inherent in an employer-employee relationship provides the duty.[97] It is not as settled, however, under what circumstances certain non-business relationships, such as family and personal relationships, may provide the duty of trust or confidence required under the misappropriation theory.

Two courts have considered this issue in criminal cases: *United States* v. *Chestman*[98] and *United States* v. *Reed*.[99] Although *Chestman* and *Reed* took into account common law notions of fiduciary and confidential relationships, they both took a relatively narrow view of when a duty of confidence exists in the context of criminal liability for insider trading.

In *Reed*, the court did not find a father-son relationship sufficient in itself to provide the required duty of confidence. But it stated that if family members have a prior history of sharing confidences, such that one family member has a reasonable expectation that the other will keep those confidences, there may be a sufficient relationship of trust and confidence. The final determination is left to the fact finder.[100]

In *Chestman*, a narrow majority of the Second Circuit *en banc*, while not overruling *Reed*, took a more restrictive view.[101] The *Chestman* majority held that marriage alone does not suffice to create a fiduciary relationship.[102] It stated that in the absence of an "express agreement of confidentiality," or a "pre-existing fiduciary-like relationship between the parties" to a family relationship, there is not a sufficient basis for establishing the necessary duty to support a fraud conviction under the misappropriation theory.[103]

Chestman makes clear that its narrow approach, in contrast to the "elastic" definition of confidential relations employed by courts of equity in the civil context, was influenced by the criminal context of the case before it.[104] In our view, however, the *Chestman* majority's approach does not fully recognize the degree to which parties to close family and personal relationships have reasonable and legitimate expectations of confidentiality in their communications.[105] For this reason, we believe the *Chestman* majority view does not sufficiently protect investors and the securities markets from the misappropriation and resulting misuse of inside information.

We have investigated and prosecuted a large number of insider trading cases that involved trading by friends or family members of insiders. In many of these cases, the evidence supports the claim that the insider intended to give the information to the friend or family member for trading.[106] The evidence in

[96] 521 U.S. 642 (1997).

[97] *See e.g.*, *United States* v. *Carpenter*, 791 F.2d 1024, 1028 (2d Cir. 1986), *aff'd*, 484 U.S. 19 (1987); *SEC v. Materia*, 745 F.2d 197, 203 (2d Cir. 1984), *cert. denied*, 471 U.S. 1053 (1985); *United States* v. *Newman*, 664 F.2d 12, 15 (2d Cir. 1981), *aff'd after remand*, 722 F.2d 729, *cert. denied*, 464 U.S. 863 (1983).

[98] 947 F.2d 551 (2d Cir. 1991), *cert. denied*, 503 U.S. 1004 (1992).

[99] 601 F. Supp. 685 (S.D.N.Y.), *rev'd on other grounds*, 773 F.2d 447 (2d Cir. 1985).

[100] *Reed*, 601 F. Supp. at 717–18.

[101] Although the facts alleged in *Reed* were that the father and son had a prior history of sharing business confidences, 601 F. Supp. at 690 n.6, the *Reed* court's analysis states, without limitation to business confidences, that "[t]he repeated disclosure of secrets by the parties or by one party to the other" or a "pre-existing confidential relationship" could be sufficient to establish a duty of trust and confidence. *Id.* at 717–18. The *Chestman* majority, however, limited *Reed's* holding in a criminal context to its facts—that the repeated sharing of business confidences between family members could be the basis of a finding of a relationship of trust and confidence, the functional equivalent of a fiduciary relationship. *Chestman*, 947 F.2d. at 569.

[102] *Id. at 568.*

[103] *Id.* at 571

[104] *Chestman* recognized that although concern about the "rule of lenity" did not permit the use of "an elastic and expedient definition of confidential relations" in criminal cases, such an approach may be useful in the civil context. *Id.* at 570 *See also O'Hagan*, 521 U.S. at 679 (concurring and dissenting opinion of Scalia, J.) (noting applicability of "principle of lenity" in criminal insider trading prosecution, and potential distinction between criminal and civil construction of Rule 10b–5).

[105] *Cf. Chestman*, 947 F.2d at 580 (concurring and dissenting opinion of Winter, J.) (calling majority's view "unrealistic" in that "it expects family members to behave like strangers to each other"). Nor does *Chestman* consider the recognition of a fiduciary duty between family members as a matter of common law or statutory enactments.

[106] *See, e.g.*, *SEC v. Michelle Nguyen, et al.*, Litigation Release No. 16199 (June 29, 1999); *SEC*

such cases supports liability under a classical tipper-tippee theory.[107]

In other circumstances, however, the evidence does not support the view that the disclosing insider intended or expected that the recipient of the inside information would trade. Instead, the evidence indicates that the insider confided the material nonpublic information to the friend or relation with the reasonable expectation that the recipient of the information would maintain the confidence. In those situations, a classical tipper-tippee theory of liability would probably not be available under the *Dirks* analysis. The misappropriation theory of liability would fit the facts better, because the trader breached a duty of confidentiality to the disclosing insider when he or she traded on the basis of the inside information. However, misappropriation liability is very difficult to establish in these situations under the restrictive analysis of *Chestman*, because *Chestman* appears to require either an express agreement of confidentiality, or a pre-existing fiduciary-like relationship that included the prior sharing of business confidences. Stated differently, under *Chestman*, it is not sufficient that the disclosing insider had a reasonable expectation of confidentiality based on his or her prior relationship with the trader.

Chestman thus leads to the following anomalous result. A family member who receives a "tip" (within the meaning of *Dirks*) and then trades violates Rule 10b–5. A family member who trades in breach of an express promise of confidentiality also violates Rule 10b–5. A family member who trades in breach of a reasonable and legitimate expectation of confidentiality, however, does not necessarily violate Rule 10b–5.

We think that this anomalous result harms investor confidence in the integrity and fairness of the nation's securities markets. The family member's trading has the same impact on the market and investor confidence in the third example as it does in the first two examples. In all three examples the trader's informational advantage "stems from contrivance, not luck," and the informational disadvantage to other investors "cannot be overcome with research or skill."[108] We believe that permitting the trader in the third example to trade legally is inconsistent with investors' expectations about what types of informational advantages can be properly exploited. Moreover, this result provides all trading family members—including those in the classical tipper-tippee example—with a roadmap for concocting a story that could provide a lawful explanation for the trading. Finally, the need to distinguish between the three types of cases may require an unduly intrusive examination of the details of particular family relationships.

Accordingly, we believe that there is good reason for the broader approach we propose today for determining when family or personal relationships create "duties of trust or confidence" under the misappropriation theory. Our proposed approach is not designed to interfere with particular family or personal relationships; rather, our goal is to protect investors and the fairness and integrity of the nation's securities markets against improper trading on the basis of inside information.

2. Proposed Rule 10b5–2

Proposed Rule 10b5–2 sets forth a non-exclusive definition of circumstances in which a person has a duty of trust or confidence for purposes of the "misappropriation" theory of insider trading under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder. As stated in the Preliminary Note to the Rule, the law of insider trading is otherwise defined by judicial opinions interpreting Rule 10b–5, and this Rule is not intended to address or modify the scope of insider trading law in any other respect.

Paragraph (a) states that the Rule applies to any cases based on the misappropriation theory of insider trading, whether involving trading or tipping. Paragraph (b) enumerates a non-exclusive list of circumstances under which a "duty of trust or confidence" shall exist.[109]

a. *Agreement Between the Parties.* First, whenever a person agrees to maintain information in confidence, a duty of trust or confidence exists.[110] This reflects the common-sense notion, acknowledged in *Reed* and *Chestman*, that reasonable expectations of confidentiality, and corresponding duties, can be created by an agreement between two parties. Although sometimes, most commonly in a business context, the parties will sign an express, written confidentiality agreement, the Rule does not require either a written or an express confidentiality agreement. This approach recognizes the fact that in everyday personal interactions, individuals frequently rely on reasonable, implicit understandings of confidentiality. In some situations, it may not be realistic or socially acceptable to insist that a close friend or relative execute a signed confidentiality agreement, or expressly consent to an oral agreement.

b. *Relationships With a History, Pattern, or Practice of Sharing Confidences.* Second, the Rule provides that a duty of trust or confidence exists when two people have a "history, pattern, or practice of sharing confidences, such that the person communicating the material nonpublic information has a reasonable expectation that the other person would maintain its confidentiality."[111] This part of the Rule does not use a bright line test that enumerates specific relationships, but instead sets forth a "facts and circumstances" analysis derived from *Reed*. This standard recognizes that in some circumstances a past pattern of conduct between two parties will lead to a legitimate, reasonable expectation of confidentiality on the part of the confiding person. This analysis does not require that the history, pattern, or practice of sharing confidences include the sharing of business confidences for there to be a duty of trust or confidence for purposes of misappropriation liability. However, evidence about the type of confidences shared in the past might be relevant to determining the reasonableness of the expectation of confidentiality.

We request comments on the approach proposed in paragraph (b)(2). Does the requirement of a prior "history, pattern, or practice" of sharing confidences provide a sufficiently well-defined standard? Should other factors be relevant to the analysis as well?

c. *Enumerated Family Relationships.* Third, paragraph (b)(3) sets forth a bright line liability rule for certain enumerated close family relationships,

---

v. Bharat Kotecha, et al. Litigation Release No. 16151 (May 18, 1999); *SEC v. Hahn Truong, et al.*, Litigation Release No. 16080 (Mar. 9, 1999); *SEC v. Eugene Dines, et al.*, Litigation Release No. 13900 (Dec. 10, 1993); *SEC v. Steven L. Glauberman, et al.*, Litigation Release No. 12574 (Aug. 9, 1990).

[107] *See Dirks*, 463 U.S. at 664 (noting that tipping liability can exist "when an insider makes a gift of confidential information to a trading relative or friend").

[108] *O'Hagan*, 521 U.S. at 658–59.

[109] Proposed para. (b) does not enumerate relationships that existing case law already recognizes as providing a clear basis for misappropriation liability: for example, lawyer-client, *O'Hagan*; employee-employer, *Carpenter*; pshchiatrist-patient, *United States v. Willis*, 737 F. Supp. 269 (S.D.N.Y. 1990), *appeal dismissed*, 778 F. Supp. 205 (S.D.N.Y. 1991). As the *O'Hagan* case demonstrates, an individual working at a professional firm may be liable for misappropriating information about a particular matter even if he or she is not personally working on that matter.

[110] Proposed para. (b)(1).

[111] Proposed para. (b)(2).

but allows for an affirmative defense. Spousal, parent-child,[112] and sibling relationships would be sufficient in themselves as a basis for misappropriation theory liability. Our enforcement experience demonstrates that these are the relationships in which family members most commonly share information with a legitimate expectation of trust or confidentiality.[113] These also are normally the types of close familial relationships in which the parties have a history, pattern, or practice of sharing confidences that would lead to a reasonable expectation of confidentiality.

Paragraph (b)(3) permits the person receiving or obtaining the information to assert an affirmative defense by demonstrating that under the facts and circumstances of that particular family relationship, no duty of trust or confidence existed. To demonstrate this, the person must establish that the disclosing family member did not have a reasonable expectation of confidentiality because the parties had neither: (a) a history, pattern, or practice of sharing confidences; nor (b) an agreement or understanding to maintain the confidentiality of the information. If the person receiving or obtaining the information can satisfy the requirements of the affirmative defense set forth in paragraph (b)(3), he or she would not be liable under Rule 10b5–2.

Paragraph (b)(3) does not reach non-traditional relationships (*e.g.*, domestic partners) or more extended family relationships. However, paragraphs (b)(1) and (b)(2) could reach these relationships, depending on the factual context of the relationship. We request comment on whether this is an appropriate distinction.

Are the family relationships enumerated in paragraph (b)(3) the proper ones to cover, or is the list too narrow or too broad? Should the list of enumerated relationships be limited to family members residing in the same household? Should it expressly encompass step-parents and step-children? Should it expressly encompass non-traditional relationships, and if so, which ones? Should it include additional family relationships, such as the list of family relationships covered in our Section 16 rules?

3. *Request for Comments.* We request comment on all aspects of Proposed Rule 10b5–2. For non-enumerated relationships, does paragraph (b)(2) focus on the proper factors for determining whether a reasonable expectation of confidentiality exists? Is the approach of paragraph (b)(3)—a per se rule with an affirmative defense for certain enumerated family relationships—the most suitable one, or should a different standard be employed?

IV. General Request for Comments

We invite you to submit comments on proposed Regulation FD, Rule 10b5–1, and/or Rule 10b5–2. If you have empirical data relevant to proposed Regulation FD, Rule 10b5–1, or Rule 10b5–2, please include it with your comments. Please submit three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You may also submit comments electronically to the following e-mail address: rule-comments@sec.gov. Refer to File No. S7–31–99. If you are commenting by e-mail, include this file number on the subject line. We will make comments available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. In addition, we will post electronically submitted comment letters on our Internet Website (http://www.sec.gov).

V. Paperwork Reduction Act

Certain provisions of Regulation FD, and the related amendments to Form 8–K and Form 6–K under the Exchange Act, contain "collections of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[114] and the Commission has submitted the proposal to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form 8–K (OMB Control No. 3235–0060)[115] was adopted pursuant to Sections 13, 15, and 23 of the Exchange Act. Form 8–K prescribes information, such as material events or corporate changes, that a registrant must disclose. Form 6–K (OMB Control No. 3235–0116)[116] was adopted pursuant to sections 13 and 15 of the Exchange Act. Form 6–K prescribes information that foreign private issuers subject to the reporting requirements of the Exchange Act must disclose. The Commission is also proposing to create a new information collection entitled "Reg. FD—Other Disclosure Materials." This information collection will encompass press releases, webcasts, announcements, conference calls, etc. that are conducted pursuant to Regulation FD, which is proposed pursuant to sections 13, 15, 23, and 36 of the Exchange Act, and that are not filed under cover of Form 8–K or Form 6–K.

The Commission currently estimates that Form 8–K results in a total annual compliance burden of 140,500 hours. The burden was calculated by multiplying the estimated number of Form 8–K filings annually (approximately 28,100) by the estimated average number of hours each entity spends completing the form (approximately 5 hours). The Commission based the number of entities that would complete and file each of the forms on the actual number of filers during the 1999 fiscal year. The staff estimated the average number of hours each entity spends completing each of the forms by contacting a number of law firms and other persons regularly involved in completing the forms.

The Commission currently estimates that Form 6–K results in a total annual compliance burden of 91,848 hours and $515,000 non-labor burden costs. This was calculated by multiplying the estimated number of Form 6–K filings annually (approximately 11,481) by the estimated average number of hours each entity spends completing the form (approximately 8 hours) and adding the non-labor burden costs. The Commission based the number of entities that would complete and file each of the forms on the actual number of filers during the 1999 fiscal year. The staff estimated the average number of hours each entity spends completing each of the forms by contacting a number of law firms and other persons regularly involved in completing the forms.

We believe that the proposed Regulation is necessary to provide for fairer and more effective disclosure of issuer information to all investors and thereby bolster investor confidence in

---

[112] We do not intend to limit this to minor children. Our enforcement cases in this area typically involve communications between parents and adult sons or daughters.

[113] *See e.g., SEC* v. *Judy Hockett, et al.* Litigation Release No. 15377 (May 30, 1997) (spouse); *SEC* v. *Linda Lou Taylor, et al.*, Litigation Release No. 14775 (Jan. 4, 1996) (spouse); *SEC* v. *Robert J. Young, et al.* Litigation Release No. 14661 (Sept. 29, 1995) (brother); *SEC* v. *Jonathan J. Sheinberg, et al.*, Litigation Release No. 13465 (Dec. 10, 1992) (son-father); *SEC* v. *Thomas C. Reed, et al.*, Litigation Release No. 9537 (Dec. 23, 1981) (son-father).

[114] 44 U.S.C. 3501 *et seq.*

[115] 17 CFR 249.308.

[116] 17 CFR 249.306.

the securities markets. Under the proposed Regulation, issuers would be required to simultaneously (or, in some instances, promptly), upon first disclosure of material, nonpublic information, publicly disclose the information broadly. The disclosure could be made by filing a Form 8–K or Form 6–K with the Commission, disseminating a press release to a widely circulated news or wire service, or disseminating the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access.

We estimate that, on average, completing and filing a Form 8–K under proposed Regulation FD would require the same amount of time currently spent by entities completing the Form—approximately 5 hours. We estimate that, on average, completing and filing a Form 6–K under proposed Regulation FD would require the same amount of time spent completing Form 6–K—approximately 8 hours. As noted, however, under the proposed Regulation, companies are exempt from the requirement to file a Form 6–K or Form 8–K if they disseminate a press release to a widely circulated news or wire service or disseminate the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access. We estimate that other methods of disclosure, such as press releases and press conferences, will require no more than the preparation time of Form 8–K—less than 5 burden hours.

We anticipate that, under Regulation FD, companies will make five [117] disclosures per year.[118] Since there are approximately 14,000 companies affected by this Regulation, we estimate that there will be 70,000 additional disclosures per year under Regulation FD. Based on a burden hour estimate of five hours, we anticipate that companies will incur 350,000 additional burden hours under Regulation FD.[119]

Compliance with the disclosure requirements is mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–31–99. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–31–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

A. Regulation FD: Selective Disclosure

Proposed Regulation FD would require that when an issuer intentionally discloses material nonpublic information to any person outside the issuer, it must simultaneously make public disclosure, and when it unintentionally discloses material nonpublic information, it must promptly make public disclosure.

Proposed Regulation FD is intended to produce several important benefits to investors and the securities markets as a whole. First, Regulation FD will inhibit current practices of selective disclosure, which damage investor confidence in the fairness and integrity of the markets. One recent study indicates that analysts and institutional investors immediately use information received in conference calls to trade.[120] Traders on the other side of these transactions, who are excluded from the conference calls, do not have the same information as the more informed analysts and selected investors. Numerous individual investors have complained about this practice. By addressing selective disclosure of material information, the proposed Regulation will foster fairer disclosure of information to all investors, and thereby increase investor confidence in market integrity.

By enhancing investor confidence in the markets, we believe the proposed Regulation will encourage continued widespread investor participation in our markets, which will enhance market efficiency and liquidity, and foster more effective capital raising.

Second, we believe that issuers may also benefit from more open and fair disclosure practices. One study concluded that companies that more liberally disclose information have a larger analyst following, a narrower consensus in earnings estimates, and a low stock price volatility, which likely leads to a lower cost of equity capital.[121] Proposed Regulation FD would encourage these beneficial disclosure practices.

Third, the proposed Regulation likely will also provide benefits to securities analysts and others in the market for information. This Regulation will place all analysts on equal competitive footing with respect to access to material information. As well, this Regulation will allow analysts to express their honest opinions without fear of being denied access to valuable corporate

---

[117] In many cases, information disclosed under Regulation FD would be information that an issuer was ultimately going to disclose to the public. Under Regulation FD, that issuer likely will not make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad public access to the information and which does not exclude any members of the public from access.

[118] We anticipate that issuers will make one disclosure each quarter under Regulation FD. We also assume that issuers will, on average, make one additional disclosure per year.

[119] Although eight burden hours are incurred by issuers filing a Form 6–K, we assume that, since issuers have the option of how to make disclosure under Regulation FD, they will make disclosure under the least burdensome option. Therefore, our burden number for estimation purposes is five burden hours.

[120] *See supra* Section II.A. and note 15.

[121] *See* National Investor Relations Institute, *Standards of Practice for Investor Relations*, 7 (1st ed. Apr. 1998) (citing Russell Lundholm and Mark Lang, "The Benefits of More Forthcoming Disclosure Practices," University of Michigan School of Business Administration, Ann Arbor, MI. 1994).

information.[122] Analysts will continue to be able to use and benefit from superior diligence or acumen, without facing the prospect that other analysts will have a competitive edge based solely on better access to corporate insiders.

We do not currently have sufficient information to quantify these or other benefits. We therefore request your comments, including supporting data, on the benefits of the Regulation.

The proposed Regulation would impose some costs on issuers. First, there will be some additional cost to publicly disclose material nonpublic information on a non-selective basis. This proposal gives issuers three options for making public disclosure. The issuer can: (1) File a Form 8–K[123] or Form 6–K;[124] (2) disseminate a press release containing the material nonpublic information through a widely circulated news or wire service; or (3) disseminate the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access (*e.g.*, teleconference, web-conference).

Because the Regulation does not require issuers to disclose material information (just to make any disclosure on a non-selective basis), we cannot predict with certainty how many issuers will actually make disclosures under this Regulation. For purposes of the Paperwork Reduction Act, however, we estimate that issuers will make five[125] public disclosures under Regulation FD per year.[126] Since there are approximately 14,000 issuers affected by this Regulation, we estimate that the total number of disclosures under Regulation FD per year will be 70,000.

If an issuer files a Form 8–K, we estimate that the issuer would incur, on average, five burden hours per filing. This estimate is based on current burden hour estimates under the Paperwork Reduction Act for filing a Form 8–K and the staff's experience with such filings. We believe that approximately 75% of the burden hours are expended by the company's internal professional staff, and the remaining 25% by outside counsel. Assuming a cost of $85/hour for in-house professional staff and $125/hour for outside counsel, we believe the total cost is $475 per filing.

If an issuer files a Form 6–K, we estimate that the issuer would incur, on average, eight burden hours per filing and other miscellaneous costs of $45 per filing. This estimate is based on estimates under the Paperwork Reduction Act for filing a Form 6–K and the staff's experience with such filings. We believe that approximately 75% of the burden hours are expended by the issuer's internal professional staff, and the remaining 25% by outside counsel. Assuming a cost of $85/hour for in-house professional staff and $125/hour for outside counsel, we believe the total cost is $805 per filing.

We have no hard data on which to base estimates of the costs of other disclosure options. However, we anticipate that other methods of disclosure, such as press releases, may require less preparation time than a Form 8–K. If the costs of the other methods of disclosure are less than the cost of filing the Form 8–K, we presume issuers will choose the other methods of public disclosure. Issuers may, however, choose to use methods of dissemination with higher out-of-pocket costs, presumably because they believe these methods provide additional benefits to the issuer or investor.

Given that we estimate that there will be 70,000 disclosures under Regulation FD per year at a cost of approximately $475 per disclosure,[127] we estimate that the total paperwork burden of preparing the information for disclosure per year will be approximately $33,250,000.

We request your comments, including supporting data, on our estimates of the costs of each disclosure option, the number of times a company will make a disclosure in a year, and which method companies are likely to use.

The proposed Regulation may also lead to some increased costs for issuers resulting from new or enhanced systems and procedures for disclosure practices. We believe that many, if not most, issuers already have internal procedures for communicating with the public; for many issuers, therefore, new procedures to prevent selective disclosures will not be needed. There might be a cost to these issuers, however, for enhancing and strengthening existing procedures to ensure that nonpublic material information is not inadvertently disclosed and for disclosing inadvertently released materials promptly. We do not have data to quantify the cost of enhancing and strengthening existing internal monitoring procedures, and we seek your comments and supporting data on these costs.

We are sensitive to the concern that the proposed Regulation might "chill" corporate disclosures to analysts, investors, and the media. Issuers may speak less often out of fear of a post hoc assessment that disclosed information was material. If the Regulation has such a chilling effect, there would be a cost to overall market efficiency. However, there are numerous practices that issuers may employ to continue to communicate freely with analysts and investors, while becoming more careful in how they disclose information. Moreover, the Regulation only covers the selective disclosure of material nonpublic information; the level of "soft" or non-material information available to the market need not decrease. As well, we believe issuers have strong reasons to continue releasing information, given the market demand for information and a company's desire to promote its products and services. Further, we note that, in light of existing SRO rules and disclosure practice guidance provided by organizations such as NIRI, many issuers are currently conducting their disclosure practices in a manner consistent with the proposed Regulation. In light of these factors, we request your comments on the effect the proposed Regulation will have on information flow. Please support your comments and conclusions with data.

Today's proposal is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act, and the Regulation does not create new duties under Section 10(b) of the Exchange Act. We nevertheless request comments on liability exposure, including the underlying case law if applicable, and we request your estimates of any costs that may result from increased risk of liability.

Are there other costs we have not identified? Please supply data to help us estimate the cost.

B. Proposed Rule 10b5–1: Trading "On The Basis Of" Material Nonpublic Information

Proposed Rule 10b5–1 would define when a sale or purchase of a security

---

[122] *See supra* Section II.A and notes 18 & 19.

[123] 17 CFR 249.308.

[124] 17 CFR 249.306.

[125] We anticipate that issuers will make one disclosure each quarter under Regulation FD. We also assume that issuers will, on average, make one additional disclosure per year.

[126] In many cases, information disclosed under Regulation FD would be information that an issuer was ultimately going to disclose to the public. Under Regulation FD, that issuer is not going to make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad public access to the information and does not exclude any members of the public from access.

[127] While, as discussed, the staff estimates that filing a Form 6–K costs slightly more than filing a Form 8–K, fewer than 1,000 issuers filed Forms 6–K in fiscal 1999. Therefore, for estimation purposes, we are not accounting for this slightly higher cost in estimating the cost of other disclosure options.

occurred "on the basis of" material nonpublic information. Under the proposed Rule, a person trades "on the basis of" material nonpublic information if the person making the purchase or sale was aware of the material nonpublic information at the time of the purchase or sale. However, the proposed Rule provides affirmative defenses to liability when a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith.

We anticipate two significant benefits arising from proposed Rule 10b5–1. First, the Rule should increase investor confidence in the integrity and fairness of the market because it clarifies and strengthens existing insider trading law. Second, the proposed Rule will benefit corporate insiders by providing greater clarity and certainty on how they can plan and structure securities transactions. The Rule provides specific guidance on how a person can plan future transactions at a time when he or she is not aware of material nonpublic information without fear of incurring liability. We believe that this guidance will make it easier for corporate insiders to conduct themselves in accordance with the laws against insider trading. We seek your comments and supporting data on these or other benefits that we have not identified.

The Rule does not require any particular documentation or recordkeeping by insiders, although it would, in some cases, require a person to document a particular plan, contract, or instruction for trading if he or she wished to establish an affirmative defense that his or her trading was not "on the basis of" material nonpublic information. We therefore do not attribute any costs to this aspect of the proposed Rule. We seek comments and data on any costs that this Rule would impose.

C. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases

Proposed Rule 10b5–2 would enumerate three non-exclusive bases for determining when a person receiving information was subject to a duty "of trust or confidence" for purposes of the misappropriation theory of insider trading. Two principal benefits are likely to result from this Rule. First, the Rule will provide greater clarity and certainty to the law on the question of when a family relationship will create a duty of trust or confidence. Second, the Rule will address an anomaly in current law under which a family member receiving material nonpublic information may exploit it without violating the prohibition against insider trading. By addressing this potential gap in the law, the Rule would enhance investor confidence in the integrity of the market. We do not attribute any costs to this aspect of the proposed Rule. We seek comments and data on any costs that this Rule would impose.

VII. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[128] the Commission is requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a) of the Exchange Act[129] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. Because we do not believe the rules would affect companies differently, we do not believe that the proposals would have any anti-competitive effects. We request comment on any anti-competitive effects of the proposals.

In addition, section 3(f) of the Exchange Act[130] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We believe that the proposals would bolster investor confidence in the securities markets by improving both the actual and perceived equity of the information available to investors from all companies. Accordingly, the proposals should promote capital formation and market efficiency. We anticipate no impact on competition. We request comment on these matters.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed new Regulation FD, Rule 10b5–1, and Rule 10b5–2 under the Exchange Act, as amended. The proposed Regulation and Rules address the selective disclosure of material information and clarify two unsettled issues under current insider trading law.

A. Reasons for the Proposed Action

The proposed Rules address three separate issues. Regulation FD addresses the problem of issuers making selective disclosure of material nonpublic information to analysts or particular investors before making disclosure to the investing public. Rules 10b5–1 and 10b5–2 address two unsettled issues in insider trading case law: (1) whether the Commission needs to show that a defendant "used" material nonpublic information in an insider trading case, or merely that the defendant traded while in "knowing possession" of the information; and (2) when a family or other non-business relationship can give rise to liability under the misappropriation theory of insider trading. By addressing these issues, the proposals will enhance investor confidence in the fairness and integrity of the securities markets.

B. Objectives

Proposed Regulation FD would require that when an issuer intentionally discloses material nonpublic information it do so through public disclosure, not selective disclosure. When an issuer has made a non-intentional selective disclosure, Regulation FD would require the issuer to make prompt public disclosure thereafter. The proposed Regulation provides for several alternative methods by which an issuer can make the required public disclosure. We believe that this proposal will provide for fairer and more effective disclosure of important information by issuers to the investing public.

Proposed Rule 10b5–1 would resolve the unsettled case law on whether the Commission must prove that a defendant "used" or traded while in "knowing possession" of material nonpublic information in order to prove insider trading liability. The proposal would provide a general rule that liability arises when a person trades while "aware" of material nonpublic information. It provides four defenses against liability, in cases where a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith. It also provides a defense against liability for trading by entities, including small entities, when the individual making the trade was not aware of the information, and the entity had implemented reasonable procedures to prevent insider trading. We believe this proposed Rule would clarify an important issue in insider trading law, and thereby enhance investor confidence in market integrity.

---

[128] Pub. L. No. 104–121, tit. II, 110 Stat. 857.

[129] 15 U.S.C. 78w(a).

[130] 15 U.S.C. 78c(f).

Proposed Rule 10b5–2 would define when a non-business relationship, such as a family or personal relationship, may provide the duty of trust and confidence required under the misappropriation theory of insider trading. This issue currently is also unsettled in the case law. Moreover, we believe that the main case on the issue, which arose in a criminal prosecution, does not fully recognize the degree to which parties to close family and personal relationships have reasonable and legitimate expectations of confidentiality in their communications, and leads to anomalous results in certain situations. Accordingly, the proposed Rule defines the scope of "duties of trust and confidence" for purposes of the misappropriation theory in a manner that more appropriately serves the purposes of insider trading law. Proposed Rule 10b5–2 will have no direct effect on small entities.

C. Legal Basis

We are proposing Regulation FD, Rule 101, the amendments to Forms 6–K and 8–K, Rule 10b5–1, and Rule 10b5–2 under the authority set forth in sections 10, 19(a) and 28 of the Securities Act,[131] sections 3, 9, 10, 13, 15, 23, and 36 of the Exchange Act,[132] and section 30 of the Investment Company Act.[133]

D. Small Entities Subject to the Proposed Regulation and Rules

Proposed Regulation FD would affect issuers and closed-end investment companies that are small entities.[134] As of July 31, 1999, the Commission estimated that there were approximately 830 issuers, other than investment companies, that may be considered small entities.[135] As of December 14, 1999, the Commission estimated that there are approximately 62 closed-end investment companies that may be considered small entities subject to Regulation FD.[136]

Proposed Rule 10b5–1 would apply to any small entities that engage in securities trading while aware of inside information and therefore are subject to existing insider trading prohibitions of Rule 10b–5. This could include issuers, broker-dealers,[137] investment advisers,[138] and investment companies. As of July 31, 1999, the Commission estimated that there were approximately 830 issuers, other than investment companies, that may be considered small entities. As of December 31, 1998, the Commission estimated that there were approximately 970 broker-dealers that may be considered small entities.[139] As of December 15, 1999, the Commission estimated that there were approximately 2,000 investment advisers that may be considered small entities.[140] As of December 14, 1999, the Commission estimated that there are approximately 227 investment companies that may be considered small entities. The Commission cannot estimate with certainty how many small entities engage in securities trading while aware of inside information.

E. Reporting, Recordkeeping, And Other Compliance Requirements

1. Regulation FD

When an issuer, large or small, discloses material nonpublic information, proposed Regulation FD would require it to do one of the following: (1) File a Form 8–K or, in the case of a foreign private issuer, a Form 6–K; (2) disseminate a press release containing the information through a widely circulated news or wire service; or (3) disseminate the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access (*i.e.*, a press conference to which the public is granted access such as by a teleconference or other electronic transmission).

The Regulation's "public disclosure" requirement would give small entity issuers flexibility in how to disseminate information (such as telephonic or Internet conference calls). This flexible performance element enables small entity issuers the freedom to select the method of public disclosure that best suits their business operations, and makes it unlikely that this "public disclosure" requirement would have a disproportionate affect on small entity issuers.

2. Rule 10b5–1

Proposed Rule 10b5–1 does not directly impose any recordkeeping or compliance requirements on any small entities. To the extent that an entity engaged in securities trading wished to rely on one of the defenses against liability provided in the Rule, it might be required to take certain steps. For example, to assert the affirmative defense in paragraph (c)(1)(i)(D) for trades that result from a written plan for trading securities designed to track or correspond to a market index, market segment, or group of securities, an entity, large or small, would have to maintain a written record of the trading plan. More generally, any entity, large or small, that sought to rely on the affirmative defense in paragraph (c)(2) for institutional traders would be required to comply with the specific provisions of that defense, including implementing reasonable policies and procedures to prevent insider trading. We believe that most entities to whom this defense would be relevant—*i.e.*, broker-dealers and investment advisers—already have the required procedures in place, because of existing statutory requirements.[141]

3. Rule 10b5–2

Proposed Rule 10b5–2 affects individuals and not entities. Accordingly, we believe that proposed Rule 10b5–2 would not have a significant economic impact on a substantial number of small entities.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with proposed Regulation FD, Rule 10b5–1, or Rule 10b5–2.

---

[131] 15 U.S.C. 77j, 77s(a), and 77z–3.

[132] 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, and 78mm.

[133] 15 U.S.C. 80a–29.

[134] Exchange Act Rule 0–10(a) defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. 17 CFR 240.0–10(a). Investment Company Act Rule 0–10(a) defines an investment company as a "small business" or "small organization" if it, "together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year." 17 CFR 270.0–10(a).

[135] The Commission bases its estimate on information from the Insight database from Compustat, a division of Standard and Poors.

[136] The Commission bases its estimate on information from Lipper Directors' Analytical Data, Lipper Closed-End Fund Performance Analysis Service, and reports investment companies file with the Commission on Form N–SAR.

[137] Exchange Act Rule 0–10(c) defines a broker-dealer as a small entity if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared and it is not affiliated with any person (other than a natural person) that is not a small entity. 17 CFR 240.0–10(c).

[138] Advisers Act Rule 0–7 defines an investment adviser as a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) is not in a control relationship with another investment adviser that is not a small entity. 17 CFR 275.0–7.

[139] The Commission bases its estimate on information from FOCUS Reports.

[140] The Commission bases its estimate on information from the Commission's database of registration information.

[141] *See* Section 15(f) of the Exchange Act (15 U.S.C. 78o(f)); Section 204A of the Investment Advisers Act (15 U.S.C. 80b–4a).

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with proposed Regulation FD and Rule 10b5–1 we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Regulation or Rule, or any part thereof, for small entities.

With respect to proposed Regulation FD, we believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of proposed Regulation FD, in whole or part, is not appropriate. In addition, we have concluded preliminarily that it is not feasible to further clarify, consolidate, or simplify the proposed Regulation for small entities. We have used performance elements in proposed Regulation FD in two ways. Regulation FD does not require that an issuer satisfy its obligations in accordance with any specific design, but rather allows each issuer, including small entities, flexibility to select the method of compliance that is most efficient and appropriate for its business operations. First, each issuer can select what method(s) to use to avoid selective disclosure (*e.g.*, by designating which authorized official(s) will speak with analysts). Second, each issuer can choose what method(s) to use for "public disclosure" (*e.g.*, filing a Form 8–K, issuing a press release, holding a conference call transmitted telephonically or over the Internet, etc.). We do not believe different performance standards for small entities would be consistent with the purpose of the proposed Regulation.

With respect to proposed Rule 10b5–1, we believe that different compliance requirements for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of proposed Rule 10b5–1, in whole or part, is not appropriate. In addition, we have concluded that it is not feasible to further clarify, consolidate, or simplify the proposed Rule for small entities. First, the aspects of proposed Rule 10b5–1 that indirectly involve compliance requirements are affirmative defenses that are not required to comply with the proposed Rule. Second, we have used performance elements for the affirmative defenses based on an index trading plan or an institutional investor implementing proper informational barriers set forth in paragraphs (c)(1)(i)(D) and (c)(2) of proposed Rule 10b5–1. If an entity decides to assert either of these affirmative defenses, proposed Rule 10b5–1 does not require that it satisfy its obligations under either of the affirmative defenses in accordance with any specific design, but rather allows it flexibility to select which measure(s) it wants to put in place to satisfy the elements of each affirmative defense. We do not believe different performance standards for small entities would be consistent with the purpose of the proposed Rule.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed Regulation and Rules; (ii) the existence or nature of the potential impact of the proposed Regulation and/or Rules on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed Regulation and Rules. Commentators are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed Regulation and/or Rules are adopted, and will be placed in the same public file as comments on the proposed Regulation and Rules themselves.

IX. Statutory Bases

We are proposing Regulation FD, Rule 181, the amendments to Forms 6–K and 8–K, Rule 10b5–1 and Rule 10b5–2 under the authority set forth in Sections 10, 19(a), and 28 of the Securities Act, Sections 3, 9, 10, 13, 15, 23, and 36 of the Exchange Act, and Section 30 of the Investment Company Act.

List of Subjects

17 CFR Part 230

Securities, Reporting and recordkeeping requirements, Investment companies.

17 CFR Part 240

Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 243 and 249

Securities, Reporting and recordkeeping requirements.

Text of Proposed Rules and Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.181 is added to read as follows:

§ 230.181 Public disclosures required under Regulation FD.

Notwithstanding Section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), any public disclosure that constitutes a prospectus need not satisfy the requirements of Section 10 (15 U.S.C. 77j) of the Act if the prospectus is used only as required under Rule 100(a) of Regulation FD (17 CFR 243.100(a)) and the registrant otherwise complies with the requirements of Regulation FD.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.10b5–1 is added after § 240l.10b–5 to read as follows:

§ 240.10b5–1 Trading "on the basis of" material nonpublic information in insider trading cases.

Preliminary Note to § 240.10b5–1: This provision defines when a purchase or sale constitutes trading "on the basis of" material nonpublic information in insider trading cases brought under Section 10(b) of the Act and Rule 10b–5 thereunder. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and

Rule 10b5–1 does not address or modify the scope of insider trading law in any other respect.

(a) *General rule.* The "manipulative and deceptive devices" prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b–5 thereunder are defined to include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) *Definition of "on the basis of."* Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is "on the basis of" material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale.

(c) *Affirmative defenses.*

(1)(i) Subject to paragraph (c)(1)(ii) of this section, a purchase or sale is not "on the basis of" material nonpublic information if the person making the purchase or sale demonstrates that, before becoming aware of the information, the person:

(A) Had entered into a binding contract to purchase or sell the security in the amount, at the price, and on the date which the person purchased or sold the security;

(B) Had provided instructions to another person to execute a purchase or sale of the security for the instructing person's account, in the amount, at the price, and on the date which that purchase or sale was executed;

(C) Had adopted, and had previously adhered to, a written plan specifying purchases or sales of the security in the amounts, and at the prices, and on the dates at which the person purchased or sold the security; or

(D) Had adopted, and had previously adhered to, a written plan for trading securities that is designed to track or correspond to a market index, market segment, or group of securities, and the amounts, prices, and timing of the purchases or sales actually made were the result of following the previously adopted plan.

(ii) The defenses provided in paragraph (c)(1)(i) of this section shall be available only when the contract, plan, or instruction to purchase or sell securities was entered into in good faith, and not as part of a plan or scheme to evade the prohibitions of this section. For example, if, after becoming aware of material nonpublic information, a person alters a previous contract, plan, or instruction to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or enters into or alters a corresponding or hedging transaction or position with respect to those securities, the person shall not be able to assert the contract, plan, or instruction as a defense to liability.

(iii) For purposes of paragraph (c), the following definitions shall apply:

(A) *In the amount(s).* A contract, plan, or instruction for a purchase or sale of securities in specified "amount(s)" must specify either the aggregate number of shares or other securities to be purchased or sold, or the aggregate dollar amount of securities to be purchased or sold.

(B) *At the price(s).* A contract, plan, or instruction for a purchase or sale of securities at specified "price(s)" includes one that specifies a purchase or sale at the market price for a particular date.

(2) In the case of a person other than a natural person, a purchase or sale of securities is not "on the basis of" material nonpublic information if the person demonstrates that:

(i) The individual(s) making the investment decision on behalf of the person to purchase or sell the securities was not aware of the information; and

(ii) The person had implemented reasonable policies and procedures, taking into consideration the nature of the person's business, to ensure that individuals making investment decisions would not violate the laws prohibiting trading on the basis of material nonpublic information. These policies and procedures may include those that restrict any purchase, sale, and causing any purchase or sale of any security as to which the person has material nonpublic information, or those that prevent such individuals from becoming aware of such information.

5. Section 240.10b5–2 is added to read as follows:

§ 240.10b5–2 Duties of trust or confidence in misappropriation insider trading cases.

Preliminary Note to § 240.10b5–2: This section provides a non-exclusive definition of circumstances in which a person has a duty of trust or confidence for purposes of the "misappropriation" theory of insider trading under Section 10(b) of the Act and Rule 10b-5. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b-5, and this section is not intended to address or modify the scope of insider trading law in any other respect.

(a) *Scope of Rule.* This section shall apply to any violation of Section 10(b) of the Act (15 U.S.C. 78j(b)) and § 240.10b–5 thereunder that is based on the purchase or sale of securities on the basis of, or the communication of, material nonpublic information misappropriated in breach of a duty of trust or confidence.

(b) *Enumerated "duties of trust or confidence."* For purposes of this section, the circumstances under which a "duty of trust or confidence" exist shall include, among others, the following:

(1) Whenever a person agrees to maintain information in confidence;

(2) Whenever the person communicating the material nonpublic information and the person to whom it is communicated have a history, pattern, or practice of sharing confidences, such that the person communicating the material nonpublic information has a reasonable expectation that the other person would maintain its confidentiality; or

(3) Whenever a person receives or obtains material nonpublic information from the person's spouse, parent, child, or sibling; *provided*, however, that the person receiving or obtaining the information may demonstrate that no duty of trust or confidence existed with respect to the information, by establishing that the spouse, parent, child, or sibling that was the source of the information had no reasonable expectation that the person would keep the information confidential, because the parties had neither a history, pattern, or practice of sharing confidences, nor an agreement or understanding to maintain the confidentiality of the information.

6. Part 243 is added to read as follows:

PART 243—REGULATION FD

Sec.

243.100 General rule regarding selective disclosure.

243.101 Definitions.

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

§ 243.100 General rule regarding selective disclosure.

(a) Except as provided in paragraph (b) of this section, whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person or persons outside the issuer, the issuer shall:

(1) In the case of an intentional disclosure, make public disclosure of that information simultaneously; and

(2) In the case of non-intentional disclosure, make public disclosure of that information promptly.

(b) Paragraph (a) of this section shall not apply when a disclosure is made to a person who owes a duty of trust or confidence to the issuer (including, for example, an outside consultant such as an attorney, investment banker, or accountant) or to a person who has expressly agreed to maintain such information in confidence.

§ 243.101 Definitions.

For purposes of this Regulation FD (§ 243.101), the following definitions shall apply:

(a) *Intentional.* A selective disclosure of material nonpublic information is "intentional" when the individual making the disclosure either knew prior to the disclosure, or was reckless in not knowing, that he or she would be communicating information that was material and nonpublic.

(b) *Issuer.* Every issuer having securities registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or which is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), including closed-end investment companies (as defined in Section 5(a)(2) of the Investment Company Act of 1940) (15 U.S.C. 80a–5(a)(2)) but not including other investment companies, shall be subject to this Regulation.

(c) *Person acting on behalf of an issuer.* Any officer, director, employee, or agent of an issuer, who discloses material nonpublic information while acting within the scope of his or her authority, shall be considered to be a "person acting on behalf of the issuer." An officer, director, employee, or agent of an issuer who discloses material nonpublic information in breach of a duty of trust or confidence to the issuer shall not be considered to be acting on behalf of the issuer.

(d) *Promptly.*

(1) "Promptly" shall mean disclosure as soon as reasonably practicable (but in no event more than 24 hours) after a senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser) knows, or is reckless in not knowing, of the non-intentional disclosure.

(2) For purposes of paragraph (d)(1) of this section, a "senior official" means any director, any executive officer (as defined in § 240.3b–7 of this chapter), any investor relations or public relations officer, or any other person with similar functions.

(e) *Public disclosure.*

(1) Except as provided in paragraph (e)(2) of this section, an issuer shall make the "public disclosure" of information required by § 243.100(a) of this chapter by filing with the Commission a Form 8–K (17 CFR 249.308) disclosing that information, or if the issuer is a foreign private issuer it shall file a Form 6–K (17 CFR 249.306).

(2) An issuer shall be exempt from the requirement to file a Form 8–K or Form 6–K if it instead does one of the following:

(i) Disseminates a press release containing that information through a widely circulated news or wire service; or

(ii) Disseminates the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access, such as announcement at a press conference to which the public is granted access (*e.g.*, by personal attendance or by telephonic or other electronic transmission).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 249 is amended by adding the following citations:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

Section 249.308 is also issued under 15 U.S.C. 80a–29.

* * * * *

8. Form 6–K (referenced in § 249.306) is amended by revising the phrase "and any other information which the registrant deems of material importance to securityholders" in the second paragraph of General Instruction B to read "information required to be publicly disclosed under Regulation FD (17 CFR 243.100) except information publicly disclosed in accordance with Rule 101(e)(2) of Regulation FD (17 CFR 243.101(e)(2)); and any other information which the registrant deems of material importance to securityholders".

Note: Form 6–K does not and the amendments will not appear in the Code of Federal Regulations.

9. Section 249.308 is revised (Ed. Note remains unchanged) to read as follows:

§ 249.308 Form 8–K, for current reports.

This form shall be used for the current reports required by Rule 13a–11 or Rule 15d–11 (§ 240.13a–11 or § 240.15d–11 of this chapter) and for reports of material nonpublic information required to be disclosed by Regulation FD (§ 243.100 and § 243.101 of this chapter).

10. Form 8–K (referenced in § 249.308) is amended:

a. in General Instruction A, by revising the phrase "Rule 13a–11 or Rule 15d–11" to read "Rule 13a–11 or Rule 15d–11, and for reports of material nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 and 243.101)".

b. by adding a sentence to the end of paragraph 1 of General Instruction B;

c. in General Instruction B.4., by revising the phrase "other events of material importance pursuant to Item 5," to read "other events of material importance pursuant to Item 5 and of reports pursuant to Item 10,";

d. by adding a new Item 10 under "Information To Be Included in the Report" to read as follows:

Note: Form 8–K does not and the amendments will not appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to Item 10 shall be filed in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)).

* * * * *

Information to be Included in the Report

* * * * *

Item 10. Regulation FD Disclosure.

Report under this item the material nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 and 243.101).

* * * * *

By the Commission.

Dated: December 20, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33492 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 890]

RIN 1512–AB86

Labeling of Flavored Wine Products (98R–317P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend the regulations to create a new standard of identity for flavored wine products. ATF believes that this regulation change is necessary to avoid consumer confusion between established classes/types of wines (including varietals, semi-generics, and type designations of varietal significance) and products that fall outside existing classes because of the addition of flavoring materials. In general, ATF proposes that such products must be labeled as "Flavored Wine Product" together with a truthful and adequate statement of composition.

In addition, we are proposing to amend the existing definition of "brand label" for wine to be consistent with the definition currently provided for distilled spirits products. This change would minimize the likelihood of consumer confusion concerning the identity of the product by making mandatory information readily visible to the consumer at retail.

Finally, this document discusses and solicits comments on a petition we received from the California Association of Winegrape Growers (CAWG) concerning the labeling of wine specialty products.

DATES: Comments must be received on or before March 29, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *Attention: Notice No. 890.* See Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8485. You may also write questions by e-mail to EAReisman@atfhq.atf.treas.gov. ATF will not accept comments on the proposal that are submitted to this e-mail address.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) provides ATF, as the delegate of the Secretary of the Treasury, with the authority to promulgate regulations with respect to the bottling, packaging, and labeling of distilled spirits, wine, and malt beverages. 27 U.S.C. 205(e). The FAA Act provides that these regulations shall prevent deception of the consumer, and provide the consumer with adequate information as to the identity and quality of alcohol beverage products.

The wine labeling regulations require that all wines sold, shipped or otherwise introduced into interstate commerce must bear labels that contain certain mandatory information. Among other things, wine labels must contain a statement relating to the class, type, or other designation of the wine. 27 CFR 4.32(a)(2). With certain exceptions, the class of the wine must be stated on the label in conformity with the standards of identity regulations. However, under certain circumstances, certain grape wine type designations may appear in lieu of a class designation, *e.g.*, grape varietal designations (*e.g.*, Chardonnay), semi-generic type designations (*e.g.*, Chablis), or type designations of varietal significance (*e.g.*, Muscatel). If the class of wine is not defined by the regulations, then a truthful and adequate statement of composition must appear on the brand label in lieu of the class designation. 27 CFR 4.34(a).

Subpart C of part 4 sets forth standards of identity for several classes and types of wine. 27 CFR 4.21. Section 4.21(a) defines "grape wine" as wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes. Pure condensed grape must and wine spirits may be added to grape wine. Section 4.21(a) also provides limitations on the amelioration of grape wine. Over-ameliorated grape wine may not be designated as grape wine. Rather, such wine must be designated as "substandard wine" or "other than standard wine." 27 CFR 4.21(h).

In general, the name of a grape variety may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin (*e.g.*, "California Chardonnay") and if not less than 75 percent of the finished wine is derived from grapes of that variety. 27 CFR 4.23. A semi-generic name of geographic significance may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine (*e.g.*, "California Burgundy"), and if the wine so designated conforms to the standard of identity for the product or, if there is no such standard, to the trade understanding of such class or type. A semi-generic designation is a name of geographic significance that is also the designation of a class or type of wine found to have become semi-generic by the Director of ATF. The regulations provide several examples of semi-generic designations that are also type designations for grape wines, such as Burgundy and Chablis. 27 CFR 4.24(b)(2). Semi-generic designations are also established by the Internal Revenue Code (IRC), 26 U.S.C. 5388(c). In the case of still grape wine there may also appear in lieu of the class designation, a type designation of varietal significance. This applies to American wines only. The regulations provide several examples of type designations of varietal significance, such as Muscatel and Scuppernong. 27 CFR 4.28.

Also, grape wine may be vintage dated if it is made in accordance with the standards prescribed in 27 CFR 4.27(a). Vintage wine is wine labeled with the year of harvest of the grapes, and made in accordance with classes 1, 2, or 3 of 27 CFR 4.21.

Section 4.21 does not allow for the addition of flavoring material(s) to wines with a standard of identity under subpart C of part 4. For example, a class 1, grape wine containing added flavoring material(s) is not entitled to a standard grape wine designation, appellation of origin, or vintage date since these statements only apply to a "standard" grape wine. Likewise, "substandard wine" or "other than standard wine" under § 4.21(h)(2) does not specifically include wine to which flavoring material(s) have been added. Substandard wine or other than standard wine typically includes any wine to which has been added sugar and water solution in an amount which is in excess of the limitations prescribed in the standards of identity for these products.

It has been ATF's longstanding policy that wines to which flavoring material(s) are added do not fall within any of the current standards of identity set forth in the wine regulations. A truthful and adequate statement of composition is required on the brand label for such flavored wine products, pursuant to § 4.34(a).

Flavored wine products may be derived from grape wine or other wines. They may be derived from citrus wine

(orange wine, grapefruit wine, *etc.*), fruit wine (apple wine, berry wine, pear wine, *etc.*) or other agricultural products (carrot wine, dandelion wine, honey wine, *etc.*).

Flavored Wine Products

Flavored wine product labels have traditionally displayed statements of composition such as "Grape Wine With Natural Flavors" to describe to consumers the composition of these products. Recently, some domestic wineries have begun using varietal and semi-generic names in the statement of composition on their product labels to describe the base wine portion of their flavored wine products. These flavored wine products most often have an appellation of origin such as "California" in conjunction with the grape varietal or semi-generic name in the statement of composition (*e.g.*, "California Chardonnay (or Chablis) With Natural Flavors"). Flavored wine products are composed differently from existing standard of identity wines. Typically, such flavored wine products contain additional flavoring material(s). Such products may contain coloring material(s). Flavored wine products may also contain sugar and water in excess of that allowed in standard wine.

ATF is aware that the recent appearance of these grape varietal and semi-generic names on flavored wine products has caused a great deal of discussion within the wine industry. On February 26, 1998, ATF wrote to the Wine Institute to respond to their concerns about this matter. Soon after the letter was sent to the Wine Institute it was placed on the ATF internet website as public information.

Consumer Survey

In view of ATF's concerns about the labeling of flavored wine products, ATF commissioned a consumer survey in July 1998 to determine consumer interpretations of varietal and semi-generic claims on labels of flavored wine products. Among other things, the survey was designed to assess whether wine consumers distinguish between grape wine and flavored wine products based on information provided on product labels. The survey involved portraying examples of two flavored wine products: one product was portrayed as containing a grape wine base that qualified as a varietal wine and another was portrayed as a product containing a grape wine base that qualified as a semi-generic wine. Both products chosen for the survey were depicted in "bag-in-box" containers. Consumers were shown labels bearing only varietal or semi-generic designations and labels bearing a varietal or semi-generic type designation as part of a statement of composition including the term "With Natural Flavors." Consumers were shown boxes bearing the statement of composition on the side panel only, and other boxes with the statement of composition prominently displayed on the front label. None of the labels was identical to the labels of wines currently marketed. The brand names, package designs, and label information were selected by the contractor, U.S. Research Company, in order to best measure consumer perceptions about the overall label presentations and were chosen in order to ensure that the results were not specific to any one particular product or brand of wine.

The survey revealed that even when the "With Natural Flavors" disclosure was prominently displayed on the front panel of the product, a large majority (80%) of the respondents failed to distinguish between grape wine and flavored wine products. The survey also revealed that placing the term "With Natural Flavors" on the label had no impact on consumer understanding of the amount of varietal or semi-generic wine in the product. This is important because over 55 percent of the consumers surveyed believed that all or almost the entire product was composed of the varietal or semi-generic wine. Moreover, when asked to interpret the "With Natural Flavors" disclosure, more than one-third of the consumers surveyed perceived it to convey a positive "no chemicals or additives" message. Seventeen percent indicated that they thought the "With Natural Flavors" disclosure meant that the product was "natural," and only fourteen percent suggested that it indicated that flavors had been added to the product.

California Association of Winegrape Growers Petition

ATF received a petition, dated September 15, 1999, filed on behalf of the California Association of Winegrape Growers (CAWG), requesting an amendment of the regulations to prohibit the use of any varietal, semi-generic or geographic name as part of a statement of composition on wine specialty products. Specifically, CAWG has requested an amendment of section 4.34(a). This section states that if the class of wine is not defined in the standards of identity in subpart C of part 4, "a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation." The petitioner is requesting that the regulation be amended to add the following wording:

> A statement of composition shall include the standard of identity (class and type designation) of the wine used in the product, but shall not be permitted to include, in lieu of the class designation for the wine used in the product, any varietal (grape type) designation, type designation of varietal significance, or semigeneric geographic type designation, or geographic distinctive designation, to which the wine used in the product may otherwise be entitled.

The petitioner contends that the manner in which flavored wine products are labeled, packaged, and marketed deceives consumers into thinking they are consuming varietal wine rather than flavored wine. As stated in the petition,

> Varietal-based specialty products appear on retailers' shelves next to or intermingled with traditional still wines, in packaging similar to traditional still wines [750 milliliter or 1.5 liter glass bottles sealed with a cork, or 5 liter "bag-in-box" containers] and with a varietal designation and an appellation of origin traditionally associated with still wines prominently displayed.

The petitioner asserts that over the last 20 years, American wine producers and grape growers have developed an important consumer market for still grape wines with varietal designations and appellations of origin. According to the petitioner, these wines represent a large volume of the domestic wine sold in the United States (64 percent for the 52 week period ending July 18, 1999). As stated in the petition, "[v]arietal designations and appellations of origin have earned an important place in the wine consumer marketplace as indications of quality wines with certain distinctive tastes and styles."

In support of its petition, CAWG commissioned a survey to study consumers' understanding of the current labeling of flavored wine products that include a varietal name with an appellation of origin in the statement of composition. A total of 800 telephone interviews were conducted. According to CAWG, the results of the survey showed that most respondents believe that wine labels accurately reflect what is in the container and that label information is important to their buying decisions. A little more than 48 percent of the respondents expected that products containing labels with such statements as "California Cabernet Sauvignon with natural flavors" and "California Chardonnay with natural flavors" to be standard grape wines which contain 75 percent wine made from grapes of that variety. The petitioner notes that flavored wine products which include a varietal name

in the statement of composition have no minimum varietal content requirement.

CAWG states that the results of its survey clearly show that the labeling of flavored wine products that include a variety name along with an appellation of origin in the statement of composition is misleading to consumers. The petitioner believes that its proposed amendment "is targeted directly at the misleading nature of current statements of composition on varietal-based specialty products." By prohibiting varietal and semi-generic designations and appellations of origin in the statement of composition, the petitioner contends that consumers will not be misled as to the actual identity of the product. Flavored wine products that have a varietal wine base would have statements of composition in the form "grape wine with natural flavors" or "white wine with natural flavors."

ATF is not proposing the amendment requested by CAWG, however, we are soliciting comments on the petition. This will be addressed further in the section titled "Proposed Regulation."

Significance of Wine Labeling Terms

ATF believes that consumers have learned to attach significance to grape wines entitled to varietal/semi-generic designations, appellations of origin, and vintage dates. This belief is based on the fact that for many years the grape wine industry has heavily utilized varietal/semi-generic designations, appellations of origin, and vintage dating in the marketing of grape wines. Additionally, ATF has conducted rulemaking projects spanning nearly 14 years identifying American grape variety names. See e.g., Treasury Decision ATF–370, 61 FR 522 (January 8, 1996). Similarly, Congress has recently amended the Internal Revenue Code to recognize semi-generic names as being distinctive grape wine designations. 26 U.S.C. 5388(c), as added by Public Law 105–34, § 910(a). These efforts illustrate the importance of varietal and semi-generic grape wine designations to both the wine industry and to wine consumers. This was also addressed in the CAWG petition.

ATF believes that consumers do not understand that flavored wine products are composed differently from existing standard of identity wines. ATF further believes that consumers are confused about the distinction between an existing standard of identity wine and flavored wine products, especially when grape varietal or semi-generic terms appear on the labels of flavored wine products. Flavored wine products are often located next to varietal wines or semi-generic wines on the shelves of grocery and liquor stores. Also, the promotional and advertising materials accompanying these flavored wine products frequently feature or highlight the varietal or semi-generic component of the finished wine product, even though the finished flavored wine product is not entitled to the varietal or semi-generic designation.

Proposed Regulation

ATF has concluded that current statements of composition that include varietal or semi-generic names tend to mislead consumers to believe that flavored wine products are the same as wines that meet the percentage requirements for a varietal or semi-generic designation. ATF is basing this conclusion on its experience in regulating the labeling of wine. ATF also believes that the consumer survey it commissioned and the CAWG consumer survey support that conclusion.

Furthermore, examination of this issue has caused ATF to review its policy relating to statements of composition for all flavored wine products, including those that do not include varietal or semi-generic names, such as those that state "Grape Wine With Natural Flavors," since the finished products are no longer "Grape Wine" but are "Flavored Wine Products" because of the presence of flavors.

Although we are soliciting comments on the CAWG petition, we are not proposing the amendment requested by the petitioner. We believe the regulation change proposed by CAWG is more restrictive and does not provide the industry with the flexibility in labeling their flavored wine products. On the other hand, we believe that the proposals made in this notice provide the consumer with sufficient information as to the actual identity of the product without imposing an undue burden on the industry.

Accordingly, ATF is proposing to establish a new class designation that would be called "Flavored Wine Product." Under this designation, a flavored wine product would be a wine-based alcohol beverage that does not qualify for any of the class or type designations listed in the existing wine regulations because of the addition of flavoring material(s).

ATF believes that all flavored wine products need to be labeled to indicate to consumers that such products are composed differently from existing standard of identity wines. ATF, therefore, proposes to add a Class 10 to the standards of identity for wine to be called "Flavored Wine Product." Such product will be required to be designated as "Flavored Wine Product" on labels. Furthermore, the designation must appear together with a truthful and adequate statement of composition. The designation and the statement of composition must appear in the same size, style and color typeface on the brand label.

At a minimum, the statement of composition for flavored wine products must:

1. Identify Class and/or Type

It must identify the class and/or type of each wine used in the flavored wine product (*e.g.*, "grape wine," "table wine," "peach wine," "honey wine"). A single grape variety, type designation of varietal significance, or semi-generic name may be used if such named grape variety, type designation of varietal significance, or semi-generic name appears together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent by volume of the finished flavored wine product. For *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the flavored wine product. An appellation of origin may not otherwise appear on the label of a product of this class. Similar provisions are being proposed for specialty products that do not contain any flavor(s) (§ 4.34(c)).

2. Identify Added Flavoring Material(s)

If one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.*, "strawberry flavor"). If two or more flavoring materials are used in the production of the flavored wine product, each flavoring material may be specifically identified (*e.g.*, "peach flavor," "kiwi flavor," or "peach and kiwi flavors") or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as "other flavor(s)."

With regard to the term "natural" as used on alcohol beverage labels to describe a flavor, *e.g.*, "With Natural Flavors," ATF believes that there is no consensus among consumers as to a meaning for the term "natural." This belief is based upon ATF's experience in regulating the wine industry and on its consumer survey noted above, which supports this conclusion. An example indicated in the survey reflects that fully one-third of respondents considered the term "natural" to indicate that no additives or chemicals are present in the product. This

conclusion is clearly erroneous. Therefore, to avoid consumer deception concerning the identity of flavored wine products, the term "natural" may not be used anywhere on the flavored wine product labels to describe flavoring materials. When artificial flavoring material(s) are used, they must be so described (e.g., "artificial raspberry flavor").

3. Identify Added Coloring Material(s)

ATF proposes to require that coloring materials(s) be disclosed in the statement of composition, whether added directly or through flavoring material(s). The coloring materials may be identified specifically (*e.g.*, "caramel," "certified color," "annato," *etc.*) or as a general statement, such as "artificially colored," to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c).

4. Include a Reference to Sugar

ATF proposes to require that sugar be listed in the statement of composition if sugar is used in the production of the flavored wine product (not including its use in the production of the base wine within the range authorized by the regulations).

5. Include a Reference to Water

ATF proposes to require that water be listed in the statement of composition, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the flavored wine product.

6. Include a Reference to Wine Spirits

ATF proposes to require, except for flavored wine products made from a base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits in the statement of composition, whether such wine spirits are added in the production of the wine component of the flavored wine product or added in the production of the flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented. Section 4.39(a)(7) prohibits the appearance on a wine label of any statement that the wine contains distilled spirits with one exception. Accordingly, we are proposing to amend the exception to cover the reference to distilled spirits in the statements of composition for flavored wine products.

Miscellaneous—Amended Definition of "Brand Label"

ATF also proposes to revise the meaning of the term "brand label" in 27 CFR 4.10. Under the amended definition, a brand label is the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

ATF believes that the existing definition of the term "brand label" allows the mandatory information to be placed on the container in such a way that it is not readily visible to consumers. ATF also believes consumers are having difficulty locating important mandatory product label information necessary to be adequately informed as to the identity and quality of the wine products, including bag-in-boxes and other new wine containers.

The amended brand label definition proposal is based on the definition of "brand label" that is currently in the distilled spirits regulations and is consistent with the principal display panel approach of the Fair Packaging and Labeling Act. ATF recognizes that the proposal to amend the definition of the term "brand label" was raised before. On September 12, 1991, ATF published Notice No. 727, "Definition of 'Brand Label' for Wine, and; Standard Wine Containers" (56 FR 46393). At that time ATF proposed that the definition of "brand label" be amended, consistent with the definition currently proposed. This proposal was subsequently withdrawn for further study (58 FR 56801, October 25, 1993).

ATF has re-examined this issue in the context of the wine regulations for the purpose of ensuring that consumers are not misled about the identity and quality of wine products. The popularity of flavored wine products and the potential for consumer confusion between such products and other wines that fit specific class designations makes this more specific definition of "brand label" necessary. Under the proposed definition, the mandatory information will be readily visible to consumers at the point of purchase.

Public Participation

Who May Comment on This Notice?

We are requesting comments on these proposed regulations and the CAWG petition from all interested persons. We are also requesting comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

Will ATF Keep My Comment Confidential?

We will not recognize any material in comments as confidential. All comments and materials received may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public you should not include it in a comment. We may also disclose the name of any person who submits a comment.

Disclosure: Who May Review the Comments ATF Receives for This Notice?

Any interested person may inspect copies of this notice and all comments. You may inspect these documents during normal business hours in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- be legible;
- reference this notice number;
- be 8½″ × 11″ in size;
- contain a legible written signature; and
- be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending them to nprm.notice.890@atfhq.atf.treas.gov.

You must follow these instructions. E-mail comments must:

- contain your name, mailing address, and e-mail address;
- reference this notice number; and
- be legible when printed on not more than three pages 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at http://www.atf.treas.gov/core/regulations/rules.htm

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 90-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

We have determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Does the Paperwork Reduction Act Apply to this Proposed Rule?

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507, and its implementing regulations (5 CFR part 1320) apply to this proposed rule. The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) for review in accordance with section 3507(d) of the PRA. The estimated average burden associated with the collection of information is 0 hours per respondent or recordkeeper because the requirement is usual and customary for wine producers. The number of respondents/recordkeepers is 6,060. Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified.

Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of ATF, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in 27 CFR 4.21(j) and 4.34. This information is required to properly identify flavored wine products. The collection of information is mandatory. The likely respondents are businesses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Does the Regulatory Flexibility Act Apply to This Proposed Rule?

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule required to be issued for notice and comment unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. Since producers routinely make changes to their labels, we do not believe that the proposed amendments, if adopted, would result in any additional burdens on the industry. Accordingly, a regulatory flexibility analysis is not required.

Drafting information. This document was drafted by Edward A. Reisman, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF also participated in the development of this document.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.10 is amended by revising the definition of the term "brand label" to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Brand label. The principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

* * * * *

Par. 3. Section 4.21 is amended by adding new paragraph (j) to read as follows:

§ 4.21 The standards of identity.

* * * * *

(j) *Class 10; flavored wine product.* A flavored wine product is a wine-based alcohol beverage that does not qualify for any of the other class or type designations listed in this section because of the addition of flavoring material(s).

(1) *Mandatory class and type designation.* The designation of such product is "flavored wine product," together with a truthful and adequate statement of composition, all of which must appear in the same size, style and color typeface. At a minimum, the statement of composition must:

(i) Identify the class and/or type of each wine used in the flavored wine product (*e.g.*, "grape wine," "table wine," "peach wine," "honey wine"). A single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively, may be used if such named grape variety, type designation of varietal significance, or semi-generic name appears together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent by volume of the finished flavored wine product: *Provided,* That for *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the finished

flavored wine product. An appellation of origin may not otherwise appear on the label of a product of this class.

(ii) Identify added flavoring material(s). If one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.*, "peach flavor" or "kiwi flavor"). If two or more flavoring materials are used in the production of the flavored wine product, each flavoring material may be specifically identified (*e.g.*, "peach flavor," "kiwi flavor," or "peach and kiwi flavors") or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as "other flavor(s)." The term "natural" may not be used to describe flavoring materials anywhere on the product label(s). Artificial flavoring material(s) must be so described (*e.g.*, "artificial raspberry flavor");

(iii) Identify coloring material(s), whether added directly or through flavoring material(s). The coloring materials may be identified specifically (*e.g.*, "caramel," "certified color," "annato," etc.) or the words "artificially colored" may be used to indicate the presence of any one or a combination of coloring material(s), except that FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c);

(iv) Include a reference to sugar, if the sugar is used in the production of the flavored wine product (not including the use of sugar in the production of the base wine within the authorized limits);

(v) Include a reference to water, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the flavored wine product;

(vi) Include, except for flavored wine products made from a base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits, whether added in the production of the wine component of the flavored wine product or added in the production of the flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented.

(2) *Optional statements.* In addition to the statement of composition portion of the mandatory designation, additional statements regarding the components of the flavored wine product may appear on a back or side label, but not the brand label. Such statements must reference all components listed in the mandatory statement of composition and must include the percentage of each component totaling 100 percent. Furthermore, such additional statements must be truthful, accurate and specific, within the meaning of § 4.38(f).

Par. 4. Section 4.34 is amended by removing the last two sentences in paragraph (a) and adding in their place three new sentences and by adding a new paragraph (c) to read as follows:

§ 4.34 Class and type.

(a) * * * Except as provided in paragraph (c) of this section, an appellation of origin may not appear on the label of the product. If the statement of composition includes a single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively, the product must comply with the provisions of paragraph (c) of this section. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. All parts of the designation of the wine, whether mandatory or optional, must appear together in the same size, style and color typeface.

* * * * *

(c) If the class of wine is not defined in subpart C, and the statement of composition required by paragraph (a) of this section includes a single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively,

(1) An appellation of origin no smaller than a country must appear together with the named grape variety, type designation of varietal significance, or semi-generic name; and

(2) The named grape variety, type designation of varietal significance, or semi-generic type wine must constitute not less than 75 percent by volume of the finished wine product: *Provided,* That for *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the finished wine product.

Par. 5. Section 4.39(a) is amended by revising the introductory text in paragraph (7) to read as follows:

§ 4.39 Prohibited practices.

(a) * * *

(7) Any statement, design, device, or representation (other than the statement of composition required by § 4.21(j)(1) and a statement of alcohol content in conformity with § 4.36), which tends to create the impression that a wine:

* * * * *

Signed: October 13, 1999.

John W. Magaw,

Director.

Approved: November 12, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–33574 Filed 12–27–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219–AA92

Requirements for the Approval of Flame-Resistant Conveyor Belts

AGENCY: The Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Proposed rule; limited reopening of the record; request for public comments.

SUMMARY: We (MSHA) are reopening the rulemaking record on our proposed rule revising the requirements for approval of flame-resistant conveyor belts for the limited purpose of giving you (interested parties) an opportunity to comment on two documents. These documents are an updated Preliminary Regulatory Impact Analysis (PRIA) and an updated Paperwork Reduction Act (PRA) submission filed with OMB. The updated PRIA, using recent economic and industry data, evaluates the impact of the proposed part 14 approval requirements on small manufacturers and the impact of proposed part 75 modifications on small mines. The updated PRIA concludes that the proposal would not have a significant economic impact on a substantial number of small entities. The updated paperwork submission evaluates the information collection requirements of the proposal using OMB's 1995 revised 83–I. Only comments addressing the updated PRIA, including its conclusion that the proposal would not have a significant economic impact on a substantial number of small entities, and the information collection requirements of the updated paperwork submission will be considered by MSHA. You may obtain a copy of the updated PRIA and updated paperwork submission, using revised form 83–I and Supporting Statement, from MSHA's Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; telephone (703) 235–1910. You may also access our Internet website at http://

www.msha.gov to obtain an electronic copy.

DATES: Please submit your comments on or before February 28, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to MSHA. Clearly identify your comments and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984; or

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

We would appreciate receiving an original hard copy of your comments for accuracy.

In addition, send your comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for MSHA, 715 17th Street NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, (703) 235–1910. Copies of this reopening notice, updated PRIA and updated paperwork submission in alternate formats may be obtained by calling (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the initiation of this rulemaking, we held a public meeting on January 19, 1989, in Triadelphia, West Virginia, to discuss the development of the revised laboratory-scale flame test to evaluate the resistance of conveyor belts to ignition and flame propagation [54 FR 1802]. On December 24, 1992, we published a proposed rule to implement new procedures and requirements for testing and approval of flame-resistant conveyor belts and requirements for their use in underground coal mines [57 FR 61524], requesting public comment by February 22, 1993. The date for comments was extended to March 26, 1993, in response to public request. Several commenters requested a hearing on this proposal. On May 2, 1995, we held a public hearing in Washington, Pennsylvania [60 FR 16589]. The post-hearing comment period closed on June 5, 1995.

On June 1, 1995, the United Mine Workers of America (UMWA) and the Bituminous Coal Operators' Association (BCOA) jointly submitted ten (10) questions regarding the proposed rule and issues raised at the public hearing. On October 31, 1995, we placed a written response to each question in the rulemaking record. On the same date we reopened the record for 45 days to give all interested parties an opportunity to provide any additional data, test results, and technical information [60 FR 55353]. On December 20, 1995, we extended the comment period to February 5, 1996 [60 FR 65609], the date on which the record closed.

II. Specific Issues

A. The Regulatory Flexibility Act (RFA)

The RFA requires us to analyze and publish, for public comment, the impact of a proposed regulation on small entities. This analysis must consider regulatory alternatives consistent with the purpose of applicable statutes, and explain our rationale for the regulatory option proposed. If there is no significant economic impact on a substantial number of small entities, we can so certify, providing a factual basis for the certification. In Chapter V of the PRIA for the conveyor belt proposal (available simultaneously with the proposed rule on December 24, 1992), we preliminarily assessed the impact of the proposal and determined that the proposed rule would not have a significant economic impact on a substantial number of small mining operations. The preamble to the proposal also included a discussion of our preliminary conclusions about the cost of the rule and invited all conveyor belt manufacturers and mine operators, including small manufacturers and small operators, to comment.

At the time the conveyor belt proposal was published, we defined a small mine to be one that employed fewer than 20 miners. In order to fully comply with the RFA requirements, we must use the Small Business Administration (SBA) definition for "small mine" and "small conveyor belt manufacturer." For the mining industry, SBA defines a "small" mine as one with 500 or fewer employees. SBA's definition of a small conveyor belt manufacturer is also one with 500 or fewer employees. To ensure that the PRIA for the conveyor belt proposal conforms with the appropriate criteria, we have updated our evaluation of the impact of the proposal on small mines and small manufacturers in the PRIA using the SBA definitions. The updated PRIA also reflects current economic and industry data and addresses comments received on the PRIA from commenters on the 1992 proposal.

This notice advises the mining industry that we are reopening the record for the limited purpose of receiving comments from you on the updated PRIA and its assessment that the conveyor belt proposal would not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers, as defined by the SBA. Comments which are outside the scope of this notice will not be considered.

B. The Paperwork Reduction Act (PRA) of 1995

The proposed rule for conveyor belts, published on December 24, 1992, summarized the paperwork burdens of the proposal based on the paperwork evaluation set out in the SF 83 and Supporting Statement, consistent with the PRA of 1980. It also requested comments on the collection of information requirements contained in the proposal from interested parties, asking that such comments be sent to us and to the MSHA Desk Officer at the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). Prior to publication of the proposal, by transmittal letter dated June 24, 1992, the Secretary sent to OMB a copy of the proposed rule, the PRIA, and the paperwork submission using form SF 83 required under Executive Order 12291 and the PRA. These documents are part of the rulemaking record of this proposal. However, we have confirmed that OIRA has no files on our conveyor belt proposal nor a record indicating that the proposed rule, PRIA, and paperwork submission were received by that office.

This notice advises you that we are resubmitting a proposed paperwork submission on the requirements for approval of flame-resistant conveyor belt to OMB for its review and approval under 44 U.S.C. § 3507(d) of the PRA. This resubmittal provides you with the opportunity to comment. We updated the paperwork submission to address changes contained in the PRA of 1995, to reflect current industry and economic data, and to address comments received on the information collection requirements from commenters on the 1992 proposal. It uses the 1995 OMB revised form 83–I, instead of the SF 83 prepared and transmitted to OMB with the conveyor belt proposal in 1992.

Descriptions of the respondents and information collection requirements follow with an estimate of the annual information collection burden and cost of that burden. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information.

1. Description of the Proposed Collection of Information Requirements, the Need for and Proposed use of the Information

Under the Federal Mine Safety and Health Act of 1977 (Mine Act), we are required to approve certain products and equipment for use in underground coal mines. This approval indicates that MSHA's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, are met. Section 311(h) of the Mine Act requires that all conveyor belts acquired for use underground meet the requirements established by the Secretary for flame-resistant conveyor belts. Because of the fire hazards in underground coal mines, our current safety standard, 30 CFR 75.1108, requires the use of flame-resistant conveyor belts.

If you are a manufacturer who desires to market your belts as approved for use in underground coal mines, you must submit an application for conveyor belt approval to us. The paperwork provisions found in proposed § 14.4(c) and (d), application for approval and extension of approval, would require an application for approval of flame-resistant belt to contain product specifications, including compound formulation, describing the belt or proposed changes to approved belting. This information would be used by our technical experts to assess the belt's compliance with the proposed technical requirements and to determine whether the belt should be approved for use in underground coal mines. Further, under proposed § 14.5, the applicant would need to submit three 5-foot by 9-inch samples of the belt to MSHA for testing where testing of the belt is required. Our approval marking on a product indicates that the product meets the specified technical requirements. The information this proposed rule would require is essentially the same information currently required by manufacturers seeking "acceptance" of conveyor belts under part 18.

Any product not in compliance with these proposed requirements would need to be traced and replaced or withdrawn from use if it could present a hazard to miners. Proposed § 14.7(d) would require you, as an approval-holder, to maintain records on the distribution of all conveyor belts bearing an approval marking. The proposal does not specify a set number of years for retention of records on the distribution of approved belts, or the type of record you must maintain. Instead, the proposed rule would require retention of records for at least the projected service life of the belt, as determined by you, the applicant. This approach would recognize that the life of a belt can vary depending on factors such as its physical characteristics, use as a main line or section belt, the type of material being transported, and belt maintenance. We assume that most manufacturers would use existing record systems to fulfill this proposed requirement.

Proposed § 14.8(d) would require you, as an approval-holder, to notify us immediately should you become aware that approved belts may have been distributed that do not meet the requirements for flame resistance upon which the approval is based. Prompt notification is important so that we could work with you on appropriate corrective action to protect miners from the hazards of fire which noncompliant conveyor belting could affect.

2. Description of Respondents

The respondents in the paperwork provisions are mine equipment manufacturers who produce conveyor belts for underground mines. Although there are 74 firms or subsidiaries of firms that hold MSHA acceptances for conveyor belts under the existing rule in part 18, the number of active belt manufacturers has decreased since the time the proposed rule was published in 1992. Some companies are no longer in business and some have been consolidated with other companies. Therefore, MSHA estimates that only ten manufacturers of conveyor belts would submit applications for approval of flame-resistant conveyor belt under the proposed rule. These manufacturers produce a number of different conveyor belts which are normally approved through separate applications for approval. An application for approval would be required whenever a new approval is sought under the proposed part 14 requirements, or when changes to a previously approved belt are planned.

3. Information Collection Burden

We estimate that there would be 663 burden hours for the first year related to conveyor belt manufacturers, 383 hours for the second year and 143 burden hours for each year thereafter, for a total of years one through three of 1,189 burden hours. The costs associated with that burden would be $46,734 for the first year, $27,269 for the second year and $10,199 for each succeeding year for a total of $84,202. With respect to this collection of information, we request your comments specifically on the resubmitted paperwork submission. You are invited to comment further on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the projected burden, including the validity of methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology

III. Request for Comments

This is a limited reopening of the record to provide you an opportunity to comment on the updated PRIA and the updated paperwork submission we are resubmitting to OMB on the proposed requirements for the approval of flame-resistant conveyor belts. We will consider comments addressing the economic impact of the proposal on small manufacturers and small mines and our conclusion, in the updated PRIA, that the proposal would not have a significant economic impact on a substantial number of small entities. Comments on the information collection requirements in the updated paperwork submission will also be considered. Comments addressing the substantive provisions of proposed part 14 and § 75.1108–1 will not be considered due to the limited scope of this reopening notice.

We encourage you to take advantage of this opportunity to provide information and express your concerns on the specific issues discussed here.

You can obtain a copy of the updated PRIA and updated paperwork submission by contacting MSHA at the address or telephone number provided at the beginning of this notice. These documents are also available on our website at http://www.msha.gov.

Dated: December 13, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–33531 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AA75

Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Proposed rule; limited reopening of the record; request for public comments.

SUMMARY: This notice announces that we (MSHA) have updated our Preliminary Regulatory Impact and Flexibility Analysis (PRIA) for our proposed rule on high-voltage longwall equipment and that we are reopening the rulemaking record for the limited purpose of providing interested parties an opportunity to comment on the updated PRIA. The updated PRIA includes an evaluation of the impact of the part 18 approval requirements on small manufacturers and the impact of the proposed part 75 requirements on small mines. The updated PRIA concludes that the proposal would not have a significant economic impact on a substantial number of these small entities. Only comments addressing the updated PRIA, including the economic impact of the proposal on small manufacturers and small mine operators described in the PRIA, will be considered by MSHA. You may obtain a copy of the updated PRIA from MSHA's Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; telephone (703) 235–1910. You may also access our Internet website at http://www.msha.gov to obtain an electronic copy.

DATES: Please submit your comments on or before February 28, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to MSHA. Clearly identify your comments as such and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984; or

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

We would appreciate receiving an original hard copy of your comments for accuracy.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910. Copies of this reopening notice and updated PRIA in alternate formats may be obtained by calling (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 1989, (54 FR 50062), we issued a proposed rule revising our electrical safety standards for underground coal mines. That proposal addressed all of our electrical standards for underground coal mines and would have allowed the use of high-voltage longwall equipment; however, it did not specifically focus on the safety issues related to the use of high-voltage longwall equipment. We published a new proposed rule on August 27, 1992, (57 FR 39036) related specifically to the use of high-voltage longwall equipment in underground coal mines. This proposal also addressed approval requirements for high-voltage electrical equipment operated in longwall face areas of underground coal mines. The comment period on the proposal was scheduled to close on October 23, 1992, but was extended to November 13, 1992 (57 FR 48350). Because considerable time had passed since the record had closed, we reopened the rulemaking record on October 18, 1995 (60 FR 53891), to provide all interested parties an opportunity to submit additional comments on the proposed rule. The comment period was scheduled to close on November 14, 1995, but was extended to December 18, 1995 (60 FR 57203), the date on which the record closed. We received no requests for a public hearing on the proposal.

The high-voltage longwall proposal would revise our existing standards to allow the use of high voltage longwall mining systems. Longwall mining is a mining method which has undergone advances in technology during the past 25 years. These technological advances have led to improved, safer systems. The proposal would be implemented in conjunction with revisions to 30 CFR part 18 which would make conforming changes to approval and design requirements for high-voltage equipment. The additional requirements under part 18 are also consistent with advances in mine technology in that they would require high-voltage switchgear used on face equipment to have enhanced safety protection from fire, explosion, and shock hazards.

II. Specific Issue: Regulatory Flexibility Act (RFA)

The RFA requires an agency to analyze a proposed rule's impact on small entities, publish the analysis for public comment, discuss regulatory alternatives considered that are consistent with the purpose of applicable statutes, and explain the rationale for the regulatory option proposed. If there is no significant economic impact on a substantial number of small entities, an agency can so certify, providing a factual basis for the certification. In Chapter V of the PRIA on the high-voltage longwall proposal (available simultaneously with the proposed rule on August 27, 1992), we preliminarily assessed the impact of the proposal and determined that the proposed rule would not have a significant economic impact on a substantial number of small mining operations. The preamble to the proposal also included a discussion of our preliminary conclusions about the impact and cost of the rule. The 1992 PRIA invited the public to comment on these small entity and cost conclusions.

At the time the high voltage proposal was published, we used our traditional definition of a small mine as one that employed fewer than 20 miners. In order to comply fully with the RFA requirements, we must use the Small Business Administration (SBA) definition of a small entity. For the mining industry, SBA defines a "small" mine as one with 500 or fewer employees. To ensure that the high-voltage longwall proposed rule conforms with the RFA, MSHA has analyzed the impact of the proposed rule on mines with 500 or fewer employees (as well as on those with fewer than 20 employees). MSHA determined that the proposed rule would not have a significant economic impact on a substantial number of small mines, whether a small mine is defined as one with 500 or fewer miners or one with fewer than 20 miners. The Agency has further determined that the proposed rule would not have a significant economic impact on a substantial number of small entities engaged in the manufacture of high-voltage longwall equipment. The SBA has defined these small entities as those manufacturers with 750 or fewer employees. To ensure that the PRIA for the high voltage proposal conforms with the appropriate criteria, we have updated our evaluation of the proposal's impact on small mines and small manufacturers in the updated PRIA using the SBA definitions. The updated PRIA also reflects current economic and

industry data and addresses comments received on the PRIA from commenters on the 1992 proposal.

III. Request for Comments

This is a limited reopening of the record to provide you an opportunity to comment on our updated PRIA and its assessment that the high voltage longwall proposal would not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers of high voltage equipment, as defined by the SBA. We will consider comments addressing the economic impact of the proposal on small manufacturers and small mines and our conclusion, in the updated PRIA, that the proposal would not have a significant economic impact on a substantial number of small entities. Comments addressing the substantive provisions of proposed parts 18 and 75 will not be considered due to the limited scope of this reopening notice.

We encourage you to take advantage of this opportunity to provide information and express your concerns on the specific issues discussed here.

Again, you can obtain a copy of this reopening notice and the updated PRIA by contacting MSHA at the address or telephone number provided at the beginning of this notice. These documents are also available on our website at http://www.msha.gov.

Dated: December 13, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–33532 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 811

RIN 0701–AA–62

Release, Dissemination, and Sale of Visual Information Materials

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising our rules on the Release, Dissemination, and Sale of Visual Information Materials to reflect current policies. Part 811 implements Air Force Instruction (AFI) 33–117, Visual Information Management, and applies to all Air Force activities.

DATES: Submit comments on or before February 28, 2000.

ADDRESSES: Mr. Raymond Dabney, HQ AFCIC/ITSM, 1250 Air Force Pentagon, Washington, DC 20330–1250, 703–588–6136.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Dabney, HQ AFCIC/ITSM, 703–588–6136.

SUPPLEMENTARY INFORMATION: The Department of the Air Force is revising our rules on the Release, Dissemination, and Sale of Visual Information Materials of the Code of Federal Regulations (CFRs) to reflect current policies. This part implements Air Force Instruction (AFI) 33–117, Visual Information Management, and applies to all Air Force activities.

List of Subjects in 32 CFR Part 811

Archives and records, Motion pictures.

For the reasons stated in the preamble, the Department of the Air Force is proposing to revise 32 CFR part 811 as follows:

PART 811—RELEASE, DISSEMINATION, AND SALE OF VISUAL INFORMATION MATERIALS

Sec.

811.1 Exceptions.
811.2 Release of visual information materials.
811.3 Official requests for visual information productions or materials.
811.4 Selling visual information materials.
811.5 Customers exempt from fees.
811.6 Visual information product/material loans.
811.7 Collecting and controlling fees.
811.8 Forms prescribed.

Authority: 10 U.S.C. 8013.

§ 811.1 Exceptions.

The following does not apply to:

(a) Visual information (VI) materials made for the Air Force Office of Special Investigations for use in an investigation or a counterintelligence report. (See Air Force Instruction (AFI) 90–301, The Inspector General Complaints, describes who may use these materials.)

(b) VI materials made during Air Force investigations of aircraft or missile mishaps according to AFI 91–204, Safety Investigations and Reports. (See AFI 90–301.)

§ 811.2 Release of visual information materials.

(a) Only the Secretary of the Air Force for Public Affairs (SAF/PA) clears and releases Air Force materials for use outside Department of Defense (DoD), according to AFI 35–205, Air Force Security and Policy Review Program.

(b) The Secretary of the Air Force for Legislative Liaison (SAF/LL) arranges the release of VI material through SAF/PA when a member of Congress asks for them for official use.

(c) The International Affairs Division (HQ USAF/CVAII) or, in some cases, the major command (MAJCOM) Foreign Disclosure Office, must authorize release of classified and unclassified materials to foreign governments and international organizations or their representatives.

§ 811.3 Official requests for visual information productions or materials.

(a) Send official Air Force requests for productions or materials from the DoD Central Records Centers by letter or message. Include:

(1) Descriptions of the images needed, including media format, dates, etc.

(2) Visual information record identification number (VIRIN), production, or Research, development, test, and evaluation (RDT&E) identification numbers, if known.

(3) Intended use and purpose of the material.

(4) The date needed and a statement of why products are needed on a specific date.

(b) Send inquiries about motion picture or television materials to the Defense Visual Information Center (DVIC), 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

(c) Send Air Force customer inquiries about still photographic materials to 11 CS/SCUA, Bolling AFB, Washington, DC 20332–0403 (the Air Force accessioning point).

(d) Send non-Air Force customers' inquiries about still photographic materials to the DVIC.

§ 811.4 Selling visual information materials.

(a) Air Force VI activities cannot sell materials.

(b) HQ AFCIC/ITSM may approve the loan of copies of original materials for federal government use.

(c) Send requests to buy:

(1) Completed, cleared, productions, to the National Archives and Records Administration, National Audiovisual Center, Information Office, 8700 Edgeworth Drive, Capitol Heights, MD 20722–3701.

(2) Nonproduction VI motion media to the DVIC. The center may sell other Air Force VI motion picture and television materials, such as historical and stock footage. When it sells VI motion media, the DVIC assesses charges, unless § 811.5 exempts the requesting activity.

(3) VI still media to the DoD Still Media Records Center (SMRC), Attn: SSRC, Washington, DC 20374–1681. When SMRC sells VI still media, the

SMRC assesses charges, unless § 811.5 exempts the requesting activity.

§ 811.5 Customers exempt from fees.

(a) Title III of the 1968 Intergovernmental Cooperation Act exempts some customers from paying for products and loans. This applies if the supplier has sufficient funds and if the exemption does not impair its mission. The requesting agency must certify that the materials are not commercially available. When requests for VI material do not meet exemption criteria, the requesting agency pays the fees. Exempted customers include:

(1) DoD and other government agencies asking for materials for official activities (see DoD Instruction 4000.19, Interservice, and Intergovernmental Support, August 9, 1995, and DoD Directive 5040.2, Visual Information (VI), December 7, 1987.

(2) Members of Congress asking for VI materials for official activities.

(3) VI records center materials or services furnished according to law or Executive Order.

(4) Federal, state, territorial, county, municipal governments, or their agencies, for activities contributing to an Air Force or DoD objective.

(5) Nonprofit organizations for public health, education, or welfare purposes.

(6) Armed Forces members with a casualty status, their next of kin, or authorized representative, if VI material requested relates to the member and does not compromise classified information of an accident investigation board's work.

(7) The general public, to help the Armed Forces recruiting program or enhance public understanding of the Armed Forces, when SAF/PA determines that VI materials or services promote the Air Force's best interest.

(8) Incidental or occasional requests for VI records center materials or services, including requests from residents of foreign countries, when fees would be inappropriate. AFI 16–101, International Affairs and Security Assistance Management, tells how a foreign government may obtain Air Force VI materials.

(9) Legitimate news organizations working on news productions, documentaries, or print products that inform the public on Air Force activities.

(b) [Reserved]

§ 811.6 Visual information product/material loans.

(a) You may request unclassified and classified copies of current Air Force productions and loans of DoD and other Federal productions from JVISDA, ATTN: ASQV–JVIA–T–AS, Bldg. 3, Bay 3, 11 Hap Arnold Blvd., Tobyhanna, PA 18466–5102.

(1) For unclassified products, use your organization's letterhead, identify subject title, PIN, format, and quantity.

(2) For classified products, use your organization's letterhead, identify subject title, personal identification number (PIN), format, and quantity. Also, indicate that either your organization commander or security officer, and MAJCOM VI manager approve the need.

(b) You may request other VI materials, such as, still images and motion media stock footage, from DVIC/OM–PA, 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

§ 811.7 Collecting and controlling fees.

(a) The DoD records centers usually collect fees in advance. Exceptions are sales where you cannot determine actual cost until work is completed (for example, television and motion picture services with per minute or per footage charges).

(b) Customers pay fees, per AFR 177–108, Paying and Collecting Transactions at Base Level, with cash, treasury check, certified check, cashier's check, bank draft, or postal money order.

§ 811.8. Forms prescribed.

Air Force (AF) Form 833, Visual Information Request, AF Form 1340, *Visual Information Support Center Workload Report*, Department of Defense (DD) Form 1995, Visual Information (VI) Production Request and Report, DD Form 2054–1, Visual Information (VI) Annual Report, and DD Form 2537, Visual Information Caption Sheet are prescribed by this publication.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–33604 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM98–3; Order No. 1274]

Revisions to Rules of Practice; Further Proposed Changes

AGENCY: Postal Rate Commission.

ACTION: Supplementary notice of further proposed rule.

SUMMARY: This document addresses comments on a previous proposal to revise the general rules of practice. It proposes adopting the special rules of practice on a permanent basis and makes several other improvements. The Commission invites comments on this set of proposals.

DATES: Submit comments no later than January 21, 2000.

ADDRESSES: Send correspondence concerning this proposal to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

In order no. 1218 the Commission solicited suggestions from interested parties on ways to improve the efficiency and effectiveness of proceedings conducted pursuant to 39 U.S.C. 3624. See 63 FR 46732 (September 2, 1998). The order encouraged comments on any topic covered in 39 CFR 3001.1–92, with the exception of library references and confidential information, which were to be addressed in separate rulemakings. While all the rules of practice and procedure were open for comment, several areas of particular interest were identified, based on the Commission's assessment of the rules in operation during the most recent omnibus rate case, docket no. R97–1.

Specifically, the Commission found that incorporation of all (or most) of the special rules into the rules of practice and procedure merited serious consideration. Traditionally, special rules of practice have been issued for application during omnibus rate cases, but more recently similar rules have been utilized in classification and complaint dockets as well. The Commission further indicated that an assessment of ways to reduce costs inherent in the service of documents be undertaken. Thus, consideration of the extent to which electronic filing requirements or options can be added is warranted. Finally, the Commission noted that the use of surveys and the Postal Service's filing of pro forma financial data, two recently adopted revisions, worked reasonably well during the last omnibus rate case.

Five sets of comments suggesting improvements were received. The comments are available for public inspection in the Commission's docket section, and can be accessed electronically at www.prc.gov. Generally, the comments do not oppose the integration of the special rules of practice into the current rules of practice and procedure, suggest a mixed

response to the possibility of electronic filing requirements, and raise the issue of whether certain technical and procedural rules have outlived their usefulness. To this end, some commenters, particularly the Postal Service, offer detailed suggestions regarding streamlining the Commission rules.

Introduction

This proposed rulemaking focuses on the aforementioned areas of interest, while also addressing minor updates to reflect internal Commission changes since the rules were first promulgated. As noted earlier, recent dockets (docket Nos. RM99–2 and RM98–2) modify Commission rules concerning confidential information (rules 42 and 42a) and library references (rule 31(b)), respectively. See order No. 1267 (issued October 8, 1999) and order No. 1273 (issued November 24, 1999). Accordingly, those rulemakings take precedence over revisions otherwise merited by integration of the special rules. The changes now proposed, in sum, have been tested in numerous Commission proceedings and have proven to be effective and efficient.

The Commission has narrowed the scope of order No. 1218 by limiting its consideration in this proposed rulemaking to Subpart A-Rules of General Applicability (rules 1–43). Commission rules of practice and procedure found in Subparts B through F (rules 51–92), which include regulations pertaining to the initiation of dockets, such as requests for changes in rates, fees or the mail classification schedule, will be addressed in a later rulemaking. Consideration of revisions to rules 51–92 therefore is deferred until that time.

Note: As such, commenters' remarks on the following issues will be deferred: (1) The elimination of the required production of "functionalized accrued costs," (rule 54); (2) the elimination of documentation requirements leading to the production of "unnecessary, little-used library references," (rule 54(h)(5)); (3) the elimination of anachronistic technical references and requirements (as in rule 54(h)(5)(v)(b)); (4) the adjustment of rules pertaining to limited, expedited proceedings (rules 54 and 64) to minimize the need for the filing of routine waiver requests; (5) the amendment of pre-filing requirements in omnibus rate cases to allow for earlier and improved access to information; and (6) the amendment of rules 52 and 54 regarding Commission acceptance of Postal Service formal requests for changes in rates or fees.

In the interest of simplicity, this order first addresses integration of the special rules, with discussion of electronic filing and minor updates presented thereafter. In the last section of the rulemaking, the Commission evaluates miscellaneous commenter suggestions.

Special Rules

The special rules, originally designed for use in omnibus rate proceedings (such as docket no. R97–1), recently have been employed in several classification and complaint dockets. As the special rules are now more universally applied in Commission proceedings, the Commission proposes that these rules be incorporated in its rules of practice and procedure.

The special rules of practice encompass five discrete areas: evidence, discovery, service, cross-examination and "general," which in part addresses the use of library references (the subject of a separate rulemaking). The rules generally provide both detailed procedures designed for complex omnibus rate cases with numerous participants, and pleading deadlines, which are more accelerated than those in the existing rules of practice. The Commission believes that incorporation of the shortened time periods into the current rules of practice and procedure is a reasonable action, given that parties repeatedly have demonstrated an ability to meet the deadlines set in omnibus rate cases, the Commission's largest and most complex proceedings. The text of the proposed revisions is presented in the attachment to this notice and order, and the Commission now describes the changes it proposes.

Evidence

The special rules related to evidence address the evidentiary case of participants, exhibits, motions to strike, and designation of evidence from other Commission dockets. The Commission proposes to incorporate these rules primarily in current rules 21 (motions), 30 (hearings) and 31 (evidence). To the extent that the special rules apply to library references, order No. 1273 takes precedence.

Discovery

The special rules related to discovery provide for more abbreviated pleading periods than the existing rules. Thus, the response time for interrogatories has been shortened from 20 days to 14 days, answers to other discovery requests likewise are due in 14 days (rather than 20 days), and compelled responses to discovery requests are due within 7 (rather than 10) days of the date of the order compelling an answer. Further, the rules of practice will now contain provisions for follow-up interrogatories and motions to compel discovery. Finally, the Commission proposes changing the time period for service of objections to discovery requests from 10 to 7 days, which, while not currently a special rule, appropriately reflects the shortened time frame for discovery.

The Commission has revised and renumbered the current rules pertaining to discovery (rules 25 through 28) to include introduction of the Commission's general policy on discovery in rule 25. This rule includes the provisions of special rule 2–E, which addresses discovery to obtain information available only from the Postal Service. Special rule 2–E states that while discovery against a participant is generally scheduled to end prior to the receipt into evidence of that participant's direct case, an exception is made when participants require information available only from the Postal Service. In this instance, discovery requests are allowed up to 20 days prior to the filing date for final rebuttal testimony. One commenter suggests that the Commission clarify this rule to reflect more recent rulings allegedly limiting its scope. The Commission finds such a revision unnecessary at this time, and will continue to apply the special rule as essentially written (and now incorporated in rule 25) on a case-by-case basis.

Service. The special rules regulating service, as distinct from the issue of electronic filing, raised only one concern from commenters. One commenter notes that special rule 3–C, which provides exceptions to general service requirements for certain documents, was established as a convenience in response to large service lists in omnibus rate cases. This commenter suggests that the rule therefore be reserved as a special rule and employed only in proceedings with a significant number of participants. The Commission does not view this rule as requiring such special treatment, and therefore proposes to incorporate it in the standard rules largely as written. The Commission proposes to add this and other special rules on service to current rules 10 (form and number of copies of documents) and 12 (service of documents), with slight modification made to the text to accommodate current Commission computer technology.

Cross-examination

The Commission proposes that special rules 4–A and 4–B, respectively governing written and oral cross-examination, be added to rule 30(e), presentation by parties.

General

The remaining general special rules address the rules on argument by parties in a proceeding, new affirmative matter, legal memoranda and library references, as well as the scope of cross-examination. As discussed earlier, library references are the subject of a separate rulemaking. The Commission proposes that the other general special rules be incorporated in rule 30(e) of the present Commission rules of practice and procedure.

Electronic Filing

The Commission is very cognizant of current communications and information technology and has made several efforts to incorporate that technology into its internal operations. A Postal Rate Commission website which provides timely notice of docket filings in ongoing cases, among other functions, has been operational since 1997 and is marked by continual improvements. In docket No. R97–1, the Commission permitted participants to file computer diskettes for some filings in conjunction with a significantly reduced number of required hard copies of the particular filing. In docket No. MC98–1, the Mailing Online Service classification case, the Commission proposed an electronic service experiment for all filed documents. The optional electronic service experiment was presented as a cost savings option for participants, with simplified, reduced mailing requirements for hard copies of documents. Interested intervenors were given the option to participate either fully or in a more restricted capacity. A number of intervenors successfully participated in the electronic service experiment.

Commenters in this docket commend the Commission's efforts to take advantage of today's technology, particularly citing the convenience of the PRC website. However, while finding merit in the reduced filing costs and timely availability of filings associated with electronic service in a limited Commission proceeding, all commenters note that hardcopy service retains significant advantages, particularly in larger omnibus proceedings. In a larger proceeding, the process of downloading and printing lengthy filed documents from numerous parties may prove to be an onerous and costly task, with significant, expensive professional time devoted to review of the internet filings in order to determine which documents merit printing. One commenter warns of the potential computer "traffic jams" on those days when briefs or testimony are filed in future cases, as numerous intervenors attempt to access and download filed documents at the same time. Further, it is implied that a participant's case may be compromised if he is unable to expend the required time and resources. More than one commenter highlighted that not all proceeding participants have joined the "information superhighway," thus automatically disadvantaging those parties.

In general, commenters advise a cautious approach toward electronic filing. In fact, one commenter maintains that the Commission should not move beyond the stage of experimental voluntary electronic filing without first conducting a cost/benefit analysis of the process. Thus, while there is some support for experimental voluntary electronic filing, commenters generally advocate that the Commission retains the requirement of hard-copy service by participants, at least upon other parties, while continuing to provide PRC website information on filings.

An alternate proposal for electronic service, which allegedly overcomes some of the aforementioned considerations, is offered by one commenter. Under the alternate proposal, participants in a particular case could choose to receive all Office of the Consumer Advocate (OCA) and Commission documents electronically via the Commission's website, with the Commission also serving all non-participating intervenors a hard copy of each participating intervenor's filing. Participants would be required to file an original and three copies of a filing, plus an electronic version of the filing. Participants further would be responsible for serving the opposing party with one hard copy (or, in the case of the Postal Service, six hard copies). The Commission otherwise would photocopy and mail the documents.

While trying to keep pace with technology and realize its obvious benefits to Commission proceedings, the Commission still appreciates the disadvantages currently associated with exclusive electronic service, as highlighted by the commenters. In particular, the Commission is cognizant of the potential difficulties associated with the review and printing of numerous, lengthy filings that are typical of an omnibus rate proceeding, and understands that some proceedings of a limited nature may be more appropriate for application of electronic service at this stage. Accordingly, the Commission proposes reserving the option to implement electronic service on a case-by-case basis, by amending part (e) of rule 12 (service of documents) to read "[s]ervice via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer."

Miscellaneous Updates of Commission Rules

The Commission proposes that several current rules be updated primarily to reflect certain institutional changes. Section 4 (or rule 4) amends the manner in which the rules of practice may be cited. Rule 5 revises the definition of "presiding officer" and also now includes a definition of the OCA. Rule 7, which discusses ex parte communications, has eliminated the reference to an administrative law judge, as the Commission no longer utilizes administrative law judges, and has been clarified as applicable to all participants. Rule 9, filing of documents, is revised to include notification of the presiding officer by the Commission's Secretary in the event of an unacceptable filing, and to eliminate such notification to the parties, except for the sender of the unacceptable document. Rule 12 on the service of documents has been altered to provide for electronic filing under certain circumstances. Rule 18, which describes the nature of proceedings, now indicates that the Commission may, rather than shall, hold a public hearing if one is requested by a party. Rule 19, regarding notice of a prehearing conference or hearing, eliminates a reference to Commission designation of a presiding officer by **Federal Register** notice, as designation is a function of the Chairman. That rule also now reflects Commission practice of providing notice of the reconvening of a hearing to all participants in a proceeding by issuing a ruling served on all participants (if necessary), rather than through publication of such notice in the **Federal Register**. Rule 43, which addresses public attendance at Commission meetings, has substituted the office of the Secretary for all references to the Office of Public Information, which no longer exists.

Service on the OCA

Several rules relating to discovery have been revised to include mandatory service of documents on the OCA. Affected rules include rules 26(a), 26(c), 27(a), 27(c), 28(a) and 28(c). The aforementioned rules also reflect renumbering to accommodate actions taken in this rulemaking. Additionally, the distinction between parties and participants has been applied in rules 7, 12, 25, 26, 27, 28, and 30.

Minor Changes

Some rule changes simply reflect altered numbering within the rule, or a change in wording to effect a more specific reference. Thus, rule 17—addressing notice of proceeding—includes new renumbering of some sections. Rules 18 (nature of proceedings), 19 (notice of prehearing conference or hearing), 20 (formal intervention) and 20a (limited participation by persons not parties) now specifically cite to proceeding notice pursuant to section (a) of rule 17, rather than generally referring to rule 17. Likewise, rules 27(b) and (e) (answers and orders regarding requests for production of documents or things for purpose of discovery) and rules 28(b) and (e) (answers and orders regarding requests for admissions for purpose of discovery) provide for service of such documents and answers pursuant to § 3001.12(b).

Finally, the Commission proposes substantive changes to rule 31(k)(3)(i), which was the subject of one commenter's remarks and therefore will be discussed in detail below.

Other Suggestions by Commenters

Several commenters have offered detailed suggestions regarding substantive revisions of the rules of practice and procedure, which have been carefully considered by the Commission. These suggestions, accompanied by Commission responses, include:

I. Elimination of Required Production of Hardcopy Listings of Data Files, Other Computer Information

One commenter suggests that the Commission amend rule 31(k)(3)(i), which currently appears to require that a hardcopy "listing of the input and output data and source codes" be provided as a foundation for each computer analysis being offered as evidence. The commenter asks that the Commission change the foundational requirements of the rule to require production only of electronic versions of data or source code, and also to eliminate the provisions which provide for production of the items upon request. Alternatively, it is suggested that the Commission not specify the medium of presentation for such information, allowing the provision only of electronic media. In support of these suggested amendments, the commenter argues that: (1) Any party who wishes to "investigate, replicate or validate" a computer analysis will likely prefer to load the source code and input the data on its own computers, a task better-suited for an electronic version of this information, particularly if the data bases involved are extensive; and (2) a requirement that data and source code be provided in hardcopy form is redundant, as almost any party can readily produce a hardcopy product from an electronic version of the document in question.

The Commission agrees that the nature of the documents filed under rule 31(k)(3)(i), in conjunction with current technology and established practice of recent years, indicate that electronic filing is the appropriate format for the mandatory submission of the specified information. However, paper copies of the data files still serve a useful purpose, particularly to those parties who may not have access to the "information superhighway," and therefore could be disadvantaged in a Commission proceeding were the request for provision of hardcopy documents unavailable. With this in mind, the Commission proposes that rule 31(k)(3)(i) be modified to require a machine readable copy of the input and output data, source codes and program files submitted as the foundation for computer studies or analyses which are being offered in evidence or relied upon as support for other evidence. Hard copies of all data bases and source codes will be deemed presumptively necessary and furnished upon request, unless the presumption is overcome by an affirmative showing. The Commission believes that this revision will facilitate the process of data production and analysis, as well as fully protect the due process rights of participants by providing alternative means of access to such information, without necessarily imposing onerous burdens of production upon the provider.

II. Streamlining of Rules Pertaining to Intervention and Participation

One commenter proposes that the Commission streamline the rules concerning party intervention and participation in Commission proceedings by eliminating rules 20, 20a and 20b. These rules identify three classes of party intervention and participation, with varying rights and obligations. Elimination of the rules would allow all interested parties who intervene to participate on an equal footing. It is also suggested that the Commission could further streamline its general rate and classification proceedings by maintaining a list of parties interested in automatic intervention, with implementation of the list upon the filing of such a case. In that manner, a more efficient service of documents upon "the core of parties who intervene in Commission proceedings as a matter of course" could be effectuated.

According to rules 20, 20a and 20b, intervention and participation by an interested party in a Commission proceeding may range from full intervention in all aspects of a case to a limited filing on the party's behalf. The rules recognize that intervenors have varying degrees of interest in issues presented in a particular proceeding, as well as different amounts of resources to expend. While simplifying the rules to provide that all interested parties participate "on a equal footing" may appear to promote fairness, in fact, the opposite may result. Full participation imposes certain obligations on the part of an intervenor, which may prove to be burdensome and prohibitive, particularly to those intervenors with limited time and resources. For these reasons, the Commission declines to revise rules 20, 20a and 20b, as suggested.

Current Commission practice regarding party intervention requires only that a notice of intervention in a proceeding be submitted by an interested party. Late intervenors must file a motion to be allowed participation in a particular proceeding. This process allows the Commission to control its docket and, in the case of late intervention, appropriately assess the merits of intervention at that point of time. The process also provides notice of parties active in a proceeding (and their respective degree of activity) to other participants. The Commission finds no compelling reason to alter these rules to allow for the automatic intervention of interested parties in Commission proceedings (particularly omnibus rate cases) beyond the provisions to this effect, which currently apply to a small number of expedited proceedings (including market tests and provisional service changes).

III. Limiting of Certain Aspects of Discovery

One commenter proposes that the Commission consider imposing numerical limitations on discovery requests in rate and classification proceedings in order to more effectively focus discovery efforts, reduce the parties' burden of participation, encourage the use of informal avenues of discovery (such as informal technical conferences) and ultimately improve the efficiency of Commission proceedings. According to the commenter, the due process rights of parties will not be compromised by such an imposition. In

support of this proposition, the commenter cites rules 26, 29–37 of the federal rules of civil procedure, which place a number of limitations on the discovery process in federal civil proceedings, including the number of interrogatories (25) a party may serve on any other party.

The Commission must reject the commenter's efforts to limit the written discovery process, particularly in omnibus rate proceedings. The Postal Service functions as a national monopoly, with the private express statute applicable to the vast majority of mail. Mailers thus are required by law to pay whatever rates are set, and clearly possess a vested interest in the process of determining these rates. Written discovery expedites the process of determining and setting fair rates and fees, allows for a more complete record, and also reduces (but does not eliminate) the need for oral cross-examination.

Further, the potential for "prolific" discovery efforts complained of by the commenter must be weighed against the protection of parties' due process rights and the increasingly complex, technical nature of Commission proceedings (which may be distinguished from typical federal court cases). Thus, while the Commission does understand the rationale for the commenter's suggestion, it is persuaded that the aforementioned considerations advise against instituting any additional limitations on the discovery process.

IV. Elimination of the Assumption That Witnesses Will Be Subjected to Oral Cross-examination.

One commenter suggests that the Commission alter the rules of Practice and Procedure to hold that each party requesting oral cross-examination be required to demonstrate why written submission is not sufficient to achieve that party's objective. The commenter notes that current practice relies heavily on written submissions, and that limitations on oral cross-examination is consistent with section 556 of the Administrative Procedure Act, which provides solely for "such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. 556(d). It is argued that parties' due process rights will still be preserved, while imposing a more streamlined, disciplined approach to discovery. It is conceded that such a change in the Commission rules may lead to increased motion practice.

The Commission views the opportunity for participants to conduct oral cross-examination of witnesses, particularly in such complex litigation as is routinely before it, as the hallmark of due process. The written submission of testimony and subsequent interrogatory practice, while certainly serving a function, in no way supercede the purpose of a live hearing on the issues. One need only consider the problems which arose in docket no. R97–1 regarding certain Postal Service library references, and the parties' expressed interest in cross-examination of the sponsoring (but unnamed) witnesses. It is acknowledged that there have been occasions when a witness has been summoned for cross-examination, only to do no more than authenticate his or her pre-filed testimony and interrogatory responses. However, such occurrences are infrequent, as in practice, counsel normally ascertain through informal contact with other parties that appearance of a particular witness is unnecessary. In any event, this inconvenience is a small price to pay to ensure that each participating party is accorded a full opportunity to investigate the issues in a given case, which may be most effectively achieved through the interplay of cross-examination. Moreover, while the Commission does grant a certain latitude during cross-examination, it also is mindful of the purpose of the exercise and applies constraint accordingly, as provided for in Commission rule 30(f). For these reasons, as well as the desire to avoid a possible floodgate of motion practice, the Commission declines to amend the rules to create a presumption against oral cross-examination.

V. Elimination of Oral Argument

According to one commenter, Commission rules could be further streamlined by the elimination or modification of those rules governing oral argument (rules 36 and 37), such that oral argument is no longer an available option or is scheduled only in truly extraordinary circumstances. In docket no. R97–1, there were no requests by parties for oral argument before the Commission. The commenter suggests that this circumstance appears to indicate an increased acceptance by the parties that oral argument is not the most productive use of either the participants' or the Commission's time. The Commission traditionally has provided the opportunity for oral argument during its proceedings. The commenter provides no compelling rationale for the Commission to depart from this practice. It is true that no party asked for oral argument in docket no. R97–1. However, such requests routinely have been made in previous omnibus rate cases. Unlike the commenter, the Commission does not view the absence of a request for oral argument in the last omnibus rate case as participant acknowledgement that oral argument serves a limited purpose. A number of factors, including the compressed time schedule subsequently imposed in that docket, may have contributed to participants' foregoing of the opportunity. In the absence of adequate cause to eliminate or limit the option of oral argument, the Commission remains firm in its belief that such requests should be decided on a case-by-case basis, with no presumption for or against the conduct of oral argument codified in the Commission's rules.

VI. Amendment of Rules to Provide for Early Summary Disposition of Issues in a Proceeding and for Settlement

One commenter has suggested that procedures be established to bring forth settlements (rather than merely encourage them), and that a process for summary disposition of issues early in a case be created. The commenter does not specify particular procedures, but does note that these recommendations were made to the Commission in an earlier rulemaking docket (Docket No. RM95–2) which was created to streamline Commission rules.

As the commenter has noted, the Commission's rules of practice and procedure do encourage settlement of issues among the parties. The Commission is unclear as to what procedures would more affirmatively promote settlement, and the commenter is silent on the matter. Were a specific process for settlement proposed, the Commission still would be inclined to direct that the process first be applied in a particular case to determine its feasibility prior to any promulgation of a rule. The same may be said of the commenter's suggestion for early summary disposition of particular issues in a proceeding. In this instance, the Commission is compelled to exercise extreme caution, as litigation practice has demonstrated that issues which have appeared at first blush to be "non-controversial" often have proved to be otherwise.

II. Amendment of the Filing Requirements Associated with Motions to Accept Late-filed Affidavits

One commenter addresses the late filing of a declaration or affidavit of a witness in support of an interrogatory response which could not be attached to the response when it was originally filed. According to the commenter, these late filings, which consist of a motion for leave explaining why the

declaration/affidavit is untimely, the declaration/affidavit and the certificate of service, may be unwarranted in toto, as each witness eventually adopts his interrogatory responses under oath as written cross-examination. In an effort to reduce costs and paperwork, the commenter suggests that the Commission: (a) Encourage parties to file all such "make-up" motions at one particular time; (b) encourage or require the parties to put the certificate of service and the motion on the same sheet of paper; or (c) entirely eliminate the affidavit requirement through adoption of a general rule to the effect that all interrogatory responses are deemed to be under oath.

Current rule 25 (b) adequately addresses the commenter's concern. Note: Under the instant proposal, current rule 25, as revised, would become rule 26. First, rule 25(b) permits the use of a declaration of accuracy as well as an affidavit. Second, although answers must be signed by the person making them, if that person is unavailable at the time the answers are filed, a signature page must be filed within ten days with the Commission, but need not be served on participants. The Commission, therefore, finds it unnecessary to revise its rules as suggested by the commenter.

For the reasons discussed above, the Commission proposes to amend Subpart A of its rules of practice and procedure as set forth below.

Ordering paragraphs. The first ordering paragraph invites interested persons to submit comments on the proposed revisions no later than January 21, 2000. The second ordering paragraph directs the Secretary to cause this order to be published in the **Federal Register**, in accordance with all applicable regulations of the Office of the Federal Register.

Dated: December 21, 1999.

Cyril J. Pittack,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend 39 CFR part 3001—Rules of Practice and Procedure Subpart A—Rules of General Applicability as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules of General Applicability

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603, 3622–24, 3661, 3662, 3663.

2. Revise § 3001.4 to read as follows:

§ 3001.4 Method of citing rules.

This part shall be referred to as the "rules of practice." Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, "3001.24 *Prehearing conferences*" shall be referred to as "section 24" or "rule 24."

3. Amend § 3001.5 by revising paragraph (e) and adding paragraph (q) to read as follows:

§ 3001.5 Definitions.

* * * * *

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

* * * * *

(q) *Office of the Consumer Advocate* or *OCA* means the officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

4. Amend § 3001.7 by revising paragraph (d)(1) to read as follows:

§ 3001.7 Ex parte communications.

* * * * *

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of paragraph (b) of this section, the Commission or presiding officer at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

* * * * *

5. Amend § 3001.9 by revising paragraph (b) to read as follows:

§ 3001.9 Filing of documents.

* * * * *

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and the presiding officer in the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

6. Amend § 3001.10 as follows:

a. Redesignate paragraph (c) as (d),

b. Revise redesignated paragraph (d); and

c. Add new paragraph (c) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(c) *Computer diskette.* Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, in lieu of the other requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of one printed original and three hard copies. Attachments will be accepted in their native format (i.e., Excel, Lotus, etc.). Documents must be submitted in Arial 12 point Font, or such program, format, or font as the presiding officer may designate to assist with optical character recognition (OCR).

(d) *Number of copies.* Except for correspondence, computer diskette filing as provided for in paragraph (c) of this section, or as otherwise permitted by the Commission, the Secretary or the presiding officer in any proceeding, all persons shall file with the Secretary an original and 24 fully conformed copies of each document required or permitted to be filed under this part.

7. Amend § 3001.12 as follows:

a. Revise paragraph (b),

b. Revise paragraph (d), and

c. Revise paragraph (e) to read as follows:

§ 3001.12 Service of documents.

* * * * *

(b) *Service by the participants.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such

groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.26 (a) and (c), 3001.27 (a) and (c), and 3001.28 (a) and (c), and except for designations for written cross-examination, notices of intent to conduct oral cross-examination and notices of intent to participate in oral argument, which need be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service. Also, discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service, the complementary party, and on any other participant so requesting, as provided in sections 26–28 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participating with the address and, if possible, a telephone number and facsimile number designated in the participant's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c). The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. Service on the Secretary's service list in any proceeding, as directed by the Commission or the presiding officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by First-Class Mail or personal delivery to the address shown for the persons designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Chief Counsel, Rates and Classification, U.S. Postal Service, Washington, DC 20260–1170. Service via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.

* * * * *

§ 3001.17 [Amended]

8. Amend § 3001.17 by redesignating paragraphs (a–1), (b) and (c) as paragraphs (b), (c) and (d).

9. Amend § 3001.18 by revising paragraph (a) to read as follows:

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* In any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

* * * * *

10. Revise § 3001.19 to read as follows:

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a) the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the **Federal Register** and served on all participants in the proceeding involved. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

11. Amend § 3001.20 by revising paragraph (a) to read as follows:

§ 3001.20 Formal intervention.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

* * * * *

12. Amend § 3001.20a by revising the introductory text to read as follows:

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions;

* * * * *

13. Amend § 3001.21 as follows:

a. Revise paragraph (b), and

b. Add new paragraph (c) to read as follows:

§ 3001.21 Motions

* * * * *

(b) *Answers.* Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

§ 3001.28 [Removed]

14. Remove § 3001.28.

§§ 3001.25, 3001.26 and 3001.27 [Redesignate as §§ 3001.26, 3001.27 and 3001.28, respectively]

15. Redesignate §§ 3001.25, 3001.26 and 3001.27 as §§ 3001.26, 3001.27, 3001.28.

16. Revise redesignated § 3001.26 to read as follows:

§ 3001.26 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish

such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall also serve the Postal Service and the OCA. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall serve the answers on the participant who served the interrogatories within 14 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit. Answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within 10 days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory, the Postal Service, and the OCA within seven days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the participant who moved to compel the answer within seven days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

(f) *Supplemental answers.* The individual or participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

17. Revise redesignated § 3001.27 to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 14 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the

answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests shall serve the objections on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA within 7 days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the participants making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced also shall be filed pursuant to § 3001.9 and served pursuant to § 3001.12(b). The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

18. Revise redesignated § 3001.28 to read as follows:

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests for admissions shall serve the objections on the participant requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA, within seven days of the request. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to requests for admissions.* Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be served on the participants who moved to compel the answers within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to § 3001.9 and served upon other participants pursuant to § 3001.12(b). If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

19. Add § 3001.25 to read as follows:

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal

means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

20. Amend § 3001.30 by revising paragraph (e) to read as follows:

§ 3001.30 Hearings.

* * * * *

(e)(1) *Presentations by participants.* Any participant, including the Postal Service, shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997))." When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness and should include (a) specific references to the subject matter to be examined and (b) page references to the relevant direct testimony and exhibits. Participants intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

* * * * *

21. Amend § 3001.31 as follows:

a. Revise paragraph (c),

b. Revise paragraph (d),

c. Revise paragraph (e),

d. Revise paragraphs (k)(3)(i)(*d*) through (*f*), and

e. Revise paragraph (k)(3)(i)(*i*) and paragraph (k)(4) to read as follows:

§ 3001.31 Evidence.

* * * * *

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

* * * * *

(e) *Designation of evidence from other Commission dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10(a) and (b).

* * * * *

(k) * * *

(3) * * *

(i) * * *

(*d*) A hard copy of all data bases;

(*e*) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(*f*) The source code in hardcopy form;

* * * * *

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file so provided

must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

22. Amend § 3001.43 as follows:

a. Revise paragraphs (e)(4) introductory text and (e)(4)(i),

b. Revise paragraph (g)(1)(iii), and

c. Revise paragraph (g)(2)(iii) to read as follows:

§ 3001.43 Public attendance at Commission meetings.

* * * * *

(e) * * *

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 1333 H Street, NW., Suite 300, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1)(i) * * *

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the Notice of Meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary ten working days after the meeting.

* * * * *

(2)(i) * * *

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the Notice of Meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

[FR Doc. 99–33556 Filed 12–27–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN110–1b; FRL–6483–3]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revised source specific lead emissions limits for the Hammond Group—Halstab Division (Halstab) facility located in Hammond, Indiana which is located in Lake County. This requested revision to the Indiana State Implementation Plan (SIP) was submitted by the State of Indiana on May 18, 1999.

DATES: Written comments must be received on or before January 27, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used we mean EPA.

Table of Contents

I. What action is EPA taking today?

II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action is EPA Taking Today?

We have examined the State's SIP revision request and the supporting documentation provided by the State. Based on the merits of the information supplied, EPA is proposing to approve the incorporation of 326 IAC 15–1–2(a)(7) (A) through (G) into the Indiana SIP.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: November 19, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–33026 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE 047–1024b, MD 089–3042b, PA 140–4092b, VA 104–5043b ; FRL–6484–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, Pennsylvania, and Virginia; Approval of National Low Emission Vehicle Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware and Maryland, and by the Commonwealths of Pennsylvania and Virginia for the purpose of adopting a National Low Emission Vehicle Program. In the Final Rules section of this **Federal Register**, EPA is approving these states' SIP submittal as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule for the affected states will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2000.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public

inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of state-specific materials may be reviewed at each respective state's offices, at: the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19903; the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; or at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, at the EPA Region III address above, or by e-mail at Rehn.Brian@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, which is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: November 18, 1999.

Alvin R. Morris,

Acting Regional Administrator, Region III.

[FR Doc. 99–33028 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6514–4]

Section 112(l) Proposal of the State of Florida's Rule Adjustment to the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the adjustment of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities," (PERC) National Emission Standards for Hazardous Air Pollutants (NESHAP), delegated to the Florida Department of Environmental Protection (FDEP). This PERC NESHAP delegated to the State of Florida is approved through the section 112(l) procedures outlined in 40 CFR 63.92 and 63.91 of section 112 of the Clean Air Act as amended in 1990. On April 9, 1999, the State of Florida submitted a request for adjustment to the requirements of 40 CFR 63.10(b)5. The requested adjustment by FDEP would allow the periodic startup, shutdown, and malfunction reports in 40 CFR 63.10(d)(5) of the General Provisions, to be retained on site at area source PERC NESHAP affected facilities instead of submitting them to the delegated agency. EPA has reviewed this 112(l) adjustment request and determined that the FDEP has satisfied the necessary criteria of a complete submittal as specified in 63.92 and 63.91.

In the Final Rules section of this **Federal Register**, EPA is approving the section 112(l) adjustment of Florida's delegated PERC NESHAP as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 27, 2000.

ADDRESSES: All comments should be addressed to: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303; ceron.leonardo@epamail.epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303, Phone: (404) 562–9129; ceron.leonardo@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: December 3, 1999.

Aw Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–33330 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

[Docket No. RSPA–99–6283 (HM–230)]

RIN 2137–AD39

Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: RSPA is considering issuing a notice of proposed rulemaking (NPRM) proposing to amend requirements in the Hazardous Materials Regulations (HMR) pertaining to the transportation of radioactive materials based on recent changes contained in the International Atomic Energy Agency (IAEA) publication, entitled "IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Material, 1996 Edition, Requirements, No. ST–1" (hereafter referred to as ST–1). The purpose of this rulemaking initiative is to harmonize requirements of the HMR with international standards for hazardous materials. Comments are requested from interested persons concerning the scope of the NPRM, *i.e.*, extent to which differences between the HMR and the IAEA publication ST–1 should be considered in proposing changes to the HMR.

DATES: Submit comments by March 29, 2000. To the extent practicable, we will consider comments received after this date.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should refer to Docket Number RSPA–99–6283 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help &

Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket number "RSPA–99–6283".

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "http://dms.dot.gov/."

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In 1958, at the request of the Economic and Social Council of the United Nations, the IAEA undertook the development of international regulations for the safe transportation of radioactive materials. The IAEA published its initial regulations in 1961, and recommended these to member states as the basis for national regulations and for application to international transportation. Most nations have since adopted the IAEA regulations as a basis for national regulations governing the transportation of radioactive materials.

In 1967, after extensive revisions, the IAEA published its regulations entitled "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6." In October 1968, DOT published amendments for radioactive materials which were in substantial conformance with the 1967 IAEA regulations (Docket HM–2, 33 FR 14918).

Based on work done by participants from member states, including the U.S., the IAEA issued two subsequent major updates of Safety Series No. 6, in 1973 and 1985. On March 10, 1983, RSPA published a final rule (Docket HM–169, 48 FR 10218), bringing the HMR requirements relating to the transportation of radioactive materials into alignment with the 1973 IAEA regulations. On September 28, 1995, RSPA published a final rule (Docket HM–169A, 60 FR 50291) that revised the radioactive materials requirements in the HMR to align them with the 1985 revision of Safety Series No. 6. In each case, DOT coordinated these revisions to the HMR with the Nuclear Regulatory Commission (NRC), which concurrently revised 10 CFR 71, and in each case these revisions made the United States radioactive material transport regulations compatible with those of most other industrialized nations.

Following the major revisions of Safety Series No. 6 in 1973 and 1985, the IAEA published the most recent major revision in 1996; at this time Safety Series No. 6 became ST–1. Copies of ST–1 may be obtained from the U. S. distributor, Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, telephone (301) 459-7666.

The ST–1 requirements listed in the following section are under consideration for possible incorporation into the HMR. Concepts described there which are not presently found in the HMR are: nuclide-specific activity concentration and consignment activity thresholds, the criticality safety index (CSI), the fissile label, compliance with ISO Standard 7195 for uranium hexafluoride packages, the use of Certificates of Competent Authority for international shipments of these packages, the definition of contamination, Type C packages, and low dispersible material. The remaining changes listed are modifications of present concepts or practices.

As in past rulemakings to incorporate updates of the international regulations into the HMR, RSPA will work in close coordination with the NRC in developing this rulemaking.

II. Areas of Regulatory Concern

A partial list of ST–1 requirements under consideration for incorporation in the HMR is given below. With the one exception indicated in item 5 below, the listed items differ from both the present requirements in Safety Series No. 6, 1985 Edition and in the HMR. These ST–1 requirements have been grouped into the following seven areas. Interested persons are invited to review and comment on these areas, and to identify other related issues RSPA should address in any further rulemaking under this docket. Sections, paragraphs and tables cited below are from ST–1.

1. Scope

The scope of ST–1 is described in paragraphs 106 through 109 of that document. For the most part, changes from Safety Series No. 6 are minor; for example, the wording has been modified to indicate that the regulations apply to the repair of packagings, as well as their design, fabrication, and maintenance. Whereas previously the regulations were said to apply to the preparation, consigning, handling, carriage, storage in transit, and receipt of packages, the word "handling" has been removed and the words "loading" and "unloading" added, and these actions are now applied to "loads of radioactive material and packages." Three severity levels have been defined to aid in the application of a graded approach to the performance standards: routine (incident free), normal (minor mishaps), and accident conditions of transport. Note that a certain subset of naturally occurring radioactive materials is excluded from consideration (paragraph 107).

2. Nuclide-Specific Thresholds

ST–1 introduces nuclide-specific activity concentrations below which materials are exempt from the transportation requirements for radioactive materials. In addition, it lists nuclide-specific activity values such that a consignment with an activity below that value is also exempt from the transportation requirements for radioactive materials. These nuclide-specific thresholds, and the A_1 and A_2 values for maximum activity permitted in a Type A package, are found in Tables I and II of Section IV, and related information is given in paragraphs 401 through 406. Many A_1 and A_2 values have been adjusted to reflect more recent dosimetric data; in general, the adjustments are not large.

3. Communication Changes

Proper shipping names and UN identification numbers are changed (Table VIII). UN identification numbers are now required to be marked on all packages, including excepted packages (paragraph 535). Activities must be expressed in SI units (paragraphs 543 and 549). The former criticality transport index (criticality TI) for fissile material has been abolished, and replaced with the criticality safety index (CSI) (paragraph 218); TI is now derived exclusively from the maximum radiation dose rate at one meter from the package (paragraphs 243, 526, 527). For fissile material, a fissile label is introduced, upon which the CSI must be displayed (Figure 5, paragraphs 544, 545).

4. Uranium Hexafluoride

There are specific performance and design requirements for packages containing uranium hexafluoride (paragraphs 629–632), including conformance with ISO Standard 7195, "Packaging of Uranium Hexafluoride (UF_6) for Transport." Competent Authority package design certificates are required for international shipments of uranium hexafluoride (paragraph 828).

5. Low Specific Activity (LSA) materials and Surface Contaminated Objects (SCO)

An additional category has been included under LSA–I (paragraph 226). The definition of contamination (paragraphs 214–216), while not new, was not included in the 49 CFR 173.403 definitions when the regulations in Safety Series No. 6, 1985 Edition were incorporated in the HMR. In addition to the tanks and freight containers presently authorized in the HMR, ST–1 also allows qualified tank containers and metal intermediate bulk containers to serve as industrial packagings, types 2 and 3 (IP–2 and IP–3; paragraphs 624–628).

6. Type B and Fissile Material Package Requirements

Upper limits have been set for the amount of activity which may be transported by air in Type B(U) and B(M) packages (paragraph 416). There is an enhanced water immersion test for Type B(U) and B(M) packages containing activities greater than 10^5 A_2 (paragraphs 657, 730). A definition of confinement system for fissile material is introduced (paragraphs 209, 678). Changes have been made in the conditions under which fissile materials may be excepted from the requirements for fissile packages (paragraph 672).

7. Other Changes

A Type C package is introduced for transport by air of activities larger than the upper limits for Type B(U) and B(M) packages (paragraphs 230, 667–670, 730, 734–737). Fissile material packages to be transported by air must be shown to remain subcritical under tests for Type C packages (paragraph 680 (a)). The concept of low dispersible material (LDM) is introduced as a new form of radioactive material which may be carried in a Type B(U) or B(M) package (paragraphs 225, 605, 663, 712). LDM must be certified as such by the Competent Authority (paragraphs 803, 804, 828, 830). Transitional requirements for packagings and special form materials manufactured under earlier revisions of Safety Series No. 6 are described in paragraphs 815–818.

III. Request for Comments

Interested persons are invited to review and comment on any or all of the requirements in ST–1 which differ from current HMR requirements, and to identify related issues RSPA should address in any further rulemaking under this docket. Comments should focus on the potential for improved safety, as well as the ease or difficulty, and the advantages and disadvantages, of complying with requirements of ST–1 that may be incorporated into the HMR. For example, do any of the new A_1 or A_2 values pose a problem? What effect would the use of nuclide-specific threshold activity concentrations and consignment activities have on safety and on your operations? How would the proposed proper shipping name changes, or the requirement for marking the UN identification number on all packages, affect what you do? What would be the effect of the ST–1 uranium hexafluoride packaging requirements? How important to safety is the ST–1 requirement to obtain a Competent Authority certificate for international shipments of uranium hexafluoride? Would safety be improved by incorporation of the new LSA–I category, or the use of metal intermediate bulk containers as IP–2 and IP–3 packagings? Would the activity limits on air transport of Type B packages, or the introduction of Type C packages and low dispersible material have a significant impact on safety, and what would be the effect on your operations?

Comments supporting a position for or against the adoption of a particular requirement should include a supporting justification for the position taken.

There are a number of additional issues that we must address in determining whether to adopt some or all of the provisions contained in ST–1. These include the analyses required under the following statutes and Executive Orders:

1. *Executive Order 12866: Regulatory Planning and Review.* Executive Order 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with the provisions in ST–1, including specific costs associated with adoption of any of the ST–1 provisions.

2. *Executive Order 13132: Federalism.* Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) preempts many state and local laws and regulations concerning hazardous materials transportation that are not the same as the federal requirements. Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We invite comments on the effect that adoption of some or all of the ST–1 provisions may have on state or local safety or environmental protection programs.

3. *Executive Order 13084: Consultation and Coordination with Indian Tribal Governments.* Executive Order 13084 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. We invite Indian tribal governments to provide comments as to the effect that adoption of some or all of the proposals in ST–1 may have on Indian communities.

4. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. We invite comments as to the economic impact that adoption of some or all of the provisions in ST–1 may have on small businesses.

IV. ST–1 Resources

A copy of ST–1 may be reviewed in the RSPA Records Center between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Records Center is located in Room 8421 of the Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590–0001. Review requests should refer to the Docket number "RSPA–99–6283". In addition, copies of ST–1 may be obtained from the U. S. distributor, Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, telephone (301) 459–7666.

V. Regulatory Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and

Procedures of the Department of Transportation (44 FR 11034).

B. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC on December 22, 1999, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–33580 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–60–P

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

50 CFR Part 635

[I.D. 121799E]

Atlantic Highly Migratory Species Fisheries; Public Hearings; Advisory Panel Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and Advisory Panel meeting; request for comments.

SUMMARY: NMFS will hold 10 public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations to implement time/area closures for Atlantic pelagic longline fishermen who hold highly migratory species (HMS) permits. To accommodate people unable to attend a hearing or wishing to provide written comments, NMFS also solicits written comments on the proposed rule. In addition, NMFS will hold a joint meeting of the HMS and Billfish Advisory Panels (APs), to discuss future fishery management actions and advise NMFS.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting and hearing dates and times. Written comments on the proposed rule must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m., eastern standard time, on February 11, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for meeting and hearing locations. For informational materials related to the AP meeting and copies of the draft Technical Memorandum and Supplemental Environmental Impact Statement/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) contact Margo Schulze-Haugen or Jill Stevenson at 301–713–2347, or write to Rebecca Lent.

Written comments on the proposed rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Jill Stevenson at 301–713–2347.

SUPPLEMENTARY INFORMATION: The proposed regulations that are the subject of the hearings are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act for the conservation and management of HMS.

A complete description of the measures, and the purpose and need for the proposed actions, is contained in the proposed rule, published December 15, 1999 (64 FR 69982), and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or by calling one of the listed contact persons (see **FOR FURTHER INFORMATION CONTACT**).

NMFS is currently considering AP member nominations for the 2000–2002 period. NMFS will send out selection letters to new AP members shortly and announce the new AP members to constituents via the fax network.

Hearing and Meeting Dates, Times, and Locations

The public hearing schedule is as follows:

Tuesday, January 4, 2000—Kill Devil Hills, NC, 7:00-9:30 p.m.

Ramada Inn, 1701 S. Virginia Dare Trail, Kill Devil Hills, NC 27948

Wednesday, January 5, 2000—Charleston, SC, 7:00-9:30 p.m.

Department of Natural Resources, Marine Research Institute Auditorium, 217 Fort Johnson Road, Charleston, SC 29412

Monday, January 10, 2000—Jacksonville, FL, 7:00-9:30 p.m.

Omni Jacksonville Hotel, 245 Water Street, Jacksonville, FL 32202

Tuesday, January 11, 2000—Fort Pierce, FL, 7:00–9:30 p.m.

Radisson Resort North Hutchinson Island, 2600 North A1A, Fort Pierce, FL 34949

Wednesday, January 12, 2000—Pompano Beach, FL, 7:00–9:30 p.m.

Pompano Beach Civic Center, 1801 NE. 6th Street, Pompano Beach, FL 33060

Thursday, January 13, 2000—Panama City, FL, 7:00–9:30 p.m.

National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408

Tuesday, January 18, 2000—Gloucester, MA, 2:00–4:30 p.m.

National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930

Wednesday, January 19, 2000—Fairhaven, MA, 7:00-9:30 p.m.

Seaport Inn, 110 Middle Street, Fairhaven, MA 02719

Tuesday, January 25, 2000—Port Aransas, TX, 7:00–9:30 p.m.

University of Texas at Austin, Marine Science Institute, 750 Channel View Drive, Port Aransas, TX 78337

Wednesday, January 26, 2000—Miami, FL, 7:00-9:30 p.m.

Sheraton Biscayne Bay Hotel, 495 Brickell Avenue, Miami, FL 33131

Wednesday, February 2, 2000—Atlantic City, NJ, 7:00-9:30 p.m.

Atlantic Community College, 1535 Bacharach Boulevard, Atlantic City, NJ 08401

Wednesday, February 9, 2000—Silver Spring, MD, 7:00-9:30 p.m.

NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20190

The public hearing on February 9, 2000, will be held in conjunction with the AP meeting scheduled for that day. AP meetings are open to the public. The AP meeting schedule is as follows:

Wednesday, February 9, 2000—Silver Spring, MD, 1:00 p.m. to 5:30 p.m.

Thursday, February 10, 2000—Silver Spring, MD, 8:00 a.m. to 6:00 p.m.

Friday, February 11, 2000—Silver Spring, MD, 8:00 a.m. to 1:00 p.m.

NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

The Advisory Panels will discuss the "1999 Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory

Species", limited entry in HMS fisheries, bycatch reduction measures (time/area closure proposed rule, turtle bycatch concerns), economic data collection, assessing social impacts on HMS fishing communities, division of the BFT Angling category, authorized gears, charter/headboat regulations, observers, vessel upgrading and permit transfer requirements. Issues for upcoming rulemakings include trade restrictions and swordfish quotas, and future options for HMS fishery management.

Special Accommodations

The hearings and the AP meeting are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing or meeting.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: December 21, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33522 Filed 12–21–99; 4:17 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 248
Tuesday, December 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Food and Agriculture Council (Service Center Initiative); Notice of Request for Approval of Information Collection

AGENCY: Office of the Secretary, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Service Center Initiative's (SCI) intention to request approval for information collection. This information collection consists of a limited customer survey in support of project pilot development prior to national deployment. This support is part of the Service Center reorganization authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354)—the 1994 Act.

DATES: Comments on this notice must be received on or before February 28, 2000 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Dave McSween, Senior Financial Analyst, Business Case Team, Service Center Initiative, USDA, 5602 Sunnyside Avenue; Beltsville, MD 20505–5000; telephone (301) 504–7554; e-mail: dave__mcsween@soza.com; or facsimile (301) 504–4103.

SUPPLEMENTARY INFORMATION:

Title: Customer Feedback from USDA Service Center Initiative Pilot Sites.

OMB Control Number: Not assigned—this is a new request.

Expiration Date of Approval: Not assigned—this is a new request.

Abstract: This request is to conduct customer interviews as to the quality, effectiveness, and utility of piloted projects. The 1994 Act authorized the Secretary of Agriculture to reorganize the Department. Within the goals and priorities of the National Partnership for Reinventing Government, a business process reengineering initiative was begun. USDA Service Centers nationwide are the backbone for providing USDA programs to rural America. The Service Center agencies are: Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and Rural Development. Internal Department studies identified business processes and information technology at the Service Centers as having major deficiencies that impeded customer service. This Service Center Initiative (SCI) was formed to spearhead changes in service delivery.

Nine national pilot sites were selected to be the test sites for new processes. Criteria for selection of the pilot sites included diversity of geographic, production, program and customer factors to ensure the full range of USDA's customers, partners and programs were represented. The nine pilot sites are: Snow Hill, MD; Okeechobee, FL; Scottsburg, IN; Paola, KS; Abilene, TX; Sacramento, CA; The Dalles, OR; Rolla, ND and Los Lunas, NM. As a result of business area analysis, specific projects were chartered to test new ideas at the pilot sites prior to nationwide deployment. The evaluation of the projects is scheduled to include internal USDA process savings and customer benefits. The Service Centers exist to provide customer service. There is no substitute for the opportunity to speak with customers and receive their candid thoughts on how well a specific project did or did not meet their needs. Without this information, projects may be deployed to 2500 Service Centers nationwide that do not meet basic customer requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Service Center customers and partners.

Estimated Number of Respondents: 200.

Estimated number of responses per respondent: 1.0.

Estimated Total Annual Burden on Respondents: 400 hours.

Proposed topics for comment include: (a) whether the information to be collected is necessary for the proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the clarity, quality, and usefulness of the information to be collected; or (d) ways to minimize further the burden of information collection for those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC and to Dave McSween, Senior Financial Analyst, Business Case Team, Service Center Initiative, USDA, 5601 Sunnyside Avenue; Beltsville, MD 20705–5000; telephone (301) 504–7445; e-mail: dave__mcsween@soza.com; or facsimile (301) 504–4103.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on December 16, 1999.

Greg Carnill,

Executive Officer, National Food and Agriculture Council.

[FR Doc. 99–33510 Filed 12–27–99 8:45 am]

BILLING CODE 3510–VS–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–901–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved generic information collection for vegetables and specialty crops.

DATES: Comments on this notice must be received by February 28, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090-6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moabdocket_clerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone (202) 720-2491, Fax: (202) 720–5698, or E-mail: Jay.Gueber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Vegetable and Specialty Crop Marketing Orders.

OMB Number: 0581–0178.

Expiration Date of Approval: July 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The following marketing orders are covered under this information collection: Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, Marketing Order 945; Irish Potatoes Grown in Washington, Marketing Order 946; Irish Potatoes Grown on Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, Marketing Order 947; Irish Potatoes Grown in Colorado, Marketing Order 948; Irish Potatoes Grown in Southeastern States, Marketing Order 953; Vidalia Onions Grown in Georgia, Marketing Order 955; Sweet Onions Grown in the Walla Walla Valley of Southeastern Washington and Northeastern Oregon, Marketing Order 956; Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, Marketing Order 958; Onions Grown in South Texas, Marketing Order 959; Tomatoes Grown in Florida, Marketing Order 966; Melons Grown in South Texas, Marketing Order 979; Hazelnuts Grown in Oregon and Washington, Marketing Order 982; Walnuts Grown in California, Marketing Order 984; Domestic Dates Produced or Packed in Riverside County, California, Marketing Order 987; Raisins Produced from Grapes Grown in California, Marketing Order 989; and, Dried Prunes Produced in California, Marketing Order 993. Also included in this request are forms applicable to imported raisins, dates, and dried prunes. Marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee or board of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs. Under the Act, orders may authorize the following: production and marketing research including paid advertising, volume regulations, reserves including pools and producer allotments, container regulations, and quality control. Production and marketing research activities are paid for by assessments levied on handlers regulated under the marketing orders. Also pursuant to section 8e of the Act, importers of raisins, dates, and dried prunes are required to submit certain information.

Under the marketing orders, producers and handlers are nominated by their respective peers. These nominees then serve as representatives on their respective committees/boards and must file nomination forms with the Secretary.

Formal rulemaking amendments to the orders must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of these marketing order programs. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the respective orders whenever an order is amended.

The orders and their rules and regulations authorize the respective commodities' Committees/Boards, the agencies responsible for local administration of the orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The Committees/Boards have developed forms as a means for persons to file required information.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the AMAA as expressed in the orders, and the rules and regulations issued under the orders.

The information collected is used only by authorized employees of the committees/boards and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff. Authorized committee/board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.07718 hours per response.

Respondents: Producers, handlers, processors and importers.

Estimated Number of Respondents: 17,463.

Estimated Number of Responses per Respondent: 6.72508.

Estimated Total Annual Burden on Respondents: 9,064 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket_clerk@usda.gov. Comments should also reference the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Avenue, S.W., Washington, D.C., room 2525–South Building.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will become a matter of public record.

Dated: December 21, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33641 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a tele conference meeting on January 6, 2000. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 13, 2000, beginning at 2 p.m. and ending at 3 p.m.

ADDRESSES: The meeting will be held via tele conference. To access this call please follow instructions: You must have a touch tone phone. Dial 1 (888) 769–8514 at the tone please give the password number 13885.

FOR FURTHER INFORMATION CONTACT: Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: [1] Watershed Assessment Recommendations. [2] Public comments. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to obtain tele conference information. Issues may be brought to the attention of the Committee during the open public comment period during the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 20, 1999.

Edmund Gee,

Acting Forest Supervisor.

[FR Doc. 99–33561 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[Docket No. 990114014–9317–02]

RIN: 0605–XX05

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of amendment of privacy act system of records; commerce/patent and trademark system 14.

SUMMARY: The Department of Commerce is amending the system of records listed under Commerce-Patent and Trademark System 14: User of Public Search Room of the Patent and Trademark Office. This action has been taken to update the user pass system privacy act notice. We invite public comment on the proposed changes announced in this publication.

DATES: *Effective Date:* The amendments will become effective as proposed January 27, 2000.

Comment Date: To be considered, written comments must be submitted on or before January 27, 2000.

ADDRESSES: Comments may be sent via United States Mail delivery to Nancy Slutter, Office of the Solicitor, United States Patent and Trademark Office, Box 8, Washington, DC 20231; or via facsimile at 703–305–9373. All comments received will be available for public inspection at the Public Search Facilities, Crystal Plaza 3, 2021 South Clark Place, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Nancy Slutter, Office of the Solicitor, Box 8, Washington, DC 20231, 703–305–9035.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office (PTO) will modify its current user pass system for persons using the Public Search Facilities and other offices at the PTO. The user pass system will be modified from a system that is currently collected on paper to a system that stores records electronically. The PTO maintains numerous search facilities for the use of members of the public. Patent applications are available to applicants and their designees and all trademark files are available to the public. Additionally, application files for issued United States patents are available for inspection and duplication at the PTO. Thus, members of the public have a need to access certain areas of the PTO facilities. The PTO has become aware of problems associated with improper use, removal, loss, or theft of application files and other PTO property and, therefore, plans to modernize its user pass system to better preserve its resources. Additionally, the user pass system will help the PTO understand the public's use of PTO facilities and allocate sufficient resources to serve the public.

On January 6, 1998, the PTO issued a notice in its Official Gazette notifying the public that updated identification passes would be issued to public users of the PTO search facilities. On October 22, 1997, the PTO held a public hearing concerning the public's access to application files. Members of the public submitted a number of written comments concerning access to application files. All commenters objected to a proposal that would have restricted access to the application files. Four additional commenters, while expressing concern at the proposal to restrict access, praised the PTO for efforts to implement procedures to assure the integrity of the application files.

Application files are critically important to understanding the metes and bounds of the intellectual property grants that the Commissioner of Patents and Trademarks issues. See, *e.g.*, Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 117 S.Ct. 1040, 1049–50 (1997) (discussing prosecution history estoppel). Moreover, Congress has mandated that the PTO keep and preserve all records pertaining to patents and trademark registrations. 35 U.S.C. 1.

Changes being made to update PAT/TM–14 include amendments to the system name, categories of records in the system, policies and practices for storing records, and addresses. The system name is being amended to reflect that this system encompasses all public facilities at the Patent and Trademark Office, not just the Public Search Room as the system is currently named. The categories of records in the system is being amended: (i) To clarify that the PTO may collect addresses, including business, home and/or electronic mail addresses—the current notice merely lists home addresses; (ii) to include telephone numbers—the current system does not mention telephone numbers; (iii) to include a photograph—the current system does not mention photographs; (iv) to include record of use—the current system does not mention record of use; (v) to include government-issued identification cards and information contained therein—the current system does not mention

government-issued identification cards; and, (vi) to include other information as needed to establish identity—the current system does not mention other information to establish identity. The PTO will collect this information to confirm identity of public users checking out application files or other material or using the public facilities. The policies and practices for storing and retrieving the information in this system are being amended to reflect electronic storage compared with the current paper storage system. The system manager and notification procedure are being amended merely to update correct addresses for those positions.

The Department of Commerce finds no probable or potential affect of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, the PTO has located paper records in lockable file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

Accordingly, the Users of Public Search Room of the Patent and Trademark Office originally published at 42 FR 32340, June 24, 1977 is amended by the following updates:

Commerce/PAT–TM–14

SYSTEM NAME:

Users of Public Facilities of the Patent and Trademark Office.

SYSTEM LOCATION: *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: *

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; addresses; telephone numbers; business firm or other organizations with which affiliated; user pass number; user photograph; registration number, if a registered practitioner before the Patent and Trademark Office; record of use; violations of policies governing use of the search facilities and other office areas; signature of recipients of user passes; government-issued identification card and information contained therein; and, other information as needed to establish identity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage.

RETRIEVABILITY:

Alphabetically by name and sequentially by user pass number. Also, electronic sort by data element.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL: *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Search Services Division, U.S. Patent and Trademark Office, Washington, DC 20231.

NOTIFICATION PROCEDURE:

Information may be obtained from: Privacy Officer, Office of the Solicitor, U.S. Patent and Trademark Office, Box 8, Washington, DC 20231. Requesters should provide name, signature, address, date of visit, and record sought in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

* No changes are being made.

Dated: December 14, 1999.

Brenda Dolan,

Freedom of Information/Privacy Act Officer, Department of Commerce.

[FR Doc. 99–33578 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 991215341–9341–01]

RIN Number 0607–XX50

Survey of Pollution Abatement Costs and Expenditures

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census (Census Bureau) is considering a proposal to conduct the Pollution Abatement Costs and Expenditures survey for the year 1999. The Census Bureau, prior to 1995, conducted the Pollution Abatement Costs and Expenditures Survey, MA–200. Due to budget limitations, the survey was suspended. In response to the need for this data to assess the cost of environmental regulations on private business, the Census Bureau, with support from the Environmental Protection Agency, plans to reinstate the Survey of Pollution Abatement Costs and Expenditures.

DATE: Written comments must be submitted on or before January 27, 2000.

ADDRESS: Direct all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, Manufacturing and Construction Division, Bureau of the Census, Room 2135, Federal Building 4, Washington, DC 20233, on (301) 457–4683.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code, Sections 182, 224, and 225. The Pollution Abatement Costs and Expenditures survey will provide continuing and timely national statistical data for the period between the economic censuses. The next Economic Census will occur in the year 2002. Data collected in this survey will be within the general scope, type, and character of those inquiries covered in the Economic Census.

The survey form will collect—from plants that produce goods or provide services classified in manufacturing, mining, and electric utility industries—data on the operating costs of pollution prevention and treatment, including hazardous pollutants, payments to government agencies for pollution removal, and new capital expenditures for pollution prevention and treatment (such as for air pollution control, water pollution control and solid waste). These data are similar to the data collected on the previously mentioned MA–200. The survey results will be used to track costs of regulatory programs and rules. Results will also be used for monitoring economic impact and promoting growth of environmental programs.

The Bureau of the Census will use mail-out/mail-back survey forms to collect the data. Companies will be asked to respond to the survey within 60 days of the initial mailing. Letters encouraging participation will be mailed to companies that have not

responded by the designated time. Resulting statistics will be published in the Current Industrial Reports series.

The primary users of these data will be federal, state, and local government agencies, including the Bureau of the Census, the Environmental Protection Agency, and the Bureau of Economic Analysis. Other users include business firms, academics, trade associations, and research and consulting organizations. The data are not publicly available from nongovernmental or other governmental sources on a timely and continuing basis.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, we will submit the survey to OMB for approval. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Dated: December 21, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–33602 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 65–99]

Proposed Foreign-Trade Zone—Victorville, CA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Southern California Logistics Airport Authority (a California public corporation), to establish a general-purpose foreign-trade zone in Victorville, California. The U.S. Customs Service has designated the Southern California Logistics Airport as a Customs user fee airport. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 16, 1999. The applicant is authorized to make the proposal under section 6302 of the California Code.

The proposed zone site (1,954 acres) is located at the Southern California Logistics Airport complex (the former George Air Force Base), 18374 Readiness Street, Victorville. The site includes air cargo and intermodal transfer facilities. The U.S. Air Force is in the process of transferring the facility to the applicant, which will operate the commercial airport complex, as well as the foreign-trade zone.

The application indicates a need for foreign-trade zone services in the Victorville/east central San Bernardino County region. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on February 3, 2000, 10 a.m., at the Victorville City Hall Council Chambers, 14343 Civic Drive, Victorville, California 92392.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 18, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 6, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Victorville Public Library, 15011 Circle Drive, Victorville, California 92392.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: December 20, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33663 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1066]

Expansion of Foreign-Trade Zone 126, Reno, NV

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Economic Development Authority of Western Nevada, grantee of Foreign Trade Zone 126, submitted an application to the Board for authority to expand FTZ 126 to include four sites (7,484 acres) in the Reno, Nevada, area, within the Reno customs port of entry (FTZ Docket 40–98; filed August 17, 1998 amended June 9, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 45998, August 28, 1998) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application, as amended, to expand FTZ 126 is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to a five-year time limit (to October 31, 2004) and subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33658 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1067]

Expansion of Foreign-Trade Zone 49, Newark/Elizabeth, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18,

1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, submitted an application to the Board for authority to expand FTZ 49 to include the jet fuel storage and distribution system at Newark International Airport (40 acres) in the Cities of Newark and Elizabeth, New Jersey (Site 5), within the New York/Newark Customs port of entry (FTZ Docket 11–99; filed 3/18/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 14860, March 29, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 49 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33659 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1070]

Expansion of Foreign-Trade Zone 46, Cincinnati, OH, Area Approval of Manufacturing Activity Within FTZ 46 Milacron, Inc.; (Plastics Processing Machinery)

Pursuant to its authority under the Foreign-Trade Zones Act (the Act) of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, The Greater Cincinnati Foreign Trade Zone, Inc. (GCFTZ), grantee of FTZ 46, submitted an application to the Board for authority to expand FTZ 46 to include three sites located in Brown and Clermont Counties within the Cincinnati, Ohio, area, and for authority, on behalf of Milacron, Inc., to manufacture plastics processing machinery and related parts under FTZ procedures within FTZ 46 (FTZ Doc. 30–99, filed June 3, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 32023, June 15, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby authorizes the grantee to expand its zone as requested in the application, and approves the request for manufacturing authority, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33662 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1068]

Expansion of Foreign-Trade Subzone 183A Dell Computer Corp. (Computer Products), Austin, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, submitted an application to the Board for authority to expand Subzone 183A at the Dell Computer Corporation facilities (computer products manufacturing) to include an additional site (Site 6) for expanded manufacturing and distribution activities, located at the Walnut Creek Corporate Center in Austin, Texas, within the Austin Customs port of entry (FTZ Docket 32–99; filed June 21, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 35124, June 30, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand Subzone 183A is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33660 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1069]

Approval for Extension of Authority of Board Order 732; Foreign-Trade Subzone 149A BASF Corp. (Caprolactam Extract, Cyclohexanone), Freeport, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (The Board) adopts the following Order:

Whereas, Subzone 149A was approved by the Board with authority to manufacture polycaprolactam and its related chemical precursors (caprolactam extract and cyclohexanone) under FTZ procedures up to a combined level of 45 million kilograms annually (Board Order 732 60 FR 15903, March 28, 1995), subject to the following conditions: (1) Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that nonprivileged foreign (NPF) status may be elected for foreign caprolactam extract (HTSUS 2933.71.0000) and cyclohexanone (2914.22.1000); and, (2) the authority with regard to the NPF option is initially granted until December 31, 1999, subject to extension.

Whereas, BASF Corporation, operator of FTZ Subzone 149A, located in

Freeport, Texas, has required an extension (to December 31, 2003) of authority for the NPF option of Board Order 732 (FTZ Doc. 10–99, filed March 17, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 14689, March 26, 1999);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request is in the public interest;

Now therefore, the Board hereby approves the request subject the FTZ Act and the Board's regulations, including § 400.28, and further subject to the other condition (Condition #1) of Board Order 732.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33661 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2000.

Antidumping duty proceedings	Periods to be reviewed
Mexico:	
Circular Welded Non-Alloy Steel Pipe	
A–201–805	
Hylsa, S.A. de C.V., Tuberia Nacional, S.A. de C.V	11/1/98–10/31/99
Republic of Korea:	
Circular Welded Non-Alloy Steel Pipe	
A–580–809	
Dongbu Steel Co., Ltd., Hyundai Pipe Co., Ltd., Korea Iron and Steel Co., Shinho Steel Co., SeAH Steel Corporation, Union Steel Manufacturing Co., Ltd	11/1/98–10/31/99
Taiwan:	
Collated Roofing Nails	
A–583–826	
Dinsen Fastening System, Inc	11/1/98–10/31/99
The People's Republic of China:	
Fresh Garlic*	
A–570–831	
Fook Huat Tong Kee Pte., Ltd., Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., Zhejiang Materials Industry, Wo Hing (H.K.) Trading Co	11/1/98–10/31/99
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
The Ukraine:	
Silicomanganese	
A–823–805	11/1/98–10/31/99

*If one of the above named companies does not qualify for a separate rate, all other exporters of fresh garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a

determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer this is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of the Department's Regulations to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 21, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–33657 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–009

Industrial Nitrocellulose From France; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 15, 1999, the Department of Commerce published in the **Federal Register** (64 FR 50107) the notice of initiation of the administrative review of the antidumping duty order on industrial nitrocellulose from France. This review covers the period August 1, 1998, through July 31, 1999. As a result of the withdrawal of the sole request for a review, the Department has now rescinded this administrative review.

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

The Department published in the **Federal Register** on August 11, 1999 (64 FR 43649), a "Notice of Opportunity to Request Administrative Review" of the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). On August 31, 1999, Bergerac, N.C., the respondent in this proceeding, requested an administrative review of the order covering industrial nitrocellulose from France for the review period August 1, 1998, through July 31, 1999. The Department published the notice of initiation of this administrative review in the **Federal Register** on September 15, 1999 (64 FR 50107).

On October 6, 1999, Bergerac, N.C., withdrew its request for a review. Because there were no other requests for review of Bergerac, N.C., we are rescinding this review covering shipments of subject merchandise from France during the period August 1, 1998, through July 31, 1999. The cash-deposit rate for Bergerac, N.C., will remain 13.35 percent, which is the rate established in the most recently completed segment of this proceeding (63 FR 49085, September 14, 1998).

This notice rescinding the administrative review is in accordance with section 777(i) of the Act and 19 CFR 351.213(d).

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–33655 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded ASTM A–312 Stainless Steel Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe (WSSP) from Korea in response to a request by Avesta Sheffield Pipe Co.; Damascus Tube Division, Damascus-Bishop Tube Co.; and the United Steelworkers of America (AFL–CIO/CLC), herein referred to as "the domestic industry." This review covers exports of subject merchandise to the United States during the period December 1, 1997, through November 30, 1998.

We have preliminarily determined that SeAH Steel Corporation Ltd. (SeAH) has made sales below normal value (NV). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the constructed export price (CEP) and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment a statement of the issue and a brief summary of the comment.

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, Mark Hoadley, or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230: telephone: (202) 482–0648, (202) 482–0666, and (202) 482–3020, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise stated, all

citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on WSSP from Korea on December 30, 1992 (57 FR 62301). On December 8, 1998, we published in the **Federal Register** (63 FR 67646) a notice of opportunity to request an administrative review of the antidumping duty order on WSSP from Korea covering the period December 1, 1998 through November 30, 1999.

In accordance with 19 CFR 351.213(b)(1), the domestic parties requested that we conduct an administrative review of SeAH's sales. We published a notice of initiation of this antidumping duty administrative review on January 25, 1999 (64 FR 36821).

During this review, the Department conducted a verification of the information provided by SeAH from November 11, 1999 through November 13, 1999. We used standard verification procedures, including the examination of relevant sales and financial records. Our verification results for SeAH are outlined in business proprietary and public versions of the verification reports on file with the Central Records Unit, in Room B–099 of the Herbert C. Hoover Building.

Scope of the Review

The merchandise subject to this administrative review, WSSP, is austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of these products are currently classifiable under the following United States Harmonized Tariff Schedule (HTS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060 and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this order is limited to welded austenitic stainless steel pipes.

Although HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by SeAH covered by the description in the "Scope of Review" section, above, and sold in the home market during the period of review (POR) to be foreign like products for the purposes of determining appropriate product comparisons with U.S. sales. In the Product Characteristics section (B3.1–B3.n and C3.1–C3.n) of our questionnaire, we provided the following hierarchy of product characteristics to be used for reporting identical and most similar comparisons of merchandise: (1) Specification/Alloy; (2) Size; (3) Hot or Cold Finish; (4) Wall Thickness; (5) End Finish; (6) Pipe Length; and (7) Other Characteristics.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the CEP to NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average home market prices for NV and compared these to individual U.S. transaction prices.

United States Price

Because SeAH and Pusan Pipe of America (PPA) are affiliated, and the subject merchandise was not sold to an unaffiliated purchaser until after its importation into the United States, we used CEP as United States Price. The starting price for CEP is the price from PPA to unaffiliated customers in the United States.

The Department calculated CEP for SeAH based on the "ex port duty paid" (net of discounts) price to PPA's customer in the United States. In accordance with section 772(c)(2) of the Act, we reduced CEP by movement expenses (foreign inland freight, foreign brokerage, ocean freight, marine insurance, U.S. brokerage, and U.S. duties). In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses (credit and warranty expenses) and indirect selling expenses, including inventory carrying costs. Finally, we added Korean duty drawback and made an adjustment for an amount of profit allocated to selling expenses incurred in the United States, in accordance with section 772(c) and (d) of the Act.

Date of Sale

Under the Department's current practice, the invoice date is normally the date of sale. We may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *Preamble to the Antidumping Duty Regs.*, 62 FR at 27411.

SeAH reported PPA's date of invoice as its U.S. date of sale. The domestic industry argued that the Department should deny SeAH's reported date of sale. The domestic industry asserts that both price and quantity are established before the date that PPA issues its invoice and that PPA is "not responsible for the establishment of the terms of sale."

After examination of SeAH's and PPA's respective roles in sales process, we determined that one of the material terms (*i.e.* quantity) of SeAH's sales to unaffiliated customers are not fixed until PPA's invoice date. Thus, we used the date of PPA's invoice to its unaffiliated customer as the date of sale.

Because most of the information on which we relied to perform our analysis is proprietary, it cannot be discussed in this notice. However, a memorandum detailing our analysis has been prepared. (See the proprietary version of the Memo from Thomas Gilgunn to Barbara E. Tillman regarding "Date of Sale for SeAH Steel Corporation and Pusan Pipe America" (Decision Memo), dated December 17, 1999.)

Normal Value

The Department determines the viability of the home market as the comparison market by comparing the aggregate quantity of home market and U.S. sales. We found that SeAH's quantity of sales in its home market exceeded five percent of its sales to the United States. We therefore have determined that SeAH's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C) of the Act and section 351.404 of our regulations. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price, net of discounts, at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP sales. *See* the "Level of

Trade section" below. We determined what home market merchandise was most similar to the merchandise sold in the United States on the basis of product characteristics set forth in sections B and C of the Department's questionnaire.

For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses (credit expenses) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, where applicable, for movement expenses, in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act, and, based upon our level of trade analysis, discussed below, for home market indirect selling expenses up to the amount of U.S. indirect selling expenses, in accordance with section 773(a)(7)(B) of the Act and section 351.412(f) of the Department's regulations. *See Analysis Memorandum* (December 17, 1999).

Cost of Production

In the last completed segment of this proceeding, the Department disregarded sales below the cost of production (COP). *See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From The Republic of Korea*, 57 FR 53693, (November 12, 1992). We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales in the home market. Using market sales and COP information provided by the respondent, we compared sales of the foreign like product in the comparison market with the model-specific COP figure for the POR. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, including all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment.

After calculating COP, we tested whether comparison market sales of the foreign like product were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared to the POR-long average COP, any sales that were below cost were also determined not to be at prices which permitted cost recovery within a reasonable period of time. We compared model-specific COPs to the reported comparison market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model during the POR were at prices less than the weighted-average COPs for the POR, we disregarded the below-cost sales because they were made over an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative expenses (SG&A), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as U.S. sales. The NV LOT is the level of the starting-price sale in the home market or, when NV is based on constructed value, the level of the sales from which we derive selling, general, and administrative expenses (SG&A) and profit. For export price, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than export price or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For merchandise sold in the home market during this POR, SeAH claimed two distribution channels and one LOT. Regardless of the distribution channel, the selling functions performed by SeAH were substantially the same. Therefore, we concluded all sales in the home market were made at one LOT. Further, because all U.S. sales were CEP sales made in the same distribution channel and SeAH performed the same selling functions for all customers, we concluded that all sales in the U.S. market were made at one LOT.

We then compared the selling functions in the U.S. and home markets. At the level of CEP sales to the United States, *i.e.*, after eliminating from consideration the selling functions associated with deductions made under section 772 of the Act, we found that the CEP sales were made at a different and less advanced level of trade than home market sales.

Because there are no sales in the home market made at the same LOT as sales in the United States, we were not able to determine whether the difference in LOT affects price comparability. Therefore, we made a CEP offset adjustment. In accordance with 19 CFR 351.412(f)(2), we deducted indirect selling expenses from NV to the extent of U.S. indirect selling expenses deducted in calculating CEP. For a further discussion of the Department's

LOT analysis with respect to SeAH, see *Analysis Memorandum* (December 17, 1999).

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a "fluctuation" to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (An exception to this rule is described below.) (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Our analysis of the U.S. dollar/Korean won exchange rates demonstrates that the Korean won declined rapidly in November and December 1997. Specifically, the won declined more than 40 percent over this two-month period. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during recent years, and it did not rebound significantly in a short time. As such, we determine that the decline in the won during November and December 1997 was of such magnitude that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. Accordingly, the Department used actual daily exchange rates exclusively in November and December 1997. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from the Republic of Korea*, 64 FR 30664, 30670 (June 8, 1999) ("*SSSS from Korea*"). We note, however, that we have refined our methodology somewhat from that applied in *SSSS from Korea*. We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in November and December 1997. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates, more than 2.25 percent from the benchmark, were merely fluctuating. Following the precipitous drop in November and December 1997, we continued to use only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely "fluctuating." Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time. Accordingly, from the first of these five days, we resumed classifying daily rates as "fluctuating" or "normal" in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 64 FR 56759, 56763 (October 21, 1999). *See also Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part*, 64 FR 62648, 62649 (November 17, 1999).

Applying this methodology in the instant case, we used daily rates from November 3, 1997, through January 13, 1998. We then resumed the use of our normal methodology, starting with a benchmark based on the average of the 20 reported daily rates from January 14, 1998. We used the normal 40-day benchmark from February 12, 1998 to the close of the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period December 1, 1997 through November 30, 1998 to be as follows:

Manufacturer/exporter	Margin percentage
SeAH	2.44

The Department will disclose to the parties to the proceeding calculations performed in connection with these preliminary results of review within five days after the date of publication of these preliminary results of review.

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 2 days after the date of filing of rebuttal briefs or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing of case briefs. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.202(b), we calculated an importer-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of review (except that no deposit will be required for firms with *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate established in the LTFV investigation, which was 6.83 percent. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the

reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C 1677f(i)(1)).

Dated: December 17, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33654 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–030. Applicant: University of Massachusetts, Biology Department, Morrill Science Center, Amherst, MA 01003-5810. Instrument: Electron Microscope, Model Tecnai 12. Manufacturer: FEU Company, The Netherlands. Intended Use: The instrument is intended to be used to view the end products of experiments, including immunolabeling of specific proteins, properties of genetically altered organisms and protein complexes under different ionic conditions. The specific research objectives vary widely but all aim to generate basic information about organisms, cells or subcellular components. In addition, the instrument will be used to demonstrate transmission electron microscopy for several courses, including Biology 523 (Histology) and Biotechnology. Application accepted by Commissioner of Customs: December 6, 1999.

Docket Number: 99–031. Applicant: University of Vermont, Department of Surgery, Given E–305, Burlington, VT 05405. Instrument: HVS Video Tracking System, Pool and Platform, Model 2020. Manufacturer: HVS Image Ltd., United Kingdom. Intended Use: The instrument is intended to be used for the study of multiple minor head injuries using a rat model in order to provide information that may be helpful in understanding why there are anecdotes in the human population of poor outcomes after seemingly minor recurrent head injuries. Application accepted by Commissioner of Customs: December 6, 1999.

Docket Number: 99–032. Applicant: University of California, Los Alamos National Laboratory, BUS–6, P.O. Box 1663, MS C308, Los Alamos, NM 87545. Instrument: Solid State Quantum Computer, Model Multiprobe S. Manufacturer: Omicron Vakùum Physik GmbH, Germany. Intended Use: The first scaleable solid state quantum computer will be used to produce an array of atoms on a Si (001) surface. The work requires using a scanning tunneling microscope for the precise placement in individual atoms of phosphorus in an array with 20 nanometer spacing on an atomically cleaned silicon substrate surface. The work also includes studying the stability and properties of such a structure at different temperatures. This investigation will also include work that will determine the best phosphorus bearing chemical species to use in this application. A silicon overlayer will bury this array. Electric contact gates will be positioned on top of the overlayer over the phosphorus sites.

Application accepted by Commissioner of Customs: December 8, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–33656 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122299A]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Large Pelagic Fishing Survey.

Agency Form Number: None.

OMB Approval Number: 0648–0380.

Type of Request: Revision of a currently approved collection.

Burden Hours: 5,032 hours.

Number of Respondents: 20,000 (multiple responses).

Average Hours Per Response: Ranges between 2 and 15 minutes depending on the requirement.

Needs and Uses: The Large Pelagic Fishing survey consists of dockside and telephone surveys of recreational anglers for large pelagic fish (tunas, sharks, and billfish) in the Atlantic Ocean. The survey provides the National Marine Fisheries Service with information to monitor catch of bluefin tuna and marlin. Catch monitoring in these fisheries and collection of catch and effort statistics for all pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected is essential for the U.S. meet its reporting obligations to the International Commission for the Conservation of Atlantic Tuna.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion, weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW., Washington, D.C. 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, D.C. 20503.

Dated: December 17, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33666 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program management and evaluation, national strategic investments, education and extension, technology programs, legislative changes and other matters as described below:

DATES: The announced meeting is scheduled during two days: Thursday, January 13, 8:30 a.m. to 5:30 p.m.; Friday, January 14, 8 a.m. to 12 noon.

ADDRESSES: National Oceanic and Atmospheric Administration, Silver Spring Metro Center III, 1315 East-West Highway, Room 4527, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (P.L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce, the Under Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to the them for review and advice. The agenda for the meeting is as follows:

Thursday, January 13, 2000

8:30 a.m. Welcoming and Opening Formalities
8:45 a.m. Sea Grant Leadership Meeting Report
9:15 a.m. Executive Committee Report
10 a.m. Sea Grant Review Panel Subcommittee Reports
10:45 a.m. Break
11 a.m. Historically Black and Minority Serving Institutions Program Report
11:30 a.m. National Extension Review
12:15 p.m. Lunch
1 p.m. Science Presentation
1:45 p.m. Congressional Update
2:30 p.m. Sea Grant Association Report
3 p.m. Break
3:15 p.m. NOAA and OAR Update
4 p.m. National Sea Grant Office Update
5:30 p.m. Adjourn

Friday, January 14, 2000

8:30 a.m. NOAA Science Advisory Board
9:15 a.m. Sea Grant Regional Approaches
10 a.m. Program Evaluation
10:30 a.m. Break
10:45 a.m. Critical Sea Grant Issues
11:45 a.m. Wrap-up
12 noon Adjourn

This meeting will be open to the public.

Dated: December 20, 1999.

Louisa Koch,

Deputy Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 99–33573 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 7, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33753 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 28, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33754 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 21, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33755 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 14, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33756 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its National Senior Service Corps Project Progress Report (OMB Control Number 3045–0033, with an expiration date of 12/31/99). The Corporation has submitted an extension request to OMB to allow for the continued use of this report during the public comment period and the OMB review. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 28, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Peter L. Boynton, Program Officer, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Peter Boynton, (202) 606–5000, ext. 499.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The Progress Report (PPR) was designed to assure that National Service Corps (NSSC) grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Current Action

The Corporation seeks to revise the current PPR: a.) in order to reflect and mirror the revised regulations for the Retired and Senior Volunteer, Foster Grandparent, and Senior Companion Programs, contained in 45 CFR parts 2551, 2552, and 2553, published in the **Federal Register** on March 24, 1999, and b.) to eliminate current use of the PPR for collection of Government Performance and Results Act (GPRA) performance data. The Corporation anticipates making available to all NSSC grantees an OMB approved revised PPR by July of 2000. Pending OMB approval, the GPRA data will be collected annually as of September 30 and submitted by December 1, through separate reporting.

The revised PPR will be used by NSSC grantees to report progress toward accomplishing work plan goals and objectives, meeting challenges encountered, describing significant activities, and requesting technical assistance. Submission requirements are proposed to be revised as follows, which will have the effect of reducing the reporting burden on many grantees that currently report semi-annually:

Established multi-year NSSC grantees will submit the complete report annually within 30 days of the end of their annual budget cycle.

New projects in their first year, new components of statewide projects, demonstrations, and projects experiencing problems or with substantial project revisions will submit the PPR quarterly. One year grantees will submit the PPR semi-annually.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: National Senior Services Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,300.

Frequency: Annual, with exceptions. It is estimated that 700 will respond annually, 500 semi-annually, and 100 quarterly.

Average Time Per Response: 9.7 hours.

Estimated Total Burden Hours: 12,550 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,599.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 21, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33551 Filed 12–27–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service. (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial

resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning a new procedure for collecting data for reporting Government Performance and Results Act (GPRA) to Congress through a new National Senior Service Corps (NSSC) Reporting Form. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 28, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Peter L. Boynton, Program Officer, 1201 New York Avenue, N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Peter Boynton, (202) 606–5000, ext. 499.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

Currently, data required for reporting under the GPRA is collected as Section I of the Project Progress Report (PPR), CNCS Form 1020. Most NSSC grantees submit a PPR semi-annually to their agency project manager. New sponsors or components of statewide projects, demonstrations and projects experiencing problems or with substantial project revisions submit the PPR quarterly. The date of submission for each grantee is tied to the end-date of their budget period. These end-dates, and the resultant submissions, vary throughout the year among grantees.

Experience with managing GPRA data reporting since the last PPR revision in 1998 has led the Corporation to seek approval from the Office of Management and Budget (OMB) for removing the GPRA reporting section (current Section I) from the PPR form, and for a new form and procedure for reporting only GPRA data as of a fixed date each year.

Current Action

The Corporation is seeking approval for a new form for all grantees of the NSSC to report GPRA data annually as of a single date. The data to be reported on this form is currently reported by most grantees semi-annually on CNCS Form 1020, Project Progress Report (OMB Control Number 3045–0033). A small percentage are required to submit the PPR quarterly. Pending OMB approval, the GPRA reporting data will be deleted from the Project Progress Report as of July 31, 2000. The new NSSC GPRA Reporting Form, if approved, will be filed by all grantees by December 1 each year, containing data with a timeperiod of Oct 1 through September 30.

Having all grantees, regardless of their grant budget cycle, report annually as of September 30 will reduce the reporting burden for GPRA data for grantees who currently report this data semi-annually or quarterly. It will also enable the Corporation to submit current, consistent, and reliable aggegrate GPRA reporting data to Congress by the date established by law, February 28th of each year.

Type of Review: New information collection.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps GPRA Reporting Form.

OMB Number: None.

Agency Number: None.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,300.

Frequency: Annual.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: 1,300 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $494.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 21, 1999

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33553 Filed 12–27–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35)). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Part I

Description: The 2000 Application Guidelines for Learn and Serve America Higher Education provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for college-age youth. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page and one budget form that all Higher Education applicants can use. Form instructions are clearer and are written in plain language. Questions that need response in the narrative section of the application are streamlined.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for Learn and Serve America Higher Education.

OMB Number: 3045–0046.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 400.

Frequency: Once per year.

Average Time Per Response: Six (6) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II

Description: The 2000 Application Guidelines for Learn and Serve America School-and Community-Based Programs provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for school-age youth. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page that all Learn and Serve America School and Community-Based Program applicants can use. Forms and form instructions are clearer and are written in plain language. Questions that need response in the narrative section of the application are streamlined.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for Learn and Serve America School and Community-Based Programs.

OMB Number: 3045–0045.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 225.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 2,250 hrs.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 21, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33552 Filed 12–27–99; 8:45 am]

BILLING CODE 6050–25–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Electronic Combat Integrated Test Quick Look Panel members will meet at Edwards Air Force Base (AFB), CA on January 18–19, 2000 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–33605 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel Chairs will meet at ANSER Corporation, Rosslyn, VA, on February 17–18, 2000 from 8 a.m. to 5 p.m.

The purpose of the meeting is to review the results of the Fiscal Year (FY) 2000 Reviews of the Air Force Science & Technology Program. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–33606 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

United States Army School of the Americas (USARSA), Training and Doctrine Command (TRADOC); Notice of Meeting

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: USARSA Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: 1–3 February 2000.

Place: USARSA, Building 35, Fort Benning, Georgia.

Time of Meeting: 0830–1630 on 1 and 2 February, 0830–1300 on 3 February 2000.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to LTC Joseph Contarino III, Designated Federal Official, U.S. Army School of

the Americas, ATTN: ATZB–SAZ–CS, Fort Benning, GA 31905–6245.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Presentation by Commanding General, TRADOC, issues from the previous meeting, and USARSA's reorganization.

1. Purpose of Meeting. This is the seventh USARSA Subcommittee meeting. The Subcommittee will receive a report from the Commander, TRADOC, and discuss the reorganization of USARSA.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Committee Management Office in writing at least five days prior to the meeting date of their intent to attend.

3. Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the subcommittee chairman may allow public presentations of oral statements at the meeting.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–33608 Filed 12–27–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Available Surplus Real Property at Fort Dix (Walson Army Hospital), Located at Fort Dix, Burlington County, NJ

AGENCY: U.S. Army Corps of Engineers, New York District.

ACTION: Notice.

SUMMARY: 32 CFR Part 176.20. This notice identifies the surplus real property located at Fort Dix (Walson Army Hospital), Burlington County, New Jersey. Fort Dix is located approximately eight (8) miles from the New Jersey Turnpike Exit 7 via Route 68.

FOR FURTHER INFORMATION CONTACT: Additional information regarding Walson Army Hospital (i.e., floor plans, existing utilities, etc.), contact Mr. John Warrick or Mrs. Jean Johnson, Regional Directorate of Public Works, ATTN: AFRC–FA–PWB–M, Real Property Office, 5318 Delaware Avenue, Fort Dix, New Jersey 08640–5506—(609)562–3253/4249; or Mr. Randy Williams, U.S. Army Corps of Engineers, New York District, Real Estate Division, ATTN: CENAN–RE–M/BRAC, 26 Federal Plaza, Room 1951, New York, NY 10278–0090, Telephone—(212) 264–5975, fax (212) 264–0230.

SUPPLEMENTARY INFORMATION: This surplus real property is available under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. Anthony R. Mazzella, Director, State of New Jersey, Department of the Treasury, Division of Property Management and Construction, P.O. Box 229, Trenton, New Jersey 08625–0229.

The surplus real property totals 24 acres, more or less. Hospital facility (PO5250) encompasses 384,057–sq. ft.; steel reinforced masonry with brick vainer exterior, built 1960. Support facilities include heating and air conditioning plants. The Air Force currently uses the facility as a hospital; however, the future uses depend on the degree of renovation.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–33607 Filed 12–27–99; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., February 8, 2000.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—November 2, 1999
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: December 20, 1999.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33686 Filed 12–22–99; 4:35 pm]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 27, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 21, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Eisenhower Regional Mathematics and Science Education Consortia Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 30.
Burden Hours: 1,200.
Abstract: Applications are required to receive grants under the Eisenhower Consortia Program. Program participants include LEAs, SEAs, and other public and private agencies, organizations, and institutions.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33542 Filed 12–27–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award Federal Financial Assistance (cooperative agreements) for the program entitled "Ultra-Clean Transporation Fuels." Awards will be made to a limited number of applicants based on an evaluation of the technical merit of the proposed technology, probable reducibility to practice, formulation and organization of the project plan, technical and management capabilities, and availability of DOE funding.

FOR FURTHER INFORMATION CONTACT: David L. Hunter, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–107, Pittsburgh PA 15236–0940, Telephone: (412) 386–4872, FAX: (412) 386–6039, E-mail: hunter@netl.doe.gov. This solicitation (available in both WordPerfect 6.1 and Portable Document Format [PDF]) was released on DOE's NETL Internet site (http://www.netl.doe.gov/business) on December 17, 1999.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: "Ultra-Clean Transportation Fuels."

Objectives: Through Program Solicitation No. DE-PS26–00FT40758, the DOE's National Energy Technology Laboratory, in cooperation with the DOE's National Petroleum Technology Office, seeks applications for research and development that will lead to the production of ultra-clean transportation fuels from fossil resources, alone or in combination with other hydrocarbon materials. The DOE's Office of Fossil Energy intends to create strategic partnerships with industry targeted at the development and verification of advanced fuel-making processes that utilize fossil feedstocks. These processes will enable the production of ultra-clean transportation fuels, that improve the environment, while also expanding and diversifying the fossil resource base. This solicitation represents a major step toward creating a comprehensive DOE Fossil Energy Ultra-Clean Transportation Fuels Initiative—Petroleum, Natural Gas and Coal programs joining forces to pursue a common strategy. In addition, Fossil Energy is coordinating this and its other fuels efforts with DOE Energy Efficiency, and Renewable Energy Office of Transportation Technologies, the organization responsible for the engine/vehicle/after treatment technologies.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to the funds available. DOE expects to provide up to $50 million between October 1999 and September 2005 with approximately $10 to $15 million per project. Cost sharing by the applicant is required, and details of the cost sharing requirement are contained in the solicitation.

Solicitation Release Date: A draft of this Program Solicitation is available for comment on NETL's World Wide Web Server Internet System at *http://www.netl.doe.gov/business* until January 7, 2000. The final Program Solicitation is expected to be ready for release on or about January 14, 2000. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Raymond D. Johnson,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–33603 Filed 12–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG00–1–000]

Clear Creek Storage Company, L.L.C.; Notice of Filing

December 21, 1999.

Take notice that on November 23, 1999, Clear Creek Storage Company, L.L.C. (Clear Creek) filed standards of conduct under Order Nos. 497 *et.seq.*,[1] Order Nos. 566 *et seq.*,[2] and Order No.

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990); FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497– D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on* rehearing and extending sunset date. 59 FR 293 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*. 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions. Order No. 566, 59 FR 32885 (June 27,

Continued

599.[3] Clear Creek also requested waivers of Standards of Conduct E and F, 18 CFR 161.3(e) and (f).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 2000. Protests will be considered by the Commission in determining the appropriate actions to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33539 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Dominion Resources, Inc. and Consolidated Natural Gas Company; Notice of Filing

[Docket Nos. MG00–6–000 and EC99–81–001]

December 21, 1999.

Take notice that on December 10, 1999, Dominion Resources, Inc. (Dominion) and Consolidated Natural Gas Company (CNG), collectively "the Applicants", filed their compliance filing pursuant to the Commission's November 10, 1999 order issued in Docket No. EC99–81–000 approving their merger.

The Applicants' filing consists of standard of conduct commitments, under Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*[2] and Order No. 599,[3] rate schedule revisions for Elwood Marketing, LLC and Kincaid Generation L.L.C. and a copy of an open tap policy being filed by CNG Transmission Corporation in a separate proceeding.

The Applicants state that copies of their compliance filing have been served on all parties to Docket No. EC99–81–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http.//www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33541 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1631–006]

Family Fiber Connection, Inc.; Notice of Filing

December 21, 1999.

Take notice that on December 2, 1999, Family Fiber Connection, Inc. filed their second and third quarterly reports for 1999 for information only. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33538 Filed 12–27–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–000]

Natural Gas Pipeline Company of America; Notice of Conference

December 16, 1999.

Take notice that the Commission's staff will convene a conference in the above-captioned proceeding on Tuesday, January 25, 2000, beginning at 10:00 a.m. in the Commission meeting room at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

On November 10, 1998, the Commission approved a settlement implementing auction procedures by which Natural Gas Pipeline Company of America allocates capacity on its system. Under the settlement, a review of the auction procedures must be held approximately one year after their implementation. The purpose of this conference is to begin this review.

All interested persons are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33594 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

---

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transaction, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats & Regs 31,064 (1998).

DEPARTMENT OF ENERGY

Fedeal Energy Regulatory Commission

[Docket Nos. MG00–2–000; MG00–3–000; MG00–4–000; and MG00–5–000]

Transwestern Pipeline Company; Florida Gas Transmission Company; Northern Natural Gas Company; Northern Border Pipeline Company; Notice of Filing

December 21, 1999.

Take notice that between December 7 and 8, 1999, each of the above-named natural gas pipeline companies filed revised standards of conduct under Order Nos. 497 *et seq.*,[1] Order Nos 566 *et seq.*,[2] and Order No. 599.[3]

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest in each separate proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in each separate proceeding. Copies of these filings are on file with the Commission and are available for public inspection. These filings may also be viewed on the Interent at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33540 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61.334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–3]

Agency Information Collection Activities; Toxic Chemical Release Reporting; Submission of ICR No. 1363.09 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "Toxic Chemical Release Reporting," (EPA ICR No. 1363.09; OMB Control No. 2070–0093) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on April 30, 2000. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on July 28, 1999 (64 FR 40862). EPA received a number of comments on this ICR during the comment period, which have been addressed.

DATES: Additional comments may be submitted on or before January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1363.09.

ADDRESSES: Send comments, referencing EPA ICR No. 1363.09 and OMB Control No. 2070–0093, to the following addresses:

Ms. Sandy Farmer, Office of Environmental Information (OEI), Mailcode 2822, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460;

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1363.09; OMB Control No. 2070–0093.

Current Expiration Date: Current OMB approval expires on April 30, 2000.

Title: Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Abstract: Section 313 of EPCRA requires owners or operators of certain facilities that manufacture, process or otherwise use any of over 600 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industries' attention on pollution prevention and source reduction opportunities.

The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 52.1 hours per response for an estimated 25,159 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are owners or operators of facilities that manufacture, process or otherwise use certain specified toxic chemicals and chemical categories, which are required under EPCRA section 313 to report annually on the environmental releases and transfers of and waste management activities for such chemicals.

Estimated No. of Respondents: 27,235.

Estimated Total Annual Burden on Respondents: 7,321,441 hours.

Frequency of Collection: Annually.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: December 21, 1999.

Richard T. Westlund,

Acting Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 99–33626 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6515–7]

Clean Air Act Advisory Committee Mobile Sources Technical Review Subcommittee Notification of Public Advisory Subcommittee Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on:

Wednesday, January 12, 2000 from 9:30 am to 3 pm Eastern Standard Time (registration starts at 9 am) at:

Holiday Inn Washington—On The Hill, 415 New Jersey Avenue, NW, Washington, DC 20001, Ph: (800) 638–1166, or 202/638–1616, Fax: (202) 638–0707

This is an open meeting and seating is on a first-come basis. During this meeting, the subcommittee may hear and receive handouts on the following subjects: progress reports from some of its workgroups (including review and approval of the On-Board Diagnostics Workgroup recommendations prior to submission to the CAAAC), updates and announcements on activities of general interest such as the Clean Air Act Advisory Committee, future of the subcommittee, status of key regulations, schedule for release of MOBILE6, and an update on the reorganization of OMS. The theme for this quarterly meeting will be fuels and may include presentations on reformulated gasoline (RFG), the future of fuels for motor vehicles: a DOE perspective, and California Air Resources Board RFG Phase 3 program.

The preliminary agenda and draft minutes from the previous meeting are available from the subcommittee's website at: http://transaq.ce.gatech.edu/epatac

Subcommittee members and interested parties requesting further technical information should contact:

Mr. John T. White, Alternate Designated Federal Officer, Assessment and Modeling Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4353, Fax: 734/214–4821, email: white.johnt@epa.gov

Subcommittee members and interested parties requesting administrative or logistics information should refer to a December 15, 1999 announcement of meeting letter or contact:

Ms. Jennifer Criss, FACA Management Officer, Assessment and Modeling Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, FACA Helpline: 734/214–4518, Ph: 734/214–4029, Fax: 734/214–4821, email: criss.jennifer@epa.gov

Individuals or organizations wishing to provide comments to the subcommittee should submit them to Mr. John T. White, Alternate Designated Officer, at the address above by January 4, 2000.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Donald E. Zinger,

Acting Director, Office of Mobile Sources.

[FR Doc. 99–33528 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30488; FRL–6484–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30488, must be received on or before January 27, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30488 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Driss Benmhend	9th Floor, CM #2, 703–308–9525, e-mail: benmhend.driss@epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Susanne Cerrelli	9th Floor, CM #2, 703–308–8077, e-mail: cerrelli.susanne@epa.gov.	Do.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30488. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30488 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30488. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the

subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 72179–R. *Applicant*: KHH BioSci, Inc., 920 Main Campus Dr., Suite 400, Raleigh, NC 27606. *Product name*: Reynoutria sachalinensis bioprotectant. *Active ingredient*: Extract of Reynoutria sachalinensis. *Proposed classification/Use*: None. To manufacture formulation of products used to increase natural defense mechanisms against certain fungal diseases. (D. Benmhend)

2. *File Symbol*: 72444–R. *Applicant*: Prophyta Biologischer Pflanzenschutz GmbH, c/o Technology Sciences Group, Inc., 101 17th St., NW., Suite 500, Washington, DC 20036. *Product name*: CONTANS® WG. Fungicide. *Active ingredient*: *Coniothyrium minitans* strain CON/M/91-08* at 5.30%. *Proposed classification/Use*: None. For use on agricultural crops, vegetables, fruit, herbs and spices, and ornamentals. (S. Cerrelli)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 16, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–33529 Filed 12–27–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51939; FRL–6404–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 8, 1999 to December 3, 1999, consists of the PMNs, which also includes Biotech PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51939 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Joe Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address:TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** – Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51939. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51939 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments

must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51939 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 8, 1999 to December 3, 1999, consists of the PMNs, which also includes Biotech PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, which also includes Biotech PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN (not including the Biotech PMNs); the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0111	11/09/99	02/07/00	Union Carbide Corporation	(G) Polyurethane articles for consumer or industrial uses	(G) Polycaprolactone diol
P–00–0112	11/09/99	02/07/00	Lonza Inc.	(G) Commercial emulsiffier	(S) 1,2,3-propanetriol, homopolymer, dodecanoate*
P–00–0113	11/08/99	02/06/00	CBI	(G) Resin coating	(G) Urethane acrylate
P–00–0114	11/08/99	02/06/00	The Goodyear Tire & Rubber Company	(S) Tackifier resin for adhesive and rubber applications	(G) 2-methyl-2-butene/piperylene/terpene resin
P–00–0115	11/08/99	02/06/00	Bedoukian Research, Inc.	(S) Powerful, pleasant aldehydic odor. used in specialty fragrances (ffdca).; fragrance use: (soaps, detergents, air fresheners, scented papers).	(S) 8-undecenal, (8z)-*
P–00–0116	11/08/99	02/06/00	CBI	(G) Industrial adhesive component for open non-dispersive use	(G) Halogenated butadiene copolymer
P–00–0117	11/08/99	02/06/00	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Mono-halo substituted alkene
P–00–0118	11/08/99	02/06/00	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Unsaturated dialkyl acetal
P–00–0121	11/09/99	02/07/00	CBI	(S) Resin for coating	(G) Amine-salted polyester resin
P–00–0122	11/09/99	02/07/00	CBI	(S) Resin for coating	(G) Amine-salted polyester resin
P–00–0123	11/08/99	02/06/00	CBI	(G) Chemical additive to enhance zinc plating	(G) Amino alkane
P–00–0124	11/08/99	02/06/00	CBI	(G) Chemical additive to enhance zinc plating	(G) Amino alkane

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0125	11/08/99	02/06/00	CBI	(G) Chemical additive to enhance zinc plating	(G) Amino alkane
P–00–0126	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, compd. with 2-aminoethanol*
P–00–0127	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:1)*
P–00–0128	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:2)*
P–00–0129	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:3)*
P–00–0130	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:4)*
P–00–0131	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, sodium salt*
P–00–0132	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, monosodium salt*
P–00–0133	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, disodium salt*
P–00–0134	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, trisodium salt*
P–00–0135	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, tetrasodium salt*
P–00–0136	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, potassium salt*
P–00–0137	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, monopotassium salt*
P–00–0138	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, dipotassium salt*
P–00–0139	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, tripotassium salt*
P–00–0140	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, tetrapotassium salt*
P–00–0141	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, magnesium salt*
P–00–0142	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, magnesium sodium salt*
P–00–0143	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, magnesium salt (1:1)*
P–00–0144	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, magnesium salt (1:2)*
P–00–0145	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, magnesium sodium salt (1:1:1)*
P–00–0146	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, magnesium sodium salt (1:1:2)*
P–00–0147	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, ammonium salt*
P–00–0148	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, monoammonium salt*
P–00–0149	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, diammonium salt*
P–00–0150	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, triammonium salt*
P–00–0151	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-, tetraammonium salt*
P–00–0152	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis-*
P–00–0153	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis- sodium salt, compd. with 2-aminoethanol*

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0154	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis- monosodium salt, compd. with 2-aminoethanol (1:3)*
P–00–0155	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis- disodium salt, compd. with 2-aminoethanol (1:2)*
P–00–0156	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis- trisodium salt, compd. with 2-aminoethanol (1:1)*
P–00–0157	11/16/99	02/14/00	CBI	(S) Additive for industrial coating	(G) Organo silane ester
P–00–0159	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0160	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0161	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0162	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0163	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0164	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0165	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0166	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0167	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0168	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0169	11/15/99	02/13/00	CBI	(G) Component for coating with open use	(G) Blocked isocyanate
P–00–0170	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Undecene*
P–00–0171	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Undecene, branched*
P–00–0172	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Dodecene, branched*
P–00–0173	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Tridecene*
P–00–0174	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Tridecene, branched*
P–00–0175	11/15/99	02/13/00	CBI	(G) Surfactant component of industrial cleaning formulations.	(G) Alkyl ether carboxylic acid
P–00–0176	11/15/99	02/13/00	CBI	(G) Surfactant ingredient for use in cleaning products.	(G) Alkyl ether carboxylic acid
P–00–0177	11/15/99	02/13/00	CBI	(G) Surfactant component for industrial cleaning formulation	(G) Alkyl ether carboxylic acid, sodium salt
P–00–0178	11/16/99	02/14/00	CBI	(G) Open, non-dispersive use	(G) Modified acrylic polymer
P–00–0179	11/17/99	02/15/00	Eastman Chemical Company	(S) Molding plastic	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-cyclohexanedimethanol and dimethyl 1,4-benzenedicarboxylate*
P–00–0180	11/17/99	02/15/00	Elf Atochem North America, Inc.	(S) Intermediate paper processing solution	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide*
P–00–0181	11/17/99	02/15/00	CBI	(G) Automotive coating additive	(G) Reactive hydroxy carbamate*
P–00–0182	11/18/99	02/16/00	CBI	(S) Chemical intermediate used for further chemical processing	(G) Substituted phenylenediamide reaction products with substituted phenylenediamine, and sulfur
P–00–0183	11/18/99	02/16/00	CBI	(S) Leuco sulfur dye for the dyeing of cellulosic fibers	(G) Substituted phenylenediamide reaction products with substituted phenylenediamine, and sulfur, leuco derivs
P–00–0184	11/17/99	02/15/00	CBI	(G) Coating intermediate	(G) Reactive carbonate

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0185	11/18/99	02/16/00	Eastman Chemical Company	(S) Engineering thermoplastic	(S) 1,4-cyclohexanedicarboxylic acid, dimethyl ester, trans-, polymer with 1,4-cyclohexanedimethanol*
P–00–0186	11/19/99	02/17/00	CBI	(G)polymeric surfactant for fire extinguishing	(G) Perflourinated polyamine
P–00–0187	11/19/99	02/17/00	CBI	(G) Open, non-dispersive(colorant stabilizer)	(G) Ethoxyylated phenol, styrenated*
P–00–0188	11/19/99	02/17/00	CBI	(G) Open- non-dipersive(colorant stabilizer)	(G) Alkylanyl poly glycol ether
P–00–0189	11/22/99	02/20/00	Ashland Chemical Company	(G) Laminating adhesive	(G) Modified polyurethane
P–00–0190	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0191	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0192	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0193	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0194	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer
P–00–0195	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer
P–00–0196	11/19/99	02/17/00	International Specialty Poducts	(S) Dye transfer inhibitor for detergents	(S) Pyridine, 4-ethehyl-, homopolymer, sodium chloroacetate quaternized*
P–00–0197	11/19/99	02/17/00	Reichhold,Inc.	(S) Binder in amine cured inks and coatings	(G) Urethane acrylate ester
P–00–0198	11/19/99	02/17/00	Reichhold,Inc.	(S) Binder in amine cured inks and coatings	(G) Urethane acrylate ester
P–00–0199	11/19/99	02/17/00	Dow Corning Corporation	(S) Binder resin for pressure sensitive tapes	(S) Siloxanes and silicones, di-me, hydroxy-terminated, polymers with silicic acid*
P–00–0200	11/23/99	02/21/00	CBI	(S) Coating	(S) 1,3-benzenedicarboxylic acid, polymer with 1,2-ethanediamine, hexanedioic acid, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane (9ci)*
P–00–0201	11/23/99	02/21/00	Condea Servo LLC	(G) Reactive monomer	(G) Dimerdiol diacrylate
P–00–0202	11/22/99	02/20/00	CBI	(G) Foam insulation	(G) Aromatic poyether polyol
P–00–0203	11/23/99	02/21/00	CBI	(G) Synthetic lubricant base stock	(G) Fatty acid ester
P–00–0204	11/23/99	02/21/00	CBI	(S) Thickening agent for use in cosmetic and detergents	(G) Sodium salt of acrylic acid/vinyl ester copolymer
P–00–0205	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0206	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0207	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0208	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0209	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0210	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0211	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0212	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0213	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0214	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0215	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0216	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0217	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0218	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0219	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0220	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0221	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0222	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0223	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0224	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0225	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0226	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0227	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0228	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0229	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0230	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0231	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0232	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0233	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0234	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0235	11/24/99	02/22/00	CBI	(G) Laminating adhesive	(G) Urethane prepolymer
P–00–0236	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0237	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0238	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0239	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0240	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0241	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0242	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0243	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0244	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0245	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0246	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0247	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0248	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0249	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0250	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0251	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0252	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0253	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0254	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0255	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0256	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0257	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0258	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0259	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0260	11/26/99	02/24/00	CBI	(S) Resin for coatings	(G) Amine salted acrylic modified polyurethane resin
P–00–0261	11/26/99	02/24/00	CBI	(S) Resin for coatings	(G) Amine salted acrylic modified polyurethane resin
P–00–0262	11/29/99	02/27/00	CBI	(G) Open, non-dispersive use	(G) Imidazole functional polyalkyl acrylate
P–00–0263	11/26/99	02/24/00	CBI	(S) Polymer intermediate for final polymer	(G) Amine salted polyurethane resin
P–00–0264	11/26/99	02/24/00	CBI	(S) Polymer intermediate for final polymer	(G) Amine salted polyurethane resin
P–00–0265	11/29/99	02/27/00	CBI	(G) Open, non-dispersive use	(G) Tin functional aliphatic copolymer
P–00–0266	11/29/99	02/27/00	CBI	(S) Oil field production aid;site-limited intermediate	(G) Acrylic acid, polymer with partial salt of acylate ester
P–00–0267	11/29/99	02/27/00	CBI	(S) Oil field production aid	(G) Acrylic acid, polymer with partial salt of acylate ester, reaction product with substituted polyglycol
P–00–0268	11/24/99	02/22/00	Asahi Chemical Industry America, Inc.	(G) Intermediate for industrial product	(G) Acetyl heterocyclic compound
P–00–0269	11/26/99	02/24/00	CBI	(G) Component in a sealant	(G) Polyurethane prepolymer
P–00–0270	11/26/99	02/24/00	CBI	(S) Cosmetic additive	(G) Dimethicone copolyol polyacrylate
P–00–0271	11/26/99	02/24/00	Kowa American Corporation	(G) Textile processing agent	(S) 1,3-dioxolane, 2,2′-(1,7-heptanediyl)bis-*
P–00–0272	11/26/99	02/24/00	Kowa American Corporation	(G) Textile processing agent	(S) 1,3-dioxolane, 2,2′-(1-methyl-1,6-hexanediyl)bis-*
P–00–0273	11/29/99	02/27/00	Solutia Inc.	(G) Flame retardant	(G) 3-substituted propanoic acid, glycol ester
P–00–0274	11/30/99	02/28/00	CBI	(S) Resin for coatings	(G) Amine-salted polyester resin
P–00–0275	11/30/99	02/28/00	CBI	(S) Resin for coatings	(G) Amine-salted polyester resin
P–00–0276	11/30/99	02/28/00	International Specialty Products	(S) Protectant for digital printing inks	(S) 2-propenamide, *n*-[3-(dimethylamino)propyl]-2-methyl-, polymer with 1-ethenyl-2-pyrrolidinone, sulfate*
P–00–0277	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Ethoxylated alcohol
P–00–0278	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Diethoxylated alcohol
P–00–0279	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Triethoxylated alcohol
P–00–0280	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Polyethoxylated alcohol

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0281	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metalworking fluids and industrial lubricants	(G) Alkarylsulfonic acid, sodium salts
P–00–0282	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metalworking fluids and industrial lubricants	(G) Alkarylsulfonic acid, cpds with ethanolamine
P–00–0283	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metalworking fluids and industrial lubricants	(G) Alkarylsulfonic acid, potassium salts
P–00–0284	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metalworking fluids and industrial lubricants	(G) Alkarylsulfonic acid, magnesium salts
P–00–0285	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, calcium salts
P–00–0286	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, barium salts
P–00–0287	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metalworking fluids and industrial lubricants	(G) Alkaryl sulfonic acid, sodium salts
P–00–0288	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metalworking fluids and industrial lubricants	(G) Alkarylsulfonic acid, cpds with ethanolamine
P–00–0289	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metalworking fluids and industrial lubricants	(G) Alkarylsulfonic acid, potassium salt
P–00–0290	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metalworking fluids and industrial lubricants	(G) Alkarylsulfonic acid, magnesium salts
P–00–0291	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, calcium salts
P–00–0292	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, barium salts
P–00–0293	12/01/99	02/29/00	Ciba Specialty Chemicals Corporation	(S) Extreme pressure anti-wear addititve for lubricating oils	(G) Organophosphinothioyl ester
P–00–0294	12/02/99	03/01/00	CBI	(G) Colorants for pertroleum products, inks and grease	(G) Alkayated phenylamino anthraquinone
P–00–0295	12/01/99	02/29/00	CBI	(G) Monomer for use in copolymer	(G) Alkyl vinyl ester
P–00–0296	12/02/99	03/01/00	3M Company	(G) Mixing agent	(G) Styrene copolymer
P–00–0297	12/01/99	02/29/00	Pilot Chemical Company	(G) Chemical intermediate-destructive use	(G) Alkarylsulfonic acid
P–00–0298	12/01/99	02/29/00	Pilot Chemical Company	(G) Chemical intermediate, destructive use	(G) Alkylbenzene
P–00–0299	12/02/99	03/01/00	CIBA Specialty Chemicals Corporation	(G) Textile dye	(G) 1,5-naphthalenedisulfonic acid, 3-[[2-(acetylamino)-4-[[4-chloro-6-[substituted]-1,3,5-triazin-2-yl]amino]phenyl]azo]-, trisodium salt
P–00–0300	12/01/99	02/29/00	CBI	(S) Hydrate inhibitor	(G) Alkyl acid halides, reaction products with alkylhalide and alkoxylated alkylamines
P–00–0301	12/02/99	03/01/00	Reichhold, Inc.	(S) Coating Addtive	(G) Triethylamine salt of aliphatic polyurethane polymer
G00–001	10/22/99	None	Prolume Ltd.	Enzyme production	Microorganism
G00–002	11/19/99	None	Aureozme, Inc.	Enzyme production	Microorganism

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 35 Notices of Commencement From: 11/08/99 to 12/03/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–1409	11/29/99	11/09/99	(G) Heterocyclic aldehyde
P–96–0001	11/22/99	11/05/99	(G) Mono-amine/acid salt carboxylates
P–98–0039	11/10/99	11/02/99	(G) Organic yellow pigment
P–98–0521	11/08/99	11/02/99	(G) Tdi/ mdi polyalkyleneoxide prepolymer
P–98–0522	11/08/99	11/02/99	(G) Tdi/ mdi polymer polyol prepolymer

II. 35 Notices of Commencement From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–99–0153	11/15/99	11/01/99	(G) Polyoxyalkylene acrylate
P–99–0254	11/10/99	11/02/99	(S) Phosphinic acid, (2-methylpheny)-, potassium salt; phosphinic acid, (3-methylphenyl)-, potassium salt; phosphinic acid, (4-methylphenyl)-, potassium salt*
P–99–0320	11/19/99	10/26/99	(S) Acetic acid, hydroxysulfino-, diisodium salt; acetic acid, hydroxysulfo-, diisodium salt*
P–99–0482	11/12/99	11/07/99	(G) Organometallic intermediate
P–99–0638	11/12/99	11/04/99	(G) Alanine, *n*-[5-(acetylamino)-4-[(2-chloro-6-cyano-4-nitrophenyl)azo]-2-methoxyphenyl]-*n*-(substituted alkoxy)-, methyl ester
P–99–0639	11/22/99	11/12/99	(G) Chlorohydroxy substituted amine reaction products with leuco sulphur dye
P–99–0696	11/12/99	11/05/99	(G) Aliphatic, aromatic polyol
P–99–0697	11/12/99	11/05/99	(G) Aliphatic, aromatic polyol
P–99–0707	11/18/99	11/04/99	(G) Silicone polymer
P–99–0744	11/12/99	11/04/99	(G) 2,7-naphthalenedisulfonic acid, 3-amino-4-[[4-[[4-[[2-[2-(substituted)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-5-hydroxy-, trisodium salt
P–99–0753	11/16/99	11/04/99	(G) Substituted heterocyclic pyrazole carboxylic acid salt
P–99–0794	11/15/99	11/08/99	(G) Acrylic acid, polymer with alkyl acrylates and substituted ethene
P–99–0826	11/12/99	10/28/99	(G) Epoxidized copolymer of phenol and aromatic hydrocarbon
P–99–0827	11/12/99	10/28/99	(G) Epoxidized copolymer of phenol and aromatic hydrocarbon
P–99–0852	11/15/99	11/09/99	(G) Fatty acid polyester
P–99–0855	11/12/99	11/04/99	(G) Cashew nutshell liquid, reaction products with formaldehyde and aliphatic amine
P–99–0955	11/23/99	10/26/99	(G) Phosphoric acid ester oligomer
P–99–0961	11/24/99	11/17/99	(G) Modified fatty acid ester
P–99–0967	11/15/99	11/03/99	(G) Colorant intermediate
P–99–0969	11/15/99	11/03/99	(G) Polyoxyalkylene substituted chromophore
P–99–0980	11/17/99	10/18/99	(G) Polyester/aliphatic polyurethane dispersion in water
P–99–0996	11/12/99	10/14/99	(G) Urethane acrylate
P–99–1033	11/19/99	10/31/99	(G) Acrylate copolymer with 2-ethylhexylacrylate
P–99–1054	11/15/99	10/25/99	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1065	11/22/99	10/25/99	(G) Organic silicon polymer
P–99–1066	11/22/99	10/25/99	(G) Organic silicon polymer
P–99–1128	11/23/99	11/17/99	(G) Styrene-methacrylate copolymer
P–99–1177	11/08/99	11/05/99	(G) Acylonitrile and butadadiene extended epoxy resin
P–99–1178	11/08/99	11/05/99	(G) Acylonitrile and butadadiene extended epoxy resin
P–99–1198	11/18/99	11/10/99	(G) Hot melt polyurethane adhesive

List of Subjects

Environmental protection, Chemicals, Premanufacturer Notices.

Dated: December 21, 1999.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–33629 Filed 12–27–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: New collection.
Title: Asset Purchaser Eligibility.
Estimate of Annual Burden:
Number of respondents: 1,800.
Frequency of response: Occasional.
Number of responses: 2,500.
Time per response: 30 minutes.
Total annual burden: 1,250 hours.

OMB: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC: Steven F. Hanft (202) 898–3907, Office of the Executive Secretary, Room F–4062, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

COMMENTS: Comments on this collection of information are welcome and should be submitted on or before January 27, 2000 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC acquires assets as the result of being appointed conservator or receiver of failing financial institutions and generally sells these assets through competitive sales. The FDIC is statutorily required to promulgate a regulation prohibiting the sale of assets held by insured depository institutions that have been placed under the conservatorship or receivership of the FDIC to certain individuals or entities who profited or engaged in wrongdoing at the expense of those failed institutions, or seriously mismanaged those failed institutions. The statute specifies classes of persons prohibited

from purchasing assets of failed institutions from the FDIC. (12 U.S.C. 1821(p)). The statutory requirement will be implemented by a recently proposed regulation, "Restrictions on the Purchase of Assets from the FDIC," (published at 64 FR 51084, Sept. 21, 1999) and a Purchaser Eligibility Certification that the FDIC will use to determine a person's eligibility to purchase assets.

Dated: December 22, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–33618 Filed 12–27–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, and NB Holdings Corporation, both of Charlotte, North Carolina; to acquire 100 percent of the voting shares of Bank of America Oregon, National Association, Portland, Oregon (in organization).

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. NBG Bancorp, Inc., Athens, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Georgia, Athens, Georgia (in organization).

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Zumbrota Agency, Inc., Zumbrota, Minnesota, and its wholly-owned subsidiary, Pine Island Bancshares, Inc., Zumbrota, Minnesota; to acquire 100 percent of the voting shares of Tri County Investment Company, Inc., Pine Island, Minnesota, and thereby indirectly acquire Security State Bank of Pine Island, Pine Island, Minnesota. In addition, Applicants also have applied to become bank holding companies.

In connection with this application, Applicants also have applied to acquire the insurance agency activity of Tri County Investment Company, Inc., Pine Island, Minnesota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33543 Filed 12–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE BOARD

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, January 3, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33752 Filed 12–23–99; 11:50 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Populations.

Times and Dates: 10 a.m.–5:30 p.m., January 24, 2000; 10 a.m.–4 p.m., January 25, 2000

Place: Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Populations will meet on January 24–25, 2000 to discuss and assess the feasibility of recording, evaluating and analyzing measures of functional status on health records, such as enrollment in health plans, records of medical encounters, and standardized attachments to such records. Several panels of experts will explore issues related to the collection of information on functional status in administrative records and data collection systems, and will discuss data collection and measurement efforts necessary to address the issue effectively. This is the first of several public meetings being planned by the Subcommittee to discuss this topic.

All topics are tentative and subject to change. Prior to the meeting, please check the NCVHS web site, where a detailed agenda will be posted when available.

Contact Person for More Information: Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by

visiting the NCVHS website (http://ncvhs.hhs.gov)) where an agenda for the meeting will be posted when available.

Additional information may be obtained by calling Carolyn Rimes, Lead Staff Person for the NCVHS Subcommittee on Populations, Office of Research and Demonstrations, Health Care Financing Administration, MS–C–13–01, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850, telephone (410) 786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: December 21, 1999.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 99–33621 Filed 12–27–99; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and date: 8:30 a.m.–4 p.m., January 20, 2000.

Place: The Wyndham Garden Hotel, 125 10th Street, Atlanta, Georgia 30309.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: The committee will anticipate, identify, and propose solutions to strategic and broad issues facing CDC.

Matters to be Discussed: Agenda items will include updates from Dr. Jeffrey P. Koplan, M.D., M.P.H., Director, CDC, regarding the Top 10 Public Health Challenges for the Next Century.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 17, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–33560 Filed 12–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; *Revised* Promulgation for Fiscal Year 2000.

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 2000.

SUMMARY: The initial **Federal Register** notice was published on November 10, 1998 based on the authorization level of $2.380 billion. The grant awards for Fiscal Year 2000 will be issued based upon the appropriation amount of $1.775 billion. Of this amount, $425,000,000 shall not be available for obligation until September 29, 2000. These figures are available on the ACF homepage on the internet: http://www.acf.dhhs.gov/programs/ocs/ssbg.

Further notification of revised allotments for SSBG will no longer be published in the **Federal Register**, but will be available on the internet address given above.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, (202) 401–2333.

EFFECTIVE DATE: The allotments are effective October 1, 1999.

Dated: December 20, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–33533 Filed 12–27–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2000

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2000. The Prescription Drug User Fee Act of 1992 (the PDUFA), as amended by the Food and Drug Administration Modernization Act of 1997 (the FDAMA), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Fees for applications for FY 2000 were set by the FDAMA, subject to adjustment for inflation. Total application fee revenues fluctuate with the number of fee-paying applications FDA receives. Fees for establishments and products are calculated so that total revenues from each category will approximate FDA's estimate of the revenues to be derived from applications.

FOR FURTHER INFORMATION CONTACT: Michael E. Roosevelt, Office of Financial Management (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5088.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Public Law 102–571), as amended by the FDAMA (Public Law 105–115), establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biologic products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 1998 through 2002, under the amendments enacted in the FDAMA, the application fee rates are set in the statute, but are to be adjusted annually for cumulative inflation since FY 1997. Total application fee revenues are structured to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases.

Each year from FY 1998 through 2002, FDA is required to set establishment fees and product fees so that the estimated total fee revenue from each of these two categories will equal the total revenue FDA expects to collect from application fees that year. This procedure continues the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fee: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2000 for application, establishment, and

product fees. These fees are retroactive to October 1, 1999, and will remain in effect through September 30, 2000. For fees already paid on applications and supplements submitted on or after October 1, 1999, FDA will bill applicants for the difference between fees paid and fees due under the new fee schedule. For applications and supplements submitted after December 31, 1999, the new fee schedule must be used. Invoices for establishment and product fees for FY 2000 will be issued in December 1999, using the new fee schedules.

II. Inflation and Workload Adjustment Process

The PDUFA, as amended by the FDAMA, provides that fee rates for each FY shall be adjusted by notice in the **Federal Register**. The adjustment must reflect the greater of: (1) The total percentage change that occurred during the preceding FY in the Consumer Price Index (CPI) (all items; U.S. city average), or (2) the total percentage pay change for that FY for Federal employees stationed in the Washington, DC metropolitan area. The FDAMA provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)(1)).

The FDAMA also structures the total application fee revenue to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases. This provision allows revenues to rise or fall as this portion of FDA's workload rises or falls. To implement this provision, each year FDA will estimate the number of fee-paying applications it anticipates receiving. The number of applications estimated will then be multiplied by the inflation-adjusted statutory application fee. This calculation will produce the FDA estimate of total application fee revenues to be received.

The PDUFA also provides that FDA shall adjust the rates for establishment and product fees so that the total revenues from each of these categories is projected to equal the revenues FDA expects to collect from application fees that year. The FDAMA provides that the new fee rates based on these calculations be adjusted within 60 days after the end of each FY (21 U.S.C. 379h(c)(2)).

III. Inflation Adjustment and Estimate of Total Application Fee Revenue

The FDAMA provides that the application fee rates set out in the statute be adjusted each year for cumulative inflation since 1997. It also provides for total application fee revenues to increase or decrease based on increases or decreases in the number of fee-paying applications submitted.

A. Inflation Adjustment to Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data for safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A) and 379h(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fees described above are set out in the FDAMA for FY 2000 ($256,338 for applications requiring clinical data, and $128,169 for applications not requiring clinical data or supplements requiring clinical data) (21 U.S.C. 379h(b)(1)), but must be adjusted for cumulative inflation since 1997. That adjustment each year is to be the greater of: (1) The total percentage change that occurred during the preceding FY in the CPI, or (2) the total percentage pay change for that FY for Federal employees, as adjusted for any locality-based payment applicable to employees stationed in the District of Columbia. The FDAMA provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)).

The adjustment for FY 1998 was 2.45 percent (62 FR 64849, December 9, 1997). This was the greater of the CPI increase for FY 1997 (2.15 percent) or the increase in applicable Federal salaries (2.45 percent).

The adjustment for FY 1999 was 3.68 percent (63 FR 70777 at 70778, December 22, 1998). This was the greater of the CPI increase for FY 1998 (1.49 percent) or the increase in applicable Federal salaries (3.68 percent).

The adjustment for FY 2000 is 4.94 percent. This is the greater of the CPI increase for FY 1999 (2.62 percent) or the increase in applicable Federal salaries (4.94 percent).

Compounding these amounts (1.0245 times 1.0368 times 1.0494) yields a total compounded inflation increase of 11.47 percent for FY 2000. The adjusted application fee rates are computed by adding one to the decimal equivalent of this percent (0.1147) and multiplying this amount (1.1147) by the FY 2000 statutory application fee rates stated above ($256,338 for applications requiring clinical data, and $128,169 for applications not requiring clinical data or supplements requiring clinical data). For FY 2000 the adjusted application fee rates are $285,740 for applications requiring clinical data, and $142,870 for applications not requiring clinical data or supplements requiring clinical data. These amounts must be submitted with all applications during FY 2000.

B. Estimate of Total Application Fee Revenue

Total application fee revenues for FY 2000 will be estimated by multiplying the number of fee-paying applications FDA receives in FY 2000 (from October 1, 1999, through September 30, 2000) by the fee rates calculated in the preceding paragraph. Before fees can be set for establishment and product fee categories, each of which are projected to be equal to total revenues FDA collects from application fees, FDA must first estimate its total FY 2000 application fee revenues. To do this FDA first determines its FY 1999 fee-paying full application equivalents, and uses that number in a linear regression analysis to predict the number of fee-paying full application equivalents expected in FY 2000. This is the same technique applied last year.

In FY 1999, FDA received and filed 119 human drug applications that required clinical data for approval, 17 that did not require clinical data for approval, and 112 supplements to human drug applications that required clinical data for approval. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee, the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by two. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications that may be subject to full application fees.

In addition, as of September 30, 1999, FDA refused to file, or firms withdrew before filing, six applications that required clinical data, three applications that did not require clinical data, and four supplements requiring clinical data. The full applications refused for filing or withdrawn before filing pay one-fourth the full application fee and are counted as one-fourth of an application; the applications that do not require clinical data and the supplements refused for filing or withdrawn before filing pay one-eighth

of the full application fee and are each counted as one-eighth of an application.

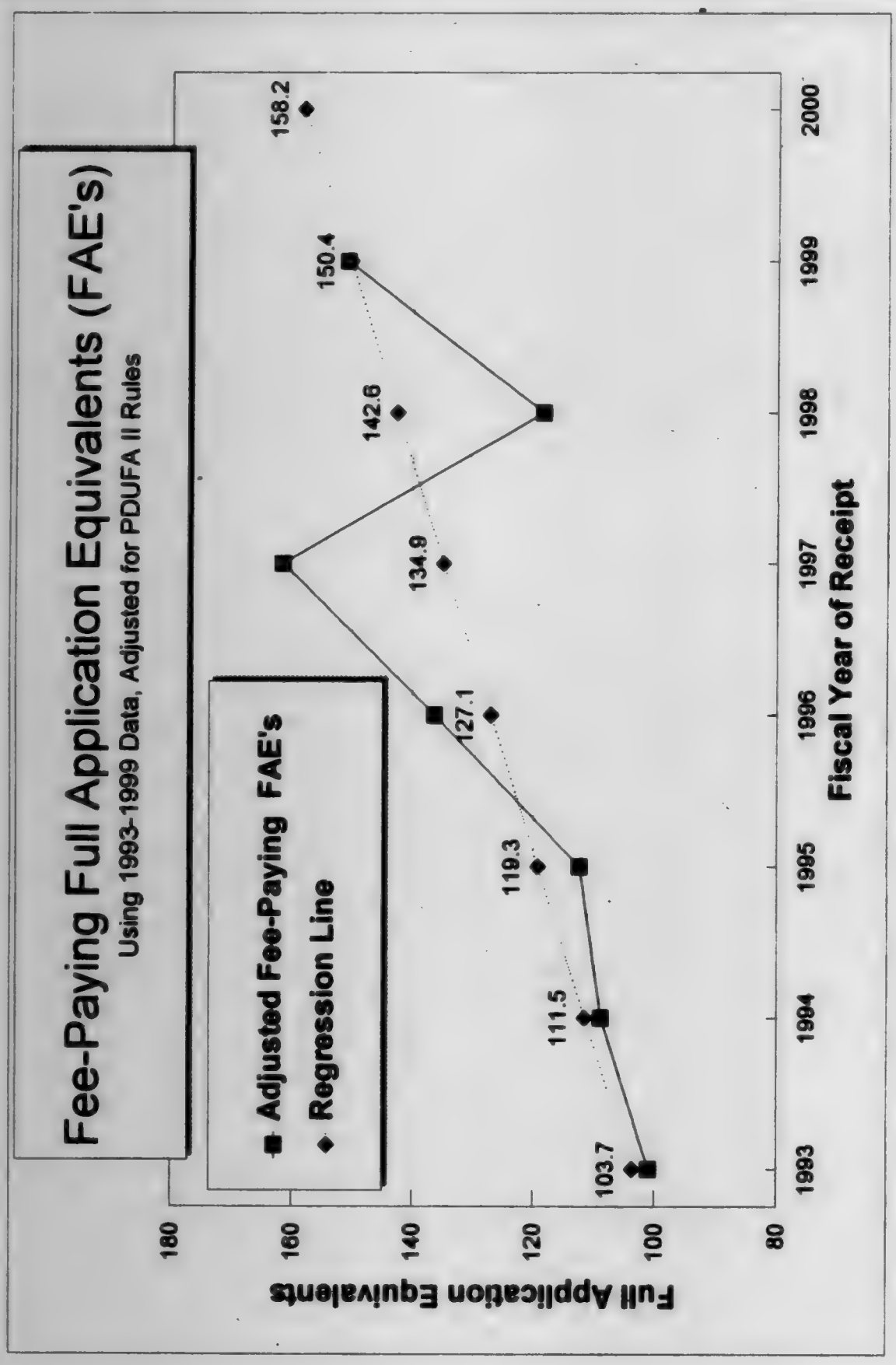
Using this methodology, the number of full application equivalents that were submitted for review in FY 1999 was 186, before any exemptions, waivers or reductions. Under the FDAMA, FDA waives fees for certain small businesses submitting their first application and certain orphan products, and certain supplements for pediatric indications are exempted from application fees. In addition, the FDAMA provides a number of other grounds for waivers (public health necessity, preventing significant barriers to innovation, and fees exceed the cost). In FY 1999, waivers or exemptions were applied to 35 full application equivalents (thirteen for orphan products, seven for small businesses, five for pediatric supplements, and ten miscellaneous exemptions/waivers). Therefore, for FY 1999, FDA estimates that it received the equivalent of 151 (186 minus 35) full application equivalents that will pay fees, after allowing for exemptions, waivers and reductions.

A linear regression line based on the adjusted number of fee-paying full application equivalent submissions since 1993, and including our FY 1999 total of 151 fee-paying full application equivalents, projects the receipt of 158 fee-paying full application equivalent submissions in FY 2000, as reflected in Table 1 of this document and the graph below.

Table 1.

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000
Adjusted fee-paying FAE's	101.0	108.9	112.5	136.3	161.5	118.5	150.9	
Regression line	103.7	111.5	119.3	127.1	134.9	142.6	150.4	158.2

BILLING CODE 4160-01-F


Fee-Paying Full Application Equivalents (FAE's)
Using 1993-1999 Data, Adjusted for PDUFA II Rules
Adjusted Fee-Paying FAE's
Regression Line
158.2
150.4
142.6
134.9
127.1
119.3
111.5
103.7
Full Application Equivalents
180
160
140
120
100
80
1993
1994
1995
1996
1997
1998
1999
2000
Fiscal Year of Receipt

The total FY 2000 application fee revenue is estimated by multiplying the adjusted application fee rate ($285,740) by the equivalent number of applications projected to qualify for fees in FY 2000 (158), for a total estimated application fee revenue in FY 2000 of $45,146,920. This is the amount of revenue that FDA is also expected to derive both from establishment fees and from product fees.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 1999, the establishment fee was based on an estimate of 318 establishments subject to fees. For FY 1999, 343 establishments qualified for and were billed for establishment fees, before all decisions on requests for waivers or reductions were made. FDA estimates that a total of 25 establishment fee waivers will be granted in FY1999, for a net of 318 fee-paying establishments, and will use this number again for its FY 2000 estimate of establishments paying fees, after taking waivers into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($45,146,920), by the estimated 318 establishments, for an establishment fee rate for FY 2000 of $141,971 (rounded to the nearest dollar).

B. Product Fees

At the beginning of FY 1999, the product fee was based on an estimate that 2,224 products would be subject to product fees. By the end of FY 1999, 2,317 products qualified and were billed for product fees before all decisions on requests for waivers or reductions were made. Assuming that there will be about 55 waivers granted, FDA estimates that 2,262 products will qualify for product fees in FY 1999, after allowing for waivers and exemptions, and will use this number for its FY 2000 estimate. Accordingly, the FY 2000 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($45,146,920) by the estimated 2,262 products for a product fee rate of $19,959 (rounded to the nearest dollar).

V. Adjusted Fee Schedules for FY 2000

The fee rates for FY 2000 are set out in Table 2 of this document:

Table 2.

Fee Category	Fee Rates for FY 2000
Applications:	
Requiring clinical data	$285,740
Not requiring clinical data	$142,870
Supplements requiring clinical data	$142,870
Establishments	$141,971
Products	$19,959

VI. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA that is submitted after December 31, 1999, must be accompanied by the appropriate application fee established in the new fee schedule. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the U.S. Food and Drug Administration. Please include the user fee ID number on your check. Your check can be mailed to: Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Mellon Bank, Three Mellon Bank Center, 27th Floor (FDA 360909), Pittsburgh, PA 15259–0001. (Note: This Mellon Bank Address is for courier delivery only.) Please make sure that the FDA P.O. Box number (PO Box 360909) is on the enclosed check.

FDA will bill applicants who submitted application fees from October 1 to December 31, 1999, for the difference between the amount they submitted and the amount specified in the Adjusted Fee Schedule for FY 2000.

B. Establishment and Product Fees

By December 31, 1999, FDA will issue invoices for establishment and product fees for FY 2000 under the new Adjusted Fee Schedule. Payment will be due by January 31, 2000. FDA will issue invoices in October 2000 for any products and establishments subject to fees for FY 2000 that qualify for fees after the December 1999 billing.

Dated: December 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33685 Filed 12–22–99; 5:00 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Registry of Effective Prevention Programs

New—Section 515(d) of the Public Health Service Act (42 USC 290bb–21) requires that the Director of SAMHSA's Center for Substance Abuse Prevention (CSAP)establish a national data base providing information on programs for the prevention of substance abuse and specifies that the data base shall contain information appropriate for use by public entities and information

appropriate for use by nonprofit private entities. Since 1994, CSAP has met this responsibility through the High Risk Populations Databank on programs for the prevention of substance abuse funded by direct CSAP grants. Because relatively few direct grants of this type have been issued in recent years, CSAP must expand its information collection to include voluntary submission of descriptions of effective substance abuse prevention conducted by state and local governments, nonprofit entities, and the private sector.

CSAP has developed a template to enable practitioners who have evidence that their program reduces risk factors or increases protective factors pertaining to substance abuse to nominate their own standardized program for the Registry. Each program that is nominated should have been standardized (including curriculum manuals, implementation manuals, videotapes, etc.), well implemented, and findings should derive from well designed research efforts. Program models nominated will be reviewed and rated by experts annually to be recommended to the field.

CSAP will promote selected models by providing funds to support development of program materials for dissemination, by connecting program developers with organizations able to help in the dissemination efforts, and by promoting model programs nationally through CSAP's State Incentive Grant recipients and regional Centers for Applied Prevention Technology. Annual burden estimates for the Registry are shown in the table below.

Number of respondents	Number of responses/respondent	Hours/response	Total burden hours
250	1	1.25	313

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 20, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–33562 Filed 12–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Statement of Findings; San Carlos Apache Tribe Water Rights Settlement Act of 1992

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Statement of findings of actions completed to implement the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (Settlement Act), Pub. L. 102–575, 106 Stat. 4740, as amended.

SUMMARY: The Secretary of the Interior is causing this notice to be published as required in section 3711 of the Settlement Act, in order to implement the Settlement Act.

DATES: The Settlement Act requires that this notice must be published in the **Federal Register** no later than December 31, 1999.

ADDRESSES: Address all comments concerning this notice to Ms. Deborah Saint, San Carlos Apache Tribe Water Rights Settlement Act Implementation Team Chairperson, Bureau of Reclamation, Native American Affairs Office, 400 North 5th Street, Suite 1470, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Saint, 602–379–3199.

SUPPLEMENTARY INFORMATION: The purpose of the Settlement Act is:

(1) To approve, ratify, and confirm an agreement entered into by the San Carlos Apache Tribe (Tribe) and its neighboring non-Indian communities (Settlement Agreement) to finally resolve the Tribe's water rights claims;

(2) To authorize and direct the Secretary of the Interior to execute and perform such Settlement Agreement; and

(3) To authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Settlement Agreement and the Settlement Act.

In order for the terms and conditions of the Settlement Act and the Settlement Agreement to be effective, the Secretary of the Interior is required to make a statement of findings that certain conditions, as specified in the Settlement Act, have been met.

Statement of Findings

As required by section 3711 of the Settlement Act, I find as follows:

1. The Secretary of the Interior has fulfilled the requirements of sections 3704 and 3706 of the Settlement Act.

2. The Roosevelt Water Conservation District subcontract for agricultural water service from the Central Arizona Project has been revised and executed as provided in section 3705(b) of the Settlement Act.

3. The funds authorized by section 3707(c) of the Settlement Act have been appropriated and deposited into the San Carlos Apache Tribe Development Trust Fund.

4. The contract between the United States Economic Development Administration and the Tribe, referred to in section 3707(a)(2) of the Settlement Act, has been amended.

5. The State of Arizona has appropriated and deposited into the San Carlos Apache Tribe Development Trust Fund $3,000,000, as required by the Settlement Agreement.

6. The stipulations attached to the Settlement Agreement as Exhibits "D" and "E" have been approved.

7. The Settlement Agreement has been modified, to the extent it was in conflict with the Settlement Act, and has been executed by the Secretary of the Interior.

Dated: December 22, 1999.

David J. Hayes,

Acting Deputy Secretary of the Interior.

[FR Doc. 99–33589 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1610–DG]

Planning Analysis, Arkansas

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of public meeting/request for public input.

SUMMARY: The Jackson Field Office, Eastern States, requests additional public input before deciding on future management of 13 tracts of public land in Arkansas. A Proposed Planning Analysis for BLM-managed tracts of land in Arkansas, which was released November 19, 1999, in withdrawn. After additional public input is considered, a new Proposed Planning Analysis will be released.

DATES: A public meeting to receive public input will be held 6:30 to 9:30 p.m., January 27, 2000 at the Civic Center Gymnasium in Marshall, Arkansas, which is located in Searcy County. The Jackson Field Office also welcome written input, which will be accepted until February 29, 2000.

ADDRESSES: Written input may be sent to: Bruce Dawson, Field Manager, Jackson Field Office, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: Duane Winters or Judy Pace, BLM, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206, (601) 977–5400.

SUPPLEMENTARY INFORMATION: There are 12 tracts of public land in Arkansas located in seven different counties: Baxter, Cleburne, Crawford, Fulton, Pike, Searcy, and Van Buren. The total acreage of the twelve tracts is 535 acres with the largest tract being 160 acres and the smallest 5 acres. The request for additional public input is because of increased public interest after release of the Proposed Planning Analysis on November 29, 1999, which proposed to make the tracts available for disposal through sale, exchange or Recreation and Public Purposes Act conveyance.

Duane Winters,

Acting Field Manager, Jackson.

[FR Doc. 99–33563 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1430–ET; CACA 38618]

Public Land Order No. 7423; Withdrawal of Public Lands Within the Corridor of the South Fork of the American River; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 99–32656, beginning on page 70277 in the issue of Thursday, December 16, 1999, make the following correction:

On page 70277 in the third column, the Effective Date was shown as December 16, 1999. That date should be changed to December 8, 1999, which is the date that Public Land Order No. 7423 was signed by Assistant Secretary of the Interior Kevin Gover. This change is consistent with the decision in the case of George W. Bolieu, 55 I. D. 85 (1934).

Dated: December 21, 1999.

Nancy J. Alex,

Acting Chief, Branch of Lands (CA–931)

[FR Doc. 99–33617 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–950–1420–00–P)

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10 a.m., December 15, 1999.

The plat representing the dependent resurvey of a portion of Tract 43 and a portion of the subdivisional lines, T. 12 N., R. 110 W., Sixth Principal Meridian, Wyoming, Group No. 622, was accepted December 13, 1999.

The plat representing the dependent resurvey of a portion of the Eigth Guide Meridian West, through Township 47 North, between Ranges 64 and 65 West, portions of the south and west boundaries, the north boundary and a portion of the subdivisional lines, T. 47 N., R. 65 W., Sixth Principal Meridian, Wyoming, Group No. 638, was accepted December 13, 1999.

The plat representing the dependent resurvey of portions of the north boundary and the subdivisional lines, and the subdivision of Section 5, and the metes and bounds survey of Lot 1, Section 5, T. 38 N., R. 115 W., Sixth Principal Meridian, Wyoming, Group No. 640, was accepted December 13, 1999.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 54 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group No. 647, was accepted December 13, 1999.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subduivision of Section 5, and the metes and bounds survey of Parcel A, T. 47 N., R. 87 W., Sixth Principal Meridian, Wyoming, Group No. 651, was accepted December 13, 1999.

Dated: December 15, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–33544 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Urban Park and Recreation Recovery Program

AGENCY: National Park Service, Interior.

ACTION: Notice of FY 2000 Grant Round—UPARR Rehabilitation Grants

SUMMARY: This notice announces the availability of grant funds under the Rehabilitation phase of the Urban Park and Recreation Recovery (UPARR) Program and provides information on the application process including eligible recipients and deadlines for submission of proposals.

DATES: NPS will accept preapplications on or before March 31, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for NPS addresses.

FOR FURTHER INFORMATION CONTACT: Tom Ross, Assistant Director, Recreation and Conservation, National Park Service, Department of the Interior, 1849 "C" Street, N.W., Washington, D.C. 20240; (202) 565–1200.

SUPPLEMENTARY INFORMATION: For Fiscal Year 2000, Congress has appropriated $2,000,000 for the funding of projects under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95–625). By law, grants made for projects in any one State are not to exceed 15 percent of the funds appropriated. As a result NPS will consider proposals from eligible local jurisdictions for funding projects with a dollar limit equal to or less than the State limitation of $300,000 (Federal share of total project cost) under the Rehabilitation phase of the program. Preapplications must be received by the appropriate NPS field office by no later than March 31, 2000.

Rehabilitation grants will be targeted to rehabilitate existing neighborhood recreation areas and facilities which have deteriorated to the point where health and safety are endangered or the community's range of quality recreation service is impaired. Proposals must be designed to provide recreation services within a specified area identified by the applicant. Proposals may identify improvements at multiple sites or facilities, each of which must be individually addressed. Grants may be used to remodel, rebuild, or develop existing outdoor or indoor recreation areas and facilities.

Eligible Jurisdictions: Eligible urban jurisdictions as listed in 36 CFR part 72, appendix B and which have an approved Recovery Action Program (RAP) on file with and approved by NPS within the last five years will be eligible to compete for Rehabilitation grant funds. If a jurisdiction's RAP plan expired since the last Congressional appropriation for the UPARR program (FY 1995), the highest elected official of that jurisdiction may submit either (1) A new or updated RAP for NPS review

and approval, or (2) A letter of recertification. A letter of recertification (for a RAP which has expired since FY 1995) must state that no significant changes have occurred in its assessment and action plan, and that the RAP remains current as a guide to community action and decision-making. NPS may accept a recertification for a period up to two years after which a new RAP is required. Additional urban jurisdictions meeting the criteria described in 36 CFR part 72, appendix A, and having been approved as discretionary applicants by NPS, may also compete. All projects must be in accord with the priorities outlined in the approved RAPs.

Grant Implementation and Timing: Grantees must comply with all applicable Federal laws and regulations for the UPARR program, which includes completion of a final grant agreement within 120 days of a grant offer (based on NPS evaluation of preapplications submitted for consideration).

Preapplication Requirements: Local Chief Executives applying for UPARR grants will be required to certify, in the preapplication, that the grantee will comply with all requirements of the UPARR program. Applicants must certify that they have adequate control and tenure over properties to be assisted through UPARR and must identify in their applications the type of control they have over those properties. Additional requirements are outlined in the "UPARR Preapplication Handbook" available from the NPS field offices (or on the internet at http://www.ncrc.nps.gov/uparr).

Matching Requirements: UPARR Rehabilitation grants are awarded on a 70/30 (Federal/local) matching basis. As an incentive for state involvement in the program, the Federal Government will match, dollar for dollar, state contributions to the local share of the total project cost, up to 15 percent of the approved grant. The Federal share is limited to no more than 85 percent of the approved grant cost and the overall dollar limitations established above for Rehabilitation grants.

Pass-Through Funding: At the discretion of the applicant jurisdiction, grants may be transferred, in whole or in part, to independent general or special purpose local governments, private nonprofit agencies or community groups, and county or regional park authorities that provide recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction. In such situations, the applicant jurisdiction will bear full legal responsibility and liability for passed-through funds.

Post-Completion Requirements: In accordance with Section 1010 of the UPARR Act of 1978, assisted properties may not be converted to other than public recreation use without the prior approval of NPS and the replacement of the converted site or facility with one of reasonably equivalent usefulness and location.

FOR FURTHER INFORMATION: Interested jurisdictions should consult their NPS field office for further information including grant round schedule and for technical assistance in applying for funding. The NPS field offices are listed below:

Northeast (CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV)

Stewardship and Partnerships Team, Philadelphia Support Office, National Park Service, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, Tele: (215) 597–9195

Southeast (AL, FL, GA, KY, LA, MS, NC, PR, SC, TN, VI)

Recreation Programs, Southeast Regional Office, National Park Service, Atlanta Federal Center, 1924 Building, 100 Alabama Street, S.W., Atlanta, GA 30303, Tele: (404) 562–3175

Midwest (AR, AZ, CO, IA, IL, IN, KS, MI, MN, MO, MT, ND, NE, NM, OH, OK, SD, TX, UT, WI, WY)

Partnerships—Grants, Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102–2571, Tele: (402) 221–3358

Pacific West (AS, CA, CM, GU, HI, NV)

Planning and Partnerships Team, Pacific Great Basin Support Office, National Park Service, Suite 600, 600 Harrison Street, San Francisco, CA 94107–1372, Tele: (415) 427–1445,

(AK, ID, OR, WA)

Partnerships Programs, Columbia Cascades Support Office, National Park Service, 909 First Avenue, Seattle, WA 98104–1060, Tele: (206) 220–4126

Dated: December 21, 1999.

D. Thomas Ross,

Assistant Director, Recreation and Conservation.

[FR Doc. 99–33559 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2000 is 6.625 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1999, through and including September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law and Revenues Management Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: 303–445–2901.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 6.625 percent for fiscal year 2000.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 5.7552 percent. Rounding this average yield to the nearest one-eighth percent is 5.75 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 1999 to 2000. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.625 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 13, 1999.

Wayne O. Deason,

Assistant Director, Office of Policy.

[FR Doc. 99–33609 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336–8565.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Extension of currently approved form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 6 hours per project.

Number of Responses: 160 per year.

Federal Cost: $3,200 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: December 21, 1999.

Ralph A. Kaiser,

Senior Counsel for Administration, Department of Legal Affairs.

[FR Doc. 99–33610 Filed 12–27–99; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; COPS crime analysis units survey.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date listed at the top of this page in the **Federal Register**. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1110 Vermont Ave, NW, Washington, DC 20530–0001; attn: Karen Beckman. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, attn: Karen Beckman. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1220, 1331 G Street, NW, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Crime Analysis Units Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 034/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Representatives from police agencies with over 100 sworn personnel will be asked to respond (approximately 800). The COPS Crime Analysis Units Survey will collect basic information about the nature, extent, and quality of recipient's crime analysis capabilities.

The COPS office will use the information collected to assess whether crime analysis units provide analytic support systems that efficiently and accurately process data that define problems and help promote solutions. Data from the surveys will be used to produce a final technical report assessing the nature of crime analysis units, a summary of the findings and an easy-to-read guidebook to aid agencies in the development and enhancement of crime analysis units.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by mail to approximately 800 law enforcement agencies with sworn forces over 100. Administrative preparation and survey completion is estimated to be 0.75 hours per respondent (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 600 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy

Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, Washington Center, 1331 G Street, NW, Washington, DC 20530.

Dated: December 21, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–33549 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 4, 1999, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for product research and development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33648 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 6, 1999, and published in the **Federal Register** on August 20, 1999, (64 FR 45564), Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Guilford Pharmaceuticals to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33645 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–10]

Wesley G. Harline, M.D.; Continuation of Registration With Restrictions

On October 27, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Wesley Harline, M.D. (Respondent) of Ogden, Utah, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH1650248 and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that his continued registration would be inconsistent with the public interest.

By letter dated December 14, 1995, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Salt Lake City, Utah on April 1 through 3 and May 6 through 8, 1997, and by telephone in Salt Lake City and Arlington, Virginia, on August 18 through 21, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing both parties submitted proposed findings of fact, conclusions of law and argument.

In this brief, Respondent's counsel included findings based upon evidence that was not introduced at the hearing. On January 5, 1998, the Government filed a Motion to Strike Post Record Evidence from Respondent's Proposed Findings of Fact, Conclusions of Law and Argument. On January 21, 1998, Respondent filed his Opposition to Government's Motion to Strike Post Record Evidence, and in the alternative, Motion to Reopen the Record.

On April 2, 1999, Judge Bittner issued her Opinion and Recommended Ruling Findings of Fact, Conclusions of Law and Decision (Opinion), granting the Government's motion to strike the additional evidence, denying Respondent's motion to reopen the record, and recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied. On June 14, 1999, Respondent filed exceptions to Judge Bittner's Opinion and on August 2, 1999, the Government filed its response to Respondent's exceptions. Thereafter, on August 10, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

While this matter was pending with the Deputy Administrator, Respondent submitted a letter dated November 4, 1999, responding to the Government's response to his exceptions and formally moving that the record be reopened to allow additional evidence to be considered. As will be discussed more fully below, the Acting Deputy Administrator denies Respondent's motion to reopen the record and has not considered Respondent's letter dated November 4, 1999, in rendering his decision in this matter.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as

specifically noted below, the findings of fact set forth in Judge Bittner's Opinion, but does not adopt Judge Bittner's recommended conclusions of law and decision.

The Acting Deputy Administrator finds that Respondents graduated from medical school in 1945. In or about 1953, Respondent joined a general surgery practice in Ogden, Utah. He has been a licensed physician in Utah since 1953 and has held state and Federal authorizations to handle controlled substances since approximately the time he obtained his medical license. According to Respondent, sometime in the 1980s, he virtually terminated his general surgery practice to concentrate on cosmetic surgery. Respondent testified that he considered weight control to be a part of cosmetic surgery, and as of 1997, he saw 15 to 20 weight control patients every weekday and a few weight control patients on Saturdays.

Primarily at issue in this proceeding is whether Respondent properly prescribed controlled substances to his weight control patients. Therefore, provisions of Utah law relating to this issue were placed into evidence. As of 1987 [1], the Utah Administrative Code (Administrative Code) authorized the Utah Division of Occupational and Professional Licensing (DOPL) to revoke a State license to handle controlled substances if the holder "[p]rescribes or administers any controlled substance for weight control for more than 30 days in any 12 twelve-month period." Utah Admin. Code R153–37–8 (1987–1988). The Administrative Code also required that "each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner." Utah Admin. Code R153–37–10.D (1987–1988).

The 1989 Administrative Code generally provided that:

> Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substances is utilized and information upon which the diagnosis is based.

Utah Admin. Code R153–37–.A (1989). Further, Utah Admin. Code R153–37–10.H (1989), provided that Schedule II controlled substances could not be prescribed, dispensed or administered for weight reduction or control. In addition, section 10.J essentially provided that Schedule III and IV controlled substances could only be used for weight reduction in the treatment of obesity as an adjunct, in accordance with Food and Drug Administration approved labeling for the product, and in a regimen of caloric restriction provided that among other things the prescribing practitioner determines that the patient has made good faith efforts to lose weight in a structured treatment program and the program was ineffective; obtains a thorough history; performs a thorough physical examination; and rules out any contraindications to the use of controlled substances. This section precluded the prescribing of Schedule III and IV controlled substances for weight reduction for a period longer than 12 weeks in any one year period. Also pursuant to this section, a practitioner was required to discontinue prescribing controlled substances if the patient failed to lose weight while under treatment for a period of 28 days as determined by weighing of the patient at least every fourteenth day.

In 1991, the provision was reworded slightly but essentially was substantively unchanged, and remained so until January 29, 1996. As of that date, Utah Admin. Code R156–37–604 (1996) provided that Schedule II and III controlled substances shall not be prescribed, dispensed, or administered for purposes of weight reduction or control. Further, Schedule IV controlled substances can only be used in the treatment of excessive weight when certain conditions are met. However, this provision no longer imposed the 12 week limitation on the use of Schedule IV controlled substances.

On June 5, 1992, the DOPL issued an emergency under restricting Respondent's authority to perform certain types of surgery and ordering him to cease providing overnight patient care at his facility. On September 29, 1993, a Third Amended Petition was filed in that proceeding alleging, among other things, that Respondent prescribed a Schedule III anorectic controlled substance beyond the period of time permitted by Utah regulation to at least 13 patients and that the prescriptions did not bear the full names and addresses of the patients and the dates issued as required by law.

On December 10, 1996, Respondent executed a Stipulation and Order in which he denied all of the allegations of the Third Amended Petition but agreed to various terms and conditions. Specifically, the Stipulation and Order suspended Respondent's medical license for three months, but stayed enforcement of the suspension and placed his license on a five-year probation subject to various conditions including that he provide adequate means to permit patients to exercise informed consent with respect to medical and surgical procedures, anesthesia, and medications to be administered or dispensed; meet with the Physicians' Licensing Board (Board) quarterly for five years; allow a qualified physician to review records of 1.4 percent of his patients; and maintain prescription records in accordance with State and Federal law and make his prescription records available for inspection by the board and the DOPL upon request.

In the latter half of 1995, DEA conducted a pharmacy survey to determine whether Respondent was complying the various regulatory requirements. The survey revealed that Respondent had written prescriptions for anorectic controlled substances for more than 12 weeks in a year in violation of state law. The survey further revealed seven prescriptions that Respondent issued between 1993 and 1995 and 202 prescriptions that he issued between 1990 and 1992 that did not bear the patient's full name and/or date of issuance.

Respondent testified that he had written incomplete prescriptions, but that in discussions with other physicians he had learned that such prescriptions "are a quite frequent occurrence." According to Respondent, he was told by a DOPL investigator that no more than 50% of prescriptions for Schedule II, IV and V controlled substances are properly filled out.

On May 11, 1995, DOPL subpoenaed records for 43 of Respondents's patients. At issue in this proceeding is whether Respondent properly prescribed controlled substances to these patients for weight control. As a result, there was evidence presented by both the Government and Respondent regarding when an individual is considered obese or overweight, when the use of controlled substances is appropriate for weight control, and when such treatment is deemed effective. The Government offered the testimony of a physician who mainly treats chronic pain patients, but who was qualified as an expert in the legitimate use of anorectic controlled substances. Respondent testified on his own behalf and also offered the testimony of a physician whose practice prior to 1991 consisted of some weight management patients and since 1991 was solely weight management patients. Both parties offered extensive documentary evidence.

[1] The Government did not provide any evidence of the statutory provisions relating to weight control in existence prior to 1987.

Evidence was presented that different methods are used to determine when a patient is considered obese or overweight. These include comparing the patient's height and weight to charts published by insurance companies, and calculating the individual's body mass index (BMI), which is the person's weight in kilograms divided by the square of his/her height in meters. The Government's expert as well as most of the documentary evidence regarding this issue cite BMI as the best general guideline. Judge Bittner went into great detail, which will not be repeated here, summarizing the various opinions in evidence regarding at what BMI an individual is considered obese or overweight. After reviewing all of the evidence, the Acting Deputy Administrator finds that there seems to be disagreement within the medical community as to when an individual is considered obese or overweight using BMI as a guideline.

Respondent testified that his standard practice for weight control patients during the time period at issue was to use the life insurance tables, and that he was not aware of BMI as a criterion until the 1990s. He further testified that although BMI is "helpful" in determining whether or not to prescribe weight control medication, he found it cumbersome to use.

Judge Bittner concluded that:

> Based on my review of all the foregoing, and recognizing that there is some disagreement among the experts, I find that for purposes of this proceeding the [National Institute of Health's National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)] definitions are the most appropriate standards. I therefore find that a person aged thirty-five or older is obese if he or she has a BMI of 27 [kilograms/meters squared] or more, that person age thirty-four or younger should be considered obese if he or she has a BMI of 25 [kilograms/meters squared] or more, and that a BMI greater than 30 [kilograms/meters squared] indicates moderate to severe obesity.

The Acting Deputy Administrator disagrees with Judge Bittner that the NIDDK definitions are the most appropriate standards. The Acting Deputy Administrator finds that given the disagreement within the medical community, he is not comfortable finding that one standard is more appropriate than another. In fact the NIDDK standard that Judge Bittner cites also noted that while BMI "is the measurement of choice for many physicians and researchers studying obesity," it

> poses some of the same problems as the height-for-weight tables. Doctors don't agree on the cutoff points for "healthy" versus "unhealthy" BMI ranges. BMI does not provide information on a person's percentage of body fat. However, like the height-for weight table, BMI is a useful general guideline.
>
> Understanding Adult Obesity, NIH Publication No. 94–3680, November 1993 <http://www.niddk.nih.gov/Aobesity/adultobe.htm>.

Therefore, the Acting Deputy Administrator is reluctant to set an objective standard to determine when an individual is considered obese or overweight which might not necessarily be appropriate for each patient. Rather it appears that there are a number of different criteria that may be considered by a physician in determining whether an individual patient is obese or overweight.

Next, Judge Bittner addressed when it is appropriate to use controlled substances in a weight loss program. A consensus of the documentary evidence, as well as the testimony of both Respondent and the Government's expert, indicate that obesity is a chronic condition, and as such, using medication to treat it only for a short time is not effective. However, by virtue of the fact that the drugs at issue are controlled substances, it has already been determined that these drugs have some potential for abuse and that abuse would lead to some level of physical or psychological dependence.

The Physicians' Desk Reference (PDR) advises that these drugs should only be used for a few weeks. However, DEA has previously held that the PDR is not binding on a physician. See Paul W. Saxton, D.O., 64 FR 25, 073 (1999); Margaret E. Sarver, M.D., 61 FR 57, 896 (1996). Even the Government's expert testified that research has found that the Food and Drug Administration recommendations on which the PDR is based may be too restrictive, at least for some Schedule IV substances. The Government's expert further testified that the risks associated with the controlled substances at issue here are low and that the medications are reasonably safe drugs, but that they do have side effects and there is some potential for abuse, although low for Schedule IV substances. The Government's expert testified that the potential benefit of using controlled substances must be balanced against the potential risk.

Judge Bittner went into great detail, which will not be reiterated here, regarding the documentary evidence regarding tolerance and the abuse potential associated with anorectic controlled substances and as to their efficacy. After reviewing all of this evidence, the Acting Deputy Administrator concludes that there have been few if any meaningful studies on the long-term use of anorectic controlled substances in the treatment of weight control.

However, the Acting Deputy Administrator finds it noteworthy that in the prologue to the Anorectic Usage Guidelines adopted by the American Society of Bariatric Physicians on November 10, 1990 (1990 ASBP Prologue) it was reported that the reported incidence of serious side effects of Schedule III and IV anorectics "is low indeed." The 1990 ASBP Prologue also stated, among other things, that short and long term studies have not documented concerns about the abuse potential of anorectics, and that a significant number of bariatric physicians reported that they maintained patients on anorectics for long periods of time without significant ill effects. The 1990 ASBP Guidelines stated that Schedule III and IV anorectics "can often be useful in helping patients to lose weight and to maintain a reduced weight," and that these medications "by definition have a low level of risk and little potential for addiction or psychologic dependence when carefully used by a physician in a properly supervised medical practice."

The Acting Deputy Administrator also finds it significant that in a 1996 article,[2] the National Task Force on the Prevention and Treatment of Obesity (National Task Force) advised that obesity is likely to require continued treatment, and that therefore drug treatments for only weeks or months is generally not warranted. The National Task Force warned that drug treatment might need to continue for years, even for the patient's lifetime, but that there were few published studies in which patients received these drugs for more than a year. Consequently, the Acting Deputy Administrator is reluctant to find that long-term use of anorectic controlled substances is inappropriate.

Judge Bittner next addressed the criteria for an appropriate weight loss program utilizing controlled substances. The Government's expert and the documentary evidence suggest that controlled substances should only be used as part of an overall program including dietary modification, behavioral instruction and exercise. The Government's expert emphasized that the key determinant of a weight loss program's efficacy is whether the weight

[2] National Task Force on the Prevention and Treatment of Obesity, Long-term Pharmacotherapy in the Management of Obesity, 276 JAMA 1907 (1996).

loss improves the patient's health. It was the opinion of the Government's expert that it is not appropriate to use controlled substances for weight loss in order to enhance a patient's self-image or for prophylactic use, for instance if other members of a patient's family are overweight. According to the Government's expert it is not appropriate to prescribe controlled substances for cosmetic purposes.

Respondent testified that in determining whether to prescribe medications for weight control he considered the patient's feelings about him or herself, whether he or she wanted to lose weight, how much the patient wanted to lose, and whether it was feasible for the patient to do so.

The Government's expert testified that a weight loss of at least 10% is considered a good sustained weight loss. Other evidence in the record indicates that some believe that a weight loss as low as 5% is considered good. The Government's expert testified that once a 10% weight loss has been achieved, that does not necessarily mean that controlled substances should be discontinued because the medication helps prevent regaining weight loss. But the expert further testified that there needs to be an ongoing review process to assess the efficacy of the use of controlled substances.

Judge Bittner went into great detail summarizing the documentary evidence relating to the criteria for determining when controlled substances should be utilized in a weight control program. After considering all of the evidence the Acting Deputy Administrator concludes that there appears to be a difference of opinion within the medical community as to when it is appropriate to use controlled substances in a weight management program and when such use is considered effective.

The Acting Deputy Administrator finds it significant that the 1990 ASBP Guidelines specify that the guidelines,

> provide suggestions regarding the use of the anorectics but they are not intended to and indeed cannot, replace the individual judgment of the treating bariatrician which remains and must remain paramount. Thus, the bariatrician must not rely on these guidelines, or on any other guidelines to provide an infallible blueprint for patient treatment. It is not the intent of these guidelines to limit the bariatricians' right to adjust the therapy based on the patient's condition, medical problems or therapeutic response.

The Government's expert testified that this statement should be interpreted in the context of a clear-cut treatment program with established goals.

Judge Bittner concluded that

> [i]n light of my findings above as to when a person should be considered obese, I further find that anorectic controlled substances should not be used in the treatment of a patient unless the individual is thirty-five or more years of age and has a BMI of at least 27 [kilograms/meters squared], or, if younger than thirty-five years of age, has a BMI of 25 [kilograms/meters squared] or more. I especially note that the evidence establishes that prescribing controlled substances to a patient for cosmetic purposes is not within the scope of legitimate medical practice.
>
> * * * Based on my review of the record and for purposes of this proceeding, I find that it is appropriate to continue prescribing anorectic controlled substances to those patients who initially are candidates for such treatment only if (a) the patient achieves a loss of five percent of body weight or a reduction in BMI by one or more units and maintains that loss for at least one year, or (b) if the patient achieves a significant clinical response as defined in the 1990 ASBP Guidelines, *i.e.*, (1) a loss of at least twelve pounds over the initial twelve weeks, and (2) a loss of at least four pounds for each additional four weeks of treatment, providing that if the patient has lost at least ten percent of his or her initial body weight, he or she may be considered to have reached [90% Target Weight] and may appropriately continue to be prescribed anorectics if needed. If the patient gains weight and exceeds that benchmark, the physician should cease prescribing the medications unless the patient again achieves the [90% Target Weight] benchmark in a period of time equaling one week for each pound above the benchmark. (Footnotes omitted).

The Acting Deputy Administrator disagrees with these findings. There appears to be differing opinions within the medical community as to when it is appropriate to use controlled substances in weight management treatment and when such use is considered effective. As a result, the Acting Deputy Administrator is not comfortable setting objective standards which might not necessarily be appropriate for each individual patient.

As to the 42 patients at issue in this proceeding, Judge Bittner went into great detail in her Opinion regarding their history of treatment with Respondent. She discussed the patient charts and patient summaries in evidence, the assessment of the Government's expert of each patient, Respondent's testimony regarding each patient, and the patient interviews conducted by DEA and/or the patients' testimony. Since the Acting Deputy Administrator is adopting Judge Bittner's findings of fact except as specifically noted, there is no need for him to reiterate them. It should be noted that based upon the Acting Deputy Administrator's rejection of certain of Judge Bittner's findings as noted above, the Acting Deputy Administrator does not adopt any of Judge Bittner's findings regarding specific patients that use her objective standard to conclude the treatment with controlled substances was inappropriate or to assess whether or not treatment was successful.

The Acting Deputy Administrator makes the following general findings regarding Respondent's treatment of the patients at issue. These patients were all being treated by Respondent for weight loss or management. There is no evidence that anorectic controlled substances were prescribed for other purposes, or that controlled substances received pursuant to Respondent's prescriptions were sold or in any other way diverted from the patients' use.

On the initial visit, the patient would be weighed, his/her height would be measured and blood pressure taken. A family/medical history would be taken and Respondent would perform a physical examination. Respondent would discuss goals and a target weight with the patient, give the patient a generalized diet, generally discuss exercise, lifestyle changes, and possible side effects of the controlled substances, and ask whether the patient had previously attempted to lose weight and by what methods.

Thereafter, Respondent would see the patient no more than once a month. In fact, several patients testified that they had tried to obtain their prescriptions earlier because they were going on vacation, but their requests were refused. At each visit the patient would be weighed and his/her blood pressure taken. The patient would always be seen by Respondent before any controlled substances would be prescribed. Respondent would admonish the patient if he/she were not losing weight. If the patient was not losing weight, Respondent would very rarely change the diet he had provided the patient because according to Respondent, more likely than not the patient was not following the diet. Respondent would remind the patient on follow-up visits of the importance of following the diet.

Respondent testified that he used the insurance company height and weight tables to determine whether to use controlled substances in the treatment of a patient. However, he also testified that he is now stricter in his approach to weight control treatment.

Respondent's office manager testified that although a patient's blood pressure was taken at each visit, the result was not always noted in the patient's chart unless it was abnormal. Respondent testified that he might not always note the responses to the medical/family history questions or the results of the

physical examination in the patient's chart if the responses and/or findings were normal.

For the most part, the charts for the patients at issue here not do indicate the patient's target weight, medical history, or results of physical examinations, nor do the charts indicate whether the patient previously saw another physician for weight control or was ever enrolled in a formal weight control program. Also, for the most part, there is no indication in the charts that Respondent gave the patient diet or exercise information on an initial or subsequent visit, or that Respondent subsequently discussed these subjects with the patient or modified the recommended diet and exercise regimens. Also there were several instances where controlled substances were prescribed by Respondent but not noted in the patient charts. In addition, a number of the patients were prescribed benzodiazepines for extended periods of time with no reason for these prescriptions noted in the charts.

The Government's expert testified that Respondent's patient records did not comply with Utah requirements regarding patient histories and physical examinations, and characterized Respondent's records as "grossly deficient * * * in terms of the evaluation of the patients." According to the Government's expert, as far as the patient records show, "the patients came in, were weighed, were given a prescription and left * * * That's all you can tell from the records. This isn't saying other things weren't done, but certainly they weren't documented if they were."

Respondent testified that the medical records in evidence as Government exhibits were incomplete, and included only his handwritten notes, not all of the information in the patient charts, and that these notes were the only portions of the charts that DEA investigators asked his staff to copy. However as Judge Bittner pointed out, Respondent did not object when the Government offered the charts into evidence, did not request that the Government be required to introduce other documents at that time, and did not offer the complete charts as his own exhibits. Regarding the benzodiazepine prescriptions, while the reasons for the prescriptions were not noted in the charts, Respondent and the patients who testified were able to give explanations for the prescriptions. Nonetheless, Respondent admitted at the hearing that his patient records were not as good as they could have been.

Respondent also admitted that with respect to all 42 patients at issue in this proceeding, he violated Utah law in existence at the time that limited the prescribing of Schedule III and IV anorectic controlled substances to no more than 12 weeks in a one-year period (12-week rule). Respondent testified that he did not agree with Utah's pre-1996 restriction because a weight control program for 12 weeks is not feasible and that the rule was not in the mainstream of medicine. According to Respondent, "I thought I was still in the mainstream of medicine, because most of my colleagues were violating the 12-week rule and certainly all of the drugstores were." Respondent asserted that "that doesn't make me any less guilty, but it explains why I did it." Respondent testified that he should not have disobeyed the law but he felt that it was in the best interest of his patients. He further testified that his patients have been inconvenienced and embarrassed by their involvement in these proceedings, and that his health has suffered and he has been financially burdened due to his violation of the law.

In general, the Government's expert opined that it did not appear that Respondent monitored the patients' treatment; that the patient interviews failed to show the Respondent used any behavior therapy; that many of Respondent's patients did not qualify as candidates for treatment with anorectic controlled substances "under any definition," and that it did not appear that Respondent placed his patients on structured diet and exercise programs. The Government's expert testified that the lack of documentation in the patient charts raised questions about the quality of care that Respondent provided these patients.

For the most part, the Government's expert concluded that Respondent's treatment of the patients at issue with controlled substances was not appropriate. Respondent admitted that his treatment of 10 of the patients was a failure. However, even the Government's expert conceded that Respondent's treatment of several of the patients was successful and he characterized Respondent's treatment of several others as minimally effective.

Respondent's treatment of one patient is of particular concern. From January 1993 to May 1995, the patient was prescribed Nardil, a non-controlled antidepressant, as well as anorectic controlled substances. The Government's expert characterized Nardil as a "fairly dangerous medication," that is typically prescribed by psychiatrists. According to the Government's expert, even many psychiatrists are reluctant to prescribe Nardil because it interacts with a number of other drugs, particularly anorectics, and some foods which can lead to life threatening side effects. At the hearing in this matter, Respondent conceded that he made a mistake and should not have prescribed Nardil for this patient.

At the hearing in this matter, Respondent testified that he did not know when he became aware of the 12-week rule. He further testified that he was not aware of the change in Utah law effective January 16, 1996, which prohibited the prescribing of Schedule III controlled substances for weight control and which eliminated the 12-week rule for Schedule IV controlled substances, until he was personally advised of this change by a DOPL inspector in February 1996. A pharmacy survey revealed that Respondent had issued 16 prescriptions for Schedule III anorectics after the effective date of the law prohibiting such prescribing but before he was advised of the change in the law by the DOPL inspector.

There was also an allegation raised at the hearing that Respondent authorized a pharmacy to change a prescription that he had written on March 12, 1996 for a Schedule IV controlled substance to a Schedule III controlled substance. A DOPL investigator testified that a pharmacy technician indicated that the patient requested the change and the pharmacy technician had gotten approval from someone at Respondent's office. Respondent testified that the individual at his office did not recall giving the pharmacy technician authorization to change the prescription. Respondent further testified that "I'm not stupid. I have been notified months previous that this was no longer a drug that we prescribed," and that he would not have authorized such a change.

Evidence was presented by Respondent regarding his practice as of the date of the hearing. Respondent testified that his patient charts have been "up to speed" from the time he entered into the agreement with the state to undergo peer review. Also as of August 1997, he follows procedures specified in a document that was prepared with the assistance of counsel which includes a checklist for the physician on the initial consult, a medical history form, an informed consent form, and a follow-up consultation questionnaire. These forms all remain as part of each patient's permanent record. Respondent's office manager testified that weight control patients are now given a handbook

which includes information on diet, exercise, and medication. Respondent testified that he is now complying with all State, Federal and local laws pertaining to controlled substances and would never violate a regulation in the future.

In this brief filed after the conclusion of the hearing, Respondent's counsel sought to introduce and rely upon evidence not admitted at the hearing. Respondent's counsel attached and discussed in his brief a letter dated October 2, 1997, from a physician who stated that he had conducted a random sampling of Respondent's charts for weight control patients. In a motion filed on January 5, 1998, the Government objected to consideration of this information arguing that Respondent did not move to reopen the record to receive additional evidence, and even if he had, the record should not be reopened because Respondent has not demonstrated that the evidence was previously unavailable and is material and relevant. See Robert M. Golden, M.D., 61 FR 24,808 (1996). Further the Government asserted that at most, the letter shows that Respondent is complying with his probationary requirements with the Board, which is presumed, and that the letter raises issues of fact that would require further testimony and documentary evidence in this proceeding. On January 21, 1998, Respondent filed his opposition to the Government's motion in which he moved to reopen the record and argued that the letter meets the standard for reopening the record.

In her opinion, Judge Bittner granted the Government's motion to strike from Respondent's brief the October 2, 1997 letter and references to it. Judge Bittner found that to appropriately evaluate the assertions in the October 2, 1997 letter the record would have to be reopened for additional testimony and documentary evidence. Judge Bittner further found that this is not warranted since, "the most the letter adds to the record is an indication that Respondent is complying with his probation; [and] as the Government asserts, such compliance is presumed."

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16, 422 (1989).

Regarding factor one, Judge Bittner noted that Respondent entered into a Stipulation and Order with the DOPL in December 1996, but no restrictions were imposed on his state authorization to handle controlled substances. Judge Bittner concluded however, that "inasmuch as State licensure is a necessary but not sufficient condition for DEA registration, this factor is not dispositive." In his exceptions to Judge Bittner's opinion, Respondent contended that the state "is in the best position to judge Respondent's fitness to practice." Respondent argued that it is "unfair and excessively punitive" for DEA to seek to take action against Respondent above and beyond that taken by the state. The Acting Deputy Administrator notes that the recommendation of the appropriate state licensing authority is but one factor to be considered in determining the public interest. However in this case, the Acting Deputy Administrator does find it significant that Utah did not restrict Respondent's ability to handle controlled substances after reviewing Respondent's treatment of his weight control patients, his documentation in his patient charts, and his failure to include all required information on controlled substance prescriptions.

As to factor two, Judge Bittner found that Respondent prescribed the patients at issue anorectic controlled substances for anywhere from a few months to twenty years, and that the vast majority were prescribed Schedule III controlled substances. Judge Bittner noted that "[a]lthough Respondent introduced evidence on the long-term use of some Schedule IV medications, the record is devoid of such evidence with respect to Schedule III anorectics." Judge Bittner evaluated the treatment of these 42 patients and concluded that

> Respondent's treatment of all forty-two patients whose records are in evidence was inappropriate because he did not provide the comprehensive program required by good medical practice. In addition, twenty-six of the patients were not sufficiently overweight to justify treatment with controlled substances at the outset and eight of these became obese while taking the medications. Of the sixteen patients who may initially have been candidates for treatment with anorectic controlled substances, ten did not achieve a weight loss that met the standard of efficacy stated above.

Judge Bittner also found it significant that Respondent prescribed benzodiazepines to 14 patients for substantial periods of time without documenting the reasons for the prescriptions in the patient charts. As a result, Judge Bittner "conclude[d] that this factor weighs strongly in favor of a finding that Respondent's continued registration would not be in the public interest."

The Acting Deputy Administrator finds that it does seem like Respondent issued a large number of prescriptions for anorectic controlled substances to the majority of these patients. However, the Acting Deputy Administrator cannot find that Respondent's prescribing was inappropriate. While the record is devoid of much evidence regarding the long-term use of Schedule III anorectics, the Acting Deputy Administrator is reluctant to find that such prescribing is inappropriate. In evaluating this case, it is apparent that there is a variety of opinions within the medical community as to when a person is considered obese or overweight and when it is appropriate to use controlled substances in the treatment of weight control.

DEA has been faced with an analogous situation when it sought to determine whether physician's prescribing for chronic pain patients was appropriate. In one recent case, the then-Deputy Administrator quoted the Administrative Law Judge who stated that "DEA is in a difficult position, for it is asked to determine appropriate prescribing practices in a treatment area in which the medical profession is not in accord * * *" Paul W. Saxton, D.O. 64 FR 25, 073 (1999). DEA has previously held that it is not DEA's role to resolve this disagreement. In William F. Skinner, M.D., 60 FR 62, 887 (1995), the then-Deputy Administrator found that, "the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of

controlled substances in the treatment of chronic pain patients * * *. It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law."

As previously noted, the Acting Deputy Administrator does not agree with Judge Bittner's conclusion that a person is obese or overweight at a set BMI. While it is true that there is evidence in the record that BMI is a good, if not the best, measure of obesity, there are still other guidelines that may be considered. In addition there is conflicting evidence in the record as to when it is appropriate to use controlled substances. Consequently, the Acting Deputy Administrator finds that it is not DEA's role to resolve these differences and set the standard for the medical community. This is not to say that physicians have free reign to prescribe anorectic controlled substances for non-legitimate reasons. But in this case, all of the patients at issue were seeking to control their weight and there is no evidence in the record that the controlled substances were diverted from this purpose.

While one might argue that Respondent did not individualize the treatment for these patients as the evidence suggests is appropriate, Respondent did meet with the patients before prescribing controlled substances and when necessary would discuss diet and exercise with the patients. On some occasions, Respondent would cease treatment when the patient failed to follow Respondent's weight control program. Judge Bittner took issue with the amount of time Respondent spent with the patients saying that it was not sufficient to provide individualized therapy. However, the Acting Deputy Administrator is not in a position to find whether the amount of time spent with the patients was sufficient since no evidence was presented as to what is considered an appropriate amount of time.

As for Respondent's prescribing of benzodiazepines for extended periods of time to some of these patients, it is true that Respondent may not have documented his reasons for these prescriptions in the patient charts. However, at the hearing, Respondent and some of these patients testified as to why these controlled substances were prescribed. The Acting Deputy Administrator concludes that he cannot find that these prescriptions were inappropriate based on the fact that the reasons for the prescriptions were not noted in the patients charts.

The Acting Deputy Administrator finds that Respondent's prescribing of Nardil along with anorectic controlled substances to one patient was inappropriate. However, this is the only example of Respondent prescribing contraindicated drugs, and Respondent has admitted that he was wrong in so doing.

Regarding factor three, there is no evidence that Respondent has been convicted of any criminal charges under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

As to factor four, Respondent's compliance with applicable laws, Respondent has admitted that he violated Utah law with respect to the 42 patients at issue in this proceeding by prescribing anorectic controlled substances to them for more than 12 weeks in a one year period and by failing to properly document his treatment of these patients in their charts. The Acting Deputy Administrator does not find that Respondent violated 21 CFR 1306.04, which states that controlled substances may only be prescribed for a legitimate medical purpose. As discussed above, given the difference of opinion in the medical community, the Acting Deputy Administrator cannot find that Respondent issued controlled substance prescriptions to the patients at issue for no legitimate medical purpose.

As to factor five, Judge Bittner concluded that Respondent did not provide adequate assurances that he would properly document the treatment of his patients in their charts. However, the Acting Deputy Administrator finds that pursuant to the Stipulation and Order with the state, Respondent's patient charts are currently reviewed on a periodic basis for completeness. As a result the Acting Deputy Administrator finds that Respondent's documentation will be sufficiently monitored. Judge Bittner also concluded that Respondent showed no remorse for his violations of Utah law and continued to assert that despite the medical evidence to the contrary, there was no need to individualize the diet and exercise programs, and that behavioral counseling would be useless. The Acting Deputy Administrator finds that Respondent did show some remorse for his violation of state law and indicated that he acknowledged that what he did was wrong and he would not violate the law in the future. The Acting Deputy Administrator also finds that while Respondent appears reluctant to individualize his weight loss treatment programs as suggested by the medical literature, this does not warrant revocation of his DEA registration.

Judge Bittner concluded "that the record as a whole establishes that Respondent is unwilling or unable to accept the responsibilities inherent in holding a DEA registration." As a result, Judge Bittner concluded that Respondent's continued registration would be inconsistent with the public interest and recommended that Respondent's DEA registration be revoked.

Respondent filed exceptions to Judge Bittner's Opinion and the Government filed a response to Respondent's exceptions which have all been considered by the Acting Deputy Administrator in rendering his decision in this matter. Most of the arguments set forth in these filings have already been addressed in this final order, or it is not necessary to address them in light of the findings of the Acting Deputy Administrator. However, Respondent does argue in his exceptions that Judge Bittner erroneously excluded the October 2, 1997 report of the physician who reviewed Respondent's charts pursuant to the terms of the Stipulation and Order with the state. In its response to Respondent's exceptions, the Government argues that Judge Bittner properly excluded the report since it added nothing to the record in this matter and in order to properly assess the value of the report, the reviewing physician would need to testify and be subjected to cross-examination. This issue will be discussed below.

On August 10, 1999, the record in this matter was transmitted to the Deputy Administrator. On November 4, 1999, Respondent sent a letter to the Deputy Administrator responding to the Government's response to his exceptions and attaching seven reports from the physician who reviewed Respondent's patient charts pursuant to the Stipulation and Order that were generated between October 2, 1997 and September 2, 1999. Respondent recognized that such a filing is not provided for in the regulations, but argued that consideration of it is necessary "to avoid a gross miscarriage of justice." In addition, Respondent filed a formal motion to reopen the record.

The Acting Deputy Administrator finds that Judge Bittner should have reopened the record to allow Respondent to introduce into evidence the October 2, 1997 report from the reviewing physician and to provide the Government with an opportunity to cross-examine the physician and/or introduce rebuttal evidence. Clearly, this report was not available to

Respondent until October 2, 1997, after the conclusion of the hearing in this matter. In addition, the Acting Deputy Administrator finds that this report is clearly material and relevant to the issue in this proceeding. Both Government counsel and Judge Bittner state that the report merely shows that Respondent is complying with the state's Stipulation and Order, which is presumed. However, the Acting Deputy Administrator finds that this report also shows the extent of Respondent's compliance. The issue in this proceeding is whether Respondent's continued registration is inconsistent with the public interest. The state of Respondent's current practice is clearly relevant and this information was not available until after the conclusion of the hearing.

Nonetheless, the Acting Deputy Administrator has decided to deny Respondent's matter to the Administrative Law Judge and has further decided not to remand this matter to the Administrative Law Judge and has further decided to deny Respondent's request to reopen the record dated November 4, 1999, to introduce the October 2, 1997 report of the reviewing physician as well as six subsequent reports. As the Government has stated, in order to admit these reports for reconsideration, the Government would need to be provided with an opportunity to cross-examine the reviewing physician and to possibly introduce rebuttal evidence, which would delay a final decision in this matter. In light of the findings and conclusions set forth in the final order, the Acting Deputy Administrator does not believe that Respondent would want to delay issuance of this decision. Therefore, the seven reports of the reviewing physician attached to Respondent's November 4, 1999 letter have not been considered by the Acting Deputy Administrator in rendering his decision in this matter.

The Acting Deputy Administrator has not considered the other statements made by Respondent in the November 4, 1999 letter. First, such a filing is not permitted by the regulations, and second, they merely reiterate arguments already made by Respondent in his brief and exceptions.

After reviewing the entire record in this matter, the Acting Deputy Administrator concludes that revocation of Respondent's DEA Certificate of Registration is not warranted. The Acting Deputy Administrator does not find that the patients at issue in this proceeding were prescribed controlled substances for no legitimate medical purpose. While Respondent may not have been as careful in prescribing controlled substances and in documenting the reasons for his prescribing, the Acting Deputy Administrator does not believe that revocation is appropriate given the dispute within the medical community as to when it is proper to use controlled substances in weight control.

However, Respondent clearly violated state law by ignoring the 12-week rule and by failing to properly document the treatment of his patients. The Acting Deputy Administrator does not condone Respondent's defiance of state law, but the Acting Deputy Administrator finds it noteworthy that the state is currently monitoring Respondent's treatment of patients and documentation of this treatment; that the state did not restrict Respondent's ability to handle controlled substances based upon the same patient charts in evidence in this proceeding; and that Respondent has taken remedial steps to ensure that he practices in compliance with the law.

But given Respondent's admitted defiance of state law by ignoring the 12-week limitation on prescribing controlled substances for weight control that was in effect at the time of the events at issue, the Acting Deputy Administrator finds that some controls are necessary to ensure that Respondent properly handles controlled substances in the future. Therefore, for two years from the effective date of this final order Respondent shall: (1) Forward to the DEA Salt Lake City office copies of the reports of the physician reviewing his charts pursuant to the Consent Order with the State of Utah; and (2) consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH1650248, previously issued to Wesley G. Harline, M.D., be and it hereby is continued, and subject to the above described restrictions. This order is effective January 27, 2000.

Dated: December 9, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33644 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 9, 1999, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objectives may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33649 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 21, 1999, Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II

Drug	Schedule
Diphenoxylate (9170)	II

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33650 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 15, 1999, Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02451, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2, 5-dimethoxyamphetamine (7396),.a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk 2, 5-dimethoxyamphetamine for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 13, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33647 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998, (63 FR 71160), Pressure Chemical Company, 3419 Spellman Street, Pittsburgh, Pennsylvania 15201, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to bulk manufacture 2,5-dimethoxyamphetamine for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Pressure Chemical Company to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated the company to ensure that the company's continued registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33646 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA No. 1861]

Controlled Substances: Established Initial Aggregate Production Quotes for 2000

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2000.

SUMMARY: This notice establishes initial 2000 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The 2000 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2000 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On October 21, 1999, a notice of the proposed initial 2000 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (64 FR 56809). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 22, 1999.

Six companies commented on a total of 16 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate

production quotas for alfentanil, amphetamine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methamphetamine (for sale), methamphetamine (for conversion), methylphenidate, noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), sufentanil and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

In addition, one comment was received after the published comment period had ended. This comment requested that the aggregate production quota for dihydromorphine be increased to provide for an intermediate in a current manufacturing process. This comment was taken into consideration in determining the established initial 2000 aggregate production quota for dihydromorphine.

DEA has taken into consideration the above comments along with the relevant 1999 manufacdturing quotas, current 1999 sales and inventories, 2000 export requirements and research and product development requirements. Based on this information, the DEA has adjusted the initial aggregate production quotas for alfentanil, dihydromorphine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methamphetamine (for conversion), noroxymorphone (for conversion), oxycodone (for sale), sufentanil and thebaine to meet the legitimate needs of the United States. Significant portions of the increases for alfentanil, diphenoxylate,, fentanyl, hydromorphone, levorphanol, noroxymorphone (for conversion) and sufentanil are due to a change in the manner in which manufacturing losses are accounted for by a bulk manufacturer.

In addition, one company requested a hearing to address the aggregate production quota for oxycodone (for sale) or hydromorphone if the aggregate production quotas were not increased sufficiently. The DA, based on the date provided, has increased the aggregate production quotas for both oxycodone (for sale) and hydromorphone and has determined that a hearing is not necessary.

Regarding amphetamine, methamphetamine (for sale), methylphenidate and oxycodone (for conversion), the DEA has determined that the proposed initial 2000 aggregate production quotas are sufficient to meet the current 2000 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2000, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1999 year-end inventory and actual 1999 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the 2000 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 2000 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	10,001,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	[illegible]
3-Methylfentanyl	14
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	20
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30
3,4-Methylenedioxymethamphetamine (MDMA)	20
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	[illegible]
4-Methoxyamphetamine	201,000
4-Methylaminoex	3
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-Methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	7
Allylprodine	2
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	7
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Diethyltryptamine	2

Basic class	Established initial 2000 quotas
Difenoxin	10,000
Dihydromorphine	508,000
Dimethyltryptamine	3
Heroin	2
Hydroxypethidine	2
Lysergic acid diethylamide (LDS)	38
Mescaline	7
Methaqualone	17
Methcathinone	9
Morphine-N-oxide	2
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	101,000
Thiofentanyl	2
Trimeperidine	2
Schedule II:	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	8,000
Alphaprodine	2
Amobarbital	12
Amphetamine	9,007,000
Cocaine	251,000
Codeine (for sale)	54,504,000
Codeine (for conversion)	52,384,000
Dextropropoxyphene	114,078,000
Dihydrocodeine	268,000
Diphenoxylate	931,000
Ecgonine	36,000
Ethylmorphine	12
Fentanyl	300,000
Glutethimide	2
Hydrocodone (for sale)	20,208,000
Hydrocodone (for conversion)	20,700,000
Hydromorphone	1,239,000
Hydrocodone (For conversion)	20,700,000
Hydromorphone	1,239,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	201,000
Levomethorphan	2
Levorphanol	27,000
Meperidine	11,335,000
Metazocine	1
Methadone (for sale)	8,347,000
Methadone (for conversion)	600,000
Methadone Intermediate	9,503,000
Methamphetamine	2,049,000
750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,225,000 grams for methamphetamine for conversion to a Schedule III product; and 74,000 grams for methamphetamine (for sale)	
Methylphenidate	14,957,000
Morphine (for sale)	14,706,000
Morphine (for conversion)	97,160,000
Nabilone	2
Noroxymorphone (for sale)	25,000
Noroxymorphone (for conversion)	3,813,000
Opium	720,000
Oxycodone (for sale)	29,826,000
Oxycodone (for conversion)	271,000
Oxymorphone	166,000
Pentobarbital	22,037,000
Phencyclidine	41
Phenmetrazine	2

Basic class	Established initial 2000 quotas
Phenylacetone	10
Secobarbital	22
Sufentanil	1,700
Thebaine	41,300,000

The Acting Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that his matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: December 21, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33550 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Telecommunications Contracts and Audit Unit; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, with changes, of a previously approved collection for which approval has expired; Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice, Federal Bureau of Investigation, Telecommunications Contracts and Audit Unit (TCAU), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 7, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 90 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Porter F. Dunn, (703) 814–4902, Federal Bureau of Investigation, TCAU, 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Reinstatement, with changes of a previously approved collection for which approval has expired.

(2) *Tile of the Form/Collection:* Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. This rule establishes the procedures whereby telecommunications carriers can recover the costs associated with complying with the Communications Assistance for Law Enforcement Act, which went into effect on October 25, 1994.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 3,000 respondents to provide the information requested is approximately four hours per telecommunications switch.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information necessary to file a claim under the Cost Recovery Regulation is approximately 46,000 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States

Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: December 21, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–33668 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

CALEA Implementation Section; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection, flexible deployment assistance guide.

The Department of Justice, Federal Bureau of Investigation, Communications Assistance for Law Enforcement Act (CALEA) Implementation Section, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 7, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Catherine Kudrick, (703) 814–4835, Federal Bureau of Investigation, CALEA Implementation Section, 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Flexible Deployment Assistance Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Flexible Deployment Assistance Guide has been developed to assist the telecommunications industry in meeting its obligations under the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 5,000 respondents to provide the information requested is approximately four hours and fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested by the Flexible Deployment Assistance Guide is approximately 21,250 annual burden hours.

If the additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Dated: December 21, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–33669 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In order with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–96,688 & A; Woodward Governor Co., Loveland, CO, Industrial Controls Group, Fort Collins, CO

TA–W–36,672; Range Production, Div. of Range Resources, Fairview, OK

TA–W–36,714 & A; International Playing Card and Label, Inc., Rogersville, TN and Surgoinsville, TN

TA–W–36,979; Omco Mould, Inc., Winchester, IN

TA–W–36,988; Siebe Automotive, Robershaw Div., Carthage, TN

TA–W–36,043; Acordis Cellulosic Fibers, Inc., Rayon Plant, Axis, AL

TA–W–36,819; Mississippi Rags, Meridian, MS

TA–W–36,801 & A; Case Corp., Racine Tractor/Foundry, Racine Transmission Plant, Racine, WI amd East Moline, East Moline, IL
TA–W–36,985; SMF, Inc., #2 Heavy Fabrication Div., Danville, IL
TA–W–36,762; Risco Products, Inc., Crescent Brick Div., East Canton, OH
TA–W–36,348; UNIFI, Inc., Plant 10, UNIFI Textured Polyester Div., Mayodan, NC
TA–W–36,654; Milacron Resin Abrasives, Carlisle, PA
TA–W–36,789; Darex Corp., Ashland, OR
TA–W–36,270; Applied Molded Products, Watertown, WI
TA–W–36,946; Tektronix, Inc., Video and Networking Div., Beaverton, OR
TA–W–36,932; P and M Cedar Products, Redding, CA, A; McCloud, CA, B; Pioneer, CA and C; Roseburg, OR
TA–W–36,518; The Turner and Seymour Manufacturing Co., Foundry Div., Torrington, CT
TA–W–36,693; Rexell Industries, Inc., Gaylord, MI
TA–W–36,890; Crown Products Div. of Sommer Metalcraft Corp., Indianapolis, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,061; Big "B" Valve, Inc., Laurel, MS
TA–W–37,123; Midland County Housing Authority, Midland, TX
TA–W–37,047; Marathon Ashland Pipeline LLC, Bridgeport, IL
TA–W–37,055; Cross Oilwell Service, ad/b/a Cross Supply, Olney, IL
TA–W–37,108; UMETCO Minerals Corp, Gas Hills, WY
TA–W–37,097; Reliable Machine & Supply Co., Inc., Odessa, TX
TA–W–37,051; G.L. Trucking & Rental, Inc., Williston, ND
TA–W–37,093; Duck Head Apparel Co., Monroe, GA
TA–W–37,092; Industrial Motor and Control, El Paso, TX
TA–W–36,616; The Investext Group, A Div. of Thompson Information Service, Inc., Boston, MA
TA–W–37,048; Jackpot Owl, Inc. d/b/a The Owl Club, Battle Mountain, NV
TA–W–36,968; Pride Companies L.P., Pride Pipeline Co., Abilene, TX
TA–W–36,816; Barrick Bullfrog, Inc., Bullfrog Mine, Beatty, NV

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,069; Conagra Grocery Products Co., Perryburg, OH
TA–W–36,964; Smithkline Beecham Pharmaceuticals, Piscataway, NJ
TA–W–37,072; Jim Strickland Production Service, Tyler, TX
TA–W–36,787; Siemens Westinghouse Power Corp., Northeast Service Center, Glassport, PA
TA–W–36,916; General Electric Service Center, Tucson, AZ
TA–W–37,056; Alcoa Technical Center, Manufacturing Center, #478, Alcoa Center, PA
TA–W–36,965 & A; Dura Automotive Systems, Inc., Engineered Components, Manchester, MI and Romulus, MI
TA–W–36,737; Sikorsky Aircraft, Stratford, CT, A; Bridgeport, CT, B; Shelton, CT, C; West Haven, CT, D; West Palm Beach FL, and E; Troy, AL
TA–W–36,986; Matsushita Home Appliance Co., Winchester, KY
TA–W–36,844; Valley Recreation Products, Inc., Sycamore, IL
TA–W–37,053; Long-Airdox Co., Pulaski, VA
TA–W–37,010; Raytheon Systems Corp., Orangeburg, SC
TA–W–37,077; Hutchinson Technology, Inc., Hutchinson, MN
TA–W–37,000; Barry Callebaut USA, Inc., Van Leer Div., Jersey City, NJ
TA–W–36,989; Mobile Energy Service Co., Mobile, AL
TA–W–36,575; Landmark Graphics Corp., Houston, TX, A; Austin, TX, B; Dallas, TX, C; Englewood CO and D; New Orleans, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,098; Cedarapids, Inc., Standard Havens-Asphalt Machinery Manufacturing Div., Glasgow, MO
TA–W–36,808; Ingersoll-Rand Co., Architectural Hardware Div., Greendale, WI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–36,839; Oremet Wah Chang, Albany, OR

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–36,930; Houze Glass Co., Point Marion, PA
TA–W–37,025; Exxon Corp., Houston, TX
TA–W–36,838; BP Amoco, Whiting, IN
TA–W–37,028; Perma Cote Industries, Lemont Furnace, PA
TA–W–36,781; Armco, Inc., Mansfield, OH

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determination For Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,039; Tellotson Healthcare Crop., North Rochest, NH: October 28, 1998.
TA–W–36,759 & A; The Worcester Co., North Providence, RI and New York, NY: August 17, 1998.
TA–W–36,943; Seco/Warwick Corp., Meadville, PA: September 24, 1998.
TA–W–37,049; Sand Creek Chemical Limited Partnership, Commerce City, CO: October 25, 1998.
TA–W–36,854; China Grove Textiles, Inc., Arlington Plant, Gastonia, NC: September 9, 1998.
TA–W–36,905; Kellwood Co., Sportswear Div., Rutherford, TN: September 10, 1998.
TA–W–36,940; Simpson Industries, Inc., Troy, OH: September 27, 1998.
TA–W–36,921; The William Carter Co., Barnesville, GA: September 24, 1998.
TA–W–36,955; Atlas Foundry & Machine Co., Tacoma, WA: October 8, 1998.
TA–W–36,996; High Plains, Inc., Dickinson, ND: October 2, 1998.
TA–W–36,897; Fargo Manufacturing, Inc., Poughkeepsie, KY: September 20, 1998.
TA–W–36,920: CMT Industries, Inc., El Paso, TX: May 6, 1999.
TA–W–36,929; Framatome Connectors Interlock, Inc., Boyne City, MI: September 22, 1998.
TA–W–36,924; FCI Electronics, Inc., Value-Added Div., Hazelton, PA: September 27, 1998.
TA–W–36,828; International Paper Co., Moss Point, MS: August 30, 1998.
TA–W–36,874; Fashions Apparel Corp., El Paso, TX: September 10, 1998.

TA–W–36,217A; Fairweather, Inc., Anchorage, AK: On or after April 6, 1998 and before June 10, 2001.
TA–W–36,962; CIBA Vision, Amwiler Facility, Amwiler, GA: All workers engaged in the production of Focus Night and Day Contact Lenses on or after September 18, 1998. All workers engaged in the production of Conventional Production Contact Lenses and High Volume Production Contact Lenses are denied.
TA–W–37,008; Elsie Undergarment Corp., Hialeah, FL: October 5, 1998.
TA–W–37,022; Mark Twain Apparel, Jamestown, TN: October 13, 1998.
TA–W–36,702; The Biltrite Corp., Ripley, MS: August 4, 1998.
TA–W–36,870; Fun Tees, Inc., Florence, SC: September 10, 1998.
TA–W–36,735; Makino, Inc., Mason, OH: August 2, 1998.
TA–W–36,992; Audioopak, Inc., Winchester, VA: October 15, 1998.
TA–W–36,894; Tara Textiles International, Inc., New York, NY: September 13, 1998.
TA–W–36,439 & A; General Electric Medical Systems, Electric Avenue Detectors, Milwaukee, WI and Ryerson Road Detectors, New Berlin, WI: June 8, 1998.
TA–W–36,840; Meisel Peskin Co., Inc., Brooklyn, NY: August 31, 1998.
TA–W–36,480; Casablanca Group, Secaucus, NJ: June 16, 1998.
TA–W–36,800; The J.W. Stannard Co., Largo, FL: August 17, 1998.
TA–W–36,764; McKenica, Inc., Buffalo, NY: August 16, 1998.
TA–W–36,584; Dino/DLA, New York, NY: July 9, 1998.
TA–W–36,798; Koul Apparel Industries, Inc., Notasulga, AL: August 23, 1998.
TA–W–36,913; Ratholes, Inc., Snyder, TX: September 30, 1998.
TA–W–36,863; QRC Corp., Quarker Rubber Co., Philadelphia, PA: September 15, 1998.
TA–W–36,933; North State Garment Co., Inc., Farmville, NC: September 28, 1998.
TA–W–37,012; Townwear Garment Co., Inc., Blairsville, GA: October 20, 1998.
TA–W–37,003; Oxford of Monroe, Monroe, GA: October 19, 1998.
TA–W–36,931; Highland Forest Products, Inc., Sweet Home, OR: September 9, 1998.
TA–W–36,826; Unitog Co. (CINTAS), Warrensburg, MO: August 13, 1998.
TA–W–36,859; Rio Grande Cutters, El Paso, TX: August 25, 1998.
TA–W–37,004; Chester County Sportswear, Henderson, TN: October 15, 1998.
TA–W–36,973; Heidelberg Publishing Services, Melville, NY: October 5, 1998.
TA–W–37,021; Endrill Corp., d/b/a Endrill Mul, Tuscola, TX: October 20, 1998.
TA–W–37,044; West Chester Holdings, Shuqualak, MS: October 25, 1998.
TA–W–36,974; Woods Equipment Co., Seguin, TX: October 11, 1998.
TA–W–37,066; Tenneco Automotive, Walker Manufacturing, Culver, IN: November 3, 1998.
TA–W–37,027; Fluid Process Systems, Inc., El Paso, TX: October 22, 1998.
TA–W–37,030; Stuffed Shirt, Inc., New York, NY: October 23, 1998.
TA–W–37,058; Tultex Corp., Bastain Plant, Bastain, VA: October 15, 1998.
TA–W–37,029; Weatherford US, Inc., Kenai, AK: October 27, 1998.
TA–W–37,062; Robett Manufacturing Co., Riceville, TN: October 21, 1998.
TA–W–36,889; Ball Foster Glass Container Co., Maywood Plant, Los Angeles, CA: September 17, 1998.
TA–W–36,900 & A: Chadbourn Curtain Co., A Div. of Pinebluff Manufacturing Corp., Chadbourn, NC: September 20, 1998.
TA–W–37,040; David Stevens, Inc., Blackwood, NJ: October 25, 1998.
TA–W–36,717; L.M. Rabinowitz and Co., Inc., Brooklyn, NY: August 11, 1998.
TA–W–36,952; Ann Loy Original, New York City, NY: October 1, 1998.
TA–W–36,852; Altec International, Inc., LaCrosse, WI: September 7, 1998.
TA–W–36,949; Computer Circuitry Co., Grand Prairie, TX: October 7, 1998.
TA–W–36,868; Abitibi Consolidated Sales Corp., West Tacoma Div., Steilacoom, WA: September 14, 1998.
TA–W–36,631; Rexam Release, Inc., Bedford Park, IL: July 17, 1998
TA–W–36,641; Chahta Enterprise, Dekalb, MS, Conehatta, MS and Pearl River, MS: July 19, 1998.
TA–W–36,119; Slatington Fashions, Slatington, PA: November 15, 1998.
TA–W–36,019; Thomas MWD, a/k/a Pathfinder Energy Service, Inc., New Iberia, LA: October 22, 1998.
TA–W–36,792; LaPine Forestry Service, Inc., La Pine, OR: August 23, 1998.
TA–W–36,107; Dana Corp., Parish Heavy Truck Structural Div., Reading, PA: November 15, 1998.
TA–W–36,681; Ganes Chemicals, Inc., Carlstadt, NJ: August 3, 1998
TA–W–36,024; Napier Co., Meriden, CT: October 22, 1998.
TA–W–36,783 & A; Boss Manufacturing Co., Greenville, AL and Monroeville, AL: August 19, 1998.
TA–W–36,117; Irwin Mfg Corp., Fitzgerald, GA: November 9, 1998.
TA–W–36,018; Lovingston Manufacturing Co., Inc., Plant #2, Harrisonburg, VA: October 20, 1998.
TA–W–37,089; KZ Corp., Vashon, WA: November 11, 1998.
TA–W–36,886; Carmet Co., Bad Axe, MI: September 15, 1998.
TA–W–37,041; Knitwaves LLC, New York, NY: August 13, 1998.
TA–W–36,957; Cogema Mining, Inc., Mills, WY: October 4, 1998.
TA–W–36,875; Collins and Aikman Dura Convertible Systems, Inc., Dura Div., Adrian, MI: September 8, 1998.
TA–W–36,724; Graphic Research, Inc., Chatsworth, CA: August 13, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA—TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from

Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03558; Atlanta Attachment Co., Lawrenceville, GA
NAFTA–TAA–03441; Carmet Co., Bad Axe, MI
NAFTA–TAA–03472; Seco/Warwick Corp., Meadville, PA
NAFTA–TAA–03486; Smithkline Beecham Pharmaceuticals, Piscataway, NJ
NAFTA–TAA–03592; Knitwaves, LLC, New York, NY
NAFTA–TAA–03386; Dyersburg Corp., Alamac Knit Fabrics, Elizabethtown, NC
NAFTA–TAA–03568; David Stevens, Inc., Blackwood, NJ
NAFTA–TAA–03398; Ingersoll Rand, Architectural Hardware Div., Greendale, WI
NAFTA–TAA–03216; UNIFI, Inc., Plant 10, UNIFI Textured Polyester Div., Mayodan, NC
NAFTA–TAA–03376; Darex Corp., Ashland, OR
NAFTA–TAA–03424; Oremet Wah Chang, Albany, OR
NAFTA–TAA–03375; Brubaker Tool Co., Millersburg, PA
NAFTA–TAA–03500; OMCO Mould, Inc., Winchester, IN
NAFTA–TAA–03544; Acordis Cellulosic Fibers, Inc., Rayon Plant, Axis, AL
NAFTA–TAA–03552; Dura Automotive Systems, Inc., Dura Hinge Operation, Manchester, MI
NAFTA–TAA–03521; Siebe Automotive, Robertshaw Div., Carthage, TN
NAFTA–TAA–03552; SMF, Inc., #2, Heavy Fabrication Div., Danville, IL
NAFTA–TAA–03546 & A; Case Corp., Racine Tractor/Foundry, Racine Transmission Plant, Racine, WI, and East Moline, East Moline, IL
NAFTA–TAA–03483; General Electric Service Center, Tucson, AZ
NAFTA–TAA–03382; Durkopp Adler America, Inc., Norcross, GA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03564; Duck Head Apparel, C., Monroe, GA
NAFTA–TAA–03550; American Medical Response, Natick, MS
NAFTA–TAA–03554; Marathon Ashland Pipe Line LLC, Bridgeport, IL
NAFTA–TAA–03589; Bombardier Transit Corp., Bensalem, PA
NAFTA–TAA–03577; Industrial Motor and Control, El Paso, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–3558; Atlanta Attachment Co., Lawrenceville, GA

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment. Sales or production, or both of such firm or subdivision have decreased absolutely.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03433; Collins and Aikman, Dura Convertible Systems, Inc., Dura Div., Adrian, MI: September 2, 1998.
NAFTA–TAA–03484; The William Carter Co., Barnesville, GA: September 24, 1998.
NAFTA–TAA–03492; Bass Foster Glass Container Co., Maywood Plant, Los Angeles, CA: September 17, 1998.
NAFTA–TAA–03405; La Pine Forestry Service, Inc., La Pine, OR: August 23, 1998.
NAFTA–TAA–03559; Pent Plastics, Inc., Afton, IA: September 13, 1998.
NAFTA–TAA–03361; H.L. Miller and Son, Inc., Iola, KS: August 9, 1998.
NAFTA–TAA–03516; Delphax Corp. A Xerox Co., Canton, MA Including Leased Workers of Accountemps, Braintree, MA, Judge Technical Service, Needham, MA, MMD Temps, Natick, MA, TAC Engineering, Newton, MA, New England Engineers & Design, Norwood, MA, Prosource, Waltham, MA, Strategy Tech Services, Westboro, MA, TAC Staffing Dedham, MA, Techaid, Waltham, MA, Technical Personnel Service, Andover, MA Winter, Wyman, Boston, MA: October 12, 1998.
NAFTA–TAA–03465; Chadbourn Curtain Co., A Div. of Pinebluff Manufacturing Corp., Chadbourn, NC: September 20, 1998.
NAFTA–TAA–03548; Tenneco Automotive, Walker Manufacturing, Culver, IN: November 3, 1998.
NAFTA–TAA–03532; Fluid Process Systems, Inc., El Paso, TX: October 22, 1998.
NAFTA–TAA–03523; Oxford of Monroe, Monroe, GA: October 19, 1998.
NAFTA–TAA–03520; Woods Equipment Co., Seguin, TX: October 11, 1998.
NAFTA–TAA–03563; Framatome Connectors Interlock, Inc., Boyne City, MI: September 18, 1998.
NAFTA–TAA–03377; General Electric Co., Industrial Systems, Tell City, IN: August 12, 1998.
NAFTA–TAA–03485; Mexport, Inc., El Paso, TX: September 10, 1998.
NAFTA–TAA–03514; United Filters, Inc., A Subsidiary of Perry Equipment Corp., Amarillo, TX: September 13, 1998.
NAFTA–TAA–03479; FCI Electronics, Inc., Value-Added Div., Hazelton, PA: September 27, 1998.
NAFTA–TAA–03538; U.S. Sack Corp., Grand Junction, CO: September 26, 1998.
NAFTA–TAA–03581; Dana Corp., Parish Heavy Truck Structural Div., Reading, PA: November 15, 1998.
NAFTA–TAA–03565; Irwin Mfg Corp., Fitzgerald, GA: November 9, 1998.
NAFTA–TAA–03543; Avery Dennison, World Wide Ticketing Service, Greensboro, NC: October 28, 1998.

I hereby certify that the aforementioned determinations were issued during the month of December, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 20, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33596 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,280A]

Eagle Ottawa Leather Company, Grand Haven, MI: Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Eagle Ottawa Leather Company, Grand Haven, Michigan. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,280A; Eagle Ottawa Leather Company, Grand Haven, Michigan (December 14, 1999)

Signed at Washington, D.C. this 17th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33597 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed evaluation of the year 2000 Summer Youth Employment and Training Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 28, 2000.

ADDRESSES: Greg Knorr, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5637, Washington, DC 20210; 202–219–5782 ext. 120 (this is not a toll-free number); gknorr@doleta.gov; Fax: 202–219–5455 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: .

I. Background

This evaluation will be a national study in summer 2000 of youth employment programs and services under the Workforce Investment Act (WIA). The last comprehensive national study of the summer program (the Title IIB program under the Job Training Partnership Act) was conducted in 1993. The Workforce Investment Act of 1998 is bringing about major changes in the way employment and training services are delivered to economically disadvantaged youth. It consolidates summer and year-round services, calls for a minimum funding level for serving out-of-school youth, mandates that certain types of services be made available to youth, includes a more comprehensive emphasis on performance accountability, and requires local Workforce Investment Boards to establish active Youth Councils. This evaluation will examine the newly integrated system of youth employment services and programs as they are operated during the summer 2000, the first year of WIA implementation. The project calls for a comprehensive report based on site visits to 28 local Workforce Investment Areas (WIAs) and a mail survey of all WIAs.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The proposed study will (1) describe the summer program as it is operating across the country, including activities of the Youth Councils, provision of the newly mandated services, and linkages with other agencies and organizations; (2) discuss how summer services are being integrated with year-round services; (3) examine the quality of the academic component in particular detail, describing academic programs that WIAs believe are especially effective for their youth; (4) describe how the WIAs devote attention/resources to reach and provide services to out-of-school youth; (5) assess the extent to which youth are engaged in work that needs to be done, complete the summer component and plan to return to school; (6) highlight innovative and adaptable practices; and (7) examine the data and information that WIAs are collecting or will be able to collect regarding individual progress, performance, and impacts of the program, including exploration of the feasibility of a national impact study of summer programs conducted under WIA.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of the Year 2000 Summer Youth Employment and Training Program.

Affected Public: Individuals and State, Local or Tribal Government.

Cite/reference	Total respondents	Frequency	Total responses	Average time per responses	Burden
Survey of all WIAs	642	One-time	642	2 hours	1,284 hours.
Site Visits to 28 WIAs	28	One-time	28	6 hours	168 hours.
Totals			670		1,452

Total Burden Cost (capital/startup): $30,000.

Total Burden Cost (operating/maintaining): $0—one-time only.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 20, 1999.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 99–33534 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North America Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Director of OTAA not later than January 7, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than January 7, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Phillips Joanna (Wkrs)	Ladd, IL	11/30/1999	NAFTA–3,598	Plastic film.
Hagale Industries (Co.)	Marshfield, MO	12/01/1999	NAFTA–3,599	Casual slacks.
Garden State Tanning (UNITE)	Adrian, MI	11/08/1999	NAFTA–3,600	Cutting facility.
Ashmore Sportswear (Co.)	Collinsville, VA	11/18/1999	NAFTA–3,601	T-shirts.
HCC (Co.)	Earlville, IL	11/30/1999	NAFTA–3,602	Assembling headers.
Lipton—Instant Tea Can Line (Co.)	Suffolk, VA	11/30/1999	NAFTA–3,603	Instant tea.
Elinco (Wkrs)	Stamford, CT	11/30/1999	NAFTA–3,604	Motors.
Kellogg Company (BCTW)	Battle Creek, MI	11/29/1999	NAFTA–3,605	Cereal products.
Nucor Corporation (Co.)	Conway, AR	12/02/1999	NAFTA–3,606	Hex head cap screws, locking nuts.
Chinet (The) Company (PACE)	Waterville, ME	12/01/1999	NAFTA–3,607	Laminated molded fiber trays.
White Swan Meta—Encompass (UNITE)	Dawson Springs, KY	12/02/1999	NAFTA–3,608	Healthcare apparel.
Moltrup Steel Products (Wkrs)	Beaver Falls, PA	12/02/1999	NAFTA–3,609	Steel products.
GL&V Dorr Oliver (Wkrs)	Hazelton, PA	12/02/1999	NAFTA–3,610	Industrial & municipal process equipment.
Headwear USA (Wkrs)	Pattonsburg, MO	11/23/1999	NAFTA–3,611	Caps.
Killark Electrical Products (Wkrs)	St. Louis, MO	12/06/1999	NAFTA–3,612	Electrical products.
Wolverine Tubs (Co.)	Roxboro, NC	12/03/1999	NAFTA–3,613	Copper tube.
Sims Manufacturing (Co.)	Payne, OH	12/06/1999	NAFTA–3,614	Cabs for tractors & equipment.
Tandycrafts (Co.)	Vay Nuys, CA	08/30/1999	NAFTA–3,615	Frame art, posters and mirrors.
Tuckaseiger Mills (Co.)	Bryson City, NC	12/07/1999	NAFTA–3,616	Comforters, bedpreads, mattress pads.
Chart Industries—Altec (IAMAW)	LaCrosse, WI	12/07/1999	NAFTA–3,617	Cryegenic heat exchanger.
B.F. Goodrick—Fairbanks Morse Engine (USWA).	Beloit, WI	12/09/1999	NAFTA–3,618	Diesel engines.
Sulzer Pumps (Co.)	Portland, OR	12/09/1999	NAFTA–3,619	Pumps.
VF Worker—Red Kap Industries (Co.)	Erwin, TN	12/07/1999	NAFTA–3,620	Pants and jackets.
Tempset (Co.)	St Louis, MO	12/13/1999	NAFTA–3,621	Thermal assemblies.
American Meter Co	Erie, PA	12/13/1999	NAFTA–3,622	Axial and Radio Flow Values.

[FR Doc. 99–33598 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises our (MSHA Approval and Certification Center (A&CC)) user fees. Fees compensate us for the costs that we incur for testing, evaluating, and approving certain products for use in underground mines. We based the year 2000 fees on our actual expenses for fiscal year 1999. The fees reflect changes both in our approval processing operations and in our costs to process approval actions.

DATES: These fee schedules are effective from January 1, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center, 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987 (52 FR 17506), pursuant to 30 U.S.C. 957, we published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products. The rule established specific procedures for calculating, administering, and revising user fees. We have revised our fee schedule for the year 2000 in accordance with the procedures of that rule and include this new fee schedule below. For approval applications postmarked before January 1, 2000, we will continue to calculate fees under the previous (1999) fee schedule, published on December 18, 1998.

Fee Computation

In general, we computed the year 2000 fees based on fiscal year 1999 data. We calculated a weighted-average, direct cost for all the services that we provided during fiscal year 1999 in the processing of requests for testing, evaluation, and approval of certain products for use in underground mines. From this cost, we calculated a single hourly rate to apply uniformly across all of the product approval categories during the year 2000.

Elimination of Flat Rates

Under the provisions of 30 CFR Part 5, three approval areas have been converted from a flat rate to an hourly rate: Statement of Test and Evaluation, Statement of Test and Evaluation Extension, and Mine Wide Monitoring System Barrier Classification. The conversion of these last three approval areas results in a single hourly rate being uniformly applied regardless of product type. See the schedule for the appropriate hourly rate.

Dated: December 22, 1999.

Rebecca J. Smith,

Deputy Director, Office of Standards, Regulations and Variances.

FEE SCHEDULE EFFECTIVE JANUARY 1, 2000

[Based on FY 1999 data]

Action title	Hourly rate
Fees for Testing, Evaluation, and Approval of all Mining Products [1]	$61
Retesting for Approval as a Result of Post-Approval Product Audit [2]	.....
30 CFR Part 15—Explosives Testing	
Permissibility Tests for Explosives:	
Weigh-in	$462
Physical Exam: First size	325
Chemical Analysis	1,977
Air Gap—Minimum Product Firing Temperature	460
Air Gap—Room Temperature	352
Pendulum Friction Test	163
Detonation Rate	352
Gallery Test 7	7,436
Gallery Test 8	5,533
Toxic Gases (Large Chamber)	805
Permissibility Tests for Sheathed Explosives:	
Physical Examination	128
Chemical Analysis	1,044
Gallery Test 9	1,944
Gallery Test 10	1,944
Gallery Test 11	1,944

FEE SCHEDULE EFFECTIVE JANUARY 1, 2000—Continued

[Based on FY 1999 data]

Action title	Hourly rate
Gallery Test 12	1,944
Drop Test	648
Temperature Effects/Detonation	672
Toxic Gases	580

[1] Full approval fee consists of evaluation cost plus applicable test costs.

[2] Fee based upon the approval schedule in effect at the time of retest.

Note: When the nature of the product requires that we test and evaluate it at a location other than our premises, you must reimburse us for the traveling, subsistence, and incidental expenses of our representative in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 99–33575 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Notice of Special Enrollment Rights, Health Insurance Portability for Group Health Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Notice of Special Enrollment Rights. A copy of the proposed information collection request (ICR) can be obtained by contacting the addressee below.

DATES: Written comments must be submitted on or before January 27, 2000.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Subtitle B of title 1 or ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, August 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997, (62 FR 16920 through 16923) (April 8 Interim Rules).

In order to improve participants' understanding of their rights under an employer's group health plan, HIPAA requires that a participant be provided with a description of a plan's special enrollment rules on or before the time when a participant is offered the opportunity to enroll in a group health plan.

Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Current Actions: The Department has not modified the ICR incorporated in the April 8 Interim Rules, but intends to submit the ICR to OMB for continued clearance. Comments received in response to this notice will be incorporated in the submission to OMB. The existing ICR should be continued because it implements the disclosure requirements mandated by the portability provisions enacted in section 701 of HIPAA. Specifically, this ICR implements the statutorily prescribed requirements necessary to provide notice of enrollment rights. The special enrollment rules generally apply to circumstances when the participant initially declined to enroll in the plan, and subsequently would like to have coverage.

The April 8 Interim Rules offer a model form to be used by group health plans and health insurance issuers, containing the minimum information mandated by the statute.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Notice of Enrollment Rights.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0101.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 15,290.

Responses: 1,612,690.

Estimated Total Burden Hours: 6,720.

Total Burden Cost (Operating and Maintenance): $860,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 22, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 99–33599 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Notice of Pre-Existing Condition Exclusion, Health Insurance Portability for Group Health Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed, Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Notice of Pre-Existing Condition Exclusion. A copy of the proposed information collection request (ICR) can be obtained by contacting the addressee identified below.

DATES: Written comments must be submitted on or before February 28, 2000.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Subtitle B of title 1 of ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, Aug. 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997 (62 FR

16920 through 16923) (April 8 Interim Rules).

In order to meet HIPAA's goal of improving portability of health care coverage, participants need to understand their right to demonstrate prior creditable coverage when entering a group health plan that imposes pre-existing condition exclusion provisions. In addition, participants entering plans that use an alternative method of determining creditable coverage also need to be informed of the plan's provisions. Therefore, the Department has determined that plans that contain these provisions must disclose that fact to new participants, as well as inform individual participants of the extent to which a pre-existing condition exclusion applies to them.

Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Current Actions: The Department has not modified the ICR incorporated in the April 8 Interim Rules, but intends to submit the ICR to OMB for continued clearance. Comments received in response to this notice will be incorporated in the submission of OMB. The existing collection of information should be continued because it implements disclosure requirements mandated by the portability provisions enacted in section 701 of HIPAA. Under the April 8 Interim Final Rules, a group health plan or health insurance issuer may not impose any pre-existing condition exclusions on a participant unless the participant has been notified in writing that the plant contains preexisting condition exclusions, that a participant has a right to demonstrate any period of prior creditable coverage, and that the plan or issuer will assist the participant in obtaining a certificate of prior coverage from any prior plan or issuer, if necessary. Plans that use the alternative method of crediting coverage must disclose their method at the time of enrollment in the plan.

In addition, the April 8 Interim Rules require that before a plan or issuer imposes a preexisting condition exclusion on a particular participant, it must first disclose that determination in writing, including the basis of the decision, and an explanation of any appeal procedure established by the plan or issuer.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Notice of Pre-Existing Exclusion.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0102.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 6,900.

Responses: 1,612,750.

Total Estimated Burden Hours: 6,875.

Total Burden Cost (Operating and Maintenance): $710,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 22, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 99–33600 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Establishing Prior Creditable Coverage, Health Insurance Portability for Group Health Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Establishing Prior Creditable Coverage. A copy of the proposed information collection request (ICR) can be obtained by contacting the addressee below.

DATES: Written comments must be submitted on or before February 28, 2000.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Subtitle B of title 1 of ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, August 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997, (62 FR 16920 through 16923) (April 8 Interim Rules).

In order to meet HIPAA's goal of improving access to and portability of health care benefits, the statute provides that, after the submission of evidence establishing prior creditable coverage, a subsequent health insurance provider would be limited to the extent to which it could use pre-existing condition exclusions to limit coverage. This ICR covers the submission of materials sufficient to establish prior creditable coverage.

Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Current Actions: The Department has not modified the ICR incorporated in the April 8 Interim Rules, but intends to submit the ICR to OMB for continued clearance. Comments received in response to this notice will be incorporated in the submission to OMB. The existing collection of information should be continued because it implements disclosure provisions mandated by the portability provisions enacted in section 701 of HIPAA. Specifically, this ICR implements statutory requirements for establishing prior creditable coverage. Under the April 8 Interim Rules, a group health plan is obligated to provide a written certificate of information suitable for establishing prior creditable coverage of a participant or beneficiary. To the extent that a certification is not available or is inadequate to prove prior creditable coverage, alternative methods of establishing creditable coverage are provided.

The April 8 Interim Rules offer model certification and notice forms to be used by group health plans and health insurance issuers, containing the minimum information mandated by the statute.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Establishing Prior Creditable Coverage.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0103.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 15,604.

Responses: 8,000,000.

Total Estimated Burden Hours: 336,060.

Total Burden Cost (Operating and Maintenance): $31,800,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 22, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 99–33601 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–163]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

DATES: Tuesday, January 25, 2000, 8:30 a.m. to 5. p.m.; Wednesday, January 26, 2000, 8:30 a.m. to 5 p.m.; and Thursday, January 27, 2000, 8:30 a.m. to 12 Noon.

ADDRESS: National Aeronautics and Space Administration, 300 E Street, SW, Conference Room 7H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: George L. Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

Overview of Strategic Plan and Present Status

Roadmap Process & Lessons Learned Roadmap Team

Office of Space Science Status Report

Living with a Star Initiative and Status

Global Electrodynamics Connector

Education/Public Outreach Processes and Status Review in Sun-Earth Connection

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 16, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–33557 Filed 12–27–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL INSTITUTE FOR LITERACY

Meeting Notice

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: January 12, 2000 from 10 a.m. to 4:30 p.m.

ADDRESS: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW, Washington, DC 20006. Telephone (202) 233–2027.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Pub. L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advice and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute.

Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The National Institute for Literacy Advisory Board will be meeting on January 12, 2000. The Board will

discuss: (1) Plans for the National Literacy Summit to be held in February; and (2) NIFL's Equipped for the Future standards guide. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 from 8:30 am to 5 p.m.

Dated: December 22, 1999.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 99–33577 Filed 12–27–99; 8:45 am]

BILLING CODE 8065-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

In the Matter of Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize the licensee to possess the Zion Nuclear Power Station (ZNPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of two pressurized-water reactors located at the ComEd site on the west shore of Lake Michigan about 40 miles north of Chicago, Illinois, in the extreme eastern portion of the city of Zion, Illinois (Lake County). The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II

Section 50.54(w) of 10 CFR Part 50 requires power reactor licensees to maintain onsite property damage insurance coverage in the amount of $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. Section 140.11(a)(4) of 10 CFR Part 140 requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain liability insurance of $200 million and to participate in a secondary insurance pool.

NRC may grant exemptions from the requirements of 10 CFR Part 50 of the regulations, which pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, and (2) present special circumstances. Special circumstances exist when (1) application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)), or (2) compliance would result in undue hardship or costs that are significantly in excess of those incurred by others similarly situated. The underlying purpose of Section 50.54(w) is to provide sufficient property damage insurance coverage to ensure funding for onsite post-accident recovery stabilization and decontamination costs in the unlikely event of an accident at a nuclear power plant.

Also, the NRC may grant exemptions from the requirements of 10 CFR Part 140 of the regulations, which pursuant to 10 CFR 140.8, are authorized by law and are otherwise in the public interest. The underlying purpose of Section 140.11 is to provide sufficient liability insurance to ensure funding for claims resulting from a nuclear incident or a precautionary evacuation.

III

On October 22, 1999, ComEd requested an exemption from the financial protection requirement limits of 10 CFR 50.54(w) and 10 CFR 140.11(a)(4). ComEd requested that the amount of insurance coverage it must maintain be reduced to $50 million for onsite property damage and $100 million for offsite financial protection and to withdraw from participation in the secondary liability insurance pool. The licensee stated that special circumstances exist because of the permanently shutdown and defueled condition of ZNPS.

The financial protection limits of 10 CFR 50.54(w) and 10 CFR 140.11 were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. In a permanently shutdown and defueled reactor facility, the reactor will never again be operated, thus eliminating the possibility of accidents involving the reactor. The Defueled Safety Analysis Report (DSAR) analyzed the remaining design basis accidents that are relevant at ZNPS in its defueled condition. These are: a loss of spent fuel inventory and cooling; a fuel handling accident in the fuel building; and a radioactive waste handling accident. The staff evaluated these accidents in the safety evaluation supporting the ZNPS exemption from offsite emergency planning requirements dated August 31, 1999. In its analysis, the staff determined that the radiological consequences of the design basis accidents cannot exceed the Environmental Protection Agency (EPA) early-phase Protective Action Guidelines (PAGs) of 1.0 rem.

The ZNPS was shut down in February 1997. The decay heat from the spent fuel stored in the spent fuel pool decreases over time. In this regard, the staff has determined that as of June 1999, air cooling of the fuel would be sufficient to maintain the integrity of the fuel cladding, and a complete loss of water from the ZNPS spent fuel pool (SFP) would not result in an offsite release of fission products exceeding the EPA early-phase PAGs.

In SECY 96–256, "Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11," dated December 17, 1996, the staff estimated the onsite cleanup costs of accidents considered to be the most costly at a permanently defueled site with spent fuel stored in the SFP. The staff found that the onsite recovery costs for a fuel-handling accident could range up to $24 million. The estimated onsite cleanup costs to recover from the rupture of a large liquid radwaste storage tank could range up to $50 million. The proposed insurance coverage levels in SECY 96–256 were calculated on a per-reactor basis and each reactor at a multi-unit site would be treated as having its own SFP. Although ZNPS is a two-reactor site, there is only one SFP. Therefore, the licensee's proposed level of $50 million for onsite property insurance is sufficient to cover these estimated cleanup costs.

The offsite cleanup costs of the accident scenarios previously discussed are estimated to be negligible in SECY 96–256. However, a licensee's liability for offsite costs may be significant as a result of lawsuits alleging damages from offsite releases. Experience at Three Mile Island Unit 2 showed that significant judgments against a licensee are possible despite negligible dose consequences from an offsite release. An appropriate level of financial liability coverage is needed to account for potential judgments and settlements and to protect the Federal Government from indemnity claims. The licensee's proposed level of $100 million in primary offsite liability coverage is sufficient for this purpose.

The staff has determined that participation in the secondary insurance pool for offsite financial protection is

not required for a permanently shutdown and defueled plant after the time that air cooling of the spent fuel is sufficient to maintain the integrity of the fuel cladding. As previously noted, the staff finds that sufficient time has elapsed to ensure the integrity of the ZNPS spent fuel cladding.

IV

The NRC staff has completed its review of the licensee's request to reduce financial protection limits to $50 million for onsite property insurance and $100 million for offsite liability insurance. On the basis of its review, the NRC staff finds that the spent fuel stored in the Zion Nuclear Power Station's SPF is no longer susceptible to rapid zirconium oxidation. The requested reductions are consistent with SECY 96–256. The licensee's proposed financial protection limits will provide sufficient insurance to recover from limiting hypothetical events, if they occur. Thus, the underlying purposes of the regulations will not be adversely affected by the reductions in insurance coverage.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption to reduce onsite property insurance to $50 million is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Further, special circumstances are present, as set forth in 10 CFR 50.12(a)(2)(ii). Therefore the Commission hereby grants an exemption from the requirements of 10 CFR 50.54(w).

In addition, the Commission has determined that, pursuant to 10 CFR 140.8, an exemption to reduce primary offsite liability insurance to $100 million, accompanied by withdrawal from the secondary insurance pool for offsite liability insurance, is authorized by law and is in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 140.11(a)(4).

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (64 FR 69806).

These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33683 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board Panel

[Docket No. 40–8027–MLA–4; ASLBP No. 99–770–09–MLA]

Sequoyah Fuels Corporation, Gore, OK Site; Decommissioning; Notice of Hearing

December 22, 1999.

This proceeding involves a proposed amendment by Sequoyah Fuels Corporation to its Source Material License No. SUB–1010, to authorize restricted decommissioning of its site near Gore, Oklahoma. The proposal under review, currently denominated as the Second Revised Site Decommissioning Plan (SRSDP), was submitted to the Nuclear Regulatory Commission on March 26, 1999 and seeks authority to decommission the facility based on restricted release pursuant to 10 CFR 20.1403.

Notice is hereby given that, by Memorandum and Order dated December 16, 1999, LBP–99–46, the Presiding Officer has granted the request for a hearing submitted by the Attorney General of the State of Oklahoma. Parties to this proceeding are the Licensee, Sequoyah Fuels Corporation; the State of Oklahoma; and the Staff of the Nuclear Regulatory Commission.

This proceeding will be conducted under the Commission's informal hearing procedures set forth in 10 CFR, Part 2, Subpart L. In response to a Notice of Opportunity for Hearing, published at 64 Fed. Reg. 31023 (June 9, 1999), the State of Oklahoma submitted a request for a hearing. On July 27, 1999, Administrative Judge Charles Bechhoefer was designated Presiding Officer, to rule on petitions for leave to intervene and/or requests for a hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory proceeding. Pursuant to 10 CFR 2.722 and 2.1209, Administrative Judge Thomas D. Murphy was appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review. 64 FR 42154 (August 3, 1999).

During the course of this proceeding, the Presiding Officer, pursuant to 10 CFR 2.1211(a), will entertain limited appearance statements from any member of the public who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not evidence and do not become part of the decisional record, they may assist the Presiding Officer and parties in their consideration of matters at issue in this proceeding. Limited appearance statements should be made in writing. If the Presiding Officer conducts an oral argument or in-person prehearing conference, the Presiding Officer may at his discretion hear oral statements, at a time and location yet to be determined. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Presiding Officer, T3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or CXB2@nrc.gov.

Documents related to this proceeding, issued prior to December 1, 1999, are available in print form for public inspection at the Commission's Public Document Room (PDR), 2120 L St. NW, Washington, D.C. Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <http://www.nrc.gov/NRC/ADAMS/index.html>). The PDR and the majority of public libraries have terminals for public access to the Internet.

Rockville, Maryland, December 22, 1999.

Charles Bechhoefer,

Presiding Officer, Administrative Judge.

[FR Doc. 99–33678 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Dresden Station, Unit Nos. 2 and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the NRC) is considering issuance of an exemption from certain requirements of its regulations regarding Facility Operating Licenses Nos. DPR–19 and DPR–25 issued to the

Commonwealth Edison Company (ComEd, the licensee), for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from certain emergency lighting requirements of 10 CFR part 50, Appendix R, Section III.J, applicable to Dresden, Units 2 and 3. The exemption will allow the use of hand-held portable lights to provide lighting for outdoor access and egress routes between the main power block, the isolation condenser pumphouse, the cribhouse, the clean demineralized water storage tank, and for reading the clean demineralized water storage tank level instrument.

The proposed action is in accordance with the licensee's application dated November 19, 1998.

The Need for the Proposed Action

Equipment needed for safe shutdown at Dresden, Units 2 and 3, is maintained inside the main power block and several buildings onsite. However, access and egress between these buildings, the clean demineralized water storage tank (CDST), and the main power block requires walking outdoors. These outdoor areas are normally lit by outdoor lighting powered by offsite power or emergency power from the security diesel. This installed outdoor and security lighting does not meet the Appendix R requirements for an 8-hour battery power supply.

Implementation of outdoor battery powered lighting units to meet Appendix R requirements would result in expenditure of engineering, construction, and plant resources for their installation, maintenance, and operation. The requested exemption from the requirements of Appendix R, Section III.J, would allow the use of hand-held portable lights, in the event that sufficient daylight or security lighting is not available, when transiting access and egress routes between the main power block, the isolation condenser pumphouse, the cribhouse, and the CDST, including reading the CDST level instrument. The exemption is needed to avoid the unnecessary expenditure of resources.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with the availability of hand-held battery-powered portable lights for use during transit between these site structures and for reading the CDST level instrument, the installation of emergency lighting units with at least an 8-hour battery supply for these transit routes and the CDST level instrument is not necessary to achieve the underlying purpose of Section III.J of Appendix R to 10 CFR part 50.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with this action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for Dresden, Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on December 8, 1999, the staff consulted with the Illinois official, Mr. Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated November 19, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33679 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop To Develop a Standard Review Plan for Decommissioning

SUMMARY: This notice announces a public workshop the U.S. Nuclear Regulatory Commission (NRC) is sponsoring to solicit input from stakeholders during the development of a Standard Review Plan (SRP) and other guidance for decommissioning nuclear facilities.

SUPPLEMENTARY INFORMATION: On October 21, 1998, NRC announced that it was sponsoring a series of public workshops to support the staff's development of an SRP and other guidance for the decommissioning of nuclear facilities. On November 18, 1998, NRC published the schedule for these workshops and indicated that a workshop would be held on October 20–21, 1999, at NRC Headquarters, at Two White Flint North, 11545 Rockville Pike, Rockville, MD. On September 8, 1999, NRC staff announced that it was postponing the October workshop until February 2000. The new date for the workshop is February 18 and 19, 2000. The workshop will be held at the NRC Headquarters in the Two Flint North Auditorium, at 11545 Rockville Pike, Rockville, MD. The workshop will begin at 8:30 a.m. and end at 4:30 p.m. on both days.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749.

Dated at Rockville, Maryland, this 20th day of December 1999.

For the U.S. Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–33681 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 116th meeting on January 13 and 14, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Thursday, January 13, 2000—5 p.m. until the conclusion of business

Friday, January 14, 2000—12 Noon until the conclusion of business

The Committee will prepare ACNW letter reports and discuss ACNW Planning and Procedures as time allows.

Preparation of ACNW Reports (Open)—The Committee will discuss planned reports on the following topics: The Department of Energy's Draft Environmental Impact Statement for the Proposed Repository at Yucca Mountain, NV; the rubblization decommissioning option; the NRC's proposed high-level waste regulation; and other topics discussed during this and previous meetings as the need arises.

ACNW Planning and Procedures (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. This will include strategic planning and self-assessment. The Committee may also discuss ACNW-related activities of individual members.

Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8 A.M. and 5 P.M. EST. ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: December 21, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–33676 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Plant Operations

The ACRS Subcommittee on Plant Operations will hold a meeting on January 20, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 20, 2000—8:30 a.m. until the conclusion of business

The Subcommittee will discuss selected technical components of the revised reactor oversight process, including the updated significance determination process and plant performance indicators. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two

working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 21, 1999.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–33677 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NUREG–0713, "Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities;" Issuance, Availability

The Nuclear Regulatory Commission has issued Volume 20 of NUREG–0713, "Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities." This NUREG summarizes the occupational exposure data that are maintained in the U.S. Nuclear Regulatory Commission's (NRC) Radiation Exposure Information and Reporting System (REIRS). The bulk of the information contained in this NUREG was compiled from the 1998 annual reports submitted by NRC licensees [1] subject to the reporting requirements of 10 CFR 20.2206. Since there are no geologic repositories for high level waste currently licensed, only six categories will be considered in this report. This NUREG is available at <*http://www.reirs.com*>, through the NRC Public Electronic Reading Room link <*http://www.nrc.gov/NRC/ADAMS/index.htm*> at the NRC Homepage.

Comments and suggestions in connection with this NUREG are encouraged at any time. Written comments may be submitted to the REIRS Project Manager, Mailstop T–9F31, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued NUREGs may be purchased from both the Government Printing Office(GPO) and the National Technical Information Service (NTIS). Details on this service may be obtained by writing either the GPO at The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 or the NTIS, 5285 Port Royal Road, Springfield, VA 22161. NUREGs are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission.

Thomas L. King,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 99–33682 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

[1] Commercial nuclear power reactors; industrial radiographers; fuel processors (including uranium enrichment), fabricators, and reprocessors; manufacturers and distributors of byproduct material; independent spent fuel storage installations; facilities for land disposal of low-level waste; and geologic repositories for high-level waste.

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review: Comment Request for Reinstatement, With Change, of a Previously Approved Information Collection for Which Approval Has Expired: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of the following reinstatement, with change, of a previously approved collection which has expired. SF 2817, Life Insurance Election, is used by Federal employees and assignees (those who have acquired ownership and control of an employee's or annuitant's coverage through the enrollee's assignment of life insurance). The form is used as the official agency record of the individual's coverage and enrollment status under the FEGLI program, and as acknowledgment and authorization by the individual for collection from him or her of the enrollee share of the premium contributions.

We estimate 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before January 27, 2000.

ADDRESSES: Send or deliver comments to—

Laura Lawrence, Senior Insurance Benefits Specialist, Insurance Planning and Evaluation Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis Pinkney, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–33584 Filed 12–27–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: RI 38–107

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of an information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received January 27, 2000.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office

Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–33586 Filed 12–27–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Deletion of a System of Records Notice

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to delete a Privacy Act system of records.

SUMMARY: The Office of Personnel Management is deleting the following system from its inventory of Privacy Act systems of records notices.

DATES: The changes will be effective without further notice February 7, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Office of Personnel Management conducted a review of its Privacy Act systems of records and determined the following records are no longer being maintained by the agency.

System No.	System name
OPM/INTERNAL–1 ...	Defense Mobilization Emergency Cadre Records.

Office of Personnel Management,

Janice R. Lachance,

Director.

[FR Doc. 99–33585 Filed 12–27–99; 8:45 am]

BILLING CODE 6325–01–U

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Evidence of Marital Relationship-Living with Requirements.

(2) *Form(s) submitted:* G–124, G–124a, G–237, G–238, G–238a.

(3) *OMB Number:* 3220–0021.

(4) *Expiration date of current OMB clearance:* 3/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals, State, Local, or Tribal government.

(7) *Estimated annual number of respondents:* 1,100.

(8) *Total annual responses:* 1,100.

(9) *Total annual reporting hours:* 196.

(10) *Collection description:* Under the R RA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law-marriage, termination of previous marriages and residency requirements.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Lori Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–33545 Filed 12–27–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24213; 812–11580]

Evergreen Select Fixed Income Trust, *et al.*; Notice of Application

December 21, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Evergreen Select Fixed Income Trust, Evergreen Select Equity Trust, Evergreen Select Money Market Trust, Evergreen Municipal Trust, Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen International Trust, Evergreen Money Market Trust, Evergreen Variable Annuity Trust (collectively the "Trusts"), on behalf of their respective series, and First Union National Bank ("FUNB") and any investment adviser controlling, controlled by or under common control with FUNB (together with FUNB, the "Advisers").

Filing Dates: The application was filed on April 14, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 21, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C.

20549–0609. Applicants, c/o Maureen E. Towle, Esq., Evergreen Investment Management Company, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trusts, organized as Delaware business trusts, are registered under the Act as open-end management investment companies. The Trusts currently consist of 92 series (each a "Fund" and collectively "Funds"), some of which hold themselves out as money market Funds and are subject to the requirements of rule 2a–7 under the Act ("Central Funds").[1] The Advisers are wholly-owned subsidiaries of First Union Corporation, a publicly-held holding company. FUNB, which is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act") and the Advisers, each of which is registered under the Advisers Act, currently serve as investment advisers to the Funds.[2]

2. Applicants state that each Fund has, or may be expected to have, uninvested cash ("Uninvested Cash") held by a custodian. Such Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. Certain Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

3. Applicants request an order to permit each of the Funds ("Participating Funds") to invest their cash Balances in one or more of the Central Funds, and the Central Funds to sell their shares to, and redeem their shares from, the Participating Funds. Investment of Cash Balances in shares of the Central Funds will be made only to the extent that such investments are consistent with each Participating Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(D)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of section 12(d)(1) (A) and (B) to permit the Participating Funds to invest Cash Balances in Central Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1) (A) and (B) were intended to prevent. Applicants state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund will not be in a position to gain undue influence over a Central fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Central Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealer's ("NASD") Conduct Rules). In connection with approving any advisory contract for a Participating Fund, each Participating Fund's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees") will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Participating Fund by the Adviser as a result of the investment of Uninvested Cash in the Central Funds. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act, in pertinent part, defines an "affiliated person" of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with the other person and any person owning, controlling or holding with power to vote, 5% or more of the other person. Applicants state that because the Funds share a common Board, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. In addition, applicants state that because a Participating Fund may acquire 5% or more of a Central Fund, each Fund may be deemed to be an affiliated person of the other Fund. As a result, section 17(a) would prohibit the sale of the shares of a Central Fund to the Participating Funds, and the redemption of the shares by a Central Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each

[1] Applicants also request relief for all registered open-end management investment companies or series thereof that are or become advised by the Advisers ("Future Funds" and together with Funds, the "Funds"). All investment companies that currently intend to rely on the requested relief are named as applicants. Any other Funds that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

[2] In addition to FUNB, the Advisers are Evergreen Investment Management Company, Evergreen Asset Management Corp., First International Advisers, Ltd. and Meridian Investment Company.

investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Participating Funds satisfies the standards in section 6(c) and 17(b). Applicants note that shares of the Central Funds will be purchased and redeemed by the Participating Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Central Fund has the right to discontinue selling shares to any of the Participating Funds if the Central Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Fund, by participating in the proposed transactions, and each Adviser, by managing the assets of the Participating Funds investing in a Central Fund, and a Central Fund by selling shares to the Participating Fund could be deemed to be a participant in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 Permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Participating Funds in shares of the Central funds would be indistinguishable from any other shareholder account maintained by the Central Fund and that the transaction will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Central Funds sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the rules of Conduct of the NASD).

2. Before the next meeting of the Board of a Participating Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser to the Participating Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any advisory contract for a Participating Fund, the Board of the Participating Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Fund by the Adviser as a result of Uninvested Cash being invested in the Central Fund. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the participating Fund's aggregate investment in the Central Funds does not exceed 25 percent of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund and series thereof will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Participating Fund, Central Fund, and any future Fund that may rely on the requested order shall be advised by the Advisers.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33634 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42256; File No. SR–CBOE–99–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Clarify Certain Aspects of Interpretation and Policy .02 to Exchange Rule 6.8

December 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Interpretation and Policy .02 to CBOE Rule 6.8 in order to clarify certain aspects of the Interpretation. Below is the text of the proposed rule change. Proposed new language is italicized.

RAES Operations in Equity Options

Rule 6.8 [No change]

* * * Interpretation and Policy

.01 [No change].

.02 Orders to buy or sell options that are multiply traded in one or more markets in addition to the Exchange will not be automatically executed on RAES at prices inferior to the current best bid or offer in any other market, as such best bids or offers are identified in RAES. In respect of those classes of options that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been specifically designated by the appropriate Floor Procedure Committee as coming within the scope of this sentence ("automatic step-up classes"), under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by no more than the "step-up amount" as defined below, such orders will be automatically executed on RAES at the current best bid or offer in the other market. In respect of automatic step-up classes of options under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up amount, or in respect of specified automatic step-up classes or series of options or specified markets under circumstances where the Chairman of the appropriate Floor Procedure Committee or his designee has determined that automatic step-up should not apply because quotes in such options or markets are deemed not to be reliable, or in respect of classes of options other than automatic step-up classes where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders will be rerouted by the DPM or OBO for that class of options for non-automated handling. The DPM or OBO will report the execution or non-execution of such orders to the firm that to originally forwarded the order to RAES. As used in this Interpretation and Policy .02, the term "step-up amount" shall mean the minimum increment for options of that series established pursuant to Rule 6.42, or any greater amount established by the appropriate Floor Procedure Committee in respect of specified automatic step-up classes or series of options. The procedures described in this Interpretation .02 shall not apply in circumstances where a "fast market" in the options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that firm quote requirements do not apply. *Under circumstances where the Chairman of the appropriate Floor Procedure Committee or his designee determines that quotes from one or more particular markets in one or more classes of options are not reliable, the Chairman or designee may direct the senior person in charge of the Exchange's Control Room to exclude the unreliable quotes from the RAES determination of the NBBO in the particular option class(es) through the end of that trading day, or until the quotes are determined to be reliable again whichever occurs first.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comment it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Interpretation and Policy .02 to CBOE Rule 6.8 provides that orders to buy or sell equity options that are multiply traded in one or more markets in addition to the CBOE will not be executed on the CBOE's Retail Automatic Execution System ("RAES") at prices inferior to the current best bid or offer in any other market (known as the National Best Bid or Offer, or "NBBO"), as the NBBO is identified in RAES.

The proposed rule change makes three clarifications to this Interpretation: (1) It clarifies that one or more markets may be turned off from the NBBO calculation while still checking the prices on other markets; (2) it specifies the individuals vested with authority to make the determination to exclude a market; and (3) it clarifies the situation(s) under which such determinations may be made.

Occasionally, bids and offers in certain options from a particular market may not be reliable, whether due to unusual market conditions, systems problems, failure by another market's specialist to update quotes, or other causes. The language of the current Interpretation and Policy .02 is ambiguous about whether the Exchange has any way to avoid executing RAES trades at these inaccurate prices except to turn off NBBO execution altogether for affected option classes.[3] If the NBBO execution was thus turned off, public customers receiving executions through the RAES system would lose the potential benefits of an execution at the NBBO, even when the inaccurate quotes are only coming from one particular exchange.

The proposed change will clarify the Exchange's current Interpretation, which allows a market to be excluded individually. It will make clear that the Exchange can keep filling orders at the best prices available at any market not experiencing quote reliability problems by removing the unreliable quotes from the RAES determination of the NBBO. The unreliable quotes may be excluded from the NBBO determination until such times as either the quotes become reliable again, or trading ends for the day—whichever occurs first. This change will clarify that Exchange public customers may receive RAES execution of their orders at the best price available at multiple exchanges more frequently and with less uncertainty.

The proposed change also will vest responsibility and discretion for determining the reliability of quotes from a particular exchange on a particular option class with the Chairman of the appropriate Floor Procedures Committee or his designee—the same procedure that currently applies under Interpretation and Policy .02 for determining when the "automatic step-up" procedure should not apply.[4]

Finally, the proposed change seeks to better describe the circumstances when a market may be excluded from the NBBO. Currently, the rule states that the NBBO procedures in the Interpretation shall not apply when a "fast market" has been declared at the Exchange or another market, or when comparable conditions exist such that the firm quote requirements do not apply. When the Exchange or another market declares a "fast market," an indication is sent out alerting the public to that fact. However, it will not always be known when another market has taken the step of suspending firm quote requirements in an option class. The Exchange, by contrast, will often know if there are problems with quotes in one or more option classes at another market because the trading crowds at the Exchange continuously monitor the other markets. Under the proposed Interpretation, if another market's quotes appear to be unreliable, the trading crowd or Exchange officials can bring this to the attention of the Chairman of the appropriate Floor Procedure Committee or his designee, who in turn can arrange

[3] While Interpretation .02 currently provides that the procedures for NBBO executions "shall not apply" if a "fast market" has been declared, or if the firm quote requirements do not apply at the other market, the Interpretation could be read to require that NBBO be turned off. The Exchange intended for the rule to have the latter interpretation, and has interpreted the rule as such.

[4] *See* Release No. 34–40096 (June 16, 1998), 63 FR 34209 (June 23, 1998).

to contact the other market directly to confirm whether there is a problem with the quotes.

2. Statutory Basis

CBOE believes that the proposed change in Interpretation and Policy .02 is consistent with and is furtherance of the provisions of Section 6(b)(5) [5] of the Act. By making clear that the Exchange has greater flexibility to keep RAES executing orders at the NBBO, CBOE believes that public customers will receive better executions of their orders more frequently. This will improve the efficiency of RAES, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system, and thus protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–45 and should be submitted by January 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33635 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42257; File No. SR–DTC–99–22]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Revisions to the Procedures for Running Call Lotteries for Book Entry Only Securities

December 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 23, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–99–22) as described in Items I, II, III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will revise its procedures for running call lotteries on book-entry only ("BEO") securities for which DTC receives notice of the call after the redemption date. Specifically, DTC will run lotteries in these instances using participants' positions as of the close of business on the day prior to the call publication date instead of the date on which the call is announced by DTC.

II Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Currently, DTC's call lottery process allocates called BEO securities among participants having positions in the called securities as of the close of business on the day DTC announces the call lottery ("DTC call announcement date"). DTC adopted these procedures in March 1998 with the approval of the Securities Exchange Commission and the endorsement of the Corporate Actions Division of the Securities Industry Association ("Corporate Actions Division").[3] Prior to March 1998, DTC ran its lotteries based on participants' positions as of the close of business on the day prior to publication date ("call publication date").[4]

DTC is proposing to change the date for the allocation in the call lottery only

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] See Securities Exchange Act Release 34–39658 (February 20, 1998) 63 FR 8726 [File No. SR–DTC–97–14].

[4] For a discussion of DTC's call lottery process, refer to Securities Exchange Act Release Nos. 21523 (November 27, 1984), 49 FR 47352 [File No. SR–DTC–84–09] (notice of filing and immediate effectiveness of proposed rule change); 30552 (April 2, 1992) 57 FR 12352 [File No. SR–DTC–90–02] (order temporarily approving a proposed rule change by DTC relating to the establishment of a procedure to recall certain deliveries which have created short positions as a result of call lotteries); 35034 (November 30, 1994) 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of proposed rule changes to establish procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits); 36651 (December 28, 1995) 61 FR 429 [File No. SR–DTC–95–21] (order granting accelerated permanent approval of a proposed rule change concerning short position reclamation procedures); and 34–39658 (February 20, 1998) 63 FR 8726 [File No. SR–DTC–97–14] (order approving proposed rule change regarding call lottery procedures for BEO securities).

for calls of BEO securities in which DTC is notified of the call after the redemption date has passed. Allocation lotteries for other calls of BEO securities, where notice is received on or before the redemption date, will continue to be run using participants' positions as of the DTC call announcement date.

When the call notice is received by DTC after the redemption date, the DTC call announcement date is necessarily after the date as of which the called securities are deemed to have been redeemed by the issuer. Use of the DTC call announcement date in these instances can have an adverse impact on participants and their customers who have acquired a security position during the period between the redemption date and the DTC call announcement date because they have acquired the called security without notice that the security has been redeemed. Therefore, for call notices received after the redemption date, DTC proposes to process its call lottery with reference to participant positions as of the close of business on the day prior to the call publication date. Use of the call publication date to determine lottery allocations is consistent with DTC's procedures for lotteries in certificated issues.

DTC's proposed rule change is designed to mitigate the negative impact of calls of BEO securities which are processed through DTC's lottery process after the redemption date due to late notification from the issuer. The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions and, in general, furthers the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC has discussed the proposed rule change with participants and the Corporate Actions Division of the Securities Industry Association. DTC presented the proposed rule change to the Board of Directors of the Corporate Action Division on March 23, 1999. Further discussions between DTC and the Corporate Actions Division took place on September 15, 1999. No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file No. SR–STC–99–22 and should be submitted by January 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33547 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42242; File No. SR–NASD–99–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Head Trader Alert 1999–60 Regarding the Nasdaq Application of the OptiMark System

December 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 on November 23, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing an interpretation of NASD Rule 4991(h) that was issued in Head Trader Alert Number 1999–60. The interpretation affects the Nasdaq Application of the OptiMark System (the "Nasdaq Application"). The text of the proposed rule change is available at the Association and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq explained the "N" modifier that may be attached to a SelectNet order that is the result of an OptiMark match, and clarified the use of the C999 modifier by market participants outside of the OptiMark system. Letter from Peter R. Geraghty, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 22, 1999.

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The SEC recently approved a proposed rule change filed by the NASD to implement the Nasdaq Application.[4] The Nasdaq Application permits NASD members and their customers to enter large orders in Nasdaq stocks into an anonymous matching system that has been designed, developed, and patented by OptiMark Technologies, Inc. ("OptiMark Match") and has been integrated into Nasdaq's facilities in Trumbull, Connecticut. The NASD believes that the anonymity offered by this facility limits the market impact of trading in large size and provides NASD members with a new, additional tool to trade Nasdaq securities more effectively.

The Nasdaq Application allows NASD members (and if sponsored by NASD members, customers of such members) to enter trading interests, called profiles, into Nasdaq-operated systems where those profiles are collected and matched periodically by the OptiMark Match. As currently approved, these matches occur no more frequently than every five minutes. In addition to matching profiles entered directly into the system, the Nasdaq Application incorporates bids and offers in the Nasdaq Quote Montage, creates profiles for such quotes, and includes the profiles in the next match. The OptiMark Match then attempts to match contra interests at the best prices and sizes according to the rules of the match process. If the system finds that a Nasdaq Quota Montage profile matched with another profile, the system sends a message to the market participant via the Nasdaq SelectNet system, seeking to trade at the market participant's quoted price or better and at round lot sizes, up to the amount quoted by that market participant.

Nasdaq believes that the rules approved by the SEC in October 1999[5] clearly implied that Nasdaq subscribers that respond to SelectNet messages sent as a result of OptiMark entered profiles matching with quoted interest displayed in the Nasdaq Quote Montage profiles must respond in round lot sizes only. Specifically, Nasdaq intended that Rule 4991(h) require such a response in that Rule 4991(h) stated that orders in the Nasdaq Application "shall be in round lots equal to or greater than 1,000 shares, except for * * * Quote Montage Profiles * * * that may be in any round lot size. * * *"

Therefore, Nasdaq issued a Head Trader Alert to firms explaining that the rules related to the OptiMark system specifically intended to require that responses to SelectNet messages sent as a result of an OptiMark Match with a Nasdaq Quote Montage profile must be made in round lot sizes, and that the C999 modifier is intended to signal the receiving market participant that it must respond in round lots only. The Head Trader Alert also noted that Rule 3380(b) should not be interpreted as permitting an ECN to reject a SelectNet message from an OptiMark match with the C999 modifier. Nasdaq notes that the requirement that an ECN or other market participant deal only in round lots when responding to a SelectNet message sent as a result of an OptiMark match is implied only by the rules governing the Nasdaq Application of the OptiMark System. Other market participants sending SelectNet messages to ECNs are not permitted to use the C999 modifier in such circumstances.

In addition, the Head Trader Alert explained another modifier that is attached to SelectNet orders sent as a result of OptiMark matches. This modifier is the letter "N" which is intended to convey to the recipient of the order that the order is non-negotiable. However the Not Negotiable modifier "N" on a SelectNet order following the price allows the recipient of the order to price improve the order and execute it at a price better than that found in the price field. The "N" modifier does not allow the recipient to enter a counter offer at an inferior price against the order. For example, a firm receiving an order to sell at 10 with the Not Negotiable indicator may not send a counter offer on the order at 9⅞, but they may price improve the order at 10 1/16.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A[6] of the Act in general and furthers the objectives of Section 15A(b)(6)[7] in particular because it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.[8]

Nasdaq believes that the proposed rule change is consistent with provisions of Section 11A[9] of the Act in general and furthers the objectives of Section 11A(a)(1)(C)[10] in particular because it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among brokers and dealers, availability to brokers, dealers and investors of information with respect to quotations and transactions in securities, and practicability of brokers executing investors' orders in the best market.

Nasdaq believes that the proposal is consistent with Section 15A(b)(6)[11] and Section 11A(a)(1)(C)[12] of the Act because it will inform firms about two modifiers that may be attached to SelectNet messages sent as a result of an Optimark match related to round lot only messages and price improvement, and will clarify a firm's obligations in responding to SelectNet orders generated by an OptiMark match.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[13] and subparagraph (f)(1) of Rule 19b-4 thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the

[4] Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999).

[5] *Id.*

[6] 15 U.S.C. 78o-3.

[7] 15 U.S.C. 78o-3(b)(c).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k-1.

[10] 15 U.S.C. 78k-1(a)(1)(C).

[11] 15 U.S.C. 78o-3(b)(6).

[12] 15 U.S.C. 78k-1(a)(1)(C).

[13] 15 U.S.C. 78s(b)(3)(A)(i).

[14] 17 CFR 240.19b-4(f)(1).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–99–68 and should be submitted by January 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33546 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42249; File No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of the Nasdaq Order Display Facility and Modifications of the Nasdaq Trading Platform

December 17, 1999.

On October 1, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") a proposal relating to the establishment of the Nasdaq Order Display Facility and modifications of the Nasdaq Trading Platform. Notice of the proposed rule change was published for comment on December 6, 1999.[1]

To give the public additional time to comment on the proposal, the Commission is extending the comment period to January 11, 2000. A copy of the proposed rule change is available in the Commission's Public Reference Room in File No. SR–NASD–99–53.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Securities Exchange Act of 1934. Persons making written submissions should file six copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–53 and should be submitted by January 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33548 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 42116 (November 22, 1999), 64 FR 66125.

[2] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42248; File No. SR–PCX–99–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Specialist Evaluation Pilot Program

December 17, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 6, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The Exchange seeks permanent approval of its Specialist Evaluation Pilot Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert Pacileo, Staff Attorney, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated December 6, 1999 ("Amendment No. 1"). In Amendment No. 1, the Exchange requested permanent approval of the specialist evaluation pilot program on an accelerated basis.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 1, 1996, the Commission approved a nine month pilot program for evaluating PCX equity specialists using a number of criteria.[4] On December 22, 1997, the Commission approved a one-year extension of the Exchange's pilot program for the evaluation of equity specialists.[5] That rule change established an overall score and individual passing scores for specialists, replaced the "Bettering the Quote" criterion with a "Price Improvement" criterion, and lowered the weighting of the "Specialist Evaluation Questionnaire" criterion from 15% to 10%, so that Price Improvement could be given a weight of 10%. Subsequently, on May 8, 1998, the Commission approved an Exchange proposal to codify these changes.[6] The Commission later approved another one-year extension of the Exchange's pilot program to January 1, 2000.[7] The program currently measures specialist performance under the following criteria, among others, trading between the quote, executions in size greater than the National Best Bid or Offer, Price Improvement, and answers to specialist evaluation questionnaire.

The Exchange is now proposing to make the program permanent. On October 29, 1999, the Exchange submitted a required report to the Commission responding to particular questions set forth in the December 1997 approval order.[8] The Exchange believes that this program is operating successfully and without any problems and, on that basis, the Exchange believes that permanent approval of the Specialist Evaluation Pilot Program is warranted.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–46 and should be submitted by January 18, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks. Among the obligations imposed upon specialists under the Act is the maintenance of fair and orderly markets in their designated securities. To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The Commission believes that the PCX's specialist evaluation program can play an important role regarding to this oversight.

The Exchange's specialist evaluation pilot program has undergone several changes since it was first implemented in 1996. However, the Commission believes that the pilot program in its current form has generated, and will continue to generate, sufficiently, detailed information to enable the Exchange to make accurate assessments of specialist performance. For example, the overall passing score and individual criterion passing scores establish minimum adequate performance thresholds. These thresholds allow the Exchange to identify specialists who are not operating at an acceptable level of performance. In its October 1999 report, the Exchange noted that all specialists attained the overall passing score in the first three quarters of 1999. The report also noted, however, the number of specialists who did not attain a passing score in one or more of the individual criteria for the specified period of time (*e.g.*, four out of five quarters). The report specified the restrictions placed on the failing specialists (*e.g.*, no new allocations).

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)[11] of the Act. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange be designed to facilitate transaction in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The criteria used to assess the

---

[4] *See* Exchange Act Release No. 37770 (October 1, 1996), 61 FR 52820 (October 8, 1996).

[5] *See* Exchange Act Release No. 39477 (December 22, 1997), 62 FR 68334 (December 30, 1997).

[6] *See* Exchange Act Release No. 39976 (May 8, 1998), 63 FR 26834 (May 14, 1998).

[7] *See* Exchange Act Release No. 40817 (December 21, 1998), 63 FR 71993 (December 30, 1998).

[8] The December 1998 approval order required the Exchange to submit a report containing the information described in the December 1997 order. *See* Release No. 40817, *supra* note 6. The December 1997 approval order requested a report containing data on (1) the number of specialists who, as a result of failing the overall passing score in any one quarterly evaluation, appeared before the Equity Allocation Committee ("EAC"); (2) the number of specialists who, as a result of failing the overall passing score in any three out of four quarters, appeared before the EAC; (3) the number of specialists who, as a result of failing any individual criterion passing score for at least two consecutive quarters, appeared before the EAC; (4) the number of specialists who, as a result of scoring in the bottom 10% in any one quarterly evaluation, appeared before the EAC; and (5) the number of specialists who, as a result of scoring in the bottom 10% in any two out of four consecutive quarterly evaluations, appeared before the EAC. The report included any type of restrictions that were imposed on these specialists, any further action that was taken against these specialists, and any situation in which the restrictions were not imposed due to mitigating circumstances. The report also included the number of specialists for whom formal proceedings were initiated and the results of such proceedings, and the number of registered specialists who scored in the bottom 10% of all registered specialists on his or her trading floor in the overall program.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

performance of PCX equity specialists (*e.g.*, price improvement and trading in size greater than the NBBO) are appropriate means of helping to determine whether a PCX equity specialist in performing its specialist duties to maintain a fair and orderly market.[13]

Further, the Commission finds that the proposal is consistent with the Act, particularly section 11(b)[14] of the Act and Rule 11b–1[15] under the Act, which allows securities exchanges to permit exchange members to register as specialists, providing that the exchange requires the specialist to assist in maintaining a fair and orderly market. As discussed, the means PCX has chosen to assess those duties and the means of sanctioning specialists who fail to meet their obligations (*e.g.*, restrictions on further stock allocations) are appropriate and consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. The Exchange has stated that the program is operating successfully and without any problems. Accelerated approval will permit the Specialist Evaluation program to continue on an uninterrupted basis. In addition, the rule change that implemented the pilot program in its current form and the rule change that subsequently extended pilot program were noticed for the full statutory period and the Commission received no comments on the proposed rule changes. Accordingly, the Commission does not believe that the current filing raises any regulatory issues not raised in the previous filings.

It is therefore ordered, pursuant to Section 19(b)(2)[16] of the Act, that the proposed rule change (SR–PCX–99–46), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33636 Filed 12–27–99; 8:45]

BILLING CODE 8010–01–M

[13] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78k(b).

[15] 17 CFR 240.11b–1.

[16] 15 U.S.C. 78s(b)(2).

[17] CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3174]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The purpose of the meeting will be for the members to look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee. In addition, the Committee members will review the activities of the various working groups of the Advisory Committee.

This meeting will be held on Thursday, January 20, 2000, from 9:30 a.m.–12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, N.W., Washington, D.C. 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: December 20, 1999.

Timothy C. Finton,

Executive Secretary of the Advisory Committee on International Communications and Information Policy, U.S. Department of State.

[FR Doc. 99–33651 Filed 12–27–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice No. 3185]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 10 A.M. on Wednesday, January 19, 2000, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Flag State Implementation (FSI) Subcommittee of the International Maritime Organization (IMO) which is scheduled for January 24–28, 2000, at the IMO Headquarters in London. At this meeting, the U.S. position on documents submitted for consideration at the eighth session of the FSI Subcommittee will be discussed.

Among other things, the items of particular interest are:

1. Responsibilities of Governments and measures to encourage flag State compliance;
2. Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
3. Self-assessment of flag State performance;
4. Implications arising when a vessel loses the right to fly the flag of a State;
5. Revision of Survey Guidelines (A.746(18)) and Guidelines on Surveys (A.560(14));
6. Guidelines for unscheduled inspections of roll-on/roll-off (ro-ro) passenger vessels;
7. Introduction of the Harmonized System of Survey and Certification (HSSC) into MARPOL Annex VI on prevention of air pollution;
8. Analysis and evaluation of deficiency reports and mandatory reports under the International Convention for the Prevention of Marine Pollution from Ships 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
9. Casualty statistics and investigations;
10. Regional cooperation on port State control;
11. Results of inspections; and,
12. Mandatory reporting procedures on port State control detentions.

Members of the public may attend the meeting up to the capacity of the room. Interested persons may seek information by contacting Mr. David Deaver, U.S. Coast Guard Headquarters (G–MOC–4), 2100 Second Street, SW, Room 1116, Washington, DC 20593–0001; telephone: (202) 267–0502; email: ddeaver@comdt.uscg.mil.

Dated: December 20, 1999.

Stephan M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 99–33652 Filed 12–27–99; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment Regarding Negotiations Toward a Free Trade Area of the Americas

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) seeks public comment as part of its efforts to develop proposals and positions concerning toward the Free Trade Area of the Americas (FTAA). The TPSC seeks public comment with respect to all aspects of the FTAA negotiations.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the FTAA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs at (202) 395–5190. Additionally, the official FTAA website (*www.ftaa-alca.org*) contains information regarding the FTAA process, including official documents.

SUPPLEMENTARY INFORMATION:

1. Background

FTAA Chronology

Miami Summit of the Americas. On December 11, 1994, President Clinton and the 33 other democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on a Free Trade Area of the Americas (FTAA) no later than the year 2005 and to achieve concrete progress toward that objective by the end of this century. The Miami Declaration of Principles and Plan of Action announced the agreements reached by the leaders at the first Summit of the Americas. With respect to the FTAA, the Plan of Action states in part:

> We will strive to maximize market openness through high levels of discipline as we build upon existing agreements in the Hemisphere. We will also strive for balanced and comprehensive agreements, including among others: tariffs and non-tariff barriers affecting trade in goods and services; agriculture; subsidies; investment; intellectual property rights; government procurement; technical barriers to trade; safeguards; rules of origin; antidumping and countervailing duties; sanitary and phystosanitary standards and procedures; dispute resolution; and competition policy.

The Plan of Action also states:

> Free trade and increased economic integration are key factors for sustainable development. This will be furthered as we strive to make our trade liberalization and environmental policies mutually supportive, taking into account efforts undertaken by the GATT/WTO and other international organizations. As economic integration in the Hemisphere proceeds, we will further secure the observance and promotion of worker rights, as defined by appropriate international conventions. We will avoid disguised restrictions on trade, in accordance with the GATT/WTO and other international obligations.

San Jose Ministerial. The 34 Western Hemisphere ministers responsible for trade met on March 19, 1998 in San Jose, Costa Rica. At the San Jose meeting, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided them recommendations on the structure, objectives, principles, and venues of the negotiations. In this context, the trade ministers proposed the creation of nine negotiating groups and three non-negotiating committees and groups. They also established the Trade Negotiations Committee (TNC) to guide the work of the negotiating groups and decide on the overall architecture of the FTAA agreement and to address institutional issues.

Trade ministers also reiterated that the FTAA negotiations will take into account the broad social and economic agenda contained in the Miami Declaration of Principles and Plan of Action with a view to "contributing to raising living standards, to improving the working conditions of all people in the Americas and to better protecting the environment." The San Jose Ministerial Declaration, as well as the Miami Declaration, can be accessed through the official FTAA website (*www.ftaa-alca.org*).

Santiago Summit of the Americas. On April 18–19, 1998, President Clinton and his 33 counterparts initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which included the establishment of nine negotiating groups to be guided by the principles and objectives agreed by the ministers in San Jose.

The nine negotiating groups established by the FTAA countries are responsible for the following areas of the negotiations: (1) Market access; (2) investment; (3) services; (4) government procurement; (5) dispute settlement; (6) agriculture; (7) intellectual property rights; (8) subsidies, antidumping and countervailing duties; and (9) competition policy. In additional to the nine negotiating groups, three non-negotiating committees and groups were established. They are: (1) The Consultative Group on Smaller Economies; (2) the Committee of Government Representatives on the Participation of Civil Society; and (3) the Joint Government-Private Sector Committee of Experts on Electronic Commerce. The negotiating groups and non-negotiating committees and groups began meeting in September 1998.

Toronto Ministerial Meeting. On November 3–4, 1999, the FTAA ministers met in Toronto to review the progress made by the negotiating groups during the first phase of the negotiations and to determine the next steps to be taken in the FTAA process. The ministers in Toronto expressed approval of the progress made by the negotiating groups and directed them to begin preparing draft texts of their respective chapters, to be completed by the next meeting of FTAA ministers in April 2001.

Committee of Government Representatives on the Participation of Civil Society. At the 1998 meeting in San Jose, the trade ministers jointly recognized and welcomed the interests and concerns expressed by a broad spectrum of interested non-governmental parties in the hemisphere and encouraged these and other parties to provide their views on trade matters related to the FTAA negotiations. In order to facilitate this process, the ministers agreed to establish the aforementioned Committee of Government Representatives on the Participation of Civil Society. The TPSC published a **Federal Register** notice on July 29, 1998 (63 FR 40579) requesting comments on the operation of the Committee, which was mandated to receive, analyze, and report on the full range of comments received from civil society from throughout the

hemisphere. At its first meeting in October 1998, the Committee approved an open invitation soliciting views from the hemisphere's public. The open invitation was placed on the FTAA website and countries agreed to use national mechanisms to disseminate the invitation further. In the United States, the invitation was disseminated through a variety of means, including press releases, letters to advisory committees and public meetings.

Prior to the Toronto Ministerial Meeting, the Committee prepared a report for the Ministers describing the submissions it received from the public. This report has been published on the official FTAA website (www.ftaa-alca.org). Executive summaries of the submissions have also been published on the Department of State website (www.state.gov /www/issues/economic/current__issues.html).

Joint Committee of Experts on Electronic Commerce

At the 1998 meeting in San Jose, the trade ministers noted the rapid expansion of Internet usage and electronic commerce in the hemisphere. In order to increase and broaden the benefits to be derived from the electronic marketplace, they agreed to establish the aforementioned Joint Government-Private Sector Committee of Experts on Electronic Commerce to make recommendations in this area. The TPSC published a **Federal Register** notice on August 5, 1998 (63 FR 42090) requesting comments on the operation of the Joint Committee. Prior to the Toronto Ministerial meeting, the government and private sector experts from throughout the Western Hemisphere prepared a report with over 40 recommendations on how to increase and broaden the benefits of electronic commerce. The Joint Committee's report has been published on the official FTAA website (*www.ftaa-alca.org*).

2. Advice From the U.S. International Trade Commission Regarding Market Access

On March 15, 1999, the U.S. Trade Representative, pursuant to Section 332(g) of the Tariff Act of 1930, requested that the U.S. International Trade Commission ("Commission") provide advice to the President, with respect to each item listed in the HTSUS where tariffs will remain in effect after full implementation of the results of the Uruguay Round and subsequent WTO agreements (such as the Information Technology Agreement), as to the probable economic effect of modification of tariffs on industries producing like or directly competitive articles and on consumers, based on three scenarios, two of which pertain to the WTO, and the third of which pertains to the FTAA. Those scenarios are: (1) The effects resulting from changes in dutiable imports from all U.S. trading partners if all tariffs were reduced by at least 50 percent, with tariffs of 5 percent reduced to zero; (2) the effects resulting from changes in dutiable imports from all U.S. trading partners if tariffs were eliminated; and (3) the effects resulting from tariff elimination on dutiable imports from FTAA trading partners alone.

3. Public Comments

In conformity with the regulations of the Trade Policy Staff Committee (15 CFR part 2003), the Chairman of the TPSC invites the written comments of interested parties on all aspects of the FTAA negotiations. This includes comments regarding the possible effects of elimination of tariffs on dutiable imports from FTAA countries (scenario 3).

Prior to initiation of negotiating group activity, the TPSC requested public comments (63 FR 128, July 6, 1998) regarding U.S. positions and objectives with respect to each of the negotiating groups. On April 14, 1999, the TPSC announced that it would seek additional public comments in the future on issues related to the FTAA, including the economic effects of the removal of duties and nontariff barriers to trade among FTAA participating countries (64 FR 18469).

The TPSC is now seeking public comments on any aspect of the FTAA negotiations, including the economic effects of the removal of duties and nontariff barriers to trade among FTAA participating countries.

Those persons wishing to submit written comments, should submit twenty (20) typed copies, no later than noon, Monday, February 7, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 Seventeenth Street, N.W., Washington, DC 20508. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, N.W., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–33670 Filed 12–27–99; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Council Bluffs, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed viaduct and roadway project in Council Bluffs, Pottawattamie County, Iowa.

FOR FURTHER INFORMATION CONTACT: Philip Taylor, Assistant Transportation Engineer, Federal Highway Administration, Iowa Division Office, 105 6th Street, Ames, Iowa 50010, Telephone: (515) 233–7307. Harry S. Budd, Director, Office of Project Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone: (515) 239–1391. Mr. Greg Reeder, City Engineer, Council Bluffs Public Works Department, 209 Pearl Street, Council Bluffs, Iowa 51503 Telephone: (712) 328–4635.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*

Background

The FHWA, in cooperation with the Iowa Department of Transportation (Iowa DOT) and the City of Council Bluffs, Iowa will prepare an environmental impact statement (EIS) for the proposed construction of a viaduct on Avenue G over the Union Pacific and Chicago, Central and Pacific railroad corridor that bisects Council Bluffs, Iowa. The proposed project begins at 16th and Avenue G and extends east to 8th Street. From 8th and

Avenue G the proposed project will consider improved roadway connections to Kanesville Boulevard. The total length of the project is approximately 1.6 km (1 mile).

The existing rail corridor is crossed by an over capacity, 4-lane viaduct constructed in the early 1950's and several at-grade crossings. The proposed viaduct crossing is considered necessary to provide for existing and projected traffic demand and to improve public safety in this sector of the City of Council Bluffs.

Alternatives under consideration include: (1) Taking no action; (2) improvement of existing roadway corridors; and (3) a new connecting roadway corridor. The "new" roadway scenario will consider various alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public involvement will be sought throughout the analysis of this proposal. In addition, a public hearing will be offered. A scoping meeting will be held for identifying significant issues to be addressed in the environmental impact statement. Public notice will be given of the time and place of all public meetings. The draft EIS will be available for public and agency review prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, Iowa DOT, or the City of Council Bluffs at the addresses provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, highway Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: December 14, 1999.

Bobby Blackmon,

Division Administrator.

[FR Doc. 99–33612 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–22–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Kittitas County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a programmatic environmental impact statement (EIS) will be prepared for a proposed highway project in Kittitas County, Washington.

FOR FURTHER INFORMATION CONTACT: Gene K. Fong, Division Administrator, Federal Highway Administration, 711 South Capital Way, Suite 501, Olympia, WA 98501–0943, telephone: (360) 753–9480; or Leonard Pittman, Regional Administrator, Washington State Department of Transportation, 2809 Rudkin Road, Union Gap, WA 98909, telephone: (509) 575–2530.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), will prepare an EIS for a proposal to improve a 13 mile portion of Interstate 90 (I–90) immediately east of Snoqualmie Pass in the Cascade Mountains, from Hyak (MP 54) to Easton Hill (MP 67).

The proposed improvements are intended to restore degraded highway surfaces, eliminate impediments to trucking, increase traffic capacity and design speed, and reduce closures due to avalanches and avalanche control activities. This highway is the major east-west corridor for truck-borne shipping in Washington; it is also the major east-west route for passenger automobile traffic. The proposed work is between 54 and 67 miles from Seattle. It is immediately east of Snoqualmie Pass in the Cascade Mountains, a popular destination for winter recreation within the state of Washington. I–90 in the Snoqualmie Pass area is subject to heavy traffic flows at all times of the year, with traffic-related slowdowns and stoppages an ongoing concern. Closures due to avalanches and avalanche control activities are common, and in the winter of 1998–1999, record snowfalls made closure frequent. Traffic stoppages on I–90 are costly to the state's economy. Potential issues of concern include fish and their habitat, wildlife habitat connectivity, wetlands, water quality, threatened and endangered species, existing management plans for forests and other areas, slope stability, cultural resources, public safety, and socioeconomic impacts related to traffic flow.

Alternatives under consideration include: (1) Taking no action; (2) resurfacing the deteriorated concrete surface; (3) splitting eastbound from westbound lanes by building new westbound lanes along the opposite (south) side of Keechelus Lake from the existing east and westbound lanes, to rejoin at an undetermined distance southeast of the lake's outlet; (4) adding a third lane each way to connect with the existing 3-lane configuration at each end of the project; (5) straightening curves to increase design speeds, including one possible elevated section over part of an embankment in Keechelus Lake; (6) overpass and snowshed modification to provide adequate clearance for oversize loads; (7) increasing capacity of the existing snowshed to handle 5 snow chutes and protect all lanes. These alternatives are not necessarily exclusive, since some of them accomplish different purposes and may be used in combination with each other. Within the alternatives, there are possible subalternatives.

Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, local agencies affected Indian tribes, private organizations, and citizens who have previously expressed or are known to have an interest in this project. A series of meetings with the public, interested community groups, and governmental agencies will be held beginning in February. In addition, a public hearing will be held after the release of the Draft EIS to receive public and agency comments. Public notice will be given of the time and place of the future meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address or phone number provided above. (Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 15, 1999.

Catherine F. Nicholas,

Transportation and Environmental Engineer, FHWA Washington Division.

[FR Doc. 99–33611 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Best Practices Procurement Manual

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of updates to FTA's Best Practices Procurement Manual.

SUMMARY: FTA periodically updates its Best Practices Procurement Manual. These updates are currently available through the FTA World Wide Web Page and the FTA Office of Procurement.

FOR FURTHER INFORMATION CONTACT: Reginald Lovelace, FTA Office of Procurement, (202) 366–2654. Electronic access to this and other documents concerning FTA's procurement requirements may be obtained through the FTA World Wide Web home page at http://www.fta.dot.gov.

SUPPLEMENTARY INFORMATION: FTA first published its Best Practices Procurement Manual (BPPM or Manual) in 1996. The purpose of the Manual is to assist FTA grantees and their contractors to better understand and implement the FTA third party procurement requirements, found at FTA Circular 4220.1D. Because the agency views the BPPM as a "living document," it has been continuously updated since 1996.

FTA has added the following subjects to the Manual: Procurement Planning and Organization (indefinite delivery contracts); Disadvantaged Business Enterprise (DBE) (comparing the previous and present DBE rules; listing administrative requirements; describing the goals for DBE participation; establishing certification standards and procedures; and discussing exemptions and waivers to the DBE rule); Contract Administration (particularly any changes in a given contract); Closeouts; and Disputes.

FTA intends to publish a fourth edition of the BPPM early next year; that manual will be available through the FTA Office of Procurement, 400 Seventh Street SW, Washington, DC 20590; it can also be downloaded through the FTA Web Page, www.fta.dot.gov.

Dated: December 22, 1999.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 99–33615 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—General Accident Insurance Company of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, a Pennsylvania corporation, has formerly changed its name to CGU INSURANCE COMPANY, effective August 2, 1999. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35876, July 1, 1999.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to CGU INSURANCE COMPANY, Philadelphia, Pennsylvania. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $131,739,000 established for the Company as of July 1, 1999, remains unchanged until June 30, 2000.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, at page 35870 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 17, 1999.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–33535 Filed 12–27–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Pennsylvania General Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Pennsylvania General Insurance Company, a Pennsylvania corporation, has formally changed its name to GENERAL ACCIDENT INSURANCE COMPANY, effective August 2, 1999. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35885, July 1, 1999.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to GENERAL ACCIDENT INSURANCE COMPANY, Philadelphia, Pennsylvania. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $18,569,000 established for the Company as of July 1, 1999, remains unchanged until June 30, 2000.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, part 223). A list of qualified companies

is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, at page 35876 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 17, 1999.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–33536 Filed 12–27–99; 8:45 am]

BILLING CODE 4810–35–M

U.S. TRADE DEFICIT REVIEW COMMISSION

Notice of Open Hearing

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S. Trade Deficit Review Commission.

Name: Murray Weidenbaum, Chairman of the U.S. Trade Deficit Review Commission.

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U.S. trade deficit. The purpose of this public hearing is to take testimony on the role played by United States participation in NAFTA and U.S.—Latin American trade in the causes and consequences of the U.S. trade deficit.

Background

In fulfilling its statutory mission, the Commission is holding field hearings to collect input from industry and labor leaders, government officials, leading researchers, other informed witnesses, and the public.

Professor Murray Wiedenbaum of Washington University, St. Louis, who is a former Chairman of the President's Council of Economic Advisors, chairs the Commission. The Vice Chairman is Professor Dimitri Papadimitriou, President of The Jerome Levy Economics Institute at Bard College, Annandale-on-Hudson, New York. The Dallas hearing will be chaired by the Honorable Carla A. Hills, Commissioner.

Purpose of Hearing

In light of the ongoing massive trade and current account deficits incurred by the United States, progress in improving U.S. exporters' access to foreign markets is critically important. The failure of the WTO Ministerial in Seattle to come up with a negotiating agenda for a new round of multilateral trade negotiations highlights how the consensus on reducing barriers to trade has fractured. Rebuilding the consensus on trade issues in the United States is of critical importance in addressing the large U.S. trade deficits. The work of the Commission, by analyzing the U.S. trade deficits in a non-partisan manner with the input of leading experts, will provide a reasoned and informed answer on how to respond to the trade deficit and its consequences. The findings of the Commission, while not binding, will likely form the basis for Congressional consensus building on trade policy as we enter the next century.

There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATE AND TIME: Friday, January 21, 2000, 8:30 am–5 pm Central Standard Time inclusive.

ADDRESS: The hearing will be held in the 2nd Floor Auditorium of the Federal Reserve Bank of Dallas, 2200 North Pearl, Dallas, TX 75201. Public seating is limited to 75 to 100 seats and will be on a first come first served basis Commercial public parking lots are available within the vicinity of the Bank.

SECURITY REQUIREMENTS: The Dallas Federal Reserve Bank is a secure facility and everyone must abide by security procedures. Everyone entering the facility is required to have a picture identification.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contact Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1409; or via e-mail at: kmichels@sso.org.

Providing Oral or Written comments at the Dallas Hearing

Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by January 14, 2000. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing. Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Pub. L. 105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the fourth in a series of field hearings to be conducted. The schedule of hearings is available at the US Trade Deficit Review Commission website <www.ustdrc.gov>.

For the U.S. Trade Deficit Review Commission.

Dated at Washington, DC, December 20, 1999.

Allan I. Mendelowitz,

Executive Director, U.S. Trade Deficit Review Commission.

[FR Doc. 99–33576 Filed 12–27–99; 8:45 am]

BILLING CODE 6820–46–P

Corrections

Federal Register

Vol. 64, No. 248

Tuesday, December 28, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–015]

Williams Gas Pipeline Central, Inc.; Notice of Filing of Refund Report

Correction

In notice document 99–32815 appearing on page 71132 in the issue of Monday, December 20, 1999, the docket is corrected to read as set forth above.

[FR Doc. C9–32815 Filed 12–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97-12

Correction

In notice document 99–32699 appearing on page 70762 in the issue of Friday, December 17, 1999, make the following correction:

In the first column, under the heading **DATES:**, "January 18, 2000" should read "February 15, 2000".

[FR Doc. C9–32699 Filed 12–27–99; 8:45 am]

BILLING CODE 1506–01–D

federal register

Tuesday
December 28, 1999

Part II

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for Section 8 Housing Assistance Payments Program, FY 2000; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4496–N–03]

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2000 Fair Market Rents (FMRs) for manufactured home spaces.

SUMMARY: FMRs for the rental of manufactured home spaces in the Section 8 housing choice voucher program are now generally 40 percent of the applicable Section 8 existing housing program FMR for a two-bedroom unit, rather than 30 percent. This reflects the change in the statute (section 545 of the Quality Housing and Work Responsibility Act of 1998) which provides that the rent for the space with respect to which assistance payments are to be made shall include tenant-paid utilities.

This change was made effective in the recent **Federal Register** (October 21, 1999; publication, "Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program; Final Rule") which revised 24 CFR 888.113.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Alan Fox, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, Extension 5863 (e-mail: alan__fox@hud.gov). Hearing-or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the "800" TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the voucher program, the FMR is used to determine the "payment standard" (the maximum monthly subsidy) for assisted families (see § 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. The FMR for the rent of manufactured home spaces ("pad rent") is referenced in § 888.113(e) and § 982.623 of the housing choice voucher program rule.

Manufactured Home Space Surveys

FMRs for the rental of manufactured home spaces in the Section 8 housing choice voucher program are generally 40 percent of the applicable Section 8 existing housing program FMR for a two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where 40 percent of the FMRs is thought to be inadequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must contain statistically valid survey data that show the 40th percentile space rent (including the cost of utilities) for the entire FMR area. Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the other FMRs.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 Program.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 13132, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 14.855, Section 8 Rental Voucher Program and 14.857, Section 8 Rental Certificate Program.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: December 17, 1999.

Andrew M. Cuomo,

Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. FMRs for Manufactured Home Spaces

FMRs for manufactured home spaces in the Section 8 housing choice voucher program are 40 percent of the two-bedroom Section 8 existing housing program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Schedule D has been revised to reflect the new 40 percent standard; exceptions that were less than 40 percent of the current FMR have been eliminated, because the area would be better off using 40 percent of the FMR. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the Section 8 existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces in the Section 8 housing choice voucher program are the same as the area definitions used for other FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

a. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State, followed by metropolitan areas and then nonmetropolitan counties.

SCHEDULE D: FY 2000 40TH PERCENTILE FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 CHOICE HOUSING PROGRAM: AREAS WITH APPROVED EXCEPTIONS ABOVE 40 PERCENT OF 2-BEDROOM FMR

Area name	Space rent including utilities
California:	
Los Angeles, CA	$383
Orange County, CA	468
Riverside-San Bernardino, CA	304
San Diego, CA	423
San Jose, CA	489
Colorado:	
Boulder-Longmont, CO	344
Denver, CO	327
Maryland:	
Hagerstown, MD	220
Minnesota:	
Minneapolis-St. Paul, MN–WI	275
Nevada:	
Reno, NV	289
New York:	
Dutchess County, NY	371
Newburgh, NY–PA	349
Rochester, NY	245
Utica-Rome, NY	220
Oregon:	
Portland-Vancouver, OR–WA	284
Deschutes County, OR	259

Areas listed here have approved mobile home space rents higher than 40 percent of the 2 bedroom Fair Market Rent for the area.

[FR Doc. 99–33500 Filed 12–27–99; 8:45 am]
BILLING CODE 4210–32–P

VOL
64
ISS
2
4
8
DE
28
999
UMI

federal register

Tuesday
December 28, 1999

Part III

Department of Housing and Urban Development

24 CFR Part 180
Civil Penalties for Fair Housing Act Violations; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 180

[Docket No. FR–4302–F–03]

RIN 2529–AA83

Civil Penalties for Fair Housing Act Violations

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts revisions to HUD's regulations governing hearing procedures for civil rights matters made effective by an interim rule published on February 10, 1999. These revisions implement two important changes in the way civil penalties are assessed in fair housing cases. First, they allow an administrative law judge (ALJ) to assess a separate civil penalty against a respondent for each separate and distinct discriminatory housing practice committed by the respondent. Second, they require an ALJ to take into account, in favor of imposing a maximum civil penalty, a finding that a respondent has committed a housing-related hate act. This final rule takes into consideration public comments received on the February 10, 1999 interim rule. After careful consideration of the public comments, HUD has decided to adopt the interim rule without change.

DATES: *Effective Date:* January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Office of the Associate General Counsel for Fair Housing, Room 10270, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–0570 (this is not a toll-free telephone number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The "Make 'Em Pay" Initiative

This rulemaking was initiated in response to President Clinton's "Make 'Em Pay" (MEP) Initiative, announced on November 10, 1997. The MEP Initiative is designed to increase enforcement of the Fair Housing Act (42 U.S.C. 3601–3619), particularly in the case of housing-related acts of violence and intimidation.

This final rule implements two aspects of the MEP Initiative. First, an administrative law judge (ALJ) may now assess a separate civil penalty against a respondent for each separate and distinct discriminatory housing practice committed by the respondent. Second, an ALJ is required to take into account, in favor of imposing a maximum civil penalty, a finding that a respondent has committed a housing-related hate act.

II. The December 18, 1997 Proposed Rule

This rulemaking was initiated by the publication of a proposed rule on December 18, 1997 (62 FR 66488). The proposed rule advised that it would amend HUD's regulations at 24 CFR part 180 (entitled "Hearing Procedures for Civil Rights Matters") to allow an ALJ to assess more than one civil penalty against a given respondent, where the respondent has committed separate and distinct acts of discrimination. The proposed rule also advised that it would amend part 180 to require ALJs to consider housing-related hate acts in determining the amount of a civil penalty assessed against a respondent found to have committed a discriminatory housing practice.

In addition to the substantive amendments described above, the December 18, 1997 proposed rule advised of a proposed structural change to 24 CFR part 180. Specifically, the December 18, 1997 rule proposed to move certain provisions governing the assessment of civil penalties found at § 180.670(b)(3)(iii)(A), (B), and (C) to a new § 180.671 (entitled "Assessing civil penalties for Fair Housing Act cases"). HUD proposed this change to make the part 180 regulations easier to understand.

III. The February 10, 1999 Interim Rule

The rulemaking process was continued with the publication of an interim rule on February 10, 1999 (64 FR 6744). During the comment period for the December 18, 1997 proposed rule, HUD received six public comments. A discussion of these public comments was published in the preamble to the interim rule. In response to the public comments, we clarified the definition of "separate and distinct housing practice" in § 180.671(b) and revised the definition of "housing-related hate act" in § 180.671(c)(2)(ii). The interim rule made the revised regulations effective as of March 12, 1999, and solicited additional public comment on the amendments to 24 CFR part 180.

IV. This Final Rule

This final rule adopts the regulations made effective by the interim rule published on February 10, 1999 without change. The public comment period for the interim rule closed on April 12, 1999. HUD received two comments, both from trade associations. We carefully considered the issues raised by the commenters and appreciate the suggestions offered by them. For the reasons discussed below, however, we chose not to implement their suggestions. This section of the preamble presents a summary of the issues raised by the public commenters and HUD's responses to their comments.

Comment—ALJs should be required to consider the amount and quality of compliance guidance supplied by HUD when determining the amount of a civil penalty. One commenter was concerned about housing providers being held responsible for violations of unclear or ambiguous fair housing regulations and guidance, and whether these respondents would receive fair and consistent assessments. The commenter suggested that an additional factor should be included in § 180.671(c) (entitled "Factors for consideration by ALJ") that requires ALJs to consider the amount and quality of compliance guidance supplied by HUD when determining the amount of a civil penalty.

The commenter proposed the following language for this additional factor: "Whether HUD has given notice previous to the allegations in this case, through a promulgated rule or regulation, and has made clear in that rule or regulation the act, transaction, or occurrence that constitutes the alleged separate and distinct discriminatory housing practice."

The commenter also suggested that HUD undertake a thorough review of our fair housing regulations and guidance to ensure that they are clear and understandable to the broader regulated community.

HUD Response. We believe that § 180.671(c) provides substantial protections for respondents with differing circumstances and levels of culpability. Among the six factors laid out in § 180.671(c), four address the commenter's concerns. Section 180.671(c)(iii) requires an ALJ to consider the nature and circumstance of the violation. Section 180.671(c)(iv) specifically requires an ALJ to consider a respondent's degree of culpability when determining the amount of a civil penalty. Section 180.671(c)(v) requires an ALJ to consider the goal of deterrence. Finally, § 180.671(c)(vi) requires the ALJ to consider other matters as justice may require.

The cumulative effect of these provisions is to provide an ALJ with the opportunity to consider the fairness of any penalty. An ALJ may consider the

level of intent a respondent had in violating the Fair Housing Act. The ALJ may also consider whether the respondent was provided with sufficient guidance. Determining appropriate justice, as with any judicial proceeding, is a complex process. This final rule provides an ALJ with substantial flexibility to fashion an appropriate remedy.

Regarding the suggestion that HUD should undertake a thorough review of its fair housing regulations and guidance, we appreciate the suggestion and agree that clear guidance is very important. While we are not in a position to institute a complete formal review of all our fair housing regulations at this time, it should be emphasized that HUD is committed to producing clear guidance, and, therefore, we strive on a continuing basis to ensure that all of our fair housing regulations and guidance are clear and understandable.

For example, in the case of the regulations adopted by this final rule, we reviewed part 180 in its entirety during the development of the proposed rule. As a result of this review, we simplified § 180.670 by creating a new § 180.671. The purpose of this change was to make the part 180 regulations easier to understand. In addition, we revised the definitions of the terms "separate and distinct housing practice" and "housing-related hate act" in response to public comments on the proposed rule. The revised definitions were also designed to improve the clarity of the regulations.

Comment—HUD must address subtitle B of the Small Business Regulatory Enforcement Fairness Act. One commenter wrote that HUD had not adequately addressed subtitle B of the Small Business Regulatory Enforcement Fairness Act (SBREFA). In particular, the commenter wrote that ALJs must be informed of SBREFA's civil penalty reduction/waiver provisions and that ALJs must be required to consider these provisions when determining the amount of a civil penalty.

HUD Response. This issue was raised in a comment to the December 19, 1997 proposed rule and was addressed in the preamble to the February 10, 1999 interim rule. As stated in HUD's response in the interim rule, we believe that the six factors that ALJs consider when determining the amount of a civil penalty are consistent with subtitle B of SBREFA. Section 223, the relevant section of subtitle B, provides in part that:

> Each agency regulating the activities of small entities shall establish a policy or program * * * to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

This final rule addresses this requirement in § 180.671(c)(1)(ii), which requires an ALJ to consider the respondent's financial resources when determining the amount of a civil penalty. To the extent a small entity may have less financial ability to pay a civil penalty, § 180.671(c)(1)(ii) permits an ALJ to assess a lower civil penalty.

In addition, HUD is cognizant that section 222 of SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel."

To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

> **Your Comments Are Important**
>
> The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in our notice describing HUD's actions on implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

Comment—HUD should clarify that publishing the same discriminatory advertisement on multiple days constitutes only one act of housing discrimination. One commenter was concerned that, under the revisions adopted by this final rule, a newspaper publisher would be held liable for multiple civil penalties for publishing the same discriminatory advertisement on multiple days. The commenter noted that: (1) Newspapers receive a high volume of daily telephone calls requesting the placement of classified advertisements; (2) newspaper employees taking those calls often only have a brief period in which to take the pertinent information; and (3) usually, advertisers placing real estate advertisements ask that they be published multiple times.

The commenter urged HUD to revise the final rule to clarify that: (1) the publication of a discriminatory advertisement multiple times does not constitute multiple acts of discrimination; and (2) an ALJ may not assess multiple civil penalties against the publisher of the newspaper.

HUD Response. HUD believes that the final rule provides sufficient protection for newspaper publishers. First, under HUD's advertising guidelines,[1] newspapers will only be held responsible for publishing an advertisement that violates the Fair Housing Act, if the advertisement is discriminatory on its face. For example, an advertisement that states "whites only" would constitute an advertisement that is discriminatory on its face. We believe that it is reasonable to require that even large and busy newspapers avoid publishing such explicitly discriminatory advertisements.

Second, in response to this comment, we considered adding a "bright line" standard to the rule that would dictate the exact circumstances when publishing the same discriminatory advertisements on multiple occasions would be considered multiple acts of housing discrimination. We concluded, however, that because of the myriad of possible scenarios that might occur, the determination should be made by the ALJ hearing the case, based upon the specific facts of the case. We believe that an ALJ is in the best position to make the determination as to which cases are suitable for such treatment. As the final rule does not *require* an ALJ to assess multiple civil penalties, even in cases that clearly involve multiple

[1] Memorandum from Roberta Achtenberg, former HUD Assistant Secretary for Fair Housing and Equal Opportunity, to FHEO Office Directors, Enforcement Directors, Staff, Office of Investigations, Field Assistant General Counsel, Subject: Guidance Regarding Advertisements Under § 804(c) of the Fair Housing Act (Jan. 9, 1995). This Guidance memorandum is publicly available on the National Fair Housing Advocate's WWW site at http://www.fairhousing.com/hud__resources/hudguid2.htm (current as of the date of publication of this rule).

separate and distinct discriminatory housing practices, a respondent faced with possible multiple civil penalties may present any possible arguments to the ALJ.

Comment—Newspaper publishers should be given the opportunity to correct discriminatory advertisements. One commenter urged HUD to consider changing its regulations to require a prospective aggrieved person to notify a newspaper publisher of an alleged violation to give the publisher an opportunity to contact the advertiser and request revisions to the advertisement before HUD accepts and investigates the aggrieved person's allegations.

HUD Response. We appreciate the commenter's suggestion. The suggestion, however, requests changes to HUD's procedures for accepting and investigating fair housing complaints. This final rule only concerns revisions to HUD's regulations covering the assessment of civil penalties. The suggestion, therefore, is outside the scope of this rulemaking and was not considered in the preparation of this final rule.

V. Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the Council on Environmental Quality regulations and 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this final rule are determined not to have the potential of having a significant impact on the human environment and are therefore exempt from further environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule and in so doing certifies that the final rule is not anticipated to have a significant economic impact on a substantial number of small entities. This final rule explicitly interprets the Fair Housing Act to allow ALJs to assess a separate civil penalty against a respondent who has been found to have committed separate and distinct acts of discrimination. The rule also amends 24 CFR part 180 to describe how ALJs are to consider housing-related hate acts under the six factors ALJs apply in determining the amount of a civil penalty to assess against a respondent found to have committed a discriminatory housing practice.

The rule will affect only those few small entity housing providers who are respondents in cases where HUD determines that there is reasonable cause to believe that they have committed multiple violations of the Fair Housing Act and whose cases are then heard before an ALJ. The ALJ may or may not then assess multiple civil penalties against the provider after a hearing comporting with due process requirements. To date, the number of entities who actually become respondents in Fair Housing Act cases before ALJs is extremely small.

For example, in FY 1994, the year when the most administrative fair housing cases (through 1997) were docketed, of the 325 cases HUD charged, 220 elected to be heard in federal court, leaving only 115 to be heard by the ALJs. Of these cases, civil penalties were only assessed against an even fewer number: after hearings in 15 cases, and as part of a consent order in another 12 cases, for a total of 27 cases, or 8.3% of the cases docketed. The average civil penalty was $3,727.77. Only a few of these cases involved multiple acts of housing discrimination.

Furthermore, ALJs have had the authority to assess multiple civil penalties in instances where respondents have been found to commit multiple discriminatory housing practices and have done so in appropriate circumstances. Thus, the economic impact of the rule on small entities should not be substantially greater than that already inherent in the Fair Housing Act.

Finally, the rule will not have a significant economic impact on a substantial number of small entities because it requires ALJs to consider each respondent's ability to pay when assessing one or more civil penalties. Thus, everything else being equal, smaller entities with diminished ability to pay would be subject to lower penalties.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

VI. List of Subjects in 24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

PART 180—HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

Accordingly, the interim rule amending 24 CFR part 180, which was published at 64 FR 6744 on February 10, 1999, is adopted as a final rule without change.

Dated: December 17, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–33501 Filed 12–27–99; 8:45 am]

BILLING CODE 4210–28–P

federal register

Tuesday
December 28, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 888

Section 8 Housing Assistance Payments Program-Contract Rent Annual Adjustment Factors, Fiscal Year 2000; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

Section 8 Housing Assistance Payments Program-Contract Rent Annual Adjustment Factors, Fiscal Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors; correction.

SUMMARY: This document corrects the Schedule C area definitions for metropolitan statistical areas (MSAs) in the following States: Alabama (Auburn-Opelika), Arizona (Flagstaff), Colorado (Grand Junction), Idaho (Pocatello), Maine (Portland), Mississippi (Hattiesburg), New Hampshire (Boston), New York (Buffalo-Niagara Falls), Oregon (Corvallis), Tennessee (Jackson), and Utah. It also clarifies the names of selected places in Connecticut and Florida. All had been incorrectly categorized or named in Schedule C of the document published in the **Federal Register** on September 24, 1999.

None of the AAFs published in the September 24, 1999 document are being changed by this document; however, for clarity the entire document is being reprinted, and the September 24, 1999 document should be replaced with this one. The Annual Adjustment Factors (AAFs) contained in this document are for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries from October 1, 1999. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development [(202) 708–1234], for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Frank M. Malone, Acting Director, Office of Asset Management and Disposition, Office of Housing [(202) 708–3730], for questions relating to all other Section 8 programs; and Alan Fox, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0590; e-mail alan_fox@hud.gov], for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This Notice explains how AAFs are applied. The first section identifies to which programs and under what circumstances AAFs apply. The second section provides an explanation of when and how the statutory 1 percent reduction to AAFs should be applied. The third section describes the actual adjustment procedures. For this purpose, Section 8 programs affected by AAFs are grouped into three categories, each of which uses AAFs differently:

Category 1.—The Section 8 new construction and substantial rehabilitation programs and the moderate rehabilitation program.

Category 2.—The Section 8 loan management (LM) and property disposition (PD) programs.

Category 3.—The Section 8 certificate program and the project-based voucher program.

Next the Notice explains the content and applicability of the two AAF tables included in this Notice and provides detailed information on the geographical coverage of each AAF area. The Notice then explains how to apply AAFs to manufactured home space rentals in the Section 8 tenant-based certificate program.

The Notice closes with a brief explanation of how HUD calculates AAFs.

I. Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs, during the term of the HAP contract. However, the specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used for the Section 8 tenant-based voucher program.

AAFs are not used for budget-based rent adjustments. Contract rents for projects receiving Section 8 subsidies under the loan management program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the property disposition program (24 CFR part 886, subpart C) are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

II. Use of Reduced AAF

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by .01:

—For regular tenancy in the Section 8 certificate program, for all units.

—In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

This statutory language is now permanent law. Section 2004 of the Balanced Budget Act of 1997 provides that these provisions are in effect through fiscal year 2000 and thereafter (Pub. L. 105–33, approved August 5, 1997).

To implement the law, HUD is again publishing two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 is computed by subtracting 0.01 from the annual adjustment factor in Table 1.

III. Adjustment Procedures

The discussion in this **Federal Register** Notice is intended to provide a broad orientation on adjustment procedures. Technical details and requirements will be described in HUD notices (issued by the Office of Housing

and the Office of Public and Indian Housing).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

—The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).
—The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).
—The Section 8 certificate program (including the project-based certificate [PBC] program) and the project-based voucher program.

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless contract rent is reduced by comparability):

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Program

The same adjustment procedure is used for rent adjustment in the tenant-based certificate program, in the project-based certificate program, and the project-based voucher program. The following procedures are used:

—The Table 2 AAF is always used; the Table 1 AAF is not used.
—The Table 2 AAF is always applied before determining comparability (rent reasonableness).
—Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

AAF Tables

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent. The second column is used where the highest cost utility is not included in the contract rent—i.e., where the tenant pays for the highest cost utility.

AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

—For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
—For the nonmetropolitan parts of these regions; and
—For 96 separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan Area and Deleted Counties

Chicago, IL: DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX: Henderson County
Flagstaff, AZ–UT: Kane County, UT
New Orleans, LA: St. James Parish
Washington, DC–VA–MD–WV: Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan

AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Corrected AAF Area Definitions

Alabama: Lee County (which constitutes the newly-designated Auburn-Opelika, Alabama MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Arizona: Coconino County (Flagstaff, Arizona MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Colorado: Mesa County (which constitutes the Grand Junction, Colorado MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Connecticut: The following place names have been changed from "town" to "city:" Ansonia, Bridgeport, Danbury, Derby, Hartford, Middletown, Milford, New Britain, New London, Norwich, Shelton, and Waterbury. Naugatuck is now listed as a borough. Newington town and Plainville town in Hartford County, and Colchester town and Lebanon town in New London County are now listed as metropolitan.

Florida: Dade County has been renamed Miami-Dade.

Idaho: Bannock County (the Pocatello, Idaho MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Maine: Long Island town, a part of the Portland, Maine MSA, has been added to the Cumberland County metropolitan part.

Mississippi: Forrest and Lamar Counties (the Hattiesburg, Mississippi MSA) are now listed as metropolitan and removed from the list of nonmetropolitan counties.

New Hampshire: The Rockingham County towns of Seabrook and South Hampton which are part of the Boston MA–NH PMSA are now listed among the CPI areas.

New York: The Buffalo-Niagara Falls, New York PMSA has been removed from the list of CPI areas, and its component counties, Erie and Niagara, are listed as metropolitan counties. This results from the Bureau of Labor Statistics removing the Buffalo-Niagara Falls MSA from its Consumer Price Index survey sample.

Oregon: Benton County (which constitutes the newly-designated Corvallis, Oregon MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Tennessee: Chester County (which is part of the Jackson, Tennessee MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Utah: Kane County (a HUD-designated metropolitan county) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Section 8 certificate program AAFs for manufactured home spaces

For a manufactured home space rental in the old Section 8 tenant-based certificate program, (under a HAP contract entered before the "merger date" (10/1/99)), the AAFs in this publication identified as "Highest Cost Utility Excluded" are to be used to adjust the rent to owner for the manufactured home space. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section. AAFs are not used for the Section 8 housing choice voucher program.

How Factors Are Calculated

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The "Highest Cost Utility Included" column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The "Highest Cost Utility Excluded" column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts, the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (i.e., paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

Other Matters

Environmental Impact

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(6).

Executive Order 13132, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 13132, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following Tables:

Dated: December 17, 1999.

Andrew Cuomo,

Secretary.

BILLING CODE 4210–32–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.008	1.013	New England Nonmetropolitan	1.007	1.014
New York/New Jersey Metropolitan	1.005	1.012	New York/New Jersey Nonmetropolitan	1.002	1.009
Mid-Atlantic Metropolitan	1.008	1.018	Mid-Atlantic Nonmetropolitan	1.005	1.018
Southeast Metropolitan	1.006	1.020	Southeast Nonmetropolitan	1.000	1.010
Midwest Metropolitan	1.013	1.019	Midwest Nonmetropolitan	1.005	1.011
Southwest Metropolitan	1.002	1.016	Southwest Nonmetropolitan	1.000	1.017
Great Plains Metropolitan	1.012	1.018	Great Plains Nonmetropolitan	1.005	1.012
Rocky Mountain Metropolitan	1.018	1.022	Rocky Mountain Nonmetropolitan	1.009	1.015
Pacific/Hawaii Metropolitan	1.013	1.018	Pacific/Hawaii Nonmetropolitan	1.004	1.009
Northwest/Alaska Metropolitan	1.005	1.010	Northwest/Alaska Nonmetropolitan	1.008	1.013
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.043	1.051
MSA Anchorage, AK	1.014	1.013	PMSA Ann Arbor, MI	1.027	1.033
MSA Atlanta, GA	1.036	1.038	PMSA Atlantic-Cape May, NJ	1.023	1.027
PMSA Baltimore, MD	1.024	1.026	PMSA Bergen-Passaic, NJ	1.032	1.039
*COUNTY Berkeley, WV	1.021	1.027	PMSA Boston, MA-NH	1.040	1.053
PMSA Boulder-Longmont, CO	1.052	1.056	PMSA Brazoria, TX	1.031	1.037
PMSA Bremerton, WA	1.046	1.054	PMSA Bridgeport, CT	1.030	1.041
PMSA Brockton, MA	1.038	1.054	*COUNTY Brown, OH	1.025	1.020
*Chicago, IL	1.034	1.045	*Cincinnati, OH-KY-IN	1.024	1.021
*COUNTY Clarke, VA	1.023	1.027	PMSA Cleveland-Lorain-Elyria, OH	1.043	1.051
*COUNTY Culpeper, VA	1.024	1.027	*Dallas, TX	1.043	1.050

SCHEDULE C - TABLE 1 - CONTRACT RENT AAPS — PREPARED ON 031099

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Danbury, CT	1.031	1.040
PMSA Denver, CO	1.051	1.056
PMSA Dutchess County, NY	1.031	1.039
PMSA Flint, MI	1.024	1.034
PMSA Fort Worth-Arlington, TX	1.042	1.050
PMSA Galveston-Texas City, TX	1.031	1.037
*COUNTY Grant, KY	1.025	1.020
*COUNTY Grundy, IL	1.030	1.049
PMSA Hamilton-Middletown, OH	1.024	1.021
PMSA Houston, TX	1.032	1.037
PMSA Jersey City, NJ	1.032	1.038
MSA Kansas City, MO-KS	1.040	1.048
PMSA Kenosha, WI	1.032	1.047
PMSA Lawrence, MA-NH	1.038	1.054
PMSA Lowell, MA-NH	1.039	1.053
PMSA Miami, FL	1.014	1.018
PMSA Milwaukee-Waukesha, WI	1.023	1.020
PMSA Monmouth-Ocean, NJ	1.031	1.040
PMSA Nassau-Suffolk, NY	1.031	1.039
PMSA New Haven-Meriden, CT	1.031	1.039
*COUNTY Westchester, NY	1.033	1.037
*COUNTY De Kalb, IL	1.032	1.047
PMSA Detroit, MI	1.025	1.034
PMSA Fitchburg-Leominster, MA	1.039	1.054
PMSA Fort Lauderdale, FL	1.014	1.018
*COUNTY Gallatin, KY	1.026	1.020
PMSA Gary, IN	1.029	1.050
PMSA Greeley, CO	1.053	1.056
PMSA Hagerstown, MD	1.024	1.027
*COUNTY Henderson, TX	1.037	1.051
*COUNTY Jefferson, WV	1.023	1.027
PMSA Kankakee, IL	1.028	1.051
*COUNTY Kendall, IL	1.032	1.046
*COUNTY King George, VA	1.023	1.027
PMSA Los Angeles-Long Beach, CA	1.022	1.029
PMSA Manchester, NH	1.039	1.054
PMSA Middlesex-Somerset-Hunterdon, NJ	1.032	1.038
MSA Minneapolis-St. Paul, MN-WI	1.027	1.031
PMSA Nashua, NH	1.039	1.053
PMSA New Bedford, MA	1.039	1.054
PMSA New York, NY	1.032	1.037
PMSA Newark, NJ	1.031	1.039

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Newburgh, NY-PA	1.031	1.039
*COUNTY Ohio, IN	1.025	1.020
PMSA Orange County, CA	1.023	1.029
PMSA Philadelphia, PA-NJ	1.023	1.027
PMSA Portland-Vancouver, OR-WA	1.039	1.036
PMSA Racine, WI	1.024	1.020
MSA St. Louis, MO-IL	1.018	1.023
MSA San Diego, CA	1.043	1.050
PMSA San Jose, CA	1.072	1.080
PMSA Santa Rosa, CA	1.068	1.080
PMSA Stamford-Norwalk, CT	1.032	1.038
MSA Tampa-St. Petersburg-Clearwater, FL	1.030	1.035
PMSA Vallejo-Fairfield-Napa, CA	1.068	1.080
PMSA Vineland-Millville-Bridgeton, NJ	1.023	1.027
*Washington, DC-MD-VA	1.024	1.026
PMSA Wilmington-Newark, DE-MD	1.023	1.027
PMSA Oakland, CA	1.070	1.080
PMSA Olympia, WA	1.046	1.054
*COUNTY Pendleton, KY	1.025	1.020
PMSA Pittsburgh, PA	1.028	1.040
PMSA Portsmouth-Rochester, NH-ME	1.039	1.054
PMSA Riverside-San Bernardino, CA	1.020	1.029
PMSA Salem, OR	1.040	1.036
PMSA San Francisco, CA	1.072	1.080
PMSA Santa Cruz-Watsonville, CA	1.070	1.080
PMSA Seattle-Bellevue-Everett, WA	1.048	1.054
PMSA Tacoma, WA	1.047	1.054
PMSA Trenton, NJ	1.031	1.039
PMSA Ventura, CA	1.023	1.029
*COUNTY Warren, VA	1.024	1.027
PMSA Waterbury, CT	1.031	1.039
PMSA Worcester, MA-CT	1.039	1.054

SCHEDULE C - TABLE 7 - CONTRACT RENT RATE

PREPARED ON 031099

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.000	1.003	New England Nonmetropolitan	1.000	1.004
New York/New Jersey Metropolitan	1.000	1.002	New York/New Jersey Nonmetropolitan	1.000	1.000
Mid-Atlantic Metropolitan	1.000	1.008	Mid-Atlantic Nonmetropolitan	1.000	1.008
Southeast Metropolitan	1.000	1.010	Southeast Nonmetropolitan	1.000	1.000
Midwest Metropolitan	1.003	1.009	Midwest Nonmetropolitan	1.000	1.001
Southwest Metropolitan	1.000	1.006	Southwest Nonmetropolitan	1.000	1.007
Great Plains Metropolitan	1.002	1.008	Great Plains Nonmetropolitan	1.000	1.002
Rocky Mountain Metropolitan	1.008	1.012	Rocky Mountain Nonmetropolitan	1.000	1.005
Pacific/Hawaii Metropolitan	1.003	1.008	Pacific/Hawaii Nonmetropolitan	1.000	1.000
Northwest/Alaska Metropolitan	1.000	1.000	Northwest/Alaska Nonmetropolitan	1.000	1.003
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.033	1.041
MSA Anchorage, AK	1.004	1.003	PMSA Ann Arbor, MI	1.017	1.023
MSA Atlanta, GA	1.026	1.028	PMSA Atlantic-Cape May, NJ	1.013	1.017
PMSA Baltimore, MD	1.014	1.016	PMSA Bergen-Passaic, NJ	1.022	1.029
*COUNTY Berkeley, WV	1.013	1.017	PMSA Boston, MA-NH	1.030	1.043
PMSA Boulder-Longmont, CO	1.042	1.046	PMSA Brazoria, TX	1.021	1.027
PMSA Bremerton, WA	1.036	1.044	PMSA Bridgeport, CT	1.020	1.031
PMSA Brockton, MA	1.029	1.044	*COUNTY Brown, OH	1.015	1.010
*Chicago, IL	1.024	1.035	*Cincinnati, OH-KY-IN	1.014	1.011
*COUNTY Clarke, VA	1.014	1.017	PMSA Cleveland-Lorain-Elyria, OH	1.033	1.041
*COUNTY Culpeper, VA	1.014	1.017	*Dallas, TX	1.033	1.040

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Danbury, CT	1.021	1.030
PMSA Denver, CO	1.042	1.046
PMSA Dutchess County, NY	1.022	1.029
PMSA Flint, MI	1.014	1.024
PMSA Fort Worth-Arlington, TX	1.032	1.040
PMSA Galveston-Texas City, TX	1.021	1.027
*COUNTY Grant, KY	1.016	1.010
*COUNTY Grundy, IL	1.020	1.039
PMSA Hamilton-Middletown, OH	1.014	1.011
PMSA Houston, TX	1.022	1.027
PMSA Jersey City, NJ	1.022	1.028
MSA Kansas City, MO-KS	1.030	1.038
PMSA Kenosha, WI	1.022	1.037
PMSA Lawrence, MA-NH	1.028	1.044
PMSA Lowell, MA-NH	1.029	1.043
PMSA Miami, FL	1.004	1.008
PMSA Milwaukee-Waukesha, WI	1.013	1.010
PMSA Monmouth-Ocean, NJ	1.021	1.030
PMSA Nassau-Suffolk, NY	1.021	1.030
PMSA New Haven-Meriden, CT	1.021	1.030
*COUNTY Westchester, NY	1.023	1.027
*COUNTY De Kalb, IL	1.022	1.037
PMSA Detroit, MI	1.015	1.024
PMSA Fitchburg-Leominster, MA	1.029	1.044
PMSA Fort Lauderdale, FL	1.004	1.008
*COUNTY Gallatin, KY	1.016	1.010
PMSA Gary, IN	1.019	1.040
PMSA Greeley, CO	1.042	1.046
PMSA Hagerstown, MD	1.014	1.017
*COUNTY Henderson, TX	1.027	1.041
*COUNTY Jefferson, WV	1.013	1.017
PMSA Kankakee, IL	1.018	1.041
*COUNTY Kendall, IL	1.022	1.036
*COUNTY King George, VA	1.013	1.017
PMSA Los Angeles-Long Beach, CA	1.012	1.019
PMSA Manchester, NH	1.028	1.044
PMSA Middlesex-Somerset-Hunterdon, NJ	1.022	1.028
MSA Minneapolis-St. Paul, MN-WI	1.017	1.021
PMSA Nashua, NH	1.029	1.044
PMSA New Bedford, MA	1.029	1.044
PMSA New York, NY	1.022	1.027
PMSA Newark, NJ	1.022	1.029

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Newburgh, NY-PA	1.022	1.029
*COUNTY Ohio, IN	1.015	1.010
PMSA Orange County, CA	1.013	1.019
PMSA Philadelphia, PA-NJ	1.013	1.017
PMSA Portland-Vancouver, OR-WA	1.030	1.026
PMSA Racine, WI	1.014	1.010
MSA St. Louis, MO-IL	1.008	1.013
MSA San Diego, CA	1.033	1.040
PMSA San Jose, CA	1.062	1.070
PMSA Santa Rosa, CA	1.058	1.070
PMSA Stamford-Norwalk, CT	1.022	1.028
MSA Tampa-St. Petersburg-Clearwater, FL	1.020	1.025
PMSA Vallejo-Fairfield-Napa, CA	1.058	1.070
PMSA Vineland-Millville-Bridgeton, NJ	1.012	1.017
*Washington, DC-MD-VA	1.014	1.016
PMSA Wilmington-Newark, DE-MD	1.013	1.017
PMSA Oakland, CA	1.060	1.070
PMSA Olympia, WA	1.036	1.044
*COUNTY Pendleton, KY	1.015	1.010
PMSA Pittsburgh, PA	1.018	1.030
PMSA Portsmouth-Rochester, NH-ME	1.029	1.044
PMSA Riverside-San Bernardino, CA	1.010	1.019
PMSA Salem, OR	1.030	1.026
PMSA San Francisco, CA	1.062	1.070
PMSA Santa Cruz-Watsonville, CA	1.060	1.070
PMSA Seattle-Bellevue-Everett, WA	1.038	1.044
PMSA Tacoma, WA	1.037	1.044
PMSA Trenton, NJ	1.022	1.029
PMSA Ventura, CA	1.013	1.019
*COUNTY Warren, VA	1.014	1.017
PMSA Waterbury, CT	1.021	1.030
PMSA Worcester, MA-CT	1.029	1.044

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

MSA	Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr. Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

PMSA	Los Angeles-Long Beach, CA:	Los Angeles
PMSA	Oakland, CA:	Alameda, Contra Costa
PMSA	Orange County, CA:	Orange
PMSA	Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA	San Diego, CA:	San Diego
PMSA	San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA	San Jose, CA:	Santa Clara
PMSA	Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA	Santa Rosa, CA:	Sonoma
PMSA	Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA	Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES
PMSA Boulder-Longmont, CO: Boulder
PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO: Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Bridgeport, CT
Fairfield County part: Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
New Haven County part: Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town

PMSA Danbury, CT
Fairfield County part: Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT
Middlesex County part: Clinton town, Killingworth town
New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT
Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT
Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part: Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town

PMSA Worcester, MA-CT
Windham County part: Thompson town

METROPOLITAN COUNTIES
Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part: Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES

PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Miami-Dade
MSA Tampa-St. Petersburg-Clearwater, FL:	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES

*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES

*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

IOWA (Cont.)
Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Boone, Campbell, Kenton
*COUNTY Gallatin, KY: Gallatin
*COUNTY Grant, KY: Grant
*COUNTY Pendleton, KY: Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES
Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES
Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Portsmouth-Rochester, NH-ME
York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES
Androscoggin County part: Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part: Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part: Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part: Winterport town
York County part: Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES
Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington
Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD: Washington
*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES
Allegany

NONMETROPOLITAN COUNTIES
Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes
Nantucket

Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES

PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES

MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH
Rockingham County part: Seabrook town, South Hampton town

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county pt: Pelham town

PMSA Manchester, NH
Hillsborough county pt: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county pt: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW JERSEY (Cont.)

PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debeca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES

PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Portland-Vancouver, OR-WA: Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR: Marion, Polk

METROPOLITAN COUNTIES
Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gillian, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Newburgh, NY-PA: Pike
PMSA Philadelphia, PA-NJ: Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA: Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES
Bristol County part: Barrington town, Bristol town, Warren town
Kent County part: Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part: Jamestown town, Little Compton town, Tiverton town
Providence County part: Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

RHODE ISLAND (CONT.)

Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins,Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampesas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilberger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

†COUNTY Clarke, VA:	Clarke
†COUNTY Culpeper, VA:	Culpeper
†COUNTY King George, VA:	King George
†COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES
*Washington, DC-MD-VA: Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Bremerton, WA: Kitsap
PMSA Olympia, WA: Thurston
PMSA Portland-Vancouver, OR-WA: Clark
PMSA Seattle-Bellevue-Everett, WA: Island, King, Snohomish
PMSA Tacoma, WA: Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Berkeley, WV: Berkeley
*COUNTY Jefferson, WV: Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Kenosha, WI: Kenosha
PMSA Milwaukee-Waukesha, WI: Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI: Pierce, St. Croix
PMSA Racine, WI: Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culebra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

[FR Doc. 99-33502 Filed 12-27-99; 8:45 am]
BILLING CODE 4210-32-C

federal register

Tuesday
December 28, 1999

Part V

Department of the Interior

Minerals Management Service

30 CFR Parts 218, 250, 252, etc.
Postlease Operations Safety; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218, 250, 252, 253, 256 and 282

RIN 1010–AC32

Postlease Operations Safety

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule: Updates and clarifies requirements related to postlease operations and stresses diligence; Allows MMS to grant a right-of-use and easement for an Outer Continental Shelf (OCS) leased or unleased block to a State lessee; Brings uniformity to the public release time for all proprietary geophysical data and information gathered under prelease; Clarifies the distinction between granting and directing a suspension, and the different consequences of each; Requires evacuation statistics for natural occurrences; Sets out criteria to disqualify an operator with repeated poor operating performance from continuing as designated operator; and Allows operators the opportunity to propose alternative regulatory approaches if they can demonstrate an equal or higher level of performance.

EFFECTIVE DATE: The rule is effective on January 27, 2000. The incorporation by reference of certain publications listed in these rules is approved by the Director of the **Federal Register** as of January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: On February 13, 1998, we published a Notice of Proposed Rulemaking (63 FR 7335), titled "Postlease Operations Safety," revising the entire 30 CFR part 250, subpart A. The proposed rule was subsequently corrected in a notice on March 9, 1998 (63 FR 11385). We extended the 90-day comment period once (to provide a comment period of 120 days that closed on July 17, 1998). We received 11 responses during the comment period. On March 24, 1998 (during the comment period), we held a public meeting to consult on establishing criteria for the disqualification provision in the rule. This final rule amends the regulations at 30 CFR 218.154; 30 CFR part 250, subpart A; 30 CFR 256.1, 256.4, 256.35, and 256.73; and it corrects regulatory citations throughout the CFR to reflect the new subpart A sections.

Redesignation of 30 CFR Part 250

On May 29, 1998, we published a final rule that redesignated 30 CFR part 250 and assigned new section numbers to each section in part 250. The subpart A proposed rule was published before the redesignation. The redesignation rule allowed us to add more sections to the subpart A final rule and to break down lengthy sections into shorter and clearer sections. In our discussion of comments on the rule, we retained the section numbers from the proposed rule when we referred to the comments that we received. When we refer to the current regulations, we use the redesignated numbers as published in the final rule, published in the **Federal Register** on May 29, 1998 (also in the bound copy of the CFR, dated July 1, 1998).

MMS Position on Incorporated Documents

Incorporation by reference allows Federal agencies to comply with the requirements to publish regulations in the **Federal Register** by referring to materials already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators accountable for complying with the documents incorporated by reference in our regulations.

Differences Between Proposed and Final Rules Not Directly Related to Comments

In addition to changes we made to the final rule in response to comments, we reworded certain complex sections for further clarity. We also changed the wording/format of several section titles and headings. Although not directly related to public comments on the proposed rule, these changes were often triggered by the comments to other sections because so many of the sections are interrelated. Following are the major changes by section. We emphasize that the wording revisions do not change any requirements. In many instances, the changes improve MMS's internal work processes to better serve its external customers.

- In the table at § 250.102(b), we added a reference to Oil Spill Financial Responsibility coverage.
- We added § 250.103 on issuing Notices to Lessees and Operators (NTLs).
- In § 250.105, we modified the definition of exploration to clarify that exploration is not just any drilling per se, but are those drilling activities conducted in searching for potential commercial quantities of oil and gas.
- In § 250.105, we removed the definition of "information" as the definition was too narrow and restrictive. In addition to geological and geophysical (G&G) information, we deal with many different kinds of information including archaeological, biological, engineering, environmental, financial, and technical.
- In § 250.105, we expanded definitions of (1) "lessee" to include the MMS-approved assignee of the lease or the operating rights; (2) "operator" to include a designated agent of the lessee(s); and (3) "you" to include a designated agent of the lessee(s) and a pipeline right-of-way holder.
- In § 250.105, for consistency, we used 30 CFR 251 definitions for terms related to G&G.
- In § 250.105, in defining "sensitive reservoirs," we deleted the word "initially" and added the words "for submitting the first MER."
- In § 250.108, we clarified the recordkeeping timeframe for crane operator qualifications to 4 years instead of 2 years. This clarification ensures that the crane operator has completed the appropriate training within the past 4 years. The 4-year timeframe is consistent with the currently incorporated Third Edition of API RP 2D, which says that operator qualifications are to be maintained at a minimum of 4 years through appropriate refresher training.
- In § 250.115, we separated the criteria for determining whether a well was an oil well or a gas well.
- In §§ 250.118 through 250.124, wherever applicable, we changed "reinject" and "reinjection" to "inject" and "injection" to denote that the gas is being injected for the first time.
- We revised § 250.120 to read: (a) "If you produce gas from an OCS lease and inject it into a reservoir on the lease or unit according to paragraph § 250.118(b), you are not required to pay royalties until you remove or sell the gas from the reservoir. (b) If you store the gas according to paragraph § 250.119(c), you are required to pay royalty before injecting it into the storage reservoir." The reason is that injection of gas for a commercial storage project is not for the benefit of the lease; therefore, royalties are due before injection. This is consistent with the subsurface storage project approved by the Gulf of Mexico (GOM) Region for Chandeleur Block 29.
- In § 250.140(a) we replaced "written approval" with "written decision" because it is not a foregone

conclusion that the decision will be an approval.

• In the last sentence of § 250.162, we replaced the words "provide you" with the word "recognize." The grant of the right-of-use or easement by MMS "provides" the "rights." The lessee, or any subsequent lessee, simply recognizes those rights.

• We deleted proposed § 250.119(l)(5) which would have allowed us to grant a Suspension of Production (SOP) for exploratory reasons without a commitment to development and production. To give meaning to the primary term, we expect lessees to complete exploration and delineation to commit to production by the end of the lease term. We deleted proposed paragraph § 250.119(l)(6) which would have clarified when geophysical work could be used as a basis for an SOP approval. We deleted it because the regulatory authority provided in § 250.175(b)(1) allows us to grant an SOP when a lessee is committed to production and needs to complete geophysical work. In this section, we also removed the vague phrase "good faith efforts."

• In § 250.180, we inserted a new paragraph (a) to provide for reporting requirements for leases in their primary term and added clarity and specificity to paragraphs (e), (f), and (i).

• In § 250.190, we added a sentence at the end of paragraph (a)(2) to put the responsibility of the contents of a computer-generated form on the lessee/operator who generates the form.

• In the table at § 250.196, we added language to clarify that part 251 determines the public release of all proprietary geophysical data and information acquired under an exploration permit, even when the data and information are later submitted to MMS under part 250 stipulations. These permit data and information are protected under § 251.14 (currently 50 years for data and 25 years for information). The proprietary terms of these permit data and information would be unaffected by lease expiration or relinquishment.

The vast majority of seismic data and information submitted by lessees was originally acquired under exploration permits. The lessees acquired the data and information indirectly on a nonexclusive basis under a license agreement among the permittee, the geophysical contractor who acquired the data and information under part 251, and the lessee, who is a third party to the data and information.

However, part 250 determines the release of proprietary geophysical data and information that were acquired on a lease exclusively by or for a lessee, under terms of a lease, and submitted to MMS under part 250. These data and information are protected for a period of 10 years, or until the lease is relinquished or expires, whichever is sooner. This would include all seismic data and information acquired exclusively by or for the lessee and submitted for unitization purposes, or in support of exploration or development and production plans.

• In the table at § 250.199(e)(1), we added the following reason for collecting information, specifically G&G data and information under 30 CFR part 250, subpart A: to support the unproved and proved reserve estimation, resource assessment, and fair market value determinations.

Comments on the Rule

We received comments on specific issues from the Trustees for Alaska (Trustees), the International Association of Drilling Contractors (IADC), Newfield Exploration Company, the State of Florida, and the Small Business Administration (SBA). The American Petroleum Institute (API) and Offshore Operator's Committee (OOC), representing the industry, sent a consolidated comments table and clearly depicted their suggested language changes and rationale. The National Ocean Industries Association, the Independent Petroleum Association of America, and some of the large oil companies sent letters endorsing the American Petroleum Institute/Offshore Operator's Committee (API/OOC) consolidated comments. We posted all comments on the MMS internet homepage. We noted a universal comment on the need for a side-by-side comparison of existing regulations and plain language rewrites; we will adopt this suggestion for future rules rewritten in plain language. We have included in this notice our responses to comments other than those included on the table submitted by API/OOC followed by the API/OOC comments in tabular form together with our responses. Some of the comments in the consolidated API/OOC comments table were reiterated by other commenters. Since our response was the same, we have not provided in this notice a separate set of comments and responses for those comments. We organized our responses to comments other than those included in the API/OOC table under the following topics: I. comments and responses to miscellaneous issues; II. disqualifying an operator; III. granting a right-of-use and easement (with detailed responses to the extensive comments we received on the section); and IV. comments from SBA.

I. Comments and Responses to Miscellaneous Issues

• *Comment:* The reference to conservation, which was under the Director's authority at current § 250.104, was removed.

Response: The reference was never removed and appears at § 250.101(b): Under this authority, the MMS Director requires that all operations conform to *sound conservation practice* to preserve, protect, and develop mineral resources of the OCS to balance orderly energy resource development with protection of the human, marine, and coastal environments.

• *Comment:* Retain wording to the effect that the implementation of the regulation of operations on the OCS remains "subject to the supervisory authority of the Secretary."

Response: The Secretary's authority is stated clearly at § 250.101: "The Secretary of the Interior (Secretary) authorized the Minerals Management Service (MMS) to regulate oil, gas, and sulphur exploration, development, and production operations on the outer Continental Shelf (OCS). *Under this authority*, the Director requires that all operations. * * *" To clarify that "this authority" refers to the Secretary's authority, we are changing the words in italics to read "Under the Secretary's authority."

Response: We strengthened the language at § 250.106.

• *Comment:* Include definition for natural resources.

Response: We included the OCS Lands Act (OCSLA) definition for natural resources.

• *Comment:* Provide definitions for Eastern and Western GOM.

Response: We put back a definition for Eastern GOM, which was deleted in the proposed rule. We also included a definition for the Western GOM. In both definitions, we clarify that these areas are not to be confused with the planning areas that we use for lease sales.

• *Comment:* The requirements for cranes at proposed § 250.105 should not apply to mobile offshore drilling units (MODU) or other vessels.

Response: We clarified in § 250.108(a) that the requirements for cranes apply only to fixed platforms.

• *Comment:* Proposed change at § 250.106(g)(5) (italicized): You may not weld while you drill, complete, workover, or conduct wireline operations unless the fluids in the well, (*being drilled, completed, worked over, or having wireline operations conducted*), are noncombustible, and

you have precluded the entry of formation hydrocarbons into the wellbore *either by mechanical means or by a positive overbalance toward the formation.* The intent is to limit welding activities on or near wells that are being serviced or drilled, not limit welding because other wells in the wellbay are live.

Response: We have made the suggested changes at § 250.113(c)(6).

• *Comment:* "You" as used in proposed § 250.13 is too restrictive and should be expanded to include any person an MMS order or decision may adversely impact.

Response: We deleted the reference related to civil penalty appeals from subpart A. On August 8, 1997 (62 FR 42668), we published a final rule revision to subpart N that provides information related to civil penalty appeals. We further shortened § 250.104 on appeals because all appeals will be processed at the Department level and not at the agency level. We expanded the definition of "you" to include an operating rights holder, a designated operator of the lessee(s), a designated agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement.

• *Comment:* Should the U.S. Coast Guard (USCG), rather than MMS, be the recipient of such reports (Evacuation Statistics at proposed § 250.123(b)).

Response: The requirement at § 250.192 relates to our need to know, for national security reasons, the amount of production shut-in.

• *Comment:* Question duplicative accident reporting to both MMS and USCG.

Response: We deleted the proposed accident reporting table (at proposed § 250.120(a)). We retained the requirement in current regulations (at § 250.119(a)) under § 250.191 in this final rule. We will propose a separate rule to establish a joint MMS–USCG web-based system for reporting incidents to either agency. The rule will also give more guidance on thresholds for fires and factors that impair safety. (See comments and our responses in comment/response table.)

II. Disqualifying an Operator

Industry asked that we delete this new section. Environmental groups supported it. In response to a comment to provide adequate notice before disqualifying an operator, we inserted language in the rule at § 250.135. A commenter wanted to know what would happen if we revoked a company's designation as operator, and it was the sole lessee. If an operator is the sole lessee and designated operator of a lease, and has been disqualified from operating a facility on that lease, then the onus is on the lessee to find a new and acceptable designated operator and submit the change for our approval.

On March 24, 1998, we held a public meeting to consult on establishing criteria for the disqualification provision in the proposed rule. At the meeting we explained the disqualification process. The principal goal of the disqualification process is to improve performance and operational safety on the OCS by focusing on the designated operators. We analyze performance based on either a periodic assessment of specific measures or because of an event or performance concern.

At a minimum, we will analyze every operator's performance annually. Compliance history and accidents are the two primary areas of measurement we use to determine performance. In addition, we use other information gathered during annual performance reviews to determine an operator's overall performance. Using this information, we decide whether operators are acceptable or unacceptable performers.

We may also assess operator performance through a safety meeting. Several things may trigger a safety meeting—an accident, a bad inspection, failing a 30 CFR 250, subpart O training audit, or a civil penalty. During the meeting, we will discuss the triggering event with the operator and may also review their general performance if the situation warrants. We may issue a directed suspension if we perceive the triggering event as a continued threat to human safety or the environment. The actual event could lead us to determine that the operator is unacceptable.

In general, operators who exhibit unacceptable performance would undergo an incremental approach to improving their overall performance. At the annual performance review meeting, we would take the opportunity to highlight areas of concern regarding an operator's performance. The District Supervisor or Regional Supervisor for Field Operations may make specific recommendations to the operator for improving the safety of its operations.

It may be necessary for us to issue a directed suspension for a given facility because it poses an imminent threat to safety or the environment. A directed suspension or chronic poor performance could lead us to place an operator on probation. Four things then occur:

1. We notify the designated operator and all relevant lessees in writing that the operator is on probation for a specific period. The Regional Director will determine the length of probation.

2. We prohibit the designated operator from becoming the designated operator on leases during its probation.

3. We require the designated operator to submit a Performance Improvement Plan (PIP) to address the performance concerns and detail how the operator will bring its inventory of facilities into compliance.

4. We have the discretion to increase the number of performance review meetings as necessary.

Through additional performance analysis, we may determine that an operator's overall performance is improving, and the operator could be removed from probation. Conversely, an operator's performance could remain poor or worsen, and we may take more stringent actions such as:

• A facility-specific disqualification as designated operator for a period of time set by the Regional Director;

• A district-specific disqualification as designated operator for a period of time set by the Associate Director for Offshore Minerals Management (AD/OMM);

• A region-specific disqualification as designated operator for a period of time set by the AD/OMM; and

• An OCS-wide disqualification as designated operator for a period of time set by the Director of MMS.

We will not take these disqualification actions without the operator having the opportunity for a review by MMS officials. These actions require that an operator submit a PIP to us that details its efforts to improve the safety of its operations and bring its facilities back into regulatory compliance. The primary purpose of this rule is to ensure that operators who demonstrate a disregard for safety are unable to direct operations on leases on the OCS. We will pursue Department of the Interior debarment proceedings if we determine that it is appropriate to disqualify an operator from acquiring new leases/assignments on an OCS-wide basis.

These adverse actions may take place sequentially or in any order that the Director of MMS deems appropriate.

III. Granting a Right-of-Use and Easement

• *Comment:* Trustees commented that the proposed rule did not provide sufficient rationale for the need to expand our authority to issue rights-of-use and easement in the OCS to accommodate State lessees and questioned the statutory authority for this expansion of the regulation. Specifically, Trustees do not believe

that we have the legal authority to allow the placement of exploratory or production drill rigs or authorize other related uses in areas where we have not authorized OCS leasing, or where there are no active leases. ("As written, the proposed regulatory change might arguably allow exploration and related activities even in areas currently covered by OCS leasing moratoria, contrary to the expressed intent of Congress and recent Presidential actions.")

Response: This rule simply clarifies our authority; the rule does not expand our authority. Between May 10, 1954, and December 13, 1979, § 250.18 specifically authorized the Regional Supervisor to grant a Federal or State lessee a "right-of-use and easement" on leased or unleased lands "for the conduct of operations on any other lease, State or Federal." On October 26, 1979, the U.S. Geological Survey (USGS) published a final rule (44 FR 61889) revising 30 CFR part 250 to implement the statutory changes of the OCSLA Amendments of September 18, 1978, and for other purposes. Instead of continuing its authority to grant rights-of-use and easement to State lessees, it stated that "State lessees wishing to obtain a right-of-way across the OCS must apply for a grant from the Bureau of Land Management (BLM)." In October of 1979, USGS exercised the Secretary's authority to grant rights-of-use and the authority to grant easements while BLM exercised the Secretary's authority to grant pipeline rights-of-way. BLM had convinced the USGS that it should stop granting rights-of-use and easement for lessee-owned pipelines that extended from the OCS to shore. The change in the 1979 rulemaking recognized the agreement between the USGS and BLM that the USGS would no longer grant a right-of-use and easement for lessees to construct and operate a pipeline from the OCS to shore.

Neither the OCSLA, nor the 1978 amendments, makes a distinction that permits the Secretary to grant a State lessee a right-of-way but not a right-of-use and easement. Furthermore, there is little reason for a State lessee to apply for a right-of-way across the OCS. The right-of-way provisions of section 5 seem to require that the right-of-way be granted for the transportation of oil and gas produced from areas leased under the OCSLA. MMS has always had the authority to grant rights-of-use and easements, but it was inadvertently dropped from the regulations in 1979. We are simply reinserting it specifically in the regulations.

We may grant a right-of-use or easement to authorize the grantee to construct and maintain one or more platforms, fixed structures, or artificial islands on areas of the OCS; to drill a directional well or wells to be bottomed under the lease area; to produce and rework the well or wells; and to handle, treat, and store the production from the well or wells. Normally, we grant a right-of-use and easement to permit a lessee to conduct leasehold-type activities at a more advantageous location off the leasehold. There has to be an existing Federal or State lease that entitles the lessee to conduct oil and gas activities before a right-of-use and easement could even be considered. This regulation change does not allow us to authorize the initiation of exploration or production drilling or related activities into areas where the driller does not already have active lease and rights to drill. In addition, MMS would not issue authority to conduct operations that are not consistent with the policy of the Department and the President.

• *Comment:* Trustees also expressed concern that the proposed new language on rights-of-use and easement appears to arbitrarily broaden the rights of lessees without justifying the need for such a change. They felt that we had not identified where and for what purpose the regulations were being modified. Trustees specifically asked "* * * does it cover gravel mining, placement of gravel mining, placement of gravel islands, disposal of dredge spoils, oil and natural gas pipeline construction and operation, processing platforms, seawater treatment plants, underground injection well sites, placement of exploratory drill ships or concrete island drilling structures?"

Response: The rule does not broaden the rights of lessees. Lessees must apply for a right-of-use and easement and show the need for conducting lease-related activities off the leasehold. We will continue to grant rights-of-use and easement to provide authority to conduct those leasehold-type activities that must be conducted off the leased areas; i.e., activities that would normally be approved under the authority of a lease (Federal OCS or State submerged lands) such as the ones listed in the comment.

• *Comment:* Trustees expressed concern that the new language in the regulations on right-of-use and easement may further reduce the environmental standards and opportunities for public involvement in controversial oil drilling projects. They gave the example of ARCO's Warthog well that was drilled from Federal OCS leases into State leases off the coast of the Arctic National Wildlife Refuge.

Response: The Warthog exploration program was conducted from an OCS lease and received a complete technical and environmental review through the exploration plan review process established under 30 CFR 250.204. The Warthog program did not involve a right-of-use and easement. The new rule will not circumvent the lease-sale, Exploration Plan (EP) and Development and Production Plan (DPP) review process to allow production from facilities located on unleased OCS areas without the benefit of public, National Environmental Policy Act (NEPA), and Coastal Zone Management Act (CZMA) consistency review.

The rule prescribes that any drilling under a right-of-use and easement must comply with the requirements of our regulations which, in turn, implement NEPA, CZMA, and the OCSLA requirements for public review; thus EP/DPP, NEPA, and CZMA consistency review and technical standards continue to apply. Consideration for a right-of-use and easement on unleased OCS lands, to conduct activity into adjoining State lands, will still require that a State lease would be in place and the issuance of that State lease would have included a public review/or equivalent process. The State lessee must also obtain State authorization for activities under a right-of-use and easement into or under the State lease before any exploration or development activity could begin.

The regulation will call for MMS officials to vigilantly ensure that the operations on Federal and State leases are conducted in an equitable way. We may have to verify that officials of the regulatory agency for the adjacent coastal State will permit wells to be drilled from State lands to reservoirs underlying Federal OCS leases that are located near or adjacent to the Federal and State boundary.

The regulation requires payment of fees and includes special bonding provisions to ensure that wells drilled from Federal OCS lands to explore for or develop and produce oil and gas from State leases are properly plugged and abandoned, that platforms and other facilities are removed, and that the seafloor is cleared of obstructions to other uses of the ocean.

• *Comment:* Trustees also suggested that, "The failure to better define 'right-of-use' in the regulations may be the nub of this problem."

Response: The definition of "right-of-use" provided in the rule simply refers a reader to the regulations and is broadly defined since the regulations are clear on the use of this term. We have also provided a definition for the term "easement."

IV. Comments from SBA

SBA commented on the Regulatory Flexibility Act (RFA) section in the proposed rule preamble and pointed out that it was devoid of specific data on firm size and receipts. They also pointed out that although we discussed the economic effects of the rule (factual statement), a more thorough analysis was needed. In response to those comments, we have rewritten the RFA portion of the preamble.

Table of MMS Responses to American Petroleum Institute/Offshore Operator's Committee (API/OOC) Comments to 30 CFR Part 250, Subpart A

In the table, under the comments column, we show words in "brackets" that were in bold/strikeout in the original comments. We show in "italics" words that were underscored in bold type. We have provided the new citations in the MMS response column.

Section	API/OOC comments	API/OOC rationale	MMS response
218.154(a)(1)	(1) Directs the suspension of [both] operations [and] *or* production; or	The MMS proposal would require lessees to pay rental or minimum royalty if an SOO is granted on a lease when there is no production but there is a producible well. This is contrary to existing practice in which there is a distinction and obligation to pay based on "who" directed or requested the suspension. It is entirely possible to have an MMS-directed suspension on the lease with a producible well in its history but no production. In such case, lessees should be relieved of the responsibility to pay.	We simplified the wording to make clear that rentals and minimum royalties are due when a suspension is granted, or when directed due to the lessee's failure to comply with applicable law, regulation, order, or provision of a lease or permit.
218.154(a)(2)	(2) Directs the suspension of operations on a lease on which there is no producible well under the provisions of 30 CFR 250.19(j)(1), (j)(2), *(j)(3)*, (j)(4) or (k)(2).	Safety and environmental requirements have been excluded on a lease with no producible well. It is entirely possible that such a requirement could be imposed by an agency with authority over such area near the end of a lease term. In such an instance a drilling rig might need to be re-outfitted. This could require a mobilization to a shore location (such as a shipyard) to add, for example, zero-discharge required equipment. Lessees should not be required to pay under these circumstances. This would be a departure from current practice since the suspension would be granted at the direction of the agency.	See comment to §218.154(a)(1).
250.2	Best available and safest technology (BAST) means the best available and safest technologies which the [Secretary] *Regional Director or his designee* determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.	The Regional Director and the Regional Staff customarily analyze what equipment is best suited to protect safety, health, and the environment. The Regional Offices consult with Headquarters Staff when necessary in cases that require additional input.	We changed the authority from Secretary to the MMS Director (§250.105 and §250.107(d)).
	Competitive reservoir means a reservoir in which there are one or more *producible or producing* well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.	Clarification	We made the suggested changes (§250.105)

Section	API/OOC comments	API/OOC rationale	MMS response
	Conservation means preservation, [economy], and avoidance of waste of *economically viable hydrocarbons.* [It is especially important in the petroleum industry, since oil and gas are irreplaceable.].	The term conservation as proposed is too vague. Generally speaking, it is the preservation and prevention of waste of economically viable hydrocarbons, which is intended.	We deleted the definition since it is not defined in the OCSLA or our regulations. The OCSLA gives us the authority to issue regulations and rules in the interest of conservation. The DOI needs the broad authority to allow for flexibility in regulating the Federal offshore program (§ 250.105).
	Development means those activities which take place following discovery of minerals in paying quantities, including *but not limited* to geophysical activity, drilling, platform construction, and operation of all *directly related* onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.	Clarification	We made the suggested changes (§ 250.105).
	Easement means an authorization *to use a portion of an OCS lease block which is non-possessory and non-exclusive.* [for a non-possessory, non-exclusive interest in a portion of an OCS tract, whether leased or unleased, which specifies the rights of the holder to use the area embraced in the easement in a manner consistent with] *The easement may be granted on leased or unleased blocks and the rights of the holder to use shall be specified and limited to the terms and conditions of* the granting authority.	The proposed definition is a new one. OCS tract is now an archaic term. The use of the phrase "non-possessory and non-exclusive interest" is misleading since the basic nature of easement is right-of-use as opposed to interest which appears to focus more on a possessory right.	We made the suggested change with respect to the term "tract." We disagree with the suggested wording changes and have not made them (§ 250.105).
	Facility, as used in Sec. 250.11 concerning inspections, means any installation permanently or temporarily attached to the seabed *on the OCS* (that includes manmade islands, and bottom-sitting structures)[and any onshore installation] used for oil, gas, or sulphur drilling, production, or related activities. *It also includes facilities for product measurement and royalty verification (e.g., LACT units, gas meters) of OCS production located on installations not on the OCS.* Any group of *OCS* installations that is interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more satellite or secondary installations, is a single facility unless the Regional Supervisor determines that the complexity of the individual installations justifies their classification as separate facilities.	The word onshore must be a typo, otherwise, this new definition would improperly expand MMS's jurisdiction in the area of inspection to onshore facilities. This would allow the MMS to inspect gas plants that process OCS gas, coastal facilities that separate oil/gas/water, and other similar facilities for which the MMS does not have jurisdiction. Also the MMS does not have jurisdiction over the State Agencies that already perform these functions. The recommended change clarifies that facilities are on the OCS.	We deleted the reference to "onshore" and inserted (per comments from IADC) a reference to MODUs. We also revised the definition of facility as used in § 250.303 to clarify that "during production, multiple installations or devices are a single facility if the installations or devices are at a single site" (§ 250.105).
	Lessee means a person who has entered into *a lease,* [or who is the MMS-approved assignee of, a lease] with the United States to explore for, develop, and produce *the* leased minerals. The term lessee also includes an owner of operating rights for that lease *and the MMS-approved assignee of that lease.*	Clarification	We made the suggested changes and expanded the definition (§ 250.105).

Section	API/OOC comments	API/OOC rationale	MMS response
	[Of] *Archaeological interest means that it directly leads to* [capable of] providing scientific or humanistic understanding of past human behavior.	The words "capable of" are unclear when used in the context of this definition and can be misinterpreted. The proposed words provide clarification.	We did not make the suggested changes except to delete the word "of" to be consistent with 30 CFR part 251. We defined the terms "Archaeological resource, Of archaeological interest, Material remains, and Significant archaeological resource" in a final rule published on 10/21/94 (59 FR 53091). The National Trust for Historic Preservation and the Office of the Department Consulting Archaeologist both commented that we define the term "archaeological resource" to be consistent with the definition provided in the implementing regulations for the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470, aa-mm, 43 CFR 7.3) (§ 250.105).
	Operating rights means any interest held in a lease with right to explore for, develop, and produce leased substances. Any assignment or transfer of operating rights may specify the depth [of the borehole down] to which the operating rights extend.	By including borehole in this definition, the proposed language is too specific. There are more cases when operating rights are assigned or transferred to a stratigraphic depth or other point, without a borehole descriptor.	We made the suggested changes (§ 250.105).
	Producing in paying quantities *means* [that] *a well is producing in paying quantities when it meets the criteria set out in Section 250.9* [able to produce oil, gas, or both in a cost-effective manner. This means that the production quantities must yield a greater return than the total costs, including well-completion costs, of producing the hydrocarbons at the wellhead].	Two separate sets of tests have been specified which will lead to ambiguity. The proposed definition suggests an economic test. Section 250.9 suggests specific tests which in most cases lead to economic production. However, there is no guarantee that the two definitions will always be equal and overlap. This may lead over time to great confusion in administering minimum royalty payment and in determining lease status for possible suspension.	We deleted this definition (§ 250.105).
	Production Areas are those areas where flammable petroleum gas and volatile liquids are produced, processed (e.g. compressed), stored, transferred (e.g. pumped), or otherwise handled prior to entering the transportation process.	Need to add clarification. Definition is from API RP 500.	We made the suggested changes (§ 250.105).
	Sensitive reservoir means a reservoir in which high reservoir production rates will decrease ultimate recovery. *For the submittal of the first MER* [Initially], all oil reservoirs with an associated gas cap are classified as sensitive.	The word "initially" in this definition is ambiguous. The classification of a sensitive reservoir can be defined in the first MER and if necessary, the MMS can determine after that point if the treatment as a sensitive reservoir should continue.	We made the suggested changes (§ 250.105).
	Suspension means a [granted or directed deferral of the requirement] *deferral granted at the request of the lessee or directed by the MMS of the requirement to* produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).	Clarification	We made the suggested changes with minor modifications (§ 250.105).
	Well bay is the perimeter of the outer most wellheads.	Clarification. Definition was from an MMS workshop in conjunction with the implementation of regulations in 1988.	Since a perimeter is just an outer border, we modified the suggested definition to read: 'Wellbay is the area on a platform within the perimeter of the outermost wellheads' (§ 250.105)

Section	API/OOC comments	API/OOC rationale	MMS response
250.3	*(b) Prevent loss of life* ..... (*c* [b]) Prevent *unreasonable* damage to or waste of any natural resource, property, or the environment; and. (*d* [e]) Cooperate and consult with affected States, local governments, other interested parties, and relevant Federal agencies.	Suggested changes include the word *unreasonable* when considering damage to natural resources, property, or environment recognizing that oil and gas developments can not avoid some minimal amount of damages. *Prevent losses of life* does not have the unreasonableness test.	We inserted "injury or" before "loss of life." We did not add the word "unreasonable' (§ 250.106).
250.5	What standards must crane operations meet? To ensure the safety of the facility operations, you must meet the requirements of paragraph (a) of this section. [If your facility is located in the Pacific OCS Region, you must also meet the requirements of paragraph (b) of this section.]. [(b)This paragraph applies if your facility is located in the Pacific OCS Region. You may use . * * *].	There is no technical or safety justification for requiring more stringent requirements in the Pacific Region. Varying regulatory requirements for operating areas creates confusion with no measurable value.	We agree and deleted the paragraph on the Pacific Region requirements. We also completed the section so that it is a performance-based regulation (§ 250.108).
250.6(a)	You must submit a Welding, Burning, and Hot Tapping Safe Practices and Procedures Plan to the District Supervisor before you begin drilling or production activities on a lease. You may not begin welding activities until the District Supervisor has approved your plan. A copy of the plan and its approval letter must be *kept in the field* [available at the facility for the life of the facility (platform or drilling rig).].	It should not be necessary to keep a copy of the plan and approval letter at all facilities and drilling rigs for their life. A copy in the field, similar to the requirement for H2S Contingency Plans, should be sufficient.	We reworded the paragraph. It is important for the welder on each facility to be familiar with the plan. We changed the wording to be clear that the plan is needed at the site where welding occurs.
(b)(4)	[Drawings showing any d] *D*esignated safe-welding areas; *drawings showing designated safe-welding areas shall be maintained on the facility; and*	Drawings of safe-welding areas of all facilities covered by the plan should not be required in the plan. A drawing showing the designated safe-welding area developed by following the procedures identified in the plan should be maintained on the facility and should not be required with the plan. This is consistent with existing regulations.	We have reworded the paragraph and have addressed the commenter's concern.
(e)	Before you weld, you must move any equipment containing hydrocarbons or other flammable substances at least 35 feet horizontally from the *welding area* [work site. * * *].	Clarification	We made the suggested changes (§ 250.113(a)).
(g)(1)	You may not begin welding until the *welding supervisor or* designated person-in-charge has authorized in writing that it is safe to proceed with the welding activity. Before beginning welding, the designated person-in-charge and the welder(s) must inspect the work area and areas below the work area for potential fire and explosion hazards.	Including welding supervisor is consistent with 250.6(c).	We made the suggested changes (§ 250.113(c)).
(g)(4)	You may not weld [in, or] within 10 feet of[,] a well-bay [or production area] unless you have shut in all producing wells in that [area] *wellbay. You may not weld within 10 feet of a production area, unless you have shut-in* that production area.	Provides clarification of shut-in requirements.	We made the suggested changes (§ 250.113(c)).

Section	API/OOC comments	API/OOC rationale	MMS response
(g)(5)	You may not weld while you drill, complete, workover, or conduct wireline operations unless the fluids in the well are noncombustible and you have precluded the entry of formation hydrocarbons into the wellbore *by a positive overbalance toward the formation.* This does not apply to welding in an approved safe-welding area.	Clarification	We made the suggested changes and added the words "either by mechanical means or" (§ 250.113(c)(6)).
250.7	What requirements apply to electrical equipment? The requirements in this section apply to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities. (a) You must classify all areas in accordance with *either* API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities *Classified as Class I, Division 1 and Division 2, or API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2.* (b)You must use trained and experienced personnel to maintain your electrical systems. They must have expertise in area classification, [distribution systems,] *and the* performance characteristics and operation of electrical equipment, *as well as* [and] associated hazards. (c) You must install all electrical systems in accordance with API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms. You do not have to comply with Sections 7.4, Emergency Lighting, and 9.4, Aids to Navigation Equipment. (d) *On each engine that has electric ignition system,* [Y]you must use a*n* [low tension] ignition system [on each engine that has electric ignition. You must.] *that is* designed and maintained [the ignition system] to minimize the release of electrical energy.	Recognizes the latest edition of API RP500 APIRP 505 as an alternative. Distribution systems are just one of many parts of the electrical system and do not need to be separately identified.	We are proposing a rule to incorporate by reference API RP 505, first edition. We made most of the suggested change to (b) and (d) (§ 250.114).
250.8	(b) *Whenever practicable,* y[Y]ou must use BAST on existing operations to avoid failure of equipment that would have a significant effect on safety, health, or the environment if the Director determines that:	Adds flexibility consistent with existing regulations.	We made the suggested changes and further clarified the language (§ 250.107(c)).

Section	API/OOC comments	API/OOC rationale	MMS response
250.9	To determine whether a well is capable of producing in paying quantities, submit a written request to the District Supervisor. You must then meet the criteria in paragraphs (a) and (b) of this section. Once a lease has a well that MMS determines is capable of producing in paying quantities, no further determination of well producibility will be made on the lease. A determination of well producibility invokes minimum royalty status on the lease as provided in 30 CFR 202.53. If your well is located in the Gulf of Mexico (GOM), you [must also] *may alternatively* meet the requirements of paragraph (c) of this section.	This is consistent with the present regulation found in Section 250.11(b). The intent is to provide an alternative mechanism, not to require additional requirements. If a well test is unavailable, the operator can submit data; it is not necessary to have both a well test and data. The present regulation states "In the Gulf of Mexico OCS Region, the following shall also be considered collectively as reliable evidence that a well is capable of producing oil and gas in paying quantities."	We made the suggested change of alternative determination of well producibility to apply to the GOM region. We rewrote this section for clarity with no new requirements. Another change is that the written request for determining well producibility must be submitted to the Regional Supervisor. The District Supervisor will continue to carry the function of witnessing tests (§ 250.116).
250.9(c)(1)	[The producible section must not include any interval which appears to be water saturated.]	The reason for the deletion is that all reservoir rocks are to some extent water saturated. This would disqualify all reservoir rocks.	We did not delete the sentence that ensures that several thin sands with a water contact are not grouped into a producible interval (§ 250.116(c)).
250.9(c)(1)(iii)	A minimum true resistivity ratio of the producible section to the nearest clean *or* water-bearing sand of at least 5:1.	This would clarify this definition which has been incorrect in the existing regulations.	We made the correction (§ 250.116(d)(1)).
250.9(c)(4)	A wireline formation test and/or mud-logging analysis which indicates that the section is capable of producing oil or gas *or evidence that an attempt was made to obtain such tests.*	This language which was left out in the rewrite is very critical and should be included. It is not unusual for wildcat/exploratory wells to have hole-problems when pay is exposed.	We did not make the suggested changes. We do not agree with the suggestion. We deleted the language in the proposed rule because the wording was very vague. We use several ways to qualify a well using standard practices. Keeping this wording would dilute the qualification process and make it a rubber stamp exercise (§ 250.116 (b)(3)).
250.11	(1) MMS conducts a scheduled onsite inspection of each offshore facility that is subject to environmental or safety regulations under the Act at least once a year. The inspection determines whether environmental protection and safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents has been installed and is operating properly *in accordance with the* requirements of this part.	Operating properly needs further definition to preclude differing interpretations. The current language in Subpart A clarifies that operating properly means in accordance with the requirements of this part. This current language should be maintained.	We made the suggested change. Also, in § 250.130(b), we removed the words "at least once a year" as this limits the scope of scheduling and added the words "according to the requirements." In § 250.132(a) we removed the words "at all reasonable times" as the phrase is subjective and not necessary (§ 250.130).
250.12	Delete this section	The MMS proposed language is inconsistent with the OCS Lands Act and should be deleted. If MMS plans to include this section in the final rulemaking, then it should include the criteria for determining disqualification as well as the specific procedures which includes prior notice and opportunity for a hearing.	We disagree with the opinion that the language is inconsistent with the OCSLA. We explained the disqualification process in the preamble of this rule. In response to the comment, we added the sentence "MMS will provide adequate notice and opportunity for a review by MMS officials before imposing a disqualification procedure" (§§ 250.135 and 250.136).
250.14(c)	Approval for departures. If certain aspects of your *operations deviate from* [proposed procedure or equipment deviate from or are not covered by] MMS regulations, MMS may prescribe or approve exceptions from the operating requirements of this part.	Clarification	We made the suggested changes (§ 250.142).

Section	API/OOC comments	API/OOC rationale	MMS response
250.15(a)	You must provide the Regional Supervisor an executed Designation of Operator form unless you are the only lessee and are the only person conducting lease operations. When there is more than one lessee then the Regional Supervisor must receive [and approve] the Designation of Operator form from each lessee before the designated operator may commence operations on the leasehold.	The existing regulation in 250.8 allows the designated operator to begin operations on the lease after the Regional Supervisor "receives" the designation of operator. The revised version contained in 250.15(a) does not allow operations to begin until after the Regional Supervisor has "received and approved" the designation. Thus, the new version appears to have imposed an additional requirement on lessees. In addition, the MMS may typically be delayed in processing these approvals and would delay changes which should take place as soon as the operators are ready.	We did not make the suggested change. With the move towards performance based regulations, we are responsible for ensuring that designated operators are acceptable (§ 250.143).
250.15(a)(2)	When you are no longer the designated operator, you must immediately provide in writing the termination of your Designation of Operator to the Regional Supervisor. If you are also a designated royalty payor and will not continue to be in the future, you must also notify the Royalty Management Program of the termination of your Designation of Operator.	It is recommended that this requirement not be included in this section and be placed in the Royalty Management Program part of the MMS regulations, since the royalty payment staff of operators do not look at this 30 CFR 250 which is an operational regulation.	We made the suggested change (§ 250.146).
250.15(d)	Whenever the regulations in 30 CFR parts 250 to 282 require the lessee to meet a requirement or perform an action, *all persons who conduct lease activities on behalf of the lessee or operator must also comply with the regulations.* [the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for compliance with the regulation.].	As written, this section overstates the obligations of the co-lessee. Subpart (b) of the same section already makes the co-lessee responsible for fulfilling the obligation of the lessee in case of failure by the operator. The recommended language adds clarification that is consistent with the intent of the preamble.	We did not make the suggested changes as paragraphs (a), (b), and (c) are needed to clarify the various conditions when responsibility needs to be spelled out (§ 250.146).
250.16	Naming and Identifying [Platforms] *Facilities* and Wells (*does not include MODUS*). How do I name [platforms] *facilities* and wells?	The word "platform" implies a multiple legged fixed structure. With the use of caissons, spars, TLP's and FPS's a more appropriate term would be "facilities." An alternative to this recommended change would be to include an applicable definition of platform. This section should not apply to MODUs that may be considered a facility when attached to the sea floor.	We made the suggested changes. For detailed descriptions on naming and numbering wells for reporting, operators should refer to the Notice to Lessees (NTL) No. 97–2N (issued on 8/1/97) "Well Naming and Numbering Standards" and to any later revisions of this NTL. We will issue another NTL to provide more instructions for the well naming and numbering to be used for reports and digital data (§§ 250.150 through 250.153).
250.16(a)	In the Gulf of Mexico Region: (1) Assign each [platform] *facility* a letter designation *except for those types of facilities identified in paragraph (a)(3)(i) of this section.* For example, A, B, CA, or CB.	The word "platform" was changed to "facility" for consistency (see above rational [sic]) for the recommended change). Furthermore, the statement "except for those type facilities identified in paragraph (a)(3)(i) of this section" was added in the recommended changes because § 250.16(a)(3)(i)[i] allows a numeric representation of single well caissons without production facilities.	We made the suggested changes (§ 250.150)

Section	API/OOC comments	API/OOC rationale	MMS response
250.16(a)(i)	After a [platform] *facility* is installed, rename each *pre-drilled* well that was *assigned only a number and was temporarily suspended at the mudline or at the surface.* [drilled through a template and was assigned a number.] Use a letter and number designation. *The letter used should be the same as that of the production facility and number used should correspond to the order which the well was completed, not necessarily the number assigned when it was drilled. For example, the first well completed for production on Facility A would be renamed Well A–1, the second would be Well A–2, and so on* [For example, rename Well No. 1: A–1, B–1, or C–1]; and.	The word "platform" was changed to "facility" for consistency (see above rational [sic]) for the recommended change). The word "template" would only account for those wells drilled through a drilling template, when in fact, most pre-drilled wells are suspended at mudline as casing stubs, or suspended as a caisson at the surface, while awaiting platform installation. The recommend change would account for all pre-drilled wells. The wells drilled, for completion as producers, are not necessarily the first wells drilled on a lease and would have an assigned number higher than one (1). Therefore, to account for this, we recommended that the well be assigned the sequential number given in the order it was completed for production, after the facility is installed, starting with the number one (1).	We made the suggested changes (§ 250.150(a)(1)).
250.16(a)(ii)	When you have more than one [platform in a field (excluding complexes), include the designations for the field and use a different letter designation for each platform.] *facility on a block, each facility installed, and not bridge-connected to another facility, should be named using a different letter in sequential order.* For example, [EC 221–A, EC 222–B, EC 223–C] *EC222A,* EC222B, EC222C.	See comments for 250.16(a)(iii)	We made the suggested changes (§ 250.150(a)(2)).
250.16(a)(iii)	ADD: *(iii) When you have more than one facility on multiple blocks in a local area that are being co-developed, each facility installed, and not connected with a walkway to another facility, should be named using a different letter in sequential order with the block number corresponding to the block on which the platform is located. For example, EC 221 A, EC 222 B and EC 223 C.*	The proposed draft only addresses more than one facility on multiple blocks or in a field. However, the recommended change accounts for multiple facilities on a single block. We recommend that a separate paragraph be added to address this scenario. The word "field" and the word "complexes" have very broad definitions. Therefore, we recommend the language change or an accurate definition of these terms as they apply to this section be added to this subpart.	We made the suggested changes (§ 250.150(a)(3)).
250.16(a)(3)(i)	For single well caissons that are not attached to a [platform] *facility* with a walkway, use the well designation. For example, Well No. 1;	Clarification	We made the suggested change (§ 250.150(c)(1)).
250.16(a)(3)(ii)	For single well caissons that are attached to a [platform] *facility* with a walkway, use the same designation as the platform. For example, rename Well No. 10 as A–10; and	Clarification	We made the suggested change (§ 250.150(c)(2)).
250.16(a)(3)(iii)	For single well caissons with production equipment use a letter designation *for the facility name and a letter plus number designation for the well.* For example, *the* Well No. 1 *caisson would be designated as Facility A, and the well would be Well [as] A–1.*	The intention of this paragraph is to use the letter designation for those caissons with substantial processing equipment. Furthermore, this requirement should not only outline the requirement for well naming but also the facility name. As proposed, the caisson would be named Well A–1, not Facility A.	We made the suggested changes (§ 250.150(c)(3)).

Section	API/OOC comments	API/OOC rationale	MMS response
250.16(d)	ADDITION: *All facilities installed and wells drilled prior to the effective date of this revision do not need to be renamed if they do not meet the naming criteria outlined in this section.*	Due to the enormous administrative and economic burden that would be placed on the industry and the MMS, existing structures should be allowed to retain their current names, if they do meet the requirements outlined herein.	We made the suggested changes and added "unless required by the Regional Director" to the end of the sentence. This gives the Regional Director the discretion to require renaming in case of a well numbering problem (§ 250.153).
250.17(a)	You must identify all *facilities* [platforms, structures], artificial islands, and mobile drilling units with a sign.	Clarification	We made the suggested change (§ 250.154).
250.17(a)(2)	(2) When helicopter landing facilities are present, you must display an additional identification sign that is visible from the air. The sign must use at least 12-inch letters and figures[, and must also display the weight capacity of the helipad]. If this sign is visible to both helicopter and boat traffic, then the sign in paragraph (a)(1) of this section is not required.	Weight capacity is not necessary for platform identification and would not be visible on the signs. Weight capacity is customarily noted on the top of the helipad.	We responded to this suggestion by adding the words "unless noted on the top of the helipad" after the words "and must also display the weight capacity of the helipad (§ 250.154(a)(2))
250.17(a)(3)(ii)	In the GOM OCS Region, list the area designation or abbreviation and the block number of the [platform] *facility* location as depicted on OCS Official Protraction Diagrams or leasing maps;	This requirement applies to both mobile drilling units and all facilities.	We made the suggested change (§ 250.154(a)(3)(ii)).
250.17(b)(2)	For wells with multiple completions, *downhole splitter wells, and multilateral wells,* identify each completion *in addition to the well name and lease number* individually *on the well flowline* at the wellhead; and	We recommend the inclusion of downhole splitter wells and multilateral wells which are unique completions identified by the MMS in NTL 97–2N. Furthermore, we believe the lease and well name need to be identified in addition to the completion code on the flowline of each completion.	We made the suggested changes (§ 250.154(c)(3)(ii)).
250.17(b)(3)	For subsea [wellheads] *wells which flow individually into separate pipelines,* affix the required sign on the *pipeline or surface* flowline that [connects to the pipeline] *is dedicated to that* subsea well at a convenient location on the receiving platform. *For multiple subsea wells which flow into a common pipeline or pipelines, no sign is required.*	The recommended change lends clarity to situations where numerous subsea wells flow into a single pipeline. Furthermore, we believe it is not practical to separately identify each subsea well flowing into a single pipeline.	We made the suggested changes (§ 250.154(b)(3)).
250.17(c)	Each identifying sign [must be visible to approaching traffic and] maintained in a legible condition.	Redundant	We deleted this section.
250.18(a)(1)(ii)	Used for conducting exploration, development, and production activities or other operations [on your lease].	Limiting the right-of-way and easement to an owned lease is too limiting. In deep water subsea projects, development may dictate that several leases flow to a single platform. Under these circumstances, the right-of-way may continue and be needed even after the platform owner has ceased production.	We made the suggested change. It is noted that the comment uses the term "right-of-way" (as in pipeline right-of-way) whereas the section referred to (§ 250.18) related to granting a "right-of-use and easement."
250.19(i)	MMS must receive the request before the lease term ends *unless the lease is held by operations.*	The way that this subsection was reworded, this existing provision was omitted. It is possible to have a lease that is about to expire held by operations (such as drilling) which automatically extends the term of the lease until that period ends.	We did not make the suggested change since a suspension would not be needed if the lease were held by operations. We further clarified the sections ("Suspensions" sections).

Section	API/OOC comments	API/OOC rationale	MMS response
250.19(j)(1)	*(6) When needed to comply with a Presidential decree or directive.*	In recent times, Presidential decrees have required cessation of activity on the West Coast, portions of Offshore Florida, and the East Coast. When the Executive Department requires this, it should be included as a cause for an MMS-directed suspension which extends the lease term.	We did not make the suggested change since a Presidential decree or directive would be implemented via a policy statement from the Director ("Suspensions" sections).
250.19(j)(2)	When activities pose a threat of serious, irreparable, or immediate harm. This would include damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. [MMS may require you to do a site-specific study (see Sec. 250.19(o)(1));]	This requirement to perform an on-site specific study should be founded on something other than the discretionary authority of the MMS to grant a suspension. The cost of on-site surveys can be quite high, often benefit the entire area as opposed to an individual lease, and MMS has demonstrated no statutory authority to impose such excess costs as a condition of exercising leaseholds rights granted under the lease.	We did not make this change. This is not a new requirement, and we are retaining this authority so that we can require a study when it is necessary ("Suspensions" sections).
250.19(l)	The Regional Supervisor may grant or direct an SOP and/or *an SOO* when: the suspension is in the national interest; [you have exercised diligence in pursuing production]; the lease was drilled and a well was determined to be producible in accordance with 30 CFR 250.9 or 250.253; and it is necessary because the suspension will meet one of the following criteria:	This change is necessary in order to correctly mirror current 30 CFR 250.10 which provides for not only suspension of production but a suspension of operations as well. The requirement to exercise diligence in production appears to already have been met by the requirement to have the producible well present. No criteria have been identified to determine diligence in production. Once the lease is in a producible status, by declaration of a producible well, this criteria seems to have already been met.	We did not add the words "and/or an SOO" because SOOs do not apply to this set of regulations. We deleted the phrase "you have exercised diligence in pursuing production." Since diligence is not easily defined, we place more emphasis on the lessee's commitment to production and a sound activity schedule when analyzing SOP requests ("Suspensions" sections).
250.19(l)(3)	It will allow you a reasonable amount of time to enter a sales *or transportation* contract for oil, gas, or sulphur. You must show that you are making a good faith effort to enter into the contract(s);	In today's gas environment, the transportation contract is as important as a sales contract; therefore the regulatory language should include both.	We did not make the change as transportation is covered ("Suspensions" sections).
250.19(o)(1)	[Conduct a site-specific study(s);].	This requirement to perform an on-site specific study should be founded on something other than the discretionary authority of the MMS to grant a suspension. The cost of on-site surveys can be quite high, often benefit the entire area as opposed to an individual lease, and MMS has demonstrated no statutory authority to impose such excess costs as a condition of exercising leaseholds rights granted under the lease.	We did not make this change. This is not a new requirement, and we are retaining this authority so that we can require a study when it is necessary ("Suspensions" sections).

Section	API/OOC comments	API/OOC rationale	MMS response
250.20	Except for requirements to report oil spills, delete all other reporting requirements and incorporate recommendations of the USCG NOSAC Incident Reporting Subcommittee established on April 22, 1998 consisting of MMS, USCG and industry personnel.	Definitions of accidents are inconsistent with those used in SEMP (NTL 98 -6N) and those required by the USCG for similar incidents. These proposed regulations in many cases duplicate reporting requirements of the United States Coast Guard. At a meeting of NOSAC (National Offshore Advisory Committee) in Washington on April 22, 1998, a Subcommittee was established to review and recommend changes to improve the process of defining and reporting incidents to the MMS and the USCG. This effort was endorsed by Carolita Kallaur, Associate Director for Offshore Minerals Management. Recommendations will be completed by October 1998. Significant administrative burden would be added to all operators if this proposed regulation was implemented. This would be the most expedient method to resolve this issue and avoid OMB and other intervention in adding this administrative burden to operators and contractors.	We deleted the accident reporting table at proposed §250.120(a). We will propose a separate rule to establish a joint MMS-USCG web-based reporting system for incidents that have to be reported to either agency. We retained the current requirement at §250.119(a) (§250.191).
250.20(a)	Industry has expressed concerns to the MMS that "fires" needs to be better defined since industry has confusion on what needs to be reported. We recommend that the MMS include a description or definition for what a fire is and what types of fires they expect to receive in the reports.	To avoid uncertainty, the rule should include the definition, especially when the MMS is planning to use fires as one of the criteria included with the disqualification procedures found in this proposed rule in Section 250.12. The preamble states that more guidance will be given in an NTL. We prefer that the language be included in a rule.	We will propose a separate rule on incident reporting (see response to previous comment). The rule will give more guidance on thresholds for fires and factors that impair safety.
	The MMS should include language that allows the Operator to submit this information marked "Confidential" and the MMS to maintain it in such a way without divulging the details that may be involved in legal action.	The MMS should respect the confidentiality and sensitivity of information marked "Confidential" as they do with other information they receive from operators.	We will propose a separate rule on incident reporting (see response to previous comment) and consider the comment in that rulemaking.
250.20(a)(1)	We recommend that this subsection qualify that the operation must be related to the exercise of the easement, right-of-way, or other permit.	It would be impossible for a pipeline right-of-way owner to be aware of any accidents which might happen to occur within the pipeline right-of-way corridor which did not directly influence or impact the exercise of the right-of-way itself.	We made the suggested changes (§250.191(b)).
250.20(a)(2)	We recommend that the final rule qualify the investigative authority so that it is not exercised by both the Department of Transportation's United States Coast Guard and the Department of [the] Interior's MMS.	The cited portions of the OCS Lands Act specify that either the Secretary or the U.S. Coast Guard may institute investigations but not both. This limitation must be contained in the regulations in order for them to be lawful.	We made the suggested changes (§250.191(c)).

Section	API/OOC comments	API/OOC rationale	MMS response
250.20(a)(2)	We recommend that the striking of the provision which only allows panel members and panel experts to address questions to the person giving testimony.	This provision violates the provisions of Section 22(f) of the OCS Lands Act which requires that the production of documents and the handling of testimony and witnesses be analogous to the Federal Rules of Civil Procedure. The Federal Rules Of Civil Procedure give the party at risk for citation the opportunity to participate in questioning of witnesses in the course of any hearing.	We did not make the suggested changes. However, since commenters have objection to the proposed wording, we used the wording exactly as it is in our current regulations (§ 250.191(c)).
250.20(b)	The MMS should clarify that they want to get personnel evacuation numbers only, to avoid uncertainty. Also, the MMS should add the words "as conditions allow" immediately after (b)(2) after "11 AM" in this sentence.	The MMS should clarify what they need since the word "statistics" is not defined. In addition, the MMS needs to understand the critical nature and plans that require full operator attention for safe evacuation of personnel, ensuring the operations are safely and environmentally shut-in, housing the evacuated personnel, and ensuring the safety of office management/staff. This process must have higher priority than reporting "statistics" by 11 AM during the period of shut-in and evacuation. MMS offices are also evacuated when natural events such as hurricanes approach populated areas, so the "statistics" would probably not be accessible.	We listed evacuation statistics needs as the following: facilities and rigs evacuated and the amount of production shut-in for oil and gas. We inserted "as conditions allow" (§ 250.192).
250.21	Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, any provision of a lease, license, or permit issued under the Act, or any provision of any regulation or order issued under the Act. When MMS receives a report of an apparent violation, or when an MMS employee detects an apparent violation, *after making a determination of the validity,* MMS will investigate in accordance with its procedures.	This will prevent the MMS from being forced to investigate frivolous or baseless allegations which are apparent on their face.	We have not made the changes because MMS procedures will determine the validity (§ 250.193).

Section	API/OOC comments	API/OOC rationale	MMS response
250.23(a)	Your lease expires at the end of its primary term unless you are producing in paying quantities or conducting drilling or well-reworking operations on your lease (see 30 CFR part 256). The objective of the drilling or well-reworking operations must be to establish continuous production on the lease. For purposes of this section, the term operations means [continuous] production, drilling, or well-reworking.	Ordinary oil and gas principles extend a lease provided a continuous exploratory drilling program is in operation. The present wording does not appear to include this fact, but instead focuses solely on production or the re-institution of production itself. A lessee could maintain a lease by a continual and diligent exploratory program through continuous drilling activity. This concept is missing in the proposed rule. In addition, the last sentence as is will cause confusion and it contradicts the remainder of Section 250.23. It is possible during drilling or well-reworking to start and stop operations within the 180-day clock, such as to get different equipment, personnel, other operations on the platform, etc. As long as the word "continuous" is there, it can be interpreted as being ongoing and not allowing for start and stops. This is unrealistic with regard to how offshore operations take place.	We deleted the word continuous from this section (§ 250.180).
250.25	When will MMS reimburse me for reproduction, *processing, and other* costs?	Since the reimbursement provision is for other areas than reproduction, it will be easier for the operator to find this section.	We made § 250.195 parallel to 30 CFR part 251. This section only refers to reimbursements for G&G data and information.
250.27(b) Table	When your lease terminates or [10] *15* years after the date you submit the data whichever is earlier. [10] *15* years after the date you submit it.	Ten years is not enough in the case of deepwater leases (deep water leases have a 10 year primary term) where an exploratory well is drilled, an SOP obtained pending development. Same as above. In addition, there could exist open acreage next to a lease that has not been fully developed since operations in deep water tend to be more complex.	We have not made the suggested change. To change the release time for these data would make releasing data and information more complicated and make it extremely difficult to track properly. Following our current regulations, we have already released deepwater data. The suggested change would not enhance our ability to get fair market value for leases (§ 250.196).
	MMS will disclose information not collected on MMS forms in accordance with the following table: if—The director determines that data and information are needed for specific scientific or research purposes for the Government MMS will release—Geophysical data, geological data, interpreted G&G information, processed and reprocessed geophysical information, analyzed geological information. At this time—Anytime Additional provisions—MMS will release data and information *with the review and consent of the lessee* only if release would further the national interest without unduly damaging the competitive position of the lessee.	Operator should have the opportunity to review the current situation and decide whether or not release of the data would jeopardize its competitive position.	We did not make this change. This change would mean that we would have to go to the lessee before we transfer proprietary data and information (paleo reports, etc.) to anyone doing work on our behalf. This is not a good idea. It limits our ability and rights to do research and detailed studies (§ 250.196).

Section	API/OOC comments	API/OOC rationale	MMS response
	[2] *10* years after you submit it or 60 days after a lease sale if any portion of an offered block is within 50 miles of a well, whichever is later.	Two years is not enough in the case of deepwater leases (deep water leases have a 10 year primary term) where an exploratory well is drilled, an SOP obtained pending development. Same as above. In addition, there could exist open acreage next to a lease that has not been fully developed since operations in deep water tend to be more complex.	We have not made the suggested change. To change the release time for these data would make releasing data/information more complicated and make it extremely difficult to track properly. Following our current regulations, we have already released deepwater data. Additionally, the suggested change would not enhance our ability to get fair market value for leases (§ 250.196).
256.73(a)	(a) [Normally,] a *A* suspension extends the term of a lease. The extension is equal to the length of time the suspension is in effect. The suspension will not extend the lease term when the Regional Supervisor directs a suspension because of:	The existing Section 256.73(a) clearly states the primary term of the lease will be extended if the lessee is granted an SOO or SOP pursuant to 30 CFR 250.10(a), (b)(2) through (b)(7), or (c). This very clear and concise provision has been rewritten to state that a suspension "normally" extends the term of a lease. Since the term "normally" is not defined, the net result of this change is a provision that is less specific.	We have deleted the word "normally" and rewritten the entire section for clarity.

API/OOC Comments and MMS Responses on Documents Incorporated By Reference

In addition to the comments in the preceding table, API/OOC provided numerous suggestions to update the documents incorporated by reference in proposed § 250.28. Some have already been updated; this final rule will make the recommended changes to most of the others; and we will consider the remaining few for future rulemaking.

The following is a list of the documents incorporated by reference that we updated in the table in § 250.198(e):

API MPMS, Chapter 2, Section 2B
API MPMS, Chapter 3, Section 1B
API MPMS, Chapter 4, Section 7
API MPMS, Chapter 6
API MPMS, Chapter 6, Section 6
API MPMS, Chapter 7, Section 3
API MPMS, Chapter 10, Section 4; also available as ANSI/ASTM D 96
API MPMS, Chapter 11
API MPMS, Chapter 11.1; also available as ANSI/ASTM D1250
API MPMS, Chapter 14, Section 3, Part 1; also available as ANSI/API 2530, Part 1
API MPMS, Chapter 14, Section 3, Part 2; also available as ANSI/API 2530, Part 2
API MPMS, Chapter 14, Section 6
API RP 2A
API RP 2A, Supplement 1
API Spec Q1
API Standard 2545 incorporated as MPMS, Chapters 3.1A and 3.1B
API Standard 2551
API Standard 2552
API Standard 2555

The following is a list of documents incorporated by reference that we have already addressed through other rulemakings published on July 9, 1998 (63 FR 37066) and May 12, 1998 (63 FR 26365):

API MPMS, Chapter 14, Section 8
API MPMS, Chapter 20
API MPMS, Chapter 21
API RP 14C
API Spec 14D

We are considering, or will consider, the following for future changes in documents incorporated by reference:

API MPMS, Chapter 14, Section 1
API RP 500 (proposed rule published 3/19/99, 64 FR 13535)
API RP 505 (proposed rule published 3/19/99, 64 FR 13535)
API 510 (currently under review)
API Specification 6D, Supplement 2
API Specification 14A, Supplement 1

Procedural Matters

Takings Implication Assessment Executive Order (E.O.) 12630

MMS certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Federalism (E.O. 13132)

According to E.O. 13132, this rule does not have Federalism implications. This rule:

(a) Does not substantially and directly affect the relationship between the Federal and State governments;

(b) Does not impose costs on States or localities;

(c) Does not preempt State law.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under E.O. 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The new or expanded requirements in the rule are designed to safeguard lives, property, and the environment. They do not impose extensive burdens. The economic effects of the rule will be minimal.

The revised regulations will allow lessees of a State lease located adjacent to the OCS to apply for a right-of-use and easement. Although MMS has always had the authority to grant rights-of-use and easements, it was inadvertently dropped from the regulations in 1979, and we are simply reinserting it specifically in the regulations. We anticipate very few situations occurring when a State lessee would need to take advantage of this provision in the regulations. Therefore, we estimate possibly one application from a State lessee annually. If a State lessee applies for a right-of-use and easement, they will be required to pay a $2,350 application fee and $500 in annual rental. The fee and rental are the same as those required for pipeline right-of-way grants in our current

regulations. We used this as the cost basis because of the similarity in complexity between approving current pipeline right-of-way grants and the new right-of-use and easement applications allowed under this regulation.

The total reporting and recordkeeping burdens on all entities affected are minimal (less than $400,000 per year).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule had a new accident reporting table that raised a question of duplicative accident reporting to both MMS and USCG. We have deleted the table from the final rule. We will propose a separate rule to establish a joint MMS–USCG web-based system for reporting accidents/incidents to either agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will only have a minimal effect with respect to user fees. State lessees will have to pay a small fee and hold a bond for the benefit of receiving the right-of-use and easement in the OCS.

(4) This rule does not raise novel legal or policy issues. The new or expanded requirements in the rule are based on the longstanding legal authority of the OCSLA and other laws. As previously stated, the rule emphasizes MMS's commitment towards ensuring safe operations.

Civil Justice Reform (E.O. 12988)

DOI has certified to OMB that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

Paperwork Reduction Act of 1995 (PRA)

We examined the proposed and final rule under the PRA. We determined that the approved information collection requirements remain unchanged for 30 CFR part 218; 30 CFR part 250, subparts E and F; and 30 CFR part 256.

With respect to 30 CFR part 250, subpart D, the rule removes sections that contain approved collections of information and relocates them to 30 CFR part 250, subpart A. We will submit an inventory correction to OMB to update the approved 30 CFR part 250, subpart D information collection requirements (OMB control number 1010–0053).

Because of the changes in 30 CFR part 250, subpart A, as part of the proposed rulemaking process, we submitted the information collection requirements (including form MMS–132) to OMB for approval. The final rule made very few changes in the collection of information, but we resubmitted the revisions to OMB for approval under section 3507(d) of the PRA. OMB has approved the collection of information under OMB control number 1010–0114. The title of this collection of information is "30 CFR 250, Subpart A—General." The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The minor differences in the information collection requirements in the proposed rulemaking from those approved for the final rule are:

- Eliminated the requirement to submit information on the use of BAST-requests would be considered under new or alternative procedures.
- Clarified the recordkeeping retention requirements for crane operator qualifications to be consistent with the standards in the document incorporated by reference for this activity.
- Eliminated the "proposed" accident reporting requirements and retained the "current" subpart A accident reporting and estimated burden.

In responding to comments, we have concluded that the procedures leading to disqualification of an operator could result in respondents submitting a performance improvement plan to avoid disqualification. Although this is part of our internal enforcement process and not specifically identified in the regulations, the ICR approved for the final rule includes the burden for this contingency.

We use the collection of information required by this rule to ensure that operations on the OCS are carried out in a manner that is safe, pollution-free, does not interfere with the rights of other users on the OCS, and balances the protection and development of OCS resources. The frequency of submission varies according to requirement but is generally "on occasion." Responses are mandatory.

We estimate there are approximately 131 respondents to this collection of information—130 Federal OCS lessees and operators and one State lessee.

Reporting and Recordkeeping "Hour" Burden: The approved annual burden of this collection of information is 7,231 reporting hours and 3,485 recordkeeping hours, for a total of 10,716 burden hours. Based on $35 per hour, we estimate the total hour burden cost to respondents to be $375,060.

Reporting and Recordkeeping "Non-Hour Cost" Burden: The approved paperwork non-hour cost burden remained unchanged in the final rule. We still anticipate that only one State lessee per year might apply for a right-of-use and easement. The respondent is required to pay a cost recovery application fee of $2,350.

Regulatory Flexibility Act

The changes proposed in 30 CFR part 250, subpart A, will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

The Small Business Administration's Office of Advocacy in commenting on this rule referred to Standard Industrial Classification (SIC) 1381, Drilling Oil and Gas Wells. Under this SIC code, MMS estimates that there is a total of 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. According to SBA estimates, 39 companies qualify as large firms, leaving 91 companies qualified as small firms with fewer than 500 employees.

The primary economic effect of the revised subpart A on small businesses is the cost associated with information collection activities. The rule is a plain language rewrite of 30 CFR 250, subpart A, and contains virtually all of the same reporting and recordkeeping requirements and attendant costs as the existing regulations. The changes in reporting requirements will not significantly increase the information collection hour burden on respondents—large or small. Based on the average number of lessees being 130, we estimate a combined annual burden of 10,716 hours for all entities. Using a standard average hourly cost of $35.00 to determine the paperwork burden, the total hourly cost burden is $375,060. This reflects an increase in the paperwork burden from the current regulation of 2,288 hours, for a cost burden increase of $80,080 or $616 per

entity (large or small) from the current regulation.

There is also a reporting cost burden associated with one of the new benefits to State lessees that requires a fee of $2,350, but only if a State lessee/operator chooses to apply for a right-of-use and easement. If a State lessee applies for a right-of-use and easement, they will be required to pay a $2,350 application fee and $500 in annual rental. We do not anticipate more than one application for a right-of-use and easement from a State lessee annually.

Based on these calculations, this rule has no significant economic impact on the small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The primary purpose of this rule is to restructure it for better reorganization and to simplify regulatory language. The restructuring and plain language revisions will not result in any economic effects to small or large entities. The only costs will be for the purchase of the new documents incorporated by reference and minor revisions to some operating procedures. The minor revisions to operating procedures may result in some minor costs or may actually result in minor costs savings.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The new costs associated with this rule are minimal. State lessees will have to pay a fee and rental to obtain the benefits of a right-of-use and easement in the Federal OCS.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The regulation will not have any adverse effects on competition or other business/commercial aspects of the regulated industry. It contains a few new requirements that are not burdensome and that ensure that operations in the OCS remain safe and environmentally sound.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.* that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

List of Subjects

30 CFR Part 218

Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur, Surety bonds.

30 CFR Part 252

Continental shelf, Freedom of information, Intergovernmental relations.

30 CFR Part 253

Continental shelf, Environmental protection, Insurance, Oil and gas exploration, Oil pollution, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 282

Continental shelf, Prospecting, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: November 5, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR parts 218, 250, 252, 253, 256 and 282 as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 *et seq.*; 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C.A. 3335; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*; 1801 *et seq.*

2. In § 218.154 paragraphs (a) and (b) are revised to read as follows:

§ 218.154 Effect of suspensions on royalty and rental.

(a) MMS will not relieve the lessee of the obligation to pay rental or minimum royalty for or during the suspension if the Regional Supervisor:

(1) Grants a suspension of operations or production, or both, at the request of the lessee; or

(2) Directs a suspension of operations or production, or both, under 30 CFR 250.173(a).

(b) MMS will not require a lessee to pay rental or minimum royalty for or during the suspension if the Regional Supervisor directs a suspension of operations or production, or both, except as provided in (a)(2) of this section.

* * * * *

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

3. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

4. Subpart A is revised to read as follows:

Subpart A—General

Authority and Definition of Terms

Sec.

250.101 Authority and applicability.
250.102 What does this part do?
250.103 Where can I find more information about the requirements in this part?
250.104 How may I appeal a decision made under MMS regulations?
250.105 Definitions.

Performance Standards

250.106 What standards will the Director use to regulate lease operations?
250.107 What must I do to protect health, safety, property, and the environment?
250.108 What requirements must I follow for cranes and other material-handling equipment?
250.109 What documents must I prepare and maintain related to welding?
250.110 What must I include in my welding plan?
250.111 Who oversees operations under my welding plan?
250.112 What standards must my welding equipment meet?
250.113 What procedures must I follow when welding?
250.114 How must I install and operate electrical equipment?
250.115 How do I determine well producibility?
250.116 How do I determine producibility if my well is in the Gulf of Mexico?
250.117 How does a determination of well producibility affect royalty status?
250.118 Will MMS approve gas injection?
250.119 Will MMS approve subsurface gas storage?
250.120 How does injecting, storing, or treating gas affect my royalty payments?
250.121 What happens when the reservoir contains both original gas in place and injected gas?
250.122 What effect does subsurface storage have on the lease term?
250.123 Will MMS allow gas storage on unleased lands?
250.124 Will MMS approve gas injection into the cap rock containing a sulphur deposit?

Inspection of Operations

250.130 Why does MMS conduct inspections?
250.131 Will MMS notify me before conducting an inspection?
250.132 What must I do when MMS conducts an inspection?
250.133 Will MMS reimburse me for my expenses related to inspections?

Disqualification

250.135 What will MMS do if my operating performance is unacceptable?
250.136 How will MMS determine if my operating performance is unacceptable?

Special Types of Approvals

250.140 When will I receive an oral approval?
250.141 May I ever use alternate procedures or equipment?
250.142 How do I receive approval to use alternate procedures or equipment for departures?
250.143 How do I designate an operator?
250.144 How do I designate a new operator when a designation of operator terminates?
250.145 How do I designate an agent or a local agent?
250.146 Who is responsible for fulfilling leasehold obligations?

Naming and Identifying Facilities and Wells (Does Not Include MODUs)

250.150 How do I name facilities and wells in the Gulf of Mexico Region?
250.151 How do I name facilities in the Pacific Region?
250.152 How do I name facilities in the Alaska Region?
250.153 Do I have to rename an existing facility or well?
250.154 What identification signs must I display?

Right-of-Use and Easement

250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?
250.161 What else must I submit with my application?
250.162 May I continue my right-of-use and easement after the termination of any lease on which it is situated?
250.163 If I have a State lease, will MMS grant me a right-of-use and easement?
250.164 If I have a State lease, what conditions apply for a right-of-use and easement?
250.165 If I have a State lease, what fees do I have to pay for a right-of-use and easement?
250.166 If I have a State lease, what surety bond must I have for a right-of-use and easement?

Suspensions

250.168 May operations or production be suspended?
250.169 What effect does suspension have on my lease?
250.170 How long does a suspension last?
250.171 How do I request a suspension?
250.172 When may the Regional Supervisor grant or direct an SOO or SOP?
250.173 When may the Regional Supervisor direct an SOO or SOP?
250.174 When may the Regional Supervisor grant or direct an SOP?
250.175 When may the Regional Supervisor grant an SOO?
250.176 Does a suspension affect my royalty payment?
250.177 What additional requirements may the Regional Supervisor order for a suspension?

Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations

250.180 What am I required to do to keep my lease term in effect?
250.181 When may the Secretary cancel my lease and when am I compensated for cancellation?
250.182 When may the Secretary cancel a lease at the exploration stage?
250.183 When may MMS or the Secretary extend or cancel a lease at the development and production stage?
250.184 What is the amount of compensation for lease cancellation?
250.185 When is there no compensation for a lease cancellation?

Information and Reporting Requirements

250.190 What reporting information and report forms must I submit?
250.191 What accident reports must I submit?
250.192 What evacuation statistics must I submit?
250.193 Reports and investigations of apparent violations.
250.194 What archaeological reports and surveys must I submit?
250.195 Reimbursements for reproduction and processing costs.
250.196 Data and information to be made available to the public.

References

250.198 Documents incorporated by reference.
250.199 Paperwork Reduction Act statements—information collection.

Subpart A—General

Authority and Definition of Terms

§ 250.101 Authority and applicability.

The Secretary of the Interior (Secretary) authorized the Minerals Management Service (MMS) to regulate oil, gas, and sulphur exploration, development, and production operations on the outer Continental Shelf (OCS). Under the Secretary's authority, the Director requires that all operations:

(a) Be conducted according to the OCS Lands Act (OCSLA), the regulations in this part, MMS orders, the lease or right-of-way, and other applicable laws, regulations, and amendments; and

(b) Conform to sound conservation practice to preserve, protect, and develop mineral resources of the OCS to:

(1) Make resources available to meet the Nation's energy needs;

(2) Balance orderly energy resource development with protection of the human, marine, and coastal environments;

(3) Ensure the public receives a fair and equitable return on the resources of the OCS;

(4) Preserve and maintain free enterprise competition; and

(5) Minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas and the recovery of other resources.

§ 250.102 What does this part do?

(a) 30 CFR part 250 contains the regulations of the MMS Offshore program that govern oil, gas, and sulphur exploration, development, and production operations on the OCS. When you conduct operations on the OCS, you must submit requests, applications, and notices, or provide supplemental information for MMS approval.

(b) The following table of general references shows where to look for information about these processes.

TABLE—WHERE TO FIND INFORMATION FOR CONDUCTING OPERATIONS

For information about	Refer to
(1) Abandoning wells	§ 250.701.
(2) Applications for Permit to Drill	§ 250.414.
(3) Development and Production Plans (DPP)	§ 250.204.
(4) Downhole commingling	§ 250.1106.
(5) Exploration Plans (EP)	§ 250.203.
(6) Flaring	§ 250.1105.
(7) Gas measurement	§ 250.1203.
(8) Off-lease geological and geophysical permits	30 CFR 251.
(9) Oil spill financial responsibility coverage	30 CFR 253.
(10) Oil and gas production safety systems	§ 250.802.
(11) Oil spill response plans	30 CFR 254.
(12) Oil and gas well-completion operations	§ 250.513.
(13) Oil and gas well-workover operations	§ 250.613.
(14) Platforms and structures	§ 250.901.
(15) Pipelines	§ 250.1009.
(16) Pipeline right-of-way	§ 250.1010.
(17) Sulphur operations	§ 250.1604.
(18) Training	§ 250.1500.
(19) Unitization	§ 250.1300.

§ 250.103 Where can I find more information about the requirements in this part?

MMS may issue Notices to Lessees and Operators (NTLs) that clarify, supplement, or provide more detail about certain requirements. NTLs may also outline what you must provide as required information in your various submissions to MMS.

§ 250.104 How may I appeal a decision made under MMS regulations?

To appeal orders or decisions issued under MMS regulations in 30 CFR parts 250 to 282, follow the procedures in 30 CFR part 290.

§ 250.105 Definitions.

Terms used in this part will have the meanings given in the Act and as defined in this section:

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

Affected State means with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved under the provisions of the Act, any State:

(1) The laws of which are declared, under section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or according to the proposed activity, will receive oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

Air pollutant means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, under section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

Analyzed geological information means data collected under a permit or a lease that have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest.

Attainment area means, for any air pollutant, an area that is shown by monitored data or that is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

Best available and safest technology (BAST) means the best available and safest technologies that the Director determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best available control technology (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The Regional Director will verify the BACT on a case-by-case basis, and it may include reductions achieved through the application of processes, systems, and

techniques for the control of each air pollutant.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

Competitive reservoir means a reservoir in which there are one or more producible or producing well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.

Correlative rights when used with respect to lessees of adjacent leases, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source.

Data means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Departures means approvals granted by the appropriate MMS representative for operating requirements/procedures other than those specified in the regulations found in this part. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources, or protect life, property, or the marine, coastal, or human environment.

Development means those activities that take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of producing the minerals discovered.

Director means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

District Supervisor means the MMS officer with authority and responsibility for operations or other designated program functions for a district within an MMS Region.

Easement means an authorization for a nonpossessory, nonexclusive interest in a portion of the OCS, whether leased or unleased, which specifies the rights of the holder to use the area embraced in the easement in a manner consistent with the terms and conditions of the granting authority.

Eastern Gulf of Mexico means all OCS areas of the Gulf of Mexico the Director decides are adjacent to the State of Florida. The Eastern Gulf of Mexico is not the same as the Eastern Planning Area, an area established for OCS lease sales.

Emission offsets means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan (EP) or Development and Production Plan (DPP).

Enhanced recovery operations means pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations that alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

Existing facility, as used in § 250.303, means an OCS facility described in an Exploration Plan or a Development and Production Plan approved before June 2, 1980.

Exploration means the commercial search for oil, gas, or sulphur. Activities classified as exploration include but are not limited to:

(1) Geophysical and geological (G&G) surveys using magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulphur; and

(2) Any drilling conducted for the purpose of searching for commercial quantities of oil, gas, and sulphur, including the drilling of any additional well needed to delineate any reservoir to enable the lessee to decide whether to proceed with development and production.

Facility means:

(1) As used in § 250.130, any installation permanently or temporarily attached to the seabed on the OCS (including manmade islands and bottom-sitting structures). It includes mobile offshore drilling units (MODUs) or other vessels engaged in drilling or downhole operations, used for oil, gas, or sulphur drilling, production, or related activities. It also includes facilities for product measurement and royalty determination (e.g., Lease Automatic Custody Transfer units, gas meters) of OCS production on installations not on the OCS. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more satellite or secondary installations is a single facility. The Regional Supervisor may decide that the complexity of the individual installations justifies their classification as separate facilities.

(2) As used in § 250.303, means any installation or device permanently or temporarily attached to the seabed. It includes mobile offshore drilling units (MODUs), even while operating in the "tender assist" mode (i.e. with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulphur and emit or have the potential to emit any air pollutant from one or more sources. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

(3) As used in § 250.417(b), means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

Gas reservoir means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

Gas-well completion means a well completed in a gas reservoir or in the associated gas-cap of an oil reservoir.

Governor means the Governor of a State, or the person or entity designated by, or under, State law to exercise the powers granted to such Governor under the Act.

H_2S absent means:

(1) Drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S; or

(2) Drilling in the surrounding areas and correlation of geological and seismic data with equivalent stratigraphic units have confirmed an absence of H_2S throughout the area to be drilled.

H_2S present means drilling, logging, coring, testing, or producing operations

have confirmed the presence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S.

H_2S unknown means the designation of a zone or geologic formation where neither the presence nor absence of H_2S has been confirmed.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Interpreted geological information means geological knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of data and analyzed geological information.

Interpreted geophysical information means geophysical knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and analyzed geophysical information.

Lease means an agreement that is issued under section 8 or maintained under section 6 of the Act and that authorizes exploration for, and development and production of, minerals. The term also means the area covered by that authorization, whichever the context requires.

Lease term pipelines means those pipelines owned and operated by a lessee or operator that are completely contained within the boundaries of a single lease, unit, or contiguous (not cornering) leases of that *lessee* or operator.

Lessee means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals. The term lessee also includes the MMS-approved assignee of the lease, and the owner or the MMS-approved assignee of operating rights for the lease.

Major Federal action means any action or proposal by the Secretary that is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. (2)(C) (i.e., an action that will have a significant impact on the quality of the human environment requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act).

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Maximum efficient rate (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir that will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

Maximum production rate (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

Minerals includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced.

Natural resources includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power or the use of water for the production of power.

Nonattainment area means, for any air pollutant, an area that is shown by monitored data or that is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

Nonsensitive reservoir means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

Oil reservoir means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

Oil reservoir with an associated gas cap means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

Oil-well completion means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

Operating rights means any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operator means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the MMS-approved designated agent of the lessee(s), or the holder of operating rights under an MMS-approved operating rights assignment.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person includes, in addition to a natural person, an association (including partnerships and trusts), a State, a political subdivision of a State, or a private, public, or municipal corporation.

Pipelines are the piping, risers, and appurtenances installed for transporting oil, gas, sulphur, and produced waters.

Processed geological or geophysical information means data collected under a permit or a lease that have been processed or reprocessed. Processing involves changing the form of data to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Production means those activities that take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover operations.

Production areas are those areas where flammable petroleum gas, volatile liquids or sulphur are produced, processed (e.g., compressed), stored, transferred (e.g., pumped), or otherwise handled before entering the transportation process.

Projected emissions means emissions, either controlled or uncontrolled, from a source or sources.

Regional Director means the MMS officer with responsibility and authority for a Region within MMS.

Regional Supervisor means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

Right-of-use means any authorization issued under this part to use OCS lands.

Right-of-way pipelines are those pipelines that are contained within:

(1) The boundaries of a single lease or unit, but are not owned and operated by a lessee or operator of that lease or unit;

(2) The boundaries of contiguous (not cornering) leases that do not have a common lessee or operator;

(3) The boundaries of contiguous (not cornering) leases that have a common lessee or operator but are not owned and operated by that common lessee or operator; or

(4) An unleased block(s).

Routine operations, for the purposes of subpart F, means any of the following operations conducted on a well with the tree installed:

(1) Cutting paraffin;

(2) Removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves that can be removed by wireline operations;

(3) Bailing sand;

(4) Pressure surveys;

(5) Swabbing;

(6) Scale or corrosion treatment;

(7) Caliper and gauge surveys;

(8) Corrosion inhibitor treatment;

(9) Removing or replacing subsurface pumps;

(10) Through-tubing logging (diagnostics);

(11) Wireline fishing;

(12) Setting and retrieving other subsurface flow-control devices; and

(13) Acid treatments.

Sensitive reservoir means a reservoir in which high reservoir production rates will decrease ultimate recovery. For submitting the first MER, all oil reservoirs with an associated gas cap are classified as sensitive.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Suspension means a granted or directed deferral of the requirement to produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).

Waste of oil, gas, or sulphur means:

(1) The physical waste of oil, gas, or sulphur;

(2) The inefficient, excessive, or improper use, or the unnecessary dissipation of reservoir energy;

(3) The locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulphur well(s) in a manner that causes or tends to cause a reduction in the quantity of oil, gas, or sulphur ultimately recoverable under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or

(4) The inefficient storage of oil.

Welding means all activities connected with welding, including hot tapping and burning.

Wellbay is the area on a facility within the perimeter of the outermost wellheads.

Well-completion operations means the work conducted to establish production from a well after the production-casing string has been set, cemented, and pressure-tested.

Well-control fluid means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

Western Gulf of Mexico means all OCS areas of the Gulf of Mexico except those the Director decides are adjacent to the State of Florida. The Western Gulf of Mexico is not the same as the Western Planning Area, an area established for OCS lease sales.

Workover operations means the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.

You means a lessee, the owner or holder of operating rights, a designated agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement.

Performance Standards

§ 250.106 What standards will the Director use to regulate lease operations?

The Director will regulate all operations under a lease, right-of-use and easement, or right-of-way to:

(a) Promote orderly exploration, development, and production of mineral resources;

(b) Prevent injury or loss of life;

(c) Prevent damage to or waste of any natural resource, property, or the environment; and

(d) Cooperate and consult with affected States, local governments, other interested parties, and relevant Federal agencies.

§ 250.107 What must I do to protect health, safety, property, and the environment?

(a) You must protect health, safety, property, and the environment by:

(1) Performing all operations in a safe and workmanlike manner; and

(2) Maintaining all equipment in a safe condition.

(b) You must immediately control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

(c) You must use the best available and safest technology (BAST) whenever practical on all exploration, development, and production operations. In general, we consider your compliance with MMS regulations to be the use of BAST.

(d) The Director may require additional measures to ensure the use of BAST:

(1) To avoid the failure of equipment that would have a significant effect on safety, health, or the environment;

(2) If it is economically feasible; and

(3) If the benefits outweigh the costs.

§ 250.108 What requirements must I follow for cranes and other material-handling equipment?

(a) If you operate a crane installed on fixed platforms you must:

(1) Follow the American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D);

(2) Keep inspection, testing, and maintenance records at the OCS facility for at least 2 years; and

(3) Keep crane operator qualifications at the facility for at least 4 years.

(b) You must operate and maintain all other material-handling equipment in a manner that ensures safe operations and prevents pollution.

§ 250.109 What documents must I prepare and maintain related to welding?

(a) You must submit a Welding Plan to the District Supervisor before you begin drilling or production activities on a lease. You may not begin welding until the District Supervisor has approved your plan.

(b) You must keep the following at the site where welding occurs:

(1) A copy of the plan and its approval letter; and

(2) Drawings showing the designated safe-welding areas.

§ 250.110 What must I include in my welding plan?

You must include all of the following in the Welding Plan that you prepare under § 250.109:

(a) Standards or requirements for welders;

(b) How you will ensure that only qualified personnel weld;

(c) Practices and procedures for safe welding that address:

(1) Welding in designated safe areas;

(2) Welding in undesignated areas, including wellbay;

(3) Fire watches;

(4) Maintenance of welding equipment; and

(5) Plans showing all designated safe-welding areas.

(d) How you will prevent spark-producing activities (i.e., grinding, abrasive blasting/cutting and arc-welding) in hazardous locations.

§ 250.111 Who oversees operations under my welding plan?

A welding supervisor or a designated person in charge must be thoroughly familiar with your welding plan. This person must ensure that each welder is properly qualified according to the welding plan. This person also must inspect all welding equipment before welding.

§ 250.112 What standards must my welding equipment meet?

Your welding equipment must meet the following requirements:

(a) All engine-driven welding equipment must be equipped with spark arrestors and drip pans;

(b) Welding leads must be completely insulated and in good condition;

(c) Hoses must be leak-free and equipped with proper fittings, gauges, and regulators; and

(d) Oxygen and fuel gas bottles must be secured in a safe place.

§ 250.113 What procedures must I follow when welding?

(a) Before you weld, you must move any equipment containing hydrocarbons or other flammable substances at least 35 feet horizontally from the welding area. You must move similar equipment on lower decks at least 35 feet from the point of impact where slag, sparks, or other burning materials could fall. If moving this equipment is impractical, you must protect that equipment with flame-proofed covers, shield it with metal or fire-resistant guards or curtains, or render the flammable substances inert.

(b) While you weld, you must monitor all water-discharge-point sources from hydrocarbon-handling vessels. If a discharge of flammable fluids occurs, you must stop welding.

(c) If you cannot weld in one of the designated safe-welding areas that you listed in your safe welding plan, you must meet the following requirements:

(1) You may not begin welding until:

(i) The welding supervisor or designated person in charge advises in writing that it is safe to weld.

(ii) You and the designated person in charge inspect the work area and areas below it for potential fire and explosion hazards.

(2) During welding, the person in charge must designate one or more persons as a fire watch. The fire watch must:

(i) Have no other duties while actual welding is in progress;

(ii) Have usable firefighting equipment;

(iii) Remain on duty for 30 minutes after welding activities end; and

(iv) Maintain a continuous surveillance with a portable gas detector during the welding and burning operation if welding occurs in an area not equipped with a gas detector.

(3) You may not weld piping, containers, tanks, or other vessels that have contained a flammable substance unless you have rendered the contents inert and the designated person in charge has determined it is safe to weld. This does not apply to approved hot taps.

(4) You may not weld within 10 feet of a wellbay unless you have shut in all producing wells in that wellbay.

(5) You may not weld within 10 feet of a production area, unless you have shut in that production area.

(6) You may not weld while you drill, complete, workover, or conduct wireline operations unless:

(i) The fluids in the well (being drilled, completed, worked over, or having wireline operations conducted) are noncombustible; and

(ii) You have precluded the entry of formation hydrocarbons into the wellbore by either mechanical means or a positive overbalance toward the formation.

§ 250.114 How must I install and operate electrical equipment?

The requirements in this section apply to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities.

(a) You must classify all areas according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities classified as Class I, Division 1 and Division 2.

(b) Employees who maintain your electrical systems must have expertise in area classification and the performance, operation and hazards of electrical equipment.

(c) You must install all electrical systems according to API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms. You do not have to comply with Sections 7.4, Emergency Lighting, and 9.4, Aids to Navigation Equipment.

(d) On each engine that has an electric ignition system, you must use an ignition system designed and maintained to reduce the release of electrical energy.

§ 250.115 How do I determine well producibility?

You must follow the procedures in this section to determine well producibility if your well is not in the GOM. If your well is in the GOM you must follow the procedures in either this section or in § 250.116 of this subpart.

(a) You must write to the Regional Supervisor asking for permission to determine producibility.

(b) You must either:

(1) Allow the District Supervisor to witness each test that you conduct under this section; or

(2) Receive the District Supervisor's prior approval so that you can submit either test data with your affidavit or third party test data.

(c) If the well is an oil well, you must conduct a production test that lasts at least 2 hours after flow stabilizes.

(d) If the well is a gas well, you must conduct a deliverability test that lasts at least 2 hours after flow stabilizes, or a four-point back pressure test.

§ 250.116 How do I determine producibility if my well is in the Gulf of Mexico?

If your well is in the GOM, you must follow either the procedures in § 250.115 of this subpart or the procedures in this section to determine producibility.

(a) You must write to the Regional Supervisor asking for permission to determine producibility.

(b) You must provide or make available to the Regional Supervisor, as requested, the following log, core, analyses, and test criteria that MMS will consider collectively:

(1) A log showing sufficient porosity in the producible section.

(2) Sidewall cores and core analyses that show that the section is capable of producing oil or gas.

(3) Wireline formation test and/or mud-logging analyses that show that the section is capable of producing oil or gas.

(4) A resistivity or induction electric log of the well showing a minimum of 15 feet (true vertical thickness except for horizontal wells) of producible sand in one section.

(c) No section that you count as producible under paragraph (b)(4) of this section may include any interval that appears to be water saturated.

(d) Each section you count as producible under paragraph (b)(4) of this section must exhibit:

(1) A minimum true resistivity ratio of the producible section to the nearest clean or water-bearing sand of at least 5:1; and

(2) One of the following:

(i) Electrical spontaneous potential exceeding 20-negative millivolts beyond the shale baseline; or

(ii) Gamma ray log deflection of at least 70 percent of the maximum gamma ray deflection in the nearest clean

water-bearing sand—if mud conditions prevent a 20-negative millivolt reading beyond the shale baseline.

§ 250.117 How does a determination of well producibility affect royalty status?

A determination of well producibility invokes minimum royalty status on the lease as provided in 30 CFR 202.53.

§ 250.118 Will MMS approve gas injection?

The Regional Supervisor may authorize you to inject gas on the OCS, on and off-lease, to promote conservation of natural resources and to prevent waste.

(a) To receive MMS approval for injection, you must:

(1) Show that the injection will not result in undue interference with operations under existing leases; and

(2) Submit a written application to the Regional Supervisor for injection of gas.

(b) The Regional Supervisor will approve gas injection applications that:

(1) Enhance recovery;

(2) Prevent flaring of casinghead gas; or

(3) Implement other conservation measures approved by the Regional Supervisor.

§ 250.119 Will MMS approve subsurface gas storage?

The Regional Supervisor may authorize subsurface storage of gas on the OCS, on and off-lease, for later commercial benefit. To receive MMS approval you must:

(a) Show that the subsurface storage of gas will not result in undue interference with operations under existing leases; and

(b) Sign a storage agreement that includes the required payment of a storage fee or rental.

§ 250.120 How does injecting, storing, or treating gas affect my royalty payments?

(a) If you produce gas from an OCS lease and inject it into a reservoir on the lease or unit for the purposes cited in § 250.118(b), you are not required to pay royalties until you remove or sell the gas from the reservoir.

(b) If you produce gas from an OCS lease and store it according to § 250.119, you must pay royalty before injecting it into the storage reservoir.

(c) If you produce gas from an OCS lease and treat it at an off-lease or off-unit location, you must pay royalties when the gas is first produced.

§ 250.121 What happens when the reservoir contains both original gas in place and injected gas?

If the reservoir contains both original gas in place and injected gas, when you produce gas from the reservoir you must use an MMS-approved formula to determine the amounts of injected or stored gas and gas original to the reservoir.

§ 250.122 What effect does subsurface storage have on the lease term?

If you use a lease area for subsurface storage of gas, it does not affect the continuance or expiration of the lease.

§ 250.123 Will MMS allow gas storage on unleased lands?

You may not store gas on unleased lands unless the Regional Supervisor approves a right-of-use and easement for that purpose, under §§ 250.160 through 250.166 of this subpart.

§ 250.124 Will MMS approve gas injection into the cap rock containing a sulphur deposit?

To receive the Regional Supervisor's approval to inject gas into the cap rock of a salt dome containing a sulphur deposit, you must show that the injection:

(a) Is necessary to recover oil and gas contained in the cap rock; and

(b) Will not significantly increase potential hazards to present or future sulphur mining operations.

Inspection of Operations

§ 250.130 Why does MMS conduct inspections?

MMS will inspect OCS facilities and any vessels engaged in drilling or other downhole operations. These include facilities under jurisdiction of other Federal agencies that we inspect by agreement. We conduct these inspections:

(a) To verify that you are conducting operations according to the Act, the regulations, the lease, right-of-way, the approved Exploration Plan or Development and Production Plans; or right-of-use and easement, and other applicable laws and regulations; and

(b) To determine whether equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents has been installed and is operating properly according to the requirements of this part.

§ 250.131 Will MMS notify me before conducting an inspection?

MMS conducts both scheduled and unscheduled inspections.

§ 250.132 What must I do when MMS conducts an inspection?

(a) When MMS conducts an inspection, you must provide:

(1) Access to all platforms, artificial islands, and other installations on your leases or associated with your lease, right-of-use and easement, or right-of-way; and

(2) Helicopter landing sites and refueling facilities for any helicopters we use to regulate offshore operations.

(b) You must make the following available for us to inspect:

(1) The area covered under a lease, right-of-use and easement, right-of-way, or permit;

(2) All improvements, structures, and fixtures on these areas; and

(3) All records of design, construction, operation, maintenance, repairs, or investigations on or related to the area.

§ 250.133 Will MMS reimburse me for my expenses related to inspections?

Upon request, MMS will reimburse you for food, quarters, and transportation that you provide for MMS representatives while they inspect lease facilities and operations. You must send us your reimbursement request within 90 days of the inspection.

Disqualification

§ 250.135 What will MMS do if my operating performance is unacceptable?

If your operating performance is unacceptable, MMS may disapprove or revoke your designation as operator on a single facility or multiple facilities. We will give you adequate notice and opportunity for a review by MMS officials before imposing a disqualification.

§ 250.136 How will MMS determine if my operating performance is unacceptable?

In determining if your operating performance is unacceptable, MMS will consider, individually or collectively:

(a) Accidents and their nature;

(b) Pollution events, environmental damages and their nature;

(c) Incidents of noncompliance;

(d) Civil penalties;

(e) Failure to adhere to OCS lease obligations; or

(f) Any other relevant factors.

Special Types of Approvals

§ 250.140 When will I receive an oral approval?

When you apply for MMS approval of any activity, we normally give you a written decision. The following table shows circumstances under which we may give an oral approval.

When you	We may	And
(a) Request approval orally	Give you an oral approval.	You must then confirm the oral request by sending us a written request within 72 hours.
(b) Request approval in writing.	Give you an oral approval if quick action is needed.	We will send you a written approval afterward. It will include any conditions that we place on the oral approval.
(c) Request approval orally for gas flaring.	Give you an oral approval.	You don't have to follow up with a written request unless the Regional Supervisor requires it. When you stop the approved flaring, you must promptly send a letter summarizing the location, dates and hours, and volumes of liquid hydrocarbons produced and gas flared by the approved flaring. (See 30 CFR 250, subpart K.)

§ 250.141 May I ever use alternate procedures or equipment?

You may use alternate procedures or equipment after receiving approval as described in this section.

(a) Any alternate procedures or equipment that you propose to use must provide a level of safety and environmental protection that equals or surpasses current MMS requirements.

(b) You must receive the District or Regional Supervisor's written approval before you can use alternate procedures or equipment.

(c) To receive approval, you must either submit information or give an oral presentation to the appropriate Supervisor. Your presentation must describe the site-specific application(s), performance characteristics, and safety features of the proposed procedure or equipment.

§ 250.142 How do I receive approval to use alternate procedures or equipment for departures?

We may approve departures to the operating requirements. You may apply for a departure by writing to the Regional Supervisor.

§ 250.143 How do I designate an operator?

(a) You must provide the Regional Supervisor an executed Designation of Operator form unless you are the only lessee and are the only person conducting lease operations. When there is more than one lessee, each lessee must submit the Designation of Operator form and the Regional Supervisor must approve the designation before the designated operator may begin operations on the leasehold.

(b) This designation is authority for the designated operator to act on your behalf and to fulfill your obligations under the Act, the lease, and the regulations in this part.

(c) You, or your designated operator, must immediately provide the Regional Supervisor a written notification of any change of address.

§ 250.144 How do I designate a new operator when a designation of operator terminates?

(a) When a Designation of Operator terminates, the Regional Supervisor must approve a new designated operator before you may continue operations. Each lessee must submit a new executed Designation of Operator form.

(b) If your Designation of Operator is terminated, or a controversy develops between you and your designated operator, you and your designated operator must protect the lessor's interests.

§ 250.145 How do I designate an agent or a local agent?

(a) You or your designated operator may designate for the Regional Supervisor's approval, or the Regional Director may require you to designate an agent empowered to fulfill your obligations under the Act, the lease, or the regulations in this part.

(b) You or your designated operator may designate for the Regional Supervisor's approval a local agent empowered to receive notices and submit requests, applications, notices, or supplemental information.

§ 250.146 Who is responsible for fulfilling leasehold obligations?

(a) When you are not the sole lessee, you and your co-lessee(s) are jointly and severally responsible for fulfilling your obligations under the provisions of 30 CFR parts 250 through 282, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under 30 CFR parts 250 through 282, the Regional Supervisor may require you or any or all of your co-lessees to fulfill those obligations or other operational obligations under the Act, the lease, or the regulations.

(c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation.

Naming and Identifying Facilities and Wells (Does Not Include MODUs)

§ 250.150 How do I name facilities and wells in the Gulf of Mexico Region?

(a) Assign each facility a letter designation except for those types of facilities identified in paragraph (c)(1) of this section. For example, A, B, CA, or CB.

(1) After a facility is installed, rename each predrilled well that was assigned only a number and was suspended temporarily at the mudline or at the surface. Use a letter and number designation. The letter used must be the same as that of the production facility, and the number used must correspond to the order in which the well was completed, not necessarily the number assigned when it was drilled. For example, the first well completed for production on Facility A would be renamed Well A–1, the second would be Well A–2, and so on; and

(2) When you have more than one facility on a block, each facility installed, and not bridge-connected to another facility, must be named using a different letter in sequential order. For example, EC 222A, EC 222B, EC 222C.

(3) When you have more than one facility on multiple blocks in a local area being co-developed, each facility installed and not connected with a walkway to another facility should be named using a different letter in sequential order with the block number corresponding to the block on which the platform is located. For example, EC 221A, EC 222B and EC 223C.

(b) In naming multiple well caissons, you must assign a letter designation.

(c) In naming single well caissons, you must use certain criteria as follows:

(1) For single well caissons not attached to a facility with a walkway, use the well designation. For example, Well No. 1;

(2) For single well caissons attached to a facility with a walkway, use the same designation as the facility. For example, rename Well No.10 as A–10; and

(3) For single well caissons with production equipment, use a letter designation for the facility name and a

letter plus number designation for the well. For example, the Well No. 1 caisson would be designated as Facility A, and the well would be Well A–1.

§ 250.151 How do I name facilities in the Pacific Region?

The operator assigns a name to the facility.

§ 250.152 How do I name facilities in the Alaska Region?

Facilities will be named and identified according to the Regional Director's directions.

§ 250.153 Do I have to rename an existing facility or well?

You do not have to rename facilities installed and wells drilled before January 27, 2000, unless the Regional Director requires it.

§ 250.154 What identification signs must I display?

(a) You must identify all facilities, artificial islands, and mobile offshore drilling units with a sign maintained in a legible condition.

(1) You must display an identification sign that can be viewed from the waterline on at least one side of the platform. The sign must use at least 3-inch letters and figures.

(2) When helicopter landing facilities are present, you must display an additional identification sign that is visible from the air. The sign must use at least 12-inch letters and figures and must also display the weight capacity of the helipad unless noted on the top of the helipad. If this sign is visible to both helicopter and boat traffic, then the sign in paragraph (a)(1) of this section is not required.

(3) Your identification sign must:

(i) List the name of the lessee or designated operator;

(ii) In the GOM OCS Region, list the area designation or abbreviation and the block number of the facility location as depicted on OCS Official Protraction Diagrams or leasing maps;

(iii) In the Pacific OCS Region, list the lease number on which the facility is located; and

(iv) List the name of the platform, structure, artificial island, or mobile offshore drilling unit.

(b) You must identify singly completed wells and multiple completions as follows:

(1) For each singly completed well, list the lease number and well number on the wellhead or on a sign affixed to the wellhead;

(2) For wells with multiple completions, downhole splitter wells, and multilateral wells, identify each completion in addition to the well name and lease number individually on the well flowline at the wellhead; and

(3) For subsea wells that flow individually into separate pipelines, affix the required sign on the pipeline or surface flowline dedicated to that subsea well at a convenient location on the receiving platform. For multiple subsea wells that flow into a common pipeline or pipelines, no sign is required.

Right-of-use and Easement

§ 250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?

MMS may grant you a right-of-use and easement on leased and unleased lands on the OCS, if you meet these requirements:

(a) You must need the right-of-use and easement to construct and maintain platforms, artificial islands, and installations and other devices at an OCS site other than an OCS lease you own, that are:

(1) Permanently or temporarily attached to the seabed; and

(2) Used for conducting exploration, development, and production activities or other operations on or off lease; or

(3) Used for other purposes approved by MMS.

(b) You must exercise the right-of-use and easement according to the regulations of this part;

(c) You must meet the requirements at 30 CFR 256.35 (Qualification of lessees); establish a regional Company File as required by MMS; and must meet bonding requirements;

(d) If you apply for a right-of-use and easement on a leased area, you must notify the lessee and give her/him an opportunity to comment on your application; and

(e) You must receive MMS approval for all platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed.

§ 250.161 What else must I submit with my application?

With your application, you must describe the proposed use giving:

(a) Details of the proposed uses and activities including access needs and special rights of use that you may need;

(b) A description of all facilities for which you are seeking authorization;

(c) A map or plat describing primary and alternate project locations; and

(d) A schedule for constructing any new facilities, drilling or completing any wells, anticipated production rates, and productive life of existing production facilities.

§ 250.162 May I continue my right-of-use and easement after the termination of any lease on which it is situated?

If your right-of-use and easement is on a lease, you may continue to exercise the right-of-use and easement after the lease on which it is situated terminates. You must only use the right-of-use and easement for the purpose that the grant specifies. All future lessees of that portion of the OCS on which your right-of-use and easement is situated must continue to recognize the right-of-use and easement for the purpose that the grant specifies.

§ 250.163 If I have a State lease, will MMS grant me a right-of-use and easement?

(a) MMS may grant a lessee of a State lease located adjacent to or accessible from the OCS a right-of-use and easement on the OCS.

(b) MMS will only grant a right-of-use and easement under this paragraph to enable a State lessee to conduct and maintain a device that is permanently or temporarily attached to the seabed (i.e., a platform, artificial island, or installation). The lessee must use the device to explore for, develop, and produce oil and gas from the adjacent or accessible State lease and for other operations related to these activities.

§ 250.164 If I have a State lease, what conditions apply for a right-of-use and easement?

(a) A right-of-use and easement granted under the heading of "Right-of-use and easement" in this subpart is subject to MMS regulations, 30 CFR parts 250 through 282, and any terms and conditions that the Regional Director prescribes.

(b) For the whole or fraction of the first calendar year, and annually after that, you must pay to MMS, in advance, an annual rental payment.

§ 250.165 If I have a State lease, what fees do I have to pay for a right-of-use and easement?

When you apply for a right-of-use and easement, you must pay:

(a) A nonrefundable filing fee as specified in § 250.1010(a); and (b) The first year's rental as specified in § 250.1009(c)(2).

§ 250.166 If I have a State lease, what surety bond must I have for a right-of-use and easement?

(a) Before MMS issues you a right-of-use and easement on the OCS, you must furnish the Regional Director a surety bond for $500,000.

(b) The Regional Director may require additional security from you (i.e., security above the prescribed $500,000) to cover additional costs and liabilities

for regulatory compliance. This additional surety:

(1) Must be in the form of a supplemental bond or bonds meeting the requirements of § 256.54 (General requirements for bonds) or an increase in the coverage of an existing surety bond.

(2) Covers additional costs and liabilities for regulatory compliance, including well abandonment, platform and structure removal, and site clearance from the seafloor of the right-of-use and easement.

Suspensions

§ 250.168 May operations or production be suspended?

(a) You may request approval of a suspension, or the Regional Supervisor may direct a suspension (Directed Suspension), for all or any part of a lease or unit area.

(b) Depending on the nature of the suspended activity, suspensions are labeled either Suspensions of Operations (SOO) or Suspensions of Production (SOP).

§ 250.169 What effect does suspension have on my lease?

(a) A suspension may extend the term of a lease (see § 250.180(b)). The extension is equal to the length of time the suspension is in effect, except as provided in paragraph (b) of this section.

(b) A Directed Suspension does not extend the term of a lease when the Regional Supervisor *directs* a suspension because of:

(1) Gross negligence; or (2) A willful violation of a provision of the lease or governing statutes and regulations.

§ 250.170 How long does a suspension last?

(a) MMS may issue suspensions for up to 5 years per suspension. The Regional Supervisor will set the length of the suspension based on the conditions of the individual case involved. MMS may grant consecutive suspension periods.

(b) An SOO ends automatically when the suspended operation commences.

(c) An SOP ends automatically when production begins.

(d) A Directed Suspension normally ends as specified in the letter directing the suspension.

(e) MMS may terminate any suspension when the Regional Supervisor determines the circumstances that justified the suspension no longer exist or that other lease conditions warrant termination. The Regional Supervisor will notify you of the reasons for termination and the effective date.

§ 250.171 How do I request a suspension?

You must submit your request for a suspension to the Regional Supervisor, and MMS must receive the request before the end of the lease term (i.e., end of primary term, end of the 180-day period following the last leaseholding operation, and end of a current suspension).

(a) The justification for the suspension including the length of suspension requested;

(b) A reasonable schedule of work leading to the commencement or restoration of the suspended activity;

(c) A statement that a well has been drilled on the lease and determined to be producible according to §§ 250.115, 250.116, or 250.1603 (SOP only); and

(d) A commitment to production (SOP only).

§ 250.172 When may the Regional Supervisor grant or direct an SOO or SOP?

The Regional Supervisor may grant or direct an SOO or SOP under any of the following circumstances:

(a) When necessary to comply with judicial decrees prohibiting any activities or the permitting of those activities. The effective date of the suspension will be the effective date required by the action of the court;

(b) When activities pose a threat of serious, irreparable, or immediate harm or damage. This would include a threat to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. MMS may require you to do a site-specific study. (See § 250.177(a).)

(c) When necessary for the installation of safety or environmental protection equipment;

(d) When necessary to carry out the requirements of NEPA or to conduct an environmental analysis; or

(e) When necessary to allow for inordinate delays encountered in obtaining required permits or consents, including administrative or judicial challenges or appeals.

§ 250.173 When may the Regional Supervisor direct an SOO or SOP?

The Regional Supervisor may direct a suspension when:

(a) You failed to comply with an applicable law, regulation, order, or provision of a lease or permit; or

(b) The suspension is in the interest of national security or defense.

§ 250.174 When may the Regional Supervisor grant or direct an SOP?

The Regional Supervisor may grant or direct an SOP when the suspension is in the national interest, and it is necessary because the suspension will meet one of the following criteria:

(a) It will allow you to properly develop a lease, including time to construct and install production facilities;

(b) It will allow you time to obtain adequate transportation facilities;

(c) It will allow you time to enter a sales contract for oil, gas, or sulphur. You must show that you are making an effort to enter into the contract(s); or

(d) It will avoid continued operations that would result in premature abandonment of a producing well(s).

§ 250.175 When may the Regional Supervisor grant an SOO?

The Regional Supervisor may grant an SOO when necessary to allow you time to begin drilling or other operations when you are prevented by reasons beyond your control, such as unexpected weather, unavoidable accidents, or drilling rig delays.

§ 250.176 Does a suspension affect my royalty payment?

A directed suspension may affect the payment of rental or royalties for the lease as provided in § 218.154.

§ 250.177 What additional requirements may the Regional Supervisor order for a suspension?

If MMS grants or directs a suspension under paragraph § 250.172(b), the Regional Supervisor may require you to:

(a) Conduct a site-specific study.

(1) The Regional Supervisor must approve or prescribe the scope for any site-specific study that you perform.

(2) The study must evaluate the cause of the hazard, the potential damage, and the available mitigation measures.

(3) You must pay for the study unless you request, and the Regional Supervisor agrees to arrange, payment by another party.

(4) You must furnish copies and results of the study to the Regional Supervisor.

(5) MMS will make the results available to other interested parties and to the public.

(6) The Regional Supervisor will use the results of the study and any other information that becomes available:

(i) To decide if the suspension can be lifted; and

(ii) To determine any actions that you must take to mitigate or avoid any damage to the environment, life, or property.

(b) Submit a revised Exploration Plan (including any required mitigating measures);

(c) Submit a revised Development and Production Plan (including any required mitigating measures); or

(d) Submit a revised Development Operations Coordination Document according to 30 CFR Part 250, subpart B.

Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations

§ 250.180 What am I required to do to keep my lease term in effect?

(a) If your lease is in its primary term:

(1) You must submit a report to the District Supervisor according to paragraphs (h) and (i) of this section whenever production begins initially, whenever production ceases during the last 180 days of the primary term, and whenever production resumes during the last 180 days of the primary term.

(2) Your lease expires at the end of its primary term unless you are conducting operations on your lease (see 30 CFR part 256). For purposes of this section, the term *operations* means, drilling, well-reworking, or production in paying quantities. The objective of the drilling or well-reworking must be to establish production in paying quantities on the lease.

(b) If you stop conducting operations during the last 180 days of your primary lease term, your lease will expire unless you either resume operations or receive an SOO or an SOP from the Regional Supervisor under §§ 250.172, 250.173, 250.174, or 250.175 before the end of the 180th day after you stop operations.

(c) If you extend your lease term under paragraph (b) of this section, you must pay rental or minimum royalty, as appropriate, for each year or part of the year during which your lease continues in force beyond the end of the primary lease term.

(d) If you stop conducting operations on a lease that has continued beyond its primary term, your lease will expire unless you resume operations or receive an SOO or an SOP from the Regional Supervisor under § 250.172, 250.173, 250.174, or 250.175 before the end of the 180th day after you stop operations.

(e) You may ask the Regional Supervisor to allow you more than 180 days to resume operations on a lease continued beyond its primary term when operating conditions warrant. The request must be in writing and explain the operating conditions that warrant a longer period. In allowing additional time, the Regional Supervisor must determine that the longer period is in the national interest, and it conserves resources, prevents waste, or protects correlative rights.

(f) When you begin conducting operations on a lease that has continued beyond its primary term, you must immediately notify the District Supervisor either orally or by fax or e-mail and follow up with a written report according to paragraph (g) of this section.

(g) If your lease is continued beyond its primary term, you must submit a report to the District Supervisor under paragraphs (h) and (i) of this section whenever production begins initially, whenever production ceases, whenever production resumes before the end of the 180-day period after having ceased, or whenever drilling or well-reworking operations begin before the end of the 180-day period.

(h) The reports required by paragraphs (a) and (g) of this section must contain:

(1) Name of lessee or operator;

(2) The well number, lease number, area, and block;

(3) As appropriate, the unit agreement name and number; and

(4) A description of the operation and pertinent dates.

(i) You must submit the reports required by paragraphs (a) and (g) of this section within the following timeframes:

(1) Initialization of production—within 5 days of initial production.

(2) Cessation of production—within 15 days after the first full month of zero production.

(3) Resumption of production—within 5 days of resuming production after ceasing production under paragraph (i)(2) of this section.

(4) Drilling or well reworking operations—within 5 days of beginning and completing the leaseholding operations.

(j) For leases continued beyond the primary term, you must immediately report to the District Supervisor if operations do not begin before the end of the 180-day period.

§ 250.181 When may the Secretary cancel my lease and when am I compensated for cancellation?

If the Secretary cancels your lease under this part or under 30 CFR part 256, you are entitled to compensation under § 250.184. Section 250.185 states conditions under which you will receive *no* compensation. The Secretary may cancel a lease after notice and opportunity for a hearing when:

(a) Continued activity on the lease would probably cause harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment;

(b) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time;

(c) The advantages of cancellation outweigh the advantages of continuing the lease in force; and (d) A suspension has been in effect for at least 5 years or you request termination of the suspension and lease cancellation.

§ 250.182 When may the Secretary cancel a lease at the exploration stage?

MMS may not approve an exploration plan (EP) under 30 CFR part 250, subpart B, if the Regional Supervisor determines that the proposed activities may cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits, the national security or defense, or to the marine, coastal, or human environment, and that the proposed activity cannot be modified to avoid the condition(s). The Secretary may cancel the lease if:

(a) The primary lease term has not expired (or if the lease term has been extended) and exploration has been prohibited for 5 years following the disapproval; or

(b) You request cancellation at an earlier time.

§ 250.183 When may MMS or the Secretary extend or cancel a lease at the development and production stage?

(a) MMS may extend your lease if you submit a DPP and the Regional Supervisor disapproves the plan according to the regulations in 30 CFR part 250, subpart B. Following the disapproval:

(1) MMS will allow you to hold the lease for 5 years, or less time at your request;

(2) Any time within 5 years after the disapproval, you may reapply for approval of the same or a modified plan; and

(3) The Regional Supervisor will approve, disapprove, or require modification of the plan under 30 CFR part 250, subpart B.

(b) If the Regional Supervisor has not approved a DPP or required you to submit a DPP for approval or modification, the Secretary will cancel the lease:

(1) When the 5-year period in paragraph (a)(1) of this section expires; or

(2) If you request cancellation at an earlier time.

§ 250.184 What is the amount of compensation for lease cancellation?

When the Secretary cancels a lease under §§ 250.181, 250.182 or 250.183 of this subpart, you are entitled to receive compensation under 43 U.S.C. 1334 (a)(2)(C). You must show the Director that the amount of compensation claimed is the lesser of paragraph (a) or (b) of this section:

(a) The fair value of the cancelled rights as of the date of cancellation, taking into account both:

(1) Anticipated revenues from the lease; and

(2) Costs reasonably anticipated on the lease, including:

(i) Costs of compliance with all applicable regulations and operating orders; and

(ii) Liability for cleanup costs or damages, or both, in the case of an oil spill.

(b) The excess, if any, over your revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of:

(1) All consideration paid for the lease (plus interest from the date of payment to the date of reimbursement); and

(2) All your direct expenditures (plus interest from the date of payment to the date of reimbursement):

(i) After the issue date of the lease; and

(ii) For exploration or development, or both.

(c) Compensation for leases issued before September 18, 1978, will be equal to the amount specified in paragraph (a) of this section.

§ 250.185 When is there no compensation for a lease cancellation?

You will not receive compensation from MMS for lease cancellation if:

(a) MMS disapproves a DPP because you do not receive concurrence by the State under section 307(c)(3)(B) (i) or (ii) of the CZMA, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the CZMA;

(b) You do not submit a DPP under 30 CFR part 250, subpart B or do not comply with the approved DPP;

(c) As the lessee of a nonproducing lease, you fail to comply with the Act, the lease, or the regulations issued under the Act, and the default continues for 30 days after MMS mails you a notice by overnight mail;

(d) The Regional Supervisor disapproves a DPP because you fail to comply with the requirements of applicable Federal law; or

(e) The Secretary forfeits and cancels a producing lease under section 5(d) of the Act (43 U.S.C. 1334(d)).

Information and Reporting Requirements

§ 250.190 What reporting information and report forms must I submit?

(a) You must submit information and reports as MMS requires.

(1) You may obtain copies of forms from, and submit completed forms to, the Regional or District Supervisor.

(2) Instead of paper copies of forms available from the Regional or District Supervisor, you may use your own computer-generated forms that are equal in size to MMS's forms. You must arrange the data on your form identical to the MMS form. If you generate your own form and it omits terms and conditions contained on the official MMS form, we will consider it to contain the omitted terms and conditions.

(3) You may submit digital data when the Region/District is equipped to accept it.

(b) When MMS specifies, you must include, for public information, an additional copy of such reports.

(1) You must mark it *Public Information.*

(2) You must include all required information, except information exempt from public disclosure under § 250.196 or otherwise exempt from public disclosure under law or regulation.

§ 250.191 What accident reports must I submit?

(a) You must notify the District Supervisor of all serious accidents, any death or serious injury, and all fires, explosions, and blowouts connected with any activities or operations on the lease. You must report all spills of oil or other liquid pollutants according to 30 CFR part 254.

(b) If you hold an easement, right-of-way, or other permit, and your operation is related to the exercise of the easement, right-of-way, or other permit, you must comply with paragraph (a) by notifying and reporting to the Regional Supervisor any accidents occurring on the area covered by the easement, right-of-way, or other permit.

(c) Any investigation that the Secretary or the U.S. Coast Guard (USCG) conducts under the authority of sections 22(d)(1) and (2) of the Act (43 U.S.C. 1348 d(1) and (2)), is a fact-finding proceeding with no civil or criminal issues and no adverse parties. The purpose of the investigation is to prepare a public report that determines the cause or causes of the accident. The investigation may involve panel meetings conducted by a chairperson appointed by MMS. The following requirements must be met for any panel meetings involving persons giving testimony:

(1) A person giving testimony may have legal and/or other representative(s) present to provide advice or counsel while the person is giving testimony. The chairperson may require a verbatim transcript to be made of all oral testimony. The chairperson also may accept a sworn written statement in lieu of oral testimony.

(2) Only panel members, panel's legal advisors, and any experts the panel deems necessary may address questions to any person giving testimony.

(3) The chairperson may issue subpoenas to persons to appear and provide testimony and/or documents at a panel meeting. A subpoena may not require a person to attend a panel meeting held at a location more than 100 miles from where a subpoena is served.

(4) Any person giving testimony may request compensation for mileage and fees for service within 90 days after the panel meeting. The compensated expenses must be similar to mileage and fees the U.S. District Courts allow.

§ 250.192 What evacuation statistics must I submit?

You must submit evacuation statistics to the Regional Supervisor for a natural occurrence such as an earthquake or hurricane. MMS will notify local and national authorities and the public, as appropriate. Statistics include facilities and rigs evacuated and amount of production shut-in for gas and oil. You must:

(a) Submit the statistics by fax or e-mail as soon as possible when evacuation occurs;

(b) Submit statistics on a daily basis by 11:00 a.m., as conditions allow, during the period of shut-in and evacuation;

(c) Inform MMS when you resume production; and

(d) Submit statistics either by MMS district or the total figures for your operations in the Region.

§ 250.193 Reports and investigations of apparent violations.

Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, any provision of a lease, license, or permit issued under the Act, or any provision of any regulation or order issued under the Act. When MMS receives a report of an apparent violation, or when an MMS employee detects an apparent violation after making an initial determination of the validity, MMS will investigate according to MMS procedures.

§ 250.194 What archaeological reports and surveys must I submit?

(a) If it is likely that an archaeological resource exists in the lease area, the Regional Director will notify you in writing. You must include an archaeological report in the EP or DPP. If the archaeological report suggests that an archaeological resource may be present, you must either:

(1) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(2) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by operations. This requires further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques the Regional Director considers appropriate. You must submit the investigation report to the Regional Director for review.

(b) If the Regional Director determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the Regional Director will notify you immediately. You must not take any action that may adversely affect the archaeological resource until the Regional Director has told you how to protect the resource.

(c) If you discover any archaeological resource while conducting operations in the lease area, you must immediately halt operations within the area of the discovery and report the discovery to the Regional Director. If investigations determine that the resource is significant, the Regional Director will tell you how to protect it.

§ 250.195 Reimbursements for reproduction and processing costs.

(a) MMS will reimburse you for costs of reproducing data and information that the Regional Director requests if:

(1) You deliver geophysical and geological (G&G) data and information to MMS for the Regional Director to inspect or select and retain;

(2) MMS receives your request for reimbursement and the Regional Director determines that the requested reimbursement is proper; and

(3) The cost is at your lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) MMS will reimburse you for the costs of processing geophysical information (that does not include cost of data acquisition):

(1) If, at the request of the Regional Director, you processed the geophysical data or information in a form or manner other than that used in the normal conduct of business; or

(2) If you collected the information under a permit that MMS issued to you before October 1, 1985, and the Regional Director requests and retains the information.

(c) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(d) MMS will not reimburse you for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

§ 250.196 Data and information to be made available to the public.

MMS will protect data and information you submit under this part, as described in this section. The tables in paragraphs (a) and (b) of this section describe what data and information will be made available to the public without the consent of the lessee and under what circumstances and in what time period.

(a) MMS will disclose data and information you submit on MMS forms according to the following table:

Data and information that you submit on form	In the following items	Will be released	And
(1) MMS–123, Application for Permit to Drill.	All entries except items 17, 24, and 25.	At any time	The data and information in items 17, 24, and 25 will be released according to the table in paragraph (b) of this section or when the well goes on production, whichever is earlier.
(2) MMS–124, Sundry Notices and Reports on Wells.	All entries except item 36 ..	At any time	The data and information in item 36 will be released according to the table in paragraph (b) or when the well goes on production, whichever is earlier.
(3) MMS–125, Well Summary Report.	All entries except items 17, 24, 34, 37, and 46 through 87.	At any time	The data and information in the excepted items will be released according to the table in paragraph (b) of this section or when the well goes on production, whichever is earlier. However, items 78 through 87 will not be released when the well goes on production unless the period of time in the table in paragraph (b) has expired
(4) MMS–126, Well Potential Test Report.	All entries except item 101	When the well goes on production.	The data and information in item 101 will be released 2 years after you submit it.
(5) MMS–127, Request for Reservoir Maximum Efficient Rate (MER).	All entries except items 124 through 168.	At any time	The data and information in items 124 through 168 will be released according to the time periods in the table in paragraph (b) of this section.
(6) MMS–128, Semiannual Well Test Report.	All entries	At any time.	

(b) MMS will disclose lease data and information that you submit, but that are not usually submitted on MMS forms, according to the following table:

If	MMS will release	At this time	Special provisions
(1) The Director determines that data and information are needed to unitize operations on two or more leases, to determine whether a reservoir is competitive to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protect the environment.	Geophysical data, Geological data, Interpreted (G&G) information, Processed G&G information, Analyzed geological information.	At any time	Data and information will be shown only to persons with an interest in the issue.

If	MMS will release	At this time	Special provisions
(2) The Director determines that data and information are needed for specific scientific or research purposes for the Government.	Geophysical data, Geological data Interpreted G&G information, Processed G&G information, Analyzed geological information.	At any time	MMS will release data and information only if release would further the national interest without unduly damaging the competitive position of the lessee.
(3) Data or information is collected with high-resolution systems (e.g., bathymetry, side-scan sonar, subbottom profiler, and magnetometer) to comply with safety or environmental protection requirements.	Geophysical data, Geological data, Interpreted G&G information, Processed geological information, Analyzed geological information.	60 days after MMS receives the data or information, if the Regional Supervisor deems it necessary.	MMS will release the data and information earlier than 60 days if the Regional Supervisor determines it is needed by affected States to make decisions under subpart B. The Regional Supervisor will reconsider earlier release if you satisfy him/her that it would unduly damage your competitive position.
(4) Your lease is no longer in effect	Geophysical data, Geological data, Processed G&G information Interpreted G&G information, Analyzed geological information.	When your lease terminates.	This release time applies only if the provisions in this table governing high-resolution systems and the provisions in §252.7 do not apply. The release time applies to the geophysical data and information only if acquired postlease for a lessee's exclusive use.
(5) Your lease is still in effect	Geophysical data Processed geophysical information, Interpreted G&G information.	10 years after you submit the data and information.	This release time applies only if the provisions in this table governing high-resolution systems and the provisions in §252.7 do not apply. This release time applies to the geophysical data and information only if acquired postlease for a lessee's exclusive use.
(6) Your lease is still in effect and within the primary term specified in the lease.	Geological data, Analyzed geological information.	2 years after the required submittal date or 60 days after a lease sale if any portion of an offered lease is within 50 miles of a well, whichever is later.	These release times apply only if the provisions in this table governing high-resolution systems and the provisions in §252.7 do not apply. If the primary term specified in the lease is extended under the heading of "Suspensions" in this subpart, the extension applies to this provision.
(7) Your lease is in effect and beyond the primary term specified in the lease.	Geological data, Analyzed geological information.	2 years after the required submittal date.	None.
(8) Data is released to the owner of an adjacent lease under subpart D of part 250.	Directional survey data	If the lessee from whose lease the directional survey was taken consents.	None.
(9) Data and information are obtained from beneath unleased land as a result of a well deviation that has not been approved by the Regional or District Supervisor.	Any data or information obtained.	At any time	None.
(10) Data and information acquired by a permit under part 251 is submitted by a lessee under part 250.	Geophysical data, Processed geophysical information, Interpreted geophysical information.	Geophysical data: 50 years, Geophysical information: 25 years after you submit it.	None.

References

§ 250.198 Documents incorporated by reference.

(a) MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by reference according to 5 U.S.C. 552(a) and 1 CFR part 51.

(1) MMS will publish any changes to these documents in the **Federal Register**.

(2) MMS may make the rule amending the document effective without prior opportunity for public comment when MMS determines:

(i) That the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties; and

(ii) MMS meets the requirements for making a rule immediately effective under 5 U.S.C. 553.

(b) MMS incorporated each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement or addendum cited in this section.

(c) Under §§ 250.141 and 250.142, you may comply with a later edition of a specific document incorporated by reference, provided:

(1) You show that complying with the later edition provides a degree of protection, safety, or performance equal to or better than would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, DC. You may obtain the documents from the publishing organizations at the addresses given in the following table:

For	Write to
ACI Standards	American Concrete Institute, P. O. Box 19150, Detroit, MI 48219.
AISC Standards	American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, IL 60680.
ANSI/ASME Codes	American National Standards Institute, Attention Sales Department, 1430 Broadway, New York, NY 10018; and/or American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.
API Recommended Practices, Specs, Standards, Manual of Petroleum Measurement Standards (MPMS) chapters.	American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005–4070.
ASTM Standards	American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.
AWS Codes	American Welding Society, 550 NW, LeJeune Road, P.O. Box 351040, Miami, FL 33135.
NACE Standards	National Association of Corrosion Engineers, P.O. Box 218340, Houston, TX 77218.

(e) This paragraph lists documents incorporated by reference. To easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.

Title of documents	Incorporated by reference at
ACI Standard 318–95, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R–95).	§ 250.908(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), (e)(2)(i).
ACI Standard 357R–84, Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984.	§ 250.900(g); § 250.908(c)(2), (c)(3).
AISC Standard Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, June 1, 1989, with Commentary.	§ 250.907(b)(1)(ii), (c)(4)(ii), (c)(4)(vii).
ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, including Appendices, 1995 Edition.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J, and the Guide to Manufacturers Data Report Forms, 1995 Edition.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1995 Edition.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
ANSI/ASME B 16.5–1988 (including Errata) and B 16.5a–1992 Addenda, Pipe Flanges and Flanged Fittings.	§ 250.1002(b)(2).
ANSI/ASME B 31.8–1995, Gas Transmission and Distribution Piping Systems	§ 250.1002(a).
ANSI/ASME SPPE–1–1994 and SPPE–1d–1996 ADDENDA, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations.	§ 250.806(a)(2)(i).
ANSI Z88.2–1992, American National Standard for Respiratory Protection	§ 250.417(g)(4)(iv), (j)(13)(ii).
API MPMS, Chapter 1, Vocabulary, Second Edition, July 1994, API Stock No., H01002.	§ 250.1201.
API MPMS, Chapter 2, Tank Calibration, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method, First Edition, February 1995, API Stock No. H022A1.	§ 250.1202(1)(4).
API MPMS, Chapter 2, Section 2B, Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method, First Edition, March 1989, reaffirmed May 1997, API Stock No. H30023.	§ 250.1202(1)(4).
API MPMS, Chapter 3, Tank Gauging, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, First Edition, December 1994, API Stock No. H031A1.	§ 250.1202(1)(4).
API MPMS, Chapter 3, Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, First Edition, April 1992, reaffirmed January 1997, API Stock No. H30060.	§ 250.1202(1)(4).
API MPMS, Chapter 4, Proving Systems, Section 1, Introduction, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30081.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 2, Conventional Pipe Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30082.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 3, Small Volume Provers, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30083.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 4, Tank Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30084.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 5, Master-Meter Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30085.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 6, Pulse Interpolation, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30086.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 7, Field-Standard Test Measures, First Edition, October 1988, reaffirmed March 1993, API Stock No. H30087.	§ 250.1202(a)(3), (f)(1).

Title of documents	Incorporated by reference at
API MPMS, Chapter 5, Metering, Section 1, General Considerations for Measurement by Meters, Third Edition, September 1995, API Stock No. H05013.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed October 1992, API Stock No. H30102.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 3, Measurement of Liquid Hydrocarbons by Turbine Meters, Third Edition, September 1995, API Stock No. H05033.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 4, Accessory Equipment for Liquid Meters, Third Edition, September 1995, with Errata, March 1996, API Stock No. H05043.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed October 1992, API Stock No. H30105.	§ 250.1202(a)(3).
API MPMS, Chapter 6, Metering Assemblies, Section 1, Lease Automatic Custody Transfer (LACT) Systems, Second Edition, May 1991, reaffirmed July 1996, API Stock No. H30121.	§ 250.1202(a)(3).
API MPMS, Chapter 6, Section 6, Pipeline Metering Systems, Second Edition, May 1991, reaffirmed July 1996, API Stock No. H30126.	§ 250.1202(a)(3).
API MPMS, Chapter 6, Section 7, Metering Viscous Hydrocarbons, Second Edition, May 1991, API Stock No. H30127.	§ 250.1202(a)(3).
API MPMS, Chapter 7, Temperature Determination, Section 2, Dynamic Temperature Determination, Second Edition, March 1995, API Stock No. H07022.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 7, Section 3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, July 1985, reaffirmed May 1996, API Stock No. H30143.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 8, Sampling, Section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, Third Edition, October 1995; also available as ANSI/ASTM D 4057–88, API Stock No. H30161.	§ 250.1202(b)(4)(i), (l)(4).
API MPMS, Chapter 8, Section 2, Standard Practice for Automatic Sampling of Liquid Petroleum and Petroleum Products, Second Edition, October 1995; also available as ANSI/ASTM D 4177, API Stock No. H30162.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 9, Density Determination, Section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed October 1992; also available as ANSI/ASTM D 1298, API Stock No. H30181.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 9, Section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed October 1992, API Stock No. H30182.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Sediment and Water, Section 1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 473, API Stock No. H30201.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Section 2, Determination of Water in Crude Oil by Distillation Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4006, API Stock No. H30202.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Section 3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4007, API Stock No. H30203.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Section 4, Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), Second Edition, May 1988, reaffirmed May 1998; also available as ANSI/ASTM D 96, API Stock No. H30204.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 11.1, Volume Correction Factors, Volume 1, Table 5A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60°F, First Edition, August 1980, reaffirmed March 1997; also available as ANSI/ASTM D 1250, API Stock No. H27000.	§ 250.1202(a)(3), (g)(3), (l)(4).
API MPMS, Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range, First Edition, August 1984, reaffirmed May 1996, API Stock No. H27300.	§ 250.1202(a)(3), (g)(4).
API MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60°F/60°F) and −50°F to 140°F Metering Temperature, Second Edition, October 1986, reaffirmed October 1992; also available as Gas Processors Association (GPA) 8286–86, API Stock No. H27307.	§ 250.1202(a)(3), (g)(4).
API MPMS, Chapter 11, Physical Properties Data, Addendum to Section 2.2, Compressibility Factors for Hydrocarbons, Correlation of Vapor Pressure for Commercial Natural Gas Liquids, First Edition, December 1994, reaffirmed March 1997; also available as GPA TP–15, API Stock No. H27308.	§ 250.1202(a)(3).
API MPMS, Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, August 1984, reaffirmed, May 1996, API Stock No. H27310.	§ 250.1202(f)(1).
API MPMS, Chapter 12, Calculation of Petroleum Quantities, Section 2, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Including Parts 1 and 2, Second Edition, May 1995; also available as ANSI/API MPMS 12.2–1981, API Stock No. H30302.	§ 250.1202(a)(3), (g)(1), (g)(2).
API MPMS, Chapter 14, Natural Gas Fluids Measurement, Section 3, Concentric Square-Edged Orifice Meters, Part 1, General Equations and Uncertainty Guidelines, Third Edition, September 1990, reaffirmed August 1995; also available as ANSI/API 2530, Part 1, 1991, API Stock No. H30350.	§ 250.1203(b)(2).
API MPMS, Chapter 14, Section 3, Part 2, Specification and Installation Requirements, Third Edition, February 1991, reaffirmed May 1996; also available as ANSI/API 2530, Part 2, 1991, reaffirmed May 1996; API Stock No. H30351.	§ 250.1203(b)(2)).
API MPMS, Chapter 14, Section 3, Part 3, Natural Gas Applications, Third Edition, August 1992, also available as ANSI/API 2530, Part 3, API Stock No. H30353.	§ 250.1203(b)(2).
API MPMS, Chapter 14, Section 5, Calculation of Gross Heating Value, Relative Density, and Compressibility Factor for Natural Gas Mixtures From Compositional Analysis, Revised, 1996; also available as ANSI/API MPMS 24.5–1981, order from Gas Processors Association, 6526 East 60th Street, Tulsa, Oklahoma 74145.§ 250.1203(b)(2).API MPMS, Chapter 14, Section 6, Continuous Density Measurement, Second Edition, April 1991, reaffirmed May 1998, API Stock No. H30346.	§ 250.1203(b)(2).

Title of documents	Incorporated by reference at
API MPMS, Chapter 14, Section 8, Liquefied Petroleum Gas Measurement, Second Edition, July 1997; reaffirmed May 1996, API Stock No. H14082.	§ 250.1203(b)(2).
API MPMS, Chapter 20, Section 1, Allocation Measurement, First Edition, September 1993, API Stock No. H30730.	§ 250.1202(k)(1).
API MPMS, Chapter 21, Section 1, Electronic Gas Measurement, First Edition, September 1993, API Stock No. H30730.	§ 250.1203(b)(4).
API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms Working Stress Design, Nineteenth Edition, August 1, 1991, API Stock No. 811–00200.	§ 250.900(g); § 250.912(a).
API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms-Working Stress Design; Twentieth Edition, July 1, 1993, API Stock No. G00200.	§ 250.900(g); § 250.912(a).
API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms-Working Stress Design; Twentieth Edition, July 1, 1993, Supplement 1, December 1996, Effective Date, February 1, 1997, API Stock No. G00205.	§ 250.900(g); § 250.912(a).
API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Third Edition, June 1, 1995, API Stock No. G02D03.	§ 250.120(c); § 250.1605(g).
API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Fourth Edition, July 1, 1994, with Errata dated June 1996, API Stock No. G14B04.	§ 250.801(e)(4); § 250.804(a)(1)(i).
API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Sixth Edition, March 1998, API Stock No. G14C06.	§ 250.802(b), (e)(2); § 250.803(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), (c)(2); § 250.804(a), (a)(5); § 250.1002(d); § 250.1004(b)(9); § 250.1628(c), (d)(2); § 250.1629(b)(2), (b)(4)(v); § 250.1630(a).
API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1, 1991, API Stock No. G07185.	§ 250.802(e)(3); § 250.1628(b)(2), (d)(3).
API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Third Edition, September 1, 1991, API Stock No. G07190.	§ 250.114(c); § 250.803(b)(9)(v); § 250.1629(b)(4)(v).
API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Third Edition, December 1, 1993, API Stock No. G07194.	§ 250.803(b)(8), (b)(9)(v); § 250.1629(b)(3), (b)(4)(v).
API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fourth Edition, July 1, 1994, API Stock No. G14H04.	§ 250.802(d).
API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. G06005.	§ 250.114(a); § 250.802(e)(4)(i); § 250.803(b)(9)(i); § 250.1628(b)(3); (d)(4)(i); § 250.1629(b)(4)(i).
API RP 2556, Recommended Practice for Correcting Gauge Tables for Incrustation, Second Edition, August 1993, API Stock No. H25560; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
API Spec Q1, Specification for Quality Programs, Fifth Edition, December 1994, API Stock No. GQ1005	§ 250.806(a)(2)(ii).
API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Seventeenth Edition, February 1, 1996, API Stock No. G06A17.	§ 250.806(a)(3); § 250.1002 (b)(1), (b)(2).
API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996, API Stock No. G06AV1..	§ 250.806(a)(3).
API Spec 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twenty-first Edition, March 31, 1994, API Stock No. G03200.	§ 250.1002(b)(1).
API Spec 14A, Specification for Subsurface Safety Valve Equipment, Ninth Edition, July 1, 1994, API Stock No. G14A09.	§ 250.806(a)(3).
API Standard 2551, Standard Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, reaffirmed January 1997; API Stock No. H25510; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, reaffirmed January 1997, API Stock No. H25520; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
API Standard 2555, Method for Liquid Calibration of Tanks, September 1966, reaffirmed January 1997, API Stock No. H25550; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
ASTM Standard C33–93, Standard Specification for Concrete Aggregates including Nonmandatory Appendix.	§ 250.908(b)(4)(i)
ASTM Standard C94–96, Standard Specification for Ready-Mixed Concrete	§ 250.908(e)(2)(i).
ASTM Standard C150–95a, Standard Specification for Portland Cement	§ 250.908(b)(2)(i).
ASTM Standard C330–89, Standard Specification for Lightweight Aggregates for Structural Concrete	§ 250.908(b)(4)(i).
ASTM Standard C595–94, Standard Specification for Blended Hydraulic Cements	§ 250.908(b)(2)(i).
AWS D1.1–96, Structural Welding Code—Steel, 1996, including Commentary	§ 250.907(b)(1)(i)
AWS D1.4–79, Structural Welding Code—Reinforcing Steel, 1979	§ 250.908(e)(3)(ii)
NACE Standard MR.01–75–96, Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment, January 1996.	§ 250.417(p)(2)
NACE Standard RP 01–76–94, Standard Recommended Practice, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production.	§ 250.907(d).

§ 250.199 Paperwork Reduction Act statements—information collection.

(a) OMB has approved the information collection requirements in part 250 under 44 U.S.C. 3501 *et seq.* The table in paragraph (e) of this section lists the subpart in the rule requiring the information and its title, provides the OMB control number, and summarizes the reasons for collecting the information and how MMS uses the information. The associated MMS forms required by this part are listed at the end of this table with the relevant

(b) Respondents are OCS oil, gas, and sulphur lessees and operators. The requirement to respond to the information collections in this part is mandated under the Act (43 U.S.C. 1331 *et seq.*) and the Act's Amendments of 1978 (43 U.S.C. 1801 *et seq.*). Some responses are also required to obtain or retain a benefit or may be voluntary. Proprietary information will be protected under § 250.196, Data and information to be made available to the public; parts 251 and 252; and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR part 2.

(c) The Paperwork Reduction Act of 1995 requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) Send comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

(e) MMS is collecting this information for the reasons given in the following table:

30 CFR 250 subpart/title (OMB control No.)	Reasons for collecting information and how used
(1) Subpart A, General (1010–0114)	To inform MMS of actions taken to comply with general operational requirements on the OCS. To ensure that operations on the OCS meet statutory and regulatory requirements, are safe and protect the environment, and result in diligent exploration, development, and production on OCS leases. To support the unproved and proved reserve estimation, resource assessment, and fair market value determinations.
(2) Subpart B, Exploration and Development and Production Plans (1010–0049).	To inform MMS, States, and the public of planned exploration, development, and production operations on the OCS. To ensure that operations on the OCS are planned to comply with statutory and regulatory requirements, will be safe and protect the human, marine, and coastal environment, and will result in diligent exploration, development, and production of leases.
(3) Subpart C, Pollution Prevention and Control (1010–0057)	To inform MMS of measures to be taken to prevent water and air pollution. To ensure that appropriate measures are taken to prevent water and air pollution.
(4) Subpart D, Oil and Gas Drilling Operations (1010–0053)	To inform MMS of the equipment and procedures to be used in drilling operations on the OCS. To ensure that drilling operations are safe and protect the human, marine, and coastal environment.
(5) Subpart E, Oil and Gas Well-Completion Operations (1010–0067)	To inform MMS of the equipment and procedures to be used in well-completion operations on the OCS. To ensure that well-completion operations are safe and protect the human, marine, and coastal environment.
(6) Subpart F, Oil and Gas Well-Workover Operations (1010–0043)	To inform MMS of the equipment and procedures to be used during well-workover operations on the OCS. To ensure that well-workover operations are safe and protect the human, marine, and coastal environment.
(7) Subpart G, Abandonment of Wells (1010–0079)	To inform MMS of procedures to be used during the temporary and permanent abandonment of wells. To ensure that wells are abandoned in a manner that is safe and minimizes conflicts with other uses of the OCS.
(8) Subpart H, Oil and Gas Production Safety Systems (1010–0059)	To inform MMS of the equipment and procedures to be used during production operations on the OCS. To ensure that production operations are safe and protect the human, marine, and coastal environment.
(9) Subpart I, Platforms and Structures (1010–0058)	To provide MMS with information regarding the design, fabrication, and installation of platforms on the OCS. To ensure the structural integrity of platforms installed on the OCS.
(10) Subpart J, Pipelines and Pipeline Rights-of-Way (1010–0050)	To provide MMS with information regarding the design, installation, and operation of pipelines on the OCS. To ensure that pipeline operations are safe and protect the human, marine, and coastal environment.
(11) Subpart K, Oil and Gas Production Rates (1010–0041)	To inform MMS of production rates for hydrocarbons produced on the OCS. To ensure economic maximization of ultimate hydrocarbon recovery.
(12) Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security (1010–0051).	To inform MMS of the measurement of production, commingling of hydrocarbons, and site security plans. To ensure that produced hydrocarbons are measured and commingled to provide for accurate royalty payments and security is maintained.
(13) Subpart M, Unitization (1010–0068)	To inform MMS of the unitization of leases. To ensure that unitization prevents waste, conserves natural resources, and protects correlative rights.
(14) Subpart N, Remedies and Penalties (1010–0121)	The requirements in subpart N are exempt from the Paperwork Reduction Act of 1995 according to 5 CFR 1320.4.
(15) Subpart O, Training (1010–0078)	To inform MMS of training program curricula, course schedules, and attendance. To ensure that training programs are technically accurate and sufficient to meet safety and environmental requirements, and that workers are properly trained to operate on the OCS.

30 CFR 250 subpart/title (OMB control No.)	Reasons for collecting information and how used
(16) Subpart P, Sulphur Operations (1010–0086)	To inform MMS of sulphur exploration and development operations on the OCS. To ensure that OCS sulphur operations are safe; protect the human, marine, and coastal environment; and will result in diligent exploration, development, and production of sulphur leases.
(17) Forms MMS–123, Application for Permit to Drill, and MMS–123S, Supplemental APD Information Sheet, Subparts D, E, P (1010–0044 and 1010–0131).	To inform MMS of the procedures and equipment to be used in drilling operations. To ensure that drilling and well-completion are safe and protect the environment, use adequate equipment, conform with provisions of the lease, and the public is informed.
(18) Form MMS–124, Sundry Notices & Reports on Wells, Subparts D, E, F, G, P (1010–0045).	To inform MMS of well-completion and well-workover operations, changes to any ongoing well operations, and well abandonment operations. To ensure that MMS has up-to-date and accurate information on OCS drilling and other lease operations; operations are safe and protect the human, marine, and coastal environment; abandoned sites are cleared of obstructions; and the public is informed.
(19) Form MMS–125, Well Summary Report, Subparts D, E, F, P (1010–0046).	To inform MMS of the results of well-completion or well-workover operations or changes in well status or condition. To ensure that MMS has up-to-date and accurate information on the status and condition of wells.
(20) Form MMS–126, Well Potential Test Report, Subpart K (1010–0039).	To inform MMS of the production potential of an oil or gas well and to verify a requested production rate. To ensure that production results in ultimate full recovery of hydrocarbons, and energy resources are produced at a prudent rate.
(21) Form MMS–127, Request for Reservoir Maximum Efficiency Rate (MER), Subpart K (1010–0018).	To inform MMS of data concerning oil and gas well-completion in a rate-sensitive reservoir and to verify requested efficiency rate. To ensure that reservoirs are classified correctly and the requested production rate will not waste oil or gas.
(22) Form MMS–128, Semiannual Well Test Report, Subpart K (1010–0017).	To inform MMS of the status and capacity of gas wells and verify production capacity. To ensure that depletion of reservoirs results in greatest ultimate recovery of hydrocarbons.
(23) Form MMS–131, Performance Measures Data (Voluntary) (1010–0112).	To collect data related to a set of performance measures. To evaluate the effectiveness of industry's continued improvement of safety and environmental management in the OCS.
(24) Form MMS–132, Evacuation Statistics (used in the GOM Region), Subpart A (1010–0114).	To inform MMS in the event of a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes. To advise the USCG of rescue needs, and to alert the news media and interested public entities when production is shut in and when resumed.
(25) Form MMS–133, Weekly Activity Report (used in the GOM Region), Subpart D (1010–0132).	To inform MMS of well status, well and casing tests, and well casing configuration data. To have accurate data and information on the wells under MMS jurisdiction to ensure compliance with approved plans.

5. In § 250.203(m), the citation "250.112" is revised to read "250.182".

6. In § 250.204(p) and (r), the citation "250.112" is revised to read "250.183".

7. In § 250.304(e)(2), the citation "250.110" is revised to read "250.174".

8. Sections 250.402, 250.403, 250.507, 250.508, 250.607, and 250.608 are removed and reserved.

9. In § 250.414(a), the citation "250.106(a)" is revised to read "250.140" and in § 250.414(g), the citation "250.117" is revised to read "250.190".

10. In § 250.415(d), the citation "250.117" is revised to read "250.190".

11. In § 250.416(b), the citation "250.110" is revised to read "250.170".

12. In § 250.513(d), the citation "250.117" is revised to read "250.190".

13. In § 250.1102(a) (9), (b)(8), and (b)(9), the citation "250.117" is revised to read "250.190".

14. In the introductory text of § 250.1201, the citation "250.101" is revised to read "250.198".

15. In § 250.1202(a)(3), (b)(4)(i), the introductory text of (g), (k)(1), (l)(4), the citation "250.101" is revised to read "250.198".

16. In § 250.1203(b)(2) and (b)(4), the citation "250.101" is revised to read "250.198".

17. In § 250.1301(d), (g)(1), (g)(2)(ii), the citation "250.110" is revised to read "250.170" and the citation "250.113" in (d) and (g)(1) is revised to read "250.180".

18. In § 250.1507, in the table, the second column for the entry "Welding and burning" is revised to "A".

19. In § 250.1617(a), the citation "250.106(a)" is revised to read "250.140" and in paragraph (d), the citation "250.117" is revised to read "250.190".

20. In § 250.1618(a), the citation "250.106(a)" is revised to read "250.140".

21. In § 250.1619(b), the citation "250.110" is revised to read "250.170".

22. In § 250.1629(a), the citation "250.291" is revised to read "250.1628".

PART 252—OUTER CONTINENTAL SHELF (OCS) OIL AND GAS INFORMATION PROGRAM

23. The authority citation continues to read as follows:

Authority: OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; Freedom of Information Act, 5 U.S.C. 552.

24. In § 252.7(a)(2)(i) and (ii), the citation "250.4" is revised to read "250.106".

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

25. The authority citation continues to read as follows:

Authority: 33 U.S.C. 2701 *et seq.*

26. In § 253.11(b)(2), the citation "250.108" is revised to read "250.143".

27. In § 253.51(d), the citation "250.110" is revised to read "250.170".

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

28. The authority citation for part 256 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 42 U.S.C. 6213.

29. Section 256.1 is revised to read as follows:

§ 256.1 Purpose.

The purpose of the regulations in this part is to establish the procedures under which the Secretary of the Interior (Secretary) will exercise the authority to administer a leasing program for oil, gas and sulphur. The procedures under which the Secretary will exercise the authority to administer a program to grant rights-of-way, rights-of-use and easements are addressed in other parts .

30. Section 256.4, Authority, is revised to read as follows:

§ 256.4 Authority.

The outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, and sulphur, in submerged lands of the outer Continental Shelf (OCS). The Act authorizes the Secretary to grant rights-of-way, rights-of-use and easements through the submerged lands of the OCS. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

31. Section 256.35 is amended by adding paragraph (c) as follows:

256.35 Qualifications of lessees.

* * * * *

(c) MMS may disqualify you from acquiring any new leaseholdings or lease assignments if your operating performance is unacceptable according to 30 CFR 250.135.

32–33. In § 256.70, the citation "250.113" is revised to read "250.180".

34. Section 256.73 is revised to read as follows:

§ 256.73 Effect of suspensions on lease term.

(a) A suspension may extend the term of a lease (see 30 CFR 250.171) with the extension being the length of time the suspension is in effect except as provided in paragraph (b) of this section.

(b) A Directed Suspension does not extend the lease term when the Regional Supervisor directs a suspension because of:

(1) Gross negligence; or (2) A willful violation of a provision of the lease or governing regulations.

(c) MMS may issue suspensions for a period of up to 5 years per suspension. The Regional Supervisor will set the length of the suspension based on the conditions of the individual case involved. MMS may grant consecutive suspensions. For more information on suspension of operations or production refer to the section under the heading "Suspensions" in 30 CFR part 250, subpart A.

35. In § 256.77(d)(3), the citation "250.112" is revised to read "250.182".

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

36. The authority citation for part 282 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

37. In § 282.28(a), the citation "250.126" is revised to read "250.194".

[FR Doc. 99–31869 Filed 12–27–99; 8:45 am]
BILLING CODE 4310–MR–P

VOL

64

ISS

2
4
8

DE

28

999

UMI

federal register

Tuesday
December 28, 1999

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 545

Inmate Financial Responsibility Program: Spending Limitations; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP–1050–F]

RIN 1120–AA49

Inmate Financial Responsibility Program: Spending Limitations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) is amending its regulations on the inmate financial responsibility program (IFRP) to impose a spending limitation of at least $25 per month upon the commissary purchases of IFRP refusees, excluding the purchase of stamps, telephone credits, and, if purchased by a common fare participant, Kosher/Halal certified shelf-stable entrees. Additional changes to the regulations are also being made for the sake of clarity, editorial consistency, and for administrative efficiency. These actions are intended to encourage inmates to participate in the IFRP.

EFFECTIVE DATE: January 27, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) is amending its regulations on the inmate financial responsibility program (IFRP) (28 CFR part 545, subpart B). A proposed rule on this subject was published in the **Federal Register** on January 2, 1996 (61 FR 92).

In accordance with provisions of the Settlement Agreement in *Washington* v. *Reno*, section III A, the Bureau proposed a rule requiring only debit telephone calling privileges for inmates who refuse to participate in the IFRP, and to limit such debit calling privileges to 60 minutes of debit calls per month. This proposed limitation would not take effect until installation of the Bureau's new nation-wide inmate telephone system, per terms of the settlement in *Washington* v. *Reno*. Because that telephone system has not been installed, the Bureau cannot finalize that rule at this time.

The Bureau also proposed to amend 28 CFR 545.11(d)(6) with respect to the monthly commissary spending limitation imposed upon inmates who refuse to participate in the IFRP. This provision previously prohibited inmates who refuse to participate in IFRP from purchasing any items in excess of the monthly spending limitation for all inmates, including special purchase items like sports equipment, hobby crafts, etc. The Bureau had proposed to revise this provision to impose upon IFRP refusees a more stringent monthly spending limitation than that imposed upon all inmates. Pursuant to the terms of the settlement in *Washington* v. *Reno*, the proposed rule specified that the monthly spending limitation upon IFRP refusees shall be at least $25 per month and excludes purchases of stamps and telephone credits. No comment was received on this aspect of the proposed rule. The Bureau is adopting this same proposed provision as final, except that the Bureau has expanded the list of items excluded from the more stringent spending limitation to include purchases by a common fare participant of Kosher/Halal certified shelf-stable entrees. As a further clarification, the final rule states that purchases of stamps, phone credits, and shelf-stable Kosher/Halal items remain subject to the limitations set forth in Bureau regulations and policies for these items.

The Bureau is making additional changes to § 545.11 for the sake of clarity, editorial consistency, and for administrative efficiency. In the introductory text of paragraph (b), the provisions describing the financial plan calculation have been revised for the sake of clarity. In paragraph (b)(2), the designated official for approving allotments less the 50% minimum is now the Unit Manager rather than the Warden. This delegation is being made for reasons of administrative efficiency. In (b)(9) the concluding punctuation has been revised for editorial consistency. Finally, in paragraph (d)(2) the Bureau is clarifying that IFRP refusees may be eligible for medical furloughs.

Interested persons may submit further comments concerning this rule by writing to the Rules Unit, Bureau of Prisons, 320 First Street, NW, HOLC Room 754, Washington, DC 20534. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

List of Subjects in 28 CFR Part 545

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 545 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 545.11, the introductory text of paragraph (b) is amended by removing the third sentence and adding two new sentences in its place, paragraph (b)(2) is amended by revising the second sentence, paragraphs (d)(2) and (d)(6) are revised, and paragraph (d)(9) is amended by removing the period and adding in its place a semi-colon:

§ 545.11 Procedures.

* * * * *

(b) *Payment.* * * * In developing an inmate's financial plan, the unit team shall first subtract from the trust fund account the inmate's minimum payment schedule for UNICOR or non-UNICOR work assignments, set forth in paragraphs (b)(1) and (b)(2) of this section. The unit team shall then exclude from its assessment $75.00 a month deposited into the inmate's trust fund account. * * *

* * * * *

(2) * * * Any allotment which is less than the 50% minimum must be approved by the Unit Manager. * * *

* * * * *

(d) * * *

(2) The inmate will not receive any furlough (other than possibly an emergency or medical furlough);

* * * * *

(6) The inmate shall be subject to a monthly commissary spending limitation more stringent than the monthly commissary spending limitation set for all inmates. This more stringent commissary spending limitation for IFRP refusees shall be at least $25 per month, excluding purchases of stamps, telephone credits, and, if the inmate is a common fare participant, Kosher/Halal certified shelf-stable entrees to the extent that such purchases are allowable under pertinent Bureau regulations;

* * * * *

[FR Doc. 99–33484 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–05–P

VOL

64

ISS

2
4
8

DE

28

999

UM

federal register

Tuesday
December 28, 1999

Part VII

Department of Education

34 CFR Part 614

Preparing Tomorrow's Teachers to Use Technology; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 614

Preparing Tomorrow's Teachers to Use Technology

RIN 1840–AC81

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds the regulations governing the Preparing Tomorrow's Teachers to Use Technology program, which provides grants to consortia that help future teachers become proficient in the use of modern learning technologies. This program provides support for two types of grants: Implementation grants and Catalyst grants.

DATES: These regulations are effective January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Gonzales, Office of Postsecondary Education, 1990 K Street, NW., Room 6153, Washington, DC. 20006–8526. Telephone: (202) 502–7788. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

On October 22, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for Preparing Tomorrow's Teachers to Use Technology in the **Federal Register** (64 FR 57287). In the preamble to the NPRM, the Secretary discussed on pages 57287 and 57288 the major regulations proposed for Preparing Tomorrow's Teachers to Use Technology. These included the following:

Establishing the purpose of the Preparing Tomorrow's Teachers to Use Technology program as helping future teachers to become proficient in the use of modern learning technologies.

Limiting grants made under this program to support training for pre-service teachers by prohibiting the use of grant funds for in-service training, or for continuing education for currently certified teachers.

Defining the eligible applicants for the program is a consortium composed of at least two or more organizations that could include: institutions of higher education (IHEs), schools of education, community colleges, State educational agencies (SEAs), local educational agencies (LEAs), private elementary or secondary schools, professional associations, foundations, museums, libraries, private sector businesses, public or private nonprofit organizations, community-based organizations, or any other entity able to contribute to the teacher preparation program reforms that produce technology-proficient educators.

Listing the regulations from the Education Department's General Administrative Regulations that would apply to the program, and referencing these regulations.

Requiring that the lead applicant for the consortium be a nonprofit member of the consortium, and that only the lead applicant could serve as the fiscal agent for the consortium.

Establishing the matching requirements for consortia by requiring that the Federal share of the cost of the project not exceed fifty percent of the total project cost for each budget period.

Limiting the maximum indirect cost rate for all consortium partners and any cost-type contract made under these grants to eight percent of a modified total direct cost base or the partner's negotiated indirect cost rate, whichever rate is lower.

Prohibiting the use of Federal grant funds to pay for student financial assistance, such as scholarships, stipends, or other financial aid incentives to recruit future teachers or to subsidize the costs of their education.

Requiring that applications for the program be received by the deadline date that will be announced in a separate notice in the **Federal Register**.

Except for minor editorial revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In the NPRM the Secretary invited comments on the proposed regulations. In response to our invitation in the NPRM, three parties submitted comments on the proposed regulations. An analysis of the comments follows.

Comments: One commenter encouraged the program to allow the use of funds for in-service professional development for current teachers to help address their discomfort with technology.

Discussion: The change recommended by the commenter would materially alter the purpose of the program. Several recent national reports have concluded that teacher preparation has emerged as the critical factor limiting the contributions of new technologies to improved learning—and these findings respond to the need to restructure the teacher preparation system. Federal, State and local agencies are investing billions of dollars a year to equip schools with computers and modern communications networks. Recent GAO testimony [1] based upon an agency survey on the use of Federal funds for teacher training programs for elementary and secondary teachers indicates that while $1.5 billion in Federal funds are used in part for teacher training, the majority goes towards in-service training while only six percent support goes towards pre-service training.

We recognize that reeducating the existing teaching force to take full advantage of technological learning tools will require extensive professional development over many years. But this problem is being greatly magnified by the fact that new teachers entering the profession are not being adequately prepared to use the modern technologies they will find in their 21st century schools. In less than a decade over two million teachers must be recruited to replace retiring teachers, to meet increasing student enrollment demands, and to achieve smaller class size. No school system in America can ensure that these future teachers are well-prepared, technology-proficient educators without significant improvement and restructuring of the teacher preparation system. If our information technology investments are to pay off in improved education, this program must focus limited Federal funds to ensure that future teachers are technology-proficient educators, who arrive at their schools ready to use modern learning resources to help 21st Century students meet high standards.

Changes: None.

Comments: One commenter suggested adding the phrase "research-proven, standards-led" to the purpose of the program to ensure that all students are taught to use technology in meaningful ways.

This program provides grants to help future teachers become proficient in the use of modern learning technologies within the context of research-proven and standards-led instructional practices. The program also supports training for pre-service teachers in modern learning technologies within the context of research-proven and standards-led instructional practices.

Discussion: The language proposed by the commenter does not make the regulations clearer. The underlying goal

[1] United States General Accounting Office, "Teacher Training—over $1.5 Billion Federal Funds Invested in Many Programs," Statement of Marnie S. Shaul, Associate Director, Education, Workforce, and Income Security Issues, Health Education, and Human Services Division, Released May 5, 1999.

of ensuring that all student populations are enabled to use technology in meaningful ways will be addressed in the application package. The application package will emphasize the importance of technology-proficient future teachers by encouraging all applicants to address equitable digital access for all populations to help all students achieve to high standards. The application package will also indicate that technology-proficient future teachers utilize technology to improve the teaching and learning process.

Changes: None.

Comments: One commenter suggested listing or identifying specific potential consortium partners such as the North Central Regional Education Laboratory (NCREL), the National Computational Science Alliance (NCSA), and the Department of Energy Laboratories.

Discussion: The regulations leave the consortium composition to the discretion of the applicant. The regulations list general types of organizations that could be included and these could include the commenter's specific potential consortium partners. The regulations also encourage as an eligible applicant any organization able to contribute to the teacher preparation reforms that produce technology-proficient educators.

Changes: None.

Comments: One commenter suggested eliminating the matching requirements for consortia to better enable all schools to fairly compete. Instead, a "match" could be used as an indicator of commitment.

Discussion: It is imperative to require matching commitments to better leverage limited Federal funding and to help build and ensure project sustainability beyond the life of the Federal grant. Over 500 eligible applicants applied for FY 1999 funds that resulted in 225 awards. The applicants were from a broad cross-section of institutions and organizations. Based upon the overwhelming response from the field and the range of types of organizations funded, it seems that the matching requirement does not preclude "poor" institutions from the competition.

Changes: None.

Comments: One commenter suggested that the demonstration of "Institution-wide" support is almost impossible at large universities.

Discussion: The demonstration of "Institution-wide" support is not required for funding under this program. However, "Institution-wide" support is important to demonstrating an effective response to the preparation of technology proficient teachers. Thus, it is to the advantage of potential applicants to show collaboration within their university.

Changes: None.

Comments: One commenter suggested allocating preference points for applicants addressing looming teacher shortages.

Discussion: The focus of this program is on preparing technology proficient future teachers. Developing remedies for possible teacher shortages is beyond the scope of this program. Extra points for addressing teacher shortages is not consistent with the program purpose.

Changes: None.

Comments: Once commenter felt that that the program should specify a more precise monetary or percentage range for the amount of grant funds to be used for project evaluation.

Discussion: The amount of money to be allocated for evaluation was not addressed in the regulations. It is up to the applicant to determine the appropriate level of evaluation investment for the proposed project.

Changes: None.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number: 84.342, Preparing Tomorrow's Teachers to Use Technology program)

List of Subjects in 34 CFR Part 614

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

(**Program Authority:** 20 U.S.C. 6832)

Dated: December 21, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

For the reasons stated in the preamble, the Secretary amends Chapter VI of title 34 of the Code of Federal Regulations by adding a new part 614 to read as follows:

PART 614—PREPARING TOMORROW'S TEACHERS TO USE TECHNOLOGY

Sec.

614.1 What is the purpose of the Preparing Tomorrow's Teachers to Use Technology program?
614.2 Who is eligible for an award?
614.3 What regulations apply to this program?
614.4 Which member of the consortium must act as the lead applicant and fiscal agent?
614.5 What are the matching requirements for the consortia?
614.6 What is the maximum indirect cost rate for all consortium members and any cost-type contract?
614.7 What prohibitions apply to the use of grant funds under this program?
614.8 What is the significance of the deadline date for applications?

Authority: 20 U.S.C. 6832, unless otherwise noted.

§ 614.1 What is the purpose of the Preparing Tomorrow's Teachers to Use Technology program?

(a) This program provides grants to help future teachers become proficient in the use of modern learning technologies and to support training for pre-service teachers.

(b) A grantee may not use funds under this program for in-service training or

continuing education for currently certified teachers.

(Authority: 20 U.S.C. 6832)

§ 614.2 Who is eligible for an award?

(a) Except as provided in paragraph (b) of this section, an eligible applicant is a consortium that includes at least two or more of the following: institutions of higher education, schools of education, community colleges, State educational agencies, local educational agencies, private elementary or secondary schools, professional associations, foundations, museums, libraries, private sector businesses, public or private nonprofit organizations, community based organizations, or any other entities able to contribute to teacher preparation program reforms that produce technology-proficient teachers.

(b) At least one member of the consortium must be a nonprofit entity.

(Authority: 20 U.S.C. 6832)

§ 614.3 What regulations apply to this program?

The following regulations apply to Preparing Tomorrow's Teachers to Use Technology:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except for § 75.102.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 614.

(Authority: 20 U.S.C. 6832)

§ 614.4 Which member of the consortium must act as the lead applicant and fiscal agent?

(a) For purposes of 34 CFR 75.127, the lead applicant for the consortium must be a nonprofit member of the consortium.

(b) The lead applicant must serve as the fiscal agent.

(Authority: 20 U.S.C. 6832)

§ 614.5 What are the matching requirements for the consortia?

A consortium must provide at least 50 percent of the total project cost per budget period of the project using non-Federal funds.

(Authority: 20 U.S.C. 6832)

§ 614.6 What is the maximum indirect cost rate for all consortium members and any cost-type contract?

(a) The maximum indirect cost rate for all consortium partners and any cost-type contract made under these grants is eight percent of a modified total direct cost base or the partner's negotiated indirect cost rate, whichever rate is lower.

(b) For purposes of this section, a modified total direct cost base is total direct costs less stipends, tuition, and related fees, and capital expenditures of $5,000 or more.

(c) Indirect costs in excess of the maximum may not be—

(1) Charged as direct costs by the grantee;

(2) Used by the grantee to satisfy matching or cost sharing requirements; or

(3) Charged by the grantee to another Federal award.

(Authority: 20 U.S.C. 6832)

§ 614.7 What prohibitions apply to the use of grant funds under this program?

Grant funds may not be used—

(a) To recruit prospective teachers;

(b) To support the cost of a prospective teacher's education through any form of financial aid assistance including scholarships, internships, or student stipends; or

(c) For in-service training or continuing education for currently certified teachers.

(Authority: 20 U.S.C. 6832)

§ 614.8 What is the significance of the deadline date for applications?

Notwithstanding § 75.102 of this chapter, an application for a grant under this program must be received by the deadline date that will be announced in a separate notice in the **Federal Register**.

(Authority: 20 U.S.C. 6832)

[FR Doc. 99–33554 Filed 12–27–99; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.342]

Preparing Tomorrow's Teachers To Use Technology

AGENCY: Office of Postsecondary Education (OPE), Department of Education.

ACTION: Notice of requirements and invitation for applications for new awards for fiscal year (FY) 2000.

Purpose of Program

The Preparing Tomorrow's Teachers to Use Technology program provides grants to consortia that are helping future teachers become proficient in the use of modern learning technologies. This program addresses looming teacher shortages by developing well-qualified, technology-proficient teachers, who are prepared to teach in 21st century schools, particularly schools in low-income communities or rural areas. This program provides support for two types of grants: implementation grants, and catalyst grants.

Eligible Applicants

Only consortia may receive grants under this program. A consortium must include at least two members. Consortium members may include institutions of higher education (IHEs), Schools of Education, State educational agencies (SEAs), local educational agencies (LEAs), private schools, professional associations, foundations, museums, libraries, for profit agencies and organizations, nonprofit organizations, community-based organizations, and others.

Note: In each consortium a participating nonprofit member must be designated as the "applicant" for purposes of 34 CFR 75.128 and must act as the fiscal agent.

Applications Available: January 7, 2000.

Deadline for Transmittal of Applications: March 7, 2000.

Deadline for Intergovernmental Review: May 8, 2000.

Estimated Available Funds: $75,000,000.

Estimated Range of Awards: $200,000–$400,000 for implementation grants, and $500,000–$700,000 for catalyst grants.

Estimated Average Size of Awards: $380,000 for implementation grants, and $600,000 for catalyst grants.

Estimated Number of Awards: 80 implementation grants, and 15 catalyst grants.

Project Period: 36 months for implementation grants, and 36 months for catalyst grants.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; (b) The regulations for this program in competition. The selection criteria and factors to be used for this competition will be provided in the application package.

Application Review Procedures

The Secretary announces the use of a multi-tier review process to evaluate all applications submitted for new awards under the FY 2000 Preparing Tomorrow's Teachers to Use Technology program. The Secretary takes this action to ensure a thorough review and assessment of the large number of applications that are expected to be received under the FY 2000 competition. This multi-tier review process does not affect the contents of applications in this competition

For Applications Contact

Beginning January 7, 2000, telephone (202) 502–7788 or fax requests to (202)502–7775. The application package also will be available from the Preparing Tomorrow's Teachers to Use Technology program web site at *http://www.ed.gov/teachtech* in January, 2000.

FOR FURTHER INFORMATION CONTACT: Erika Kirby, Preparing Tomorrow's Teachers to Use Technology, U.S. Department of Education, 1990 K Street, NW, Suite 6160,Washington DC 20202–5131. Telephone: (202) 502–7788. E-mail: erika__kirby@ed.gov Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html.

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 6832.

Dated: December 21, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33555 Filed 12–27–99; 8:45 am]

BILLING CODE 4000–01–U

VOL

64

ISS

2
4
8

DE

28

999

IML

federal register

Tuesday
December 28, 1999

Part VIII

Department of Defense

Department of the Air Force

32 CFR Part 806
Freedom of Information Act Program; Final Rule

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806

RIN: 0701–AA–61

Freedom of Information Act Program

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising our rules on the Freedom of Information Act Program of the Code of Federal Regulations (CFRs) to reflect current policies. Part 806 implements Air Force Policy Directive (AFPD) 37–1, Air Force Information Management (will convert to AFPD 33–3), and applies to all Air Force activities. It provides policies and procedures for implementing the Freedom of Information Act (FOIA), Title 5 United States Code (U.S.C.) Section 552, as amended, and "For Official Use Only (FOUO)" information requirements.

EFFECTIVE DATE: November 1, 1999.

ADDRESSES: Mrs. Anne P. Rollins, HQ AFCIC/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250, 703–588–6187.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins, HQ AFCIC/ITC, 703–588–6187.

List of Subjects in 32 CFR Part 806

Freedom of Information.

For the reasons set forth in the preamble, the Department of the Air Force is revising 32 CFR part 806 as follows:

PART 806—AIR FORCE FREEDOM OF INFORMATION ACT PROGRAM

Sec.

806.1 Summary of revisions.
806.2 Applicability.
806.3 Public information.
806.4 Definitions.
806.5 Responsibilities.
806.6 Prompt action on requests.
806.7 Use of exemptions.
806.8 Description of requested record.
806.9 Referrals.
806.10 Records management.
806.11 FOIA reading rooms.
806.12 Record availability.
806.13 5 U.S.C. 552 (a)(2) materials.
806.14 Other materials.
806.15 FOIA exemptions.
806.16 For official use only.
806.17 Release and processing procedures.
806.18 Initial determinations.
806.19 Reasonably segregable portions.
806.20 Records of non-U.S. government source.
806.21 Appeals.
806.22 Time limits.
806.23 Delay in responding to an appeal.
806.24 Fee restrictions.
806.25 Annual report.
806.26 Addressing FOIA requests.
806.27 Samples of Air Force FOIA processing documents.
806.28 Records with special disclosure procedures.
806.29 Administrative processing of Air Force FOIA requests.
806.30 FOIA exempt information examples.
806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of nongovernment contract-related information.
Appendix A To Part 806—References
Appendix B To Part 806—Abbreviations and Acronyms
Appendix C To Part 806—Terms

Authority: 5 U.S.C. 552.

§ 806.1 Summary of revisions.

This part makes this guidance an Air Force supplement to the DoD regulation at 32 CFR part 286. It transfers responsibility for the Air Force Freedom of Information Act (FOIA) Program from the Office of the Secretary of the Air Force (SAF/AAI) to Headquarters United States Air Force (HQ USAF/SC) and Headquarters Air Force Communications and Information Center/Corporate Information Division (HQ AFCIC/ITC); contains significant changes and additions to implement the Electronic Freedom of Information Act (EFOIA) Amendments of 1996; addresses electronic records; increases time limits to 20 working days; adds procedures for multiple tracking and expedited processing of requests; changes annual report date and content; adds major command (MAJCOM) inspectors general (IG), MAJCOM Directors of Inquiries (IGQ), and wing commanders as initial denial authorities (IDAs).

§ 806.2 Applicability.

A list of Air Force MAJCOMs, field operating agencies (FOAs), and Direct Reporting Units (DRUs) is at § 806.26.

§ 806.3 Public information.

(a) *Functional requests.* Air Force elements may receive requests for government information or records from the public that do not refer to the FOIA. Often these requests are sent to a public affairs office (PAO) or a specific unit. All releases of information from Air Force records, whether the requester cites the FOIA or not, must comply with the principles of the FOIA and this part. If the requested material contains personal privacy information that the Air Force must withhold, it is particularly important to handle that "functional" request as a request under the FOIA and coordinate it with the appropriate FOIA office and an Air Force attorney. Regardless of the nature of the functional request, if the responding element denies the release of information from Air Force records, then control the request as a FOIA and follow FOIA denial procedures for records withheld (cite the pertinent FOIA exemption and give the requester FOIA appeal rights).

(b) HQ AFCIC/ITC will make the Air Force handbook and guide for requesting records available on the World Wide Web (WWW) from Air ForceLINK, at http://www.foia.af.mil/handbook.htm.

§ 806.4 Definitions.

(a) *Electronic reading room (ERR).* Rooms established on Internet web sites for public access to FOIA-processed (a)(2)(D) records.

(b) *FOIA request.* This includes FOIA requests made by members of Congress either on their own behalf or on behalf of one of their constituents. Process FOIA requests from members of Congress in accordance with this Air Force supplement. Air Force-affiliated requesters, to include military and civilian employees, should not use government equipment, supplies, stationery, postage, telephones, or official mail channels to make FOIA requests.

(1) Simple requests can be processed quickly with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records. Only one installation is involved and there are no outside Office of Primary Responsibility (OPRs). There are no classified or nongovernment records. No deliberative process/privileged materials are involved. The responsive records contain no (or limited) personal privacy information and do not come from a Privacy Act system of records. No time extensions are anticipated.

(2) Complex requests take substantial time and cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume. Multiple organizations must review/coordinate on requested records. Records are classified; originated with a nongovernment source; are part of the Air Force's decision-making process; or are privileged.

(c) *Government Information Locator Service (GILS).* GILS is an automated on-line card catalog of publicly accessible information. The Office of Management and Budget (OMB) Bulletin 95–01, December 7, 1994, and OMB Memorandum, February 6, 1998, mandates that all federal agencies create

a GILS record for information available to the public. The DoD GILS resides on DefenseLINK, the official DoD home page, at "http://www.defenselink.mil/locator/index.html."

(d) *Initial denial authority.* Only approved IDAs may deny all or parts of records. FOIA managers may: initially deny fee category claims, requests for expedited processing, and waiver or reduction of fees; review fee estimates; and sign "no records" responses. IDAs are the deputy chiefs of staff and chiefs of comparable offices or higher at HQ USAF and Secretary of the Air Force (SAF), and MAJCOM commanders. Deputy Chiefs of Staff and chiefs of comparable offices or higher at HQ USAF and SAF may name one additional position as denial authority. MAJCOM commanders may appoint two additional positions at the headquarters and also the wing commander at base level. MAJCOM IGs and MAJCOM Directors of Inquiries (IGQ) may act as IDAs for IG records. MAJCOM FOIA managers must notify HQ AFCIC/ITC in writing (by facsimile, e-mail, or regular mail) of IDA position titles. Send position titles only—no names. HQ AFCIC/ITC sends SAF/IGQ a copy of the correspondence designating IDA positions for IG records. When the commander changes the IDA designee position, MAJCOM FOIA managers will advise HQ AFCIC/ITC immediately. In the absence of the designated IDA, the individual filling/assuming that position acts as an IDA, however; all denial documentation must reflect the position title of the approved or designated IDA, even if in an acting capacity (for example, Acting Director of Communications and Information, Headquarters Air Combat Command).

(e) *Office of primary responsibility (OPR).* A DoD element that either prepared, or is responsible for, records identified as responsive to a FOIA request. OPRs coordinate with the office of corollary responsibility (OCR) and FOIA managers to assist IDAs in making decisions on FOIA requests.

(f) *OCR.* A DoD element with an official interest in, and/or collateral responsibility for, the contents of records identified as responsive to a FOIA request, even though those records were either prepared by, or are the primary responsibility of, a different DoD element. OCRs coordinate with OPRs and FOIA managers to assist IDAs in making decisions on FOIA requests.

(g) *Appellate authority.* The SAF has designated the Deputy General Counsel, Fiscal, Ethics, and Civilian Personnel (SAF/GCA) as the FOIA appellate authority.

(h) *Reading room.* Any place where a member of the public may view FOIA records.

§ 806.5 Responsibilities.

(a) The Director, Communications and Information (HQ USAF/SC) has overall responsibility for the Air Force FOIA Program. The Corporate Information Division (HQ AFCIC/ITC) administers the procedures necessary to implement the Air Force FOIA Program, submits reports to the Director, Freedom of Information and Security Review (DFOISR), and provides guidance and instructions to MAJCOMs. Responsibilities of other Air Force elements follow.

(b) SAF/GCA makes final decisions on FOIA administrative appeals.

(c) Installation commanders will: Comply with FOIA electronic reading room (ERR) requirements by establishing a FOIA site on their installation public web page and making frequently requested records (FOIA-processed (a)(2)(D)) records available through links from that site, with a link to the Air Force FOIA web page at http://www.foia.af.mil. See § 806.12(c).

(d) MAJCOM commanders implement this instruction and appoint a FOIA manager, in writing. Send the name, phone number, office symbol, and e-mail address to HQ AFCIC/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

(e) Air Force attorneys review FOIA responses for legal sufficiency, provide legal advice to OPRs, disclosure authorities, IDAs, and FOIA managers, and provide written legal opinions when responsive records (or portions of responsive records) are withheld. Air Force attorneys ensure factual and legal issues raised by appellants are considered by IDAs prior to sending the FOIA appeal files to the Secretary of the Air Force's designee for final action.

(f) Disclosure authorities and IDAs apply the policies and guidance in this instruction, along with the written recommendations provided by staff elements, when considering what decisions to make on pending FOIA actions. Where any responsive records are denied, the IDA tells the requesters the nature of records or information denied, the FOIA exemption supporting the denial, the reasons the records were not released, and gives the requester the appeal procedures. In addition, on partial releases, IDAs must ensure requesters can see the placement and general length of redactions with the applicable exemption indicated. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption. When working FOIA appeal actions for the appellate authority review:

(1) IDAs grant or recommend continued denial (in full or in part) of the requester's appeal of the earlier withholding of responsive records, or adverse determination (for example, IDAs may release some or all of the previously denied documents).

(2) IDAs reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination made by the FOIA manager.

(3) When an IDA denies any appellate action sought by a FOIA requester, the IDA, or MAJCOM FOIA manager (for no record, fee, fee estimates, or fee category appeals) will indicate in writing that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

(g) OPRs:

(1) Coordinate the release or denial of records requested under the FOIA with OCRs, FOIA offices, and with Air Force attorneys on proposed denials.

(2) Provide requested records. Indicate withheld parts of records annotated with FOIA exemption. Ensure requesters can see the placement and general length of redactions. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption.

(3) Provide written recommendations to the disclosure authority to determine whether or not to release records, and act as declassification authority when appropriate.

(4) Make frequently requested records (FOIA-processed (a)(2)(D)) available to the public in the FOIA ERR via the Internet. As required by AFIs 33–129, Transmission of Information Via the Internet, and 35–205, Air Force Security and Policy Review Program, OPRs request clearance of these records with the PAO before posting on the WWW, and coordinate with JA and FOIA office prior to posting. The FOIA manager, in coordination with the functional OPR or the owner of the records, will determine qualifying records, after coordination with any interested OCRs.

(5) Complete the required GILS core record for each FOIA-processed (a)(2)(D) record.

(6) Manage ERR records posted to the installation public web page by updating or removing them when no longer needed. Software for tracking number of hits may assist in this effort.

(h) FOIA managers:

(1) Ensure administrative correctness of all FOIA actions processed.

(2) Control and process FOIA requests.

(3) Obtain recommendations from the OPR for records.

(4) Prepare or coordinate on all proposed replies to the requester. FOIA managers may sign replies to requesters when disclosure authorities approve the total release of records. If the MAJCOM part directs the OPR to prepare the reply, the OPR will coordinate their reply with the FOIA office.

(5) Make determinations as to whether or not the nature of requests are simple or complex where multitrack FOIA request processing queues exist.

(6) Approve or initially deny any requests for expedited processing.

(7) Provide interim responses to requesters, as required.

(8) Provide a reading room for inspecting and copying records.

(9) Provide training.

(10) Review publications for compliance with this part.

(11) Conduct periodic program reviews.

(12) Approve or deny initial fee waiver requests.

(13) Make the initial decision on chargeable fees.

(14) Collect fees.

(15) Send extension notices.

(16) Submit reports.

(17) Sign "no record" responses.

(18) Provide the requester the basis for any adverse determination (i.e., no records, fee denials, fee category determinations, etc.) in enough detail to permit the requester to make a decision whether or not to appeal the actions taken, and provide the requester with appeal procedures.

(i) On appeals, FOIA managers:

(1) Reassess a fee category claim by a requester, overturning or confirming the initial determination.

(2) Reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination.

(3) Reassess a request for a waiver or reduction of fees, overturning or confirming the initial determination.

(4) Review a fee estimate, overturning or confirming the initial determination.

(5) Confirm that no records were located in response to a request.

(j) The base FOIA manager acts as the FOIA focal point for the FOIA site on the installation web page.

(k) When any appellate action sought by a FOIA requester is denied by an IDA or FOIA manager for authorized actions, the IDA or FOIA manager will indicate, in writing, that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

§ 806.6 Prompt action on requests.

(a) Examples of letters to FOIA requesters (e.g., response determinations and interim responses) are included in § 806.27.

(b) Multitrack processing. (1) Examples of letters to FOIA requesters (e.g., letters to individuals who have had their FOIA request placed in the complex track) are included in § 806.27.

(2) Simple requests can be processed quickly, with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records, only one installation is involved, there are no outside OPRs, no classified or nongovernment records, no deliberative process/privileged materials are involved, records contain no (or limited) personal privacy information/did not come from Privacy Act systems of records concerning other individuals, or time extensions not anticipated.

(c) Complex requests will take substantial time, will cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume, multiple organizations must review/coordinate on records, records are classified, records originated with a nongovernment source, records were part of the Air Force's decision-making process or are privileged.

(d) Expedited processing. Examples of letters to individuals whose FOIA requests and/or appeals were not expedited are included in § 806.27.

§ 806.7 Use of exemptions.

(a) A listing of some AFIs that provide guidance on special disclosure procedures for certain types of records is provided in § 806.28. Refer to those instructions for specific disclosure procedures. Remember, the only reason to deny a request is a FOIA exemption.

(b) Refer requests from foreign government officials that do not cite the FOIA to your foreign disclosure office and notify the requester.

(c) If you have a non-U.S. Government record, determine if you need to consult with the record's originator before releasing it (see § 806.9 and § 806.15(c)). This includes records created by foreign governments and organizations such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). You may need to coordinate release of foreign government records with either the U.S. Department of State or with the specific foreign embassy, directly through the MAJCOM FOIA office. Coordinate release or denial of letters of offer and acceptance (LOA) with SAF/IA through 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington DC 20330–1000.

§ 806.8 Description of requested record.

Air Force elements must make reasonable efforts to find the records described in FOIA requests. Reasonable efforts means searching all activities and locations most likely to have the records, and includes staged or retired records, as well as complete and thorough searches of relevant electronic records, such as databases, word processing, and electronic mail files.

§ 806.9 Referrals.

(a) Send all referrals through the FOIA office. The receiving FOIA office must agree to accept the referral before transfer. The FOIA office will provide the name, phone number, mailing address, and e-mail address of both the FOIA office point of contact and the record OPR point of contact in their referral letter. Include the requested record. If the requested records are massive, then provide a description of them. Referrals to, or consultations with, DFOISR are accomplished from the MAJCOM level. Section 806.27 has an example of a referral memo.

(b) In some cases, requested records are available from the GPO and NTIS, 5285 Port Royal Road, Springfield VA 22161. These organizations offer certain records for sale to the public. Current standard releasable Air Force publications are available electronically on the WWW at http://afpubs.hq.af.mil/. For requesters without electronic access, NTIS has paper copies for sale. Give requesters the web address or NTIS address when appropriate. However, if the requester prefers to pursue the FOIA process, consult with HQ AFCIC/ITC through the MAJCOM. Refer FOIA requests for Air Force publications that are classified, FOUO, rescinded, or superseded to the OPR through the appropriate FOIA office.

§ 806.10 Records management.

Keep records that were fully released for 2 years and denied records for 6 years. Include in the 6-year record file copies of records or parts of records that

were released in response to the same request. Refer to Air Force Manual (AFMAN) 37–139, Records Disposition Schedule (converting to AFMAN 33–339, see § 806.9(b)). The functional OPR or FOIA office may keep the records released or denied. The FOIA office keeps the FOIA case file for each request. The FOIA case file consists of: the initial request; tasking to OPRs; OPR's reply; memoranda for record (MFR) of phone calls or other actions related to the FOIA request; DD Forms 2086, Record of Freedom of Information (FOI) Processing Cost, or 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data; final response; and any of the following, if applicable: extension letter; legal opinions; submitter notification letters and replies; the appeal and required attachments (except for the released or denied records if maintained by the OPR); and all other correspondence to and from the requester.

§ 806.11 FOIA reading rooms.

Each FOIA office will arrange for a reading room where the public may inspect releasable records. You do not need to co-locate the reading room with the FOIA office. The FOIA does not require creation of a reading room dedicated exclusively to this purpose. A "reading room" is any location where a requester may review records. For FOIA-processed (a)(3) records, if requesters meet the criteria for search and review costs, they must be paid before inspecting records. Assess reproduction costs at the time of inspection, if appropriate.

§ 806.12 Record availability.

(a) HQ AFCIC/ITC will make the traditional FOIA-processed (a)(2) materials (5 U.S.C. 552(a)(2)(A), (B), and (C)) available to the public. Each Air Force activity must make 5 U.S.C. 552(a)(2)(D) records ("FOIA-processed (a)(2)(D) records"—records which they determine will, or have become, the subject of frequent or subsequent requests) available to the public in a reading room in hard copy and electronically by posting it to their appropriate web site. There is no requirement to make all FOIA-released records available electronically. The FOIA manager, in coordination with the functional OPR, or the owner of the records, determines qualifying records, after coordination with any interested OCRs. As required by AFIs 33–129 and 35–205, OPRs request clearance of these records with the PAO before posting on the WWW.

(b) Normally, if the FOIA office or OPR receives, or anticipates receiving, five or more requests for the same record in a quarter, they will consider it a frequently requested record (FOIA-processed (a)(2)(D) record) and make it publicly available in hard copy and electronically as outlined in § 806.12(a). OPRs may elect to make other records publicly available if they receive, or expect to receive, less than five requests a quarter. The purpose is to make records available in an ERR to potential future FOIA requesters instead of waiting to receive a FOIA request, and reduce the number of multiple FOIA requests for the same records requiring separate responses. In making these determinations, recognize there are some situations in which a certain type of record becomes the subject of simultaneous FOIA requests from all interested parties and then ceases to be of interest. Activities may typically receive a "flurry" of FOIA requests for contract records immediately after a contract is awarded, but do not receive any subsequent requests for such bulky records after that point. In some cases, activities may decide that placing records in the ERR would not serve the statutory purpose of "diverting some potential FOIA requests for previously released records." The following types of records should be considered for inclusion in the ERR (excluding individuals assigned to overseas, sensitive, and routinely deployable units): organizational charts and limited staff directories; lists of personnel reassigned with gaining base; MAJCOM FOIA supplements; lists of International Merchant Purchase Authority Card (IMPAC) card holders. Do not post lists of e-mail addresses.

(c) GILS. Each activity that posts FOIA-processed (a)(2)(D) records (records which they determine will, or have become, the subject of frequent or subsequent requests) must create a GILS record for each FOIA-processed (a)(2)(D) record and post it to DefenseLINK. The OPR prepares the GILS record. You can complete and submit a GILS record on-line using a web browser. Instructions for completing the GILS record, and an on-line form are at http://www.defenselink.mil/locator/index.html. Follow the steps listed on the web page. The GILS site on DefenseLINK will serve as the central index of Air Force FOIA-processed (a)(2)(D) records.

(d) In addition, installations will post a list, or index, of locally produced FOIA-processed (a)(2)(D) records on their web page at their FOIA site. Each listing will point or link to the particular record. In addition, MAJCOMs may choose to post their own index of MAJCOM specific FOIA-processed (a)(2)(D) records to their appropriate web site. Installation web pages will include the following phrase (or similar words) on their FOIA site if they do not have any frequently requested FOIA records: "There are no frequently requested FOIA records to post at this time." Include the following statement, or a similar one, on the installation web page with the records: "Some records are released to the public under the FOIA, and may therefore reflect deletion of some information in accordance with the FOIA's nine statutory exemptions. A consolidated list of such records is on DefenseLINK." Link the word "DefenseLINK" to www.defenselink.mil/locator/fpr__index.html. Qualifying releasable records with exempt information redacted must show on the record the amount of information withheld and the exemption reason (for example, (b)(6)). Activities with such records should provide the public an index and explanation of the FOIA exemptions. All installation FOIA pages will include a link to the Air Force page.

(e) FOIA web pages should be clearly accessed from the main installation page, either by a direct link to "FOIA" or "Freedom of Information Act" from the main page, or found under a logical heading such as "Library" or "Sites."

§ 806.13 "5 U.S.C. 552(a)(2)" materials.

The GILS records on DefenseLINK will serve as the index for 5 U.S.C. 552(a)(2)(D) materials.

§ 806.14 Other materials.

HQ AFCIC/ITC makes the appropriate FOIA-processed (a)(1) materials available for the Air Force.

§ 806.15 FOIA exemptions.

(a) *Exemption number 1.* When a requester seeks records that are classified, or should be classified, only an initial classification authority, or a declassification authority, can make final determinations with respect to classification issues. The fact that a record is marked with a security classification is not enough to support withholding the document; make sure it is "properly and currently classified." Review the record paragraph by paragraph for releasable information. Review declassified and unclassified parts before release to see if they are exempt by other exemptions. Before releasing a reviewed and declassified document, draw a single black line through all the classification markings so they are still legible and stamp the document unclassified. If the requested records are "properly and currently classified," and the Air Force withholds

from release under FOIA exemption (b)(1), and the requester appeals the withholding, include a written statement from an initial classification authority or declassification authority certifying the data was properly classified originally and that it remains properly classified per Executive Order. Examples of initial classification and declassification authority statements are included in § 806.27. Guidance on document declassification reviews is in AFI 31–401, Managing the Information Security Program, and DoD 5200.1–R, Information Security Program, January 1997.

(b) *Exemption number 3.* HQ AFCIC/ITC will provide the current FOIA-processed (b)(3) statutes list to the MAJCOMs.

(c) *Exemption number 4.* The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination of whether FOIA exemption (b)(4) applies. (See § 806.20(a) and § 806.31). Due to a change to Title 48 CFR, Federal Acquisition Regulations System, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after January 1, 1998. For solicitations issued before January 1, 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 U.S.C. 2305(g), Prohibition on Release of Contractor Proposals).

(d) *Exemption number 5.* (1) Attorney-client records could include, e.g., when a commander expresses concerns in confidence to his or her judge advocate and asks for a legal opinion. The legal opinion and everything the commander tells the judge advocate in confidence qualify under this privilege. Unlike deliberative process privilege, both facts and opinions qualify under the attorney work product or attorney-client privilege. Attorney work product records are records an attorney prepares, or supervises the preparation of, in contemplating or preparing for administrative proceedings or litigation.

(2) Based on court decisions in FOIA litigation, which led to the release of results of personnel surveys, FOIA managers and IDAs should get advice from an Air Force attorney before withholding survey results under FOIA exemption (b)(5).

(e) *Exemption number 6.* (1) AFI 37–132, Air Force Privacy Act Program (will convert to AFI 33–332) provides guidance on collecting and safeguarding social security numbers (SSN). It states: "SSNs are personal and unique to each individual. Protect them as FOUO. Do not disclose them to anyone without an official need to know." Before releasing an Air Force record to a FOIA requester, delete SSNs that belong to anyone other than the requester. In any subsequent FOIA release to a different requester of those same records, make sure SSNs are deleted. When feasible, notify Air Force employees when someone submits a FOIA request for information about them. The notification letter should include a brief description of the records requested. Also include a statement that only releasable records will be provided and we will protect personal information as required by the FOIA and Privacy laws.

(2) Personal information may not be posted at publicly accessible DoD web sites unless to do so is clearly authorized by law and implementing regulation and policy. Personal information should not be posted at nonpublicly accessible web sites unless it is mission essential and appropriate safeguards have been established. See also AFIs 33–129 and 35–205.

(3) Withhold names and duty addresses of personnel serving overseas or in sensitive or routinely deployable units. Routinely deployable units normally leave their permanent home stations on a periodic or rotating basis for peacetime operations or for scheduled training exercises conducted outside the United States or United States territories. Units based in the United States for a long time, such as those in extensive training or maintenance activities, do not qualify during that period. Units designated for deployment on contingency plans not yet executed and units that seldom leave the United States or United States territories (*e.g.*, annually or semiannually) are not routinely deployable units. However, units alerted for deployment outside the United States or United States territories during actual execution of a contingency plan or in support of a crisis operation qualify. The way the Air Force deploys units makes it difficult to determine when a unit that has part of its personnel deployed becomes eligible for denial. The Air Force may consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of its personnel have been either alerted or actually deployed. In this context, alerted means that a unit has received an official written warning of an impending operational mission outside the United States or United States territories. Sensitive units are those involved in special activities or classified missions, including, for example, intelligence-gathering units that collect, handle, dispose of, or store classified information and materials, as well as units that train or advise foreign personnel.

(i) Each MAJCOM and FOA will establish a system and assign OPRs to identify United States-based units in their command qualifying for the "sensitive or routinely deployable unit" designation, under this exemption. Appropriate OPRs could include directors of operations, plans and programs, and personnel.

(ii) MAJCOM FOIA managers will ensure the list of sensitive and routinely deployable units is reviewed in January and July, and will follow that review with a memo to the Air Force Personnel Center (HQ AFPC/MSIMD), 550 C Street West, Suite 48, Randolph AFB, TX 78150–4750, either validating the current list or providing a revised listing based on the current status of deployed units at that time. This listing is in American Standard Code for Information Interchange (ASCII) format on a 3½" (double-sided, high-density) diskette, which contains the unit's eight-position personnel accounting symbol (PAS) code, with one PAS code per line (record) (8-byte record). The MAJCOM FOIA manager will send an electronic copy of the list of nonreleasable units to HQ AFPC/MSIMD which is included in the personnel data system. The MAJCOM and HQ AFPC FOIA offices will use it to determine releasable lists of names and duty addresses. This reporting requirement is exempt from licensing with a reports control symbol (RCS) in accordance with AFI 37–124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33–324).

(f) *Exemption number 7.* Guidance provided in § 806.15(e)(1) also applies to SSNs in records compiled for law enforcement purposes. Do not disclose SSNs to anyone without an official need to know.

§ 806.16 For official use only.

(a) Markings. Record owners may also add the following sentence to the statement above: "(Further distribution is prohibited without the approval of (owner's organization, office symbol, phone).)"

(b) Dissemination and transmission. (1) When deciding whether to send FOUO records over facsimile equipment, balance the sensitivity of the

records against the risk of disclosure. When faxing, use cover sheets to indicate FOUO attachments (*i.e.*, AF Form 3227, Privacy Act Cover Sheet, for Privacy Act information). Consider the location of sending and receiving machines and ensure authorized personnel are available to receive FOUO information as soon as it is transmitted.

(2) For Privacy Act records, refer to AFI 33–332 for specific disclosure rules. For releases to GAO and Congress, refer to AFI 90–401, Air Force Relations With Congress and AFI 65–401, Relations With the General Accounting Office. See § 806.9(b) for availability.

(c) Termination, disposal and unauthorized disclosures. You may recycle FOUO material. Safeguard the FOUO documents or information to prevent unauthorized disclosure until recycling. Recycling contracts must include specific responsibilities and requirements on protecting and destroying FOUO and Privacy Act materials.

§ 806.17 Release and processing procedures.

(a) Individuals seeking Air Force information should address requests to an address listed in § 806.26. MAJCOM FOIA office phone numbers and mailing addresses are available on the Air Force FOIA Web Page at http://www.foia.af.mil.

(1) A list of Air Force FOIA processing steps, from receipt of the request through the final disposition of an administrative appeal is at § 806.29, which also includes guidance on preparing and processing an Air Force FOIA appeal package.

(2) Air Force host tenant relationships. The Air Force host base FOIA manager may log, process, and report FOIA requests for Air Force tenant units. In such cases, the host base FOIA office refers all recommended denials and "no records" appeals to the Air Force tenant MAJCOM FOIA manager. This does not apply to the Air National Guard (ANG), Air Force Reserves, or to disclosure authorities for specialized records.

(b) Use FOIA procedures in this part to process any congressional request citing FOIA, or covering a constituent letter citing FOIA. This does not apply to requests from a Congressional Committee or Subcommittee Chair on behalf of the committee or subcommittee.

§ 806.18 Initial determinations.

(a) Disclosure authorities make final decisions on providing releasable records within the time limits and provide recommendations to the IDA on proposed denials and partial denials after coordination with the appropriate FOIA and JA office. Normally, disclosure authorities are division chiefs or higher at Air Staff level. MAJCOMs will designate their disclosure authority levels. The level should be high enough so a responsible authority makes the disclosure according to the policies outlined in this part. At out sourced units or functions, the disclosure authority must be a government official. Contractors who are functional OPRs for official government records are not authorized to make the decision to disclose government records.

(b) On receipt, Air Force FOIA offices will promptly inform Air Force PAOs of all FOIA requests that are potentially newsworthy, or that are submitted by news media requesters. FOIA offices will coordinate final replies for such cases with public affairs.

§ 806.19 Reasonably segregable portions.

Delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to "read through the marking." Examples of records with deletions of exempted data are in § 806.30.

§ 806.20 Records of non-U.S. government source.

(a) The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination as to whether FOIA exemption (b)(4) applies. See § 806.15(c) and § 806.31. Due to a change to 48 CFR, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after January 1, 1998. For solicitations issued before January 1, 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 U.S.C. 2305(g)).

(b) Department of State involvement. Air Force FOIA managers will notify their MAJCOM (or equivalent) FOIA office, in writing, via fax or e-mail when the Department of State becomes involved in any Air Force FOIA actions. The MAJCOM FOIA office will provide 11 CS/SCSR, via fax or e-mail, a summary of the issues involved, and the name, phone number, mailing address and e-mail address of: their own FOIA office point of contact; the Air Force record OPR point of contact, the DoD component FOIA office point of contact (if any), and the Department of State point of contact. 11 CS/SCSR will inform SAF/IA of any State Department involvement in Air Force FOIA actions. (See § 806.7(b).) An example of a memo advising 11 CS/SCSR of State Department involvement in an Air Force FOIA action is provided in § 806.27.

§ 806.21 Appeals.

(a) FOIA requesters seeking Air Force records must address appeals to the Office of the Secretary of the Air Force, through the FOIA office of the IDA that denied the request. Requesters should attach a copy of the denial letter to their appeal and give reasons for appealing. Air Force IDAs may reconsider any prior denials and may grant all or part of a requester's appeal. When any appellate action sought by a FOIA requester is denied by an IDA, the IDA will include a statement that the issues raised in the appeal were considered and rejected (in full or in part) in any file sent to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeals to IDA decisions at the wing level through the MAJCOM FOIA office for sending to the Secretary of the Air Force's designated appellate authority, SAF/GCA (and Air Force Legal Services Agency (AFLSA/JACL)). (See §§ 806.4(g), 806.5(b), and § 806.5(k).) Additional steps are required prior to sending an appeal file.

(1) MAJCOM FOIA offices and record OPRs are responsible for ensuring adequate preparation of the FOIA appeal package for reconsideration by the IDA. FOIA offices and records OPRs will coordinate with Air Force attorneys, who will provide written opinions on substantive issues raised in the appeal.

(2) If a requester appeals an Air Force "no records" determination, Air Force elements must search again or verify the adequacy of their first search. The package must include documents that show the Air Force element systematically tried to find responsive records. Tell, for example, what areas or offices were searched and how the search was conducted—manually, by computer, by telephone, and so forth. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits are required to support the adequacy of any searches conducted.

(3) FOIA requesters seeking to appeal denials involving Office of Personnel Management's controlled civilian personnel records must appeal to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

(4) If a requester appeals a denial of a fee waiver, fee estimate, or fee reduction request, FOIA offices and record OPRs must account for actual and estimated costs of processing a request, and will include copies of the DD Forms 2086 or 2086–1 in the appeal package.

(5) When any appellate action sought by a FOIA requester is denied by an IDA, prepare the FOIA appeal package as specified in § 806.29, and then the MAJCOM FOIA office forwards the appeal file to the Secretary of the Air Force's designated appellate authority, SAF/GCA (through AFLSA/JACL), for a final administrative determination.

(b) Air Force activities will process appeal actions expeditiously to ensure they reach the Office of the Secretary of the Air Force in a timely manner.

§ 806.22 Time limits.

Any FOIA appeals received after the 60-day time limit are not processed, unless the requester provides adequate justification for failing to comply with the time limit. If a late appeal is received, and there is no adequate justification for failing to comply with the time limit, the FOIA office will advise the FOIA requester their appeal has been closed. An example of a closure letter is included in § 806.27.

§ 806.23 Delay in responding to an appeal.

For an appeal in process and not yet forwarded to AFLSA/JACL, the MAJCOM FOIA office is responsible for advising the requester of the status of the appeal. For an appeal in process at AFLSA/JACL, that office will advise the requester regarding status of the appeal.

§ 806.24 Fee restrictions.

For FOIA purposes, Air Force activities will consider the cost of collecting a fee to be $15 and will not assess requesters' fees for any amount less than $15.

§ 806.25 Annual report.

(a) MAJCOM FOIA managers and AFLSA/JACL send a consolidated report for the fiscal year on DD Form 2564, Annual Report Freedom of Information Act, to HQ AFCIC/ITC by October 30 via regular mail, e-mail, or facsimile. AFLSA/JACL will prepare the appeals and litigation costs sections of the report. HQ AFCIC/ITC will make the Air Force report available on the WWW.

(b) Total requests processed. "Processed" includes responses that give an estimated cost for providing the records, even if the requester has not paid.

(c) Denied in full. Do not report "no record" responses as denials.

(d) Other reasons.

(1) *Referrals.* Also include referrals within Air Force in this category.

(2) *Not an agency record.* The "not an agency record" other reason category only applies to requests for: objects or articles such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence; anything that is not a tangible or documentary record such as an individual's memory or oral communication; and personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use. This category does not include "no record" responses.

(e) Other. The "Other (Specify)" block must contain the reason with the total number for the reason. For example: "FOIA request had no return address–4."

(f) 5 U.S.C. 552(b)(3) statutes invoked on initial determinations. A corresponding statute is required for each instance entered in the Exemption 3 block. List the statute by number, not title. For any statute on the report that is not on DoD's list of commonly used 5 U.S.C. 552(b)(3) statutes, attach a copy of the pertinent page of the statute that states information must be withheld from public disclosure. HQ AFCIC/ITC makes the DoD list available to FOIA managers electronically. Statutes on the DoD list with an asterisk indicate they are valid 5 U.S.C. 552(b)(3) statutes from litigation. Do not enter any of the following as 5 U.S.C. 552(b)(3) statutes:

5 U.S.C. 552
5 U.S.C. 552a
28 U.S.C. 1498
17 U.S.C. 101
18 U.S.C. 1905.

(g) Appeal determinations. Enter the total number of FOIA appeals received and total number of FOIA appeals completed during the fiscal year.

(h) Average. Air Force will use the "median age" and will not collect or report averages.

(i) Number of initial requests received during the fiscal year. This number includes open and closed cases.

(j) Total number of initial requests. "Processed" includes responses which give an estimated cost for providing the records, even if the requester has not paid.

(k) Total program cost. This figure includes all costs from the DD Forms 2086 and 2086–1, as well as personnel costs for individuals primarily involved in administering the FOIA program. To figure personnel costs, multiply the annual salary of each person by the percentage of time spent on FOIA.

(l) MAJCOMs and bases do not include the 25 percent. HQ AFCIC/ITC will add to the final Air Force report to DoD.

(m) Authentication. MAJCOM SCs will sign as approving official (or two-letter functional equivalent for FOIA offices in other functional areas).

§ 806.26 Addressing FOIA requests.

(a) FOIA requests concerning Air National Guard Inspector General records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000.

(b) Addressing Air Force Freedom of Information Act requests. The Department of the Air Force, a component of the DoD, includes the Office of the Secretary of the Air Force, the Chief of Staff of the Air Force (who is supported by Headquarters Air Force or "Air Staff" elements), the MAJCOMs, the FOAs, and DRUs. This section lists the FOIA office addresses. A selected subordinate unit is also included in this section. Realignment of Air Force elements is frequent; addresses listed below are subject to change.

(c) The Department of the Air Force does not have a central repository for Air Force records. FOIA requests are addressed to the Air Force element that has custody of the record desired. In answering inquiries regarding FOIA requests, Air Force personnel will assist requesters in determining the correct Air Force element to address their requests. If there is uncertainty as to the ownership of the record desired, refer the requester to the Air Force element that is most likely to have the record. Two organizations that include Air Force elements, and hold some Air Force-related records, are also included in the addresses listed below.

(d) MAJCOMs:

(1) Air Combat Command (ACC): HQ ACC/SCTC, 230 East Flight Line Road, Langley AFB VA 23665–2781.

(2) Air Education and Training Command (AETC): HQ AETC/SCTS, 61 Main Circle Suite 2, Randolph AFB TX 78150–4545.

(3) Air Force Materiel Command (AFMC): HQ AFMC/SCDP, 4225 Logistics Avenue, Suite 6, Wright-Patterson AFB, OH 45433–5745.

(4) Air Force Reserve Command (AFRC): HQ AFRC/SCSM, 155 2nd Street, Robins AFB, GA 31098–1635.

(5) Air Force Special Operations Command (AFSOC): HQ AFSOC/SCMN, 100 Bartley Street, Suite 201, Hurlburt Field, FL 32544–5273.

(6) Air Force Space Command (AFSPC): HQ AFSPC/SCMA, 150 Vandenberg

Street, Suite 1105, Peterson AFB, CO 80914–4400.

(7) Air Mobility Command (AMC): HQ AMC/SCYNR, 203 West Losey Street, Room 3180, Scott AFB, IL 62225–5223.

(8) Pacific Air Forces (PACAF): HQ PACAF/SCT, 25 E Street, Suite C220, Hickam AFB, HI 96853–5409.

(9) United States Air Forces in Europe (USAFE): HQ USAFE/SCMI, Unit 3050, Box 125, APO AE 09094–0125.

(e) FOAs:

(1) Air Force Audit Agency (AFAA): HQ AFAA/IMP, 1126 Air Force Pentagon, Washington, DC 20330–1126.

(2) Air Force Base Conversion Agency (AFBCA): AFBCA/ESA, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

(3) Air Force Center for Environmental Excellence (AFCEE): HQ AFCEE/MSI, 3207 North Road, Brooks AFB, TX 78235–5363.

(4) Air Force Civil Engineering Support Agency (AFCESA): HQ AFCESA/IMD, 139 Barnes Drive Suite 1, Tyndall AFB, FL 32403–5319.

(5) Air Force Historical Research Agency (AFHRA): AFHRA/RSA, 600 Chennault Circle, Maxwell AFB, AL 36112–6424.

(6) Air Force Inspection Agency (AFIA): (Shared FOIA office/function, AFIA and Air Force Safety Agency) AFSA/JAR, 9700 Avenue G SE, Suite 236B, Kirtland AFB, NM 87117–5670.

(7) Air Force Medical Support Agency (AFMSA): AFMSA/CCEA, 2510 Kennedy Circle, Suite 208, Brooks AFB, TX 78235–5121.

(8) Air Force News Agency (AFNEWS): HQ AFNEWS/SCB, 203 Norton Street, Kelly AFB, TX 78241–6105.

(9) Air Force Office of Special Investigations (AFOSI): HQ AFOSI/SCR, P. O. Box 2218, Waldorf, MD 20604–2218.

(10) Air Force Personnel Center (AFPC): HQ AFPC/MSIMD, 550 C Street West, Suite 48, Randolph AFB, TX 78150–4750.

(11) Air Force Center for Quality and Innovation (AFCQMI): AFCQMI/CSP, 550 E Street East, Randolph AFB, TX 78150–4451.

(12) Air Force Safety Agency (AFSA): (Shared FOIA office/function, AFIA, and AFSA) AFSA/JARF, 9700 Avenue G SE, Suite 236B, Kirtland AFB, NM 87117–5670.

(13) Air Force Security Forces Center (AFSFC): AFSFC/CCQ 1720 Patrick Street, Lackland AFB, TX 78236–5226.

(14) Air Force Services Agency (AFSVA): AFSVA/SVSR, 9504 1H–35 North, Suite 250, San Antonio, TX 78233–6635.

(15) Air Force Technical Applications Center (AFTAC): AFTAC/LSCS, 1030 South Highway, Suite A1A, Patrick AFB, FL 32925–6001.

(16) Air Intelligence Agency (AIA): AIA/DOOI, 102 Hall Boulevard, Suite 229, San Antonio, TX 78243–7029.

(17) Air Reserve Personnel Center (ARPC): ARPC/SCS, 6760 East Irvington Place, #6600, Denver, CO 80280–6600.

(18) Air Force Weather Agency (AFWA): HQ AFWA/SCI, 106 Peacekeeper Drive Suite 2N3, Offutt AFB, NE 68113–4039.

(19) Air Force History Support Office (AFHSO): AFHSO, 500 Duncan Avenue Box 94, Bolling AFB, DC 20332–1111.

(f) DRUs:

(1) Air Force Operational Test and Evaluation Center (AFOTEC): AFOTEC/SCM, 8500 Gibson Boulevard SE, Kirtland AFB, NM 87117–5558.

(2) 11th Wing: 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000 (if a person is unsure where to send a FOIA request for Air Force records, or is seeking records from the Office of the Secretary of the Air Force, or other Headquarters Air Force records, use this address).

(3) United States Air Force Academy (USAFA): 10 CS/SCBD, 2304 Cadet Drive, Suite 232, USAFA, CO 80840–5060.

(g) Selected subordinate units: Air Force Communications Agency (AFCA): HQ AFCA/CCQI, 203 West Losey Street, Room 1022, Scott AFB, IL 62225–5203.

(h) Organizations which include air force elements:

(1) Army and Air Force Exchange Service (AAFES): HQ AAFES/GC–E, P.O. Box 660202, Dallas, TX 75266–0202.

(2) National Guard Bureau (NGB)/Air National Guard: NGB–AD, 2500 Army Pentagon, Washington, DC 20310–2500. (FOIA requests concerning Air National Guard IG records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000.)

§ 806.27 Samples of Air Force FOIA processing documents.

(a) This section includes suggested language in paragraph format that tracks Air Force and DoD FOIA guidance. The rest of the body of letters and memorandums should comply with Air Force administrative guidance. Each MAJCOM may elect to prepare their own verbiage to meet their specific needs, so long as FOIA processing actions are consistent with guidance in DoD 5400.7–R and this part. In this section, language in parentheses is for explanatory purposes only. Do not include any of the parenthetical language of this section in your FOIA correspondence. When optional language must be selected, the optional language will be presented within parentheses. Use only the portions that apply to the specific request or response.

(b) Initial receipt of Freedom of Information Act request.

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). We will provide you our release determination by (enter date that is 20 workdays from date you received the request). (Based on our initial review, we believe we cannot process your request within 20 workdays.) (If "cannot" is used, add appropriate explanation; examples follow.) Please contact (name and commercial telephone number) if you have any questions and refer to case number #######.

(c) Interim response:

Your request will be delayed because: all or part of the responsive records are not located at this installation; (and/or) Processing this FOIA request will require us to collect and review a substantial number of records (and/or) Other Air Force activities or other agencies (if applicable) to include the submitter of the information, need to be involved in deciding whether or not to release the responsive records. We expect to reply to your request not later than (give a date that is not more than 30 workdays from the initial receipt of the request); (or) If processing the FOIA request will take more than the allowed time limits to respond). We find we are unable to meet the time limits imposed by the FOIA in this instance because (tell the requester the reason for the delay) (example: the records are classified and must be reviewed for possible declassification by other activities or agencies). We anticipate completing your request by (date).

(When charging fees is appropriate.) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. Based on the information in your request, we have determined your fee category is (commercial/educational or noncommercial scientific institution or news media/all others). As a result, you (if commercial category) are required to pay all document search, review and duplication costs over $15.00. (or) As a result, you (if educational or noncommercial scientific institution or news media) will be provided the first 100 pages free of charge; you are required to pay any duplication costs over and above those amounts. (or) As a result, you will be provided the first 2 hours of search time and the first 100 pages free of charge; you are required to pay any search and duplication costs over and above those amounts.

(d) Request for a more specific description:

Your request does not sufficiently describe the desired records. The FOIA applies to existing Air Force records; without more specific information from you, we cannot

identify what documents might be responsive to your request. Please give us whatever additional details you may have on the Air Force records you want. Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number and dates it covered? Our address is (include name and complete mailing address), our fax number is (give fax number), our e-mail address is (optional—give complete e-mail address). Based on the original request you sent us, we are unable to respond.

(e) Single letter acknowledging receipt of request and giving final response. (If you can complete a FOIA request within the statutory 20-workday processing period, Air Force elements may elect to send a single letter to the requester, along with responsive records which are released to the requester in full).

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). A copy (or) Copies of (describe the record(s) being released) (is/are) releasable and (is/are) attached.

(f) Collection of fees:

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category) fee category. In your case, we have assessed a charge of $____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.) Please make your check payable to (appropriate payee) and send it to (give your complete mailing address) by (date 30 days after the letter is signed). (or) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category); however, in this case, we have waived collecting fees.

(g) Multitrack processing letters to FOIA requesters. (When using the multitrack FOIA processing system, determine which of the following paragraphs to include in your letters to the requester. To the extent it may apply, include language from paragraph 2 of the sample. If a requester asks for expedited processing, answer carefully if you decide not to provide expedited processing, because requesters may appeal denial of their request for expedited processing. Advise requesters placed into the complex track in writing how they can simplify their request to qualify for the simple track.)

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). Because our organization has a significant number of pending FOIA requests, which prevents us from making a response determination within 20 workdays, we have instituted multitrack processing of requests. Based on the information you provided, we have placed your request in the (simple or complex) track. We have assigned number ##### to identify your request; should you need to contact us about your request, please write or call (name and telephone) and use this number to assist us in responding more promptly.

Based on our current backlog, we expect to respond to your request not later than (give an estimated date). Our policy is to process requests within their respective tracks in the order in which we receive them. We do process each FOIA request as quickly as we can.

(h) If the request is placed in the complex track:

In your case, processing your request is complex because (give basic reasons this is a complex case: request was vague or complicated; the records sought are voluminous; multiple organizations will have to work on this request; records are classified; responsive records came from another command/another service/a nongovernment source; responsive records were part of the Air Force's decision-making process, and the prerelease review will require policy determinations from different Air Force elements; records describe law enforcement activities; records involve foreign policy issues; due to the nature of your request and/or the nature of our computer system, responding to your request or providing a response in the electronic format you requested will be technically complex, etc.). Simplifying your request might permit quicker processing in the following ways: (describe ways the search could be narrowed to fewer records, or ways policy issues could be avoided, etc.) Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number? Please give us whatever additional details you may have on the Air Force records you are seeking, so we can attempt to streamline the processing of your request. Our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (optional—give complete e-mail address).

(i) If the requester asks that you expedite their request:

Because individuals receiving expedited processing may receive a response before other earlier requesters, there are administrative requirements you must meet before we can expedite a request. In your request, you asked that we expedite processing. In order for us to expedite a request, the requester must provide a statement certifying the reasons supporting their request are true and correct to the best of their knowledge.

In the second category, "urgently needed" means the information itself has a particular value that it will lose if it is not disseminated quickly. Ordinarily this means the information concerns a breaking news story of general public interest. Historic information, or information sought for litigation or commercial activities usually would not qualify for expedited processing in the second category. Also, the fact that a news organization has an internal broadcast or publication deadline, so long as the deadline was unrelated to the nature of the information itself (for example, the information was not a breaking news story of general public interest) would not make the information "urgently needed."

In this case, we have determined your FOIA request (will/will not) receive expedited processing. We came to this conclusion because you (did/did not) demonstrate you need the information because failure to obtain the records on an expedited basis (could or could not) reasonably expect to pose an imminent threat to life or physical safety of an individual (or) the information (is or is not) urgently needed in order to inform the public about actual or alleged Federal Government activity (or) failure to obtain the records on an expedited basis (could or could not) reasonably expect to lead to an imminent loss of substantial due process rights, (or) release (would or would not) serve a humanitarian need by promoting the welfare and interests of mankind (and/or) your request for expedited processing did not meet the statutory requirements of the FOIA; you did not provide enough information to make a determination of compelling need for the information you requested (and/or) you did not properly certify your request.

(j) If you deny a request for expedited processing:

If you consider our decision not to expedite your request incorrect, you may appeal our decision. Include in your appeal letter the reasons for reconsidering your request for expedited processing, and attach a copy of this letter. Address your appeal to Secretary of the Air Force through (address of MAJCOM FOIA office). In the meantime, we will continue to process your request in the (simple/complex) processing track.

(k) Certification, computer systems manager (electronic records or format requested).

(When answering a request for electronic records, based on the configuration of your hardware and/or software, certain factors may make a particular request complex. Have your computer system manager advise you whether or not they can create the new record/format on a "business as usual" basis. If producing the record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment, you do not need to process the request. The FOIA office needs to get a certification from the computer systems manager to document this determination to support their response. Possible language for this certification is provided below.)

I, (rank/grade and name) am the computer systems manager for (organization with electronic records responsive to FOIA request). In consultation with (FOIA office), I have considered the FOIA request of

(requester's name), our ##### (FOIA identifier), which asked for (describe electronic record or format). We (do/do not) have electronic records that are responsive to this request (or) data that we (can/cannot) configure into the requested format. (If there are electronic records) The existing electronic records (do/do not) contain nonreleasable data that we (can/cannot) remove from the electronic record. Because of the way our (computer system/database/software) (use all that apply, specify hardware and/or software nomenclature if possible; for example, IBM ###, Microsoft Excel) is configured, creating the electronic record (or) modifying the existing record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment (describe how responding would interfere and time/manpower resources required, give estimated reprogramming time, if possible). I have applied the DoD "standard of reasonableness" in considering this request. I understand that when the capability exists to respond to a FOIA request that would require only a "business as usual" approach to electronically extract the data and compile an electronic record or reformat data to satisfy a FOIA request, then creation of the electronic record or reformatting the data would be appropriate. In this case, a significant expenditure of resources and manpower would be required to compile the electronic record (or) reformat existing data. This activity would cause a significant interference with the operation of our automated information system. I certify creation of the electronic record (or) reformatting existing data in order to respond to this request would not be reasonable, under the circumstances.

Signature

(Date Signed) (Signature Block)

(Note: Some electronic data requests may include a request for software. You may have to release government-developed software that is not otherwise exempt, if requested under the FOIA. Exemptions 1—classified software, 2—testing, evaluation, or similar software, 3—exempt by statute, 5—deliberative process/privileged software, and 7—law enforcement operations software may apply, based on the nature of the requested software. If the software is commercial off-the-shelf software, as opposed to software developed by the government, the software may qualify to be withheld from release under FOIA exemption 4.

(l) "No (paper or electronic) records" or "requested format not available" letters.

This is in response to your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received), our number #####.

A thorough search by (identify the unit(s) that tried to locate responsive records) did not locate any records responsive to your request. (If the requester asked questions, and there are no responsive records that would provide the answers to those questions): The FOIA applies to existing Air Force records; the Air Force need not create a record in order to respond to a request.

(or) A thorough assessment by the OPR and the computer systems manager has determined we cannot provide the (electronic record data) in the format you requested. (If this can be done on a "business as usual basis):" (Paper copies American Standard Code for Information Interchange (ASCII) files) of the data you requested are attached.

If you interpret this "o records" response as an adverse action, you may appeal it in writing to the Secretary of the Air Force. Your appeal should be postmarked no later than 60 calendar days from the date of this letter. Address your letter as follows: Secretary of the Air Force, Thru: (MAJCOM FOIA Office), (mailing address).

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter category) fee category; however, in this case, we have waived fees. (If paper copies or ASCII files are provided:) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. In your case, as a requester in the fee category of (add appropriate category), we have assessed a charge of $____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.) Please make your check payable to (appropriate payee) and send it to (give your complete mailing address) by (date 30 days after the letter is signed).

(m) Referral or coordination letters. (These letters are to tell the requester all or part of the request was referred to another Air Force organization, to refer or coordinate the request to another federal government organization, and to advise a nongovernment submitter a FOIA request was received for information they submitted.)G56

(1) Letter to requester.

(If all or part of a request has been referred, write to the requester:) Your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) received on ## Month year (date received), our number #####, was referred (or) must be coordinated with (give mailing address of the FOIA office to which you are referring all or part of the request, the identity of the federal government organization you are either coordinating with or are referring all or part of the request to, or that you must coordinate with the nongovernment submitter of responsive information). (On referrals:) That office will process (all/part) of your request (describe which part is being referred if the entire request is not being referred) and they will respond directly to you. (On coordinations:) That organization has a significant interest in the records (or) created the records that may answer to your request. (Before notifying a requester of a referral to another DoD component or federal agency, consult with them to determine if their association with the material is exempt. If so, protect the association and any exempt information without revealing the identity of the protected activity.) (When a nongovernment submitter is involved:) The nongovernment submitter of information that may answer your request needs time to respond to the possible release of information under the FOIA.

Because we must refer (or) coordinate your request outside our organization, your request will be delayed. We will determine whether any records are available; as soon as is practicable, a decision will be made whether to release or to withhold from disclosure any responsive records under the FOIA, 5 U.S.C. 552. Your request will be processed as expeditiously as circumstances permit.

(2) Letter to another government agency.

(If all or part of a request was referred or requires coordination, write to the government entity): On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), Attachment 1, dated ## Month year, for (summarize the request). Based on our assessment of that request, our number #####, we need to (refer/coordinate) (all/part) of that request to you (describe which part is being referred or coordinated, if it was not the entire request). (Name and phone number of person who agreed to the referral or coordination) accepted this referral (or) coordination action was on (date). We notified the requester of this action (see § 806.31).

We (do/do not) hold records responsive to this request. (If do hold is used:) Copies of responsive records located in our files are included at Attachment 3 to assist you in making your assessment on the releasability of (our/your) related records. If you need to contact us, our phone number and address is (give name, phone and complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(3) Letter to submitter of contract-related information.

(If contractor-submitted information is involved, write to the submitter:) On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Information you submitted to the Air Force was identified as responsive to this request, see copies attached.

To determine the releasability of the information contained in these documents and to give you the maximum protection under the law, please review the attached documents and give us the information outlined in § 806.31. If you feel the information is privileged or confidential, consists of proprietary commercial or financial information, and otherwise meets the statutory requirements for withholding

the information from release under FOIA exemption 4, 5 U.S.C. 552(b)(4), respond to us in writing not later than ## working days from the date of this letter (usually 30 calendar days). If you object to release of this information under the FOIA, identify the items, lines, columns or portions you believe we should withhold from release.

You will also need to provide a written explanation of how release would adversely impact or cause harm to your competitive position, your commercial standing, or other legally protected interests. An assertion that "we should deny because all of the information was submitted in confidence" or "deny because all of the information was marked as proprietary in nature" would not justify withholding of the requested information under the FOIA. If you need to contact us, call or write (give name), phone number is (give commercial number), our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(4) Letter requesting State Department coordination. (If the State Department is involved in coordinating on a request, fax or e-mail 11 CS/SCSR so they can inform SAF/IA if appropriate).

On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Because of the nature of this request, we were advised by (note the individual and organization who told you to coordinate the request with the State Department; this may be a MAJCOM or Combatant Command—give telephone and facsimile numbers if known) we need to coordinate this request with the Department of State. In accordance with DoD 5400.7–R, Air Force Supplement, we are informing you of their involvement in this FOIA request. (Provide any specifics available.) Air Force records are involved in this action. If you need to contact us, our phone number is (give commercial and DSN numbers), our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(n) Certification of initial classification or declassification authority (When denying a FOIA request, in whole or in part, because the information requested is classified, the initial classification authority, his or her successor, or a declassification authority, needs to determine if the records are "properly and currently classified," and therefore must be withheld from release under FOIA exemption (b)(1); also, you need to determine that you cannot release any reasonably segregable additional portions. Language that certifies such a determination was made on a FOIA request involving classified records follows).

(1) Sample certification format—all information remains classified.

I, (rank/grade and name) am the initial classification authority (or) the successor to the original initial classification authority (or) the declassification authority for (give an unclassified description of the records concerned). In consultation with (FOIA office), I have assessed the FOIA request of (requester's name), our ##### (FOIA identifier), for records that were properly classified at the time of their creation and currently remain properly classified in accordance with Executive Order (E.O.) 12958, National Security Information, (or) contain information that we have determined is classified in accordance with E.O. 12958 Section 1.5(__) (or) in accordance with E.O. 12958 Section 1.5(__) and is also exempt from declassification in accordance with Section 1.6(__) of the E. O. (or if the record is more than 25 years old) contain information that we have determined is exempt from declassification in accordance with E.O. 12958 Section 3.4(b)(__). Unauthorized release could cause (for TOP SECRET, use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage) damage to national security. There are no reasonably segregable portions that we can release. Consequently release of this information is denied pursuant to 5 U.S.C. 552(b)(1).

Signature

(Date Signed) (Signature Block)

(2) Sample certification format—portions remain classified.

I, (rank/grade and name) am the initial classification authority (or) the successor to the original initial classification authority (or) the declassification authority for (give an unclassified description of the records concerned.) In consultation with (FOIA office), I have assessed the FOIA request of (requester's name), our ##### (FOIA identifier), that asked for records, (or) portions of which were properly classified at the time of their creation. Portions of the records currently remain properly classified in accordance with E.O. 12958. The bracketed information is currently and properly classified in accordance with Section 1.5 (add appropriate subparagraph), E.O. 12958, and is also exempt from declassification in accordance with Section 1.6(__) of the Executive Order (or if the record is more than 25 years old) contain information that we have determined is exempt from declassification in accordance with E.O. 12958 Section 3.4(b)(__). Unauthorized release could cause (for TOP SECRET use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage) damage to national security. There are no other reasonably segregable portions that we can release. Consequently this information is denied pursuant to 5 U.S.C. 552(b)(1).

Signature

(Date Signed) (Signature Block)

(o) Letter to a requester who has withdrawn their request or appeal. (If a FOIA requester has withdrawn a FOIA request or appeal, sending a final letter to the requester to close the file may be wise. Suggested language to the requester follows):

We received your Freedom of Information Act (FOIA) request (or) appeal dated ## Month year, on ## Month year (date received). After sending us your request (or) appeal, you indicated by (facsimile, letter) that you wished to withdraw your request (or) appeal. We have, therefore, closed your file without further action.

(p) Letter to a requester who has appealed after the 60-day deadline. (We will not process FOIA appeals received after the 60-day time limit, unless the requester provides adequate justification for failing to comply. If you receive a late appeal, and it gives inadequate justification for failing to comply, the FOIA office will advise the requester their appeal was closed; suggested language for a letter to an untimely requester follows.)

We received your Freedom of Information Act (FOIA) appeal dated ## Month year, on ## Month year (date received). You did not appeal within 60 days of the postmarked date of our denial letter as outlined in our agency regulation. Therefore, we are closing our file.

(q) Letter to a requester who has appealed. (There are occasions when, on reconsideration, an IDA grants all or part of an appeal. When sending their appeal to higher headquarters, notify the requester. Suggested language to a requester who has appealed follows):

We received your Freedom of Information Act (FOIA) appeal, our number #####, dated ## Month year, on ## Month year (date received). We considered the issues raised in your appeal carefully. We have decided to grant (or) partially grant your appeal.

(If you grant all or part of the appeal): Upon reconsideration, we are releasing the requested records (or) granting your request. (If the appeal is only partially granted, describe what portions remain in dispute). (If applicable): We are releasing and attaching all or portions of the responsive records. (If applicable): We will continue processing your appeal for the remaining withheld (records/information).

§ 806.28. Records with special disclosure procedures.

Certain records have special administrative procedures to follow before disclosure. Selected publications that contain such guidance are listed below.

(a) AFI 16–701, Special Access Programs.
(b) AFI 31–206, Security Police Investigations.
(c) AFI 31–501, Personnel Security Program Management.
(d) AFI 31–601, Industrial Security Program Management.
(e) AFI 36–2603, Air Force Board for Correction of Military Records.

(f) AFI 36–2706, Military Equal Opportunity and Treatment Program.
(g) AFI 36–2906, Personal Financial Responsibility.
(h) AFI 36–2907, Unfavorable Information File (UIF) Program.
(i) AFI 40–301, Family Advocacy.
(j) AFI 41–210, Patient Administration Functions.
(k) AFI 44–109, Mental Health and Military Law.
(l) AFI 51–201, Administration of Military Justice.
(m) AFI 51–301, Civil Litigation.
(n) AFI 51–303, Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights.
(o) AFI 51–501, Tort Claims.
(p) AFI 51–503, Aircraft, Missile, Nuclear and Space Accident Investigations.
(q) AFI 51–504, Legal Assistance, Notary and Preventive Law Programs.
(r) AFI 51–1102, Cooperation with the Office of the Special Counsel.
(s) AFI 61–204, Disseminating Scientific and Technical Information.
(t) AFI 61–303, Licensing Inventions Made Under Cooperative Research and Development Agreements.
(u) AFI 71–101, Volume 1, Criminal Investigations, and Volume 2, Protective Service Matters.
(v) AFI 84–101, Historical Products, Services, and Requirements.
(w) AFI 90–301, Inspector General Complaints.
(x) AFI 91–204, Safety Investigations and Reports.

§ 806.29. Administrative processing of Air Force FOIA requests.

(a) This section is a checklist format of processing steps and explanations of Air Force and DoD guidance. Each MAJCOM may elect to prepare its own checklists to tailor FOIA processing actions within its own organizations to meet their specific needs, so long as it remains consistent with guidance contained in DoD 5400.7–R, DoD Freedom of Information Act Program, and this part.

(b) Procedures: FOIA requests.

(1) Note the date the request was received, give the request a unique identifier/number, and log the request.

(2) Assess the request to determine initial processing requirements:

(3) Determine what Air Force elements may hold responsive records.

(i) Are responsive records kept at the same or different installations?

(ii) Is referral of (all/part) of the request required?

(4) Determine appropriate processing track (simple/complex/expedited). (Air Force FOIA offices without backlogs do not multitrack FOIA requests.)

Note: Requesters have a right to appeal an adverse tracking decision (for example, when it is determined their request will not be expedited). Also, if their request qualifies for the complex track, tell requesters so they may limit the scope of their request in order to qualify for the simple track. FOIA managers must assess a request before placing it into a specific processing track, and must support their actions should the requester appeal. If a request is determined to be complex, or is not expedited when the requester sought expedited processing, you must advise the requester of the adverse tracking decision in writing. See § 806.27 for sample language for this kind of letter to a requester.

(i) Simple. Defines a request that can be processed quickly, with limited impact on the responding units. The request clearly identifies the records, involves no (or few) complicating factors (e.g., there are few or no responsive records, involves only one installation and there are no outside OPRs, involves no classified records (Exemption 1), a law exempts the responsive records from disclosure (Exemption 3), no contractor-submitted records (Exemption 4), no deliberative process/privileged materials (Exemption 5), records contain no (or limited) personal privacy information/did not come from Privacy Act systems of records concerning other individuals (Exemption 6), release of records would have minimal impact on law enforcement (Exemption 7); no time extensions expected, other than the additional 10-workdays allowed in situations outlined in the FOIA). If the requested data must come from electronic records, response can be completed on a "business-as-usual" basis; requires no (or limited) reprogramming of automated information systems and would cause no significant interference with operation of information systems by processing a simple request/providing a response in the electronic format requested.

(ii) Complex. Defines a request whose processing will take substantial time, will cause significant impact on responding units. Complications and delays are likely (e.g., the request is vague (poor description of records, unclear who or when records were created), records are massive in volume, multiple organizations will receive tasking, records are classified (Exemption 1), records came from another command/service/a nongovernment source (Exemption 4), records are part of the Air Force's decision-making process, and not incorporated into a final decision (IG/audit reports, legal opinions, misconduct or mishap investigations etc.) or are attorney-client records (Exemption 5), records are largely personal information on another individual or came from Privacy Act systems of records (Exemption 6), records describe law enforcement activities or information from (and/or identities of) confidential sources (Exemption 7); response cannot be completed on a "business as usual" basis and would require extensive reprogramming or cause significant interference with operation of the automated information systems. (Advise requester, in writing, of right to limit the scope of their request in order to qualify for simple track.)

(iii) An expedited request is when a requester asks for expedited processing and explains the compelling need (imminent threat to life or physical safety; urgently needed by a person primarily engaged in disseminating information; due process; or humanitarian need) for the requested information. In order to receive expedited processing, requesters must provide a statement certifying their "demonstration" (description) of their specific "compelling need" or due process/humanitarian need is true and correct to the best of their knowledge. When a requester seeks expedited processing, FOIA offices must respond in writing to the requester within 10 calendar days after receipt of the request approving or denying their request for expedited processing. Requesters have a right to appeal an adverse decision (e.g., when it is determined their requests will not be expedited). There are four categories of FOIA requests that qualify for expedited processing:

(A) The requester asserts a "compelling need" for the records, because a failure to obtain records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(B) The requester asserts a "compelling need" for the records, because the information is "urgently needed" by an individual engaged in disseminating information to inform the public (primarily news media requesters; and could also include other persons with the ability to disseminate information).

Note: "Urgently needed," in this case, means the information has a particular value that will be lost if it is not disseminated quickly. This normally would apply to a breaking news story of general public interest. Information of historical interest only, or sought for litigation or commercial activities would not qualify, nor would the fact a news media entity had an internal broadcast deadline of its own, which was unrelated to the "news breaking nature" of the information itself, cause the requested information to qualify as "urgently needed."

(C) Failure to obtain records quickly could cause imminent loss of substantial due process rights or providing the information quickly would serve a "humanitarian need" (i.e., disclosing the information will promote the welfare and interests of mankind). While FOIA requests falling into these third and fourth categories can qualify for expedited processing, process them in the expedited track behind the requests qualifying for expedited processing based on "compelling need" (the first two types of expedited FOIA requests).

(5) Determine fee category of requester (commercial/educational—noncommercial scientific institution—news media/all others) and assess fee issues. When all assessable costs are $15.00 or less, waive fees automatically for all categories of requesters. Assess other fee waiver or reduction requests on a case-by-case basis.

(6) Apply fee waiver/fee reduction criteria in appropriate cases (when requester asks for fee waiver/reduction).

(7) Find the responsive Air Force records (if any).

(i) Send the request to the appropriate OPRs to search for responsive records and to decide whether to recommend release of any responsive records. Include a DD Form 2086, Record of Freedom of Information (FOI), or a DD Form 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, in each request. The OPR must complete and return the appropriate forms and statements to the FOIA office.

(ii) If the OPRs find no responsive records, or if the OPRs desire to withhold any responsive records from release to the requester, the OPRs must provide a written certificate detailing either their unsuccessful search, or their reasons why the documents should be withheld from release under the FOIA; the written OPR statements must accompany the copies of the records the OPR desires to withhold as the FOIA action is processed (e.g., include it in any denial or appeal file).

Note: If any part of a FOIA request is denied, and the requester appeals that denial, include all forms, certificates and documents prepared by the OPRs in the FOIA appeal package required in paragraph (d)(5) of this section.

(c) Contacts with FOIA requesters and non-Air Force submitters of data.

(1) Contacts with Air Force elements. A FOIA request is considered "received" (and therefore ready to process) when the FOIA office responsible for processing the request physically receives it, when the requester states a willingness to pay fees set for the appropriate fee category, or, if applicable, when the requester has paid any past FOIA debts and has reasonably described the requested records. Keep hard/paper copies of all memoranda documenting requester contacts with Air Force elements regarding a pending FOIA request in the requester's FOIA file. If the requester contacts Air Force elements telephonically about a pending FOIA request, the Air Force member participating in the conversation must prepare notes or memorandums for record (MFR), and keep those notes or MFRs in the requester's FOIA file. If any part of a FOIA request is denied, and the requester appeals that denial, submit documentation of requester contacts with Air Force elements in chronological order in the FOIA appeal package (see paragraph (d)(1) of this section).

(2) Contacts with the FOIA Requester. See § 806.27 for samples of language to use in various types of Air Force FOIA letters. If any part of a FOIA request is denied, and the requester appeals that denial, submit documents sent by Air Force elements to the requester in the FOIA appeal package in chronological order (see paragraph (d)(5) of this section). Letters that Air Force FOIA offices may need to send to a FOIA requester include:

(i) An initial notification letter that the FOIA request was received. This letter may advise the requester that processing of the FOIA request may be delayed because:

(A) All or part of the requested records are not located at the installation processing the FOIA request (see § 806.29(c)(2)(ii)).

(B) An enormous number of records must be collected and reviewed.

(C) Other Air Force activities or other agencies, to include (if applicable) the nongovernment submitter of information, need to be involved in deciding whether or not to release the records.

(D) If you cannot complete processing of a FOIA request within 20 workdays, advise the requester of the reasons for the delay and give a date (within 30 workdays after receiving the request) when the requester can expect a final decision.

(ii) The initial notification letter may advise the requester all/part of the request was referred to another Air Force element or government activity.

(iii) The initial notification letter may advise the requester of the appropriate fee category. In cases where fees are appropriate, and requesters have not agreed to pay for responsive records and fees are likely to be more than $15.00, seek assurances that the requester agrees to pay appropriate fees. If more information is needed to make a fee category determination, or to determine whether fees should be waived/reduced, inform the requester. FOIA offices may determine fee waiver/reduction requests before processing a FOIA request; if a fee waiver/reduction request is denied, the requester may appeal that denial; he/she may also appeal an adverse fee category determination (e.g., asked for news media fees, but was assessed commercial fees.)

(iv) The initial notification letter may advise the requester the request does not sufficiently describe the desired records. If possible, help the requester identify the requested records by explaining what kind of information would make searching for responsive records easier.

(v) If Air Force elements can complete a FOIA request within the statutory 20-workday processing period, you may elect to send only a single letter to the requester, along with responsive records that are released to the requester in full.

(vi) A letter to the requester that the responding FOIA office uses multitrack processing due to a significant number of pending requests that prevents a response determination from being made within 20 workdays. This letter advises the FOIA requester that track the request is in (simple/complex); in this letter, if expedited processing was requested, the requester is advised if the request will be expedited or not. If the request is found to be complex, you must advise the requester he/she may alter the FOIA request to simplify processing. If it is determined the request will not be expedited, the requester must be told he/she can appeal. (This may be the initial letter to the requester, for Air Force elements with multitrack processing; if that is the case, this letter may include sections discussed in § 806.29(c)(2)(i)).

(vii) Subsequent letters to the requester on various subjects (for example, releasing requested records; advising reasons for delays; responding to the letters, facsimiles or calls; advising the requester of referrals to other Air Force units or government activities; involves a non-Air Force submitter, *etc.*).

(viii) A release letter to the requester, forwarding releasable responsive records with a bill (if appropriate).

(ix) A "no records" response letter to the requester if there are no responsive records, or, a denial letter, if any responsive records are withheld from release. FOIA managers may sign "no records" or "requested format not available" responses; they may also sign

a letter that advises a requester the fee category sought was not determined to be appropriate, or that a fee waiver/fee reduction request was disapproved, or that a request for expedited processing has been denied. An IDA must sign any letter or document withholding responsive records. When denying records, you must tell the requester, in writing: the name and title or position of the official who made the denial determination, the basis for the denial in enough detail to permit the requester to make a decision concerning appeal, and the FOIA exemptions on which the denial is based. The denial letter must include a brief statement describing what the exemptions cover. When the initial denial is based (in whole or in part) on a security classification, this explanation should include a summary of the applicable executive order criteria for classification, as well as an explanation of how those criteria apply to the particular record in question. Estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or, for records in other media, in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part. Indicate the size and location of the redactions on the records released. You must also tell the requester how he/she can appeal the denial.

(3) Contacts with non-Air Force submitters of data. Before releasing data (information or records) submitted from outside the Air Force, determine whether you need to write to the submitter of the data for their views on releasability of their data. In many cases, this non-Air Force data may fall under FOIA Exemption 4. If it appears you must contact the submitter of the data, advise the requester in writing that you must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information. Give the submitter a reasonable period of time (30 calendar days) to object to release and provide justification for withholding the documents. If the submitter does not respond, advise the submitter in writing that you have not received a reply and plan to release the records. Provide the submitter with the reasons the Air Force will release the records, and give the submitter your expected release date (at least 2 weeks from the date of your letter). This permits the submitter time to seek a temporary restraining order (TRO) in federal court, if they can convince the judge to issue such an order. See § 806.27 for samples of language to use in Air Force letters to both the FOIA requester and nongovernment submitters. Remember to include a copy of § 806.31 as an attachment to the letter sent to the nongovernment submitter.

(i) The notice requirements of this section need not be followed if the Air Force determines that the information should not be disclosed, the information has been lawfully published or officially made available to the public, or disclosure of the information is required by law.

(ii) If the submitter objects to release of the records, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter to the submitter a brief explanation and a specific release date at least 2 weeks from the date of the letter. Advise the submitter once a determination is made that release of the data is required under the FOIA, failure to oppose the proposed release will lead to release of submitted data. Also advise the requester such a release under the FOIA will result in the released information entering the public domain, and that subsequent requests for the same information will be answered without any formal coordination between the Air Force and the submitter, unless the information is later amended, changed, or modified. A person equal to, or higher in rank than, the denial authority makes the final decision to disclose responsive records over the submitter's objection.

(iii) When a previously released contract document has been modified, any contract documents not in existence at the time of an earlier FOIA request that are responsive to a later FOIA request for the same contract, will be processed as a first-time FOIA request for those newly created documents. Notify the nongovernment submitter of the pending FOIA action, and give them the same opportunity to respond as is detailed above. Passage of a significant period of time since the prior FOIA release can also require Air Force elements to comply with the notice requirements in this paragraph.

(d) Denying all or part of a request. When responsive records are withheld from release (denied), the appropriate offices must prepare a denial package for the IDA. Air Force elements must send the request, related documents, and responsive records through their IDA's FOIA office to the IDA for a decision. The denial package must include:

(1) The FOIA request and any modifications by the requester.

(2) A copy of the responsive records, including both records that may be released and records recommended for denial.

(3) Written recommendations from the OPRs and an Air Force attorney.

(4) The exemptions cited and a discussion of how the records qualify for withholding under the FOIA. This discussion should also include the reasons for denial: to deny release of responsive records requested under the FOIA, you must determine that disclosure of the records would result in a foreseeable harm to an interest protected by a FOIA exemption (or exemptions), that the record is exempt from release under one or more of the exemptions of the FOIA, and that a discretionary release is not appropriate.

(5) Any collateral documents that relate to the requested records. For example:

(i) If the requested records came from a non-Air Force or non-U.S. Federal Government submitter, include any documents from the submitter that relate to the release or denial of the requested records. If you are not sure whether or not the non-Air Force or non-U.S. Federal Government submitted information is potentially exempt from release under the FOIA, contact an Air Force attorney. FOIA Exemptions 3, 4, 5, 6, and 7 may apply.

(ii) If the requested records came from Privacy Act systems of records, include a written discussion of any Privacy Act issues.

(iii) If any requested records came from another Air Force element, or release of the requested records would affect another Air Force element, FOIA offices should coordinate with that other element. If the FOIA request is not completely referred to the other element, include documents from that element.

(iv) If any requested records are classified, include a written certification from a classification authority or declassification authority stating the data was properly classified originally, that it remains properly classified (per E.O. 12958), and, if applicable, that no reasonably segregable portions can be released.

(e) FOIA appeal actions.

(1) If an IDA, or a FOIA office responding on behalf of an IDA, withholds a record from release because they determine the record is exempt under one or more of the exemptions to the FOIA, the requester may appeal that decision, in writing, to the Secretary of the Air Force. The appeal should be accompanied by a copy of the denial

letter. FOIA appeals should be postmarked within 60 calendar days after the date of the denial letter, and should contain the reasons the requester disagrees with the initial denial. Late appeals may be rejected, either by the element initially processing the FOIA appeal, or by subsequent denial authorities, if the requester does not provide adequate justification for the delay. Appeal procedures also apply to the denial of a fee category claim by a requester, denial of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis of a determination not to grant expedited access to agency records, and for "no record" or "requested format not available" determinations when the requester considers such responses adverse in nature.

(2) Coordinate appeals with an Air Force attorney (and the OPR, if appropriate) so they can consider factual and legal arguments raised in the appeal, and can prepare written assessments of issues raised in the appeal to assist the IDA in considering the appeal. MAJCOM FOIA offices and 11 CS/SCSR (for OPRs at HQ USAF and SAF), send all appeals to the Secretary of the Air Force through AFLSA/JACL for consideration, unless the IDA has reconsidered the initial denial action, and granted the appeal.

(3) If a requester appeals a "no records" determination, organizations must search again or verify the adequacy of their first search (for example, if a second search would be fruitless, the organization may include a signed statement from either the records OPR or the MAJCOM FOIA manager detailing why another search was not practical). The appeal package must include documents (to include a certification from the records OPR) that show how the organization tried to find responsive records. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits will be required to support the adequacy of any searches conducted.

(4) General administrative matters. FOIA requesters may ultimately sue the Air Force in federal court if they are dissatisfied with adverse determinations. In these suits, the contents of the administrative appeal file are evaluated to determine whether the Air Force complied with the FOIA and its own guidance. Improper or inadequate appeal files make defending these cases problematic. Include all the documents related to the requester's FOIA action in the appeal file. If appeal file documents are sensitive, or are classified up to the SECRET level, send them separately to AFLSA/JACL, 1501 Wilson Boulevard, 7th Floor, Arlington, VA 22209–2403. Make separate arrangements with AFLSA/JACL for processing classified appeal file documents TOP SECRET or higher. Cover letters on appeal packages need to list all attachments. If a FOIA action is complicated, a chronology of events helps reviewers understand what happened in the course of the request and appeal. If an appeal file does not include documentation described below, include a blank sheet in proper place and mark as "not applicable," "N/A," or "not used." Do not renumber and move the other items up. If any part of the requester's appeal is denied, the appeal package must include a signed statement by the IDA, demonstrating the IDA considered and rejected the requester's arguments, and the basis for that decision. This may be a separate memorandum, an endorsement on a legal opinion or OPR opinion, or the cover letter which forwards the appeal for final determination. Include in the cover letter forwarding the appeal to the Secretary of the Air Force the name, phone number and e-mail address (if any) of the person to contact about the appeal. The order and contents of appeal file attachments follow.

(i) The original appeal letter and envelope.

(ii) The initial FOIA request, any modifications of the request by the requester or any other communications from the requester, in chronological order.

(iii) The denial letter.

(iv) Copies of all records already released. (An index of released documents may be helpful, if there are a number of items. If the records released are "massive" (which means "several cubic feet") and AFLSA/JACL agrees, an index or description of the records may be provided in place of the released records. Do not send appeal files without copies of released records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the released records in appeal files. If you do not send the released records to AFLSA/JACL when a FOIA requester has appealed a partial denial, retain a copy of what was released for 6 years.)

(v) Copies of all administrative processing documents, including extension letters, search descriptions, and initial OPR recommendations about the request, in chronological order.

(vi) Copies of the denied records or portions marked to show what was withheld. If your organization uses a single set of highlighted records (to show items redacted from records released to the requester), ensure the records are legible and insert a page in the appropriate place stating where the records are located. (An index of denied documents may be helpful, if there are a number of items. If the records denied are "massive" (which means "several cubic feet") and AFLSA/JACL agrees, an index or description of the records may be provided in place of the denied records. Do not send appeal files without copies of denied records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the denied records in appeal files. If you do not send the denied records to AFLSA/JACL, when a FOIA requester has appealed a denial, retain a copy of what was denied for 6 years.)

(vii) All legal opinions in chronological order. Include a point-by-point discussion of factual and legal arguments in the requester's appeal (prepared by an Air Force attorney and/or the OPR). If the IDA does not state in the cover letter he/she signed, that he/she considered and rejected the requester's arguments, asserting the basis for that decision (e.g., the IDA concurs in the legal and/or OPR assessments of the requester's arguments) include a signed, written statement containing the same information from the IDA, either as a separate document or an endorsement to a legal or OPR assessment. Include any explanation of the decision-making process for intra-agency documents denied under the deliberative process privilege and how the denied material fits into that process (if applicable).

§ 806.30. FOIA exempt information examples.

(a) Certain responsive records may contain parts that are releasable, along with other parts that the Air Force must withhold from release. Carefully delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to "read through the marking." In order to assist FOIA managers in redacting records, selected items appropriate to withhold in commonly requested Air Force records are illustrated below. When providing releasable portions from classified paragraphs, line through and do not delete, the classification marking preceding the paragraph.

(b) Exemption 1. Example used is an extract from a "simulated" contingency plan (all information below is fictional and UNCLASSIFIED; parenthetical information and marking is used for illustrative purposes only).

(U) Air Force members will safeguard all FELLOW YELLOW data (NOTE: FELLOW

YELLOW simulates an UNCLASSIFIED code name).

During the contingency deployment in Shambala, those members assigned to force element FELLOW YELLOW will cover their movements by employing specified camouflage and concealment activities while behind enemy lines. Only secure communications of limited duration as specified in the communications annex will be employed until FELLOW YELLOW personnel return to base. (Exemption 1)

(c) Exemption 2. Example used is an extract from a "simulated" test administration guide (all information below is fictional and is used for illustrative purposes only).

When administering the test to determine which technicians are ranked fully qualified, make sure to allow only the time specified in HQ AETC Pamphlet XYZ, which the technicians were permitted to review as part of their test preparation. For ease in scoring this exam, correct answers are A, A, B, B, A, B, C, C, A, B, D, D, C, C, C, D; the corresponding template for marking the standard answer sheet is kept locked up at all times when not in use to grade answer sheets. (Exemption "high" 2)

(d) Exemption 5. Example used is a simulated IG Report of Investigation (ROI) recommendation. All parenthetical information in this example is fictional and is used for illustrative purposes only:

Having interviewed the appropriate personnel and having reviewed the appropriate documents, I recommend additional training sessions for all branch personnel on accepted Air Force standards, and the Air Force pursue administrative or judicial disciplinary action with respect to Terry Hardcase. (Exemption 5)

(e) Exemption 6. Example used is a simulated personnel computer report on a military member selected for a special assignment (all information below is fictional; information and marking is used for illustrative purposes only.):

SSgt Doe, Kerry E.
Duty Title: Special Assistant to CINCPAC
Duty Station: Hickam AFB HI 11111–1111
Marital Status: Divorced

Home Phone: (112) 223–3344 (Exemption 6)

SSN: 111–11–1112
Office Symbol: CINCPAC/CCSA
Date Assigned: 12 June 1998
Dependents: 01

Date of Birth: 22 Jun 71

Home Address: 12 Anystreet, Downtown ST 11112

(f) Exemption 7. Example used is summary of a law enforcement report on a domestic disturbance at on-base family housing (all information below is fictional and all parenthetical information is used for illustrative purposes only):

At 2140, the law enforcement desk, extension 222–3456, took an anonymous call that reported a disturbance at 1234 Basestreet, quarters allegedly occupied by two military members. SrA Patrolman (names of law enforcement investigators usually are withheld under Exemptions 6 and 7(C)) arrived on the scene at 2155. SrA Patrolman met Nora Neighbor, (names of witnesses usually are withheld under Exemptions 6 and 7(C)) who was very agitated. Because she feared her neighbors would retaliate against her if they knew she reported their fight, she asked that her name not be released before she would talk. After she was promised her identity would remain anonymous, she stated: (Nora Neighbor became a confidential informant; data that could identify her, and in some cases, the information she related, should be withheld from release under Exemptions 6, 7(C) and (D).) "I heard cursing and heard furniture and dishes breaking. They fight all the time. I've seen Betty Battle (unless Betty is the requester, redact her name Exemptions 6 and 7(C)) with a black eye, and I also saw Bob Battle (unless Bob is the requester, redact his name Exemptions 6 and 7(C)) with bruises the day after they had their last fight, last Saturday night. This time, there was a tremendous crash; I heard a man scream "My Lord NO!" then I saw Betty Battle come out of the house with dark stains on her clothes—she got into her car and drove away. I could see this really well, because the streetlight is right between our houses; I'm the wife of their NCOIC. If only Nick, my husband, was here now, he'd know what to do! I haven't heard anything from Bob Battle." (Exemptions 6 and 7)

§ 806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of nongovernment contract-related information.

(a) The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

(b) In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government that is privileged or confidential. This generally includes information provided and received during the contracting process with the understanding that the Air Force will keep it privileged or confidential.

(c) Commercial or financial matter is "confidential" and exempt if its release will probably:

(1) Impair the government's ability to obtain necessary information in the future.

(2) Substantially harm the source's competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

(d) Applicability of exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

(1) Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

Note: Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2305(g) or 41 U.S.C. 423, if statutory requirements are met.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

(4) Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

(5) Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.

(6) Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320 to 2321 and 48 CFR, Chapter 2, 227.71–227.72.

(7) Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

(e) Submitter's Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.

(f) Pricing Information. Generally, the prices a contractor charges the government for goods or services would be released under the FOIA. Examples of releasable data include: bids submitted in response to an invitation for bids (IFB), amounts actually paid by the government under a contract, and line item prices, contract award price, and modifications to a contract. Unit prices contained in a contract award are considered releasable as part of the post award notification procedure prescribed by 48 CFR 15.503, unless they are part of an unsuccessful proposal, then 10 U.S.C. 2305(g) protects everything including unit price.

Appendix A to Part 806—References

Title 5, United States Code, Section 552, The Freedom of Information Act, as amended
Title 5, United States Code, Section 552a, The Privacy Act (as amended)
Title 10, United States Code, Section 2305(g), Prohibition on Release of Contractor Proposals
Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR) System
OMB Bulletin 95–01, 7 December 1994
OMB Memorandum, 6 February 1998
DoD 5200.1–R, Information Security Program, January 1997
AFI 16–701, Special Access Programs
AFI 31–206, Security Police Investigations
AFI 31–401, Information Security Program Management
AFI 31–501, Personnel Security Program Management
AFI 31–601, Industrial Security Program Management
AFI 33–129, Transmission of Information Via the Internet
AFI 35–205, Air Force Security and Policy Review Program
AFI 36–2603, Air Force Board for Correction of Military Records
AFI 36–2706, Military Equal Opportunity and Treatment Program
AFI 36–2906, Personal Financial Responsibility
AFI 36–2907, Unfavorable Information File (UIF) Program
AFPD 37–1, Air Force Information Management (will convert to AFPD 33–3)
AFI 37–124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33–324)
AFI 37–132, Air Force Privacy Act Program (will convert to AFI 33–332)
AFMAN 37–139, Records Disposition Schedule (will convert to AFMAN 33–339)
AFI 40–301, Family Advocacy
AFI 41–210, Patient Administration Functions
AFI 44–109, Mental Health and Military Law
AFI 51–201, Administration of Military Justice
AFI 51–301, Civil Litigation
AFI 51–303, Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights
AFI 51–501, Tort Claims
AFI 51–503, Aircraft, Missile, Nuclear and Space Accident Investigations
AFI 51–504, Legal Assistance, Notary and Preventive Law Programs
AFI 51–1102, Cooperation with the Office of the Special Counsel
AFI 61–204, Disseminating Scientific and Technical Information
AFI 61–303, Licensing Inventions Made Under Cooperative Research and Development Agreements
AFI 65–401, Relations With the General Accounting Office
AFI 71–101, Volume 1, Criminal Investigations
AFI 71–101, Volume 2, Protective Service Matters
AFI 84–101, Historical Products, Services, and Requirements
AFI 90–301, Inspector General Complaints
AFI 90–401, Air Force Relations With Congress
AFI 91–204, Safety Investigations and Reports

Appendix B to Part 806—Abbreviations and Acronyms

AFCA—Air Force Communications Agency
AFCIC—Air Force Communications and Information Center
AFRC—Air Force Reserve Command
AFI—Air Force Instruction
AFLSA/JACL—Air Force Legal Services Agency, General Litigation Division
AFMAN—Air Force Manual
AFPC/MSIMD—Air Force Personnel Center/Records Management, FOIA, and Privacy Act Office
AFPD—Air Force Policy Directive
ANG—Air National Guard
ASCII—American Standard Code for Information Interchange
CFR—Code of Federal Regulations
DFAS—Defense Finance and Accounting Service
DFOISR—Director, Freedom of Information and Security Review
DoD—Department of Defense
DRU—Direct Reporting Unit
EFOIA—Electronic Freedom of Information Act
ERR—Electronic Reading Room
FOA—Field Operating Agency
FOIA—Freedom of Information Act
FOUO—For Official Use Only
GAO—General Accounting Office
GILS—Government Information Locator Service
GPO—Government Printing Office
IDA—Initial Denial Authority
IG—Inspector General
IMPAC—International Merchant Purchase Authority Card
LOA—Letters of Offer and Acceptance
MAJCOM—Major Command
MFR—Memorandum for Record
NATO—North Atlantic Treaty Organization
NORAD—North American Aerospace Defense
NTIS—National Technical Information Service
OCR—Office of Corollary Responsibility
OMB—Office of Management and Budget
OPR—Office of Primary Responsibility
PA—Privacy Act
PAO—Public Affairs Office
PAS—Personnel Accounting Symbol
RCS—Reports Control Symbol
SAF—Secretary of the Air Force
SSN—Social Security Number
USAF—United States Air Force
U.S.C.—United States Code
WWW—World Wide Web

Appendix C To Part 806—Terms

Appellate Authority—The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA).
Denial—An adverse determination on no records, fees, expedited access, or not disclosing records.
Determination—The written decision to release or deny records or information that is responsive to a request.
Disclosure—Providing access to, or one copy of, a record.
Disclosure Authority—Official authorized to release records, normally division chiefs or higher.
FOIA Manager—The person who manages the FOIA Program at each organizational level.
FOIA Request—A written request for DoD records from the public that cites or implies the FOIA.
Functional Request—Any request for records from the public that does not cite the FOIA.
Government Information Locator Service (GILS)—An automated on-line card catalog of publicly accessible information.
Glomar Response—A reply that neither confirms nor denies the existence or nonexistence of the requested record.
Initial Denial Authority (IDA)—Persons in authorized positions that may withhold records.
Partial Denial—A decision to withhold part of a requested record.

Public Interest—The interest in obtaining official information that sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing.

Reading Room—A place where the public may inspect and copy, or have copied, releasable records.

Records—The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal Law in connection with the transaction of public business and in the agency's possession and control at the time the FOIA request is made. Records include notes, working papers, and drafts.

Redact—To remove nonreleasable material.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–29525 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

VOL
64
ISS
2
4
8
DE
28
999
UMI

federal register

Tuesday
December 28, 1999

Part IX

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 28 and 52
Federal Acquisition Regulation; Construction Industry Payment Protection Act of 1999; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAR Case 1999–302]

RIN 9000–AI30

Federal Acquisition Regulation; Construction Industry Payment Protection Act of 1999

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The proposed rule also provides enhanced payment protection for Government contracts not subject to the Miller Act. This added protection is not required by the CIPP but is considered beneficial to add consistency to the rule and to afford added protection to subcontractors and suppliers on contracts less than $100,000.00.

DATES: Interested parties should submit comments in writing on or before February 28, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: *farcase.1999-302@gsa.gov*. Please submit comments only and cite FAR case 1999–302 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ralph O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 1999–302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises FAR 28.102 and the clauses at 52.228–13, 52.228–15, and 52.228–16 to implement the CIPP Act (Pub. L. 106–49) and to enhance payment protection for Government contracts not subject to the Miller Act.

The Miller Act (40 U.S.C. 270a, *et seq.*) requires contractors performing Government construction contracts that exceed $100,000 to furnish performance and payment bonds. Previously, the required payment bond did not exceed 50 percent of contract price, and was capped at a ceiling of $2.5 million.

The CIPP Act substitutes a requirement that the payment bond generally must equal the contract price. In addition, the CIPP Act makes two procedural changes to the Miller Act, adding a requirement regarding subcontractor waiver of the right to sue on the payment bond, and modernizing the requirements for the delivery of notice by subcontractors having right of action on the payment bond.

The proposed rule amends the clause at FAR 52.228–15 to address the statutory requirement regarding waiver of the right to sue on the payment bond. The delivery of notice by subcontractors having right of action on the payment bond is not an issue addressing either the contracting officer or the contractor, and is not addressed in the proposed rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule requires prime contractors to provide increased payment protection for subcontractors that furnish labor or materials on Federal construction projects. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The primary objective of this rule is to enhance payment protection for subcontractors that furnish labor or materials on Federal construction projects. The rule will require all contractors to which the Government awards construction contracts exceeding $25,000 to obtain a payment bond equal to the contract price, unless the contracting officer determines that to be impractical or unnecessary. The rule is expected to benefit subcontractors seeking payment, without resulting in substantial price increases for the prime contractor obtaining the increased payment protection. We estimate that the Executive branch annually awards 54,000 construction contracts exceeding $25,000, of which half (27,000 contracts) are awarded to approximately 7,500 small business firms. We estimate that approximately 60,000 small business subcontractors could benefit from increased payment protection.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subparts 28 and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1999–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: December 17, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 28 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Revise section 28.102–2 to read as follows:

28.102–2 Amount required.

(a) *Definition.* As used in this subsection—

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract

price does not include the price of any options, except those options exercised at the time of contract award.

(b) Contracts exceeding $100,000 (Miller Act).

(1) *Performance bonds.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of performance bonds must equal—

(i) 100 percent of the original contract price; and

(ii) If the contract price increases, an additional amount equal to 100 percent of any such increase.

(2) *Payment bonds*—

(i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of any such increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Contracts exceeding $25,000 but not exceeding $100,000.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of the payment bond or the amount of alternative payment protection must equal—

(1) 100 percent of the original contract price; and

(2) If the contract price increases, an additional amount equal to 100 percent of any such increase.

(d) *Securing additional payment protection.* If the contract price increases, the Government must secure any needed additional protection by directing the contractor to—

(1) Increase the penal sum of the existing bond;

(2) Obtain an additional bond; or

(3) Furnish additional alternative payment protection.

(e) *Reducing amounts.* The contracting officer may reduce the amount of security to support a bond, subject to the conditions of 28.203–5(c) or 28.204(b).

3. Revise the section heading and paragraph (a) of section 28.102–3; and add a sentence at the end of paragraph (b) to read as follows:

28.102–3 Contract clauses.

(a) Insert a clause substantially the same as the clause at 52.228–15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed $100,000. The contracting officer may decrease the penal amount of the performance or payment bonds in accordance with 28.102–2(b). If the provision at 52.228–1 is not included in the solicitation, the contracting officer must set a period of time for return of executed bonds.

(b) * * * The contracting officer may decrease the required percentage in paragraph (b) of the clause in accordance with 28.102–2(c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.228–13 [Amended]

4. Amend section 52.228–13 by revising the date of the clause; and in paragraph (b) of the clause by removing "50" and adding "100" in its place.

5. In section 52.228–15, revise the date of the clause, paragraph (a), and paragraph (b); and add paragraph (e) to read as follows:

52.228–15 Performance and Payment Bonds—Construction.

* * * * *

Performance and Payment Bonds—Construction (Date)

(a) *Definitions.* As used in this clause—

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Unless the resulting contract price is $100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds* (Standard Form 25): The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds* (Standard Form 25–A): The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

* * * * *

(e) Any subcontractor waiver of the right to sue on a payment bond is subject to 40 U.S.C. 270b(c).

(End of clause)

6. In section 52.228–16, revise the date of the clause and paragraph (a); in paragraph (b) add "original" before "contract", twice; and revise paragraph (d) and Alternate I to read as follows:

52.228–16 Performance and Payment—Bonds Other Than Construction.

* * * * *

Performance and Payment—Bonds Other Than Construction (Date)

(a) *Definitions.* As used in this clause—

Original contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

* * * * *

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

* * * * *

(End of clause)

Alternate I (Date). As prescribed in 28.103–4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection to the Government in an amount equal to ____ percent of the contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

[FR Doc. 99–33280 Filed 12–27–99; 8:45 am]

BILLING CODE 6820–EP–P

VOL
64
ISS
2
4
8
DE
28
999
UMI

federal register

Tuesday
December 28, 1999

Part X

Department of Education

Bilingual Education: State Grant Program; Application for New Awards FY 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.194Q]

Bilingual Education: State Grant Program; Notice inviting applications for new awards for fiscal year (FY) 2000

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition. The statutory authorization for this program and the application requirements that apply to this competition are contained in section 7134 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7454)).

Purpose of Program: This program provides grants to State educational agencies to—(1) assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation; and (2) collect data on the State's limited English proficient (LEP) population and the educational programs and services available to that population. However, a State is exempt from the requirements to collect data if it did not, as of October 20, 1994, have a system in place for collecting the data.

Eligible Applicants: State Educational Agencies.

Applications Available: December 28, 1999.

Deadline for Transmittal of Applications: January 28, 2000.

Deadline for Intergovernmental Review: March 28, 2000.

Available Funds: $500,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR part 299.

Description of Program

Funds under this program are to be used to assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation. In addition, grantees are required to collect data on the State's LEP population and the educational programs and services available to that population unless a grantee's State did not, as of October 20, 1994, have a system for collecting data in place. However, a State that develops a system for collecting data on the educational programs and services available to all LEP students in the State subsequent to October 20, 1994 must meet this requirement. A grantee may also use funds provided under this program for the training of State educational agency personnel in educational issues affecting limited English proficient children and youth.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria under 34 CFR 75.209 and 75.210 of EDGAR and section 7134 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Providing for the education of children and youth with limited English proficiency.* (20 points) The Secretary reviews each application to determine how effectively the applicant provides, through its own programs and other Federal education programs, for the education of limited English proficient children within its State.

(2) *Need for the project.* (15 points) (i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(3) *Quality of the project design.* (25 points) (I) The Secretary considers the quality of the design of the proposed project.

(ii) determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(C) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(4) *Quality of project services.* (15 points) (I) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project is appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which entities that are to be served by the proposed technical assistance project demonstrates support for the project.

(C) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(5) *Quality of project personnel.* (10 points) (I) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources:* (5 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(B) The extent to which the budget is adequate to support the proposed project.

(C) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the project evaluation.* (10 points) (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372.

Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 28, 1999 (64 FR 22960–22963) or you may view the latest official SPOC list on the OMB Web site at the following address:

http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.194Q, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the Applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and one copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Washington, DC 20202–4725, or

(2) Hand deliver the original and one copy of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (Standard Form 424) the CFDA Number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications, checklist for applicants, and required documentation:

a. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

b. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

c. Instructions for the Application Narrative.

d. Estimated Public Reporting Burden Statement.

e. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

f. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

g. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)

h. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

i. Notice to All Applicants.

j. Checklist for Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit *one original* signed application, including ink signatures on all forms and assurances, and *one* copy of the application. Please mark each application as "original" or "copy." No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue, SW., room 5623, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9907. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format

(*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 7454.

Dated: December 21, 1999.

Arthur M. Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Public Reporting Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0541. Expiration date: December 31, 2001. The time required to complete this information collection is estimated to average 60 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5623, Mary E. Switzer Building, Washington, DC 20202–6510.

Instructions for the Application Narrative

Abstract

The narrative section should begin with an abstract that includes a short description of the LEP population in the State, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance Form (SF 424).

2. Budget Information Form (ED Form No. 524).

3. Itemized budget for each year.

4. Assurances—Non-Construction Programs Form (SF 424B).

5. Certifications, Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).

6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) (if applicable).

7. Disclosure of Lobbying Activities Form (SF–LLL).

8. Notice to All Applicants (OMB Control No. 1801–0004)—Information that addresses section 427 of the General Education Provisions Act.

9. Table of Contents.

10. Application Narrative, including abstract.

11. One original and one copy of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000-01-P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Organizational Unit

Address: _____

_____

_____ ____ _____ _____ - _____
City State County ZIP Code + 4

2. Applicant's D-U-N-S Number: |_|_|_|_|_|_|_|_|_|

3. Catalog of Federal Domestic Assistance #: 84.194Q ==> Title: Bilingual Education: State Grant Program

4. Project Director: _____

Address: _____

_____ ____ _____ - _____
City State Zip code + 4

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

6. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State	H - Independent School District
B - County	I - Public College or University
C - Municipal	J - Private, Non-Profit College or University
D - Township	K - Indian Tribe
E - Interstate	L - Individual
F - Intermunicipal	M - Private, Profit-Making Organization
G - Special District	N - Other *(Specify)*: _____

5. Is the applicant delinquent on any Federal debt? ___Yes ____No
(If "Yes," attach an explanation.)

7. Novice Applicant ___Yes ____ No

Application Information

8. Type of Submission:

-PreApplication	*-Application*
____Construction	____Construction
____Non-Construction	____Non-Construction

9. Is application subject to review by Executive Order 12372 process?

____ Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/_____

____ No *(If "No," check appropriate box below.)*
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

10. Proposed Project Dates: ___/___/_____ ___/___/_____
Start Date: **End Date:**

11. Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No

a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

_____ *OR* _____

c. IRB approval date: ____ Full IRB or
_____ ____ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$ _____.00
b. Applicant	$ _____.00
c. State	$ _____.00
d. Local	$ _____.00
e. Other	$ _____.00
f. Program Income	$ _____.00
g. TOTAL	$ _____.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. Signature of Authorized Representative

_____ Date: ___/___/_____

ED 424 (rev 12.22.98)

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check "No." **The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a

separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Protection of Human Subjects in Research
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

--Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

--Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or*

associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control Number *Draft* Expiration Date: *Pending OMB Clearance*
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 99-33638 Filed 12-27-99; 8:45 am]
BILLING CODE 4000-01-C

federal register

Tuesday
December 28, 1999

Part XI

Department of Housing and Urban Development

1999 HUD Disaster Recovery Initiative; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4482–N–01]

1999 HUD Disaster Recovery Initiative

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice provides requirements to govern the use of $20 million in Community Development Block Grant (CDBG) funds for additional unmet disaster recovery needs.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Empowering Communities for Recovery

A. Purpose

1. This Notice describes policies and procedures applicable to the HUD Disaster Recovery Initiative (DRI) for funds appropriated under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681, approved October 21, 1998).

2. When a community is hit hard by a natural disaster, there is often a long, difficult process of recovery. Most impacted areas never fully recover because of limited resources. HUD is uniquely positioned to support other Federal agencies in assisting States and communities with disaster recovery, because of its mission and experience as the Federal Government's agency for addressing a broad spectrum of needs related to community viability (e.g., housing, economic and community development).

3. HUD's Disaster Recovery Initiative helps communities impacted by natural disasters receiving Presidential declarations.

4. DRI funds are intended to support the activities of other Federal agencies and cannot be used for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or the U.S. Army Corps of Engineers (Corps of Engineers).

B. Authority

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277, 112 Stat. 2681, approved October 21, 1998).

C. Benefiting Persons of Low and Moderate Income

1. DRI funds are provided by a supplemental appropriation under the Community Development Block Grant program authority of title I of the Housing and Community Development Act of 1974, (42 U.S.C. 5301 *et seq.*). Use of those funds is governed by that Act and regulations at 24 CFR part 570, except as modified by this notice and a separate notice of waivers and modifications appearing elsewhere in today's **Federal Register**. The primary objective of that program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. States and State grant recipients should give maximum feasible priority to funding activities that benefit persons of low and moderate income.

2. A State must use more than 50 percent of its DRI funds for activities that benefit primarily persons of low and moderate income. The Secretary may waive this requirement only on a case-by-case basis and only upon making a finding of a compelling need to do so. HUD will consider such a waiver only after it receives a request from a State that includes a justification that establishes a compelling need for the waiver. The compelling need must reflect a public purpose directly related to disaster recovery, and the justification must include a determination by the State, with supporting documentation, that there is no practicable alternative course of action to otherwise targeting funds to activities which principally benefit persons of low and moderate income. As required by statute, HUD will provide an explanation of the finding of compelling need to the Congressional Committees on Appropriations.

D. Definitions

Regulatory references are in title 24 of the Code of Federal Regulations (CFR), and will be cited by section (§), unless otherwise cited.

1999 Supplemental Appropriations Act means the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277, 112 Stat. 2681, approved October 21, 1998).

Act means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

Buildings for the general conduct of government means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various non-legislative functions or services provided by government at decentralized locations.

City means the following:

a. Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

b. Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

i. Possesses powers and performs functions comparable to those associated with municipalities;

ii. Is closely settled; and

iii. Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

Director means the Director of the Federal Emergency Management Agency.

Disaster means a major disaster declared by the President under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*) in Federal fiscal year 1998 or 1999.

Family means all persons living in the same household who are related by birth, marriage or adoption.

FEMA means the Federal Emergency Management Agency.

Household means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related

or unrelated persons who share living arrangements.

HUD means the U.S. Department of Housing and Urban Development.

Income. For the purpose of State grant recipients determining whether a family or household is of low and moderate income, such recipients may select any of the three definitions listed below for each activity. However, integrally related activities of the same type and qualifying under the same paragraph of § 570.483(b) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.483(b)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.483(b)(1)(I). Activities qualifying under § 570.483(b)(1), at the discretion of the State, must use the area income data supplied by HUD or survey data which is methodologically sound.

a. The three definitions are as follows:

i. "Annual income" as defined for the Public Housing and Section 8 programs at § 5.609 (except that if the DRI assistance being provided is homeowner rehabilitation, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

ii. Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(1) Wages, salaries, tips, commissions, etc.;

(2) Self-employment income from own non-farm business, including proprietorships and partnerships;

(3) Farm self-employment income;

(4) Interest, dividends, net rental income, or income from estates or trusts;

(5) Social Security or railroad retirement;

(6) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(7) Retirement, survivor, or disability pensions; and

(8) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

iii. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

b. Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the DRI grant-assisted activity shall not be considered in calculating estimated annual income.

Indian tribe means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States that is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512) before its repeal.

Low-and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low-and moderate-income persons means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Secretary means the Secretary of Housing and Urban Development.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

State means any State of the United States, and the Commonwealth of Puerto Rico, or an instrumentality thereof approved by the Governor. Additionally, except as pertains to environmental review responsibilities under Part 58, for these 1999 Supplemental Appropriations Act funds only, the term "State" also includes an Indian tribe.

State grant recipient means a unit of general local government that receives a DRI grant through a State. Additionally, for these 1999 Supplemental Appropriations Act funds only, the term "State grant recipient" also includes Indian tribes.

Unit of general local government means any city, county, town, township, parish, village or other general purpose political subdivision of a State; a combination of such political subdivisions recognized by the Secretary; and the District of Columbia.

Unmet need means projects identified by the Director as those which have not or will not be addressed by other Federal disaster assistance programs, and need that is not addressed by activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency, the Small Business Administration, or the Army Corps of Engineers.

E. Allocation and Expenditure of Funds

1. $250 million has been appropriated for the 1999 HUD Disaster Recovery Initiative under division B, title IV, Chapter 7 of the 1999 Supplemental Appropriations Act. Title IV of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, 113 Stat. 57, approved May 21, 1999) rescinded $230 million of these funds. The $20 million balance of these funds has been made available for obligation by HUD until October 1, 2002. States are responsible to HUD for the timely expenditure of funds in accordance with any expenditure deadlines HUD may include as grant agreement conditions.

2. The 1999 Supplemental Appropriations Act requires that HUD allocate funds to States, based on unmet needs identified by the director of FEMA as those which have not or will not be addressed by other Federal disaster assistance programs. HUD has used the following procedures in allocating the funds.

a. In calculating allocations, HUD will use data identified by FEMA from State, and Federal sources as unmet needs (or surrogates for unmet needs) in four areas: housing, business recovery, mitigation, and public works and facilities.

b. The allocation calculations will include appropriate weights and adjustment factors. The weightings of the unmet needs categories are at following ratios: housing, 40 percent; business recovery, 20 percent; mitigation, 20 percent; and public works and facilities, 20 percent.

c. HUD has set minimum grant amounts for the allocation of funds at the lesser of $1.5 million or the amount of unmet need identified by FEMA from State sources, except such minimum

shall not apply to funds allocated under paragraph e.

d. HUD may calculate the allocation of funds to States in one or more groupings of, or individual, disaster declarations, as it deems appropriate.

e. HUD may allocate up to $20 million in accordance with paragraph 2 of the notice published March 10, 1999, at 64 FR 11943, which amends paragraph I.E.2.e. of the notice published October 22, 1998 (63 FR 56764), to state, "If a State certifies that it has determined that the unmet needs data previously submitted to FEMA are inaccurate or significantly incomplete, within 45 days of publication of this notice, the Governor may request HUD, in consultation with FEMA, to accept, review, and identify as unmet needs, a revised State submission of such needs. Those needs must be related to a disaster declared during fiscal year 1998 or declared prior to the date of this notice during fiscal year 1999. Such request must be accompanied by the revised unmet needs data in the same format as previously prescribed by FEMA and by a justification for reconsideration."

3. The appropriation accounting provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), limit the availability of certain appropriations for expenditure. With respect to the funds appropriated for the 1999 HUD Disaster Recovery Initiative, this statute requires the withdrawal from the States' lines of credit any DRI funds appropriated under the 1999 Supplemental Appropriations Act that the States have not expended before October 1, 2007. This limitation may not be waived. HUD may place shorter deadlines on the expenditure of those funds via grant agreement conditions.

4. The 1999 Supplemental Appropriations Act requires that each State administer the DRI funds "in conjunction with its Federal Emergency Management Agency program or its community development block grants program or by the entity designated by its Chief Executive Officer to administer the HOME Investment Partnerships program." Whichever agency the governor designates to administer the DRI funds must have the capacity to comply with all applicable requirements of this notice in a timely manner. Whichever State agency administers the DRI funds should coordinate with the agency or agencies that administer the other two programs named above.

F. Non-Federal Public Matching Funds Requirement

1. The 1999 Supplemental Appropriations Act requires that "each State shall provide not less than 25 percent in non-Federal public matching funds or its equivalent value (other than administrative costs)" for any 1999 HUD Disaster Recovery Initiative grant funds which it receives.

2. Match contributions must be made to DRI-funded recovery projects related to covered disasters.

3. Match may be provided by any public entity from non-Federal cash (*e.g.*, general or dedicated revenues), real estate, or other similar assets owned or controlled by the public entity or the value of public improvements and public facilities activities, or force account undertaken.

4. Match funds must be reasonably valued. For example, base the value of cash grants on the dollar value of the grant; value below market interest rate loans on the present discounted cash value of the amount of subsidy; value taxes forgiven for future years based on the present discounted cash value of the revenue foregone; and value a donation of real estate titled to the State or State grant recipient based on a professional appraisal.

5. The State must make match contributions before all DRI funds are expended. Match contributions must total not less than 25 percent of the disaster grant funds drawn from the State's line of credit, excluding funds drawn for administrative and planning costs.

6. States may not count administrative costs toward the required non-Federal public matching funds or equivalent value.

7. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award, including any other DRI grant or Community Development Block Grant, may not count as satisfying the matching contribution requirement for the HUD Disaster Recovery Initiative.

8. Match contributions must be contributed permanently to a disaster-related activity. To receive match credit for the full amount of a loan made with non-Federal public funds to a DRI funded activity, all repayment, interest, or other return on the loan must be treated as CDBG program income.

9. The following are examples that do not count toward meeting a grantee's matching contribution requirement:

a. Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended

Use of CDBG funds (defined at § 570.3) under section 105(a)(9) of the Act for payment of the non-Federal share required in connection with a Federal grant-in-aid program is permissible;

b. Contributions made with or derived from private resources or funds, regardless of when the private resources or funds were received or expended;

c. The interest rate subsidy attributable to the Federal tax exemption on financing or the value attributable to Federal tax credits;

10. Contributions are credited at the time the contribution is made and reported to HUD quarterly, as follows:

a. Credit a cash contribution when the funds are expended for a disaster-related activity or at the time the State awards DRI funds if the activity was completed before the award of DRI funds;

b. Credit the subsidy value of a below-market interest rate loan at the time of the loan closing;

c. Credit the value of State or local taxes, fees, or other charges that are normally and customarily imposed but waived, foregone, or deferred at the time the State or State grant recipient or other public entity officially waives, forgoes, or defers the taxes, fees, or other charges;

d. Credit the value of donated land or other real property at the time ownership of the property is transferred to the public entity carrying out the DRI-assisted or disaster-related activity;

e. Credit the direct cost of relocation payments and services at the time that the payments and services are provided.

11. For DRI-assisted projects involving more than one State, the State that makes the match contribution may decide to retain the match credit or permit the other State to claim the credit.

G. Submission Requirements

1. Prerequisites to a State's receipt of a DRI grant include a citizen participation plan; publication of its proposed Action Plan; notice and comment; and submission of an Action Plan for Disaster Recovery.

2. Each State must submit to HUD, for approval, an Action Plan for Disaster Recovery that describes:

a. The recovery needs resulting from the covered disaster;

b. The State's overall plan for recovery;

c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with DRI funds;

d. The State's method of distribution;

e. Units of general local government receiving State distributions;

f. The proposed uses for the DRI funds for each unit of general local government and Indian tribe receiving State distributions;

g. An explanation of why other federal disaster assistance programs do not cover the costs of unmet needs identify to FEMA;

h. An explanation of how the disaster impacted the proposed projects; and

i. The specific sources from which the match requirement will be achieved.

2A. Indian tribes, only, may omit from their Action Plans items 2(d) and 2(e) above.

3. A State must only distribute DRI funds to units of general local government, including cities (both CDBG metropolitan cities and non-metropolitan cities) and counties (including CDBG urban counties), and to Indian tribes that have the capability to carry out disaster recovery activities. Indian tribes may carry out activities directly and must meet the requirements of this notice placed on State grant recipients, except as exempted.

4. Each State must describe monitoring standards and procedures pursuant to § 91.330 and include certifications pursuant to:

a. Section 91.325(a)(1), affirmatively furthering fair housing;

b. Section 91.325(a)(3), drug-free workplace;

c. Section 91.325(a)(4), anti-lobbying;

d. Section 91.325(a)(5), authority of the State to carry out the program;

e. Section 91.325(a)(7), acquisition and relocation, except as waived;

f. Section I.G.5. of this notice, citizen participation;

g. Section 91.325(b)(2), consultation with local governments;

h. Section 91.325(b)(5), compliance with anti-discrimination laws;

i. Section 91.325(b)(6), excessive force;

j. Section 91.325(b)(7), compliance with applicable laws.

4A. Instead of following paragraph G.4., above, each Indian tribe must describe monitoring standards and procedures and certify that:

a. It will comply with the requirements of Title II of Public Law 90–284 (25 U.S.C. 1301) (the Indian Civil Rights Act) and any applicable anti-discrimination laws;

b. It will provide the drug-free workplace required by 24 CFR part 24, subpart F;

c. It will comply with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part;

d. It will comply with all applicable laws;

e. It possesses the legal authority to apply for the DRI grant and execute the proposed program;

f. Except as waived, it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24;

g. Prior to submission of its application to HUD, it has met the citizen participation requirements of Section I.G.5. of this notice;

h. The Action Plan for Disaster Recovery has been developed so that more than 50 percent of the funds received under this grant will be used for activities that benefit low- and moderate-income persons (as the term "activities benefiting low- and moderate-income persons" is used at § 570.483(b)).

5. Citizen participation.

a. In order to permit public examination and appraisal of the Action Plan for Disaster Recovery, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the State and State grant recipients shall in a timely manner—

i. Furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed DRI grant activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income;

ii. Publish a proposed Action Plan for Disaster Recovery in such manner to afford affected citizens and units of general local government an opportunity to examine its content and to submit comments on the proposed disaster recovery plan and on the community development performance of the grantee; and

iii. Provide citizens and units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under this grant from one eligible activity to another or in the method of distribution of such funds.

In preparing the Action Plan for Disaster Recovery, the State shall consider any such comments and views and may, if it deems appropriate, modify the proposed Action Plan for Disaster Recovery. The Action Plan for Disaster Recovery shall be made available to the public, and a copy shall be furnished to HUD together with the certifications required under section I.G.4. or 4A., above. Any Action Plan for Disaster Recovery may be modified or amended from time to time by the State in accordance with the same procedures required in this paragraph for the preparation and submission of such Action Plan for Disaster Recovery.

b. A DRI grant may be made only if the State certifies that it is following, and that it will require its State grant recipients to follow, a detailed citizen participation plan that:

i. Provides for and encourages citizen participation, with particular emphasis on areas in which DRI funds are proposed to be used;

ii. Provides citizens with information and records relating to the grantee's proposed use of funds, and relating to the actual use of DRI funds; and

iii. Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the State for the development and execution of its DRI Action Plan.

H. Determining Eligibility of Activities

An activity may be assisted in whole or in part with DRI funds only if all of the following requirements are met:

1. Neither the State nor its State grant recipients may use DRI funds for activities reimbursable or for which funds are made available by FEMA, SBA, or the Corps of Engineers.

2. Any project underway prior to a Presidentially declared disaster may not receive DRI funds unless the disaster directly impacted the project.

3. *Compliance with national objectives.* States receiving allocations under the HUD Disaster Recovery Initiative must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities that:

a. Will benefit to low- and moderate-income families;

b. Will aid in the prevention or elimination of slums or blight; or

c. May also include activities that the State and its State grant recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

d. Consistent with the foregoing, each State and State grant recipient must ensure, and maintain evidence, that each of its activities assisted with DRI funds meets one of the three above

national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.483.

4. *Compliance with the primary objective.* In using HUD Disaster Recovery Initiative funds under the authority of the Act, the State must meet the primary objective of the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. To meet the primary objective, more than 50 percent of the funds in each grant must be used for activities that principally benefit persons of low and moderate income as determined by the criteria under § 570.483(b), unless waived under section I.C.2. When calculating the percentage of funds expended for such activities:

a. Costs of administration and planning eligible under section I.H.6. of this notice will be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the DRI funds and, accordingly, shall be excluded from the calculation;

b. Funds expended for the acquisition, new construction, reconstruction, or rehabilitation of property for housing that qualifies under § 570.483(b)(3) must be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including DRI grant and non-DRI grant costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low- and moderate-income persons.

c. Funds expended for any other activities qualifying under § 570.483(b) must be counted for this purpose in their entirety.

5. *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

6. *Eligible activities.* DRI funds may be used for activities carried out by a State grant recipient that are relevant to disaster recovery, as described in this Notice. States and State grant recipients must use funds appropriated under the 1999 Supplemental Appropriations Act only for disaster relief, long-term recovery, and mitigation activities related to a covered disaster in communities affected by a Presidentially declared disaster that is designated during Federal fiscal year 1998 or 1999. Such communities must be in areas included in such declarations. These funds will supplement, not replace, FEMA and other Federal funds. To the extent the use of funds does not violate the restriction at section I.H., eligible activities include:

a. Acquisition of real property (including the buying out of flood-prone properties and the acquisition of relocation property);

b. Relocation payments and assistance for displaced persons, businesses, organizations, and farm operations;

c. Debris removal, clearance, and demolition to the extent that these activities are not eligible under FEMA's Public Assistance program;

d. Rehabilitation or reconstruction of residential and non-residential buildings and improvements;

e. Acquisition, construction, reconstruction, or installation of public works, facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes, to the extent that these activities are not eligible under FEMA's Public Assistance program;

f. Code enforcement in deteriorated or deteriorating areas, *e.g.*, disaster areas;

g. Assistance to facilitate homeownership among low- and moderate-income persons, *e.g.*, downpayment assistance, interest rate subsidies, loan guarantees;

h. Provision of public services, if such services are new or an increased level of services, limiting costs to no more than 15 percent of the grant amount;

i. Activities relating to energy conservation and renewable energy resources, incorporated into recovery;

j. Provision of assistance to profit-motivated businesses to carry out economic development recovery activities that benefit the public by:

i. Creating or retaining jobs for low- and moderate-income persons;

ii. Preventing or eliminating slums and blight;

iii. Meeting urgent needs;

iv. Creating or retaining community-owned businesses;

v. Assisting businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

vi. Providing related technical assistance;

k. Planning and administration costs up to 20 percent of the grant (*e.g.*, planning, urban environmental design and policy-planning-management-capacity building activities and payment of reasonable program administration costs for: general management, oversight and coordination; public information; fair housing activities; indirect costs charged to the HUD Disaster Recovery Initiative under a cost allocation plan prepared in accordance with OMB Circulars A–21, A–87, or A–122 as applicable; and submission of applications for Federal programs; as well as,

l. Any other activity authorized under section 105(a) of the Housing and Community Development Act of 1974, as amended, not waived by this notice or subsequently, provided that it relates to recovery from a covered Presidentially declared disaster. The Department may grant waivers permitting States and State grant recipients to undertake additional activities with DRI funds if they are consistent with the requirements of division B, title IV, chapter 7 of Public Law 105–277 after a full consideration of a waiver request.

7. *Special policies governing facilities.* The following special policies apply to:

a. *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the HUD Disaster Recovery Initiative may be provided with DRI funds even if it is part of a multiple use building containing ineligible uses, if:

i. The facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

ii. The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

b. *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with DRI funds, but charges such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities, are not permitted.

8. *Special assessments under the HUD Disaster Recovery Initiative.* The following policies relate to special assessments under the HUD Disaster Recovery Initiative:

a. *Definition of special assessment.* The term "special assessment" means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a

public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

b. *Special assessments to recover capital costs.* Where DRI funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

i. Special assessments to recover the DRI funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

ii. Special assessments to recover the non-DRI grant portion may be made provided that DRI funds are used to pay the special assessment in behalf of all properties owned and occupied by low- and moderate-income persons. However, DRI funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate-income persons if the State or State grant recipient certifies that it does not have sufficient DRI funds to pay the assessments in behalf of all of the low- and moderate-income persons who are owner-occupants. Funds collected through such special assessments are not program income.

c. *Public improvements not initially assisted with DRI funds.* The payment of special assessments with DRI funds constitutes HUD Disaster Recovery assistance to the public improvement. Therefore, DRI funds may be used to pay special assessments provided:

i. The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this initiative, including environmental, citizen participation, and Davis-Bacon requirements;

ii. The installation of the public improvement meets a criterion for national objectives in paragraph I.H.3.a., b. or c.; and

iii. The requirements of paragraph I.H.8.b.ii. are met.

9. *Limitation on planning and administrative costs.*

a. No more than 20 percent of the sum of any grant to a State, plus program income, shall be expended for planning and program administrative costs under section I.H.6.k.

b. *State administrative costs.* The State is responsible for the administration of its HUD Disaster Recovery Initiative. The amount of DRI funds used to pay administrative costs incurred by the State in carrying out its responsibilities under this program shall not exceed 2 percent of the aggregate of the State's grant. This paragraph 9.b. does not apply to Indian tribes.

10. *Reimbursement for pre-award costs.* The effective date of the grant agreement is the date HUD obligates the appropriated funds by executing the grant agreement.

a. Prior to the effective date of the grant agreement, a State grant recipient may incur costs beginning on or after the incident date of the Presidentially declared disaster, and then charge those costs to DRI grant funds, provided that:

i. The State permits such use;

ii. Such funds do not reimburse costs paid with other Federal grant funds; and

iii. The costs and activities funded are in compliance with the requirements of this initiative and with the Environmental Review Procedures stated in 24 CFR part 58 including the prohibition contained in § 58.22(a) on commitment of HUD assistance and non-HUD funds prior to HUD approval of the Request for Release of Funds and the certification of the responsible entity for activities that require an environmental review.

11. *Activities outside the jurisdiction of the unit of general local government.* DRI funds may assist an activity located outside the jurisdiction of the unit of general local government that receives the DRI funds as a State grant recipient, provided the unit of general local government determines that the activity is meeting its disaster recovery needs.

I. Guidelines for Evaluating and Selecting Economic Development Projects

HUD provides guidelines to assist the recipient to evaluate and select activities to be carried out for economic development recovery purposes under paragraph H.6.j. These guidelines are composed of two components: Guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating projects costs and financial requirements are not. The guidelines and standards may be found at § 570.482(e) and (f). HUD may consider the waiver of such standards on a case-by-case basis upon submission of a written justification as to why the recipient cannot meet the requirement and a proposed alternative that assures at least a minimum level of public benefit.

J. Ineligible Activities

1. *General government expenses.* Except as otherwise specifically authorized in this Notice, or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the State or unit of general local government are not eligible for assistance.

2. The following activities may not be assisted with DRI funds unless authorized under provisions of section 105(a)(15) of the Act.

a. *Purchase of equipment.* The purchase of equipment with DRI funds is generally ineligible.

i. *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of DRI funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible.

ii. *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible.

iii. *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. DRI funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A–21, A–87 or A–122, as applicable) for such items when necessary for use by a State grant recipient or its subrecipients in the administration of activities assisted with DRI funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service.

b. *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the HUD Disaster Recovery Initiative. For example, the use of DRI funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible, even if no other costs of providing such a service are assisted with such funds.

Examples of ineligible operating and maintenance expenses are:

i. Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which DRI funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

ii. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

c. *Income payments.* The general rule is that DRI funds may not be used for income payments. For purposes of the HUD Disaster Recovery Initiative, "income payments" means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

3. *Use of DRI funds as a non-Federal cost-share for Corps of Engineers projects.* The use of more than $250,000 in DRI funds as a non-Federal cost-share for any project funded by the Secretary of the Army through the Corps of Engineers is ineligible.

4. *Prohibition on use of DRI funds for employment relocation activities.* No DRI funds may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

K. Treatment of Program Income

Any program income generated by HUD Disaster Recovery Initiative becomes program income to the State's CDBG program, not to its DRI grant. Such program income shall be returned to the State as program income for the year in which the State redistributes those funds. Therefore, any program income generated by DRI funds is to be included in cost cap calculations and program requirements for use of the CDBG funds. For States not participating in the CDBG program, program income received by the State after closeout of its grant is not subject to any Federal requirement.

L. Acquisition (Buyouts) of Flood-Damaged Properties

1. *Payment of pre-flood values for buyouts.* HUD Disaster Recovery Initiative State grant recipients have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or flood plain. In using DRI funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

2. *Duplication of benefits and optional relocation payments with buyouts.*

a. Optional relocation assistance should only be provided to the extent necessary for displaced persons to relocate in a "comparable replacement dwelling," as defined in 42 U.S.C. 4601(10) and 49 CFR 24.2(d), except as provided by HUD with prior approval on a case by case basis when sufficient cause exists due to extraordinary erosive economic impact of relocation, and shall not exceed an amount equal to the housing replacement cost minus:

i. Net proceeds from any flood insurance payment (proceeds net of the cost of documented repairs of flood damage);

ii. Personal tax savings that result from an owner's tax deduction of capital loss on displacement property;

iii. FEMA Hazard Mitigation Grant Program acquisition proceeds, and

iv. SBA disaster loan assistance.

3. *Buyout of undamaged properties.* Many buyout projects contain some properties that were undamaged by the floods. Local administrators sometimes seek to offer buyouts to owners of undamaged properties to maximize clearance of the flood plain. Purchase of such properties with DRI funding is permitted if the properties are incidental to the project as a whole.

4. *Ownership and maintenance of acquired property.*

Any property acquired with DRI funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

5. *Future Federal assistance to owners remaining in flood plain.*

a. Section 582 of the National Flood Insurance Reform Act of 1994 (in Title V of Pub. L. 103–325) (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

b. Section 582 also implies a responsibility for a grantee that receives DRI funds or that, under section 122 of the Act, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

c. *Duty to notify.* In the event of the transfer of any property described in paragraph e, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

i. Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

ii. Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

d. *Failure to notify.* The transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property, if a transferor fails to make notification and, subsequent to the transfer of the property:

i. The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

ii. The property is damaged by a flood disaster; and

iii. Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage.

e. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

f. The term "Federal disaster relief assistance" applies to HUD or other Federal assistance for disaster relief in "flood disaster areas." This prohibition applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (*i.e.*, earthquakes, fire, wind, *etc.*). The term "flood disaster area" is defined in section 582(d)(2) to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

M. Other Program Requirements

1. *General.* This section I.M. enumerates laws that HUD will treat as applicable to the HUD Disaster Recovery Initiative grants to States and State grant recipients, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which HUD has enforcement responsibility. The absence of mention herein of any other statute for which HUD does not have direct enforcement responsibility is not intended to be taken as an indication that, in HUD's opinion, such statute or Executive Order is not applicable to activities assisted with DRI funds. States are governed by applicable laws.

2. *Labor standards.* In part because Davis-Bacon requirements are not applicable to FEMA disaster grants, it is necessary to clarify the applicability of Davis-Bacon requirements in relationship to the use of DRI funds in disaster recovery efforts. This section of this Notice addresses Davis-Bacon applicability to use of DRI funds to reimburse property owners for construction work either completed or in process at the time use of those funds is contemplated. In accordance with the authority under section 107(e)(2) of the Act, HUD has waived the labor standards requirements of Indian tribes under DRI.

In accordance with Section 110(a) of the Act, construction work financed in whole or in part with DRI funds is subject to Federal labor standards provisions including the payment of Davis-Bacon prevailing wage rates. Additionally, such work is subject to the requirements of the Copeland Act governing the certification and submission of weekly payroll reports and prohibiting kick-backs and other impermissible deductions from wages, and the overtime requirements of the Contract Work Hours and Safety Standards Act. The requirements found in Department of Labor (DOL) regulations for Davis-Bacon administration and enforcement (29 CFR parts 1, 3, 5, 6, and 7) also apply.

a. *Applicability.* DRI activities are subject to program policies and parameters for Federal labor standards applicability at § 570.603. The labor provisions apply to rehabilitation of residential property only if such property contains 8 or more units.

b. *Volunteers.* Section 110(b) of the Act provides for the use of volunteer labor on construction work subject to Federal labor standards. Volunteers may be utilized to the extent permitted under the regulations in 24 CFR part 70.

c. *Work in progress.* In accordance with 29 CFR 1.6(g), if DRI funds are approved after start of construction (*e.g.*, rehabilitation), Davis-Bacon requirements apply to the construction work. In such cases, the appropriate Davis-Bacon wage decision and contract standards must be incorporated into the contract specifications retroactively to the date of award or to the start of construction, if there is no contract award. However, HUD may request, and the DOL may approve, a wage determination effective on the date the DRI funding is approved (*i.e.*, not retroactively to the start of construction), provided that HUD considers and DOL agrees that it is necessary and proper in the public interest to prevent injustice or undue hardship, and provided further that there is no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate.

d. *Reimbursement for completed construction work.* When DRI funds are proposed to reimburse property owners for construction work performed and fully completed as disaster damage rehabilitation, Federal labor standards provisions (*i.e.*, Davis-Bacon wage rates and related requirements) are not applicable to the completed work provided that:

i. Neither the owner nor the unit of general local government contemplated use of or reimbursement by DRI funds for the rehabilitation(s) before or during the time construction work was underway; and

ii. No other Federal funding requiring the payment of Davis-Bacon wage rates was used to carry out the work.

In these cases, the use of DRI funds to reimburse owners for completed rehabilitation does not constitute financing of construction work within the meaning of the labor standards provisions of section 110 of the Act.

e. *Davis-Bacon Streamlining.* The HUD Office of Labor Relations has instituted a number of streamlining measures that significantly reduce the paperwork/recordkeeping burdens commonly attributed to Davis-Bacon projects. In addition, Labor Relations headquarters and field staff are committed to providing expedited processing on all matters related to DRI activities.

Note that most forms of DRI assistance to homeowners would not trigger Davis-Bacon requirements. Grantees should contact Richard S. Allan, Assistant to the Secretary for Labor Relations (Acting), or Jade M. Banks at (202) 708–0370 for assistance in determining whether and to what extent Davis-Bacon requirements apply to specific activities undertaken with DRI funds. Information about Federal labor standards provisions and HUD programs is also available on the HUD Homepage at: http://www.hud.gov/olr/olr__int2.html.

3. *National Flood Insurance Program.* State DRI grants are subject to sections 102(a) and 202(a) of the Flood Disaster Protection Act of 1973, respectively for the requirements for assisted property owners to purchase flood insurance and the effect of nonparticipation of the community in the flood insurance program. These requirements cannot be waived.

a. State grant recipients may not use HUD Disaster Recovery Initiative funding in flood hazard areas for acquisition or construction projects in communities that have been identified by FEMA as nonparticipating.

noncompliant communities under the National Flood Insurance Program. Specific guidance can be found in the references in section I.M.3.b. Listings of participating, nonparticipating, and suspended communities are in the FEMA Federal Insurance Administration's "National Flood Insurance Program Community Status Book," available on the World Wide Web at http://www.fema.gov/home/fema/csb.htm for viewing or downloading. FEMA's revised publication, "Mandatory Purchase of Flood Insurance Guidelines," reflecting new provisions of the National Flood Insurance Reform Act of 1994 is also available on the World Wide Web at http://www/fema.gov/nfip/mpurfi.htm.

b. Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 4003(a)), one year or more after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of FEMA as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of a State's Action Plan for Disaster Recovery, funds shall not be expended for acquisition or construction purposes in an area that has been identified by FEMA as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79, or less than a year has passed since FEMA notification to the community regarding such hazards; and, where the community is participating, flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a).)

N. Waiver of Statutory and Regulatory Requirements That Would Otherwise Apply to the HUD Disaster Recovery Initiative

1. Division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act, provides that in administering these amounts, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute. As noted, the Secretary may not waive statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, or labor standards. Also, as provided in implementing language in section I.C.2. in this notice, the statute requires that more than 50 percent of the funds must benefit primarily persons of low and moderate income unless HUD makes a finding, based on a State's request, that there is a compelling need to waive such requirement. The procedures set forth in this notice reflect the waiver of the statutory and regulatory requirements that the Secretary considered necessary for the implementation of the HUD Disaster Recovery Initiative, and that are authorized to be waived under division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act. The statutory and regulatory requirements that have been waived pertain to requirements governing consolidated planning submissions, CDBG program requirements, acquisition and relocation requirements, and other program related requirements appears elsewhere by notice in today's **Federal Register**. HUD has published a notice listing the specific statutory and regulatory requirements that have been waived and setting forth the reasons for the waivers. With respect to the waivers of these statutory and regulatory requirements, no further action need be taken by the grantees.

2. HUD may issue additional waivers (beyond those already waived by the Secretary in the implementation of this initiative) deemed appropriate under this authority. HUD will consider additional waivers on a case-by-case basis, as requested by grantees. Such waivers will receive expedited review.

3. States and State grant recipients should give priority to projects that benefit low-and moderate-income individuals to the maximum extent practicable.

II. Ensuring the Public Trust

A. Program Administrative, Recordkeeping and Reporting Requirements

The program administrative requirements at §§ 570.489–570.492, which are not otherwise waived, shall apply, except that, with respect to reporting:

1. States must submit a Performance Evaluation Report (PER) pursuant to 24 CFR 91.520, separately for the HUD Disaster Recovery Initiative, similar in all other respects to that which is required for the CDBG program regulated at 24 CFR part 570. HUD will compile this PER for the HUD Disaster Recovery Initiative from the quarterly reports submitted under paragraph 2 below, except that, with the final quarterly report submitted prior to grant closeout, States must also include with the PER a special narrative that discusses how the State assured that activities met the requirements of this notice with respect to the buyout of structures in a disaster area.

2. Congress has required that quarterly reports be submitted regarding the actual projects, localities and needs for which funds have been provided. HUD must also receive reporting information for program management purposes. Therefore, each State must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, non-HUD Disaster Recovery Initiative Federal source and funds, numbers of properties and housing units, and numbers of low- and moderate-income households. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Initiative Grant Reporting system. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the overall percent of benefit to low- and moderate-income persons. HUD has sought approval from OMB for new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165, which expires on May 31, 2001. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

B. Cost Principles

1. *Direct and indirect cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A–87, "Cost Principles for State, Local and

Indian Tribal Governments;" A–122, "Cost Principles for Non-profit Organizations;" or A–21, "Cost Principles for Educational Institutions," as applicable. All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under the HUD Disaster Recovery Initiative, except for the following:

i. Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

ii. Fines and penalties (including punitive damages) are unallowable costs to the HUD Disaster Recovery Initiative.

iii. Pre-award costs for State grant recipients are limited to those authorized under § 570.489(b).

2. *Uniform administrative requirements and cost principles.* The State and State grant recipients, their agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of OMB Circulars A–87 and A–133 (implemented at 24 CFR part 45), as applicable. States shall also comply with the applicable requirements of § 570.489 that are not otherwise waived or modified by this notice.

3. *Consultant activities.* Consulting services are eligible for assistance for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

a. *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with DRI funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties that detail the responsibilities, standards, and compensation.

b. *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in § 570.489(g) and are not subject to the Level IV limitation.

C. Public Law 88–352 and Public Law 90–284; Affirmatively Furthering Fair Housing; Executive Order 11063

1. The following requirements apply to HUD Disaster Recovery Initiative:

a. Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

b. Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, for each grantee receiving a DRI grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within the State, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard and assuring that State grant recipients comply with their certifications to affirmatively further fair housing.

2. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

3. Paragraphs C.1. and C.2., above, do not apply to Indian tribes, which are instead governed by the requirements of the Indian Civil Rights Act (25 U.S.C. 1301–1303, Title II of the Civil Rights Act of 1968).

D. Section 109 of the Act

1. No person in the United States shall on the ground of race, color, religion, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with DRI funds made available pursuant to the Act. "Funded in whole or in part with HUD community development funds" means that DRI funds have been transferred by the State grant recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity.

2. *Specific discriminatory actions prohibited and corrective actions.*

a. A recipient may not, under any program or activity, directly or through contractual or other arrangements, on the ground of race, color, religion, national origin, or sex:

i. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.

ii. Provide any facilities, services, financial aid or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity.

iii. Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

iv. Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

v. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition that the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

vi. Deny an individual an opportunity to participate in a program or activity as an employee.

b. A recipient may not use criteria or methods of administration that have the effect of subjecting persons to discrimination on the basis of race, color, religion, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, religion, national origin, or sex.

c. A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds, may not make selections of such site or location that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, religion, national origin, or sex; or that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act.

d.i. In administering a program or activity funded in whole or in part with DRI funds regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "previously"

does not exclude current discriminatory practices.

ii. In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with DRI funds, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, religion, national origin or sex.

iii. After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited from taking any eligible action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

e. Notwithstanding anything to the contrary, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

3. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with DRI funds. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8.

4. Paragraphs D.1. and D.2., above, do not apply to Indian tribes, which are governed by the Indian Civil Rights Act.

E. Environmental Review Requirements

1. Prior to the commitment of any DRI funds, grantees must comply with the regulations in 24 CFR part 58. These regulations require: The analysis of potential environmental impacts; consultation with interested parties; and public notification of the results of the analysis and intent to request release of funds from HUD. State grant recipients must assume the responsibility for environmental reviews under the Disaster Recovery Initiative. States administering DRI funds must assume the responsibilities set forth in § 58.18 for overseeing the State grant recipients' compliance with environmental review requirements, including receiving requests for release of funds (RROF) and environmental certifications form State grant recipients and objections from government agencies and the public in accordance with subpart H of 24 CFR part 58. Indian tribes must forward to the responsible HUD field office the environmental certification, the RROF and any objections received, and must recommend to HUD whether to approve or disapprove the certification and RROF.

2. *Disaster recovery assistance in a floodplain.*

a. The State grant recipient must follow the eight-step decision-making process required by Executive Order 11988, Floodplain Management, as codified for HUD programs at § 55.20. The Order covers the proposed acquisition, construction, improvement, disposition, financing, and use of property in a floodplain. Other related Federal environmental laws and authorities noted at § 58.5 may also apply.

b. The Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) jointly issued a memorandum on February 18, 1997 entitled " Floodplain Management and Procedures For Evaluation and Review of Levee and Associated Restoration Projects," which emphasizes the need to consider nonstructural alternatives, *e.g.*, "buyouts," in flood disaster recovery activities and the need for coordination among all levels of government.

3. Environmental assessments and reviews may be tiered to eliminate duplication and to save time and resources. For other Federal programs, environmental assessments and reviews are not carried out by the State grant recipients as they are for the HUD Disaster Recovery Initiative, but are usually undertaken by Federal staff or contractors. Therefore, the State grant recipients must coordinate with other Federal agencies, e.g., FEMA, to tier environmental assessments and reviews for activities funded by programs of both Federal agencies.

4. *Joint environmental assessments between HUD and other Federal agencies.*

a. In addition to the provisions of § 58.33, the following special procedures may be employed when HUD and other Federal agencies jointly fund a project related to recovery from a covered disaster.

b. A State grant recipient administering Federal environmental requirements for the HUD Disaster Recovery Initiative may enter into cooperating agreements with other Federal agencies to prepare an environmental assessment for a HUD Disaster Recovery Initiative-funded project. The cooperating agreement will identify the project, all Federal agencies party to the agreement (including the State grant recipient acting for HUD under the provisions of 24 CFR part 58), which agency will be the lead agency and prepare the environment assessment, and the scope of the assessment, including the size and area of potential impact. The lead agency will prepare the assessment, using its own CEQ-approved procedures, and conduct all required reviews, consultations and public notifications under applicable related laws and authorities.

c. The provisions of 24 CFR part 58 would apply if a State grant recipient administering a HUD-funded program that is subject to part 58 (*e.g.*, the HUD Disaster Recovery Initiative) is the lead agency.

d. If the State grant recipient that assumes the HUD environmental review responsibilities is not the lead agency, then that government must review the completed environmental assessment that was prepared by a lead agency under the cooperating agreement. If the review of the document determines that the information is not accurate or complete or does not meet the requirements of 24 CFR part 58, a State grant recipient administering the provisions of 24 CFR part 58 must reject the assessment and prepare its own independent assessment as required in 24 CFR part 58. A State grant recipient acting as a cooperating agency remains responsible for review under authorities that may be unique to HUD-assisted projects under part 58, *i.e.*, HUD environmental standards in 24 CFR part 51 and HUD policy regarding toxic or hazardous materials. However, if a lead agency's assessment meets the requirements of part 58, except for a lack of coverage of these particular areas, the cooperating agency need not reject the assessment. In these cases, the cooperating agency may add its own review of these areas and its own findings regarding the overall environmental impact of the project.

e. If an assessment showing no significant environmental impact is adopted by a State grant recipient administering the provisions of 24 CFR part 58, it must formally record its adoption pursuant to § 58.38, prepare a statement that the proposed HUD funding of the proposed project produces no significant environmental impact (FONSI), and follow the provisions for release of funds as stated

in subpart H of 24 CFR part 58, including notice to the public and the statutory waiting period.

F. Displacement, Relocation, Acquisition, and Replacement of Housing

1. *General policy for minimizing displacement.* Consistent with the other goals and objectives of the HUD Disaster Recovery Initiative, and Executive Order 11988 on Floodplain Management, a State shall assure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this program.

2. *Relocation assistance for displaced persons at URA levels.*

a. A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

b. *Displaced person.*

i. For purposes of paragraph 2. of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this initiative. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(1) After notice by the State grant recipient to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this initiative that are later provided or granted.

(2) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph 2.b.i.(1) or (2), if the State grant recipient determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(4) If the person is the tenant-occupant of a dwelling unit and any one of the following two situations occurs:

(a) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary. location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(b) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

ii. Notwithstanding the provisions of paragraph 2.b.i., the term "displaced person" does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the State grant recipient must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date of the notice described in paragraph 2.b.i.(1) or (2) of this section, but who received a written notice of the expected displacement before occupancy.

(3) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(4) A person who the State grant recipient determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

iii. A grantee (or State or State recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

3. *Optional relocation assistance.* In connection with the use of DRI funds for buyouts, a State may permit a State grant recipient to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs 2. The State may also permit the State grant recipient to provide relocation assistance to persons receiving assistance under paragraph 2. of this section at levels in excess of those required by this paragraph. Unless such assistance is provided under State or local law, the State grant recipient shall provide such assistance only upon the basis of a written determination that the assistance is appropriate. The State grant recipient must adopt a written policy available to the public that describes the relocation assistance that the State grant recipient has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

4. *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

5. *Appeals.* If a person disagrees with the determination of the State grant recipient concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with that government. The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling, where grant, loan or guarantee funds are provided by a State, may file a written request for further review of the State grant recipient's decision to the State.

6. *Responsibility of the State.*

a. The State is responsible for ensuring compliance with these requirements, notwithstanding any third party's contractual obligation to the State grant recipient to comply with the provisions of this section. For purposes of State DRI funds, the State shall require State grant recipients to certify that they will comply with the requirements of this section.

b. The cost of assistance required under this section may be paid from local public funds, funds provided under this initiative, or funds available from other sources.

c. The State and State grant recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

G. Employment and Contracting Opportunities

1. Grantees shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) and the implementing regulations at 41 CFR chapter 60; and

2. Though requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, are waived, HUD encourages each grantee to give priority to the hiring of local low and moderate income persons and contractors in carrying out its disaster recovery activities.

3. *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.*

a. The State and State grant recipient must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

b. Affirmative steps include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance of SBA and the Minority Business Development Agency of the U.S. Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.

H. Lead-Based Paint

States shall comply with the provisions of § 570.487(c).

I. Architectural Barriers Act and the Americans With Disabilities Act

1. The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this initiative after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

2. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

J. Constitutional Prohibition

1. In accordance with First Amendment church/State principles, as a general rule, DRI grant assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

2. The following restrictions and limitations therefore apply to the use of DRI funds.

a. DRI funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or purposes that will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph 2.b. of this section with respect to rehabilitation and under paragraph 2.d. of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with DRI funds at no more than fair market value for a non-religious use.

b. DRI funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

i. The building (or portion thereof) that is to be improved with the HUD Disaster Recovery Initiative assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

ii. The HUD Disaster Recovery Initiative assistance is provided to the lessee (and not the lessor) to make the improvements;

iii. The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

iv. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

v. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

vi. The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

vii. The lessee must remit the amount received from the lessor under paragraph b.vi. of this section to the recipient or subrecipient from which the DRI funds were derived.

viii. The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, *e.g.*, homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph c.

c. As a general rule, DRI funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the State grant recipient or subrecipient from which the DRI funds are derived that, in connection with the provision of such services:

i. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

ii. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

iii. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

iv. Where the public services provided under paragraph 2.c. are

carried out on property owned by the primarily religious entity, DRI funds may also be used for minor repairs to such property that are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the DRI grant expenditure for the public services.

K. Political Activities

DRI funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with DRI funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

L. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients

The requirements set forth in 24 CFR part 24 apply to this program.

M. Procurement

When procuring property or services to be paid for in whole or in part with DRI funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for State grant recipients, based on full and open competition. Methods of procurement (*e.g.*, small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by section II.N. of this notice and § 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations. The State may adopt procurement standards in § 85.36, and may adopt procurement standards in § 85.36 for its State grant recipients that are also CDBG entitlement communities regardless of whether the State adopts such standards for other State grant recipients. Indian tribes must follow the procurement standards in § 85.36.

N. Conflict of Interest

1. *Applicability.* In the procurement of supplies, equipment, construction, and services by the States, State grant recipients, and subrecipients, the conflict of interest provisions in section II.M. shall apply. In all cases not governed by section II.M., this section II.N. shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with DRI funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

2. *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph 3. of this section who exercise or have exercised any functions or responsibilities with respect to HUD Disaster Recovery Initiative-assisted activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

3. *Persons covered.* The conflict of interest provisions for paragraph 2. apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a State grant recipient, or of any designated public agencies, or subrecipients which are receiving DRI funds.

4. *Exceptions: Threshold requirements.* Upon written request by the State, an exception to the provisions of paragraph 2. of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the State grant recipient provided the State shall fully document its determination in compliance with all requirements of paragraph 4.a., including the State's position with respect to each factor at paragraph 5., and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or State grant recipient, as appropriate. An exception may be considered only after the State or State grant recipient, as appropriate, has provided the following:

a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

b. An opinion of the attorney for the State or the State grant recipient, as appropriate, that the interest for which the exception is sought would not violate State or local law.

5. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph 4. have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

b. Whether an opportunity was provided for open competitive bidding or negotiation;

c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in this paragraph 5.

f. Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

O. Performance Reviews and Dispute Resolution and Enforcement Actions

The provisions of 24 CFR subpart I apply to States, regarding HUD review of grantee performance, resolution of disputes regarding grantee performance, and adjudicative, remedial and enforcement actions that HUD may take to resolve noncompliance matters.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD

regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the 1999 HUD Disaster Recovery Initiative are as follows: 14.219; 14.228.

Dated: December 21, 1999.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 99–33673 Filed 12–27–99; 8:45 am]

BILLING CODE 4210–29–P

federal register

Tuesday
December 28, 1999

Part XII

Department of Housing and Urban Development

24 CFR Part 200

Single Family Mortgage Insurance; Appraiser Roster Placement Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4429–F–02]

RIN 2502–AH29

Single Family Mortgage Insurance; Appraiser Roster Placement Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts certain of the provisions concerning HUD's Appraiser Roster that were published for public comment in a proposed rule on July 2, 1999. The Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration single family appraisals. The provisions adopted by this final rule codify the current Appraiser Roster placement procedure. The provisions published in the proposed rule concerning the Appraiser Roster removal procedure are being further considered by HUD and will be addressed in a separate rulemaking.

DATES: *Effective Date:* January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. HUD's Appraiser Roster

HUD's Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration (FHA) single family appraisals. HUD maintains the Appraiser Roster to provide a means by which HUD can monitor the quality of appraisals performed on single family homes financed through FHA single family programs and to ensure that appraisers performing FHA appraisals meet high competency standards. The Appraiser Roster is an important part of the FHA Single Family Mortgage Insurance program because accurate appraisals are vital to the success of the Program and HUD's ability to protect the FHA insurance funds.

II. The July 2, 1999 Proposed Rule

On July 2, 1999, HUD published for public comment a proposed rule (64 FR 36216) that would have codified the current placement procedure for HUD's Appraiser Roster and proposed an independent procedure for removing an appraiser from the Appraiser Roster. HUD proposed this independent removal procedure, separate and apart from HUD's existing debarment, suspension, and limited denial of participation administrative remedies, in order to better safeguard the FHA insurance funds and to better protect homebuyers. A complete description of these procedures is presented in the preamble to the July 2, 1999 proposed rule.

III. This Final Rule

This final rule adopts certain of the provisions concerning HUD's Appraiser Roster published in the July 2, 1999 proposed rule. Specifically, this final rule adopts the provisions that codify the current Appraiser Roster placement procedure. This final rule does not adopt the independent removal procedure nor certain other related provisions. A summary of the provisions adopted by this final rule is presented in section V. of this preamble.

The public comment period for the proposed rule closed on August 2, 1999. HUD received 2 comments. We received one comment from a banking institution and the other from a trade association. One of the commenters wrote in favor of the proposed rule. The other commenter raised a number of concerns about the proposed removal procedure. Neither commenter raised issues concerning the codification of HUD's current placement procedure. Consequently, HUD is adopting this procedure without change.

HUD, however, has decided not to adopt the proposed independent removal procedure in this final rule.

IV. Plain Language

Please note that the structure of the proposed rule has been revised in this final rule to comply with President Clinton's Memorandum of June 1, 1998, entitled "Plain Language in Government" (63 FR 31885). In this memorandum, President Clinton directed Federal agencies to use plain language in all government writing. With respect to rulemaking, President Clinton directed Federal agencies to use plain language in new proposed and final rules beginning January 1, 1999. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communications.

In particular, the structure of this final rule has been revised to present the rule in question-and-answer format. This was done to improve clarity and to make the regulations more user-friendly. The substance of each section, however, as proposed in the July 2, 1999 rule, has not been changed. In addition, some of the proposed regulatory language has been revised. Again, these revisions do not change the substance of each section. The revisions are also intended to improve the clarity of the final rule.

V. Summary of Provisions Adopted by this Final Rule

The following table presents a summary of the provisions adopted by the final rule. The table also serves as a guide to the plain language organizational changes implemented by the final rule. The first column of the table lists the provisions of the proposed rule. If the provision has been adopted by this final rule, the second column lists where in the new organization the provision appears. If the provision has not been adopted, the second column indicates that the provision has not been adopted by the final rule.

Provision in proposed rule * * *	Adopted by this final rule at * * *
§ 200.200(a)	§ 200.200(a)
§ 200.200(b)	§ 200.200(b)
§ 200.200(c)	§ 200.202
§ 200.200(d)	Not adopted by this final rule.
§ 200.200(e)	§ 200.206
§ 200.200(f)	Not adopted by this final rule.
§ 200.200(g)	Not adopted by this final rule.
§ 200.200(h)	Not adopted by this final rule.

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned OMB control number 2502–0538. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or

provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

VII. List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons discussed in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Add subpart G to read as follows:

Subpart G—Appraiser Roster

Sec.

200.200 What is the Appraiser Roster?
200.202 How do I apply for placement on the Appraiser Roster?
200.204 [Reserved]
200.206 What are my responsibilities as an appraiser listed on the Appraiser Roster?

Subpart G—Appraiser Roster

§ 200.200 What is the Appraiser Roster?

(a) *Appraiser Roster.* HUD maintains a list of appraisers. A mortgagee must select only an appraiser from this list for the appraisal of a property that is to be the security for an FHA-insured single family mortgage.

(b) *Disclaimer.* Since an appraisal is performed to determine the maximum insurable mortgage and to also protect the FHA insurance funds, the inclusion of an appraiser on the Appraiser Roster does not create or imply a warranty or endorsement to a prospective homebuyer or to any other organization or individual by HUD of the listed appraiser nor does it represent a warranty of any appraisal performed by the listed appraiser. The inclusion of an appraiser on the Appraiser Roster means only that a listed appraiser has met the qualifications and conditions, prescribed by the Secretary, for inclusion on the Appraiser Roster.

§ 200.202 How do I apply for placement on the Appraiser Roster?

(a) *Application.* To apply for placement on the Appraiser Roster, you must submit an application to HUD.

(b) *Eligibility.* To be eligible for placement on the Appraiser Roster:

(1) You must be a state-licensed or state-certified appraiser;

(2) You must pass a HUD test on FHA appraisal methods and reporting; and

(3) You must not be listed on:

(i) The General Service Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Voice Response System.

§ 200.204 [Reserved]

§ 200.206 What are my responsibilities as an appraiser listed on the Appraiser Roster?

All appraisers listed on the Appraiser Roster are responsible for:

(a) Obtaining and reading the HUD Appraiser Handbook (4150.2) and any updates to the Handbook;

(b) Complying with the HUD Appraiser Handbook (4150.2), and any updates to the Handbook, when performing all appraisals of properties for HUD single family mortgage insurance purposes; and

(c) Complying with all other instructions and standards issued by HUD when performing all appraisals of properties for HUD single family mortgage insurance purposes.

Dated: December 17, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–33672 Filed 12–27–99; 8:45 am]

BILLING CODE 4210–27–P

VOL
64
ISS
2
4
8
DE
28
999
UMI

federal register

Tuesday
December 28, 1999

Part XIII

Department of Housing and Urban Development

Disaster Recovery Initiative Waivers and Modifications; Requirements for Community Development Block Grant Funds; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4482–N–02]

1999 HUD Disaster Recovery Initiative Waivers and Modifications of Requirements for Community Development Block Grant Funds Under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers and modifications.

SUMMARY: Elsewhere in today's **Federal Register**, HUD published a notice governing the allocation and use of funds under the 1999 Disaster Recovery Initiative. In implementing this Initiative, HUD is authorized by statute to waive statutory and regulatory requirements. This notice lists the provisions being waived and provides justifications for these waivers.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277, 112 Stat. 2681, approved October 21, 1998)(1999 Supplemental Appropriations Act), under division B, title IV, chapter 7, appropriates $250 million in Community Development Block Grant (CDBG) funds to use for disaster relief, long-term recovery, and mitigation in communities affected by Presidentially declared natural disasters designated during fiscal year 1998 and 1999.

With respect to these supplemental funds, the Act provides that the Secretary of HUD:

> may waive or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds and would not be inconsistent with the overall purpose of the statute: *Provided further*, That the Secretary may waive the requirements that activities benefit persons of low-and moderate-income, except that at least 50 percent of the funds under this head must benefit primarily persons of low-and moderate-income unless the Secretary makes a finding of compelling need. *Provided further*, That, upon a finding of compelling need, the Secretary must provide an explanation of the finding to the Committees on Appropriations.

In conjunction with these statutory provisions and pursuant to 24 CFR 5.110, the Department has determined that it has good cause to waive certain regulatory provisions governing the use of Disaster Recovery Initiative funds. Therefore, to facilitate the use of the Disaster Recovery Initiative funds appropriated under division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act, the following provisions are waived for the reasons set forth below. These waivers apply to activities funded under the Act with Disaster Recovery Initiative funds.

Consolidated Submissions for Community Planning and Development Programs

Description of Requirements Waived

Citizen participation requirements at 42 U.S.C. 5304(a), 42 U.S.C. 5306(d)(5)(C), 24 CFR 91.115(c), to the extent that expedited amendment of the State's Consolidated Plan is necessary to ensure timely delivery of assistance, except that grantees must provide alternative procedures for public notice of funding availability, as approved by HUD.

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary.

The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), and 24 CFR 91.320.

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. These requirements concern the submission of an Annual Action Plan (for States receiving annual allocations of regular CDBG funding). 42 U.S.C. 5304(m) contains the requirement for submission of a Community Development Plan describing a grantee's priority non-housing community development needs. Section I.G. of the **Federal Register** notice, published elsewhere in today's **Federal Register**, implementing the Disaster Recovery Initiative establishes streamlined, alternative planning and submission requirements for Disaster Recovery Initiative funding which meet the intent of the Cranston-Gonzalez National Affordable Housing Act and the Housing and Community Development Act. All State grantees that receive formula allocations of CDBG funding have already met the statutory and regulatory requirements for the five-year strategic plan in the Consolidated Plan.

Citizen participation requirements at 42 U.S.C. 5304(a)(2) and (a)(3)(A) through (E), 24 CFR 91.110 and 91.115, and 24 CFR 570.486(a).

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. Section I.G. of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes streamlined, alternative citizen participation requirements for Disaster Recovery Initiative funding which meet the intent of the National Affordable Housing Act and the Housing and Community Development Act. Such requirements provide for public notice, appraisal, examination, and comment on the activities proposed for the use of DRI funds, but do not specifically require public hearings.

Community Development Block Grant Program

Description of Requirements Waived

Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A) and 24 CFR 570.484 (for States) that 70 percent of funds, over a period not to exceed three years, are for activities that benefit low and moderate income persons.

Justification: Grantees should give maximum feasible priority to funding activities that benefit persons of low and moderate income. Because the damage to community development and housing is without regard to income, and income-producing jobs are often lost following a disaster for a period of time, it is important to give grantees maximum flexibility to carry out recovery activities within the confines of the CDBG program national objectives, which are not waived. Also, with mitigation activities such as the buyout of flood-prone properties, it is within the community's interest and consistent with Federal disaster and floodplain policy to reduce the risks to health and safety and to lessen future disaster damage and related costs by buying out all properties with areas at risk, rather than taking a patchwork approach. Section I.C.2 of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes requirements for complying with the statutory mandate that each grantee's program principally (at least 50%) benefit low- and moderate-income persons.

Requirements at 42 U.S.C. 5305(a) and 24 CFR 570.482(a) through (d), concerning activities eligible for funding under the Disaster Recovery Initiative.

Justification: To give maximum flexibility to grantees in addressing the wide variety of needs resulting from natural disasters, the Department has established alternative requirements for eligible activities at section I.H. of the **Federal Register** notice implementing the Disaster Recovery Initiative. These requirements will ensure compliance with the eligibility requirements of the Act and will ensure accountability in the use of funds.

The 50 percent of downpayment limitation on direct homeownership assistance for low or moderate income homebuyers at 42 U.S.C. 5305(a)(24)(D).

Justification: Required to provide additional assistance to low/moderate income disaster victims in instances in which direct homeownership assistance with 50 percent of a downpayment is insufficient.

Provisions of 42 U.S.C. Chapter 69—Community Development and 24 CFR part 570 that would prohibit States electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities and to Indian tribes, including 42 U.S.C. 5306(d)(1) and (2)(A) and 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in nonentitlement areas and to Indian tribes.

Justification: This provides the State the flexibility necessary to meet a wide range of recovery needs in any areas of the State, including those in entitlement communities and on Indian reservations, that have been affected by the disaster.

Requirements at 24 CFR 570.480(a), 570.481(a) and 570.486(b).

Justification: These provisions describe requirements which are specific to States' administration of CDBG funding for non-entitlement areas. 24 CFR 570.480(a) indicates that other subparts of Part 570 are generally not applicable to the State CDBG program; 24 CFR 570.481(a) indicates that HUD will defer to States' interpretations of the definitions of terms contained in 42 U.S.C. 5300 *et seq.;* 24 CFR 570.486(b) governs activities serving beneficiaries outside the jurisdiction of the unit of general local government. The Act permits HUD to specify alternative requirements for purposes of the Disaster Recovery Initiative. Where possible, the **Federal Register** notice implementing the Disaster Recovery Initiative retains the administrative flexibility provided to States in the State CDBG program.

Requirements of 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a)(1) concerning the use of Disaster Recovery Initiative funds for State administrative costs, including matching funds requirements.

Justification: Waiving these provisions would prevent undue hardship on States and would further the purposes of disaster recovery, by eliminating the requirement that Disaster Recovery Initiative funds spent on State administrative costs be matched with State funding. Paragraph I.H.8.b. of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes alternative requirements for States' use of funds for costs incurred in administering this funding.

The provisions at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), for the State CDBG program, that require States to allow units of local government to retain program income. All program income will be returned to the State and will become program income for the year in which the State redistributes those funds.

Justification: Waiver of this provision will also allow States to quickly utilize all program income for other eligible activities, except that for States not participating in the CDBG program, program income received by a State after closeout of its grant shall not be subject to any Federal requirement.

Requirements of 42 U.S.C. 5306(d)(2)(C)(iii) concerning restrictions on a State's ability to limit activities eligible for funding.

Justification: Waiving these requirements will increase State grantees' flexibility in prioritizing and responding to disaster recovery needs.

Acquisition and Relocation Requirements For CDBG Disaster Supplemental Funds

Description of Requirements Waived

One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and 24 CFR 570.488, 570.606(c) and 42.375(a), for low and moderate income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation.

Justification: These requirements provide that all occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to a use other than as low/moderate income dwelling units in connection with a CDBG activity must be replaced with low/moderate income dwelling units.

These requirements are waived provided the grantee assures HUD it will use all resources at its disposal, including DRI funds authorized to be used for a program of optional relocation assistance under 42 U.S.C. 505(a)(11), to ensure no displaced homeowner will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

Not waiving this provision would discourage grantees from demolition and clearance of dwelling units that would otherwise be appropriate for CDBG assistance. Such inaction would inhibit recovery efforts and add to health and safety problems.

Relocation requirements at 42 U.S.C. 5304(d)(2)(iii) and (iv) and 24 CFR 570.606(c) and 42.350(e), to permit a grantee to meet all or part of its obligation to provide relocation benefits to displaced persons under sections 204 and 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq*) (URA).

Justification: The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and that agency will thus be eliminated.

FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(iii) and (iv) and implementing regulations at 24 CFR 570.606(c)(2). These alternative relocation benefits, available to low-and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA, respectively. The waiver assures uniform and equitable treatment for all such tenants under the URA, as qualified by this waiver.

Requirements at 49 CFR 24.2, 24.402(b)(2) and 24.404, to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income.

Justification: The failure to suspend these requirements would impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

Requirements of Sections 204 and 205 of the URA, and 49 CFR Part 24, to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter who elects to relocate to rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.*, Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

Justification: Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. The change conforms URA policy with Section 104(d) relocation assistance.

Requirements of Section 202(b) of the URA and 49 CFR 24.302, to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

Justification: Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

Requirements of Section 414 of the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5181) so that Uniform Relocation Act provisions do not apply when a homeowner displaced by the disaster is assisted.

Justification: Section 414 States: "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act."

Failure to waive section 414 would impede disaster recovery, discouraging grantees from the acquisition, demolition or rehabilitation of disaster-damaged housing because of excessive costs that would result from replacement housing payments made to former homeowners displaced by the disaster. Homeowners actually displaced by a HUD-assisted disaster recovery project will continue to receive URA assistance. Homeowners displaced by the disaster may apply for assistance under available disaster recovery programs.

Other Applicable Requirements

Requirements of 12 U.S.C. 1701u, 24 CFR 570.607(b) and 24 CFR part 135, concerning the requirements of Section 3 of the Housing and Urban Development Act of 1968.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs. However, in the **Federal Register** notice implementing the Disaster Recovery Initiative funding, HUD encourages grantees to give priority to the hiring of local low-and moderate-income persons and contractors in carrying out its activities.

Requirements of 24 CFR 570.612 and 24 CFR part 52, concerning applicability of Executive Order 12372 regarding intergovernmental consultation and review of activities proposed for Federal funding.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs.

Additionally, section 107(e)(2) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307(e)(2)) authorizes HUD to waive the provisions of section 109 and 110 in connection with grants to Indian tribes. HUD is exercising this authority to now waive labor standards requirements of section 110 (42 U.S.C. 5310) as they would otherwise apply to Indian tribes.

Justification: Waiving the cited labor standards requirements for the use of Disaster Recovery Initiative grants to Indian tribes conforms with Departmental policy for the Indian Community Development Block Grant program.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Dated: December 21, 1999.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 99–33674 Filed 12–27–99; 8:45 am]

BILLING CODE 4210–29–P

federal register

Tuesday
December 28, 1999

Part XIV

Department of Housing and Urban Development

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4512–N–03]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from July 1, 1999 through September 30, 1999.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers it has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on July 1, 1999 and ending on September 30, 1999.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from July 1, 1999 through September 30, 1999.

For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between October 1, 1999 through December 31, 1999.

In addition to listing the HUD waivers granted during the third quarter of 1999, this notice corrects two typographical errors contained in HUD's **Federal Register** notice of HUD waivers granted during the second quarter of 1999 (64 FR 55378, October 12, 1999). Waiver item number 56 of that notice incorrectly identified the HUD office requesting the waiver as the "Boston Multifamily HUB." The correct office is the "Buffalo Multifamily HUB." Additionally, the prefix number of the multifamily project involved was incorrectly identified as "013–EE033." The correct prefix is "014–EE033." (See 64 FR 55386.) For the convenience of readers, this notice republishes the corrected summary as waiver action number 58 of this notice.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: December 21, 1999.

Andrew Cuomo,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, July 1, 1999 through September 30, 1999

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

I. Waivers Granted by the Office of Community Planning and Development

For items 1 through 35, waivers for 24 CFR parts 42, 91, 92, 576, and 582, contact: Cornelia Robertson-Terry, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

1. Regulation: 24 CFR 42.375.

Project/activity: The State of Ohio requested this waiver for four of its grantees: Jackson City, Salisbury Township (Meigs County), Lawrence County, and Ripley Village (Brown County).

Nature of requirement: HUD's regulation at 24 CFR 42.375 requires that lower-income dwelling units that are demolished in connection with a CDBG-assisted activity be replaced with comparable lower-income dwelling units.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 30, 1999

Reasons waived: HUD determined that there was good cause for the waiver. The waiver was granted under the authority of Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters and for Overseas Peacekeeping Efforts, Including Those in Bosnia (Public Law 105–18, 111 Stat. 199). This action was taken so that acquisition of properties and relocation of persons out of the flood plain may be accomplished.

2. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Tulare, California requested a waiver of the submission date for the City's CDBG Performance Annual Evaluation Report (CAPER).

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's financial accounting system experienced a system failure and all financial data was temporarily inaccessible.

3. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Baltimore, Maryland requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's accounting system did not provide expenditure data in time for the City to complete the CAPER before the deadline. Additionally, more than 1000 CDBG activities were initiated prior to HUD's implementation of IDIS, which resulted in additional staff time devoted to updating and closing out these activities in IDIS, including a review of all financial accounts supporting these activities.

4. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Bellflower, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver due to the departure of two City employees directly responsible for this assignment.

5. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Lakewood, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The staff member responsible for this assignment was on sick leave. It would have been a financial hardship for the City to hire and train a staff person to prepare this report in the absence of the official on sick leave.

6. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Johnson City, Tennessee requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there is good cause for the waiver. The City's financial accounting system has not been fully implemented. In addition, the City must submit its financial records to auditors and hold public hearings.

7. Regulation: 24 CFR 91.520(a).

Project/activity: The County of Baltimore, Maryland requested a waiver of the submission date for the County's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 24, 1999.

Reasons waived: HUD determined that there was good cause for the waiver due to the workload demand created by HUD's request that the County staff review HOME program data in IDIS.

8. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Lompoc, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 24, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's Finance Department was not able to provide a complete expenditure report through June 30, 1999. In addition, the City's Community Development Program has experienced a staff shortage because of an extended delay in filling the position of Grant Record Technician.

9. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Bristol, Virginia requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City experienced recent personnel changes. In addition, the City's financial data system has experienced network problems and the City is in the process of re-entering data that was lost. The financial data is needed to prepare the CAPER.

10. Regulation: 24 CFR 91.520(a).

Project/activity: The cities of Jacksonville, Wilmington, Goldsboro, Greenville, and Rocky Mount, North Carolina requested a waiver of the submission date for their CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a

performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The five cities requested an extension because the completion of the CAPER reports have been delayed due to the damage and flooding caused by Hurricane Floyd.

11. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Charlotte, North Carolina requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City was delayed in preparing its report because of recent post-HUD monitoring activities and other major project demands. The waiver will provide time for citizens to review and comment on the final CAPER before its submission to HUD.

12. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Irvine, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City has implemented a new financial system and has only recently been able to reconcile its financial data with data recorded in IDIS.

13. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Asbury Park, New Jersey requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's program monitor/data technician recently departed and the remaining staff do not have experience with preparing the performance report using IDIS. The new program monitor did not receive her security access to IDIS in sufficient time to allow her to complete the report by the deadline.

14. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Fort Smith, Arkansas requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City requested additional time to correct data in IDIS and allow for public comment on the CAPER prior to submission to HUD.

15. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Charlottesville, Virginia requested a waiver of the submission date for the City's CAPER.

Nature of requirement: 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City experienced a recent loss of key experienced staff members.

16. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Irvington, New Jersey requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The staff person who prepared the report is out of the office and was unable to complete the report before her scheduled leave.

17. Regulation: 24 CFR 91.520(a).

Project/activity: The City of St. Cloud, Minnesota requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City did not receive its performance data from the non-profit sub-recipients that were assisted last year. As a result, the City was not able to meet the publication and public comment requirements before the deadline.

18. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Nashua, New Hampshire requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The extension was needed due to recent personnel changes in the community development staff and technical problems with IDIS.

19. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Portsmouth, Virginia requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for granting the waiver. The City staff that prepare the CAPER have been involved in resolving monitoring and audit issues. Further, the City experienced extensive damage as a result of Hurricane Floyd.

20. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Alhambra, California requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City needs additional time for the new Assistant City Manager to learn the CAPER reporting requirements.
21. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Oakland, California requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City recently experienced a reorganization of its Housing and Community Development Division.
22. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Union City, New Jersey requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City recently replaced the computer which contained HUD's Community 2020 software as well as the CAPER and IDIS data. The workload associated with backing up and replacing the information within those systems prevented the City from submitting the report before the deadline.
23. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Elizabeth, New Jersey requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City staff members who normally prepare the report were temporarily re-assigned to work on job training and implementation requirements for a CDBG-funded economic development project.
24. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Norwalk, California requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City needs additional time to meet the public comment period.
25. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Virginia Beach, Virginia requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City was delayed by Hurricanes Floyd and Dennis.
26. Regulation: 24 CFR 91.520(a).
Project/activity: The Town of Islip, New York requested a waiver of the submission date for the Town's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The Director of the Town's Community Development Agency has been incapacitated for an extended period of time. This person plays an integral role in the preparation of the CAPER.
27. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Bridgeport, Connecticut requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City experienced difficulty in extracting financial data from the internal information technology system. This data is used to complete the CAPER.
28. Regulation: 24 CFR 91.520(a).
Project/activity: Jefferson County, Kentucky requested a waiver of the submission date for the County's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 28, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The extension is needed because the County has experienced recent personnel changes and has limited staff.
29. Regulation: 24 CFR 91.520(a).
Project/activity: The City of Florissant, Missouri requested a waiver of the submission date for the City's CAPER.
Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date granted: September 29, 1999.
Reasons waived: HUD determined that there was good cause for the waiver. The City has a new director and

the director is not familiar with IDIS. The new director did not join the staff until August 23, 1999 and the CAPER report was due August 31, 1999.

30. Regulation: 24 CFR 92.205(c) and 92.251.

Project/activity: The City of Oklahoma City, Oklahoma requested waivers of the HOME program requirements regarding property standards and the minimum amount of assistance that may be invested in a project.

Nature of requirement: Section 92.205(c) requires that the minimum amount of HOME funds that may be invested in a project is an average of $1,000 per unit. Section 92.251 of the HOME program regulations requires that housing units assisted with HOME fund meet certain property standards.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: August 27, 1999.

Reasons waived: Oklahoma City was declared a disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. HUD determined that there was good cause for the waiver since this will allow the City to assist homeowners by granting HOME funds to pay for emergency repair costs.

31. Regulation: 24 CFR 92.216(a).

Project/activity: The State of Kansas requested a waiver of the HOME Program income targeting requirements.

Nature of requirement: Section 214(1)(A) of the National Affordable Housing Act (NAHA) and its implementing regulations at 24 CFR 92.216(a) require that, for each allocation of HOME funds received by a participating jurisdiction, 90 percent of the families assisted through rental housing (*i.e.*, occupying HOME-assisted rental housing units or receiving HOME-funded tenant-based rental) must have incomes that do not exceed 60 percent of the median family income for the area.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 30, 1999.

Reasons waived: Sedgwick County sustained substantial damage to its housing stock as a result of tornadoes on May 3, 1999. Section 290 of NAHA allows HUD the authority to suspend statutory requirements of the HOME program to address damage in an area for which the President has declared a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

32. Regulation: 24 CFR 576.21.

Project/activity: The City of Knoxville, Tennessee requested a waiver of the Emergency Shelter Grant (ESG) program regulations at 24 CFR 576.21.

Nature of requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 30, 1999.

Reasons waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The only eligible activity for which 1999 ESG funds would be used will be funded by the City through its Rental Rehabilitation Program. The City's April 15th letter clearly demonstrates that support services are a major gap in Knoxville's Continuum of Care Gap Analysis.

33. Regulation: 24 CFR 576.21.

Project/activity: The City of Fall River, Massachusetts requested a waiver of the ESG program regulations at 24 CFR 576.21.

Nature of requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: August 10, 1999.

Reasons waived: HUD may waive this provision if the grantee demonstrates that other eligible activities under the program are already being carried out in the locality with other resources. The City certified that other eligible activities under the program are already being undertaken by the City with other resources.

34. Regulation: 24 CFR 576.35(b)(2).

Project/activity: The City of Minneapolis requested an extension of the 24-month expenditure deadline.

Nature of requirement: The ESG regulation at 24 CFR 576.35(b)(2) requires grantees to expend ESG funds within 24 months of the date of the grant award by HUD.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 16, 1999.

Reasons waived: Based on information in a letter from the City, dated May 14, 1999, HUD determined that there was good cause for granting the waiver. The Turning Point project was not able to secure the required matching funds until February 18, 1999 in order to proceed. Turning Point anticipates that its portion of the project will be expended in three months.

35. Regulation: 24 CFR 582.105(e).

Project/activity: The City of Longview, Texas requested a waiver of the eight percent administrative cap for its 1993 Shelter Plus Care grant.

Nature of requirement: This provision caps administrative expenses for Shelter Plus Care program grants at eight percent.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: August 10, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. By raising the cap, the City will be able to continue to administer the grant for the entire projected term of the extension. The City will be allowed to use 13.36% of its grant for administrative expenses and the grant period will be extended to June 30, 2004.

II. Regulatory Waivers Granted by the Office of Housing

For item 36, waiver granted for 24 CFR part 207, contact: James B. Mitchell, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6164, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

36. Regulation: 24 CFR 207.259.

Project/activity: Temple Courts Apartments.

Nature of requirement: HUD regulations prohibit payment of a fee to a Housing Authority other than for actual expenses of a bond refunding transaction.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reasons waived: HUD determined that there was good cause to grant the waiver. The waiver was granted to assure bond purchasers that the project will not be disadvantaged in the event of an insurance claim by reason of its status as a Section 241 insured project.

For item 37, waiver granted for 24 CFR part 291, contact: Joe McCloskey, Director, Asset Management Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9286, Washington, DC 20410; telephone: (202) 708–1672 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

37. Regulation: 24 CFR 291.210(a).

Project/activity: Waiver of the requirement of 24 CFR 291.210(a) to provide authority for governmental entities and private nonprofit organizations to purchase HUD-owned single family properties offered with mortgage insurance on a direct sales basis and to provide discounts of 50 percent for use in the Teacher Next Door Initiative.

Nature of requirement: The HUD regulations at 24 CFR part 291 permit direct sales at deep discounts off the list price of properties sold without mortgage insurance to governmental entities and private nonprofit organizations for use in HUD and local housing or homeless programs. Based on HUD's experience with Real Estate Owned (REO) sales, it would not be detrimental to the insurance fund to permit governmental entities school districts and private nonprofit organizations to purchase properties offered with mortgage insurance on a direct sales basis or to provide discounts of 50 percent on properties sold for use in the Teacher Next Door Initiative.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reasons waived: Approving the waiver enables governmental entities school districts and nonprofit organizations the opportunity to fully participate in the Teacher Next Door Initiative by purchasing properties eligible for mortgage insurance at a 50 percent discount for resale to teachers.

For items 38 through 57, waivers granted for 24 CFR part 891, contact: Willie Spearmon, Director, Office of Business Projects, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6134, Washington, DC 20410–7000; telephone: (202) 708–3000 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–977–8391.

38. Regulation: 24 CFR 891.100(d).

Project/activity: Presidential Place, Cranston, Rhode Island (Project Number: 016–EE027/RI43–S981–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reason waived: HUD determined that there was good cause to grant this waiver. Additional funds were needed because of higher development costs attributed to a sewer impact fee, a substantial ejector pump and a lift station.

39. Regulation: 24 CFR 891.100(d) and 891.165.

Project/activity: Woodgrove Apartments, Knoxville, Tennessee (Project Number: 087–HD033–NP–CMI/TN37–Q961–004).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999

Reason waived: The waivers were approved because the project was delayed due to site changes caused by community opposition. Additional funds were required as a result of the contractors' bids exceeding the capital advance amount due to bad soil, rocks, and certain site requirements imposed by the city.

40. Regulation: 24 CFR 891.100(d).

Project/activity: Options Supported Housing IV, Ronkonkoma, New York (Project Number: 012–HD072/NY36Q971001); Project Share VI, Port Jefferson, New York (Project Number: 012–HD074/NY36Q971003).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner

Date granted: August 24, 1999.

Reason waived: The capital advances issues at the fund reservation stage did not reflect the higher costs to develop projects within the New York metropolitan area.

41. Regulation: 24 CFR 891.100(d).

Project/activity: Jackson Supportive Development, Jackson, Mississippi (Project Number: 065–HD–10/MS26–Q971–002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 3, 1999.

Reason waived: Additional funds were needed for project feasibility and the Sponsors could not raise any additional funds nor did they have the capacity to provide the funds.

42. Regulation: 24 CFR 891.100(d) and 891.165.

Project/activity: Mt. Zion Baptist Church, St. Louis, Missouri (Project Number: 085–EE038/M036–S971–005).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 3, 1999.

Reason waived: The Sponsor/Owner has taken all reasonable measures to

reduce project cost by competitively bidding the project. Further, the Sponsor/Owner has incurred additional project costs due to HUD error, and has no other funds available to cover the shortfall in project development costs. Additional time was needed for the project to reach initial closing due to a HUD processing error.

43. Regulation: 24 CFR 891.100(d).

Project/activity: River View Manor, Inc., Blairsville, Georgia (Project Number: 061–HD052–WDD/GA06–Q961–007).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 22, 1999.

Reason waived: The Owner had taken all reasonable measures to reduce project cost and had no other funds available to cover the shortfall in the cost to develop the project.

44. Regulation: 24 CFR 891.165.

Project/activity: Kittery Housing, Kittery, Nebraska (Project Number: 024–HDO22/ME36–Q961–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 2, 1999.

Reason waived: HUD needed additional time to review the initial closing documents and to schedule a closing.

45. Regulation: 24 CFR 891.165.

Project/activity: Jackson Place Red Bluff, Tehama County, California (Project Number: 136–HDO09–NP–WDO/CA30–Q961–002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 14, 1999.

Reason waived: There were unforeseen delays and the Sponsors encountered cost problems that had to be resolved.

46. Regulation: 24 CFR 891.165.

Project/activity: Cross Lanes Unity Apartments, Inc., Cross Lanes, West Virginia (Project Number: 045–EE009–CA/WV15–S961–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 14, 1999.

Reason waived: Delays occurred while the Owner was identifying additional funding sources to make the project feasible.

47. Regulation: 24 CFR 891.165.

Project/activity: Jefferson Cottage, Inc., Martinsburg, Virginia, (Project Number: 045–HDO21–CA/WV15–Q961–031).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 14, 1999.

Reason waived: Owner encountered significant delays with the County Planning Commission in regard to subdivision approval.

48. Regulation: 24 CFR 891.165.

Project/activity: Haledon Consumer Home, Haledon, New Jersey (Project Number: 031–HD075/NJ39–Q91–015).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reason waived: HUD required additional time in order to close the project.

49. Regulation: 24 CFR 891.165.

Project/activity: B'nai B'rith, New Haven, Conn. (Project Number: 017–EE029); C.I.B. West Hartford, Conn. (Project Number: 017–HD016).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Commissioner.

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Date granted: August 3, 1999

Reason waived: Delays were caused by the City's reluctance to issue a building permit for B'nai B'rith and HUD's delayed approval of additional funds. C.I.B. West Hartford's project was delayed because of extensive legal work required to resolve provisions of the condominium Declarations/Bylaws which were in conflict with the requirements of the Section 811 program.

50. Regulation: 24 CFR 891.165.

Project/activity: BCLT, Burlington, Vermont (Project Number: 024–HD024/VT36Q961001); Randolph Neighborhood, Randolph, Vermont (Project Number: 024–EE034/VT36S961002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Commissioner.

Date granted: August 24, 1999.

Reason waived: BCLT's delay in the submission of the firm application is primarily attributed to time needed to negotiate with the general contractor regarding the contract price. Randolph

Neighborhood's delay in closing is due to their efforts to identify other sources of funds needed to meet their cash requirement.

51. Regulation: 24 CFR 891.165.

Project/activity: Anointed Acres Housing Development, Greensboro, North Carolina (Project Number: 053–EE069/NC19–S971–002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: August 24, 1999.

Reason waived: Additional time was required for the owner to amend its firm commitment application and to resolve a title problem.

52. Regulation: 24 CFR 891.165.

Project/activity: Ralston Mercy Douglas House, Philadelphia, Pennsylvania (Project Number: 034–EE061/PA26–S961–005).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 3, 1999.

Reason waived: Additional time was needed by HUD to review the closing documents.

53. Regulation: 24 CFR 891.165.

Project/activity: Summerdale Court, Clariton, Allegheny County, Pennsylvania (Project Number: 033–HD039/PA28Q971001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 10, 1999.

Reason waived: Delays were caused as a result of the Sponsor's request for zoning variances, and the resulting from the adjacent property owners.

54. Regulation: 24 CFR 891.165.

Project/activity: Citrus Gardens, Orlando, Orange County, Florida (Project Number: 067–EE082/FL29–S971–008); Goodwill Industries, St. Petersburg, Florida (Project Number: 067–HD054/FL29–Q971–008); Bethel Towers, Tallahassee, Florida (Project Number: 067–EE016/FL29–S971–002); Cape Coral Home, Cape Coral, Florida (Project Number: 066–HD038/FL29–Q971–005); Matthew's Corner, Tampa, Florida (Project Number: 067–HD053/FL29–Q971–007).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 13, 1999

Reason waived: Citrus Gardens experienced delays due to deficiencies in their Firm Commitment Application and their efforts to resolve issues with the City of Orlando in order to obtain a building permit. Bethel Towers' delays were caused by efforts to correct deficiencies in the Firm Commitment Application including resolving a cash shortage. Goodwill Industries' closing has been delayed because they were forced to seek an alternate site. Cape Coral Home's delays have been caused by their inexperience with development activities and the General Contractor having revised his cost. Matthew's Corner delays occurred as the Owner tried to obtain approval from the City of Tampa for the project to have access from the road, and in obtaining a clarification of the site's legal description.

55. Regulation: 24 CFR 891.165.

Project/activity: VOA Riverside 10, Fort Worth, Texas (Project Number: 113–HD015–WPD/TX21–Q971–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 22, 1999.

Reason waived: Delays occurred because the owner was forced to change sites. The change in sites was necessary because the owner was not able to obtain proper zoning due to neighborhood opposition.

56. Regulation: 24 CFR 891.165.

Project/activity: ARC Housing, Milwaukee, Wisconsin (Project Number: 075–HD049–WDD/W139–Q961004).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 22, 1999.

Reason waived: Project has not closed due to architectural problems that have to be resolved.

57. Regulation: 24 CFR 891.165.

Project/activity: Royale Gardens Residences, Chicago, Illinois (Project Number: 071–EE125/IL06–S961–016).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 23, 1999.

Reason waived: Additional time is needed for the Sponsor to secure secondary financing to cover additional construction costs.

For item 58, waiver granted for 24 CFR part 891, contact: Frank W. Parker, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3730. Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

58. Regulation: 24 CFR 891.205 and 410(c).

Project/activity: The Buffalo Multifamily HUB requested an age waiver for the Henderson School Apartments, Henderson, New York, Project Number: 014–EE033/NY–06–S921–011.

Nature of requirement: 24 CFR 891.205 defines the term "Elderly person" as a household of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: June 30, 1999.

Reasons waived: The waiver was granted because of sustained high vacancy rates and indications of a soft market for VLI families in the area. The admission income limits were requested to be changed from 50 percent of median income (VLI) to 80 percent of median (LI) to sustain occupancy and maintain project viability.

III. Waivers Granted by the Office of Public and Indian Housing

For items 59 through 63, waivers granted for 24 CFR part 761, contact: Sonia Burgos, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4206, Washington, DC 20410; telephone (202) 708–1197 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

59. Regulation: 24 CFR 761.30(b).

Project /activity: Alma City Housing Authority; Public Housing Drug Elimination Program (PHDEP) Grant #GA06DEP1330196.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 9, 1999.

Reason waived: The housing authority has experienced changes in administrative personnel, including the Executive Director. These changes caused a reduced staff. Because of this, drawdowns were not made in a timely manner from the Line of Credit and Control system.

60. Regulation: 24 CFR 761.30(b).

Project/activity: Calhoun Housing Authority; Public Housing Drug Elimination Program (PHDEP) Grant #GA06DEP1190197.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 12, 1999.

Reason waived: The housing authority requested a six month extension on the ending date of the grant with no changes in the budget line items, to expend funds that would pay salaries at a Day Care Center and the After School Program. HUD determined there was good cause to grant this waiver of the regulation.

61. Regulation: 24 CFR 761.30(b).

Project/activity: Springfield Metropolitan Housing Authority; Public Housing Drug Elimination Program (PHDEP) Grant #OH16DEP02100196.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 12, 1999.

Reason waived: The PHA experienced poor management and was placed on the troubled list. New management and a new Board of Commissioners have taken over and are working to correct these problems. The PHA requested to reprogram PHDEP funds for law enforcement activity.

62. Regulation: 24 CFR 761.30(b).

Project/activity: Romulus Housing Commission; Public Housing Drug Elimination Program (PHDEP) Grant #MI28DEP0720197.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 13, 1999.

Reason waived: The PHA grant coordinator left for another job and did not inform the PHA of this. The Executive Director of the PHA attempted to manage the grant. However, her workload inhibited this activity. The security lighting equipment was not obtained in a timely fashion and the original budget for the security lighting was underestimated. The PHA requested a budget revision to fund the security lighting.

63. Regulation: 24 CFR part 761.

Project/activity: Public Housing Drug Elimination Program (PHDEP) Grant #CA01DEP0010198.

Nature of requirement: Waiver of 24 CFR part 761 relative to Law Enforcement Service Agreement and Policy Manual.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: September 17, 1999.

Reason waived: The PHA has not successfully executed a written Memorandum of Understanding between the local police department and a private security contractor. The PHA utilizes a pool of private security contractors who are governed by State Law in lieu of individual policy manuals, which is peculiar to California.

For Item 64, waiver granted for 24 CFR Part 982, contact: Gerald Benoit, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0477 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

64. Regulation: 24 CFR 982.303(b)(1).

Project/activity: Housing Authority of El Dorado County, California; Section 8 Rental Voucher Program.

Nature of requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: September 16, 1999.

Reason waived: Approval of the waiver provided the voucher holder an additional 60 days to seek housing due to a lease-up delay.

For Item 65, waiver granted for 24 CFR part 990, contact: Joan DeWitt, Director, Funding and Financial Management Division, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4216,

Washington, DC 20410; telephone (202) 708–1872 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

65. Regulation: 24 CFR 990.107(f) and 990.109.

Project/activity: Housing Authority of Elgin, IL.

Nature of requirement: Under 24 CFR 990, the Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of Elgin has both PHA-paid and tenant-paid utilities. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The PHA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 20, 1999.

Reason waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of Elgin requested a waiver based on the same approved methodology. The waiver permits the PHA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

For items 66 through 71, waivers granted for 24 CFR part 1000, contact: Tracy Outlaw, National Office of Native American Programs, U.S. Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

66. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Santee Sioux Tribe (SST) to accept the late submittal of the Indian Housing Plan (IHP) from the SST for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: Rain and severe flooding created an emergency situation on the reservation and every available person from the tribe was needed to assist fellow tribal members. Neither the tribe nor the housing authority held meetings during that time and, therefore, the IHP could not be reviewed and approved.

67. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Pit River Tribe to accept the late submittal of the IHP from the Pit River Tribe for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: Pit River is a small tribe in California that has experienced difficulty in understanding the requirements of NAHASDA and feels that the information provided has been confusing and has caused misunderstanding about the Tribal calendar year versus HUD's fiscal year (FY). Therefore, the tribe submitted its Annual Performance Report (APR) instead of the IHP with the presumption that the requirements had been met.

68. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Paskenta Band of Nomlaki Indians to accept the late submittal of the IHP from the Paskenta Band of Nomlaki Indians for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: the Paskenta band of Nomlaki Indians is a small tribe that relied on a consultant to submit its IHP this Fiscal Year. The tribe received assurance from the consultant that the IHP would be submitted by the deadline. However, the tribe was unaware that the IHP was submitted after the deadline until receiving a call from the Southwest ONAP.

69. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Cortina Band of Indians to accept the late submittal of the IHP from the Cortina Band of Indians for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: the Cortina Band informed the Southwest ONAP that the water heater in the tribal office broke in the middle of the night and flooded the office and damaged books and records. All the work that was done to prepare the IHP was destroyed. The documents were re-created as quickly as possible, but had to be submitted late.

70. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Nottawaseppi Huron Band of Potawatomi (NHBP) for the Department to accept the late submittal of the IHP from the NHBP for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 27, 1999.

Reason waived: Two factors contributed to the failure of the NHBP in submitting the IHP in a timely manner: (1) The tribal government and housing authority have been undergoing changes and a reorganization; and (2) the housing authority has only one full-time staff person affecting the ability of the recipient to meet all new NAHASDA requirements.

71. Regulation: 24 CFR 1000.327(b).

Project/activity: A request was made by the Aniak Native Community to waive the tribe/Tribally Designated Housing Entity (TDHE) regulatory notification requirement so that it could submit an IHP to receive formula funding for Fiscal Year 1998. The tribe was undergoing a transition in leadership and tribal members were at the peak of subsistence activities which delayed their preparation and submission of an IHP.

Nature of requirement: The regulation establishes the deadline for notification on whether an IHP will be submitted. By September 15 of each year, each Indian tribe in Alaska not located on a reservation, including each Alaska Native Village, regional Indian tribe, and regional corporation, or its TDHE must notify HUD in writing whether it or its TDHE intends to submit an IHP.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 20, 1999.

Reason waived: Based on the information and the documentation that was received, the Department believed

that there was good cause to waive the notification requirements of 24 CFR 1000.327(b).

[FR Doc. 99–33675 Filed 12–27–99; 8:45 am]

BILLING CODE 4210–32–P

Reader Aids

Federal Register

Vol. 64, No. 248

Tuesday, December 28, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468	1
67469–67692	2
67693–67996	3
67997–68274	6
68275–68614	7
68615–68930	8
68931–69164	9
69165–69370	10
69371–69628	13
69629–69882	14
69883–70172	15
70173–70562	16
70563–70984	17
70985–71266	20
71267–71632	21
71633–71982	22
71983–72248	23
72249–72456	27
72457–72886	28

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7256	67691
7257	68269
7258	69161
7259	69163
7260	70563
7261	71629
7262	71631

Executive Orders:

June 24, 1914 (Revoked in part by PLO 7416)	67295
April 28, 1917 (Revoked in part by PLO 7416)	67295
February 11, 1918 (Revoked in part by PLO 7416)	67295
July 10, 1919 (Revoked in part by PLO 7416)	67295
May 25, 1921 (Revoked in part by PLO 7416)	67295
April 17, 1926 (Revoked in part by PLO 7416)	67295
February 7, 1930 (Revoked in part by PLO 7416)	67295
13106 (superceded by EO 13144)	72237
13143	68273
13144	72237

Administrative Orders:

Memorandums:

November 29, 1999	68275

5 CFR

410	69165
530	69165
531	69165
532	69183, 72249
534	68931
536	69165
550	69165, 69936, 72457
551	69165
575	69165, 71633
591	69165
595	72457
610	69165, 72457
630	72250
831	72256
842	72256
870	72459
1205	71267
1630	67693
6801	68615
870	71983

Proposed Rules:

532	72292
792	72037
1201	72040

7 CFR

29	67469
210	72466
225	72474
226	72257
245	72466
246	67997, 70173, 71635
301	71267
319	68001, 69629
353	72262
457	71270
761	69322
905	69371
906	69375
915	69380
955	72265, 72267
1000	70868
1001	70868
1002	70868
1004	70868
1005	70868
1006	70868
1007	70868
1012	70868
1013	70868
1030	70868
1032	70868, 70985
1033	70868
1036	70868
1040	70868
1044	70868
1046	70868
1049	70868
1050	70868
1064	70868
1065	70868
1068	70868
1076	70868
1079	70868
1106	70868
1124	70868
1126	70868
1131	70868
1134	70868
1135	70868
1137	70868
1138	70868
1139	70868
1407	67470
1703	69937
1721	72488
4284	71984

Proposed Rules:

271	72196
272	70920, 72196
273	70920, 72196
301	71322
360	72293
361	72293
955	69419

985.....69421
989.....69204
1032.....67201
1703.....69937
1721.....72575
1744.....69946
1980.....70124
3555.....70124
4280.....69937

8 CFR

103.....69983
235.....68616

Proposed Rules:

100.....69538
103.....71323
214.....71323
299.....71323

9 CFR

78.....67695
94.....67695
130.....67697, 67699
310.....72170
317.....71989, 72490
381.....71989, 72150, 72490
391.....72492
424.....72150

Proposed Rules:

54.....70608
79.....70608
301.....70200
318.....70200
320.....70200

10 CFR

21.....71990
50.....71990
51.....68005
52.....72002
54.....71990
72.....67700, 72019
709.....70962
710.....70962
711.....70962
850.....68854

Proposed Rules:

26.....67202
71.....71331
73.....71331
431.....69596
960.....69963
963.....69963

11 CFR

Proposed Rules:

100.....68951

12 CFR

22.....71272
24.....70986
203.....70991
208.....71272
327.....70178
339.....71272
503.....69183
505.....69183
557.....69183
559.....69183
563.....69183
572.....69183
614.....71272
701.....72269
760.....71272
932.....71275
934.....71275
935.....71275
1102.....72494
1780.....72501

Proposed Rules:

202.....69963
205.....69963
213.....69963
226.....69963
230.....69963
611.....72041
615.....72041
935.....71689

13 CFR

107.....70992
300.....69868
301.....69868
302.....69868
303.....69868
304.....69868
305.....69868
306.....69868
307.....69868
308.....69868
314.....69868
316.....69868
317.....69868
318.....69868
400.....72019
500.....72022

Proposed Rules:

120.....67205, 69964

14 CFR

25.....67147, 67701, 67705, 69383
39.....67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394, 69629, 69964, 69967, 70181, 70997, 71001, 71003, 71004, 71006, 71007, 71009, 71010, 71012, 71278, 71280, 71282, 72270, 72522, 72524, 72528, 72530, 72531, 72533
65.....68916, 71635
71.....67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932, 69631, 69632, 70565, 70566, 70567, 70568, 70570, 71014, 71637
91.....70571
97.....67473, 67476, 71015, 71017
254.....70573
1203.....72534

Proposed Rules:

11.....69856
25.....67804, 69425
39.....67206, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336, 71689, 71694, 71696, 72575, 72579, 72582, 72584, 72586
71.....67525, 67810, 69430, 69431, 70610, 70611, 70612
450.....69628
1261.....71339
1267.....71339

15 CFR

303.....67148
806.....67716
902.....68228, 68932, 69888
2015.....67152

Proposed Rules:

280.....69969
922.....72296

16 CFR

0.....71283
4.....69397
305.....71019
1145.....71854
1212.....71854
1213.....71888
1500.....71888
1513.....71888

17 CFR

3.....68011
32.....68011
211.....67154, 68936
270.....68019

Proposed Rules:

Ch. II.....69074
1.....72587
4.....68304
230.....72590
240.....69975, 70613, 72590
243.....72590
249.....72590
250.....71341

18 CFR

35.....72535
141.....72537

19 CFR

12.....67479
132.....67481
163.....67481

20 CFR

404.....67719

Proposed Rules:

222.....68647
325.....67811
330.....67811
335.....67811
336.....67811
604.....67811, 67972, 71346

21 CFR

10.....69188
12.....69188
176.....68629, 69898
177.....71637
178.....67483, 71639, 72272, 72273, 72274
179.....69190
203.....67720
205.....67720
510.....69188, 69191
520.....68289
522.....71640
529.....71640
558.....70576, 72026
1401.....69901

Proposed Rules:

10.....69209
12.....69209
16.....70202, 70203
314.....67207
330.....71062
510.....69209
601.....67207
807.....71347
1309.....67216

23 CFR

130.....71284
480.....71284
620.....71284
630.....71284
635.....71284
645.....71284
710.....71284
712.....71284
713.....71284

Proposed Rules:

655.....71354, 71358

24 CFR

180.....72726
200.....72868
290.....72410
888.....72722, 72730
985.....67982

25 CFR

Proposed Rules:

504.....72296
990.....71698

26 CFR

1.....67763, 69903, 71641, 72540, 72545, 72555
20.....67763, 67767, 71021
25.....67767
301.....67767
601.....69398
602.....67767, 69903, 71641, 72545, 72555

Proposed Rules:

1.....71082

27 CFR

200.....71918
270.....71918, 71929, 71937
275.....71918, 71929, 71937, 71947
290.....71918, 71929, 71937
295.....71929, 71937
296.....71929, 71937, 71957

Proposed Rules:

4.....72612
200.....71927
270.....71927, 71935
275.....71927, 71935, 71955
290.....71927, 71935
295.....719351
296.....719351

28 CFR

0.....68307
91.....71022
545.....72798
551.....68264

29 CFR

403.....71622
4011.....67163
4022.....67163
4044.....67165, 69922

Proposed Rules:

2520.....67436
2700.....68649

30 CFR

218.....72756
250.....69923, 72756
252.....72756
253.....72756
256.....72756
282.....72756
740.....70766
745.....70766
761.....70766, 70838
762.....70766
772.....70766
773.....70766
778.....70766
780.....70766
784.....70766, 71652
817.....71652
913.....68024, 72275
914.....70578
918.....68289
936.....70584
946.....69399, 72277

Proposed Rules:

14.....72617
18.....72617, 72620
75.....72617, 72620
280.....68649
931.....71698, 71700
938.....70644, 72297

31 CFR

285.....71228

Proposed Rules:

28.....69432
285.....71233

32 CFR

44.....72027
199.....72030
287.....67166
296.....71297
299.....71299
806.....72808
806b.....72031

Proposed Rules:

199.....67220, 69981
811.....72621

33 CFR

26.....69633
100.....67168, 67169, 69192, 70184
117.....67169, 67773, 68291, 71653
127.....67170
154.....67170
155.....67170
159.....67170
161.....69633
164.....67170
165.....70587, 71023, 71655, 72281, 72558, 72559
183.....67170
207.....69402

Proposed Rules:

100.....70650
140.....68416
141.....68416
142.....68416
143.....68416
144.....68416
145.....68416
146.....68416
147.....68416
165.....70650

34 CFR

76.....71964
304.....69138
606.....70146
607.....70146
614.....72802

Proposed Rules:

694.....71552

36 CFR

7.....71025
1220.....67662
1222.....67662
1228.....67662, 67634, 68945

Proposed Rules:

217.....69446, 70204
219.....69446, 70204
251.....70204

37 CFR

1.....67486, 67774
2.....67486, 67774
253.....67187
258.....71659

Proposed Rules:

201.....71086

38 CFR

Proposed Rules:

3.....67528

39 CFR

3001.....67487

Proposed Rules:

111.....68965, 71702, 72044
3001.....72622

40 CFR

9.....68546, 68722, 69636
51.....71026
52.....67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404, 70589, 70592, 70593, 71026, 71027, 71031, 71035, 71038, 71304, 71660, 71663, 71666, 72032, 72561, 72564
62.....70595
63.....67789, 67793, 69637, 71852, 72568
70.....71038, 72032
82.....68039
122.....68722
123.....68722
124.....68722
141.....67450
143.....67450
144.....68546, 70316
145.....68546
146.....68546
180.....68044, 68046, 68631, 69407, 69409, 70184, 70599, 71670, 72282, 72284
243.....70602
300.....68052

Proposed Rules:

2.....71366
50.....68659
52.....67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332 70347, 70364, 70380, 70397, 70412, 70428, 70443, 70459, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087, 71704, 71705, 72045, 72632
62.....70665
63.....72633
70.....68066, 72045
80.....70121
81.....68659, 70660
85.....68310, 70121
86.....68310, 70121, 70665
141.....71366
142.....71367
165.....71367
180.....71708
194.....68661
243.....70666
260.....68968
372.....68311
503.....72045
761.....69358

41 CFR

Ch. 101.....72570
Ch. 301.....67670
300-3.....67670
301-10.....67670

42 CFR

121.....71317
422.....71673
1001.....71626

Proposed Rules:

68c.....69213
433.....67223
438.....67223
1001.....69217

43 CFR

12.....72287

44 CFR

61.....71317
64.....71317, 71678
65.....69644, 69646, 69647, 69649
67.....69652, 69655, 69657

Proposed Rules:

67.....69676

45 CFR

61.....71041
1302.....69924
1641.....67501

Proposed Rules:

160.....69981
161.....69981
162.....69981
163.....69981
164.....69981
270.....68202
2522.....67235
2525.....67235

46 CFR

28.....67170
30.....67170
32.....67170
34.....67170
35.....67170
38.....67170
39.....67170
54.....67170
56.....67170
58.....67170
61.....67170
63.....67170
76.....67170
77.....67170
78.....67170
92.....67170
95.....67170
96.....67170
97.....67170
105.....67170
108.....67170
109.....67170
110.....67170
111.....67170
114.....67170
119.....67170
125.....67170
151.....67170
153.....67170
154.....67170
160.....67170
161.....67170
162.....67170
163.....67170
164.....67170
170.....67170
174.....67170
175.....67170
182.....67170
190.....67170
193.....67170
195.....67170
199.....67170

47 CFR

Ch. 1.....68053
1.....68946, 69926, 72570
2.....69926, 72571
36.....67372, 67416
51.....68637
54.....67372, 67416
69.....67372
73.....70606, 71041
76.....67193, 67198
90.....67199, 71042
95.....69926

Proposed Rules:

0.....71369
1.....71088
2.....71088
73.....67236, 67535, 68662, 68663, 68664, 68665, 70670, 70671, 70672, 71097, 71098, 71712
80.....71369
90.....71369
101.....71088, 71373

48 CFR

Ch. 1.....72414, 72451
1.....72415, 72416
2.....72416, 72441, 72450
4.....72441, 72444
5.....72416, 72441, 72450
6.....72416
7.....72441
8.....72445
9.....72416
10.....72441
11.....72446
12.....72415, 72416, 72447
13.....2416, 72447
14.....72416, 72450
15.....72416, 72441, 72450
16.....72448

17 72416
19 ..... 72416, 72441, 72447, 72450
23 72415
25 72416
32 72450
33 72450
36 ..... 72416, 72450
39 72445
42 ..... 72444, 72450
48 72448
52 ..... 72415, 72416, 72446, 72447, 72448, 72450
808 69934
812 69934
813 69934
852 69934
853 69934
1815 69415

Proposed Rules:

1 67986
2 70158
12 67992
13 67992
16 70158
22 ..... 67986, 67992
25 67446
28 72828
30 67814
37 70158
52 ..... 67446, 67986, 67992, 72828
919 68072
952 68072
1815 70208
1819 70208
1852 70208

48 CFR

192 69660
195 69660
211 70193
219 ..... 69193, 72289
225 69193
235 70193
238 70193
240 70193
571 69665

Proposed Rules:

40 69076
106 71098
107 71098
171 ..... 71098, 72633
172 72633
173 72633
174 72633
175 72633
176 72633
177 72633
178 72633
179 72633
180 72633
192 71713
195 71713
571 ..... 70672, 71377

50 CFR

17 ..... 68508, 69195, 71680
20 71236
21 71236
222 ..... 69416, 70196
223 ..... 69416, 70196
300 ..... 69672, 72035
600 67511
622 ..... 68932, 71056
635 70198
648 ..... 71060, 71320, 71687
649 68228
660 ..... 69888, 72290
679 ..... 68054, 68228, 68949, 69673, 70199, 71688, 72572

Proposed Rules:

17 ..... 67814, 69324, 70209, 71714, 72300
18 68973
216 ..... 70678, 71722
226 ..... 67536, 69448
622 ..... 70678, 71388
635 ..... 69982, 72636
648 67551
660 70679
679 ..... 67555, 69219, 69458, 71390, 71396, 72302

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 28, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Onions (Vidalia) grown in—
Georgia; published 12-27-99

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
Nutrient content claims; ≥healthy≥ definition; published 12-28-99

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Maryland; published 10-29-99

GENERAL SERVICES ADMINISTRATION

Federal property management:
Utilization and disposal—
Excess personal property; reporting criteria; published 12-28-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Information security program; published 12-28-99

PERSONNEL MANAGEMENT OFFICE

Pay administration:
Back pay, holidays, and physicians' comparability allowances; published 12-28-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Fokker; published 12-13-99
Pratt & Whitney; published 10-29-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Estates; applicability of separate share rules; published 12-28-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
Fire ant, imported; comments due by 1-4-00; published 11-5-99

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning
Supplemental information; comments due by 1-4-00; published 12-13-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Community development quota program; at-sea scales; comments due by 1-3-00; published 12-2-99
Pollock; comments due by 1-5-00; published 12-21-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico Fishery Management Council; meetings; comments due by 1-3-00; published 11-26-99
Northeastern United States fisheries—
Dealer and vessel reporting requirements; comments due by 1-3-00; published 12-2-99
Marine mammals:
Dolphin-safe tuna labeling; official mark; comments due by 1-5-00; published 12-22-99

ENERGY DEPARTMENT

Acquisition regulations:
Mentor-Protege Program; comments due by 1-5-00; published 12-6-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Ethylene oxide commercial sterilization and fumigation operations; chamber exhaust and aeration room vents; requirements suspended; comments due by 1-3-00; published 12-3-99
Air programs:
Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply
Findings rescission; comments due by 1-3-00; published 12-8-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 1-3-00; published 12-17-99
Connecticut; comments due by 1-3-00; published 12-1-99
Georgia; comments due by 1-3-00; published 12-2-99
Montana; comments due by 1-5-00; published 12-6-99
Pennsylvania; comments due by 1-5-00; published 12-6-99
Rhode Island; comments due by 1-3-00; published 12-2-99
Utah; comments due by 1-5-00; published 12-6-99
Radiation protection programs:
Hanford Site; transuranic radioactive waste proposed for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability; comments due by 1-7-00; published 12-8-99
Water supply:
National primary drinking water regulations—
Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 11-2-99
Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 0-0- 0

FEDERAL ELECTION COMMISSION

Internet use for campaign activity; inquiry; comments due by 1-4-00; published 11-5-99

FEDERAL MEDIATION AND CONCILIATION SERVICE

Freedom of Information Act; implementation; comments due by 1-3-00; published 11-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Adjuvants, production aids, and sanitizers—
7-oxa-3,20-diazadispiro-[5.1.11.2]-heneicosan-21-one,2,2,4,4-tetramethyl-,hydrochloride, reaction products; comments due by 1-3-00; published 12-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:
Children's Health Insurance Program; State allotments and grants; comments due by 1-7-00; published 11-8-99
Medicare:
Physician fee schedule (2000 CY); payment policies and relative value unit adjustments; comments due by 1-3-00; published 11-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 1-3-00; published 11-3-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Santa Ana sucker; comments due by 1-3-00; published 12-16-99
Scaleshell mussel; comments due by 1-7-00; published 11-29-99

LABOR DEPARTMENT

Employment Standards Administration

Federal Coal Mine Health and Safety Act of 1969, as amended:
Black Lung Benefits Act—
Individual claims by former coal miners and dependents processing and adjudication; regulations clarification and simplification; comments due by 1-6-00; published 11-18-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
Employee choice between appeal procedure and

grievance procedure; agency requirement to provide notice when it takes appealable action against employee; comments due by 1-3-00; published 11-1-99

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:

Antitrust review authority; clarification; comments due by 1-3-00; published 11-3-99

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:

New York; comments due by 1-4-00; published 11-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 1-6-00; published 12-7-99

Bell Helicopter Textron Canada; comments due by 1-3-00; published 11-4-99

BFGoodrich; comments due by 1-7-00; published 12-8-99

Boeing; comments due by 1-6-00; published 11-22-99

British Aerospace; comments due by 1-6-00; published 12-7-99

Eurocopter France; comments due by 1-4-00; published 11-5-99

Fokker; comments due by 1-5-00; published 12-6-99

McDonnell Douglas; comments due by 1-6-00; published 11-22-99

New Piper Aircraft, Inc.; comments due by 1-4-00; published 11-5-99

Raytheon; comments due by 1-3-00; published 11-16-99

Rolls-Royce plc; comments due by 1-3-00; published 11-2-99

Class E airspace; comments due by 1-3-00; published 11-19-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Controlled corporations; recognition of gain on certain distributions of stockor securities in connection with an acquisition; comments due by 1-5-00; published 8-24-99

LIST OF PUBLIC LAWS

This is a completes the listing of public laws enacted during the first session of the 106th of Congress. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

The list will resume when bills are enacted into public law during the second session of the 106th Congress, which convenes on January 24, 2000. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1999.

H.R. 1180/P.L. 106–170

Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

Last List December 23, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: PENS will resume service when bills are enacted into law during the second session of the 106th Congress. This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.

_____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐

☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
64
ISS
2
4
8
DE
28
1999
JML

Public Laws

106th Congress, 2nd Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 2nd Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 2nd Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 12/99

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
64
ISS
2
4
8
DE
28
999
UMI

Printed on recycled paper

VOL
64
ISS
249
DE
29
999
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12-29-9
Vol. 64

United
Govern
Printing
SUPERINTE
OF DOCUM
Washington,

OFFICIAL B
Penalty for p

12–29–99
Vol. 64 No. 249

Federal Register

Wednesday
December 29, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
64
ISS
2
4
9
DE
29
999
IMI

12-29-99
Vol. 64 No. 249
Pages 72887-73380

federal register

Wednesday
December 29, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register

Vol. 64, No. 249

Wednesday, December 29, 1999

Agency for Health Care Policy and Research
NOTICES
Meetings:
Health Care Policy and Research Special Emphasis Panel, 73050
Health Services Research Initial Review Group, 73050–73051

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Scientific Counselors Board, 73051

Agricultural Marketing Service
RULES
Prunes (dried) produced in California, 72909–72912

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
African swine fever; disease status change—Portugal, 72912–72913

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Alcoa Inc., et al., 73066–73074

Army Department
See Engineers Corps
NOTICES
Meetings:
Reserve Officers' Training Corps (ROTC) Program Subcommittee, 73021

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73051–73053
Submission for OMB review; comment request, 73053

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 73053–73054

Coast Guard
RULES
Ports and waterways safety:
Safety and security zones and local regulations; temporary rules issued; list, 72929–72934
NOTICES
Meetings:
Great Lakes pilotage system; improvements, 73113–73114

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Customs Service
NOTICES
Automation program test:
Reconciliation prototype, 73121–73124

Defense Department
See Army Department
See Engineers Corps
RULES
Privacy Act; implementation, 72928–72929
NOTICES
Meetings:
Electron Devices Advisory Group, 73018–73019
President's Security Policy Advisory Board, 73019
Science Board task forces, 73020
Privacy Act:
Systems of records, 73020–73021

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Roche Diagnostics Corp., 73074

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73021–73022
Grants and cooperative agreements; availability, etc.:
Women's Educational Equity Act program, 73375–73379
Postsecondary education:
Federal Pell Grant Program—
Federal need analysis methodology for 2000-2001 award year; correction, 73022–73023
Privacy Act:
Computer matching program, 73023–73024

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73024–73025
Grants and cooperative agreements; availability, etc.:
Testing and evaluation of promising mercury control technologies for coal based power systems, 73025–73026
Meetings:
Environmental Management Site-Specific Advisory Board—
Fernald Site, OH, 73026
Kitland Area Office (Sandia), NM, 73026–73027
Reports and guidance documents; availability, etc.:
Environmental cleanup program at sites; long-term stewardship activities and issues; national study, 73027

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Rio de Flag Flood Control Study, Coconino County, AZ, 73021

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Compression-ignition marine engines at or above 37 kilowatts, 73299–73373
Air quality implementation plans; approval and promulgation; various States:
Alaska, 72940–72947
Georgia, 72939–72940
Louisiana, 72934–72938
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Phosphine, 72947–72951
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Alaska, 72972
Louisiana, 72971–72972
Standards, test methods, and guidelines:
Good laboratory practice standards; consolidation, 72972–72985
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73040–73042
Reporting and recordkeeping requirements, 73042–73045
Air programs:
National ambient air quality standard for sulfur oxides remand; settlement extension, 73045
Meetings:
FIFRA Scientific Advisory Panel, 73045–73046
Local Government Advisory Committee, 73046–73047
Project XL (excellence and leadership) innovative technologies projects:
Steele County, MN, 73047
Reports and guidance documents; availability, etc.:
Chesapeake 2000; a watershed partnership; comment request, 73048

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Cessna, 72919–72922
Fokker, 72913–72916
Pratt & Whitney, 72916–72918
Rolls-Royce, 72918–72919
Class E airspace, 72922–72928
PROPOSED RULES
Airworthiness directives:
Boeing, 72967–72969
EMBRAER, 72964–72967
Learjet, 72963–72964
Class E airspace, 72969–72971
NOTICES
Meetings:
RTCA, Inc., 73115
Passenger facility charges; applications, etc.:
Jacksonville International Airport, FL, 73115–73116

Federal Communications Commission
RULES
Common carrier services:
Commercial mobile radio services—
Wireless services campatibility with enhanced 911 services; reconsideration petitions, 72951–72956
Federal-State Joint Board on Universal Service—
Non-rural local exchange carriers; high-cost support; forward-looking mechanism, 72956
Radio services, special:
Personal radio services—
218-219 MHz services, licensing issues, 72956–72959
PROPOSED RULES
Television broadcasting:
Satellite Home Viewer Improvement Act; implementation—
Retransmission consent issues, 72985–72992

Federal Deposit Insurance Corporation
RULES
Deposit insurance coverage:
Technical amendments; correction, 72913

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
New England Power Co., et al., 73034–73037
Environmental statements; availability, etc.:
Rough and Ready Hydro Inc., 73037
Environmental statements; notice of intent:
Guardian Pipeline, L.L.C., 73037–73040
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 73027
Atlanta Gas Light Co., 73027
Columbia Gas Transmission Corp., 73027–73028
Distrigas of Massachusetts Corp., 73028–73029
El Paso Natural Gas Co., 73029
Equitrans, L.P., 73029
Florida Gas Transmission Co., 73029–73030
Granite State Gas Transmission, Inc., 73030
Independence Pipeline Co., et al., 73030
KN Interstate Gas Transmission Co., 73031
Northern Border Pipeline Co., 73031–73032
Northern Natural Gas Co., 73032–73033
PG&E Gas Transmission, Northwest Corp., 73033
Pine Needle LNG Co., LLC, 73033
Transcontinental Gas Pipe Line Corp., 73033–73034
Venice Gathering System, L.L.C., 73034
Williston Basin Interstate Pipeline Co., 73034

Federal Highway Administration
NOTICES
Transportation Equity Act for 21st Century; implementation:
Transportation enhancement activities; final guidance, 73116–73117

Federal Maritime Commission
NOTICES
Agreements filed, etc., 73048
Freight forwarder licenses:
Beacon International, Inc., et al., 73048

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 73074–73075

Federal Railroad Administration
NOTICES
Environmental statements; notice of intent:
Maglev Deployment Program, 73117–73118

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 73048–73049
Formations, acquisitions, and mergers, 73049
Permissible nonbanking activities, 73049–73050

Fish and Wildlife Service
RULES
Endangered and threatened species:
Chinook salmon, 72960–72961
PROPOSED RULES
Endangered and threatened species:
Columbian white-tailed deer, 72992–72993
San Diego ambrosia, 72993–73003
NOTICES
Endangered and threatened species:
Recovery plans—
Bighorn sheep, 73057–73058
Environmental statements; availability, etc.:
Incidental take permits—
Palm Beach County, FL; Florida scrub-jay, 73060–73062
San Bernardino County, CA; desert tortoise and Mohave ground squirrel, 73058–73060
National Wildlife Refuge System:
Navassa Island National Wildlife Refuge; establishment, 73062
Permits:
Marine mammals, 73017
Wild Bird Conservation Act of 1992:
Approval applications—
Hurricane Aviaries, Inc., 73062
Royster, Jerry L., 73062–73063

Food and Drug Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73054–73055
Reporting and recordkeeping requirements, 73055–73056
Submission for OMB review; comment request, 73056–73057

Food and Nutrition Service
RULES
Child nutrition programs:
Summer food service program—
Program meal service during school year, paperwork reduction, and targeted State monitoring, 72889–72898
Food distribution programs:
Food donations—
Indian tribal household; definition, 72908–72909
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation, 72898–72907

Forest Service
PROPOSED RULES
Land uses:
Special use authorizations; costs recovery for processing applications and monitoring compliance, 72971
NOTICES
National Forest System lands:
Louisiana Forestry Productivity Program—
Payment determination; Federal tax purposes, 73006

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Central Livestock Association, Inc., et al., 73006–73007
Geneva Livestock Sales, Inc., et al., 73007

Health and Human Services Department
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
NOTICES
Meetings:
National Bioethics Advisory Commission, 73050

Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations:
Strategic Planning Office, 73057

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 73007–73013
Cut-to-length carbon-quality steel plate products from—
France, 73143–73155
India, 73125–73131
Indonesia, 73164–73176
Italy, 73234–73244
Japan, 73215–73234
Korea, 73196–73214
Countervailing duties:
Cut-to-length carbon-quality steel plate from—
France, 73277–73298
India, 73131–73143
Indonesia, 73155–73164
Italy, 73244–73277
Korea, 73176–73196
Five-year (sunset) reviews:
Final results and revocations, 73013–73015
North American Free Trade Agreement (NAFTA); binational panel reviews:
Brass sheet and strip from—
Canada, 73015
Live cattle from—
Canada, 73015–73016

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 73063

Environmental statements; availability, etc.:
3R Minerals Coal Bed Canyon, UT; mine/operation plan modification, 73063–73064
Survey plat filings:
Oregon and Washington, 73064–73065
Wild horses removal:
Wyoming, 73065

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Archives and Records Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73075
Agency record schedules; availability, 73075–73079

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Import eligibility; determinations, 73118–73119

National Oceanic and Atmospheric Administration
RULES
International fisheries regulations:
Pacific tuna—
Purse seine fishery for bigeye tuna; closure, 72962
Purse Seine fishery for yellowfin tuna; closure, 72961
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 73003–73005
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs; performance evaluations, etc.—
Georgia, 73016
Meetings:
Gulf of Mexico Fishery Management Council; correction, 73016–73017
Permits:
Marine mammals, 73017
Reports and guidance documents; availability, etc.:
Longline fisheries; incidental catch reduction of seabirds; national plan of action, 73017–73018

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 73065–73066

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 73079

Nuclear Regulatory Commission
NOTICES
Meetings:
Licensing Support Network Advisory Review Panel, 73082–73083
Meetings; Sunshine Act, 73083
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 73083–73108
Applications, hearings, determinations, etc.:
Commonwealth Edison Co. et al., 73079–73080
Entergy Operations, Inc., 73080–73082

Personnel Management Office
RULES
Pay administration:
Senior Executive Service performance awards, 72889
NOTICES
Privacy Act:
Systems of records, 73108–73109

Presidential Documents
ADMINISTRATIVE ORDERS
Jerusalem Embassy Act; suspension of limitations (Presidential Determination No. 2000-8 of December 17, 1999), 72887

Public Health Service
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 73109–73112

Small Business Administration
NOTICES
License surrenders:
Transpac Capital Corp., 73112
Applications, hearings, determinations, etc.:
Zero Stage Capital VI, L.P., 73112

State Department
NOTICES
Meetings:
Arms Control and Nonproliferation Advisory Board, 73112
Universal Postal Union; reform initiatives; briefing, 73112–73113

Surface Transportation Board
NOTICES
Motor carriers:
Finance applications—
Academy Lines, Inc., 73119–73120
Tedesco Family ESB Trust, 73120–73121

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Motor carrier safety standards:
CFR chapter revisions, 72959–72960
NOTICES
Aviation proceedings:
Agreements filed, etc., 73113
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 73113

Treasury Department
See Community Development Financial Institutions Fund
See Customs Service
NOTICES
Boycotts, international:
Countries requiring cooperation; list, 73121

Separate Parts In This Issue

Part II
Department of Commerce, International Trade Administration, 73125–73298

Part III
Environmental Protection Agency, 73299–73373

Part IV
Department of Education, 73375–73379

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
..... 72887
Presidential Determinations:
No. 2000-8 of December 17, 1999 72887

5 CFR
534 72889

7 CFR
225 72889
250 72898
251 72898
253 72908
254 72908
993 72909

9 CFR
94 72912

12 CFR
308 72913

14 CFR
39 (4 documents) 72913, 72916, 72918, 72919
71 (7 documents) 72922, 72924, 72925, 72926, 72928
Proposed Rules:
39 (3 documents) 72963, 72964, 72967
71 (2 documents) 72969, 72970

32 CFR
312 72928

33 CFR
100 72929
165 72929

36 CFR
Proposed Rules:
251 72971

40 CFR
52 (3 documents) 72934, 72939, 72940
89 73300
92 73300
94 73300
180 72947
185 72947
186 72947
Proposed Rules:
52 (2 documents) 72971, 72972
160 72972
792 72972
805 72972

47 CFR
20 72951
36 72956
54 72956
95 72956
Proposed Rules:
76 72985

49 CFR
Ch. III 72959
301 72959

50 CFR
17 72960
300 (2 documents) 72961, 72962
Proposed Rules:
17 (2 documents) 72992, 72993
679 73003

Federal Register
Vol. 64, No. 249
Wednesday, December 29, 1999

Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–8 of December 17, 1999

Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the "Act"), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in section 3(b) and 7(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.

William J. Clinton

THE WHITE HOUSE,
Washington, December 17, 1999.

[FR Doc. 99–33927
Filed 12–28–99; 8:45 am]
Billing code 4710–10–M

VOL
64
ISS
2
4
9
DE
29
999
UMI

This
conta
appli
are k
Fede
50 ti

The
the S
new
REG

OFF
MAN

5 CF

RIN 3

Pay

AGEN
Man

ACTI

SUMM
techn
regul
publi
Frida
techn
statu
perfo
to ca
Exec
chan
105–
and E
Appr
1998.

EFFEC

FOR F
Anne
606–

SUPPL
Law
1998,
incre
perfo
durin
chang
to 10
aggre
perce
avera
pay. T
could
award
the pu

In a
find t
mand
proce

Rules and Regulations

Federal Register
Vol. 64, No. 249
Wednesday, December 29, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206–AI59

Pay Under Other Systems

AGENCY: Office of Personnel Management

ACTION: Technical amendment.

SUMMARY: This document contains a technical amendment to the final regulations that were originally published in the **Federal Register** on Friday, January 2, 1987 (52 FR 1). This technical amendment implements statutory changes in the total amount of performance awards that may be granted to career members of the Senior Executive Service in a fiscal year. These changes were enacted by Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, October 21, 1998.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Anne Kirby, (202) 606–1610, FAX (202) 606–0557, or email to seshelp@opm.gov.

SUPPLEMENTARY INFORMATION: Public Law 105–277, enacted on October 21, 1998, amends 5 U.S.C. 5384(b)(3) to increase the total amount of SES performance awards that may be paid during a fiscal year. The public law changed the award pool configurations to 10 percent (formerly 3 percent) of aggregate career SES basic pay, or 20 percent (formerly 15 percent) of the average annual rates of career SES basic pay. The new award pool provisions could be used for SES performance awards paid any time after enactment of the public law.

In accordance with 5 U.S.C. 553, I find that, as these amendments are mandated by statute, notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest.

Regulatory Flexibility Act

I certify that these changes will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

2. Amend § 534.403 by revising paragraph (b) to read as follows:

§ 534.403 Performance awards.

* * * * *

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Ten percent of the aggregate career SES basic pay for the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Twenty percent of the average annual rates of basic pay for career SES appointees of the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

* * * * *

[FR Doc. 99–33583 Filed 12–28–99; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

RIN 0584–AC06

Summer Food Service Program: Program Meal Service During the School Year, Paperwork Reduction, and Targeted State Monitoring

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule contains changes to the Summer Food Service Program as a result of a provision in the Healthy Meals for Healthy Americans Act of 1994 which allows Program meal service to be provided during periods of unanticipated school closures such as teacher strikes. Additionally, this rule makes discretionary changes to simplify sponsor and site applications and State agency monitoring requirements. Except for the State agency monitoring requirements, which were changed substantially, the final rule makes only minor modifications to the provisions of the proposed rule. These changes are intended to reduce unnecessary and duplicative administrative burdens for Summer Food Service Program sponsors and State agencies.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein (Summer Food Service Program) at the following address: Policy and Program Development Branch, Child Nutrition Division, Room 1006, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302–1500, or by telephone at: (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Background

The Summer Food Service Program (SFSP) provides free meals to children at approved feeding sites in areas with significant concentrations of low-income children during school vacations. SFSP meals are intended to take the place of the meals that children normally receive through the National School Lunch and Breakfast Programs during the school year.

Generally, Program benefits are limited to times when school is not in

session during the months of May through September. Section 13(c)(1) of the National School Lunch Act (NSLA) (42 U.S.C. 1761(c)(1)) provides an exception to these timeframes for areas that operate on a year-round, or continuous school calendar basis. In these areas, Program benefits may be provided at any time of the year that children are on school vacation. An additional exception was authorized by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), which permits the SFSP to operate in areas with unanticipated school closures during October through April.

On October 13, 1998, we published a proposed rule for the SFSP in the **Federal Register** (63 FR 54617). The rule proposed changes to the Program in the following three areas:

- Unanticipated school closures. The proposed rule set forth criteria for participation of sponsors and sites in the SFSP during periods of unanticipated (*i.e.*, emergency) school closures during the months of October through April, and included language from Pub. L. 103–448 on the types of situations that qualify;
- Paperwork reduction. The proposed rule removed unnecessary and duplicative sponsor and site application requirements for experienced sponsors and sites; and
- Targeted State agency monitoring. The proposed rule revised State agency monitoring requirements to better target efforts to new and large sponsors, and those sponsors who have operational deficiencies or experience significant staff turnover from one year to the next.

The proposed rule had a sixty day public comment period which ended on December 14, 1998. During this time, we received a total of 17 comments. Of these, 13 were from State agencies, 2 were from SFSP sponsors (both of which were local school districts), and 2 were from community organizations. In general, commenters were supportive of the proposed rule. Every commenter addressed the area of "paperwork reduction" in some capacity, and primarily viewed the changes as positive with only minor modifications needed. The final rule is being published based on these comments.

A. Unanticipated School Closures

General Discussion

Since the beginning of the SFSP, there have been times when a single school or an entire school system did not open as scheduled at the end of the summer (*e.g.*, in the case of a teacher strike). Prior to 1994, the NSLA prohibited the SFSP to operate during the months of October through April unless the school was in session on a year-round or continuous school calendar basis. Since the National School Lunch and Breakfast Programs may only operate when school is in session, many children were denied a nutritious meal when the schools were closed in these emergency situations.

In response to these circumstances, the President signed into law the Healthy Meals for Healthy Americans Act of 1994. Section 114(c) of this law amended section 13(c)(1) of the NSLA to allow SFSP meals to be served at "non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order or similar cause".

Proposed Rule Provisions

In addition to setting forth the circumstances warranting implementation, the October 13, 1998, proposed rule detailed how existing requirements for SFSP participation would be applied when the Program operates during unanticipated school closures. Specifically, the proposed rule:

- Listed circumstances under which SFSP sponsors and sites are eligible to participate in the Program during unanticipated school closures. These circumstances included natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, and similar causes as approved by the State agency;
- In accordance with the explicit language of the law, permitted only *non-school sites* to be eligible feeding sites in these situations, although school food authorities would be eligible as *sponsors*;
- Waived eligibility documentation for sites that had previously participated in the SFSP in the current year or prior two calendar years; documentation of site eligibility was still required for all other sites;
- Streamlined the application process for sponsors which had successfully participated in the Program in the current year or either of the two prior calendar years;
- Required that all sponsors participating during unanticipated school closures enter into agreements with the State agency to operate the Program; and
- Provided State agencies discretion in conducting pre-approval visits of sponsors operating the Program during unanticipated school closures, but maintained the requirement that *sponsors* visit all of their feeding sites prior to Program operations.

Comments Received and Final Rule Provisions

Non-School Sites

Six commenters expressed concern that the proposed rule did not allow school sites to participate in the SFSP during unanticipated school closures. In general, respondents believe that schools are accessible to the community at large and, a uniform prohibition on using those sites as feeding sites during all emergency situations might deny eligible children SFSP meals when they most need them.

Although we agree that school buildings are sometimes the most capable and logical feeding sites (*e.g.*, during a natural disaster), Pub. L. 103–448 explicitly excludes school sites from participating in these situations. Therefore, this final rule retains the provision as set forth in the proposed rule. We recommend that local areas that encounter unanticipated school closures in which a school feeding site is the only viable option, should contact their State agency to find acceptable alternatives, or to explore the possibility of requesting a waiver of this provision from the Department under section 12(l) of the NSLA (42 U.S.C. 1760(l)). We will consider these requests on a case-by-case basis. We do not anticipate granting waivers in situations of unanticipated school closures involving labor-management disputes at school sites unless the safety of the children being fed at the site can be insured. Under this rule, school food authorities that meet the sponsor eligibility requirements may serve as sponsors during unanticipated school closures.

Sponsor Applications

We received one comment expressing concern about allowing experienced sponsors to participate in the Program without a current year application. The commenter indicated that sponsor information can change significantly from year to year, and recommended that we retain the application requirements found in the current regulations. State agencies that have concerns about the accuracy of the information they already have on file can choose to require that sponsors complete a new application in these circumstances. However, we believe the need to begin program operations quickly in these situations usually outweighs the need for collecting new application information from sponsors who have participated in the Program within the last three years. Accordingly, this final rule retains the streamlined application provision for experienced sponsors seeking to operate the Program

during unanticipated school closures. This provision is set forth in §§ 225.6(c)(1) and 225.14(a) of this final rule.

Year-Round Sites

One commenter expressed concern that the provisions for unanticipated school closures do not include year-round, or continuous school calendar, SFSP sponsors. The commenter was concerned that the type of unanticipated school closures discussed in Pub. L. 103–448 and the proposed rule could occur at *any* time of the year, not just during October through April. We agree with the commenter, and do not believe the law intended to exclude sponsors in year-round school communities from being able to provide SFSP meal service during unanticipated school closures.

Accordingly, this final rule adds language clarifying that the unanticipated school closure provisions of the regulations apply to areas operating under a continuous school calendar system. In these areas, this authority is not restricted to closures that occur during the months of October through April, but rather is available at any time of the year. These revisions appear in this final rule in §§ 225.6(b)(1); 225.6(b)(4); 225.6(c)(1); 225.6(c)(2)(i)(G); 225.6(c)(3)(i)(B); 225.7(a); 225.7(d)(1)(i); 225.14(a); and 225.15(d)(1).

Other Provisions/Clarifying Language

We received a few comments pertaining to the meaning of "current year or prior two calendar years" in describing those sponsors who are exempt from application and other requirements during unanticipated school closures. One commenter suggested an editorial change to be more specific with our intent of prior participation in the Program at any time within three years. Therefore, we are amending the language of the final rule to read "current year or in either of the prior two calendar years." These changes are contained in §§ 225.6(b)(4); 225.6(c)(1); 225.6(c)(2)(i)(G); 225.6(c)(3)(i)(B); and 225.14(a) of this final rule.

We received no comments on the remaining provisions of the proposed rule on operation of the SFSP during unanticipated school closures. Accordingly, this final rule retains these provisions as set forth in the proposed rule. These provisions are contained in this final rule at §§ 225.6(c)(2)(i)(G) and 225.6(c)(3)(i)(B) (documentation of site eligibility); § 225.7(d)(1)(i) (pre-approval visits by State agencies); and § § 225.7(a) and 225.15(d) (training by State agencies and sponsors).

B. Paperwork Reduction

Proposed Rule Provisions

The proposed rule took the minimum application requirements for SFSP sponsors and sites found in current § 225.6(c)(2) and reorganized and substantially revised them. The proposed rule established separate minimum requirements for: (1) New sponsors and sites, and those with significant operational problems in the prior year; and (2) experienced sponsors and sites. In the proposed rule, paragraph (c)(2) contained the requirements for new sponsors/sites and sponsors/sites with significant operational problems, and paragraph (c)(3) contained the requirements for experienced sponsors/sites. The application requirements were grouped and discussed in the preamble to the proposed rule as general requirements that apply to all types of sponsors and sites and requirements that are specific to certain types of sites, such as open sites, enrolled sites, migrant sites, and homeless sites.

In light of this new structure, and to help clarify application requirements for sponsors and sites with varying degrees of experience and/or success in operating the Program, new definitions were included in the proposed rule in § 225.2 for "new sponsor," "new site," "experienced sponsor," and "experienced site." The proposed rule eliminated duplicative and unnecessary requirements for experienced sponsors, with the intent of reducing the paperwork associated with the application process for these sponsors.

The proposed rule also contained new definitions of "open site," "closed enrolled site," and "open enrolled site." These definitions were used in setting forth the application requirements, and included in the rule to clarify how each type of Program site demonstrates eligibility.

Comments Received and Final Rule Provisions

We received a total of 17 comments in the area of Paperwork Reduction. In general, commenters were supportive of the changes to the Program outlined in the proposed rule with only minor modifications needed. The concerns of commenters and a discussion of these concerns are provided below.

General Comments

A few commenters expressed concern that paperwork is not reduced under the proposed rule, but rather increased as State agencies will need to keep separate records for experienced and new sponsors. In addition, several commenters expressed concern that the integrity of SFSP may be compromised if we do not require all information currently required of SFSP sponsors on an annual basis, as information can change significantly from year to year for experienced sponsors.

In response to these comments, we do not anticipate an increase in administrative burden once the changes are implemented. As with any new system, it may take additional time to create a system that appropriately determines and tracks new sponsors, sponsors with significant operational problems, and experienced sponsors. However, there is flexibility in how a State agency implements these provisions. As we indicated in the preamble to the proposed rule, the requirements set forth in the regulations are *minimum* requirements. State agencies may include other provisions in their applications as long as they do not establish additional requirements for SFSP participation.

State Agency Classification of Sponsors

We also received several comments in the area of State agency classification of sponsors. Commenters suggested that we provide State agencies with guidelines for categorizing sponsors as having significant staff turnover or significant operational problems. We do not believe it is necessary nor prudent to include specific guidelines for making sponsor classifications in the final rule. We prefer to leave this discretion to State agencies to make assessments on a case-by-case basis. In making these classifications, State agencies should consider the deficiencies, if any, noted in monitoring visits, reports that have been received about the sponsor or any of its sites, and whether staff in key positions have changed.

Commenters also indicated that sponsors who experience significant operational problems should be required to attend more training or should be monitored more frequently by the State agency, not merely be required to submit more paperwork or information to the State agency. We believe providing additional training and monitoring for sponsors with operational problems is important, and encourage State agencies to do so. However, we also believe there is value in having these sponsors fully document their plans for administering the Program through the application process. This documentation helps ensure that they have a thorough understanding of Program requirements and responsibilities.

Definitions

One commenter recommended including in the definition of experienced sponsor, a requirement that the sponsor had to have successfully completed an application to participate in the Program in the prior year. We do not believe this change is necessary. We believe the fact that a sponsor is experienced clearly implies that the organization must have successfully completed an application. Therefore, we are not including the commenter's recommendation in the final rule.

Another commenter proposed eliminating the word "successful" from "successful participation" as a criterion to be classified as an experienced sponsor. We agree that the term "successful" is a subjective term. However, we believe it conveys the appropriate meaning. Therefore, we are retaining it in the definition of experienced sponsor in § 225.2 of the final rule.

We received one comment requesting that the reference to using data "from other appropriate sources" found in paragraph (a)(3) of the definition of "areas in which poor economic conditions exist" in § 225.2 needs to be better defined. As mentioned in the proposed rule, to determine if a site is located in a low-income area, State agencies should first consult school data to determine if the site meets the criteria that 50 percent or more of children are eligible for free or reduced-price meals. Census data may be used to determine site eligibility in certain circumstances where it is more representative of an area's socioeconomic status than school data. If neither school nor census data indicates that a site is area eligible but "other" data sources do, State agencies must consult with FNS to assess the appropriateness of that data as an indicator of an area's socioeconomic status. Though it is used rarely, for these unique situations, we believe it is important to retain the language "from other appropriate sources" in the final rule as it provides some flexibility in determining if a source provides substantial evidence of being a low-income area.

We received several comments on the proposed rule's definitions of "open site," "closed enrolled site," and "open enrolled site." Commenters were concerned that the terminology would lead to confusion regarding the required documentation of eligibility for the different types of sites, especially in the case of the term "open enrolled site."

The proposed rule defined an "open site" as "a site at which meals are made available to all children in the area and which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of Areas in which poor economic conditions exist." Open sites document their eligibility on the basis of area data showing that at least 50 percent of the children from the area are from households with incomes at or below 185 percent of poverty.

An "open enrolled site" was defined as "an enrolled site which is initially open to broad community participation, but at which the sponsor limits attendance for reasons of security, safety, or control. Site eligibility for an open enrolled site shall be documented in accordance with paragraph (a) of the definition of Areas in which poor economic conditions exist." For an open enrolled site, site eligibility is documented using area eligibility information, the same way that eligibility is documented for an open site.

The proposed rule defined a closed enrolled site as "a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f) of this part." Thus, in contrast to open and open enrolled sites, a closed enrolled site documents its eligibility on the basis of applications from individual children that are enrolled at the site.

We agree with commenters that the term "open enrolled site" could lead a reader to believe that the site's eligibility is linked to the income eligibility of individual children rather than the overall socioeconomic status of the area. Based on comments, we are changing the term "open enrolled site" in this final rule to "restricted open site." (The wording of the definition remains the same.) We believe "restricted open site" more accurately conveys the way that these sites must document eligibility. The definitions of "open site," "closed enrolled site," and "restricted open site" are in § 225.2 of this final rule.

Site Eligibility Documentation

One commenter recommended allowing eligibility documentation for open and open enrolled (now "restricted open") sites to be collected every five years, instead of the three years set forth in the proposed rule, because a site's economic status does not change significantly in a five year time period. We agree that, in most cases, an area's overall economic status does not change rapidly. However, we are retaining the three year cycle for determining a site as area eligible when school data is used in § 225.6(c)(3)(i)(B), as we believe this timeframe provides the appropriate balance between paperwork reduction and Program accountability.

Homeless Feeding Sites

The requirements for new sponsors and sponsors with significant operational problems applying to participate in the Program at homeless feeding sites were contained in § 225.6(c)(2)(i)(L) of the proposed rule. We did not receive any comments on the provisions relating to homeless feeding sites. However, minor changes have been made to the requirements for homeless feeding sites, since these sites are no longer eligible to participate in SFSP solely on the basis of being homeless sites. Section 107(j)(2)(A) of the Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) amended Section 13(a)(3)(C) of the NSLA (42 U.S.C. 1761 (a)(3)(C)) to remove the special eligibility provisions for homeless feeding sites in SFSP, and authorized their participation in the Child and Adult Care Food Program, effective July 1, 1999. To continue to participate in SFSP, homeless sites must qualify as open or enrolled sites. Therefore, this final rule removes the requirement in proposed § 225.6(c)(2)(i)(L) that site information sheets for homeless sites contain certification that the site's primary purpose is to provide shelter and one or more meal services per day to homeless families, since this information is no longer necessary in determining a homeless site's eligibility to participate in SFSP.

Budgets

One commenter stated that experienced sponsors should not be required to continue to submit administrative budgets to the State agency, as these budgets are not an accurate indicator of what a sponsor needs to financially administer the Program because sponsors tend to add and drop sites during the course of the year. The commenter also stated that experienced sponsors usually have a good understanding of the "lesser of cost versus rate" concept and can effectively use this to project their finances for the Program. According to

the April 14, 1994, FNS instruction, 796–4, Revision 4, the "lesser of cost versus rate" concept means payments made to SFSP sponsors for their operating costs should equal the lesser of: (1) the actual operating costs incurred by the sponsor, or (2) the sum of the amounts derived by multiplying the number of meals, by type, that are served to participating children at the current reimbursement rates. This concept is also outlined in § 225.9(d)(6)(i) and (ii) of the SFSP regulations.

As mentioned in the proposed rule, updating and submitting administrative and operating budgets to the State agency is an important process as it ensures that Federal funds are properly spent. Additionally, this process helps sponsors determine whether their planned expenditures will be adequately funded under the SFSP's "lesser of costs versus rates" funding formula. We continue to believe this is important information to be submitted on an annual basis to the State agency. Therefore, we are retaining the requirement for experienced sponsors in § 225.6(c)(3)(ii)(B). (The requirement is found in § 225.6(c)(2)(ii)(B) of this final rule for new sponsors and sponsors with significant operational problems.)

Other Comments/Summary of Provisions

We did not receive any comments on the remaining provisions of the proposed rule on sponsor and site application requirements. The following chart outlines the sponsor and site application requirements for new sponsors/sponsors with significant operational problems, and for experienced sponsors. Changes based on public comments received, as discussed above, have been incorporated in the final rule.

Requirement	New sponsors/sites and sponsors/sites with significant operational problems	Experienced sponsors/sites
Site Information Sheet:		
Organized and supervised system for serving meals to children.	§ 225.6(c)(2)(i)(A)	N/A.
Estimated number and types of meals to be served and times of service.	§ 225.6(c)(2)(i)(B)	§ 225.6(c)(3)(i)(A).
Arrangements for delivery and holding of meals and storing leftovers for next day meal service.	§ 225.6(c)(2)(i)(C)	N/A.
Arrangements for food service during periods of inclement weather.	§ 225.6(c)(2)(i)(D)	N/A.
Access to means of communication for making necessary adjustments for number of meals to be served at each site.	§ 225.6(c)(2)(i)(E)	N/A.
Whether the site is rural or non-rural and whether the site's food service will be self-prepared or vended.	§ 225.6(c)(2)(i)(F)	N/A.
Open sites and restricted open sites: documentation supporting area eligibility determination.	§ 225.6(c)(2)(i)(G)	§ 225.6(c)(3)(i)(B). Documentation must be submitted every three years if school data is used, or earlier if requested by the State agency. If census data is used, documentation must be submitted when new census data becomes available.
Closed enrolled sites: the projected number of children enrolled and projected number of children eligible for f/rp meals for each site.	§ 225.6(c)(2)(i)(H)	§ 225.6(c)(3)(i)(C).
NYSP sites: certification from sponsor that all children who will receive SFSP meals are enrolled participants in NYSP.	§ 225.6(c)(2)(i)(I)	N/A.
Camps: number of children enrolled in each session who meet Program income standards.	§ 225.6(c)(2)(i)(J)	§ 225.6(c)(3)(i)(D).
Migrant sites: certification from migrant organization that site serves children of migrant worker families. If site also serves non-migrant children, sponsor must certify that the site primarily serves migrant children.	§ 225.6(c)(2)(i)(K)	N/A.
Homeless feeding sites: information that demonstrates that site is not a residential child care institution; description of method used to ensure that no cash payments or other in-kind services are used for meal service; certification that site only claims meals served to children.	§ 225.6(c)(2)(i)(L)	N/A.
Other Application Requirements:		
Information that demonstrates that applicant meets requirements in § 225.14; extent of Program payments needed including advance and start-up payments (if applicable); staffing and monitoring plan.	§ 225.6(c)(2)(ii)(A)	§ 225.6(c)(3)(ii)(A).
Complete administrative and operating budget which includes projected administrative expenses and information of how sponsor will operate the Program within estimated reimbursement.	§ 225.6(c)(2)(ii)(B)	§ 225.6(c)(3)(ii)(B).

Requirement	New sponsors/sites and sponsors/sites with significant operational problems	Experienced sponsors/sites
Summary of how meals will be obtained; if invitation for bid is required, sponsors must submit a schedule for bid dates and a copy of their IFB.	§ 225.6(c)(2)(ii)(C)	§ 225.6(c)(3)(ii)(C). If IFB is required, sponsors must submit schedule for bid dates and copy of IFB if a change has occurred from previous year. If method for procuring meals has changed from previous year, sponsors must submit a summary of how meals will be obtained.
For sponsors seeking approval as unit of local, municipal, county or State government, certification that it will directly operate the Program in accordance with § 225.14(d)(3).	§ 225.6(c)(2)(ii)(D)	N/A.

C. Targeted State Monitoring

General Discussion

State agency monitoring of SFSP sponsors and sites is critically important as it serves as a tool for effective Program management and ensures that quality meals are being served to eligible children. However, we believe that the current State agency monitoring requirements do not always allow State agencies enough flexibility to determine where to focus their monitoring resources. Provisions in the proposed rule allowed State agencies to target their review efforts to new sponsors and those sponsors determined by the State agency to need follow-up monitoring. In response to public comments, this final rule revises some of the monitoring requirements contained in the proposed rule to allow State agencies to more effectively focus their monitoring efforts on those sponsors/sites which are new, operationally deficient, or demonstrate the greatest potential to be deficient in their operations.

Proposed Rule Provisions

Pre-approval Visits

The proposed rule retained the current provisions, found in § 225.7(d)(1)(i) and (ii), for State agencies to conduct pre-approval visits of *sponsors*. These provisions require State agencies to:

- Conduct pre-approval visits for all applicant sponsors which did not participate in the Program in the prior year;
- Conduct optional pre-approval visits for new applicant school food authority sponsors which have been reviewed by the State agency under the NSLP during the preceding 12 months and had no significant deficiencies; and
- Conduct pre-approval visits for sponsors identified by the State agency as needing pre-operational visits as a result of operational problems in the prior year.

The proposed rule removed the specific requirements for State agencies to conduct pre-approval visits for certain large sites and sites operated by private nonprofit sponsors, and made all State agency pre-approval visits to *sites* discretionary. This provision was contained in § 225.7(d)(1)(iii) of the proposed rule.

Sponsor and Site Reviews

The proposed rule required that, at any time during the Program year, State agencies were required to conduct annual reviews of sponsor operations and review at least 10 percent of the sponsor's sites or one site, whichever number was greater, for:

- Every new sponsor at least once during its first year of operation;
- Every sponsor which, in the determination of the State agency, experienced significant problems in the prior year; and
- Every sponsor with 20 or more sites.

Under the proposed rule, all sponsors were to be reviewed at least once every 3 years. In addition, sponsors with large sites, larger numbers of sites, or significant operational problems in the prior year were required to be reviewed earlier. The recommendation was also made that State agencies prioritize their review efforts to target all other sponsors which increase their total number of sites by five or more, or whose participation increased substantially, from one year to the next.

Finally, the proposed rule eliminated the special requirements for State agency review of private nonprofit organizations found in § 225.7(d)(2)(i)(A), and removed the review requirement for academic-year NYSP sites, since the NSLA no longer authorizes these sites to participate in SFSP.

As indicated in the preamble of the proposed rule, the proposed changes were not intended to result in a reduction in a State agency's monitoring efforts. Rather, it was intended that the State agency's monitoring resources would become more targeted to reviews of new sponsors and sponsors of over 20 sites, and other sponsors that the State agency identifies, and that a correspondingly greater amount of State agency time and effort could be spent in conducting such reviews. We expected each State's level of resources devoted to SFSP monitoring to remain the same.

Comments Received and Final Rule Provisions

We received 3 comments pertaining to sponsor and site reviews. One commenter suggested removing the reference to having State agencies target sponsors that have increased their sites by 5 or more, indicating that recommendations such as this are better placed in guidance material. Two commenters expressed concern that the net result of the proposed monitoring requirements could result in significant reductions in the monitoring efforts put forth by State agencies.

As a result of these comments, we are revising the State agency monitoring requirements in this final rule. We are removing the proposed requirements that the State agency annually review every sponsor with 20 or more sites, and that State agencies prioritize their review efforts to target all other sponsors which increase their total number of sites by five or more, or whose participation increases substantially, from one year to the next.

Instead, State agencies will be required to annually review a number of sponsors whose Program reimbursements, in the aggregate, accounted for at least one-half of the total Program meal reimbursements in the State in the prior year. We believe that the three-year review cycle, coupled with the elimination of the current detailed and prescriptive review requirements, will provide State agencies the flexibility they need to properly oversee Program operations. The requirement to annually review sponsors with claims totaling one-half of Program reimbursements in the prior year ensure that State agencies focus on the largest sponsors. To improve Program management, we are

considering similar changes in the State agency monitoring requirements for the Child and Adult Care Food Program.

Accordingly, under this final rule, State agencies are required to conduct annual reviews of sponsor operations and review at least 10 percent of the sponsor's sites or one site, whichever number is greater, for:

- Every new sponsor at least once during its first year of operation;
- Every sponsor which, in the determination of the State agency, experienced significant problems in the prior year; and
- A number of sponsors whose Program reimbursements, in the aggregate, accounted for at least one-half of the total Program meal reimbursements in the State in the prior year.

In addition, State agencies must review every sponsor at least once every 3 years. Sponsors with large numbers of sites, or a site(s) with a large number of children attending, should be reviewed earlier. These provisions are contained in § 225.7(d)(2) of this final rule.

D. Procedural Matters

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance under No. 10.559. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notices (48 FR 29114 and 49 FR 2276), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. Simplifying and streamlining the administration of the SFSP is the intended effect of this rule when implemented.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Dates" section of the preamble of the rule. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures available through State or local governments. SFSP administrative procedures are set forth at: (1) 7 CFR 225.13, which outlines appeals procedures for use by a sponsor or a food service management company; and (2) 7 CFR 225.17 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and sponsors.

Paperwork Reduction Act

This final rule seeks to reduce the reporting and recordkeeping requirements for State agencies administering the SFSP. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the reporting requirements included in this final rule were reviewed by the Office of Management and Budget (OMB). OMB approved these requirements for 7 CFR Part 225 under OMB number 0584–0280.

List of Subjects in 7 CFR Part 225

Food and Nutrition Service, Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 225 is amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. In § 225.2:

a. New definitions of *Closed enrolled site, Experienced site, Experienced sponsor, New site, New sponsor, Open site,* and *Restricted open site* are added in alphabetical order; and

b. The definition of *Areas in which poor economic conditions exist* is revised. The additions and revision read as follows:

§ 225.2 Definitions.

* * * * *

Areas in which poor economic conditions exist means:

(a) The local areas from which an open site and restricted open site draw their attendance in which at least 50 percent of the children are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined:

(1) By information provided from departments of welfare and education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations;

(2) By the number of free and reduced-price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites; or

(3) From other appropriate sources; or

(b) A closed enrolled site.

* * * * *

Closed enrolled site means a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f).

* * * * *

Experienced site means a site which, as determined by the State agency, has successfully participated in the Program in the prior year.

Experienced sponsor means a sponsor which, as determined by the State agency, has successfully participated in the Program in the prior year.

* * * * *

New site means a site which did not participate in the Program in the prior year, or, as determined by the State agency, a site which has experienced significant staff turnover from the prior year.

New sponsor means a sponsor which did not participate in the Program in the prior year, or, as determined by the State agency, a sponsor which has experienced significant staff turnover from the prior year.

* * * * *

Open site means a site at which meals are made available to all children in the area and which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist.*

* * * * *

Restricted open site means a site which is initially open to broad community participation, but at which the sponsor restricts or limits attendance for reasons of security, safety or control. Site eligibility for a restricted open site shall be documented in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist.*

* * * * *

3. In § 225.6:

a. Paragraph (b)(1) is amended by adding a new sentence at the end;

b. Paragraph (b)(4) is revised;

c. Paragraph (c)(1) is revised;

d. Paragraph (c)(2) is revised;

e. Paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (c)(4) and (c)(5), respectively, and a new paragraph (c)(3) is added;

f. Newly redesignated paragraph (c)(4) is amended by adding a heading and by removing paragraph (c)(4) introductory text and adding it as the first sentence in newly redesignated paragraph (c)(4)(i); the paragraph is further amended by removing the reference to "(c)(4)" in paragraph (c)(4)(ii)(D) and adding in its place a reference to "(c)(5)".

g. Newly redesignated paragraph (c)(5) is amended by adding a heading;

h. Paragraph (d)(1)(ii) is amended by removing the word "and" at the end of the paragraph;

i. Paragraph (d)(1)(iii) is amended by removing the period at the end of the paragraph and adding in its place the word "; and";

j. A new paragraph (d)(1)(iv) is added; and

k. Paragraph (e)(1) is revised.

The additions and revisions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(b) * * *

(1) * * * Sponsors applying for participation in the Program due to an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) shall be exempt from the application submission deadline.

* * * * *

(4) The State agency shall determine the eligibility of sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in § 225.14. However, State agencies may approve the application of an otherwise eligible applicant sponsor which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: It is a residential camp; it proposes to provide a food service for the children of migrant workers; a failure to do so would deny the Program to an area in which poor economic conditions exist; a significant number of needy children will not otherwise have reasonable access to the Program; or it proposes to serve an area affected by an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar). In addition, the State agency may approve a sponsor for participation during an unanticipated school closure without a prior application if the sponsor participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

(c) * * *

(1) *Application forms.* The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. Sponsors proposing to serve an area affected by an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years. The State agency may use the application form developed by FNS, or it may develop an application form, for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.6(b)(1).

(2) *Requirements for new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems in the prior year.*—(i) *Site information sheets.* At a minimum, the application submitted by new sponsors and by sponsors which, in the determination of the State agency, have experienced significant operational problems in the prior year shall include a site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet for new sponsors and new sites, and for sponsors and sites which, in the determination of the State agency, have experienced significant operational problems in the current year must demonstrate or describe the following:

(A) An organized and supervised system for serving meals to attending children;

(B) The estimated number and types of meals to be served and the times of service;

(C) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(D) Arrangements for food service during periods of inclement weather;

(E) Access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the number of children attending daily at each site;

(F) Whether the site is rural, as defined in § 225.2, or non-rural, and whether the site's food service will be self-prepared or vended;

(G) For open sites and restricted open sites, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist. However, for sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program

at any time during the current year or in either of the prior two calendar years shall be considered eligible without new documentation;

(H) For closed enrolled sites, the projected number of children enrolled and the projected number of children eligible for free and reduced price meals for each of these sites;

(I) For NYSP sites, certification from the sponsor that all of the children who will receive Program meals are enrolled participants in the NYSP;

(J) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session;

(K) For those sites at which applicants will serve children of migrant workers, certification from a migrant organization which attests that the site serves children of migrant worker families. If the site also serves non-migrant children, the sponsor shall certify that the site predominantly serves migrant children; and

(L) For a site that serves homeless children, information sufficient to demonstrate that the site is not a residential child care institution, as defined in paragraph (c) of the definition of *school* in § 210.2 of this chapter. If cash payments, food stamps, or any in-kind service are required of any meal recipient at these sites, sponsors must describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children. In addition, sponsors must certify that such sites employ meal counting methods which ensure that reimbursement is claimed only for meals served to children.

(ii) *Other application requirements.* New sponsors and sponsors which in the determination of the State agency have experienced significant operational problems in the prior year shall also include in their applications:

(A) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.14; the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable; and a staffing and monitoring plan;

(B) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs;

(C) A summary of how meals will be obtained (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company, etc.). If an invitation for bid is required under § 225.15(g), sponsors shall also submit a schedule for bid dates, and a copy of their invitation for bid; and

(D) For each applicant which seeks approval under § 225.14(b)(3) as a unit of local, municipal, county or State government, or under § 225.14(b)(5) as a private nonprofit organization, certification that it will directly operate the Program in accordance with § 225.14(d)(3).

(3) *Requirements for experienced sponsors and experienced sites.*—(i) *Site information sheets.* At a minimum, the application submitted by experienced sponsors shall include a site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet for experienced sponsors and experienced sites must demonstrate or describe the information below. The State agency also may require experienced sponsors and experienced sites to provide any of the information required in paragraph (c)(2) of this section.

(A) The estimated number and types of meals to be served and the times of service;

(B) For open sites and restricted open sites, new documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist shall be submitted. Such documentation shall be submitted every three years when school data are used. When census data are used, such documentation shall be submitted when new census data are available, or earlier if the State agency believes that an area's socioeconomic status has changed significantly since the last census. For sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program at any time during the current year or in either of the prior two calendar years shall be considered eligible without new documentation of serving an area in which poor economic conditions exist;

(C) For closed enrolled sites, the projected number of children enrolled and the projected number of children eligible for free and reduced price school meals for each of these sites; and

(D) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session.

(ii) *Other application requirements.* Experienced sponsors shall also include on their applications:

(A) The extent of Program payments needed, including a request for advance payments and start-up payments, if applicable, and a staffing and monitoring plan;

(B) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs; and

(C) If an invitation for bid is required under § 225.15(g), a schedule for bid dates. Sponsors shall also submit a copy of the invitation for bid if it is changed from the previous year. If the method of procuring meals is changed, sponsors shall submit a summary of how meals will be obtained (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company, etc.).

(4) *Free meal policy statement.* * * *

* * * * *

(5) *Hearing procedures statement.* * * *

* * * * *

(d) * * *

(1) * * *

(iv) If it is a site proposed to operate during an unanticipated school closure, it is a non-school site.

* * * * *

(e) * * *

(1) Operate a nonprofit food service during the period specified, as follows:

(i) From May through September for children on school vacation;

(ii) At any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or

(iii) During the period from October through April, if it serves an area affected by an unanticipated school closure due to a natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, a similar cause.

* * * * *

4. In § 225.7:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1)(i) is amended by removing the semicolon at the end of the paragraph, by adding a period in its place, and by adding a new sentence at the end of the paragraph;

c. Paragraph (d)(1)(iii) is revised;

d. Paragraph (d)(1)(iv) is removed; and

e. Paragraph (d)(2) is revised.

The additions and revisions read as follows:

§ 225.7 Program monitoring and assistance.

(a) * * * State agencies are not required to conduct this training for sponsors operating the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

* * * * *

(d) * * *

(1) * * *

(i) * * * In addition, pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be conducted at the discretion of the State agency;

* * * * *

(iii) All sites which the State agency has determined need a pre-approval visit.

(2) *Sponsor and site reviews*—(i) *General.* The State agency must review sponsors and sites to ensure compliance with Program regulations, the Department's non-discrimination regulations (7 CFR part 15) and any other applicable instructions issued by the Department. In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of previous reviews of the sponsor and sites. When the same school food authority personnel administer this Program as well as the National School Lunch Program (7 CFR part 210), the State agency is not required to conduct a review of the Program in the same year in which the National School Lunch Program operations have been reviewed and determined to be satisfactory. Reviews shall be conducted as follows:

(ii) *Frequency and number of required reviews.* State agencies shall:

(A) Conduct a review of every new sponsor at least once during the first year of operation;

(B) Annually review a number of sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year;

(C) Annually review every sponsor which experienced significant operational problems in the prior year;

(D) Review each sponsor at least once every three years; and

(E) As part of each sponsor review, conduct reviews of at least 10 percent of each sponsor's sites, or one site, whichever number is greater.

* * * * *

5. In § 225.14:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1) is removed; and

c. Paragraphs (d)(2) through (d)(6) are redesignated as paragraphs (d)(1) through (d)(5), respectively.

The addition reads as follows:

§ 225.14 Requirements for sponsor participation.

(a) * * * Sponsors proposing to operate a site during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

6. In § 225.15, paragraph (d)(1) is amended by adding a new sentence after the first sentence to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(d) * * *

(1) * * * The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

* * *

* * * * *

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33504 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

RIN 0584–AC49

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the Food Distribution Program regulations and the Emergency Food Assistance Program (TEFAP) regulations to implement certain provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as Welfare Reform, while generally streamlining and clarifying these regulations. In accordance with the Welfare Reform legislation, the provisions contained in this rule address various changes required by the repeal of section 110 of the Hunger Prevention Act of 1988, which authorized the former Soup Kitchens/Food Banks Program, the former beneficiaries of which are now served by an expanded TEFAP. It amends the definitions relating to organizational eligibility in TEFAP to reflect the program consolidation, and to achieve consistency with the Emergency Food Assistance Act of 1983 as amended by Welfare Reform. Changes to these and other definitions also provide greater clarity to the regulations. As mandated by Welfare Reform, this rule also changes the required content and frequency of submission of the TEFAP State plan of operation, and encourages State agencies to create advisory boards comprised of public and private entities with an interest in the distribution of TEFAP commodities. In addition, this rule broadens the allowable uses of TEFAP administrative funds at the State and local levels, and provides greater flexibility for State agencies in meeting the TEFAP maintenance-of-effort

requirement. Finally, in order to reduce the paperwork burden and afford State agencies greater flexibility, this rule makes discretionary changes in TEFAP recordkeeping, monitoring, and reporting requirements.

EFFECTIVE DATE: This final rule is effective February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The procedures in this rulemaking would primarily affect FNS regional offices, and the State distributing and recipient agencies that administer food distribution programs. Private enterprises that enter into agreements for the storage of donated food or meal service management would also be affected. While some of these entities constitute small entities, a substantial number will not be affected. Furthermore, any economic impact will not be significant.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995, Pub. L. 104–4, (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550, 10.568 and 10.569 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions..

Paperwork Reduction Act

The reporting and recordkeeping requirements included in 7 CFR parts 250 and 251 have been approved by the Office of Management and Budget under OMB No. 0584–0293.

Background

On July 8, 1999, the Department of Agriculture (hereinafter "USDA" or "Department") published a proposed rule in the **Federal Register** (64 FR 36978) to amend provisions of the Food Distribution Program regulations and the TEFAP regulations to reflect changes brought about in the administration of food distribution programs by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (hereinafter "Welfare Reform"). The rule also proposed changes which would clarify existing regulatory requirements and reduce the burden associated with the administration of TEFAP. The specific changes made by this rule were discussed in detail in the preamble to the proposed rule, which provided a 60-day comment period.

Analysis of Comments Received

The Department received a total of 14 comment letters. Comment letters were submitted by three State TEFAP agencies, one inter-church local food pantry, seven food banks on the city, regional, state and national levels, one national commodity distribution association, one State community action program association, and one local human resources council. The 14 commenters were generally enthusiastic in their support for the rule. Seven of them supported implementation of the proposed rule without change. Comments received are discussed in detail below. For a complete understanding of the provisions contained in this final rule, the reader should refer to the preamble of the proposed rule.

Definition of Eligible Recipient Agency

As discussed in the proposed rule, a definition of "eligible recipient agency" (ERA) as contained in section 251.3(d) of the proposed rule is not found in current regulations. This definition was included in the proposed rule to clarify the types of organizations eligible to receive TEFAP commodities and administrative funds, provided they meet all pertinent eligibility criteria. Three comments were received concerning the list of organizations identified in the definition of ERA under subparagraph (6).

One commenter expressed concern about the inclusion of "disaster relief programs" as a type of ERA. He said that if the new definition allows provision of food to such organizations on the same basis as other ERAs, *i.e.*, without USDA approval, then current regulations must be clarified. The definition of ERA contained in the Emergency Food Assistance Act of 1983 (EFAA) includes disaster relief programs as a type of ERA. Therefore, they were included in the proposed regulatory definition of ERA. However, as stated above, such organizations would be required to meet TEFAP eligibility criteria (i.e., if the organization provides commodities to households, it must administer a means test; if it uses TEFAP commodities to provide prepared meals, it must serve predominantly needy persons). This contrasts with the regulatory requirements governing the distribution of commodities to disaster organizations for use in providing assistance in Presidentially declared disasters and situations of distress as set forth in

section 250.43 and section 250.44 respectively. Under sections 250.43 and 250.44, State agencies must obtain approval from USDA prior to making commodities available for distribution to households in disaster or emergency situations. Once approval is obtained, commodities from TEFAP (and other food distribution programs) can be made available to disaster organizations and distributed to disaster victims without regard to TEFAP eligibility requirements.

Another commenter recommended that the definition be revised to make summer camps and child nutrition programs which receive assistance through other Federal nutrition assistance programs ineligible for TEFAP commodities and administrative funds. As discussed in the proposed rule, Welfare Reform defines ERA to include summer camps for children and child nutrition programs. Therefore, the Department does not have the authority to categorically exclude such organizations from participation in the program.

The same commenter requested that the definition be revised to eliminate reference to the Nutrition Program for the Elderly (NPE), and add "other nutrition projects that serve on-site or home-delivered meals to needy elderly people" since sites participating in NPE receive Federal support from other sources. As discussed above, the list of organizations contained in the definition of ERA in the proposed rule reflects the organizations listed in the definition of ERA in the EFAA. The Department lacks the authority to exclude a clearly eligible organizational type from participation in the program. In addition, revising the definition in the manner suggested would not make ineligible those NPE sites that meet the eligibility criteria.

Another commenter requested that community action programs be specifically mentioned as a type of EFO, and noted that they were mentioned in the preamble of the proposed rule, but not in the regulatory text. Specific reference to community action programs was included in the preamble of the proposed rule as an example of the types of organizations that could be considered an EFO. However, such reference does not appear in the regulatory text because it is not included in the definition set forth in the EFAA. Furthermore, it would be impossible to identify all the different types of organizations that could be considered an EFO. This in no way, however, affects their eligibility to participate in the program.

We appreciate the recommendations made by the commenters. However, for the reasons described above, this final rule retains the definition of ERA as originally proposed.

Eligible Recipient Agency Eligibility Criteria

Section 251.5(a)(2) of the proposed rule would limit the eligibility of organizations providing prepared meals to those which serve "predominantly needy" persons. Two commenters, although enthusiastic supporters of implementation of the proposed rule without change, expressed concern about the "new" standard. They believe that the new standard will require additional monitoring to ensure that it does not restrict access of the needy to TEFAP. The EFAA requires that TEFAP commodities be used to provide assistance to those in need. Prior to Welfare Reform, TEFAP regulations (7 CFR part 251) only addressed the distribution of TEFAP commodities to households through organizations which impose a means test. With the consolidation of the Soup Kitchen/Food Bank Program (SK/FB) into TEFAP, it became necessary to establish requirements relative to the distribution of commodities to organizations which provide prepared meals to ensure that such organizations are providing nutrition assistance to the needy. Upon reviewing the provisions relative to the distribution of SK/FB commodities contained in section 250.52, it was determined that limiting participation of organizations that provide prepared meals to those that serve "predominantly" needy persons would meet the requirements of the EFAA. In addition, this limitation is no more stringent than the limitations that were placed on State agencies in the distribution of SK/FB commodities. Therefore, the Department does not expect needy persons to be adversely affected as a result of establishing this criterion for these types of organizations. Thus, this provision is retained in section 251.5(a)(2) as proposed.

Another commenter was concerned about the provision contained in section 251.5(a)(3)(iii) of the proposed rule which states that organizations "organized or operated exclusively for religious purposes" are automatically tax exempt under Internal Revenue Service (IRS) rules. The commenter expressed concern that States and ERAs may be unfamiliar with IRS rules, and asked if organizations would be allowed to simply self-declare that they meet this definition, or if they would be required to provide documentation. Under IRS rules, such organizations effectively self-declare their status, i.e., once having claimed the tax exemption, they are deemed to possess it unless successfully challenged by the IRS. Therefore, the rule did not propose to require State agencies to obtain documentation.

Some of the comments have led the Department to believe that the language of the proposed rule regarding eligibility of organizations for TEFAP is in need of further clarification. Section 251.2(c)(2) states that "[p]rior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies." However, section 251.5(a) of the proposed rule speaks only in terms of commodities and does not mention administrative funds, leading to possible confusion. Therefore, section 251.5(a) of the proposed rule is revised to specifically include administrative funds.

Recipient Eligibility Criteria

One commenter recommended that the criteria for recipient eligibility under section 251.5(b) of the proposed rule be expanded to include "needy persons in situations of emergency and distress due to disasters." As discussed in detail above, commodities are made available for distribution to households in disasters and situations of emergency and distress in accordance with the provisions contained in sections 250.43 and 250.44. These provisions permit TEFAP commodities to be distributed to households without regard to income only after proper authorization has been obtained.

Two commenters recommended that section 251.5(b)(2), which requires the use of income-based standards in determining a household's eligibility to receive TEFAP commodities, be removed and replaced with language that would permit the use of non-income-based eligibility criteria. The EFAA does not explicitly require income-based standards to be met by TEFAP recipients. However, TEFAP regulations have always required the use of such criteria. This requirement is necessary in order to ensure that only those households in need of assistance

receive commodities. In addition, it is consistent with eligibility requirements for other nutrition assistance programs, as well as other types of Federal assistance, such as the Temporary Assistance to Needy Families Program.

Reduction in Administrative Burden (State Agreements with Eligible Recipient Agencies and TEFAP State Distribution Plan)

Several commenters expressed interest in reductions in administrative burdens beyond those set forth in the proposed rule. The Department believes it has come close to the proper balance between reduced administrative burden and sufficient program accountability. However, in reviewing the provisions contained in the proposed rule, it has been determined that the administrative burden can be further reduced by making minor changes in the following requirements. Section 251.2(d)(1)(iii) of the proposed rule would require the agreement to include "the name of the person responsible for administering the program in the receiving eligible recipient agency." With the move to permanent agreements, it is prudent to avoid requiring information that could change frequently. Therefore, the final rule is revised to remove subparagraph (iii) in section 251.2(d)(1) of the proposed rule.

Section 251.6(a)(1) of the proposed rule would require State agencies to include "[a] designation of the State agency responsible for distributing commodities and administrative funds provided under this part, the address of such agency, and the name of the agency official entrusted with binding signature authority" in their distribution plan. Under Welfare Reform, TEFAP State plans are to be submitted every four years instead of annually, which was the previous regulatory requirement. Thus, while TEFAP State plans do not have the potential to be permanent, as do State agreements with ERAs, the plans are now of sufficient duration to justify a re-evaluation of this provision. The Department has determined that the name of the agency official entrusted with binding signature authority also falls into the category of information that could change frequently. Therefore, the final rule is amended to remove this element of the requirement in section 251.6(a)(1) of the proposed rule.

Disbursement of Administrative Funds

Two commenters, although both generally supporting implementation of the proposed rule without change, expressed concern that the new requirements in section 251.8 for documenting the 40 percent pass-through of administrative funds may require additional monitoring. Section 251.8(d)(3) of the current regulations requires, as mandated by the EFAA, that State agencies pass through 40 percent of TEFAP administrative funds to emergency feeding organizations (EFOs). Current regulations also restrict the distribution of TEFAP administrative funds to EFOs. (The proposed rule would amend the definition of EFO in a way that does not materially affect the pass-through requirement.) While section 251.8 of the proposed rule retains the 40 percent pass-through requirement, the rule would permit the distribution of TEFAP administrative funds to non-EFOs. However, as discussed in the preamble to the proposed rule, State agencies which pass through 40 percent of such funds to ERAs that are EFOs, as defined in section 251.3, will be considered to have met the pass-through requirement. The Department will continue to monitor the distribution of TEFAP administrative funds by State agencies to ensure that they are in compliance with this requirement. Therefore, while TEFAP administrative funds may be distributed to non-EFOs under the provisions contained in the proposed rule, monitoring activities at the State or local level will not be affected.

Allowable Administrative Costs, Non-USDA Commodities

Upon further review of the proposed rule, the Department has identified a need to revise section 251.8 to clarify provisions relative to the distribution of TEFAP administrative funds to cover costs associated with the distribution of non-USDA commodities. Section 251.5(a) of the proposed rule requires that all organizations, including those that distribute only non-USDA commodities, must qualify as ERAs in all respects under section 251.3(d) in order to receive TEFAP administrative funds. Section 251.8(d) of the proposed rule refers to "organizations which distribute only non-USDA commodities." For the sake of clarity, this rule revises section 251.8(d) to remove the term "organizations" and replaces it with "ERA."

Recordkeeping and Reporting Requirements

The proposed rule's reduction in the administrative burden for TEFAP drew the most praise from commenters. It was the factor most often noted by those who merely wrote to urge speedy implementation of the rule. However, one commenter expressed concern about the amendment to section 251.10(d)(2) which eliminates the requirement that State agencies report to FNS on a quarterly basis the total number of households served in TEFAP. While the commenter noted that this requirement has already been eliminated by TEFAP Policy Memorandum No. 12, dated December 23, 1997, the State agency has continued to collect and maintain such data. These data have been used to document the success of the program and for allocating resources at the local level. The Department is aware that such information is used by some ERAs and State agencies for various purposes. However, as discussed in the preamble to the proposed rule, the information is no longer useful to FNS. Therefore, while section 251.10(d)(2) of the proposed rule would no longer require that State agencies report such information to FNS, it does not prohibit State agencies from collecting household participation data from ERAs.

One commenter recommended that requirements associated with maintaining inventory records be kept to a minimum. While these requirements were not addressed in the proposed rule, TEFAP agencies have raised a number of questions and concerns about this issue. The Department is in the process of preparing guidance which will clarify what the Federal requirements are and explain the minimum requirements a State agency could choose to adopt in order to comply with the regulations.

Monitoring Requirements

Commenters were all in favor of the proposed rule's reduction in TEFAP monitoring requirements. However, one commenter recommended that sections 251.2(d)(2)(i) and 251.10(e) be revised to permit State agencies to delegate to ERAs with which States have agreements, the authority to conduct reviews of ERAs with which those ERAs in turn have agreements. Only in instances in which deficiencies are identified would the ERA be required to report to the State agency, which would assist in effecting corrective action. The Department is appreciative of the need to reduce the administrative burden as much as possible, but this goal must be balanced with the need for a certain level of accountability necessary to insure program integrity. The Department does not believe this balance can be achieved if State agencies are allowed to delegate authority for conducting reviews of ERAs to other ERAs. There must be a unified, independent and objective review authority. Therefore, the

Department cannot adopt this recommendation.

The commenter also expressed concern about the burden associated with selecting ERAs for review based on the dollar value of TEFAP commodities distributed or deficiencies that have been identified through various means. As discussed in the preamble to the proposed rule, State agencies would be afforded flexibility to develop a system for selecting ERAs for review. No selection criteria are mandated. The criteria listed in the preamble are merely suggestions regarding how to select sites for review. The only requirement is that the system must ensure that deficiencies in program administration are detected and resolved in an effective and efficient manner.

In reviewing the provisions contained in section 251.10, the Department has determined the following changes are necessary for clarification purposes. First, section 251.10(e)(3) of the proposed rule is being revised to include civil rights in the list of areas to be covered during a review, given the fact the revised FNS Instruction 113–3 will specify that on-site civil rights reviews be conducted at the frequency established in section 251.10(e). Since these reviews must be conducted at the same frequency, State agencies will likely consolidate civil rights and program reviews into one effort. Second, section 251.2(d)(2)(i) of the proposed rule would prohibit State agencies from delegating the authority to establish eligibility criteria for organizations or recipients, or for conducting reviews of ERAs. The prohibitions on delegating authority to establish eligibility criteria are then repeated in section 251.5(c). For the sake of consistency, section 251.10(e)(1) of the proposed rule is being revised to include the prohibition on the delegation of authority to conduct reviews.

Maintenance of Effort

Two commenters, although both generally supporting implementation of the proposed rule without change, were concerned about the new requirements for documenting the State maintenance-of-effort requirement, in section 251.10(h). The commenters suggested "additional monitoring" would be needed to insure compliance. This requirement is applied to State agencies, and compliance is monitored by the Department. Therefore, it will have no impact on monitoring activities at the State or local level.

Alien Provisions

Two commenters requested that the rule make clear that organizations are not required to determine the citizenship status of any recipient pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). As noted in the preamble to the proposed rule, the provisions of Welfare Reform affecting aliens do not require that States in any way restrict access of aliens to TEFAP. Welfare Reform gives States the option to provide, or not provide, program benefits to any individual who is not a citizen or a qualified alien. As discussed in the preamble to the proposed rule, the Department intends to publish a separate rulemaking to incorporate the provisions of Welfare Reform regarding eligibility of aliens for TEFAP and other food distribution programs.

Miscellaneous Comments

One commenter expressed concerns about the various problems involved in dealing with commodity losses and the procedures involved in establishing claims for those losses. The Department appreciates the comments provided and will consider them in developing proposals for a separate rulemaking aimed at addressing issues associated with commodity losses and claims.

Another commenter requested that an indemnification for product liability be granted by USDA to States and ERAs, referencing the Good Samaritan Act. Such language could also be included in all agreements between States and ERAs and between ERAs. As praiseworthy as this recommendation is, unfortunately the Good Samaritan Food Donation Act (Pub. L. 101–610) applies to donors of food only. Therefore, USDA lacks the authority to extend its protections to distributors of such food.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

§ 250.3 [Amended]

2. In § 250.3, the definitions of *Food bank* and *Soup kitchen* are removed.

§ 250.13 [Amended]

3. In § 250.13:

a. Paragraph (a)(1)(iv) is amended by removing the words "emergency feeding organizations" wherever they appear and adding the words "eligible recipient agencies" in their place.

b. The last sentence of paragraph (k)(2) is amended by removing the words ", including, for example, State Food Distribution Advisory Council Reports".

§ 250.24 [Amended]

4. In § 250.24, paragraph (b)(4) is removed, and paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(4) and (b)(5), respectively.

§ 250.41 [Amended]

5. In § 250.41, the first sentence of paragraph (a)(1) is amended by removing the words "With the exception of section 110 commodities, which are to be distributed in accordance with the provisions of § 250.52, the" and adding in their place "The".

§ 250.52 [Removed]

6. Section 250.52 is removed.

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

§ 251.1 [Amended]

2. In § 251.1, the word "Temporary" is removed.

3. In § 251.2:

a. Paragraph (a) is amended by adding the heading "*Food and Nutrition Service.*";

b. Paragraph (b) is amended by adding the heading "*State Agencies.*", by removing the words "emergency feeding organizations" and by adding the words "eligible recipient agencies" in their place;

c. Paragraph (c) is revised; and

d. Paragraph (d) is added.

The revision and addition read as follows:

§ 251.2 Administration.

* * * * *

(c) *Agreements.* (1) *Agreements between Department and States.* Each State agency that distributes donated foods to eligible recipient agencies or receives payments for storage and distribution costs in accordance with § 251.8 must perform those functions pursuant to an agreement entered into with the Department. This agreement will be considered permanent, with amendments initiated by State agencies, or submitted by them at the Department's request, all of which will be subject to approval by the Department.

(2) *Agreements between State agencies and eligible recipient agencies, and between eligible recipient agencies.* Prior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with any eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies. All agreements entered into must contain the information specified in paragraph (d) of this section, and be considered permanent, with amendments to be made as necessary, except that agreements must specify that they may be terminated by either party upon 30 days' written notice. State agencies must ensure that eligible recipient agencies provide, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference if permitted under paragraph (d) of this section, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

(d) *Contents of agreements between State agencies and eligible recipient agencies and between eligible recipient agencies.* (1) Agreements between State agencies and eligible recipient agencies and between eligible recipient agencies must provide:

(i) That eligible recipient agencies agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter; and

(ii) The name and address of the eligible recipient agency receiving commodities and/or administrative funds under the agreement.

(2) The following information must also be identified, either in the agreement or other written documents incorporated by reference in the agreement:

(i) If the State agency delegates the responsibility for any aspect of the program to an eligible recipient agency, each function for which the eligible recipient agency will be held responsible; except that in no case may State agencies delegate responsibility for establishing eligibility criteria for organizations in accordance with § 251.5(a), establishing eligibility criteria for recipients in accordance with § 251.5(b), or conducting reviews of eligible recipient agencies in accordance with § 251.10(e);

(ii) If the receiving eligible recipient agency is to be allowed to further distribute TEFAP commodities and/or administrative funds to other eligible recipient agencies, the specific terms and conditions for doing so, including, if applicable, a list of specific organizations or types of organizations eligible to receive commodities or administrative funds;

(iii) If the use of administrative funds is restricted to certain types of expenses pursuant to § 251.8(e)(2), the specific types of administrative expenses eligible recipient agencies are permitted to incur;

(iv) Any other conditions set forth by the State agency.

4. Section 251.3 is revised to read as follows:

§ 251.3 Definitions.

(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.

(b) *Charitable institution* (which is defined differently in this part than in part 250 of this chapter) means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and

(4) Provides food assistance to needy persons.

(c) *Distribution site* means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.

(d) *Eligible recipient agency* means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution; and

(4) Provides food assistance—

(i) Exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5 (b), or

(ii) Predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and

(5) Has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and

(6) Falls into one of the following categories:

(i) Emergency feeding organizations (including food banks, food pantries and soup kitchens);

(ii) Charitable institutions (including hospitals and retirement homes);

(iii) Summer camps for children, or child nutrition programs providing food service;

(iv) Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate Nutrition sites and projects that provide home-delivered meals; and

(v) Disaster relief programs.

(e) *Emergency feeding organization* means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an

integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

(g) *Food pantry* means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

(h) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

(i) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(j) *Soup kitchen* means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

(k) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

5. In § 251.4:

a. The words "emergency feeding organization", "emergency feeding organizations" and "emergency feeding organization's" are removed wherever they appear in the section, and the words "eligible recipient agency", "eligible recipient agencies" and "eligible recipient agency's" respectively are added in their place;

b. Paragraph (c)(1) is amended by removing the reference to "§ 251.3(d)" and adding a reference to "§ 251.3(h)" in its place;

c. Paragraph (d)(3) is removed;

d. Paragraph (f)(5) is amended by removing the reference "§ 250.15" and adding in its place the reference "§ 250.30";

e. Paragraphs (g) and (h) are revised;

f. Paragraph (j) is amended by adding the words "that has signed an agreement with the respective State agencies" after the words "eligible recipient agency";

The revisions read as follows:

§ 251.4 Availability of commodities.

* * * * *

(g) *Availability and control of donated commodities.* Donated commodities will be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in paragraph (f) of this section, donated commodities not so distributed or used for any reason may not be sold, exchanged, or otherwise disposed of without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may be transferred by eligible recipient agencies receiving commodities under this part, or recipient agencies, as defined in § 250.3 of this chapter, to any other eligible recipient agency or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers will be effected only with prior authorization by the appropriate State agency and must be documented. Such documentation shall be maintained in accordance with § 251.10(a) of this part and § 250.16 of this chapter by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to eligible recipient agencies—priority system and advisory boards.* (1) State agencies must distribute commodities made available under this part to eligible recipient agencies in accordance with the following priorities:

(i) *First priority.* When a State agency cannot meet all eligible recipient agencies' requests for TEFAP commodities, the State agency must give priority in the distribution of such commodities to emergency feeding organizations as defined under § 251.3(e). A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(ii) *Second priority.* After a State agency has distributed TEFAP commodities sufficient to meet the needs of all emergency feeding organizations, the State agency must distribute any remaining program commodities to other eligible recipient agencies which serve needy people, but do not relieve situations of emergency and distress. A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(2) *Delegation.* When a State agency has delegated to an eligible recipient agency the authority to select other eligible recipient agencies, the eligible recipient agency exercising this authority must ensure that any TEFAP commodities are distributed in accordance with the priority system set forth in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. State agencies and eligible recipient agencies will be deemed to be in compliance with the priority system when eligible recipient agencies distribute TEFAP commodities to meet the needs of all emergency feeding organizations under their jurisdiction prior to making commodities available to eligible recipient agencies which are not emergency feeding organizations.

(3) *Existing networks.* Subject to the constraints of paragraphs (h)(1)(i) and (h)(1)(ii) of this section, State agencies may give priority in the distribution of TEFAP commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(4) *State advisory boards.* Each State agency receiving TEFAP commodities is encouraged to establish a State advisory board representing all types of entities in the State, both public and private, interested in the distribution of such commodities. Such advisory boards can provide valuable advice on how resources should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their program resources in the most efficient and effective manner possible. A State agency may expend TEFAP administrative funds to support the activities of an advisory board in accordance with § 251.8 of this part.

* * * * *

6. Section 251.5 is revised to read as follows:

§ 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations.* Prior to making commodities or administrative funds available, State agencies, or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of TEFAP commodities or administrative funds, must ensure that an organization applying for participation in the program meets the definition of an "eligible recipient agency" under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing to households.* Organizations distributing commodities to households for home consumption must limit the distribution of commodities provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency, or eligible recipient agency to which they have applied for the receipt of commodities or administrative funds, that they serve predominantly needy persons. State agencies may establish a higher standard than "predominantly" and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

(3) *Tax-exempt status.* Private organizations must—

(i) Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC), or

(ii) Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC, or

(iii) If not in possession of such documentation, be automatically tax exempt as "organized or operated exclusively for religious purposes" under the IRC, or

(iv) If not in possession of such documentation, but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of such status and be moving toward compliance with the requirements for recognition of tax-exempt status. If the IRS denies a participating organization's application for recognition of tax-exempt status, the organization must immediately notify the State agency or the eligible recipient agency, whichever is appropriate, of such denial, and that agency will terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or eligible recipient agency must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained, except that the State agency or eligible recipient agency may grant a single extension not to exceed 90 days if the organization can demonstrate, to the State agency's or eligible recipient agency's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the organization to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive commodities provided under this part for home consumption. The criteria must:

(1) Enable the State agency to ensure that only households which are in need of food assistance because of inadequate household income receive TEFAP commodities;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of commodities and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive commodities and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive commodities and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that commodities and administrative funds are distributed in accordance with the provisions contained in this part.

7. Section 251.6 is revised to read as follows:

§ 251.6 Distribution plan.

(a) *Contents of the plan.* The State agency must submit for approval by the appropriate FNS Regional Office a plan which contains:

(1) A designation of the State agency responsible for distributing commodities and administrative funds provided under this part, and the address of such agency;

(2) A plan of operation and administration to expeditiously distribute commodities received under this part;

(3) A description of the standards of eligibility for recipient agencies, including any subpriorities within the two-tier priority system; and

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive TEFAP commodities for home consumption.

(b) *Plan submission.* A complete plan will be required for Fiscal Year 2001, to be submitted no later than August 15, 2000. Thereafter, a complete plan must be submitted every 4 years, due no later than August 15 of the fiscal year prior to the end of the 4 year cycle.

(c) *Amendments.* State agencies must submit amendments to the distribution plan to the extent that such amendments are necessary to reflect any changes in program operations or administration as described in the plan, or at the request of FNS, to the appropriate FNS Regional Office.

8. Section 251.7 is revised to read as follows:

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make annual adjustments to the commodity allocation for each State, based on updated unemployment statistics. These adjusted allocations will be effective for

the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year unless funds are recovered, withheld, or reallocated by FNS in accordance with § 251.8(f).

9. In § 251.8:

a. Paragraph (a) is amended by removing the reference "§ 251.3(d)" and adding in its place the reference "§ 251.3(h)";

b. Paragraph (b) is amended by removing the reference "part 3015" and adding in its place the reference "part 3016 or part 3019, as applicable.";

c. Paragraph (c)(1) is amended by removing the words "U.S. Treasury Department checks or";

d. Paragraph (c)(2) is amended by:

1. removing the words "FNS Instruction 407–3 (Grant Award Process)" and adding in their place the words "procedures established by FNS";

2. removing from the first sentence the words "either" and "or a U.S. Treasury check pursuant to submission of the SF–270, Request for Advance or Reimbursement";

3. removing the second sentence; and

4. removing reference to "§ 251.8(e)" and in its place adding reference to "paragraph (f) of this section";

e. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and new paragraph (d) is added; and

f. Newly redesignated paragraph (e) is revised.

The addition and revision read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(d) *Priority for eligible recipient agencies distributing USDA commodities.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to eligible recipient agencies which distribute only non-USDA commodities.

(e) *Use of funds.* (1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA commodities and commodities secured from other sources to the extent that the commodities are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities; except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(ii) Costs associated with determinations of eligibility, verification, and documentation;

(iii) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(iv) Costs involved in publishing announcements of times and locations of distribution; and

(v) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(2) *State restriction of administrative costs.* A State agency may restrict the use of TEFAP administrative funds by eligible recipient agencies by disallowing one or more types of expenses expressly allowed in paragraph (e)(1) of this section. If a State agency so restricts the use of administrative funds, the specific types of expenses the State will allow eligible recipient agencies to incur must be identified in the State agency's agreements with its eligible recipient agencies, or set forth by other written notification, incorporated into such agreements by reference.

(3) *Agreements.* In order to be eligible for funds under paragraph (e)(1) of this section, eligible recipient agencies must have entered into an agreement with the State agency or another eligible recipient agency pursuant to § 251.2(c).

(4) *Pass-through requirement-local support to emergency feeding organizations.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State agency in accordance with paragraph (a) of this section must be:

(A) Provided by the State agency to emergency feeding organizations that have signed an agreement with the State agency as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (e)(1) of this section, except that such emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (e)(1) of this section.

(ii) Any funds allocated to or expended by the State agency to cover costs incurred by eligible recipient agencies which are not emergency feeding organizations shall not count toward meeting the pass-through requirement.

(iii) State agencies must not charge for commodities made available under this part to eligible recipient agencies.

* * * * *

10. In § 251.9:

a. The words "emergency feeding organization" and "emergency feeding organizations" are removed wherever they appear in the section, and added in their place are the words "eligible recipient agency" and "eligible recipient agencies" respectively;

b. Paragraph (a) is revised;

c. Paragraph (c) introductory text and paragraph (c)(2)(i) are amended by removing the references "3016.24(b)(1)" and "3016.24(c) through 3016.24(f)" and adding the reference "part 3016 or 3019, as applicable" in their place;

d. Paragraph (e) is removed, and paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively;

e. Newly redesignated paragraph (e) is amended by removing the words "SF–269, Financial Status Report" and adding the words "FNS–667, Report of TEFAP Administrative Costs" in their place.

f. Newly redesignated paragraph (f) is amended by removing the reference "SF–269" wherever it appears and adding the reference "FNS–667" in its place.

The revision reads as follows:

§ 251.9 Matching of funds.

(a) *State matching requirement.* The State must provide a cash or in-kind contribution equal to the amount of TEFAP administrative funds received under § 251.8 and retained by the State agency for State-level costs or made available by the State agency directly to eligible recipient agencies that are not emergency feeding organizations as defined in § 251.3(e). The State agency will not be required to match any portion of the Federal grant passed through for administrative costs incurred by emergency feeding organizations or directly expended by the State agency for such costs in

accordance with § 251.8(e)(4) of this part.

* * * * *

11. In § 251.10:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by adding the words "commodities distributed for home consumption and meals prepared from" after the word "law,";

c. Paragraph (c) is amended by adding the words "for home consumption or availability of meals prepared from commodities" after the word "foods".

d. Paragraphs (d) and (e) are revised;

e. Paragraph (f) is amended by:

1. removing the words "emergency feeding organizations and distribution sites", "emergency feeding organization or distribution site" and "emergency feeding organization's or distribution site's" wherever they appear, and adding in their place the words "eligible recipient agencies", "eligible recipient agency" and "eligible recipient agency's" respectively;

2. adding the words "or meal service" after the word "foods" in paragraph (f)(1) introductory text;

3. adding the words "for home consumption or prepared meals containing TEFAP commodities" after the word "commodities" in paragraph (f)(1)(ii);

4. adding the words "or meal service" at the end of paragraph (f)(1)(iii);

5. adding the words "or meal service" after the word "foods" in paragraph (f)(2); and

6. removing the words "the distribution of commodities by" in paragraph (f)(4);

f. Paragraph (g) is amended by removing the words "emergency feeding organizations" and adding in their place "eligible recipient agencies";

g. Paragraph (h) is revised.

The revisions read as follows:

§ 251.10 Miscellaneous provisions.

(a) *Records.* (1) *Commodities.* State agencies, subdistributing agencies (as defined in § 250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in § 250.16 of this chapter. Eligible recipient agencies must sign a receipt for program commodities which they receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Household information.* Each distribution site must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities for home consumption.

(4) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

* * * * *

(d) *Reports.* (1) *Submission of Form FNS–667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS–667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter.

(e) *State monitoring system.* (1) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements. State agencies may not delegate this responsibility.

(2) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(i) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided that each such agency must be reviewed no less frequently than once every four years; and

(ii) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive TEFAP commodities and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of commodities and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(3) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, and civil rights.

(4) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(5) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

* * * * *

(h) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide commodities or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33619 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN 0584–AB67

Food Distribution Programs: Definition of "Indian Tribal Household"

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule makes final an interim rule published in the **Federal Register** on January 11, 1994. It broadens the regulatory definition of "Indian tribal household" in the Food Distribution Program on Indian Reservations (FDPIR) and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO). Previous to the amendment of the definition, households residing in areas approved for service near Indian reservations ("near areas"), or in FNS service areas in Oklahoma, that contained Native American children, but no Native American adults, were excluded from the programs. Also, households in near areas were excluded from FDPIR if they did not contain a tribal member of the administering Indian tribe or tribes in that area. The intended effect of the change is to allow more low-income households to be served in FDPIR and FDPIHO.

EFFECTIVE DATE: This final rule is effective on December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Ave., Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters
II. Background and Discussion of the Final Rule

I. Procedural Matters

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under 10.550 and 10.570, and for the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Since the provisions contained in this rule were implemented under the interim rule published in the **Federal Register** on January 11, 1994 (59 FR 1447), it will have no impact.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

II. Background and Discussion of the Final Rule

FDPIR was established by section 4(b) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2013(b)), as an alternative to food stamps for low-income Native Americans who, because they live on or near Indian reservations in sparsely populated areas, may not have convenient access to food stamp certification offices or authorized food stamp retailers. On January 11, 1994, the Department published an interim rule in the **Federal Register** (59 FR 1447) that amended the definition of "Indian tribal household" in 7 CFR 253.2(c) and 254.2(d) to read, "* * * a household in which at least one household member is recognized as a tribal member by any Indian tribe* * *" (as "Indian tribe" is defined in 7 CFR Part 253). Prior to implementation of the interim rule, the definition restricted Indian tribal households to those which contained an adult Native American member. This excluded households containing Native American children, but no Native American adults, from participation in FDPIR in areas near Indian reservations that had been approved for service ("near areas") or, in FDPIHO, in the areas approved for service ("FNS service areas").

Prior to implementation of the interim rule, the definition contained in 7 CFR 253.2(c) also restricted Indian tribal households to those households which contained a member recognized by the administering Indian tribal organization as a tribal member. This excluded from participation in FDPIR those households containing a Native American member or members from any Indian tribes other than the tribe administering the program in the "near areas" in which the household resided. Households with a Native American member of any Indian tribe residing in an FNS service area have always been eligible for participation in FDPIHO. However, the language in 7 CFR 254.2(d) was amended by the interim rule simply to provide greater clarity.

The interim rule also clarified in 7 CFR 253.6(b)(1) that all households living on Indian reservations on which FDPIR is available, and that meet other program eligibility requirements, are eligible to receive program benefits, regardless of whether they contain a

Native American member. Although not previously expressed clearly in Federal regulations, this has always been the policy under which FDPIR has operated on all participating reservations. In the same section, amended language makes clear that Indian tribal organizations (or State agencies) must serve all Indian tribal households living in "near areas" and meeting other eligibility requirements. Indian tribal organizations and State agencies must accept official documentation of an individual's membership in an Indian tribe in determining the household's eligibility for program benefits.

The Department received no comments on the interim rule, and is adopting the interim rule as final without change.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the interim rule amending 7 CFR Parts 253 and 254, which was published at 59 FR 1447 on January 11, 1994, is adopted as a final rule without change.

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33620 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00–993–1 IFR]

Dried Prunes Produced in California; Changes in Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule realigns the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee) under Marketing Order No. 993. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Due to shifts in the production areas, the current seven production districts for independent producer representation on the Committee are out of balance. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

EFFECTIVE DATE: The interim final rule is effective December 30, 1999. Comments which are received by January 28, 2000 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended [7 CFR Part 993], regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Paragraph (a) of § 993.128 of the order's administrative rules and regulations lists and describes the boundaries of each of the seven independent grower districts. This rule realigns the boundaries of the seven districts based on a unanimous recommendation of the Committee made on November 30, 1999. To be consistent with current industry demographics, this rule ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. The 14 producer member positions are apportioned between cooperative producers and independent producers. The apportionment, insofar as is practicable, is the same as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years

and currently, cooperative producers and independent producers each have been eligible to nominate seven members.

Section 993.28(a) of the order provides that, for independent producers, the Committee shall, with the approval of the Secretary of Agriculture, divide the production area into districts giving, insofar as practicable, equal representation throughout the production area by numbers of independent producers and production of prune tonnage by such producers. When revisions are required, the Committee must make its recommendations to the Secretary of Agriculture to change the district boundaries prior to January 31 of any year in which nominations are to be made. Nominations are made in all even-numbered years.

Since the last redistricting in 1994, the number of producers and volume of production in most districts has changed, causing imbalances among some districts. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in other districts. Thus, redistricting is needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule establishes new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo.
2	Sutter (Central)	Sutter (North).[1]
3	Sutter (South), Yolo	Sutter (South).[1]
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.
5	Butte, Sutter (North)	Butte.
6	Yuba	Yuba.
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

The Committee calculated the percentage of total independent prune growers and the percentage of total independent grower prune tonnage for each proposed new district. The two percentages were averaged for each district to determine a representation factor for each district. The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The representation factors for the seven old and the seven new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation factor	
	Old districts (percent)	New districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

The redistricting is desirable because it allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, 13 of the 20 handlers (65%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 1,141 producers (91 percent) of the 1,250 producers, could be considered small growers with annual income less than $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule realigns the boundaries of the seven districts established for independent producer representation on the Committee. To be consistent with current industry demographics, this rule ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Shifts in the prune production area have lead to greater differences among the current districts than is desirable for equitable independent producer representation. As shown below, District 1 represents less than 10% of California's independent prune producers/production while District 5 represents nearly 24% as currently defined.

The representation factors for the seven old and the seven new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation factor[1]	
	Old districts (percent)	New districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

[1] The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The economic vagaries of prune production are responsible for the

current imbalance among production districts. When the average grower return per ton reached $1,121 in 1993, prune tree sales by nurseries jumped to 1.5 million trees from a normal maintenance and replacement level of about 300,000 trees. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in others. Non-bearing acreage increased from 8,000 acres in 1993 to 26,000 acres in 1998.

More recently, grower prices have steadily declined from 1993's peak of $1,121 per ton to $763 in 1998. This lead to the removal of over 5,000 acres in 1998 alone. The overall result is a shift in prune production which leaves imbalance in the composition of independent producer districts.

The recommended realignment of district boundaries will yield more equitable representation. Currently, the representation factors for the districts range from 9.75% to 23.97%. The revised alignment narrows this range to 10.33% to 16.87%. The California prune industry considered other district alignments; however, none would not have improved the balance among districts as much as this rule. Since the weather-reduced 1998-99 prune crop (102,000 tons) was the smallest since 1986, the Committee also did a representation factor analysis on the more typical 1997–98 crop (205,000 tons) to ensure that the short crop year did not produce atypical results. The results were consistent as far as each district's percent of the total. Another alternative considered was to do nothing, but this would not have done anything to correct the representation factor imbalance, and this was not acceptable.

The Committee unanimously recommended this change at its November 30, 1999, meeting. Since the last redistricting in 1994, the number of producers and volume of production in most districts has changed causing imbalances among some districts. Thus, redistricting is needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule establishes new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo.
2	Sutter (Central)	Sutter (North).[1]
3	Sutter (South), Yolo	Sutter (South).[1]
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.
5	Butte, Sutter (North)	Butte.
6	Yuba	Yuba.
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. All independent producers regardless of size will continue to have representation and the overall representation will be more equitable as previously explained. There will be no additional costs generated by this rule. Since this rule affects only independent producers, there is no expected impact on handlers.

This rule will realign the boundaries of seven independent grower districts. This rule allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district.

This rule will impose no additional reporting or recordkeeping requirements on either small or large entities. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 22 members, of which 7 are handlers, 14 are producers and 1 is a public representative.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Ad-Hoc Redistricting Subcommittee met on November 2, 1999, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the "**FOR FURTHER INFORMATION CONTACT**" section.

After consideration of all relevant information presented, including the Committee's unanimous recommendation and other available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on realigning the independent producer districts as currently prescribed in § 993.128(a) of the administrative rules and regulations. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The order requires that

independent producer nomination meetings be held for each of the seven districts prior to March 8, 2000, for the term of office beginning June 1, 2000, and this action should be in place before those meetings. The first meeting is scheduled on January 18, 2000; (2) the industry is aware of this action, which was unanimously recommended by the Committee at an open meeting on November 30, 1999; and (3) this rule provides a 30-day comment period, which is considered appropriate in view of the above, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 993.128, paragraph (a) is revised to read as follows:

§ 993.128 Nominations for membership.

(a) *Districts.* In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. The counties of Colusa, Glenn, Solano and Yolo.

District No. 2. That portion of Sutter County north of a line extending along Franklin Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 3. That portion of Sutter County south of a line extending along Franklin Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 4. The counties of Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.

District No. 5. All of Butte County.

District No. 6. All of Yuba County.

District No. 7. The counties of Fresno, Kern, Kings, Madera Merced, San Benito, San Joaquin, Santa Clara, Tulare and all other counties not included in Districts 1, 2, 3, 4, 5 and 6.

* * * * *

Dated: December 21, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33642 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–02–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 99–096–1]

Change in Disease Status of Portugal Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of pork and pork products by adding Portugal to the list of regions where African swine fever exists. We are taking this action because there has been an outbreak of African swine fever in Portugal. This action will restrict the importation of pork and pork products into the United States from Portugal and is necessary to prevent the introduction of African swine fever into the United States.

DATES: Interim rule effective November 5, 1999. We invite you to comment on this docket. We will consider all comments that we receive by February 28, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–096–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–096–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; or phone (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.8 of the regulations lists regions of the world where African swine fever (ASF) exists or is reasonably believed to exist. Section 94.8 also restricts the importation of pork and pork products into the United States from the listed regions.

Prior to the effective date of this interim rule, Portugal was considered free of ASF. However, on November 5, 1999, a suspected outbreak of ASF was detected in Portugal. The outbreak was confirmed by laboratory tests on November 15, 1999. On November 19, 1999, it was reported by the Director General of Veterinary Services of Portugal's Ministry of Agriculture. Therefore, in order to prevent the introduction of ASF into the United States, we are amending the regulations by adding Portugal to the list of regions in 94.8 where ASF exists or is reasonably believed to exist. We are making this action effective retroactively to November 5, 1999, which was the initial date of detection. As a result of this action, the importation, into the United States, of pork and pork products that left Portugal on or after November 5, 1999, will be restricted.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of ASF into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider

comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the regulations governing the importation of pork and pork products by adding Portugal to the list of regions where ASF exists. We are taking this action because there has been an outbreak of ASF in Portugal. This action will restrict the importation, into the United States, of pork and pork products that left Portugal on or after November 5, 1999. This action is necessary to prevent the introduction of ASF into the United States.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) Has retroactive effect to November 5, 1999; and (3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.8 [Amended]

2. In 94.8, the introductory paragraph is amended by removing the word "and" immediately before "Malta," and adding the word "Portugal," immediately following "Malta,".

Done in Washington, DC, this 17th day of December 1999 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33839 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Technical Amendments to FDIC Regulations Relating to Rules of Practice and Procedure and Deposit Insurance Coverage; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; correction.

SUMMARY: The FDIC published in the **Federal Register** of November 16, 1999, a document making technical amendments to various sections of its Local Rules of Practice and Procedure (Local Rules). The document also made a conforming technical amendment to the deposit insurance regulations. This document corrects an amendatory statement in the Local Rules.

EFFECTIVE DATE: November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Jenetha M. Hickson, Alternate Liaison Officer; 202–898–3807.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 99–29830 , on page 62101, in the first column, correct amendatory statement 14 to read as follows:

"14. Section 308.156 is amended by removing the words 'and a person' and adding in their place the words 'and/or an individual' and by adding the words 'or money laundering' after the word 'trust'."

Dated: December 23, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–33812 Filed 12–28–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–235–AD; Amendment 39–11484; AD 99–27–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes. This action requires repetitive inspections of the connections between certain ribs and stringers of the wing skins to detect loose or missing rivets or gaps, and corrective actions, if necessary. This action also requires eventual modification of the rib-stringer connection, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking in the skin and stringers, which could result in reduced structural integrity of the wings.

DATES: Effective January 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–235–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE

Nieuw-Vennep, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 050 series airplanes. The RLD advises that rivet heads were missing at the rib-to-stringer connections of both the upper and lower wing skin. Investigation revealed that understrength rivets were used in the affected connections. Such deficient connections reduce the static buckling strength of the wing skin and may cause fretting of the stringer. This condition, if not corrected, could result in fatigue cracking in the skin and stringers, which could result in reduced structural integrity of the wings.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SB50–57–019, dated February 27, 1998, which describes procedures for repetitive detailed visual inspections of the connections between ribs 11260, 11860, 12660, and 13460, and stringers 4, 5, 6, and 7 of the top and bottom wing skins to detect loose or missing rivets or gaps. The service bulletin also describes procedures for modification of the rib-stringer connection. The modification involves reaming the original rivet holes of the rib-stringer connections, performing a rotating probe eddy current inspection to detect cracks of these rivet holes, performing corrective actions for cases where cracking is detected, and installing connecting angles between the stringers and ribs. The corrective actions include reaming the diameter of the rivet hole, performing a surface probe eddy current inspection to detect cracks of the surrounding of each rivet hole, drilling out rivets, removing connecting angles, and repairing angles, as applicable. Accomplishment of the modification eliminates the need for the repetitive inspections.

For cases where cracking is detected during the visual inspection, the service bulletin describes procedures for accomplishing either of the following temporary repairs and eventual modification of the rib-stringer connection (described previously):

- Performing a surface probe eddy current inspection to detect cracks in the surrounding of the rib-stringer connection in the area of the gap and/or loose or missing rivets; and installing a shim between the rib-girder and the stringer and new blind rivets, and repairing the crack; as applicable.
- Performing a surface probe eddy current inspection to detect cracks in the surrounding of the rib-stringer connection in the area of the gap and/or loose or missing rivet; and installing connecting angles and repairing the crack; as applicable.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1998–023/2, dated October 30, 1998, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or the RLD (or its delegated agent). In light of the type of repair required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the RLD is acceptable for compliance with this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 11 work hours to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection required by this AD would be $660 per airplane, per inspection cycle.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately between 80 and 116 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $11,850 per airplane. Based on these figures, the cost impact of the modification required by this AD would be between $16,650 and $18,810 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number

and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–235–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–27–03 Fokker: Amendment 39–11484. Docket 99–NM–235–AD.

Applicability: Model F27 Mark 050 series airplanes, serial numbers 20103 through 20298 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the skin and stringers, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Perform a detailed visual inspection of the connections between ribs 11260, 11860, 12660, and 13460, and stringers 4, 5, 6, and 7 of the top and bottom wing skins to detect loose or missing rivets or gaps, in accordance with Part 1 of Fokker Service Bulletin SBF50–57–019, dated February 27, 1998; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles.

(1) For airplanes that have accumulated less than 15,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 15,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 15,000 total flight cycles or more but less than 20,000 total flight cycles as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(3) For airplanes that have accumulated 20,000 total flight cycles or more but less than 25,000 total flight cycles as of the effective date of this AD: Inspect within 6 months after the effective date of this AD.

(4) For airplanes that have accumulated 25,000 total flight cycles or more as of the effective date of this AD: Inspect within 3 months after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) Except as provided by paragraph (d) of this AD, if no loose or missing fastener, or no gap is found during any inspection required by paragraph (a) of this AD, prior to the accumulation of 40,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later, modify the rib-stringer connections (i.e., reaming of rivet holes, rotating probe eddy current inspections, corrective actions, and installation of connecting angles) in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–57–019, dated February 27, 1998. Accomplishment of the actions required by this paragraph constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(c) If any loose or missing fastener, or any gap is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD in accordance with Fokker Service Bulletin SBF50–57–019, dated February 27, 1998.

(1) Accomplish the modification specified in paragraph (b) of this AD.

(2) Except as provided by paragraph (d) of this AD, accomplish the temporary repair (i.e., surface probe eddy current inspection, repair, and installation of a shim and new blind rivets) in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Within 500 flight cycles after accomplishment of this temporary repair, accomplish the modification specified in paragraph (b) of this AD.

(3) Except as provided by paragraph (d) of this AD, accomplish the temporary repair (i.e., surface probe eddy current inspection, repair, and installation of connecting angles) in accordance with Part 4 of the Accomplishment Instructions of the service bulletin. Within 2,500 flight cycles after accomplishment of this temporary repair, accomplish the modification specified in paragraph (b) of this AD.

(d) If any discrepancy is found during any inspection required by paragraph (a), (b), or (c) of this AD; and Fokker Service Bulletin SBF50–57–019, dated February 27, 1998, specifies to contact Fokker for appropriate

action: Prior to further flight, repair in accordance with either a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Rijksluchtvaartdienst (RLD) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF50–57–019, dated February 27, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1998–023/2, dated October 30, 1998.

(h) This amendment becomes effective on January 13, 2000.

Issued in Renton, Washington, on December 21, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33567 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–80–AD; Amendment 39–11482; AD 99–27–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines, that requires inspection of the 3rd stage and 4th stage low pressure turbine (LPT) blades for shroud notch wear and replacement of the blade if wear limits are exceeded. This amendment is prompted by a report of an uncontained blade failure. The actions specified by this AD are intended to prevent an uncontained blade failure that could result in damage to the airplane.

DATES: Effective February 2, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines was published in the **Federal Register** on September 23, 1999 (64 FR 51484). That action proposed to require inspection of the 3rd stage and 4th stage low pressure turbine (LPT) blades for shroud notch wear and replacement of the blade if wear limits are exceeded in accordance with PW Service Bulletin (SB) No. 6224, Revision 2, dated August 27, 1998. That action was prompted by a report of an uncontained blade failure. That condition, if not corrected, could result in an uncontained blade failure that could result in damage to the airplane.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from one commenter.

From Earlier to Later

One commenter wants to change the cyclic and hourly time limits from whichever occurs first to whichever occurs later. The commenter believes that the later of the cyclic or hourly limits provides an adequate level of safety. The Federal Aviation Administration (FAA) does not concur. The commenter does not provide the substantiating data required to support such a claim. The FAA recognizes that many operators manage their engine fleet safely with alternate inspection techniques and intervals. The FAA is prepared to grant alternative methods of compliance (AMOC) to those operators who submit a request with data substantiating that an acceptable level of safety is maintained using their program through the AMOC provisions of paragraph (d) of this final rule.

SB Publication Date vs. Effective Date of This AD

The same commenter expresses confusion as to how to compute the compliance intervals of this AD; specifically, if the effective date of the AD should be used vs. the publication date of the SB for a compliance baseline. The FAA concurs. For the purpose of this AD, all baseline compliance times should be calculated based upon the effective date of this AD. The FAA has added an explanatory paragraph (c) to this final rule to clarify this issue.

Economic Impact Understated

The same commenter believes that the economic impact of the AD is understated as based upon the numbers presented in the economic analysis of the proposal. Specifically, the commenter believes that the cost effect of hardware removals after failing an inspection should be considered. The FAA concurs and has revised the

economic analysis to include an estimated cost of the hardware replacement. The addition of the costs of blade replacement and removals adds an additional $4, 720, 640 per year to the economic impact of the AD.

Request for Terminating Action

Two commenters, including the manufacturer, request that the installation of stronger LPT flange bolts be viewed as terminating action for the inspections required by this AD. The commenters point to a similar terminating action for an inspection requirement for JT8D–1 through –17AR engines, also intended to address a containment issue. The FAA does not concur. While installation of improved LPT bolts will provide some increase in containment capability, the improved bolts alone are not equivalent to the required inspections for preventing an uncontained blade failure in the JT8D–200 series engines. The containment issue for the JT8D–1 through –17AR engines was addressed through installation of improved bolts and a containment shield. At present, there is no similar containment shield available for the JT8D–200 series engines. In addition, the installation of improved LPT bolts is already mandated by AD 99–22–14. The FAA has determined that for the JT8D–200 series engines, an uncontained LPT blade failure must be addressed through both the installation of improved LPT flange bolts and the inspections required by this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 2,631 engines of the affected design in the worldwide fleet. The FAA estimates that 1,279 engines installed on aircraft of US registry will be affected by this AD, that it will take approximately 1 work hour per engine per year to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact for the required inspections is estimated to be $76,740 per year. It is estimated that 10% of the blade sets will fail the inspection per year and require replacement. The average cost for a new blade set is $35,500. The new blades take approximately 23 work hours to install and the average labor rate is $60 per work hour. Based on these figures, the annual replacement cost impact of the AD on US operators per year is $4,720,640. Therefore the total annual cost impact of the AD on US operators is 4,797,380.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under EO 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–27–01 Pratt & Whitney: Amendment 39–11482. Docket 98–ANE–80–AD.

Applicability: Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines, installed on, but not limited to, McDonnell Douglas MD–80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained blade failure that could result in damage to the airplane, accomplish the following:

Inspection

(a) For JT8D–209, –217, and –217A engines, perform the 3rd and 4th stage low pressure turbine (LPT) blade torque inspections in accordance with the intervals and procedures described in PW Service Bulletin (SB) No. 6224, Revision 2, dated August 27, 1998, Accomplishment Instructions, Part 1, A(1) through B(3).

(b) For JT8D–217C and –219 engines, perform the 4th stage LPT blade torque inspection in accordance with the intervals and procedures described in PW SB No. 6224, Revision 2, dated August 27, 1998, Accomplishment Instructions, Part 2, C(1) through C(3).

Effective Date for Computing Compliance Intervals

(c) For the purpose of this AD, use the effective date of this AD for computing compliance intervals whenever PW SB No. 6224, Revision 2, dated August 27, 1998, refers to the publication date of the SB.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions required by this AD shall be done in accordance with Pratt & Whitney Service Bulletin No. 6224, Revision 2, dated August 27, 1998. This incorporation by

reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on February 2, 2000.

Issued in Burlington, Massachusetts, on December 20, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–33566 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–30–AD; Amendment 39–11485; AD 99–27–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited Dart Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Rolls-Royce Limited Dart series turboprop engines. This amendment requires a one-time visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with serviceable parts. This amendment is prompted by the discovery of unapproved low torque switches in fleet operation. The actions specified by this AD are intended to prevent possible low torque switch failure, which could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

DATES: Effective February 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 28, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Limited, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland; telephone: +44 1355–220–200, fax: +44 1141–778–432. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce Limited (R-R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines was published in the **Federal Register** on August 26, 1999 (64 FR 46609). That action proposed to require a one-time visual inspection of the interior of the switch to determine the type of low torque switch within 3 months after the effective date of the AD, and removal from service of unapproved Klixon low torque switches and replacement with approved low torque switches. That action was prompted by AD 002–12–96, issued by the Civil Aviation Authority of the United Kingdom. That condition, if not corrected, could result in possible low torque switch failure, which could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

No Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 890 engines of the affected design in the worldwide fleet. The FAA estimates that 139 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $12,500 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,754,180.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under EO 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–27–04 Rolls-Royce Limited: Amendment 39–11485. Docket 99–NE–30–AD.

Applicability: Rolls-Royce Limited (R-R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines, installed on but not limited to Gulfstream Aerospace Corp. G–159, British Aerospace HS 748, Fokker Aircraft F.27, Mitsubishi Heavy Industries YS-11, General Dynamics (Convair) 640 and 600 series, and Vickers Armstrongs (Aircraft Limited) Viscount.

Note 1: This airworthiness directive (AD) applies to each engine identified in the

preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag, accomplish the following:

Inspection

(a) Within 3 months after the effective date of this AD, accomplish the following in accordance with the Action section of R–R Service Bulletin (SB) No. Da61–13, dated December 1996:

(1) Remove the switch cover, visually inspect the interior of the switch and replace the switch cover, all in accordance with the accomplishment instructions of the SB.

(2) If a Klixon low torque switch, part number (P/N) 6PS–25–1, is installed, prior to further flight remove the Klixon low torque switch from service and replace with an approved low torque switch.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions required by this AD shall be done in accordance with Rolls-Royce Service Bulletin No. Da61–13, dated December 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Limited, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland; telephone: +44 1355–220–200, fax: +44 1141–778–432. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on February 28, 2000.

Issued in Burlington, Massachusetts, on December 21, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–33565 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–24–AD; Amendment 39–11483; AD 99–27–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 170, 172, 175, and 177 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Cessna Aircraft Company (Cessna) 170, 172, 175, and 177 series airplanes. This AD requires replacing certain fuel selector valve cams or fuel selector valves that Cessna shipped from December 6, 1998, through May 10, 1999, and prevents the future installation of these fuel selector valve cams or fuel selector valves.

This AD allows the pilot to check the logbooks to determine whether one of these fuel selector valve cams or fuel selector valves is installed. This AD results from reports from Cessna that fuel selector valve cams and fuel selector valves were manufactured with control shafts that will not allow both tanks to supply fuel to the engine in certain situations. The actions specified by this AD are intended to prevent an inadequate supply of fuel from reaching the engine because of a fuel selector valve cam or fuel selector valve. This could result in an emergency landing or loss of control of the airplane.

DATES: Effective January 21, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of January 21, 2000.

The FAA must receive any comments on this rule on or before February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–24–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from the Cessna Aircraft Company, Product Support, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 571–5800; facsimile: (316) 942–9008. You may examine this information at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–24–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Rm 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Cessna manufactured fuel selector valve cams and fuel selector valves that may have control shafts that will not allow both tanks to supply fuel to the engine when the pilot selects the "Both On" position. These fuel selector valve cams and fuel selector valves can be installed in certain Cessna 170, 172, 175, and 177 series airplanes (specific models listed in the AD). The "Both On" position is required for takeoff and landing on most of the affected airplanes, in order to supply fuel to the engine at an acceptable rate.

What is the unsafe condition? These fuel selector valve cams or fuel selector valves, when installed, could result in an inadequate supply of fuel to the engine and result in an emergency landing or loss of control of the airplane.

What is the cause of the problem? Quality control. Cessna shipped the fuel selector valve cams and fuel selector valves during the time of December 6, 1998, through May 10, 1999.

Relevant Service Information

Is there service information that applies to this subject? Yes. Cessna has issued Service Bulletin SEB99–7, dated June 7, 1999.

What are the provisions of this service bulletin? The service bulletin includes the following:

—A list of all the airplanes where these fuel selector valve cams and fuel

selector valves are eligible for installation;
—The material and parts necessary to replace the fuel selector valve cams and fuel selector valves;
—Instructions for accomplishing the fuel selector valve cam and fuel selector valve replacement; and
—Information on warranty credit.

The FAA's Determination and an Explanation of the Provisions of the AD

What has the FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

—An unsafe condition exists or could develop on certain Cessna 170, 172, 175, and 177 series airplanes;
—The above-referenced fuel selector valve cams and fuel selector valves should be removed from service and future installation should be prohibited; and
—AD action should be taken to prevent an inadequate supply of fuel from reaching the engine because of a fuel selector valve cam or fuel selector valve, which could result in an emergency landing or loss of control of the airplane.

What does this AD require? This AD requires replacing certain fuel selector valve cams and fuel selector valves that Cessna shipped from December 6, 1998, through May 10, 1999, and prevents the future installation of these fuel selector valve cams and fuel selector valves. This AD allows the pilot to check the logbooks to determine whether one of these fuel selector valve cams or fuel selector valves is installed.

What is the compliance time of this AD? Within 10 hours time-in-service (TIS) after the effective date of this AD. Since a situation exists that requires the immediate adoption of this regulation, the FAA finds that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, the FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–24–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. We determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If the FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the Rules Docket (otherwise, an evaluation is not required). You may obtain a copy of this evaluation, if filed, from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–27–02 Cessna Aircraft Company: Amendment 39–11483; Docket No. 99–CE–24–AD.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are:

(1) certificated in any category; and

(2) equipped with Fuel Selector Valve Cam part number 0513123, or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120–200; that Cessna shipped from December 6, 1998, through May 10, 1999:

Model	Serial No.
170B	20267 through 20999.
170B	25000 through 27169.
170B	609 and 19401.
172	28000 through 29999.
172	36000 through 36999.
172	46001 through 46754.
172	610, 612, and 615.
172A	46755 through 47746.
172A	622 and 625.
172B	17247747 through 17248734.
172B	630.
172C	17248735 through 17249544.
172D	17249545 through 17250572.
172E	17250573 through 17251822.
172E	639.
172F	17251823 through 17253392.
172G	17253393 through 17254892.
172H	17254893 through 17256492.
172H	17256494 through 17256512.
172H	638.
172I	17256513 through 17257161.
172K	17257162 through 17258486.
172K	17258487 through 17259223.
172L	17259224 through 17259903.
172L	17259904 through 17260758.
172M	17260759 through 17261444.

Model	Serial No.
172M	17261446 through 17261577.
172M	17261579 through 17261898.
172M	17256493.
172M	17261899 through 17263458.
P172D	P17257120 through P17257188.
P172E (T41)	R172–0001 through R172–0335.
R172F (T41)	R172–0336 through R172–0409.
R172G (T41)	R1720410 through R1720444.
R172H (T41)	R1720445 through R1720494.
R172H (T41)	R1720495 through R1720546.
R172H (T41)	R1720547 through R1720620.
R172J	P17257189.
R172K	R1722000 through R1722724.
R172K	R1722725 through R1722929.
R172K	R1722930 through R1723199.
R172K	680.
R172K	R1723200 through R1723397.
R172K	R1723397 through R1723399.
R172K	R1723400 through R1723454.
175	28700A
175A	619.
175C	17557003 through 17557119.
177	17700001.
177	17700003 through 17701164.
177	661.
177A	17701165 through 17701370.
177B	17701371 through 17701471.
177B	17701473 through 17701530.
177B	17701531 through 17701633.
177B	17700002.
177B	17701634 through 17701773.
177B	17701774 through 17701973.
177B	17701974 through 17702123.
177B	17702124 through 17702313.
177B	17701472.
177B	17702314 through 17702522.
177B	17702523 through 17702672.
177B	17702673 through 17702752.
F172D	F172–0001 through F172–0018.
F172E	F172–0019 through F172–0085.
F172F	F172–0086 through F172–0179.
F172G	F172–0180 through F172–0319.
F172H	F172–0320 through F172–0431.
F172H	F172–0436 through F172–0442.
F172H	F172–0444 through F172–0446.
F172H	F172–0432 through F172–0435.
F172H	F172–0443.
F172H	F172–0447 through F172–0559.
F172H	F172–0560 through F172–0654.
F172H	F17200655 through F17200754.
F172K	F17200755 through F17200804.
F172L	F17200805 through F17200904.
F172M	F17200905 through F17201034.
F172M	F17201035 through F17201234.
FP172	FP172–0001 through FP172–0003.
FR172E	FR17200001 through FR17200060.
FR172F	FR17200061 through FR17200145.
FR172G	FR17200146 through FR17200225.
FR172H	FR17200226 through FR17200275.
FR172H	FR17200276 through FR17200350.
FR172J	FR17200351 through FR17200440.
FR172J	FR17200441 through FR17200530.
FR172J	FR17200531 through FR17200559.
FR172J	FR17200560 through FR17200590.
FR172K	FR17200591 through FR17200620.
FR172K	FR17200621 through FR17200630.
FR172K	FR17200631 through FR17200655.
FR172K	FR17200656 through FR17200665.
FR172K	FR17200666 through FR17200675.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register.

(c) *What problem does this AD address?* The affected fuel selector valve cams or fuel selector valves, when installed, could result in an inadequate supply of fuel to the engine. This could then result in an emergency landing or loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the replacement, records check, and/or installation prohibition requirements explained below, as applicable:

(1) Replacement Requirement.

(i) *What action is required?* Replace any Fuel Selector Valve Cam part number 0513123, or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120-200, that Cessna shipped from December 6, 1998, through May 10, 1999. Paragraphs (d)(2)(i) and (d)(2)(ii) of this AD provide procedures for checking the maintenance records to determine if one of these fuel selector valve cams or fuel selector valves is installed.

(ii) *What procedures must be used?* The procedures contained in Cessna Service Bulletin SEB99–7, dated June 7, 1999, and the applicable maintenance manual.

(iii) *When is the action required?* Within the next 10 hours TIS after the effective date of this AD.

(2) Maintenance Records Check.

(i) *May the pilot check the maintenance records to determine if this AD applies?* Yes. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether one of the affected fuel selector valve cams or fuel selector valves was installed after December 6, 1998.

(ii) *What if the maintenance records show that no affected fuel selector valve cam or fuel selector valve is installed?* If, by checking the maintenance records, the pilot can positively show that a Fuel Selector Valve Cam part number 0513123, or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120-200, is not installed or was installed prior to December 6, 1998, then the replacement requirement of paragraph (b) of this AD does not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(3) Installation Prohibition Requirements.

(i) *What prevents these parts from being installed in the future?*

You may not install a Fuel Selector Valve Cam part number 0513123 or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120–200; that Cessna shipped from December 6, 1998, through May 10, 1999, in any of the affected airplanes.

(ii) *When does this prohibition go into effect?* As of the effective date of this AD.

(e) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Yes. You must accomplish the actions required by this AD in accordance with Cessna Service Bulletin SEB99–7, dated June 7, 1999. The Director of the Federal Register approved this

incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 21, 2000.

Issued in Kansas City, Missouri, on December 20, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33564 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–46]

Amendment to Class E Airspace; Mountain View, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Mountain View, MO.

DATES: The direct final rule published at 64 FR 59615 is effective on 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 3, 1999 (64 FR 59615). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 24, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on December 13, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33798 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–45]

Amendment to Class E Airspace; Norfolk, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Norfolk, NE.

DATES: The direct final rule published at 64 FR 56251 is effective on 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 19, 1999 (64 FR 56251). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 24, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on December 13, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33797 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–52]

Amendment to Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Marshalltown Municipal Airport, Marshalltown, IA. A review of the Class E airspace area for Marshalltown Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the coordinates for the Elmwood VOR have been revised and are included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the coordinates for the Elmwood VOR, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 10, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–52, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the

Class E airspace at Marshalltown, IA. A review of the Class E airspace for Marshalltown Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Marshalltown Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, revise the Elmwood VOR coordinates, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–52." The post card will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, AND CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth.

* * * * *

ACE IA E5 Marshalltown, IA [Revised]

Marshalltown Municipal Airport, IA
(lat. 42°06′46″N., long. 92°55′04″W.)
Elmwood VOR
(lat. 42°06′41″N., long. 92°54′32″W.)
Marshalltown NDB
(lat. 42°06′36″N., long. 92°55′01″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshalltown Municipal Airport and within 2.6 miles each side of the 135° radial of the Elmwood VOR extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 313° bearing from the Marshalltown NDB extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on December 13, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33796 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–47]

Amendment to Class E Airspace; Fredericktown, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Fredericktown Regional Airport, Fredericktown, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 1, GPS RWY 19 Standard Instrument Approach Procedures (SIAPs), and amended VHF Omnidirectional Range (VOR) RWY 19 SIAP to serve Fredericktown Regional Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the GPS RWY 1, GPS RWY 19, and VOR RWY 19 SIAPs in controlled airspace.

In addition, a minor revision to the Airport Reference Point (ARP) coordinates is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 1, GPS RWY 19 and VOR RWY 19 SIAPs, revise the ARP coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 2, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–47, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 1, GPS RWY 19 SIAPs, and amended the VOR RWY 19 SIAP to serve the Fredericktown Regional Airport, MO. The amendment to Class E airspace at Fredericktown, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Fredericktown Regional Airport, MO, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–47." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of

transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Fredericktown, MO [Revised]

Fredericktown Regional Airport, MO
(lat. 37°36′20″N., long. 90°17′14″W.)
Farmington VORTAC
(lat. 37°40′25″N., long. 90°14′02″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fredericktown Regional Airport and within 2.4 miles each side of the Farmington VORTAC 032° radial extending from the 6.4-mile radius of the Fredericktown Regional Airport to 7 miles northeast of the Farmington VORTAC.

* * * * *

Issued in Kansas City, MO, on December 14, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33795 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–49]

Amendment to Class E Airspace; Cameron, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Cameron Memorial Airport, Cameron, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17, GPS RWY 35 Standard Instrument Approach Procedures (SIAPs) and amended the Nondirectional Radio Beacon (NDB) RWY 35 SIAP to serve Cameron Memorial Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the GPS RWY 17, GPS RWY 35, and NDB RWY 35 SIAPs in controlled airspace.

In addition, a minor revision to the coordinates for the Cameron Memorial Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17, GPS RWY 35, and NDB RWY 35 SIAPs, amend the ARP coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 31, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–49, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17, GPS RWY 35 SIAPs and amended the NDB RWY 35 SIAP to serve the Cameron Memorial Airport, MO. The amendment to Class E airspace at Cameron, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Cameron Memorial Airport, MO, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and

a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–49." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 199, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Cameron, MO [Revised]

Cameron Memorial Airport, MO
(lat. 39°43′39″N., long. 94°16′35″W.)
Cameron NDB
(lat. 39°43′45″N., long. 94°16′20″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Cameron Memorial Airport and within 2.5 miles each side of the Cameron NDB 187° bearing extending from 6.4-mile radius of the Cameron Memorial Airport to 7 miles south of the Cameron NDB.

* * * * *

Issued in Kansas City, MO, on December 14, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33794 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–50]

Amendment to Class E Airspace; Iowa City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Iowa City Municipal Airport, Iowa City, IA. A review of the Class E airspace area for Iowa City Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 8, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–50, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Iowa City, IA. A

review of the Class E airspace for Iowa City Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Iowa City Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–50." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have sufficient federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; and REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Iowa City, IA [Revised]

Iowa City Municipal Airport, IA
(lat. 41°38′21″ N., long. 91°32′47″ W.)
Iowa City VORTAC
(lat. 41°31′08″ N., long. 91°36′48″ W.)
Hawkeye NDB
(lat. 41°37′55″ N., long. 91°32′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Iowa City Municipal Airport and within 1.8 each side of the 024° radial of the Iowa City VORTAC extending from the 6.5-mile radius to the VORTAC and within 2.6 miles each side of the 276° bearing from the Hawkeye NDB extending from the 6.5-mile radius to 7.4 miles west of the airport.

* * * * *

Issued in Kansas City, MO, on December 16, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33790 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–21]

Establishment of Class E Airspace; Okeechobee, FL.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Okeechobee, FL. A Global Positioning System (GPS) Runway (RWY) 4 Standard Instrument Approach Procedure (SIAP) has been developed for Okeechobee County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Okeechobee County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On November 10, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Okeechobee, FL (64 FR 217). This action provides adequate Class E airspace for IFR operations at Okeechobee County Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Okeechobee, FL. A GPS RWY 4 SIAP has been developed for Okeechobee County Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Okeechobee County Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Okeechobee, FL [New]

Okeechobee County Airport
(Lat. 27°15′46″ N, long. 80°50′59″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of Okeechobee County Airport.

* * * * *

Issued in College Park, GA, on December 14, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–33793 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Inspector General

32 CFR Part 312

Privacy Act; Implementation

AGENCY: Office of the Inspector General, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Inspector General is amending an existing exemption rule for a Privacy Act system of records. The amendment is administrative in nature. The system name is being changed to reflect changes made to the system of records notice.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at telephone (703) 604–9786.

SUPPLEMENTARY INFORMATION:

Executive Order 12866.

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of

Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 312

Privacy.

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 312.12, is amended by revising paragraphs (f)(1) and (f)(2) as follows:

§ 312.12 Exemptions.

(f) *System identifier:* CIG–15.

(1) *System name:* Departmental Inquiries Case System.

(2) *Exemption:* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portions of this system which fall under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsection of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I).

* * * * *

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33699 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG–1999–5938]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substsantive rules adopted by the Coast Guard and temporarily effective between January 1, 1999 and September 30, 1999 which were not published in the **Federal Register**. This notice lists temporary local regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between January 1, 1999 and September 30, 1999.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Junior Grade Bruce Walker, Office of Regulations and Administrative Law, telephone (202) 267–6233. For questions on viewing, or on submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation (202) 866–9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels,, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expenses on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirely in the **Federal Register**. Temporary regulations may also be published in their entirely if sufficient time is avaiable to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1999 and September 30, 1999, unless otherwise indicated.

Dated: December 22, 1999.

Pamela M. Pelcovits,

Chief, Office of Regulations and Administrative Law.

1ST QUARTER 1999 COTP QUARTERLY REPORT

COTP Docket	Location	Type	Effective Date
CORPUS CHRISTI 99–001	Corpus Christi, TX	Safety zone	1/18/99
CORPUS CHRISTI 99–002	Brownsville Ship Channel, Brownsville, TX	Safety zone	2/12/99
CORPUS CHRISTI 99–003	Corpus Christi, TX	Safety zone	2/12/99
GUAM 98–005	Apra Outer Harbor, Guam	Safety zone	1/13/99
GUAM 98–006	Apra Outer Harbor, Guam	Safety zone	1/27/99

1ST QUARTER 1999 COTP QUARTERLY REPORT—Continued

COTP Docket	Location	Type	Effective Date
JACKSONVILLE 99–086	Atlantic Ocean, Mayport, FL	Safety zone	1/2/99
LOUISVILLE 99–001	Ohio River, M. 530.5 to 532	Safety zone	1/24/99
LOUISVILLE 99–002	Kentucky River, Owens Country, Ky	Safety zone	2/20/99
MOBILE 99–001	Gulf of Mexico	Safety zone	1/29/99
NEW ORLEANS 99–001	Lwr Mississippi River, M. 94 to 96	Safety zone	2/15/99
NEW ORLEANS 99–002	Lwr Mississippi River, M. 226 to 237	Safety zone	2/9/99
NEW ORLEANS 99–003	Lwr Mississippi River, M. 47 to 54	Safety zone	2/28/99
NEW ORLEANS 99–004	Lwr Mississippi River, M. 229 to 230.5	Safety zone	3/5/99
NEW ORLEANS 99–005	Lwr Mississippi River, M. 047 to 054	Safety zone	3/6/99
PRINCE WILLIAM SOUND 99–001	Valdez, AK	Safety zone	3/22/99
SAN FRANCISCO BAY 99–001	San Francisco, CA	Safety zone	3/5/99
SAN FRANCISCO BAY 99–003	San Francisco, CA	Safety zone	3/16/99
SAN FRANCISCO BAY 99–004	San Francisco, CA	Safety zone	3/15/99
SAN FRANCISCO BAY 99–005	San Francisco, CA	Safety zone	3/13/99
SAN FRANCISCO BAY 99–006	San Francisco, CA	Security zone	3/19/99
SAN JUAN 99–005	San Juan, Puerto Rico	Safety zone	1/10/99
TAMPA 99–009	Tampa Bay, FL	Safety zone	1/25/99
WESTERN ALASKA 99–001	Northern Edge '99, Resurrection Bay, Alaska	Safety zone	3/7/99

1ST QUARTER 1999 DISTRICT QUARTERLY REPORT

District Docket	Location	Type	Effective date
01–99–005	East River, New York	Security zone	1/21/99
01–99–011	Portsmouth, NH	Security zone	2/18/99
01–99–013	Boston Harbor, Boston, MA	Safety zone	3/1/99
01–99–014	Boston Harbor, Boston, MA	Safety zone	3/2/99
01–99–019	Fall River, MA	Safety zone	3/13/99
01–99–021	Boston Harbor, Boston, MA	Safety zone	3/2/99
01–99–025	Boston Harbor, Boston, MA	Safety zone	3/9/99
01–99–026	Boston Harbor, Boston, MA	Safety zone	3/28/99
05–99–002	Cape Fear River, North Carolina	Safety zone	1/7/99
05–99–007	Camp Lejeune, North Carolina	Safety zone	2/9/99
05–99–009	Baltimore, MD	Safety zone	3/27/99
05–99–017	Croatan Sound, North Carolina	Safety zone	3/29/99
07–99–006	Great Bay, St. Thomas, U.S.V.I.	Special local	1/29/99
07–99–012	Bay Vew, Catano, PR	Special local	3/21/99
08–99–003	Knoxville, TN	Special local	1/99/99
09–99–005	Lake Ontario, Oswego, New York	Safety zone	2/27/99

2ND QUARTER 1999 COTP QUARTERLY REPORT

COTP Docket	Location	Type	Effective Date
CORPUS CHRISTI 99–004	Port Isabel, TX	Safety zone	4/5/99
GUAM 99–008	Agat Outer Harbor, Guam	Safety zone	4/29/99
GUAM 99–009	Agat Bay, Guam	Safety zone	5/12/99
GUAM 99–010	Cocos Lagoon, Guam	Safety zone	6/11/99
GUAM 99–012	Cocos Lagoon, Guam	Safety zone	6/2/99
HOUSTON-GALVESTION 99-002	Bayport, TX	Safety zone	4/19/99
LA/LB 99–004	Huntington Beach, CA	Safety zone	6/13/99
MIAMI 99–021	Palm Beach, FL	Safety zone	4/30/99
MILWAUKEE 99–009	Lake Michigan, Sheboygan, WI	Safety zone	5/14/9
NEW ORLEANS 99–006	Lwr Mississppi River, M. 94 to 96	Safety zone	4/6/99
NEW ORLEANS 99–007	Lwr Mississippi River, M.94 to 96	Safety zone	4/10/99
NEW ORLEANS 99–008	Lwr Mississippi River, M. 94 to 96	Safety zone	4/12/99
NEW ORLEANS 99–010	Mississippi, M. 94 to 96	Safety zone	5/30/99
PADUCAH 99–004	Ohio River, M. 917.5 to 919.5	Safety zone	5/6/99
SAN FRANCISCO BAY 99–007	San Francisco Bay, CA	Safety zone	4/18/99
SAN FRANCISCO BAY 99–008	Mare Island Strait, CA	Safety/security zone	4/30/99
SAN FRANCISCO BAY 99–009	San Francisco Bay, CA	Safety zone	5/12/99
SAN FRANCISCO BAY 99–010	San Francisco Bay, San Francisco, CA	Safety zone	5/22/99
SAN FRANCISCO BAY 99–011	San Francisco Bay, San Francisco, CA	Safety zone	5/22/99
SAN FRANCISCO BAY 99–012	Suisun Bay, CA	Safety zone	6/22/99
SOUTHEAST ALASKA 99–002	Tongass Narrows, Ketchikan, AK	Safety zone	5/8/99
TAMPA 99–043	Tampa Bay, FL	Safety zone	6/16/99

2ND QUARTER 1999 DISTRICT QUARTERLY REPORT

District docket	Location	Type	Effective date
01–99–035	Portsmouth, NH	Safety zone	4/9/99
01–99–037	Hudson River, Manhattan, NY	Safety zone	6/25/99
01–99–043	Bath, ME	Safety zone	4/17/99
01–99–045	Long Island, New York	Safety zone	4/22/99
01–99–046	Manhattan, New York	Security zone	4/21/99
01–99–058	Chelsea, MA	Safety zone	5/11/99
01–99–063	Bangor, ME	Safety zone	5/13/99
01–99–065	East River, New York	Security zone	5/19/99
01–99–091	East and Hudson Rivers, New York	Security zone	6/7/99
01–99–097	Rondout Creek, New York	Safety zone	6/27/99
01–99–098	Gloucester, MA	Safety zone	6/27/99
01–99–099	New York Harbor, Upper Bay	Safety zone	6/25/99
01–99–113	Sherwood Park, Westport, CT	Safety zone	6/28/99
01–99–117	Boston, MA	Security zone	6/25/99
01–99–119	Saugatuck River, Saugatuck, CT	Safety zone	6/28/99
05–99–043	Cape Henlopen State Park, DA	Safety zone	5/7/99
05–99–023	Chestertown, MD	Safety zone	4/10/99
05–99–024	Elizabeth River, Virginia	Security zone	4/13/99
05–99–025	Baltimore, MD	Special local	4/24/99
05–99–027	Willoughby Bay, Norfolk, VA	Security zone	4/17/99
05–99–028	Baltimore Inner Harbor, Baltimore, Maryland	Special local	5/2/99
05–99–029	Sharptown, Maryland	Special local	5/1/99
05–99–030	Thimble Shoal Channel, Virginia	Safety zone	4/30/99
05–99–031	Elizabeth River, Norfolk, VA	Safety zone	5/5/99
05–99–032	Thimble Shoal Channel, Virginia	Safety zone	5/6/99
05–99–035	Harbor Park, Norfolk, VA	Safety zone	5/15/99
05–99–042	Elizabeth River, Chesapeake, VA	Safety zone	5/28/99
05–99–046	Harbor Park, Norfolk, VA	Safety zone	6/23/99
07–99–017	Fort Lauderdale, FL	Special local	4/30/99
07–99–020	Bahia de Mayaquez, Puerto Rico	Special local	4/18/99
07–99–029	Saint Thomas, USVI	Special local	5/1/99
07–99–031	Saint Thomas, USVI	Special local	5/5/99
07–99–032	Caneel Bay, Saint John, USVI	Special local	5/15/99
08–99–043	Corpus Christi, TX	Special local	6/19/99
09–99–010	Lake Muskegon, Muskegon, MI	Safety zone	4/24/99
09–99–011	Washington Township, Ohio	Safety zone	6/26/99
09–99–012	Tibbets Point, New York	Safety zone	4/29/99
09–99–014	Lake Michigan, Chicago, IL	Safety zone	5/2/99
09–99–015	Lake Macatawa, Holland, MI	Safety zone	5/7/99
09–99–016	Lake Muskegon, Muskegon, MI	Safety zone	5/22/99
09–99–020	Lake Michigan, Chicago, IL	Safety zone	5/29/99
09–99–022	City Pier—Bayfield, Wisconsin—Lake Superior	Safety zone	5/29/99
09–99–023	Milwaukee, WI	Safety zone	6/24/99
09–99–025	Lake Muskegon, Muskegon, MI	Safety zone	6/10/99
09–99–027	Lake Macatawa, Holland, MI	Safety zone	6/19/99
09–99–028	Black River, South Haven, MI	Safety zone	6/19/99
09–99–034	Presque Isle Bay, Erie, PA	Safety zone	6/26/99
09–99–040	Muskegon Lake, Muskegon, MI	Safety zone	6/24/99
13–99–010	Renton, WA	Safety zone	4/24/99
13–99–012	Willamette River, Portland, Oregon	Safety zone	5/7/99
13–99–014	Pacific Coast, Washington	Safety zone	5/21/99
13–99–015	Neah Bay, Neah Bay, WA	Safety zone	5/21/99
13–99–016	Neah Bay, Neah Bay, WA	Safety zone	5/24/99
13–99–017	Willamette River, Portland, OR	Safety zone	6/4/99
13–99–023	Bellingham, Washington	Safety zone	6/14/99
13–99–029	Lake Washington, WA	Safety zone	6/26/99

3RD QUARTER 1999 COTP QUARTERLY REPORT

COTP docket	Location	Type	Effective date
CORPUS CHRISTI 99–006	Intracoastal Waterway, TX	Safety Zone	8/22/99
GUAM 99–013	Apra Harbor, Guam	Safety Zone	7/12/99
GUAM 99–014	Apra Harbor, Guam	Safety Zone	8/11/99
GUAM 99–015	Apra Harbor, Guam	Safety Zone	8/23/99
JACKSONVILLE 99–046	St. Johns River, Jacksonville, FL	Safety Zone	7/4/99
JACKSONVILLE 99–049	Intracoastal Waterway, Melbourne, FL	Safety Zone	7/4/99
LOUISVILLE 99–006	Ohio River	Safety Zone	9/2/99
LOUISVILLE 99–007	Ohio River, M. 265 to 469	Safety Zone	8/16/99
LOUISVILLE 99–008	Ohio River, M. 556.5 to 558.5	Safety Zone	9/30/99
NEW ORLEANS 99–017	Mississippi River, M. 94 to 96	Safety Zone	8/19/99

3RD QUARTER 1999 COTP QUARTERLY REPORT—Continued

COTP docket	Location	Type	Effective date
NEW ORLEANS 99–018	Mississippi River, above Head of Passes	Safety Zone	8/30/99
NEW ORLEANS 99–019	Harvery Canal	Safety Zone	9/5/99
NEW ORLEANS 99–020	Mississippi River, above Head of Passes	Safety Zone	8/31/99
NEW ORLEANS 99–021	Mississippi River, above Head of Passes	Safety Zone	9/9/99
NEW ORLEANS 99–023	Lower Mississippi River, M. 382 to 385	Safety Zone	9/22/99
NEW ORLEANS 99–025	Lower Mississippi River, M. 342 to 345	Safety Zone	9/25/99
SAN DIEGO 99–005	San Diego, CA	Safety Zone	8/4/99
SAN DIEGO 99–009	San Diego, CA	Safety Zone	9/5/99
SAN DIEGO 99–010	Lower Colorado River, Imperial County, GA	Safety Zone	9/21/99
SAN DIEGO BAY 99–003	San Diego Bay, San Diego, CA	Safety Zone	7/13/99
SAN DIEGO BAY 99–004	San Diego Bay, San Diego, CA	Safety Zone	7/13/99
SAN DIEGO BAY 99–006	San Diego Bay, San Diego, CA	Safety Zone	8/6/99
SAN DIEGO BAY 99–007	San Diego Bay, San Diego, CA	Safety Zone	8/6/99
SAN FRANCISCO BAY 99–013	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–014	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–015	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–016	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–017	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–018	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–019	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–020	Suison Bay, CA	Safety Zone	8/6/99
SAN FRANCISCO BAY 99–021	San Francisco, CA	Safety Zone	8/15/99
SAN FRANCISCO BAY 99–022	San Francisco Bay, San Francisco, CA	Safety Zone	9/8/99
SAN FRANCISCO BAY 99–023	San Francisco Bay, San Francisco, CA	Safety Zone	9/8/99
SOUTHEAST ALASKA 99–004	Gastineau Channel, Juneau, AK	Safety Zone	7/3/99
SOUTHEAST ALASKA 99–005	Tracy Arm, AK	Safety Zone	7/28/99
TAMPA 99–061	Tampa Bay, FL	Safety Zone	8/26/99
TAMPA 99–064	Tampa Bay, FL	Safety Zone	9/14/99
TAMPA 99–065	Tampa Bay, FL	Safety Zone	9/20/99
TAMPA 99–066	Tampa Bay, FL	Safety Zone	9/22/99
TAMPA 99–067	Tampa Bay, FL	Safety Zone	9/22/99
WESTERN ALASKA 99–003	Nikiski Rigtender's Dock, Cook Inlet, Alaska	Safety Zone	7/7/99

3RD QUARTER 1999 DISTRICT QUARTERLY REPORT

District docket	Location	Type	Effective date
01–99–041	Hudson River, New York	Safety zone	7/3/99
01–99–051	East River, New York	Safety zone	7/4/99
01–99–089	Somerset, MA	Safety zone	7/2/99
01–99–090	Rock Harbor, Orleans, MA	Safety zone	7/3/99
01–99–101	Cove Neck, NY	Safety zone	7/4/99
01–99–103	Lynn, MA	Safety zone	7/2/99
01–99–105	Arthur Kill, New Jersey	Safety zone	7/4/99
01–99–107	Great South Bay, Patchogue, NY	Safety zone	7/5/99
01–99–108	All-Star Baseball, Boston, MA	Safety zone	7/11/99
01–99–109	Weymouth, MA	Safety zone	7/3/99
01–99–111	Swampscott, MA	Safety zone	7/2/99
01–99–114	Shinnecock Bay, Southampton, NY	Safety zone	7/2/99
01–99–116	Moriches Bay, Smith Point, NY	Safety zone	7/4/99
01–99–122	Oakland Beach, Warwick, RI	Safety zone	7/3/99
01–99–123	Buzzards Bay, MA	Safety zone	7/6/99
01–99–127	West of Martha's Vineyard, MA	Safety zone	7/19/99
01–99–128	New York Harbor, Upper Bay	Safety zone	8/1/99
01–99–129	West of Martha's Vineyard, MA	Safety zone	7/20/99
01–99–131	Casco Bay, Portland, ME	Safety zone	8/21/99
01–99–132	West of Martha's Vineyard, MA	Safety zone	7/21/99
01–99–134	Martha's Vineyard, MA	Safety zone	7/22/99
01–99–136	Gloucester, MA	Safety zone	8/7/99
01–99–137	Beverly, MA	Safety zone	8/8/99
01–99–138	Narrangansett Bay, Coddington Cove, RI	Safety zone	7/23/99
01–99–139	Sagaponock, NY	Safety zone	7/31/99
01–99–143	Martha's Vineyard, MA	Safety zone	8/18/99
01–99–144	Martha's Vineyard, MA	Safety zone	8/18/99
01–99–146	Newburyport, MA	Safety zone	8/7/99
01–99–158	Hudson River, New York	Safety zone	9/25/99
01–99–160	Boston, MA	Security zone	9/2/99
01–99–164	Hudson River, Anchorage Channel	Safety zone	9/11/99
01–99–166	New York Harbor Upper Bay	Safety zone	9/22/99
01–99–168	Boston Harbor, Boston, MA	Safety zone	9/16/99
05–99–047	Chickahominy River, Williamsburg, VA	Safety zone	7/4/99

3RD QUARTER 1999 DISTRICT QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
05–99–048	Coastal Water, Avon, NC	Safety zone	7/4/99
05–99–049	Coastal Water, Chincoteague, VA	Safety zone	7/4/99
05–99–050	Piakatant River, Methews, VA	Safety zone	7/4/99
05–99–051	Assawomen Bay, Ocean City, MD	Safety zone	7/4/99
05–99–052	Coastal Waters, Ocean City, MD	Safety zone	7/4/99
05–99–053	Chesapeake Bay, Norfolk, VA	Safety zone	7/4/99
05–99–054	York River, Yorktown, VA	Safety zone	7/3/99
05–99–055	Chesapeake Bay, Virginia Beach, VA	Safety zone	7/4/99
05–99–056	Atlantic Ocean, Virginia Beach, VA	Safety zone	7/4/99
05–99–057	Alexandria, VA	Safety zone	7/3/99
05–99–058	New Bern, North Carolina	Special local	7/10/99
05–99–059	Kent Narrows, Maryland	Special local	7/4/99
05–99–061	Elizabeth River, Norfolk, VA	Special local	7/4/99
05–99–064	Patapsco River, Baltimore, MD	Safety Zone	7/2/99
05–99–065	Willoughby Bay, Norfolk, VA	Special local	7/24/99
05–99–066	Prospect Bay, Kent Narrows, MD	Special local	7/16/99
05–99–067	Patuxent River, Solomons, MD	Special local	8/7/99
05–99–069	Pamlico River, Washington, NC	Special local	8/7/99
05–99–072	Abingdon, Maryland	Special local	8/13/99
05–99–073	Phoebus, Virginia	Special local	~~8/28/99~~
05–99–074	Chestertown, Maryland	Safety Zone	8/17/99
05–99–075	Hampton, VA	Special local	~~9/4/99~~
05–99–077	Delaware River, Philadelphia, Pennsylvania	Safety Zone	8/26/99
05–99–086	Elizabeth River and York River, VA	Special local	~~9/5/99~~
07–99–041	Savannah, GA	Safety Zone	9/13/99
07–99–059	Riviera Beach, Florida	Special local	7/4/99
08–99–044	Paducah, KY	Special local	8/27/99
08–99–045	Metropolis, IL	Special local	7/4/99
08–99–054	Clarksville, TN	Special local	7/4/99
09–98–047	Lake Erie, Put-In-Bay, OH	Special local	9/12/99
09–99–013	Milwaukee Harbor, Milwaukee, WI	Safety Zone	7/4/99
09–99–026	Port Clinton, OH	Safety Zone	7/1/99
09–99–029	Lake Erie-Maumee River, Ohio	Safety Zone	7/4/99
09–99–030	Niagara River, Tonawanda, NY	Safety Zone	7/3/99
09–99–031	Niagara River, Buffalo, NY	Safety Zone	7/25/99
09–99–032	Oswego Harbor, Oswego, NY	Safety Zone	7/4/99
09–99–033	Oswego Harbor, Oswego, New York	Safety Zone	7/24/99
09–99–036	Sodus Bay Channel, Sodus Point, NY	Safety Zone	7/25/99
09–99–039	Milwaukee Harbor, Milwaukee, WI	Safety Zone	7/3/99
09–99–041	Palos Heights, Illinois	Safety Zone	8/7/99
09–99–042	Black River, South Haven, MI	Safety Zone	7/4/99
09–99–043	Lake Michigan, Chicago, IL	Safety Zone	7/2/99
09–99–044	Lake Michigan, St. Joseph, MI	Safety Zone	7/3/99
09–99–045	White Lake, MI	Safety Zone	7/3/99
09–99–046	Lake Michigan, Holland, MI	Safety Zone	7/3/99
09–99–048	Lake Erie, OH	Safety Zone	7/3/99
09–99–049	Lake Erie, OH	Safety Zone	7/3/99
09–99–050	Lake Michigan, Pentwater, MI	Safety Zone	7/10/99
09–99–051	Lake Macatawa, Holland, MI	Safety Zone	7/3/99
09–99–052	White Lake, Whitehall, MI	Safety Zone	7/3/99
09–99–053	Lake Kalamazoo, Saugatuck, MI	Safety Zone	7/4/99
09–99–054	Lake Michigan, Ludington, MI	Safety Zone	7/3/99
09–99–055	Lake Michigan, Manistee, MI	Safety Zone	7/4/99
09–99–056	Lake Michigan, Frankfort, MI	Safety Zone	7/4/99
09–99–057	Grand River, Grand Haven, MI	Safety Zone	7/4/99
09–99–059	Lake Michigan, North Beach, MI	Safety Zone	7/4/99
09–99–060	Lake Michigan, St. Joseph, MI	Safety Zone	7/17/99
09–99–061	Lake Michigan, Michigan City, IN	Safety Zone	7/17/99
09–99–062	Niagara river, Tonawanda, New York	Safety Zone	7/18/99
09–99–063	Black Rock, Canal Buffalo, NY	Safety Zone	7/24/99
09–99–067	Grand River, Grand Haven, MI	Safety Zone	8/10/99
09–99–069	Lake Michigan, New Buffalo, MI	Safety Zone	7/31/99
09–99–070	South Haven, MI	Safety Zone	8/7/99
09–99–071	Lake Michigan, Pentwater, MI	Safety Zone	8/14/99
09–99–072	Milwaukee Harbor, Milwaukee, WI	Safety Zone	8/14/99
09–99–073	Lake Erie Maumee River, Ohio	Safety Zone	9/10/99
09–99–074	Lake Erie Maumee River, Ohio	Safety Zone	9/4/99
09–99–075	Clair, Michigan	Safety Zone	9/5/99
09–99–076	Buffalo, New York	Safety Zone	8/14/99
13–99–021	Willamette River, Portland, OR	Safety Zone	8/21/99
13–99–022	Columbia River, Astoria, OR	Safety Zone	7/4/99
13–99–024	Columbia River, Cascade, OR	Safety Zone	7/4/99
		Safety Zone	7/4/99

3RD QUARTER 1999 DISTRICT QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
13–99–025	Columbia River, St. Helens, OR	Safety Zone	7/4/99
13–99–026	Columbia River, St. Helens, OR	Safety Zone	7/3/99
13–99–027	Willamette River, Portland, OR	Safety Zone	7/4/99
13–99–028	Columbia River, Kennewick, WA	Safety Zone	7/4/99
13–99–030	Chehalis River, Aberdeen, WA	Safety Zone	7/4/99
13–99–031	Commencement Bay, WA	Safety Zone	7/4/99
13–99–032	Seattle, WA	Security	7/9/99
13–99–034	Willamette River, Portland, OR	Safety Zone	8/13/99
13–99–035	Lake Washington, Washington State	Safety Zone	8/5/99
13–99–036	Elliott Bay, Washington State	Safety Zone	8/4/99
13–99–037	Columbia River, Astoria, OR	Safety Zone	8/14/99
13–99–038	Willamette River, Portland, OR	Safety Zone	8/21/99
13–99–039	Willamette River, Portland, OR	Safety Zone	9/2/99
13–99–041	Puget Sound, Washington State	Safety Zone	9/12/99
13–99–042	Commencement Bay, Tacoma, WA	Safety Zone	9/19/99
13–99–043	Willamette River, Portland, OR	Safety Zone	9/17/99

[FR Doc. 99–33805 Filed 12–28–99; 8:45 am]
BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–26–1–6965a; FRL–6514–6]

Approval and Promulgation of Implementation Plan for Louisiana: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Louisiana State Implementation Plan (SIP) that contains the transportation conformity rule. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level. The EPA's approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. The final approval action is limited to Transportation Conformity. The EPA approved the SIP revision sent under conformity of general Federal actions on September 13, 1996 (61 FR 48409).

The EPA approves this SIP revision under sections 110(k) and 176 of the Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on February 28, 2000 without further notice, unless EPA receives adverse comment by January 28, 2000. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Louisiana Department of Environmental Quality, Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, Telephone: (225) 765–0178.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

We have outlined the contents of this document below for your reading convenience:

I. Background
A. What is a SIP?
B. What is the Federal approval process for a SIP?
C. What is transportation conformity?
D. Why must the State send a transportation conformity SIP?
E. How does transportation conformity work?
II. Approval of the State Transportation Conformity Rule
A. What did the State send?
B. What is EPA approving today and why?
C. How did the State satisfy the interagency consultation process (40 CFR 93.105)?
D. Why did the State exclude the grace period for new nonattainment areas (40 CFR 93.102(d))?
E. What parts of the rule are excluded?
III. Opportunity for Public Comments
IV. Administrative Requirements

I. Background

A. What Is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, the EPA, for approval and incorporation into the Federally enforceable SIP.

Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What Is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies

consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice, and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The Government does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What Is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why Must the State Send a Transportation Conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State of Louisiana sent a transportation conformity SIP on November 23, 1994, but we could not approve this SIP revision. We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning Organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on transportation plans, programs, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the State Transportation Conformity Rule

A. What Did the State Send?

On October 21, 1998, the Governor of Louisiana sent a SIP revision that includes the State's transportation conformity and consultation rule. At the same time, the Governor withdrew his November 23, 1994, submission. Also, the State submitted additional information on November 19, 1998, and June 29, 1999. The Louisiana Department of Environmental Quality (LDEQ) published its final transportation conformity rule on September 20, 1998, in Louisiana Register after appropriate public participation and interagency consultation.

B. What is EPA Approving Today and Why?

We are approving the Louisiana transportation conformity rule that the Governor of Louisiana sent us on October 21, 1998, information submitted on November 19, 1998, and June 29, 1999, except for the incorporation by reference of sections 93.102(c), 93.104(d), 93.109(c)-(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b) of 40 CFR into Louisiana Administrative Code (LAC) 33:III.1432. The rationale for exclusion of these sections is discussed in section II.E of this action. The LDEQ has adopted the Federal rules by "incorporation by reference" except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this notice.

"Incorporation by Reference" (IBR) means that the State adopted the Federal rules without rewriting the text of the Federal rules but by referring to them for inclusion as if they were printed in the state regulation. The Federal Transportation Conformity Rule required the states to adopt a majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the State's rules apply equally to nonfederal entities as well as Federal entities. The LDEQ Transportation Conformity Rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the State has fully adopted the Federal transportation conformity rules as described in 40 CFR part 51, subpart T and part 93, subpart A. Also, the LDEQ has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the Louisiana general conformity SIP on September 13, 1996 (61 FR 48409).

C. How Did the State Satisfy the Interagency Consultation Process?

Our rule requires the States to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U. S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The State developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from IBR. As a first step, the State established an ad hoc multiagency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The State air quality agency served as the lead agency in coordinating the multiagency efforts for developing the consultation rule. The committee met periodically and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the State of Louisiana and is codified under section LAC 33:III.1434 of the State rule. We have determined that the State adequately included all elements of 40 CFR 93.105 and meets the EPA SIP requirements.

D. Why Did the State Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The State excluded 40 CFR 93.102(d) from its IBR. Section 93.102(d) of 40 CFR allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. The Sierra Club challenged this section of the rule arguing that allowing a 12-month grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency*, 129 F.3d 137 (D.C.Cir.1997), that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has excluded this section from its rule. We agree with the State's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule Are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, 167 F.3d 641 (D.C.Cir.1999). The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination that the Federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse;

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate;

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval;

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed; and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections.

We believe that the LDEQ has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. If the court had issued its ruling before adoption and SIP submittal by the LDEQ, we believe the LDEQ would have removed these sections from its IBR. The LDEQ has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time.

The LDEQ will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the state rules from this SIP approval action. As a result, we are not taking any action on the IBR of sections 93.102(c), 93.104(d), 93.109(c)-(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b) of 40 CFR at LAC 33:III.1432 under the State conformity rule. The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues. The EPA has already issued guidance on how to implement these provisions in the interim prior to EPA amendment of the Federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in Louisiana should comply with the requirements of the revised Federal rule until corresponding provisions of the Louisiana conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on February 28, 2000 without further notice unless we receive adverse comment by January 28, 2000. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will

address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review.

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new Executive Order on federalism, Executive Order 13132, (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: November 22, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

SUBPART T—LOUISIANA

2. § 52.970 is amended in paragraph (c), under Chapter 14—Conformity, by adding Subchapter B, Sections 1431, 1432, and 1434, after Subchapter A, Section 1415, to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Explanation
*	*	*	*	*
CHAPTER 14—Conformity				
*	*	*	*	*
Subchapter B	Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act			
Section 1431	Purpose	September 1998, LR24:1684	[December 29, 1999 FR volume and page number].	
Section 1432	Incorporation by Reference.	July 1998, LR24:1280	[December 29, 1999 FR volume and page number].	No action is taken on the portions of LAC 33:III.1432 that contain 40 CFR 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b).
Section 1434	Consultation	November 1994, LR20:1278; July 1998, LR24:1280; September 1998, LR24:1684; October 1998, LR24:1925.	[December 29, 1999 FR volume and page number].	
*	*	*	*	*

[FR Doc. 99–33448 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA 34–9919(c), GA25–1–9805(c); FRL–6515–8]

Approval and Promulgation of Air Quality Implementation Plans; Georgia; 15 Percent Rate-of-Progress Plan and 9 Percent Rate-of-Progress Plan for the Atlanta Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule clarification.

SUMMARY: This action clarifies two final rules which were published on March 18, 1999, and April 26, 1999. This action pertains to the State Implementation Plan (SIP) revisions submitted by Georgia on November 15, 1993, consisting of the 15 percent Rate-of-Progress Plan for the Atlanta ozone nonattainment area, which was amended on June 17, 1996, and the Post 1996 Rate-of-Progress Plan (9 Percent Plan) for the Atlanta ozone nonattainment area, also submitted on June 17, 1996.

EFFECTIVE DATE: This rule is effective December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Region 4, Air, Pesticides and Toxics Management Division, Air Planning Branch at (404) 562–9042.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1999, (64 FR 13348) and April 26, 1999, (64 FR 20186), EPA published a final rule approving the 15 Percent Plan and 9 Percent Plan SIP revisions respectively. These SIP revisions were submitted by the Georgia Environmental Protection Division (GAEPD) on November 15, 1993, and amended on June 17, 1996, for the Atlanta ozone nonattainment area.

Need for Clarification

On March 18, 1999, and April 26, 1999, EPA granted final conditional approval of the 15 Percent Plan SIP revision for the Atlanta ozone nonattainment area and final approval of the 9 Percent Plan SIP revision. These documents identify various control programs which constitute the reductions GAEPD used to demonstrate a 15 percent reduction in emissions of volatile organic compounds and a 9 percent reduction in nitrogen oxides. Transportation control measures (TCMs) were listed as one of the types of control programs in both actions. However, the rulemaking actions did not specifically state which TCMs the action approved. This document serves to identify which TCMs are approved as part of the 15 Percent Plan and 9 Percent Plan SIP revisions.

Below is a list of the TCMs that are contained in both the 15 percent and 9 percent SIPs:

1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316
2. Clean Fuel Vehicles Revolving Loan Program
3. Regional Commute Options Program and HOV Marketing Program
4. HOV lanes on I–75 and I–85 (inside I–285)
5. Two Park and Ride Lots: Rockdale County-Sigman at I–20 and Douglas County-Chapel Hill at I–20
6. MARTA Express Bus routes (15 buses)
7. Signal preemption for MARTA routes #15 and #23
8. Improve and expand service on MARTA's existing routes in southeast DeKalb County
9. Acquisition of clean fuel buses for MARTA and Cobb County Transit
10. ATMS/Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85
11. Upgrading, coordination and computerizing intersections

In addition, two other TCMs were provided in the 15 Percent Plan and 9 Percent Plan revisions that the State has subsequently requested be withdrawn. These include five park-and-ride lots and bike and pedestrian facilities. These TCMS are being removed because the Metropolitan Planning Organization could not clearly identify these specific projects by location in the transportation plan and improvement program. In order for TCMs to be approved in the SIP, they must be included in the transportation plan and improvement program. Because these bike and pedestrian facilities and park-and-ride lots are not included in the transportation plan and improvement program, EPA cannot approve them into the SIP.

What are the consequences of not including these controls?

The 15 Percent Plan and 9 Percent Plan SIP revisions both provided additional emission reductions from the other control program (i.e., the TCMs listed above). These emission reductions were not included in the calculated demonstration of a 15 percent reduction of volatile organic compounds or the demonstration of a 9 percent reduction of nitrogen oxides. These "unclaimed" emission reductions are greater than the amount of credit loss from the five park-and-ride lots (.03 tons per day of VOC and .04 tons per day of NO_x) and the bike and pedestrian facilities (.2 VOC and .5 NO_x). Therefore, the additional emissions reductions of 1.06 tons per day of VOC and 19.47 tons per day of NO_x which were not claimed are sufficient to make up the loss of credit from the two withdrawn TCMs.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks. This rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it does not include any information collection requirements. This rule is not subject to the requirements of the National Technology Transfer and Advancement Act (NTTAA) because it does not include provisions for technical standards.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 8, 1999.

Stanley A. Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of Chapter I, Title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart—L Georgia

2. Accordingly, § 52.570 is amended by adding paragraph (e) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) EPA Approved Georgia Nonregulatory Provisions

Name of nonregulatory SIP Provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date
1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316.	Atlanta Metropolitan Area ..	November 15, 1993 and amended on June 17, 1996.	March 18, 1999 and April 26, 1999.
2. Clean Fuel Vehicles Revolving Loan Program.			
3. Regional Commute Options Program and HOV Marketing Program.			
4. HOV lanes on I–75 and I–85.			
5. Two Park and Ride Lots: Rockdale County-Sigman at I-20 and Douglas County-Chapel Hill at I–20.			
6. MARTA Express Bus routes (15 buses).			
7. Signal preemption for MARTA routes #15 and #23.			
8. Improve and expand service on MARTA's existing routes in southeast DeKalb County.			
9. Acquisition of clean fuel buses for MARTA and Cobb County Transit.			
10. ATMS/ Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85.			
11. Upgrading, coordination and computerizing intersections.			

[FR Doc. 99–33527 Filed 12–28–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–a; FRL–6515–3]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves various revisions to the carbon monoxide (CO) Alaska State Implementation Plan (SIP) for Alaska. These revisions to the SIP were submitted in three different packages to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998.

The revisions cover numerous regulations, the Transportation Conformity Rule (18 AAC 50); Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52); and Fuel Requirements for Motor Vehicles (18 AAC 53). Highlights include changing the I/M program schedule from annual to biennial, replacing the CO contingency measures for Anchorage, and streamlining and updating several portions of the Alaska Air Quality Control Plan for more efficient reading and organization.

DATES: This direct final rule is effective on February 28, 2000 without further notice, unless EPA receives adverse comment by January 28, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Ms. Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

A. What SIP Amendments is EPA Approving?
B. What CO Updates and Changes Were Made to Air Quality Projections and CO Contingency Measures?
C. What Are the Significant Changes to Alaska's I/M Air Quality Program and Regulations (AAC 52)?
D. What Are the Overall Changes to Alaska's Regulations AAC 50 and 53?
E. What Is Transportation Conformity?
F. How Does Transportation Conformity Work?

G. What Are the Effects to Alaska's Transportation Conformity Program from the I/M Rule Change?
H. Why Must the State Have A Transportation Conformity SIP?
I. What is EPA Approving Today for Transportation Conformity and Why?
J. How Did the State Satisfy the Transportation Conformity Interagency Consultation Process (40 CFR 93.105)?
K. What Parts of the Transportation Conformity Rule Are Excluded?

A. What SIP amendments is EPA approving?

The following table outlines the submittals EPA received and is approving in this action:

Date of submittal to EPA	Items Revised
2–6–97	—Alaska State Air Quality Control Plan: Volume II, Section I.
	—Alaska State Inspection and Maintenance Program Manual.
	—Biennial Vehicle Inspection Program.
	—Revised Rollback Calculation.
6–1–98	—Emission Inspection and Maintenance Requirements.
9–10–98	—Alaska State Air Quality Control Plan: Volume II, Sections II and III.
	—Air Quality Control Regulations, Transportation Conformity Rule 18 AAC 50.
	—Fuel Requirements for Motor Vehicles: Regulations 18 AAC 53.
	—Anchorage Carbon Monoxide Contingency Measures.

B. What CO Updates and Changes Were Made to Air Quality Projections and CO Contingency Measures?

• EPA Approves a new CO Contingency Measure for Anchorage that replaces its past two CO Contingency Measures.

In the September 10, 1998 submittal from ADEC, ADEC requests EPA's approval of its new CO contingency measure, an enhanced technician training certification (TTC) program in Anchorage. The TTC contingency measure consists of additional local training and certification for mechanics. The TTC program includes a series of enhanced technician training modules aimed at competency areas such as electrical theory, emission control systems, electronic ignitions, fuel injection, on-board diagnostics, advanced diagnostic tools and procedures, oxygen sensors, catalytic converters, and the use of current analytical equipment.

The TTC program helps ensure that mechanics are trained to properly maintain and repair newer vehicles with advanced technology. It may also enhance efficiency, which would provide a cost benefit to consumers.

The TTC program, found in State regulation 18 AAC 52.400–410, was adopted by the State as a CO contingency measure for Anchorage upon Anchorage's reclassification to a serious CO nonattainment area. In addition, the TTC program was already approved by EPA on February 14, 1996 (61 FR 5704) as a CO contingency measure for Fairbanks, Alaska.

The TTC program also becomes the contingency measure for the vehicle miles traveled (VMT) forecasting and tracking requirement found in section 187 of the Clean Air Act Amendments of 1990.

The two replaced contingency measures for Anchorage were (1) compressed natural gas vehicles (CNG) procurement requirements for government fleets, and, (2) the expansion of the oxygenated fuels program to the Matanuska-Susitna Valley. Both of these contingency measures were impractical to initiate upon Anchorage's CO reclassification to serious.

Using the CNG procurement requirements for government fleets as a contingency measure was determined unworkable at this time. Major issues included lack of a refueling infrastructure for CNG vehicles in and around Anchorage, and there are only selected models available now which are dedicated CNG vehicles certified to ultra low emission vehicle standards. The extent of these issues were such that it would be infeasible to implement the CNG contingency measure in Anchorage and expect to gain meaningful reductions in emissions.

The second contingency measure was the expansion of the oxygenated fuels program. With the continued fleet turnover to newer, cleaner (technologically improved) cars, the information from the oxygenated fuels program in Anchorage indicates that oxyfuel expansion to the Matanuska-Susitna Valley was unlikely to provide the benefits originally projected.

Expanding the oxygenated gasoline control area to the Matanuska-Susitna Valley was inherently less cost effective than an oxyfuel requirement in Anchorage. Expanding the requirement to the valley is less effective because vehicles fueled in the valley spend less time, on average, traveling in the nonattainment area than those fueled in Anchorage itself.

Although the benefits of oxygenated gasoline were estimated on the basis of the best information available at the time, recent MOBILE model updates have suggested that oxygenated gasoline CO emission reductions may be overestimated in some cases. Extending the program to the valley is likely to result in even smaller benefits than were originally anticipated in the plan.

EPA concurs with ADEC's request to repeal and replace the past contingency measures with the TTC program.

• How Does Approval of the New Contingency Measure Change Alaska's Air Quality Control Regulations in 18 AAC 53, *Fuel Requirements for Motor Vehicles?*

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53, Article I, Oxygenated Gasoline Requirements), is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

• The Rollback Modeling Calculation Used to Determine CO Emission Reductions is Clarified.

ADEC typically uses rollback modeling to determine CO emission reductions needed to reach attainment of the CO national ambient air quality and standards (NAAQS). The rollback calculation determines a percentage reduction target by taking the ratio of the difference between the second highest CO exceedance value in the emission inventory base year and the ambient standard, and the second highest value in the base year adjusted for the ambient background concentration. ADEC clarifies in Alaska's CO SIP that the target CO level for SIP purposes is 9.0 ppm, or the CO NAAQS. Using 9 ppm as the appropriate target level gives ADEC the

amount of control necessary to attain and maintain the CO NAAQS.

• Long-Term Air Quality Projections are Updated.

The on-road mobile source portion of Anchorage's 1990 base year CO emission inventory was updated, using MOBILE5a which was the latest emission estimation model available as of December 1, 1994. The 1993 periodic inventory was developed and adjusted for population growth factors, and for changes in the Inspection and Maintenance program. The 1995 projected year inventory was also developed and adjusted for population growth factors, and for changes in the inspection and maintenance program and oxygenated fuels program. Tables provide summaries of the 1990 base year and 1995 projected year emissions by source category. In addition, daily emissions are calculated.

Also, data was updated to include 1995 2nd highest 8-hour ambient CO concentrations recorded at Anchorage monitoring sites.

In addition, best estimates of future VMT projections in Anchorage were completed through 1995.

• Information is Streamlined and Reorganized in Alaska's CO SIP.

The numerous non-substantive reformatting and restructuring changes streamline the Alaska SIP and make for more efficient and customer-friendly reading. They collectively, rather than individually, result in a much more significant impact on the SIP's organization.

As an example, a table was created showing the 1998 Transportation Control Strategies for Anchorage. Headings include Federal Control Strategies, State Control Strategies, and Local primary Control Strategies. Only one footnote accompanied the table, and that was an explanation of the oxygenated fuels program. The table is easy to understand and effectively summarizes important information.

Other similar edits found in Volume II, sections II and III of the State Air Quality Control Plan removed out-of-date references, eliminated duplicity and redundancy, reflected changes to Alaska's Inspection and Maintenance program, and generally reorganized for better sequence of information and requirements, while graphing projections and trends in population and average daily traffic.

C. What are the Significant Changes to Alaska's I/M Air Quality Program and Regulations (AAC 52)?

EPA approves all the changes to Alaska's I/M regulations submitted by the Alaska Department of Environmental Conservation (ADEC) on February 6, 1997 and June 1, 1998. The following explains the major changes:

• I/M Program Changes From Annual to Biennial.

In 1995, the Alaska State Legislature in Senate Bill 28 required that all State I/M programs implement biennial I/M testing beginning no later than January 1, 1997. In February 1997, ADEC submitted to EPA the updated State I/M regulations that reflect this change. Many States nationwide have changed their I/M programs from annual to biennial programs. This change has provided more convenience to vehicle owners (inspections are required less frequently, except when ownership of a vehicle is transferred), only negligible increases in vehicle emissions, and improved I/M program efficiency. ADEC analyzed the impact of changing the I/M program from an annual to a biennial program on motor vehicle emissions and found it would not significantly impact emission reductions. The I/M regulations also reflect a change in fees. Alaska's I/M programs in Fairbanks and Anchorage are operated by local government, Fairbanks North Star Borough and the Municipality of Anchorage, respectively, who have the authority to set their own program fees. In addition, in June 1998 the vehicle inspection schedule was changed to match the vehicle registration schedule (required by Alaska Statute 28:10.108), resulting in vehicle inspection and registration occurring on the same biennial schedule. The certificate of inspection is $18 in both Anchorage and Fairbanks. Anchorage has set a maximum of $60 and Fairbanks $35 for inspection testing.

• Provisions for Waivers and Emissions-Related Repair Costs Changed.

The provisions for waivers granted to motorists from passing an I/M program inspection have been revised. Waivers are now valid for one inspection cycle (every two years), instead of for one year. ADEC offset the change by proposing more stringent requirements for repair cost waivers. Section 18AAC 52.065 ("Emissions-Related Repair Cost Minimum") was updated to require motorists to meet the minimum necessary repair costs of $450 per inspection cycle before qualifying for a waiver, as opposed to spending a maximum of $450 annually. The new requirements should increase the number of repairs completed, which could benefit air quality. This change should address public concern over waivers being valid for two years (one inspection cycle).

• New Requirements for Dealers of Used Motor Vehicles.

In accordance with Alaska statute 45.45.400 ("Prohibited transfer of used motor vehicle"), the I/M regulations contain new requirements for dealers of used motor vehicles. The requirements apply only to cars tested by a dealership and held in inventory on a used car lot, since these cars are not likely to pollute the air. In general, an I/M certificate is good for one year for cars that are inspected while in the dealer's inventory or if the dealer registers the vehicle in the buyer's name. The new requirements are outlined in the I/M regulation under 18 AAC 52.020 ("Certificate of Inspection Requirements").

• ADEC's Dual Authority With an Implementing Agency Clarified.

The regulations clarify ADEC's dual authority with the implementing agencies, Fairbanks North Star Borough and the Municipality of Anchorage, under the provisions for enforcement procedures. ADEC has the authority to take an enforcement action against a motorist, certified mechanic, or station with or without the participation of the implementing agency to ensure compliance with enforcement provisions (18 AAC 52.100 and AAC 52.105).

• Notice of Violation Provisions Pertaining to Motorist Updated.

More stringent enforcement procedures for violations by motorists are outlined in 18 AAC 52.100. "If a motorist fails to respond or provide appropriate proof of compliance with this chapter within 30 days after receiving a notice of violation," the implementing agency may refer the matter for prosecution under the provision of Alaska state law pertaining to Local Air Quality Control Programs (AS 46.14.400(j)) or as a Class A misdemeanor under the provision for Criminal Penalties (AS 46.03.790). The penalty for motorists who fail to respond to a notice of violation (or fail to provide appropriate proof of compliance) was changed from potential loss of vehicle registration to the possibility of prosecution under Alaska's misdemeanor statutes.

• New Provision Allows for Visual Identification of Certificate of Inspection ('Sticker Program').

A new provision allows the implementing agency to require a visual identification, such as windshield sticker or license plate tab, that clearly shows compliance with inspection requirements. A sticker program (or similar program) provides easy visual verification of program compliance, which improves enforcement and

provides incentive to motorists to have their cars inspected. Details of this provision are outlined in 18 AAC 52.025.

• Update to Requirements for Grey Market Vehicles.

Grey market vehicles are manufactured for use outside of, and imported into, the United States. The revised provision for grey market vehicles (18 AAC 52.080) reduces the requirements for issuing a certificate of inspection on a grey market vehicle when it has a United States title. However, grey market vehicles are required to pass visual and functional inspections and/or tailpipe emission standards required by the I/M program manual. In addition, motorists are still required to obtain the applicable importation documents issued by EPA or the U.S. Department of Transportation.

D. What are the Overall Changes to Alaska's Regulations AAC 50 and 53?

EPA is approves in part, and takes no action on the following Alaska Air Quality Control Regulations:

Approvals 18 AAC 50

EPA is approving the following transportation conformity regulations under 18 AAC 50 as adopted by ADEC and effective on September 4, 1998: Section 700; 705; Section 710 with the exception of incorporation by reference of sections 93.102(c), 93.102(d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b); 715; and 720. EPA takes no action at this time on the exceptions found under section 710. (For an explanation of incorporation by reference, please see "I.")

No Action 18 AAC 50

In addition to the transportation conformity exceptions listed in the preceding paragraph, EPA is taking no action at this time on any of the 18 AAC 50 regulations, Articles 1 through 9, submitted on September 10, 1998. These regulations that are not being acted upon relate to the permitting of new and modified stationary sources or do not relate to the purposes of the SIP under section 110 of the Act or implement other provisions of the Clean Air Act.

Approvals 18 AAC 53

EPA is approving the regulations found in 18 AAC 53 regarding fuel requirements for motor vehicles, with the exception of section 015 which is repealed (see below). These regulations had minor, non-substantive and streamlining changes.

Repeal of 18 AAC 53.015

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53,Article I, Oxygenated Gasoline Requirements),is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

E. What is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated. The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

F. How Does Transportation Conformity Work?

The Federal or State Transportation Conformity Rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning Organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

G. What are the Effects to Alaska's Transportation Conformity Program From the I/M Rule Change?

The I/M action has no impact on the transportation emissions budget. However, the switch to biennial I/M does make it somewhat more difficult to demonstrate regional conformity, since it results in small increases in future emissions projections (while the allowable emissions budgets do not increase). However, this impact has not caused a significant problem in continuing to demonstrate conformity in Anchorage and Fairbanks, largely due to the continued decline in projected emissions resulting from fleet turnover.

Updated baseline and attainment inventories are scheduled for Anchorage and Fairbanks as part of the revised air quality attainment plans that must be prepared due to the redesignation to serious CO nonattainment status. As part of this process, the biennial I/M programs will become part of both the baseline and attainment inventories (and thus emissions budgets associated with each inventory), thereby totally eliminating any impact on regional conformity determinations.

H. Why Must the State Have a Transportation Conformity SIP?

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. EPA required the States and local agencies to adopt and submit a transportation conformity SIP revision by November 25, 1994. The State of Alaska sent a transportation conformity SIP on November 6, 1994, and EPA approved this SIP on November 8, 1995 (60 FR 56244). EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the States to

change their rules and send a SIP revision by August 15, 1998.

I. What is EPA Approving Today for Transportation Conformity and Why?

EPA is approving the Alaska Transportation Conformity Rule that the Governor of Alaska submitted on December 10, 1998 except for the incorporation by reference of sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b) of 40 CFR into AAC 50.710. The rationale for exclusion of these sections is discussed in Question K.

ADEC has adopted the Federal rules by "incorporation by reference" (except for the interagency consultation section 40 CFR 93.105 where they customized the rules for Alaska) "Incorporation by Reference" (IBR) means that the State adopted the Federal rules without rewriting the text of the Federal rules but by referring to them for inclusion as if they were printed in the state regulation. The Federal Transportation Conformity Rule required the states to adopt majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the State's rules apply equally to non-federal entities as well as Federal entities. The Alaska Transportation Conformity Rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception to the consultation section. EPA has evaluated this SIP revision and has determined that the State has fully adopted the Federal Transportation Conformity rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. Also, the ADEC has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, EPA is approving this SIP revision.

J. How did the State Satisfy the Transportation Conformity Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the States to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT. The State developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from IBR.

The Alaska consultation rule specifically addresses interagency consultation procedures between ADEC, the local air planning agency, Alaska Department of Transportation and Public Facilities, the local transportation agency, any agency created under state law that sponsors or approves transportation projects, the U.S. EPA, the Federal Highway Administration, and the Federal Transit Administration. The rule includes provision for consultation, review procedures, and conflict resolution for elements such as: discussion draft conformity determinations on transportation plans, programs, and projects; traffic demand modeling; regional emissions modeling; transportation control measures; and projects that should be considered regionally significant. It also includes provision for public review of conformity determinations.

K. What Parts of the Transportation Conformity Rule are Excluded?

EPA promulgated the transportation conformity rule on August 15, 1997. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in Sierra Club v. Environmental Protection Agency, No. 96–1007, ruled that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, EPA cannot approve 40 CFR 93.102(d). On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, No. 97–1637. The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the Federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were: (a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse, (b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate, (c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval, (d) 40 CFR 93.121(a)(1) which allowed the non-federally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and (e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval. Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections. EPA believes that ADEC has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to EPA. If the court had issued its ruling before adoption and SIP submittal by the ADEC, we believe the ADEC would have removed these sections from its IBR. The ADEC has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time. ADEC will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, EPA believes that it would be reasonable to exclude the corresponding sections of the state rules from this SIP approval action. As a result, we are not taking any action on the IBR of sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b) of 40 CFR at 18 AAC 50.710 under the State Transportation Conformity Rule. The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues. The EPA will be issuing guidance on how to

implement these provisions in the interim prior to EPA amendment of the federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in Alaska should comply with the requirements of the revised Federal rule until corresponding provisions of the Alaska conformity SIP have been approved by EPA.

II. Summary of Action

EPA approves and takes no action on certain regulations found in 18 AAC 50, 52, and 53, which were submitted for inclusion into Alaska's SIP. EPA also approves deletions listed below from the Alaska SIP.

18 AAC 50 Approvals

EPA approves sections 700, 705, 710 except for the incorporation by reference of sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2); 715, and 720.

18 AAC 50 No Action

As stated in "D", EPA takes no action on the remainder of those regulations submitted on September 10, 1998, found in Articles 1–9, 18 AAC 50.

18 AAC 52

The 18 AAC 52 Inspection and Maintenance Air Quality Program and Regulations that are approved by EPA are: Effective January 1, 1998, Section 005; 010; 015; 020; 025; 035; 037; 050; 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); 065; 070; 080; 085; 095; 100; 105; 400; 405; 415, except subsection (f)(1); 420, except subsection (a)(11); 425; 440; 500; 515; 520, except subsection (c)(9); 525; 527; 530, except subsections (b)(3), (c)(4)(C) and (d)(9); 535; 540; 545; 546; 990.

Effective January 1, 1997: Section 055; 090.

Remove the following provisions of 18 AAC 52: effective January 1, 1997, Section 060, subsection 8 (c) and 8 (e); Section 520, subsection (c)(9).

Remove the following provisions of 18 AAC 52: effective January 1, 1998: Section 060, subsection 8 (d)(2); Section 415, subsection (f)(1); Section 420, subsection (a) (11); Section 530, subsection (b)(3) and (d)(9).

Remove the following provisions of 18 AAC 52, effective January 4, 1995: Section 530, subsection (c) (4)(c).

The 18 AAC 53 Fuel Requirements for Motor Vehicles Regulations that are approved by EPA are: Effective October 31, 1997, Section 05; 07; 10; 20; 30; 35; 40; 45; 60; 70; 80; 90; 200; 105; 120; 130; 140; 150; 160; 170; and 190; and effective September 4, 1998, 18 AAC 53.990.

Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

EPA also approves numerous edits, updates, and improved reorganization to the narrative portions of Alaska's CO SIP for easier reading and understanding.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 28, 2000 without further notice unless the Agency receives adverse comments by January 28, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 28, 2000 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance

costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 10, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (29) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(29) The Environmental Protection Agency (EPA) approves various amendments to the Alaska State Air Quality Control Plan which are contained in three separate submittals to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998, and which include the inspection and maintenance program.

(i) Incorporation by reference.

(A) Air Quality Control Regulations, 18 AAC 50.

Effective September 4, 1998: Section 700; Section 705; Section 710 (except for the incorporation by reference of

sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b) of 40 CFR); Section 715; and Section 720.

(B) Emissions Inspection and Maintenance Requirements for Motor Vehicles 18 AAC 52.

(1) Effective January 1, 1998: Section 005; Section 010; 015; 020; 025; 035; 037; 050; 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); 065; 070; 080; 085; 095; 100; 105; 400; 405; 415, except subsection (f)(1); 420, except subsection (a)(11); 425; 440; 500; 515; 520, except subsection (c)(9); 525; 527; 530, except subsections (b)(3), (c)(4)(C) and (d)(9); 535; 540; 545; 546; 990.

(2) Effective January 1, 1997: Section 055; 090.

(3) Remove the following provisions of 18 AAC 52, effective January 1, 1997: Section 060, subsection 8 (c) and 8 (e); Section 520, subsection (c)(9).

(4) Remove the following provisions of 18 AAC 52, effective January 1, 1998: Section 060, subsection 8 (d)(2); Section 415, subsection (f)(1); Section 420, subsection (a) (11); Section 530, subsection (b)(3) and (d)(9).

(5) Remove the following provisions of 18 AAC 52, effective January 4, 1995: Section 530, subsection (c) (4)(c).

(C) Fuel Requirements for Motor Vehicles 18 AAC 53.

(1) Effective October 31, 1997: Section 05; 07; 10; 20; 30; 35; 40; 45; 60; 70; 80; 90; 200; 105; 120; 130; 140; 150; 160; 170; 190 and effective September 4, 1998, Section 990.

(2) Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

(ii) Additional Material.

(A) Revisions to Alaska's State Air Quality Control Plan, Volume II: Section I, "Background," I.A; I.B., I.C., I.D., and I.E., adopted 11/26/96; Part B—Anchorage Contingency Measures, adopted 5/18/98; Section II, "State Air Quality Control Program," pages II–1 through II–4, adopted 5/18/98; Section III.A. "Statewide Carbon Monoxide Control Program," pages III.A.1–1 through III.A.3–4, adopted 5/18/98; III.B. "Anchorage Transportation Control Program," pages III.B.1–1 through III.B.6–7, adopted 5/18/98; III.B.8. "Modeling and Projections," pages III.B.8–1 through III.B.9–2, adopted 5/18/98; III.B.10, "Anchorage Air Pollution Episode Curtailment Plan," pages III.B.10–1 and III.B.10–2, revised 12/19/93; III.B.11. "Assurance of Adequacy," pages III.B.11–1 through III.B.11–3, revised 5/18/98; III.B.12. "Emissions Budget," page III.B.12–1, adopted 11/26/96; and various CO SIP streamlining edits throughout Volume II and Volume III of the State Air Quality Control Plan which make the document easier to read and better organized, adopted 5/18/98.

[FR Doc. 99–33525 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300961; FRL–6484–8]

RIN 2070–AB78

Phosphine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Tolerances are being revised and consolidated for residues of phosphine in or on certain agricultural commodities and animal feeds. None of these tolerances are new, although the change will facilitate new application methods. The Agency is merely changing the tolerance expression to eliminate references concerning how the phosphine is generated. The Agency published a detailed discussion of the change in the tolerance expression, including a risk assessment, on June 9, 1999, as a proposed rule.

DATES: This regulation is effective December 29, 1999. Objections and requests for hearings, identified by docket control number OPP–300961, must be received by EPA on or before February 28, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300961 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-6742; and e-mail address: McNeilly.Dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300961. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 9, 1999 (64 FR 30939) (FRL–6082–4), EPA issued a proposed rule pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the revision of phosphine tolerances to eliminate references as to how the gas is generated and consolidating the tolerances for phosphine in 40 CFR 180.225. The proposed rule included a detailed discussion of the proposed change prepared by the Agency. The Agency completed the Reregistration Eligibility Decision (RED) for Aluminum and Magnesium Phosphide in December 1998 (EPA 738–R–98–017). That risk assessment evaluated the acute and chronic risk from dietary exposure to phosphine residues. For the reasons stated in the proposed rule, EPA concludes that modifying the phosphine tolerance as described above will be safe.

EPA received several minor comments on the proposed rule and those comments are addressed below. EPA has made minor changes to the language in the tolerance regulation to clarify EPA's intent.

1. *Comment.* Several individuals pointed out a typographical error in the listing of the tolerance for phosphine in or on animal feed. The existing aluminum phosphide and magnesium phosphide tolerances for animal feeds was incorrectly listed as 0.01 ppm rather than the actual value of 0.1 ppm.

Response. The existing tolerances for residues of phosphine in or on animal feeds from fumigation with aluminum phosphide or magnesium phosphide is 0.1 ppm (40 CFR 186.200 and 40 CFR 186.3800). Tolerances will be consolidated into a new 40 CFR 180.225, the tolerance level published in this final rule remains unchanged, i.e., remains at the 0.1 ppm level. The Agency does note that the tolerance is associated with the requirement to aerate fumigated finished feed for 48 hours before use. The Agency is not modifing this restriction and it will remain in effect unless data are provided indicating some other time interval is more appropriate for any new products or new application method. The 48-hour aeration interval is appropriate for all currently registered products; however, in the future other products may apply phosphine gas in a different manner from the existing technology and any limitations or guidance to ensure that tolerances are not exceeded will be provided on the products labels.

2. *Comment.* Legume vegetables (succulent or dried - excluding soybeans) are listed in the proposed tolerances under raw agricultural commodities (RACs). The present listing specifies vegetables, seed and pod (except soybeans). Are these listings equivalent?

Response. The new listing "Legume vegetables (succulent or dried - excluding soybeans)" is equivalent to the previous tolerance listing with the exception that it does not include dill and okra. Therefore, tolerances for these two commodities dill and okra are added to 40 CFR 180.225 to make the transition equivalent. The additional tolerances for dill and okra do not change existing cultural practice or the dietary exposure of the U.S. population or any population subgroup to phosphine.

3. *Comment.* It has been suggested that residues from zinc phosphide be included in this tolerance expression.

Response. The Agency considered this but decided that the use patterns of this rodenticide is significantly different from the fumigation uses of phosphine gas and therefore any residues from that type of use are not specifically included in this tolerance document. In addition, separate REDs were prepared for these very different formulations and use patterns. Aluminum and magnesium phosphide were also evaluated together in the same RED, while zinc phosphide was evaluated in a separate RED.

4. *Comment.* Under RACs, the tolerance for coffee, bean, green is listed as 0.1 ppm. What is the tolerance for roasted coffee beans? The tolerance as presently written does not distinguish between the green and roasted beans.

Response. The Agency revised tolerance nomenclature to avoid ambiguity. The previous tolerance was for "beans, coffee" while the new definition makes it clear that the tolerance is for "Coffee, beans, green." Unless processed commodities have different tolerances, the established tolerance for the RAC applies, in this case 0.1 ppm. A similar comment/question was also asked concerning cottonseed, i.e. what is the tolerance for delinted cottonseed? The new listing is for "cotton, seed, undelinted." Once again, unless a tolerance is established for a processed commodity the tolerance for the commodity's RAC applies, in this case the tolerance for "cotton, seed, undelinted" which is 0.1 ppm. As stated in the summary, this rule eliminates references as to how the phosphine gas is generated, no tolerance levels are changed in this rule.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300961 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 28, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also

deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300961, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a new tolerance expression for phosphine under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates fumigators, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: December 17, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

b. Section 180.225 is revised to read as follows:

§ 180.225 Phosphine; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of phosphine in or on the following raw agricultural commodities (RACs) resulting from post-harvest fumigation for the control of insects with phosphine gas or phosphide compounds that produce phosphine gas.

Commodity	Parts per million
Almond	0.1
Avocado	0.01
Banana (includes Plantains)	0.01
Barley, grain	0.1
Brazil nut	0.1
Cabbage, Chinese	0.01
Cacao bean, dried bean	0.1
Cashew	0.1
Citrus citron	0.01
Coffee, bean, green	0.1
Corn, field, grain	0.1
Corn, pop, grain	0.1
Cotton, undelinted seed	0.1
Date, dried fruit	0.1
Dill, seed	0.01
Eggplant	0.01
Endive	0.01
Filbert	0.1
Grapefruit	0.01
Kumquat	0.01
Legume vegetables (succulent or dried group, excluding soybeans)	0.01
Lemon	0.01
Lettuce	0.01
Lime	0.01
Mango	0.01
Millet, grain	0.1
Mushroom	0.01
Oat, grain	0.1
Okra	0.01
Orange	0.01
Papaya	0.01
Peanut	0.1
Pecan	0.1
Pepper	0.01
Persimmon	0.01
Pimento	0.01
Pistachio	0.1
Rice, grain	0.1
Rye, grain	0.1
Safflower, seed	0.1
Salsify tops	0.01
Sesame, seed	0.1
Sorghum, grain	0.1
Soybean, seed	0.1
Sunflower, seed	0.1
Sweet potato	0.01
Tangelo	0.01
Tangerine	0.01
Tomato	0.01
Walnut	0.1
Wheat, grain	0.1

(2) Tolerances are established for residues of the fumigant in or on all RACs resulting from preharvest treatment of pest burrows in agricultural and non-crop land areas.

Commodity	Parts per million
All RACs resulting from preharvest treatment of pest burrows	0.01

(3) Residues resulting from fumigation of processed foods:

Commodity	Parts per million
Processed foods	0.01

(4) *Residues resulting from fumigation of animal feeds:*

Commodity	Parts per million
Animal feeds	0.1

(5) To assure safe use of this pesticide, it must be used in compliance with the labeling conforming to that registered by the U.S. Environmental Protection Agency (EPA) under FIFRA. Labeling shall bear a restriction to aerate the finished food/feed for 48 hours before it is offered to the consumer, unless EPA specifically determines that a different time period is appropriate. Where appropriate, a warning shall state that under no condition should any formulation containing aluminum or magnesium phosphide be used so that it will come in contact with any processed food, except processed brewer's rice, malt, and corn grits stored in breweries for use in the manufacture of beer.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertant residues.* [Reserved]

§ 180.375 [Removed]

b. Section 180.375 is removed.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.200 [Removed]

b. Section 185.200 is removed.

§ 185.3800 [Removed]

c. Section 185.3800 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.200 [Removed]

b. Section 186.200 is removed.

§ 186.3800 Removed

c. Section 186.3800 is removed.

[FR Doc. 99–33332 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 99–352]

Wireless Radio Services; Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document the Commission decides various issues raised in petitions for reconsideration and clarification of the wireless Enhanced 911 (E911) rules that request the removal of ambiguities in the rules and the adoption of modifications to enhance Phase I implementation. Resolution of these issues should address delays in implementation of Phase I service. The Commission also resolves such issues in order to ensure implementation of Phase II and avoid potential delays in the provision of vital Phase II services. Finally, the Commission takes action to overcome obstacles in Commercial Mobile Radio Service carriers' ability to comply with the schedule and requirements that apply to their implementation of E911, consistent with the Commission's goals in adopting the framework for E911.

DATES: Effective April 27, 2000. Public comment on the information collection are due February 28, 2000, and comments by the Office of Management and Budget are due April 27, 2000.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler, 202–418–1310. For further information concerning the information collection contained in this Report and Order, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Memorandum Opinion and Order (Second MO&O) in CC Docket No. 94–102; FCC 99–352, adopted November 18, 1999, and released December 8, 1999. The complete text of this Second MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Second Memorandum Opinion and Order

1. In this Second Memorandum Opinion and Order (Second MO&O), the Commission takes steps to hasten the introduction and rollout of wireless Enhanced 911 (E911) services that were required by the Commission when it adopted E911 rules in the Report and Order. (61 FR 40348, August 2, 1996.) The Commission seeks to accelerate implementation of this important service in order to enable wireless callers to obtain emergency assistance more rapidly and efficiently through the transmission of certain enhanced information that assists in locating the caller. Wireless subscribership continues to grow rapidly and wireless phones are used increasingly to place 911 calls in emergency situations. The Commission adopted E911 rules in accordance with an agreement between the wireless industry and State and local 911 officials to promote wireless technologies and transmissions that provide important information to enable the 911 Public Safety Answering Point (PSAP) to promptly locate the 911 caller. The wireless E911 service was established to ensure that wireless phones automatically transmit the same vital data about a 911 caller's location as wireline phones.

2. The Commission reaffirmed its commitment to the goals for a wireless E911 service in the E911 First Reconsideration Order. (63 FR 02631, January 16, 1998) Accordingly, covered Commercial Mobile Radio Service (CMRS) carriers were expected to achieve transmission of the enhanced

location information in two phases, with Phase I to begin April 1, 1998. The Commission subsequently received petitions from BellSouth Corporation (BellSouth) and the Cellular Telecommunications Industry Association (CTIA) for further reconsideration and for clarification of the E911 rules that request the removal of ambiguities in the rules and the adoption of modifications to enhance Phase I implementation. In this Second MO&O, the Commission decides the various issues raised in the petitions for reconsideration and clarification. Resolution of these issues should address delays being experienced in implementation of Phase I service. In addition, the Commission resolves such issues in order to ensure implementation of Phase II and avoid potential delays in the provision of vital Phase II services. The Commission also takes action to overcome obstacles in CMRS carriers' ability to comply with the schedule and requirements that apply to their implementation of E911, consistent with the Commission's goals in adopting the framework for E911.

3. First, the E911 rules are revised to remove the prerequisite that a cost recovery mechanism for carriers be in place before the CMRS carrier is obligated to provide E911 service in response to a valid PSAP service request. The Commission agrees with CTIA that modification of the rule is necessary to remove ambiguities that are causing delays in Phase I implementation and that, more significantly, may delay implementation of Phase II. The Commission declines to modify the rule, as suggested by commenters, by imposing certain requirements on the States to adopt formal mechanisms for the recovery of carrier costs and to adhere to certain definitions and procedures as the means to clarify the rule and facilitate implementation. Instead, the Commission finds that the disputes and delays that have arisen in the consideration and implementation of cost recovery mechanisms for carrier costs, in some instances, have become, and will continue to be, significant and unnecessary impediments to Phase I implementation. Moreover, the Commission finds that the disputes and delays also will be a problem in the implementation of Phase II.

4. Although a number of States have decided that separate E911 cost recovery mechanisms are the best way to recover carriers' costs of implementing E911, such mechanisms are not necessary to permit CMRS carriers, whose rates are not regulated, to recover their costs. As a result, the Commission sees no need to make the obligations of carriers to implement E911 service contingent on the resolution of carrier cost recovery issues. However, in removing the condition that a cost recovery mechanism for carriers' costs be in place before the carrier is obligated to provide E911 service, the Commission does not intend to disturb the actions of States or localities that already have adopted such mechanisms or to discourage them from deciding that cost recovery or sharing mechanisms that cover carrier costs are an effective way of expediting wireless E911 for their citizens, especially in rural areas.

5. At the same time, adequate funding of PSAPs to enable them to deploy the upgrades to use wireless E911 location information remains essential to implementation. State and local authorities have to provide their local public safety officials with the means needed to request and use wireless E911 location information. Otherwise, PSAPs will be unable to dispatch emergency services to wireless 911 callers in life-threatening situations as quickly as possible. In these circumstances, the Commission modifies the rule to retain a cost recovery requirement for recovery of the PSAP's costs of E911 service. Thus, while the Commission no longer conditions a carrier's obligation on a cost recovery mechanism to be in place for the carrier's costs, the obligation continues to be conditioned upon the carrier receiving a valid request from the PSAP that is capable of receiving and utilizing the data elements associated with the service. Inasmuch as those capabilities often were achieved through mechanisms that included carrier costs, the Commission modifies that condition to ensure that States or localities continue to address the needs of the PSAPs to be upgraded for wireless E911.

6. Accordingly, before a carrier is required to provide E911 services pursuant to a PSAP request, the PSAP must have the means of covering its costs of receiving and utilizing the E911 information to ensure the request is valid. As modified, the carrier's E911 service obligation is triggered when the carrier receives a valid request from a PSAP that is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the PSAP's cost of the E911 service is in place. The Commission does not mandate any specific State action, nor do we define the nature and extent of any funding mechanism or other approach that may achieve the necessary technology and service capabilities that enable the PSAP to make a valid service request.

7. Second, the Commission agrees with CTIA that disputes between CMRS carriers and PSAPs on the choice of the transmission means and related technologies also have caused delays in Phase I implementation. The Commission declines, however, to establish in the E911 rules that the carriers, and not the PSAP, should have the final choice as the means to overcome the delays. Instead, given our elimination of a cost recovery mechanism for carriers as a prerequisite for E911 implementation, the Commission concludes that negotiation between the parties, presumptively based on the alternative methods adopted in the official standard, is the best means in most instances to ensure an expeditious selection of transmission method that meets the individual requirements of the PSAP and carrier in each situation. However, in the event that an impasse arises, Commission staff will be available to help resolve these disagreements on an expedited basis, based on consideration of a number of specific factors. These include the additional costs of the two methodologies to the PSAP and the wireless carrier, whether the carrier is paying for its own E911 implementation costs or receiving funding from a State-sponsored cost recovery mechanism, the technical configuration of the PSAP's existing E911 system, and the ability of the transmission technology to accommodate Phase II of wireless E911 and other planned changes in the E911 system.

8. Third, we find that this Commission and the relevant State public service commissions can address the issues concerning local exchange carriers (LECs) that are identified as potential reasons for delay in the implementation of E911. LECs are important factors in achieving E911 implementation, inasmuch as State 911 systems are LEC-based. Although the Commission has not, at this point, imposed special obligations on incumbent LECs in implementing E911, we note that incumbent LECs are already subject to obligations under the Telecommunications Act of 1996, as well as various Federal and State regulations, to ensure that interconnection agreements with CMRS carriers are fulfilled promptly and fairly. The Commission intends to further monitor the role of LECs to determine whether we need to impose additional obligations on them to ensure implementation of our wireless E911 rules. The Commission notes that parties may request consideration under our rocket docket procedures of

complaints filed under section 208 of the Communications Act against LECs for violation of LECs' existing obligations.

9. Finally, the Commission modifies the Phase I rule to conform with the E911 Orders (cited in paragraphs 1 and 2 of this synopsis) and clarifies that carriers are required to provide service within six months of a PSAP's request for Phase I service when the request is received after the date established in the rules. In addition, the Commission finds the requests in CTIA's petition to protect carriers from liability for providing E911 service and to mandate nationwide usage of 911 as the number for emergency assistance are moot. The Wireless Communications and Public Safety Act of 1999 (911 Act) requires that States provide CMRS carriers, users, and PSAPs involved in the transmission of wireless 911 and E911 calls with liability protection to the same extent the State provides protection with respect to wireline 911 services. The 911 Act also provides for the Commission to designate 911 as the universal emergency telephone number for both wireline and wireless telephone service and includes provisions for transition periods and Commission action to encourage the development of State-wide E911 systems. Insofar as the petition also requests that the Commission encourage federal agencies to make federal property available for the siting of wireless facilities, we find the request to be beyond the scope of this proceeding. The United States Congress is the preferable forum for addressing this issue, as well.

10. The goals of this proceeding are to maintain the framework the Commission established to achieve the E911 service intended to provide the customers of wireless carriers with improved emergency response services. This relies on the voluntary efforts of wireless and wireline providers, manufacturers, third-party providers, State and local governments, public safety authorities, and consumer interest groups to achieve the necessary transmissions and provide the emergency assistance required by the public. The Commission adopted the E911 rules to ensure that CMRS licensees developed the capabilities to achieve enhanced transmission of 911 calls and respond promptly when localities request service. The Commission is concerned by delays in the implementation of Phase I of the E911 service and addresses obstacles to that implementation in order to take appropriate action for their removal. The Commission is also concerned about the potential delays to Phase II implementation that are likely to result unless such obstacles are removed. The Commission's actions in this MO&O are intended to build on the progress that has been made and to expedite E911 implementation. Any unnecessary delay in deployment and effective, universal operation of E911 is undesirable.

11. The Commission's actions also are consistent with the Congressional goals reflected in the newly enacted 911 Act. The purpose of the 911 Act is "to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs." Among other things, the 911 Act requires this Commission, or its delegatee, to designate 9–1–1 as "the universal emergency telephone number within the United States." The Commission also is specifically directed to encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans that include a ubiquitous wireless network and wireless E911 service. The Commission plans to move forward promptly to implement these Congressional goals, including through the initiation of a rulemaking proceeding.

Paperwork Reduction Act of 1995 Analysis

12. The actions contained in this Second MO&O have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act. The new paperwork requirement contained in the Second MO&O will go into effect April 27, 2000.

Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act (RFA),[1] a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the Report and Order and Further Notice of Proposed Rulemaking (E911 First Report and Order) in this proceeding. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in this Second Memorandum Opinion and Order (Second MO&O) contains information that is in addition to that contained in the FRFA. This Supplemental FRFA is limited to matters addressed in this Second Memorandum Opinion and Order. Specifically, the Order addresses petitions for further reconsideration and clarification of the E911 First Report and Order and the responsive pleadings, which were filed in response to the First Memorandum Opinion and Order (E911 First Reconsideration Order). The Commission sought to augment the record and requested that an Implementation Report be filed on the matters to be addressed. Upon the filing of the Implementation Report, the Commission requested written public comment on the proposals in the petitions and the Implementation Report. The petitions, the Implementation Report, and the responsive comments that were filed for consideration in the Second Memorandum Opinion and Order are discussed in this Supplemental FRFA. This Supplemental FRFA conforms to the RFA. (*See* 5 U.S.C. 604.)

14. This is a summary of the full Supplemental FRFA. The full Supplemental FRFA may be found in Appendix C of the full text of this Second MO&O.

I. Need for, and Objectives of, the Second Memorandum Opinion and Order

15. This Second MO&O takes steps to hasten the introduction and rollout of wireless Enhanced 911 (E911) services that were required under the E911 service rules adopted in the E911 First Report and Order. The petitions for reconsideration and clarification of the E911 rules, the Implementation Report, and the responsive comments have identified a number of obstacles to the ability of carriers to comply with the schedule and performance requirements in the E911 rules. This Second MO&O aims to eliminate such delays and obstacles, and so to encourage prompt implementation of the E 911 rules.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Petitions for Reconsideration and Clarification and the Implementation Report

16. In the petitions for reconsideration and clarification, some issues were raised that might affect small entities. Comments from some rural carriers and the Rural Cellular Association (RCA) argued that small and rural carriers would benefit if the cost recovery rule were amended to require States to

[1] *See* 5 U.S.C. 604. The RFA, *see* 5 U.S.C. 601 *et seq.*, was amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

provide for the recovery of carriers' E911 costs through the adoption of pooling cost recovery mechanisms. They requested that the rule include requirements and procedures to ensure that the State legislatures adopt such mechanisms for carrier recovery and to overcome the delays under the current rule. The Association of Public-Safety Communications Officials-International, Inc. (APCO) alternatively argued that rural carriers and areas and PSAPs would benefit by elimination of the cost recovery rule and the complex, expensive, time-consuming process of achieving cost recovery mechanisms for carriers with State legislatures.

17. The Commission declined to adopt the specific definitions for carrier cost recovery, because they would be difficult to apply and would increase the delays already experienced in establishing State-adopted mechanisms as a prerequisite to E911 service. The Commission found that the cost recovery rule for carrier costs was unnecessary and eliminated the rule, giving carriers and States the option of such mechanisms while removing the obstacle to E911 implementation that resulted from carriers waiting for such a mechanism before initiating service. The Commission modified the rule to require that a PSAP cost recovery mechanism be in place, however, to ensure that States or localities funded PSAPs to enable PSAPs to request and provide vital E911 services.

18. CTIA and some carriers requested that the E911 rules be clarified to give carriers, and not PSAPs, the authority to choose which of the two official transmission means to use in transmitting E911 data to the PSAP in order to resolve disputes and expedite E911 implementation. The Public Safety Associations opposed the request, arguing that carrier choice would be too costly for many PSAPs and would fail to take into account the need to integrate with the PSAPs' systems. The Commission declined to adopt a rule on transmission choice as unnecessary and inappropriate, determining that any disputes should be resolved by the elimination of the carrier cost recovery rule and that negotiation between the parties was essential to ensure that a compatible transmission means is selected. The Commission provided the parties an opportunity to petition the Commission in the rare event of an impasse for a resolution.

19. Finally, the Implementation Report requested the Commission investigate the role of LECs and the delays in E911 implementation that result when LECs fail to cooperate with wireless carriers and promptly establish the necessary interconnection with the LEC's 911 system to enable the wireless carrier to transmit E911 data to the PSAP. The Commission declined to conduct such an investigation as unnecessary and problematic. The Commission encouraged incumbent LECs to fulfill their obligations under several federal and State regulations that require prompt and fair interconnection agreements, noted that wireless carriers may file complaints for expedited treatment under the federal regulations, and intended to monitor the role of LECs to ensure that wireless E911 was being implemented promptly.

20. A more detailed discussion on issues raised by public comments may be found in section II of Appendix C to the full text of this decision.

III. Description and Estimates of the Number of Small Entities to Which the Rule Modifications and Decisions in the Second Memorandum Opinion and Order Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. (5 U.S.C.603 (b)(3)). The RFA generally defines the term "small entity" as having the same meaning as the term "small business." (5 U.S.C. 601(6)). In addition, the term "small business" has the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." (5 U.S.C. 601(6)), incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (Small Business Act, 15 U.S.C. 632 (1996).) "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less that 50,000" (5 U.S.C. 601(5)); using Census Bureau data we estimate that 81,600 are small entities.

22. *SMR Licensees.* Pursuant to § 90.814(b)(1) of the Commission's Rules, the Commission has defined "small business" for purposes of auctioning 900 Mhz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for all 800 MHz and 900 MHz auctions has been approved by the SBA. The rule modification in this Second MO&O that eliminates the requirement for a carrier cost recovery mechanism affects all SMR licensees that were previously subject to the rule. That rule was limited to SMR licensees that offer real-time, two-way voice or data service that is interconnected with the public switched network and that use an in-network switching facility.

23. The Commission concludes that the number of small 900 MHz SMR geographic area licensees affected by the rule modification that eliminates the rule for carrier cost recovery is at least 60. Additionally, the Commission estimates at least 10 small 800 MHz SMR geographic area licensees for the upper 200 channels affected by the rule modification that eliminates that rule for carrier cost recovery.

24. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses or which of these licensees would have been covered by the previous rule. Therefore, the Commission concludes that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification is at least 3325.

25. Finally, the Commission concludes that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is, at most, 6800 licensees.

26. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entities is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The Commission concludes that there are fewer than 732 small cellular service carriers that may be affected by the rule

modification that eliminates the requirement for a carrier cost recovery mechanism adopted in this Second Memorandum Opinion and Order.

27. *Broadband Personal Communications Service.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. The Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *Public Safety Answering Points.* A PSAP is "a point that has been designated to receive 911 calls and route them to emergency service personnel." (47 CFR 20.3.) Neither the Commission nor the SBA has developed a definition of small businesses specifically directed towards PSAPs. The category for small businesses that are within the SIC code 4899, "Communications Services, Not Elsewhere Classified," contains entities that have an annual revenue of $11 million or less. We can estimate that the small entities affected by the rule modifications are approximately 10,000 PSAPs nationwide. The Commission assumes that, for purposes of this Supplemental FRFA, all of the PSAPs may be affected by the rule modifications.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The Second MO&O modifies the rule for a cost recovery mechanism, first, to eliminate the requirement that the mechanism provide for the recovery of the carrier's costs of implementing E911 as a precondition of service. Second, the cost recovery rule is modified to provide a recovery mechanism for the PSAP's E911 costs as a precondition of the carrier's service. The Second MO&O also provided wireless carriers and PSAPs with an opportunity to petition the Commission in the rare case that they reach an impasse in their negotiations to choose the means of transmission for E911, but did not adopt any rule or otherwise impose any compliance requirements to govern such voluntary petitions.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The rule modifications and decisions adopted in the Second MO&O are in response to the petitions for reconsideration and clarification of the E911 rules, the Implementation Report, and the responsive pleadings that, for purposes of this analysis, the Commission has considered to be filed by small entities, as discussed in section V of Appendix C of the full text of this decision.

31. *Report to Congress:* The Commission will send a copy of this Second Memorandum Opinion and Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Second Memorandum Opinion and Order and this Supplemental FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

32. Accordingly, the Petitions for Reconsideration and Clarification of the Memorandum Opinion and Order, , Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems, are granted in part, as provided in the text of the Second Memorandum Opinion and Order, and are otherwise denied.

33. The late-filed Comments of Wireless Consumers Alliance are accepted.

34. The request for declaratory ruling of the Attorney General of the State of Washington is dismissed as moot.

35. Part 20 of the Commission's Rules is amended as reflected in the Rule Changes portion of this synopsis.

36. The Second Memorandum Opinion and Order and its rule amendments shall become effective April 27, 2000. The Commission will publish a document at a later date announcing OMB approval of the information collection requirements.

37. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Memorandum Opinion and Order, including the Supplementary Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Association.

Paperwork Reduction Act

38. This Second MO&O contains a new information collection.

39. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this Second MO&O, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 28, 2000. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: N.A.

Title: Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order.

Form No. N.A.

Type of Review: New information collection.

Respondents: Business or other for profit.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 50 hours (one-time burden).

Cost to Respondents: .0.

Needs and Uses: The information required to be reported to the Commission by CMRS carriers and PSAPs who cannot agree on the choice of the transmission means and related technologies will be used by the Commission to resolve such disputes.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.18 is amended by revising paragraphs (d)(1) and (j) to read as follows:

§ 20.18 911 Service.

* * * * *

(d) *Phase I enhanced 911 services.* (1) As of April 1, 1998, or within six months of a request by the designated Public Safety Answering Point as set forth in paragraph (j) of this section, whichever is later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

* * * * *

(j) *Conditions for enhanced 911 services.* The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

* * * * *

[FR Doc. 99–33391 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 99–306]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rules governing its existing support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and transitioned to the new forward-looking support mechanism.

The document was published in the **Federal Register** on December 1, 1999. Some of the rules contained information collection requirements.

DATES: The amendments to 47 CFR 36.611(h), 36.612, 54.307(b), (c), 54.309(c), 54.311(c), and 54.313 published at 64 FR 67416 (December 1, 1999) became effective on December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: On October 21, 1999, the Commission adopted an order adopting a new specific and predictable forward-looking mechanism that will provide sufficient support to enable affordable, reasonably comparable intrastate rates for customers served by non-rural carriers. That document also addressed specific methodological issues relating to the calculation of forward-looking support, including the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; the elimination of the state share requirement; and the targeting of the statewide support amount. A summary was published in the **Federal Register**. See 64 FR 67416, December 1, 1999. Some of the rules contained information collection requirements. We stated that the "rules contain information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these rules." The information collections were approved by OMB on December 2, 1999. See OMB Nos. 3060–0233, 3060–0774 and 3060–0894. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules. It also modifies the rules governing our existing support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and transitioned to the new forward-looking support mechanism.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–33767 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 98–169; FCC 99–372]

Rules to Provide Regulatory Flexibility in the 218–219 MHz Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies the restructuring plan adopted in the 218–219 MHz final rule document. The purpose of the modification is to remove a provision whereby an eligible licensee participating in the restructuring plan can obtain a seventy-percent credit on its down payment and forego, for a period of two years, eligibility to acquire the surrendered licenses. It was not the Commission's intent to adopt the seventy-percent credit and the intended effect is to correct the prior error.

DATES: Effective December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Andrea Kelly, Wireless Telecommunications Bureau, Auctions and Industry Analysis Division (202) 418–0660.

SUPPLEMENTARY INFORMATION: 1. This *Order on Reconsideration* in WT Docket 98–169 was adopted November 24, 1999 and released November 30, 1999. The document is available, in its entirety, for inspection and copying during normal business hours in the FCC Reference Center, (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Orders.*

Synopsis

I. Background

2. In the *218–219 MHz Report and Order* 64 FR 59656 (November 3, 1999), the Commission adopted a restructuring plan for existing 218–219 MHz licensees. These licensees were current in installment payments (*i.e.* less than ninety days delinquent) as of March 16, 1998, or those licensees that had properly filed grace period requests

under the former installment payment rule. ("Eligible Licensees"). The restructuring plan offered three options to provide specific relief for licensees that wish to retain their license but are experiencing financial hardship or that wish to return their licenses due to an inability to assume their financial responsibilities. The three options are: (a) Reamortization and Resumption of Payments; (b) Amnesty, and (c) Prepayment, whereby an Eligible Licensee may prepay the principal of any license it wishes to retain with cash and prepayment credits generated from down payments on spectrum returned to the Commission and any installment payments previously made. The Commission's order allowed an Eligible Licensee electing the Amnesty option to choose either to receive no credit for its down payment, but remain eligible to bid on the surrendered licenses when they are subsequently offered in auction, with no restriction on after-market acquisitions; or obtain a credit for seventy percent of its down payment and forego for a period of two years, from the start date of the next auction of the 218–219 MHz Service, eligibility to reacquire the surrendered licenses through either auction or any secondary market transaction.

II. Discussion

3. It was not the Commission's original intent to adopt the seventy percent credit proposed in the *218–219 MHz Flex NPRM*, 63 FR 52215 (September 30, 1998) therefore, on its own motion, for the following reasons, the Commission corrects the prior error. On review, it is apparent that, under the Amnesty option, allowing an Eligible Licensee to obtain credit for its down payment and forego reacquiring surrendered licenses for a period of two years is inconsistent with our responsibility to protect the integrity of the auction program and promote new and innovative uses of spectrum. Giving a seventy percent credit on down payments associated with returned spectrum, without an adequate counterbalancing public interest benefit, would undermine the integrity of the auction process by relieving participants of even the most basic obligation of their participation.

4. However, the Commission recognizes that it allows for a credit on down payments in other portions of the *218–219 MHz Report and Order*. Specifically, an Eligible Licensee who elects the Prepayment option is eligible for an eighty-five percent credit on its down payment. It is important to note that an Eligible Licensee who elects the prepayment option is providing a public benefit through early payment of its financial obligations. Nevertheless, under the Prepayment option, the Commission retains an amount equal to the three-percent default payment. (Fifteen percent of the twenty-percent down payment equals three percent of the purchase price.) Thus, as an Eligible Licensee electing the Amnesty option is not providing the same public benefit, it would not be in the public interest to allow it a seventy-percent credit on its down payment. Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services, (PCS), *Order on Reconsideration of the Second Report and Order*, 63 FR 17111 (April 8, 1998) ("*C Block Reconsideration Order*").

5. The *218–219 MHz Report and Order* increased the flexibility of the 218–219 MHz service and extended the license term in order to encourage new and innovative uses in the marketplace and expedite service to the public. In the *218–219 MHz Report and Order*, the only restriction on reacquisition applied to those Eligible Licensees opting for the seventy percent credit. Thus, as the seventy percent credit is no longer available, Eligible Licensees electing Amnesty will not be precluded from reacquiring licenses at auction or in the secondary market. This result is appropriate as Eligible Licensees electing amnesty may still have viable business plans to implement based on spectrum they may acquire in future auctions or in the secondary market. A two-year restriction on the acquisition of certain spectrum may negatively impact an otherwise viable business plan. The Commission's action in this *Order on Reconsideration* moots the comments of EON Corporation seeking to broaden the disqualification period to exclude the future acquisition of any 218–219 MHz Service licenses to be auctioned in the ensuing two-year period. As the Commission stated in the *218–219 MHz Report and Order*, limiting the reacquisition of spectrum or acquisition of additional spectrum by Eligible Licensees would not be in the public interest.

6. The Commission modifies the *218–219 MHz Report and Order*. Therefore, while the Commission will not give Eligible Licensees electing amnesty a credit for down payments associated with spectrum returned to the Commission, neither will it limit the reacquisition of spectrum or the acquisition of additional spectrum.

III. Ordering Clauses

7. Accordingly, it is ordered that, pursuant to § 1.108 of the Commission's rules, 47 CFR 1.108, the Commission reconsiders on its own motion the decision in Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order*, WT Docket No. 98–169, FCC 99–239 regarding amnesty and resumption of payment in the 218–219 MHz service, as detailed herein.

IV. Supplemental Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service and Amendment of part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services, *218–219 MHz Flex NPRM*. The Commission sought written public comment on the proposals in the *218–219 MHz Flex NPRM*, including comment on the IRFA. A Final Regulatory Flexibility Analysis ("FRFA") was included in the Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *218–219 MHz Report and Order*. In this *Order on Reconsideration*, we issue this supplemental Final Regulatory Flexibility Analysis ("supplemental FRFA") which conforms to the RFA.

V. Need for, and Objecties of, The Order on Reconsideration

9. In the *218–219 MHz Report and Order*, among other things, we adopted a restructuring plan for existing 218–219 MHz licensees that were current in installment payments (*i.e.* less than ninety days delinquent) as of March 16, 1998, or those licensees that had properly filed grace period requests under the former installment payment rule. ("Eligible Licensees"). The restructuring plan offered three options to provide specific relief for licenses that wish to retain their license, but are experiencing financial hardship, or that wish to return their licenses due to an inability to assume their financial responsibilities. Under one of these options, Amnesty, an Eligible Licensee could choose either to receive no credit

[1] *See* 5 U.S.C. 603. The RFA, *see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").*

for its down payment, but remain eligible to bid on the surrendered licenses when they are subsequently offered in auction, with no restriction on after-market acquisitions; or obtain a credit for seventy percent of its down payment and forego for a period of two years, from the start date of the next auction of the 218–219 MHz Service, eligibility to reacquire the surrendered licenses through either auction or any secondary market transaction.

10. On review, it is apparent that, under the Amnesty option, allowing an Eligible Licensee to obtain credit for its down payment and forego reacquiring surrendered licenses for a period of two years is inconsistent with our responsibility to protect the integrity of the auction program and promote new and innovative uses of spectrum. Giving a seventy percent credit of the down payments associated with returned spectrum would undermine the integrity of the auction process by relieving participants of even the most basic obligation of their participation. Further, a two-year restriction on the reacquisition of the surrendered license unduly restricts the number of potential licenses, and is inconsistent with a fair and equitable auction process.

VI. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

11. Previously, no petitions were filed in direct response to the IRFA or the FRFA in this proceeding. Thus, on our own motion, we have issued this *218–219 MHz Reconsideration Order.*

VII. Description and Estimate of the Number of Small Entities to Which the Rules Apply

12. Previously, in the FRFA, pursuant to the RFA, we provided a detailed description and estimate of the number of small entities that may be affected by the proposed rules, if adopted. We noted that the *218–219 MHz Report and Order* affects a number of small entities who are either licensees, or who may choose to become applicants for licenses, in the 218–219 MHz Service. Such entities fall into two categories. The first category consists of those using the 218–219 MHz Service for providing interactivity capabilities in conjunction with broadcast services. In the FRFA, with respect to the first category, we estimated that the number of small business entities operating in the 218–219 MHz band for interactivity capabilities with television viewers in the 218–219 MHz Service which will be subject to the rules will be less than 612. The second category consists of those using the 218–219 MHz Service to operate other types of wireless communications services with a wide variety of uses, such as commercial data applications and two-way telemetry services. In the FRFA, with respect to the second category, we estimated that the number of small entities that would provide wireless communications services other than that described herein would be 247 or less.

13. On January 6, 1998, the SBA approved of the small business size standards established in the *Competitive Bidding Tenth Report and Order.*[2] As we described in the FRFA, the first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area ("MSA") licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business.

VIII. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. Previously, in the FRFA to the *218–219 MHz Report and Order,* we adopted rules altering the reporting and recordkeeping requirements for a number of small business entities. The rules changed the obligations of 218–219 MHz Service licensees with respect to license renewal, construction reports, and acquisitions by partitioning or disaggregation. As we noted in the FRFA, the *218–219 MHz Report and Order* contained three options relevant to some small businesses that will alter their reporting and recordkeeping requirements. Our reconsideration order is relevant only to the second option. Specifically, non-defaulting 218–219 MHz Service licensees currently participating in the installment payment plan may elect one of three restructuring plans concerning their outstanding payments. However, our reconsideration order does not alter any reporting, recordkeeping, or other compliance requirements contained in the *218–219 MHz Report and Order.*

IX. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. As we described in detail in the FRFA to the *218–219 MHz Report and Order,* we adopted final rules designed to maximize opportunities for participation by, and growth of, small businesses in providing wireless services. We noted that we expected that the extension of license terms from five to ten years and allowing partitioning and disaggregation of licenses will specifically assist small businesses. We also noted that the *218–219 MHz Report and Order* contained provisions, such as liberalization of construction requirements and technical restrictions, and elimination of the cross-ownership restriction, that will assist all licenses, including small business licensees.

16. In this *Order on Reconsideration,* we change the options available to those small businesses electing the Amnesty option in the restructuring plan. The *218–219 MHz Report and Order* allowed an Eligible Licensee electing the Amnesty option to choose either to receive no credit for its down payment, but remain eligible to bid on the surrendered licenses when they are subsequently offered in auction, with no restriction on after-market acquisitions; or obtain a credit for seventy percent of its down payment and forego for a period of two years, from the start date of the next auction of the 218–219 MHz Service, eligibility to reacquire the surrendered licenses through either auction or any secondary market transaction. We recognize that some commentators proposed a more liberal amnesty option. However, we believe that eliminating all adverse financial consequences of a licensee's decision to participate in the auction would be contrary to a fair and equitable auction process. Further, it might encourage future licensees to participate in an auction under the assumption that the Commission will relieve it of the most basic obligations of participation in an auction, if, in the future, its business plans do not prove profitable. Thus, we will not provide the licensees with a seventy percent down payment credit. However, to the extent that a licensee believes that it can create a valuable business with the same license, if its debt burden were smaller, it will not be precluded from acquiring the license at auction, or in any secondary market transaction. For these reasons, we did not consider any significant alternatives to our proposals to minimize significant economic impact on small entities.

17. *Report to Congress:* The Commission will send a copy of the *Order on Reconsideration,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Order on Reconsideration,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

[2] *See* Letter to Daniel B. Phythyon, Chief, WTB, from Aida Alvarez, Administrator, SBA, Dated Jan. 6, 1998.

List of Subjects in 47 CFR Part 95

Communications equipment, Penalties, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–33768 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Chapter III and Part 301

[Docket No. OST–2000–6698]

Motor Carrier Safety Regulations; Revision of Chapter Heading and Removal of CFR Part

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document amends the heading for chapter III concerning motor carrier safety regulations. On October 9, 1999, the Secretary of Transportation (Secretary) rescinded the authority previously delegated to the Federal Highway Administrator to perform motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code; and redelegated that authority to the Director, Office of Motor Carrier Safety, a new office within the Department of Transportation (Department). The title of chapter III, therefore, was changed from "Federal Highway Administration, Department of Transportation" to "Office of Motor Carrier Safety, Department of Transportation" on October 29, 1999. On December 9, 1999, the Motor Carrier Safety Improvement Act of 1999 established a new administration—the Federal Motor Carrier Safety Administration (FMCSA)—within the Department to improve the motor carrier safety program, effective January 1, 2000. Accordingly, the title of chapter III is now being changed from "Office of Motor Carrier Safety, Department of Transportation" to "Federal Motor Carrier Safety Administration, Department of Transportation" to reflect the statutory changes noted above. The document also removes regulations that reference the organizational structure of the Federal Highway Administration (FHWA) so that new regulations may be added for the FMCSA.

EFFECTIVE DATE: This final rule is effective on January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590; or Ms. Cindy Walters, Office of the General Counsel, (202) 366–9314, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 338 of the Department of Transportation Appropriations Act, FY2000 [Public Law 106–69, 113 Stat. 986, at 1022 (October 9, 1999)] prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration" (FHWA). Section 338 further provides that, if the authority of the Secretary on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that office under the Act may be transferred and expended to support its functions and operations.

On October 9, 1999, the Secretary rescinded the authority previously delegated to the FHWA Administrator to carry out motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, U.S.C.; and redelegated that authority to the Director, Office of Motor Carrier Safety, a new office within the Department (64 FR 56270 and 64 FR 58356). Thus, the heading for chapter III, title 49 of the CFR, was changed from "Chapter III—Federal Highway Administration, Department of Transportation" to "Chapter III—Office of Motor Carrier Safety, Department of Transportation" on October 29, 1999 (64 FR 58355).

Section 101, title I, of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748 (December 9, 1999)) established a new administration—the Federal Motor Carrier Safety Administration—to improve the motor carrier safety program, effective January 1, 2000. Accordingly, the heading for chapter III, title 49 of the CFR, is now changed to read "Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation."

The new FMCSA includes the following headquarters offices: the Office of Motor Carrier Research and Standards, the Office of Data Analysis and Information Systems, the Office of Motor Carrier Enforcement, the Office of Policy and Program Management, the Office of National and International Safety Programs, the Office of Technology Evaluation and Deployment, and the Office of Program Evaluation. In addition, the motor carrier functions of the former OMCS's Resource Centers and Division (i.e., State) Offices have been transferred to FMCSA Resource Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement, and other activities of the former OMCS will be continued by the new administration. The action will cause no changes in the motor carrier functions and operations of the offices or resource centers listed above. For the time being all phone numbers and addresses are unchanged. Accordingly, this rule will also remove part 301 of chapter III (which references the organizational structure of the FHWA) and reserve this part so that new regulations may be added for the FMCSA.

This rule is being published as a final rule and made effective on January 1, 2000. As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). This action makes no substantive changes to the motor carrier safety regulations. It simply provides a chapter heading change to 49 CFR chapter III, and removes certain regulations that reference the organizational structure of the FHWA. Therefore, prior notice and opportunity to comment are unnecessary and that good cause exists to dispense with the 30-day delay in the effective date requirement so that the Federal Motor Carrier Safety Administration may administer its regulations pursuant to the statutory changes noted above.

List of Subjects in 49 CFR Part 301

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and under the authority of 49 U.S.C. 301 and 322, Public Law 106–159, 113 Stat. 1748, and 49 CFR 1.73, chapter III of

title 49, Code of Federal Regulations, is amended as follows:

1. The heading for chapter III is revised to read as follows:

CHAPTER III—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 301—[REMOVED AND RESERVED]

2. Remove and reserve part 301.

Issued on: December 22, 1999

Rosalind A. Knapp,

Acting General Counsel, Office of the Secretary of Transportation.

[FR Doc. 99–33808 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF82

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Two Chinook Salmon Evolutionarily Significant Units (ESUs) in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are adding the Central Valley spring-run Evolutionarily Significant Unit (ESU) and the California Coastal ESU of the west coast chinook salmon (*Oncorhynchus tshawytscha*) to the List of Endangered and Threatened Wildlife as threatened. This amendment to the list, authorized by the Endangered Species Act of 1973 (Act), is based on a determination by the National Marine Fisheries Service (NMFS), which has jurisdiction for this species.

EFFECTIVE DATE: November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358–2171).

SUPPLEMENTARY INFORMATION: In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the decisions regarding the Central Valley spring-run and the California Coastal, both are ESUs of the west coast chinook salmon as defined in the Act. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened, and the Service is responsible for the actual addition of these species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination of threatened status for the Central Valley spring-run ESU and the California Coastal ESU of the west coast chinook salmon on September 16, 1999 (64 FR 50394). Accordingly, we are now adding both ESUs to the List of Endangered and Threatened Wildlife, as threatened species. This addition is effective as of November 15, 1999, as indicated in the NMFS determination. Because this action is nondiscretionary, and in view of the public comment period provided by NMFS on the March 9, 1998, proposed listing (63 FR 11482), we find that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under FISHES:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special Rules
Common name	Scientific name						
*	*	*	*	*	*		*
Fishes							
*	*	*	*	*	*		*
Salmon, chinook ...	*Oncorhynchus (=Salmo) tshawytscha.*	North Pacific Basin from U.S.A. (CA) to Japan.	U.S.A. (CA) all naturally spawned spring-run populations from the Sacramento San Joaquin R. mainstem and its tributaries..	T	674	NA	NA
Salmon, chinook ...	*Oncorhynchus tshawytscha.*	North Pacific Basin from U.S.A. (CA) to Japan.	U.S.A. (CA) from Redwood Creek south to Russian R., inclusive, all naturally spawn populations in mainstems and tributaries.	T	674	NA	NA
*	*	*	*	*	*		*

Dated: December 9, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–33782 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No.991207319–9319–01; I.D. 120899A]

Pacific Tuna Fisheries; Closure of U.S. Purse Seine Fishery for Yellowfin Tuna in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces that the 1999 yellowfin tuna quota has been reached and the 1999 U.S. purse seine fishery for yellowfin tuna in the Commission Yellowfin Regulatory Area (CYRA) of the Inter-American Tropical Tuna Commission (IATTC) is closed. In accordance with a resolution adopted by the IATTC and approved by the Department of State, several restrictions on fishing for yellowfin tuna in the eastern Pacific Ocean (EPO) are now in effect.

DATES: Effective at 12:01 a.m. on November 24, 1999.

ADDRESSES: Submit comments to Rodney R. McInnis, Acting Regional Administrator, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of the regulations at 50 CFR part 300, subpart C, which implement the Tuna Conventions Act (16 U.S.C. § 955). The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of tunas and tuna-like fishes in the convention area. The IATTC has maintained a scientific research and fishery monitoring program for many years, and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The Convention Area is all waters of the EPO between 40° N. lat. and 40° S. lat. out to 150° W. long. The boundary of the CYRA was described in the announcement of the 1999 harvest quotas that was published in the **Federal Register** on December 14, 1999 (64 FR 69672).

At its annual meeting in June 1999, the IATTC adopted a resolution (which was subsequently agreed to by the Department of State) recommending that action be taken by member nations and other fishing nations to limit the catch of yellowfin tuna in 1999 to 225,000 metric tons (mt), with the potential to increase the quota to up to 270,000 mt if the Director of IATTC concluded that, based on catch and effort data, that level of harvest would not adversely affect the yellowfin tuna stock. Subsequently, the IATTC met in October 1999 and agreed to measures that would set the final quota at 265,000 mt.

Under regulations promulgated earlier this year (64 FR 44428, August 16, 1999), the Regional Administrator is authorized to notify the U.S. tuna industry (industry) directly of any quotas and associated regulatory measures that have been recommended by the IATTC and approved by the Department of State. In a separate action, the Regional Administrator announced the 1999 yellowfin tuna quota directly to the industry. The Regional Administrator also announced the 1999 yellowfin tuna quota to the industry and the public in the **Federal Register** on December 14. In another separate action, the Regional Administrator advised the industry directly of the management measures contained in this **Federal Register** document.

The IATTC Director advised the Regional Administrator on November 16, 1999, that the 1999 quota was projected to be reached on November 23, 1999. Accordingly, the measures agreed to in the October 1999 resolution were implemented. Those measures are as follows:

1. Purse seine vessels with an observer aboard from the On-Board Observer Program established under the Agreement on the International Dolphin Conservation Program must refrain from fishing for yellowfin in the CYRA.

2. The landings of fish caught while fishing for other species of tunas in the CYRA after the date established for the CYRA closure by any individual purse seiner with an observer aboard may include a maximum of 15–percent yellowfin (relative to its total catch of all species of fish during those periods).

3. Vessels with an observer aboard which are at sea on December 31, 1999, will not be subject to the 15–percent maximum after that date during the remainder of that trip.

4. Purse seine vessels and baitboats without an observer aboard which are at sea on the closure date may continue to fish for yellowfin without restriction until they return to port for unloading.

5. Purse seine vessels and baitboats without an observer aboard which are not at sea on the closure date, but which depart from port to fish for tunas after November 23, 1999, must refrain from fishing for yellowfin. The landings by vessels in this category, regardless of the date the trip is completed, may include a maximum of 15 percent yellowfin caught while fishing for other species of tunas.

For the reasons stated here and in accordance with the regulations at 64 FR 44428, August 16, 1999, NMFS herein announces that, after midnight on November 23, 1999, no U.S. vessel may fish unless in compliance with the above measures.

Classification This action is authorized by the regulations implementing the Tuna Conventions Act. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Acting Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR part 300, subpart C and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: December 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33852 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 991207319–9319–01; I.D. 113099A]

Pacific Tuna Fisheries; Closure of Purse Seine Fishery for Bigeye Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 1999 purse seine fishery for bigeye tuna in the eastern Pacific Ocean through a prohibition of purse seine sets on floating objects in the eastern Pacific Ocean after midnight on November 8, 1999.

DATES: Effective at 12:01 A.M. on November 9, 1999.

ADDRESSES: Submit comments to Rodney R. McInnis, Acting Regional Administrator, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of the regulations at 50 CFR part 300, subpart C, which implement the Tuna Conventions Act (16 U.S.C. § 955). The U.S. is a member of the Inter-American Tropical Tuna Commission (IATTC), which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of tunas and tuna-like fishes in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years, and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The Convention Area is all waters of the eastern Pacific Ocean (EPO) between 40° N. lat. and 40° S. lat. out to 150° W. long.

At its annual meeting in June 1999, the IATTC adopted a resolution, which was subsequently agreed to by the Department of State, recommending that action be taken by member nations and other fishing nations to limit the 1999 bigeye tuna catch by the purse seine fishery in the Convention Area to 40,000 mt. The harvest limit was to be implemented by prohibiting purse seine sets on all types of floating objects in the Convention Area when this harvest level is reached. The limit is intended to protect the spawning stock and maintain bigeye stock productivity. Sets on floating objects result in relatively high catch rates of juvenile bigeye, and available information suggests that the stock cannot sustain purse seine catches in excess of 40,000 mt per year. The closure of the purse seine fishery will limit the mortality of small bigeye.

The IATTC Director reviewed available data on effort and catch of bigeye in the purse seine fisheries throughout the year, and in October projected that the limit of 40,000 mt would be reached on November 8, 1999. Accordingly, member nations of the IATTC were to prohibit further sets on floating objects after that date.

Under regulations promulgated earlier this year (64 FR 44428, August 16, 1999), the Regional Administrator is authorized to notify the U.S. tuna industry directly of any quotas and associated regulatory measures that have been recommended by the IATTC and approved by the Department of State. In a separate action, the industry has been advised accordingly. However, a **Federal Register** notification also must be published as soon as practicable.

For the reasons stated here and in accordance with the regulations at 64 FR 44428, August 16, 1999, NMFS herein announces: After midnight on November 8, 1999, no U.S. vessel may make a purse seine set around floating objects in the Convention Area.

Classification

This action is authorized by the regulations implementing the Tuna Conventions Act. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR part 300, subpart C and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: December 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33854 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 249
Wednesday, December 29, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–311–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); rescission.

SUMMARY: This document proposes to rescind an existing airworthiness directive (AD), applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes. That AD currently requires installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative at certain engine speeds. That AD also provides for an optional installation of certain band reject filters, which eliminates the need for the placard. The actions specified by that AD are intended to prevent excessive deviation from the intended flight path due to loss of navigation signals, which could result in a potentially low-fuel condition or a traffic conflict. Since the issuance of that AD, use of the Omega navigation system has been permanently discontinued; therefore, the original unsafe condition no longer exists.

DATES: Comments must be received by February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information pertaining to this proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–311–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 5, 1995, the FAA issued AD 95–19–04, amendment 39–9365 (60 FR 47265, September 12, 1995), applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes. That AD requires installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative at certain engine speeds. That AD also provides for an optional installation of certain band reject filters, which eliminates the need for the placard. That action was prompted by reports of loss of certain navigation signals during extended over-water operation. The requirements of that AD are intended to prevent excessive deviation from the intended flight path due to loss of navigation signals, which could result in a potentially low-fuel condition or a traffic conflict.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received notification that use of the Omega navigation system has been permanently discontinued. Therefore, the FAA finds that the original unsafe condition (harmonic interference from the generator, which interferes with Omega navigation signals and could result in loss of navigation signals and, potentially, a low-fuel condition or a traffic conflict) no longer exists.

FAA's Conclusions

Since the unsafe condition no longer exists, the FAA has determined that it is necessary to rescind AD 95–19–04 in order to prevent operators from installing an unnecessary placard or unnecessary band reject filters. (Installation of certain band reject filters is provided in AD 95–19–04 as an optional alternative method of compliance with that AD.)

This proposed action would rescind AD 95–19–04. Rescission of AD 95–19–04 would constitute only such action, and, if followed by a final action, would not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

Cost Impact

The FAA estimates that 177 airplanes of U.S. registry are affected by AD 95–19–04. The actions that are currently required by that AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts (local manufacture of a placard) is negligible. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $10,620, or $60 per airplane. However, the adoption of this proposed rescission would eliminate those costs.

Should an operator elect to remove the placard required by AD 95–19–04, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of removal of the placard would be approximately $60 per airplane.

Should an operator elect to remove the band reject filters that were one option for compliance with AD 95–19–04, it would take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of removing the band reject filters would be approximately $900 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9365.

Learjet: Docket 99–NM–311–AD. Rescinds AD 95–19–04, Amendment 39–9365.

Applicability: Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes; equipped with Global Wulfsburg GNS 500, GNS–1000, and GNS–X Flight Management Systems; certificated in any category.

Issued in Renton, Washington, on December 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33734 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–305–AD]

RIN 2120–AA64

Airworthiness Directives; EMBRAER Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that currently requires revisions to the Airplane Flight Manual (AFM) to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. That AD also requires installation of certain warning placards. This action would require replacement of a certain integrated computer with a new integrated computer; installation of an upgraded integrated computers checklist; and removal of certain placards and certain limitations in the AFM. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

DATES: Comments must be received by January 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–305–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 21, 1999, the FAA issued AD 99–01–12, amendment 39–11015 (64 FR 4521, January 29, 1999), applicable to certain EMBRAER Model EMB–145 series airplanes, to require revisions to the Airplane Flight Manual to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. That AD also requires installation of certain warning placards. That action was prompted by a report indicating that, during a flight test of a similar airplane model, the pitch trim monitoring subsystem malfunctioned internally. The requirements of that AD are intended to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–01–12, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–31–0010, dated March 18, 1999. The service bulletin describes procedures for replacement of the integrated computer IC–600 #1, part number (P/N) 7017000–82402, with a new integrated computer, P/N 7017000–82422; installation of an upgraded integrated computers checklist; and removal of warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Departmento de Aviacao Civil (DAC), which is the regulatory authority for Brazil, approved this service bulletin and issued Brazilian airworthiness directive 98–12–01R1, dated May 26, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–01–12 to continue to require revisions to the AFM to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. The proposed AD also would continue to require installation of certain warning placards. The proposed AD also would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel Brazilian airworthiness directive in that it would mandate replacement of the integrated computer IC–600 #1, P/N 7017000–82402, with a new integrated computer, P/N 7017000–82422. The Brazilian airworthiness directive provides for that action as an alternative to installation of certain warning placards.

Mandating the terminating action is based on the FAA's determination that, in this case, long-term continued operational safety would be better assured by a modification to remove the source of the problem, rather than by revising flight procedures. The source of the unsafe condition (failure of the pitch trim monitoring system) is in the design of the pitch trim monitoring system installed on the airplane, in that the pitch trim monitoring system failed to detect a trim malfunction. In this particular case, there is no way to physically prevent the use of the autopilot below 1,500 ft. above ground level (AGL), unlike in other situations in which the inadvertent positioning of a switch or lever can be remedied by application of a limiter or guard to prevent or restrict operation of that switch or lever.

While revising flight procedures ensures that the flight crew is informed that an unsafe condition may exist if the autopilot is selected below 1,500 ft. AGL, it does not remove the source of that unsafe condition. Human factors (e.g., variations in flight crew training and familiarity with the airplane, flight crew awareness in the presence of other hazards, flight crew fatigue) may allow inadvertent selection of the autopilot below 1,500 ft. AGL and result in the unsafe condition. Thus, revisions to flight procedures are not considered adequate to provide the degree of safety assurance necessary for the transport airplane fleet. Consideration of these factors has led the FAA to mandate replacement of the integrated computer IC–600 #1, P/N 7017000–82402, with a new integrated computer, P/N 7017000–82422; and installation of an integrated computers checklist, if applicable, in order to eliminate the unsafe condition associated with a failure of the pitch trim monitoring system.

Operators should also note that, although PART II of Brazilian AD 98–12–01R1 requires installation of an upgraded integrated computers checklist, the FAA has determined that this is only necessary if a checklist is currently installed on the airplane.

Explanation of Change to Applicability Statement

Operators should note that the applicability of the proposed AD differs from the applicability of AD 99–01–12 in that it no longer affects airplanes

equipped with IC–600 #1 having P/N 7017000–83402. The DAC has informed the FAA that affected airplanes equipped with this IC–600 #1 part number are not subject to the identified unsafe condition. Brazilian AD 98–12–01R1 also reflects this change.

Cost Impact

There are approximately 46 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 99–01–12, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $2,760, or $60 per airplane.

The new integrated computer replacement, checklist installation and placard removals that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $675 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $33,810, or $735 per airplane.

The removal of AFM limitations that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $2,760, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11015 (64 FR 4521, January 29, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 99–NM–305–AD. Supersedes AD 99–01–12, Amendment 39–11015.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145047 inclusive and 145049 through 145051 inclusive; certificated in any category; equipped with IC–600 #1 having part number (P/N) 7017000–82402; excluding those airplanes on which the modification specified in any of the following Embraer service bulletins has been accomplished:

- Embraer Service Bulletin 145–22–0001, dated May 7, 1998;
- Embraer Service Bulletin 145–22–0004, Revision 01, dated July 30, 1998;
- Embraer Service Bulletin 145–31–0007, Revision 02, dated June 30, 1998.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and result in reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss; accomplish the following:

Restatement of Requirements of AD 99–01–12

Placard Installation and AFM Revision

(a) Within 20 flight hours after February 2, 1999 (the effective date of AD 99–01–12, amendment 39–11015), accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Install warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel, using double-face tape (or similar), in accordance with Embraer Service Bulletin, 145–31–A010, dated December 15, 1998, which states:

"DO NOT OPERATE AUTOPILOT BELOW 1,500 FT A.G.L."

(2) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) (in the "AUTOPILOT" section) to include the information contained in this paragraph of the AD. This may be accomplished by inserting a copy of this AD in the AFM.

"AUTOPILOT

THE USE OF AUTOPILOT BELOW 1,500 FEET IS PROHIBITED."

(3) Revise the Emergency Procedures Section of the FAA-approved AFM (in the "PITCH TRIM RUNAWAY" section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"PITCH TRIM RUNAWAY	
Immediately and simultaneously:	
Control Column	HOLD FIRMLY
Quick Disconnect Button.	PRESS AND HOLD
Pitch Trim Main System.	OFF
Pitch Trim Back Up System.	OFF
Quick Disconnect Button.	RELEASE

If control column forces are excessive, try to recover airplane control by turning one system on and trimming the airplane as necessary. Initiate with the backup system. Leave the failed system off.

If neither system is operative:

PITCH TRIM INOPERATIVE Procedure.	COMPLETE
Autopilot	OFF

Do not use the autopilot for the remainder of the flight."

(4) Revise the Abnormal Procedures Section of the FAA-approved AFM (in the "AUTOPILOT" section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"AUTOPILOT TRIM FAILED

PITCH TRIM RUNAWAY Procedure.	PERFORM
STABILIZER OUT OF TRIM PITCH TRIM RUNAWAY Procedure.	PERFORM"

New Requirements of this AD

Terminating Action

(b) Within 500 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Replace the integrated computer IC–600 #1, P/N 7017000–82402, with a new integrated computer, P/N 7017000–82422; install an upgraded integrated computers checklist; and remove warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel required by paragraph (a)(1) of this AD; in accordance with EMBRAER Service Bulletin S.B. 145–31–0010, dated March 18, 1999.

Note 2: Installation of an upgraded integrated computers checklist is required only if an integrated computers checklist is currently installed on the airplane.

(2) Remove the limitations required by paragraphs (a)(2), (a)(3), and (a)(4) of this AD from the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance/Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 98–12–01R1, dated May 26, 1999.

Issued in Renton, Washington, on December 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33733 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–313–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and –300 series airplanes. This proposal would require repetitive inspections to detect wear or damage of the door latches and disconnect housings of the off-wing escape slide compartments. If wear or damage is found, the proposed AD would require replacement of these discrepant components with new components. This proposal is prompted by reports of worn and damaged door latches and disconnect housings of the off-wing escape slide compartments. The actions specified by the proposed AD are intended to ensure deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew.

DATES: Comments must be received by February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jim Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–313–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–313–AD , 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of broken and worn door latches and disconnect housings of the off-wing escape slide compartments on Boeing Model 767–200 and –300 series airplanes. These worn or broken parts have caused non-deployment of a slide during an emergency evacuation and during a test. This condition, if not corrected, could result in non-deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998, which describes procedures for repetitive detailed visual inspections to detect wear or damage of the door latches and disconnect housings of the off-wing escape slide compartments. The alert service bulletin also describes procedures for replacement of these components with new components if wear or damage is found. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that the alert service bulletin recommends accomplishing the initial inspection within 180 days (after the release of the service bulletin) for airplanes with 6,000 flight hours or more; and within 6,000 flight hours or 180 days after release of the service bulletin, whichever is later, for airplanes with less than 6,000 flight hours. However, the FAA has determined that a compliance time of 6,000 total flight hours, or 18 months after the effective date of this AD, whichever occurs later, would address the identified unsafe condition in a timely manner. By aligning the initial inspections with an 18-month interval, they can be incorporated into the maintenance schedules recommended by the Boeing Maintenance Manual.

In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than three hours). In light of all of these factors, the FAA finds a compliance time of 6,000 total flight hours, or 18 months after the effective date of this AD, whichever occurs later, for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Additionally, operators should note that the alert service bulletin allows door latches having part numbers H2052–11 and H2052–115 to remain installed provided that they are not worn or damaged. However, the FAA has previously issued AD 92–16–17, amendment 39–8327 (57 FR 47987, October 21, 1992), and AD 95–08–11, amendment 39–9200 (60 FR 20013, April 24, 1995). Those AD's require, among other things, modification of escape slide compartment door latching mechanisms in accordance with Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991. Part of the modification entails replacement of latches having part numbers H2052–11 or H2052–115 with new latches having part number H2052–13. Therefore, a NOTE has been included in the body of this proposed AD to clarify that latches having part number H2052–11 or H2052–115 are not acceptable. The FAA finds that this proposed rule does not need to include a requirement to replace latches having part numbers H2052–11 or H2052–115, because such replacement is already required by AD 92–16–17 and AD 95–08–11.

Cost Impact

There are approximately 634 airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $43,380, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–313–AD.

Applicability: Model 767–200 and –300 series airplanes, as listed in Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998; certificated in any category; except Model 767 series airplanes that have undergone conversion to freighter configurations, and on which the off-wing escape system has been removed or deactivated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent non-deployment of an escape slide during an emergency evacuation, which could slow down the evacuation of the airplane and result in injury to passengers or flightcrew, accomplish the following:

Inspections

(a) Prior to the accumulation of 6,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect wear or damage of the door latches and disconnect housings of the off-wing escape slide compartments, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

Note 2: Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998, allows repetitive inspections of a door latch having part number H2052–11 or H2052–115, provided that the latch is not worn or damaged. However, replacement of any latch having part number H2052–11 or H2052–115 with a new latch having part number H2052–13 is described as part of a modification of the escape slide compartment door latching mechanism that is specified in Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991. Accomplishment of that modification is required by AD 92–16–17, amendment 39–8327, and AD 95–08–11, amendment 39–9200. Therefore, operators should note that any latch having part number H2052–11 or H2052–115 found during an inspection required by paragraph (a) of this AD is already required to be replaced in accordance with AD 92–16–17 or AD 95–08–11, as applicable.

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD, in accordance with the Validation Copy of Boeing Alert Service Bulletin 767–25A0260, dated April 28, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Replacement

(b) If any part is found to be worn or damaged during the inspections performed in accordance with paragraph (a) of this AD, prior to further flight, replace the worn or damaged part with a new part, and perform an adjustment of the off-wing escape slide system, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33732 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–26]

Proposed Establishment of Class E Airspace; Big Bear City, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Big Bear City, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 26 at Big Bear City Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 26 SIAP to Big Bear City Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Big Bear City Airport, Big Bear City, CA.

DATES: Comments must be received on or before, February 4, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–26, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, CA 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at

Big Bear City, CA. The establishment of a GPS RWY 26 SIAP at Big Bear City Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS approach procedure at Big Bear City Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport, Big Bear City, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Big Bear City, CA [New]

Big Bear City Airport, CA
(Lat. 34°15′49″ N, long. 116°51′16″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Big Bear City Airport.

* * * * *

Issued in Los Angeles, California, on December 20, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–33789 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–29]

Proposed Establishment of Class E Airspace; Atmore, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Atmore, AL. A Global Positioning System (GPS) Runway (RWY) 36 Standard Instrument Approach Procedure (SIAP) has been developed for Atmore Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument flight rules (IFR) operations at Atmore Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before January 28, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–29, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, GA 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, GA 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, GA 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to

establish Class E airspace at Atmore, AL. A GPS RWY 36 SIAP has been developed for Atmore Municipal Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Atmore Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO AL E5 Atmore, AL [New]

Atmore Municipal Airport, AL
(Lat. 31°00′58″N, long. 87°26′48″W)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of Atmore Municipal Airport.

* * * * *

Issued in College Park, GA, on December 15, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–33792 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB36

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations; Extension of Comment Period

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: On November 24, 1999, the Department of Agriculture, Forest Service, published proposed regulations for recovering costs associated with processing applications for special use authorizations to use and occupy National Forest System lands and monitoring compliance with these special use authorizations (64 FR 66342). The provisions of this proposed rule would apply to applications and authorizations for use of National Forest System lands. The agency is extending the comment period by 30 days to February 24, 2000, to respond to requests form organizations and individuals who have requested more time to review and comment on the document.

DATES: Comments must be received in writing by February 24, 2000.

ADDRESSES: Send written comments to Director, Lands Staff, 2720, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090. Submit electronic comments (as an ASCII file if possible) to: gtlands4/wo@fs.fed.us.

Please confine written comments to issues pertinent to the proposed rule and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph you are addressing. The Forest Service may not include in the administrative record for the proposed rule those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in **ADDRESSES.**

You may view an electronic version of this proposed rule at the Forest Service Internet home page at: http://www.fs.fed.us/recreation/permits/.

All comments, including the names, street addresses, and other contact information about respondents, are placed in the record and are available for public review and copying at the above address during regular business hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Those wishing to inspect comments are encouraged to call ahead, (202) 205–1256, to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff, (202) 205–1256 or Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1399.

Dated: December 22, 1999.

Phil Janik,

Chief Operating Officer.

[FR Doc. 99–33826 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–11–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–26–1–6965b; FRL–6514–7]

Approval and Promulgation of Implementation Plan for Louisiana: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Louisiana State Implementation Plan (SIP) that contains transportation conformity rules. If EPA approves this transportation conformity SIP revision, the State will be able to implement and enforce the Federal transportation conformity requirements at the State level. This proposed action would streamline the conformity process and

allow direct consultation among agencies at the local levels. The proposed approval is limited to Transportation Conformity. The EPA approved the SIP revision for conformity of general Federal actions on September 13, 1996 (61 FR 48409).

The EPA is proposing to approve this SIP revision under sections 110(k) and 176 of the Clean Air Act. The EPA has given its rationale for the proposed approval and other information in the Final Rules section of this **Federal Register**.

In the "Rules and Regulations" section of **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no adverse comment, no further action will be taken on this proposed rule. If EPA receives adverse comment, the direct final rule will be withdrawn and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: We must receive your comments in writing, postmarked by January 28, 2000.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202; Telephone: (214) 665–7214.

Louisiana Department of Environmental Quality, Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810; Telephone: (225) 765–0178.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202; Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: If you wish to obtain additional information, you should read the Direct Final rule which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 22, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–33449 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–b; FRL–6515–4]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Alaska which include revisions to Alaska's Air Quality Control Regulations, Transportation Conformity Rule (18 AAC 50); Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52); and Fuel Requirements for Motor Vehicles (18 AAC 53).

These revisions include changing the I/M program schedule for cars subject to I/M from annual to biennial, replacing the CO contingency measures for Anchorage, and streamlining several portions of the Alaska Air Quality Control Plan for more efficient reading and organization. They also include updating and streamlining the Alaska's Transportation Conformity Rule. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by January 28, 2000.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101

The Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality, (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: December 10, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–33526 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 160, 792, and 806

RIN 2020–AA26

[ECDIC–1998–02; FRL–5782–7]

Consolidation of Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to consolidate its Good Laboratory Practice Standards (GLPS), which currently exist in two separate regulations at 40 CFR part 160 and 40 CFR part 792. The proposed consolidated GLPS rule would be applicable to programs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) to which the current rules apply. In addition to the proposed consolidation, EPA is also proposing amendments to the GLPS that streamline and ease

compliance while still maintaining the rule's data integrity assurance purpose. The consolidation will reduce the volume of regulations administered by EPA without adversely affecting current data integrity requirements. GLPS are intended to ensure the integrity of data gathered from studies in a wide variety of disciplines such as toxicology, ecological effects, chemical fate, residue chemistry, and product performance testing. Under FIFRA, compliance with regulations on GLPS applies to all studies required to be submitted in support of pesticide registrations, reregistrations, and experimental use permits. Under TSCA, GLPS are required for testing conducted pursuant to consent agreements/orders and test rules issued under sections 4 and 5 of that Act. Failure to comply with applicable GLPS is an actionable violation which may result in civil or criminal penalties, and can render data from non-compliant studies unacceptable for consideration by EPA.

DATES: Comments, identified by the docket control number EC-1998-02, must be received by March 29, 2000.

ADDRESSES: By mail, submit comments to: Enforcement and Compliance Docket and Information Center (2201A), Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Enforcement and Compliance Docket and Information Center, Office of Enforcement and Compliance Assurance, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC. The telephone number for the Enforcement and Compliance Docket and Information Center is (202) 564–2614.

Information submitted and any comment(s) concerning this proposed rule may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed rule and any written comments received will be available for public inspection in Room 4033 at the Ariel Rios Bldg. address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to Donna Williams@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number EC-1998-02. No CBI should be submitted through e-mail. Electronic comments on this proposed rule, but not the record, may be viewed or new comments filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: David Stangel, Agriculture and Ecosystems Division, Office of Compliance (2225A), U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 564–4162, e-mail: stangel.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA proposes to amend the FIFRA GLPS (40 CFR part 160) and the TSCA GLPS (40 CFR part 792) to consolidate these regulations into one rule. In addition, EPA proposes to provide clarifications of certain requirements and amend other requirements of the rule to reflect the experience gained in administering the GLPS.

A. Legal Authority

These GLPS are promulgated under the authority of sections 3, 4, 5, 6, 8, 18, 24(c), and 25(a) of FIFRA, 7 U.S.C. 136 *et seq.*, as amended, sections 408, 409[1], and 701 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, the Reorganization Plan No. 3 of 1970, and sections 4(b)(1) and 5 of TSCA, 15 U.S.C. 2603 *et seq.*

B. Background

EPA published FIFRA and TSCA GLPS in the **Federal Register** on November 29, 1983 (48 FR 53946 and 48 FR 53922), which were codified as 40 CFR parts 160 and 792 respectively, and were amended on August 17, 1989 (54 FR 34052 and 54 FR 34034). These TSCA and FIFRA regulations were initially promulgated to address assuring the validity of data in the wake of investigations by EPA and the Food and Drug Administration (FDA) during the mid-1970's which revealed that some studies submitted to the Agencies had not been conducted in accordance with acceptable laboratory practices. Some studies had been conducted so poorly that the resulting data could not be relied upon in EPA's regulatory decision-making process. In some cases, results were selectively reported, underreported, or fraudulently reported. In addition, it was discovered that some testing facilities displayed poor animal care procedures and inadequate recordkeeping techniques. The GLPS specify minimum practices and procedures in order to ensure the quality and integrity of data submitted to EPA in support of a research or marketing permit for a pesticide product, or the quality and integrity of data submitted in accordance with a TSCA section 4 or 5 requirement.

When EPA published its initial FIFRA and TSCA GLPS in the **Federal Register** of November 29, 1983, EPA sought to harmonize the requirements and language with those regulations promulgated by the FDA in the **Federal Register** of December 22, 1978 (43 FR 60013), and codified as 21 CFR part 58. Differences between the two Agencies' current GLPS regulations existed only to the extent necessary to reflect the Agencies' different statutory responsibilities under TSCA, FIFRA, and FFDCA. Similar to the FDA GLPS regulations, the FIFRA and TSCA GLPS delineate standards for studies required to be submitted to EPA for its regulatory decision-making.

Compliance with EPA's FIFRA and TSCA GLPS has been monitored through a program of laboratory inspections and data audits coordinated between EPA and FDA. Under an Interagency Agreement originated in 1978 between FDA and EPA, FDA carries out GLPS inspections at laboratories which conduct health effects testing. EPA primarily performs GLPS inspections for environmental laboratories and conducts data audits for health effects and environmental studies. Because of the cooperative nature of FDA's and EPA's GLPS programs, it is important that the GLPS remain substantially consistent not only between programs within each Agency but also between Agencies.

FDA revised its GLPS regulations on September 4, 1987 (52 FR 33768), to simplify the regulations and reduce the regulatory burden on testing facilities without compromising study integrity. EPA published amendments to its FIFRA and TSCA GLPS in the **Federal Register** of August 17, 1989 (54 FR 34052 and 54 FR 34043 respectively). During that rulemaking, EPA expanded the applicability of its FIFRA GLPS to cover all data required to be submitted under FIFRA.

On March 4, 1995, the President directed all Federal agencies to conduct

[1] Prior to August 3, 1996 (the effective date of the Food Quality Protection Act of 1996), data were submitted to the Agency pursuant to section 409. References in this rule to section 409 remain with respect to such data.

a comprehensive review of the regulations these agencies administer and reduce or eliminate unnecessary or duplicative regulations. In response, EPA conducted a review of its regulations to determine candidates for such reductions. During this process, EPA identified the FIFRA and TSCA GLPS as providing an opportunity for such reductions. The goal of consistency of GLPS resulted in the same regulatory language being duplicated throughout these two rules. This proposed rulemaking reflects EPA's belief that it is not necessary to duplicate the same language in two separate regulations.

Since the 1989 rulemaking, EPA has received many requests for clarifications with respect to compliance requirements, especially regarding FIFRA studies that came under GLPS coverage in 1989. EPA's responses to those requests facilitated compliance with the FIFRA GLPS rule and have been made available to the regulated community in a Question and Answer document which may be obtained from the address listed above in the "FOR FURTHER INFORMATION CONTACT" section.

EPA has been in communication with representatives of the regulated community who indicated that it would improve the quality of and compliance with the GLPS if previous clarifications were incorporated. As a result of these initial consultations, EPA believes that it makes sense to incorporate these clarifications and consider other suggestions for improving these regulations, and is proposing several modifications to the GLPS requirements as part of this rulemaking.

II. Summary of Proposed Changes

A. Consolidation

Currently, EPA has GLPS at 40 CFR part 160 and part 792. These rules are identical in general format, each consisting of the following subparts: A--General Provisions; B--Organization and Personnel; C--Facilities; D--Equipment; E--Testing Facilities Operation; F--Test, Control, and Reference Substances; G--Protocol for and Conduct of a Study; H and I--[Reserved]; and J--Records and Reports.

Most of the sections under these subparts are identical between the two rules. In such cases, EPA proposes to continue the current language except where amended as provided in Unit II.B. of this preamble. Some sections include rule differences for the two regulatory areas--TSCA and FIFRA. In such cases, it is necessary to provide separate, distinct sections, or subsections applicable to those programs.

Therefore, the proposed 40 CFR part 806 will continue the common language currently found in both 40 CFR parts 160 and 792. Current differences between the TSCA and FIFRA rules will be treated in one of two ways: (1) Differences which are programmatic and necessary will be continued in the form of separate regulatory provisions under the consolidated GLPS; and (2) differences that are determined to be inadvertent, e.g., typographic errors, minor grammatical differences, etc., will be eliminated.

1. *Program differences.* The two subparts in which there are significant differences between the two rules are Subpart A (General Provisions) and Subpart J (Records and Reports). All other subparts are virtually identical.

a. *Subpart A--General Provisions*—i. *§ 806.1--Scope.* Section 806.1(a) proposes to include the relevant statutory authorities under FIFRA and FFDCA (currently applicable to pesticides studies), and the authorities under TSCA (currently applicable to substances regulated under TSCA). In § 806.1(a)(2), the Agency states that the GLPS apply to any study which any person conducts, initiates, or supports by a certain date. If a study is initiated prior to that date but conducted after that date, the GLPS would apply to the study. Only if the study is completed prior to the effective date of the rule would it not be subject to the amended GLPS.

ii. *§ 806.3--Definitions.* Section 806.3 includes definitions which are specific to program areas and are currently listed separately in the two rules.

iii. *§ 806.12--Statement of Compliance or Noncompliance.* Section 806.12 proposes specific and separate applicability under the current program areas (toxics and pesticides) which provide for compliance statements.

b. *Subpart J--Records and Reports.* --§ 806.195--Retention of Records. Section 806.195 proposes separate record retention requirements for documentation records, raw data, and specimens pertaining to FIFRA and TSCA studies.

B. Clarifying Amendments

In addition to consolidating the regulations, the Agency is proposing to amend the current regulatory language in 40 CFR parts 160 and 792 to clarify certain requirements and simplify others. These amendments are being proposed in response to feedback received from the regulated community as well as comments received in response to publication of the Agency's intent to consolidate the FIFRA and TSCA GLPS.

1. *Subpart A--General Provisions.* The proposal would amend the current definitions of the terms "carrier" and "test systems" by adding the word "air" to each definition to clarify that air is considered both a carrier and a test system in certain circumstances. This change will alleviate confusion on this point.

EPA proposes to amend the current definition of the term "quality assurance unit" by deleting the phrase "the study director" and adding the phrase "individual(s) directly involved in the conduct of the study, including the study director." This change is being proposed because it is equally improper for persons other than the study director who are working directly on the study to perform quality assurance of the study.

EPA proposes to amend the current definition of the term "vehicle" by adding examples of substances which are considered vehicles.

EPA proposes to amend the current §§ 160.10 and 792.10 by adding the phrase "prior to initiation of the study," to the end of the sentence as well as requiring the notification to be made in writing. This change clarifies a number of questions that have been raised in the past and is in keeping with normal practices. Section 806.10 reflects the change.

EPA proposes to amend the current §§ 160.17(a)(2) and 792.17(a)(2) by changing the reference to FFDCA section 406, which was a typographical error, to section 408, the proper reference. EPA proposes to amend the term "consent agreement" to "consent agreement/order" and the reference to "section 4 of TSCA" to "section 4 or 5 of TSCA" throughout the proposed rule to reflect that GLPS are required in both test rules and consent agreements/orders, and that testing can be required under both sections 4 and 5 of TSCA. Section 806.17(a)(2) reflects these changes.

EPA proposes to amend the current §§ 160.33(f) and 792.33(f) to read: ". . .during or at the close or termination of the study.", to address those instances where a study is terminated prior to completion of the study. Section 806.33(f) reflects the change.

2. *Subpart B--Organization and Personnel.* EPA proposes to amend the current §§ 160.35(b)(1) and 792.35(b)(1) to include the following language ". . .indexed to permit expedient retrieval, which identifies the. . ." to allow the study director to employ an indexing system which may not reference the test substance but would still allow the

facility to quickly extract the information. Section 806.35(b)(1) reflects this change. EPA proposes to amend the current §§ 160.35(b)(2) and 792.35(b)(2) to read: ". . .all protocols until study completion pertaining. . . ." Protocols are required to be archived at the completion of a study and requiring the maintenance of another copy of the protocol would be duplicative. Section 806.35(b)(2) reflects this change.

3. *Subpart C--Facilities.* Questions have been raised in the past about the applicability of the language in the current §§ 160.43(a) and 792.43(a); specifically whether co-exposure of test species to the test substance (e.g., inhalation studies) is allowable given the requirement for proper separation of species or test systems. Co-exposure of test species in inhalation studies is allowable unless the study protocol specifically prohibits the practice. Section 806.43(a) reflects this change.

4. *Subpart D--Equipment.* The Agency proposes to amend the current §§ 160.63 and 792.63 by adding paragraph (d) to address the integrity of data stored and manipulated by computers, data processors, and automated laboratory procedures to make it clear that these types of equipment are subject to the same provisions as other laboratory equipment. Section 806.63 reflects this change.

5. *Subpart E--Testing Facilities Operation.* The Agency is proposing to amend the current §§ 160.83 and 792.83 to allow the testing facility to develop a documentation performance standard as an alternative to an expiration date for the contents of transfer bottles and wash bottles. The testing facility has the option of labeling transfer and wash bottles or developing another well documented system to ensure that these solutions have not deteriorated or exceeded their expiration date. Section 806.63 reflects this change. EPA specifically requests comment on a documentation performance standard that would provide the same assurances that the solutions have not deteriorated or exceeded their expiration date. Other alternatives being considered include the development of a list of substances that do not require expiration dates, e.g., distilled water.

6. *Subpart F--Test, Control, and Reference Substances.* The Agency proposes to amend the current §§ 160.105(b) and 792.105(b) to allow concurrent determination of solubility as well as stability of the test, control, or reference substance. The rule presently allows only concurrent determination of the stability of the test, control, or reference substance. Section 806.105(b) reflects this change.

EPA proposes to amend the current §§ 160.105(c) and 792.105(c) to allow the study director the options of discarding containers which contained the test substance, with proper recordkeeping of the disposition of the containers, or retaining the containers until the termination of the study. The proposal to relax the requirement for retention of test substance containers is being made to address the burden of retaining containers in field studies where large amounts of the test substance are used. The approach proposed is prescriptive in nature and gives the testing facility and study director EPA's position on what the Agency considers adequate documentation. EPA is requesting comments on whether such a prescriptive approach is necessary or should be relaxed to state that the study director may authorize container disposal and simply note in the raw data that this has been done.

In addition, the Agency is proposing to amend the current §§ 160.105(c) and 792.105(c) by deleting the term "where appropriate" from the first sentence to now read ". . .expiration date, if any, and storage conditions necessary to maintain the identity, . . ." because information on storage conditions is always appropriate. Section 806.105(c) reflects these changes.

The Agency proposes to amend the current §§ 160.113(a)(2) and 792.113(a)(2) by the addition of the following language ". . .reference substance in the mixture; or if the solubility of the substance is difficult to determine, appropriate homogeneity data, by the testing facility. . ." to address those situations in which the test, control, or reference substance is insoluble and may create emulsions that are very difficult to analyze. Section 806.113(a)(2) reflects this change. EPA proposes to amend the current §§ 160.113(b) and 792.113(b) to exempt tank mixes and solutions prepared for immediate administration (within 12 hours) in mammalian acute toxicology studies, metabolism studies, or mutagenicity studies from requirements for concentration determinations (but not from uniformity determinations) under §§ 160.113(a)(1) and 792.113(a)(1) and solubility determinations under §§ 160.113(a)(2) and 792.113(a)(2). This addition is being proposed in response to comments that these mixes must be made and used quickly, and it is not possible to perform solubility testing before the experimental start date. Section 806.113(b) reflects this change.

7. *Subpart G--Protocol for and Conduct of a Study.* EPA proposes to amend the current §§ 160.120(a)(2) and 792.120(a)(2) to exempt metabolism studies from the requirement to identify the test, control, or reference substance when their identities are to be determined during the study. In metabolism studies, the identity of the metabolite or metabolites may not be known at the time that the protocol is written. EPA proposes that the protocol need not identify reference substances for metabolites when they cannot be identified before the beginning of the study. This proposal does not affect the requirement to identify metabolism study test, reference, or control substances at the beginning of the study, unless the purpose of the study is to identify them. Section 806.120(a)(2) reflects this change.

EPA proposes to amend the current §§ 160.120(c) and 792.120(c) to allow discontinued studies or studies otherwise terminated before completion to be finalized by writing a protocol amendment with the reasons for the termination, in lieu of preparing a final report. All documentation for the terminated study must be retained in accordance with § 806.195. Sponsors are still obligated to meet section 6(a)(2) of FIFRA and section 8(e) of TSCA requirements for submission of adverse effects data including, but not limited to, those generated by terminated studies. Section 806.120(c) reflects this change.

8. *Subpart J--Records and Reports.* EPA proposes to amend the current §§ 160.185(a)(1) and 792.185(a)(1) by deleting the words "terminated or discontinued," because § 806.120(c) was added to address terminated or discontinued studies. Section 806.185(a)(1) reflects this change.

EPA proposes to amend the current §§ 160.185(a)(7) and 792.185(a)(7) by deleting the phrase "or other test organisms," because the required information is relevant chiefly to animal systems. Section 806.185(a)(7) reflects this change.

Finally, EPA proposes to amend the current § 792.195 by replacing the existing record retention requirements for studies submitted under sections 4 and 5 of TSCA with a single requirement to retain records for a period of 5 years following the date on which the final report of the study is submitted to the Agency. The change will simplify record retention requirements for persons required to retain records by providing a single standard for record retention. Section 806.195 reflects this change.

III. Public Docket

A record has been established for this rulemaking under docket number EC-

1998-02. This record is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 4033, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC. Written requests should be mailed to: Enforcement and Compliance Docket and Information Center (2201A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

IV. Statutory Review

In accordance with FIFRA section 25(a), this proposal was submitted to the FIFRA Scientific Advisory Panel, the Secretary of Agriculture, and appropriate Congressional Committees. No comments were received.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this proposed action is not a "significant regulatory action" and is therefore not subject to the Office of Management and Budget (OMB) review. The Agency believes that the amendments associated with this action constitute regulatory relief, and therefore will not impose any additional costs or burdens. The analysis related to the costs and burdens of the original requirements were discussed in conjunction with their promulgation in 1989. Because this action consolidates the requirements contained in the original GLPS, no new costs or burdens are imposed. Instead, the Agency believes that the consolidation of the GLPS may actually increase efficiencies for those companies that are required to use both TSCA and FIFRA GLPS, because these companies will now only have one version of GLPS to use. Additionally, many of the changes in the rule allow the laboratories to use more efficient means of achieving the requirements of the GLPS. The Agency solicits comments on the impacts of this consolidation on the regulated community.

B. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address - Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that this action will not adversely impact low-income and minority communities. These regulations consolidate existing regulations and have not been the subject of any environmental justice concerns in the past.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this document.

D. Unfunded Mandates Reform Act and Executive Order 12875

This proposed action does not contain any new requirements or impose any additional burden because it proposes to consolidate requirements together which currently exist in two separate rulemakings. As such, this proposed action is expected to result in savings and burden relief rather than in an expenditure by any State, local, or Tribal governments, or by anyone in the private sector, and will not result in any unfunded Federal mandates as defined by Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

In addition, since this action does not contain any Federal mandates on States, localities, or Tribes, it is not subject to the requirements of Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993).

E. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this regulatory action does not have any significant adverse economic impacts on a substantial number of small entities. This proposed rule does not impose any new requirements that would impose any adverse impacts on small entities. In consolidating the existing requirements, EPA is allowing those companies that are currently conducting various testing for use either pursuant to FIFRA or TSCA, to adhere to and follow a single GLP standard. Given the efficiencies provided, the Agency has determined that this proposal will not result in adverse impacts. As such, no impact analysis is required.

Information related to this determination has been included in the docket for this rulemaking, and, in accordance with Small Business Administration (SBA) policy, will be provided to the Chief Counsel for Advocacy of the SBA upon request. Any comments regarding the economic impacts that this regulatory action may impose on small entities should be submitted to the Agency at the address listed under Unit III. of this preamble.

F. Paperwork Reduction Act

This proposed action does not contain any new information collection requirements. The GLPS do not directly impose any information collection requirements, but they describe standards regarding testing conducted for other information collections currently approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*:

Maximum Residue Limit (MRL) Petitions on Food/Feed Crops and New Inert Ingredients (EPA ICR No. 597.06, OMB Control No. 2070–0024)

Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) under FIFRA Section 24(c) (EPA ICR No. 595.06, OMB Control No. 2070–0055)

Application for New or Amended Registration (EPA ICR No. 277.10, OMB Control No. 2070–0060)

Application for Experimental Use Permit (EUP) to Ship a Pesticide for Experimental Purposes Only (EPA ICR

No. 276.08, OMB Control No. 2070–0040)

Data Call-In for Special Review Chemicals (EPA ICR No. 922.05, OMB Control No. 2070–0057)

Application and Summary Report for an Emergency Exemption for Pesticides (EPA ICR No. 596.05, OMB Control No. 2070–0032)

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

G. Request for Comment on Potential Voluntary Consensus Standards to Consider for Future Regulatory Actions

This proposal does not involve a regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

As indicated earlier, these guidelines represent an Agency effort to harmonize the test guidelines between the Office of Pesticide Programs (OPP) and the Office of Pollution Prevention and Toxics (OPPT), as well as harmonizing the OPP and OPPT test guidelines with those of the Organization for Economic Cooperation and Development. The process for developing and amending these test guidelines includes the extensive involvement of the scientific community, including peer review by the FIFRA SAP and other expert scientific panels, and providing extensive public comment.

In the future, these test guidelines could be incorporated into regulatory actions taken by EPA pursuant to TSCA section 4. Although the NTTAA requirements do not specifically apply to the issuance of these particular test guidelines today, EPA invites your comment on whether or not there are any voluntary consensus standards that should be considered during the development of any future action under TSCA. Future actions under TSCA section 4 would go through notice and comment rulemaking or be negotiated as voluntary testing enforcement agreements/consent orders/decrees, allowing for additional public comment on this issue. Nevertheless, the Agency is interested in whether or not there are any voluntary consensus standards that EPA should considered in lieu of these test guidelines when the Agency develops any future regulatory action that incorporates these test guidelines. Any comments provided will assist the Agency in complying with the NTTAA by facilitating the Agency's identification of voluntary consensus standards that should be considered during the development of a proposed regulatory action that incorporates any standards included in these test guidelines. Please submit your comments to the person identified in the FOR FURTHER INFORMATION CONTACT section.

H. Executive Order 13045

Executive Order 13045 entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

I. Executive Order 13132

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

List of Subjects

40 CFR Part 160

Environmental protection, Laboratories, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 792

Environmental protection, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

40 CFR Part 806

Environmental protection, Data requirements, Good laboratory practice, Hazardous materials, Pesticides and pests, Reporting and recordkeeping requirements, Testing.

Dated: October 28, 1999.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 160 [Removed]

1. By removing part 160.

PART 792 [Removed]

2. By removing part 792.

3. By adding subchapter S consisting of part 806 to read as follows:

SUBCHAPTER S—STANDARDS, TEST METHODS, AND GUIDELINES

PART 806—GOOD LABORATORY PRACTICE STANDARDS

Subpart A—General Provisions

Sec.

806.1 Scope.
806.3 Definitions.
806.10 Applicability to studies performed under grants and contracts.
806.12 Statement of compliance or non-compliance.
806.15 Inspection of a testing facility.
806.17 Effects of non-compliance.

Subpart B—Organization and Personnel

806.29 Personnel.
806.31 Testing facility management.
806.33 Study director.
806.35 Quality assurance unit.

Subpart C—Facilities

806.41 General.
806.43 Test system care facilities.
806.45 Test system supply facilities.
806.47 Facilities for handling test, control, and reference substances.
806.49 Laboratory operation areas.
806.51 Specimen and data storage facilities.

Subpart D—Equipment

806.61 Equipment design.
806.63 Maintenance and calibration of equipment.

Subpart E—Testing Facilities Operation

806.81 Standard operating procedures.
806.83 Reagents and solutions.
806.90 Animal and other test system care.

Subpart F—Test, Control, and Reference Substances

806.105 Test, control, and reference substance characterization.
806.107 Test, control, and reference substance handling.
806.113 Mixtures of substances with carriers.

Subpart G—Protocol for and Conduct of a Study

806.120 Protocol.
806.130 Conduct of a study.
806.135 Physical and chemical characterization studies.

Subparts H and I—[RESERVED]

Subparts J—Records and Reports

806.185 Reporting of study results.
806.190 Storage and retrieval of records and data.
806.195 Retention of records.

Authority: 7 U.S.C. 136a, 136c, 136d, 136f, 136j, 136t, 136v, 136w; 15 U.S.C. 2603; 21 U.S.C. 346a, 348, 371, Reorganization Plan No. 3 of 1970.

Subpart A—General Provisions

§ 806.1 Scope.

(a)(1) This part prescribes good laboratory practices for conducting studies that support or are intended to support applications for research or marketing permits for pesticide products regulated by the EPA. This part is intended to assure the quality and integrity of data submitted pursuant to sections 3, 4, 5, 8, 18, and 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136a, 136c, 136f, 136q, and 136v(c)) and sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 346a, 348).

(2) This part applies to any study described by paragraph (a)(1) of this section which any person conducts, initiates, or supports on or after [Insert date 60 days after date of publication in the **Federal Register** of the final rule].

(b)(1) This part also prescribes good laboratory practices for conducting studies relating to health effects, environmental effects, and chemical fate testing pursuant to the Toxic Substances Control Act (TSCA) (Public Law 94–469, 90 Stat. 2006, 15 U.S.C. 2603 *et seq.*). This part is intended to assure the quality and integrity of data submitted pursuant to test rules and testing consent agreements/orders issued under section 4 and section 5 of TSCA.

(2) This part applies to any study described by paragraph (b)(1) of this section which any person conducts, initiates, or supports on or after [Insert date 60 days after date of publication in the **Federal Register** of the final rule].

(3) It is EPA's policy that all data developed for submission under section 5 of TSCA be in accordance with provisions of this part. If data are not developed in accordance with the provisions of this part, EPA will consider such data insufficient to evaluate the health and environmental effects of the chemical substances unless the submitter provides additional information demonstrating that the data are reliable and adequate.

§ 806.3 Definitions.

As used in this part, the following terms shall have the meanings specified:

Application for research or marketing permit includes:

(1) An application for registration, amended registration, or reregistration of a pesticide product under FIFRA sections 3, 4, or 24(c).

(2) An application for an experimental use permit under FIFRA section 5.

(3) An application for an exemption under FIFRA section 18.

(4) A petition or other request for establishment or modification of a tolerance, for an exemption for the need for a tolerance, or for other clearance under FFDCA section 408.

(5) A petition or other request for establishment or modification of a food additive regulation or other clearance by EPA under FFDCA section 409.

(6) A submission of data in response to a notice issued by EPA under FIFRA section 3(c)(2)(B).

(7) Any other application, petition, or submission sent to EPA intended to persuade EPA to grant, modify, or leave unmodified a registration or other approval required as a condition of sale or distribution of a pesticide.

Batch means a specific quantity or lot of a test, control, or reference substance that has been characterized according to § 806.105(a).

Carrier means any material, including but not limited to feed, water, soil, air, or nutrient media, with which the test substance is combined for administration to a test system.

Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements.

EPA means the U.S. Environmental Protection Agency.

Experimental start date means the first date the test substance is applied to the test system.

Experimental termination date means the last date on which data are collected directly from the study.

FDA means the U.S. Food and Drug Administration.

FFDCA means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321 *et seq*).

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136 *et seq*).

Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

Quality assurance unit means any person or organizational element (except individual(s) directly involved in the conduct of the study, including the study director), designated by testing facility management to perform the duties relating to quality assurance of the studies.

Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact

copy or exact transcript may be substituted for the original source as raw data. Raw data may include photographs, microfilm or microfiche copies, computer printouts, any original data captured electronically or by some other medium, dictated observations, and recorded data from automated instruments.

Reference substance means any chemical substance or mixture, or analytical standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for the purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements.

Specimens means any material or sample derived from a test system for examination or analysis.

Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a study;

(2) A person who submits a study to the EPA: in support of an application for a research or marketing permit; or in response to a TSCA section 4 test rule and/or a person who submits a study under a TSCA section 4 testing consent agreement/order or a TSCA section 5 consent order to the extent the agreement, rule or order references this part; or

(3) A testing facility, if it both initiates and actually conducts the study.

Study means any experiment at one or more test sites, in which a test substance is studied in a test system under laboratory conditions or in the environment to determine or help predict its effects, metabolism, product performance (pesticide efficacy studies only as required by 40 CFR 158.640) environmental and chemical fate, persistence, or residue, or other characteristics in humans, other living organisms, or media. The term "study" does not include basic exploratory studies carried out to determine whether a test substance or a test method has any potential utility.

Study completion date means the date the final report is signed by the study director.

Study director means the individual responsible for the overall conduct of a study.

Study initiation date means the date the protocol is signed by the study director.

Test substance means a substance or mixture administered or added to a test system in a study, which substance or mixture:

(1) Is the subject of an application for a research or marketing permit supported by the study, or is the contemplated subject of such an application; or

(2) Is an ingredient, impurity, degradation product, metabolite, or radioactive isotope of a substance described by paragraph (1) of this definition, or some other substance related to a substance described by that paragraph, which is used in the study to assist in characterizing the toxicity, metabolism, or other characteristics of a substance described by that paragraph; or

(3) Is used to develop data to meet the requirements of a TSCA section 4 test rule and/or is developed under a TSCA section 4 testing consent agreement/order or TSCA section 5 consent order to the extent the agreement, rule, or order references this part.

Test system means any animal, plant, microorganism, chemical or physical matrix, including but not limited to soil, water or air, or subparts thereof, to which the test, control, or reference substance is administered or added for study. "Test system" also includes appropriate groups or components of the system not treated with the test, control, or reference substance.

Testing facility means a person who actually conducts a study, i.e., actually uses the test substance in a test system. Testing facility encompasses only those operational units that are being or have been used to conduct studies.

TSCA means the Toxic Substances Control Act (15 U.S.C., 2601 *et seq.*)

Vehicle means any agent which facilitates the mixture, dispersion, or solubilization of a test substance with a carrier (e.g., water, mineral oil, animal feed).

§ 806.10 Applicability to studies performed under grant and contracts.

When a sponsor or other person utilizes the services of a consulting laboratory, contractor, or grantee to perform all or a part of a study to which this part applies, that sponsor or person shall notify the consulting laboratory, contractor, or grantee, in writing, that the service is, or is part of, a study that must be conducted in compliance with the provisions of this part, prior to initiation of the study.

§ 806.12 Statement of compliance or non-compliance.

Any person who submits to EPA either an application for a research or marketing permit and who, in connection with the application, submits data from a study to which this part applies, or a test required by a test rule or testing consent agreement/order issued under section 4 or 5 of TSCA, shall include in the application or submission a true and correct statement, signed by the applicant, the sponsor, and the study director, of one of the following types:

(a) A statement that the study was conducted in accordance with this part.

(b) A statement describing in detail all differences between the practices used in the study and those required by this part.

(c) A statement that the person was not a sponsor of the study, did not conduct the study, and does not know whether the study was conducted in accordance with this part.

§ 806.15 Inspection of a testing facility.

(a) Testing facility management shall permit an authorized employee or duly designated representative of EPA or FDA, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies to which this part applies. The records inspection and copying requirements shall not apply to quality assurance unit records of findings and problems, or to actions recommended and taken, except that EPA may seek production of these records in litigation or formal adjudicatory hearings.

(b) EPA will not consider reliable for purposes of supporting an application for a research or marketing permit, or showing that a chemical substance or mixture does not present a risk of injury to health or the environment, any data developed by a testing facility or sponsor that refuses to permit inspection in accordance with this part. The determination that a study will not be considered in support of an application for a research or marketing permit or reliable for other purposes does not, however, relieve the applicant for such a permit or the sponsor of a required test of any obligation under any applicable statute or regulation to submit the results of the study to EPA.

(c) Because a testing facility is a place where chemicals are stored or held, it is subject to inspection under section 11 of TSCA.

§ 806.17 Effects of non-compliance.

(a)(1) EPA may refuse to consider reliable for purposes of supporting an application for a research or marketing permit any data from a study which was not conducted in accordance with this part.

(2) Submission of a statement required by § 806.12 which is false may form the basis for cancellation, suspension, or modification of the

research or marketing permit, or denial or disapproval of an application for such a permit, under FIFRA section 3, 4, 5, 6, 18, or 24 or FFDCA section 408 or 409, or for criminal prosecution under 18 U.S.C. 2 or 1001 or FIFRA section 14, or for imposition of civil penalties under FIFRA section 14.

(b)(1) The sponsor or any other person who is conducting or has conducted a test to fulfill the requirements of a test rule or testing consent agreement/order issued under section 4 or 5 of TSCA will be in violation of section 15 of TSCA if:

(i) The test is not being or was not conducted in accordance with any requirement of this part;

(ii) Data or information submitted to EPA under this part include information or data that are false or misleading, contain significant omissions, or otherwise do not fulfill the requirements of this part; or

(iii) Entry in accordance with § 806.15 for the purpose of auditing test data or inspecting test facilities is denied. Persons who violate the provisions of this part may be subject to civil or criminal penalties under section 16 of TSCA, legal action in United States District Court under section 17 of TSCA, or criminal prosecution under 18 U.S.C. 2 or 1001.

(2) EPA, at its discretion, may not consider reliable for purposes of showing that a chemical substance or mixture does not present a risk of injury to health or the environment any study which was not conducted in accordance with this part. EPA, at its discretion, may rely upon such studies for purposes of showing adverse effects. The determination that a study will not be considered reliable does not, however, relieve the sponsor of a required test of the obligation under any applicable statute or regulation to submit the results of the study to EPA.

(3) If data submitted to fulfill a requirement of a test rule or testing consent agreement/order issued under section 4 or 5 of TSCA are not developed in accordance with this part, EPA may determine that the sponsor has not fulfilled its obligations under section 4 or 5 of TSCA and may require the sponsor to develop data in accordance with the requirements of this part in order to satisfy such obligations.

Subpart B—Organization and Personnel

§ 806.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a study shall have the appropriate education, training, and experience, or a combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test systems and test, control, and reference substances.

(e) Personnel engaged in a study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical contamination of test systems and test, control, and reference substances.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the study shall be excluded from direct contact with test systems, test, control, and reference substances, and any other operation or function that may adversely affect the study until the health or medical condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a study.

§ 806.31 Testing facility management.

For each study, testing facility management shall:

(a) Designate a study director as described in § 806.33 before the study is initiated.

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

(c) Assure that there is a quality assurance unit as described in § 806.35.

(d) Assure that test, control, and reference substances or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.

(e) Assure that personnel, resources, facilities, equipment, materials and methodologies are available as scheduled.

(f) Assure that personnel clearly understand the functions they are to perform.

(g) Assure that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.

§ 806.33 Study director.

For each study, a scientist or other professional of appropriate education, training, and experience, or combination thereof, shall be identified as the study director. The study director has overall responsibility for the technical conduct of the study, as well as for the interpretation, analysis, documentation, and reporting of results, and represents the single point of study control. The study director shall assure that:

(a) The protocol, including any change, is approved as provided by § 806.120 and is followed.

(b) All experimental data, including observations of unanticipated responses of the test system are accurately recorded and verified.

(c) Unforeseen circumstances that may affect the quality and integrity of the study are noted when they occur, and corrective action is taken and documented.

(d) Test systems are as specified in the protocol.

(e) All applicable GLPS regulations are followed.

(f) All raw data, documentation, protocols, specimens, and final reports are transferred to the archives during or at the close or termination of the study.

§ 806.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study. The quality assurance unit shall conduct inspections and maintain records appropriate to the study.

(b) The quality assurance unit shall:

(l) Maintain a copy of a master schedule sheet of all studies conducted at the testing facility indexed to permit expedient retrieval, which identifies the test substance, the test system, nature of study, date study was initiated, current status of each study, date of completion or termination if study is not ongoing, identity of the sponsor, and name of the study director.

(2) Maintain copies of all protocols until study completion pertaining to all studies for which the unit is responsible.

(3) Inspect each study at intervals adequate to ensure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the

inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for reinspection. Any problems which are likely to affect study integrity found during the course of an inspection shall be brought to the attention of the study director and management immediately.

(4) Periodically submit to management and the study director written status reports on each study, noting any problems and the corrective actions taken.

(5) Determine that no deviations from approved protocols or standard operating procedures were made without proper authorization and documentation.

(6) Review the final study report to assure that such report accurately describes the methods and standard operating procedures, and that the reported results accurately reflect the raw data of the study.

(7) Prepare and sign a statement to be included with the final study report which shall specify the dates inspections were made and findings reported to management and to the study director.

(c) The responsibilities and procedures applicable to the quality assurance unit, the records maintained by the quality assurance unit, and the method of indexing such records shall be in writing and shall be maintained. These items including inspection dates, the study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection shall be made available for inspection to authorized employees or duly designated representatives of EPA or FDA.

(d) An authorized employee or a duly designated representative of EPA or FDA shall have access to the written procedures established for the inspection and may request testing facility management to certify that inspections are being implemented, performed, documented, and followed-up in accordance with this paragraph.

Subpart C—Facilities

§ 806.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of studies. Testing facilities which are not located within an indoor controlled environment shall be of suitable location to facilitate the proper conduct of studies. Testing facilities shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

§ 806.43 Test system care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or other test system areas, as needed, to ensure: proper separation of species or test systems, isolation of individual projects, quarantine or isolation of animals or other test systems, and routine or specialized housing of animals or other test systems.

(1) In tests with plants or aquatic animals, proper separation of species can be accomplished within a room or area by housing them separately in different chambers or aquaria. Separation of species is unnecessary where the protocol specifies the simultaneous exposure of two or more species in the same chamber, aquarium, or housing unit.

(2) Aquatic toxicity tests for individual projects shall be isolated to the extent necessary to prevent cross-contamination of different chemicals used in different tests.

(b) A testing facility shall have a number of animal rooms or other test system areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test, control, and reference substances known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory test system diseases. These areas shall provide effective isolation for the housing of test systems either known or suspected of being diseased, or of being carriers of disease, from other test systems.

(d) Facilities shall have proper provisions for collection and disposal of contaminated water, soil, or other spent materials. When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.

(e) Facilities shall have provisions to regulate environmental conditions (e.g., temperature, humidity, photoperiod) as specified in the protocol.

(f) For marine test organisms, an adequate supply of clean sea water or artificial sea water (prepared from deionized or distilled water and sea salt mixture) shall be available. The ranges of composition shall be as specified in the protocol.

(g) For freshwater organisms, an adequate supply of clean water of the appropriate hardness, pH, and temperature, and which is free of contaminants capable of interfering with the study, shall be available as specified in the protocol.

(h) For plants, an adequate supply of soil of the appropriate composition, as specified in the protocol, shall be available as needed.

§ 806.45 Test system supply facilities.

(a) There shall be storage areas, as needed, for feed, nutrients, soils, bedding, supplies, and equipment. Storage areas for feed nutrients, soils, and bedding shall be separated from areas where the test systems are located and shall be protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.

(b) When appropriate, plant supply facilities shall be provided. As specified in the protocol, these include:

(1) Facilities for holding, culturing, and maintaining algae and aquatic plants.

(2) Facilities for plant growth, including, but not limited to, greenhouses, growth chambers, light banks, and fields.

(c) When appropriate, facilities for aquatic animal tests shall be provided. These include, but are not limited to, aquaria, holding tanks, ponds, and ancillary equipment, as specified in the protocol.

§ 806.47 Facilities for handling test, control, and reference substances.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:

(1) Receipt and storage of the test, control, and reference substances.

(2) Mixing of the test, control, and reference substances with a carrier, e.g., feed.

(3) Storage of the test, control, and reference substance mixtures.

(b) Storage areas for test, control, and/or reference substance and for test, control, and/or reference mixtures shall be separate from areas housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the substances and mixtures.

§ 806.49 Laboratory operation areas.

Separate laboratory space and other space shall be provided, as needed, for the performance of the routine and

specialized procedures required by studies.

§ 806.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed or terminated studies.

Subpart D—Equipment

§ 806.61 Equipment design.

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

§ 806.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated, and/or standardized.

(b) The written standard operating procedures required under § 806.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person(s) responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, calibrating, and/or standardizing operations. These records, containing the date of the operations, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of nonroutine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.

(d) The integrity of data from computers, data processors, and automated laboratory procedures involved in the collection, generation, or measurement of data shall be ensured through appropriate validation processes, maintenance procedures, disaster recovery, and security measures.

Subpart E—Testing Facilities Operation

§ 806.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing setting forth study methods that management is satisfied are adequate to ensure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:

(1) Test system area preparation.

(2) Test system care.

(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test, control, and reference substances.

(4) Test system observations.

(5) Laboratory or other tests.

(6) Handling of test systems found moribund or dead during study.

(7) Necropsy of test systems or postmortem examination of test systems.

(8) Collection and identification of specimens.

(9) Histopathology.

(10) Data handling, storage, and retrieval.

(11) Maintenance and calibration of equipment.

(12) Transfer, proper placement, and identification of test systems.

(c) Each laboratory or other study area shall have immediately available manuals and standard operating procedures relative to the laboratory or field procedures being performed. Published literature may be used as a supplement to standard operating procedures.

(d) A historical file of standard operating procedures, and all revisions thereof, including the dates of such revisions, shall be maintained.

§ 806.83 Reagents and solutions.

All reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used. As an alternative to labeling wash bottles and transfer bottles with the expiration date, the testing facility may develop a well-documented performance standard to ensure that the reagents or solutions have not deteriorated or are outdated.

§ 806.90 Animal and other test system care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals and other test systems.

(b) All newly received test systems from outside sources shall be isolated and their health status or appropriateness for the study shall be evaluated. This evaluation shall be in accordance with acceptable veterinary medical practice or scientific methods.

(c) At the initiation of a study, test systems shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If during the course of the study, the test systems contract such a disease or condition, the diseased test systems should be isolated, if necessary. These test systems may be treated for disease or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorization of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

(d) Warm-blooded animals, adult reptiles, and adult terrestrial amphibians used in laboratory procedures that require manipulations and observations over an extended period of time or in studies that require these test systems to be removed from and returned to their test system-housing units for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification (e.g., tattoo, color code, ear tag, ear punch, etc.). All information needed to specifically identify each test system within the test system-housing unit shall appear on the outside of that unit. Suckling mammals and juvenile birds are excluded from the requirement of individual identification unless otherwise specified in the protocol.

(e) Except as specified in paragraph (e)(1) of this section, test systems of different species shall be housed in separate rooms when necessary. Test systems of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to test, control, or reference substances or test system mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.

(1) Plants, invertebrate animals, aquatic vertebrate animals, and organisms that may be used in multispecies tests need not be housed in

separate rooms, provided that they are adequately segregated to avoid mixup and cross contamination.

(2) [Reserved]

(f) Cages, racks, pens, enclosures, aquaria, holding tanks, ponds, growth chambers, and other holding, rearing and breeding areas, and accessory equipment, shall be cleaned and sanitized at appropriate intervals.

(g) Feed, soil, and water used for the test systems shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed, soil, or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.

(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.

(i) If any pest control or cleaning materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

(j) All plant and animal test systems shall be acclimatized to the environmental conditions of the test, prior to their use in a study.

Subpart F—Test, Control, and Reference Substances

§ 806.105 Test, control, and reference substance characterization.

(a) The identity, strength, purity, and composition, or other characteristics which will appropriately define the test, control, or reference substance shall be determined for each batch and shall be documented before its use in a study. Methods of synthesis, fabrication, or derivation of the test, control, or reference substance shall be documented by the sponsor or the testing facility, and the location of such documentation shall be specified.

(b) When relevant to the conduct of the study, the solubility of each test, control, or reference substance shall be determined by the testing facility or the sponsor before the experimental start date or concurrently according to written standard operating procedures, which provide for periodic analysis of each batch. The stability of the test, control, or reference substance shall be determined before the experimental start date or concurrently according to written standard operating procedures, which provide for periodic analysis of each batch.

(c) Each storage container for a test, control, or reference substance shall be labeled by name, Chemical Abstracts Service (CAS) registry number or code number, batch number, expiration date, if any, and storage conditions necessary to maintain the identity, strength, purity, and composition of the test, control, or reference substance. Storage containers shall be assigned to a particular test substance for the duration of the study. With the study director's written approval, test substance storage containers need not be retained after use, provided that full documentation of the disposition of the containers is maintained as raw data for the study. This documentation shall include:

(1)(i) Information of shipments pertaining to each container leaving the storage site (examples of such records are shipping request records, bills of lading, carrier bills, and monthly inventories of warehouse activity).

(ii) Test substance receipt records at each testing facility.

(iii) Complete use logs of material taken from containers.

(iv) A record of the final destination of the container, including the place and date of disposal or reclaiming, and any appropriate receipts.

(2) An inventory record of empty containers before disposal, including sufficient information to uniquely identify containers, maintained in an up-to-date manner recording all arrivals of empty containers and their disposal. This record shall be maintained as raw data for this study.

(3) Locations of facilities; where test substance is stored; where empty containers are stored prior to disposal; where records of use, shipment, and disposal of containers are maintained; and where the test substance is used in studies (i.e., testing facility).

(d) For studies of more than 4 weeks from the experimental start to completion dates, reserve samples from each batch of test, control, and reference substances shall be retained for the period of time provided by §. 806.195.

(e) The stability of test, control, and reference substances under storage conditions at the test site shall be known for all studies.

§ 806.107 Test, control, and reference substance handling.

Procedures shall be established for a system for the handling of the test, control, and reference substances to ensure that:

(a) There is proper storage.

(b) Distribution is made in a manner designed to preclude the possibility of contamination, deterioration, or damage.

(c) Proper identification is maintained throughout the distribution process.

(d) The receipt and distribution of each batch is documented. Such documentation shall include the date and quantity of each batch distributed or returned.

§ 806.113 Mixtures of substances with carriers.

(a) For each test, control, or reference substance that is mixed with a carrier, tests by appropriate analytical methods shall be conducted:

(1) To determine the uniformity of the mixture and to determine, periodically, the concentration of the test, control, or reference substance in the mixture.

(2) When relevant to the conduct of the study, to determine the solubility of each test, control, or reference substance in the mixture; or if the solubility of the substance is difficult to determine, appropriate homogeneity data, by the testing facility or the sponsor before the experimental start date.

(3) To determine the stability of the test, control, or reference substance in the mixture before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(b) Tank mixes prepared for application to soil or plants by typical agricultural practices within a 12-hour period between preparation and application, and solutions prepared for immediate administration in mammalian acute toxicology studies, metabolism studies, or mutagenicity studies, are exempt from requirements for concentration determinations (but not from uniformity determinations) under paragraph (a)(1) of this section and are exempt from requirements for solubility determinations under paragraph (a)(2) of this section.

(c) Where any of the components of the test, control, or reference substance carrier mixture has an expiration date, that date shall be clearly shown on the container. If more than one component has an expiration date, the earliest date shall be shown.

(d) If a vehicle is used to facilitate the mixing of a test substance with a carrier, assurance shall be provided that the vehicle does not interfere with the integrity of the test.

Subpart G—Protocol for and Conduct of a Study

§ 806.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain but shall not necessarily be limited to the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test, control, and reference substance by name, Chemical Abstracts Service (CAS) registry number or code number. When a reference substance for a metabolite cannot be identified prior to the beginning of a study (only in the case of metabolism studies), it is not necessary to identify the substance in the protocol. However, a statement must be included that the identity of the reference substance will be determined during the course of the study and maintained as raw data.

(3) The name and address of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The proposed experimental start and termination dates.

(5) Justification for selection of the test system.

(6) Where applicable, the number, body weight range, sex, source of supply, species, strain, substrain, and age of the test system.

(7) The procedure for identification of the test system.

(8) A description of the experimental design, including methods for the control of bias.

(9) Where applicable, a description and/or identification of the diet used in the study as well as solvents, emulsifiers and/or other materials used to solubilize or suspend the test, control, or reference substances before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.

(10) The route of administration and the reason for its choice.

(11) Each dosage level, expressed in milligrams per kilogram of body or test system weight or other appropriate units, of the test, control, or reference substance to be administered and the method and frequency of administration.

(12) The type and frequency of tests, analyses, and measurements to be made.

(13) The records to be maintained.

(14) The date of approval of the protocol by the sponsor and the dated signature of the study director.

(15) A statement of the statistical method to be used.

(b) All changes in or revisions of an approved protocol and the reasons therefore shall be documented, signed by the study director, dated, and maintained with the protocol.

(c) Discontinued studies or studies otherwise terminated before completion shall be finalized by writing a protocol amendment providing the reason(s) for termination. All documentation for terminated studies including the protocol, protocol amendment(s), and raw data, if collected, shall be retained as provided at § 806.195.

§ 806.130 Conduct of a study.

(a) The study shall be conducted in accordance with the protocol.

(b) The test systems shall be monitored in conformity with the protocol.

(c) Specimens shall be identified by test system, study, nature, and date of collection. This information shall be located on the specimen container or shall accompany the specimen in a manner that precludes error in the recording and storage of data.

(d) In animal studies where histopathology is required, records of gross findings for a specimen from postmortem observations shall be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the day of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

§ 806.135 Physical and chemical characterization studies.

(a) All provisions of the GLPS shall apply to physical and chemical characterization studies designed to determine stability, solubility, octanol water partition coefficient, volatility, and persistence (such as biodegradation, photodegradation, and chemical degradation studies) of test, control, or reference substances.

(b) The following GLPS shall not apply to studies, other than those designated in paragraph (a) of this section, designed to determine physical and chemical characteristics of a test, control, or reference substance: §§ 806.31(c), (d), and (g), 806.35(b) and (c), 806.43, 806.45, 806.47, 806.49, 806.81(b)(1), (2), (6) through (9), and (12), 806.90, 806.105(a) through (d), 806.113, 806.120(a)(5) through (12), and (15), 806.185(a)(5) through (8), (10), (12), and (14), and 806.195(c) and (d).

Subparts H and I—[Reserved]

Subpart J—Records and Reports

§ 806.185 Reporting of study results.

(a) With the exception of discontinued or otherwise terminated studies, as provided at § 806.120(c), a final report shall be prepared for each study and shall include, but not necessarily be limited to, the following:

(1) Name and address of the facility performing the study and the dates on which the study was initiated and was completed.

(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(3) Statistical methods employed for analyzing the data.

(4) The test, control, and reference substances identified by name, Chemical Abstracts Service (CAS) registry number or code number, strength, purity, and composition, or other appropriate characteristics.

(5) Stability and, when relevant to the conduct of the study, solubility of the test, control, and reference substances under the conditions of administration.

(6) A description of the methods used.

(7) A description of the test system used. Where applicable, the final report shall include the number of animals used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification. For other test organisms (plants, bacteria), similarly detailed descriptions of the test system are required.

(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in § 806.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible. Modification of a final report to comply with the submission requirements of EPA does not constitute a correction, addition, or amendment to a final report.

(d) A copy of the final report and of any amendment to it shall be maintained by the sponsor and the test facility.

§ 806.190 Storage and retrieval of records and data.

(a) All raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study shall be retained. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. Correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report, also shall be retained.

(b) There shall be archives for orderly storage and expedient retrieval of all raw data, documentation, protocols, specimens, and interim and final reports. Conditions of storage shall minimize deterioration of the documents or specimens in accordance with the requirements for the time period of their retention and the nature of the documents of specimens. A testing facility may contract with commercial archives to provide a repository for all material to be retained. Raw data and specimens may be retained elsewhere provided that the archives have specific reference to those other locations.

(c) An individual shall be identified as responsible for the archives.

(d) Only authorized personnel shall enter the archives.

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

§ 806.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this subchapter.

(b) Except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for:

(1) In the case of applicability under § 806.1(a), whichever of the following periods is longest:

(i) In the case of any study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor or any successor(s) hold(s) any research or marketing permit to which the study is pertinent.

(ii) A period of at least 5 years following the date on which the results of the study are submitted to EPA in support of an application for a research or marketing permit.

(iii) In other situations (e.g., where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(2) In the case of applicability under § 806.1(b):

(i) In the case of a study required to be conducted under TSCA section 4 or section 5, except for those items listed in paragraph (c) of this section, all documentation, records, raw data, and specimens pertaining to that study and required to be retained by this part shall be retained in the archive(s) for a period of at least 5 years following the date on which the final report of that required study is submitted to EPA.

(ii) [Reserved]

(c) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. In no case shall retention be required for longer periods than those set forth in paragraph (b) of this section.

(d) The master schedule sheet, copies of protocols, and records of quality assurance inspections, as required by § 806.35(c) shall be maintained by the quality assurance unit as an easily accessible system of records for the period of time specified in paragraph (b) of this section.

(e) Summaries of training and experience and job descriptions required to be maintained by § 806.29(b) may be retained along with all other testing facility employment records for the length of time specified in paragraph (b) of this section.

(f) Records and reports of the maintenance and calibration and inspection of equipment, as required by § 806.63(b) and (c), shall be retained for the length of time specified in paragraph (b) of this section.

(g) If a facility conducting testing or an archive contracting facility goes out of business, all raw data, documentation, and other material specified in this section shall be transferred to the archives of the sponsor of the study. EPA shall be notified in writing of such a transfer.

(h) Specimens, samples, or other non-documentary materials need not be retained after EPA has notified in writing the sponsor or testing facility holding the materials that retention is no longer required by EPA. Such notification normally will be furnished upon request after EPA or FDA has completed an audit of the particular study to which the materials relate and EPA has concluded that the study was conducted in accordance with this part.

(i) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

[FR Doc. 99–33831 Filed 12–28–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99–363; FCC 99–406]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement certain aspects of the

Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the new legislation requires broadcasters, until the year 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors ("MVPDs") with respect to their retransmission of the broadcasters" signals, and prohibits broadcasters from entering into exclusive retransmission agreements. We seek comment on these issues. This document also seeks comment on the adoption of implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent to satellite carriers and other MVPDs.

DATES: Comments by the public on the Exclusivity and Good Faith Negotiation Sections are due January 12, 2000; reply comments are due January 19, 2000. Comments on Retransmission Consent Election Process and Administrative Matters are due February 1, 2000; reply comments are due February 20, 2000. Written comments by the public on the proposed information collections relating to the entire Notice are due February 1, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before February 28, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Steve Broeckaert at (202) 418–7200 or via internet at sbroecka@fcc.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 99–406, adopted December 21, 1999; released December 22, 1999. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at http://www.fcc.gov/csb/

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking ("*Notice*"), we seek comment on our implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999 ("1999 SHVIA"), which was enacted on November 29, 1999. This act authorizes satellite carriers to add more local and national broadcast programming to their offerings, and to make that programming available to subscribers who previously have been prohibited from receiving broadcast fare via satellite under compulsory licensing provisions of the copyright law. The legislation generally seeks to place satellite carriers on an equal footing with local cable operators when it comes to the availability of broadcast programming, and thus give consumers more and better choices in selecting a multichannel video program distributor ("MVPD"). We intend to implement the 1999 SHVIA aggressively to ensure that the pro-competitive goals underlying this important legislation are realized.

2. Among other things, the new legislation requires broadcasters, until 2006, to negotiate in good faith with satellite carriers and other MVPDs with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. We are initiating, and plan to conclude, this rulemaking well ahead of our statutory deadlines for doing so because of the vital importance of these provisions of the 1999 SHVIA. Strict adherence by broadcasters to the good faith requirement is crucial if the statutory objectives are to be fulfilled. This *Notice* also seeks comment on the adoption of implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent. Retransmission consent is the process whereby television broadcasters negotiate and consent to carriage of their signals by MVPDs such as cable television operators and satellite carriers.

II. Retransmission Consent

3. The Commission, in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("*Broadcast Signal Carriage Order*") (58 FR 17350), implemented the retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). The 1992 Cable Act amended section 325 of the Communications Act of 1934 by adding provisions governing retransmission of broadcast signals by cable systems and other MVPDs. Section 325 of the 1992 Cable Act provided that television broadcast stations were required to make an election every three years whether to proceed under the mandatory cable signal carriage rules or to govern their relationship with cable operators or other MVPDs by electing retransmission consent. Congress indicated that the retransmission consent and must-carry rule election provisions adopted pursuant to the 1992 Cable Act provide a model for implementation of the retransmission consent election provisions of the 1999 SHVIA.

Retransmission Consent and the Election Process

4. Section 1009 of the 1999 SHVIA amends section 325(b)(1) and provides that no cable system or other MVPD shall transmit the signal of a broadcasting station, or any part thereof, except: (A) with the express authority of the originating station; (B) pursuant to section 614, in the case of a station electing to assert the right to carriage by a cable operator; or (C) pursuant to section 338, in the case of a station electing to assert the right to carriage by a satellite carrier. Thereafter, the 1999 SHVIA provides that every three years television stations covered by 325(b) are required to elect retransmission consent pursuant to section 325 or must-carry pursuant to sections 614 or 338.

5. Amended section 325(b)(2) provides five exceptions to the retransmission consent requirement of section 325(b)(1). The amendment provides that the retransmission consent requirement does not apply to: (1) noncommercial television broadcast stations; (2) retransmission, in certain circumstances, of the signal of a superstation outside the station's local market by a satellite carrier; (3) until December 31, 2004, retransmission of signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal is located in an area outside the local market of such station and resides in an unserved household; (4) retransmission, in certain circumstances, by a cable operator or other MVPD other than a satellite carrier of the signal of a superstation outside the station's local market; and (5) during

the six month period following the date of enactment of the 1999 SHVIA, the retransmission of the signal of a television broadcast station within the station's local market by a satellite carrier directly to its subscribers. In other words, subject to the limitations set forth therein, MVPDs, including satellite carriers, may freely transmit the signals of any of the broadcasters satisfying the criteria set forth in section 325(b)(2) without obtaining retransmission consent from such broadcasters.

6. Section 325(b)(3)(C) directs the Commission, within 45 days after the date of enactment of the 1999 SHVIA, to commence a rulemaking to administer the limitations contained in section 325(b)(2). At the outset, we note that this *Notice* relates to retransmission consent only. The exercise of must carry rights by broadcasters with regard to satellite carriers does not commence until January 1, 2002 and will be addressed in a subsequent Notice and Rulemaking proceeding. As part of that proceeding, we will seek comment on any necessary or prudent revisions to our retransmission consent rules as a result of the initiation of satellite must carry.

7. The Commission was directed by Congress to undertake a rulemaking to implement a substantially similar provision of the 1992 Cable Act. In the *Broadcast Signal Carriage Order*, the Commission adopted such regulations. The rules implementing this provision are codified at 47 CFR 76.64. We seek comment on the appropriate manner to implement the provisions of amended section 325(b)(2). In particular, we seek comment on whether the amended provisions should be incorporated into existing 47 CFR 76.64, or whether some other regulatory framework or procedures would more appropriately implement amended section 325(b)(2). We also seek comment on any other issues relevant to the implementation of section 325(b)(2). In addition, we note that, although the statute is entitled the *Satellite* Home Viewer Improvement Act, some of the amendments Congress enacted to section 325 appear to have general impact upon the retransmission consent provisions as applied to all MVPDs. We tentatively conclude that such was Congress' intent and seek comment on this tentative conclusion.

8. Congress also amended section 325(b) by adding new paragraph (3)(C)(i), which requires the Commission to adopt regulations which shall "establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph. * * *" Commission adopted the required regulations in the *Broadcast Signal Carriage Order*. The regulations are codified in 47 CFR 76.64.

9. We seek comment on the appropriate manner to implement section 325(b)(3)(C)(i). In particular we seek comment on whether, following an initial election period applicable only to satellite carriers, the Commission should merely incorporate the satellite carrier must carry-retransmission consent election cycle into the Commission's regulations, employing the same rules and procedures the Commission adopted in response to the 1992 Cable Act. In the alternative, we seek comment on whether a different election cycle with different procedures is required to appropriately implement section 325(b)(3)(C)(i) and what the effect would be of having different procedures in the cable and satellite contexts. In this regard, we seek comment on any statutory, regulatory or technical differences between satellite carriers and other MVPDs that would justify a different election scheme. 47 CFR 76.64(g) requires that broadcasters make consistent must carry-retransmission consent elections where the franchise areas of cable systems overlap. We seek comment on the consistent election requirement and how it would be implemented, if at all, in the context of any election cycle in which satellite carriers participate. We also seek comment on any other issues relevant to the implementation of section 325(b)(3)(C)(i).

III. Exclusivity and Good Faith Negotiation

A. Good Faith Negotiation Requirement

10. Congress further amended section 325(b) of the Communications Act, requiring the Commission to adopt regulations that shall:

> * * * until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from * * * failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.

The Joint Explanatory Statement of the Committee of Conference ("Conference Report") does not explain or clarify the statutory language and merely states that:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from * * * refusing to negotiate in good faith regarding retransmission consent agreements. A television station may generally offer different retransmission consent terms or conditions, including price terms, to different distributors. The [Commission] may determine that such different terms represent a failure to negotiate in good faith only if they are not based on competitive marketplace considerations.

Accordingly, we seek comment on the good faith negotiation requirement of section 325(b)(3)(C).

11. Congress did not expressly define the term "good faith" in the statutory language or the legislative history other than to instruct that retransmission consent agreements containing different terms and conditions, including price terms, with different video programming distributors do not reflect a failure to negotiate in good faith on behalf of the television broadcast station if such different terms and conditions are based on competitive marketplace conditions. While Congress did not expressly define what constitutes good faith under section 325(b)(3)(C), Congress has signaled its intention to impose some heightened duty of negotiation on broadcasters in the retransmission consent process. We seek to fulfill Congress' intent by adopting substantive and procedural rules that are clear and subject to swift and effective enforcement. We therefore seek comment on the criteria that should be employed to define "good faith." We also seek comment on whether the duty of good faith negotiation applies equally to the MVPD negotiating a retransmission consent agreement. We seek comment on whether we need to explicitly define what constitutes good faith under section 325(b)(3)(C). The Uniform Commercial Code ("UCC") defines the term "good faith" as "honesty in fact in the conduct of the transaction concerned." In addition, Black's Law Dictionary defines good faith as "an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage * * *" We seek comment on whether to adopt either of these definitions, or some other explicit definition of the term good faith.

12. We note that, in other contexts within both the Communications Act and other Federal laws, Congress has imposed a good faith negotiation requirement upon parties subject to a federal statutory scheme. For example, section 8(d) of the Taft-Hartley Act details the collective bargaining duty of

both employers and employees, providing that:

> To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment * * * but such obligation does not compel either party to agree to a proposal or require the making of a concession.
>
> In determining good faith under section 8(d), the National Labor Relations Board ("NLRB") and the courts apply two independent tests to see whether a party has acted in good faith during collective bargaining. In one test, the NLRB applies an objective set of criteria to determine whether a party has violated one or more enumerated *per se* violations of the duty to negotiate in good faith. In the second test, the NLRB subjectively examines the "totality of the circumstances" evidencing a party's behavior during negotiations to determine whether the duty to negotiate in good faith has been violated. The objective test allows the NLRB to single out specific recurring or particularly damaging behavior. On the other hand, the subjective test allows the NLRB to punish behavior that would not by itself constitute a *per se* violation, but when examined along with other suspect behavior constitutes a violation of the duty to negotiate in good faith.

13. Congress imposed a good faith negotiation requirement upon common carriers as part of the Telecommunications Act of 1996 ("1996 Act"). Section 251(c)(1) of the Communications Act imposes on incumbent local exchange carriers ("ILECs"):

> The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

In implementing section 251(c)(1), the Commission adopted a two-part test to determine good faith similar to that used by the NLRB. Reasoning that it would be futile to try to determine in advance every possible action that might be inconsistent with the duty to negotiate in good faith, the Commission found that it was appropriate to identify factors or practices that may be evidence of failure to negotiate in good faith, but that need to be considered in light of all relevant circumstances. The Commission adopted a list of eight specific actions or practices that, among other unenumerated actions or practices to be determined on a case-by-case basis, violate the section 251(c)(1) duty to negotiate in good faith.

14. We seek comment on whether to adopt a two-part objective-subjective test for good faith similar to that embraced by the NLRB and by the Commission pursuant to section 251 of the Communications Act. In this regard, we seek comment on specific actions or practices which would constitute a *per se* violation of the duty to negotiate in good faith in accordance with section 325(b)(3)(C). Establishing a specific list of *per se* requirements or prohibitions would lend clarity to, and thus expedite, the negotiation process and would do likewise with respect to our enforcement mechanism, where enforcement became necessary. In addition to any other actions or practices, we ask commenters to address whether it would be appropriate to include in any such list provisions similar to the *per se* violations set forth in 47 CFR 51.301. Although the 47 CFR 51.301 process provides a basis for comment in this proceeding, we emphasize that the good faith standard of SHVIA is different in significant respects. We also seek comment on any other specific legal precedent upon which we should rely and any other regulatory approach that might appropriately implement the good faith negotiation requirement of section 325(b)(3)(C) of the Communications Act.

15. Section 325(b)(3)(C) permits television broadcast stations to negotiate in good faith retransmission consent agreements with different MVPDs with different terms and conditions, including price terms, provided that such different terms and conditions are based upon "competitive marketplace considerations." We seek comment on what constitutes a competitive marketplace consideration. We seek to define the term as specifically as possible in this rulemaking, rather than to adopt a general standard to be fleshed out in subsequent adjudication. While we will resolve each case on its own merits, adding specification to our rules should add certainty to the negotiation process and reduce the number of cases presented to the Commission for adjudication. We note that the Commission has adopted non-discrimination standards in both the program access and open video system contexts. We seek comment on the relevance, if any, of these standards to what constitutes a "competitive marketplace consideration." We seek comment on the scope of the relevant marketplace to which Congress refers. In addition, we seek comment on any other factors or approaches to determining what constitutes competitive marketplace considerations under section 325(b)(3)(C). In this regard, we note that the Commission has recently relaxed the television broadcast ownership rules, in certain circumstances, permitting companies to own two television broadcast stations within a given market. We seek comment on this development and its impact upon a broadcaster's duty to negotiate in good faith. For example, can companies with two broadcast stations within the same market negotiate a joint retransmission consent agreement or should they be required to negotiate separate arms-length retransmission consent agreements on behalf of each station?

16. The Commission is aware that direct broadcast satellite providers have entered into retransmission consent agreements with television broadcast stations that predate enactment of section 325(b)(3)(C). In addition, we note that we are also aware of agreements that have been executed since the enactment of the 1999 SHVIA. We seek comment on the impact on these agreements of the duty to negotiate in good faith.

B. Prohibition of Exclusive Retransmission Consent

17. Section 325(b) of the Communications Act also directs the Commission to commence a rulemaking proceeding that shall:

> until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts * * *

The accompanying Conference Report contains no language to clarify or explain the prohibition, stating only:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from entering into an exclusive retransmission consent agreement with a multichannel video programming distributor * * *

18. The Commission established a similar prohibition in rulemakings following passage of the 1992 Cable Act. The 1992 Cable Act called upon the Commission to "establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent * * *" In the *Broadcast Signal Carriage Order*, the Commission recognized that "exclusivity can be an efficient form of distribution, but, in view of the concerns that led Congress to regulate program access and signal carriage arrangements, we believe that it is appropriate to extend the same nonexclusivity safeguards to non-cable multichannel distributors with respect to television broadcast signals, at least initially." The Commission established

the following prohibition on exclusive retransmission contracts:

> Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make an agreement with one multichannel distributor for carriage, to the exclusion of other multichannel distributors.

19. Section 325(b)(3)(C)(ii) requires us to "until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts." We seek comment on what activities would constitute "engaging in" exclusive retransmission agreements. We note that section 325(b)(3)(C)(ii) prohibits a broadcaster from "engaging in" exclusive retransmission consent agreements, while the Conference Report describes the prohibition of "entering into" exclusive retransmission consent agreements. While the phrase "engaging in" could be interpreted to suggest a currently effective exclusive relationship, it would appear to allow television broadcast stations to negotiate future exclusive contracts that would take effect on or after January 1, 2006. We seek comment on whether the statute allows negotiation and execution of such agreements before January 1, 2006. We also note the distinction between the phrases "engaging in" and "entering into." While the statutory phrase "engaging in" seems to indicate not only the act of entering into a contract, but also the acts necessary to performance of a contract, the phrase "entering into" seems to indicate only the process of negotiating and formalizing a contract. We seek comment on the significance, if any, of the Conference Report's use of the phrase "entering into."

20. The Conference Report states that the prohibition applies to "an exclusive retransmission consent agreement with a multichannel video programming distributor" until January 1, 2006. On its face, this provision would seem to sunset any prohibition on exclusive retransmission consent contracts for all multichannel video program distributors. Under this reading of the statute, the Commission's rule prohibiting exclusive retransmission consent agreements for cable operators would be deemed abrogated as of January 1, 2006. We seek comment on whether this was Congress' intent in enacting section 325(b)(3)(C)(ii). In addition, we seek comment regarding what public interest concerns are involved in such a sunset. Section 325(b)(3)(C)(ii) appears to have immediate effect. We seek comment on the existence of exclusive satellite carrier retransmission consent agreements that either predate the enactment of the 1999 SHVIA or under the Commission's rules implementing section 325(b)(3)(C)(ii). Assuming any such agreements exist, we seek comment on what, if anything, the Commission should do about them.

21. We seek comment on what evidence should be required to demonstrate the existence of an exclusive contract in violation of section 325(b)(3)(C)(ii). Presumably, if companies are engaged in an exclusive contractual relationship, they are in violation of the statute's prohibitions. However, there is no mechanism for determining whether such exclusive contracts exist. As such, it may be difficult for a MVPD not party to an exclusive retransmission consent agreement to determine whether one exists. We seek comment on approaches to establishing the existence of an exclusive retransmission consent agreement.

C. Procedural Issues

22. In directing the Commission to adopt regulations which, until January 1, 2006, prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements, Congress did not indicate what procedures the Commission should employ to enforce these provisions. We seek comment on what procedures the Commission should employ to enforce the provisions adopted pursuant to section 325(b)(3)(C). Our goal is swift and certain enforcement of the rules that Congress has directed us to adopt to further the pro-competitive goals of the 1999 SHVIA. Commenters should state whether the same set of enforcement procedures should apply to both the exclusivity prohibition and the good faith negotiation requirement, or whether the Commission should adopt different procedures tailored to each prohibition. We seek comment regarding whether special relief procedures of the type found in 47 CFR 76.7 which provides an appropriate framework for addressing issues arising under section 325(b)(3)(C). We seek comment on whether expedited procedures are necessary to the appropriate resolution of either exclusivity or good faith proceedings. We seek comment on whether there are circumstances in which the use of alternative dispute resolution services would assist in determining whether a television broadcast station negotiated in good faith as defined by section 325(b)(3)(C)(ii) and the Commission's rules adopted thereunder.

23. We also seek comment on how the burden of proof should be allocated. In this regard, we seek comment on whether the burden should rest with the complaining party until it has made a *prima facie* showing and then shift to the defending party. Under this approach, we seek comment on what would constitute a *prima facie* showing sufficient to shift the burden to the defending party.

24. Section 325(b)(3)(C) directs that the regulations adopted by the Commission prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements "until January 1, 2006." We seek comment on whether the Commission's rules regarding exclusive carriage agreements and good faith negotiation should automatically sunset on this date. We seek comment on whether any sunset of regulations should apply to television broadcast stations negotiations with all MVPDs or solely to negotiations with satellite programming distributors. We also seek comment on what, if anything, is the Commission's role with regard to these issues after January 1, 2006.

IV. Administrative Matters

A. Initial Regulatory Flexibility Act Statement

25. The initial regulatory flexibility analysis is attached to this order as Appendix A.

B. Ex Parte Rules

26. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under 47 CFR 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

C. Filing of Comments and Reply Comments

27. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing

paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form<your e-mail address." A sample form and directions will be sent in reply.

28. Written comments by the public on the proposed information collections are due February 1, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 28, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

29. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Cable Services Bureau contact for this proceeding is Steven Broeckaert at (202) 418–7200, TTY (202) 418–7172, or at sbroecka@fcc.gov.

30. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Steven Broeckaert, Cable Services Bureau, 445 12th Street N.W., Room 4–A802, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case [CS Docket No. 99–363]), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues.

Type of Review: New collection or revision of existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: Television broadcast licensees and MVPDs—11,588.

Estimated Time Per Response: 11.196 hours.

Total Annual Burden: 1,297,492.

Cost to Respondents: $13,000.

Needs and Uses: Congress directed the Commission to adopt regulations related to retransmission consent pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. Retransmission consent is the process whereby television broadcasters negotiate and consent to carriage of their signals by MVPDs. Television broadcasters will be required to make an election and make status information available for public review. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Appendix A

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the possible policies and rules that would result from this Notice of Proposed Rulemaking ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in paragraph 31. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

2. *Need for, and Objectives of, the Proposed Rules.* Section 325(b)(3)(C), of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 325, directed the Commission, within 45 days of enactment of the Satellite Home Viewer Improvement Act of 1999, "to commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent." These provisions concern retransmission consent in connection with transmission of television broadcast station signals by multichannel video programming distributors ("MVPDs").

3. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 325, 338, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 325, 338, and 534.

4. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.

Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we may adopt as a result of the Notice will affect television station licensees, cable operators, and other MVPDs.

5. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the Nation as of May 31, 1998.

6. Thus, the proposed rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

7. In addition to owners of operating television stations, any entity that seeks or desires to obtain a television broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown. We invite comment as to such number.

8. *Small MVPDs:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below services individually to provide a more precise estimate of small entities.

9. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules emanating out of the Notice.

10. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

11. *Open Video System ("OVS"):* The Commission has certified eleven OVS operators. Of these eleven, only two are providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

12. *Multichannel Multipoint Distribution Service ("MMDS"):* The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the proceeding three calendar years. This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.

13. The Commission completed its MMDS auction in March, 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

14. *DBS:* There are four licenses of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

15. *HSD:* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

16. According to the most recently available information, there are approximately 30 program packages nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packages may be substantially smaller.

17. *SMATVs:* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million

residential subscribers as of September, 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

18. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* In order to implement the Satellite Home Viewer Improvement Act of 1999, the Commission has proposed to add new rules and modify others. We have yet to determine whether to amend existing provisions of the Commission's rules, or to adopt some other regulatory framework or procedures concerning retransmission consent. There are certain compliance requirements involving the retransmission consent agreement process. Foremost is that entities most likely will have to participate in a negotiation process. There may be costs relating to the time and effort involved in discussions, in crafting, and possibly in achieving an agreement. In certain circumstances, there may be costs associated with hiring accounting or engineering personnel, as there may be instances where entities may have to provide detailed information relating to such aspects of their particular operations. Conversely, research may have to be conducted and information may have to be obtained on other entities' operations. All such data may be key to a negotiation and a retransmission consent agreement.

19. In terms of recordkeeping, entities most likely will have to keep a record of their election status and entities may be required to maintain such information within their business environment and may also have to file such information with the Commission. As discussed in the Notice, however, it is unclear what records or recordkeeping would be required of entities relating to the good faith negotiation and exclusive carriage aspects of a retransmission consent agreement. At this time, small businesses might not be impacted differently, but we seek comment on these and the above matters.

20. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

21. As indicated above, the Notice proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, the new legislation requires television broadcasters, until 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors ("MVPDs") with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. This document also discusses implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent to satellite carriers and other MVPDs.

22. This legislation applies to small entities and large entities equally. However, in terms of the election process, in the Notice we specifically ask whether there are any statutory, regulatory, or technical differences between any of the MVPDs that would justify different election schemes. The Commission acknowledges that consideration should be given to possible differences in services. There may be established a different election process timetable or compliance requirement, and also possibly a different filing requirement, among the different MVPDs. In the Notice, however, the possible distinction in treatment was not related to the size of the entity. At this time, small entities are not treated differently and might not be impacted differently, but we seek comment.

23. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

[FR Doc. 99–33764 Filed 12–28–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Delisting of the Douglas County Population of the Columbian White-Tailed Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice of the reopening of the comment period for the proposed delisting of the Douglas County, Oregon population of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*). The comment period has been reopened in order to provide the three independent peer reviewers an opportunity to review previous public comments, and any additional public comments, on the proposed rule.

DATES: Comments from all interested parties must be received by January 13, 2000.

ADDRESSES: Written comments, materials, data, and reports concerning this proposal should be sent to the Supervisor, U.S. Fish and Wildlife Service, Southwest Oregon Field Office, 2900 NW Stewart Parkway, Roseburg, Oregon 97470. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: David Peterson, at the address listed above (telephone 541/957–3474; facsimile 541/957–3475).

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer (*Odocoileus virginianus leucurus)* resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lbs) for females and 52 to 68 kg (115 to 150 lbs) for males. Generally a red-brown color in summer, and gray in winter, the species has white rings around the eyes and a white ring just behind the nose. Its tail is long and triangular in shape, and is brown on the dorsal (upper) surface, fringed in white, and the ventral (under) portion is white (Oregon Department of Fish and Wildlife (ODFW) 1995). The species was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936). It is the westernmost representative of the 38 subspecies of white-tailed deer. Early accounts suggested this deer was locally common, particularly in riparian areas along the major rivers (Gavin 1978). The decline in deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys. Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1984). Only a small herd of 200 to 400 animals in the lower Columbia River area of Clatsop and Columbia Counties, Oregon, and Cowlitz and Wahkiakum Counties, Washington, and a disjunct population of unknown size in Douglas County,

Oregon, survived. These two remnant populations are geographically separated by about 320 kilometers (km) (200 miles (mi)) of unsuitable or discontinuous habitat.

Population declines led to classification of this subspecies as endangered in 1967 under the Endangered Species Protection Act of 1966 (32 FR 4001). The subspecies was automatically included in the lists of threatened and endangered species when the Endangered Species Act was authorized in 1973 (16 U.S. C. 1531 *et seq.*). Prior to 1977, only the Columbia River population was listed as endangered since the Douglas County population was considered a black-tailed deer (*Odocoileus hemionus columbiana*) or a hybrid between the black-tailed deer and the Columbian white-tailed deer by the State of Oregon. In 1978, the State of Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer and prohibited hunting of white-tailed deer in that county (ODFW 1995). The Columbian White-tailed Deer Recovery Plan (Recovery Plan) was approved by us in 1976, and a revised version was approved in 1983 (Service 1983). Because of the distance between the Douglas County and Columbia River populations, and differences in habitats and threats, the Recovery Plan addresses the recovery of these two populations separately.

Crews (1939) estimated the population in the 1930s in Douglas County at 200 to 300 individuals within a range of about 78 square kilometers (sq km) (30 square miles (sq mi)). In 1970, ODFW estimated that 450 to 500 deer were present. By 1983, the number had increased to about 2,500 (Smith 1985). The population has continued to grow, and are presently estimated to be between 5,900 to 7,900 deer (ODFW 1999).

Along with this increase in numbers, the range also has expanded. The deer have expanded to the north and west in the last 10 years, and now occupy an area of approximately 800 sq km (308 sq mi) (ODFW 1995).

Most habitat for the Douglas County population is on private lands. Approximately 3,880 hectares (ha) (9,586 acres (ac)) of suitable habitat are presently considered secure on Federal, County and private lands. For the purpose of delisting, habitat is considered secure if it is protected by legally binding measures or law from adverse human activities for the foreseeable future.

The current total population size is estimated as approximately six times the population size required for downlisting, which greatly reduces the risk to the population. It is also anticipated that as habitat management and restoration activities are implemented by the Bureau of Land Management, which contains the majority of secure lands, the carrying capacity and numbers of deer on these lands will increase accordingly. The Douglas County population has met the objectives in the Recovery Plan, and greatly exceeded the habitat objectives.

We published a proposed rule to delist the Columbian white-tailed deer on May 11, 1999 (64 FR 25263). The original comment period closed on June 25, 1999. We reopened the comment period on November 3, 1999 (64 FR 59729) to conduct a peer review of the proposal, and solicited the opinions of three appropriate and independent specialists regarding the data, assumptions, and supportive information presented for the Douglas County population of Columbian white-tailed deer, per our Interagency Cooperative policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We are reopening the comment period again in order to provide the three independent peer reviewers an opportunity to review previous public comments, and any additional public comments, on the proposed rule.

References Cited

Bailey, V. 1936. The mammals and life zones of Oregon. North American Fauna. U.S. Department of Agriculture, Washington, DC 55: 89–91.

Crews, A.K. 1939. A study of the Oregon white-tailed deer, *Odocoileus virginianus leucurus* (Douglas). M.S. thesis. Oregon State College. Corvallis. 46 pp.

Gavin, T.A. 1984. Pacific Northwest. *in:* White-tailed deer, ecology and management. L. K. Halls, editor. A Wildlife Management Institute publication. Pages 491–492.

Gavin, T.A. 1978. Status of the Columbian white-tailed deer: some quantitative uses of biogeographic data. Pages 185–202 *in:* Threatened Deer. IUCN. Morges, Switzerland. 434 pp.

Oregon Department of Fish and Wildlife. 1999. Deer census and population trend data. Unpublished ODFW report, Southwest Regional Office. 4 pages.

Oregon Department of Fish and Wildlife. 1995. Columbian white-tailed deer biological status assessment. Report to Oregon Fish and Wildlife Commission. 83 pp.

Smith, W.P. 1985. Current geographic distribution and abundance on the Columbian white-tailed deer, *Odocoileus virginianus leucurus* (Douglas). Northwest Science 59:243–251.

U. S. Fish and Wildlife Service. 1983. Revised Columbian white-tailed deer recovery plan. Portland, Oregon. 75 pp.

Author

The primary author of this notice is Barbara Behan of the Regional Office, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6131).

Authority

The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Thomas J. Dwyer,

Regional Director, Fish and Wildlife Service.

[FR Doc. 99–33735 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF86

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Ambrosia pumila* (San Diego Ambrosia) from Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list *Ambrosia pumila* (San Diego ambrosia) as endangered under the Endangered Species Act of 1973, as amended (Act). This plant is restricted to San Diego and Riverside Counties, California and Baja California, Mexico, from Colonet to Lake Chapala. *Ambrosia pumila* is primarily restricted to flat or sloping grasslands, often along valley bottoms or areas adjacent to vernal pools. This species is threatened by the following; destruction, fragmentation, and degradation of habitat by recreational and commercial development; highway construction and maintenance; construction and maintenance activities associated with a utility easement; competition from non-native plants; trampling by horses and humans; off-road vehicle (ORV) use; and inadequate regulatory mechanisms. This proposed rule, if made final, would extend protection under the Act to *Ambrosia pumila*.

DATES: Comments from all interested parties must be received by February 28, 2000. Requests for public hearings must be received by February 14, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and

materials concerning this proposal by any one of several methods.

You may submit written comments to the Deputy Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may send comments by e-mail to ambrosia_pr@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

You may hand-deliver comments to our Carlsbad office at 2730 Loker Avenue West, Carlsbad, California.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gary D. Wallace, Botanist, at the above address (telephone 760/431–9440; facsimile 760/918–0638).

SUPPLEMENTARY INFORMATION:

Background

Ambrosia is a genus of 35 to 50 wind-pollinated species of annuals and perennials in the Asteraceae (sunflower) family. The perennial taxa range from woody shrubs to herbaceous rhizomatous (possessing underground stems) taxa. Payne (1976) notes that self-pollination and self-fertility contribute strong inbreeding, as does seed longevity. Members of the genus occur predominantly in the Western Hemisphere, especially North America. Species are generally found in arid or semiarid areas.

Ambrosia pumila (San Diego ambrosia), was originally described as *Franseria pumila* by Thomas Nuttall (Nuttall 1840) based on a specimen he collected near San Diego in 1836. Delpino (1871) transferred the species to another genus he erected based on a character of the fruit and published the combination *Hemiambrosia pumila* (Nutt.) Delpino. Asa Gray (1882), after seeing specimens of the plant with fruits, decided it was closely related to members of the genus *Ambrosia* and published the currently accepted combination, *Ambrosia pumila* (Nutt.) A. Gray. This has been recognized by current systematic and floristic treatments (Payne 1963; Munz 1935, 1974; Munz and Keck 1959; Ferris 1960; Beauchamp 1986; Payne 1993).

Ambrosia pumila is an herbaceous perennial arising from a branched system of rhizome-like roots. This rhizomatous perennial habit results in groupings of aerial stems, often termed clones, that are, or at least were at one time, all attached to one another. References to clones derive from the presence of currently separated specimens whose interconnections have degenerated leaving genetically identical but organically separate individuals. The aerial stems sprout in early spring after the winter rains and deteriorate in late summer. Therefore, the plant may not be evident from late summer to early spring. The aerial stems are 0.5 to 3 decimeter (dm) (2 to 12 inches (in)) rarely to 5 dm (20 in) tall and densely covered with short hairs. The leaves are 3 to 4 times pinnately divided into many small segments and are covered with short soft, gray-white, appressed hairs. This species is monoecious, with separate male and female flowers on the same plant, and is wind-pollinated. The male flower clusters (heads) are borne on terminal racemes, and the female flower clusters (heads) are in the axils of the leaves below the male inflorescences. The fruiting heads are enclosed by cup-like structures that have no spines, although some reports note a few vestigial spines. *Ambrosia pumila* may be distinguished from other species of *Ambrosia* in the area by its leaves which are twice divided, involucres (cup-like structures) lacking hooked spines, and lack of longer stiff hairs on the stems and leaves. This species flowers from May through October.

Several factors make it difficult to determine the extent of an individual plant. The species is rhizomatous, plants produce a few to many aerial stems each year, the rhizomatous connections among the aerial stems may deteriorate over time resulting in physically separate but genetically identical individuals, and plants may have intermingling rhizomes resulting in intermixed aerial stems that appear identical. Because this species is a clonal plant, the numbers of genetically different individuals in an occurrence, especially small occurrences, could be very low. It is possible that an occurrence that supports even 1,000 aerial stems may consist of very few plants. This suggests that the low genetic diversity within the smaller occurrences may relegate these occurrences to extinction (Barrett & Kohn 1991). Seven of the 13 extant occurrences fall into this category of reportedly supporting 1,000 or fewer aerial stems. It is also possible that even the largest reported number of aerial stems (10,000) may represent fewer than 100 plants. Some surveys have reported numbers of plants, when in fact, only numbers of aerial stems have been counted, and the actual number of separate plants is not determinable (CNDDB 1999).

Ambrosia pumila is found on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub habitat, and dry lake beds. The species may also be found in disturbed sites such as fuel breaks and roadways. Associated native plant taxa include *Distichlis spicata* (saltgrass), *Orcuttia californica* (California Orcutt grass), *Baccharis salicifolia* (Mule-fat), and *Eremocarpus setigerus* (Turkey-mullein). Populations of *Ambrosia pumila* occur on Federal, State, local government, and private lands in western San Diego County, western Riverside County, and in the northern state of Baja California, Estado de Baja California, Mexico.

This species has been reported from 49 occurrences in the United States (CNDDB 1999). Four were combined with other occurrences, six were based on misidentified specimens, and two that were based on old collections have not been documented since 1936 (CNDDB 1999). Three occurrences consist of transplanted plants from other occurrences that were subsequently partially or totally eliminated (CNDDB 1999). There are, therefore, 34 verifiable native reported occurrences of this species. Twenty of these have been extirpated since the 1930's, nearly all by commercial development and activities associated with highway construction. One occurrence, with a single stem in 1996, is considered non-viable due to the small size of the occurrence and the high level of disturbance of the site (CNDDB 1999). Subtracting this non-viable occurrence, there are currently 13 extant native occurrences of this species. Two recent occurrences (CNDDB 1999; T. Stewart, CDFG *in litt.*1999) are incorporated here into previously known occurrences. Eleven occurrences are in San Diego County, and two are in western Riverside County.

San Diego County

In San Diego County, two occurrences are protected on the Sweetwater River watershed in the recently established San Diego National Wildlife Refuge (SDNWR). One of these was reported to be 0.6 hectares (ha) (0.25 acres(ac)) in size in 1996, and 0.15 ha (0.06 ac) in 1998 (Julie Vanderwier, USFWS *in litt.*1998). Numbers of aerial stems have

not been reported in the various surveys of this site. The 1998 survey indicated an unknown number of stems at this site and additionally a few plants nearby to the northeast. These few plants are included here in the earlier known occurrence. The second occurrence on the San Diego National Wildlife Refuge was reported to support 50 plants in 1996. It must be pointed out that throughout this discussion reports that include numbers of "plants" are, in fact, indicating only the numbers of aerial stems. It is not possible to determine the extent of a single genetically distinct plant from the numbers of aerial stems because a plant may consist of numerous aerial stems produced by interconnected underground rhizomes. These rhizomes may deteriorate over time, resulting in physically separate but genetically identical plants. A survey in 1998 (Vanderwier *in litt.*1998) reported that this site covered 0.07 ha (0.03 ac). This same survey discovered a large number of individuals just to the northeast in a 0.7-ha (1.75-ac) site, considered here as an extension of the second occurrence. Another occurrence on the Sweetwater River watershed is in El Cajon on a 0.02-ha (0.06-ac) vacant lot owned by California Department of Transportation (Caltrans) which supported 10,000 stems in 1997 (Vanderwier *in litt.*1997). In 1998 an additional occurrence was found in El Cajon on a group of vacant lots of 1.9 ha (4.8 ac) supporting 6,500 plants (aerial stems) (CNDDB 1999).

Three occurrences occur on the San Diego River watershed. The largest one is in Mission Trails Regional Park (MTRP) managed by the City of San Diego, and on adjacent private land. That portion of the occurrence on MTRP land managed by the City of San Diego occupies 13.6 ha (34 ac) and supported 1,500 stems in 1994. The adjacent private lands portion of this occurrence is afforded protections under the City of San Diego's Subarea Plan of the Multiple Species Conservation Program (MSCP) (City of San Diego 1997). The second occurrence on the San Diego River watershed and also in MTRP supports an unknown number of individuals (CNDDB 1999). Both occurrences in MTRP are afforded protected under provisions of City of San Diego's Subarea Plan (City of San Diego 1997). The third occurrence on the San Diego River watershed occurs at Gillespie Field, where there are small remnants of native populations scattered near the south side of the airfield. The current status of these remnants is unknown.

The four remaining occurrences in San Diego County may eventually be protected under provisions of the Multiple Habitats Conservation Program (MHCP) or the City of San Diego's north segment MSCP Subarea Plan. Three are small occurrences on the San Luis Rey River watershed near Bonsall—1) Some plants are presumed extant in a fenced area on Caltrans lands, and some are on private land. However, the current number of aerial stems or the area of this occurrence is not known; (2) Another occurrence in the area is 2.6 ha (6.6 ac) in size and supported about 700 plants (aerial stems) in 1996; and (3) the third occurrence on the San Luis Rey River watershed is on jointly private and Caltrans-owned lands near Bonsall and reportedly supported 2,000 to 3,000 plants (aerial stems) in 1997 (CNDDB 1999). The remaining extant occurrence in San Diego County is on the San Dieguito River watershed. The privately owned site is 31.7 ha (79.2 ac) in size and reportedly supported 2,000 stems in 1997 (CNDDB 1999). Recent site visits found fewer than 100 stems in an area less than 0.4 ha (1 ac) (Wallace *in litt.* 1999). The area is degraded and immediately adjacent to a bulldozed area of a development (Wallace *in litt.* 1999).

Riverside County

Two occurrences are known from Riverside County on privately owned lands. One occurrence along Nichols Road, Lake Elsinore supported an estimated 3,400 stems in 1997, and another occurrence at a fenced mitigation bank area at Skunk Hollow supported about 100–300 stems in 1998 (Brenda McMillan USFWS in litt.1999).

Baja California, Mexico

The current documented range of *Ambrosia pumila* in Baja California, Mexico extends from Colonet south to Lake Chapala. Two of the three documented sites were confirmed by Hogan and Burrascano (1996). Although additional occurrences may exist in Baja California, the species is not considered to be widespread because of lack of appropriate habitat and impacts from agriculture and urban development, especially near the coast.

Previous Federal Action

Federal Government action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated House Document No. 94–51 was presented to Congress on January 9, 1975. (*Ambrosia pumila* was not included in this document). A revision of the Smithsonian report (Ayensu and DeFilipps 1978) provided new lists based on additional data on taxonomy, geographic range, and endangered status of taxa, as well as suggestions of taxa to be included or deleted from the earlier listing. *Ambrosia pumila*, not included in the first Smithsonian report, was recommended for threatened status in the Ayensu and DeFilipps (1978) report. We published an updated Notice of Review of plants on December 15, 1980 (45 FR 82479). This notice included *Ambrosia pumila* as a category 1 candidate. Category 1 candidates were taxa for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ambrosia pumila* because the 1978 Smithsonian report (Ayensu and DeFilipps 1978) had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. On November 28, 1983, we published a supplement (48 FR 53639) to the December 15, 1980, Notice of Review of plant taxa for listing. The status of *Ambrosia pumila* was changed to category 2. Category 2 candidates were taxa for which information then in our possession indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. The status of *Ambrosia pumila* remained unchanged through, and including, the Notice of Review we published in the **Federal Register** on September 30, 1993 (58 FR 51143). On February 28, 1996, we published in the **Federal Register** (61 FR 7595) a Notice of Review of plant and animal taxa that are candidates for listing as endangered or threatened. In that notice we announced changes to the way that we identify species that are candidates for listing under the Act, and we

discontinued maintenance of a list of species that were previously identified as "category 2 candidates." Thus, as a category 2 candidate, *Ambrosia pumila* was not included in the February 28, 1996, Notice of Review.

On January 9, 1997, we received a petition dated November 12, 1996, from Mr. David Hogan of the Southwest Center for Biodiversity and Ms. Cindy Burrascano of the California Native Plant Society, San Diego Chapter, requesting that *Ambrosia pumila* (San Diego ambrosia) be listed as endangered pursuant to section 4 of the Act. Additionally, the petition appealed for emergency listing pursuant to section 4(b)(7) of the Act. The petitioners further requested that critical habitat be designated for *Ambrosia pumila* concurrent with the listing pursuant to 50 CFR 424.12 and the Administrative Procedures Act 50 U.S.C. 5.53. On January 23, 1997, we notified the petitioners that we received their petition and that their petition would be processed based on the listing priority guidance then in effect.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition presents substantial information indicating that the action may be warranted. To the maximum extent practicable, this finding should be made within 90 days of the receipt of the petition and it should be published promptly in the **Federal Register**. If we determine that listing the species may be warranted, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. However, because of budgetary restraints, we processed petitions in accordance with the 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance identified four tiers of listing activities to be conducted by us with appropriate funds. Tier 1, the highest priority, covered emergency listings of species facing an imminent risk of extinction as defined under the emergency listing provisions of section (4)(b)(7) of the Act. Tier 2, the second priority, included processing of final determinations for species currently proposed for listing. Tier 3, the third priority, addressed efforts under the Act to resolve the conservation status of candidate species and process administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. Tier 4, the lowest priority, covered the processing of critical habitat determinations, delisting actions, and reclassification of endangered species to threatened status. Under the priority system and because of the backlog of species proposed for listing and awaiting final listing determinations at that time, we deferred action on listing petitions except where an emergency existed and where the immediacy of the threat was so great to a significant portion of the population that the routine listing process would not be sufficient to prevent large losses that might result in extinction.

We reviewed the petition and supporting documentation to determine whether *Ambrosia pumila* faced a significant risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act (61 FR 64479). On July 15, 1997, we concluded that emergency listing and the designation of critical habitat were not warranted, and that the petition should be processed as a Tier 3 priority task pursuant to the listing priority guidance for fiscal year 1997. A notice published in the **Federal Register** (62 FR 55268) on October 23, 1997, announced the extension of the fiscal year 1997 listing priority guidance until such time as the fiscal year 1998 appropriation bill for the Department of the Interior became law and new final guidance was published in the **Federal Register**. In this notice there were no changes made in the tier system.

On October 1, 1997, Southwest Center for Biodiversity and the California Native Plant Society filed a lawsuit in the United States District Court for the Southern District of California challenging our failure to produce timely administrative 90-day and 12-month findings for *Ambrosia pumila*.

On May 8, 1998, new listing priority guidance for Fiscal Years 1998 and 1999 was published in the **Federal Register** (63 FR 10931). This new guidance changed the four tier priority system to a three tier priority system. Highest priority, Tier 1, was processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority, Tier 2, was processing final determinations on pending proposed listings; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, and petitions to delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Lowest priority, Tier 3, was the processing of proposed or final critical habitat designations. Under that guidance, the administrative review process for this petition fell under Tier 2. We published a 90-day finding on the petition to list *Ambrosia pumila* as endangered in the **Federal Register** (64 FR 19108) on April 19, 1999. We found that substantial information existed indicating listing may be warranted and solicited comments and information regarding the finding. However, we did not receive any comments by May 19, 1999, the close of the comment period. On October 28, 1999, the District Court ordered us to complete a 12-month finding for *Ambrosia pumila* on or before December 10, 1999. This proposed rule constitutes the 12-month finding on the petition.

The processing of this final rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register** we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Ambrosia pumila*. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act, set forth the procedures for adding species to the Federal list. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Ambrosia pumila* (Nutt.) A. Gray are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Twenty of the 34 reported native occurrences of this species have been eliminated by urbanization, recreational development and highway construction and alteration (CNDDB 1999). Of the remaining 14, one occurrence in a sidewalk crack in National City, is considered non-viable (CNDDB 1999). Six of the 13 other extant occurrences, including three of the larger (reportedly supporting more that 1,000 aerial stems) occurrences, are threatened with habitat destruction associated with highway expansion or maintenance activities or by maintenance of utility rights of way, including mowing (CNDDB 1999). One of these is west of the Bonsall Bridge and reportedly supported 2,000 to 3,000 stems in 1997 (CNDDB). The two other smaller occurrences near Bonsall are also threatened by Caltrans highway maintenance and expansion (CNDDB 1999). These are the only three extant occurrences known within the San Luis Rey watershed. Two occurrences near El Cajon within the San Diego River watershed, both reportedly supporting more that 1,000 stems, are likewise threatened by highway maintenance and highway widening (CNDDB 1999). The last occurrence threatened by highway expansion or maintenance activities or utility rights of way maintenance activities is a large (500 to 1,000 stems reported in 1998) occurrence along Nicols Road in Riverside County (CNDDB 1999). Two occurrences, both reportedly supporting more that 1,000 aerial stems have been affected by recreational development (CNDDB 1999). One of these is within a golf course under construction near Del Dios. During a recent visit, this site appeared to be significantly degraded by grading in the immediate vicinity and less than 100 aerial stems were found on the site which was less than 0.4 ha (1 ac) in size (Wallace *in litt.* 1999). The second occurrence is located within and adjacent to Mission Trails Regional Park, managed by the City of San Diego, which is required by the Multiple Species Conservation Program (MSCP) to conserve and manage 90 percent of the large population on their lands. A 10 percent loss (0.2 ha or 0.05 ac) of this major population of *Ambrosia pumila* occurred in 1997 for development of a campground facility (CNDDB 1999) and was allowed under the provisions of the City of San Diego's Subarea Plan (City of San Diego 1997). If more than a 10 percent loss occurs, the species will no longer be covered under the provisions of the MSCP (City of San Diego 1997). It will be possible to verify future losses and assess indirect effects of these losses when the biological monitoring and management aspect of the MSCP Subarea Plans are in full effect. An additional habitat loss for this species was an occurrence on the San Luis Rey watershed that supported over 1,600 "plants" (aerial stems). This loss occurred in spite of an existing agreement prohibiting impacts to this species (see discussion below regarding San Diego Gas and Electric under factor D). The site was graded and the plants extirpated in late 1996. Two other occurrences are threatened by residential or commercial development. The larger of the two reportedly supported 6,500 stems in 1998 (CNDDB 1999). This occurrence is on vacant lots and back yards in a residential area of El Cajon (CNDDB 1999). In Riverside County, one occurrence, near Lake Elsinore, is threatened by highway expansion activities, the other occurrence at Skunk Hollow is threatened by indirect impacts associated with urbanization surrounding the occurrence (CNDDB 1999).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting *Ambrosia pumila* at this time. However, rare taxa are favored by some professional and amateur botanists for their collections or for trade with other individuals. The potential threat to this species from overcollection may increase upon publication of this proposed rule.

C. *Disease or predation.* Disease and predation are not known to be factors affecting this plant species.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for this species include—(1) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, and section 404 of the Federal Clean Water Act; (2) State laws, including the Native Plant Protection Act (NPPA), the California Endangered Species Act (CESA), the California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (3) regional planning efforts pursuant to the California Natural Community Conservation Planning Program (NCCP); (4) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations; (5) local land use processes and ordinances; and (6) enforcement of Mexican laws.

Federal Laws and Regulations

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 to 4347) requires disclosure of the environmental effects of projects within Federal jurisdiction. NEPA requires that each of the project alternatives recommend ways to protect, restore and enhance the environment and avoid and minimize any possible adverse effects when implementation poses significant adverse impacts. NEPA does not, however, require that the lead agency select an alternative with the least significant impact to the environment, nor does it prohibit implementing a proposed action in an environmentally sensitive area (40 CFR 1500 *et seq.*). Only two of the extant occurrences of *Ambrosia pumila* are on Federal lands.

The Federal Endangered Species Act (Act), as amended, may afford protection to sensitive species if they coexist with species already listed as threatened or endangered under the Act. A number of federally listed species occur within the range of *Ambrosia pumila* and are known or likely to co-occur with the species. Protection afforded by these species, however, is minimal due to the lack of significantly overlapping habitat requirements. These species include Riverside fairy shrimp (*Streptocephalus woottonii*), *Orcuttia californica* (California Orcutt grass), and Least Bell's vireo (*Vireo bellii pusillus*), listed as endangered, and the coastal California gnatcatcher (*Polioptila californica californica*), and *Navarretia fossalis* (spreading navarretia), listed as threatened. These species are not known to consistently co-occur in the same vegetation communities although they may occur in nearby associated communities.

Conservation provisions under the Clean Water Act could afford some protection to *Ambrosia pumila*. *Ambrosia pumila* could potentially be affected by projects requiring a permit from the Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. Under section 404, the Corps regulates the discharge of fill material into waters of the United States, which

includes navigable and isolated waters, headwaters, and adjacent wetlands. Section 404 regulations require that applicants obtain an individual permit for projects to place fill material affecting greater than 1.2 ha (3 ac) of waters of the United States. Nationwide Permit 26 (33 CFR part 330, revised on December 20, 1996 (61 FR 65916) was established by the Department of the Army to facilitate authorization of discharges of fill into isolated waters (including wetlands and vernal pools), that cause the loss of less than 1.2 ha (3 ac) of waters of the United States, and that cause minimal individual and cumulative environmental impacts. Projects affecting less than 0.1 ha (0.33 ac) of isolated waters require no prior approval by the Corps. In addition, other nationwide permits authorize activities that may affect *Ambrosia pumila* without prior notification to the corps. Because the distribution of this species occurs in non-wetland habitat and in habitats associated with drainages and dry lakebeds, the instances and extent of protection for this species under section 404 is unclear. However, there are no specific provisions that adequately conserve rare or candidate plant species.

Minimal impacts to the occurrences of *Ambrosia pumila* were incurred on the San Diego National Wildlife Refuge as a consequence of efforts to relocate burrowing owls onto the refuge. Throughout the relocation process, the *Ambrosia pumila* were considered, and minimal impacts were limited to an area of approximately eight square meters (9.6 square yards). Similar relocation efforts will be coordinated to avoid direct or indirect impacts to *Ambrosia pumila*. The San Diego National Wildlife Refuge currently has no specific protections in place to prevent trampling of the plant by horses and people who traverse one of the occurrences, nor is there a weed abatement plan for the *Ambrosia pumila* sites. However, future management includes abandonment of some trails and installation of trail signs to direct horses and people away from the *Ambrosia pumila* sites (Tom Roster, San Diego National Wildlife Refuge pers. comm 1999.).

State Laws and Regulation

Although State laws, including CEQA, CESA, and NPPA at times may provide a measure of protection to the species, these laws are not adequate to protect the species in all cases. For example, under CEQA where overriding social and economic considerations can be demonstrated, a project may go forward even if adverse impacts to a species are significant.

Ambrosia pumila is included on List 1B of the California Native Plant Society Inventory (Skinner and Pavlik 1994), which, in accordance with section 1901, chapter 10 of the California Department of Fish and Game Code, makes it eligible for State listing. This species is not, as yet, listed under the California Endangered Species Act.

The California Environmental Quality Act (Public Resources Code, section 21000 *et seq.*) pertains to projects on non-Federal lands and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency. The lead agency is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal" including those that are eligible for listing under the NPPA or CESA. However, as noted above, under CEQA where overriding social and economic considerations can be demonstrated, a project may go forward even where adverse impacts to a species are significant.

Regional Planning Efforts

In 1991, the State of California established the NCCP program to address conservation needs of natural ecosystems throughout the State. The focus of the current planning program is the coastal sage scrub community in Southern California, although other vegetative communities are being addressed in an ecosystem approach. *Ambrosia pumila* is a covered species under the Multiple Species Conservation Program (MSCP) in southwestern San Diego County. Based on the MSCP, we issued a Federal incidental take permit to the City of Poway in July 1996, City of San Diego in July 1997, and to the County of San Diego in March 1998. The MSCP establishes a 68,800-ha (172,000-ac) preserve and provides for monitoring and management for the 85 covered species addressed in the permit, including *Ambrosia pumila*. Additionally, *Ambrosia pumila* is defined by the MSCP as a narrow endemic. This requires that unavoidable impacts associated with reasonable use or essential public facilities must be minimized and mitigated within the MSCP planning area both inside and outside the Multiple Habitat Plan Area (MHPA).

Eight of the 11 extant occurrences in San Diego County are in the MSCP planning area. Five of the eight known occurrences in the MSCP planning area are currently afforded some level of protection within approved permitted Subarea Plans. Two of the occurrences, both at Mission Trails Regional Park (MTRP), are addressed under the approved City of San Diego's Subarea Plan (City of San Diego 1997). Under this plan, coverage for this species is dependent upon conservation of 90 percent of the only large population in the MSCP, located in and adjacent to MTRP (CNDDB 1999). Provisions of the City of San Diego's Subarea Plan require conservation of 100 percent of the portion of the occurrence on private lands adjacent to MTRP near a radio tower. The other occurrence at MTRP is also protected under provisions of the approved City of San Diego's Subarea Plan (City of San Diego 1997). The occurrence near Del Dios in the San Dieguito River watershed, is within the approved County of San Diego's Subarea Plan (County of San Diego 1997). An additional three occurrences are located within the City of El Cajon, which is in the process of preparing a subarea plan consistent with the MSCP.

Within approved Subarea Plans, four of the six occurrences are impacted due to trampling, (CNDDB 1999), and competition from non-native species affects all the occurrences. There are likely other indirect impacts from altered fire and hydrological regimes. The threat from trampling, increased competition from non-native plants and altered fire and hydrological regimes will likely be significantly reduced or eliminated when the monitoring and management program required by the MSCP and Subarea Plans is in place.

The San Diego Association of Governments Multiple Habitat Conservation Plan (MHCP) in northwestern San Diego County is still in the planning phase. It has been proposed that the only known occurrence of this species within the planning area be conserved and that the species be treated as a narrow endemic requiring surveys of suitable habitat and in situ conservation of 80–100 percent of each occurrence discovered in the area. One of the two occurrences in Riverside County is at Skunk Hollow in a fenced mitigation bank. However, this site suffered from sheep intrusion and grazing in March 1999 (Christine Moen, USFWS *in litt.*1999).

San Diego Gas and Electric owns powerline easements for some of the land at one of the occurrences on the

San Diego National Wildlife Refuge and for all of an occurrence in Oceanside. The Service, CDFG, and San Diego Gas and Electric (SDG&E) signed an implementation agreement and memorandum of understanding in December 1995 under the Natural Community Conservation Program called the San Diego Gas and Electric Subregion Plan (SDG&E Plan). Under the provisions of this plan, Ambrosia pumila is a covered species and a narrow endemic. The plan prohibits impacts to occupied habitat except in emergency situations. Contrary to the SDG&E Plan, a 1996 SDG&E project resulted in the extirpation of a relatively large occurrence at Oceanside that reportedly supported 1,600 plants (aerial stems).

The County of Riverside is preparing the Western Riverside Multiple Species Habitat Conservation Plan. *Ambrosia pumila* has been proposed for coverage under this plan but analysis of the data have not yet been completed.

Mexican Laws

We are not aware of any existing regulatory mechanisms in Mexico that would protect *Ambrosia pumila* or its habitat. Although Mexico has laws that could provide protection for rare plants, there are no specific protections for this species or vernal pools with which it is often associated. If specific protections were available and enforceable in Mexico, the portion of the range in Mexico alone, in isolation, would not be adequate to ensure long-term conservation of this species.

E. *Other natural or manmade factors affecting their continued existence.* Non-native plants threaten virtually all of the extant occurrences of *Ambrosia pumila* (CNDDB 1999, Vanderwier *in litt.* 1998). Non-native species of grasses and forbs have invaded many of Southern California's plant communities. Their presence and abundance are often an indirect result of persistent and repeated habitat disturbance from development, discing, mowing, alteration of local hydrology and the presence and maintenance of highways and trails. This species is subject to displacement by non-native species, which also likely affect the reproductive potential of this low growing wind-pollinated species (CNDDB 1999). Non-native species found with *Ambrosia pumila* include *Brassica* spp. (mustard), *Vulpia* spp. (annual fescue), *Erodium* spp. (Crane's-bill), *Bromus* spp. (brome grass), and *Foeniculum vulgare* (sweet fennel). The presence of these and other non-native plants is likely to affect (1) pollen and fruit dispersal by increasing the aerial density of plant material, (2) fire patterns by increasing the fuel volume due to the influx of larger plants, and (3) hydrological conditions by decreasing the amount of water available for *Ambrosia pumila*. The cumulative and collective effects of non-native plants pose a threat to this species which apparently has a low output of seeds. Few preserved museum specimens have fertile fruits and field collections have not provided evidence of production of significant numbers of viable seeds. This species is also threatened by altered hydrological regimes at several occurrences associated with roads, rights of way, or locations mowed for fire breaks (CNDDB 1999). A 1998 survey (Vanderwier *in litt.* 1998) reported that non-native species are common on the two occurrences in the San Diego National Wildlife Refuge and a portion of one of these occurrences is in a fuel modification zone where the plants are mowed. Several occurrences are threatened by periodic mowing which, if done in late summer or early fall, is likely to remove the flowering portions of the aerial stems and greatly reduce or eliminate the reproductive output for the year. The effects on the rhizomes by soil compaction from vehicle traffic is undocumented.

In at least one documented instance in 1999, an occurrence of *Ambrosia pumila* at Skunk Hollow, Riverside County, was grazed by sheep (Christine Moen, USFWS *in litt.* 1999). Grazing would likely eliminate or severely reduce the annual reproductive output of *Ambrosia pumila* and could also reduce the vegetative portions of the plants to a degree that would threaten their capacity to persist.

Six of the 13 extant occurrences of *Ambrosia pumila*, including four of the larger occurrences, are threatened due to the impacts of trampling by horses and people as well as ORV traffic. Two of these occurrences are on the San Diego National Wildlife Refuge (Vanderwier *in litt.* 1998, Tom Roster SDNWR pers. comm.1999). Trampling likely is a threat to any of the other accessible occurrences such as those with utility easements for maintenance purposes or access roads. The two occurrences near trails in Mission Trails Regional Park are threatened by trampling by people (City of San Diego 1999). Additional discussion of trampling may be found under Regional Planning Efforts, under factor D of this rule. The two occurrences in El Cajon are threatened by trampling by people and vehicles (CNDDB 1999).

Because *Ambrosia pumila* is a rhizomatous clonal species, a single plant may be represented by many aerial stems. An occurrence, especially some of the smaller ones, could be composed of one or only a few plants. For example, an occurrence where 500 stems had been counted could represent only 50 plants. This would likely reflect low genetic variability, which is detrimental to the long-term persistence of the species (Barrett and Kohn 1991). This condition exacerbates the other threats to all other occurrences of this species.

Transplantation of *Ambrosia pumila*, previously employed in an effort to salvage plants from native occurrences identified for extirpation, has proven to be of limited success. Transplantation protocols were generally lacking and likely did not include—meaningful guidelines for site selection, sampling methods to ensure that as many individual plants as possible are represented in the transplantation, measures of success for survival and recruitment of new seedling generations, and recourse for failure or limited success of any of these aspects of transplantation. There does not appear to be a well documented transplantation that meet the above measures. Maintenance of a few of the aerial stems for a period of time does not demonstrate that transplantation of this rhizomatous clonal perennial is an effective means for perpetuating the genetic lineages that constitute one or more of the occurrences of this species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ambrosia pumila* (San Diego ambrosia) as endangered. The species is threatened with extinction due to habitat alteration and destruction resulting primarily from highway and right-of-way widening and maintenance, urban development, trampling, competition from non-native plants, and vulnerability to naturally occurring events due to low numbers of individuals. Any of the threats noted above is compounded by the fact that this species is a rhizomatous, clonal, perennial that has wind-pollinated flowers and apparently rarely sets seed. The number of genetically different plants at a given site is unknown, but there may be more than 100 aerial stems per plant. This means that some of the smaller occurrences could represent a single plant. Seven of the 13 occurrences are on private lands, some of these with rights-of-way access. Although conservation measures are in place for 5 of the 13 occurrences, full protection afforded by a monitoring and

management program is not yet in place. Even with full protection, this would be less than half of the known occurrences and will likely not protect sufficient numbers of genetically different plants. Also, as yet there are no known examples of transplanted or reintroduced occurrences of this species in which sexual reproduction has occurred to sustain either a viable population or exhibit the genetic diversity found in a naturally occurring population.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 1999 and FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for *Ambrosia pumila*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat for would be prudent for *Ambrosia pumila*.

Due to the small number of populations, *Ambrosia pumila* is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for *Ambrosia pumila* of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Ambrosia pumila*. However, the deferral of the critical habitat designation for *Ambrosia pumila* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Ambrosia pumila* without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for *Ambrosia pumila*. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for *Ambrosia pumila* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by

Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. We discuss the protection required of Federal agencies and the prohibitions against taking and harm, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. The association of *Ambrosia pumila* with dry waterways and lakebeds may result in the Corps becoming involved through its permitting authority under section 404 of the Clean Water Act, and the issuance of permits necessary to build flood control structures associated with highway projects.

The two occurrences of *Ambrosia pumila* on the San Diego National Wildlife Refuge receive the general protection afforded biotic resources on the refuge. However, there is currently no specific management plan for this plant. The City of San Diego (1999) has prepared a draft management plan for the occurrences of *Ambrosia pumila* in Mission Trail Regional Park. This management plan has not yet been finalized.

As noted above under factor D of the "Summary of Factors Affecting the Species" section, eight of the occurrences in San Diego County are in the MSCP planning area, five of which are within approved Subarea Plans. According to the City of San Diego's Subarea Plan (City of San Diego 1998), 90 percent of the only major population will be conserved and 100 percent of the adjacent portion of the occurrence will be preserved. The monitoring method is to include a site-specific monitoring plan with management plans and directives to protect against detrimental edge effects (City of San Diego 1998). This Subarea Plan also treats this species as a narrow endemic requiring jurisdictions and other participants to specify measures in their subarea plans to ensure that impacts to these resources are avoided to the maximum extent possible. Under the County of San Diego's Subarea Plan, *Ambrosia pumila* is a narrow endemic requiring avoidance to the maximum extent possible. Where avoidance is infeasible, a maximum encroachment may be authorized of up to 20 percent of the population on site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending upon the sensitivity of the species and population size, as determined in a biological analysis approved by the Director of the Fish and Wildlife Service.

Listing *Ambrosia pumila* provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site specific management actions necessary to achieve conservation and survival of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.62. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California State criminal trespass law. Otherwise such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9, should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for

public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Carlsbad Fish and Wildlife Office by February 28, 2000. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning threat (or lack thereof) to *Ambrosia pumila*.

(2) The location of any additional populations of *Ambrosia pumila* and the reasons why any habitat should or should not be determined to be critical habitat for this species pursuant to section 4 of the Act.

(3) Additional information concerning the essential habitat features (biotic and abiotic), range, distribution, population size of this taxon, and information relating to the distributions of genetically distinct individuals within the population.

(4) Current or planned activities in the subject area and their possible impacts on this taxon.

Final promulgation of the regulations on *Ambrosia pumila* will take into consideration any comments and any additional information we receive during the comment period, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor of the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Gary D. Wallace, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17 as set forth below:

PART 17— [AMENDED]

1. The authority for citation of part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Ambrosia pumila	San Diego ambrosia	U.S.A. (CA) Mexico	Asteraceae	E		NA	NA
*	*	*	*	*	*	*	*

Dated: December 9, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–33781 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991221345–9345–01; I.D. 113099B]

RIN 0648–AL30

Fisheries of the Exclusive Economic Zone off Alaska; Prohibition of Nonpelagic Trawl Gear in the Bering Sea and Aleutian Islands Pollock Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action would consist of three regulatory changes. First, it would prohibit the use of nonpelagic trawl gear in the directed pollock fisheries of the Bering Sea and Aleutian Islands (BSAI). Second, the action would revise the existing performance standard for pelagic trawl gear. Third, crab and halibut bycatch limits established for the BSAI groundfish trawl fisheries would be reduced. This action is necessary to address bycatch reduction objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is intended to further the goals and objectives of the FMP.

DATES: Comments on the proposed rule must be received at the following address by February 14, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel or faxed to (907) 586–7465. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Copies of Amendment 57 to the FMP and of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address or by calling the Alaska Region, NMFS, at (907)586–7228. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, (907)586–7228.

SUPPLEMENTARY INFORMATION:

NMFS manages the domestic groundfish fisheries of the BSAI under the FMP. The North Pacific Fishery Mangement Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 57 for Secretarial review. A Notice of Availability (NOA) of the FMP amendment was published on December 10, 1999 with comments on the FMP amendment invited through February 7, 2000. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by February 7, 2000 to be considered in the decision to approve or disapprove the FMP amendment.

Background and Need for Action

This action is designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National Standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures minimize bycatch, to the extent practicable, and minimize mortality where bycatch cannot be avoided.

More specific authority for the proposed rule is provided by paragraph 303(b)(2) of the Magnuson-Stevens Act. It states: "Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may * * * designate zones where, and periods when, fishing * * * shall be permitted only * * * with specified types and quantities of fishing gear."

The objective of Amendment 57, as adopted by the Council at its June 1998 meeting, is to reduce bycatch in the BSAI pollock fishery. The proposed action to implement the amendment has three parts.

1. Prohibition on Nonpelagic Trawl Gear in the BSAI Directed Pollock Fishery

Under existing regulations (§ 679.20(a)(5)(i)(B)), the Administrator of the Alaska Region, NMFS, in consultation with the Council, has authority to limit the amount of the total allowable catch (TAC) that may be taken in the directed fishery for pollock using nonpelagic trawl gear. The Administrator accomplishes this by allocating TAC for pollock between pelagic and nonpelagic trawl gear types during the annual specification process. In practice, the Council has recommended allocating TAC between gear types only twice. In 1990, the Bering Sea pollock TAC was split 88 percent for pelagic gear and 12 percent for nonpelagic trawl gear during the annual specification process. No limit was placed on nonpelagic trawl gear during subsequent years until the 1999 season, when the entire pollock TAC was allocated to pelagic gear and none to nonpelagic gear. This step was taken in anticipation of Amendment 57 being approved.

Currently, NMFS has authority to prohibit nonpelagic trawling for pollock in the BSAI under § 679.21(e)(7)(i). When a prohibited species catch (PSC) allowance, or a seasonal apportionment of the allowance, is reached in the pollock/Atka mackerel/"other species" category, NMFS prohibits nonpelagic trawling for pollock either throughout the BSAI, or, depending on the PSC species, in the affected zone of the BSAI, for the remainder of the year.

The Council's rationale for permanently prohibiting nonpelagic trawling for pollock in the BSAI, instead of relying on existing measures, is that the prohibition is expected to result in needed bycatch savings while imposing a relatively low cost on the fishery. Pollock is the only fishery where both types of trawl gear are used, and already most fishing for pollock is conducted with pelagic trawl gear, which has a substantially lower bycatch rate of halibut and crab. Although operators who use both types of gear would lose some flexibility under this rule, participants in the pollock fishery would nevertheless be able to catch the TAC.

2. Performance Standard

Existing regulations, establish a performance standard to discourage operators from fishing on the seabed with pelagic gear at times when nonpelagic trawl gear is prohibited in the BSAI. The regulations prohibit a vessel engaged in directed fishing for pollock from having 20 or more crabs of any species, with a carapace width of more than 1.5 inches (38 mm) at the widest dimension, on board at any one time. Crabs were chosen for the standard because they inhabit the seabed and, if caught with trawl gear, provide proof that a trawl has been in contact with the bottom. The proposed rule would clarify that the standard

would be in effect at all times for vessels in the BSAI directed fishery for pollock, because the use of nonpelagic trawl gear would be prohibited permanently.

3. PSC Limits

The proposed rule would reduce the bycatch limit for halibut and crab caught using trawl gear in the BSAI. The CDQ program would continue to receive 7.5 percent of each PSC limit, in accordance with § 679.21(e)(1), which contains the existing limits for each PSC species in the BSAI. The current halibut PSC allowance is 3,775 mt. Crab bycatch limits vary according to abundance and spawning biomass as determined by annual surveys.

Under the proposed rule, halibut bycatch mortality would be reduced by 100 mt. The PSC allowance for red king crabs would be reduced by 3,000 animals, for *C. bairdi* crabs by 50,000 animals, and for *C. opilio* crabs by 150,000 animals. For *C. bairdi* crabs, the limit would be lowered by 20,000 in Zone 1 and by 30,000 in Zone 2, reflecting the larger fishery there.

The Council recommended these reduced PSC limits after considering data on bycatch rates from vessels using pelagic gear while the performance standard was in effect. Two other options were considered: Option 1 would have reduced only the halibut bycatch limit, and Option 2 would have reduced bycatch by lesser amounts for all four PSC species. The Council chose the proposed approach because it represents a more realistic estimate of how much bycatch would be saved by prohibiting nonpelagic trawl gear. The analysis of all options and alternatives is contained in the EA/RIR/IRFA (see **ADDRESSES**).

Pollock CDQ Fisheries

Under this rule, vessels fishing for CDQ pollock would be exempt from the nonpelagic trawl gear prohibition. This exemption is based on two reasons. First, the structure of the CDQ program provides a strong incentive to the CDQ groups and their harvesting partners to use fishing gear and fishing techniques that minimize the bycatch of non-target groundfish and prohibited species. Each CDQ group receives an allocation of all the groundfish TAC species. Each CDQ group is prohibited from exceeding these allocations. In accounting for the CDQ and prohibited species quota (PSQ) allocations, NMFS considers the catch by all vessels fishing for the CDQ group. Each CDQ group is each responsible for managing the catch of its CDQ and PSQ allocations so as to maximize the overall value of the CDQ fisheries. For example, if a CDQ group reaches its halibut PSQ allocation, its members must stop all CDQ fishing for the group's remaining CDQ allocations, and thus forego the value of any unharvested goundfish. This management structure provides a substantial incentive to use pelagic gear away from the bottom in the pollock CDQ fisheries. In 1998, for example, 98 percent of the total pollock CDQ was harvested using pelagic trawl gear.

The incentive to use gear that will minimize PSC while fishing for pollock would be strengthened further by the proposed rule. The CDQ program, which currently receives a 7.5 percent allocation of each PSC species, would receive a reduced allocation of PSC under the rule, because it would continue to receive a 7.5 percent allocation of what would be a reduced overall PSC allowance. Therefore, although the prohibition on nonpelagic trawl gear in itself would not apply to the CDQ fisheries, the collateral reduction in PSC allowance would increase the effect of the existing incentive for CDQ groups to minimize the bycatch of PSQ species.

Second, NMFS currently does not have a definition for directed fishing for CDQ pollock. Without such a definition, a prohibition against using nonpelagic trawl gear while directed fishing for pollock would not be enforceable in the CDQ fisheries. NMFS is developing a definition for directed fishing for pollock in the CDQ fisheries under regulations implementing Amendment 66 to the BSAI groundfish FMP. In light of that definition, NMFS may consider extending the prohibition on the use of nonpelagic trawl gear in directed fisheries for BSAI pollock to the CDQ program. Such an extension would be subject to the normal process for public review and comment.

Fishing Trip Definition

The proposed rule would change the "fishing trip" definition contained in § 679.2. Under the new definition, when a vessel begins fishing with a new gear type, it would be required to start recordkeeping for a new fishing trip. This change would enable, for example, a vessel legitimately fishing with nonpelagic trawl gear for yellowfin sole, and therefore under a maximum retainable bycatch restriction for pollock (see § 679.20(e)), to keep clear records if it switches to directed fishing for pollock using pelagic gear.

Classification

At this time, NMFS has not determined that the amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council and NMFS prepared an Initial Regulatory Flexibility Analysis that describes the impact this proposed rule, if adopted, would have on small entities. Analysis of catch data from 1996 and 1997 indicates that very few vessels will be adversely affected by the Council's preferred alternative to the extent of having to buy or use new gear because most vessels fishing for pollock do so mostly using pelagic gear. In 1996, five small catcher vessels used nonpelagic trawl gear only. This number was recuced to two vessels in 1997. Total pollock harvests by the few catcher vessels using only nonpelagic trawl gear averaged 85 mt per year during 1996–1997, for an ex-vessel value of $17,000, or about $5,000 per vessel per year. This amount is likely to be a very small portion (<5 percent) of the annual gross revenues for the vessels in question. The few catcher vessels that use only nonpelagic trawl gear in the BSAI pollock fishery tend to concentrate on other fisheries such as Pacific cod and flatfish. For these small vessels, pollock represents a fishery of opportunity that is sometimes targeted when other fisheries are closed, but it is not their primary source of income. In addition, none of these vessels are believed to qualify as future participants in the BSAI pollock fishery under the American Fisheries Act (AFA), which limits participation in the BSAI pollock fishery to those vessels named in the AFA or meeting certain qualifying criteria. Under the AFA, the small vessels in question, with a few possible exceptions, are excluded from BSAI pollock fishery by statute and will be unaffected by the prohibition on the use of nonpelagic trawl gear. Of the approximately 120 catcher vessels that are expected to remain in the BSAI pollock fishery under the AFA, approximately 60 are small entities, and these vessels fish for pollock predominantly with pelagic trawl gear. Some catcher processors that target on larger pollock for fillet processing use nonpelagic trawl gear for pollock under certain circumstances, and these vessels may face impacts if nonpelagic trawl gear is prohibited. However, none of the catcher processors in the pollock fishery is a small entity under the RFA.

The crab performance standard may pose some unquantifiable inconvenience to vessels with pelagic gear, as they will be forced to fish only

in midwater. To the extent that they have chosen to do otherwise in the past, economic theory suggests that they have probably been gaining some economic advantage.

The reductions in overall PSC limits for halibut, red king crab, Tanner crab, and snow crab are not likely to cause significant impacts to small entities, as the proposed reductions are expected to mirror reductions in bycatch resulting from the prohibition on nonpelagic trawl gear.

The Council and NMFS considered alternative approached for meeting the Magnuson-Stevens Act's requirement to minimize bycatch that would minimize the effect on small entities. While eliminating nonpelagic trawling in all fisheries in the BSAI, or eliminating nonpelagic trawling in pollock fisheries in the Gulf of Alaska would reduce bycatch more dramatically than the proposed approach, such measures would be expected to have far more significant effects on many more small entities. The no action alternative (alternative 1 in the EA), could result in fewer economic effects on small entities depending on the Council's future recommended allocations of pollock quota. However, it is not clear that the status quo would comply with the requirements of the Magnuson-Stevens Act.

NMFS also considered a regulatory amendment to split the pollock/Atka mackerel/other species category for purposes of allocating the PSC limits among fisheries, but rejected that approach because of the potential for major economic consequences.

While eliminating nonpelagic trawling in all fisheries in the BSAI, or eliminating nonpelagic trawling in pollock fisheries in the Gulf of Alaska would reduce bycatch more dramatically than the proposed approach, such measures would be expected to have far more significant effects on many more small entities.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of "Fishing trip", is amended by redesignating paragraph (1)(iv) as paragraph (1)(v), removing the coordinating conjunction, "or," at the end of paragraph (1)(iii), and adding paragraph (1)(iv) to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

(1) * * *

(iv) The vessel begins fishing with different type of authorized fishing gear; or

* * * * *

2. In § 679.7, paragraph (a)(14) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(14) *Trawl gear performance standard.* Use a vessel to participate in a directed fishery for pollock in the BSAI using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

* * * * *

§ 679.20 [Amended]

3. In § 679.20, paragraph (a)(5)(i)(B) is removed and paragraph (a)(5)(i)(C) is redesignated as (a)(5)(i)(B).

4. In § 679.21, paragraphs (e)(1)(ii)(A) through (C), (e)(1)(iii)(A) and (B), (e)(1)(iv)(A) through (C), and (e)(1)(v) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) When the number of mature female red king crabs is at or below the threshold of 8.4 million mature crabs or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 32,000 red king crabs.

(B) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is greater than 14.5 million lb but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 97,000 red king crabs.

(C) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 197,000 red king crabs.

(iii) * * *

(A) *Zone 1.* When the total abundance of *C. bairdi* crabs is:

(*1*) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance, minus 20,000 animals.

(*2*) Over 150 million to 270 million animals, the PSC limit will be 730,000 animals.

(*3*) Over 270 million to 400 million animals, the PSC limit will be 830,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 980,000 animals.

(B) *Zone 2.* When the total abundance of *C. bairdi* crabs is:

(*1*) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance, minus 30,000 animals.

(*2*) Over 175 million to 290 million animals, the PSC limit will be 2,070,000 animals.

(*3*) Over 290 million to 400 million animals, the PSC limit will be 2,520,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 2,970,000 animals.

(iv) * * *

(A) *PSC Limit.* The PSC limit will be 0.1133 percent of the total abundance, minus 150,000 *C. opilio* crabs, unless;

(B) *Minimum PSC Limit.* If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.350 million animals; or

(C) *Maximum PSC Limit.* If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 12.850 million animals.

(v) *Halibut.* The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,675 mt of halibut mortality.

* * * * *

5. In § 679.24, paragraph (b)(4) is added to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(4) *BSAI pollock nonpelagic trawl prohibition.* No person may use nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI.

* * * * *

[FR Doc. 99–33853 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 249
Wednesday, December 29, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Louisiana Forestry Productivity Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture has determined that all cost-share payments to individuals by the State of Louisiana under the Louisiana Forestry Productivity Program are primarily for the purpose of improving forests. This determination was made in accordance with section 126 of the Internal Revenue Code of 1954, as amended, and permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed on December 20, 1999.

ADDRESSES: Questions may be addressed to Paul D. Frey, Assistant Commissioner and State Forester, Louisiana Department of Agriculture and Forestry, Office of Forestry, PO Box 1628, Baton Rouge, LA 70821.

FOR FURTHER INFORMATION CONTACT: Paul D. Frey, Louisiana Department of Agriculture and Forestry, at (504) 925–4500 or Ted Beauvais, Cooperative Forestry Staff, Forest Service, USDA, at (202) 205–1389.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), provides that certain payments made to persons under State programs may be excluded from the recipient's gross income for Federal income tax purposes under two conditions:

(1) If the Secretary of Agriculture, based on criteria set forth in 7 CFR part 14, determines that payments are made, "* * * primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife;" and

(2) If it "* * * is determined by the Secretary of the Treasury or his delegate as not increasing substantially the annual income derived from the property."

Procedural Matters

The Secretary of Agriculture, after reviewing the authorizing legislation, regulations, and operating procedures regarding the Louisiana Forestry Productivity Program and using the criteria set forth in 7 CFR part 14, has concluded that cost-share payments made to recipients for approved practices under this program are made primarily for the purpose of improving forests.

The Secretary of Agriculture signed the "Record of Decision, Louisiana Forestry Productivity Program, Primary Purpose Determination for Federal Tax Purposes" on December 20, 1999, and the document is available upon request from the persons listed earlier in this notice.

Dated: December 21, 1999.

Jose Cruz,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 99–33762 Filed 12–28–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
ND–100—Central Livestock Association, Inc., Ashley, North Dakota	July 9, 1959.
ND–103—Home Base Auction, Inc., Bowman, North Dakota	May 12, 1959.
ND–104—Central Livestock Association, Inc., Carrington, North Dakota	December 10, 1964.
ND–106—Stockmen's Livestock Exchange, Inc., Dickinson, North Dakota	May 9, 1959.
ND–110—Rocking M Livestock, LLC, Harvey, North Dakota	May 18, 1959.
ND–121—Park River Livestock Auction Market, Park River, North Dakota	June 9, 1959.
ND–124—Schilling Livestock, Inc., Turtle Lake, North Dakota	June 6, 1959.
ND–126—Watford City Livestock Auction, Watford City, North Dakota	June 1, 1959.
ND–131—Central Livestock Association, Inc., Dickinson, North Dakota	September 14, 1976.
ND–132—Litchville Feeder Pigs, Inc., Litchville, North Dakota	June 19, 1985.
SD–114—Edgemont Livestock Market, Inc., Edgemont, South Dakota	March 25, 1955.
SD–149—Timber Lake Livestock Market, Timber Lake, South Dakota	June 27, 1957.
SD–163—O'Connell's Lake Road Arena, Aberdeen, South Dakota	August 23, 1979.
SD–166—Magness-Faulkton Livestock Market, Faulkton, South Dakota	January 2, 1982.
SD–169—Alexandria Livestock Market, Inc., Alexandria, South Dakota	September 3, 1987.
WI–109—Midwest Livestock Producers Cooperative, Granton, Wisconsin	December 20, 1962.
WI–116—Midwest Livestock Producers Cooperative, Monticello, Wisconsin	May 2, 1960.
WI–117—Peshtigo Livestock Market, Inc., Peshtigo, Wisconsin	May 7, 1959.
WI–124—Midwest Livestock Producers Cooperative, Shullsburg, Wisconsin	April 15, 1971.
WI–127—Midwest Livestock Producers Cooperative, Thorp, Wisconsin	May 7, 1959.
WI–132—Midwest Livestock Producers Cooperative, Dale, Wisconsin	February 18, 1974.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C., this 20th day of December 1999.

Michael J. Caughlin, Jr.,

Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 99–33841 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
MN–117—Geneva Livestock Sales, Inc., Geneva, Minnesota	December 29, 1959.
MN–139—Porter Livestock Auction Market Co., Porter, Minnesota	April 6, 1966.
MN–151—Spring Grove Livestock Exchange, Spring Grove, Minnesota	October 20, 1959.
MN–158—Willmar Livestock Market, Willmar, Minnesota	September 26, 1959.
MN–159—C & C Sales, Windom, Minnesota	October 21, 1959.
MN–168—Gibbon Feeder Pig Markets, Inc., Gibbon, Minnesota	June 2, 1976.
MN–169—Minnesota Feeder Pig Markets, Inc., Willmar, Minnesota	February 28, 1977.
MN–171—Minnesota Feeder Pig Markets, Inc., Windom, Minnesota	February 5, 1979.
MN–173—Rush City Stockyard Auction, Inc., Rush City, Minnesota	June 26, 1979.
MN–174—Lee & John's Livestock, Inc., d/b/a Harmony Livestock Sales, Harmony, Minnesota	July 24, 1980.
MN–176—Minnesota Feeder Pig Markets, Inc., Elysian, Minnesota	May 23, 1981.
MN–179—Minnesota Feeder Pig Markets, Inc., Pipestone, Minnesota	May 25, 1983.
MN–180—Sauk Center Tel-O-Auction Coop., Sauk Center, Minnesota	January 28, 1985.
MN–183—Auction Center Livestock, Frazee, Minnesota	May 1, 1987.
MN–189—All Phase Arena, Inc., Spring Grove, Minnesota	June 5, 1993.

This notice is in the nature of a change relieving a restriction and, thus, May be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 20th day of December 1999.

Michael J. Caughlin, Jr.,

Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 99–33840 Filed 12–28–99; 8:45 am].

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 28, 1999, the Department of Commerce published notices of initiation of the third new shipper review and second administrative review of the antidumping duty order on brake rotors from the People's Republic of China. The reviews cover nine exporters of the subject merchandise to the United States. The period of review is April 1, 1998, through March 31, 1999. The Department of Commerce is also rescinding the administrative review with respect to three exporters of the subject merchandise which withdrew their requests for review in a timely manner and for which no other interested party requested a review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, Internation Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION: For the nine respondents that submitted full responses to the antidumping questionnaire and have preliminarily been found to be entitled to a separate rate, we have preliminarily determined that U.S. sales have not been made below normal value ("NV"). If these preliminary results are adopted in our

final results of these reviews, we will instruct the Customs Service to assess no antidumping duties on entries from the nine exporters from the People's Republic of China ("PRC") that cooperated in these reviews (including the one new shipper reviewed) for which the importer-specific assessment rates are zero or *de minimis* (i.e., less than 0.50 percent).

Background

On April 30, 1999, the following eleven exporters requested an administrative review pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b): (1) Jilin Provincial Machinery & Equipment Import & Export Corporation ("Jilin"); (2) Laizhou Auto Brake Equipments Factory ("LABEF"); (3) Longjing Walking Tractor Works Foreign Trade Import & Export Corporation ("Longjing"); (4) Longkou Haimeng Machinery Co. ("Haimeng"); (5) Quingdao (Gren) Co. ("GREN"); (6) Yantai Chen Fu Machinery Co., Ltd. ("Chen Fu"); (7) Yantai Import & Export Corporation ("Yantai"); (8) Yantai Winhere Auto-Part Manufacturing Co. ("Winhere"); (9) Yenhere Corporation ("Yenhere"); (10) Zibo Botai Machinery Manufacturing Co. ("Zibo"); and (11) Zibo Luzhou Automobile Parts Co. ("ZLAP").

On April 30, 1999, the Department received a timely request from Laizhou Hongda Auto Replacement Parts Co., Ltd. ("Laizhou Hongda"), Auto Replacement Parts Co., Ltd. ("Laizhou Hongda"), in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order.

In its April 30, 1999, request for review, Laizhou Hongda certified that it did not export the subject merchandise to the United States during the period covered by the original less-than-fair-value ("LTFV") investigation, and that it is not affiliated with any company which exported subject merchandise to the United States during the period of investigation. Laizhou Hongda also certified that its export activities are not controlled by the central government of the PRC. Pursuant to 19 CFR 351.214(b)(2)(iv), Laizhou Hongda submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States. Laizhou Hongda also agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On May 20, 1998, the Department initiated an administrative review covering the eleven PRC exporters mentioned above (*see Initiation of Antidumping and Countervailing Duty Administrative Review and Request for Revocation in Part* (64 FR 28973, May, 1999)). In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we initiated a new shipper review covering Laizhou Hongda. *See Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 64 FR 28982 (May 28, 1999).

On June 8, 1999, we issued a questionnaire to each PRC company which requested a new shipper or administrative review.

On July 1, 1999, the Department provided the parties an opportunity to submit publicly available information ("PAI"), through August 16, 1999, for consideration in these preliminary results. On July 13, 1999, GREN and Jilin requested an extension of time to file their responses to the antidumping duty questionnaire. On July 14, 1999, the Department granted the extension request made by GREN and Jilin. On July 15, 1999, Chen Fu, Longjing and ZLAP withdrew their requests for review in accordance with 19 CFR 351.213(d). On July 15, and 22, 1999, the remaining nine PRC companies [1] submitted their questionnaire responses. On July 26, 1999, the petitioner [2] submitted comments on the questionnaire responses.

On August 11, 1999, the respondents requested an extension of time until August 31, 1999, to submit PAI in this proceeding. On August 12, 1999, the Department extended the time for both the respondents and the petitioner to submit PAI to August 31, 1999. On August 13, 1999, the petitioner objected to the extension arguing that the Department was denying the petitioner due process. On August 26, 1999, the Department responded to petitioner's concerns (*see* Memorandum to the File, dated August 24, 1999).

On August 31, 1999, the respondents submitted PAI for use in valuing the factors of production. The petitioner elected not to submit PAI. Instead, the practitioner requested: (1) that the Department conduct verification of all companies which submitted antidumping questionnaire responses in this proceeding; (2) that the Department conduct a verification at the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") and Ministry of Machinery Industry ("MMI"); and (3) that the Department include in this proceeding the Department's MMI verification report, and accompanying verification exhibits, from the LTFV investigation.

On September 7, 1999, the petitioner submitted rebuttal comments on PAI. On September 10, 1999, the Department notified the petitioner by letter that the Department had rejected the petitioner's August 31, 1999, request to include in the record of this proceeding the MMI verification report or exhibits obtained in the LTFV proceeding because the information in question was not relevant to the separate rates issue of whether government control existed with respect to the export activities of the respondent companies involved in this proceeding. The Department issued supplemental questionnaires to the respondents during September 18–27, 1999. In October, November, and December 1999, the Department received supplemental questionnaire responses from the respondents.

Scope of Review

The products covered by these reviews are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in these reviews are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel

[1] These nine PRC exporters are (1) Jilin; (2) LABEF; (3) Laizhou Hongda; (4) Haimeng; (5) GREN; (6) Yantai; (7) Winhere; (8) Yenhere; and (9) Zibo.

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

plate, but otherwise meet the above criteria. Excluded from the scope of the reviews are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these reviews is dispositive.

Period of Reviews

The period of review ("POR") covers the period April 1, 1998, through March 31, 1999.

Rescission

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department may rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Chen Fu, Longjing, and ZLAP withdrew their request for an administrative review on July 15, 1999, which is within the 90-day deadline.

The Department has determined to grant the request to rescind this administrative review with respect to Chen Fu, Longjing, and ZLAP, because these companies withdrew their requests for review in a timely manner and because no other interested party requested a review of these companies. Accordingly, for POR entries made by these PRC companies, the Department will instruct the Customs Service to assess *ad valorem* duties at the rates applicable at the time of entry.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. Of the nine respondents that submitted questionnaire responses, one of the PRC companies, Winhere, is wholly owned by private individuals. Three respondents (*i.e.*, Haimeng, Laizhou Hongda and Zibo) are joint ventures between PRC and foreign companies. Another respondent, Yenhere, is a limited liability corporation in the PRC. The four other respondents are either wholly owned by "all the people" (*i.e.*, Jilin and Yantai) or collectively owned (*i.e.*, GREN and LABEF). Thus, for all nine respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* ("*Bicycles*") 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of china*, 56 FR 20588 (may 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under this separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Each respondent has placed on the administrative record documents to demonstrate absence of *de jure* control, including the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("the Industrial Enterprises Law"); "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC"; the 1992 "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises" ("Business Operation Provisions"); and the 1994 "Foreign Trade Law of the People's Republic of China."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of companies "owned by the whole people," privately owned enterprises, joint ventures, stock companies including limited liability companies, and collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to the nine respondents mentioned above.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each of the nine respondents asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, the respondents' questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of the export functions of the respondents. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that each

of the respondents has met the criteria for the application of separate rates.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the export price ("EP") to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

1. Haimeng, Jilin, LABEF, Winhere, Yenhere and Zibo

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we based those charges on surrogate rates from India (*see* "Surrogate Country" section below). To value foreign inland trucking charges, we used the average inflation-adjusted 1994 truck freight rate contained in the Indian periodical *The Times of India*. We have used this same rate in numerous NME cases in which India has been selected as the primary surrogate (*see, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160, 9163 (February 28, 1997)). To value foreign brokerage and handling expenses, we relied on public information reported in the antidumping investigation of stainless steel wire rod from India (*see Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581, 61584 (November 12, 1999) (*Brake Rotors First Administrative Review*)).

2. GREN and Yantai

We calculated EP based on packed, CIF, U.S. or FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information reported in the antidumping investigation of sulfur dyes, including sulfur vat dyes, from India (*see Brake Rotors First Administrative Review*, 64 FR at 61584). For ocean freight, we used a 1996 price quote (adjusted for inflation) from a U.S. shipping company to calculate an average price for shipping. We did so because GREN used NME carriers and Yantai paid freight expenses to a U.S. freight forwarder which then contracted with NME carriers to ship the subject merchandise to the United States.

3. Laizhou Hongda

We calculated EP based on packed, CIF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information as reported in the antidumping investigation of sulfur dyes, including sulfur vat dyes, from India (*see Brake Rotors First Administrative Review* at 64 FR 61584). To value ocean freight, we used Laizhou Hongda's reported expense because Laizhou Hongda used market-economy freight carriers (*see, e.g., Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 64 FR 9972, 9974 (March 1, 1999).

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value a NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India and Indonesia are among the countries comparable to the PRC in terms of overall economic development (*see* Memorandum from the Office of Policy to Irene Darzenta Tzafolias, dated June 24, 1999, which was included in the Department's July 1, 1999, letter sent to the interested parties in this proceeding for the submission of PAI). In addition, based on PAI placed on the record, India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production as the basis for NV because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we valued those factors using values from Indonesia.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production. We used factors reported by companies in the PRC that produced brake rotors for export to the United States during the POR through reviewed exporters. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian or Indonesia values.

In a September 7, 1999, submission, the petitioner alleged that there is widespread tax evasion in India and, therefore, insisted that the Department only subtract excise duties, levies and sales taxes from Indian domestic material prices used by the Department if the Indian brake rotor producers demonstrated that they paid their excise and sales taxes related to such materials used in production during the POR. In these preliminary results, we have not used Indian domestic prices to value the material inputs (*see* discussion below). Therefore, we do not deem it necessary to address the petitioner's allegation at this time.

In addition, the petitioner requested that the Department not deduct an amount for duty drawback from the cost of inputs used to produce brake rotors which are exported from India, based on information submitted by the respondents which indicates that Indian

brake rotor exporters are entitled to duty drawback if they used imported inputs to produce the exported finished good. A "duty drawback" is, by definition, a remission of an amount paid (or to be paid) as an import "duty" (*i.e.*, tax). Such a "drawback" is often conditional upon exporting a certain volume of product using the imported inputs. The input prices the Department uses do not include Indian taxes because Indian government revenue-collection practices are not relevant to the question of what it would cost a PRC producer to produce the item in question, if the PRC were a market economy country. In this case, the input prices the Department is using based on the PAI specified below are already duty free. Therefore, we have not made any adjustment to these prices for duty drawback.

Finally, to calculate surrogate percentages for selling, general and administrative ("SG&A") expenses, factory overhead and profit, the petitioner requested that the Department use financial data from a group of Indian brake rotor producers, rather than just one Indian brake rotor producer, which are more representative of the experience of the Indian brake rotor industry as a whole. We agree with the petitioner on this point, and have used financial data from five known Indian brake rotor producers to calculate these percentages (*see* discussion below).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

To value pig iron, we used average values based on import statistics for April 1997–March 1998 from *Monthly Statistics of the Foreign Trade of India* ("*Monthly Statistics*") rather than domestic price data in India from the April 1996–March 1997 financial report of Lamina Foundries ("Lamina") or from the 1996 financial report of Nagpur Alloy Castings Ltd. ("Nagpur"), because the import data was more contemporaneous with the POR. For iron scrap, steel scrap, ferrosilicon, ferromanganese, lubrication oil and limestone, we used April 1997–March 1998 average values from *Monthly Statistics*.

Certain types of rotors use steel sheet, lug bolts and ball bearing cups. To value steel sheet, we used an April 1997–March 1998 average value from *Monthly Statistics*. Because we could not obtain a product-specific price from India to value lug bolts (*see Bicycles*, 61 FR at 19026 (Comment 17)), we used January–October 1998 product-specific import data from the Indonesian government publication *Foreign Trade Statistical Bulletin*. To value ball bearing cups, we used April 1997–July 1997 import price data from *Monthly Statistics*.

To value coking coal, we used an April 1997–March 1998 import price from *Monthly Statistics* rather than a price applicable during the fourth quarter of 1996 from the International Energy Agency's *Energy Price and Taxes*, because the import price was more contemporaneous with the POR. To value firewood, we used a 1990 domestic value from the USAID publication *Marketing Opportunities for Social Forestry in Uttar Pradesh*, which is the most recent value available for this input. To value electricity, we calculated an average 1996 industrial rate based on data contained in the financial reports of Lamina, Nagpur, and Jayaswals Neco Limited ("Jayaswals"). For a complete analysis of surrogate values, see the Preliminary Results Valuation Memorandum from the Team to the File, dated December 17, 1999 ("Preliminary Results Valuation Memorandum").

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value SG&A expenses, factory overhead and profit, we used the 1998–1999 financial data of Kalyanti Brakes Limited ("Kalyani") combined with the financial data of Indian producers whose data is less contemporaneous with the POR (*i.e.*, the 1996–1997 financial data of Jayaswals, Krishna Engineering Works ("Krishna"), Nagpur, and Rico Auto Industries Limited ("Rico")). We did so because we determined that it is more appropriate in this instance to calculate surrogate percentage averages which are representative of the experience of known Indian brake rotor producers, rather than to use the financial data of a sole Indian brake rotor producer just because that data is more contemporaneous with the POR as suggested by the respondents. In prior brake rotor administrative reviews, both the petitioner and the respondents have consistently submitted for the Department's consideration financial statements from multiple Indian producers of comparable merchandise which generally have been contemporaneous with the POR. Therefore, we had no reason to question the representativeness of the data being submitted. However, in this proceeding, the respondents submitted the financial statement of only one Indian producer of comparable merchandise (*i.e.*, Kalyani). Because the Department generally prefers surrogate ratios which are based on the financial data of more than a single Indian producer and are more representative of the experience of all known Indian brake rotor producers, the Department has averaged the most recent financial data available for Jayawals, Kalyani, Krishna, Nagpur and Rico to calculate the surrogate ratios for factory overhead, SG&A, and profit.

Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports (*see Brake Rotors*, 62 FR at 9164). We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. In utilizing the financial data of the Indian companies, we treated the line item labeled "stores and spares consumed" as part of factory overhead because stores and spares are not direct materials consumed in the production progress. Based on PAL, we considered the modeling materials (*i.e.*, sand, bentonite, coal powder, steel pellets, lead powder, waste oil) to be indirect materials included in the "stores and spares consumed" category of the financial statements. We based our factory overhead calculation on the cost of manufacturing. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature. Where a company did not distinguish interest income as a line item within total "other income," we used the ratio of interest income to total other income as reported for the Indian metals industry in the *Reserve Bank of India Bulletin* to calculate the interest expense amount. For example, if an Indian company's financial statement indicated that the company had miscellaneous receipt or other income under the general category "other income," we applied a ratio (based on data contained in *Reserve Bank of India Bulletin*) to that miscellaneous receipts or other income figure in the financial statement to determine the amount associated with short-term interest income. To avoid double-counting, we treated the line item "packing, freight and delivery charges" as expenses to be valued separately. Specifically, to determine the packing expense, we used the respondents' reported packing factors.

We used the respondents' reported distances to determine the foreign inland freight expense. For a further discussion of other adjustments made, *see* the Preliminary Results Valuation Memorandum.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used the April 1994 truck rate from the *Times of India*.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

To value adhesive tape, corrugated cartons, nails, polyethylene material for bags, steel strap and steel strip, we used April 1997–March 1998 import values from *Monthly Statistics*. To value pallet wood, we selected an April 1995–March 1996 import value from *Monthly Statistics* rather than values obtained after March 1996, because the more contemporaneous values appeared aberrational relative to the overall value of the subject merchandise (*see* Preliminary Results Valuation Memorandum for further discussion).

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the nine respondents during the period April 1, 1998, through March 31, 1999:

Manufacturer/producer/exporter	Margin percent
Jilin Provincial Machinery & Equipment Import & Export Corporation.	0.00
Laizhou Auto Brake Equipments Factory.	0.00
Laizhou Hongda Auto Replacement Parts Co., Ltd.	0.00
Longkou Haimeng Machinery Co.	0.10 (*de minimis*)
Qingdao (Gren) Co ...	0.49(*de minimis*)
Yantai Import & Export Corporation.	0.30(*de minimis*)
Yantai Winhere Auto-Part Manufacturing Co.	0.00
Yenhere Corporation	0.00
Zibo Botai Machinery Manufacturing Co.	0.00
PRC-Wide Rate	43.32

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on March 31, 2000.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than March 24, 2000. Rebuttal briefs, limited to issues raised in the case briefs, will be due on March 29, 2000. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will issue the final results of this administrative and new shipper review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we will subtract international movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). For entries of subject merchandise from those PRC companies for which the Department has rescinded the review, the Customs Service shall assess *ad valorem* duties at the rates applicable at the time of entry, as stated in the "Rescission" section of this notice. For entries subject to the PRC-wide rate, the Customs Service shall assess *ad valorem* duties at the rate established in the LTFV investigation. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Cash Deposit Requirements

Upon completion of this new shipper review, for entries from Laizhou Hongda, we will require cash deposits at the rate established in the final results pursuant to section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e) and as further described below.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper antidumping duty administrative reviews for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each reviewed company will be the rate established in the final results; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding but for whom the Department has rescinded the review (*i.e.*, Longjing and ZLAP) will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (*i.e.*, all other exporters including Chen Fu) will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper administrative reviews and notice are in accordance with section 751(a)(1) and (2)(B) of the Act (19 U.S.C. 1675(a)(1) and (2)(B)) and 19 CFR 351.213 and 351.214.

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33665 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–804]

Final Results of Expedited Sunset Review: New Steel Rail from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: New Steel Rail from Canada.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on new steel rail from Canada (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 29, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is new steel rail, whether of carbon, high carbon, alloy or other quality steel from Canada. Subject merchandise includes, but is not limited to, standard rails, all main line sections (at least 30 kilograms per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines, and in industrial applications.

Specifically excluded from the order are light rails (less than 30 kilograms per meter or 60 pounds per yard). Also excluded from the order are relay rails, which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. As a result of a changed circumstances review in 1996, the antidumping duty order on new steel rail was partially revoked with regard to 100ARA–A new steel rail, except light rail, from Canada.[1] Also, nominal 60 pounds per yard steel rail is outside the scope of this order.[2]

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 7302.10.1010, 7302.10.1015, 7302.1035, 7302.10.1045, 7302.10.5020, 8548.90.0000.[3] The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

The Department issued its final determination of sales at less than fair value ("LTFV") with respect to imports of new steel rail from Canada on August 3, 1989 (54 FR 31984). In this determination, the Department published one company-specific dumping margin as well as an "all others" rate. On September 15, 1989, the Department issued the antidumping duty order on new steel rail from Canada, again publishing one company-specific dumping margin as well as an "all others" rate (54 FR 38263).

Since the imposition of the order, the Department has conducted one changed circumstances administrative review.[4] There have been no administrative reviews of the order.

We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise from Canada.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping order on new steel rail from Canada (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Pennsylvania Steel Technologies, Inc. ("PST"), a subsidiary of Bethlehem Steel Corporation, and Rocky Mountain Steel Mills ("RMSM") (collectively, the "domestic interested parties") on June 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested parties on July 1, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Both PST and RMSM claimed interested party status under 19 USC 1677(9)(C) as U.S. manufacturers of the subject merchandise. In addition, PST stated that it is subsidiary of Bethlehem Steel Corporation, a petitioner in the original investigation. We did not receive a substantive response from any respondent interested party in this case. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of the order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On October 12, 1999, the Department determined that the sunset review of the antidumping duty order on new steel rail from Canada is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than

---

[1] *See New Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders*, 61 FR 11607 (March 21, 1996).

[2] *See New Steel Rail, Except Light Rail, From Canada, Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language*, 63 FR 43137 (August 12, 1998).

[3] Per conversation with April Avalone at U.S. Customs on September 7, 1999.

[4] *See* footnote 1.

December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumpung order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In this instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the order on new steel rail from Canada would be likely to lead to continuation or recurrence of dumping. They maintain that were the order revoked, imports of new steel rail from Canada would likely reenter the U.S. market at less than fair value. They point out that although Algoma Steel Corporation, Limited, has ceased producing new steel rail, another Canadian producer, the Sydney Steel Corporation ("Sysco"), does produce the subject merchandise. The domestic interested parties argue that new steel rail currently accounts for approximately 40 percent of Sysco's total steel production (*see* July 1, 1999, substantive response of the domestic interested parties at 9–10 and Exhibit 2). Moreover, they argue that Sysco's five year business plan calls for an increase in rail production and an increase in exports to account for some of the production increase. The domestic interested parties assert that several factors indicate that, if the antidumping duty order were revoked, the primary target of Sysco's increased production of new steel rail would be the United States market. Specifically, the domestic parties argue that, because Sysco maintains a location in Eastern Canada, its most economical and logical export market would be the United States. Additionally, the domestic interested parties stress that statements made by Sysco executives indicate a willingness to regain market share in the U.S. (*see id.* at 10 and Exhibits 3 and 5).

The domestic interested parties also base their likelihood argument on the decline in import volumes following the imposition of the order. The domestic interested parties, citing U.S. Census Bureau statistics, state that subject imports dropped off significantly in 1990, the year following the imposition of the order. They argue that prior to the issuance of the order, sales of Canadian new steel rail had increased by 162 percent between the time period 1986 to 1988. The domestic interested parties further assert that subsequent to the antidumping order, sales volumes dropped by over 99.9 percent in 1990, as compared to 1988 figures. Moreover, in 1998, imports were 99.7 percent lower than in 1988. They conclude that Canadian imports, while not zero, are currently insignificant in the U.S. market (*see id.* at 8–9). Therefore, the domestic interested parties argue that were the order revoked, dumping would be likely to recur since the evidence indicates that Canadian exporters of the subject merchandise need to dump in order to sell at pre-order levels.

In conclusion, the domestic interested parties argue that the Department should determine that there is a likelihood that dumping would continue or recur were the order revoked because the imposition of the order resulted in the near termination of imports of new steel rail from Canada.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue to dump with the discipline of the order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As discussed above, no administrative reviews have been conducted since the original investigation, and therefore dumping margins above *de minimis* continue to exist for all shipments of the subject merchandise from Canada. While the domestic interested parties note that Algoma no longer produces the subject merchandise, other Canadian producers/exporters, such as Sysco, continue to produce and export the subject merchandise.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after the issuance of the order. As stated above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from Canada since the imposition of the order provides further evidence that dumping would continue if the order were revoked. In their substantive responses, the domestic interested parties provide statistics demonstrating the decline in import volumes of new steel rail since the imposition of the order (*see* July 1, 1999, Substantive Response of the domestic interested parties at 8 and Exhibit 1). Utilizing the Department's statistics, including IM146 reports, on imports of the subject merchandise from Canada, we agree with the domestic interested parties' assertions that imports of the subject merchandise declined sharply following the imposition of the order and have not regained pre-order volumes. However, it

[5] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 55233 (October 12, 1999).

is not possible to determine whether this decline is due to the fact that Algoma has ceased producing new steel rail or to the response of Sysco and other producers/exporters to the order. Therefore, the decline in imports in this case is not probative of the likelihood of continuation or recurrence of dumping.

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above *de minimis* is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, given that dumping has continued over the life of the order, respondent parties waived participation in this review, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

In their substantive response, the domestic interested parties recommend that the Department adhere to its general practice of selecting dumping margins from the original investigation. Regarding companies not reviewed in the original investigation, the domestic interested parties suggest that the Department report to the Commission the all others rate published in the original investigation. Since the Algoma Steel Corporation, the company that received a company-specific rate in the original investigation, has, according to the domestic interested parties, ceased production of new steel rail, the domestic parties maintain that providing a rate for Algoma is not necessary. However, because at least one other producer/exporter remains, the domestic interested parties recommend that the Department provide to the Commission the all others rate determined in the original investigation.

The Department agrees with the domestic interested parties that the margins calculated in the original investigation are the only rates that reflect the behavior of exporters without the discipline of the order. Absent argument and evidence to the contrary, the Department finds the margins calculated in the original investigation are probative of the behavior of Canadian producers/exporters of new steel rail if the order were revoked. As such, the Department will report to the Commission the "all others" rates from the original investigation as contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Algoma	38.79
All Others	38.79

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33664 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Brass Sheet and Strip from Canada, Secretariat File No. USA/CAN–98–1904–03.

SUMMARY: Pursuant to the Order of the Binational Panel dated November 5, 1999, affirming the final remand determination described above was completed on December 16, 1999.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On November 5, 1999, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration ("ITA") concerning Brass Sheet and Strip from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists discharged from their duties effective December 17, 1999.

Dated: December 22, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–33785 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United

States Section, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of termination of panel review of the final countervailing duty determination made by the International Trade Administration, respecting live cattle from Canada (Secretariat File No. USA–CDA–99–1904–06).

SUMMARY: Pursuant to the Consent Motion to Terminate the Panel Review, the panel review is terminated as of December 22, 1999. No complaints were filed pursuant to Rule 39, no Notices of Appearance were filed pursuant to Rule 40, and no panel has been appointed. Pursuant to Rule 73(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panel. When a request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: December 22, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–33784 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

Evaluation of National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Sapelo Island (Georgia) National Estuarine Research Reserve.

The evaluation will be conducted pursuant to Sections 315 and 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, and regulations at 15 C.F.R. Part 921, Subpart E, and Part 923, Subpart L. The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. A public meeting will be held as part of the site visit.

Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

The Sapelo Island National Estuarine Research Reserve site visit will be from January 31–February 4, 2000. One public meeting will be held on Thursday, February 3, 2000, at 7 p.m., in the Sapelo Island Visitors Center, on Dock Landing Road, Meridian, Georgia.

The State will issue notice of the public meeting in a local newspaper at least 45 days prior to the public meeting, and will issue other timely notice as appropriate.

Copies of the State's most recent performance report, as well as OCRM's notification and supplemental request letter to the State, are available upon request from OCRM. Written comments from interested parties regarding the Reserve are encouraged and will be accepted until 15 days after the date of the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3155, Extension 114.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 22, 1999.

CAPT Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–33745 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112699C]

Gulf of Mexico Fishery Management Council; Public Meetings; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction of public meeting notice.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings on January 18–21, 1999. The meeting agendas were published in the **Federal Register** on December 6, 1999. There are some corrections to that notice.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The original notice of these meetings was published in the **Federal Register** on December 6, 1999 (64 FR 68086). This document corrects and makes changes to the meeting agendas.

Under "Council" the following changes are to be made:

January 21

9:30 a.m. - 10:00 a.m.—Receive the Reef Fish Management Committee Report.

10:30 a.m. - 11:00 a.m.—Receive the Migratory Species Management Committee Report.

11:00 a.m. - 11:15 a.m.—Receive the South Atlantic Fishery Management Council Liaison Report.

11:15 a.m. - 11:30 a.m.—Receive Enforcement Reports.

Under "Committees" the following changes are to be made:

January 18

1:00 p.m. - 3:00 p.m.—Convene the Reef Fish Committee to review red

snapper management issues and develop recommendations.

3:00 p.m.- 4:30 p.m.—Convene the Migratory Species Management Committee to consider a NMFS proposal for an area closed to pelagic longline fishing.

All other previously published information remains unchanged.

Although non-emergency issues not contained in the agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **FOR FURTHER INFORMATION CONTACT**) by January 10, 2000.

Dated: December 23, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33811 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF INTERIOR

U.S. Fish and Wildlife Service

[I.D. 110299C]

Marine Mammals; File No. 932–1489–01

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce. U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Marine Mammal Health and Stranding and Response Program (MMHSRP), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, has been issued an amendment to scientific research and enhancement Permit No. 932–1489–01.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ruth Johnson 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 25, 1999, notice was published in the **Federal Register** (64 FR 14435) that a request for a scientific research and enhancement permit to take all species in the Orders Cetacea, Pinnipedia, Sirena, and polar bear, sea otter and marine otter had been submitted by the above-named organization. The permit was issued July 2, 1999 (64 FR 37933) under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*) to only take species of the Orders Cetacea and Pinnipedia (except walrus). The Permit is amended to include species of Order Sirenia and polar bear, sea and marine otters. The amendment is issued under authority of the above citations and the MMPA (16 U.S.C. 1361 et seq), applicable regulations (50 CFR part 18), ESA (16 U.S.C. 1531 et seq), and applicable regulations (50 CFR part 17).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–9250 (978/281–9250);

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, bldg. 1, Seattle, WA 98115–0070;

Southeast Region, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (727/570–5301);

Southwest Region, National Marine fisheries Service, NOAA, 501 west Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001);

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/943–1221);

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, VA 22203 (1–800–358–2104);

Field Supervisor, Jacksonville Field Office, 6620 South Point Drive South, Suite 310, Jacksonville, FL 32216–0312 [904–232–2580, Fax: 904–232–2404);

Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, CA 93003 [805–644–1766, Fax: 805–644–3958]; and

Marine Mammals Management, 1101 E. Tudor Road, Anchorage, AK 99503–6199 [907–786–3800, Fax: 907–786–3816).

Dated: December 20, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: December 20, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 99–33855 Filed 12–28–99; 8:45 am]

BILLING CODES 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120999G]

National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; schedule change; public meeting; request for comments.

SUMMARY: The United States, through a collaborative effort of NMFS and the U.S. Fish & Wildlife Service (FWS), announces the availability of a draft National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds). The United States, through

NMFS, also announces a schedule change for the NPOA-Seabirds. NMFS will host a public meeting to receive comments from members of the public on the draft NPOA-Seabirds. To accommodate people unable to attend a meeting or wishing to provide written comments, NMFS solicits written comments on the NPOA-Seabirds.

DATES: A public hearing on the NPOA-Seabirds will be held at 3:00 p.m. on January 19, 2000. Submit comments on the NPOA-Seabirds to the appropriate address or fax number by 5:00 p.m. on January 18, 2000.

ADDRESSES: The public meeting will be held at NOAA-NMFS Headquarters, 1315 East-West Highway, SSMC3 Room 14836, Silver Spring, MD 20910. Comments on the NPOA-Seabirds may be sent to David Kerstetter, NOAA-NMFS/SF4, 1315 East-West Highway, Silver Spring, MD 20910, or by fax to 301–713–2313. Comments will not be accepted via e-mail or internet.

FOR FURTHER INFORMATION CONTACT: David Kerstetter, 301–713–2276, ext. 107, or fax 301–713–2313.

SUPPLEMENTARY INFORMATION: The United States, through a collaborative effort of NMFS and the FWS, is developing a NPOA-Seabirds pursuant to the endorsement of the International Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries by the Food and Agriculture Organization of the United Nations Committee on Fisheries (COFI) Meeting in February 1999. The United States has committed itself to developing this NPOA-Seabirds and reporting to COFI on its implementation no later than 2001.

A previous **Federal Register** document dated September 8, 1999 (64 FR 48987), provided a tentative time frame for the completion of this project and an outline of the contents of the NPOA-Seabirds. The time frame has been revised as provided here, and the structure of the NPOA-Seabirds, but not the content, has been changed. Public comments received regarding this September 8, 1999, document will be addressed in the notice of availability of the final NPOA-Seabirds.

Time Frame:

NPOA-Seabirds

December 27, 1999: Release draft NPOA-Seabirds for public comment via posting of the document on the NMFS web site (www.nmfs.gov). The document will also be provided in hard copy upon request (see **ADDRESSES**).

January 2000: Public comment period on draft NPOA-Seabirds.

January 19, 2000: Public meeting on NPOA-Seabirds.

February 2000: Release final NPOA-Seabirds via a Federal Register notice of availability and posting on the NMFS web site (www.nmfs.gov). The document will also be provided in hard copy upon request (see **ADDRESSES**).

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David Kerstetter (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Dated: December 22, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33856 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, January 18, 2000.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advise to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 u.S.C. App. sec. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1004), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33692 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, January 20, 2000.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with

industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d) (1994)), it has been determined that this advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1944), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33693 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, February 24, 2000.

ADDRESSES: The meeting will be held at Palisades Institutes for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33694 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, January 19, 2000.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments proposed to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33695 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board Action Notice

Summary: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by President on September 16, 1994.

The Board advises the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and functions as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) chairs the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Advisory Board will be held on 10 January 2000 at 1400hrs at the Rand Corporation, 1700 Main Street, Santa Monica, CA. 90407–2318. The meeting will be open to the public.

For further information please contact Mr. Bill Isaacs telephone: 703–602–0815.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33696 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Air Force Space Launch Facilities will meet in closed session on February 24, 2000, Patrick Air Force Base, Cape Canaveral, FL, and March 24, 2000, at The Aerospace Corporation, Chantilly, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense Science Task Force on Air Force Space Launch Facilities will assess the anticipated military, civil and commercial space launch requirements and estimate future funding requirements for space launch ranges capable of meeting both national security needs and civil and commercial needs. The Task Force will discuss interim findings and tentative recommendations resulting from ongoing activities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33697 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Inspector General

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Office of the Inspector General, DoD proposes to amend a system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on January 28, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Acting Chief, Administrative Service, Assistant Inspector General for Administration, Information Management, 400 Army Navy Drive, Room 410, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at telephone (703) 604-9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendment is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: December 22, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG-15

SYSTEM NAME:

Special Inquiries Investigative Case File and Control System *(February 22, 1993, 58 FR 10213).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Departmental Inquiries Case System'.

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete first paragraph and replace with 'Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.'

* * * * *

CIG-15

SYSTEM NAME:

Departmental Inquiries Case System.

SYSTEM LOCATION:

Office of the Assistant Inspector General for Departmental Inquiries, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202-2884.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals who provide initial complaints resulting in administrative investigations conducted by Office of the Assistant Inspector General for Departmental Inquiries (OAIG-DI) related to violations of laws, rules, or regulations or mismanagement, gross waste of funds, abuse of authority, or a danger to the public health and safety; subjects of administrative investigations conducted by the OAIG-DI; or individuals identified as having been adversely affected by matters under investigation by the OAIG-DI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Materials relating to allegations received and documentation created as a result of action by the Office of the Inspector General, including reports, records of action taken, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95-452), as amended; and DoD Directive 5106.1 (32 CFR part 376).

PURPOSE(S):

To record complaints, allegations of wrongdoing, and requests for assistance; to document inquiries, research facts and circumstances, sources of information, conclusions and recommendations; to record actions taken and notifications of interested parties and agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records are stored in conventional media file folders and personal computer.

RETRIEVABILITY:

Automated and paper records pertaining to administrative investigation cases are indexed through the use of a computerized cross-reference system; they may be retrieved by individual names or case numbers.

SAFEGUARDS:

Records, both paper and automated, are accessible only to Office of the Assistant Inspector General for Departmental Inquiries personnel having official need therefor and are stored in locked rooms. The automated system is password protected, and regular back-ups of data are performed.

RETENTION AND DISPOSAL:

Automated and paper records are retained for a period of ten years following completion of final action.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Inspector General for Departmental Inquiries, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202-2884.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202-2884.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

RECORDS ACCESS PROCEDURES:

Individuals may access agency records or information about themselves should address written inquiries to the Chief, Freedom of Information Act/ Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202-2884.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information was obtained from sources, subjects, witnesses, all levels of government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 99–33698 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officer's Training Corps (ROTC) Program Subcommittees; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., App. 2), announcement is made of the following Committee meeting:

Name of Committee: Reserve Officers's Training Corps (ROTC) Program Subcommittee.

Date of Meeting: 6–8 February 2000.

Place: Pentagon, Washington, DC.

Time: 0800–1700 hours.

Proposed Agenda: Review and discuss status of Army ROTC since the July 1999 meeting held in Louisville , KY.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee. For further information, contact: Commander U.S. Army Cadet Command, ATTN: ATCC–TT (MAJ Hewitt), Fort Monroe, VA 23651; (757) 728–5456.

C. Paul Whitaker

Colonel, GS., Acting Chief of Staff.

[FR Doc. 99–33409 Filed 12–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Rio de Flag Flood Control Study Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Extension of comment period.

SUMMARY: Notice of Availability for the Rio de Flag Flood Control Study Draft Environmental Impact Statement was published in the **Federal Register**, Volume 64, No. 223 on November 19, 1999. The public comment is scheduled to conclude on January 4, 2000. However, in response to requests received from the public, the comment period will be extended two weeks and comments will be due on January 18, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David Compas, (213) 452–3850.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–33769 Filed 12–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 30, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before February 28, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New

Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 22, 1999.

William E. Burrow, Leader,

Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: National Student Loan Data System (NSLDS)

Abstract: The U.S. Department of Education will collect data from postsecondary schools and guaranty agencies about federal Perkins loans, federal family education loans, and William D. Ford direct student loans to be used to determine eligibility for Title IV student financial aid.

Additional Information: Organizational circumstances necessitate the Office of Student Financial Assistance to request a three-month extension on the present OMB clearance.

Frequency: On Occasion, Weekly, Monthly, Quarterly

Affected Public: Not-for-profit institutions; Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 29,952.

Burden Hours: 179,712.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33691 Filed 12–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs; Correction

AGENCY: Office of Student Financial Assistance, Department of Education.

ACTION: Notice of revision of the Federal need analysis methodology for the 2000–2001 award year; Correction.

SUMMARY: On June 1, 1999, a notice was published in the **Federal Register** (64 FR 29512–29515, FR Doc. 99–13767) to update the Federal need analysis methodology for the 2000–2001 award year. This notice corrects the June 1 document.

Page 29512 is corrected as follows:

(1) Column one, "Summary", line 13, "educational" should be "education".

(2) Column three, line 23, replace "two-earner" with "two wage earner" and "one-earner" with "one wage earner".

(3) Table one, "Income Protection Allowance", line 1 following the table, "$2,940" should be "$2,980" and line 2, "$2,090" should be "$2,120".

(4) Item 2, "Adjusted Net Worth (NW) of a Business or Farm", continued to column two, line 1, "anther" should be "another".

(5) Table two, "Adjusted Net Worth (NW) of a Business or Farm", second column heading "new worth" should be "net worth".

Page 29513 is corrected as follows:

(1) Item 3, "Education Savings and Asset Protection Allowance", line 5, "educational expenses" should be "education expenses".

(2) Column three, "Independent Students With Dependents Other Than A Spouse—continued", column three, line two of the table, "18,00" should be "18,000".

(3) Column three, "Assessment Schedules and Rates", line 7, "educational" should be "education".

(4) Column three, "Assessment Schedules and Rates", line 11, "parents" should be "parents' ".

(5) Column one, heading under "Dependent Students", "parents" should be "parent".

Page 29514 is corrected as follows:

(1) Column one, "Employment Expense Allowance", line 10, replace "two-earner" with "two wage earner" and "one-earner" with "one wage earner".

(2) Column three, "Allowance for State and Other Taxes", line 1, "students" should be "student's".

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, U.S. Department of Education, Room 3053, ROB–3, 400 Maryland Avenue, SW, Washington, D.C. 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Program; 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

Dated: December 21, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–33763 Filed 12–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice-Computer Matching between the U.S. Department of Education and the Social Security Administration.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub.L. 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, a notice is hereby given of the computer matching program between the U.S. Department of Education (ED) (the recipient agency), and the Social Security Administration (SSA) (the source agency). The following notice represents the approval of a new computer matching agreement by the SSA and ED Data Integrity Boards to implement the matching program on the effective date as indicated below.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub.L. 100–503), the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, we are providing the following information:

1. Names of Participating Agencies

The U.S. Department of Education and the Social Security Administration.

2. Purpose of Match

ED is one of several Federal agencies to operate benefit programs that have statutory requirements to reduce, suspend, or terminate benefits to those who are incarcerated. Sections 484(a)(5)(20 U.S.C. 1091) and 401(b)(8)(20 U.S.C. 1070a) of the Higher Education Act of 1965, as amended (HEA) provide that an incarcerated student is ineligible for loans under the Title IV student financial assistance programs and that students incarcerated in any Federal or State penal institution are ineligible for Federal Pell Grant assistance. The SSA, with the assistance of the Federal Bureau of Prisons and various State and local entities developed a database of persons who are incarcerated. On April 25, 1998, the White House directed ED to coordinate its efforts to enforce the requirements of sections 484(a)(5)(20 U.S.C. 1091) and 401(b)(8)(20 U.S.C. 1070a) of the HEA with SSA by accessing SSA's prisoner database. This computer matching program will provide an efficient and comprehensive method of identifying incarcerated applicants who are ineligible to received student financial assistance under the Title IV programs.

3. Legal Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under Title IV section 484(a)(5)(20 U.S.C. 1091) and 401(b)(8)(20 U.S.C. 1071a) of the HEA. SSA is authorized to participate in the matching program under 42 U.S.C. 1382(e)(1)(I)(ii).

4. Categories of Records and Individuals Covered by the Match

ED will submit for verification from its Central Processing System files (Federal Student Aid Application File (18–11–01)) the social security number (SSN) and other identifying information for each applicant for Title IV student financial assistance. This information will be matched against the SSA State Verification and Exchange System, which contains the SSN and other identifying information for all SSN holders.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and SSA should contact Ms. Edith Bell, Program Specialist, U.S. Department of Education, Room 3053, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

You may inspect all public comments about this matching program at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed.

Electronic Access to this Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), Toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Dated: December 21, 1999.

Jeanne VanVlandren,

Acting Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–33744 Filed 12–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed three-year extension of existing Form DOE–887, "Department of Energy Customer Surveys."

DATES: Written comments must be submitted on or before February 28, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Herbert T. Miller, Statistics and Methods Group, EI–70, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Mr. Miller may be reached by phone at 202–426–1103, by e-mail at hmiller@eia.doe.gov, or by FAX 202–426–1081.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*), require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

On September 11, 1993, the President signed Executive Order No. 12862 aimed at "* * * ensuring the Federal government provides the highest quality service possible to the American people." The voluntary surveys the Department proposes will be used to ascertain customer satisfaction with the Department of Energy in terms of services, products, and information our customers want and expect, as well as their satisfaction with and awareness of existing products, services, and information. Respondents will be businesses, academic institutions, associations, researchers, and other individuals, organizations, or institutions that are the recipients of the Department's services, products, and information. Previous customer surveys have provided useful information to the Department for assessing how well services, products, and information are delivered and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis, and are used to satisfy the requirements and the spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a three-year extension of the expiration date of approval for DOE to conduct customer surveys. During the past approval period of about three years, 14 customer surveys have been conducted by telephone, mail, and through the Web site. (Examples of previously conducted customer surveys are available upon request.) Our planned activities in the next three fiscal years reflect our increased emphasis on and expansion of these activities, including an increased use of electronic means for obtaining customer input. Surveys may be conducted by focus groups, reply cards that accompany product distribution, web-based surveys that offer customers the opportunity to express their levels of satisfaction with DOE products, services, and information, and for on-going dialogue with the Department. DOE will collect this information by electronic means, as well as by mail, fax, telephone, and person-to-person. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a potential respondent:

A. Public reporting burden for this collection is estimated to average .25 hours per response (8,333 respondents per year × 15 minutes per response = 2,083 hours annually). The response time varies from two minutes to four hours depending upon the complexity of the information collection. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

B. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection of information. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with this information collection?

C. What additional actions could be taken to minimize the burden of this collection of information? Such actions my involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

D. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a potential user:

A. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C., December 22, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–33822 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (Cooperative Agreements) for the program entitled "Testing and Evaluation of Promising Mercury Control Technologies for Coal Based Power Systems". Through this solicitation, DOE seeks to support applications in the following areas of interest: (1) Field Testing of Activated Carbon Upstream of Existing Utility Particulate Control Devices, (2) Field Testing of Effective Mercury Control Technologies Upstream of and Across Wet Flue Gas Desulfurization Systems, (3) Field Testing of Concepts for Augmenting or Aiding in the Overall Control of Mercury in the Field Tests under Topic 1 and Topic 2, and (4) Testing Novel and Less Mature Control Technologies on Actual Flue Gas at the Pilot-scale. A DOE technical panel will perform a scientific and engineering evaluation of each responsive application to determine the merit of the approach, and availability of DOE funding in the technical areas proposed. Awards will be made to a limited number of applicants based on this review.

FOR FURTHER INFORMATION CONTACT: Martin J. Byrnes, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–112, Pittsburgh PA 15236–0940, Telephone: (412) 386–4486, FAX: (412) 386–6137, E-mail: byrnes@netl.doe.gov.

This solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) will be released on DOE's NETL Internet site (http:/www.netl.doe.gov/business/solicit) on or about January 28, 2000.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: "Testing and Evaluation of Promising Mercury Control Technologies for Coal Based Power Systems."

Objectives: The mission of the DOE Mercury Measurement and Control Program is to perform research and development in order to provide a better understanding of mercury and its speciation for coal-based power generation activities. The Department of Energy's Mercury Measurement and Control Program goal is to develop control strategies for reducing the current annual utility mercury emissions by 50 to 70% by 2005 and by 90% by 2010 at a cost between one-quarter to one-half of the current cost estimates. Research continues on developing potential technologies for mercury emission reduction from utility plants, and is designed to augment existing pre- and post-combustion technologies, with investigations studying different combustion conditions for possible mercury removal or mercury speciation modifications. The post-combustion R&D focuses on the addition of some type of sorbent technology (including gas-phase additives) to adsorb the mercury, or using new technology for mercury control.

The primary objective of this solicitation is to solicit applications for work that seek cost-shared projects (1) to conduct field testing of promising mercury control technologies to determine their maximum removal of measured mercury levels (total i.e., elemental plus oxidized) while determining realistic process/equipment costs for various levels of Hg removed; and (2) to further develop the less mature methods for possible control of mercury emissions from coal-fired power plants. A secondary focus of this solicitation is to measure and/or assess potential multiple pollutant or co-control associated with the control technology field test and development projects designed to elucidate mercury emission reductions. The key element addressed in the solicitation's overall areas of interest is the control of mercury and its species generated by U.S. coal-fired utility boiler systems.

Intent: The Department of Energy's intent under this solicitation is to gather cost and performance data by field testing of promising mercury control technologies, and smaller pilot-scale investigations to determine: (1) The potential mercury removal or efficiency of promising mercury control technologies at a larger scale; (2) the portion of the very diverse utility industry that these mercury control technologies could penetrate or be retrofittable allowing high end mercury removal; (3) the possible negative and positive impacts of retrofitting these mercury control technologies; (4) accurate cost(s) of retrofitting these technologies; (5) the highest amount of Hg removed at the lowest cost per pound; and (6) effective sequestration of the captured mercury in the various media utilized as by-products or being disposed in landfills.

Eligibility: Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical and organizational evaluation factors and the relative importance of each factor. While national laboratories may not participate as a prime they may participate as a sub-contractor.

Areas of Interest: The Department expects to support applications in the following areas of interest: (1) Field Testing of Activated Carbon Upstream of Existing Utility Particulate Control Devices, (2) Field Testing of Effective Mercury Control Technologies Upstream of and Across Wet Flue Gas Desulfurization Systems, (3) Field Testing of Concepts for Augmenting or Aiding in the Overall Control of Mercury in the Field Tests under Topic 1 and Topic 2, and (4) Testing Novel and Less Mature Control Technologies on Actual Flue Gas at the Pilot-scale.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to the funds available. DOE expects to provide a total of $7.4 million for projects under Topic 1; a total of $2.0 million for projects under Topic 2; a total of $0.775 million for projects under Topics 3; and a total of $2.0 million for projects under Topic 4. The period of performance for all projects is expected to be within three years, with projects associated with Topics 1 through 4 being initiated at different times over the three year period. This is dependent on the number of awards and the availability of

the independent contractor performing the sampling and analyses of mercury for all the field tests. The minimum cost shares are twenty (20) percent and fifty (50) percent, depending on criteria described in the draft solicitation.

Solicitation Release Date: A draft of this Program Solicitation is available for comment on FETC's World Wide Web Server Internet System at *http://www.netl.doe.gov/business/solicit* until January 14, 2000. The final Program Solicitation is expected to be ready for release on or about January 28, 2000. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–33828 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management (EM) Site-Specific Advisory Board (SSAB), Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, January 15, 2000: 8:30 a.m.–12:30 p.m.

ADDRESS: The Plantation, 9660 Dry Fork Road, Harrison, Ohio

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (513) 648–6478

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m.—Call to order
8:30–8:45 a.m.—Chair's Remarks and Announcements
8:45–9:00 a.m.—Year 2000 Activities and Priorities
9–10 a.m.—Silos Recommendation Discussion and Approval
10–10 a.m. Status of Fernald Remediation Programs
10:30–10:45 a.m.—Break
10:45–11:45 a.m.—Presentation on DOE Stewardship Activities
11:45–12 p.m.—Review of Stewardship Path Forward
12–12:15 p.m.—Public Comment
12:15–12:30 p.m.—Presentation of Core Values Award
12:30 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, MS 76, Post Office Box 538704, Cincinnati, Ohio 45253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on December 22, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33824 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

DATE: Wednesday, January 19, 2000: 6 p.m.–9 p.m. (MST).

ADDRESS: John Marshall Center for Family and Community Services, 1500 Walter Street, SE, Albuquerque, NM 87102, (505) 848–1324.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6–6:15 p.m.—Check In/Minutes/Agenda Approval
6:15–7 p.m.—Class II Permit Modifications
7–7:15 p.m.—Public Comment
7:15–7:30 p.m.—Form Task Group for Class II Permit Modifications
7:30–7:45 p.m.—Break
7:45–8:15 p.m.—Overview of Upcoming Six Months and Form Task Group for Stewardship
8:15–8:30 p.m.—Form Existing Task Groups and Introduction of Potential New Members and Vote
8:30–8:45 p.m.—Task Group Reports and Coordinating Council Status
8:45–9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on December 22, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33827 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Study on Long-Term Stewardship Activities and Issues; Extension of Scoping Period

AGENCY: Department of Energy (DOE).

ACTION: Extension of scoping period for study on long-term stewardship.

NOTICE: Notice of extension of scoping period for national study on long-term stewardship.

SUMMARY: The Department of Energy (DOE) is preparing a national study on long-term stewardship focusing on the institutional and programmatic issues facing the Department as it completes the environmental cleanup program at sites. This study is being prepared pursuant to the terms of a settlement agreement that resolved a lawsuit brought against DOE by the Natural Resources Defense Council and 38 other plaintiffs [*Natural Resources Defense Council, et al.* v. *Richardson, et al.*, Civ. No. 97–936 (SS) (D.D.C. Dec. 12, 1998)]. On October 6, 1999 (64 FR 54279), the Department published a notice in the **Federal Register** stating its intent to prepare a national study on long-term stewardship of DOE sites. Public comment is being sought pursuant to the terms of the settlement agreement, to provide DOE with input on priority issued that will be most useful to address in the study. In response to public comment, the Department is extending the formal scoping period for the national study on long-term stewardship and invites the general public, other Federal agencies, Native American Tribes, state and local governments, and all other interested parties to comment on the scope of the study.

DATES: The formal scoping period for the national study on long-term stewardship is extended from January 4, 2000 to February 3, 2000.

ADDRESSES: Scoping comments may be submitted in writing to: Steven Livingstone, Project Manager, U.S. Department of Energy, PO Box 45079, Washington, DC 20026–5079; or electronically at www.em.doe.gov/lts or to Steven.Livingstone@em.doe.gov; or by fax at 202-586–4314.

FOR FURTHER INFORMATION CONTACT: James D. Werner, Program Director, or Steven Livingstone, Project Manager, Office of Long-Term Stewardship (EM–51), Office of Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585–0119, phone: 202–586–9280, fax: 202–586–4314.

Signed in Washington DC, this 22nd day of December, 1999.

James D. Werner,

Director, Office of Long-term Stewardship, Office of Environmental Management.

[FR Doc. 99–33821 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–30–002]

ANR Pipeline Company; Notice of Filing

December 22, 1999.

Take notice that on December 13, 1999, in compliance with the Commission's November 23, 1999 order, ANR Pipeline Company, (ANR) tendered for filing supplemental information, pursuant to Section 154.202 of the Commission's regulations, in support of ANR's proposed new hourly flow transportation services under Rate Schedules FTS–3 and ITS–3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be file on or before December 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33709 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–005]

Atlanta Gas Light Company; Notice of Technical Conference

December 22, 1999.

Take notice that a technical conference will be held on Wednesday, January 19, 2000, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33706 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–032]

Columbia Gas Transmission Corporation; Notice of Filing

December 22, 1999.

Take notice that on December 15, 1999, Columbia Gas Transmission Corporation (Columbia) tendered a filing pursuant to Article III, Section F, Sharing of Gains or Losses on Disposition of Gathering and Products Extraction Facilities, of Stipulation II in Docket No. RP95–408, et al., approved by the Commission on April 17, 1997 (79 FERC 61,044 (1997)). In accordance with this provision, Columbia is required to share with its customers the gain or loss on the sale of certain gathering and products extraction facilities to exceed the Sharing Threshold by $1.496 million.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33703 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–033]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 22, 1999.

Take notice that on December 17, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2000:

Forty-first Revised Sheet No. 25
Forty-first Revised Sheet No. 26
Forty-first Revised Sheet No. 27
Eighteenth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95-408 et al., approved by the Commission on April 17, 1997 (79 FERC 61,044 (61,044)). Under the approved section of the Settlement, Columbia is required to true-up its collections pursuant to the Settlement Component for 12-month periods commencing November 1, 1996 and ending October 31, 2004. The third 12-month period (Period III) ended October 31, 1999.

Columbia states that it is making this true-up filing in compliance with the Settlement to return a net over-recovered amount of $1,691,326 for Period III, which include interest and the true-up of the Period II Settlement Component adjustment, through an adjustment to the Settlement Component of the base rates for the Period January 1, 2000 through October 31, 2000.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33704 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–55–000]

Distrigas of Massachusetts Corporation; Notice of Application

December 22, 1999.

Take notice that on December 15, 1999, Distrigas of Massachusetts Corporation (DOMAC), 75 State Street, 12th Floor, Boston, Massachusetts 02109, filed in Docket No. CP00–55–000 an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations for a certificate of public convenience and necessity authorizing DOMAC to install, operate, and maintain certain facilities at its Everett, Massachusetts LNG Plant in order to provide services between its LNG Plant and an electric power generating plant (Power Project) to be constructed on a site adjacent to the LNG Plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us./online/rims.htm (call 202–208–2222 for assistance).

Specifically, DOMAC seeks authorization to install, operate, and maintain: (1) A hot and cold water thermal energy transfer system between the LNG Plant and the Power Project, (2) replacement vaporization equipment necessary to integrate the thermal energy transfer system into the LNG Plant's existing operations, and (3) certain minor LNG Plant modifications necessary to meter and connect the Power Project's fuel supply line to the LNG Plant. The Power Project is under development by Cabot Power Corporation, an affiliate of DOMAC, and will be constructed on a site owned by MASSGAS, INC. (another affiliate of DOMAC) adjacent to the LNG Plant. The total cost of the proposed facilities is estimated to be $11 million. DOMAC requests that the Commission issue final certificate authorization by June 30, 2000.

DOMAC explains that it wishes to construct the proposed facilities in order to establish a mutually beneficial thermal energy exchange arrangement between its LNG Plant and the Power Project. DOMAC will supply regasified LNG to the Power Project. Waste heat from the Power Project will be authorized by DOMAC to increase the efficiency of its LNG Plant and the Power Project will utilize chilled water returned from the LNG Plant to increase its efficiency.

DOMAC states that the proposed project is designed to preserve existing LNG Plant capabilities and will not degrade any services DOMAC provides to existing customers. In addition, DOMAC lists as benefits that the proposed project will provide: improved reliability; improved operational safety; improved air quality; as well as reduced operating costs for DOMAC which will benefit the competitive Northeast energy market. DOMAC also states that, since it will bear all costs of the proposed facilities and will assume the full economic risk of the investment, the proposed project will not affect the rates paid by existing or future customers.

Any question regarding this amendment should be directed to Robert A. Nailling, Senior Counsel, Distrigas of Massachusetts Corporation, 75 State Street, 12th Floor, Boston, Massachusetts 02109, at (617) 526–8300.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to

intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33718 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–10–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 22, 1999.

Take notice that on December 15, 1999, El Paso Natural Gas Company (El Paso) tendered for filing two Transportation Service Agreements (TSAs), one for firm service and the other for interruptible service, between El Paso and Odessa-Ector Power Partners, L.P. (Odessa-Ector) and Sixteenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSAs for Commission approval since the TSAs contains provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the TSAs, is proposed to become effective on January 15, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33700 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–61–001]

Equitrans, L.P.; Notice of Refund Report

December 22, 1999.

Take notice that on December 17, 1999, Equitrans, L.P. tendered for filing a status report on the progress of resolving the issues raised by Columbia Gas of Pennsylvania, Inc. (CPA) on applying the Gas Research Institute (GRI) demand surcharge to individual storage-related transactions.

Equitrans states that it has resolved the issue with CPA and GRI by issuing refunds to the affected customers who paid the demand surcharge during 1994 through 1999.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33720 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–142–000]

Florida Gas Transmission Company; Notice of Filing of Report of Cash-Out Activity

December 22, 1999.

Take notice that on December 16, 1999, Florida Gas Transmission Company (FGT) tendered for filing schedules detailing certain information related to the Cash-Out mechanism from October 1, 1997 through September 30, 1998. No tariff changes are proposed therein.

FGT states that section 19.1 of the General Terms and Conditions (GTC) of

its FERC Gas Tariff provides for an Annual Report containing an accounting for costs and revenues associated with the Cash Out Mechanism, Fuel Recovery Mechanism and various Balancing Tools provided for in FGT's Tariff. FGT states the Instant filing is made in compliance with those provisions.

FGT states that there was a net revenue balance for the current Settlement Period of $329,576 and a cumulative underrecovery of $69,426 of system balancing costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33705 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–205–005]

Granite State Gas Transmission, Inc.; Notice of Filing

December 22, 1999.

Take notice that on December 15, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on January 15, 2000:

First Revised Sheet No. 336
First Revised Sheet No. 337
First Revised Sheet No. 338

Granite State states that the purpose of this filing is: (1) to submit its final report to the Commission reflecting a true-up of all Portland Pipe Line lease-related costs billed to Granite State and all revenues collected pursuant to Granite State's Portland Pipe Line surcharge; and (2) to delete all tariff language relating to the Portland Pipe Line lease. According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33711 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–140–000]

Granite State Gas Transmission, Inc.; Notice of Tariff Filing

December 22, 1999.

Take notice that on December 15, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on January 1, 2000:

Sub Twenty-Second Revised Sheet No. 21
Sub Twenty-Third Revised Sheet No. 22
Fourteenth Revised Sheet No. 23

Granite State states that the purpose of this filing is to revise its rates to reflect the Year 2000 Gas Research Institute Surcharges. According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33711 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–315–000, CP97–315–001, CP97–320–000, CP97–321–000, CP97–319–000, CP98–200–000, and CP98–540–000 (Not Consolidated)]

Independence Pipeline Company, ANR Pipeline Company, National Fuel Gas Supply Corporation, and Transcontinental Gas Pipe Line Corporation; Errata (December 22, 1999), Interim Order

Issued December 17, 1999.

On December 17, 1999, the Commission issued an Interim Order in the above-docketed proceedings (89 FERC 61,283). The following changes should be noted.

(1) On page 103, Appendix A, delete Certificate Condition number 14.

(2) On page 100, add Ordering Paragraph (G) to read as follows: Independence, Transco and ANR each shall immediately designate an ombudsman to address promptly any complaints from landowners regarding trespassing or objectionable land acquisition techniques, as set out in the body of this order.

(3) On page 101, formally Ordering Paragraph (G) becomes Ordering Paragraph (H).

David P. Boergers,

Secretary.

[FR Doc. 99–33748 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–105–001]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

December 22, 1999.

Take notice that on December 15, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheet, to be effective January 1, 2000:

Third Revised Volume No. 1–A

Substitute Ninth Revised Sheet No. 4D

First Revised Volume No. 1–C

Substitute Fourteenth Revised Sheet No. 4

KNI states that this filing corrects an inadvertent error made during the submission of the annual GRI filing, approved by the Commission in Docket No. RP99–323–000. KNI proposes an effective date of January 1. 2000, in accordance with the Letter Order dated September 29, 1999 in the above referenced Docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33710 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–143–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

December 22, 1999.

Take notice that on December 16, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following revised tariff sheet, to be effective January 1, 2000.

Tenth Revised Sheet No. 4D

KNI states that this filing contains revised mainline transmission and storage fuel and loss reimbursement percentages, pursuant to KNI's Offer of Settlement and Stipulation and Agreement in Docket Nos. RP98–117, *et al.* KNI proposes an effective date of January 1, 2000, for the reduced fuel and loss reimbursement percentages reflected in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33713 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–21–002]

Northern Border Pipeline Company; Notice of Amendment

December 22, 1999.

Take notice that on December 17, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed is Docket No. CP99–21–002, an amendment to its application in Docket No. CP99–21, for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations, to construct and operate pipeline and compression facilities all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

On March 25, 1999, Northern Border filed with the Commission an amendment to its application in Docket No. CP99–21–001, wherein Northern Border modified the design of the pipeline and compression facilities it proposes. By this amendment, Northern Border now proposes to install approximately 34.4 miles of 30-inch pipeline (rather than 36-inch pipeline, as previously proposed), commencing from Northern Border's 36-inch pipeline near Manhattan, Illinois to a point near North Hayden, Indiana. The proposed pipeline extension will interconnect with Northern Indiana Public Service Company (NIPSCO) at the terminus of the pipeline at which point Northern Border proposes to install a meter station. The pipeline extension between Manhattan and Northern Hayden will have a design capacity of 544,000 Mcf/d and a maximum operating pressure of 1,050 psig. Due to the potential development of a new airport along the route of the proposed pipeline, Northern Border has been requested and proposes to install a tee and side valve on the pipeline extension near the site. Further, the planned cooling modifications at proposed Compressor Station No. 18 have been eliminated. The change in pipeline diameter from a 36-inch to 30-inch, and the elimination of cooling at Compressor Station No. 18 are the only facility changes from those proposed in the March 25, 1999, amendment.

As now amended, the estimated project cost is $94.4 million, in fourth quarter 1999 dollars. Northern Border says that it does not intend to use its cost projection in the instant application as the basis for an incentive rate proposal. Northern Border filed additional exhibits which compare the transportation cost for the year 2002 without the proposed facilities to the projected year 2002 cost with the proposed facilities in order to show the impact of rolling-in the proposed facilities on the first calendar year of operations' cost of service. Northern Border's year 2002 projected unit cost of service rate, including fuel, the proposed facility costs, and the related volumes in 4.30 center per 100 Dekatherm-Miles, which is the same as the unit cost without the proposed facilities and related volumes. Northern Border says that this demonstrates that Project 2000 is financially viable

without "subsidy" from existing customers.

On September 15, 1999, the Commission issued a Statement of Policy in Docket No. PL99–3–000, "Certification of New Interstate Natural Gas Pipeline Facilities". The Policy Statement announced changes to the pricing and rate criteria applicable to new construction projects and, specified that applicants proposing to add new pipeline capacity must satisfy a threshold requirement of "no financial subsidies". The Policy Statement also announced that a project will also be evaluated based upon consideration of (i) the interests of the applicant's existing customers; (ii) the interests of competing existing pipelines and their captive customers, and (iii) the interests of landowners and surrounding communities. Where a project results in adverse impacts to any of members of these three stakeholder groups, the project sponsor must show how the specific public benefits resulting from its project outweigh the adverse effects the members of the three stakeholder groups.

Northern Border states that Project 2000, as now amended, meets the Commission's threshold "no financial subsidies" requirement of for certification. Further, its says that the public benefits of Project 2000 outweigh any adverse impacts to any members of the three stakeholder groups identified in the Policy Statement, because in its amendment, Northern Border describes in detail how Project 2000 does not have any adverse impact on the three stakeholder groups listed in the Policy Statement, Northern Border therefore requests that the Commission promptly certificate Project 2000, as hereby amended, and that such approvals issue no later than March 15, 2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 14, 2000, file with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33715 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–46–000]

Northern Natural Gas Company; Notice of Application

December 22, 1999.

Take notice that on December 9, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP00–46–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's Regulations thereunder (18 CFR 157.7 and 157.18), for permission and approval to abandon in-place five (5) 1,600 horsepower horizontal compressor units at the Ventura compressor station, with appurtenances, located in Hancock County, Iowa, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us.* Call (202) 208–2222 for assistance.

Northern states the horizontal compressor units at its Ventura compressor station proposed to be abandoned in the instant application are no longer needed due to changes in the operating configuration of its system since the units were initially installed. Northern asserts that the abandonment of these facilities will not result in the abandonment of service to any of Northern's existing shippers, nor will the proposed abandonment adversely effect capacity since the compression is no longer needed to meet current firm service obligations.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or Michele Winckowski, Senior Regulatory Analyst, at (402) 398–7082.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 12, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, a protest or a motion to intervene in accordance with the requirements of the

Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the abandonment is required by the public convenience and necessity. If a protest or motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33717 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–003]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 22, 1999.

Take notice that on December 2, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas First Revised Volume No. 1–A, First Revised Sheet No. 8 and Original sheet No. 8A, with an effective date of December 2, 1999.

PG&E GT–NW states that these sheets are being filed to reflect the implementation of a negotiated rate agreement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33707 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–141–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff Filing

December 22, 1999.

Take notice that on December 15, 1999, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 50. The effective date for the tariff sheet is February 1, 2000.

Pine Needle states that the purpose of the instant filing is to revise Sections 7 (b) and (c) of the General Terms and Conditions of Pine Needle's Original Volume No. 1 Tariff to provide that the interest rate to be applied to unpaid amounts due from Customers and to overcharges by Pine Needle shall be the interest rate provided under 18 CFR 154.501(d)(1). This revision will conform Pine Needle's tariff to a common business practice being adopted by Pine Needle and its interstate affiliates, which is anticipated to be effective on Pine Needle's System February 1, 2000. In addition, Pine Needle's revision to such interest calculation is consistent with the interest calculation method reflected in the tariffs of numerous other pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be file in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assisance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33719 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–24–000 and RP00–24–001]

Transcontinental Gas Pipe Line Corporation; Notice of Date Change for Technical Conference

December 22, 1999.

Take notice that the technical conference on the above-referenced proceeding has been changed to Thursday, January 20, 2000, at 10:00 a.m.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33708 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–144–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 22, 1999.

Take notice that on December 14, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventeenth Revised Sheet No. 28, with an effective date of December 1, 1999.

Transco states that the purpose of the instant filing is to track rate and fuel changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33714 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–9–001]

Venice Gathering System, L.L.C.; Notice of Substitute Tariff Sheet Filing

December 22, 1999.

Take notice that on December 16, 1999, Venice Gathering System, L.L.C. (VGS), submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with an effective date of January 10, 2000:

Substitute First Revised Sheet No. 2

VGS states that it is submitting this substitute tariff sheet to make a correction that was overlooked in the December 10 filing submitted to make "housekeeping" changes to correct typographical and grammatical errors in VGS' tariff. VGS states that it is proposing the same January 10, 2000 effective date for this substitute sheet.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33721 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–11–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

December 22, 1999.

Take notice that on December 17, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 17, 1999:

Third Revised Sheet No. 373
Third Revised Sheet No. 374
Sixth Revised Sheet No. 375
Third Revised Sheet No. 376

Williston Basin states that it has revised the above-referenced tariff sheets found in Section 48 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), to rename various receipt points associated with its Pooling Service. The receipt points were renamed in order to achieve consistency among its Measurement Information Processing System, Supervisory Control and Data Acquisition System, Master Receipt/Delivery Point List on its Electronic Bulletin Board, and its Tariff. Such name changes have no effect on Williston Basin's Pooling Service, but are being made simply for consistency purposes.

Williston Basin states that it is also proposing the deletion of five receipt points associated with its Pooling Service: Point ID No. 00960 (Temple Plant) from the Can-Am Pool; Point ID No. 03140 (South Byron); Point ID No. 03145 (Garland Field); Point ID No. 03147 (Pearson Pratt A #1); and Point ID No. 03200 (Elk Basin Plant) from the Big Horn Pool.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33701 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–773–000, et al.]

New England Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 21, 1999.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER00–773–000]

Take notice that on December 10, 1999, New England Power Company (NEP) tendered a Stipulation and Agreement (Massachusetts Agreement) among NEP, the Associated Industries of Massachusetts, the Attorney General of Massachusetts, the Division of Energy Resources, The Energy Consortium, and Massachusetts Electric Company (Mass. Electric). The Massachusetts Agreement

resolves all issues presented by NEP's December 1, 1998 "Reconciliation of Contract Termination Charges" to Mass. Electric.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Nordic Marketing, L.L.C.

[Docket No. ER00–774–000]

Take notice that on December 10, 1999, Nordic Marketing, L.L.C. (Nordic Marketing or Applicant) petitioned the Commission to: (1) accept for filing Nordic Marketing Rate Schedule FERC No. 1, which will permit Nordic Marketing to sell electric energy and capacity to wholesale customers at market-based rates; and (2) grant such other waivers and blanket authorizations as have been granted to other power marketers.

Nordic Marketing intends to engage in wholesale electric power and energy purchases and sales as a marketer. Neither Nordic Marketing nor any of its affiliates owns or controls any transmission or operating generation facilities, or has a franchised service area for the sale of electricity to captive customers.

Nordic Marketing does not currently sell power to any person pursuant to the proposed rate schedule. A copy of its filing, however, has been served on the Michigan Public Service Commission as a courtesy.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Aquila Energy Marketing Corporation

[Docket No. ER00–775–000]

Take notice that on December 10, 1999, Aquila Energy Marketing Corporation, an indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing a revised code of conduct.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Duquesne Light Company and FirstEnergy Operating Companies, The Cleveland Electric Illuminating Company, Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER00–776–000]

Take notice that on December 13, 1999, Duquesne Light Company and the FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company and Pennsylvania Power Company) (collectively, Parties), tendered for filing under Federal Power Act Section 205 an Interchange Agreement that is a result of the Parties recent generation exchange. The Parties request waiver of the Commission's regulations to permit the Interchange Agreement to become effective on December 3, 1999, the closing date of the generation exchange.

A copy of the filing was served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company and FirstEnergy Operating Companies

[Docket No. ER00–777–000]

Take notice that on December 13, 1999, Duquesne Light Company and the FirstEnergy Operating Companies tendered for filing under Section 205 of the Federal Power Act a reactive supply and voltage control service agreement. The agreement is a result of the generation exchange previously approved by the Commission, and Duquesne's ownership of baseload generating units located within FirstEnergy's control area.

Copies of the filing were served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER00–778–000]

Take notice that on December 13, 1999, Northern States Power Company (Minnesota) (NSP), tendered for filing the Amendment No. 2, Revision No. 2 to Exhibit A, and Revision No. 11 to Exhibit B to the Interconnection Contract No. 6–07–60–P0236 (Contract) between the United States Department of Energy Western Area Power Administration (Western) and NSP.

NSP requests that the Commission accept the Agreements effective October 14, 1999, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER00–779–000]

Take notice that on December 13, 1999, Ameren Services Company (AMS), tendered for filing an Interconnection Agreement between AMS and Ameren Intermediate Holding Company (AIHC). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of AIHC, the point of interconnection and Corporate Guaranty.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER00–780–000]

Take notice that on December 13, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and MidAmerican Energy Company—Retail (MEC). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to MEC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96-677–004.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–781–000]

Take notice that on December 13, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and MidAmerican Energy Company-Retail (MEC). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to MEC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. New Century Services Inc.

[Docket No. ER00–782–000]

Take notice that on December 13, 1999, New Century Services Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Utah Municipal Power Agency (UMPA), which is an umbrella service agreement under the Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on October 24, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L Colstrip II

Docket No. ER00–783–000

Take notice that on December 13, 1999, PP&L Colstrip II, LLC, tendered for filing an amendment to the Colstrip Project Transmission Agreement dated May 6, 1981, to the Montana Intertie Agreement dated April 6, 1981, to the Ownership and Operation Agreement, Colstrip Units 3 and 4 dated May 6, 1981, and to the Common Facilities Agreement dated May 6, 1981. Portland General Electric Company executed a certificate of concurrence to the amendment.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Oklahoma

[Docket No. ER00–784–000]

Take notice that on December 13, 1999, Public Service Company of Oklahoma (PSO), tendered for filing a revised Exhibit A to the Contract for Electric Service, dated September 29, 1992, as amended, between PSO and the City of Collinsville, Oklahoma ("Collinsville"). Revised Exhibit A reflects the addition of a temporary point of delivery.

PSO requests an effective date of December 14, 1999 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Collinsville and on the Oklahoma Corporation Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER00–785–000]

Take notice that on December 13, 1999, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing an Amended Interconnection and Operating Agreement between Entergy Arkansas and Pine Bluff Energy LLC (Pine Bluff).

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–786–000]

Take notice that on December 13, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 45 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of December 10, 1999 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PEC Energy Marketing, Inc.

[Docket No. ER00–787–000]

Take notice that on December 13, 1999 in the above-referenced proceeding, PEC Energy Marketing, Inc., tendered for filing Notice of Cancellation of its Supplement No. 3 to Rate Schedule FERC No. 1.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power, LLC

[Docket Nos. ER00–817–000, ER00–818–000 and ER00–819–000]

Take notice that on December 13, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ended September 30, 1999.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Long Beach Generation LLC

[Docket No. ER00–820–000]

Take notice that on December 10, 1999, Long Beach Generation LLC filed their quarterly report for the quarter ended September 30, 1999.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Portland General Electric Co.

[Docket No. ER98–1643–002]

On December 13, 1999, Portland General Electric Co. (PGE), tendered for filing notification of change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority. PGE informed the Commission of an agreement between Enron Corp., the parent company of PGE, and Sierra Pacific Resources, pursuant to which Sierra Pacific Resources will acquire PGE.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. TransAlta Centralia Generation LLC

[Docket No. EG00–49–000]

Take notice that on December 13, 1999, TransAlta Centralia Generation LLC (TACG) tendered for filing an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

20. Heartlands Power Limited

[Docket No. EG00–50–000]

Take notice that on December 14, 1999, Heartlands Power Limited (Applicant) filed with the Federal Energy Regulatory Commission an application for Commission determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant is organized under the Companies act of England and Wales and is now constructing, and will own, a 98 MW net gas-fired electrical generating facility in Fort Dunlap, Birmingham, England (the Facility). Construction of the Facility began in March, 1997, and the Facility is expected to be placed in operation in the fall of 2000. Upon completion, Applicant will sell all of the Facility's net electrical output at wholesale to the Electricity Pool of England and Wales. Catamount Heartlands Limited is scheduled to assume ownership of 50 per cent of Applicant's common stock. Catamount Heartlands Limited is a wholly-owned subsidiary of Catamount Energy Corporation, which is a wholly-owned subsidiary of Central Vermont Public Service Corporation, a public utility within the meaning of Part II of the Federal Power Act, 16 U.S.C. § 824 *et seq.*, and a holding company exempt from regulation as a holding company pursuant to Section 3(a)(2) of the Public Utility Holding Company Act. Applicant will be engaged directly and exclusively in the business of owning the Facility, which is an eligible facility as defined in Section 32(a)(2) of the 1935 Act, and which will sell electric energy at wholesale only. No electric energy produced by the Facility will be resold to any customer within the United States.

Copies of the application have been served upon the Vermont Public Service Board and the Securities and Exchange Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

21. Catamount Heartlands Limited

[Docket No. EG00–51–000]

Take notice that on December 14, 1999, Catamount Heartlands Limited (Applicant) filed with the Federal Energy Regulatory Commission an application for Commission determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a wholly-owned subsidiary of Catamount Energy Corporation, which is a wholly-owned subsidiary of Central Vermont Public Service Corporation, a public utility within the meaning of Part II of the Federal Power Act, 16 U.S.C. § 824 *et seq.*, and a holding company exempt from regulation as a holding company pursuant to Section 3(a)(2) of the Public Utility Holding Company Act of 1935 (the 1935 Act).

The Applicant is organized under the Companies act of England and Wales and is scheduled to own a 50 per cent interest in Heartlands Power Limited (HPL). HPL is now constructing, and will own, a 98 MW net gas-fired electrical generating facility in Fort Dunlap, Birmingham, England (the Facility).

Construction of the Facility began in March, 1997, and the Facility is expected to be placed in operation in the fall of 2000. Applicant will be engaged indirectly, through its affiliate (as defined in Section 2(a)(11)(B) of the 1935 Act) HPL, exclusively in the business of owning part of the Facility, which is an eligible facility as defined in Section 32(a)(2) of the 1935 Act, and which will sell electric energy at wholesale only. No electric energy produced by the Facility will be resold to any customer within the United States.

Copies of the application have been served upon the Vermont Public Service Board and the Securities and Exchange Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33747 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9974–040]

Rough and Ready Hydro Inc.; Notice of Availability of Final Environmental Assessment

December 22, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for the proposed revocation of exemption from licensing for the Upper Watertown Hydroelectric Project (FERC No. 9974). The FEA finds that the proposed revocation would not constitute a major federal action significantly affecting the quality of the human environment. The Upper Watertown Hydroelectric Project is located on the Rock River in the City of Watertown, Jefferson County, Wisconsin.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A 888 First Street, NE, Washington, DC 20426. Copies can also be obtained by calling the project manager, Bob Fletcher at (202) 219–1206 or viewed on the web at http://www.ferc.fed.us/online/rims.htm. Please call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33702 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–36–000]

Guardian Pipeline, L.L.C.; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Guardian Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

December 22, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the guardian Pipeline Project in various counties of Illinois and Wisconsin.[1] these facilities would consist of about 149 miles of pipeline and 25,080 horsepower (hp) of compression. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner on Guardian's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Guardian provided to landowners along and adjacent to the proposed route. This fact sheet addresses a number of typically asked questions, including the use of eminent domain. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This notice is being sent to landowners of property crossed by and adjacent to Guardian's proposed route; landowners of property along a major route alternative; Federal, state, and local agencies; elected officials;

---

[1] Guardian Pipeline, L.L.C.'s application in Docket No. CP00–36–000 was filed with the Commission under Section 7(c) of the Natural Gas Act.

environmental and public interest groups; and local libraries and newspapers. Additionally, with this notice we are asking those Federal, state, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating agency status should follow the instructions for filing comments described below.

To date, the Wisconsin Public Service commission (WIPSC) and the Wisconsin Department of Natural Resources have requested and been granted cooperating agency status.

Summary of the Proposed Project

Guardian Pipeline L.L.C. (Guardian) proposes to build new natural gas pipeline and compression facilities to transport 750,000 decatherms per day (Dth/d) of natural gas from the Chicago Hub near Joliet, Illinois to markets in northern Illinois and Wisconsin. Guardian requests Commission authorization, to construct, install, own, operate, and maintain the following facilities:

- About 140 miles of 36-inch-diameter pipeline in Will, Kendall, DeKalb, and McHenry Counties, Illinois and Walworth and Jefferson Counties, Wisconsin; extending from Joliet, Illinois to Ixonia, Wisconsin (Joliet to Ixonia Pipeline);
- About 8.5 miles of 16-inch-diameter lateral pipeline in Walworth and Waukesha Counties, Wisconsin (Eagle Lateral);
- A total of about 0.16 miles of 30-, 24-, and 16-inch-diameter pipelines in Will County, IL to interconnect the Guardian Pipeline with the Northern Border Pipeline Company, Midwestern Gas Transmission Company, and Natural Gas Pipeline Company of America;
- Seven meter/regulating stations including four stations in Will County, Illinois, and one station in each of Walworth, Waukesh, and Jefferson Counties, Wisconsin; and
- One compressor station with 25,080 hp in Will County, Illinois;
- Associated pipeline facilities, including two pig launchers, and two pig receivers.

The general location of Guardian's proposed project facilities is shown on the map attached as appendix 1.[2]

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Wisconsin Gas Lateral Line

Wisconsin Gas Company (WGC) proposes to construct about 35 miles of 30-, 24-, and 16-inch-diameter pipeline (WGC Lateral Line Project) extending from northern terminus of the Guardian Pipeline eastward into Jefferson, Waukesha, and Washington Counties, Wisconsin. WGC's Lateral Line Project will be under the jurisdiction of the WIPSC. Although these facilities will not be under the jurisdiction of the FERC, they will be analyzed in this EIS. As noted above, the WIPSC is participating in the EIS process as a cooperating agency.

Land Requirements for Construction

Guardian would construct a total of about 149 miles of new pipeline of which about 91 miles would be in Illinois and 58 miles would be in Wisconsin. Construction of the Guardian Pipeline Project would require about 2,580 acres of land including extra workspace and aboveground facilities. Of this total, about 1,939 acres would be disturbed by construction of the pipeline right-of-way, 596 acres would be disturbed by extra workspace and contractor/pipe yards, and 45 acres would be disturbed by the aboveground facilities and access roads.

Guardian proposes to generally use a 70- to 110-foot-wide construction right-of-way along the Eagle Lateral. Smaller construction right-of-way widths would be used in tight construction areas and in wetlands. Following construction and restoration of the right-of-way and temporary work spaces, Guardian proposes to retain a 50-foot-wide permanent pipeline right-of-way along both the Joliet to Ixonia Pipeline and the Eagle Lateral. Total land requirements for the permanent right-of-way would be about 900 acres with an additional 24 acres required for the operation of the new or modified aboveground facilities.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Guardian. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Soils
  - —Impact on prime farmland soils.
  - —Mixing of topsoil and subsoil during construction.
  - —Compaction of soil by heavy equipment.
  - —Impact on drain tiles and irrigation systems.
  - —Erosion control and right-of-way restoration.
- Water Resources
  - —Impact on areas with shallow groundwater.
  - —Fourteen waterbody crossings 25 feet wide or greater.
  - —Crossing of two waterbodies designated as sensitive/unique, three waterbodies listed as Illinois Natural Inventory Sites, and one waterbody classified as a National Historic Landmark.
  - —Effect of crossing waterbodies with contaminated sediments.

—Potential for erosion and sediment transport to area waterbodies.
—Impact on groundwater and surface water supplies.
—Impact on wetland hydrology.
- Biological Resources
—Short- and long-term effects of right-of-way clearing and maintenance on wetlands, forests, riparian areas, and vegetation communities of special concern.
—Effects of construction on about 31 acres of wetlands and 51 acres of forest.
—Impact on wildlife and fishery habitats.
—Potential impact on federally endangered species such as the Indiana bat and on federally threatened species such as the prairie bush clover and eastern prairie fringed orchid.
—Potential impact on state-listed sensitive species.
- Cultural Resources
—Effect on historic and prehistoric sites.
—Native American concerns.
- Socioeconomics
—Effect on the construction workforce on demands for services in surrounding areas.
—Impact on property values.
- Land Use
—Impact on crop production.
—Impact on residential areas.
—Effects of construction on about 35 acres of Conservation Reserve Program land.
—Impact on public lands and special use areas including waterbodies, state scenic trails, a state recreation area, county parks, city/township private parks and campgrounds, and golf courses.
—Impact on future land uses and consistency with local land use plans and zoning.
—Visual effect of the aboveground facilities on surrounding areas.
- Air Quality and Noise
—Construction impact on local air quality and noise environment.
—Impact on local air quality and noise environment as a result of operation of the compressor stations.
- Pipeline Reliability and Safety
- Cumulative Impact
—Effect of Guardian Project combined with that of other projects that have been or may be proposed in the same region and similar time frames.
- Nonjurisdictional Facilities
—Assessment of the effects of the construction of the WGC Lateral Line Project.
- Alternatives
—Evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP00–036–000;
- Mail your comments so that they will be received in Washington, DC on or before February 4, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, you must return the Information Request (appendix 3). If you do not send comments or return the Information Request, you will be taken off the mailing list.]

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below. [Note: the meeting in Oconomowoc, Wisconsin on January 25, 2000 will be a joint scoping meeting with the WIPSC which will be receiving public comments on the WGC Lateral Line Project.]

Schedule of Public Scoping Meetings for the Guardian Pipeline Project Environmental Impact Statement

Janaury 25, 2000, 7:00 PM
Oconomowoc, Wisconsin, Olympia Conference Center, 1350 Royale Mile Road, (800) 558–9573
January 25, 2000, 7:00 PM
Delavan, Wisconsin, Lake Lawn Lodge, 2400 East Geneva St., (800) 338–5253
Janaury 26, 2000, 7:00 PM
DeKalb, Illinois, Northern Illinois University, Holmes Student Center, Normal & Lucinda Roads, (815) 753–1744
January 26, 2000, 7:00 PM
Joliet, Illinois, Joliet Junior College, 1215 Houbolt Road, (815) 729–9020.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Guardian representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

Site Visit

On the dates of the meetings, we will also be conducting limited site visits to the project area. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

The time period for filing of timely motions to intervene in this proceeding closes on December 28, 1999. If this date has passed, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RAMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS Menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33716 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00635; FRL–6398–4]

Notice of Supplemental Distribution of a Registered Pesticide Product; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA No. 0278.07; OMB 2070–0044). This ICR is a renewal of a collection activity that is currently approved and due to expire on September 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00635, must be received on or before February 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00635 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e:mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant who has entered into an agreement with a second company to distribute your pesticide product under the second company's name and product name. Section 3(e) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires pesticide registrants to notify the Agency of such distribution agreements. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS code	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6078 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00635. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information

claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00635 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00635. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Notice of Supplemental Distribution of a Registered Pesticide Product.

ICR numbers: EPA ICR No. 0278.07, OMB No. 2070–0044.

ICR status: Expires September 30, 2000.

Abstract: EPA is responsible for the regulation of pesticides as mandated by the FIFRA, as amended. This collection activity provides the Agency with notification of supplemental registration of distributors of pesticide products. Section 3(e) of FIFRA allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to his own. Such distribution and sale is termed "supplemental distribution" and the product is termed "distributor product." EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5) when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name. Any pesticide registrant may participate in this program by submitting a completed EPA Form 8570–5, "Notice of Supplemental Distribution of a Registered Pesticide Product," to the Agency. The registrant must furnish the following information:

1. EPA registration number of the product to be distributed.

2. Distributor company number.

3. Name and address of the basic product registrant.

4. Name of the registered product to be distributed.

5. Name to be used on the distributed product.

6. Name and address of the distributor.

7. Signature and title of the distributor and date signed.

8. Signature and title of the basic product registrant and date signed.

Since the last approval, EPA has not changed the substance or the method of collection for this activity.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated to average 15 minutes per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 5,000.

Frequency of response: As needed per event.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,250.

Estimated total annual burden costs: $118,350.

VI. Are There Changes in the Estimates from the Last Approval?

The total burden associated with the supplemental distribution of a registered pesticide product has decreased from 1,500 hours in the 1997 ICR to 1,250. This adjustment represents an improved estimate of the volume of responses received by the Agency. The previous estimate of 6,000 responses per year has been adjusted to reflect the new estimate of 5,000 responses per year.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 14, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–33331 Filed 12–28–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00624; FRL–6388–6]

Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection (OMB Control No. 2070–0074; EPA No. 1249.06)." This is a request to renew an existing ICR that is currently approved and is due to expire June 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00624 must be received on or before [*insert date 60 days after date of publication in the* **Federal Register**].

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00624 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–305–5454; fax number: 703–305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are one of the approximately 120 certified pesticide applicators, who utilize 1080 toxic collars for livestock protection. Or a State Agency that implements a 1080 collar monitoring program in the state of Montana, New Mexico, South Dakota, or Wyoming. Or are one of the five registrants are required to keep records of: (1) number of collars purchased; (2) number of collars placed on livestock; (3) number of collars punctured or ruptured; (4) apparent cause of puncture or rupture; (5) number of collars lost or unrecovered; (6) number of collars in use and in storage; and (7) location and species data on each animal poisoned as an apparent result of the toxic collar. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants whose products include 1080 collars

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Administration of Environmental Quality Control Programs	9241	None	States implementing a 1080 collar monitoring program

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6076 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00624. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00624 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00624. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the

functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection.

ICR numbers: EPA ICR No. 1249.06, OMB No. 2070–0074.

ICR status: This is a renewal of an existing ICR that is currently approved by OMB and is due to expire June 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the Paperwork Reduction Act, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: The data that certified Livestock Protection Collar applicators are required to record and maintain are stipulated in "Use Restriction 5" in the technical bulletin that is part of the labeling for all Livestock Protection Collar products registered as pesticides in the United States. Use Restriction 5, from a typical technical bulletin, reads as follows:

"Each applicator shall keep records dealing with the use of Livestock Protection Collars and the results of such use. Records shall be maintained in accordance with appropriate State or Federal regulations but for not less than 2 years following disposal or loss of collars. Such records shall include, but need not be limited to:

1. The number of collars attached on livestock.

2. The pasture(s) where collared livestock were placed.

3. The dates of each attachment, inspection, and removal.

4. The number and locations of livestock found with ruptured or punctured collars and the apparent cause of the damage.

5. The number, dates, and approximate location of all collars lost.

6. The species, locations, and dates of all suspected poisonings of humans, domestic animals or non-target wild animals resulting from collar use."

Use Restriction 6, from the same typical technical bulletin, requires that "suspected" poisonings of "threatened or endangered species, . . . humans, domestic animals or nontarget wild animals" be reported, within 3 days of the incident, to a designated Government Agency (EPA and/or the appropriate state lead agency for regulation of pesticides). The EPA requires certified Livestock Protection Collar applicators to keep and report no records other than those prescribed by Use Restrictions 5 and 6.

Livestock Protection Collar registrants are required, by Use Restriction 4 of the same typical technical bulletin, to:

> . . . keep records of all collars sold or transferred at their address of record. Records shall include the name, address, state where Livestock Protection Collar certification was issued, certification number of each recipient, and dates and numbers of collars sold or transferred.

Use Restriction numbers and content vary somewhat from product to product due to additional restrictions or considerations either proposed by the registrants or required by state lead agencies. As a condition of registration, the EPA has required submission of annual reports monitoring use of all of Livestock Protection Collar products. Depending upon the product, the registrant or the state lead agency for pesticide regulation is designated as being responsible for annual monitoring report. The requirement to submit reports is imposed for at least the first 4 years of the collars' use under the registration. Factors affecting the extension of requirements to submit annual reports include: (1) quality of reports submitted previously; (2) results of collar use (in terms of numbers punctured by coyotes, numbers punctured by other causes, numbers lost, nontarget poisonings, etc.); and (3) frequency and nature of violations reported. In 1992, the requirement to submit annual monitoring reports was dropped for one Livestock Protection Collar product.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection is estimated to average 40 hours per certified applicator, 77 hours per state, and 9 hours per registrant. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Certified applicators, states, and registrants.

Estimated total number of potential respondents: 120 certified applicators, 4 states, 5 registrants.

Frequency of response: Annually.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 5,153.

Estimated total annual burden costs: $51,048.

VI. Are There Changes in the Estimates from the Last Approval?

Yes. The Agency reduced its estimate of the number of certified applicators from the previous ICR (from 150 to 120). Overall, the total burden on respondents has been reduced from 6,439 hours to 5,153 hours. Changes in the total cost associated with this program are due to the wage rates adjustment, reflecting the most current estimates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR

1320.10. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 20, 1999.

Stephen L. Johnson,

Acting Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–33458 Filed 12–28–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–9]

Notice of Settlement Extension: National Ambient Air Quality Standard for Sulfur Oxides Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement extension.

SUMMARY: In 1998, the United States Court of Appeals for the District of Columbia Circuit remanded EPA's decision to not revise the National Ambient Air Quality Standard for sulfur oxides for further explanation by EPA. *American Lung Association* v. *Browner,* 134 F. 3d 388 (D.C. Cir. 1998). Subsequently, the American Lung Association (ALA) and EPA agreed that EPA would propose a response to the court's remand by summer, 1999 and that EPA would finalize its response to the remand by the end of the year 2000. In exchange, ALA agreed to not file a petition for rehearing *en banc* with the court and to not pursue any mandatory duty or unreasonable delay claims regarding the remand prior to January, 2001.

In September, 1999, EPA and ALA met to discuss the status of the remand and agreed to extend the summer, 1999 deadline until January 15, 2000. During the time of the extension, EPA will continue to work on the remand.

Dated: December 9, 1999.

Gary S. Guzy,

General Counsel.

[FR Doc. 99–33830 Filed 12–28–99; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00637; FRL–6485–9]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Open Meeting.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency pertaining to atrazine cancer risk assessment.

The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Laura Morris at the address listed under "FOR FURTHER INFORMATION CONTACT" at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on Thursday, January 27, and Friday, January 28, 2000, from 8:30 a.m. to 5:30 p.m.

Request to participate in the meeting must be received on or before January 27, 2000.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is: (703) 486–1111.

Requests and/or comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00637 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Laura Morris, Designated Federal Official, FIFRA SAP (7101C), Office of Science Coordination and Policy, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–6212; fax number: (703) 605–0656; e-mail address: morris.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda and copies of EPA background documents for the meeting will be available early January, 2000. The meeting agenda and EPA primary background documents will be available on the FIFRA SAP web site – http://www.epa.gov/scipoly/sap/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00637. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2,) 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participte in this Meeting?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00637 in the subject line on the first page of your response. Members of the public wishing to submit comments should contact the persons listed under "FOR FURTHER INFORMATION CONTACT" to confirm that the meeting date and the agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed under "FOR FURTHER INFORMATION CONTACT", interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the persons listed under "FOR FURTHER INFORMATION CONTACT" and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00637. Electronic comments may also be filed online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

This 2–day meeting concerns the pesticide, atrazine, which is currently undergoing Special Review within the EPA/Office of Pesticide Programs (OPP). Atrazine is a mammary carcinogen. There are several issues surrounding the interpretation of experimental data pertaining to tumor response in test animals. Laboratory animal studies available on atrazine indicate that its mode of action involves a perturbation of the neuroendocrine system that results in prolonged exposure to endogenous estrogen and prolactin. This endogenous exposure to estrogen leads to effects on several endocrine organs and tissues. Given the complexity and multiplicity of effects that result from exposure to atrazine, OPP is at a point in its assessment of atrazine where external peer review by the FIFRA SAP would facilitate further development and refinement of the draft carcinogen assessment document. Furthermore, very little is understood about the long term consequences that may result from prenatal and early postnatal exposures to endocrine-perturbing chemicals. Presenting the atrazine cancer assessment to the FIFRA SAP at this time allows the Agency an opportunity to obtain comments on the adequacy of the approach taken by the Agency to address potential cancer hazard to children.

The purpose of the session is not to discuss the dose-response assessment (i.e., quantification of potential risk). The focus of this session is to obtain advice and comments on the draft document on specific science issues, such as: the factors that should be considered in evaluating this particular endocrine mode of action; the relevance and implications of this type of perturbation in humans; the key biological events driving the hazard concern; and the potential cumulative effects and hazards on the developing brain that could result from the effects of atrazine on the function of the endocrine system.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: December 21, 1999.

Martha K. Shimkin,

Acting Director, Office of Science Coordination and Policy, Office of Pesticides Programs.

[FR Doc. 99–33628 Filed 12–28–99; 8:45 am]
BILLING CODE 0560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–6]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee will meet on February 10–11, 2000, in Chattanooga, TN. The theme of the meeting is sustainability/smart growth. There will be two panel discussions in the morning on February 10. Participants on the first panel will be from Chattanooga and will discuss how EPA helped or hindered the City's redevelopment efforts. Participants on the second panel, will be EPA officials and they will discuss the Agency's programs policies, and tools for smart growth/sustainability. Subcommittee sessions will take place on both February 10 and 11.

The Committee will hear comments from the public between 1 pm and 1:15 pm on February 10. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members

of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 8:15 a.m. on Thursday, February 10 and conclude at 4:00 p.m. on February 11.

ADDRESSES: The meetings will be held in Chattanooga, TN at the Radisson Read House Hotel and Suites located at M.L. King Blvd. and Broad Street.

Requests for Minutes and other information can be obtained by writing the DFO at 401 M Street, SW (1306), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419.

Dated: December 20, 1999.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 99–33774 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–8]

Regulatory Reinvention (XLC) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Steele County Project XL for Communities (XLC) Draft Final Project Agreement.

SUMMARY: EPA is today requesting comments on a draft Project XLC Final Project Agreement (FPA) for Steele County, MN. The FPA is a voluntary agreement developed by the Steele County Community Sponsors, the Cities of Owatonna and Blooming Prairie, MN, project stakeholders, the Minnesota Pollution Control Agency (MPCA), and EPA.

DATES: The period for submission of comments ends on January 28, 2000.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Abeer Hashem, Water Division, WC–15J, US EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, or Kristina Heinemann, U.S. EPA, 401 M Street, SW, Room 445WT (1802), Washington, DC 20460. Comments may also be faxed to Ms. Hashem at (312) 886–0168 or Ms. Heinemann at (202) 260–7875. Comments will also be received via electronic mail sent to: hashem.abeer@epa.gov or heinemann.kristina@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact: Abeer Hashem, Water Division, WC–15J, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, or Kristina Heinemann, U.S. EPA, 401 M Street, SW, Room 445WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region 5 in Chicago, IL. Questions to EPA regarding the documents can be directed to Abeer Hashem at (312) 886–1331 or Kristina Heinemann at (202) 260–5355. Additional information on Project XL and XLC, including documents referenced in this notice, other EPA policy documents related to Project XL and XLC, application information, and descriptions of existing XL and XLC projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL".

SUPPLEMENTARY INFORMATION: Project XLC, announced in the **Federal Register** on November 1, 1995 (60 FR 55569), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

If implemented, the draft FPA would carry out the first phase of a community-wide project consisting of a two-phase approach to attain Environmental Excellence and Leadership. This draft FPA states the intentions of the parties to implement Phase I of the Steele County, MN Community XL Project Pilot.

Phase I would specifically address industrial regulated wastewater effluent reductions, and at the same time concentrate on significant water use reduction controls. Phase II would expand to a multi-media approach to environmental permitting. It would be based on overall community performance, rather than individual member performance, in the areas of air emissions, solid waste, hazardous waste, chemical storage, and community sustainability.

In Phase I, direct participants from the Steele County community have agreed jointly to four Superior Environmental Performance (SEP) approaches. The Owatonna, MN Sponsors have committed to: (1) Reduce the discharge of four priority metals; (2) reduce water usage; (3) develop and implement a storm water and sewer water separation and education plan in an effort to minimize the impact of storm water on the Owatonna wastewater treatment facility; and (4) develop and participate in a training and assessment program to better understand potential benefits of an ISO 14000 Environmental Management System (EMS). The Blooming Prairie, MN Sponsor has agreed to: (1) Reduce the discharge of three priority effluents; and (2) reduce water usage.

Phase I of this agreement would also provide regulatory flexibility to the Owatonna Sponsors in the following areas: (1) An incentive-based monitoring approach, such that as metal discharge goals are met, the frequency of monitoring may be reduced; (2) a mass-based compliance standard would replace the concentration-based standard currently in place; (3) the elimination of pollutant monitoring where a pollutant is not discharged; (4) the development of an alternative Significant Non-Compliance (SNC) approach, under which qualifying violations may be posted on the MPCA website in lieu of being published in the local newspaper. Phase I of this agreement would provide regulatory flexibility to the Blooming Prairie Sponsor in two areas: (1) An incentive-based monitoring approach, such that as effluent discharge goals are met, the frequency of monitoring may be reduced; and (2) the elimination of pollutant monitoring where a pollutant is not discharged. Regulatory flexibility will rely on EPA to issue a federal site-specific rule (subject to public notice and consideration of public comment) and any corresponding State and City action needed for the project to proceed.

For Phase I current regulatory limits for participating facilities would remain in effect. The regulatory limits would be changed from concentration-based limits to mass-based limits. An exceedance of a mass-based limit could result in the use of traditional enforcement tools.

Dated: December 22, 1999.

Richard T. Farrell,

Associate Administrator, Office of Policy and Reinvention.

[FR Doc. 99–33775 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–5]

Chesapeake 2000; A Watershed Partnership Draft for Public Review and Comment

U.S. Environmental Protection Agency, Chesapeake Bay Program Office is releasing this draft document to solicit your comments. It has been developed by the Chesapeake Bay Program partners with the assistance of thousands of citizens, scientists and policy makers from throughout the Chesapeake Bay region. It contains commitments that are far reaching and that address issues of the waters and living resources of the Bay and its rivers, and the land and air that surround them. It is intended to take us well into the next decade and beyond.

For the most part, the document represents issues that the signatories believe must be addressed. In order to finalize our decisions, we must hear from you. Have we addressed your concerns? Will the Bay and its rivers be better off as a result of the commitments proposed?

Public comments will be received until March 31, 2000. A copy of this document is available by calling 1–800–YOUR–BAY or by visiting: www.chesapeakebay.net. Comments will only be accepted in writing either through the web page comment box or by mail.

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 99–33773 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011517–007.

Title: APL/Crowley/Lykes Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd., APL Co., PTE Ltd., Crowley American Transport, Inc. (To be renamed Hamburg-Sudamerikanische Dampfschifffahrtsgesellschaft Eggert & Amsinck d/b/a/ Crowley American Transport), Lykes Lines Limited, LLC.

Synopsis: The proposed Agreement adds Evergreen Marine Corp. (Taiwan) Ltd., as a party to the agreement; changes the name of the agreement to reflect Evergreen's name; amends article 5(a) to reflect the space allocations to Evergreen; makes technical and non-substantive revisions to other articles of the agreement; and restates the agreement. The parties request expedited review.

Agreement No.: 232–011683.

Title: Contship/CMA CGM/Marfret Space Charter and Sailing Agreement.

Parties: CMA, CGM, Compagnie Maritime Marfret, Contship Containerlines Limited.

Synopsis: The proposed agreement authorizes the parties to charter vessels and vessel space to each other, interchange equipment, jointly enter into arrangements with terminal operators, and agree on the number, size and type of vessels to operate in the trade between U.S. Atlantic Coast ports and U.S. points, and ports and points in the Indian subcontinent, Australia, and New Zealand. The agreement also covers the U.S. inbound trade from Northern Europe, the Mediterranean Sea, the Red Sea, and South East Asia.

Dated: December 23, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33843 Filed 12–28–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Beacon International, Inc., 39 Beacon Street, Port Reading, NJ 07064, Officer: Alexis Gil, President (Qualifying Individual)

Asean Logistics, Inc., 350 S. Crenshaw Blvd., Suite A204, Torrance, CA 90503, Officers: Kai Kung Chan (aka: Peter Chan), Vice President (Qualifying Individual), Paul Pomroy, CEO.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Paradigm International, Inc., 2057 N.W. 79th Avenue, Miami, FL 33122, Officer: Jacques A. Nijankin, President (Qualifying Individual).

Pro Ag Logistics, LLC, 4225 Nicols Road, Eagan, MN 55122–1910, Officers: Scott A. Frane, President, (Qualifying Individual), Cynthia D. Frane, Vice President.

Dated: December 23, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33842 Filed 12–28–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 12, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Mooresville Savings Bank, SSB, Inc., Employee Stock Ownership Plan*, Mooresville, North Carolina; to retain voting shares of Coddle Creek Financial Corp., Mooresville, North Carolina, and thereby indirectly retain voting shares of Mooresville Savings Bank, Inc., SSB, Mooresville, North Carolina.

Board of Governors of the Federal Reserve System, December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33819 Filed 12–28–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Centerstate Banks of Florida, Inc., Winter Haven, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Osceola County, Kissimmee, Florida, and thereby indirectly acquire Community National Bank of Pasco County, Zephyrhills, Florida, and First National Bank of Polk County, Winter Haven, Florida.

2. Century South Banks, Inc., Dahlonega, Georgia; to merge with Lanier Bankshares, Inc., Gainesville, Georgia, and thereby indirectly acquire Lanier National Bank, Gainesville, Georgia.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. PremierWest Bancorp, Medford, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Southern Oregon, Medford, Oregon, and 100 percent of the voting shares of United Bancorp, Roseburg, Oregon, and thereby indirectly acquire Douglas National Bank, Roseburg, Oregon.

In connection with this application, Applicant has also applied to acquire DNB Mortgage Company, Roseburg, Oregon, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33725 Filed 12–28–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Omni Financial Services, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of United National Bank, Fayetteville, North Carolina.

In connection with this application, Applicant has also applied to engage *de novo* in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33820 Filed 12–28–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Concord EFS, Inc., Memphis, Tennessee; to acquire National Payment Systems, Inc., New York, New York (d/b/a Card Payment Systems), and thereby engage in data processing activities, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33818 Filed 12–28–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss (a) its ongoing project examining ethical issues in international research and (b) its new project examining issues arising from the oversight human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on January 13, 2000 from 1:30 pm–2:00 pm.

Dates/Times and Location

January 13, 2000, 8:30 am–5 pm—The Madison Hotel, 15th and M Street, NW, Washington, DC 20005

January 14, 2000, 8 am–12 noon—Same Location as Above

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: December 20, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–33823 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Special Emphasis Panel (SEP); Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of these Special Emphasis Panel (SEP) meetings.

SEPs are committees used for scientific review activities. These committees have members drawn from a list of experts who are designated to serve for particular individual meetings rather than for extended fixed terms of service.

Substantial segments of these upcoming SEP meetings listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10 (d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of SEP:* Health Research Dissemination and Implementation.

Date: January 31, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: AHCPR, 6010 Executive Blvd., 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of SEP:* Health Care Markets and Managed Care.

Date: February 3–4, 2000 (Open from 8:30 a.m. to 8:45 a.m. and closed for remainder of the meeting).

Place: AHCPR, 6010 Executive Blvd., 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of these meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHCPR, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 20, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–33687 Filed 12–28–99; 8:45 am]

BILLING CODE 4150–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Services Research Initial Review Group Committee; Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), The Agency for Health Care Policy and Research (AHCPR) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to include personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: February 10–11, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 24–25, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: March 2–3, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Systems Research.

Date: March 6–7, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHCPR, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 20, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–33688 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Research Agenda Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Research Agenda Subcommittee of the Board of Scientific Counselors.

Time and Date: 9:30 a.m.–11 a.m., January 5, 2000.

Place: The conference call will originate from the Agency for Toxic Substances and Disease Registry, in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the conference calls.

Status: Open to the public, limited by the availability of telephone ports.

Purpose: This subcommittee will advise the Board of Scientific Counselors and the Agency on areas of emphasis and focus for the ATSDR five-year environmental public health research agenda. The subcommittee will report jointly to the Board of Scientific Counselors and the ATSDR Associate Administrator for Science.

Matters to be Discussed: The conference call is to finalize plans for a workshop with ATSDR partners and community and tribal representatives, and continue planning efforts in the development of the ATSDR five-year environmental public health research agenda.

Supplementary Information: This conference call is scheduled to begin at 9:30 a.m., EST. To participate in the conference call, please dial 1–800–311–3437 and enter conference code 264428. You will then be automatically connected to the call.

Contact Person for More Information: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: December 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33740 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Research Agenda Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Research Agenda Subcommittee of the Board of Scientific Counselors.

Time and Date: 8:30 a.m.–4:10 p.m., January 19, 2000.

Place: Radisson Inn Hotel, 2061 North Druid Hills Road, Atlanta, Georgia 30329, telephone 404/321–4174.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: This subcommittee will meet to obtain individual advice and comments regarding the formation of ATSDR's Five-Year Environmental Public Health Research Agenda from scientific and public health partners and community and tribal constituents.

Matters to be Discussed: Agenda items will include an overview of ATSDR's Research Program; discussions on exposure assessment; evaluation and surveillance of health effects; evaluation of chemical mixtures; health promotion and intervention; children, minorities, and other special populations; and special issues concerning tribes and communities which will help to identify research needs.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–33741 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c) (2) (A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

The Incidence of Breast and Other Cancers among Female Flight Attendants—New—National Institute for Occupational Safety band Health (NIOSH)—Flight attendants experience exposures which may affect breast cancer risk including exposure to elevated levels of cosmic radiation and circadian rhythm disruption. This study will evaluate the incidence of breast and other cancers among a cohort of approximately 10,000 women who were employed as flight attendants.

The occurrence of breast and other cancers will be obtained from death certificates and from telephone interviews with living women and next-of-kin of deceased women. Each interview will take approximately 60 minutes to complete. Medical records will be requested to confirm cancer diagnoses. The primary analysis will evaluate the risk of breast and other cancers associated with occupational exposure within the cohort. The secondary analysis will compare the incidence of breast and other cancers in the cohort to that in the general population, with adjustment for factors which might increase cancer risk in the cohort independent of occupational exposure to cosmic radiation and circadian rhythm disruption. The total cost to respondents is estimated at $165,400.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Flight attendants/proxies	10,000	1	1	10,000
Flight attendants/proxies whose eligibility for the study is unknown	300	1	0.083	25
Medical providers	1,000	1	0.5	500
Total				10,525

Dated: December 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33728 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

The Centers for Disease Control and Prevention (CDC) proposes to continue data collection for congenital syphilis case investigations under the "Congenital Syphilis Case Investigation and Report Form" (CDC 73.126 REV 11–98); this form is currently approved under OMB No. 0920–0128. This request is for a 3-year extension of clearance. Reducing congenital syphilis is a national objective in the DHHS Report entitled *Healthy People 2000: Mid-course Review and 1995 Revisions.* Objective 19.4 of this document states the goal: "reduce congenital syphilis to an incidence of no more than 40 cases per 100,000 live births" by the year 2000. In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued in order to monitor current levels of disease and progress towards the year 2000 objective. This data will also be used to develop intervention strategies and to evaluate ongoing control efforts.

Respondent burden is approximately 15 minutes per reported case. The estimated annual number of cases expected to be reported using the current case definition is 1,000 or less. Therefore, the total number of hours for congenital syphilis reporting required will be approximately 250 hours per year. The total estimated cost for this project is $7,275. The estimated cost to the Federal government is $3,750; this figure includes the cost of printing the form and staff time in preparing reports for publication and mailing. The annualized cost to the respondents is $3,525 based on an estimated support staff salary of $15 per hour.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
State and local health department	65 areas	Varies—cases are reported by occurrence.	.25/hour (15 minutes)	1.083
Total				1.083

Dated: December 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33730 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–07–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Management of Occupational Blood Exposures and Antibiotic Prescription Practices Among United States Dentists—NEW—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). In U.S. health care facilities, both occupational transmission of bloodborne pathogens and antimicrobial resistance are important problems with significant morbidity and costs. Several public health initiatives have been undertaken or are being developed to increase compliance with recently published recommendations to reduce occupational transmission of bloodborne pathogens and to assess current antibiotic use by physicians, hospital and other medical health-care workers. However, to date, there are limited data on dentists' implementation and knowledge of postexposure recommendations or on their antibiotic use. Therefore, the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Oral Health, intends to conduct a survey of the management of occupational blood exposures and antibiotic prescription practices among United States dentists. Information provided by these data are critical to the Division of Oral Health's ongoing efforts to protect dental workers from infection with bloodborne diseases and to target educational efforts aimed at increasing awareness of and compliance with current CDC recommendations. Information on antibiotic prescribing practices will help identify the most effective strategies for promoting appropriate use of antibiotics among dentists, provide an epidemiologic baseline on which to measure future behaviors, and assess the need for comprehensive guidelines.

A random sample of currently practicing U.S. dentists will be mailed questionnaires with two follow-up mailings to non-respondents. The information collected will include demographic information, office policies for management of occupational blood exposures and training of dental staff, the weekly number of antibiotic prescriptions, the most commonly prescribed antibiotics, and the most common oral conditions for which antibiotics are prescribed. The total annual burden hours are 3600.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Practicing U.S. Dentists	3,600	1	0.25

Dated: December 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33729 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee State-of-Origin Report ORR–11.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires ORR to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals in order to calculate the ORR social services formula allocation.

Respondents: State, Local or Tribal Government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State-of-Origin Report	50	1	4.333	217

Estimated Total Annual Burden Hours: 217.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resources Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**, Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: ACF Desk Officer.

Dated: December 21, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–33690 Filed 12–28–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5325]

Agency Information Collection Activities: Proposed Collection; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping and labeling requirements for food irradiation processors.

DATES: Submit written comments on the collection of information by February 28, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Irradiation in the Production, Processing, and Handling of Food—21 CFR Part 179 (OMB Control Number 0910–0186—Extension)

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation as a food additive. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179).

To assure safe use of radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum energy of radiation emitted by X-ray tube sources. Section 179.21(b)(2)(i) requires that the label or accompanying labeling bear adequate directions for installation and use.

Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.).

The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
179.21(b)(1) and 179.21(b)(2)(i)	4	1	4	5	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
179.25(e)	3	120	360	1	360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of firms who process food using irradiation is extremely limited. FDA estimates that there is a single irradiation plant whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Two other firms also irradiate small quantities of food (mainly spices). FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Although recent FDA rulemaking has authorized the irradiation of red meat, United States Department of Agriculture/Food Safety and Inspection Service (USDA/FSIS) has yet to issue a rule regarding meat irradiation. Actual implementation of meat irradiation cannot take place until USDA/FSIS final regulations are in place, which may not take place until later this fiscal year. At this time, FDA has no basis for estimating the extent of changes in the food irradiation business as a result of future USDA/FSIS actions. Therefore, the average estimated burden is based on: (1) Facility devoting 100 percent of its business (or 300 hours for recordkeeping annually) to food irradiation; (2) facilities devoting 10 percent of their business or 60 hours (2 x 30 hours) for recordkeeping annually, to food irradiation or (300 + 60)/3 = 120 x 3 firms x 1 hour = 360 hours annually.

No burden has been estimated for the labeling requirements in §§ 179.21(b)(2)(i) and (b)(2)(ii) and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33761 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0240]

Agency Information Collection Activities; Announcement of OMB Approval; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Veterinary Feed Directive" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In a proposed rule entitled "Animal Drug Availability Act; Veterinary Feed Directive" that appeared in the **Federal Register** of July 2, 1999 (64 FR 35966 at 35970), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0325. The approval expires on September 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33758 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0529]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Changes to an Approved New Drug Application (NDA) or Abbreviated New Drug Application (ANDA)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Changes to an "Approved NDA or ANDA" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 1999 (64 FR 65716), the agency announced that the proposed information collection had been submitted to OMB for review

and clearance under the emergency processing provisions of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the collection of information and has assigned OMB control number 0910–0431. The approval expires on May 31, 2000. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33760 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4068]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Advisory Opinions—21 CFR 10.85 (OMB Control Number 0910–0193)—Extension

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), provides that an interested person may request an advisory opinion from the Commissioner of Food and Drugs (the Commissioner) on a matter of general applicability. Section 10.85 sets forth the format and instructions for making an advisory opinion request. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested and a full statement of the facts and legal points relevant to the request. An advisory opinion represents the formal position of FDA on a matter of general applicability. Respondents to this collection of information are parties seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

In the **Federal Register** of September 28, 1999 (64 FR 52329), the agency requested comments on the proposed collection of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.85	3	1	3	16	48

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on an average for the period 1996 through 1998 with each advisory opinion requiring an estimated 16 hours of preparation time.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33757 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4069]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

Notice of Participation—21 CFR 12.45 (OMB Control Number 0910–0191)—Extension

Under part 12 (21 CFR part 12) regulations issued under sections 201 to 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 to 393), any interested person may participate in a formal evidentiary hearing, either personally or through a representative by filing a notice of participation under § 12.45. Section 12.45 requires that any person filing a notice of participation state the person's specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in § 12.85 or, in the case of a hearing before a public board of inquiry, in 21 CFR 13.25, concerning disclosure of data and information by participants. A participant's appearance can be struck by the presiding officer in accordance with § 12.45(e). The information obtained is used by the presiding officer and other participants in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation. The affected respondents are individuals or households, State or local governments, not-for-profit institutions and businesses or other for-profit groups and institutions.

In the **Federal Register** of September 28, 1999 (64 FR 52330), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	30	1	30	3	90

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate on an average for the period 1996 through 1998 in which each notice of participation filed took an estimated 3 hours to complete.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33759 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Office of Strategic Planning; Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 63, No. 45, p. 11448 dated Monday, March 9, 1998 is amended to reflect a functional realignment in the Office of Strategic Planning. The realignment moves the international communications function from the Office of Professional Relations, Center for Health Plans and Providers to the Office of Strategic Planning (OSP). The purpose of the realignment is to consolidate HCFA's international communications function within OSP to better serve the needs of the international community and intergovernmental agencies.

The specific amendments to part F are described below:

Section F.20., (Functions) is amended to read as follows:

4. Office of Strategic Planning (FAK)

- Develops and manages the long-term strategic planning process for the Agency; responsible for the Agency's conformance with the Strategic Plan requirements of the Government Performance and Results Act (GPRA).
- Provides analytic support and information to the Administrator and the Executive Council needed to establish Agency goals and directions.
- Performs environmental scanning, identifying, evaluating, and reporting emerging trends in health care delivery and financing and their interactions with Agency programs.
- Manages strategic, crosscutting initiatives.
- Designs and conducts research and evaluations of health care programs, studying their impacts on beneficiaries, providers, plans, States and other partners and customers, designing and assessing potential improvements, and developing new measurement tools.
- Coordinates all Agency demonstration activities, including development of the research and demonstration annual plan, evaluation of all Agency demonstrations, and assistance to other components in the design of demonstrations and studies.
- Manages assigned demonstrations, including Federal review, approval, and oversight; coordinates and participates with departmental components in experimental health care delivery projects.
- Develops research, demonstration, and other publications and papers related to health care issues.
- Serves as contact in HCFA for international visitors. Responds to requests from intergovernmental agencies and the international community for information related to the United States health care system.

Dated: November 23, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–33746 Filed 12–28–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Bighorn Sheep in the Peninsular Ranges for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the bighorn sheep in the Peninsular Ranges of southern California. The Peninsular bighorn sheep represents a distinct vertebrate population that is restricted to east facing, lower elevation slopes typically

below 1,400 meters (4,600 feet) of the Peninsular Ranges in the Sonoran Desert life zone. The population addressed in this recovery plan extends from the San Jacinto and Santa Rosa Mountain ranges in Riverside County south through numerous smaller mountain ranges in Imperial and San Diego Counties to the United States and Mexico international border. The Service solicits review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before February 14, 2000 to receive consideration by the Service.

ADDRESSES: The draft recovery plan is available for public inspection by appointment during normal business hours at the Service's Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor (attention Pete Sorensen) at the above address or by calling (760) 431–9440. Comments and materials should be submitted to the above address and are available on request for public inspection by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Pete Sorenson or Andy Yuen at the above Carlsbad address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

Bighorn sheep have been documented in the Peninsular Ranges since the 1700's (Bolton 1930). An examination of past records and current data suggest that the distribution of bighorn sheep has been altered during the past 25 years. There is no documentation of newly formed ewe groups, and in portions of the range, formerly occupied habitat is now unoccupied. Documented population declines of Peninsular bighorn sheep ranged from stable low numbers in ewe groups to 28 percent declines in other groups. Though cause and effect relationships for these population declines have not been well documented among ewe groups, cumulative and synergistic effects of disease, high predation rates, low population recruitment rates, habitat loss, modification, and fragmentation, and human-related disturbance are likely, contributing factors.

The objective of this recovery plan is to secure habitat and alleviate threats to the overall Peninsular bighorn sheep population so that population levels will increase to the point that this species may be downlisted to threatened status, and ultimately delisted.

Recovery of the bighorn sheep in the Peninsular Ranges is contingent upon (1) providing large tracts of habitat that provide a diversity of resources needed to offset seasonal, annual, and longer term cycles of environmental variability and scarcity, (2) establishing habitat continuity between subpopulations to allow long term shifts in distribution, (3) maintaining healthy population levels that are resilient to potential disease outbreaks and high levels of predation, and (4) educating the public on human-related activities that affect habitat use patterns of Peninsular bighorn sheep.

The draft plan was developed by a recovery team composed of representatives of the Agua Caliente Band of Cahuilla Indians, Bureau of Land Management, U.S. Forest Service, California Department of Fish and Game, California Department of Parks and Recreation, Bighorn Institute, University of California at Davis and White Mountain Research Station, and the Zoological Society of San Diego. Short-term recovery objectives proposed are to: (a) Maintain 25 or more ewes in 9 regions of the Peninsular ranges during 1 bighorn sheep generation, and (b) establish regulatory mechanisms and land management commitments to provide for long-term protection of Peninsular bighorn sheep. Proposed recovery actions include protecting essential habitat, improving habitat management capabilities, and conducting monitoring and research necessary for effective management. The long-term objective is to manage conserved lands to provide for permanent protection needed for continued population viability of bighorn sheep in the Peninsular Ranges. Delisting of the Peninsular bighorn sheep will be achieved when: (1) Greater than or equal to 25 ewes are present in the 9 specified regions of the Peninsular Ranges during 2 bighorn sheep generations, without augmentation, (2) the range-wide population averages 750 individuals in a stable or increasing population, and (3) essential habitat, as described in the recovery plan, is permanently protected through regulatory mechanisms and land management commitments.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 9, 1999.

Thomas Dwyer,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 99–32577 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement and Receipt of an Application for an Incidental Take Permit for the High Desert Power Project, Victorville, San Bernardino County, California

AGENCY: Fish and Wildlife Service, Interior (Lead Agency); Bureau of Land Management, Interior and Corps of Engineers, Army (Cooperating Agencies).

ACTION: Notice of availability.

SUMMARY: The High Desert Power Project Limited Liability Company (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The

proposed 50-year permit would authorize the incidental take of the threatened desert tortoise (*Gopherus agassizii*) in connection with the development, operation, maintenance, and eventual decommissioning of the High Desert Power Project (Power Project) in San Bernardino County, California. The proposed permit would also authorize the incidental take, in connection with the Power Project, of the Mohave ground squirrel (*Spermophilis mohavensis*), a species listed as threatened by the State of California, in the event that species becomes listed as threatened or endangered under the Endangered Species Act during the term of the requested permit.

The Service, in cooperation with the Bureau of Land Management and the Army Corps of Engineers, has prepared a draft Environmental Impact Statement addressing the potential effects on the human environment that may result from the proposed granting of an incidental take permit and other federal actions associated with the construction and operation of the Power Project.

The permit application, including the Applicant's proposed Habitat Conservation Plan and Implementing Agreement, are available for public review and comment. The Environmental Impact Statement also is available for public review and comment. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments must be received on or before February 23, 2000.

ADDRESSES: Comments should be addressed to Ms. Diane Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. Written comments may also be sent via facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Mr. George Walker, Fish and Wildlife Service Biologist, Barstow, California, at (760) 255–8852.

SUPPLEMENTARY INFORMATION:

Document Availability

Copies of the incidental take permit application materials and draft Environmental Impact Statement are available for review at the following government offices and libraries:

Government Offices—Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003, (805) 644–1766; and the Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311, (760) 252–6000.

Libraries—California State Library, Information and Reference Center, 914 Capital Mall, Room 301, Sacramento, California 95814, (916) 654–0261; San Bernardino County Library, Adelanto Branch, 11744 Bartlett Avenue, Adelanto, California 92301, (760) 246–5661, San Bernardino County Library, Victorville Branch, 15011 Circle Drive, Victorville, California 92392, (760) 245–4222.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Under limited circumstances, the Service, however, may issue permits to authorize "incidental take" of listed animal species (defined by the Endangered Species Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The High Desert Power Project Limited Liability Company seeks an incidental take permit for the threatened desert tortoise, and for the Mohave ground squirrel should it be listed under the Act during the term of the permit. Take of these species would be incidental to the High Desert Power Project. The Applicant proposes to construct, operate and maintain a 680- to 830-megawatt natural gas-fueled electricity generation power plant on a 25-acre site located in the northeast corner of the Southern California Logistics Airport, formerly a part of George Air Force Base, in the City of Victorville, San Bernardino County, California. The Applicant proposes to use an additional 24-acre area for construction staging. The proposed project also includes the construction, operation and maintenance of 7 water injection/extraction wells within the Mojave River watershed; 2 water supply pipelines (one approximately 2.5 miles in length and the other approximately 6.5 miles in length); 2 natural gas supply pipelines (one approximately 3.5 miles in length and the other approximately 32 miles in length); and a 7-mile-long electrical transmission line.

Construction of the Power Project and associated facilities would result in short-term, long-term, and permanent disturbances to desert tortoise and Mohave ground squirrel habitat. The Power Project would disturb approximately 630.2 acres of habitat, with approximately 244.1 acres of short-term disturbance and 386.1 acres of long-term and/or permanent disturbance.

The Applicant proposes to minimize and/or mitigate for impacts associated with the Power Project, in part, by conducting pre-construction surveys of proposed work areas and construction zones, and by developing an employee and contractor education program that would describe allowable practices when constructing in desert tortoise and Mohave ground squirrel habitat area. The Applicant would revegetate habitat disturbed during construction, operation, maintenance, and/or decommissioning activities in accordance with an approved habitat conservation plan. As compensation for impacts to habitat on private land, the Applicant would ensure the protection in perpetuity of 1,242.8 acres of off-site mitigation lands or habitat credits, having habitat value for both desert tortoises and Mohave ground squirrels that is at least as great as the value of the habitat being impacted. The number of compensation acres was developed based on an agency-approved formula which assesses the categories of previous and potential disturbance, the condition and classification of the impacted habitat, and potential impacts to adjacent habitat.

In addition to issuance of an incidental take permit by the Service, the High Desert Power Project Limited Liability Company has requested other Federal authorizations for the proposed project. The Applicant seeks Nationwide Permit No. 12 authorizations by the Army Corps of Engineers, pursuant to Section 404 of the Clean Water Act, for pipeline crossings of waters of the United States. The Applicant also seeks a right-of-way grant from the Bureau of Land Management pursuant to Section 28 of the Mineral Leasing Act of 1920, to authorize construction, operation and maintenance of the 32-mile natural gas pipeline. To mitigate for impacts to desert tortoise and Mohave ground squirrel associated with construction and operation of this gas pipeline, the Applicant proposes that funding for restoration activities may be provided either in lieu of or in combination with the purchase of compensation lands or habitat credits.

In December 30, 1998, a notice was published in the **Federal Register** (61 FR 71940) announcing that the Service would take the lead in preparing an

Environmental Impact Statement addressing the Federal actions associated with the Power Project. The Bureau of Land Management and Army Corps of Engineers may use this Environmental Impact Statement as the basis for their separate Federal permit decisions. Comments received by the agencies during scoping were considered and are reflected in the draft Environmental Impact Statement made available for comment through this notice.

The draft Environmental Impact Statement analyzes the potential environmental impacts that may result from the Federal actions requested in support of the proposed development of the High Desert Power Project, and identifies various alternatives, including the No Action Alternative (no incidental take permit), the Combined Cycle Power Plant with Dry Cooling Alternative, and various alternatives proposing the power plant be located in different locations. Several of these alternatives would reduce the amount of habitat disturbance and levels of take of threatened and endangered species compared to the Proposed Project Alternative but would have potentially greater adverse effects on other resources such as air quality, land use, views, and geological hazards.

The analysis provided in the draft Environmental Impact Statement is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Fish and Wildlife Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: December 21, 1999.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–33610 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Commercial Development Called Mangrove Bay, Palm Beach County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Senior Lifestyle Jupiter Corporation and The Mangrove Bay Master Limited Partnership (Applicants) request an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicants anticipate taking one family of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) incidentally to the clearing of land associated with the development of an assisted-care living facility. The proposed commercial development will occur in section 8, Township 41 South, Range 43 East, in the town of Jupiter, Palm Beach County, Florida.

The clearing of the property for commercial construction will destroy habitat occupied by the Florida scrub-jay (scrub-jay). A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (Plan), the Service's draft Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of the draft EA and Plan for the incidental take application. Copies of the draft EA and/or Plan may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the Permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The preliminary Finding of No Significant Impact (FONSI) is based on information contained in the EA and Plan. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service specifically solicits information regarding the adequacy of the Plan as measured against the Service's Permit issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "david__dell@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the Permit application, draft EA, and Plan should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before January 28, 2000.

ADDRESSES: Persons wishing to review the application, Plan, and draft EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, GA. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia

30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 2676, Vero Beach, FL. 32961–2676. Written data or comments concerning the application, draft EA, or Plan should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE020656–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in southeastern Florida has been greater than in most other regions of the State. Southeastern Florida has experienced tremendous urban growth in the past 50 years and much of this commerical and residential development has occured on the dry soils which historically supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east Florida occurs along a narrow stretch of historic sand dunes situated on a north-south axis from Dade to Flagler County. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the suppression of the wildfires that maintained xeric uplands in conditions suitable for scrub-jays.

Scrub-jays using the Project site and adjacent lands are considered part of a larger complex of scrub-jays that occupy xeric uplands of southeastern Florida. This complex of scrub-jay families ranges from about eastcentral Martin County south to northeastern Palm Beach County. The majority of scrub-jays within this complex are found within Jonathan Dickinson State Park which is located about 10 miles north of the Project site. The continued survival of scrub-jays in this area may depend on the maintenance of suitable habitat and the restoration of unsuitable habitat in northeastern Palm Beach and southeastern Martin counties.

Scrub-jay use of the Project site and adjacent lands has been assessed on two occasions. In February 1998, field investigations determined that one scrub-jay family comprising three individual birds used portions of the Project site as well as adjacent lands. Systematic surveys conducted in April 1998 documented use of about 2.7 acres of suitable habitat within the Project site by one family represented by two individual birds.

The Project site represents one of the few remaining undeveloped parcels east of the Intracoastal Waterway in northern Palm Beach County that provides habitat for the scrub-jay. Several tracts of public conservation lands are also located in the vicinity of the Project site, but much of the remaining landbase has been developed for commercial or residential uses. The Project site is bounded on three sides by urban development and the site itself has been negatively influenced by previous land clearing activities, off-road vehicle use, and invasion by exotic species. Due to the proximity of the Project site to existing residential and commercial development, fire has been actively excluded because of safety concerns. As a result, the condition of the xeric habitat within the Project site is degraded; periodic fire or land management practices that mimic fire are required to maintain habitat conditions suitable for the scrub-jay.

Land clearing in preparation for commerical construction will destroy habitat and result in death of, or injury to, scrub-jays, incidentally to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed commerical development will reduce the availability of feeding, nesting, and sheltering habitat for scrub-jays.

The Applicant's Plan and the Service's draft EA describe the following minimization and mitigation strategy to be employed by the Applicants to offset the impacts of the Project to the scrub-jay:

- The Applicants agree to preserve, restore, and manage 1.77 acres of scrub-jay habitat within the project site.
- The Applicants agree to avoid disturbance to occupied scrub-jay habitat during the nesting season.
- The Applicants agree to further minimize impacts by using native xeric plants for ornamental purposes through the commerical facility when completed.
- The Applicants agree to avoid land clearing activities during the scrub-jay nesting season.
- The Applicants agree to compensate for the unavoidable destruction of 1.67 acres of occupied scrub-jay habitat by providing funding in the amount of $124,093 to acquire and manage scrub-jay habitat in southeastern Florida, conduct public outreach, and/or fund research, as specified by the Service.
- In the event the on-site preserve is not occupied by scrub-jays within three years following completion of the commerical construction, the Applicants also agree to provide additional funding in the amount of $93,465 to acquire and manage scrub-jay habitat in southeastern Florida, conduct public outreach, and/or fund research, as specified by the Service.

The draft EA considers the environmental consequences of one action alternative which would require issuance of a Permit. The no action alternative (not issue the Permit) will ultimately result in loss of scrub-jay habitat within the Project site due to habitat degradation. The no action alternative may also expose the Applicants under Section 9 of the Act. The preferred alternative would affect about 1.67 acres of occupied scrub-jay habitat while protecting and enhancing 1.77 acres of habitat on-site. Additional scrub-jay habitat would also be acquired in the future and managed with the funding provided by the Applicants.

The proposed action alternative is issuance of the Permit according to the Plan as submitted and described above. Under the proposed alternative, the effect of the proposed minimization and mitigation measures will be the protection, restoration, and management of 1.77 acres of scrub-jay habitat within the Project site that will provide habitat for nesting, foraging, and shelter and stop-over habitat for dispersing birds. With management of on-site habitat, existing conditions may improve over the long-term for scrub-jays in the vicinity. The contribution of mitigation funding will provide the Service opportunities to protect and manage other suitable habitat in southeastern Florida. Mitigation funding will likely be used in combination with other

matching sources of money to target the purchase of larger tracts of habitat. As a result, the immediate acquistion of habitat with the mitigation funding provided by the Applicant is not anticipated.

However, any future acquistion made with all or portions of this funding is expected to benefit scrub-jays since habitat protection and management has been identified as one of the most important conservation tasks for this species.

As stated above, the Service has made a preliminary determination that the issuance of the Permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the draft EA and Plan.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) Permit complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the Permit.

Dated: December 22, 1999.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 99–33738 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Change in Administrative Jurisdiction of Navassa Island

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We are announcing the establishment of Navassa Island National Wildlife Refuge located in the Caribbean Sea, and that the Secretary of the Interior has delegated the authority for the civil administration of Navassa Island to the Director of the U.S. Fish and Wildlife Service.

FOR FURTHER INFORMATION CONTACT: Jeffery M. Donahoe, Chief, Division of Realty, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 622, Arlington, Virginia 22203; Telephone (703) 358–1713; FAX (703) 358–2223.

SUPPLEMENTARY INFORMATION: This gives public notice of the establishment of the Navassa Island National Wildlife Refuge. A Memorandum of Understanding (MOU) between the Director of the United States Fish and Wildlife Service (Service) and the Director of the Office of Insular Affairs (both within the Department of the Interior) established the refuge on April 22, 1999. On December 3, 1999, the Secretary of the Interior transferred full administrative responsibility for the island and its territorial waters from the Office of Insular Affairs to the United States Fish and Wildlife Service by Secretarial Order 3210.

We will continue to administer this area under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–ee), the general regulations governing the National Wildlife Refuge System published in Title 50, Subchapter C, Code of Federal Regulations, and in accordance with all applicable laws, policies, and rules.

The refuge consists of all of Navassa Island located in latitude 18′25″ N and longitude 75′02″ W from Greenwich together with the full extent of its territorial sea, which currently extends outward to 12 miles. Secretarial Order 3210, dated December 3, 1999 delegated the authority over Navassa Island from the Secretary of the Interior to the Director of the Service. We took this action in furtherance of United States sovereignty over Navassa Island and to protect the unique ecosystem of Navassa Island, the adjacent coral reefs, and marine waters.

The Service, which has been managing the refuge pursuant to the MOU, will continue to manage it under all applicable laws, policies, and regulations that govern the National Wildlife Refuge System. In carrying out those responsibilities, and consistent with those authorities, we shall ensure that we manage the unique ecosystem of the refuge to preserve its character in support of the protection and conservation of the fish and wildlife in the refuge.

Dated: December 15, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–33407 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and Title 50, of the Code of Federal Regulations, Section 15.26(c).

Applicant: Hurricane Aviaries Inc., Loxahatchee, FL. The applicant wishes to establish a cooperative breeding program for the Blue-headed macaw (*Ara couloni*). The applicant wishes to be an active participant in this program with four other private enterprises. The American Federation of Aviculture Inc. has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: December 22, 1999.

Bruce Weissgold,

Acting Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 99–33779 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under Section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and Title 50, of the Code of Federal Regulations, Section 15.26(c).

Applicant: Jerry G. Royster, Leonard, MI. The applicant wishes to establish a cooperative breeding program for the Orange-breasted Fig-parrot *(Cyclopsitta gulielmiterti),* Double-eyed Fig-parrot *(Cyclopsitta diophthalma),* Desmarest's Fig-parrot (*Psittaculirostris desmarestii*), Edward's Fig-parrot (*Psittaculirostris edwardsii*), and Salvadori's Fig-parrot

(*Psittaculirostris salvadori*). Mr. Royster wishes to be an active participant in this program with five other private individuals. The Avicultural Society of America (ASA) has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: December 22, 1999.

Bruce Weissgold,

Acting Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 99–33780 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Temporary closure of selected public lands in Clark County, Nevada, during the operation of the 2000 SCORE Laughlin Desert Challenge Race.

SUMMARY: The Field Office Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 2000 SCORE Laughlin Desert Challenge Race and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (I–5–98–F–053).

DATES: From 6 a.m. January 21, 2000 through 8 p.m. January 23, 2000 Pacific Standard Time.

Closure Area: As described below, an area within T.32 S. to T.33 S.R. 64 E. to R. 66 E.

1. The closure is a bound by STATE ROUTE #163 on the NORTH, CALIFORNIA STATE LINE on the SOUTH, US 95 on the WEST, BIG BEND DRIVE ON THE EAST.

Exceptions to the closure are: State Route 163.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Presence on a public land when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or public land resources, is prohibited.

g. Discharge, or use firearms, other weapons or fireworks.

h. Park, stop, or stand any vehicle outside of the designated spectator area.

i. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

j. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owner's expense.

k. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

l. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

m. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Pacific Standard Time.

n. Allow any pet or other animal in their care to be unrestrained at any time.

o. Fail to follow orders or directions of an authorized officer.

p. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restriction do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or to Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR part 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager or Ron Crayton, BLM Law Enforcement Ranger, BLM Las Vegas District, 4765 West Vegas Dr., Las Vegas, Nevada 89108, (702) 647–5000.

Dated: December 17, 1999.

Mark T. Morse,

Field Office Manager.

[FR Doc. 99–33723 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–1330–00]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the proposed 3R Minerals Coal Bed Canyon mine/operation plan modification, Garfield County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an EIS and Notice of Scoping on the proposed 3R Minerals' Coal Bed Canyon mine/operation plan modification, Garfield County, UT.

SUMMARY: Pursuant to Section 102(2) (C) of the National Environmental Policy

Act of 1969, the Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument (GSENM) office, will be writing an EIS on the proposed Coal Bed Canyon Mine located within the GSENM. The proposed mine is located on 4.8 acres of BLM administered lands approximately 4 miles southwest of the town of Escalante along the Alvey Wash Road (T. 35 S., R. 2 E., Sec. 36, SE¼, SLM, Garfield County, Utah). 3R Minerals proposes to mine and separate mineral sands (*i.e.* zirconium and titanium) from the active stream channel of Alvey Wash. Primary processing of the mineral sands would occur on-site in a fenced area of approximately 100 by 150 feet. The processing pad would accommodate gravity spiral mineral separation equipment, material stockpiles, loading and hauling equipment, a water well and storage pond, a generator, and personnel trailer. Reject material (non-mineral sands) would be placed back into the wash.

Major issues include potential impacts on wildlife habitat, recreation, visual resources, and wilderness values. Alternatives identified at this time include the proposed action and the no action alternative.

DATES: Public scoping comments will be accepted on or before January 28, 2000. A public scoping open house and information meeting will be held on January 13, 2000 from 4–7 p.m. at the Escalante Community Center, 65 North 100 West, Escalante, Utah. If you have any information, data or concerns related to potential impacts of the proposed action including the issues identified above, or have suggestions for additional alternatives, please submit them to the address listed below.

ADDRESSES: Written scoping comments should be sent to: GSENM Manager, Bureau of Land Management, Grand Staircase-Escalante National Monument, 180 West 300 North, Kanab, Utah 84741, ATTN: Coal Bed Canyon Mine Plan.

Comments, including names and street addresses of respondents will be available for public review at the BLM Grand Staircase-Escalante National Monument Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Paul Chapman (435) 644–4309 or e-mail: pchapman@ut.blm.gov.

SUPPLEMENTARY INFORMATION: On September 1, 1997, the Utah State Institutional Trust Lands Administration (SITLA) issued a metalliferous lease on lands located in T. 35 S. , R. 2 E. , Section 36, SLM, Garfield County, Utah. A Notice of Intent (NOI) to commence mining was submitted by 3R Minerals to SITLA on June 1, 1998. SITLA granted approval on October 5, 1998. A Notice of Intention to Commence Small Mining Operations was submitted and received by the Utah Division of Oil, Gas and Mining (UDOGM), on June 1, 1998 and accepted on July 1, 1998. On October 31, 1998, the Utah Schools and Lands Exchange Act of 1998 (Public Law 105–335) was signed by the President of the United States, in order to exchange certain federal and state lands and interests (including this parcel). This exchange was subject to valid existing rights. On January 7, 1999, the surface and mineral estate, along with the interest in the state lease was conveyed to the United States, Bureau of Land Management. BLM now administers the 3R Minerals lease under the terms and conditions set forth in the lease, the NOI approval, and SITLA rules pertaining to the lease. 3R Minerals may currently conduct operations under the terms of the original approval by SITLA and the acceptance by DOGM.

On June 15, 1999, BLM received 3R Minerals' Notice of Intent to Revise Mining Operations. Under the lease and SITLA rules, BLM as the lessor, is required to approve any proposed changes to 3R Minerals' operations that are not covered by the original approval. Such a decision is a Federal action to which the National Environmental Policy Act applies. Based upon this review, an Environmental Impact Statement is being prepared to assess potential impacts to resources reflected in the Notice of Intent to Revise Mining Operations within the Grand Staircase-Escalante National Monument.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–33736 Filed 12–28–99; 8:45 am]

BILLING CODE 1330–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP0–0065]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 35 S., R. 4 W., accepted November 15, 1999

T. 36 S., R. 4 W., accepted November 15, 1999

Tps. 25 and 26 S., R. 13 and 14 W., accepted November 18, 1999

T. 21 S., R. 2 W., accepted November 22, 1999

T. 15 S., R. 6 W., accepted November 22, 1999

T. 16 S., R. 41 E., accepted November 24, 1999

Washington

T. 34 N., R. 2 E., accepted December 10, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515

S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: December 14, 1999.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 99–33724 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–2000–1060–JJ]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to remove stray wild horses.

SUMMARY: The Wild, Free Roaming Horse and Burro Act (Pub. L. 92–195) requires, among other things, that horses that stray from designated Herd Management Areas (HMAs) be removed. In order to accomplish that, Rawlins Field Office of the Bureau of Land Management (BLM) plans to remove 200–400 horses from an area designated as Interstate 80 (I–80) North. These horses have strayed from the nearby Stewart Creek and Lost Creek HMAs over a period of time. The area known as I–80 North contains a large percentage (greater than 50%) of private land. The removal is scheduled to begin after February 15, 2000, and conclude March 31, 2000. If weather or other conditions preclude or otherwise limit operations during this period, this action may resume after July 10, 2000, and continue until December 31, 2000.

Populations in the nearby Stewart Creek and Lost Creek HMAs will not be affected by this removal and will remain above the AMLs established for them.

Numbers presented are approximate and will be finalized by aircraft census to be conducted during January/February 2000 in the removal area and nearby HMAs.

A detailed Gather Plan and NEPA documentation for this removal is available on request from: Chuck Reed, Bureau of land Management, Rawlins Field Office, P.O. Box 2407, Rawlins, WY 82301, (307) 328–4213.

This removal action represents continued implementation of decisions previously communicated through Decision Record WY–037–EA4–121/122 dated July 11, 1994.

FOR FURTHER INFORMATION CONTACT: For further information please contact the Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, WY 82301, (307) 328–4200.

Dated: December 17, 1999.

Kurt J. Kotter,

Field Manager.

[FR Doc. 99–33376 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 18, 1999. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 13, 2000.

Patrick Andrus,

Acting Keeper of the National Register.

COLORADO

Adams County

Union High School, 3455 W. 72nd Ave., Westminster, 99001665

Jefferson County

Queen of Heaven Orphanage Summer Camp, 20189 Cabrini Blvd., Golden vicinity, 99001666

Park County

Buckley Ranch (Ranching Resources of South Park, Colorado) Co. Rd. 59, Hartsel vicinity, 99001667

CONNECTICUT

New Haven County

Maltby—Stevens Factory Site, Address Restricted, North Branford, 99001668

INDIANA

Porter County

Nike Missile Site C47, Co. Rds. 700 N. and 600 N., Portage vicinity, 99001669

MARYLAND

Baltimore Independent City

Baltimore Grand, 401 W. Fayette St., Baltimore, 99001671

Hippodrome Theatre, 12 N. Eutaw St., Baltimore, 99001670

MICHIGAN

Hillsdale County

Trunk Line Bridge No. 237 (Highway Bridges of Michigan MPS) Burt Rd. over Silver Cr. (Ransom Township), Ransom vicinity, 99001672

Ingham County

Ash Street—Sycamore Creek Bridge (Highway Bridges of Michigan MPS), MI 36 over Sycamore Cr., Mason, 99001673

Jackson County

Denton Road—Sparks Foundation Park Pond Bridge (Highway Bridges of Michigan MPS) Denton Rd. over Sparks Foundation Park Pond, Jackson, 99001676

M–50—Sandstone Creek Bridge (Highway Bridges of Michigan MPS) 5MI 50 over Sandstone Cr. (Tompkins Township), Tompkins vicinity, 99001674

Mill Street—South Branch Raisin River Bridge (Highway Bridges of Michigan MPS) Mill St. over S. Branch Raisin River, Brooklyn, 99001675

NEW MEXICO

Bernalillo County

Hendren Building (Multi-unit Dwellings in Albuquerque, New Mexico MPS), 3001 Monte Vista Blvd. NE, Albuquerque, 99001678

Newlander Apartments (Multi-unit Dwellings in Albuquerque, New Mexico MPS), 616 Coal Ave., Albuquerque, 99001677

Lincoln County

Fort Stanton Historic District (Boundary Increase), NM 214, Capitan vicinity, 99001679

Santa Fe County

Lujan—Ortiz House, 1 mi. from NM 502 on Co. Rd. 84, Jaconita vicinity, 99001680

NEW YORK

Suffolk County

Dove, Arthur—Torr, Helen, Cottage, 30 Centershore Rd., Centerport, 99001682

Rosemary Lodge, 322 Rose Hill Rd., Southampton, 99001681

NORTH CAROLINA

Durham County

Tilley, Marcus, House, 7616 Jock Rd., Bahama, 99001684

Forsyth County

Black, George, House and Brickyard, 111 Dellabrook Rd., Winston-Salem, 99001683

OHIO

Brown County

Higginsport School, Jct. of Jackson and Gaines Sts., Higginsport, 99001685

Knox County

Gambier Historic District, Roughly bounded by OH 229, Meadow Ln., Brooklyn St. and N. Village boundary, Gambier, 99001686

Richland County

Voegele Building, 211 N. Main St., Mansfield, 99001687

SOUTH DAKOTA

Brule County

Chamberlain Bridge (Historic Bridges in South Dakota MPS) I–90 Loop over Missouri R., Chamberlain, 99001691

Clay County

South Dakota Department of Transportation Bridge No. 14–088–170 (Historic Bridges in South Dakota MPS), Local Rd. over Clay Cr. Ditch, Vermillion vicinity, 99001689
South Dakota Department of Transportation Bridge No. 14–105–209 (Historic Bridges in South Dakota MPS), Local Rd. over Chicago, Milwaukee, St. Paul and Pacific Railroad tracks, Vermillion vicinity, 99001690
South Dakota Department of Transportation Bridge No. 14–090–042 (Historic Bridges in South Dakota MPS), Local Rd. over Vermillion R., Wakonda vicinity, 99001700

Lincoln County

South Dakota Department of Transportation Bridge No. 42–103–207 (Historic Bridges in South Dakota MPS), Local Rd. over Local Cr., Beresford vicinity, 99001688

Minnehaha County

South Dakota Department of Transportation Bridge No. 50–192–132 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R. (Mapleton Township), Renner vicinity, 99001694
South Dakota Department of Transportation Bridge No. 50–193–086 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R. (Sverdrup Township), Midway vicinity, 99001695

Moody County

Sioux River Bridge (Historic Bridges in South Dakota MPS), 3rd St. over Big Sioux R., Trent, 99001696
South Dakota Department of Transportation Bridge No. 51–102–010 (Historic Bridges in South Dakota MPS), Local Rd. over Local Cr., Riverview Township vicinity, 99001693
South Dakota Department of Transportation Bridge No. 51–140–078 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Flandreau vicinity, 99001698
South Dakota Department of Transportation Bridge No. 51–051–000 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Lake Campbell Resort vicinity, 99001699

Yankton County

Pine Street Bridge (Historic Bridges in South Dakota MPS), Pine Street over Marne Cr., Yankton, 99001697
Walnut Street Bridge (Historic Bridges in South Dakota MPS), Walnut St. over Marne Cr., Yankton, 99001692

TEXAS

Gray County

White Deer Land Company Building, 116 S. Cuyler, Pampa, 99001701

A Removal has been requested for:

ARKANSAS

Hempstead County

McRae, K.G., House, 3rd and Edgewood Sts. Hope, 76000413

A request for a Move has been made for:

FLORIDA

Broward County

Sample Estate, 3161 N. Dixie Hwy., Pompano Beach, 84000834

[FR Doc. 99–33742 Filed 12–28–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Alcoa Inc., ACX Technologies, Inc., and Golden Aluminum Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States of America* v. *Alcoa Inc., ACX Technologies, Inc., and Golden Aluminum Company*, Civil No. 99–2943 on November 5, 1999. On December 6, 1999, the United States filed a Competitive Impact Statement. The Complaint alleged that the proposed acquisition by Alcoa Inc. ("Alcoa") of ACX Technologies, Inc.'s ("ACX") interest in Golden Aluminum Company ("Golden") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the market for aluminum food and beverage can lid stock ("lid stock"). The proposed Final Judgment, filed at the same time as the Complaint, requires Alcoa to sell Golden's Fort Lupton, Colorado aluminum business. The proposed Final Judgment requires that the purchaser of the divested assets continue to operate them in the manufacture and sale of lid stock. The Competitive Impact Statement describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee. These materials are also located on the Antitrust Division's web site (www.usdoj.gov/atr/cases.html).

Public comment is invited within 60 days of the date of this notice. Such comments, and response thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: 202–307–6351).

Constance K. Robinson,
Director of Operations and Merger Enforcement.

Stipulation and Order

It is hereby Stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court

has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein..

7. Defendants agree not to consummate their transaction before the Court has signed this Stipulation and Order.

Dated: November 5, 1999.
Respectfully submitted,
For Plaintiff
United States of America: Nina B. Hale, *Washington Bar #18776;* Laura M. Scott, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20004, (202) 307–6351.
For Defendant:
Alcoa, Inc., W. Randolph Smith, *DC Bar #_____*, Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004–2595, (202) 624–2700.
For Defendants:
ACX Technologies, Inc., and Golden Aluminum Company: W. Todd Miller, *DC Bar #414930*, Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.

Order

It is so ordered, this ____ day of _____, 1999.

_____
United States District Court Judge

Hold Separate Stipulation and Order

It is hereby *Stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:*

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Alcoa" means defendant Alcoa Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. "ACX" means ACX Technologies, Inc., a Colorado corporation with its headquarters in Golden, Colorado, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. "Golden" means Golden Aluminum Company, a wholly owned subsidiary of ACX, with two principal aluminum sheet manufacturing facilities located in Fort Lupton, Colorado, and San Antonio, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. "Fort Lupton Assets" means all assets included within Golden's Fort Lupton, Colorado operation including:

1. All tangible assets, including the Fort Lupton manufacturing facility located at 1405 E. 14th Street, Fort Lupton, Colorado 80621–0207 ("the Fort Lupton Facility") and the real property on which the Fort Lupton Facility is situated; any facilities used for research and development activities, including Golden Engineering, AG, a Swiss company, and GAC Technology, a Colorado corporation, both of which provide engineering support to the Fort Lupton Facility ("the Engineering Facilities"), and any real property associated with those facilities, manufacturing assets relating to the Fort Lupton Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Fort Lupton Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Fort Lupton Facility and of the Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Golden in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Golden provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities; except that Alcoa may retain a non-exclusive, non-transferable, royalty-free license to use all patents, licenses, and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures necessary to operate the block caster at Golden's San Antonio, Texas manufacturing facility ("the San Antonio block caster"), provided, however, that if Alcoa sells the San Antonio block caster to ACX Technologies, Inc. or an affiliate of ACX Technologies, Inc., it may provide ACX Technologies, Inc. or the ACX Technologies, Inc. affiliate with a non-exclusive, non-transferable, royalty-free license for use solely in connection with the operation of the San Antonio block caster; and

3. All research data concerning historic and current research and development efforts relating to the operation of the Fort Lupton Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

E. "Lid stock" means an aluminum sheet product from which the ends, tabs and pull-off lids of food and beverage cans are made.

II. Objectives

The Final Judgment filed in this case is meant to ensure Alcoa's prompt divestiture of the Fort Lupton Assets for the purpose of maintaining a viable competitor in the manufacture and sale of lid stock to remedy the effects that the United States alleges would otherwise result from Alcoa's proposed acquisition of Golden.

This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Fort Lupton Assets, which are being divested, be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

III. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Alcoa shall preserve, maintain, and operate the Fort Lupton Assets as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing or sale of products from the Fort Lupton

Assets with its existing lid stock business. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa will inform plaintiff of the steps taken to comply with this provision.

B. Alcoa shall take all steps necessary to ensure that the Fort Lupton Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the manufacture and sale of lid stock; that the management of the Fort Lupton Assets will not be influenced by Alcoa, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Fort Lupton Assets will be kept separate and apart from the operations of Alcoa. Alcoa's influence over the Fort Lupton Assets shall be limited to that necessary to carry out Alcoa's obligations under this Order and the Final Judgment. Alcoa may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Fort Lupton Assets to the extent necessary to allow Alcoa to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports.

C. Alcoa shall use all reasonable efforts to maintain lid stock manufacturing and sales levels at the Fort Lupton Facility, and to maintain research and development activities and engineering support at the Engineering Facilities. Alcoa shall maintain at current or previously approved levels, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Fort Lupton Assets.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Fort Lupton Assets as an economically viable, on going business.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Fort Lupton Assets as an economically viable, ongoing business.

F. Alcoa shall take all steps necessary to ensure that the Fort Lupton Facility is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Fort Lupton Facility.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any of the Fort Lupton Assets, including the intangible assets that are described in Section II of the Final Judgment.

H. Alcoa shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with part practices, the assets, liabilities, expenses, revenues, income, profit and loss of the Fort Lupton Assets.

I. Until such time as the Fort Lupton Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, Alcoa shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any Golden employees who on the date of the signing of this Agreement work for the Fort Lupton Facility, or for the Engineering Facilities, unless such individual has a written offer of employment from a third party for a like position.

J. Alcoa shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. The Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court. Respectfully submitted,

For Plaintiff:
United States of America: Nina B. Hale, *Washington Bar #18776*, Laura M. Scott, *Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20004, (202) 307–6351.*
Dated this 5th day of November 1999.
For Defendant:
Alcoa, Inc.: W. Randolph Smith, *Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington DC 20004–2595, (202) 624–2700.*
For Defendants:
ACX Technologies, Inc. and Golden Aluminum Company: W. Todd Miller, *Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.*

Order

It is so ordered, this _____ day of _____, 1999.

_____
United States District Court Judge

Dated: November 5, 1999.
Respectfully submitted,
For Plaintiff United States of America Nina B. Hale *Washington Bar #1877G*, Laura M. Scott, *Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW, Suite 500, Washington, DC 20004, (202) 307–6351.*
For Defendant Alcoa, Inc.
W. Randolph Smith *DC Bar #356402* Crowell & Moring, 1001 Pennsylvania Avenue, NW, Washington, DC 20004–2595, (202) 624–2700.
For Defendants ACX Technologies, Inc. and Golden Aluminum Company
W. Todd Miller *DC Bar #_____* Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.

Order

It is so ordered, this _____ day of _____, 1999.

_____
United States District Court Judge

Final Judgment

Whereas, plaintiff, the United States of America ("United States"), filed its complaint in this action on November 5, 1999, and plaintiff and defendants, Alcoa Inc. ("Alcoa"), ACX Technologies, Inc. ("ACX"), and Golden Aluminum Company ("Golden"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Fort Lupton Assets of ACX's subsidiary, Golden Aluminum Company ("Golden"), to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendant Alcoa to divest the Fort Lupton Assets for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to plaintiff that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or contract provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged*, and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Alcoa" means defendant Alcoa, Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. "ACX" means ACX Technologies, Inc., a Colorado corporation with its headquarters in Golden, Colorado, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. "Golden" means Golden Aluminum Company, a wholly owned subsidiary of ACX, with two principal aluminum sheet manufacturing facilities located in Fort Lupton, Colorado, and San Antonio, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. "Fort Lupton Assets" means all assets included within Golden's Fort Lupton, Colorado operation including:

1. All tangible assets, including the Fort Lupton manufacturing facility located at 1405 E. 14th Street, Fort Lupton, Colorado 80621–0207 ("the Fort Lupton Facility") and the real property on which the Fort Lupton Facility is situated; any facilities used for research and development activities, including Golden Engineering, AG, a Swiss company, and GAC Technology, a Colorado corporation, both of which provide engineering support to the Fort Lupton Facility ("the Engineering Facilities"), and any real property associated with those facilities; manufacturing assets relating to the Fort Lupton Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorization issued by any governmental organization relating to the Fort Lupton Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Fort Lupton Facility and of the Engineering Facilities; supply agreements; all customers lists, accounts, and credit records; and other records maintained by Golden in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all parents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Golden provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities, except that Alcoa may retain a non-exclusive, non-transferable, royalty-free license to use all patents, licenses, and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures necessary to operate the block caster at Golden's San Antonio, Texas manufacturing facility ("the San Antonio block caster"), provided, however, that if Alcoa sells the San Antonio block caster to ACX Technologies, Inc. or an affiliate of ACX Technologies, Inc., it may provide ACX Technologies, Inc., or the ACX Technologies, Inc. affiliate with a non-exclusive, non-transferable, royalty-free license for use solely in connection with the operation of the San Antonio block caster; and

3. All research data concerning historic and current research and development efforts relating to the operations of the Fort Lupton Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

E. "Lid stock" means an aluminum sheet product from which the ends, tabs and pull-off lids of food and beverage cans are made.

III. Applicability

A. The provisions of this Final Judgment apply to Alcoa and ACX, as defined above, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Alcoa shall require, as a condition of the sale or other disposition of all or substantially all of the Fort Lupton Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Alcoa is hereby ordered and directed in accordance with the terms of this Final Judgment, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Fort Lupton Assets as an ongong business to a purchaser acceptable to the United States in its sole discretion.

B. Alcoa shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Alcoa promptly shall make known, by usual and customary means, the availability of the Fort Lupton Assets described in this Final Judgment. Alcoa shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Alcoa shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Fort Lupton Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Alcoa shall make available such information to the plaintiff at the same time that such information is made available to any other person.

D. Alcoa shall provide to any purchaser of the Fort Lupton Assets information relating to the personnel involved in the manufacture and sale of lid stock in connection with the Fort Lupton Assets to enable the purchaser to make offers of employment. Alcoa shall not interfere with any negotiations by any purchaser to employ any Golden employee who works for the Fort Lupton Facility or for the Engineering Facilities, or whose principal responsibility involves the manufacture and sale of lid stock associated with the Fort Lupton Assets.

E. Alcoa shall permit prospective purchasers of the Fort Lupton Assets to have reasonable access to personnel and to make inspection of the Fort Lupton Assets; access to any and all environmental, zoning, and other permit documents and information customarily provided as part of a due diligence process.

F. Alcoa shall warrant to the purchaser of the Fort Lupton Assets that all necessary environmental, zoning and other permits relating to the Fort Lupton assets are in order in all material respects. Alcoa will not undertake, directly or indirectly, following the divestiture of the Fort Lupton Assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the Fort Lupton Assets.

G. Alcoa shall warrant to the purchaser of the Fort Lupton Assets that the Fort Lupton Assets will be operational on the date of the sale.

H. Alcoa shall not take any action, direct or indirect, that will impede in any way the operation of the Fort Lupton Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this final Judgment, shall include all of the Fort Lupton Assets, operated pursuant to the Hold Separate Stipulation and Order, and be accomplished by selling or otherwise conveying the Fort Lupton Assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Fort Lupton Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of lid stock. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser with respect to whom it is demonstrated to the United States' sole satisfaction that: (1) The purchaser has the capability and intent of competing effectively in the manufacture and sale of lid stock; (2) The purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of lid stock; (3) None of the terms of any agreement between the purchaser and Alcoa gives Alcoa the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively; and (4) The divestiture will remedy the competitive harm alleged in the Complaint.

V. Appointment of Trustee

A. In the event that Alcoa has not divested the Fort Lupton Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Fort Lupton Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Fort Lupton Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Alcoa any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States in its sole discretion. Alcoa shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Alcoa must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Alcoa, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Alcoa and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Alcoa shall use its best efforts to assist the trustee in accomplishing the required divestiture, including its best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Alcoa shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Alcoa shall permit *bona fide* prospective acquirers of the Fort Lupton Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment. Alcoa shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff and to defendant Alcoa, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any

proposed divestiture pursuant to Sections IV and V of this Final Judgment, Alcoa or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff or the proposed divestiture. If the trustee is responsible, it shall similarly notify Alcoa. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, the United States, in its sole discretion, may request from Alcoa, the trustee, the proposed purchaser, or any other third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Alcoa and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Alcoa, the trustee, the proposed purchaser, or any third party, whichever is later, the United States shall provide written notice to Alcoa and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Alcoa and the trustee that it does not object, then the divestiture may be consummated, subject only to Alcoa's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Alcoa under the provision in Section (V)(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Alcoa shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Alcoa has taken to solicit a buyer for the Fort Lupton Assets and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa shall deliver to plaintiff an affidavit which describes in detail all actions Alcoa has taken and all steps Alcoa has implemented on an on-going basis to preserve the Fort Lupton Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Alcoa's efforts to maintain and operate the Fort Lupton Assets as an active competitor, maintain the management, staffing, research and development activities, sales, marketing, and pricing of the Fort Lupton Assets, and maintain the Fort Lupton Assets in operable condition at current capacity configurations. Alcoa shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Alcoa's earlier affidavit(s) filed pursuant to Section VII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Alcoa shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Alcoa shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court and to preserve the Fort Lupton Assets. Defendants shall take no action that would jeopardize the divestiture of the Fort Lupton Assets.

IX. Financing

Alcoa is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Section IV or V of this Final Judgment.

X. Compliance Inspection

For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other

than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 5, 1999 the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Alcoa Inc. ("Alcoa") of ACX Technologies, Inc.'s ("ACX") interest in Golden Aluminum Company ("Golden") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the transaction would result in Alcoa increasing its already dominant share of the aluminum food and beverage can lid stock ("lid stock") production business in North America. Alcoa is the largest producer of lid stock in North America. Golden is a small, but low cost producer of lid stock. They compete to produce and sell the best quality lid stock at the lowest prices, and to provide the best technological, marketing, and customer support services. Alcoa and ACX have proposed a transaction that would eliminate this competition, further increase concentration in the already highly concentrated lid stock business, and further increase the market power of the dominant firm—Alcoa. The proposed transaction would make it more likely that the few remaining lid stock producers will engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock.

The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) A permanent injunction preventing Alcoa from acquiring Golden from ACX.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Alcoa to complete its acquisition of Golden, but requires a divestiture that will preserve competition in the relevant market. This settlement consists of a Stipulation and Order, Hold Separate Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Alcoa to divest, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, Golden's Fort Lupton Assets (as defined in the Final Judgment) as an ongoing business to an acquirer acceptable to the Antitrust Division of the Department of Justice ("DOJ"). "Fort Lupton Assets" means all assets included within Golden's Fort Lupton, Colorado aluminum operation including all tangible and intangible assets, and all facilities which provide engineering support to the Fort Lupton, Colorado facility.

Until such divestiture is completed, the terms of the Hold Separate Stipulation and Order entered into by the parties apply to ensure that the Fort Lupton Assets shall be maintained as an independent competitor from Alcoa.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Alcoa is a Pennsylvania corporation, with its principal offices located in Pittsburgh, Pennsylvania. Alcoa is the world's largest integrated aluminum company, engaging in all phases of the aluminum business—from the mining and processing of bauxite to the production of primary aluminum and fabrication of products. In 1998, Alcoa had revenues of over $15 billion. Alcoa produces lid stock at its rolling mill located in Warrick, Indiana. Alcoa's 1998 sales of lid stock in North America were approximately $700 million.

ACX is a Colorado corporation, headquartered in Golden, Colorado. ACX owns 100% of the stock of Golden, whose primary assets are two continuous cast facilities. At its facility located in Fort Lupton, Colorado, Golden produces lid stock. Golden produces a variety of aluminum sheet products (but not lid stock) at its facility located in San Antonio, Texas. In 1998, ACX reported total sales of about $988.4 million.

On August 17, 1999, Alcoa and ACX entered into an agreement under which Alcoa would acquire all of ACX's interest in Golden. This transaction, which would increase concentration in the already highly concentrated lid stock market, precipitated the government's suit.

B. Lid Stock Market

Lid stock is a flat rolled aluminum product that is typically manufactured in a rolling mill. A typical rolling mill contains a hot mill, which performs the initial reduction of the thickness of the ingot, one or more cold mills, which finish the metal to the desired thickness and width, and a variety of ancillary equipment. Lid stock can also be produced in a continuous cast facility. In a continuous cast facility, a thin sheet of molten metal is poured onto a base and pressed between two blocks or belts to achieve the desired thickness and width.

Lid stock differs from other aluminum sheet products. Lid stock is made from a harder alloy than other aluminum sheet products, such as the sheet product from which the bodies of beverage cans are made ("can body stock"). Consequently, lid stock requires more powerful mills and more mill time to produce than can body stock and other sheet products. Lid stock is therefore more expensive to produce per pound than many other sheet products.

Lid stock is sold to can makers in large coils that are fed into lid making machines, which stamp out rings and scored circles to form the ends, tabs, and pull-off lids of food and beverage cans. Because of the metallurgical characteristics of lid stock, can makers cannot use their equipment to produce lids from can body stock or other materials, such as steel.

Can makers sell lids to food and beverage companies which used them to seal their beer, soft drink, and food cans.

The food and beverage companies cannot use other types of lids to seal their cans.

As a result, a small but significant increase in lid stock prices would not cause a significant number of customers to substitute other products for lid stock.

C. Harm to Competition as a Consequence of the Acquisition

The proposed acquisition would likely lessen competition in the manufacture and sale of lid stock. Alcoa controls over 50 percent of the aluminum can lid stock market in North America. Golden is one of only five other companies that manufactures lid stock in North America. The proposed transaction will make it more likely that the few remaining lid stock producers will engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock.

The Complaint alleges that the transaction would likely have the following effects, among others: actual and potential competition between Alcoa and Golden in the lid stock market would be eliminated; competition generally in the sale and manufacture of lid stock would be lessened substantially; prices for lid stock would increase; and the quality and amount of lid stock produced would decrease.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Golden by Alcoa.

The proposed Final Judgment provides that Alcoa must divest, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, Golden's Fort Lupton Assets as an ongoing business to an acquirer acceptable to DOJ. If defendants fail to divest the Fort Lupton Assets, a trustee (selected by DOJ) will be appointed.

The Final Judgment provides that Alcoa will pay all costs and expenses of the trustee. After his or her other appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or the term of the trustee's appointment.

Divestiture of the Fort Lupton Assets preserves competition because it will restore the lid stock market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor. Thus, the divestiture will preserve and encourage ongoing competition in the production and sale of lid stock.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC. 20004.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Alcoa, ACX and Golden.

The United States is satisfied that the divestiture of the described assets specified in the proposed Final Judgment will encourage viable competition in the production and sale of lid stock. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in the market, The divestiture of the Fort Lupton Assets will restore the lid stock market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making the determination, the court *may* consider.

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See*

United States v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extending proceedings which with have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

> absent a showing to corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statements and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court, a court may not "engage in an unrestricted evaluation of what relief would best serve the Public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988); *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); *see also, Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> [t]the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest*.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive competitive effect of a particular practice or whether it mandates certainty of the free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved on, even if it falls short of the remedy the court impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' (citations omitted)."[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 6, 1999.

For Plaintiff United States of America:
Respectfully submitted,

Nina B. Hale,
Washington Bar #18776.
Laura M. Scott,
Virginia Bar *#36587.*

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Suite 500, Washington, DC 20004, 202–307–0892 202–307–2441 (Facsimile).

[FR Doc. 99–33410 Filed 12–28–99; 8:45 am]
BILLING CODE 4410–11–M

[1] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also United States. v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel & Tel., Co.*, 552 F. Supp. 131, 150 (D.C.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated June 8, 1999, and published in the **Federal Register** on July 7, 1999, (64 FR 36718), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostics Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 9, 1999.

John H. King,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33817 Filed 12–28–99; 8:45 am]
BILLING CODE 4410–09–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 21, 1999.

TIME AND DATE: 10:00 a.m., Thursday, January 6, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Martin Marietta Aggregates, Docket No. SE 98–156–M (Issues include whether the judge erred in finding that a miner's negligence was not imputable to the operator for penalty assessment and unwarrantable failure purposes because the miner was not an agent of the operator.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance

of those needs. Subject to 29 C.F.R. §§ 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–33928 Filed 12–27–99; 10:04 am]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to conduct a Survey of Customer Satisfaction at the National Personnel Records Center (Military Personnel Records [MPR] facility) of the National Archives and Records Administration. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 28, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Personnel Records Center (NPRC) Survey of Customer Satisfaction.

OMB number: 3095–00XX.

Agency form number: N/A.

Type of review: Regular.

Affected public: Federal, state and local government agencies, veterans, and individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

Estimated number of respondents: 7,800.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: 1,300 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction is to (1) provide baseline data concerning customer satisfaction with MPR's reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: December 21, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–33813 Filed 12–28–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 14, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which

appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of the Census (N1–29–99–7, 2 items, 1 temporary item). Duplicate copies of 1970 decennial census planning and management files retained in field offices for quick reference. Records include copies of questionnaires, directives and manuals, meeting notes, correspondence, and evaluation reports. Recordkeeping copies of these files are proposed for permanent retention.

2. Department of Commerce, Office of the Secretary and Office of the General Counsel (N1–40–99–1, 8 items, 6 temporary items). Files of the General Counsel dating from 1950 through 1968 are proposed for disposal. Included are routine administrative and general subject files, Oil Import Appeals Board case files accumulated by the Department's representative to the Board, working files of attorneys, copies of decided Civil Aeronautics Board dockets, and Business and Defense Services Administration (BDSA) case files documenting routine company audits and security investigations of firms and individuals performed under the provisions of the Defense Production Act. Files proposed for permanent retention date from 1913 to 1961 and include BDSA general subject files and correspondence, memorandums, and reports dealing with matters of domestic and international significance accumulated by the Office of the Secretary of Commerce.

3. Department of Education, Office of Student Financial Assistance (N1–441–00–1, 9 items, 9 temporary items). Paper and electronic records compiled by the Institutional Participation Oversight Service during the evaluation of applications from institutions seeking to participate in student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended. Records include application case files for institutions, correspondence and other documents relating to applications and program participation agreements, financial statement files, audit report files, and program review files. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of Housing and Urban Development, Office of Community Planning and Development (N1–207–00–1, 1 item, 1 temporary item). Forms, checklists, correspondence, and related materials used to determine if underutilized or surplus Federal property is suitable for leasing to organizations assisting the homeless.

5. Department of Justice, Federal Bureau of Investigation (N1–65–00–1, 1 item, 1 temporary item). Audiotapes of incoming telephone messages to the FBI captured by switchboard monitoring and recording systems. Tapes of messages containing no information of continuing value are proposed for disposal. Audiotapes with information concerning emergencies, threats, or criminal activity are filed in the appropriate case file and disposed of in accordance with the NARA-approved disposition instructions for the file.

6. Department of Justice, Immigration and Naturalization Service (N1–85–99–6, 9 items, 8 temporary items). Records of the Office of Internal Audit including subject files, files concerning reviews and studies of agency programs, and investigative case files concerning allegations and investigations of employee misconduct. Also included are electronic copies of documents created using electronic mail and word processing. Significant investigative case files are proposed for permanent retention.

7. Department of Labor, Employment and Training Administration (N1–369–00–1, 12 items, 12 temporary items). Records relating to the administration of the Job Training Partnership Act. Included are agreements, biannual state planning files, grant files, and electronic copies of documents created using electronic mail and word processing.

8. Environmental Protection Agency, Office of Air and Radiation (N1–412–99–9, 2 items, 2 temporary items). Emission Factors Program test records, including electronic copies of records created using electronic mail and word processing. Records consist of raw data and test results, which are used for the development of models for estimating in-use emission factors for highway vehicles.

9. Environmental Protection Agency, Agency-wide (N1–412–99–16, 3 items, 2 temporary items). Records accumulated pursuant to the Administrative Procedures Act documenting pre-regulatory and non-regulatory risk management decisions including meeting notes and summaries, correspondence, press releases, reports, and public comments. Electronic copies of records created using electronic mail and office automation applications are proposed for disposal as are paper records that have been microfilmed. Microfilm copies are proposed for permanent retention. Paper records that

have not been microfilmed are also proposed for permanent retention.

10. Environmental Protection Agency, Office of Air and Radiation (N1–412–00–7, 3 items, 3 temporary items). Forms and related records verifying that motor vehicles were legally imported into the United States, including electronic copies of records created using electronic mail and word processing.

11. National Aeronautics and Space Administration, Agency-wide (N1–255–00–2, 6 items, 6 temporary items). Training records documenting employee participation in agency-required training for technical certification or to meet contract requirements. Records include rosters, correspondence, certification letters, and electronic copies of records created using electronic mail and word processing.

12. Nuclear Regulatory Commission, Office of Commission Appellate Adjudication (N1–431–99–9, 13 items, 10 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Commission Appellate Adjudication, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of draft memorandum and order files along with office program management and operational files are proposed for disposal as are paper files that pre-date ADAMS. Records proposed for permanent retention include recordkeeping copies of informational legal memoranda prepared for Commissioners, no-action memoranda, and legal memoranda pertaining to cases monitored by the Office.

13. Nuclear Regulatory Commission, Office of the Inspector General (N1–431–00–1, 36 items, 25 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Inspector General, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of audit case files are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of such files as records of committees and conferences for which NRC is not the sponsor, program correspondence accumulated below the Office director level, and routine correspondence. Paper copies of these records were previously approved for disposal. Electronic recordkeeping copies of public release versions of final investigative reports and of investigative documents from cases that lack historical value are proposed for disposal as well. Recordkeeping copies of investigative case files and final reports are maintained in paper form and are included in Disposition Job No. N1–431–00–2 (see below). Records proposed for permanent retention include recordkeeping copies of such files as program correspondence accumulated at the Office director level, records of committees and conferences sponsored by NRC, copies of final investigation reports made publicly available, and rulemaking files. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

14. Nuclear Regulatory Commission, Office of the Inspector General (N1–431–00–2, 5 items, 3 temporary items). Records relating to investigations of alleged fraud, waste, abuse, and violations of laws and regulations. Records proposed for disposal include investigation case files that lack historical value and files containing allegations and information of an investigative nature that do not result in formal investigations. Also proposed for disposal are electronic records created using office automation tools used to create paper records. Records proposed for permanent retention include paper copies of final investigation reports and investigation case files that pertain to high ranking officials, attract national or regional media attention, or result in congressional investigations or substantive changes in agency policies and procedures.

15. Nuclear Regulatory Commission, Office of Incident Response Operations (N1–431–00–3, 17 items, 10 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Incident Response Operations, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of correspondence files that document routine program development, management, and operational functions are proposed for disposal as are paper files that pre-date ADAMS. Records proposed for permanent retention include record-keeping copies of correspondence files that document policy-making decisions, significant management functions, and unusual occurrences or events that are highly significant or result in major changes in regulatory activities.

16. Nuclear Regulatory Commission, Office of Administration (N1–431–00–4, 105 items, 88 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Administration, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Proposed for disposal are electronic recordkeeping copies of such records as documents published in the **Federal Register**, files relating to committees and conferences for which NRC is not the sponsor, correspondence files accumulated below the Office director level, and systems security files. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include electronic recordkeeping copies of files relating to directives, records relating to committees and conferences sponsored by the agency, and correspondence files accumulated at the Office director level. This schedule also proposes minor changes in the disposition instructions for the paper copies of several series that were previously scheduled, such as committee and conference records and copies of documents published in the **Federal Register**.

17. Nuclear Regulatory Commission, Office of Enforcement (N1–431–00–5, 44 items, 34 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Enforcement, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of discrimination case files and enforcement action case files that lack historical value are proposed for disposal along with paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of files relating to committees and conferences for which NRC is not the sponsor, program correspondence files accumulated below the Office director level, and routine correspondence files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of files related to significant enforcement actions and files relating to

committees and conferences sponsored by NRC. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

18. Nuclear Regulatory Commission, Office of the Executive Director for Operations (N1–431–00–6, 28 items, 20 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of the Executive Director of Operations, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Proposed for disposal are electronic recordkeeping copies of files relating to committees and conferences for which NRC is not the sponsor, program correspondence files accumulated below the Office director level, and routine program correspondence files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of the Executive Director of Operation's action item files, files relating to committees and conferences sponsored by NRC, and program correspondence files accumulated at the Office director level. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

19. Nuclear Regulatory Commission, Office of the Chief Financial Officer (N1–431–00–7, 42 items, 31 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of the Chief Financial Officer, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of files that identify manpower, contractual, or other costs used to develop and support fee determinations are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of working papers and background materials relating to budgets, records relating to committees and conferences for which NRC is not the sponsor, program correspondence files accumulated below the Office director level, and routine program correspondence files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of files relating to committees and conferences sponsored by NRC, program correspondence accumulated at the Office director level, and budget estimates and justifications. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

20. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation (N1–431–00–8, 86 items, 71 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Nuclear Reactor Regulation, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of such files as licensing examinations, general correspondence concerning licensing matters, and files on inspections of vendor facilities are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of such files as allegation cases, antitrust cases, records relating to committees and conferences for which NRC is not the sponsor, program correspondence accumulated below the Office director level, and files on applicants for licenses. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of such files as records relating to committees and conferences for which NRC is the sponsor, program correspondence accumulated at the Office director level, inspection manuals, and nuclear power plant docket files. This schedule also proposes minor changes in the disposition instructions for paper copies of such files as allegation cases, reports submitted by vendors, and committee and conference records, which were previously scheduled.

21. Nuclear Regulatory Commission, Advisory Committee on Reactor Safeguards (N1–431–00–9, 59 items, 39 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Advisory Committee on Reactor Safeguards, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of general files accumulated by Committee members are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of personnel files on Committee members and consultants, records that pertain to committees and conferences for which NRC is not the sponsor, and nuclear power plant docket files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of meeting files, annual reports, files relating to regulations, and case files on individual nuclear reactors. This schedule also proposes minor changes in the disposition instructions for paper copies of such records as meeting files, personnel files, annual reports, and committee and conference records, which were previously scheduled.

22. Nuclear Regulatory Commission, Advisory Committee on Nuclear Waste (N1–431–00–10, 54 items, 35 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Advisory Committee on Nuclear Waste, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of general files accumulated by Committee members and personnel files of consultants are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of personnel files of Committee members, records of committees and conference for which NRC is not the sponsor, and waste management licensing files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of such files as transcripts of Committee meetings and other records relating to meetings, project case files, and correspondence accumulated by consultants. This schedule also proposes minor changes in the disposition instructions for paper copies of such records as meeting files, project case files, committee and conference records, and consultant correspondence files, which were previously scheduled.

23. Nuclear Regulatory Commission, Office of Investigations (N1–431–00–11, 3 items, 3 temporary items). Logs and other records relating to confidential sources that provide information to the agency. Also included are electronic records created using office automation tools, including word processing

documents and electronic mail messages, that are used to create paper records.

24. Nuclear Regulatory Commission, Office of Investigations (N1–431–00–12, 30 items, 19 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Investigations, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Electronic recordkeeping copies of investigative case files that lack significance, routine correspondence files, and program correspondence accumulated below the Office director level are proposed for disposal. Paper copies of these records were previously approved for disposal. Proposed for permanent retention are recordkeeping copies of such files as legal interpretations, significant investigative case files, manuals and other records that pertain to procedures for investigations, and program correspondence accumulated at the Office director level. This schedule also proposes minor revisions in the disposition instructions for paper copies of such records as investigative case files and investigative procedures files, which were previously scheduled.

25. United States Trade Representative, Agency-wide (N1–364–97–1, 4 items, 4 temporary items). Word processing records for the period 1986 to 1993 created on the Data General computer system. The records include spreadsheets, calendars, word processing documents restored from backup tapes, and backup tapes. Paper copies of monthly calendars of high officials were previously approved for permanent retention. Paper copies of word processing documents that were Federal records were produced and placed in the agency's official recordkeeping system, which was previously approved as permanent.

Dated: December 22, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–33814 Filed 12–28–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Wednesday, January 5, 2000.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first item is Open to the Public. The last item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

7216 Highway Accident Report: Greyhound Motorcoach Run-Off-the-Road Accident, Burnt Cabins, Pennsylvania, on June 20, 1998.

7217 Proposed Safety Recommendation: Regarding the Use of Medication when Operating Vehicles.

7127 Opinion and Order: *Administrator* v. *Kraft*, Docket SE–15152; disposition of the Administrator's appeal.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Monday, January 3, 2000.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: December 27, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–33929 Filed 12–27–99; 11:27 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company, Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Change in Shareholders of MidAmerican Energy Holdings Company Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR–29 and DPR–30, for the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), respectively, to the extent currently held by MidAmerican Energy Company (MidAmerican), as a co-owner of Quad Cities.

According to the application for approval by MidAmerican, all of the stock of MidAmerican Energy Holdings Company (MEHC), the parent company of MidAmerican, is to be acquired by a small group of investors. This group of investors consists of Berkshire Hathaway, Inc. and/or subsidiaries thereof; David L. Sokol, the Chairman and Chief Executive Officer of MEHC; and Walter Scott, MEHC's largest individual shareholder, and/or certain Scott family interests; and potentially other members of MEHC's management. Following the acquisition, Commonwealth Edison Company (ComEd) and MidAmerican would remain as the licensees for Quad Cities. ComEd would continue to own 75% of the facility, be exclusively responsible for the operation and maintenance of Quad Cities, and be an agent for MidAmerican. MidAmerican would continue to hold a 25% ownership interest in Quad Cities. The application proposes no changes to the financial arrangements and obligations of ComEd and MidAmerican with respect to Quad Cities, including decommissioning funding responsibilities. In addition, no physical changes to the Quad Cities facility or operational changes are being proposed in the application. No direct transfer of the licenses would result from the proposed acquisition of MEHC stock. The application seeks consent by the Commission to the extent the proposed acquisition would effect an indirect transfer of the Quad Cities licenses, as held by MidAmerican, under 10 CFR 50.80.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By January 18, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License

Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Roy P. Lessy, Jr., Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036, telephone (202) 887–4500, fax (202) 995–7763, e-mail *Rlessy@akingump.com;* John A. Rasmussen, Jr., Senior Vice President and General Counsel, MidAmerican Energy Company, 666 Grand Avenue, P.O. Box 657, Des Moines, Iowa 50303, telephone (515) 242–4085, fax (515) 242–4261, e-mail *jarasmussen@midamerican.com;* Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for license transfer cases only: OGCLT@nrc.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 28, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application and related cover letters dated November 15, 1999, and previous related letters dated November 2, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33680 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc. Arkansas Nuclear One, Unit No. 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. DRP–51, issued to Entergy Operations, Inc. (the licensee), for operation of Arkansas Nuclear One, Unit 1 (ANO–1) located in Pope County, Arkansas.

This proposed change would amend Technical Specification (TS) 4.18.5.b, "Steam Generator Tubing Surveillance—Acceptance Criteria," to allow tube 110/60 to remain inservice through the current operating cycle (Cycle 16) with two axial indications that have potential through wall depths greater than the plugging limit. The axial indications are located in the roll transition region and are contained within the upper tubesheet.

The licensee requested that this proposed amendment be processed as an exigent request, pursuant to Section 50.91(a)(6) of Title 10 of the Code of Federal Regulations (10 CFR). The exigency is created by the inability of ANO–1 to fully comply with TS 4.18.5.b. With ANO–1 operating at 100 percent power, members of the licensee's technical staff generated a condition report (CR) that questioned the integrity of an individual steam generator tube that was currently inservice in the "A" steam generator. This CR documented that during a review of eddy current data taken during the last refueling outage, it was identified that steam generator tube 110/60 contained two axial indications in the upper roll transition area that exceeded the tube plugging limit. However, the licensee failed to repair this tube through means of either rerolling or plugging. TS 4.18.5.b indicates that the steam generator shall be demonstrated operable following a steam generator inspection after completing repair activities for all tubes that have indications that exceed the plugging limit. As a result, the "A" steam generator was considered inoperable due to the failure to take action after completion of the surveillance and TS 3.1.1.2, "Reactor Coolant System—Steam Generators" was entered. This TS has no associated required action for an inoperable steam generator. Therefore, TS Limiting Condition for Operation (LCO) 3.0.3 was entered, as appropriate, to address this condition. TS LCO 3.0.3 requires, within one hour, that action be taken to place the unit in an operating condition in which the TS does not apply through the initiation of a plant shutdown.

Based on the circumstances described above, the NRC verbally issued a Notice of Enforcement Discretion (NOED) on December 15, 1999. The NOED was documented by letter dated December 17, 1999. The NOED expressed the NRC's intention to exercise discretion not to enforce compliance with TS LCO 3.0.3 and TS 3.1.1.2 until the NRC staff acts on the licensee's exigent TS amendment request to revise TS 4.18.5.b with a footnote to address continued operation during the remainder of this fuel cycle with tube 110/60 inservice. The licensee submitted the exigent TS amendment request on December 16, 1999.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The OTSGs [Once Through Steam Generators] are used to remove heat from the reactor coolant system (RCS) during normal operation and during accident conditions. The OTSG tubing forms a substantial portion of the reactor coolant pressure boundary. An OTSG tube failure is a violation of the reactor coolant pressure boundary and is a specific accident analyzed in the ANO–1 Safety Analysis Report (SAR).

The purpose of the periodic surveillance performed on the OTSGs in accordance with ANO–1 Technical Specification 4.18 is to ensure that the structural integrity of this portion of the RCS will be maintained. The technical specification plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the technical specifications as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line break. Of these accidents, the most sever condition with respect to axial cracking in the upper roll transition (URT) of a tube within the tubesheet is a main steam line break (MSLB). During this event the differential pressure across the tube could be as high as 2500 psid [pounds per square inch differential]. The rupture of a tube during this event could permit the flow of reactor coolant into the secondary system thus bypassing the containment.

From testing performed on simulated flaws within the tubesheet it has been shown that the axial indications within the upper tube sheet left in service during cycle 16 do not represent structurally significant flaws which would increase probability of a tube failure beyond that currently assumed in the ANO–1 SAR.

Burst tests were conducted on tubing with simulated flaws within the tubesheet. In these tests, through-wall holes of varying sizes up to 0.5 inch in diameter were drilled in test specimens. The flawed specimen tubes were then inserted into a simulated tubesheet and pressurized. In all cases the tube burst away from the flaw in that portion of the tube that was outside the tubesheet. The size of these simulated flaws bound the indications left in service within the upper tubesheet during 1R15 [refueling outage following the completion of operating cycle 15]. These tests demonstrate for flaws similar to the axial indications in the ANO–1 upper tubesheet that the tubes will not fail at this location under accident conditions.

The dose consequences of a MSLB accident are analyzed in the ANO–1 accident analysis. This analysis assumes a 1 gpm [gallon per minute] OTSG tube leak and that the unit has been operating with 1% defective fuel. The postulated accident induced leak rate contribution at the end of cycle from these indications is negligible.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The OTSGs are passive components. The intent of the technical specification surveillance requirements is being met by this change in that adequate structural and leakage integrity will be maintained. The proposed change introduces no new modes of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The ANO–1 Technical Specification Bases specify that the surveillance requirements (which includes the plugging limit) are to ensure the structural integrity of this portion of the RCS pressure boundary. The technical specification plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the technical specifications as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a MSLB. Of these accidents the most severe condition with respect to flaws within the tubesheet is the MSLB.

Testing of simulated through wall flaws of up to 0.5 inch in diameter within a tubesheet showed that the tubes always failed outside of the tubesheet. Thus the structural requirement of the bases of the surveillance specification is satisfied.

Leakage under accident conditions would be limited due to the small size of the flaws and would be low enough to ensure offsite dose limits are not exceeded.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 12, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman

of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 16, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 22nd day of December 1999.

For the Nuclear Regulatory Commission.

M. Christopher Nolan,

Project Manager, Section 1, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33777 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network; Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold its next meeting on Wednesday, February 23, 2000, at the Alexis Park Hotel located at 375 E. Harmon, Las Vegas, NV. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

Agenda: The meeting will be held from 8:30 a.m. to 5 p.m. on Wednesday, February 23, 2000. The purpose of the meeting is to discuss issues concerning the design and operation of the Licensing Support Network (LSN). The LSN is an internet-based electronic discovery database being developed to aid the NRC in complying with the schedule for decision on the construction authorization for the high-level waste repository contained in Section 114(d) of the Nuclear Waste Policy Act of 1982, as amended.

SUPPLEMENTARY INFORMATION: In 1998, the NRC Rules of Practice in 10 CFR Part 2, Subpart J, were modified to provide for the creation and operation of the LSN, an internet-based technological solution to the submission and management of records and documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste. (63 FR 71729.) Pursuant to 10 CFR 2.1011(d), the agency has chartered the LSNARP, an advisory committee that provides advice to the NRC on fundamental issues relating to LSN design, operation, maintenance, and compliance monitoring. At the February 23, 2000 LSNARP meeting, a principal topic for discussion will be the evaluation of alternative system configuration designs developed by the LSNARP's Technical Working Group to identify which

alternative(s) the LSNARP will recommend or endorse to the Commission.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, Washington, DC 20555–0001; Attn: John C. Hoyle (telephone 301–415–7467; e-mail JXH5@NRC.GOV) or Jack G. Whetstine (telephone 301–415–7391; e-mail JGW@NRC.GOV).

Public Participation: Interested persons may make oral presentations to the LSNARP or file written statements. An oral presentations request should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: December 22, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–33778 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of December 27, 1999, January 3, 10, and 17, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 27

There are no meetings scheduled for the Week of December 27.

Week of January 3—Tentative

Wednesday, January 5

9:55 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of January 10—Tentative

Monday, January 10

10:00 a.m.
Meeting with D.C. Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

Tuesday, January 11

9:30 a.m.
Briefing on Status of Research Programs, Performance, and Plans (including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Wednesday, January 12

9:55 a.m.
Affirmation Session (Public Meeting) (if needed)
10:00 a.m.
Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1134)

Week of January 17—Tentative

Wednesday, January 19

9:30 a.m.
Discussion of Management Issues (Closed—Ex. 2 & 6)

Thursday, January 20

9:55 a.m.
Affirmation Session (Public Meeting) (if needed)
10:00 a.m.
Briefing on Status of CIO Programs, Performance, and Plans (Public Meeting) (Contact: Donnie Grimsley, 301–415–8702)

Friday, January 21

10 a.m.
Briefing on Native American, State of Nevada, and Affected Units of Local Governments Representratives Responses to DOE's Draft Environmental Impact Statement (EIS) for a proposed HLW Geologic Repository (Public Meeting)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings can (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMAITON: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on December 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's Rules that "Affirmation of GPU Nuclear Corporation, Docket No. 50–219, OLA–2, Memorandum and Order Terminating Proceeding), LBP 99–45 (Dec 15, 1999)" and "Affirmation of Niagara Mohawk Power Corp. et al. (Nine Mile Point, Units 1 & 2), Docket Nos. 50–220 and 50–410" (PUBLIC MEETING) be held on December 22, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 23, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–33890 Filed 12–23–99; 4:34 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 4, 1999, through December 17, 1999. The last biweekly notice was published on December 15, 1999 (64 FR 70077).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 28, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 22, 1999.

Description of amendments request: The proposed amendment revises Technical Specification (TS) 5.5.11, "Ventilation Filter Testing Program" for laboratory testing of charcoal in Clavert Cliffs engineered safety feature (ESF) ventilation systems to reference the latest charcoal testing standard (American Society for Testing and Materials [ASTM] D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon"). This TS change was requested by the Nuclear Regulatory Commission (NRC) in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," and is based on the NRC's determination that testing nuclear-grade activated charcoal to standards other than ASTM D3803–1989 does not provide assurance for complying with the current licensing basis as it relates to the dose limits of General Design Criterion 19 of Appendix A to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR) and Subpart A of 10 CFR Part 100. The generic letter provided a sample TS that the NRC considers acceptable. The proposed revision to TS 5.5.11 meets the intent of the sample TS. Specifically, the proposed change removes the reference to testing in accordance with American National Standards Institute N510–1975 and changes the allowable methyl iodide penetration to an acceptance criterion that is derived from applying a safety factor of two to the charcoal filter efficiency assumed in Calvert Cliffs design basis dose analysis. The proposed changes will ensure that the charcoal filters used in ESF ventilation systems will perform in a manner that is consistent with the particular ESF charcoal adsorption efficiencies assumed in the analyses of design basis accidents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change makes changes to the methods, test conditions, and acceptance criteria associated with the performance of the laboratory tests of charcoal samples. The effected equipment is used to mitigate the consequences of an accident and are not accident initiators. This proposed change does not make any changes to the method of obtaining the charcoal sample. No structural changes or modifications are being made to the ESF ventilation equipment. This proposed change does not make any changes to equipment, procedures, or processes that increase the likelihood of an accident. Therefore, this proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The ESF ventilation systems are designed to mitigate the consequences of accidents. The design basis analysis of the accidents account to varying degrees for the reduction in airborne radioactive material provided by the charcoal filters. The proposed change will change the charcoal filter test protocol to ASTM D3803–1989. The use of this standard will produce more accurate and reproducible laboratory test results and provides a more conservative estimate of charcoal filter capability. The proposed change makes changes to the methyl iodide penetration acceptance criteria to ensure that the charcoal filters are capable of performing their required safety function for the expected operating cycle. The proposed change will make it more likely that the charcoal will meet its intended safety function as described in the Updated Final Safety Analysis Report. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change will not make any physical changes to the plant or changes to the ESF ventilation system operation. The proposed change is limited to the ESF ventilation system testing protocol, test conditions, and acceptance criteria. These changes are administrative in nature. This proposed change does not make any changes to the method of obtaining the charcoal sample. This proposed change does not cause any ESF ventilation equipment to be operated in a new or different manner. No structural changes or modifications are being made to the ESF ventilation equipment. This proposed change does not create any new interactions between any plant components. Therefore, the possibility of a new or different type of accident is not created by this proposed change.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the ESF ventilation systems is to mitigate the consequences of accidents by reducing the potential release of radioactive material to the environment or the Control Room following a design basis accident. The TS requirements for laboratory testing of charcoal samples provides assurance that the charcoal filters in these systems are capable of reducing airborne radioactive material to within acceptable limits. The proposed license amendment requires the use of the latest NRC-accepted charcoal testing standard and makes changes to the charcoal testing methyl iodide removal efficiency acceptance limits in accordance with the formula provided by the NRC in Generic Letter 99–02. The proposed license amendment continues to provide assurance that the charcoal filters are capable of reducing airborne radioactive material to within acceptable limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 22, 1999.

Description of amendments request: The Baltimore Gas and Electric Company (BGE) requests an amendment to implement a change to the Calvert Cliffs Nuclear Power Plant (CCNPP) Updated Final Safety Analysis Report (UFSAR) that constitutes an unreviewed safety question as described in 10 CFR 50.59.

The change revises the information currently provided within the UFSAR on aircraft and their flight paths for Patuxent River Naval Air Station (Pax River NAS). The existing information is outdated and does not reflect current conditions for aircraft utilizing Pax River NAS. Additionally, the UFSAR will be revised to add information

pertaining to the corporate helipad located northwest of the plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an aircraft crash was not quantified during the timeframe of licensing and construction of the plant. As was noted previously, the Directorate of Licensing at the U.S. Atomic Energy Commission concurred with Baltimore Gas and Electric Company's conclusion that no special design provisions were required to be incorporated into Calvert Cliffs Nuclear Power Plant (CCNPP) because the probability of an aircraft crash affecting the plant was acceptably low (implies a probability of less than 10^{-7}/Year). Therefore, the probability of an aircraft crash affecting the plant was acceptably low at less than 10^{-7}/year.

The probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines was considered to still be below the Standard Review Plan (SRP) (NUREG–0800) level of acceptability of 1.0×10^{-7} per year for CCNPP. The probability of an aircraft accident during the timeframe of original construction and licensing of the plant was never quantified. Since today's probability of an aircraft accident may be higher based on the fact that, at times, aircraft going into Patuxent River Naval Air Station fly over the plant, where previously they came no closer than seven miles from the plant (as described in the UFSAR), the probability of occurrence of an accident will conservatively be considered to have increased. However, it should be noted that the probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines is still considered to be below 1.0×10^{-7} cr/yr, which is acceptable since it is within SRP Section 3.5.1.6 guidelines. Since the above probability of an aircraft accident meets the criteria of SRP Section 3.5.1.6, no additional design or procedural protection is required. Note that the SRP criteria is only being used as one acceptable method of evaluating risk. Use of this method is not a commitment to the SRP and does not incorporate the SRP into our licensing basis.

Changes to the aircraft flight patterns and/or frequency (probability) have no affect on the design or method of operating equipment necessary to mitigate the consequences of previously analyzed accidents. As was noted above, the aircraft hazard was considered to be acceptable and, therefore, no additional design or procedural protection is required for the plant. Since the aircraft hazard is considered acceptable (where additional design features are not required), it can be concluded that no action assumed to occur within the accident analysis of CCNPP's Updated Final Safety Analysis Report Chapter 14 will be degraded or prevented. Therefore, it is concluded that the current calculated aircraft hazard will not result in an increase of the consequences of an accident preciously evaluated in the UFSAR.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

All possible malfunctions have been previously analyzed. Aircraft hazard was addressed within the original design of the plant. The frequency/probability of an aircraft crash was considered to be so low that special design provisions to protect against aircraft crashes did not have to be considered during construction of CCNPP. The current calculated aircraft hazard is considered to still be within SRP Section 3.5.1.6 guidelines. The possibility for a malfunction of a different type than preciously evaluated in the UFSAR is not created.

Aircraft accidents were considered within the original plant design. The probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines is still considered to be below the level of acceptability (per SRP Section 3.5.1.6) and no special design provisions are required. Since an aircraft crash is not a design basis concern, it is not plausible that the possibility of a new accident is created that has not been previously evaluated in the UFSAR. There are also no new challenges to safety-related equipment.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The probability of an aircraft crash affecting the plant, at the time of original licensing and construction, was so low that no special design provisions were needed in the plant for such an event. Since aircraft hazards did not have to be considered within the design of the plant, no margin of safety was required or established for such a hazard. All of the plant equipment and initial condition assumptions stipulated within the UFSAR Chapter 14 accident analysis would not be affected by such an event.

The calculated probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines, based on today's aircraft hazard, is considered to be below the 1.0×10^{-7} per year stipulated within SRP Section 3.5.1.6. Therefore, there is still no need for special design provisions within the plant to guard against such an event. All of the plant equipment and initial condition assumptions stipulated within the UFSAR Chapter 14 accident analysis remain unchanged. The plant will continue to operate in such a manner that will ensure acceptable levels of protection for the health and safety of the public.

Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 23, 1999

Description of amendments request: The requested amendments would change Technical Specification (TS) 5.5.7.c.1, "Ventilation Filter Testing." The testing criteria would be changed consistent with the NRC request in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revises TS 5.5.7.c.1 to require testing of the SGT [Standby Gas Treatment] system charcoal in accordance with American Society for Testing and Materials (ASTM) D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon." Per the existing TSs, the SGT system charcoal must meet an acceptance criteria of < 1.0% penetration of methyl iodide when tested at a relative humidity ≥ 70%. CP&L performs this testing in accordance with the criteria of Regulatory Position C.6.a of Regulatory Guide 1.52, Revision 1, 1976, "Design, Testing, and Maintenance Criteria for Engineered Safety Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants." As stated in Updated Final Safety Analysis Report, Section 6.5.1.1, the purpose of the SGT system, along with that of the primary and secondary containment, is to mitigate accident consequences. It is not associated with any initiating events and, therefore, cannot affect the probability of any accident.

ASTM D3803–1989 is an industry accepted standard for charcoal filter testing. The conditions employed by this standard were selected to approximate operating or accident conditions of a nuclear reactor which would severely reduce the performance of activated carbons. The key difference associated with the two testing protocols is the testing temperature. Specifically, testing to a challenge temperature of 30 °C per ASTM D3803–1989 versus 80 °C per Regulatory

Guide 1.52 results in a much more stringent test. Testing at a higher temperature tends to eliminate impurities and moisture from the sample. This creates the possibility of the charcoal achieving a slightly higher efficiency than actual. Other parameter changes will not significantly affect charcoal test performance and will result in more accurate and reproducible test results.

The proposed TS change also includes a requirement that the test be performed with a face velocity of 61 fpm. A single BSEP SGT system train operates at a maximum flow rate of 4200 scfm which corresponds to a face velocity of 61 fpm. In accordance with Generic Letter (GL) 99–02, this requirement has been included in TS 5.5.7.c.1.

As recommended by GL 99–02, the proposed amendment incorporates a safety factor of 2 into the allowed methyl iodide penetration limit. The existing TS 5.5.7.c.1 acceptance criteria of 99% does not account for a safety factor. In previous testing, CP&L has applied the safety factor provided by Regulatory Guide 1.52, Revision 1, 1976, to the laboratory testing results to ensure proper charcoal performance. The proposed changes to TS 5.5.7.c.1 require that charcoal samples, tested in accordance with the methodology of ASTM D3803–1989, show the methyl iodide penetration to be < 0.5%. The 0.5% penetration limit is derived by applying a safety factor of 2 to the 99% filtration efficiency assumed in the current bounding calculations for offsite radiological dose release limits. As such, the acceptance criteria of < 0.5% penetration of methyl iodide ensures that 10 CFR 100 offsite dose limits are not exceeded.

Based on the more stringent testing temperature requirements, the new face velocity testing requirement, and the acceptance criteria of < 0.5% penetration of methyl iodide, the proposed change will not result in an increase in the consequences of an accident previously evaluated.

2. The proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes revise the required testing methodology for SGT system charcoal. The SGT system is not an initiator of any accident, and no new accident precursors are created due to the change in the charcoal testing methodology. In addition, the change does not alter the design, function, or operation of the SGT system. Therefore, the proposed change to test SGT system charcoal in accordance with ASTM D3803–1989 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed amendment upgrades the SGT system charcoal testing requirements to those contained in ASTM D3803–1989. The conditions employed by ASTM D3803–1989 were selected to approximate operating or accident conditions of a nuclear reactor which could reduce the performance of activated carbons. The key difference between CP&L's current testing protocol and ASTM D3803–1989 is the testing temperature. Specifically, testing to a challenge temperature of 30°C per ASTM D3803–1989 versus 80°C per Regulatory Guide 1.52 results in a much more stringent test.

The proposed TS change also includes a requirement that the test be performed with a face velocity of 61 fpm. A single BSEP SGT system train operates at a maximum flow rate of 4200 scfm which corresponds to a face velocity of 61 fpm. In accordance with GL 99–02, this requirement has been included in TS 5.5.7.c.1.

As recommended by GL 99–02, the proposed amendment incorporates a safety factor of 2 into the allowed methyl iodide penetration limit. The existing TS 5.5.7.c.1 acceptance criteria of 99% does not account for a safety factor. In previous testing, CP&L has applied the safety factor provided by Regulatory Guide 1.52, Revision 1, 1976, to the laboratory testing results to ensure proper charcoal performance. The proposed changes to TS 5.5.7.c.1 require that charcoal samples, tested in accordance with the methodology of ASTM D3803–1989, show the methyl iodide penetration to be < 0.5%. The 0.5% penetration limit is derived by applying a safety factor of 2 to the 99% filtration efficiency assumed in the current bounding calculations for offsite radiological dose release limits. As such, the acceptance criteria of < 0.5% penetration of methyl iodide ensures that 10 CFR 100 offsite dose limits are not exceeded.

Based on the more stringent testing temperature requirements, the new face velocity testing requirement, and the acceptance criteria of < 0.5% penetration of methyl iodide, the proposed change does not involve a significant [reduction] in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 30, 1999.

Description of amendment request: The amendment revises Technical Specifications (TS) Section 5.5.11, Ventilation Filter Testing Program (VFTP) testing requirements. The proposed change requires VFTP testing be done according to ASTM D3803–1989 protocol in lieu of previous standards.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The CP&L conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification Section 5.5.11, "Ventilation Filter Testing Program," does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change updates the required testing of Engineered Safety Features (ESF) ventilation filter systems to more recent standards accepted by the NRC and described in Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal." The NRC has found that charcoal filter test protocols other than American Society for Testing and Materials (ASTM) standard ASTM D3803–1989 do not assure accurate and reproducible test results. Since this proposed change references an acceptable testing standard and provides assurance that the current licensing basis is met, the proposed change does not involve an increase in the probability or consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not introduce a new mode of operation or changes in the method of normal plant operation. The proposed change introduces a new testing standard for ESF ventilation system charcoal samples removed for testing and does not involve manipulation of plant systems to perform the charcoal test. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change revises the required testing standard for ESF ventilation charcoal filter systems and does not alter plant design margins or analysis assumptions as described in the Updated Final Safety Analysis Report. The proposed change does not affect any limiting safety system setpoint, calibration method, or setpoint calculation. The

proposed change is more restrictive with regard to testing protocol and less restrictive with respect to the allowed penetration during testing of the Control Room ventilation system charcoal. However, the allowed increase in penetration is in accordance with the method for determining the allowable penetration described in GL 99–02. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Section Chief: Richard P. Correia.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: November 18, 1999.

Description of amendment request: The proposed amendment requests a revision to Technical Specification (TS) 5.5.7.c. The changes would revise the requirements that (1) a sample of the charcoal absorber for the standby gas treatment (SGT) system and the control room emergency filtration (CREF) system be tested in accordance with American Society for Testing and Materials (ASTM) D3803–1986, "Standard Test Method for Nuclear-Grade Activated Carbon", (2) methyl iodide penetration be less than a value of .175% for the SGT system and 1.0% for the CREF system, and (3) charcoal absorber testing be conducted at a relative humidity of greater than or equal to 70%. As requested by Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," Energy Northwest proposed that TS 5.5.7.c be revised so that (1) testing of charcoal absorber samples be in accordance with ASTM D3803–1989 at a specified temperature of 30° Centigrade (C) [86° Fahrenheit (F)], (2) methyl iodide penetration to be less than a value of 0.6% for the SGT system and 2.5% for the CREF system, (3) testing be performed at 70% relative humidity, and (4) a face velocity of 75 feet-per-minute (fpm) will be specified for the SGT system. In addition, the revision to TS 5.5.7.c will note that variations in testing parameters are permitted in accordance with the guidance in Table 1 and Section A5.2 of ASTM D3803–1989.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The SGT System is designed to limit the release of airborne radioactive contaminants from secondary containment to the atmosphere within the guidelines of 10 CFR 100 in the event of a DBA [design basis accident]. The CREF System provides a radiologically controlled environment from which the plant can be safely operated following a DBA. The proposed amendment will require that charcoal from these two ESF [engineered safeguard feature] systems be tested to the more conservative standards of ASTM D3803–1989. Using the more conservative ASTM D3803–1989 testing standard will provide no increase in the probability of an accident previously evaluated.

The staff considers ASTM D3803–1989 to be the most accurate and most realistic protocol for testing charcoal in ESF ventilation systems because it offers the greatest assurance of accurately and consistently determining the capability of the charcoal. Using the more conservative ASTM D3803–1989 testing standard will provide greater assurance that the ESF ventilation systems will properly perform their safety function, thus assuring no increase in the radiological consequences of a DBA.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not create a new or different kind of accident since it only requires that charcoal from the SGT and CREF safety-related filtration systems be tested to the more conservative standards of ASTM D3803–1989. Using the more conservative ASTM D3803–1989 testing standard will provide even greater assurance that the ESF ventilation systems will properly perform their safety function, thus helping to minimize the radiological consequences of a DBA. The increased margin provided by the more conservative testing standard will assure no new or different kinds of accidents results from the proposed change.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment requires that more conservative ESF charcoal filter testing criteria be used to verify ESF ventilation systems are operable. More conservative testing criteria will provide greater assurance that the ESF ventilation systems will properly perform their safety function, thus helping to minimize the radiological consequences of a DBA. Using more conservative testing criteria will result in maintaining the current margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: November 18, 1999.

Description of amendment request: The proposed amendment requests a revision to subsection 4.3.1.2.b of Technical Specification 4.3, Fuel Storage. The change would revise the current wording, which describes the spacing of the fuel in the new fuel racks, with wording that would limit the number of fuel assemblies that may be stored in the facility and establish increased spacing limitations for storage of new fuel assemblies in the racks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not increase the consequences of any previously analyzed accident or transient, since the arrangement of new nuclear fuel in storage racks maintains the effective neutron multiplication factor much less than 0.95. The change in configuration requirements will not increase the probability of any previously analyzed accident, because physical constraints are installed in the storage racks when new fuel assemblies are inserted, assuring that only certain cells can be used for storage of new fuel.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is consistent with a new fuel criticality analysis performed in support of a previously implemented change to Section 9.1 of the FSAR. A variety of accidents were considered in that analysis, and it was determined that the effective neutron multiplication factor was well below specified limits for any normal or accident case.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The current wording of Technical Specification 4.3.1.2.b was determined to not provide sufficient margin of safety to assure that the requirements of Technical Specification 4.3.1.2.a would be maintained. The proposed amendment modifies the requirements for new fuel storage configuration for Technical Specification 4.3.1.2.b, to assure the margin of safety is maintained for optimum moderation conditions.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 20, 1999.

Description of amendment request: The proposed amendment request is to incorporate 17 improvements (identified by Technical Specification Task Force (TSTF) numbers) to the Improved Standard Technical Specifications (TSs), NUREG–1434 (for BWR/6 plants such as the Grand Gulf plant), that was part of the basis for the current improved TSs for Grand Gulf Nuclear Station (GGNS) that were issued in Amendment 120 dated February 21, 1995. These improvements to the improved TSs for BWR/6 plants such as GGNS are identified by TSTF numbers and are the following: (1) TSTF–2, relocate the 10 year sediment cleaning of the diesel generator fuel storage tank in Surveillance Requirement (SR) 3.8.3.6 to the GGNS Updated Final Safety Analysis Report (UFSAR), (2) TSTF–5, delete notification, reporting, and restart requirements if a safety limit is violated in TSs Section 2.2, (3) TSTF–9, relocate the shutdown margin values in Limiting Conditions for Operation (LCO) 3.1.1 and SR 3.1.1.1 to the Core Operating Limits Report (COLR), (4) TSTF–17, extension of the testing frequency for the primary containment airlock interlock mechanism from 184 days to 24 months in SR 3.6.1.2.3 and deletion of the SR Note, (5) TSTF–18, reword and clarify SR 3.6.4.1.2 to require only one secondary containment access door per access opening to be closed, (6) TSTF–32, move the requirement to ensure that "slow" and withdrawn stuck control rods are appropriately separated from LCO 3.1.4 requirements to LCO 3.1.3 Condition A Required Actions, (7) TSTF–33, administrative change to clarify the Completion Time for LCO 3.1.3 Required Action A.2, (8) TSTF–38, revise and clarify the visual surveillance in SR 3.8.4.3 for batteries to specify the inspection is for performance degradation, (9) TSTF–45, revise SRs 3.6.1.3.2 and 3.6.1.3.3 to specify that only Primary Containment Isolation Valves which are not locked, sealed, or otherwise secured are required to be verified closed, (10) TSTF–60, exempt LCO 3.4.7 on Reactor Coolant System Leakage Detection Instrumentation from LCO 3.0.4 which restricts entry into MODES, or specified conditions with required equipment inoperable, (11) TSTF–104, relocate the discussion of exceptions in LCO 3.0.4 to the Bases of the TSs, (12) TSTF–118, add a sentence to the administrative controls program in TSs Administrative Controls Section 5.5.9 that the provisions of SRs 3.0.2 and 3.0.3 applies to the specified testing frequencies of the Diesel Fuel Oil Testing Program, (13) TSTF–153, clarify the exception Notes for LCOs 3.4.9, 3.4.10, 3.9.8, and 3.9.9 to be consistent with the requirement being excepted, (14) TSTF–163, modify SRs 3.8.1.2, 3.8.1.12, 3.8.1.15, and 3.8.1.20 for diesel generators to provide minimum volt/Hz limits for the 10-second acceptance and detail the current volt/Hz range as "steady state" acceptance criteria, (15) TSTF–166, revise LCO 3.0.6 to explicitly require an evaluation per the Safety Function Determination Program and delete the statement that "additional * * * limitations may be required," (16) TSTF–278, LCO 3.8.6 is revised to require that battery cell parameters be "within limits," the reference to Table 3.8.6–1 is deleted, and a reference to the table is added to the Actions Table for LCO 3.8.6, and (17) TSTF–279, delete the reference to the "applicable supports" from the description of the "Inservice Testing Program" in the Administrative Controls TSs, Section 5.5.6. The licensee is proposing the current latest revision for each TSTF at the time of application with minor exceptions and/or clarification in some cases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The licensee's NSHC is divided into the following five categories (which also list the TSTF changes in each category): administrative changes, less restrictive changes—removed detail, less restrictive changes—relaxation of required action, less restrictive changes—deletion of surveillance requirement, and less restrictive changes—relaxation of surveillance frequency. The licensee's category NSHCs are presented below:

1. Administrative Changes

These changes involve reformatting, renumbering, and rewording of [TSs], with no change in intent. Since they do not change the intent of the [TSs] they are considered to be administrative in nature. The GGNS is adopting NRC [Nuclear Regulatory Commission] approved TSTF–5, TSTF–18, TSTF–33, TSTF–38, TSTF–104, TSTF–118, TSTF–153, TSTF–163, TSTF–166, TSTF–278, and TSTF–279, generic changes to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, "Standard Technical Specifications, BWR/6 Plants." In accordance with the criteria set forth in 10 CFR 50.92, EOI [Entergy Operations, Inc.] has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves reformatting, renumbering, and rewording the existing [TSs]. The reformatting, renumbering, and rewording process involves no changes in intent to the [TSs]. The proposed changes also involve [TSs] requirements, which are purely administrative in nature. As such, this change does not [a]ffect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or

different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no [a]ffect on any safety analyses assumptions. This change is administrative in nature. Therefore, the change does not involve a significant reduction in a margin of safety.

2. Less Restrictive Changes—Removed Detail

GGNS is adopting NRC approved TSTF–2, TSTF–9, and TSTF–32 generic changes to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, "Standard Technical Specifications, BWR/6 Plants." The proposed changes involve moving details out of the [TSs] and into the [TSs] Bases, the UFSAR, or the Core Operating Limits Report (COLR). The removal of this information is considered to be less restrictive because it is no longer controlled by the [TSs] change process. Typically, the information moved is descriptive in nature and its removal conforms with NUREG–1434 for format and content.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates certain details from the [TSs] to other documents under regulatory control. The Bases and UFSAR will be maintained in accordance with 10 CFR 50.59. In addition to 10 CFR 50.59 provisions, the [TSs] Bases are subject to the change control provisions in the Administrative Controls Chapter of the [TSs]. The UFSAR is subject to the change control provisions of 10 CFR 50.71(e). The COLR is controlled in accordance with TS[s] 5.6.5. The controls of TS[s] 5.6.5 will ensure that adequate limits are maintained and reported to the NRC. Since any changes to these documents will be evaluated, no significant increase in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of the information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no [a]ffect on any safety analysis assumptions. In addition, the details to be moved from the [TSs] to other documents remain the same as the existing [TSs]. Since any future changes to these details will be evaluated, no significant reduction in a margin of safety will be allowed. A significant reduction in the margin of safety is not associated with the elimination of the 10 CFR 50.92 requirement for NRC review and approval of future changes to the relocated details. The proposed change is consistent with the BWR/6 Standard Technical Specifications, NUREG–1434, issued by the NRC Staff, revising the [TSs] to reflect the approved level of detail, which indicates that there is no significant reduction in the margin of safety.

3. Less Restrictive Changes—Relaxation of Required Action

GGNS is adopting NRC approved TSTF–60 generic changes to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, "Standard Technical Specifications, BWR/6 Plants." The proposed changes involve relaxation of the Required Actions in the current Technical Specifications (TS).

Upon discovery of a failure to meet an LCO, the TS specifies Required Actions to be completed for the associated Conditions. Required Actions of the associated Conditions are used to establish remedial measures that must be taken in response to the degraded conditions. These actions minimize the risk associated with continued operation while providing time to repair inoperable features. Some of the Required Actions are modified to place the plant in a MODE in which the LCO does not apply. Adopting Required Actions from this change is acceptable because the Required Actions take into account the operability status of redundant systems of required features, the capacity and capability of the remaining features, and the compensatory attributes of the Required Actions as compared to the LCO requirements. These changes have been evaluated to not be detrimental to plant safety.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relaxes Required Actions. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated and the accident analyses do not assume that required equipment is out of service prior to the analyzed event. Consequently, the relaxed Required Actions do not significantly increase the probability of any accident previously evaluated. The Required Actions in the change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition considering the operability status of the redundant systems of required features, and the capacity and capability of remaining features while minimizing the risk associated with continued operation. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The Required Actions and associated Completion Times in the change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The relaxed Required Actions do not involve a significant reduction in the margin of safety. As provided in the justification, this change has been evaluated to minimize the risk of continued operation under the specified Condition, considering the operability status of the redundant systems of required features, the capacity and capability of remaining features, a reasonable time for repairs or replacement of required features, and the low probability of a DBA [design basis accident] occurring during the repair period. Therefore, this change does not involve a significant reduction in a margin of safety.

4. Less Restrictive Changes—Deletion of Surveillance Requirement

GGNS is adopting NRC approved TSTF–45 which is a generic change to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, "Standard Technical Specifications, BWR/6 Plants." The proposed changes involve deletion of [SRs] in the current Technical Specifications (TS).

The TS require safety systems to be tested and verified Operable prior to entering applicable operating conditions. These changes eliminate unnecessary TS [SRs] that do not contribute to verification that the equipment used to meet the LCO can perform its required functions. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to give confidence that the equipment can perform its assumed safety function. These changes have been evaluated to not be detrimental to plant safety.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes [SRs]. Surveillance's are not initiators to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be Operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly [a]ffected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The remaining [SRs] are consistent with industry practice and are considered to be sufficient to prevent the removal of the subject Surveillance's from creating a new or different type of accident. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The deleted [SRs] do not result in a significant reduction in the margin of safety. As provided in the justification, the change has been evaluated to ensure that the deleted [SRs] are not necessary for verification that the equipment used to meet the LCO can perform its required functions. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to give confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

5. Less Restrictive Changes—Relaxation of Surveillance Frequency

GGNS is adopting NRC approved TSTF–17 which is a generic change to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, "Standard Technical Specifications, BWR/6 Plants." The proposed changes involve the relaxation of Surveillance Frequencies in the current Technical Specifications (TS).

Surveillance Frequencies specify time interval requirements for performing surveillance testing. Increasing the time interval between Surveillance tests results in decreased equipment unavailability due to testing which also increases equipment availability. Reduced testing can result in a safety enhancement because the unavailability due to testing is reduced and[,] in turn, reliability of the [a]ffected structure, system or component should remain constant or increase. Reduced testing is acceptable where operating experience, industry practice or the industry standards such as manufacturers' recommendations have shown that these components usually pass the Surveillance when performed at the specified interval, thus the frequency is acceptable from a reliability standpoint. These changes have been found to be acceptable based on a combination of the above criteria and have been evaluated to not be detrimental to plant safety.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relaxes Surveillance Frequencies. The relaxed Surveillance Frequencies have been established based on achieving acceptable levels of equipment reliability. Consequently, equipment which could initiate an accident previously evaluated will continue to operate as expected and the probability of the initiation of any accident previously evaluated will not be significantly increased. The equipment being tested is still required to be Operable and capable of performing any accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly [a]ffected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The relaxed Surveillance Frequencies do not result in a significant reduction in the margin of safety. As provided in the justification, the relaxation in the Surveillance Frequency has been evaluated to ensure that it provides an acceptable level of equipment reliability. Thus, appropriate equipment continues to be tested at a Frequency that gives confidence that the equipment can perform its assumed safety function when required. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 4, 1999. This amendment request supercedes the licensee's application of June 10, 1999, in its entirety. (64 FR 38025)

Description of amendment request: The proposed amendment would remove the existing filter testing requirements of the Technical Specifications (TSs) and replace them with a reference to the Ventilation Filter Testing Program which is being added to the Administrative Controls section of the Davis-Besse TS. The amendment introduces TS 6.8.4.f, "Ventilation Filter Testing Program," and removes the specific ventilation filter testing requirements from the surveillance requirements of TS 3/4.6.4.4, "Hydrogen Purge System," TS 3/4.6.5.1, "Shield Building Emergency Ventilation System," and TS 3/4.7.6.1, "Control Room Emergency Ventilation System." Also included are supporting Bases changes to TS 3/4.6.4.4, TS 3/4.6.5.1, and TS 3/4.7.6.1

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station(DBNPS), Unit Number 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. The replacement of the specific Technical Specification (TS) ventilation filter testing Surveillance Requirements for the Containment Hydrogen Purge System (3/4.6.4.4), Shield Building Emergency Ventilation System (3/4.6.5.1), and the Control Room Emergency Ventilation System (3/4.7.6.1), with a reference to the newly created Ventilation Filter Testing Program contained in TS Administrative Controls Section 6.8.4.f, Ventilation Filter Testing Program, is a removal and relocation of certain TS details. The proposed TS 6.8.4.f will, however, add controls to maintain similar operation, maintenance, testing and system operability for these three ventilation systems. The TS Bases changes reflect the use of the Ventilation Filter Testing Program.

The replacement of ASTM D 3803–1979 with ASTM D 3803–1989 for laboratory testing of the charcoal filter samples reflects the NRC recommendations in Generic Letter 99–02, "Laboratory Testing of Nuclear Grade Activated Charcoal." ASTM D 3803–1989 is

a more stringent testing standard for charcoal filter testing, than the present standard referenced by the TS.

The increase in allowable charcoal penetration due to the use of a safety factor of "2" is acceptable as a result of using this more stringent testing standard.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The increase in allowable charcoal penetration due to the use of a safety factor of "2" is acceptable as a result of using this more stringent testing standard. No physical alterations of the DBNPS are involved, nor are plant operating methods being changed. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated. No new or different types of failures or accident initiators are being introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because there are no significant changes to the initial conditions contributing to accident severity or consequences. Therefore, there are no significant reductions in a margin of safety. Testing under the more restrictive requirements of ASTM D 3803–1989 will continue to ensure that the ventilation systems will perform their safety function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendment request: December 1, 1999, as supplemented December 15, 1999.

Description of amendment request: The licensee is requesting to revise the Turkey Point Plant Physical Security Plan (PSP) to modify the PSP requirements for compensation of a security computer failure, and to modify the requirements of the minimum security force staffing. The December 1, 1999, submittal supersedes two previous submittals dated March 10 and June 8, 1999, regarding the same subject. As a result of the proposed changes, License Conditions 3.L. for Turkey Point Units 3 and 4 Operating Licenses will be updated to reflect the latest revision to the Physical Security Plan dated December 1, 1999. In addition, the phrase "Turkey Point Plant, Units 3 and 4 Security Plan" was revised to "Turkey Point Physical Security Plan." The latter changes are administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes will not significantly affect the ability to detect a Protected Area intrusion. These changes do not affect the ability of a security response to an overt attack on the plant. These changes will not affect the ability of the security force to respond to contingency events. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not affect the ability of the security force to defeat the design basis threat. The composition of the response organization is not effected by these changes.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The demonstrated level of dependability of the security system ensures that a significant reduction in effectiveness or margin of safety does not occur.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. The staff has also reviewed the changes to License Conditions 3.L. for Turkey Point Units 3 and 4 Operating Licenses, as well as the change of the security plan title. Based on this review, the staff finds that the changes are administrative in nature and that they meet the three criteria discussed above. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 6, 1999.

Description of amendment request: This proposed Technical Specification TS change will revise the Cooper Nuclear Station (CNS) TS Sections 1.0, "Use and Application," 3.6, "Containment Systems," Bases 3.0, "Limiting Condition for Operation (LCO) Applicability," Bases 3.6, "Containment Systems," and 5.5, "Programs and Manuals," to adopt the implementation requirements of 10 CFR Part 50, Appendix J, Option B, for the performance of Type A, B, and C containment leakage rate testing. Contingent upon the Nuclear Regulatory Commission's (NRC's) approval of the proposed TS change, the licensee is also requesting the NRC to grant the withdrawal of two exemptions. These exemptions were previously granted under Option A to 10 CFR Part 50, Appendix J; however, under Option B they are no longer required.

The proposed TS change also contains line-item changes for TS requirements addressing containment airlock interlocks, primary and secondary containment isolation valves and power-operated automatic valves. These changes, along with the specific change to implement Option B, have been previously approved by the NRC through submittals made by the Nuclear Energy Institute-sponsored TS Task Force.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implement 10 CFR 50 Appendix J, Option B.

There is no increase in the probability or consequences of an accident since there is no work that would affect containment integrity. The testing of containment isolation valves and other containment penetration sealing devices are not postulated as an accident precursor or initiating event.

The NRC has concluded, prior to approving Option B, that performance-based testing would eliminate or modify prescriptive regulatory requirements for which the burden is marginal-to-safety. Reviews and analyses considered by the NRC are presented in NUREG–1493, "Performance-Based Containment Leak-Test Program, Final Report," September 1995 (Attachment 2, Reference 12 [of the October

6, 1999, application]). The historical leakage rate test results for Cooper and for the nuclear industry support extension of the testing frequencies and demonstrate that structural integrity has been maintained.

Type A testing is capable of determining the total leakage from both local leakage paths and gross containment leakage paths. The Type B and C testing has consistently provided accurate leakage rates for valves and penetrations. Administrative controls govern maintenance and testing such that there is very low probability that unacceptable maintenance or alignments can occur. Prior to and following maintenance on primary containment isolation valves and penetrations, a local leak rate test is required to be performed. As a result, Type A testing is not required to accurately quantify the leakage through containment penetrations.

Extension of testing frequency of containment airlock interlock mechanism from 18 months to 24 months.

There is no increase in the probability or consequences of an accident since there is no work that would affect containment integrity. The testing of containment airlock interlocks, isolation valves and other containment penetration sealing devices is not postulated as an accident precursor or initiating event.

This changed the testing of the containment airlock interlocks from 18 months to 24 months. This testing is only performed during periods of reactor shut down and the primary containment is de-inerted. Thus this change plus the allowance from SR [Surveillance Requirement] 3.0.2, provides a total of 30 months, which corresponds to the overall airlock leakage test frequency under Option B. In this fashion, the interlock can be tested in a Mode where the interlock is not required.

Clarify the Containment Isolation Valve (CIV) surveillance to apply to only automatic isolation valves.

The Bases for SR 3.6.1.3.5 state that the isolation time test ensures the valve will isolate in time period less than or equal to that assumed in the safety analysis. There may be valves credited as containment isolation valves, which are power operated, that do not receive a containment isolation signal. These valves do not have an isolation time as assumed in the accident analyses since they require operator action. However, these valves are tested in accordance with the Inservice Test Program as required. Therefore this change reduces the potential for misinterpreting the requirements of this SR while maintaining the assumptions of the accident analysis.

Based on the above discussion, there is no increase in the probability or consequences of an accident, since this change provides clarification of the applicability of the SR and has no affect on those automatic valves with operating times assumed in the accident analysis.

Allow administrative means of position verification for locked or sealed valves.

It is sufficient to assume that the initial establishment of component status (e.g., isolation valve closed) was performed correctly. Subsequently verification is intended to ensure the component has not been inadvertently repositioned. Given that the function of locking, sealing or securing components is to ensure the same avoidance of inadvertent repositioning, the periodic re-verification should only be a verification of the administrative control that ensures that the component remains in the required state. It would be inappropriate to remove the lock, seal, or other means of securing the component solely to perform an active verification of the required state. There is no increase in the probability or consequences of an accident since the function of locking, sealing, or securing components is to ensure that these devices are not inadvertently repositioned.

Therefore, the proposed change described above does not involve a significant increase in the probability or consequences of an accident previously evaluated in the USAR [updated safety analysis report].

The proposed change will not create the possibility of a new or different kind of accident than evaluated in the USAR.

The proposed change involves individual proposed changes related to the implementation of 10 CFR 50 Appendix J, Option B, the extension of testing frequency of the containment airlock interlock, clarification of the CIV surveillance to apply to only automatic isolation valves, and the allowance of administrative means of position verification for locked or sealed valves. The proposed change does not result in any physical change to plant structures, systems, or components. The proposed change does not alter the form, fit, or function of any equipment or components credited in the accident analyses described in the USAR. The performance history of containment testing verifies that containment integrity has been maintained.

The frequency changes allowed by the implementation of the applicable proposed TS changes will not significantly decrease the level of confidence in the ability of the containment to limit offsite doses to allowable values. No accident or malfunction can be the result of the allowed changes to test schedule or frequency.

Since the proposed changes will not directly impact equipment, procedures or operations, the changes will not create the possibility of any new or different kind of accident from any accident previously evaluated in the USAR.

Therefore, the proposed change does not create the possibility of a new or different kind of accident.

The proposed change will not involve a significant reduction in a margin of safety.

The reason for performing containment leakage rate testing is to assure that the leakage paths are identified, and that any accident release will be restricted to those paths assumed in the safety analysis. The purpose for the schedule is to assure that containment integrity is verified on a periodic basis. Implementation of Option B to provide flexibility in the scheduled requirements does not mean that containment integrity will be compromised.

The NRC has concluded, prior to approving Option B, that performance-based testing would eliminate or modify prescriptive regulatory requirements for which the burden is marginal-to-safety. Reviews and analyses considered by the NRC are presented in NUREG–1493, "Performance-Based Containment Leak-Test Program, Final Report," September 1995 (Attachment 2, Reference 12). The historical leakage rate test results for CNS and for the nuclear industry support extension of the testing frequencies and demonstrate that structural integrity has been maintained.

Administrative controls govern position verification for locked or sealed valves such that there is a very low probability that unacceptable alignment can occur.

When the containment airlock interlock is opened during times the interlock is required, the operator first verifies that one door is completely shut before attempting to open the other door. Therefore, the interlock is not challenged except during actual testing of the interlock. Therefore, it should be sufficient to ensure proper operation of the interlock by testing the interlock on a 24 month interval.

There may be valves credited as containment isolation valves, which are power operated, that do not receive a containment isolation signal. These valves do not have an isolation time as assumed in the accident analyses since they require operator action. However, these valves are tested in accordance with the Inservice Test Program as required and as such there will be no reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 6, 1999.

Description of amendment request: Changes are proposed to Technical Specification (TS) Section 2.1.1.2 for the safety limit minimum critical power ratio (SLMCPR). The proposed changes to TS 2.1.1.2 revise the SLMCPR values from 1.06 to 1.08 for two recirculation loop operation, and from 1.07 to 1.09 for single recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation: The basis for the Safety Limit Minimum Critical Power Ratio (SLMCPR) is to ensure that at least 99.9% of all fuel rods in the core avoid transition boiling if the SLMCPR limit is not violated. The revised SLMCPR values preserve the existing margin to transition boiling and thus the probability for fuel damage is not increased. The determination of a revised SLMCPR Technical Specification value does not affect the assumptions of accidents previously evaluated; or initiate, or affect initiators, of accidents previously evaluated. The proposed revisions to SLMCPR are based on the use of methodology previously accepted by the NRC for calculating SLMCPR and do not change the definition of SLMCPR. Thus, the probability of an accident previously evaluated is not increased.

The revised SLMCPR values do not affect the design or operation of any system, structure, or component in the facility. No new or different type of equipment is installed by this change. The proposed revision does not change or alter the design assumptions for systems, structures, or components used to mitigate the consequences of an accident. Thus, he dose consequences of an accident previously evaluated are not increased.

Therefore, the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation: The SLMCPR ensures that at least 99.9% of all fuel rods in the core avoid transition boiling if the SLMCPR limit is not violated. The revised SLMCPR values preserve the existing margin to transition boiling. The proposed revisions to SLMCPR are based on the use of methodology previously accepted by the NRC for calculating SLMCPR and do not change the definition of SLMCPR. The proposed revision does not change the design or operation of any system, structure, or component. No new or different type of plant equipment is installed by this change. The proposed revision does not involve a change to plant operation or allowable plant operating modes. The calculational methodology used to determine a revised SLMCPR Technical Specification value cannot initiate or create a new or different type of accident.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment create a significant reduction in the margin of safety?

Evaluation: The SLMCPR ensures that at least 99.9% of all fuel rods in the core avoid transition boiling if the SLMCPR limit is not violated. The revised SLMCPR values were calculated using a methodology previously accepted by the NRC, and preserve the existing margin to transition boiling and thus the margin of safety to fuel failure. The proposed change does not involve a relaxation of the criteria or basis used to establish safety limits, or a relaxation in the criteria or bases for the limiting conditions for operation. The assumptions and methodologies used in the plant accident analysis remain unchanged. Therefore, the proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 16, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Safety Limit Minimum Critical Power Ratio (SLMCPR) values for two recirculation pump and single-loop operation, delete cycle specific footnotes, update the single-loop operation Average Planar Heat Generation rate limiting values, correct a typographical error, and delete an obsolete reference to Siemens fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

GE [General Electric] has recently revised their single loop operation (SLO) analysis review procedures to add an additional requirement that the peak cladding temperature (PCT) during a LOCA [loss-of-coolant accident] initiated while in SLO should be bounded by the PCT for a LOCA initiated while in dual loop operation. This desired result is enforced by revising the SLO MAPLHGR [maximum average planar linear heat generation rate] "multipliers" found in Technical Specification 3.11.A from the current value of 0.85 for all fuel to values of 0.78 for GE10 fuel and 0.80 for GE11 and GE12 fuel. This change ensures that the condition that the Upper Bound PCT does not exceed 1600 °F (as required by the NRC-approved SAFER methodology for performing ECCS [emergency core cooling system] LOCA calculations) is satisfied even if a LOCA were to occur while operating in SLO. This change does not alter the method of operating the plant and does not increase the probability of an accident initiating event or transient. These limits are established to preserve required margins.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

SLMCPR is a TS numerical value designed to ensure that transition boiling does not occur in greater than 99.9% of all fuel rods in the core during the limiting postulated transient. A change in SLMCPR cannot create the possibility of any new type of accident. SLMCPR values for the new fuel cycle are calculated using previously transmitted methodology. Similarly, changes to the SLO MAPLHGR multiplier values are designed to ensure that the PCT resulting from a LOCA while operating in SLO are bounded by the PCT from a LOCA while operating in dual loop operation. Thus, a change in these multipliers cannot create the possibility of any new type of accident. This multiplier update results from application of GE's current standard methodology for this analysis.

The proposed changes result only from a specific analysis for the Monticello core reload design and deletion of a cycle specific reference for the values. These changes do not involve any new or different method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

SLMCPR calculations are based on ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. Proposed SLMCPRs preserve required margin to transition boiling and fuel damage in the event of a postulated transient. Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 20 in the same manner as applied in previous cycles. The revised SLMCPR values do not change the method of operating the plant and have no effect on the probability of an accident-initiating event or transient because these limits are established to preserve required margin.

Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 20 in the same manner as previously applied. SLMCPRs prepared by GE using methodology previously transmitted to the NRC ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving fuel cladding integrity. The operating MCPR limit is set appropriately above the safety limit value to ensure

adequate margin when the cycle specific transients are evaluated.

Application of new SLO MAPLHGR multiplier values ensures that SLO LOCA results are bounded by those for dual loop operation and thus maintain or improve the margin of safety for LOCA analyses.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 5, 1999.

Description of amendment request: The proposed amendment would add a license condition denoting NRC approval of the Trojan Nuclear Plant (TNP) License Termination Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment does not authorize additional plant activities beyond those that already may be conducted under the approved TNP Decommissioning Plan and the Defueled Safety Analysis Report (DSAR). Accident analyses are included in the approved TNP Decommissioning Plan and incorporated into the TNP DSAR. No systems, structures, or components that could initiate or be required to mitigate the consequences of an accident are affected by the proposed change in any way not previously evaluated in the approved TNP Decommissioning Plan and DSAR. Therefore, the proposed change is administrative in nature and as such does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested license amendment does not authorize additional plant activities beyond those that already may be conducted under the approved TNP Decommissioning Plan and the DSAR. Accident analyses are included in the approved TNP Decommissioning Plan and incorporated into the DSAR. The proposed change does not affect plant systems, structures, or components in any way not previously evaluated in the approved TNP Decommissioning Plan and DSAR, and no new or different failure modes will be created. Therefore, the proposed change is administrative in nature and as such does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Approval of the TNP License Termination Plan by license amendment is administrative in nature since the decommissioning and fuel storage activities described in the TNP license Termination Plan are consistent with those in the approved TNP Decommissioning Plan and DSAR. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 24, 1999.

Description of amendment request: The proposed amendment would delete Section 4.7.D.1.e of Appendix A (Technical Specifications (TSs)) to the James A. FitzPatrick Operating License to eliminate the surveillance requirement for partially stroking of the plant Main Steam Isolation Valves (MSIVs) twice a week. The MSIVs will continue to be fully stroked with a frequency that is in accordance with the In-Service Testing (IST) Program per TS 4.7.D.1.d, which is consistent with the Boiling-Water Reactor Standard Technical Specification and the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. The proposed changes include associated administrative changes to Section 4.7.D.1.d, and to Bases Section 4.7.D of the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change will not significant[ly] increase the probability or consequences of any previously evaluated accidents.

This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change deletes the requirement to exercise the MSIVs twice per week. The twice per week exercise involves partial closure of each individual MSIV and subsequent reopening to the full open position.

The safety function of the MSIV is to isolate the main steam line in case of a steam line break, Control Rod Drop Accident or Loss of Coolant Accident in order to limit the loss of reactor coolant and/or the release of radioactive materials. The MSIVs perform a safety function which mitigates the consequences of accidents: however, an event can be initiated by the inadvertent closure of MSIVs. Therefore, eliminating excessive operation of the MSIVs reduces the probability of an inadvertent closure. Also, the surveillance which is being deleted does not test the safety function of the MSIVs. The safety function is tested during the full stroke fast closure test. Since deleting the twice per week exercise of the valves is not considered to have any effect on the reliability of the MSIVs to perform there safety function, there is no increase in the consequences of any postulated accidents. Therefore, deleting the requirement for twice per week exercising of the MSIVs does not significantly increase the probability or consequences of any previously evaluated accidents.

(2) The proposed change will not create the possibility of a new or different kind of accident.

The safety function of the MSIV is to isolate the main steam line in case of a steam line break, Control Rod Drop Accident, or Loss of Coolant Accident in order to limit the loss of reactor coolant and/or the release of radioactive materials. The MSIVs perform a safety function which mitigates the consequences of accidents: however, an event can be initiated by the inadvertent closure of MSIVs. The inadvertent closure of the MSIVs event has been previously evaluated in Chapter 14 of the James A. FitzPatrick Final Safety Evaluation Report (FSAR). The surveillance which is being deleted does not test the safety function of the MSIVs. The safety function is tested during the full stroke fast closure test. Since the MSIVs perform a mitigating safety function, and the MSIV full stroke fast closure test adequately tests the safety function, elimination of the twice per week exercise will not create any new or different kind of accident.

(3) The proposed change will not involve a significant reduction in a margin of safety.

The safety function of the MSIV is not tested during the twice per week exercise. The ability of the MSIVs to perform their safety function is tested during the MSIV full stroke fast closure test in accordance with the IST Program. Therefore, deletion of the requirement does not reduce the margin of safety. The exercising of the MSIVs was

originally specified in order to detect binding of the pilot valve. The type of pilot valve that was susceptible to binding was replaced and there is no longer any need for frequent exercising of the MSIVs. The full closure test of the MSIVs in accordance with the IST Program adequately demonstrates that the MSIVs and their pilot valves are not binding and that the MSIVs will perform their safety function. Additionally, reducing the frequency of MSIV operation reduces the probability of inadvertent scrams and transients, and challenges to relief valves, providing a net addition to the margin of safety. The full stroke fast closure test is considered to be sufficient. It is the only test required by the ASME Boiler and Pressure Vessel Code and the BWR Standard Technical Specifications. Therefore, eliminating the twice per week exercise of the MSIVs does not significantly reduce any margin of safety.

The proposed change will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident previously evaluated, or reduce existing margin to safety. Therefore, the proposed license amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Alexander W. Dromerick (Acting Section Chief).

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 24, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to implement Filtration, Recirculation, and Ventilation System (FRVS) and Control Room Emergency Filtration (CREF) System charcoal filter testing requirements that are consistent with the U. S. Nuclear Regulatory Commission requirements delineated in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The CREF and FRVS systems will continue to function as designed. The CREF and FRVS systems are designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. The proposed TS surveillance requirement changes implement testing methods that more appropriately demonstrate charcoal filter capability and establish acceptance criteria, which ensure that Hope Creek's licensing and design basis assumptions are met.

In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner in which the CREF and FRVS systems are operated is not affected by these proposed changes. The proposed surveillance requirement acceptance criteria ensure that the FRVS and CREF safety functions will be accomplished. Therefore, the proposed TS changes would not result in the increase of the consequences of an accident previously evaluated, nor do they involve an increase in the probability of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the CREF and FRVS systems are not changed from that currently described in Hope Creek's licensing basis. The CREF and FRVS systems will continue to function as designed to mitigate the consequences of an accident. Implementing the proposed charcoal filter testing methods and acceptance criteria does not result in plant operation in a configuration that would create a different type of malfunction to the CREF and FRVS systems than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in Hope Creek's licensing basis regarding the safety related functions of these systems.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal would implement TS requirements that: (1) Are consistent with the requirements delineated in Generic Letter 99–02; (2) implement testing methods that adequately demonstrate charcoal filter capability; and (3) establish acceptance criteria consistent with Hope Creek's licensing basis. The ability of CREF and FRVS to perform their safety functions is not adversely affected by these proposed changes. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern California Edison Company, et al., Docket Nos. 50–206, 50–361, and 50–362, San Onofre Nuclear Generating Station, Units 1, 2, and 3, San Diego County, California

Date of amendment requests: December 2, 1999 (Unit 1—PCN 267, Units 2 and 3—PCN 506).

Description of amendment requests: This amendment application is a request to revise the Unit 1 Technical Specifications Section D6, Administrative Controls, to be consistent with the San Onofre Units 2 and 3 Technical Specification Section 5.0, Administrative Controls, and incorporate changes related to certified fuel handlers and 10 CFR 50.54(x), administrative control of working hours and working hour deviation approvals, position titles and responsibilities and organizational description reference, qualifications for a multi-discipline supervisor, quality assurance program control of review and audit and record retention procedures, high radiation area controls, description of the plant configuration for environmental protection, and environmental protection related document reporting.

This amendment application also requests to revise the Unit 2 and Unit 3 Technical Specifications, Section 5.0, Administrative Controls, to incorporate changes related to the operating organization, working hours deviation approvals, qualifications for a multi-discipline supervisor, the schedule for submitting Technical Specification Bases changes, reference to American Society of Mechanical Engineers (ASME) code class components, steam generator inspection reporting, Core Operating Limits Report references, high radiation area controls, offsite dose calculation manual change control reference, and environmental protection related document reporting.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This proposed change is to revise the administrative controls section of the San Onofre Units 1, 2 and 3 technical specifications. To the extent practicable, the San Onofre Unit 1 technical specification Section D6, Administrative Controls, is made consistent with the San Onofre Units 2 and 3 technical specification Section 5.0, Administrative Controls. This change allows the handling of key administrative controls to be consistent on site. Certain position titles have been revised, and the cognizant Vice President has been included as an approver of deviations from the work hours and reviewer of overtime hours. The Vice President—Business and Financial Services is identified to be responsible for Unit 1 decommissioning. The specification allowing the certified fuel handlers to implement 10 CFR 50.54(x) is removed since this is now included in the regulations. The qualification requirements for a multi-discipline supervisor consistent with the American National Standards Institute [ANSI] standard have been added to the staff qualifications section. The schedule for submitting technical specification Bases changes is revised to be consistent with the NRC approved exemption to 10 CFR 50.71(e) for submitting Updated Final Safety Analysis Report (UFSAR) updates. A reference to Class 1, 2, and 3 ASME code components is removed from the technical specifications and maintained in the Licensee Controlled Specifications (LCS) and the inservice inspection and testing program. The Units 2 and 3 steam generator inspection reporting requirements are revised to refer to the technical specification requirement. The Core Operating Limits Report (COLR) section is revised to include references to 2 topical reports related to the reload analysis technology transfer and the NRC's evaluation of the technology transfer. The sections on high radiation are revised to be consistent with Regulatory Guide 8.38 which provides an acceptable method for controlling access to high radiation areas. The environmental protection section of the San Onofre Unit 1 technical specifications is revised to reflect the current status of the discharge system. The environmental protection sections for Unit 1 and Units 2/3 are further revised by including a 30 day timeframe for providing the NRC copies of reports related to unusual or important environmental events and deleting the requirement to provide the NRC copies of proposed changes and renewal applications for NPDES permits.

All of these changes are being made to provide consistency and flexibility in the handling of site programs, and update and clarify the administrative controls. There are no equipment changes or modifications to the plant associated with these changes that would affect the probability or consequences of accidents at all three units.

Therefore, this change does not affect the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated?

No. This proposed change is to revise the administrative controls sections of the San Onofre Units 1, 2, and 3 technical specifications. The changes provide consistency and flexibility in the handling of site programs, and update and clarify the administrative controls. There is no administrative change being made that could create a new or different accident at any of the three units and there is no plant or equipment modification associated with this change.

Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. This change revises the administrative controls sections of the San Onofre Units 1, 2, and 3 technical specifications. The changes provide consistency and flexibility in the handling of site programs, and update and clarify the administrative controls. There is no change to plant equipment associated with this change. This change does not affect any margin of safety.

Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chiefs: Michael Masnik (Unit 1); Stephen Dembek (Units 2 and 3).

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: November 24, 1999 (PCN–274).

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.3.11, "Post Accident Monitoring Instrumentation (PAMI)." Specifically, the proposed change would extend the PAMI channel calibration surveillance frequency from 18 months to 24 months to accommodate a 24-month fuel cycle. All PAMI instruments would then be on a 24-month calibration interval, which removes the need for Surveillance Requirement (SR) 3.3.11.5. Therefore, the licensee also proposes to delete SR 3.3.11.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment[s] to extend the calibration surveillance frequency of Post Accident Monitoring Instrumentation (PAMI) instrumentation [are] being made to support plant operation with a 24-month fuel cycle.

Increasing the calibration intervals for PAMI instrumentation to 30 months [24 months plus the 25% surveillance interval extension allowed by SR 3.0.2] does not affect the initiation or probability of any previously analyzed accident. Increasing the calibration interval will not affect the integrity of any of the principal barriers against radiation release (fuel cladding, reactor vessel, and containment building). The ability of the plant to mitigate the consequences of any previously analyzed accidents is not adversely affected.

PAMI instrumentation provides to the operators both qualitative and quantitative information used in accident mitigation and for the safe shutdown of the plant. Instrumentation which provides qualitative information is unaffected by a change in instrument accuracy induced by drift due to the increased surveillance interval because no explicit value is required by the Emergency Operating Instructions (EOIs). Instrumentation that provides quantitative information (*i.e.*, decision points) in the EOIs have been evaluated. This evaluation resulted in no changes to any operating instructions. This evaluation of the proposed change to the surveillance interval demonstrates that licensing basis safety analyses acceptance criteria and San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 EOI criteria will continue to be met.

The proposed new surveillance frequency for these instrument channels was evaluated using the guidance of Generic Letter 91–04. The basis for the change includes a quantitative evaluation of instrument drift for PAMI instrumentation providing quantitative information to the EOIs. Also, loop accuracy/setpoint calculations for these instruments were updated to accommodate the extended surveillance period. Analyses and evaluations completed to assess the proposed increase in the surveillance interval demonstrate that the effectiveness of these instruments in fulfilling their respective functions is maintained. Technical Specifications Channel Checks and Channel Functional Checks for the subject channels, will continue to be performed to provide assurance of instrument channel OPERABILITY.

Therefore, the proposed amendment[s do] not involve a significant increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The increased calibration surveillance interval for PAMI instrumentation is justified based on evaluation of past equipment

performance and does not require any plant hardware changes or changes in normal system operation. Changing the calibration interval for this instrumentation has no means of creating the possibility of a new or different kind of accident. There are no new decision points or operator responses required to support existing accident mitigation strategies.

Therefore, there are no new failure modes introduced as a result of extending these surveillance intervals, and the proposed amendment[s do] not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the calibration surveillance interval was evaluated using the criteria of 95% probability/95% confidence level for process sensor drift.

PAMI instrumentation are used to provide indication following certain hypothetical accident conditions and are used in EOIs for trending and to initiate operator action at certain decision points. Instrument uncertainty calculations have been updated for PAMI instrumentation used for EOI decision points as appropriate. Updated calculations show that the total loop uncertainty for PAMI evaluated either decreased or remained the same. These updated calculations demonstrate that applicable accuracy requirements for SONGS 2 and 3 are satisfied with the proposed new surveillance intervals.

Changing the calibration interval for these channels does not affect the margin of safety for previously analyzed accidents. Therefore, the proposed amendment[s do] not involve a significant reduction in a margin of safety.

Based on the responses to these three criteria, Southern California Edison (SCE) has concluded that the proposed amendment[s involve] no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: December 13, 1999 (PCN–507).

Description of amendment requests: San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 are currently licensed for operation for 40 years commencing with issuance of their construction permits. The licensee proposes to amend the SONGS Units 2 and 3 operating licenses to revise the expiration dates of these licenses to 40 years from the date of issuance of the operating licenses. Thus, these amendment applications request that the SONGS Unit 2 operating license expiration date be changed from October 18, 2013, to February 16, 2022, and the SONGS Unit 3 operating license expiration date be changed from October 18, 2013, to November 15, 2022.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed change does not involve any changes to the design or operation of the San Onofre Nuclear Generating Station (SONGS) 2 and 3 which may affect the probability or consequences of an accident evaluated in the Updated Final Safety Analysis Report (UFSAR). SONGS 2 and 3 were designed and constructed on the basis of a forty (40) year life. The accidents analyzed in the UFSAR were postulated on the basis of a 40 year life. No changes will be made that could alter the design, construction, or postulated scenarios regarding accident initiation and/or response. Existing surveillance, inspection, testing and maintenance practices and procedures ensure that degradation in plant equipment, structures, and components will be identified and corrected throughout the life of the plant. The effect of aging of electrical equipment, in accordance with 10 CFR50.49, has been incorporated into the plant maintenance and surveillance procedures. Therefore, the probability or consequences of a postulated accident previously evaluated in the UFSAR are not increased as a result of the proposed change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change does not involve any changes to the physical structures, components, or systems of SONGS 2 and 3. Existing surveillance, inspection, testing, and maintenance practices and procedures will assure full operability for the plant's design lifetime of 40 years. Continued operation of SONGS 2 and 3 in accordance with these approved procedures and practices will not create a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety?

Response: There are no changes in the design, design basis, or operation of SONGS 2 and 3 associated with the proposed change. Existing surveillance, inspection, testing, and maintenance practices and procedures provide assurance that any degradation of equipment, structures, or components will be identified and corrected throughout the lifetime of the plant. These measures together with the continued operation of SONGS 2 and 3 in accordance with the Technical Specifications assure an adequate margin of safety is preserved on a continuous basis. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 30, 1999.

Description of amendment request: The proposed amendments would change Technical Specification Surveillance Requirement 3.8.1.12 to remove the restriction which prevents performance of the diesel generator 24-hour run while operating in either Mode 1 or Mode 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or the consequences of a previously evaluated event for the following reasons:

The primary function of the diesel generators is to supply emergency power to the safety-related equipment necessary to safely shut down the plant in case of a design basis event, such as a loss of coolant accident (LOCA) concurrent with a loss of offsite power (LOSP). The diesels are not designed to prevent such an event. Accordingly, the probability of a LOCA/LOSP event is not increased by allowing the performance of the 24-hour run with the reactor operating.

It is possible that, with a diesel generator connected to its bus, an electrical disturbance will travel through the system and affect the other busses. This is most likely to happen when initially connecting the diesel to the bus. However, the surveillance procedures require that diesel generator output voltage be synchronized with the bus prior to the diesel output breaker being closed in, thus reducing the chance of an electrical distribution system disturbance.

If a LOCA occurred concurrent with an LOSP while a diesel generator is connected to the bus in its 24-hour run, the diesel logic automatically realigns itself to the Standby mode of operation, allowing the diesel to supply power to the emergency bus. A Technical Specifications surveillance requirement tests this feature. Also, the proposed specification prevents the test from being performed unless the other two diesel generators are operable; this includes suspending the surveillance if one of the other available diesels becomes inoperable during the actual test. This restriction will ensure that two diesels are available to safely shut down the plant if necessary.

Additionally, this amendment request does not affect any other system or piece of equipment necessary to prevent or mitigate the consequences of previously evaluated events. As a result, the consequences of a LOCA/LOSP event are not increased.

2. The proposed changes do not create the possibility of an accident of a new or different kind from any previously evaluated based upon the following:

This proposed modification to SR 3.8.1.12 does not introduce any new modes of operation or testing. In fact, each diesel generator is already connected to its respective bus during operation to satisfy SR 3.8.1.2, the monthly test. In the monthly test, the diesel is run loaded for 1 hour, connected to the grid, with the unit in operation. Therefore, allowing the 24 hour test to be performed for the diesels introduces nothing new with respect to diesel testing, and as a result, the possibility of a new type of event is not created.

3. The change does not significantly reduce the margin of safety for the following reasons:

The probability of an electrical disturbance affecting plant operation while connecting the diesel to the bus is minimized by the fact that the diesel's output voltage and phase angle are synchronized with those of the grid prior to being tied to the emergency bus. Based on engineering judgement, with the diesel synchronized and running connected to the grid, the likelihood of an electrical disturbance being transferred through the system and causing a plant transient is very small. Furthermore, since only one diesel will be tied to the bus in either Mode 1 or Mode 2, neither of the other two diesel generators will be affected by the disturbance.

If a LOCA/LOSP occurred during the 24-hour run, the diesel generator's auto-logic would take the diesel out of the test mode. This feature is tested once per 18 months per Technical Specifications. With the diesel no longer in test, it would be free to once again tie itself to the bus. Additionally, only one diesel will be tied to the line during a 24-run performed with the reactor operating, with other diesel generators available to supply power to their respective emergency busses. This ensures two diesels are available to shut down the plant and maintain it in a safe condition.

Other precautions will also be placed into plant procedures; specifically, the 24-hour run will not be performed on line during periods of severe weather or during grid instabilities.

For the above reasons, the proposed Technical Specifications change will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 18, 1999.

Description of amendment request: The proposed amendments would revise technical specification surveillance requirements 4.7.7, 4.7.8, and 4.9.12, on the control room makeup and cleanup filtration system and the fuel handling building exhaust air system, from a requirement that laboratory analysis of charcoal filter samples meets the laboratory testing criteria of Regulatory Position C.6.a of Regulatory Guide 1.52, "Design, Testing, and Maintenance Criteria for Postaccident Engineered-Safety-Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants," Revision 2, March 1978, to a requirement that the analysis meets the laboratory testing criteria of American Society for Testing and Materials ASTM D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the test protocol for Engineered Safety Feature charcoal filters from ASTM D3803–1979 to ASTM D3803–1989. The change in protocol is a conservative change in that the revised test conditions will more accurately reflect the functionality of the charcoal filters under accident conditions. There is no change in plant configuration or components. The tests are conducted under laboratory conditions, so that change in protocol has no effect on plant operation. There is no change in how samples are taken to be used in analyses.

Based on the above, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the test protocol for Engineered Safety Feature charcoal filters from ASTM D3803–1979 to ASTM D3803–1989. The change in protocol is a conservative change in that the revised test conditions will more accurately reflect the functionality of the charcoal filters under accident conditions. There is no change in plant configuration or components. The tests are conducted under laboratory conditions, so that change in protocol has no effect on plant operation. There is no change in how samples are taken to be used in analyses.

Based on the above, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed change revises the test protocol for Engineered Safety Feature charcoal filters from ASTM D3803–1979 to ASTM D3803–1989. The change in protocol is a conservative change in that the revised test conditions will more accurately reflect the functionality of the charcoal filters under accident conditions. There is no change in plant configuration or components. The tests are conducted under laboratory conditions, so that change in protocol has no effect on plant operation. There is no change in how samples are taken to be used in analyses.

Based on the above, the margin of safety is not significantly reduced by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 6, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification Definition 1.9, "Core Alterations," to explicitly define core alterations as the movement of any fuel, sources, or reactivity control components within the reactor vessel with the vessel head removed and fuel in the vessel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any physical changes to the facility. The change to the definition of core alterations is consistent with that used in NUREG–1431, Revision 1, "Improved Standard Technical Specifications for Westinghouse Plants." The proposed revision to the definition of core alterations will not affect the Technical Specifications Section 3/4.9, "Refueling Operations", requirements which ensure the core remains subcritical, nor will any Limiting Condition for Operation required for core alterations or the movement of fuel be changed. The proposed change will not affect any safety margin or safety limit applicable to the facility. Therefore, the proposed change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not affect any previously evaluated accident scenario, nor does it create any new accident scenarios. The proposed change is a clarifying revision to the definition of core alterations only, and will not alter any of the currently approved refueling operation activities, nor will it create any new refueling operation activities.

Since the proposed change does not impact operation of the facility as presently approved, no possibility exists for a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

South Texas Project Technical Specification 3/4.9.1, "Boron Concentration", ensures that the reactor will remain subcritical ($K_{eff} \leq 0.95$) during core alterations and that uniform boron concentration is maintained for reactivity control in the water volume having direct access with the reactor vessel. The proposed change in the definition of core alterations will allow "non-reactive" components, such as cameras, lights, tools, movable incore detector thimbles, etc., to be moved or manipulated in the vessel, with fuel in the vessel and the vessel head removed, without constituting a core alteration. This is acceptable because these types of components will have negligible effect on core reactivity, and will not affect reactor coolant system boron concentration. Therefore, operations using these types of components will not adversely affect K_{eff} or the shutdown margin. Additionally, reactor subcriticality status is continuously monitored in the control room during Operating Mode 6, as specified in Specification 3/4.9.2, "Instrumentation". Thus, there will be no reduction in a margin of safety resulting from the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 14, 1999 (TS 99–12).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Operating Licenses DPR–77 (Unit 1) and DPR–79 (Unit 2) by revising the Technical Specification (TS) surveillance requirements for steam generator tube integrity by incorporating an alternate repair criteria for axial primary water stress corrosion cracking at dented tube support plate intersections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of Sequoyah Units 1 and 2, in accordance with the proposed license amendment, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Examination of crack morphology for primary water stress corrosion cracking (PWSCC) at dented intersections has been found to show one or two microcracks well aligned with only a few uncorroded ligaments and little or no other inside diameter axial cracking at the intersection. This relatively simple morphology is conducive to obtaining good accuracy in Non-destructive Examination (NDE) sizing of these indications. Accordingly, alternate repair criteria is established based on crack length and average and maximum depth within the thickness of the tube support plate (TSP) or limited extension outside the thickness of the TSP.

The application of the alternate repair criteria (ARC) requires a condition monitoring assessment. If all indications satisfy the structural limits with regard to bounding lengths and average depths, the condition monitoring burst pressure requirements are satisfied.

In addition, an operational assessment is performed to determine the length/depth repair bases. The crack profiles are projected to the end of the operating cycle for comparison with acceptance limits (i.e., length limit and average depth limit). Burst pressures are calculated from the depth profiles by searching the total crack length for the partial length that results in the lowest burst pressure. Because the burst pressure can be lower than that for the longest acceptable crack length at its average depth, a fixed repair limit is not established. The repair bases is obtained by projecting the crack profile to the end of the next operating cycle and determining if the burst pressure for the projected profile meets the burst pressure margin requirements defined by [Westinghouse Topical Report] WCAP–15128, Revision 1, dated August 1999. If the projected end-of-cycle (EOC) burst margin requirements are satisfied, the indication is left in service. Thus, the repair limit relative to length and average depth assures that the operational assessment requirements are satisfied.

Crack length limits are established in the WCAP to assure that crack extension and growth outside of the TSP provides adequate margin against burst for the free-span crack (*i.e.*, $3DP_{NO}$ burst capability is maintained) in addition to the total crack length. A repair limit is also established in the WCAP for maximum depth to provide a high confidence that the indication will not progress through the wall at the end of an operating cycle.

Based on the above, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the Sequoyah FSAR [Final Safety Analysis Report].

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed S/G [steam generator] tube ARC does not introduce any significant changes to the plant design basis. A single or multiple tube rupture event would not be expected in a S/G in which the plugging criteria has been applied. Both condition monitoring and operational assessments are completed as part of the implementation of ARC to determine that structural and leakage margin exists prior to returning S/Gs to service following inspections. If the condition monitoring requirements are not satisfied for burst or leakage, the causal factors for EOC indications exceeding the expected values will be evaluated. The methodology and application of this ARC will continue to ensure that tube integrity is maintained during all plant conditions consistent with the requirements of draft RG [Regulatory Guide] 1.121 and Revision 1 of RG 1.83.

A S/G tube rupture event is one of a number of design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a S/G tube rupture event, a bounding primary-to-secondary leakage rate equal to the operational leakage limits in the TSs, plus the leak rate associated with the double ended rupture of a single tube, is

assumed. For other design basis accidents such as a main steam line break and loss of alternating current power, the tubes are assumed to retain their structural integrity and exhibit primary-to-secondary leakage within the limits assumed in Final Safety Analysis Report (FSAR) accident analyses. The proposed ARC does not result in an accident leakage rate in excess of that assumed or calculated in SQN's current accident analyses.

Even under severe accident conditions, the potential for significant leakage would be expected to be small and not significantly different than for other degradation mechanisms repaired to 40 percent depth limits. It is concluded that application of the proposed ARC for PWSCC at dented TSP locations results in a negligible difference from current 40-percent repair limits.

TVA continues to implement a maximum operating condition leak rate limit of 150 gallons per day (0.1 gallons per minute) per S/G to preclude the potential for excessive leakage during all plant conditions.

The possibility of a new or different kind of accident from any previously evaluated is not created because S/G tube integrity is maintained by inservice inspection and effective primary-to-secondary leakage monitoring.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

Tube repair limits provide reasonable assurance that tubes accepted for continued service without plugging or repair will exhibit adequate tube structural and leakage integrity during subsequent plant operation. The implementation of the proposed ARC is demonstrated to maintain S/G tube integrity consistent with the criteria of draft NRC Regulatory Guide 1.121. The guidelines of RG 1.121 describe a method acceptable to the NRC staff for meeting General Design Criteria (GDC) 2, 4, 14, 15, 31, and 32 by ensuring the probability or the consequences of S/G tube rupture remain within acceptable limits. This is accomplished by determining the limiting conditions of degradation of S/G tubing, for which tubes with unacceptable cracking should be removed from service.

Upon implementation of the proposed ARC, even under the worst-case conditions, the occurrence of PWSCC at the tube support plate elevations is not expected to lead to a S/G rupture event during normal or faulted plant conditions. All tubes are shown to retain the margins of safety against burst consistent with the safety factor margins implicit in the stress limit criteria of Section III of the American Society of Mechanical Engineers [ASME] Code, for all service loading conditions. In addition, all tubes have been shown to retain a margin of safety against gross failure or burst consistent with the stress limits of [Paragraph] NB–3225 of Section III of the ASME Code under postulated accident conditions concurrent with a safe shutdown earthquake.

In addressing the combined effects of loss-of-coolant accident plus safe shutdown earthquake on the S/G component (as required by GDC 2), it has been determined that tube collapse will not occur in the Sequoyah S/Gs. This analysis is discussed in WCAP 13990, dated May 1994. No tubes are excluded from the application of the proposed ARC.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to the plant safety analyses as defined in the FSAR or TSs.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 8, 1999.

Brief description of amendments: The proposed amendments would change Technical Specification 5.5.11, "Ventilation Filter Testing Program (VFTP)" to include the requirement for laboratory testing of Engineered Safety Feature (ESF) Ventilation System charcoal samples per American Society for Testing and Materials (ASTM) D3803–1989 and the application of a safety factor of 2.0 to the charcoal filter efficiency assumed in the plant design-basis dose analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes only involve the laboratory testing methodology performed on activated charcoal to help determine whether the charcoal in the filtration units can remain in place or [if it] require[s] replacement.

Generic Letter 99–02 intends to standardize the way nuclear-grade activated charcoal is tested throughout the industry in order to provide conservative filtration results as well as uniform and repeatable tests. The purpose is to ensure the filtration systems protect the Operators in the Control Room (GDC [General Design Criterion] 19) as well as the public (10CFR100), in the event of a radiological accident scenario.

The charcoal adsorber sample laboratory testing per ASTM D3803–1989 is more stringent than the current testing practice and more accurately demonstrates the required performance of the adsorbers following a design ba[s]is LOCA [loss of coolant accident]. No Licensing Basis Accidents or mitigation capability will be affected by incorporation of these changes.

Therefore, this change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Plant procedures are only altered to the extent that the revised specification will allow different reference standards for testing activated charcoal. These changes ensure continued support of the safety related ESF filtration equipment and do not affect their failure or failure modes.

Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

None of the changes being proposed alter the environmental conditions maintained in the areas supported by the ESF filtration systems during normal operations and following an accident. Also these changes will not cause an increase in radiological releases through the Primary Plant Ventilation Exhaust System. As a result, the margin of safety for these functions remains the same.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 3, 1999 (ULNRC–04158).

Description of amendment request: The proposed amendment requested changes to Section 5.6.6, "Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR)," of the improved Technical Specifications (ITS) that were issued on May 28, 1999, in Amendment No. 133. The current Technical Specifications (CTS) remain in effect until the ITS are implemented on or before April 30, 2000. The proposed changes to the ITS would approve the use of the PTLR by the licensee to make changes to the plant pressure temperature limits and low temperature overpressure protection

limits without prior NRC staff approval in accordance with Generic Letter 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits," dated January 31, 1996. The proposed changes are: (1) Add the word criticality to ITS Subsection 5.6.6.a as one of the reactor conditions for which RCS pressure and temperature limits will be determined, (2) add the phrase "and COMS PORV," where COMS PORV stands for cold overpressure mitigation system power operated relief valve, to the the introductory paragraph of ITS subsection 5.6.6.b to show that the analytical methods listed in the subsection are also for the COMS PORV, and (3) replace the two documents listed in ITS subsection 5.6.6.b by the reference to the future NRC letter that approves the use of the PTLR and the Westinghouse Topical Report, WCAP–14040–NP–A, Revision 2, "Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves," dated January 1996, that provides the methodology that will be used by the licensee in using the PTLR report. The current plant pressure temperature limits and low temperature overpressure protection limits are in the CTS and were approved in Amendment No. 124, which was issued April 2, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change submits the PTLR, which contains the relocated CTS heatup and cooldown, and COMS PORV limits and the methodology used to calculate them, and the added references into ITS 5.6.6. The proposed change is administrative in nature since it is a movement of information from the CTS to a licensee controlled document, and has prior NRC staff approval. The PTLR contains the limit curves and the ITS requires more restrictive actions to be taken when the limiting conditions for operation are not met than is currently required by the CTS. The heatup and cooldown, and COMS PORV limits within the PTLR will be implemented and controlled per Callaway Plant programs and procedures and changes to the PTLR will be performed per requirements of 10 CFR 50.59 to ensure that change to these limits in the future will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the movement of the heatup and cooldown, and COMS PORV limits from the CTS to the PTLR has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of this proposed change. The proposed change is administrative in nature since it is a movement of requirements from the CTS to a licensee controlled document, the PTLR, and the change adds references into the ITS incorporating the licensee controlled document. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for an analyzed event. The margin of safety presently provided by the CTS remains unchanged. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. Therefore, the proposed change is administrative in nature and does not impact the operation of Callaway Plant in a manner that involves a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 5, 1999, as supplemented on December 3, 1999.

Description of amendment request: This proposed change revises the applicability for the reactor power distribution limits and the Average Power Range Monitor (APRM) gain adjustments. The applicability is proposed to be revised to operation at ≥25% Rated Thermal Power (RTP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated because the revisions standardize and make consistent the applicability and actions for the reactor power distribution limits in the current Technical Specifications. Since reactor operation with these revised Specifications is fundamentally unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events or assumed mitigation of accident or transient events. The structural and functional integrity of plant systems is unaffected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect any parameters or conditions that could contribute to the initiation of any accident. No new accident modes are created. No safety-related equipment or safety functions are altered as a result of these changes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

At thermal power levels < 25% RTP, the reactor is operating with substantial margin to the reactor power distribution limits [and this margin is unchanged]. The proposed change does not impact operation at power levels ≥ 25% RTP and has no effect on any safety analysis assumption or initial condition. Thus, the margin of safety required for safety analyses [is] maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 15, 1999 (TSCR 202).

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) in order to extend the required frequency of the control rod exercise test (TS 15.4.1, Table 15.4.1–2, Item 10) from the current frequency of every 2 weeks to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Relaxing the frequency of performance for a surveillance does not result in any hardware changes, nor does it significantly increase the probability of occurrence for initiation of any analyzed events since the function of the equipment has remained unchanged. The proposed frequency has been determined to be adequate based on industry operating data as supported by the conclusions reached in NUREG 1366 and NRC GL [Generic Letter] 93–05.

Surveillance tests are intended to provide assurance of continued component operability. The frequency of performance of a surveillance does not significantly increase the consequences of an accident, as a change in frequency does not change the response of the equipment in performing its specified function (i.e. the overall functional capabilities of the rod control system will not be modified). Increasing the interval of control rod exercise testing will reduce the possibility of inadvertent testing related [to] reactor trips and dropped rods, and resulting in fewer challenges to safety systems and resultant plant transients.

This change does not involve a significant increase in the consequences of an accident or event previously evaluated because the source term, containment isolation or radiological releases are not being changed by the proposed revision. Existing system and component redundancy and operation is not being changed by the proposed change. The assumptions used in evaluating the radiological consequences in the PBNP Final Safety Analysis Report are not invalidated. Therefore, this change does not affect the consequences of previously evaluated accidents.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not introduce nor increase the number of failure mechanisms of a new or different type of accident than those previously evaluated since there are no physical changes being made to the facility. The design and design basis of the facility remain unchanged. The plant safety analyses remain unchanged. All equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions nor result in any increase in challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in the margin of safety because existing component redundancy is not being changed by this proposed change. There are no changes to initial conditions contributing to accident severity or consequences. The proposed surveillance frequency, as supported by past test results, continues to provide the required assurance of operability, such that safety margins established through the design and facility license, including the Technical Specifications, remain unchanged. Therefore, there are no significant reductions in a margin of safety introduced by this proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as a separate individual notice. The notice content was the same as above. It was published as an individual notice either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. It is repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 20, 1999.

Brief description of amendment: The amendment changed the footnote to the Improved Technical Specifications associated with the Design Features Fuel Storage Specification 4.3.1.1.b which required that 2300 ppm boron be maintained in the Spent Fuel Pool.

Date of publication of individual notice in **Federal Register**: November 19, 1999 (64 FR 63346).

Expiration date of individual notice: December 20, 1999.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L

Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: September 14, 1999.

Brief description of amendments: The amendments approve the administrative changes to PVNGS TS 5.5.2, Primary Coolant Sources Outside Containment, to delete the references to the post-accident sampling return piping of the radioactive waste gas system and the liquid radwaste system, and TS 5.6.2, Annual Radiological Environmental Operating Report, to delete the administrative requirement to include in the report certain TLD [thermoluminescence dosimeter] results that are no longer available.

Date of issuance: November 24, 1999.

Effective date: November 24, 1999, to be implemented within 60 days.

Amendment Nos.: Unit 1—122, Unit 2—121, Unit 3—121.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 20, 1999 (64 FR 56528).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 24, 1999.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 21, 1999

Brief description of amendment: This amendment revises Technical Specifications (TS) for the Shearon Harris Nuclear Power Plant by implementing selected improvements described in NRC Generic Letter (GL) 93–05, "Line-Item Technical Specifications To Reduce Surveillance Requirements For Testing During Power Operation," dated September 27, 1993.

Date of issuance: December 17, 1999.

Effective date: December 17, 1999.

Amendment No: 93.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: November 17, 1999 (64 FR 62705).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1999.

No significant hazards consideration comments received: No.

CBS Corporation, Docket No. 50–22, Westinghouse Test Reactor, Waltz Mill, Pennsylvania

Date of application for amendment: September 15, 1999, as supplemented on October 4, 1999.

Brief description of amendment: This amendment changes the decommissioning Technical Specifications dealing with controls for ingress, egress, and equipment removal from containment.

Date of issuance: December 7, 1999.

Effective Date: December 7, 1999.

Amendment No: 11.

Facility License No. TR–2: This amendment changes the decommissioning Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59798).

The Commission has issued a Safety Evaluation for this amendment dated December 7, 1999.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Inc., Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1, Buchanan, New York

Date of application for amendment: July 20, 1999.

Brief description of amendment: The amendment would revise the Technical Specifications to change the senior license requirements for the Operations Manager.

Date of issuance: December 15, 1999.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No: 46.

Facility Operating License No. DPR–5: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1999 (64 FR 49027).

The July 20, 1999, letter providing clarifying information that did not change the scope of the original application and proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1999.

No significant hazards consideration comments received: No.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: May 5, 1999, as supplemented June 22 and July 30, 1999.

Brief description of amendments: These amendments conform the licenses to reflect the transfer of Operating Licenses Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station Unit Nos. 1 and 2, to the extent held by Duquesne Light Company (DLC) to the Pennsylvania Power Company, and the operating authority under the licenses from DLC to FirstEnergy Nuclear Operating Company as previously approved by an Order dated September 30, 1999.

Date of issuance: December 3, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 226 and 104.

Facility Operating License Nos. DPR–66 and NPF–73: These amendments revised the Operating Licenses.

Date of initial notice in **Federal Register**: June 14, 1999 (64 FR 31880).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1999. The June 22 and July 30, 1999, supplements were within the scope of the initial application as originally noticed.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: September 14, 1999.

Brief description of amendment: This amendment eliminates License Condition 2.C.10 of the Operating License regarding controls over the containment air locks during plant outages and modifies License Condition 2.F of the Operating License regarding reporting requirements for violations of the Technical Specifications and the Environmental Protection Plan.

Date of issuance: December 15, 1999.

Effective date: December 15, 1999.

Amendment No.: 109.

Facility Operating License No. NPF–58: This amendment revised the Operating License.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59803).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated December 15, 1999.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: June 29, 1999, as supplemented August 27, October 29, and November 3, 1999.

Brief description of amendment: The amendment clarifies the authority to possess certain types of radioactive materials and components at either Unit 1 or Unit 2. Following the transfer of the Three Mile Island, Unit 1 (TMI–1), operating license to AmerGen, these items, under the amendment, may continue to be moved between the TMI–1 and TMI–2 units as they currently are.

Date of issuance: December 9, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 217.

Facility Operating License No. DPR–50: Amendment revised the License.

Date of initial notice in **Federal Register**: July 12, 1999 (64 FR 37572). The August 27, October 29, and November 3, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1999.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, (TMI–2) Middletown, Pennsylvania

Date of application for amendment: June 29, 1999, as supplemented by letters dated August 27, October 29, and November 3, 1999.

Brief description of amendment: The amendment adds a provision to the license conditions to ensure that the storage of certain types of radioactive materials and components at Three Mile Island (TMI), Unit 2, pursuant to the TMI, Unit 1 license, does not result in a source term that would exceed the limits in the TMI, Unit 2 Post-Defueling Monitored Storage Safety Analysis Report.

Date of issuance: December 14, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 53.

Facility Operating License No. DPR–73: Amendment revised the License.

Date of initial notice in **Federal Register**: July 12, 1999 (64 FR 37572). The August 27, October 29, and November 3, 1999, supplements provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1999.

No significant hazards consideration comments received: No.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: July 23, 1999, as supplemented July 30, August 9, August 20, October 7, and October 11, 1999.

Brief description of amendment: The amendment replaces references to Illinois Power Company in the Operating License with references to AmerGen Energy Company, LLC, to reflect the transfer of the license as approved by an Order dated November 24, 1999.

Date of issuance: December 15, 1999.

Effective date: December 15, 1999.

Amendment No.: 123.

Facility Operating License No. NPF–62: The amendment revised the Operating License.

Date of initial notice in **Federal Register**: August 19, 1999 (64 FR 45290).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1999.

Comments received: Yes. Comments received from The Environmental Law and Policy Center of the Midwest were addressed in the staff's safety evaluation.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 23, 1999, as supplemented October 11 and November 10, 1999.

Brief description of amendments: The amendments provide approval to move steam generator sections through the auxiliary building and to disengage crane travel interlocks, and provide relief from performance of Technical Specification Surveillance Requirement 4.9.7.1. The loads to be moved are in support of the Unit 1 Steam Generator Replacement Project.

Date of issuance: December 7, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 233 and 216.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 26, 1999 (64 FR 57665). The October 11, 1999, submittal provided corrected TS pages. The November 10, 1999, submittal was in response to a NRC request for additional information dated October 26, 1999, and provided clarifying information to the original submittal. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 1999.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 1, 1999, as supplemented November 19, 1999.

Brief description of amendments: The amendments involve the resolution of an unreviewed safety question related to certain small-break loss-of-coolant accident scenarios for which there may not be sufficient containment recirculation sump water inventory to support continued operation of the emergency core cooling system and containment spray system pumps during and following switchover to cold leg recirculation. Resolution of this issue consists of a combination of physical plant modifications, new analyses of containment recirculation sump inventory, and resultant changes to the accident analyses to ensure sufficient water inventory in the containment recirculation sump. The amendments would also change the Technical Specifications dealing with the refueling water storage tank inventory and temperature, the required amount of ice in each ice basket in the containment, and the delay to start the containment air recirculation/hydrogen skimmer fans.

Date of issuance: December 13, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 234 and 217.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 29, 1999 (64 FR 58458).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 1999.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 12, 1999.

Brief description of amendment: The amendment changes the Technical Specifications to (1) allow reactor vessel hydrostatic and leakage tests when reactor coolant temperature is above 212°F without maintaining primary containment integrity and (2) establish a limit and a surveillance requirement on reactor coolant activity when reactor coolant temperature is above 212°F, the reactor is not critical, and primary containment has not been established.

Date of issuance: November 24, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 107.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14283).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1999.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 30, 1999.

Brief description of amendment: The amendment changes the Technical Specification surveillance periodicity requirements for the control room emergency filtration system.

Date of issuance: December 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 108.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59805).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1999.

No significant hazards consideration comments received: No.

PECO Energy Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: March 1, 1999, as supplemented June 14, October 1 and October 6, 1999.

Brief description of amendment: The amendment supports the installation of a digital Power Range Neutron Monitoring system and the incorporation of the long-term thermal-hydraulic stability solution hardware.

Date of issuance: October 14, 1999.

Effective date: Effective as of date of issuance and shall be implemented prior to restart from the Peach Bottom Atomic Power Station, Unit 3, October 1999 refueling outage.

Amendment No.: 234.

Facility Operating License No. DPR–56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 2, 1999 (64 FR 29711). The June 14, October 1 and October 6, 1999, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1999.

No significant hazards consideration comments received: No.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 6, 1999.

Brief description of amendment: The amendment changes the Technical Specifications by removing the words "three individual underground" and "underground" from the limiting conditions for operation when referring to the emergency diesel generator fuel oil storage tanks in Sections 3.7.A.5 and 3.7.F.4.

Date of issuance: December 7, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 198.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: June 2, 1999 (64 FR 29713).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1999.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., (SNC) Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Dates of amendments request: March 12, 1998, as supplemented by letters of April 24, 1998, August 20, 1998, November 20, 1998, February 3, 1999, February 20, 1999, April 30, 1999 (two letters), May 28, 1999, June 30, 1999, July 27, 1999, August 19, 1999, August 30, 1999, September 15, 1999, and September 23, 1999.

Brief description of amendments: The amendments fully convert SNC's Current TS (CTS) to Improved TS (ITS) based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, of April 1995. The amendments add two new Additional Conditions to Appendix C of the Unit 1 and Unit 2 Facility Operating Licenses. The first new Additional Condition authorizes SNC to relocate certain CTS requirements to SNC-controlled documents. The second new condition addresses the schedule for performing new and revised ITS surveillances.

Date of issuance: November 30, 1999.

Effective date: As of the date of issuance and shall be implemented no later than March 31, 2000.

Amendment Nos.: 146 and 137.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments fully convert SNC's CTS to ITS.

Dates of initial notices in **Federal Register:** May 25, 1999 (64 FR 28218) and August 25, 1999 (64 FR 46443). The supplemental letters dated April 24, 1998, August 20, 1998, November 20, 1998, February 3, 1999, February 20, 1999, April 30, 1999 (two letters), May 28, 1999, June 30, 1999, July 27, 1999, August 19, 1999, August 30, 1999, September 15, 1999, and September 23, 1999, provided clarifying information that did not change the initial proposed no significant hazards consideration determinations.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 1999.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 28, 1999.

Brief description of amendments: The amendments revised Vogtle's operating licenses to allow the licensee to establish containment hydrogen monitoring within 90 minutes of initiation of a safety injection following a loss-of-coolant accident, compared to the current 30 minute requirement.

Date of issuance: December 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 110 and 88.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Operating Licenses.

Date of initial notice in **Federal Register:** August 11, 1999 (64 FR 43779).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1999.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 28, 1998, as supplemented by letters dated May 31 and October 21 (2 letters), 1999.

Brief description of amendments: The amendments authorize the revision of the South Texas Project updated final safety analysis report (UFSAR) to allow the use of operator action to reduce the steam generator power-operated relief valve setpoint consistent with the revised small-break loss-of-coolant accident analysis for the replacement Delta 94 SGs.

Date of issuance: December 14, 1999.

Effective date: December 14, 1999. Revisions will be incorporated into the next UFSAR update in accordance with the schedule in 10 CFR 50.71(e).

Amendment Nos.: Unit 1—119, Unit 2—107.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments authorize revision of the UFSAR.

Date of initial notice in **Federal Register:** September 9, 1998 (63 FR 48268).

The May 31 and October 21 (2 letters), 1999, supplements provided additional clarifying information. One of the October 21, 1999, supplements also provided a revised UFSAR pages. This information was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 14, 1999.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant , Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 30, 1999.

Description of amendment request: The amendments revise the operating licenses to remove license conditions that have become outdated, are no longer applicable, or are redundant, and to consolidate license conditions which currently exist in two locations in each units license.

Date of issuance: December 16, 1999.

Effective date: December 16, 1999.

Amendment Nos.: 237, 262, and 222.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the licenses.

Date of initial notice in **Federal Register:** November 3, 1999 (64 FR 59807).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1999.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 27, 1998, as supplemented by letters dated June 10, 1998, and October 22, 1999.

Brief description of amendments: The amendments change the refueling water storage tank (RWST) low-low level setpoints in Technical Specification Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," to increase the volume of water available to containment spray pumps when the containment spray system switches to the recirculation mode of operation.

Date of issuance: December 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 73 and 73.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1998 (63 FR 38205). The October 22, 1999, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the application beyond the scope described in the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1999.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 18, 1999.

Brief description of amendment: The amendment revises the reactor core spiral reloading pattern such that it begins around a source range monitor. The offloading pattern is the reverse sequence.

Date of Issuance: December 14, 1999.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 181.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 8, 1999 (64 FR 48867).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 14, 1999.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 23, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) by deleting the test requirements for snubbers from the TSs. These requirements are already included in the Point Beach Nuclear Plant In-Service Inspection Program.

Date of issuance: December 6, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 191 and 196.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1998 (63 FR 71977).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 1999.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 29, 1998, as supplemented by letters dated July 29 and October 21, 1999.

Brief description of amendment: The amendment revised (1) the reactor coolant system (RCS) heatup and cooldown limit curves in Figures 3.4–2 and 3.4–3 and cold overpressure mitigation system power-operated relief valve setpoint limit curve in Figure 3.4–4 of the current TSs, and (2) the list of references in Section 5.6.6 on the RCS pressure temperature limits report (PTLR) in the improved TSs. The improved TSs were issued in Amendment No. 123, dated March 31, 1999, to replace the current TSs, but have not yet been implemented. The revision to Section 5.6.6 of the improved TSs replaced the previous references to NRC documents giving criteria for the above limit curves in the current TSs by the references to (1) the NRC letter of December 2, 1999, that approved the use of the PTLR of Generic Letter 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits," dated January 31, 1996, for WCGS, and (2) WCAP–14040–NP–A, "Methodology Used to Develop Cold Overpressure Mitigation System Setpoints and RCS Heatup and Cooldown Limit Curves." The PTLR will provide the methodology for the licensee to revise the heatup and cooldown and setpoint limit curves for WCGS in the future without prior staff approval, after the improved TSs are implemented and have replaced the current TSs. The improved TSs are to be implemented by December 31, 1999.

Date of issuance: December 7, 1999.

Effective date: December 7, 1999, to be implemented by December 31, 1999.

Amendment No.: 130.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9023) and September 8, 1999 (64 FR 48869). The October 21, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1999.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 8, 1999.

Brief description of amendment: The amendment corrects 15 errors in the improved Technical Specifications that was issued in Amendment No. 123 on March 31, 1999. In addition, four corrections to Table LG, "Details Relocated from Current Technical Specifications [CTS]," that was attached to the safety evaluation dated March 31, 1999, issued with Amendment No. 123 were made.

Date of issuance: December 16, 1999.

Effective date: December 16, 1999, to be implemented December 31, 1999.

Amendment No.: 131.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1999 (64 FR 62231).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1999.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 8th day of December 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33684 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: OPM proposes to add a new system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C.552a(e)(4)).

DATES: The changes will be effective without further notice February 8, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606-8358.

SUPPLEMENTARY INFORMATION: The photo identification and visitor access records system was established to improve security in OPM facilities. This system allows the system manager to control and/or monitor access to the building and sensitive areas within the building.

Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/INTERNAL–14

SYSTEM NAME:

Photo Identification and Visitor Access Control Records.

SYSTEM LOCATION:

U.S. Office of Personnel Management, Office of Contracting and Administrative Services, 1900 E Street NW., Washington, DC 20415–7100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals visiting OPM facilities, OPM employees, contractors, and retirees seeking access to OPM facilities and classified records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of individuals visiting OPM and employees, contractors, and retirees identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services of 1949, as amended, and 40 U.S.C. 486(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use 1 of the Prefatory Statement at the beginning of OPM's

system notices (60 FR 63075, effective January 17, 1996) applies to the records maintained within the system. The are no routine uses unique to this system of records.

PURPOSE(S):

OPM will use the records to issue official U.S. Government Identification cards to OPM employees and contract employees requiring access to OPM building and offices. The records will also be used to maintain a record of all holders of identification cards, for renewal and recovery of expired cards, and to identify lost or stolen cards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an automated database.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to security and guard force personnel. Records are stored in guarded security areas.

RETENTION AND DISPOSAL:

Records are destroyed 3 months after they are returned to the issuing office.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Office of Personnel Management, Office of Contracting & Administrative Services, Facilities Services Division, Security Office, Washington, DC 20415–7100.

NOTIFICATION PROCEDURE:

OPM employees wishing to inquire whether this system of records contains information about them should contact the system manager indicated. Individuals must furnish their full names for their records to be located and identified.

RECORD ACCESS PROCEDURE:

OPM employees wishing to request access to records about them should contact the system manager indicated. Individuals must furnish their full names for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

OPM employees wishing to request amendment of their records should contact the system manager indicated. Individuals must furnish their full names for their records to be located and identified.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom the records pertain.

b. Information taken from official OPM records.

[FR Doc. 99–33588 Filed 12–28–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42264; File No. SR–PHLX–99–38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the Removal of Certain Printers From the Equity Floor

December 21, 1999.

I. Introduction

On September 10, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the removal of certain printers from the floor of the Exchange, the revision of the Exchange's minor rule plan, and the modification of Advice E–5 to conform to Phlx Rule 206. On October 22, 1999, the Exchange submitted Amendment No. 1 to its proposed rule change.[3] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on November 24, 1999.[4] No comments were received on the proposal. On December 20, 1999, the Exchange submitted Amendment No. 2 to its proposed rule change.[5] This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposal

The Phlx proposes to amend Equity Floor Procedure Advice E–5 ("Advice E–5"), Clocked Tickets; Phlx Rule 206, Written Orders-Day Orders; and Phlx Rule 216, Records to be Kept. The purpose of the amendments to Advice E–5 and Phlx Rules 206 and 216 is to allow for the removal of the Designated Automatic Routing to Terminal System ("DARTS") printers from the equity floor without causing the specialists and floor brokers to be in violation of Advice E–5 or Phlx Rules 206 and 216.[6]

Currently, orders sent to the equity floor through the PACE System[7] generate a hard copy ticket, which is printed on a DARTS printer.[8] These tickets provide hard copy records of the time of receipt of orders. In addition, specialists stamp the time of execution of the order on the reverse side of the ticket on all manual market and limit orders. However, the system that supports the DARTS printers is not, and cannot become, Year 2000 compliant. Therefore, the DARTS printers will be removed from the Equity Floor. The information that is produced by the DARTS printer will be maintained electronically for the appropriate time periods mandated by the books and records requirements of the Commission. The Exchange has submitted a letter to the Commission undertaking, in part, to maintain and preserve, on behalf of the equity specialist firms, all information contained on the order tickets generated by the DARTS printer.[9]

Advice E–5 requires floor brokers to record, by time stamp, the time of receipt of the order on the front of the ticket and the time of execution of the order on the reverse side of the ticket. Specialists also are required to record the time of execution of orders executed

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated October 21, 1999 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 42151 (November 17, 1999), 64 FR 66223 (November 24, 1999).

[5] In Amendment No. 2, the Exchange requested accelerated approval of its proposed rule change and notified the Division that the Exchange will be submitting an undertaking concerning the record-keeping requirements of its equity specialists affected by the removal of the DARTS printers. *See* Letter from John Dayton, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division, Commission, dated December 17, 1999 ("Amendment No. 2"). A copy of the undertaking letter was received on December 20, 1999. *See* Letter from Lanny Schwartz, Executive Vice President, Legal, Phlx, to Michael A. Macchiaroli, Associate Director, Office of Risk Management and Control, Division, Commission, dated December 20, 1999 ("Schwartz Letter").

[6] This proposal affects PACE order tickets only, not telephone orders/manual tickets or production of hard copy reports.

[7] PACE is the Exchange's automated order routing and execution system on the equity trading floor.

[8] PACE orders are also processed electronically. The Exchange believes, therefore, that the elimination of hard copy tickets will not impact the ability to efficiently process orders and executions. In fact, the Exchange believes that the removal of the hard copy tickets will improve trade processing efficiencies and reduce the amount of paper that is used on the trading floor. *See* Amendment No. 2, *supra* note 5.

[9] *See* Schwartz Letter, *supra* note 5.

off the specialist's book. In addition, Phlx Rule 206 requires, in part, that all orders given to a specialist be in writing and timed by him when received. Phlx Rule 216 requires, in part, that every specialist keep a record of all orders placed with him and all executions or such orders. In addition, Phlx Rule 216 requires the specialist to preserve such records in accordance with Rule 17a–4 of the Act.[10]

With no hard copy tickets recording order receipt and execution time data, floor brokers and specialists on the Equity Floor could be in violation of Advice E–5 and Rule 206 each time an order is received and executed on PACE. Without the DARTS printer tickets, specialists would be in violation of Rule 216 if they did not retain the DARTS printer tickets. Therefore, as a matter of practicality, it is necessary to eliminate the hard copy recording and document maintenance requirements for trades for which no hard copy ticket is generated. As stated above, the information that is produced by the DARTS printer will be maintained electronically for the appropriate time periods mandated by the books and records requirements of the Commission.

In addition, the proposed change to Advice E–5 would require specialists to record the time of receipt of hand-held orders to be placed on the specialist's book on the front of the ticket in accordance with Phlx Rule 206. Further, the fine schedule for violations of Advice E–5, which has not been updated for ten years, will be increased to better reflect the seriousness of the violation. The fine schedule for violations of Advice E–5 will be increased from $50 to $100 for the first occurrence, from $100 to $250 for the second occurrence, and from $200 to $500 for the third occurrence.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the removal of the DARTS printers is necessary since the printers cannot become Year 2000 compliant. The Commission notes that all PACE orders are currently processed electronically, and, further, that the Exchange has represented that the removal of the DARTS printers should not impact the processing of orders or executions and may, in fact, improve trade processing efficiencies and reduce paper on the trading floor. The Commission also notes that the Exchange has submitted a letter to the Commission undertaking to maintain and preserve electronically, on behalf of the equity specialist firms, all information contained on the order tickets generated by the DARTS printer.[13] The Exchange also agreed, in part, to promptly surrender such records at the request of the equity specialist firm, as well as allow the Commission to examine such records.[14] The Commission therefore, believes that it is appropriate to modify the Phlx's rules so that Phlx floor brokers and specialists will not violate Advice E–5 and Phlx Rules 206 and 216 once the printers are removed.

The Commission also finds it is appropriate to revise Advice E–5 to specifically require specialists to record the time of receipt of hand-held orders to be placed on the specialist's book on the front of the ticket, because it merely incorporates the existing requirement of Phlx Rule 206. Thus, the proposed revision to Advice E–5 clarifies the obligations of specialists. Further, the Commission believes it is appropriate to update the fine schedule for violations of Advice E–5 to better reflect the seriousnesss of such violations. The Commission notes that the Exchange has represented that the fine schedule has not been revised for ten years.

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Exchange is merely asking for expedited approval of its proposal to ensue a smooth transition from the DARTS printers to an electronic system before the Year 2000. The Exchange believes that accelerated approval will allow ample time for equity floor members to adjust to this change.[15] Thus, the Commission believes that allowing the removal of the DARTS printers and the revision of the corresponding Phlx Rules 206 and 216 and Advice E–5 prior to the Year 2000 will allow the Exchange to address Your 2000 associated issues in an expedited manner. In addition, the Commission notes that the revision to Advice E–5, which would require specialists to record the time of receipt of hand-held orders to be placed on the specialists book on the front of the ticket, merely clarifies the requirement of Phlx Rule 206 in Advice E–5. The Commission also believes it is appropriate to revise the find scheldue in Advice E–5 in conjunction with the other amendments to Advice E–5.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principle office Exchange. All submission should refer to File No. SR–Phlx–99–38 and should be submitted by January 19, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[16] that the proposed rule change SR–PHLX–99–38), as amended, is approved.

For the Commission, by the Division of Market Requlation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 99–33850 Filed 12–28–99; 8:45 am]

BILLING CODE 8010–01–M

---

[10] 17 CFR 240.17a–e.

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Schwartz Letter, *supra* note 5.

[14] *Id.*

[15] To assist members with the transition, the Exchange intends to provide refresher training sessions relating to the equity specialist workstations. *See* Amendment No. 2, *supra* note 5.

[16] 15 U.S.C. 78s(b)(2).

[17] CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42263; File No. SR–Phlx–99–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Exemption of Certain Foreign Currency Options Participants From the Foreign Currency Options Participation Fee

December 21, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described as described in Items I, II, and III below, which Items have been prepared by Exchange.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to exempt the foreign currency option ("FCO") participants who had contracted to sell their FCO participations as of July 30, 1999 from payment of the FCO participation fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places species in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Summary Basis for the Proposed Rule Change

1. Purpose

On June 23, 1999, the Exchange submitted a proposed rule change to the Commission, to adopt an annual FCO participation fee for all FCO participants.[3] The proposed rule change became immediately effective when it was fully filed.[4] The Exchange stated that it would bill this fee semi-annually, effective July 1, 1999, and that it would be payable beginning with FCO participants who held legal title as of July 30, 1999.

The Exchange notified all FCO participants about the fee on June 25, 1999. In its notification, the Exchange stated that the FCO participation fee would not apply to FCO participants who were not legal title holders as of July 30, 1999.

The Exchange, pursuant to its By-laws,[5] must provide notice to the membership at least fourteen days prior to the effective transfer of legal title to an FCO participation. Within two weeks prior to July 30, 1999, 46 FCO participants contracted to sell their FCO participants. The fourteen-day notice period of these 4 sales extended beyond July 30, 1999, and subjected those 46 FCO participants to the new FCO participation fee.

On October 20, 1999, the Exchange's Finance Committee discussed this situation, clarifying that the intent of the FCO participation fee was to capture only FCO participants who had contracted to sell their participation as of July 30, 1999.[6] Accordingly, the Exchange will exempt FCO participants who had contracted to sell their participations by that date from payment of the participation fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[7] in general, and further the objectives of Section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the exemption distributes the burden of the fee equitably because those who would qualify for the exemption have sold their FCO participation and will not benefit from any improvements implemented with funds from the fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charged imposed by the Exchange and, therefore, has become effective upon filing pursuant to Rule (19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rate change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[11] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41780 (August 23, 1999), 64 FR 47887 (September 1, 1999) (SR–Phlx–99–20).

[4] The Commission deemed the proposed rule change to be filed on July 21, 1999, the date of the last amendment, due to the substantive nature of the amendments.

[5] *See* Phlx By-law Article I, Section 1–1(i); Phlx By-Law Article XV, Section 15–1.

[6] The Exchange purchased 41 out of the 46 FCO participants. The Exchange represents that the purchaser of the remaining FCO participations will pay a pro rata portion of the participation fee, calculated from the date the purchaser assumes legal title to the FCO participations, as provided by Phlx By-law Article XIV, Section 14–7. Telephone conservation between John Dayton, Counsel, Phlx, and Murrary Ross, Vice President and Secretary, Phlx, and Hong-anh Tran, Attorney, and Joshua Kans, Special Counsel, Division of Market Regulation ("Division"), Commission, on November 24, 1999.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–47 and should be submitted by January 19, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33851 Filed 12–28–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0372]

Zero Stage Capital VI, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide equity financing Mosaic Technology, Inc., 1106 Commonwealth Ave., Boston, MA 02215. The financing is contemplated for funding growth.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Zero Stage Capital V, L.P., an Associate of Zero Stage Capital VI, L.P., owns greater than 10 percent of Mosaic Technology, Inc. and therefore Mosaic Technology, Inc. is considered an Associate of Zero Stage Capital VI, L.P. as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.730(g), in the Boston Herald, Boston, Massachusetts.

[12] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: December 22, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–33846 Filed 12–28–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Transpac Capital Corporation

[License No. 02/02–5502]

Notice of Surrender of License

Notice is hereby given that Transpac Capital Corporation, 1037 Route 46 East, Clifton, New Jersey 07013 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). TLC Funding Corporation was licensed by the Small Business Administration on May 28, 1987.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on November 29, 1999.

Accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 22, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–33845 Filed 12–28–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3186]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2)(1996), the Secretary of State announces the following Arms Control and Nonproliferation Advisory Board (ACNAB) meetings:

Date and Location

January 6–7, 2000, Department of State, Washington, DC.
February 18, 2000, Patrick Air Force Base, FL, Cocoa Beach, FL.
March 24–25, 2000, Department of State, Washington, DC.
April 8–9, 2000, Livermore National Laboratory, Livermore, CA.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d)(1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that these Board meetings will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention.

For more information, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Advisory Board, at (202) 647–1192.

Dated: December 21, 1999.

Robert Sherman,

Executive Director, Secretary of State's Arms Control and Nonproliferation Advisory Board, Department of State.

[FR Doc. 99–33847 Filed 12–28–99; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 3191]

Universal Postal Union Reform Initiatives; Notice of Briefing

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Tuesday, February 1, 2000, to provide an update on reform initiatives at the Universal Postal Union (UPU).

The briefing will be held from 2 p.m. until approximately 4 p.m., on February 1, 2000, in Room 1105 of the Department of State, 2201 C Street, NW, Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

The briefing will provide information on the results of the recent meetings of the High-Level Group on the Future of the UPU, and of the UPU Postal Operations Council, as well as on other significant UPU—related issues. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In

order to arrange admittance, persons desiring to attend the briefing should, no later than noon on February 1, 2000, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–2752. This request applies to both government and non-government individuals.

All attendees must use the Department of State diplomatic entrance at 22nd and C Streets, NW. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647–1044.

Dated: December 22, 1999.

Lynne Lambert,

Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 99–33848 Filed 12–28–99; 8:45 am]

BILLING CODE 4710–19–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending December 17, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6645.
Date Filed: December 14, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0398 dated 14 December 1999, Mail Vote 052—Resolution 076ee, TC3 PEX Fares from Japan to South East Asia, Intended effective date: 1 April 2000.

Docket Number: OST–99–6653.
Date Filed: December 15, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–J/K 0051 dated 14 December 1999, Mail Vote 053—TC23/TC123 between Europe and Japan, Resolutions 074f and 081zz, Intended effective date: 1 April 2000.

Docket Number: OST–99–6670.
Date Filed: December 16, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0550 dated 17 December 1999, Mail Vote 054—Resolution 011a (Amending), Mileage Manual Non-TC Member/Non-IATA, Carrier Sectors, Intended effective date: 15 Jan 2000, for implementation 1 April 2000.

Docket Number: OST–99–6677.
Date Filed: December 17, 1999.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/407 dated December 6, 1999 r1–r15, Special PAC Conference—Finally Adopted Resolutions, PAC/Meet/163 dated December 6, 1999—Minutes, Intended effective date: 1 January 2000.

Docket Number: OST–99–6682.
Date Filed: December 17, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0552 dated 21 December 1999, Mail Vote 055—TC23/TC123 Special Passenger, Amending Resolution 010t, Intended effective date: 1 April 2000.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 99–33787 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending December 17, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6663.
Date Filed: December 15, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 12, 2000.
Description: Application of United Parcel Service Co. ("UPS") pursuant to 49 U.S.C. 41102 and Subpart Q, applies for a Certificate of Public Convenience and Necessity so as to authorize it to engage in the scheduled foreign air transportation of property and mail between Austin, Texas and Monterrey, Mexico. UPS further requests route integration authority enabling it to integrate services on other routes under the various certificate and exemption authorities held by UPS.

Docket Number: OST–99–6671.
Date Filed: December 16, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 13, 2000.
Description: Application of American Trans Air, Inc. ("ATA"), requests renewal of its Certificate of Public Convenience and Necessity to perform scheduled foreign air transportation of persons, property and mail between the terminal points Indianapolis, Indiana and Cancun, Mexico.

Docket Number: OST–99–6678.
Date Filed: December 17, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 14, 2000.
Description: Application of Helijet Airways Inc. ("Helijet") pursuant to 49 U.S.C. 41301 *et seq.* and Subpart Q, applies for a Foreign Air Carrier Permit to engage in scheduled foreign air transportation of persons, property and mail between any point or points in Canada and any point or points in the United States. Helijet also requests authority to conduct Third, Fourth and, subject to the Department's approval, Fifth Freedom charter flights transporting persons and property in accordance with Part 212 of the Department's economic regulations and other applicable rules and regulations.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 99–33786 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6635]

Great Lakes Pilotage Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard's Office of Great Lakes Pilotage is holding a public meeting to discuss options for improving the safety, reliability, and efficiency of the Great Lakes Pilotage System. We encourage interested parties

to attend the meeting and submit comments for discussion during the meeting. We also seek written comments from any party who is unable to attend the meeting.

DATES: *Public Meeting:* We will hold the meeting on January 27, 2000, from 10 a.m. to 4 p.m. We may end the meeting early, if we have covered all the topics on the agenda and if the meeting attendees have no further comments. Written Comments: The Docket Management Facility must receive your comments on or before January 15, 2000.

ADDRESSES: Public Meeting: We will hold the meeting in room B1, The Federal Building, 1240 East 9th Street, Cleveland, Ohio 44199.

Written Comments: Look in the first column of the table to select one of the four methods to send your comments. Then, use the address or fax number in the second column to submit your comments:

If you are using this method	please use this address or fax number
(1) By mail	Docket Management Facility, (USCG–1999–6635), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.
(2) In Person	Room PL–401. On the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. *Hours:* 9 a.m. to 5 p.m., Monday through Friday. Closed on Federal holidays. *Telephone number:* 202–366–9329.
(3) Internet	*http://dms.dot.gov.*
(4) Fax	Docket Management Facility: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or the public meeting, contact Mr. Tom Lawler, Chief Economist, Office of Great Lakes Pilotage (G-MW), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20590, telephone 202–267–6164. For questions on viewing or submitting material to the docket contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

How Do I Participate in this Action?

The Coast Guard encourages you to participate by submitting comments and related material, and by attending the public meeting. If you submit written comments, please include—

- Your name and address;
- The docket number for this notice (USCG–1999–6635);
- The specific section of this notice to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and attachments to the Docket Management Facility, using an address or fax number listed in the **ADDRESSES** section of this notice. Please do not submit the same comment or attachment by more than one method. If you mail or deliver your comments, they must be on 8½ by 11 inch paper and the quality of the copy should be clear enough for copying and scanning. If you mail your comments, and you would like to know if the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

How Can I Get Additional Information, Including Copies of This Notice or Other Related Documents?

The Docket Management Facility maintains the public docket for this notice. The docket number for this notice is USCG–1999–6635. Comments, and other documents related to this notice will become part of this docket and will be available for inspection or copying as follows:

- *In person:* You may access the docket in room PL–401, on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday. The facility is closed on Federal holidays.
- *Electronically:* You may access the docket on the Internet at *http://dms.dot.gov.*

Where Can I Get Information on Service for Individuals with Disabilities?

To obtain information on facilities or services for individuals with disabilities or to request that we provide special assistance at the public meeting, please contact Mr. Tom Lawler as soon as possible. You will find his address and phone number in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Why is the Coast Guard Holding This Public Meeting?

This meeting is in response to requests for a comprehensive review to improve the safety, reliability, and efficiency of the Great Lakes pilotage system. The requests came from all facets of the marine industry operating on the Great Lakes. We are holding the meeting to discuss ways to design a safer, more reliable and efficient pilotage system for the Great Lakes.

What Issues Should I Discuss at the Meeting or Address in Written Comments?

The public meeting on January 27, 2000, will provide a forum for members of the public to discuss ways to improve the safety, reliability and efficiency of the Great Lakes Pilotage System. You can discuss or comment on any ideas you have for improving the safety, reliability, and efficiency of the Great Lakes pilotage system.

What Is the Agenda for the Public Meeting?

Agenda

The agenda for the meeting on January 27, 2000, is as follows:

- Session I—Introduction and Overview.
- Session II—Discussion Groups. Each group will be chaired by a senior member of the Coast Guard. Each group will discuss one of the following topics:
  - ►Safety.
  - ►Efficiency.
  - ►Reliability.
- Session III—Reports, Recommendations, and Comments. The chairperson for each discussion group will report on their group's activities and recommendations.

Dated: December 14, 1999.

R.C. North,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–33472 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 188 meeting to be held January 14, 2000, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Review revised draft document, Minimum Operational Performance Standards for Aeronautical Mobile High Frequency Data Link. (SC–188 will conduct a final editorial review at this plenary meeting before approving the document to be forwarded to the Program Management Committee.); (2) Review summary of previous meeting; (3) Review Working Group Reports; (4) Review activities of other Standards Groups; (5) Open discussion; (6) Confirm dates for future meetings; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 933–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on December 17, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–33799 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Program Management Committee meeting to be held January 11, 2000, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review/Approve Summary of previous meeting; (3) Publication Consideration/Approval: A. Final Draft, Guiding Principles for Air Traffic Services Provided Via Data Communications Utilizing the ATN, Builds I and IA (RTCA Paper No. 318–99/PMC–070, prepared by SC–194); B. Final Draft, U.S. National Airspace System (NAS) Plan for Air Traffic Service Data Link (Phase 1, En Route CONUS Implementation) (RTCA Paper No. 319–99/PMC–071, prepared by SC–194); C. Final Draft, Minimum Operational Performance Standards (MOPS) for Automated Meteorological Transmission (AUTOMET) (RTCA Paper No. 309–99/PMC–066, prepared by SC–195); D. Final Draft, Minimum Operational Performance Standards for GPS Local Area Augmentation System (LAAS) Airborne Equipment (RTCA Paper No. 320–99/PMC–072, prepared by SC–159); E. Final Draft, Revised DO–246, GNSS Based Precision Approach Local Area Augmentation System (LAAS) Signal-in-Space Interface Control Document (ICD), prepared by SC–159. The revised document would be published as RTCA DO–246A; F. Final Draft, Change 1, DOD–228, Minimum Operational Performance Standards for Global Navigation/ Satellite System (GNSS) Airborne Antenna Equipment (RTCA Paper No. 322–99/PMC–074, prepared by SC–159); (4) Action Item Review: A. Action Item 99–12, Coordination of Special Committee work in support of Safe Flight 21, including Status of coordination; and Proposed TOR revision for SC–195; (5) Discussion; A. Update on SC–147, Working Group-1 activities. B. Review Document Production and PMC Meeting Schedule; (6) Other Business; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 17, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–33800 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jacksonville International Airport, Jacksonville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 28, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Clark, Vice President of Aviation of the Jacksonville Port Authority at the following address: Jacksonville Port Authority, Post Office Box 3005, Jacksonville, Florida 32206–0005.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jacksonville Port Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, 407–812–6331, Extension 19. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Jacksonville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

On December 16, 1999, the FAA determined that the application to impose and use the revenue from a PFC

submitted by the Jacksonville Port Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 8, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–05–C–00–JAX.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2000.

Proposed charge expiration date: March 1, 2002.

Total estimated PFC revenue: $13,936,065.

Brief description of proposed project(s): Land Acquisition Parcel No. 1; JIA Master Plan and ALP Update; Land Acquisition Parcel Nos. 2, 3, 4, 5, and 7.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators (ATCC) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jacksonville Port Authority.

Issued in Orlando, Florida on December 21, 1999.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 99–33791 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Transportation Equity Act for the 21st Century (TEA–21); Final Implementation Guidance for Transportation Enhancement Activities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability of final guidance.

SUMMARY: This document provides notice of the availability of final implementation guidance on the transportation enhancements (TE) provisions of the Federal-aid program administered by the FHWA. This guidance provides information and assistance to the States and local agencies in the delivery of the TE program, and includes amendments made by the Transportation Equity Act for the 21st Century (TEA–21).

FOR FURTHER INFORMATION CONTACT: Mr. Harold Peaks, Community Impacts and Transportation Enhancements Team Leader, HEPH, (202) 366–1598; or Mr. S. Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Availability of Final Guidance

A copy of the final TE guidance may be obtained by calling (202) 366–0106 or may be viewed at the FHWA's web page as follows: *http://www.fhwa.dot.gov/environment/te_final.htm*

Background

On June 9, 1998, President Clinton signed into law the TEA–21, Public Law 105–178, 112 Stat. 107. The legislation includes improvements and changes to the TE program administered by the FHWA.

The interim guidance on TE was issued on June 17, 1999. To obtain a copy of this guidance, please contact the FHWA, Office of Human Environment, at 202–366–0106. We have not received many substantive comments on the interim guidance. However, a number of general comments were obtained through participants' discussions at the National Transportation Enhancements Coordinators meeting, held in Pittsburgh on June 22–23, 1999. The comments include topics such as user fees, linkage to scenic or historic sites, value of donations, local match, and military transport. The comments received are reflected in the questions and answers developed and made a part of the final TE guidance. The list of questions and answers assist in clarifying specific sections where issues have been brought to the attention of the FHWA. These questions and answers are among the more common questions raised by enhancement coordinators, project proponents, and interest groups. The expectation is that the list of questions and answers will remain fluid, and additional questions and answers will be added to the list as appropriate.

The final guidance, issued on December 17, 1999, supersedes two guidance memorandums issued by the FHWA: "Transportation Enhancement Activities," dated April 24, 1992, and "Eligibility of Historic Preservation Work for Transportation Enhancement Funding," dated June 6, 1995.

The final guidance does not attempt to address all the possible questions that have been or could be raised concerning transportation enhancements. The guidance, however, provides further information concerning the process of determining whether or not activities qualify for TE set-aside funds.

Much of this final guidance focuses particularly on the provisions related to TE activities added or amended by the TEA–21. It also provides brief summaries of relevant information detailed in other related guidance memoranda. It does not seek to replace these memoranda where they remain current and the information valid.

Among the key changes reflected in this final implementation guidance are the following:

1. Congress provided that TE activities must "relate to surface transportation." This makes clear that TE projects are to have a relationship to surface transportation;

2. New categories of TE activities added by the TEA–21 are discussed; and

3. Innovative financing opportunities are provided by the TEA–21 and their program implications are discussed.

The TEA–21 continued the provision in 23 U.S.C. 133(d)(2) requiring 10 percent of the Surface Transportation Program (STP) funds be set-aside and be available only for TE activities. The specific language reads:

(2) For transportation enhancement activities.—10 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.

Section 1201 of the TEA–21 amends 23 U.S.C. 101(a)(35) which defines TE activities. Also, the TEA–21 amends 23 U.S.C. 134(h) and 23 U.S.C. 135(f); but continues to specify in 23 U.S.C. 135(f)(2)(G) that the statewide transportation improvement program shall reflect the priorities for programming and expenditure of funds, including transportation enhancements. This document provides guidance concerning the interpretation of the TE provisions and their implementation.

The list of qualifying TE activities provided in 23 U.S.C. 101(a)(35) of the TEA–21 is intended to be exclusive, not illustrative. That is, *only* those activities listed therein are eligible as TE activities. They are listed below (*Items listed in italics are those added by TEA–21*):

TE Activities Defined—

1. Provision of facilities for pedestrians and bicycles.

2. *Provision of safety and educational activities for pedestrians and bicyclists.*

3. Acquisition of scenic easements and scenic or historic sites.

4. Scenic or historic highway programs (*including the provision of tourist and welcome center facilities*).

5. Landscaping and other scenic beautification.

6. Historic preservation.

7. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).

8. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).

9. Control and removal of outdoor advertising.

10. Archaeological planning and research.

11. *Environmental* mitigation to address water pollution due to highway runoff *or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.*

12. *Establishment of transportation museums.*

Many projects are a mix of elements, some on the list and some not. Only those project elements which are on the list may be counted as TE activities. For example, a rest area might include a historic site purchased and developed as an interpretive site illustrating local history. The historic site purchase and development could qualify as a transportation enhancement activity.

Activities which are not explicitly on the list may qualify if they are an integral part of a larger qualifying activity. For example, if the rehabilitation of a historic railroad station required the construction of new drainage facilities, the entire project could be considered for TE funding. Similarly, environmental analysis, project planning, design, land acquisition, and construction enhancement activities are eligible for funding.

The funded activities must be accessible to the general public or targeted to a broad segment of the general public.

Authority: 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: December 22, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–33807 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Programmatic Environmental Impact Statement for the Maglev Deployment Program

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA will prepare a programmatic environmental impact statement (PEIS) for the Maglev Deployment Program, to solicit public and agency input into the development of the scope of that PEIS, and to advise the public that outreach activities conducted by the program participants will be considered in the preparation of the PEIS.

FOR FURTHER INFORMATION CONTACT: For further information regarding the programmatic environmental review, please contact: David Valenstein, Environmental Program Manager, Office of Passenger Programs, Federal Railroad Administration (RDV 10), 400 Seventh Street, SW (Mail Stop 20), Washington, D.C. 20590, (telephone 202 493–6368). For information regarding the Maglev Deployment Program, please contact: Arnold Kupferman, Maglev Program Manager, Office of Railroad Development, Federal Railroad Administration (RDV–2), 400 Seventh Street, SW (Mail Stop 20), Washington, D.C. 20590, (telephone 202 493–6370). For further information regarding any of the individual projects, please contact the applicant representatives identified below under the Alternative Sites heading.

SUPPLEMENTARY INFORMATION:

Background

Section 1218 of the Transportation Equity Act for the 21st Century (TEA 21) added section 322 to title 23 of the United States Code. Section 322 provides a total of $55 million for Fiscal Years 1999 through 2001 for transportation systems employing magnetic levitation ("Maglev") and an authorization of appropriations for an additional $950 million over Fiscal Years 2000 through 2003. Responsibility for implementing the program has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. Section 322 requires FRA to establish project selection criteria, to solicit applications for funding, to select one or more projects to receive financial assistance for preconstruction planning activities, and, after completion of such activities, to provide financial assistance for final design, engineering, and construction activities leading to the implementation of a maglev deployment project.

FRA has determined that implementing the maglev deployment program is a major Federal action with the potential to significantly impact the human environment. As a consequence, FRA is initiating the preparation of an EIS as required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the regulations of the President's Council on Environmental Quality implementing NEPA (40 CFR 1500 *et seq.*). FRA intends to prepare a programmatic EIS (PEIS) to address the selection process and the potential for significant environmental impact from the maglev deployment program. The agency will prepare additional site specific environmental reviews, as appropriate, as the program progresses.

The Environmental Review Process

As provided for in 23 U.S.C. 322, FRA has initiated a competition to select a project for the purpose of demonstrating the use of maglev technology to the American public. Using criteria specified in section 322, FRA has selected seven projects, sponsored by States or their designated agencies, to receive preconstruction planning grants. As a part of the preconstruction planning effort, FRA has required the seven applicants to prepare environmental assessments and conduct public involvement and scoping activities for their respective project proposals. FRA will use these individual project environmental assessments and records of agency and public comment and participation in preparing the PEIS, which will be made available to the public for comment. FRA anticipates issuing a draft EIS in the summer of 2000. After reviewing comments on the draft PEIS, FRA will prepare a final PEIS that addresses these comments and incorporates any additional analyses and material deemed necessary. The final PEIS will be made available for public review for not less than 30 days before FRA takes any final action on the program.

Alternatives Sites

The following applicants and projects (with identified applicant representatives) were selected by the Secretary to receive preconstruction planning assistance and represent the range of potential program alternatives:

- Port Authority of Allegheny County: A 45-mile project linking Pittsburgh Airport to Pittsburgh and its eastern suburbs (Mr. Bruce W. Ahern, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233–1080, telephone 412–237–6121).
- Maryland Department of Transportation: A 40-mile project linking Camden Yard in Baltimore and Baltimore-Washington International Airport to Union Station in Washington, D.C. (Mr. Suhair Alkhatib, Maryland Mass Transit Administration, William Donald Schafer Tower, 6 St. Paul St., Baltimore, MD 21202–1614, telephone 410–767–3751).
- California-Nevada Super Speed Train Commission: A 42-mile project linking Las Vegas to Primm, Nevada (Ms. Richann Johnson, Executive Assistant, California-Nevada Super Speed Train Commission, 400 Las Vegas Blvd. South, Las Vegas, NV 89101, telephone 702–229–6551).
- Florida Department of Transportation: A 20-mile project linking Port Canaveral to the Space Center and the Titusville Regional Airport (Mr. Nazih K. Haddad, Manager, Intercity Passenger Rail, Florida Department of Transportation, 605 Suwannee Street, Mail Station 57, Tallahassee, FL 32399–0450, telephone 850–414–4534).
- Greater New Orleans Expressway Commission: A 40-mile project linking New Orleans Union Passenger Terminal to the airport and across Lake Ponchartrain to the northern suburbs (Mr. Bryan Clement, Greater New Orleans Expressway Commission, 3943 N. Causeway Blvd., Metairie, LA 70002, telephone 504–835–3116).
- Georgia/Atlanta Regional Commission: First 40 miles of 110-mile project from Atlanta to Chattanooga, TN. (Mr. Robert McCord, Maglev Project Manager, The Atlanta Regional Commission, 40 Courtland Street, NE, Atlanta, GA 30303, telephone 404–463–3253).
- State of California: A 70-to 75-mile system connecting Los Angeles International Airport to Union Station in downtown Los Angeles to Ontario Airport and further east into Riverside County (Mr. Albert Perdon, Maglev Project Director, Albert Perdon & Associates, 12748 Castleford Lane, Cerritos, CA 90703, telephone 310–871–1113).

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of national environmental concern where there might be the potential for significant impacts, either adverse or favorable, as a result of advancing the maglev deployment program. Because the applicants are required to conduct public outreach as part of their preparation of environmental assessments, FRA does not plan to hold public scoping meetings. The applicants are responsible for contacting appropriate Federal, State, and local agencies, private organizations and citizens to solicit input regarding their respective program alternatives. Persons interested in providing comments on the scope of the programmatic environmental document should do so by February 18, 2000. Comments can be sent in writing to Mr. David Valenstein at the address identified above. Persons interested in providing comments on issues of environmental concern with respect to any of the individual projects should contact the applicant representatives identified above.

FRA has in place a Maglev Deployment Program page (*http://www.fra.dot.gov/o/hsgt/maglev.htm*) on the agency's Internet site where the public can obtain additional information related to the Maglev Deployment Program. FRA also intends to establish a separate page on the agency's site specifically addressing the environmental impact statement process for the Maglev Deployment Program.

Issued in Washington, D.C. on: December 20, 1999.

Arrigo P. Mongini,

Acting Associate Administrator for Railroad Development.

[FR Doc. 99–33788 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6668]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Mercedes-Benz 560SEC Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Mercedes-Benz 560SEC passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1991 Mercedes-Benz 560SEC that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 28, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or

importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Black Shrine, Inc. of Costa Mesa, California ("Black Shrine") (Registered Importer 99–224) has petitioned NHTSA to decide whether 1991 Mercedes-Benz 560SEC passenger cars are eligible for importation into the United States. The vehicle which Black Shrine believes is substantially similar is the 1991 Mercedes-Benz 560SEC that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Mercedes-Benz 560SEC passenger car to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Black Shrine submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Mercedes-Benz 560SEC, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Mercedes-Benz 560SEC is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt latch in the driver's position; (b) installation of an ignition switch-actuated seat belt warning buzzer. The petitioner states that the vehicle is equipped with driver's and passenger's side air bags and knee bolsters that are identical to the components found on the vehicle's U.S.-certified counterpart. Additionally, the petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

The petitioner states that a theft prevention/certification label will be permanently affixed to the vehicle and the vehicle's vehicle identification number (VIN) will be engraved on the engine, transmission, right front fender, left front fender, hood, right door, left door, front bumper, rear bumper, right rear quarter panel, left rear quarter panel, and decklid to comply with the Theft Prevention Standard found at 49 CFR Part 541.

The petitioner also states that a VIN plate must be installed inside the vehicle so that it can be read from the left windshield pillar and a VIN reference label must be affixed to the edge of the door or on the latchpost nearest the driver to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 23, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–33802 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20958]

Academy Lines, Inc.—Merger—Asbury Park Transit Lines, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Academy Lines, Inc. (Academy Lines or applicant), a motor carrier of passengers, has filed an application under 49 U.S.C. 14303 for the acquisition by merger of its affiliate, Asbury Park Transit Lines, Inc. (Asbury Park), also a motor carrier of passengers. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has

tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 14, 2000. Applicant may file a reply by February 28, 2000. If no comments are filed by February 14, 2000, the approval is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-20958 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005-3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Academy Lines is authorized to provide local commuter bus service and other regular-route operations, principally between New York, NY, and various points in New Jersey and Pennsylvania, as well as in special or charter operations, pursuant to authority granted in Docket No. MC-106207. Asbury Park is authorized to provide local commuter bus service and other regular-route operations, principally between New York, NY, and various points in New Jersey, as well as special or charter operations, pursuant to authority granted in Docket No. MC-1002.

Academy Lines and Asbury Park are currently controlled by the Frank Tedesco Trust, Francis Tedesco and Mark Tedesco, settlers (Tedesco Trust). Applicant states that the Tedesco Trust will convey all of its shares of stock of Asbury Park to Academy Lines, and Asbury Park will be merged into Academy Lines.[1] By application thereafter to be filed with the Federal Highway Administration, the operating authority held by Asbury Park is expected to be transferred to, and be integrated into the operating authority of, Academy Lines.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has shown that the merger will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicant's representative.

On the basis of the application, we find that the proposed merger is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed merger is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on February 14, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carrier Safety—HMCE-20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: December 21, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99-33630 Filed 12-28-99; 8:45 am]

BILLING CODE 4915-00-P

[1] By separate application simultaneously filed in *Tedesco Family ESB Trust— Acquisition of Control—Academy Bus Tours, Inc., et al.*, STB Docket No. MC-F-20957, Tedesco Family ESB Trust (Francis Tedesco and Mark Tedesco, settlers), seeks Board approval of its acquisition of control, from Tedesco Trust, of Academy Lines, along with Academy Bus Tours, Inc. (MC-165004), and, through Franmar Logistics, Inc., a noncarrier, of Academy Bus Tours, Inc. (PA) (MC-215354), Academy Express, Inc. (MC-228481), Commuter Bus Line, Inc. (MC-162133), and No. 22 Hillside Corp. (MC-182453).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC-F-20957]

Tedesco Family ESB Trust—Acquisition of Control—Academy Bus Tours, Inc., et al.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Tedesco Family ESB Trust, Francis Tedesco and Mark Tedesco, settlers, of Hoboken, NJ (Tedesco Family Trust or applicant), a noncarrier, has filed an application under 49 U.S.C. 14303 to acquire control of Academy Bus Tours, Inc., and Academy Lines, Inc.,[1] motor carriers of passengers, and through Franmar Logistics, Inc., of Hoboken, NJ, a noncarrier, of Academy Bus Tours, Inc. (PA) (MC-215354), Academy Express, Inc. (MC-228481), Commuter Bus Line, Inc. (MC-162133), and No. 22 Hillside Corp. (MC-182453), motor carriers of passengers. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 14, 2000. Applicants may file a reply by February 28, 2000. If no comments are filed by February 14, 2000, the approval is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-20957 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005-3934.

[1] By separate application simultaneously filed in *Academy Lines, Inc.—Merger— Asbury Park Transit Lines, Inc.*, STB Docket No. MC-F-20958, Board approval is being sought for the merger of Asbury Park Transit Lines, Inc. (MC-1002), into Academy Lines, Inc. (MC-106207).

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Tedesco Family Trust seeks authority to acquire control of six motor passenger carriers through the acquisition of all of their shares of voting stock. All six passenger carriers hold federally issued operating authority and provide either local commuter bus service and other regular-route operations, or special or charter operations, or a combination of both. Collectively, these carriers operate between New York, NY, and various points in New Jersey and Pennsylvania.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) The total fixed charges that result; and (3) The interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has shown that the common control of the six bus lines will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicant's representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on February 14, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Office of Motor Carrier Safety—HMCE–20, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; (2) The U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) The U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: December 21, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33631 Filed 12–28–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen
Republic of

Dated: December 21, 1999.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 99–33783 Filed 12–28–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On February 6, 1998, a general notice was published in the **Federal Register** announcing the Customs Automated Commercial System (ACS) Reconciliation Prototype test. Additional notices announcing modifications to the prototype were published on August 18, 1998, and July 21, 1999. This notice serves to make further modifications, as well as to announce operational aspects of the prototype not covered in the previous notices. These changes include, among other things, making the filing of NAFTA Reconciliations optional and announcing a liquidated damages process for late-filed and non-filed Reconciliations. Other aspects of the prototype test not affected by the changes announced in this notice remain the same.

DATES: The prototype testing period started on October 1, 1998. It will run for approximately two years from that date and may be extended. Applications to participate in the prototype will be accepted throughout the duration of the prototype. The liquidated damages provision and the change regarding optional filing of NAFTA Reconciliations set forth in this notice are effective on the date this document is published in the **Federal Register**.

ADDRESS: Written inquiries regarding participation in the prototype test should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Mailstop 5.2A, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Don Luther at (202) 927–0915 or Ms. Shari McCann at (202) 927–1106.

SUPPLEMENTARY INFORMATION:

I. Administrative Procedure

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Pub. L. 103–182, 107 State. 2057 (December 8, 1993)), is currently being tested by Customs under the Customs Automated Commercial System (ACS) Prototype test. Customs announced and explained the prototype

test (also referred to as the prototype or the test) in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998, which replaced all previous notices. A notice published in the **Federal Register** (63 FR 44303) on August 18, 1998, announced clarifications and operational changes. Further changes to the prototype were announced in a **Federal Register** (64 FR 39187) notice published on July 21, 1999. This notice announces additional changes. Except for the modifications herein specified, all other aspects of the test remain the same.

II. Background

Reconciliation is the process that allows an importer, at the time of entry summary, to identify undeterminable information (other than that affecting admissibility) to Customs and to provide that outstanding information at a later date. The means of providing that outstanding information at a later date is through the filing of a Reconciliation entry.

An importer indicates its intent to file a Reconciliation entry by "flagging" an entry summary and indicating which undeterminable issues will be covered and resolved in the Reconciliation. (The flagging is done electronically at the time of filing the entry summary. See the notice published in the **Federal Register** on August 18, 1998, for the two methods of flagging entry summaries: individual entry flag and blanket flag.) Later, the importer files the Reconciliation entry that resolves only the issues that were specified as undeterminable in the flagged entry summary. The issues that may be covered for later resolution in a Reconciliation are: (1) Value; (2) classification, on a limited basis; (3) value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS) (referred to as 9802 issues); and (4) merchandise entered under the North American Free Trade Agreement (NAFTA).

III. Filing of NAFTA Reconciliations Optional

A. Existing Requirements

As set forth in the **Federal Register** notice published on February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation to resolve and close out the issue(s) specified. Reconciliations covering a NAFTA eligibility issue, which cannot include other issues, are due within 12 months of the earliest import date of all entry summaries grouped on the Reconciliation. Reconciliations covering any of the other issues (alone or in combination) are due within 15 months of the earliest summary date of the entry summaries grouped on the Reconciliation.

B. Policy Discussion

The value, classification, and 9802 issues allowed under Reconciliation have a direct bearing on Customs ability to regulate the importation of merchandise and enforce the customs laws. For this reason, Customs will continue to require timely closure of these issues via timely filed Reconciliations and will issue liquidated damages claims against the importer in cases where this obligation is not met.

The function of NAFTA Reconciliations is to allow the importer to make a post-importation claim of NAFTA eligibility under 19 U.S.C. 1520(d), which requires the filing of a claim thereunder within one year of importation. If a NAFTA Reconciliation is not filed within the 12 months allowed under the prototype, it simply means that no post-importation NAFTA claim can be filed timely under the statute, as the one-year time limit provided under 19 U.S.C. 1520(d) will have expired.

Thus, the only consequence of a failure to file a NAFTA Reconciliation is the importer's loss of the benefit provided under the statute. By eliminating the formality of closing open NAFTA flags (entry summaries flagged to indicate the intended filing of a NAFTA Reconciliation) where no claims under 19 U.S.C. 1520(d) are being made, Customs hopes to further streamline the prototype and prevent unnecessary work by Customs personnel and the trade community.

C. Change in Requirement

Based on the foregoing policy considerations, upon publication of this notice, the filing of NAFTA Reconciliations (as opposed to Reconciliations covering other issues) will be optional. As before, importers wishing to make post-importation NAFTA claims under the Reconciliation process must do so via a timely filed NAFTA Reconciliation. However, as announced in this notice, NAFTA Reconciliations that are filed against flagged entry summaries past their 12-month deadline will simply not be accepted by Customs and liquidated damages claims will not be issued. Late-filed NAFTA Reconciliations may be refiled (electronically retransmitted) after removal of all entry summaries for which the deadline has passed, and NAFTA claims may be made against those entry summaries that were still within the 12-month deadline at the time of original Reconciliation filing.

D. Effect on Drawback

As mentioned in the previous **Federal Register** notices, drawback claims may not be made against flagged entry summaries (open flags) until all issues have been closed by a Reconciliation. This restriction was built into Customs automated system to ensure proper financial controls under drawback. Thus, when a Reconciliation is not filed, the entry summary remains flagged and drawback is precluded.

Customs plans eventually to implement a mechanism to delete open NAFTA flags that are more than 12 months old (flagged entry summaries as to which the intended NAFTA Reconciliation was not filed). This will serve to enable drawback on those entry summaries flagged for NAFTA reconciliation that were not reconciled within the required 12 months. (Flagged entry summaries covering other issues will remain flagged until a Reconciliation is filed.)

The flag deletion capability for entry summaries flagged for NAFTA reconciliation will not be ready until spring, 2000. Until its implementation, drawback claims will not be accepted where NAFTA Reconciliations were not filed for flagged entry summaries. Customs will notify filers when the flag deletion capability has been implemented. Reconciliations for NAFTA may still be filed timely, either with or without NAFTA claims being made, which will enable drawback on the entry summaries without delay.

IV. Definition of Reconciliation Filing Date

As described in the previous **Federal Register** notices, the Reconciliation entry comprises three components: the Header, the Association File, and the Summarized Line Item Data Spreadsheet. In order for a Reconciliation entry to be considered filed, all three of these components must be received by the Customs processing port assigned to the importer. Additionally, for NAFTA Reconciliations where NAFTA claims are being made, the statements specified in 19 CFR 181.32 are required. Accordingly, the actual filing date for each Reconciliation is the date when all of these required elements have been properly presented to Customs. This actual filing date will be used for determining whether Reconciliations were filed timely.

V. Liquidated Damages for Failure To File Reconciliations Timely

As described in this notice (subsection (C) of Section I), the filing of NAFTA Reconciliations is now optional. Accordingly, the liquidated damages provisions in this section apply only to value, classification, and 9802 Reconciliations. They do not apply to NAFTA Reconciliations.

A. Requirements

As described above and in the **Federal Register** notice of February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation within the allotted time, covering the flagged issue(s) on that entry summary. This notice removes the obligation to reconcile NAFTA eligibility for entry summaries flagged for that issue.

Each entry summary flagged for value, classification, and/or 9802 issues must be covered by a Reconciliation filed prior to the due date, 15 months from the earliest entry summary date of the underlying entry summaries. Up to 9,999 underlying entry summaries may be covered by a single Reconciliation. If any one of the underlying entry summaries' due dates has passed prior to Reconciliation filing, the entire Reconciliation is considered late. However, the importer and filer have discretion to determine which and how many entry summaries are grouped on a Reconciliation, regardless of the flagging method and timing involved in the original flagging of those entry summaries.

B. Liquidated Damages for Non-Filed and Late-Filed Reconciliations

The obligation to file Reconciliations created by the flagging of entry summaries carries liquidated damages implications for failure to do so timely. Each flagged entry summary remains an independent entity until reconciled. Customs has no way of knowing which entry summaries will be covered by a single Reconciliation until one is actually filed. Once the Reconciliation has been filed, the universe of entry summaries covered by it is established. Moreover, the Reconciliation is an entry in its own right and has the same legal status as other Customs entries. For these reasons, late-filing and non-filing of Reconciliations will be dealt with using different mechanisms.

C. Liquidated Damages Mechanisms

1. "No File" Liquidated Damages

Periodically, Customs will perform research to identify flagged entries that were not reconciled timely (within 15 months of their date). In cases where flagged entry summaries are found to have not been covered by a Reconciliation, Customs will issue a single "No File" liquidated damages claim against the importer of record for all unreconciled flagged entries past their due dates for the calendar month. Subsequent filing of Reconciliations to cover entries on this monthly consolidated liquidated damages report will result in mitigation of the initial liquidated damages claim.

2. "Late File" Liquidated Damages

In cases where flagged entry summaries are found to have been covered by a Reconciliation that was filed late, Customs will issue a single "Late File" liquidated damages claim against the Reconciliation entry itself (as opposed to a claim against the importer that covers the calendar month, as in the case of "No File" liquidated damages claims). This mechanism applies also to Reconciliations, filed timely or not, where payment of additional monies (duties, taxes, fees, and interest) due is made late or not at all.

3. Where Liquidated Damages Claims Are Processed

Each importer participating in the ACS Reconciliation Prototype is assigned to a particular Reconciliation processing port. Liquidated damages claims involving Reconciliation will always be processed by the Reconciliation processing port. This is true regardless of the port(s) where the underlying entry summaries were filed.

D. Summary of Liquidated Damages Claims

There are five different types of liquidated damages violations under the ACS Reconciliation Prototype. The descriptions, assessed liquidated damages amounts, and "option 1" amounts are shown below. "Option 1" refers to the option where importers may agree to pay a reduced amount, but waive rights to mitigate the claim below that amount. The term "money" in this listing refers to the additional duties, taxes, fees, and interest due upon Reconciliation.

1. Reconciliation No File

Description: Entry summaries flagged, but no Reconciliation filed. Customs will issue a single consolidated liquidated damages claim for all such instances for a given importer, per month, per surety. (For example, if an importer had flagged entry summaries covered by two sureties during one month, two separate consolidated liquidated damages claims would be issued, one covering entry summaries insured by one surety and the other covering entry summaries insured by the second surety.)

Assessed Liquidated Damages Amount: Total entered value of the underlying entry(ies).

Option 1 Amount: Not Applicable.

2. Reconciliation Money No File

Description: Reconciliation filed timely, but without payment of additional duties, taxes, fees, and interest due.

Assessed Amount: $1,000 or double the duties, taxes, and fees due on the Reconciliation, whichever is greater.

Option 1 Amount: Not Applicable.

3. Reconciliation Late File

Description: Reconciliation filed and paid after the 15-month deadline.

Assessed Amount: $1,000 or double the duties, taxes, fees, and interest, if applicable, due on the Reconciliation, whichever is greater.

Option 1 Amount: $500+(Total duties, taxes, fees, and interest, if applicable, due on Reconciliation×number of days late×0.1%).

4. Reconciliation Money Late File

Description: Reconciliation filed timely, but payment of additional duties, taxes, fees, and interest due submitted late.

Assessed Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

Option 1 Amount: $500+(Total duties, taxes, fees, and interest due on Reconciliation×number of days payment is late×0.1%).

5. Reconciliation Late File with Money No File

Description: Reconciliation filed late, without payment of duties, taxes, fees, and interest due.

Assessed Amount: $1,000 or double the duties, taxes, and fees due on the Reconciliation, whichever is greater.

Option 1 Amount: Not Applicable.

E. Surety Issues

The liquidated damages claims that result from failure to file Reconciliations or filing them untimely may be for substantial amounts. Failure to resolve these claims could saturate the importer's continuous bond. Thus, in certain circumstances, importers may be required to submit single entry bonds for further entry summaries or make live entry with payment to secure release of merchandise.

VI. Courtesy Notification of Impending Due Dates

Because of the serious consequences involved in not filing Reconciliations

timely, Customs has been providing importers with lists of their flagged entry summaries upon request. However, workload considerations make this practice unsustainable. While the tracking and timely reconciliation of flagged entry summaries is solely the responsibility of the importer and filer, Customs appreciates the logistical burden of this task. For this reason, Customs is currently developing an Internet-based lookup system, where interested filers and importers can obtain the list of flagged entry summaries that are coming due in the upcoming months (referring to the Reconciliation filing due date (or deadline)). This system will provide entry summary numbers sorted two ways: by filer code and by an encrypted version of the importer of record number, which will be made available to the importer.

Importers who prefer that their entry numbers and flag codes not be made available via this mechanism may opt out by sending written notification to that effect to the Reconciliation Team at the address shown in the **ADDRESS** section of this notice. Such written notifications must be received by January 31, 2000.

It is anticipated that this lookup system will be operational in spring, 2000. In the interim, the Reconciliation team will continue to provide filers with monthly lists of flagged entries coming due during the following month. Importers and filers retain the right to request data from Customs under the authority of the Freedom of Information Act (FOIA), for which monetary charges may be assessed.

VII. Conclusion

Regarding the ACS Reconciliation Prototype test generally, interested parties should consult the **Federal Register** notices of February 6, 1998 (63 FR 6257), August 18, 1998 (63 FR 44303), and July 21, 1999 (64 FR 39187). All terms and conditions set forth in those notices remain in effect, except as specifically modified or affected by this notice.

Dated: December 23, 1999.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 99–33809 Filed 12–28–99; 8:45 am]

BILLING CODE 4820–02–P

federal register

Wednesday
December 29, 1999

Part II

Department of Commerce

International Trade Administration

Final Determination of Sales at Less Than Fair Value and Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate Products From India et al.; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Nithya Nagarajan, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0065 or (202) 482–5253, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1999).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from India are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "*Suspension of Liquidation*" section of this notice.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from India*, 64 FR 41202 (July 29, 1999)) ("*Preliminary Determination*"), the following events have occurred:

In August, 1999, the Department issued two additional supplemental questionnaires to Steel Authority of India, Ltd.("SAIL"), in response to which the respondent filed submissions on August 17, 1999. In September 1999, the Department conducted verification of SAIL, the sole respondent in the instant investigation. A public version of our report of the results of this verification is on file in the Central Records Unit ("CRU"), room B–099, of the main Department of Commerce building, under the appropriate case number. On November 18, 1999, a public hearing was held at the main Department of Commerce building and was attended by interested parties.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1998, through December 31, 1998.

Facts Available

Based on our analysis of the facts on the record of this investigation, we continue to find that SAIL failed to act to the best of its ability in reporting accurate and verifiable information to the Department. At the preliminary determination, we found that because of 1) the problems with the electronic databases that SAIL submitted; 2) the lateness and incompleteness of narrative portions of the questionnaire responses; and 3) the lack of product-specific costs, SAIL's questionnaire response could not be used to calculate a reliable margin. As a result, we utilized adverse facts available as the basis of the preliminary margin.

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that

has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

The Department has further determined that the use of facts available is appropriate for SAIL for purposes of the final determination, pursuant to section 776(a)(2)(A), (B), and (D) of the Act. With respect to subsection (A), at verification the Department discovered that SAIL failed to report a significant number of home market sales; was unable to verify the total quantity and value of home market sales; and failed to provide reliable cost or constructed value data for the products. *See Home Market and United States Sales Verification Report* ("*Sales Report*"), dated November 3, 1999; *see also Cost of Production and Constructed Value Verification Report* ("*Cost Report*"), dated November 3, 1999. With regard to subsection (B), SAIL was provided with numerous opportunities and extensions of time to fully respond to the Department's original and supplemental questionnaires, as well as ample time to prepare for verification. However, even with numerous opportunities to remedy problems, SAIL failed to provide reliable data to the Department in the form and manner requested.

With respect to section 776(a)(2)(D) of the Act., we note that as a result of the widespread problems encountered at verification, SAIL's questionnaire responses could not be verified. *See Sales Report* and *Cost Report*. *See Memorandum to the File: Determination of Verification Failure* ("*Verification Memo*"), dated December 13, 1999.

Section 782(d) provides certain conditions that must be satisfied before the Department may, subject to section 782(e), disregard all or part of the information submitted by a respondent. First, this section states that, if the Department determines that a response to a request for information does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) continues that, if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

With respect to section 782(d), we gave SAIL numerous opportunities and extensions to submit complete and accurate data. As stated in the Preliminary Determination, SAIL's questionnaire and deficiency questionnaire responses were found to be substantially deficient and untimely for purposes of calculating an accurate antidumping margin. *See Preliminary Determination*. However, subsequent to the preliminary determination we issued two additional questionnaires and further extensions to SAIL presenting it yet additional opportunities to submit a complete and accurate electronic database. Nevertheless, the Department found at verification that the final submission was again substantially deficient (*see* the *Department's Position* below; *see Verification Memo*; *and see Sales Report* and *Cost Report*). Therefore the Department may "disregard all or part of the original and subsequent responses," subject to subsection (e) of section 782.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) provided that:

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot be served as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it has acted to the best of its ability in providing the information and meeting the requirements established by the administering authority * * * with respect to the information, and

(5) The information can be used without undue difficulties.

See Section 782(e) of the Act. In the instant investigation, record evidence supports the following findings:

First, with respect to section 782(e)(1), as stated in the Preliminary Determination and the sales and cost verification reports, SAIL was given numerous extensions to submit accurate data which it failed to do. In fact the last submission of cost data filed on August 18, 1999, was a database which contained unreadable electronic versions of SAIL's cost of production which did not include any constructed value information.

Second, with respect to section 782(e)(2), we were not able to verify SAIL's questionnaire response due to the fact that essential components of the response (*i.e.*, the home market and cost databases) contained significant errors.

Third, with respect to section 782(e)(3), the fact that essential components of SAIL's response could not be verified resulted in information that was incomplete and unreliable as a basis for determining the accurate margin of dumping.

Fourth, with respect to section 782(e)(4), SAIL, as stated in the home market sales verification report, did not sufficiently verify the accuracy and reliability of its own data prior to submitting the information to the Department, thereby indicating that it did not act to the best of its ability to provide accurate and reliable data to the Department.

Finally, with respect to section 782 (e)(5), the U.S. sales database contained errors that, while in isolation were susceptible to correction, however when combined with the other pervasive flaws in SAIL's data lead us to conclude that SAIL's data on the whole is unreliable. As a result, the Department does not have an adequate basis upon which to conduct its analysis to determine the dumping margin and must resort to facts available pursuant to section 776(a)(2) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. *See* the Statement of Administrative Action ("SAA") at 870. To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b), the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review* ("*Pipes and Tubes from Thailand*"), 62 FR 53808, 53819–53820 (October 16, 1997).

In addition to repeated problems in the timeliness and completeness of submissions and the workability of computer tapes, verification revealed that SAIL's data was significantly inaccurate, incomplete or otherwise unreliable. Therefore, pursuant to 776(b) of the Act, we conclude that SAIL did not cooperate to the best of its ability during the course of this investigation and consequently we used an adverse

inference in selecting a margin as facts available. The Department has applied a margin rate of 72.49 percent, the highest of the margins alleged in the petition, as facts available.

Corroboration

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.103–316 (1994) (hereinafter, the "SAA") states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

To corroborate the range of the margins alleged in the petition, we examined the basis of the rates contained in the petition. The petition margins were based on both price-to-price and price-to-constructed value comparisons. Petitioners' calculated export price was based on U.S. price offerings, with deductions taken for international movement charges. We compared this with information from U.S. Customs and found them consistent. Petitioners based normal value on prices for comparable products sold in the home market obtained from market research. Petitioners calculated constructed value based on their own production experience adjusted for known differences. With regard to the normal values contained in the petition, the Department is aware of no other independent sources of information that would enable us to further corroborate this information. We compared the petition information with reliable information obtained during the investigation, primarily SAIL's financial statements and other published materials from the questionnaire response and found them consistent. Finally, with respect to the relevance of the margin used for adverse facts available, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that the selected margin is not appropriate. *See Memorandum to the File: Corroboration of the Petition Data*, dated July 19, 1999, on file in the CRU.

Finally, we note that the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition, and mindful of the legislative history discussing facts available and corroboration, we consider the petition margin we are assigning to SAIL in this investigation as adverse facts available to be corroborated to the extent practicable.

Interested Party Comments

Comment 1: Facts Available

Respondent argues that the Department should determine that SAIL cooperated to the best of its ability to accurately report its export sales to the U.S., and as a result the Department should not base its final determination on total adverse facts available.

SAIL argues that it responded in a timely manner to all of the Department's requests for information and also cooperated in the conduct of a 21-day verification to ensure the accuracy of its responses. SAIL admits that it had difficulties in verifying the accuracy of its home market sales, and cost of production data, but argues that its U.S. sales data were verified without significant problems and should be used as a basis for calculating the final antidumping duty margin in this determination. SAIL further argues that although it had difficulties in verifying the home market sales, the majority of these problematic sales would not have been used for comparison purposes as they were either of defective or off-grade merchandise or merchandise that would not be used for comparison purposes to the U.S. products. Accordingly, although SAIL's home market database lacks the degree of precision required by the Department, respondent argues that there is sufficient reliable information about the home market sales for the Department to evaluate and determine the "true" picture of SAIL's home market sales. Finally, while acknowledging that there were problems associated with its cost of production data, SAIL contends that the Department verified the underlying accuracy of SAIL's books and records and also verified the plant-specific average plate costs. Therefore, the Department has a reliable basis from which to determine the relevant costs of the products sold to the United States. SAIL argues that extrapolating information from this reliable information, the Department could determine that SAIL's margin would be in the range of zero to 1 percent. As a result, SAIL proposes that the Department compare the U.S. prices in the submitted Section C responses to the normal value and constructed value alleged in the petition, after comparing these figures to the home market prices from Section B responses, and cost of production data in the Section D responses to evaluate the reliability of the petition information.

In SAIL's view, the Department cannot ignore the U.S. sales information submitted and verified and resort to total adverse facts available. SAIL relies on the premise that the "basic purpose of the statute" is to determine a margin as accurately as possible citing *Rhone-Poulenc Inc*, v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990). Furthermore, respondent argues that the Court of International Trade ("CIT") has upheld the Department's use of best information available where the respondent's data was more accurate than the data in the petition and where the Department appeared to verify the data and make adjustments to it. *See Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 35 (CIT 1995) ("*Micron*"). In the present determination, SAIL argues that the Department should not ignore SAIL's probative, accurate U.S. sales data and rely on less probative export information as facts available which would result in inaccurate dumping margins. SAIL repeats its claim that the Department has accurate and verified U.S. sales data; reliable home market sales data for the product most similar to the U.S. product; and average plant-specific costs sufficient to demonstrate that home market sales were not made below cost; and therefore, can make an accurate price comparison.

SAIL's secondary argument is that the URAA requires the use of its timely and verified information on the record of this investigation. SAIL argues that, pursuant to section 782(e) of the Act, the Department must consider information if: (1) the information has been submitted in a timely manner; (2) the information can be verified; (3) the information can serve as a reliable basis for reaching the applicable determination; (4) the interested party

demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. *See* section 782(e) of the Act. Citing multiple prior Department determinations, SAIL argues that it has met all these criteria, therefore, the submitted U.S. sales data must be used to calculate the margin. (*See Toyota Motor Sales, U.S.A. Inc.* v. *United States*, 15 F. Supp. 2d 872 (CIT 1988); *Koenig & Bauer-Albert AG* v. *United States*, 15 F. Supp. 2d 834 (CIT 1998); *see also Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 30790 (1999); *Certain Preserved Mushrooms from Chile*, 63 FR 56613 (1998)). SAIL argues that it would be arbitrary and capricious for the Department to reject SAIL's accurate U.S. sales data in favor of an adverse facts available margin from the petition and that the Department must use SAIL's U.S. data and partial facts available for the other missing data in calculating SAIL's final dumping margin on the basis that SAIL cooperated to the best of its ability during the instant investigation. Citing Annex II of the Agreement on Implementation of Article VI of the GATT 1994 ("AD Agreement"), SAIL contends that where a party acts to the best of its ability, its information should not be disregarded even though the information is not ideal in all respects.

Petitioners counter SAIL's arguments on the grounds that SAIL failed to act to the best of its ability. As support for their contention, petitioners cite to SAIL's omissions of both home market sales and cost data, and its selective compliance with the Department's instructions. Petitioners note that the Department attempted to accommodate SAIL in the course of the investigation and during verification; however, SAIL continued to fail to submit a full, readable, and complete database for use in the Department's investigation.

Furthermore, petitioners argue that SAIL understates the gravity of the errors in its database. Petitioners cite to numerous factual discrepancies in the home market sales and cost databases including: (i) inability to reconcile total quantity and value; (ii) under-reported sales values and over-reported quantities; (iii) omitted home market sales; (iv) double-counted transactions; (v) misreported gross unit prices, product characteristics, and taxes; (vi) misreported thickness and width values in the home market database; (vii) over and under-reported freight costs in the U.S. sales database; (viii) misreported product characteristics for U.S. sales; (ix) failure to provide a constructed value database; (x) problematic yield adjustments to reported costs; (xi) understated material costs; (xii) failure to provide a ratio analyses for the RSP plant; (xiii) failure to provide product-specific costs; (xiv) failure to report the conversion factor of theoretical to actual weights; and (xv) failure to explain the reason for transactions with an identical home market control number ("CONNUMH") having different variable costs. As a result, petitioners argue that there was no reliable information on the record (as evidenced by the Department's verification reports) to enable the Department to calculate a margin. Petitioners cite *Pipes and Tubes from Thailand*, at 53814, in support of their contention that without reliable cost data there is no means of ensuring the accuracy and reliability of the home market sales data. In addition, petitioners also argue that the errors with the U.S. database (such as errors in reporting product characteristics of a majority of U.S. sales) render it deficient, incomplete, and inaccurate. As a result, the Department cannot calculate a margin and must resort to total adverse facts available.

Petitioners also contest SAIL's invocation of Annex II of the AD Agreement. According to petitioners, SAIL's information was considerably less than ideal. Petitioners cite to the problems, listed above, with the home market sales, cost, and U.S. sales databases to counter SAIL's argument regarding the reliability of its information. Petitioners argue that the calculation of a margin comparing SAIL's U.S. sales information to the normal value ("NV") and constructed value ("CV") from the petition would lead to an untenable result that would encourage selective reporting in the future and undermine the statutory goal of calculating an accurate margin. Moreover, petitioners state that the premise of SAIL's argument relies on the belief that the U.S. sales database is without errors, which is not factually supported by the Department's findings at verification. *See Sales Report*.

Finally, petitioners state that the standard set forth in section 782(e) of the Act does not support the use of U.S. sales information upon the rejection of home market sales and cost of production information. Petitioners state that section 782(e) does not direct the Department to use part of response where essential components of the response are not otherwise useable. *See Frozen Concentrated Orange Juice from Brazil*, 64 FR 43650 (August 11, 1999). As a result of the data problems described above, as well as SAIL's inadequate review of its database for accuracy and completeness, petitioners argue that respondent clearly failed to act to the best of its ability to provide the Department with requested information, and therefore use of total adverse facts available is warranted for SAIL.

Petitioners rely on two recent cases to demonstrate the Department's methodology for selecting total adverse facts available under circumstances similar to those in the present investigation. First, petitioners argue that the Department normally rejects a respondent's response in its entirety when price-to-price comparison is impossible due to a reporting failure on the behalf of the respondent. In *Heavy Forged Hand Tools Finished or Unfinished, With or Without Handles from the People's Republic of China* ("*Tools from China*"), 64 FR 43659 (August 11, 1999), the Department rejected the response and used total adverse facts available when it discovered, at verification, that a significant portion of sales were missing for four months of the POR and that it could not "successfully perform the completeness test." *See Tools from China*, 64 FR at 43663. Second, petitioners argue that total adverse facts available is warranted where the questionnaire response is extremely deficient in other respects such that the Department cannot reliably use the reported data to calculate a margin. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany* ("*Steel Wire Rod from Germany*"), 63 FR 8953 (February 23, 1998). In that case, the Department found that the response was deficient and an unreliable basis to calculate a margin as a result of "numerous inconsistencies" in the reported sales and cost data. Petitioners argue that the fact pattern of the present case is similar to both *Tools from China* and *Steel Wire Rod from Germany;* therefore, the Department's only choice is to apply total adverse facts available in determining the dumping margin for SAIL's transactions during the POI.

SAIL takes issue in the petitioners' claim that the facts here are similar to those in *Tools from China* and argues that petitioners' reliance on *Tools from China* is misplaced, since there was a determination in that case that the respondents were withholding information and generally acting in "bad faith." Contrary to the circumstances in that case, SAIL argues that there is no evidence of "bad faith" on its part in the instant investigation.

Department Position:

We disagree with respondent that total adverse facts available are not warranted for this determination. SAIL

has consistently failed to provide reliable information throughout the course of this investigation. At the preliminary determination we relied on facts available because widespread and repeated problems in SAIL's questionnaire response rendered it unuseable for purposes of calculating a margin. These problems recurred despite our numerous and clear indications to SAIL of its response deficiencies. Even though we rejected use of SAIL's questionnaire response at the preliminary determination, because the company was seemingly attempting to cooperate, albeit in a flawed manner, we continued to collect data after the preliminary determination in an attempt to gather a sufficiently reliable database and narrative record for verification and for use in the final determination. The Department also rejected petitioners' request that verification be cancelled in light of the response deficiencies. However, as evidenced by the summary below, SAIL was unable to provide the Department with useable information to calculate and determine whether sales were made at less than fair value.

Throughout the responses to the Department's original questionnaire and supplemental questionnaires there were ongoing, serious problems in the areas of completeness, timeliness, and workability of computer tapes. Regarding completeness, the responses repeatedly made the statement that certain data were not available and would be supplied later (*i.e.*, during verification). Instances of this unavailability included unreported home market sales, a substantial number of sales dates, product specifications, supporting documentation, and so forth.

Regarding timeliness, on several occasions SAIL called requesting extensions past the already extended deadlines for its submissions. On other occasions SAIL submitted unrequested clarifications to previous responses and responses to questions after the required deadline, in effect providing itself with an extension to respond to the Department's questionnaires. In fact, several of SAIL's submissions were returned to it due to untimely filing. *See* Letter to Respondent's Counsel on July 7, 1999, *Antidumping Duty Investigation of Certain Cut-to-Length Carbon Quality Steel Plate ("CTL Plate") from India.*

Regarding computer tapes, repeated technical problems with the submitted data resulted in our inability to load, run, and analyze the data, despite a significant amount of time and attention from the Department. Moreover, at verification we discovered that SAIL's last submission (made just prior to verification and to provide the Department with useable cost of production and constructed value data) was not only incomplete, but also riddled with inaccuracies to the point where SAIL's data remains unuseable. SAIL attempted to provide the Department with a new tape at verification containing revised cost of production and constructed value data which the Department rejected as untimely.

Furthermore, at verification, we discovered that: SAIL had failed to report a significant number of home market sales; we were unable to verify the total quantity and value of home market sales; SAIL failed to report accurate gross unit prices; SAIL failed to reconcile costs of production to its audited financial statements; and SAIL failed to provide constructed value data on the costs of products produced and sold to the United States. *See Sales Report* and *Cost Report.*

Furthermore, we disagree with SAIL's characterization of its U.S. sales as accurate, timely, and verified. In fact, the U.S. sale database contained certain errors, as revealed at verification. *See Sales Report; see also Verification Memo.* Moreover, we disagree with SAIL that we are required by the Act to use SAIL's reported U.S. prices. SAIL cites to *Toyota Motor Sales, U.S.A., Inc.,* v. *United States,* 15 F. Supp. 2d 872 (CIT 1998); *Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834 (CIT 1998); *Antidumping Duty Investigation on Sales at Less-Than-Fair-Value: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia,* 64 FR 40457 (July 19, 1999); *Antidumping Duty Investigation on Sales at Less-Than-Fair-Value: Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 30790 (1999), as support for the contention that the Department does not resort to total facts available if there are deficiencies in the respondent's submitted information. It is the Department's long-standing practice to reject a respondent's questionnaire response *in toto* when essential components of the response are so riddled with errors and inaccuracies as to be unreliable. *See Steel Wire Rod from Germany.* SAIL's argument relies on a mischaracterization of our practice with respect to so-called "gap-filler" facts available. SAIL argues that the Department should fill in the record for home market sales, cost of production, and constructed value as if there were a mere "gap" in the response, as opposed to the entire record. Thus respondent's arguments and citations to these cases are inapposite. In each of the above-mentioned cases, the majority of the information on the record was verified and useable; there were only certain small areas of information which required the Department to facts otherwise available to accurately calculate a dumping margin. The Department's long-standing practice of filling in gaps or correcting inaccuracies in the information reported in a questionnaire response, often based on verification findings, is appropriate only in cases where the questionnaire response is otherwise substantially complete and useable. In contrast, in this case, SAIL's questionnaire response is substantially incomplete and unuseable in that there are deficiencies concerning a significant portion of the information required to calculate a dumping margin. To properly conduct an antidumping analysis which includes a sales-below-cost allegation, the Department must analyze four essential components of a respondent's data: U.S. sales; home market sales; cost of production for the home market models; and constructed value for the U.S. models. Yet SAIL has not provided a useable home market sales database, cost of production database, or constructed value database. Moreover, the U.S. sales database would require some revisions and corrections in order to be useable. As a result of the aggregate deficiencies (data problems and SAIL's responses), the Department was unable to adequately analyze SAIL's selling practices in a thorough manner for purposes of measuring the existence of sales at less than fair value for this final determination. *See Sales Report* and *Cost Report.*

We also disagree with SAIL's reliance on the *Micron* decision in arguing that we should use its U.S. sales data as facts available. In the *Micron* case, the CIT affirmed the Department's use of respondent data as non-adverse facts available for a discrete piece of data which required adjustment. Specifically, the Department had concluded that a respondent used an improper methodology in reporting depreciation expenses. In selecting non-adverse facts available in order to properly adjust the depreciation expenses, the Department relied on calculations proposed by the respondent, which were specific to the subject merchandise, rather than calculations proposed by petitioner, which were based on broader assets. Thus, the facts of the *Micron* case are quite different from this case, where the Department must apply total adverse facts available because SAIL's data on the whole is unreliable.

Respondent also cites to section 782(e) of the Act as support for its

argument that the Department should utilize the verified U.S. sales in calculating a dumping margin in the instant investigation. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) provided that subsections (1), (2), (3), (4), and (5) of section 782(e) are met. In the instant investigation, record evidence supports the finding that SAIL did not meet these requirements (*see, Facts Available* section above).

With regard to each respective subsection of 782(e): (1) SAIL did not provide information in a timely manner; (2) the information submitted could not be verified; (3) essential components of the information (*e.g.*, home market sales and cost information) are so incomplete that it cannot be used as a reliable basis for reaching a determination; (4) SAIL did not act to the best of its ability in providing the information and meeting the requirements established by the administering authority; and (5) the information cannot be used without undue difficulties. Accordingly, we are applying a margin based on total facts available to SAIL in the final determination. *See, Facts Available* section above.

Accordingly, pursuant to section 776(a)(2) of the Act, the Department has determined that the information on the record is unusable and is not a reliable basis upon which to calculate a margin in this investigation. Moreover, because we determine that SAIL has not acted to the best of its ability, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin as facts available. The Department has applied a margin rate of 72.49 percent, the highest margin alleged in the petition, as facts available.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from India that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for SAIL. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
SAIL	72.49
All others[1]	72.49

[1] The Act normally prohibits inclusion in the "All Others" rate of any margins determined entirely on the basis of facts available, pursuant to section 776. However, where the estimated weighted-average margin is based entirely on facts available, we must use any reasonable method to establish the estimated "All Others" rate for exporters and producers not individually investigated. *See* section 733(d)(1)(ii); 735(c)(5)(B). In this case, we have determined that a reasonable method is to use 72.49 percent, the highest margin alleged in the petition, which was also the source of our facts available margin for SAIL. This is consistent with the Department's practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela*, 63 FR 8946, 8948 (1998).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33228 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–818]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2786.

Final Determination: The U.S. Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from India. For information on the estimated countervailing duty rate, please see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition for this investigation was filed by Bethlehem Steel Corporation; U.S. Steel Group, a unit of USX Corporation; Gulf States Steel, Inc.; IPSCO Steel Inc.; Tuscaloosa Steel Corporation; and the United Steelworkers of America (the petitioners).

Case History

Since the publication of the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India*, 64 FR 40438 (July 26, 1999) (*Preliminary Determination*), the following events have occurred. We issued a supplemental questionnaire on July 29, 1999, and we received a response to that supplemental questionnaire on August 6, 1999. From August 8 through August 20, 1999, we conducted a verification of the information submitted by the respondents. *See* Memoranda to David Mueller, Director, Office of AD/CVD Enforcement VI, dated September 20, 1999, "Verification of the Questionnaire Responses of the Government of India (GOI)" and "Verification of the

Questionnaire Responses Submitted by the Steel Authority of India (SAIL)" (GOI Verification Report and SAIL Verification Report, respectively), which are on file in public version form in our Central Records Unit (Room B–099 of the main Commerce building).

Petitioners, the GOI, and SAIL filed case briefs on September 29, 1999, and rebuttal briefs on October 4, 1999. On November 20, 1999, a public hearing was conducted.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. part 351 (1998) and to the current substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998, 63 FR 65348 (*CVD Regulations*).

Injury Test

Because India is a "Subsidies Agreement country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On April 5, 1999, the ITC announced its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from India of the subject merchandise. *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia*, 64 FR 17198 (April 8, 1999).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation (*see Initiation of Antidumping Duty Investigations: Certain Cut-to-length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia*, 64 FR 12959 (March 16, 1999)). In accordance with section 705(a)(1) of the Act, we aligned the final determination in this investigation with the final determinations in the antidumping duty investigations of cut-to-length plate. *See Preliminary Determination*, 64 FR 40438 (July 26, 1999). Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination and the final antidumping duty determination was postponed, the Department extended the final determination of the countervailing duty investigation until no later than December 13, 1999. *See Postponement of Final Antidumping Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and Korea; Postponement of Final Countervailing Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, and Korea: and Amendment of the Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Product from Indonesia*, 64 FR 46341, 46342, (August 25, 1999).

Period of Investigation (POI)

Because SAIL is the only exporter/producer of the subject merchandise, the POI for which we are measuring subsidies is the period for SAIL's most recently completed fiscal year, April 1, 1997 through March 31, 1998.

Subsidies Valuation Information

Allocation Period: Under section 351.524 of the CVD Regulations, non-recurring benefits are allocated over time, while recurring benefits are expensed in the year of receipt. Section 351.524(d)(2) of the *CVD Regulations* states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the U.S. Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation and establishes that the difference between the company-specific or country-wide AUL for the industry under investigation is significant. In this investigation, no party to the proceeding has claimed that the IRS tables do not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the *CVD Regulations*, we have allocated non-recurring benefits over 15 years, the AUL listed in the IRS tables for the steel industry.

Under section 351.524 of the *CVD Regulations*, non-recurring benefits which equal less than 0.5 percent of a company's relevant sales are expensed in the year of receipt. SAIL realized non-recurring benefits under a program during two separate years. In the first year, SAIL realized a non-recurring benefit which was less than 0.5 percent of the total value of its export sales during that year. We did not allocate that benefit but rather expensed it in the year it was realized. In the second year, which was the POI, SAIL realized a benefit under the same program which was greater than 0.5 percent of the total value of its export sales during that year. Therefore, we allocated that benefit over 15 years.

Benchmarks for Loans and Discount Rate: SAIL did not report long-term company-specific fixed rate loans denominated in rupees. Therefore, for programs requiring a discount rate or the application of a rupee-denominated long-term benchmark interest rate, we relied upon the long-term rupee-denominated "lending rates" of private creditors reported in the International Monetary Fund's *International Financial Statistics*.

SAIL also reported several long-term foreign currency loans obtained from commercial sources for use as a benchmark where necessary. However, we are unable to rely upon those loans for benchmark purposes because the agreement dates and currencies are not consistent with the agreement dates and currencies of the loans under investigation and because SAIL reported its payments in rupees and reported weighted-average interest rates derived from those payments. We attempted (both during and after verification) but were unable to obtain any information regarding long-term foreign currency lending rates for companies in India. Therefore, we have used the currency-specific "Lending Rates" from private creditors as published in *International Financial Statistics* as the benchmark for foreign currency loans.

For those programs requiring the application of a short-term interest rate benchmark, we used for benchmark purposes company-specific, short-term commercial interest rates reported by SAIL in accordance with section 351.505(3)(i) of the *CVD Regulations*.

I. Programs Determined To Be Countervailable

A. Duty Entitlement Passbook Scheme (DEPS)

In its May 10, 1999, response to the Department's original questionnaire, the GOI submitted copies of two publically available Ministry of Commerce publications—"Export and Import Policy" and "Handbook of Procedures" (*see* Exhibits P and Q of the public version on file in the Central Records Unit, Room B–099 of the main Commerce building). These publications set forth the rules and regulations for the several programs which allow duty exemptions on imports. Chapter 7 of the "Export and Import Policy" contains the details of India's Duty Exemption Scheme, which consists of the DEPS and "Duty Free Licenses" (Advance Licenses, Advance Intermediate Licenses, and Special Imprest Licenses).

On April 1, 1995, the GOI enacted the Passbook Scheme (PBS). Administered under auspices of the Directorate General of Foreign Trade (DGFT), the PBS enabled GOI-designated manufacturers/exporters, upon export of finished goods, to earn import duty exemptions in the form of credits which could be used to pay customs duties on subsequent imports. The amount of PBS credit granted was determined according to the GOI's "Standard Input/Output Norms Schedule" (SIO Norms), which contains GOI-determined breakdowns of inputs needed to produce finished products. Rather than receiving cash, companies record their PBS credits in "passbooks" and then offset import duties on subsequent GOI-approved imports by making debit entries in their passbooks.

The PBS was discontinued on April 1, 1997. However, exporters are allowed to use their PBS credits for up to three years and, thus, exporters could use PBS credits as late as March 31, 2000. We established at verification that SAIL did not earn or use PBS credits during the POI.

India's DEPS was enacted on April 1, 1997, as a successor to the PBS. As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. Exporting companies may obtain DEPS credits on a pre-export basis or on a post-export basis. Eligibility for pre-export DEPS credits is limited to manufacturer/exporters that have exported for a three-year period prior to applying for the program. The amount of pre-export DEPS credits that can be earned is capped at five percent of the average export performance of the applicant during the preceding three years. Pre-export DEPS credits are not transferable. At verification, we established that SAIL has not participated in the DEPS on a pre-export basis.

All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's SIO Norms. Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Post-export DEPS credits are valid for 12 months and are transferable. With respect to subject merchandise, exporters are eligible to earn credits equal to 13 percent of the f.o.b. value of their export shipment. During the POI, SAIL earned post-export DEPS credits. SAIL used such credits during the POI, and did not transfer post-export DEPS credits during the POI.

Section 351.519 of the *CVD Regulations* sets forth the criteria regarding the remission, exemption or drawback of import duties. Under section 351.519(a)(4), the entire amount of an import duty exemption is countervailable if the government does not have in place and apply a system or procedure to confirm which imports are

consumed in the production of the exported product and in what amounts, or if the government has not carried out an examination of actual imports involved to confirm which imports are consumed in the production of the exported product.

The DEPS does not meet either of these standards. Upon exportation, the exporter submits a listing of inputs used to produce the export shipment. While some of these inputs may be imported items, the GOI has no way of knowing whether the inputted items were imported or purchased domestically. Therefore, the GOI has no system in place for determining whether the value of credits issued is equal to the amount of import duties that was payable on any imported items which were consumed in the production of the export shipment. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, under section 351.519 (a)(4) of the *CVD Regulations*, the entire amount of import duty exemption earned by SAIL during the POI constitutes a benefit. A financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program because the GOI has provided SAIL with credits for the future payment of import duties. This program can only be used by exporters and therefore is specific under section 771(5)(A) of the Act. On this basis, we determine that the DEPS is a countervailable program.

In our *Preliminary Determination*, we calculated the total benefit to SAIL from the DEPS as the total amount of import duty exemptions claimed by SAIL during the POI, against the DEPS credits the company earned on its export shipments of subject merchandise to the United States. Upon further review of the operation of this program, in accordance with section 351.519(b)(2) of the *CVD Regulations*, we determine that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned rather than the date DEPS credits are used. At that time, the amount of the benefit is known by the exporter. The benefit to SAIL under this program is the total value of DEPS import duty exemptions that SAIL earned on its export shipments of subject merchandise to the United States during the POI. We also determine that the application fees paid by SAIL qualify as an "...application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act.

Under section 351.524(c) of the *CVD Regulations*, this program provides a recurring benefit because DEPS credits all for the exemption of import duties. To derive the DEPS program rate, we first calculated the value of the credits that SAIL earned for its export shipments of subject merchandise to the United States during the POI by multiplying the f.o.b. value of each export shipment by 13 percent, the percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by SAIL's total exports of subject merchandise to the United States during the POI.

On this basis, we determine the net countervailable subsidy from this program to be 7.28 percent *ad valorem*. *See, also*, Comment 3 and Comment 4 of the "Interested Party Comments" section.

B. Advance Licenses

Under India's Duty Exemption Scheme, companies may also import inputs duty-free through the use of import licenses. Using advance licenses, companies are able to import inputs "required for the manufacture of goods" without paying India's customs duties (*see* chapter 7 of "Export and Import Policy"). Advance intermediate licenses and special imprest licenses are also used to import inputs duty-free. During the POI, SAIL used advance licences and also sold some advance licenses. SAIL did not use or sell any advance intermediate licenses or special imprest licenses during the POI.

The Department has previously determined that the sale of import licenses confers a countervailable export subsidy. *See, e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 63 FR 64050 (Nov. 18, 1998) (*1996 Castings*) and *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 62 FR 32297 (June 13, 1997) (*1994 Castings*). No new or substantive evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. During the POI, SAIL sold advance licenses or portions of advance licenses. Therefore, in accordance with section 771(5)(B) of the Act, we determine that SAIL's sale of advance licenses is an export subsidy and that the financial contribution in the form of the revenue received from the license sales constitutes the benefit to SAIL.

With respect to the use of advance licenses, the Department found, in *1994 Castings* (62 FR 32297 (June 13, 1997)), that the advance license system accomplished, in essence, what a drawback system is intended to accomplish, *i.e.*, finished products produced with imported inputs are allowed to be exported free of the import duties assessed on the imported inputs. The Department concluded that, because the imported inputs were consumed in the production of castings which were subsequently exported, the duty-free importation of these inputs under the advance license program did not constitute a countervailable subsidy. Subsequently, in *1996 Castings* (63 FR 64050 (Nov. 18, 1998)), we stated that we would reevaluate the program in light of new information as to how the program operates. In the petition for this investigation, petitioners provided new substantive information which indicated that the GOI does not value the licenses according to the inputs actually consumed in the production of the exported good. Based on this information, we initiated a reexamination of the advance license program.

SAIL used advance licenses during the POI. As explained above, section 351.519 of the *CVD Regulations* contains the criteria used to determine whether programs which provide for the remission, exemption, or drawback of import duties are countervailable. Under section 351.519(a)(4), the entire amount of an import duty exemption is countervailable if the government does not have in place and apply a system or procedure to confirm which imports are consumed in the production of the exported product and in what amounts, or if it has not carried out an examination of actual imports involved to confirm which imports are consumed in the production of the exported product.

The GOI reported in its questionnaire response and GOI officials explained at verification that products imported under an advance license need not be consumed in the production of the exported product. Upon exportation, in order to obtain an advance license, the exporter submits a listing of inputs used to produce the export shipment. While some of these inputs may be imported items, the GOI has no way of knowing whether the inputted items were imported or purchased domestically. Because the GOI then issues the advance license based on this list of inputted items, we find that the GOI does not base the licenses it issues on

the amount of import duties that were payable on the imported items that were consumed in the production of the export shipment, *i.e.*, the exported merchandise. In addition, because the licenses specify ranges of quantities to be imported rather than an actual amount of duty exemption that can be claimed, the actual value of the advance licenses is not known at the time the license is issued. Therefore, we determine that the GOI has no system in place to confirm that the inputs are consumed in the production of the exported product. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, under section 351.519 (a)(4) of the *CVD Regulations*, the entire amount of import duty exemption earned by SAIL during the POI constitutes a benefit. Because only exporters can receive advance licenses, this program constitutes an export subsidy under section 771(5A)(B) of the Act. A financial contribution is provided by the program under section 771(5)(D)(ii) of the Act because the GOI foregoes the collection of import duties.

Under section 351.524(c) of the *CVD Regulations*, this program provides a recurring benefit because advance licenses are issued on a shipment-by-shipment basis. SAIL reported the advance licenses it used and sold during the POI which it received for exports of subject merchandise to the United States and the application fees it paid in order to obtain those licenses. Because SAIL was able to segregate its advance licenses according to specific export shipments, we included in these calculations exemptions claimed and proceeds realized during the POI which stemmed from exports of subject merchandise to the United States only. As in the *Preliminary Determination*, we continue to determine that benefits from advance licenses are conferred as of the date they are used, not the date of exportation of the export shipment for which the pertinent advance license is earned. *See* Department's Position of Comment 1 and Comment 2 below. We also determine that the application fees paid by SAIL qualify as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act.

To calculate the program rate for the countervailable benefits conferred to SAIL from its use and sale of advance licenses, we first added the values of import duty exemptions realized by SAIL from the use of advance licenses during the POI (net of application fees) and the proceeds SAIL realized from sales of advance licenses during the POI (net of application fees). We then divided the total benefit by SAIL's total value of export of subject merchandise to the United States during the POI. On this basis, we determine the net countervailable subsidy from this program to be 3.33 percent *ad valorem*.

C. Special Import Licenses (SILs)

During the POI, SAIL sold through public auction two other types of import licenses—SILs for Quality and SILs for Star Trading Houses. SILs for Quality are licenses granted to exporters which meet internationally-accepted quality standards for their products, such as IS0 9000 (series) and IS0 14000 (series). SILs for Star Trading Houses are licenses granted to exporters that meet certain export targets. Both types of SILs permit the holder to import products listed on a "Restricted List of Imports" in amounts up to the face value of the SIL, but they do not relieve the importer of import duties.

The Department's practice is that the sale of special import licenses constitutes an export subsidy because companies received these licenses based on their status as exporters. *See, e.g., 1996 Castings* and *1994 Castings*. No new substantive information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. Therefore, in accordance with section 771(5)(B) of the Act, we continue to determine that this program constitutes a countervailable export subsidy and that the financial contribution in the form of the revenue received on the sale of licenses constitutes the benefit.

Because the receipt of SILs cannot be segregated by type or destination of export, we calculated the program rate by dividing the total amount of proceeds SAIL realized during the POI from the sales of these licenses by the value of SAIL's total exports. On this basis, we determine the net countervailable subsidy from this program be 0.15 percent *ad valorem*. *See, also,* Comment 5 of the "Interested Party Comments" section.

D. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to six times the value of the capital goods within a period of five to eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In the *Final Negative Countervailing Duty Determination: Elastic Rubber Tape From India*, 64 FR 19125 (April 19, 1999) (*Elastic Rubber Tape*), we determined that the import duty reduction provided under the EPCGS was a countervailable export subsidy. *See Elastic Rubber Tape*, 64 FR at 19129–30. We also determined that the exemption from the excise tax provided under this program was not countervailable. *See Elastic Rubber Tape*, 64 FR at 19130. No new information or evidence of changed circumstances has been provided to warrant a reconsideration of these determinations. Therefore, we continue to find that import duty reductions provided under the EPCGS to be countervailable export subsidies.

SAIL reported that it imported machinery under the EPCGS in the years prior to the POI and during the POI. For some of its imported machinery, SAIL met its export requirements. Subsequently, the amount of import duties on those imports for which SAIL claimed exemption was completely waived by the GOI. However, SAIL has not completed its export requirements for other imports of capital machinery. Therefore, although SAIL received a reduction in import duties when the capital machinery was imported, the final waiver on the potential obligation to repay the duties has not yet been made by the GOI.

We determine that SAIL benefitted in two ways by participating in this program. The first benefit to SAIL is the benefit from the waiver of import duty on imports of capital equipment. SAIL met its export requirement with respect to certain imports of capital equipment. Because the GOI has formally waived the unpaid duties on those imports, we have treated the full amount of the waived duty exemptions as a grant received in the year the waiver of unpaid duties occurred. For other imports of capital machinery, SAIL has not completed its export commitments and the final waiver of the potential obligation to repay the duties on those imports has not yet been made by the GOI.

Section 351.524 of the *CVD Regulations* specifies the criteria to be used by the Department in determining whether to allocate the benefits from a countervailable subsidy program. Under the *CVD Regulations*, recurring benefits are not to be allocated but are to be expensed to the year of receipt, while

non-recurring benefits are to be allocated over time. In this investigation, non-recurring benefits will be allocated over 15 years, the AUL of assets used by the steel industry as reported in the IRS tables.

Normally, tax benefits are considered to be recurring benefits and are expensed in the year of receipt. Since import duties are a type of tax, the benefit provided under this program is a tax benefit, and, thus, normally would be considered a recurring benefit. However, the *CVD Regulations* recognize that, under certain circumstances, it is more appropriate to allocate over time the benefits of a program traditionally considered a recurring subsidy, rather than to expense the benefits in the year of receipt. Section 351.524(c)(2) of the *CVD Regulations* allows a party to claim that a recurring subsidy should be treated as a non-recurring subsidy and enumerates the criteria to be used by the Department in evaluating such a claim. In the "Explanation of the Final Rules" (the Preamble) to the *CVD Regulations*, the Department provides an example of when it may be more appropriate to consider the benefits of a tax program to be non-recurring benefits, and, thus, allocate those benefits over time. We also stated in the Preamble to the *CVD Regulations* that, if a government provides an import duty exemption tied to major capital equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies. See *CVD Regulations*, 63 FR at 65393. Because the benefit received from the waiver of import duties under the EPCGS is tied to the capital assets of SAIL, and therefore, is just such a benefit, we determine that it is appropriate to treat the benefit conferred to SAIL as non-recurring.

In its questionnaire response, SAIL reported all of the capital equipment imports it made using EPCGS licenses and the application fees it paid to obtain its EPCGS licenses. At verification, we confirmed the accuracy of the information submitted and obtained clarifications regarding certain amounts of duty waived, the timing of the waivers, and the application fees paid. We determine that the application fees paid by SAIL qualify as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act.

In order to calculate the benefit received from the waiver of SAIL's import duties on its capital equipment imports, we allocated the amount of duty waived (less application fees paid) beginning with the year amount of import duty outstanding was formally waived (not at the time the export requirements were met). As explained above in the "Subsidies Valuation Information" section, SAIL realized its non-recurring benefits under this program in two separate years. For each of those years, we performed the "0.5 percent test" prescribed under section 351.524(b)(2) of the *CVD Regulations*. Based on our test result, the amount of non-recurring benefit realized by SAIL in the first year must be expensed but the amount of non-recurring benefit realized in the second year is to be allocated. Accordingly, we determine that it is appropriate to allocate this benefit over the average useful life of assets in the industry, as set forth in the "Subsidies Valuation Information" section, above.

A second type of benefit received under this program was conferred on SAIL involve the import duty reductions received on the imports of capital equipment for which SAIL has not yet met its export requirements. For those capital equipment imports, SAIL has unpaid duties that may have to be paid to the GOI if the export requirements are not met. Therefore, we determine that the company had outstanding contingent liabilities during the POI. When a company has an outstanding liability and repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. *See* section 351.505(d)(1) of the *CVD Regulations*.

We determine that the amount of contingent liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which SAIL applied but, as of the end of the POI, was not finally waived by the GOI. We calculated this benefit to be the interest that SAIL would have paid during the POI had it borrowed the full amount of the duty reduction at the time of import. Pursuant to section 351.505(d)(1) of the *CVD Regulations*, the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for SAIL to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported.

To calculate the program rate, we combined the sum of the allocated benefits attributable to the POI and the benefit conferred on SAIL in the form of a contingent liability loan. We then divided that combined total benefit by the total value of SAIL's exports to all destinations during the POI. On this basis, we determine the net countervailable subsidy from this program to be 0.25 percent *ad valorem*. *See, also,* Comment 6 of the "Interested Party Comments" section.

E. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials, warehousing, packing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines against which they may draw as needed. Credit line limits are established by commercial banks, based upon a company's creditworthiness and past export performance, and may be denominated in either Indian rupees or in foreign currency. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period.

Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. During the POI, the rate of interest charged on pre-shipment, rupee-denominated export loans up to 180 days was 12.0 and 13.0 percent. For those loans over 180 days and up to 270 days, banks charged interest at 15.0 percent. The interest charged on foreign currency denominated export loans up to 180 days during the POI was a 6-month LIBOR rate plus 2.0 percent for banks with foreign branches, or plus 2.5 percent for banks without foreign branches. For those foreign currency denominated loans exceeding 180 days and up to 270 days, the interest charged was 6-month LIBOR plus 4.0 percent for banks with foreign branches, or plus 4.5 percent for banks without foreign branches. Exporters did not receive the concessional interest rate if the loan was beyond 270 days.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export

documents to their lending bank. The credit covers the period from the date of shipment of the goods, to the date of realization of export proceeds from the overseas customer. Post-shipment financing is, therefore, a working capital program. This financing is normally denominated in either rupees or in foreign currency, except when an exporter used foreign currency pre-shipment financing, then the exporter is restricted to post-shipment export financing denominated in the same foreign currency.

In general, post-shipment loans are granted for a period of no more than 180 days. The interest rate charged on these foreign currency denominated loans during the POI was LIBOR plus 2.0 percent for banks with overseas branches or LIBOR plus 2.5 percent for banks without overseas branches. For loans not repaid within the due date, exporters lose the concessional interest rate on this financing.

The Department has previously found both pre-shipment export financing and post-shipment export financing to be countervailable, because receipt of export financing under these programs was contingent upon export performance and the interest rates were lower than the rates the exporters would have paid on comparable commercial loans. *See, e.g., 1994 Castings*, 62 FR at 32998. No new substantive information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of this finding. Therefore, in accordance with section 771(A)(B) of the Act, we continue to find that pre-shipment and post-shipment export financing constitute countervailable export subsidies.

To determine the benefit conferred on SAIL through the its rupee-denominated pre-shipment export financing, we compared the interest rate charged on these loans to a benchmark interest rate. SAIL reported that, during the POI, it received and paid interest on commercial, short-term, rupee-denominated cash credit loans which were not provided under a GOI program. Cash credit loans are the most comparable type of short-term loans to use as a benchmark because, like the pre-export loans received under this program, cash credit loans are denominated in rupees and take the form of a line of credit which can be drawn down by the recipient. Thus, we used these loans to calculate a company-specific, weighted-average, rupee-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on SAIL's pre-shipment rupee-denominated loans and found that the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POI because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

To calculate the benefit from these pre-shipment loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate. Where the calculated amount of benchmark interest exceeded the actual interest paid, the difference is the benefit. We then divided the total amount of the benefit by SAIL's total exports. SAIL did not have any post-shipment rupee-denominated loans outstanding during the POI.

During the POI, SAIL also utilized pre-shipment and post-shipment export financing denominated in U.S. dollars. To determine the benefit conferred from this dollar pre-shipment and post-shipment export financing, we again compared the program interest rates to a benchmark interest rate. We used the company-specific interest rates from SAIL's "bankers acceptance facility" loans to derive the benchmark. SAIL's bankers acceptance facility loans were the only commercial short-term dollar lending received by the company during the POI. Because the effective rates paid by the exporters are discounted rates, we derived from the bankers acceptance facility rates a discounted weighted-average, dollar-denominated benchmark interest rate. We compared this company-specific benchmark interest rate to the interest rates charged on pre-shipment and post-shipment dollar-denominated loans and determined that the program interest rates were higher than the benchmark interest rate. Therefore, we determine that SAIL did not benefit from pre-shipment and post-shipment dollar-denominated export financing during the POI.

We determine the net countervailable subsidy from rupee-denominated pre-shipment export financing to be 0.10 percent *ad valorem*. *See, also*, Comment 7 of the "Interested Party Comments" section.

F. Loan Guarantees From the GOI

In its questionnaire response, the GOI reported that it has not extended loan guarantees pursuant to any program *per se*. Rather, the Ministry of Finance extends loan guarantees to selected Indian companies on an *ad hoc* basis, normally to public sector companies in particular industries. The GOI also reported that GOI loan guarantees are not contingent on export performance nor are they contingent on the use of domestic over imported goods. The GOI stated that, while it has not extended loan guarantees to the steel sector since 1992, it continues to extend loan guarantees to other industrial sectors on an *ad hoc* basis.

During the POI, SAIL had several long-term, foreign currency loans outstanding on which it had received loan guarantees from the GOI and the State Bank of India (SBI). According to SAIL, the loan guarantees were earmarked for certain activities related to the company's steel production (*i.e.*, worker training, modernization activities, etc.). In contradiction to the GOI's questionnaire response, SAIL finalized a loan agreement and, thus, received a GOI loan guarantee as late as 1994.

Section 351.506 of the *CVD Regulations* states that, in the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with a government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any differences in guarantee fees. Thus, to determine whether a government loan guarantee confers a benefit, we compare the total amount paid by the company (*i.e.*, the effective interest and guarantee fees) for the loan with the total amount it would have paid for a comparable commercial loan.

Using the benchmark rates discussed in the "Subsidies Valuation Information" section above for comparison purposes, we found that the total amounts SAIL paid for its GOI-guaranteed loans were less than total amounts SAIL would have otherwise paid for comparable commercial loans. Thus, the loan guarantees from the GOI conferred a benefit on SAIL equal to the difference between these two amounts. The GOI's provision of loan guarantees is specific under section 771(5A)(D)(iii)(II) of the Act because it is limited to certain companies selected by the GOI on an *ad hoc* basis. In addition, a financial contribution is provided under the program as defined under section 771(5)(D)(i) of the Act. To calculate the rate of subsidy during the POI, we divided the benefit by SAIL's total sales during the POI. Consistent with our practice regarding transnational subsidies, we did not include in our calculations SAIL's World Bank, KFW, and Finnish Export Credit loans.

On this basis, we determine the net countervailable subsidy to be 0.14 percent *ad valorem*. *See, also,* Comment 8 and Comment 9 of the "Interested Party Comments" section.

II. Program Determined To Be Not Countervailable

GOI Loans Through the Steel Development Fund (SDF)

The SDF was established in 1978 at a time when the steel sector was subject to price and distribution controls. From 1978 through 1994, an SDF levy was imposed on all sales made by India's integrated producers. The proceeds from this levy were then remitted to the Joint Plant Committee (JPC), the administrating authority consisting of four major integrated steel producers in India that have contributed to the fund over the years. These levies, interest earned on loans, and repayments of loans due are the sources of funds for the SDF.

Under the SDF program, companies that have contributed to the fund are eligible to take out long-term loans from the fund at favorable rates. All loan requests are subject to review by the JPC along with the Development Commission for Iron and Steel. At verification, we confirmed the GOI's claim that it has not contributed any funds to the SDF. Because the SDF was funded by producer levies and other non-GOI monies and there is no evidence of direct or indirect funding by the GOI, SDF loans do not confer a financial contribution as defined under section 771(5)(D)(ii) of the Act. Therefore, consistent with our practice regarding such producer funds, SAIL's SDF loans do not confer a financial contribution from the GOI to SAIL.

On this basis, we determine that the SAIL's SDF loans are not countervailable. *See, also,* Comment 10 of the "Interested Party Comments" section.

III. Programs Determined To Be Not Used

Based upon the information provided in the responses and the results of verification, we determine that SAIL did not apply for or receive benefits under the following programs during the POI:

A. Passbook Scheme (PBS)

B. Advanced Intermediate Licenses

C. Special Imprest Licenses

D. Tax Exemption for Export Profits (Section 80 HHC of the India Tax Act)

Interested Party Comments

Comment 1: The Use of Advance Licenses and Duty Drawback Equivalency

The GOI and SAIL argue that the use of advance licenses is the equivalent to the use of a non-excessive duty drawback program. They contend that, while the structure of India's advance license program may differ from traditional duty drawback programs, the use of advance licenses is not countervailable. Rather, through the use of advance license, exporters obtain duty exemptions that do not exceed the duties payable on the imported inputs used to produce the exported product. They argue that the GOI has a reasonable and effective procedure for confirming which inputs are consumed in the production of the exported products, and in what amounts, and that the GOI uses the SIO norms to ensure against excess drawback.

The GOI and SAIL contend that the mere fact that duty-free imports under a particular advance license need not be physically incorporated into the product exported under the same advance license does not automatically render the advance license program a subsidy. They argue that the regulations only require that the duty-free inputs be used to produce the type of product that is being exported. The regulations do not require that the actual exported product be physically incorporated with the duty-free imports made under the same advance license. They also state that the use of post-export advance licenses is similar to the use of the U.S. substitution drawback regime in that the applicant need only correlate or link the imported items with exported products.

Petitioners contend that the advance license program is not a permissible duty drawback program. First, they argue that there is no requirement that imported inputs be used in the production of the exported merchandise. They argue that the GOI's reliance on the SIO norms and the value-added requirement does not ensure that the amount of benefits granted are not excessive. They argue that the relevant SIO norm is neither a producer-specific nor product-specific norm" but encompasses a broad range of carbon, alloy and stainless steel products made by all producers of such products in India. Therefore, the SIO norm does not limit the amount of benefits granted to SAIL to those imported inputs that SAIL actually consumes in the production of exported cut-to-length plate.

In addition, Petitioners contend that the advance license program does not meet the substitution drawback criteria because the GOI has no mechanism for tracking items imported under advance license and that, in the absence of such a mechanism, there can be no means for ensuring that any domestic inputs used as substitutes are used in the same quantities, and are of the same quality and characteristics as the imported inputs.

Department's Position: We disagree with respondents. The first step in our analysis is to examine whether the GOI has in place and applies an effective system for confirming that imported inputs are consumed in the production of the exported product and in what quantities. Although section 351.519 of the regulations recognizes a longstanding principle that governments may remit or drawback import charges levied on imported inputs, the caveat to that provision is that such recognition will be accorded when the finished product is exported. 19 CFR 351.519 (1999). Section 351.519 incorporates the rule set forth in Annexes II and III of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). These annexes provide the analytical framework for addressing the issue. The preamble to the *CVD Regulations* makes clear that we first determine whether the government has a sufficient system in place to confirm the consumption of the imported inputs and the quantity of the imported inputs consumed in the production of the exported product.

> [u]nder the modified [linkage] test, we will *first* examine whether the exporting government has a system in place that confirms which inputs are consumed in the production of the exported product, and in what amounts, and which taxes are imposed on the inputs consumed in production. Where we find that such a system is in operation, we will examine the system to determine whether it is reasonable, effective, and based on generally accepted commercial practices in the exporting country.

CVD Regulations, 63 FR at 65348, 65413 (Nov. 25, 1998) (emphasis added). Thus, only if a government has a legitimate and effective monitoring system will we then attempt to determine whether that system prevents excessive drawback. Of course, qualification as a substitution drawback system also requires that a government has in place and applies a monitoring system to confirm consumption, quantity, and,

additionally, equality in characteristics of domestic inputs used in place of imported ones. 19 CFR 351.519(a)(ii).

At verification, GOI officials stated that the GOI had no way of confirming whether imported inputs were actually consumed in the production of steel. They also stated that the GOI had no way of knowing whether home market inputs were used in the production of the exported product or whether imported inputs are used to produce products destined for export or the domestic market. They explained the GOI uses its SIO Norms to establish the quantities and maximum import values to be imported under an advance license.

We determine that the use of advance licenses is not equivalent to the use of a permissible duty drawback program. Upon review of the application procedures and the process for issuing a licenses, we found that GOI issues an advance license based on a list of inputs submitted by the exporter and the quantities prescribed in the SIO norms. In this application and approval process, however, there is no way to ascertain whether the items listed for an export shipment were imported inputs or domestic inputs. For a given input listed in an application, the GOI does not know how much was imported and how much was purchased domestically. Therefore, the GOI issued advance licenses without confirming whether the items, upon which it based those licenses, were indeed imported inputs consumed in the production of the export shipment of domestic inputs.

We also determine that the use of advance licenses is not equivalent to the use of a permissible substitution drawback program. The GOI does not have a system in place for confirming that inputs imported under that advance license are used to produce the exported product. The GOI merely presumes that the imported inputs were consumed in the production of the exported product because these inputs are needed for production of cut-to-length plate. Under Annex III to the SCM agreement and section 351.519 of the *CVD Regulations*, the drawback substitution scheme must accomplish substitution on a one-to-one ratio between the imported input and the home market input. The GOI has also failed to provide evidence that such an objective is accomplished under the advance license system.

In summary, the GOI has no way to know whether imported inputs are consumed in subsequently exported products as required under Annex III to the SCM agreement or whether an amount imported was equal to the home market substitutes consumed in the exported product. Consequently, the entire amount of the benefit conferred is countervailable, as directed under section 351.519 of the *CVD Regulations* and reflected in Annexes II and III to the SCM Agreement. Because the GOI does not have a sufficient monitoring system, there is no need to further address whether the system prevents excess drawback or is a viable substitution drawback system.

Finally, at the hearing, the GOI argued that the type of advance licenses used by SAIL is no longer available. This argument was not made in the GOI's case brief and the record contains no factual evidence on which to base this statement. Section 351.310 states that arguments presented at the hearing are limited to those arguments raised in the case briefs. Because the Government of India failed to make this argument in its case brief, we will not address this argument.

Comment 2: Timing and Calculation of Advance License Benefits

SAIL states that it is the Department's practice to measure the benefit from an export subsidy according to the time of export. SAIL then argues that the Department should measure any benefit to SAIL from its advance licenses on an "as earned basis" because SAIL knew the exact amount of duty exemption that it earned under each license at the time of export. SAIL concludes that, because it did not earn any benefits under the advance license program during the POI, the Department may not allocate any benefits to SAIL for its use of advance licenses during the POI. SAIL also argues that, whenever a license is tied to a particular market and a particular product, the Department should attribute the benefit only to that market and product.

Petitioners state that the Department's practice is to measure the benefit of an export subsidy on an "as earned" basis when the benefit is calculated as a percentage of the FOB value of the exported merchandise on a shipment-by-shipment basis and the exporter knows the amount of benefit it will receive at the time of export. They argue that advance licenses are not valued according to these criteria and, thus, the benefits should be calculated at the time they were used or sold. They argue that the SIO norm is used to determine the quantities of specified articles the license holder will be eligible to import free of duty. They state that an advance license holder may know the quantities of the specified articles that it will be eligible to import but, until such merchandise is actually imported and the dutiable value of the merchandise is established, it does not know the value of the customs duties that will be forgiven.

Petitioners also argue that the Department's advance license calculations for the *Preliminary Determination* contain two ministerial errors. They argue that the value of one of the customs duty exemptions and the value of one of the applications fees were incorrectly brought forward from one spreadsheet to another. In addition, they voice a concern that SAIL's submissions regarding advance licenses may not be accurate. They also point out that the information in the advance license documentation submitted by SAIL in Exhibit 27 to its June 25, 1999 supplemental questionnaire response does not reconcile with the data listed for that license in SAIL verification exhibit VE–19.

Department Position: Upon making an export shipment, an exporter can apply for and obtain an advance license. The advance license will list the specific items which can be imported under the license, including the total quantity of goods which can be imported and the maximum value of those future imports that can be made using that license. The GOI establishes those quantities and maximum import values using its SIO Norms. Although an exporter knows the quantities and maximum value of imports it could make under the advance license, the actual value of duty exemptions cannot be determined until the license is actually used by the exporter. Because the actual benefit derived from the use of advance licenses, *i.e.*, the amount of duty exemptions received by the exporter, can only be determined when the license is used, respondents are incorrect when they state that the benefit from this program should be determined on an "as earned basis." Therefore, we calculated SAIL's benefit from this program based on the date the company used advance licenses. This methodology is consistent with prior Department practice. *See e.g., Final Negative Countervailing Duty Determination; Fresh Atlantic Salmon from Chile*, 63 FR 31347, 31440–41 (June 9, 1998) (exports were not associated with particular export transactions so amount could not be calculated); *Certain Pasta from Italy*, 63 FR 17372, 17378 (April 9, 1998) (Preliminary Results of First Countervailing Duty Administrative Review) (uncertainty in restitution benefits because amount granted did not always equal the amount declared by the company); *Final Results of Countervailing Administrative Review: Certain Iron Metal Castings from India*,

56 FR 41658, 41661–62 (Aug. 22, 1991) (lag time between export and identification of the price chosen to calculate IPRS payment).

We do not however agree with Petitioners' comments about the accuracy of SAIL's advance licenses data. The materials provided in Exhibit 27 include a sample application, sample shipping bills, and a sample advance license. These documents do not represent a complete set of supporting documentation for one particular license but are merely examples from different transactions. Thus, it is not surprising that the destination information on these sample shipping bills does not match the destination data listed for the advance license also provided in Exhibit 27. Most importantly, we verified the accuracy of all the information used in the calculation of the benefit for this program.

Comment 3: The Use of DEPS Licenses and Duty Drawback Equivalency

The GOI and SAIL argue that the use of DEPS licenses is equivalent to the use of a non-excessive duty drawback program. They contend that, for the reasons discussed in the above section regarding advance licenses, the SIO Norms and the program's value-added requirement constitute an effective monitoring system. They also argue that the fact that the DEPS provides the exporter duty drawback in the form of credits rather than cash does not make the program a subsidy. In addition, SAIL notes that, during the POI, it used all of its DEPS credits to import a single major input used in the production of the subject merchandise.

Petitioners argue that the DEPS does not qualify as a permissible drawback program and therefore SAIL's DEPS credits are countervailable. They argue DEPS credits may be used to import any article, not just inputs used in the production of the exported merchandise. They further state that SAIL is not required to import or consume any imported inputs in the production of the exported goods in order to obtain post-export DEPS credits. They also argue that, because post-export DEPS credits can be used to offset duties on any imports and are transferable, exemptions are not limited to inputs consumed in the production of the exported goods. Petitioner state that the fact that SAIL may have imported a single major input is irrelevant because the Department's regulations are clear that the government in question (not the importer) must maintain an effective system for guarding against excessive drawback or the entire amount of the benefits will be countervailable.

Department Position: We disagree with respondents for the reasons outlined in response to Comment 1, above. The GOI issues DEPS licenses without confirming whether and in what amounts imported inputs were used to produce the export shipment against which the license is to be based. Consequently, the GOI has no system for monitoring that DEPS licenses are valued according to the import duties that were payable for inputs imported for the production of the exported product.

Comment 4: Timing and Calculation of DEPS Benefits

SAIL argues that, if the DEPS is determined to be countervailable, the Department should measure the benefit from its post-export DEPS credits on an "as used" basis. SAIL explains that, due to administrative irregularities and confusion with regard to how the program operated, it did not know how much credit it earned at the time of export.

Petitioners argue the Department should measure the benefit to SAIL under the DEPS using all of the DEPS credits "earned" by SAIL on its exports of the subject merchandise to the United States during the POI. They state that this is the appropriate methodology because (1) post-export DEPS credits are provided on a shipment-by-shipment basis, and (2) SAIL knew the exact amount of DEPS credits it would earn on its shipments because the credit rates are published by the GOI.

Department's Position: We agree with petitioners. Under the new CVD regulations, the benefit is measured on an "as earned" basis under the following conditions. If the program permits exemption of import duties upon export, the Department normally will consider the benefit as having been received upon exportation. 19 CFR 351.519(b)(2) (1999). We calculate the benefit on an "earned" basis (that is upon export) where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and the exact amount of the exemption is known. *Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe From Turkey; Final Results and Partial Recission of Countervailing Duty Administrative Reviews*, 63 FR 18885, 18888 (April 16, 1998). *Accord Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Reviews*, 61 FR 50273, 50275 (Sept. 25, 1996); *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 60 FR 44843, 44844 (Aug. 29, 1995).

DEPS credits are based upon the f.o.b. value of the shipment. Thus, the amount of the benefit is known to the recipient upon export. Unlike advance licenses, which are issued according to the quantities and maximum values of the items to be imported, DEPS credits are equal to the amount of import duty exemptions that the credit-holder is eligible to claim. Despite some initial uncertainty on the part of SAIL as to how the program operated and the amount of duty exemption that would be granted, SAIL was able to confirm the rates applicable and know the value of its credits by June 1997, which was not long after the program was implemented and at the beginning of the POI.

Comment 5: Calculation of the Benefit from Selling SILs

Petitioners point out that, at verification, SAIL officials explained that SAIL reported its revenues from its sales of SILs net of tax. They argue that, because sales tax does not qualify as an application fee, deposit or other payment pursuant to 771(6)(A) of the Act, the Department should include in its calculations the sales taxes reported in SAIL verification exhibit VE–13.

SAIL argues that the Department should not include the sales taxes in its calculations pertaining to sales of SILs. They argue that SAIL does not realize any benefit when the buyer of a SIL incurs a sales tax liability and pays it through the seller (SAIL).

Department's Position: The only adjustments which can be made to a subsidy benefit are those enumerated under section 771(6) of the Act. Under section 771(6)(A), the Department is only authorized to adjust the benefit from a subsidy by "any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." No other adjustments to the benefit received under this program are applicable under section 771(6)(A) of the Act. Therefore the revenue earned by respondent on its special import licenses is the countervailable benefit received by SAIL under this program. No other offsets or adjustments to that benefit, such as taxes, are authorized under the Act.

Comment 6: Timing and Calculation of EPCGS Benefits

SAIL argues the Department should treat SAIL's EPCGS import duty exemptions as non-recurring grants and allocate the benefits during the POI pursuant to section 351.524 of the *CVD*

Regulations. SAIL explains that, for its imports of capital equipment under the EPCGS, SAIL received partial duty exemptions at the time of importation. SAIL further explains that the exemptions were subject to certain export performance commitments and that SAIL has always met its export commitments under the program.

Petitioners argue the Department should not treat SAIL's EPCGS benefits as being received at the time the capital goods were imported. They argue that the Department has previously considered and rejected this argument in *Elastic Rubber Tape,* 64 FR 19125, 19129 (April 19, 1999). They argue that the Department should allocate the benefits according to the dates that the export obligations were fulfilled. For the instances in which SAIL had export obligations outstanding during the POI, they argue that the Department should regard the amount of duty exemption as an interest-free loan and calculate the benefit by applying its contingent liability methodology.

They also note that, at verification, SAIL officials indicated that SAIL paid a single application fee for the three licenses utilized during the POI. Accordingly, they argue that the Department should exclude from its calculations only the single application fee paid by SAIL. In addition, they note that, at verification, the Department discovered a slight error in the duty rate reported for one of SAIL's capital equipment imports under the EPCGS.

Department's Position: As explained above, we treated the benefits provided under the EPCGS as non-recurring benefits and allocated them according to when the pertinent export requirement was lifted and not the date of importation. Although SAIL claims it has always met its export requirements, there is no evidence on the record that the GOI waived SAIL's export requirements. The benefit from this program, which is the waiver of the import duties, is not confirmed until the pertinent export requirements are met by the exporter. Therefore, the methodology proposed by SAIL, which is based on the date the capital equipment was imported, is not appropriate because that is not the point at which the waiver of duty is made.

In our final calculations, we subtracted the application fees discussed by petitioners only once and corrected for the error regarding the duty rate as well.

Comment 7: Benchmarks for Pre-shipment Export Financing

SAIL argues that the Department should use SAIL's commercial paper issuances rather than it's cash credit loans to determine whether a benefit is provided for rupee-dominated pre-shipment export financing. SAIL argues that the commercial paper issuances are preferable because they represent the most market-based arms-length interest rate for rupee-denominated short-term borrowing.

Petitioners argue that the Department should use SAIL's cash credit loans for benchmark purposes because they are the most comparable to SAIL pre-shipment export financing loans. They state that both types of credit are secured by the corporate assets of SAIL, but SAIL's commercial paper issuances are not secured.

Department's Position: Section 771(5)(E)(ii) of the Act states that the benefit from a loan program is based upon the difference the recipient pays for the program loan and the amount the recipient would pay on a comparable commercial loan. SAIL's rupee-denominated pre-shipment loan export loans and its cash credit loans operate in the same way, as running lines of credit which can be drawn against as needed. Therefore, we determine that the cash credit loan is a comparable commercial loan with respect to the pre-shipment loan provided under this program. The cash credit loan is also a "market-based arms-length" rupee-dominated short-term loan.

Comment 8: Treatment of SAIL's Long-Term Foreign Currency Loans

Citing section 351.527 of the CVD Regulations, SAIL argues that the Department should exclude from its calculations SAIL's foreign currency loan from the World Bank. SAIL then argues that the Department should also exclude SAIL's foreign currency supplier credit loans. SAIL explains that the financing structure for supplier credits—which is fixed by the suppliers, not SAIL—requires SAIL to pay a higher purchase price for all non-cash purchases of capital equipment from the supplier (as opposed to a lower purchase price if SAIL were to pay cash up-front). SAIL then argues SAIL derived no benefit from its supplier credits because they carry an "implicit interest rate" which exceeds the interest rate that was otherwise available on the comparable commercial market. In addition, SAIL argues that the Department should exclude from its calculations its Kreditanstalt fur Weideraufbau (KFW) loans and its Finnish Export Credit (FEC) supplier credit loans. SAIL argues that these loans are not countervailable because they were disbursed by government-owned banks in compliance to the Agreement on Guidelines for Officially Supported Export Credit ("OECD Consensus").

The GOI and SAIL argue that SAIL's loans from the State Bank of India (SBI) should also not be included in the calculations. The GOI argues that the SBI's foreign currency loan guarantees are purely commercial in character and bear no relationship to the GOI's loan guarantee policies or practices. SAIL also argues that, in the *Preliminary Determination,* the Department erroneously treated SAIL's foreign currency loans from the SBI as GOI-guaranteed loans. SAIL argues that these loans were not guaranteed by the GOI but rather were guaranteed by the largest and most important commercial bank in India.

Petitioners argue that the SAIL's GOI loan guarantees were provided in limited numbers and therefore are specific. They then argue that the Department should include in its calculations all of the long-term guaranteed foreign currency loans reported by SAIL. Based on information obtained at verification that commercial bankers would have been unwilling to provide loan guarantees to SAIL, they argue the GOI's provision of loan guarantees on SAIL's loans from international lending or development institutions was not consistent with commercial considerations. With regard to SAIL's supplier credit loans, they argue that SAIL was unable to provide documentation that interest is factored into the amount of the loan. They argue that the GOI guarantees clearly played the decisive role in the lenders' decisions to grant SAIL these loans. Finally, they argue the loan guarantees provided by the GOI-owned SBI are countervailable. They maintain that, at the time SAIL received loan guarantees from the SBI, it could not have obtained guarantees from private sector banks because it was viewed as too great a financial risk. They also argue that the references to documents regarding the lending policies of the KFW and the FEC in SAIL's September 29, 1999 case brief constitute the submission of factual information after the deadline prescribed under 19 CFR 351.301(b)(1).

Department's Position: At verification, we discussed with SAIL officials the foreign currency loans SAIL received from the World Bank and the KFW, two well-known international lending/development institutions. We learned that SAIL also received supplier credit loans through FEC, which is a Finnish government bank. *See* SAIL Verification Report at 15. Consistent with our practice of not countervailing transnational subsidies, we excluded

from our calculations all of SAIL's transnational loans. In addition, we excluded from the calculations any loans which were not guaranteed by the GOI. We do not agree with Petitioners' argument that SAIL could not have obtained commercial loan guarantees and therefore none of the guarantees provided to SAIL were commercial in nature. We are not examining the creditworthiness of SAIL in this investigation. *See Notice of Initiation of Countervailing Duty Investigations: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 64 FR 12996 (March 16, 1999) (*Initiation*). Therefore, information or argument regarding SAIL's financial health at the time it obtained its loans cannot be a basis for including or excluding from the calculations loans that were not guaranteed by the GOI.

Comment 9: Benchmarks for SAIL's GOI-Guaranteed Loans

SAIL argues that SAIL's SBI-guaranteed long-term foreign currency loans should be used for benchmark purposes in calculating the benefit conferred by the GOI guarantees that SAIL received. SAIL argues that the guarantee fee charged to SAIL by the SBI was a reasonable commercial guarantee fee, considering SAIL's status as a large public sector company in reasonable financial health. SAIL states that commercial foreign currency lenders in general regarded loan guarantees by the SBI as providing comparable security to GOI loan guarantees. Accordingly, SAIL argues that the Department should not use a methodology of comparing the total cost of borrowing, *i.e.*, the combination of interest and guarantee costs. Rather, SAIL argues that Department need only account for any difference in guarantee fees and should simply compare the GOI guarantee fee (1.20%) with the guarantee fee charged by SBI. Then the Department should multiply the difference by the outstanding balance during the POI for each GOI-guaranteed loan and divide the total by SAIL's total sales during the POI.

Petitioners argue that, in absence of a company-specific benchmark interest rate for SAIL, the Department should not use for benchmark purposes the "lending rates" published in *International Financial Statistics*. They argue that, pursuant to section 351.505(a)(3)(ii) of the *CVD Regulations*, the use of a national average interest rate is intended to be representative of a loan that "could have been taken out" by SAIL. They then argue that, during the period in which SAIL obtained GOI-guaranteed loans, SAIL could not have obtained loan guarantees from commercial banks. They state that a company viewed by commercial bankers as posing too great a risk to be eligible for loan guarantees could not have obtained loans at the same interest rates charged to SBI's best customers. Accordingly, they propose that the Department should adopt an approach which is analogous to applying a risk premium when a company is uncreditworthy. They argue that such an approach should be used with respect to the loans SAIL received from international lending or development institutions as well.

In its rebuttal brief, SAIL takes issue with Petitioners' argument that the Department should select benchmark interest rates which reflect an inability on the part of SAIL to obtain long-term long guarantees from commercial banks. SAIL argues that there is substantial evidence on the record that commercial banks were willing to make long-term foreign currency loans to SAIL, including evidence that independent credit rating agencies gave SAIL high ratings.

Department Position: We disagree with SAIL that SAIL's SBI-guaranteed long-term foreign currency loans can be used for benchmark purposes. The loans for which SAIL received guarantees from the SBI are not denominated in the same currency as any of SAIL's GOI-guaranteed long-term foreign currency loans and, in all but one instance, were agreed upon in different years. Therefore, the SBI-guaranteed loans cannot be used for benchmark purposes. We also disagree with SAIL that the Department should only consider differences in guarantee fees. Section 771(5)(E)(iii) of the Act makes clear the basis for calculating the benefit from a guaranteed loan is a comparison of what the recipient paid for the guaranteed loan (including any guarantee fees) with what the recipient would pay to obtain comparable commercial financing. This standard, which is repeated in section 351.506 of the *CVD Regulations*, replaced the pre-URAA practice, under which we followed the methodology proposed by SAIL. Given the change in standard, we have followed the methodology outlined in our regulations and compared the costs of the GOI-guaranteed loans with the appropriate benchmark as discussed in the "Subsidies Valuation Information" section above.

With respect to Petitioners" concerns about using national average interest rates for benchmark purposes, we acknowledge that the "lending rates" published by the IMF are not ideal. However, there is no information on the record containing interest rates that can be regarded as preferable. As explained above, we attempted to obtain other information regarding long-term foreign currency interest rates. At verification, we were unable to obtain any information regarding the foreign currency or other long-term interest rates available during the years in which the GOI provided guaranteed loans to SAIL. The "lending rates" published in *International Financial Statistics* are the only interest rates on the record of this investigation which can reasonably be used for benchmark purposes. In addition, we did not initiate an examination of SAIL's creditworthiness. *See Initiation*, 64 FR 12996 (March 16, 1999). Consequently, we did not include a risk premium in the calculation of our benchmark.

Comment 10: SAIL's SDF Loans

Petitioners argue that SAIL's long-term SDF loans are countervailable under section 771(5)(B) of the Act. In short, they argue that (1) the levies used to fund the SDF are, in essence, taxes and thus constitute GOI contributions to the SDF, (2) the GOI controls the SDF funds, and (3) SAIL received a financial contribution from the GOI in the form of soft SDF loans. Throughout their initial and rebuttal comments regarding the SDF, petitioners refer to information contained in an article that was attached to their September 29, 1999, case brief.

Petitioners argue that the statute does not make an exception for governments that direct tax levies into special government-directed "funds" as opposed to placing such funds in the general treasury. They argue that section 771(5)(B)(iii) of the Act defines as countervailable the types of loans made by the GOI under the SDF because, under this statute, a government need not make a financial contribution itself to give rise to a subsidy. They then argue that, by making soft loans through the SDF, the GOI has foregone revenue to which it is entitled and has therefore made a financial contribution under section 771(5)(D)(ii). They also argue that, because the SDF was created through levies on sales to consumers, SAIL's SDF loans are transfers of funds from the GOI and therefore constitute financial contributions under section 771(5)(D)(i) of the Act.

The GOI and SAIL contend that SAIL's SDF loans are not countervailable. They argue that the SDF was funded from levies on steel producers and other non-GOI sources and that the Department's practice is to not countervail benefits received by producers from such "producer" funds.

They argue that, because the GOI did not contribute any funds to the SDF, SAIL has not received a financial contribution from the GOI as a result of its SDF loans.

In addition, SAIL notes that the article and related arguments contained in Petitioners case brief constitutes factual information. SAIL points out that this information was submitted after the time limit prescribed in section 351.301(b)(1) of the *CVD Regulations*, should not be made a made a part of the record, and should be ignored by the Department.

Department's Position: We agree with respondents. At verification, we confirmed that the SDF was funded by producer levies and other non-GOI sources. *See*, SAIL Verification Report at 10. Therefore, there is no basis for concluding that the SDF loans received by SAIL confer a financial contribution to SAIL from the GOI. In addition, there is no information on the record indicating that the GOI contributed tax revenues to the SDF either directly or indirectly. There is no information on the record indicating that the GOI controls the SDF. Accordingly, there is no basis on the record of this investigation for determining that SAIL's SDF loans are countervailable.

We agree with SAIL that Petitioners' case brief contains new factual information. We also agree that the information was submitted in violation of section 351.301(b)(1) of the *CVD Regulations*. We returned the brief and article to the Petitioners and requested that they submit a redacted brief, which contains no references or argument regarding the article or any new factual information. *See* Memorandum to file Re: Removal of Untimely Factual Information from the Record, dated December 13, 1999, which is on file in the public file of our Central Records Unit (Room B–0990 of the main Commerce Building). Therefore, all arguments relating to information in the article cannot be addressed.

Comment 11: Treatment of SAIL's Stockyard Sales

Petitioners argue that the figure reported for the total value of SAIL's sales it too large because the figure includes the f.o.b.(stockyard) value of SAIL's stockyard sales rather than the f.o.b.(factory) value of those sales. They argue that, in calculating the ad valorem program rates for SAIL, the Department should use an adjusted figure.

Department's Position: We agree with Petitioners. The original figure reported by SAIL includes the f.o.b. (stockyard) value of SAIL's stockyard sales rather than the f.o.b. (factory) value of those sales. At verification, we requested SAIL to derive the f.o.b. (factory) value of its stockyard sales. See SAIL Verification Report at 5 and 6. We adjusted the figure for SAIL's total value of sales during the POI so that the value of SAIL's stockyard sales is included on an f.o.b. (factory) basis. We used this adjusted sales figure for the final determination.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the GOI Verification Report and the SAIL Verification Report, which are on file in our Central Records Unit (Room B–099 of the main Commerce building).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual countervailable subsidy rate for the company under investigation—SAIL. This rate will also be used for purposes of the "all others" rate. We determine that the total estimated net countervailable subsidy rates are as follows:

Producer/exporter	Net subsidy rate
Steel Authority of India (SAIL).	11.25% ad valorem.
All others	11.25% ad valorem.

In accordance with our Preliminary Determination, we instructed the U.S. Customs Service (Customs) to suspend liquidation of all entries of certain cut-to-length carbon-quality steel plate from India which were entered, or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our Preliminary Determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999, and November 22, 1999.

If the ITC determines that material injury or threat of material injury does not exist, this investigation will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If the ITC determines that such injury does exist and issues a final affirmative determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33229 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–816]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Frank Thomson, Office 4, Group II, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3965 or (202) 482–4793, respectively.

The Applicable Statute: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Final Determination: We determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from France are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "*Suspension of Liquidation*" section of this notice.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate from France*, (64 FR 41198, July 29, 1999)) ("*Preliminary Determination*"), the following events have occurred:

In September 1999, the Department conducted verification of Usinor S.A. ("Usinor") and its affiliates (*i.e.*, Sollac S.A. ("Sollac"), GTS Industries S.A. ("GTS"), SLPM, Francosteel Corporation ("Francosteel"), and Berg Steel Pipe Corporation ("Berg")). A public version of our report of the results of this verification is on file in room B–099 of the main Department of Commerce building, under the appropriate case number.

In November 1999, respondent submitted revised databases at the Department's request, pursuant to minor corrections discovered at verification. The petitioners (*i.e.*, Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation)) and the respondent submitted case briefs on November 12, 1999, and rebuttal briefs on November 23, 1999. At the request of all parties, the scheduled public hearing was canceled.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the "*Scope of Investigation*" section, above, and sold in France during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because Usinor had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise

in our product comparisons See *e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* (63 FR 40449, 40450, July 29, 1998) ("*SSWR*").

Changes From the Department's Preliminary Determination

As a result of verification findings and/or clerical errors outlined in the comments below, we have made the following changes from our *Preliminary Determination*: 1) we have added the additional coating, girthweld and unloading and stockpiling charges to Berg's gross price, in addition to its freight revenue, in deriving Berg's total sales price. *See* Interested Party Comment 1; 2) for those sales to the United States that involve Usinor's affiliated freight forwarders, we have used the average of the international freight expenses that do not involve Usinor's affiliated freight forwarders. We have used Usinor's reported domestic brokerage and handling expenses for all sales. *See* Interested Party Comment 3; 3) we have disregarded SLPM's reported indirect selling expenses in our analysis. *See* Interested Party Comment 6; 4) we have denied Usinor's claimed home market packing expense adjustment for all SLPM sales. *See* Interested Party Comment 8; 5) we have matched certain U.S. products to identical home market products. *See* Interested Party Comment 10; 6) we have determined appropriate home market sales for purposes of comparison to three U.S. products whose specifications were corrected at verification; 7) we have recalculated Usinor's home market inventory carrying costs based on the revised cost of manufacturing discussed in Interested Party Comment 16; 8) we have increased Sollac's and GTS's cost of manufacturing to account for increased pig iron cost from an affiliated supplier, thus increasing Usinor's COP and CV. *See* Interested Party Comment 16; 9) we have disallowed Usinor's claimed foreign exchange gains offset to its consolidated financial expense ratio, thus increasing Usinor's financial expense ratio. *See* Interested Party Comment 15; 10) we have used the financial expense information contained in Europipe's financial statements to calculate the further manufacturing financial expense ratio. *See* Interested Party Comment 14; 11) we adjusted Berg's further manufacturing, per-unit movement costs to reflect a per metric-ton value. *See* Interested Party Comment 18; 12) we have deducted home market imputed credit in calculating constructed value; and 13) we have excluded home market inventory carrying cost in calculating constructed value.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Usinor's data. For a discussion of our application of facts available, *see* Comments 3, 6, 8, and 10.

Interested Party Comments

Comment 1: Whether the Department Should Include All Additional Berg Charges in Calculating the Firm's Prices

Respondent argues that the Department's preliminary margin calculation erroneously derived the total price for Berg sales by only adding two of the six relevant data fields, the price for base pipe and freight revenue, while omitting the other four additional charges (*i.e.*, ID coating, OD coating, girthweld, and unloading and stockpiling charges). Respondent asserts that its submitted U.S. sales file, like Berg's invoices, lists the base price and all additional charges within separate fields. Therefore, all fields must be summed to reach the total price.

According to respondent, the Memorandum for Holly Kuga from the Team, "Verification of the Responses of Usinor in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Plate From France (Berg Sales)" (Oct. 22, 1999) ("*Berg Sales Verification Report*") supports its position. Petitioners did not comment on this issue.

Department's Position: We agree with respondent that it was established at the Berg sales verification that, in determining the total Berg sales price, we should include not only the additional charge for freight revenue, but also the additional coating, girthweld and unloading and stockpiling charges. Based upon our findings at verification, we have included these additional charges in deriving Berg's total sales price for the final determination.

Comment 2: Whether GTS' French-Format and U.S.-Format Financial Statements Reconcile

Respondent notes that, in the normal course of business, GTS prepares both French-and U.S.-format financial statements. Respondent argues that the Memorandum for Holly Kuga from the Team, "Verification of the Responses of Usinor in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Plate From France (GTS, Sollac, and SLPM)" (Nov. 3, 1999) ("*French Sales Verification Report*") erroneously states that the GTS U.S.-format does "not tie to the French-style format in the GTS financial statements." According to respondent, the financial statements do reconcile, and further, the financial statements report the same revenue and expenses.

Respondent asserts that the only difference in the two statements is in the presentation of expenses. According to respondent, GTS' French-format financial statements are prepared in accordance with French GAAP, whereby expenses are reported by nature (*e.g.*, salaries, taxes) and are not categorized as cost of sales, commercial expenses or general and administrative expenses. The U.S.-format financial statements, by contrast, are prepared in accordance with U.S. GAAP, which requires the separation of cost of sales, selling expenses, and general and administrative expenses. Petitioners did not comment on this issue.

Department's Position: We agree with respondent. Upon further review of the data on the record, we find that the French and U.S. format financial statements do in fact contain the same information.

Comment 3: Whether Usinor Has Demonstrated That Its Foreign Brokerage and Handling Expenses and Sollac's International Freight Expenses Are at Arm's Length Prices

Respondent asserts that Usinor's affiliated transport companies provided freight forwarding and handling services at arm's length prices. Respondent maintains that, should the Department not agree with this assertion, it should not resort to petitioners' proposal that we use, as facts available, the highest foreign brokerage and handling expense and international freight expense reported by respondent from all U.S. sales. Respondent claims that only a small fraction of the brokerage and handling expense incurred by GTS and international freight expense incurred by Sollac and reported in the relevant fields is related to fees charged by one of these affiliates.

Respondent takes issue with the *French Sales Verification Report* statement that Sollac and GTS failed to provide any evidence, other than the affiliated transport companies' income statements, that the charges for brokerage and handling services and international freight services were at arm's length prices. Respondent maintains this was the only documentary evidence Sollac and GTS could provide, since Usinor did not purchase similar services from unaffiliated companies and the affiliated

transport companies do not keep track of data that would allow the calculation of the costs associated with individual shipments.

According to respondent, under the antidumping statute, where an input is purchased from an affiliated party, the Department is to evaluate the price charged by the affiliated party against a market price for that product or service. If the input is a "major input," then the Department is also to evaluate the price charged by the affiliated party for the input against the cost of the input and use the highest of the price from the affiliate, the market price, or the cost of production. *See* Section 773(f)(3) of the Act and 19 CFR § 351.407(b). Respondent argues that, in this case, the affiliated transport companies did not provide the same kind of services to an unaffiliated company that they provided to Sollac or GTS, and Sollac and GTS did not purchase similar services from an unaffiliated company. Consequently, respondent states, it is impossible to make a market price comparison.

Respondent urges the Department to determine that the transfer price was greater than or equal to the cost of the input by examining the affiliated transport companies' financial statements. Specifically, both companies are involved only with export transactions, and work almost exclusively for companies affiliated with Usinor. Thus, according to respondent, the profits listed on the income statements of these two companies are nearly entirely attributable to export work conducted for Usinor and its affiliates. According to respondent, since one company posted a profit for 1998 and the other showed that its income equaled its expenses, their prices are the same or greater than the cost of providing the services.

Respondent argues that in evaluating the prices for inputs in circumstances where no market price is available, the Department routinely uses the higher of the transfer price or cost. Respondent asserts that it is clear that the companies are not absorbing costs and that their prices equal or surpass their costs of providing the services. Hence, respondent concludes that the Department should use the affiliated transport companies' prices in the final determination.

Respondent notes that in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30,820 (June 8, 1999) ("*SSS&S*"), the Department stated that the "arm's length test compares prices charged by or paid to affiliated parties with prices which would otherwise be obtained in transactions with unaffiliated parties." The Department then found that a profit made on services provided by an affiliated freight forwarder did not prove that the prices for the services were at arm's length, and accordingly rejected the transfer price data. According to respondent, the result in SSS&S should not be followed in this case for three reasons.

First, according to respondent, these affiliated transport companies perform basically all of their freight services for Usinor and its affiliates. Their financial statements establish that the prices charged Usinor are equal to or greater than cost. Second, respondent argues that the rule applied in *SSS&S* is more restrictive than the rule routinely applied by the Department regarding affiliated suppliers of major inputs in cost of production investigations, where the Department takes the highest of the price charged by nonaffiliated suppliers, the transfer price, or the cost. *See* 19 CFR § 351.407(b). The Department should not apply a more stringent proof to suppliers of a minor input (*e.g.*, freight forwarding services), than it applies to suppliers of major inputs. Third, respondents assert that the ruling in *SSS&S* is based upon a case involving entirely different facts. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32,833, 32,838 (June 16, 1998) ("*Circular Welded Non-Alloy Steel Pipe*"). In that case, respondent notes, the Department found an affiliated supplier's freight charges were equivalent to the prices charged by unaffiliated suppliers. The Department accordingly rejected evidence that the affiliate did not always charge a markup when it arranged for third-party supply. In other words, respondents claim, the Department said that once it had evidence establishing a market-price benchmark (the best evidence that the transaction occurred at a market price), proof of the affiliate's profitability (the second best evidence) was irrelevant. Respondent argues that the Department's statement that it will not allow evidence of profitability to overcome market price information does not mean, however, that the Department cannot rely on profitability when no market price evidence exists.

Petitioners argue that there is no record evidence to support respondent's claim that its affiliates provided freight-forwarding and handling services at arm's length prices. Petitioners argue that respondent's suggestion that the Department determine that the transfer price was greater than or equal to the cost of the input by examining the affiliates' financial statements is incorrect. According to petitioners, Usinor fails to articulate how the Department could utilize the affiliates' financial statements to determine that the transfer price was greater than or equal to the cost of the input. Further, petitioners contend that the affiliates' financial statements are not a valid source for the arm's length test because one affiliate in a few instances performed some services for unaffiliated companies, indicating that profits may have been derived from transactions with the unaffiliated parties.

Petitioners state the fact that the affiliates may have been profitable overall is irrelevant to whether they charged arm's length prices for foreign brokerage and handling services to a specific entity because they may have been charging preferential rates to GTS and Sollac while earning greater profits on sales to other customers or on sales of non-subject merchandise. Moreover, according to petitioners, even if the affiliate earned a profit for services provided to GTS and Sollac with respect to the subject merchandise, this does not mean it charged arm's length prices for these sales. What is relevant, petitioners state, is whether the profit earned is as large as the profit earned on sales to other customers or for other products. Thus, petitioners conclude, Usinor has failed to demonstrate that it paid arm's length prices for this service. Petitioners suggest applying the highest brokerage and handling expense reported by Usinor in the foreign brokerage and handling field to all U.S. sales.

Petitioners further state that Usinor also failed to demonstrate that international freight expenses incurred for Sollac's U.S. sales were at arm's length. Petitioners argue that because Usinor failed to demonstrate that it reported arm's length prices for Sollac international freight expenses, the Department should apply, as facts available for all U.S. sales, the highest international freight expenses reported by Usinor.

Department's Position: We agree with petitioners in part. As in *SSS&S*, it is clear from the record evidence that Usinor was unable to demonstrate that its affiliated freight forwarder rates (brokerage and handling) were at arm's length prices. We disagree with respondent's argument that a profit made on the services the affiliated freight forwarders provided to GTS and Sollac proves that these services were at arm's length. The arm's length test for services between affiliated parties compares prices charged by or paid to

affiliated parties with prices which would otherwise be obtained in transactions with unaffiliated parties. *See Circular Welded Non-Alloy Steel Pipe.* The level of profit on these services is not a relevant consideration.

However, we disagree with petitioners' contention that adverse facts available should be utilized. In accordance with Section 776(b) of the Act, Usinor acted to the best of its ability to prove that these transactions were at arm's length. Specifically, the affiliated transport companies did not provide the same kind of services to an unaffiliated company that they provided to Sollac or GTS, and Sollac and GTS did not purchase similar services from an unaffiliated company. Thus, at verification Usinor provided us with the only information available with respect to the issue of brokerage and handling cost.

Usinor's attempt, therefore, to prove the arm's length nature of these transactions by supplying the affiliates' income statements, in light of the lack of any other information, constitutes a reasonable attempt to cooperate with the Department's requests. Because Usinor cooperated fully, but was unable to provide the requested information in the exact manner requested, adverse facts available is an inappropriate basis on which to calculate this adjustment. Because we find that Usinor has acted to the best of its ability with respect to this adjustment, and because there are no unaffiliated transactions that we can utilize as facts available, we have used Usinor's domestic brokerage and handling expense as reported. Finally, we note that for international freight expenses, the record does contain expenses from unaffiliated parties. Because Usinor's international freight expenses from affiliated parties were less than such expenses from unaffiliated parties, as non-adverse facts available for affiliated transactions we have used the average of the unaffiliated international freight expenses.

Comment 4: Whether Usinor Has Adequately Demonstrated Differences in Levels of Trade ("LOT")

Petitioners note that in the preliminary determination, the Department identified two LOTs in France, one comprised of sales by GTS and Sollac, and a second comprised of sales by SLPM. The Department found that the LOT of the U.S. sales differed from both of these because Usinor claimed that it performed fewer selling activities for U.S. sales than for home market sales at either level. Petitioners state that at verification, the Department found that it could not verify Usinor's LOT representations, and accordingly should reject Usinor's claim for a CEP offset based on different LOTs.

Petitioners quote from the *French Sales Verification Report* in regard to GTS: "Company officials explained the information included in the [LOT] chart submitted to the Department and provided no supporting documentation." Petitioners quote from the French Sales Verification Report in regard to Sollac: "Included in the list of corrections * * * are minor revisions to the [LOT] chart most recently submitted to the Department. Company officials explained the information included in the [LOT] chart and provided no supporting documentation." Petitioners argue that, as the Department was unable to verify Usinor's information submitted with regard to GTS and Sollac, there is no basis upon which to presume that home market LOT one is distinct from the U.S. LOT. Petitioners next state that the Department also has no basis upon which to conclude that Usinor's second home market LOT, which involves sales by SLPM, is distinct from the U.S. LOT, because the Department could not verify SLPM's warehousing expenses and its indirect selling expenses and selling activities (two of the activities which led to the preliminary LOT determination.)

Respondent states that, as requested by the Department, Usinor provided comprehensive charts detailing the various activities performed by the various companies in each market, including the degree to which each function was performed. Respondent argues that these LOT charts reveal that Sollac and GTS conduct more selling activities, and to a greater degree, in France than they do in the United States because the U.S. companies are fully engaged in the selling effort and perform themselves the selling functions that the French companies undertake at home. Respondent reiterates Usinor's statements from its initial questionnaire response that: "Sales in the respective markets are at different [LOTs]—to end users and service centers in France, and to a super-distributor, Francosteel, and an affiliated pipe producer, Berg, in the United States. As such, all sales made by Sollac and GTS in France are at a different [LOT], representing a more advanced stage of distribution [than that for U.S. sales]. In the United States, Francosteel and Berg effectively relieve Sollac and GTS, as applicable, of virtually all of the selling functions that they bear in connection with their home market sales."

Respondent argues that the mode of analysis undertaken by the Department in evaluating LOTs, as reflected in its July 19, 1999, *LOT/CEP Memorandum* and the *Preliminary Determination*, was proper and in accordance with the requirements of the law. Respondent argues that nothing in the *French Sales Verification Report* raises any question about the Department's preliminary determination that a CEP offset was appropriate. Respondent argues that the *French Sales Verification Report* does not state that the LOT charts failed to verify, rather, it stated that respondent did not provide any additional new documentary evidence at verification on LOT. In fact, respondent contends, the record contains myriad evidence, verified by the Department, demonstrating from every possible angle the differences in selling activities conducted in selling to France versus those for selling to the United States.

Respondent contends that Sollac Vente France's (SVF)'s and SLPM's activities, which are conducted solely for sales in France, demonstrate that a CEP offset is warranted. Respondent asserts that it has submitted copious data supporting SVF's activities, including French sales traces demonstrating SVF involvement, a list of SVF's eleven sales offices, and a certified response elaborating its role in the sales process. Respondent states that a comparison of the home market and U.S. sales traces exhibits that SVF does not conduct any activities regarding sales to or in the United States. For SLPM sales, both SVF and SLPM provide services, drawing into even starker relief the differences in the selling activities for France vis-a-vis CEP sales to Francosteel and Berg for the U.S. market.

According to respondent, further confirmation of the significant differences in selling activities for respondent's sales in France compared with its sales to the United States is provided by the verified selling expenses provided in respondent" computer files. Respondent states that the average level of expenses for sales in the home market is anywhere from 50 to 1200 percent higher than for sales to the United States.

Respondent argues that the Department was able to orally verify the LOT charts with the company officials who, by virtue of their daily involvement in CTL plate sales, are intimately aware of the degree of selling activities conducted in each country. According to respondent, the charts were put together by the companies after lengthy consultations with personnel who have direct, day-to-day involvement in the sale of CTL plate in the United States and France, and many of these same people were present and

available for questioning by the Department at verification.

Respondent further asserts that a CEP offset to reflect the demonstrated differences in selling activities is warranted in this case. Respondent states that it provided complete and accurate data regarding the level of selling activities conducted in each country, including: information regarding the extensive selling activities of Sollac, GTS, SVF, and SLPM in France and the substantially less or non-existent selling activities of those companies for sales to the United States, including sales traces revealing these differences, addresses of SVF's commercial offices in France and the lack of such offices in the United States, addresses and maps of SLPM's commercial offices and warehouses in France and the lack of such offices in the United States, verified information regarding warehousing expenses, warranty expenses, indirect selling expenses, commission expense and inventory carrying cost incurred for sales in France and for the United States, and complete access to personnel at all companies who could confirm the differences in selling activities.

Department's Position: We disagree with petitioners that Usinor's CEP offset should be denied. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether or not a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR at 61731.

In the *Preliminary Determination*, the Department made a CEP offset adjustment to the normal values that were compared to CEP sales in the United States, because the Department preliminarily found that all of Usinor's home market sales were made at LOTs different from and more advanced than the LOT of Usinor's CEP sales in the United States, and there was no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability. *See LOT/CEP Memorandum*, dated July 19, 1999. In particular, the Department found that Usinor performed fewer and different selling functions in connection with its CEP sales than in connection with home market sales to its unaffiliated customers. Further, the Department found that it was not possible to quantify a LOT adjustment based on the available data. The fact that Usinor identified a slightly different LOT pattern at verification than it had in its questionnaire response is not determinative. As explained above, the Department conducts its own LOT analysis, rather than merely accepting the assertions of the parties. The Department is satisfied that it has sufficient reliable information to reach a decision as to the LOTs at which Usinor and its affiliates sell subject merchandise. Furthermore, the Department verified the data used in making this analysis. *See* the *French Sales Verification Report*, which notes that we reviewed the LOT charts with company officials, and substantiated the claimed LOT differences through documentation such as that collected in the sample sales traces and verification exhibits related to the relevant expenses. Although we disagree with respondent's assertion that SVF's and SLPM's lack of commercial offices in the United States is relevant, after further examination of the relevant information on the record, the Department has continued to make a CEP offset because the facts on the record indicate that Usinor's CEP LOT is different from and less advanced than Usinor's home market LOTs, and that the data of record do not permit it to, instead, make a LOT adjustment based on the effect of the LOT difference on price comparability.

Comment 5: Whether Usinor Has Failed To Provide Accurate Inventory Carrying Cost Information for Sollac Home Market Sales

Petitioners argue that the inventory carrying cost information Usinor has reported for Sollac sales does not reflect the inventory experience of Sollac for the entire period of investigation, but rather ignores seventeen percent of the period. Petitioners quote from the *French Sales Verification Report:* "Sollac utilized the daily inventory balance during the period March 9 through Dec. 31, 1998, because, according to company officials, Sollac no longer had the information for the first two months of the year in their system to cover the entire POI." Petitioners state that the Department should not deem this information accurate or representative, and, accordingly, should not include Sollac's reported inventory carrying costs as part of that adjustment.

Respondent contends that the Department verified the accuracy of the information used to calculate Sollac's average number of days between production and shipment for the March 9, 1998 through December 31, 1998 period. Respondent states that the earliest date for which Sollac's database had detailed inventory movement data was March 9, 1998, and that its method of calculating average inventory days is more precise than the general method.

Respondent contends that the general method used by accountants to calculate annual average inventory days or turnover is by dividing the average of beginning and ending inventory balances by average daily shipments or costs of goods sold during the year. So, according to respondent, the general method is based upon only two observations.

On the other hand, for each shipment of plate to a customer in France during the period from March 9, 1998 through December 31, 1998, Sollac calculated the actual number of days between the date when the plate entered finished or semi-finished goods inventory and the date when the plate was shipped to the customer. Thus, according to respondent, Sollac's calculation was based on 291 observations rather than the two observations that is the norm for this calculation. Further, respondent argues, Sollac calculated its average inventory days specific to the subject merchandise, not on a larger product group as is typically the case. Respondent asserts that Sollac's calculation is more representative than the data typically prepared by companies, and accordingly, the

Department should reject petitioners' request that the Department not include Sollac's inventory carrying costs.

Department's Position: We agree with respondent. We verified the accuracy of the information used to calculate Sollac's average number of days between production and shipment for the March 9, 1998 through December 31, 1998 period, and find this period to be an accurate representation of the POI for purposes of tracking inventory movement. We found that respondent's explanation for the absence of inventory information for the first two months of the POI was reasonable, and noted no discrepancies in tracing the relevant information through Sollac's books and records. *See* the *French Sales Verification Report.*

Comment 6: Whether Usinor Accurately Reported Indirect Selling Expenses for SLPM's Home Market Sales

Petitioners argue that Usinor's reported indirect selling expenses for SLPM's home market sales are deficient, and thus the Department should not include this information in the adjustment to normal value. Petitioners cite to the SLPM Indirect Selling Expense section of the *French Sales Verification Report* in support of their above contention.

Respondent argues that the Department verified the accuracy of SLPM's indirect selling expenses. Respondent first states that the discrepancy cited by petitioners that its receivables insurance was inadvertently included in the calculation of indirect selling expenses is clearly immaterial and was well known to the Department. Respondent next disagrees with petitioners' arguments regarding SLPM's allocation of costs by function. Respondent asserts that SLPM maintains its costs by nature, which is in accordance with French GAAP (*note,* an example of maintenance of cost "by nature" as distinguishable from costs "by function" would be tracking total electricity costs rather than electricity usage by process or factory.) Further, respondent asserts, SLPM's submitted cost worksheet allocated its costs by nature into the form requested by the Department and accounts for all costs.

According to respondent, the Department verified that the costs reported tied to SLPM's 1998 income statement and general ledger, then requested that SLPM demonstrate the basis for its allocations of these costs among functions. Respondent states that SLPM provided detailed worksheets for electricity and the other allocations specifically reviewed by the Department, and SLPM's controller and financial director explained how he used his knowledge of the company to make the allocation judgements. Respondent argues that petitioners do not question whether all of SLPM's costs and expenses were properly reported to the Department, but rather whether they were properly allocated. According to respondent, petitioners point to no contrary record evidence to buttress their claim that the allocation is incorrect and to warrant the Department rejecting SLPM's indirect selling expenses.

Department's Position: We agree with petitioners. As noted in the *French Sales Verification Report,* SLPM provided no documentation to support its estimated allocations used to determine the costs included in its reported indirect selling expenses. We disagree with respondent's contention that SLPM provided detailed worksheets for electricity and the other allocations specifically reviewed by the verifiers. The worksheets provided by respondent at verification merely listed the estimates used to derive SLPM's allocations, and did not offer any supporting documentation on how those estimates were derived.

In conducting verification the burden is on respondents to demonstrate that the information in their questionnaire response is complete and accurate. While the verifier asks different questions and employs different methods to evaluate the reported expenses, it is respondents who have the most complete knowledge of available information sources, who must devise a way of demonstrating the accuracy and completeness of their reported data. For indirect selling expenses, which by their very nature are general expenses that must be allocated over relevant sales, it is sometimes difficult to allocate expenses in a precise manner. Nevertheless, some reasonable and consistent method has to be developed which can be tested and evaluated at verification. In the instant case, respondent did not provide a reasonable or consistent basis for the reported expense, but merely estimated the relevant amount. We are unable to accept respondent's estimates without some basis for critically evaluating whether they are reasonable at verification. Accordingly, we have disregarded SLPM's reported home market indirect selling expenses.

Comment 7: Whether Usinor Accurately Provided Warehousing Expense Information for Sollac's Home Market Sales to SLPM

Petitioners argue that Usinor did not provide verifiable warehouse expense information for Sollac's home market sales. Petitioners cite to the *French Sales Verification Report:* "to support its per metric ton warehouse expense amount, SLPM provided a computer screen print which, according to company officials, cannot be linked to SLPM's accounting system . . . SLPM informed us that warehousing information is entered when received and does not connect to any other information or accounting system." Petitioners claim that, as this expense could not be tied to SLPM's accounting system, the Department has no way of ensuring the accuracy of the reported expenses, and thus should not include Sollac's warehousing expense in the adjustment to normal value for all SLPM sales.

Respondent disagrees with petitioners' contention that SLPM's warehousing costs should not be included as an adjustment to normal value because SLPM could not link the tons warehoused to its accounting systems. Respondent maintains that accounting systems track revenue and costs rather than tonnage, so it is understandable that the tons warehoused were not mentioned in SLPM's accounting system. Respondent asserts that SLPM appropriately provided the Department with a query of its inventory database that tracked the number of tons shipped from its warehouses. Respondent argues that the Department verified that this database is maintained in the normal course of business, and that SLPM accurately reported its per-unit cost of warehousing.

Department's Position: We agree with respondent. We verified that SLPM's inventory database is maintained in the normal course of business, and traced the relevant information from this database to SLPM's calculated per-unit cost of warehousing as reported to the Department.

Comment 8: Whether Usinor Provided Accurate Home Market Packing Costs for SLPM Sales

Petitioners claim that the *French Sales Verification Report* indicates that the packing expenses reported with respect to SLPM sales do not pertain to the POI. Petitioners quote from the *French Sales Verification Report,* "SLPM acknowledged that its packing costs were based on May 1998 estimated costs for which it could not provide detailed specifications." Petitioners argue that, as these reported amounts were estimated and do not pertain to, and thus cannot be linked to, sales made during the POI, the Department should deny Usinor's claimed home market

packing expense adjustment for all SLPM sales.

Respondent disagrees with petitioners' contention that the Department should deny Usinor's claimed home market packing expense adjustment for all SLPM sales. Respondent states that petitioners' cite from the *French Sales Verification Report* only refers to a small amount of SLPM's sales, those which are not further processed. Respondent states that, when SLPM ships product in the same form as received from the manufacturer, it assigns a Franc per ton charge to the shipment. Respondent argues that this charge represents a reasonable estimate of SLPM's handling costs that it has used for its own internal accounting purposes in the normal course of business. Respondent argues that, for the other SLPM sales, it provided detailed support for its calculated packing costs at verification and met its burden of demonstrating that these expenses were properly reported.

Department's Position: We agree with petitioners. Each pre-selected sales invoice reviewed and discussed in the *French Sales Verification Report* involving SLPM indicated that the subject merchandise was not further processed by SLPM. The packing type for subject merchandise that was not further processed by SLPM is that for which SLPM was unable to substantiate its estimated packing cost. *See French Sales Verification Report* at page 37, where we noted that "SLPM acknowledged that its packing costs were based on May 1998 estimated costs for which it could not provide detailed specifications." With respect to the packing types SLPM utilized when it further processed the subject merchandise, notwithstanding respondent's claim that it "calculated packing costs in detail and provided support for its calculation," the respondent provided no documentation on the record to support its cost breakdown (listed in SLPM verification exhibit 13). We have thus denied Usinor's claimed home market packing expense adjustment for all SLPM sales.

Comment 9: Whether Sales of Certain Merchandise Should Be Reclassified as Non-Prime Sales

Petitioners argue that the Department treated sales of certain merchandise as prime merchandise in the preliminary determination when, in fact, Usinor has stated that such merchandise is non-prime. Petitioners note that Usinor has stated "GTS guarantees neither the grade nor the length of this merchandise; it only guarantees thickness," and that the *French Sales Verification Report* confirmed this assertion. Petitioners assert that this merchandise is non-prime material that is priced differently from other CTL plate sold in the home market, and thus should be treated as non-prime sales in the final determination.

Respondent contends that the Department should not alter its Preliminary Determination with respect to this merchandise. Respondent argues that the only difference between this merchandise and full prime merchandise is the possibility of changes in the mechanical properties of the slab over the six-month waiting period. This merchandise, according to respondent, is superior to non-prime merchandise because it is warranted except for grade, while non-prime is not warranted at all. Respondent argues that it would be distortive to treat this merchandise as non-prime merchandise because it is much closer in characteristics and price to the prime merchandise sold by GTS.

Department's Position: We agree with respondent that it would be distortive to treat this merchandise as non-prime. We have stated, in *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil* 64 FR 38756 (July 19, 1999) (*"Hot-Rolled Steel from Brazil"*), that "to determine if sales or transactions are outside the ordinary course of trade, the Department evaluates all of the circumstances particular to the sales in question. Examples of sales that we might consider outside the ordinary course of trade are sales involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price. See 19 CFR 351.102."

In this case, the CTL plate described above is not defective in any way, but is merely prime plate that has been in inventory for a period long enough to possibly alter some mechanical properties of the merchandise. *See French Sales Verification Report* at page 3. Although the existence of such differences is speculative, in the interest of full disclosure, respondent identifies this merchandise to customers. However, we found no evidence at verification that customers actually treat this merchandise any differently from full prime merchandise. Thus, unlike that discussed in *Hot-Rolled Steel from Brazil*, these products are not off-quality merchandise, and therefore the sales may be considered within the ordinary course of trade. As such, we have continued to treat this plate as prime merchandise for purposes of the final determination.

Comment 10: Whether Usinor Has Provided Complete Information on Product Specifications

Petitioners argue that the model matching hierarchies provided by Usinor for two of its U.S. CTL plate specifications do not indicate identical home market matches, when in fact Usinor sold merchandise with these exact specifications in its home market. *See Final Calculation Memo*, dated December 13, 1999, for a description of these proprietary specifications. Petitioners assert that the Department should revise its model match program to permit identical matches between these U.S. and home market specifications.

Respondent contends that petitioners' argument in this regard is simply incorrect, and that for these two U.S. CTL plate specifications, the identical home market specification was sold in the home market and has been identified.

Department's Position: We agree with respondent that it provided accurate supplemental model-matching information in its May 25, 1999, submission. Usinor identified the identical home market specification for both of these U.S. specifications in its submission. Therefore, for the final determination, we have matched the relevant U.S. sales to home market sales with identical specifications.

Comment 11: Whether Usinor Failed to Report Inland Freight Expenses That Were Incurred for Numerous U.S. Sales

Petitioners assert that for numerous U.S. sales with reported sales terms that indicate inland freight expenses, Usinor failed to report freight expense. Petitioners argue that, as facts available, the Department should deduct the highest reported freight charge from each of these transactions.

Respondent maintains that these sales were correctly reported as incurring no freight expenses. According to respondent, the Department specifically reviewed a transaction at the Francosteel sales verification where the sales terms were reported as delivered but the freight expense was zero, and verified that the zero freight expense was correct. Respondent further argues that the other fields in the Berg and Francosteel records corroborate that no U.S. freight expense was incurred.

Department's Position: We agree with respondent. Item 5 of Francosteel

verification exhibit 1 (list of corrections) from the "Verification of the Responses of Usinor in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Plate From France (Francosteel Sales)" (Oct. 22, 1999) ("*Francosteel Sales Verification Report*") contains the list of invoices in which Francosteel incorrectly labeled the delivery terms "delivered" in its previous sales databases. We verified specific invoice items from this list and found that Francosteel incurred no freight expense for these invoices. Further, we noted no discrepancies at the Berg sales verification when verifying Berg's freight adjustment factor for its U.S. inland freight expense.

Comment 12: Whether Usinor Has Failed To Report Warehousing Expenses for Sales by Berg

Petitioners assert that Usinor's supplemental questionnaire responses indicate that Berg incurred warehousing expenses on U.S. sales because Usinor did not address the Department's request that it explain the apparent contradiction between a statement Usinor had made "which implies warehousing expenses were sometimes incurred in the United States." Petitioners argue that the Department should apply facts available to account for possible unreported warehousing expense for all Berg sales. Petitioners suggest that the Department apply as facts available the highest reported warehousing expense reported in the home market.

Respondent maintains that petitioners are incorrect in implying that there are possible unreported warehousing expenses for Berg sales. Respondent states that Berg, as it stated in its initial questionnaire response and as the Department verified, never incurred such warehouse expense.

Department's Position: We agree with respondent. We found no evidence of unreported warehousing expenses at the Berg sales verification, and have therefore utilized Berg's reported expenses. *See Berg Sales Verification Report* at sections Accounting Overview and Reconciliations, Sales Process, U.S. Sales Transactions, and the various expenses, where no evidence of unreported expenses are noted.

Comment 13: Whether the Department Should Reject Usinor's Most Recent Dataset

Petitioners argue that a comparison of Usinor's August 23, 1999, data submission and its most recent, November 10, 1999. data submission reveals that Usinor made a number of changes to its datasets which the company fails to acknowledge in its November 10 memorandum. Petitioners cite the following unacknowledged changes: (1) The number of home market sales transactions increased; (2) the mean gross unit price for U.S. sales increased for numerous customers; (3) the mean value for domestic brokerage and handling for U.S. sales decreased for numerous customers; and (4) the mean value for international freight for U.S. sales decreased for numerous customers. Petitioners argue that, because Usinor has made these unexplained and apparently unauthorized changes to its data, the Department should utilize the August 23, 1999 data submission for the final determination.

Respondent argues that petitioners' list of "unacknowledged and unauthorized" changes to the U.S. and home market sales files submitted on November 10, 1999 in fact were discussed in respondent's minor corrections filings and presented to the Department on the first day of each verification. Respondent states that in the letter that accompanied the files in the November 10 post-verification submission, it incorporated by reference the minor corrections and verification exhibits that described these corrections in detail.

Department's Position: We agree with respondent that in the letter that accompanied the files in the November 10, post-verification submission, it incorporated by reference the minor corrections and verification exhibits that described these corrections in detail. At verification we accepted these minor corrections, and accordingly, we utilized Usinor's most recently submitted data for the final determination.

Comment 14: Calculation of Further Manufacturer's Financial Expense Ratio

Usinor first argues that the Department should not use Europipe Gmbh's ("Europipe") (*i.e.*, Berg's parent) financial expense ratio to calculate Berg's further manufacturing financial expense. Instead, Usinor believes that Dillinger Hutte's ("Dillinger") financial expense ratio should be used because this company is the ultimate parent of both Berg and Europipe. However, if the Department does determine that Europipe's financial expense ratio should be used for the final determination, Usinor requests that the Department make certain corrections to the calculation of the ratio. First, Usinor claims that Europipe's financial expenses should be offset by short-term interest income. According to Usinor, the Department normally allows such offsets, and cites to the *Final Determination of Sales at Less than Fair Value: Stainless Steel and Strip in Coils from the United Kingdom*, 64 FR 30688, 30710 (June 8, 1999) to support its claim. Second, Usinor recommends that the Department include Europipe's product specific research and development ("R&D") expenses in the calculation of denominator (*i.e.*, cost of goods sold) that the Department uses to determine the financial expense ratio. Although Europipe records this expense as a separate line item on the income statement, Usinor notes that the Department should consider it as a cost of manufacturing because the expense is product-specific. According to Usinor, the Department normally considers product-specific R&D as a component of cost of goods, citing *Final Results of Administrative Review; Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934, 8939 (February 23, 1998) to support its claim.

In contrast, petitioners do not take issue with the use of Europipe's financial expense ratio to calculate Berg's further manufacturing financial expense. As for the calculation of the financial expense ratio, the petitioners believe that Usinor's suggested changes would misstate the financial expense of Berg. Petitioners also assert that Usinor has not met the burden of proof in supporting its claim for either adjustment. Specifically, petitioners claim that Europipe's financial expense should not be altered because Usinor has not shown that this income was in fact short-term interest income. Likewise, the petitioners state that Usinor has not demonstrated that Europipe's R&D expenses were product-specific. According to petitioners, the Department considers product-specific or process-specific R&D as a cost of manufacturing only if the benefits of the R&D relate to a single product; otherwise, the R&D is considered a G&A expense. *See e.g., Negative Final Determination of Circumvention of Antidumping Duty Order; Portable Electric Typewriters from Japan;* 56 FR 58031, 58040 (November 15, 1991). In addition, the petitioners note that Europipe's income statement did not classify its R&D as a manufacturing expense. For these reasons, the petitioners claim that the Department should not adjust the calculation.

Department's Position: We disagree with respondent that we should not use Europipe's financial expense ratio to calculate Berg's further manufacturing financial expenses. In the instant case, Europipe is the parent company of Berg. Europipe, in turn, is a joint venture owned by Dillinger (a Usinor affiliate)

and another company. Berg calculated its financial expense ratio based on the information contained in the consolidated financial statements of Dillinger. However, we note that Dillinger includes neither Berg's nor Europipe's financial results in its consolidated financial statements. Thus, Europipe's financial statement is the highest level of consolidation available. As such, we have relied on the information contained in Europipe's consolidated statements to calculate the financial expense ratio. This method is consistent with our normal practice. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada*, 64 FR 17324–17336 (April 9, 1999) (the Department relied on the amounts reported in the consolidated financial statements of the highest level available to calculate the financial expense ratio); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30820, 30842–43 (June 8, 1999) (where the Department agreed with Usinor that it was appropriate to use the highest consolidation level available to calculate the financial expense ratio.)

We also disagree with Usinor's suggestion that we make certain corrections to the calculation of Europipe's financial expense ratio. Specifically, we have not allowed an offset for interest income because Usinor did not provide any evidence to substantiate that the amount it claimed as an offset is short-term interest income. Moreover, Europipe's audited financial statements did not report any breakdown of long- vs. short-term investments or interest income. Consistent with our past practice, we have disallowed Europipe's claimed short-term interest income offset in the financial expense calculation where respondents have not substantiated their claim. *See, e.g., Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Silicon Metal From Brazil*, 64 FR 6305, 6313 (February 9, 1999), where the Department disallowed the short-term offset because of lack of supporting evidence.

In addition, we disagree with Usinor that R&D expenses should be included in the denominator (*i.e.*, cost of sales) used in calculating the financial expense ratio. In the instant investigation, we did not include Europipe's R&D expenses in the denominator used to calculate the financial expense ratio because Usinor did not provide evidence to substantiate that its R&D is a cost of manufacturing. We note that the only information on the record that identifies the nature of Europipe's R&D is a footnote in the company's financial statement. However, this footnote only provides a generic description of the expense and it does not identify the R&D as product-specific. In addition, we note that Europipe's income statement classifies this expense as a period cost (similar to general expenses) rather than a component of its cost of goods sold. Thus, we have found that Europipe's R&D expense is not a product-specific cost of manufacturing. This determination is consistent with our determination in the *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom;* 62 FR 2081, 2112 (January 15, 1997) (the Department treated R&D as a G&A expense because respondent did not provide information indicating that the R&D relates to a specific product). For the final determination, we have not included Europipe's expense as part of the cost of goods sold for purposes of calculating the financial expense.

Comment 15: Offsetting Financial Expenses with Net Foreign Exchange Gains

Usinor argues that the Department should include its net foreign exchange gains in the calculation of its financial expenses. Usinor admits that it could not identify the various components of this gain because it does not have the necessary information to identify specific foreign currency gains or losses as having arisen from transactions involving accounts receivable, loans receivable, accounts payable, loans payable, other sources, *etc.* This information, according to Usinor, could not be provided because the company is made up of more than thirty companies and does not separately track the foreign currency transactions conducted for each of these companies. Thus, Usinor argues that it should not be punished for failing to provide data that it does not have. Moreover, Usinor claims that section 773(f)(1)(A) of the Act provides that the Department will calculate costs based on the producer's records if such records are kept in accordance with GAAP in the producer's home market and reasonably reflect the costs associated with production and sale of the merchandise. According to Usinor, its financial statements are prepared in accordance with French GAAP and, as such, reasonably reflect costs incurred by the company, including those costs related to foreign exchange gains and losses.

Petitioners counter that the Department should disallow Usinor's net foreign exchange gains from the calculation of financial expenses. According to petitioners, Usinor has not demonstrated that its net exchange gains resulted from short-term investments or that the gain excludes amounts related to accounts receivables. According to petitioners, the Department requires that respondents provide this distinction, citing to *Final Determination of Sales at less than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24350 (May 6, 1999) ("it is the Department's normal practice to distinguish between foreign exchange gains and losses from other types of transactions"). Petitioners additionally argue that Usinor does have the information necessary to segregate the gains related to specific transactions. Thus, petitioners claim that if Usinor's claimed offset is allowed, the Department would reward Usinor for failing to provide data that was available. According to petitioners, these type of gains and losses normally arise on a transaction-specific basis. Therefore, even if Usinor does not have the information at the consolidated level, the petitioners claim the subsidiaries would have it. The petitioners further note that disallowing this offset does not "punish" Usinor, as Usinor claims, but simply adopts a reasonable adverse inference from Usinor's refusal to provide information the company has the ability to produce.

Department's Position: We agree with the petitioner that we should not include Usinor's net foreign exchange gains in the calculation of its financial expenses. To calculate its reported financial expense, Usinor offset its financial expenses with the total net foreign exchange gains realized on all transactions. However, Usinor was unable to demonstrate the source of these consolidated foreign exchange gains and losses. Thus, contrary to our normal practice, Usinor did not distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. Specifically, our normal practice is to include a portion of these foreign-exchange gains and losses in the calculation of COP and CV. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 9181 (February 24, 1998) (*Steel Wire Rod from Trinidad and Tobago*). We normally include in the calculation of COP and CV the foreign-exchange gains and losses that result from transactions

related to a company's manufacturing activities. We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. *See, e.g., Steel Wire Rod from Trinidad and Tobago and Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31430 (June 9,1998).

In addition, we disagree with Usinor's position that this issue involves or questions the respondent's use of generally accepted accounting principles ("GAAP"). The issue at hand involves the fact that Usinor has not shown that the components of this foreign exchange gain are associated with manufacturing activities of the company.

We agree with petitioners that respondent has the burden of proof to demonstrate, substantiate and document this type of adjustment. *See e.g., Timken Company* v. *United States*, 673 F. Supp. 495, 513 (CIT 1987); and *Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Japan;* 60 FR 43761, 43767 (August 23, 1995); *see* also 19 CFR § 351.401(b)(1) of our regulations.

Comment 16: Calculation of Depreciation Expense

Usinor claims that it properly excluded the stepped-up basis of an affiliate supplier's depreciation expense in calculating the cost of producing pig iron obtained from an affiliate. According to Usinor, the affiliate is merely a wholly owned subsidiary that was created to hold the production assets used by the Usinor organization in manufacturing pig iron. Usinor asserts that this subsidiary does not actually manufacture or produce pig iron because it is just an accounting entity that exists for tax purposes. Since the transfer of the ownership of the assets had only a tax effect, Usinor believes it is appropriate to exclude the additional depreciation expense associated with the stepped-up basis. Thus, Usinor claims that the Department should rely on the depreciation expense as recorded in Usinor's consolidated financial statements that exclude the adjustment. Petitioners did not comment on this issue.

Department's Position: We disagree with Usinor that the depreciation expense associated with its affiliate's revaluation of assets (*i.e.*, "stepped-up basis") should be excluded from the calculation of COP. Specifically, Usinor obtained pig iron from an affiliate company and reported the affiliate's cost of production. In calculating the affiliate's cost of production, Usinor did not include the depreciation expense reported in the company's normal books and records. Instead, Usinor included a depreciation expense figure based on its historical cost of the assets. Our normal practice, however, is to rely on the depreciation expense recorded in the normal accounting records. *See, e.g., Cinsa S.A. de C.V.* v. *United States*, 966 F. Supp 1230, 1234 (CIT 1997) (upholding the Department's reliance on depreciation expense reported on the financial statements); *Laclede Steel Co.* v. *United States*, 965 Slip OP 94–160, *24 (CIT 1994) (upholding the Departments reliance on depreciation expense reported on the financial statements); *see also Final Results of Administrative Review: Silicon Metal from Brazil*, 64 FR, 6305, 6321 (February 9, 1999).

Contrary to Usinor's argument, we also do not find it appropriate to rely on the depreciation expense of the affiliated supplier as calculated at the consolidated level because it would circumvent the major-input rule. *See,* sections 773(f)(2) and (3)of the Act. Here, the affiliated company in question is a separate legal entity in France that maintains its own books and records. Consistent with prior determinations, we find that the legal form dictates whether we should use that affiliate's production costs as reported in its books and records. *See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6622 (February 10, 1999) (the Department treated an affiliated supplier as a separate entity for reporting costs because of its legal form). Therefore, we have adjusted the cost of pig iron to reflect the affiliate's cost of production in accordance with section 773(f)(3) of the Act.

Comment 17: Calculation of Reported Costs

Petitioners allege that Usinor uses a standard cost accounting system but refused to provide variances to the Department. According to petitioners, Usinor's failure to provide a variance between its standard and actual costs means that the Department cannot use the reported CONNUM-specific standard costs. Without this variance, the petitioners continue that the Department has no assurance that Usinor has accurately reported product-specific costs. Moreover, petitioners claim that Usinor has consistently refused to provide this information. Therefore, petitioners believe that the Department should reject Usinor's cost data and resort to the use of facts available as it has done in similar situations in the past, citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72,268, 72,276 (December 31, 1998).

Petitioners further counter Usinor's explanation that a variance is not necessary in this case because it used actual costs; according to petitioners, Usinor has stated both that it had reported actual product specific costs and that the product specific costs are based on standards. Thus, petitioners claim that Usinor is obliged to provide variances because the statute requires that COP and CV be based on the producer's actual costs. In addition, the petitioners discount the importance of Usinor's claim that its total aggregate extra and aggregate base costs equal aggregate actual costs. According to petitioners, this does not signify that the product-specific costs upon which the reported COP and CV data are based were accurate. In fact, petitioners claim that the Department has rejected such arguments in the past, citing *Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico*, 64 FR 7679 (January 4, 1999). To demonstrate the possible distortions that may occur with the use of a "base cost" system which accounts for actual costs on an aggregate level, petitioners refer to proprietary information which cannot be adequately summarized. However, in essence, petitioners argue that because of the possible differences between actual costs and potentially erroneous standards, the Department cannot have confidence that Usinor's base cost system is accurate.

Finally, petitioners contend that the Department's testing performed at verification does not provide assurance that Usinor's standard costs are accurate. For example, petitioners argue that the verification step to reconcile the cost of an extra (*i.e.*, the cost variations associated with a product's unique physical characteristics), with the amounts used in the cost build up means only that Usinor adhered to its base plus extra method. Likewise, the verification step to compare the consistency of the reported extras with those outside the POI only indicates that the inaccuracies contained in Usinor's previous figures also appear in the reported costs.

Usinor argues that petitioners are incorrect in alleging that it did not report any cost variances and therefore the Department should reject all product-specific costs. Usinor states that its base-plus-extra costing system reflects the actual production costs of

the company. To calculate the reported costs, respondent states that it calculated the unit cost of the base product, the average extra costs associated with the base product, and any extras associated with a product's specifications. It then subtracted the average cost of extras from the average base product cost and added the extra costs associated with each unique product which resulted in the actual production costs for each product. Respondent argues that a similar methodology was verified and accepted by the Department in two recent cases. *See Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Germany*, 60 FR 65264, 65267 (1995) (*"Certain Cold-Rolled Carbon Steel Flat Products from Germany"*); see also Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Plate from Finland, 63 FR 2952, 2957 (January 20, 1998) (*"Certain Cut-to-Length Carbon Steel Plate from Finland"*).

Furthermore, Usinor argues that there is no support for petitioners' contention that the Department's cost verification confirms that Usinor's reported costs are based on standard costs and not actual costs. Rather, Usinor states that the Department recognized that the base-plus-extra cost system is founded on actual production costs and not standard costs adjusted to actual. Based upon this argument, Usinor urges the Department to accept the reported methodology just as it did in *Certain Cut-to-Length Carbon Steel Plate from Finland*. Finally, respondent states that the antidumping law allows costs to be computed based on the producer's normal accounting records, provided that it is kept in accordance with GAAP. In the instant case, respondent argues that the reported costs are kept in accordance with GAAP and are therefore an accurate basis for the calculation of COP and CV.

Department's Position: We disagree with petitioners' contention that we must reject Usinor's submitted COP and CV data for this investigation. In its normal accounting records, Usinor determines its product-specific costs by using a "base plus extras" method. For submission purposes, the company relied on this methodology. Contrary to petitioners' assertions, Usinor does not use a standard cost accounting system nor does it calculate variances. Instead, the system begins and ends with actual production costs. Specifically, Usinor's cost accounting system accumulates the actual costs incurred and actual tonnages produced by product group. The company then takes these total costs and deducts the total cost of extras to derive its base product costs. To calculate the product specific costs, Usinor simply adds the unique "extras" of a model to the base. Usinor used engineering studies to determine the cost of product-specific extras. Contrary to petitioners' allegation, we found nothing inherently unreliable or theoretically unsound about Usinor's underlying cost allocation methodology. In fact, we note that this method of using base-plus-extra is quite common for the industry. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from Germany and Certain Cut-to-Length Carbon Steel Plate from Finland*. In both of these proceedings, the Department accepted COP and CV values calculated from the respondent's "base-plus-extra" cost accounting systems used in the normal course of business. Moreover, the record in the instant case contains the following factual information that justifies using Usinor's normal accounting system to calculate the unique cost of a CONNUM.

First, Usinor supported its product-specific costs with source documentation that was verifiable. For example, in its June 30, 1999, supplemental section D questionnaire response, Usinor provided documentation of the detailed calculations used to derive its quality extras. As noted earlier, Usinor based these calculations on engineering standards and its production experience. After reviewing and testing this information, we have no reason to believe that Usinor's extra cost calculations, which were based on data used by the company in its normal accounting records, do not reasonably represent the cost differences incurred to produce individual products. Furthermore, we note that section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. We have found that following the GAAP provides the respondent and the Department with a reasonable, objective and predictable basis by which to compute costs for the merchandise under investigation. In accordance with the statutory directive, the Department will accept the company's "normal" costs if the cost data can be reasonably allocated to subject merchandise. In this instant case, we find the Usinor's costs do reasonably reflect the costs of the merchandise under investigation.

Second, the record contains several overall cost reconciliations that identify no misstatement or mis-allocations. For example, we reconciled Usinor's reported product-specific costs to its audited financial statements and noted no significant discrepancies. *See* "Verification Report on the Cost of Production and Constructed Value Data Submitted by USINOR" (October 27, 1999) at page 9 through 12, (*"Cost Verification Report"*). Thus, we confirmed that Usinor accounted for all of the manufacturing costs it incurred during the POI. In addition, we compared per-unit inventory values to reported per-unit CONNUM values and noted no significant discrepancies. Furthermore, we confirmed that Usinor's reported costs reasonably reflected the values as recorded in the ordinary course of business.

Finally, Usinor's product-specific costs are supported by detailed tests performed by the Department during verification. For example, we tested Usinor's calculations of weighted-average costs, base costs, and extra costs. See Cost Verification Report at pages 12 through 18. In addition, we documented that the costs for extras used by Usinor in the normal accounting system were in fact based on actual production and cost data, engineering standards, and company experience. For these reasons, we have relied on Usinor's base-plus extra costs for the final determination.

Comment 18: Calculation of Freight Expenses Included in Further Manufacturing Expenses

Petitioners claim that the Department should correct Berg's reported movement expenses. According to petitioners, Usinor calculated and reported the per-unit amount on a short-ton basis and not the metric-ton basis used for all other costs. Usinor did not comment on this issue.

Department's Position: We agree with petitioners that we should correct for this clerical error. As noted by petitioners, Berg reported its per unit movement expense (*i.e.*, inbound freight from port to production facility) for plate in short-tons. Usinor reported all other further manufacturing costs on a metric ton basis. Therefore, we adjusted the reported per-unit movement costs to reflect a per metric-ton value for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing

the Customs Service to continue to suspend liquidation of all entries of subject merchandise from France that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Usinor	10.43
All others	10.43

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33230 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–806]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Eva Temkin or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cut-to-length carbon-quality steel plate from Indonesia. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel, Inc., Tuscaloosa Steel Corporation, and the United Steel Workers of America (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation on July 26, 1999 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Indonesia*, 64 FR 40457 (*Preliminary Determination*)), the following events have occurred:

On July 15, we reissued the Department's June 22, 1999 supplemental questionnaire to the Government of Indonesia (GOI). We received a response on July 22, 1999. We conducted verification of the countervailing duty questionnaire responses from July 28 through August 3, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 40458), and the final antidumping duty determination was postponed (*see* 64 FR 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR 46341). On August 26, 1999, the Department released its verification reports to all interested parties. Petitioners filed comments on September 10, 1999. Respondents made no arguments. No rebuttal briefs were filed.

On November 23, 1999, we discontinued the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the

quantity, by weight, respectively indicated:
1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 C.F.R. Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because Indonesia is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to, a U.S. industry. On April 5, 1999, the ITC announced its preliminary finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Indonesia of the subject merchandise (*see Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia*, 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Attribution of Subsidies

Section 351.525 of the CVD Regulations states that the Department will attribute subsidies received by two or more corporations to the products produced by those corporations where cross ownership exists. According to section 351.525(b)(6)(vi) of the CVD Regulations, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The preamble to the CVD Regulations identifies situations where cross ownership may exist even though there is less than a majority voting interest between two corporations: "in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership." *See* 63 FR 65401.

Because we preliminarily found both Gunawan and Jaya Pari to have zero subsidy rates, we did not reach the question of whether the relationship between the companies satisfies the standard of cross-ownership. However, in the *Preliminary Determination*, we stated that if we discovered subsidies at verification or otherwise modified our findings so that one or more of the companies did indeed have a subsidy rate for the final determination, we would consider whether there is cross-ownership between Gunawan and Jaya Pari and thus, whether, for purposes of calculating a countervailing duty rate, we should attribute any subsidies received by either or both companies to the products produced by both companies. We invited the parties to comment on whether the relationship between the firms satisfies our new cross-ownership standard.

Since the publication of our *Preliminary Determination*, we have found no evidence of subsidies having been given to either Gunawan or Jaya Pari; nor have we otherwise modified our findings in a way such that either company has a subsidy rate in this final determination. Moreover, we received no comments from the parties on this issue. Thus, the question of whether the relationship between the companies satisfies the standard of cross-ownership is moot for purposes of this investigation.

Use of Facts Available

As discussed in detail in the *Preliminary Determination*, Krakatau failed to respond to any of the Department's questionnaires. The GOI provided some, although not all, of the information requested about Krakatau. In the *Preliminary Determination*, relying upon section 782(e) of the Act, the Department determined that based on the GOI's submission of some data, the administrative record was not so incomplete that it could not serve as a reliable basis for reaching a preliminary determination. Therefore, the Department used the GOI's data where possible, *i.e.*, the Department relied on information provided by the GOI to reach a preliminary determination that Krakatau had not used the Rediscount Loan Program and Tax Holiday Program. The Department only resorted to the facts otherwise available in those instances where data necessary for the calculation of Krakatau's subsidy rate was missing. *See Preliminary Determination*. In addition, as described in detail in the *Preliminary Determination*, the Department determined that in those instances when resort to facts available was necessary, the use of an adverse inference was warranted under section 776(b) of the Act because the Department determined that Krakatau failed to cooperate by not acting to the best of its ability in complying with requests for information in this investigation.

After the issuance of the *Preliminary Determination*, the Department attempted to verify with the GOI that Krakatau had not used the Rediscount Loan Program, but was unable to do so. *See* Memorandum to David Mueller, "Verification Report of the Government of Indonesia," dated August 26, 1999 (*GOI Verification Report*), public version on file in the Central Records Unit (CRU) (Room B–099 of the Main Commerce Building). We were, however, able to verify that no respondent in this investigation used the Tax Holiday Program.

Section 782(e) of the Act provides that the Department shall not decline to consider information submitted by an interested party, if, among other factors, the information can be verified. Because information submitted by the GOI concerning Krakatau's use of the Rediscount Loan Program could not be verified, we have declined to consider it for this final determination, and find it necessary to resort to the facts available for this program, as well. Therefore, for this final determination, all components of Krakatau's subsidy rate are based on the facts available.

Moreover, the Department determines that when selecting among the facts otherwise available for the Rediscount Loan Program, an adverse inference is warranted because the GOI and Krakatau have failed to cooperate by not acting to the best of their abilities. Krakatau and the GOI failed on numerous occasions to respond to the Department's questions. Specifically, Krakatau has failed to participate in any way in this investigation. The GOI responded to the Department's initial questionnaire, but did not respond fully to supplemental questionnaires, and did not respond at all to the Department's final questionnaire. Regarding the information that the GOI did place on the record in this investigation, we specifically requested in the outline sent to the GOI prior to verification that the GOI be prepared to review any files maintained on the Rediscount Loan Program, and to demonstrate whether Krakatau used the program for shipments of subject merchandise to the United States in 1998. However, at verification, GOI officials stated that due to the nature and volume of their files on this program, they were unable to present them. Thus, the Department was unable to verify certain information submitted by the GOI. For these reasons, we find that the GOI, like Krakatau, did not cooperate to the best of its ability in this investigation.

Further, as stated in the *Preliminary Determination*, petitioners made new subsidy allegations with respect to Krakatau on June 7, 1999. The Department determined that these allegations were adequate, but as of the date of the *Preliminary Determination*, the Department had not had sufficient time to collect information from Krakatau and the GOI on the Pre-1993 Equity Infusions to Krakatau, P.T., Cold-Rolled Mill Indonesia (CRMI) Equity Infusions, and Two-Step Loan programs. Thus, we did not make preliminary determinations with respect to these programs' countervailability. We asked both Krakatau and the GOI to submit information specific to these allegations. We received no response from Krakatau, and the GOI stated that they did not have access to the relevant files.

Therefore, because both Krakatau and the GOI have failed to provide information necessary for the calculation of subsidy rates for these newly alleged programs, pursuant to section 776(a)(2)(B) of the Act, we find it necessary to resort to the facts otherwise available for this final determination. As described in detail in the *Preliminary Determination* and above, because we have determined that both Krakatau and the GOI have failed to cooperate to the best of their abilities in this investigation, we find the use of adverse inferences necessary when selecting among the facts available, in accordance with section 776(b) of the Act.

When employing an adverse inference, the statute indicates that the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See also* section 351.308(c) of the CVD Regulations. Due to the absence of any other relevant information on the record, we consider the petition to be an appropriate source for the necessary information.

Furthermore, the Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal. The SAA provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. Furthermore, the SAA explicitly states, "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent [Commerce] from applying an adverse inference . . . ." SAA at 870.

As explained above, we are using the petition information as adverse facts available in countervailing the programs involved in this investigation. For a more detailed description of our treatment of these programs, see the program descriptions in the "Programs Determined to be Countervailable" section of this notice. Due to a lack of available public information, with respect to the programs for which we did not receive information from respondents, or for which we could not verify information which had been submitted, we corroborated the information used as adverse facts available by comparing it to the exhibits attached to the petition, including Krakatau's financial statements. In the case of the Rediscount Loan Program, we used information from *Final Negative Countervailing Duty Determination: Extruded Rubber Thread From Indonesia*, 64 FR 14695, (March 26, 1999) (*ERT*), where we examined the same program and found it to be countervailable. In addition, where calculations from the petition were used, we modified and adjusted the calculation of the *ad valorem* subsidy rates to conform to the Department's methodologies when necessary or when possible. More detailed explanations of our corroboration of the petition information is contained in the "Equityworthiness" and "Programs Determined to be Countervailable" sections of this notice. In places where we do not explain our corroboration of information used, we did not find it practicable to corroborate the information because of a lack of reasonably available independent sources. However, as discussed above, a finding that it is not practicable to corroborate certain information, does not prevent the Department from using the information as adverse facts available. *See* SAA at 870.

Changes in Ownership

In this investigation, we have examined subsidies that were conferred upon CRMI at a time when it was partially owned by Krakatau. Since that time, Krakatau has taken control over the remaining share of CRMI, which is presently a wholly-owned subsidiary of Krakatau. In change of ownership situations such as this, it is the Department's standard practice to

follow the methodology outlined in the *General Issues Appendix (GIA)*, attached to the *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37265 (July 9, 1993), with respect to the treatment of subsidies received prior to the sale of the company. *See also, Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38741, 38745 (July 19, 1999).

Over the course of this investigation, we repeatedly asked both Krakatau and the government to provide information that would allow us to use this methodology, but they did not. In the absence of this information, as adverse facts available, for equity infusions provided to CRMI, we treated these equity infusions as though the entire amount was attributable to Krakatau. Accordingly, we assigned the total amount of the equity infusions directly to Krakatau.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the CVD Regulations, we have allocated Krakatau's non-recurring benefits over 15 years, the AUL listed in the IRS tables for the steel industry.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion based on the information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time. In making an equityworthiness determination, in accordance with section 351.507(a)(4) of the CVD Regulations, the Department may examine the following factors, among others:

A. Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

B. Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

C. Rates of return on equity in the three years prior to the government equity infusion; and

D. Equity investment in the firm by private investors.

The Department has examined Krakatau's equityworthiness for the period 1988 through 1992, as well as in 1995, to the extent that equity infusions may have been received in these years. In our preliminary determination, we found that Krakatau was unequityworthy in 1995. We received no comments from the interested parties relating to our analysis of Krakatau's equityworthiness. Thus, for the reasons specified in the *Preliminary Determination*, we determine that Krakatau was unequityworthy in 1995. See *Preliminary Determination*, 64 FR at 40460.

The Department has also examined Krakatau's equityworthiness for the period 1988 through 1992, to the extent equity infusions may have been received in these years. Because neither Krakatau nor the GOI responded to our repeated attempts to gather information regarding the new allegations pertaining to the period 1988 through 1992, we used the information in the petition as adverse facts available in accordance with section 776(b) of the Act to conclude that Krakatau was unequityworthy during the period 1988 through 1992. (For further discussion, see the "Facts Available" section of this notice.)

With respect to factor A, no studies or other relevant data have been submitted to the record. The petition cites several press articles which describe Krakatau as inefficient, unprofitable, and uncompetitive during the years prior to 1992. *See* Countervailing Duty Petition, public version on file in the CRU. In order to corroborate the petition information demonstrating that Krakatau was inefficient and unprofitable prior to 1992, we examined the newspaper articles cited by the petition. We found that these independent sources did indeed describe Krakatau's financial and operational difficulties, thus corroborating a finding of unequityworthiness.

To address factors B and C, we examined Krakatau's financial ratios for 1990 through 1992, provided in the petition, which show that Krakatau's rates of return were far less than the average rate of return available in Indonesia. With respect to the final factor, Krakatau has no private investors. Therefore, there are no private investments that may be used to evaluate Krakatau's equityworthiness.

The available financial ratios, coupled with press reports used as adverse facts available, demonstrate that no reasonable private investor would have made equity investments in Krakatau during the period 1988 through 1992. On this basis, we find that Krakatau was unequityworthy during the period 1988 through 1992.

We have also examined the equityworthiness of Krakatau's subsidiary, the Cold Rolling Mill of Indonesia (CRMI), in 1989 and 1990, to the extent that equity infusions may have been received in these years. As discussed above, because neither Krakatau nor the GOI responded to our repeated attempts to gather information regarding the allegations pertaining to CRMI, we have relied upon the information provided in the petition as adverse facts available in accordance with section 776(b) of the Act. (For further discussion, see the "Facts Available" section of this notice.)

Because no financial statements for CRMI for years prior to 1994 have been available, the petition cites to several press articles to demonstrate CRMI's unequityworthiness. One such article, from 1989, quotes a government official (who was also a company official at the time) as stating that CRMI had failed to make a profit since being inaugurated in 1987. Another 1989 article reports that CRMI's money-losing performance was caused by large debts, technical problems and poor sales, which led to accumulated losses of about US$120 million. At the same time, CRMI's estimated debt was reported to be US$485 million. The petition shows that CRMI's financial situation declined further in 1990. According to press reports from 1990, the company's losses

increased to US$150 million and its outstanding debts grew to US$492 million. In order to corroborate this petition information demonstrating CRMI's unequityworthiness, we examined the independent press reports cited in the petition and confirmed that they in fact described CRMI's operational and financial difficulties in a manner that supports an unequityworthy determination.

These articles are the only evidence on the record concerning CRMI's equityworthiness, and suggest that no reasonable private investor would have deemed CRMI capable of generating a reasonable rate of return within a reasonable period at the time of the equity infusions. On this basis, we determine that CRMI was unequityworthy in 1989 and 1990.

Equity Methodology

In measuring the benefit from a government equity infusion, in accordance with section 351.507(a)(2) of the CVD Regulations, the Department compares the price paid by the government for the equity to actual private investor prices, if such prices exist. According to section 351.507(a)(3) of the CVD Regulations, where actual private investor prices are unavailable, the Department will determine whether the firm was unequityworthy at the time of the equity infusion. In these cases, private investor prices were unavailable; thus, we conducted equityworthy analyses. As discussed above, we have determined that Krakatau was unequityworthy during the period from 1988 to 1992, and in 1995, and that CRMI was unequityworthy from 1989 to 1990.

Section 351.507(a)(3) of the CVD Regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with the usual investment practices of private investors. The Department will then apply the methodology described in section 351.507(a)(6) of the regulations, and treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

As discussed in the *Preliminary Determination*, we only initiated an investigation of Krakatau's creditworthiness during 1995. In the *Preliminary Determination*, based on adverse facts available, we found Krakatau to be uncreditworthy in 1995. We received no comments from the interested parties relating to our analysis of Krakatau's creditworthiness. Thus, for the reasons specified in the *Preliminary Determination*, we continue to find that Krakatau was uncreditworthy in 1995. *See Preliminary Determination*, 64 FR at 40461.

Discount Rates and Loan Benchmarks

For equity infusions given to Krakatau, we calculated the discount rates in accordance with the formula for constructing a long-term interest rate benchmark for uncreditworthy companies as stated in the Department's new regulations. *See* Section 351.505 (a)(3)(iii) of the CVD Regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997," (February 1998). For the probability of default by a creditworthy company, we used the average cumulative default rates reported for the Aaa to Baa.[1] Because no timely allegation of uncreditworthiness was made against CRMI in this investigation, no determination has been made regarding CRMI. Thus, we did not add an uncreditworthiness margin to interest rates used to calculate benefits received by CRMI.

For subsidies received by Krakatau between 1994 and 1998, we used the average cost of long-term fixed-rate loans in Indonesia as the interest rates that would have been paid by a creditworthy company, specifically the investment rates offered by commercial banks in Indonesia as reported in the Indonesian Financial Statistics of February 1999, attached to the GOI's April 29, 1999, questionnaire response, a public document on file in the CRU. In order to calculate a benefit for long-term allocable subsidies that were received prior to 1994, we used interest rate data for Indonesian long-term non-guaranteed commercial loans as published in the International Monetary Fund's *International Financial Statistics*. For 1998, since Indonesia experienced very high inflation during this year, we converted the subsidy into U.S. dollars and then applied a long-term dollar rate as the discount rate, specifically, the average yield to maturity on selected long-term Baa-rated bonds. *See* Memorandum to David Mueller, "Preliminary Analysis and Calculations," dated July 16, 1999 (*Preliminary Analysis Memo*), public version on file in the CRU. This conforms with our practice in *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014, 55019 (October 22, 1997).

To calculate the benefit from the Two-Step Loan Program, because the loans were denominated in Austrian schillings, we used as our benchmark the Austrian national average government bond rate, as published in the International Monetary Fund's *International Financial Statistics*. While it is not our policy to use government bonds as a benchmark, due to the lack of record evidence in this investigation, a commercial lending rate was unavailable. Therefore, this is the only information we were able to find for a schilling benchmark. As with the equity infusions, we calculated the discount rates in accordance with the formula for constructing a long-term interest rate benchmark for uncreditworthy companies as stated in the Department's new regulations. *See* Section 351.505 (a)(3)(iii) of the CVD Regulations

For the Rediscount Loan Program, we used as our benchmark the reported average cost of short-term fixed-rate loans in Indonesia as the interest rate that would be paid by a creditworthy company, specifically the working capital rate offered by commercial banks in Indonesia as reported in the Indonesian Financial Statistics of February 1999, attached to the GOI's April 29, 1999, questionnaire response, a public document on file in the CRU.

I. Programs Determined To Be Countervailable

A. 1995 Equity Infusion into Krakatau

In the *Preliminary Determination*, because Krakatau did not respond to this allegation, we used the information and data provided in the petition as adverse facts available, in accordance with section 776(b) of the Act (*see* "Facts Available" discussion above). We corroborated this information in accordance with section 776(c) of the Act as described in the *Preliminary*

[1] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998 (see Exhibit 28).

Analysis Memo. We received no comments from the interested parties relating to our analysis of Krakatau's 1995 equity infusion. Thus, for the reasons specified in the *Preliminary Determination*, we determine that this equity infusion constituted a countervailable subsidy. *See Preliminary Determination*, 64 FR at 40461.

As explained in the "Equity Methodology" section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity infusion is allocated as a non-recurring subsidy. We allocated the subsidy and converted the remaining face value of the infusion in 1998 into U.S. dollars using the average 1997 rupiah/dollar exchange rate and applied the long-term U.S. dollar uncreditworthy interest rate described in the "Discount Rate" section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in the *Preliminary Analysis Memo*, public version on file in the CRU. On this basis, we determine the net countervailable subsidy to be 16.21 percent *ad valorem* for Krakatau.

B. Pre-1993 Equity Infusions to Krakatau

As discussed in the *Preliminary Determination*, on June 7, 1999, petitioners alleged that the GOI had made equity infusions into Krakatau prior to 1993. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI on the alleged Pre-1993 Equity Infusions to Krakatau, and so did not make a determination with respect to this program's countervailability.

After the preliminary determination, both Krakatau and the GOI were given an opportunity to provide information regarding these programs, but they did not. Therefore, in accordance with section 776(b) of the Act, we have used the information contained in the petition as adverse facts available in order to make a determination with regard to this program. (*See* "Facts Available" discussion above).

According to the petitioners, the GOI provided Krakatau with equity infusions totaling US$765 million during the period from 1988 to 1992. We corroborated the assertion made in the petition by comparing it to the independent newspaper article cited in the petition which states that, "Excluding the cold-rolled mill, government subsidies for Krakatau totaled Rps. 1.6 trillion (US$765 million) in the five years to 31 December 1992."

Because we have determined that Krakatau was unequityworthy during this period in accordance with section 776(b) of the Act, we determine that under section 771(5)(E)(i) of the Act, these equity infusions into Krakatau were not consistent with the usual investment practice of a private investor and confer a benefit in the amount of each infusion (*see* "Equityworthiness" section above). The equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to Krakatau. Accordingly, we find that the equity granted to Krakatau during the period in question provides a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained in the "Equity Methodology" section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity conversion is allocated as a non-recurring subsidy. Due to the lack of record information regarding this program, we were unsure of the years in which the equity was given. Therefore, we treated the entire amount as a grant provided in equal payments over the five-year period from 1988 to 1992. We allocated the subsidy and converted the remaining face value of the infusion in 1998 into U.S. dollars using the average 1997 rupiah/dollar exchange rate and applied the long-term U.S. dollar interest rate to uncreditworthy companies described in the "Discount Rate" section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in our *Preliminary Analysis Memo*. On this basis, we determine the net countervailable subsidy to be 16.66 percent *ad valorem* for Krakatau.

C. 1989 Equity Infusion to CRMI

As discussed in the *Preliminary Determination*, on June 7, 1999, petitioners alleged that massive equity infusions were provided to Krakatau's subsidiary, the Cold Rolling Mill of Indonesia (CRMI). Krakatau owned 40 percent of CRMI's equity until 1991, when it purchased the remaining shares to become a 100 percent owner. Petitioners alleged that these 1989 and 1990 equity infusions provided a countervailable benefit to Krakatau based on its ownership share in CRMI. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI on the alleged Equity Infusions to CRMI, and so did not make a determination with respect to this program's countervailability. Since the preliminary determination, however, the Department afforded both Krakatau and the GOI the opportunity to provide information regarding these subsidy allegations. Because neither party responded to our questionnaires, we have used the information contained in the petition as adverse facts available, in accordance with section 776(b) of the Act. (*See* "Facts Available" discussion above).

According to the Countervailing Duty Petition, the GOI provided CRMI with an equity infusion totaling US$75 million in 1989. In support of this allegation, the petition points to quotes from GOI officials regarding the cash injections. To the extent practicable, we have corroborated the information provided in the petition with numerous press articles which describe the equity infusion, provided as attachments to the petition. On the basis of this information, as adverse facts available, we determine that under section 771(5)(E)(i) of the Act, these equity infusions into CRMI were not consistent with the usual investment practices of a private investor and confer a benefit to CRMI in the amount of each infusion (*see* "Equityworthiness" section above). The equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to CRMI. Accordingly, we find that the equity granted to CRMI during the period in question provides a countervailable subsidy within the meaning of section 771(5) of the Act.

As discussed in the "Changes in Ownership" section, above, as adverse facts available, we are assuming that Krakatau did not pay for its total acquisition of CRMI in 1991. Therefore, all of the benefit to CRMI would have passed through to Krakatau at the time of the acquisition. As explained in the "Equity Methodology" section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity conversion is allocated as a non-

recurring subsidy. Therefore, we treated the entire amount as a grant given to Krakatau in 1989. We allocated the subsidy over 15 years, and applied the long-term U.S. dollar uncreditworthy interest rate described in the "Discount Rate" section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in our *Preliminary Analysis Memo*. On this basis, we determine the net countervailable subsidy to be 1.50 percent *ad valorem* for Krakatau.

D. Three-Step Equity Infusion to CRMI

Information in the petition indicates that in 1989, an equity infusion of US$357 million was to be provided to CRMI in three installments—US$290 million, US$49 million and US$18 million. A 1990 article corroborates that the GOI was considering an equity infusion in the amount of US$290 to CRMI. *See* Third Petition Attachment, Exhibits 15, 48. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI on these alleged Equity Infusions to CRMI, and so did not make a determination with respect to this program's countervailability.

After the preliminary determination, both Krakatau and the GOI were given the opportunity to provide information regarding these programs, but did not. Therefore, as adverse facts available, we determine that under section 771(5)(E)(i) of the Act, these equity infusions into CRMI were not consistent with the usual investment practice of a private investor and confer a benefit to CRMI in the amount of each infusion (*see* "Equityworthiness" section above). To the extent that Krakatau had a 40 percent stake in CRMI at the time of the infusion, and has full ownership presently, the benefit to CRMI is equivalent to a benefit to Krakatau. The equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to CRMI. Accordingly, we find that the equity granted to CRMI during the period in question provides a countervailable subsidy within the meaning of section 771(5)(A) of the Act.

As explained in the "Changes in Ownership" section above, as adverse facts available, we are assuming that all of the benefit to CRMI would have passed through to Krakatau at the time of the acquisition. As explained in the "Equity Methodology" section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity conversion is allocated as a non-recurring subsidy. Therefore, we treated the entire amount as a grant. The information in the petition, corroborated by an independent newspaper article attached to the petition, indicated that the GOI was going to give the infusion in 1990; likewise, we have treated this equity infusion as a grant given to Krakatau in 1990. We allocated the subsidy and applied the long-term U.S. dollar interest rate described in the "Discount Rate" section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in our *Preliminary Analysis Memo*. On this basis, we determine the net countervailable subsidy to be 7.64 percent *ad valorem* for Krakatau.

E. Two-Step Loan Program

Prior to the Department's preliminary determination in this proceeding, the petitioners alleged that the GOI had provided so-called "two-step loans" to Krakatau for the construction of certain fixed assets. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI regarding this alleged Two-Step Loan program, and so did not make a determination with respect to this program's countervailability. Although the GOI and Krakatau were both asked repeatedly to respond to the Department's questions about this program, neither party provided any information that could be used in making a determination with respect to this program's countervailability. Thus, in accordance with section 776(b) of the Act, we have used the information provided by petitioner as adverse facts available. (*See* "Facts Available" discussion above).

According to the petition, and corroborated by the descriptions contained in Krakatau's 1996 and 1997 annual reports, these two-step loans were drawn by Krakatau from "credit facilities" (*i.e.*, lines of credit) in the billing currencies of its equipment suppliers, who, in turn, receive payment from banks appointed by lenders. According to Krakatau's annual reports, the loans, which were converted into rupiah based on the exchange rate on the drawing date, are repayable in the currency in which they were borrowed, Austrian schillings. Krakatau's annual reports indicate that Krakatau received a credit facility from the GOI in fiscal year (FY) 1995 for "optimization projects for the slab steel plant and billet steel plant" from which it drew down loan amounts in FY 1995, FY 1996, and FY 1997. For all loan amounts drawn under this credit facility, Krakatau pays interest at a rate of 4 percent per annum. The first principal installment on the loan balance is scheduled for April 30, 2003 and last payment on October 30, 2020.

In 1995, the year in which the credit facilities were extended, a lending rate of 4 percent would be inconsistent with an interest rate the company would have received on a comparable commercial loan denominated in Austrian schillings, and would thus provide a benefit pursuant to section 351.505(a) of the Department's regulations. (*See* the International Monetary Fund's International Financial Statistics, October 1999, at 110). The information provided in the petition and corroborated by the company's financial statements further demonstrates that these loans are specific because they were provided by the GOI as part of the financing for Krakatau's projects. There is no information on the record of this investigation which would indicate that the two-step loan was provided to Krakatau pursuant to a program to which other companies ostensibly had access. As adverse facts available, pursuant to section 776(b) of the Act, we find that the loan is specific as a matter of law. Accordingly, we find that the two-step loan granted to Krakatau provides a countervailable subsidy within the meaning of section 771(5) of the Act.

In order to calculate the benefit from this program, we compared the interest rates Krakatau paid on these two-step loans during the POI to the interest rates the company would have paid for comparable commercial loans, based on the long-term Austrian schilling loan benchmark for uncreditworthy companies described in the "Discount Rates" section of this notice, above. This difference was then divided by Krakatau's estimated sales during the POI which were calculated based on petition information and corroborated as detailed in the *Preliminary Analysis Memo*. On this basis, we determine the countervailable subsidy from this program to be 0.65 percent *ad valorem* for Krakatau.

F. Rediscount Loan Program

In our *Preliminary Determination*, the Department found that Krakatau had not

used this program. This determination was based on information provided by the GOI; this information indicated that while Krakatau was eligible to receive benefits under this program, it had neither applied for nor received such benefits. The Department found, at the preliminary stage of this investigation, that the administrative record with regard to Krakatau was not so incomplete that it could not serve as a reliable basis for reaching a determination with regard to this program.

According to section 782(e)(2) of the Act, the Department shall not decline to consider information submitted by an interested party if, among other factors, the information can be verified. We attempted to verify with the GOI that Krakatau had not used the Rediscount Loan Program, but were unable to do so. *See, GOI Verification Report* at 3. As explained in the "Facts Available" section of this notice, we have determined to resort to adverse facts available for our determination with regard to this program.

Under Decree No. 132/MPP/Kep/1996 of June 4, 1996, the Ministry of Industry and Trade, the Ministry of Finance, and the Bank of Indonesia (BI) provide support for certain exporters with the goal of achieving diversification of the Indonesian export base. Companies designated as Perusahaan Eksportir Tertentu (PET) are eligible to participate in this program. Under the program, PETs sell their letters of credit and export drafts at a discount to the BI through participating foreign exchange banks, which are commercial banks that have obtained a license to conduct activities in foreign currencies. The sale of the letters of credit and export drafts by the PETs provides them with working capital at lower interest rates than they would otherwise pay on short-term commercial loans.

This same program was determined to constitute an export subsidy in *Final Negative Countervailing Duty Determination: Extruded Rubber Thread From Indonesia*, 64 FR 14695 (March 26, 1999) (*ERT*).

On the basis of this information, and in conformance with section 776(b) of the Act, we determine that the loans provided under this program are countervailable in accordance with section 771(5)(A) of the Act. Through this program, the BI provides working capital to PETs at interest rates which are more favorable than those provided to non-PETs. The benefit is the difference between the amount the borrower of the loan pays on the loan and the amount the borrower would pay on a comparable commercial loan. Finally, because the program is contingent upon export performance, it is an export subsidy under section 771(5A)(B) and is, therefore, specific.

In the *ERT* determination, the Department verified that the interest rates in effect during that investigation's POI were the Singapore Interbank Offering Rate (SIBOR) for PETs, and SIBOR plus 1 percent for non-PETs. *See ERT*, 64 FR at 14696. The interest rates used in the petition, as corroborated by the questionnaire response of the GOI were SIBOR for PET exporters, and SIBOR plus 1 percent for non-PET exporters during the first half of the POI. During the second half of the POI rediscount loan rates rose to SIBOR plus 3 percent for PET exporters, and SIBOR plus 4 percent for non-PET exporters. *See Third Petition Amendment*, Exhibit 42; *see also GOI Verification* at 2. Thus, we have used these interest rates to calculate the benefit to Krakatau. We compared the interest rates Krakatau paid on loans for shipments to the United States to the interest rates that non-PET companies would have had to pay for comparable commercial short-term loans. This difference was then divided by Krakatau's total exports sales. As adverse facts available, we used the estimated export sales calculated in the petition to calculate the subsidy rate. On this basis, we determine the countervailable subsidy from this program to be 5.05 percent *ad valorem* for Krakatau.

Based on the verified information provided by respondents and the GOI, we determine that neither Gunawan nor Jaya Pari applied for or received benefits under the Rediscount Loan Program during the POI.

II. Program Determined Not To Exist

Reduction in Electricity Tariffs

In the *Preliminary Determination*, the Department found no basis for concluding that the steel industry had received a special electricity discount. Moreover, based on the record evidence, the electricity discount was not limited to a specific enterprise, industry or group thereof, but was available to all industrial users in the country. Therefore, we preliminarily determined that the electricity discount program is not countervailable. (*See Preliminary Determination*, 64 FR at 40462).

At verification, we met with officials from the government-owned electricity company, PLN, to discuss the tariff rates. Officials explained that, prior to the increase in question, the last tariff schedule was implemented in 1994. The President established a tariff increase with Decree No. 70 of 1998, because of the increased costs of providing electricity. The increase was to be implemented in three stages. However, due to the financial crisis and the instability of the rupiah, only the first of these three stages was actually implemented, in May 1998. In early 1999, with Presidential Decree No. 1, 1999, the second two stages were officially postponed in a decree which legalized the existing tariff schedule. *See* Exhibit 12 to the GOI's June 2, 1999, questionnaire response, public version on file in the CRU. Thus, the subsequent stages were never implemented and there were no refunds. The May 1998 tariff schedule is still presently in place.

Additionally, we verified that there are no special rates for particular industries; all industries are charged based on industrial usage categories. On these bases, we find this program not to exist.

III. Program Determined To Be Not Used

Based on the verified information provided by respondents and the GOI, we determine that neither Gunawan nor Jaya Pari applied for or received benefits from Corporate Income Tax Holidays during the POI. With regard to Krakatau, the facts available regarding this program have not changed from the preliminary determination; therefore we continue to find that Krakatau did not use this program during the POI.

Interested Party Comments

Comment 1: Whether the Department Should Countervail the 1989 Equity Infusion to CRMI, the Three-Step Equity Infusion, and the Two-Step Loan from the GOI

Petitioners argue that the Department should countervail three subsidies to Krakatau which were outlined in the June 7, 1999 amendment to the petition: the 1989 Equity Infusion to CRMI, the Three-Step Equity Infusion, and the Two-Step Loan from the GOI. The information in the petition amendment was not rebutted by Krakatau or the GOI, nor did Krakatau or the GOI present any affirmative information regarding these programs in the investigation. Therefore, petitioners argue, the Department should apply adverse facts available in its final determination, in accordance with the Department's own regulations.

Department's Position: We agree with Petitioners. In the *Preliminary Determination*, we stated that due to the lateness of the allegations, the parties had not been given sufficient time to provide information with regard to these alleged programs. However, since the

preliminary determination, both Krakatau and the GOI have been afforded opportunities to present information regarding these allegations. Neither Krakatau nor the GOI responded to our questions concerning these programs. Therefore, as discussed in detail in both the "Use of Facts Available" and "Programs Determined to be Countervailable" sections of this notice, we have applied adverse facts available in accordance with the Department's regulations, at 351.308(a) and with section 776(b) of the Act.

Comment 2: Whether the GOI has Failed Verification with Respect to the Rediscount Loan Subsidy

In the *Preliminary Determination*, the Department found that Krakatau had not used rediscount loans, on the basis of the GOI's questionnaire responses. However, petitioners assert that the GOI had placed conflicting information on the record, information that should have been clarified at verification. As the Department was unable to verify this program, petitioners argue that the Department should resort to the use of facts available to countervail Krakatau's use of this program, which has been found to be countervailable in prior proceedings. To support their position, petitioners point to the verification outlines, which clearly stated that the Department would need to examine records maintained on Krakatau with regard to this subsidy. Because the Department requested that the GOI be prepared to present documentation at verification, petitioners argue that the GOI should have been fully prepared for verification.

Simply put, petitioners argue that because officials from the GOI were unable to present information beyond mere assertions at verification that Krakatau did not use this program, the GOI failed verification with respect to this program and the Department is obliged to countervail Krakatau's use of this program as adverse facts available. Petitioners cite to *Stainless Steel Sheet and Strip in Coils from Taiwan*, in which the Department applied adverse facts available because a party was in control of necessary information but did not provide that information.

Department's Position: As discussed in the "Use of Facts Available" section of this notice, above, according to section 782(e)(2) of the Act, the Department shall not decline to consider information if, among other factors, that information can be verified. In this case, we attempted to verify with the GOI that Krakatau had not used the Rediscount Loan Program, but were unable to do so. At verification, we asked to review any records the Bank of Indonesia maintains with regard to the users of this program. The officials indicated that, although they searched their files for any information on Krakatau Steel and did not find anything, it was not possible to review each and every file to demonstrate that Krakatau did not use the program. *See, GOI Verification Report*, page 3. Moreover, the government officials did not propose any other way in which Krakatau's non-use could be adequately verified. Consequently, we agree with petitioners' assertion that the Department was unable to verify Krakatau's non-use of the rediscount loan program and we must, therefore, base our final determination on the facts available on the record. Additionally, as explained in the "Facts Available" section above, because we determined that the GOI failed to cooperate by not acting to the best of its ability in this investigation, we determined that an adverse inference is warranted when selecting among the facts available. For more information, *see* the "Programs Determined to be Countervailable" section of this notice.

Verification

In accordance with section 782(i) of the Act, except as noted in the "Facts Available" and "Programs Determined to Be Countervailable" sections, above, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation.

According to section 705(5)(A)(i) of the Act, the all others rate normally will be "an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776." In this case, all exporters and producers individually investigated have zero rates or a rate based entirely on facts available.

According to section 705(5)(A)(ii) of the Act, in situations where the countervailable subsidy rates established for all exporters and producers individually investigated are zero or *de minimis* rates, or are determined entirely under section 776, the Department may use any reasonable method to establish an all others rate. In antidumping duty investigations, where petitions typically have a range of calculated dumping rates, the Department often bases the all others rate on a simple average of the petition rates in such situations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Italy*, 64 FR 15458, 15459 (Mar. 31, 1999). In this investigation, we do not have information from the petition that would allow us to calculate the all others rate in this fashion. Therefore, we have considered the options of using a weighted average of the countervailing subsidy rates of the exporters and producers individually examined in this investigation or a simple average of these same rates. Because of concerns about the potential disclosure of proprietary data through the use of a weighted average of the subsidy rates in this case, the Department has decided to use a simple average of the subsidy rates of the producers and exporters examined as the all others rate in this case.

Producer/exporter	Net subsidy rate
P.T. Krakatau Steel ...	47.71% ad valorem
P.T. Gunawan Steel ..	0.00% ad valorem
P.T. Jaya Pari	0.00% ad valorem
All others rate	15.90% ad valorem

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality steel plate from Indonesia which were entered, or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d)(3) of the Act, which provides that suspension ordered after the preliminary determination may not remain in effect for more than four months, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26 and November 22, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. Because the estimated net

countervailing duty rates for Gunawan and Jaya Pari are zero, these companies will be excluded from the suspension of liquidation, and the order, if one is issued.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 704(g) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33231 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–805]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt or Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629 or (202) 482–1766, respectively.

The Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (1999).

Final Determination: We determine that certain cut-to-length carbon-quality steel plate products ("CTL Plate") from Indonesia are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Quality Steel Plate Products from Indonesia*, 64 FR 41206 (July 29, 1999)) (*Preliminary Determination*), the following events have occurred:

On July 23, 1999, the Department received Krakatau's response to the Department's July 8, 1999, supplemental questionnaire. Even though the Department received Krakatau's response three days after the questionnaire response deadline, Department officials examined the data to determine whether Krakatau fully responded to the Department's questionnaire. On July 28, 1999, the Department informed Krakatau that it was not going to proceed with verification of Krakatau's response because it did not adequately address the sales-related and cost-related questions. Also, on July 28, 1999, the petitioners [1] alleged ministerial errors in the preliminary determination. On July 29, and 30, 1999, Krakatau submitted letters objecting to the Department's decision not to conduct verification.

On August 4, 1999, PT Gunawan Dianjaya Steel ("Gunawan") and PT Jaya Pari Steel Corporation ("Jaya Pari") submitted a proposal for a suspension agreement to the Department. Department officials subsequently met with counsel for Gunawan/Jaya Pari and an official from the Indonesian government to discuss the likelihood of a suspension agreement (*see* Memorandum to the File from Wendy Frankel, Special Assistant to the Deputy Assistant Secretary, dated August 27, 1999). In that meeting, Department officials indicated that a suspension agreement in this case was unlikely because the proposed agreement did not meet the requisite conditions.

From August 10 through 19, 1999, we conducted verification of Gunawan/Jaya Pari's sales and cost responses to the antidumping questionnaire. On August 17, 1999, the Department issued the amended preliminary determination, correcting certain ministerial errors, and postponed the final determination until no later than 135 days after publication of the preliminary determination (*see Notice of Amendment of the Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 46341, August 25, 1999) ("*Amended Prelim*").

On August 24, 1999, Krakatau requested a hearing. In response to numerous improperly filed letters sent by Krakatau between August 12 and 24, 1999, the Department issued a letter to Krakatau on August 25, 1999, explaining the procedures for submitting case and rebuttal briefs and extending the deadlines for submitting such documents.

During September and October 1999, we issued our verification reports for Gunawan/Jaya Pari. The petitioners and Gunawan/Jaya Pari submitted case briefs on October 19, 1999, and rebuttal briefs on October 25, 1999. The Department received Krakatau's case brief on October 14, 1999, and rebuttal brief on October 25, 1999. On October 27, 1999, the Department held a public hearing.

On November 22, 1999, the petitioners alleged that one of the respondents either had not reported certain U.S. sales made during the period of investigation ("POI") or had not reported price reductions for certain U.S. sales made during the POI. Because we do not have sufficient information on the record to substantiate this allegation, and because this allegation was made at a very late stage of the proceeding, we did not consider it for purposes of this final determination. However, if an antidumping duty order is ultimately issued in this case, we will

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

examine carefully all sales of this company in any future review.

Scope of Investigation

For purposes of this investigation, the products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy ("HSLA") steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The POI is January 1, through December 31, 1998.

Facts Available

Because we did not receive an adequate questionnaire response from Krakatau, we could not conduct verification and, therefore, could not use its data for the final determination. For the reasons explained in detail below, we have applied to Krakatau an adverse facts available margin, the highest margin alleged in the petition (52.42 percent), for purposes of the final determination.

1. Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(c)(1), (d) and (e), facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this investigation, Krakatau failed to provide the information necessary to properly calculate a dumping margin, in the form and manner requested by the Department. As explained below, in response to Krakatau's request for assistance under section 782(c)(1), the Department attempted to assist Krakatau under section 782(c)(2) in understanding the Department's reporting requirements by visiting its facilities to respond to its questions and issuing it various supplemental questionnaires and instructional letters prior to the preliminary determination. We also provided Krakatau with an opportunity to supplement its questionnaire response after the preliminary determination in order to

address numerous deficiencies and omissions of data which rendered its previous response inadequate for use in the preliminary determination. Krakatau's supplemental response continued to contain numerous deficiencies and omissions of data, and did not provide alternative methodologies, which prevented the Department from conducting verification and using its data in the final determination. Thus, pursuant to sections 776(a)(2)(A) and (B) of the Act, and having satisfied the requirements under sections 782(c)(2), (d) and (e), the Department must apply facts otherwise available in this case.

2. Selection of Facts Available

Section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See the Statement of Administrative Action ("SAA") at 870.

In this case, Krakatau, a *pro se* company, had requested the Department's assistance in responding to the questionnaire under section 782(c) of the Act. In response to Krakatau's request for assistance, the Department helped Krakatau to understand the reporting requirements. The Department's assistance in this regard included sending staff to Krakatau's facilities in Jakarta, Indonesia, to clarify and elaborate on the Department's reporting requirements contained in the questionnaire and numerous subsequent Departmental letters instructing Krakatau of the Department's reporting requirements in general and informing it of its reporting deficiencies in particular. Krakatau was provided numerous opportunities and extensions of time to fully respond to the Department's questionnaire (*see Preliminary Determination* at 64 FR 41207, 41209). However, despite the assistance offered by the Department's staff, Krakatau failed to provide a questionnaire response that addressed the most important deficiencies identified by the Department in its May 27 and July 8, 1999, supplemental questionnaires. Moreover, Krakatau failed to provide a reasonable explanation for its failure to comply with these standard requests for information. Accordingly, the Department finds that Krakatau did not act to the best of its ability to provide the information requested, despite the extensive assistance provided by the Department. Therefore, we have used an adverse inference in selecting the facts available to determine Krakatau's final margin.

In the preliminary determination, recognizing Krakatau's effort to comply with the Department's information requests and in light of its claimed reporting difficulties up until that time, the Department assigned Krakatau the simple average of the margins contained in the petition under section 776(b) of the Act, which the Department corroborated, to the extent practicable, from independent sources reasonably at its disposal under section 776(c) of the Act (*see Preliminary Determination* at 64 FR 41209, and *Memorandum to the File regarding the Facts Available Rate and Corroboration of Secondary Information* dated July 19, 1999). However, for the final determination, we have determined it is more appropriate to assign Krakatau the highest margin in the petition, 52.42 percent, which is also higher than the rate calculated for the only other respondent in this investigation, because Krakatau did not provide an adequate response that the Department could verify and use in the final determination, despite the numerous opportunities and extensive assistance afforded to it by the Department as explained above. (*See* Krakatau Comment 1 in the "Interested Party Comments" section of this notice for further discussion.) We continue to find this margin corroborated for the reasons discussed in the preliminary determination.

Fair Value Comparisons

We made our fair value comparisons in the manner described in the preliminary determination (*see Preliminary Determination* at 64 FR 41209). Gunawan/Jaya Pari argued that the Department should use two averaging periods in its margin calculations to account for the effect of low inflation during the second half of the POI. We continued to find that Indonesia experienced significant inflation throughout the POI, as measured by the Wholesale Price Index, published in the September 1998—September 1999 issues of International Monetary Fund's ("IMF's") *International Financial Statistics* (*see* Memorandum from the Team to the File, "Inflation Data Used and Statistical Analysis Performed for Determining Whether High Inflation Was Present During the Period of Investigation," dated December 13, 1999). For the reasons discussed in detail in Comment 1 of the "Gunawan/Jaya Pari Interested Party Comments" section of this notice below, we continued to use monthly averages within one averaging period for purposes of this final determination

Product Comparisons

We made our product comparisons using the same methodology as in the preliminary determination (*see Preliminary Determination* at 64 FR 41209).

Level of Trade

Consistent with our preliminary determination, we continue to find that no level of trade ("LOT") adjustment under section 773(a)(7)(A) of the Act is warranted because the U.S. sales and home market sales made by Gunawan and Jaya Pari were at the same LOT (*see Preliminary Determination* at 64 FR 41210).

Export Price

As in the preliminary determination, for both Gunawan and Jaya Pari, we used export price ("EP") methodology, in accordance with section 772(a) of the Act, because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") methodology was not otherwise indicated.

Gunawan/Jaya Pari

We calculated EP using the same methodology as in the preliminary determination, with the following exceptions:

Based on our verification findings, we made the following revisions to Gunawan's U.S. sales database: (1) for some sales, we deducted an amount from EP for Indonesian port handling charges and loading charges; (2) we revised the reported U.S. inland freight expenses from the factory to the port of exportation to reflect actual expenses for all sales; (3) we corrected an amount reported for a quantity discount noted for one sales invoice; and (4) we corrected an amount reported for bank charges noted for a different sales invoice (*see* September 16, 1999,

Gunawan verification report for further discussion).

Based on our verification findings, we made the following revisions to Jaya Pari's U.S. sales database: (1) we revised the reported U.S. inland freight expenses from the factory to the port of exportation to reflect actual expenses for all sales; (2) and we corrected the reported advertising expenses because Jaya Pari used an incorrect allocation factor (*see* September 23, 1999, Jaya Pari verification report for further discussion).

Normal Value

After testing home market viability and whether home market sales were made at prices below the cost of production ("COP"), we calculated normal value ("NV") as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice. As noted in the preliminary determination, we did not conduct an arm's-length test on affiliated party transactions because we continued to find that Gunawan and Jaya Pari met the criteria for collapsing affiliated companies. Therefore, we continued to treat Gunawan and Jaya Pari as a single entity for purposes of our analysis (*see Preliminary Determination* at 64 FR 41209–41210).

1. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether Gunawan/Jaya Pari made sales of the foreign like product in the home market during the POI at prices below the COP within the meaning of section 773(b)(1) of the Act. We calculated COP based on the same methodology used in the preliminary determination on a model-specific basis, except where we modified the margin calculation program to reflect certain adjustments and updated cost data based on verification findings (*see* Final Calculation Memorandum, dated December 13, 1999). Specifically, we relied on the respondents' COP and CV amounts except as follows:

A. We adjusted the reported nominal monthly depreciation expense figures to reflect each month's currency levels.

B. We adjusted the reported costs based on the corrections provided by Gunawan and Jaya Pari at the first day of verification.

C. We revised Jaya Pari's reported per-unit variable and fixed overhead to include the company's year-end audit adjustments.

D. We recalculated the yield adjustment factor applied to direct labor, variable and fixed overhead by dividing the rupiah/kilogram cost by the yield adjustment factor, rather than multiplying by the yield adjustment factor.

E. For those months in which Jaya Pari had no production, we allocated the factory overhead and labor costs incurred to the months where production occurred.

F. For months in which Gunawan and Jaya Pari had no purchases of slabs, as a surrogate cost, we used the most recent previous month's average purchase price indexed for inflation. However, we used Gunawan's average purchase price for slab in January 1998 as a surrogate for Jaya Pari's January 1998 slab costs.

G. We revised the scrap offset by indexing the monthly scrap sales revenue before calculating an annual average, and then calculated the scrap offset for each month by indexing the annual average back to each month.

H. We revised Jaya Pari and Gunawan's reported general and administrative ("G&A") expense and interest expense by indexing each month's nominal G&A expense, interest expense, and cost of sales figure for inflation. We excluded the interest on accounts receivable included in "other income" as an offset in the G&A expense calculation.

I. We recalculated Gunawan and Jaya Pari's total indexed foreign exchange gains attributable to accounts payable as a percentage of the indexed cost of sales and multiplied this percentage by the total cost of manufacturing ("COM") of each product control number.

J. We corrected the error made in calculating total COM based on the petitioners' comments on page 23 of their case brief.

K. We corrected our calculation of the indexed, weight-averaged costs based on the petitioners' comments on pages 23 and 24 of their case brief.

L. We revised Gunawan's reported conversion costs to account for cost differences associated with rolling products of different thicknesses. In making this adjustment, we have applied adverse facts available to Gunawan's reported conversion costs, as explained in detail below.

Gunawan allocated monthly conversion costs to all products based on total production quantities each month. This assignment of conversion costs does not allow for the accurate accounting of cost differences between products. For example, products with different thicknesses require different amounts of processing (*i.e.*, reduction). Critical to the Department's calculation of a dumping margin is the establishment of proper comparisons between prices of similar products sold in Indonesia and the United States. Without accurate difference-in-merchandise ("DIFMER") cost data for the various products, the Department cannot properly account for the differences in physical characteristics and associated price differences between products sold in Indonesia and the United States. Additionally, without costs that accurately account for cost differences associated with physical differences (*e.g.*, differences in thickness) for each product sold in Indonesia, we cannot conduct a meaningful cost test to evaluate whether products have been sold in Indonesia at less than the COP.

Gunawan responded to Sections B, C and D of the antidumping duty questionnaire on April 26, 1999. On May 21, 1999, the Department issued a supplemental questionnaire requesting further clarification of Gunawan's method of allocating conversion costs. The Department received Gunawan's response to the supplemental questionnaire on June 14, 1999, in which Gunawan indicated that it could not provide more product-specific costs. At verification, we found that there were differences in the amount of reduction required to produce a given thickness of plate. Therefore, we believe that Gunawan could have developed a way of differentiating costs based on the reduction necessary to produce the various thicknesses of plate.

Because Gunawan did not submit the conversion cost data as requested, we have determined that it did not act to the best of its ability. Therefore, application of adverse facts available is warranted in accordance with section 776(b) of the Act (*see* standard for the application of facts available set forth above in "Facts Available" section of this notice). However, because the company was otherwise cooperative, we have not drawn the most adverse inference. (*See e.g., Krupp Stahl AG* v. *U.S.*, 822 F. Supp. 789, 793 (Ct. Int'l Trade 1993), which referenced a Court of Appeals' opinion sanctioning the Department's practice to take into account the level of respondents' cooperation; and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany*, 63 FR 8953, 8955 (February 23, 1998).) Specifically, we have relied on the reported control-number-specific direct material costs and variable overhead costs. However, for the fixed overhead costs, we identified the largest expense (depreciation) and allocated the portion attributable to rolling based on reduction time. We first calculated the average reduction required to produce

all thicknesses of plate and then compared the average reduction to each thickness reported. We found that one thickness of plate required more reduction on average than all other plates produced. We calculated the percentage difference between the average reduction and the reduction required to produce this thickness of plate and increased the depreciation expense attributable to rolling by this percentage.

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondents' sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondents' sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain grades of CTL plate, more than 20 percent of Gunawan/Jaya Pari's home market sales within an extended period of time were at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act. For those U.S. sales of CTL plate for which there were no comparable home market sales in the ordinary course of trade, we compared EPs to CV, in accordance with section 773(a)(4) of the Act.

2. Calculation of CV

We calculated CV using the same methodology as in the preliminary determination, except where we made certain adjustments, as discussed above, and updated cost data based on verification findings and revised our calculation of CV profit based on the petitioners' comments on pages 23 and 24 of their case brief (*see* "Cost of Production Analysis" section of this notice and Final Calculation Memorandum, dated December 13, 1999 for further discussion).

Price-to-Price Comparisons

For price-to-price comparisons, we calculated NV based on the same methodology used in the preliminary determination, with the following exceptions based on verification findings: (1) we corrected the amount reported for commissions for certain Gunawan home market sales; (2) we determined that Gunawan's reported early payment discounts are, in fact, billing adjustments and deducted these reported amounts, where applicable, from the gross unit price; (3) we corrected the amounts reported for advertising expenses for all of Jaya Pari's home market sales; and (4) for one Jaya Pari sales invoice, we corrected the amount reported for inland freight from the plant to the customer (*see* September 16, 1999, Gunawan verification report, September 23, 1999, Jaya Pari verification report, and Comment 2 in the "Interested Party Comments" section of this notice for further discussion).

Price-to-CV Comparisons

For price-to-CV comparisons, we applied the same general methodology used in the preliminary determination (*see Preliminary Determination* at 64 FR 41212).

Critical Circumstances

Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As noted in the preliminary critical circumstances determination, we are not aware of any existing antidumping order in any country on CTL plate from Indonesia. Therefore, we examined whether there was importer knowledge. In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more for EP sales (and margins of 15 percent or more for CEP sales) sufficient to impute knowledge of dumping (*see Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160 (February 28, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel Sheet and Strip in Coils from Japan*)). All respondents in this proceeding have made EP sales to the United States.

The Department's final margin for Gunawan and Jaya Pari exceeds 25 percent (*see* "Suspension of Liquidation" section below). Therefore, we continue to determine that importers knew or should have known that Gunawan and Jaya Pari made sales of the subject merchandise at prices below fair value. As to the knowledge of injury from such dumped imports, in the present case, the International Trade Commission ("ITC") preliminarily determined that there is reasonable indication that the U.S. CTL plate industry is experiencing present material injury. Therefore, we continue to find that the "importer knowledge of dumping and material injury" criterion is met with respect to CTL plate from Indonesia.

Because we have found that the first statutory criterion is met with regard to Gunawan and Jaya Pari, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR 351.206(h), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 351.206(h), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive." The Department examines shipment information submitted by the respondent or import statistics when respondent-specific shipment information is not available.

To determine whether imports of subject merchandise have been massive over a relatively short period, we compared Gunawan/Jaya Pari's export volume for the four months subsequent to the filing of the petition (March-June 1999) to that during the four months prior to the filing of the petition (November 1998–February 1999). These

periods were selected based on the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

Based on our analysis, we find that the increase in imports was not greater than 15 percent with respect to Gunawan/Jaya Pari, as our verification findings indicate that these companies had no exports of subject merchandise to the United States during the period March-June 1999 (*see* July 9, 1999, submission; page nine of September 16, 1999, Gunawan verification report; and page eight of September 23, 1999, Jaya Pari verification report). Therefore, we do not find critical circumstances with respect to Gunawan/Jaya Pari.

Because the margin we have assigned to Krakatau is 52.42 percent, and thus exceeds 25 percent, we have imputed knowledge of dumping to Krakatau. However, information on the record sufficiently establishes that Krakatau's exports of subject merchandise to the United States have not increased massively since the filing of the petition. U.S. Customs import data indicate that Gunawan/Jaya Pari accounted for the vast majority of imports of subject merchandise into the United States during the POI. Moreover, since the filing of the petition, U.S. Customs import data do not indicate evidence of massive imports of subject merchandise from Indonesia (*see* July 19, 1999, *Memorandum to the File Regarding Import Statistics Used for Preliminary Critical Circumstances Determination*). Thus, we continue to determine that no critical circumstances exist for Krakatau.

Because the margin for all other Indonesian exporters/producers of the subject merchandise is 42.36 percent (*i.e.*, Gunawan/Jaya Pari's margin), and thus exceeds 25 percent, we have imputed knowledge of dumping to "All Others." However, we considered that the increase in imports was not greater than 15 percent with respect to Gunawan/Jaya Pari. We also considered U.S. Customs data on overall imports from Indonesia of the products at issue. Based on our review of Gunawan/Jaya Pari's shipment data and the U.S. Customs import data, we find that imports from all non-investigated exporters (*i.e.*, "all others") were also not massive during the relevant comparison periods. Given these factors, the Department determines that there are no critical circumstances with regard to "all other" imports of CTL Plate from Indonesia (*see Stainless Steel Sheet and Strip in Coils from Japan* at 64 FR 30585).

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Gunawan/Jaya Pari for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Gunawan/Jaya Pari.

Interested Party Comments

Gunawan/Jaya Pari Comments

Comment 1: Application of the High-Inflation Methodology to the POI

The respondents contend that the Department should divide the POI into two separate parts when accounting for the effect of inflation on the COP in order to make a fair comparison between home market costs and home market prices and between home market sales and U.S. sales. Specifically, the respondents state that the IMF wholesale price indices indicate that the Indonesian economy was experiencing hyperinflation only in the first six months of the POI, based on applying the Department's monthly and annual high inflation benchmarks of five and 50 percent, respectively. In support of their position, the respondents cite to the *Preliminary Results of Antidumping Duty Administrative Review and Extension of Final Results of Administrative Review: Gray Portland Cement and Clinker from Mexico*, 64 FR 48778, 48783 (September 8, 1999) (*Cement*). The respondents further note that the inflation rate in Indonesia declined significantly during the fourth quarter of the POI and continued to decline after the POI. The respondents also point out that section 777A(d)(1)(A) of the Act and section 351.414(d)(3) of the Department's regulations grant the Department the authority to use averaging periods less than the POI when NV, EP (or CEP) varies significantly over the POI, and that the Department has exercised its authority in prior antidumping duty cases to apply shorter weighted-average periods to investigations involving a country experiencing high inflation. In support of this position, the respondents cite to numerous cases where the Department split the POI or period of review ("POR") for various reasons (*see, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 64 FR 43157, 43158 (August 9, 1999) (*Pasta*); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56620 (October 22, 1998) (*Mushrooms*); *Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Colombia*, 62 FR 53287, 53299 (October 14, 1997) (*Flowers from Colombia*); *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 6993 (February 6, 1995) (*Roses*); and *Final Determination of Sales at Less Than Fair Value: Salmon from Chile*, 63 FR 31432 (June 9, 1998) (*Salmon*)). Furthermore, the respondents state that the Department has recognized in prior antidumping duty cases that it should not apply the high inflation methodology to the period in which no high inflation exists, and as a result, the Department has separated the POI into high-inflation and non-high-inflation periods. In addition, the respondents claim that the Department has stated in previous high inflation cases that the monthly averaging method is not dispositive when examining the entire POI to determine high inflation. In support of these positions, the respondents cite to the *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Peru*, 52 FR 7000, 7002 (March 6, 1987) (*Flowers from Peru*); *Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 61 FR 59407, 59408 (November 22, 1996) (*Ferrosilicon*); and *Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 62 FR 51629, 51630 (October 2, 1997) (*Pipe and Tube from Turkey*). Therefore, the respondents claim that the Department has recognized in the past that under certain circumstances, the appropriate high inflation period may not be the entire POI, which applies in this case, as well. Finally, the respondents claim that the Department has in practice determined shorter-than-POI, weighted-average periods to avoid distortive effects on dumping margins. In support of this claim, the respondents cite to the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664, 30676 (June 8, 1999) (*Steel Sheet and Strip*); *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*,

63 FR 8909, 8925 (February 23, 1998) (*SRAMs*); *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993) (*DRAMS*); and *Final Determination of Sales at Less Than Fair Value: Erasable Programable Read Only Memories from Japan*, 51 FR 39680, 39682 (October 30, 1986) (*EPROMs from Japan*).

The petitioners contend that Indonesia did experience high inflation during the second half of the POI, and that even if it had not, the Department's normal practice is to apply its high inflation methodology to the entire POI, not just to a particular segment of that period. The petitioners also maintain that the calculation performed by the respondents to determine whether high inflation existed in the second half of the POI is flawed because it did not include July 1998's inflation figure, nor did it take into account the compounding effects of inflation.

DOC Position: We agree with the petitioners. Based on the respondents' request, we have examined the issue of whether the Department should apply its high-inflation methodology based on whether Indonesia experienced high inflation throughout the POI. As a matter of practice, when the Department uses its high-inflation methodology, we index the costs reported in each POI month, even if inflation was absent during certain portions of the period for which the costs were reported (*i.e.*, the POI), and make sales comparisons on a monthly average basis, rather than on a POI average basis, in order to minimize the effects of inflation on our analysis.

The reason for this methodology is that in order to calculate a weighted-average cost for the POI, all monthly costs during the POI must be restated on an equivalent currency value basis using inflation indices during that period. The POI weighted-average cost is then restated to the currency value of each respective POI month in order to minimize the distortive impact of inflation. The Department's high-inflation methodology does not increase actual costs, but rather, allows the Department to calculate the weighted-average period cost from monthly data that is stated in different currency levels. *See Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190 (June 29, 1998)

Although the Department's past practice has been to treat an economy as hyperinflationary if the annual inflation rate is greater than 50 percent, since *Pipe and Tube from Turkey* the Department has modified its practice and used a 25 percent per annum inflation rate as a general guide for assessing the impact of inflation on an economy and for determining whether an economy experienced high inflation rather than hyperinflation during the POI or POR (*see Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from South Korea*, 64 FR 137, 139 (January 4, 1999)). The Department's use of this benchmark was illustrated in *Cement* where the Department found that a 16 percent Mexican annual inflation rate did not warrant application of the Department's high-inflation methodology (*see Cement* at 64 FR 48778). In *Pipe and Tube from Turkey*, where the POR extended from May 1, 1993, through April 30, 1994, the Department indicated that it separately examined the inflation rate during two segments of the POR because each segment covered portions of different years and we had to determine what the annual inflation rate was during the POR. In this context, the Department applied its then existing benchmark of 50 percent to determine whether high inflation existed in either 1993 or 1994. The Department did not restrict its examination of the issue to quarters within a year, but instead examined the two years in their entirety, which overlapped the POR and the months in the POR as a whole, in order to determine whether Turkey should be treated as hyperinflationary during the POR. Moreover, in *Pipe and Tube from Turkey*, the Department expressed a clear preference not to break the POR into discrete periods for high-inflation analysis, and stated that its finding in *Flowers from Peru*, made over 10 years ago, where the Department split the POI in its application of inflation methodology, was not a reflection of the Department's more recent practice in conducting inflation analysis. Rather, the Department stated a desire to examine the high-inflation issue by examining and considering the entire review period. The respondents in this case claim that a decline in the inflation rate in the fourth quarter of 1998 and a continuing decline in the inflation rate during the first quarter of 1999 are compelling reasons for departing from this methodology. The Department disagrees that it should perform its high-inflation analysis on a quarterly basis or consider the impact of inflation during periods extending past a POI or POR.

Though the facts in our case are different from those present in *Ferrosilicon*, where the Department determined not to apply its high-inflation methodology, the methodology employed in the present case is consistent with the one in *Ferrosilicon* in that the existence or absence of high inflation during the relevant portion of the review or investigatory period was the single most important contributing factor in determining whether to apply the high-inflation methodology to the POI or POR as a whole. Moreover, the approach taken in *Ferrosilicon* for examining whether high inflation existed during the POR as a whole (*i.e.*, focusing on the annualized rate of inflation over the entire POR or POI rather than quarters or abbreviated time periods) is also consistent with *Pipe and Tube from Turkey*, which, as noted above, is more relevant to our particular situation (*see Ferrosilicon* at 59408).

Unlike in *Flowers from Colombia, Mushrooms, Salmon and Roses*, the issue in our case is not whether to adjust or exclude certain cost items which have a significant impact on home market prices without applying our high-inflation methodology. In the present case, our current practice of applying an annualized benchmark to determine the existence of high inflation during the POI shows that Indonesia experienced high inflation during the entire POI at a level which requires the use of the Department's high-inflation methodology (*see*, Memorandum from the Team to the File, "Inflation Data Used and Statistical Analysis Performed for Determining Whether High Inflation Was Present During the Period of Investigation," dated December 13, 1999). No individual adjustments are necessary beyond those warranted by the application of the Department's high-inflation methodology. Accordingly, we have continued to apply our high inflation methodology to the entire POI.

Since we have determined that inflation existed throughout the POI, there is no need to consider splitting the POI into two averaging periods under 19 CFR 351.414(d)(3).

The effect of currency devaluations resulting from the Asian financial crisis of 1997, as opposed to the existence or absence of inflation, was the principal reason for splitting up the POI in the more Korean case involving *Steel Sheet and Strip*. In that case, the Department determined that the precipitous drop in the value of the home market currency caused significant differences in home market prices and, thus, warranted the POI split. As for the recent Taiwanese case involving *SRAMs*, the Department did use shorter averaging periods to avoid distortive effects due to declining costs and prices. The Department did

not, however, apply different methodologies to different parts of the POI. Finally, as is the case with the Department's outdated inflationary analysis and decision made in *Flowers from Peru*, decisions made by the Department in *EPROMs from Japan* are also not a reflection of the Department's current practice with respect to the inflation issue. Accordingly, the Department has continued to apply its high-inflation methodology over the entire POI in this case.

Comment 2: Home Market Early Payment Discount

The petitioners contend that the Department should disallow Gunawan's early payment discount because it constitutes a post-sale price adjustment that is not part of Gunawan's normal business practice. Specifically, the petitioners maintain that information in Gunawan's response indicates that Gunawan grants the discount in question to its home market customers on a discretionary basis, and that the discount percentage is not specified on documentation, or linked to the quantity or value of the sale. Rather, the petitioners allege that the discount is set by Gunawan's sales department on an *ad hoc* basis since the customer is unaware at the time of sale of any terms or conditions it must meet to receive the discount. Finally, the petitioners contend that the Department should disallow this adjustment to NV because Gunawan failed to demonstrate at verification that the discount was part of its normal business practice. In support of their position, the petitioners cite to numerous cases where the Department granted a post-sale price adjustment if it reflected the respondent's normal business practice. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 64 FR 12951, 12958 (March 16, 1999); *Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico*, 64 FR 13148, 13167 (March 17, 1999); *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings and Parts Thereof from France*, 63 FR 33320, 33327 (June 18, 1998) and 60 FR 10900, 10930 (February 28, 1995); and the *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 FR 13815, 13823 (March 28, 1996).

Gunawan maintains that the Department should continue to allow Gunawan's early payment discount because the Department verified that the *ad hoc* method by which Gunawan grants the discount is its normal business practice. Gunawan also states that the Department examined at verification Gunawan's policy for granting this discount and its reporting of this discount in the sales listing, and found no discrepancies in its reported discount programs. With regard to the administrative cases relied upon by the petitioners, Gunawan points out that this proceeding is an investigation and that the likelihood that it can manipulate its dumping margin by granting the discount in the future is not germane to a LTFV proceeding.

DOC Position: We agree in part with Gunawan. After reviewing data referenced in the Gunawan sales verification report (*i.e.*, verification exhibit 30), we note that the record evidence indicates the post-sale adjustment, referred to as an "early payment discount" by both Gunawan and the petitioners, is actually a billing adjustment associated with defective merchandise sold in the home market. Based on the invoices examined at verification, the Department found that the disputed amounts were noted on credit memos which were issued after the sale invoices were sent to home market customers, and that the credits were mostly associated with claims of defective merchandise which was not returned to Gunawan. Therefore, we are treating the amounts at issue as billing adjustments and deducting them, where applicable, from the gross unit price. Finally, the above-referenced administrative cases relied upon by the petitioners have no applicability in this case because, unlike those cases where the issue was whether a respondent granted rebates in its normal course of business, the issue in this proceeding is whether to make a deduction to Gunawan's home market price based on credit memos noting returns of defective merchandise which Gunawan issues to its customers in the normal course of business.

Comment 3: Depreciation Expenses

The petitioners state that the Department should adjust Gunawan's depreciation expenses to account for the effects of inflation and to permit a more appropriate matching of costs and prices based on equivalent currency units. The petitioners argue that Gunawan's reported depreciation expenses are based on the nominal value of assets, since they were last revalued, and reflect neither the inflation experienced in Indonesia since the last revaluation nor the inflation experienced during the POI. The petitioners argue that the Department should adjust the depreciation expenses for the effects of inflation occurring prior to the POI, as well as for the effects of inflation during the POI.

The respondents argue that the Department has already taken into account the effects of inflation by indexing the total amount of reported fixed overhead expenses (*i.e.*, the account in which depreciation expense was recorded) in its cost calculation and, therefore, should not further index for inflation. According to respondents, further indexing the monthly amount of depreciation expense will result in double counting. The respondents argue that the Department's long-standing practice is to rely on data from a respondent's normal books and records if they are prepared in accordance with the generally accepted accounting principles ("GAAP") of the exporting country.

DOC Position: We agree with the petitioners, in part. The depreciation expense at issue is included in fixed overhead expense. Because the depreciation expense reported for each month was based on fixed assets values recorded in currency levels at the beginning of the POI, it is not enough to index each monthly depreciation expense from that month to the end of the period. Each monthly depreciation expense must be indexed, on a monthly basis, to account for the full change in currency value between the beginning and the end of the POI, before an average COP for the period can be calculated. The reported monthly depreciation expense figures are all stated in the currency level of the first month of the POI and, therefore, must all be indexed for inflation on a monthly basis over the full POI. In this case, the monthly inflation rates during the POI were significant.

We disagree with the petitioners that the nominal monthly depreciation expenses should be adjusted for inflation that occurred prior to the POI. We note that one of the two collapsed respondents revalued their assets during the last quarter of 1998 and the other revalued its assets in 1996. Inflation in Indonesia since this pre-POI revaluation has not been significant. Thus, we do not consider it appropriate to adjust the pre-POI fixed asset valuations as recorded in their normal books and records. For the final determination, we have indexed the monthly depreciation expense to account for the high inflation during, but not prior to, the POI.

Comment 4: First-Day Verification Corrections

The petitioners argue that the Department should, pursuant to 19 CFR 351.301(b), reject the undisclosed and untimely major modifications contained in Gunawan's August 24, 1999 and Jaya Pari's September 1, 1999 submissions. The petitioners argue that it is the Department's longstanding policy not to accept the submission of new information at verification unless: (1) The need for that information was not evident previously, (2) that information makes minor corrections to information already on the record, or (3) that information corroborates, supports, or clarifies information already on the record. According to the petitioners, the corrections submitted by Gunawan and Jaya Pari on the first day of verification significantly affect the financial expense calculation and the foreign exchange gains and losses on accounts payable. The petitioners claim that these "major" modifications cannot be characterized as "minor corrections" and, therefore, should be rejected as new information.

The respondents argue that the Department should reject the petitioners' claim that the corrections submitted by Gunawan and Jaya Pari at verification constitute an untimely submission of new factual information. The respondents argue that these minor corrections were made timely on the first day of verification and included worksheets showing the effects of the corrections which the Department verified. The respondents argue that the corrections were minor in nature and significance, and were related only to exchange gains and losses, which represent a minor part of the total reported costs. The respondents argue that these corrections went in both positive and negative directions, which in turn had an insignificant impact on the margin calculation, and, therefore, the Department should include these corrections in its calculation of the respondents' dumping margin in the final determination.

DOC Position: We agree with the respondents that the corrections presented on the first day of verification were minor and were of the type typically identified by the respondents during preparation for verification. These corrections were minor in that they affected only specific accounts, did not change the reporting methodology, and corroborated, supported, and clarified information already on the record. Therefore, we have included the corrections for purposes of the final determination.

Comment 5: Slab Costs

The petitioners argue that the Department should adjust the respondents' reported slab costs. The petitioners argue that where Gunawan and Jaya Pari had no purchases of slabs in a given month, the Department should construct a current monthly cost by using the most recent preceding month's cost, adjusted for the effects of inflation, instead of the unadjusted slab costs reported by the respondents. In addition, the petitioners disagree with the respondents' claim that all slab costs were denominated in U.S. dollars. According to the petitioners, it is not clear from the record how much of the slab purchases were made in U.S. dollars or Indonesian rupiah. The petitioners argue that as a surrogate for Jaya Pari's January 1998 mild slab costs the Department should use Gunawan's January 1998 mild slab purchases, because Gunawan's average January purchase price is more representative of January slab costs than is the price reported by Jaya Pari, a price from the previous year.

The respondents argue that the Department should not adjust the purchase price of slab for inflation, but instead use the slab costs as reported. The respondents are opposed to the petitioners' argument that the respondents' reported slab costs for a month in which there were no purchases should be adjusted by the Indonesian inflation indices. The respondents argue that when they produce subject merchandise in a month in which there are no purchases, they are consuming slab from inventory, which was purchased in previous months. Therefore, they argue that the cost of slab in any given month was equal to the slab cost of the previous month, irrespective of inflation in Indonesia because they did not incur any additional acquisition costs for these slabs. Accordingly, the Department should not revalue the slab costs for those months in which there were no purchases.

The respondents also argue that the Department should not use Gunawan's January 1998 mild slab purchase price as a surrogate for Jaya Pari's January 1998 mild slab costs as suggested by the petitioners. The respondents state that they purchased all of their material inputs in U.S. dollars from sources outside of Indonesia and there were no significant price increases during the POI. The respondents argue that because the acquisition cost of slabs in U.S. dollars is not affected by Indonesian market conditions and is also not affected by inflation, no adjustments should be made to the slab purchase price.

Lastly, the respondents argue that since the IMF's wholesale price indices show that Indonesia has not had high inflation subsequent to July 1998, the Department's high-inflation methodology should not be applied to costs during the period from July through December 1998.

DOC Position: We agree with the petitioners that replacement cost (*i.e.*, the purchase price for the current month) should be used to value slabs for Gunawan and Jaya Pari. Moreover, we agree that for those months in which there were no slab purchases, the preceding month's purchase price, adjusted for the effects of inflation, should be used. In cases where the respondent experiences inflation in the comparison market during the POI, the Department requires the respondent to report current costs for the calculation of COP and CV. This methodology entails valuing any materials used to produce the subject merchandise at the average purchase price of those materials during the month of consumption (*i.e.*, the normal inventory value of consumed raw materials is replaced by the average monthly purchase price for those materials).

We disagree with the respondents that all purchases of slabs were made in U.S. dollars. In fact, some purchases, and all of the miscellaneous acquisition fees, were made in rupiah. Moreover, we disagree that when slab purchases are made in U.S. dollars the book value is not affected by inflation. This is because the U.S. dollar-denominated purchase price is converted to rupiah in the month of purchase. Since the company was experiencing high inflation during the POI, its currency was losing value in relation to the U.S. dollar and, therefore, in Indonesian rupiah terms the slabs were increasing in price.

We also agree with the petitioners that it is more appropriate to use Gunawan's weighted-average, per-unit purchase price in January 1998 for mild slab as a surrogate for Jaya Pari's January 1998 mild slab costs. Gunawan's average January purchase price is more representative of January slab costs than the price Jaya Pari paid months ago. Simply indexing the price paid in the previous period would only account for increases in the purchase price due to inflation, but would not reflect other market-based pressures on slab prices. We note further that Jaya Pari has been collapsed with Gunawan as a single respondent for margin calculation purposes, and also that it purchased slab from Gunawan during the POI. Therefore, we find that it is appropriate

to used Gunawan's slab cost as a surrogate for Jaya Pari's slab cost in January 1998.

Finally, we disagree with the respondents' argument that the Department's high-inflation methodology should not be applied to the period from July through December 1998. First, we note that the IMF's wholesale price indices show that Indonesia continued to experience inflation through September 1998. Second, our practice is to use the high-inflation methodology for the entire POI if a country experiences a significant level of inflation throughout that period, as was the case in Indonesia. The Department's high-inflation methodology does not increase costs, but rather, allows the Department to calculate the weighted-average period cost from monthly data that is stated in different currency levels. Therefore, we have continued to apply the high-inflation methodology in our calculation of the POI costs.

Comment 6: G&A Expenses

The petitioners argue that the Department should exclude Gunawan's "other income," resulting from interest on accounts receivable, as an offset in the calculation of its G&A expense factor. The petitioners argue that this interest on accounts receivable was from a company that did not pay its invoices on time and is not related to Gunawan's production operations.

The respondents argue that the Department should not exclude interest income from accounts receivable, which was included in "other income," from the calculation of G&A expenses because it is directly related to subject merchandise. Alternatively, the respondents argue that this interest income should be deducted from the respondents' indirect selling expenses.

DOC Position: We agree with the petitioners that the interest on accounts receivable, which was included in "other income," should not be used as an offset in the G&A expense calculation. Interest income earned on accounts receivable is treated as an adjustment to the selling price. The Department's standard questionnaire directs a respondent to report such interest income in a separate field on the sales database in order to allow for the adjustment to the selling price. Accordingly, we have disallowed this interest income on accounts receivable as an offset to G&A expense. We do agree with the respondents that the interest income should be deducted from the respondents' indirect selling expenses and have done so for the final margin calculation.

Comment 7: Scrap Sales

The petitioners argue that because of the high inflation experienced in Indonesia, the Department should first index the monthly scrap sales revenue before calculating an annual average.

The respondents agree that the Department should first index the monthly amounts of scrap before calculating an average, but argue that the indexing should be limited to data for the period from January through June 1998.

DOC Position: We agree with the petitioners that because of the high inflation experienced in Indonesia, we should first index the monthly scrap sales revenue before calculating an annual average. Gunawan calculated the scrap offset by dividing the total scrap sales revenue for the year by the total quantity of plate produced during the year. Since the monthly scrap sales revenue that was summarized to obtain the total scrap sales revenue was in different currency levels, we have first indexed the monthly amounts using the Wholesale Price Index as reported in the *International Financial Statistics* before calculating an annual average. We then calculated the scrap offset for each month by indexing the annual average back to each month. Finally, we disagree with the respondents concerning their argument that the indexing should be limited to the period from January through June 1998, consistent with our decision to apply high-inflation methodology to the entire POI. *See* DOC Position to Comment 1 above for further discussion.

Comment 8: Foreign Exchange Loss on Accounts Payable

The respondents argue that the Department should not include the exchange losses on accounts payable attributable to the purchase of slab in the calculation of the COP. The respondents argue that, because costs included in CV are eventually converted into U.S. dollars, the Department should base slab purchase costs on the U.S. dollar-denominated purchase price to avoid the conversion from U.S. dollars to Indonesian rupiah and back to U.S. dollars which creates a loss that does not exist in dollar terms. The respondents argue that the exchange loss on accounts payable arose solely from different exchange rates used between the date of recording purchases in their books and the date of payment. The respondents also argue that the Department should exclude this exchange loss since it was only a "book" loss which did not add to the real COP.

In addition to the above argument, the respondents state that by indexing the slab purchase price and then including the exchange loss on accounts payable from the purchase of slab, the Department has double counted costs in the calculation of the COP. The respondents state that they are being made to record exchange losses in their books due to the Indonesian rupiah depreciating against the U.S. dollar which, in turn, was due to inflation in the Indonesian economy.

The petitioners argue that the Department should continue to include the respondents' foreign exchange losses on accounts payable in the calculation of COP and CV. They argue that the respondents must convert their slab costs into Indonesian rupiah since their normal books and records are maintained in Indonesian rupiah, and as a result of doing so, they realize exchange gains and losses on accounts payable. The petitioners state that these foreign exchange gains and losses on accounts payable are a result of the Indonesian rupiah depreciating between the time slab is purchased and the time payment is made. The petitioners claim that this is a real economic loss, which is recognized by the respondent and is recorded in their financial accounting system. The petitioners argue that the conversion of these Indonesian rupiah costs back into U.S. dollars for purposes of calculating CV does not create the loss, it is simply a convention of the dumping analysis. In addition, the petitioners argue that the Department has consistently held that foreign exchange losses on accounts payable must be included in costs. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Trinidad & Tobago*, 63 FR 9177, 9182 (February 24, 1998) (*Steel Wire Rod*).

DOC Position: We disagree with the respondents. Foreign exchange losses realized in connection with accounts payable should be included in the COP and CV calculations. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea*, 64 FR 17342 (April 9, 1999) and *Steel Wire Rod* at 63 FR 9182. The foreign exchange losses on accounts payable were a result of the Indonesian rupiah depreciating between the time the slab was purchased and the time the payment was made. In simple terms, when the payment is made it takes more Indonesian rupiah than the original amount recorded for the purchase. This is a real economic loss, which was recognized by the respondents and was recorded in their financial accounting system. The Department includes these losses in the COM because they are the

direct result of purchasing inputs for the manufacturing process. We also disagree with the respondents' argument that if the slabs were purchased in U.S. dollars and paid out of the company's U.S. dollar reserves, there is no exchange loss. Even if the payment of slabs were made from U.S. dollar reserves, there is still an exchange loss on the payment of the slabs, because the originally agreed upon price in rupiah terms has increased. We further note that any exchange gain on U.S. dollar reserves would be included by the Department in the calculation of financial expense.

Moreover, we disagree with the respondents' assertion that the Department has double counted costs by both including the exchange losses and indexing the monthly slab costs in its calculation of the COP and CV. The indexing simply allows the Department to calculate an average period cost from monthly amounts that are denominated in different currency levels. The average cost is then restated in currency levels for each month in which a sale took place. The inclusion of the foreign exchange loss recognizes that the respondent paid a higher amount for the slab than originally recorded.

Comment 9: Foreign Exchange Gains on Accounts Receivable

The respondents argue that the Department should include the foreign exchange gains from accounts receivable as an offset to the foreign exchange loss from accounts payable. The respondents argue that, by excluding this offset amount, the Department departed from the objectives and principles of GAAP, which is to ensure that each company fairly presents its financial position, operating position and any change to its financial position. The respondents state that in their normal financial practices, the companies do not manage specific accounts, but instead manage their net exposed position. Therefore, any change in relative currency values will be offset with no cost to the company. The respondents argue that if the gains on accounts receivable were excluded, a distortion in the real financial position of the company would occur because the cost of exchange losses actually suffered would be overstated.

The petitioners argue that the Department should not include foreign exchange gains from accounts receivable in the calculation of the respondents' costs. They state that it is the Department's practice to include foreign exchange gains and losses on financial assets and liabilities in the COP and CV calculations, provided that the gains and losses are related to the company's production operations. Since the foreign exchange gains and losses incurred on accounts receivable are related to sales operations, rather than to production, the petitioners maintain these amounts should not be included in the calculation of COP and CV. *See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7392, 7401 (February 13, 1998) and *Steel Wire Rod* at 63 FR 9182.

DOC Position: We agree with the petitioners that foreign exchange gains and losses arising from sales transactions should not be included in the calculation of COP and CV. The Department's longstanding practice is to exclude exchange gains and losses on accounts receivable. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico*, 62 FR 37014,37026 (July 10, 1997) (Comment 31) (where the Department did not include exchange gains and losses on accounts receivables, because these gains and losses related to selling activities rather than production activities); and *Pipe and Tube from Turkey* at 62 FR 51629–01 (October 2, 1997). The Department normally includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing operations (*e.g.*, purchases of inputs). *See, e.g., Final Determination of Sales Less Than Fair Value: Polyethylene Tenephthalate Film, Sheet, and Strip From the Republic of Korea*, 56 FR 16305, 16313 (April 22, 1991). We do not consider foreign exchange gains and losses arising from sales transactions to relate to manufacturing activities of a company. Accordingly, for the final determination we included in COP and CV exchange gains and losses arising from purchase transactions (accounts payables) (*see* Comment 8), but disallowed exchange gains and losses arising from sales transactions.

Krakatau Comments

Comment 1: Application of Facts Available

Krakatau maintains that the Department's use of facts available in its case violates Articles 2.2.1.1 and 6.8 of the Antidumping Duty Agreement of the World Trade Organization because the Department could have used its questionnaire response to arrive at a calculated margin for Krakatau without undue difficulties. Krakatau further maintains that the Department's insistence that Krakatau provide costs on a control-number-specific basis based on its cost records and Krakatau's inability to provide such costs are no justification for rejecting Krakatau's response and applying facts available.

The petitioners maintain that the Department should assign Krakatau the higher of the highest dumping margin alleged in the petition or calculated in the final determination, rather than the simple average of the dumping margins alleged in the petition, because Krakatau has not provided an adequate questionnaire response. The petitioners argue that if the Department assigns Krakatau the simple average of the petition dumping margins, Krakatau might receive a lower rate than it might otherwise have received if it had cooperated, thus rewarding Krakatau for not providing complete and accurate information in a timely manner.

DOC Position: We agree with the petitioners. We did not request that Krakatau provide cost and sales information that other respondents in numerous antidumping duty proceedings have not been able to provide, without undue hardship, in response to the Department's antidumping duty questionnaire. Furthermore, Krakatau was given significant guidance and assistance by the Department throughout this investigation, but was unable to provide the Department with an adequate response that could be verified and used in the final determination. Consequently, the Department has no choice but to continue to resort to facts available with respect to Krakatau in the final determination as explained in detail below.

We provided Krakatau with numerous opportunities and guidance throughout this proceeding to enable it to submit its cost and sales data on a control-number-specific basis, as requested by the Department's questionnaire, for purposes of calculating a margin for Krakatau based on its own data. Despite the Department's numerous attempts to assist Krakatau, Krakatau failed to provide critical information needed for calculating a margin, thereby rendering its information severely deficient and unusable. Specifically, prior to the preliminary determination, the Department issued Krakatau a number of instructional letters, including a second supplemental questionnaire which was explicit regarding the information the Department needed from Krakatau in order to further consider its response for verification and the final determination (*see* July 8, 1999, letter from the Department to Krakatau). In the July 8, 1999, letter, the Department requested for each sales control number, production costs and

sales expenses unique to the control number, along with worksheets showing how Krakatau arrived at its calculations for the requested costs and sales expenses. Moreover, we requested Krakatau to provide the costs for each control number on a monthly basis since evidence suggested that Indonesia experienced high inflation throughout the POI. In addition, the July 8, 1999, letter provided Krakatau with step-by-step instructions for submitting the requested information noted above. The July 8, 1999, letter also stated that if Krakatau could not establish a unique cost for each product, it must describe in detail the reason it could not provide such information. In summary, this letter was designed to assist Krakatau and give Krakatau one final opportunity to comply with the Department's reporting requirements because the Department was fully aware that Krakatau was a *pro se* company and had requested assistance in a timely manner under section 782(c)(1) of the Act. Having received the Department's assistance in this regard under section 782(c)(2) of the Act, the ultimate burden was on Krakatau to supply the Department with the requested information.

In its response to the Department's July 8, 1999, letter, Krakatau (1) did not report control-number-specific, monthly costs (critical for making fair value comparisons); (2) did not provide the requested worksheets necessary for determining whether it properly reported its sales expenses on a per-unit basis; and (3) did not explain in detail why it was not able to provide the sales and cost information the Department routinely requests and receives from respondents in other antidumping duty cases. Furthermore, Krakatau offered no alternative methodologies for meeting the Department's request for information given its alleged inability to provide such information in the manner requested by the Department. Rather, Krakatau continued to report a standard sales expense amount irrespective of the POI month for each control number reported in its home market and U.S. sales listings without showing or explaining its calculation methodology, and one standard production cost for each POI month which did not differentiate between control numbers. With these significant deficiencies still present in Krakatau's July 23, 1999, supplemental response, we notified Krakatau on July 27, 1999, that the Department was unable to conduct a meaningful verification of its response and that the supplemental information Krakatau submitted on July 23, along with the information previously submitted on June 25, 1999, did not provide the Department with an appropriate basis on which to calculate an antidumping duty margin for Krakatau in the final determination (*see* July 27, 1999, letter from the Department to Krakatau).

Because Krakatau did not provide an adequate response that the Department could verify and use in the final determination, despite numerous opportunities and assistance afforded to it by the Department, the Department does not consider Krakatau to have cooperated to the best of its ability in this proceeding. Therefore, the Department has relied on adverse facts available in accordance with section 776(b) of the Act in making its final determination with respect to Krakatau. Accordingly, the Department has assigned Krakatau the highest dumping margin alleged in the petition, which is higher than the margin calculated for Gunawan/Jaya Pari. *See* also "Facts Available" section of this notice.

Comment 2: Exclusion From Investigation

Krakatau claims that its negligible exports of subject merchandise to the U.S. market during the POI could not possibly cause or threaten material injury to the domestic industry. Therefore, Krakatau maintains that the Department should not impose antidumping duties on Krakatau's U.S. exports of the subject merchandise.

The petitioners did not comment on this issue.

DOC Position: We disagree with Krakatau. The ITC, not the Department, determines whether imports of the subject merchandise from Indonesia have caused or threaten material injury to the domestic industry. Therefore, Krakatau's argument is not one in which the Department has jurisdiction to address. The Department determines whether dumping exists. If we find dumping and the ITC finds material injury, we must impose antidumping duties.

Comment 3: Adequacy of Questionnaire Response

Krakatau claims that it did not know how to report its information in the format requested by the Department's original and supplemental questionnaires because it was unfamiliar with the requirements of the U.S. antidumping duty law and because it could not afford the services of a consultant to prepare its response due to the adverse impact of the Indonesian economic crisis on its operations. Instead, Krakatau points out that it used its own resources to respond to the Department's questionnaires to the best of its ability. In addition, Krakatau alleges that the Department's guidance was inadequate in terms of assisting it in reporting its cost and sales information in the format requested by the Department. Therefore, Krakatau maintains that the Department should not resort to facts available with respect to Krakatau because Krakatau was unable to provide the Department with certain requested information (*i.e.*, assigning product control numbers and reporting control number-specific costs) for which Krakatau did not maintain or record in its accounting records.

The petitioners did not comment on this issue.

DOC Position: We disagree with Krakatau. As discussed in the Department's position to Comment 1, the Department provided Krakatau with numerous opportunities to submit in a timely manner critical cost and sales information in the format requested in the Department's antidumping duty questionnaire. In the final supplemental questionnaire the Department issued to Krakatau on July 8, 1999, the Department provided Krakatau with the actual calculation steps it needed to follow in order to report its sales expenses in the manner requested by the antidumping duty questionnaire. Additionally, in the supplemental questionnaire, the Department outlined for Krakatau how it could comply with the Department's request to report monthly, control-number-specific cost data based on Krakatau's description of its own cost records. Krakatau failed to provide the requested information despite the Department's assistance efforts. In addition to these detailed explanations and guidelines, we took the unusual step of sending a Department official to Jakarta to answer any questions Krakatau staff had concerning the contents of the Department's questionnaires. Having received this assistance, the burden was on Krakatau to provide the requested information. It did not. Therefore, the Department has no alternative but to resort to adverse facts available in Krakatau's case. (*See* "Comment 1 above and "Facts Available" section of this notice for discussion of adverse facts available rate assigned to Krakatau.)

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, for

consumption on or after the date of publication of the final determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Gunawan/Jaya Pari	42.36
PT Krakatau Steel	52.42
All Others	42.36

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33232 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Tipten Troidl, Office of CVD/AD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

Final Determination: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cut-to-length carbon-quality steel plate from the Republic of Korea. For information on the countervailing duty rates, see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, and the United Steelworkers of America (petitioners).

Case History

Since the publication of our preliminary determination in this investigation on July 26, 1999 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 40445 (*Preliminary Determination*)), the following events have occurred:

On September 13, 1999, we issued supplemental questionnaires to Pohang Iron & Steel Co., Ltd. (POSCO), Dongkuk Steel Mill Co., Ltd. (DSM), and the Government of Korea (GOK). We received the respondents' questionnaire responses on October 5, 1999. We conducted verification of the countervailing duty questionnaire responses from October 25 through November 9, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR 40416), and the final antidumping duty determination was postponed (*see* 64 FR 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR 40416). On November 19, 1999, we issued to all parties the verification reports for POSCO, DSM, and the Meetings with Banking Experts in Korea. We later issued on November 23, 1999, the verification report for the GOK. Petitioners and respondents filed case briefs on November 29, 1999. Rebuttal briefs were submitted to the Department by petitioners and respondents on December 3, 1999. A public hearing on the case was held on December 6, 1999.

On November 23, 1999, we discontinued the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or

0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because the Republic of Korea is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*see Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations*, 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the CVD Regulations, we have allocated POSCO and DSM's non-recurring subsidies over 15 years, the AUL listed in the IRS tables for the steel industry.

Benchmarks for Long-term Loans and Discount Rates

During the POI, POSCO and DSM had a number of won-denominated and foreign currency-denominated long-term loans outstanding which the company received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. A number of these loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea*,[1] the Department determined that the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans through 1991. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37328, 37338 (July 9, 1993) (*Steel Products from Korea*), and the "Direction of Credit" section below. In that investigation, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the final determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1992, and still outstanding during the POI.

In *Stainless Steel Plate* and *Stainless Steel Sheet and Strip*,[2] the Department, for the first time, examined the GOK's direction of credit policies for the period 1992 through 1997. Based on new information gathered during the course of those investigations, the Department determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1997. In the current investigation, we determine that the GOK still exercised

[1] On October 1, 1999, the United States Court of Appeals for the Circuit (CAFC) issued a decision regarding *Steel Products from Korea*. *See AK Steel Corp.* v. *United States*, 192F.3d (*AK Steel*). The Department has not received specific instructions from the Court on how this decision should be implemented. However, our review of the decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided credit directly to the Korean steel industry. In this investigation, we have additional information on the record indicating that the GOK's direction of credit prior to 1992 provided a countervailable benefit to the Korean steel industry. Therefore, the selection of long-term benchmarks cited to in *Steel Products from Korea* is appropriate for this current investigation. For further information on direction of credit prior to 1992, see the "Direction of Credit" section of this notice.

[2] *See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15532 (March 31, 1999) (*Stainless Steel Plate*), and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 39641 (June 8, 1999) (*Stainless Steel Sheet and Strip*).

substantial control over lending institutions in Korea during the POI.

Based on our findings on this issue in prior investigations, as well as in the instant investigation, discussed below in the "Direction of Credit" section of this notice, we are using the following benchmarks to calculate respondents' long-term loans obtained in the years 1992 through 1998. First, for countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average U.S. dollar-denominated interest rates on the companies' loans from foreign bank branches in Korea. However, certain companies had foreign currency loans denominated in a currency other than U.S. dollars but did not have the same type of currency loans from foreign bank branches in Korea. Because we were unable to find a similar foreign-currency denominated loan benchmark within Korea, we used foreign-currency interest rates as reported in the *International Financial Statistics*, a publication of the IMF. Second, for countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the companies' public and private bonds. We note that this benchmark is based on the decision in *Stainless Steel Plate*, 64 FR at 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the national average of the yields on three-year corporate bonds as reported by the Bank of Korea (BOK).

We are also using the three-year company-specific corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 1998.

Benchmarks for Short-Term Financing

For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans for the POI. Each respondent provided its respective company-specific, short-term commercial interest rate to the Department.

Treatment of Subsidies Received by Trading Companies

During the POI, POSCO exported the subject merchandise to the United States through three trading companies, POSTEEL, Hyosung, and Sunkyong. DSM exported through one trading company, DKI. POSTEEL is affiliated with POSCO, and DKI is affiliated with DSM within the meaning of section 771(33)(E) of the Act because as of December 31, 1998, POSCO owned 95.8 percent of POSTEEL's shares, and DSM owned 51.3 percent of DKI shares. The other trading companies are not affiliated with either POSCO or DSM. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation. Responses were required from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer, with those provided to the exporter. *See* 19 CFR 351.525.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the "Explanation of the Final Rules" (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27303 (May 19, 1997).

In this investigation, we have determined that it is not appropriate to establish combination rates. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers. Second, the difference in the levels of subsidies conferred upon the subject merchandise among the individual trading companies is insignificant. Therefore, combination rates would serve no practical purpose because the calculated subsidy rate for POSCO/POSTEEL or POSCO/Sunkyong or POSCO and any of the other trading companies would effectively be the same rate. For these reasons, we are not calculating combination rates in this investigation. Instead, we have only calculated one rate for each producer of the subject merchandise, all of which is produced by either POSCO or DSM.

To include the subsidies received by the trading companies, which are conferred upon the export of the subject merchandise, in the calculated *ad valorem* subsidy rate, we used the following methodology. For each of the four trading companies, we calculated the benefit attributable to the subject merchandise and factored that amount into the calculated subsidy rate for the producer. In each case, we determined the benefit received by the trading companies for each export subsidy and weight-averaged the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. This calculated *ad valorem* subsidy was then added to the subsidy calculated for either POSCO or DSM. Thus, for each of the programs below, the listed ad valorem subsidy rate includes the countervailable subsidies received by both the trading companies and either POSCO or DSM.

I. Programs Determined To Be Countervailable

A. The GOK's Direction of Credit Policies

1. The GOK's Credit Policies Through 1991

As noted above in the "Subsidies Valuation" section of this notice, on October 1, 1999, the CAFC issued a decision regarding *Steel Products from Korea*. *See AK Steel*. The Department has not received specific instructions from the Court as to how this decision should be implemented. However, our review of the decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided credit directly to the Korean steel industry. Since the time of the final determination of *Steel Products from Korea* the URAA was enacted and the Department developed and codified new substantive countervailing duty regulations. Under the new statute and regulations and considering the new information that was not on the record of *Steel Products from Korea*, we determine that all loans disbursed to respondent companies through 1991 are countervailable. For a discussion of this new information, please see Comments 1 and 2 in the "Interested Party Comments" section of the notice. The provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has

been conferred on the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the "Subsidies Valuation Information" section, above.

POSCO and DSM were the only producers of the subject merchandise, and both companies received long-term loans prior to 1992 that were still outstanding during the POI. To determine the benefit from the regulated loans, we applied the long-term loan methodology provided for in section 351.505 of the CVD Regulations. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we determine the net countervailable subsidy to be 0.12 percent *ad valorem* for POSCO, and 0.04 percent *ad valorem* for DSM.

In the preliminary determination, we stated that the long-term KExim Bank loans are regulated. Accordingly, these loans are countervailable as directed credit, and we included these long-term loans in POSCO's benefit calculations for directed credit. In the preliminary determination, we concluded that the loans provided to POSCO from the KExim Bank were export subsidies, and thus divided the benefit amounts from the loans attributable to the POI by the company's export sales. During verification, we found that these loans were provided under the Overseas Resource Development Program, and thus were not provided to POSCO based upon its export performance. Therefore, for the purposes of this final determination, we have attributed the benefit conferred from the KExim Bank loans over POSCO's total sales.

2. The GOK's Credit Policies From 1992 Through 1998

In the *Stainless Steel Plate* and *Stainless Steel Sheet and Strip* investigations, the Department determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997.[3] The Department also determined that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. This credit conferred a benefit on the producers/exporters of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans. *See* section 771(5)(ii) of the Act. *See* also *Stainless Steel Plate*, 64 FR 15530, 15533, and *Stainless Steel Sheet and Strip*, 64 FR 30636, 30642.

We provided the GOK with the opportunity to present new factual information concerning the government's credit policies during the 1992 through 1997 period, which we would consider along with our finding in the prior investigations. The GOK did not provide new factual information that would lead us to change our determination in *Stainless Steel Plate and Stainless Steel Sheet and Strip*. Therefore, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable.

In the instant investigation, we examined whether the GOK continued to control or influence directly or indirectly, the lending practices of sources of credit in Korea in 1998, in light of our prior finding that the GOK controlled and directed credit provided by domestic banks and government-owned banks during the period 1992 through 1997. The GOK asserted that it does not provide direction or guidance to Korean financial institutions in the allocation of loans to selected industries. The GOK stated that the lending decisions and loan distributions of financial institutions in Korea reflect commercial considerations. The GOK also stated that its role in the financial sector is limited to monetary and credit policies as well as bank supervision and examination.

According to the GOK, measures were taken in 1998 to liberalize the Korean financial sector. For example, in January 1998 the GOK announced closure of some banks, and in April 1998, launched the Financial Supervisory Commission (FSC) to monitor the competitiveness of financial institutions. In June 1998, the Regulation on Foreign Exchange Controls was amended to further liberalize foreign currency transactions, and in July, the GOK abolished the limit on purchasing foreign currency. According to the GOK, it also liberalized access to foreign loans. For direct foreign loans to Korean companies, the approval process under Article 19 of the Foreign Investment and Foreign Capital Inducement Act (FIFCIA) and Article 21 of its enforcement decree were eliminated and replaced with the Foreign Investment Promotion Act (FIPA), effective in November 1998. However, during most of the POI, access to direct foreign loans still required the approval of the Ministry of Finance and Economy.

Regarding the GOK regulated credit from government-controlled banks such as the Korea Development Bank (KDB), the GOK reported that the KDB Act was amended in January 1998, in response to the financial crisis in 1997. According to the GOK, with the new Act, the KDB no longer allocates funds for various functional categories; such as R&D, environment and technology. All functional loan categories were eliminated and such loans were consolidated into a single category for facility (equipment) loans. The GOK also stated that the KDB strengthened its credit evaluation procedures by developing an objective and systematic credit evaluation standard to prevent arbitrary decisions on loans and interest rates. The KDB changed its Credit Evaluation Committee to the Credit Deliberation Committee (CDC), and gave the CDC the authority to make lending decisions. As a result, the KDB governor no longer makes lending decisions without the approval of the CDC. The GOK also stated that in 1997, the KDB used the prime rate plus a spread for determining interest rates. Effective January 1, 1998, the KDB increased the range of the credit spread to provide more flexibility in determining interest rates based on creditworthiness and to allow the KDB to increase its profits. However, respondents did not provide any evidence to demonstrate that the KDB has discontinued the practice of selectively making loans to specific firms or activities to support GOK policies.

In *Stainless Steel Plate*, the Department noted conflicting information regarding the GOK's direct or indirect influence over the lending decisions of financial institutions. For example, the GOK policies appeared to be aimed, in part, at promoting certain sectors of the economy, such as high technology, which is defined to include the steel industry.

While the GOK started to plan and implement reforms in the financial system during the POI as a result of the 1997 financial crisis, the record evidence indicates that the GOK previously attempted reforms of the

[3] In the *Stainless Steel Plate* and *Stainless Steel Sheet and Strip* investigations, the Department based its affirmative direction of credit determination for the period 1992 through 1997 on record evidence covering a time period different than that covered by the CAFC's decision in *AK Steel* which was Pre-1992. Moreover, in its decision, the CAFC did not reject the notion of the GOK directing credit specifically to the Korean steel industry but rather took issue with the evidence upon which the Department based its affirmative finding. Thus, because the Department based its affirmative direction of credit determination for the years 1992 through 1997 on evidence that was not before the CAFC at the time of its decision in *AK Steel*, that case does not preclude a finding of directed credit during this later time period.

financial system in order to remove or reduce its control and influence over lending in the country. In the past ten years, the GOK has twice attempted to reform its financial system. In 1988, the GOK attempted to deregulate interest rates. However, the government deemed the 1988 liberalization a failure. When the interest rates began to rise, the GOK canceled the reforms by indirectly pressuring the banks to keep interest rates low. In the early 1990s, the GOK attempted reforms again with a four-stage interest rate deregulation plan. Again, the GOK deemed this attempt to reform the financial system a failure. During 1998 and 1999, the GOK has threatened to cut off credit to Korean companies unless the companies follow GOK policies. In addition, during the POI, the GOK took control of five large commercial banks due to the financial crisis.

Based upon the information on the record and our determinations in *Stainless Steel Plate and Stainless Steel Sheet and Strip*, we determine that the GOK continued to control, directly and indirectly, the lending practices of domestic banks and government-owned banks through the POI.

With respect to foreign sources of credit, in *Stainless Steel Plate* and *Stainless Steel Sheet and Strip*, we determined that access to government regulated foreign sources of credit in Korea did not confer a benefit to the recipient as defined by 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, respondents' loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. On the basis of this comparison, we found that there was no benefit during the POI. Petitioners have not provided any new information or evidence of changed circumstances to cause us to revisit this determination. Therefore, we continue to determine that credit from Korean branches of foreign banks were not subject to the government's control and direction. As such, lending from this source continues to be not countervailable, and loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign sources of funds confer a benefit to respondents.

With respect to loans provided under the Energy Savings Fund, in *Stainless Steel Plate*, 64 FR at 15533, the Department found that these loans were countervailable as directed credit on the grounds that they are policy loans provided by banks that are subject to the same GOK influence as described above. POSCO had Energy Savings Fund loans outstanding during the POI. Accordingly, these loans are countervailable as directed credit, and we have included these long-term loans in POSCO's benefit calculations for directed credit.

In addition, respondents received loans under the Industry Promotion Fund and the Industry Technology Development Fund. Similar to our determination with respect to the Energy Savings Fund, loans from both of these Industry Funds are policy loans provided by banks subject to the same GOK influence as described above. Therefore, loans from these two Industry Funds are countervailable as directed credit. POSCO's affiliates had outstanding loans during the POI from these Industry Funds. Therefore, we have included these long-term loans in POSCO's benefit calculations for directed credit.

Both POSCO and DSM received long-term loans from domestic banks and government-owned banks during the period 1992 to 1998 that were still outstanding during the POI. These included loans with both fixed and variable interest rates. To determine the benefit from the regulated loans with fixed interest rates and those with variable interest rates, we applied the methodology provided for in section 351.505(c)(2) and section 351.505(c)(4), respectively, of the CVD Regulations, using as our benchmark the rate described in the "Subsidies Valuation Information" section of the notice, above. Therefore, for both fixed and variable rate loans, we calculated the difference in interest payments for the POI based upon the difference in the amount of actual interest paid during 1998 on the regulated loan and the amount of interest that would have been paid on a comparable commercial loan. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we determine the net countervailable subsidy to 0.15 percent *ad valorem* for POSCO, and 0.13 percent *ad valorem* for DSM.

B. GOK Infrastructure Investment at Kwangyang Bay

In *Steel Products from Korea*, the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea*, 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea*, which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year allocation time period. *See* the allocation period discussion under the "Subsidies Valuation Information" section, above. We used as our discount rate the three-year corporate bond rate on the secondary market as used in *Steel Products from Korea*. We then summed the benefits received by POSCO during 1998 from each of the GOK's yearly investments over the period 1983–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1998. On this basis, we determine a net countervailable subsidy of 0.23 percent *ad valorem* for the POI.

C. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea (see* 58 FR at 37350). During the POI, POSCO was the only producer/exporter of the subject merchandise that used export financing.

In accordance with section 771(5A)(B) of the Act, this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(i) of the Act in the form of a

loan. To determine whether this export financing program confers a countervailable benefit to POSCO, we compared the interest rate POSCO paid on the export financing received under this program during the POI with the interest rate POSCO would have paid on a comparable short-term commercial loan. See discussion above in the "Subsidies Valuation Information" section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rate paid by POSCO on its export financing is a discounted rate. Therefore, it was necessary to derive from POSCO's company-specific weighted-average interest rate for short-term won-denominated commercial loans, a discounted benchmark interest rate. We compared this discounted benchmark interest rate to the interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rate. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we determine that this program confers a countervailable benefit because the interest rates charged on the loans were less than what POSCO would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We then divided the benefit derived from all of POSCO's export loans by the value of the company's total exports. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO.

D. Reserve for Export Loss

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. During the POI, DSM was the only exporter of the subject merchandise that benefitted from this program.

We determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the company.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1997, by the corporate tax rate for 1997. We treated the tax savings on these funds as a short-term interest-free loan. Accordingly, to determine the benefit, the amount of tax savings was multiplied by the company's weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the "Subsidies Valuation Information" section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we determine a net countervailable subsidy of 0.02 percent *ad valorem* for DSM.

E. Reserve for Overseas Market Development

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets overseas expenses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. The following exporters of the subject merchandise used this program during the POI: Hyosung, POSTEEL, Sunkyong, and DKI.

We determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the companies.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. Using the methodology for calculating subsidies received by trading companies, which is detailed in the "Subsidies Valuation Information" section of this notice, we determine a net countervailable subsidy of 0.01 percent *ad valorem* for POSCO and a rate of 0.01 percent *ad valorem* for DSM.

F. Technical Development Reserve Funds Under Article 8 of TERCL

Article 8 of TERCL allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. These reserve funds are included in the company's losses and reduces the amount of taxes paid by the company. Article 8 specifies that capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three percent reserve.

Because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers, we determine that the Technical Development Reserve Funds is specific under section 771(5A)(D). We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential two percent tax savings enjoyed by the companies in the capital

goods industry, which includes steel manufacturers.

During the POI, POSCO was the only exporter of the subject merchandise that benefitted from this program. To determine the benefit conferred by this program, we first calculated the balance amount of the reserve as of December 31, 1997, attributable to the company being allowed to contribute a higher amount to the reserve account. We then calculated the tax savings by multiplying the calculated balance amount in the reserve account, by the corporate tax rate for 1997. We treated the tax savings on these funds as a short-term interest-free loan. As a benchmark interest rate, we used an affiliated company's weighted-average interest rate for short-term won-denominated commercial loans for the POI. On this basis, we determine a net countervailable subsidy for POSCO of less than 0.005 percent *ad valorem*.

G. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent tax years. During the POI, POSCO claimed various investment tax credits to reduce its 1997 net tax liability. In *Steel Products from Korea*, we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, there were changes in the countervailing duty statute effective in 1995, which have caused us to revisit the countervailability of the investment tax credits.

POSCO used the following tax credits: (1) tax credits for investments in facilities for research and experiment under Article 10(1)(a) and Article 10(1)(b); (2) tax credits for investments in productivity improvement under Article 25; (3) tax credits for specific facility investments under Article 26; (4) tax credit for Equipment Investment to Promote Workers' Welfare under Article 88.

Under these TERCL Articles, if a company invested in foreign-produced facilities (*i.e.*, facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (*i.e.*, facilities produced in Korea) under the same Articles, it received a 10 percent tax credit. Under Article 88, a tax credit can only be claimed if a company is using domestic machines and materials. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced facilities, we determine that investment tax credits received under Articles 10(1)(a), 10(1)(b), 25, 26, and 88 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK is foregoing the collection of tax revenue otherwise due under this program, we determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program is a reduction in taxes payable. Therefore, we determine that this program is countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1997 fiscal year. POSCO deducted from its 1997 taxes payable, credits earned in the years 1995 and 1996. Therefore, we first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales during the POI. On this basis, we determine a net countervailable subsidy of 0.32 percent *ad valorem* for POSCO. DSM did not claim any tax deductions during the POI through the use of any of these investment tax credits.

H. Electricity Discounts Under the Requested Load Adjustment Program

The GOK reported that during the POI, the government-owned Korea Electric Power Company (KEPCO) provided respondents with four types of discounts under its tariff schedule. These four discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; (3) Requested Load Adjustment; and (4) Voluntary Curtailment Adjustment. *See* the discussion below in "Programs Determined To Be Not Countervailable" with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment, and Voluntary Curtailment Adjustment discount programs.

The GOK introduced the Requested Load Adjustment (RLA) discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

During the POI, KEPCO granted 33 companies RLA discounts even though KEPCO did not request these companies to reduce their respective loads. The GOK reported that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997 and 1998. In 1996, KEPCO had entered into RLA contracts with 232 companies, which was reduced to 44 companies in 1997 and 33 in 1998. Therefore, we continue to find that the discounts provided under the RLA were distributed to a limited number of users. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The benefit provided under this program is a discount on a company's monthly electricity charge. A financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government. *See Stainless Steel Sheet and Strip*, 64 FR at 40454.

Under section 351.524(c) of the CVD regulations, discounts on electricity will normally be treated as recurring benefits and expensed in the year of receipt. Therefore, to measure the benefit from this program, we summed the electricity discounts which POSCO and DSM received from KEPCO under the RLA program during the POI and divided that amount by each company's total sales value for 1998. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO, and a rate less than 0.005 percent *ad valorem* for DSM from the RLA discount program.

I. Asset Revaluation Pursuant to TERCL Article 56(2)

This provision under Article 56(2) of the Tax Exemption and Reduction Control Act (TERCL) allowed companies making an initial public offering between January 1, 1987, and December

31, 1990, to revalue their assets without meeting the requirement in the Asset Revaluation Act of a 25 percent change in the wholesale price index since the company's last revaluation. In *Steel Products from Korea*, after verification, petitioners submitted additional information, which according to them, indicated that POSCO's revaluation may have been significantly greater than that of the other companies that revalued. Because the information submitted by petitioners was untimely, it was rejected; however, we requested additional information on the subject. The additional information submitted by petitioners contained data on the amount of assets revalued of only 45 of the 207 companies that revalued pursuant to Article 56(2). It was unclear from petitioners' data which companies revalued pursuant to Article 56(2) and which revalued in accordance with the general provisions of the Asset Revaluation Act. Because of these shortcomings, and because the information was submitted too late for verification, we were unable to draw conclusions with respect to the relative benefit derived by POSCO from this program. Since there was no evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation or the method of POSCO's revaluation under the Asset Revaluation Act, the Department determined this program to be not countervailable. *See Steel Products from Korea*, 58 FR at 37351.

In the petition in this case, petitioners provided information to substantiate their allegation that POSCO and DSM received a specific benefit under this program because their massive asset revaluations permitted the companies to substantially increase their depreciation and, thereby, reduce their income taxes payable. Based on this new information, the Department initiated a reexamination of the countervailability of this program and solicited information regarding the usage of this program.

Because the enabling legislation does not expressly limit access to the subsidy to an enterprise or industry, or group thereof, the program is not *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Although the regulation itself does not expressly limit the access to this law to a specified group or industry, it does place restrictions on the time period and eligibility criteria which may have been structured to result in *de facto* limitations on the actual usage of this tax program. For example, Article 56(2) was enacted on November 28, 1987, and applied only to companies making an initial public offering from January 1, 1987 until the provision was abolished effective December 31, 1990. Pursuant to Article 56(2), companies listed on the Korea Stock Exchange between January 1, 1987 and December 31, 1988 (as was the case with POSCO) had until December 31, 1989 to revalue their assets. A company that listed its stock after December 31, 1988 had to revalue its assets prior to being listed on the stock exchange. Therefore, based upon the eligibility criteria of the program, Article 56(2) effectively limited usage of this program to only the 316 companies that were newly listed on the Korean Stock Exchange during the three years the program was in place rather than the 15 to 24 thousand manufacturers in operation in Korea during that period.

Information on the record of the current investigation shows that during the period 1987–1990, there were between 14,988 and 24,073 manufacturing companies operating in Korea, and only 77 companies revalued their assets in 1989 (at the time the respondents revalued their assets). In addition to the limited number of companies using this program, we note that the basic metal sector accounted for 83 percent of the total revaluation surplus amount (book value less revalued amount), which indicates that the basic metal industry was a dominant user of this program in 1988/89. *See, e.g., Stainless Steel Plate in Coils from South Africa*, 64 FR 15553 (March 31, 1999). In examining the *de facto* specificity of the program, we recognize the concern that a tax benefit conferred on a large company might be disproportionate merely because of the size of the company. However, based upon the facts of this particular case, this concern is unfounded. First, given the number of manufacturing companies in Korea during the effective period of this program's operation, there were very few companies receiving tax benefits under this program. In addition, given the number of manufacturers in Korea, there should have been other large companies relative to the size of POSCO revaluing assets under this program. However, this is not the case with respect to this program.

Therefore, based upon the above set of facts, we determine that this program is specific, within the meaning of 771(5A)(D)(iii). As a result of the increase in the value of depreciable assets resulting from the asset revaluation, the companies were able to lower their tax liability. Therefore, we also determine that the program provides a financial contribution within the meaning of section 771(5)(D)(ii), because by allowing companies to reduce their income tax liability, the GOK has foregone revenue that is otherwise due.

The benefit from this program is not the amount of the revaluation surplus, but rather the impact of the difference that the revaluation of depreciable assets has on a company's tax liability each year. Based on clarification of the May 28, 1999 questionnaire responses submitted by the respondents, we have revised our calculations. We have now used the additional depreciation in 1997, which resulted from the company's assets revaluation and multiplied that amount by the tax rate applicable to the tax return filed in the POI, and divided the benefit for each company by their respective total sales during the POI. On this basis, we determine a net countervailable subsidy of 0.04 percent *ad valorem* for POSCO and a rate of 0.02 percent *ad valorem* for DSM.

I. Exemption of Bond Requirement for Port Use at Asan Bay

The GOK's overall development plan is published every 10 years, last published in 1991, and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. The Korea Land Development Corporation (KOLAND) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.

The Asan Bay area was designated as an Industrial Site Development Area in December 1979. The Asan Bay area consists of five development sites, (1) Kodai, (2) Wanjung, (3) Woojung, (4) Poseung, and (5) Bukok. Although Wanjung and Woojung are within the Asan National Industrial Estate, those properties are not owned by KOLAND.

After the preliminary determination, we requested and received information regarding the GOK's infrastructure investments at Asan Bay, which we subsequently verified. At verification, the officials explained that the GOK had built port berths #1, #2, #3, and #4 in the Poseung area. We also learned of POSCO's activities at Asan Bay. In September 1997, POSCO signed a three-year lease agreement with the Inchon Port Authority (IPA) for the exclusive use of port berth #1, which was constructed by the GOK, and paid the applicable user fee.

In 1997, the GOK also entered into a lease agreement for the exclusive use of the other port berths #2, #3, and #4, with

a consortium of six companies. The consortium of companies was required to purchase bonds, which the GOK would repay without interest after the lease expired in 10 years. However, POSCO was not required to purchase a bond for the exclusive use of port berth #1. See POSCO Verification Report, public version dated November 19, 1999, on file in the CRU.

We first determine that the waiver of the bond purchase was only provided to POSCO. Therefore, the program meets the specificity requirements under section 771(5A)(D) of the Act. In addition, we determine that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO confers a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determine that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease.

To determine the benefit from the loan, we treated the amount of the bond as a long-term interest-free loan. We then applied the methodology provided for in section 351.505(c)(4) of the CVD Regulations for a long-term fixed rate loan, and compared the amount of interest that should have been paid during 1998 on the interest free loan to the amount of interest that would have been paid based upon the interest rate on a comparable won-denominated benchmark loan. We then divided the benefit by the company's total sales. On this basis, we determine the net countervailable subsidy to be less than 0.005 percent ad valorem for POSCO.

J. Price Discount for DSM Land Purchase at Asan Bay

In 1995, DSM purchased land at the Asan Bay Industrial Site, a GOK constructed industrial estate. DSM began making land payments in 1995 and continued until the last payment in December 1998. The original total land cost to the KDLC included land, management fees, and land development costs. During the period of the contract from 1995 to 1998, a variety of cost and fees changed. For instance, DSM decided to have a private company perform land development, thus reducing the original total amount of land cost. Also, the management fee to West Area Industrial Site Management Corporation (WAISM) was waived and the GOK further reduced the land price.

During verification, the Department noted a difference between the total cost of land amount after changes and what DSM actually paid. This difference occurred because the GOK reduced the amount by percent and waived a management fee owed to WAISM. Based upon 771(5A)(D)(iii)(I) of the Act, this price reduction was specific to DSM. As the GOK issued this price reduction, this confers a benefit under 771(5)(D)(ii) of the Act, because the GOK foregoes revenue that it normally would collect.

To calculate the benefit from this program, the Department first took the original amount of the land cost and deducted the amount that was to be paid to the KLDC for land development, to obtain the new price of the land. Next, to derive the amount DSM paid for the land, we took the actual amount and added the prepaid interest. The Department then took the difference between the new price of the land and the calculated amount paid by DSM. We treated the difference as a grant as described in 19 CFR 351.504 of the CVD regulations. Although this program confers a non-recurring benefit, the amount of the benefit is less than 0.5 percent of DSM's total sales, therefore, we have expensed this benefit in the year of receipt, which was the POI, pursuant to section 351.524(2) of the CVD regulations. On this basis, we have calculated a net countervailable subsidy rate of 0.48 percent *ad valorem* for DSM.

K. POSCO's Dual-Pricing Scheme

POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea, direct export prices in U.S. dollars or Japanese yen, and local export prices in U.S. dollars. According to POSCO's response, local export prices are provided to those domestic customers who purchase steel for further processing into products that are exported. POSCO is the only Korean producer of slabs, which is the main input into the subject merchandise. During the POI, POSCO sold slab to DSM for products that will be consumed in Korea, as well as slab to produce exports of the subject merchandise.

During the POI, POSCO continued to be a government-controlled company. *See Stainless Steel Sheet and Strip* 64 FR at 30642–43. POSCO sets different prices for the identical product for domestic purchasers based upon that purchaser's anticipated export performance. *See Stainless Steel Sheet and Strip,* 64 FR at 30647. Thus, in selling to DSM, POSCO charged a domestic price for slab when DSM's finished product was to be sold in Korea, and a "local-export" price for slab when DSM's finished product was to be exported. In *Stainless Steel Sheet and Strip,* we found this pricing scheme to be an export subsidy under section 771(5A)(B) of the Act, which provides a financial contribution under section 771(5)(D) of the Act.

In *Stainless Steel Sheet and Strip,* we calculated the benefit conferred by POSCO's pricing policies under section 351.516 of the CVD regulations which provides the methodology used to determine price preferences for inputs used in the production of goods for export. Therefore, in *Stainless Steel Sheet and Strip,* and in the preliminary determination of this investigation, the Department determined the benefit from this pricing scheme by comparing the difference in the local-export and domestic prices charged by POSCO.

In comments prior to our preliminary determination, petitioners argued that POSCO's dual-pricing system is a provision of a good for less than adequate remuneration under section 771(5)(E)(iv), therefore, petitioners stated that the Department should analyze this pricing scheme in accordance with section 351.511 of the CVD regulations. In our preliminary determination, we stated that we would continue to analyze this issue for our final determination.

The focus of our analysis in *Stainless Steel Sheet and Strip* was whether the GOK, acting through its ownership and control of POSCO, was setting below-market prices for raw materials used by Korean steel exporters. Based upon this premise, we determined that this program should be analyzed under section 351.516 of the CVD regulations to measure the discriminatory pricing practice between domestic and export consumption. This was the appropriate methodology to employ based upon the allegation in *Stainless Steel Sheet and Strip* that the government was providing price preferences for inputs used in the production of goods for export. As noted above, section 351.516 specifies the methodology to be employed when there are price preferences for inputs used in the production of goods for export and is based upon Item (d) of the Illustrative List of Export Subsidies, which is provided for in Annex I of the Agreement on Subsidies and Countervailing Measures.

In this current investigation, petitioners have argued that the GOK is controlling both the domestic and export prices of slab, the input into plate. Petitioners have stated that the same information on the record that demonstrates that the GOK through its control of POSCO is setting below-market prices for exporters also supports a conclusion that a similar pricing policy is followed for POSCO's

domestic-priced slab sales. Therefore, we must analyze POSCO's dual pricing scheme based upon the specific allegation in this current investigation, *i.e.*, the provision of a good or service for less than adequate remuneration.

Under section 351.511(a)(2), the adequacy of remuneration is to be determined by comparing the government price to a market determined price based on actual transactions in the country in question. Such prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. During the POI, DSM imported slab; therefore, we are using actual imported prices of slab as our basis of comparison. Based upon this comparison, we determined that POSCO's local-export price for slab is sold at less than adequate remuneration. As a result, a benefit is conferred to DSM under section 771(5)(E)(iv). We have not made a determination with respect to POSCO's domestic-priced slab sales to DSM because under section 351.525(b)(4) of the CVD regulations, subsidies tied to a particular market will be attributed only to the products sold by the firm to that market.

To determine the value of the benefit under this program, we compared the quarterly delivered weighted-average price charged by POSCO to DSM for local export production to the quarterly delivered duty-exclusive weighted-average price DSM paid for imported slab, by grade of slab. We used a duty-exclusive price because, consistent with the prevailing market conditions referred to in section 771(5)(E)(iv) of the Act, an exporter in Korea is entitled to duty drawback. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. On this basis, we determine that DSM received a countervailable subsidy of 0.90 percent *ad valorem* from this program during the POI.

L. Special Cases of Tax for Balanced Development Among Areas (TERCL Article 43)

TERCL Article 43 allows a company to claim a tax reduction or exemption for income gained from the disposition of factory facilities when relocating from a large city to a local area (*e.g.*, Seoul Metropolitan area to a place outside the Seoul Metropolitan area). On December 29, 1995, DSM sold land from its Pusan factory and within three years from the sale date began production at its Pohang plant. In accordance with Article 16, paragraph 7 of the Addenda to the TERCL, DSM was entitled to receive an exemption on its income tax for the resulting capital gain.

Payment for the Pusan facilities is on a long-term installment basis. Therefore, the income tax on the capital gain is payable when DSM actually receives payment or transfers the title of ownership. The capital gain in the tax year cannot exceed DSM's total taxable income. The maximum tax savings permitted is 100 percent of the taxable income; however, this program is also subject to the minimum tax. This program does not allow carrying forward of unused benefits in future years.

We determine that the TERCL Article 43, for Special Cases of Tax for Balanced Development Among Areas is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to enterprises or industries located within a designated geographical region. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy*, 64 FR 15508, 15516 (March 31, 1999) (funds were regionally specific because they were limited to certain areas within Italy). We also determine that Article 43 provides a financial contribution within the meaning of section 771(5)(D)(ii), because the GOK foregoes revenue that is otherwise due by granting this tax credit.

To calculate the benefit from this tax credit program, we examined the amount of the tax credit DSM deducted from its taxes payable for the 1997 fiscal year. In DSM's 1997 income tax return filed during the POI it deducted from its taxes payable, credits earned in 1997. Next, we calculated the amount of the tax savings and divided that amount by DSM's total sales during POI. Using this methodology, we determine a net countervailable subsidy of 0.61 percent *ad valorem* for DSM. POSCO did not use this program.

M. Research and Development (R&D)

The GOK, through MOCIE, provides R&D grants to support numerous projects pursuant to the Industrial Development Act, including technology for core materials, components, and engineering systems, and resource technology. The program is designed to foster the development of efficient technology for industrial development. A company may participate in this program in several ways: (1) a company may perform its own R&D project, (2) it may participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) a company may participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. Upon completion of the R&D project, the participating company must repay 50 percent of the R&D grant (30 percent in the case of SME's established within 7 years) to the GOK, in equal payments over a five-year period. If the R&D project is not successful, the company must repay the full amount.

This program was not reported until after the Department published its preliminary determination. We subsequently received information on this program during verification. However, we are unable to conduct a complete *de facto* specificity analysis regarding R&D that respondents performed with GOK assistance because: (1) A complete breakdown of projects, company names, sector, grant amount, and the duration of the projects was not provided until verification, and (2) this data is primarily in Korean. Therefore, as facts available, we determine that grants provided directly to respondents and their affiliates that are steel-related, are specific and thus countervailable. We also determine that R&D funds through KNISTRA are specific to the steel industry, and therefore countervailable. These grants also provide a financial contribution under section 771(5)(D)(i) of the Act.

Under 19 CFR 351.524, non-recurring benefits are allocated over time, while recurring benefits are expensed in the year of receipt. In addition, non-recurring benefits which are less than 0.5 percent of a company's relevant sales are also expensed in the year of receipt. The grants provided to respondents did not exceed 0.5 percent of each company's respective sales. Therefore, regardless of whether this program provided recurring or non-recurring benefits, the benefits are expensed in the year of receipt. To determine the benefit from the grants received through KNISTRA, we first calculated the percent of each company's contribution to KNISTRA and applied that percent to the GOK's contribution for each R&D project. We then summed the grants received by each company through KNISTRA and divided the amount by each company's respective total sales. To determine the benefit from the grants provided directly to the companies, we divided the

amount of the grant by each company's respective consolidated total sales. Based upon this methodology, we determine that POSCO received a countervailable subsidy of 0.07 percent *ad valorem*, and that DSM received a countervailable subsidy less than 0.005 percent *ad valorem*.

II. Programs Determined To Be Not Countervailable

A. Electricity Discounts under Power Factor Adjustment, Summer Vacation and Repair Adjustment, and Voluntary Curtailment Adjustment Programs

In *Stainless Steel Sheet and Strip*, we determined that the Power Factor Adjustment, and the Summer Vacation and Repair Adjustment programs are not countervailable because the discounts under these programs are distributed to a large number of firms in a wide variety of industries. *See Stainless Steel Sheet and Strip* 64 FR at 30647–48.

Regarding the Voluntary Curtailment Adjustment (VCA) program, KEPCO introduced this discount in 1995, to provide a stable supply of electricity and to improve energy efficiency by reducing demand during periods of peak consumption that occur during the summer. Under this program, customers who use general, educational or industrial services with a contract demand of 1,000 kw or more, and who arrange with KEPCO a curtailment period of five or more days (or times) during the July 15–August 31 period, are eligible to enter into a VCA contract with KEPCO. Customers who choose to participate in this program must curtail demand by 20 percent or more on the basis of the average daily demand during 10 a.m.–12 p.m., or by 3,000 kw.

Customers can apply for this program until June 15 of each year. If KEPCO finds the application in order, KEPCO approves the application. After approval, KEPCO and the customer enter into a contract with respect to the VCA discount. Under this program, a basic discount of 110 won per kw is granted between July 15 and August 31.

We analyzed whether the VCA discount program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as being eligible to participate in the electricity discount programs. The VCA discount program is available to numerous companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, we determine that the VCA electricity programs is not *de jure* specific under section 771(5A)(D)(i) of the Act because the regulation does not explicitly limit eligibility of the program.

We next examined data on the distribution of assistance under the VCA program to determine whether the electricity discount program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the VCA program were distributed to a large number of customers, across a wide range of industries. Given the data with respect to the large number of companies and industries which received VCA electricity discounts, and the fact that POSCO and DSM were not dominant or disproportionate users of this program, we determine that the VCA program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that the VCA program is not countervailable.

B. Port Facility Fees

In *Stainless Steel Sheet and Strip*, we determined that this program is not countervailable because a diverse and large group of private sector companies representing a wide cross-section of the economy have made a large number of investments in infrastructure facilities at various ports in Korea, including numerous investments at Kwangyang Bay. *See Stainless Steel Sheet and Strip* at 30649.

C. GOK Infrastructure Investments at Kwangyang Bay Post-1991

In *Stainless Steel Plate*, we determined that this program is not countervailable because the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific. *Id.* at 15536.

III. Programs Determined To Be Not Used

Based on the information provided in the questionnaire responses and the results of our verification, we determine that the companies under investigation either did not apply for, or receive, benefits under the following programs during the POI:

A. Special Cases of Tax for Balanced Development Among Areas (TERCL Articles 41, 42, 44 and 45)
B. Private Capital Inducement Act (PCIA)
C. Social Indirect Capital Investment Reserve Funds (Art. 28)
D. Energy-Savings Facilities Investment Reserve Funds (Art. 29)
E. Industry Promotion and Research and Development Subsidies
1. Highly Advanced National Project Fund
2. Steel Campaign for the 21st Century
F. Export Insurance Rates Provided By The Korean Export Insurance Corporation
G. Export Industry Facility Loans (EIFL) and Specialty Facility Loans
H. Scrap Reserve Fund
I. Excessive Duty Drawback

IV. Program Determined Not To Exist

Free Trade Zones (FTZ) at Pusan and Kwangyang

Interested Party Comments

Comment 1: CAFC's Decision in AK Steel With Respect to Domestic Loans

Respondents state that subsequent to the Department's preliminary determination, the CAFC ruled on the issue of direction of credit and foreign loans, and reversed the Court of International Trade's (CIT) affirmation of the Department's decision in *Steel Products from Korea* that the GOK's direction of credit provided a countervailable benefit to the Korean steel industry. *See AK Steel.* Respondents conclude that based upon the CAFC's decision, the Department must reverse its finding in the preliminary determination regarding the countervailability of the direction of credit.

Petitioners argue that, although the CAFC has reversed certain aspects of the CIT's decision affirming the Department's determination in *Steel Products from Korea*, the ultimate disposition of that decision has no impact upon the Department's ability to countervail the domestic loans in this investigation, because the record in this proceeding contains new evidence that was not before the CAFC in *AK Steel.* Petitioners claim that this new evidence clearly establishes a proximate causal nexus between the GOK's control of the financial system (control which POSCO and the GOK denied, but which the CAFC affirmed) and the benefit of low cost credit to the Korean steel industry. Moreover, according to petitioners, the CAFC's decision pertained only to the lack of a casual nexus for an indirect subsidy finding, *i.e.*, private loans directed or induced by government action, which were received after the end of the *de jure* preferences for steel, and does not impact upon loans received directly from government sources such as the Korean

Development Bank, or any loans received prior to 1987.

Department's Position

A large portion of the comments submitted by petitioners and respondents dealt with the *AK Steel* decision and its relationship to our preliminary determination that the GOK directed credit to the steel industry. The CAFC decision was based upon the Department's determination in *Steel Products from Korea* that the GOK provided a countervailable benefit to the Korean steel industry through its direction and influence over the provision of credit to selected industries. The decision in *Steel Products from Korea* covered the GOK's direction of credit polices through 1991. In subsequent investigations, *Stainless Steel Plate* and *Stainless Steel Sheet and Strip,* which were completed during 1999, the Department determined that the GOK also directed credit to selected industries during the period 1992 through 1997. The CAFC ruling in *AK Steel* does not cover the GOK's directed lending policies after 1991.

As we noted earlier, the Department has not received specific instructions from the Court on the *AK Steel* decision. However, our review of that decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided directed domestic credit to the Korean steel industry between 1985, the year the GOK removed *de jure* lending preferences to the steel industry, and 1991. With respect to pre-1992 foreign loans, the CAFC found that the Department did not establish that the terms of the foreign loans, which were provided through the GOK's control of preferential access to foreign lending, were on "terms inconsistent with commercial considerations" as required by the then governing statute. Since the final determination of *Steel Products from Korea,* Congress enacted a new statute and in 1998, the Department codified new substantive countervailing duty regulations. Below, we address the issue of the GOK's control over domestic credit. The Department's position with respect to access to foreign lending is addressed in "Comment 2".

Based upon our reading of *AK Steel,* the CAFC did not reject the notion of the GOK directing credit specifically to the Korean steel industry, but rather took issue with the evidence upon which the Department based its affirmative finding. Information which is on the record of this investigation, which was not in the record of *Steel Products from Korea,* indicates that the GOK directed credit to the Korean steel industry through 1991.

In its decision in *AK Steel,* it appears that the CAFC focused on the importance of Korea's second integrated steel mill at Kwangyang Bay, and noted the key role that project played in the Department's decision that the GOK was directing credit to the steel industry. Indeed the CAFC stated:

> If Commerce is correct in describing Kwangyang Bay as essentially a government project, Commerce can plausibly contend that a *de jure* preference program was replaced with a *de facto* system under which industry credit requirements and supplies were both managed by the government. If that premise is incorrect, however, the aggressive targeting theory is clearly unsupported.

Based upon a review of the evidence, the CAFC decided that the information on the record of *Steel Products from Korea* did not support the Department's decision. Therefore, we have reviewed the record of the instant investigation to determine whether there is new evidence on this record to support a conclusion that Kwangyang Bay was essentially a government project. Based upon this review, additional information is on the record of this current investigation to support a determination that the GOK directed credit to the steel industry.

In a speech in March 1981, Korean President Chun Doo Hwan stated that despite the stagnation plaguing steel industries in other countries, Korea intended to expand its steelmaking capacity.[4] In this speech marking the completion of POSCO's fourth phase of construction at Pohang, President Chun stated that his government will give special emphasis to Korea's steel industry and promised to carry on the work of building a second integrated steel plant in Korea. The speech from President Chun was on the record on *AK Steel,* however, the CAFC questioned the relevance of excerpts from his speech because the speech took place before any construction began at Kwangyang Bay. Information on the record of the current investigation places the speech in context of the time frame of the actual decision to build a second integrated steel mill at Kwangyang Bay. At the time of President Chun's speech, POSCO Chairman Park Tae Joon, stated that an evaluation of sites for the second integrated steel plant would be completed in July of 1981, at which time the government would make its final decision. Information on this record also shows that in November 1981, the government selected Kwangyang Bay as the site of the country's second integrated steel works and that groundbreaking for the construction of the Kwangyang steel works began in 1982.

In addition, information from the 1995 KOSA (the Korea Iron and Steel Association) Yearbook reports that the GOK originally designated Asan Bay as the second integrated steel manufacturing site in 1979, but put off construction of the second integrated steel at Asan Bay in 1980, before designating Kwangyang Bay as the site for the construction of the steel mill. According to the publication *Business Korea,* the GOK has been criticized for showing favoritism towards POSCO. The publication noted that POSCO was given free hand with millions of dollars in foreign loans for the construction of the Kwangyang steel mill in the late 1980's. This publication also noted that in 1991 when the GOK was following a tight fiscal policy, foreign loans coming into the country were virtually halted. However, even when the GOK was cutting off the supply of foreign funds, POSCO's application to bring in US$200 million in foreign currency was quickly approved by the government.

Information on the record includes statements from bankers in Korea reporting that through the late 1980's the government directed funds to specially designated sectors such as the steel sector. *See Memorandum on Meetings with Commercial and Investment Banks and Research Institutes in the Countervailing Duty Investigation of Stainless Steel Plate in Coils from the Republic of Korea* dated February 2, 1999 (*February Banker Verification Report*). This verification report was provided in petitioner's February 25, 1999 "Amendment to Petition" of this current investigation. The *February Banker Verification Report* also provides information of the role of the Korean Development Bank (KDB) in support of the Korean steel industry. The KDB is and has been since its inception the predominant source of long-term lending in Korea and is used by the government to support GOK industrial policies. According to Korean banking experts, the steel industry directly benefitted from preferential access to KDB lending, and the KDB is still known for preferring the semiconductor, shipbuilding, and steel industries. In addition, other information on the record shows that even in the 1990's the KDB has channeled billions of dollars into

[4] Supporting evidence on this record has been cited in the December 13, 1999 Memorandum to David Mueller from Team, which is on file in the CRU.

sectors favored by the GOK's industrial policies, including the steel industry. During our verification in this investigation, we examined internal KDB loan approvals for DSM and POSCO. According to the KDB's loan approval documents, both POSCO and DSM were "nationally important industr[ies]." *See GOK Verification Report* at page 4.

These same financial experts also stated that the GOK can influence commercial bank lending decisions by using the KDB. Korean financial experts stated that when the KDB decides to fund a project, it may be considered as a guarantee from the government. Projects funded by the KDB are receiving tacit government approval for that project, and thus an implicit guarantee is provided to commercial banks in Korea to follow the KDB's lead. *See February Banker Verification Report* at 7.

A review of respondents' outstanding loans which were received before 1992, demonstrates the importance of the KDB financing to the steel industry. A substantial portion of POSCO's pre-1992 outstanding loans are either from the KDB or guaranteed by the KDB. In addition, almost all of DSM's pre-1992 outstanding loans are from the KDB.

In addition, further information on the GOK's direction of credit policies came to light after Korea's 1997 financial crisis. Portions of this information are now on the record of this current investigation. The GOK has acknowledged to the IMF that it has directed lending in the financial sector. As noted above, banking experts and other analysts have stated that the GOK has used the KDB as a tool for directing credit to strategic industries such as steel. Other observers of the Korean financial system have concluded that the GOK has used commercial banks to funnel money into favored industries, and that the GOK has directed banks to provide lending to "promising" industries. These experts have concluded that the GOK's directed lending policies have helped build Korea's formidable steel industry.

As noted above, the CAFC decision in *AK Steel* was based upon the evidence of the record on the *Steel Products from Korea* investigation. As detailed above, there is additional information on the record of this current investigation, which in conjunction with prior case precedent, supports a determination that the GOK has directed credit to the steel industry prior to 1992, the period covered by the *AK Steel* decision.

Comment 2: CAFC's Decision in AK Steel With Respect to Foreign Loans

Respondents state that subsequent to the Department's preliminary determination, the CAFC issued its findings on the issue of foreign loans, and reversed the Court of International Trade's (CIT) affirmation of the Department's decision that the GOK's direction of credit provided a countervailable benefit to the Korean steel industry in *Steel Products from Korea*. *See AK Steel*. Respondents conclude that based upon the CAFC's decision, the Department must reverse its finding in the preliminary determination regarding the countervailability of the foreign loans.

Petitioners argue that although the CAFC has reversed certain aspects of the CIT's decision affirming the Department's determination in *Steel Products from Korea*, the ultimate disposition of that decision has no impact upon the Department's ability to countervail the foreign loans in this investigation, because the record in this proceeding contains new evidence that is not before the CAFC in *AK Steel*.

Department Position

First, we note that the CAFC in *AK Steel* did not disagree with our determination that the GOK controlled the provision of foreign loans and that a disproportionate share of those foreign loans were provided to the steel industry. The CAFC, instead, based its decision on the statutory language as to when a loan provides a countervailable subsidy. In *AK Steel*, the CAFC stated the Department characterized the foreign loans as subsidies on the ground that preferential access to those loans benefitted the Korean steel industry. The CAFC concluded that this was an inadequate basis under the then governing statute for determining that the foreign loans constituted subsidies. Under the statute in effect during the period pertinent to *Steel Products from Korea*, 19 U.S.C. 1677(5)(a)(ii)(1) required that for a loan to be countervailable it must be provided "on terms inconsistent with commercial considerations." The CAFC concluded that the Department did not provide evidence to demonstrate the legal requirement that the foreign loans were provided on "terms inconsistent with commercial considerations."

Since the investigation of *Steel Products from Korea*, Congress has amended the statute. With the enactment of the URAA in 1995, section 771(5)(E)(ii) of the Act provides that the standard for determining whether a benefit has been provided is "in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Therefore, to determine in this current investigation whether the foreign loans received by POSCO and DSM are countervailable, the Department must apply the standards set forth under section 771(5)(E)(ii) of the Act.

As noted above, the CAFC did not disagree with our conclusion that the GOK controlled the access to foreign loans, which were made on terms more favorable than the loans available in the Korean domestic market. Absent GOK approval, a company could not borrow foreign loans and would have to obtain financing in the more expensive, domestic market. Under section 771(5)(E)(ii), a loan program provides a countervailable benefit to the extent that the costs of the loan provided under the government program is lower than the cost of a loan the recipient could actually obtain on the market. Absent the approval from the GOK to participate in this program, a Korean company would be unable to obtain foreign lending and would only be able to obtain loans in the Korean market. Therefore, under section 771(5)(E)(ii) of the Act, the foreign loans received by DSM and POSCO are countervailable to the extent that the interest rates on these foreign loans are less than the interest rates the companies could actually obtain in the Korean financial market. Based upon the statutory requirements set forth under 771(5)(E)(ii), we continue to find these loans countervailable.

Comment 3: Long-Term Won-Denominated Loan Benchmark Methodology

Petitioners argue that the long-term loan benchmark that the Department used to calculate the benefit to POSCO from its won-denominated loans received in 1998 is at odds with the Department's Regulations and the Department's POSCO Verification Report. First, the applicable regulation governing the choice of long-term loan benchmark in section 351.505(a)(2)(iii), states that: in selecting a comparable loan, the Department will normally use a loan the terms of which were established during or immediately before, the year in which the terms of the government-provided loan were established.

Second, to apply this regulatory objective, the Department must consider POSCO's borrowing experience and developments in the Korean financial

market in 1998. Petitioners state that according to the Department's POSCO Verification Report, POSCO did not issue bonds or foreign securities before August 1998 due to the financial crisis in Korea. Instead, POSCO turned to subsidized long-term loans. However, late in 1998, after the financial crisis subsided and corporate-bond interest rates declined, POSCO returned to the corporate bond market in August 1998. Thus, petitioners argue that the Department cannot use POSCO's post-crisis borrowing experience as a benchmark to measure the benefit from the government's subsidized loans to POSCO during the crisis period. Therefore, petitioners argue that the Department should use a monthly benchmark comparison and, during months when POSCO did not issue corporate bonds, the Department should use the Bank of Korea's corporate bond index.

Respondents counter that petitioners' cite to section 351.505(a)(2)(iii), is an unequivocal twist in the standard choices the Department uses for comparable benchmarks. Respondents state that the Department used a benchmark in the year that the KDB loan was given in its preliminary determination. Therefore, they argue that petitioners' argument that the Department should use data from a different part of the year, as its benchmark, is an attempt to manipulate a subsidy calculation, and should be rejected by the Department.

Department's Position

Petitioners' proposed methodology for selecting the long-term loan benchmark for the government-provided won-denominated loans is inappropriate in this investigation. The Department's regulations state that the Department will select an interest rate benchmark from the year in which the terms of the government-provided loan were established. *See* section 351.505(a)(2)(iii) of the CVD regulations. The interest rate benchmark selected in this investigation reflects the rate at which POSCO could borrow in the same currency during the year in which the government-provided loan was given. Petitioners have not provided sufficient evidence to dictate a change in the Department's policy. Furthermore, we used the same methodology of selecting the interest rate benchmarks in *Stainless Steel Sheet and Strip* and *Stainless Steel Plate*.

Comment 4: Subsidies Received by Affiliates

Petitioners state that the Department instructed respondents to identify all affiliated companies, and further instructed certain affiliated companies to provide complete questionnaire responses. Petitioners argue that all of these affiliated companies fall under the definition of mandatory respondents because they supply an input product that is primarily dedicated to the production of the subject merchandise or have otherwise engaged in financial transactions with respondents. Therefore, petitioners argue that all subsidies received by these affiliates are attributable to the subject merchandise and should be countervailed.

Respondents counter that while they do not disagree in principle with petitioners, they disagree with the methodology that the Department should employ in allocating any subsidies found to be received by these affiliated parties. Respondents counter that the Department should determine the total *ad valorem* benefit of all relevant subsidies received by each affiliated party and, based on the portion of each affiliate's sales to the respondent company as a percentage of their total sales, calculate the amount of subsidy applicable to the respondents through their purchases from these affiliates.

Department's Position

During this period of investigation, certain of POSCO's and DSM's affiliates have received subsidies under investigated programs which benefit the respondents' steel production, including the production of subject merchandise. For example, certain of POSCO's affiliates have received benefits under certain R&D loan and grant programs. To quantify the benefit from these programs, we have calculated the *ad valorem* subsidy rate by dividing the program benefit by POSCO's total consolidated sales which includes the total sales of POSCO as well as its affiliates. This methodology is consistent with section 351.525 of the CVD regulations.

Comment 5: Exemption of Bond Requirement for Port Use at Asan Bay

Petitioners argue that on more than one occasion, POSCO did not respond truthfully regarding its activity at Asan Bay, until the Department discovered the truth as verification. According to petitioners, these misrepresentations constitute a failure by POSCO to act to the best of its ability. Therefore, they argue, as facts available, the Department should find that (1) POSCO received a specific benefit from the GOK's expenditures on infrastructure at Asan Bay, and that (2) POSCO received a specific subsidy because the company never paid the bond requested by the GOK for POSCO's exclusive use of port berth #1, or (3) at a minimum the Department should use the highest previously calculated rate for infrastructure provided in Korea.

Respondents counter that the issues raised in this investigation regarding Asan Bay were always framed by petitioners and the Department in the context of infrastructure. Respondents claim that a warehouse, unloading equipment and a coil service are not traditionally considered infrastructure and POSCO has not built any infrastructure to date. Furthermore, respondents counter that some of the facilities built in the dockyard area, such as the coil service center and equipment used in the unloading of cargo were reverted to the GOK, for which POSCO is being compensated through free usage until full recovery of its expenditures, pursuant to relevant provisions of the Harbor Act. Respondents claim that in *Stainless Steel Plate*, the Department determined that the program by which companies build facilities at ports that are reverted to the GOK, and then are allowed free usage and the right to collect fees from other users until fully compensated for their costs, does not constitute a countervailable subsidy.

Respondents also counter that petitioners are wrong with respect to the facts concerning POSCO's exclusive use of port berth #1. Respondents claim that POSCO signed an agreement to purchase bonds on the same terms as the companies that obtained the rights to exclusive use of port berths #2, #3, and #4 through an open bidding process; however, POSCO was not permitted to follow through on the agreement, and has instead been required to either build port berth #5 or pay for the construction costs of port berth #1, and receive compensation through free use until it recovers its costs. Therefore, respondents counter that instead of POSCO benefitting from a financial contribution by not being required to purchase the bond, it is being required to incur a far larger outlay of expenses for the construction of port berth #5.

Department's Position

During verification, we found that other companies which received exclusive use of port berths at Asan Bay were required to purchase a bond through the GOK. POSCO was not required to purchase the bond because it was going to build port berth #5. POSCO's argument that it was required to build a port berth is not germane to the analysis as to whether the

exemption from the bond requirement provided POSCO with a countervailable subsidy. When POSCO builds the port berth, which will revert back to the GOK under the provisions of the Harbor Act, POSCO will be compensated for its expenditures through free usage of that newly-built port berth until full recovery of its costs under the same Harbor Act. As POSCO has correctly noted, the Department has found this practice under the Harbor Act not countervailable. *See* the discussion of the "Port Facility Fees" in *Stainless Steel Sheet and Strip*, 64 FR at 30649.

Therefore, based upon the information gathered during verification, the issue is whether POSCO received a benefit from the bond exemption. Because POSCO was the only company to receive this exemption, the program is specific to POSCO under section 771(5A)(D) of the Act. In addition, a financial contribution was provided to POSCO under section 771(5)(D)(ii). Therefore, we determine that POSCO received a countervailable benefit when it was not required to purchase a bond for the exclusive use of the port berth at Asan Bay.

Comment 6: Highly Advanced National Project Fund (HANP)

Petitioners state that although the GOK claimed that it was unaware of the existence of HANP, an exhibit provided by the GOK in the same response explicitly referenced the HANP. Petitioners also state that at verification, the Department found that a subsidiary of POSCO received a HANP grant. Therefore, petitioners argue that because the parties failed to act to the best of their ability to comply with a request for information, the Department is required to apply facts available, and determine that the HANP program conferred a specific benefit to POSCO. Petitioners also argue that the benefit should be treated as a grant and amortized using the mid-year convention.

Respondents counter that this grant received by POSCO's subsidiary was not originally reported because the GOK and POSCO were unaware of the HANP program. According to respondents, the program is commonly referred to by the GOK as the G–7 project, and the company received the R&D under the STEP 2000 project. Respondents also counter that the grant which was received in 1994 would have been expensed in the year of receipt, pursuant to section 351.524(b)(2) of the Department regulations, because the subsidy is less than 0.5 percent *ad valorem*.

Department's Position

Although the HANP project, as argued by respondents is known by different names, a POSCO affiliated subsidiary did receive a GOK grant which should have been reported in their response. However, because this grant was provided in 1994, and the calculated subsidy was less than 0.5 percent *ad valorem*, it is expensed in the year of receipt in accordance with section 351.524(b)(2) of the CVD regulations. Therefore, no benefit was provided to POSCO from this program during the POI.

Comment 7: Steel Campaign for the 21st Century

Petitioners argue that the GOK's claim that this program is a private initiative organized by the Korea Iron and Steel Association (KOSA), a trade organization with no government involvement and no participation by respondents, has been demonstrated to be false. According to petitioners, record evidence indicates that the GOK and the respondents are active participants in the Campaign. A KOSA report identifies the Ministry of Trade, Industry and Economy (MOTIE) as providing "fiscal and tax support," and the respondents as receiving substantial benefits from various R&D projects. The KOSA report also states that the Campaign funds R&D so as to boost exports and create import substitution savings. Petitioners further state that a program entitled "Korean Industry in the 21st Century," which was never disclosed to the Department in questionnaire responses, was discovered by the Department at verification.

Petitioners also argue that, given respondents' repeated denials, and their not acting to the best of their ability, the Department should use facts available, and find that this program provides an import substitution subsidy, which is specific, and therefore countervailable.

Respondents counter that this is a private initiative by the Korean steel industry, under the auspices of the Korea Iron and Steel Association (KOSA), the industry trade association. Respondents also counter that if there were any benefits specifically offered under this program, one would expect that there would be explicit mention and some attempt at quantification, just as other parts of the report mention. Respondents also counter that if import substitution is done economically and without government involvement, it is a perfectly normal strategy for increasing revenues, and state that petitioners offer no evidence of any specific government involvement in this program.

Department's Position

At the GOK's verification, we obtained a document entitled "Vision and Development Strategy of Korean Industry in the 21st Century." We were unable to determine whether there is a relationship between this program that is administered by MOCIE and the Steel Campaign for the 21st Century, which respondents' claim is handled through KOSA. However, we did not find any benefits given to respondents under either of these programs during the POI.

Comment 8: Whether Assets Revaluation Pursuant to TERCL Article 56(2) Is Countervailable

Petitioners argue that in its preliminary determination, the Department properly countervailed a program which permitted POSCO and DSM to revalue their assets at an earlier time than would otherwise be allowed, and that the Department should maintain its position in the final determination.

Respondents argue that the Department erred in its preliminary determination that asset revaluation pursuant to TERCL Article 56(2) was *de facto* specific to the basic metals sector, and in its calculation of the benefit. According to respondents, this determination cannot stand because the Department examined this program in *Steel Products from Korea* based on the same record evidence in this case, which the CAFC affirmed in *AK Steel*. Respondents also counter that in *Steel Products from Korea*, the Department analyzed and rejected petitioners' theory of dominant or disproportionate use based on the percentage change in the value of a company's assets after revaluation. Respondents claim that in defending the Department's decision to use this methodology before the CAFC, the Department argued that the domestic producers erroneously contend that percentage change information contained within the record is not relevant in the disproportionality analysis, and that with respect to a tax program, it easily enables the Department to distinguish between general and specifically targeted tax schemes without penalizing companies due to their profits or size. Respondents also argue that the CAFC also considered and rejected petitioners arguments on (1) dominant or disproportionate share of the benefit conferred based on a percentage basis rather than on an absolute basis, and (2) the Department's reliance on the information contained in the Korea Listed Companies Association (KLCA) report.

Respondents also argue that if the Department continues to countervail the asset revaluation, the benefit from the asset revaluation program, was calculated incorrectly, which reflects the Department's misunderstanding of the data reported in respondents' May 28, 1999 questionnaire responses. Respondents claim that its May 28, 1999 responses were clarified at verification; therefore, the Department should take the additional depreciation in 1997 as a result of asset revaluation pursuant to TERCL 56(2), and multiply that by the corporate tax rate of 30.8 percent to obtain POSCO's total tax savings in fiscal year 1997.

Petitioners also counter that while they do agree with respondents that the Department's methodology does not accurately reflect the benefit received by respondents in any given year, they argue that respondents' proposed methodology does not accurately represent the true benefits either. According to petitioners, benefits received in fiscal years 1990–1993 should be amortized using their mid-year grant allocation methodology, and benefits received in fiscal years 1994–1998 should be expensed in the year of receipt. Petitioners also counter that the benefits are exceptional because the recipient cannot expect to receive additional subsidies under the same program on an on-going basis from year to year, the program is not automatic, and because this program is undoubtedly tied to the companies' capital structure and capital assets.

Department's Position

We disagree with respondents that the Department should not reconsider the specificity determination made in *Steel Products from Korea*. In *Steel Products from Korea*, there was not sufficient information on the record to indicate that POSCO revalued more of its assets than is generally allowed under Korean law. We noted in that case that the Department had rejected specificity information submitted by petitioners, because it was untimely. In the absence of evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation or the method of POSCO's revaluation under the Asset Revaluation Act, the Department determined this program to be not countervailable. *See Steel Products from Korea*, 58 FR at 37351.

In the instant investigation, petitioners have timely submitted information that warrants reconsideration of this program by the Department. Information on this record shows that during the period 1987–1990, companies making an initial public offering were allowed to revalue their assets pursuant to Article 56(2). There were between 14,988 and 24,073 manufacturing companies operating in Korea at that time. However, only 77 companies revalued their assets in 1989, the same year in which POSCO revalued its assets. The basic metal sector accounted for 83 percent of the total revaluation surplus, of which POSCO's revaluation accounted for 91 percent. While we recognize that many factors can affect the relative size of tax benefits claimed under programs (*e.g.*, company size, value of assets, timing of investments, management decisions, capital intensiveness, labor intensiveness), the record evidence indicates that the basic metal industry was a dominant user of this program in 1988/89. We also note that the GOK enacted Article 56(2) on November 28, 1987, and it listed POSCO shares on the Korean Stock Exchange in 1988. POSCO was also, by far, the largest beneficiary under this program.

After clarification of the assets revalued by respondents at verification, we agree with petitioners and respondents that the Department did not properly calculate the benefits from this program in its preliminary determination. However, we disagree with the calculation methodology suggested by petitioners. Petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the preamble to the CVD Regulations. Further, petitioners' methodology combines allocating some benefits over time and expensing other benefits in the year of receipt, two different methodologies.

However, we disagree with petitioners that this program provides exceptional non-recurring benefits. While there may be instances where these types of benefits could be found to be non-recurring, in this case, that is not possible because the total value of the benefit cannot be determined at the point of the revaluation. This is because the benefit is not the amount of the revaluation surplus, but rather the impact of the difference the revaluation of depreciable assets has on a company's tax liability in each year. Therefore, based on verification of the respondents questionnaire responses, we have used the additional depreciation in 1997, as a result of the asset revaluation pursuant to 56(2), and multiplied that amount by the applicable tax rate in 1997. We then divided the benefit for each company by their respective total sales during the POI.

Comment 9: Countervailability of TERCL Investment Tax Credits

Petitioners argue that Articles 8, 9 and 10 fall under Section 2 of the TERCL, which provides tax benefits for companies engaged in R&D activities. Petitioners also argue that the Department previously found Article 10 countervailable, and it should also find Article 8, technical development reserve funds, and Article 9, technology for manpower development expenses, specific and therefore countervailable. Petitioners argue that Article 8 is specific because it is limited to the manufacturing and mining industries, and it provides for a varying level of benefit to industries. Petitioners argue that Article 9 is also limited on its face to the manufacturing and mining industries.

Petitioners argue that Article 11 confers a type of import substitution subsidy by granting greater tax benefits for patent rights sold or leased domestically rather than abroad, which encourages domestic production as a substitute for importation. Petitioners also claim that Article 88 provides tax credits to companies that build or purchase qualified assets for employee welfare. Petitioners argue that Article 88 is specific because the tax deduction is limited to investments in domestically-produced machines and materials.

Regarding Articles 8 and 9, respondents counter that since the manufacturing sector, by itself, covers a very broad and non-specific range of industries, there is no basis for finding these programs specific. Respondents also counter that petitioners have not cited to any Department precedent for the proposition that participation in such a program, in and of itself, mandates a finding of specificity. Respondents further counter that petitioners have not offered any reasons for the Department to reverse its finding in *Stainless Steel Sheet and Strip*, 64 FR at 30646, that Article 9 is not countervailable.

With respect to Article 11, respondents counter that this program was investigated in *Stainless Steel Plate*, and the Department did not countervail it. Respondents also counter that since the tax incentive is earned for transferring or leasing either a patent right or technical know-how, it is difficult to construe how this fits under the rubric of import substitution.

Finally, with respect to Article 88, respondents counter that this program had been reported and explained in *Stainless Steel Plate*, and that the Department did not countervail this program in that investigation. Respondents also counter that there is no apparent basis for arguing that the benefit received has any bearing on the production of subject or other merchandise, or in this case that investments in worker housing provide any competitive benefit to POSCO.

Department's Position

Regarding Article 8, this article provides a higher tax credit to the capital goods industry than to other manufacturers. Therefore, we determine that the difference in the tax credit provided to the capital goods industry and the tax credit rate provided to all other industries to be a countervailable subsidy. However, we disagree with petitioners argument with respect to Article 9. We previously determined in *Stainless Steel Sheet and Strip* that this program is not countervailable. Petitioners have provided no additional evidence or information to suggest that a program provided to all manufacturing and mining industries is specific under CVD law.

With respect to Article 11, we agree with respondents that this program is not an import substitution subsidy as argued by petitioners. Under an import substitution program, the government provides an incentive to a domestic company to favor domestic consumption over export consumption. For example, in certain of these investment tax credits, the GOK provides Korean companies with a higher tax deduction if they purchase domestically-manufactured machines rather than purchasing imported machinery. This type of program is the classic example of an import substitution program because it seeks to influence the behavior of the party seeking to purchase a good or service. Article 11 does not operate in this fashion. There is no incentive provided to a domestic company by the GOK to purchase patent rights from a domestic company as opposed to a foreign company. Any benefit from this program would confer to a company for not exporting its technology, not to a company which is purchasing the technology.

Finally, we have determined that Article 88 is specific because the tax deduction is limited to investments in domestically-produced machines and materials, and as such is an import substitution subsidy under section 771(5A)(C) of the Act.

Comment 10: Countervailability of Tax Programs TERCL Article 23

Petitioners argue that although the Department failed to initiate an investigation into Article 23, the Department must reconsider its prior decision, especially in light of the European Union's recent findings that this same program was countervailable and specific. Petitioners also argue that this program is an export incentive, as the amount of the allowable loss is limited to a set percentage of foreign exchange receipts from overseas business, and is limited to exporters.

Respondents counter that Article 23 was found not countervailable in *Steel Products from Korea*. Moreover, respondents state that Article 23 permits creation of a reserve for overseas investment losses and not a deduction of income from an overseas business, which is covered under Article 20, as argued by petitioners.

Department's Position

We disagree with petitioners that the Department must reconsider its prior decision of not initiating an investigation on Article 23 given the European Union's recent findings that this same program was countervailable and specific. The Department must base its decisions on U.S. CVD law. (For example, in the referenced EU decision cited by petitioners, it appears that the EU found Korean tax reserves provided to all manufacturing and mining industries to meet the standards of de jure specificity.) We also disagree with petitioners that this program is an export incentive and limited to only exporters. The foreign exchange in question under this tax reserve is foreign receipts earned from an overseas business. Therefore, the income is not earned on exports from Korea. Furthermore, a non-exporter may also be able to earn foreign exchange from an overseas business.

Comment 11: Electricity Discount Programs

Petitioners argue that the Department incorrectly determined that the Voluntary Curtailment Adjustment (VCA) program was not countervailable. Petitioners argue that in its *de facto* specificity analysis, the Department relied solely on one criterion. According to petitioners, there is no indication of how the Department conducted its specificity analysis of dominant or disproportionate use of this program. Petitioners argue that the steel industry received an overwhelming 51 percent of the total benefit during the POI, which is specific, and thus countervailable. Petitioners also argue that this analysis is consistent with Department practice.

Petitioners also argue that record evidence demonstrates that KEPCO provides electricity subsidies through discriminatory pricing schedules for certain industries, such as the steel industry. They argue that the manufacturing and mining industries receive a lower rate than do other industries in Korea, and therefore, a countervailable subsidy is bestowed on these industries.

Respondents counter that petitioners misstate the nature of the Department's specificity analysis. They state that the Department analyzed the detailed breakdown of the number of companies in each sector that used the program, and properly found that this program was used by a wide variety of industry sectors, and that the respondents were not dominant or disproportionate users. Respondents also counter that petitioners ignore the fact that (1) steel companies tend to be very large consumers of electricity, so it would be expected that their savings from this program are relatively high, and (2) in order to qualify for VCA savings, steel companies have to curtail relatively more electricity usage than other sectors.

Respondents also counter that KEPCO's varying rate schedules to different types of industries with different electricity use patterns do not give rise to countervailable subsidies for those industries with lower per unit rates. Moreover, according to respondents, a cursory examination of KEPCO's rate schedule shows that there are considerable variations in the rates applicable to users, including manufacturers, that have different requirements as to voltage level and contract demand.

Department's Position

The examination of electricity tariffs is a complicated issue. However, tariff rates that are applicable to manufacturing and mining industries would generally not be found countervailable. We have recognized in prior cases that electricity tariffs are generally based upon the type and amount of consumption of electricity, and have not countervailed utility rates solely because the rates are provided to large consumers. *See e.g., Pure and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992); *Oil Country Tubular Goods from Argentina*, 62 FR 32307 (June 13, 1997). Therefore, we did not simply analyze one specificity criterion to reach a determination that the VCA program is not countervailable, as argued by petitioners, but analyzed

the specificity of this program in light of established Department practice regarding the countervailability of utility programs. As noted by the above-cited case precedent, the fact that certain companies are necessarily large consumers of electricity does not make an electricity program providing tariff reductions to those companies countervailable. KEPCO has established a program whereby electricity customers who use general, educational, or industrial services with a contract demand of at least 1,000 kw can volunteer to reduce their consumption during peak summer periods (July 15—August 31) in exchange for a discount during that period. Based upon our review of the KEPCO customers that volunteered for this program, we found that there were a large number of volunteers from across a wide range of industries. We also found that steel companies were not the dominant or disproportionate volunteers for this program.

Comment 12: Private Capital Inducement Act (PCIA)

Petitioners argue that, in their petition, they provided evidence that POSCO had received government subsidies under the PCIA related to the construction of coal-fired power co-generation facilities at Kwangyang Bay. Petitioners argue that POSCO obfuscated the Department's repeated requests for information on this program. According to petitioners, if POSCO and the GOK had been honest regarding the cogeneration facilities at Kwangyang, the investigation would have taken a different track. Petitioners claim it was not until verification that the Department discovered this misrepresentation.

Respondents counter that contrary to petitioners claim, the petition merely noted that POSCO had plans to build four power plants (two using coal and two using LNG as the power sources) and indicated that they are being built pursuant to the PICA. Respondents claim that it reported that POSCO did not use the PCIA program, which the GOK confirmed. Respondents also counter that in subsequent responses, POSCO and the GOK clarified the nature of POSCO's electric power projects in response to the Department's questions. Furthermore, respondents counter that the Department verified that POSCO did not receive any loans for construction of these plants, nor was there evidence of government contributions for the development of these plants.

Department's Position

At verification we examined the published list of approved PCIA projects during our meetings with GOK officials. An examination of this published list revealed that there were no POSCO approved PICA projects. In addition, during our verification of POSCO, we reviewed the company's accounts and its corporate financing. During this examination of POSCO's records, we did not find any evidence that POSCO received any loans for construction of these plants, nor was there any evidence of government contributions for the development of these plants.

Comment 13: DSM's Denominator

Petitioners assert that the denominator used for DSM is overstated. Petitioners note that at verification the Department concluded that certain materials, such as: other products, (non-subject merchandise purchased and resold) and sub-materials, (products purchased from outside vendors as intended for production materials but were resold without being used in the production) were included in DSM's sales denominator. Petitioners explain that the statute requires the Department to countervail subsidies bestowed upon the manufacture, production, or export of the subject merchandise; the other products and sub-materials which were not manufactured, produced or exported by the respondent. Therefore, petitioners argue that these amounts should be excluded from the sales denominator.

Department's Position

According to the *General Issues Appendix*, attached to the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993) (GIA), it is the Department's aim to "capture every part of the sales transaction that could benefit from subsidies" in the total sales denominator. GIA, 58 FR at 37237. Moreover, it is the Department's long-standing position that production subsidies are tied to a company's domestic production. *See* 351.525 of the CVD Regulations. The presumption that the subsidies at issue are tied to domestic production has not in any way been rebutted by respondents, and respondents have not attempted to show that DSM's "merchandise" sales should appropriately be included in the sales denominator. We, therefore, determine that the appropriate sales denominator is the total of DSM's domestically produced merchandise, and we have excluded DSM's "merchandise" sales, as these are not sales of goods produced by the company. The Department also verified that DSM included other items which were not produced, manufactured or exported in total sales. As applied to "merchandise sales" the Department will remove the value of "other products," and "sub-materials" from total sales.

Comment 14: Tax Exemption for Locating at Asan Bay

Petitioners state that DSM received a countervailable benefit from the exemption of taxes related to its purchase of land at Asan Bay. DSM entered a purchasing agreement in 1995, and closed the deal in 1998; however, DSM did not register the land until 1999. Petitioners note that DSM benefitted from this tax exemption for 1998. Petitioners suggest treating this amount as a grant or as an interest free loan.

Respondents refute petitioners allegation, based upon the fact that taxes are only due upon registration of the title for land purchase after the settlement. Notification of settlement was on January 7, 1999, which required DSM to enter into the settlement agreement by January 30, 1999. Based upon the dates of notification and settlement agreement, taxes were not due during the POI.

Department Position

The date of settlement on the land purchased at the Asan Bay was December 31, 1998. After the final settlement, DSM registered title of the land in June of 1999. Under Korean law when title is registered companies are required to pay certain taxes including the registration tax, the education tax, and acquisition tax. However, land purchased in industrial estates is exempt from these taxes. We verified that these taxes are due at the time the title is registered with the court and that DSM received these exemptions on June 30, 1999, which is outside the period of investigation. Under section 351.509(b) of the CVD regulations, the benefit from a tax exemption is the date on which the recipient would otherwise have had to pay the taxes associated with the exemption. We verified that this date is in 1999. Therefore, no benefit is provided under this program during the POI. If this investigation results in a countervailing duty order, we will review this issue in a subsequent administrative review if one is requested.

Comment 15: Price Discount for DSM Land Purchase at Asan Bay

Petitioners state that DSM received a countervailable benefit from paying a discounted price for its land at Asan Bay. Petitioners note that a difference in cost of the land and the amount that DSM paid exists and this reduction in cost of the land reflects a benefit from the GOK to DSM. This deduction also included the removal of a management fee that was to be paid by DSM. Petitioners point out that DSM had a contract with West Area Industrial Site Management Corp (WAIMC) and was obligated to pay a management fee; however, DSM did not end up paying this fee. Rather the management fee was waived. Petitioners argue that since the GOK sold land to DSM for less than the official price available to other purchasers, the GOK has provided a financial contribution.

Respondents refute petitioners allegation that DSM received a countervailing benefit from the management fee being waived for the land purchase at Asan Bay. First, the purchase agreement was not final until the last payment and title transfer. Second, the fee was waived between the original purchase agreement and the revised 1997 agreement, and there is no legal provision for collecting a management fee. Third, DSM does not have an obligation to pay this fee.

Department Position

DSM began making land payments in 1995 and continued until the last payment in December 1998. The original total land cost to the KDLC included land, management fees and land development costs. During verification, the Department noted a difference between the total cost of land amount compared to the amount that DSM actually paid. This difference occurred because the GOK reduced the purchase price of the land, waived the management fee, and deducted the land development costs. We determine that the purchase price reduction of the land, and the waiver of the fee are specific to DSM and thus countervailable. We also determine that the deduction of the land development costs is not countervailable, because the development was contracted out to another company. Hence, the GOK was not entitled to payment for developing the land.

Comment 16: Infrastructure at Asan Bay

Petitioners state that the industrial estate at Asan Bay benefits the steel industry, and the Department should follow the methodology used for Kwangyang Bay. Petitioners state that DSM has received a benefit from the infrastructure built at Asan Bay by the GOK, such as: roads, industrial water conduits, electricity, transmission lines, and port facilities. This expenditure relieves DSM from the financial liability it would otherwise have to bear. Petitioners state that the value of land DSM purchased increases with the addition of infrastructure, and therefore, DSM receives a benefit by the amount that the land appreciates.

Respondents argue that DSM does not have a facility at Asan Bay, rather they concluded the settlement agreement in 1999. Respondents state that DSM has only purchased land, and the land in question is still undeveloped, therefore, DSM is not receiving any benefits for any infrastructure at Asan Bay.

Department Position

We verified that DSM does not have any facilities at Asan Bay. Therefore, during the POI, the company is not benefitting from any of the GOK developed infrastructure at Asan Bay. Because there is no benefit to DSM during the POI, we need not address the specificity arguments raised by petitioners. With respect to petitioners' novel argument that DSM is accruing a benefit from the Asan Bay infrastructure based on an increase in the value of its land holdings at Asan Bay we note that (1) there is no evidence on the record to indicate that land prices are appreciating at Asan Bay, and (2) assuming that the Department were to adopt such a methodology, the benefit would accrue to DSM at the point in which the land is sold.

Comment 17: Excessive Duty Drawback

Petitioners argue that DSM received a countervailable subsidy from claiming excessive duty drawback. DSM receives duty drawback from certain materials used in the production of subject merchandise. Drawback must be claimed on the amount of an input product consumed in production, if there is a drawback on wastage, then it is considered excessive. The GOK maintains "standard input usage tables," prepared by the National Institute of Technology and Quality (NITQ) based upon POSCO's 1990 production data. DSM used the standard input usage rate from these tables in its duty drawback calculations. Petitioners argue that DSM is not as efficient as POSCO and by DSM using POSCO usage chart demonstrates excessive duty drawback. Petitioners state that DSM used a higher standard rate rather than its own, less efficient usage rate. Being able to use a higher standard rate and claim a greater percentage of imported inputs as incorporated into the subject merchandise constitutes a financial contribution, for the GOK has foregone revenue which is would have otherwise received.

Respondents claim that duty drawback is based on the standard usage rate applicable when a company imports slab as an input for plate for export, and can only be claimed when matching imports of slab for paid import duties. Based upon the context of how the Korean duty drawback operates, there were no over-rebates of import duties.

Department's Position

We have determined this program not to be used because DSM did not receive excessive duty drawback. We verified that the amount of duty drawback received by DSM is based directly on the duty actually paid by DSM at the time of importation of slab. The argument that DSM is a less efficient producer than POSCO does not negate the fact that DSM did not receive excessive duty drawback. Indeed, it supports a determination that DSM did not receive excessive drawback. This is because a less efficient producer would have a higher wastage rate, *i.e.*, it would require more of the imported slab to produce the same quantity of exported plate. However, the amount of drawback is determined by the NITQ's standard usage rate, which according to petitioner, is based upon a more efficient producer's lower wastage rate. Therefore, DSM would not receive the duty drawback on the additional amount of imported slab it requires to produce the same quantity of exported plate as the more efficient producer.

Comment 18: Tariff Rate Quota on Slab

Petitioners claim that during 1998, the tariff rate for imported slab was lowered from 8 percent to 1 percent during the first half of 1998 and up to 3 percent for the second half of the year. According to petitioners, this program is limited by the number of products and therefore is specific. A reduction in tariff rate for imported slab constitutes a financial contribution because the GOK foregoes revenue it would otherwise receive. Petitioners suggest calculating this benefit by taking the difference between the import duty actually paid on imported slabs (1 to 3 percent) and the usual duty (8 percent). The Department should allocate this sum to only the production of the subject merchandise.

Respondents argue that duties on imported slab are paid upon import and rebated upon export (whether at normal or reduced rates). If a lower duty is

initially charged upon import then the company receives the rebate of that lower import duty at the time of export. No import duties are ultimately paid on imported slab that is eventually exported. A subsidy could only arise if normal import duty rates were refunded on exports for slab that had paid the lower duty rate upon import.

Department's Position

First, we note that petitioners made this allegation in a July 8, 1999 submission to the Department. Thus, we rejected this allegation as being untimely as set forth in section 351.301(d)(4)(i)(A) of the Department's regulations, and we declined to examine this allegation in this current investigation. *See* "Memorandum to David Mueller from the Team Re: New Subsidy Allegation in Countervailing Duty Investigation of Certain Cut-to-Length Carbon Quality Steel Plate from Korea" dated August 11, 1999, which is on file in the CRU. Furthermore, we note that petitioners have failed to demonstrate how a temporary reduction in a tariff rate for slab would confer a benefit upon the export of subject merchandise. Regardless of whether the tariff rate is one percent or eight percent the full amount of the tariff would be returned to the respondents through the duty drawback system when the imported slab is manufactured into plate and then exported as subject merchandise.

Comment 19: Scrap Reserve Fund

Petitioners argue that the GOK provides low-interest or no-interest financing through the scrap reserve fund, thus affording a financial subsidy to DSM. They further observe that the financial contribution benefits all of DSM's production, not strictly subject merchandise. Since the scrap reserve fund is limited to only those producers of steel that have the capability of using scrap, this program is specific.

Respondents state that the loans are directly tied to the purchase of scrap. The scrap reserve fund involves specific purchases of scrap that were not used to produce slab, the input into the subject merchandise. As a result, there is no possibility that these purchases will ever be used to produce slab.

Department Position

The Department verified DSM's scrap reserve fund. The Department verified that DSM purchased all of its slab used in the production of plate. Therefore, DSM does not use scrap in the production of plate. Based upon 19 CFR 351.525(b)(5)(ii), if a subsidy is tied to production of an input product then the Secretary will attribute the subsidy to both the input and the downstream products produced by a corporation. Since scrap is tied to slab and DSM does not produce slab, the Department finds this program not tied to subject merchandise and therefore not countervailable.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU of the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy is 2.21 percent *ad valorem* for DSM. We determine that the total estimated net countervailable subsidy is 0.95 percent *ad valorem* for POSCO, which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to POSCO for its production or exportation of certain cut-to-length carbon-quality steel plate.

In accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all-others rate which is "an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776." On this basis, we determine that the all-others rate is 2.21 percent *ad valorem*, which is the rate calculated for DSM.

Company	Net subsidy rate
POSCO	0.95% *ad valorem*.
DSM	2.21% *ad valorem*.
All Others	2.21% *ad valorem*.

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality from Korea, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries except for POSCO if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33233 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–580–836]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith, Frank Thomson, or Lyman Armstrong, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5193, (202) 482–4793 or (202) 482–3601, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR part 351 (1998).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from Korea are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "*Suspension of Liquidation*" section of this notice.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Korea*, 64 FR 41224 (July 29, 1999) ("*Preliminary Determination*")), the following events have occurred:

In August, September, and October 1999, the Department conducted verifications of Pohang Iron & Steel Co., Ltd. ("POSCO") and Dongkuk Steel Mill Co., Ltd. ("DSM"), the respondents in the instant investigation. A public version of our analysis and report of the results of this verification is on file in room B–099 of the main Department of Commerce building, under the appropriate case number.

On October 15, 1999, and October 27, 1999, respondents submitted revised databases. Petitioners [1] and respondents submitted case briefs on November 12, 1999, November 15, 1999, and November 16, 1999, and rebuttal briefs on November 22, 1999. On November 23, 1999, the Department held a public hearing concerning this investigation.

Subsequent to the hearing on November 29, 1999, petitioners submitted a letter alleging that respondents' rebuttal brief contained untimely filed new factual information that must be rejected. Specifically, petitioners stated that an opinion from an expert on accounting issues was new information. On December 3, 1999, respondents submitted a letter arguing that this opinion was not new factual information. The opinion in question is that of Dr. Charles T. Horngren, and was found at attachment 4 to respondent's cost rebuttal brief. We agree with petitioners that this opinion constitutes new factual information because it is offered as an "expert opinion," and as such, constitutes testimony rather than a general opinion. Therefore, we find that the information in question is new factual information untimely submitted pursuant to section 351.301(b) of the Department's regulations. Normally such new factual information is returned to the submitter. However, given that this issue was raised so late in the proceeding—less than two weeks before the final determination—for administrative convenience we have not returned these data. We have not considered them in making our final determination in this case. Rather, all copies were removed from the record and destroyed, except that, pursuant to section 351.104(a)(ii)(A), of the Act, we have kept one copy solely for the purpose of documenting the reason for rejecting the new information.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy ("HSLA") steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by POSCO and DSM covered by the description in the "*Scope of Investigation*" section, above, and sold in Korea during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because neither POSCO nor DSM had sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons. *See, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* 63 FR 40449, 40450 (July 29, 1998) ("*SSWR*").

Changes From the Department's Preliminary Determination

The following is a summary of changes from the Department's *Preliminary Determination*. For a full explanation of DSM and POSCO sales, *see Dongkuk Steel Mill Co., Ltd. Calculation Memorandum*, dated December 13, 1999 and *Pohang Iron & Steel Co., Ltd. Memorandum*, dated December 13, 1999. For POSCO, the Department utilized the most recent affiliated service center data submitted. For DSM, the Department revised certain codes reported for PLQUAL2H/U in accordance with corrections submitted on July 16, 1999. Additionally, the Department made the following changes to DSM's sales database: for certain U.S. sales observations we revised the per-unit international freight as a result of verification, for a certain U.S. sales observation we revised the amount reported for other discounts, and for a certain U.S. sales observation we revised the order date.

For DSM cost we made changes to the following general areas: scrap offset, affiliated input costs, start-up cost depreciation, inventory, and foreign exchange gains and losses. *See Cost of Production and Constructed Value Calculation Memorandum*, dated December 13, 1999.

Verification

As provided in section 782(i) of the Act, we verified all information provided by POSCO and DSM with respect to its sales and costs, including on-site inspection of facilities, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the cost verification and sales report. *See Cost Verification Report*—Pohang Iron and Steel Company, Ltd., from James Terpstra to Official File (November 4, 1999); *Cost Verification Report*—Dongkuk Steel Mill Co., Ltd., from Garri Gzirian and Lauren Van Houten to Neal Harper (October 21, 1999); *Sales Verification Report*—Pohang Iron and Steel Company, Ltd. from Frank Thomson to James Terpstra (November 10, 1999); *Sales Verification Report*—Dongkuk Steel Mill Co., Ltd., from Howard Smith and Lyman Armstrong to James Terpstra (November 10, 1999).

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* 61 FR 9434 (March 8, 1996).

Particular Market Situation

On October 8, 1999, petitioners submitted an allegation that a "particular market situation" exists within the meaning of section 773(a)(1)(C)(iii) of the Act. This allegation was based on a variety of information sources that, according to petitioners, show that the Government of Korea ("GOK") controls the price of steel in the home market to such an extent that the prices cannot be considered to be competitively set, such that home market prices cannot be used as a basis for normal value. Petitioners supplemented this allegation on October 29, 1999.

Petitioners provided four types of evidence to support their allegations: (1) Market research, including interviews with steel industry indicating GOK control of steel prices; (2) a time series of transaction prices showing flat prices (indicative of price controls according to petitioners); (3) a GOK document related to steel prices; and (4) a variety of media articles related to this topic.

On October 19, 1999, respondents submitted a rebuttal to this allegation. Respondents asserted that the allegation was untimely and should be rejected. Respondents also stated that this allegation was fully evaluated in a previous case and found to be without merit. Finally, respondents submitted home market prices data for showing variation in home market prices, which

they claimed to be indicative of market forces operating freely.

Regarding timeliness, 19 CFR 351.301(d)(1) requires that an allegation must be submitted within 40 days after the date on which the original questionnaire was transmitted, unless the Secretary extends the time limit. In this case, the questionnaire was transmitted on March 17, 1999, and thus this allegation would normally have been due on or before April 26, 1999.

In considering whether to extend the deadline for this allegation, as permitted by the regulations, we consider, *inter alia*, how the allegation would affect the schedule of the case. *See* 19 CFR 351.302(b). The regulations state that "unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part. Furthermore, with regard to the allegation itself, the regulations regarding this provision foresee that such an allegation would lead to the rejection of an otherwise viable home market in favor of sales to a third country as the basis for normal value. *See* 19 CFR 351.404(c)(1). As such, the deadlines are predicated on the assumption that we would need sufficient time to collect and analyze third country sales. Whatever the merits of the allegation in this case, the timing of petitioners allegation would not have allowed for sufficient time to collect and analyze third country sales data. Therefore, we have not extended the deadline for filing the allegation in this case. Consequently, we find petitioners allegation to be untimely filed and have not considered it in our final determination.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from petitioners and case and rebuttal briefs from respondents.

Home Market and U.S. Sales

DSM

Comment 1: *Physical Characteristics of Subject Merchandise*

Petitioners argue that the methodology DSM used for reporting its plate specification information is flawed and cannot be accepted. Petitioners state that DSM's claim of producing high-strength shipbuilding plate from "general" quality slabs demonstrates an error in the physical characteristics designated by either DSM's slab supplier or DSM itself. Under either scenario, petitioners feel that DSM's reported plate specification and quality information must be considered unreliable. Petitioners argue that the Department's sales verification report says nothing about manufacturing a high strength product from general quality slab. *See Department's Sales Verification of DSM* at 12. Petitioners contend that it is not possible to create a high-strength plate from non-high strength slab. Petitioners argue that all the chemical properties (such as carbon content) which engenders a CTL plate product with high-strength qualities are added *prior* to the production of slab. According to petitioners, while the subsequent rolling and finishing of a slab (in the production of CTL plate) may improve the mechanical attributes of the product, they cannot alter the chemical composition of the product. Given these assumptions, petitioners claim that the Department cannot have any confidence in any of the plate quality and specification information submitted by DSM.

Petitioners also argue that DSM's claim that general quality plates are produced from high-strength shipbuilding slabs is inconsistent with the statute, the Department's questionnaire, and past practice. Petitioners claim that pursuant to 19 U.S.C. 1667b(a), the Department must compare products that are identical in physical characteristics, and not merely identical in the assigned product specification.

In addition, petitioners contend that there is the potential for manipulation stemming from the use of a methodology that relies on something other than physical characteristics. Petitioners argue that if the Department were to determine that the actual physical characteristics of a finished product are not relevant and the only relevant information is the specification designated on the sales invoices, then companies could legally sell their products in the United States at the lesser specification, when in fact the products actually possess significantly different physical characteristics. Petitioners recommend that the Department use partial facts available given that DSM did not assign costs to the merchandise actually produced; but rather to the merchandise as ordered by the customer. According to petitioners, this would lead to a distorted comparison between home market sales and U.S. sales. Petitioners claim that, as partial facts available, the Department should designate all of DSM's U.S. sales as sales of high-strength shipbuilding plate, to account for the fact that under the flawed reporting methodology, any of the company's U.S. sales could actually be of a high-strength shipbuilding specification.

DSM claims that they reported subject merchandise correctly and that the Department verified the information. DSM asserts that it seldom produces general quality plate using high strength slab, except in order to avoid delays in meeting a customer's order. Further, DSM states that a customer cannot use plate with a general quality certification for a high strength application. Citing the *Verification Report*, DSM argues that the Department randomly selected two months, June and July 1998, and found no instances in which general plate was produced using slabs that were not of general quality.

Department's Position

We disagree with petitioners. During verification, Department officials found one instance where DSM used slabs that were certified to a general quality specification to produce plates that were certified to a high-strength specification. In addition, DSM reported that during the POI, it used both general quality and high-strength slabs to produce plates that were certified to a general quality specification. For the following reasons we have not rejected the reported product characteristics. First, the evidence on the record supports DSM's claim that it produced high-strength plates from slabs certified to a general quality specification, and that it properly reported the quality and specification of such plates. The Department verified that the slabs in question were certified to a general quality specification, and hence DSM classified them as general quality slabs in its inventory system. *See Sales Verification Report* at 9 and exhibit 32. However, the mill test certificate for the slabs showed that their chemical characteristics satisfied the chemical standards of the high-strength specification to which the plates were produced.[2] The fact that the slabs had only been tested in accordance with the general quality specification and, thus, only certified to that specification does not change the fact that, chemically, they also satisfied the requirements of a high-strength specification and were used to produce that specification. Moreover, the plates that were produced from these slabs were tested and found to meet the high-strength specification that DSM reported to the Department. Thus, this method of production does

[2] At verification, DSM officials explained that they select the slabs to be used to produce a plate order based on similarities between the physical characteristics of the slab and the ordered plate irrespective of the quality assigned to the slab in DSM's inventory system.

not demonstrate that DSM's submitted product characteristics are unreliable. Second, at verification the Department found no evidence to indicate that DSM had incorrectly reported the physical characteristics of the plates sold. Furthermore, it is inappropriate to conclude, based solely on the quality of the slabs, that plates that were produced from high-strength slabs and certified to a general quality specification are in fact high-strength plates. The record shows that the production of high-strength plates may involve special hot-mill processing which improves the mechanical properties of certain high-strength steels. Thus, additional factors must be considered before concluding that such plates are high-strength. Moreover, there is no information on the record to show that these products were marketed or sold as a specification other than that for which they were tested and to which they were certified. Finally, the record shows that only a very small percentage of the slabs that DSM used to produce general quality plates were high-strength slabs. For the foregoing reasons, we have accepted the product characteristics as reported.

Comment 2: Commission Expense

DSM focuses a statement in the Department's verification report that one of the selling agents received a lesser commission for each sale. While DSM admits this selling agent received less of a commission for each U.S. sale it was involved in, DSM argues that this agent also received a salary which was reported in DSM's indirect selling expense. This additional compensation was not considered in the Department's analysis.

DSM argues that it is Departmental practice to report commissions paid to independent sales agents, as a direct selling expense and employee's salary, as an indirect selling expense. Accordingly, DSM has properly reported its commission expenses in the United States.

Petitioners did not comment on this issue.

Department's Position

We agree with DSM. We recognize that the sales agent in question received a salary in addition to his commission and that the amount of the salary was properly included in the reported indirect selling expense.

Comment 3: CEP Offset

DSM argues that a CEP offset is warranted because (1) NV is established at a Level of Trade ("LOT") which constitutes a more advanced stage of distribution than the LOT of the CEP; and (2) the data available do not provide an appropriate basis to determine a LOT adjustment. *See* 19 CFR 351.412(c)(2); *Notice of Preliminary Determination of Stainless Steel Sheet and Strip from the United Kingdom*, 64 FR 90 (January 4, 1999). At verification, DSM demonstrated, and the Department verified, that DKA, not DSM, was responsible for negotiating prices with customers and for invoicing customers in U.S. Channels 1 and 3. In those CEP channels, DSM argues that DKA was also responsible for market research and all interactions with the U.S. customers, including arranging for freight and delivery in the United States and, in Channel 1, U.S. Customs clearance. *See Sales Verification Report* at 8–9; *Sales Verification* Exhibit 9.

Accordingly, DSM states that there is no reseller in Korea that fulfills the role on home market sales that DKA performs on U.S. sales in Channels 1 and 3. As a result, when DKA's selling activities are excluded for purposes of the LOT analysis (CEP LOT), the home market comparison price becomes incomparable because it included significant expenses, communication expenses, rent, and market research. As such, a CEP offset is warranted in this case.

Petitioners claim that a CEP offset adjustment is not warranted in this case. First, petitioners argue that the record evidence fails to indicate that there are significant differences in selling functions between DSM's home market and CEP LOTs. Second, petitioners argue that there is no effect on price comparability on the LOT in this case. As such, the Department should uphold its preliminary determination that U.S. and home market sales were made at the same LOT.

Petitioners claim that, in the event that the Department erroneously determines to make a CEP offset adjustment to normal value for home market sales matched to CEP sales, it must ensure any adjustment is properly applied and not double-counted with the commission offset adjustment. Citing *Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998), petitioners argue that the Department must "offset any commission paid on U.S. sale by reducing the NV by any home market indirect selling expense remaining after the deduction for the CEP offset, up to the amount of the U.S. commission."

Department's Position:

We agree with the petitioners. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price of sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling general and administrative expenses and profit. For EP sales, the LOT is also the level of the starting-price sale which is usually from the exporter to the importer. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether or not a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South* Africa, 62 FR 61731 (November 19, 1997).

As stated in the preliminary determination notice, Dongkuk reported one channel of distribution in the home market through which it sold to distributors and affiliated and unaffiliated end-users. Dongkuk reported no appreciable differences in the functions performed in selling to different types of customers in the home market. Thus, sales to these customers constitute a single marketing stage and, therefore, we continue to find that all of DSM's home market sales were made at one LOT.

In the U.S. market, DSM reported four sales channels: (1) CEP sales through Dongkuk Industries Co., Ltd. ("DKI"), Dongkuk's affiliated trading company in Korea, to Dongkuk International, Inc. ("DKA"), Dongkuk's U.S. affiliate, to unaffiliated customers; (2) EP sales through DKI, to unaffiliated customers;

(3) CEP sales through DKA, to unaffiliated customers; and (4) EP sales from Dongkuk to unaffiliated customers. After adjusting CEP sales in accordance with section 772(d) of the Act, we find no substantial differences in selling activities between EP and CEP sales. Moreover, in comparing home market sales to EP sales and CEP sales, as adjusted under 772(d), we find that DSM performs many of the same functions in selling to its U.S. and home market customers. Therefore, we find that there is no difference in the LOT for NV, EP, or CEP sales. Because there is no difference in the LOT for NV and CEP sales we have not granted DSM a CEP offset. *See Dongkuk Steel Mill Co., Ltd: Level of Trade Analysis*, dated December 13, 1999.

Comment 4: Minor Adjustments Made at the Preliminary Determination Are No Longer Needed

DSM argues that minor adjusts to DSM's database made at the *Preliminary Determination* are no longer needed. First, the Department recalculated credit expense in the home market database because of a database programming error. At the start of verification, DSM corrected the programming that had resulted in incorrect payment dates for a number of their home market sales. *See Sales Verification Report* at 3. Second, the Department had found several missing payment dates and used the signature date as payment date for those sales. Again, at verification, DSM provided the correct payment dates for the invoices that were paid subsequent to the *Preliminary Determination* and the payment date for any remaining unpaid sales. As a result, DSM claims that the Department should have no need to create new payment dates or to make any other adjustments to the sales database.

Petitioners did not comment on this issue.

Department's Position

We agree with the DSM that the minor adjustments to its database are no longer needed. At verification, DSM provided the Department with the correct payment dates for the invoices that were paid subsequent to the *Preliminary Determination* and the payment date for any remaining unpaid sales. *See Sales Verification Report* at 3 and exhibit 1.

Comment 5: Gross Unit Price for Home Surprise Sales 6 and 7

DSM argues that the verification report incorrectly stated that the prices for home market surprise sales 6 and 7 were understated. DSM argues that the value for freight revenue was not included in the variable gross unit price (GRSUPRH); rather for both sales this value was reported in freight revenue (FRTREVH) and was verified as such. *See Sales Verification Report* at Exhibit 24 and 25. However, in the normal course of business, freight revenue and gross unit price are recorded as a single line item in DSM's invoice. In its questionnaire response, DSM reported freight revenue separately from gross unit price and if it was included in gross unit price it would double the amount reported for freight revenue. DSM maintains that the freight revenue accounted for an insignificant percentage of the total value of sales for the two sales, and that the Department found no discrepancies in the reported sales values for the other sales reviewed at verification. As the Department also verified the total reported value and tested the accuracy of DSM's reported data in a variety of ways, DSM argues no adjustment is needed.

Petitioners argue that when errors are discovered at verification, it is the Department's practice to adjust the untested portion of the data in line with the verified findings based on facts available. According to petitioners, these errors are fundamental to the Department's analysis as they relate directly to the prices charged for the foreign like product and as such the Department should increase the gross unit price for all home market sales.

Department's Position

We agree with DSM that no adjustment is needed to the gross unit price of home market surprise sales 6 and 7. At verification we found that the value of freight revenue for both sales was captured in the variable FRTREVH rather than GRSUPRH. Moreover, this discrepancy does not necessitate the use of adverse facts available for all home market sales, as petitioners suggest. If the Department added the difference between the invoice gross unit price and the reported gross unit price, it would double the amount of freight revenue reported for each sale, as this is already captured in another variable, *i.e.*, FRTREVH. Consequently, the Department has made no adjustment to home market surprise sales 6 and 7.

Comment 6: DSM's Model Matching Methodology

Petitioners claim that a comparison of the plate specifications (*i.e.*, PLSPECH) for the home market matching hierarchies to the plate specifications for the U.S. market (PLSPECU) submitted by DSM and POSCO revealed significant discrepancies in the two respondents' methodologies. These discrepancies indicate that DSM's and POSCO's respective specification concordances for "similar" products are unreliable. Therefore, the Department should rely on facts available in determining the margins for all U.S. sales not matched to identical PLSPECHs in the home market. Specifically, the Department should assign the highest reported home market price to all sales of non-identical PLESPECHs matching to U.S. sales.

DSM contends that petitioners are most concerned that DSM and POSCO did not report the same suggested matching hierarchy in their questionnaire responses. DSM states that it is unaware of any requirement that respondents report identical matching hierarchies. Further, DSM argues that their company and POSCO were precluded from consulting with one another on this issue due to the proprietary nature of the information. Instead, the companies reviewed the physical characteristics guidelines in the Department's questionnaire; discussed it with their engineers; and made an informed assessment of the most reasonable hierarchy for all specifications sold in the home market.

According to DSM, the hierarchy for the subject merchandise is moot. Both companies sold sufficient quantities of the identical merchandise above cost in the home market to eliminate the necessity of selecting the next most similar product. DSM states that the Department verified the underlying product characteristics associated with DSM's model matching hierarchy. Because this information has been verified as accurate, and because the Department has the discretion to alter the hierarchy, there is no basis for utilizing facts available.

Department's Position

We disagree with petitioners that the reported model matching hierarchies proposed by DSM are flawed and must be rejected. The questionnaire in this case instructed respondents to identify, for every specification sold to the United States, the identical and four or five most similar specifications sold in the home market. In the questionnaire, respondents are requested to explain their identical and similar selections. The Department normally relies on this information in developing its model match concordance. However, if we disagree with any selection of similarity, we can rearrange this hierarchy as appropriate. In this case, petitioners, have not disputed any of these hierarchies at any time prior to the submission of case briefs. Moreover, we have not questioned either party on the

use of these hierarchies in any supplemental questionnaire or found specific faults with any chosen selection.

We also note that the similarity in hierarchies can vary based on the fact that each company sells a different mix of specifications in the home market. Moreover, in this case, the great majority of all of the U.S. sales were matched to either identical, or functionally identical, home market specifications. Thus, for the majority of the reported U.S. transactions, second and third next most similar specifications were not relevant to the margin calculations, as they were not utilized as matches.

Comment 7: Application of Adverse Facts Available to DSM's Cost of Production Data

Petitioners contend that the Department should apply total facts available with an adverse inference in making its final determination in this case. According to petitioners, the Department has resorted to the facts otherwise available in similar cases. *See Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico*, 60 FR 49569 (Sept. 26, 1995) ("*Flowers from Mexico*"); *Final Results of Changed Circumstances Antidumping Duty Administrative Review: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan*, 58 FR 32644 (June 11, 1993) ("*Sweaters from Taiwan*").

Petitioners assert that DSM's financial statements are materially misstated and, therefore, are unreliable. They question the credibility of DSM's auditors by citing articles published in 1999 in the Korean press, which indicate that this accounting firm ceased operations because of the repeated sanctions imposed by the Korean oversight authorities for poor audits of the companies it audited. Additionally, they claim that, in the course of this investigation, the Department has detected numerous examples where DSM's financial statements are either not compiled in accordance with Korean Generally Accepted Accounting Principles (GAAP), misrepresent relevant financial information, or utilize unreasonable accounting methods. According to petitioners, these problems demonstrate that DSM's financial statements are materially misstated and artificially understate the company's true costs and overstate its income. Furthermore, petitioners argue that these examples also indicate the unreliability of DSM's auditors and their audit report with respect to DSM's financial statements. Petitioners list four instances of such material misstatements:

1. Petitioners argue that DSM violated Korean GAAP by materially overstating the value of its raw materials inventory. Specifically, DSM did not state raw materials inventory at the lower of cost or market value. Petitioners point out that DSM misstated its actual accounting practice in the footnotes to its audited financial statements, by stating that it had valued its inventories at the lower of cost or market value, when in fact it did not do so. To refute DSM's defense that the company's independent auditors did not require this adjustment, petitioners refer to the U.S. Securities and Exchange Commission's ("SEC") pronouncements on the issue of materiality of misstatements in the financial statements. Petitioners claim that DSM's failure to write-down its raw materials inventory value constitutes a material misstatement.

2. Petitioners argue that DSM, in its treatment and reporting of capitalized 1997 foreign exchange losses, misrepresented its accounting policies, mistranslated certain Korean text, violated Korean GAAP, and employed an unreasonable accounting practice. Specifically, petitioners point out that the company's 1998 financial statements footnote claimed that foreign exchange losses related to debt are amortized over the corresponding maturity periods. In 1998, however, the vast majority of these deferred expenses was transferred to fixed assets and subject to depreciation over asset lives. In addition, according to petitioners, DSM mistranslated Korean GAAP by omitting the fact that the capitalization of certain financial type expenses, other than interest expenses related to certain asset acquisitions, should be disclosed in the footnotes to the financial statements. Therefore, petitioners contend that by not disclosing the transfer of the capitalized foreign exchange losses to fixed assets DSM violated Korean GAAP.

3. Petitioners assert that DSM, in its treatment and reporting of 1998 foreign exchange gains, misrepresented its accounting policies, mislead the Department as to the information in the footnotes of the company's Korean financial statements, and employed an unreasonable accounting practice. Specifically, petitioners point out that the footnotes to the company's financial statements submitted to the Department claimed that foreign exchange gains and losses are amortized over the corresponding maturity periods. However, in fact, the gross amount of the gain was reported on the company's financial statements.

4. Petitioners contend that DSM's extension of the useful lives of its asset represent an unreasonable accounting practice. They note that to support the reasonableness of adopting these asset lives, DSM referred the Department to several sources, none of which, provide an adequate justification for DSM's adoption of longer asset lives for its machinery and equipment.

Petitioners summarize their arguments by asserting that each of the issues presented above represents a material misstatement and alone is a sufficient ground for not relying on DSM's financial statements. Moreover, the cumulative effect of each issue requires the Department to reject DSM's financial statements and to use total facts available. Petitioners argue that, if the Department found these material misstatements based on its limited examination, numerous other instances of material misstatement may also be present in DSM's 1998 financial results. Petitioners contend that these issues demonstrate that DSM has failed to cooperate by not acting to the best of its ability to comply with a request for information, and, therefore, the Department should apply total adverse facts available.

DSM argues that petitioners' request for the use of total adverse facts available is without merit, and should be rejected by the Department. According to DSM, it cooperated fully with the Department in this investigation, and its data submissions were fully verified by the Department. DSM contends that the alleged misstatements identified by petitioners are no more than instances in which petitioners are attempting to second-guess the interpretation and application of Korean GAAP. DSM maintains that the Department should rely on the certified Korean financial auditor's opinion that its financial statements were fairly stated. Furthermore, DSM argues that even if petitioners could identify misstatements in DSM's financial statements, the Department has held that such errors cannot form the basis for the use of adverse facts available absent a showing that the errors prevented the verification of submitted data or otherwise impeded the Department's investigation. DSM argues that no such showing has been, or can be, made in this investigation.

DSM contends that the two cases cited by petitioners in support of their position (*i.e.*, *Flowers from Mexico* and *Sweaters from Taiwan*) are far from being on point. According to DSM, in both cases the Department resorted to

facts available only where the Department had determined that the financial statements in question were unreliable, and that it was impossible to verify the accuracy of fundamental questionnaire response data. DSM claims that these cases stand in stark contrast to facts of record in this investigation because, according to DSM, the Department verified without exception each and every element of DSM's antidumping questionnaire responses. DSM contends that the Department was able to link DSM's reported data not only to its accounting ledgers and its audited financial statements and income tax return, but also to journal vouchers, invoices, mill certificates, sales order summaries, and other underlying source documents. Therefore, DSM claims that the Department may not resort to facts available in such a situation. *See Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 Fed. Reg. 53711, 53713 (October 15, 1996) ("*Sulfanilic Acid from China*").

DSM objects to petitioners attempt to impugn the legitimacy of its audit by noting that the accounting firm that performed DSM's audit was subsequently sanctioned by the Korean authorities for deficiencies in unrelated audits conducted for other companies. DSM calls this argument "guilt by association", and asserts that the Department may not refuse to accept the professional opinion of DSM's auditor that DSM's financial statements were fairly stated under Korean GAAP in the absence of any indication of irregularities in its audit of DSM. It points out that the Korean Securities and Exchange Commission (KSEC) has never questioned the accuracy or validity of DSM's audited financial statements. DSM also notes that its financial statements were reconciled by the Department to DSM's income tax returns, which were accepted without adjustment by the Korean tax authorities.

DSM rebuts each specific allegation of misstatement in the financial statements made by petitioners:

1. DSM claims that its inventory was properly valued on its financial statements and no adjustment should be made to its costs on account of this issue. DSM argues that petitioners' claim is misguided, and is contradicted by the proper application of the lower-of-cost-or-market rule, under both Korean and U.S. GAAP. DSM points out that its profits in the first-half 1999 are precisely opposite of the substantial losses that would have been incurred had DSM in fact overstated the value of its inventory on hand at the end of 1998.

2. DSM argues that its deferral and transfer to fixed asset value of the 1997 exchange gains and losses associated with the financing of fixed assets was in accordance with Korean GAAP. According to DSM, prior to 1997, Korean GAAP required that foreign currency gains and losses incurred on long-term debt be fully recognized in the year they were incurred. Effective for fiscal year 1997, Korean Financial Accounting Standards were amended to provide that such gains and losses could be accounted for as deferred charges or credits and amortized. The company claims that it followed this accounting treatment in 1997 and amortized both gains and losses on long-term foreign currency obligations in that year. DSM maintains that it also followed Korean GAAP when the deferred losses associated with the financing of capital assets were subsequently transferred to the capitalized cost of those assets when they were placed into service in 1998. The company cites relevant articles of Korean Financial Accounting Standards to support this treatment.

DSM disagrees with petitioners assertion that DSM's accounting treatment of these items was not properly disclosed in DSM's audited financial statements. DSM also disagrees that the translation of the relevant section of the Korean GAAP prepared internally by DSM and submitted to the Department misstates the original text. DSM argues that Korean GAAP does not require a separate disclosure in the notes of the subsequent transfer of previously deferred charges (*i.e.*, foreign exchange loss capitalized in 1997) from one balance sheet account (*i.e.*, deferred charges account) to another (*i.e.*, fixed assets account). Moreover, DSM argues that the issue of disclosure in the financial statements is simply irrelevant because, according to DSM, it fully disclosed to the Department the methodologies it used both in the financial statements and in its submitted data, and the Department verified both the methodologies and the underlying figures. DSM further points out that the Korean Securities and Exchange Commission has never questioned the adequacy of DSM's financial statement disclosure.

3. DSM argues that its accounting treatment of 1998 exchange gains and losses was also in accordance with Korean GAAP. DSM points out that in 1998 the Korean Financial Accounting Standards were amended again, which allowed DSM to make an election to return to the previous rule which prescribed that foreign exchange gains and losses on long-term assets and liabilities "shall be recognized in the current year." DSM claims that it followed this accounting treatment in its 1998 financial statements, and thus recognized the full amount the long-term foreign exchange gains and losses incurred during that year. Due to a translation error, however, according to DSM, the footnote to the English language version of the 1998/1997 unconsolidated financial statements failed to include a reference to this latter change in accounting standards. Thus, according to DSM, while long-term foreign exchange gains and losses were in fact accounted for differently in 1998 than in 1997, this was due to a change in Korean Financial Accounting Standards and does not in any way call into question the consistency and reasonableness of DSM's choice of accounting policies.

4. DSM argues that its useful lives for fixed assets are fully in accordance with Korean GAAP. It asserts that not only were the useful lives specifically concurred with by DSM's financial auditors, but they are supported by an appraisal performed by a certified appraisal firm, by a survey conducted by the Korean Iron & Steel Association, and by statements by the manufacturers of the equipment, all of which attest to the reasonableness of the useful lives adopted by DSM.

Department's Position

We disagree with petitioners that the issues raised concerning DSM's audited financial statements warrant the application of total adverse facts available. The examples of alleged material misstatement cited by petitioners are issues of accounting conventions and principles adopted by company management, as opposed to the reliability of the underlying financial data. At verification, we noted no instances which raise doubts as to the reliability of DSM's underlying financial data. Although the Department agrees that an audit entails a much more thorough testing of the source financial data as compared to a verification, we noted no inconsistencies in the underlying cost information reviewed (*e.g.*, financial accounting system, cost accounting system, and production records). While there are legitimate concerns about whether the specific accounting practices identified by petitioners result in unreasonable per unit costs for antidumping purposes, we find that after reviewing DSM's treatment, of the identified issues, DSM's management applied the requirements of Korean GAAP in a reasonable manner.

Korean GAAP specifies that the market value of inventory as used in the lower-of-cost-or-market adjustment should be based on the net realizable value of the inventory. *See* DSM's Rebuttal Brief, Attachments 2. Korean GAAP is not clear as to whether the net realizable value should be determined based on the estimated sales value for the raw material in question or by starting with the estimated sales value of the finished goods the raw material will be used to produce. Specifically, it states that the net realizable value, "shall be determined as estimated selling price, less estimated expenses that can ordinarily be expected to occur." *See* Cost Verification Exhibit 25. We consider DSM's approach of starting with the estimated sales value of the finished goods a plausible interpretation of Korean GAAP because the "estimated selling price" referred to by Korean GAAP could be interpreted as being of the finished good as well as the raw material. Thus, we disagree with petitioners that DSM's decision not to make an adjustment to its inventory for the lower of cost or market supports the position that DSM's audited financial statements are unreliable.

Effective for fiscal year 1997, Korean GAAP provided that all foreign exchange gains and losses related to long-term debt should be capitalized and amortized over the corresponding maturity period for the loans. Effective for fiscal year 1999 and 1998, *if a company elected to do so* (emphasis added), Korean GAAP provides that all foreign exchange gains and losses related to long-term debt may be recognized in full, in the year incurred. While we have concerns about the inconsistent treatment of the foreign exchange gains and losses in 1998 (recognizing the gains over a shorter period than the losses) and its effect on the antidumping duty analysis (*see* Comment 9), the treatment of exchange gains and losses fall within the confines of Korean GAAP. That is, it appears that the capitalization of the foreign currency losses associated with acquisition of equipment and the subsequent depreciation of these losses over the life of the equipment, as opposed to the corresponding maturity period of the loans, is an acceptable interpretation of Korean GAAP.

While we also have concerns about the timing and magnitude of useful life changes adopted by DSM during 1998, we do not consider these changes to constitute grounds for rejecting a company's audited financial statements in their entirety. The new useful lives adopted by DSM were largely approved by a certified independent appraiser and were fully disclosed by the company in its financial statements. While the Korean tax laws prescribe a rigid limit on depreciable lives, Korean GAAP does not set such strict constraints. Korean GAAP stipulates that companies may select estimated useful lives that differ from those in the tax law. It allows the management of a company to use its judgement, within certain guidelines, in determining useful life and depreciation methodology. Based on this, we do not find the new lives adopted by DSM necessarily conflict with Korean GAAP. *See* discussion in Comment 10.

Lastly, we disagree with petitioners that the fact that DSM's auditors have ceased operations due to repeated sanctions imposed by the Korean oversight authorities for poor audits automatically impeaches the DSM audit. Despite the problems identified by the Korean oversight committee related to audits performed on other companies, there is no evidence that similar types of problems are present with regard to DSM's audit. Absent factual evidence specific to DSM, we have no grounds to reject their audited financial statements.

Comment 8: Ending Inventory Balance Valuation

Petitioners assert that DSM has understated its true cost of production by failing to value ending inventory at the lower of cost or market value (which, according to Korean GAAP, should be determined at net realizable value). Petitioners also point out that the net realizable value as it is defined under Korean GAAP, would actually differ from the acquisition cost because it should be net of certain other costs (*e.g.*, selling expenses). Therefore, petitioners argue, because the Department does not have information on how much DSM has understated its costs due to this particular error, the Department should apply the highest known difference between DSM's stated year-end inventory value and DSM's December acquisition cost to DSM's total year-end inventory value and allocate that calculated amount over costs of goods sold.

Petitioners contend that DSM's suggested definition of the "net realizable value" of slab is unreasonable. According to petitioners, DSM's definition of the net realizable value of slab (a raw material input to the CTL plate under investigation) ignores the known market value of slab (*i.e.*, the value of year-end purchases of slab by DSM from unaffiliated parties) and instead relies on a derivation involving several estimated values—the estimated value of the finished plates that will be produced from the particular slabs in inventory at the time of valuation, the estimated fabrication costs associated with producing those finished plates, and the estimated general expenses associated with producing those finished plates. Petitioners argue that the Department should not ignore the known market value of the raw material being valued and instead resort to a derived value based on estimates and presumptions. Petitioners also claim that DSM provides no reference to any authority supporting its slab valuation methodology.

DSM contends that its inventories are appropriately valued in its audited financial statements, and, therefore, no adjustment to DSM's inventory value is required or permitted. DSM argues that the Department may not substitute its own judgment on the application of Korean GAAP for that of DSM's outside auditors. According to DSM, the purpose of verification is not to conduct a "super audit" of the company's financial statements, but rather to determine (1) that the submitted costs reconcile with the audited financial statements, and (2) that the resulting costs fairly reflect the actual unit costs of producing subject merchandise, as required for calculating COP and CV. DSM argues that any attempt on the part of the Department to override the accounting treatment specified in a company's audited financial statements is directly contrary to section 773(f)(1)(A) of the Act.

DSM argues that any conclusion that DSM or its auditors failed to follow Korean GAAP in the valuation of DSM's raw materials inventory is unsupported by any information on the record in this investigation. According to DSM, under Korean GAAP, the correct valuation of raw materials inventory for purposes of applying the lower-of-cost-or-market rule is net realizable value, and not the replacement value. The net realizable value, in turn, would be determined by calculating an estimated selling price for the finished product (*i.e.*, plate) and subtracting fabrication and general expenses. DSM disagrees with the method where the average purchase price for slab in December of 1998 is used as raw material year-end inventory value because DSM is not in the business of selling slab. DSM claims that the year-end raw material inventory value when determined according to its method provides no grounds to conclude that there was a sharp decline in value that would have required a write-down under Korean GAAP. DSM argues that any decline in value of raw materials was due to the fact that the majority of DSM's slab was imported, and the fluctuation in the Korean won

and the general instability caused by the Asian crisis led to significant fluctuations in the won-denominated price for slabs. DSM asserts that, even assuming that the market value of its raw materials inventory had declined sharply as of the end of 1998, the decline would not produce a loss material enough to require an adjustment to inventory under Korean GAAP.

DSM claims that the Department's normal policy regarding the treatment of inventory write-downs that have been made in a DSM's audited financial statements appears to be that such write-downs are normally included in cost of production for the period. At the same time, according to respondent, write-downs that are not reflected in the company's cost of goods sold for financial accounting purposes are not included in COP or CV. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553, 29571 (June 5, 1995) ("*Pineapple from Thailand*"); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2118 (January 15, 1997) ("*Antifriction Bearings-1997*"); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472, 66495 (December 17, 1996) ("*Antifriction Bearings-1996*"). DSM argues that if the Department makes an inventory adjustment where no write-down was made for financial accounting purposes, this would violate the requirement that COP and CV be based on the actual costs of the company. *See IPSCO, Inc. v. United States*, 965 F.2d. 1056 (Fed. Cir. 1992).

Finally, DSM claims that, even if the Department were to erroneously determine that some adjustment is appropriate to DSM's reported costs to account for an apparent decline in the value of DSM's raw materials inventory, the adjustment proposed by petitioners would wildly exaggerate any possible decline in inventory value and would amount to an unjustified and punitive overstatement of DSM's actual costs.

Department's Position

We disagree with DSM that the Department's practice is to only consider the write-downs that are reflected in the company's cost of goods sold for financial accounting purposes. The antidumping law requires the Department to base its calculation of costs upon the costs recorded in respondent's books and records unless doing so would be distortive. Section 773(f)(1)(A) of the Act provides that for purposes of calculating COP and CV, "[c]osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise."

In the instant case, Korean GAAP requires the application of the lower-of-cost-or-market rule to the company's inventory valuation. The purpose of this rule, which is also a part of the U.S. GAAP, and International Accounting Standards, as well as many other national accounting systems, is to comply with the one of the basic accounting measurement principals—the "matching principle". This accounting principle, in the context of inventory valuation, requires that a loss of inventory value be reflected as a charge against the revenues of the period in which it occurs. Different accounting systems, though, may differ on the specifics of the lower-of-cost-or-market rule, including the definition of the term "market." The information on the record demonstrates that the Korean GAAP defines this term as "net realizable value." However, as we noted above, Korean GAAP is not clear as to whether the net realizable value should be determined based on the estimated sales value for the inventory item in question (*i.e.*, raw materials in this case), or by starting with the estimated sales value for the finished goods the raw material will be used to produce.

We agree that choice of the method, just like the application of the lower-of-cost-or-market rule in general, may depend upon the specific facts and circumstances under consideration, and calls for the application of professional judgement. We believe that it is conceivable that both methods of calculating net realizable value may be acceptable under Korean GAAP. However, in this specific case, the method utilized by DSM distorts the costs because, the estimated future profits from the finished product sales mask the loss in raw materials inventory value that occurred during the POI. In the current case, we found that the method based on the sales value for raw materials is more appropriate because it more accurately reflects the costs the company incurred during the POI by utilizing the market prices readily available for this particular inventory item. Therefore, we adjusted DSM's costs to include the loss in raw materials inventory value that occurred during the period of investigation.

Comment 9: Foreign Exchange Gains and Losses

Petitioners argue that, while DSM's reclassification of 1997 long-term foreign exchange losses incurred on monetary liabilities related to specific capitalized assets may be allowed under Korean GAAP, it nevertheless is unreasonable and distorts the company's costs. Accordingly, petitioners assert that reclassification should be rejected by the Department. They contend that gains or losses incurred on monetary liabilities such as loans (or financial obligations) should remain tied to those liabilities, rather than being re-assigned to non-monetary assets. In addition, petitioners assert that DSM's treatment of its foreign exchange losses is inconsistent with its treatment of foreign exchange gains (*i.e.*, DSM's foreign exchange gains are amortized over the terms of the underlying financial instruments while its foreign exchange losses are depreciated over the useful life of its assets). This, according to petitioners, may lead to miscalculation of carry forward amounts from prior years that should be reflected in the current year. Therefore, petitioners contend that, the Department does not have the information to make the treatment of its foreign exchange gains consistent with the treatment of its foreign exchange losses and cannot reasonably determine the accurate amount of foreign exchange gains and losses for the current year. Accordingly, petitioners argue that the Department should apply adverse facts available with respect to this claimed adjustment by disallowing any foreign exchange gains and assuming the largest amount of foreign exchange losses incurred in the current year. The petitioners contend that, at a minimum, the Department should assume that all of these foreign exchange losses relate to the current period, and increase DSM's submitted G&A costs by the full amount related to the reclassification.

DSM argues that its accounting treatment of 1998 exchange gains and losses was in accordance with Korean GAAP. According to DSM, while long-term foreign exchange gains and losses were in fact accounted for differently in 1998 than in 1997, this was due to a change in Korean Financial Accounting Standards and does not in any way call into question the consistency and reasonableness of DSM's choice of

accounting policies. In addition, DSM argues that its deferral and transfer to fixed asset values of the 1997 exchange gains and losses associated with the financing of fixed assets was in accordance with Korean GAAP. DSM objects to petitioners suggestion that the gains or losses incurred on long-term obligations should remain tied to those liabilities as lacking any accounting authority, and points out that this treatment would not be supported by either Korean or U.S. GAAP. DSM points out that, notwithstanding the fact that DSM, in accordance with Korean GAAP, recognized the full amount of the long-term foreign currency gains and losses in its 1998 income statement, for purposes of the antidumping response, DSM amortized the gain over the remaining life of the underlying obligations and reported only the current portion of this gain as an offset to its reported interest expense for COP and CV.

Department's Position

Section 773(f)(1)(A) of the Act requires the Department to base its calculation of costs upon the costs recorded in the books and records of the respondent, provided such records are kept in accordance with the local GAAP, unless doing so would be distortive. In the instant case, while we agree with DSM that its treatment of foreign exchange gains and losses for the purposes of financial reporting may be consistent with Korean GAAP, we consider the inconsistent treatment of foreign exchange gains and losses to be distortive.

DSM's inconsistent treatment of foreign exchange gains and losses results in losses being amortized over the life of fixed assets, whereas the gains are being amortized over the life of loans. This inconsistency is of particular concern when the same loans which generated the 1997 foreign exchange losses assigned to fixed assets also generated a portion of the foreign exchange gains recognized in 1998. As a result, the foreign exchange losses from those loans are being depreciated over a significantly longer period than the foreign exchange gains from the same loans. This results in the smoothing out of losses and the recording of gains (*i.e. income*) in the current period of time. In order to neutralize this inconsistent treatment, we consider it appropriate to amortize the foreign exchange losses in question over the life of the loans, as opposed to the life of the equipment. This treatment is both consistent with DSM's reported treatment of its 1998 foreign exchange gains and with the Department's preferred method for foreign exchange gains and losses related to long-term debt.

Comment 10: Extension of Useful Lives of Depreciable Assets

DSM contends that the Department erroneously overstated its depreciation expense in the preliminary determination. DSM states that the antidumping law requires the Department to base its calculation of costs (including depreciation expense) upon the costs recorded in the books and records of the respondent unless doing so would be distortive, citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France*, 64 FR 30820, 30836 (June 8, 1999) (*"Sheet and Strip from France"*); *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305, 6321 (February 9, 1999) (*"Silicon Metal from Brazil"*).

DSM maintains that the equipment acquired for Plate Mill #2 had never been operated and remained in mint condition at the time DSM acquired it. DSM claims that petitioners' reliance on POSCO to define an industry practice is misplaced because the shorter useful lives used by POSCO reflect a different election under Korean GAAP, and not a different practice with respect to the determination of the actual, economic useful lives of the assets.

DSM refers to *Notice of Final Determination of Sales at less than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664, 30684 (June 8, 1999) (*"Sheet and Strip from Korea"*) as having similar circumstances and outcome. DSM claims that in that case the Department accepted the respondent's depreciation expense as reflected on the audited financial statements, even though there has been a change in depreciation methodology and useful lives from prior periods, because the respondent in that case "provided evidence that its change in depreciation methods and useful lives were reasonable, and that the change occurred in a time period prior to the initiation of the investigation." DSM contends that it, too, has demonstrated that the depreciation methodology and useful lives it has used are reasonable, and that the changes in question were adopted well before the POI and before the initiation of this antidumping investigation.

DSM also claims that a major portion of the Department's adjustment to DSM's depreciation expense in the preliminary determination is unrelated to the determination of the appropriate useful lives for fixed assets. Rather, it relates to the change in depreciation convention used for determining the depreciation expense. Specifically, prior to 1998, DSM followed the "six-month convention" for determining depreciation. Beginning in 1998, however, DSM began calculating depreciation on a monthly basis, so that depreciation was determined with reference to the month the asset was actually placed into service. DSM argues that, while both conventions are permissible under Korean Financial Accounting Standards, the monthly convention applied by DSM is inherently more accurate than the six-month convention. DSM presents an example where, under the monthly convention, a machine installed in November of 1998 would be depreciated in 1998 only for the two months in which it was actually in service during the year. Under the six-month convention, however, the same machine would be depreciated for a full six months, as if it had been installed on July 1. Similarly, machinery installed in June of 1998 would, under the six-month convention, be depreciated for a full year, as if it had been installed on January 1. DSM also points out that this change in depreciation convention was determined to be a reasonable change in accounting methodology for fiscal year 1998 by DSM's outside auditor.

According to DSM, the Department's adjustment in the preliminary determination ignored the fact that DSM also revalued upward its fixed assets in 1998. This upward revaluation increased DSM's depreciation expense. DSM claims that if the Department intends to rely upon the previous useful life figures used by DSM prior to 1998, then it must also use the original asset values.

In conclusion, DSM asserts that, for the reasons stated above, and consistent with the Department's decision in *Sheet and Strip from Korea* and long-standing precedents, the Department should eliminate the adjustment to DSM's depreciation expense made in the preliminary determination and instead use the actual depreciation expense for the subject merchandise reported by DSM and verified by the Department.

Petitioners assert that DSM has massively understated its depreciation costs by extending the useful lives of depreciable assets, using new asset lives that are unreasonable. Petitioners argue that the revaluation of assets and the restatement of asset lives are not inextricably linked, but rather independent decisions having no direct bearing on one another. Therefore, according to petitioners, the Department

should reject DSM's extension of asset lives.

Petitioners assert that claims by manufacturers of equipment that their machinery and equipment is still functional after 20 years are irrelevant because the functionality of equipment over an extended period relates to the magnitude of repair and maintenance performed. For the same reason, petitioners maintain, the KSA's survey is not relevant to the issue at hand, because different companies may have different policies on equipment maintenance. In addition, petitioners point out that the asset lives referred to by DSM relate to new assets, while most of the DSM's newly acquired assets had not been operated for fourteen years, and not been maintained for six years. They also note that it is unclear from the information provided by the respondent exactly which of the fourteen-year old equipment was in "mint condition," and which had already been installed in Mexico by the previous owners.

Petitioners argue that the finding of the certified appraiser that provided the basis for DSM's change in useful lives should be ignored because, the appraisal was not conducted with professional due diligence. Petitioners claim that the appraiser was unaware of the fact that the equipment in question spent over a decade in Mexico before it was purchased by DSM. They also contend that the appraiser did not examine any information on POSCO's plate equipment to compare it to DSM's equipment. Petitioners claim that DSM in several instances did not follow the useful lives guidelines established by the Korean Appraisal Board ("KAB"). Petitioners note that, for example, the lives assigned to certain equipment exceed the limits indicated in KAB guidelines.

Petitioners claim that by adopting extended asset lives DSM violated a fundamental accounting convention. That convention, according to petitioners, is the practice of following particular accounting techniques applicable to the company's industry. Specifically, petitioners refer to useful lives used by POSCO (*i.e.*, up to 9 years), which is the only other major producer of CTL plate in Korea, as being indicative of the useful lives that would have been used by other Korean producers of the same products.

Petitioners also claim that, even though DSM changed its useful lives policy prior to the initiation of the case, it was already clear at that point to all the parties involved in the investigation, based on the statistics and dynamics of the DSM sales in the United States, that an antidumping investigation was practically unavoidable. Petitioners assert that this was at least one of the factors DSM considered in switching to an accounting policy reducing the reported costs.

Petitioners contend that the cases cited by DSM in support of retaining the company's submitted depreciation expenses are distinguishable from the current situation. According to petitioners, in *Sheet and Strip from France, Silicon Metal from Brazil* and *Sheet and Strip from Korea*, the respondents' submitted costs were not found to be unreasonable (*i.e.*, distorted), while in the instant investigation petitioners claim that DSM's submitted depreciation expenses do distort the company's actual costs.

Department's Position

Sheet and Strip from Korea represents one of the most recent cases where the Department identified the factors it considers in deciding whether a change in an accounting method, or estimate, should be allowed for the purposes of COP and CV calculations. That is, the Department, while relying on a company's normal books and records, analyzes the reasonableness of the newly adopted accounting method, and considers if the fact, or an expectation, of being involved in an antidumping investigation might have played a role in the company's decision to change its accounting practice (*see Sheet and Strip from Korea*, 64 FR 30664, 30684 (June 8, 1999)). In the instant case, within months of initiation of the investigation, DSM made three changes affecting its depreciation expense calculations: revaluation of fixed assets, change in depreciation convention, and extension of useful lives.

We agree with DSM that revaluation of fixed assets and a change in depreciation convention may result in more accurate cost reporting. The revaluation of fixed asset values restates amounts recorded in prior years to current currency levels. We also agree with DSM that the new month-of-acquisition convention for when to start depreciating an asset, being in conformity with Korean GAAP, reasonably reflects the costs, and is generally more accurate than the six-month convention previously used by the company. Therefore, we allowed these two changes to the company's depreciation methodology.

However, we disagree with DSM's assertion that it has demonstrated that the new useful lives are reasonable. Pursuant to section 773(f)(1)(A) of the Act, the Department "shall consider all available evidence on the proper allocation of costs, * * *, if such allocations have been *historically used* by the exporter or producer *in particular for establishing appropriate amortization and depreciation periods.*" (emphasis added) In 1998, DSM departed from its historical useful life policy by aggressively extending asset lives, which resulted in a dramatic reduction in depreciation expenses. This is distortive because it understates the actual depreciation expense incurred during the POI as well as understating the depreciation expense for the current fiscal year.

DSM refers to useful life guidelines established by the Korean Appraisal Board ("KAB") as support for the company's revised asset lives. However, we agree with petitioners that the useful lives DSM assigned to certain equipment exceed the limits indicated in KAB guidelines. Furthermore, the KAB guidelines require that the condition of the equipment in question should be taken into account when choosing an appropriate life within the established range. As we stated in our Cost Verification Report, all the opinions and guidelines provided by DSM to support the extended useful lives referred to the lives of new equipment. *See Cost Verification Report* at 12. However, it has been established in the course of investigation that the equipment DSM acquired for Plate Mill #2 was not new. The September 1998 article from *Steel Times International* supplied by DSM shows that some of the equipment was already installed by the Mexican company and had to be dismantled (*see* DSM's November 8, 1999, submission at Attachment 1). Therefore, we agree with petitioners that it is unclear from the information provided by DSM exactly which components of the fourteen-year-old equipment were in "mint condition."

Moreover, even if we were to assume that, as DSM claims, this equipment had never been operated, fourteen year old equipment is still subject to obsolescence, if not other factors commonly associated with a "moth balled" asset. Nevertheless, DSM assigned to these assets the useful lives that in certain cases even exceeded the upper limits established by KAB for these types of assets. *See Cost Verification* Exhibit 8. For these reasons, we believe that the longer useful lives distort the reported costs of production by allowing respondent to recognize a small amount of depreciation in a given year. The resulting distortion understates the true actual depreciation expense for the period, thereby resulting in lower reported total cost of production. Therefore, we have adjusted the new extended useful lives, and

applied to both the COP and CV calculations the lives historically used by the company because this approach more consistently and accurately captures the costs.

Comment 11: Startup Adjustment

DSM argues that its audited financial statements reasonably accounted for the costs of construction, test, and start-up of Plate Mill #2. DSM claims that this is the accounting treatment followed by DSM for financial accounting purposes, which is in accordance with Korean GAAP, and which has been accepted by the Department in previous cases.

DSM argues that it did not request the startup adjustment provided for in section 773(f)(1)(C) of the Act because, according to DSM, the purpose of section 773(f)(1)(C) is to adjust costs for purposes of calculating COP and CV under the antidumping statute when a respondent's normal accounting system fails to account for the effects of start-up operations. DSM contends that this is an exception to the general rule in section 771(f)(1)(A) that costs shall be calculated based on the books and records of the producer, when those books are maintained in accordance with GAAP. Therefore, according to DSM, because its normal costs already reasonably account for the effects of start-up operations, no adjustment to DSM's normal costs under section 773(f)(1)(C) is necessary. *See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan*, 64 FR 56308, 56318–56319, (October 19, 1999) ("*DRAMs from Taiwan*"); *Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 36 (CIT 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada*, 63 FR 9182, 9186–9187 (February 24, 1998) ("*Wire Rod from Canada*"); and *Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 36 (Ct. Int'l Trade 1995).

DSM also argues that even if the Department were to determine that the criteria for an adjustment under section 773(f)(1)(C) are relevant to this case, DSM's new plate mill clearly satisfies the criteria for startup operations under the statute (*i.e.*, it is a new production facility and requiring substantial new investment). Furthermore, DSM asserts that it has demonstrated that its production levels at Plate Mill #2 during the first five months of 1998 were limited by technical factors uniquely associated with the start of commercial production. Therefore, DSM contends that no adjustment should be made to its reported costs, as reflected in DSM's audited financial statements.

Petitioners contend that the Department should adjust DSM's COM to eliminate DSM's startup adjustment. Petitioners note that, according to 19 U.S.C. § 1677b(f)(1)(C)(ii), "Adjustments shall be made for startup operations only where—(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production." Petitioners argue that DSM did not satisfy the first prong of the statute because the opening of the Plate Mill #2 production in the first half of 1998 represented simply an expansion of the capacity of an existing production line (*i.e.*, extension of existing plate production in Pohang). With respect to the second prong, petitioners argue that DSM did not satisfy it either because: (a) DSM did not provide evidence demonstrating that production quantities were limited; (b) the company's operations were not limited by technical factors, but rather, were limited because its employees were on vacation; (c) the capacity utilization DSM defined as commercial was actually achieved in the middle of the claimed startup period; and, (d) DSM failed to link the three technical factors it claimed to have limited production levels with the production process, or explain how these factors actually limited the production. Therefore, according to petitioners, DSM has failed to satisfy either prong of the startup adjustment test under the statute and the Department should deny the claimed startup adjustment entirely.

Petitioners disagree with DSM's position that the statutory criteria for a startup adjustment is not relevant and that the only criteria is whether the Plate Mill 2's treatment was consistent with Korean GAAP. Petitioners contend that, even if this is true, the Department must reject DSM' startup calculations, because DSM has not shown that the mill's treatment was in accordance with the Korean GAAP (which, according to petitioners, distinguishes the current case from *DRAMs from Taiwan* and *Wire Rod from Canada* cited by DSM) and that its treatment reasonably reflect DSM's actual costs.

Department's Position

We agree with DSM, in part. Section 773(f)(1)(C) of the Act provides for a claimed start-up adjustment in cases where a respondent has not already done so in its normal books and records. Nevertheless, under section 773(f)(1)(A) of the Act, the Department is directed to follow the normal records of the exporter or producer if such records are kept in accordance with the producer's home country GAAP and reasonably reflect the costs associated with the production of the merchandise. Therefore, because DSM's normal records already accounted for the start-up operation, we must follow such treatment if it reasonably reflects the costs associated with the production of the merchandise.

However, we have determined that the DSM's accounting method for startup period costs is distortive in two respects: First, it overstated the period of startup and, therefore, understated the reported costs. DSM asserted that its production levels at Plate Mill #2 were limited by technical factors uniquely associated with the start of commercial production during the first five months of 1998. However, at verification, we found that, from the end of March through May, the daily production quantities were relatively the same as the daily production levels for the three months subsequent to DSM's designated end to the start-up period. Therefore, we identified the point at which DSM reached normal production levels and have adjusted the start-up period costs accordingly.

Second, under DSM's method, the company capitalized the startup period costs net of startup period sales. We agree that this approach may be acceptable for financial accounting purposes because, if a company does not include the same sales in its gross sales figure on its financial statements, the effect of such treatment on the company's net income figure is minimal. However, for COP and CV calculations, we consider this methodology to be distortive because the same startup period sales that are included in the home and U.S. sales files, are, at the same time, used as an offset to the costs. Therefore, in calculating our adjustment, we eliminated the effect of the startup period sales on the startup period costs. For further explanation of our findings at verification, *see DSM Cost Verification Report*, dated October 21, 1999. Consequently, we have adopted DSM's treatment of startup costs except for these two corrections, because its methodology, otherwise accurately reflects costs associated with production of the subject merchandise.

Comment 12: Transactions with Affiliated Entities

DSM contends that, in the final determination, the Department should eliminate the adjustment it made in the

preliminary determination on purchases of slab through two affiliated trading companies, Dongkuk International, Inc. ("DKA") and Dongkuk Corporation ("DKC"), and should base its valuation of DSM's slab costs on the prices reported by DSM for these slab purchases as reflected in DSM's normal cost accounting system. DSM argues that the major input rule does not apply to these slab purchases because DKA and DKC did not produce the slabs. According to DSM's interpretation of the Act, while section 773(f)(2) of the Act—the "Transactions Disregarded" rule applies to transactions between any affiliated persons, section 773(f)(3)—"the Major Input Rule" applies only to situations when an affiliated person is involved in production of a major input to the merchandise. DSM cites section 773(f)(3) which refers to the case "of a transaction between affiliated persons involving the *production* by one of such persons of a major input to the merchandise" (emphasis added). DSM asserts that there is an apparent contradiction between this section of the Act and section 351.407(b) of the Department's antidumping regulations, which refer to "a major input *purchased* from an affiliated person" (emphasis added). DSM notes that, in the event of a conflict between section 773(f)(3) and the Department's regulations, the statutory language governs.

DSM argues that the intent of major input rule, as explained in SAA to the Uruguay Round Agreement Act, is to prevent manipulation of costs between affiliated producers, and not just any affiliated parties. DSM disagrees with the Department's reasoning in such cases as *Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada*, 64 FR 17324 (April 9, 1999) ("*SSRW from Canada*"), where the Department explained that the intent of major input rule and the related regulations is "to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier." DSM contends that the Department's decision in *SSRW from Canada* is directly contrary to the language and intent of section 773(f)(3) and should not be followed in this investigation. DSM further asserts that the statutory language with regard to the major input rule is unambiguous, and allows for only one interpretation: the affiliated person must be engaged in the "production" of the merchandise, or the rule does not apply. As to the "possibility of shifting costs to an affiliated party", DSM claims that where the Department knows the actual price charged by an unaffiliated producer of the input (*i.e.*, the market value), and where the affiliated supplier performs no substantive role in the transaction, such a possibility does not exist.

DSM proceeds with an argument that DSM should be even entitled to value the purchases it made through DKA and DKC at the price paid by the affiliates to the unaffiliated suppliers, not the higher transfer price paid to DKA or DKC, and cites *AK Steel Corporation* v. *United States*, 34 F. Supp. 2d, 756, 765 (Ct. Int'l Trade 1998) ("*AK Steel Corporation*"), where the Court upheld the Department's determination not to apply 19 U.S.C. 617b(f)(2)–(3) to transactions between collapsed entities.

DSM asserts that because DKA and DKC are not the manufacturers of the merchandise, the Department's calculations of their cost of production for the purposes of major input rule err by including costs and expenses incurred by these trading companies in unrelated lines of business. DSM also claims that, in fact, DKA and DKC simply provide a service to DSM which is limited to the resellers' minor commission or margin on the exchange and does not rise to the level required for an adjustment to be permitted under the major input rule. *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, 30747 (Comment 29) (June 8, 1999) ("*Sheet and Strip from Germany*").

Furthermore, DSM argues that no adjustment to the transfer prices reported by DSM is permitted under Section 773(f)(2) of the Act. DSM claims that if, however, the Department decides to disregard the transfer price in this situation, the price paid by DKA and DKC to its unaffiliated suppliers should be used by the Department as the amount that "would have been if the transaction had occurred between persons who are not affiliated" under the alternative valuation rule of Section 773(f)(2) of the Act. According to DSM, the Department should compare the price DSM paid to DKA or DKC (*i.e.*, transfer price) to a "market value" based on the actual price the affiliates paid to their unaffiliated slab suppliers for that particular slab, but not based on DSM's purchases of slabs from other suppliers. Finally, DSM argues that because the transfer price paid by DSM to its affiliates is greater than the price paid by the affiliates to their unaffiliated suppliers for those very slabs, there can be no basis for the Department to determine that the transfer price "does not fairly reflect the amount usually reflected" in sales of such slabs.

Petitioners contend that the Department should follow its decision in *SSRW from Canada* and revise DSM's submitted costs to properly value its slab inputs that were purchased through its affiliates to reflect the higher of transfer price, cost of production, or market value. They argue that, just as in *SSRW from Canada*, the possibility of shifting of costs exists in this case because, while the price at which the affiliated party purchased the input from an unaffiliated party may represent a "market" value of the input, the transfer price may or may not reflect all costs related to the input.

Petitioners contend that the Department should adjust it for the following items: (a) Indirect selling expenses of the affiliates should be included in their cost of production; (b) any offset for the interest income should be excluded from the affiliates' finance cost calculations since DSM improperly included long-term interest income in the offset amount; (c) interest expenses of DKA, which were included in DSM's consolidation, and were improperly excluded by the Department in its preliminary determination; and, (d) the highest of transfer price, cost of production, or market value, determined on quarterly basis.

Department's Position

We disagree with respondents, in part. Section 773(f)(2) of the Act allows for the Department to disregard transactions between affiliates if the transfer price does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. Because the affiliate is providing an input (slabs) into the production of subject merchandise, as well as services related to the acquisition of the slab input, the selling, general and administrative expenses ("SG&A") of the affiliate must be included. We disagree with respondent that the trading company's overhead should not be added to its purchase price (*i.e.*, its cost of sales) in determining the value of the input. The trading company purchases the material, takes title to the item, and provides for the sale and transport of the good to the affiliated respondent. All of these activities have costs associated with them that must be taken into account in order to calculate a total actual cost.

Finally, we disagree with the respondent that in identifying a market value, the Department's preference

should be to look to the prices that the affiliated suppliers paid to their unaffiliated suppliers, and not to the prices paid by the respondent to its unaffiliated suppliers from whom it directly purchased the major input. Both sets of transactions may constitute a usable market value. Respondent seems to suggest that because the affiliated supplier's supplier is providing the specific input, the price between them would be the preferable standard. We disagree. The price that a respondent pays directly to a supplier might be preferable since the statute, at section 773(f)(2), specifically refers to transactions "in the market under consideration." The prices paid by the respondent in an investigation by definition represent the market under consideration. Therefore, we have valued the inputs received from affiliates at the higher of the affiliate's average acquisition cost plus SG&A, average market price, or transfer price.

Comment 13: Production Quantities During "Test" Period

Petitioners claim that while DSM did not include any production costs incurred in the "test" period, it did include the related production quantities. Petitioners argue that the Department should revise DSM's manufacturing costs to exclude these quantities from per-unit cost calculations.

DSM notes that it did include in the reported costs the material cost associated with the "test" period, as well as the related quantities. Only fabrication costs associated with this production were ultimately capitalized and added to Plate Mill #2 fixed assets. While DSM agrees that petitioners' argument has certain merit, it argues that the production quantities during the test period are so small as to have virtually no effect on the per-unit costs. DSM claims that it ignored the impact of these test period quantities and material costs simply as a matter of convenience and, also, to facilitate verification of total production quantity and total costs by remaining consistent with DSM's internal accounting treatment.

Department's Position

We agree with DSM that although the production quantities during the test period were small, as noted in our *Cost Verification Report* at 14, there is an inconsistency in DSM's treatment of the "test" period quantities and costs: all the quantities are included in the reported production quantity, only a portion of the related costs was included. Moreover, for accurate per-unit cost calculations, any exclusion of the production quantities should be accompanied by the exclusion of the related costs, which would result in an adjustment that has virtually no effect on the per-unit costs. Section 351.413 of the Regulations addresses the Department's authority to disregard insignificant adjustments under section 777A(a)(2) of the Act. "[A]n "insignificant adjustment" is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent of the export price, constructed export price or normal value, as the case may be." *See* 19 C.F.R. 351.413 (1997). In the instant case, the effect of the individual adjustment on an ad valorem basis is less than 0.33 percent of normal value (i.e., Constructed Value). See DSM Cost Verification Report; see also Final Cost of Production Analysis Memo, dated December 13, 1999.

Comment 14: Gain from Disposal of Certain Fixed Assets

DSM argues that the Department should not adjust its reported G&A expenses to eliminate gains from the disposal of fixed assets that included certain non-depreciable assets. According to DSM, it is the Department's long-standing policy that gains and losses on the disposal of fixed assets, including the sale of an entire manufacturing facility, should be included in COP and CV as part of G&A expenses, provided that these assets had been used to produce subject merchandise. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35,590, 35,614 (July 1, 1999) ("*Antifriction Bearings—1999*"); *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7042 (February 6, 1995) ("*Roses from Ecuador*").

Petitioners contend that the Department should continue to disallow DSM's offset to G&A expenses generated by the sale of the above mentioned fixed assets. They point out that DSM reported negative G&A expenses, based largely on the large gain the company received on the sale of certain non-depreciable fixed assets. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167 (January 28, 1992) (comment 57) ("*Forklift Trucks from Japan*"). Petitioners, argue, as evidenced by the above-mentioned cases, that the Department has never allowed this type of negative SG& A reported in its calculation of COP.

Petitioners assert that, according to *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea*, 57 FR 53693, 53704 (November 12, 1992) ("*Stainless Steel Pipe from Korea*"), the Department's practice on treatment of dispositions of fixed assets is that in order to be included in the reported costs, these dispositions should be a normal part of the company's operations and a routine disposition of fixed assets. Petitioners argue that in the current case, the sale of assets in question is outside of DSM's ordinary course of business and is not a "routine disposition" of fixed assets, and the resulting gain is not income from activities related to the company's general operations. Petitioners argue that the cases cited by DSM (*Antifriction Bearings—1999, Roses from Ecuador*, et al.) are easily distinguished from the present case because in those cases the Department found that the assets were used to manufacture the subject merchandise and their sale were a normal part of operations, or did not address whether the transaction at issue was routine.

Department's Position

We disagree with DSM that the Department should include, as an offset to G&A expense, the gain incurred on the sale of certain non-depreciable fixed assets. We also disagree that this asset's relationship to production is the standard for whether to include the gain in G&A expense. *U.S. Steel Group* v. *United States*, 998 F.Supp. 1151 (CIT 1998). G&A expenses are those expenses which relate to the general operations of the company as a whole, rather than to the production process. Therefore, it is not relevant whether or not the particular asset was used to produce subject merchandise.

In analyzing whether to include an item in G&A, the Department considers the nature of the activity and whether the activity is significant enough to be treated separately from the respondent's other business activities. "[I]n determining whether it is appropriate to include or exclude a particular item from the G&A calculation, the Department reviews the nature of the G&A activity and the relationship between this activity and the general operations of the company." *See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From*

Taiwan, 64 FR 56308, 56323 (October 19, 1999). In cases where the activity is comparatively small in relation to the company's primary activities, the Department has included the occasional miscellaneous gain or loss in G&A expense. However, at the point where an activity becomes significant enough to constitute a separate business activity, the Department treats it as such. "However, the gain SMP is claiming as an offset to G&A expenses is related to the sale of a *significant* manufacturing plant and adjacent land area. This sales transaction is not a routine disposition of fixed assets' (emphasis added). *Stainless Steel Pipe from Korea*, 57 FR 53693, 53704 (November 12, 1992). *See, also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38756, 38791 (July 19, 1999). In past cases, the portion of the sale of facilities related to certain non-depreciable fixed assets has not been specifically addressed, indicating that the particular treatment of those assets must not have been significant to the overall gain or loss. *See, e.g., Roses from Ecuador*, 60 FR 7019, 7042 (February 6, 1995). In the instant case, the gain on the sale of these non-depreciable assets constitutes the bulk of the gain from the sale of the facility and, as noted above, is greater than DSM's entire G&A expense.

A gain or loss on the sale of a non-depreciable asset, particularly one as significant as that incurred by DSM, warrants separate treatment. This is due to the fact that no depreciation expense associated with this asset were accounted for in the calculation of the cost of production. This is especially true in light of the fact that non-depreciable assets, which are not consumed in the production process and generally retain their value regardless of the state of a particular industry, are normally not treated as a depreciable asset. Depreciation expense is generally not calculated on these assets, which means that no costs associated with these expenses are included in COP or CV. Therefore, it would not be reasonable to include the associated gain or loss on disposal of this kind of assets when they are sold. As a result, we have continued to exclude the gain for the final determination.

POSCO

Comment 1: Whether POSCO's home market and U.S. sales were made at a different LOT than sales by POSCO's affiliated service centers.

POSCO asserts that, based on the information on the record, the Department should conclude that POSCO's home market sales are at a different LOT than the service centers' sales because each sells to purchasers at different stages in the chain of distribution and each performs qualitatively and quantitatively different selling functions. POSCO argues that the differences in the LOT between POSCO and the service centers is demonstrated by significant differences in their marketing positions, quantity sold, customer base, selling activities, warranty services, and sales expenses.

POSCO states that it is an integrated manufacturer which produces a wide range of steel products, sells subject merchandise on a large scale, and has adapted its expense structure in order to maximize profit by selling on a large scale. On the other hand, according to POSCO, the service centers are small resellers which sell out of inventory on a much smaller scale.

In addition, POSCO asserts that it sold significantly more subject merchandise than the service centers during the POI. According to POSCO, its customers are large end-users, resellers or wholesalers, and service centers that buy in large quantities and process the products. The service centers' customers, on the other hand, are typically small resellers and end-users who cannot hold inventory or shear products, and therefore, tend to order small quantities. POSCO argues that these differences in customer base and customer purchasing power are significant indications that POSCO sells merchandise at a different point in the distribution chain than the service centers and, thus, at a different LOT.

POSCO states that the regulations, at 19 CFR 351.412(c)(2), require the Department to look for differences in selling activities when conducting a LOT analysis, and that the differences in the LOT between POSCO and service centers is demonstrated by significant differences in their selling functions. POSCO states that the service centers maintain inventory for sales of subject merchandise, while POSCO sells subject merchandise to order. Another difference, according to POSCO, is that it usually produces subject merchandise in standard lot sizes because its customers later process the merchandise, while the service centers typically process the merchandise into different sizes for small customers who are unable to perform this function. POSCO also states that it provides more delivery options and more differentiated freight arrangements than the service centers. POSCO argues that, while the company and the service centers do provide some similar delivery terms, the mere fact that certain selling activities are performed in a similar manner does not preclude a finding of different LOTs.

POSCO argues that the Department has also emphasized differences in warranty services, technical services and other sales-related activities when examining LOTs, and cite *Carbon Steel Products from Germany*, 64 F.R. at 16,703, 16,705 (April 6, 1999); *Steel Wire Rod from Canada*, 63 F.R. at 9191–9193 (April 1, 1999); *Stainless Steel Sheet and Strip in Coils from Mexico*, 64 F.R. 30790, 30807–30810 (June 8, 1999). POSCO argues that while it provides warranty services for base metal and provides technical services to its customers, the service centers do not.

POSCO next argues that the differences in the LOT between POSCO and the service centers is demonstrated by differences in their sales expenses. POSCO argues that its selling expense structure is very different from that of the service centers, in that it spends significantly more on sales expenses. POSCO further argues that the service centers assume the risk of finding a customer for the products they purchase from POSCO, while POSCO has a commitment from its customer before production. Respondent states that the Department noted no discrepancies in the data POSCO presented in support of POSCO's arguments regarding the different LOTs, and that the Department's findings at verification confirm its analysis.

Petitioners argue that there is no significant difference between the levels of selling activity performed by POSCO and its affiliated service centers because, while the service centers may inventory products longer than POSCO, POSCO provides such selling functions as warranty, technical advice and market research for all customers.

Petitioners claim that, contrary to POSCO's assertion, no significant difference exists between sales quantities and customer categories sold upstream and those downstream. Petitioners further argue that, in any case, differences in sales quantities and customer categories are irrelevant for purposes of determining separate LOTs. According to petitioners, without evidence that significant differences in selling functions exist between sales channels, there is no basis for the Department to determine that different LOTs exist.

Department's Position

We agree with petitioners. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the

comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer. *See* sections 773 (a)(7)(A) and 772 (b) of the Act.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR at 61731.

In the *Preliminary Determination*, the Department found that there were no differences in LOT between POSCO's and the service centers' home market sales and, therefore, did not make any LOT adjustment to the normal value. *See LOT Memo*, dated July 19, 1999; *Preliminary Determination*, 64 FR at 41226–27. In order to determine whether NV was established at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. Based on our analysis of the chains of distribution and selling functions performed for EP sales in the U.S. market, we continue to determine that POSCO and its subsidiaries POSCO Steel Sales and Service Co., Ltd. ("POSTEEL"), the service centers, and POSAM (for EP sales) provided a sufficiently similar degree of services on sales to all channels of distribution, and that the sales made to the United States constitute one LOT. *See LOT Memo*, dated July 19, 1999; *Preliminary Determination*.

We find that the facts in this case are similar to those in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 64 Fed. Reg. 48767, 48773 (Sept. 8, 1999). While different types of selling activities were performed by POSCO, POSTEEL, and the service centers, in examining the selling functions associated with various LOTs, the Department will compare the *cumulative* level of selling activity rather than simply collating specific activities. *See LOT Memo*, dated July 19, 1999; *see generally, Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR at 61731. In comparing the cumulative level of selling activity, we find that the differences in selling functions between POSCO's two claimed home market LOTs are not substantial. Accordingly, we find the U.S. sales and home market sales to be at the same LOT, such that no LOT adjustment under section 773(a)(7)(A) of the Act is warranted.

Comment 2: Whether the Department should reclassify POSCO's U.S. sales as CEP transactions

Petitioners contend that the Department should reclassify POSCO's U.S. sales as CEP transactions, and assert that record evidence demonstrates that POSAM sets prices in the United States and performs a number of significant selling functions.

According to petitioners, POSAM was solely responsible for selling POSCO's product and keeping contact with POSCO's customers. Petitioners argue that U.S. customers initially contact POSAM, and POSCO has admitted that during the POI it did not send any sales personnel or senior managers to the United States. Petitioners also state that POSCO reported that POSAM employs numerous individuals in the United States responsible for various activities that are consistent with an active selling operation in the United States, not an operation whose only purpose is to process sales-related documentation. In addition, petitioners state that POSAM's financial statements indicate that POSAM extended credit for its customers' purchases of subject merchandise from POSCO and POSTEEL. Thus, according to petitioners, POSAM is undertaking the entire risk of these sales and, as such, is far more than a mere processor of sales-related documentation.

POSCO argues that its sales through POSAM are properly treated as EP sales. Respondent states that the Department closely examined this issue at verification and found that POSAM merely functions as a forwarder of requests to POSCO, and that only POSCO can approve the price and terms of sale.

POSCO maintains that the Department found at verification that all prices and terms of sale for U.S. sales are determined by POSCO or POSTEEL and not POSAM, and that POSAM's role was limited to that of a processor of sales-related documentation and providing a communication link. *See Sales Verification Report*, dated November 10, 1999. POSCO asserts that in no instance did POSAM have discretion to adjust prices or negotiate with the customer. Furthermore, according to POSCO, POSAM merely served as a communication link between POSCO and its U.S. unaffiliated customers due to the time difference and communication costs.

POSCO also argues that POSAM employs few employees and that it would not be feasible for such a small number of employees to conduct and operate an "active selling operation." Next, POSCO states that POSAM did not extend credit to POSCO's customers but merely received payment which it then transferred to POSCO. Finally, POSCO argues that the circumstances in the instant investigation are distinguishable from other proceedings before the Department. In prior cases such as *Stainless Steel Wire Rod, Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products, and Stainless Steel Plate in Coils from the Republic of Korea*, the circumstances were different and the factual basis for the Department's decisions also differed. In each of the above-mentioned cases, there was tangible evidence that POSAM did not change or reject prices; POSAM is not the importer of record for the overwhelming majority of sales; and POSAM did not provide any financing to the U.S. customers. Based on these factors, POSCO argues that there is nothing on the record to indicate that POSAM took steps beyond those necessitated for EP classification. Accordingly, POSCO requests that the Department continue to accord EP treatment to POSCO's U.S. sales through POSAM.

Department's Position

We agree with POSCO that sales through POSAM are more appropriately treated as EP transactions. The facts in this investigation are similar to the facts in the *Final Determination of Stainless Steel Wire Rod from the Republic of Korea* 63 FR 40461 (July 29, 1998) cited by POSCO, and sufficient record evidence exists which leads the

Department to conclude that POSCO's U.S. sales through POSAM warrant classification as EP sales.

The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18389, 18391 (April 15, 1997); *see also Mitsubishi Heavy Industries* v. *United States*, 15 F. Supp.2d 807, 811–12 (CIT 1998).

We note that neither party has disputed that POSCO's U.S. sales through POSAM meet the first two criteria of the Department's standard. Therefore, the determining factor in this case is the degree of involvement by POSAM in the sales process. In the *Preliminary Determination*, the Department based its EP classification of sales through POSAM on POSCO's statement that POSTEEL or POSCO determined price and terms of sale. *See* 64 FR at 41227–28. Based upon our findings at verification, it is clear that POSTEEL and/or POSCO perform almost all selling activities for U.S. sales through POSAM, including undertaking business trips to meet with potential U.S. customers of the subject merchandise. *See Sales Verification Report* at 11. The record further supports POSCO's assertion that POSAM is merely a processor of sales-related documentation. First, POSAM is only a point of contact via whom the U.S. unaffiliated customer ultimately contacts POSCO or POSTEEL. POSAM officials explained that because of the time zone difference and the cost of long distance, it would be expensive and inconvenient for the customer to contact POSTEEL directly. *See Sales Verification Report*, dated November 10, 1999. POSAM acts as merely a conduit between the unaffiliated U.S. customer and POSTEEL. *See Sales Verification Report*, dated November 10, 1999. POSAM merely collects payment from the customer and transfers this money to POSTEEL or POSCO. *See Sales Verification Report*, dated November 10, 1999. The functions performed by POSAM indicate that it is a mere facilitator and not a seller of subject merchandise. This selling arrangement between POSAM and POSTEEL is similar to the one between POSAM and Changwon, addressed in *Stainless Steel Wire Rod*, where the U.S. customers remit payment to POSAM, which subsequently transfers the payment to POSTEEL, which, in turn, transfers it to Changwon. *See Stainless Steel Wire Rod From Canada*, 64 FR at 40419. Furthermore, of the sales examined by the Department during the POSAM verification, we found no evidence that POSAM was given discretion in adjusting the price of the sale. *See Sales Verification Report* at 30. Thus, the record evidence demonstrates that POSAM has no sales negotiating authority with regard to U.S. sales. Therefore, because of the lack of significant risk incurred by POSAM, in addition to its lack of other selling activities, we find that POSAM's activities are merely ancillary to the sales process and have classified POSCO's U.S. sales through POSAM as EP transactions.

Comment 3: Whether the Department should disregard POSCO's model-matching methodology

Petitioners state that due to significant discrepancies between the model-matching reporting methodologies submitted by POSCO, the Department should disregard POSCO's model-matching methodology. Petitioners argue that for a U.S. specification, POSCO and Dongkuk assigned different home market specifications in the most similar model match chart. According to petitioners, this indicates that POSCO's and Dongkuk's specification concordances for similar products are unreliable. Petitioners argue that the Department should assign, as facts available, the highest reported home market price to all sales of non-identical home market specifications matching to U.S. sales.

POSCO claims that its model match methodology was verified and is reliable. POSCO states that petitioners propose that the Department assign the highest reported home market price to all sales of non-identical specifications matching to U.S. sales because POSCO did not report the same model matching hierarchy in the questionnaire responses. POSCO claims that it is not aware of any requirement that respondents report identical matching hierarchies. POSCO asserts that the Department verified POSCO's approach to model matching and the underlying information at verification. POSCO further argues that the issue of model match hierarchy is moot due to the fact that, for the specification at issue, the Department did not have to match to a similar product for POSCO. POSCO claims that both companies sold a sufficient quantity of the product above cost in the home market to eliminate the necessity of selecting the next most similar product.

Department's Position

We disagree with petitioners that POSCO's reported model matching hierarchies are flawed and must be rejected. The questionnaire in this case instructed respondents to identify, for every specification sold to the United States, the identical and four or five most similar specifications sold in the home market. In the questionnaire, respondents are requested to explain their identical and similar selections. The Department normally relies on this information in developing its model match concordance. *See Original Questionnaire Response: Section B, C and Appendix V* (March 17, 1999). However, if we disagree with any selection of similarity, or if any petitioners raise any issues, we can and do rearrange this hierarchy in any way we deem appropriate. Prior to raising this issue in their case brief, petitioners did not dispute any of the hierarchies proposed by respondents.

The Department verified the methodologies chosen by each of the responding companies, and we noted no discrepancies between the companies' records in the normal course of business and the characteristics reported to us. We also note that each company sells a different mix of specifications in the home market. Thus, the similarity hierarchies can vary based on this fact. Therefore, we find that the methodology used by POSCO to report physical characteristics and matching hierarchies is accurate and reasonable under the circumstances. In addition, in this case, the great majority of all of the U.S. sales were matched to either identical, or functionally identical, home market specifications. As a result, we have not

questioned the use of these hierarchies in supplemental questionnaires or found specific faults with any of POSCO's selections. Thus, the second and third choice for similar specifications are not relevant to the margin calculations because these categories were not used in matching.

Comment 4: *Whether the Department should apply adverse facts available for POSCO's reported downstream sales in the home market.*

Petitioners claim that POSCO's reported sales and cost information for affiliated service centers is significantly flawed and, as a result, the Department should apply adverse facts available for POSCO's reported downstream sales in the home market. Petitioners argue that POSCO did not distinguish between prime and non-prime merchandise sold by its affiliated service centers despite the Department's explicit requests for that information. Petitioners state that the Department discovered that POSCO's reporting of the PRIMEH Fields for sales made by one service center was based entirely on the nature of the merchandise purchased from POSCO, rather than on the nature of the merchandise sold by the service center. Petitioners argue that while the merchandise purchased from POSCO by one service center was reported as prime material, that does not confirm the fact POSCO sold only prime merchandise. Petitioners claim that the merchandise could have been damaged during shipment or failed to meet customer-specified characteristics that would warrant the production of non-prime merchandise.

Petitioners further claim that POSCO failed to report affiliated service centers' further processing costs for products produced by POSCO. Petitioners argue that POSCO reported variable costs for the affiliated service centers based solely on POSCO's own costs, as opposed to the combined manufacturing costs of POSCO and its affiliated service centers. Petitioners state that POSCO only provided cost information for the unique products produced by the affiliated service centers and did not provide the information requested by the Department for the common products produced by both POSCO and the affiliated service centers. Petitioners claim that POSCO withheld critically important information and did not fully cooperate with the Department's repeated requests and therefore, the Department should apply adverse facts available.

POSCO argues that the Department verified the accuracy of its reported downstream sales information. POSCO claims that the service center's product code defines the merchandise that it is selling, not the merchandise that it purchased. POSCO argues that the second and third digits identify whether the merchandise was imported or purchased domestically and the fourth and fifth digits of the code identifies the specification of the merchandise being sold. Therefore, POSCO claims that the service center is able to demonstrate that its sales of second grade material were not from POSCO. POSCO states that it provided complete and accurate answers to the Department's questions on reporting the conditions of the merchandise.

POSCO states that it fully explained the basis for its methodology, and the Department verified the accuracy of the reporting methodology. POSCO claims that the Department verified that the additional cost has a de minimis impact and is therefore, unnecessary for the service centers to be included in the analysis.

Department's Position

We agree with POSCO. At verification, the Department conducted a detailed examination of the reported downstream sales to determine the accuracy of the reported characteristics and the methodology for reporting any additional processing costs and expenses. *See Sales Verification Report*, dated November 10, 1999, at 2. Therefore, we have used the reported downstream sales in our analysis.

We agree with petitioners, in part, that POSCO failed to report the reseller's further processing costs on the COP computer tape. At verification, POSCO indicated that it did not include such costs in the reported COPs because they would be negligible when included and weight-averaged with POSCO's costs. *See Cost Verification Report*, dated November 4, 1999, at 7. We tested this at verification and found that POSCO's failure to include the resellers' further manufacturing costs resulted in a minor understatement of COP. *See Cost Verification Report*. We have increased the reported COP, based on our findings at verification, to account for this understatement.

The Department normally requests responding companies to identify whether sales are of prime or secondary merchandise in both the home and U.S. markets to ensure that a proper comparison is made between sales in both markets. *See Original Questionnaire Response: Section B and C* (March 17, 1999). However, the Department will also consider the burden on the responding company, whether the information is retained in the normal course of business, and whether the requested information is retrievable without undue burden. In the instant case, the Department examined the records of the affiliated resellers which we visited. We verified that one reseller does not maintain a product code designation for non-prime or off-grade merchandise, thus rendering it impossible for that reseller to identify possible sales of non-prime merchandise. *See Sales Verification Report*, dated November 10, 1999 at 22. For the other reseller with which we conducted verification, we noted no discrepancies in reviewing documentation to confirm its assertion that it had no sales of non-prime merchandise purchased from POSCO during the POI. *See Sales Verification Report*, dated November 10, 1999, at 25.

Based upon our examination of POSCO's records and its affiliated resellers' records, the Department finds that POSCO's information was properly reported to the Department as requested. Therefore, we have continued to use all of POSCO's downstream sales in our analysis.

Comment 5: *Facts Available for Certain Unique Product Costs*

Petitioners argue that the Department should resort to adverse facts available in adjusting POSCO's reported costs for certain products. Petitioners claim that POSCO did not identify the unique costs associated with producing products to various specified widths. Petitioners state that POSCO indicated that it did not identify unique costs for the width characteristic for cut-to-length plate although it tracked the unique costs for hot-rolled plate and hot-rolled sheet products. Petitioners claim that the Department confirmed that for subject merchandise produced at the plate mill, POSCO's reported costs did not reflect the differences in width. Petitioners argue that width is an important physical characteristic in the Department's model match hierarchy and that POSCO failed to cooperate to the best of its ability to provide information requested by the Department.

POSCO claims that, as verified by the Department, the costs associated with width are minor. POSCO states that width was not taken into account in the product definition for plate products. POSCO argues that the Department confirmed that any attempt to superimpose width as a cost allocator raises serious risk that other costs would be distorted in the process.

Department's Position: We agree with POSCO that the cost differences associated with width are minor and that any attempt to adjust for these differences could be distortive. As detailed in the cost verification report,

we determined the minor cost differences associated with width (one of several relevant physical characteristics) and found a way to isolate, measure, and adjust for them. *See Costs Verification Report*, dated November 4, 1999, at 5. However, POSCO's reported costs differ for reasons unrelated solely to physical characteristics—POSCO's costs for different products vary based on which plate mill will produce the product as well as which blast furnace, steel making unit, and concast unit will produce the slab. *See POSCO Cost Verification Report*, dated November 10, 1999. Because each of these has different efficiencies and standard costs, the same product (not to mention products whose only difference is thickness) will have a different cost based on which mill in which it was produced. As a consequence, cost differences are not purely isolated to physical characteristics. Thus, applying an adjustment factor based solely on physical characteristics to the reported costs, which vary for reasons not associated with physical characteristics, may not increase the accuracy of the reported costs. We note that POSCO reported the actual costs it incurred to produce the subject merchandise. For COP purposes, these costs are accurate and reliable. However, for purposes of adjustments for physical differences in merchandise, these costs are somewhat problematic in that POSCO cannot always isolate cost differences purely associated with physical differences (*e.g.*, when identical products are produced at separate facilities, production efficiencies become a factor in the calculation of the cost of the product). In this case, the vast majority of price-to-price comparisons are of identical merchandise. Therefore, any adjustment would have a negligible effect.

Comment 6: *Variable and Total Cost of Manufacture*

Petitioners argue that POSCO misstates the burden of producing complete and accurate data. They argue that the data provided to the Department and petitioners was not readable due to the existence of multiple VCOM values within a single CONNUM. Petitioners state that POSCO's revised table of "cost by CONNUMU," attached to the July 16, 1999 letter, is not an acceptable explanation of the previous inadequate submission. In all cases, most of the sales represented by the CONNUMU had been assigned one VCOM value, while other VCOM was assigned to a much smaller number of sales. In POSCO's revised table, the VCOM value which had previously been assigned to the smaller number of sales for each CONNUMU is now identified as being the actual VCOM value for all sales. Accordingly, petitioners feel that this is not a logical explanation of POSCO's previous submission. In light of these deficiencies in the database, petitioners recommend the Department apply, as partial facts available, the highest calculated margin for any CONNUM to each of these sales implicated by the deficiencies.

POSCO claims that its reported variable and total cost information on the U.S. sales database is correct. POSCO asserts that an inadvertent error in creating files caused different values in variable costs for the same products in a previous submission. POSCO states that the error has been corrected and subsequent databases have reported a single variable cost and a single total cost of each unique CONNUM. POSCO claims that the costs were fully and successfully verified by the Department.

Department's Position

We agree with POSCO. Upon review of the record, we found that the errors noted by petitioner made when POSCO filed its July 12, 1999, response appear to be inadvertent. Subsequently, at the request of the Department, POSCO corrected this error in its post-verification filing on October 27, 1999. The Department has utilized the database filed on October 27, 1999, with the unique variable cost of manufacturing and total cost of manufacturing in its final determination.

Comment 7: Home Market Viability

Respondent claims that the issue regarding home market viability raised by petitioners should be rejected by the Department. Respondent argues that since petitioners did not raise that issue in their case briefs, they have waived the right for consideration of the issue by the Department.

Department's Position

The Department has not considered or substantially addressed this issue in the instant final determination because petitioners allegations were untimely. For a full discussion, *see Particular Market Situation*, section, above.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Korea that were entered, or withdrawn from warehouse, for consumption on or after July 19, 1999 (the date of publication of the Department's preliminary determination) for DSM, and those companies which received the "all others" rate. POSCO's rate continues to be de minimis, as it was in the *Preliminary Determination;* therefore the Department will not suspend liquidation of these entries. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Pohang Iron & Steel Co., Ltd..	0.05 de minimis
Dongkuk Steel Mill Co., Ltd..	2.98
All Others	2.98

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33234 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan

AGENCY: Import Administration, International Trade Administration; Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nithya Nagarajan, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references made are to the Department's regulations codified at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "*Continuation of Suspension of Liquidation*" section of this notice.

Case History

Since the publication of the preliminary determination in this investigation (*Notice of Preliminary Determination of Antidumping Investigation: Certain Cut-To-Length Carbon-Quality Steel Plate from Japan*, 64 FR 41218 (July 29, 1999) ("*Preliminary Determination*"), the following events have occurred:

In September 1999, the Department of Commerce ("the Department") conducted verification of Kawasaki Steel Corporation ("KSC"), the sole participating respondent in the instant investigation. On October 21, 1999, we issued our cost verification report for KSC, and on October 26, 1999, we issued our sales verification report. Public versions of our report of the results of the cost and sales verifications are on file in the Central Records Unit ("CRU") located in room B–099 of the main Department of Commerce building, under the appropriate case number. Petitioners [1] and respondent submitted case briefs on November 5, 1999, and rebuttal briefs on November 10, 1999. On November 12, 1999, the Department held a public hearing concerning this investigation.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

2. Selection of Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997).

Kobe Steel, Ltd. ("Kobe"), Nippon Steel Corporation ("Nippon"), NKK Corporation ("NKK"), and Sumitomo Metal Industries, Ltd. ("Sumitomo") all declined to respond to the Department's antidumping questionnaire. Because these respondents have withheld requested information, we determine that it is appropriate to use facts available, in accordance with section 776(a)(2)(A) and (C) of the Act. We have also determined that because these respondents failed to respond to our questionnaire, they have not cooperated to the best of their abilities. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department has applied a margin rate of 59.12 percent, the highest alleged margin in the petition.

3. Corroboration of Information Used as Facts Available

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (hereinafter, the "SAA") states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See* Initiation of *Antidumping Duty Investigations: Certain Cut-To-*

Length Carbon-Quality Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia, 64 FR 12959 (March 16, 1999) ("*Initiation Notice*").

Moreover, for purposes of the preliminary determination, we corroborated the information in the petition. In this regard, we reexamined the export price and CV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the July 19, 1999, memorandum to the file regarding *Corroboration of the Petition Data*, on file in the CRU). Since the preliminary determination, we received no new information which would call into question the use of petition information as facts available or our corroboration analysis.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by KSC covered by the description in the "*Scope of Investigation*" section, above, and sold in Japan during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling. In accordance with section 771(16)(B) of the Act, these physical characteristics reflect differences in the uses and value of the subject merchandise.

Because KSC had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40450 (July 29, 1998) ("*SSWR*").

Verification

As provided in section 782(i) of the Act, we verified all information determined to be acceptable for use in making our final determination, in accordance with standard verification procedures.

Changes From the Department's Preliminary Determination

Based on our analysis of the comments received, we have made certain changes for the final determination. Where applicable, these changes are discussed in the relevant sections of the party comments below. Specifically, we revised the following cost items to reflect certain adjustments arising from information obtained during verification: (1) KSC's interest expense ratio, and (2) KSC's G&A expense ratio. *See* Memorandum to the File, "Verification of the Cost Responses of Kawasaki Steel Corporation, in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Products from Japan," dated October 21, 1999 ("Cost Verification Report"). In addition, we have made the following changes to items concerning

KSC's home market and U.S. sales: (1) revised KSC's constructed export price calculation to include the operating expenses of its U.S. affiliate, Kawasaki Steel (America) Inc. ("KSCUSA"), (2) changed the application of the arm's-length test of KSC's home market sales from a point-of-delivery basis to a customer-specific basis, (3) granted KSC the CEP offset, (4) used the yen price as the starting price for KSC's export price transactions, (5) included three unreported U.S. sales disclosed at verification in our margin calculations, (6) recalculated Kawasho's home market credit expense to account for inconsistencies found during verification regarding Kawasho's reported dates of payment, (7) adjusted Kawasho International (USA)'s ("KI's") short-term interest rate to account for additional interest expenses found during verification, (8) corrected a clerical error in the programming for the preliminary determination that understated Kawasho's home market short-term interest rate, (9) corrected Kawasho's warehousing expenses to account for a clerical error disclosed during verification, and (10) corrected the gross unit price on two U.S. sales by KI to account for a clerical error disclosed at verification. For further details concerning the changes listed above, *see* Memorandum to the File, "Calculation Memorandum of the Final Determination for the Investigation of Kawasaki Steel Corporation," dated December 13, 1999 ("Final Determination Calculation Memo").

Throughout the investigation, KSC argued that its U.S. affiliate, KSCUSA, is a liaison office that provides certain after-sales services to the customers of KSC's customers. According to KSC, KSCUSA provides legal, financial, and accounting support to KSC's other U.S. subsidiary companies; assists KSC with public relations in the Americas; coordinates and receives U.S. business visits from KSC officials; informs KSC of political, economic, social, and business conditions in the United States; and provides warranty/complaint and technical services to U.S. end-users of KSC steel products, including subject merchandise. *See* KSC's June 23, 1999, supplemental Section A response at A–9 and KSC's July 22, 1999, second supplemental Section A response at 10–15.

KSC states that KSCUSA is not involved in the sale of subject merchandise, but supports sales of KSC's entire line of steel products in North, South, and Central America. With respect to CTL plate sales, KSC states that KSCUSA's role in providing after-sale services involves providing technical services, handling warranty claims, and processing complaints by U.S. end-users. However, KSC states that there were no such warranty claims/complaints on subject CTL plate sales during the POI. *See* KSC's July 22, 1999, second supplemental Section A response at 10–15.

Although KSC argues that there were no warranty claims or complaints filed against CTL plate by U.S. end-users during the POI, this does not diminish the fact that KSCUSA was still operating and incurring costs (e.g., salaries, rent) to maintain the personnel and corporate infrastructure necessary to handle such complaints, in the event any are filed. For this reason, we find that KSCUSA's expenses should be included in the calculation of constructed export price ("CEP"). Since the costs incurred by KSCUSA are not specific to CTL plate, but rather apply to all of KSC's steel products, we consider these expenses to be indirect selling expenses. Because of the limited information on the record concerning KSCUSA's expenses, the most reasonable method for including these costs in KSC's CEP calculation is to calculate a ratio of KSCUSA's operating expenses over KSC's total sales in North, South, and Central America. In our calculations, we multiplied this ratio against KSC's gross unit price for CEP sales, and added the result to U.S. indirect selling expenses.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Date of Sale

Petitioners argue that section 351.401(i) of Department's regulations allows it to use "a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." Petitioners argue that the documents and information obtained at verification support the conclusion that the material terms of sale are set on the order confirmation date and therefore the order confirmation date is the appropriate date of sale for this investigation.

Petitioners observe that when KSC revises an order confirmation, its internal records do not identify the type of revision causing the revised order confirmation to be issued. Petitioners argue that although KSC provided evidence that some changes occurred between the order confirmation and invoice date for a portion of its sales, petitioners state that KSC is unable to identify whether these changes were material or not. Petitioners observe that the Department stated in its verification report that "neither of these methods of analysis reflects the type of revision that occurred or, in the case where multiple revisions occurred for a single order confirmation, the total number of revisions for that order." *See* Memorandum to the File, "Verification of the Sales Responses of Kawasaki Steel Corporation, and its Affiliated Companies, in the antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Products from Japan," dated October 26, 1999, ("Sales Verification Report"), at 29. Petitioners conclude that there is no record evidence of the number of sales in which there were material changes to the terms of sale after order confirmation. Furthermore, petitioners note that although a portion of KSC's sales incurred post-order changes, the majority of KSC's sales had no changes of any kind after order confirmation. Therefore, in the absence of record evidence indicating that the material terms of sale were modified after order confirmation date, the Department must use order confirmation date as the date of sale. Petitioners cite to *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 63 FR 9312, 9315 (February 25, 1999) ("*Russian Hot-Rolled*"), where the Department stated that "there is no evidence on the record which indicates that, when no order amendment was provided, the terms of sale for the merchandise shipped differed from the terms of sale set in the order specification." Petitioners argue that in that case the Department preliminarily determined that it was appropriate to use the "order specification date or order amendment, if applicable, as the date of sale." *Id.* Petitioners conclude that the *Russian Hot-Rolled* case illustrates that the Department will not adopt the invoice date as the date of sale when there is no record evidence to show modifications to the material terms of sale after the order date.

Petitioners also argue that KSC's refusal to report sales based on order confirmation warrants use of adverse facts available. Petitioners note that the Department requested KSC to report all sales on the basis order confirmation date rather than invoice date in its Supplemental Section B Questionnaire. In its response, KSC stated that it "will not provide sales or cost information on an order confirmation date-basis." *See* KSC's June 23, 1990 Section B Supplemental Questionnaire Response, at 7. According to petitioners, this response indicates that KSC has failed

to cooperate by not acting to the best of its ability to comply with a request for information. Consequently, petitioners recommend that the Department use as adverse facts available the highest margin alleged by petitioners or the highest margin calculated for a single CONNUM, whichever is higher.

Lastly, petitioners argue that even if the Department accepts the invoice date as the date of sale, KSC's refusal to provide sales and cost information on an order confirmation basis, as requested in the Department's supplemental questionnaire, constitutes uncooperative behavior. Petitioners note that section 776(a) of the Act states that when "an interested party or any other person—(A) withholds information that has been requested by the [Department] * * * the [Department] shall * * * use the facts otherwise available in reaching the applicable determination under this subtitle." This provision of the statute, petitioners claim, authorizes the Department to use the highest margin alleged in the petition of this investigation, which, according to petitioners, would be an appropriate response to KSC's disregard for the Department's authority to request information.

Respondent argues that, in accordance with its rules and established practice, the Department appropriately used KSC's invoice date as the date of sale in the preliminary determination of this investigation. KSC claims that section 351.401(i) of the Department's regulations establishes a presumption that invoice date be used as the date of sale, a rule which KSC argues the Department has consistently applied in recent antidumping investigations. Specifically, respondent cites *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24334 (May 6, 1999) ("*Hot-Rolled Steel from Japan*"), and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2178 (January 13, 1999), as evidence that the Department reaffirmed its practice of using the invoice date as the proper date of sale when terms of sale can change between order and invoice date.

According to KSC, the initial terms of sale are established with the order confirmation. KSC states that the initial terms of sale can and do change up to the invoice/shipment date. KSC notes that it provided evidence that the terms of sale changed for a significant portion of sales during the POI. KSC observes that the Department verified the accuracy of this information and stated in its verification report that "[t]hroughout the course of this verification, we encountered several revised order confirmations and revised invoices" and that "[w]e found no discrepancies between the documents we examined and the explanation of order confirmation and invoice revisions KSC provided in its questionnaire responses." *See* Sales Verification Report at 30.

KSC states that in two recent investigations on hot-rolled steel products from Japan and stainless steel sheet and strip products from Japan, and one administrative review covering corrosion-resistant steel from Japan, the Department requested, and KSC provided, two complete sales databases for both the home market and U.S. market. See Hot-Rolled Steel from Japan; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30585 (June 8, 1999) ("Stainless Steel Sheet and Strip from Japan"); and *Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 4483 (August 16, 1999). For each proceeding, KSC submitted one database compiled using order confirmation dates and another database using invoice dates. KSC notes that in all of these proceedings, the Department's purpose for requesting the information was to determine the appropriate date of sale. KSC argues that the Department verified the submitted information and determined that invoice date is the appropriate date of sale in the final determinations of each of these three proceedings.

Lastly, KSC argues that the invoice/shipment date is the correct date of sale because KSC and its affiliates participating in this investigation use invoice date as the date of sale in their books and records. Consequently, KSC states that using invoice date as the date of sale is consistent with its internal sources of documentation, makes reporting such information easier, and thus, simplifies the verification process.

Department's Position

We agree with respondent that invoice/shipment date is the correct date of sale for all home market and U.S. sales of subject merchandise for KSC in this investigation.

Under our current practice, as codified in the Department's regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (October 16, 1998) ("*Pipes and Tubes from Thailand*"). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations*, 62 FR 27296 (May 17, 1997) ("*Preamble*"). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, KSC reported invoice/shipment date as the date of sale in both the U.S. and home markets. To ascertain whether KSC accurately reported the date of sale, the Department requested in its May 28, 1999, Section B supplemental questionnaire that KSC report all sales made by KSC pursuant to orders with confirmation dates within the POI. In its June 23, 1999, supplemental response, KSC indicated that there were numerous instances in which terms such as price and quantity changed subsequent to the confirmation of the original orders in the U.S. and home markets. In view of the Department's acceptance of KSC's invoice date as the date of sale in previous cases, as well as the burden and expense for responding to the Department's request, KSC did not resubmit its sales or cost information on an order confirmation date-basis. For purposes of our preliminary determination, we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination*, 64 FR 41218.

At verification, we carefully examined KSC's selling practices. We found that it records sales in its financial records by date of invoice/shipment. For both the home and U.S. markets, we reviewed several sales observations for which the material terms of sale (*i.e.*, price and quantity) changed subsequent to the original order. Based on respondent's representations, and as a result of our examination of the company's selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as

the date of sale because it best reflects the date on which material terms of sale were established for KSC's U.S. and home market sales.

We disagree with the petitioners' claim that order confirmation date is the most appropriate date of sale for KSC's U.S. and home market sales because the majority of KSC's sales required no change in material terms subsequent of the issuance of the order confirmation. The fact that terms often changed subsequent to the initial order confirmation suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that we reviewed, we found this to be true for material terms of sale such as price and quantity.

The Department's decision in *Russian Hot-Rolled* to use the order specification date as the date of sale for Magnitogorsk Iron & Steel Works ("MMK"), a Russian steel producer, was based on the fact that MMK stated that the terms of the sale are set in the order specification. *See Russian Hot-Rolled*, 63 FR 9314 ("MMK also stated that the date of the order specification would most likely be considered by the Department to be the most appropriate date of sale, because the terms of sale are set in the order specification"). Where order specifications were amended, MMK identified the sales containing such revisions and reported the date of the order amendment. Since there was no evidence on the record of that case indicating that, when no order amendment was provided, the terms of the sale for the merchandise shipped differed from the terms of sale set in the order specification, the Department accepted MMK's statement that the terms of the sale are set in the order confirmation, or in the order amendment. Furthermore, we note that in *Russian Hot-Rolled*, there was no discussion regarding the possibility or frequency of changes between the original order confirmation, any revised order confirmations, the invoice, and changes subsequent to the invoice.

The facts of the instant case are distinguishable. In the instant case, pursuant to our findings at verification, the Department determines that there are changes between the order confirmation date (*i.e*, the date of sale proposed by petitioner) and the invoice date (*i.e.*, the date of sale proposed by respondents). This fact distinguishes the factual record in the current case from the Department's decision in the *Russian Hot-Rolled* case. Therefore, in accordance with our regulations and pursuant to our findings at verification, we have determined that invoice date is the appropriate date of sale for KSC's sales, as it most accurately represents the date on which the material terms of sale are established. Because KSC provided verifiable information establishing the proper date of sale, we have not resorted to using facts available, as suggested by petitioners.

Comment 2: Critical Circumstances

Respondent argues that the Department calculated a preliminary dumping margin of 10.78 percent, which is well below the 25 percent threshold used by the Department to impute knowledge of less than fair value sales and injury when determining whether critical circumstances exist. Furthermore, respondent states that its data shows that KSC did not have "massive imports" within the meaning of the statute and regulation because its shipments actually declined from the base period to the comparison period. Consequently, respondent argues, the Department's finding of critical circumstances is not in accordance with law or supported by substantial record evidence. Lastly, respondent states that the time frame used by the Department to determine whether KSC had massive imports was wrong as a matter of law because the Department has no authority to examine a period of time that is disconnected with the date the petition was filed. Respondent argues that the legislative history of the critical circumstances provision indicates that Congress intended that the period of time examined to determine whether massive imports exist be the time following the filing of the petition compared to a prior period of time. Moreover, respondent argues that the press articles relied upon by the Department did not support the factual conclusion that KSC knew about this investigation. Respondent states that those articles contained general comments about the state of the U.S. steel industry, and covered a similar period of time as the other investigations against steel products conducted by the Department. Thus, respondent concludes, the Department's initial affirmative critical circumstances determination was unlawful.

Department's Position

For the reasons discussed below, we no longer find critical circumstances with regard to KSC or the "all others" companies. However, we continue to find critical circumstances for non-responding companies (Kobe, Nippon, NKK, and Sumitomo).

Section 735(a)(3) of the Act provides that if critical circumstances are alleged, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to section 735(a)(3)(A)(ii) of the Act, in determining whether an importer knew or should have known that the exporter was selling CTL plate at less than fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the resultant material injury. *See Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997).

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

1. KSC

With regard to KSC's imports, we find that there is no relevant history of dumping with respect to subject merchandise (discussed in the "all others" section below) and that the calculated margin is below the 25 percent threshold for determining whether the importers knew or should have known that the exporters were dumping the subject merchandise. For these reasons we determine that the first criterion under section 735(a)(3) of the Act has not been met and thus that critical circumstances do not exist for imports of KSC-produced CTL plate from Japan.

2. Kobe, Nippon, NKK, and Sumitomo

With respect to imports of subject merchandise sold by Nippon, NKK, Kobe, and Sumitomo, we have determined the final margins for those companies to be 59.12 percent (based on adverse facts available), which exceeds the 25 percent threshold. Therefore, we determine there is a reasonable basis to believe or suspect that importers knew or should have known that Nippon, NKK, Kobe, and Sumitomo were dumping the subject merchandise. Since the ITC, in this investigation, found a reasonable indication of present material injury to the relevant U.S. industry, the Department further determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of the dumped imports. *ITC Preliminary Determination*, April 1999.

Since there is no verifiable information on the record with respect to Nippon, NKK, Kobe, and Sumitomo's import volumes, we must use the facts available in accordance with section 776(a) of the Act in determining whether there were massive imports of merchandise produced by these companies. With regard to aggregate import statistics, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. Nor do these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for any of these companies. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available, and determine that there were massive imports from Nippon, NKK, Kobe, and Sumitomo over a relatively short period. *See* Critical Circumstances Preliminary Determination Memo, Attachment II. Because both of the necessary criteria have been met, in accordance with section 735(a)(3) of the Act, the Department finds that critical circumstances exist with respect to CTL plate products imported from Nippon, NKK, Kobe, and Sumitomo.

3. "All Others"—It is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey* ("*Rebars from Turkey*"), 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the "all others" rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. *See Stainless Steel Sheet and Strip from Japan*. Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others" rate.

In the preliminary critical circumstances determination of this investigation, we concluded that there is a reasonable basis to believe or suspect that critical circumstances exist for imports plate from Japan. In that preliminary determination, we satisfied section 735(a)(3)(A) of the Act through finding a history of dumping in conjunction with a determination that importers had knowledge of dumping. Specifically, we based our decision that there is a history of dumping on the existence of a dumping finding on carbon steel plate from Japan (43 FR 22937) (May 30, 1978), which was revoked based on changed circumstances on April 17, 1986 (51 FR 13039), and found that importers had knowledge of dumping by relying upon the alleged dumping rates contained in the petition, which were in excess of the 25 percent threshold. For our final critical circumstances determination, however, we find that there is no longer knowledge of dumping with respect to the "all others" category for purposes of satisfying 735(a)(3)(A).

In determining knowledge of dumping, we look to the "all others" rate, which is based on the weighted-average rate of all investigated companies. In this case, such a weighted-average rate must, of necessity, be based on the individual rate of KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's rate, applied to the "all others," is 10.78 percent. This rate is not high enough to impute knowledge of dumping to the "all others" category. Furthermore, with respect to the history of dumping criterion, we conclude that the prior dumping finding on carbon steel plate from Japan does not reflect a relevant history of dumping for purposes of section 735(a)(3)(A). Specifically, the age of a previous dumping finding is taken into consideration in our determination of whether there exists a history of dumping. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Polyester Staple Fiber From the Republic of Korea*, 64 FR 60776, 60778–79 (November 8, 1999) (where the Department stated that "[b]ased on the recent existence of this order, there is sufficient evidence to determine that there is a history of dumping of the subject merchandise and a history of material injury as a result thereof"). Due to the fact that the dumping finding on carbon steel plate from Japan is twenty-one years old and was revoked thirteen years ago, we no longer consider there to be a relevant history of dumping with respect to subject merchandise. Since we determined above that importers did not have knowledge of dumping of subject merchandise, we find that section 733(e)(1)(A) of the Act has not been satisfied.

Because we find that there is no relevant history of dumping and that there is no evidence on the record of this investigation to support a finding that the "all others" companies had knowledge of dumping, the Department finds that critical circumstances do not exist for the "all others" category in this investigation.

Comment 3: Level of Trade

Respondent argues that the Department ignored record evidence and violated its established policies and regulations by grouping all three home market CTL plate sales distribution channels into a single level of trade ("LOT"). According to respondent, its home market is divided into three channels of distribution: (1) Sales to unaffiliated trading companies, (2) sales to unaffiliated end-users, and (3) sales to the affiliated trading company Kawasho Corporation ("Kawasho"). Respondent notes that in its Preliminary Determination, the Department incorrectly grouped the three channels into one home market LOT. According to respondent, there are actually two distinct LOTs in the home market: LOT 1, which consists of direct sales by KSC to unaffiliated trading companies and end-users (channels 1 and 2); and LOT 2, which consists of KSC's sales through its affiliated trading company Kawasho (channel 3). The respondent argues that each LOT involves significantly different selling activities which occur at different stages in the marketing process.

With regard to selling activities, respondent states that in LOT 1, KSC deals directly with its unaffiliated trading company and end-user customers, provides technical advice, negotiates price, manages credit risks, processes orders, enters relevant information into the specification control system, and makes freight and

delivery and/or warehousing arrangements when necessary. In LOT 2, respondent states that Kawasho markets the product to its customers, forecasts demand, negotiates price, manages credit risks, processes orders, enters relevant information into the specification control system, makes freight and delivery arrangements, and maintains direct customer contact. Furthermore, respondent states that although KSC performed some common manufacturer-related selling activities (*e.g.*, confirming the order once production was agreed, warranty and rebate administration, and product brochures) for all three channels of distribution, this minor overlap of services does not control the analysis.

In regard to marketing stages, respondent states that KSC's sales directly to unaffiliated trading companies and end-users (channels 1 and 2) involve one stage in the marketing process (KSC to customer), while KSC's sales through Kawasho involve a different stage in the marketing process (KSC to affiliated trading company to customer). Respondent argues that the reported sales by Kawasho, just like sales by any other trading company, are a full level of distribution removed from KSC's direct sales. Respondent concludes that sales through LOT 1 (channels 1 and 2) are at a less-advanced stage in the marketing process than are Kawasho's sales.

Respondent also argues that, in the recent *Hot-Rolled Steel from Japan* investigation, the Department found that KSC had two home market LOTs: LOT 1, which contained sales directly to unaffiliated trading companies and end-users; and LOT 2, which contained downstream sales through Kawasho.

Petitioners argue that the Department should reject KSC's claim that there exist two LOTs in the home market. Petitioners argue that the record indicates that KSC performed virtually the same selling functions for its direct channel one sales to unaffiliated trading companies as it does for its channel three sales to unaffiliated end-users through Kawasho. According to petitioners, KSC's supplemental Section A response identified eleven selling functions performed in its channel three home market sales. Petitioners contend that the record indicates that KSC provided eight of these eleven selling functions for its channel one sales. Moreover, petitioners argue that of the eight selling functions KSC provides for its channel one sales, it provides seven of these functions in channel three sales. Petitioners state that the only difference is sales processing, which is performed by KSC in channel one sales and Kawasho in channel three sales. Petitioners also argue that KSC provides nearly the same level of services for both channels. According to petitioners, KSC provides exactly the same level of service for technical advice, warranty, warehousing, rebate administration, advertising, and freight and delivery services in its channel one and channel three sales. Petitioners state that the only difference between the two channels is in performing the specification control system, where KSC's role is "high" for channel one sales, but "low" for channel three sales.

Lastly, petitioners argue that when comparing the sales activities performed for a company's direct sales with those performed for its downstream sales, the Department looks to the combined sales activities of the company and its affiliated reseller. Therefore, petitioners contend that channel three sales should be placed in a separate LOT from channel one and two sales only if the sales services performed for those channel three customers were substantially different, regardless of whether it was KSC or Kawasho which performed the selling functions. Petitioners conclude that there is no evidence on the record of this proceeding to make such a determination.

Department's Position

We do not agree that KSC's home market sales are made at two distinct LOTs. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value ("NV") based on sales in the comparison market at the same LOT as the export price ("EP") or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general, and administrative ("SG&A") expenses and profit.

To determine the LOT of a company's sales (whether in the home market or in the U.S. market), we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) ("*CTL Plate from South Africa*").

KSC sells subject merchandise in the home market through three channels of distribution: channel one involves sales by KSC to unaffiliated trading companies, channel two involves sales by KSC to unaffiliated end-users, and channel three involves sales by KSC's affiliate, Kawasho, to unaffiliated customers. For the preliminary determination, the Department found that KSC's sales to these three types of home market customers involved essentially the same level of selling functions. After a careful analysis of the information on the record, we continue to find that there was not a substantial difference in the selling functions performed by KSC in making sales to its unaffiliated customers and the combined selling functions performed by KSC and its affiliated company, Kawasho, for Kawasho's sales to unaffiliated customers. Therefore, we continue to find that there is one LOT in the home market.

In its discussion of LOT, KSC collapsed home market channels of distribution one and two into a single channel of distribution because its sales to unaffiliated customers, regardless of whether the customer is a trading company or end-user, involve the same selling functions. According to KSC, there are substantial differences in the selling activities performed by KSC for sales through this combined channel of distribution, hereafter referred to as channel 1, and its sales through channel 3 (*i.e.*, sales by Kawasho to unaffiliated customers).

In the preliminary determination, we conducted our analysis of LOT by comparing the selling functions performed for sales in the home market to the first unaffiliated customer. According to Exhibit 7 of its June 23, 1999, supplemental Section A response, KSC indicated that it provides the following selling activities for its sales to unaffiliated customers: technical advice, warranty services, advertising, freight and delivery arrangements, warehousing, inputting specification control system, sales processing, and rebate administration. KSC also indicated that the selling functions performed by itself and Kawasho, for Kawasho's sales to unaffiliated customers, consist of the following activities: technical advice, warranty services, advertising, marketing, freight and delivery arrangements, warehousing, inputting specification control system, sales processing, rebate administration, and demand forecasting. Comparing the selling functions performed for the first unaffiliated customer in channel one and channel three sales indicates that marketing services and demand forecasting are the only two selling activities performed for channel three sales that are not performed in channel one sales. Thus,

eight of the ten [2] selling functions are performed in both channel one and channel three sales. Therefore, the information on the record indicates that the types of selling functions and activities performed by KSC on sales to unaffiliated customers as compared to the types of selling functions and activities performed by both KSC and Kawasho on sales to unaffiliated customers are not substantially different. KSC's argument that there are differences between these selling functions is not supported by the evidence on the record.

With regard to the degree of selling functions provided in each channel, we note that seven of the eight types of selling functions provided in both channels are provided in the same amount for both channel one and channel three sales. *See* KSC's June 23, 1999, supplemental Section A response at Exhibit 7. The only selling function provided for in different amounts is freight and delivery, which the respondent provides in a "medium" amount for channel one sales and a "high" amount for channel three sales. Lastly, we note that of the two selling functions provided for channel three sales, but not in channel one sales (*i.e.*, market services and demand forecasting), are provided for in a "high" level. Therefore, although there is a difference in the amount of market services, demand forecasting, and freight and delivery activities between channel one and channel there sales, we do not consider these differences to be substantial enough as to warrant finding two different LOTs on this basis alone.

The substantial similarity in types of selling activities and level at which they are performed belies KSC's argument that channel one and channel three sales are made at different marketing stages. Because the customer types are the same, the types of selling functions are substantially the same, and there are not substantial differences in the level of functions performed, we continue to find that there is one LOT in the home market.

Comment 4: CEP Offset

Respondent argues that it is statutorily entitled to a CEP offset because its home market sales include more sales functions and selling activities (*i.e.*, are at a more advanced LOT) than do its U.S. market CEP sales. Respondent states that a CEP offset adjustment is required where NV is established at a more advanced LOT than the LOT of CEP sales and a LOT adjustment cannot be determined. Respondent notes that in the recent investigation of *Hot-Rolled Steel from Japan*, the Department granted KSC a CEP offset, concluding that the CEP LOT was different and less advanced than KSC's two home market LOTs. *See Hot-Rolled Steel from Japan*, 64 FR at 24340–24341. Since the same factual scenario exists in the instant case, respondent argues that the Department should be consistent in its administration of the antidumping statute and find the same result here.

Respondent argues that the Department's characterization of selling services performed by Kawasaki and/or Kawasho for CEP sales is inconsistent with KSC's responses and fails to account for role in marketing and selling for CEP sales provided by KI. According to respondent, KSC performs some common manufacturer-related services in support of all steel sales in the home market and U.S. market, including technical advice, warranty service, and product brochures. According to respondent, these are the bulk of the services offered by KSC and Kawasho to CEP customers. Respondent contends that neither KSC nor Kawasho forecasts demand, provides marketing services, warehouses, processes the final sale, or maintains regular customer contact in CEP sales. Instead, respondent states that KI is responsible for these services in CEP sales.

Respondent claims that the record demonstrates that KSC's home market LOTs were at a more advanced stage of distribution and more remote from the factory than the CEP LOT. Respondent explains that the CEP LOT involves three marketing stages: (1) KSC sells to Kawasho, (2) Kawasho sells to KI, and (3) KI sells to unaffiliated end-users and distributors. Since KI is the company that sells the merchandise to the first unaffiliated customer in the United States, respondent states that the bulk of sales functions for CEP sales are performed by KI. Since the record does not provide an appropriate basis for quantifying a LOT adjustment on comparison market sales, respondent argues that the Department should grant KSC a CEP offset.

Petitioners argue that respondent has failed to establish that its home market sales are made at a more remote LOT involving more substantial selling functions than its CEP sales. According to petitioners, the combined selling functions of KSC/Kawasho for the CEP sales are very similar to the selling functions performed for KSC's home market sales. Petitioners contend that there are only three selling functions, out of eleven functions, which are performed on the home market sales at a higher level than they are performed for the CEP sales. Specifically, petitioners note that KSC performs the following services for its home market sales but not for CEP sales: warehousing, sales processing, and rebate administration. According to petitioners, these services are not substantial enough to warrant a finding that the home market sales were made at a more remote LOT. Moreover, petitioners note that KSC/Kawasho performed a slightly higher level of services for its CEP sales than for its home market sales in another three categories (*i.e.*, marketing service, freight and delivery arrangements, and demand forecasting). Petitioners conclude that because the home market sales did not involve substantially greater selling functions than the CEP sales, and were therefore not at a more remove LOT, these sales should be compared without a CEP offset.

Department's Position

We agree with respondent that it should be granted a CEP offset. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See CTL Plate from South Africa*, 62 FR at 61731.

[2] KSC actually reports eleven home market selling functions. Since KSC reported that neither it nor its affiliates provide inventory maintenance for sales through any channel of distribution, in either the home or U.S. markets, we have disregarded this selling function from our analysis.

In the preliminary determination, the Department denied a CEP offset adjustment to the NV of KSC's sales that were compared to CEP sales in the United States, because the Department preliminarily found that all of KSC's home market sales were made at the same LOT as the LOT of KSC's CEP sales in the United States. Upon further analysis of the record evidence, we now determine that the selling functions performed by KSC and Kawasho in Japan in connection with the CEP sales through KI, the U.S. affiliate, are less and different than the selling functions provided by KSC/Kawasho for home market sales to unaffiliated customers. Specifically, we note that in combination, KSC and Kawasho provide a high level of marketing services, warehousing, sales processing, rebate administration, and demand forecasting in the home market to unaffiliated customers, but did not provide the same level of services on its CEP sales to the United States. Instead, these services are provided by KI in the United States (*i.e.*, marketing services, sales processing, demand forecasting) or are not offered for CEP sales (*i.e.*, warehousing and rebates). *See* KSC's April 27, 1999, Section A response at Exhibit 13 and June 23, 1999, supplemental Section A response at Exhibit 7. We note that the Department verified this information and is therefore satisfied that it has substantial, reliable information to reach a decision as to the levels of trade at which KSC and its affiliates sell subject merchandise. *See* Sales Verification Report. Thus, after further examination of the record, the Department is now granting a CEP offset because the facts on the record indicate that KSC's CEP LOT is different from and less advanced than KSC's home market levels of trade and that the data on the record do not permit the Department to make a LOT adjustment based on the effect of the LOT difference on price comparability.

Comment 5: Downstream Sales to Affiliated Parties

Petitioners note that KSC sold through Kawasho subject merchandise to 26 affiliated resellers/processors in the home market and that such sales constitute a significant portion of the home market sales. Petitioners observe that although the Department's questionnaire required KSC to report the downstream sales, KSC replied that it is unable to report such sales for two reasons: (1) The affiliates are unable to "systematically distinguish" CTL plate produced by KSC from that produced by other manufacturers, and (2) even if they could identify such merchandise, the affiliates' sales records do not contain the information concerning product characteristics that is necessary to construct the CONNUM. Petitioners note that KSC claimed that it can only determine the appropriate CONNUM based on the complete order information stored at KSC, which is obtained through KSC's order confirmation number.

Petitioners argue that during verification of one such affiliated processor, the Department learned that KSC's claim that the affiliated resellers/processors could not "systematically distinguish" subject merchandise produced by KSC from that produced by other manufacturers is incorrect. According to petitioners, verification showed that the processor examined could use its internal, computerized documentation to electronically link sales invoices to KSC plate identification numbers. Thus, petitioners conclude that the affiliate can identify KSC as the manufacturer for each sale using the KSC plate identification number.

Moreover, petitioners argue that KSC's claim that the affiliated resellers/processors cannot report complete product characteristics necessary for constructing the CONNUM does not excuse KSC's failure to report the downstream sales. Petitioners note that verification revealed that the processor examined maintains records of four of the product characteristics used in constructing the CONNUM. According to petitioners, even if only partial information on the product characteristics was available from the affiliated resellers/processors, KSC should have complied with the Department's questionnaire by reporting its downstream sales to the fullest extent possible. In fact, petitioners claim that it is the Department's practice to use a modified matching program where there are missing product characteristics in the reported database. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 FR 13815, 13830–31 (March 28, 1996) ("*Plate from Canada*").

Furthermore, petitioners argue that since the processor examined at verification electronically records the KSC plate identification number, KSC could have reported all product characteristics used in creating the CONNUM by linking these plate identification numbers to its own computerized production or sales records. Even if linking its own sales records to plate identification numbers supplied by the affiliates was not possible, petitioners argue that KSC could still have reported the complete product characteristics of the merchandise sold to the affiliated resellers/processors by examining the general characteristics of the merchandise sold to each affiliate. Specifically, petitioners note that the record indicates that KSC sold merchandise with a limited number of product characteristics to the processor examined at verification. Petitioners argue that since this processor maintains records with respect to four of the product characteristics, KSC could have deduced the remaining product characteristics from its general knowledge of the characteristics of the merchandise it sold to the processor. Therefore, petitioners conclude that KSC could have combined the characteristics supplied by the affiliate with the characteristics it can determine through its knowledge of the merchandise sold to the affiliate, and constructed the full CONNUM. Petitioners contend that all of the product characteristics necessary to comprise the CONNUM were available to KSC and could have been reported.

Moreover, petitioners claim that, contrary to KSC's statements, the verification report indicates that the processor examined can match sales invoices to the KSC order confirmation, which would allow KSC to construct a CONNUM for sales through this company. According to petitioners, the verification report indicates that the processor examined can electronically link its sales invoices to its production instruction slips, which contain the plate identification numbers. Petitioners contend that this allows the processor to identify all sales of plate produced by KSC. The petitioners assert that while the processor cannot electronically link its sales invoices to the KSC order confirmation number, it can manually match the plate identification number to the mill certificate, which lists the KSC order confirmation number. Therefore, petitioners argue, the processor can, for purposes of reporting downstream sales, match its sales invoices to the KSC order confirmation number through a combined electronic and manual process. Petitioners argue that the manual portion of this process is not unreasonably burdensome given the ample time allowed for response.

Petitioners conclude that since KSC incorrectly claimed that the affiliated resellers/processors could not identify KSC as the manufacturer of its purchased plate and did not report downstream sales to the best of its ability, the Department should apply adverse facts available for the sales to the affiliated resellers/processors that do not pass the arm's-length test.

Petitioners argue that section 776(a) of the Act directs the Department to use "facts otherwise available" because KSC failed to (1) provide "necessary information" for the calculation of NV, (2) KSC and its affiliated resellers "withheld information that has been requested", and (3) KSC "failed to cooperate to the best of its ability to comply" with the Department's request for data on sales of foreign like product made through affiliated resellers.

As adverse facts available, petitioners recommend that the Department treat the sales to the affiliates that fail the arm's-length test as having passed this test. Then, petitioners continue, for the U.S. sales that match to those upstream sales which had previously failed the arm's length test, the Department should apply as adverse facts available the highest calculated margin for any KSC CONNUM.

Respondent argues that the Department correctly used its upstream sales to the affiliated resellers/processors in place of downstream sales by those affiliated companies in the preliminary determination. Respondent states that it cannot report downstream sales to the first unaffiliated customer through the affiliated resellers/processors in the home market because the sales records of those affiliates do not permit systematic linkage of final sales data with relevant product characteristics. Without such product characteristics, respondent states that it cannot create a reportable CONNUM for these sales. To construct the CONNUM, respondent states that it must link its order confirmation number to the sales data of the affiliated resellers/processors. According to respondent, allowing KSC to report upstream sales in place of unreportable downstream sales is consistent with the Department's regulations and practice. As evidence, respondent cites to *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 63 FR 33320, 33341 (June 18, 1998), where the Department allowed a respondent to report upstream sales to affiliates where they were unable to report downstream sales because of the affiliates' unsophisticated computer systems.

Respondent states that petitioners make three arguments in their effort to demonstrate that KSC should have reported the downstream sales from the affiliated resellers/processors. First, respondent states that petitioners maintain that it was possible for all affiliated resellers/processors to report downstream sales because one such affiliate could manually identify the manufacturer and link its downstream sales to the required product characteristics. The respondent observes that the verification exhibits indicate that while the production instruction slips record the plate identification number, it is hand-written and not entered into the system like other information in the documents. Therefore, respondent argues that the affiliated processor would have to manually examine its production instruction slips to identify KSC plate identification numbers and then manually link the production instruction slips to the mill certificate to obtain the KSC order confirmation number. According to respondent, this task is not possible for the processor examined, nor the other 25 affiliated resellers/processors, given the volume of sales involved and the tight time frame of this investigation.

Respondent states that the second argument made by petitioners is that KSC could have reported all product characteristics by having the affiliated resellers/processors report the limited product characteristics available in their computerized records and then having KSC provide the remaining characteristics either through linking its upstream sales to the affiliate (via the plate identification number) or through its general knowledge of the merchandise sold to the affiliate. According to respondent, this argument is incorrect and largely grounded on petitioners' hindsight analysis of the upstream sales to the examined processor on the present home market sales file. Respondent states that the processor examined can derive a limited database of sales containing plate specification, width, thickness, quantity, and price from its computerized sales/production records. However, respondent argues that the processor could only manually identify the original manufacturer of the CTL plate from each (physical) production instruction slip because the manufacturer-specific product identification number is physically hand-written, rather than electronically entered, on the instruction slip. Thus, respondent concludes that the affiliated processor is not able to systematically identify the plate manufacturer in the sales and production records.

Furthermore, respondent notes that petitioners suggest that KSC has the capacity to report the other product characteristics such as paint, patterns in relief, and descaling because products with these characteristics were not sold to the examined processor during the POI. According to respondent, this argument can only be made in hindsight and with the benefit of an already completed home market sales file. Respondent states that this analysis does not use the examined processor's, or the other affiliated resellers/processors', computerized sales records and begs the question of how such information would be reported without linking to KSC's order confirmation number. Respondent argues that petitioners are suggesting a multi-step process whereby KSC and Kawasho provide data that may or may not be relevant that the affiliate must match by a process of manual examination, all within the time frame of responding to the Department's questionnaires. Respondent states that given the practical limitations of reporting these sales within the statutory and regulatory schedules in place and the affiliates' inability to identify sales of subject merchandise except through a process of sale-by-sale manual examination, the Department must conclude that the only method for the affiliated resellers/processors to report accurate CONNUM information is to link back to Kawasaki's order confirmation number.

Lastly, respondent states that petitioners put forward a third argument that KSC should report incomplete CONNUMs based upon the limited product characteristic information recorded by the affiliated resellers/processors. Respondent states that petitioners would then have the Department plug the missing product characteristic data and use the downstream sales information for purposes of its margin calculation. According to respondent, the case cited by petitioners, *Plate from Canada*, as evidence supporting their argument is factually dissimilar to the instant investigation. Respondent argues that in *Plate from Canada*, a respondent was unable to identify product characteristics for "a very small portion" of secondary and excess prime merchandise U.S. market sales, and that the Department accepted the reporting of only "relevant" physical characteristics in "this limited circumstance." In the instant investigation, respondent concludes, the downstream sales by affiliated resellers/processors (1) equal much more than "a very small portion" of home market sales and (2) would be missing product characteristics that cannot be dismissed as irrelevant.

Department's Position

We disagree with petitioners that KSC is able to report the downstream sales by the 26 affiliated resellers/processors. KSC is directly affiliated with one

reseller/processor and is affiliated through Kawasho to an additional 25 resellers/processors. Jointly, the downsteam sales from these resellers/processors constitute a substantial portion of home market sales. In its questionnaire responses, KSC stated that these affiliates cannot report their downstream sales for two basic reasons: (1) the affiliates are unable to "systematically distinguish" CTL plate produced by KSC from that produced by other manufacturers, and (2) even if they could identify such merchandise, the affiliates' sales records do not contain the information concerning product characteristics that is necessary to construct the CONNUM.

During verification, we selected one of Kawasho's affiliated resellers/processors, referred to hereafter as Company X, to examine the feasibility of this affiliate reporting its downstream sales, in order to determine the veracity of KSC's representations. Having verified Company X's records and internal tracking systems, we agree with KSC that Company X is unable to use its computerized records to systematically link its sales invoices to (1) plate produced by KSC and (2) the KSC order confirmation number. During verification we found that Company X can electronically link its sales invoices to the relevant production instruction slip. This slip contains the hand-written, rather than electronically entered, plate identification number. Thus, Company X would have to manually search its production instruction slips in order to identify KSC-produced CTL plate. Furthermore, Company X stated during verification that, in its normal course of business, it manually matches the plate identification number found on the production instruction slip to the appropriate mill certificate, which is mailed to its customer. The mill certificate contains the order confirmation number that is used by KSC to construct the CONNUM. While petitioners are correct in that Company X must have an organized system in which it does this match, that does not diminish the fact that this process is manual and that Company X would have to search its records again for purposes of reporting downstream sales. Therefore, although Company X can combine a computerized and manual search process to identify plate produced by KSC and link it back to the KSC order confirmation number, given the number of sales Company X had during the POI, we find that this process is unreasonably burdensome given the time constraints of an antidumping investigation.

We also disagree with petitioners argument that KSC can link its own sales records to the plate identification numbers supplied by the affiliated resellers/processors, or use its knowledge of the types of products sold to those affiliates, in order to supply any missing product characteristics. This argument assumes that the affiliated resellers/processors can systematically identify both the manufacturer and the plate identification numbers. In the case of Company X, we found that it can electronically link its sales invoices to the relevant production instruction slip. Although the production instruction slip does contain the plate identification number, it is hand-written, rather than electronically entered onto the slip. Thus, Company X can identify KSC produced merchandise and the KSC plate identification number only through a manual search of its production instruction slips. Given the volume of sales at Company X, and the time constraints of an investigation, this manual search would be unreasonably burdensome.

Lastly, we disagree with petitioners argument that KSC should have reported whatever limited information concerning the product characteristics that comprise the CONNUM that is available through its, or the affiliates records. Each product characteristic is a vital and necessary component of the CONNUM used by the Department in order to match United States and home market sales. Reporting a partial CONNUM is of no use in our margin calculations in this investigation. As respondent points out, the case cited by petitioners as evidence supporting its position is factually distinguishable from the instant case. In *Plate from Canada*, the Department used a modified model match methodology for sales in the United States and home market where the respondent was unable to report the full product characteristics. In that case, the Department concluded that it was appropriate to conduct a modified model match on sales of excess prime merchandise for which there were limited product characteristics reported because (1) the Department verified that respondent reported all physical characteristics it could, (2) sales of such merchandise represented a very small portion of its home market and United States sales, and (3) the missing physical characteristics were not important to the respondent's customers or relevant to the way the product was sold. In the instant case, were the Department to require the affiliated resellers/processors to report the characteristics available to them, there is no evidence on the record to determine that the missing characteristics (*e.g.*, whether painted, heat treated, patterned, or descaled) are not important to the respondent's customers or irrelevant to the way the product is sold.

Comment 6: Currency for the Gross Unit Price of EP Sales

Petitioners observe that respondent negotiates its EP sales prices with unaffiliated trading companies in U.S. dollars and then converts this dollar price into a yen price using the exchange rate in effect a certain number of days after shipment. Petitioners note that respondent originally reported the gross unit price for EP sales in yen, but in response to a Departmental request, converted the yen prices into dollars (using the exchange rate in effect a certain number of days after shipment). Furthermore, petitioners note that respondent tracks the yen price, rather than the dollar price, as the price actually paid to KSC by the trading company and is the price KSC tracks through its internal books and records. In addition, petitioners note that the dollar price that appears on KSC's invoice contains the trading company's markup, and is therefore the price to the trading company's customer. However, petitioners observe that the yen price listed on the invoice is the price to KSC's customer, the unaffiliated trading company.

Considering the above facts, petitioners argue that the Department should use the gross unit price in yen for the purposes of its final determination. Petitioners cite the recent final determination in the *Hot-Rolled Steel from Japan* investigation, where the Department faced an identical set of facts for one of the respondents and found the yen price to be the appropriate gross unit price for use in the margin calculation. *See Hot-Rolled Steel from Japan*, 64 FR at 24345. In order to be consistent with *Hot-Rolled from Japan*, and because the yen price is the price that appears on the invoice, is paid to KSC, and is tracked through KSC's internal records, petitioners recommend that the Department use the yen price in its final determination.

Respondent urges the Department to use the dollar price of its EP sales to unaffiliated Japanese trading companies because EP sales are first negotiated and set in dollars. According to respondent, the final invoice contains the dollar price (which includes the trading company markup), the yen price (which does not include the trading company

market), and the exchange rate used by KSC to convert from dollars to yen. Respondent explains that in its supplemental responses, it used the exchange rate listed on the invoice to convert the yen price into a dollar denominated invoice price, exclusive of the trading company markup. Respondent concludes that the Department should use the dollar price of EP sales because dollar-based prices represent the original negotiated price and currency. According to respondent, this is consistent with the Department's supplemental request that the sales be reported in the currency in which they are set.

In its rebuttal brief, respondent notes that the petitioners argue that the Department should be consistent with its recent final determination in *Hot-Rolled Steel from Japan*, where it used the yen-based prices for EP sales. Respondent notes, however, that petitioners have initiated legal action in the Court of International Trade ("CIT"), challenging the Department's use of the same yen-based EP prices in the *Hot-Rolled Steel from Japan* investigation that they are asking the Department to use in the instant case. In the instant case, respondent contends that the Department can simply and most accurately obtain dollar-denominated prices for use in its margin calculation by using KSC's reported dollar-based prices.

Department's Position

We disagree with the respondent that the Department should use the reported gross unit U.S. price in dollars and not the price in yen. Record evidence indicates that KSC negotiates the purchase price in dollars with unaffiliated Japanese trading companies and converts this price into yen using an exchange rate in effect a certain number of days after shipment. KSC records on the invoice the negotiated dollar value (which includes the trading company markup), the yen value (which does not include the trading company markup), and the exchange rate used by KSC to convert the dollar price to yen. The record also indicates that KSC is paid by its customers in yen and tracks the yen price from the invoice through its internal books and records.

The Department verified that the dollar price negotiated between KSC and the Japanese trading companies is converted to yen using the exchange rate in effect a certain number of days after shipment, which is listed on the invoice. This conversion is made pursuant to the terms of sale agreed upon by the parties at the time of the order confirmation. We also verified that KSC receives payment in yen and tracks the yen value from the invoice through its accounting records as part of its normal course of business. Therefore, since KSC (1) records the yen price negotiated between KSC and the unaffiliated trading company on the invoice, (2) receives payment in yen, and (3) the yen value is tracked through KSC's accounting records, we find that the price in yen is the appropriate price to use in our calculations.

In reporting U.S. sales to the Department, KSC originally reported the yen invoice price as the gross unit price for EP sales. Pursuant to the Department's request, KSC revised its U.S. sales listing and converted its yen invoice price into the dollar price originally negotiated between KSC and the unaffiliated trading companies using the exchange rate in effect a certain number of days after invoice/shipment. Since the yen invoice price is the proper starting point for calculating KSC's U.S. price, we converted the dollar price back into yen by applying KSC's reported exchange rate to the dollar price. However, in the normal course of our margin calculations, EP sales are converted from the foreign currency into dollars at an exchange rate determined by the Department to be in effect on the date of sale. Therefore, for purposes of our calculations, we converted the yen invoice price into dollars using the Department's exchange rate in effect on the date of sale.

Comment 7: Kawasho's Date of Payment

Petitioners note that of the five home market Kawasho sales verified by the Department, only two sales did not show a discrepancy between the reported payment date and the actual payment date. Petitioners observe that in response to these discrepancies, the Department examined an additional twenty home market Kawasho sales. Of these twenty, petitioners note that only seven sales reported the correct payment dates. Moreover, petitioners note that, of the 25 total sales examined, only nine contained the correct payment dates. Therefore, petitioners argue that the frequency of errors (*i.e.*, 64 percent) render the data unreliable. Since the "necessary information is not available on the record" with respect to Kawasho's payment dates, petitioners argue that the Department should reject Kawasho's reported payment dates in favor of facts available. In addition, petitioners contend that since Kawasho is in possession of the sales documents that show the correct date of payment, it should have reviewed those documents to ensure that it had correctly reported such information in its original sales response. Petitioners state that because respondent did not act "to the best of its ability" in providing accurate payment dates, the Department should employ an adverse inference. As adverse facts available, petitioners recommend that the Department base the credit expenses for all of Kawasho's home market sales on the shortest payment period for all such sales.

Respondent states that the payment date discrepancies found during verification applied to a group of national defense specification products sold to defense contractors in the home market. Respondent notes that, as demonstrated at verification, Kawasho relied on the payment term stated in the invoice to determine the actual payment dates included in the file because actual payment date information was not accessible by computer and could not be manually obtained given the time constraints of this investigation for Kawasho's large volume of home market sales. Respondent notes that the discrepancies resulted from instances of both early and late payment. Thus, respondent notes that for these sales, Kawasho both over- and under-estimated imputed credit expenses. Furthermore, respondent notes that besides the sales of national defense products, there is no evidence on the verified record that Kawasho's payment dates and credit expenses were systematically underreported. Respondent argues that since Kawasho correctly identified the payment date according to the invoice payment terms in the other verified sales, should the Department accept petitioners' arguments, the application of facts available should be limited to sales of national defense specification products and not categorically applied to all Kawasho sales as petitioners have suggested.

Respondent also argues that Kawasho could not systematically gather and report the actual payment dates of its customers because the payment date information contained in "Collection Summary by Customer" and "Accounts Receivable by Customer" is inaccessible by computer. According to respondent, Kawasho used the terms of payment to compute the payment date since Kawasho's customers almost always pay according to the payment terms.

Respondent states that of the 25 Kawasho home market sales examined, 22 were of sales of unique national defense specification products. Respondents argue that none of these products are sold in the United States and represent a very small percent of the total number of home market

transactions. Respondent concludes that the payment date discrepancies should be viewed in the context that they primarily involved sales of national defense products. Therefore, respondent concludes that any conclusions drawn by the Department with regard to payment dates must be limited to Kawasho's sales of those products.

Department's Position

We agree with petitioners in part. During verification, we examined five home market sales made through Kawasho. Actual payment was received earlier than the reported date of payment for two of the sales, while actual payment was received later than the reported date of payment for a third sale. In response to these inaccuracies, the Department examined the reported date of payment for the twenty home market sales with the highest reported credit expenses. Of these twenty sales, the correct date of payment was reported for seven sales, the date of payment was incorrectly reported for seven sales (actual payment was received earlier than the reported date), and six sales had no reported date of payment. Since we identified the actual date of payment for the six sales with no reported date of payment, we have recalculated the credit expenses for these sales using the actual date of payment and, therefore, did not include these sales in our analysis of the sales with incorrectly reported dates of payment.

Of the remaining 19 sales reviewed, we found that 10 had incorrect dates of payment. We also found that four of the five customers associated with the total 25 sales we examined had at least one inaccurate date of payment. Although these 25 sales do not constitute a random sample of the home market sales made by Kawasho, we did not place any customer or time constraints on their selection. Therefore, we find that the results from these sales have value in representing Kawasho's home market sales. Thus, we find that the date of payment discrepancies found for four out of five customers are indicative of problems regarding date of payment for Kawasho's other customers.

Concerning respondent's argument that the inaccuracies found in the date of payment are limited to national defense specification products, we note that there were date of payment inconsistencies found during verification for sales of non-defense specification products. In fact, respondent states in its rebuttal brief that "(t)he Department found two additional inconsistencies in Kawasho's reporting of payment dates for non-national defense specification products causing credit to be under-reported for one sale and over-reported for the other." *See* KSC's November 10, 1999, submission at 22. Thus, two of the ten sales which had an inaccurate date of payment were found to involve non-defensive specification products. These two sales indicate that the problem regarding the reported date of payment is not limited to national defense products. Moreover, even if we were to agree with respondent and limit our conclusions concerning this issue to only national defense specification products, we note that there is no evidence on the record identifying all of the specifications used for national defense products. As we are unable to rely upon the reported dates of payment to calculate home market credit expenses, we determine it is appropriate to resort to the use of facts available, pursuant to section 776(a)(2)(D) of the Act.

We disagree with petitioners that we should make an adverse inference in applying facts available. We verified that Kawasho is unable to systematically determine the actual date of payment. As verification Exhibit K–17 indicates, Kawasho officials had to use their accounts receivable by customer journal, collection summary by customer journal, outstanding collection details journal, and collection schedule journal in order to demonstrate the actual date of payment for the sales in question. Therefore, we find that Kawasho's use of the terms of payment to compute the payment date reflected a reasonable attempt to comply with the Department's request for information given the very large volume of Kawasho's home market sales and the time constraints of this investigation.

Therefore, in order to correct for these inaccuracies, we are using the information obtained during verification to adjust the date of payment reported for Kawasho's home market sales. Specifically, we calculated the difference between the actual date of payment and the reported date of payment for the 10 sales with incorrectly reported dates. We then summed the number of days difference for each of the 10 sales, including the sales for which the actual date of payment was earlier than the reported date of payment and the one sale for which the actual payment was after the reported date of payment. We divided this sum by the total number of sales examined with reported dates of payment (*i.e.*, 19 sales) to calculate the average number of days difference between actual and reported payment dates. Lastly, we subtracted this number from the reported date of payment for all of Kawasho's home market sales.

Comment 8: The Arm's-Length Test

Respondent argues that the Department does not have the authority to exclude sales made to affiliates for consumption from its margin analysis, and by doing so, has violated the antidumping statute and the WTO Antidumping Agreement. Respondent states that an examination of relevant statutory language of the Act reveals that Congress gave the Department no authority to disregard home market sales to affiliates for consumption. According to respondent, this lack of authority is apparent by noting that Congress gave the Department the authority to exclude home market sales to affiliates in only two provisions of the Act: (1) Section 773(a)(5) provides for the exclusion of sales to affiliates who sell to downstream purchasers in favor of using the downstream sales, and (2) section 773(b)(1) allows for the exclusion of certain sales from the calculation of NV that are made at less than the cost of production. In addition, respondent argues that two other statutory provisions, which define export price and constructed export price, also make explicit reference to affiliation. Respondent concludes from these passages that Congress selectively and deliberately accorded the Department authority to exclude sales to affiliated parties and knew how to provide guidance and instruction to the Department in this area. Respondent argues that there is no evidence in the statute that Congress intended the Department's authority to extend to home market sales to affiliates for consumption. By applying an arm's-length test to exclude sales for consumption, the Department has acted beyond Congresses' delegation of authority in this matter.

Further, respondent claims that the exclusion of non-matching sales violates the requirement that a "fair comparison" be made between sales in the home and U.S. markets. Respondent observes that the WTO Antidumping Agreement provides that a fair comparison of NV and export price requires the Department to include all sales absent a demonstration that their inclusion would affect price comparability. Respondent argues that the Department's arm's-length test, as applied, rejects any demonstrations or evidentiary standard in favor of an inflexible rule, which violates the due process protections of the Fifth Amendment to the Constitution, since the Department's rule makes the exclusion without providing any

opportunity to present rebuttable evidence. However, respondent notes that the record of the case demonstrates that not all sales to affiliates are made at less than arm's-length because the Department's preliminary analysis indicates that many such sales passed the arm's-length test. Thus, respondent states that the Department's presumption about these sales is not universally or necessarily true. Respondent concludes that absent positive evidence showing sales to affiliated parties are not at arm's-length, the Department has no basis for not including them in its calculation of NV.

Lastly, respondent argues that the Department should apply its arm's-length test on a customer-specific basis, and not on a point-of-delivery basis as it did in the preliminary determination.

Petitioner argues that the Department has the authority to exclude from NV certain sales made to affiliated parties for consumption because they were made on a non-arm's-length basis and were outside the ordinary course of trade. Petitioners claim that the fact that merchandise was sold to an affiliated party for consumption rather than resale does not indicate that the sale was made at arm's-length or was otherwise made in the ordinary course of trade. Furthermore, petitioners note that the CIT has on numerous occasions upheld the Department's application of the arm's length test to home market sales. Petitioners state that the CIT ruling in *Usinor Sacilor* v. *United States*, 872 F. Suppl 1000, 1004 (CIT 1994), which upheld the application of the arm's-length test to home market sales to affiliated companies, is dispositive of this issue.

Petitioners argue that section 773(a)(1)(B) of the Act gives the Department the discretion to use the prices of sale made through affiliated parties in determining NV and permits, but does not require, the Department to base NV on sales to affiliated parties in the home market. Moreover, petitioners contend that the SAA directs the Department to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating NV. *See* SAA at 827. Petitioners argue that section 773(a)(5) of the Act, contrary to respondent's interpretation, is not a grant of authority to exclude sales of affiliated resellers, but is instead a grant of discretion to include such sales. Petitioners contend that there is nothing in the statute which in any way limits the Department's authority to exclude sales to affiliates based on the fact that they consume the merchandise. Moreover, petitioners claim that sales to affiliates for consumption can be just as unrepresentative of normal selling practices as sales to affiliates for resale. Petitioners assert that the critical question is whether there is any evidence to lead the Department to conclude that such sales were made on an arm's-length basis.

Petitioners also argue that it has been the Department's longstanding practice to exclude sales to affiliated parties "where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, (and the Department) is unable to determine that these sales were made at arm's-length." *See Certain Cold-Rolled Carbon-Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Moreover, section 351.403(c) of the Department's regulations permits the use of sales to affiliates "only if satisfied that the price (to the affiliated party) is comparable." Petitioners argue that it is the burden of the respondent to prove that sales to related parties are at arm's-length prices and that the Court of Appeals on the Federal Circuit ("CAFC"), in *NEC Home Electronics., Ltd.* v. *United States*, 54 F.3d 736 (Fed. Cir. 1995) at 744, rejected the argument that it is somehow the Department's burden to prove that a sale to an affiliated party was not made at arm's length. Therefore, petitioner concludes that absent any evidence that KSC's sales made to affiliated parties for which there are no sales of identical merchandise to unaffiliated parities were made at arm's-length, the Department should continue to determine that such sales were not made on an arm's-length basis and are outside the ordinary course of trade.

Department's Position:

We disagree with KSC. Section 773(a)(5) of the Act provides that sales of the foreign like product between affiliated parties "may be used in determining NV." Thus, the statute provides the Department with discretion in determining whether to include sales between affiliates in the calculation of NV. The SAA, however, limits this discretion and provides that "Commerce will continue to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating normal value." SAA at 827, citing section 773(a)(5) of the Act. Moreover, the Department's regulations state that NV may be calculated based upon sales between affiliated parties "only if * * * the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." *See* 19 CFR 351.403(c).

As the CAFC has noted, '"[c]ommon sense, of course, would indicate that strictly by themselves sales to a related purchaser would be a questionable guarantee of a fair home market price.'" *NEC Home Electronics* v. *United States*, 54 F.3d 736, 739 (Fed. Cir. 1995), *quoting Connors Steel Co.* v. *United States*, 527 F. Supp. 350, 354 (CIT 1981). "There is a perceived danger that a foreign manufacturer will sell to related companies in the home market at artificially low prices, thereby camouflaging true [normal value] and achieving a lower antidumping duty margin." *NEC Home Electronics*, 54 F.3d at 739, *citing Ansaldo Componenti, S.p.A.* v. *United States*, 628 F. Supp. 198, 204 (CIT 1986) ("Related party home-market sales tend to be lower in price because related companies generally decrease prices to each other to the advantage of the principal entity").

In order to determine whether sales to affiliated parties should be included in the NV calculation, the Department has consistently required respondents to demonstrate that the merchandise is sold to affiliates at arm's-length prices. In this regard, the Department treats prices to an affiliated purchaser as "arm's-length" prices if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers. *See* Preamble to Antidumping Regulations, 62 FR 27295, 27355 (May 19, 1997); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 61249, 61257 (November 10, 1999) ("*Cold-Rolled Steel from Brazil*"). As petitioners correctly note, this test has been affirmed by the courts. *See Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1094 (CIT 1994). We note that this decision does not distinguish between merchandise sold for consumption or resale in affirming the application of the arm's-length test. Therefore, we reject KSC's argument that it is unlawful to exclude home market sales to affiliated purchasers where those sales are for consumption.

The Department's exclusion of KSC's home-market sales to affiliated parties that have not been demonstrated to be at arm's-length prices is consistent with the above-described law and practice. Contrary to KSC's arguments, these exclusions do not reflect the application of an irrebutable presumption. Instead, the arm's-length test provides respondents with an opportunity to demonstrate that including home market sales to affiliates in the calculation of NV is appropriate

pursuant to section 773(a)(5) of the Act. Stated differently, a respondent which demonstrates that prices are at arm's length rebuts the presumption that "a foreign manufacturer will sell to related companies in the home market at artificially low prices * * *." *See NEC Home Electronics*, 54 F.3d at 739. Moreover, the CAFC in *NEC Home Electronics* affirmed the CIT's decision which confirmed that the burden is on respondents to come forward with evidence demonstrating that sales to affiliated parties are at arm's-length prices. *Id.* at 744. *See* also *Cold-Rolled Steel from Brazil*, 64 FR 61257 (excluding sales to affiliates where no price ratio could be constructed because identical merchandise was not sold to unaffiliated customers).

In this case, KSC did not offer any evidence that such sales were made at arm's-length prices. While KSC is correct to note that the arm's-length test could not be applied to sales for which no identical merchandise is sold to unaffiliated parties, KSC did not offer any alternative means of demonstrating the arm's-length nature of such sales. Indeed, in the preamble to the Department's antidumping regulations, the Department indicated that, in addition to the arm's-length test, "there may be other methods available" of determining the arm's-length nature of sales to affiliated parties. However, without any evidence to the contrary, we must continue to conclude that, pursuant to section 773(a)(5) of the Act and 19 CFR 351.403(b), respondent has not demonstrated that sales to its affiliates were at arm's-length prices. Consequently we have continued to exclude such sales for purposes of calculating NV. As the Department has excluded such sales in accordance with the antidumping statute, there has been no violation of KSC's due process rights, as argued by KSC.

We also disagree with KSC's argument that the exclusion of such sales from NV violates the United States' obligations under the WTO Antidumping Agreement. As the CAFC in *Federal Mogul Corp.* v. *United States*, 63 F.3d 1572 (Fed. Cir. 1995), explained: "GATT agreements are international obligations, and absent express Congressional language to the contrary, statutes should not be interpreted to conflict with international obligations." *Federal Mogul*, 63 F.3d at 1581. Indeed, the United States Supreme Court elaborated on this canon of construction. "It has also been observed that an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains * * *." *Murray* v. *Schooner Charming Betsy*, 6 U.S. (2 Cranch.) 64, 118 (1804). *See also Fundicao Tupy S.A.* v. *United States*, 652 F. Supp. 1538, 1543 (CIT 1987) ("An interpretation and application of the statute which would conflict with the GATT Codes would clearly violate the intent of Congress."); *Footwear Dist. and Retailers of America* v. *United States*, 852 F. Supp. 1078, 1092–93 (CIT 1994), *quoting* Restatement (Third) of the Foreign Relations Law of the United States, at 115, comment a, p. 64 (1987) ("Congress does not intend to repudiate an international obligation of the United States * * * Therefore, when an act of Congress and an international agreement * * * relate to the same subject, the courts, regulatory agencies, and the Executive Branch will endeavor to construe them so as to give effect to both."). Rather, the statutory provisions discussed above implement the United States' obligations under the WTO Antidumping Agreement, including Article 2.4 cited by KSC, with respect to the calculation of NV. Because KSC's home-market sales to affiliated parties not demonstrated to be made at arm's-length prices affect price comparability, the statutory and regulatory scheme, as applied in this case, are consistent with Article 2.4 of the Antidumping Agreement. Thus, the United States has fully implemented its WTO obligations with respect to the calculation of NV in cases where home market sales to affiliated parties are not demonstrated to be made at arm's-length prices.

With respect to KSC's argument that the Department should apply its arm's-length test on a customer-specific basis rather than a point of delivery basis, we agree with respondent and have changed our methodology accordingly.

Comment 9: Kawasho's Warehouse Expenses

Petitioners argue that the Department should reject Kawasho's reported warehousing expenses because Kawasho's allocation methodology causes inaccuracies and distortions in these reported costs. Petitioners note that KSC, in its Section B response, stated that Kawasho incurs warehousing expenses for certain home market sales, but not for all such sales. Petitioners observe that KSC stated that Kawasho is unable to report transaction specific warehousing costs because it records its warehousing costs by product category, rather than on a sale-by-sale basis. Petitioners note that Kawasho allocated its warehousing costs to all home market sales by dividing its total warehousing expenses incurred for the CTL plate product category by the total tonnage sold of the CTL plate product category. Furthermore, petitioners state that, according to KSC, Kawasho's CTL plate product category includes both subject and non-subject merchandise. Because KSC's allocation methodology allocates warehousing costs to certain sales that were not warehoused, and the methodology includes non-subject merchandise, petitioners conclude that KSC's reported warehousing expenses are inaccurate and distortive.

Respondent argues that Kawasho's warehousing expenses were reported on the most specific basis possible, given how Kawasho maintains its internal books and records. According to respondent, Kawasho's warehousing expenses are maintained by product-category, rather than on a transaction-specific basis. Respondent argues that Kawasho has a CTL plate category that includes subject and non-subject merchandise. Since Kawasho keeps its records in this manner during the normal course of business, respondent argues that it is not feasible to report Kawasho's warehouse expenses on a more specific basis. Moreover, respondent argues that section 773(a)(6)(B)(ii) of the Act allows the Department to reduce NV for movement expenses, such as warehousing expenses, and that section 351.401(g)(4) of the regulations directs the Department not to reject an allocation methodology solely because the method includes expenses incurred with respect to sales of non-subject merchandise. Respondent argues that during verification, the Department examined the warehouse records kept by Kawasho and verified the accuracy of the numbers used for the calculation. Specifically, the Department examined "the quantity and warehousing expenses listed for both subject merchandise product codes and non-subject merchandise product codes * * * (and) found no discrepancies." *See* Sales Verification Report at 44. Thus, respondent argues, there is no evidence on the record that the out-of-scope merchandise incurred a disproportionate amount of warehousing expense. Respondent concludes that the Department should reject petitioners' argument and continue to use Kawasho's warehousing expenses in the final determination.

Department's Position: While we prefer that respondents report warehousing charges on a transaction-specific basis, we are satisfied that, based on its records, Kawasho is unable to report its warehouse expenses on that basis. Moreover, we note that section 351.401(g) of the Department's regulations provides that we may consider allocated expenses and price adjustments when transaction-specific

reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions.

As we stated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 63 FR 33320, 33340 (June 18, 1998), "while we do initially examine transaction-specific information on home-market sales, ultimately we calculate a weighted-average home-market price for comparison to U.S. sales. The averaging of net home-market prices has the effect of averaging the components used to calculate those net prices, including inland freight. Therefore, the use of an allocated expense would not necessarily result in a distortion of home-market prices." Although that case was referring to a respondent's inability to report transaction-specific inland freight expenses, we find that the same principle applies here.

KSC explained that Kawasho maintains its warehouse expenses on a product-category specific basis in its books and records, and that this product category contains both subject and non-subject CTL plate. *See* KSC's June 23, 1999, supplemental Section B response at 25. During verification, we examined Kawasho's warehouse expenses and found no evidence that such expenses could be reported on a transaction-specific basis. Since Kawasho does not maintain transaction-specific warehousing expenses, we agree with KSC that allocating Kawasho's total warehouse expense for subject and non-subject CTL over its total tonnage sold of subject and non-subject CTL plate is the most accurate per-unit expense that Kawasho can derive from its books and does not unreasonably distort the reported expense. Moreover, we are satisfied that KSC reported Kawasho's expenses in the most specific manner feasible and allocated these expenses reasonably for the calculation of NV. Accordingly, we have continued to use Kawasho's warehousing expenses in our final determination.

Comment 10: KI's Short-Term Interest Rate

Petitioners argue that the Department's verification report indicates that KSC did not fully report KI's short-term interest expenses. According to petitioners, the Department learned at verification that KI did not report the interest expenses it incurred with respect to (1) export sales of log and lumber products to Japan and (2) certain overnight loans that occurred during the POI. Because KI has not provided the interest rates paid on the above borrowings, petitioners contend that the information necessary to calculate KI's overall interest rate is not available on the record. Therefore, petitioners urge the Department, pursuant to Policy Bulletin 98.2, to recalculate KI's U.S. dollar short-term interest rate based on the average prime rate in effect during the POI.

Respondent asserts that the Department should reject petitioners' argument and use KI's reported short-term interest rate. Respondent argues that credit costs are imputed based on the time value of money, and not based on the cost of debt actually incurred. Respondent states that in this respect, it is important that a respondent provide an interest rate for imputing credit expense that reflects commercial reality. With respect to the overnight loans, respondent states that it excluded this rate as one that KI would not reasonably incur to finance receivables. Moreover, respondent claims that because the average interest rate for these loans is lower than that for the reported short-term borrowings, it would have actually benefitted by incorporating this interest rate into its reported interest rate, as it would have raised its CEP price by reducing U.S. credit expenses.

Respondent also states that it properly excluded the item "Interest on Export Bills Discounted (Log & Lumber)" from its calculation of a short-term interest expenses because the "interest expense" incurred does not even relate to actual interest paid for short-term borrowings to finance working capital requirements, but rather consists of discounted payments received by KI from the bank upon presentation of letters of credit. Moreover, respondent states that this interest expense is also incurred only by KI's Seattle office on sales of lumber products to Japan, and does not involve the sale of subject merchandise to the United States. Since KI's reported interest rate accurately represents a commercially reasonable payment for financing receivables, and this information was thoroughly verified by the Department, respondent argues that the short-term borrowing expenses for CEP sales as reported in KSC's Section C response are correct.

Department's Position: We agree with petitioners that KSC should have reported its interest expenses associated with overnight loans, but we disagree with petitioners that KSC should have reported the expenses associated with KI's export sales of log and lumber products to Japan. The Department calculates a respondent's imputed credit expenses using "a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction." *See* Policy Bulletin 98.2 at 6, dated February 23, 1998. During verification, we learned that KI incurred interest expenses on overnight loans that were used for various corporate purposes during the POI. Since these overnight loans are short-term in nature, denominated in the currency of the sales transaction, and are obtained in the normal course of business, we determine that these loans should have been included in KSC calculation of KI's weighted-average short-term interest rate. During verification, we noted the total amount of interest paid by KI for these overnight loans obtained during the POI. Since the average balance of these loans for the POI is not on the record, we are unable to calculate the weighted-average POI interest rate for these loans. In light of our verification findings, we have added the POI interest expense paid on overnight loans to the reported interest paid on KI's short-term borrowings. Using this larger amount for interest paid during the POI, we have recalculated KI's short-term interest rate.

With respect to the expense KI incurred on its export sales of log and lumber products to Japan, we agree with KSC that it was proper not to report these expenses. During verification, we learned that KI's Seattle office exports log and lumber products to Japan on a letter of credit basis, with an extended term of payment for its Japanese customers. The expenses in question are the discounted payment KI receives from the bank upon presentation of the letter of credit. We have not included these interest expenses in our calculation of the short-term interest rate used to calculate imputed credit expense on U.S. sales because these expenses are not the best measure of the opportunity cost associated with sales of subject merchandise.

Comment 11: KSC's Usance Expenses

Respondent argues that the Department should not include the usance-related expenses incurred by KSC on the importation of certain raw materials. Respondent states that it purchases certain raw materials from trading companies who obtain usance loans from Japanese banks for the "upstream" purchase of the raw material from the actual supplier (*e.g.*, mining company). Respondent alleges that these usance loans between the bank and trading company are

denominated in U.S. dollars. Respondent argues that although KSC negotiates directly with the bank and sets the terms of the usance loan obtained by the trading company, it is the trading company, not KSC, that receives the funds from the loan to purchase raw materials and eventually pays back the bank. Respondent states that in return for offering KSC an extended period of payment (*i.e.*, two to three months) on such raw material purchases, KSC pays the trading companies a yen-denominated interest amount. Respondent notes that KSC pays the purchase price, plus the interest amount, to the trading companies, not the banks.

According to respondent, there are two reasons for not including the expenses KSC pays to the trading companies in KSC's yen-based short-term borrowings. First, respondent states that including these expenses would violate the Department's practice by calculating a respondent's credit expenses based on another entity's borrowings. According to respondent, the Department has "a clear preference for the actual borrowing experience of the respondent" in calculating credit expenses and will incorporate usance interest only for loans actually obtained by a respondent. *See Certain Steel Concrete Reinforcing Bars from Turkey*, 64 FR 49150, 49155 (September 10, 1999). In the instant case, respondent states that it does not obtain usance loans, rather it purchases raw materials in yen from trading companies that obtain usance loans.

Respondent argues that where usance loans are obtained by another entity that is not the respondent, the Department will not include a usance-related interest in the short-term interest calculation. Citing to *Color Television Receivers from the Republic of Korea*, 55 FR 26225 (June 27, 1990), respondent states that the Department considered petitioners' contention that usance loan interest should be incorporated into respondent's short-term borrowing rate, even though respondent did not actually obtain usance loan funds. According to KSC, the respondent in that case argued that the usance loan funds were not provided to it directly, but rather to its suppliers. KSC states that the Department agreed with respondent and excluded the usance interest rate from the short-term interest calculation, concluding that "these particular usance loans, which are not available for general financing purposes such as accounts receivable, were properly excluded from the calculation of the company's average short-term borrowing rate." *Id.* In addition, respondent argues that the Department should not impute a dollar-based interest rate to KSC's short-term borrowings that are exclusively in yen. Respondent argues that in *LMI-La Metalli Industriale S.p.A.* v. *United States*, 912 F.2d 455, 460–61 (Fed Cir. 1990), the CAFC noted that different interest rates correspond to different currencies and rejected the government's position that it could impute a lira-denominated interest rate to dollar-denominated U.S. sales. It concluded that the cost of credit "must be imputed on the basis of usual and reasonable commercial behavior" using short-term interest rates that conform with "commercial reality." *Id.*

According to respondent, any short-term interest rate calculated for KSC must be a yen-based rate because its CTL plate transactions are yen-denominated transactions. Citing to Policy Bulletin 98.2 at 2, respondent contends that the Department's practice for calculating imputed credit expenses is to use a "short-term interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction." Respondent contends that it pays the trading company for the raw material inputs in yen, receives payment from its customers in yen, and records all sales in its books in yen. Accordingly, respondent argues that the Department must denominate its short-term borrowing rate and credit expenses in yen.

Petitioners did not comment on this issue.

Department's Position: We have not included KSC's usance-related expenses in our calculation of KSC's imputed credit expenses. These expenses relate to the terms of sale between KSC and its suppliers and thus are similar to other fees and interest paid to suppliers, such as late-payment charges. Therefore, we did not include these expenses in determining KSC's short-term borrowing rate.

Comment 12: Deduction of Profit from CEP Sales

Respondent argues that the Department's methodology of deducting CEP profit from the U.S. price for CEP sales violates the "Fair Comparison" requirement established in Article 2.4 of the Antidumping Agreement, which provides that the Department may make adjustments to the extent needed to account for differences that affect price comparability (*e.g.*, profit). Respondent argues that profit is properly adjusted for in U.S. sales involving further manufacturing, where a portion of the U.S. profit is based on the additional value resulting from the physical change in the good. Unlike further manufacturing, respondent states that normal CEP goods and their home market counterparts are physically identical. Moreover, respondent contends that in the instant proceeding, there is no record evidence to support a finding that CTL plate sold in CEP transactions through KI and CTL plate sold by KSC in the home market are not physically comparable. Therefore, respondent contends that deducting CEP profit in KSC's CEP sales violates the fair comparison provision of Article 2.4.

Respondent argues that the inherent unfairness in the Department's methodology is even more evident when the CEP offset is added to the analysis. In situations where the Department grants an offsetting deduction of indirect selling expenses from normal value, this offset rebalances the comparison by deducting from normal value the same kind and character of indirect selling expenses deducted in determining CEP, but only in part. Respondent argues that profit assigned to the CEP selling expenses was deducted along with those expenses, but no profit was allocated to the selling expenses deducted from normal value, even though the express purpose of the offset is to put the transactions on an equal footing (*i.e.*, produce a fair comparison). Respondent concludes that in order to achieve a fair comparison, the Department must adjust its methodology and eliminate the automatic deduction of profit when determining CEP.

Petitioners argue that the Department should reject KSC's argument because Section 772(d)(3) of the Act states that "the price used to establish constructed export price shall also be adjusted by * * * the profit allocated to the expenses described in paragraphs (1) and (2)." Petitioners contend that the Department, in the preliminary determination, calculated CEP with an adjustment for profit in accordance with this statutory provision. In fact, argue petitioners, this statutory provision does not leave the deduction of profit to the Department's discretion. Rather, petitioners contend that this provision explicitly requires the Department to make this adjustment. Lastly, petitioners argue that the deduction of profit from CEP does not result in an unfair comparison in violation of the Antidumping Agreement, as claimed by Kawasaki. In support of their position, petitioners cite to the SAA, which states "(the) deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which

reflects that constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers."

Department's Position: We disagree with respondent. Consistent with section 772(d)(3) of the Act, we properly reduced CEP by the profit allocated to certain enumerated expenses (*e.g.*, commissions, credit, and warranties). Indeed, KSC does not argue that the Department's deduction of CEP profit is inconsistent with U.S. law, but instead argues that the deduction is inconsistent with U.S. obligations under Article 2.4 of the Antidumping Agreement. We do not agree. Section 772(d)(3) of the Act implements Article 2.4 of the Antidumping Agreement, which requires that a "fair comparison" shall be made between export price and normal value. However, Article 2.3 states that where there is no export price because of an affiliation between exporter and importer, a constructed export price may be calculated. When such constructed export price is used, Article 2.4 makes clear that there shall be "allowances for costs * * * *and for profits accruing* * * *" Article 2.4 (emphasis added). Thus, when promulgating section 772(d)(3) which provides for the deduction of CEP profit, the administration made clear that "[t]he deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which reflects that constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers." SAA at 823. In this regard, section 772(d)(3) clearly implements U.S. obligations under Article 2 of the Antidumping Agreement and the Department's deduction of CEP profit in this case is consistent with these obligations.

Comment 13: U.S. Sales Disclosed at Verification

The respondent argues that the Department should add the additional U.S. sale disclosed during verification to KSC's U.S. sales database. According to respondent, the Department's verification team asked KSC whether Kawasho made any direct sales to the United States other than through its U.S. affiliate, KI. In response to this question, respondent contends that it investigated whether Kawasho had any direct sales during the POI to the United States and uncovered a single, unreported, direct sale to the United States by Kawasho. Respondent argues that although this sale consisted of three separate shipments, the Department should consider it to be a single sale. Respondent states that upon finding this inadvertent omission, it immediately, and voluntarily, brought this sale to the verification team's attention. In order to demonstrate to the Department that there were no further unreported sales, respondent states that it provided the verification team with substantial documentation proving that the U.S. sales file is now complete. In addition, respondent notes that it provided a full sales trace package for this omitted sale, complete with all necessary documentation to support the sales adjustments KSC claims are associated with this sale. Respondent notes that the quantity and value and sales adjustment documentation were accepted by the verification team. Respondent argues that this lone sale is a clerical error and represents an insignificant portion of KSC's U.S. sales transactions, and if it is included in the U.S. sales database, will have a de minimis effect on the final dumping calculations.

Respondent argues that failure to include this sale in the Department's analysis, or to use the data relevant to this sale, would result in an inaccurate margin, in derogation of the statutes's purpose. Respondent cites to several cases where the Department added unreported U.S. sales to the respondent's U.S. sales database after the omission of such sales was discovered at verification in order to determine current margins as accurately as possible. Respondent states that in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664, 30680 (June 8, 1999), the Department added one unreported U.S. sale to the file after its omission was discovered at verification. Moreover, respondent notes that in the Korean case, the Department accepted the corrective information concerning this sale nearly one month after the end of verification. Respondent states that in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, (June 9, 1998) ("Atlantic Salmon from Chile"), the Department added twenty-seven U.S. sales to the U.S. sales database that were disclosed during verification. *See Atlantic Salmon from Chile*, Analysis Memorandum for Pesquera Mares Australes, dated June 1, 1998, at 2. Respondent also cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 30790, 30812 (June 8, 1999) (*"Stainless Steel Sheet and Strip from Mexico"*), where the Department added sales to the sales database and stated that "we have no reason to believe that respondent intentionally withheld from the Department the sales at issue here * * *" we are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI.'" *Id.* (citation omitted). According to respondent, there is nothing on the record of the instant investigation that would support a conclusion that KSC deliberately withheld the one sale at issue from the Department. In addition, respondent cites to *Usinor Sacilor, Sollac* v. *United States*, 872 F. Supp. 1000, 1008 (CIT 1994), and argues that the Department's decision to reject information is governed by the interests of accuracy and fairness, and whether accepting new information will impose a burden on the Department. According to respondent, the most accurate margin requires that all sales be included in the sales databases, determining an accurate margin is the most fair calculation for all parties concerned, and adding the disclosed sale imposes only a minimal, if any, burden on the Department.

Respondent also argues that KSC's disclosed sale constitutes a minor correction to information already on the record and therefore should be accepted by the Department. As supporting evidence, respondent cites to *Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom*, 64 FR 30688, 30701 (June 8, 1999), where the Department utilized its minor errors practice to accept a small quantity of additional home market sales mistakenly omitted by the respondent, that were disclosed at verification. In *Stainless Steel Sheet and Strip from Mexico*, 64 FR at 30812, respondent claims that the Department added unreported U.S. sales disclosed at verification to the sales database when the volume of sales at issue was a very small percentage of respondent's U.S. sales. Lastly, respondent cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan*, 64 FR 17336, 17340 (April 9, 1999), where the Department accepted missing sales disclosed at verification because the sales were minor in scope and immaterial.

Respondent notes that the Department may also disregard the unreported sale altogether. According to respondent, in one case, the Department ignored unreported sales and declined to use facts available against the relevant sales in *Bicycles from the People's Republic of China*, 61 FR 19026, 19041 (April 30, 1996), and *Random Access Memory Semiconductors of One Megabit and Above from Taiwan ("DRAMs")*, 64 FR

56308, 56318 (October 19, 1999). Moreover, respondent notes that in DRAMs, the Department stated that "the amount of sales in question is relatively insignificant, both in terms of quantity and value of respondent's home market sales. Thus, we are disregarding those sales discovered during verification because the volume of unreported sales is relatively insignificant." *Id.* In the instant case, respondent argues that the single unreported sale accounts for a very small percentage of KSC's total U.S. sales and will have a de minimis impact on the final margin.

Lastly, respondent argues that if the Department considers the sale to be an error in KSC's data that was disclosed after the deadline for submission of factual information, the sale should still qualify for inclusion on the U.S. sales database under the Department's policy for correcting clerical errors. The respondent argues that the Department, in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42834 (August 19, 1996) ("*Certain Fresh Cut Flowers from Colombia*"), identified six criteria under which it will accept corrections of clerical errors. Respondent claims that the sale in question meets each of these criteria: (1) the sale was not disclosed because it was a simple oversight, (2) the corrective documentation provided to the Department at verification is reliable and was verified to be accurate, (3) KSC disclosed the unreported sale at the earliest reasonable opportunity and provided corrective information, (4) the clerical error allegation and corrective documentation were submitted well before KSC's due date for the administrative case brief, (5) adding the disclosed sale to the U.S. sales database does not require a substantial revision of the response, and (6) KSC's corrective documentation does not contradict information previously determined to be accurate at verification. For these reasons, respondent argues that its disclosed sale qualifies as a clerical error for which the Department should accept a correction.

Some of the petitioners argue that they have at numerous times over the course of this investigation raised the issue of whether Kawasho made any sales to the United States other than sales through its U.S. affiliate, KI. In each instance, petitioners state that KSC claimed in strong terms that all U.S. sales have been reported and that Kawasho only made sales to the United States through KI. Petitioners argue that the three sales disclosed at verification clearly contradict all of KSC's past denials and renders respondent's data unreliable. Moreover, petitioners claim that the strong manner in which respondent previously denied the existence of EP sales through Kawasho, indicates that KSC's omission cannot fairly be characterized as "inadvertent." To the contrary, petitioners argue that the record strongly suggests that KSC acted aggressively to prevent the discovery of relevant information. Petitioners observe that KSC claims that the unreported sales are an isolated incident. According to petitioners, the issue is not merely of a small number of missing sales, rather it is about the discovery of an unreported kind of sale, through an unreported channel of distribution. Since the purpose of verification is to test a representative sample of sales for discrepancies, petitioners claim that the discovery of these unreported U.S. sales should be understood as representative of a substantial percentage of incorrectly classified and unreported sales. For this reason, petitioners contend that the Department cannot trust the veracity of KSC's sales data. Based on the discovery of unreported U.S. sales and KSC's false claim that it is unable to report downstream home market sales, petitioners conclude that KSC has failed the verification tests of its home market and U.S. sales. These petitioners argue that KSC has not acted to the best of its ability to provide information requested by the Department and urges the Department to apply total adverse facts available.

Other petitioners argue that the Department should apply partial facts available to the quantity of KSC's three unreported U.S. sales. Although the respondent characterizes its disclosure as voluntary, petitioners note that KSC did not report the unreported sales until several days into the verification, rather than at the outset. Furthermore, petitioners argue that the Department has applied adverse facts available under circumstances where the respondent has been more forthcoming than KSC in this case, such as where the respondent identified unreported U.S. sales on the first day of verification. *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 30710, 30732 (June 8, 1999) ("*Stainless Steel Strip from Germany*"), Petitioners also argue that even though KSC claims its omission was inadvertent, KSC had numerous opportunities during the course of the investigation to review its U.S. sales database and check it for completeness. Petitioners state that KSC clearly failed to do so.

Petitioners also note that although KSC provided a package of supporting documentation concerning its three unreported sales on the record at verification, there is no requirement that the Department use such information for its final determination. Petitioners cite to *Stainless Steel Strip in Coils from Germany,* where the respondent KTN similarly "provided a complete packet containing copies of each of the relevant invoices" at verification concerning previously unreported U.S. sales and claimed that the "corrected information was verified." Petitioners contend that the Department emphasized the respondent's responsibility to provide complete U.S. sales information and rejected the corrective information in favor of partial adverse facts available. Petitioners contend that the facts are similar with regard to KSC and that given the untimeliness of the proffered information, the Department should consider only the quantity of the missing sales and reject all of the other transaction-specific data.

Petitioners also argue that the cases cited by respondent do not support its position. In *Atlantic Salmon from Chile,* 63 FR 31411, the Department's analysis memorandum shows that the unreported sales were made in the United States by an unaffiliated reseller. Petitioner concludes that, unlike the instant case, application of facts available in *Atlantic Salmon from Chile* would not have been proper since the respondent had no control over the conduct of the reseller. Moreover, petitioners state that in *Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR at 30812, unlike the instant case, the respondent reported the missing sales to the Department on the first day of verification. According to petitioners, reporting missing sales on the first day of verification is important because it is the only way to ensure that the disclosure is in fact voluntary. Petitioners argue that since KSC disclosed this sale while the Department was testing for completeness, KSC now finds itself in the position of attempting to dispel the inference that disclosure occurred because the Department's discovery of such sales would have been inevitable.

Lastly, petitioners argue that KSC is wrong in its statement that the Department can properly accept its new sales information as a "correction of a clerical error." Petitioners observe that one of the criteria set forth in *Fresh Cut Flowers from Colombia* for correcting alleged clerical errors is that "the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement or a substantive error." In the instant case, petitioners assert that KSC's failure to

report the sales was demonstrably not clerical. Rather, petitioners state that it was based on KSC's substantive error that Kawasho did not make any direct sales to a U.S. customer. Thus, petitioners concluded that the Department cannot accept the new sale as a clerical error. These petitioners recommend that the Department apply adverse facts available to the quantity of this sale. As adverse facts available, petitioner urges the Department to apply the highest calculated margin on KSC's other sales to the unreported sales and include the unreported sales in the overall weighted-average margin.

Department's Position: We disagree with petitioners that the three unreported sales disclosed at verification by KSC are not minor. During verification, while the Department was conducting various completeness tests, KSC voluntarily disclosed that it had found a previously unreported sale to the United States made by Kawasho. Since this sale comprised three individual shipments, and we are defining a sale as a single shipment in this investigation, we concluded that there were actually three unreported sales disclosed at verification. These sales, which were made by Kawasho directly to an unaffiliated Japanese trading company that in turn sold the CTL plate to its U.S. affiliate, are properly classified as EP sales through Kawasho. During verification, KSC provided substantial quantity and value information to support its assertion that there are no additional unreported U.S. sales. We examined this quantity and value information and are satisfied that there are no additional unreported U.S. sales.

The Department's practice is to accept new information during verification only when that information constitutes minor corrections to information already on the record, or when that information corroborates, supports, or clarifies information already on the record. We agree with KSC that these disclosed sales constitute minor corrections to information already on the record. Therefore, we included the information we accepted at verification concerning these three sales in our margin analysis for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after April 30, 1999 (90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**) for Kobe, Nippon, NKK, and Sumitomo, which received the petition rate of 59.12 as adverse facts available. In addition, we will continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for KSC and those companies which received the "all others" rate. We shall refund cash deposits and release bonds for KSC and "all others" companies for the period between April 30, 1999 and July 29, 1999 (*i.e.*, the critical circumstances period). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the NV exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Kawasaki Steel Corporation	10.78
Kobe Steel, Ltd	59.12
Nippon Steel Corporation	59.12
NKK Corporation	59.12
Sumitomo Metal Industries, Ltd	59.12
All Others	10.78

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33235 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Maisha Cryor, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5193 or (202) 482–5831, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from Italy are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *"Suspension of Liquidation"* section of this notice.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy*, 64 FR 41213 (July 29, 1999) ("*Preliminary Determination*")), the following events have occurred:

On July 28, 1999, ILVA S.p.A, ("ILVA") alleged that the Department of Commerce ("the Department") made a ministerial error in the preliminary determination because it incorrectly

excluded from its analysis all of ILVA's U.S. sales that were entered under a temporary importation bond and subsequently re-exported to a country that is a party to the North American Free Trade Agreement ("NAFTA"). We disagreed with ILVA's allegation because our decision to exclude these sales was intentional and, thus, could not be considered a ministerial error (for further discussion of the ministerial error, see the Memorandum from Howard Smith to Holly Kuga dated August 17, 1999, on file in the Central Records Unit ("CRU") in room B–099 of the main Department of Commerce building, under the appropriate case number). However, as noted in comment 6 of the comments below, for the final determination we have included these sales in our analysis.

In September 1999, the Department conducted sales and cost verifications of Palini & Bertoli S.p.A ("Palini") and ILVA, the two respondents in the instant investigation. At verification, both respondents submitted corrections to the data used in the preliminary determination. These corrections are reflected in the data used in the final determination. A list of the corrections can be found in the public versions of the Department's verification reports which are on file in the CRU in room B–099 of the main Department of Commerce building, under the appropriate case number. For ILVA, see the memoranda from Howard Smith and James Nunno to The File dated October 29, 1999 regarding the sales and cost verifications. For Palini, see the memoranda from Maisha Cryor and Zev Primor to The File dated October 29, 1999 regarding the sales and cost verifications.

The petitioners (*i.e.*, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., and United States Steelworkers of America) and the respondents submitted case briefs on November 5, 1999, and rebuttal briefs on November 12, 1999. On November 10, 1999, the petitioners, the only party to the proceeding to request a hearing, withdrew their request for a hearing. Therefore, we did not hold a public hearing.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the *"Scope of Investigation"* section, above, and sold in Italy during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the Department's March 1999 questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because neither Palini nor ILVA had sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* 63 FR 40449, 40450, (July 29, 1998) (*"SSWR"*)).

Changes From the Department's Preliminary Determination

Except where noted in the comments below, we reached our final determination using the same methodology as that used in the preliminary determination. However, we made certain adjustments to the reported data based on our verification findings. Specifically, with respect to ILVA's sales data, we recalculated home market credit expenses, temporary importation bond's ("TIB") and indirect selling expenses, and reclassified as entries under TIB certain U.S. sales which ILVA had incorrectly reported as having been entered for consumption. In addition, we revised the international freight expense reported for one U.S. sale. With respect to ILVA's cost data, we recalculated general and administrative expenses and revised the cost of iron pellets included in the reported costs. For Palini, we recalculated home market credit expenses, inventory carrying costs, home market warranty expense and indirect selling expenses and reclassified warranty expenses as direct selling expenses for sales in the home and U.S. markets. In addition, we revised the quantity and commission reported for one U.S. sale. With respect to Palini's cost data, we recalculated general and administrative expenses and recalculated the value of scrap and scale. For details regarding these adjustments, see the company-specific memoranda to The File dated December 13, 1999 regarding the calculations for the final determination.

Interested Party Comments

ILVA

Comment 1: Failure to Identify Overrun Sales in the Home Market

The petitioners contend that ILVA's failure to identify all overrun sales in the home market may understate the actual dumping margin because the margin will be calculated based on comparisons of lower-priced overrun sales in the home market to non-overrun sales in the United States. In its response to section B of the Department's questionnaire, ILVA noted that it reported as overrun sales those overrun quantities which it sold as secondary merchandise. However, the petitioners point out that ILVA failed to report as overrun sales those overrun quantities that were sold as prime merchandise to either the customer who placed the order or another customer. In addition, according to the petitioners, ILVA acknowledged that in instances where the original customer agreed to purchase the overrun merchandise, the price may or may not differ from the original price negotiated with the customer. Because ILVA failed to comply with the Department's questionnaire instruction to identify all overrun sales during the POI, the petitioners urge the Department to apply partial facts available in the final determination. As facts become available, the petitioners request that the Department treat as overrun sales all sales where the gross unit price is equal to or less than the maximum gross unit price of sales that ILVA identified as overrun sales.

ILVA claims that it properly reported as overrun sales those overrun quantities that were sold as prime merchandise to someone other than the customer who ordered the merchandise. However, ILVA notes that it could not report as overruns the excess prime merchandise that was sold with the order that generated the excess because its record keeping system does not separately identify such sales as overruns. According to ILVA, the record evidence (*i.e.*, the verification results and home market sales file) supports its claim that it properly reported prime merchandise overruns that were sold to someone other than the customer who ordered the merchandise. Moreover, ILVA claims that the data on the record show that the prime merchandise sales identified as overruns were made within the ordinary course of trade and, thus, should be included in the Department's analysis. Specifically, ILVA compared the price, quantity, sales terms, and product specifications of prime merchandise overrun and non-overrun sales in the home market and submitted statistics [1] which demonstrate, according to ILVA, that its sales of prime merchandise identified as overruns did not involve unusual product specifications or unusual sales terms (*i.e.* aberrational prices, unusual quantities, unusual delivery terms). Regarding prime merchandise overruns that ILVA sold with the order that generated them, ILVA maintains that the prices for these sales are arm's-length prices and that the sales are commercially indistinguishable from, and included as part of, other sales of prime merchandise. Since there is no evidence that any of ILVA's sales of prime merchandise, which may or may not contain overrun quantities, are outside the normal course of trade and, thus, would distort the margin calculation, ILVA submits that these sales should be used in the Department's analysis. Finally, ILVA asserts that the use of facts available is unsupported and unfair given that it reported overruns, where possible, and that the overruns not identified as such were part of commercial sales made within the ordinary course of trade.

DOC Position:

We agree with ILVA. The relevant provisions of section 776 of the Act state that if—

(1) necessary information is not available on the record, or

(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this title * * * the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

ILVA reported overrun sales of prime merchandise where it could identify such sales in its records. However, ILVA's record keeping system does not identify as overruns the overrun quantities that were sold with the order that generated them. By not reporting such sales as overruns, ILVA did not withhold information from the Department because such information was not available. Moreover, the overrun information is unnecessary in the instant investigation since there is no evidence on the record that ILVA's failure to identify all overrun sales distorts the Department's margin calculation. Under such circumstances, the facts available remedy suggested by the petitioners is not warranted (*see Olympic Adhesives* v. *United States*, 899 F.2d 1565 (Fed. Cir. 1990); *see also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 61 FR 13815, 13830–31 (March 28, 1996)). To avoid distortion, the Department will exclude from its analysis sales that are outside the ordinary course of trade. Section 351.102 of the Department's regulations notes that sales outside the ordinary course of trade might include:

Sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

The petitioners provided no evidence that any of ILVA's sales, including overrun sales of prime merchandise that may not have been included as overruns, were outside the ordinary course of trade. Therefore, with respect

[1] These statistics, which are proprietary, can be found on page 5 of ILVA's November 12, 1999 case brief.

to these overruns, we have accepted the information as reported.

Comment 2: Market Warehousing Expense

ILVA reported separate weighted-average warehousing expenses for direct sales and sales through resellers. The petitioners urge the Department to reject the warehousing expense reported for sales through resellers because it is not clear from the record that the sales for which the expense was reported are reseller sales. According to the petitioners, the sales file shows that the sales for which ILVA reported the reseller warehousing expense are sales from stock to the customer. If these were reseller sales, the petitioners contend that the file should indicate that the sale was through a service center to the customer, not from stock to the customer. Because of this contradiction, the petitioners request that the Department reject the reported reseller warehousing expense.

ILVA claims that the petitioners are mistaken because it only reported reseller warehousing expense for those sales that were identified as reseller sales in the home market sales file. Furthermore, ILVA claims that such sales were from the stock of the *reseller* and, thus, identifying a sale as being from stock and made by a reseller is not a contradiction. Finally, ILVA notes that contrary to the petitioners' suggestion, the reseller sales in question should not have been classified as sales through service centers because ILVA's resellers are not service centers.

DOC Position: We agree with ILVA. ILVA only reported reseller warehousing expense for those sales that were identified as reseller sales in the home market sales file. Moreover, the fact that ILVA's home market sales file identifies the resellers' sales as being from stock is consistent with information on the record indicating that the resellers sold merchandise from their warehouses. Thus, we have accepted the reseller warehousing expense as reported.

Comment 3: Correcting Data Files in Accordance With Verification Findings

The petitioners request that the Department adjust the reported general and administrative expense ratio and the reported cutting costs in accordance with its verification findings. Also, the petitioners request that the Department recalculate home market credit expense using the correct interest rate identified at verification. ILVA agrees with the petitioners.

DOC Position: We agree with both parties. We adjusted the reported costs and general and administrative expense ratio as appropriate. In addition, for the final determination we recalculated home market credit expense.

Comment 4: Failure To Establish the Market Price of Electricity

The petitioners claim that ILVA was unable to demonstrate that the price it paid to purchase electricity from an affiliated party is an arm's-length price. In addition, the petitioners assert that ILVA did not demonstrate that the affiliated party's price is greater than the cost of production since it did not provide documentation to support the affiliate's reported cost of producing electricity. Therefore, as facts available, the petitioners request that the Department base the electricity cost used in the final determination on the greatest electricity price reported in Appendix D–6(d) of ILVA's June 29, 1999 supplemental questionnaire response.

ILVA maintains that the petitioners' claim is without merit because it did, in fact, demonstrate that it paid a market price for electricity and that the price was greater than the affiliate's cost of producing electricity. During the POI, ILVA purchased electricity from both an affiliated and an unaffiliated party. According to ILVA, the disparity in the quantities of electricity purchased from these two parties precludes one from comparing the parties' prices in order to determine whether the affiliated party price is a market price. ILVA notes that it was unable to obtain actual electricity prices that the unaffiliated supplier charged other parties. Likewise, ILVA notes that, for reasons which are proprietary, it was unable to provide electricity prices that the affiliated supplier charged other parties. Thus, in order to provide the Department with a price comparison, ILVA compared the affiliated party price to a constructed unaffiliated party price. Specifically, ILVA used electricity rates published by the unaffiliated party to construct a weighted-average unit price that the party would have charged ILVA if all purchased electricity had been supplied by the unaffiliated party. ILVA points out that during the verification Department officials examined the calculation of the constructed unaffiliated party price and found no indication that the constructed price was based on inaccurate or incomplete information. Moreover, ILVA notes that the constructed price is based on publicly available information and, thus, it is reliable. Furthermore, ILVA submits that the constructed unaffiliated party price overstates the actual price that ILVA would pay for electricity since it is based on published rates that do not take into account the discounts that large consumers of electricity, such as ILVA, are able to negotiate. Finally, ILVA states that during the verification Department officials examined source documents supporting the affiliate's cost of producing electricity and found nothing to suggest that the documents were unreliable. For the foregoing reasons, ILVA urges the Department to accept the reported electricity costs.

DOC Position: We agree with ILVA. Although ILVA was unable to provide evidence of market prices based on actual transactions between unaffiliated parties, in response to the Department's request for a market price, ILVA used electricity rates published by its unaffiliated supplier to construct a weighted-average market price between unaffiliated parties. At verification, we examined the information used to construct that price and found no discrepancies. Moreover, at verification, we accepted the consumption and rate data provided by ILVA's affiliated electricity supplier, which demonstrated that the prices it charged ILVA are greater than its cost of production. Therefore, we have determined that the use of facts available to value electricity is unwarranted for the final determination.

Comment 5: Failure To Establish the Market Price of Iron Pellets

In the preliminary determination, the Department found that ILVA failed to establish that the price it paid to purchase iron pellets from an affiliated party was a market price. Therefore, in reaching its preliminary determination, the Department valued iron pellets using the weighted-average Italian import values of iron ore as provided by the petitioners in their July 8, 1999 submission.

ILVA contends that the Department should not rely on the values submitted by the petitioners for two reasons. First, the value that the petitioners submitted is for iron ore and iron ore concentrates while ILVA only purchased iron pellets. Thus, the value that the petitioners submitted is for a basket of products that is overly broad. Second, it is important to identify the iron content of products before comparing their prices; however, there is no mention of iron content in the information submitted by the petitioners. Therefore, ILVA calls on the Department to reject the petitioners price data, which ILVA characterizes as general and incomplete, and to value iron pellets using verified information.

The petitioners urge the Department to continue to value iron pellets using the Italian import price for iron ores and

concentrates for three reasons. First, ILVA failed to demonstrate that the Italian import value of iron ores and concentrates is unrepresentative of the costs incurred by ILVA for iron pellets. Second, ILVA submitted the "verified" information regarding the market price of iron pellets at verification which is after the regulatory deadline for submitting factual information. The petitioners note that section 351.301(b)(1) of the Department's regulations provides that in an antidumping duty investigation, factual information is due no later than:

> Seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed.

The petitioners assert that there is no evidence on the record that the Department requested this information from ILVA. Therefore, the petitioners maintain that the "verified" information is untimely and should be rejected. Finally, the petitioners point out that the "verified" information consists of a constructed market price for iron pellets which is based, in part, on costs incurred by a Dutch producer and, thus, this information is not representative of the price ILVA would have actually paid to purchase iron pellets from its suppliers. For the foregoing reasons, the petitioners request that the Department reject the "verified" information and continue to value iron pellets using the Italian import value used in the preliminary determination.

DOC Position: We agree with ILVA. During the POI, ILVA purchased iron pellets from an affiliated supplier and a supplier which it identified as an unaffiliated party. In order to demonstrate that the affiliated party price for iron pellets is a market price, ILVA compared the prices that it paid its two suppliers for iron pellets. However, we preliminarily determined that ILVA and the supplier whom ILVA identified as an unaffiliated party are, in fact, affiliated pursuant to section 771(33)(F) of the Act. Thus, as noted above, for the preliminary determination we disregarded the prices that ILVA paid for iron pellets and valued the pellets using, as fact available, the price supplied by the petitioners. However, in making that decision, we stated in the preliminary notice that we were going to disregard the transactions whereby ILVA purchased iron pellets unless ILVA could demonstrate that such transactions reflect a market value. In keeping with this position, our verification outline requested ILVA to provide information regarding its claim that it bought iron pellets from affiliated parties at world market prices. ILVA provided both a constructed market price for iron pellets and an actual iron pellet price that one of its suppliers charged certain other customers during 1998. We have accepted this information because (1) during the verification ILVA provided this information in response to our request and, thus, the information is timely according to section 351.301(b)(1) of the Department's regulations; and (2) there is no information on the record to indicate that the actual price that ILVA's supplier charged certain other customers during 1998 is not representative of a market price for iron pellets. Therefore, for the final determination, we used the information obtained at verification to value iron pellets in accordance with section 773(f)(3) of the Act.

Comment 6: Treatment of U.S. Sales Entered Under Temporary Importation Bond

ILVA alleges that the Department should not have excluded from its preliminary analysis its sales of merchandise which entered the United States under TIB and was subsequently re-exported to Canada.[2] ILVA has taken this position because it believes that the U.S. law implementing the NAFTA requires the Department to assess antidumping and countervailing duties on such entries. Based on article 303(3) of the NAFTA, ILVA contends that merchandise which enters the United States under a TIB and is subsequently re-exported to another NAFTA party is considered "entered for consumption" and is therefore subject to all applicable customs duties. Article 303(3) states:

> Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported: (a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption * * *.

Moreover, ILVA notes that Congress implemented NAFTA article 303 by amending the Tariff Act of 1930 as follows:

> [N]o merchandise that is subject to NAFTA drawback * * * that is manufactured or otherwise changed in condition shall be exported to a NAFTA country * * * without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation * * * and the payment of the assessed duty before the 61st day after the date of exportation of the article. * * *.

North American Free Trade Agreement Implementation Act, § 203(b)(5)(B), *codified at* 19 U.S.C. § 81c(a). Furthermore, ILVA notes that 19 U.S.C. § 333, which defines certain imported goods that are not subject to 19 U.S.C. § 81c(a), states that:

> Nothing in this section [concerning goods subject to NAFTA duty deferral and drawback] or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

Based on these provisions, ILVA asserts that the Department has a statutory mandate to assess antidumping and countervailing duties on goods entered under a TIB and then re-exported to Canada.

Additionally, ILVA points out that in *Oil Country Tubular Goods From Japan: Preliminary Results and Recission in Part of Antidumping Duty Administrative Review*, 64 FR 48589 (September 7, 1999) (*OCTG from Japan*) the Department commented on goods which were imported under TIBs and re-exported to Canada stating that "the TIB status of such entries does not necessarily insulate [them] from the assessment of antidumping duties" (*OCTG from Japan*, 64 FR at 48591). However, ILVA also notes that in *OCTG from Japan*, the Department concluded from article 1901.3 of the NAFTA that "if it is possible to read the NAFTA rules in a manner consistent with the law and practice discussed above [the antidumping law and Departmental practice regarding TIB entries], the entries in question [TIB entries re-exported to Canada] should not be subject to antidumping duties" (*OCTG from Japan*, 64 FR at 48591). Article 1901.3 provides that:

> No provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

ILVA makes the following points regarding the Departments comments in *OCTG from Japan*. First, ILVA maintains that the Department must base its opinion on this issue on U.S.

[2] However, ILVA requests that the Department continue to exclude from its analysis of all ILVA's TIB entries that were re-exported to non-NAFTA parties.

law, not the NAFTA. According to ILVA, the plain language of 19 U.S.C. §§ 81c(a) and 333 unambiguously requires the Department to assess antidumping duties on ILVA's TIB entries that were re-exported to a NAFTA party ("NAFTA TIB entries"). While ILVA acknowledges that the Department may be correct when it observed in *OCTG From Japan* that the NAFTA "does not compel the assessment of antidumping or countervailing duties that would not otherwise be applied under a party's domestic law," ILVA notes that in implementing the provisions of the NAFTA, Congress has required the Department to assess antidumping and countervailing duties on NAFTA TIB entries. Specifically, ILVA points out that the House Report on the NAFTA Implementation Act explains that Congress implemented article 303(3) of the NAFTA because it believed it "critical to ensure" that the NAFTA member countries do not become an "export platform" for materials produced in other regions of the world (*see* H.R. Rep. No. 103–361 (I), at 39–40 (1993), reprinted in 1993 U.S.C.C.A.N 2552, 2589–2590). According to ILVA, were the Department to adopt a practice of excluding NAFTA TIB entries, the Department's actions would contravene the expressly stated intent of Congress. Finally, ILVA observes that the Department's analysis in *OCTG From Japan* strongly suggests that it may exclude NAFTA TIB entries based on the fact that they are not entries for consumption. However, ILVA maintains that in implementing the NAFTA, Congress simply directed the Department to assess antidumping and countervailing duties on NAFTA TIB entries without defining such entries as being for consumption. Therefore, whether or not the entries are for consumption is immaterial in deciding whether to assess antidumping and countervailing duties on NAFTA TIB entries.

Additionally, ILVA notes that the Court of International Trade ("CIT") has treated the Department's normal practice concerning TIBs as applying equally to countervailing and antidumping duties. Therefore, ILVA submits that if the Department were to continue to exclude ILVA's NAFTA TIB entries from its analysis in the antidumping duty investigation, it must also do so in the countervailing duty investigation. Nevertheless, ILVA contends that unless advised to the contrary, the U.S. Customs Service ("Customs") will collect antidumping and countervailing duties on ILVA's NAFTA TIB entries. Therefore, if the Department continues to exclude ILVA's NAFTA TIB entries from its analysis, ILVA requests that the Department instruct Customs to liquidate without liability for countervailing or antidumping duties, all TIB entries by ILVA that are subsequently re-exported to a NAFTA country.

The petitioners assert that the NAFTA and U.S. law are clear on this issue—the TIB entries in question are excluded from dumping margin calculations, but not exempted from the assessment (*i.e.*, collection) of antidumping and countervailing duties.[3] According to the petitioners, ILVA's reliance on article 303(3) of the NAFTA and 19 U.S.C. sections 81c(a) and 333 is misplaced. The petitioners contend these provisions do not address the NAFTA's effect on U.S. antidumping and countervailing law; rather they deal with duty drawback and deferral programs and the collection of customs duties by Customs. The petitioners hold that Customs statutes, regulations, rulings and practices are not binding on the Department and, accordingly, ILVA's reliance on such is not determinative. On the other hand, the petitioners claim that article 1901.3 of the NAFTA is an explicit statement by the parties to the agreement that the agreement does not control the application of each parties antidumping and countervailing law. In addition, the petitioners disagree with ILVA's position that "U.S. law and not the wording of the NAFTA should control the Department's conduct in this matter." On the contrary, the petitioners believe that both the U.S. laws necessary to implement the NAFTA and the NAFTA itself are dispositive of U.S. obligations under the agreement. If this were not the case, the petitioners argue that all of the NAFTA provisions not specifically addressed in the U.S. statute implementing NAFTA would have no effect, leaving the United States in the position of having not adopted the NAFTA in its entirety. Thus, the petitioners contend that ILVA cannot argue that article 1901.3 of the NAFTA is without effect. Moreover, the petitioners maintain that sections 81c(a) and 333 of the statute implementing the NAFTA were included so as to preclude any conflict between the NAFTA and the customs statutes in existence prior to implementation of the NAFTA. According to the petitioners, the absence of specific antidumping and countervailing duty provisions in the statute implementing the NAFTA is proof that, consistent with article 1901.3 of the NAFTA, the current U.S. law and practice controls the treatment of TIB entries for purposes of calculating dumping margins (*i.e.*, excluding such entries from the margin calculation). Moreover, the petitioners state that in *OCTG From Japan*, the Department noted that "the parties [to NAFTA] made clear that NAFTA did not require any changes in antidumping duty law or practice" (*OCTG From Japan*, 64 FR at 48590–91). Thus, the petitioners hold that the Department's exclusion of NAFTA TIB entries from its analysis in the preliminary determination is appropriate because it is consistent with existing law and Departmental practice which has been upheld by the CIT (*see Titanium Metals Corp.* v. *United States*, 901 F. Supp. 362, 367 (Ct. Int'l Trade 1995)). Nevertheless, the petitioners note that sections 81c(a) and 333 of the statute implementing the NAFTA and Article 303(3) of the NAFTA compel Customs to collect antidumping and countervailing duties on ILVA's NAFTA TIB entries as though the entries were withdrawn for domestic consumption. The petitioners note that this position is consistent with the Department's analysis in *OCTG From Japan*. Although the implementation of the NAFTA may lead to differing results in the manner in which the Department and Customs treat NAFTA TIB entries, the petitioners assert that the pertinent articles of the NAFTA and the U.S. customs law are unequivocal—NAFTA TIB entries must be excluded from dumping margin calculations, but not exempted from the assessment (*i.e.*, collection) of antidumping and countervailing duties.

DOC Position: Article 303 of the NAFTA addresses duty drawback and duty deferral programs, including TIB. In particular, Article 303(3) provides that merchandise entered into the United States under a TIB and subsequently re-exported to another NAFTA party shall be considered to be entered for consumption and shall be subject to all relevant customs duties. No party in this case disputes the requirement, established by Article 303, that the Department assess antidumping duties on subject merchandise entered under a TIB and re-exported to another NAFTA party. Rather, the petitioners contend that while the Department is required to assess antidumping duties on NAFTA TIB entries, it should nonetheless exclude from the calculation of the dumping margin those U.S. sales that entered under a TIB and

[3] The petitioners note that they assume that ILVA is referring to the Department's margin calculations when it used the term "assess" in its arguments. According to the petitioners, to do otherwise would render ILVA's arguments wholly inconsistent.

were subsequently re-exported to a NAFTA party. The petitioners' positions are incongruous.

In accordance with section 733(d)(2) of the Act, the Department can only assess antidumping duties on subject merchandise entered for consumption in the United States. *See Titanium Metals Corp.* v. *United States*, 901 F. Supp. 362 (CIT 1995). Normally, TIB entries are not entered for consumption, and the Department therefore does not assess antidumping or countervailing duties on TIB entries. Consistent with its treatment on assessment of duties, the Department's practice is to exclude those sales that entered under a TIB from its margin calculation because there will be no assessment of antidumping duties on such entries. *See e.g.*, Titanium Sponge From the Republic of Kazakhstan; Notice of Preliminary Results of Antidumping Duty Administrative Review, 64 FR 48793, 48794 (September 8, 1999). By contrast, where, as here, the Department will assess antidumping duties on entries, there is no basis to exclude the relevant sales from the margin calculation. Accordingly, we have included in the margin calculation of all ILVA's U.S. sales to unaffiliated parties that were entered for consumption under Article 303(3) of the NAFTA.

Comment 7: Collapsing Affiliates and Application of the Major Input Rule

During the POI, ILVA produced slabs which it sold to its wholly owned subsidiary, ILVA Lamiere e Tubi S.p.A. ("ILT"). ILT rolled the slabs into quarto plate and sold the plate to ILVA. During the POI, ILT only sold plate to ILVA (*i.e.*, ILT did not sell plate to any one else), which resold the plate to affiliated and unaffiliated customers in the U.S. and home markets. Prior to the preliminary determination, the petitioners argued that the Department should value the slabs that ILVA sold to ILT in accordance with the major input rule of section 773(f)(3) of the Act. ILVA argued that the Department should collapse ILT and ILVA and, in doing so, not apply the major input rule. In the preliminary determination, the Department did not treat ILT as a producer of the merchandise under investigation because it only supplied one service, namely rolling, in a larger production process wherein ILVA supplied all of the other material inputs and services required to produce plate. The Department determined that there was not a significant potential for price manipulation and, thus, no basis for collapsing ILT and ILVA. Since the Department did not collapse ILT with the producer ILVA, it used the major input rule to value ILT's rolling service. For the final determination, both the petitioners and ILVA contend that the Department erred by not treating ILT as a producer of the merchandise under investigation.[4] However, the parties differ as to whether the major input rule should be applied.

According to the petitioners, the record demonstrates that ILT is a supplier and seller of plate and, thus, the Department should apply the major input rule to ILT's purchases of slab from ILVA irrespective of whether it collapses ILT with ILVA. The petitioners note that ILVA reported, and the Department verified, that ILT purchased slabs from ILVA, rolled the slabs into plates, and sold the plates to ILVA. Thus, according to the petitioners, "there is no tolling arrangement between ILVA and ILT." The petitioners submit that transactions between affiliated parties should be valued under the major input rule and, thus, they urge the Department to apply this rule in the instant situation. According to the petitioners, the decision to collapse entities is a sales, not a cost, issue and, therefore, it should have no bearing on the application of the major input rule. Specifically, the petitioners maintain that the purpose behind collapsing is 1) to ensure that all sales of a producer or reseller are reviewed; 2) to ensure that antidumping margins are calculated as accurately as possible; and, 3) to prevent evasion of antidumping duty orders by the establishment of alternate sales channels (*see Queen's Flowers de Colombia et al.* v. *United States*, 981 F. Supp. 617, 622 (CIT 1997). Thus, the petitioners contend that the decision to collapse entities is made in the limited context of ensuring that the Department has included all of a respondent's U.S. sales in its margin calculation. Hence, the petitioners assert that collapsing should not affect the application of the major input rule. Because ILVA failed to provide a market price for slabs, as required by the Department for application of the major input rule, the petitioners request that as facts available, the Department value ILVA's slabs using the market price that the petitioners provided in their July 8, 1999 submission.

ILVA agrees that ILT and ILVA are both producers of the merchandise under investigation, but also contends that they satisfy the regulatory criteria for collapsing. Consequently, ILVA contends that the Department should collapse these two entities and not apply the major input rule. ILVA notes that during the POI, it produced CTL plate from plate in coil while ILT, a separate affiliated legal entity, produced another type of CTL plate, referred to as quarto plate. Based on the independent legal status of ILT, along with the fact that legal title belongs to ILT until ILT sells the plate to ILVA, ILVA maintains that the Department must find that ILT is a producer of plate and not merely a subcontractor as the Department held in its preliminary determination. ILVA believes that the Department's decision not to treat ILT as a producer of plate is wrong for the following reasons. First, ILVA reiterates that ILT cannot be considered a subcontractor because it acquires ownership of the subject merchandise. Second, ILVA argues that even if the Department considers ILT to be a "subcontractor," the Department's regulations preclude it from finding that ILT is not a producer. Specifically, ILVA notes that 19 CFR 351.401(h) states the following:

> (h) *Treatment of subcontractors ("tolling" operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

Since ILT acquires ownership of the subject merchandise and both elements of 19 CFR 351.401(h) must be satisfied before a company, even if deemed a subcontractor, cannot be treated as a producer, ILVA claims that the Department must determine that ILVA is a producer.

Third, ILVA alleges that the Department reached its preliminary determination on this matter by improperly focusing on the operational relationship between ILVA and ILT rather than the legal relationship. Again, ILVA notes that the legal relationship involves ILT purchasing slabs from ILVA, holding title to those slabs, using the slabs to produce plates, and selling the plates, for which ILT also holds title, to ILVA. According to ILVA, finding that an entity is not a producer based on an "operational reality test" would not withstand judicial scrutiny because it conflicts with the Department's practice of focusing only on legal relationships when employing the major input rule. Specifically, ILVA notes that the Department consistently looks to the legal status of the responding parties rather than their operational relationship in determining whether the "transactions disregarded" and "major input rules" of the Act are applicable. ILVA contends that the Department

[4] Although the petitioners maintain that ILT is a producer, they did not address the issue of whether the Department should collapse ILT with ILVA.

would be hard-pressed to explain to a Court why it looks at the operational relationship between parties to determine whether an entity is a producer but refuses to look at the operational relationship when employing the major input rule. ILVA adds that this is especially so since the logical consequence of being treated as a "subcontractor" based on the "operational reality test" leads to the application of the major input rule.

Fourth, ILVA notes that its relationship with ILT is identical to the relationship that existed between two affiliated in the antidumping duty investigation of stainless steel wire rod from Sweden and yet, in that investigation, the Department found that both the affiliates were producers (*see Notice of Final Determination of Sales at Less Than fair Value: Stainless Steel Wire Rod From Sweden*, 63 FR 40449 (July 29, 1998) (*"SSWR From Sweden"*)). ILVA and ILT operate under an agreement whereby, in general, ILT must purchase from ILVA all of the slabs that it uses to produce plates and it must sell the plates that it produces only to ILVA. According to ILVA, its relationship with ILT is identical to the relationship between Fagersta and Sandvik, the two affiliates in *SSWR From Sweden*, because Sandvik, a producer of stainless steel wire rod ("SSWR") operated under an exclusive purchase and supply agreement with Fagersta whereby Fagersta was "required to purchase only from Sandvik the billets that it processes into SSWR for sale to Sandvik" (*see SSWR From Sweden*, 63 FR at 40454). Unlike the Department's finding in the instant investigation, in *SSWR From Sweden*, the Department found that Fagersta was a producer. Moreover, ILVA points out that the Department's preliminary analysis on this issue, which seems to focus on the commercial relationship between ILVA and ILT as described in their exclusive supply and purchase agreement, is flawed because it does not consider certain provisions in the agreement that indicate that ILT is a separate entity that is operationally independent from ILVA. Finally, ILVA argues that the fact that ILT did not export subject merchandise to the United States does not prohibit the Department from treating ILT as a producer and collapsing the two entities. ILVA notes that in *Certain Fresh Cut Flowers From Colombia; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 63 FR 25447, 25448 (May 8, 1998) (*Certain Fresh Cut Flowers From Colombia*), the Department collapsed a potential exporter that was not even producing subject merchandise during the period of review because the company had the capability of producing subject merchandise. For the foregoing reasons, ILVA urges the Department to treat ILT as a producer.[5]

Furthermore, ILVA contends that as producers, ILT and ILVA satisfy all of the regulatory criteria for collapsing. ILVA states that pursuant 19 CFR. 351.401(f), the Department will collapse two producers where the Department finds; 1) the producers are affiliated under section 771(33) of the Act; 2) the producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities; and 3) there is a significant potential for the manipulation of price or production. ILVA believes that it meets all of the above criteria for the following reasons. First, ILVA notes that it owns 100 percent of ILT and, thus, ILVA and ILT are affiliated according to section 771 (33)(e) of the Act which states that an organization and any person owning 5 percent or more of the organization are affiliated. Second, ILVA maintains that it produces plates that are the same or similar to the plates produced by ILT. In fact, ILVA notes that using the Department's model-matching characteristics, there are some control numbers that include both ILVA and ILT produced plates. Hence, ILVA concludes that it meets the second of the Department's requirements for collapsing. Lastly, ILVA argues that in the instant situation, there is a significant potential for the manipulation of prices or production. According to ILVA, in order to determine whether a significant potential for manipulation exists, the Department considers; 1) the level of common ownership between the affiliates, 2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and 3) whether the operations of the affiliated firms are intertwined. ILVA believes that it meets each of these criteria because it owns 100 percent of ILT, certain members of its board of directors are also on the board of directors of ILT, and it shares information concerning sales, production and pricing with ILT. Moreover, ILVA contends that given its exclusive purchase and supply agreement with ILT, the two companies intimately coordinate production activities and, thus, their operations are intertwined. ILVA notes that the Department found the exclusive purchase and supply agreement in *SSWR From Sweden* to be a significant factor in its determination to collapse Sandvik and Fagersta. Additionally, ILVA maintains that in the preliminary determination, the Department did not collapse ILVA and ILT because it did not consider ILT to be a producer. However, as noted above, ILVA believes that ILT is a producer and argues that the petitioners agree with that conclusion. Thus, ILVA contends that it should be collapsed with ILT.

If the Department collapses ILVA and ILT, ILVA maintains that precedent requires the Department to disregard the major input rule. *AK Steel Corp.* v. *United States*, 34 F. Supp.2d 756 (CIT 1998); *see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13185 (March 18, 1998); *see also Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, 12749–50 (March 16, 1998) In fact, ILVA notes that the Department was very specific on this point in *SSWR From Sweden* where it stated that "because we have collapsed Fagersta, Sandvik, and Kanthal, we find that the major input rule does not apply in this instance and have used Sandvik's billet costs as the basis for COP" (*see SSWR From Sweden*, 63 FR at 40454). Given the Department's precedents, ILVA urges the Department to collapse ILVA and ILT and to disregard the major input rule.

DOC Position: We disagree with both parties. The two issues at hand are whether to collapse ILVA and ILT and whether to apply the major input rule. With respect to collapsing, section 351.401(f) of the Department's regulations describes the circumstances whereby the Department will treat two or more affiliated producers as a single entity (*i.e.*, collapse the parties). As in the preliminary determination, we do not consider ILT to be a producer because the terms of its exclusive supply and purchase agreement with ILVA require ILT to sell to ILVA all of the plate that it rolls in its facility. In arguing that ILT is a producer, the petitioners focused on the fact that

[5] ILVA also contends that the Department's decision not to collapse ILT because ILT is not a producer nullifies the "significant potential for manipulation" provision of the regulations. According to ILVA, "the fact that the Department determined that ILT is not a producer because of the exclusive supply arrangement with ILVA is simply not dispositive of whether the Department should collapse ILVA." ILVA contends that its agreement with ILT could change whereupon ILT would sell subject merchandise and "this is exactly the situation that the Department's collapsing regulation is intended to address."

actual sales of slabs and plates took place between ILVA and ILT and, thus, according to the petitioners, "there is no tolling arrangement between ILVA and ILT." ILVA also focused on the legal form of the transactions between ILVA and ILT, noting that "based on the independent legal status of ILT, along with the fact that legal title [to the plates] belongs to ILT until ILT sells the merchandise to ILVA, the Department must determine that ILT is a producer." However, the transfer of legal title is not the only factor that the Department considers when deciding whether an entity that is involved in manufacturing subject merchandise or foreign like product is a producer (*see Notice of Final Determination of Sales of Less Than Fair value: Dynamic random Access Memory Semiconductors of One Megabit and Above*, 64 FR 56308, 56318 (October 19, 1999 ("DRAMs" From Taiwan)). Significantly, section 351.401(h) of the Department's regulations notes that a subcontractor will not be considered to be a producer where the subcontractor "does not acquire ownership and *does not control the pertinent sale of the subject merchandise or foreign like product.*" This provision indicates that ownership of the produced merchandise and control of the relevant sale of such merchandise are important considerations in identifying the producer. Contrary to ILVA's claim, however, it does not require the Department to consider an entity to be a producer where one of the two conditions is not satisfied. Moreover, the Department has discretion in both selecting the factors that it considers in order to identify a producer and in determining the importance of those factors. In this case, we find that control of the relevant sale, *i.e.*, the sale of subject merchandise or foreign like product to unaffiliated parties, is a particularly important characteristic for the producer to possess. Under the terms of the exclusive supply and purchase agreement, ILT does not sell plates to unaffiliated parties and, thus, does not control the relevant sale (*i.e.*, the sale to an unaffiliated party). Rather, ILVA controls the first sale of the plates to unaffiliated parties. In essence, ILT only performs a rolling service for ILVA, obtaining slab from ILVA and returning the finished plate to ILVA. Thus, we do not consider ILT to be a producer of subject merchandise. Therefore, because ILT is not a producer, it is not appropriate to collapse ILVA and ILT into one entity under 19 CFR 351.401(f) for purposes of this final determination. Furthermore, there is no other basis on which to collapse ILVA and ILT.

The cases cited by ILVA as support for treating ILT as a producer differ from the instant case with respect to control of the relevant sale. In those cases, there is no indication that the parties which the Department treated as producers were contractually precluded from selling subject merchandise or foreign like product to unaffiliated customers. In fact, in *SSWR From Sweden*, each of the parties which the Department identified as producers and subsequently collapsed sold subject merchandise to the United States during the POI. In the preliminary results of the changed circumstances review in *Certain Fresh Cut Flowers From Colombia*, the Department collapsed Flores El Talle S.A. ("Flores"), the party that requested the review, with the Flores Colombianas Group ("the Group"), and found that the revocation of the antidumping order with respect to the Group also applied to Flores. In that case the Department noted that Flores' shipments would not be subject to suspension of liquidation if it were collapsed with the Group. Thus, unlike ILT, Flores, although not currently producing the subject merchandise due to soil infestation, was a producer of subject merchandise in a position to sell subject merchandise and foreign like product to unaffiliated customers once it resumed production. Thus, the fact that the Department treated Flores as a producer is not inconsistent with the Department's treatment of ILT in the instant case.

Furthermore, we do not find that the provisions which ILVA pointed to in the exclusive supply and purchase agreement sufficiently mitigate the restrictions that the agreement places on ILT's ability to sell plates. The agreement is clear that in the ordinary course of business, control of the relevant sale belongs to ILVA, and, in fact, during the POI, it was ILVA, not ILT, that sold plates to unaffiliated parties.

Finally, we disagree with ILVA's contention that the Department's decision not to collapse ILVA and ILT nullifies the "significant potential for manipulation" provision of section 351.401(f) of the Department's regulations. As the Department has noted, it "does not collapse affiliated companies for margin-calculation purposes unless both companies produce or sell the subject merchandise since the Department collapses affiliated companies only where the potential for price manipulation exists" (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6628 (February 10, 1999)). Thus, rather than nullifying the "significant potential for manipulation" provision, in making our decision we have specifically considered whether such potential exists by examining the role that ILVA and ILT played in manufacturing and selling the merchandise under investigation. Moreover, the fact that ILVA and ILT can alter their agreement and change the role that each plays in manufacturing and selling the merchandise under investigation has not escaped our attention. Should we issue an order with respect to ILVA, we intend to revisit this issue if the relationship between ILVA and ILT should change in any future administrative review.

Because we have not collapsed ILVA and ILT and we treated ILVA as the producer, we have continued to apply the major input rule to value the rolling services provided by ILT. In the absence of a market price or a transfer price for rolling slabs, as in the preliminary determination, we constructed a transfer price by increasing the reported rolling costs for quarto plate by ILT's G&A expenses and profit.

Palini

Comment 1: Classification of Warranty Expenses

The petitioners contend that Palini improperly classified as indirect selling expenses the U.S. credit notes issued by Palini pursuant to warranty claims made by U.S. customers. The petitioners argue, citing *Zenith Electronics Corporation* v. *United States*, that the Department's regulations allow for the classification of warranty expenses as indirect selling expenses only where the warranty expenses relate to non-variable costs. 77 F.3d 426, 433–34 (Fed. Cir. 1996). In contrast, in this case, the petitioners assert that Palini's warranty expenses are variable expenses, because the credit notes were issued for defective and non-conforming merchandise and therefore directly relate to specific sales. Therefore, the petitioners request that, for the final results, the Department treat Palini's warranty expenses as direct selling expenses.

Palini claims that it properly reported its warranty expenses as indirect selling expenses. Palini contends that, according to *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan (TRB's from Japan)*, the Department recognizes that

period of review ("POR") warranty expenses cannot always be linked to POR sales, because the expenses may result from sales that occurred before the POR. 62 FR 11825 (March 13, 1997). Therefore, Palini asserts that its reported warranty expenses must be allocated because the expenses cannot be reported on a transaction-specific basis. *Id.* Further, in accordance with *TRB's from Japan*, Palini contends that warranty expenses may be classified as indirect selling expenses, when the expenses cannot be reported on a transaction-specific basis. Therefore, for the final results, Palini requests that, because it issued credit notes on a customer-specific basis, as opposed to a transaction-specific basis, the Department should treat its warranty expenses as indirect selling expenses. However, Palini notes, if the Department were to reclassify the company's U.S. warranty expenses as direct selling expenses, it should similarly treat its home market warranty expenses, because the expenses are incurred in the same manner in both markets.

DOC Position: We agree with the petitioners and have treated Palini's warranty expenses as a direct expense in both the U.S. and home markets. Section 351.410 of the Department's regulations states that direct selling expenses are expenses, such as warranties, that result from, and bear a direct relationship to, the particular sale in question. In this case, Palini stated, at verification, that it issued credit notes for customer claims concerning defective or non-conforming merchandise. Thus, these expenses arise directly from the sales of subject merchandise and, consequently, pursuant to section 351.410 of the Department's regulations, we find that Palini's issuance of credit notes relates directly to specific sales.[6]

However, we agree with Palini that to the extent we reclassify its warranty expenses as direct selling expenses in the U.S. market, we should also do so in the home market because evidence on the record indicates that such expenses were incurred in the same manner in both markets. Therefore, for these final results, we have determined that Palini's warranty expenses should be treated as direct selling expenses for both the home and U.S. markets.

[6] We note, as stated in the *Antidumping Manual, Chapter 8, page 17*, and in accordance with Department practice, that "warranties are included even though the expense can not be tied to a particular sale because of the lapse of time between sale and expense. Yet it is inescapable that had there been no sales, there would have been no warranty expense."

Comment 2: Minor Corrections

The petitioners contend that Palini's submission of its revised U.S. warranty expense, presented as a minor correction at the beginning of verification, should not be accepted as such by the Department. The petitioners argue that the amount of the reduction from the reported value to the value presented at verification, was such a substantial change that it should be rejected by the Department as an untimely submission of new factual information.

In response, Palini asserts that its revision to U.S. warranty expenses was properly submitted as part of the minor corrections presented at the beginning of verification, pursuant to Department practice, and should be accepted as such by the Department.

DOC Position: We agree with Palini. During our verification of Palini, we examined and traced selected credit notes to Palini's financial records and completed an overall financial reconciliation, which substantiated the validity of Palini's U.S. warranty expense revision. Following Department practice, because the corrections are limited to U.S. warranty expenses and were verified to our satisfaction, we accepted these corrections for purposes of the final results.

Comment 3: Early Payment Discounts

The petitioners argue that Palini did not substantiate its claim that all customers who were offered an early payment discount actually made an early payment. The petitioners assert that pursuant to section 351.308 of the regulations, the Department should disallow all home market early payment discounts as facts available because Palini failed to provide information that distinguished between sales where the discount was granted and sales where the discount was not granted.

Palini argues that its reported early payment discounts were properly treated as a price adjustment in the preliminary determination. Palini states the Department affirmatively verified that when an early payment discount is granted, the amount of the discount is indicated in the invoice price. Therefore, Palini argues that the Department should not apply facts available to its early payment discount, but should treat it as a price adjustment to NV in the final results.

DOC Position: We agree with Palini. During our home market verification of Palini, we conducted thorough sales traces which included ensuring the accuracy of Palini's early payment discounts through an examination of the reported gross unit price and the invoice price. We found no discrepancies. Furthermore, we were satisfied that for those sales transactions reviewed at verification, which included early payment discounts, the customer did utilize the early payment option whenever offered by Palini. Therefore, for these final results, we have continued to allow an adjustment to NV for Palini's reported early payment discounts.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Italy that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Palini B Bertoli S.p.A	8.97
Ilva S.p.A	de minimis
All others	8.97

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33236 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–D

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–827]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon, Kristen Johnson, or Michael Grossman, Office of CVD/AD Enforcement II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

Final Determination. The Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from Italy. For information on the countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Gulf States, Inc., IPSCO Steel Inc., and the United Steelworkers of America (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy*, 64 FR 40416 (July 26, 1999) (*Preliminary Determination*)), the following events have occurred:

We issued supplemental questionnaires on July 23, 26, and 27, 1999, to ILVA S.p.A. (ILVA) and ILVA Lamiere e Tubi S.p.A. (ILT) (collectively referred to as ILVA/ILT), Palini & Bertoli S.p.A. (Palini & Bertoli), and the Government of Italy (GOI), respectively. We received the respondents' questionnaire responses on September 3, 1999. We conducted verification of the countervailing duty questionnaire responses from September 13 through September 24, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 40416), and the final antidumping duty determination was postponed (*see* 64 FR at 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR at 46341). On November 8, 1999, we issued to all parties the verification reports for ILVA/ILT, Palini & Bertoli, and the regional government of Friuli Venezia Giulia. On November 12, 1999, we issued the verification report for the GOI. Petitioners, the GOI, and ILVA/ILT filed case briefs on November 18, 1999. Rebuttal briefs were submitted to the Department by the petitioners and ILVA/ILT on November 23, 1999. The case hearing was held on November 30, 1999.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because Italy is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations*, 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Corporate History of ILVA/ ILT [1]

Prior to 1981, the Italian government holding company Istituto per la Ricostruzione Industriale (IRI), controlled Italy's nationalized steel industry through its wholly-owned subsidiary, Finsider S.p.A (Finsider). The steel operations of Finsider were subdivided into three main companies: Italsider (carbon steel); Terni (stainless and special steel); and Dalmine (pipe and tube). Italsider was the sector leader and the primary producer of the subject merchandise. In 1981, the GOI implemented a restructuring plan, restructuring Finsider into several operating companies including: Nuova Italsider (carbon steel flat products); Terni (speciality flat steels); Nuova Sias (special long products); and other steel product divisions. In the course of the 1981 Restructuring Plan, Italsider transferred all of its assets, with the exception of certain plants, to Nuova Italsider. Italsider became a one-company holding company with Nuova Italsider's stock as its primary asset.

During 1987, Finsider restructured three of its main operating companies: Nuova Italsider, Deltasider, and Terni. Nuova Italsider spun-off its assets to Italsider and transferred its shares in Italsider to Finsider. Nuova Italsider ceased operations after this divestment and Finsider had direct ownership of Italsider. Upon completion of the 1987 restructuring, Italsider re-emerged as the steel sector's carbon steel products producer.

Later in 1987, Finsider and its main operating companies (Italsider, TAS, and Nuova Deltasider) were placed in liquidation, and the GOI subsequently implemented the 1988 Restructuring Plan. The goal of the 1988 Restructuring Plan was to restructure Finsider and its operating companies, assembling the group's most productive assets into a new operating company, ILVA S.p.A. (ILVA S.p.A. or (old) ILVA), which was created on January 1, 1989. The 1988 Restructuring Plan, like the 1981 plan, was submitted to and approved by the European Commission (EC). In accordance with the plan, ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies, and Finsider closed certain facilities to comply with the EC's requirements. With respect to Italsider, part of the company's liabilities and the majority of its viable assets, including assets associated with the production of carbon steel flat-rolled products, were transferred to ILVA S.p.A., which commenced production on January 1, 1989. Non-productive assets and a substantial amount of liabilities were left behind with Finsider and the liquidating operating companies.

The facilities retained by ILVA S.p.A were organized into four primary operating groups: carbon steel flat products, stainless steel flat products, stainless steel long products, and seamless pipe and tube. In 1992, ILVA Lamiere e Tubi (ILT), a carbon steel flat products operation, was created as a wholly-owned subsidiary of ILVA S.p.A. ILVA S.p.A. was also the majority owner of a large number of separately incorporated subsidiaries. Some of these subsidiaries produced various types of steel products. The other subsidiaries were service centers, trading companies, and an electric power company, among others. ILVA S.p.A., together with its subsidiaries, constituted the ILVA Group. The ILVA Group was wholly-owned by IRI.

Although ILVA S.p.A. was profitable in 1989 and 1990, the company encountered financial difficulties in 1991, and became insolvent by 1993. On October 31, 1993, ILVA S.p.A. entered into liquidation. On December 31, 1993, IRI demerged ILVA S.p.A."s main productive assets and a share of its liabilities into two new companies: ILVA Laminati Piani (ILP) (carbon steel flat products) and Acciai Speciali Terni (AST) (speciality and stainless steel flat products). On January 1, 1994, ILP and AST were formally established as separately incorporated firms in advance of privatization. *See Memorandum to David Mueller: Verification Report for ILVA S.p.A. and ILVA Lamiere e Tubi*, dated November 8, 1999 (public version on file in the Central Records Unit (CRU) (Room B–099 of the Main Commerce Building) *(ILVA/ILT Verification Report)*, at Exhibit 1993/94–1 and *Memorandum to David Mueller: Verification Report for the Government of Italy*, dated November 12, 1999 (public version on file in the CRU) *(GOI Verification Report)* at 11. ILT, the carbon flat steel products operation, was transferred to ILP as its wholly-owned subsidiary. The remainder of ILVA S.p.A."s assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua (a.k.a., ILVA in Liquidation).

In 1995, 100 percent of ILP was sold through a competitive public tender managed by IRI with the assistance of Istituto Mobiliare Italiano (IMI). The sale of ILP was executed through a share purchase agreement between IRI and a consortium of investors led by Riva Acciaio S.p.A. (RIVA) and investment companies. The contract of sale was signed on March 16, 1995, and all shares of ILP were transferred to the consortium on April 28, 1995. As of that date, the GOI no longer maintained any ownership interest in ILP or had any ownership interest in any of ILP's new owners.

On January 1, 1997, RIVA changed the name of ILP to ILVA S.p.A (creating the "new" ILVA, referred to hereafter as ILVA or (new) ILVA). ILVA continues to wholly-own ILT. Within RIVA's corporate structure, ILT, at its Taranto Works facility, produces the subject merchandise, which is exported to the United States. ILVA, with the assistance of ILVA Commerciale S.p.A. (ICO), a sales company wholly-owned by ILVA, is responsible for selling and exporting the subject merchandise to the United States and other markets.

[1] As discussed in this section, ILVA/ILT's carbon steel predecessor companies are: Nuova Italsider (1981–1987), Italsider (1987–1988), ILVA S.p.A. (1989–1993), and ILP (1994–1996).

As of 1998, RIVA owns and/or controls 82.0 percent of ILVA and two foreign-incorporated investment companies own the remaining 18.0 percent.

According to ILVA/ILT, Sidercomit Taranto C.S. Lamiere S.r.l. (Sidercomit) was created in 1992, as an indirect subsidiary of (old) ILVA. Sidercomit became an operating unit within (new) ILVA in 1997, and currently operates service centers for the distribution of merchandise, including the subject merchandise for ILVA/ILT. Any benefits to Sidercomit under programs that have been found countervailable have been mentioned separately within those program sections below.

Corporate History of Palini & Bertoli

Palini & Bertoli, a 100 percent privately-owned corporation, was incorporated in December 1963. Palini & Bertoli has never been part of the Italian state-owned steel industry.

Change in Ownership

In the General Issues Appendix (GIA), appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993) (*Certain Steel from Austria*), we outlined our methodology for the treatment of subsidies received prior to the sale of a government-owned company to a private entity (*i.e.*, privatization), or the spinning-off (*i.e.*, sale) of a productive unit from a government-owned company to a private entity.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We do this by first dividing the sold company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI and ending one year prior to the sale of the company. We then take the simple average of these ratios. This averaged ratio serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. Next, we multiply this ratio by the purchase price to derive the portion of the purchase price attributable to the payment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time the company is sold.

With respect to the spin-off of a productive unit, consistent with the Department's methodology set out above, we analyze the sale of a productive unit to determine what portion of the sales price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. The result of this calculation yields the amount of remaining subsidies attributable to the spun-off productive unit. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the methodology set out above, and deduct it from the maximum amount of subsidies that could be attributable to the spun-off productive unit.

Use of Facts Available

Both the GOI and ILVA/ILT failed to fully respond to the Department's questionnaires concerning the program "Debt Forgiveness: 1981 Restructuring Plan." Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because the GOI and ILVA/ILT failed to submit the information that was specifically requested by the Department, we find that the respondents have failed to cooperate to the best of their abilities. Therefore, we have based our determination for this program on the facts available.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* 19 CFR 351.308(c). In the absence of information from the GOI and ILVA/ILT, we consider the February 16, 1999 petition, as well as our findings from the final determination of *Certain Steel from Italy* to be appropriate bases for a facts available countervailing duty rate calculation. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy*, 58 FR 37327, 37329–30 (July 9, 1993) (*Certain Steel from Italy*).

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information. With respect to the program for which we did not receive complete information from the respondents, the secondary information was corroborated through exhibits (*i.e.*, financial statements) attached to the petition. The financial transactions discussed within Finsider's 1984 and 1985 financial statements confirm that the GOI engaged in transactions which are tantamount to the assumption of debt and debt forgiveness. Based on such review of the transactions discussed in the financial statements, we find that the secondary information (*i.e.*, the petition and *Certain Steel from Italy*) has probative value and, therefore, the information regarding the debt forgiveness provided under the 1981 Restructuring Plan has been corroborated.

Subsidies Valuation Information

Allocation

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims, and establishes that, these tables do not reasonably reflect the AUL of the renewable physical assets for the

company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

On June 21, 1999, ILVA/ILT submitted to the Department four tables illustrating company-specific AUL calculations for (old) ILVA, ILP, ILT, and (new) ILVA, both separately and in combination. In addition, the GOI provided estimates of the country-wide AUL for the Italian steel industry. Based upon our analysis of the data submitted by ILVA/ILT regarding the AUL of their assets, we preliminarily determined that the calculation which takes into consideration all producers of the subject merchandise over the past 10 years is the most appropriate AUL calculation. However, because this calculation did not yield a company-specific AUL which is significantly different from the AUL listed in the IRS tables, in the *Preliminary Determination*, we used the 15 year AUL as reported in the IRS tables to allocate non-recurring subsidies under investigation for ILVA/ILT in the preliminary calculations.

After considering the parties' comments and verifying the data submitted by ILVA/ILT regarding the AUL of their assets, we continue to use a 15 year AUL for ILVA/ILT. We have rejected respondents company-specific AUL calculation and the country-wide depreciation information provided by the GOI and are using the IRS tables pursuant to 19 CFR 351.524(d)(2)(i). For an explanation of why we are rejecting ILVA/ILT's company-specific AUL and the country-wide depreciation information, see *Comment 2*.

In its questionnaire response of July 6, 1999, Palini & Bertoli stated that it "does not have sufficient resources to respond" to the Department's inquiry of whether the company wished to rebut the 15 year AUL as reported in the IRS tables. Therefore, we are using a 15 year AUL for Palini & Bertoli.

Equityworthiness

In measuring the benefit from a government equity infusion, in accordance with section 351.507(a)(2) of the Department's CVD Regulations, the Department compares the price paid by the government for the equity to actual private investor prices, if such prices exist. According to section 351.507(a)(3) of the Department's CVD Regulations, where actual private investor prices are unavailable, the Department will determine whether the firm was unequityworthy at the time of the equity infusion.

In this case, private investor prices are unavailable; therefore, it is necessary to determine whether ILVA/ILT's predecessor companies were unequityworthy in the years in which equity infusions were made. Our review of the record has not led us to change our findings from prior investigations, in which we found ILVA/ILT's predecessor companies, Nuova Italsider and (old) ILVA, unequityworthy from 1984 through 1988, and from 1991 through 1992. *See, e.g.,Certain Steel from Italy*, 58 FR 37328; *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40477 (July 29, 1998) *(Wire Rod from Italy); Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15511 (March 31, 1999) (*Plate in Coils from Italy*) and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30624, 30627 (June 8, 1999) *(Sheet and Strip from Italy)*. We have not examined whether (old) ILVA was equityworthy in 1989 and 1990, because the company did not receive an equity infusion from the GOI in either of those years.

Section 351.507(a)(3) of the Department's CVD Regulations views an infusion of equity into an unequityworthy company as inconsistent with the usual investment practices of private investors. In such cases, the Department will apply the methodology described in section 351.507(a)(6) of the regulations, treating the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the year in which the infusion was received based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 21, 1997). The Department will consider a firm to be uncreditworthy if it is determined that, based on information available at the time of the government-provided loan, the firm could not have obtained a long-term loan from conventional sources. *See* section 351.505(a)(4)(i) of the CVD Regulations.

Italsider, Nuova Italsider, and (old) ILVA were found to be uncreditworthy from 1977 through 1993. *See Certain Steel from Italy*, 58 FR at 37328–29, *Wire Rod from Italy*, 63 FR at 40477, and *Sheet and Strip from Italy*, 64 FR at 30627. In its September 3, 1999 response, ILVA/ILT stated that the Department has incorrectly determined that Finsider and (old) ILVA were uncreditworthy, since these companies were able to borrow money from commercial lenders at prevailing market rates of interest. ILVA/ILT discussed the existence of IRI guarantees as the reason why both Finsider and (old) ILVA were able to obtain loans at commercial interest rates. *See* ILVA/ILT's September 3, 1999 Questionnaire Response (QR), at 12–13.

We disagree with respondents. The existence of commercial loans to a government-owned company is not dispositive for purposes of determining the company's creditworthiness. In the preamble to the CVD Regulations, we state that for government-owned firms, the Department will make its creditworthiness determination by examining those factors listed in paragraph (a)(4)(i) of section 351.505. *See* Preamble to the CVD Regulations, 63 FR at 65367. Those factors outlined in paragraph (a)(4)(i) include, among other things: (1) the receipt by the firm of comparable, commercial financing, (2) the present and past financial health of the firm as indicated by various financial indicators, (3) the firm's past and present ability to meet its costs and fixed financial obligations with its cash flow, and (4) evidence of the firm's future financial position.

No information with respect to the above factors has been presented in this investigation that would lead us to reconsider our earlier findings that Italsider, Nuova Italsider, and (old) ILVA were uncreditworthy from 1977 through 1993. Therefore, consistent with our past practice, we continue to find Italsider, Nuova Italsider, and (old) ILVA uncreditworthy from 1977 through 1993.

We have not analyzed ILP's, (new) ILVA's, or ILT's creditworthiness in the years 1994 through 1998, because the companies did not negotiate new loans with the GOI or EC during these years.

Benchmarks for Long-Term Loans and Discount Rates

In the *Preliminary Determination*, we based our discount rates on the Italian

Bankers' Association (ABI) rates, which was consistent with the Department's finding in *Wire Rod from Italy*, 63 FR at 40477 and *Sheet and Strip from Italy*, 64 FR at 30626–30627. However, at verification, we learned that the ABI rate does not represent a long-term interest rate, but is rather an average of the short-term interest rates commercial banks charge to their most favored customers. A Bank of Italy (BOI) official explained at verification that an overdraft loan is the most wide-spread short-term instrument of financing available in Italy for companies and individuals. There is no set maturity on an overdraft loan and a company or individual repays the principal when the banks call in the loans. The Italian Bankers Association averages the banks' short-term interest rates to arrive at the ABI rate which the BOI publishes in its economic bulletins and annual reports. *See GOI Verification Report*, at 3–4.

At verification, we inquired whether the BOI collects data on long-term interest rates charged by commercial banks. We learned that only recently (i.e., beginning with financial year 1995) has the BOI started to compile statistics on long-term interest rates charged by banks. The only long-term interest rate for which the BOI has historical yearly information is the rate charged on treasury bonds issued by the GOI. *See Id.*

Because we were unable to gather information on commercial long-term interest rates from either the BOI or independent research for the period 1984 through 1998, and the government bond rate does not represent a commercial rate, for purposes of this final determination, we have continued to use the ABI rates to construct discount rates. We note that, in *Wire Rod from Italy*, the ABI rate was said to be "the most suitable benchmark for long-term financing to Italian companies." *See Memorandum to Barbara Tillman re: Countervailing Duty Investigation of Certain Stainless Steel Wire Rod from Italy: Discussions with Company Officials from Gabetti per L'impresa, Banca Di Roma, and Reconta Ernst & Young*, dated June 3, 1998 (public document on file in CRU).

In calculating the interest rate applicable to a borrower, commercial banks typically add a spread ranging from 0.55 percent to 4.0 percent, which is determined by the company's financial health. *See Wire Rod from Italy*, 63 FR at 40477. Additionally, information on the record indicates that the published ABI rates do not include amounts for fees, commissions, and other borrowing expenses. While we do not have information on the expenses that would be applied to long-term commercial loans, the GOI supplied information on the borrowing expenses for overdraft loans in 1997, as an approximation of the expenses on long-term commercial loans. This information shows that expenses on overdraft loans range from 6.0 to 11.0 percent of interest charged. Such expenses, along with the applied spread, raise the effective interest rate that a company would pay. Because it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. *See* section 351.505(a)(1) of the CVD Regulations. Therefore, we have added the average of the spread (*i.e.*, 2.28 percent) and borrowing expenses (*i.e.*, 8.5 percent of the interest charged) to the yearly ABI rates to calculate the effective discount rates.

For the years in which ILVA/ILT or their predecessor companies were uncreditworthy (*see* "Creditworthiness" section above), we calculated discount rates in accordance with the formula for constructing a long-term benchmark interest rate for uncreditworthy companies as stated in section 351.505 (a)(3)(iii) of the CVD Regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the weighted-average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998).[2] For the probability of default by a creditworthy company, we used the weighted-average cumulative default rates reported for the Aaa to Baa-rated categories of companies in the study. The weighted-average cumulative default rates for the Aaa to Baa-rated categories is indicated as the "Investment Grade" default rates. *See Memorandum to the File: Moody's Investment Grade Default Rates*, dated November 9, 1999 (public document on file in the CRU). For non-recurring subsidies, the average cumulative default rates for both uncreditworthy and creditworthy companies were based on a 15 year term, since all of ILVA/ILT's allocable subsidies were based on this allocation period.

In addition, ILVA/ILT had two long-term, fixed-rate loans under ECSC Article 54 outstanding during the POI. Therefore, we have selected a U.S. dollar-based interest rate as our benchmark. *See* section 351.505(a)(2)(i) of the CVD Regulations. Consistent with the *Preliminary Determination*, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars. We have used these rates since we were unable to obtain at verification or through independent research, a long-term borrowing rate for loans denominated in U.S. dollars in Italy. Because ILVA was uncreditworthy in the years in which the loans were contracted, we calculated the uncreditworthy benchmark rates in accordance with section 351.505 (a)(3)(iii) of the CVD Regulations.

I. Programs Determined To Be Countervailable

Government of Italy Programs

A. Equity Infusions to Nuova Italsider and (Old) ILVA[3]

The GOI, through IRI, provided new equity capital to Nuova Italsider or (old) ILVA, two predecessor companies of ILVA/ILT that produced carbon steel plate, in every year from 1984 through 1992, except in 1987, 1989, and 1990. We determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. These equity infusions constitute financial contributions, as described in section 771(5)(D)(i) of the Act. Because they were not consistent with the usual investment practices of private investors (*see* "Equityworthiness" section above), the equity infusions confer a benefit within the meaning of section 771(5)(E)(i) of the Act. Because these equity infusions were limited to Finsider and its operating companies, Nuova Italsider and (old) ILVA, we determine that they are specific within the meaning of section 771(5A)(D)(iii) of the Act.

We have treated these equity infusions as non-recurring subsidies given in the year each infusion was received because each required a separate authorization. We allocated the equity infusions over a 15 year AUL.

[2] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore, for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody's Investors Service's publication dated February 1998 (at Exhibit 28).

[3] In the *Initiation Notice*, these equity infusions were separately listed as "Equity Infusions into Italsider/Nuova Italsider" and "Equity Infusions into ILVA."

Because Nuova Italsider and (old) ILVA were uncreditworthy in the years the equity infusions were received, we constructed uncreditworthy discount rates to allocate the benefits over time. *See* "Subsidies Valuation Information" section, above. We noted, and petitioners discussed in their November 18, 1999 case brief, that a ministerial error was made in the *Preliminary Determination* with respect to the 1986 equity infusion Nuova Italsider received from IRI. *See* Petitioners' November 18, 1999 Case Brief, at 48. The error was numerical and was insufficient to require a ministerial error correction of the preliminary calculations. For this final determination, we have corrected the error.

For equity infusions originally provided to Nuova Italsider, a predecessor company that produced carbon steel plate, we consider these equity infusions to be attributable to (old) ILVA and subsequently to ILP, because they are simply restructured entities of the government-owned steel company. Accordingly, we did not apportion to the other operations of (old) ILVA any part of the equity infusions originally provided directly to Nuova Italsider. While we acknowledge that it would be our preference to look at equity infusions into (old) ILVA as a whole and then apportion an amount to ILP when it was spun-off from (old) ILVA, we find our approach in this case to be the most feasible since information on equity infusions provided to the non-carbon steel operations of (old) ILVA is not available. For the equity infusions to (old) ILVA, however, we did apportion these by asset value to all (old) ILVA operations in determining the amount applicable to ILP.

We applied the repayment portion of our change in ownership methodology to all of the equity infusions described above to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales [4] during the POI. On this basis, we determine the net countervailable subsidy to be 3.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any equity infusions from the GOI.

[4] Since February 1997, ILVA and ILT have had an exclusive sales arrangement, by which, all of ILT products are sold to ILVA, which, in turn, sells them to outside customers. When ILVA purchases goods from ILT, ILVA considers the purchase as an increase of inventory and the transaction is recorded as an "acquisition cost" in its accounting books. *See ILVA/ILT Verification Report*, at 2. Because of this sales arrangement, we are using as our denominator, ILVA's 1998 sales sourced from the company's unconsolidated financial statement.

B. Debt Forgiveness: 1981 Restructuring Plan

The GOI reported that the objective of the 1981 Restructuring Plan was to redress the economic and financial difficulties the iron and steel industry was realizing in the early 1980's. The GOI stated that this plan, which extended to 1985, due to the prolonged crisis within the sector, envisaged financial interventions to aid in the recovery of the Finsider group. As discussed above in the "Use of Facts Available" section, the GOI and ILVA/ILT failed to submit complete information in regard to the assistance provided under the 1981 Restructuring Plan. Therefore, based on the facts available, we determine that certain financial transactions conducted in association with the 1981 Restructuring Plan are countervailable subsidies.

Following Italsider's transfer of all its company facilities to Nuova Italsider in September 1981, Italsider held 99.99 percent of Nuova Italsider's shares. In 1983, Italsider was placed in liquidation. While in liquidation, Italsider sold its shares of Nuova Italsider to Finsider in December 1984. The sales price was 714.6 billion lire. As part of this payment, Finsider assumed Italsider's debts owed to IRI of 696.4 billion lire. The difference between the 714.6 billion lire and 696.4 billion lire was paid directly by Finsider to Italsider.

On December 31, 1984, Finsider also granted to Italsider a non-interest bearing loan of 563.5 billion lire to cover losses realized from the liquidation. A matching provision was also made to Finsider's "Reserve for Losses on Investments and Securities," to cover the losses of the liquidation of Italsider. Following a shareholders' meeting of Finsider on December 30, 1985, the amount of 563.5 billion lire was disbursed to cover the losses of Italsider and Italsider's state of liquidation was revoked.

In *Certain Steel from Italy*, the Department determined that the 1981 Restructuring Plan merely shifted assets and debts within a family of companies, all of which were owned by Finsider, and ultimately, by the GOI. Therefore, we determined that both the 696.4 billion lire assumption of debt and the 563.5 billion lire debt forgiveness were specifically limited to the steel companies and constitute countervailable subsidies. *See Certain Steel from Italy*, 58 FR at 37330. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant a reconsideration of the earlier finding that the debt assumption and debt forgiveness are countervailable subsidies. Therefore, consistent with our treatment of these transactions in *Certain Steel from Italy*, we determine that the 1984 assumption of debt and 1985 debt forgiveness constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with *Certain Steel from Italy*, debt assumption and debt forgiveness are treated as grants which constitute financial contributions under section 771(5)(D)(i) of the Act. The transactions also confer benefits to the recipient within the meaning of section 771(5)(E)(i) of the Act, in the amount of the debt coverage. Because the debt assumption and debt forgiveness were limited to Italsider, one of ILVA/ILT's predecessor companies, we determine that these transactions are specific within the meaning of section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we have treated the assumption of debt and debt forgiveness to Italsider as non-recurring subsidies because each transaction was a one-time, extraordinary event. We allocated the 1984 debt assumption and 1985 debt forgiveness over a 15 year AUL. *See* the "Allocation Period" section, above. In our grant formula, we used constructed uncreditworthy discount rates based on our determination that Italsider was uncreditworthy in 1984 and 1985. *See* "Benchmark for Long-Term Loans and Discount Rates" and "Creditworthiness" sections, above.

As with the equity infusions originally provided to Nuova Italsider, we consider the assumption of debt and debt forgiveness to be attributable to (old) ILVA and subsequently to ILP, because they are simply restructured entities of the government-owned steel company. To determine the amount appropriately allocated to ILP after its privatization, we followed the methodology described in the "Change in Ownership" section above. We divided this amount by ILVA's sales during the POI. On this basis, we determine the net countervailable subsidy to be 1.09 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

C. Debt Forgiveness: 1988 Restructuring Plan

As discussed above in the "Corporate History of ILVA/ILT" section of this notice, the GOI liquidated Finsider and its main operating companies in 1988, and assembled the group's most productive assets into a new operating company, ILVA S.p.A. (*i.e.*, (old) ILVA).

The Finsider restructuring plan was developed at the end of 1987, and was approved by the GOI on June 14, 1988, and by the EC on December 23, 1988. The objective of the plan was to restore the industrial, financial, and economic balance to the public iron and steel-making sector in Italy. The restructuring plan included the voluntary liquidation of Finsider, and IRI's assumption of the debts not covered by the sale of assets of the companies being liquidated. IRI was the majority owner of Finsider, and therefore, the party responsible for payment of Finsider's debts.

A transfer of assets and liabilities from Finsider to (old) ILVA was to be accomplished at the latest by March 31, 1990. Upon completion of the 1988 Restructuring Plan, (old) ILVA owned Finsider's productive assets and a small portion of the group's liabilities. Included in the transfer were the productive portions of the flat-rolled facilities located at Taranto, Genoa, and Novi Ligure.[5] The liquidating companies retained the non-productive assets and the vast majority of the liabilities, which had to be repaid, assumed, or forgiven. Thus, while (old) ILVA emerged from the process with a positive net worth, the other companies were left with capital structures in which their liabilities greatly exceeded the liquidation value of their assets.

We determine that certain financial transactions associated with the 1988 Restructuring Plan constitute countervailable subsidies. In 1988, IRI established a fund of 2,943 billion lire to cover losses which Finsider would realize while in liquidation. As of December 31, 1988, Finsider had accumulated losses in excess of its equity. In order to prevent Finsider from becoming insolvent during 1989, IRI utilized 1,364 billion lire of the fund to forgive debts it was owed by Finsider to cover the losses. We determine that IRI's action of forgiving Finsider's debts in 1989, constitutes a countervailable subsidy.

Later in 1990, IRI forgave debts it was owed by Finsider when it purchased (old) ILVA's stock from Finsider (and Terni) for 2,983 billion lire. The 2,983 billion lire was used to pay the liquidated companies' debts which existed at the time of the sale. Prior to the preliminary determination, ILVA/ILT disagreed with our characterization in *Certain Steel from Italy* that the share purchase was an act of debt forgiveness. They stated that the price paid by IRI for (old) ILVA's shares reflected the market value of the shares and, therefore, the purchase was not an act of debt forgiveness. We preliminarily disagreed with ILVA/ILT's argument and determined that IRI's purchase of (old) ILVA's stock was tantamount to debt forgiveness; however, we stated that we would seek further clarification of the stock purchase transaction for the final determination. *See Preliminary Determination*, 64 FR at 40422.

In the July 23, 1999 questionnaire and at verification, we asked the GOI and ILVA/ILT to provide all feasibility studies, market reports, economic forecasts, or similar documents completed prior to (old) ILVA's share purchase, which related to the future expected financial performance of the company. We examined the McKinsey & Company (McKinsey) report of August 1988, which respondents claim provides a comprehensive analysis of the expected future financial performance of (old) ILVA. For reasons discussed in *Comment 7*, we find that the McKinsey report did not assess the expected future financial health of (old) ILVA. Rather, we find that the report examined the viability of the government's 1988 Restructuring Plan for the period 1988 to 1990, and assessed whether the creation of (old) ILVA would conform with the EC's trade and competition rules. *See GOI Verification Report*, at 5. Therefore, on January 1, 1989, the day on which IRI committed to purchasing (old) ILVA's shares, IRI did not have sufficient financial data and analysis which would have allowed it to evaluate the potential risk versus the expected return in (old) ILVA. *See Id.*, at 9–10. Because IRI did not undertake the financial analysis that a private investor would have prior to purchasing shares, we determine that ILVA's share purchase was not in accordance with the normal investment practice of a private investor.

Consistent with our preliminary determination, we find that IRI's purchase of (old) ILVA's shares from Finsider merely shifted assets (*i.e.*, ownership of company stock) within a family of companies which were all owned by the government. The purpose of IRI's decision to purchase (old) ILVA's stock on January 1, 1989, was to provide to Finsider in liquidation cash to repay debts. As such, IRI's purchase of (old) ILVA's stock was tantamount to debt forgiveness. Thus, we determine that IRI's purchase of (old) ILVA's stock is a countervailable subsidy because it effectively forgave Finsider's debts.

At the *Preliminary Determination*, we noted that Finsider's 1989 Annual Report at page 12 states that: "During the fiscal year, your company [Finsider] recorded losses totaling 1,568 billion lire; therefore, the circumstances reoccur for which the shareholder IRI later renounced its own credits necessary to cover the difference." Thus, Finsider realized a net loss of 1,568 billion lire for fiscal year 1989. In order to avoid insolvency of the company, IRI should have, but did not, forgive the 1,568 billion lire it was due to cover Finsider's losses in excess of equity during 1990. At the *Preliminary Determination*, we stated that we would seek additional information regarding Finsider's 1,568 billion lire of losses.

For this final determination, we have examined whether IRI expected to receive payment of the 1,568 billion lire debt which Finsider owed it in 1990. Based on the record evidence, we determine that IRI did not expect Finsider to pay the 1,568 billion lire debt. First, in 1988, IRI created a fund with the sole purpose to cover the losses which Finsider would realize while in liquidation. Second, IRI utilized 1,364 billion lire of the fund to cover losses in 1989, by forgiving debt of an equivalent amount. In addition, respondents did not submit information on the record regarding the value of the assets which remained in Finsider as of December 31, 1989, to demonstrate that Finsider had viable assets which it could sell for cash to pay the debt owed to IRI. On the basis of these facts, we determine that IRI had no expectation that Finsider would pay the 1,568 billion lire debt. Therefore, we determine that IRI provided to Finsider debt forgiveness of 1,568 billion lire in 1990. For a further discussion see *Comment 6*.

On the basis of the record evidence, we determine that the debt forgiveness which IRI provided in 1989 and 1990, constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with our practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt coverage. Because the debt forgiveness was received by only (old) ILVA, a predecessor company of ILVA/ILT, we determine that the debt coverage is specific under section 771(5A)(D)(iii)(I) of the Act.

The record of this investigation demonstrates that (old) ILVA did not obtain all of Finsider's assets. Based on the information submitted to the Department, we have calculated the percentage of Finsider's assets which were transferred to (old) ILVA. We calculated that, on December 31, 1988, 71.31 percent of Finsider's assets were transferred to (old) ILVA. We also

[5] The subject merchandise which ILT produced and (new) ILVA exported to the United States in 1998, was produced at the Taranto facilities.

calculated the value of the additional assets which were transferred to (old) ILVA during the course of 1990. We then summed the assets transferred to (old) ILVA in 1989 and 1990, and divided that amount by Finsider's total asset value as of December 31, 1988, to derive the percentage of Finsider's assets which were obtained by (old) ILVA. On this basis, we calculated that 84.94 percent of Finsider's assets were transferred to (old) ILVA. For a further discussion see the Department's Position to *Comment 5*.

To determine the benefit from these countervailable subsidies, we have treated the amounts of debt forgiveness provided under the 1988 Restructuring Plan as non-recurring grants because they were one-time, extraordinary events. For the debt forgiveness provided in 1989, we applied 71.31 percent to the amount of debt forgiveness to determine the amount attributable to (old) ILVA. With respect to the debt forgiveness provided in 1990, we applied 84.94 percent to the total amount of debt forgiveness to determine the amount attributable to (old) ILVA. Because (old) ILVA was uncreditworthy in 1989 and 1990, the years in which the assistance was provided, we used constructed uncreditworthy discount rates to allocate the benefits over time. We allocated the debt forgiveness provided in 1989 and 1990, over a 15 year AUL. *See* the "Subsidies Valuation Information" section, above.

We also apportioned the debt coverage by asset value to all (old) ILVA operations in determining the amount applicable to ILP. We next applied the repayment portion of our change in ownership methodology to the debt forgiveness to determine the amount of the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 5.12 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

In addition, at the time of the *Preliminary Determination*, there was ambiguity as to whether the GOI provided additional financial assistance to Finsider in liquidation, and if so, the amount of assistance actually disbursed (*see* 64 FR at 40423). For purposes of the preliminary determination, we found, based on the information provided to the Department by ILVA/ILT, that IRI provided 738 billion lire to Finsider to cover costs and losses in 1989. *See Id.* However, we stated that we would seek further clarification from the GOI and ILVA/ILT of the assistance provided under the 1988 Restructuring Plan.

At verification, we discussed with GOI and company officials the aid disbursed to Finsider for the closure of steel plants and other losses realized in the liquidation process. In particular, we asked the officials to account for the financial assistance the EC authorized for plant closure costs and liquidation losses in the 89/218/ECSC Decision of December 23, 1988. We learned that the EC authorized the disbursement of a maximum of 738 billion lire in additional financial aid to Finsider to cover costs and losses realized in the liquidation process. However, the GOI and ILVA/ILT officials stated that, although the EC authorized the additional financial assistance, this aid was not needed. They stated that no additional assistance was required because the cash received from the sale of Finsider's assets was greater than expected. *See GOI Verification Report*, at 10 and *ILVA/ILT Verification Report*, at 11. To confirm whether this additional 738 billion lire of assistance was provided, we examined Finsider's and IRI's 1989 financial statements and found no evidence that IRI provided additional aid to Finsider based upon the 89/218/ECSC Decision. Therefore, we determine that IRI did not provide to Finsider an additional 738 billion lire to cover closure costs and losses in 1989.

D. Debt Forgiveness: 1993–1994 Restructuring Plan, ILVA-to-ILP[6]

During 1992 and 1993, (old) ILVA incurred heavy financial losses, which compelled IRI to place the company into liquidation. In December 1993, the Italian government proposed to the EC a plan to restructure and privatize (old) ILVA by the end of 1994. The reorganization provided for splitting (old) ILVA's main productive assets into two new companies, ILP and AST. ILP would consist of the carbon steel flat production of (old) ILVA, receiving the Taranto facilities. AST would consist of the speciality and stainless steel production. The rest of (old) ILVA's productive assets (*i.e.*, tubes, electricity generation, specialty steel long products, and sea transport), together with the bulk of (old) ILVA's existing debt and redundant work force were placed in a third entity known as ILVA Residua. Under the restructuring plan, ILVA Residua would sell those productive units it could for cash to pay debts and then would be liquidated, with IRI (*i.e.*, the Italian government) absorbing the remaining debt.

The demerger of the majority of (old) ILVA's viable manufacturing activities and a portion of its liabilities occurred on December 31, 1993. On January 1, 1994, ILP and AST were formally established as separate corporations which, respectively, had operating assets and relatively modest debt loads. *See ILVA/ILT Verification Report*, at Exhibit 1993/94–1. (Old) ILVA in liquidation became a shell company, known as ILVA Residua, with liabilities far exceeding its assets, although it did contain some operating assets that were later sold. The liabilities which remained with ILVA Residua had to be repaid, assumed, or forgiven. On April 12, 1994, the EC, through the 94/259/ECSC decision, approved the GOI's restructuring and privatization plan for (old) ILVA and IRI's intention to cover ILVA Residua's remaining liabilities.

We determine that ILP received a countervailable subsidy on January 1, 1994, within the meaning of section 771(5)(B)(i) of the Act, when the bulk of (old) ILVA's liabilities were placed in ILVA Residua, rather than being proportionately allocated to ILP and AST when they were formally established as separate corporations. The retention of liabilities by (old) ILVA that should have been transferred to ILP when the company was created constitutes a financial contribution to ILP in accordance with section 771(5)(D)(i) of the Act in the form of debt forgiveness. Prior to the separate incorporation of ILP and AST, (old) ILVA significantly wrote down the value of its assets, thereby increasing the net liabilities that it retained when ILP and AST were created. These write-downs can be tied to specific assets that were either transferred to ILP and AST, or retained by (old) ILVA. In order to more accurately calculate the value of the benefit to ILP from the debt forgiveness, we have factored in the value of each company's asset write-downs, to determine the total benefit from debt forgiveness to ILP and AST, rather than apportioning the total benefit by using a ratio calculated from the asset values each company took at the point of demerger. This is further discussed below and in *Comment 11*.

We determine that the amount of liabilities which resulted from the 1993–94 Restructuring Plan which should have been attributable to ILP, but were instead retained by ILVA Residua, was equivalent to debt forgiveness for ILP at the time of its separate incorporation. In accordance with our practice, debt forgiveness is treated as a

[6] This program was referred to as "Debt Forgiveness Given in the Course of Privatization in Connection with the 1993–1994 Restructuring Plan" in the *Initiation Notice* (*see* 64 FR at 13000).

grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt forgiveness.

We also determine, based on record evidence, that the liquidation process of (old) ILVA did not occur under the normal application of a provision of Italian law, and therefore, the debt forgiveness is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act. As stated above, the liquidation of (old) ILVA was done in the context of a massive restructuring/privatization plan of the Italian steel industry undertaken by the GOI and approved and monitored by the EC. Because (old) ILVA's liquidation was part of an extensive state-aid package to privatize the Italian state-owned steel industry, and the debt forgiveness was received by only privatized (old) ILVA operations, we find that the assistance provided under the 1993–1994 Restructuring Plan is *de facto* specific. In support of this finding, we note the EC's 94/259/ECSC decision, in which the Commission identified the restructuring of (old) ILVA as a single program, the basic objective of which was the privatization of the ILVA steel group by the end of 1994. As set forth in the EC's decision, the 1993–1994 Restructuring Plan was limited by its terms to (old) ILVA and the benefits of the plan were received by only (old) ILVA's successor companies. For a further discussion see *Comment 13*.

To determine the benefit attributable to ILP, it is first necessary to determine the total amount of liabilities which the government forgave. We would prefer to base our calculation on information at the time a portion of (old) ILVA's assets and liabilities were demerged to ILP and the company was separately incorporated. However, the information contained in (old) ILVA's 1993 financial statement regarding the assets and liabilities of the company was found to be unreliable by the company's auditor. We note the following statement within the "Report on the Management" section of ILVA Residua's 1994 annual report: "In the financial statement for 1993, we pointed out how the opening of liquidation would require drawing up a balance sheet formulated not with values of normal operation but with values of estimated cost. The brevity of time available then and the complexity of the valuations to be executed in that meeting allowed putting together only a few limited adjustments of values for which sure elements of judgement were available." *See* ILVA Residua's 1994 Annual Report in the February 16, 1999 Petition, at Volume 8, Tab 11. Because this information has been determined to be unreliable, we have resorted to facts otherwise available. As such, we have used information contained in the EC's 10th Monitoring Report which provides the most reliable data that is on the record for determining the benefit conferred by this program. We intend, however, to seek additional information to establish the value of the debt forgiveness at the time of the separate incorporation of ILP, in a subsequent administrative review should this investigation result in a countervailing duty order.

Therefore, based upon the methodology that we employed in the final determination of *Sheet and Strip from Italy*, the amount of liabilities that we attributed to ILP is based on the gross liabilities left behind in ILVA Residua, as reported in the EC's 10th Monitoring Report (*see* 64 FR at 30628). In calculating the amount of unattributable liabilities remaining after the separate incorporation of ILP, we started with the most recent "total comparable indebtedness" amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatization of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation (old) ILVA. In order to calculate the total amount of unattributed liabilities which amounted to countervailable debt forgiveness, we made the following adjustments to this figure: for the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report; for assets that comprised SOFINPAR, a real estate company (because these assets were sold prior to the demergers of AST and ILP); for the liabilities transferred to AST and ILP; for income received from the sale of ILVA Residua's productive assets; and for the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun off, as well as the amount of (old) ILVA debt attributed to CAS and countervailed in *Wire Rod from Italy* (*see* 63 FR at 40478). As discussed above, we subtracted the value of the asset write-downs taken by ILVA.

The amount of liabilities remaining represents the pool of liabilities that were not individually attributable to specific (old) ILVA assets. We apportioned this debt to ILP, AST, and viable assets of ILVA Residua based on their relative asset values. We used the total consolidated asset values reported for ILP and AST for the year ending December 31, 1993.[7] The asset values recorded for ILP and AST as of December 31, 1993, were the opening asset values for each company when they were separately incorporated on January 1, 1994. *See ILVA/ILT Verification Report*, at 12 and Exhibit 1993/94–2, for ILP's asset value. For ILVA Residua, we used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod from Italy*, we did not include its assets in the amount of ILVA Residua's privatized assets. Also, we did not include in ILVA Residua's viable assets those assets sold to IRI, because the sales do not represent sales to a non-governmental entity. To ensure that liabilities retained by ILVA Residua were properly apportioned across the three companies, we added the amount of the write-downs that were tied to the asset pool which ILP took when it was separately incorporated from (old) ILVA. The total amount of write-downs were previously subtracted from the pool of liabilities.

We have treated the debt forgiveness provided to ILP as a non-recurring subsidy because it was a one-time, extraordinary event. The discount rate we used in our grant formula was a constructed uncreditworthy benchmark rate based on our determination that (old) ILVA was uncreditworthy in 1993, the year in which the 1993–94 Restructuring Plan was approved by the GOI. *See* "Benchmarks for Long-Term Loans and Discount Rates" and "Creditworthiness" sections, above. We followed the methodology described in the "Change in Ownership" section above to determine the amount of benefit appropriately allocated to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 13.27 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefits under this program.

E. Capital Grants to Nuova Italsider Under Law 675/77

In 1977, the Italian Parliament passed Law 675 to establish an industrial plan for Italy which was experiencing an economic downturn. The objective of the law was to identify those industries vital to the economic health and development of Italy and provide to them financial assistance to modernize

[7] Because the ultimate objective of the 1993–94 Restructuring Plan was the privatization of ILP and AST, which were separately incorporated from (old) ILVA on January 1, 1994, we have no reason not to believe that the value of the assets which were transferred to ILP and AST were accurately assessed during the liquidation process.

and restructure production facilities. *See GOI Verification Report*, at 16. In total, eleven sectors were identified as eligible for assistance. *See Certain Steel from Italy*, 58 FR at 37330–31. The types of funding provided under Law 675/77 included: (1) interest payments on bank loans and bond issues; (2) low interest loans granted by the Ministry of Industry; (3) grants for companies located in the South; (4) grants for personnel retraining; and (5) increased VAT reductions for firms located in the Mezzogiorno area.

In *Certain Steel from Italy*, we verified that of the sectors which received Law 675/77 funding, steel accounted for 36.4 percent of the total funding provided under Law 675/77 (*see* 58 FR 37331). On this basis, we determined that assistance provided to steel companies under Law 675/77 is limited to a specific enterprise or industry, or group of enterprises or industries, and therefore is countervailable.

In regard to the record of the instant investigation, the GOI stated that the objective of the capital grants program was to support the development of regions in the south of Italy. *See* GOI's May 28, 1999 QR. The only eligibility criterion for receipt of this "one-time" assistance was the location of factories in the south of Italy.

Consistent with our preliminary finding, we determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. The capital grants constitute a financial contribution under section 771(5)(D)(i) of the Act providing a benefit in the amount of the grants. Because the steel sector was found to be the dominant user of Law 675/77 and the capital grants were limited to enterprises located in the south of Italy, we determine that the program is specific under section 771(5A)(D)(iii) and (iv) of the Act.

At the verification of this investigation, we examined the application which Italsider submitted on February 20, 1980, for assistance under Law 675/77, and the corresponding approval notification of November 19, 1982. We noted that Nuova Italsider, the successor company to Italsider, was awarded a grant of 125,040 million lire. We examined Nuova Italsider's financial statements and learned that the grant was disbursed in several tranches during the years 1985, 1986, and 1987.

To determine the benefit, we have treated the capital grant as a non-recurring subsidy because the receipt of the grant was a one-time, extraordinary event. Because the benefit to Nuova Italsider is greater than 0.5 percent of the company's sales for 1982 (the year in which the grant was approved), we allocated the benefit over a 15 year AUL. *See* section 351.524(b)(2) of the CVD Regulations. We applied the change in ownership methodology to the capital grant to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.13 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

F. Early Retirement Benefits

Law 451/94 was created to conform with EC requirements of restructuring and capacity reduction of the Italian steel industry. Law 451/94 was passed in 1994, and enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. During the 1994–1996 period, and into January 1997, Law 451/94 provided for the early retirement of up to 17,100 Italian steel workers. Benefits applied for during this period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years.

In the final determinations of *Plate in Coils from Italy* and *Sheet and Strip from Italy*, 64 FR at 15514–15 and 64 FR at 30629–30, respectively, as well as in the *Preliminary Determination* of the instant investigation, 64 FR at 40425–26, the Department determined that early retirement benefits provided under Law 451/94 are countervailable subsidies under section 771(5)(B)(i) of the Act. Law 451/94 provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because Law 451/94 relieves the company of costs it would have normally incurred by having to employ individuals until the normal age of retirement. Also, because Law 451/94 was developed for, and exclusively used by, the steel industry, we determined that Law 451/94 is specific within the meaning of section 771(5A)(D)(iii) of the Act. No new factual information or evidence has led us to change our prior findings that early retirements under Law 451/94 are countervailable.

As in the *Preliminary Determination*, we have treated one-half of the amount paid by the GOI as benefitting the company. Recognizing that, under Law 223/91, ILP would have been required to enter into negotiations with the unions before laying off workers, it is impossible for the Department to determine the outcome of those negotiations absent Law 451/94. At one extreme, the unions might have succeeded in preventing lay offs. If so, the benefit to ILP would be the difference between what it would have cost to keep those workers on the payroll and what the company actually paid under Law 451/94. At the other extreme, the negotiations might have failed and ILP would have incurred only the minimal costs described under the so-called "Mobility" provision of Law 223/91, which identifies the minimum payment the company would incur when laying off workers. The benefit to ILP would have been the difference between what it would have paid under Mobility and what it actually paid under Law 451/94.

We have no basis for believing either of these extreme outcomes would have occurred. It is clear, given the EC regulations that called for restructuring within the steel industry, that ILP would have laid off workers. However, we do not believe that ILP would have simply fired the workers without reaching accommodation with the unions. GOI officials have indicated that failure to negotiate a separation package with the unions would likely have led to social strife. Therefore, we have proceeded on the assumption that ILP's early retirees would have received some support from ILP.

In attempting to determine the level of post-employment support that ILP would have negotiated with its unions, we examined the situation facing (old) ILVA before ILP and AST were separately incorporated. By the end of 1993, (old) ILVA had established an overall plan for terminating redundant workers—a plan that would ultimately affect both ILP and AST. Under this plan, early retirees would first be placed on a temporary worker assistance measure under Law 223/91, Cassa Integrazione Guadagni—Extraordinario (CIG–E), while awaiting the passage of Law 451/94, and then would receive benefits under Law 451/94, once implemented. This indicates that, at the time an agreement was being negotiated with the unions and the Ministry of Labor on the terms of the layoffs, (old) ILVA and its workers were aware that government contributions would ultimately be made to workers' benefits. In such situations, *i.e.*, where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's prior practice has been to treat half of the amount paid by the government as benefitting the company. We have stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this

assistance is likely to have an effect on the outcome of the negotiations. While we continue to adhere to this logic in the preamble to the CVD Regulations, we stated that we would examine the facts of each case to determine the appropriate portion of the funds to be considered countervailable. *See* CVD Regulations, 63 FR at 65380.

With respect to ILP and its workers, we determine that, under Italian Law 223, ILP would be required to negotiate with its unions about the level of benefits that would be made to workers permanently separated from the company. Since (old) ILVA and its unions were aware at the time of their negotiations that the GOI would be making payments to those workers under Law 451/94, some portion of the payment is countervailable. However, we have no basis for apportioning the benefit. Therefore, we consider the benefit to ILVA/ILT to be one-half of the amount paid to the workers by the GOI under Law 451/94.

Consistent with the Department's practice with regard to allocation of worker-related subsidies, we have treated benefits to ILVA/ILT under Law 451/94 as recurring grants expensed in the year of receipt. To calculate the benefit received by ILVA/ILT during the POI, we multiplied the number of employees by employee type (blue collar, white collar, and senior executive) who retired early by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA's total sales during the POI. On this basis, we determine a net countervailable subsidy to be 1.39 percent *ad valorem* for ILVA/ILT.

As mentioned in the "Corporate History of ILVA/ILT" section of this notice, in October 1993, (old) ILVA entered into liquidation and became known as ILVA Residua. In December 1993, IRI initiated the demerger of (old) ILVA's main productive assets into two new companies, ILP and AST. On January 1, 1994, ILP and AST became separately incorporated firms. The remainder of (old) ILVA's productive assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua. By placing much of this redundant workforce in ILVA Residua, ILP and AST were able to begin their respective operations with a relatively "clean slate" in advance of their privatizations. ILP and AST were relieved of having to assume their respective obligations to those redundant workers who were placed in ILVA Residua and received early retirement benefits under Law 451/94. Therefore, we have determined that ILVA/ILT has received a countervailable benefit during the POI, because it was relieved of a financial obligation that would otherwise have been due.

In order to calculate the subsidy received by ILVA/ILT during the POI, we first needed to determine the appropriate number of early retirees in ILVA Residua that originally should have been apportioned to ILP. Consistent with our findings for the 1993–94 Restructuring Plan, we used the asset value we apportioned to ILP as a percentage of total viable assets of (old) ILVA immediately prior to ILP's separate incorporation. We then multiplied this percentage by the total number of ILVA Residua early retirees. It was then necessary to estimate the numbers and salaries of early retirees by employee type since the GOI did not provide this information. To do this, we applied the same ratios of workers by employee type as ILP retired, and applied this to ILVA Residua. We also used the same salaries of ILVA/ILT employees by worker type. As we did with ILP early retirees, we then multiplied the number of employees, by employee type, by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA's total sales during the POI. On this basis, we determine a net countervailable subsidy to be 0.66 percent *ad valorem* for ILVA/ILT.

The Sidercomit unit of ILVA/ILT also received early retirement benefits under Law 451/94 separately from ILVA/ILT. As we did with ILVA/ILT, we multiplied the total wages of the early retirees by 40 percent and then divided this amount by the total sales of ILVA during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for ILVA/ILT.

Upon consolidation of the above determined rates, we determine a total net countervailable subsidy of 2.06 percent *ad valorem* for ILVA/ILT under Law 451/94 for the POI. Palini & Bertoli did not use this program.

G. Exemptions From Taxes

Presidential Decree 218/1978 exempted firms operating in the Mezzogiorno from both the ILOR and IRPEG profit taxes. Companies are eligible for full exemption from the 16.2 percent ILOR tax on profits arising from eligible projects in the Mezzogiorno and less developed regions of the center-north of Italy for ten consecutive years after profits first arise. New companies undertaking productive activities in the Mezzogiorno are entitled to a full exemption from the IRPEG tax (37 percent of a majority of profits and 19 percent of certain profits) for ten consecutive years after the project is completed. While the ILOR tax was repealed beginning with tax year 1998, a successor tax, IRAP, has been introduced beginning with tax year 1998.

We determine that exemptions from ILOR and IRPEG taxes are countervailable subsidies in accordance with section 771(5)(B)(i) of the Act. These tax exemptions constitute financial contributions under section 771(5)(D)(ii) of the Act, since revenue that is otherwise due is being foregone. Because these exemptions are limited to a group of enterprises or industries within a designated geographical region, they are specific in accordance with section 771(5A)(D)(iv). Benefits resulting from ILOR and IRPEG tax exemptions were found to be countervailable in *Certain Steel from Italy* (*see* 58 FR at 37334–35).

ILT received an exemption from the IRPEG tax and a partial exemption from the ILOR tax on its 1997 tax return, filed during the POI. In order to calculate the benefit stemming from the exemption from IRPEG, we multiplied ILT's total profits that would otherwise have been subject to IRPEG by the IRPEG tax rate. We then divided the result by ILVA's total sales during the POI to determine the *ad valorem* subsidy. On this basis, we determine the subsidy to be 1.05 percent *ad valorem* for ILVA/ILT.

To compute ILT's partial exemption from ILOR, we took the amount of profits exempted from the ILOR tax, as shown in ILVA/ILT Verification Exhibits Tax-2 and Tax-3, and multiplied that amount by the ILOR tax rate of 16.2 percent to determine the benefit. We then divided the result by ILVA's total sales during the POI to determine the *ad valorem* subsidy. On this basis, we determine the subsidy to be 0.24 percent *ad valorem* for ILVA/ILT. Upon consolidation of the IRPEG and ILOR exemptions, we determine the net consolidated subsidy for ILVA/ILT to be 1.29 percent *ad valorem*. Palini & Bertoli did not use this program.

H. Exchange Rate Guarantees Under Law 796/76

Law 796/76 established a program to minimize the risk of exchange rate

fluctuations on foreign currency loans. All firms that contract foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CERF) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculates loan payments based on the lire-foreign currency exchange rate in effect at the time the loan is contracted (*i.e.*, the base rate). The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent above or below the base rate. If the lire depreciates more than two percent against the foreign currency, a borrower is still able to purchase foreign currency at the established (guaranteed) ceiling rate. The MOT absorbs the loss in the amount of the difference between the guaranteed rate and the actual rate. If the lire appreciates against the foreign currency, the MOT realizes a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the pre-existing exchange rate guarantees continue on any loans outstanding after that date. Italsider contracted two loans, one in 1978, and the other in 1979. Both of these loans were ultimately transferred to ILVA/ILT. These two foreign currency denominated loans were outstanding during the POI and exchange rate guarantees applied to both.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lire depreciates against the foreign currency beyond the two percent limit. When this occurs, the borrower receives a benefit in the amount of the difference between the guaranteed rate and the actual exchange rate.

During the recent verification of the GOI in the *Plate in Coils from Italy* and *Sheet and Strip from Italy* investigations, GOI officials explained that over the last decade, roughly half of all guarantees made under this program were given to coal and steel companies. *See Results of Verification of the Government of Italy*, Memorandum to the File, dated February 3, 1999 (public version of the document is available on the public file in the CRU). This is consistent with the Department's finding in a previous proceeding that the Italian steel industry has been a dominant user of the exchange rate guarantees provided under Law 796/76. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy*, 60 FR 31996 (June 19, 1995). No new information to contradict these earlier findings of specificity has been received in this case. Therefore, we determine that the program is specific under section 771(5A)(D)(iii)(II) of the Act.

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we are treating the benefits under this program as recurring grants. ILVA/ILT and its predecessor companies from which these loans were transferred, paid a foreign exchange commission fee to the UIC for each payment made. We determine that this fee qualifies as an " . . . application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act. Thus, for the purposes of calculating the countervailable benefit, we have added the foreign exchange commission to the total amount ILVA/ILT paid under this program during the POI. *See Wire Rod from Italy*, 63 FR at 40479.

Under this program, we have calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, less the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

I. Interest Grants on Loans Under Law 64/86

The GOI has maintained a system of "extraordinary intervention" in southern Italy since the 1950's, authorizing aid to the disadvantaged region. Over time, various laws were passed, including Decree 218/78, relating to the extraordinary intervention in the South. In 1986, Law 64/86 was passed in order to consolidate all laws relating to the extraordinary intervention in the South into one development policy.

In 1992, Sidercomit was created as a subsidiary of (old) ILVA. In 1997, Sidercomit became an operating unit within (new) ILVA. During verification, the Department determined that in 1996, Sidercomit received a loan for which it was granted interest contributions under Law 64. Subsequent to receiving this loan, but prior to the POI, Sidercomit was subsumed into ILVA as an operating unit, and was no longer a separate corporate entity.

ILVA/ILT did not report these interest contributions in its questionnaire responses. We found at verification, through examining the financial statements of (new) ILVA and discussions with company officials, that Sidercomit had received a "soft loan" in 1996, which was ultimately recorded in (new) ILVA's financial statements once Sidercomit was subsumed into (new) ILVA. We further learned that, under this loan, the Ministry of Industry was to assume a large part of the interest payments, which effectively reduced the payments for Sidercomit. The Ministry pays the interest contributions directly to the bank. As such, these contributions reduce the interest rate that Sidercomit (and now (new) ILVA) must pay on the loan. Accordingly, under section 771(5)(D)(i) of the Act, we have determined that these interest contributions represent financial contributions.

Under section 771(5A)(D)(iv) of the Act, we determine that these contributions are specific since assistance under Law 64 was only available to a limited geographical region within the country. This is consistent with our determinations in numerous Italian countervailing duty investigations, including the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, 30293 (June 14, 1986). Pursuant to section 771(5)(E)(ii) of the Act, we are calculating the benefit conferred as the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." In this particular case, the benefit conferred is equal to the amount of the interest contributions provided by the GOI during the POI. We have divided the benefit over ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

Programs of the Regional Government of Friuli-Venezia Giulia

A. Development Grants Under Law 30 of 1984

Law 30 of 1984 was enacted by the Regional Government of Friuli-Venezia

Giulia to provide one-time development grants to companies for investments in industrial projects, including the construction of new plants and modernization or expansion of existing plants. Eligible companies could receive a grant amounting to 20 percent of the cost of the investment, with the grant not to exceed 1,000,000,000 lire. Law 30 has not been officially terminated by Decree, but funding for grants outlined under the law has not been provided since 1993. Those projects approved for funding prior to 1993, would still receive the grant at the conclusion of the investment project.

At verification, the Department learned that companies from all industries that planned future industrial investments were eligible to receive development grants under Law 30. Eligibility under the law was, however, confined to certain geographical areas within the Friuli-Venezia Giulia region. Eligible firms were those operating in mountainous zones north of Udine, those in the provinces of Trieste and Gorizia, and those in the industrial areas of Aussa Corno and San Vitto al Tagliamento. Because these grants are available to firms within designated areas of the Friuli-Venezia Giulia region, they are specific in accordance with section 771(5A)(D)(iv) of the Act. The grants provided under this program represent a financial contribution under section 771(5)(D)(i) of the Act.

In 1989, Palini & Bertoli submitted to the regional government an application for a development grant under Law 30. The company received approval for the grant in 1989, and received the grant in 1993. To determine the benefit, we have treated the grant as a non-recurring subsidy because receipt of the grant was a one-time, extraordinary event. Because the benefit to Palini & Bertoli is greater than 0.5 percent of the company's sales for 1989 (the year in which the grant was approved), we allocated the benefit over a 15 year AUL. *See* section 351.524(b)(2) of the CVD Regulations. To calculate the benefit, we determined the benefit allocable to the POI and divided it by Palini & Bertoli's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.12 percent *ad valorem* for Palini & Bertoli. ILVA/ILT did not use this program.

European Commission Programs

A. ECSC Loans Under Article 54

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the member iron and steel industries to finance modernization and purchase new equipment. Eligible companies apply directly to the EC (which administers the ECSC) for up to 50 percent of the cost of an industrial investment project. The Article 54 loans are generally financed on a "back-to-back" basis. In other words, upon granting loan approval, the ECSC borrows funds (through loans or bond issues) at commercial rates in financial markets which it then immediately lends to steel companies at a slightly higher interest rate. The mark-up is to cover the costs of administering the Article 54 program.

We determine that these loans constitute a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, which confers a benefit to the extent the interest rate is less than the benchmark interest rate. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy*, 59 FR at 18362, *Certain Steel from Italy*, 58 FR at 37335, and *Plate in Coils from Italy*, 64 FR at 15515, because loans under this program are provided only to iron and steel companies. The EC has also indicated on the record of this investigation that Article 54 loans are only available to steel and coal companies which fall within the scope of the ECSC Treaty. Therefore, we determine that this program is specific pursuant to section 771(5A)(D)(i) of the Act.

ILVA/ILT had two long-term, fixed-rate loans outstanding during the POI, each denominated in U.S. dollars. These loans were contracted by Italsider, one in 1978 and one in 1979. Consistent with *Wire Rod from Italy*, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars (*see* 63 FR at 40486). We used these rates since we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. The interest rate charged on both of ILVA/ILT's two Article 54 loans was lowered part way through the life of the loan. The interest rate on the loan contracted in 1978 was lowered in 1987, and the rate on the loan contracted in 1979 was lowered in 1992. Therefore, for the purpose of calculating the benefit, we have treated these loans as if they were contracted on the date of this rate adjustment. Because ILVA was uncreditworthy in the year these loans were contracted, 1987 and 1992 (based on the interest rate adjustments mentioned above), we calculated the uncreditworthy benchmark rate in accordance with section 351.505 (a)(3)(iii) of the CVD Regulations. *See* "Benchmark for Long-Term Loans and Discount Rates" section, above.

To calculate the benefit under this program, pursuant to section 351.505(c)(2) of the CVD Regulations, we employed the Department's long-term fixed-rate loan methodology. We compared ILVA/ILT's interest rates on the two loans to our benchmark interest rate for uncreditworthy companies on interest paid by ILVA/ILT during the POI. We then divided the benefit by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.02 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

ILVA/ILT was also repaying four ECSC loans under Article 54 during the POI that were taken by ILP for the construction of housing for coal and steel industry workers. Funding for these loans came entirely from the ECSC operational budget, which is composed of levies imposed on coal and steel producers, investment income on those levies, guarantee fees and fines paid to the ECSC, and interest received from companies that have obtained loans from the ECSC. Consistent with previous determinations, because ECSC funding for these types of loans is completely from non-government sources, we find these loans to be not countervailable. *See Electrical Steel from Italy*, 59 FR at 18364 and *Certain Steel from Italy*, 58 FR at 37336.

II. Programs Determined To Be Not Countervailable

Government of Italy Programs

A. Law 308/82

On March 16, 1999, the Department initiated on the program "Grants to ILVA." In their May 13, 1999 response, ILVA/ILT report that Italsider was approved for a grant under Law 308/82 in 1983. In *Certain Steel from Italy*, we verified that benefits under Law 308/82 were widely and fairly evenly distributed with no one sector or sectors receiving a disproportionate amount. Because Law 308/82 grants were not limited to a specific enterprise or industry, or group of enterprises or industries, we determined them to be not countervailable. *See Certain Steel from Italy*, 58 FR at 37336. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant the Department to revisit its earlier determination that grants provided

under Law 308/82 are not countervailable.

B. Unpaid Portion of Payment Price for ILP

Petitioners alleged that the GOI effectively gave RIVA a zero-interest loan on a portion of the contract price agreed to by RIVA for ILP, because RIVA has not paid the full contract price for ILP. RIVA reported that the company entered into arbitration after the transfer of ownership of ILP in April 1995. RIVA stated that it did not invoke arbitration to challenge the purchase price of ILP, but invoked arbitration to obtain an indemnity from pre-existing and unreported liabilities in accordance with the indemnification provision of the contract of sale. The dispute concerns whether IRI owes RIVA a sum of money as indemnification for liabilities, which RIVA has potentially incurred as a result of the acquisition of ILP. To preserve its leverage in the dispute and ensure that the company will obtain relief in the event that it is awarded indemnification by the arbitration panel, RIVA has withheld payment of amounts due to IRI under the contract of sale.

We inquired about the arbitration procedure and whether any Italian company which purchases either a government-owned or private entity can enter into arbitration to remedy a dispute. RIVA reported that Article 25 of the contract of sale provides for arbitration under the rules of the International Chamber of Commerce and that Article 806 of the Italian Civil Code authorizes the use of arbitration to settle litigation. Any company in Italy that purchases another company from either the government or a private seller can include such an arbitration provision in the contract of sale. Because the use of arbitration to settle disputes between two parties is a normal commercial practice in Italy and there is no information that this particular arbitration has proceeded in a non-commercial manner, we determine that no countervailable benefit has been provided under this process.

Programs of the Regional Government of Friuli-Venezia Giulia

A. Interest Contributions Under Law 25 of 1965

Under Regional Law 25 of 1965, companies making manufacturing investments in the region of Friuli-Venezia Giulia were eligible to receive interest contributions from the region on loans taken out for those investments. For a firm to receive interest contributions, it had to construct a new industrial plant, or modernize or expand an existing plant. Interest contributions effectively lower the interest rate on a loan taken out for such an investment. While the firm pays interest on the loan at an agreed-upon rate, the regional government will reimburse the company the difference between the agreed-upon rate and a reference rate decided on by the region. The Department learned at verification that, although the program has not been officially terminated, no regional investments made after 1991 have been approved for interest contributions.

The regional government approved Palini & Bertoli for interest contributions in 1991. The company began receiving payments in 1993, after construction of a new plant was completed. During the POI, Palini & Bertoli received two interest contributions under Law 25. We verified that assistance under Law 25 was provided to a large number of firms from a wide range of industries throughout the entire region of Friuli-Venezia Giulia, and that the steel industry did not receive a disproportionate share of assistance under the program. Because interest contributions under Regional Law 25 are not specific in accordance with section 771(5A)(D) of the Act, we determine that this program is not countervailable.

III. Programs Determined To Be Not Used

Government of Italy Programs

A. Lending From the Ministry of Industry Under Law 675/77

ILVA/ILT reported that at the time of its privatization the company became responsible for certain loan obligations of its predecessor companies. ILVA/ILT was responsible for repaying loans provided under Law 675/77, which were applicable to those facilities that produce the subject merchandise. We confirmed at verification that the repayment obligations on these loans ended in December 1997. We also verified with the GOI that no new loans have been provided under Law 675/77 since 1987. Because ILVA/ILT did not have loans under Law 675/77 outstanding during the POI, we determine that the program was not used.

B. Interest Contributions Under Law 675/77

ILVA/ILT reported and we verified that the company received an interest contribution in 1998, against a loan provided under Law 675/77. Because the loan against which the interest contribution was received was repaid in full in December 1997, we determine that this program was not used during the POI. It is the Department's practice to treat an interest contribution as countervailable on the date the company made the corresponding interest payment, despite any delay in the receipt of the interest contribution. This is because the company's entitlement to the interest contribution was automatic when it made the interest payment and the amount of any benefit from the interest contribution was known at the time of the interest payment. Therefore, we find, for purposes of the benefit calculation, that the benefit was received at the time the interest payment was made, and, as such, the program was not used during the POI. *See e.g., Sheet and Strip from Italy*, and *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Italy*, 60 FR 33577, 33579 (June 28, 1995) (*Oil Country Tubular Goods from Italy*).

C. Law 305/89

ILVA/ILT reported that (old) ILVA, its predecessor company, applied for a grant under Law 305/89 in 1990. The GOI approved (old) ILVA's application in 1991, and awarded the company a grant of 2.2 billion lire. However, payment of the grant was delayed. We learned at verification that ILP received a portion of the grant in 1996, and ILVA/ILT received the remaining portion of the grant in 1997. We applied the 0.5 percent allocation test against the full grant amount approved in 1991. *See* section 351.524(b)(2) of the CVD Regulations. We calculated the amount of the grant received under Law 305/89 to be less than 0.5 percent *ad valorem* of (old) ILVA's sales in 1991. Therefore, even if we determined that Law 305/89 is countervailable, the grant would have been expensed in the years of receipt, 1996 and 1997. Because the grant would be expensed, it would not provide any benefit to ILVA/ILT during the POI. Therefore, we determine that Law 305/89 was not used by ILVA/ILT.

D. Interest Grants for "Indirect Debts" Under Law 750/81

In 1984, Italsider received a residual payment of 25.3 billion lire against interest grants provided in fiscal years 1981, 1982, and 1983. At verification, we learned that under Law 750 of 1981, the GOI approved funding for IRI, which was providing financial assistance to its sub-holdings that were incurring debts. *See GOI Verification Report*, at 19–20. In 1981, 1982, and 1983, Italsider incurred costs, associated with debts, at the Bagnoli plant and the Elba Island

mines, and the grant received in 1984, was for the plant and mines. However, since the grant was received in 1984, the POI (*i.e.*, 1998) would be the last year of the allocation period. Therefore, even if we were to allocate the grant over time, rather than expense it in the year of receipt, any benefit during the POI would be less than 0.005 percent *ad valorem*.

E. Capital Grants Under Decree 218/78 and Law 64/86

The GOI reported that (old) ILVA received a grant in 1988, under Decree 218. The original grant amount was approved in 1978. We applied the 0.5 percent test against the full grant amount approved in 1978. *See* section 351.524(b)(2) of the CVD Regulations. We calculated the benefit as less than 0.5 percent *ad valorem* of Italsider's sales in 1978. Additionally, Sidercomit and Centro Acciai received several grants under Decree 218 and Law 64 between 1984 and 1997. We summed all grants by year of approval and applied the 0.5 percent test against the total amounts for each year. We calculated the benefit as less than 0.5 percent *ad valorem* of the sales of ILVA/ILT or its respective predecessor company corresponding to the year the grants were received. Therefore, even if we determined that this program is countervailable, the above-mentioned grants would have been expensed in the respective years of receipt. Because the grants would be expensed and would not provide any benefit to ILVA/ILT during the POI, we determine that this program was not used.

F. Urban Redevelopment Packages Under Law 181/89

ILVA/ILT and its predecessor companies, ILP and (old) ILVA, received grants under Law 181/89 between 1991 and 1997. No grants were received during the POI. Because the approved amount of each grant, separately, was less than 0.5 percent of total sales of ILVA/ILT (or predecessor company) in the corresponding year, we would expense the benefit of each approved grant in that year. *See* section 351.524(b)(2) of the CVD Regulations. Therefore, since the grants would be expensed in the years of receipt, and ILVA/ILT would not realize any benefit during the POI, we determine that Urban Redevelopment Packges under Law 181/89 were not used.

G. Grants to ILVA

For a discussion, *see* Comment 20, below.

H. Closure Payments Under Law 481/94 and Predecessor Law

I. Closure Grants Under Laws 46 and 706

J. Decree Law 120/89

K. Law 488/92

L. Law 341/95 Tax Concessions

M. Interest Rate Reductions Under Law 902

N. Interest Contributions Under the Sabatini Law

O. Export Marketing Grants Under Law 394/81

P. Law 549/95: Tax Exemptions on Reinvested Profits for Steel Producers in Objective 1, 2, and 5(B) Areas

European Commission Programs

A. European Social Fund (ESF)

The GOI has reported that ESF grants were provided to Nuova Italsider, Italsider and (old) ILVA from 1985 through 1993. Because the total of all grants provided under the program in each year was less than 0.5 percent of total sales of Nuova Italsider, Italsider or (old) ILVA (depending on the year of approval) in the corresponding year, we would expense the benefit of each grant payment received in that year. *See* section 351.524(b)(2) of the CVD Regulations. Therefore, there is no benefit to ILVA/ILT during the POI.

ILVA/ILT has reported that ESF payments were also made to ILP in 1994 and 1995, and to ILVA/ILT in 1998, for the DUSID, DUTEM, and DUMES training programs having taken place in 1994 and 1995. While some ILP employees took part in these training programs, there is no evidence that ILP benefitted from the ESF payments under these training programs, or that these programs provided training to ILP employees that ILP would otherwise have had to incur. As such, we find that these programs do not provide a countervailable subsidy. *See* Comment 19, below.

Based on the fact that grants received in 1985 through 1993, would provide no benefit to ILVA/ILT during the POI, and that funds received for the DUSID, DUTEM, and DUMES training programs are not countervailable, we determine that the ESF was not used by ILVA/ILT.

B. Interest Rebates on ECSC Article 54 Loans

C. ECSC Conversion Loans, Interest Rebates, Restructuring Grants and Traditional and Social Aid Under Article 56

D. ERDF Aid

E. Resider and Resider II (Commission Decision 88/588)

IV. Programs Determined Not To Exist or To Have Been Terminated

A. Additional Debt Forgiveness in the Course of Privatization

B. Grants to ILVA To Cover Closure and Liquidation Expenses as Part of the 1993–1994 Privatization Plan

C. Working Capital Grants to ILVA in 1993

With respect to the programs A, B, and C listed above, the GOI reported in its May 10, 1999 questionnaire response that all monetary assistance (old) ILVA received in the course of the 1993–1994 Restructuring Plan was effected in the EC Decision 94/259/ECSC of April 12, 1994. We found no evidence at verification that there was any further debt forgiveness or grants provided as part of the 1993–1994 Restructuring Plan beyond the assistance outlined in the April 12, 1994 EC decision. We therefore determine that these programs do not exist.

D. Personnel Retraining Grants Under Law 675/77

The GOI reported, and we verified, that personnel retraining grants provided under Law 675/77 were terminated in 1987. The government stated that the resources provided under this program were allocated over the years 1981 through 1987. The GOI reported that no other law providing personnel retraining grants or financial allocations under Law 675/77 have been approved since 1987.

E. VAT Reductions Under Law 675/77

The GOI reported, and we verified that, the tax reductions referred to in Section 18 of Law 675 of August 12, 1977, were terminated effective March 29, 1991. Pursuant to Section 14(3) of Law 64 of March 1, 1986, Section 18 of Law 675/77, applied for a period of five years from the date of promulgation of the law.

F. Grants to RIVA/ILP

Interested Party Comments

The case brief submitted by the GOI addresses, what they consider to be, errors and omissions contained the in the GOI's verification report issued by

the Department on November 12, 1999. Principally, they state the errors concern the liquidation of Finsider and the assistance provided by IRI in connection with the liquidation. The GOI also states that no subsidies passed through to the new owner of ILP upon its privatization in 1995, and that failure by the Department to recognize this fact would be inconsistent with U.S. obligations under the WTO Agreement. With regard to the GOI's statement on the privatization of ILP, we address the issue of privatization in *Comment 14* below. Because the other comments made by the GOI are not substantive arguments, we have not addressed them separately.

Palini & Bertoli did not submit any comments, therefore, when we refer to "respondents" below, we are referring to ILVA/ILT, except for *Comment 14* where we refer to ILVA/ILT and the GOI.

Comment 1: Use of ILVA's Verified 1998 Sales

Respondents argue that the Department in calculating the final CVD rates should use the correct and verified 1998 sales denominator. They state that at the time of the preliminary determination ILVA (*i.e.*, (new) ILVA) had not completed its official trial balance for 1998. When preparing for verification, using the finalized trial balance, ILVA found that the sales denominator submitted earlier to the Department was incorrect. Respondents note that the Department confirmed the correct sales denominator at verification, and therefore, that sales denominator should be used in the final determination.

Department's Position: We agree with the respondents that the Department should use ILVA's verified 1998 sales figure as the denominator to calculate the final CVD rates. We verified the correct 1998 sales figure by reconciling that amount to ILVA's completed trial balance which was examined at verification. Therefore, we have used ILVA's corrected 1998 sales denominator in the final determination.

Comment 2: Average Useful Life of Assets

Respondents provided four tables illustrating its proposed company-specific AUL calculations for ILVA's (*i.e.*, (new) ILVA) and ILT's assets, both separately and in combination. Both respondents and petitioners have focused their arguments on two of the four tables. The primary difference between the AUL calculations contained in each of these two tables is the treatment of the 1993 write-down of ILVA's assets. The first calculation presents a simple division of the annual average gross book values of the depreciable fixed assets by the aggregated annual charge to accumulated depreciation over a ten-year period (calculation 1). The second calculation adjusts the figures contained in the first calculation to reduce the gross book values by the amount of write-downs that occurred in connection with the 1993–94 restructuring and demerger of ILP from the (old) ILVA (calculation 2).

According to respondents, they provided the Department an inadequate explanation of ILVA's AUL worksheets prior to the *Preliminary Determination*, and, as a result, the Department relied on a worksheet (calculation 1) that substantially overstated the value of ILVA's depreciable assets. Respondents further maintain that, as demonstrated at verification, using the correct numbers from the correct worksheet yields an AUL for the renewable physical assets of ILVA and ILT of approximately 11 years.

Respondents state that this 11-year AUL not only accords with Generally Accepted Accounting Principals (GAAP) and is consistent with ILVA's financial statements, but also reflects precisely the type of normalizing adjustment required by the Department for companies that have recorded asset write-downs as per the preamble to the Department's final CVD Regulations, (see 63 FR at 65397). Respondents maintain that because ILVA made the normalizing adjustment, the Department should use this 11-year AUL from calculation 2 in its final determination. According to respondents, the AUL calculation, which was provided by respondents and used by the Department in its preliminary determination does not produce an AUL using actual asset values, since it disregards the write-downs of 1993. In other words, this calculation does not include the normalizing adjustment for the asset write-down, and as a result seriously distorts the AUL calculation. Respondents also claim the Department cannot accept the calculation 1 result, because it omits the normalizing adjustment for the asset write-down and the only purpose served by calculation 1 was to illustrate the impact of the 1993 write down on the asset values and depreciation recorded in calculation 2.

Petitioners contend that calculation 1 provides the closest approximation to the AUL methodology established by the Department in 19 CFR 351.524(d)(iii) and that this calculation produces an AUL of assets that does not differ by a year or more from the 15 year period provided for in the IRS tables. Therefore, petitioners request that the Department use the AUL established by the IRS as it did in the preliminary determination.

Petitioners contend that adjusting the asset values to account for the extraordinary write-downs in the value of ILVA's fixed assets in 1993 due to the liquidation of ILVA in connection with the 1993–94 restructuring has the effect of distorting the AUL calculation in a manner that makes the calculation unreliable for purposes of determining ILVA/ILT's company-specific AUL. Petitioners cite the preamble to the current regulations (*see* 63 FR at 65396) to support their contention that the company-specific AUL calculation is not appropriate "* * * for companies that have been sold and that it presents problems when a company revalues its assets, for example, as a result of declaring bankruptcy."

Petitioners cite *Steel Wire Rod from Germany* to support the contention that whether or not an asset write-down is done in accordance with GAAP is not necessarily the determining factor when examining whether these write-downs should be reflected in the average annual gross value of fixed assets in the AUL calculation. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Germany*, 62 FR 54990, 54999 (October 22, 1997) (*Steel Wire Rod from Germany*). Petitioners state that the asset write-down adjustment does not represent a reasonable estimate of the life of equipment at the time it was purchased, but instead ILVA/ILT 's calculation represents a mixture of the average useful life of the assets and the remaining useful life of assets after the revaluation. They further state that a company-specific AUL may be inappropriate when the company under investigation has faced recent changes in ownership or bankruptcy.

Finally, both respondents and petitioners argue that the country-wide AUL information provided by the GOI should not be used by the Department.

Department's Position: Under 19 CFR 351.524(d)(2), the Department presumes that the AUL set out in the IRS's 1977 Class Life Asset Depreciation Range System is the appropriate allocation period by which to allocate non-recurring subsidies, and the burden is placed on the party contesting these AULs to establish that the IRS tables do not reasonably reflect the company-specific AUL. In addition, the contesting party must demonstrate that the company-specific AUL differs significantly from the AUL in the IRS tables.

It is clear from the preamble to the CVD Regulations that, based on the Department's experience, using a company-specific AUL in situations where there have been major asset revaluations in connection with bankruptcy poses significant problems: "We have found that the method [i.e., company-specific AUL calculation] may not be appropriate for companies that have been sold and that it presents problems when a company revalues its assets as a result of declaring bankruptcy (*see, e.g., Steel Wire Rod from Germany*, 62 FR at 54990 (October 22, 1997))." *See* CVD Regulations, 63 FR at 65396. In addition, the preamble states: "It may also be necessary to make normalizing adjustments for factors that distort the calculation of an AUL. We are not in a position at this time to provide additional detail in the regulation itself on when we will make normalizing adjustments and how such adjustments will be made because the types of necessary adjustments will likely vary based on the facts of a particular case. However, certain obvious normalizing adjustments that come to mind are situations in which a firm may have charged an extraordinary write-down of fixed assets to depreciation, or where the economy of the country in question has experienced persistently high inflation." *See Id.*, at 65397.

With regard to this last statement from the preamble, we disagree with respondents that adjusting the AUL calculation for the asset write-downs, as was done in calculation 2, is the normalizing adjustment called for in the regulations. Respondents misread the regulations; it is precisely the existence of a massive asset write-down that requires a "normalizing adjustment" in the first place. We also find the distinction drawn between Saarstahl's situation in *Steel Wire Rod from Germany* and ILVA/ILT by respondents to be uninformative. There is little substantive difference between a situation where a company acquires assets from another company then revalues them at acquisition cost and a situation where assets are revalued before the transfer with the new owner carrying the assets on its books at the new revalued amount.

The basic point being made in the Department's regulations is that the basis of a company-specific AUL calculation is called into question when a situation exists such as the situation we are currently facing with ILVA/ILT, *i.e.*, numerous changes in ownership, a massive asset write-down, and bankruptcy. We do not agree with respondents that the only issue here is one of consistency between the numerator and the denominator in the company-specific calculation. The larger issue is whether we should depart from the IRS asset depreciation schedules. We do not find the fact that the 1993 asset write-downs were in accordance with GAAP to be particularly persuasive. The AUL calculation is an attempt to derive the average useful life of renewable physical assets. Whether or not it is in accordance with GAAP, the accounting treatment of asset values, which is usually done for tax purposes, does not necessarily attempt to accurately reflect the physical life of a particular asset. Because there are so many different ways to calculate asset values for tax purposes, the IRS constructed its tables to ensure consistency. There is a tendency on the part of the Department to rely on the IRS tables because, as is stated in the preamble to the countervailing duty regulations: "In our experience, we have found that for most industries and most types of subsidies, the IRS tables have provided an accurate and fair approximation of the AUL of assets in the industry in question. * * *" *See* CVD Regulations, 63 FR at 65396. In other words, the presumption that the IRS tables do not reflect the actual physical life of an asset for a particular company is not an easy one to overcome. In our view, respondents have failed to meet this threshold.

As noted above, respondents have provided four different AUL calculations, all with different results. By respondents' own admission, very little, if any explanation of how these calculations were done was provided until relatively late in the case. Respondents have argued that the main issue in the AUL calculation for this investigation is a simple matter of consistency between the numerator and the denominator. Respondents argument that their calculation 2, which takes the asset write-downs into account in both the asset value and depreciation, is the only reliable calculation is unpersuasive. Calculation 1, which we relied upon in the Preliminary Determination, is flawed according to respondents, because the asset values do not reflect the write-down while depreciation does reflect the write-down. Since by respondents' own admission, calculation 1 is flawed, we are rejecting calculation 1 as a basis for the company-specific AUL.

With regard to the Italian country-wide AUL, 19 CFR 351.524(d)(2)(iii) states that "A country-wide AUL for the industry under investigation will not be accepted by the Secretary unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL." The GOI has not met this burden, nor have respondents argued that they have.

We therefore reject respondents company-specific AUL calculation and the country-wide depreciation information provided by the GOI, and have used the IRS tables for purposes of determining the period over which to allocate non-recurring subsidies.

We note that in the 1993 *Certain Steel* cases, our practice was to use the IRS tables to allocate non-recurring subsidies over time. Subsequent to that case, the Court overturned over use of the IRS tables in favor of company-specific rates. *See* British Steel plc v. United States, 879 F. Supp. 1254 (CIT 1995) and British Steel plc v. United States, 929 F. Supp. 426, 439 (CIT 1996). Under the current regulations, we have decided to revert to the IRS tables as a rebuttable presumption. In a 1997 Italian investigation, while we did attempt to calculate a company-specific AUL, we were unable to do so and used a surrogate AUL instead. *See Wire Rod from Italy*, 63 FR 40477.

While our preference is to apply the same AUL to the same subsidies across cases, we have not been able to do that in Italy due to the changes in our allocation methodology mandated by the Court and our subsequent decision to use the IRS table as a rebuttable presumption. This is the first Italy case subject to the new regulations. Accordingly, we are applying the regulatory standard to determine the AUL.

Comment 3: 1984 Debt Transfer Was Not a Countervailable Event

Respondents disagree with the Department's classification of the 1984 debt transfer from Italsider to Finsider as being equivalent to a government grant. They note that, under section 771(5)(D) of the Act, the Department can countervail a transfer of debt only if it involves a financial contribution from the government.

In 1984, debts were transferred from Italsider's balance sheet to that of Finsider, which under the sole shareholder provision of the Italian Civil Code, had legal responsibility for all debts of Italsider. Respondents contend that the debts remained fully in effect, but that Finsider now had direct rather than indirect responsibility for their payment. They argue that IRI made no financial contribution in 1984, by allowing the transfer of debt from Italsider to Finsider. Respondents point out that the Department itself

recognized that the transfer "merely shifted assets and debts within a family of companies, all of which were owned by Finsider." They submit that it would be double-counting to countervail both the 1984 debt transfer and the subsequent forgiveness of the same debt through the liquidation of the Finsider Group in 1988. Since no debt was forgiven in 1984, the Department has no legal or factual justification to countervail the 696.4 billion lire of debt which was transferred within the Finsider Group.

Petitioners urge the Department to continue to use facts available to make its finding with respect to the debt forgiveness provided under the 1981 Restructuring Plan. They state that, despite numerous requests, the GOI failed to provide to the Department the necessary information regarding the 1984 assumption of debt and 1985 debt forgiveness. Therefore, the Department should continue to rely on information provided in the petition and *Certain Steel* Products from Italy (see 58 FR at 37329–30), and determine that the 1984 assumption of debt and 1985 debt forgiveness are countervailable subsidies.

Department's Position: We disagree with ILVA/ILT that IRI provided no financial contribution in 1984, by allowing the transfer of debt from Italsider to Finsider. Under section 771(5)(D)(i) of the Act, the GOI provided a financial contribution when it allowed Finsider to assume the debts Italsider owed to IRI. The benefit provided to Italsider was debt forgiveness. *See* section 351.508 of the CVD Regulations.

We also disagree with respondents' argument that it would be double-counting to countervail both the 1984 debt transfer and the subsequent forgiveness of the same debt through the liquidation of the Finsider Group in 1988. Respondents have not demonstrated that the 696.4 billion lire which was transferred to Finsider in 1984, was part of the 1,364 billion lire of debt forgiveness which IRI provided to Finsider in 1989. As noted above, we requested information from respondents on several occasions regarding the debt assumption and debt forgiveness provided under the 1981 Restructuring Plan. The burden is on respondents to provide to the Department the necessary information with which to conduct a complete analysis. Absent information regarding how the 1984 debt transfer is connected to the 1989 debt forgiveness, the Department must rely on the facts available.

Therefore, we affirm our *Preliminary Determination* that, based on the facts available, the 696.4 billion lire transferred to Finsider in 1984, was tantamount to debt forgiveness because respondents have not demonstrated that it was part of Finsider's 1,364 billion lire debt which IRI forgave in 1989.

Comment 4: Allocation of Benefits From the 1981 Plan Using the Correct Asset Ratios

Respondents assert that the Department has incorrectly allocated 100 percent of the countervailable benefits received by Italsider and Nuova Italsider to ILP. During verification, the Department reviewed the separation of certain carbon steel flat product assets that occurred between 1985, and the creation of ILP on January 1, 1994, verifying that ILP inherited only 88.29 percent of the total fixed, productive assets of Nuova Italsider. *See ILVA/ILT Verification Report*, at Exhibit 1985Rest-1.

Respondents submit that under, long-standing policy, the Department apportions benefits to successor and spin-off companies on the basis of asset ratios. As noted in the 1993 General Issues Appendix, to calculate benefits, the Department divides "the value of the assets of the spun-off unit by the value of the assets of the company selling the unit." *See* GIA, 58 FR at 37269. Therefore, consistent with this established policy, the Department should attribute benefits in accordance with the ratio of assets that actually traveled with ILP.

Petitioners argue that the Department should reject the information regarding the assets of Nuova Italsider because, not only was it untimely, but is also inconsistent with other evidence on the record. Section 351.301 of the Department's procedural regulations mandates that "a submission of factual information is due no later than * * * seven days before the date on which the verification of any person is scheduled to commence." They emphasize that verification was the first time ILVA/ILT mentioned a 1985 Restructuring Plan and the transfer of Nuova Italsider's assets. No such plan was discussed in the GOI's questionnaire response, though the Department requested information on "the restructuring of the Italian steel industry from 1981 through 1998," including "a detailed description of each restructuring plan." See Department's March 19, 1999 questionnaire, at Section II–1, Part I, Question A.1.

Petitioners add that, should the Department decide to consider this new information, it should not reduce the subsidy benefit to (new) ILVA (*i.e.*, formerly named ILP) from the 1981 Restructuring Plan because the information provided by ILVA/ILT does not clearly establish that any productive units of Nuova Italsider were spun-off in 1985. They argue that the mere fact that assets related to certain plants were not listed as part of the assets of ILP does not establish that they were spun-off as productive units in 1985. In fact, there is record evidence that two plants were in fact closed down as part of the 1988 and 1993–94 Restructuring Plans. *See* EC Decision 89/218/ECSC of December 23, 1988, and EC Decision 94/259/ECSC of April 12, 1994.

ILVA/ILT rebuts petitioners' arguments, stating that there was no restructuring plan in 1985, and that the company has never maintained otherwise. Respondents explain that ILVA/ILT's verification exhibit simply traces the disposition of assets under the 1988 and 1993–94 restructuring plans that Italsider and Nuova Italsider had owned prior to 1987, but which ultimately did not travel to ILP. *See ILVA/ILT Verification Report*, at Exhibit 1985Rest-1. They state that the asset allocation arose for the first time in the *Preliminary Determination*, when the Department incorrectly presumed that 100 percent of the assets of Nuova Italsider traveled to ILP.

Department's Position: Information regarding the percentage of Nuova Italsider's assets which were transferred to ILP was first presented to the Department during ILVA/ILT's verification. Thus, the Department did not have sufficient time between the presentation of the information and this final determination to permit a thorough examination of the accuracy of the data. In addition, information necessary to determine the amount of productive assets which remained with Nuova Italsider was not placed on the record of this investigation. Therefore, in accordance with section 351.311(c)(2) of the Department's procedural regulations, we have deferred consideration of the percentage of Nuova Italsider's assets which were transferred to ILP. If this investigation goes to order and an administrative review is requested, we will, at that time, examine this issue again if complete information is provided in that review.

Comment 5: Use of the Verified Asset Ratio to Apportion Finsider Benefits From the 1988 Restructuring Plan

Respondents state that, at the *Preliminary Determination*, the Department allocated the countervailable benefits from the 1988 Restructuring Plan in accordance with an asset allocation table prepared by ILVA/ILT which used the best

information available prior to verification (see 64 FR at 40423). At verification, IRI, the owner of both Finsider and (old) ILVA, provided to the Department a more precise allocation of assets between Finsider and (old) ILVA based on IRI's consolidated financial statements. *See GOI Verification Report*, at 7 and *ILVA/ILT Verification Report*, at 10. Respondents argue that the Department not only verified the asset ratio using IRI's consolidated statements, but also tied the results to (old) ILVA's consolidated financial statements. Therefore, in line with the Department's long-standing policy of allocating benefits in accordance with asset ratios, respondents argue that the Department should use the correct and verified ratio of 51.2 percent to allocate the benefits of the Finsider restructuring to (old) ILVA.

Petitioners assert that the Department's methodology in the *Preliminary Determination* with respect to the percentage of debt forgiveness from the 1988 Restructuring Plan attributable to (old) ILVA is incorrect. They argue that only where a portion of Finsider's assets were transferred to a productive unit other than (old) ILVA, should the Department allocate a portion of the subsidy amount to those assets. They note that this approach was taken by the Department in *Plate in Coils from Italy* (*see* 64 FR at 15523) and is consistent with the opinion of the CIT in *British Steel Corp.* v. *United States*, 605 F. Supp. 286 (1985) (*British Steel*). In that decision, the court ruled that "the competitive benefit of funds used to acquire assets does not cease upon the assets' premature retirement, but rather such benefit continues to contribute to the firm's manufacture, production, or exportation of products accomplished by the firm's remaining assets." *See British Steel*, at 296.

However, if the Department insists on calculating the percentage of Finsider's assets actually transferred to (old) ILVA as a result of the 1988 Restructuring Plan, petitioners urge the Department to reject the estimate used in the *Preliminary Determination* and the estimate provided at verification. They contend that these estimates are incorrect because: (1) the estimate used in the preliminary analysis does not account for the additional assets transferred to (old) ILVA in 1990, as part of the 1988 Restructuring Plan, and (2) neither calculation accounts for the write-down in the value of Finsider's assets which took place in 1989. Therefore, if the Department continues to use ILVA/ILT's calculations for the final, the amount of debt forgiveness that benefitted (old) ILVA will be substantially underestimated.

Petitioners claim that it would be inappropriate to use net asset values from the end of 1989 or 1990, to estimate the assets transferred from Finsider to (old) ILVA, because the asset values were substantially written down in 1989, in connection with the restructuring. To compare asset values after the write-down (those assets in (old) ILVA) with asset values before (those assets remaining in Finsider) will inevitably lead to the incorrect conclusion that a substantial amount of Finsider's assets were not transferred to (old) ILVA.

In their rebuttal brief, ILVA/ILT submits that petitioners have confused the benefit of liquidation, *i.e.*, debt coverage, with the allocation of this benefit. They contend that liquidation provides a benefit because it enables a spun-off company to emerge without the unsustainable debt burden that had deprived the company in liquidation of viability; it is the liquidated company that lacks viability, not the individual assets. The viability of the assets of the Finsider Group was demonstrated both by the audited financial statements of 1988, and by the subsequent success of the liquidated Finsider Group in generating revenue from the sale of assets to offset its net debt coverage.

ILVA/ILT further states that since the benefit was received by the Finsider Group as a whole, the Department must allocate the benefit over the entire Group. As stated in the GIA, "The amount of the potential pass-through subsidy is calculated by applying the ratio of the book value of the productive unit sold to the book value of the assets of the entire company at the time the productive unit is spun-off." *See* GIA, 58 FR at 37268. Accordingly, the Department must use a ratio that bases the asset values in the numerator (the assets of each successor) and the asset values in the denominator (all assets of the predecessor, before the spin-offs) on the same base year and the same valuation method. Respondents add that it is the Department's established policy to use book value in the last accounting period preceding the spin-offs, taken from the consolidated audited financial statements.

Department's Position: We reject the respondents' asset allocation calculation, which indicates that 51.2 percent of Finsider's assets were transferred to (old) ILVA. The calculation appears to take into consideration Finsider's asset value of December 31, 1988, prior to the write downs, and (old) ILVA's asset value after the write downs, and consequently derives an incorrect percentage of assets transferred. Record evidence indicates the opposite of ILVA/ILT's statement that "assets were transferred from Finsider to ILVA at their written down value." We note in IRI's 1989 consolidated financial statement that Finsider's net fixed asset value for year-end 1988, was 8,023 billion lire. For year-end 1989, Finsider's net fixed asset value was 1,345 billion lire and (old) ILVA's was 3,910 billion lire. These amounts closely reconcile to those presented in the June 14,1989 McKinsey report[8] which indicates that the write down of assets occurred on January 1, 1989, after they were transferred to (old) ILVA on December 31, 1988. We learned at verification that Finsider transferred assets to (old) ILVA on December 31, 1988, in advance of the company's commencement of production as a steel company on January 1, 1989. *See GOI Verification Report*, at 6.

We further note that ILVA/ILT was not able to substantiate their claim that Finsider's assets were transferred to (old) ILVA at their written down value. In support of their statement, respondents simply translated a paragraph from Finsider's 1989 financial statement. ILVA/ILT did not place information on the record which clearly indicates when the asset write downs were taken or the method by which the assets were revalued. In particular, at verification, ILVA/ILT did not demonstrate that Finsider's net fixed asset value of 8,023 billion lire as of December 31, 1988, was the value of the company's assets post-write downs.

On the basis of the record evidence, for purposes of this final determination, we have recalculated the percentage of Finsider's assets transferred to (old) ILVA using pre-write down asset values. To calculate the percentage of assets transferred to (old) ILVA, we used information from the June 14, 1989 McKinsey report which the GOI submitted to the Department on July 9, 1999. The report indicates that Finsider as of December 31, 1988, had a net fixed asset value of 8,610 billion lire. Of Finsider's assets, 6,140 billion lire of the assets were conferred to (old) ILVA on December 31, 1988. On January 1, 1989, (old) ILVA's assets were written down. This information demonstrates that prior to the write downs, 71.31 percent of Finsider's assets were transferred to (old) ILVA.

We agree with petitioners that it is necessary to add to the 71.31 percent asset figure the assets transferred to (old) ILVA during 1990. During 1990,

[8] This report was submitted to the Department by the GOI on July 9, 1999.

705 billion lire in assets were transferred to (old) ILVA. *See* (old) ILVA's 1990 Annual Report, at 46, contained in the February 16, 1999 Petition, at Volume VIII, Exhibit 4 and 5. Because it is likely that the 705 billion lire is based on asset values after the write-downs of 1989, we have assumed that these assets were written down by a similar percentage as (old) ILVA" assets on January 1, 1989, (*i.e.*, 39.9 percent). Accordingly, we have increased the value of the assets transferred during 1990, to their pre-write down value of 1,173 billion lire. We then summed the 1,173 billion lire and the 6,140 billion lire assets values, to arrive at the total asset value of 7,313 billion lire which was transferred to (old) ILVA. Therefore, we determine that, in total, 84.94 percent of Finsider's assets were transferred to (old) ILVA.

Respondents are incorrect in arguing that the methodology to be applied here is the "spin-off" methodology described in the GIA. We do not consider the creation of (old) ILVA to be a "spin-off" from Finsider, because they were still government-owned companies. Normally, in such a situation, we would not separate the untied subsidies within the corporate group. However, the facts of this case, *i.e.*, numerous restructurings and assumption of liabilities by the government which should have been taken by each new company created, dictate that we must apportion the subsidies provided to each of the new companies created. The most reliable way to determine the percentage of subsidies provided to the predecessor companies that are attributable to the successor companies is through the value of the assets taken by each company.

Comment 6: Debt Forgiveness Provided From the Reserve Fund

Petitioners claim that, in the *Preliminary Determination*, the Department did not countervail the 1,568 billion lire in net losses which Finsider realized in 1989, stating that it would seek additional information in regard to Finsider's indebtedness to IRI (*see* 64 FR at 40422–23). While the Department notes in its verification report that Finsider is still officially in liquidation, the fact that Finsider has not paid IRI for the debt a decade after the 1988 restructuring should be sufficient for the Department to determine that this debt has been forgiven. *See GOI Verification Report*, at 8. They state that since the 1988 restructuring, Finsider has been a shell corporation that assumed the liabilities which were stripped from those assets transferred to (old) ILVA. Accordingly, the Department must countervail the 1,568 billion lire debt forgiveness as benefitting (old) ILVA in 1990, the year in which it was identified, as an amount that would not be repaid to IRI.

In their rebuttal brief, ILVA/ILT states that the reserve fund involved a suspension rather than a forgiveness of debt. *See GOI Verification Report*, at 8 and ILVA/ILT's September 3, 1999 QR, at Exhibit 1. They emphasize that the record demonstrates that no forgiveness of the 1,568 billion lire debt has yet occurred and that Finsider, in liquidation, continues to possess assets that may enable it to cover the debt without recourse to IRI's reserve. *See GOI Verification Report*, at 9. Because IRI has not forgiven Finsider's remaining debt, and ultimately may not need to forgive any of this debt, they argue that no countervailable forgiveness has yet occurred.

Department's Position: On the record of this investigation, the GOI has reported that in 1988, IRI established a fund of 2,943 billion lire to cover Finsider's losses while in liquidation. *See* GOI's July 8, 1999 QR, at Program 4, Question 3a and *GOI Verification Report*, at 8. The government stated that the fund equaled the total amount of assistance IRI expected to provide to Finsider during the liquidation process. IRI, which earlier extended 2,943 billion lire in loans to Finsider, questioned whether Finsider would default on the loans, and therefore, established the reserve fund to cover the outstanding loans. *See GOI Verification Report*, at 8.

Finsider realized losses of 1,364 billion lire in 1988. To prevent Finsider from becoming insolvent, IRI utilized 1,364 billion lire of the fund in 1989, to forgive debts Finsider owed to it. In 1989, Finsider realized losses of 1,568 billion lire. Because the purpose of the reserve fund was to cover losses that Finsider would realize while in liquidation, IRI should have, but did not, cover the 1,568 billion lire of losses in 1990, by forgiving debt of an equivalent amount.

At verification, we learned that Finsider, which remains in liquidation, still had losses of 1,568 billion lire carried forward in its financial statement of December 31, 1998. Likewise, within IRI's financial statement as of year-end 1998, IRI still maintained a balance of 1,568 billion lire in the reserve fund. *See GOI Verification Report*, at 9. IRI officials explained that the agency expects Finsider to repay all outstanding debts with revenue realized through the sale of remaining assets. However, until the liquidation is officially terminated, IRI must keep the fund on its books in case any outstanding debts cannot be covered with cash earned from the sale of assets. *See Id.*

We analyzed whether, when Finsider realized losses of 1,568 billion lire in 1990, IRI expected to receive payment against the debts owed to it by Finsider. Based on the record evidence, we determine that IRI did not expect Finsider to pay the 1,568 billion lire debt. First, in 1988, IRI created a fund with the sole purpose to cover the losses which Finsider would realize while in liquidation. Second, IRI utilized 1,364 billion lire of the fund to cover losses in 1989, by forgiving debt of an equivalent amount. In addition, respondents did not submit information on the record regarding the value of the assets which remained in Finsider as of December 31, 1989, to demonstrate that Finsider had viable assets which it could sell to obtain cash to pay IRI. On the basis of these facts, we determine that in 1990, IRI had no expectation that Finsider would pay the 1,568 billion lire debt. Therefore, for this final determination, we find that in 1990, IRI provided to Finsider debt forgiveness of 1,568 billion lire.

Comment 7: IRI's Purchase of Finsider Shares

Respondents contend that IRI's purchase in 1990, of (old) ILVA's shares from Finsider, Italsider, and Terni in liquidation was step one of a two-step asset purchase. They state that the liquidators of the Finsider Group used a two-step process to raise cash for the benefit of creditors by selling assets of the liquidated companies. In step one, Finsider, Italsider, and Terni in liquidation sold assets to (old) ILVA in exchange for shares of the company. In step two, Finsider, Italsider and Terni in liquidation sold their shares in (old) ILVA to IRI in exchange for cash at the same value. Respondents contend that this two-step sale enabled the companies in liquidation to liquidate productive assets at the assets' appraised market value for the benefit of their creditors.

They argue that, because IRI's purchase of shares was an asset sale at market value, the Department has no legal or factual basis for countervailing the transaction. They stress that this process was not "tantamount to debt forgiveness," stating that IRI simply purchased the shares in (old) ILVA which Finsider, Italsider and Terni in liquidation had received in exchange for the assets which they transferred to (old) ILVA. IRI paid the assets' appraised market value to Finsider, Italsider and Terni in liquidation. Under section 771(5)(E)(iv) of the Act, a

purchase of assets by or for the government provides a countervailable benefit only "if such goods are purchased for more than adequate remuneration" and that adequate remuneration "shall be determined in relation to prevailing market conditions."

Respondents state that the appraisal of the assets in question was based on prevailing market conditions, and utilized the comprehensive market assessment of McKinsey, as described in ILVA/ILT's September 3, 1999 QR. Therefore, they argue that no countervailable benefit was conveyed because the remuneration provided by the government for the assets was adequate.

Petitioners argue that the McKinsey study was not an analysis of whether (old) ILVA in 1990, was a good investment. Rather, the study was an analysis of the viability of the 1988 Restructuring Plan, *i.e.*, whether the restructuring of Finsider into (old) ILVA would meet the objectives set out by the GOI and the EC. At verification, the Department learned that "[t]he consulting firm of McKinsey & Company was hired to examine whether the creation of ILVA S.p.A. would conform with the EC's trade and competition rules." *See GOI Verification Report*, at 5. No analysis of the risk of an investment in (old) ILVA versus the potential return of such an investment is contained in the study, nor any comparison to the expected return of alternative investment opportunities, as is required under the Department's practice.

Petitioners add that there is no basis for concluding that the GOI was acting as a normal investor in buying (old) ILVA's shares in 1990. They highlight (old) ILVA's negative return on equity for the years 1986, 1987, and 1988, and conclude that no private investor would have made an investment in such a financially unsound company. On the basis of this information, the Department should determine that (old) ILVA was unequityworthy in 1989, and that IRI's purchase of (old) ILVA's shares was equivalent to debt forgiveness.

In their rebuttal brief, ILVA/ILT dispute petitioners' argument that (old) ILVA was unequityworthy in 1989. They state that, contrary to petitioners' calculation, which appears to have been based on data for Finsider in liquidation and not (old) ILVA, (old) ILVA had a return on equity of 7.6 percent for 1989. The McKinsey report, which they contend does satisfy the Department's requirements for investment studies, projected a level of profitability of 12.8 percent in 1990, for (old) ILVA.

Department's Position: As in our *Preliminary Determination*, we continue to find that IRI's purchase of (old) ILVA's shares is countervailable. It is the Department's position that prior to purchasing shares of a company, it is the usual investment practice of a private investor to evaluate the potential risk versus the expected return. This includes an objective analysis of information sufficient to determine the expected risk-adjusted return and how such a return compares to that of alternative investment opportunities of similar risk. In the July 23, 1999 questionnaire and at verification, we asked the GOI and ILVA/ILT to provide all feasibility studies, market reports, economic forecasts, or similar documents completed *prior to* (old) ILVA's share purchase, which related to the future expected financial performance of the company.

We disagree with respondents that IRI's purchase of (old) ILVA's shares in 1990, was preceded by a comprehensive and objective financial analysis of (old) ILVA. We find that the McKinsey report which was commissioned by the EC and the GOI, examined not the expected financial performance of (old) ILVA, but assessed the viability of the government's "ILVA Steel Plan" (*i.e.*, the 1988 Restructuring Plan) for the period 1988 to 1990. The scope of the study was to "examine the ILVA Steel Plan trying to verify consistency with the Italian government proposals' and focused on (old) ILVA's steel making activities to ensure compliance with the EC's trade and competition rules. *See GOI Verification Report*, at 5. We note that the McKinsey team's evaluation involved: (1) reviewing the ILVA plan with the managers to ensure a full understanding of the underlying programs; (2) validating the feasibility of the plan using sound management principles; and (3) verifying EC mandated guidelines for price/cost squeeze and profitability. *See* McKinsey Report, "Evaluating the Viability of the ILVA Steel Plan," of August 5, 1988, in the GOI's July 8, 1999 QR.

We determine that the McKinsey report did not incorporate the type of objective, quantitative analysis that an investor would require prior to a share purchase to evaluate the potential risk versus the expected return of an investment in (old) ILVA. There is no financial forecasting of (old) ILVA which would inform the investor of the viability of the company. Respondents discuss in their case brief that the McKinsey report evaluated (old) ILVA's ability to realize a minimum level of profitability of 12.8 percent in 1990. *See* ILVA/ILT's November 23, 1999 Rebuttal Brief, at 6. However, respondents have taken that "probability" out of context. In fact, the report states, "[T]he overall plan meets CEC [EC] guidelines for a 2.5 percent annual price/cost squeeze and exceeds guidelines for a minimum MOL [operating margin improvement]-profitability level in 1990 of 12.8 percent of revenue." *See Id.* As discussed in the report, the MOL level of 12.8 percent of consolidated revenues is the target level that (old) ILVA had to reach, as a whole, in order to meet the EC guidelines for viability, and not the company's projected profitability. The report further states that when calculating (old) ILVA's MOL profitability-level, the McKinsey team had no confirmation of (old) ILVA's official financial plans. Therefore, they assumed a normal capital structure for (old) ILVA in their evaluation and urged the government to create a sound financial base for the new enterprise. *See Id.*, at section "1990 Profitability Meets CEC Guidelines."

The facts on the record indicate that IRI, which committed itself on January 1, 1989, to purchase (old) ILVA's shares from Finsider, did not have sufficient financial data which would have allowed it to evaluate the potential risk versus the expected return in an investment in (old) ILVA. Further, at the GOI's verification, we learned that under Italian law, a company in liquidation must sell all of its assets to repay outstanding debt. *See GOI Verification Report*, at 9–10. IRI, which wanted to remain in the steel business, committed itself on the day (old) ILVA was created, to purchase from Finsider the shares of the company. *See Id.* With the cash from the sale, Finsider repaid a portion of its outstanding debts. *See Id.* Therefore, on the basis of the record evidence, IRI did not act like a private investor when it decided to purchase (old) ILVA's stock on January 1, 1989. The purpose of the share purchase was to provide to Finsider with cash to repay debts.

Comment 8: Finsider Received No Countervailable Operating Assistance During Its Liquidation

Respondents argue that the Department should not countervail the amount of 738 billion lire which was the ceiling the EC imposed on IRI's coverage of losses incurred during the liquidation of Finsider. They contend that IRI provided no such assistance apart from the 1,364 billion lire in loss coverage which the Department has countervailed separately. They point out that IRI demonstrated that the global

assistance amount did not exceed 1,364 billion lire, as documented in the relevant financial statements. *See GOI Verification Report*, at Exhibits Plan 1988/1–6.

Petitioners argue that the Department should affirm its preliminary determination for the following reasons: One, the GOI claimed that no assistance beyond the 1,364 billion lire in debt forgiveness from 1989, was provided by IRI; however this statement made at verification conflicted with the GOI's own July 8, 1999 QR. *See GOI Verification Report*, at 10, and GOI's July 8, 1999 QR, at Part II, P.S. Q. Program 4. Two, the GOI could not provide any documentation to support its claim that IRI only provided 1,364 billion lire in assistance. *See GOI Verification Report*, at 10.

Department's Position: In the *Preliminary Determination*, we discussed the ambiguous information on the record regarding the additional financial assistance, if any, the GOI provided to Finsider in liquidation (*see* 64 FR at 40423). We preliminarily found, based on information provided by ILVA/ILT, that IRI provided 738 billion lire to Finsider to cover costs and losses in 1989. *See Id.* However, we stated that we would seek further clarification from the GOI and ILVA/ILT regarding all assistance provided under the 1988 Restructuring Plan.

We learned that through the 89/218/ECSC Decision of December 23, 1988, the EC authorized the disbursement of a maximum of 738 billion lire in additional financial assistance to Finsider to cover costs and losses realized in the liquidation process. However, because the cash received from the sale of Finsider's assets was greater than expected, IRI did not have to disburse to Finsider any portion of the 738 billion lire of aid authorized for closure costs and liquidation expenses. *See GOI Verification Report*, at 10 and *ILVA/ILT Verification Report*, at 11. At verification, we examined Finsider's and IRI's 1989 financial statements, in particular, sections where such assistance would have been recorded. We found no evidence that IRI provided any aid to Finsider in addition to the 1,364 billion lire in 1989. Therefore, on this basis, we determine that IRI did not provide to Finsider an additional 738 billion lire to cover closure costs and losses in 1989.

Comment 9: Allocation of the 1993 Restructuring Benefits Using the Consolidated Asset Values for the ILVA Group

Respondents contend that in the *Preliminary Determination*, the Department incorrectly allocated the benefits from the 1993–94 ILVA restructuring to ILP, AST and ILVA Residua. Though it is the Department's policy to allocate benefits to successor and spin-off companies by asset value, the Department did not use the actual consolidated asset values of all three companies as the denominator for its allocation of the 1993–94 benefits. Rather, the Department used the consolidated asset values only for ILP and AST. For ILVA Residua, the Department "used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua." See *Preliminary Determination*, 64 FR at 40424. They explain that by using the consolidated assets of ILP and AST, but not ILVA Residua, the Department distorted the allocation and exaggerated the benefits attributed to ILP from the restructuring.

The respondents stress that by using a surrogate value for ILVA Residua's assets, the Department erred in three fundamental respects: First, the Department had no basis in law or accounting to use a surrogate, because ILVA/ILT submitted the actual consolidated asset value for ILVA Residua as recorded in audited financial statements. Second, the surrogate was based not on year-end 1993 data, but on "the purchase price plus debts" of "operations sold from ILVA Residua." *See Id.* These sales occurred after year-end 1993, and, in many cases, not until years later. In contrast, the ILP and AST assets used in the *Preliminary Determination* were from year-end 1993 financial statements. For purposes of consistency and accuracy, allocations of asset values must incorporate the value of all the assets at one common point in time. Third, respondents emphasize that the Department used as its surrogate the post-1993 purchases of assets from the unconsolidated ILVA Residua, which excluded the asset values of the many subsidiary companies that ILVA Residua sold in market transactions. They add that by using consolidated assets for ILP and AST (*i.e.*, including subsidiary companies owned by ILP and AST), but using a surrogate only for the unconsolidated ILVA Residua's assets (*i.e.*, excluding subsidiary companies), the Department significantly understated the asset value of ILVA Residua in comparison to ILP and AST as of year-end 1993.

Petitioners argue that the correct asset value for ILVA Residua is the price paid for each subsidiary sold plus the debts transferred. This approach reflects the fact that the debt forgiveness should only be allocated to the viable assets of (old) ILVA and not to any assets that were to be closed or otherwise ceased to be viable. *See Plate in Coils from Italy*, 64 FR at 15523.

They contend that this analysis is consistent with legal precedent with respect to subsidies provided for closure of inefficient plants. Petitioners cite *British Steel* in which the CIT ruled that subsidies used to close redundant facilities provide countervailable benefits to the remaining, productive assets of the recipient firm because "redundancy funds and plant closures make the recipient more efficient and relieve it of significant financial burdens." *See British Steel*, at 293. They also reference the GIA, in which the Department states: "* * * subsidies are not extinguished either in whole or in part when a company closes facilities. Rather, the subsidies continue to benefit the merchandise being produced by the company." *See* GIA, 58 FR at 37269.

It would not be appropriate to allocate the debt forgiveness to the total assets of ILVA Residua as of year-end 1993, as this would allocate benefits to assets that were closed or otherwise became non-viable following the restructuring. They emphasize that, at verification, the ILVA/ILT officials could not support their statement that all assets remaining in ILVA Residua were viable. *See ILVA/ILT Verification Report*, at 11. Therefore, the Department should continue to rely on the EC's 10th Monitoring Report for purposes of determining the viable assets remaining in ILVA Residua, and use that figure for purposes of allocating the debt forgiveness of the 1993–94 Restructuring Plan among ILP, AST and ILVA Residua.

Department's Position: We find that, given the information on the record, the most reliable asset value for ILVA Residua is the price paid for each subsidiary sold plus the debts transferred. It is the Department's practice to apportion otherwise untied liabilities remaining in a shell corporation to the new, viable operations that had been removed from the predecessor company. Therefore, consistent with our past practice, we have assigned a portion of these liabilities to ILP and AST based on the ratio of assets each company took to the total viable assets of all three companies, including ILVA Residua.[9] This approach is consistent with the methodology employed in the recent

[9] Because the ultimate objective of the 1993–94 Restructuring Plan was the privatization of ILP and AST, which were separately incorporated from (old) ILVA on January 1, 1994, we have no reason not to believe that the value of the assets which were transferred to ILP and AST were accurately assessed during the liquidation process.

stainless steel investigations. *See, e.g., Plate in Coils from Italy*, 64 FR at 15523.

As stated earlier in the notice, based on the record evidence of this investigation, the EC's 10th Monitoring Report is the only reliable information available to the Department to establish the value of those productive assets which remained in ILVA Residua at the point ILP and AST were separately incorporated. We disagree with respondents that the best source of data is the consolidated asset value for ILVA Residua as of December 31, 1993. Evidence on the record indicates that the asset value for ILVA Residua as of year-end 1993, is seriously flawed. At verification, the EC economist who monitored the restructuring and privatization of (old) ILVA stated that the "balance sheets for December 31, 1993, provide only an estimate of ILVA in Liquidation's indebtedness which IRI would have to cover, the amount of debts to be transferred, etc." *See GOI Verification Report*, at 13. He also explained that the balance sheets of December 31, 1994, were the first audited financials of IRI and ILVA Residua since the commencement of the liquidation in the fall of 1993. *See Id.*

We examined ILVA Residua's 1994 annual report and noted the following statement pertaining to 1993, within the "Report on the Management:" "In the financial statement for 1993, we pointed out how the opening of liquidation would require drawing up a balance sheet formulated not with values of normal operation but with values of estimated cost. The brevity of time available then and the complexity of the valuations to be executed in that meeting allowed putting together only a few limited adjustments of values for which sure elements of judgement were available." *See* ILVA Residua's 1994 Annual Report in the February 16, 1999 Petition, at Volume 8, Tab 11. In addition, at verification, we obtained a listing of the amount of assets from each ILVA Group company which were placed in ILVA Residua as of December 31, 1993. *See ILVA/ILT Verification Report*, at Exhibit 1993/94–4. Respondents claimed, but could not document, that all of the assets were viable. *See ILVA/ILT Verification Report*, at 11. As the auditor's opinion clearly indicates, the asset value for ILVA Residua, recorded in the company's financial statement as of December 31, 1993, was distorted, and respondents have submitted no evidence to substantiate their claim that the assets were accurately valued. As such, it is not appropriate to apportion the subsidies to ILVA Residua using the company's 1993 consolidated asset value. To determine the amount of liabilities from the 1993–94 Restructuring Plan, that should be apportioned to ILVA Residua, we must first determine the value of the productive assets that remained in ILVA Residua.

Given that the Department does not have the necessary asset values to make this determination from financial statements prepared at the point (old) ILVA's assets were demerged into ILP and AST, we consider that the EC report provides the only reliable information on the record to determine the viable assets which remained in ILVA Residua. The EC report provides a list of subsidiaries and shareholdings sold by ILVA Residua from 1993 through 1998, together with the sales price for each company and the debts transferred from ILVA Residua upon each sale. Respondents themselves note this fact in their case brief: "The 10th EC Monitoring Report describes these sales [*i.e.*, ILVA Residua's assets sold in market transactions], which involved virtually all of ILVA Residua's consolidated assets." *See* ILVA/ILT's November 18, 1999 Case Brief, at 16. Moreover, the EC Monitoring Report notes that "[t]he privatisation or the sale of shareholdings of all the companies formerly part of the ILVA Group (over 100 companies) is now practically completed," with only a negligible amount of assets remaining to be sold.

Therefore, to calculate the asset value of the viable operations, which were in ILVA Residua, we summed the cash price paid plus debts transferred at the time of their sale. We believe this approach provides a reasonable surrogate asset value because the newly sold company's books will, by the basic accounting equation of "assets equal liabilities plus owners" equity," reflect an asset value that is equal to the debts transferred plus the cash purchase price. The debts transferred become the liabilities in the new company's books, while the cash purchase price becomes the owners' equity. *See Plate in Coils from Italy*, 64 FR at 15523. Given the record evidence of this investigation, this calculation is the most reasonable estimate of the amount of viable assets that were left in ILVA Residua upon the separate incorporation of ILP and AST. However, should this investigation result in an order and an administrative review is requested, we will examine whether, at the point ILP and AST were separately incorporated, more accurate information can be obtained with regard to the value of those productive assets which remained in ILVA Residua.

Comment 10: Countervailable Debt Coverage Should Be Offset by Revenue From ILP/AST Sales

Respondents state that the Department's preliminary analysis, guided by the EC's 10th Monitoring Report, disregarded the EC's treatment of revenue from the sale of ILP and AST as an offset to debt coverage. They argue that, by overlooking this revenue offset, the Department overstated the net amount of debt coverage. The record of the case demonstrates the legal obligation of the GOI and IRI to use the revenue from the sale of ILP and AST for the benefit of ILVA Residua's creditors. *See GOI Verification Report*, at 14. Since revenue from the ILP and AST privatizations is no different from revenue generated by the sale of ILVA Residua's other productive enterprises, they argue that all revenue should be deducted from the gross liabilities of ILVA Residua prior to attributing any countervailable debt coverage to ILP.

In support of their argument, respondents note that the EC in its Decision 94/259 of April 12, 1994, at Article 3(2), states: "The income obtained through the sale of the companies in the (old) ILVA Group shall be used in full to reduce the indebtedness of the group." Because the revenue from the privatizations was intended to reduce the debt coverage provided by IRI to ILVA Residua, the Department has no legal justification to exclude this revenue from its calculation of the net debt relief attributable to the liquidation process. Respondents add that under the Italian Civil Code, IRI had a legal obligation to the ILVA Group's creditors to apply the revenue from the subsequent privatizations of ILP and AST for the creditors' benefit.

They further state that the Department in the *Preliminary Determination* (*see* 64 FR 40424) recognized the revenue from asset sales by ILVA Residua as an offset to the countervailable debt coverage provided by the liquidation. Because no justifiable distinction can be drawn between the ILP and AST privatization revenue and the revenue from other asset sales, the Department should apply the 2,665 billion lire from the privatization of ILP and AST as an offset to the countervailable debt coverage attributed to the 1993–94 restructuring process.

Petitioners counter that the subsidy at issue is the amount of liabilities stripped from the operating company of (old) ILVA, which were placed in ILVA Residua, and not the amount of ILVA Residua's debts the GOI ultimately forgave or paid, nor the source of the

funds used to satisfy the debt. ILVA/ILT is confusing the benefit to the recipient of the subsidy the Department must measure (*i.e.*, the net liabilities stripped from ILP) with the subsequent transactions between ILVA Residua and the GOI. They argue that the Department rejected the same argument in *Plate in Coils from Italy* (*see* 64 FR at 15522–23), stating that such an analysis would calculate the cost to government, rather than the benefit to the recipient, in violation of the law. Petitioners submit that the same analysis is applicable in the instant investigation.

They add that there is a fundamental difference between the revenue from the privatization of ILP and AST and the revenue from other asset sales by ILVA Residua. Despite ILVA/ILT's claims, the GOI's receipt of cash from the proceeds of its sale of ILP (and AST) did not come from (old) ILVA itself and therefore does not constitute an "offset" to the liabilities stripped from (old) ILVA. Petitioners note that section 771(6) of the Act provides a list of proper offsets in determining the net countervailable subsidy and the proceeds from a privatization are not included within the list.

Department's Position: As mandated by law under section 771(5)(E) of the Act, the Department must calculate subsidies as the benefit to the recipient and not the cost to the government as proposed by respondents. Accordingly, we must determine, at the time ILP was spun-off from (old) ILVA, the benefit that ILP received, calculated as the portion of (old) ILVA's liabilities which was forgiven on behalf of ILP. At the time of ILP's separate incorporation of January 1, 1994, ILP clearly benefitted to the extent that it did not assume a proportional share of (old) ILVA's liabilities. ILP emerged with a positive equity position as a result of ILVA Residua's assumption of the vast majority of (old) ILVA's liabilities, which included that portion of liabilities which should have been transferred to ILP.

While the EC's Monitoring Report is a useful source of information about the liquidation of (old) ILVA, the methodologies the EC employs to measure and report amounts associated with the liquidation may not be appropriate for our purposes, *i.e.*, for identifying and measuring the countervailable benefit to ILP from the GOI's liquidation activities. For example, we cannot rely on calculations based on the cost to the government rather than the benefit to the recipient. *See Sheet and Strip from Italy*, 64 FR at 30633.

It is the Department's practice to determine the benefit to a respondent as the amount of liabilities that are not directly associated with any given assets that the respondent should have taken. *See Plate in Coils from Italy*, 64 FR at 15522–23. If liabilities are not properly distributed to a new company through a restructuring process, a benefit is conferred upon the productive assets of the new entity. The assumption by a government of those liabilities not apportioned is the countervailable event. If the new company is later sold, as was the case with ILP, then the Department applies its change in ownership methodology to determine the portion of the purchase price attributable to the repayment of prior subsidies. We note that the cash transfer for ILP did not take place at the time of the company's separate incorporation, but over a year later when ILP was sold to the RIVA Group in April 1995. Therefore, consistent with the Department's policy, we determine that ILP received a benefit when it was separately incorporated from (old) ILVA; the benefit was that portion of liabilities of (old) ILVA which should have transferred to ILP, but instead remained with ILVA Residua. *See, e.g., Electrical Steel from Italy*, 59 FR at 18365, and *Certain Steel from Austria*, 58 FR at 37221.

Comment 11: ILVA 1993 Asset Write-Downs

Respondents contend that as a matter of law, accounting and simple fact, the Department's preliminary approach to this subject was in error. In the *Preliminary Determination*, according to respondents, the Department countervailed the asset write-downs taken by (old) ILVA in 1993, treating the write-downs as a countervailable event. This, according to respondents, reflected the Department's preliminary view that the write-downs generated losses and that these losses were the equivalent of debts that would have to be covered by the government. Respondents maintain that the asset write-downs taken by the ILVA Group in 1993 amounted to 1,780 billion lire, including write-downs of 1,685 billion lire for assets that would later be transferred to ILP.

Respondents claim that both Italian and U.S. GAAP require the write down of asset values, once the impaired condition of the assets is manifest, particularly in the face of an impending sale or transfer of assets. Respondents state that the correct application of these accounting rules in the current investigation requires an appreciation of the fundamental distinctions between asset write-downs, losses, and debts.

According to respondents, the occurrence of a loss by a company, as reflected on the balance sheet by a reduction in shareholder's equity and an accompanying asset write-down, involves neither a direct transfer of funds into the company nor the forgiveness of any debts. Rather, the asset write-downs are accounting entries required by Italian and U.S. GAAP in the event the losses reflect a material impairment of an asset's earnings potential over its remaining useful life. The asset write-down does not "cause" the loss; instead events or circumstances which cause losses, such as overcapacity or obsolescence, may require an extraordinary write down of asset values on the asset side of the balance sheet and an offsetting reduction to a capital account on the liabilities/shareholders' equity side of the balance sheet.

Respondents take issue with the Department's analysis in the *Preliminary Determination*. Although respondents agree that under section 771(5)(D) of the Act, the Department has an obligation to identify a "financial contribution" from the government to (old) ILVA, they believe the Department erred in preliminarily determining that asset write-downs are a "direct transfer of funds" in accordance with section 771(5)(D)(I). *See Preliminary Determination*, 64 FR at 40423.

Respondents claim that two fundamental flaws with the Department's *Preliminary Determination* are evident. First, the Department has confused "real" events and obligations with accounting entries that create no such obligations. Second, the Department has double or even treble counted benefits conferred by a single financial contribution. Regarding the confusion over "real" events versus accounting entries, respondents state that the assumption or forgiveness of a debt is equivalent to a grant only if the government voluntarily pays a debt on behalf of the company, or voluntarily waives its right to receive a payment from the company. They further state that above all, there has to be a debt and it has to be forgiven and that a loss is not a debt and is by no means equivalent to a debt. A loss is recorded on the income statement and typically impacts the balance sheet as a reduction to retained earnings, reserves or other capital account. If the loss-making company wants to avoid an erosion in its capital, it can replenish its funds either by obtaining additional equity or incurring additional debt. The loss, in and of itself, will have no direct impact

on debt and may never have any impact on debt, given other means of absorbing losses available to the company. Respondents contend that an asset write-down neither increases debt nor forgives debt. The act of borrowing is a "real" event, not simply an accounting event, just as the act of debt forgiveness is a "real" event, whereas the recording of an asset write-down, or the reduction of shareholders' equity, are accounting entries that impose no new obligations on the company.

Regarding double counting the benefit from a single financial contribution, respondents state that the failure to distinguish between (1) past financial contributions, (2) potential future financial contributions, and (3) actual financial contributions that occur in subsequent years, has led the Department to double or even treble count the benefit from individual contributions of the same capital. To the extent that the government contributed either equity or debt to (old) ILVA, and thereby conferred a subsidy, those financial contributions remain countervailable over the AUL period. To the extent the government forgave accumulated debt, that act of debt forgiveness is also potentially countervailable. Respondents go on to argue that an intervening loss and asset write-down incurred by the company that received the original equity infusion, and that might later benefit from a debt forgiveness, would not represent an additional financial contribution from the government or confer a separate countervailable benefit. In the absence of a new financial contribution, as defined by section 771(5)(D) of the Act, there can be no subsidy.

In (old) ILVA's case, according to respondents, the 1991/92 equity infusions of 660 billion lire provided a financial contribution from the GOI that supported the acquisition of assets and other operations of (old) ILVA and thereby conferred a countervailable benefit. (Old) ILVA's subsequent losses (and associated write downs) involved no additional financial contribution or benefit because they involved no affirmative action of any sort on the government's part. Instead, they simply reflected the company's failure to earn a profit. As described above, such losses result in a reduction of retained earnings or other capital account on the balance sheet. No government action is associated with an accounting entry of this type, and no benefit is conferred. An additional financial contribution by the government can be said to occur only in the event of additional equity infusions, loans or debt forgiveness provided by the government. Thus, to impose countervailing duties in connection with the 1993 asset write-down would unlawfully double penalize ILVA for the same capital.

Petitioners contend that the debt forgiveness and coverage of losses provided by IRI to ILP (now (new) ILVA) in connection with the 1993–94 Restructuring Plan provided a financial contribution to (new) ILVA in the form of a direct transfer of funds—the equivalent of a grant—as described in section 771(5)(D)(I) of the Act. Petitioners cite *Sheet and Strip from Italy*, 64 Fed. Reg. at 30,628. They point out that ILVA/ILT has repeatedly argued that the coverage of losses by the GOI resulting from asset write-downs in the various restructurings of the Italian state-owned steel industry does not constitute a financial contribution and that this argument is in error.

Petitioners cite *Plate in Coils from Italy* in their argument that the Department has previously considered the countervailability of the coverage of losses resulting from the write-down of assets in connection with the 1993–94 restructuring. In that case the Department found that because the asset write-downs generated a loss that was eventually covered by the GOI through its debt forgiveness to ILVA, the asset write-downs are countervailable. Petitioners also cite *Electrical Steel from Italy* for their assertion that the Department has previously considered countervailability of asset write-downs in Italy. In that case assets transferred from a GOI created "shell company" (TAS) to (old) ILVA were written down prior to the transfer and as a result, the GOI created "shell company" was forced to absorb greater losses, which were countervailed.

According to petitioners, in order to understand the connection between the countervailable benefit from the reduction of liabilities afforded (old) ILVA and the asset write-downs, the Department need only consider the methodology it used to determine the amount of countervailable benefit that arises from the liabilities that were stripped from (old) ILVA in the 1993–94 restructuring. In particular, the countervailable benefit equals the total (gross) liabilities transferred out of (old) ILVA minus the total assets transferred, which equals the net liabilities transferred. For example, if the government transfers $100 in gross liabilities and $20 in assets, then the net benefit is $80. Obviously, the correct result from this calculation depends on the correct value of both the gross liabilities and the assets. If, in this example, it is determined after the transfer takes place that the assets are, in fact, worth only $10 and are written down accordingly, then the true amount of net liabilities transferred is $90—or $10 more as reflected in the amount of the asset write-down.

Respondents dispute petitioners use of *Electrical Steel from Italy* (see, 59 FR at 18359) pointing out that the passages from that final used by petitioners address the Finsider restructuring (not the (old) ILVA restructuring) and that this passage neither references nor identifies a financial contribution. In fact, respondents claim that the *Electrical Steel from Italy* determination illustrates that by focusing exclusively on the perceived benefit without identifying any financial contribution, the Department has unlawfully engaged in double counting of a single subsidy event. Further, respondents dispute petitioners' other cited case, *Plate in Coils from Italy* (*see*, 64 FR at 15525). Respondents argue that the issue of countervailing asset write-downs *in Plate in Coils from Italy* was decided on the basis of a deficient record in which the Department did not have the benefit of the complete legal, accounting, and factual information contained in the record of this current investigation, which is necessary for the Department to reach an informed determination.

Respondents argue that the Department has countervailed (old) ILVA's equity infusions that preceded the asset write-down as well as the debt forgiveness that followed the asset write-downs, and that it would be unlawful to countervail the intervening asset write-downs, which involved no new or separate financial contribution from the GOI.

Department's Position: Respondents misunderstand the Departments position concerning the asset write-downs that (old) ILVA took in 1993 as part of the restructuring/privatization plan. We disagree with respondents that the technical GAAP requirements on asset write-downs of either country are particularly relevant to the issue. The main point is that retained liabilities of (old) ILVA represent the portion of the company not covered by assets and, therefore, this is the pool of liabilities covered by the GOI. To clarify, the recognition of the fact that (old) ILVA's assets had become impaired in value (a real event), and needed to be written-down, increases the retained losses (i.e., negative equity), in the same manner as any other operating expense or loss. The large retained losses, while not technically debt, represents the portion of the company's liabilities that cannot be covered by the sale or transfer of assets. It is clear that the total amount

of debt is not increased by the asset write-downs. However, the writing down of assets must be factored in to accurately reflect the amount of debt the GOI is forgiving.

It is important to note that in its history of examining asset write-downs in connection with Italian state-owned steel industry restructurings, the Department has not determined that asset write-downs per se are countervailable events. In each instance, the Department referred to the specific situation in the Italian steel industry, where debt forgiveness was involved. Certainly, there are many instances where private sector companies revalue their assets in accordance with GAAP for perfectly legitimate reasons. What the Department has consistently determined in *Electrical Steel from Italy*, *Plate in Coils from Italy*, and *Sheet and Strip from Italy*, is that coverage of liabilities by the GOI, whether those liabilities are created or increased by asset write-downs or any other economic event, is countervailable. In all of these cases, the Department was presented with the issue of how to apportion liabilities that were retained by the GOI that should have been transferred to the new companies, ILP and AST. To the extent that asset write-downs, recorded prior to the separate incorporation of the companies, increased the liabilities retained by the GOI, the Department has considered those write-downs in the calculation of the benefit from the debt forgiveness. The real issue here is how to apportion liabilities retained by the GOI across the companies created by the 1993–94 Restructuring Plan, namely AST and ILP. We can only identify the actual liabilities covered by the government if we factor in the value of the asset write-downs. Because the asset write-downs can be tied to specific assets that went to ILP and AST, it is appropriate to factor these into our calculation. Assigning the amounts of the tied write-downs to the appropriate companies (ILP and AST) is a more reliable way to apportion the liabilities that should have been transferred.

We disagree with respondents' argument that *Electrical Steel from Italy* is not relevant here because it involved Finsider's restructuring rather than (old) ILVA's restructuring. Respondents' distinction between these two cases is largely cosmetic. Respondents' allegation of double counting benefits is also without merit. In its calculation of the total benefit from the 1993–94 Restructuring Plan, the Department was careful to deduct the amount of liabilities associated with (old) ILVA's asset write-downs from the amount of liabilities covered by the GOI that were apportioned according to asset values. The amount of net liabilities created by the asset write-downs associated with assets transferred to ILP were then added directly to the first calculation described above to arrive at the total amount of countervailable debt forgiveness, thereby negating the possibility of double counting. This calculation is consistent with *Plate in Coils from Italy*. We disagree with respondents that *Plate in Coils from Italy* is not relevant here since that case was "decided on the basis of a deficient record in which the Department did not have the benefit of the complete legal, accounting, and factual information contained in the record of this current investigation" (*see* ILVA/ILT's November 23, 1999 Rebuttal Brief, at 19). The issue in this current case as well as the *Plate in Coils from Italy*, *Sheet and Strip from Italy*, and *Electrical Steel from Italy* cases is not the completeness of the record. It is the countervailability of liabilities/losses covered by the GOI and how to apportion those amounts among respondent companies.

Comment 12: Any Benefit From Debt Coverage Was Received at the Time of the Original Loans, Not Upon Liquidation of (Old) ILVA or Finsider

Respondents disagree with the Department's analysis that the debt coverage provided at the time of the liquidation of Finsider in 1988 and the ILVA Group in 1993, was a new and separately countervailable benefit. They argue that the actual benefit was many years before, when IRI guaranteed the loans that it later had to cover during the liquidations of Finsider and (old) ILVA. It was the loan guarantees that later obliged IRI to provide the debt coverage, and therefore, the only possible subsidy event occurred at the time when IRI provided the guarantees, *i.e.*, at the time of the original commercial borrowings.

Respondents also argue that the loan guarantee which (old) ILVA received at the time of its commercial borrowings was consistent with normal commercial practice in Italy, and thus, did not provide a countervailable benefit, citing to section 351.506(b) of the CVD Regulations. They state that Article 2362 of the Italian Civil Code makes the sole shareholder an automatic guarantor of all loans obtained by its wholly-owned subsidiary, and point to information placed on the record that demonstrates the widespread use of the sole shareholder structure in Italy. However, if the Department finds a countervailable benefit, then that benefit could only have occurred at the time of the original commercial borrowings which IRI guaranteed and not at the time of liquidation. Respondents argue that the Department would be impermissibly double-counting a single subsidy event by finding that IRI's coverage of the same loans during liquidation subsequently provided a new countervailable benefit.

Petitioners state that, with respect to the 1988 restructuring, there is record evidence that the guarantee of Finsider debt by IRI was an integral part of the overall 1988 Restructuring Plan. First, IRI issued an explicit guarantee to the Finsider Group's creditors that all the principal and interest of the Group's existing loans would be repaid. *See* EC Decision 89/218/ECSC of December 23, 1988, contained in the Petitioners' November 12, 1999 Case Brief, at Exhibit 1, page 77. The guarantee issued in connection with the 1988 restructuring was issued in 1988, and not when any outstanding loans were made to Finsider at some earlier date. Therefore, the proper countervailable event is the actual provision of the debt forgiveness and coverage of losses in connection with the 1988 restructuring.

With regard to the 1993–94 Restructuring Plan, there were no IRI "guarantees" of loans to (old) ILVA prior to the enactment of the plan. According to ILVA/ILT's September 3, 1999 QR, the provisions of Italian Civil Law (*i.e.*, Article 2362) did not apply to IRI, the "sole shareholder" of (old) ILVA, until July 1992, when IRI was converted into a public limited company. Thus, the "sole shareholder" guarantee argued by respondents could not have been applicable to any loans taken by (old) ILVA, or predecessor companies, prior to July 1992. They add that record evidence indicates that (old) ILVA's loans pre-date July 1992. Therefore, petitioners argue that the "guarantee" provided by IRI under Article 2362 is irrelevant to this case and the countervailable event is the forgiveness of debt and coverage of losses that occurred when (old) ILVA was demerged into AST and ILP. In addition, petitioners argue that the "sole shareholder" provision is not a normal loan guarantee.

Department's Position: ILVA/ILT's arguments that the Department is countervailing the wrong subsidy event (*i.e.*, debt forgiveness provided under the 1988 and 1993–94 Restructuring Plans) and double-counting subsidies in terms of both loan guarantees and debt coverage are incorrect. We find that, even if there had been some earlier loan guarantee by the GOI, a loan guarantee and the forgiveness of debt are two

separate and distinct subsidy events. In a commercial context, where a borrower defaults on a loan that is guaranteed, the borrower is still liable to the guarantor for the debt that is now being paid by the guarantor. Thus, if a borrower defaulted on a government-provided loan guarantee, the borrower would still be liable to the government for the debt, and the subsequent forgiveness of the debt would be a separate, countervailable event from the government-provided loan guarantee. *See* section 351.508 of the CVD Regulations.

Comment 13: Italy's Generally Available Liquidation Process Provided No Countervailable Benefits

Respondents state that even if the Department regards liquidation as a separate subsidy event from the original loan guarantees provided by IRI, the Department must address the question of specificity under section 771(5A) of the Act. They discuss that in the *Preliminary Determination*, the Department found a specific benefit from the liquidation of (old) ILVA, under the theory that liquidation occurred under an EC directive which was specific to (old) ILVA (see 64 FR at 40423–24). Respondents argue, however, that the liquidation occurred under a generally applicable provision of the Italian Civil Code, not under an EC directive.

In support of their argument, respondents state that (old) ILVA entered into voluntary liquidation on October 31, 1998, in accordance with Articles 2448 *et. seq.* of the Italian Civil Code, which is similar to U.S. bankruptcy procedure. The liquidation took place prior to the EC's April 1994 Commission Decision which provided the EC with oversight authority to prevent "unfair competition" and to protect "conditions of trade in the Community steel industry." *See* EC Decision 94/259 of April 1994, contained within ILVA/ILT's May 13, 1999 questionnaire response, at Exhibit 16.

Respondents argue that the same liquidation procedures automatically apply to all Italian corporations, regardless of whether they are privately-held or state-owned, and regardless of the industrial sector in which they operate (*i.e.*, broad cross-section of firms utilize the process without any disproportionate or predominant users or favoritism in the law's application). The Court of Rome's acceptance of (old) ILVA's entry into liquidation was not the type of discretionary government action that justifies a finding of specificity by the Department.

They further discuss that judicial precedent has firmly established that receivership under a generally-available bankruptcy law does not confer a countervailable subsidy, citing *Al Tech Specialty Steel Corp.* v. *U.S.*, 661 F. Supp. 1206 (CIT 1987) (*Al Tech*). The court in *Al Tech* upheld the Department's finding, in *Certain Stainless Steel Products from Spain*, that the receivership of Olarra had extinguished prior subsidies received in the form of loans to that company. In that case, the Department ruled that "where the [local] court has specifically recognized the company's receivership, we find that any countervailable benefits associated with loans incorporated in the receivership plan cease to exist." *See Certain Stainless Steel Products from Spain*, 47 FR 51453, 51455 (November 15, 1982).

Petitioners state that the Department rejected the same "generally-available liquidation" argument with respect to a similar restructuring plan for Cogne S.p.A. in *Wire Rod from Italy* (*see* 63 FR 40498). They submit that the record of the instant investigation provides clear evidence that the privatization of ILP and AST was the purpose of (old) ILVA's liquidation and that, as in *Wire Rod from Italy*, the liquidation was merely the mechanism through which one aspect of a massive government restructuring and state aid plan was to be implemented.

Based on this record evidence, petitioners conclude that ILVA/ILT's argument that (old) ILVA's liquidation was a normal proceeding under Italian law is specious at best. The Plan was limited by its terms to one entity, (old) ILVA, and the benefits were limited to (old) ILVA and its two privatized companies: ILP and AST. The Department in both *Plate in Coils from Italy* (*see* 64 FR 15508) and *Sheet and Strip from Italy* (*see* 64 FR 30624) treated the 1993–94 Restructuring of (old) ILVA as providing specific countervailable subsidies to AST. To petitioners' knowledge, the only other entities in Italy to receive similar restructuring benefits were other pieces of the Italian state-owned steel industry, such as Cogne, itself formerly a part of (old) ILVA; and these benefits were found to be specific (*see, Stainless Steel Wire Rod*, 63 FR 40475). Therefore, under section 771(5A)(D), the Department should continue to find the 1993–94 Restructuring Plan *de facto* specific.

Petitioners also argue that ILVA/ILT's reliance on *Al Tech* to support its position is misplaced. *Al Tech* involved a normal recourse to traditional bankruptcy protection, in which the company in question received traditional benefits under a receivership plan without special consideration. *See Al Tech*, at 1212. The court made clear that the mere use of a bankruptcy law would not insulate a subsidy recipient from the countervailing duty law where special benefits were bestowed on specific enterprises. *See Id.*

Department's Position: Consistent with our determination in *Wire Rod from Italy* (*see* 63 FR 40498), we disagree with respondents' argument pertaining to the sole shareholder provision of Italian law. The record evidence demonstrates that the liquidation of (old) ILVA, including the debt forgiveness provided, was done in the context of a massive restructuring/privatization plan undertaken by the GOI, which was approved and monitored by the EC. The debt forgiveness which ILP realized was provided in the context of a massive state-aid package designed to allow the GOI to restructure and privatize its steel holdings. At verification, GOI officials "emphasized that the goal of the 1993–94 Restructuring Plan was not simply the liquidation of ILVA S.p.A and demerger of AST and ILP, but the privatization of the Italian steel industry." *See GOI Verification Report*, at 10–11.

While the EC did not direct the GOI to place (old) ILVA in liquidation on October 31, 1993, the 1993–94 restructuring and privatization plan, of which liquidation was an integral part, was subject to the approval of, and monitoring by,[10] the EC. In fact, ILVA/ILT, in their May 13, 1999 response, states that "[T]he restructuring that occurred during the liquidation process was reviewed by the EC under its competition rules and resulted in the EC decision [of April 12, 1994]." This statement indicates that the restructuring and liquidation were not separate events, but two processes which the GOI set in motion with the ultimate objective of privatizing (old) ILVA through the demerger and separate incorporation of two spin-off companies: ILP and AST.

The evidence on the record demonstrates that the liquidation was not a normal occurrence, but was part of an extensive state-aid package designed to bestow special benefits on a specific enterprise. In support of our

[10] As stated in the EC's April 12, 1994 approval, the GOI was responsible for furnishing reports on the implementation of the "privatization and reorganization programme and in particular * * * financial data necessary to allow the Commission to assess whether its conditions and requirement are fulfilled." *See* EC's 94/259/ECSC Decision of April 12, 1994, at 69.

finding that the 1993–1994 Restructuring Plan is *de facto* specific, we note the EC's 94/259/ECSC decision of April 12, 1994, in which the Commission identified the restructuring of (old) ILVA as a single program, the basic objective of which was the privatization of the ILVA steel group by the end of 1994. *See* EC's 94/259/ECSC decision of April 12, 1994, at 65. As set forth in the EC's approval decision, the 1993–1994 Restructuring Plan was limited by its terms to (old) ILVA and the benefits of the plan were received by only (old) ILVA's successor companies.

Comment 14: The Extinguishing Versus Pass-Through of Subsidies During Privatization

The GOI and ILVA/ILT argue that, based on the verified circumstances of the sale of ILP, the Department must conclude that privatization extinguished any prior subsidies to (old) ILVA. The respondents first posit that ILP's privatization, monitored by the EC, was an open and competitive process, and therefore, was conducted at "arm's-length." The privatization of ILP was accomplished through a public tender with negotiation of terms between IRI and competing bidders to establish an acceptable price. They equate the sale of ILP to that of British Steel. They note that a WTO dispute resolution panel recently determined that open and competitive bidding procedures which result in payment of a market price for a privatized company will extinguish prior subsidies to that company.

They add that U.S. law recognizes that privatization can extinguish subsidies. *See* Section 771(5)(F) of the Act and *Delverde S.r.l.* v. *United States*, 989 F. Supp. 218, 228 (CIT 1997). They argue that based on the record of this investigation, U.S. law would support a determination that no subsidies passed through to the new owners of ILP upon its privatization in 1995. The sale of ILP occurred at a market price and therefore involved payment for the market value of the company, including the current value of any subsidies received by the company prior to privatization.

Petitioners argue that the URAA confirms that subsidies remain fully countervailable following a change in ownership, referencing section 771(5)(F) of the Act. They add that record evidence indicates that none of the subsidies bestowed on ILP's predecessor companies should be treated as "repaid" as a result of the 1995 privatization of ILP. The purchase price of ILP was below fair market value, and therefore, no prior subsidies were extinguished in the sales transaction. In support of their position, they note that the GOI placed restrictions on the buyer of ILP such that the company could not be shut down and no employees could be terminated for a period of three years after the sales transaction. *See GOI Verification Report*, at 14–15. Such restrictions undoubtedly caused many potential bidders not to participate in the privatization process and surely reduced the value of ILP to those bidders still willing to participate. Thus, the purchase price agreed to by RIVA was undoubtedly lower than a "negotiation process directed at obtaining the highest possible return." They add that the "below-market" price agreed upon by RIVA and the GOI has yet to be fully paid, as the sale is in arbitration. Therefore, it is not rational to conclude that any subsidies were repaid, much less extinguished in the purchase transaction.

Department's Position: Under our existing methodology, we neither presume automatic extinguishment nor automatic pass through of prior subsidies in an arm's-length transaction. Instead, our methodology recognizes that a change in ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies are allocated to the privatized company. In the instant proceeding, the Department relied upon the pertinent facts of the case in determining the extent to which the countervailable benefits received by ILP's predecessor companies passed through to ILP.

Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and ILP's purchase price to a specific, detailed analysis. This analysis resulted in a particular "pass through ratio" and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that, when ILP was privatized, a portion of the benefits received by (old) ILVA, and other predecessor companies, passed through to the privatized company and a portion was repaid to the government. This is consistent with our past practice and has been upheld in the Court of Appeals for the Federal Circuit in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*), *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) (*British Steel II*) and *Delverde II*.

Furthermore, ILVA/ILT's contention that the sale of ILP was an arm's-length, market-valued transaction does not demonstrate that previous subsidies were extinguished. Section 771(5)(F) of the Act states that the change in ownership of the productive assets of a foreign enterprise does not require an automatic finding of no pass through even if accomplished through an arm's-length transaction. Section 771(5)(F) of the Act instead leaves the choice of methodology to the Department's discretion. Additionally, the SAA directs the Department to exercise its discretion in determining whether a privatization eliminates prior subsidies by considering the particular facts of each case. *See* SAA at 928.

Lastly, with respect to the respondents' comments concerning the recent finding by a WTO Dispute Settlement Panel that an arm's-length privatization automatically extinguishes prior subsidies received by government-owned firms, the Department notes that this was an interim (*i.e.*, preliminary) confidential report. As such, it is inappropriate for the parties or the Department to comment on it.

Comment 16: Repayment Portion of Change-in-Ownership Analysis

According to petitioners, Congress intended that countervailing duties be imposed to offset subsidies to production. Since changes in ownership do not affect production, the petitioners conclude that they should also not affect countervailing duty liability.

The petitioners distinguish between the subsidies themselves and countervailing duty liabilities arising from those subsidies. Citing the GIA (58 FR at 37260) where it quotes *British Steel Corp.* v. *United States*, 605 F. Supp. 286, 294 (CIT 1985), the petitioners state that the Department is obligated, when injury exists, to impose duties when subsidies have been provided "with respect to the manufacture, production or export * * * of a class or kind of merchandise" imported into the United States. To show that the liability for such subsidies is attached to production, the petitioners cite to the same where it states, "if a benefit or advantage is received in connection with the production of merchandise," that benefit or advantage is a "bounty or grant on production." To further demonstrate the linking of countervailing duty liabilities to production in a post-URAA case, the petitioners cite the Final Results of Redetermination Pursuant to Court Remand, *Delverde, SrL* v. *United States*, Consol. Ct. No. 96–08–01997, *aff'd*, *Delverde, SrL* v. *United States*, 24 F. Supp.2d 314 (CIT 1998) where it states:

> Once the Department determines that a "subsidy" has been provided, it measures the amount of the subsidy, attributes the subsidy to the appropriate production * * *

Generally speaking, the practical results of this system is to link liability for, as an example, pasta subsidies to pasta production."

The petitioners maintain that after a change in ownership, a company will produce at the same cost, in the same volume and with the same artificial advantages born of subsidies. Petitioners claim that this happens because the profit-maximizing level of price and output are unchanged. According to petitioners, regardless of whether a buyer or seller captures the benefit of a subsidy after a change in ownership, the buyer still acquires the subsidy-augmented production facilities and uses them at the same profit-maximizing level, thus leaving the misallocation of resources arising from the subsidies and the threat to the companies' competitors unchanged.

To show that the seller actually captures the benefit of previously bestowed subsidies, the petitioners cite a publication by the U.S. Department of Agriculture which states that subsidies to farmers have created inequities between existing and entering farmers by increasing the cost of acquiring land for entering farmers.[11] The petitioners maintain that even though sellers gain the windfalls from subsidies during a change in ownership, the reallocation of countervailing duty liabilities back to the sellers is inappropriate. First of all, the price paid by a buyer is discounted for the risk associated with the countervailing duty liabilities, according to petitioners. In addition, since the seller no longer has control over production, the petitioners state that imposing duties on the seller would not have the effect of offsetting the artificial advantages on production arising from the subsidies.

The petitioners further argue that the reallocation/repayment aspects of the Department's change-in-ownership methodology amount to measuring the effects of subsidies and taking account of events subsequent to the bestowal of the same. According to 19 CFR 351.504–511, the Department should not take into account the effects of subsidies and, instead, should measure benefits at the time of bestowal.

Finally, the petitioners take issue with the Department's practice of automatically conducting a repayment/reallocation analysis as part of its change-in-ownership methodology. According to the petitioners, the URAA legislative history makes it clear that such automatically was not intended by Congress where it says that the Department must continue to countervail subsidies following a normal (*i.e.*, fairly priced) ownership change without lessening or reallocating unamortized subsidy benefits unless something else occurs during the transaction that "actually serve[s] to eliminate * * * subsidies." See S. Rep. No. 103–412 at 92 (1994).

Department's Position: The petitioners' main argument is that subsidy liabilities are attached to production; therefore, subsidy amounts cannot change when production remains unchanged. While we agree that subsidies benefit production, that does not require the conclusion that subsidies cannot change without changes in production. Our rationale for applying repayment calculations as part of our change-in-ownership methodology does not pre-suppose that production has changed. Rather, our methodology is based on the idea that a portion of the purchase price for ownership rights may remunerate the seller for prior subsidies.

To the extent we countervail the portion of the subsidy existing after repayment or reallocation, we are executing our mandate "to impose duties with respect to the manufacture, production or export of a class or kind of merchandise." Not reducing the subsidy by the amount of repayment or reallocation for a seller would amount to over-imposing duties. Our repayment/reallocation methodology, as part of our change-in-ownership methodology, has been litigated and upheld by the Courts (*see Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996), *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) *British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) and *Delverde, SrL.* v. *United States*, 24 F. Supp. 2d 314 (CIT 1998).

Regarding the petitioners' argument that the risk of countervailing duty liabilities will be taken into account by a buyer, we agree that this might occur and result in a discounted price for the company being sold. However, at the time the changes in ownership relevant to the investigation occurred, the Department's change-in-ownership methodology was being challenged in court. Therefore, while there might have been some risk, there was no certainty of a countervailing duty liability. Any attempt to account for the risk would be purely speculative.

We disagree with the petitioners' assertion that the "automatic" nature of the repayment/reallocation analysis is contrary to the URAA legislative history. The legislative history simply says that a change in ownership "does not by itself require the Commerce Department to determine that a countervailable subsidy * * * continues to be countervailable, even if the change in ownership occurs through an 'arm's length transaction' "and that "the sale of a firm at 'arm's length' does not automatically extinguish any previously-conferred (sic) subsidies." See S. Rep No. 103–412 at 92 (1994). To the extent our repayment/reallocation methodology does not make any presumptions as to whether there will be any repayment/reallocation as a result of a change in ownership, there is nothing inherently automatic in its nature. Nowhere does the legislative history require that "something else" must happen, as was argued by the petitioners, before subsidies can be extinguished.

Finally, regarding the petitioners' argument that the repayment/reallocation calculation amounts to measuring to the effects of subsidies, we disagree. Our calculation does not look at the effects of a subsidy, but instead looks at the effects of changes in ownership on the subsidy.

Comment 16: Discount Rate for Net Present Value Calculations

Respondents argue that in the *Preliminary Determination*, the Department used an uncreditworthy discount rate to calculate the benefit stream from non-recurring subsidies over the entire AUL period, while using a creditworthy discount rate to discount these same benefits in 1998, back to 1995, the year of ILP's privatization. It is respondents' view that under 19 CFR 351.524(d)(3) and 351.505(a)(4), the Department must, in selecting a discount rate for any allocation of benefits, determine creditworthiness "in the year in which the government agreed to provide the subsidy." Respondents argue that since the Department has to use the subsidy approval year, and since the Department regards (old) ILVA's predecessors as uncreditworthy during that period, the Department must assign an uncreditworthy interest rate to (old) ILVA for all of its net present value (NPV) calculations.

Petitioners state that if the Department chooses to apply its repayment methodology in this case, they do not disagree with the concept that the Department should use consistent discount rates for all NPV calculations for its final determination and that discount rates are properly determined at the time of subsidy bestowal.

[11] U.S. Farm Programs and Agricultural Resources, USDA Economic Research Service, Agricultural Information Bulletin No. 614 (Sept. 1990).

Department's Position: We disagree with both respondents and petitioners concerning our use of discount rates. Consistent with our past practice, we have used the discount rate prevailing at the time of privatization. This issue was discussed in the GIA: "Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to *the net present value of all remaining benefits at the time of privatization.*" (emphasis added) *See* GIA, 58 FR at 37263. This is the same approach taken by the Department in *Plate in Coils from Italy,* and *Sheet and Strip from Italy.* Given the Department's past practice and the language of the GIA, it is inappropriate to use the original discount rates from the subsidy allocation formula to calculate the net present value of remaining benefits at the time of privatization.

Comment 17: Early Retirement Benefits

Petitioners contend the appropriate benefit to ILVA/ILT from Law 451/94 is the full amount of the payments made by the GOI to workers attributable to ILVA/ILT under Law 451/94. They state it is now clear that, absent a government early retirement program, ILVA/ILT would not have been in a position to lay-off a substantial number of workers. Therefore, the workers were in a position to insist on the benefits received and, absent Law 451/94, the obligation would have fallen fully on ILVA/ILT.

Petitioners also contend that, since the GOI still owned (old) ILVA when the negotiations took place, before the adoption of Law 451, it was the GOI that negotiated the lay-offs and the early retirement program with the unions. ILP, which was bought the next year by Riva, was the beneficiary of the GOI's efforts to pay off the unions so as to avoid social strife while still creating a viable ILP that could be sold to a private investor.

Also, petitioners argue that since the proposed industrial plan was a critical factor for determining which bidder could purchase ILP, it is reasonable to assume that the GOI would have had extreme difficulty selling ILP to anyone, had it not established Law 451/94 and ensured a negotiated settlement with the unions on the necessary early retirement program for (old) ILVA. Indeed, the Riva Group was forced to agree as a condition of its purchase of ILP that no lay-offs of employees (beyond those previously agreed to by the unions in March 1994) could happen for a period of three years.

Respondents counter that the sales contract mandated the continued operation of production lines ("with the purpose of ensuring continuity of production") as well as the continued employment of workers. They state that, contrary to petitioners' assertion that the contract demonstrates ILP would have kept all early retirees on its payroll in the absence of Law 451/94, the contract actually confirms that it was the production cut-backs and restructuring requirements that resulted in the adoption of Law 451 in 1994. As noted in the contract, without production cutbacks, no layoffs would have been needed. The choice between mass firings and Law 451/94 was not and has never been the choice that ILVA actually faced.

Regarding whether the program is countervailable, respondents argue Law 451/94 provided no countervailable benefit to ILVA because the government required the steel industry to restructure, based on the requirements set forth by the EC. In recognition of the costs imposed, the EC authorized member governments to provide early retirement and other "social rehabilitation" benefits. The restructuring and production cut-backs ordered by the EC and the GOI provided the legal basis for the early retirement benefits. Respondents argue that the Department does not consider worker assistance to benefit a company if the government provides the assistance for the specific purpose of offsetting costs imposed on that company by an industry-specific government program, as outlined in the General Issues Appendix.

Respondents further state that ILVA would not "normally" have incurred an early retirement burden, because it would not "normally" have needed to shutter capacity and shed workers under an EC and GOI restructuring plan. Absent the costs of restructuring, there would have been no Law 451/94 and no early retirement benefits. Under 19 CFR 351.513 and the GIA, Law 451/94 is not countervailable because it did not relieve ILVA of an obligation that it would normally have incurred.

Respondents also state that absent Law 451/94, ILVA's workers would have used the Mobility provision. ILVA had the legal right to lay off redundant workers without paying them annual compensation. In the absence of Law 451/94, ILVA would not have kept these workers on the payroll. Instead, ILVA would have negotiated with the unions under Law 223 and the non-specific provisions for early retirement under that law.

Petitioners contend that ILVA was not mandated to lay-off workers and therefore any early retirement benefits received under Law 451/94 provided a countervailable benefit. While ILVA/ILT claims Law 451/94 was adopted to offset the burden of EC requirements imposed on the Italian steel industry, petitioners argue that it was the EC's intention to provide an additional subsidy to the European steel industry, not some additional legal obligation on the industry. While it is true that the EC did mandate some reductions in production capacity for ILVA, petitioners state this was not done in the form of a legal directive, but rather, as a condition for receiving EC approval of the 1993–94 Restructuring Plan for ILVA and the massive subsidy program inherent in the Plan that had been proposed by the GOI. Moreover, even if one considered this a legal requirement, there is still no indication on the record in this investigation that ILVA was legally required to lay-off employees. Rather, the obligation, if any, was on ILVA to reduce production capacity. Petitioners contend Law 451/94 was not a device that ILVA could use to lay off workers, but only to grant early retirement to those that volunteered. Given these facts, petitioners argue the costs ILVA would have borne under Mobility are irrelevant to the Department's analysis of this program.

Department's Position: According to section 351.513(a) of the CVD Regulations, worker related subsidies provide a benefit to the extent that the assistance relieves a firm of an obligation that it would normally incur. We disagree with respondents' argument that the Department does not consider worker assistance to benefit a company if the government provides the assistance for offsetting costs imposed on that company by a government program. The industry restructuring, in and of itself, was not mandated by the GOI. Rather, the resulting capacity reductions, and corresponding layoffs associated with those reductions, were a condition for the receipt of additional subsidies. Thus, the capacity reductions in the Italian steel industry were a condition for receiving EC approval of the 1993–94 Restructuring Plan for ILVA, and its inherent subsidies. These capacity reductions would necessitate the layoffs. Further, since negotiations with the unions took place while the GOI still owned (old) ILVA, the GOI, in effect, negotiated the early retirements with the unions. Therefore, early retirement under Law 451 can be considered as another benefit to ILP, as an attempt to make it more attractive to a potential buyer in advance of its privatization.

As to whether the company could have used the "Mobility" provision of Law 223 in the absence of Law 451, we disagree with respondents' claims that

laying off a significant number of employees would not have caused social unrest because those employees would have been compensated under Mobility. We have no way of knowing what the social implications would have been had there been a massive layoff in the steel industry. However, we note that benefits available under Mobility are far less generous than the benefits provided under Law 451. We also note that the GOI officials explained to us at verification that there would likely be social strife associated with such a large number of layoffs. Because of these factors, it is not unreasonable to assume that negative social implications would have occurred had the steel industry simply laid off a large number of employees.

Respondents point out that, as stated by the Department in *Plate in Coils from Italy* and *Sheet and Strip from Italy*, the benefit to ILP would have been the difference between what it would have paid under Mobility and what the company actually paid under Law 451/94. However, as explained by the Department, this is relevant only if we knew that the outcome of the negotiations between the Ministry of Labor, the company and the unions would have resulted in the union's failure to prevent any layoffs. The fact is that, under Law 223, the company would have had to enter into negotiations with the unions before laying off such a large number of workers, and we have no way of knowing what the outcome of those negotiations would have been, absent Law 451.

With regard to ILVA Residua early retirees, we find asset value apportioned to ILP, as a percentage of total viable assets of (old) ILVA immediately prior to ILP's separate incorporation, to be the most appropriate method to apportion the correct number of ILVA Residua early retirees to ILP. This is consistent with our findings for the 1993–94 Restructuring Plan. We disagree with respondents' argument that we should only apportion those ILVA Residua early retirees who worked at facilities connected to the operations of ILP. To the extent Law 451 provides a benefit to the entire entity of (old) ILVA by relieving it of costs it would otherwise have had to bear, the benefits flow to the entire entity, regardless of which facilities employed the workers.

In addition, we disagree with respondents' characterization that the Department verified all of the other ILVA Residua retirees came from facilities that "were never connected to any of the activities of ILP." The Department's ILVA/ILT Verification Report states:

> We were able to verify that the following facilities were not involved in the production or sale of carbon steel plate products: Aosta; Bagnoli; Campi; Levate; Miniere dell'Elba; Piombino; Sesto S.G. + ex Uve/MI; Terni; Torino; and Torre Annunziata. For the remaining facilities, we verified that carbon steel plate production or sales either did, or could have, taken place there. The total number of those employees is 893, as calculated on page 10 of Verification Exhibit L451–5.[12]

Lastly, 26 early retirees attributable to ILVA Pali Dalmine, a former ILVA subsidiary that was sold prior to the POI, were not included in our calculation of the benefit to ILVA/ILT resulting from Law 451, since they would not have been employed by the company during the POI, absent Law 451.

Comment 18: Exemptions From Taxes

Petitioners contend that, in the *Preliminary Determination*, the Department failed to countervail the ILOR tax exemption that ILT benefitted from during the POI. At verification, the Department confirmed ILT benefitted from an exemption of both IRPEG and ILOR on its 1997 tax return, filed during the POI.

ILVA/ILT states that, at verification, the Department confirmed the repeal of the ILOR tax in 1997. ILOR no longer applied during the period of investigation. ILT received no exemption from ILOR in the 1998 tax year because the tax itself no longer existed. Under 19 CFR 351.526(b), repeal of ILOR constitutes a program-wide change because it "(1) is not limited to an individual firm or firms; and (2) is effectuated by an official act, such as the enactment of a statute, regulation, or decree." As provided in 19 CFR 351.526(a), the Department should take this program-wide change into account in establishing the estimated countervailing duty cash deposit rate.

Petitioners counter by stating that the benefits available under ILOR are completely unaffected by its repeal. Petitioners contend that the repeal of ILOR does not constitute a program-wide change since it was accompanied with the implementation of a new tax, IRAP, which is a substitute for ILOR. ILVA/ILT's argument also ignores subsection (d) of 19 CFR 351.526, which provides that:

> The Secretary will not adjust the cash deposit under paragraph (a) of this section if the program-wide change constitutes the termination of a program and * * *. The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

ILVA/ILT also states the Department should use the verified benefit calculations for the ILT tax exemptions from IRPEG. At verification, the Department confirmed that IRPEG tax without the exemption would have applied only partially at the 37% rate, because a small portion of income would have qualified for a 19% rate. By reviewing ILT's tax return, the Department verified that the value of the IRPEG exemption for the 1997 tax year was smaller than that which was used in determining the benefit in the *Preliminary Determination*.

Department's Position: We agree with petitioners that ILT's exemption of the ILOR tax provides a countervailable benefit during the POI. While respondents are correct that the ILOR tax was repealed beginning in the tax year 1998, ILT received an exemption of the ILOR tax on its 1997 tax return, which was filed in 1998, the POI. According to the Department's long-standing practice, a benefit takes place at the time of receipt, which, in this case is 1998, the year in which the tax return was filed. *See* section 351.509(b)(1) of the CVD Regulations. It is also clear to the Department that IRAP, for which eligibility for an exemption is similar to that of ILOR, is essentially a successor tax to ILOR; therefore, in accordance with section 351.526(d)(2), the cash deposit rate should not be adjusted in this instance.

After examining evidence at verification, we agree with ILVA/ILT that a portion of the profit to which the IRPEG tax applies should be calculated at the rate of 19%, with the remainder calculated at the rate of 37%.

Comment 19: European Social Fund (ESF)

Petitioners argue that, at verification, it was determined that at least some ILP employees participated in ESF training programs that took place in Taranto in 1994 and 1995. Since ILVA/ILT officials could not confirm how many of the total participants were ILP employees, the Department must countervail the full amount of the ESF payments as benefitting ILP since companies normally incur the costs of training to enhance the job-related skills of their own employees. The Department has previously countervailed ESF training funding to Italian steel producers.

[12] *See ILVA/ILT Verification Report*, at page 21.

ILVA/ILT states that the Department verified that these payments were not grants but were instead payments earned by ILP "for services provided" in connection with training and tutoring of workers in the Taranto area under an ESF grant administered by IRI. The Department noted that 11 of 64 workers that received training were from ILP, according to the explanation and partial documentation presented at verification. None of the training programs covered skills specific to the steel industry, and most of the workers attending had no connection to ILP. This general training course attended by workers of many firms did not relieve ILP of the obligation to provide steel-specific training to its workers and therefore is not countervailable under section 351.513 of the CVD Regulations.

Department's Position: Certain Stainless Steel Hollow Products From Sweden, 52 FR at 5799, states that "because we saw no evidence that: (1) the classes were for jobs related to stainless steel production; or (2) that either of these companies was relieved of any expenses it otherwise would have incurred absent this program, we determine that no countervailable benefit was bestowed under this program." Based on our findings at verification, and the overall record of this investigation, there is nothing to suggest that the training programs in which ILP and ILVA/ILT received payment for services provided (DUSID, DUTEM, and DUMES) were related to the steel industry in general, let alone production of subject merchandise, or that the company was relieved of expenses it otherwise would have incurred.

Comment 20: Grants to ILVA

Petitioners argue that, while ILVA/ILT had claimed that the amounts listed in its annual reports for 1989–1992 as "Grants and Aid for Operations" were totals of grants provided under various programs being separately investigated, at verification, ILVA/ILT officials could not reconcile the figures from 1989–92 annual reports with the amounts the company received under the various separate programs. Petitioners claim that these discrepancies, together with the fact that the Department found such grants to be countervailable subsidies in *Certain Steel from Italy*, the Department should countervail these grants in the final determination.

Respondents counter that, legally, *Certain Steel from Italy* has no probative value and that the current investigation of ILVA is not an administrative review of *Certain Steel from Italy*, therefore the Department has no legal authority to use information from *Certain Steel from Italy* for any purpose whatsoever in the current, unrelated investigation. ILVA/ILT states that the Department investigated and verified the benefits that (old) ILVA received under all of the programs that might potentially have applied to ILVA between 1989–1992. In its June 21, 1999 questionnaire response, and again at verification, ILVA provided worksheets and supporting documentation that accounted for the sum total of "Grants and Aid for Operations" recorded on (old) ILVA's financial statements. The company noted that the majority of the benefits to (old) ILVA during those years came from interest contributions under Law 675/77. However, because the ILVA that now exists is not the same company or under the same ownership as the (old) ILVA, it has no access to records of the actual receipt or amount of interest contribution payments to (old) ILVA between 1989–1992. Respondents further state that ILVA did demonstrate in its June 21 response and at verification that: (1) the interest contribution obligations of the GOI would have resulted in actual interest contribution payments over this period; and (2) these payments could have fully offset the difference between the sum total of "Grants and Aid for Operations" recorded on old ILVA's financial statements and the amounts verified by the Department under the specific programs applicable at that time. Respondents argue that ILVA has, therefore, satisfied the burden of accounting for the benefits in question.

Department's Position: We agree with respondents that the company has satisfied the burden of accounting for any discrepancy between the amounts recorded in the financial statement and the amounts verified. We concluded from our verification that benefits received as interest contributions under Law 675 are listed in the "Grants and Aid for Operations" account in the company's financial statements. Although we could not completely tie these contributions directly to the financial statement, this is due to the difference in the recording of interest contributions for financial statement purposes and the recording of the actual receipt of the contributions in the company's internal accounts.

Comment 21: Additional Subsidies Discovered at Verification

Petitioners state that, at verification, the Department discovered that Sidercomit, which merged with ILVA in 1997, received a loan under Law 64 of March 1, 1986, in 1996, and in 1998, received interest contributions against that loan. Petitioners argue that these interest contributions on behalf of ILVA/ILT constitute a countervailable subsidy. Petitioners further claim that, as outlined in the ILVA/ILT Verification Report, these interest grants were provided to Sidercomit "for the processing of quarto plate (*i.e.*, cleaning, painting, and packaging of quarto plate) at the Taranto facility," therefore, pursuant to 19 CFR 351.525(b)(5) of the Department's regulations, should be attributed only to ILVA/ILT's cut-to-length plate sales. Therefore, the Department should use ILVA/ILT's 1998 sales of subject merchandise as the denominator in its calculation of the *ad valorem* rate attributable to this benefit.

ILVA/ILT does not contest the countervailability of the interest contribution, but does challenge petitioners' proposed allocation method. Sidercomit was created in 1992 as a subsidiary of IDI S.p.A., which was in turn a subsidiary of (old) ILVA. Thus, at the time Sidercomit received the loans, it was a separate subsidiary of ILVA. However, in 1997, Sidercomit became an operating unit within ILVA and remained a unit within ILVA during the POI. As a result, respondents argue the interest contribution received during the POI benefitted all of ILVA, not just Sidercomit. This is confirmed by the fact that ILVA, not Sidercomit, is the recipient of the interest contribution. ILVA/ILT further states that the record establishes that Sidercomit operates service centers for the distribution in Italy of quarto plate and other products produced by ILVA/ILT. Therefore, respondents claim, the Department should determine that the interest contribution benefitted all of ILVA's production, not just the subject merchandise.

Petitioners also contend that the Department, during verification, obtained additional information regarding grants to ILVA/ILT under Decree 218 and Law 64. As noted above, Decree 218 and Law 64 were found to provide specific benefits in *Certain Steel Products from Italy*. Therefore, petitioners argue, these grants are countervailable subsidies. Respondents counter that, as their only justification for this request, petitioners cite the 1993 *Certain Steel from Italy* determination. *Certain Steel from Italy* was a best information available (BIA) determination which has no probative value and no connection to this investigation. Since petitioners have provided no information to support their request, and since the record demonstrates that ILVA received no benefits during the POI under these programs, ILVA/ILT argues that no

countervailing duties should be imposed in connection with these programs.

Department's Position: The interest contributions received against the loan to Sidercomit represent a countervailable benefit to ILVA/ILT. We agree with petitioners that these interest contributions were tied to the production of plate and, as such, should be attributed to all of ILVA's plate sales, not just the plate produced by ILT. However, it is not clear from the record that we have total sales (both domestic and export) of plate over which to attribute these interest contributions. While we do have sales of subject merchandise produced by ILT and sold by ILVA, it is not clear that this figure reflects total sales of all plate by ILVA. Therefore, we have attributed the interest contributions to ILVA's total sales. We note that, even if we were to attribute the interest contributions to the sales figure for subject merchandise, the subsidy rate would be negligible.

With regard to Capital Grants under Decree 218 and Law 64, since the total amounts of the benefits received by ILVA/ILT and its predecessor companies would be expensed in the years of receipt, and since no grants were provided during the POI, we find it unnecessary to reach the issue of whether this program is countervailable.

Comment 22: "Green Light" Treatment of Subsidies

Petitioners state that, in the *Preliminary Determination*, the Department properly rejected the requests made by the GOI and ILVA/ILT that certain regional subsidies be considered non-countervailable under the green light provisions of section 771(5B) of the Act. Petitioners further point out that the GOI waived its green light claims at verification.

ILVA/ILT does not contest petitioners' argument that the GOI waived its prior request for green light treatment of certain programs in the context of this investigation.

Department's Position: At verification, GOI officials stated that they did not wish to further pursue the issue of green light treatment of certain subsidies, and that they were waiving their prior green light claim. Therefore, the Department will not grant green light treatment to any program in this investigation, and does not rule on the validity of the GOI's prior green light claim.

Comment 23: Imports Under Temporary Bond (TIB)

Respondents state that in response to the Department's preliminary countervailing duty determination, ILVA submitted to the Department a formal request that the Department harmonize its treatment of ILVA's temporary importation bond entries that were subsequently exported to Canada in the countervailing duty phase of this proceeding with its approach in the antidumping proceeding. In that request, ILVA informed the Department that, in the antidumping investigation, the Department excluded ILVA's TIB entries from its margin calculation because such entries were not "entries for consumption." ILVA also argued that exclusion of ILVA's TIB entries from the antidumping investigation required that the Department exclude those same entries, for suspension of liquidation and cash deposit purposes, from the corresponding countervailing duty investigation. Respondents maintain that, to date, the Department has not responded to this request.

Respondents reaffirm their position that U.S. law requires that TIB entries be included in the Department's dumping margin calculation, because the TIB entries are "entered for consumption." Respondents argue the statute thereby requires the Department to include TIB entries in its margin calculations, suspend liquidation on those entries, and collect estimated antidumping *and* countervailing duties. If, however, in the final determination of the antidumping investigation, the Department continues to treat ILVA's TIB entries as not being "entries for consumption," respondents request that the Department harmonize both the antidumping and countervailing duty investigations. Specifically, ILVA requests that the Department issue instructions to Customs specifying that Customs not suspend liquidation of TIB entries and not collect estimated cash deposits of estimated countervailing duties on those entries.

Petitioners state that none of ILVA/ILT's arguments are relevant to the Department's final determination in this countervailing duty investigation. Any issues regarding the dumping margin calculations, according to petitioners, should be addressed in the separate antidumping investigation of carbon-quality steel plate from Italy and for purposes of this countervailing duty investigation, the Department should issue its standard instructions to the Customs Service regarding suspension of liquidation and assessment of duties.

Department's Position: We agree with petitioners that none of respondents' comments concerning the treatment of the TIB entries in question with respect to the dumping margin calculation is relevant to this proceeding. Further, respondents agree with the approach taken by the Department at the *Preliminary Determination* with respect to the suspension of liquidation of entries and collection of estimated countervailing duties since the Department directed Customs to suspend liquidation of all imports of subject merchandise from ILVA/ILT. With respect to entries subject to suspension of liquidation and collection of duties, we have continued to follow the approach to the TIB entries in question taken in the companion antidumping duty investigation for cut-to-length carbon steel plate from Italy. (See that notice for further discussion of how these entries will be treated in terms of assessment of duties.)

Comment 24: Mid-Year Convention

Petitioners discuss that the Department, in amortizing grants over time, continues to use a methodology which assumes that subsidies are received on the first day of the year. They argue that the Department's methodology is unreasonable and biased against a full subsidy offset, and is in violation of the law.

ILVA/ILT counters stating that it is the Department's long-standing policy to allocate benefits as if the subsidy was received at the beginning of the year of receipt. They discuss that in the final CVD regulations, the Department rejected the "mid-year convention"; *i.e.*, the proposition that it should assume grants are received in the middle of the year. Respondents conclude that nothing in the petitioners' presentation merits a reconsideration of the Department's position against the mid-year convention.

Department's Position: The petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the preamble to the CVD Regulations.

Verification

In accordance with section 782(i) of the Act, except where noted, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU of

the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy is 26.12 percent *ad valorem* for ILVA/ILT. We determine that the total estimated net countervailable subsidy is 0.12 percent *ad valorem* for Palini & Bertoli, which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to Palini & Bertoli for its production or exportation of certain cut-to-length carbon-quality steel plate.

In accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all-others rate which is "an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776." On this basis, we determine that the all-others rate is 26.12 percent *ad valorem*, which is the rate calculated for ILVA/ILT.

Company	Net subsidy rate
ILVA/ILT	26.12% *ad valorem*.
Palini & Bertoli.	0.12% *ad valorem*.
All others	26.12% *ad valorem*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality from Italy, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**, with the exception of Palini & Bertoli, which was *de minimis* in the *Preliminary Determination*. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries except for Palini & Bertoli if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33237 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai and Gregory Campbell, Office of Antidumping/Countervailing Duty Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–4087 or 482–2239, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers or exporters of certain cut-to-length carbon-quality plate (carbon plate) from France. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

Petitioners

The petition in this investigation was filed by the Bethlehem Steel Corporation, U.S. Steel Group, Gulf States Steel, Inc., IPSCO Steel Inc., and the United Steel Workers of America (collectively referred to hereinafter as the "petitioners").

Case History

Since the publication of our preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 40430 (July 26, 1999) (*Preliminary Determination*)), the following events have occurred:

On September 21, 1999, we initiated an investigation of whether advances by the Government of France (GOF) to the Société pour le Développement de l'Industrie et de l'Emploi (SODIE) through Usinor since 1991 provided countervailable benefits to Usinor (*see* Memorandum on Inclusion of Previously Investigated Programs in the Countervailing Duty Investigation of French Steel Plate, September 21, 1999). We issued questionnaires on SODIE advances to the GOF and Usinor on October 18, 1999. The GOF and Usinor responded to the SODIE questionnaires on November 3, 1999.

On October 7–15, 1999, we verified the responses of Usinor, Sollac S.A. (Sollac), Creusot Loire Industrie S.A.(CLI), GTS Industries S.A. (GTS) and the GOF (collectively known as "the respondents"). Verification took place at: Usinor and the GOF in Paris, France; GTS in Dunkirk, France; and AG

der Dillinger Hüttenwerke (Dillinger), the parent company of GTS, in Dillingen, Germany.

The petitioners and the respondents submitted case briefs on November 12 , 1999. On November 18, 1999, the petitioners, the respondents and Dillinger submitted rebuttal briefs. A public hearing was held November 22, 1999.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to our regulations as codified at 19 CFR Part 351 (1998) and *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (CVD Regulations).

Injury Test

Because France is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise. See *Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations*, 64 FR 17198 (April 8, 1999). The ITC will make its final injury determination within 45 days of this final determination by the Department.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1998.

Company History

The GOF identified Usinor, Sollac, CLI, and GTS as the only producers of the subject merchandise that exported to the United States during the POI. Sollac and CLI are wholly-owned subsidiaries of Usinor (a holding company), and GTS is partially owned by Usinor.

Usinor

In 1984, the GOF was a majority shareholder of Usinor. In 1986, Usinor was merged with another state-owned company, Sacilor, into a single company called Usinor Sacilor. Usinor Sacilor was 100 percent owned by the GOF.

In 1995, Usinor Sacilor was privatized, principally through the public sale of shares. In October 1997, the GOF reduced its direct shareholdings to 1 percent. As of August 1998, the GOF has no direct ownership interest in Usinor but retains a minority indirect interest in the company.

GTS

Prior to 1992, GTS was 89.73 percent owned by Sollac, a subsidiary of Usinor. In 1992, Sollac transferred its shares in GTS to Dillinger. In return, Dillinger transferred to Sollac shares it held in Sollac of an equivalent value. At that time, Dillinger was majority owned by DHS-Dillinger Hütte Saarstahl AG (DHS), a German holding company, which, in turn, was 70 percent owned by Usinor.

In 1996, Usinor reduced its interest in DHS from 70 to 48.75 percent. At that time, DHS owned 95.3 percent of Dillinger, which in turn, owned 99 percent of GTS.

Attribution of Subsidies

The GOF has identified three producers of subject merchandise in this investigation: Sollac, CLI and GTS. During the POI, both Sollac and CLI were wholly-owned by and consolidated subsidiaries of Usinor. With respect to GTS, prior to 1996, it was majority owned by Usinor since Usinor held 70 percent of DHS, which in turn, held approximately 95 percent of Dillinger, GTS' direct parent company. However, since 1996 and during the entire POI, Usinor's interest in DHS has been 48.75 percent, i.e., slightly less than a majority.

The issue before the Department is whether the subsidies granted to Usinor are attributable to GTS given that GTS is no longer majority-owned by Usinor. Section 351.525 of the *CVD Regulations* states that the Department will attribute subsidies received by two or more corporations to the products produced by those corporations where cross-ownership exists. According to section 351.525(b)(6)(vi) of the *CVD Regulations*, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The Preamble to the *CVD Regulations* identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: "in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership" (63 FR at 65401).

In the *Preliminary Determination*, we found that there was no cross-ownership between Usinor and GTS. Interested parties commented on cross-ownership and attribution (see Comment 1 below). Based on our analysis of information on the record of this proceeding and comments by interested parties, we continue to find that Usinor's ownership interest in DHS, the holding company of GTS' parent, Dillinger, is insufficient to establish cross-ownership between Usinor and GTS during the POI. We base this determination on the following: (1) Usinor has less than a majority voting ownership in DHS; (2) Usinor does not control GTS directly or indirectly; and (3) although GTS uses Usinor affiliates to transport and sell some of its merchandise, there is no evidence that Usinor controls the sales that its affiliates make for GTS. For more details, see the Department's position on Comment 1 below.

Therefore, for this final determination, we have calculated a separate net subsidy rate for GTS. However, since GTS was part of the Usinor Group for much of the allocation period, we have attributed a portion of subsidies received by Usinor through 1996 to GTS (see the "Change in Ownership" section below).

Change in Ownership

In the General Issues Appendix (GIA) attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit. Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (i.e., in this case, 1985 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to payment for prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards payment for prior subsidies in accordance with the privatization methodology outlined above.

As discussed above in the "Case History" section of this notice, two important changes of ownership have occurred with respect to the producers of the subject merchandise. First, Usinor's ownership of GTS has declined over time so that Usinor is no longer a majority owner of GTS. Second, Usinor has been privatized. In addition, Usinor sold (in whole or in part) various productive units: Ugine (1994); Centrale Siderurgique de Richemont (CSR) (1994); Entreprise Jean LeFebvre (1994); and various productive units to FOS-OXY (1993).

To determine the amount of subsidies that potentially transfers with a spun off productive unit, we have measured that productive unit's assets in relation to the subsidized assets of the seller (see Comment 8 below). In particular, because we normally attribute subsidies to production occurring in the jurisdiction of the subsidizing government (see section 351.525(b)(7)), we believe we should calculate the share of subsidies that can potentially transfer with the sale of Usinor's French productive units in relation to Usinor's total French assets (as opposed to Usinor's total worldwide assets). As explained below, we lack the information to make this calculation in this determination, but for the spin-off of GTS, we have developed a substitute measure for that amount based on sales.

Using this information, we have applied the spin-off and privatization methodologies described in the GIA. Regarding spin offs, we first determined the portion of subsidies that potentially transfers with the spun-off unit based on that unit's share of assets (or French sales). For the latter three transactions described above (involving CSR, Entreprise Jean LeFebvre, and FOS-OXY), the entire productive unit was transferred. Consequently, the entire amount of subsidies attributable to these productive units were potentially transferred and, also, potentially reallocated to Usinor through the payment for these companies. Similarly, the privatization of Usinor involved virtually all of Usinor's shares and, hence, the entire amount of Usinor's remaining subsidies potentially transferred with Usinor and, also, were potentially repaid to the seller.

The sales of Ugine and GTS present variations from the sales discussed above. While the sales of Ugine and GTS are spin offs of productive units, these units have been only partially spun off. Moreover, the sale of Ugine must be distinguished from the sale of GTS because after Usinor's sale of Ugine's

shares in 1994, Usinor continued to be the majority owner of Ugine. While it would be possible to apply the change-in-ownership methodology to this transaction (and we did so in *French Stainless*), there is no impact on the subsidy to Usinor. This is because even after the partial spin off, Ugine continued to be part of the consolidated Usinor Group. Thus, the total amount of subsidies within the Usinor Group would not diminish as a result of the partial spin off of Ugine, nor would Usinor's denominator change. Since Usinor's ownership in Ugine did not diminish further after 1994 (indeed, Usinor subsequently repurchased the Ugine shares it had sold) and we have not applied the change-in-ownership methodology to Usinor's repurchase of Ugine's shares (*see French Stainless*), there is no need to perform the change-in-ownership calculation for the partial spin off of Ugine.

GTS' situation by the POI was very different from that of Ugine. As discussed above, after 1996, GTS was no longer part of the consolidated Usinor Group. Therefore, any subsidies properly attributed to GTS would no longer be counted among Usinor's subsidies, nor would GTS' sales be included in Usinor's sales. To reflect this change in GTS' status, we have applied the spin off methodology twice. First, we have applied the methodology to the 1992 transfer of GTS shares from Sollac to DHS. We have done this by determining the subsidies potentially allocable to GTS in 1992. We have then reduced this total by the percentage of ownership in GTS that transferred outside the Usinor Group in 1992 to arrive at the amount of subsidies subjected this amount to the repayment methodology. We note that Usinor continued to be a majority owner of GTS after the 1992 transaction and, hence, that Usinor and GTS would continue to be treated as a single company. However, unlike the situation with Ugine, it is necessary for us to apply the change-in-ownership methodology to this 1992 transaction. This is because we have to calculate a subsidy rate for 1998, a point in time when Usinor and GTS are being treated as separate companies. If we failed to apply the change-in-ownership methodology to the 1992 transaction, and only applied it to the 1996 transaction, the amount paid for GTS in 1996 (assuming we had that information) would not be commensurate with the total amount of ownership that had transferred over time.

The second application of the change-in-ownership methodology to Usinor/GTS is also a partial spin off. In recognition of the fact that this transaction reduces Usinor's ownership of GTS below 50 percent and our finding that Usinor does not direct or control the use of GTS' assets (see Comment 1 below), with the result that GTS's sales will no longer be treated as Usinor's sales, we believe the spin off methodology requires us first to assign to GTS its full share of Usinor subsidies (reduced in proportion to the amount of GTS sold in 1992). The amount of these subsidies that are then reallocated to Usinor is calculated taking into account the percentage change in Usinor's ownership of GTS and the price paid by the new owner of the GTS shares.

The Use of Facts Available

Certain information requested of respondents was not provided in this investigation. Specifically, Usinor failed to respond to the Department's questions concerning creditworthiness for the years 1992 though 1995. The GOF failed to provide information on the distribution of investment and operating subsidies (other than those from the water boards) received by Usinor. Nor did it demonstrate at verification that it had provided information on use of ESF funding by all Usinor group members. Finally, the EC did not provide information with respect to the distribution of European Social Fund (ESF) funding.

Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because the EC, the GOF and Usinor failed to submit the information that was specifically requested by the Department, we have based our determination for these programs on the facts available.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. See 19 C.F.R. 351.308(c). In the absence of information from the EC, the GOF and Usinor, we consider the February 16, 1999 petition, as well as our findings in *French Stainless* and other information gathered during the course of this investigation to be appropriate bases for a facts available countervailing duty rate calculation.

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." See Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

We relied upon *French Stainless* regarding Usinor's creditworthiness during the period 1992 through 1995. With respect to ESF funding and investment and operating subsidies (other than those provided by the water boards) for which we did not receive complete information from the respondents, we relied upon findings in *French Stainless* and information in the petition indicating that these programs are specific. Based on our review of the findings in *French Stainless* and the information in the petition, we find that this secondary information has probative value and, therefore, the information has been corroborated.

Subsidies Valuation Information

Allocation Period

The current investigation includes untied, non-recurring subsidies to Usinor that were found to be countervailable in *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From France*, 58 FR 37304 (July 9, 1993) *(French Certain Steel):* PACS, FIS, and Shareholders' Advances. For the *Preliminary Determination*, we allocated those subsidies over 14 years because we have already assigned this company-specific allocation period to those subsidies in other proceedings. See *French Stainless*. See also Final Results of

Redetermination Pursuant to Court Remand on General Issue of Allocation, British Steel plc, v. United States, Consol. Ct. No. 93–09–00550–CVD. After considering interested parties comments on this issue, we have continued to apply a 14-year allocation period to these subsidies for this final determination. For further details, see Comment 13 below.

We have found no other allocable non-recurring subsidies received by Usinor and GTS in the instant proceeding.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. See section 351.595 of the *CVD Regulations.*

Usinor was found to be uncreditworthy from 1982 through 1988 in *French Certain Steel,* 58 FR at 37306. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, we continue to find Usinor uncreditworthy from 1985 through 1988.

In *Notice of Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 64 FR 12996 (March 16, 1999), we stated that the petitioners provided sufficient information to lead us to believe or suspect that Usinor was uncreditworthy from 1992 through 1995. Therefore, we requested Usinor to provide data that would allow us to analyze its creditworthiness during this period.

Usinor did not provide the information requested by the Department citing the "formidable burdens which would be involved in responding to the Department's Creditworthiness questions." Consequently, the Department has decided to use facts available in accordance with section 776 (a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." In this investigation, Usinor refused to answer on more than one occasion, the creditworthiness questions in the Department's original and supplemental questionnaires. Therefore, the Department determines it appropriate to use an adverse inference in selecting the discount rate to be applied in these years.

Benchmarks for Loans and Discount Rates

In accordance with sections 351.505 (a) and 351.524 (c)(3)(i) of the *CVD Regulations,* we used Usinor's company-specific cost of long-term, fixed-rate loans, where available, for loan benchmarks and discount rates for years in which Usinor was creditworthy. In the *Preliminary Determination* for years where Usinor was creditworthy and a company-specific rate was not available, we used the average yields on long-term private-sector bonds in France as published by the OECD. Interested parties commented on the calculation of the non-company-specific benchmark rate. In response to these comments, we have revised our benchmark for this final determination. Specifically, we are using an average of the following long-term interest rates: medium-term credit to enterprises (MTCE), and equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France,* and private sector bond rates as published by the International Monetary Fund. (See Comment 18 below for further discussion of this issue.)

For the years in which Usinor was uncreditworthy (see "Creditworthiness" section above), we calculated the discount rates in accordance with section 351.524(c)(3)(ii) of the *CVD Regulations.* To construct these benchmark rates, we used the formula described in section 351.505(a)(3)(iii) of the *CVD Regulations.* This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rate reported for Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997," (February 1998). For the probability of default by a creditworthy company we used the average cumulative default rates reported for the Aaa to Baa-rated categories of companies as reported in this study.[1] See Memorandum to Case File; Clarification of Moody's Default Data (December 13, 1999).

[1] We note that since publication of the *CVD Regulations,* Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication, February 1998.

Based upon our verification and our analysis of the comments received from interested parties, we determine the following:

I. Programs Determined To Be Countervailable

GOF Programs

A. Loans With Special Characteristics (PACS)

A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from Credit National and Fonds de Developpement Economique et Social (FDES) were converted into "loans with special characteristics," or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986, and 1991, respectively.

In *French Stainless, French Certain Steel,* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France,* 58 FR 6221 (January 27, 1993) *(French Bismuth),* the Department determined that the conversion of PACS to common stock in 1986 constituted a countervailable equity infusion. This equity infusion was limited to Usinor Sacilor and was, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, this equity infusion provided a financial contribution to Usinor Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine that a countervailable benefit exists in the amount of the 1986 equity infusion in accordance with section 77(5)(A) of the Act.

We have treated the 1986 equity infusion as a non-recurring grant

received in the year the PACS were converted to common stock. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefit of the equity infusion over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amounts of the equity infusion appropriately allocated to Usinor and GTS. We divided these amounts by Usinor's and GTS' total sales of French-produced merchandise during the POI. Accordingly, we determine the net subsidy rate to be 1.35 percent ad valorem for Usinor and 1.70 percent ad valorem for GTS.

B. Shareholders' Advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances in 1985 and 1986. The purpose of these advances was to finance the revenue shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *French Stainless, French Certain Steel,* and *French Bismuth,* the Department determined that the shareholders' advances constituted countervailable grants because no shares were received for them. These grants were limited to Usinor and Sacilor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these grants provided a financial contribution to Usinor and Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine these grants provide a countervailable benefit in accordance with section 77(5)(A) of the Act.

Because the 1986 shareholders' advance was less than 0.5 percent of Usinor's sales of French-produced merchandise during the year of approval, this grant was expensed in the year of receipt. See *CVD Regulations,* 64 FR at 65415.

We have treated the 1985 shareholders' advance as a non-recurring subsidy. Using the allocation period of 14 years, this shareholders' advance continues to provide a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefits of the 1985 shareholders' advance over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of the grant appropriately allocated to Usinor and GTS. We divided these amounts by Usinor's and GTS" total sales of French-produced merchandise during the POI. Accordingly, we determine the net subsidy rate to be 0.54 percent ad valorem for Usinor and 0.68 percent ad valorem for GTS.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Sidérurgique (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *French Stainless, French Certain Steel* and *French Bismuth,* the Department determined that the conversions of FIS bonds to common stock in 1986 and 1988 were countervailable equity infusions. These equity infusions were limited to Usinor Sacilor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine that a countervailable benefit exists in the amount of the 1986 and 1988 equity infusions in accordance with section 77(5)(A) of the Act.

We have treated the 1986 and 1988 equity infusions as non-recurring subsidies received in the years the FIS bonds were converted to common stock. Using the allocation period of 14 years, the 1986 and 1988 FIS bond conversions continue to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefits of the equity infusions over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of the equity infusion appropriately allocated to Usinor and GTS. Dividing these amounts by Usinor's and GTS' total sales of French-produced merchandise during the POI, we determine the net subsidy rate to be 3.56 percent ad valorem for Usinor and 4.48 percent ad valorem for GTS.

D. Investment/Operating Subsidies

During the period 1987 through 1998, Usinor received a variety of small investment and operating subsidies from various GOF agencies as well as from the European Coal and Steel Community (ECSC). The subsidies were provided for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *French Stainless,* the Department determined that the funding provided to Usinor by the water boards (les agences de l'eau) and certain work/training grants were not countervailable. Therefore, we are not investigating those programs in this proceeding.

For the remaining amounts in these accounts, including certain work/training grants that differed from those found not countervailable in *French Stainless,* the GOF did not provide any information regarding the distribution of funds, stating that, in the GOF's view, the total amount of investment and operating subsidies received by Usinor was "insignificant and would * * * be expensed." Given the GOF's failure to provide the requested information, we are using "facts available" in accordance with section 776(a)(2)(A) of the Act. Further, section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." In this investigation, the GOF has refused to answer the Department's repeated requests for data regarding the distribution of grant funds. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the investment and operating subsidies (except those provided by the water boards and certain work/training contracts) are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the GOF and the ECSC to Usinor, providing a benefit in the amount of the grants.

The investment and operating subsidies provided in the years prior to the POI were less than 0.5 percent of Usinor's sales of French-produced merchandise in those years. Therefore, we have expensed these grants in the years of receipt, in accordance with section 351.524 (b)(2) of the *CVD Regulations*. To calculate the benefit received during the POI, we divided the subsidies received by Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI. Accordingly, we determine Usinor's net subsidy rate to be 0.11 percent ad valorem. GTS did not receive any of these investment and operating subsidies during the POI.

E. Subsidies Provided Directly to GTS

GTS' 1996 condensed financial statements include a "capital subsidy" in the amount of FF 2.1 million. GTS claims that this amount reflects the unamortized balance of a grant that was provided to GTS pursuant to an agreement dated December 29, 1987, between the GOF and Usinor. The grant was given to support the development of a machine for the accelerated cooling of heavy plate during the hot-rolling process. The grant was provided in two disbursements made in 1988 and 1990.

The GOF responded to the Department's questions on this capital subsidy stating that because of its size, the amounts would be expensed in a period outside the POI. Therefore, the GOF did not provide information on the distribution of other grants that might have been given under the same program.

The total amount approved in 1987 was less than 0.5 percent of Usinor's sales of French-produced heavy plate in 1987. Therefore, we determine that these grants did not confer a countervailable subsidy during the POI.

F. Myosotis Project

Since 1988. Usinor has been developing a continuous thin-strip casting process, called "Myosotis," in a joint venture with the German steelmaker, Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist this project, the GOF, through the Ministry of Industry and Regional Planning and L'Agence pour la Maîtrise de L'Énergie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, provided three payments in 1989, 1991, and 1993. The second agreement, between Ugine and the AFME, covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from the AFME in 1991 and 1992. The third agreement, with Ugine, dated July 3, 1995, provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance under this agreement was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

In *French Stainless*, the Department determined that funding associated with the 1989 and 1991 contracts constituted countervailable subsidies within the meaning of section 771(5) of the Act. Since the GOF did not provide any information indicating that the grants were provided to other companies in France, the Department determined that the grants were specific within the meaning of section 771(5A)(D) of the Act. Also, the Department found that these grants provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act. No new information has been submitted to warrant a reconsideration of our earlier finding. Therefore, we continue to find that the grants associated with the 1989 and 1991 Myosotis contracts constitute countervailable subsidies within the meaning of section 771(5) of the Act. Because the amounts received under the 1989 and 1991 contracts were less than 0.5 percent of Usinor's sales of French-produced merchandise during their respective year of approval, these grants were expensed in the years of receipt. See *CVD Regulations*, 64 FR at 65415.

With respect to the reimbursable advance received in 1997, the GOF has requested that we find this subsidy non-countervailable under section 771(5B)(B)(ii)(II) of the Act, i.e., that this is a green-light subsidy. We have determined that we do not need to address the issue whether this subsidy is countervailable because the benefit of the reimbursable advance during the POI is less than 0.5 percent. As stated in the Preamble to the *CVD Regulations*:

> [W]e will not consider claims for green light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the green light status of a subsidy will be considered only in an investigation or review of a time period where the subject merchandise did benefit from the subsidy.

See *CVD Regulations*, 63 FR at 65388.

In accordance with section 351.505(d)(1) of the *CVD Regulations*, we are treating this reimbursable advance as a contingent liability loan because the GOF has indicated that repayment of the loan is contingent on the success of the project. We used as our benchmark a long-term fixed-rate loan consistent with section 351.505(a)(2)(iii) of the Department's regulations. Since Usinor would have been required to make an interest payment on a comparable commercial loan during the POI (*see French Stainless*), we calculated the benefit from the reimbursable advance as the amount that would have been due during the POI. Dividing these interest savings by Usinor's sales of French-produced merchandise during the POI, we find the net subsidy rate to be 0.00 percent ad valorem for Usinor. GTS did not receive subsidies under this program.

EC Programs

European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957 to improve workers' employment opportunities and to raise their living standards. The main purpose of the ESF is to make employing workers easier and to increase the geographical and occupational mobility of workers within the European Union. It accomplishes this by providing support for vocational training, employment, and self-employment.

Like the other EC Structural Funds, the ESF seeks to achieve six different objectives explicitly identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions; Objective 2 is to assist areas in industrial decline; Objective 3 is to combat long-term unemployment and to create jobs for young people and people excluded from the labor market; Objective 4 is to assist workers adapting to industrial changes and changes in production systems; Objective 5 is to promote rural development; and Objective 6 is to aid sparsely populated areas in northern Europe.

The member states are responsible for identifying and implementing the individual projects that receive ESF financing. The member states also must contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below), and 75 percent of

the project's total cost for Objective 1 projects. For all programs implemented under Objective 4 in France, 35 percent of the funding comes from the EC, 25 percent from the GOF, and the remaining 40 percent from the company.

According to the questionnaire responses, CLI received an ESF grant for an Objective 4 project. The amount received during the POI was a portion of a larger ESF grant authorized for CLI in 1996.

The Department considers worker assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. See section 357.513(a) of the *CVD Regulations*. Only limited information was provided in the questionnaire responses about the purpose of this grant; therefore, we are unable to determine whether it relieved CLI of any legal or contractual obligations. With regard to specificity, the EC has not provided complete information about the distribution of ESF grants. In addition, the GOF was unable to show at verification that it had reported all ESF grants to Usinor Group companies during the POI.

Consequently, the Department has decided to use facts available in accordance with section 776(a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Since Usinor, the GOF and the EC failed to provide complete information to the Department, we determine it appropriate to use an adverse inference in concluding that: CLI was relieved of an obligation in receiving the ESF grant; the ESF grant is specific within the meaning of section 771(5A)(D) of the Act and that the benefit was tied to goods produced by CLI. Also, we find the grant to be a financial contribution within the meaning of section 771(5)(D)(i) of the Act. Based on the foregoing, we determine that the 1998 ESF grant is countervailable within the meaning of section 771(5) of the Act.

The Department normally expenses the benefits from worker-related subsidies in the year in which the recipient is relieved of a payment it would normally incur. See CVD Regulations, 63 FR at 65412. Dividing the amount received by CLI in 1998 by CLI's 1998 sales of French-produced merchandise yields a net subsidy rate of 0.00 percent ad valorem for Usinor. GTS did not benefit from ESF funding during the POI.

II. Programs Determined Not To Be Countervailable

GOF Programs

A. 1994 Purchase of Power Plant for Excessive Remuneration

The Department initiated an investigation of this program prior to the issuance of the final determination of *French Stainless*. This program was subsequently found to be not countervailable in *French Stainless*.

B. GOF Conditional Advance on New Steel Development

Usinor received an interest-free conditional advance from the GOF. This advance was provided through the Ministry of Industry to support a project aimed at developing a new type of steel for use in the production of catalytic converters. Since the GOF conditional advance is for a project aimed at developing a new type of steel which does fall within the scope of this proceeding, we find that this program is tied to non-subject merchandise and not countervailable with respect to this investigation only.

III. Other Programs

A. Electric Arc Furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts regarding electric arc furnaces. The first disbursal of funds occurred on July 17, 1998. Repayment of the reimbursable advances will begin on July 31, 2002.

Since these advances may someday be repaid, we are treating them as contingent liability loans. Section 351.505(d)(1) of the *CVD Regulations*. Under the methodology specified in the Department's new regulations, the benefit occurs when payment would have been made on a comparable commercial loan. Section 351.505(b) of the *CVD Regulations*. As stated in *French Stainless*, Usinor would make interest payments on its long-term loans on an annual basis and such a payment schedule would not be considered atypical of general French banking practices. See *French Stainless*, 64 FR at 30780. Accordingly, we have assumed that a payment on a comparable commercial loan taken out by Usinor at the time of this reimbursable advance would not be due until the year 1999.

Given that no payment would be due during the POI, we determine that there is no benefit to Usinor from these reimbursable advances during the POI. Consequently, we have not addressed whether this reimbursable advance is countervailable.

B. Post-1991 SODIE Advances

As discussed in the "Case History" section of this notice, the decision to investigate post-1991 SODIE advances was made at a late date in this investigation. Because of this, we were not able to seek clarification of the information supplied in the GOF and Usinor responses. Therefore, we are not making a determination on the countervailability of the post-1991 SODIE advances in this investigation. If this proceeding results in a countervailing duty order, we will examine the post-1991 SODIE advances in an administrative review, if requested. See Comment 16 below.

IV. Programs Determined To Be Not Used

Based on the information provided in the responses and our findings at verification, we determine that the responding companies did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. Shareholders Guarantees

B. Long-Term Loans From CFDI

EC Programs

A. Resider and Resider II Program

B. ECSC Article 54 Loans

C. ECSC Article 56(2)(b) Redeployment/ Readaptation Aid

D. Grants From the European Regional Development Fund (ERDF)

Interested Party Comments

Comment 1: Treatment of GTS

The petitioners argue that the Department's preliminary decision to treat GTS as separate from Usinor was unreasonable, inconsistent with past Department practice and contrary to law. The petitioners maintain that GTS should continue to be treated as part of the Usinor group, along with the other two producers of subject merchandise (*i.e.*, CLI and Sollac), with all receiving a single subsidy rate for the Usinor group.

The petitioners base this on their claim that the Usinor group was and remains fully vertically integrated, with ownership of raw materials, basic production facilities, steel processing operations, service centers, marketing arms and distribution services fully consolidated. Furthermore, the petitioners argue that calculating a single subsidy rate for the group is

consistent with past practice. The petitioners state that in *French Certain Steel, French Bismuth,* and *French Stainless,* the Department treated the Usinor group, not the individual group producers, as the relevant respondent; consequently, GTS' subsidies were included in the Usinor numerator and its sales were included in the Usinor denominator.

The petitioners argue that despite Usinor's reduction of its indirect ownership interest in GTS below the 50 percent level in 1996, the reasons for approaching Usinor as a group have not changed; namely: (1) GTS and Usinor share common marketing and transportation services which provide a vehicle for the transmittal of subsidies and the potential for export shifting should the Department assign different rates, and (2) GTS does not have audited financial statements for all of the years that the Department would require in order to conduct an analysis leading to a separate subsidy rate.

The petitioners dispute the Department's application of its cross-ownership regulation in the Preliminary Determination. The petitioners maintain that the relevant regulation is 19 CFR. 351.525(b)(6)(iii) which states that if a subsidy is received by a holding company "the Secretary will attribute subsidies to the consolidated sales of the holding company and its subsidiaries." Additionally, the petitioners maintain that Usinor and GTS do not cross-own each other. Instead, Usinor has one-way partial ownership of GTS.

Finally, even if the cross-ownership regulation does apply, the Department should still treat GTS as part of the Usinor group, in the petitioners' view. The petitioners point to *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 53332 (July 26, 1999) (*Brazil Carbon Plate*) in which the Department found cross-ownership between two companies when one company owned only 49.8 percent of the other.

Moreover, the petitioners argue that Usinor effectively controls GTS because: (1) Usinor's 48.31 percent ownership interest in GTS far exceeds any other owner, (2) the next largest shareholder, Saarstahl with 32.14 percent indirect ownership interest in GTS, is in bankruptcy and its shares can only be voted on by the bankruptcy trustees, and (3) Usinor, with three of the eight GTS Board members, controls GTS' Board of Directors. Additionally, the petitioners point out that the Department learned at verification that Dillinger controls GTS. The petitioners argue that this control by Dillinger is not inconsistent with Usinor's control of GTS since Usinor is the largest shareholder of Dillinger's parent company, DHS. Furthermore, the petitioners argue that the Chairman of both DHS and Dillinger Supervisory Boards is a representative of Usinor and that Usinor's presence on DHS's and Dillinger's Supervisory Board gives Usinor considerable power.

The respondents disagree with the petitioners that the Department should treat GTS as if it were still part of the Usinor group. The respondents maintain that under section 351.525(b)(6)(iii) of the *CVD Regulations* (relating to holding companies), Usinor's subsidies should not be attributed to GTS because it is not included in Usinor's consolidated holdings. Instead, the Department properly looked to section 351.525(b)(6)(ii) of the *CVD Regulations,* (relating to cross-ownership) to determine whether any subsidies should be attributed to GTS as a result of cross-ownership between GTS and Usinor. The respondents argue that the Department correctly concluded that there is no cross-ownership between GTS and Usinor since Usinor cannot control or direct GTS' assets in essentially the same manner it could its own.

The respondents argue that the record is clear that Usinor does not have any direct interest in GTS or Dillinger (GTS' parent company), and only a minority interest in DHS (Dillinger's parent company). The respondents argue that verification confirmed that Usinor cannot use or direct the assets of DHS given its minority shareholding, the power accorded to labor on DHS' Supervisory Boards, and that all the seats on DHS' Management Board are held by employees. The respondents explain that Usinor's role in GTS is further attenuated and that Dillinger directs the individual assets of GTS. Therefore, the respondents maintain that cross-ownership does not exist, and the Department cannot attribute Usinor's subsidies to GTS.

Dillinger rejects petitioners' argument that the Department should continue to treat GTS as part of the Usinor group based on the fact that GTS was part of the Usinor group during the *French Certain Steel* investigation. Dillinger points out that in the POI of the instant proceeding, GTS is no longer consolidated in the Usinor group's financial statements. Additionally, Dillinger points out that the Department has promulgated new regulations which mandate that the Department treat GTS as a separate company.

Dillinger also rejects petitioners' argument that internal transfers and shared marketing services within the Usinor group provide a vehicle for the transmittal of subsidies. Dillinger states that GTS is no longer a consolidated member of the Usinor group so this argument is not relevant. Furthermore, Dillinger argues that petitioners' argument was not accepted by the Department in *French Certain Steel* nor has it been adopted in subsequent cases. Dillinger also rejects the petitioners' argument that the Department does not have audited financial statements for GTS for all of the years that the Department would require in order to conduct an analysis leading to a separate subsidy rate. Dillinger argues that this is not true and that the petitioners have not identified a single piece of missing information that the Department would need to calculate a separate rate.

Dillinger argues that the Department should continue to calculate a separate rate for GTS since the Department's new regulations at 19 CFR 351.525(b)(6)(iv) require a finding of cross-ownership in order to attribute subsidies. Dillinger maintains that there is no cross-ownership between the two companies because: (1) Usinor only has a minority ownership interest in DHS, (2) Usinor does not have "golden share" in DHS, and (3) Usinor's indirect ownership interest is matched by the combined ownership of Saarstahl and the Government of Saarland. Furthermore, Dillinger argues that Usinor's large minority ownership interest in DHS is irrelevant because the DHS General Assembly requires at least a 70 percent majority for approval. Therefore, Dillinger points out that Usinor's ownership interest does not come close to the level that would enable it control DHS, Dillinger, or GTS.

Lastly, Dillinger argues that petitioners' argument that Usinor has a dominant presence on the GTS Board of Directors is irrelevant. Dillinger points out that all shareholder representatives on GTS' Board of Directors are elected by Dillinger. Dillinger points out that the fact that three of the eight directors elected by Dillinger happen to be representatives of Usinor is merely a business decision made by Dillinger based on its prior affiliation with that company.

Department Position: Although the petitioners have raised several valid concerns about treating GTS as separate from Usinor, we have examined this matter closely and concluded that, on balance, the facts of this case support calculating separate subsidy rates for Usinor and GTS.

At the outset, we note that we do not share the petitioners' view that Section

351.525 (b)(6)(iii) (regarding holding companies) is the relevant provision for deciding how to attribute subsidies in this case. Although Usinor was a holding/parent company during the POI, GTS was no longer a consolidated member of the Usinor group and GTS' sales were not reported in Usinor's consolidated sales. Thus, subparagraph (b)(6)(iii) does not lead us to attribute Usinor's subsidies to GTS. Instead, we believe that the applicable regulation is Section 351.525(b)(6)(ii), which addresses situations involving cross ownership.

In applying this subparagraph, the petitioners have asked that we take into account two types of concerns. First, because Usinor is a vertically integrated company and because certain services are shared among Usinor companies, including GTS, they should be viewed as a single company. Second, although Usinor is not the majority owner of GTS, it should be viewed as controlling GTS. We address these points in turn.

The petitioners are correct that both GTS and Usinor, as producers of subject merchandise, share service centers, marketing arms, and channels of distribution. GTS makes a certain number of its French sales through a subsidiary of Sollac and some of its U.S. sales to an importer which is also owned by Sollac. However, we reviewed these transactions carefully at verification and found no indication that they were not at arm's length. Therefore, we found no basis to conclude that subsidies were transmitted from Usinor to GTS (or vice versa) as a result of GTS using Usinor affiliates for these services.

To the extent that the petitioners rely on the Department's decision "to collapse" respondents in the *Affirmative Countervailing Duty Determination and Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy and Turkey*, 61 FR 30288, 30308 (June 14, 1996) (*Italy Pasta*) as the basis for treating Usinor and GTS as a single company, we note that *Italy Pasta* predates the current regulations. We also are not persuaded by the precedents involving the Usinor group. Until 1996, GTS' results were consolidated in the Usinor Group. Therefore, even under our current regulations, Usinor's subsidies would be attributed to GTS and a single CVD rate would be calculated. With respect to *French Stainless*, which had a 1997 POI, GTS' sales were not included in Usinor's sales because GTS was no longer included in Usinor's consolidated results.

Regarding Usinor's alleged control of GTS, as noted above, Usinor indirectly owned 48.75 percent of GTS during the POI. Because this level of ownership is close to the majority ownership required to find cross ownership, we have examined closely whether Usinor controls GTS directly, or indirectly through its ownership position in DHS. In analyzing whether two companies should be treated as one for purposes of calculating a countervailing duty rate, we believe that the control analysis undertaken in connection with subparagraph (b)(6)(ii) should identify situations where the "interests of these two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the corporations in essentially the same ways it can use its own assets (or subsidy benefits)." See the Preamble to the *CVD Regulations* (63 FR at 65401).

In this connection, the petitioners have pointed to *Brazil Carbon Plate*, where the Department found cross ownership although the major shareholder held less than a majority ownership position. We note that the facts in this case differ from those in the Brazil case. In *Brazil Carbon Plate*, one shareholder directly held 49.8 percent while the remaining shareholders were numerous (*i.e.*, more than 10) and each held a small ownership interest percentage with no one shareholder coming close to controlling one-quarter of the shares that the main shareholder controlled (64 FR at 53334). In the instant proceeding, Usinor's ownership interest is indirect (via DHS) and there are only three other shareholders in DHS, two of which are affiliated and together match Usinor's ownership interest. Specifically, while Usinor's ownership interest in DHS is unquestionably large, it is matched by two affiliated shareholders, SAG Saarstahl AG at 33.75 percent and Government of Saarland at 15 percent.

We have also considered whether Usinor controls GTS via control over its Board of Directors and its parent companies, Dillinger and DHS. First, we do not believe that Usinor controls GTS Board of Directors, notwithstanding the fact that Usinor has three of the eight representatives on GTS' current Board. According to the information we received, Usinor cannot control the GTS Board because all Board members are selected by Dillinger, and there is no indication that Usinor has guaranteed ownership of these three seats. Dillinger has stated that its decision to have Usinor representatives on GTS' Board was a business decision based on their knowledge of the industry.

Second, we find that Usinor does not control Dillinger, notwithstanding the fact that Usinor is the largest shareholder of Dillinger's parent company, DHS. We recognize, in certain situations and in certain countries, that a large minority interest such as Usinor's interest in DHS could lead a finding of control by that shareholder. However, because DHS and Dillinger are German companies in the coal, iron and steel sector, they are governed by laws which limit the shareholders' ability to control a company. In the case of DHS and Dillinger, information on the record shows that the day-to-day operational decisions and long-term business decisions concerning DHS and Dillinger are made by DHS's and Dillinger's Supervisory and Management Boards, and Usinor did not and could not control these decision-making bodies given its ownership interest during the POI.[2]

During the POI, Dillinger's Supervisory Board consisted of 15 members, three of which were Usinor company representatives. Given that Supervisory Board decisions require a 50 percent majority and Usinor had only three representatives on this Board, it was impossible for Usinor to control Dillinger's Supervisory Board. Additionally, the Department notes that laws governing the membership of Dillinger's Supervisory Board require an equal number of labor and shareholders' representatives. Given this legal requirement, Usinor's minority indirect ownership interest could not enable it to gain a significant presence on the Supervisory Board to control decision making. With respect to Dillinger's Management Board, we note that it consists of employees from DHS and Dillinger. Therefore, Usinor does not control the Dillinger's Management Board.

Similarly with respect to DHS, resolutions requiring approval of DHS' General Assembly of Shareholders (which includes the election of the Supervisory Board members) require 70 and 90 percent majorities. DHS' Supervisory Board requires a 50 percent majority for the approval of decisions, and Usinor holds only three out of 21 seats on this Board. Like Dillinger's Management Board, DHS' Management Board is made up of employees.

Based on all the information regarding Usinor and its ability to direct or control GTS, we have concluded, on balance, that such control does not exist. Therefore, we have determined that

[2] Because more specific information concerning the types of decisions made by both Dillinger and DHS's Supervisory and Management Boards is business proprietary, the Department cannot discuss them here.

cross ownership does not exist between Usinor and GTS.

Comment 2: 1996 Transfer of Usinor's Ownership Interest in DHS Should Not Be Treated as a Spin-Off of GTS

The respondents argue that the Department erroneously applied its change-in-ownership methodology to the 1996 partial reduction of Usinor's ownership interest in DHS. The respondents maintain that this transaction was not a sale or transfer of GTS because no GTS shares changed hands and, therefore, it should not be treated as a spin-off of GTS. The respondents explain that the fact that the transaction had the effect of reducing Usinor's indirect beneficial interest in GTS was an incidental result of the transaction, not the focus.

The respondents point out that the Department has made clear that it will not apply its change-in-ownership methodology to every transaction that affects the ownership of a productive unit. The respondents state that in *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, (March 31, 1999) (*Italian Plate*), the Department declined to perform its change-in-ownership methodology to a transaction involving the sale/transfer of indirect beneficial interests of the Italian respondent, AST, because the ownership interest was relatively small and so remote from the company upon which the subsidies were conferred. The respondents argue that Usinor's 1996 transaction is similar to the Italian one in that in both cases, the productive units (GTS and AST) were not involved in the transaction and the exchange occurred two levels up the corporate chain from the productive unit.

Additionally, the respondents argue that the Department's practice and regulations preclude attributing subsidies to GTS as a consequence of the 1996 transaction because the transfer of shares involved DHS, a German company upon which no alleged subsidies involved in this investigation were conferred. The respondents argue that the Department's regulations at 19 CFR 351.525(b)(7) do not permit the attribution of subsidies across borders. Therefore, they maintain it is impossible for Usinor's subsidies to be attributed to GTS through Usinor's transfer of shares in DHS, a German company.

The petitioners take issue with the respondents' claim that German ownership of GTS' stock somehow relieves GTS' production of countervailable French subsidies. The petitioners argue that the subsidies in question were provided to French steel production which included GTS. The petitioners argue that the real issue is whether Usinor's reduction of its ownership interest in DHS in 1996 leads to reallocation of the subsidies received by GTS. The petitioners believe that there should be no reallocation of subsidies as a result of this transaction since the respondents have contended that nothing substantive really happened as a result of this transaction.

The petitioners object to the respondents' application of the transnational rule because the petitioners believe that it is not applicable here as it only deals with initial bestowal of subsidies not attribution. The petitioners point out that even if the transnational rule applies, it does not apply to subsidies tied to French production which are the only subsidies at issue in this case. Finally, the petitioners note that if the respondents' application of the transnational rule is correct, then companies could insulate their subsidiaries from all countervailing duty liability by setting up their ownership in foreign holding companies.

Department Position: We disagree with the respondents that we erroneously applied our change-in-ownership methodology to the 1996 reduction of Usinor's indirect interest in GTS. For this final determination, the Department has revised its treatment of the subsidies received by GTS when it was part of the Usinor Group by assigning to GTS its pro rata share of Usinor's subsidies (based on GTS' sales/assets as a percentage of Usinor's sales/assets). Since those subsidies have been attributed to GTS and a portion of GTS has been sold, it is appropriate to apply our change-in-ownership methodology to the 1996 transaction in the instant proceeding.

We believe that the situation can be distinguished from that in *Italian Plate*. First, the net result of this transaction resulted in the termination of GTS' consolidation in Usinor's financial results. Second, the seller (Usinor) was owned, in part, by the Government of France. Therefore, Usinor's sale of its DHS shares resulted in the disposition of a portion of GTS to private parties. This is in contrast to *Italian Plate* where minority private owners were selling their interests in AST's parent companies to other private companies.

We further disagree with the respondents that the Department's regulations preclude the attribution of subsidies to GTS as a consequence of the 1996 transaction because Usinor's sale of its DHS shares was to a foreign company. While the Department's regulations require it to attribute subsidies to products produced within the territory of the subsidizing government, GTS is located in France (*see* 19 CFR 351.525(b)(7)). Therefore, even if those subsidies flowed from Usinor to the German company which purchased Usinor's DHS shares, our attribution rules require that the subsidies be attributed to DHS' French production, *i.e.*, GTS.

Comment 3: The Department Must Correct the Misapplication of its Change-in-Ownership Methodology to the 1996 Transaction

The respondents suggest that if the Department were to continue to treat the 1996 DHS transaction as a spin-off of GTS, then it must correct the misapplication of its change-in-ownership methodology in the *Preliminary Determination*. The respondents argue that in the *Preliminary Determination* the Department treated the transaction as involving 100 percent of GTS' assets rather than a partial spin-off of a small portion of Usinor's indirect beneficial interest in GTS, as stipulated in the GIA (58 FR at 37273). In the GIA, the respondents point out that the Department stated that pass-through of subsidies must correspond to the extent of the interest being transferred. The respondents do not agree with the Department's analysis that Usinor's reduction of its interest in DHS was "akin to a total sale since Usinor no longer had the ability to control or direct GTS' assets as its own" (see Memorandum from the Team to Susan Kuhbach regarding the Ministerial Error Allegation for Preliminary Determination (September 22, 1999)). The respondents believe that the methodological rationale advanced in the *Preliminary Determination* is not consistent with the Department's decision not to require change in control before applying its change-in-ownership methodology.

The respondents argue that it is impossible for the Department to treat the 1996 DHS transaction as a 100 percent transfer of GTS when the Department treated the 1992 sale of Sollac's ownership interest in GTS as a partial spin-off. Additionally, the respondents argue that methodology applied to the 1996 transaction in the *Preliminary Determination* is inconsistent with the Department's repayment methodology since the calculation provided for 100 percent of GTS' assets as transferred but repayment could have been only been based on the price paid for the assets actually

transferred which was 21.25 percent of DHS' shares. Therefore, the respondents argue that if the Department continues to treat the 1996 transaction as a spin-off involving GTS, it should revise the assets to reflect the percentage that was actually transferred.

The petitioners take issue with the respondents' suggestion that because only 21 percent of DHS was transferred, a maximum of 21 percent of the subsidies provided to GTS' production can be countervailed. The petitioners point out that the respondents' argument is based on the incorrect assumption that no subsidies are attributable to GTS' production prior to the 1996 transaction. The petitioners contend that the real question is to what extent, if any, is the 21 percent of the subsidies repaid or reallocated. The petitioners further argue that the 1996 transaction does not change the fact that 79 percent of the previously allocated subsidies inhere in GTS' assets and, therefore, are attributable to GTS.

The petitioners do not believe that the methodology used in the *Preliminary Determination* to attribute subsidies to GTS as a result of the 1996 transfer is inconsistent with its past practice. The petitioners argue that once the Department decided that the result of the 1996 transaction required it to calculate a separate rate for GTS, it first correctly determined the total amount of the subsidies potentially allocable to GTS' production.

The petitioners point out that the second step of the change-in-ownership calculation requires it to determine the amount of subsidies repaid or reallocated by the partial sale. The petitioners believe that the Department correctly applied its methodology by determining that this transaction could have only resulted in the repayment/reallocation of a maximum of 21 percent of the subsidies since only 21 percent of the assets were transferred. The petitioners reject the respondents' claim that there is inconsistency or unfairness in the Department's application of its change-in-ownership methodology in this transaction.

Department Position: We have revised the calculation used in the *Preliminary Determination*. Beginning with the 1992 transaction and continuing with the 1996 transaction, we have determined the subsidies allocable to GTS (in accordance with the spin-off methodology described in the GIA). Then, as ownership of GTS transferred out of Usinor, we applied our change-in-ownership methodology to measure the amount of subsidies that were reallocated to Usinor. This approach was necessitated by our decision that GTS should be treated as separate from Usinor during the POI. In short, because GTS' sales were no longer included in the Usinor Group's sales, it was incorrect to include subsidies attributable to GTS (because it was part of the Usinor Group when these subsidies were received) as Usinor's subsidies.

We disagree that this revision from the *Preliminary Determination* conflicts with the position taken by the Department in *Italian Plate* regarding changes in control. Specifically, there does not have to be a change in control of a company for the Department to apply the change-in-ownership methodology. However, when a company moves from being part of a consolidated group to outside the consolidated group because of a change in ownership, it is appropriate to ensure that the proper share of subsidies is assigned to the company.

Comment 4: Privatization Should Extinguish Any Previously Bestowed Subsidies

The respondents argue that the circumstances of Usinor's privatization compel the Department to find that any previously conferred subsidies were eliminated and did not pass through to the privatized company. The respondents point out that the URAA directs the Department to examine all the circumstances of a privatization to determine whether and to what extent subsidies have been extinguished or passed through to the private buyer. Similarly, the SAA at 928 directs the Department to devise an appropriate methodology to determine whether and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies. The respondents argue that the countervailing duty law states that a subsidy can only be found where a benefit is conferred as the result of a government financial contribution. The respondents maintain that the payment of a market price for all or part of a previously subsidized entity should extinguish previously bestowed countervailable subsidies because the purchased entity is acquired at full value and, thus, there is no benefit. See 19 CFR 351.503(b)(1). Since Usinor's privatization consisted mainly of the sale of shares to the public for fair market value by means of international and French public offerings, the full value of any previously conferred subsidies was embodied in the purchase price and those subsidies were eliminated upon Usinor's privatization.

Additionally, the respondents note that a WTO Dispute Settlement Panel recently found in a case involving hot-rolled lead and bismuth carbon steel products from the United Kingdom that the Department had violated its WTO obligations in determining that the sale of a company to private bidders did not automatically extinguish subsidies that the company received when it was government owned.

The petitioners dispute the respondents' claim that Usinor's privatization eliminates benefits from pre-privatization subsidies. According to the petitioners, this same argument has been repeatedly rejected by the Department, the CIT, and Congress. Specifically, the respondents argument that there is no benefit after Usinor's privatization because the shares were purchased at fair market value is misplaced since the Department's obligation with respect to a benefit analysis refers to the initial bestowal of the subsides not to a competitive benefit received after privatization.

The petitioners further believe that the respondents have wrongly accused the Department of failing to examine all factual circumstances as directed by the statute. The petitioners argue that the requirement to "examine all circumstances" relates to determining whether any repayment of subsidies has taken place, not, as respondents characterize, whether a competitive advantage has been received. Petitioners claim that the respondents' argument would be tantamount to a presumption that subsidies do not survive privatization, a presumption which the petitioners argue the URAA's change-in-ownership provision was enacted to preclude.

The petitioners argue that the record in the instant proceeding fully supports the Department's decision to countervail Usinor's sales post-privatization. In support of this, the petitioners point out that Usinor is wholly unchanged by the privatization as the privatization was merely a stock sale and Usinor has made clear that its management did not change in any way after the privatization.

Lastly, with respect to the WTO report, the petitioners point out that this interim report cannot change the clear Congressional mandate which expressly overturns Usinor's argument with respect to this issue.

Department Position: Under our existing methodology we presume neither automatic extinguishment nor automatic pass-through of prior subsidies in an arm's-length transaction. Instead, our methodology recognizes that a change in ownership has some impact on the allocation of previously bestowed subsidies and, through an

analysis based on the facts of each transaction, determines the extent to which the subsidies pass through to the privatized company. In the instant proceeding, we have relied upon the pertinent facts of the case in determining whether the countervailable benefits received by Usinor Sacilor pass through to the privatized Usinor and to the productive units that have been spun off by Usinor.

Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and Usinor's purchase price to a specific, detailed analysis. This analysis resulted in a particular "pass-through ratio" and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that when Usinor was privatized a portion of the benefits received by Usinor Sacilor passed through to Usinor and a portion was repaid to the government. This is consistent with our past practice and has been upheld in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996), *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. 1997) (*British Steel*), and *Delverde, SrL.* v. *United States*, 24 F. Supp. 2d 314 (CIT 1998).

Furthermore, Usinor's contention that the sale of Usinor was an arms-length, market-valued transaction does not demonstrate that previous subsidies were extinguished. Section 771(5)(F) of the Act states that the change in ownership of the productive assets of a foreign enterprise does not require an automatic finding of no pass through even if accomplished through an arms-length transaction. Section 771(5)(F) of the Act instead leaves the choice of methodology to the Department's discretion. Additionally, the SAA directs the Department to exercise its discretion in determining whether a privatization eliminates prior subsidies by considering the particular facts of each case. *See* SAA at 928.

Lastly, with respect to the respondents' and the petitioners' comments concerning the recent finding by a WTO Dispute Settlement Panel that an arm's-length privatization automatically extinguishes prior subsidies received by government-owned firms, the Department notes that this was an interim (*i.e.*, preliminary) confidential report. As such, it is inappropriate for the parties or the Department to comment on it.

Comment 5: Repayment Portion of Change-in-Ownership Analysis

According to the petitioners, Congress intended that countervailing duties be imposed to offset subsidies to production. Since changes in ownership do not affect production, the petitioners conclude that they should also not affect countervailing duty liability.

The petitioners distinguish between the subsidies themselves and countervailing duty liabilities arising from those subsidies. Citing the GIA (58 FR at 37260) where it quotes *British Steel Corp.* v. *United States*, 605 F. Supp. 286, 294 (CIT 1985), the petitioners state that the Department is obligated, when injury exists, to impose duties when subsidies have been provided "with respect to the manufacture, production or export . . . of a class or kind of merchandise" imported into the United States. To show that the liability for such subsidies is attached to production, the petitioners cite to the same where it states, "if a benefit or advantage is received in connection with the production of merchandise," that benefit or advantage is a "bounty or grant on production." To further demonstrate the linking of countervailing duty liabilities to production in a post-URAA case, the petitioners cite the Final Results of Redetermination Pursuant to Court Remand, *Delverde, SrL* v. *United States*, Consol. Ct. No. 96–08–01997, *aff'd*, *Delverde, SrL* v. *United States*, 24 F. Supp.2d 314 (CIT 1998) where it states:

> Once the Department determines that a "subsidy" has been provided, it measures the amount of the subsidy, attributes the subsidy to the appropriate production . . . Generally speaking, the practical results of this system is to link liability for, as an example, pasta subsidies to pasta production."

The petitioners maintain that after a change in ownership, a company will produce at the same cost, in the same volume and with the same artificial advantages born of subsidies. This happens, state the petitioners, because the profit-maximizing level of price and output are unchanged. According to the petitioners, regardless of whether a buyer or seller captures the benefit of a subsidy after a change in ownership, the buyer still acquires the subsidy-augmented production facilities and uses them at the same profit-maximizing level, thus leaving the misallocation of resources arising from the subsidies and the threat to the companies' competitors unchanged.

To show that the seller actually captures the benefit of previously bestowed subsidies, the petitioners cite a publication by the U.S. Department of Agriculture which states that subsidies to farmers have created inequities between existing and entering farmers by increasing the cost of acquiring land for entering farmers.[3] The petitioners maintain that even though sellers gain the windfalls from subsidies during a change in ownership, the reallocation of countervailing duty liabilities back to the sellers is inappropriate. First of all, the price paid by a buyer is discounted for the risk associated with the countervailing duty liabilities, according to the petitioners. In addition, since the seller no longer has control over production, the petitioners state that imposing duties on the seller would not have the effect of offsetting the artificial advantages on production arising from the subsidies.

The petitioners further argue that the reallocation/repayment aspects of the Department's change-in-ownership methodology amount to measuring the effects of subsidies and taking account of events subsequent to the bestowal of the same. According to 19 CFR 351.504–511, the Department should not take into account the effects of subsidies and, instead, should measure benefits at the time of bestowal.

Finally, the petitioners take issue with the Department's practice of automatically conducting a repayment/reallocation analysis as part of its change-in-ownership methodology. According to the petitioners, the URAA legislative history makes it clear that such automaticity was not intended by Congress where it says that the Department must continue to countervail subsidies following a normal (*i.e.*, fairly priced) ownership change without lessening or reallocating unamortized subsidy benefits unless something else occurs during the transaction that "actually serve[s] to eliminate . . . subsidies." See S. Rep. No. 103–412 at 92 (1994).

The respondents emphasize that the petitioners' argument that there must be specific evidence of repayment has been considered and rejected by the Department in the GIA (58 FR at 37264). In addition, the respondents state that there is nothing about the Ugine transactions or Usinor's 1995 privatization that would disqualify these transactions from being analyzed under the Department's change-in-ownership methodology.

Department Position: The petitioners' main argument is that subsidy liabilities are attached to production; therefore, subsidy amounts cannot change when production remains unchanged. While we agree that subsidies benefit production, that does not require the

[3] U.S. Farm Programs and Agricultural Resources, USDA Economic Research Service, Agricultural Information Bulletin No. 614 (Sept. 1990).

conclusion that subsidies cannot change without changes in production. Our rationale for applying repayment calculations as part of our change-in-ownership methodology does not presuppose that production has changed. Rather, our methodology is based on the idea that a portion of the purchase price for ownership rights may remunerate the seller for prior subsidies.

To the extent we countervail the portion of the subsidy existing after repayment or reallocation, we are executing our mandate "to impose duties with respect to the manufacture, production or export of a class or kind of merchandise." Our repayment/reallocation methodology, as part of our change-in-ownership methodology, has been litigated and upheld by the Courts (*see Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996), *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) *British Steel plc* v. *United States*, 929 F. Supp. 426 439 (CIT 1996) and *Delverde, SrL.* v. *United States*, 24 F. Supp. 2d 314 (CIT 1998).

We disagree with the petitioners' assertion that the "automatic" nature of the repayment/reallocation analysis is contrary to the URAA legislative history. The legislative history simply says that a change in ownership "does not by itself require the Commerce Department to determine that a countervailable subsidy . . . continues to be countervailable, even if the change in ownership occurs through an 'arm's length transaction'." and that "the sale of a firm at 'arm's length' does not automatically extinguish any previously-conferred (sic) subsidies." See S. Rep No. 103–412 at 92 (1994). To the extent our repayment/reallocation methodology does not make any presumptions as to whether there will be any repayment/reallocation as a result of a change in ownership, there is nothing inherently automatic in its nature. Nowhere does the legislative history require that "something else" must happen, as was argued by the petitioners, before subsidies can be extinguished.

Finally, regarding the petitioners' argument that the repayment/reallocation calculation amounts to measuring to the effects of subsidies, we disagree. Our methodology does not examine the effects of a subsidy.

Comment 6: Spin-Offs of Productive Assets

The petitioners maintain that in the event the Department decides to continue applying the repayment portion of its change-in-ownership analysis, it should only conduct such analyses for sales of enterprises that Usinor has demonstrated to be productive units. In particular, the petitioners question whether Usinor has demonstrated that the enterprises sold to FOS-OXY and Enterprise Jean Lefebvre in 1994 were, at the time of sale, "productive" within the meaning articulated in the GIA, *i.e.*, capable of generating sales and operating independently. See GIA 58 FR at 37268.

In *French Stainless*, state the respondents, the Department found that Entreprise Jean LeFebvre was a lime production facility and FOS-OXY an oxygen-generating one. According to the respondents, the production of oxygen and lime both constitute production; therefore, the treatment of these two companies as "productive units" in the *Preliminary Determination* was proper. In any event, the respondents point out that the issue is moot in that no subsidies were spun-off from Usinor as a result of either of these two transactions because all benefits were found to be reallocated to Usinor.

Department Position: As stated above in Comment 5, we are continuing to apply our repayment analysis. However, the application of this analysis in this case results in all subsidies potentially spun-off to Entreprise Jean LeFebvre and FOS-OXY remaining with Usinor. Therefore, the respondents are correct that the issue is moot.

Comment 7: Assets v. Sales in Apportioning Subsidies

The petitioners point out that the Department's practice of using relative asset value to apportion subsidies between units in a spin-off analysis was born from administrative convenience in the *Certain Steel* investigations to cover situations where a unit does not have identifiable sales. See GIA 58 FR at 37268. Prior to *Certain Steel*, the petitioners note that the Department acknowledged the reasonableness of apportioning subsidies via relative sales by stating:

> [B]ecause it is the Department's long-standing practice to allocate subsidies over the sales of subject merchandise, it is reasonable to use the ratio between the sales of [the spun-off unit] and the sales of the [parent] . . . as the basis on which we would apportion the subsidies.

See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 FR 6237 (July 9, 1993) (UK Bismuth). In situations where sales are disproportionate compared to assets, the use of assets to apportion subsidies can be distortive in light of the statute's goal of offsetting subsidized U.S. sales, state the petitioners. Accordingly, the petitioners argue that subsidies should be apportioned based on relative sales in situations where both the parent and the spun-off unit have sales.

Acknowledging that the Department expressed a preference for asset values over sales values in *UK Bismuth*, the respondents argue that the Department later expressed its clear intention in the GIA to adopt a practice of using assets where it stated, "asset values are the more appropriate basis upon which to measure the portion of the subsidy which potentially passes through" (58 FR at 37268). According to the respondents, adopting an approach that could be applied consistently was a reasonable step by the Department as opposed to using different measures from one case to another depending upon the information available. In addition, the respondents state that the Department has consistently used asset values in other proceedings, *see, e.g., French Stainless* 64 FR at 30776–77.

Department Position: We agree with the respondents that it is the Department's practice and preference to apportion subsidies based on assets. In many instances, such as in spin-offs of units that were not previously considered to be profit centers, sales values may not be available. In using assets to apportion subsidies, we have a measure that can be applied in all cases which adds to predictability. Moreover, it avoids the situation where the spin off of one productive unit in a company which happens to have a sales value would be treated differently than the spin off of another productive unit in the same company which does not have a sales value. However, we recognize that there may be situations where an exception to this rule is necessary. As stated in our response to Comment 8 below, information on the record does not allow us to calculate a French-only asset value for Usinor for any of the years in which spin offs occurred. For details on how we are addressing this situation for purposes of this final determination, see Comment 8:

Comment 8: French v. Total Usinor Assets

Should the Department continue to use assets as the basis for allocating subsidies between GTS and the Usinor Group, argue the petitioners, then it should base the calculation of Usinor's assets only on the relevant pool of assets over which the subsidy benefits would be applicable, *i.e.*, French assets in this case. The petitioners note that this information was requested at verification but not provided. Lacking information on Usinor's French assets, the petitioners suggest that the Department use sales to allocate the

subsidies between Usinor and GTS, in particular, Usinor's sales of French-produced merchandise net of intra-company transactions.

The respondents argue that the use of total assets has been the Department's practice since the Certain Steel cases where it said in the GIA that the potential pass-through of subsidies would be calculated by comparing the book value of "the productive unit sold to the book value of the assets of the entire company" (58 FR at 37273). The respondents add that this same methodology of allocating subsidies based total assets was used in the *French Stainless* case.

Department Position: This is the first time that the question of what group of assets to use in allocating subsidies between units under our change-in-ownership methodology has arisen as an issue of contention. While our prior general statements on the use of assets may have referred to "total assets," this is because our basic assumption was that for a typical respondent, subsidy benefits would apply equally to all assets. However, we acknowledge that the asset values used for purposes of apportioning benefits between units as part of our change-in-ownership methodology should correspond to those assets to which subsidies would properly be attributed (*i.e.*, assets in facilities located in France). Such an approach is entirely consistent with our view that governments subsidize domestic production and not foreign production, which has been upheld by the Courts. See Preamble to the *CVD Regulations (*63 FR at 65403); see also Inland Steel Industries v. United States, 188 F. 3d 1349, 1360–61 (Fed. Cir. 1999) (where the Court held that the Department's presumption that subsidies are tied to domestic production on the premise that a foreign government normally intends to principally benefit its domestic production "is eminently reasonable").

Information on the record of this case, however, does not allow us to calculate a French-only asset value for Usinor for any of the years in which spin-offs occurred. This information was requested of Usinor too late in the proceeding for it to provide. Therefore, for those transactions for which French sales values are available for both Usinor and the units being spun off, we are using sales to allocate subsidies in this case. For those transactions for which French sales values are not available, we will continue to use total assets to allocate subsidies for purposes of this final determination. Should a countervailing duty order be put in place in this case, we will, however, pursue French asset values during the course of any administrative review that may occur.

Comment 9: Sale of and Buyback of Ugine Shares

Should the Department continue to calculate repayment as part of its change-in-ownership analysis, the petitioners take issue with its application to the partial spin-off of Ugine shares that were eventually repurchased by Usinor a short time later. If the Department allows for the reduction in subsidy benefits in this case via repayment, the petitioners argue that an incentive would be created for foreign producers to buy and repurchase their productive units in order to dissipate their countervailable subsidy benefits. The petitioners note that while the amount of repayment with respect to the Ugine transactions was small, the concept is important in principle.

The respondents counter by saying that both the initial sale of Ugine shares and their later repurchase by Usinor were legitimate, arm's-length transactions. According to the respondents, these were not sham or churning transactions, as supposed by the petitioners. Since these were legitimate transactions, the respondents maintain that application of the Department's change-in-ownership methodology is warranted.

Department Position: We agree with the respondents that there is nothing on the record of this case indicating that there is anything illegitimate about these transactions. However, because Ugine would continue to be consolidated in the Usinor Group, and we did not apply our change-in-ownership methodology to the repurchase of Ugine's shares by Usinor, application of the change-in-ownership methodology would not affect subsidies to the Usinor Group. This is because in any reallocation of subsidies from the sale of Ugine's shares, the reallocated portion would go to Usinor. However, Usinor's subsidy benefits, including the amount reallocated would be attributed to all members of the consolidated Usinor Group, including Ugine. Likewise, any amount allocable to Ugine would have been attributed to the Usinor Group.

Comment 10: The 1995 Privatization of Usinor

Should the Department continue to apply its repayment methodology to privatizations, the petitioners argue that no repayment should be found in the 1995 privatization of Usinor. According to the petitioners, the "repayment" of subsidy benefits to the government was not possible in this case since the purchase price for Usinor was retained by Usinor, itself, and not passed on to the GOF.

According to the respondents, the 1995 privatization of Usinor involved the sale of shares for cash and no part of the purchase price inured to Usinor. The respondents add that Usinor's capital increase, to which the petitioners allude, was properly not included among the programs to be examined during this investigation because the purchase of shares by private investors did not provide countervailable benefits to Usinor.

Department Position: We agree with the respondents that the 1995 privatization of Usinor was a legitimate transaction for which a change-in-ownership calculation is appropriate. All monies paid for existing Usinor shares during the privatization process were received by the parties holding those shares prior to the transaction, *i.e.*, proceeds from the sale of shares held by the GOF were paid to the GOF, those from shares held by Clindus (the subsidiary of Crédit Lyonnais holding Usinor shares) were paid to it. The only monies received by Usinor during the privatization process were those it received for the sale of new shares in a public offering. The sale by Usinor of new shares was like any other private company offering shares as a means of raising capital. In such cases, it is proper for the seller (*i.e.*, the company itself) to hold on to the proceeds of the sale.

Comment 11: Disposition of Benefits Spun-Off in 1992 GTS Transaction

Since the 1992 transaction was a share swap that did not push GTS outside of the Usinor Group, state the petitioners, this transaction should not be viewed as a spin off. Should the Department continue to apply a spin-off calculation to this transaction, the petitioners state that the distinct benefit stream for the spun-off portion of GTS should be properly applied as was not done in the calculations for the *Preliminary Determination*.

While the 1992 transaction did not result in the loss of control of GTS by Usinor, the respondents argue that it was, nonetheless, a partial spin-off to third parties. As such, the respondents conclude that the Department's treatment of this transaction in the *Preliminary Determination* as a partial spin-off was in accord with its practice with respect to partial changes in ownership.

Department Position: As discussed in the "Change in Ownership" section of the notice, we have applied our change-

in-ownership methodology to the 1992 transaction. It is necessary to do this because a portion of GTS moved from Usinor to non-Usinor ownership and Usinor received payment for that portion of subsidies attributable to GTS. Although GTS is not treated as a separate company until 1996, we need to account for the 1992 transaction so that the amount of subsidies potentially reallocated to Usinor 1996 is commensurate with the amount of ownership that has transferred up to time.

Comment 12: Calculation of the Portion of Benefits Spun-Off in 1992 GTS Transaction

Should the Department continue to do a partial spin-off calculation with respect to the 1992 GTS transaction, the petitioners argue that it must correct its calculation of the portion of Usinor benefits potentially being spun-off by virtue of the partial sale of GTS. According to the petitioners, the Department should first determine the benefit attributable to GTS as a whole, and then multiply that amount by the percentage of GTS being sold to determine what, if any, reallocation occurs.

The respondents take issue with the petitioners' proposition that subsidies should be attributed to all of GTS' assets, including those not spun-off, with respect to the 1992 partial spin-off. According to the respondents, under the Department's change-in-ownership methodology with respect to partial changes in ownership, the subsidy benefits attributable to the portion of GTS that was not sold and remained with Usinor do not travel with the sold portion. Rather, the respondents claim that those benefits should remain with Usinor and be attributed across the consolidated French sales of Usinor.

Department Response: Given the circumstances of this case, in particular the facts that GTS goes through two partial changes in ownership prior to the POI and is being treated as a separate company, we have performed our calculations as suggested by the petitioners. That is, beginning in 1992, we have calculated subsidies attributable to GTS based on GTS' share of Usinor's assets in that year. The level of the ownership change in 1992 (and also 1996) serves to cap the amount of subsidies reallocated to Usinor as a result of the payments for GTS. Although only a portion of GTS is sold in each instance (*i.e.*, these are partial privatizations) it is necessary to move the full amount of subsidies out of Usinor and into GTS because after 1996, GTS is separate from Usinor. To follow the respondent's suggestion would understate the benefit to GTS.

Comment 13: Allocation Period

Should the Department continue to find that the 1995 privatization of Usinor did not extinguish previously bestowed benefits, the respondents argue that Usinor's company-specific calculation of its average useful life of assets (AUL) for the POI should be used to determine its allocation period. The respondents take issue with the decision in *French Stainless* where the Department for the first time rejected a verified, company-specific AUL in favor of one from another previous investigation. Following the *French Stainless* precedent is not justified in this case, argue the respondents, because the Preamble to the regulations governing this investigation (which differ from those governing *French Stainless*) require the Department to use a company's own AUL when it varies from that in the IRS tables by one year or more. See 19 CFR 351.524(d)(2)(iii).

The respondents also point out that the *French Stainless* decision is inconsistent with prior court rulings mandating the use of company-specific allocation periods based on record evidence which the Department has followed consistently until *French Stainless* (*see e.g.*, Italian Plate (64 FR at 15511); *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489, 44490 (August 16, 1999)). According to the respondents, there is no basis for using information that is decades old. Not only has the current data been verified as being accurate, the respondents claim that its privatization did not change Usinor's AUL nor has Usinor and it has not suffered a bankruptcy, instances that petitioners state may affect a company's AUL. As for the concern that changing the allocation period from one case to another may result in under- or over-countervailing a subsidy, the respondents state that this is simply not the case.

Finally, the respondents note that the Department has not hesitated to apply other parts of 19 CFR 351.524(d) (the section of the *CVD Regulations* specifying the AUL methodology) when they work to the detriment of the respondents, such as the use of a new policy for calculating discount rates. For example, the use of the new discount rates created entirely new benefit streams for Usinor's old subsides, state the respondents. The respondents point out that this stands in contrast to the rationale in *French Stainless* of applying an AUL from a prior case to previously countervailed subsidies in order to maintain consistency. According to the respondents, the Department cannot pick and choose which parts of the applicable regulations it will apply.

The petitioners cite to *French Stainless* as precedent for maintaining the allocation period for a particular subsidy benefit once it has been countervailed. To change the allocation period in a future segment or proceeding, argue the petitioners, would risk either over-countervailing or under-countervailing the subsidy. Such a practice, point out the petitioners, would also be at odds with the fact that the subsidies themselves have not changed.

The petitioners also point out that the 14-year period used in the *Preliminary Determination* was based on Usinor's own information and approved by the CIT during the Certain Steel litigation. See *British Steel plc.* versus *United States*, 929 F. Supp. 426 439 (CIT 1996). The petitioners note that while the regulations require a company-specific AUL, they do not mandate the period over which that AUL should be calculated. The petitioners' take issue with the information submitted by Usinor for the calculation of the allocation period noting that it covers only post-bestowal years—a period not "appropriate" within the meaning of section of the Preamble to the *CVD Regulations* pertaining to company-specific AULs (63 FR at 65397).

With respect to the respondents' complaint about the change in the discount rates affecting the benefit streams, the petitioners state that changing a discount rate differs from changing an allocation period in that the principal amount allocable to any particular year is not affected by a change in the discount rate, but would be when the allocation period changes.

Finally, should the Department contemplate using an allocation period other than 14 years, the petitioners maintain that, pursuant to 19 CFR 351.524(d)(2), it should look to the IRS tables as they are the default source for information on the useful life of assets when a respondent has not demonstrated a significantly different and non-aberrational average useful life of assets of its own.

Department Position: For this final determination, we are continuing to allocate subsidies countervailed in prior cases over the AUL established in those prior cases consistent with *French Stainless*. See, *e.g.*, *French Certain Steel*. In so doing, we maintain consistency across cases and predictability, and we attach the most relevant period possible to allocable subsidies.

Since the purpose of calculating an AUL is to determine the relevant period over which an allocable subsidy would provide benefits to a company, the year of most relevance is the year of receipt. In an ideal setting, we would calculate a company's AUL, in accordance with our methodology in the *CVD Regulations*, in each year that an allocable subsidy is provided and then allocate each subsidy based on the AUL of that year. This is what we do in administrative reviews when new allocable subsidies are received during a review period. See, *e.g., Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review*, 64 FR 2879, 2880 (January 19, 1999) (Israel IPA).

The question of what AUL to use becomes particularly acute in investigations where allocable subsidies have been received prior to the POI because AULs have not been calculated on an on-going basis. As a matter of convenience, we have elected as our practice to compute an AUL for the POI to determine how far back in time to capture allocable subsidies in our analysis. The alternative would be to have respondents calculate all of the AULs for years in which allocable subsidies were received in the past in the event the AUL for any of those prior years would happen to call for the allocation of the subsidies received in that year into the POI. This could be extremely burdensome for both respondents and the Department, and involve the use of very old information. Therefore, we find that calculating an AUL for the POI to be reasonable in that it uses information as close in time to the year of receipt of prior subsidies without posing a great burden on any party.

An exception occurs for allocable subsidies that have been countervailed in prior cases. Since the time period examined in any prior case will always be the same as, or earlier than, the POI for an on-going investigation, the information on the AUL for a company from a prior proceeding will always be as close or closer to the year of receipt for allocable subsidies being examined. Therefore, an AUL used to allocate a previously countervailed subsidy will be as accurate, or even more accurate, than an AUL calculated in an on-going investigation. If we were to attach different AULs to the same subsidy across proceedings, the possibility would arise of countervailing the same subsidy across different products by different amounts in any given period. Since a given subsidy intuitively should supply the same benefit to a company across all the relevant products during the same period of time, we find the method in *French Stainless* to be reasonable.

Based on the foregoing, we find that the use of an AUL from a prior investigation to allocate a previously countervailed subsidy to be reasonable and as accurate as possible without being burdensome. With respect to the respondents' argument regarding the application of the new discount policy described in 19 CFR 351.524, we disagree. The changes in the benefit stream brought about by application of a more realistic discount rate result in a better measure of the subsidy. For the reasons discussed above, using a more current AUL would not increase the accuracy of our benefit calculation.

Comment 14: 1991 Equity Infusion

The petitioners argue that the "voluminous new evidence" they submitted regarding the nature of and circumstances surrounding the GOF's infusion of equity into Usinor in 1991, which has not previously been considered by the Department, provides sufficient cause to believe that Usinor was unequityworthy and, therefore, that a countervailable subsidy had been conferred. The Department, the petitioners contend, has violated the statute by refusing to reinvestigate this equity infusion.

Department Position: The Department examined this program closely in *French Certain Steel* and found it to be non-countervailable. Faced with largely the same record evidence in *French Stainless*, the Department declined to reinvestigate this program in that proceeding. Likewise, we are not investigating this program in this proceeding. See Memorandum to Richard W. Moreland from Susan Kuhbach; Petitioners' Request for Initiation of 1991 Equity Infusion (July 16, 1999).

Comment 15: Shareholder Advances

The petitioners argue that the Department correctly found the 1982–86 shareholder advances to be countervailable subsidies. However, in the petitioners' view, the Department wrongly determined that these advances were grants in the years of bestowal (1982–86) rather than debts whose 1986 conversion to equity conferred a new subsidy in the year of conversion. While conceding that the Department's treatment of these advances in the *Preliminary Determination* is consistent with *French Certain Steel*, the petitioners contend that this approach results in an undervaluation of the benefit because the benefit stream has been pushed back farther in time. The correct approach, according to the petitioners, would be to treat the advances as loans in the year of bestowal, and then treat the conversion of these loans as a distinct, countervailable subsidy in the form of an equity infusion in 1986. The petitioners make the following points in support of their argument:

First, in *French Certain Steel* the Department characterized these advances as grants in part because there was no written agreement between the shareholders and Usinor at the time of the advances stipulating the terms of repayment. However, Usinor included these advances in the "liabilities" section of its audited financial statement, the same section in which PACs—which the Department found to be loans—where included. There is no such thing as a grant giving rise to a liability, and "it is simply inconceivable that Usinor would have chosen to record (or that auditors would have permitted it to record) as liabilities funds for which it was not liable."

Second, by reporting these advances as liabilities, Usinor clearly expected to have to make a repayment of some sort. In fact, in its questionnaire responses in *French Bismuth*, Usinor explicitly referred to these advances as "loans" which are ". . . repayable on demand." Furthermore, in a Usinor-Sacilor condensed balance sheet submitted by the respondents in the *French Certain Steel* investigation, the shareholder advances are reported in the category "long term debt." Also, Usinor issued the new stock to the GOF in 1986 to avoid taxation that would otherwise accompany the direct forgiveness of the shareholder advances.

Third, the Department cannot assume that because no formal repayment terms were written, no repayment was expected or required. Expert opinions from PriceWaterhouse and others indicate French accounting standards and French law clearly establish that where there is no written agreement regarding the terms of the repayment of a shareholder advance, the "funds put at the disposal of a company by a shareholder cannot be recorded otherwise (sic) than as a liability of the company." The expert opinion further states that a French company may not "register funds put at the disposal of a company as a grant without the written evidence of such intention from the provider."

The respondents counter, first, by noting that the petitioners' arguments are largely the same as those which the CAFC considered and rejected in the petitioners' appeal of *French Certain Steel*. See *Inland Steel Indus., Inc.*

versus *United States*, 188 F.3d 1349 (Fed. Cir. 1999). According to the respondents, these arguments include: (1) shareholder advances were accounted for by Usinor and Sacilor as loans; (2) the conversion of the advances into common stock to avoid taxation demonstrates that they were loans; and (3) French law and accounting practice required treating them as loans. The "new evidence" submitted in this proceeding by the petitioners, the respondents contend, in fact consists of no new information over that reviewed by the CAFC in upholding the Department's determination in *French Certain Steel*. Therefore, these facts cannot "overcome the preclusive or, at a minimum, *stare decisis* effect" of the CAFC's finding.

The respondents further argue that the petitioners arguments in this regard become moot if the Department adopts—as the respondents argue it should—Usinor's 11-year AUL to allocate subsidies. Under this 11-year allocation period, the benefits from the 1986 shareholder advances would fall outside the POI.

Department Position: We disagree that, for purposes of calculating the correct benefit stream for these subsidies, the Department should treat the 1986 conversion of the shareholder advances to equity as a separate subsidy event. The respondents are correct in noting that the petitioners' arguments are largely the same as those which the CAFC considered and rejected in the petitioners' appeal of *French Certain Steel*. Although some additional information regarding this program is available on the record of this proceeding, this information does not include any substantive new facts that would merit a reevaluation of our findings in *French Certain Steel*.

In response to the petitioners' arguments, we start by noting the following excerpt from the Usinor Sacilor Verification Report in the *French Certain Steel* investigation (at 18).[4]

Officials stated that the French versions of the companies' *Annual Reports* show the outstanding amounts of the shareholders' advance in the liabilities account "dotation d'actionnaire." Officials explained that prior to the shareholders' advance designated for SODIs, shareholders' advances were called "dotation," which when translated means "grant," "capital advance," "grant of capital," or "capital injection."

We asked officials why the shareholders' advances received from 1982 through 1985 were reported under liabilities in the balance sheet. Officials explained that when the GOF paid shareholders' advances to Usinor and Sacilor, they were reported under liabilities because as cash was debited, the corresponding entry was a liability account. We also asked why the receipt of shareholders' advances was not originally reported as capital, given that they ultimately were converted to common stock. Officials explained that recording shareholders' advances under "dotation d'actionnaire" suggested, essentially, that the shareholders' advances were designated to become common stock rather than income. In 1986, when shareholders' advances were received to fund the SODIs, officials explained that they were placed under the account "avance d'acctionnaire," indicating an "advance of funds" or "loan."

Several points are clear from the Usinor officials' above statements. First, at the time of receiving the shareholder advances, company officials expected that those funds would be converted into equity rather than repaid in cash or in some other more liquid form of reimbursement.

Second, Usinor officials perceived these shareholder advances as uniquely different from other sources of funds the company received, including shareholder advances for the SODIEs program, and signaled as much by including the advances in a specially designated category ("*dotation*") indicating they were grants of capital. It is likewise telling that these shareholder advances are in a category entirely separate from the company's "financial debts" and "operating debts." Contrary to the petitioners" assertion, the "PAC" loans are included in the "debts" category of both Usinor and Sacilor's 1985 balance sheets, which is a distinctly separate category from shareholder advances.

Although the petitioners are correct that shareholder advances were reported under the heading "long term debt" in the Usinor-Sacilor condensed balance sheets, we do not find this information conclusive. The condensed balance sheet is clearly meant to be a summary of Usinor-Sacilor's combined asset and liability accounts, and its summary format does not supersede the more precise and specific breakout of accounts provided in the annual reports. We note, for example, that in the condensed statement, the PACs (*i.e.*, loans with special characteristics) comprise part of the "total equity" accounts whereas in the detailed balance sheets these loans are categorized as "debts."

Third, as Usinor officials implied, recording these advances as "liabilities" was necessitated by the basic tenets of double-entry bookkeeping. An infusion of cash into a company is recorded in an accounting system by means of two entries: one "on the left side" of the balance sheet (a debit to the cash account), and one "on the right side" of the balance sheet (in this case, a credit to shareholder advances). The petitioners are incorrect in their assertion that a grant cannot involve an entry in the "liabilities" category of the company's accounts. A cash infusion in the form of a grant to Usinor would increase the value of assets, which would have to be matched by a corresponding increase in the value of either the equityholders' or the debtholders' stake in the company. However, as evidenced by the very financial statements cited by the petitioners, both debt and equity in Usinor/Sacilor's financial statements are included in the "*passif*" (liabilities) category. A cash infusion in the form of a loan would have the same effect on the company's assets and "liabilities" accounts as a grant infusion. Therefore, the fact that the shareholder advances are recorded as a liability is irrelevant to the issue of whether an infusion is a grant or a loan.

With regard to the petitioners' expert opinion from PriceWaterhouse on French accounting and law, we note that the Price Waterhouse opinion states that a shareholder advance must "become part of the company's liability and must be recorded as a debt." The evidence on the record, however, flatly refutes the later portion of this statement. In neither the Usinor or Sacilor balance sheets are these shareholder advances included in the debt category. And the Auditor's Report for these statements makes no indication that the reporting of these advances is incorrect or misleading.

Finally, our comments above notwithstanding, the meaning of shareholder advances according to French accounting standards is ultimately irrelevant to how we calculate the benefit from these subsidies in this instance. Under the Department's established methodology, this program is properly treated as a grant in the year of receipt because, for as long as these funds were considered to be shareholder advances, there was no expectation of a: (1) repayment of the grant amount, (2) payment of any kind stemming directly from the receipt of the grant, or (3) claim on any funds in case of company liquidation. See the GIA (58 FR at 37254).

[4] Memorandum to Susan H. Kuhbach, from Julie Anne Osgood and Susan Strumbel; Verification of the Responses of Usinor Sacilor in the Countervailing Duty Investigations of Certain Steel Products from France (April 9, 1993), Attached to Memorandum to Case File, Excerpts Regarding Shareholder advances from Certain Steel Usinor Verification Report (December 13, 1999).

Comment 16: SODIEs

In 1983, Usinor and Sacilor established regional development subsidiary companies, subsequently to be known as SODIEs, to promote the retraining of redundant steelworkers. From 1983 through the mid-1990s, Usinor provided funds to the subsidiary SODIEs which, in turn, loaned these funds to local enterprises providing the worker retraining. Starting in 1986, the GOF agreed to provide to the SODIEs (through Usinor) additional funds matching the amount of Usinor's contribution. In return, Usinor agreed to expand the coverage of its SODIEs into other depressed regions of France. In *French Certain Steel*, the Department determined that these GOF contributions were not countervailable because they represented the GOF's share of the SODIE program and were used only for GOF purposes, not to support Usinor's steel operations. We further found that the GOF's contributions did not relieve Usinor from any costs or obligations it would otherwise have been required to incur.

The petitioners argue that the Department should find the post-1991 payments from the GOF to Usinor in support of the SODIES to be countervailable subsidies. First, the petitioners argue, the Usinor Group (including the subsidiary SODIEs) was entitled to keep full repayment (both principal and interest) of the GOF's share of the loans that the SODIEs provided to the local entities. This entitlement to repayment of the GOF's funds constitutes a grant. Second, the petitioners claim that neither the GOF nor Usinor has established that the GOF's contributions did not relieve Usinor of certain obligations to retrain redundant steelworkers. Finally, with respect to the post-1991 advances, the petitioners state that the European Commission has conceded that the SODIE advances are a financial contribution which confers a benefit, as evidenced by the EC's notification of the SODIE program to the World Trade Organization (WTO).

The petitioners also object to the Department's decision not to reinvestigate the pre-1992 SODIE contributions by the GOF. (The pre-1992 contributions were found to be not countervailable in *French Certain Steel*.) According to the petitioners, the Department failed to consider whether the GOF's SODIE contributions were ultimately grants to Usinor. The petitioners also object to the Department's finding that Usinor was not relieved of any obligations by the GOF's SODIE contributions.

The respondents counter, to start, by noting that the Department has not reinitiated an investigation into the 1980s SODIE advances and, therefore, the petitioners' arguments that the Department should find these countervailable are not relevant. With regard to the post-1990 SODIE payments by the GOF, the respondents state that the petitioners have not shown how these are materially different from the 1980s SODIEs payments, which the Department has previously found to be not countervailable.[5] Although there is additional evidence on the record of this proceeding, none of it supports a different conclusion regarding the countervailability of the program.

Specifically with regard to the petitioners' argument that a benefit was conferred on Usinor because it was entitled to repayment by the SODIEs of funds provided by the GOF, the respondents state that the Department has already considered this fact with regard to the 1980s GOF payments and, nevertheless, found that the payments made by the GOF do not confer a benefit on Usinor. This is because upon repayment of the loan, the funds were simply loaned out again. The respondents also state that, in addition to passing the GOF's contributions on to the SODIEs, Usinor made its own contributions to the SODIEs that exceeded substantially the GOF's contributions.

Finally, the respondents contend, the EC notification of the SODIE program to the WTO does not represent a concession that the GOF's payments were a subsidy to Usinor. In fact, the notification states that the loans "are not financed by the State funds but by the Usinor-Sacilor iron and steel group." Rather, the program was notified because the GOF was providing assistance to particular regions—unrelated to Usinor's assistance to steel producing regions—for which notification was appropriate.

Department's Position: On September 21, 1999, just prior to verification, the Department formally notified the respondents that it was initiating an investigation of the post-1991 GOF advances to Usinor under the SODIE program. The decision to initiate was based on questions raised by factual information submitted by the petitioners regarding the EC's notification of the SODIE program to the WTO, and the reporting of the SODIE funds in Usinor's financial statements.[6] On October 18, 1999, the Department sent a questionnaire soliciting information from the respondents and the GOF regarding this program.

The Department received questionnaire responses regarding the SODIE program from both the GOF and the respondents on November 3, 1999. In their respective questionnaire responses, both the GOF and the respondents stated that because the respondents did not apply, use, or benefit from the SODIE program during the POI, in accordance with the questionnaire instructions, no detailed response was required. Consequently, neither party provided complete details regarding the specificity of the program, or any financial contributions or benefits Usinor may have received under this program. The parties did, however, provide a general history of, and comments on, the SODIE program and the WTO's notification.

Notwithstanding these general responses to the Department's questionnaire, we find that we do not have sufficient information at this time to determine whether this program represents a countervailable subsidy. In particular, Usinor has claimed that it made contributions to SODIE that exceed the GOF's contributions and that Usinor loans to SODIE are reclassified as "risk and losses." Without further questioning, we are not able to track these amounts in Usinor's financial statements. We note that we initiated our investigation of the post-1991 SODIE contributions because the data presented in Usinor's financial statements did not reflect our understanding of the program. Without a full understanding of the amounts contributed by the GOF and Usinor, we are not in a position to say whether the post-1991 advances should be viewed differently from the pre-1992.

Because an investigation of the post-1991 SODIE advances was not initiated in time to solicit adequate, verified information from all of the necessary respondents, we have no basis upon which to use adverse facts available with respect to this program. Accordingly, we are not making a determination on the countervailability of the SODIE program in this investigation. Should a countervailing duty order be put in place, however, we will solicit information on the post-1991 SODIE advances in a future

[5] This determination, the respondents note, was subsequently upheld by the CIT in *Inland Steel*, 967 F. Supp. at 1366–68.

[6] *See Memorandum to Richard Moreland from Susan Kuhbach; Inclusion of Previously Investigated Programs in the Countervailing Duty Investigation of French Steel Plate* (September 21, 1999).

administrative review, if one is requested. *See* 19 CFR 351.311(c)(2).

We note, moreover, that based on the limited information the respondents have submitted, any potential benefits to Usinor during the POI from the SODIE program appear to be very small and, therefore, would likely have little or no impact on the overall *ad valorem* subsidy rate. See Memorandum to the file, Calculations for Final Determination, December 13, 1999.

Comment 17: Foreign Ownership

The petitioners argue that 19 CFR 351.525(b)(7) makes clear that subsidies are allocable to all domestic production regardless of the nationality of the owner of that production where it states:

> If the firm that received the subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production.

Therefore, state the petitioners, any subsidies allocated to DHS will be tied to DHS' French production only. The petitioners point out that if the Department were to adopt a policy of reducing the level of past subsidies in any way in response to a purchase of a company by a foreign entity, then governments could shield against countervailing duties by selling shares in domestic producers to foreign entities.

Department's Position: We agree with the petitioners that it is not the nationality of the owner of the productive unit that matters; rather, it is the nationality of the productive unit, itself, that is of consequence. If a unit is cross-owned by a company that receives untied subsidies and both are in the same country, we would attribute the subsidy benefits to both. For a subsidy to be considered trans-national and, therefore, not countervailable, it would have to be given by a government in one country to a company in a different country. The owners of the subsidy recipient are of no consequence in making transnational determinations.

Comment 18: Discount Rates

The petitioners state that in calculating benchmark interest rates, the new regulations require the Department to use as a base rate a long-term interest rate that would be paid by a creditworthy company. The petitioners state that there are a number of possible creditworthy rates on the current record and that, of those rates, the Department should choose the OECD-published "Medium Term Credit to Enterprises, 3–7 years" (MTCE) rates which are rates that are both long-term and rates which would be paid by a creditworthy company.

The respondents take issue with the petitioners' attempt to increase the creditworthy interest rate used in the Department's uncreditworthy interest rate calculation. The respondents argue that the bond rates selected by the Department in the *Preliminary Determination* are the most appropriate rates to use to match to default rates of corporate bond issuers as contemplated by section 351.505(a)(3)(iii) of the *CVD Regulations*. The respondents point out that the MTCE rates recommended by the petitioners are not appropriate because these rates apply to credit that is for a much shorter period of time than is typical of private sector bonds. Furthermore, respondents believe that the MTCE rates recommended by the petitioners do not match with either the bond default rates currently used or with the Department's AUL-determined benefit stream. With respect to the IMF rates, the respondents point out that they have been previously rejected by the Department as unrepresentative of long-term corporate borrowing (*see French Certain Steel*).

Department's Position: We agree with the petitioners that the Department has a variety of creditworthy interest rates on the record to select from. In calculating a creditworthy benchmark rate for use in years in which Usinor was creditworthy, but did not have a company-specific interest rate, and for use in constructing uncreditworthy benchmark rates for years in which it was not creditworthy, we applied the methodology as described in section 351.505(a)(3) of the *CVD Regulations*. This methodology requires the use of a long-term interest rate that would be paid by a creditworthy company.

On the record of the instant proceeding, there are several interest rates that could serve as the long-term interest rates that would be paid by a creditworthy company, *i.e.*, MTCE and equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France*, and private sector bond rates as published by the International Monetary Fund. With respect to the equipment loan rates, the cost of credit rates, and the private sector bond rates, the Department determined in prior cases that these rates are indicative of a creditworthy company's long-term cost of borrowing, *see French Certain Steel* (58 FR at 37314) and *French Stainless* (64 FR at 30790). Although the Department has not previously used the MTCE rates, there is no record information indicating that they would be not indicative of a creditworthy company's long-term cost of borrowing. In addition, there is no evidence on the record of this proceeding indicating that any of these rates is more appropriate than the others for purposes of constructing a creditworthy benchmark rate. Therefore, for this final determination, we are using an average of these creditworthy long-term interest rates to calculate a non-company-specific creditworthy benchmark rate.

Contrary to the respondents' argument, the Department's regulations require the use of a long-term interest rate, not an interest rate that equals the term of a company's AUL or matches the term of the other interest rates being used. We did not include the IMF-published line 60p "lending rates" because the Department has determined that these interest rates are unrepresentative of the cost of corporate long-term borrowing. *See French Certain Steel* (58 FR at 37315).

Comment 19: Sales Denominators

The petitioners state that the sales values used by Department in its preliminary determination were inflated because they included substantial transfers occurring between members of the Usinor Group. The petitioners argue that the 1998 Usinor net sales of 9.4 billion euros, as reported in its annual report, is a gross amount which includes intersegment sales occurring within the Usinor Group and that this figure does not represent the sales revenue derived by the Group from selling French merchandise to outside parties. Instead, the petitioners argue, the correct sales figure is 8.3 billion euros as reported in the annual report as total sales (or net sales minus intersegment sales).

The petitioners state that due to the manner in which GTS determines its sales revenues, it is impossible to judge whether the sales value reported by GTS is legitimate. However, the petitioners point out that there was an error in the company's calculations of its POI sales revenue as made clear by the GTS verification exhibit detailing this calculation.

The respondents take issue with the petitioners' claim that Usinor based its 1998 sales figure of French-produced merchandise on the wrong line item in its 1998 Annual Report. Respondents argue that the figure accepted by the Department includes sales of French-produced merchandise to members of the Usinor Group outside France. This is in accordance with Financial Accounting Standard 14 which requires

exclusion of intercompany sales within France in order to avoid double-counting of French production. Respondents argue that the line item entitled "intersegment sales" represents sales from one geographical segment to another geographical segment (e.g., from France to the United States) for which sales are reported.

The respondents argue that Usinor's use of the amount in the "net revenue" column is consistent with the calculation of the French-only sales denominator in *French Certain Steel*. The respondents point out that this methodology was also upheld in Court, *see Inland Steel Industries, Inc., et al, v. United States*, 967 F. Supp. 1338, 1368(CIT 1997) (Inland Steel). The respondents believe that the petitioners have no reason and cite no precedent for excluding intersegment sales within the Usinor Group. The respondents maintain that these sales are real sales carried out under arm's-length conditions. Lastly, the respondents argue that most of Usinor's U.S. sales are to affiliates and that the petitioners would never contend that any subsidies found should not be allocated to these intercompany sales.

Department Position: We disagree with the petitioners that the appropriate net sales amount for Usinor should be net of intersegment sales. According to the *Interpretation and Application of International Accounting Standard for 1998*,[7] "intersegment sales" are defined as "transfers or products or services, similar to those sold to unaffiliated customers, between industry segments or geographic areas of the enterprise." Therefore, since Usinor's intersegment sales are similar to those sold to unaffiliated customers, and there is no regulatory or statutory requirements to exclude these sales, the Department will continue to include them in Usinor's net sales amount for the POI.

With respect to the petitioners' argument that it is impossible to judge whether the sales value reported by GTS is legitimate, we disagree. While the manner in which GTS records its sales value is unusual, we do not find it to be inherently distortional. Therefore, the verified sales value for GTS is appropriate to use in the calculations for the final determination. Although GTS made a slight error in calculating its reported POI sales value, it is not the error alluded to by the petitioners. The "error" referred to by the petitioners is not an error because the adjustment they said should have been done was made in a later stage of the calculation. For more information, see the GTS verification report.

Comment 20: FOB Calculation

The petitioners argue that Usinor's reported FOB adjustment is inconsistent with other publicly available data for plate imports from France. The petitioners maintain that Usinor understated the FOB port adjustment by only including ocean freight in its shipping expenses. The petitioners argue that there are other costs such as insurance which should have been deducted which Usinor failed to account for in its calculations. The petitioners argue that the Department only verified that there were no discrepancies with Usinor's reported shipping costs, but it did not verify that there were other expenses such as insurance which should also be included in the FOB adjustment. The petitioners urge the Department to apply a more meaningful and realistic FOB port adjustment to Usinor's sales for the final determination.

Additionally, the petitioners argue that the same FOB adjustment was used to adjust GTS' French merchandise sales value with no indication of whether: (1) GTS was more or less export-intensive than the Usinor Group as a whole or (2) GTS' costs for shipping, insurance and other items were higher or lower than those of the Usinor Group as a whole. Furthermore, the petitioners point out that the Department did not verify GTS' FOB adjustment and whether it should be identical to that of the Usinor Group.

The respondents take issue with the petitioners' complaint that Usinor's FOB sales adjustment is too small because it does not include insurance and other non-shipping costs. The respondents point out that the FOB adjustment made by Usinor in this investigation was verified and is precisely the same methodology used in *French Certain Steel* and *French Stainless*. The respondents assert that the petitioners also made this same argument on appeal from *French Certain Steel*, and that the Court rejected those challenges, *see Inland Steel*, 967 F. Supp. at 1368–69.

Department Position: We agree with the respondents. Usinor has indicated that it does not maintain FOB (port) value information, as requested in the Department's questionnaire, in the regular course of business. Therefore, Usinor reported an FOB adjustment based on the methodology that was used and verified in the *French Stainless*. This methodology derived Usinor's estimated FOB value by calculating a shipping expense based on the expenses of a sample of Usinor Group companies (including ocean freight, loading and port/terminal fees) and dividing the shipping expenses by the 1998 net sales of the sampled companies to derive the ratio of shipping costs to net sales. At verification we found no reason to suspect that this methodology was distortional, rather, we found it to be a reasonable methodology for deriving Usinor's sales value on an FOB (port) basis.

With respect to the petitioners' argument that the Department accepted the same FOB adjustment for GTS without verifying whether or not it should be the same, there is no record information indicating that it would not be an inappropriate estimate. Furthermore, the Department has consistently recognized that given the vast amount of information provided during the course of an investigation and the strict time constraints imposed on the proceeding and particularly, verification, it is simply not possible to examine each and every piece of information provided by the respondents. The Department has taken the position that by testing the validity and integrity of a significant amount of relevant information, the small portion of the remaining information not examined cannot be considered inaccurate or incomplete.

In this instance, the responding companies had reported a single FOB adjustment to be applied to the sales of the Usinor Group and GTS. As discussed in Usinor's verification report, see Memorandum to the File dated November 4, 1999 regarding "Results of Verification of Usinor," this adjustment was derived by calculating the total shipping expenses of four companies within the Usinor Group: Sollac, Ugine, Unimetal and Ascometal. Although this adjustment does not include the shipping costs of GTS or CLI (also a producer of subject merchandise), we consider it to be a more reasonable estimate of shipping costs incurred by GTS than the use of the difference between the customs value and the landed value as suggested by the petitioners since the landed value could include other expenses which are not representative of the respondents' shipping costs. Nevertheless, we acknowledge that the respondents' calculation of the FOB adjustment did not include amounts for insurance. Should a countervailing duty order be put in place, we will examine this issue further in an administrative review, if one is requested.

Therefore, for the purposes of this final determination, we have continued to use the FOB adjustment reported by the responding companies and verified

[7] Excerpts are found attached to the Memorandum to the file on International Accounting Standards of December 1, 1999.

by the Department. We note, however, that in the event a countervailing duty order is put in place and an administrative review of GTS occurs, GTS will be required, as a separate entity, to report its own sales values on an FOB basis.

Comment 21: Mid-Year Grant Allocation Assumption

The petitioners take issue with the Department's allocation methodology for non-recurring benefits codified as 19 CFR 351.503(c)(4)(i). According to the petitioners, this methodology is biased in favor of respondents in the following respects:

First, the methodology assumes that the benefit was received on the first day of the first year instead of, on average, midway through the year, the petitioners claim. In so doing, claim the petitioners, it reduces the remaining, unallocated portion of the benefit that goes into subsequent years. Since it is on this unallocated portion that the time value of money calculation is attached, the petitioners argue that the benefits in subsequent years are artificially reduced.

Second, the Department's methodology provides that the yearly portion of the benefit that is amortized in subsequent years is also credited as of the first of the year, *i.e.*, no time value of money calculation is made for that portion during that year, according to the petitioners. In reality, argue the petitioners, the yearly portion of the benefit would be expended over the course of the year and another time value of money calculation would be appropriate on that yearly portion. As a result of the yearly portion being credited as of the first of the year, state the petitioners, the remaining unallocated amount of the benefit that gets moved to future years is artificially reduced at the beginning of the year instead of across the span of the year. Accordingly, point out the petitioners, the calculation of the time value of money attached to the remaining unallocated amount is also artificially reduced.

The petitioners propose adopting the assumption that benefits are received mid-year in order to neutralize the bias in the Department's methodology. To this end, the petitioners provide calculation methodologies.

The respondents note that the petitioners made these same arguments during the Department's recent countervailing duty rulemaking proceedings and that the Department rejected them. According to the respondents, the petitioners must either challenge the particular regulation that embodies the Department's grant allocation formula as unlawful or seek a new rulemaking proceeding.

Department Position: The petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the Preamble to the *CVD Regulations.*

Verification

In accordance with section 782(i)(1) of the Act, except as noted above, we verified the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Usinor (including CLI and Sollac) and GTS, the sole manufacturers of the subject merchandise. We determine that the total estimated net subsidy rate is 5.56 percent *ad valorem* for Usinor and 6.86 percent *ad valorem* for GTS. The All Others rate is 6.80 percent, which is the weighted average of the rates for both companies.

In accordance with our *Preliminary Determination,* we instructed the U.S. Customs Service to suspend liquidation of all entries of carbon-quality plate from France, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33238 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Wednesday,
December 29, 1999

Part III

Environmental Protection Agency

40 CFR Part 89 et al.

Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 37 kW; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89, 92, and 94

[AMS–FRL–6482–3]

RIN 2060–AI17

Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 37 kW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: In this action, we are establishing an emission control program for new marine diesel engines rated at or above 37 kilowatts. The affected engines are used for propulsion and auxiliary purposes in a wide variety of marine applications. The standards for these engines will require substantial reductions in oxides of nitrogen and particulate matter emissions to correspond with the next round of emission standards for comparable land-based engines. The standards will lead to significant reduction in oxides of nitrogen and particulate matter emissions from this source. When combined with other mobile source emission control programs, the program described in this action will help provide long-term improvements in air quality in many port cities and other coastal areas. Overall, these emission standards provide much-needed assistance to states facing ozone and particulate air quality problems, which can cause a range of adverse health effects for their residents, especially in terms of respiratory impairment and related illnesses.

The persons potentially affected by this action are those who manufacture new marine diesel engines or marine vessels or other equipment using such engines. Additional requirements apply to companies that rebuild or maintain these engines.

DATES: This final rule is effective January 28, 2000 except the amendments to 40 CFR parts 89 and 92 will become effective February 28, 2000, unless EPA receives adverse comment on or before January 28, 2000 regarding the amendments to 40 CFR parts 89 and 92. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments to 40 CFR parts 89 and 92 will not take effect.

The incorporation by reference of certain publications listed in the regulations in 40 CFR part 94 is approved by the Director of the Federal Register as of January 28, 2000.

ADDRESSES: Materials relevant to this rulemaking, including the Final Regulatory Impact Analysis, are contained in Public Docket A–97–50. Additional materials can be found in Public Docket A–92–28 (Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines). For the changes to 40 CFR part 92, additional materials can be found in Public Docket A–94–31 (Emission Standards for Locomotives and Locomotive Engines). These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. You may inspect the docket from 8:00 a.m. until 5:30 p.m., Monday through Friday. We may charge a reasonable fee for copying docket materials.

For further information on electronic availability of this action, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Alan Stout, Office of Mobile Sources, (734) 214–4805, *stout.alan@epa.gov*.

For a copy of the Information Collection Request, contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epamail.epa.gov*, or download it off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1897.02.

SUPPLEMENTARY INFORMATION:

Regulated Entities

You may be regulated by this action if you manufacture or introduce into commerce new marine diesel engines or if you make vessels or other equipment using these engines. Other requirements may apply to you if you rebuild or maintain marine engines. Regulated categories and entities include:

Category	Examples of regulated entities	NAICS Code	SIC Code
Industry	Manufacturers of new marine diesel engines	333618	3519
Industry	Manufacturers of marine vessels	3366	3731
			3732
Industry	Engine repair and maintenance	811310	7699

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, carefully examine the regulations, especially the applicability criteria in § 94.1. Direct any questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language and Final Regulatory Impact Analysis are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. The electronic version of this rulemaking is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/oms/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Table of Contents

I. Introduction
  A. Background
  B. Statutory Authority
II. Scope of Application
  A. Definition of New
  B. Importing and Exporting Marine Engines
  C. Marine Engine Definitions
  D. Remanufactured Engines
  E. Recreational Engines
  F. Engine Dressing Exemption
  G. Foreign-Trade Exemption
  H. National Security Exemption
  I. Competition Exemptions
  J. Other Exemptions
III. Engine Categories
IV. Emission Standards and Related Provisions
  A. Standards and Dates
  1. MARPOL Annex VI
  2. Tier 2
  B. Total Hydrocarbons

C. Crankcase Emissions
D. Smoke Requirements
E. Alternative Fuels
F. Test Procedures
1. Duty Cycles
2. In-Use Testing
3. Test Fuel
4. Adjustable Parameters
5. Determination of Maximum Test Speed
G. Not-to-Exceed Standards and Related Requirements
H. Voluntary Low-Emitting Engine Program
I. Durability
1. Useful Life
2. Warranty Periods
3. Deterioration Factors
4. Rebuilt Engines
5. Replacement Engines
J. Certification
1. Engine Family Definition
2. Emission Data Engine Selection
K. Production-Line Testing
L. Miscellaneous Compliance Issues
M. Averaging, Banking, and Trading Program
N. Special Provisions for Post-Manufacture Marinizers
V. Technological Feasibility
VI. Areas for Future Action
A. Tier 3 Emission Standards
B. Emission Standards for Remanufactured Engines
C. NTE Requirements for Auxiliary Engines
D. Application of Provisions to Marine Diesel Engines Less than 37 kW
E. Category 3 Engines
VII. Projected Impacts
A. Environmental Impacts
B. Noise, Energy, and Safety
C. Economic Impacts
D. Cost-effectiveness
VIII. Direct Final Changes
IX. Public Participation
X. Administrative Requirements
XI. Judicial Review

List of Tables

Table 1 Engine Category Definitions
Table 2 MARPOL Annex VI Emission Limits
Table 3 Final Tier 2 Emission Standards and Dates
Table 4 Voluntary Emission Standards
Table 5 Useful Life and Warranty Periods
Table 6 Category 1 Commercial Propulsion and Auxiliary Emissions Inventory
Table 7 Category 2 Emissions Inventory
Table 8 [Reserved]
Table 9 Emission Reductions From Engines Subject to Tier 2 Standards
Table 10 Projected Cost Impacts by Power Rating
Table 11 Cost-Effectiveness of the Marine Tier 2 Standards for HC and NO_X
Table 12 Aggregate Cost-Effectiveness for the Marine Tier 2 Standards for HC and NO_X

I. Introduction

A. Background

The Clean Air Act as amended in 1990 mandated that we establish emission regulations for a variety of previously unregulated nonroad mobile sources of emissions, including marine engines. We most recently proposed emission standards and an associated compliance program for commercial marine diesel engines on December 11, 1998 (63 FR 68508).[1] At a public hearing on January 19 and in the rest of the comment period we heard from 35 commenters. The program we are finalizing here follows from the approach described in the proposal, though we made numerous adjustments in response to the comments and other information received since the proposal. The proposal included an extensive discussion of the air quality problems we are addressing and the regulatory history of this rulemaking (see Sections I, II, and XI of the proposal). A summary description of the final rule follows in this document. Further discussion of issues and the anticipated impacts of the final rule are in the Final Regulatory Impact Analysis (Final RIA) and the Summary and Analysis of Comments. These documents and all the comments we received are contained in Docket A–97–50.

The International Maritime Organization (IMO) is the Secretariat for the International Convention on the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto (better known as MARPOL 73/78). Annex VI to that Convention, adopted on September 27, 1997 (but not yet in force) contains, among other provisions, requirements to limit NO_X emissions from marine diesel engines, but sets no limits for other engine pollutants (*i.e.*, HC, CO, PM). Other provisions of Annex VI include requirements for ozone-depleting substances, sulfur content of fuel, incineration, VOCs from refueling, and fuel quality. The United States has signed Annex VI, but the Annex has not yet been forwarded to the Senate for its advice and consent.

B. Statutory Authority

We conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991, as directed by the Clean Air Act, section 213(a) (42 U.S.C. 7547(a)). Based on the results of that study, we determined that emissions of NO_X, VOCs (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires us to establish (and from time to time revise) emission standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have determined that commercial and recreational marine diesel engines rated over 37 kW cause or contribute to such air pollution (See also the preamble to the proposed rule).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that cause or contribute to such air pollution. We have determined that commercial and recreational marine diesel engines rated over 37 kW cause or contribute to such air pollution (See also the preamble to the proposed rule).

II. Scope of Application

Clean Air Act section 213(a)(3) broadly sets the scope of application of this final rule, instructing us to promulgate regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles that are found to cause or contribute to ozone or carbon monoxide concentrations in more than one nonattainment area. As explained below and in the text of the regulations, the rulemaking generally covers all new diesel engines installed in a marine vessel, and all new marine vessels that use those engines. This includes both propulsion and auxiliary engines.

A. Definition of New

We are extending the definition of "new" contained in 40 CFR 89.2 to marine diesel engines at or above 37 kW. Under that definition, an engine is considered new until its legal or equitable title has been transferred, or the engine has been placed into service. Because the definition of new in 40 CFR 89.2 applies to both engines and equipment, its extension to the marine sector extends as well to vessels. Starting with the implementation dates of the new emission standards, we will consider vessels new until their equitable or legal title has been transferred to an ultimate purchaser. In addition, we will consider a vessel new if it undergoes modifications such that the modified vessel derives at least half

[1] The December 1998 proposal superseded earlier proposed emission standards for marine diesel engines (59 FR 55929, November 9, 1994, and 61 FR 4600, February 7, 1996). References in this document to "the proposal" or "the proposed rule" refer only to the December 1998 proposal.

of its value from new materials or components. This prevents someone from re-using the hull or other parts from a used vessel to avoid emission standards.

To further clarify the definition of "new," 40 CFR 89.2 specifies that a nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purpose. For the purpose of applying this criteria to marine diesel engines and new vessels, we have concluded that a marine diesel engine is used for its functional purpose when it is installed on a marine vessel. This clarification is needed because some marine diesel engines are made by modifying a highway or nonroad engine that has already been installed on a vehicle or other equipment. In other words, the engine has been transferred to an ultimate purchaser after it is used for its functional purpose as a land-based nonroad engine (for example, on a truck or a backhoe) and is therefore no longer new, but it is later removed for marinization and installation on a marine vessel. While the 40 CFR 89 requirements for land-based nonroad diesel engines do not contain such a requirement, we believe it is reasonable to treat these engines as new marine engines when they are installed on a vessel. While the practice of marinizing used highway or nonroad engines may be infrequent, it could become more common if these engines are not subject to the standards finalized in this document.

As described in the proposal, we are not applying emission standards to remanufactured engines. In Section VI we discuss the potential for considering this issue in the future.

B. Importing and Exporting Marine Engines

Engines imported for use in the United States are covered by this final rule whether they are imported as loose engines or are already installed on a vessel constructed elsewhere. We will require all imported engines to have a certificate of conformity from us before anyone may enter them into commerce in the United States, subject to limited exemptions. Accordingly, we are applying the approach contained in other highway and nonroad engine programs, according to which any engine or vessel that is imported into the United States without a valid certificate of conformity and that was built after the effective date of the applicable standards, will be considered new at the time it is imported into the United States. As a new engine, it will have to comply with the relevant emission limits in effect at the time it was manufactured. Thus, for example, a marine vessel manufactured in a foreign country in 2007 that is imported into the United States in 2010 would be considered new, and its engine would have to comply with the emission limits in effect for model year 2007. This provision is important to prevent manufacturers from avoiding the emission requirements by building vessels abroad, transferring their title, and then importing them as used vessels.

Engines that are to be exported to countries with emission standards different than ours are exempt from the requirements of this final rule. Marine engines that are exported but are subsequently re-imported into the United States must, however, meet the new emission standards that apply based on the manufacturing date of the engine. This would be the case when a foreign company purchases marine engines manufactured in the United States for installation on a vessel that will be subsequently exported to the United States. It would also be the case when a foreign company purchases marine engines manufactured in the United States for dressing and subsequent re-exportation to the United States. Engines that are intended for export but that will be re-imported into the United States are subject to the emission standards at the time the engine is manufactured, unless the vessel manufacturer or marinizer intends to re-certify the engines to comply with emission standards before they enter the United States. Consequently, foreign purchasers who do not wish to recertify the engines will need to make sure they purchase complying engines for those marine vessels or engines they intend to subsequently offer for sale in the United States. Engines intended for export and sale in a foreign country should be easily distinguishable from complying engines because complying engines are required to be labeled as such. Any person who introduces into commerce in the United States a noncomplying engine that is intended for export and use in a foreign country will be subject to civil penalties.

To determine when an engine or vessel will be considered "imported" for the purposes of determining compliance with emission standards, we will follow the approach contained in the Harmonized Tariff Schedule of the United States (HTSUS). According to HTSUS, vessels used in international trade or commerce or vessels brought into the territory of the United States by nonresidents for their own use in pleasure cruising are admitted without formal customs consumption entry or payment of duty.[2] This approach is consistent with the Treasury Department's ruling, which concluded that vessels coming into the United States temporarily as carriers of passengers or merchandise are not subject to customs entry or duty, but if brought into the United States permanently, they are to be considered and treated as imported merchandise. *See American Customs Brokerage Co., Inc., a/c Astral Corp.* v. *United States*, 375 F. Supp. 1360, 1366 (Cust. Ct. 1974). This means that engines installed on vessels flagged in another country that come into the United States temporarily will not be subject to the emission standards, because they are not imported and are therefore not new engines under Clean Air Act Section 216(3) and 213(d).

C. Marine Engine Definitions

In the final land-based nonroad engine rule, we determined that a portable auxiliary engine used onboard a marine vessel should not be considered a marine engine (October 23, 1998, 63 FR 56967). Instead, a portable auxiliary engine is considered to be a land-based engine subject to the requirements of 40 CFR Part 89. To distinguish a marine auxiliary engine installed on a marine vessel from a land-based portable auxiliary engine used on a marine vessel, we specified in that rulemaking that an auxiliary engine is installed on a marine vessel if its fuel, cooling, or exhaust systems are an integral part of the vessel. These auxiliary engines are therefore not fundamentally different than land-based engines and we regulate them under 40 CFR Part 89.

With very few exceptions, this final marine engine rule applies equally to propulsion and auxiliary engines. Consistent with the definitions in 40 CFR Part 89, a propulsion engine is one that is intended to move a vessel through the water or assists in guiding the direction of the vessel (including, for example, bow thrusters). Auxiliary engines are all other marine engines. Propulsion and auxiliary engines have different duty cycles and different load factors for calculating emission credits. Auxiliary engines will not be subject to not-to-exceed requirements until we finalize them for land-based nonroad engines. Also, auxiliary engines are not eligible to qualify as recreational engines.

[2] HTSUS (1994), Additional U.S. Note 1. In particular, cruise ships, ferry boats, cargo ships, barges and "similar vessels for the transportation of persons or goods" are duty free. HTSUS (1994) 8901.

Marine drilling platforms are another example of an application where the question arises of whether an engine is a marine engine (subject to 40 CFR Part 94) or a land-based nonroad diesel engine (subject to 40 CFR 89). Drill ships are clearly marine vessels, so engines installed in drill ships are marine engines. In contrast, permanently anchored drilling platforms would not qualify as marine vessels, so none of the engines associated with one of these facilities would be a marine engine. A third class of drilling equipment is less clear. Semi-submersible drilling rigs are moored to the ocean bottom, but have some propulsion capability. We consider these to be marine vessels, so any engine that is "installed" on such a rig would be a marine engine. As described above, we would consider portable engines on a drilling rig to be land-based nonroad engines, since they are not installed on the vessel.

D. Remanufactured Engines

As described in the proposed rule, we are not setting emission standards for engines originally manufactured before the Tier 2 standards take effect. Section VI describes our ongoing concern with remanufactured engines.

E. Recreational Engines

We continue to believe, as we discussed in the proposal, that it is appropriate to distinguish between commercial and recreational marine engines for the purpose of establishing requirements for engine and vessel manufacturers. This is because the performance characteristics for these two kinds of engines can be substantially different, due to the different characteristics of the vessels on which they are installed. Commercial marine vessels tend to be displacement hull vessels, designed and built for a unique application. Power ratings for engines used on these vessels are analogous to land-based applications, and these engines are warranted for 2,000 to 5,000 hours of use a year. Recreational vessels, on the other hand, tend to be planing vessels, and engines used on these vessels are designed to achieve higher power output with less engine weight. This increase in power reduces the lifetime of the engine; recreational marine engines are therefore warranted for fewer hours of operation than their commercial counterparts.

We will be pursuing emission limits for recreational marine engines in a separate rulemaking. This makes it necessary to clearly define recreational marine engine, so engine manufacturers and users will be able to know which set of standards apply to their engine.

In this final rule, we are finalizing a definition of recreational marine engine as a propulsion engine that is intended by the manufacturer to be installed on a recreational vessel. To ensure that users will not install a recreational engine on a commercial vessel his engine, we are requiring the following label language (in our proposed rulemaking for recreational marine engines, we will also address any changes that would be appropriate or necessary for this label):

THIS ENGINE IS CATEGORIZED AS A RECREATIONAL ENGINE UNDER 40 CFR PART 94, AND IS NOT SUBJECT TO THE EMISSION STANDARDS OF THAT PART. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

It should be noted that there is no prohibition against installing a certified commercial marine engine on a recreational vessel. In fact, we encourage recreational vessel manufacturers to use certified engines whenever possible due to the beneficial impact on the environment. There is also no prohibition on installing an old marine engine in an old vessel.

We are revising our definition of recreational marine engine, in response to comments, to bring it more in line with the Coast Guard approach contained in 46 U.S.C. 2101. Specifically, we are defining a recreational vessel as a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure. However, we continue to believe that it is necessary to put some boundaries on this definition, since certain vessels that are used for pleasure may have operating characteristics that are, in fact, similar to commercial marine vessels. For example, engines installed on excursion boats should be grouped with commercial marine engines because they are used much more intensely (more hours, higher load) than engines on a similar vessel operated exclusively for one's own pleasure. Therefore, we are drawing on the Coast Guard's definition of passenger vessel to further delineate what will be considered to be a recreational vessel. Specifically, vessels of less than 100 gross tons that carry more than six passengers will not be considered recreational vessels, and vessel of 100 gross tons or more that carry one or more passengers will not be considered recreational vessels. For the purpose of defining a recreational vessel, a passenger will have the same meaning as that in given by 46 U.S.C. 2101(21), which is generally a person that pays to be on the vessel. Finally, a vessel that is used solely for competition will not be considered a recreational vessel.

A vessel will be a considered a recreational vessel if the boat builder intends that the customer will operate the boat consistent with the recreational-vessel definition. Relying on the boat builder's intent is necessary since manufacturers need to establish a vessel's classification before it is sold, whereas the Coast Guard definitions apply at the time of use. The final definition therefore relies on the intent of the boat builder to establish that the vessel will be used consistent with the above criteria. If a boat builder manufactures a vessel for a customer who intends to use the vessel for recreational purposes, we will always consider that a recreational vessel regardless of how the owner (or a subsequent owners) actually uses it. To be able to verify that boat buyers don't abuse this provision, we would need to have some way of verifying the validity of the vessel manufacturer's original intent, for example, with written assurance from the buyer. We are not finalizing such a requirement in this final rule, but intend to address it when we propose emission standards for recreational marine engines.

F. Engine Dressing Exemption

Some companies produce marine engines by marinizing new, land-based engines and modifying them for installation on a marine vessel. This can be done in a way that does not affect emissions. For example, the modifications may consist of adding mounting hardware and a generator or reduction gears for propulsion. It can also involve installing a new marine cooling system that meets original manufacturer specifications and duplicates the cooling characteristics of the land-based engine, but with a different cooling medium (*i.e.*, water). This is similar to the process of buying certified land-based engines to make a generator or other equipment. This simplified approach of producing an engine can be described as dressing an engine for a particular application. Because the modified land-based engines are subsequently used on a marine vessel, however, these modified engines will be considered marine diesel engines, which then fall under the requirements in this final rule.

The final rule exempts engines from the marine certification requirements if

the marinizing company meets the following conditions.

(i) The engine being dressed, (the "base" engine) must be a heavy-duty highway, land-based nonroad, or locomotive engine, certified pursuant to 40 CFR Part 86, 40 CFR Part 89, or 40 CFR Part 92. The base engine must be certified to the standards that apply at the time the base engine manufacturer completes assembly of the engine. We don't allow stockpiling of uncertified engines.

(ii) The dressing process must not involve any changes that can reasonably be expected to increase engine emissions. This includes a requirement that engine cooling and aftercooling systems stay within the ranges specified by the original engine manufacturer.

(iii) The original emissions-related label must remain on the engine.

(iv) The dressing company must report annually to us the models that are exempt under this provision.

(v) The engine model must not be primarily for marine application.

The goal of our engine dressing provisions is to eliminate the burden of certification and other compliance requirements where we have confidence that engines already certified to comparable standards from other programs will meet marine engine emission standards. Moreover, the certificate holder for the base engine continues to be liable, under the terms of the original certification, for the emissions performance of the dressed engine. We will nevertheless require, as we proposed, that a company certify dressed engines under 40 CFR Part 94 if the majority of engines produced are for marine application. This prevents a company taking advantage of the engine dressing exemption to produce marine diesel engines under, for example, a land-based nonroad diesel certificate, even though the engine might be used almost exclusively for marine application. Companies that produce engines qualifying for the engine dressing exemption will be exempt from the certification requirements and prohibited acts of 40 CFR Part 94. Minimal reporting and labeling requirements apply to these engines, as described below.

Companies that produce marine versions of their base engines may qualify for the engine dressing exemption if they meet the established criteria. Base engine manufacturers utilizing the dressing exemption must submit marine-specific emission data on their dressed marine engines. In addition, we may request marine-specific data from the original engine manufacturer if another company is dressing their engines for marine application. We would use this data for oversight to determine the validity of the exemption. Except for this testing responsibility, the discussion of engine dressing applies equally whether an original engine manufacturer or a post-manufacture marinizer produces the marine engine.

Heavy-duty highway engines are certified to a much different test cycle, which has in the past prevented us from accepting a highway engine certificate for nonroad applications for certification. Now that we are proposing to revise the standards and test procedures for these engines to control steady-state emissions, we can be more confident that they will adequately control emissions in a marine application. Thus, any certified heavy-duty highway, nonroad, or locomotive engine will be eligible for the dressing exemption.

Engine manufacturers might use averaging, banking, or trading to produce land-based engines that are certified with emission levels exceeding the comparable marine emission standard. These engines could not meet the proposed engine dressing criteria. Unlike an original engine manufacturer, a post-manufacture marinizer has no control over this. We have therefore simplified the criteria to say that any engine must be certified to land-based standards that apply to that engine at the time the dressing company buys the engine. This is true regardless of whether the original engine was certified using emission credits under the ABT program. Similarly, our NTE provisions do not apply to dressed engines, unless NTE provisions are in place for the certified base engine.

Engines that qualify as dressed engines are exempt from the marine emission standards. We therefore will not treat these as regulated marine engines. If we find that a company with an engine dressing exemption does not, in fact, meet the criteria spelled out in the regulations, the engines are not exempt and we may pursue enforcement for selling uncertified marine engines and/or tampering with certified engines.

We are including in the final rule a requirement that dressing companies put a label on each exempted engine stating the name of the dressing company and the fact that the engine was marinized without affecting emission controls. This will make clear that the engine is acceptable for use in a marine vessel. In addition, dressing companies will need to give us minimal notification that they are modifying certified engines. This can be done once annually for a company's whole range of dressed marine engines.

In addition to the labeling requirement, we encourage engine manufacturers to inform companies dressing their engines of these requirements. This will not only aid us in educating affected companies, it may help protect engine manufacturers from exposure to liability if their engines are ever found in a marine vessel without proper documentation.

G. Foreign-Trade Exemption

Oceangoing vessels with Category 3 propulsion engines typically have additional Category 1 and Category 2 engines onboard. We are adopting a provision that will allow owners of qualifying vessels to obtain an exemption from the national emission requirements for Category 1 and Category 2 engines that are installed on any U.S.-flagged vessel engaged in foreign trade or other overseas operation. We expect that ship owners will buy MARPOL-compliant engines because ships that travel to foreign ports will eventually need to demonstrate compliance with the Annex VI NO_x limits to get an International Air Pollution Prevention Certificate for their vessels. While the proposed regulation text inadvertently limited this to auxiliary engines, the exemption applies equally to propulsion engines that meet the criteria. This provision will allow all engines on qualifying vessels to meet solely the international requirements. This exemption will go into effect at the same time as the implementation of the domestic emission standards for these engines.

A vessel owner can obtain this exemption if it can be demonstrated to the Administrator's satisfaction that the vessel: (a) Will spend less than 25 percent of its total engine operation time within 320 nautical kilometers (200 nautical miles) of U.S. territory; or (b) will not operate between two United States ports, as evidenced by the vessel having solely a registry endorsement from the Coast Guard. The second qualifying criterion was described in the preamble to the proposed rule, but was inadvertantly omitted from the proposed regulation text. For installation of new or replacement engines on used vessels, the vessel's service record can be used to show where the vessel will be operated. For a new vessel, however, this determination must be made before it is placed into service, so it will not be possible to use the vessel's service record to make the determination described in (a). Instead, application to the Administrator for this exemption

can rely on the vessel owner's business plans for the vessel, as well as on records from other vessels under the owner's control, any features of the vessel that will tend to limit its use within the specified area, or such other information as the Administrator shall request. Similarly, the determination described in (b) will rely on a good faith statement by the owner that the vessel is intended to hold only a registry endorsement. It should be noted, however, that if we learn that a vessel owner subsequently receives a coastwise or other registration that would allow the vessel to operate between two U.S. ports, we may review the validity of the exemption. This would also have a bearing on future requests for an exemption.

Category 1 and 2 engines that are exempt under this provision must be labeled to indicate that they have been certified only to the MARPOL Annex VI NO_x curve limits and that they are for use solely on vessels that meet the above criteria.

H. National Security Exemption

With regard to the national security exemption, we are applying an approach similar to that in our existing land-based nonroad and gasoline marine programs (40 CFR 89.908 and 40 CFR 91.1008). Under this exemption, only marine engines used in vessels that exhibit substantial features ordinarily associated with military combat, such as armor, permanently affixed weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements and which will be owned and/or used by an agency of the federal government with the responsibility for national defense, will be exempt from the regulations in this subpart for reasons of national security. No request for an exemption is necessary for these engines.

There may be situations in which an exemption from the emission controls is necessary for other vessels used for national security. Manufacturers may in these cases request a special national security exemption. A manufacturer will need to justify this request and get an agency of the federal government charged with responsibility for national defense to endorse it. We understand that the Navy, and all other branches of the government, will do their best to comply with the emission standards finalized in this final rule.

I. Competition Exemption

We are addressing competition engines, also referred to as racing engines, in two ways. First, engines produced by the manufacturer specifically for competition are exempt from the requirements of the rule. The Clean Air Act does not consider these to be nonroad engines, so none of the requirements of 40 CFR 94 apply, except for a requirement to label the engines. Manufacturers need only get our approval to sell engines under this exemption. Second, someone can modify a certified engine for competition purposes. Normally we would prohibit making such changes to certified engines under the anti-tampering provisions. The final rule, however, exempts these engines from the anti-tampering provisions for engines that are used "solely for competition."

Engines or vessels used for amateur or occasional competition do not meet the competition exemption criteria. Our review of a request from a manufacturer should prevent abuse of this provision for engines that are originally produced for competition. There is, however, no approval step for someone who modifies engines for competition, so we will more clearly spell out criteria indicating whether the engine will be used solely for competition. Specifically, owners meeting all the following criteria will qualify for the competition exemption:

—The engine and vessel are designed and built to be used solely for competition. For example, we would not expect engines used solely for competition to have a lifetime until rebuild greater than about 10 hours.

—The vessel is registered with a nationally recognized organization that sanctions professional competitive events.

In addition, once an engine is modified for competition, the engine is no longer certified to the requirements of 40 CFR 94 and must therefore not be used in an application where we would require a certified engine.

J. Other Exemptions

We are extending other nonroad exemptions to marine diesel engines. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the export exemption. Remember that these exemptions are not necessarily automatic, and that the engine or vessel manufacturer, or ultimate engine owner, may need to apply for them. As part of the approval, we may require labels on exempted engines.

III. Engine Categories

The engines that are the subject of this action are very diverse in terms of physical size, engine technology, control hardware, and costs associated with reducing emissions. These differences make it difficult to design one set of emission requirements for all marine diesel engines. For example, numerical emission limits that may be reasonable and feasible for a 37 kW engine used on an 5.5-meter (18-foot) boat may not be reasonable or feasible for a 1,500 kW engine installed on a tug or a 20,000 kW engine installed on an ocean-going container ship. Similarly, numerical emission limits appropriate for very large engines may be not be appropriately stringent for smaller engines, requiring little or no emission reduction.

Consequently, it is necessary to divide marine diesel engines into categories for the purposes of applying emission limits and duty cycles. We are adopting the categorization scheme summarized in Table 1. This relies predominantly on per-cylinder displacement to distinguish between categories of engines. This has the advantage that per-cylinder displacement is an engine characteristic that is not easily changed and is constant for a given engine model or series of engine models.

TABLE 1.—ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder
1	disp. <5 liters (and power ≥37 kW).
2	5 ≤ disp. <30 liters.
3	disp. ≥30 liters.

We define Category 1 engines as those marine diesel engines that are rated above 37 kW and have a per-cylinder displacement of less than 5 liters. This definition groups together the class of marine engines that are serially produced and generally derived from land-based nonroad configurations or use the same emission control technologies. These engines are typically used as propulsion engines on relatively small commercial vessels (fishing vessels, tugboats, crewboats, *etc.*) They are also used as auxiliary engines on vessels of all sizes and applications. Category 2 engines are those marine diesel engines with per-cylinder displacement at or above 5 liters and up to 30 liters. These are the largest engines that are widely used as propulsion engines in harbor and coastal vessels in U.S. waters. These engines also provide auxiliary power on very large vessels. Many of these engines are of similar size and configuration as locomotive engines or use comparable emission control technologies. We define Category 3

engines as those marine diesel engines with a displacement at or above 30 liters per cylinder. These are very large high-power engines that are used almost exclusively for propulsion on vessels engaged in international trade.

We further divide Category 1 engines into several subgroups. These subgroups are similar to the land-based nonroad diesel engine subgroups, except that the subgroups are based on per-cylinder displacement rather than on engine power.

The final rule also divides Category 2 into subgroups, with gradually increasing emission standards for larger engines. Engines between 5 and 15 L/cyl are generally derived from locomotive engines and have corresponding emission standards. The current range of marine engine models over 15 L/cyl have design constraints that limit their ability to control emissions. Since engines under 15 L/cyl may not currently be capable of providing adequate propulsion power for all vessels in this size range, we believe the best approach is to accommodate the technology constraints of these engines by setting emission standards less stringent than for locomotive-derived engines. These standards reflect the reduced capability of controlling emissions from engines designed to operate on heavy fuel (and the need to reduce emissions from a higher baseline level).

Engines models between 15 and 20 L/cyl in particular are in a somewhat transitional category. These engines are sometimes used in harbor and inland river applications alongside locomotive-derived engines. Higher-power models are used in coastal and open-sea operations alongside engines with much larger per-cylinder displacement. The final rule separates engines between 15 and 20 L/cyl into two subgroups, those with a rated power less than 3300 kW and those with a rated power 3300 kW or greater. Locomotive engine manufacturers are developing new locomotive engines between 15 and 20 L/cyl (up to about 4500 kW), but it is not clear if these engines will be made available for marine application. In the Tier 2 time frame, we therefore believe it is appropriate to set emission standards based on what is achievable for the engines currently available. If it appears that these larger locomotive engines will become available as marine engines in the future, we would need to reconsider this approach to take into account the emission-control capabilities of these engines.

There are several marine engine models available worldwide with per-cylinder displacement between 20 and 30 liters. Very few of these engines are currently installed in vessels that are flagged and used in the United States. In the final rule we expand Category 2 to include engines up to 30 L/cyl. We subdivide the category with graduated emission standards for 20 to 25 L/cyl and 25 to 30 L/cyl engines reflecting the emission control capability of those engines. This should prevent high-emission engines from displacing smaller engines in common applications.

IV. Emission Standards and Related Provisions

This section describes the emission standards for commercial marine diesel engines at or above 37 kW. It also describes provisions that will ensure that engines comply with the emission limits across all engine speed and load combinations, throughout their useful life. We discuss in this section requirements related to test procedures, fuel specifications, certification, and compliance.

A. Standards and Dates

1. MARPOL Annex VI

MARPOL Annex VI specifies that any diesel engine over 130 kW installed on a vessel constructed on or after January 1, 2000 and to any engine that undergoes a major conversion after that date must comply with the Annex VI NO_X limits.[3] These NO_X requirements, listed in Table 2, are intended to apply to all vessels in a country's fleet. However, according to Regulation 13(1)(b)(ii) of the Annex, a country has the option of setting alternative NO_X control measures for engines on vessels that are not operated internationally. This final rule is intended to be an alternative NO_X control measure under the Annex for engines on US-flagged vessels that are not operated internationally.

In this final rule, we are not adopting the MARPOL Annex VI NO_X emission limits under U.S. law. However, we are encouraging engine manufacturers to make Annex VI compliant engines available and ship owners to purchase and install them on all vessels constructed on or after January 1, 2000. Because this voluntary emission control program is the first set of standards for marine diesel engines at or above 37 kW in the U.S., we sometimes refer to them as Tier 1 standards. We are also not finalizing emission limits for Category 3 engines in this rule, and the voluntary MARPOL Annex VI NO_X limits will be the sole emission control applicable to those engines.

To encourage vessel owners to purchase MARPOL Annex VI compliant engines prior to the date the Annex goes into force for the United States, we have developed a voluntary certification program that will allow engine manufacturers to obtain a Statement of Voluntary Compliance to the MARPOL Annex VI NO_X limits. Owners of vessels that are not operated internationally but that will be subject to the MARPOL survey requirements after Annex VI goes into effect for the United States should be aware that they may be required to demonstrate compliance with the Annex VI NO_X limits when they apply for their International Air Pollution Prevention (IAPP) certificate. Owners of vessels that are operated internationally may also be required to demonstrate compliance with the MARPOL limits after the Annex goes into effect, both because they will be required to have an IAPP and because they may be subject to port state controls. For all of these reasons, we expect ship owners to begin purchasing compliant engines for installation on ships constructed on or after January 1, 2000, and to bring engines into compliance when they undergo a major conversion after that date. Ship owners who fail to comply with the MARPOL VI NO_X requirements may face compliance and liability problems after U.S. ratification or the Annex goes into force internationally. Bringing engines into compliance at that time may involve retrofitting or replacing noncomplying engines. Ship owners may also be required to remove their vessels from service while these issues are resolved.

TABLE 2.—MARPOL ANNEX VI EMISSION LIMITS

Engine Speed, rpm	NO_X (g/kW-hr)
n <130	17.0
130 ≤ n <2000	$45.n^{(-0.2)}$
n ≥2000	9.8

This voluntary approach to the MARPOL Annex VI emission limits depends on the assumption that manufacturers will produce MARPOL-compliant engines before the emission limits go into effect internationally. Engine manufacturers can use the voluntary certification program mentioned above to obtain a Statement of Voluntary Compliance to the MARPOL NO_X limits. If, however, manufacturers continue to sell engines

[3] The Annex VI emission limits are not enforceable until the annex goes into effect: 12 months after it is ratified by 15 countries representing at least 50 percent of the gross tonnage of the world's merchant shipping.

with emissions above MARPOL levels or if the Annex is not ratified by the United States or does not go into effect internationally, we will revisit the need to adopt these emission limits under the Clean Air Act.

Finally, note that after the standards finalized in this final rule go into effect, engines meeting these national standards will also meet the less stringent MARPOL Annex VI NO_X limits and separate emission testing will not be required. However, engines intended for use on foreign-trade vessels or for sale in foreign countries will still be required to comply with the administrative, recordkeeping, and survey requirements that will be mandated when MARPOL Annex VI goes into force for the United States.

2. Tier 2

The Clean Air Act provides guidance for setting emission standards for nonroad engines in section 213(a)(3), instructing us to set standards that achieve the greatest degree of emission reduction achievable through the application of technology the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

As described in the Final Regulatory Impact Assessment, manufacturers of marine diesel engines typically start with a partially or fully completed land-based nonroad diesel engine or, in some cases, a highway diesel engine, and adapt it for use in the marine environment. The emission standards that apply to land-based nonroad diesel engines therefore serve as the primary basis for the standards that apply to marine diesel engines. The land-based nonroad diesel engine standards in turn were designed to expand the use of highway engine technologies. The marine diesel new emission standards, and the underlying technology assumptions, are similarly derived from highway engine emission standards and technologies.

Table 3 contains the emission standards for commercial marine diesel engines at or above 37 kW. We are setting a standard of 7.2 g/kW-hr NO_X+HC for most Category 1 engines. For engines under 0.9 liters per cylinder, a 7.5 g/kW-hr applies to correspond with the standard for land-based nonroad engines. The PM standards vary by engine size, as shown in Table 3; these values generally match the limits that apply to the counterpart land-based engines. The CO emission standard is 5 g/kW-hr for all engines. New Category 1 engines under 0.9 liters per cylinder produced starting in 2005 must comply with these standards. For Category 1 engines over 2.5 liters per cylinder, the starting date is 2007. For the rest of Category 1, these standards apply to new engines produced beginning in 2004.

For Category 2 engines between 5 and 15 liters per cylinder, the NO_X+HC and PM standards are 7.8 g/kW-hr and 0.27 g/kW-hr, respectively. Bigger Category 2 engines are subject to graduated NO_X+HC standards and a PM standard of 0.5 g/kW-hr, as shown in Table 3. These standards apply to new engines produced beginning in 2007.

These dates refer to the point at which the manufacturer concludes the final assembly of the engine. This also applies to remanufactured and imported engines that qualify as new marine engines. In addition, an engine can become new without being manufactured, remanufactured, or imported, if it is an engine that has been placed into service in non-marine application before being installed on a vessel. In this case, these dates refer to the point at which the engine is installed on a vessel.

TABLE 3.—FINAL TIER 2 EMISSIONS STANDARDS AND DATES

Category	Displacement (liters/cylinder)	Starting Date	NO_X+THC (g/kW-hr)	PM (g/kW-hr)	CO (g/kW-hr)
1	power ≥37 kW disp. <0.9	2005	7.5	0.40	5.0
	0.9 ≤ disp. < 1.2	2004	7.2	0.30	5.0
	1.2 ≤ disp. < 2.5	2004	7.2	0.20	5.0
	2.5 ≤ disp. < 5.0	2007	7.2	0.20	5.0
2	5.0 ≤ disp. < 15.0	2007	7.8	0.27	5.0
	15.0 ≤ disp. < 20.0, and power < 3300 kW	2007	8.7	0.50	5.0
	15.0 ≤ disp. < 20.0, and power ≥3300 kW	2007	9.8	0.50	5.0
	20.0 ≤ disp. < 25.0	2007	9.8	0.50	5.0
	25.0 ≤ disp. < 30.0	2007	11.0	0.50	5.0

We are finalizing requirements to ensure that engines meet the emission standards during real-world operation, not only under laboratory testing (see Section IV.G.). Under these requirements, marine engines may not exceed the applicable emission standards by a fixed percentage while the engine is operated in any load/speed combination contained in specified not-to-exceed (NTE) zones.

B. Total Hydrocarbons

The emission standards specify total hydrocarbons (THC) rather than nonmethane hydrocarbons. Organic emissions are sometimes expressed as nonmethane hydrocarbons because methane is significantly less reactive than other hydrocarbons in the formation of ozone. However, for diesel engines, methane makes up only about two percent of the total hydrocarbons. In addition, HC generally makes up less than five percent of the combined HC+NO_X from diesel engines. The combination of these two factors makes the methane fraction a mathematically insignificant portion of the HC+NO_X emission standard.

C. Crankcase Emissions

We are requiring that all naturally aspirated marine diesel engines have closed crankcases, where blowby gases are routed into the engine intake air stream. For turbocharged engines, manufacturers may have a closed crankcase or route blowby gases directly to the atmosphere. If manufacturers do not have a closed crankcase, they must make it possible to readily route blowby gases into the exhaust stream or otherwise measure them for an in-use test. This approach is similar to the approach we adopted for locomotives. The purpose of this requirement is to provide manufacturers the incentive to reduce crankcase emissions to the maximum extent possible, or eliminate them altogether.

D. Smoke Requirements

We are not setting smoke requirements for marine diesel engines. Manufacturers have stated that many of these engines, though currently unregulated, are manufactured with smoke limiting controls at the request of the engine purchasers. Users seek low smoke emissions, both because they dislike the associated residue on decks and because they can be subject to penalties in ports that have smoke emission requirements. In many cases, marine engine exhaust gases are mixed with water prior to being released. This practice reduces the significance of smoke emissions, since smoke becomes significantly less visible when mixed with water. Moreover, we believe that the new PM standards will have the effect of further limiting smoke emissions.

E. Alternative Fuels

The new emission standards apply to marine diesel engines, without regard to the type of fuel they use. This is consistent with nonroad diesel engine regulations of 40 CFR Part 89. It is also generally consistent with the locomotive regulations; however, the locomotive regulations apply even more broadly because they also include spark-ignited engines. We are aware that there are currently very few alternative-fueled marine engines, but we believe that it is important to make clear to manufacturers what standards will apply if they produce these engines.

Heavy fuel (or residual fuel) is fundamentally different than the distillate fuel used for testing and most in-use operation. We therefore treat it as an alternative fuel. If manufacturers produce their engines with sufficient hardware to be capable of operating on heavy fuel, they should submit test data with their application for certification showing that they meet the emission standards using both distillate and heavy fuel. The Clean Air Act prohibits removing or rendering inoperative elements of design in regulated engines. If operators add fuel heating and filtering equipment and other hardware to make a certified engine capable of operating on heavy fuel, we would likely consider that to be making the emission control system inoperative. We are requiring a statement on the engine label for engines that can be modified to operate on heavy fuel to discourage operators from making this modification.

To properly address the range of possible alternative-fuel engines, it was necessary to modify the form of the HC standard. In the regulation of highway vehicles and engines, we determined that it is not appropriate to apply total hydrocarbon standards to engines fueled with natural gas, which is primarily methane (59 FR 48472, September 21, 1994). Rather, nonmethane hydrocarbon (NMHC) standards should apply to natural gas engines. We are therefore setting NMHC+NO_X standards for diesel-cycle marine engines that operate on natural gas. The same numerical standards apply to both types of engines. For example, an emission standard of 7.2 g/kW-hr THC+THC that applies to diesel-fueled engines becomes 7.2 g/kW-hr NMHC+NO_X for natural gas engines. Similarly, reported emissions from alcohol-fueled engines are on a basis of total HC-equivalent (THCE). THC-equivalent emissions are calculated from the oxygenated organic components and non-oxygenated organic components of the exhaust, summed together based on the amount of organic carbon present in the exhaust. Refer to the April 11, 1989 final rule for more information regarding the determination of HC-equivalence (54 FR 14426). These approaches will minimize variations in stringency for different fuel types.

F. Test Procedures

In this final rule we rely on previously established test procedures for land-based diesel engines. Specifically, we require that Category 1 marine engines be tested using the land-based nonroad procedures of 40 CFR Part 89, and that Category 2 marine engines be tested using the locomotive test procedures of 40 CFR Part 92. There are two reasons for using this approach. First, most manufacturers of marine diesel engines also manufacture land-based engines and will be equipped to test engines using these test procedures. Second, marine diesel engines are fundamentally similar to their land-based counterparts, and it is therefore appropriate to measure their emissions in the same way. In addition, the test procedures found in 40 CFR Parts 89 and 92 include flexibility for testing alternative-fuel engines. Some changes are nevertheless necessary. Manufacturers should be aware that the test procedures in MARPOL Annex VI are not equivalent to the test procedures described here and in § 94.103 and § 94.104. We are including the modifications to these test procedures as described below.

1. Duty Cycles

Testing an engine for emissions typically consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine dynamometer. The duty cycle used to measure emissions for determining compliance with emission standards during the certification process is intended to represent operation in the field. The nature of that duty cycle is critical in evaluating the likely emissions performance of engines designed to those standards. To address operational differences between engines, we are specifying different duty cycles for different types of marine diesel propulsion engines. These are summarized here and described further in the Final RIA. Propulsion engines that operate on a fixed-pitch propeller curve must be certified using the International Standards Organization (ISO) E3 duty cycle. This is a four-mode steady-state cycle developed to represent in-use operation of commercial marine diesel engines. The four modes lie on an average propeller curve based on in-use measurements.

Fixed-speed marine propulsion engines with variable-pitch or electrically coupled propellers will be certified on the ISO E2 duty cycle. This duty cycle is also a four-mode steady-state cycle. It uses the same power and weighting factors as the E3 cycle, but the engine is operated in each mode at rated speed.

Constant-speed auxiliary engines must be certified to the ISO D2 duty cycle. Variable-speed auxiliary engines must be certified to the ISO C1 duty cycle. These duty cycles are consistent with the requirements for land-based nonroad diesel engines.

There is another class of propulsion engines that run at variable-speed and use a variable-pitched propeller. These engines are designed to operate near the power curve for the engine to maximize fuel efficiency. In general, these engines will operate at a constant speed near peak torque except when maneuvering in port, where they operate along the lug curve. Because of the expense of the system, variable-speed engines are rarely used with variable-pitched propellers. ISO does not have a test duty cycle specifically designed for these engines. While we proposed to use the E2 duty cycle for these engines, we have since learned the the in-use operation, especially in port areas, is best represented by the C1 duty cycle. This is consistent with MARPOL Annex VI.

For larger marine engines, conventional emission testing on a dynamometer becomes more difficult because of the size of the engine. Often engine mock ups are used for the development of these engines where a single block is used for many years and only the power assembly is changed out. For Category 2 engines, certification

tests may be performed on these engine mock-ups, provided that their configuration is the same as that of the production engines. To obtain approval for single-cylinder testing the manufacturer must rely on the provision for special test procedures (40 CFR 94.207). This requires a demonstration "that it is equivalent to the specified procedures." We will address the concern that single-cylinder testing may not be appropriate in some cases by evaluation of the individual situations under § 94.27.

2. In-Use Testing

Before manufacturers produce engines, they certify that their engines will meet all the standards that apply, including the standards based on testing with the specified duty cycles and based on the broader Not-to-Exceed standards, throughout the useful life of the engines. We are interested in testing in-use engines to confirm that they are emitting within these standards. For any in-use testing for purposes of section 207(c), we would depend on receiving the permission of the owner to conduct the testing on that vessel. We could do this testing one of two ways. First, we could remove the engine from the vessel and test it on a laboratory dynamometer, much like the manufacturer's certification testing. This would be the most direct way to determine if an engine continues to meet the certification standards after the engine has been installed on a vessel. However, the cost of removing and testing engines this way would be extremely high and a ship operator may be unwilling to allow us to remove the engine from service for emission testing.

Onboard testing is a second type of in-use emission measurement. Being able to conduct emission testing onboard the vessel can make in-use testing more accessible since onboard testing eliminates the need for engine removal and minimizes the disruption of normal vessel operations. The goal is for us to accurately assess the emission performance of these engines when they are in service. We may use onboard emission testing to identify and hold manufacturers responsible for noncompliance with the emission standards (including the Not-to-Exceed limits). The Clean Air Act authorizes us to pursue an emission-related recall if we determine that a substantial number of engines, when properly maintained and used, do not conform to the regulations throughout their useful life. Noncompliance relates to meeting the emissions levels under the associated test procedures, as defined in the regulations. For example, the test procedure for the NTE emission standard calls for nominally steady-state operation within a specified zone of engine operation. In-use testing results may provide credible and probative information relevant to making a determination of compliance. We also recognize that the level of accuracy and precision of in-use testing is one of the key factors to take into account when making any such evaluation or determination of compliance. We believe such systems and procedures would provide a significant benefit to both the agency and the industry.

For marine diesel engines that expel exhaust gases underwater or mix exhaust gases with water, we require that manufacturers equip the engines with an exhaust sample port, where a probe can be inserted for in-use emission tests. It is important that the location of this port allows a well mixed and representative sample of the exhaust. The purpose of this provision is to simplify in-use testing.

3. Test Fuel

The test procedure, including the test fuel, must adequately represent in-use operation to ensure achievement of emission reductions in use. To facilitate the testing process, we generally define a range of specifications for a test fuel that is intended to represent in-use fuels. Marine diesel engines need to comply with emission standards on any fuel falling within the range of the test fuel specifications, with one modification described below. This section describes the test fuel we are specifying for Category 1 and Category 2 engines (see also 40 CFR 94.108). This test fuel is for all testing associated with the standards in this final rule, including certification, production-line, in-use, and NTE testing.

We are applying the recently finalized test fuel specifications for land-based nonroad diesel engines to marine diesel engine testing, with a modification to the sulfur specification as described below. We believe that largely adopting the nonroad fuel will simplify development and certification burdens for marine engines that are developed from land-based counterparts. The test fuel for marine diesel engine testing has a sulfur specification range of 0.03 to 0.80 weight-percent (wt%), which covers the range of sulfur levels observed for most in-use fuels. Manufacturers are generally responsible for ensuring compliance with the emission standards using any fuel within this range. Thus, they will be able to harmonize their marine test fuel with U.S. highway (<0.05 wt%), nonroad (0.03 to 0.40 wt%), locomotive (0.2 to 0.4 wt%) and European testing (0.1 to 0.2 wt%). The full range of test fuel specifications are presented in Chapter 3 of the Final RIA.

We are setting a higher upper limit for the marine diesel engine sulfur specification (0.8 wt%) than was recently finalized for land-based nonroad engines (0.4 wt%), because there is some information available suggesting that marine fuels may have higher sulfur contents than land-based diesel fuels.[4] Using ASTM specification D 2069 as a guide, we considered choosing an upper limit of 1.5 wt% sulfur. However, we are setting an upper limit on sulfur content of 0.8 wt%, because the available data show that most in-use marine fuels have sulfur levels lower than this. Moreover, it is not clear that PM emission could accurately be measured using the specified testing procedures, or if the correction factor would be accurate, if fuels with a sulfur content higher than 0.8 wt% are used.[5]

We determined that the new PM standards are feasible based largely on the feasibility of the corresponding standards for land-based nonroad and locomotive applications, which have a 0.4 wt% sulfur upper limit for the test fuel. Since PM emissions are somewhat fuel sulfur-dependent, we do not believe it is appropriate to require compliance with the PM standards using fuel with a sulfur content above 0.4 wt%. We are therefore allowing a correction of PM emissions for testing with a fuel sulfur content greater than 0.4 wt%. Thus, the measured PM emissions for any test performed using fuel with a sulfur content of greater than 0.4 wt% may be corrected to the level that would have been measured if the fuel had a sulfur content of 0.4 wt%. This does not apply to systems using aftertreatment technologies, since the correction equation is not valid for those engines. This correction method is the same as that used for land-based nonroad engine testing to Tier 1 emission standards. Moreover, in the nonroad rulemaking, for engines rated over 37 kW certified to Tier 2 standards, we agreed to use only fuel with sulfur levels up to 0.2 wt% for our testing. Because Category 1 marine engines are mostly derived from land-based nonroad engines, we believe it is appropriate to extend this provision to Category 1 marine engines for the period during which they rely on land-based engines operating at Tier 2 emission

[4] "In-Use Marine Diesel Fuel," Final Report by ICF Consulting Group for EPA, August 1999 (Docket A–97–50, document IV–A–4).

[5] "Exhaust Gas Emission Measurements: A Contribution to a Realistic Approach," D. Bastenhof, dieselMAC, May, 1995.

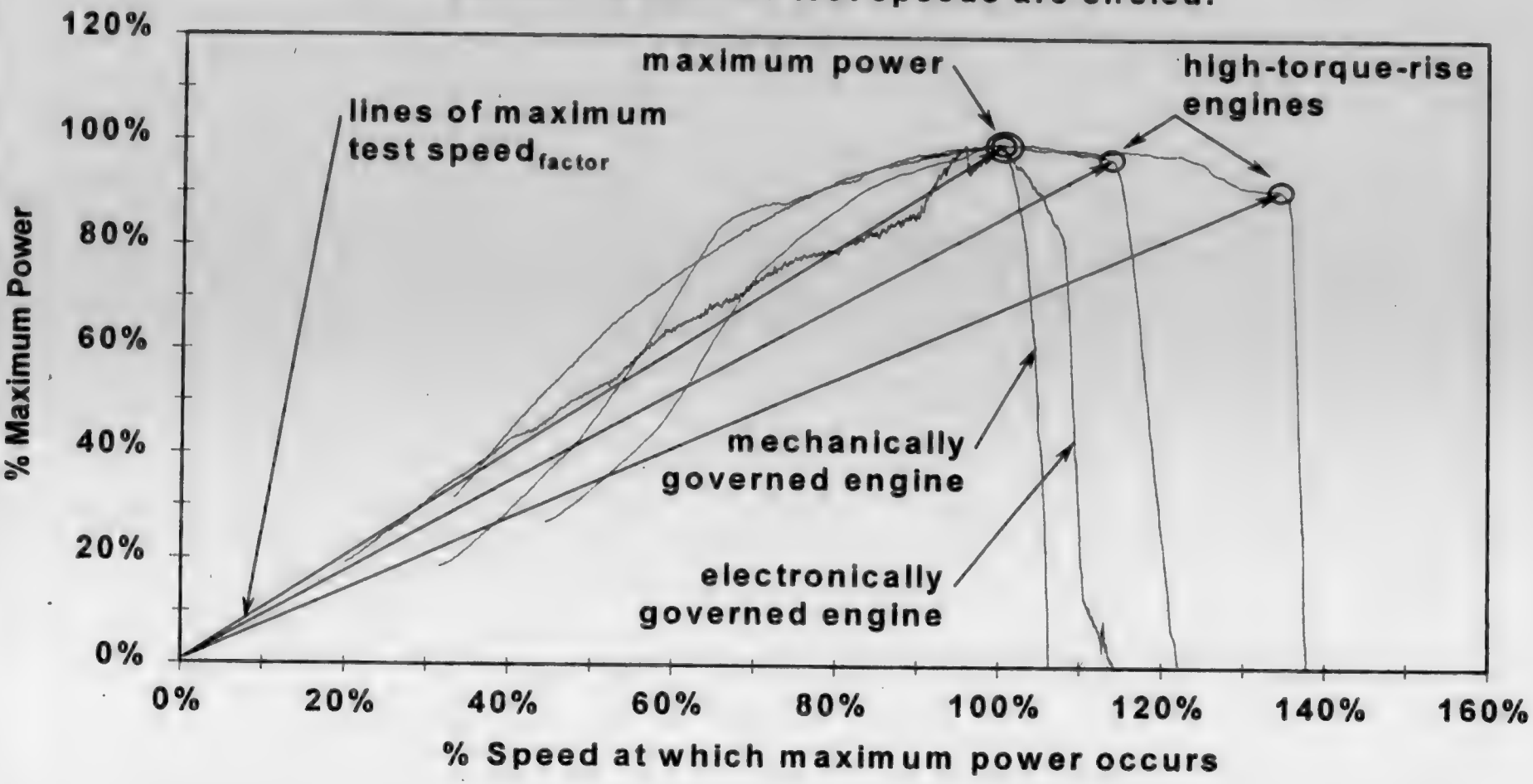
levels. In the future effort to set marine Tier 3 emission levels, we will revisit the appropriate range of fuel properties for in-use testing in the context of the emission standards we set at that time.

4. Adjustable Parameters

Marine diesel engines are often designed with adjustable components to allow the engine to be adjusted for maximum efficiency when used in a particular application. This practice simplifies marine diesel engine production, since the same basic engine can be used in many applications. We recognize the need for this practice, but are also concerned about varying emission levels across the range of adjustment. We are therefore generally requiring that engines meet the emission standards when operated anywhere within the adjustable range (see 40 CFR 94.205). In most cases, this means engine manufacturers will be required to design their engines to prevent adjustments outside the specified range to ensure that engines are always operated within the specified range of adjustment. However, consistent with the approach used in the locomotive rule, we may allow manufacturers to specify in their applications for certification a narrower range of adjustment for these components across which the engine is certified to comply with the applicable emission standards, and demonstrate compliance across that range. For these engines, this allowance means that a manufacturer would specify a range of fuel injection timing, for example, over which the engine complies with the emission standards. This range could be designed to account for differences in fuel quality. Operators are then prohibited by the anti-tampering provisions from adjusting engines outside of this range.

BILLING CODE 6560-50-P

Figure 1: Example of normalized maximum-power versus speed curves. Maximum test speeds are circled.



BILLING CODE 6560-50-C

5. Determination of Maximum Test Speed

The determination of maximum test speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm) is an important aspect of the duty cycles and "not-to-exceed" (NTE) zones described in this document (see also 40 CFR 94.107). We define the maximum test speed of an engine as the single point on an engine's maximum-power versus speed curve that lies farthest away from the zero-power, zero-speed point on a normalized maximum-power versus speed plot. In other words, consider straight lines drawn between the origin (speed = 0, load = 0) and each point on an engine's maximum-power versus speed curve (see Figure 1). Maximum test speed is defined as that point where the length of this line reaches its maximum value. Examples of results from this calculation are illustrated by circles superimposed on four maximum-power versus speed curves in Figure 1.

G. Not-to-Exceed Standards and Related Requirements

Our goal is for engines to control emissions over the broad range of in-use speed and load combinations that can occur on a vessel, achieving real-world emission reductions, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. Historically, we have taken the approach of setting a numerical standard on a specified test procedure and relying on the prohibition of defeat devices to ensure in-use control over a broad range of operation not included in the test procedure.[6]

No single test procedure can cover all real world applications, operations, or conditions. Yet to ensure that emission standards provide the intended benefits in use, we must have a reasonable expectation that emissions under real world conditions reflect those measured on the test procedure. The defeat device prohibition is designed to ensure that emissions controls are employed during real world operation and not just under laboratory or test procedure conditions. However, the defeat device prohibition is not a quantified standard and does not have an associated test procedure, so it does not have the clear objectivity and ready enforceability of a numerical standard and test procedure. As a result, the current focus on a standardized test procedure makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell.

Because the E3 duty cycle uses only four modes on an average propeller curve to characterize marine diesel engine operation, we are concerned that an engine designed to the duty cycle would not necessarily perform the same way over the range of speed and load combinations seen on a vessel. The E3 duty cycle is based on an average propeller curve, but a propulsion marine engine may never be fitted with an "average propeller." For instance, a light vessel with a planing hull may operate at lower torques than average while the same engine operated on a heavy vessel with a deep displacement hull may operate at higher torques than average. This can largely be a function of how well the propeller is matched to the engine and vessel. A planing hull vessel can operate at high torques at low speed prior to planing.

To ensure that emissions from propulsion engines are controlled over the full range of speed and load combinations seen on vessels, we are establishing a zone under the engine's power curve where the engine may not exceed a specified emission standard, for any of the regulated pollutants, under the kind of operation that could reasonably be expected to be seen in the real world. In addition, the whole range of real ambient conditions is included in this "not-to-exceed" (NTE) zone testing. The NTE zone, limit, and ambient conditions are described below.

At the time of certification, manufacturers would have to submit a statement that its engines will comply with these requirements under all conditions that may reasonably be expected to occur in normal vehicle operation and use. The manufacturer must provide a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This certification statement must be based on testing and/or research reasonably necessary to support such a statement and on good engineering judgment. This supporting information would have to be submitted to us at certification if we request it; manufacturers would not necessarily be required to submit NTE test data for compliance during certification.

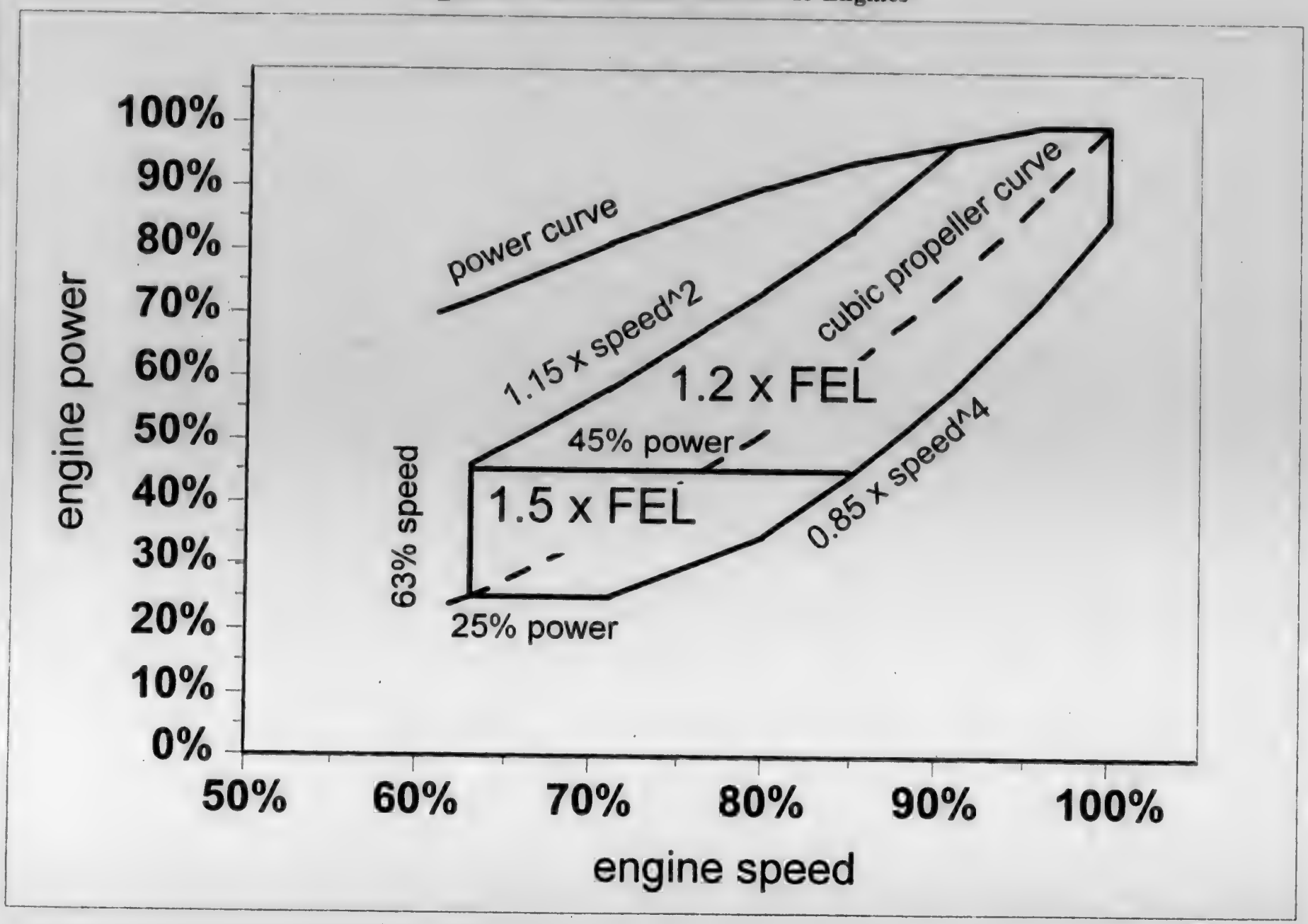
We believe there are significant advantages to taking this sort of approach. The test procedure is very flexible so it can represent many in-use speed and load combinations and ambient conditions. Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, laboratory testing makes it harder to perform in-use testing since either the engines would have to be removed from the vessel or care would have to be taken that laboratory-type conditions can be achieved on the vessel. With the NTE approach, in-use testing and compliance become much easier since emissions may be sampled during normal vessel use. Because this approach is objective, it makes enforcement easier and provides more certainty to the industry of what is expected in use versus over a fixed laboratory test procedure.

Even with the NTE requirements, we believe it is still important to retain standards based on the steady-state duty cycles. This is the standard that we expect the certified engines to meet on average in use. The NTE testing is more focused on maximum emissions for segments of operation and should not require additional technology beyond what is used to meet the new emission standards. We believe that basing the emissions standards on a distinct cycle and using the NTE zone to ensure in-use control creates a comprehensive program. In addition, the steady-state duty cycles give a basis for calculating credits for use in the averaging, banking, and trading program.

The NTE zone for marine diesel engines certified with the E3 duty cycle is illustrated in Figure 2 and is defined by the power curve of the engine up to rated speed. This zone is based on the range of conditions that a marine diesel propulsion engine typically experiences in use. For variable-speed engines with variable-pitch propellers certified to the C1 duty cycle, this zone is extended to include all torque points between the E3 power curve (between 63 percent and 100 percent speed) and the lug curve. These NTE zones are divided into two subzones above and below 45% of power at maximum test speed.

[6] EPA letter from Jane Armstrong and Bruce Buckheit, October 15, 1998.

Figure 2: Not-to-Exceed Zone for E3 Engines



BILLING CODE 6560-50-C

We are requiring a similar approach for engines certified using the constant-speed E2 duty cycle. In this case, the "not-to-exceed" zone is at the speed for which the engine is designed to operate for loads ranging from 25 to 100 percent of maximum load at that speed. Because a constant speed can actually operate over a small range of engine speeds in-use, the NTE zone includes this small range of speeds. This zone is also split into subzones above and below 45% of maximum power. More detail on the development of the boundaries and conditions associated with the NTE zones may be found in Chapter 3 of the Final RIA.

We are requiring emissions caps for the NTE zones that represent a multiplier times the weighted test result used for certification for all of the regulated pollutants ($HC+NO_X$, CO, and PM). This is consistent with the concept of a weighted modal emission test such as the steady-state tests included in this rule. The standard itself is intended to represent the average emissions under steady-state conditions. Since it is an average, some points can be higher, some lower, and the manufacturer will design to maximize performance and still meet the engine standard. The NTE limit is on top of this. It is designed to make sure that no part of the engine operation and that no application goes too far from the average level of control.

For propulsion engines certified to the E3, C1, and E2 duty cycles, we believe that a not-to-exceed limit of 1.2 times the emissions standard (or FEL) is appropriate for the subzone at or above 45% of maximum test power. Below 45% of maximum test power, the cap is 1.5. Data presented in Chapter 3 of the Final RIA show that these limits are feasible for marine diesel engines, yet challenging because of variations in emissions at high versus low speeds and loads for some engines. This data show that the 1.2 cap is easily achievable at higher power, but may be more challenging at low powers. We set the cap at 1.5 below 45% of maximum test power for this reason. These subzones and caps apply equally to the Tier 2 emission standards for each regulated pollutant. Manufacturers may alternatively choose to comply with a cap of 1.25 over the whole zone, as we originally proposed. In any future tier of standards, we will review the appropriateness of tailoring the NTE approach to the unique characteristics of the individual exhaust constituents.

When testing the engine within the NTE zone, only nominally steady-state operation will be considered. It is unlikely that transient operation is necessary under the NTE provisions to ensure that emissions reductions are achieved for commercial marine diesel engines. We designed the NTE zones to contain the operation near an assumed propeller curve that the steady-state cycles are intended to represent. We believe that the large majority of commercial marine operation in the NTE zone is steady-state. For planing vessels, we believe the transient operation as a vessel comes to plane generally is along the torque curve and would not be within the NTE zone. However, we don't have enough data to reliably say where under the torque curve marine engines operate during transient operation. Also, we do not believe the NTE zone should include areas where an engine may operate during transients but not in steady-state modes. We therefore don't believe that adding transient operation to the NTE requirements is necessary at this time. This would change if we saw evidence that in-use emissions increase due to insufficient emission control under transient operation.

The NTE standards apply under any ambient air conditions. Within the following air temperature and humidity ranges, no corrections will be allowed to account for the effects of temperature or humidity on emissions: 13–30°C for ambient air temperature and 7.1–10.7 grams water per kilogram of dry air for humidity. For engines drawing intake air from an enclosed engine room, however, the high end of the air temperature range is 35°C (measured as intake air temperature). Ambient water temperature must be in the range of 5–27°C during NTE testing. In addition, the engines must comply with the standards for the full range of test fuel specifications. These ranges for ambient conditions are discussed in more detail in Chapter 3 of the Final RIA.

The defeat device provisions established for highway and nonroad engines apply to marine diesel engines in addition to the NTE requirements. A design in which an engine met the standard at the steady-state test points but was intentionally designed to approach the NTE limit everywhere else would be considered to be defeating the standard, except under limited circumstances discussed below. Electronic controls that recognize when the engine is being tested for emissions and adjust the emissions from the engine would be another example of a defeat device, regardless of the emissions performance of the engine.

We are aware that marine diesel engines may not be able to meet the emissions limit under all conditions. Specifically, there are times when emission control must be compromised for startability or safety. We have excluded engine starting from NTE testing. In addition, our defeat device provisions accommodate the manufacturers potential need to allow emissions to increase to the extent necessary to protect the engine, such as responding to engine overheating.

Manufacturers may ask us to approve an adjusted size or shape of the NTE zone for certain engines if they can show us that the engines will only operate within the revised NTE zone in normal use. This way, manufacturers can avoid testing their engines under operation they would rarely experience in a vessel. However, manufacturers are still responsible for any engine operation seen in normal use. They are also responsible for ensuring that their specified operation is indicative of real-world operation. In addition, if a manufacturer designs an engine for operation at speeds and loads outside of the NTE zone, the manufacturer is responsible for notifying us so their NTE zone can be modified appropriately to include this operation.

We are not in this final rule setting an NTE limit for auxiliary marine engines. We do not yet have enough data on the operating characteristics of auxiliary engines to determine NTE zones and the associated limits for these engines. We expect to pursue similar requirements for land-based nonroad diesel engines. If we adopt NTE requirements for land-based nonroad diesel engines, we expect to extend those provisions to marine auxiliary engines at the same time.

The NTE provisions will go into effect in the 2010 model year for post-manufacture marinizers and in the 2007 model year for other manufacturers for all commercial marine diesel engines. Manufacturers have agreed to collect and show us data on their engines operating in the NTE zone before the NTE standards take effect. We may also choose to require them to give us this data under § 208 of the Clean Air Act. This delay in implementation of the NTE provisions for most Category 1 engines will provide reasonable lead time by allowing more time to collect data and assess engine operation in the NTE zone. For larger engines, the early banking program will provide manufacturers with an incentive to produce low-emission engines prior to 2007. This way, if these manufacturers chose to stagger their product line and produce low emission engines early, they will be able to add NTE-type testing to the testing they perform while calibrating their engines.

H. Voluntary Low-Emitting Engine Program

In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as "Blue Sky Series" engines (63 FR 56967, October 23, 1998). We are setting similar voluntary standards as part of this rulemaking. The program, if successful, will lead to the introduction and more widespread use of these low-emission technologies. The qualifying emission levels are listed in Table 4. The voluntary standards for the expanded subcategories above 15 L/cyl all follow the pattern of a 40 percent reduction relative to the mandatory standards.

While the Blue Sky Series emission limits are voluntary, a manufacturer choosing to certify an engine under this program must meet all the provisions established to demonstrate compliance with these limits, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions.

TABLE 4.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Engine size	$HC+NO_x$	PM
Power ≥37 kW, and displ.<0.9 L	4.0	0.24
0.9 L ≤displ.<1.2 L	4.0	0.18
1.2 L ≤displ.<2.5 L	4.0	0.12
2.5 L ≤displ.<5 L	5.0	0.12
5.0 L ≤displ.<15.0 L	5.0	0.16
15.0 L ≤disp. <20.0 L, and power <3300 kW	5.2	0.30
15.0 L ≤disp. <20.0 L, and power ≥3300 kW	5.9	0.30
20.0 L ≤disp. <25.0 L	5.9	0.30
25.0 L ≤disp. <30.0 L	6.6	0.30

The Blue Sky Series program begins immediately upon publication of this final rule and continues through the 2010 model year. We intend to evaluate the program to determine if it should be continued for 2011 and later engines, and if so, whether any changes are needed.

Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure adequate in-use performance, will be a major step forward in advancing innovative emission control technologies, because EPA certification will provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives for the production of these engines must be created as well.

We are concerned that such incentive programs not lead to a net detriment to the environment through the double-counting of benefits. We have therefore concluded that manufacturers choosing to sell an engine with the Blue Sky Series designation should not generate averaging, banking, and trading credits for demonstrating compliance with EPA programs. Other groups are free to design credit programs without concern for any double-counting or other unintended effect of overlapping programs.

In addition to credit-based programs, we see substantial potential for users and state and local governments to establish incentive programs. For example, state or local governments or individual ports may be able to add incentives for introducing low-emitting engine technologies in harbor and other coastal vessels.

I. Durability

As directed by the Clean Air Act, we are requiring that manufacturers design and build engines with durable emission controls. This means that manufacturers are responsible for the emission results for the engines they produce throughout their useful life.[7] We are also establishing provisions to ensure proper maintenance and repair of engines throughout their lifetime. The durability provisions, described below, are intended to ensure that engines continue to meet the applicable standards in use. The specific areas of the durability program focused on here are useful life, warranty periods, deterioration factors, and rebuilding requirements. Most of these provisions are carried over from the land-based or locomotive programs.

1. Useful Life

Useful life is the period during which the marine engine is required to meet the emission standards. For Category 1 engines, we are setting a minimum useful life of 10 years or 10,000 hours of operation. Specifically, the 10,000-hour requirement is based on an expected five-year period until the first time the engine is rebuilt, and an expected usage rate of 2,000 hours per year. For Category 2 engines, we are setting a minimum useful life of 10 years or 20,000 hours of operation. In this case, the 20,000-hour requirement for marine engines is calculated based on an operating rate of 4,000 hours of use per year, with five years between rebuilds. The useful life figures are minimum values to take into account the possibility that manufacturers may in the future design their engines for a longer period of operation before rebuilding. If an engine is designed to be in service until rebuild longer than our minimum useful life period, then the manufacturer must specify a corresponding longer useful life for that engine family.

The above approach of basing useful life on time to first rebuild was chosen because it is difficult to justify holding the engine manufacturer responsible for an engine's emissions after the engine is rebuilt. The original engine manufacturer has little, if any, control over the rebuild process. When done improperly, the rebuilding process can include changes to the engine that adversely affect emissions. At the same time, however, these engines are often kept in service much longer than the minimum useful life. Median values for service lives are 15 years for Category 1 propulsion engines and 23 years for Category 2 engines. These longer service lives mean that the engine may be exempt from in-use testing for more than half its service life. We therefore believe it is important to be able to conduct recall testing on these engines throughout the established useful life period. We are also establishing requirements for engine rebuilders.

To address the possibility of light commercial applications with much shorter design lifetimes, the final rule allows manufacturers to request a

[7] This is different from the approach used in MARPOL Annex VI, according to which manufacturers must ensure their engines meet the emission limits at the time of certification but ship owners become responsible for their continued compliance with the limits. Under that program, compliance is verified during flag-state and port-state inspections.

shorter useful life for certain engines. Manufacturers in this case need to determine the alternate useful life based on the documented hourly service life of these engines in the field. This may in some cases be much less than 10,000 hours of operation. To prevent abuse of this provision, we won't approve any useful life less than 1,000 hours and we will require that the manufacturer display the certified useful life on the engine label. Also, the shortened useful life may not be less the manufacturer's recommended overhaul interval or mechanical warranty for that engine.

2. Warranty Periods

Tied to the useful life is the minimum warranty period imposed under the Clean Air Act. The warranty periods for marine diesel engines are based on the ratio of useful life and warranty periods established for land-based nonroad engines. Specifically, we are setting a warranty period that is 50 percent as long as the useful life (in both operating hours and years) for both Category 1 and Category 2 engines. Also, the emissions warranty may not be less than any mechanical warranties offered by the manufacturer. This applies whether the mechanical warranty is published or negotiated, and whether it is offered for a fee or at no extra charge. Table 5 summarizes the useful life and warranty values that apply.

We are also including defect reporting requirements in the final rule. We require engine manufacturers to tell us whenever they identify a specific emission-related defect in 25 or more Category 1 engines, consistent with the provisions that apply to highway and land-based nonroad engines. Similarly, we require notification for specific emission-related defects in 10 or more Category 2 engines, which is the same threshold that applies to locomotives. This is not limited to a single engine model or model year.

TABLE 5.—USEFUL LIFE AND WARRANTY PERIODS

Category	Useful Life		Warranty Period	
	Hours of operation	Years	Hours of operation	Years
Category 1	10,000	10	5,000	5
Category 2	20,000	10	10,000	5

3. Deterioration Factors

To further ensure that the emission standards are met in use, we require the application of a deterioration factor (DeF) in evaluating emission control performance during the certification and production-line testing process. The emissions from new engines are adjusted using the DF to account for the expected deterioration in emissions over the life of the engine due to wear and aging of the engine and emission controls. The resulting emission level (*i.e.*, the final deteriorated emission level) represents the expected emissions at the end of the useful life period. New emission control technologies such as aftertreatment, sophisticated fuel delivery controls, and some cooling systems, may lose some of their effectiveness as they age. DFs are already required for highway vehicles and engines, land-based nonroad engines, and locomotives. We are extending this approach to marine diesel engines.

Marine diesel engine DFs will be determined by the engine manufacturers in accordance with good engineering practices. Consistent with the land-based nonroad and locomotive programs, we are not specifying a detailed procedure. In generating DFs, however, manufacturers must observe some general guidelines and get our approval. In particular, the DF must be consistent with emissions increases observed in-use based on emission testing of similar engines. Additionally, the DF should be calculated for the worst-case engine calibration offered within the engine family.[8] DFs must be calculated as an additive value (*i.e.*, the arithmetic difference between emission level at full useful life and the emission level at the test point) for engines without exhaust aftertreatment devices. In contrast, DFs must be calculated as a multiplicative value (*i.e.*, the ratio of the emission level at full useful life to the emission level at the test point) for engines using exhaust aftertreatment devices. This is consistent with the DF requirements applicable to other diesel engines, based on observed patterns of emission deterioration.

It is not our intent to require a great deal of data gathering on engines that use established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. However, we are applying the DF requirement to all engines to be sure that manufacturers are using reasonable methods to ascertain the capability of engines to meet standards throughout their useful lives. Consistent with the land-based engine programs, we will allow marine diesel engine manufacturers the flexibility of using carryover and carryacross of durability emission data from a single engine that has been certified to the same or more stringent standard for which all of the data applicable for certification has been submitted. In addition, we are allowing deterioration data from highway or land-based nonroad engines to be used for similar marine diesel engines.

Service accumulation is necessary to generate DFs from engines in the laboratory. Consistent with the land-based nonroad rule, we are specifying minimum allowable maintenance intervals for marine diesel engine service accumulation to ensure that durability data represent in-use performance (see 40 CFR 94.211(e)). These minimum intervals for marine diesel engines are equivalent to those required for nonroad and highway diesel engines (40 CFR 89.109; 40 CFR 86.094–25). For Category 2 engines, we will allow engine manufacturers to request alternate minimum maintenance intervals at the time of certification, subject to our approval. This allowance for Category 2 engines is necessary to allow harmonization with locomotive maintenance practices (63 FR 18978, April 16, 1998).

4. Rebuilt Engines

It is common for marine diesel engines to be rebuilt several times during the course of their lifetimes. Similar to land-based nonroad engines, we have two concerns regarding the rebuilding of marine diesel engines. First, there may not be an incentive to check and repair emission controls that do not affect engine performance. Second, there may be an incentive to rebuild engines to an older

[8] The worst case would be the engine calibration expected to generate the highest level of emission deterioration over the useful life, using good engineering judgement.

configuration due to real or perceived performance penalties associated with technologies used to meet the new emission standards. Such practices would likely result in increased emissions. To address these concerns, we are extending the land-based nonroad rebuild requirements to marine diesel engines. Under these requirements, the parties involved in the process of rebuilding or remanufacturing engines must follow specific provisions to avoid tampering with the engine and emission controls. This requirement is based on the statutory prohibition against tampering with regulated engines. The rebuild requirements apply to any engine built on or after the date that new emission standards apply to that engine's specific category or group, regardless of the emission levels that the individual engine is designed to achieve.

Anyone who rebuilds engines, in whole or part, and fails to comply with these provisions may be liable for tampering. Individuals or companies are responsible for the activities over which they have control. Therefore, there may be more than one responsible party for a single engine in cases where different parties perform different tasks during the engine rebuilding process (e.g., engine rebuild, full engine assembly, installation). We are not including any certification or in-use emissions requirements for the rebuilder or engine owner.

We are adopting modest record keeping requirements that should be in line with customary business practices. People involved in the process of marine diesel engine rebuilding or remanufacturing will keep the records. The required records include the hours of use accumulated on the engine at the time of rebuild and a list of the work performed on the engine or related systems. For work performed on the engine, rebuilders must include a list of replacement parts used, engine parameter adjustments, design element changes, and a description of any work performed. Parties must keep the information for two years and may use any format or system, provided that the information can be readily understood by an EPA enforcement officer. We do not require that companies keep information that is not reasonably available through normal business practices. In cases where it is customary practice to keep records for engine families rather than specific engines, where the engines within that family are being rebuilt or remanufactured to an identical configuration, such record keeping practices are satisfactory. Rebuilders may use records such as build lists, parts lists, and engineering parameters that they keep of the engine families being rebuilt rather than on individual engines, provided that each engine is rebuilt in the same way to those specifications.

5. Replacement Engines

There may be situations in which a marine diesel engine can or must be replaced with a new engine. In general, we require that these replacement engines meet the certification requirements that apply to new engines for the year it is manufactured. The final rule makes provision for engine manufacturers to produce new engines to replace an older, uncertified model, where the replacement engine doesn't need to comply with the emission standards that would otherwise apply to new engines. This exemption for replacement engines is available if no new, compliant engine is available that meets the physical and performance characteristics of the engine being replaced (subject to our approval). There is no exemption for engines that are replacing certified engines. Consistent with replacement engine provisions in other programs, some additional constraints ensure that companies do not circumvent the regulations.

J. Certification

As discussed previously, we expect technology to be shared between land-based engines and marine engines. Some engine manufacturers will likely produce engines of the same basic design for sale in both areas. Specifically, we expect Category 1 marine engines to share the technology developed for land-based nonroad engines, and Category 2 engines to share technology developed for locomotive engines. To account for this product overlap, we are basing certification data and administration requirements for Category 1 on the existing program for land-based nonroad engines, and for Category 2 marine engines on the existing program for locomotive engines.[9] Specific certification provisions are discussed more fully in the following sections.

1. Engine Family Definition

Engine grouping for the purpose of certification is accomplished through the application of an "engine family" definition. Engines expected to have similar emission characteristics throughout the useful life are classified in the same engine family. Separate engine family classification is also required for each marine engine category (*i.e.*, Categories 1, 2, and 3 will be in separate engine families). We are establishing specific parameters to define engine family for each category of marine engine. To provide for administrative flexibility, we may separate engines normally grouped together or to combine engines normally grouped separately based upon a manufacturer's request substantiated with an evaluation of emission characteristics over the engine's useful life.

For Category 1, we are using the engine family definition for land-based nonroad engines, with the addition of the type of fuel system and whether fuel injection is controlled mechanically or electronically. For Category 2, we are using the engine family definition for locomotive engines.

These definitions provide consistency between land-based and marine engines of the same basic type. The fuel system type and control type were added to the land-based nonroad engine family definition to reduce the variability of emissions within an engine family. This change will aid manufacturers in selecting the "worst-case" engine for emission testing. It will lessen the chance of noncompliance in use by ensuring that the highest emitting engine is tested during certification.

Under the provisions of the land-based nonroad rule, engine manufacturers have the option to petition for their marine engines to be included in land-based engine families. We are not including this flexibility for marine engines rated over 37 kW because the "not-to-exceed" provisions in this final rule apply uniquely to marine engines. We do, however, allow manufacturers to rely on the land-based certification for land-based engines that are marinized without affecting emissions (see Section II.F.).

The engine family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. Manufacturers are required to estimate the rate of deterioration for each engine family (see Section IV.I.3. for further details). Compliance with the emission standard will also be demonstrated for each engine family based upon required testing and the application of the deterioration factor. Separate certificates of conformity are required for each engine family.

2. Emission Data Engine Selection

Manufacturers must select the highest emitting engine (*i.e.*, "worst-case" engine) in a family for certification

[9] See 40 CFR part 89, subpart B, for the provisions of the land-based nonroad engine program and 40 CFR part 92, subpart C, for the provisions of the locomotive program.

testing. In making that determination, the manufacturer must use good engineering judgement (considering, for example, all engine configurations and power ratings within the engine family and the range of installation options allowed). By requiring manufacturers to test the worst-case engine, we can be sure that all engines within the engine family are complying with emission standards for the least cost (as measured by the number of tests required). Manufacturers may request the separation of the dissimilar calibrations into separate engine families. This may be appropriate, for example, if a manufacturer feels that an engine family is grouped too broadly or that the worst-case emission data engine underestimates the emission credits available under the ABT provisions.

K. Production-Line Testing

One of the challenges of serial engine production is ensuring that each engine produced has the same emission characteristics as the original certification engine. We are finalizing a requirement for manufacturers to conduct production line testing (PLT). The general object of a PLT program is to show, with reasonable certainty, whether certification designs have been translated into production engines that meet applicable standards (or FELs) at the time of production, before excess emissions are generated in use. PLT is performed on a regular basis during the year by the engine manufacturer according to our criteria.

With PLT testing, a manufacturer selects engines from its production line for confirmatory testing. In general, a manufacturer must test one percent of its total projected annual U.S. marine diesel engine sales (propulsion and auxiliary) for each category each year. We believe that a one percent sampling rate is appropriate for the marine diesel engine industry because of its low production volumes, and that a higher sampling rate would be overly burdensome for this industry. We are not specifying a minimum number of tests for Category 1 engines. If a manufacturer sells fewer than 100 Category units in the United States in a given year, it is not required to do any PLT testing for those engines that year. For Category 2 engines, a manufacturer must conduct a minimum of one PLT test per year. Thus, for manufacturers with sales of less than 100 Category 2 engines in a given year, one test is required that year. For purposes of calculating the number of tests required, Category 1 and Category 2 annual engine sales must be considered separately.

The manufacturer selects a random sample of test engines that is representative of annual production. We reserve the right to reject any engines selected by manufacturers if we determine that such engines do not represent production engines. Engines selected should cover the broadest range of production possible, and from year to year should be varied to cover all engine families if possible. Tests should also be distributed evenly throughout the model year, to the extent possible.

Manufacturers must conduct emission testing of PLT engines in accordance with the applicable federal testing procedures. Compliance with the NTE provisions must be demonstrated as part of PLT testing. The results must be communicated to us in periodic reports that summarize emissions results, test procedures, and events such as the date, time, and location of each test. These reports allow us to continually monitor the PLT data. Reports must be submitted each quarter. If no testing is performed during the period, no report is required.

Under this testing scheme, if an engine fails a production line test, the manufacturer must test two additional engines out of either the next two days' production or the next fifteen engines produced in that engine family in accordance with the applicable federal testing procedures. This dual approach to testing additional engines accounts for variations in production volumes. If production volumes are high, then we believe the two-day provision will allow for the orderly selection of additional test engines. Likewise, if production volumes are low, then the provision allowing the engines to be selected from the next fifteen produced will allow for orderly selection. When the average of the three test results, for any pollutant, are greater than the applicable standard or FEL for any pollutant, the manufacturer fails the PLT for that engine family. Such failures must be reported to us within two working days of the determination of a failure. Note that compliance with the standards is required of every covered engine. Thus, every engine failing a PLT test is considered noncompliant with the standards and must be brought into compliance. Using the average of three tests to determine compliance with the PLT program serves only as a tool to decide when it is appropriate to suspend or revoke the certificate of conformity for that engine family, and is not meant to imply that not all engines have to comply with the standards.

In the PLT program, the Administrator can suspend or revoke the manufacturer's certificate of conformity, in whole or in part, thirty days after we determine that an engine family is noncompliant, or if the engine manufacturer's report reveals that the PLT tests were not performed correctly. During the thirty-day period after we establish noncompliance, we will coordinate with the manufacturer to facilitate the approval of the required production line remedy to eliminate the need to halt production as much as possible. The manufacturer must then address the noncompliance for the engines produced prior to the suspension or revocation of the certificate of conformity (for example, by bringing them into compliance or removing them from service). We can reinstate the certificate after a suspension, or reissue one after a revocation, if the manufacturer demonstrates through its PLT program that improvements, modifications, or replacements have brought the engine family into compliance. The regulations include hearing provisions that provide a mechanism to resolve disputes between manufacturers and us regarding a suspension or revocation decision based on noncompliance with the PLT. It is important to point out that we retain the legal authority to inspect and test engines if problems arise in the PLT program. Note also that the definition of "failure" of the PLT is limited to the PLT program, and does not define failure or noncompliance for other purposes. It is based in part on the severity of the result of a failure (suspension or revocation of a certificate) and is not meant to limit in any way the overall obligation of the manufacturer to produce engines that meet the standard.

We recognize the need for a PLT program that does not impose an unreasonable burden on manufacturers. Therefore, consistent with the requirement that testing be required on one percent of total marine diesel engine production for each category, no PLT is required for manufacturers whose Category 1 marine diesel engines sales are less than 100 per year. This is because companies with such low sales are unlikely to have in-house testing facilities, and requiring such companies to send an engine to an independent test facility for PLT purposes may be too burdensome. Note that companies exempt from the PLT program are not exempt from other certification and compliance provisions. Engines exempt from the PLT program must still meet the emission limits as produced and in use. We reserve the right to conduct an SEA on any manufacturer with engines certified to the requirements of this final rule. In addition, we are not extending

this flexibility provision to the PLT program for Category 2 marine diesel engines, since they are typically produced in very small volumes.

Finally, while we believe this PLT program takes into account the circumstances of this industry, we also understand that alternative plans may be developed that better account for the individual needs of an individual manufacturer. Thus, a manufacturer may submit an alternative plan for a PLT program, subject to our approval. A manufacturer's petition to use an alternative plan needs to address the need for the alternative and include justifications for the number and representativeness of engines tested. The alternative plan must also have specific provisions regarding what constitutes a PLT failure for an engine family.

L. Miscellaneous Compliance Issues

We are extending the general compliance provisions for land-based nonroad engines to Category 1 and Category 2 marine diesel engines. These include the tampering, defeat device, imported engines and vessels, and general prohibition provisions.

M. Averaging, Banking, and Trading Program

Along with the emission standards, we are including a marine averaging, banking, and trading (ABT) program. An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 213 of the Clean Air Act. ABT reduces the cost and improves the technological feasibility of achieving the standards, helping to ensure the attainment of the standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. ABT also creates an incentive for the early introduction of new technology, which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology before manufacturers need apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

The voluntary ABT program allows the certification of one or more engine families within a given manufacturer's product line at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more families certified below the emission standards. The average of all emissions for a particular manufacturer's production (weighted by sales-weighted average power, production volume and useful life) must be at or below the level of the applicable emission standards. In addition to the averaging program just described, the ABT program contains banking and trading provisions, which allow a manufacturer to generate emission credits and bank them for future use in its own averaging program or sell them to another entity. Compliance is determined on a total mass emissions basis to account for differences in production volume, power and useful life among engine families.

The ABT program for marine diesel engines over 37 kW is based on the corresponding ABT programs recently adopted for land-based nonroad engines (63 FR 56967, October 23, 1998) and locomotives (63 FR 18978, April 16, 1998), which roughly correspond to the Category 1 and Category 2 engines, respectively. A manufacturer choosing to participate in the ABT program must certify each participating engine family to a family emission limit (FEL) determined by the manufacturer during certification testing. A separate FEL must be determined for each pollutant the manufacturer includes in the ABT program. The ABT program is limited to $HC+NO_X$ and PM emissions. Thus, only two different FELs may be generated for a given engine family.

Consistent with the recently finalized land-based nonroad engine program, marine engine credits are to be calculated based on the difference between the applicable standard(s) and FEL(s). However, credit calculation for marine engines is somewhat different than that for land-based nonroad engines, in that a load factor is inserted in the equation. This term is necessary because, contrary to land-based nonroad case, not all marine engines are expected to operate at the same load. The credit calculation equation is as follows:

$$\text{Emission credits} = (\text{Std}—\text{FEL}) \times (\text{UL}) \times (\text{Production}) \times (\text{AvgPR}) \times (10^{-6}) \times (\text{LF})$$

Where:

- Std = the applicable cycle-weighted marine engine $THC+NO_X$ and/or PM emission standard in grams per kilowatt-hour.
- FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)
- UL = the useful life in hours.
- Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.
- AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.
- LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

A. 0.69 for propulsion engines
B. 0.51 for auxiliary engines.

We are prohibiting the generation of credits for one pollutant and the simultaneous use of credits for the other pollutant within the same engine family. In other words, a manufacturer may not simultaneously generate $HC+NO_X$ credits and use PM credits on the same engine family, and vice versa. This is consistent with the recently finalized emission standards for land-based nonroad diesel engines. This also reflects the inherent trade-off between NO_X and PM emissions in diesel engines.

FEL upper limits apply in the same manner as those in the comparable land-based ABT programs to ensure that the emissions from any given family certified under this ABT program not be significantly higher than the applicable emission standards. In general, these FEL upper limits correspond to the existing previous tier of standards for the various classes. In other words, the FEL upper limits are generally the Tier 1 standards for engines certifying according to the ABT provisions relative to the Tier 2 standards. Since we are not including any Tier 1 standards for marine engines in this rulemaking, the land-based Tier 1 standards serve as FEL upper limits for the Tier 2 marine engine standards. When the ABT provisions for land-based nonroad engines were recently revised, there were no Tier 1 standards in place for some land-based categories and pollutants. These cases correspond to some Category 1 marine engines. In those cases we chose FEL upper limits based on typical in-use emission levels of precontrol engines, or existing

California Air Resources Board emission standards. For a more complete discussion of the rationale for the Tier 2 FEL upper limits for Category 1 engines the reader is directed to the most recent final rule concerning land-based nonroad engine emission standards.

Consistent with the land-based ABT programs from which the marine program is derived, ABT credits generated under this program do not expire and are not discounted. Also consistent with the recently finalized land-based nonroad diesel rule, credits generated on land-based engines may not be used for demonstrating compliance for marine diesel engines. We are concerned that manufacturers who produce engines used in both marine and land-based applications could effectively trade out of the marine portion of the program, thereby potentially obtaining a competitive advantage over small marinizers who sell only marine engines. For similar reasons, credits generated on Category 2 engines can not be used for Category 1 engine compliance. For similar reasons we proposed to prevent the use of credits generated on Category 1 engines from being used for Category 2 engines. Since the expressed concern does not apply to credit exchanges going from smaller to bigger engines, the final rule allows this. However, to account for the likelihood that Category 2 engines will undergo more rebuilds in their lifetime than Category 1 engines, manufacturers must discount any Category 1 engine credits by 25 percent if they are used for Category 2 engine compliance.

Effective immediately, early credit generation is available for all Category 1 and 2 commercial CI marine engines. Credits will be generated relative to the actual Tier 2 standards and will be undiscounted. However, if a manufacturer believes it should be allowed to generate credits relative to an engine family's pre-control emission levels (rather than the Tier 2 standards), it can choose to develop engine family-specific baseline emission levels. Credits will then be calculated relative to the manufacturer-generated baseline emission rates, rather than the Tier 2 standards. Engine manufacturers that are not post-manufacture marinizers generate baseline emission rates by testing three engines from the family for which the baseline is being generated, with the baseline calculated as the average of the three engines. Under this option, engines must still meet the Tier 2 standards for all pollutants to generate credits, but the credits will be calculated relative to the generated baseline rather than the Tier 2 standards. Any credits generated between a measured baseline and the Tier 2 levels will be discounted by reducing the measured baseline value by 10 percent. This is to account for the variability of testing in-use engines to establish the baseline due to differences in hours of use and maintenance practices.

Some early banking provisions apply uniquely to post-manufacture marinizers. In recognition of their small size, more difficult resource constraints and general reliance on engine manufacturers to produce base engines, additional flexibility is warranted to ease the transition to these rules. Therefore, post-manufacture marinizers may establish a measured baseline by testing a single engine. Consistent with the provisions of § 94.209(a), the baseline established by this single engine may be used for broadened engine families, provided the marinizer starts with certified land-based engines. Also, they may certify an engine under the early banking program with an engine that does not meet the Tier 2 emission standards. However, since this program is only intended to ease the transition to full compliance with these standards and rules, the credits will only be available to post-manufacture marinizers through the 2007 model years

In the recent rulemaking for nonroad diesel engines, we also set emission standards for marine diesel engines below 37 kW. These engines were also included in the land-based ABT program in that rule, with some restrictions. We are not changing the way we treat these small marine diesel engines. We are not integrating the ABT program in that rule with the requirements in this final rule, so we don't allow manufacturers to exchange credits for engines above and below 37 kW.

Credits may not be exchanged between Category 1 marine engine families and land-based nonroad engine families. As with the restriction of credit exchanges between engine families above and below 37 kW, this restriction applies because the stringency of the land-based standards was determined in the absence of the availability of credit exchange between marine and land-based engines. In addition, there are differences in the way that marine and land-based credits are calculated that are implicit in the calculation and that make the credits somewhat incompatible. The first is that the difference in test duty cycles means there is an implicit difference in load factor between the two. The second is that there are provisions in this final rule for varying useful lives of marine engine families, which are not included in the land-based nonroad regulations. In addition, as discussed above, the actual credit calculation equations for the two programs are different.

We don't allow trading between Category 2 engines and locomotive engines, because locomotive credits are calculated based on expected remaining service life (which could be many useful life periods, due to the inclusion of the remanufacturing provisions for locomotives), whereas Category 2 marine engine credits are only calculated on the basis of a single useful life.

Participation in the marine diesel ABT program is voluntary. For those manufacturers choosing to use the program, compliance for participating engine families is evaluated in two ways. First, compliance of individual engine families with their FELs is determined and enforced in the same manner as compliance with the emission standards in the absence of an averaging, banking and trading program. Each engine family must certify to the FEL (or FELs, as applicable), and the FEL is treated as the emission limit for certification, production-line and in-use testing (as well as for any other testing done for other enforcement purposes) for each engine in the family. Second, the final number of credits available to the manufacturer at the end of a model year after considering the manufacturer's use of credits from averaging, banking and trading must be greater than or equal to zero.

The generation transfer and use of credits in the ABT program does not change the obligation of all manufacturers to meet the applicable standards. This provision is consistent with other mobile source ABT programs. The marine diesel engine certificates of both parties involved in the violating trading transaction could be voided *ab initio* (*i.e.* back to date of issue) if the engine family or families exceed emission standards as a result of a credit shortfall. A buyer of credits which are shown later to be invalid will only be required to make up the credit shortfall. There will be no penalty associated with the unknowing purchase of invalid credits.

The integrity of the marine diesel averaging, banking and trading program depends on manufacturers' accuracy in recordkeeping and reporting and our effectiveness in tracking and auditing this information. Failure of a manufacturer to maintain the required records would result in the certificates for the affected engine family or families being voided retroactively. Violations of

reporting requirements could result in a manufacturer being subject to civil penalties as authorized by sections 213 and 205 of the Clean Air Act. We allow positive reporting errors (*i.e.*, those errors that result in an underestimation of the manufacturer's positive credit balance) to be corrected provided that the errors are identified within 180 days of the time we receive the manufacturer's annual report.

N. Special Provisions for Post-Manufacture Marinizers

In general, we set engine emission standards that take effect at a set point in time, concurrently precluding the installation in vehicles or equipment of engines not certified to the new standards. The rigidity of this approach is lessened to some extent through averaging, banking, and trading programs, which allow engine manufacturers to produce engines that exceed the emission limits as long as the added emissions can be offset by engines that emit below the required levels. While this approach generally works well, additional flexibility provisions to help relieve compliance burdens may be needed in special cases.

Marine diesel engines are produced using one of three basic manufacturing methods. In the first, least common, method, marine engines are designed and built exclusively for marine applications. This is typically the case for very large Category 3 engines as well as some smaller engines that are produced for special niche markets. In the second method, an engine manufacturer produces a marine diesel engine using a land-based engine that was built by that same manufacturer. In the third method, an unrelated company, referred to here as a "marinizer" produces a marine diesel engine by purchasing a completed or partially completed land-based nonroad or highway engine from an engine manufacturer and modifying it for use in the marine environment according to the marinizing company's own processes. Marinizers tend to be small companies and their output is often designed for niche markets. To address their concerns, we are adopting several provisions to streamline the certification process for marinizers.

1. Application of Flexibility Provisions

The following flexibility provisions will be available only to these marinizers. We define the term post-manufacture marinizer as "an entity that produces a marine engine by modifying a non-marine engine, whether certified or uncertified, complete or partially complete, where such entity is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine." This definition no longer refers only to companies that "substantially modify" non-marine engines because the engine dressing exemption makes provision for companies whose marinization process does not include steps that might affect emissions.

A vessel manufacturer that substantially modifies a certified engine or an engine certified to a previous tier of emission limits or that installs an uncertified engine will be considered a marinizer and must comply with the certification and compliance provisions in this final rule. This clarification is necessary because it is not uncommon for vessel manufacturers to modify marine engines. This may be done to increase the power of an engine or to respond to the needs of a particular user. By considering these vessel manufacturers as marinizers, we will ensure that the engine modifications do not also increase the emissions of an otherwise certified engine.

2. Broader Engine Families

We are allowing marinizers to use a broad engine family definition. Under this provision, a marinizer may include any engines that have similar emission deterioration characteristics in one engine family. Thus, a marinizer could conceivably group all commercial marine diesel engines into one engine family. These engines must all be in the same category and they must be previously certified to meet land-based nonroad, locomotive, or heavy-duty highway emission standards. Separate engine families will be required for each category of marine engines

Note that all other provisions of the final rule apply to this broad engine family including, but not limited to, selection and testing of an emission data engine, application of a deterioration factor (DF), and compliance with the standards.

Even with these larger engine families, marinizers are responsible to conduct testing on a worst-case engine. We can suggest some guidelines for identifying worst-emitter engines without the expense of conducting a full emission test on each engine calibration of each model.

Marinizers can utilize low-cost equipment and a simple procedure to routinely measure parts per million (ppm) levels of gaseous pollutants. We expect that every company operates most or all production engines for quality control purposes, probably with a small number of fixed cycles. Measuring for NO_X emissions during that time provides an additional diagnostic for engine performance, and should provide a good benchmark for comparing emission levels across the product line. Measured ppm NO_X readings should correlate closely with NO_X emission levels from a full certification test. Conversely, the lowest measured NO_X emissions (or highest CO emissions) are an indication of the worst PM emitter. The marinizer may choose to send in test data from a single duty cycle on a single engine, but remains liable for all pollutants on all engines in the family, with any applicable duty cycle.

This guidance suggests a possible means by which a post-manufacture marinizer can limit the testing burden in the effort to certify broad engine families where it may not be apparent which engine to test. If this does not address a marinizer's concerns, the remaining alternative is to certify each engine family, using the standard engine-family definition.

3. Carryover Provisions

Engine manufacturers may carry over engine data generated in a previous model year's certification to certify for the current year. This provision will also apply to the broader engine families of marinizers, with the constraint that the marinizer will need to generate new data if any model in the broad engine family is modified in any way that will make it the highest emitter in the family.

4. Streamlined Certification for Subsequent Years

We are adopting a streamlined certification process for marinizers. This process applies beginning with the year after the relevant implementation dates and continues until engine design changes cause a different engine model to be the highest emitter in the marinizer's broad engine family. Recertification would be required at that point. Under this streamlined certification process, the marinizer submits an annual certification application stating that there have been no changes in the design or production of the engine models that make up the engine family. If there have been changes, the marinizer can still avoid a complete certification submission with test data by demonstrating that there is no change in the identity of the highest emitter or its emissions.

5. Additional Compliance Time

Marinizers generally depend on engine manufacturers producing base engines for marinizing and may therefore be affected by circumstances

beyond their control. This can make it difficult to certify the marinized engines. Consequently, there may be situations in which, despite its best efforts, a marinizer cannot meet the implementation dates, even with the flexibility provisions described in this section. Such a situation may occur if an engine supplier without a major business interest in a marinizer were to change or drop an engine model very late in the implementation process, or was not able to supply the marinizer with an engine in sufficient time for the marinizer to recertify the engine. Based on this concern, we are allowing a one-year delay in the implementation dates for post-manufacture marinizers. In this case, marinizers would need only notify us that they are using the additional year before meeting emission standards.

A similar need for additional lead time is appropriate for post-manufacture marinizers to demonstrate compliance with Not-to-Exceed requirements. Post-manufacture marinizer's reliance on another company's base engines affects the time needed for the development and testing work needed to comply. As described above, engine manufacturers generally have until 2007 to comply with Not-to-Exceed requirements. We are extending that to 2010 for post-manufacture marinizers. Three years of extra lead time (compared to one year for the primary certification standards) is appropriate considering their more limited resources.

6. Special Hardship Provision

As a relief mechanism of last resort, we are also extending to post-manufacture marinizers the hardship relief provisions we included in the recently finalized land-based nonroad rule (see 40 CFR 89.102(f)). Under this provision, marinizers can ask us for additional time to meet the emission limits. Under this hardship relief provision, appeals must be made in writing, be submitted before the earliest date of noncompliance, include evidence that failure to comply was not the fault of the marinizer (*e.g.*, a supply contract was broken by the engine supplier), and include evidence that the inability to sell the subject engines will have a major impact on the company's solvency. We would work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted before granting additional relief, and limit the period of relief to no more than one year. Furthermore, any relief may not exceed one year beyond the date relief is granted. We expect that this provision will be used only rarely. Each granting of relief would be treated as a separate agreement, with no prior guarantee of success, and with the inclusion of measures, agreed to in writing by the marinizer, for recovering the lost environmental benefit. If a marinizer during this hardship period produces certified engines (to emission levels less stringent than would otherwise be required), we would take that into account in determining the lost environmental benefit. This provision is not limited to small businesses, as described in the proposal, since all post-manufacture marinizers have a similar reliance on other manufacturers to produce their engines.

7. Incomplete Marine Engine Exemption

We finalized the nonroad diesel rule with no allowance to import uncertified nonroad engines that will be changed into a marine engine. This final rule is changing the definition of marine engines to include those that are "intended" to be installed on a marine vessel. This is necessary to allow post-manufacture marinizers to import loose engines for marinizing. We also include provisions specifically allowing post-manufacture marinizers to import uncertified engines. Once emission standards apply, a marinizer importing such engines must already have a certificate showing that the engine is part of a certified engine family. The regulations also obligate the marinizer to modify all the imported engines to comply with the requirements of 40 CFR part 94.

V. Technological Feasibility

The emissions standards in this final rule apply to a large variety of marine diesel engine sizes and applications. Section 213(a)(3) of the Clean Air Act directs us to establish standards that provide the "greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology."

We have concluded that the requirements in this final rule are appropriate under section 213 of the Clean Air Act and are technologically feasible on the prescribed schedule. The Final RIA and the Summary and Analysis of Comments contain a detailed treatment of emission-control technologies and the basis for selecting the individual standards. The costs associated with these technologies are discussed in Section VII. We have also concluded, as described in the Final RIA, that the emission standards will have no significant negative effect on noise, energy, or safety.

VI. Areas for Future Action

A. Tier 3 Emission Standards

We have decided not to finalize the proposed Tier 3 emission standards at this time. We intend to address this next tier of emission standards through a separate final rule. This may involve a supplemental proposal. Delaying action on Tier 3 standards will allow us to learn from the application of Tier 3 technology to land-based nonroad diesel engines. Also, it will give us time to consider emission control strategies such as aftertreatment.

B. Emission Standards for Remanufactured Engines

As described in the proposed rule, we are aware of the obstacles to implementing emission standards that would apply to existing engines at the point of rebuild or remanufacture. The comments in favor of such standards did not address these questions. Nevertheless, we are concerned that the gradual turnover to new engines and vessels will cause a very slow introduction of new technologies. As new technologies become available to comply with MARPOL Annex VI emission standards and the emission standards in this final rule, we are hopeful that emission controls on new engines will improve even before our standards take effect. Our early banking provisions add an incentive for this to occur.

To the extent that we observe companies not taking reasonable measures to introduce emission control technologies, we will need to reconsider the importance of setting standards on remanufactured engines. In contrast, introduction and use of emission control technologies ahead of the regulated schedule may reduce the need for a control program for these engines.

C. NTE Requirements for Auxiliary Engines

We are not at this time finalizing NTE requirements for auxiliary marine engines in this final rule. We are contemplating, however, to establish NTE requirements for similar land-based nonroad diesel engines. When we adopt such requirements for nonroad diesel engines, we expect to apply the same provisions, including zones and caps, to auxiliary marine diesel engines at the same time.

D. Application of Provisions to Marine Diesel Engines Less than 37 kW

Marine diesel engines less than 37 kW were included in the rulemaking for nonroad diesel engines and are subject to the emission control program contained in 40 CFR Part 89. That program has two tiers of emission limits, phased in from 1999 to 2000 for Tier 1 and 2004 to 2005 for Tier 2. In general, marine diesel engines less than 37 kW are subject to the same certification and compliance program as land-based nonroad diesel engines. Exceptions to this general approach include the duty cycle (E3, but with a C1 option), ABT program restrictions (land-based credits cannot be used to offset marine diesel emissions), and implementation flexibility provisions that allow post-manufacture marinizers to phase in compliance with Tier 1 emission limits according to the schedule extended to nonroad equipment manufacturers.

We intend eventually to consolidate the smaller engines in a general marine diesel engine regulation. Consolidating existing requirements without reopening those issues may, however, cause confusion. Commenters did not feel strongly that there would be an advantage to combining programs, so we are not consolidating them at this time. We will likely pursue the next tier of emission standards (i.e., Tier 3) for all marine diesel engines together. This way we will be able to integrate the requirements for varying engines sizes in the most sensible way.

E. Category 3 Engines

State and environmental organization commenters have made clear in their comments that they are eager to see greater emission reductions from Category 3 engines, including PM emissions. These commenters are particularly concerned that the MARPOL NO_x limits are not stringent enough to appreciably reduce NO_x inventories and ozone levels. Chapter 5 of the Final RIA describes the expected NO_x reductions from the MARPOL Annex VI limits in more detail. There is enough foreign vessel traffic in U.S. ports that these engines contribute substantially to local air pollution in port areas. However, imposing separate national requirements on foreign-flagged ships that use U.S. ports raises sensitive concerns relating to international trade and policy. Consequently, we will recommend that the United States urge the International Maritime Organization to consider and adopt more stringent NO_x limits as well as PM limits for marine diesel engines. Technologies currently under development for very large marine engines hold a lot of promise for reducing their emissions in the future. The emission standards finalized in this final rule for engines capable of burning heavy fuels (15 L/cyl and larger) also suggest that emission improvements can be obtained from slow- and medium-speed engines. Finally, the standards in this final rule for smaller marine diesel engines will provide a good starting point for a new tier of international standards for those engines.

VII. Projected Impacts

A. Environmental Impacts

Chapter 5 of the Final Regulatory Impact Analysis provides a detailed explanation of the methodology we used to determine the environmental benefits from marine diesel engines associated with this final rule. The following discussion gives a general overview of the methodology and the results.

1. Category 1 Engines

For the purposes of the inventory analysis, Category 1 commercial engines were divided into commercial propulsion and auxiliary categories. Annual emissions were then calculated using engine populations, load factors, annual hours of use, rated power, emission factors, turnover, and growth rates. The sources for and the values of these factors are provided in the Final RIA. Note that we received some indication that the annual use for recreational engines may be lower than assumed in the inventory analysis and calculations (Table 5–2 of the Final Regulatory Impact Analysis).

Table 6 presents the projected emissions inventory from Category 1 commercial propulsion and auxiliary marine engines with and without the new emission standards. Table 6 also presents the anticipated effects of the MARPOL Annex VI standards on the Category 1 NO_x inventory. The CO standard places a cap on existing emission levels, so no benefits are claimed here.

TABLE 6.—CATEGORY 1 COMMERCIAL PROPULSION AND AUXILIARY EMISSIONS INVENTORY (THOUSAND SHORT TONS PER YEAR)

Year	HC		NO_x			PM		CO
	Base	Control	Base	MARPOL Annex VI	Control	Base	Control	Base
2000	11.3	11.3	436	434	434	14.0	14.0	59
2005	11.9	11.5	457	449	435	14.7	14.7	72
2010	12.5	11.1	479	465	406	15.4	12.9	76
2020	13.7	10.4	527	501	368	17.0	11.1	83
2030	15.1	11.2	580	556	392	18.7	11.7	91

2. Category 2 Engines

We developed baseline emission inventories for Category 2 marine engines under contract with Carnegie Mellon University.[10] For the purposes of this analysis, emissions are included from all Category 2 engines operated in the Great Lakes, inland waterways, and coastal waters up to 320 kilometers (200 miles) offshore. Emissions from U.S.-flagged vessels were determined using ship registry data, fuel consumption, rated power, operation assumptions, and fuel specific emission factors. Emissions from foreign-flagged vessels were developed based on cargo movements and waterways data, vessel speeds, average dead weight tonnage per ship, and assumed cargo capacity factors.

To model the benefits of the new standards, we applied an engine replacement schedule and new engine standards to the baseline inventory. In this case, no emission reductions are expected beyond the already low levels of HC. Also, the PM and CO standards are intended as caps, and no benefits are claimed for those pollutants. Table 7 shows the projected emissions for

[10] Corbett, J., Fischbeck, P., "Commercial Marine Emissions Inventory and Analysis for United States Continental and Inland Waterways," Carnegie Mellon University, Order No. 8A–0516–NATX, September 1998 (Docket A–97–50; document II–A–01).

Category 2 vessels with and without the new emission standards. The anticipated NO_X impacts for the application of MARPOL Annex VI standards to U.S.-flagged vessels are also included. The analysis presumes no control of emissions beyond MARPOL levels for foreign-flagged vessels; these are included in the analysis because they operate in U.S. waters.

TABLE 7.—CATEGORY 2 EMISSIONS INVENTORY (THOUSAND SHORT TONS PER YEAR)

Year	HC	NO_X			PM	CO
	Base	Base	MARPOL Annex VI	Control	Base	Base
2000	11.1	267	265	265	6.1	34.1
2010	12.3	295	278	266	6.8	37.7
2020	13.6	325	292	250	7.5	41.7
2030	15.0	360	315	243	8.3	46.0

3. Total Impacts

Table 9 contains the baseline annual emissions from marine diesel engines at or above 37 kW as a whole as well as projections of the annual emissions with the MARPOL Annex VI requirements and EPA standards in place. According to this analysis, the emission standards in this final rule will result in reductions, beyond the MARPOL Annex VI limits, of 8 percent HC, 15 percent NO_X, and 11 percent PM percent CO from marine diesel engines in 2020. Nationally, these reductions represents reductions of 0.9 percent NO_X and 0.1 percent PM. The percent reduction would clearly be much higher for port areas. This is especially true for San Diego, Beaumont-Port Arthur, San Francisco and similar ports where marine diesel engines account for a large fraction of the NO_X emissions.[11]

TABLE 9.—EMISSION REDUCTIONS FROM ENGINES SUBJECT TO TIER 2 STANDARDS

		2000	2010	2020	2030
HC (10^3 short tons)	Baseline	22.4	24.7	27.3	30.1
	Controlled	22.4	23.3	24.0	26.2
	Reduction	0%	6%	12%	13%
NO_X (10^3 short tons)	Baseline	702.2	773.5	852.2	939.0
	MARPOL	699.6	742.3	797.5	871.1
	Controlled	699.6	672.1	618.0	634.7
	Reduction*	0%	13%	27%	32%
PM 10^3 short tons	Baseline	20.1	22.2	24.4	27.0
	Controlled	201.1	19.7	18.6	20.0
	Reduction	0%	11%	24%	26%

*This reduction is from the baseline. The Tier 2 standards are expected to achieve a 23 percent reduction in 2020 from the levels expected from the MARPOL standards.

In addition to the effect of the new standards on direct PM emissions noted above, the standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. As described in Chapter 5 of the Final RIA, each 100 tons of NO_X reduction results in about a 4-ton reduction in secondary PM. This conversion rate varies from region to region, and is greatest in the West. We estimate that the 257,000 tons per year total NO_X reduction projected for marine engines in 2020 will simultaneously reduce secondary PM by about 10,300 tons. This secondary PM reduction is almost double the direct PM reductions for 2020 projected for this rulemaking.

B. Noise, Energy, and Safety

Engines designed to meet the new emission standards will generally operate at lower noise levels. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of fuel and air ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO_X formation. Fuel injection changes and other NO_X control strategies therefore typically reduce engine noise, sometimes dramatically.

We do not anticipate any negative impacts on energy or safety as a result of this final rule. The impact of the new standards on energy is measured by the effect on fuel consumption from complying engines. Although it is not expected to be a primary compliance strategy, marine engine manufacturers could retard engine timing to comply with emission limits. This could lead to an increase in fuel consumption in the absence of other changes to the engines. Most of the technology changes anticipated in response to the new standards, however, have the potential to reduce fuel consumption as well as emissions. Therefore, on balance, no increase in energy consumption is expected. As far as safety is concerned, we believe that marine engine manufacturers will use only proven technology that is currently used in

[11] Marine diesel engines make up about approximately 17% of the NO_X on a summer day for San Diego, 15% for Beaumont-Port Arthur, and 12% for San Francisco. See the final report "Commercial Marine Vessel Contributions to Emission Inventories," submitted by Booz-Allen & Hamilton, Inc., October 7, 1991 (Docket A–97–50; document II–A–5).

other engines such as nonroad land-based diesel applications, locomotives, and diesel trucks.

C. Economic Impacts

In assessing the economic impact of setting emission standards, we have made a best estimate of the combination of technologies that an engine manufacturer will most likely use to meet the new standards. The analysis presents estimated cost increases for new engines and equipment. This economic impact is comprised of variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). The analysis considers total operating costs, including maintenance and fuel consumption, as well. Cost estimates based on these projected technology packages represent an expected change in the cost of engines as they begin to comply with new emission standards. Separate projected costs were derived for engines used in five different ranges of rated power; costs were developed for engines near the middle of the listed ranges. All costs are presented in 1997 dollars. Full details of our cost analysis can be found in Chapter 4 of the Final RIA.

Table 10 summarizes the projected costs of these technologies for meeting the new emission limits. Anticipated incremental cost impacts of the Tier 2 emission limits for the first years of production range from $1,800 to $54,000 per engine, in general with proportionally higher projected costs for larger engines. Long-term impacts on engine costs are expected to be much lower, dropping to levels between $500 and $13,000. Most of this cost reduction is accounted for by the fact that development time and other fixed costs dominate the cost analysis, but disappear after the projected five-year amortization period.

The cost analysis also includes an estimated burden resulting from the need to do additional maintenance work during periodic rebuilds. Complying engines will be equipped with technologies that will require replacement of hardware that is either more expensive than from earlier models, or that is only used because of emission standards. Using typical rebuild schedules, the analysis projects incremental costs for multiple rebuilds, resulting in net-present-value costs that range from $400 to $12,000. In addition to rebuild cost impacts, Table 10 includes an estimated cost burden for conducting production line testing of 1 percent of total industry-wide production.

TABLE 10.—PROJECTED COST IMPACTS BY POWER RATING (KW)

Power rating (kW)	Short-term cost impact	Long-term cost impact	Increased operating cost (npv)
37–225	$1,798	$466	$442
225–560	3,191	846	704
560–1000	25,147	856	206
1000–2000	22,575	1,120	696
2000+	53,923	13,019	12,430

The above analysis presents unit cost estimates for each power category. With current data for engine and vessel sales for each category and projections for the future, these costs can be translated into projected direct costs to the nation for the new emission standards in any year. Aggregate costs are estimated at about $10 million in the first year the new standards apply, increasing to a peak of about $16 million in 2008 as increasing numbers of engines become subject to the new standards. The following years show a drop in aggregate costs as the per-unit cost of compliance decreases, resulting in aggregate costs of $2 million to $3 million after 2010.

Some of the anticipated emission-control technologies improve fuel efficiency, while others may have a negative effect. We believe that, on average, manufacturers will be able to comply with the emission standards without increasing fuel consumption relative to today's models. This will be less true for engine models that have already incorporated advanced technologies. These engines, however, will not need to make the extensive hardware changes projected in our analysis, so they should have a much smaller increase in production costs. Similarly, manufacturers may choose to avoid the high R&D costs of implementing a new technology for an engine family with low sales volume by relying on timing retard as a lower-cost alternative. To show how this compares, we conducted a sensitivity analysis to show the costs associated with a fuel penalty resulting from relying on retarded timing. The Final RIA quantifies the cost of a timing retard strategy, which results in an estimated net-present-value cost increase from fuel consumption ranging from $400 for a 100 kW engine to $19,000 for a 3000 kW engine. This cost results from increased fuel consumption. Considering the established effectiveness of timing retard as a strategy to control NO_X emissions, this may be a viable approach, as either a substitute or a supplemental technology.

D. Cost-effectiveness

We estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the new emission standards for the same nominal power ratings of marine engines and vessels highlighted earlier in this section. This analysis has been performed only for Category 1 and Category 2 marine engines, since the final rule does not apply to Category 3 engines. Chapter 6 of the Final RIA contains a more detailed discussion of the cost-effectiveness analysis.

As described in the Final RIA, neither costs nor emission benefits were specifically attributed to the not-to-exceed provisions. The calculated cost-effectiveness of the emission standards presented here therefore includes all the anticipated effects on costs and emission reductions.

1. Tier 2 Cost-Effectiveness

For determining the cost-effectiveness of the Tier 2 emission standards, only benefits beyond those achieved by the MARPOL Annex VI standard were considered. This is a conservative estimate because we attributed all the costs of the technology associated with the Tier 2 levels to this action and did not attribute any of these costs to the MARPOL Annex VI standard. For the sake of this analysis, we assigned the whole cost increase to reducing $HC+NO_X$ emissions. NO_X reductions represent approximately 98 percent of the total $HC+NO_X$ emission reductions expected from the new standards. Table

11 presents the cost-effectiveness of the Tier 2 standards.

TABLE 11.—COST-EFFECTIVENESS OF THE MARINE TIER 2 STANDARDS FOR HC AND NO_X

Nominal power(kW)	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefit.
100	$2,239	4.3	$470	$521
400	3,894	26	137	151
750	25,354	80	318	319
1500	23,210	267	87	88
3000	66,353	750	81	89

Weighting the projected cost and emission benefit numbers presented above by the populations of the individual power categories, we calculated the cost-effectiveness of the Tier 2 HC+NO_X standards for Category 1 and 2, both separately and combined. Table 12 contains the resulting aggregate cost-effectiveness results for the Tier 2 standards.

TABLE 12.—AGGREGATE COST-EFFECTIVENESS FOR THE MARINE TIER 2 STANDARDS FOR HC AND NO_X

	NPV of total lifetime costs	NPV Benefits (short tons)	Discounted Cost-Effectiveness	Cost-Effectiveness without non-emission benefits
Category 1	$4,333	24	$131	$185
Category 2	66,353	750	64	89
Combined	5,667	39	103	172

While the cost estimates described under the Economic Impacts do not take into account the observed value of performance improvements in the field, these non-emission benefits should be taken into account in the calculation of cost-effectiveness. We believe that an equal weighting of emission and non-emission benefits is justified for those technologies which clearly have substantial non-emission benefits, namely fuel injection changes and turbocharging. For some or all of these technologies, a greater value for the non-emission benefits could likely be justified. This has the effect of halving the cost for those technologies in the cost-effectiveness calculation. The cost-effectiveness values in this document are based on this calculation methodology. Cost-effectiveness values are shown without adjustment for non-emission benefits in Tables 11 and 12 for comparison purposes.

2. Comparison to Other Programs

In an effort to evaluate the cost-effectiveness of the HC+NO_X controls for marine engines, we have summarized the cost-effectiveness results for five other recent EPA mobile source rulemakings that required reductions in NO_X (or NMHC+NO_X) emissions. The heavy-duty vehicle portion of the Clean Fuel Fleet Vehicle Program yielded a cost-effectiveness of approximately $1,500 per ton of NO_X. The most recent NMHC+NO_X standards for highway heavy-duty diesel engines yielded a cost-effectiveness of $100-$600 per ton of NMHC+NO_X. The newly adopted standards for locomotive engines yielded a cost-effectiveness of $160–$250 per ton of NO_X. Finally, the recent standards for nonroad engines reported a cost-effectiveness of $410–$600 per ton. The cost-effectiveness of the new HC+NO_X standards for marine diesel engines presented above is more favorable than the cost-effectiveness of many other recent programs.

We have also summarized the cost-effectiveness results for three other recent EPA mobile source rulemakings that required reductions in PM emissions. The cost-effectiveness of the most recent urban bus engine PM standard was estimated to be $10,000–$16,000 per ton, and the cost-effectiveness of the urban bus retrofit/rebuild program was estimated to be approximately $25,000 per ton. The October 1998 nonroad diesel final rule reported a cost-effectiveness for PM of $2,300 per ton (using the same conservative method used here for marine engines). The cost-effectiveness of the PM emission standard for marine diesel engines presented above is more favorable than that of either of the urban bus programs and is comparable to that of the nonroad rule.

We also analyzed the PM cost-effectiveness of the new standards by attributing half of the increased costs to controlling PM to compare with other PM control strategies. This approach effectively double-counts these costs, since we already assess the full cost of the program in the calculation of NO_X+HC cost-effectiveness. This aggregate discounted lifetime cost-effectiveness represents the highest figure that could be expected for cost-effectiveness of the new standards and was calculated to provide an indication of the upper bound of PM cost-effectiveness values. The resulting fleet-wide discounted lifetime cost-effectiveness of the PM standards is approximately $600–$2,600 per ton. This cost-effectiveness is much better than for the urban bus PM standard and the urban bus retrofit/rebuild program and is comparable to the nonroad Tier 2 standards.

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new standards are expected to have beneficial impacts with respect to crop damage, secondary particulate formation, acid deposition, eutrophication, visibility, and the viability of forests, as described earlier.

Because it is difficult to quantify the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to them.

VIII. Direct Final Changes

In the proposal for this rulemaking, we did not include modifications to the PLT regulations for locomotives in 40 CFR Part 92. However, on May 13, 1999, EMA submitted a comment to the public docket stating that they believe it is important to make the PLT provisions consistent between locomotives and Category 2 marine engines. We agree with this comment. This requires two revisions to the locomotive regulations. The first revision is the addition of a regulatory provision that authorizes the Administrator to conduct alternate PLT programs instead of the program specified in the regulations. The locomotive FRM preamble stated that we were finalizing such a provision, but the regulatory text was not included in the notice. Thus, we believe there is good cause to finalize this provision without providing the public additional opportunity to comment on it.

The second issue is related to a technical detail of the locomotive PLT program. The previously finalized regulations require that engines tested for PLT have service accumulation "equivalent to 300 hours of operation." EMA commented that we should require only that they have service accumulation "up to 300 hours of operation," which is the same as we proposed for marine engines in this rulemaking. Given the technical nature of this issue, we believe that it would be appropriate to finalize this revision, without providing the public an opportunity to comment on them.

In addition, we are revising the definition of new in 40 CFR 89.2. The existing definition inadvertantly omits a portion of the intended definition. The revised definition is consistent with our other control programs.

The revisions to 40 CFR parts 89 and 92 will be effective February 28, 2000, provided that we do not receive notification on or before January 28, 2000 that someone wishes to file an adverse or negative comment regarding this issue. If we do not receive such comment, this provision will become final and effective without further EPA action. If on the other hand, we do receive notification on or before January 28, 2000 that someone wishes to file an adverse or negative comment regarding this issue, we will withdraw this revision, then propose it and go through full notice-and-comment procedures before finalizing the revision again.

IX. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided several opportunities for public comment over a period of several years. We first proposed emission standards for marine diesel engines on November 9, 1994 (59 FR 55929), with a supplemental proposal on February 7, 1996 (61 FR 4600). An Advance Notice of Proposed Rulemaking published May 22, 1998 announced our plan to pursue a new direction in regulating marine diesel engines (63 FR 28309). Comments received on that notice were considered in the development of the proposal (December 11, 1998, 63 FR 68508). The comment period and public hearing associated with that proposal provided another opportunity for public input. We have also met with a variety of stakeholders at various points in the process, including engine manufacturers, engine marinizers, vessel builders, environmental organizations, and states.

We have described and provided responses to the comments on the proposed rule in the Summary and Analysis of Comments, which is available in the docket for this rulemaking and on the Office of Mobile Sources internet home page. Some of the principal areas of comment are highlighted here. Engine manufacturers and others had extensive comment on the feasibility, appropriate level and timing of the standards. Several commenters focused on the proposed Tier 3 standards and the largest Category 2 engines. The final rule divides Category 2 into new subcategories with differentiated emission standards. Additional comments centered on the timing and level of the Tier 2 standards. We address these comments in Chapter 3 of the Final RIA and in Chapter 3 of the Summary and Analysis of Comments. Manufacturers also expressed several concerns with the proposed not-to-exceed provisions. They questioned the principle of Not-to-Exceed requirements generally and their effect on the stringency of the emission standards. They also raised practical issues related to the conditions and ranges associated with Not-to-Exceed testing. The Summary and Analysis of Comments in Chapter 4 provides responses to these comments and describes the several changes we made to the proposed rule to address these concerns.

Though we are not including recreational engines and vessels in this final rule, we need to define these terms here to differentiate them from commercial models. Engine and vessel manufacturers had objections to our proposed definitions, primarily because of potential inconsistencies with Coast Guard requirements and the potential liability for vessel manufacturers. To address these concerns, we drew directly from the existing Coast Guard definitions, with one necessary change. A manufacturer needs to establish a vessel's classification as commercial or recreational before it is sold or used, so the final definitions specify the intent of the manufacturers to produce vessels for recreational purposes as the determining factor. We describe this further in Section II.E. above and in Chapter 2 of the Summary and Analysis of Comments.

X. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has submitted this rulemaking to the Office of Management and Budget for review and prepared a Final RIA, which is available in the docket. Any written comments from OMB and any EPA response to OMB comments are also in the public docket. EPA estimates total societal costs resulting from this final rule between $15 million and $20 million for the early years, with a decreasing annual figure once manufacturers fully amortize their fixed costs.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For the reasons set out below, this rulemaking will not have a significant impact on a substantial number of small entities.

EPA has identified four types of entities that may be affected by the final rule: base engine manufacturers, post-manufacture marinizers, commercial vessel builders, and boat operators.

The group of companies that marinize their own base engines presents no small business impacts concerns because all of the manufacturers are large (using the Small Business Administration definitions).

Numerous manufacturers of commercial vessels and commercial boats qualify as small businesses. [12] This final rule, however, is expected to impose very little additional cost on these entities. According to discussions with several of these vessel and boat builders and a related trade association, the production of new commercial vessels is generally flexible enough to accommodate physical changes to an engine without forcing a redesign of the vessel.

The small entities likely to be affected by the final rule are post-manufacture marinizers. These companies modify a land-based engine for use in the marine environment. The following discussion of the impacts on these companies is derived from an impact assessment prepared for this rulemaking by ICF, Inc. and discussions with several potentially affected companies. [13]

Through conversations with engine manufacturers and vessel builders, EPA initially identified twelve small post-manufacture marinizers. Four of these were subsequently eliminated from the Agency's analysis (two were eliminated because there were subsidiary companies of other companies on the list; two others were eliminated because they do not actually manufacture marine engines). The eight remaining companies were used to develop a model small company for purposes of exploring the impact of this rulemaking. Using this model small company as a guide, it was estimated that average compliance costs will range from 1.3 percent to 3.9 percent (relative to total revenues), depending on the compliance cost scenario used. [14] As discussed above, this final rule contains many provisions to ease the burden of compliance for small post-manufacture marinizers.

Because the number of companies examined is so small, EPA also performed an analysis using company-specific data instead of the model company. According to this data, in the least costly compliance scenario, four small post-manufacture marinizers may be affected by more than 3 percent of sales, two companies by 1 to 3 percent of sales, and two companies by less than 1 percent of sales. Of the four companies originally thought to be affected by more than 3 percent of sales, two were eliminated because they, in fact, only dress engines. The original estimate of 3 percent is therefore an overstatement of costs for these companies. As discussed above, a company dressing engines needs to label the engines, but does not need to demonstrate compliance with emission standards. Under the expanded definition of engine dressing in the final rule, one additional company would be exempt from certification requirements for most of its engines, which undergo an exchange of turbochargers. Consequently, it is expected that only one small company may be affected by more than 3 percent of annual sales. It may, however, be possible for all marinizers subject to certification requirements to reduce the impacts of this rule further. For example, they can marinize a cleaner engine, thus reducing the design and development costs associated with bringing a previous tier engine to the new emission standards. Alternatively, they may be able to work more closely with the base engine manufacturer to reduce the need for extensive redesign of their marinization process.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request has been prepared by EPA, and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

The information being collected is to be used by EPA to ensure that new marine diesel engines comply with applicable emissions standards through certification requirements and various subsequent compliance provisions.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 589 hours per response, with collection required annually. The estimated number of respondents is 32. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request for this rulemaking has been forwarded to the Office of Management and Budget (OMB) for review and approval. The Information Collection Request describes the nature of the information collection and its expected burden and cost. Sections 94.203, 94.206, 94.213, 94.215, 94.308, 94.309, 94.403, 94.404, 94.406, 94.508, 94.509, 94.803, 94.1104, 94.1108 do not apply until the Office of

[12] Commercial vessels are larger merchant vessels, typically exceeding 400 feet in length and generally used in waterborne trade and/or passenger transport. Commercial boats are smaller service, industrial, and fishing vessels generally used in inland and coastal waters. A more indepth description of these industry sectors is contained in "Industry Characterization: Commercial Marine Vessel Manufacturers" prepared by ICF, Inc. for US Environmental Protection Agency, Contract No. 68–C5–0010, September 1998 (Docket A–97–50, document II–A–3).

[13] "Characterization and Small Business Impact Assessment for Small and Large Marine Compression Ignition Engine Manufacturers/ Marinizers," prepared by ICF Incorporated for U.S. Environmental Protection Agency, Contract Number 68–C5–0010, September 1998 (Docket A–97–50; document II-A–4).

[14] ICF explored three cost scenarios: $100,000, $200,000, and $300,000 per engine family.

Management and Budget has approved the information collection requirements contained in them. We will publish a document in the **Federal Register** announcing the information collection requirements are approved.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The rule does not impose any enforceable duties on state, local, or tribal governments, i.e., they manufacture no engines and are therefore not required to comply with the requirements of this rule. For the same reason, EPA has determined that this rule also contains no regulatory requirements that might significantly or uniquely affect small governments. EPA projects that annual economic effects will be far less than $100 million. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In specifying the proposed test procedures for marine engines, we sought to maximize consistency with other nonroad programs in 40 CFR Parts 89 and 92. This is because most commercial marine engines in the U.S. are derivations of engines that are regulated under 40 CFR Parts 89 and 92. The test procedures from these EPA programs sections are very similar to those specified in ISO 8178, with a few important differences. First, the ISO procedures correct measured emissions to a narrow set of reference testing conditions to minimize variability in measured emission values. This is in conflict with our goal generally to ensure to control of emissions over the wide range of engine operation and ambient conditions that the engine can reasonably be expected to encounter in use. The narrow set of ISO reference testing conditions is also in conflict with the not-to-exceed emission standards in this final rule, which specifically requires manufacturers to control emissions in a zone of engine operation over defined ranges of test conditions that are wider. Second, the ISO procedures allow wide discretion for manufacturers to set important test parameters such as rated speed and fuel properties. We describe in the Summary and Analysis of Comments why it is important to define an explicit procedure to determine an objective value for an engine's rated speed and to establish a range of test fuel properties (especially sulfur). Third, an ISO committee is in the process of making various corrections to the calculations and sampling and analysis procedures currently specified in 8178. EPA is hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could then be adopted by reference. EPA also expects that any development of revised test procedures will be done in accordance with ISO procedures and in a balanced manner and thus include the opportunity for involvement of a range of interested parties (potentially including parties such as industry, EPA, state governments, and environmental groups) so that the resulting procedures can represent these different interests.

F. Protection of Children

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to a rule that is determined to be "economically significant," as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. Moreover, this rule is determined not to be economically significant under Executive Order 12866.

G. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule creates no mandate on state, local or tribal governments. The rule imposes no enforceable duties on these entities, because they do not manufacture any engines that are subject to this rule. This rule will be implemented at the federal level and impose compliance obligations only on private industry. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This final rule will not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the federal level and impose compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804 (2).

XI. Judicial Review

Under section 307(b) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 28, 2000. Under section 307 (b)(2) of the Act, the requirements published in this document may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Diesel fuel, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 92

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Railroads, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel fuel, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

Dated: November 23, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as set forth below.

PART 89—[AMENDED]

1. The authority citation for Part 89 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 89.1 is revised to read as follows:

§ 89.1 Applicability.

(a) This part applies for all compression-ignition nonroad engines (see definition of "nonroad engine" in § 89.2) except those specified in paragraph (b) of this section. This means that the engines for which this part applies include but are not limited to the following:

(1) Compression-ignition engines exempted from the requirements of 40 CFR Part 92 by 40 CFR 92.907;

(2) Compression-ignition engines exempted from the requirements of 40 CFR Part 94 by 40 CFR 94.907;

(3) Portable compression-ignition engines that are used in but not installed in marine vessels (as defined in the General Provisions of the United States Code, 1 U.S.C. 3);

(4) Non-propulsion compression-ignition engines used in locomotives; and

(5) Compression-ignition marine engines with rated power under 37 kW.

(b) (1) *Aircraft engines.* This part does not apply for engines used in aircraft (as defined in 40 CFR 87.1).

(2) *Mining engines.* This part does not apply for engines used in underground mining of engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MSHA) in 30 CFR Parts 7, 31, 32, 36, 56, 57, 70, and 75.

(3) *Locomotive engines.* This part does not apply for engines that:

(i) Are subject to the standards of 40 CFR part 92; or

(ii) Are exempted from the requirements of 40 CFR part 92 by exemption provisions of 40 CFR part 92 other than those specified in 40 CFR 92.907.

(4) *Marine engines.* This part does not apply for engines that:

(i) Are subject to the standards of 40 CFR part 94;

(ii) Are exempted from the requirements of 40 CFR part 94 by exemption provisions of 40 CFR part 94 other than those specified in 40 CFR 94.907; or

(iii) Are marine engines (as defined in 40 CFR part 94) with rated power at or above 37kW that are manufactured in calendar years in which the standards of 40 CFR part 94 are not yet applicable.

(5) *Hobby engines.* This part does not apply for engines with a per-cylinder displacement of less than 50 cubic centimeters.

3. Section 89.2 is amended by revising the definition of "New" to read as follows:

§ 89.2 Definitions.

* * * * *

New for purposes of this part, means a nonroad engine, nonroad vehicle, or nonroad equipment the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to the engine, vehicle, or equipment is not transferred to an ultimate purchaser until after the engine, vehicle, or equipment is placed into service, then the engine, vehicle, or equipment will no longer be new after it is placed into service. A nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purposes. With respect to imported nonroad engines, nonroad vehicles, or nonroad equipment, the term *new* means an engine, vehicle, or piece of equipment that is not covered by a certificate of conformity issued under this part at the time of importation, and that is manufactured after the effective date of a regulation issued under this part which is applicable to such engine, vehicle, or equipment (or which would be applicable to such engine, vehicle, or equipment had it been manufactured for importation into the United States).

* * * * *

PART 92—[AMENDED]

4. The authority citation for Part 92 continues to read as follows:

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart F—[Amended]

5. Section 92.503 is amended by adding paragraph (c) to read as follows:

§ 92.503 General Requirements.

* * * * *

(c) Upon request, the Administrator may also allow manufacturers (and remanufacturers, where applicable) to conduct alternate production line testing programs, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the locomotives and locomotive engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Administrator may waive some or all of the requirements of this subpart.

6. Section 92.506 is amended by revising paragraph (c) to read as follows:

§ 92.506 Test procedures.

* * * * *

(c) *Service Accumulation/Green Engine factor.* The manufacturer or remanufacturer shall accumulate service on the locomotives and locomotive engines to be tested up to 300 hours of operation. In lieu of conducting such service accumulation, the manufacturer or remanufacturer may establish a Green Engine factor for each regulated pollutant for each engine family to be used in calculating emissions test results. The manufacturer or remanufacturer shall obtain the approval of the Administrator prior to using a Green Engine factor.

* * * * *

7. Part 94 is added to read as follows:

PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION-IGNITION ENGINES

Subpart A—General Provisions for Emission Regulations for Compression-Ignition Marine Engines

Sec.
94.1 Applicability.
94.2 Definitions.
94.3 Abbreviations.
94.4 Treatment of confidential information.
94.5 Reference materials.
94.6 Regulatory structure.
94.7 General standards and requirements.
94.8 Exhaust emission standards.
94.9 Compliance with emission standards.
94.10 Warranty period.
94.11 Requirements for rebuilding certified engines.
94.12 Interim provisions.

Subpart B—Test Procedures

94.101 Applicability.
94.102 General provisions.
94.103 Test procedures for Category 1 marine engines.
94.104 Test procedures for Category 2 marine engines.
94.105 Duty cycles.
94.106 Supplemental test procedures.
94.107 Determination of maximum test speed.
94.108 Test fuels.

Subpart C—Certification Provisions

94.201 Applicability.
94.202 Definitions.
94.203 Application for certification.
94.204 Designation of engine families.
94.205 Prohibited controls, adjustable parameters.
94.206 Required information.
94.207 Special test procedures.
94.208 Certification.
94.209 Special provisions for post-manufacture marinizers.
94.210 Amending the application and certificate of conformity.
94.211 Emission-related maintenance instructions for purchasers.
94.212 Labeling.
94.213 Submission of engine identification numbers.
94.214 Production engines.
94.215 Maintenance of records; submittal of information; right of entry.
94.216 Hearing procedures.
94.217 Emission data engine selection.
94.218 Deterioration factor determination.
94.219 Durability data engine selection.
94.220 Service accumulation.
94.221 Application of good engineering judgment.
94.222 Certification of engines on imported vessels.

Subpart D—Certification Averaging, Banking, and Trading Provisions

94.301 Applicability.
94.302 Definitions.
94.303 General provisions.
94.304 Compliance requirements.
94.305 Credit generation and use calculation.
94.306 Certification.

94.307 Labeling.
94.308 Maintenance of records.
94.309 Reports.
94.310 Notice of opportunity for hearing.

Subpart E—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program

94.401 Applicability.
94.402 Definitions.
94.403 Emission defect information report.
94.404 Voluntary emissions recall reporting.
94.405 Alternative report formats.
94.406 Reports filing; record retention.
94.407 Responsibility under other legal provisions preserved.
94.408 Disclaimer of production warranty applicability.

Subpart F—Manufacturer Production Line Testing Programs

94.501 Applicability.
94.502 Definitions.
94.503 General requirements.
94.504 Right of entry and access.
94.505 Sample selection for testing.
94.506 Test procedures.
94.507 Sequence of testing.
94.508 Calculation and reporting of test results.
94.509 Maintenance of records; submittal of information.
94.510 Compliance with criteria for production line testing.
94.511 [Reserved]
94.512 Suspension and revocation of certificates of conformity.
94.513 Request for public hearing.
94.514 Administrative procedures for public hearing.
94.515 Hearing procedures.
94.516 Appeal of hearing decision.
94.517 Treatment of confidential information.

Subpart G—[Reserved]

Subpart H—Recall Regulations

94.701 Applicability.
94.702 Definitions.
94.703 Applicability of 40 CFR Part 85, Subpart S.

Subpart I—Importation of Nonconforming Engines

94.801 Applicability.
94.802 Definitions.
94.803 Admission.
94.804 Exemptions.
94.805 Prohibited acts; penalties.

Subpart J—Exclusion and Exemption Provisions

94.901 Purpose and applicability.
94.902 Definitions.
94.903 Exclusions.
94.904 Exemptions.
94.905 Testing exemption.
94.906 Manufacturer-owned exemption, display exemption, competition exemption, and foreign trade vessel exemption.
94.907 Engine dressing exemption.
94.908 National security exemption.
94.909 Export exemptions.
94.910 Granting of exemptions.
94.911 Submission of exemption requests.

Subpart K—[Reserved]

Subpart L—General Enforcement Provisions and Prohibited Acts

94.1101 Applicability.
94.1102 Definitions.
94.1103 Prohibited acts.
94.1104 General enforcement provisions.
94.1105 Injunction proceedings for prohibited acts.
94.1106 Penalties.
94.1107 Warranty provisions.
94.1108 In-use compliance provisions.
Appendix I to Part 94—Emission-Related Engine Parameters and Specifications.

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—General Provisions for Emission Regulations for Compression-Ignition Marine Engines

§ 94.1 Applicability.

(a) Except as noted in paragraphs (b) and (c) of this section, the provisions of this part apply to manufacturers (including post-manufacture marinizers and dressers), rebuilders, owners and operators of:

(1) Marine engines that are compression-ignition engines manufactured (or that otherwise become new) on or after January 1, 2004;

(2) Marine vessels manufactured (or that otherwise become new) on or after January 1, 2004 and which include a compression-ignition marine engine.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply with respect to the engines identified in paragraphs (a)(1) and (2) of this section where such engines are:

(1) Category 3 marine engines;

(2) Marine engines with rated power below 37 kW; or

(3) Marine engines on foreign vessels.

(c) The provisions of subpart L of this part apply to all persons with respect to the engines identified in paragraphs (a)(1) and (2) of this section.

(d) The provisions of this part do not apply to any persons with respect to the engines not identified in paragraphs (a)(1) and (2) of this section.

(e) The prohibition specified in § 94.1103(a)(6) applies to all persons with respect to recreational marine engines. Notwithstanding the provision of paragraph (c) of this section, requirements or prohibitions other than the prohibition specified in § 94.1103(a)(6) do not apply with respect to recreational marine engines.

§ 94.2 Definitions.

(a) The definitions of this section apply to this subpart. They also apply to all subparts of this part, except where noted otherwise.

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act: *Act* means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Adjustable Parameter means any device, system, or element of design which is physically or electronically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing.

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Aftertreatment system or *aftertreatment component* or *aftertreatment technology* means any system or component or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Applicable standard means a standard to which an engine is subject; or, where an engine is certified to another standard or FEL, applicable standard means the other standard or FEL to which the engine is certified, as allowed by § 94.8. This definition does not apply to subpart D of this part.

Auxiliary engine means a marine engine that is not a propulsion engine.

Auxiliary emission control device (AECD) means any element of design which senses temperature, vessel speed, engine RPM, atmospheric pressure, manifold pressure or vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system (including, but not limited to injection timing); or any other feature that causes in-use emissions to be higher than those measured under test conditions.

Averaging means the exchange of emission credits among engine families within a given manufacturer's product line.

Banking means the retention of emission credits by a credit holder for use in future calendar year averaging or trading as permitted by the regulations in this part.

Base engine means a land-based engine to be marinized, as configured prior to marinization.

Blue Sky Series engine means an engine meeting the requirements of § 94.7(e).

Calibration means the set of specifications, including tolerances, specific to a particular design, version, or application of a component, or components, or assembly capable of functionally describing its operation over its working range.

Category 1 means relating to a marine engine with a rated power greater than or equal to 37 kilowatts and a specific engine displacement less than 5.0 liters per cylinder.

Category 2 means relating to a marine engine with a specific engine displacement greater than or equal to 5.0 liters per cylinder but less than 30 liters per cylinder.

Category 3 means relating to a marine engine with a specific engine displacement greater than or equal to 30 liters per cylinder.

Commercial marine engine means a marine engine that is not a recreational marine engine.

Compliance date means the date on which compliance with a standard becomes mandatory. For example, the compliance date for standards which first apply to the 2004 model year, is January 1, 2004.

Compression-ignition means relating to a type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle to regulate intake air flow for controlling power during normal operation is indicative of a compression-ignition engine.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine calibration, and other parameters as designated by the Administrator.

Constant-speed engine means an engine that is governed to operate only at a single rated speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or engine lubrication system.

Defeat device means an AECD or other control feature that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal engine operation and use, unless the AECD or other control feature has been identified by the manufacturer in the application for certification, and:

(1) Such conditions are substantially represented by the portion of the applicable duty cycle of § 94.105 during which the applicable emission rates are measured;

(2) The need for the AECD or other control feature is justified in terms of protecting the engine or vessel against damage or accident; or

(3) The AECD or other control feature does not go beyond the requirements of engine starting.

Designated Officer means the person designated by the Director of the Office of Mobile Sources to act as the Designated Officer under the provisions of this part. For marine engines, the address for the Designated Officer is: Group Manager, Engine Compliance Group, U.S. EPA (mail code 6403J), 401 M Street SW, Washington, DC, 20460.

Deterioration factor means the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point expressed as either: the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low hour test point (for multiplicative deterioration factors); or the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point (for additive deterioration factors).

Diesel fuel means any fuel suitable for use in diesel engines which is commonly or commercially known or sold as diesel fuel.

Dresser means any entity that modifies a land-based engine for use in a marine vessel, in compliance with the provisions of § 94.907. This means that dressers may not modify the engine in a way that would affect emissions.

Emission control system means those devices, systems or elements of design which control or reduce the emission of substances from an engine. This includes, but is not limited to, mechanical and electronic components and controls, and computer software.

Emission credits means the amount of emission reduction or exceedance, by an engine family, below or above the emission standard, respectively, as calculated under subpart D of this part. Emission reductions below the standard are considered as "positive credits," while emission exceedances above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales volume of the engine family. "Reserved credits" are emission credits generated within a calendar year waiting to be reported to EPA at the end of the calendar year. "Actual credits" refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA.

Emission-data engine means an engine which is tested for purposes of emission certification or production line testing.

Emission-related defect means a defect in design, materials, or workmanship in a device, system, or assembly which affects any parameter or specification enumerated in Appendix I of this part.

Emission-related maintenance means that maintenance which substantially affects emissions or which is likely to affect the deterioration of the engine or vessel with respect to emissions.

Engine family means a group of engine configurations that are expected to have similar emission characteristics throughout the useful lives of the engines (see § 94.204), and that are (or were) covered (or requested to be covered) by a specific certificate of conformity.

Engineering analysis means a summary of scientific and/or engineering principles and facts that support a conclusion made by a manufacturer, with respect to compliance with the provisions of this part.

EPA Enforcement Officer means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator or his/her designee.

Exhaust emissions means substances (i.e., gases and particles) emitted to the atmosphere from any opening downstream from the exhaust port or exhaust valve of an engine.

Exhaust gas recirculation means an emission control technology that reduces emissions by routing gases that had been exhausted from the combustion chamber(s) back into the engine to be mixed with incoming air prior to or during combustion. The use of valve timing to increase the amount of residual exhaust gas in the combustion chamber(s) that is mixed with incoming air prior to or during combustion is not considered to be exhaust gas recirculation for the purposes of this part.

Family Emission Limit (FEL) means an emission level declared by the certifying manufacturer to serve in lieu of an otherwise applicable emission standard for certification and compliance purposes in the averaging, banking and trading program. FELs are expressed to the same number of decimal places as the applicable emission standard.

Foreign vessel means a vessel of foreign registry or a vessel operated under the authority of a country other than the United States.

Fuel system means the combination of fuel tank(s), fuel pump(s), fuel lines and filters, pressure regulator(s), and fuel injection components, fuel system vents, and any other component involved in the delivery of fuel to the engine.

Green Engine Factor means a factor that is applied to emission

measurements from an engine that has had little or no service accumulation. The Green Engine Factor adjusts emission measurements to be equivalent to emission measurements from an engine that has had approximately 300 hours of use.

Identification number means a specification (for example, model number/serial number combination) which allows a particular engine to be distinguished from other similar engines.

Importer means an entity or person who imports engines from a foreign country into the United States (including its territories).

Intermediate Speed means peak torque speed if peak torque speed occurs from 60 to 75 percent of maximum test speed. If peak torque speed is less than 60 percent of maximum test speed, intermediate speed means 60 percent of maximum test speed. If peak torque speed is greater than 75 percent of maximum test speed, intermediate speed means 75 percent of maximum test speed.

Low hour engine means an engine during the interval between the time that normal assembly operations and adjustments are completed and the time that 300 additional operating hours have been accumulated (including hours of operation accumulated during emission testing, if performed).

Malfunction means a condition in which the operation of a component in an engine occurs in a manner other than that specified by the certifying manufacturer (e.g., as specified in the application for certification); or the operation of an engine in that condition.

Manufacturer means any person engaged in the manufacturing or assembling of new engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines. The term manufacturer includes post-manufacturer marinizers, but does not include any dealer with respect to new engines received by such person in commerce.

Manufacturer-owned engine means an uncertified marine engine that is owned and controlled by a manufacturer, is used for product development, and is not sold or leased.

Marine engine means an engine that is installed or intended to be installed on a marine vessel. This definition does not include portable auxiliary engines for which the fueling, cooling and exhaust systems are not integral parts of the vessel.

Marine vessel has the meaning specified in the General Provisions of the United States Code, 1 U.S.C. 3.

Maximum Test Power means:

(1) For Category 1 engines, the power output observed at the maximum test speed with the maximum fueling rate possible.

(2) For Category 2 engines, 90 percent of the power output observed at the maximum test speed with the maximum fueling rate possible.

Maximum Test Torque means the torque output observed at the test speed with the maximum fueling rate possible at that speed.

Method of aspiration means the method whereby air for fuel combustion enters the engine (e.g., naturally aspirated or turbocharged).

Model year means the manufacturer's annual new model production period which includes January 1 of the calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. Where a manufacturer has no annual new model production period, model year means calendar year.

New marine engine means:

(1)(i) A marine engine, the equitable or legal title to which has never been transferred to an ultimate purchaser;

(ii) A marine engine installed on a vessel, the equitable or legal title to such vessel has never been transferred to an ultimate purchaser; or

(iii) A marine engine that has not been placed into service on a vessel.

(2) Where the equitable or legal title to an engine or vessel is not transferred to an ultimate purchaser prior to its being placed into service, the engine ceases to be new after it is placed into service.

(3) With respect to imported engines, the term "new marine engine" means an engine that is not covered by a certificate of conformity under this part at the time of importation, and that was manufactured after the starting date of the emission standards in this part which are applicable to such engine (or which would be applicable to such engine had it been manufactured for importation into the United States).

New vessel means:

(1)(i) A vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(ii) A vessel that has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel.

(2) Where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, the vessel ceases to be new when it is placed into service.

Nonconforming marine engine means a marine engine which is not covered by a certificate of conformity prior to importation or being offered for importation (or for which such coverage has not been adequately demonstrated to EPA); or a marine engine which was originally covered by a certificate of conformity, but which is not in a certified configuration, or otherwise does not comply with the conditions of that certificate of conformity.

Note: This definition does not include domestic marine engines which are not covered by a certificate of conformity prior to their introduction into U.S. commerce; such engines are considered to be "noncomplying marine engines."

Oxides of nitrogen means nitric oxide and nitrogen dioxide. Oxides of nitrogen are expressed quantitatively as if the nitric oxide were in the form of nitrogen dioxide (oxides of nitrogen are assumed to have a molecular weight equivalent to nitrogen dioxide).

Passenger has the meaning given by 46 U.S.C. 2101(21). This generally means that a passenger is a person that pays to be on the vessel.

Post-manufacture marinizer means an entity that produces a marine engine by modifying a non-marine engine, whether certified or uncertified, complete or partially complete, where such entity is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine. In addition, vessel manufacturers that substantially modify marine engines are post-manufacture marinizers. For the purpose of this definition, "substantially modify" means changing an engine in a way that could change engine emission characteristics.

Presentation of credentials means the display of the document designating a person as an EPA enforcement officer.

Primary fuel means that type of fuel (e.g., petroleum distillate diesel fuel) that is expected to be consumed in the greatest quantity (volume basis) when the engine is operated in use.

Propulsion engine means an engine that moves a vessel through the water or directs the movement of a vessel.

Recreational marine engine means a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel, and which is permanently labeled as follows: "THIS ENGINE IS CATEGORIZED AS A RECREATIONAL ENGINE UNDER 40 CFR PART 94, AND IS NOT SUBJECT TO THE EMISSION STANDARDS OF THAT PART. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS

A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."

Recreational vessel means a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure. For this definition, the term "operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure" does not include the following vessels:

(1) Vessels of less than 100 gross tons that carry more than 6 passengers (as defined in this section).

(2) Vessels of 100 gross tons or more that carry one or more passengers (as defined in this section).

(3) Vessels used solely for competition.

Service life means the total life of an engine. Service life begins when the engine is originally manufactured and continues until the engine is permanently removed from service.

Specific emissions means emissions expressed on the basis of observed brake power, using units of g/kW-hr. Observed brake power measurement includes accessories on the engine if these accessories are required for running an emission test (except for the cooling fan). When it is not possible to test the engine in the gross conditions, for example if the engine and transmission form a single integral unit, the engine may be tested in the net condition. Power corrections from net to gross conditions will be allowed with prior approval of the Administrator.

Specified by a certificate of conformity or *specified in a certificate of conformity* means stated or otherwise specified in a certificate of conformity or an approved application for certification.

Test engine means an engine in a test sample.

Test sample means the collection of engines or vessels selected from the population of an engine family for emission testing.

Tier 2 means relating to an engine subject to the Tier 2 emission standards listed in § 94.8.

Total Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Trading means the exchange of engine emission credits between credit holders.

Ultimate Purchaser means, with respect to any new engine or vessel, the first person who in good faith purchases such new engine or vessel for purposes other than resale.

United States. United States includes the customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

U.S.-directed production volume means the number of marine engine units, subject to this part, produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

Useful life means the period during which an engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as hours of operation and years. It is the period during which a new engine is required to comply with all applicable emission standards. (Note: § 94.9(a) specifies minimum requirements for useful life values.)

Vessel means a marine vessel.

Voluntary emission recall means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer to remedy any emission-related defect for which notification of engine or vessel owners has been provided.

§ 94.3 Abbreviations.

The abbreviations of this section apply to all subparts of this part and have the following meanings:

AECD—Auxiliary emission control device.
API—American Petroleum Institute.
ASTM—American Society for Testing and Materials.
°C—Degrees Celsius.
CI—Compression ignition.
CO—Carbon monoxide.
CO_2—Carbon dioxide.
disp.—volumetric displacement of an engine cylinder.
EGR—Exhaust gas recirculation.
EP—End point.
EPA—Environmental Protection Agency.
FEL—Family emission limit.
ft—foot or feet.
FTP—Federal Test Procedure.
g—gram(s).
g/kW-hr—Grams per kilowatt hour.
gal—U.S. gallon.
h—hour(s).
HC—hydrocarbon.
Hg—Mercury.
hp—horsepower.
ICI—Independent Commercial Importer.
in—inch(es).
K—Kelvin.
kg—kilogram(s).
km—kilometer(s).
kPa—kilopascal(s).
kW—kilowatt.
L/cyl—liters per cylinder.
m—meter(s).
max—maximum.
mg—milligram(s).
min—minute.
ml—milliliter(s).
mm—millimeter.
NIST—National Institute for Standards and Testing.
NMHC—Non-methane hydrocarbons.
NTIS—National Technical Information Service.
NO—nitric oxide.
NO_2—nitrogen dioxide.
NO_x—oxides of nitrogen.
No.—number.
O_2—oxygen.
pct—percent.
PM—particulate matter.
PMM—post-manufacture marinizer.
ppm—parts per million by volume.
ppmC—parts per million, carbon.
rpm—revolutions per minute.
s—second(s).
SAE—Society of Automotive Engineers.
SEA—Selective Enforcement Auditing.
SI—International system of units (i.e., metric).
THC—Total hydrocarbon.
THCE—Total hydrocarbon equivalent.
U.S.—United States.
U.S.C.—United States Code.
vs—versus.
W—watt(s).
wt—weight.

§ 94.4 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR part 2, subpart B.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to

the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

§ 94.5 Reference materials.

(a) The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part:

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. The table follows:

Document number and name	40 CFR part 94 reference
ASTM D 86–97: "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure".	§ 94.108 to Subpart D.
ASTM D 93–97: "Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester".	§ 94.108 to Subpart D.
ASTM D 129–95: "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)".	§ 94.108 to Subpart D.
ASTM D 287–92: "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method).	§ 94.108 to Subpart D.
ASTM D 445–97: "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)".	§ 94.108 to Subpart D.
ASTM D 613–95: "Standard Test Method for Cetane Number of Diesel Fuel Oil".	§ 94.108 to Subpart D.
ASTM D 1319–98: "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption".	§ 94.108 to Subpart D.
ASTM D 2622–98: "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry".	§ 94.108 to Subpart D.
ASTM D 5186–96: "Standard Test Method for "Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels By Supercritical Fluid Chromatography".	§ 94.108 to Subpart D.
ASTM E 29–93a: "Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications".	§§ 94.9, 94.218, 94.305, 94.508.

(2) [Reserved]

§ 94.6 Regulatory structure.

This section provides an overview of the regulatory structure of this part.

(a) The regulations of this Part 94 are intended to control emissions from in-use marine engines.

(b) The engines for which the regulations of this part (i.e., 40 CFR part 94) apply are specified by § 94.1, and by the definitions of § 94.2. The point at which an engine or vessel becomes subject to the regulations of this part is determined by the definitions of new marine engine and new marine vessel in § 94.2. Subpart J of this part contains provisions exempting certain engines and vessels from the emission standards in this part under special circumstances.

(c) To comply with the requirements of this part, a manufacturer must demonstrate to EPA that the engine meets the applicable standards of §§ 94.7 and 94.8, and all other requirements of this part. The requirements of this certification process are described in subparts C and D of this part.

(d) Subpart B of this part specifies procedures and equipment to be used for conducting emission tests for the purpose of the regulations of this part.

(e) Subparts E, F, and H of this part specify requirements for manufacturers after certification; that is during production and use of the engines.

(f) Subpart I of this part contains requirements applicable to the importation of marine engines covered by the provisions of this part.

(g) Subpart L of this part describes prohibited acts and contains other enforcement provisions relating to marine engines and vessels covered by the provisions of this part.

(h) Unless specified otherwise, the provisions of this part apply to all marine engines and vessels subject to the emission standards of this part.

§ 94.7 General standards and requirements.

(a) Marine engines and vessels may not be equipped with a defeat device.

(b) An engine may not be equipped with an emission control system for the purpose of complying with emission standards if such a system will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(c) An engine with an emission control system may not emit any noxious or toxic substance which would not be emitted in the operation of the engine in the absence of such a system, except as specifically permitted by regulation.

(d) All engines subject to the emission standards of this part shall be equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use. (Equivalent connections are allowed.)

(e) Electronically controlled engines subject to the emission standards of this part shall broadcast on engine's controller area networks engine torque

(as percent of maximum) and engine speed.

§ 94.8 Exhaust emission standards.

(a) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)

Engine size—liters/cylinder, rated power	Category	Model Year [1]	THC+NO_X g//kW-hr	CO g/kW-hr	PM g/kW-hr
Disp. <0.9 and power ≥ 37 kW	Category 1	2005	7.5	5.0	0.40
0.9 ≤disp. <1.2 all power levels	Category 1	2004	7.2	5.0	0.30
1.2 ≤disp. <2.5 all power levels	Category 1	2004	7.2	5.0	0.20
2.5 ≤disp. <5.0 all power levels	Category 1	2007	7.2	5.0	0.20
5.0 ≤disp. <15.0 all power levels	Category 2	2007	7.8	5.0	0.27
15.0 ≤disp. <20.0 power < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤disp. <20.0 power ≥ 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤disp. <25.0 all power levels	Category 2	2007	9.8	5.0	0.50
25.0 ≤disp. <30.0 all power levels	Category 2	2007	11.0	5.0	0.50

[1] The model years listed indicate the model years for which the specified standards start.

(b) Exhaust emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter (and other compounds, as applicable) shall be measured using the procedures set forth in subpart B of this part.

(c) In lieu of the THC+NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer shall then set a family emission limit (FEL) which will serve as the standard for that engine family.

(d)(1) Naturally aspirated engines subject to the standards of this section shall not discharge crankcase emissions into the ambient atmosphere.

(2) For engines using turbochargers, pumps, blowers, or superchargers for air induction, if the engine discharges crankcase emissions into the ambient atmosphere in use, these crankcase emissions shall be included in all exhaust emission measurements.

(e) Exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(1) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed; or

(2) 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106.

(f) The following paragraphs define the requirements for low-emitting Blue Sky Series engines.

(1) *Voluntary standards.* Engines may be designated "Blue Sky Series" engines through the 2010 model year by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing, as follows:

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated Brake Power (kW)	THC+NO_X	PM
Power ≥37 kW, and displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5	5.0	0.12
5≤displ.<15	5.0	0.16
15 ≤disp. <20, and power <3300 kW	5.2	0.30
15 ≤disp. <20, and power ≥3300 kW	5.9	0.30
20 ≤disp. <25	5.9	0.30
25 ≤disp. <30	6.6	0.30

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part.

(3) *Test procedures.* Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator.

(g) Standards for alternative fuels. The standards described in this section apply to compression-ignition engines, irrespective of fuel, with the following two exceptions:

(1) Engines fueled with natural gas shall comply with NMHC+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section; and

(2) Engines fueled with alcohol fuel shall comply with THCE+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section.

§ 94.9 Compliance with emission standards.

(a) The general standards and requirements in § 94.7 and the emission standards in § 94.8 apply to each new engine throughout its useful life period. The useful life is specified both in years and in hours of operation, and ends when either of the values (hours of operation or years) is exceeded.

(1) The minimum useful life is 10 years or 10,000 hours of operation for Category 1 and 10 years or 20,000 hours of operation for Category 2.

(2) The manufacturer shall specify a longer useful life if the engine is designed to remain in service longer than the applicable minimum useful life without being rebuilt. A manufacturer's recommended time to remanufacture/rebuild longer than the minimum useful life is one indicator of a longer design life.

(3) Upon request by the manufacturer, the Administrator may allow useful life values shorter than the minimum values specified in paragraph (a)(1) of this section, provided:

(i) The useful life value may not be shorter than any of the following:

(A) 1000 hours of operation.

(B) The manufacturer's recommended overhaul interval.

(C) The mechanical warranty provided by the manufacturer to the owner.

(ii) The manufacturer must have documentation from in-use engines showing that these engines will rarely operate longer than the alternate useful life.

(iii) The manufacturer displays the useful life on the engine label.

(b) Certification is the process by which manufacturers apply for and obtain certificates of conformity from EPA, which allows the manufacturer to introduce into commerce new marine engines for sale or use in the U.S.

(1) Compliance with the applicable emission standards by an engine family shall be demonstrated by the certifying manufacturer before a certificate of conformity may be issued under § 94.208. Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in Subpart B of this part, from a low hour engine. A development engine that is equivalent in design to the marine engines being certified may be used for Category 2 certification.

(2) The emission values to compare with the standards shall be the emission values of a low hour engine, or a development engine, adjusted by the deterioration factors developed in accordance with the provisions of § 94.219. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the same number of significant figures as contained in the applicable standard.

(c) Upon request by the manufacturer, the Administrator may limit the applicability of exhaust emission requirements of § 94.8(e) as necessary for safety or to otherwise protect the engine.

§ 94.10 Warranty period.

(a) Warranties imposed by § 94.1107 shall apply for a period of operating hours equal to at least 50 percent of the useful life in operating hours or a period of years equal to at least 50 percent of the useful life in years, whichever comes first.

(b) Warranties imposed by § 94.1107 shall apply for a period not less than any mechanical warranties provided by the manufacturer to the owner.

§ 94.11 Requirements for rebuilding certified engines.

(a) The provisions of this section apply with respect to engines subject to the standards prescribed in § 94.8 and are applicable to the process of engine rebuilding. Engine rebuilding means to overhaul an engine or to otherwise perform extensive service on the engine (or on a portion of the engine or engine system). For the purpose of this definition, perform extensive service means to disassemble the engine (or portion of the engine or engine system), inspect and/or replace many of the parts, and reassemble the engine (or portion of the engine or engine system) in such a manner that significantly increases the service life of the resultant engine.

(b) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications), and the model year(s) of the resulting engine configuration must be identified. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emission control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(c) When an engine is being rebuilt and remains installed or is reinstalled in the same vessel, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a certified configuration that is equivalent, from an emissions standpoint, to the engine being replaced.

(d) At time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy requirements in § 94.211 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(e)(1) When conducting a rebuild, all critical emission-related components listed in Appendix I of this part not otherwise addressed by paragraphs (b) through (d) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(2) During the installation of a rebuilt engine, all critical emission-related components listed in Appendix I of this part not otherwise addressed by paragraphs (b) through (d) of this section must be checked as necessary, following manufacturer recommended practices.

(f) Records shall be kept by parties conducting activities included in paragraphs (b) through (e) of this section. At minimum the records shall include the hours of operation at the time of rebuild, a listing of work performed on the engine and emission-related control components (including a listing of parts and components used, engine parameter adjustments, emission-related codes or signals responded to and reset), and work performed under paragraph (e) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions apply instead of other provisions of this part.

(a) *Compliance date of standards.* Post-manufacture marinizers may elect to delay the model year of the Tier 2 standards as specified in § 94.8 by one year for each engine family. Compliance with the standards becomes mandatory after that year. Post-manufacture marinizers wishing to take advantage of this provision must inform the Designated Officer of their intent to do so in writing before the date that compliance with the standards would otherwise be mandatory.

(b) *Early banking of emission credits.* (1) A manufacturer may optionally certify engines manufactured before the date the Tier 2 standards take effect to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part. Manufacturers may begin earning credits on January 28, 2000.

(2) Consistent with the provisions of Subpart D of this part, NO_X and PM emission credits may be generated from engines prior to the applicable effective compliance date of the applicable standard (i.e., the effective compliance date in § 94.8(a), as applicable), relative to baseline emission rates.

(3)(i) THC+NO_X credits generated under this paragraph (b) shall be calculated as specified in § 92.305, except that the baseline emission rate may be either the applicable standard or a measured THC+NO_X baseline level for the configuration with the lowest NO_X emission rate in the applicable engine family. The additional credits resulting from using a measured baseline (instead of the applicable standard) shall be discounted by 10 percent. This discount does not apply to the portion of the credits resulting from the engine's emissions being below the applicable standard. Baseline emission rates may not exceed the IMO NO_X limits.

(ii) PM credits generated under this paragraph (b) shall be calculated as specified in § 94.305, except that the applicable standard may be replaced by a measured PM baseline emission rate for the configuration with the lowest NO_X emission rate in the applicable engine family that is approved in advance by the Administrator. The additional credits resulting from using a measured baseline (instead of the applicable standard) shall be discounted by 10 percent. This discount does not apply to the portion of the credits resulting from the engine's emissions being below the applicable standard.

(4)(i) For post-manufacture marinizers, measured baseline emission levels may be based on emissions from a single engine for each engine family.

(ii) For all other manufacturers, measured baseline emission levels must be based on the average of emissions from at least three engines for each engine family.

(iii) The Administrator must approve any measured baselines in advance.

(5) For an engine to be eligible to generate early credits under this paragraph (b), its certified emission levels for all pollutants must be below the Tier 2 standards listed in § 94.8, with the following exception: PMMs may include in this early credit program Category 1 marine engines with certified emissions above the Tier 2 standards listed in § 94.8. Early credits generated by Category 1 marine engines with certified emissions above the Tier 2 standards listed in § 94.8 may not be used for model year 2008 or later engines.

(c) Testing of Category 1 engines subject to the requirements of this part that is conducted by the Administrator shall be performed using test fuels that meet the specifications in § 94.108 and have a sulfur content no higher than 0.20 weight percent, unless the PM emission rates are corrected for the effect of a higher fuel sulfur content.

(d) Post-manufacture marinizers may import an uncertified engine for marinization, in cases where the engine in the final marinized configuration is not subject to the standards of this part because:

(1) The model year of the marinized engine is prior to the first model year for which engines of that size are subject to the standards;

(2) The post-manufacture marinizer is marinizing the engine under paragraph (a) of this section; or

(3) The post-manufacture marinizer is granted hardship relief from the Tier 2 standards under § 94.209(c).

(e) Notwithstanding the other provisions of this part, the requirements of § 94.8(e) start with 2010 model year engines for post-manufacture marinizers and 2007 model year engines for all other engine manufacturers.

Subpart B—Test Procedures

§ 94.101 Applicability.

Provisions of this subpart apply for testing performed by the Administrator or a manufacturer.

§ 94.102 General provisions.

(a) The test procedures specified in this part are intended to produce emission measurements that are equivalent to emission measurements that would result from emission tests performed during in-use operation using the same engine configuration installed in a vessel.

(b) Test procedures otherwise allowed by the provisions of this subpart shall not be used where such procedures are not consistent with good engineering practice and the regulatory goal specified in paragraph (a) of this section.

(c) Alternate test procedures may be used if shown to yield equivalent results, and if approved in advance by the Administrator.

§ 94.103 Test procedures for Category 1 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 89, except as otherwise specified in this subpart.

(b) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.104 Test procedures for Category 2 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 92, except as otherwise specified in this subpart.

(b)(1) The requirements of 40 CFR part 92 related to charge air temperatures, engine speed and load, and engine air inlet restriction pressures do not apply for marine engines.

(2) For marine engine testing, charge air temperatures, engine speed and load, and engine air inlet restriction pressures shall be representative of typical in-use marine engine conditions.

(c) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.105 Duty cycles.

(a) *Overview.* For the purpose of determining compliance with the emission standards of § 94.8, except for those in § 94.8(e), engines shall be tested using the appropriate duty cycles described in this section.

(b) *General cycle.* Propulsion engines that are used with (or intended to be used with) fixed-pitch propellers, and any other engines for the other duty cycles of this section don't apply, shall be tested using the duty cycle described in the following Table B–1:

TABLE B–1.—GENERAL MARINE DUTY CYCLE

Mode No.	Engine speed [1] (percent of maximum test speed)	Percent of maximum test power [2]	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	91	75	5.0	0.50

TABLE B–1.—GENERAL MARINE DUTY CYCLE—Continued

Mode No.	Engine speed [1] (percent of maximum test speed)	Percent of maximum test power [2]	Minimum time in mode (minutes)	Weighting factors
3	80	50	5.0	0.15
4	63	25	5.0	0.15

[1] Engine speed: ±2 percent of point.
[2] Power: ±2 percent of engine maximum value.

(c) *Variable-pitch and electrically coupled propellers.* (1) Constant-speed propulsion engines that are used with (or intended to be used with) variable-pitch propellers or with electrically coupled propellers shall be tested using the duty cycle described in the following Table B–2:

TABLE B–2.—DUTY CYCLE FOR CONSTANT-SPEED PROPULSION ENGINES

Mode No.	Engine speed [1] (percent of maximum test speed)	Percent of maximum test power [2]	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	100	75	5.0	0.50
3	100	50	5.0	0.15
4	100	25	5.0	0.15

[1] Engine speed: ±2 percent of point.
[2] Power: ±2 percent of engine maximum value.

(2) For the purpose of determining compliance with the emission standards of § 94.8, variable-speed propulsion engines that are used with (or intended to be used with) variable-pitch propellers or with electrically coupled propellers shall be tested using the duty cycle described in Table B–3, which follows:

TABLE B–3.—DUTY CYCLE FOR VARIABLE SPEED PROPULSION ENGINES USED ON NON-PROPELLER LAW VESSELS AND FOR VARIABLE SPEED AUXILIARY ENGINES

Test segment	Mode No.	Engine speed [1]	Percent of maximum test torque [2]	Minimum time in mode (minutes)	Weighting factors
1	1	Maximum Test Speed	100	5.0	0.15
1	2	Maximum Test Speed	75	5.0	0.15
1	3	Maximum Test Speed	50	5.0	0.15
1	4	Maximum Test Speed	10	5.0	0.10
2	5	Intermediate	100	5.0	0.10
2	6	Intermediate	75	5.0	0.10
2	7	Intermediate	50	5.0	0.10
2	8	Idle	0	5.0	0.15

[1] Engine speed (non-idle): ±2 percent of point. Engine speed (idle): Within manufacturer's specifications. Idle speed is specified by the manufacturer.
[2] Torque (non-idle): ±2 percent of engine maximum value. Torque (idle): minimum fueling rate Load less than 5 percent of peak torque.

(d) *Auxiliary.* For the purpose of determining compliance with the emission standards of § 94.8:

(1) Constant speed auxiliary engines shall be tested using the duty cycle described in Table B–4, which follows:

TABLE B–4.—DUTY CYCLE FOR CONSTANT-SPEED AUXILIARY ENGINES

Mode No.	Engine speed [1]	Percent of maximum test torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum Test Speed	100	5.0	0.05
2	Maximum Test Speed	75	5.0	0.25
3	Maximum Test Speed	50	5.0	0.30
4	Maximum Test Speed	25	5.0	0.30

TABLE B–4.—DUTY CYCLE FOR CONSTANT-SPEED AUXILIARY ENGINES—Continued

Mode No.	Engine speed [1]	Percent of maximum test torque [2]	Minimum time in mode (minutes)	Weighting factors
5	Maximum Test Speed	10	5.0	0.10

[1] Engine speed: ±2 percent of point.
[2] Torque: ±2 percent of engine maximum value.

(2) Variable speed auxiliary engines shall be tested using the duty cycle described in Table B–3 in paragraph (c)(2) of this section.

§ 94.106 Supplemental test procedures.

This section describes the test procedures for supplemental testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e). In general, the supplemental test procedures are the same as those otherwise specified by this subpart, except that they cover any speeds, loads, ambient conditions, and operating parameters that may be experienced in use. The test procedures specified by other sections in this subpart also apply to these tests, except as specified in this section.

(a) Notwithstanding other provisions of this subpart, testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted:

(1) At any speed and load (or any combination of speeds and loads that is nominally steady-state) within the applicable Not To Exceed Zone specified in paragraph (b) of this section;

(2)(i) Without correction, at any intake air temperature between 13°C and 35°C (or between 13°C and 30°C for engines not drawing intake air directly from a space that could be heated by the engine);

(ii) Without correction at any ambient water temperature (or equivalent) between 5°C and 27°C;

(iii) Without correction at any ambient humidity between 7.1 and 10.7 grams of moisture per kilogram of dry air; and

(3) With a continuous sampling period not less than 30 seconds in duration.

(b) The specified Not to Exceed Zones for marine engines are defined as follows. These Not to Exceed Zones apply, unless a modified zone is established under paragraph (c) of this section.

(1) For Category 1 engines certified using the duty cycle specified in § 94.105(a), the Not to Exceed zones are defined as follows:

(i) The Not to Exceed zone is the region between the curves power = 1.15 × SPD^2 and power = 0.85 × SPD^4, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

(ii) This zone is divided into two subzones, one above and one below 45% of maximum power at rated speed.

(iii) SPD in paragraph (b)(1)(i) of this section refers to percent of maximum test speed.

BILLING CODE 6560–50–P

(iv) See Figure B–1 for an illustration of this Not to Exceed zone which follows:

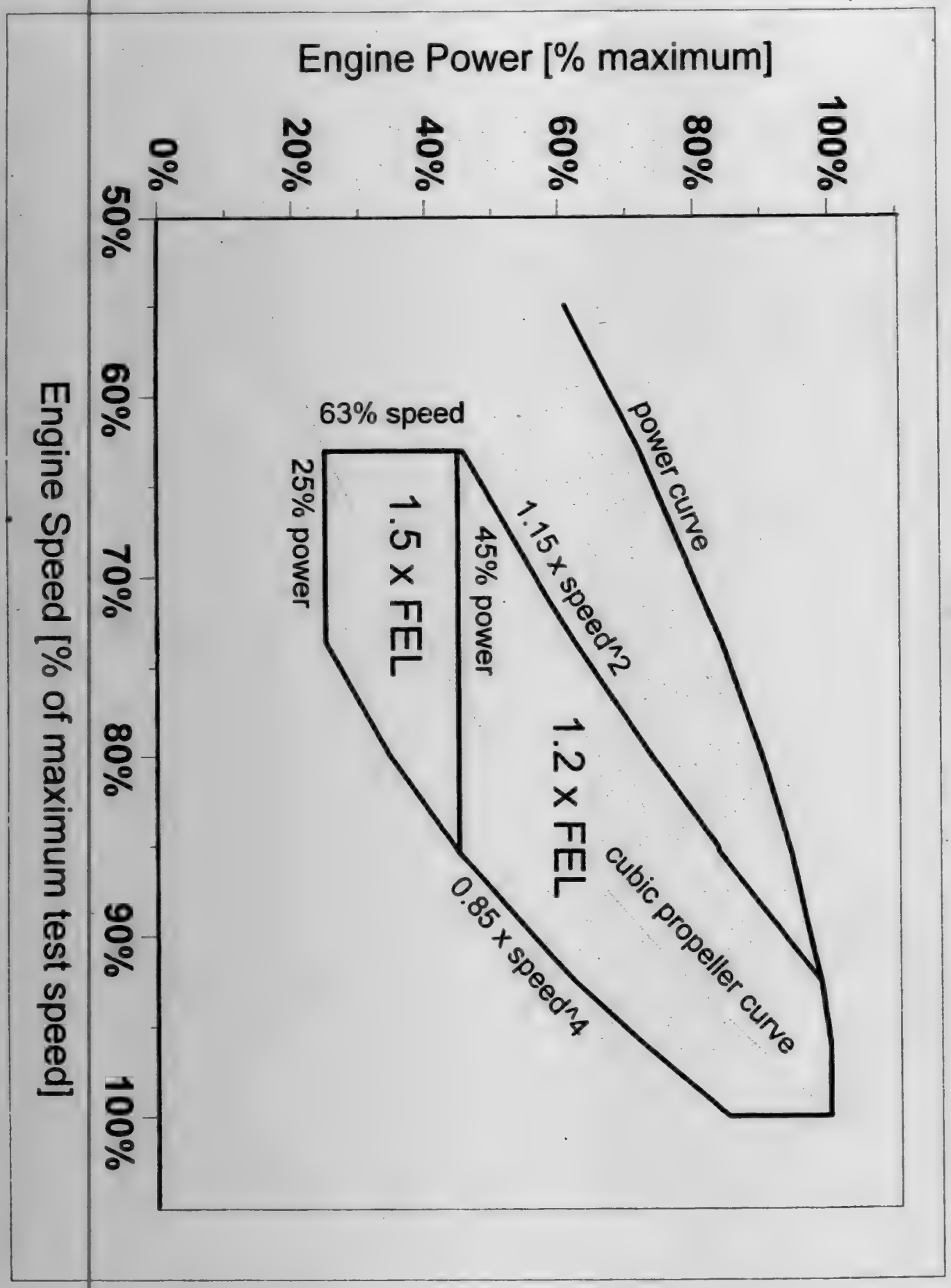


Figure B-1

(2) For Category 2 engines certified using the duty cycle specified in § 94.105(a), the Not to Exceed zones are defined as follows:

(i) The Not to Exceed zone is the region between the curves power = 1.04 × SPD^2 and power = 0.76 × SPD^4, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

(ii) This zone is divided into two subzones, one above and one below 45% of maximum power at rated speed.

(iii) SPD in paragraph (b)(2)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B–2 in paragraph (b)(3) of this section for an illustration of this Not to Exceed zone.

(3) For engines certified using the duty cycle specified in § 94.105(b)(2), the Not to Exceed zones are defined as follows:

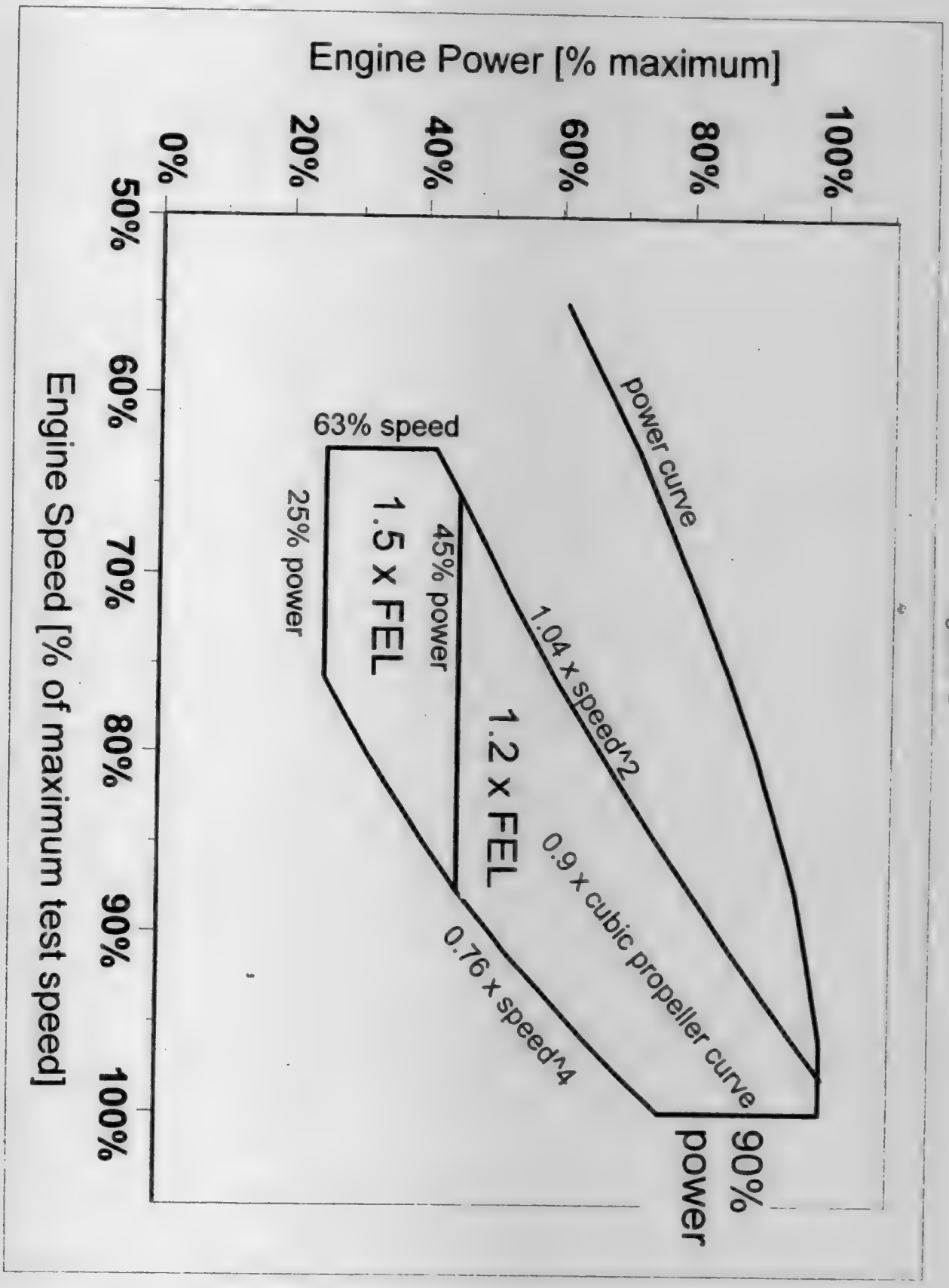


Figure B-2

(i) The Not to Exceed zone is the region above the curve power = 0.85 × SPD^2, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

(ii) This zone is divided into two subzones, one above and one below 45% of maximum power at rated speed.

(iii) SPD in paragraph (b)(3)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B–3 for an illustration of this Not to Exceed zone:

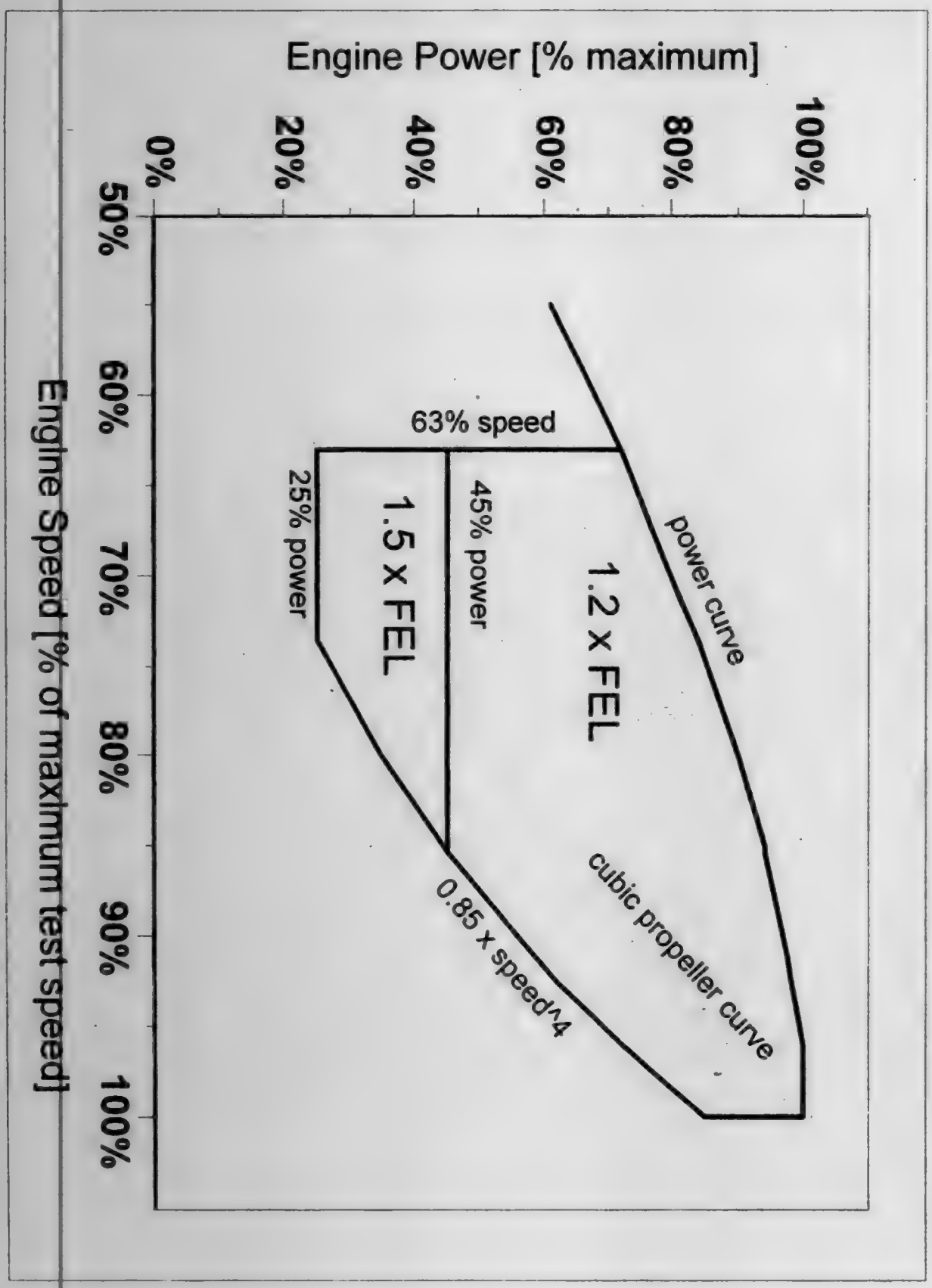


Figure B-3

(4) For engines certified using the duty cycle specified in § 94.105(b)(1), the Not to Exceed Zone is defined as any load greater than or equal to 25 percent of maximum power at rated speed, and at any speed at which the engine operates in use.

(c)(1) Upon request by the manufacturer, the Administrator may specify a narrower Not to Exceed Zone for an engine family at the time of certification, provided that the narrower Not to Exceed Zone includes all speeds greater than 63 percent of maximum test speed and loads greater than 25 percent of maximum power at rated speed at which the engines are expected to normally operate in use.

(2) At the time of certification, the Administrator may specify, or require the manufacturer to specify, a broader Not to Exceed Zone for an engine family, provided that the broader Not to Exceed Zone includes only speeds greater than 63 percent of maximum test speed and loads greater than 25 percent of maximum power at rated speed at which the engines are expected to normally operate in use.

(d) Testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted at any ambient air temperature or humidity outside the ranges specified in paragraph (a)(2) of this section, provided that emission measurements are corrected to be equivalent to measurements within the ranges specified in paragraph (a)(2) of this section. Correction of emission measurements made in accordance with this paragraph (d) shall be made in accordance with good engineering practice. The measurements shall be corrected to be within the range using the minimum possible correction.

(e) Testing conducted under this section may not include engine starting.

§ 94.107 Determination of maximum test speed.

(a) *Overview.* This section specifies how to determine maximum test speed from a lug curve. This maximum test speed is used in §§ 94.105 and 94.106 (including the tolerances for engine speed specified in § 94.105).

(b) *Generation of lug curve.* Prior to beginning emission testing, generate maximum measured brakepower versus engine speed data points using the applicable method specified in 40 CFR 86.1332. These data points form the lug curve. It is not necessary to generate the entire lug curve. For the portion of the curve where power increases with increasing speed, it is not necessary to generate points with power less than 90 percent of the maximum power value. For the portion of the curve where power decreases with increasing speed, it is not necessary to generate points with power less than 75 percent of the maximum power value.

(c) *Normalization of lug curve.* (1) Identify the point (power and speed) on the lug curve at which maximum power occurs.

(2) Normalize the power values of the lug curve by dividing them by the maximum power value identified in paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(3) Normalize the engine speed values of the lug curve by dividing them by the speed at which maximum power occurs, which is identified in paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(4) Maximum engine power is located on the normalized lug curve at 100 percent power and 100 percent speed.

(d) *Determination of maximum test speed.* Calculate the maximum test speed from the speedfactor analysis described in this paragraph (d).

(1) For a given combination of engine power and speed (i.e., a given power/speed point), the speedfactor is the distance to the normalized power/speed point from the zero power, zero speed point. The value of the speedfactor is defined as:

$$\text{Speedfactor} = \sqrt{(\text{power})^2 + (\text{speed})^2}$$

(2) Calculate speedfactors for the power/speed data points on the lug curve, and determine the maximum value.

(3) Maximum test speed is the speed at which the maximum value for the speedfactor occurs.

(e) For constant-speed engines, rated speed is the maximum test speed.

§ 94.108 Test fuels.

(a) *Distillate diesel test fuel.* (1) The diesel fuels for testing marine engines designed to operate on distillate diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 94.5) in Table B–5, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM) [1]	Value (Type 2–D)
Cetane	D 613–95	40–48
Distillation Range:		
IBP, °C	D 86–97	171–204
10% point, °C	D 86–97	204–238
50% point, °C	D 86–97	243–282
90% point, °C	D 86–97	293–332
EP, °C	D 86–97	321–366
Gravity, API	D 287–92	32–37
Total Sulfur, weight%	D 129–95 or D 2622–98	0.03–0.80
Hydrocarbon composition:		
Aromatics, % vol.	D 1319–98 or D 5186–96	10 [2]
Paraffins, Naphthalenes, Olefins	D 1319–98	[3]
Flashpoint, °C (minimum)	D 93–97	54
Viscosity @ 38 °C, Centistokes	D 445–97	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 94.6.
[2] Minimum.
[3] Remainder.

(2) Other diesel fuels may be used for testing provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in service; and

(iii) Use of a fuel listed under paragraph (a)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(3) The specification of the fuel to be used under paragraphs (a)(1), and (a)(2) of this section shall be reported in the application for certification.

(b) *Other fuel types.* For engines that are designed to be capable of using a type of fuel (or mixed fuel) instead of or in addition to distillate diesel fuel (e.g., natural gas, methanol, or nondistillate diesel), and that are expected to use that type of fuel (or mixed fuel) in service, a commercially available fuel of that type shall be used for exhaust emission testing. The manufacturer shall propose for the Administrator's approval a set of test fuel specifications that take into account the engine design and the properties of commercially available fuels. The Administrator may require testing on each fuel if it is designed to operate on more than one fuel. These test fuel specifications shall be reported in the application for certification.

(c) *Service accumulation fuel.* Fuel used for service accumulation shall be representative of the typical fuel expected to be used by the engines in service.

(d) *Correction for sulfur.* (1) Particulate emission measurements from engines without exhaust aftertreatment obtained using a diesel fuel containing more than 0.40 weight percent sulfur may be adjusted to a sulfur content of 0.40 weight percent.

(2) Adjustments to the particulate measurement shall be made using the following equation:

$$PMadj = PM - [BSFC * 0.0917 * (FSF - 0.0040)]$$

Where:

PMadj=adjusted measured PM level [g/kW-hr]

PM=measured weighted PM level [g/KW-hr]

BSFC=measured brake specific fuel consumption [g/KW-hr]

FSF=fuel sulfur weight fraction

Subpart C—Certification Provisions

§ 94.201 Applicability.

The requirements of this subpart are applicable to manufacturers of engines subject to the standards of subpart A of this part.

§ 94.202 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.203 Application for certification.

(a) For each engine family that complies with all applicable standards and requirements, the manufacturer shall submit to the Administrator a completed application for a certificate of conformity.

(b) The application shall be approved and signed by the authorized representative of the manufacturer.

(c) The application shall be updated and corrected by amendment, where necessary, as provided for in § 94.210 to accurately reflect the manufacturer's production.

(d) Each application shall include all the following information:

(1)(i) A description of the basic engine design, including but not limited to, the engine family specifications, the provisions of which are contained in § 94.204.

(ii) A list of distinguishable configurations to be included in the engine family.

(2) An explanation of how the emission control system operates, including detailed descriptions of:

(i) All emission control system components;

(ii) The injection timing map or maps (i.e., degrees before or after top-dead-center), and any functional dependence of such timing on other operational parameters (e.g., engine coolant temperature or engine speed);

(iii) Each auxiliary emission control device (AECD); and

(iv) All fuel system components to be installed on any production or test engine(s).

(3) A description of the test engine.

(4) Special or alternate test procedures, if applicable.

(5) A description of the operating cycle and the period of operation necessary to accumulate service hours on the test engine and stabilize emission levels.

(6) A description of all adjustable operating parameters (e.g., injection timing and fuel rate), including all the following:

(i) The nominal or recommended setting and the associated production tolerances.

(ii) The physically adjustable range (Note: if this is different than the intended adjustable range, describe why these are different).

(iii) The limits or stops used to limit adjustable ranges.

(iv) Production tolerances of the limits or stops used to establish each physically adjustable range.

(v) Information relating to the reason that the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are the most effective means possible of preventing adjustment of parameters to settings outside the manufacturer's specified adjustable ranges on in-use engines.

(7) For families participating in the averaging, banking, and trading program, the information specified in subpart D of this part.

(8) Projected U.S.-directed production volume information for each configuration.

(9) A description of the test equipment and fuel used.

(10) All test data obtained by the manufacturer on each test engine.

(11) The intended useful life period for the engine family, in accordance with § 94.9(a).

(12) The intended deterioration factors for the engine family, in accordance with § 94.218.

(13) All information required for EPA to interpret all messages and parameters broadcast on an engine's controller area network, including but not limited to message or parameter identification, scaling, limit, offset, and transfer function. (The manufacturer may reference publicly released controller area network standards where applicable. The format of this information shall be provided in a format similar to publicly released documents pertaining to controller area network standards.)

(14) A statement that the all the engines included in the engine family comply with the Not To Exceed standards specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(15) An unconditional statement certifying that all engines included in the engine family comply with all requirements of this part and the Clean Air Act.

(16) A statement indicating duty-cycle and application of the engine (e.g., used to propel planing vessels, use to propel vessels with variable-pitch propellers, constant-speed auxiliary, etc.).

(e) At the Administrator's request, the manufacturer shall supply such additional information as may be required to evaluate the application.

(f)(1) If the manufacturer submits some or all of the information specified in paragraph (d) of this section in

advance of its full application for certification, the Administrator shall review the information and make the determinations required in § 94.208 (d) within 90 days of the manufacturer's submittal.

(2) The 90-day decision period is exclusive of any elapsed time during which EPA is waiting for additional information requested from a manufacturer regarding an adjustable parameter (the 90-day period resumes upon receipt of the manufacturer's response). For example, if EPA requests additional information 30 days after the manufacturer submits information under paragraph (f)(1) of this section, then the Administrator would make a determination within 60 days of the receipt of the requested information from the manufacturer.

(g)(1) The Administrator may modify the information submission requirements of paragraph (d) of this section, provided that all of the information specified therein is maintained by the manufacturer as required by § 94.215, and amended, updated, or corrected as necessary.

(2) For the purposes of this paragraph (g), § 94.215 includes all information specified in paragraph (d) of this section, whether or not such information is actually submitted to the Administrator for any particular model year.

(3) The Administrator may review a manufacturer's records at any time. At the Administrator's discretion, this review may take place either at the manufacturer's facility or at another facility designated by the Administrator.

§ 94.204 Designation of engine families.

This section specifies the procedure and requirements for grouping of engines into engine families.

(a) Manufacturers shall divide their engines into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group shall be defined as a separate engine family.

(b) For Category 1 marine engines, the following characteristics distinguish engine families:

(1) Fuel;

(2) Cooling method (including cooling medium);

(3) Method of air aspiration;

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap);

(5) Combustion chamber design;

(6) Bore;

(7) Stroke;

(8) Number of cylinders, (engines with aftertreatment devices only);

(9) Cylinder arrangement (engines with aftertreatment devices only); and

(10) Fuel system configuration

(c) For Category 2 marine engines, the following characteristics distinguish engine families:

(1) The combustion cycle (e.g., diesel cycle);

(2) The type of engine cooling employed (air-cooled or water-cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.);

(3) The bore and stroke dimensions;

(4) The approximate intake and exhaust event timing and duration (valve or port);

(5) The location of the intake and exhaust valves (or ports);

(6) The size of the intake and exhaust valves (or ports);

(7) The overall injection, or as appropriate ignition, timing characteristics (i.e., the deviation of the timing curves from the optimal fuel economy timing curve must be similar in degree);

(8) The combustion chamber configuration and the surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions;

(9) The location of the piston rings on the piston;

(10) The method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown);

(11) The turbocharger or supercharger general performance characteristics (e.g., approximate boost pressure, approximate response time, approximate size relative to engine displacement);

(12) The type of air inlet cooler (air-to-air, air-to-liquid, approximate degree to which inlet air is cooled);

(13) The intake manifold induction port size and configuration;

(14) The type of fuel and fuel system configuration;

(15) The configuration of the fuel injectors and approximate injection pressure;

(16) The type of fuel injection system controls (i.e., mechanical or electronic);

(17) The type of smoke control system;

(18) The exhaust manifold port size and configuration; and

(19) The type of exhaust aftertreatment system (oxidation catalyst, particulate trap), and characteristics of the aftertreatment system (catalyst loading, converter size vs engine size).

(d) Upon request by the manufacturer, engines that are eligible to be included in the same engine family based on the criteria in paragraph (b) or (c) of this section may be divided into different engine families. This request must be accompanied by information the manufacturer believes supports the use of these different engine families.

(e) Upon request by the manufacturer, the Administrator may allow engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer demonstrates that the engines will have similar emission characteristics. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

§ 94.205 Prohibited controls, adjustable parameters.

(a) Any system installed on, or incorporated in, a new engine to enable the engine to conform to the standards contained in this part:

(1) Shall not cause a violation of the general standards of § 94.7.

(2) Shall function during all in-use operation, except as otherwise allowed by this part.

(b) Nonroad engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the physically adjustable range.

(c) The Administrator may require that adjustable parameters be set to any specification within its adjustable range for certification, selective enforcement audit, or in-use testing to determine compliance with the requirements of this subpart.

(d) In specifying the adjustable range of each adjustable parameter on a new engine, the manufacturer, shall:

(1) Ensure that safe engine operating characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act, taking into consideration the production tolerances; and

(2) To the maximum extent practicable, limit the physical range of adjustability to that which is necessary for proper operation of the engine.

§ 94.206 Required information.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the information required by this section: *Provided*, that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of engines for which the required emission data are otherwise available.

(b) The manufacturer shall submit exhaust emission deterioration factors.

with supporting data. The determination of the deterioration factors shall be conducted in accordance with § 94.218 to ensure that the engines covered by a certificate issued under § 94.208 will meet all of the emission standards in § 94.8 in use for the useful life of the engine.

(c) The manufacturer shall submit emission data on such engines tested in accordance with the applicable test procedures of Subpart B of this part. These data shall include zero hour data, if generated. In lieu of providing the emission data required by paragraph (a) of this section, the Administrator may, upon request by the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other testing information) that the engine will conform with the applicable emission standards of § 94.8.

(d) The manufacturer shall submit a statement that the engines for which certification is requested conform to the requirements in § 94.7 and that the descriptions of tests performed to ascertain compliance with the general standards in § 94.7, and the data derived from such tests, are available to the Administrator upon request.

(e) The manufacturer shall submit a statement that the emission data engine used to demonstrate compliance with the applicable standards of this part is in all material respects as described in the manufacturer's application for certification; that it has been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification; and that on the basis of such tests, the engine family conforms to the requirements of this part. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test engine was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the engine does not meet the applicable standards. If the Administrator makes such a determination, he/she may withhold, suspend, or revoke the certificate of conformity under § 94.208 (c)(3)(i).

§ 94.207 Special test procedures.

(a) *Establishment of special test procedures by EPA.* The Administrator may, on the basis of written application by a manufacturer, establish special test procedures other than those set forth in this part, for any engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in Subpart B of this part.

(b) *Use of alternate test procedures by a manufacturer.* (1) A manufacturer may elect to use an alternate test procedure, provided that it is equivalent to the specified procedures with respect to the demonstration of compliance, its use is approved in advance by the Administrator, and the basis for the equivalence with the specified test procedures is fully described in the manufacturer's application.

(2) The Administrator may reject data generated under alternate test procedures if the data do not correlate with data generated under the specified procedures.

§ 94.208 Certification.

(a) If, after a review of the application for certification, test reports and data acquired from an engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the application is complete and that the engine family meets the requirements of the Act and this part, he/she will issue a certificate of conformity with respect to such engine family, except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year for which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to ensure that the production engines covered by the certificate will meet the requirements of the Act and of this part.

(b) [Reserved]

(c)(1) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificates were issued were satisfied or excused.

(2) The Administrator will determine whether the test data included in the application represents all engines of the engine family.

(3) Notwithstanding the fact that any engine(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of any certificate of conformity, or suspend or revoke any such certificate(s) which has (have) been issued with respect to any such engine(s) if:

(i) The manufacturer submits false or incomplete information in its application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which it submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such engine;

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 94.215 to any facility or portion thereof which contains any of the following:

(A) An engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing; or

(B) Any components used or considered for use in the construction, modification or buildup of any engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing for purposes of emissions certification; or

(C) Any production engine which is or will be claimed by the manufacturer to be covered by the certificate; or

(D) Any step in the construction of the engine; or

(E) Any records, documents, reports or histories required by this part to be kept concerning any of the items listed in paragraphs (c)(3)(iii)(A) through (D) of this section; or

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 94.215).

(4) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(5) In any case in which certification of an engine is to be withheld, denied, revoked or suspended under paragraph (c)(3) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 94.215 in fact occurred, the manufacturer, if it wishes to contend that, even though the violation occurred, the engine in question was not involved in the violation to a degree that would warrant withholding, denial, revocation or suspension of certification under paragraph (c)(3) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any revocation, suspension, or voiding of certification under paragraph (c)(3) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing

conducted in accordance with § 94.216; and

(ii) Extend no further than to forbid the introduction into commerce of engines previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct that makes the certification invalid ab initio.

(7) The manufacturer may request, within 30 days of receiving notification, that any determination made by the Administrator under paragraph (c)(3) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 94.216. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he/she will grant the request with respect to such issue.

(d) In approving an application for certification, the Administrator may specify or require the manufacturer to specify:

(1) A broader range of adjustability than recommended by the manufacturer for those engine parameters which are subject to adjustment, if the Administrator determines that it is not reasonable to expect the parameter to be kept adjusted within the recommended range in use;

(2) A longer useful life period, if the Administrator determines that the useful life of the engines in the engine family, as defined in § 94.2, is longer than the period specified by the manufacturer;

(3) Larger deterioration factors, if the Administrator determines that the deterioration factors specified by the manufacturer do not meet the requirements of § 94.218; and/or

(4) A broader Not to Exceed Zone subject to the provisions of § 94.106(b).

(e) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, the manufacturer shall be provided with a hearing in accordance with § 94.216 with respect to such issue.

§ 94.209 Special provisions for post-manufacture marinizers.

(a) *Broader engine families.* To be eligible to use the provisions of this paragraph (a), the manufacturer must demonstrate that it is a post-manufacture marinizer as defined in § 94.2 and that the base engines used for modification shall have a valid certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86.

(1) In lieu of the requirements of § 94.204, an eligible manufacturer may group all its engine models into an engine family consisting of engines within a single category of engines that have similar emission deterioration characteristics.

(2) The manufacturer remains subject to all provisions of this part other than § 94.204 for engines using the engine family defined in paragraph (a)(1) of this section.

(b) *Hardship relief.* Post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 94.1103(a)(1) if approved in advance by the Administrator, and subject to the following requirements:

(1) Application for relief must be submitted to the Designated Officer in writing prior to the earliest date in which the applying manufacturer would be in violation of § 94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(3) The conditions causing the impending violation must be such that the applying manufacturer will experience serious economic hardship if relief is not granted.

(4) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.

(5) Any relief may not exceed one year beyond the date relief is granted.

(6) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

§ 94.210 Amending the application and certificate of conformity.

(a) The manufacturer shall notify the Administrator when changes to information required to be described in the application for certification are to be made to a product line covered by a certificate of conformity. This notification shall include a request to amend the application or the existing certificate of conformity. Except as provided in paragraph (e) of this section, no manufacturer shall make said changes or produce said engines prior to receiving approval from the Administrator.

(b) A manufacturer's request to amend the application or the existing certificate of conformity shall include the following information:

(1) A full description of the change to be made in production, or of the engines to be added;

(2) Engineering evaluations or data showing that the engines as modified or added will comply with all applicable emission standards; and

(3) A determination whether the manufacturer's original test fleet selection is still appropriate, and if the original test fleet selection is determined not to be appropriate, test fleet selection(s) representing the engines changed or added which would have been required if the engines had been included in the original application for certification.

(c) The Administrator may require the manufacturer to perform tests on the engine representing the engine to be added or changed.

(d)(1) Based on the description of the amendment and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the change or addition would still be covered by the certificate of conformity then in effect.

(2) If the Administrator determines that the change or new engine(s) meets the requirements of this part and the Act, the appropriate certificate of conformity shall be amended.

(3) If the Administrator determines that the changed engine(s) does not meet the requirements of this part and the Act, the certificate of conformity will not be amended. The Administrator shall provide a written explanation to the manufacturer of the decision not to amend the certificate. The manufacturer may request a hearing on a denial.

(e) A manufacturer may make changes in or additions to production engines concurrently with the notification to the Administrator, as required by paragraph (a) of this section, if the manufacturer complies with the following requirements:

(1) In addition to the information required in paragraph (b) of this section, the manufacturer shall supply supporting documentation, test data, and engineering evaluations as appropriate to demonstrate that all

affected engines will still meet applicable emission standards.

(2) If, after a review, the Administrator determines additional testing is required, the manufacturer shall provide the required test data within 30 days or cease production of the affected engines.

(3) If the Administrator determines that the affected engines do not meet applicable requirements, the Administrator will notify the manufacturer to cease production of the affected engines and to recall and correct at no expense to the owner all affected engines previously produced.

(4) Election to produce engines under this paragraph (e) will be deemed to be a consent to recall all engines that the Administrator determines do not meet applicable standards and to cause such nonconformity to be remedied at no expense to the owner.

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) The manufacturer shall furnish or cause to be furnished to the ultimate purchaser of each new engine, subject to the standards prescribed in § 94.8, written instructions for the proper maintenance and use of the engine as are reasonable and necessary to assure the proper functioning of the emissions control system, consistent with the applicable provisions of paragraph (b) of this section.

(1) The maintenance and use instructions required by this section shall be clear and easily understandable.

(2) The maintenance instructions required by this section shall contain a general description of the documentation that would demonstrate for warranty purposes that the ultimate purchaser or any subsequent owner had complied with the instructions.

(b)(1) The manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any engine repair establishment or individual.

(2) The instructions under paragraph (b)(1) of this section will not include any condition on the ultimate purchaser's or owner's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also will not directly or indirectly distinguish between service performed by any other service establishments with which such manufacturer has a commercial relationship and service performed by independent vessel or engine repair facilities with which such manufacturer has no commercial relationship.

(3) The prohibition of paragraph (b)(2) of this section may be waived by the Administrator if:

(i) The manufacturer demonstrates to the Administrator's satisfaction that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(ii) The Administrator finds that such a waiver is in the public interest.

(c) The manufacturer shall provide to the Administrator, no later than the time of the submission required by § 94.203, a copy of the emission-related maintenance instructions that the manufacturer proposes to supply to the ultimate purchaser or owner in accordance with this section. The Administrator will review such instructions to determine whether they are reasonable and necessary to ensure the proper functioning of the engine's emission control systems. If the Administrator determines that such instructions are not reasonable and necessary to ensure the proper functioning of the emission control systems, he/she may disapprove the application for certification or may require that the manufacturer modify the instructions.

(d) Any revision to the maintenance instructions which will affect emissions shall be supplied to the Administrator at least 30 days before being supplied to the ultimate purchaser or owner unless the Administrator consents to a lesser period of time, and is subject to the provisions of § 94.210.

(e) This paragraph (e) specifies emission-related scheduled maintenance for purposes of obtaining durability data for marine engines. The maintenance intervals specified in this paragraph are minimum intervals.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same or longer hours of use intervals as those specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the engine under paragraph (a) of this section. This maintenance schedule may be updated as necessary throughout the testing of the engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test equipment or engine.

(2) Any emission-related maintenance which is performed on equipment, engines, subsystems, or components must be technologically necessary to ensure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the emission-related maintenance instructions provided to the purchasers under paragraph (a) of this section.

(i) The Administrator may require longer maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where the listed intervals are not technologically necessary.

(ii) The Administrator may allow manufacturers to specify shorter maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where technologically necessary for Category 2 engines.

(3) The adjustment, cleaning, repair, or replacement of items listed in paragraphs (e)(3)(i) through (e)(3)(iii) of this section shall occur at 1,500 hours of use and at 1,500-hour intervals thereafter.

(i) Exhaust gas recirculation system-related filters and coolers.

(ii) Positive crankcase ventilation valve.

(iii) Fuel injector tips (cleaning only).

(4) The adjustment, cleaning and repair of items in paragraphs (e)(4)(i) through (e)(4)(vii) of this section shall occur at 3,000 hours of use and at 3,000-hour intervals thereafter for engines with per-cylinder displacement less than 1.2 liters, or at 4,500-hour intervals thereafter for engines with per-cylinder displacement greater than or equal to 1.2 liters.

(i) Fuel injectors.

(ii) Turbocharger.

(iii) Electronic engine control unit and its associated sensors and actuators.

(iv) Particulate trap or trap-oxidizer system (including related components).

(v) Exhaust gas recirculation system (including all related control valves and tubing), except as otherwise provided in paragraph (e)(3)(i) of this section.

(vi) Catalytic convertor.

(vii) Any other add-on emission-related component (*i.e.*, a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(f) Scheduled maintenance not related to emissions which is reasonable and technologically necessary (*e.g.*, oil change, oil filter change, fuel filter change, air filter change, cooling system

maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, lubrication of the exhaust manifold heat control valve, *etc.*) may be performed on durability engines at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (*e.g.*, not the intervals recommended for severe service).

(g) Adjustment of engine idle speed on emission data engines may be performed once before the low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with advance approval of the Administrator.

(h) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and are:

(1) Used in conjunction with scheduled maintenance on such components; or

(2) Used subsequent to the identification of an engine malfunction, as provided in paragraph (e) of this section for emission data engines; or

(3) Specifically authorized by the Administrator.

(i) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 94.215.

(j)(1) The components listed in paragraphs (j)(1)(i) through (j)(1)(vi) of this section are defined as critical emission-related components.

(i) Catalytic convertor.

(ii) Electronic engine control unit and its associated sensors and actuators.

(iii) Exhaust gas recirculation system (including all related filters, coolers, control valves, and tubing).

(iv) Positive crankcase ventilation valve.

(v) Particulate trap or trap-oxidizer system.

(vi) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. The manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (j)(2)(i) through (j)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

(i) Data are presented which establish for the Administrator a connection between emissions and engine performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical operation.

(ii) Survey data are submitted which adequately demonstrate to the Administrator with an 80 percent confidence level that 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(iii) A clearly displayed visible signal system approved by the Administrator is installed to alert the equipment operator that maintenance is due. A signal bearing the message "maintenance needed" or "check engine," or a similar message approved by the Administrator, shall be actuated at the appropriate usage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator. The system must not be designed to deactivate upon the end of the useful life of the engine or thereafter.

(iv) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected engines per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (j)(2)(ii) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(v) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under paragraph (a) of this section.

(vi) The manufacturer uses any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(3) Visible signal systems used under paragraph (j)(2)(iii) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act.

§ 94.212 Labeling.

(a) *General requirements.* (1) Each new engine covered by a certificate of conformity under § 94.208 shall be labeled by the manufacturer in the manner described in this paragraph (b) of this section at the time of manufacture.

(2) Each new marine engine modified from a base engine by post-manufacture marinizers in accordance with the provisions of § 94.209 (b) and covered by a certificate of conformity under § 94.208 shall be labeled by the PMM in the manner described in paragraph (b) of this section.

(b) *Engine labels.* Engine labels meeting the specifications of this section shall be applied to every engine by the manufacturer at the point of original manufacture. Engine labels shall be permanent and legible and shall be affixed to the engine in a position in which it will be readily visible after installation of the engine in the vessel. The label shall be attached to an engine part necessary for normal operation and not normally requiring replacement during the useful life of the engine. The label shall be affixed by the manufacturer in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such engine. The label may be not be made up of more than one piece without the advance approval of the Administrator. The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(1) The label heading: Marine Engine Emission Control Information.

(2) Full corporate name and trademark of the manufacturer.

(3) The model year.

(4) The per-cylinder displacement of the engine.

(5) Engine family and configuration identification.

(6) A prominent unconditional statement of compliance with U.S. Environmental Protection Agency regulations which apply to marine engines designated by the parameters of paragraphs 5(b)(2)(v)(A) through (E) of this section.

(7) The useful life of the engine.

(8) The standards and/or FELs to which the engine was certified.

(9) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speeds(s), injection timing, valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer.

(10) The application for which the engine family is certified. (For example: constant-speed auxiliary, variable-speed propulsion engines used with fixed-pitch propellers, etc.)

(c) The provisions of this section shall not prevent a manufacturer from also providing on the label any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vessel or engine.

(d) Engines certified under the voluntary standards described in § 94.8(f) to be designated as Blue Sky Series engines must contain the statement on the label: "Blue Sky Series".

(e) If an engine can be modified to operate on residual fuel, but has not been certified to meet the standards on such a fuel, it must contain the statement on the label: "THIS ENGINE IS CERTIFIED FOR OPERATION ONLY WITH DISTILLATE DIESEL FUEL. MODIFYING THE ENGINE TO OPERATE ON RESIDUAL FUEL MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTIES." The Administrator may approve alternate language.

§ 94.213 Submission of engine identification numbers.

(a) Upon request of the Administrator, the manufacturer of any engine covered by a certificate of conformity shall, within 30 days of receipt of such request, identify by engine identification number, the engines covered by the certificate of conformity.

(b) The manufacturer of any engines covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any engine identification coding system in sufficient detail to enable the Administrator to identify those engines which are covered by a certificate of conformity.

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 94.215 Maintenance of records; submittal of information; right of entry.

(a) Any manufacturer subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records. The records required to be maintained by this paragraph (a) shall consist of:

(i) Identification and description of all certification engines for which testing is required under this subpart.

(ii) A description of all emission control systems which are installed on or incorporated in each certification engine.

(iii) A description of all procedures used to test each such certification engine.

(iv) A copy of all applications for certification, filed with the Administrator.

(2) Individual records. (i) A brief history of each engine used for certification under this subpart including:

(A) In the case where a current production engine is modified for use as a certification engine, a description of the process by which the engine was selected and of the modifications made. In the case where the certification engine is not derived from a current production engine, a general description of the buildup of the engine (*e.g.*, whether experimental heads were cast and machined according to supplied drawings). In the cases in the previous two sentences, a description of the origin and selection process for fuel system components, ignition system components (as applicable), intake air pressurization and cooling system components, cylinders, pistons and piston rings, exhaust smoke control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification engine, with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, or any other devices or components as applicable, that can reasonably be expected to influence exhaust emissions will be representative of production engines and that either: all components and/or engine, construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such engines are reasonably likely to be implemented for production engines; or that they are as close as practicable to planned construction and assembly process.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of hours accumulated on the engine.

(C) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(D) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(E) A brief description of any significant events affecting the engine during the period covered by the history and not described by an entry under one of the previous headings, including such extraordinary events as accidents involving the engine or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification engine and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of 8 years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to computer disks, etc., depending on the record retention procedures of the manufacturer: *Provided*, that in every case all the information contained in the hard copy shall be retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional

records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him/her the information that is required to be retained.

(6) EPA may void a certificate of conformity *ab initio* for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) The manufacturer of engines subject to any of the standards prescribed in this part shall submit to the Administrator, at the time of issuance by the manufacturer, copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such engine, relevant to the control of crankcase, or exhaust emissions issued by the manufacturer, for use by other manufacturers, assembly plants, distributors, dealers, owners and operators. Any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) Any manufacturer participating in averaging, banking and trading program of subpart D of this part must comply with the maintenance of records requirements of § 94.308.

(d)(1) Any manufacturer who has applied for certification of a new engine subject to certification testing under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed;

(ii) Any facility where any engine which is being tested (or was tested, or is to be tested) is present;

(iii) Any facility where any construction process or assembly process used in the modification or buildup of such an engine into a certification engine is taking place or has taken place; or

(iv) Any facility where any record or other document relating to any of the activities listed in this paragraph (d)(1).

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities and testing facilities including, but not limited to, monitoring engine preconditioning, emissions tests, service accumulation, maintenance, and engine storage procedures, and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in Subpart D of this part; and

(iii) To inspect and/or photograph any part or aspect of any such certification engine and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production engines, conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications applicable to those engines, as described in the application for certification for which a certificate of conformity has been issued, any manufacturer shall admit any EPA Enforcement Officer on presentation of credentials to:

(i) Any facility where any document, design or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production engines is located or carried on;

(ii) Any facility where any engines to be introduced into commerce are manufactured; and

(iii) Any facility where records specified this section are located.

(4) On admission to any such facility referred to in paragraph (d)(3) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any aspects of such manufacture and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such engine(s) and any component used in the assembly thereof that are reasonably related to the purpose of his/her entry; and

(iv) To inspect and make copies of any records and documents specified in this section.

(5) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he/she may request to help him/her discharge any function listed in this part. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer applies to any facility involved in the manufacturing or assembling of engines, whether or not the manufacturer owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that an engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this section:

(i) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(ii) Where component or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to engine manufacture, or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any engine which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be

accompanied, represented and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance.

(8) EPA may void a certificate of conformity *ab initio* for engines introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

§ 94.216 Hearing procedures.

(a)(1) After granting a request for a hearing under § 94.210 or § 94.208, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 94.208, the Administrator may in his/her discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he/she may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon his/her appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator under § 94.210 or § 94.208 together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer, upon the request of any party, or in his/her discretion, may arrange for a prehearing conference at a time and place specified by him/her to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by him/her.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 30 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision, the Administrator shall have all the powers which he/she would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

§ 94.217 Emission data engine selection.

(a) The manufacturer must select for testing, from each engine family, the engine configuration which is expected to be worst-case for exhaust emission compliance on in-use engines, considering all exhaust emission constituents and the range of installation options available to vessel builders. The engines selected for testing are collectively described as the test fleet.

(b) Each engine in the test fleet must be constructed to be representative of production engines.

(c) After review of the manufacturer's test fleet, the Administrator may select from the available fleet one additional test engine from each engine family.

(d) Each engine selected shall be tested according to the provisions of Subpart B of this part.

(e) In lieu of testing an emission data engine selected under paragraph (a) of this section and submitting the resulting data, a manufacturer may, with Administrator approval, use emission data on a similar engine for which certification has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

§ 94.218 Deterioration factor determination.

Manufacturers shall determine exhaust emission deterioration factors using good engineering judgement according to the provisions of this section. Every deterioration factor must be, in the Administrator's judgment, consistent with emissions increases observed in-use based on emission testing of similar engines. Deterioration factors that predict emission increases over the useful life of an engine that are significantly less than the emission increases over the useful life observed from in-use testing of similar engines shall not be used.

(a) A separate exhaust emission deterioration factor shall be established for each engine family and for each emission constituent applicable to that family.

(b) *Calculation procedures.* (1) *For engines not utilizing aftertreatment technology (e.g., catalyst).* For each applicable emission constituent, an additive deterioration factor shall be used; that is, a deterioration factor that when added to the low mileage emission rate equals the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this section.

(2) *For engines utilizing aftertreatment technology (e.g., catalyst).* For each applicable emission constituent, a multiplicative deterioration factor shall be used; that is deterioration factors that when multiplied by the low mileage emission rate equal the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this section.

(c) *Rounding.* (1) In the case of a multiplicative exhaust emission deterioration factor, the factor shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(2) In the case of an additive exhaust emission deterioration factor, the factor shall be established to a minimum of two places to the right of the decimal in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(d)(1) Except as allowed by paragraph (d)(2) of this section, the manufacturer shall determine the deterioration factors based on service accumulation and related testing, according to the manufacturer's procedures, and the provisions of §§ 94.219 and 94.220. The manufacturer shall determine the form and extent of this service accumulation, consistent with good engineering practice, and shall describe this process in the application for certification.

(2) *Alternatives to service accumulation and testing for the determination of a deterioration factor.* A written explanation of the appropriateness of using an alternative must be included in the application for certification.

(i) *Carryover and carryacross of durability emission data.* In lieu of testing an emission data or durability data engine selected under § 94.217 or § 94.219, and submitting the resulting data, a manufacturer may, with Administrator approval, use exhaust emission deterioration data on a similar engine for which certification to the same standard has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

(ii) *Use of non-marine deterioration data.* In the case where a manufacturer produces a certified motor vehicle engine, locomotive engine, or other nonroad engine that is similar to the marine engine to be certified, deterioration data from the non-marine engine may be applied to the marine engine. This application of deterioration data from such an engine to a marine engine is subject to Administrator approval, and the determination of whether the engines are similar shall be based on good engineering judgment.

(iii) *Engineering analysis for established technologies.* In the case where an engine family uses technology which is well established, an analysis based on good engineering practices may be used in lieu of testing to determine a deterioration factor for that engine family. Engines using exhaust gas recirculation or aftertreatment are excluded from this provision. The manufacturer shall provide a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the deterioration factor is based, are available to the Administrator upon request.

§ 94.219 Durability data engine selection.

(a) The manufacturer shall select for durability testing, from each engine family, the engine configuration which is expected to generate the highest level of exhaust emission deterioration on engines in use, considering all exhaust emission constituents and the range of installation options available to vessel builders. The manufacturer shall use good engineering judgment in making this selection.

(b) Carryover data satisfying the provisions of § 94.220 may also be used in lieu of testing the configuration selected in paragraph (a) of this section.

(c) Durability data engines shall be built from subsystems and components that are representative of actual production engines.

§ 94.220 Service accumulation.

(a) Each test emission data engine in the test fleet may be operated with all emission control systems operating properly for a period, up to 125 hours of operation, that is sufficient to stabilize emissions.

(b) Durability data engines shall accumulate service in a manner which will represent the emission levels from in-use engines over their full useful life, consistent with good engineering judgement.

(1) Components may be removed from the engine and aged separately.

(2) End of useful life emission levels and deterioration factors may be projected from durability data engines which have completed less than full useful life service accumulation, provided that the amount of service accumulation completed and projection procedures are determined using good engineering judgement.

(c) No maintenance, other than recommended lubrication and filter changes or maintenance otherwise allowed by this part, may be performed during service accumulation without the Administrator's approval.

(d) The manufacturer must maintain, and provide to the Administrator if requested, records stating the rationale for selecting the service accumulation period and records describing the method used to accumulate service hours on the test engine(s).

§ 94.221 Application of good engineering judgment.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this part, including but not limited to selections, categorizations, determinations, and applications of the requirements of the part.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment or is otherwise inconsistent with the requirements of this part.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void *ab initio* a certificate of conformity.

(2) If the Administrator determines that the manufacturer's decision is not covered by the provisions of paragraph (d) (1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the

manufacturer of this concern and the basis of the concern.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer's response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer's decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 94.216 with respect to such issue.

§ 94.222 Certification of engines on imported vessels.

For marine engines subject to the requirements of this part that are installed on imported vessels, the Administrator may specify alternate certification provisions as necessary.

Subpart D Certification Averaging, Banking, and Trading Provisions

§ 94.301 Applicability.

Marine engine families subject to the standards of Subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart.

The provisions of this subpart apply to manufacturers of new engines that are subject to the emission standards of § 94.8.

§ 94.302 Definitions.

The definitions of Subpart A of this part apply to this subpart. The following definitions also apply:

Applicable standard means a standard that would have otherwise been applicable had the engine not been certified under this subpart to an FEL different than that standard.

Broker means any entity that facilitates a trade between a buyer and seller.

Buyer means the entity that receives credits as a result of trade.

Reserved credits means credits that have been generated but have not yet been reviewed by EPA or used to demonstrate compliance under the averaging provisions of this subpart.

Seller means the entity that provides credits during a trade.

§ 94.303 General provisions.

(a) Participation in the averaging, banking, and trading program is voluntary. A manufacturer may choose to involve some or all of its engine families in any or all aspects of the program.

(b) An engine family is eligible to participate in the certification averaging, banking, and trading program for $THC+NO_X$ and PM emissions only if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. No averaging, banking, and trading program is available for meeting the CO standards of this part.

(c) Engines may not participate in the certification averaging, banking, and trading program if they are exported. Only engines certified under this part are eligible for generation or use of credits in this certification averaging, banking, and trading program. Engines certified to the Blue Sky provisions of § 94.8(f) are not eligible for inclusion in this certification averaging, banking, and trading program.

(d) Averaging involves the generation of credits by a manufacturer for use by that same manufacturer in the same calendar year. A manufacturer may use averaging during certification to offset an emission exceedance of an engine family caused by an FEL above the applicable emission standard, subject to the provisions of this subpart.

(e) Banking involves the generation of credits by a manufacturer in a given calendar year for use in a subsequent model year. A manufacturer may bank actual credits only after the end of the calendar year and after EPA has reviewed the manufacturer's end-of-year reports. During the calendar year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report. Credits declared for banking from the previous calendar year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(f) Trading involves the sale of banked credits for use in certification of new engines under this part. Only banked credits may be traded; reserved credits may not be traded.

§ 94.304 Compliance requirements.

(a) Manufacturers wishing to participate in certification averaging, banking and trading programs shall select a FEL for each engine family they wish to include. The level of the FEL shall be selected by the manufacturer, subject to the upper limits described in paragraph (m) of this section. An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the applicable $THC+NO_X$ and PM emission standard for the family participating in the averaging, banking, and trading program.

(b) A manufacturer may certify one or more engine families at FELs above or below the applicable emission standard, provided the summation of the manufacturer's projected balance of all credit transactions in a given calendar year is greater than or equal to zero, as calculated for each family under § 94.305 and reported under § 94.309.

(c) Manufacturers certifying engine families with FELs exceeding the applicable emission standard shall obtain emission credits in amounts sufficient to address the shortfall. Credits may be obtained from averaging, banking, or trading, subject to the restrictions described in this subpart.

(d) Manufacturers certifying engine families with FELs below the applicable emission standard may generate emission credits to average, bank, or trade, or a combination thereof.

(e) An engine family may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(f) Credits may only be used for certification; they may not be used to remedy a violation of the FEL determined by production line or in-use testing. Credits may be used to allow subsequent production of engines for an engine family failing production line testing if the manufacturer elects to recertify to a higher FEL.

(g) [Reserved].

(h) If an FEL is changed after initial certification in any given model year, the manufacturer must conduct production line testing to verify that the emission levels are achieved, with one exception: when an FEL is changed immediately after (and because of) a production line testing failure, additional verification testing is not required.

(i) Manufacturers participating in the averaging, banking and trading program must demonstrate compliance with the applicable emission standards at the end of the model year. Manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standard and the FEL for such engine families will be in violation of the conditions of the certificate of conformity for such engine families. The certificates of conformity may be voided *ab initio* for those engine families.

(j) In the event of a negative credit balance resulting from a credit trade, both the buyer(s) and the seller(s) are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided *ab initio*.

(1) Where a buyer of credits is not responsible for causing the negative credit balance, the buyer is only liable to supply additional credits equivalent to any amount of invalid credits that the buyer used for its engine family(ies).

(2) Credit holders responsible for the credit shortfall may be subject to the requirements of § 94.309(g)(3).

(k) Credits generated by Category 1 engine families may be used for compliance by Category 1 or Category 2 engine families. Credits generated from Category 1 engine families for use by Category 2 engine families must be discounted by 25 percent. Credits generated by Category 2 engine families may be used for compliance only by Category 2 engine families.

(l) Credit life shall be unlimited.

(m) Upper limits. The FELs for THC+NO_X and PM for new engines certified for participation in this averaging, banking and trading program may not exceed the following values:

(1) For Category 1 engines, the FEL may not exceed the levels contained in Table D–1, which follows:

TABLE D–1.—CATEGORY 1 UPPER LIMITS FOR TIER 2 FAMILY EMISSION LIMITS

Subcategory liters/cylinder	Model year [1]	THC+NO_X FEL g/kW-hr	PM FEL g/kW-hr
Power ≥ 37 kW disp. < 0.9	2005	11.5	1.2
0.9 ≤ disp. < 1.2	2004	11.5	1.2
1.2 ≤ disp. < 2.5	2004	10.5	0.54
2.5 ≤ disp. < 5.0	2007	10.5	0.54

[1] The model years listed indicate the model years for which the specified standards start.

(2) For Category 2 engines, the FEL may not exceed the applicable standard by more than 25 percent.

§ 94.305 Credit generation and use calculation.

(a) For each participating engine family, THC+NO_X and PM emission credits (positive or negative) are to be calculated according to the equation in paragraph (b) of this section and rounded in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the nearest one-hundredth of a megagram (Mg). Consistent units are to be used throughout the calculation.

(b) Credits (Mg) for each engine family are calculated as: Emission credits = (Std—FEL) X (UL) X (Production) X (AvgPR) X (LF) X (10^{-6})

Where:

(i) Std = the applicable cycle-weighted marine engine THC+NO_X or PM emission standard in grams per kilowatt-hour.

(ii) FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)

(iii) UL = the useful life in hours of operation.

(iv) Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.

(v) AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

(vi) LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

(A) 0.69 for propulsion engines,

(B) 0.51 for auxiliary engines.

§ 94.306 Certification.

(a) In the application for certification a manufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and/or trading programs. Separate declarations are required for each pollutant (THC+NO_X and PM).

(2) Declare FELs for each engine family participating in certification averaging, banking, and/or trading.

(i) The FELs must be to the same number of significant digits as the emission standard.

(ii) In no case may the FEL exceed the upper limit prescribed in § 94.304(m).

(3) Conduct and submit detailed calculations of projected emission credits (positive or negative) based on quarterly production projections for each participating family and for each pollutant, using the applicable equation in § 94.305 and the applicable values of the terms in the equation for the specific family.

(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically where the quarterly projected credits will be applied (manufacturer/engine family or reserved).

(4) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's engine families participating in the averaging, banking, and trading program.

(b) Based on this information, each manufacturer's certification application must demonstrate:

(1) That at the end of model year production, each engine family has a net emissions credit balance equal to or greater than zero for any pollutant and program for which participation in certification under averaging, banking, and/or trading is being sought. The equation in section § 94.305 shall be used in this calculation for each engine family.

(2) That the manufacturer will obtain sufficient credits to be used to comply with the emission standard for any engine family with an FEL that exceeds the applicable emission standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, for each engine family involved the manufacturer must identify specifically the source of the credits being used (manufacturer/engine family). All such reports shall include all credits involved in certification averaging, banking, or trading.

(3) That in cases where credits are being generated/supplied, the use of such credits is specifically designated (manufacturer/engine family or reserved). All such reports shall include all credits involved in certification averaging, banking, or trading.

(c) Manufacturers must monitor projected versus actual production throughout the model year to ensure that compliance with emission standards is achieved at the end of the model year.

(d) At the end of the model year, the manufacturer must provide the end-of-year reports required under § 94.309.

(1) Projected credits based on the information supplied in the certification application may be used to obtain a certificate of conformity. However, any such projected credits must be validated based on review of the end of model year reports and may be revoked at a later time based on follow-up audits or any other verification measure deemed appropriate by the Administrator.

(2) Compliance for engine families using averaging, banking, or trading will be determined at the end of the model year. Manufacturers that have certified engine families with credit balances for THC+NO_X and/or PM that do not equal or exceed zero shall be in violation of the conditions of the certificate of conformity for such engine families. The certificate of conformity may be voided *ab initio* for those engine families.

(e) Other conditions of certification.

(1) All certificates issued are conditional upon compliance by the manufacturer with the provisions of this subpart both during and after the calendar year of production.

(2) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio*.

(3) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

§ 94.307 Labeling.

For all engines included in the certification averaging, banking, and trading program, the FEL to which the engine is certified must be included on the label required in § 94.212.

§ 94.308 Maintenance of records.

(a) The manufacturer of any engine that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such engine produced:

(1) EPA engine family and configuration;

(2) Engine identification number;

(3) Engine calendar year and build date;

(4) Rated power;

(5) Purchaser and destination; and

(6) Assembly plant.

(b) The manufacturer of any engine family that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such family:

(1) Model year and EPA engine family;

(2) Family Emission Limit(s) (FEL);

(3) Rated power for each configuration;

(4) Projected applicable production/sales volume for the calendar year;

(5) Actual applicable production/sales volume for the calendar year; and

(6) Useful life.

(c) Any manufacturer producing an engine family participating in trading of credits must maintain the following records on a quarterly basis for each engine family in the trading program:

(1) The model year and engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 94.305;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(d) The manufacturer must retain all records required to be maintained under this section for a period of 8 years from the due date for the end-of-calendar year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(f) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(g) EPA may void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 94.309 Reports.

(a) Manufacturers must submit the certification information as required under § 94.306, and end-of-year reports each year as part of their participation in certification averaging, banking, and trading programs.

(b) Quarterly reports. All entities involved in credit trades must submit quarterly reports. The reports shall include the source or recipient of the credits, the amount of credits involved plus remaining balances, details regarding the pollutant, and model year as well as the information prescribed in § 94.308(c). Copies of contracts related to credit trading must be included or supplied by the buyer, seller, and broker, as applicable.

(c) End-of-year reports must include the information prescribed in § 94.308(b). The report shall include a calculation of credit balances for each family to show that the summation of the manufacturer's use of credits results in a credit balance equal to or greater than zero. The report shall be consistent in detail with the information submitted under § 94.306 and show how credit surpluses were dispersed and how credit shortfalls were met on a family specific basis. The end-of-year report shall incorporate any information reflected in previous quarterly reports.

(d) The applicable production/sales volume for quarterly and end-of-year reports must be based on the location of either the point of first retail sale by the manufacturer or the point at which the engine is placed into service, whichever occurs first. This is called the final product purchase location.

(e) Each quarterly and end-of-year report submitted shall include a statement certifying to the accuracy and authenticity of the material reported therein.

(f) Requirements for submission. (1) Quarterly reports must be submitted within 90 days of the end of the calendar quarter to the Designated Officer.

(2) End-of-year reports must be submitted within 120 days of the end of the calendar year to the Designated Officer.

(3) Failure by a manufacturer participating in the averaging, banking, or trading program to submit any quarterly or end-of-year reports in the specified time for all engines is a violation of sections 203(a)(1) and 213 of the Clean Air Act for each engine.

(4) A manufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (120 days after the end of the calendar year) may not use or trade the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(g) Reporting errors. (1) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected 180-days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180-days shall be correctable if, as a result of the correction, the manufacturer's credits are reduced. Errors in the manufacturer's favor are not corrected if discovered after the 180-day correction period allowed.

(2) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be corrected by EPA.

(3) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero. These credits must be supplied at the ratio of 1.1 credits for each 1.0 credit needed. If sufficient credits are not available to bring the credit balance to zero for the family(ies) involved, EPA may void the certificate(s) for that family(ies) *ab initio*. In addition, all engines within an engine family for which there are insufficient credits will be considered to have violated the conditions of the certificate of conformity and therefore are not covered by that certificate.

(4) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits are restored for use by the manufacturer.

§ 94.310 Notice of opportunity for hearing.

Any voiding of the certificate under this subpart will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

Subpart E—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program

§ 94.401 Applicability.

The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of Subpart A of this part. The requirement to report emission-related defects affecting a given class or category of engines applies for eight years from the end of the year in which such engines were manufactured.

§ 94.402 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.403 Emission defect information report.

(a) A manufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects (or based on other information), that a specific emission-related defect exists in 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected engines to an ultimate purchaser. (Note: These limits apply to the occurrence of the same defect, and are not constrained by engine family or model year.)

(b) Defect information reports required under paragraph (a) of this section must be submitted not more than 15 working days after the same emission-related defect is found to effect 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. Information required by paragraph (c) of this section that is either not available within 15 working days or is significantly revised must be submitted as it becomes available.

(c) Except as provided in paragraph (b) of this section, each defect report must contain the following information in substantially the format outlined:

(1) The manufacturer's corporate name.

(2) A description of the defect.

(3) A description of each class or category of engines potentially affected by the defect including make, model, calendar year produced, purchaser and any other information as may be required to identify the engines affected.

(4) For each class or category of engines described in response to paragraph (c)(3) of this section, the following shall also be provided:

(i) The number of engines known or estimated to have the defect and an explanation of the means by which this number was determined.

(ii) The address of the plant(s) at which the potentially defective engines were produced.

(5) An evaluation of the emissions impact of the defect and a description of any operational or performance problems which a defective engine might exhibit.

(6) Available emissions data which relate to the defect.

(7) An indication of any anticipated follow-up by the manufacturer.

§ 94.404 Voluntary emissions recall reporting.

(a) When any manufacturer initiates a voluntary emissions recall campaign involving an engine, the manufacturer shall submit to EPA a report describing the manufacturer's voluntary emissions recall plan as prescribed by this section within 15 working days of the date owner notification was begun. The report shall contain the following:

(1) A description of each class or category of engines recalled including the number of engines to be recalled, the calendar year if applicable, the make, the model, and such other information as may be required to identify the engines recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments, or other changes to be made to correct the engines affected by the emission-related defect.

(3) A description of the method by which the manufacturer will notify engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's reasons for imposing any such

condition, and a description of the proof to be required of an engine owner to demonstrate compliance with any such condition.

(5) A description of the procedure to be followed by engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor to remedy the defect, and the designation of facilities at which the defect can be remedied.

(6) If some or all the nonconforming engines are to be remedied by persons other than authorized warranty agents of the manufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer who will remedy the defect.

(7) A copy of any written notification sent to engine owners.

(8) A description of the system by which the manufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the changes on fuel consumption, operation or performance, and safety of each class or category of engines to be recalled.

(11) A sample of any label to be applied to engines which participate in the voluntary recall campaign.

(b) Unless otherwise specified by the Administrator, the manufacturer shall report on the progress of the recall campaign by submitting subsequent reports for six consecutive quarters, or until proven that remedial action has been adequately taken on all affected engines, whichever occurs first, commencing with the quarter after the voluntary emissions recall campaign actually begins. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter. For each class or group of engine subject to the voluntary emissions recall campaign, the quarterly report shall contain the:

(1) Emission recall campaign number, if any, designated by the manufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of engines involved in the voluntary emissions recall campaign.

(4) Number of engines known or estimated to be affected by the emission-related defect and an explanation of the means by which this number was determined.

(5) Number of engines inspected pursuant to voluntary emission recall plan.

(6) Number of inspected engines found to be affected by the emissions-related defect.

(7) Number of engines actually receiving repair under the remedial plan.

(8) Number of engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrappage, or for other reasons (specify).

(9) Number of engines determined to be ineligible for remedial action due to a failure to properly maintain or use such engines.

(10) Three copies of any service bulletins which relate to the defect to be corrected and which have not previously been reported.

(11) Three copies of all communications transmitted to engine owners which relate to the defect to be corrected and which have not previously been submitted.

(c) If the manufacturer determines that any of the information requested in paragraph (b) of this section has changed or was incorrect, revised information and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (6), (7), (8), and (9) of this section shall be cumulative totals.

(d) The manufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, the names and addresses of engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) Who were determined not to qualify for such remedial action when eligibility is conditioned on proper maintenance or use.

(e) The records described in paragraph (d) of this section shall be made available to the Administrator upon request.

§ 94.405 Alternative report formats.

(a) Any manufacturer may submit a plan for making either of the reports required by §§ 94.403 and 94.404 on computer diskettes, magnetic tape or other machine readable format. The plan shall be accompanied by sufficient technical detail to allow a determination that data requirements of these sections will be met and that the data in such format will be usable by EPA.

(b) Upon approval by the Administrator of the reporting system, the manufacturer may use such system until otherwise notified by the Administrator.

§ 94.406 Reports filing: record retention.

(a) The reports required by §§ 94.403 and 94.404 shall be sent to the Designated Officer.

(b) The information gathered by the manufacturer to compile the reports required by §§ 94.403 and 94.404 shall be retained for not less than 8 years from the date of the manufacture of the engines and shall be made available to duly authorized officials of the EPA upon request.

§ 94.407 Responsibility under other legal provisions preserved.

The filing of any report under the provisions of this subpart shall not affect a manufacturer's responsibility to file reports or applications, obtain approval, or give notice under any provision of law.

§ 94.408 Disclaimer of production warranty applicability.

(a) The act of filing an Emission Defect Information Report pursuant to § 94.403 is inconclusive as to the existence of a defect subject to the warranty provided by section 207(a) of the Act.

(b) A manufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to this subpart is not conclusive as to the applicability of the Production Warranty provided by section 207(a) of the Act.

Subpart F—Manufacturer Production Line Testing Programs

§ 94.501 Applicability.

(a) The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of Subpart A of this part.

(b) The provisions of Subpart F of 40 CFR Part 89 (Selective Enforcement Audit) apply to engines subject to the provisions of Subpart A of this part.

§ 94.502 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.503 General requirements.

(a) Manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506.

(b) Upon request, the Administrator may also allow manufacturers to conduct alternate production line testing programs, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Administrator may waive some or all of the requirements of this subpart.

(c) The requirements of this subpart apply with respect to all applicable standards and FELs of Subpart A of this part, including the supplemental standards of § 94.8(e).

§ 94.504 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any engine is to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to a manufacturer's production line testing program or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test engine is present; and

(4) Any facility where any record required under § 94.509 or other document relating to this subpart is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of engine manufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine test procedures or activities, including test engine selection, preparation and service accumulation, emission duty cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of a engine; and

(4) To inspect and photograph any part or aspect of any engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer to make arrangements with those in charge of a facility operated for the manufacturer benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, and served on the manufacturer, a manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible.

(1)(i) The required sample size for Category 1 engine manufacturers is one percent of projected annual U.S.-directed production for all Category 1 engine families, provided that no engine tested fails to meet applicable emission standards. Test engines shall include a proportional sample from each engine family. The required sample size is zero if a manufacturer's projected annual production for all Category 1 engine families is less than 100.

(ii) The required sample size for a Category 2 engine family is one percent of projected annual U.S.-directed production for that engine family, with a minimum sample size of one test per model year provided that no engine tested fails to meet applicable emission standards.

(2) Manufacturers may elect to test additional engines. All additional engines must be tested in accordance with the applicable test procedures of this part.

(3) The Administrator may reject any engines selected by the manufacturer if he/she determines that such engines are not representative of actual production.

(b) The manufacturer must assemble the test engines using the same mass production process that will be used for engines to be introduced into commerce.

(c) No quality control, testing, or assembly procedures will be used on any test engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other engines of that family, except with the approval of the Administrator.

§ 94.506 Test procedures.

(a)(1) For engines subject to the provisions of this subpart, the prescribed test procedures are those procedures described in Subpart B of this part, except as provided in this section.

(2) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any engine he/she determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(3) If test procedures other than those in Subpart B of this part were used in certification of the engine family being

tested under this subpart (other than alternate test procedures necessary for testing of a development engine instead of a low hour engine under § 94.9), the manufacturer shall use the test procedures used in certification for production line testing.

(b)(1) The manufacturer may not adjust, repair, prepare, modify, or perform any emission test on any test engine unless this adjustment, repair, preparation, modification and/or test is documented in the manufacturer's engine assembly and inspection procedures and is actually performed by the manufacturer or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) Any adjustable engine parameter must be set to values or positions that are within the range specified in the approved application for certification.

(3) The Administrator may adjust or require to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and production line testing, to any setting within the specified adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test.

(c) Service Accumulation/Green Engine Factor. The manufacturer shall accumulate up to 300 hours of service on the engines to be tested. In lieu of conducting such service accumulation, the manufacturer may establish a Green Engine Factor for each regulated pollutant for each engine family to be used in calculating emissions test results. The manufacturer shall obtain the approval of the Administrator prior to using a Green Engine Factor.

(d) The manufacturer may not perform any maintenance on test engines after selection for testing.

(e) If an engine is shipped to a facility other than the production facility for production line testing, and an adjustment or repair is necessary because of such shipment, the engine manufacturer must perform the necessary adjustment or repair only after the initial test of the engine, except where the Administrator has determined that the test would be impossible to perform or would permanently damage the engine.

(f) If an engine cannot complete the service accumulation or an emission test, because of a malfunction, the manufacturer may request that the Administrator authorize either the repair of that engine or its deletion from the test sequence.

(g) *Retesting.* If an engine manufacturer determines that any production line emission test of an engine is invalid, the engine must be retested in accordance with the requirements of this subpart. Emission results from all tests must be reported to EPA, including test results the manufacturer determines are invalid. The engine manufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in § 94.508(e). In the event a retest is performed, a request may be made to the Administrator, within ten days of the end of the production quarter, for permission to substitute the after-repair test results for the original test results. The Administrator will either affirm or deny the request by the engine manufacturer within ten working days from receipt of the request.

§ 94.507 Sequence of testing.

(a) If one or more engines fail a production line test, then the manufacturer must test two additional engines for each engine that fails.

(b) The two additional engines tested under paragraph (a) of this section shall be selected from either the next fifteen produced in that engine family, or from those engines produced in that engine family within 48 hours of the completion of the failed test.

§ 94.508 Calculation and reporting of test results.

(a) Manufacturers shall calculate initial test results using the applicable test procedure specified in § 94.506(a). These results must also include the Green Engine Factor, if applicable. The manufacturer shall round these results, in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Test results shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding in accordance with ASTM E 29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(c) Manufacturers shall calculate the final test results for each test engine by applying the appropriate deterioration factors, derived in the certification process for the engine family, to the test results described in paragraph (b) of this section, and rounding in accordance with ASTM E 29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(d) If, subsequent to an initial failure of a production line test, the average of the test results for the failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(e) Within 30 calendar days of the end of each quarter, each manufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) Total production and sample size for each engine family;

(3) The applicable standards and/or FELs against which each engine family was tested;

(4) A description of the test engines;

(5) For each test conducted:

(i) A description of the test engine, including:

(A) Configuration and engine family identification;

(B) Year, make, and build date;

(C) Engine identification number;

(D) Number of hours of service accumulated on engine prior to testing; and

(E) Description of Green Engine Factor; how it is determined and how it is applied;

(ii) Location(s) where service accumulation was conducted and description of accumulation procedure and schedule, if applicable;

(iii) Test number, date, test procedure used, initial test results before and after rounding, and final test results for all production line emission tests conducted, whether valid or invalid, and the reason for invalidation of any test results, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and testing which was performed on the test engine, has not been reported pursuant to any other paragraph of this subpart, and will not be performed on other production engines;

(v) Any other information the Administrator may request relevant to the determination whether the new engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(6) For each failed engine as defined in § 94.510(a), a description of the remedy and test results for all retests as required by § 94.512(g);

(7) The date of the end of the engine manufacturer's model year production for each engine family tested; and

(8) The following signed statement and endorsement by an authorized representative of the manufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR part 94. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 94.509 Maintenance of records; submittal of information.

(a) The manufacturer for any new engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) General records. A description of all equipment used to test engines in accordance with § 94.503. The equipment requirements in Subpart B of this part apply to tests performed under this subpart.

(2) Individual records. These records pertain to each production line test conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The method by which the Green Engine Factor was calculated or the number of hours of service accumulated on the test engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test;

(iv) A record and description of any adjustment, repair, preparation or modification performed on test engines, giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the action;

(v) If applicable, the date the engine was shipped from the assembly plant, associated storage facility or port facility, and the date the engine was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed directly by EPA), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in Subpart B of this part;

(vii) A brief description of any significant events during testing not otherwise described under this paragraph (a)(2) of this section, commencing with the test engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer must retain all records required to be maintained under this subpart for a period of eight (8) years after completion of all testing. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer must, upon request by the Administrator, submit the following information with regard to engine production:

(1) Projected production for each configuration within each engine family for which certification has been requested and/or approved.

(2) Number of engines, by configuration and assembly plant, scheduled for production.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to the Designated Officer.

(f) The manufacturer must electronically submit the results of its production line testing using an EPA information format.

§ 94.510 Compliance with criteria for production line testing.

(a) A failed engine is one whose final test results pursuant to § 94.508(c), for one or more of the applicable pollutants, exceed an applicable emission standard or FEL.

(b) An engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL.

§ 94.511 [Reserved]

§ 94.512 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine that fails a production line test pursuant to § 94.510(a), effective from the time the testing of that engine is completed.

(b) The Administrator may suspend the certificate of conformity for an engine family which is in noncompliance pursuant to § 94.510(b), thirty days after the engine family is deemed to be in noncompliance.

(c) If the results of testing pursuant to this subpart indicate that engines of a particular family produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for engines manufactured by the manufacturer at all other plants.

(d) The Administrator may suspend a certificate of conformity for any engine family in whole or in part if:

(1) The manufacturer fails to comply with any of the requirements of this subpart.

(2) The manufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 94.504 for any reason.

(e) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part; a suspension or revocation is effective upon receipt of such notification or thirty days from the time an engine family is deemed to be in noncompliance under §§ 94.508(d), 94.510(a), or 94.510(b), whichever is earlier, except that the certificate is immediately suspended with respect to any failed engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine

family when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the remedy is one requiring a design change or changes to the engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed engine, as provided for in paragraph (a) of this section, the manufacturer must take the following actions before the certificate is reinstated for that failed engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the engine conforms to applicable standards or family emission limits by retesting if applicable, the engine in accordance with this part; and

(3) Submit a written report to the Administrator, after successful completion of testing on the failed engine, which contains a description of the remedy and test results for each engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines, describes the remedy, including a description of any quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing engines selected from normal production runs of that engine family. Such testing must comply with the provisions of this subpart. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the applicable standards or family emission limits through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the change(s) in engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer, within five working days after receipt of the report in paragraph (h)(1) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing engines selected from normal production runs of that engine family. When both of these requirements are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. If this subsequent testing reveals failing data the revocation remains in effect.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than 30 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraph (b), (c), or (f) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraphs (a),(b),(c) and (d) of this section:

(1) Shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 94.513, 94.514, and 94.515; and

(2) Need not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or voids a certificate of conformity under paragraph § 94.215, and prior to the commencement of a hearing under § 94.513, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke, or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to recall all engines of that family produced from the time the certificate is conditionally reinstated if the family fails subsequent testing and must commit to remedy any nonconformity at no expense to the owner.

§ 94.513 Request for public hearing.

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 94.512(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 30 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Designated Officer and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which configuration(s) within a family is to be the subject of the hearing;

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 94.512(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 94.512(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 94.514 Administrative procedures for public hearing.

(a) The Presiding Officer shall be an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930).

(b) The Judicial Officer shall be an officer or employee of the Agency appointed as a Judicial Officer by the Administrator, pursuant to this section, who shall meet the qualifications and perform functions as follows:

(1) *Qualifications.* A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. The Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart. The Judicial Officer shall be a graduate of an accredited law school and a member in good standing of a recognized Bar Association of any state or the District of Columbia.

(2) *Functions.* The Administrator may consult with the Judicial Officer or delegate all or part of the Administrator's authority to act in a given case under this section to a Judicial Officer, provided that this delegation does not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) For the purposes of this section, one or more Judicial Officers may be designated by the Administrator. As work requires, a Judicial Officer may be designated to act for the purposes of a particular case.

(d)(1) In the case of a hearing requested under § 94.512(j), when it clearly appears from the data and other information contained in the request for a hearing that no genuine and substantial question of fact or law exists with respect to the issues specified in § 94.513(c)(2), the Administrator may enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity.

(2) In the case of a hearing requested under § 94.513 to challenge a suspension of a certificate of conformity for the reason(s) specified in § 94.512(d), when it clearly appears from the data and other information contained in the request for the hearing that no genuine and substantial question of fact or law exists with respect to the issue of whether the refusal to comply with this subpart was caused by conditions and circumstances outside the control of the manufacturer, the Administrator may enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraph (d)(1) or (d)(2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to § 94.516.

(4) If the Administrator determines that a genuine and substantial question of fact or law does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, the Administrator shall grant the request for a hearing and publish a notice of public hearing in the **Federal Register** or by such other means as the Administrator finds appropriate to provide notice to the public.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section and § 94.513(c) must be filed with the Hearing Clerk of the Agency. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section and § 94.513(b). If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing referred to in paragraph (d)(4) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division 6403–J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Computation of time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his or her discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Hearing date.* To the extent possible hearings under § 94.513 will be scheduled to commence within 14 days of receipt of the request for a hearing.

§ 94.515 Hearing procedures.

The procedures provided in 40 CFR 86.1014–84(i) through (s) apply for hearings requested pursuant to § 94.513 regarding suspension, revocation, or voiding of a certificate of conformity.

§ 94.516 Appeal of hearing decision.

The procedures provided in 40 CFR 86.1014–84 (t) through (aa) apply for appeals filed with respect to hearings held pursuant to § 94.515.

§ 94.517 Treatment of confidential information.

Except for information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e), information submitted pursuant to this subpart shall be made available to the public by EPA, notwithstanding any claim of confidentiality made by the submitter. The provisions for treatment of confidential information described in § 94.4 apply to the information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e).

Subpart G—[Reserved]

Subpart H—Recall Regulations

§ 94.701 Applicability.

The requirements of this subpart are applicable to all engines subject to the provisions of this part.

§ 94.702 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.703 Applicability of 40 CFR part 85, subpart S.

(a) Engines subject to provisions of this part are subject to recall regulations specified in 40 CFR part 85, subpart S, except for the items set forth in this section.

(b) In 40 CFR 85.1801, section 216 of the Clean Air Act applies, rather than section 214 of the Act.

(c) In 40 CFR 85.1802(a), section 213 of the Act applies, rather than section 202 of the Act.

(d) In 40 CFR 85.1803(a) and 85.1805(a)(1) the reference to "family emission limits" as defined in this part 94 promulgated under section 213 of the Act applies, rather than the reference to "family particulate emission limits as defined in 40 CFR part 86 promulgated under section 202 of the Act".

(e) Throughout the subpart references to "engines" apply rather than references to "vehicles or engines".

Subpart I—Importation of Nonconforming Engines

§ 94.801 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to importers of engines (and vessels containing engines) for which the Administrator has promulgated regulations under this part prescribing emission standards, that are offered for importation or imported into the United States, but which engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming engines as defined in § 94.2), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in U.S. Customs Service regulations (19 CFR Chapter I).

§ 94.802 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.803 Admission.

(a) A nonconforming engine offered for importation may be admitted into the United States pursuant to the provisions of this subpart. Subpart C of this part, including § 94.222, describes how to certify engines installed on vessels before they are imported.

(b) To obtain admission, the importer must submit to the Administrator a written request for approval containing the following:

(1) Identification of the importer of the engine and the importer's address, telephone number, and taxpayer identification number;

(2) Identification of the engine's owner, the owner's address, telephone number, and taxpayer identification number;

(3) Identification of the engine including make, model, identification number, and original production year;

(4) Information indicating the provision in this subpart under which the engine is to be imported, including a demonstration of how it qualifies for the requested exemption;

(5) Identification of the place(s) where the engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(6) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(7) Such other information as is deemed necessary by the Administrator.

§ 94.804 Exemptions.

(a) *General provisions.* (1) Unless otherwise specified, any person may apply for the exemptions allowed by this section.

(2) Paragraph (b) of this section describes the provisions that apply to temporary exemptions. Paragraph (c) of this section describes provisions that apply to permanent exemptions.

(3) Applications for exemption under this section shall be mailed to the Designated Officer.

(b) Notwithstanding other requirements of this subpart, a nonconforming engine that qualifies for a temporary exemption under this paragraph (b) may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for a temporary exemption from the Administrator shall contain the information required in § 94.803. Noncompliance with the provisions of this paragraph (b) will be considered unlawful importation and may result in the forfeiture of the total amount of the bond, exportation of the engine, and/or imposition of civil penalties.

(1) *Exemption for repairs or alterations.* A person may conditionally import under bond a nonconforming engine solely for purpose of repair(s) or alteration(s). The engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A person may conditionally import under bond a nonconforming engine for testing, subject to the requirements of § 94.905. A test engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning the engine in accordance with § 94.905 for a subsequent one-year period.

(3) *Display exemptions.* A person may conditionally import under bond a nonconforming engine solely for display purposes, subject to both of the following requirements:

(i) A display engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of an engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(ii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) A nonconforming engine that qualifies for a permanent exemption under this paragraph (c) may be admitted into the United States if prior written approval is obtained from the Administrator. A written request for a permanent exemption from the Administrator shall contain the information required in § 94.803. Noncompliance with the provisions of this paragraph (c) will be considered unlawful importation and may result in the exportation of the engine and/or imposition of civil penalties.

(1) *National security exemption.* Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the national security exemption found in § 94.908.

(2) *Competition exemption.* Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the competition exemption found in § 94.906(c).

(3) *Incomplete marine engine exemption.* An engine that is intended to be modified prior to being placed into service as a marine engine may be imported in a nonconforming configuration, subject to the following provisions:

(i) The modified engine must be covered by a valid marine engine certificate issued under this part prior to importation and held by a post-manufacture marinizer. (Note: Prior to certification, manufacturers and post-manufacture marinizers may import uncertified engines for testing, as specified in paragraph (b)(2) of this section.)

(ii) The engine may not be placed into non-marine service prior to being installed in a vessel.

(iii) The importer must obtain written approval from the Administrator prior to admission.

(iv) The engine and engine container must be labeled as specified by the Administrator.

(v) A manufacturer importing an engine under this exemption must modify the engine to comply with the requirements of this part.

§ 94.805 Prohibited acts; penalties.

(a) The importation of an engine (including an engine incorporated in an imported marine vessel) which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of an engine may not:

(1) Operate the engine in the United States; or

(2) Sell or lease or offer the engine for sale or lease.

(c) An engine conditionally admitted pursuant to § 94.804 and not otherwise permanently exempted or excluded by the end of the period of conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations by the end of the period of conditional admission. An engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to a civil penalty under section 205 of the Act and § 94.1106. In addition to the penalty provided in the Act and § 94.1106, where applicable, a person or entity who imports an engine under the exemption provisions of § 94.804 and, who fails to deliver the engine to the U.S. Customs Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

Subpart J—Exclusion and Exemption Provisions

§ 94.901 Purpose and applicability.

The provisions of this subpart identify excluded engines (i.e., engines not covered by the Act) and allow for the exemption of engines from certain provisions of this part. The applicability of the exclusions is described in § 94.903, and the applicability of the exemption allowances is described in §§ 94.904 through 94.909.

§ 94.902 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.903 Exclusions.

(a) Upon written request with supporting documentation, EPA will make written determinations as to whether certain engines are excluded from applicability of this part. Any engines that are determined to be excluded are not subject to the regulations under this part. Requests to determine whether certain engines are excluded should be sent to the Designated Officer.

(b) EPA will maintain a list of models of engines that have been determined to be excluded from coverage under this part. This list will be available to the public and may be obtained by writing to the address in paragraph (a) of this section.

(c) In addition to the engines excluded in paragraph (a) of this section, certain engines are not subject to the requirements and prohibitions of this part because they are excluded from the definitions of "marine engine" in § 94.2.

§ 94.904 Exemptions.

(a) Except as specified otherwise in this subpart, the provisions of §§ 94.904 through 94.911 exempt certain new engines from the standards, other requirements, and prohibitions of this part, except for the requirements of this subpart and the requirements of § 94.1104. Additional requirements may apply for imported engines; these are described in subpart I of this part.

(b)(1) Any person may request a testing exemption subject to the provisions of § 94.905.

(2) Any engine manufacturer may request a national security exemption subject to the provisions of § 94.908.

(3) Engines manufactured for export purposes are exempt without application, subject to the provisions of § 94.909, except as otherwise specified by § 94.909.

(4) Manufacturer-owned engines are exempt without application, subject to the provisions of § 94.906(a).

(5) Display engines are exempt without application, subject to the provisions of § 94.906(b). This does not apply to imported engines (see § 94.804).

(6) Engines used solely for competition are exempt, subject to the provisions of § 94.906(c).

(7) Engines used on foreign trade vessels are exempt, subject to the provisions of § 94.906(d).

§ 94.905 Testing exemption.

(a)(1) The Administrator may exempt from the standards and/or other requirements and prohibitions of this part new engines that are being used solely for the purpose of conducting a test program. Any person requesting an exemption for the purpose of conducting a test program must demonstrate the following:

(i) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance this section;

(ii) That the proposed test program necessitates the granting of an exemption;

(iii) That the proposed test program exhibits reasonableness in scope; and

(iv) That the proposed test program exhibits a degree of oversight and control consonant with the purpose of the test program and EPA's monitoring requirements.

(2) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four elements identified in paragraphs (a)(1)(i) through (iv) of this section.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, technology development, or training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under § 94.1103. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

(1) An estimate of the program's duration; and

(2) The maximum number of engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the testing;

(2) The location(s) of the testing;

(3) The time or work duration of the testing;

(4) The ownership arrangement with regard to the engines involved in the testing;

(5) The intended final disposition of the engines;

(6) The manner in which the engine identification numbers will be identified, recorded, and made available; and

(7) The means or procedure whereby test results will be recorded.

(f) A manufacturer of new engines may request a testing exemption to cover engines intended for use in test programs planned or anticipated over the course of a subsequent two-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the engines are used for purposes consistent with paragraph (a) of this section.

(g) For engines being used for the purpose of developing a fundamentally new emission control technology related either to an alternative fuel or an aftertreatment device, the Administrator may exempt the engine from some or all of the applicable standards of this part for the full useful life of the engine, subject to the provisions of paragraphs (a) through (f) of this section.

§ 94.906 Manufacturer-owned exemption, display exemption, competition exemption, and foreign trade vessel exemption.

(a) *Manufacturer-owned exemption.* Any manufacturer-owned engine, as defined by § 94.2, is exempt from § 94.1103, without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer must establish, maintain, and retain the following adequately organized and indexed information on each exempted engine:

(i) engine identification number;

(ii) Use of the engine on exempt status; and

(iii) Final disposition of any engine removed from exempt status.

(2) The manufacturer must provide right of entry and access to these records to EPA Enforcement Officers as outlined in § 94.208.

(3) The manufacturer must permanently affix a label to each engine on exempt status, unless the requirement is waived or an alternate procedure is approved by the Director, Engine Programs and Compliance Division. This label should:

(i) Be affixed in a readily visible portion of the engine;

(ii) Be attached in such a manner that cannot be removed without destruction or defacement;

(iii) State in the English language and in block letters and numerals of a color that contrasts with the background of the label, the following information:

(A) The label heading "Emission Control Information";

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement, engine family identification, and model year of engine; or person of office to be contacted for further information about the engine;

(D) The statement "This engine is exempt from the prohibitions of 40 CFR 94.1103."

(4) No provision of paragraph (a)(3) of this section prevents a manufacturer from including any other information it desires on the label.

(5) The engine is not used in revenue-generating service, or sold.

(b) *Display exemption.* An uncertified engine that is to be used solely for display purposes, and that will only be operated incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been obtained for the engine, is exempt without request from the standards of this part. This does not apply to imported engines (see § 94.804).

(c) *Competition exemption.* The Administrator may exempt, upon request, engines that are intended by the manufacturer to be used solely for competition. Engines that are modified after they have been placed into service and are used solely for competition are exempt without request.

(d) *Foreign trade exemption.* (1) The Administrator may exempt, upon request of the vessel owner, engines used on U.S.-flagged vessels meeting the provisions of paragraph (d)(2) of this section.

(2) Vessel owners requesting an exemption under this paragraph (d) must demonstrate to the Administrator that:

(i) The vessel will spend less than 25 percent of its operating time within 320 nautical kilometers of U.S. territory; or

(ii) That it will not operate between two United States ports.

(3) For the purpose of this paragraph (d), the term "vessel owner" includes any entities that have contracted to purchase a new marine vessel.

(4) The engine manufacturer must label the engine, and must include on the label the following statement: "THIS ENGINE IS SUBJECT TO THE MARPOL ANNEX VI NO_x LIMITS AND IS INTENDED FOR USE SOLELY ON VESSELS THAT SERVICE FOREIGN PORTS AS DESCRIBED IN 40 CFR 94.906.", or a similar statement approved by the Administrator.

§ 94.907 Engine dressing exemption.

(a) This section applies to you if you are an engine manufacturer (this includes post-manufacture marinizers).

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) The requirements and prohibitions of this part apply to all engines in the scope of § 94.1 that do not qualify for the engine dressing exemption.

(d) New marine engines that meets all the following criteria are exempt under this section:

(1) You must produce it by marinizing an engine covered by a valid certificate of conformity from one of the following programs:

(i) Heavy-duty highway engines (40 CFR part 86).

(ii) Land-based nonroad diesel engines (40 CFR part 89).

(iii) Locomotive engines (40 CFR part 92).

(2) The engine must have the label that required under 40 CFR part 86, 89, or 92.

(3) You must not make any changes to the certified engine that could reasonably be expected to increase its emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for the engine dressing exemption:

(i) Change any fuel system parameters from the certified configuration.

(ii) Replace an original turbocharger.

(iii) Modify or design the marine engine cooling or aftercooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(4) The engine model must not be primarily for marine applications. This means that total sales of the engine model, from all companies, must be mostly for non-marine applications.

(e) If you dress an engine under this exemption, you must do all of the following:

(1) Make sure the original engine label will remain clearly visible after installation in the vessel.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the vessel. In your engine label, do the following:

(i) Include the heading: "Marine Engine Emission Control Information".

(ii) Include your full corporate name and trademark.

(iii) State: "This engine was marinized without affecting its emission controls."

(iv) State the date you finished marinizing the engine (month and year).

(3) Send a signed letter to the Designated Officer by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the engine models you expect to produce under this exemption in the coming year.

(iii) State: "We produce each listed engine model for marine application without making any changes that could increase its certified emission levels, as described in 40 CFR 94.907."

(f) In general you may use up your inventory of engines that are not certified to new marine emission standards if they were originally manufactured before the date of the new standards. However, stockpiling these engines is a violation of § 94.1103(a)(1)(i)(A).

(g) If your engines do not meet the criteria listed in paragraphs (d)(2) through (d)(4) of this section, they will be subject to the standards and prohibitions of this part. Marinization without an exemption would be a violation of § 94.1103(a)(1) and/or the tampering prohibitions of the applicable land-based regulations (40 CFR Parts 86, 89, or 92).

(h)(1) If you are the original manufacturer and marinizer of an exempted engine, you must send us emission test data on the appropriate marine duty cycles. You can include the data in your application for certification or in the letter described in paragraph (e)(3) of this section.

(2) If you are the original manufacturer of an exempted engine that is marinized by a post-manufacture marinizer, you may be required to send us emission test data on the appropriate marine duty cycles. If such data are requested you will be allowed a reasonable amount of time to collect the data.

§ 94.908 National security exemption.

(a)(1) Any marine engine, otherwise subject to this part, that is used in a vessel that exhibits substantial features ordinarily associated with military combat such as armor, permanently affixed weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements and which will be owned and/or used by an agency of the federal government with the responsibility for national defense, will be exempt from the regulations in this subpart for reasons of national security. No request for this exemption is necessary.

(2) Manufacturers may request a national security exemption for any marine engine, otherwise subject to this part, which does not meet the conditions described in paragraph (a)(1) of this section. A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

(b) EPA will maintain a list of models of marine engines (and the vessels which use them) that have been granted a national security exemption under paragraph (a)(2) of this section. This list will be available to the public and may be obtained by writing to the Designated Officer.

§ 94.909 Export exemptions.

(a) A new engine intended solely for export, and so labeled or tagged on the outside of any container and on the engine, is subject to the provisions of § 94.1103, unless the importing country has new marine engine emission standards which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards whatsoever is deemed to be a country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void ab initio with respect to a new engine intended solely for export, where such engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

§ 94.910 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to § 94.905 or § 94.908, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void ab initio with respect to any engine. Consequently, the causing or the performing of an act prohibited under § 94.1103(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of § 94.1103(a) are applicable, liable to suit under sections 204 and 205 of the Act.

§ 94.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to the Designated Officer.

Subpart K—[Reserved]

Subpart L—General Enforcement Provisions and Prohibited Acts

§ 94.1101 Applicability.

The requirements of this subpart are applicable to all persons with respect to engines subject to the provisions of Subpart A of this part.

§ 94.1102 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.1103 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1)(i)(A) In the case of a manufacturer of new engines, the sale, the offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the distribution in commerce of any new engine that is subject to the standards of this part, unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(B) The manufacture of a engine for the purpose of an act listed in paragraph (a)(1)(i)(A) of this section unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part prior to its introduction into commerce.

(ii) In the case of any person, except as provided in Subpart I of this part, the importation into the United States of any engine manufactured on or after the implementation date of the applicable emission limits for the relevant engine, unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(2)(i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this part.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under this part.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required by this part.

(iv) For a person to fail to establish or maintain records as required under this part.

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer, as approved in the application for certification by the Administrator.

(ii) For a person to manufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(iii) for a person to deviate from the provisions of § 94.11 when rebuilding an engine (or rebuilding a portion of an engine or engine system).

(4) For a manufacturer of a new engine subject to standards prescribed under this part:

(i) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless the manufacturer has complied with the requirements of § 94.1107.

(ii) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless all required labels and tags are affixed to the engine in accordance with § 94.212.

(iii) To fail or refuse to comply with the requirements of § 94.1108.

(iv) Except as provided in § 94.211, to provide directly or indirectly in any communication to the ultimate purchaser or a subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of a part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons.

(v) To fail or refuse to comply with the terms and conditions of the warranty under § 94.1107.

(5) For a manufacturer of marine vessels to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity applicable for an engine model year the same as or later than the calendar year in which the manufacture of the new vessel is initiated. (Note: For the purpose of this paragraph (a)(5), the manufacture of a vessel is initiated when the keel is laid, or the vessel is at a similar stage of construction.)

(6) For any person to install a recreational marine engine in a vessel that is manufactured on or after the implementation date of the applicable standards and that is not a recreational vessel.

(b) For the purposes of enforcement of this part, the following apply:

(1) Nothing in paragraph (a)(3) of this section is to be construed to require the use of any manufacturer's parts in maintaining or repairing a engine.

(2)(i) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the procedure, and the action results in the proper functioning of the device or element of design.

(ii) Actions for emergency purposes are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure and the device or element is replaced such that the proper functioning of the device or element of design is restored as soon as possible.

(3) Where the Administrator determines that no engine that is certified to the requirements of this part is produced by any manufacturer with the appropriate physical or performance characteristics to repower a vessel, the Administrator may allow an engine manufacturer to introduce into commerce a replacement engine without complying with all of the otherwise applicable requirements of this part. Such engine shall not be subject to the prohibitions of paragraph (a)(1) of this section, provided that:

(i) The engine requiring replacement is not certified or is certified to emission standards that are less stringent than those in effect when the replacement engine is built; and

(ii) The engine manufacturer or its agent takes ownership and possession of the engine being replaced in partial exchange for the replacement engine; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved by the Administrator: "THIS ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1 [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY"; and

(iv) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(3) of this section, the term "engine manufacturer" shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part; and

(v) Where the replacement engine is intended to replace an engine that is

certified to emission standards that are less stringent than those in effect when the replacement engine is built, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(vi) Engines sold pursuant to the provisions of this paragraph will neither generate nor use emission credits and will not be part of any accounting under the averaging, banking and trading program.

§ 94.1104 General enforcement provisions.

(a) *Information collection provisions.* (1)(i) Every manufacturer of new engines and other persons subject to the requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer shall comply in all respects with the requirements of subpart E of this part.

(ii) Every manufacturer or owner of engines exempted from the standards or requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require regarding the emissions of such engines.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section; and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new engine from § 94.1103 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security, or for other purposes allowed by subpart J of this part.

(c) *Importation provision.* (1) A new engine, offered for importation or imported by a person in violation of § 94.1103 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a engine is finally refused admission under this paragraph (c), the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the Treasury regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new engine intended solely for export, and so labeled or tagged on the outside of the container if used and on the engine, shall be subject to the provisions of § 94.1103, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart A of this part, then the engine must comply with the standards of the country that is to receive the engine.

(e) *Recordkeeping.* Except where specified otherwise, records required by this part must be kept for eight (8) years.

§ 94.1105 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 94.1103(a).

(b) Actions to restrain violations of § 94.1103(a) must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

§ 94.1106 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 94.1103(a)(1), (a)(4), (a)(5), or (a)(6), or a manufacturer or dealer who violates § 94.1103(a)(3)(i) or (iii) is subject to a civil penalty of not more than $25,000 for each violation unless modified by the Debt Collection Improvement Act (31 U.S.C. chapter 37) and/or regulations issued there under.

(2) A person other than a manufacturer or dealer who violates § 94.1103(a)(3)(i) or (iii) or any person who violates § 94.1103(a)(3)(ii) is subject to a civil penalty of not more than $2,500 for each violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(3) A violation with respect to § 94.1103(a)(1), (a)(3)(i), (a)(4), or (a)(5) constitutes a separate offense with respect to each engine.

(4) A violation with respect to § 94.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 94.1103(a)(5) constitutes a separate offense.

(5) A person who violates § 94.1103(a)(2) or (a)(5) is subject to a civil penalty of not more than $25,000 per day of violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph (b) may be brought in the district court of the United States for the district in which the defendant resides or has the Administrator's principal place of business, and the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph (b), the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) *Administrative assessment of certain penalties.*—(1) *Administrative penalty authority.* In lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at 40 CFR Part 22. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) *Determining amount.* In determining the amount of any civil penalty assessed under this paragraph (c), the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) *Effect of administrator's action.* (i) Action by the Administrator under this paragraph (c) does not affect or limit the Administrator's authority to enforce any provisions of the Act; except that any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this paragraph (c), or for which the Administrator has issued a final order not subject to further judicial review and for which the violator has paid a penalty assessment under this paragraph shall not be the subject of a civil penalty action under paragraph (b) of this section.

(ii) No action by the Administrator under this paragraph (c) shall affect a person's obligation to comply with a section of this part.

(4) *Finality of order.* An order issued under this paragraph (c) is to become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (c)(5) of this section.

(5) *Judicial review.* A person against whom a civil penalty is assessed in accordance with this paragraph (c) may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. The person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph (c) unless substantial evidence does not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) *Collection.* (i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of the Administrator, the Administrator shall request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty is not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is an amount equal to ten percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

§ 94.1107 Warranty provisions.

(a) The manufacturer of each engine must warrant to the ultimate purchaser and each subsequent purchaser or owner that the engine is designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period (as determined under § 94.10).

(b) For the purposes of this section, the owner of any engine warranted under this part is responsible for the proper maintenance of the engine. Proper maintenance includes replacement and/or service, as needed, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices which were in general use with engines prior to 1999. For diesel engines, this would generally include replacement or cleaning of the fuel delivery and injection system.

§ 94.1108 In-use compliance provisions.

(a) Effective with respect to engines subject to the requirements of this part:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life period (as defined under § 94.2), the Administrator shall immediately notify the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with

respect to any class or category of engines shall be given to ultimate purchasers, subsequent purchasers (if known), and dealers (as applicable) in such manner and containing such information as required in Subparts E and H of this part.

(3)(i) The certifying manufacturer shall furnish with each new engine written instructions for the proper maintenance and use of the engine by the ultimate purchaser as required under § 94.211.

(ii) The instruction under paragraph (a)(3)(i) of this section must not include any condition on the ultimate purchaser's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also must not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer, or any other service establishments with which such manufacturer has a commercial relationship; and service performed by independent engine repair facilities with which such manufacturer has no commercial relationship.

(iii) The prohibition of paragraph (a)(3)(ii) of this section may be waived by the Administrator if:

(A) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(B) The Administrator finds that such a waiver is in the public interest.

(iv) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to the engine that the engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under § 94.212.

(b) The manufacturer bears all cost obligation any dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

Appendix I to Part 94—Emission-Related Engine Parameters and Specifications

I. Basic Engine Parameters—Reciprocating Engines.
- 1. Compression ratio.
- 2. Type of air aspiration (natural, Roots blown, supercharged, turbocharged).
- 3. Valves (intake and exhaust).
- a. Head diameter dimension.
- b. Valve lifter or actuator type and valve lash dimension.
- 4. Camshaft timing.
- a. Valve opening—intake exhaust (degrees from TDC or BDC).
- b. Valve closing—intake exhaust (degrees from TDC or BDC).
- c. Valve overlap (degrees).
- 5. Ports—two stroke engines (intake and/or exhaust).
- a. Flow area.
- b. Opening timing (degrees from TDC or BDC).
- c. Closing timing (degrees from TDC or BDC).

II. Intake Air System.
- 1. Roots blower/supercharger/turbocharger calibration.
- 2. Charge air cooling.
- a. Type (air-to-air; air-to-liquid).
- b. Type of liquid cooling (engine coolant, dedicated cooling system).
- c. Performance (charge air delivery temperature (°F) at rated power and one other power level under ambient conditions of 80°F and 110°F, and 3 minutes and 15 minutes after selecting rated power, and 3 minutes and 5 minutes after selecting other power level).
- 3. Temperature control system calibration.
- 4. Maximum allowable inlet air restriction.

III. Fuel System.
- 1. General.
- a. Engine idle speed.
- 2. Fuel injection—compression ignition engines.
- a. Control parameters and calibrations.
- b. Transient enrichment system calibration.
- c. Air-fuel flow calibration.
- d. Altitude compensation system calibration.
- e. Operating pressure(s).
- f. Injector timing calibration.

IV. Engine Cooling System.
- 1. Thermostat calibration.

V. Exhaust System.
- 1. Maximum allowable back pressure.

VI. Exhaust Emission Control System.
- 1. Air injection system.
- a. Control parameters and calibrations.
- b. Pump flow rate.
- 2. EGR system.
- a. Control parameters and calibrations.
- b. EGR valve flow calibration.
- 3. Catalytic converter system.
- a. Active surface area.
- b. Volume of catalyst.
- c. Conversion efficiency.
- 4. Backpressure.

VII. Crankcase Emission Control System.
- 1. Control parameters and calibrations.
- 2. Valve calibrations.

VIII. Auxiliary Emission Control Devices (AECD).
- 1. Control parameters and calibrations.
- 2. Component calibration(s).

[FR Doc. 99–31658 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

OL

64

SS

2
4
9

DE

29

999

MI

federal register

Wednesday
December 29, 1999

Part IV

Department of Education

Women's Educational Equity Act Program (WEEA); Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.083A and B]

Women's Educational Equity Act Program (WEEA); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To promote gender equity in education; to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age; and to provide financial assistance to enable educational agencies to meet the requirements of title IX of the Education Amendments of 1972.

Eligible Applicants: Public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and individuals.

Deadline for Transmittal of Applications: February 14, 2000.

Note: We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C 533 (b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: April 14, 2000.

Applications Available: December 29, 1999.

Available Funds: $906,883.

Estimated Range of Awards: Implementation Grants: $90,000–$200,000; Research and Development Grants: $75,000–$150,000.

Estimated Average Size of Awards: Implementation Grants: $145,000; Research and Development Grants: $125,000.

Estimated Number of Awards: Implementation Grants: 4–8; Research and Development Grants: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. Funds available under this competition would be used for the first 12 months of a project.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: The Department will award two types of grants: (1) grants for the *implementation* of gender equity programs in schools; and (2) *research and development* grants to develop model equity programs. Examples of authorized activities under the program include—

Implementation Grants

(a) Assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972;

(b) Training for teachers, counselors, administrators, and other school personnel, especially preschool and elementary school personnel, in gender-equitable teaching and learning practices;

(c) Leadership training for women and girls to develop professional and marketable skills to compete in the global marketplace, improve self-esteem, and benefit from exposure to positive role models;

(d) School-to-work transition programs, guidance and counseling activities, and other programs to increase opportunities for women and girls to enter a technologically demanding workplace and, in particular, to enter highly skilled, high-paying careers in which women and girls have been underrepresented;

(e) Enhancing educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and on race, ethnic origin, limited-English proficiency, disability, socioeconomic status, or age;

(f) Assisting pregnant students and students rearing children to remain in or to return to secondary school, graduate, and prepare their preschool children to start school;

(g) Evaluating exemplary model programs to assess the ability of such programs to advance educational equity for women and girls;

(h) Introduction into the classroom of textbooks, curricula, and other materials designed to achieve equity for women and girls;

(i) Programs and policies to address sexual harassment and violence against women and girls and to ensure that educational institutions are free from threats to the safety of students and personnel;

(j) Nondiscriminatory tests of aptitude and achievement and of alternative assessments that eliminate biased assessment instruments from use;

(k) Programs to increase educational opportunities, including higher education, vocational training, and other educational programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children benefits;

(l) Programs to improve representation of women in educational administration at all levels; and

(m) Planning, development, and initial implementation of—

(1) Comprehensive institution-or districtwide evaluation to assess the presence or absence of gender equity in educational settings;

(2) Comprehensive plans for implementation of equity programs in State and local educational agencies and institutions of higher education, including community colleges; and

(3) Innovative approaches to school-community partnerships for educational equity.

Research and Development Activities

(a) Research and development of innovative strategies and model training programs for teachers and other education personnel;

(b) The development of high-quality and challenging assessment instruments that are nondiscriminatory;

(c) The development and evaluation of model curricula, textbooks, software, and other educational materials to ensure the absence of gender stereotyping and bias;

(d) The development of instruments and procedures that employ new and innovative strategies to assess whether diverse educational settings are gender equitable;

(e) The development of instruments and strategies for evaluation, dissemination, and replication of promising or exemplary programs designed to assist local educational agencies in integrating gender equity in their educational policies and practices;

(f) Updating high-quality educational materials previously developed through Women's Educational Equity Act (WEEA) grants;

(g) The development of policies and programs to address and prevent sexual harassment and violence to ensure that educational institutions are free from threats to safety of students and personnel;

(h) The development and improvement of programs and activities to increase opportunity for women, including continuing educational activities, vocational education, and programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children; and

(i) The development of guidance and counseling activities, including career

education programs, designed to ensure gender equity.

Priority for Implementation Grants

Under 34 CFR 75.105(b) and (c), the Secretary gives a competitive preference to applications that meet the following priority found in 20 U.S.C. 7235(b) by awarding bonus points depending on the extent to which the applicant meets the priority:

Projects submitted by applicants that have not received assistance under the WEEA Program (5 points).

Invitational Priority for Implementation Grants

Under 34 CFR 75.105(b) and (c), the Secretary invites and encourages applications that meet the following invitational priority for implementation grants: Projects that develop and implement programs which will promote gender equity in the math and science areas, including projects that promote equity in math and science for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age. The Secretary is particularly interested in applications that meet this priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria for Implementation Grants

The Secretary evaluates applications for implementation grants on the basis of the following criteria which are taken either from the statute or from 34 CFR 75.210. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(a) *Effectively achieving the purposes of WEEA.* (20 points).

Under 34 CFR 75.209 and 20 U.S.C. 7235(a), the Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

Note: Applicants should consider the following statutory provisions when responding to this criterion. Under 20 U.S.C. 7232, the purpose of the WEEA program is: (a) to promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age.

(b) *Project as a component of a comprehensive plan.* (5 points).

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(C), the Secretary reviews each application to determine the extent to which the project is a significant component of a comprehensive plan for educational equity and compliance with title IX of the Educational Amendments of 1972 in the particular school district, institution of higher education, vocational-technical institution, or other educational agency or institution.

(c) *Implementing an institutional change strategy.* (5 points).

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(D), the Secretary reviews each application to determine the extent to which the project implements an institutional change strategy with long-term impact that will continue as a central activity of the applicant after the WEEA grant has been terminated.

(d) *Need for project.* (10 points). (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which the proposed project will enhance educational and career opportunities for those women and girls who suffer forms of discrimination, based on sex and race, ethnic origin, limited English-proficiency, disability, and socioeconomic status, or age.

(e) *Significance.* (5 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(ii) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(f) *Quality of the project design.* (15 points). (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(g) *Quality of project services.* (10 points). (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(ii) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(h) *Quality of project personnel.* (5 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(i) *Adequacy of resources.* (5 points). (1) The Secretary considers the

adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(j) *Quality of the management plan.* (10 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(k) *Quality of the project evaluation.* (10 points). (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: Applicants should consider the following statutory provision when responding to this criterion. Under 20 U.S.C. 7234 (1), applicants for WEEA funds are required to set forth policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

Priority for Research and Development Grants

Under 34 CFR 75.105 (b) and (c), the Secretary gives a competitive preference to applications that meet the following priority found in 20 U.S.C. 7235(b) by awarding bonus points depending on the extent to which the applicant meets the priority:

Projects submitted by applicants that have not received assistance under the WEEA Program (5 points).

Selection Criteria for Research and Development Grants

The Secretary evaluates applications for research and development grants on the basis of the following criteria which are taken either from the statute or from 34 CFR 75.210. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(a) *Effectively achieving the purposes of WEEA.* (20 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a), the Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

Note: Applicants should consider the following statutory provisions when responding to this criterion. Under 20 U.S.C. 7232, the purpose of the WEEA program is: (a) to promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age.

(b) *Addressing multiple discrimination.* (5 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(A), the Secretary reviews each application to determine the quality of the applicant's plan for addressing the needs of women and girls of color and women and girls with disabilities.

(a) *Need for project.* (10 points). (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance.* (10 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The national significance of the proposed project.

(ii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(e) *Quality of the project design.* (20 points). (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iv) The quality of methodology to be employed in the proposed project.

(e) *Quality of project personnel.* (10 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the

project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(g) *Adequacy of resources.* (5 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(h) *Quality of the management plan.* (10 points. (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(i) *Quality of the project evaluation.* (10 points). (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: Applicants should consider the following statutory provision when responding to this criterion. Under 20 U.S.C. 7234(1), applicants for WEEA funds are required to set forth policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

For Information Contact: Edith Harvey, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E106, Washington, D.C. 20202–6140. Telephone (202) 260–1393. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (*http://www.ed.gov/pubs/edpubs.html*) or its E-mail address (*edpubs@inet.ed.gov*).

Electronic Access to this Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GOP Access at: http://www.access.gpo/nara/index.html

Program Authority: 20 U.S.C. 7231–7238.

Dated: December 23, 1999.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–33743 Filed 12–28–99; 8:45 am]

BILLING CODE 4000–01–P

VOL
64
ISS
2
4
9
DE
29
999
UMI

Reader Aids

Federal Register

Vol. 64, No. 249

Wednesday, December 29, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–5641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468	1
67469–67692	2
67693–67996	3
67997–68274	6
68275–68614	7
68615–68930	8
68931–69164	9
69165–69370	10
69371–69628	13
69629–69882	14
69883–70172	15
70173–70562	16
70563–70984	17
70985–71266	20
71267–71632	21
71633–71982	22
71983–72248	23
72249–72456	27
72457–72886	28
72887–73380	29

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders 72887

Presidential Determinations:

No. 2000–8 of December 17, 1999 72887

Proclamations:

7256 67691
7257 68269
7258 69161
7259 69163
7260 70563
7261 71629
7262 71631

Executive Orders:

June 24, 1914 (Revoked in part by PLO 7416) 67295
April 28, 1917 (Revoked in part by PLO 7416) 67295
February 11, 1918 (Revoked in part by PLO 7416) 67295
July 10, 1919 (Revoked in part by PLO 7416) 67295
May 25, 1921 (Revoked in part by PLO 7416) 67295
April 17, 1926 (Revoked in part by PLO 7416) 67295
February 7, 1930 (Revoked in part by PLO 7416) 67295
13106 (superceded by EO 13144) 72237
13143 68273
13144 72237

Administrative Orders:

Memorandums:

November 29, 1999 68275

5 CFR

410 69165
530 69165
531 69165
532 ..... 69183, 72249
534 ..... 68931, 72889
536 69165
550 ..... 69165, 69936, 72457
551 69165
575 ..... 69165, 71633
591 69165
595 72457
610 ..... 69165, 72457
630 72250
831 72256
842 72256
870 72459
1205 71267
1630 67693
6801 68615
870 71983

Proposed Rules:

532 72292
792 72037
1201 72040

7 CFR

29 67469
210 72466
225 ..... 72474, 72889
226 72257
245 72466
246 ..... 67997, 70173, 71635
250 72898
253 72908
254 72908
301 71267
319 ..... 68001, 69629
353 72262
457 71270
761 69322
905 69371
906 69375
915 69380
955 ..... 72265, 72267
993 72909
1000 70868
1001 70868
1002 70868
1004 70868
1005 70868
1006 70868
1007 70868
1012 70868
1013 70868
1030 70868
1032 ..... 70868, 70985
1033 70868
1036 70868
1040 70868
1044 70868
1046 70868
1049 70868
1050 70868
1064 70868
1065 70868
1068 70868
1076 70868
1079 70868
1106 70868
1124 70868
1126 70868
1131 70868
1134 70868
1135 70868
1137 70868
1138 70868
1139 70868
1407 67470
1703 69937

1721 72488
4284 71984

Proposed Rules:
271 72196
272 ..... 70920, 72196
273 ..... 70920, 72196
301 71322
360 72293
361 72293
955 69419
985 69421
989 69204
1032 67201
1703 69937
1721 72575
1744 69946
1980 70124
3555 70124
4280 69937

8 CFR

103 69983
235 68616

Proposed Rules:
100 68638
103 71323
214 71323
299 71323

9 CFR

78 67695
94 ..... 67695, 72912
130 ..... 67697, 67699
310 72170
317 ..... 71989, 72490
381 ..... 71989, 72150, 72490
391 72492
424 72150

Proposed Rules:
54 70608
79 70608
301 70200
318 70200
320 70200

10 CFR

21 71990
50 71990
51 68005
52 72002
54 71990
72 ..... 67700, 72019
709 70962
710 70962
711 70962
850 68854

Proposed Rules:
26 67202
71 71331
73 71331
431 69598
960 69983
963 69983

11 CFR

Proposed Rules:
100 68951

12 CFR

22 71272
24 70986
203 70991
208 71272
308 72913
327 70178
339 71272
503 69183
505 69183
557 69183
559 69183
563 69183
572 69183
614 71272
701 72269
760 71272
932 71275
934 71275
935 71275
1102 72494
1780 72501

Proposed Rules:
202 69963
205 69963
213 69963
226 69963
230 69963
611 72041
615 72041
935 71689

13 CFR

107 70992
300 69868
301 69868
302 69868
303 69868
304 69868
305 69868
306 69868
307 69868
308 69868
314 69868
316 69868
317 69868
318 69868
400 72019
500 72022

Proposed Rules:
120 ..... 67205, 69964

14 CFR

25 ..... 67147, 67701, 67705, 69383
39 ..... 67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394, 69629, 69964, 69967, 70181, 70997, 71001, 71003, 71004, 71006, 71007, 71009, 71010, 71012, 71278, 71280, 71282, 72270, 72522, 72524, 72528, 72530, 72531, 72533, 72913, 72916, 72918, 72919
65 ..... 68916, 71635
71 ..... 67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932, 69631, 69632, 70565, 70566, 70567, 70568, 70570, 71014, 71637, 72922, 72924, 72925, 72926, 72928
91 70571
97 ..... 67473, 67476, 71015, 71017
254 70573
1203 72534

Proposed Rules:
11 69856
25 ..... 67804, 69425
39 ..... 67206, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336, 71689, 71694, 71696, 72575, 72579, 72582, 72584, 72586, 72963, 72964, 72967
71 ..... 67525, 67810, 69430, 69431, 70610, 70611, 70612, 72969, 72970
450 69628
1261 71339
1267 71339

15 CFR

303 67148
806 67716
902 ..... 68228, 68932, 69888
2015 67152

Proposed Rules:
280 69969
922 72296

16 CFR

0 71283
4 69397
305 71019
1145 71854
1212 71854
1213 71888
1500 71888
1513 71888

17 CFR

3 68011
32 68011
211 ..... 67154, 68936
270 68019

Proposed Rules:
Ch. II 69074
1 72587
4 68304
230 72590
240 ..... 69975, 70613, 72590
243 72590
249 72590
250 71341

18 CFR

35 72535
141 72537

19 CFR

12 67479
132 67481
163 67481

20 CFR

404 67719

Proposed Rules:
222 68647
325 67811
330 67811
335 67811
336 67811
604 ..... 67811, 67972, 71346

21 CFR

10 69188
12 69188
176 ..... 68629, 69898
177 71637
178 ..... 67483, 71639, 72272, 72273, 72274
179 69190
203 67720
205 67720
510 ..... 69188, 69191
520 68289
522 71640
529 71640
558 ..... 70576, 72026
1401 69901

Proposed Rules:
10 69209
12 69209
16 ..... 70202, 70203
314 67207
330 71062
510 69209
601 67207
807 71347
1309 67216

23 CFR

130 71284
480 71284
620 71284
630 71284
635 71284
645 71284
710 71284
712 71284
713 71284

Proposed Rules:
655 ..... 71354, 71358

24 CFR

180 72726
200 72868
290 72410
888 ..... 72722, 72730
985 67982

25 CFR

Proposed Rules:
504 72296
990 71698

26 CFR

1 ..... 67763, 69903, 71641, 72540, 72545, 72555
20 ..... 67763, 67767, 71021
25 67767
301 67767
601 69398
602 ..... 67767, 69903, 71641, 72545, 72555

Proposed Rules:
1 71082

27 CFR

200 71918
270 ..... 71918, 71929, 71937
275 ..... 71918, 71929, 71937, 71947
290 ..... 71918, 71929, 71937
295 ..... 71929, 71937
296 ..... 71929, 71937, 71957

Proposed Rules:
4 72612
200 71927
270 ..... 71927, 71935
275 ..... 71927, 71935, 71955
290 ..... 71927, 71935
295 719351
296 719351

28 CFR

0.....68307
91.....71022
545.....72798
551.....68264

29 CFR

403.....71622
4011.....67163
4022.....67163
4044.....67165, 69922

Proposed Rules:

2520.....67436
2700.....68649

30 CFR

218.....72756
250.....69923, 72756
252.....72756
253.....72756
256.....72756
282.....72756
740.....70766
745.....70766
761.....70766, 70838
762.....70766
772.....70766
773.....70766
778.....70766
780.....70766
784.....70766, 71652
817.....71652
913.....68024, 72275
914.....70578
918.....68289
936.....70584
946.....69399, 72277

Proposed Rules:

14.....72617
18.....72617, 72620
75.....72617, 72620
280.....68649
931.....71698, 71700
938.....70644, 72297

31 CFR

285.....71228

Proposed Rules:

28.....69432
285.....71233

32 CFR

44.....72027
199.....72030
287.....67166
296.....71297
299.....71299
312.....72928
806.....72808
806b.....72031

Proposed Rules:

199.....67220, 69981
811.....72621

33 CFR

26.....69633
100.....67168, 67169, 69192, 70184, 72929
117.....67169, 67773, 68291, 71653
127.....67170
154.....67170
155.....67170
159.....67170
161.....69633
164.....67170
165.....70587, 71023, 71655, 72281, 72558, 72559, 72929
183.....67170
207.....69402

Proposed Rules:

100.....70650
140.....68416
141.....68416
142.....68416
143.....68416
144.....68416
145.....68416
146.....68416
147.....68416
165.....70650

34 CFR

76.....71964
304.....69138
606.....70146
607.....70146
614.....72802

Proposed Rules:

694.....71552

36 CFR

7.....71025
1220.....67662
1222.....67662
1228.....67662, 67634, 68945

Proposed Rules:

217.....69446, 70204
219.....69446, 70204
251.....70204, 72971

37 CFR

1.....67486, 67774
2.....67486, 67774
253.....67187
258.....71659

Proposed Rules:

201.....71086

38 CFR

Proposed Rules:

3.....67528

39 CFR

3001.....67487

Proposed Rules:

111.....68965, 71702, 72044
3001.....72622

40 CFR

9.....68546, 68722, 69636
51.....71026
52.....67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404, 70589, 70592, 70593, 71026, 71027, 71031, 71035, 71038, 71304, 71660, 71663, 71666, 72032, 72561, 72564, 72934, 72939, 72940
62.....70595
63.....67789, 67793, 69637, 71852, 72568
70.....71038, 72032
82.....68039
89.....73300
92.....73300
94.....73300
122.....68722
123.....68722
124.....68722
141.....67450
143.....67450
144.....68546, 70316
145.....68546
146.....68546
180.....68044, 68046, 68631, 69407, 69409, 70184, 70599, 71670, 72282, 72284, 72947
185.....72947
186.....72947
243.....70602
300.....68052

Proposed Rules:

2.....71366
50.....68659
52.....67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332 70347, 70364, 70380, 70397, 70412, 70428, 70443, 70459, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087, 71704, 71705, 72045, 72632, 72971, 72972
62.....70665
63.....72633
70.....68066, 72045
80.....70121
81.....68659, 70660
85.....68310, 70121
86.....68310, 70121, 70665
141.....71366
142.....71367
160.....72972
165.....71367
180.....71708
194.....68661
243.....70666
260.....68968
372.....68311
503.....72045
761.....69358
792.....72972
806.....72972

41 CFR

Ch. 101.....72570
Ch. 301.....67670
300-3.....67670
301-10.....67670

42 CFR

121.....71317
422.....71673
1001.....71626

Proposed Rules:

68c.....69213
433.....67223
438.....67223
1001.....69217

43 CFR

12.....72287

44 CFR

61.....71317
64.....71317, 71678
65.....69644, 69646, 69647, 69649
67.....69652, 69655, 69657

Proposed Rules:

67.....69676

45 CFR

61.....71041
1302.....69924
1641.....67501

Proposed Rules:

160.....69981
161.....69981
162.....69981
163.....69981
164.....69981
270.....68202
2522.....67235
2525.....67235

46 CFR

28.....67170
30.....67170
32.....67170
34.....67170
35.....67170
38.....67170
39.....67170
54.....67170
56.....67170
58.....67170
61.....67170
63.....67170
76.....67170
77.....67170
78.....67170
92.....67170
95.....67170
96.....67170
97.....67170
105.....67170
108.....67170
109.....67170
110.....67170
111.....67170
114.....67170
119.....67170
125.....67170
151.....67170
153.....67170
154.....67170
160.....67170
161.....67170
162.....67170
163.....67170
164.....67170
170.....67170
174.....67170
175.....67170
182.....67170
190.....67170
193.....67170
195.....67170
199.....67170

47 CFR

Ch. 1.....68053
1.....68946, 69926, 72570
2.....69926, 72571
20.....72951
36.....67372, 67416, 72956
51.....68637
54.....67372, 67416, 72956
69.....67372
73.....70606, 71041
76.....67193, 67198
90.....67199, 71042
95.....69926, 72956

Proposed Rules:

0.....71369
1.....71088

2 71088
73 ..... 67236, 67535, 68662, 68663, 68664, 68665, 70670, 70671, 70672, 71097, 71098, 71712
76 72985
80 71369
90 71369
101 ..... 71088, 71373

48 CFR

Ch. 1 ..... 72414, 72451
1 ..... 72415, 72416
2 ..... 72416, 72441, 72450
4 ..... 72441, 72444
5 ..... 72416, 72441, 72450
6 72416
7 72441
8 72445
9 72416
10 72441
11 72446
12 ..... 72415, 72416, 72447
13 ..... 2416, 72447
14 ..... 72416, 72450
15 ..... 72416, 72441, 72450
16 72448
17 72416
19 ..... 72416, 72441, 72447, 72450
23 72415
25 72416
32 72450
33 72450
36 ..... 72416, 72450
39 72445
42 ..... 72444, 72450
48 72448
52 ..... 72415, 72416, 72446, 72447, 72448, 72450
808 69934
812 69934
813 69934
852 69934
853 69934
1815 69415

Proposed Rules:

1 67986
2 70158
12 67992
13 67992
16 70158
22 ..... 67986, 67992
25 67446
28 72828
30 67814
37 70158
52 ..... 67446, 67986, 67992, 72828
919 68072
952 68072
1815 70208
1819 70208
1852 70208

49 CFR

Ch. III 72959
192 69660
195 69660
211 70193
219 ..... 69193, 72289
225 69193
235 70193
238 70193
240 70193
301 72959
571 69665

Proposed Rules:

40 69076
106 71098
107 71098
171 ..... 71098, 72633
172 72633
173 72633
174 72633
175 72633
176 72633
177 72633
178 72633
179 72633
180 72633
192 71713
195 71713
571 ..... 70672, 71377

50 CFR

17 ..... 68508, 69195, 71680, 72960
20 71236
21 71236
222 ..... 69416, 70196
223 ..... 69416, 70196
300 ..... 69672, 72035, 72961, 72962
600 67511
622 ..... 68932, 71056
635 70198
648 ..... 71060, 71320, 71687
649 68228
660 ..... 69888, 72290
679 ..... 68054, 68228, 68949, 69673, 70199, 71688, 72572

Proposed Rules:

17 ..... 67814, 69324, 70209, 71714, 72300, 72992, 72993
18 68973
216 ..... 70678, 71722
226 ..... 67536, 69448
622 ..... 70678, 71388
635 ..... 69982, 72636
648 67551
660 70679
679 ..... 67555, 69219, 69458, 71390, 71396, 72302, 73003

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 29, 1999

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Pine shoot beetle; published 4-2-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food distribution programs:

Food donations—

Indian tribal household; definition; published 12-29-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Ocean and coastal resource management:

Marine sanctuaries—

Hawaiian Islands Humpback Whale National Marine Sanctuary, HI; published 11-29-99

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent and trademark cases:

Fee revisions (2000 FY); published 12-3-99

DEFENSE DEPARTMENT

Privacy Act; implementation; published 12-29-99

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Georgia; published 12-29-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Phosphine; published 12-29-99

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Personal radio services—

218-219 MHz services, licensing issues; published 12-29-99

PERSONNEL MANAGEMENT OFFICE

Pay administration:

Senior Executive Service performance awards; published 12-29-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Foreign partnerships—

Information reporting requirements; published 12-28-99

U.S. persons owning interests in; return requirements; published 12-28-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Fire ant, imported; comments due by 1-4-00; published 11-5-99

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning

Supplemental information; comments due by 1-4-00; published 12-13-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Community development quota program; at-sea scales; comments due by 1-3-00; published 12-2-99

Pollock; comments due by 1-5-00; published 12-21-99

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico Fishery Management Council; meetings; comments due by 1-3-00; published 11-26-99

Northeastern United States fisheries—

Dealer and vessel reporting requirements; comments due by 1-3-00; published 12-2-99

Marine mammals:

Dolphin-safe tuna labeling; official mark; comments due by 1-5-00; published 12-22-99

ENERGY DEPARTMENT

Acquisition regulations:

Mentor-Protege Program; comments due by 1-5-00; published 12-6-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Ethylene oxide commercial sterilization and fumigation operations; chamber exhaust and aeration room vents; requirements suspended; comments due by 1-3-00; published 12-3-99

Air programs:

Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply

Findings rescission; comments due by 1-3-00; published 12-8-99

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 1-3-00; published 12-17-99

Connecticut; comments due by 1-3-00; published 12-1-99

Georgia; comments due by 1-3-00; published 12-2-99

Montana; comments due by 1-5-00; published 12-6-99

Pennsylvania; comments due by 1-5-00; published 12-6-99

Rhode Island; comments due by 1-3-00; published 12-2-99

Utah; comments due by 1-5-00; published 12-6-99

Radiation protection programs:

Hanford Site; transuranic radioactive waste proposed for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability; comments due by 1-7-00; published 12-8-99

Water supply:

National primary drinking water regulations—

Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 11-2-99

Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 0-0- 0

FEDERAL ELECTION COMMISSION

Internet use for campaign activity; inquiry; comments due by 1-4-00; published 11-5-99

FEDERAL MEDIATION AND CONCILIATION SERVICE

Freedom of Information Act; implementation; comments due by 1-3-00; published 11-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adjuvants, production aids, and sanitizers—

7-oxa-3,20-diazadispiro-[5.1.11.2]-heneicosan-21-one,2,2,4,4-tetramethyl-,hydrochloride, reaction products; comments due by 1-3-00; published 12-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Children's Health Insurance Program; State allotments and grants; comments due by 1-7-00; published 11-8-99

Medicare:

Physician fee schedule (2000 CY); payment policies and relative value unit adjustments; comments due by 1-3-00; published 11-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health plans, health care clearinghouses, and health care providers:

Administrative data standards and related requirements—

Individually identifiable health information; privacy standards; comments due by 1-3-00; published 11-3-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Santa Ana sucker; comments due by 1-3-00; published 12-16-99

Scaleshell mussel; comments due by 1-7-00; published 11-29-99

LABOR DEPARTMENT

Employment Standards Administration

Federal Coal Mine Health and Safety Act of 1969, as amended:

Black Lung Benefits Act—

Individual claims by former coal miners and dependents processing and adjudication; regulations clarification and simplification; comments due by 1-6-00; published 11-18-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Employee choice between appeal procedure and grievance procedure; agency requirement to provide notice when it takes appealable action against employee; comments due by 1-3-00; published 11-1-99

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:

Antitrust review authority; clarification; comments due by 1-3-00; published 11-3-99

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:

New York; comments due by 1-4-00; published 11-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 1-6-00; published 12-7-99

Bell Helicopter Textron Canada; comments due by 1-3-00; published 11-4-99

BFGoodrich; comments due by 1-7-00; published 12-8-99

Boeing; comments due by 1-6-00; published 11-22-99

British Aerospace; comments due by 1-6-00; published 12-7-99

Eurocopter France; comments due by 1-4-00; published 11-5-99

Fokker; comments due by 1-5-00; published 12-6-99

McDonnell Douglas; comments due by 1-6-00; published 11-22-99

New Piper Aircraft, Inc.; comments due by 1-4-00; published 11-5-99

Raytheon; comments due by 1-3-00; published 11-16-99

Rolls-Royce plc; comments due by 1-3-00; published 11-2-99

Class E airspace; comments due by 1-3-00; published 11-19-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

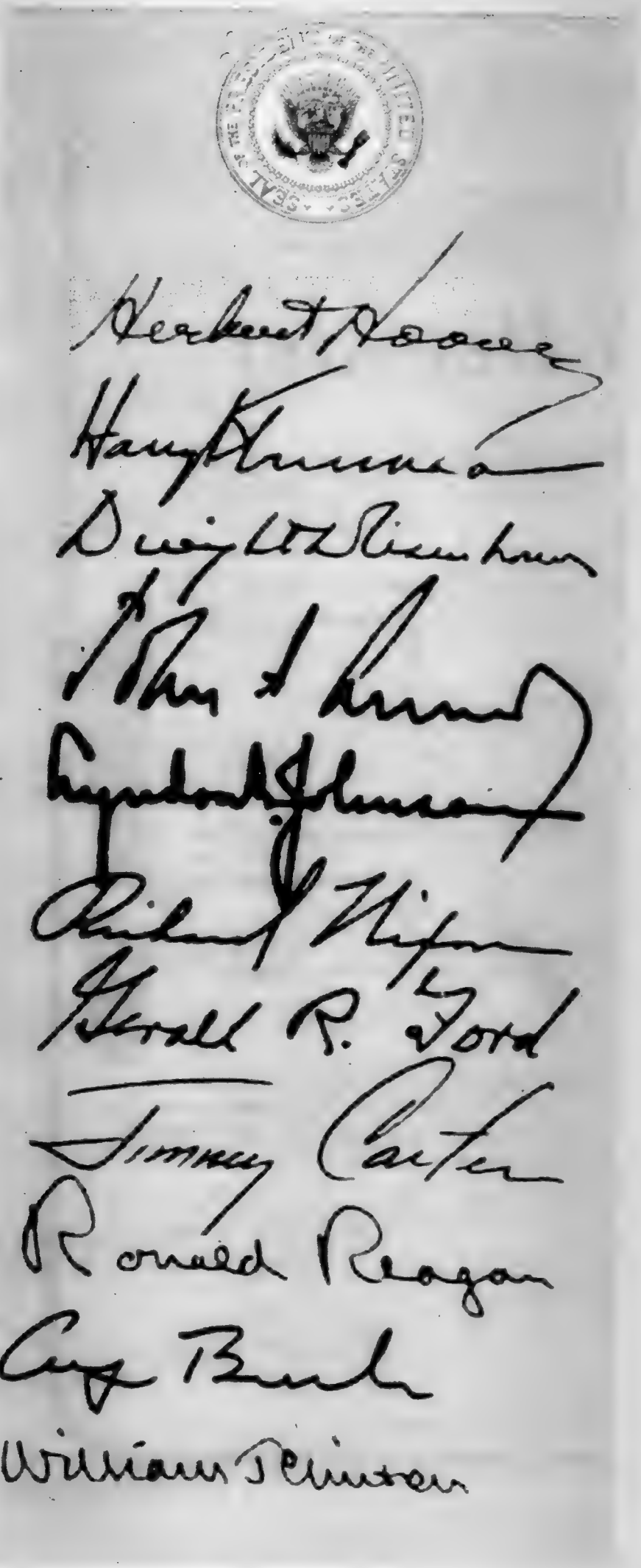
Controlled corporations; recognition of gain on certain distributions of stockor securities in connection with an acquisition; comments due by 1-5-00; published 8-24-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 9/23/99)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

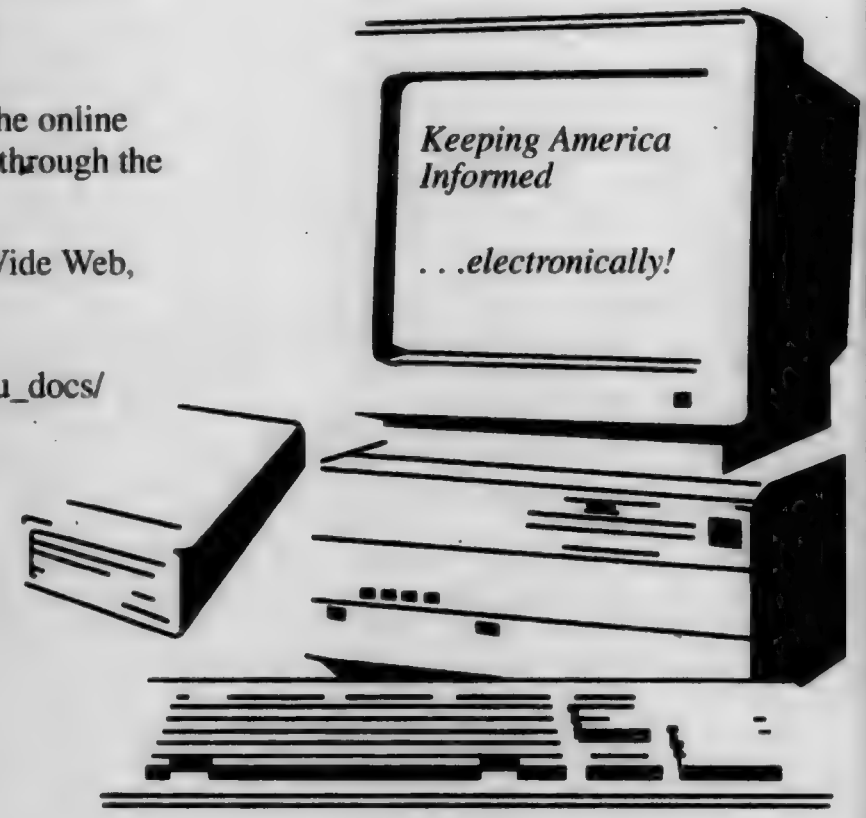
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Order Now!

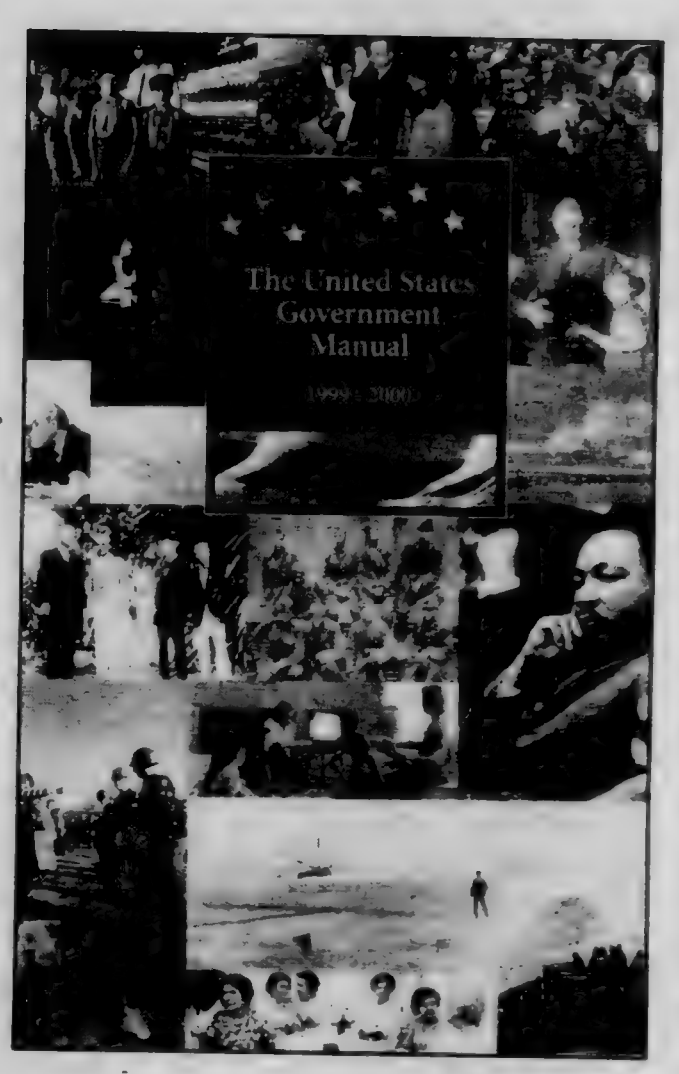
The United States Government Manual 1999/2000

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$46 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1999/2000,
S/N 069–000–00109–2 at $46 ($57.50 foreign) each.

Total cost of my order is $ ———— . **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

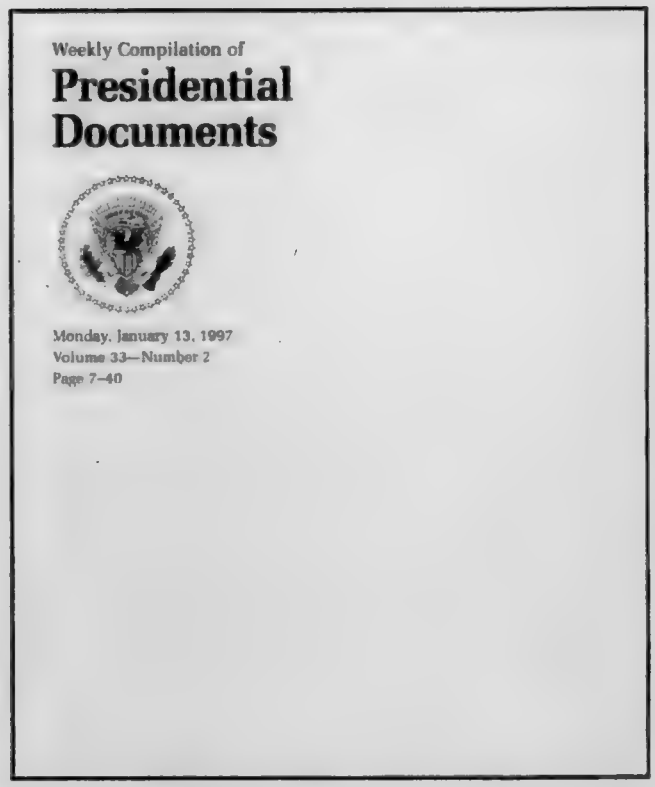
Thank you for your order!

Authorizing signature 9/99

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

VOL
64
ISS
2
50
DE
30
1999
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12-30-99
Vol. 64

United S
Governm
Printing
SUPERINTE
OF DOCUM
Washington,

OFFICIAL B
Penalty for p

12–30–99
Vol. 64 No. 250

Federal Register

Thursday
December 30, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
64
ISS
2
5
0
DE
30
1999
UMI

12-30-99
Vol. 64 No. 250
Pages 73381-73880

federal register

Thursday
December 30, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Printed on recycled paper.

Contents

Federal Register

Vol. 64, No. 250

Thursday, December 30, 1999

Agricultural Marketing Service
RULES
Milk marketing orders:
New England et al., 73386–73387

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research, Education, and Extension Service
See Food and Nutrition Service
See Forest Service
See Natural Resources Conservation Service

Army Department
NOTICES
Meetings:
Armament Retooling and Manufacturing Support Executive Advisory Committee, 73525

Centers for Disease Control and Prevention
NOTICES
Clinical Laboratory Improvement Amendments:
Clinical laboratory complexity categorization responsibility transfer, 73561

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 73510

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 73510

Coast Guard
NOTICES
Merchant marine officers and seamen:
Random drug testing; minimum rate, 73596

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
South Eastern, South Western, and Western Oriented Strand Board futures and options, 73524–73525

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Higher Education Challenge Grants Program Correction, 73508

Defense Department
See Army Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 73525

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Cavanagh, James G., M.D., 73586–73587
Patterson, Michael A., M.D., 73587–73591

Education Department
PROPOSED RULES
Postsecondary education:
Higher Education Act—
Negotiated rulemaking committees on issues under Title IV; establishment, 73458–73460
NOTICES
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Teachers, administrators, and other educational personnel; professional development program, 73861–73879
Indian education programs—
Strengthening Institutions Program et al., 73525–73529
Postsecondary education:
Learning anytime anywhere partnerships, 73529–73530

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Carbon sequestration research program, 73530–73533

Environmental Protection Agency
RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 73423–73427
Water programs:
Pollutants analysis test procedures; guidelines—
Available cyanide; measurement method, 73414–73423
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 73460
NOTICES
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
California, 73549–73550
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 73550–73551
Weekly receipts, 73550
Meetings:
Gulf of Mexico Program Policy Review Board, 73551
Superfund; response and remedial actions, proposed settlements, etc.:
Pyridium Mercury Disposal Superfund Site 1 & 2, 73551–73552
South Bay Asbestos Superfund Site, 73552
Water pollution control:
National pollutant discharge elimination system; State programs—
Maine, 73552–73555

Executive Office of the President
See Management and Budget Office

Export Administration Bureau
RULES
Chemical Weapons Convention regulations; implementation, 73744–73811

Federal Aviation Administration
RULES
Standard instrument approach procedures, 73387–73389
PROPOSED RULES
Airworthiness directives:
Airbus, 73438–73444
Airworthiness standards:
Crash resistant fuel systems, 73437
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 73596–73597
Small-scale rockets; simplified launch licenses, 73597–73599

Federal Communications Commission
RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
Non-rural local exchange carriers; high cost support, 73427–73429
Satellite Home Viewer Act; satellite delivery of network signals to unserved households, 73429–73434
PROPOSED RULES
Radio stations; table of assignments:
Arizona, 73461
California, 73460–73464
Louisiana, 73463–73464
Michigan, 73461–73462
Texas, 73462–73463
NOTICES
Common carrier services:
In-region interLATA services—
Bell Atlantic New York; application to provide services in New York, 73555–73559

Federal Energy Regulatory Commission
RULES
Organization, functions, and authority delegations:
Chief Accountant et al., 73403–73408
NOTICES
Electric rate and corporate regulation filings:
Interstate Power Co., et al., 73541–73546
Hydroelectric applications, 73546–73549
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 73533
Aquenergy Sytems, Inc., 73533
Central Illinois Light Co. et al., 73533
Columbia Gas Transmission Corp. et al., 73533–73534
Destin Pipeline Co., L.L.C., 73534
East Tennessee Natural Gas Co., 73534–73535
El Paso Natural Gas Co., 73535
Granite State Gas Transmission, Inc., 73535–73536
High Island Offshore System, L.L.C., 73536
Iroquois Gas Transmission System, L.P., 73536
K N Interstate Gas Transmission Co., 73536–73537
Northern Border Pipeline Co., 73537–73538
PanEnergy Texas Intrastate Pipeline Co., 73538
PG&E Texas Pipeline, L.P., 73538–73539
Southern California Edison, 73539
Southern Natural Gas Co., 73539–73540
Southwest Gas Storage Co., 73540
Sumas International Pipeline Inc., 73540
Tennessee Gas Pipeline Co., 73540

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—
General provisions, markings, and signals, 73612–73674
Temporary traffic control, 73605–73612
Transportation operations and management:
Dedicated short range communications in intelligent transportation systems commercial vehicle operations, 73674–73742
NOTICES
Environmental statements; notice of intent:
Jackson County et al., MO, 73599
Raleigh County, WV, 73599–73600
Transportation Equity Act for 21st Century; implementation:
Specialized hauling vehicle (SHV) study, 73600–73602

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
National Railroad Passenger Corp. (AMTRAK), 73602–73603

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 73559
Formations, acquisitions, and mergers, 73559–73560
Permissible nonbanking activities, 73560

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 73560

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Resident Canada Goose Management; migratory bird permits, 73570–73573

Food and Drug Administration
NOTICES
Clinical Laboratory Improvement Amendments:
Clinical laboratory complexity categorization responsibility transfer, 73561
Reports and guidance documents; availability, etc.:
Zoonoses transmission by blood and blood products from xenotransplantation product recipients and their contacts; risk reduction; industry guidance, 73562–73563

Food and Nutrition Service
RULES
Food distribution programs:
Indian reservation programs; disqualification penalties for intentional violations, 73381–73385

Forest Service
NOTICES
Environmental statements; notice of intent:
Idaho Panhandle National Forests, ID, 73508–73509
Meetings:
Oregon Coast Provincial Advisory Committee, 73509

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73560–73561

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 73563
Clinical Laboratory Improvement Amendments:
Clinical laboratory complexity categorization responsibility transfer, 73561

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability; etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 73570

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
RULES
Income taxes, etc.:
Withholding of tax on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc., 73408–73413
PROPOSED RULES
Procedure and administration:
Combat zone service and Presidentially declared disaster; tax-related deadline relief, 73444–73448

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Five-year (sunset) reviews—
Final results and revocations, 73511–73523
Initiation of reviews, 73510–73511
Committees; establishment, renewal, termination, etc.:
Trade Policy Matters Industry Sector Advisory Committees, 73518–73519

International Trade Commission
NOTICES
Generalized System of Preferences; modifications, 73574–73575
Import investigations:
Circular welded carbon quality line pipe from—
Canada and Mexico, 73575–73576
Coumarin from—
China, 73576–73578
Semiconductor memory devices and products, 73578–73579
Stainless steel bar from—
Various countries, 73579–73581
Synthetic indigo from—
China, 73581–73582
United Kingdom; free trade agreement with U.S, Canada, and Mexico, 73582–73583

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Akzo Nobel Coatings, Inc. et al., 73583–73584
American Jetway Corp. et al., 73584
Eagle-Picher Industries, Inc., 73584
St. Charles Riverfront Station, Inc., 73584–73585
Titanium Metals Corp., 73585
Privacy Act:
Systems of records, 73585–73586

Labor Department
See Occupational Safety and Health Administration
RULES
Ethical conduct standards for employees, 73851–73853

Land Management Bureau
NOTICES
Closure of public lands:
Arizona, 73573
Meetings:
Resource Advisory Councils—
Eastern Montana, 73573–73574
Survey plat filings:
Colorado, 73574

Management and Budget Office
NOTICES
Federal Activities Inventory Reform Act of 1998; implementation:
Commercial Activities Inventories; availability, 73595–73596

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Matson Navigation Co., 73603

Minerals Management Service
PROPOSED RULES
Royalty management:
Oil valuation; Federal leases and Federal royalty oil sale Workshops, 73458
Oil value for royalty due on Federal leases; establishment, 73819–73849

National Highway Traffic Safety Administration
PROPOSED RULES
Fuel economy standards:
Passenger automobiles; low volume manufacturer exemptions, 73476–73479

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73563–73564
Meetings:
National Center for Complementary and Alternative Medicine, 73564–73565
National Heart, Lung, and Blood Institute, 73565
National Human Genome Research Institute, 73565
National Institute of Arthritis and Muscoskeletal and Skin Diseases, 73566
National Institute of Dental and Craniofacial Research, 73567–73568
National Institute of Environmental Health Sciences, 73567

National Institute of Neurological Disorders and Stroke, 73568
National Institute of Nursing Research, 73568
National Institute on Alcohol Abuse and Alcoholism, 73566–73567
National Library of Medicine, 73568–73569
Scientific Review Center, 73569–73570

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic surf clam and ocean quahog, 73435–73436
Marine mammals:
Commercial fishing authorizations—
Atlantic large whale take reduction plan, 73434–73435
PROPOSED RULES
Endangered and threatened species:
Marine and anadromous species—
West Coast Steelhead; Snake River, Central California Coast; Evolutionary significant units, 73479–73506
Fishery conservation and management:
Northeastern United States fisheries—
New England Fishery Management Council; meetings, 73506–73507
NOTICES
Permits:
Marine mammals, 73523–73524

National Science Foundation
NOTICES
Meetings:
Civil and Mechanical Systems Special Emphasis Panel, 73591
Experimental & Integrative Activities Special Emphasis Panel, 73591
Geosciences Special Emphasis Panel, 73592
Graduate Education Special Emphasis Panel, 73592

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Departee Creek Watershed, AR, 73509–73510

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73592
Environmental statements; availability, etc.:
Holtec International, 73594–73595
Applications, hearings, determinations, etc.:
Duke Energy Corp., 73593–73594
GPU Nuclear, Inc., 73594

Occupational Safety and Health Administration
PROPOSED RULES
Occupational safety and health standards:
Ergonomics program; correction, 73448–73458

Office of Management and Budget
See Management and Budget Office

Panama Canal Commission
RULES
General regulations and shipping and navigation regulations; repeal, 73413

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Hazardous liquid transportation—
Areas unusually sensitive to environmental damage; definition, 73464–73476

Securities and Exchange Commission
RULES
Securities:
Audit committee disclosures, 73389–73403
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 73596

State Department
RULES
Chemical Weapons Convention and Chemical Weapons Convention Implementation Act:
Sample taking and record keeping and inspections, 73811–73817

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 73570

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 73603–73604

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Secretarial determinations:
Murtala Mohammed International Airport, Nigeria; notification of effective security measures, 73596

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
RULES
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Grounds of clear and unmistakable error decisions, 73413–73414

Separate Parts In This Issue

Part II
Department of Transportation, Federal Highway Administration, 73605–73742

Part III
Department of Commerce, Export Administration , 73743–73818

Part IV
Department of Interior, Minerals Management Service, 73819–73849

Part V
Department of Labor, 73851–73853

Part VI
Office of the Federal Registeer, National Archives and Records Administration, 73855–73859

Part VII
Department of Labor, 73861–73879

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
5201.....73852

7 CFR
253.....73381
254.....73381
1000.....73386

14 CFR
97.....73387

Proposed Rules:
23.....73437
39 (3 documents).....73438, 73439, 73441

15 CFR
710.....73744
711.....73744
712.....73744
713.....73744
714.....73744
715.....73744
716.....73744
717.....73744
718.....73744
719.....73744
720.....73744
721.....73744
722.....73744

17 CFR
210.....73389
228.....73389
229.....73389
240.....73389

18 CFR
375.....73403
376.....73403

22 CFR
103.....73743

23 CFR

Proposed Rules:
655 (2 documents).....73605, 73612
945.....73674

26 CFR
1.....73408
31.....73408
35a.....73408
301.....73408
502.....73408
503.....73408
509.....73408
513.....73408
514.....73408
516.....73408
517.....73408
520.....73408
521.....73408
602.....73408

Proposed Rules:
301.....73444

29 CFR
0.....73852

Proposed Rules:
1910.....73448

30 CFR

Proposed Rules:
206 (2 documents).....73458

34 CFR

Proposed Rules:
Ch. VI.....73458

35 CFR
Ch. I.....73413

38 CFR
20.....73413

40 CFR
136.....73414
300.....73414

Proposed Rules:
300.....73460

47 CFR
36.....73427
54.....73427
73.....73429

Proposed Rules:
73 (10 documents).....73460, 73462, 73463, 73464

49 CFR

Proposed Rules:
195.....73464
531.....73476

50 CFR
229.....73434
648.....73435

Proposed Rules:
223.....73479
648.....73506

Rules and Regulations

Federal Register
Vol. 64, No. 250
Thursday, December 30, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN 0584–AC85

Food Distribution Program on Indian Reservations: Disqualification Penalties for Intentional Program Violations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service is amending Food Distribution Program regulations in response to an audit recommendation by the Department of Agriculture's Office of Inspector General. The changes are intended to improve program integrity and promote consistency with the Food Stamp Program. This rule defines intentional program violations, establishes penalties for them, and requires Indian Tribal Organizations and State agencies that administer the Food Distribution Program to take appropriate action on suspected cases of intentional program violations. It also addresses the establishment and collection of claims against households for overissuances under the Food Distribution Program, and makes technical changes to correct erroneous regulatory references.

EFFECTIVE DATE: This rule is effective February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or by telephone at (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters
II. Background and Discussion of Final Rule

I. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866. Therefore, it has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570, and for the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. Indian Tribal Organizations and State agencies that administer the Food Distribution Program, and program participants will be affected by this rulemaking, but the economic effect will not be significant.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

II. Background and Discussion of the Final Rule

On July 22, 1999, the Food and Nutrition Service (FNS) published a rule at 64 FR 39432 proposing amendments to the regulations for the Food Distribution Program at 7 CFR Parts 253 and 254. These proposed changes would have defined intentional program violations (IPV), established penalties for them, and required Indian Tribal Organizations (ITOs) and State agencies that administer the Food Distribution Program to take appropriate action on suspected cases of IPV. This proposed rule was prompted, in part, by an audit recommendation by the Department of Agriculture's Office of Inspector General. Please refer to the proposed rule for a discussion of the audit and its findings.

Comments were solicited through September 20, 1999, on the provisions of the proposed rulemaking. FNS received two comment letters, which are discussed in detail below. For a full understanding of the provisions of this

final rule, the reader should refer to the preamble of the proposed rule.

In preparing the final rule, we identified several areas discussed in the proposed rule that needed further explanation to ensure that the Department's position is clear. We wish to emphasize that these changes to the final rule are made for the purposes of clarification, and that the Department's position with regard to the necessity of the proposed changes has not altered.

In the discussion and regulatory text below, we have used the term "State agency," as defined at 7 CFR 253.2 and 254.2, to include ITOs authorized to administer the Food Distribution Program.

1. Initiating Administrative Disqualification Procedures

Section 253.8(a) of the proposed rule would define IPV, in part, as an act committed by an *individual* who willingly, knowingly and with deceitful intent misrepresents the household's circumstances or withholds facts in order to obtain benefits that the household is not entitled to receive. In preparing the final rule, we realized that there may be some confusion relating to the use of the term "individual" in the proposed rule. By "individual" we meant the *individual household member*. We wanted to differentiate between the individual household member and the household as a whole. Since "household" is a term defined in the Food Distribution Program regulations, we believe the use of the term "household member," rather than the term "individual," is preferable for the purposes of this rule. Therefore, we are revising the final rule to remove the term "individual" and replace it with the term "household member" throughout the regulatory text pertaining to IPVs.

2. Referral to Authorities for Prosecution

Section 253.8(e)(7) of the proposed rule would require State agencies to refer all substantiated cases of intentional program violations to *Federal, State, or local authorities* for prosecution under applicable statutes. It was our intent that the term "local" include Tribal authorities. However, in preparing the final rule we realized that "local" is commonly used to refer to County-level entities. Some readers may not associate "Tribal authorities" with the term "local authorities." To avoid such confusion, we are revising the final rule to specifically include the term "Tribal," as appropriate, throughout regulatory text.

3. Notification Requirements

Section 253.8(e)(2) of the proposed rule would require State agencies to inform households in writing of the disqualification penalties for intentional program violation each time they apply for benefits (including recertifications). This notice is intended to advise the household of the consequences of committing an intentional program violation. One of those consequences may be prosecution by Tribal, Federal, State, or local authorities. In preparing the final rule we realized that the notification requirements did not clearly specify that households be informed of the possibility of prosecution. To ensure that households are properly informed of all the consequences of committing an intentional program violation, we are revising section 253.8(e)(2) to require State agencies to include a statement in the notice informing households of the possibility of prosecution by authorities.

4. Application of the Disqualification Penalties

We wish to clarify that the procedures proposed at section 253.8(h) would require imposition of the disqualification penalties without regard to the household member's current eligibility status. Because of an oversight, this policy was not stated correctly in one section of the preamble to the proposed rule that concerns fair hearing notices. However, it was stated correctly elsewhere in the preamble and the regulatory text. We apologize for any confusion caused by this oversight. Although there is no change to the final rule, we wish to confirm that the State agency must proceed with imposition of the disqualification penalty, even if the household member is not certified to participate in the Food Distribution Program at the time the disqualification is to begin.

5. Claims Against Households

One commenter suggested that we allow households to repay an overissuance claim by voluntarily taking less commodities than they are entitled to receive. The value of the commodities not taken each month would be applied to the outstanding claim.

Current policy on the collection of overissuance claims is addressed in FNS Handbook 501, Chapter V, Section 6, State Agency Claims Procedures Against Households. Subsection 5670 prohibits the recovery of benefits from households through a reduction in the amount of commodities the household would otherwise receive. We do not feel that this policy should be changed by this action. Such a change would place an undue burden on State agencies. They would be required to determine the value of each commodity not selected by the household each month. They would also be required to track the "payments" until the claim is paid in full. We are reluctant to impose a new burden on State agencies and make a change in policy without first providing an opportunity for public comment. Therefore, we are not incorporating the commenter's proposal in the final rule.

Another commenter, who expressed strong support for administrative disqualification penalties for intentional program violations, recommended stronger penalties against households that fail to repay overissuance claims. The procedures for the collection of overissuance claims and actions to be taken against households that fail to repay claims are addressed in FNS Handbook 501, Chapter V, Section 6, State Agency Claims Procedures Against Households. We are reluctant to change these procedures by instituting a new penalty without first providing an opportunity for public comment. Therefore, we are not incorporating the commenter's recommendation in the final rule.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 253 and 254 are amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

2. In § 253.2, redesignate paragraphs (f) through (i) as paragraphs (g) through (j), respectively, and add new paragraph (f) as follows:

§ 253.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a

household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

§ 253.5 [Amended]

3. In § 253.5:

a. Amend paragraph (a)(1) by removing the reference "§ 253.9" and adding, in its place, the reference "part 250 of this chapter";

b. Amend paragraph (a)(2)(vii) by removing the reference "part 283 of this subchapter" and adding, in its place, the words "this part";

c. Amend paragraph (d)(1) by removing the references "§ 283.7(a)(2) and (b)(3)" and adding, in its place, the references "§ 253.7(a)(2) and (b)(3)", and by removing the reference "§ 283.7(c)" and adding, in its place, the reference "§ 253.7(c)";

d. Amend paragraph (k)(1) by removing the reference "§ 283.9(g) of this part" and adding, in its place, the reference "§ 253.11(g)";

e. Amend paragraph (k)(2) by removing the reference "§ 283.4" and adding, in its place, the reference "§ 253.4";

f. Amend paragraph (l)(1)(iii) by removing the reference "§ 283.5(k) or § 283.9(g)" and adding, in its place, the reference "paragraph (k) of this section or § 253.11(g)"; and

g. Amend paragraph (l)(3)(i) by removing the reference "§ 283.4(d)(2)" and adding, in its place, the reference "paragraph (m) of this section", and removing the reference "§ 283.5" and adding, in its place, the reference "§ 253.4(e)(2)".

§ 253.6 [Amended]

4. In § 253.6:

a. Amend paragraph (a)(3) by removing the reference "§ 283.7(a)(10)(i) and § 283.7(a)(10)(ii)" and adding, in its place, the reference "§ 253.7(a)(10)(i) and § 253.7(a)(10)(ii)";

b. Amend paragraph (b)(2) by removing the reference "§ 283.6(a)(3)(iv)" and adding, in its place, the reference "paragraph (a)(2)(iv) of this section";

c. Amend paragraph (c)(1) by removing the reference "§ 283.6(a)(2)(ii)" and adding, in its place, the reference "paragraph (a)(2)(ii) of this section";

d. Amend paragraph (d)(2)(iii) by removing the reference "§ 283.7(b)(1)(iii)" and adding, in its place, the reference "§ 253.7(b)(1)(iii)";

e. Amend paragraph (e)(1)(i) by removing the reference "§ 283.6(a)(2)(ii)" and adding, in its place, the reference "paragraph (a)(2)(ii) of this section", and removing the reference "§ 283.6(c)" and adding, in its place, the reference "paragraph (c) of this section";

f. Amend paragraph (e)(2)(ii)(F) by removing the reference "§ 283.7" and adding, in its place, the reference "§ 253.7"; and

g. Amend paragraph (e)(3)(ix) by removing the reference "§ 283.7(b)(1)(iii)" and adding, in its place, the reference "§ 253.7(b)(1)(iii)".

5. In § 253.7:

a. Amend paragraph (a)(2) by removing the reference "§ 283.7(f)" and adding, in its place, the words "paragraph (g) of this section";

b. Amend paragraph (a)(5) by removing the reference "§ 283.7(a)(7) or § 283.7(a)(9)" and adding, in its place, the reference "paragraphs (a)(7) and (a)(9) of this section";

c. Add two new sentences to the end of paragraph (b)(3)(iii)(A);

d. Amend the second sentence of paragraph (b)(3)(iii)(B) by removing the words "and no more than 20", and by removing the word "mailed" and adding, in its place, the word "issued";

e. Revise paragraph (b)(3)(iii)(C);

f. Add new paragraph (b)(3)(iii)(E);

g. Amend paragraph (c)(1) by removing the reference "§ 283.6(e)(1)" and adding, in its place, the reference "§ 253.6(e)(1)";

h. Remove paragraph (e)(3);

i. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add a new paragraph (f);

j. Amend newly redesignated paragraph (g)(1) by removing the reference "§ 283.6(c)(2)" and adding, in its place, the reference "§ 253.6(c)(2)";

k. Amend newly redesignated paragraph (g)(2) by removing the reference "§ 283.7(a)(7) and § 283.7(a)(9)" and adding, in its place, the reference "paragraphs (a)(7) and (a)(9) of this section";

l. Revise newly redesignated paragraph (h)(2)(i);

m. Revise newly redesignated paragraph (h)(11)(iii); and

n. Add new paragraph (h)(11)(iv).

The revisions and additions read as follows:

§ 253.7 Certification of households.

* * * * *

(b) *Eligibility determinations.* * * *

(3) *Certification notices.* * * *

(iii) *Notice of adverse action.*

(A) * * * The notice must be issued within 10 days of determining that an adverse action is warranted. The adverse action must take effect with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household requests a fair hearing.

* * * * *

(C) The notice of adverse action must include the following in easily understandable language:

(*1*) The reason for the adverse action;

(*2*) The date the adverse action will take effect;

(*3*) The household's right to request a fair hearing and continue to receive benefits pending the outcome of the fair hearing;

(*4*) The date by which the household must request the fair hearing;

(*5*) The liability of the household for any overissuances received while awaiting the outcome of the fair hearing, if the fair hearing official's decision is adverse to the household;

(*6*) The telephone number and address of someone to contact for additional information; and

(*7*) The telephone number and address of an individual or organization that provides free legal representation, if available.

* * * * *

(E) If the State agency determines that a household received more USDA commodities than it was entitled to receive, it must establish a claim against the household in accordance with § 253.9. The initial demand letter for repayment must be provided to the household at the same time the notice of adverse action is issued. It may be combined with the notice of adverse action.

* * * * *

(f) *Treatment of disqualified household members.* (1) The following are not eligible to participate in the Food Distribution Program:

(i) Household members disqualified from the Food Distribution Program for an intentional program violation under § 253.8. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification has ended.

(ii) Household members disqualified from the Food Stamp Program for an intentional program violation under § 273.16 of this chapter. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification under the Food Stamp Program has ended. The State agency must, in cooperation with the appropriate food stamp agency, develop a procedure that ensures that these household members are identified.

(iii) Households disqualified from the Food Distribution Program for failure to pay an overissuance claim. The circumstances under which a disqualification is allowed for such failure are specified in FNS Handbook 501.

(2) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members will be determined as follows:

(i) *Resources.* The resources of the disqualified member will continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of the disqualified member will be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(iii) *Eligibility and benefits.* The disqualified member will not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

* * * * *

(h) *Fair hearing.* * *

(2) *Timely action on hearings*—(i) *Time frames for the State agency.* The State agency must conduct the hearing, arrive at a decision, and notify the household of the decision within 60 days of receipt of a request for a fair hearing. The fair hearing decision may result in a change in the household's eligibility or the amount of commodities issued to the household based on household size. The State agency must implement these changes to be effective for the next scheduled distribution of commodities following the date of the fair hearing decision. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period.

* * * * *

(11) *Hearing decisions.* * * *

(iii) Within 10 days of the date the fair hearing decision is issued, the State agency must issue a notice to the household advising it of the decision.

(A) If the decision upheld the adverse action by the State agency, the notice must advise the household of the right to pursue judicial review.

(B) If the decision upheld a disqualification, the notice must also include the reason for the decision, the date the disqualification will take effect, and the duration of the disqualification (that is, 12 months; 24 months; or permanent). The State agency must also advise any remaining household members if the household's benefits will change, or if the household is no longer eligible as a result of the disqualification.

(iv) The State agency must revise the demand letter for repayment issued previously to the household to include the value of all overissued commodities provided to the household during the appeal process, unless the fair hearing decision specifically requires the cancellation of the claim. The State agency must also advise the household that collection action on the claim will continue, in accordance with FNS Handbook 501, unless suspension is warranted.

* * * * *

§ 253.8 [Redesignated as § 253.10 and Amended]

6. § 253.8 is redesignated as § 253.10 and amended as follows:

a. Amend paragraph (c)(12) by removing the reference "§ 283.7(b)(9)" and adding, in its place, the reference "§ 253.7(a)(9)";

b. Amend paragraph (e) by removing the words "the State agency's agreement with the Department under § 250.6(b) of part 250 of this chapter and the requirements of § 250.6(l) of this same chapter" and adding, in its place, the reference "§ 250.13 and § 250.15 of this chapter"; and

c. Amend paragraph (f) by removing the reference "§ 250.7 of part 250" and adding, in its place, the reference "§ 250.13(f)".

7. Add new § 253.8 to read as follows:

§ 253.8 Administrative disqualification procedures for intentional program violation.

(a) *What is an intentional program violation?* An intentional program violation is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

(1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or

(2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities.

(b) *What are the disqualification penalties for an intentional program violation?* Household members determined by the State agency to have committed an intentional program violation will be ineligible to participate in the program:

(1) For a period of 12 months for the first violation;

(2) For a period of 24 months for the second violation; and

(3) Permanently for the third violation.

(c) *Who can be disqualified?* Only the household member determined to have committed the intentional program violation can be disqualified. However, the disqualification may affect the eligibility of the household as a whole, as addressed under paragraphs (e)(5) and (h) of this section.

(d) *Can the disqualification be appealed?* Household members determined by the State agency to have committed an intentional program violation may appeal the disqualification, as provided under § 253.7(h)(1).

(e) *What are the State agency's responsibilities?*

(1) Each State agency must implement administrative disqualification procedures for intentional program violations that conform to this section.

(2) The State agency must inform households in writing of the disqualification penalties for intentional program violations each time they apply for benefits, including recertifications. This notice must also advise households that an intentional program violation may be referred to authorities for prosecution.

(3) The State agency must attempt to substantiate all suspected cases of intentional program violation. An intentional program violation is considered to be substantiated when the State agency has clear and convincing evidence demonstrating that a household member committed one or more acts of intentional program violation, as defined in paragraph (a) of this section.

(4) Within 10 days of substantiating that a household member has committed an intentional program violation, the State agency must provide the household member with a notice of disqualification, as described in paragraph (f) of this section. A notice must still be issued in instances where the household member is not currently eligible or participating in the program.

(5) The State agency must advise any remaining household members if the household's benefits will change or if the household will no longer be eligible as a result of the disqualification.

(6) The State agency must provide the household member to be disqualified with an opportunity to appeal the disqualification through a fair hearing, as required by § 253.7(h).

(7) The State agency must refer all substantiated cases of intentional

program violations to Tribal, Federal, State, or local authorities for prosecution under applicable statutes. However, a State agency that has conferred with its legal counsel and prosecutors to determine the criteria for acceptance for possible prosecution is not required to refer cases that do not meet the prosecutors' criteria.

(8) The State agency must establish claims, and pursue collection as appropriate, on all substantiated cases of intentional program violation in accordance with § 253.9.

(f) *What are the requirements for the notice of disqualification?*

(1) Within 10 days of substantiating the intentional program violation, the State agency must issue to the household member a notice of disqualification. The notice must allow an advance notice period of at least 10 days. The disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household member requests a fair hearing. A notice must still be issued in instances where the household member is not currently eligible or participating in the program.

(2) The notice must conform to the requirements of § 253.7(b)(3)(iii)(C) for notices of adverse action.

(g) *What are the appeal procedures for administrative disqualifications?*

(1) *Appeal rights.* The household member has the right to request a fair hearing to appeal the disqualification in accordance with the procedures at § 253.7(h).

(2) *Notification of hearing.* The State agency must provide the household member with a notification of the time and place of the fair hearing as described in § 253.7(h)(7). The notice must also include:

(i) A warning that if the household member fails to appear at the hearing, the hearing decision will be based solely on the information provided by the State agency; and

(ii) A statement that the hearing does not prevent the Tribal, Federal, State, or local government from prosecuting the household member in a civil or criminal court action, or from collecting any overissuance(s).

(h) *What are the procedures for applying disqualification penalties?*

(1) If the household member did not request a fair hearing, the disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period of the notice of adverse action. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (that is, 12 months, 24 months, or permanent) specified in the notice of disqualification. The State agency must advise any remaining household members if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(2) If the household member requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of commodities that follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (that is, 12 months, 24 months, or permanent) specified in the notice of disqualification. No further administrative appeal procedure exists after an adverse fair hearing decision. The decision by a fair hearing official is binding on the State agency. The household member, however, may seek relief in a court having appropriate jurisdiction. As provided under § 253.7(h)(11)(iii)(B), the State agency must advise any remaining household members if the household's benefits will change, or if the household is no longer eligible as a result of the disqualification.

(3) Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (that is, 12 months; 24 months; or permanent). Changes in the eligibility of the disqualified household member's household will not interrupt or shorten the disqualification period.

(4) The same act of intentional program violation continued over a period of time will not be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

(5) If the case was referred for Tribal, Federal, State, or local prosecution and the court of appropriate jurisdiction imposed a disqualification penalty, the State agency must follow the court order.

§ 253.9 [Redesignated as § 253.11]

8. Redesignate § 253.9 as § 253.11.

9. Add new § 253.9 to read as follows:

§ 253.9 Claims against households.

(a) *What are the procedures for establishing a claim against a household for an overissuance?*

(1) The State agency must establish a claim against any household that has received more Food Distribution Program commodities than it was entitled to receive.

(2) The procedures for establishing and collecting claims against households are specified in FNS Handbook 501, The Food Distribution Program on Indian Reservations.

(b) *Who is responsible for repaying a household overissuance claim?*

(1) All adult household members are jointly and separately liable for the repayment of the value of any overissuance of Food Distribution Program benefits to the household.

(2) Responsibility for repayment continues even in instances where the household becomes ineligible or is not participating in the program.

PART 254–ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for part 254 continues to read as follows:

Authority: Pub. L. 97–98, sec. 1338; Pub. L. 95–113.

2. In § 254.2, redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add new paragraph (f) to read as follows:

§ 254.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

Dated: December 23, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33932 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000

[DA–97–12]

Milk in the New England and Other Marketing Areas; Order Amending the Orders; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Agricultural Marketing Service (AMS), USDA, published in the **Federal Register** of December 17, 1999, a final rule that implemented and modified a previous rule published in the **Federal Register** on September 1, 1999, which consolidated the current 31 Federal milk marketing orders into 11 orders. The December 17 final rule also made changes to the Class I differentials contained in the September 1, 1999, rule to comply with the Consolidated Appropriations Act, 2000. Class I differentials in 89 of the 3,110 counties, parishes and cities listed were published incorrectly. This document corrects the Class I differentials for the 89 counties.

EFFECTIVE DATE: This correction is effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John.Borovies@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction amended § 1000.52 by modifying the table containing the Class I differentials adjusted for location.

Need for Correction

The table listing the Class I differentials adjusted for location by county, parish, and city contains inadvertent errors. The differentials listed in the table do not reflect all of the modifications made to the Class I differentials contained in a correction docket published in the **Federal Register** on July 14, 1999 (64 FR 37892).

Correction of Publication

Accordingly, the publication of the final regulations (DA–97–12), which was the subject of FR Doc. 99–32366 (64 FR 70868, December 17, 1999) is corrected as follows:

1. In § 1000.52, the following Class I Differentials adjusted for location contained in the table beginning on page 70869 are corrected to read as follows:

County/parish/city	State	Fips_Code	Class I differential adjusted for location
FAIRFIELD	CT	09001	3.15
HARTFORD	CT	09003	3.15
MIDDLESEX	CT	09007	3.15
NEW HAVEN	CT	09009	3.15
NEW LONDON	CT	09011	3.15
TOLLAND	CT	09013	3.15
WINDHAM	CT	09015	3.15
KENT	DE	10001	3.05
NEW CASTLE	DE	10003	3.05
SUSSEX	DE	10005	3.05
DE SOTO	FL	12027	4.00
HARDEE	FL	12049	4.00
HIGHLANDS	FL	12055	4.00
MANATEE	FL	12081	4.00
OKEECHOBEE	FL	12093	4.00
SARASOTA	FL	12115	4.00
ST. LUCIE	FL	12111	4.00
CARROLL	MD	24013	2.90
CECIL	MD	24015	3.05
FREDERICK	MD	24021	2.90
WASHINGTON	NC	37187	3.20
ATLANTIC	NJ	34001	3.05
BURLINGTON	NJ	34005	3.05
CAMDEN	NJ	34007	3.05
CAPE MAY	NJ	34009	3.05
CUMBERLAND	NJ	34011	3.05
GLOUCESTER	NJ	34015	3.05
SALEM	NJ	34033	3.05
ALBANY	NY	36001	2.70
BROOME	NY	36007	2.70
CHEMUNG	NY	36015	2.50
CHENANGO	NY	36017	2.50
CLINTON	NY	36019	2.30
COLUMBIA	NY	36021	2.70
CORTLAND	NY	36023	2.50
DELAWARE	NY	36025	2.70
ESSEX	NY	36031	2.30
FRANKLIN	NY	36033	2.30
FULTON	NY	36035	2.50
GREENE	NY	36039	2.70
HAMILTON	NY	36041	2.50
HERKIMER	NY	36043	2.50
JEFFERSON	NY	36045	2.30
LEWIS	NY	36049	2.30

County/parish/city	State	Fips__Code	Class I differential adjusted for location
MADISON	NY	36053	2.50
MONTGOMERY	NY	36057	2.70
ONEIDA	NY	36065	2.50
ONONDAGA	NY	36067	2.50
OTSEGO	NY	36077	2.50
RENSSELAER	NY	36083	2.70
SARATOGA	NY	36091	2.70
SCHENECTADY	NY	36093	2.70
SCHOHARIE	NY	36095	2.70
ST. LAWRENCE	NY	36089	2.30
TIOGA	NY	36107	2.50
TOMPKINS	NY	36109	2.50
WARREN	NY	36113	2.50
BRADFORD	PA	42015	2.50
BUCKS	PA	42017	3.05
CENTRE	PA	42027	2.50
CHESTER	PA	42029	3.05
CLINTON	PA	42035	2.50
COLUMBIA	PA	42037	2.70
DELAWARE	PA	42045	3.05
FULTON	PA	42057	2.70
JUNIATA	PA	42067	2.70
LACKAWANNA	PA	42069	2.70
LANCASTER	PA	42071	2.90
LUZERNE	PA	42079	2.70
LYCOMING	PA	42081	2.50
MIFFLIN	PA	42087	2.70
MONTGOMERY	PA	42091	3.05
MONTOUR	PA	42093	2.70
NORTHUMBERLAND	PA	42097	2.70
PERRY	PA	42099	2.70
PHILADELPHIA	PA	42101	3.05
POTTER	PA	42105	2.50
SNYDER	PA	42109	2.70
SULLIVAN	PA	42113	2.50
SUSQUEHANNA	PA	42115	2.50
TIOGA	PA	42117	2.50
UNION	PA	42119	2.70
WAYNE	PA	42127	2.70
WYOMING	PA	42131	2.50
YORK	PA	42133	2.90
CHITTENDEN	VT	50007	2.50
ESSEX	VT	50009	2.40
LAMOILLE	VT	50015	2.50
WINDSOR	VT	50027	2.60

Dated: December 22, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–33726 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29885; Amdt. No. 1967]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body to technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 23, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulation (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows.

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 95.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC number	SIAP
12/01/99 ...	CA	Vacaville	Nut Tree	FDC 9/9622	GPS RWY 20 AMDT 1...
12/03/99 ...	HI	Kailua-Kona	Keahole-Kona Intl	FDC 9/9519	VOR/DME OR TACAN OR GPS Rwy 17, AMDT 3... This corrects NOTAM Published IN TL 00–01.
12/08/99 ...	PA	Pottstown	Pottstown-Limerick	FDC 9/9584	NDB Rwy 28 AMDT 1...
12/08/99 ...	TX	Laredo	Laredo Intl	FDC 9/9596	NDB OR GPS Rwy 17R. AMDT 9A...
12/08/99 ...	TX	Laredo	Laredo Intl	FDC 9/9601	NDB OR GPS Rwy 17L, AMDT 2A...

FDC Date	State	City	Airport	FDC number	SIAP
12/08/99 ...	TX	Longview	Gregg County	FDC 9/9602	NDB Rwy 13, AMDT 14...
12/09/99 ...	NC	Siler City	Siler City Muni	FDC 9/9616	VOR OR GPS–A, AMDT 1A...
12/09/99 ...	NC	Siler City	Siler City Muni	FDC 9/9620	NDB OR GPS Rwy 22, ORIG–A...
12/09/9	TX	Laredo	Laredo Intl	FDC 9/9609	VOR/DME OR TACAN OR GPS Rwy 32, AMDT 9A...
12/09/99 ...	TX	Laredo	Laredo Intl	FDC 9/9610	VOR/DME OR TACAN OR GPS Rwy 14, AMDT 9...
12/09/99 ...	TX	Laredo	Laredo Intl	FDC 9/9611	LOC BC Rwy 35L, AMDT 1...
12/13/99 ...	LA	Slidell	Slidell	FDC 9/9672	VOR/DME OR GPS Rwy 18, AMDT 3A...
12/13/99 ...	MS	Aberdeen Amory	Aberdeen/Monroe County	FDC 9/9661	VOR OR GPS Rwy 18, AMDT 6A...
12/14/99 ...	AK	Homer	Homer	FDC 9/9697	GPS Rwy 3, ORIG–A...
12/14/99 ...	IL	Chicago	Chicago-O'Hare Intl	FDC 9/9712	ILS Rwy 9L, AMDT 6A...
12/14/99 ...	MD	Cumberland	Greater Cumberland Regional	FDC 9/9710	LOC/DME Rwy 23, AMDT 5D...
12/14/99 ...	MD	Cumberland	Greater Cumberland Regional	FDC 9/9711	LOC–A AMDT 3C...
12/14/99 ...	TN	Nashville	Nashville Intl	FDC 9/9716	ILS Rwy 2R (CAT I, II, III) AMDT 5A...
12/14/99 ...	TX	Midland	Midland Intl	FDC 9/9706	LOC BC Rwy 28, AMDT 12A... This Replaces FDC 9/9393
12/15/99 ...	FL	Fort Pierce	St. Lucie County Intl	FDC 9/9753	GPS Rwy 9, ORIG–A...
12/15/99 ...	NC	Albemarle	Stanly County	FDC 9/9741	NDB OR GPS Rwy 22L, ORIG–C...
12/15/99 ...	NC	Albemarle	Stanly County	FDC 9/9742	GPS Rwy 4R, ORIG–B...
12/15/99 ...	NC	Albemarle	Stanly County	FDC 9/9743	ILS Rwy 22L, ORIG–A...
12/15/99 ...	TX	Gainesville	Gainesville Muni	FDC 9/9774	NDB Rwy 7, AMDT 8... This Replaces FDC 9/9274.
12/15/99 ...	TX	Greenville	Greenville/Majors	FDC 9/9775	NDB OR GPS Rwy 17, AMDT 5...
12/15/99 ...	WY	Casper	Natrona County Intl	FDC 9/9744	ILS Rwy 3, AMDT 5...
12/20/99 ...	TX	Gainesville	Gainesville Muni	FDC 9/9923	GPS Rwy 17, ORIG... This Replaces FDC 9/9275.
12/21/99 ...	NE	North Platte	North Platte Regional Airport Lee Bird Field.	FDC 9/9961	NDB OR GPS Rwy 30R, AMDT 3...
12/21/99 ...	NE	North Platte	North Platte Regional Airport Lee Bird Field.	FDC 9/9962	ILS Rwy 30R, AMDT 5B...
12/21/99 ...	TX	Midland	Midland Intl	FDC 9/9963	VOR/DME OR TACAN Rwy 34L, AMDT 9A... This Replaces FDC NOTAM 9/9392.

[FR Doc. 99–33936 Filed 12–29–99; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, and 240

[Release No. 34–42266; File No. S7–22–99]

RIN 3235–AH83

Audit Committee Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting new rules and amendments to its current rules to require that companies' independent auditors review the companies' financial information prior to the companies filing their Quarterly Reports on Form 10–Q or Form 10–QSB with the Commission, and to require that companies include in their proxy statements certain disclosures about their audit committees and reports from their audit committees containing certain disclosures. The rules are designed to improve disclosure related to the functioning of corporate audit committees and to enhance the reliability and credibility of financial statements of public companies.

DATES: *Effective Date:* January 31, 2000.

Compliance Dates: Registrants must obtain reviews of interim financial information by their independent auditors starting with their Forms 10–Q or 10–QSB to be filed for fiscal quarters ending on or after March 15, 2000. Registrants must comply with the new proxy and information disclosure requirements (*e.g.*, the requirement to include a report of their audit committee in their proxy statements, provide disclosures regarding the independence of their audit committee members, and attach a copy of the audit committee's charter) for all proxy and information statements relating to votes of shareholders occurring after December 15, 2000. Companies who become subject to Item 302(a) of Regulation S–K as a result of today's amendments must comply with its requirements after December 15, 2000. Registrants voluntarily may comply with any of the new requirements prior to the compliance dates.

FOR FURTHER INFORMATION CONTACT: Mark Borges, Attorney-Adviser, Division of Corporation Finance (202–942–2900), Meridith Mitchell, Senior Counselor, Office of the General Counsel (202–942–0900), or W. Scott Bayless, Associate Chief Accountant, or

Robert E. Burns, Chief Counsel, Office of the Chief Accountant (202–942–4400).

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 10–01 of Regulation S–X,[1] Item 310 of Regulation S–B,[2] Item 7 of Schedule 14A[3] under the Securities Exchange Act of 1934 (the "Exchange Act"),[4] and Item 302 of Regulation S–K.[5] Additionally, the Commission is adopting new Item 306 of Regulation S–K[6] and Item 306 of Regulation S–B.[7]

I. Executive Summary

We are adopting new rules and amendments to current rules to improve disclosure relating to the functioning of corporate audit committees and to enhance the reliability and credibility of financial statements of public companies.[8] As more fully described in the Proposing Release, the new rules and amendments are based in large measure on recommendations made by the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee").[9] The new rules and amendments have been adopted in most respects as proposed, with modifications discussed below.

Audit committees play a critical role in the financial reporting system by overseeing and monitoring management's and the independent auditors' participation in the financial reporting process. We have seen a number of significant changes in our markets, such as technological developments and increasing pressure on companies to meet earnings expectations,[10] that make it ever more important for the financial reporting process to remain disciplined and credible.[11] We believe that additional disclosures about a company's audit committee and its interaction with the company's auditors and management will promote investor confidence in the integrity of the financial reporting process. In addition, increasing the level of scrutiny by independent auditors of companies' quarterly financial statements should lead to fewer year-end adjustments, and, therefore, more reliable financial information about companies throughout the reporting year.

Accordingly, the new rules and amendments:

- Require that companies' independent auditors review the financial information included in the companies' Quarterly Reports on Form 10–Q or 10–QSB prior to the companies filing such reports with the Commission (see Section III.A below);
- Extend the requirements of Item 302(a) of Regulation S–K (requiring at fiscal year end appropriate reconciliations and descriptions of any adjustments to the quarterly information previously reported in a Form 10–Q for any quarter)[12] to a wider range of companies (see Section III.A below);
- Require that companies include reports of their audit committees in their proxy statements;[13] in the report, the audit committee must state whether the audit committee has: (i) Reviewed and discussed the audited financial statements with management; (ii) discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61,[14] as may be modified or supplemented; and (iii) received from the auditors disclosures regarding the auditors' independence required by Independence Standards Board Standard No. 1,[15] as may be modified or supplemented, and discussed with the auditors the auditors' independence (see Section III.B below);
- Require that the report of the audit committee also include a statement by the audit committee whether, based on the review and discussions noted above, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10–K or 10–KSB (as applicable) for the last fiscal year for filing with the Commission (see Section III.B below);
- Require that companies disclose in their proxy statements whether their Board of Directors has adopted a written charter for the audit committee, and if so, include a copy of the charter as an appendix to the company's proxy statements at least once every three years (see Section III.C below);
- Require that companies, including small business issuers,[16] whose securities are quoted on Nasdaq or listed on the American Stock Exchange ("AMEX") or New York Stock Exchange ("NYSE"), disclose in their proxy statements whether the audit committee members are "independent" as defined in the applicable listing standards,[17] and disclose certain information regarding any director on the audit committee who is not "independent"(see Section III.D below); require that companies, including small business issuers, whose securities are not quoted on Nasdaq or listed on the AMEX or NYSE disclose in their proxy statements whether, if they have an audit committee, the members are "independent," as defined in the NASD's, AMEX's or NYSE's listing standards, and which definition was used (see Section III.D below); and
- Provide "safe harbors" for the new proxy statement disclosures to protect companies and their directors from certain liabilities under the federal securities laws (see Section III.E below).

To provide companies with the opportunity to evaluate their compliance with the revised listing standards of the NASD, AMEX, and NYSE and to prepare for the new disclosure requirements, we are providing transition periods for compliance with the new requirements (see Section V below).

II. Background

As discussed in the Proposing Release, given the changes in our markets, such as the increasing number of investors entering our markets and changes in the way and speed with which investors receive information, it is vitally important for investors to remain confident that they are receiving the highest quality financial reporting. The demand for reliable financial information appears to be at an all time high, as technology makes information

---

[1] 17 CFR 210.10–01.

[2] 17 CFR 228.310.

[3] 17 CFR 240.14a–101.

[4] 15 U.S.C. § 78a *et seq.*

[5] 17 CFR 229.302.

[6] 17 CFR 229.306.

[7] 17 CFR 228.306.

[8] The new rules and amendments were proposed in Exchange Act Release No. 41987 (Oct. 7, 1999) [64 FR 55648] (the "Proposing Release").

[9] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999) (the "Blue Ribbon Report"). The Blue Ribbon Report is available on the internet at http://www.nasd.com and http://www.nyse.com.

[10] *See, e.g.*, Jack Ciesielski, Editorial, *More Second-Guessing: Markets Need Better Disclosure of Earnings Management*, Barrons, Aug., 24, 1998, at 47.

[11] The Commission recently filed 30 enforcement actions against 68 individuals and companies for fraud and related misconduct in the accounting, reporting, and disclosure of financial results by 15 different public companies. *See* SEC Press Release 99–124 (Sept. 28, 1999).

[12] 17 CFR 229.302(a).

[13] References in this release to proxy statements also include information statements.

[14] *See* Codification of Statements on Auditing Standards, AU § 380 ("SAS 61").

[15] Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees* ("ISB Standard No. 1"). A copy of ISB Standard No. 1 can be obtained at www.cpaindependence.org.

[16] "Small business issuer" is defined in Item 10(a)(1) of Regulation S–B, 17 CFR 228.10(a)(1), as a company with less than $25 million in revenues and market capitalization.

[17] The listing standrds of the National Association of Securities Dealers ("NASD"), AMEX and NYSE are available on their websites at: http://www.nasd.com, http://www.amex.com, and http://www.nyse.com, respectively. *See infra* note 27 regarding recent changes to the listing standards of the NASD, AMEX, and NYSE.

available to more people more quickly. The new dynamics of our capital markets have presented companies with an increasingly complex set of challenges. One challenge is that companies are under increasing pressure to meet earnings expectations.[18] We have become increasingly concerned about inappropriate "earnings management," the practice of distorting the true financial performance of the company.[19]

The changes in our markets and the increasing pressures on companies to maintain positive earnings trends have highlighted the importance of strong and effective audit committees. Effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets. Audit committees play a critical role in the financial reporting system by overseeing and monitoring management's and the independent auditors' participation in the financial reporting process. Audit committees can, and should, be the corporate participant best able to perform that oversight function.

As discussed more fully in the Proposing Release, since the early 1940s, the Commission, along with the auditing and corporate communities, has had a continuing interest in promoting effective and independent audit committees. Most recently, the NYSE and NASD sponsored the Blue Ribbon Committee in response to "an increasing sense of urgency surrounding the need for responsible financial reporting given the market's increasing focus on corporate earnings and a long and powerful bull market."[20] The new rules and amendments affirm what have long been considered sound practice and good policy within the accounting and corporate communities.[21]

While almost all of the commenters that provided comment letters on the Proposing Release[22] supported our goals of improving disclosure about audit committees and enhancing the reliability and credibility of financial statements, many commenters suggested alternative approaches to achieving those goals. Some commenters believed that we should impose more rigorous requirements.[23] Other commenters recommended that we not adopt certain aspects of the proposals. In this regard, the concern most frequently expressed was that as a result of the new requirements to provide certain disclosures in a report, audit committees may be exposed to additional liability, and that consequently it may be difficult for companies to find qualified people to serve on audit committees.[24]

It is not our intention to subject audit committee members to increased liability. We addressed concerns about liability by modifying our initial proposals from the Blue Ribbon Committee's recommendations and by providing safe harbor protections. Nevertheless, we appreciate that many commenters continue to be concerned about the audit committee report generally, and specifically the requirement that the audit committee state whether anything has come to the attention of the members of the audit committee that caused the audit committee to believe that the audited financial statements included in the company's Annual Report on Form 10–K or 10–KSB contain an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

In response, we have modified that disclosure item, which was the subject of most of the commentary. We are adopting, instead, one of the other alternatives proposed—the audit committee must state whether, based on the review and discussion of the audited financial statements with management and discussions with the independent auditors, the audit committee recommended to the Board that the audited financial statements be included in the company's Annual Report on Form 10–K or 10–KSB (as applicable) for the last fiscal year for filing with the Commission. As we discussed in the Proposing Release, we do not believe that improved disclosure about the audit committee and increased involvement by the audit committee should result in increased exposure to liability. Consequently, we believe that this modification, together with the safe harbors, should further alleviate concerns about increased liability exposure, while promoting our goal of improving the financial reporting process.

Some commenters expressed concern about applying the new requirements to small businesses, particularly the interim financial review requirement. We have considered those comments carefully. We think that improvements in the financial reporting process for companies of all sizes is important for promoting investor confidence in our markets.[25] In this regard, because we have seen instances of financial fraud at small companies as well as at large companies,[26] we think that improving disclosures about the audit committees of small and large companies is important. As discussed in the Proposing Release, interim financial information generally may include more estimates than annual financial statements, but interim financial statements have never been subject to the discipline provided by having auditors associated with these statements on a timely basis. Investors, however, rely on and react quickly to quarterly results of companies, large and small. Accordingly, we believe that it is appropriate to require small business issuers to obtain reviews of interim financial information. As discussed below, however, small business issuers are not included in the expanded group of issuers subject to Item 302(a) disclosure requirements. In addition, we think that the transition period should help small businesses prepare for and adapt to the new requirements.

The Blue Ribbon Committee also made recommendations that call for action by the NASD, the NYSE, and the AICPA. In response, the NASD and NYSE proposed, and the Commission

---

[18] *See, e.g.*, Carol J. Loomis *et al.*, *Lies, Damned Lies, and Managed Earnings*, Fortune, Aug. 2, 1999, at 74; Thor Valdmanis, *Accounting Abracadabra*, USA Today, Aug. 11, 1998, at 1B; Bernard Condon, *Pick a Number, Any Number*, Forbes, Mar. 23, 1998, at 124; Justin Fox & Rajiv Rao, *Learn to Play the Earnings Game*, Fortune, Mar. 31, 1997, at 76.

[19] *See, e.g.*, Arthur Levitt, Chairman, SEC, Address to the NYU Center for Law and Business (Sept. 28, 1998). A copy of this speech is available on the SEC's website at www.sec.gov.

[20] Blue Ribbon Report, *supra* note 9, at 17.

[21] *See* Advisory Panel on Auditor Independence ("Kirk Panel"), *Strengthening the Professionalism of the Independent Auditor*, Report by the Oversight Board of the SEC Practice Section, American Institute of Certified Public Accountants ("AICPA") (Sept. 13, 1994) (the "Kirk Panel Report"); *see also* Report of the National Commission on Fraudulent Financial Reporting (Oct. 1987) (the "Treadway Report").

[22] You may read and copy the comment letters in our Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Ask for File No. S7–22–99. You may view the comment letters that were submitted by electronic mail at the Commission's web site: www.sec.gov.

[23] *See, e.g.*, Letter dated November 8, 1999 from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors; Letter dated October 14, 1999 from Robert B. Hodes, Willkie Farr & Gallagher.

[24] *See, e.g.*, Letter dated November 29, 1999 from Stephanie B. Mudick, General Counsel—Corporate Law, Citigroup Inc. ("Citigroup Letter"); Letter dated November 22, 1999 from Michael L. Conley, Executive Vice President and CFO, McDonald's Corporation.

[25] *See, e.g.*, Letter dated November 19, 1999 from the New York State Bar Association, Committee on Securities Regulation ("NYS Bar Letter") and Letter dated November 17, 1999 from KPMG LLP ("KPMG Letter") supporting application of the amendments and new rules to companies of all sizes.

[26] *See supra* note 11; *see also* Beasley, Carcello, and Hermanson, Fraudulent Financial Reporting: 1987–1997, An Analysis of U.S. Public Companies (Mar. 1999) (study commissioned by the Committee of Sponsoring Organizations of the Treadway Commission) (the "COSO Report").

approved, changes to their listing standards,[27] and the Auditing Standards Board ("ASB") recently proposed amendments[28] to SAS 61[29] and SAS 71.[30]

III. Discussion of New Rules and Amendments

A. Pre-Filing Review of Quarterly Financial Statements; Item 302(a)

We are adopting, as proposed, amendments to Rule 10–01(d) of Regulation S–X and Item 310(b) of Regulation S–B to require that a company's interim financial statements be reviewed by an independent public accountant prior to the company filing its Form 10–Q or 10–QSB with the Commission.[31] The amendments would require that independent auditors follow "professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission." Under current auditing standards, this means that the auditors would be required to follow the procedures set forth in SAS 71, or such other auditing standards that may in time modify, supplement, or replace SAS 71.

As noted above, we believe that more discipline is needed for the quarterly financial reporting process.[32] We believe that the reviews required will facilitate early identification and resolution of material accounting and reporting issues because the auditors will be involved earlier in the year. Early involvement of the auditors should reduce the likelihood of restatements or other year-end adjustments and enhance the reliability of financial information. In addition, as a result of changes in the markets, companies may be experiencing increasing pressure to "manage" interim financial results. Inappropriate earnings management could be deterred by imposing more discipline on the process of preparing interim financial information before filing such information with the Commission.

Many commenters supported the interim review requirement.[33] Several commenters expressed concern, however, about the cost of obtaining interim reviews, particularly for small business issuers.[34] As discussed above, we believe that improving the interim reporting process is important for companies of all sizes. As noted in the Proposing Release, we understand that the five largest U.S. accounting firms and other firms have policies to require that their clients have reviews of quarterly financial statements as a condition to acceptance of the audit.[35] Consequently, those firms already have implemented the new requirement for the companies that are audited by those firms.

In the Proposing Release, we solicited comment on whether, in light of the proposal to require interim reviews, we should require all companies to comply with Item 302(a) of Regulation S–K. Currently, under Item 302(a) of Regulation S–K, larger, more widely-held companies[36] supplement their annual financial information with disclosures of selected quarterly financial data. Item 302(a) requires appropriate reconciliations and descriptions of any adjustments to the quarterly information previously reported in a Form 10–Q for any quarter. The selected financial data must be reviewed by the independent auditors in accordance with SAS 71, but the review can occur at the end of the year and as part of the audit of the annual financial statements. We are amending Item 302(a) to extend the requirements to all companies[37] (except small business issuers filing on small business forms) that have securities registered under Sections 12(b)[38] or 12(g)[39] of the Exchange Act regardless of the size of the company or public float.[40]

Regulation S–B does not require small business issuers to provide Item 302(a) type disclosures. Today's amendments continue to exclude small business issuers filing under Regulation S–B from

---

[27] *See* Order Approving Proposed Rule Change by the NASD, Exchange Act Release 42231, File No. SR–NASD–99–49; Order Approving Proposed Rule Change by the NYSE, Exchange Act Release No. 42233, File No. SR–NYSE–99–39. While the Blue Ribbon Committee's recommendations were directed to the NYSE and the NASD, the AMEX proposed, and the Commission approved, rule changes to AMEX's listing standards. *See* Order Approving Proposed Rule Change by the AMEX, Exchange Act Release No. 42232, File No. SR–Amex–99–38.

[28] *See* Exposure Draft for Proposed Statement on Auditing Standards: Amendments to Statements on Auditing Standard No. 61, Communication with Audit Committees and Statements on Auditing Standard No. 71, Interim Financial Information (Oct. 1, 1999) ("ASB Exposure Draft"). A copy of the ASB Exposure Draft can be obtained at www.aicpa.org/members/div/auditstd/drafts.htm.

[29] SAS 61 requires independent auditors to communicate certain matters related to the conduct of an audit to those who have responsibility for oversight of the financial reporting process, specifically the audit committee. Among the matters to be communicated to the audit committee are: (1) Methods used to account for significant unusual transactions; (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus; (3) the process used by management in formulating particularly sensitive accounting estimates and the basis for the auditor's conclusions regarding the reasonableness of those estimates; and (4) disagreements with management over the application of accounting principles, the basis for management's accounting estimates, and the disclosures in the financial statements.

[30] *See* Codification of Statements on Auditing Standards, AU § 722. SAS 71 provides guidance to independent accountants on performing reviews of interim financial information.

[31] In the Proposing Release, we solicited comment on whether to require companies to disclose whether their quarterly financial statements have been reviewed by independent auditors. We are not adopting that requirement, but are retaining the current requirement of Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d), that if a company discloses that an independent auditor has performed a review of interim financial information, it must file a copy of the auditor's report. A conforming change to Item 310(b) has been made as proposed.

[32] In 1989, the Commission issued a concept release on whether it should propose amendments to its rules to require more involvement of the independent accountant in the preparation of interim financial information. *See* Exchange Act Release No. 26949 (June 20, 1989) [54 FR 27023]. The Treadway Commission recommended that the SEC require independent public accountants to review quarterly financial data before a company releases it to the public. Treadway Report, *supra* note 21, at 53.

[33] *See, e.g.*, Letter dated November 29, 1999 from The Business Roundtable ("We believe that a requirement for such a review would not impose a substantial burden and would help to improve the investor's comfort with interim statements"); Letter dated November 23, 1999 from Mark Wovsaniker, Vice President—Accounting Policy, America Online Incorporated ("To promote the accuracy and the high quality of the quarterly results, the auditor's regular involvement throughout the year, not just once at the end of each year, is necessary"); Letter dated November 22, 1999 from the Association for Investment Management and Research—Advocacy Advisory Committee ("AIMR Letter") ("[The proposal] will require auditor involvement throughout the year, which should help mitigate earnings management, as well as reduce the likelihood of restatements or other year-end adjustments").

[34] *See, e.g.*, Letter dated December 3, 1999 from the American Bar Association—Section of Business Law ("ABA Letter").

[35] One firm's policy apparently applies only to clients filing selected quarterly financial data under Item 302(a) of Regulation S–K, 17 CFR 229.302(a).

[36] Prior to today's amendments, Item 302(a) required registrants to provide Item 302(a) information if the registrant met certain tests, but not limited to: (1) Two of the three following requirements: (a) Shares outstanding have a market value of at least $2.5 million; (b) the minimum bid price is at least $5 per share; or (c) the registrant has at least $2.5 million of capital, surplus, and undivided profits; and (2) the registrant and its subsidiaries: (a) Have had net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal year; or (b) had total assets of at least $200 million for the last fiscal year end.

[37] *See, e.g.*, KPMG Letter, *supra* note 25, supporting this amendment.

[38] 15 U.S.C. § 78*l*(b).

[39] 15 U.S.C. § 78*l*(g).

[40] We are eliminating the requirement for large, widely-traded insurance companies, which file periodic reports solely pursuant to Section 15(d) of the Exchange Act, to provide Item 302(a) information. It is noted in this regard that other types of issuers reporting solely pursuant to Section 15(d) are not required to provide Item 302(a) information. The Item 302(a) amendments will accord insurance companies the same treatment under Item 302(a) as other issuers that report solely pursuant to Section 15(d).

those disclosure requirements,[41] but we will continue to consider whether and how such requirements should apply to small business issuers.

We believe that the amendments to Item 302(a) are consistent with the new requirement to obtain interim reviews. Both new measures should add discipline to the process of preparing and reporting quarterly financial information. Both should also encourage early identification of accounting issues and resolution of those issues before they must be subject to an auditor's review or a "reconciling" disclosure under Item 302(a)(2). Because the information to be disclosed should be readily available from each company's Form 10–Q filings, no additional audit or review costs will be imposed by the amendments to Item 302(a).

B. The Audit Committee Report

We are adopting new Item 306 of Regulations S–K and S–B and Item 7(e)(3) of Schedule 14A that require the audit committee to provide a report in the company's proxy statement. The required disclosure will help inform shareholders of the audit committee's oversight with respect to financial reporting, and underscore the importance of that role.

Many commenters were concerned that a report by the audit committee that indicates whether various discussions have occurred would expose the audit committee members to increased scrutiny and liability.[42] We do not believe that will be the case. Under state corporation law, the more informed the audit committee becomes through its discussions with management and the auditors, the more likely that the "business judgment rule" will apply and provide broad protection.[43] Those discussions should serve to strengthen the "information and reporting system" that should be in place.[44] Adherence to a sound process should result in less, not more, exposure to liability.[45]

Accordingly, we are adopting, as proposed, the requirement that the audit committee disclose whether the audit committee has reviewed and discussed the audited financial statements with management and discussed certain matters with the independent auditors.[46] Under paragraphs (a)(1), (a)(2), and (a)(3) of Item 306 (paragraph (a)(4) is discussed separately, below), audit committees must state whether:

(1) The audit committee has reviewed[47] and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61, as may be modified or supplemented;[48] and

(3) The audit committee has received the written disclosures and the letter from the independent auditors required by ISB Standard No. 1, as may be modified or supplemented, and has discussed with the auditors the auditors' independence.

If the company does not have an audit committee, the board committee tasked with similar responsibilities, or the full board of directors, would be responsible for the disclosure.

The disclosure required by paragraph (a)(3) relates to written disclosures, a letter from the independent auditors, and discussions between the audit committee and the independent auditors required by ISB Standard No. 1. The Commission has long recognized the importance of auditors being independent from their audit clients.[49] Public confidence in the reliability of a company's financial statements depends on investors perceiving the company's auditors as being independent from the company.

As noted above, paragraph (a)(4) was the subject of the most criticism. Commenters expressed concern about increased liability exposure, which they believed may result in qualified audit committee members resigning or companies having difficulty recruiting qualified members.[50] Some commenters, on the other hand, were skeptical that there would be increased liability exposure.[51]

Because of concerns about liability, we did not propose the disclosure requirement recommended by the Blue Ribbon Committee,[52] but instead proposed that the audit committee indicate whether, based on its discussions with management and the auditors, its members became aware of material misstatements or omissions in the financial statements. As discussed in the Proposing Release, we did not intend, nor do we believe, that the proposed disclosure about the audit committee and increased involvement by the audit committee would result in increased exposure to liability. Because commenters continued to be concerned, however, we are adopting an alternative contained in the Proposing Release. We believe that the revised language, together with the safe harbors, addresses those concerns.

As adopted, new paragraph (a)(4) requires the audit committee to state whether, based on the review and discussions referred to in paragraphs (a)(1) through (a)(3), it recommended to the Board of Directors that the financial statements be included in the Annual Report on Form 10–K or 10–KSB for the last fiscal year for filing with the Commission.[53] Because the new

---

[41] *See* Letter dated November 29, 1999 from Ernst & Young recommending that the criteria for Item 302(a) compliance be based on a company's market capitalization, such as above $25 million.

[42] *See, e.g.*, Letter dated November 24, 1999 from Tommy Chisholm, Secretary, Southern Company; Citigroup Letter, *supra* note 24. *But see* Letter dated November 26, 1999 from Peter C. Clapman, Senior Vice President and Chief Counsel, Investments, Teachers Insurance and Annuity Association College Retirement Equities Fund ("TIAA-CREF Letter").

[43] *See* 1 American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations* 134–98 (1994); *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 967–70 (Del. Ch. 1996).

[44] *Caremark*, 698 A.2d at 970 (boards must assure "themselves that information and reporting systems exist in the organization that are reasonably designed to provide to senior management and to the board itself timely, accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning both the corporation's compliance with law and its business performance").

[45] *See generally* Report of the Public Oversight Board ("POB"), "Directors, Management, and Auditors: Allies in Protecting Shareholder Interests," in which the POB discusses, among other things, a recommendation of the Kirk Panel to require audit committees to discuss with management and the auditors the quality of the accounting principles and judgments used in preparing financial statements. The POB notes its belief that compliance with that recommendation would not increase the exposure of board members to litigation because, among other things, the procedures will reduce the possibility that the financial statements are in fact misleading, thereby reducing the danger of finding directors at fault, and the additional steps taken should be persuasive in convincing courts and juries that the financial statements were prepared with care.

[46] At least in some measure, these discussions are already prescribed by the auditing literature. *See* SAS 61. *See, e.g.*, Letter dated November 29, 1999 from America's Community Bankers and Letter dated November 22, 1999 from the Massachusetts Financial Services Company supporting the requirements of paragraphs (a)(1), (2) and (3).

[47] We recognized that the auditing literature defines the term "review" to include a particular set of required procedures. *See* SAS 71. In using the term "reviewed" in the new disclosure requirement, we are not suggesting that the audit committee members can or should follow the procedures required of auditors performing reviews of interim financial statements.

[48] *See* ASB Exposure Draft, *supra* note 28.

[49] The federal securities law recognize the importance of independent auditors. *See, e.g.*, Items 25 and 26 of Schedule A of the Securities Act and Sections 12(b)(1)(J) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78*l*(b)(1)(J) and 78m(a)(2).

[50] See *supra* note 24.

[51] *See, e.g.*, TIAA–CREF Letter, *supra* note 42.

[52] The Blue Ribbon Committee recommended that the audit committee state that, in reliance on the review and discussions with management and the auditors, the audit committee "believes that the company's financial statements are fairly presented in conformity with Generally Accepted Accounting Principles (GAAP) in all material respects." Blue Ribbon Report, *supra* note 9, at 35.

[53] For closed-end investment companies, paragraph (a)(4) clarifies that this requirement applies to financial statements included in a fund's annual report to shareholders required by Section 30(e) of the Investment Company Act of 1940 and

Continued

language in paragraph (a)(4) focuses on the annual audited financial statements and the filing of those financial statements with the Commission, we believe that this requirement will provide investors with a better understanding of the audit committee's oversight role in the financial reporting process. The audit committee's recommendation that the financial statements be used in Commission filings already is implicit in, and is consistent with, board members signing the company's Annual Report on Form 10–K or 10–KSB.[54] Further, several commenters preferred this alternative.[55]

In addition, in performing its oversight function, the audit committee likely will be relying on advice and information that it receives in its discussions with management and the independent auditors. Accordingly, the text of the new requirement acknowledges that the audit committee had such discussions with management and the auditors, and, based on those discussions, made decisions about the financial statements and the filing of the company's Form 10–K or 10–KSB. This approach is consistent with state corporation law that permits board members to rely on the representations of management and the options of experts retained by the corporation when reaching business judgments.[56] The Blue Ribbon Committee noted the "impracticability of having the audit committee do more than rely upon the information it receives, questions, and assesses in making this disclosure."[57]

We are adopting, as proposed, the requirement that the new disclosure appear over the printed names of each member of the audit committee.[58] This requirement will emphasize for shareholders the importance of the audit committee's oversight role in the financial reporting process.

The disclosures are required in the company's proxy statement because they could have a direct bearing on shareholders' voting decisions, and because the proxy statement is actually delivered to shareholders and is accessible on the SEC's web site. Companies must provide the disclosure only in a proxy statement relating to an annual meeting of shareholders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). The disclosure needs to be provided only one time during the year (*e.g.*, in a proxy statement for an annual meeting at which directors are to be elected, but not in proxy solicitation material used in a subsequent election contest during that same year).

C. Audit Committee Charters

We are adopting, as proposed, the requirement that companies disclose in their proxy statements whether their audit committee is governed by a charter, and if so, include a copy of the charter as an appendix to the proxy statement at least once every three years. The requirement appears in new paragraph (e)(3) under Item 7 of Schedule 14A. The new disclosure regarding audit committees' charters should help shareholders assess the role and responsibilities of the audit committee.

We believe that audit committees that have their responsibilities set forth in a written charter are more likely to play an effective role in overseeing the company's financial reports. The amendments, however, will not require companies to adopt audit committee charters, or dictate the content of the charter if one is adopted.[59]

Several commenters expressed concern that the requirement to attach the charter would result in boilerplate charters.[60] We believe that it is useful for shareholders to know about the responsibilities and the duties of audit committees,[61] and while it is inevitable that some of the same provisions will appear in charters of different audit committees, we encourage companies to tailor the charters to their specific circumstances.

Consistent with some of the comments regarding the audit committee report, some commenters recommended that the charter be attached to the Form 10–K instead of the proxy statement because of concerns about expanding the length of the proxy statement.[62] We believe that information about the responsibilities and the duties of audit committees is most relevant to shareholders when they are electing directors and reviewing their performance. Accordingly, we have determined to require, as proposed, that the charter be attached to the proxy statement every three years.

D. Disclosure About "Independence" of Audit Committee Members

As early as 1940, the Commission encouraged the use of audit committees composed of independent directors. As the Commission staff stated in a report to Congress in 1978, "[i]f the [audit] committee has members with vested interests related to those of management, the audit committee probably cannot function effectively. In some instances this may be worse than having no audit committee at all by creating the appearance of an effective

---

rule 30d–1. These reports must be filed with the Commission pursuant to Rule 30b2–1, 17 CFR 270.30b2–1, under the Investment Company Act of 1940. Commenters disagreed about whether closed-end funds be excluded altogether from the new proxy statement disclosure requirements. *See, e.g.*, ABA Letter, *supra* note 34; Letter dated November 29, 1999 from Stuart M. Strauss, Morgan Stanley Dean Witter; Letter dated November 29, 1999 from Arthur Andersen LLP; Letter dated November 3, 1999 from the Investment Company Institute. We have concluded, however, that the application of these requirements to closed-end funds is warranted because of the critical role that audit committees play in overseeing the financial reporting process.

[54] The signature requirement is described in General Instruction D of Form 10–K and General Instruction C of Form 10–KSB. The Commission amended the signature requirements for Form 10–K in 1980 in order to "enhance director awareness of and participation in the preparation of the Form 10–K information." *See* Securities Act Release No. 6176 (Jan. 15, 1980) [45 FR 5972].

[55] *See, e.g.*, Letter dated December 1, 1999 from Ira M. Millstein, Weil Gotshal & Manges LLP, and John C. Whitehead. Messrs. Millstein and Whitehead were co-chairmen of the Blue Ribbon Committee; Letter dated November 29, 1999 from Deloitte & Touche LLP; Letter dated November 29, 1999 from James E. Kelly, General Counsel, Dime Bancorp, Inc.; Letter dated November 23, 1999 from Michael A. Rocca, Senior Vice President, Chief Financial Officer, Mallinckrodt Inc. ("This type of report better describes the audit committee's oversight role * * *. Moreover, in our view this alternative language would create a less significant litigation risk to audit committees"); NYS Bar Letter, *supra* note 25; Letter dated November 16, 1999 from Ernst & Young LLP. *See also* Letter dated August 20, 1999 from Ernst & Young LLP to Harvey J. Goldschmid, General Counsel, and Lynn E. Turner, Chief Accountant, SEC, commenting on the recommendations of the Blue Ribbon Committee and recommending a variation of this alternative.

[56] Delaware General Corporation Law, for example, states that board members are "fully protected in relying on good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees * * * or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence * * *." Del. Code Ann. tit. 8, § 141(e).

[57] *See* Blue Ribbon Report, *supra* note 9, at 34.

[58] This approach is consistent with the current treatment for the report from the company's compensation committee. *See* Instruction 9 to Item 402(a)(3) of Regulation S–K, 17 CFR 229.402(a)(3).

[59] We note, however, that the revised listing standards of the NYSE, NASD, and AMEX require the audit committee to: (1) Adopt a formal written charter that is approved by the full board of directors and that specifies the scope of the committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements; and (2) review and reassess the adequacy of the audit committee's charter on an annual basis. *See supra* note 27.

[60] *See, e.g.*, Letter dated November 29, 1999 from William E. Eason, Jr., Senior Vice President and General Counsel, Scientific-Atlanta, Inc.; Letter dated November 29, 1999 from Paul V. Stahlin, Senior Vice President and Comptroller, Summit Bancorp.

[61] *See, e.g.*, TIAA–CREF Letter, *supra* note 42.

[62] Letter dated November 29, 1999 from David K. Owens, Edison Electric Institute.

body while lacking the substance."[63] Further, as the Blue Ribbon Committee noted, "* * * common sense dictates that a director without any financial, family, or other material personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting, internal control and reporting practices."[64]

As noted in the Proposing Release, because of the importance of having an audit committee that is comprised of independent directors,[65] we believe that shareholders should know about the independence of the members. We believe that the new disclosures will accomplish that goal.

Under the revised listing standards of the NYSE, AMEX, and NASD, under exceptional and limited circumstances, companies may appoint to their audit committee one director who is not independent if the Board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the Board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination. We are adopting, as proposed, the requirement that companies whose securities are listed on the NYSE or AMEX or quoted on Nasdaq that have a non-independent audit committee member disclose the nature of the relationship that makes that individual not independent and the reasons for the Board's determination to appoint the director to the audit committee. Small business issuers are not required to comply with this requirement.

In addition, companies, including small business issuers, whose securities are listed on the NYSE or AMEX or quoted on Nasdaq, must disclose whether the audit committee members are independent, as defined in the applicable listing standards.[66] While companies are required to provide in their proxy statements certain disclosures that relate to the independence of directors,[67] we thought that it was important to make the disclosure about all of the audit committee members' independence explicit and clear for shareholders. For example, if we required disclosure about only those audit committee members who are not independent, there would have been an implication that all of the other members are independent. Because of the importance of having independent directors on the audit committee, shareholders should be informed explicitly, rather than implicitly, of each member's status.

While we recognize that the new requirements of the NYSE, AMEX, and NASD regarding independence of audit committees need not be complied with for 18 months, we think that companies will be able to provide the new disclosures in the first proxy season after year 2000 because, as a practical matter, to meet the 18-month deadline, most companies will elect new directors during the year 2000. For other companies, this will show their progress in moving toward compliance with the listing requirements.

We are also adopting, as proposed, the requirement that companies, including small business issuers, whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq, disclose in their proxy statements whether, if they have an audit committee, the members are independent as defined in the NYSE's, AMEX's, or NASD's listing standards, and which definition was used. These companies would be able to choose which definition of "independence" to apply to the audit committee members in making the disclosure. Whichever definition is chosen must be applied consistently to all members of the audit committee.

E. Safe Harbors

We are adopting, as proposed, "safe harbors" for the new disclosures.[68] The "safe harbors" would track the treatment of compensation committee reports under Item 402 of Regulation S–K.[69] The safe harbors are in paragraph (c) in new Item 306 of Regulations S–K and S–B and paragraph (e)(v) of Schedule 14A. Under the "safe harbors," the additional disclosure would not be considered "soliciting material," "filed" with the Commission, subject to Regulation 14A or 14C (and, therefore, not subject to the antifraud provisions of Rules 14a–9 or 14c–6)[70] or to the liabilities of Section 18 of the Exchange Act, except to the extent that the company specifically requests that it be treated as soliciting material, or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

Several commenters recommended that the Commission also provide a safe harbor from private litigation.[71] After careful consideration, we do not believe an additional safe harbor is necessary or appropriate. As discussed more fully above, in adopting the new rules and amendments, we do not intend to subject companies or their directors to increased exposure to liability under the federal securities laws, or to create new standards for directors to fulfill their duties under state corporation law. We do not believe that the disclosure requirements will result in increased exposure to liability or create new standards. We have modified the disclosure required in Item 306 in response to commenters' concerns. To the extent the disclosure requirements would result in more clearly defined procedures for, and disclosure of, the operation of the audit committee, liability claims alleging breach of fiduciary duties under state law actually may be reduced. Accordingly, we believe that the safe harbors adopted are appropriate and sufficient.

IV. Applicability to Foreign Private Issuers and Section 15(d) Reporting Companies

A. Foreign Private Issuers

We proposed to exclude from the new requirements foreign private issuers with a class of securities registered under Section 12 of the Exchange Act or that file reports under Section 15(d) of the Exchange Act.[72] Foreign private issuers currently are exempt from the proxy rules, are not required to file Quarterly Reports on Form 10–Q or 10–QSB,[73] and are subject to different corporate governance regimes in their

---

[63] Staff of the SEC, 95th Cong., 2d Sess., Report to Congress on the Accounting Profession and the Commission's Oversight Role, Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs, at 97 (Comm. Print July 1978). *See also* Blue Ribbon Report, *supra* note 9, at 22–23; Treadway Report, *supra* note 21, at 40–41; *In the Matter of McKesson & Robbins*, Accounting Series Release No. 19, Exchange Act Release No. 2707 (Dec. 5, 1940).

[64] Blue Ribbon Report, *supra* note 9, at 22.

[65] *See, e.g.*, TIAA–CREF Letter, *supra* note 42.

[66] The revised listing standards of the NASD and AMEX require that small business issuers have at least two members of their audit committee, a majority of whom must be independent. In responding to the new disclosure requirement, small business issuers, of course, can disclose that the listing standards of the NASD or AMEX do not require that all members of their audit committee be independent. *See supra* note 27.

[67] Item 7 of Schedule 14A requires companies to provide the disclosures required by Items 401 and 404(a) and (c) of Regulation S–K.

[68] *See* Blue Ribbon Report, *supra* note 9, at 35, recommending a safe harbor.

[69] *See* Instruction 9 to Item 402(a)(3) of Regulation S–K, 17 CFR 229.402(a)(3).

[70] The other antifraud provisions of the Exchange Act and Securities Act of 1933 (the "Securities Act"), however, would continue to apply.

[71] *See, e.g.*, Letter dated November 29, 1999 from Katherine K. Combs, Deputy General Counsel and Corporate Secretary, PECO Energy Company; Letter dated November 30, 1999 from the American Society of Corporate Secretaries (the "ASCS Letter").

[72] 15 U.S.C. § 78o(d).

[73] A "foreign private issuer" must file reports on Form 6–K promptly after the information requried by the Form is made public in accordance with the laws of its home country or a foreign securities exchange. *See* 17 CFR 240.13a–16(b).

home countries. Accordingly, we do not believe it is appropriate to extend the new requirements to foreign private issuers at this time. The Commission, however, is continuing to consider how the periodic reporting requirements for domestic companies should apply to foreign private issuers.

B. Section 15(d) Reporting Companies

As noted in the Proposing Release, companies whose reporting obligations arise solely under Section 15(d) of the Exchange Act are not required to file proxy statements with the Commission. We solicited comment on whether we should require those companies to provide the new disclosures in their Form 10–Ks or some other filing. Because we believe that the disclosures are most relevant to voting decisions on the basis of disclosure in proxy statements, and because of the nature of the market for the securities of such companies, we are not adopting such a scheme. Accordingly, at this time we are not extending the proxy statement disclosure requirements to Section 15(d) companies.

V. Compliance Dates

Several commenters requested that we provide a transition period to allow companies time to consider the rules and to revise, if necessary, any of their procedures.[74] We agree, and have provided a transition period for compliance with the new requirements. Registrants must obtain reviews of interim financial information by their independent auditors starting with their Forms 10–Q or 10–QSB to be filed for fiscal quarters ending on or after March 15, 2000. Registrants must comply with the new proxy and information disclosure requirements (*e.g.*, the requirement to include a report of their audit committee in their proxy statements, provide disclosures regarding the independence of their audit committee members, and attach a copy of their audit committee's charter) for all proxy and information statements relating to votes of shareholders occurring after December 15, 2000. Companies who become subject to Item 302(a) as a result of today's amendments must comply with its requirements after December 15, 2000. Registrants voluntarily may comply with any of the new requirements prior to the compliance dates.

VI. Paperwork Reduction Act

Earlier this year, the staff submitted the proposed amendments to Regulations 14A and 14C to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Regulations 14A and 14C contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*). The titles for the collections of information are: (1) Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15) and Schedule 14A; and (2) Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7) and Schedule 14C. Also, in accordance with the Paperwork Reduction Act, we solicited comments on the accuracy of our burden estimates for Regulations 14A and 14C. We did not receive any comments that address specifically the estimated paperwork burdens associated with those collections of information. The comments we received primarily addressed the costs and benefits of the proposals in general terms, and liability concerns, rather than issues relating to the collection of information. Commenters' more generalized concerns about costs and benefits of the amendments are addressed more fully in the cost-benefit and other sections of this release.

We proposed and are adopting amendments that will require a company to include additional disclosures in Schedules 14A and 14C, including certain information about the company's audit committee. The audit committee will have to disclose whether it had certain discussions with management and the company's independent auditors. The substance of the discussions would not be required to be disclosed. Companies will also have to disclosure information regarding the independence of audit committee members. The amendments would also require companies that have adopted a written charter for their audit committee to include a copy of the charter as an appendix to Schedules 14A and 14C at least once every three years. The amendments do not require companies to prepare charters.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Schedule 14A (OMB Control No. 3235–0059)[75] and Schedule 14C (OMB Control No. 3235–0057)[76] were adopted pursuant to Sections 14(a) and 14(c) of the Exchange Act. Schedule 14A prescribes information that a company must include in its proxy statement to ensure that shareholders are provided material information relating to voting decisions. Schedule 14C prescribes information that a company must include in its information statement to shareholders where votes are solicited by means other than proxies.

We solicited comments on whether we should require all companies to comply with Item 302(a) of Regulation S–K. As discussed in previous sections of the release, Item 302(a) of Regulation S–K currently requires larger, more widely-held companies to supplement their annual financial information with disclosures of selected quarterly financial data. We are amending Item 302(a) to extend the requirements to all companies (but not small business issuers filing on small business forms and foreign private issuers) that have securities registered under Section 12(b) or 12(g) of the Exchange Act. The Item 302(a) information will continue to appear as a table in the Form 10–K.

Form 10–K under the Exchange Act (OMB Control Number 3235–0063)[77] is used by registrants to file annual reports. The title for this collection of information is Form 10–K. Form 10–K provides a comprehensive overview of the registrant's business and financial condition. The Commission estimates that Form 10–K currently results in a total annual compliance burden of approximately 17,886,463 hours. The burden was calculated by multiplying the estimated number of entities filing Form 10–K (approximately 10,381) by the estimated average number of hours each entity spends completing the Form (approximately 1723 hours). The Commission based the number of entities that complete and file Form 10–K on the actual number of filers during the 1998 fiscal year. The staff estimated the average number of hours an entity spends completing Form 10–K by contacting a number of law firms and other persons regularly involved in completing the forms.

We estimate that the incremental burden of extending Item 302(a) to all companies with securities registered under Sections 12(b) or 12(g) of the Exchange Act (except small business issuers filing on small business forms) will increase the total by approximately 2000 hours. This burden was calculated by multiplying the estimated number of entities that do not currently provide Item 302(a) information by the number of additional hours it would take to provide the additional information. The staff estimates that approximately 8000 Form 10–K filers do not currently provide Item 302(a) information, and

[74] *See, e.g.*, ASCS Letter, *supra* note 71.

[75] 17 CFR 240.14a–101.

[76] 17 CFR 240.14c–101.

[77] 17 CFR 249.310.

that it would take a total of approximately .25 hours to include the new disclosure in a Form 10–K. The Commission based the number of Form 10–K filers not currently providing Item 302(a) information on the approximate number of companies in the Compustat database that currently are required to file Item 302(a) information based on the criteria set forth in Item 302(a) of Regulation S–K.

We believe that the amendments will promote investor confidence in the securities markets by informing investors about the important role that audit committees play in the financial reporting process and will enhance the reliability and credibility of financial statements of public companies.

Compliance with the disclosure requirements is mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the revised rule is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements for Form 10–K should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–22–99. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–22–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VII. Cost-Benefit Analysis

The amendments are expected to improve disclosure related to the functioning of the corporate audit committees and to enhance the reliability and credibility of financial statements of public companies. We believe that the amendments will promote investor confidence in the securities markets by informing investors about the important role that audit committees play in the financial reporting process. As the Blue Ribbon Committee summarized:

> Improving oversight of the financial reporting process necessarily involves the imposition of certain burdens and costs on public companies. Despite these costs, the Committee believes that a more transparent and reliable financial reporting process ultimately results in a more efficient allocation of and lower cost of capital. To the extent that instances of outright fraud, as well as other practices that result in lower quality financial reporting, are reduced with improved oversight, the benefits clearly justify these expenditures of resources.[78]

As noted above, the amendments are part of a larger, coordinated series of actions by the NYSE, NASD, AMEX, and the accounting profession that were recommended by the Blue Ribbon Committee to improve the financial reporting process. The Commission's rule amendments and new rules complement and strengthen the efforts of the NYSE, NASD, AMEX and the accounting profession. This cost-benefit analysis concentrates only on the effect of the Commission's rules. The benefits of the new requirements cannot be readily quantified.[79] However, these measures should mitigate inappropriate earnings management, enhance the reliability of financial information, improve disclosure to investors, and could improve securities pricing efficiency by encouraging the distribution of higher quality earnings numbers on a more timely basis.

Reviews of Quarterly Financial Statements

We are requiring interim reviews of quarterly financial statements filed on Form 10–Q or 10–QSB.[80] Under the amendments, a company's quarterly financial statements must be reviewed by independent auditors using "professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission." Currently, that means that the review would follow the procedures established by SAS 71. The amendments apply only to the financial information contained in the company's Quarterly Reports on Form 10–Q or 10–QSB. Accordingly, the amendments do not require any review of quarterly financial information released to the public before the filing of the Form 10–Q or 10–QSB, such as the so-called quarterly "earnings release."

We believe that companies are under increasing pressure to meet financial analysts' expectations, and that pressure can be even more acute in the context of reports on quarterly earnings. We believe that the participation of auditors in the financial reporting process at interim dates will help to counterbalance that pressure and impose increased discipline on the process of preparing interim financial information.[81] Auditor involvement in the financial reporting process earlier in the year should facilitate timely identification and resolution of significant and sensitive issues and result in fewer year-end adjustments, which should reduce the cost of annual audits.[82] The increased focus and discipline imposed on the preparation of interim financial statements should enhance the efficiency of the capital markets by improving the reliability of quarterly financial statements, although these benefits are difficult to quantify.

We have prepared our best estimate of the incremental costs of preparing a SAS 71 review for those companies not currently having them performed. Our estimate of those incremental costs is based on data provided to the staff by the SEC Practice Section of the AICPA ("SECPS"), discussions with experienced practitioners, the experiences of current SEC staff members, and data provided by commenters.

Firms providing information to the SECPS indicated that the procedures they currently use are similar, if not the same, as those described in SAS 71. Most indicated that review reports are seldom issued. The firms also indicated

---

[78] Blue Ribbon Report, *supra* note 9, at 19.

[79] OMB, *Report to Congress on the Costs and Benefits of Federal Regulation* 21 (1998) (OMB has recognized that while it may be difficult to quantify the benefits of disclosure requirements, there is a strong consensus among economists that, in general, disclosure-based regulatory schemes can improve the functioning of markets and produce significant benefits for consumers).

[80] *See* Section III.A above.

[81] COSO Report, *supra* note 26, at 34 ("Close scrutiny of quarterly financial information and a move toward continuous auditing strategies may increase opportunities for earlier detection of financial statement improprieties").

[82] *See, e.g.*, AIMR Letter, *supra* note 33.

that they are not aware of (and do not expect) clients switching auditing firms because of their new policies.

The firms providing information to the SECPS identified several unquantifiable benefits that they believe would result from the reviews, including better interim reporting, earlier identification and resolution of accounting issues, improvement in the quality of accounting estimates, and improved communications between clients and auditors. These benefits could also improve pricing efficiency of the issuer's securities. Several comment letters from accounting firms supported this view.[83] Medium and smaller sized accounting firms, however, indicated to the SECPS that SAS 71 reviews of small companies' interim financial statements may cause delays in filing Forms 10–Q or 10–QSB, be relatively more costly for small companies, be hampered by inadequate financial reporting processes, and would result in small companies shifting work from the company to the CPA firm. One small business commenter expressed concern that increased pressure to meet the filing deadlines would require hiring another employee.[84] Based on staff experience and discussions with practitioners, we believe many of the required review procedures can be performed simultaneously with the preparation of the quarterly financial statements, and accordingly, should not delay these filings. In addition, we believe that the same management personnel who work with the auditors at year end should be able to assist with the quarterly reviews.

The firms responding to the SECPS generally indicated that the costs of reviews of quarterly financial statements vary depending on several factors, including: (i) The sophistication of the client's accounting and reporting system; (ii) The quality of the client's accounting personnel; (iii) The identification of "fraud risk factors;" (iv) The client's industry; (v) The number and location of the client's subsidiaries; (vi) The seasonality of the client's business; (vii) The existence of contentious accounting issues; and (viii) Whether there will be a staffing "crunch" at the firm to handle the reviews each quarter.

The five largest U.S. accounting firms, the so-called "Big 5," and some other firms, currently have in place policies that require their clients to have interim reviews as a condition to acceptance of an audit. Based on the Compustat database and information from the SECPS and from commenters, we estimate that approximately 8,934 companies for calendar year 1998 retained auditors that require SAS 71 reviews. Based on a total of approximately 12,972 Forms 10–K and 10–KSB filed in 1998, we therefore estimate that approximately 4,038 companies are not currently subject to SAS 71 reviews.

Based on the data provided to staff by the SECPS, our experience, and information from commenters, we estimate the incremental cost to conduct a SAS 71 review will be nominal for those companies currently audited by the Big 5 firms and for the remaining companies would range from approximately $1,000 to about $4,000[85] per quarter. Multiplying $7,500 (the midpoint of the average cost per firm of $3,000 to $12,000 per year) by 4038 produces an estimated $30 million a year cost for SAS 71 reviews.[86] Obviously, if more companies are currently subject to SAS 71 reviews, or if the cost of the reviews is offset by a reduction in annual fees, the cost estimate would be smaller.

Disclosure Related to the Functioning of the Audit Committee

The principal benefits of the proposals are improved disclosure relating to the functioning of corporate audit committees and enhanced reliability and credibility of financial statements. The benefits of improved disclosure regarding the audit committee's communications with management and the independent auditors are not readily quantifiable. We believe, however, that they would include increased market efficiency due to improved information and investor confidence in the reliability of companies' financial disclosures. As discussed above, most of the commenters supported the goals of improving disclosure about audit committees, although some suggested alternative disclosure requirements. Commenters' principal concern was that audit committees may be exposed to additional liability, with the result that they would find it more difficult to recruit qualified audit committee members; others disagreed with that view. As discussed above, we modified the Item 306 audit committee report requirement to respond to commenters' concerns about liability.

We believe the costs associated with these amendments would derive principally from the disclosure obligations—we are not placing any substantive requirements on audit committees or their members. At the proposing stage, we estimated that the additional disclosure contemplated by the amendments would, on average, require less than three-fourths of a page in a company's proxy statement, based on the staff's experience with proxy statements, and analogous cost estimates. A financial printing company informed the staff that this disclosure would not likely increase the printing cost because up to three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. The printer reported that adding one more page could increase costs by about $1,500 for an average sized company.

Only a few commenters mentioned printing costs, with one stating that the costs of printing the charter in the proxy statement "could be significant," but did not quantify the amount.[87] We continue to believe that the printing costs of the disclosures and charter[88] would not be significant. The charter, for example, needs to be printed only once every three years, so the cost has been averaged over three years. We estimate the total average disclosure per year—the average annual burden of printing the charter and the other disclosures—would be one printed proxy statement page. Consequently, the annual aggregate cost would be approximately $15 million.[89]

This amount, however, does not include possible "start up" costs for some companies. First, some companies may have to set up procedures to monitor the activities of their audit committee in order to collect and record the information required by the amendments. In our view, such monitoring costs are most likely to result from disclosing the fact of the audit committee's discussions with management and the independent auditors and receiving from the independent auditors certain required disclosures and a letter from the

[83] *See, e.g.*, KPMG Letter, *supra* note 25 ("In our experience that policy [of conducting SAS 71 reviews] has resulted in the earlier identification of accounting and reporting issues and has therefore enhanced the quality of interim financial reporting").

[84] Letter dated November 22, 1999 from Michael Dea.

[85] One non-Big 5 accounting firm indicated in its comment letter that the upper end of the range (*i.e.*, about $4,000 per quarter) comported with its experience for small to medium size companies. Letter dated October 14, 1999 from Edward W. O'Connell, Wiss & Company, LLP.

[86] At the proposing stage, we used 2,150 companies to reach an estimate of $16 million.

[87] *See* NYS Bar Letter, *supra* note 25.

[88] Preparation of the charter is required by the NYSE, NASD, and AMEX and not the Commission's rules.

[89] The $15 million figure derives from one page at $1,500 per page for approximately 10,145 companies.

independent auditors. We believe such monitoring costs will be insignificant.

Second, some companies may seek the help of outside experts, particularly outside legal counsel, in formulating responses to the new requirements.[90] In some circumstances, for instance, the audit committee may seek the advice of legal counsel before making the required disclosure about the audited financial statements. Commenters provided no cost data. We understand that many audit committees already use outside experts, but do not know what, if any, incremental cost there will be. As we modified our proposals to reflect better the oversight role of audit committees and address liability concerns, we anticipate that any costs attributable to the increased use of outside experts to respond to the new disclosure requirements will be negligible.

For purposes of the Paperwork Reduction Act, we estimated that our required disclosures would, on average, impose one additional burden hour, exclusive of printing costs, on each filer of Schedule 14A or 14C, or an aggregate annual total of 10,145 additional burden hours. This estimate reflects the time companies would spend preparing the additional disclosures in the proxy statement.[91] The total annual costs accordingly would be approximately $1 million.

These amendments are not intended to increase companies' or directors' exposure to liability under federal or state law. A number of commenters indicated that, in their assessment, the proposals would have the effect of increasing the companies' and/or directors' exposure to liability, with attendant costs, but provided no economic data. For the reasons discussed in previous sections of this release, we believe that the amendments will likely result in better and more reliable financial reporting, but should not increase liability exposure. In particular, we modified requirements to address this liability concern. In addition, the amendments include liability "safe harbors" similar to those that apply to compensation committee reports under current rules.[92]

[90] *See, e.g.*, Letter dated November 19, 1999 from Patricia Gallup, Chairman of the Board, PC Connection, Inc.

[91] The estimate does not include the amount of time the audit committee would spend conducting the discussions with the independent accountants and management to which new Item 306 of Regulations S–K and S–B and the amendments to Item 7 of Schedule 14A refer. The amendments would not require that the audit committee hold the discussions, but merely that it disclose whether the discussions have taken place.

[92] *See* Section III.E above.

Item 302(a) of Regulation S–K

The Commission is requiring more companies to provide the supplemental financial information described in Item 302 of Regulation S–K. That information consists of selected quarterly financial data, such as net sales and gross profit, for the prior two years. We recognize that requiring all public companies (except Form S–B filers, Section 15(d) reporting companies, and foreign private issuers) to provide supplemental financial information under Item 302(a) of Regulation S–K may have some incremental cost. Currently only certain large, widely-held companies that meet certain tests (involving, among other things, the number of security holders, stock price, and market capitalization) must file supplemental financial information. Taking into account that auditors will be performing SAS 71 reviews for these companies, the incremental cost of preparing and presenting the supplementary financial information is small.

Based on the staff's experience, we do not believe that it will take company employees much time to pull the data from their prior quarterly reports to prepare the supplementary financial information for the Form 10–K. While the information will take up part of an additional page in the Form 10–K, there are no printing costs attributable to disclosure of this information since it is not typically contained in the annual report that is printed and distributed to investors.

We believe the supplementary financial information is a useful resource for investors and justifies the cost of its collection and filing. By tying the regulatory threshold to an existing, widely used test (*e.g.*, the definition of small business issuer in Regulation S–B), the Commission is simplifying the regulatory scheme. Such simplification is an additional benefit of the amendments.

VIII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation. We believe that the proposals will promote investor confidence in the securities markets by improving the transparency of the role of corporate audit committees and enhancing the reliability and credibility of financial statements of public companies. More reliable financial statements should help to lower the costs of capital. Accordingly, the proposals should promote capital formation and market efficiency.

Section 23(a) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact on competition of any rule it adopts. We do not believe that the proposals would have any anti-competitive effects since the proposals should improve the transparency, reliability, and credibility of companies' financial statements. We requested comment on any anti-competitive effects of the proposals. For the reasons discussed above, we have decided to exclude foreign private issuers from these disclosure requirements. Any competitive effect that may occur by requiring domestic public companies to comply with these additional disclosure requirements, compared to foreign private issuers, is necessary and appropriate for the protection of investors.

IX. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act ("RFA"). It relates to amendments to Rule 10–01 of Regulation S–X, Item 310 of Regulation S–B, Item 302(a) of Regulation S–K, Item 7 of Schedule 14A under the Exchange Act, and new Item 306 of Regulations S–B and S–K.

A. Need for the Rules and Rule Amendments

The new rules and amendments to current rules are designed to improve disclosure relating to the functioning of corporate audit committees and to enhance the reliability and credibility of financial statements of public companies. The required disclosure will help inform shareholders of the audit committee's role in overseeing the preparation of the financial statements and underscore the importance of the audit committee's participation in the financial reporting process.

The required reviews of interim financial information should facilitate early identification and resolution of material accounting and reporting issues because the auditors will be involved earlier in the year. More reliable interim financial information will be available to investors, and early involvement of the auditors should reduce the number of restatements or other year-end adjustments. We believe that the disclosures will reinforce the audit

committee's awareness of its responsibilities, and make visible for shareholders the audit committee's role in promoting reliable and transparent financial reporting.

B. Significant Issues Raised by Public Comment

Many commenters were concerned that the proposed rules would expose audit committee members to increased scrutiny and liability. As a result, those commenters suggested that we amend certain disclosure requirements and provide an additional safe harbor from private litigation. We modified the required audit committee report to address the liability concerns, and consequently, as discussed in previous sections of this release, we do not believe additional safe harbors are necessary or appropriate. We are adopting, as proposed, the same report requirements and safe harbors for companies of all sizes.

The Commission requested comment on whether the scope of the proposed rules should be narrowed to exclude companies under a certain size. Some commenters questioned the need for interim reviews for small entities,[93] particularly in light of the additional costs. However, we continue to believe that improving the interim reporting process is important for small companies. Investors rely on and react quickly to quarterly results of companies, large and small. Moreover, the COSO Report found that the incidence of financial fraud was greater at small companies.[94] The COSO Report specifically noted that the "concentration of fraud among companies with under $50 million in revenues and with generally weak audit committees highlights the importance of rigorous audit committee practices, even for smaller organizations."[95] In light of the COSO Report, we believe it would be inconsistent with the purposes of the rule to exempt small business issuers from the proposed requirement for interim reviews.

We also solicited comment on whether we should require all companies to comply with Item 302(a) of Regulation S–K. Commenters generally agreed that we should extend the requirements to other companies, but questioned the need to include small companies. We are adopting the Item 302(a) requirement for all Section 12(b) and 12(g) registered companies (except small business issuers reporting on small business forms) to maintain the more simplified reporting format of the regulatory scheme for small business issuers.

C. Small Entities Subject to the Rule

For purposes of the RFA, Exchange Act Rule 0–10 defines "small business" as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[96] The rules will affect small businesses that are required to file proxy materials on Schedule 14A or 14C and Quarterly Reports on Form 10–Q or 10–QSB under the Exchange Act. We estimate that there are approximately 830 reporting companies (that are not investment companies) with assets of $5 million or less. The Commission bases its estimate on information from the Insight database from Compustat, a division of Standard and Poors.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Reviews of Quarterly Financial Statements

The rules will require companies to engage their independent auditors to conduct interim reviews of their quarterly financial statements prior to the company filing its Forms 10–Q or 10–QSB. Based on information provided to the Commission by the SECPS,[97] it appears that most companies already engage their independent auditors to undertake some level of review of their quarterly financial statements.

Medium and smaller sized accounting firms indicated to the SECPS that SAS 71 reviews of small companies' interim financial statements may cause delays in filing Forms 10–Q or 10–QSB, be relatively more costly for all companies, be hampered by inadequate financial reporting processes, and would result in small companies shifting financial responsibilities from the company to the CPA firm.

However, based on the SECPS survey, we believe that the costs of compliance would be partially offset by a reduction in year-end audit fees and would lead to earlier identification of accounting and auditing issues and an improvement in the quality of the process used for preparing interim financial reports.

2. Disclosure Related to the Functioning of the Audit Committee

Issuers, both large and small, will be required to provide certain additional disclosure in their proxy statements regarding the company's audit committee, including attaching every three years a copy of the audit committee's charter, if they have one. Companies will be required to include reports of their audit committees in which the audit committee provides disclosure about whether certain discussions between the audit committee and management and the auditors took place. No disclosure of the substance of the discussions is required. The increased disclosure will require all entities, large and small, to spend additional time and incur additional costs in preparing disclosures. In particular, smaller companies may incur additional costs to set up procedures in order to respond to the new disclosure requirements. Smaller companies may also incur additional costs in seeking the help of outside experts, particularly outside legal counsel, in formulating responses to the new requirements.

3. Disclosure Related to Independence

We are requiring that companies whose securities are listed on the NYSE, AMEX, or traded on Nasdaq make certain disclosures about any member of the audit committee who is not independent (small business issuers are not subject to that requirement) and whether the audit committee members are independent. Companies, including small business issuers, whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq are required to disclose whether their members are independent, but may choose which definition of independence to use and must disclose which definition was used.

E. Agency Action To Minimize Effect on Small Entities

As required by Section 603 of the RFA, the Commission has considered the following alternatives to minimize the economic impact of the rules on small entities: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rules, or any part thereof, for small entities.

---

[93] *See* ABA Letter, *supra* note 34.

[94] *See generally* COSO Report, *supra* note 26. In fact, the COSO Report specifically found that a "regulatory focus on companies with market capitalization in excess of $200 million may fail to target companies with greater risk for financial statement fraud activities." *Id.* at 4.

[95] COSO Report, *supra* note 26, at 5.

[96] A "small business issuer" under Regulation S–B, however, is a company with less than $25 million in revenues and market capitalization.

[97] *See* Section VII above.

We continue to believe investors in smaller companies would want and benefit from the disclosures about the audit committee and the advantages of interim reviews just as much as investors in larger companies. We have made some adjustments to the rules to decrease their impact on small businesses. For example, we did not extend Item 302(a) to small business issuers filing on small business forms.

In addition, small businesses not subject to the NASD's, AMEX's or NYSE's listing standards can choose which definition of independence to use, as long as it is used consistently. Further, small business issuers are not required to state the reasons for including a non-independent audit committee member, since under the listing standards, they are not required to have all independent members on their audit committees.

Finally, to provide companies with the opportunity to evaluate their compliance with the revised listing standards of the NASD, AMEX, and NYSE and to prepare for the new disclosure requirements, we are providing transition periods for compliance with the new requirements, which should benefit all companies, large and small.

X. Statutory Bases and Text of Amendments

We are adopting amendments to Rules 10–01 of Regulation S–X and 14a–101 (Schedule 14A), Item 310 of Regulation S–B, and Item 302(a) of Regulation S–K, and adopting new Item 306 of Regulations S–K and S–B, under the authority set forth in Sections 2, 13, 14, and 23 of the Exchange Act.

List of Subjects

17 CFR Part 210

Accountant, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By amending § 210.10–01 by revising paragraph (d) to read as follows:

§ 210.10–01 Interim financial statements.

* * * * *

(d) *Interim review by independent public accountant.* Prior to filing, interim financial statements included in quarterly reports on Form 10–Q (17 CFR 249.308(a)) must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission. If, in any filing, the company states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements.

* * * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

3. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. Section 228.305 is added and reserved and § 228.306 is added to read as follows:

§ 228.305 [Reserved]

§ 228.306 (Item 306) Audit committee report.

(a) The audit committee must state whether:

(1) The audit committee has reviewed and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61, as may be modified or supplemented;

(3) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as may be modified or supplemented, and has discussed with the independent accountant the independent accountant's independence; and

(4) Based on the review and discussions referred to in paragraphs (a)(1) through (a)(3) of this Item, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10–KSB (17 CFR 249.310b) for the last fiscal year for filing with the Commission.

(b) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

5. By amending § 228.310 by revising the introductory text of paragraph (b) to read as follows:

§ 228.310 (Item 310) Financial Statements.

* * * * *

(b) *Interim Financial Statements.* Interim financial statements may be unaudited; however, prior to filing,

interim financial statements included in quarterly reports on Form 10–QSB (17 CFR 249.308b) must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission. If, in any filing, the issuer states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements. Interim financial statements shall include a balance sheet as of the end of the issuer's most recent fiscal quarter and income statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

6. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78*l*, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

7. By amending § 229.302 by revising paragraph (a)(5) to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) *Selected quarterly financial data.*

* * *

(5) This paragraph (a) applies to any registrant, except a foreign private issuer, that has securities registered pursuant to sections 12(b) (15 U.S.C. § 78*l*(b)) (other than mutual life insurance companies) or 12(g) of the Exchange Act (15 U.S.C. § 78*l*(g)).

* * * * *

8. By adding § 229.306 to read as follows:

§ 229.306 (Item 306) Audit committee report.

(a) The audit committee must state whether:

(1) The audit committee has reviewed and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61 (Codification of Statements on Auditing Standards, AU § 380), as may be modified or supplemented;

(3) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as may be modified or supplemented, and has discussed with the independent accountant the independent accountant's independence; and

(4) Based on the review and discussions referred to in paragraphs (a)(1) through (a)(3) of this Item, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10–K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the annual report to shareholders required by Section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(e)) and Rule 30d–1 (17 CFR 270.30d–1) thereunder) for the last fiscal year for filing with the Commission.

(b) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a company proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the company specifically incorporates it by reference.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

10. By amending § 240.14a–101 by adding paragraph (e)(3) to Item 7 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. *Directors and executive officers.*

* * *

(e) * * *

(3) If the registrant has an audit committee:

(i) Provide the information required by Item 306 of Regulation S–K (17 CFR 229.306).

(ii) State whether the registrant's Board of Directors has adopted a written charter for the audit committee.

(iii) Include a copy of the written charter, if any, as an appendix to the registrant's proxy statement, unless a copy has been included as an appendix to the registrant's proxy statement within the registrant's past three fiscal years.

(iv)(A) For registrants whose securities are listed on the New York Stock Exchange ("NYSE") or American Stock Exchange ("AMEX") or quoted on Nasdaq:

(*1*) Disclose whether the members of the audit committee are independent (as independence is defined in Sections 303.01(B)(2)(a) and (3) of the NYSE's listing standards, Section 121(A) of the AMEX's listing standards, or Rule 4200(a)(15) of the National Association of Securities Dealers' ("NASD") listing standards, as applicable and as may be modified or supplemented); and

(*2*) If the registrant's Board of Directors determines in accordance with the requirements of Section 303.02(D) of the NYSE's listing standards, Section 121(B)(b)(ii) of the AMEX's listing standards, or Section 4310(c)(26)(B)(ii) or 4460(d)(2)(B) of the NASD's listing standards, as applicable and as may be modified or supplemented, to appoint one director to the audit committee who is not independent, disclose the nature of the relationship that makes that individual not independent and the reasons for the Board's determination. Small business issuers (17 CFR 228.10(a)(1)) need not provide the information required by this paragraph (e)(3)(iv)(A)(2).

(B) For registrants, including small business issuers, whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq, disclose whether, if the registrant

has an audit committee, the members are independent. In determining whether a member is independent, registrants must use the definition of independence in Sections 303.01(B)(2)(a) and (3) of the NYSE's listing standards, Section 121(A) of the AMEX's listing standards, or Rule 4200(a)(15) of the NASD's listing standards, as such sections may be modified or supplemented, and state which of these definitions was used. Whichever definition is chosen must be applied consistently to all members of the audit committee.

(v) The information required by paragraph (e)(3) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(vi) The disclosure required by this paragraph (e)(3) need only be provided one time during any fiscal year.

(vii) Investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than closed-end investment companies, need not provide the information required by this paragraph (e)(3).

* * * * *

Dated: December 22, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33849 Filed 12–29–99; 8:45 am]

BILLING CODE 6010–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 376

[Docket No. RM00–4–000; Order No. 613]

Delegations of Authority

Issued December 21, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending regulations to revise delegations of authority and related provisions to reflect changes in the Commission's internal structure.

DATES: This final rule is effective January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0953.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994

—CIPS can be access using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending 18 CFR Parts 375 and 376 to revise the delegations to certain Commission officials and to make related changes in connection with changes in the Commission's internal structure. These changes came about as a result of the Chairman's FERC First initiative, which reorganized many of the Commission's internal operations with the objective of making them more responsive to the public's needs. As a result, the positions to which the Commission formerly delegated a number of authorities will no longer exist. This rulemaking reassigns those authorities to the new offices.

II. Background

The Commission's staff, at the Chairman's direction, has undertaken a re-engineering effort, called FERC First, to re-examine and, where appropriate, restructure its organization and processes. One result of this effort has been a decision to replace a number of the Commission's internal organizations with others that are better structured to meet the challenges of changing energy markets. Among the new offices that the Commission has established, or is establishing, are the Office of Markets, Tariffs and Rates (OMTR); the Office of Energy Projects (OEP); and the Office of Finance, Accounting and Organization (OFAO). Among the offices being eliminated are the Office of the Chief Accountant, the Office of Pipeline Regulation, the Office of Electric Power Regulation, the Office of Energy Policy, the Office of the Executive Director and the Office of Hydropower Licensing.

III. Discussion

The change in internal structure requires that many of the Commission's delegations of authority be revised to reflect the fact that the positions to which the existing delegations were made, in some cases, have been or are being eliminated. This rulemaking is intended solely to transfer existing delegations rather than to alter the existing scope of delegated authority within the Commission. Apart from the provisions being revised in this rulemaking, there may be other references in the Commission's regulations to official positions or offices that will no longer exist after the reorganization of the Commission's staff. These regulations will be revised in due course. The existing delegations are being revised as follows:

Part 375

Office of the Chief Accountant (existing § 375.303). The Office of the Chief Accountant has been moved into OFAO, with the Chief Accountant reporting to the Director of OFAO.

Consequently, most of the delegations contained in this section are being transferred to the Director. Authorities contained in subsections 375.303(d)(1) and (e) are being transferred to OMTR. Section 375.303(g) is being deleted because it is obsolete.

Office of Pipeline Regulation (existing § 375.307). These delegations are being divided between the Directors of OMTR and OEP. In particular, where a delegation concerns pipeline facilities or both facilities and services, it is being transferred to OEP. Where it concerns services only, it is being transferred to OMTR.

Office of Electric Power Regulation (existing § 375.308). These delegations are being transferred to OMTR.

Office of Economic Policy (existing § 375.310). This section is being deleted as obsolete.

Office of the Executive Director (existing § 375.313). These delegations are being transferred to OFAO.

Office of Hydropower Licensing (existing § 375.314). These delegations are being transferred to OEP.

Part 376

Part 376 governs the Commission's organization and its operations during emergency conditions. This rulemaking updates the list of officials authorized to conduct operations during emergency conditions and replaces references to the former position of Executive Director with the Director, OFAO.

General

The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of internal agency procedure and will not affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of rules that will have a significant impact on a substantial number of small entities. 5 U.S.C. 601–612. The Commission is not required to make such analyses if a rule would not have such an effect. Because this rule concerns only matter of internal agency procedure, it will have no impact upon any entity other than the Commission.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment. Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,783 (1987). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

VI. Information Collection Statement

This rulemaking contains no information collections.

VII. Congressional Review

The provisions of 5 U.S.C. 801, regarding Congressional review of rulemakings, do not apply to this rulemaking because it concerns agency procedure and practice and will not substantially affect the rights and obligations of non-agency parties. 5 U.S.C. 804(3)(C).

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 376

Civil defense, Organization and functions (Government agencies).

By the Commission.

(SEAL)

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 375 and 376, Chapter I, Title 18, of the *Code of Federal Regulations*, as follows:

PART 375—THE COMMISSION

1. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Section 375.303 is revised to read as follows:

§ 375.303 Delegations to the Chief Accountant.

(a) The Commission authorizes the Chief Accountant or the Chief Accountant's designee to issue interpretations of the Uniform System of Accounts for public utilities, licensees, natural gas companies and oil pipeline companies.

(b) Pass upon any proposed accounting matters submitted by or on behalf of public utilities, licensees, natural gas companies, and oil pipeline companies, that require Commission approval under the Uniform System of Accounts, except that if the proposed accounting matters involve unusually large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(c) Pass upon applications to increase the size or combine property units of public utilities, licensees, natural gas companies and oil pipeline companies.

3. Section 375.307 is revised to read as follows:

§ 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence on behalf of the Commission with state regulatory commissions and agencies in connection with non-financial auditing matters.

(b) Pass upon any uncontested application for authorization to issue securities or to assume obligations and liabilities, filed by public utilities and licensees pursuant to part 34 of this chapter.

(c) Sign non-financial audit reports of jurisdictional companies.

(d) In connection with non-financial audits, pass upon and review requests by state and federal agencies to review staff audit working papers if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission; and

(2) The requester

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(e) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications by a pipeline for the deletion of delivery points but not facilities;

(2) Applications to abandon pipeline services, but not facilities, involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(3) Applications for temporary or permanent certificates (and for amendments thereto) for services, but not facilities, in connection with the transportation, exchange or storage of natural gas, provided that the cost of construction of the certificate applicant's related facility is less than the limits specified in column 2 of table I in § 157.208(d) of this chapter;

(4) Blanket certificate applications by interstate pipelines and local distribution companies served by interstate pipelines filed pursuant to §§ 284.221 and 284.224 of this chapter;

(5) Applications for temporary certificates involving transportation service or sales, but not facilities, pursuant to § 157.17 of this chapter;

(6) Dismiss any protest to prior notice filings involving existing service, made pursuant to § 157.205 of this chapter, that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications pertaining to approval of changes in customer names where there is no change in rate schedule, rate, or other incident of service;

(8) Applications for approval of customer rate schedule shifts;

(9) Applications filed under section 1(c) of the Natural Gas Act and part 152 of this chapter, for declaration of exemption from the provisions of the Natural Gas Act and certificates held by the applicant; and

(10) Applications and amendments requesting authorizations filed pursuant to section 7(c) of the Natural Gas Act for new or additional service to right-of-way grantors either directly or through a distributor, where partial consideration for the granting of the right-of-way was the receipt of gas service pursuant to section 7(c) of the Natural Gas Act.

(f) Act upon filings for all initial rate schedules, rate schedule changes and notices of changes in rates submitted by gas companies and impose conditions to the following extent, in uncontested cases:

(1) Accept a tariff or rate schedule filing, except a major pipeline rate increase under section 4(e) of the Natural Gas Act and under subpart D of part 154 of this chapter, if it complies with all applicable statutory requirements, and with all applicable Commission rules, regulations and orders for which a waiver has not been granted, or if a waiver has been granted by the Commission, if it complies with the terms of the waiver;

(2) Reject a tariff or rate schedule filing, if it patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and

(3) Advise the filing party of any actions taken under paragraph (b)(1) or (b)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date thereof.

(g) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline service and not facilities, or an uncontested rate schedule proceeding;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to § 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption and where only services are involved; and

(4) Applications for extensions of time to file required reports, data and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(h) Undertake the following actions:

(1) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold face type on the cover;

(2) Issue and sign deficiency letters regarding natural gas applications; and

(3) Accept for filing, data and reports (including Forms 1, 1F, 2, 2A, and 6) required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance.

(i) Take appropriate action on requests or petitions for waivers of:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter;

(2) Filing requirements for statements and reports under Parts 260, 261 and 357 of this chapter;

(3) Fees prescribed in §§ 381.207, 381.403, and 381.505 of this chapter in accordance with § 381.106(b) of this chapter;

(4) Annual charges prescribed in § 382.202 of this chapter in accordance with the standard set forth in § 382.105 of this chapter;

(5) Section 154.403 of this chapter, as necessary, in order to rule on out-of-cycle purchased gas adjustment filings;

(6) The requirements of subpart C of part 292 of this chapter governing cogeneration and small power production facilities made by any state regulatory authority or nonregulated electric utility pursuant to § 292.402 of this chapter;

(7) Annual charges prescribed in § 382.201 of this chapter in accordance with the standard set forth in § 382.105 of this chapter; and

(8) Deny or grant, in whole or in part, requests for waiver of the requirements for statements or reports under § 141.1 of this chapter (FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others) and § 141.2 of this chapter (FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees), and of the filing of FERC Form No. 1 on electronic media (§ 385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(6), (c), and (e)).

(j) Take the following actions relating to the regulation of oil pipelines under the Interstate Commerce Act:

(1) Accept any uncontested item which has been filed consistent with Commission regulations and policy;

(2) Reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted;

(3) Prescribe for carriers the classes of property for which depreciation charges may be properly included under operating expenses, review the fully documented depreciation studies filed by the carriers, and authorize or revise the depreciation rates reflected in the depreciation study with respect to each of the designated classes of property; and

(4) Refer any matter to the Commission which the Director believes

should be acted upon by the Commission.

(k) Take the following actions with respect to rates, rate schedules, and rate filings:

(1) Accept for filing all uncontested initial rate schedules and uncontested rate schedule changes submitted by public utilities, including changes which would result in rate increases; waive the requirement of statutory notice for good cause shown; advise the filing party of such acceptances; and designate rate schedules and the effective dates thereof;

(2) Approve uncontested rates and rate schedules filed by the Secretary of Energy or his designee, for power developed at projects owned and operated by the federal government and for services provided by federal power marketing agencies;

(3) Reject a rate filing, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations and orders; and

(4) Assign to an Administrative Law Judge (ALJ), with the ALJ's concurrence, uncontested interim electric rate motions that would result in lower rates, pending Commission action on settlement agreements.

(l) Take appropriate action on uncontested applications for:

(1) The sale or lease or other disposition of facilities, consolidation of facilities, and acquisition of securities of public utilities under section 203 of the Federal Power Act;

(2) Interlocking positions under section 305(b) of the Federal Power Act;

(3) Certification of the qualifying status for small power production and cogeneration facilities under § 292.207 of this chapter; and

(4) The extension of time for public utilities to file required reports, data, and information and to do other acts required to be done within a specific time period by any rule, regulation or order of the Commission.

(m) Take appropriate action on:

(1) Notices of intervention or petitions to intervene in an uncontested rate schedule proceeding;

(2) Requests for authorization for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule; and

(3) Filings related to uncontested nonexempt qualifying small power production facilities, including action on requests for waivers of the Commission's regulations under the Federal Power Act and related authorizations consistent with Massachusetts Refusetech, Inc., 31 FERC ¶ 61,048 (1985), and the orders cited therein without limitation as to whether qualifying status is by Commission certification or notice of qualifying status, provided that in the case of a notice of qualifying status, any waiver is granted on condition that the filing party has correctly noticed the facility as a qualifying facility.

(n) Undertake the following actions:

(1) Redesignate proceedings, rate schedules, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved;

(2) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale, lease of disposition of property, consolidation of facilities, acquisition of securities of public utilities and applications to hold interlocking positions;

(3) With respect to amendments to agreements, contracts, and rate schedules (including approved rate settlements), and data and reports submitted by public utilities pursuant to Commission opinions, orders, decisions, or other actions or presiding officers' initial decisions:

(i) Accept for filing any amendment, contract, rate schedule, data and reports which are in compliance and, when appropriate, notify the filing party of such acceptance; or

(ii) Reject for filing any amendment, contract, rate schedule, data, and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection; and

(4) Adopt final allocations of costs for federal multiple-purpose reservoir projects for which the Commission has statutory responsibility, and review and comment on cost allocations prepared by others.

(o) In connection with the regulation of oil pipelines under the Interstate Commerce Act, refer any matter to the Commission which the Director believes should be acted upon by the Commission.

4. Section 375.308 is removed and § 375.314 is redesignated as § 375.308 and its heading and introductory text are revised and paragraphs (v) through (z) are added to read as follows:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

The Commission authorizes the Director or the Director's designee to:

* * * * *

(v) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications or amendments requesting authorization for the construction or acquisition and operation of facilities that have a construction or acquisition cost less than the limits specified in column 2 of table I in § 157.208(d) of this chapter;

(2) Applications by a pipeline for the abandonment of pipeline facilities;

(3) Applications for temporary certificates for facilities pursuant to § 157.17 of this chapter;

(4) Petitions to amend certificates to conform to actual construction;

(5) Applications for temporary certificates for facilities pursuant to § 157.17 of this chapter;

(6) Dismiss any protest to prior notice filings made pursuant to § 157.205 of this chapter and involving pipeline facilities that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications for temporary or permanent certificates (and for amendments thereto) for the transportation, exchange or storage of natural gas, provided that the cost of construction of the applicant's related facility is less than the limits specified in column 2 of table 1 in § 157.208(d) of this chapter; and

(8) Applications for blanket certificates of public convenience and necessity pursuant to subpart F of part 157 of this chapter, including waiver of project cost limitations in §§ 157.208 and 157.215 of this chapter, and the convening of informal conferences during the 30-day reconciliation period pursuant to the procedures in § 157.205(f).

(w) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline facilities;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to

§ 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption when the emergency requires installation of facilities; and

(4) Applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(x) Undertake the following actions:

(1) Compute, for each calendar year, the project limits specified in table I of § 157.208 and table II of § 157.215(a) of this chapter, adjusted for inflation, and publish such limits as soon as possible thereafter in the **Federal Register**;

(2) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold face type on the cover;

(3) Issue and sign deficiency letters regarding natural gas applications;

(4) Accept for filing, data and reports required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance;

(5) Reject requests which patently fail to comply with the provisions of 157.205(b) of this chapter; and

(6) Take appropriate action on requests or petitions for waivers of any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter.

(y) Take appropriate action on the following:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter; and

(2) Requests or petitions for waivers of filing requirements for statements and reports under §§ 260.8 and 260.9 of this chapter.

(z) Approve, on a case-specific basis, and make such decisions as may be necessary in connection with the use of pre-filing collaborative procedures, for the development of an application or certificate or abandonment authorization under Section 7 of the Natural Gas Act, or the development of an application for facilities under Section 3 of the Natural Gas Act, and assist in the pre-filing collaborative and related processes.

§ 375.310 [Removed]

5. Section 375.310 is removed.

§ 375.311 [Redesignated as § 375.310]

6. Section 375.311 is redesignated as § 375.310.

§ 375.312 [Redesignated as § 375.311]

7. Section 375.312 is redesignated as § 375.311.

§ 375.313 [Redesignated as § 375.312]

8. Section 375.313 is redesignated as § 375.312 and is revised to read as follows:

§ 375.312 Delegations to the Director of the Office of Finance, Accounting and Operations.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence with respect to financial accounting and reporting matters on behalf of the Commission.

(b) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof, and sign audit reports resulting from the examination of the books and records of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If, in the case of a financial audit, the company does not agree with the audit report, provided that notification of the opportunity for a hearing under Section 301(a) of the Federal Power Act or Section 8(a) of the Natural Gas Act accompanies the audit report.

(c) Pass upon and approve requests by state and federal agencies to review staff working papers from financial audits if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission, and

(2) The requester—

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(d) With regard to billing errors noted as a result of the Commission staff's examination of automatic adjustment tariffs approved by the Commission, approve corrective measures, including recomputation of billing and refunds, to the extent the company agrees.

(e) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352 and 356 of this chapter, except if the matters involve unusually large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(f) Prescribe the updated fees for part 381 of this chapter in accordance with § 381.104 of this chapter.

(g) Prescribe the updated fees for part 381 of this chapter in accordance with § 388.109(b)(2) of this chapter.

(h) Deny or grant, in whole or in part, petitions for waiver of fees prescribed in § 381.302 of this chapter in accordance with § 381.106(b) of this chapter.

(i) Deny or grant, in whole or in part, petitions for exemption from fees prescribed in part 381 of this chapter in accordance with § 381.108 of this chapter.

(j) Determine the annual charges for administrative costs, for use of United States lands, and for use of government dams or other structures.

(k) Grant or deny waiver of penalty charges for late payment of annual charges.

(l) Give credit for overpayment of annual charges.

(m) Deny or grant, in whole or in part, petitions for exemption from annual charges under § 11.6 of this chapter for state and municipal licensees.

(n) Grant or deny petitions for waiver of annual charges for oil pipelines.

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS: OPERATIONS DURING EMERGENCY CONDITIONS

9. The authority citation for Part 376 is revised to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

10. In § 376.105, paragraph (b)(2) is revised to read as follows:

§ 376.105 Chairman.

* * * * *

(b) * * *

(2) The selection, appointment, and fixing of the compensation of such personnel as he deems necessary.

* * * * *

11. In § 376.204, paragraph (b)(2) is revised to read as follows:

§ 376.204 Delegation of Commission's authority during emergency conditions.

* * * * *

(b) * * *

(2) The list referred to in paragraph (b)(1) of this section is:

(i) Director of the Office of Finance, Accounting and Operations;

(ii) Director of the Office of Markets, Tariffs and Rates;

(iii) Director of the Office of Energy Projects;

(iv) General Counsel;

(v) Executive Assistant to the Chairman;

(vi) Deputy Directors, Office of Markets, Tariffs and Rates, in order of seniority;

(vii) Deputy Directors, Office of Energy Projects, in order of seniority;

(viii) Deputy General Counsel;

(ix) Associate General Counsels, Assistant General Counsels and Solicitor, in order of seniority;

(x) Assistant Directors and Division heads, Office of Markets, Tariffs and Rates; Assistant Directors and Division heads, Office of Energy Projects; and Assistant General Counsels; in order of seniority.

* * * * *

12. Section 376.206 is revised to read as follows:

§ 376.206 Delegation of functions of certain Commission staff members.

When, by reason of emergency conditions, the Secretary; Director of the Office of Finance, Accounting and Operations; Director of any Office or Division, or officer in charge of a regional office, is not available and capable of carrying out his functions, such functions are delegated to staff members designated by the Chairman to perform such functions. If no staff member so designated is available and capable of carrying out his functions, such functions are delegated to the next subordinate employee in the Office or Division of the highest grade and longest period of service in that grade.

13. Section 376.207 is revised to read as follows:

§ 376.207 Personnel and fiscal functions.

Subject to modifications or revocation by authority of the Director of the Office of Finance, Accounting and Operations, during the continuation of emergency conditions authority to effect temporary appointments of such additional officers and employees, to classify and allocate positions to their proper grades, to issue travel orders, and to effect emergency purchases of supplies, equipment and services shall be exercised by the respective Directors of Offices and officials in charge of regional offices, their deputies, or staff in line of succession, as may be required for the discharge of the lawful duties of such organization.

[FR Doc. 99–33591 Filed 12–29–99; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602

[TD 8856]

RIN 1545–AX44

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: This document contains changes delaying the effective date to final regulations (TD 8734), which were published in the **Federal Register** of October 14, 1997, relating to the withholding of income tax on certain U.S. source income payments to foreign persons. The Department of the Treasury and the IRS believe it is in the best interest of tax administration to delay the effective date of the final withholding regulations to ensure that both taxpayers and the government can complete changes necessary to implement the new withholding regime. As extended by this document, the final withholding regulations will apply to payments made after December 31, 2000.

DATES: *Effective Dates:* The amendments in this final rule are effective January 1, 2001. As of December 31, 1999, the effective date of the final regulations published at 62 FR 53387, October 14, 1997, and delayed by TD 8804 (63 FR 72183, December 31, 1998), is delayed from January 1, 2000, until January 1, 2001; however, the effective date of the addition of §§ 31.9999–0 and 35a.9999–0 and the removal of § 35a.9999–0T remains October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Laurie Hatten-Boyd, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this amendment provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code (Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461 of the Code, and the related changes under sections 163(f), 165(j), 871, 881, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Code.

Need for Changes

On April 29, 1999, in Notice 99–25 (1999–20 I.R.B. 1), the IRS and Treasury announced their decision to extend the effective date of the final regulations. When originally published in the **Federal Register** on October 14, 1997 (62 FR 53387), the final regulations were applicable to payments made after December 31, 1998 and, generally, granted withholding agents until after December 31, 1999, to obtain the new withholding certificates (Forms W–8BEN, W–8ECI, W-8EXP, and W–8IMY) and statements required under those regulations. On April 13, 1998, in Notice 98–16 (1998–15 I.R.B. 12), the IRS and Treasury announced the decision to extend the effective date of the final regulations to January 1, 2000 and to provide correlative extensions to the transition rules for obtaining new withholding certificates and statements. Those extensions were published on December 31, 1998 at 63 FR 72183 as TD 8804. This amendment serves to make the final regulations applicable to payments made after December 31, 2000 and to require mandatory use of the new withholding certificates and statements for payments made after that date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Finally, it has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because the regulations do not impose a collection of information on small entities. Pursuant to 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (61 FR 17614) was submitted to the Small Business Administration for comment on its impact on small business.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, and 301 are amended by making the following correcting amendments:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.871–14, paragraph (h) is revised to read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(h) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 2000.

(2) *Transition rule.* For purposes of this section, the validity of a Form W–8 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W–8 that is valid on or after January 1, 1999 remains valid until its validity expires under the regualtions in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a form remain valid after December 31, 2000. The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W–8 that expired solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (h)(2), a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may choose to obtain withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 3. In § 1.1441–1, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (f) is revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules*—(i) *Special rules for existing documentation.* For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, the validity of a withholding certificate (namely, Form W–8, 8233, 1001, 4224, or 1078 , or a statement described in § 1.1441–5 in effect prior to January 1, 2001 (see § 1.1441–5 as contained in 26 CFR part 1, revised April 1, 1999)) that was valid on January 1, 1998 under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such withholding certificate remain valid after December 31, 2001. The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2)(i), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in paragraph (e)(4)(ii) of this section, regardless of when the certificate is obtained.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 2000.

Par. 4. In § 1.1441–4, as amended at 62 FR 53424 (TD 8734) and at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a Form 4224 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 4224 or 8233 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) but in no event will such form remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 4224 or 8223 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the

documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 5. In § 1.1441–5, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a withholding certificate that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 6. In § 1.1441–6, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form 1001 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 1001 or 8233 is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a form remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 1001 or 8233 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under § 1.894–1T(d). Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 7. In § 1.1441–8 as redesignated and amended at 62 FR 53464 and amended at 63 FR 72138 (TD 8804), paragraph (f) is revised to read as follows:

§ 1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form 8709 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 8709 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) but in no event shall such a form remain valid after December 31, 2000. The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a Form 8709 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 8. In § 1.1441–9, paragraph (d) is revised to read as follows:

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

* * * * *

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form W–8, 1001, or 4224 or a statement that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W–8, 1001, or 4224 or a statement that is valid on or after January 1, 1999 remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1,

1999) but in no event shall such form or statement remain valid after December 31, 2000. The rule in this paragraph (d)(2), however, does not apply to extend the validity period of a Form W–8, 1001, or 4224 or a statement that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (d)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 9. In § 1.1443–1, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (c) is revised to read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

* * * * *

(c) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of an affidavit or opinion of counsel described in § 1.1443–1(b)(4)(i) in effect prior to January 1, 2001 (see § 1.1443–1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1999) is extended until December 31, 2000. However, a withholding agent may choose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 10. In § 1.6042–3, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (b)(5) is revised to read as follows:

§ 1.6042–3 Dividends subject to reporting.

* * * * *

(b) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such withholding certificate remain valid after December 31, 2000. The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (b)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

* * * * *

Par. 11. In § 1.6045–1, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g)(5) is revised to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(g) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(5)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

* * * * *

Par. 12. In § 1.6049–5, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this

section apply to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

PARTS 1, 31, AND 301—[AMENDED]

Par. 13. In the list below, for each section indicated in the left column (which was added, revised, or amended at 62 FR 53387 (TD 8734) and further amended at 63 FR 72138 (TD 8804), remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.871–14(c)(3)(i), *Example*, first and sixth sentences	October 12, 2000	October 12, 2001.
1.871–14(c)(3)(i), *Example*, sixth sentence	December 31, 2000	December 31, 2001.
1.871–14(c)(3)(i), *Example*, sixth sentence	June 15, 2004	June 15, 2005.
1.871–14(c)(3)(i), *Example*, seventh sentence	June 15, 2004	June 15, 2005.
1.1441–1(b)(4)(xix)	January 1, 2000	January 1, 2001.
1.1441–1(b)(4)(xix)	April 1, 1998	April 1, 1999.
1.1441–1(b)(7)(v), *Example 1*, first, fourth, and eighth sentences	June 15, 2000	June 15, 2001.
1.1441–1(b)(7)(v), *Example 1*, third and ninth sentences	September 30, 2002	September 30, 2003.
1.1441–1(b)(7)(v), *Example 1*, ninth sentence	March 15, 2001	March 15, 2002.
1.1441–1(b)(7)(v), *Example 2*, first, fourth, and seventh sentences	June 15, 2000	June 15, 2001.
1.1441–1(b)(7)(v), *Example 2*, third and seventh sentences	September 30, 2002	September 30, 2003.
1.1441–1(b)(7)(v), *Example 2*, seventh and ninth sentences	March 15, 2001	March 15, 2002.
1.1441–1(c)(6)(i)(B)	January 1, 2000	January 1, 2001.
1.1441–1(c)(6)(i)(B)	April 1, 1998	April 1, 1999.
1.1441–1(e)(4)(i)(A)	September 30, 2000	September 30, 2001.
1.1441–1(e)(4)(i)(A)	December 31, 2003	December 31, 2004.
1.1441–2(b)(3)(iv)	December 31, 1999	December 31, 2000.
1.1441–2(f)	December 31, 1999	December 31, 2000.
1.1441–3(h)	December 31, 1999	December 31, 2000.
1.1441–7(g)	December 31, 1999	December 31, 2000.
1.1461–1(i)	December 31, 1999	December 31, 2000.
1.1461–2(a)(4), *Example 1*(i), second sentence	December 2000	December 2001.
1.1461–2(a)(4), *Example 1*(i), third sentence	February 10, 2001	February 10, 2002.
1.1461–2(a)(4), *Example 1*(ii), first, second, and last sentences	2000	2001.
1.1461–2(a)(4), *Example 1*(ii), first senterice	March 15, 2001	March 15, 2002.
1.1461–2(a)(4), *Example 1*(ii), third sentence	2001	2002.
1.1461–2(a)(4), *Example 2*, second and last sentences	2001	2002.
1.1461–2(a)(4), *Example 2*, second sentence	June 2001	June 2002.
1.1461–2(a)(4), *Example 2*, third sentence	July 15, 2001	July 15, 2002.
1.1461–2(a)(4), *Example 2*, third sentence	2000	2001.
1.1461–2(a)(4), *Example 2*, last sentence	March 15, 2002	March 15, 2003.
1.1461–2(a)(4), *Example 3*, last sentence	February 15, 2001	February 15, 2002.
1.1461–2(a)(4), *Example 3*, last sentence	March 15, 2001	March 15, 2002.
1.1461–2(d)	December 31, 1999	December 31, 2000.
1.1462–1(c)	December 31, 1999	December 31, 2000.
1.1463–1(b)	December 31, 1999	December 31, 2000.
1.6041–4(d)	December 31, 1999	December 31, 2000.
1.6041A–1(d)(3)(v)	December 31, 1999	December 31, 2000.
1.6045–1(d)(6)(i)(B)	December 31, 1999	December 31, 2000.
1.6049–4(d)(3)(i)(B)	December 31, 1999	December 31, 2000.
1.6049–5(c)(4)(v)	January 1, 2000	January 1, 2001.
1.6050N–1(e), last sentence	December 31, 1999	December 31, 2000.
31.3401(a)(6)-1(e), paragraph heading	*January 1, 2000*	*January 1, 2001.*
31.3401(a)(6)-1(e), first sentence	January 1, 2000	January 1, 2001.
31.3401(a)(6)-1(f), paragraph heading	*December 31, 1999*	*December 31, 2000.*
31.3401(a)(6)-1(f), first sentence	December 31, 1999	December 31, 2000.
31.3406(g)-1(e), first sentence	December 31, 1999	December 31, 2000.
31.3406(h)-2(d), penultimate sentence	December 31, 1999	December 31, 2000.
31.9999–0	January 1, 2000	January 1, 2001.

Section	Remove	Add
301.6114–1(b)(4)(ii)(C), introductory text	December 31, 1999	December 31, 2000.
301.6114–1(b)(4)(ii)(D)	December 31, 1999	December 31, 2000.
301.6724–1(g)(2) Q–11	January 1, 2000	January 1, 2001.
301.6724–1(g)(2) Q–11	April 1, 1998	April 1, 1999.
301.6724–1(g)(2) A–11	January 1, 2000	January 1, 2001.
301.6724–1(g)(2) A–11	April 1, 1998	April 1, 1999.
301.6724–1(g)(3), first sentence	December 31, 1999	December 31, 2000.
301.6724–1(g)(3), last sentence	January 1, 2000	January 1, 2001.
301.6724–1(g)(3), last sentence	April 1, 1998	April 1, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 21, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury. (Tax Policy).

[FR Doc. 99–33515 Filed 12–29–99; 8:45 am]

BILLING CODE 4830–01–P

PANAMA CANAL COMMISSION

35 CFR Chapter I, Subchapters B and C

Repeal of the Panama Canal Commission's General Regulations and Shipping and Navigation Regulations

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This action repeals the Commission's public regulations in the Code of Federal Regulations (CFR), Subchapters B (General Regulations) and C (Shipping and Navigation) and discontinues the U.S. Government's responsibility for health, sanitation, postal money orders, and shipping and navigation in the Panama Canal. This action does not terminate the Commission's liability for marine vessel claims which arise prior to Noon, December 31, 1999.

DATES: Effective 12:00 Noon, December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Jay Sieleman, Assistant General Counsel, Panama Canal Commission, Office of Transition Administration c/o U.S. Embassy, Panama APO AA 34002. The telephone number is 272–6625. The facsimile number is 272–6621.

SUPPLEMENTARY INFORMATION: In compliance with the Panama Canal Treaty of 1977 and Public Law 96–70, as amended, (22 U.S.C. 3601 *et seq.*) the United States Government will turn over the operation, maintenance, and management of the Panama Canal to the Government of Panama at Noon, December 31, 1999. The regulations published in 35 CFR subchapters B and C are directly related to the operation, maintenance and management of the Panama Canal or to functions performed by the Panama Canal Government prior to the Panama Canal Treaty of 1977. With the termination of the Commission's responsibility for these functions, the Commission is revoking the applicable regulations to avoid confusion on the part of customers seeking guidance on the use of the Panama Canal or its related areas.

Persons and organizations interested in obtaining information regarding the operation, maintenance and management of the Panama Canal after 12:00 Noon, December 31, 1999, should contact the Government of Panama agency established for these purposes. This agency is the Panama Canal Authority, Balboa, Ancon, Republic of Panama. The mailing address is: Panama Canal Authority, Office of General Counsel Marine Accident Claims, PCA GC-GCCL, P. O. Box 025413, Miami FL 33102–5413.

Persons or organizations with claims against the Panama Canal Commission for marine vessel accidents which arise prior to Noon, 31 December 1999, should contact David L. Terzian, Torts Branch, Civil Division, U.S. Department of Justice, 1425 New York Avenue, NW, Room 3046, Washington, DC 2005. The telephone number is (202) 616–4137.

This rule involves agency management functions and, therefore, is not subject to the procedures required by 5 U.S.C 553 and 801. It is also exempt from review under Executive Order 12866 but has been reviewed internally by the Commission to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. It does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

Authority: 22 U.S.C. 3602.

Accordingly, for the reasons set forth above, at noon, December 31, 1999, in accordance with the Panama Canal Treaty of 1977, 35 CFR chapter I is amended by removing subchapters B (parts 60 through 70) and C (parts 101 through 135).

Dated: December 23, 1999.

William J. Connolly,

Secretary, Panama Canal Commission.

[FR Doc. 99–33908 Filed 12–29–99; 8:45 am]

BILLING CODE 3640–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ98

Board of Veterans' Appeals: Rules of Practice—Revision of Decisions on Grounds of Clear and Unmistakable Error; Clarification

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals governing the revision of Board decisions on the grounds of clear and unmistakable error. By this amendment, we clarify that, in the case of a Board decision on more than one issue, the Board's decision on issues appealed to and decided by a court of competent jurisdiction is not subject to subsequent revision on the grounds of clear and unmistakable error, but the Board's decision on issues not appealed to or decided by a court of competent jurisdiction is subject to such revision.

DATES: *Effective Date:* February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: On May 19, 1998, we published a notice of proposed rulemaking in the **Federal Register** (63 FR 27534). We proposed to implement section 1(b) of Pub. L. 105–111 (Nov. 21, 1997), which permits challenges to Board of Veterans' Appeals (Board) decisions on the

grounds of clear and unmistakable error (CUE). In particular, because "it would be inappropriate for an inferior tribunal to review the actions of a superior," we proposed to codify at 38 CFR 20.1400(b) a provision stating: "A Board decision on an issue decided by a court of competent jurisdiction on appeal is not subject to revision on the grounds of [CUE]." 63 FR at 27536, 27539.

On January 13, 1999, we published the final rule, which became effective February 12, 1999 (64 FR 2134). Based on comments that § 20.1400(b) was unclear, we revised that provision with the intent that "our rule preclude[] a CUE challenge to a Board decision on an issue that has been subsequently decided by a court of competent jurisdiction, whether on direct appeal of that Board decision or on appeal of a subsequent Board decision on the same issue." 64 FR at 2136. However, the language of § 20.1400(b) stated: "All final Board decisions are subject to revision under this subpart except: (1) Those decisions which have been appealed to and decided by a court of competent jurisdiction; and (2) Decisions on issues which have subsequently been decided by a court of competent jurisdiction." *Id.* at 2139.

By inadvertently omitting the words "on issues" from § 20.1400(b)(1), we created an ambiguity in the case of a Board decision on more than one issue where fewer than all of the issues were appealed to and decided by a court. It was not clear whether § 20.1400(b)(1) insulated every issue in such a Board decision from CUE revision or whether it insulated only the issues appealed to and decided by the court. We intended, both in the proposed rule and in the final rule, that § 20.1400(b)(1) would insulate only the decision *on issues* appealed to and decided by a court. By reinserting the words "on issues" in § 20.1400(b)(1), we remove the ambiguity and clarify that, in the case of a Board decision on multiple issues, § 20.1400(b)(1) insulates from subsequent CUE revision only the Board's decision on issues appealed to and decided by a court, but not its decision on issues not appealed to the court. We are also removing the word "Those" to make paragraphs (1) and (2) of § 20.1400(b) parallel.

This document merely clarifies regulatory provisions. Therefore, in accordance with 5 U.S.C. 553, this final rule is exempt from prior notice-and-comment and delayed-effective-date provisions.

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: November 18, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

1. The authority citation for part 20 is revised to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

§ 20.1400 [Amended]

2. Section 20.1400(b)(1) is amended by removing "Those decisions" and adding, in its place, "Decisions on issues".

[FR Doc. 99–33995 Filed 12–29–99; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6478–1]

RIN 2040–AC76

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Available Cyanide in Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" under section 304(h) of the Clean Water Act by adding Method OIA–1677: Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry (hereafter Method OIA–1677). Method OIA–1677 employs flow injection analysis (FIA) to measure "available cyanide." Method OIA–1677 is an additional test procedure for measuring the same cyanide species as are measured by currently approved methods for cyanide amenable to chlorination (CATC). In some matrices, CATC methods are subject to test interferences. EPA is approving Method OIA–1677 because it is more specific for available cyanide, is more rapid, measures cyanide at lower concentrations, offers improved safety, reduces laboratory waste, and is more precise and accurate than currently approved CATC methods.

EFFECTIVE DATE: This regulation is effective on January 31, 2000. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Standard Time on January 13, 2000 in accordance with 40 CFR 23.2.

The incorporation by reference of Method OIA–1677 listed in the rule is approved by the Director of the Federal Register January 31, 2000.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this document) are available for review at the U.S. Environmental Protection Agency, Water Docket, 401 M Street SW., Washington, DC 20460. For access to docket materials, call 202–260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment.

Copies of Method OIA–1677 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or from ALPKEM, Box 9010, College Station, TX 77842–9010. The NTIS publication number is PB99–132011.

An electronic version of Method OIA–1677 is also available via the Internet at http://www.epa.gov/OST/Methods.

FOR FURTHER INFORMATION CONTACT: For information regarding Method OIA–1677, contact Maria Gomez-Taylor, Ph.D., Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, SW., Washington, DC 20460, or call (202) 260–1639.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authority, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection

of pollutants to be measured and, in many cases, limited in permits. If EPA has "approved" (i.e., promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permit must specify one of the approved testing procedures or an approved alternate test procedure. Permitting authorities may, at their discretion, require the use of any method approved at 40 CFR part 136 in the permits they issue. Therefore, dischargers with NPDES permits could be affected by the standardization of testing procedures in this rulemaking because NPDES permits may incorporate the testing procedures in today's rulemaking. In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the standardized testing procedures. Categories and entities that may ultimately be affected include:

Category	Examples of potentially regulated entities
Regional, State and Territorial Governments and Indian Tribes.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; Governmental NPDES permittees.
Industry	Industrial NPDES permittees.
Municipalities	Publicly-owned treatment works with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline of Preamble

I. Authority
II. Summary of the Final Rule
  A. Introduction
  B. Summary of Method OIA–1677
  C. Comparison of Method OIA–1677 to Current Methods
  D. Quality Control
  E. Performance-Based Measurement System
III. Improvements and Changes to Method OIA–1677 Since Proposal
IV. Public Participation and Response to Comments
  A. Definition of Cyanide
  B. Method Detection Limit
  C. Regulatory Compliance Implications of Method OIA–1677
  D. Proprietary Reagents
  E. Cyanide Species Measured
  F. Sample Pretreatment Issues
  G. Interferences
  H. Alternative Methods
  I. Data Quality
  J. Laboratory Safety
  K. Miscellaneous
V. References
VI. Regulatory Requirements
  A. Executive Order 12866
  B. Unfunded Mandates Reform Act
  C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  D. Paperwork Reduction Act
  E. Submission to Congress and the General Accounting Office
  F. National Technology Transfer and Advancement Act
  G. Executive Order 13045
  H. Executive Order 13132
  I. Executive Order 13084

I. Authority

EPA promulgates today's regulation pursuant to the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA) or the "Act," 33 U.S.C. 1314(h), 1317, and 1361(a). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his (her) function under this Act." EPA publishes CWA analytical methods regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, sections 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, sections 403.10 and 402.12).

II. Summary of the Final Rule

A. Introduction

Today's action makes available at 40 CFR part 136 an additional test procedure for measurement of available cyanide. Currently approved methods for measurement of available cyanide are based on sample chlorination. Method OIA–1677 uses a flow injection/ligand exchange technique to measure available cyanide. Although Method OIA–1677 and chlorination methods both measure available cyanide, it is possible that the results produced by the two techniques will vary slightly, as detailed in the proposed rule (63 FR 36809, July 7, 1998). EPA offers Method OIA–1677 as another testing procedure for several purposes, including permit applications and compliance monitoring under the NPDES program under CWA section 402; ambient water quality monitoring; CWA section 401 certifications; development of new effluent limitations guidelines, pretreatment standards, and new source performance standards; and for general laboratory use.

This rulemaking does not repeal any of the currently approved methods that test for available cyanide. For an NPDES permit, the permitting authority can decide which method is appropriate for the specific NPDES permit based on the circumstances of the particular effluent measured. If the permitting authority does not specify the method to be used for the determination of available cyanide, a discharger would be able to use Method OIA–1677 or any of the presently approved cyanide amenable to chlorination (CATC) methods.

B. Summary of Method OIA–1677

Method OIA–1677 is divided into two parts: sample pretreatment and cyanide quantification via amperometric detection. In the sample pretreatment step, ligand-exchange reagents are added to a 100-mL sample. The ligand-exchange reagents displace cyanide ions (CN^-) from weak and intermediate strength metallo-cyanide complexes.

In the flow-injection analysis system, a 200-µL aliquot of the pretreated sample is injected into the flow injection manifold. The addition of hydrochloric acid converts cyanide ion to hydrogen cyanide (HCN). The hydrogen cyanide diffuses through a membrane into an alkaline receiving solution where it is converted back to cyanide ion (CN^-). The amount of cyanide ion in the alkaline receiving solution is measured amperometrically with a silver working electrode, silver/silver chloride reference electrode, and platinum counter electrode at an applied potential of zero volt. The current generated in the cell is proportional to the concentration of cyanide in the original sample, as determined by calibration.

C. Comparison of Method OIA–1677 to Current Methods

Methods currently approved for determination of available cyanide all test for CATC. Although they represent the best methods available to date, these methods are prone to matrix interference problems. EPA considers Method OIA–1677 to be a significant addition to the suite of analytical testing procedures for available cyanide because it (1) has greater specificity for cyanide in matrices where interferences have been encountered using currently approved methods; (2) has improved precision and accuracy compared to currently approved CATC cyanide methods; (3) measures available cyanide at lower concentrations; (4) offers improved analyst safety; (5) shortens sample analysis time; and (6) reduces laboratory waste.

Method OIA–1677 is not subject to known interferences from organic species. The flow-injection technique of Method OIA–1677 excludes known interferences, except sulfide. Sulfide is eliminated by treating the sample with lead carbonate and removing the insoluble lead sulfide by filtration prior to introduction of the sample to the amperometric cell used for cyanide detection.

Method OIA–1677 was tested against and compared to two existing cyanide methods: EPA Method 335.1, an EPA-approved CATC method, and Standard Method (SM) 4500 CN^-I, a weak-acid dissociable (WAD) cyanide method. Comparative recovery and precision data were generated from simple metallo-cyanide species in reagent water. Recovery and precision of each method was comparable for the easily dissociable cyanide species. Results of these tests were included in the docket at proposal (63 FR 36809, July 7, 1998). Method OIA–1677 showed superior precision and recoveries of mercury cyanide complexes.

While EPA Method 335.1 does not specify a method detection limit, colorimetric detection is "sensitive" to approximately 5 µg/L. The method detection limit (MDL), as determined in a multi-laboratory study using the procedures described at 40 CFR part 136, appendix B, is 0.5 µg/L for Method OIA–1677.

Method OIA–1677 offers improved analyst safety for two reasons. The first reason is the reduced generation of hydrogen cyanide gas, a highly toxic compound. Although the proposed flow-injection analysis (FIA) method and currently approved CATC methods all generate HCN, the currently approved methods generate a larger quantity of gas during distillation in an open distillation system. As such, extra care is necessary to prevent accidental release of HCN into the laboratory atmosphere. Method OIA–1677 possesses an advantage because it tests a much smaller sample and, therefore, generates significantly less HCN than currently approved methods. In addition, the gas is contained in a closed system with little possibility for release. The second safety improvement is the reduced use of hazardous substances. Currently approved CATC methods require use of hazardous substances in the distillation and color developing processes. These hazardous substances include hydrochloric acid, pyridine, barbituric acid, chloramine-T, and pyrazolone. Method OIA–1677 requires only hydrochloric acid and at a much lower concentration than used in CATC procedures.

Method OIA–1677 offers a reduced analysis time, which should increase sample throughput in the laboratory. Method OIA–1677 uses automated mixing of the sample with hydrochloric acid and exposure to the gas diffusion membrane to determine the sample concentration. This process takes approximately two minutes per sample. As a comparison, EPA Method 335.1 requires a one-hour distillation procedure plus the time necessary to add and develop the sample color to determine the presence of cyanide.

Less laboratory waste is generated in Method 1667 because it requires a much smaller sample size for testing. EPA Method 335.1 requires handling a sample size of 500 mL for distillation. Method OIA–1677 requires the addition of the ligand exchange reagents to 100 mL of sample, from which 40 to 250 µL are used for analysis. This reduces the amount of both hazardous sample and toxic reagents that must be handled and subsequently disposed.

D. Quality Control

The quality control (QC) in Method OIA–1677 is more extensive than the QC in currently approved methods for CATC. Method OIA–1677 contains all of the standardized QC tests proposed in EPA's streamlining initiative (62 FR 14976, March 28, 1997) and used in the 40 CFR part 136, appendix A methods. An initial demonstration of laboratory capability is required and consists of (1) an MDL study to demonstrate that the laboratory is able to achieve the MDL and minimum level of quantification (ML) specified in Method OIA–1677; and (2) an initial precision and recovery (IPR) test, consisting of the analysis of four reagent water samples spiked with the reference standard, to demonstrate the laboratory's ability to generate acceptable precision and recovery. An important component of these and other QC tests required in Method OIA–1677 is the use of mercuric cyanide ($Hg(CN)_2$) as the reference standard for spiking. Mercuric cyanide was chosen because it is fully recovered in Method OIA–1677 and weak-acid dissociable (WAD) methods, whereas mercuric cyanide is only partially recovered in the CATC method. Therefore, mercuric cyanide demonstrates the ability of the ligand-exchange reagents to liberate cyanide from moderately strong metal-cyano complexes. Method OIA–1677 requires the use of standards of known composition and purity, which facilitates more accurate determination of recovery and precision and minimizes variability that may be introduced from spiking substances of unknown or indeterminate purity.

Ongoing QC consists of the following tests that would need to accompany each analytical batch, i.e., a set of 10 samples or less pretreated at the same time:

- Verification of calibration of the flow injection analysis/amperometric detection system, to verify that instrument response has not deviated significantly from that obtained during calibration.
- Analysis of a matrix spike (MS) and matrix spike duplicate (MSD) to demonstrate method accuracy and precision and to monitor matrix interferences. $Hg(CN)_2$ is the reference standard used for spiking.
- Analysis of a laboratory blank to demonstrate freedom from contamination.
- Analysis of a laboratory control sample to demonstrate that the method remains under control.

Method OIA–1677 contains QC acceptance criteria for all QC tests. Compliance with these criteria allows a data user to evaluate the quality of the results. This increases the reliability of results and provides a means for laboratories and data users to monitor analytical performance, thereby providing a basis for sound, defensible data.

E. Performance-Based Measurement System

On March 28, 1997, EPA proposed a rule (62 FR 14976) to streamline approval procedures and use of analytic methods in water programs through a performance-based approach to environmental measurements. On October 7, 1997, EPA published a Notice of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all

media programs to the extent feasible (62 FR 52098). EPA's water program offices are developing plans to implement PBMS. Although EPA has not yet promulgated a final rule to implement PBMS in water programs, Method OIA–1677 incorporates the QA and QC acceptance criteria to be used as a basis for assessment of method performance. When PBMS is in place, Method OIA–1677 could serve as a reference method for demonstrating equivalency for subsequent modifications to the method.

The analyst has flexibility to modify the Method provided all performance criteria are met. Demonstrating equivalency involves two sets of tests, one set with reference standards and the other with the sample matrix. In addition, if the detection limit would be affected by the modification, performance of an MDL study would be required to demonstrate that the modified procedure could achieve an MDL less than or equal to the MDL in Method OIA–1677 or, for those instances in which the regulatory compliance limit is greater than the ML in the method, one-third the regulatory compliance limit. (For a discussion of these levels, see the streamlining proposal (62 FR 14976, March 28, 1997).)

III. Improvements and Changes to Method OIA–1677 Since Proposal

EPA has revised Method OIA–1677 based on comments received on the proposal (63 FR 36809, July 7, 1998). Minor changes were made to correct typographical errors and for clarification:

- Section 4.5 was reworded to clarify how to mitigate sulfide ion interference.
- Potassium nickel (II) cyanide, a quality control reagent was added as section 7.5.
- Mercury (II) cyanide stock solution (section 7.12.1) mixing directions were rewritten to better explain the steps.
- Section 8.2.1 was revised to require that samples that contain particulate matter be filtered prior to sulfide removal and that the particulate matter be recombined with the treated filtrate prior to shipment to the laboratory. This procedure is necessary to assure that cyanide associated with particulate matter will be included in the measurement.
- Laboratory control sample (LCS) of the mercury (II) cyanide stock solution was described more concisely.
- A note was added to section 11 to explain ligand-exchange reagents and their use.
- Reference materials were updated in section 15.
- In Table 2, units were corrected from mg/L to μg/mL CN^-.
- A definition for "discharge" was added under section 18.2.
- The sections on Pollution Prevention and Waste Management were separated and expanded.
- Section 12.2 was reworded to clarify the reporting of analytical results.

IV. Public Participation and Response to Comments

EPA proposed Method OIA–1677 for use on July 7, 1998 (63 FR 36809). The public comment period closed on September 8, 1998. Significant comments are summarized below, along with EPA's responses. To the extent practicable, the comments have been categorized by subject. Detailed comments and their accompanying responses are included in the Docket for today's final rule.

EPA thanks commenters for constructive suggestions. EPA believes that the version of Method OIA–1677 promulgated today will provide reliable data for compliance monitoring.

A. Definition of Cyanide

Comment: The endorsement by EPA of yet another operational method, in this case what its developers term "available cyanide," does not resolve the confusion that exists regarding the appropriateness of the various cyanide measurements for discharge permits and water quality assessments.

Response: EPA explained use of the term "available cyanide" in the preamble to the proposal of Method OIA–1677. The term "available cyanide" reflects that it is the cyanide species available for dissociation that is measured by Method OIA–1677. The same cyanide species are measured by the CATC and WAD methods. In today's document, EPA further clarifies that "available" cyanide includes "cyanide amenable to chlorination" and "weak-acid dissociable" cyanides. EPA continues to use the term "total cyanide" for cyanides determined after total distillation. The reason that a change to "available" cyanide was necessary is that the chlorination reaction used in methods for "cyanide amenable to chlorination" is not used in Method OIA–1677. The term "weak-acid dissociable" (WAD) cyanide was considered but not used in anticipation that future methods could use technologies other than weak-acid dissociation.

B. Method Detection Limit

Comment: If EPA wishes to expand the use of the method detection limit (MDL) approach for the new purpose of deriving a detection level for Method OIA–1677, the Administrative Procedure Act (APA) demands that it provide the public an opportunity to review and comment on the justification for that decision.

Response: EPA has used the MDL procedure, as described at 40 CFR part 136, appendix B, for the purpose of deriving detection limits in analytical methods for the past 20 years. Use of the MDL procedure for this purpose is therefore not new. By proposing Method OIA–1677 and including the MDL therein, EPA provided the public the opportunity for review and comment on the MDL in Method OIA–1677 and the data that support this MDL estimate.

EPA has used the MDL successfully for estimating the lowest level at which a substance can be detected since the peer-reviewed article on the MDL was published in 1980 (Environmental Science and Technology 15 1426–1435). The MDL procedure is subjected to public comment with every MDL that EPA publishes in nearly every method proposed in the **Federal Register** for use in EPA's various programs. The MDL procedure is referenced in those methods. The MDL procedure has widespread acceptance and use throughout the analytical community. No other detection or quantitation limit procedure or concept has achieved this level of acceptance and use.

Comment: Effluent limitations should never be imposed in an enforceable manner below concentrations at which accurate and consistent measurement is possible. EPA must adequately justify the manner in which it proposes to derive detection and quantification levels. EPA has failed to justify its proposal and to allow for public comment.

Response: EPA proposed to approve Method OIA–1677 as an additional test procedure for use in its water programs. This new analytical method is more sensitive than currently approved methods for the determination of available cyanide and, therefore, EPA believes that this method is suitable for accurate and consistent measurements. The performance of this method was demonstrated through an inter-laboratory validation study. The manner in which EPA derives detection and quantitation levels is through use of the MDL procedure published at 40 CFR part 136, appendix B. EPA has used the minimum level of quantitation (ML) in previous rulemakings. The ML is consistent with the limit of quantitation (LOQ) developed by the American Chemical Society. EPA allows comment on the derivation of detection and

quantification levels through the public comment process every time it proposes a new method. EPA is currently evaluating different approaches to detection and quantification, and may propose one or more alternate approaches in a future rulemaking.

C. Regulatory Compliance Implications of Method OIA–1677

Comment: EPA should clarify that Method OIA–1677 does not indicate that the species measured represent an environmental risk, and that the method should not be used by regulators for measuring the risk associated with particular cyanide species.

Response: Today's action approves Method OIA–1677 for use in CWA programs because EPA believes that Method OIA–1677 can be used for reliable determination of available cyanide. Analytical methods measure the presence and concentration of pollutants, not risk. In this case, Method OIA–1677 measures dissociable cyanide species.

Comment: A better measurement of toxicological significance is needed. A regulatory view based on the presence or absence of "available cyanide" would not be reflective of environmental conditions that may affect biological organisms. Cyanide species-specific methods, such as ion chromatography and the ASTM diffusible cyanide method, provide more scientifically defensible data. EPA and/or instrument manufacturers should pursue development of such techniques as EPA approved methods. For acute toxicity determination, the "free cyanide" method by microdiffusion may well be the best approach since it measures HCN and CN species.

Response: Measurements of toxicological significance and improved tests for toxicological significance are beyond the scope of Method OIA–1677. Method OIA–1677 was developed as an alternative to currently approved methods that measure dissociable cyanide species.

Regarding cyanide-specific methods such as ion chromatography and diffusible cyanide, EPA believes that these methods may have utility in toxicological testing. However, for testing of wastewaters, methods such as Method OIA–1677 and the total cyanide methods have the advantage that they capture multiple cyanides in a single measurement. These methods are generally less expensive to practice than those methods that resolve the various cyanide forms and species. However, if an instrument manufacturer, discharger, or other interested entity desires to pursue approval of one or more of the cyanide-specific methods, the entity may submit the method under EPA's alternate test procedure program described at 40 CFR part 136.

Comment: The proposed rule section on regulatory effects is erroneous. Method OIA–1677 will likely produce a result higher than the result produced by a CATC method if a cyanide of nickel, mercury, or silver is present at a high enough concentration. In this instance a permit limit for cyanide would probably be violated.

EPA must provide specific regulatory language regarding comparison of inconsistent results which impact compliance. EPA recognizes that the new method and the CATC method can produce different results. For example, if a discharger uses the CATC method which shows compliance, while a regulator uses the new method which indicates a violation, EPA suggests that the discharger refer to the preamble language of the proposed rule to convince the regulator that no violation has occurred. As EPA is aware, preamble language is not binding authority as is the actual regulatory language.

Response: In the proposed rule, EPA stated that interferences in the CATC methods can produce an inflated result for cyanide and that Method OIA–1677 is nearly immune to the interferences that inflate results from CATC methods. Therefore, the result of an analysis using Method OIA–1677 will nearly always be lower, and therefore closer to the true value for cyanide than a result from an analysis using a CATC method. EPA detailed the only exception to this situation as an analysis in which interferences are not present but certain cyanides of nickel, mercury, or silver are present at concentrations greater than 2 mg/L. At these concentrations, Method OIA–1677 recovers these cyanides at near 100 percent whereas the CATC methods recover them at 55–85 percent, resulting in concentrations that could be 15–45% greater with Method OIA–1677. The scenario described at proposal is very unlikely because the difference in recoveries are not that significant at permit quantities.

Therefore, in order for a violation to occur, a cyanide of nickel, mercury, or silver would need to be present at greater than 2 mg/L, there would need to be no interferences present, and the permit limit would need to be 2 mg/L or greater. EPA believes that this situation is highly unlikely and believes that, if it ever should occur, it can be handled on a case-by-case basis. Regarding differential use of methods by the permittee and the regulatory authority, EPA notes that permits often specify a particular test method to measure compliance. Compliance with a permit constitutes compliance with the CWA. Dischargers will be held accountable for results from the methods specified in their permits.

D. Proprietary Reagents

Comment: The use of a proprietary reagent as a chelating agent in a significant step in the procedure is an unfortunate precedent in what is supposed to be a scientific process.

Response: While Method OIA–1677 employs proprietary reagents, the method clearly states that changes to the method (including use of alternative reagents) can be made provided that the analyst demonstrates that the performance achieved is equivalent or superior to the performance of the unmodified method. The process for demonstrating acceptable performance is specified in section 9 of the Method.

Comment: As presented at the 19th U.S. EPA Conference on Analysis of Pollutants in the Environment (J.R. Sebroski, Bayer Corporation), the proprietary ligand exchange reagents used in the proposed method can suffer from false positive results if the sample is not injected into the flow injection system immediately. For example, after 12 hours residence time in reagent water, the combination of Ligand Exchange Reagent A and B showed an average of 7.57 µg/L cyanide.

Response: The ligand exchange reagents should be tested in NaOH solution, similar to the testing of cyanide samples (pH 12). The method developer has shown that signals due to the reagents are less than the minimum level (ML) of Method OIA–1677 provided the samples are analyzed within 2 hours of reagent addition. Method OIA–1677 has been modified to include statements that specify that the reagents have an approximate lifetime of 6 months after opening, that the reagents should be stored in a refrigerator at 0–4 °C, and that samples should be analyzed within 2 hours of adding the ligand-exchange reagents. This is sufficient time for sample preparation even if an auto-sampling system is utilized. Supporting data are included in the docket for the final rule.

Comment: In order to evaluate the efficiency of a front-end method change or the use of "equivalent" ligand exchange reagents, mercury (II) cyanide alone would not be sufficient to demonstrate method equivalency, since this only verifies ligand exchange reagent B and not ligand exchange reagent A which specifically displaces the cyanide species containing nickel. In order to alleviate the problem, several

ligand exchange reagents from the literature were evaluated for their effectiveness to displace nickel and mercury cyanide species with Method OIA–1677 because the composition of the proprietary reagents is unknown. Our research revealed that tetraethylenepentamine (TEP) and dithizone (diphenylthiocarbazone) were effective at displacing the cyanide species containing nickel and mercury, respectively, up to 400 µg/L as CN^-. The TEP and dithizone combination of ligand exchange reagents did not suffer from any interferences or false positive results, and the reagents have a shelf-life of approximately 6 months.

Response: EPA agrees and has revised Method OIA–1677 to state that a modification to the method must be demonstrated on the cyanide species to which the modification will be applied.

E. Cyanide Species Measured

Comment: While Method OIA–1677 demonstrates some performance characteristics superior to currently available methods (notably the speed of the procedure), cyanide chemistry is too complex to generalize that the proposed method measures the "same cyanide species" as the CATC method or that the species measured under either test reflect actual environmental risk.

Response: Based on the information presented in section II C of the preamble at proposal (63 FR 36810) and data presented in the literature (Environmental Science and Technology, 1995, Vol. 29, 426–430) and at technical conferences (Goldberg, *et al.*; Goldberg and Clayton), and with the exceptions noted in the preamble at proposal and detailed in a response to Comment IV C above, Method OIA–1677 and the CATC and WAD methods measure the same cyanide species.

Comment: A fundamental difficulty with the determination of various forms of cyanide is that the analytical methods in use are not defined in terms of specific cyanide species being measured, but rather in terms of whatever the analytical method reports.

Response: EPA agrees. Method OIA–1677 is actually the first method available that can be defined in terms of the cyanide species being measured because it recovers cyanide completely throughout the analytical range of the Method (2 µg/L to 5000 µg/L) from the following cyano-species: HCN, CN^-, $[Zn(CN)_4]^{2-}$, $[Cd(CN)_4]^{2-}$, $[Cu(CN)_4]^{3-}$, $[Ag(CN)_2]^-$, $[Ni(CN)_4]^{2-}$, $[Hg(CN)_4]^{2-}$ and $Hg(CN)_2$. In addition, the recoveries are concentration independent, which is not the case with either the CATC or WAD procedures.

Comment: We believe that the characterization of WAD and CATC analytical methods as deficient is inappropriate because the methods themselves provide operational definitions of cyanide species that comprise weak-acid dissociable cyanide. As such, the fact that the EPA Method OIA–1677 recovers additional metal cyanide complexes does not qualify it as better or more appropriate.

Response: The WAD and CATC methods are not deficient because they provide an operational definition of cyanide species that comprise weak-acid dissociable cyanide. Rather, the CATC and WAD methods are merely more susceptible to known interferences. The discussion in the preamble of the proposed rule illustrated the problems with the methods that utilize distillation to separate the analyte from potential interferences. Also, Method OIA–1677 does not recover cyanide from additional metal complexes when compared to the WAD and CATC procedures. Rather, it recovers the same metal cyano complexes completely (100%) throughout the analytical range of the method whereas the WAD and CATC procedures recover these species only partially at high concentrations.

F. Sample Pretreatment Issues

Comment: The method currently does not supply any information on the amount of lead carbonate to be used to eliminate sulfide interference.

Response: The amount of lead carbonate needed depends on the amount of the sulfide interference in each sample. Because the concentration of the sulfide interference is not known in advance, the amount of lead carbonate needed must be determined by the analyst or sampler.

Comment: Please clarify what preservation must be performed in the field and what preservation can take place back in the laboratory. For example, must the lead acetate paper test, lead carbonate treatment, and filtration for sulfide be performed in the field?

Response: All preservation must be performed at the time of sampling due to rapid degradation of cyanide in unpreserved samples. If the sample can be transported to a laboratory or other facility within 15 minutes of sampling, preservation may be performed in the laboratory or other facility. See footnote 4 to Table II in 40 CFR 136.3 (e) for information on preservation.

Comment: The procedure for sulfide containing samples is confusing. Is there a concentration below which suspected sulfide ion is not a problem? The method indicates that two samples "should" be collected and that both samples "must" be analyzed. Is collecting two samples optional or required? When two samples are collected and analyzed, which result should be reported? Or, should both results be reported? If the samples are tested within 24 hours, is one sample sufficient?

Response: EPA does not know the concentration below which sulfide is not a problem. Collection of two samples is required if sulfide ion is not detected by the lead acetate paper test (See section 8.2.1 of the method). If sulfide ion is detected and removed with lead carbonate, the collection and analysis of a second sample is not required. The result that must be reported is the lower of the two results because the presence of sulfide ion will inflate a result. One sample is sufficient if tested within 24 hours, per footnote 6 of Table II at 40 CFR 136.3(e).

Comment: Paragraph II F is totally misleading when it states that "Method OIA–1677 takes approximately two minutes to perform," as this time does not include pretreatment (*e.g.*, filtering to eliminate interference from sulfide).

Response: Pretreatment to remove sulfide interferences is performed at the time of sampling (usually in the field) and the time to perform this pretreatment is not included in analysis time for Method OIA–1677. Analysis of the sample using Method OIA–1677 is performed in the laboratory.

G. Interferences

Comment: The preamble at proposal of Method OIA–1677 states that the Method is not subject to interferences from organic species. While we suspect that the interference that we have encountered may be due to a release of a sulfur-containing or other inorganic gas through the membrane from the acidic flow stream, we cannot be sure that it is not caused by a volatile organic compound.

Response: EPA does not know if the interference that the commenter is experiencing is a volatile organic compound or a sulfur-containing or other inorganic gas. To date, EPA has not had any reports of interference from organic species. However, one of the developers of Method OIA–1677 speculates that if the electrochemistry at the silver working electrode and the volatility of certain organic species are examined, some interferences from organic species could be encountered. For examples, acetonitrile (CH_3CN) could possibly pass through the membrane and would almost certainly aid the oxidation of silver at the

working potential, producing an analytical signal; low molecular weight aliphatic mercaptans might also pass through the membrane and be active at the working electrode. As a result of these possibilities, EPA believes that it is appropriate to modify its previous statement to state that interference from organic compounds may be possible but that EPA does not have evidence of such organic interferences to date.

Comment: Use of Method OIA–1677 in the precious metal ore process offers significant improvements over CATC methods with respect to interferences from thiocyanate, sulfide, carbonates, formaldehyde, and metals. While CATC might result in lower cyanide concentrations due to lower metal recoveries, the advantages of Method OIA–1677 with respect to the above interferences should be clarified in the preamble. Mines should be given every opportunity to use the method that provides the best defensible analytical results for those cyanide complexes present in precious metal ore process solutions.

Response: EPA recognizes the significant advantages of Method OIA–1677 over existing methods with respect to interferences. Section IIB–D of the preamble at proposal discussed the interference problems with current methods and the advantage of Method OIA–1677 (63 FR 36811–36812). In section IIE of that preamble, EPA stated that use of Method OIA–1677 will likely produce a lower result than the CATC methods because it is nearly interference free. EPA's approval of Method OIA–1677 includes its use for the precious metal ore processing industry and for other industries.

H. Alternative Methods

Comment: Any effort funded by EPA and its contractors should result in the technology and methodology that is freely available and fully described via publications of voluntary consensus standards bodies or via scientific literature. Method OIA–1677 is neither of these things. The ASTM method is, by the Rule's own admission, required to take precedence over any method developed by a single vendor by the requirement of the National Technology Transfer and Advancement Act (NTTAA) of 1995.

Response: EPA did not fund the development of Method OIA–1677. Other than identifying test samples and offering assistance to the method developer on the requirements for validation described in EPA's streamlining proposal (62 FR 13976, March 28, 1997), EPA did not participate in the development of Method OIA–1677. Details of the technology in Method OIA–1677 were published in the scientific literature (Environmental Science and Technology, 1995, 29, 426–430). The NTTAA requires EPA to consider methods from voluntary consensus standard bodies, and to provide a justification if an available method is not selected.

To date, ASTM has not approved a flow-injection, ligand-exchange method for available cyanide. If ASTM or any other voluntary consensus standard body (VCSB) approves such a method and the quality control and other features of the method meet EPA's requirements, EPA may propose the VCSB method in a future rulemaking.

I. Data Quality

Comment: In 6 of 9 samples in Table 3 on page 36823, the added CN concentrations are 30 times higher than the background concentrations of cyanide in the sample. This ratio seems excessive for calculating spike recoveries.

Response: Because all samples tested, except the mining tailings pond effluent, had low or undetectable concentrations of cyanide, EPA recommended to the method developer that the range of concentrations tested in the round-robin should encompass the dynamic range of the method (2 to 5000 µg/L) so that the efficacy of the ligand-exchange reagents in high concentration samples could be evaluated and so that spike recoveries could be determined reliably. Therefore, some samples were spiked at concentrations considerably above the background concentration of cyanide.

Comment: Method OIA–1677 will not improve data quality.

Response: Method OIA–1677 is less susceptible to interferences than other methods for available cyanide, including CATC and WAD methods. Therefore, Method OIA–1677 will not subject dischargers to violations for those instances in which an interference with a CATC or WAD method would inflate a cyanide concentration above a permit limit. EPA believes that any method that is less susceptible to interferences and thereby comes closer to determining the true value of a pollutant will improve the quality of analytical data.

J. Laboratory Safety

Comment: EPA promotes the use of mercury cyanide for spiking without any discourse on laboratory safety or disposal problems. Current methods use potassium cyanide for spiking whereby cyanide is the only hazardous substance. However, with mercuric cyanide, there is not only cyanide to consider, but now also mercury. Does it make sense to replace a "singly" hazardous compound with a "doubly" hazardous compound?

Response: Mercuric cyanide was chosen because the CATC and WAD methods do not completely recover cyanide from these species, whereas Method OIA–1677 does, and because mercuric cyanide exercises the ligand-exchange reagents used in Method OIA–1677. All methods for determination of cyanide generate cyanide waste and the metal in these wastes is not identified in cyanide determination. Therefore the wastes from all methods must be treated as hazardous unless it is shown that cyanide is not present above disposable levels. Section 14.0 of Method OIA–1677 requires proper handling and disposal of these wastes.

K. Miscellaneous

Comment: To date, there have not been contract laboratories set up to run proposed Method OIA–1677 and there are no commercial laboratories in the U.S. set up to run the new test method.

Response: There are numerous laboratories in the U.S. that have the instrumentation and can run Method OIA–1677 as written. Nine of these laboratories participated in the round-robin study. Generally, laboratory capacity expands after a method is approved for use in EPA's programs. EPA is not requiring use of Method OIA–1677 in any rules or withdrawing approval for use of any of the methods presently approved. EPA is simply approving another method for use at 40 CFR part 136.

Comment: The text clearly states that samples with cyanide concentrations higher than 2 mg/L will be reported with a high bias whenever Method OIA–1677 is used. For samples with cyanide concentrations less than 0.2 mg/L, the CATC and Method OIA–1677 methods report approximately the same values. Because most environmental samples have cyanide concentrations less than 0.2 mg/L, *e.g.*, the Safe Drinking Water Act (SDWA) maximum contaminant level (MCL), what is the advantage of Method OIA–1677?

Response: The bias that occurs with high concentrations of certain cyanides was addressed above in section IV C. Regarding the advantage of Method OIA–1677 over other approved methods for cyanides, EPA has documented through the round-robin validation study that Method OIA–1677 offers significant advantages over existing distillation-based methods, including speed, freedom from interferences that

may occur in highly complex wastewater matrices, and complete recovery of metal cyano complexes.

Comment: What is the validity of the section III C item 5 of the preamble: "EPA considers Method OIA–1677 to be a significant addition to the suite of analytical testing procedures for available cyanide because it * * * (5) shortens sample analysis time" because of the 120 second analysis time of Method OIA–1677 versus the 90 second analysis time of another cyanide analysis method (Alpken's Colorimetric RFA)?

Response: Method OIA–1677 has the shortest analysis time of any method approved for determination of available cyanide. Alpken's Colorimetric RFA method, cited in the comment, is not approved for use at 40 CFR part 136.

V. References

1. Solujic, Lj.; Milosavljevic, E.B.; Hendrix, J.L.; Straka, M.R.; Gallagher, N.P.; "Cyanide Determination Methods: Distillation vs. Flow Injection Analysis," Randol Gold Forum '96, Squaw Creek, CA, April, 1996, 167–173.

2. Beck, M.T.; "Critical Survey of Stability Constants of Cyano Complexes," Pure & Appl. Chem. 1987, 59, 1703–1720.

3. Milosavljevic, E.B.; Solujic, Lj.; Hendrix, J.L.; "Rapid Distillationless 'Free Cyanide' Determination by a Flow Injection Ligand Exchange Method," Environ. Sci. & Technol. 1995, 29, 426–430.

4. J.C. Wilmot, *et al.*; "Formation of Thiocyanate During Removal of Sulfide as Lead Sulfide Prior to Cyanide Determination," Analyst, 1996, 121, 799–801.

5. Goldberg, M.M.; Clayton, C.A.; Potter, B.B.; "The Effect of Multiple Interferences on the Determination of Total Cyanide in Simulated Electroplating Waste by EPA Method 335.4," Proceedings of The Seventeenth Annual EPA Conference On Analysis Of Pollutants in the Environment, Norfolk, VA, 1994, pp. 395–427.

6. Goldberg, M.M. and Clayton, C.A.; "Effects of Metals, Ligands, and Oxidants on Cyanide Analysis: Gold Mining Waste Case Study," Proceedings of The Eighteenth Annual EPA Conference On Analysis Of Pollutants in the Environment, Norfolk, VA, 1995, pp. 87–126.

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or Tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule would impose no enforceable duty on any State, local or Tribal governments or the private sector, nor would it significantly or uniquely affect them. This rule makes available an additional analytical test procedure which would merely augment the testing options and standardize the procedures when testing is otherwise required by a regulatory agency. Therefore, today's rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, we defined: (1) Small businesses according to SBA size standards; (2) small governmental jurisdictions as governments of a city, county, town, school district or special district with a population less than 50,000; and (3) small organizations as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This final rule approves an additional testing procedure for the measurement of available cyanide in wastewater. However, this regulation does not require its use. Rather, the final rule merely provides another option because any of the testing procedures currently approved at 40 CFR part 136 can be used if monitoring is otherwise required for this pollutant under the CWA.

D. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, no information collection request has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on January 31, 2000.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards for measuring "available cyanide," and none were brought to our attention in comments. Therefore, EPA has decided to use Method OIA–1677.

The American Society of Testing and Materials (ASTM) is in the balloting process for approval of a voluntary consensus standard method for "available cyanide." The ASTM method may differ slightly from Method OIA–1677. If ASTM or another voluntary consensus standard body approves such a method and EPA determines that the method is suitable for compliance monitoring and other purposes, EPA would promulgate the method in a subsequent rulemaking.

G. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866.

H. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule merely approves an additional testing procedure for the measurement of available cyanide in wastewater. Today's action does not, however, require use of the alternative method. The rule provides laboratory analysts with another option to the list of currently approved testing procedures 40 CFR part 136, which can be used if monitoring is otherwise required for this pollutant under the CWA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084

Under Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives

of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Further, this rule does not impose substantial direct compliance costs on Tribal governments. This rule makes available an additional testing procedure which would be used when testing is otherwise required by a regulatory agency to demonstrate compliance with permit limits for cyanide. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 20, 1999.

Carol M. Browner,

Administrator.

In consideration of the preceding, EPA amends 40 CFR part 136 as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation of 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended in paragraph (a), Table IB.—List of Approved Inorganic Test Procedures, by revising entry 24 and adding a new footnote 44 and by adding a new paragraph (b)(43) to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1 35]	STD methods 18th ed.	ASTM	USGS [2]	Other
* * *	*	*	*	*	*
24. Available Cyanide, mg/L					
Cyanide amenable to chlorination (CATC), Manual distillation with $MgCl_2$ followed by titrimetry or spectrophotometry.	335.1	4500–CN G	D2036–91(B).		
Flow injection and ligand exchange, followed by amperometry.					[44] OIA–1677
* * *	*	*	*	*	*

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., *et al.*, "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals."

[44] Available Cyanide, Method OIA–1677 (Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry), ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842–9010.

(b) * * *

(43) Method OIA–1677, Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry. August 1999. ALPKEM, OI Analytical, Box 648, Wilsonville, Oregon 97070 (EPA–821–R–99–013). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB99–132011. Cost: $22.50. Table IB, Note 44.

[FR Doc. 99–33627 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6516–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA), Region 8, announces the deletion of the Monticello Radioactive Contaminated Properties Site (Site), located in Monticello, Utah, from the National Priorities List (NPL). The NPL is the National Oil and Hazardous Substances Pollution and Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). EPA, with the preliminary concurrence of the State of Utah Department of Environmental Quality (UDEQ), has determined that responsible parties have implemented all appropriate response actions required and that no further response at the Site is appropriate.

DATES: This direct final rule will be effective February 28, 2000, unless EPA receives significant adverse or critical comments by January 31, 2000. If significant adverse or critical comments are received, EPA will publish a timely withdrawal of the direct final rule in the

Federal Register informing the public that the Rule will not take effect.

ADDRESSES: Comments may be mailed to: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 312–6664.

Information repositories: Comprehensive information on the Site is available for viewing and copying at the Site information repositories at the following locations: U.S. Department of Energy Grand Junction Office Public Reading Room, 2597 B¾ Road, Grand Junction, Colorado 81503, (970) 248–6344; Monticello City Offices, 17 North First East Street, Monticello, Utah 84535, (435) 587–2271.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6664; Mr. Joel Berwick, Project Manager, U.S. Department of Energy, 2597 B¾ Road, Grand Junction, Colorado, 81503, (970) 248–6020; Mr. David Bird, Project Manager, State of Utah Department of Environmental Quality, 168 North 1950 West, Salt Lake City, Utah, 84116, (801) 536–4219.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis For Site Deletion
V. Action

I. Introduction

The United States environmental Protection Agency (EPA), Region 8, announces the deletion of the releases from the Monticello Radioactive Contaminated Properties Site (Site), located in Monticello, Utah, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As stated in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for further remedial actions financed by the Hazardous Substances Superfund (Fund), should future conditions at a site warrant such action.

EPA will accept comments concerning this action for 30 days after publication of this document in the **Federal Register**. If no significant adverse or critical comments are received, the Site will be deleted from the NPL effective February 28, 2000. However, if significant adverse or critical comments are received within the 30 day comment period, EPA will publish a notice of withdrawal of this direct final rule within 60 days of publication of this direct final rule. All public comments received will be addressed in a subsequent final rule, if appropriate, based on the Proposal to Delete located in the proposed rules section of this **Federal Register**. If, after consideration of the public comments, EPA proceeds with a subsequent final rulemaking, a second public comment period will not be instituted. Any parties interested in commenting should do so at this time.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures EPA is using for this action. Section IV discusses the Site and how the Site meets the deletion criteria. Section V states EPA's action to delete the Site from the NPL.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA must consider, in consultation with the state in which the release was located, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a release is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site that has been deleted from the NPL, the site will be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion of the Site:

(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate;

(2) EPA provided the State of Utah at least 30 working days for review of this Direct Final Rule prior to its publication in the **Federal Register**.

(3) Concurrent with publication of this direct final rule, a notice of availability of this action is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local officials and other interested parties. The notice of availability announces the 30-day public comment period concerning the deletion.

(4) EPA has placed copies of information supporting the deletion in the information repositories which are available for public inspection and copying.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management.

EPA Region 8 will accept and evaluate public comments on this direct final rule before making a final decision. If necessary, EPA will prepare a responsiveness summary to address any significant public comments received. If no significant adverse or critical comments are received during the comment period, the Site will be deleted from the NPL effective February 28, 2000.

IV. Basis For Site Deletion

The following information provides the EPA's rationale for deleting this Site from the NPL:

A. Site Background and History

The Site, which is also commonly referred to as the Monticello Vicinity Properties Site, is located in the City of Monticello, San Juan County, Utah, approximately 65 miles south of Moab, Utah. The Site consists of private and commercial properties covering approximately nine square miles in and around the City of Monticello. Four hundred and twenty-four (424) properties, divided into Operable Units (OUs) A through H, are included in the Site. The properties are used for residential, commercial, and agricultural purposes. Montezuma Creek, a largely seasonal stream, traverses several properties on the south end of the Site before it flows east

through the former Monticello Millsite and eventually terminates in the San Juan River.

The source of the contamination that has been remediated at the Site was the original Monticello Millsite. The Millsite was constructed with government funding by the Vanadium Corporation of America (VCA) in 1941 to provide vanadium, a steel hardener, for the Manhattan Engineer District during World War II. The VCA operated the Millsite until early 1944 and again from 1945 through 1946, producing vanadium, as well as a waste uranium-vanadium sludge. Vanadium is found in the same ore with uranium and radium and, as a result, the processed wastes contain significant uranic radioactivity. In 1948, the U.S. Atomic Energy Commission (AEC) purchased the Site. Uranium and vanadium milling operations began again in 1949 under the auspices of the AEC. Vanadium milling operations ceased in 1955. Uranium milling continued until 1960 when the Millsite was permanently closed.

Four tailings piles, the result of the ore milling process, were left at the Millsite following the cessation of milling operations. Contaminated dust from the Millsite tailings piles was wind deposited throughout the City of Monticello and surrounding areas, and tailings from the Millsite were used as construction material and backfill on properties in and around the City. The main contaminants of concern include radium-226 and associated radon gas. The contaminants posed potential threats to human health and the environment resulting from exposure to radiation emanating from soils contaminated with uranium mill tailings and from radon gas inhalation.

B. Remedial Investigation and Feasibility Study Activities

The United States Department of Energy (DOE) initiated cleanup activities at the Site in 1984 pursuant to the DOE Surplus Facilities Management Program. In conjunction with this effort, and prior to the Site being added to the NPL, DOE commenced property investigations and completed remedial actions on some of the properties at the Site. EPA proposed the Site for placement on the NPL on October 15, 1984, and thereafter added it to the NPL on June 10, 1986. After the Site was added to the NPL, DOE, pursuant to section 120 of CERCLA, 42 U.S.C. 9620, entered into a Federal Facilities Agreement (FFA) with EPA and UDEQ. The FFA became effective on or about February 1989. Among other things, the FFA required that DOE perform a Remedial Investigation /Feasibility Study (RI/FS) or functional equivalent at the Site. After reviewing information submitted by DOE documenting the efforts it had already performed at the Site, EPA and UDEQ concluded that DOE had in fact performed the functional equivalent of an RI/FS at the Site. The Monticello Vicinity Properties Equivalency of Documentation was approved on May 24, 1984.

DOE is the Responsible Party and the lead agency for remediation at the Site, and provides principal staff and resources to plan and implement response actions. Responsibility for oversight of activities performed by DOE under the FFA were shared by EPA and UDEQ. EPA is the lead regulatory agency with ultimate responsibility and authority, but shares its decision making with UDEQ.

C. Record of Decision

A Record of Decision (ROD) for the Site was issued by EPA on November 29, 1989. The ROD identified the following routes of exposure to humans:

- Inhalation of radon-222 and daughter products that result from the continuous decay of radium-226. The greatest hazard to human health results from the inhalation of radon-222 daughters which emit alpha radiation that affects the lungs.
- External whole-body gamma exposure directly from radionuclides in the mill tailings.
- Inhalation and ingestion of windblown mill-tailings dust.
- Ingestion of groundwater and surface water contaminated with radioactive elements, primarily radium-226.
- Ingestion of food potentially contaminated through uptake and concentration of radioactive elements through plants and animals.

Details of the health risks are found in the Monticello Vicinity Properties Equivalency of Documentation, specifically within the *Environmental Evaluation on Proposed Cleanup Activities at Vicinity Properties Near the Inactive Uranium Millsite, Monticello, Utah, Appendix B,* August 1985. The evaluation determined the potential ingestion pathways of food, groundwater, and surface water to be insignificant exposure routes. The ROD identified exposure in the lungs to radon and radon daughters, and exposure to external gamma radiation as presenting imminent and substantial endangerment to public health and the environment.

The selected remedy for cleanup of the Site was the removal of residual radioactive contaminants, restoration with clean materials, and the modification of existing structures to isolate radon sources from inhabitants. Cleanup activities required excavation and, in some cases, demolition of sidewalks, sheds, patios, and other improvements. All affected structures and other improvements were reconstructed or the owner was compensated based on the current value of the structure or other improvement.

D. Characterization of Risk

Property Completion Reports (PCR) were prepared for each remediated property in the Site. Each PCR included the legal description of the property, the name and address of the owner, remediation activities performed, and a summary of the assessment results and verification surveys. As documented in the PCRs, all properties at the Site were either (1) remediated to the standards set forth in 40 CFR part 192, subpart B and DOE guidelines for Residual Radioactive Material at Formerly Utilized Sites Remedial Action Program (FUSRAP Guidance); or (2) remediated, based on a site specific risk assessment, to the Supplemental Standards provided for in 40 CFR 192.22. If Supplemental Standards were applied to a property, appropriate institutional controls in the form of land use restrictions were also instituted. Compliance with the clean-up standards are documented in each of the individual PCRs. EPA and UDEQ have approved all 424 PCRs for the Site covering Operable Units A through H. Supplemental Standards were applied to one privately-owned parcel, four parcels associated with the Highway 191 embankment owned by the Utah Department of Transportation, to City Streets/Utilities, and the Highway 191 and Highway 666 rights-of-way. Compliance with the institutional controls required for these properties will be monitored under the DOE Long-Term Surveillance and Maintenance Plan (LTSM) and the 5-year reviews required under CERCLA and the FFA. The remedial actions taken at the Site have reduced the environmental risk for approximately 2,200 people within an eight-mile radius of the City of Monticello, Utah.

E. Remedial Action Activities

EPA standards for Remedial Action at Inactive Uranium Processing Sites (40 CFR part 192) and DOE FUSRAP Guidance are Applicable or Relevant and Appropriate Requirements (ARARs) for the selected remedy. Remedial activities conducted at the Site include:

- Excavation and disposal of all contaminated soil and construction materials exceeding the standards in 40

CFR part 192, subpart B (except where Supplemental Standards were applied). Contaminated material from the properties was disposed of in a repository constructed approximately one mile south of the former Monticello Millsite, a separate NPL Site. The repository contains a double HDPE liner with a leak detection system, meeting the functional equivalency of a Resource Conservation and Recovery Act, Subtitle C facility. The repository cover will be 8.5 feet thick, including a radon barrier.

• After removal of contaminated material and before backfilling, verification surveys were performed in order to demonstrate compliance with the 40 CFR part 192, subpart B Standards. For the Supplemental Standards properties, contamination was removed to risk-based clean-up levels corresponding with future land use scenarios.

• Placement of backfill and reconstruction to a physical condition comparable to that which existed before remedial action activities, and

• Post-construction monitoring of radon levels, where applicable, to verify conformance to 40 CFR part 192 standards.

Supplemental Standards were selected for contaminated materials located on one privately-owned parcel, four parcels associated with the Highway 191 embankment owned by the Utah Department of Transportation, on City Streets/Utilities, and the Highway 191 and Highway 666 rights-of-way. Supplemental Standards were applied because:

• The remedial action would have caused excessive environmental harm when compared to health benefits, and/or

• Because the cost of remedial action at the Site would have been unreasonably high relative to long-term benefits for contamination that does not pose a clear present or future hazard.

On July 1, 1999, EPA approved, with UDEQ concurrence, DOE's applications for Supplemental Standards per 40 CFR part 192.

F. Pre-Final Inspection Activities

DOE's independent verification contractor (IVC) for Site remediation activities was Oak Ridge National Laboratory (ORNL) in Grand Junction, Colorado. ORNL provided 100 percent Type A verification (document review) of the U.S. Department of Energy Grand Junction Office (DOE–GJO) Remedial Action Contractor (RAC) remediation activities, and 10 percent Type B verifications, which included verification of field surveys and measurements, physical sampling, and laboratory analyses. EPA and UDEQ also conducted independent verification surveys on at least 10 percent of the properties.

Compliance with the clean-up standards are documented in each of the individual PCRs generated for the 424 Site properties. EPA and UDEQ have approved all of the PCRs for the Site. Remedial Action Reports (RARs) have been prepared for OUs A through H. All RARs have been accepted by EPA and UDEQ.

G. Long-Term Surveillance and Maintenance

OU H contains five properties which were approved for Supplemental Standards. One is a privately-owned parcel with pinon/juniper woodlands and four are associated with the Highway 191 embankment owned by the Utah Department of Transportation. Additionally, Supplemental Standards were applied to streets and utilities in the City of Monticello rights-of-way and Highways 191 and 666 rights-of-way. The City streets and utilities and the highway rights-of-way have not been included in OU's A through H, but are located within the City of Monticello and therefore, are considered part of the Site. The remediation of OU H was completed on December 10, 1998. The remediation consisted of removal of contaminated material to risk-based clean-up levels corresponding with intended future land-use scenarios. Since remediation of the OU H properties was based on Supplemental Standards that are not as protective as the 40 CFR part 192, subpart B standards that were applied to the rest of the Site properties, all OU H properties will be subject to DOE's LTSM and 5-Year Reviews required by section 121(c) of CERCLA, 42 U.S.C. 9621(c), and the FFA. The next CERCLA 5-Year Review report for these Supplemental Standards properties will be completed during February 2002, which is 5 years after the initial CERCLA 5-Year Review completed on February 13, 1997.

H. Close Out Report

The Close Out Report (COR) for the Site, completed September 2, 1999, detailed that all Site response actions were accomplished in accordance with CERCLA and consistent with the NCP. Following review of all PCRs, RARs and the COR, EPA and UDEQ agree that conditions at the Site do not pose any unacceptable risks to human health or the environment.

Based on the completion of the activities listed above, EPA and UDEQ conclude that the responsible party, DOE, has implemented all appropriate response actions required and that the Site should be deleted from the NPL.

I. Community Involvement

Public participation activities required by section 113(k) of CERCLA, 42 U.S.C. 9613(k), and section 117 of CERCLA, 42 U.S.C. 9617, have been satisfied. Documents which EPA relied on for Site deletion from the NPL are available to the public in the information repositories.

V. Action

EPA, with the concurrence of the State of Utah, has determined that the Site poses no significant threat to human health or the environment, that all appropriate responses under CERCLA at the Site have been completed, and that no further response actions, other than five-year reviews and maintaining institutional controls, are necessary. Therefore, EPA is deleting this Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking this action without prior proposal. This Direct Final Rule will become effective February 28, 2000, unless EPA receives significant adverse or critical comments by January 31, 2000. If significant adverse or critical comments are received, EPA will publish a timely withdrawal of this action in the **Federal Register** informing the public that the Rule will not take effect.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 15, 1999.

William P. Yellowtail,

Regional Administrator, Region 8.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Utah ("UT") by removing the site name "Monticello

Radioactive Contaminated Prop." and the city/county "Monticello."

[FR Doc. 99–33523 Filed 12–29–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 99–396]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service makes a procedural change to the new high-cost universal service support mechanism for non-rural carriers adopted in the High-Cost Methodology Order on October 21, 1999. The change concerns the targeting of high-cost support amounts to individual wire centers, which was set to occur beginning in the first quarter of 2000.

DATES: Effective December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Nineteenth Order on Reconsideration in CC Docket No. 96–45 released on December 17, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC 20554.

I. Introduction

1. In this Order, the Commission on its own motion makes a procedural change to the new high-cost universal service support mechanism for non-rural carriers adopted in the *High-Cost Methodology Order*, 64 FR 67416 (December 1, 1999), on October 21, 1999, and scheduled to become effective on January 1, 2000. The change concerns the *targeting* of high-cost support amounts to individual wire centers, which was set to occur beginning in the first quarter of 2000. Because non-rural carriers will be filing wire center line count data for the first time on December 30, 1999, the Commission will not have a sufficient opportunity to review and verify that data to enable targeting during the first and second quarters of 2000. We therefore find that support payments targeted to the wire center level shall be issued beginning with payments provided in the third quarter of 2000. This change affects only the *targeting* of support during the first and second quarters of 2000, and does not alter the January 1, 2000 effective date of the new mechanism or the aggregate *amount* of support provided to each non-rural carrier under the new mechanism.

II. Discussion

2. We conclude that support payments should be calculated using the targeting approaches previously adopted. We conclude, however, that the provision of forward-looking support should be deferred until the third quarter of 2000. Until targeted support is provided in the third quarter of 2000, interim hold-harmless support shall be provided at the study-area level. Because non-rural carriers will be formally submitting wire center line count data for the first time on December 30, 1999, we do not believe that there will be sufficient time to analyze and verify the data before carriers are scheduled to receive targeted interim hold-harmless support in the first quarter of 2000 and targeted forward-looking support in the second quarter of 2000. Our decision to postpone the targeting of support will allow us to work with carriers and USAC to address any anomalies in carriers' first-time filings and to ensure that the wire center line count data are valid and sufficiently accurate for targeting purposes. We emphasize, however, that this decision does not change the January 1, 2000 effective date of the new mechanism or the aggregate amount of high-cost support provided to non-rural carriers under the new mechanism.

3. We therefore reconsider and amend on our own motion §§ 54.313(c) and 54.311(b) of our rules, as set forth. Specifically, we delete § 54.313(c)(1)(i) of our rules, thereby eliminating the January 1, 2000 state certification option, which would have permitted any carrier in a state that filed a certification by that date to receive targeted forward-looking support for the first and second quarters of 2000 in the second quarter of 2000. The elimination of this filing option, however, does *not* eliminate a carrier's ability to obtain forward-looking support for the first and second quarters of 2000. Under the rules adopted in the *High-Cost Methodology Order*, if a state files the requisite certification by April 1, 2000, carriers subject to that certification shall receive forward-looking support for the first and third quarters of 2000 in the third quarter of 2000, and forward-looking support for the second and fourth quarters of 2000 in the fourth quarter of 2000. We also amend § 54.311(b) of our rules, so that for the first and second quarters of 2000, non-rural carriers eligible for interim-hold harmless support shall receive such support at the study-area level, rather than the wire center level. Targeting of interim hold-harmless support shall occur at the wire center level beginning in the third quarter of 2000.

4. We also correct an oversight in the rules that we adopted in the *High-Cost Methodology Order* concerning the calculation of the expense adjustments for non-rural carriers. In that order, we amended § 36.631(d) of our rules so that the expense adjustment for study areas reporting more than 200,000 working loops would be calculated pursuant to the new forward-looking support mechanism or the interim hold-harmless provision, whichever is applicable, effective January 1, 2000. We inadvertently did not make a similar amendment to § 36.631(c) of our rules, which concerns study areas reporting 200,000 or fewer working loops, even though a small number of non-rural carriers serve such study areas. To remedy this oversight, we now amend § 36.631(c) so that the expense adjustment for non-rural carriers serving study areas reporting 200,000 or fewer working loops will be calculated pursuant to the new forward-looking support mechanism or the interim hold-harmless provision, whichever is applicable, effective January 1, 2000.

III. Procedural Matters

A. Regulatory Flexibility Act Certification

5. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field

of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

6. In the *High-Cost Methodology Order*, the Commission certified pursuant to the RFA that the final rules adopted in that order would not have a significant economic impact on a substantial number of small entities. We concluded that the *High-Cost Methodology Order* adopted a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion Further Notice of Proposed Rulemaking adopted in this docket, the Commission prepared an IRFA seeking comment on the economic impacts on small entities. No comments were received in response to that IRFA.

7. The rule changes adopted in this order are merely procedural and affect only the timing of the implementation of certain aspects of the *High-Cost Methodology Order*, and the correction of an oversight in the rules accompanying the *High-Cost Methodology Order*. The changes adopted in this order will affect only non-rural LECs. As mentioned, non-rural LECs generally do not fall within the definition of a small business concern. Therefore, we certify pursuant to section 605(b) of the RFA, that the final rules adopted in this order will not have a significant economic impact on a substantial number of small entities. The Consumer Information Bureau, Reference Information Center, will send a copy of the *Nineteenth Order on Reconsideration*, including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification and order will be published in the **Federal Register**. Finally, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the *Nineteenth Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

B. Effective Date of Final Rules

8. We conclude that the amendments to our rules adopted herein shall be effective December 30, 1999. In this order, we make minor amendments to the rules adopted in the *High-Cost Methodology Order*, which implement a new forward-looking high-cost support mechanism, effective January 1, 2000. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required January 1, 2000 implementation date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

IV. Ordering Clauses

9. The authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, the Ninetheenth Order on Reconsideration is adopted.

10. Parts 36 and 54 of the Commission's Rules, 47 CFR 36 and 54, are amended as set forth, effective December 30, 1999.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Nineteenth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

Parts 36 and 54 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410 unless otherwise noted.

2. Amend § 36.631 by revising paragraph (c) introductory text to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(c) Beginning January 1, 1998, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2). After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h) shall be calculated pursuant to § 54.309 of this Chapter or § 54.311 of this Chapter (which relies on this part), whichever is applicable.

* * * * *

PART 54—UNIVERSAL SERVICE

3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(I), 201, 205, 214, and 254 unless otherwise noted.

4. Amend § 54.311 by revising paragraph (b) to read as follows:

§ 54.311 Interim hold-harmless support for non-rural carriers.

* * * * *

(b) *Distribution of Interim Hold-Harmless Support Amounts.* Until the third quarter of 2000, interim hold-harmless support shall be distributed pursuant to part 36 and, if applicable, § 54.303 of this subpart. Beginning in the third quarter of 2000, the total amount of interim hold-harmless support provided to each non-rural incumbent local exchange carrier within a particular State pursuant to paragraph (a) shall be distributed first to the carrier's wire center with the highest wire center average FLEC per line until that wire center's average FLEC per line, net of support, equals the average FLEC per line in the second most high-cost wire center. Support shall then be distributed to the carrier's wire center with the highest and second highest wire center average FLEC per line until those wire center's average FLECs per line, net of support, equal the average FLEC per line in the third most high-cost wire center. This process shall continue in a cascading fashion until all of the interim hold-harmless support provided to the carrier has been exhausted.

* * * * *

5. Amend § 54.313 by revising paragraph (c) to read as follows:

§ 54.313 State certification.

* * * * *

(c) *Filing Deadlines.* In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in paragraph (b), with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule:

(1) *First Program Year (January 1, 2000–December 31, 2000).* During the first program year (January 1, 2000–December 31, 2000), a carrier in a particular State shall receive support pursuant to § 54.311 of this subpart. If a State files the certification described in this section during the first program year, carriers eligible for support pursuant to § 54.309 shall receive such support pursuant to the following schedule:

(i) *Certifications filed on or before April 1, 2000.* Carriers subject to certifications that apply to the first and second quarters of 2000, and are filed on or before April 1, 2000, shall receive support pursuant to § 54.309 of this subpart for the first and third quarters of 2000 in the third quarter of 2000, and support for the second and fourth quarters of 2000 in the fourth quarter of 2000. Such support shall be net of any support provided pursuant to § 54.311 of this subpart for the first or second quarters of 2000.

(ii) *Certifications filed on or before July 1, 2000.* Carriers subject to certifications filed on or before July 1, 2000, shall receive support pursuant to § 54.309 of this subpart for the fourth quarter of 2000 in the fourth quarter of 2000.

(iii) *Certifications filed after July 1, 2000.* Carriers subject to certifications filed after July 1, 2000, shall not receive support pursuant to § 54.309 of this section in 2000.

* * * * *

[FR Doc. 99–33766 Filed 12–29–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[CS Docket No. 98–201; FCC 99–278]

Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the rule applicable to the antenna and equipment testing procedure of the collection of field strength data to determine television broadcast signal intensity at individual locations. The action was taken in response to petitions filed by DIRECTV and EchoStar in connection with the Satellite Home Viewer Act. This action is intended to allow for flexibility in testing and reduced cost to the public.

DATES: Effective December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jay Heimbach at (202) 418–7200 or via Internet at jheimbac@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration, FCC 99–278, CS Docket No. 98–201, adopted October 5, 1999 and released October 7, 1999. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at www.fcc.gov/csb. For copies in alternative formats, such as Braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act: The requirements adopted in this Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose no new or modified information collection requirements on the public.

Synopsis of Report and Order

Introductory Background

1. In this proceeding, we address an issue involving petitions filed by two satellite carriers, DIRECTV and EchoStar, for reconsideration of the Commission's February 1, 1999 *Report and Order* concerning the 1988 Satellite Home Viewer Act ("SHVA") (47 CFR 73). That Order addressed an issue involving the television broadcast industry, the direct-to-home satellite industry, and consumers who subscribe to satellite services for their broadcast network television programming.

2. Broadly stated, the issue is whether and where home satellite carriers may retransmit television broadcast network signals under the SHVA. Federal copyright law, which the SHVA is a part of, contains a copyright compulsory license authorizing the carriage of certain network broadcast signals by home satellite carriers. (17 U.S.C. 119(a)(2)(A) The compulsory license is limited, however, because it does not permit satellite carriers to retransmit a particular network's signal to a subscriber unless the subscriber is "unserved" by the local affiliate of the network. (17 U.S.C. 119(a)(2)(B)) "Unserved" is defined in the SHVA as a household that cannot receive an adequate television signal (defined as a signal of "Grade B" intensity) using a conventional outdoor rooftop antenna. The Grade B values (which represent the required field strength in dB above one micro-volt per meter) are defined for each over-the-air television channel in the Commission's rules. (47 CFR 683) There are also Grade A and "city grade" field strength values, which represent stronger signals.

[In dBu's]

	Grade B	Grade A	City grade
Channels 2–6 ...	47	55	74
Channels 7–13	56	71	77
Channels 14–69	64	74	80

Several judicial proceedings involving the SHVA have resulted in findings that some satellite carriers have violated that statute and have highlighted the significant disputes between broadcast networks and satellite carriers over which consumers are eligible to receive satellite-delivered network programming.

3. The *SHVA Report and Order* sought to help the consumers caught in these disputes by refining two tools to more accurately determine whether a household is truly unserved. The first tool is an on-site (or at-home) signal measurement test to determine the strength of a television signal at a consumer's household. The second tool is a computer-generated prediction model that might obviate the need for large numbers of on-site tests and that could be used by consumers when first signing up for satellite service (at the

"point of sale"). This Individual Location Longley-Rice ("ILLR") model is a variation of the core Longley-Rice model that the Commission has long used to determine signal propagation. The ILLR is specifically designed to predict the strength of a television signal at an individual location, such as a consumer's home, by considering what happens to the signal as it travels from the transmitter to the home. The model accounts for the effects that signal interference and terrain have on signal strength. We concluded that other factors, specifically vegetation and buildings, can also affect the strength of television signals received at a home. However, the rulemaking record did not contain information sufficient for us to identify, endorse, or develop a way to apply these land use and land cover ("LULC") factors in an application that would be "accepted by the technical and scientific community." We noted that LULC data are available from the United States Geological Survey ("USGS") and asked interested parties to develop an application for incorporating that data into the ILLR.

4. DIRECTV and EchoStar separately petitioned the Commission to reconsider parts of the Order regarding the eligibility of satellite subscribers to receive broadcast network signals through home satellite dishes. The National Association of Broadcasters ("NAB"), Entravision Holdings, and affiliates of ABC, NBC, CBS, and Fox (the "Affiliates") opposed the petitions. The National Rural Telecommunications Cooperative ("NRTC") expressed its support for the petitions.

5. The Communications Act and our own rules govern our response to the petitions. (47 CFR 1.429) Reconsideration of a Commission decision is warranted only if the petitioner cites a material error of fact or law or presents additional facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. For the reasons stated herein, the Order on Reconsideration affirms the decisions in the *SHVA Report and Order* and denies DIRECTV's Petition. The Order denies in part and grants in part EchoStar's Petition.

The Petitions for Reconsideration

DIRECTV's Petition

6. DIRECTV's Petition asks the Commission to allow satellite carriers to include the effects of land use and land cover in the ILLR prediction model now. The Petition contends that there are "a variety of scientifically accepted means" of including USGS data into the model using commercially available mapping software and emphasizes that DIRECTV itself is developing software. However, DIRECTV did not identify these means in any detail. In an accompanying statement, DIRECTV's expert states that the military targets cruise missiles using "a comparison of data available through the Global Positioning System ('GPS') and USGS LULC data," but does not specifically identify the procedure used by the military, nor does it identify any other procedure or software application. DIRECTV's Reply offers some information on the specific LULC application it supports, but still does not offer the application itself. According to DIRECTV, their engineering consultants are actively in the process of developing an LULC loss algorithm implementation that can be "readily achieved using the USGS database."

7. Broadcasting interests, led by the NAB and the Affiliates, opposed the Petition and argued that DIRECTV is trying unilaterally to create and use an LULC application in direct contravention of the Commission's Order. ABC, CBS, and Fox affiliates go one step further by stating that overlaying LULC data in the ILLR would amount to "double-counting" the effects of trees and buildings. They contend that the core Longley-Rice programming language (on which the ILLR is based) already incorporates some LULC data into its calculations. The Affiliates also questioned using the USGS database, asserting that it covers too much land per grid area (200 meters) to be accurate for the purposes here involved. Both the NAB and the Affiliates emphasized that DIRECTV has not offered a specific software package for applying LULC data to the predictive model. When it does, the NAB asserts that it would support an expedited review by the Commission. On the other hand, the NRTC supported DIRECTV's Petition and asked the Commission for "practical rules and recommendations * * * to use in determining a household's eligibility to receive distant network signals by satellite."

8. The Commission believes that consumers will benefit when the effects of trees and buildings on a television signal are included in the ILLR prediction model. We stated in the *SHVA Report and Order:*

> While we expect the model to include land use and land cover, we are not aware of a standard means of including such information in the ILLR that has been accepted by the technical and scientific community. When an appropriate application has been developed and accepted, this information will be included in the ILLR.

The Commission specifically invited interested parties to develop such an application. Before such an application can be used, however, it is necessary that some consensus be developed as to the specifics of the technique involved so that the process is generally understood, the results can be replicated by all who would use the process, and any disputes as to accuracy of the technique can be addressed. Neither DIRECTV, nor any other party, may unilaterally incorporate LULC data into the Commission's ILLR until an application has been publicly reviewed. The Commission again encourages any interested party to develop an application and offer it for comment. Because DIRECTV has not fully offered the details of its application, such review is not possible here. The Order on Reconsideration therefore denies DIRECTV's Petition for Reconsideration.

EchoStar's Petition

9. EchoStar, in its Petition, first argued that the Commission could have and should have adopted a new definition of Grade B intensity specifically for SHVA purposes. The Petition, however, does not propose a new definition or standard. Second, EchoStar argued that the Commission should consider the effects of "ghosting" in a television picture, caused by signal "multipathing," when determining who is unserved. Third, EchoStar took issue with several elements of the Commission's new on-site testing methodology, including (a) whether measurements should be taken at a house's roof or at the television set, (b) the orientation of the testing antenna, (c) the type of testing antenna that should be used, and (d) the number and location of the tests. Finally, EchoStar asked the Commission to raise the confidence factor in the predictive model from 50% to 90%, arguing that the latter is more consumer-friendly and, therefore, consistent with the SHVA's purposes.

10. The Order concludes that the record provided an inadequate basis for changing the Grade B signal intensity values either generally or for purposes of the SHVA specifically, and therefore, declined to change the definition of Grade B signal intensity. EchoStar disagreed with these conclusions, but

presented no new arguments or facts that warrant revisiting this issue. The Commission stands by the conclusions in the *SHVA Report and Order* and denies EchoStar's petition on this issue.

11. EchoStar contends that the Order did not specifically take account of the effects of multipathing and asks the Commission to do so now. Multipathing is the reflection of a single television signal off of buildings or other objects. It causes several transmissions of the same signal to arrive at a television at slightly different times, leading to "ghosting" on the screen (one fainter "ghost" picture superimposed on the main picture). Importantly, multipathing can affect picture quality on a consumer's television set even when a Grade B signal exists at the consumer's rooftop. EchoStar asked the Commission to institute proceedings to account for the effects of multipathing. The NRTC supported EchoStar's position, arguing that "consumers want and deserve the best quality television picture available, and if ghosting or other environmental factors degrade picture quality * * * the Commission should recognize and incorporate these factors in the predictive model and testing methodology." The NAB and the Affiliates rejected the satellite carriers' position, noting that the SHVA speaks of Grade B intensity, an objective standard for determining who is unserved, rather than a subjective picture quality standard that would be very difficult to enforce and implement. Therefore, the broadcasters claimed that the Commission "unquestionably lacks authority to alter the SHVA eligibility standard to deal with ghosting." EchoStar replied that ghosting is not so subjective that it is impossible to determine: "Ghosting either exists or it does not, it is objectively ascertainable."

12. The Order addressed multipathing in several places and, as with the Grade B definition issue, EchoStar has not offered any additional facts or new arguments that warrant a change in our conclusions. We recognize that ghosting is a problem that affects television pictures but note, as we did in the Order, that there is no simple solution. For example, raising the Grade B values to give a consumer a stronger television signal could actually exacerbate the problem of multipathing. As the signal strength increases, "noise" or "snow" in a television picture may be reduced, but the chance of ghosting increases. Moreover, the multipath "interference" created by the same signal is very difficult to measure objectively.

13. While the Commission welcomes concrete solutions to the ghosting problem, any solution must be objective and verifiable. EchoStar has not offered any new facts or arguments that describe how to predict or measure multipathing or even permit it to be taken into account under the current language in the SHVA. The Order on Reconsideration therefore denies Echostar's petition on this issue.

14. EchoStar believes the Commission's on-site measurement test is too complicated and costs too much (estimates are $99 to $119 per on-site test for four networks). In its comments to the petition, the NRTC agreed. EchoStar also suggested that the SHVA does not require signal measurements at a house's rooftop and that any such conclusion is merely "a legal fallacy, propagated by the broadcasters." Instead, EchoStar argued that signal strength should be measured at the television set. Alternatively, EchoStar suggested changing several requirements mandated for the outdoor, on-site tests: (1) Eliminate the requirement that the testing antenna be oriented separately for each station being measured; (2) require fewer testing locations and measurements (for each station, replace 1 test at 5 locations with 3 tests at 1 location); (3) allow parties to choose the type of testing antenna, either a half-wave dipole (as the *SHVA Report and Order* required) or gain antenna; (4) clarify that the half-wave dipole required for testing in the Order can be of fixed length. The NAB rejected EchoStar's suggestions, except that it does admit that a properly calibrated gain antenna could be used to conduct signal intensity measurements. In a "Revised Engineering Statement," however, the NAB added that a simple gain antenna is not sufficient and recommends that the Commission specify and endorse particular brands and models of antenna. Specifically, NAB's engineering expert, Jules Cohen, recommended that "antennas with a relatively large number of elements are more likely to have a more consistent input impedance than the simpler types." He further notes that the Channel Master Model 3016 is such an antenna and added that similar antennas would be suitable "if channel-by-channel gain figures are provided and certified by the manufacturer together with the antenna's input impedance characteristics." The Affiliates stated that EchoStar's suggestions, as a group, would reduce accuracy with very little cost savings and asserted that the Commission gave full and detailed attention to the creation of the new measurement methodology. In its Reply, EchoStar countered that any additional inaccuracies created by a less complex test would fall equally on broadcasters and satellite carriers.

15. When the Commission created the on-site test in the *SHVA Report and Order*, it was faced with balancing the cost of the test with the accuracy and objectivity that would result. In the end, the Order thoroughly considered and discussed many different issues. The Order on Reconsideration reiterates the Commission's intent that the test should be relatively inexpensive, simple enough so that an average antenna installer can conduct it, and objective enough so that the test results will not constantly fall in doubt. EchoStar offered neither new evidence nor new arguments with respect to orientation of the test antenna and the number of test measurements. EchoStar provided new information in its request that the rules permit testers to use either a half-wave dipole or an antenna with gain to conduct the tests. In the rulemaking, broadcasters also supported the use of a gain antenna, albeit with the recent qualification that the test antenna should have multiple elements to ensure proper calibration. Because a gain antenna is able to accurately measure the intensity of a television signal and because it will provide additional flexibility for technicians who conduct tests, we amend the testing rule to allow the use of either a gain antenna with several elements or the half-wave dipole that we originally endorsed. In response to the concerns raised by the NAB, the revised rule maintains an impedance match at the antenna at all frequencies. We believe this approach is preferable to endorsing a particular brand or model or requiring use of an expensive test antenna. In addition, we will amend the rule to allow use of signal level test instruments with a bandwidth of 200 kHz through one megahertz (1,000 kHz), rather than requiring a bandwidth of at least 450 kHz. (47 CFR 73.686(d)(2)(i)) We believe that this amendment will reduce the cost of the tests by permitting technicians to use test equipment they have on hand and not require them to purchase new equipment.

16. EchoStar asked the Commission to revisit the confidence factor used in the ILLR prediction methodology, an issue that the SHVA Report and Order addressed more exhaustively than any other in the proceeding. EchoStar contended that the Commission's decision to set the ILLR's confidence factor at 50% "penalizes the consumer and errs in favor of some policy of 'belt-and-suspenders" over-protection for the broadcaster's local franchise." Instead, the satellite carrier asserted that the

Commission should set the confidence factor at 90% because consumers' rights to a good television picture, not broadcasters' copyrights, must be "the cornerstone of a predictive model." To prevent alleged "overprediction" of unserved households, EchoStar proposes a "cap" that would cut off eligibility for distant network satellite service if a household cannot be predicted (with 90% confidence) to receive 70.75 dBu or less. EchoStar essentially suggested a floor and ceiling for determining whether a household is unserved—the household should receive (a) at least a signal of 47 dBu with 90% confidence, and (b) less than a signal of 70.75 dBu with 90% confidence.

17. The Order on Reconsideration declines EchoStar's request to revisit the confidence factor issue. The SHVA Report and Order thoroughly considered and addressed the issues surrounding the confidence factor and EchoStar has offered no new arguments or facts that warrant a change in our conclusions. Its suggestion that we adopt a floor-and-ceiling approach to determining unserved households is legally untenable. EchoStar's suggested ceiling of 70.75 dBu would change the SHVA's definition of unserved household, which is defined only as a household that does not receive a signal of at least Grade B intensity, not as a household that also receives less than a signal of some other level. (17 U.S.C. 119(d)(10))

18. In any action brought under the SHVA, the burden of proof lies with the satellite carriers to demonstrate that a particular household is unserved. (17 U.S.C. 119(d)(5)(D)) To be useful in carrying this burden, any prediction system must demonstrate with a sufficient degree of confidence to be acceptable in a judicial proceeding which households are unserved. Conversely, it is not sufficient to demonstrate with confidence which households are served. Because of the statistical factors underlying the prediction system, which have not changed since the SHVA Report and Order, there is a considerable difference between demonstrating with confidence which households are served and which are unserved. EchoStar's suggestions did not advance the goal of more accurately identifying unserved households and its Petition with respect to the confidence factor must be denied.

Supplemental Final Regulatory Flexibility Analysis

Background

19. As required by the Regulatory Flexibility Act (RFA), (5 U.S.C. 603) an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *Notice of Proposed Rulemaking* in this proceeding. (CS Docket No. 98–201, FCC 98–302, 63 FR 67439 (December 7, 1998)) The Commission sought written public comment on the expected impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. The Commission included a Final Regulatory Flexibility Analysis ("FRFA") into the *SHVA Report and Order*. While no petitioners seeking reconsideration of the Order raised issues directly related to the FRFA, the Commission is amending the rules in a manner that may affect small entities, although only in a minor way. Accordingly, this Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addresses those amendments and conforms to the RFA.

Need for and Objective of the Rules

20. In both the *SHVA Report and Order* and this Order on Reconsideration, the Commission has addressed methods for determining whether a household is "unserved" by network television stations for purposes of the 1988 Satellite Home Viewer Act. (17 U.S.C. 119) Our goal was to provide relatively simple and inexpensive prediction and testing methodologies to determine the intensity of a television signal at a consumer's household. The changes to the on-site test outlined in the current Order on Reconsideration clarify and simplify the rule and its implementation and, therefore, serve our objectives.

Legal Basis

21. This Order on Reconsideration is authorized under Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j) and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a).

Summary of Significant Issues Regarding FRFA Raised in Petitions for Reconsideration

22. No parties address the FRFA in their petitions for reconsideration, or any subsequent filings. The Commission has, however, addressed, on it's own motion, steps taken to further minimize the effect of these requirements on small entities.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

23. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed action. (5 U.S.C. 604(a)(3)) The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. (5 U.S.C. 604(a)(3)) Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) Is not dominant in its field of operation; and (3) Satisfies any additional criteria established by the SBA. (15 U.S.C. 632) The action taken in this Order will affect television broadcasting licensees and DTH satellite operators.

24. The rule developed in the *SHVA Report and Order* and reconsidered in this Order on Reconsideration will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. (13 CFR 121.201, Standard Industrial Code ("SIC") 4833 (1996)) Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and that produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television broadcasting stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 low power television broadcasting ("LPTV") broadcasting stations that may also be affected by our proposed rule changes. For 1992 the number of television broadcasting stations that produced less than $10.0 million in revenue was 1,155 establishments. The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

25. The Commission has not developed a definition of small entities

applicable to geostationary or non-geostationary orbit fixed-satellite or DBS service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. (13 CFR 121.201, SIC Code 4899) The number of employees working for a "small entity" must be 750 or fewer. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DTH category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. The action in the *SHVA Report and Order* and reconsidered in this Order on Reconsideration applies to entities providing DTH service, including licensees of DBS services and distributors of satellite programming. There are four licensees of DBS services under Part 100 of the Commission's rules. (47 CFR 100 *et seq.*) Three of those licensees are currently operational, and each of those licensees has annual revenues in excess of the threshold for a small business.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. The Commission did not prescribe reporting requirements in the original Order and do not do so in this Order on Reconsideration. As noted in the Order, parties who choose to conduct individual household measurements are required to memorialize their test observations and results.

Steps Taken To Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered

27. In formulating the testing rule in the Order, the Commission sought to minimize the effect on small entities while ensuring accurate determinations of signal intensity at individual locations such as households. These efforts are consistent with the Congress' goal of ensuring that "unserved" consumers are able to receive network broadcast signals through a home satellite dish. The actions the Commission is taking on reconsideration further refine the rule so as to advance this goal and further minimize unnecessary burdens on small entities.

28. Specifically, the Order only allows the use of one type of testing antenna. Here, on reconsideration, the Commission has increased test-takers' flexibility by allowing the use of a second type of antenna. Additionally, the Commission has amended it's rule to allow use of signal level test instruments with a bandwidth of 200 kHz through one megahertz (1,000 kHz), rather than requiring a bandwidth of at least 450 kHz, because the Commission wishes to reduce the cost of the test by permitting technicians to use test equipment they have on hand and not require them to purchase new equipment.

Report to Congress

29. The Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. (5 U.S.C. 801(a)(1)(A)) In addition, the Commission will send a copy of the Order on Reconsideration, including Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. (5 U.S.C. 604(b))

Paperwork Reduction Act of 1995 Analysis

30. This Order on Reconsideration has been analyzed with respect to the Paperwork Reduction Act of 1995 and has been found to contain no new or modified information collection requirements on the public.

Ordering Clauses

31. Pursuant to Section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and Section 1.429 of the Commission's rules, 47 CFR 1.429, DIRECTV's Petition for Reconsideration is denied.

32. Pursuant to Section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and Section 1.429 of the Commission's rules, 47 CFR 1.429, EchoStar's Petition for Reconsideration is granted in part and denied in part.

33. The NAB Motion for Leave to File Corrected Engineering Statement is granted.

34. Under authority of Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), part 73 of Title 47 of the Code of Federal Regulations is amended as indicated in the Appendix.

35. The Commission's Office of Media Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 73

Communications equipment, Television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

Subpart E—Television Broadcast Stations

2. Section 73.686(d) is revised to read as follows:

§ 73.686 Field strength measurements.

* * * * *

(d) Collection of field strength data to determine television signal intensity at an individual location—cluster measurements.

(1) *Preparation for measurements*—(i) *Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the visual carrier frequency of the channel being measured or a gain antenna, provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

(ii) *Testing locations.* At the location, choose a minimum of five locations as close as possible to the specific site where the site's receiving antenna is located. If there is no receiving antenna at the site, choose the minimum of five locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBu) and report it as the measurement result.

(iii) *Multiple signals.* If more than one signal is being measured (*i.e.*, signals from different transmitters), use the same locations to measure each signal.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of the Rules. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Measure the field strength of the visual carrier with a calibrated instrument with an i.f. bandwidth of at least 200 kHz, but no greater than one megahertz (1,000 kHz). Perform an on-site calibration of the instrument in accordance with the manufacturer's specifications. The instrument must accurately indicate the peak amplitude of the synchronizing signal. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an unbalanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBu and after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

[FR Doc. 99–33765 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 991222346–9346–01; I.D. 031997B]

RIN 0648–AN40

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Suspension of Effectiveness of Gear Marking Requirements for Northeast U.S. Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; suspension.

SUMMARY: On February 16, 1999, NMFS issued a final rule implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This suspends the gear marking requirements for northeast U.S. fisheries contained in that rule. The other provisions of that rule, including the gear marking requirements for southeast U.S. (SEUS) fisheries under the ALWTRP, remain in effect. The current gear marking requirements for northeast U.S. fisheries under the rule are unlikely to provide useful information. The purpose of this suspension is to spare fishermen from unnecessary expenses while a better gear marking system is devised and implemented.

DATES: Effective December 30, 1999 50 CFR 229.32 (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), and (d)(5)(ii) are suspended until November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, NMFS, Northeast Region, 978–281–9254; or Gregory Silber, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1999, NMFS published a final rule (64 FR 7529) implementing the ALWTRP. Among other measures, the final rule required gear marking in all fisheries under the ALWTRP by April 1, 1999.

The Atlantic Large Whale Take Reduction Team (ALWTRT) met on February 8–10, 1999, discussed the gear marking scheme in detail, and recommended by consensus (with the NMFS members abstaining) that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system is designed. In order to provide an appropriate gear marking scheme that could be implemented by NMFS by November 1, 1999, the ALWTRT asked that the Gear Advisory Group (GAG) be reconvened quickly to design a better system for approval by the ALWTRT. The criteria established by the ALWTRT for the better gear marking system were that the system should: (1) identify the buoy lines by individual fishermen; (2) apply to all waters affected by the ALWTRP; (3) be easily implemented by the affected fisheries; (4) allow identification of gear type from a photograph so that it can be identified without being removed from a whale; and (5) allow identification of where the gear had been set.

In March 1999, an ad hoc group of ALWTRT members representing the scientific, conservation and state and Federal fishery managers of the northeastern area met to discuss gear marking. The group recognized many of the points discussed here and agreed that, under the gear marking requirements then in effect, it was highly probable that gear recovered from animals could be identified to the individual fisherman, thus allowing details on the gear (i.e., gear type, and date and location of set) to be determined in most cases. NMFS then changed the effective date of the gear marking measures contained in the final rule to November 1, 1999 (64 FR 17292, April 9, 1999), and tasked the GAG and the ALWTRT with reviewing the final rule=s gear scheme. NMFS committed to revise the final rule=s gear marking scheme if the GAG and ALWTRT reached consensus on an appropriate gear marking scheme.

Three GAG meetings were held in April at Sandwich, Massachusetts; Portsmouth, New Hampshire; and Ellsworth, Maine to gather the fishermens= perspectives from each region. A summary of the three GAG meetings is available upon request from

the contacts noted at the beginning of this document. The basic conclusions from the GAG members were:

(1) A single gear identification number is desirable. State and Federal regulations require gear tagging or marking systems for both lobster and gillnet gear. A marking system that incorporates the existing marking requirements should be used.

(2) An individual fisherman=s identification would provide more information than the current ALWTRP color-coding system, which only requires marking in certain areas. Fishermen set gear across boundary areas and, under the current ALWTRP system, would have to re-rig their gear when moving into or out of a required area. With individual markings, the fishermen can provide specific information on where the gear had been set at any given time.

(3) The ALWTRP color-coded system does not provide the detailed information that a universal individual marking system throughout the range would provide. Better ways of marking buoy lines and high flyers with individual numbers are being tested, and the results of these tests will be available by Spring 2000.

(4) The ALWTRP marking system was based on the need to identify gear on whales that is observed from a distance that may never be recovered. Recent entanglement events and subsequent detailed investigations have resulted in up to 70 percent of the gear involved being identified, including the probable time and location the gear was set, for those whales that have been disentangled and the gear has been recovered. The current ALWTRP gear marking system would not have improved identification of gear in any of the recent Northeast entanglement events. Entangled animals are receiving close scrutiny, and photos or video images are routinely collected, allowing a more definitive analysis of gear type before a disentanglement is attempted. Thus, the current ALWTRP gear marking system is not needed to identify gear that is not removed from a whale.

In summary, the consensus of the GAG and the ALWTRT is that: (1) The gear marking measures for northeastern U.S. fisheries under the ALWTRP as contained in the February 16, 1999, final rule are unlikely to provide useful information; (2) the value of making a gear marking system being visible from a distance is questionable; (3) existing gear marking and buoy color-coding requirements applicable to the various northeastern U.S. fisheries allow gear type and ownership to be identified in most cases; (4) gillnet fisheries operating in the SEUS do not have the same level of existing gear marking requirements; (5) after 2 years of investigating gear entangled on whales, NMFS has found that it is possible to determine gear ownership in the majority of the entanglements and thus find out the details about the date and location of the set; and (6) better ways for buoy lines and high flyers to be marked with individual identification numbers are being tested and the results should be available soon. Therefore, in order to spare fishermen from unnecessary expense, NMFS is suspending the effectiveness of the gear marking requirements for northeast U.S. fisheries in the February 16, 1999, final rule implementing the ALWTRP. Gear marking requirements for SEUS fisheries remain in effect. The ALWTRT will meet in early Spring, 2000, to review the GAG report and the results of the testing of new gear marking methods, and make further recommendations to NMFS on how or whether to modify the ALWTRP gear marking system. By late Spring, 2000, NMFS will propose modifications to the ALWTRP gear marking system and implementing regulations with the aim of having an effective system implemented by November, 2000.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an Environmental Assessment (EA) on the interim final rule preceding the February 16, 1999, final rule to implement the ALWTRP, and its findings applied to the February 16, 1999 final rule, as well. This action suspends the effectiveness of a portion of that final rule. Although this action falls within the scope of alternatives of that EA and the environmental consequences described in that action, NMFS has prepared a supplemental EA for this action with a finding of no significant impact.

A biological opinion (BO) on the ALWTRP was completed on July 15, 1997. That BO concluded that implementation of the ALWTRP and continued operation of fisheries conducted under the American Lobster and Northeast Multispecies fishery management plans (FMPs), and southeastern shark gillnet component of the Shark FMP, may adversely affect, but are not likely to jeopardize the continued existence of any listed species of large whales or sea turtles under NMFS jurisdiction. The February 16, 1999, final rule was determined not to change the basis for that BO. This action also does not change the basis for that BO.

The suspension of the effective date of the ALWTRP gear marking requirement for Northeast U.S. fisheries made by this rule will have no adverse impacts on marine mammals. In addition, this rule does not change the determination that the ALWTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states.

As noted above, the ALWTRP gear marking regime for the Northeast is unlikely to provide useful information. Fishermen should be spared the expense of having to comply with it prior to implementation of a better system. Accordingly, the Assistant Administrator for Fisheries, for good cause, finds that delaying this rule to allow for prior notice and opportunity for public comment would be contrary to the public interest. Because this suspension of effectiveness relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in the effective date.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law , the analytical requirements of the Regulatory Flexibility Act do not apply.

This rule suspends the effectiveness of a collection-of-information requirement subject to the Paperwork Reduction Act previously approved by OMB (OMB Control Number: 0648–0364).

Dated: December 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33810 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122299B]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2000

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 2000 fishing year. This action is taken under the authority of the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP), which allows for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the majority of surf clams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978-281-9104.

SUPPLEMENTARY INFORMATION: Section 648.72 (c) of the regulations implementing the FMP allows the Regional Administrator, Northeast Region (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent or more of the Atlantic surf clam resource is smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density dependent factors.

At its August meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Surf clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit. Commercial surf clam shell length data for 1999 indicate that only 10.3 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this notification to suspend the minimum size limit for Atlantic surf clams for the period January 1, 2000, through December 31, 2000.

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 27, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33980 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 250
Thursday, December 30, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 24494; Notice No. 85–7A]

RIN 2120–AA57

Airworthiness Standards; Crash Resistant Fuel Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that proposed to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. That notice proposed upgrades in the requirements for fuel system components that would have improved crash resistance of these systems by limiting fuel spillage near ignition sources and thus provide additional time for survivors of the impact to evacuate the airplane. As a result of the comments received, the FAA completed a revised economic evaluation of these safety recommendations and has concluded that the costs of the proposed change are not justified by the potential benefits. Accordingly, the FAA is planning no additional proposals on this issue.

FOR FURTHER INFORMATION CONTACT: Scott Sedgwick, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1990, the FAA published Notice of Proposed Rulemaking No. 85–7A (55 FR 7280) that proposed an amendment to 14 CFR part 23 and invited public comment. The comment period closed on June 28, 1990. Seventeen commenters responded to the notice.

Several commenters disagreed with the economic evaluation contained in the NPRM and believed that either the benefits had been overestimated, costs had been underestimated, or both. The FAA agrees, and after completing an extensive economic evaluation of these safety recommendations has determined that the costs of the proposed change are not justified by the potential benefits.

Some commenters believed that the proposed § 23.993(f) probably would result in the incorporation of some sort of self-closing device in fuel lines and that the reliability of such devices should be addressed. The FAA agrees, and the referenced economic evaluation also includes the effects of uncommanded operation of such devices.

Other Comments

There were both positive and negative overall comments on the NPRM proposals. However, as the proposals are not economically feasible at this time, every comment will not be addressed in specific detail. The most pertinent comments are summarized as follows.

Several commenters suggested definitions of a "survivable" crash along with specific improvements/changes to the proposed regulations. The FAA agrees that a definition of a survivable crash would be necessary to proceed with the proposal. Because the NPRM is being withdrawn, the FAA has noted these definitions, along with the comments specific to the actual wording of the proposed regulations, for possible future reference.

Several commenters disagreed with either mandating the use of flexible bladder tanks, certain aspects of their use, or both. The FAA agrees it is more appropriate to specify an objective test for fuel tanks (leaving the details of design and construction to the designer) than to mandate the use of flexible bladder tanks. Because this NPRM is being withdrawn, the FAA has noted these comments for possible future reference.

There were both positive and negative comments regarding the applicability of the proposal to previously type-certificated, newly manufactured (in addition to newly type-certificated) airplanes. These will not be addressed in specific detail because the NPRM is being withdrawn. However, one commenter did suggest making the standards applicable to newly manufactured airplanes on an individual model basis rather than on an overall basis as proposed. The commenter refers to a report by the FAA, DOT/FAA/CT–86/24, *Study of General Aviation Fire Accidents (1974–1983)*, which the commenter believes shows that some airplane types are more prone to post-crash fires than others. The FAA agrees with the observation that some airplane types are more prone to post-crash fires than others. However, the FAA does not selectively apply airworthiness standards (such as these proposed rules) to specific airplane models. These standards define a minimum level of safety that applies to all airplanes certificated in a given category.

Additionally, two commenters objected that the proposals did not adhere to the recommendations made by the GASP II committee. The FAA's rationale for not following those recommendations is contained in the preamble to the NPRM and remains unchanged.

Several comments were beyond the scope of the NPRM and, though some were commendable, they will not be addressed further.

Withdrawal of Proposed Rule

In consideration of those comments to Notice No. 85–7A regarding the cost-benefit analysis, the Federal Aviation Administration has decided to withdraw Notice No. 85–7A for further internal study. Accordingly, Notice No. 85–7A, published on February 28, 1990 (55 FR 7280), is withdrawn.

Issued in Washington, D.C. on December 21, 1999.

Ronald T. Wojnar,

Acting Director, Aircraft Certification Service.

[FR Doc. 99–33801 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–353–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A321 series airplanes. This proposal would require replacement of the actuator of the ram air turbine (RAT) with a new actuator. It would also require modification of the actuator wiring. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the RAT to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–353–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A319 and A321 series airplanes. The DGAC advises that the ram air turbine (RAT) may jam if the RAT deployment is initiated with the airplane in a negative-G flight condition. In such a case, the RAT is not usable or recoverable during flight. This condition, if not corrected, could result in failure of the RAT to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–29–1088, dated February 23, 1999, which describes procedures for replacement of the actuator of the ram air turbine (RAT) with a new actuator. It also specifies modification of the actuator wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–412–141(B), dated October 20, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,320, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–353–AD.

Applicability: Model A319 and A321 series airplanes, certificated in any category; except those on which Airbus Modification 27015 or Airbus Service Bulletin A320–29–1088, dated February 23, 1999, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ram air turbine (RAT) to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Replace the RAT actuator with an improved actuator, and modify the wiring of the RAT actuator; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1088, dated February 23, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–412–141(B), dated October 20, 1999.

Issued in Renton, Washington, on December 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33948 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–337–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that currently requires repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This action would expand the current inspection area for certain airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–337–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 2, 1999, the FAA issued AD 99–19–26, amendment 39–11313 (64 FR 49966, September 15, 1999), applicable to certain Airbus Model A300 and A300–600 series airplanes, to require repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Since the issuance of AD 99–19–26, the manufacturer has issued Airbus Service Bulletins A300–57A0234, Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); and A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes). These service bulletins expand the current inspection area for accomplishing the repetitive detailed visual and high frequency eddy current inspections to include holes 43, 48, 49, 50, 52, and 54 of Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 1998–151–247(B) R2, dated June 16, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–19–26 to continue to require repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. It also would continue to require modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This proposed AD would expand the current inspection area for certain airplanes. The inspections would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 164 airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is currently required by AD 99–19–26, and retained in this proposed AD takes approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $10,270 per airplane. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $2,294,360, or $13,990 per airplane.

The new expanded inspections that are proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $59,040, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11313 (64 FR 49966, September 15, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–337–AD. Supersedes AD 99–19–26, amendment 39–11313.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; except airplanes on which Airbus Modification 11912 has been installed in production, or on which Airbus Modification 11932 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998 (for Model A300–600 series airplanes); or A300–57–0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. After the effective date of this AD, only Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable; shall be used. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles.

Detailed Visual Inspection

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 3: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6057, both dated August 1, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) of this AD.

Repair

(b) If any crack is detected during any inspection required by this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) or (b)(2) of this AD, as applicable.

(1) If a crack is detected at one hole only, and the crack does not extend out of the spotface of the hole, repair in accordance with Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

Terminating Modification

(c) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999 (the effective date of AD 99–19–26, amendment 39–11313), whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01 (for Model A300–600 series airplanes), or A300–57–0235, Revision 01, including Appendix 01 (for Model A300 series airplanes), all dated February 1, 1999, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 4: Accomplishment of the modification required by paragraph (d) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6088 or A300–57–0235, both dated August 1, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(d)(2) Alternative methods of compliance, approved previously in accordance with AD 99–19–26, amendment 39–11313, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in French airworthiness directive 1998–151–247(B), dated June 16, 1999.

Issued in Renton, Washington, on December 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33949 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–241–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require repetitive inspections to detect cracking of the fuselage skin in the area of the VHF2 antenna, repair, if necessary. This proposal also would provide for optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness

information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct such cracking, which could result in cabin depressurization of the airplane.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–241–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.99–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Ǵeńerale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that cracks have been found in the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna. The cracks were caused by fatigue induced by the vibration of the VHF2 antenna during flight. This antenna is installed on both Model A330 and A340 series airplanes. Operators have reported 30 such occurrences on Model A330 and A340 series airplanes. Such cracking could result in cabin depressurization of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998 (for Model A330 series airplanes), and Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998 (for Model A340 series airplanes); which provide instructions for repetitive HFEC inspections to detect cracks of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna, and an interim repair procedure if cracks are found. Accomplishment of the interim repair will stop further crack propagation until a permanent repair can be accomplished. The interim repair consists of cutting out the cracked portion of the fuselage skin, and installing a filler plate in the skin cutout, two doublers, and shims. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 1998–192–071(B), Revision 01 (for Model A330 series airplanes) and 1998–193–089(B), Revision 01 (for Model A340 series airplanes), both dated March 24, 1999, in order to assure the continued airworthiness of these airplanes in France.

Airbus has also issued Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), and Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes); which provide terminating action for the repetitive inspections. The terminating action consists of a modification to reinforce the fuselage structure in the area of the VHF2 antenna. These service bulletins were approved by the DGAC.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. This proposed AD also would provide for an interim repair, which if accomplished, would extend the interval for the repetitive inspections. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, to be consistent with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action specified in the service bulletins described previously. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, unlike the procedures described in Airbus Service Bulletins A330–53–3094 and Service

Bulletin A340–53–4105, this proposed AD would not permit further flight if cracks are detected in the fuselage skin. The service bulletins allow for a temporary repair to be applied to cracks below a certain size, consisting of stop drilling the crack tip, until the interim repair can be accomplished. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject fuselage skin that is found to be cracked must be repaired either with the interim repair or in accordance with a method approved by the FAA (as applicable) prior to further flight.

In addition, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 6 work hours to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $360 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 112 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,720 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Airplane, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 99–NM–241–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; except those on which Airbus production modification 46025 is installed or on which Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the fuselage skin in the area of the VHF2 antenna, which could result in cabin depressurization of the airplane, accomplish the following:

Detailed Visual Inspection

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, as applicable: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with Airbus Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998 (for Model A340 series airplanes) (hereinafter referred to as the applicable service bulletin). Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the high frequency eddy current (HFEC) inspection required by paragraph (b) of this AD.

(1) Prior to the accumulation of 900 total flight hours.

(2) Within 1,250 flight hours since accomplishment of the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin, if the interim repair has been accomplished prior to the effective date of this AD.

(3) Within 300 flight hours since the most recent HFEC inspection accomplished in accordance with the applicable service bulletin, if the most recent HFEC inspection has been accomplished prior to the effective date of this AD.

(4) Within 36 flight hours after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

High Frequency Eddy Current Inspection

(b) Perform a high frequency eddy current (HFEC) inspection to detect cracks of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the

area of the VHF2 antenna, in accordance with the applicable service bulletin, at the applicable time specified by paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to the accumulation of 900 total flight hours on the airplane, or within 500 flight hours after the effective date of this AD, whichever occurs later. Thereafter, accomplish the follow-on actions of paragraph (c) or (d) of this AD, as applicable.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Within 1,250 flight hours after accomplishment of the interim repair, or within 500 flight hours after the effective date of this AD, whichever occurs later.

Repetitive Inspections

(c) If no crack is detected during the HFEC inspection required by paragraph (b) of this AD, accomplish the repetitive inspections required by paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished, accomplish the actions specified by paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat the HFEC inspection specified by paragraph (b) at intervals not to exceed 500 flight hours.

(ii) Within 300 flight hours after each HFEC inspection required by this AD: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with the applicable service bulletin. Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the next HFEC inspection required by paragraph (c)(1)(i) of this AD.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Corrective Actions

(d) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD, and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to further flight, accomplish the actions specified by paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If only one crack is detected and that crack is 9.45 inches or less, and is within the limits specified by the applicable service bulletin: Install the interim repair specified in paragraph 2.C.(4) of the applicable service bulletin. Thereafter, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Note 3: The interim repair referenced by this AD consists of cutting out the cracked portion of the fuselage skin, and installing a filler plate in the skin cutout, two doublers, and shims, as described in paragraph 2.C.(4) of the applicable service bulletin.

Note 4: Accomplishment of the interim repair in accordance with paragraph 4.3 of Airbus Industrie All Operator Telex (AOT) 53–10, dated September 24, 1997, is acceptable for compliance with the requirements of paragraph (d)(1) of this AD.

(2) If any crack is detected that is longer than 9.45 inches, or is outside the limits specified by the service bulletin, or if more than one crack is detected: Repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(e) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) Accomplishment of the modification as described in Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), terminates the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Note 5: Accomplishment of Airbus production modification 46025, or the modification as described in Airbus Service Bulletin A330–53–3097, dated July 29, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, dated July 31, 1998 (for Model A340 series airplanes), also constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 7: The subject of this AD is addressed in French airworthiness directives 1998–192–071(B)R1 (for Model A330 series airplanes) and 1998–193–089(B)R1 (for Model A340 series airplanes), both dated March 24, 1999.

Issued in Renton, Washington, on December 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Airplane Certification Service.

[FR Doc. 99–33950 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–101492–98]

RIN 1545–AV92

Relief for Service in Combat Zone and for Presidentially Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the postponement of certain tax-related deadlines due either to service in a combat zone or a Presidentially declared disaster. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations affect taxpayers serving in a combat zone and taxpayers affected by a Presidentially declared disaster.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 30, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–101492–98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–101492–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting

comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Beverly A. Baughman, (202) 622–4940; concerning the hearing and submissions of written comments, Guy Traynor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7508 of the Internal Revenue Code (Code), relating to postponement of certain acts by reason of service in a combat zone, and section 7508A, relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster. Section 7508A was added to the Code by section 911 of the Taxpayer Relief Act of 1997, Pub. L. 105–34 (111 Stat. 788 (1997)), effective for any period for performing an act that had not expired before August 5, 1997.

In general, section 7508 provides that the time individuals serve in a "combat zone" plus 180 days will be disregarded in determining whether acts listed in section 7508(a)(1), such as filing returns, paying taxes, filing certain petitions with the Tax Court, filing a claim for credit or refund, bringing suit, and assessing tax, are performed within the time prescribed. Under section 7508(a)(1)(K), the Secretary has the authority to provide by regulation other acts to which section 7508 will apply.

Section 7508A provides that, in the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster, the Secretary may postpone certain tax-related deadlines for up to 90 days. The deadlines that may be postponed are determined by cross-reference to section 7508(a)(1). Pursuant to section 7508A(b), the provision does not apply for purposes of determining interest on any overpayment or underpayment (if the underpayment arose prior to the disaster). See also H.R. Rep. No. 148, 105th Cong., 1st Sess. 397 (1997).

Explanation of Provisions

Under section 7508, the proposed regulations provide that, in addition to the acts described in section 7508(a)(1), the IRS may postpone other acts specified in revenue rulings, revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin.

Under section 7508A, the proposed regulations provide that, for any tax, penalty, additional amount, or addition to the tax of an affected taxpayer in a Presidentially declared disaster area, the IRS may disregard up to 90 days in determining whether certain tax-related deadlines described in section 7508(a)(1) were satisfied and the amount of any credit or refund. The proposed regulations apply to taxpayer deadlines, such as the time for filing returns and paying taxes relating to most income taxes (including domestic service employment taxes), estate taxes, and gift taxes; filing certain court documents, including petitions filed in United States Tax Court for redetermination of a deficiency; and filing claims for refund. In addition, under the authority in section 7508(a)(1)(K), the proposed regulations provide that for purposes of section 7508A, the IRS may disregard up to 90 days in determining whether the deadlines for filing returns and paying taxes relating to certain excise taxes and employment taxes have been met. Although the proposed regulations do not apply to deadlines for depositing federal taxes pursuant to section 6302 and the underlying regulations, it is anticipated that the failure to deposit penalty under section 6656 will be waived in appropriate circumstances, and thus section 7508A relief will not be necessary.

The proposed regulations also provide for the postponement of certain government deadlines, such as the time for making assessments, taking collection action, and bringing suit. However, the IRS and Treasury Department anticipate that the authority to postpone government deadlines will only be used in limited circumstances when it is determined that such a postponement is necessary and appropriate.

The proposed regulations provide that an affected taxpayer is (1) any individual whose principal residence is located in a covered disaster area; (2) any business whose principal place of business is located in a covered disaster area; (3) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area; (4) any individual whose principal residence or any business whose principal place of business is located outside the disaster area, but whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner's office, in a covered disaster area; (5) any estate or trust whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner's office, in a covered disaster area; (6) any individual who files a joint return with an affected taxpayer; or (7) any other person who is determined by the IRS to be affected by a Presidentially declared disaster. A covered disaster area means the location of a Presidentially declared disaster to which the IRS determines section 7508A applies.

It is anticipated that the IRS's authority to grant extensions of time to file tax returns under section 6081 and to pay tax with respect to such returns under section 6161 will provide taxpayers with the necessary relief in the case of many Presidentially declared disasters. However, if the IRS determines that section 7508A applies, it will publish guidance to inform taxpayers of the counties included in the covered disaster area, the taxpayer and government deadlines to which section 7508A applies, and the period to be disregarded (up to 90 days). Guidance will be published as soon as practicable after the declaration of a Presidentially declared disaster.

Section 6404(h) provides that in the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such returns under section 6161, interest will be abated during the extension period. The proposed regulations clarify that if, in addition to an extension under sections 6081 and 6161, there is a postponement of tax-related deadlines under section 7508A, interest will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extensions of time to file and pay. The abatement of interest only applies in the case of underpayments of income tax that arise during the extension period.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and 8 copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Beverly A. Baughman, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 301.7508–1 also issued under 26 U.S.C. 7508(a)(1)(K).

Section 301.7508A–1 also issued under 26 U.S.C. 7508(a)(1)(K) and 7508A(a). * * *

Par. 2. Section 301.7508–1 is added to read as follows:

§ 301.7508–1 Time for performing certain acts postponed by reason of service in a combat zone.

(a) *General rule.* The period of time that may be disregarded for performing certain acts pursuant to section 7508 applies to acts described in section 7508(a)(1) and to other acts specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(b) *Effective date.* This section applies to any period for performing an act that has not expired before December 30, 1999.

Par. 3. Section 301.7508A–1 is added to read as follows:

§ 301.7508A–1 Postponement of certain tax-related deadlines by reason of Presidentially declared disaster.

(a) *Scope.* This section prescribes rules by which the Internal Revenue Service (IRS) may postpone deadlines for performing certain acts with respect to taxes other than taxes not administered by the IRS such as taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E).

(b) *Postponed deadlines.* For any tax, penalty, additional amount, or addition to the tax of an affected taxpayer (defined in paragraph (d)(1) of this section), the IRS may disregard a period of up to 90 days in determining, under the internal revenue laws—

(1) Whether any or all of the acts described in paragraph (c) of this section were performed within the time prescribed; and

(2) The amount of any credit or refund.

(c) *Acts for which a period may be disregarded—(1) Acts performed by taxpayers.* Paragraph (b) of this section applies to the following acts performed by taxpayers—

(i) Filing any return of income, estate, gift, excise (other than taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E)) or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(ii) Payment of any income, estate, gift, excise (other than taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E)) or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof (including payment under section 6159 relating to installment agreements) or of any other liability to the United States in respect thereof, but not including deposits of taxes pursuant to section 6302 and the regulations thereunder;

(iii) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(iv) Allowance of a credit or refund of any tax;

(v) Filing a claim for credit or refund of any tax;

(vi) Bringing suit upon a claim for credit or refund of any tax; and

(vii) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(2) *Acts performed by the government.* Paragraph (b) of this section applies to the following acts performed by the government—

(i) Assessment of any tax;

(ii) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(iii) Collection by the Secretary, by levy or otherwise, of the amount of any liability in respect of any tax;

(iv) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and

(v) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(d) *Definitions—(1) Affected taxpayer* means—

(i) Any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a covered disaster area;

(ii) Any business whose principal place of business is located in a covered disaster area;

(iii) Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area;

(iv) Any individual whose principal residence (for purposes of section 1033(h)(4)) or any business whose principal place of business is not located in a covered disaster area, but whose records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a location, such as a practitioner's office, in a covered disaster area;

(v) Any estate or trust whose tax records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a location, such as a practitioner's office, in a covered disaster area;

(vi) The spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife; or

(vii) Any other person determined by the IRS to be affected by a Presidentially

declared disaster (within the meaning of section 1033(h)(3)).

(2) *Covered disaster area* means an area of a Presidentially declared disaster (within the meaning of section 1033(h)(3)) to which the IRS has determined paragraph (b) of this section applies.

(e) *Notice of postponement of certain acts.* If any tax-related deadline is postponed pursuant to section 7508A and this section, the IRS will publish a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance (see § 601.601(d)(2) of this chapter) describing the acts postponed, the number of days disregarded with respect to each act, the time period to which the postponement applies, and the location of the covered disaster area. Guidance under this paragraph (e) will be published as soon as practicable after the declaration of a Presidentially declared disaster.

(f) *Abatement of interest under section 6404(h).* In the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such return under section 6161, and, in addition, a postponement of tax-related deadlines under section 7508A, interest on an underpayment of income tax that arises during such period will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extension of time to file and the extension of time to pay.

(g) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) Corporation M, a calendar year taxpayer, has its principal place of business in County A in State X. Pursuant to a timely filed request for extension of time to file, Corporation M's 1999 Form 1120, "U.S. Corporation Income Tax Return," is due on September 15, 2000. Also due on September 15, 2000, is Corporation M's third quarter estimated tax payment for 2000. Corporation M's 2000 third quarter Form 720, "Quarterly Federal Excise Tax Return," and third quarter Form 941, "Employer's Quarterly Federal Tax Return," are due on October 31, 2000. In addition, Corporation M has an employment tax deposit due on September 15, 2000.

(ii) On September 1, 2000, a hurricane strikes County A. On September 6, 2000, the President declares that County A is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County A in State X is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on September 1, 2000, and ending on November 6, 2000, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because Corporation M's principal place of business is in County A, Corporation M is an affected taxpayer. Accordingly, Corporation M's 1999 Form 1120 will be filed timely if filed on or before December 14, 2000. Corporation M's 2000 third quarter estimated tax payment will be made timely if paid on or before December 14, 2000. In addition, because excise and employment tax returns are described in paragraph (c) of this section, Corporation M's 2000 third quarter Form 720 and third quarter Form 941 will be filed timely if filed on or before January 29, 2001. However, because deposits of taxes are excluded from the scope of paragraph (c) of this section, Corporation M's employment tax deposit is due on September 15, 2000.

Example 2. The facts are the same as in *Example 1*, except that during 2000, Corporation M's 1996 Form 1120 is being examined by the IRS. Pursuant to a timely filed request for extension of time to file, Corporation M timely filed its 1996 Form 1120 on September 15, 1997. Without application of this section, the statute of limitations on assessment for 1996 income tax will expire on September 15, 2000. However, pursuant to paragraph (c) of this section, assessment of tax is one of the government acts for which up to 90 days may be disregarded. The IRS determines that an extension of the statute of limitations is necessary and appropriate under these circumstances. Because the September 15, 2000, expiration date of the statute of limitations on assessment falls within the period of the disaster as described in the IRS's published guidance, the 90 day period disregarded under paragraph (b) of this section begins on September 16, 2000, and ends on December 14, 2000. Accordingly, the statute of limitations on assessment for Corporation M's 1996 income tax will expire on December 14, 2000.

Example 3. The facts are the same as in *Example 2*, except that the examination of the 1996 taxable year was completed earlier in 2000, and on July 28, 2000, the IRS mailed a statutory notice of deficiency to Corporation M. Without application of this section, Corporation M has 90 days (or until October 26, 2000) to file a petition with the Tax Court. However, pursuant to paragraph (c) of this section, filing a petition with the Tax Court is one of the taxpayer acts for which up to 90 days may be disregarded. Because Corporation M is an affected taxpayer, Corporation M's petition to the Tax Court will be filed timely if filed on or before January 24, 2001.

Example 4. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2001 taxable year and are required to file a Schedule H, "Household Employment Taxes." The joint return is due on April 15, 2002. H and W fully and timely paid all taxes for the 2001 taxable year, including domestic service employment taxes, through withholding and estimated tax payments. H and W's principal residence is in County B in State Y.

(ii) On April 2, 2002, a severe ice storm strikes County B. On April 5, 2002, the President declares that County B is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County B in State Y is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on April 2, 2002, and ending on April 19, 2002, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because H and W's principal residence is in County B, H and W are affected taxpayers. Because April 15, 2002, the due date of H and W's 2001 Form 1040 and Schedule H, falls within the period of the disaster as described in the IRS's published guidance, the 90 day period disregarded under paragraph (b) of this section begins on April 16, 2002, and ends on July 14, 2002, a Sunday. Pursuant to section 7503, if the last day for performing an act falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. Accordingly, H and W's 2001 Form 1040 will be filed timely if filed on or before July 15, 2002. In addition, the Schedule H will be filed timely if filed on or before July 15, 2002.

Example 5. The facts are the same as in *Example 4*, except H and W want to file an amended return to request a refund of 1998 taxes. H and W timely filed their 1998 income tax return on April 15, 1999. Without application of this section, H and W's amended 1998 tax return must be filed on or before April 15, 2002. However, pursuant to paragraph (c) of this section, filing a claim for refund of a tax is one of the taxpayer acts for which up to 90 days may be disregarded. Ninety days are disregarded under paragraph (b) of this section beginning on April 16, 2002, and ending on July 14, 2002. Accordingly, H and W's claim for refund for 1998 taxes will be filed timely if filed, as in *Example 4*, on or before July 15, 2002.

Example 6. (i) L is an unmarried, calendar year taxpayer whose principal residence is located in County R in State T. L does not timely file a 2001 Form 1040, "U.S. Individual Income Tax Return," which is due on April 15, 2002, and does not timely pay tax owed on that return. Absent reasonable cause, L is subject to the failure to file and failure to pay penalties under section 6651 beginning on April 16, 2002.

(ii) On May 10, 2002, a tornado strikes County R. On May 14, 2002, the President declares that County R is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County R in State T is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on May 10, 2002, and ending on June 27, 2002, 90 days will be disregarded in determining whether the acts are timely.

(iii) On May 31, 2002, L files a 2001 Form 1040, "U.S. Individual Income Tax Return," and pays the tax owed for 2001.

(iv) Because L's principal residence is in County R, L is an affected taxpayer. For purposes of penalties under section 6651, 90

days are disregarded under paragraph (b) of this section beginning on May 10, 2002. Because L files the return on May 31, 2002, the penalties under section 6651 will run from April 16, 2002, until May 10, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through May 31, 2002.

Example 7. The facts are the same as in *Example 6*, except L does not file the 2001 Form 1040 until November 25, 2002. Ninety days are disregarded under paragraph (b) of this section beginning on May 10, 2002, and ending on August 8, 2002. Therefore, the section 6651 penalties will run from April 16, 2002, until May 10, 2002, and from August 9, 2002, until November 25, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through November 25, 2002.

Example 8. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2001 taxable year. The joint return is due on April 15, 2002. After credits for withholding under section 31 and estimated tax payments, H and W owe tax for the 2001 taxable year. H and W's principal residence is in County C in State Z.

(ii) On March 1, 2002, severe flooding strikes County C. On March 5, 2002, the President declares that County C is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County C in State Z is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on March 1, 2002, and ending on April 25, 2002, 90 days will be disregarded in determining whether the acts are performed timely. The guidance also grants affected taxpayers an additional 6 month extension of time to file returns under section 6081 and an additional 6 month extension of time to pay under section 6161.

(iii) Because H and W's principal residence is in County C, H and W are affected taxpayers. Pursuant to the published guidance, H and W have until January 13, 2003, to file their return and pay the tax. This date is computed as follows: Under sections 6081 and 6161, H and W will have an additional 6 months, until October 15, 2002, to file and pay the tax. Further, under paragraph (f) of this section, 90 days are disregarded in determining the period of the extension. Therefore, H and W's return and payment of tax will be timely if filed and paid on or before January 13, 2003. In addition, under section 6404(h), underpayment interest under section 6601 is abated for the entire period, from April 16, 2002, until January 13, 2003.

(h) *Effective date.* This section applies to disasters declared after December 30, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–32823 Filed 12–29–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN No. 1218–AB36

Ergonomics Program; Corrections

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; technical corrections.

SUMMARY: This document makes technical corrections in OSHA's proposed ergonomics program standard, which was published on November 23, 1999.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at www.osha.gov.

SUPPLEMENTARY INFORMATION: OSHA published its proposed ergonomics program standard on November 23, 1999 (64 FR 65768). The published document contained miscellaneous errors. We are publishing this document to correct errors that appeared in the preamble and regulatory text of the proposed standard. The corrections refer to page numbers and columns in the November 23, 1999 **Federal Register**.

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this document. OSHA is issuing this document under the authority of sections 4, 6(b), and 8 of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), and 29 CFR part 1911.

Accordingly, OSHA is correcting the following errors in FR Doc. 99–28981 published in the November 23, 1999 **Federal Register**:

Corrections to Preamble

1. On page 65768, left column, bottom paragraph, in the last sentence, correct the words "approximately $900 per covered establishment" to read "approximately $700 per general industry establishment".

2. On page 65778, left column, top partial paragraph, correct the last sentence to read as follows: "Where employers do not have manual handling or manufacturing jobs, or jobs that have given rise to a covered MSD, the ergonomics program standard would not apply at all."

3. On page 65790, left column, first full paragraph, correct the second sentence to read as follows: "As explained in the summary and explanation for those sections, a covered MSD, as defined by this standard, is one that occurs after the effective date of this standard; is an OSHA-recordable MSD (as defined by OSHA's recordkeeping rule, 29 CFR part 1904); and is determined by the employer to have occurred in a job in which the physical work activities and conditions are reasonably likely to have caused or contributed to the type of MSD reported (or to have aggravated a pre-existing MSD), and those activities and conditions are a core element of the job and/or make up a significant amount of the employee's worktime."

4. On page 65797, right column, bullet points under the first full paragraph, add the following as a fifth bullet point: "• The requirements of the ergonomics program standard."

5. On page 65804, right column, third full paragraph, fifth sentence, correct the introductory language to read: "For these employers, the job hazard analysis includes two possible results:".

6. On page 65804, right column, third full paragraph, fifth sentence, correct the last part of the sentence (beginning "and second, * * *") to read as follows: "and second, the employer has determined that no job fix is needed because risk factors are not present to the extent that a covered MSD is reasonably likely to occur.".

7. On page 65821, left column, under heading "Section 1910.918 What must I do to analyze a problem job?", correct the paragraph heading "(b)" to read "(d)".

8. On page 65829, right column, correct the third paragraph from the end to read as follows: "Back belts/braces and wrist braces/splints are not considered PPE for the purposes of this standard."

9. On page 65836, left column, second paragraph under the table, correct the first sentence by deleting the words "prior to the occurrence of covered MSDs".

10. On page 65844, left column, first full paragraph, correct the exhibit number at the end of the paragraph to read "Ex. 26–432".

11. On page 65844, left column, in the text of section 1910.932, paragraph (d), correct the word "work-related" to read "covered".

12. On page 65853, left column, second full paragraph, in the last sentence, correct the number "6" to read "7".

13. On page 65862, left column, in the note to the table at the top of the column, correct the introductory language to read "Note to § 1910.940:".

14. On page 65864, right column, in the second full paragraph, correct the term "medical management" to read "MSD management" in the second and fotirth sentences.

15. On page 65986, right column, bottom paragraph, correct the next to last sentence ("Table VIII–1 shows that the total MSD incidence rates * * *") to read as follows: "Table VIII–1 shows that the total MSD incidence rates in general industry range as high as 1,448 per 10,000 workers (in Public Building and Related Furniture (SIC 253))."

16. On pages 65987 to 65993, column "Total MSD incidence rate (per 10,000 workers)" of Table VIII–1 Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC, contained errors for some SICs. The correct numbers are shown below.

CORRECTIONS TO TABLE VIII–1: ESTIMATED NUMBER OF ESTABLISHMENTS AND EMPLOYEES AND ESTIMATED ANNUAL INCIDENCE OF ALL MSD'S, BY 3-DIGIT SIC

SIC	Industry	Total MSD incidence rate (per 10,000 workers)
302	Rubber and plastics footwear	724
313	Footwear cut stock	347
315	Leather gloves and mittens	753
328	Cut stone and stone prods	397
387	Watches, clocks, and parts	144
417	Bus terminals	509
423	Trucking Terminals fac	501
461	Pipelines, excpt natural gas	446
474	Rental of railroad cars	113
482	Telegrph and other comm	75
489	Communication ser., n.e.c	45
496	Steam and air-cond. supplies	225
527	Department stores	371
544	Dairy products stores	91
545	Retail bakeries	68
552	Used car dealers	28
557	Motorcycle dealers	20
559	Auto dealers, n.e.c	28
563	Wm's access. and specialty strs	41
564	Chldrn's and infants' wear strs	53
608	Foreign banking	47
611	Federal credit agencies	15
614	Personal cred. institutions	11
622	Commodity contracts brokers	18
635	Surety insurance	48
636	Title insurance	97
637	Pension and health funds	42
639	Ins. Carriers, n.e.c	72
654	Title abstract offices	102
671	Holding offices	57
679	Miscellaneous investing	43
703	Camps and rec. vehicle parks	21
704	Membership-basis org. hotels	21
724	Barber shops	134
725	Shoe Repair	134
731	Advertising	124
754	Automotive serv., exc repair	153
762	Electrical repair shops	133
763	Watch and jewelry repair	133
764	Reupholstery and furn. repair	96
781	Motion picture production	249
782	Motion picture dist	575
783	Motion picture theaters	324
784	Video tape rental	312
791	Dance studios and schools	203
802	Dentists offices and clinics	50
803	Osteopathic physicians	28
823	Libraries	22
824	Vocational schools	23
829	Schools, n.e.c	22

17. On page 66018, correct Table VIII–4 by deleting this page.

18. On page 66019, left column, second paragraph from the bottom, correct the third sentence to read: "In an industry such as this, even the very small cost of the proposed ergonomics standard per affected establishment—$446—represents a large share of annual profits."

19. On page 66019, right column, third paragraph from the bottom, in the

last sentence, correct "27 industries" to read "15 industries".

20. On page 66019, right column, second paragraph from the bottom, in the first sentence, correct "0.04 percent" to read "0.05 percent".

21. On pages 66020 to 66026, the columns entitled "Annualized Compliance Costs as a Percentage of Revenue—SBA (percent)" and "Annualized Compliance Costs as a Percentage of Profits—SBA (percent)" of Table VIII–5 contained errors. Substitute the following corrected Table VIII–5.

BILLING CODE 4510–25–P

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
710	Soil prep. services	100	$827,563	6.0%	$49,406	$232	0.03	0.5	261	$569	0.07	1.15
720	Crop services	100	$920,171	7.9%	$72,694	$823	0.09	1.1	1,618	$2,060	0.22	2.83
740	Veterinary services	100	$323,809	8.7%	$28,171	$259	0.08	0.9	8,885	$663	0.20	2.35
750	Animal serv., except vet.	100	$130,385	6.0%	$7,784	$99	0.08	1.3	1,686	$608	0.47	7.81
780	Landscape & hort. services	500	$224,169	4.4%	$9,863	$411	0.18	4.2	22,191	$1,264	0.56	12.81
810	Timber tracts	100	$655,119	3.1%	$20,243	$433	0.07	2.1	183	$2,029	0.31	10.02
830	Forest products	1000	na [c]	3.1%	na	$1,936	na	na	34	$7,822	na	na
850	Forestry services	500	$651,017	3.1%	$20,116	$393	0.06	2.0	341	$1,804	0.28	8.97
910	Commercial fishing	100	$467,143	5.0%	$23,357	$206	0.04	0.9	255	$1,567	0.34	6.71
920	Fish hatcheries	100	$263,926	5.0%	$13,196	$691	0.26	5.2	21	$3,004	1.14	22.76
970	Hunting & trapping	100	$221,182	5.0%	$11,059	$258	0.12	2.3	49	$1,766	0.80	15.97
1310	Crude petrol. & nat. gas	500	$3,965,915	5.7%	$226,454	$308	0.01	0.1	1,239	$1,930	0.05	0.85
1320	Natural gas liquids	500	$48,139,333	4.8%	$2,320,316	$842	0.00	0.0	26	$18,379	0.04	0.79
1380	Oil & gas field services	500	$626,980	2.0%	$12,289	$828	0.13	6.7	1,730	$4,175	0.67	33.97
2010	Meat products	500	$8,956,331	2.3%	$205,996	$2,623	0.03	1.3	642	$11,427	0.13	5.55
2020	Dairy products	500	$15,094,385	2.2%	$332,076	$3,388	0.02	1.0	348	$18,122	0.12	5.46
2030	Preservd fruits & vegetables	500	$9,121,313	4.2%	$383,095	$2,397	0.03	0.6	375	$12,416	0.14	3.24
2040	Grain mill products	500	$9,680,093	2.7%	$261,363	$2,053	0.02	0.8	439	$12,065	0.12	4.62
2050	Bakery products	500	$2,270,290	2.2%	$49,946	$2,042	0.09	4.1	735	$9,530	0.42	19.08
2060	Sugar and confect. prods	500	$6,274,334	4.6%	$288,619	$2,413	0.04	0.8	227	$11,253	0.18	3.90
2070	Fats and oils	500	$17,798,517	2.9%	$516,157	$2,250	0.01	0.4	67	$16,977	0.10	3.29
2080	Beverages	500	$10,514,066	4.5%	$473,133	$3,163	0.03	0.7	462	$15,407	0.15	3.26
2090	Misc. food products	500	$4,590,098	2.9%	$133,113	$1,808	0.04	1.4	853	$8,404	0.18	6.31
2110	Cigarettes	1000	na [c]	3.9%	na	$58,343	na	na	3	$328,533	na	na
2120	Cigars	500	$1,804,300 [c]	3.9%	$70,368	$1,115	0.06	1.6	6	$7,955	0.44	11.31
2130	Chewing & smoking tobacco	500	$21,752,278	3.9%	$848,339	$2,309	0.01	0.3	4	$13,614	0.06	1.60
2140	Tobacco stemm. & redrying	500	na [c]	3.9%	na	$4,760	na	na	5	$26,690	na	na
2210	Brdwven fab. mills, cotton	1000	$15,713,726	3.6%	$565,694	$7,087	0.05	1.3	143	$20,446	0.13	3.61
2220	Broadwoven fabric mills	500	$5,404,147	2.4%	$129,700	$3,382	0.06	2.6	108	$13,015	0.24	10.03
2230	Brdwvn fab. mills, wool	500	$5,776,513	2.4%	$138,636	$1,624	0.03	1.2	30	$4,932	0.09	3.56
2240	Narrow fabric mills	500	$3,448,690	1.3%	$44,833	$2,554	0.07	5.7	98	$7,170	0.21	15.99
2250	Knitting mills	500	$3,597,430	2.7%	$97,131	$2,354	0.07	2.4	658	$6,714	0.19	6.91
2260	Tex. finishing, exept wool	500	$4,235,317	1.2%	$50,824	$1,923	0.05	3.8	253	$6,375	0.15	12.54
2270	Carpets and rugs	500	$5,177,762	1.7%	$88,022	$2,040	0.04	2.3	135	$6,824	0.13	7.75
2280	Yarn and thread mills	500	$8,354,331	4.0%	$334,173	$4,622	0.06	1.4	125	$21,020	0.25	6.29
2290	Misc. textile goods	500	$4,445,480	2.4%	$106,692	$1,868	0.04	1.8	316	$5,877	0.13	5.51
2310	Men's & boys' suits & coats	500	$2,881,376	4.0%	$115,255	$1,863	0.06	1.6	72	$7,232	0.25	6.27
2320	Men's & boys' furnishings	500	$3,171,012	3.2%	$101,472	$2,590	0.08	2.6	504	$10,478	0.33	10.33
2330	Wm's & misses' outerwear	500	$1,569,746	2.0%	$31,395	$510	0.03	1.6	2,430	$1,870	0.12	5.96
2340	Wm's & childm's undergarments	500	$3,775,503	2.2%	$83,061	$2,613	0.07	3.1	91	$10,338	0.27	12.45
2350	Hats, caps, & millinery	500	$1,649,005	4.3%	$70,907	$881	0.05	1.2	104	$3,208	0.19	4.52
2360	Girls' & childm's outerwear	500	$2,669,747	1.4%	$37,376	$1,263	0.05	3.4	154	$4,752	0.18	12.71
2370	Fur goods	500	$1,027,540 [c]	2.4%	$24,661	$88	0.01	0.4	29	$409	0.04	1.66
2380	Misc. apparel & accessories	500	$1,580,292	2.4%	$37,927	$944	0.06	2.5	263	$3,333	0.21	8.79
2390	Misc. fab. textile prods	500	$1,304,873	2.4%	$31,317	$705	0.05	2.2	2,525	$2,442	0.19	7.80
2410	Logging	500	$929,614	3.9%	$36,255	$75	0.01	0.2	1,998	$539	0.06	1.49
2420	Sawmills & planing mills	500	$2,910,249	3.8%	$110,589	$1,332	0.05	1.2	2,028	$4,004	0.14	3.62
2430	Millwork & plywood	500	$1,826,529	3.7%	$67,582	$1,344	0.07	2.0	3,340	$3,829	0.21	5.67
2440	Wood containers	500	$1,369,020	3.6%	$49,285	$706	0.05	1.4	1,041	$1,918	0.14	3.89
2450	Wood bldings & mobile homes	500	$4,950,488	3.7%	$183,168	$4,995	0.10	2.7	290	$17,727	0.36	9.68
2490	Misc. wood products	500	$2,178,297	2.8%	$60,992	$1,033	0.05	1.7	1,040	$3,502	0.16	5.74

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)*	Average Revenue per Firm (SBA)	Profit as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
2510	Household furniture	500	$2,073,124	2.9%	$60,121	$1,595	0.08	2.7	1,498	$5,763	0.28	9.59
2520	Office furniture	500	$3,012,350	3.9%	$117,482	$2,455	0.08	2.1	277	$8,986	0.30	7.65
2530	Pub bldng & related furn.	500	$5,819,938	3.0%	$174,598	$5,263	0.09	3.0	150	$17,683	0.30	10.13
2540	Partitions and fixtures	500	$2,089,272	3.0%	$62,678	$1,216	0.06	1.9	940	$3,867	0.19	6.17
2590	Misc furniture and fixtures	500	$2,117,271	3.0%	$63,518	$1,025	0.05	1.6	414	$3,475	0.16	5.47
2610	Pulp mills	750	$134,667,674 [c]	3.8%	$5,117,372	$10,469	0.01	0.2	16	$40,502	0.03	0.79
2620	Paper mills	750	$191,302,866	4.7%	$8,991,235	$35,806	0.02	0.4	77	$160,361	0.08	1.78
2630	Paperboard mills	750	$196,732,297 [c]	4.7%	$9,246,418	$17,393	0.01	0.2	43	$91,758	0.05	0.99
2650	Paperbrd containers & boxes	500	$8,670,479	4.0%	$346,819	$3,672	0.04	1.1	688	$14,915	0.17	4.30
2670	Misc. convrtd paper products	500	$6,820,292	2.7%	$184,148	$3,055	0.04	1.7	937	$9,692	0.14	5.26
2710	Newspapers	500	$1,125,756	6.0%	$67,545	$1,195	0.11	1.8	2,564	$4,079	0.36	6.04
2720	Periodicals	500	$2,200,657	3.7%	$81,424	$326	0.01	0.4	1,407	$1,332	0.06	1.64
2730	Books	500	$2,457,053	4.0%	$98,282	$816	0.03	0.8	1,021	$2,798	0.11	2.85
2740	Miscellaneous publishing	500	$1,795,050	5.1%	$91,548	$407	0.02	0.4	783	$1,691	0.09	1.85
2750	Commercial printing	500	$1,315,823	3.3%	$43,422	$539	0.04	1.2	12,442	$1,488	0.11	3.43
2760	Manifold business forms	500	$5,561,192	2.7%	$150,152	$2,493	0.04	1.7	308	$7,334	0.13	4.88
2770	Greeting cards	500	$6,967,041	3.8%	$264,748	$3,783	0.05	1.4	46	$10,909	0.16	4.12
2780	Blankbooks & bookbinding	500	$1,749,401	3.8%	$66,477	$1,752	0.10	2.6	645	$4,271	0.24	6.42
2790	Printing trade services	500	$1,124,497	3.0%	$33,735	$306	0.03	0.9	776	$1,352	0.12	4.01
2810	Indust. inorganic chemicals	1000	$50,087,613	4.1%	$2,053,592	$3,489	0.01	0.2	106	$45,940	0.09	2.24
2820	Plastics mat. & synthetics	750	$100,234,215	5.0%	$5,011,711	$4,326	0.00	0.1	116	$32,782	0.03	0.65
2830	Drugs	500	$11,576,143	5.5%	$636,688	$1,450	0.01	0.2	230	$9,702	0.08	1.52
2840	Soap, clnrs, & toilet goods	500	$6,619,474	2.9%	$191,965	$1,083	0.02	0.6	385	$6,751	0.10	3.52
2850	Paints & allied products	500	$6,147,975	2.8%	$172,143	$947	0.02	0.6	228	$6,116	0.10	3.55
2860	Indust. organic chemicals	500	$18,842,994	3.3%	$621,819	$1,554	0.01	0.2	95	$14,701	0.08	2.36
2870	Agricultural chemicals	500	$7,976,028	3.4%	$271,185	$688	0.01	0.3	117	$5,456	0.07	2.01
2890	Misc. chemical products	500	$6,784,471	3.8%	$257,810	$939	0.01	0.4	494	$4,860	0.07	1.89
2910	Petroleum refining	1500	$836,868,684 [c]	3.1%	$25,942,929	$15,004	0.00	0.1	77	$53,844	0.01	0.21
2950	Asphlt paving & roofing mat.	500	$7,498,719	3.3%	$247,458	$1,614	0.02	0.7	234	$9,441	0.13	3.82
2990	Misc. pet. & coal prods	500	$10,440,575 [c]	3.7%	$386,301	$1,111	0.01	0.3	112	$4,603	0.04	1.19
3010	Tires and inner tubes	1000	$110,959,868	3.9%	$4,327,435	$27,946	0.03	0.6	31	$153,001	0.14	3.54
3020	Rubber & plastics footwear	1000	$14,058,755	4.2%	$590,468	$9,891	0.07	1.7	13	$45,753	0.33	7.75
3050	Hose, blting, and gaskets	500	$3,876,049	4.4%	$170,546	$2,773	0.07	1.6	168	$13,254	0.34	7.77
3060	Fab. rubber prod., n.e.c.	500	$4,274,557	3.9%	$166,708	$2,682	0.06	1.6	369	$12,622	0.30	7.57
3080	Misc plastics, n.e.c.	500	$4,687,853	3.4%	$159,387	$2,109	0.04	1.3	3,289	$8,723	0.19	5.47
3110	Leather tan. & finishing	500	$3,171,214	1.7%	$53,911	$2,123	0.07	3.9	114	$6,300	0.20	11.69
3130	Footwear cut stock	500	na [c]	1.8%	na	$1,350	na	na	26	$3,668	na	na
3140	Footwear, except rubber	500	$3,351,889	1.9%	$63,686	$4,214	0.13	6.6	115	$13,237	0.39	20.79
3150	Leather gloves & mittens	500	na [c]	1.8%	na	$1,829	na	na	22	$5,820	na	na
3160	Luggage	500	$2,550,508 [c]	1.8%	$45,909	$1,023	0.04	2.2	89	$2,979	0.12	6.49
3170	Hndbags & prsnal leathr gds.	500	$1,514,988 [c]	1.8%	$27,270	$967	0.06	3.5	114	$2,888	0.19	10.59
3190	Leather goods, n.e.c.	500	$1,368,278	1.8%	$24,629	$991	0.07	4.0	143	$2,885	0.21	11.71
3210	Flat glass	1000	$44,411,164	4.5%	$1,998,502	$16,902	0.04	0.8	20	$66,938	0.15	3.35
3220	Glass, pressed or blown	750	$18,905,290	6.8%	$1,285,560	$8,125	0.04	0.6	139	$34,412	0.18	2.68
3230	Prod. of purchased glass	500	$1,988,946	4.4%	$87,514	$1,948	0.10	2.2	422	$7,500	0.38	8.57
3240	Cement, hydraulic	750	$32,779,097	4.5%	$1,475,059	$5,681	0.02	0.4	50	$26,357	0.08	1.79
3250	Structural clay products	500	$3,234,269	6.0%	$194,056	$3,422	0.11	1.8	137	$14,805	0.46	7.63
3260	Pottery & related prods	500	$1,082,204	4.5%	$48,699	$1,792	0.17	3.7	317	$6,711	0.62	13.78
3270	Concrete &. plast. prdcts	500	$3,222,724	4.3%	$138,577	$1,376	0.04	1.0	2,133	$6,124	0.19	4.42
3280	Cut stone & stone prods	500	$965,036	4.2%	$40,532	$703	0.07	1.7	342	$2,200	0.23	5.43
3290	Misc. nonmet. mineral prods.	500	$3,852,558	5.7%	$219,596	$2,286	0.06	1.0	372	$9,758	0.25	4.44

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
3310	Basic steel products	750	$71,587,838	4.7%	$3,364,628	$10,440	0.01	0.3	253	$52,946	0.07	1.57
3320	Iron and steel foundries	500	$5,316,943	4.7%	$249,896	$4,038	0.08	1.6	272	$16,348	0.31	6.54
3330	Primary nonfer. metals	750	$104,585,150	4.5%	$4,706,332	$8,632	0.01	0.2	43	$40,387	0.04	0.86
3340	Secondary nonfer. metals	500	$19,152,945	3.6%	$689,506	$2,661	0.01	0.4	63	$12,500	0.07	1.81
3350	Nonfer. rolling & drawing	750	$58,983,857	5.6%	$3,303,096	$8,858	0.02	0.3	223	$43,822	0.07	1.33
3360	Nonfer. foundries (estngs)	500	$3,491,201	3.7%	$129,174	$2,284	0.07	1.8	425	$8,841	0.25	6.84
3390	Misc. primary metal prdcts	750	$5,066,740	0.5%	$25,840	$1,177	0.02	4.6	246	$4,525	0.09	17.51
3410	Met. cans & ship. containers	500	$8,487,749	2.8%	$237,657	$4,197	0.05	1.8	73	$24,972	0.29	10.51
3420	Cutlery, hndtls, & hardware	500	$3,168,148	4.7%	$148,903	$2,157	0.07	1.4	754	$6,859	0.22	4.61
3430	Plumbing & heating fixtures	500	$5,500,578	3.8%	$209,022	$3,724	0.07	1.8	214	$11,696	0.21	5.60
3440	Fab. struct. metal prdcts	500	$3,142,031	4.0%	$125,681	$1,523	0.05	1.2	4,464	$4,533	0.14	3.61
3450	Screw machine products	500	$3,399,471	3.9%	$132,579	$1,750	0.05	1.3	925	$4,903	0.14	3.70
3460	Met. forgings & stampings	500	$5,900,679	4.5%	$265,531	$3,484	0.06	1.3	1,216	$10,429	0.18	3.99
3470	Metal services, n.e.c.	500	$1,930,459	5.7%	$110,096	$925	0.05	0.8	1,885	$2,712	0.14	2.46
3480	Ordnance and access., n.e.c.	500	$1,916,047	4.4%	$84,306	$1,632	0.09	1.9	113	$6,002	0.31	7.12
3490	Misc. fab. metal products	500	$3,139,004	4.8%	$150,672	$1,779	0.06	1.2	2,269	$5,655	0.18	3.75
3510	Engines and turbines	1000	$56,430,684	4.4%	$2,482,950	$12,325	0.02	0.5	101	$45,252	0.08	1.82
3520	Farm & garden machinery	500	$3,024,716	4.1%	$124,013	$1,768	0.06	1.4	514	$5,917	0.20	4.77
3530	Construct. & related mach.	500	$4,366,578	5.0%	$218,329	$2,252	0.05	1.0	974	$7,547	0.17	3.46
3540	Metalworking machinery	500	$1,923,153	4.6%	$88,465	$925	0.05	1.0	3,687	$2,951	0.15	3.34
3550	Special industry mach.	500	$3,696,115	4.5%	$166,325	$1,339	0.04	0.8	1,392	$4,575	0.12	2.75
3560	General indust. mach.	500	$4,271,460	4.5%	$192,216	$2,206	0.05	1.1	1,204	$7,894	0.18	4.11
3570	Computer & office equip.	500	$6,625,168	3.3%	$218,631	$1,234	0.02	0.6	475	$5,265	0.08	2.41
3580	Refrig. & serv. indust mach.	500	$4,721,613	2.0%	$94,432	$2,869	0.06	3.0	611	$10,155	0.22	10.75
3590	Industrial mach., n.e.c.	500	$1,086,294	5.5%	$59,746	$459	0.04	0.8	5,890	$2,016	0.19	3.37
3610	Elect. dist. equipment	750	$14,873,332	4.0%	$594,933	$2,500	0.02	0.4	142	$15,357	0.10	2.58
3620	Elect. indust. apparatus	500	$3,392,834	4.0%	$135,713	$1,478	0.04	1.1	340	$9,541	0.28	7.03
3630	Household appliances	500	$5,756,270	3.4%	$195,713	$2,815	0.05	1.4	60	$19,679	0.34	10.05
3640	Elct. lghtng & wire equip.	500	$4,355,541	4.6%	$200,355	$1,635	0.04	0.8	328	$10,265	0.24	5.12
3650	Household audio & vid. equip.	750	$17,721,076	5.9%	$1,045,543	$1,845	0.01	0.2	129	$11,620	0.07	1.11
3660	Communications equipment	750	$30,039,483	5.4%	$1,622,132	$2,370	0.01	0.1	307	$16,296	0.05	1.00
3670	Electronic components & access.	500	$4,279,984	5.4%	$231,119	$931	0.02	0.4	942	$6,289	0.15	2.72
3690	Misc. elect. equipment	500	$4,403,609	5.0%	$220,180	$1,758	0.04	0.8	240	$12,642	0.29	5.74
3710	Motor vehicles & equipt.	500	$5,821,819	3.9%	$227,051	$1,935	0.03	0.9	490	$18,774	0.32	8.27
3720	Aircraft and parts	1000	$64,238,252	4.3%	$2,762,245	$4,463	0.01	0.2	144	$52,379	0.08	1.90
3730	Ship, boat bldng and repair [c]	500	$1,358,254	3.6%	$48,897	$433	0.03	0.9	261	$4,423	0.33	9.05
3740	Railroad equipment	1000	$43,644,454 [c]	2.8%	$1,222,045	$5,496	0.01	0.4	18	$64,378	0.15	5.27
3750	Motorcycles & bicycles	500	$2,531,479	3.8%	$96,196	$531	0.02	0.6	36	$5,329	0.21	5.54
3760	Guided missiles	1000	$228,855,179 [c]	3.8%	$8,696,497	$9,485	0.00	0.1	8	$117,349	0.05	1.35
3790	Misc transportation equip.	500	$3,063,312	3.8%	$116,406	$795	0.03	0.7	170	$5,240	0.17	4.50
3810	Srch & navigation equipment	750	$51,158,168	4.7%	$2,404,434	$5,279	0.01	0.2	114	$32,312	0.06	1.34
3820	Meas. & contrlling devices	500	$3,508,984	5.3%	$185,976	$1,013	0.03	0.5	878	$5,387	0.15	2.90
3840	Medical instrmnts & supplies	500	$3,717,069	6.2%	$230,458	$1,031	0.03	0.4	757	$5,937	0.16	2.58
3850	Ophthalmic goods	500	$1,524,020	4.2%	$64,009	$803	0.05	1.3	104	$4,461	0.29	6.97
3860	Photo. equip. & supplies	500	$3,934,531	5.3%	$208,530	$1,085	0.03	0.5	112	$6,869	0.17	3.29
3870	Watches, clocks, & parts	500	$2,121,654	5.6%	$118,813	$552	0.03	0.5	25	$3,065	0.14	2.58
3910	Jwlry, slvrwre, and plate	500	$1,704,571	2.8%	$47,728	$432	0.03	0.9	648	$1,870	0.11	3.92
3930	Musical instruments	500	$1,432,933	3.3%	$47,287	$1,273	0.09	2.7	134	$5,206	0.36	11.01
3940	Toys and sporting goods	500	$2,141,491	3.5%	$74,952	$1,126	0.05	1.5	918	$4,277	0.20	5.71
3950	Office and art supplies	500	$1,910,943	3.3%	$63,061	$700	0.04	1.1	255	$2,829	0.15	4.49
3960	Costume jewelry & notions	500	$1,192,271	3.3%	$39,345	$437	0.04	1.1	243	$1,953	0.16	4.96

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

					For all small firms				For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
3990	Misc. manufactures	500	$1,443,695	3.4%	$49,086	$676	0.05	1.4	4,123	$1,439	0.10	2.93
4110	Local & suburban trans.	500	$693,674	6.2%	$43,008	$2,341	0.34	5.4	4,738	$4,702	0.68	10.93
4120	Taxicabs	500	$334,160	5.9%	$19,715	$341	0.10	1.7	715	$1,574	0.47	7.98
4130	Intercty & rural bus trans.	500	$2,047,822	7.0%	$143,348	$4,431	0.22	3.1	146	$14,516	0.71	10.13
4140	Bus charter service	500	$1,112,257	3.8%	$42,266	$1,055	0.09	2.5	611	$2,472	0.22	5.85
4150	School buses	500	$655,154	5.9%	$38,654	$1,663	0.25	4.3	1,401	$4,401	0.67	11.38
4170	Bus terminals	100	$178,250	5.9%	$10,517	$520	0.29	4.9	26	$1,099	0.62	10.45
4210	Trkng & Courier Service	100	$682,252	3.2%	$21,832	$952	0.14	4.4	32,512	$3,359	0.49	15.38
4220	Pub. warehousing & storage	1000	$645,103	9.4%	$60,640	$1,452	0.23	2.4	4,289	$4,015	0.62	6.62
4230	Trucking terminal fac.	500	$528,972 [c]	4.2%	$22,217	$1,215	0.23	5.5	33	$2,959	0.56	13.32
4510	Air trans., nhedulerl	1500	$84,888,883	4.0%	$3,395,555	$18,711	0.02	0.6	1,186	$104,226	0.12	3.07
4520	Air trans., nonsched.	1500	$2,785,728	6.0%	$167,144	$172	0.01	0.1	629	$500	0.02	0.30
4580	Airports and services	100	$815,921	4.6%	$37,532	$200	0.02	0.5	1,326	$574	0.07	1.53
4610	Pipelines, except natural gas	1500	$85,999,109 [c]	4.9%	$4,213,956	$13,744	0.02	0.3	62	$214,972	0.25	5.10
4720	Pass. trans. arrangements	100	$291,573	2.7%	$7,872	$61	0.02	0.8	2,944	$681	0.23	8.65
4730	Freight trans. arrangements	1000	$1,127,447	3.7%	$41,716	$630	0.06	1.6	4,822	$1,992	0.18	4.78
4740	Rental of railroad cars	20	$3,112,041	3.4%	$105,809	$151	0.00	0.1	16	$987	0.03	0.93
4780	Misc. trans. services	100	$597,838	3.4%	$20,326	$978	0.16	4.8	679	$3,744	0.63	18.42
4810	Telephone communication	1500	$30,966,070	7.7%	$2,384,387	$3,508	0.01	0.1	1,118	$85,583	0.28	3.59
4820	Telegrph & other comm.	100	$1,587,993	5.7%	$90,516	$169	0.01	0.2	49	$1,564	0.10	1.73
4830	Radio & TV broadcasting	100	$828,013	2.4%	$19,872	$143	0.02	0.7	994	$1,212	0.15	6.10
4840	Cable & othr pay TV services	100	$2,309,048	5.4%	$124,689	$638	0.03	0.5	405	$6,908	0.30	5.54
4890	Communication serv., n.e.c.	100	$1,476,773	5.7%	$84,176	$95	0.01	0.1	120	$1,144	0.08	1.36
4910	Electric services	100	$10,459,747	10.8%	$1,129,653	$1,057	0.01	0.1	257	$22,613	0.22	2.00
4920	Gas product. & distribution	10	$5,639,801	6.7%	$377,867	$184	0.00	0.0	67	$5,196	0.09	1.38
4930	Comb. utility services	20	$1,749,337	8.3%	$145,195	$227	0.01	0.2	23	$8,823	0.50	6.08
4940	Water supply	100	$417,626	10.6%	$44,268	$189	0.05	0.4	527	$1,314	0.31	2.97
4950	Sanitary services	100	$1,250,569	7.6%	$95,043	$865	0.07	0.9	987	$5,476	0.44	5.76
4960	Steam & air-cond. supplies	100	$1,091,696	8.3%	$90,611	$587	0.05	0.6	10	$4,026	0.37	4.44
4970	Irrigation systems	100	$176,445 [c]	8.3%	$14,645	$149	0.08	1.0	95	$572	0.32	3.91
5010	Motor vehicles	100	$7,338,706	2.0%	$146,774	$636	0.01	0.4	13,204	$2,181	0.03	1.49
5020	Furn. & homefurnishings	100	$3,107,868	2.0%	$62,157	$563	0.02	0.9	5,429	$1,715	0.06	2.76
5030	Lumber & construct. mat.	100	$3,956,240	1.9%	$75,169	$953	0.02	1.3	8,570	$2,610	0.07	3.47
5040	Prof. & commercial equip.	100	$2,865,424	2.5%	$71,636	$456	0.02	0.6	12,520	$1,851	0.06	2.58
5050	Met. & minerals, except pet.	100	$10,345,693	2.8%	$289,679	$880	0.01	0.3	3,648	$2,712	0.03	0.94
5060	Electrical goods	100	$5,334,184	2.2%	$117,352	$461	0.01	0.4	9,925	$1,913	0.04	1.63
5070	Hardware supplies	100	$3,243,960	2.2%	$71,367	$718	0.02	1.0	8,258	$2,254	0.07	3.16
5080	Mach., equipt, & supplies	100	$3,120,491	2.9%	$90,494	$567	0.02	0.6	23,717	$1,809	0.06	2.00
5090	Misc. durable goods	100	$3,072,234	3.2%	$98,311	$389	0.01	0.4	10,654	$1,450	0.05	1.47
5110	Paper and paper products	100	$4,200,691	1.6%	$67,211	$519	0.01	0.8	3,765	$2,540	0.06	3.78
5120	Drugs, proprietors, & sundries	100	$6,828,751	2.9%	$198,034	$566	0.01	0.3	1,457	$2,708	0.04	1.37
5130	Apparel and notions	100	$3,898,982	2.1%	$81,879	$297	0.01	0.4	4,780	$1,336	0.03	1.63
5140	Groceries & related products	100	$6,267,970	1.4%	$87,752	$1,003	0.02	1.1	12,569	$3,326	0.05	3.79
5150	Farm-prod. raw materials	100	$13,088,804	1.7%	$222,510	$233	0.00	0.1	1,829	$1,356	0.01	0.61
5160	Chemicals & allied prods	100	$6,688,714	3.2%	$214,039	$417	0.01	0.2	3,212	$1,950	0.03	0.91
5170	Petrol. & petrol. prods	100	$18,899,169	1.2%	$226,790	$537	0.00	0.2	2,938	$2,388	0.01	1.05
5180	Beer, wine, & dist. bev.	100	$7,805,539	2.3%	$179,527	$2,003	0.03	1.1	1,630	$5,786	0.07	3.22
5190	Misc. nondurable goods	100	$2,420,357	1.9%	$45,987	$422	0.02	0.9	18,050	$1,257	0.05	2.73
5210	Lumber & other bldng mat.	100	$2,041,155	1.9%	$38,782	$1,480	0.07	3.8	10,952	$3,113	0.15	8.03
5230	Paint, glass, wallpaper stn	100	$746,327	0.9%	$6,717	$449	0.06	6.7	3,228	$1,361	0.18	20.27
5250	Hardware stores	100	$747,354	2.3%	$17,189	$514	0.07	3.0	6,760	$1,085	0.15	6.31

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm ($BA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm ($BA) ($)	Average Cost per Firm ($BA) ($)	Annualized Compliance Costs as a Percentage of Revenues--$BA (percent)	Annualized Compliance Costs as a Percentage of Profits--$BA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
5260	Retail nurseries and gardens	100	$685,629	2.2%	$15,084	$616	0.09	4.1	5,227	$1,325	0.19	8.78
5270	Mobile home dealers	100	$2,506,918	2.9%	$72,701	$949	0.04	1.3	2,293	$1,976	0.08	2.72
5310	Department stores	500	$90,424,242	2.6%	$2,351,030	$13,243	0.01	0.6	145	$976,462	1.08	41.53
5330	Variety stores	500	$518,168	2.7%	$13,991	$782	0.15	5.6	2,693	$3,151	0.61	22.52
5390	Misc. gen. merchandise strs.	100	$867,314	1.6%	$13,877	$620	0.07	4.5	2,834	$3,055	0.35	22.01
5410	Grocery stores	500	$1,354,669	1.2%	$16,256	$1,395	0.10	8.6	31,006	$5,803	0.43	35.70
5420	Meat and fish markets	500	$698,037	1.3%	$9,074	$280	0.04	3.1	2,197	$1,003	0.14	11.05
5430	Fruit & vegetable markets	500	$670,436	1.3%	$8,716	$161	0.02	1.8	614	$877	0.13	10.06
5440	Candy, nut, & confectnry strs	500	$356,630	1.3%	$4,636	$153	0.04	3.3	698	$1,043	0.29	22.49
5450	Dairy products stores	500	$357,975	1.3%	$4,654	$111	0.03	2.4	297	$950	0.27	20.42
5460	Retail bakeries	500	$310,632	3.0%	$9,319	$216	0.07	2.3	4,795	$910	0.29	9.76
5490	Misc. food stores	100	$485,584	1.8%	$8,741	$122	0.03	1.4	2,047	$588	0.12	6.72
5510	New and used car dealers	100	$14,022,797	1.1%	$154,251	$2,830	0.02	1.8	15,764	$4,068	0.03	2.64
5520	Used car dealers	1000	$1,204,329	2.5%	$30,108	$50	0.00	0.2	1,935	$573	0.05	1.90
5530	Auto & home supply stores	100	$734,699	1.9%	$13,959	$643	0.09	4.6	15,128	$1,860	0.25	13.32
5540	Gas service stations	100	$1,661,818	1.6%	$26,589	$298	0.02	1.1	22,903	$1,250	0.08	4.70
5550	Boat dealers	100	$1,497,285	2.2%	$32,940	$529	0.04	1.6	2,280	$1,176	0.08	3.57
5560	Rec. vehicle dealers	20	$1,564,906	1.7%	$26,603	$595	0.04	2.2	1,298	$1,201	0.08	4.51
5570	Motorcycle dealers	100	$1,722,849	3.1%	$53,408	$80	0.00	0.2	456	$668	0.04	1.25
5590	Auto dealers, n.e.c.	500	$1,054,926	2.6%	$27,428	$67	0.01	0.2	125	$665	0.06	2.42
5610	Men's & boys' clothing strs	100	$734,468	0.1%	$734	$146	0.02	19.8	1,695	$1,188	0.16	161.69
5620	Women's clothing stores	100	$521,388	4.0%	$20,856	$117	0.02	0.6	3,610	$1,307	0.25	6.27
5630	Wm's access.& specialty strs	100	$424,294	4.5%	$19,093	$86	0.02	0.4	705	$1,049	0.25	5.49
5640	Children's & infants' wear strs	100	$442,743	1.2%	$5,313	$205	0.05	3.9	822	$1,289	0.29	24.27
5650	Family clothing stores	100	$811,771	1.3%	$10,553	$774	0.10	7.3	3,914	$3,824	0.47	36.23
5660	Shoe stores	100	$720,198	2.6%	$18,725	$159	0.02	0.8	1,931	$2,614	0.36	13.96
5690	Misc. apparel stores	500	$486,401	1.2%	$5,837	$62	0.01	1.1	956	$659	0.14	11.30
5710	Furnitre & homefurnishng strs	100	$837,185	2.3%	$19,255	$623	0.07	3.2	26,271	$1,560	0.19	8.10
5720	Household appliance strs	100	$851,037	2.3%	$19,574	$552	0.06	2.8	4,005	$1,380	0.16	7.05
5730	Radio, TV, & compr strs	100	$1,073,328	2.3%	$24,687	$329	0.03	1.3	6,675	$1,907	0.18	7.72
5810	Eating & drinking places	500	$469,053	3.0%	$14,072	$328	0.07	2.3	128,415	$1,190	0.25	8.46
5910	Drug stores	100	$1,276,589	2.5%	$31,915	$450	0.04	1.4	10,658	$1,821	0.14	5.71
5920	Liquor stores	1000	$803,413	1.4%	$11,248	$45	0.01	0.4	3,029	$423	0.05	3.76
5930	Used merchandise stores	500	$327,184	4.6%	$15,050	$237	0.07	1.6	5,829	$955	0.29	6.35
5940	Misc. shopping goods strs.	100	$506,822	2.2%	$11,150	$243	0.05	2.2	29,906	$1,049	0.21	9.40
5960	Nonstore retailers	100	$831,934	2.0%	$16,639	$664	0.08	4.0	9,386	$2,081	0.25	12.51
5980	Fuel dealers	100	$1,502,002	0.8%	$12,016	$590	0.04	4.9	3,581	$1,859	0.12	15.47
5990	Retail stores, n.e.c.	100	$392,251	2.6%	$10,199	$158	0.04	1.6	14,159	$1,063	0.27	10.43
6010	Central rsv. depository	10	na [c]	12.7%	na	$233	na	na	1	$3,130	na	na
6020	Commercial banks	10	$1,727,898	12.7%	$219,443	$67	0.00	0.0	112	$20,574	1.19	9.38
6030	Savings institutions	10	$1,974,399	12.7%	$250,749	$55	0.00	0.0	33	$15,956	0.81	6.36
6060	Credit unions	10	$494,582	12.7%	$62,812	$52	0.01	0.1	937	$587	0.12	0.93
6080	Foreign banking	10	$6,126,893	12.7%	$778,115	$74	0.00	0.0	6	$2,180	0.04	0.28
6090	Banking-related functions	100	$918,459	12.7%	$116,644	$131	0.01	0.1	486	$1,547	0.17	1.33
6110	Federal credit agencies	20	$1,722,770	14.6%	$251,524	$27	0.00	0.0	3	$9,859	0.57	3.92
6140	Personal cred. institutions	20	$856,550	18.1%	$155,036	$19	0.00	0.0	128	$2,706	0.32	1.75
6150	Business cred. institutions	20	$1,814,771	15.5%	$281,290	$55	0.00	0.0	219	$1,151	0.06	0.41
6160	Mortgage bankers & brokers	100	$695,722	9.6%	$66,789	$68	0.01	0.1	1,549	$949	0.14	1.42
6210	Security brokers & dealers	20	$842,572	10.5%	$88,470	$31	0.00	0.0	370	$1,764	0.21	1.99
6220	Commodity contracts brokers	100	$1,061,365	11.7%	$124,180	$37	0.00	0.0	85	$709	0.07	0.57
6230	Security & commod. exchanges	100	$1,600,957	11.7%	$187,312	$165	0.01	0.1	11	$1,573	0.10	0.84

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
6280	Security & commod. services	100	$731,044	14.1%	$103,077	$26	0.00	0.0	437	$1,062	0.15	1.03
6310	Life insurance	100	$7,739,146	12.7%	$982,872	$176	0.00	0.0	133	$14,390	0.19	1.46
6320	Medical & health insur.	20	$4,637,512	12.7%	$588,964	$134	0.00	0.0	67	$4,124	0.09	0.70
6330	Fire, marine, & casby ins.	1500	$140,086,752	12.7%	$17,791,018	$3,452	0.00	0.0	248	$283,937	0.20	1.60
6350	Surety insurance	20	$2,086,520	12.7%	$264,988	$56	0.00	0.0	13	$2,014	0.10	0.76
6360	Title insurance	100	$628,048	12.7%	$79,762	$189	0.03	0.2	109	$4,292	0.68	5.38
6370	Pension and health funds	1000	$758,021	12.7%	$96,269	$108	0.01	0.1	249	$1,193	0.16	1.24
6390	Ins. carriers, n.e.c.	100	$1,836,789	12.7%	$233,272	$141	0.01	0.1	46	$878	0.05	0.38
6410	Insurance agents	100	$376,269	6.8%	$25,586	$42	0.01	0.2	9,495	$557	0.15	2.18
6510	Real estate operators	100	$723,466	15.4%	$111,414	$203	0.03	0.2	23,947	$850	0.12	0.76
6530	RE agents and managers	100	$452,717	12.1%	$54,779	$127	0.03	0.2	17,090	$919	0.20	1.68
6540	Title abstract offices	100	$450,454	12.1%	$54,505	$146	0.03	0.3	1,204	$629	0.14	1.15
6550	Subdividers & developers	100	$686,118	9.1%	$62,437	$314	0.05	0.5	3,755	$1,543	0.22	2.47
6710	Holding offices	100	$1,458,012	17.5%	$255,152	$161	0.01	0.1	846	$1,759	0.12	0.69
6720	Investment offices	20	$2,504,933	17.5%	$438,363	$63	0.00	0.0	32	$1,656	0.07	0.38
6730	Trusts	100	$964,611	17.5%	$168,807	$80	0.01	0.0	907	$771	0.08	0.46
6790	Miscellaneous investing	20	$1,309,443	17.5%	$229,152	$48	0.00	0.0	575	$656	0.05	0.29
7010	Hotels and motels	100	$562,982	7.0%	$39,409	$639	0.11	1.6	13,478	$2,010	0.36	5.10
7020	Rooming & boarding houses	1000	$274,294	7.0%	$19,201	$285	0.10	1.5	519	$890	0.32	4.64
7030	Camps and rec. vehicle parks	1000	$403,297	7.0%	$28,231	$33	0.01	0.1	427	$576	0.14	2.04
7040	Membership-basis org. hotels	100	$216,959	7.0%	$15,187	$29	0.01	0.2	167	$414	0.19	2.72
7210	Laundry & garment svices	100	$247,311	3.8%	$9,398	$365	0.15	3.9	19,329	$1,062	0.43	11.30
7220	Photo studios, portrait	500	$278,014	3.9%	$10,843	$114	0.04	1.1	1,511	$995	0.36	9.18
7230	Beauty shops	500	$142,666	4.6%	$6,563	$42	0.03	0.6	7,931	$430	0.30	6.55
7240	Barber shops	100	$82,197	4.6%	$3,781	$108	0.13	2.9	1,016	$478	0.58	12.63
7250	Shoe repair	100	$101,726	4.6%	$4,679	$113	0.11	2.4	418	$596	0.59	12.74
7260	Fun. service and crematories	100	$590,431	7.9%	$46,644	$150	0.03	0.3	2,838	$834	0.14	1.79
7290	Misc personal services.	500	$212,827	4.6%	$9,790	$50	0.02	0.5	1,091	$1,420	0.67	14.51
7310	Advertising	100	$765,849	3.8%	$29,102	$217	0.03	0.7	3,055	$1,373	0.18	4.72
7320	Credit report.& collection	100	$674,626	7.0%	$47,224	$133	0.02	0.3	966	$930	0.14	1.97
7330	Mailing, reprod, stano., serv	100	$500,227	4.6%	$23,010	$163	0.03	0.7	5,396	$1,048	0.21	4.55
7340	Services to buildings	500	$258,731	3.7%	$9,573	$176	0.07	1.8	12,290	$935	0.36	9.76
7350	Misc. equipt. rental	100	$985,159	9.2%	$90,635	$327	0.03	0.4	4,016	$2,010	0.20	2.22
7360	Pers. supply services	500	$1,103,842	3.0%	$33,115	$1,381	0.13	4.2	6,019	$8,402	0.76	25.37
7370	Comptr & data proc. services	500	$1,097,682	5.2%	$57,079	$138	0.01	0.2	7,146	$1,711	0.16	3.00
7380	Misc. business services	500	$557,848	3.4%	$18,967	$242	0.04	1.3	14,724	$1,402	0.25	7.39
7510	Auto rentals, no drivers	100	$1,154,193	5.7%	$65,789	$427	0.04	0.6	1,671	$2,651	0.23	4.03
7520	Automobile parking	100	$682,842	4.8%	$32,776	$254	0.04	0.8	414	$5,421	0.79	16.54
7530	Automotive repair shops	500	$374,580	3.9%	$14,609	$198	0.05	1.4	36,758	$751	0.20	5.14
7540	Automotive serv., exc repair	500	$349,680	6.5%	$22,729	$408	0.12	1.8	9,281	$1,186	0.34	5.22
7620	Electrical repair shops	100	$384,314	2.6%	$9,992	$363	0.09	3.6	5,382	$1,293	0.34	12.94
7630	Watch and jewelry repair	100	$156,483	3.4%	$5,320	$151	0.10	2.8	398	$684	0.44	12.86
7640	Reupholstery & furn. repair	100	$149,960	3.4%	$5,099	$112	0.07	2.2	1,452	$528	0.35	10.36
7690	Misc. repair shops	100	$456,359	5.9%	$26,925	$376	0.08	1.4	12,308	$1,186	0.26	4.41
7810	Motion picture production	500	$990,868	5.4%	$53,507	$418	0.04	0.8	2,454	$2,492	0.25	4.66
7820	Motion picture dist.	20	$1,444,490	5.8%	$83,780	$365	0.03	0.4	445	$1,005	0.07	1.20
7830	Motion picture theaters	100	$652,241	5.8%	$37,830	$958	0.15	2.5	1,580	$3,958	0.61	10.46
7840	Video tape rental	500	$297,050	7.2%	$21,388	$275	0.09	1.3	7,203	$795	0.27	3.72
7910	Dance studios & schools	100	$147,902	4.1%	$6,064	$210	0.14	3.5	2,061	$582	0.39	9.59
7920	Prducrs, orch., entertainers	100	$713,474	3.6%	$25,685	$191	0.03	0.7	3,228	$977	0.14	3.80
7930	Bowling centers	500	$480,995	4.2%	$20,202	$258	0.05	1.3	1,830	$809	0.17	4.00

BILLING CODE 4510-26-C

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)*	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
7940	Commercial sports	100	$1,064,778	3.6%	$38,332	$416	0.04	1.1	1,259	$1,498	0.14	3.91
7990	Misc. recreation services	500	$602,501	4.2%	$25,305	$681	0.11	2.7	17,198	$2,443	0.41	9.65
8010	Offices of medical doctors	100	$775,789	6.3%	$48,875	$184	0.02	0.4	30,591	$1,113	0.14	2.28
8020	Dentists offices and clinics	500	$413,582	11.3%	$46,735	$75	0.02	0.2	15,864	$531	0.13	1.14
8030	Osteopathic physicians	500	$501,172	5.4%	$27,063	$43	0.01	0.2	786	$500	0.10	1.85
8040	Other health practitioners	500	$289,816	6.5%	$18,838	$145	0.05	0.8	17,520	$703	0.24	3.73
8050	Nursing & personal care fac.	500	$2,533,384	4.3%	$108,936	$5,958	0.24	5.5	6,066	$23,504	0.93	21.58
8060	Hospitals	100	$2,933,028	5.1%	$149,584	$3,119	0.11	2.1	329	$12,379	0.42	8.28
8070	Med. & dental labs	100	$567,385	7.9%	$44,823	$236	0.04	0.5	2,039	$1,725	0.30	3.85
8080	Home hlth care services	500	$1,352,121	3.5%	$47,324	$2,695	0.20	5.7	3,534	$12,169	0.90	25.71
8090	Hlth & allied serv., n.e.c.	500	$1,242,429	11.0%	$136,667	$794	0.06	0.6	4,121	$4,012	0.32	2.94
8110	Legal services	100	$499,601	5.0%	$24,980	$69	0.01	0.3	13,330	$864	0.17	3.46
8210	Elem. & secondary schools	100	$1,176,073	5.9%	$69,388	$420	0.04	0.6	3,421	$2,066	0.18	2.98
8220	Colleges & universities	100	$1,325,665	6.2%	$82,191	$632	0.05	0.8	260	$5,624	0.42	6.84
8230	Libraries	1000	$390,031	5.9%	$23,012	$62	0.02	0.3	164	$852	0.22	3.70
8240	Vocational schools	100	$557,312	5.9%	$32,881	$68	0.01	0.2	481	$944	0.17	2.87
8290	Schools, n.e.c.	1000	$500,377	5.0%	$25,019	$53	0.01	0.2	1,288	$636	0.13	2.54
8320	Individual & fam. services	500	$609,148	4.1%	$24,975	$944	0.16	3.8	12,854	$3,159	0.52	12.65
8330	Job train. & related serv.	500	$1,095,666	2.5%	$27,392	$2,250	0.21	8.2	2,477	$8,240	0.75	30.08
8350	Child day care services	1000	$266,652	3.8%	$10,133	$250	0.09	2.5	15,684	$854	0.32	8.42
8360	Residential care	500	$860,750	2.6%	$22,380	$2,038	0.24	9.1	9,280	$6,310	0.73	28.20
8390	Social services, n.e.c.	100	$982,940	3.4%	$33,420	$376	0.04	1.1	2,944	$1,958	0.20	5.86
8410	Museums & art galleries	100	$413,094	6.1%	$25,199	$258	0.06	1.0	906	$1,255	0.30	4.98
8420	Bot. & zoology gardens	100	$580,625	6.1%	$35,418	$713	0.12	2.0	133	$2,921	0.50	8.25
8610	Business associations	100	$658,954	3.3%	$21,745	$67	0.01	0.3	1,566	$669	0.10	3.08
8620	Prof. organizations	100	$732,835	4.8%	$35,176	$67	0.01	0.2	642	$730	0.10	2.07
8630	Labor organizations	100	$432,735	6.4%	$27,695	$45	0.01	0.2	1,557	$561	0.13	2.03
8640	Civic & social assoc.	500	$382,151	3.4%	$12,992	$252	0.07	1.9	7,826	$1,187	0.31	9.14
8650	Political organizations	100	$362,243	6.4%	$23,184	$89	0.02	0.4	371	$615	0.17	2.65
8660	Religious organizations	500	$328,231	9.1%	$29,869	$34	0.01	0.1	7,712	$695	0.21	2.33
8690	Membership orgs., n.e.c.	100	$482,414	6.4%	$30,874	$325	0.07	1.1	1,571	$1,843	0.38	5.97
8710	Eng. and arch. services	100	$647,979	4.2%	$27,215	$140	0.02	0.5	9,322	$1,164	0.18	4.28
8720	Accntng, auditng, & bkeeping	100	$324,342	12.0%	$38,921	$120	0.04	0.3	9,288	$1,075	0.33	2.76
8730	Research & testing services	100	$976,053	3.4%	$33,186	$504	0.05	1.5	3,434	$2,742	0.28	8.26
8740	Management & pub. relations	100	$540,229	6.2%	$33,494	$194	0.04	0.6	11,955	$1,516	0.28	4.53
8990	Services, n.e.c.	100	$470,986	5.0%	$23,548	$285	0.06	1.2	5,755	$848	0.18	3.60
	Total Average (unweighted)		$11,070,190	4.9%	$481,756	$1,898	0.08	1.48	1,210,067	$13,666	0.23	6.07

Source: Office of Regulatory Analysis.
Revenue data are from U.S. Dept. of Commerce, Bureau of Census. Compliance costs are from Chapter V of this Preliminary Economic Analysis. Profit rates are from, in most cases, Robert Morris Associates' "RMA Studies."

* Approximated, to make use of available firm revenue data.
[a] Excludes SIC 3731
[b] A profit rate of 5 percent of revenues was estimated for SICs 910,920,970,8110, and 8990; a profit rate of 4 percent was estimated for SICs 2280, 2310, and 5620.
[c] Revenue data were wholly or partially suppressed by the Census Bureau for the SBA small entity size category to protect confidentiality. Any projected economic impacts are therefore overestimated for these industries. Where estimated costs as a percent of profits would be in excess of 20 percent in those industries for which the Bureau suppressed the data, OSHA reported profit impacts as "na."

22. On page 66054, left column, correct the reference to the Eastern Research Group document to read as follows: "Eastern Research Group [ERG, 1999]. *Tabulations from OSHA's 1993 Ergonomics Survey*, Lexington, MA, 1999, Ex. 28–7."

23. On page 66054, left column, in the reference to the Robert Morris Associates document, add ", Ex. 26–1641" after "Philadelphia, PA 1996".

24. On page 66063, left column, in paragraph 5 under "G. MSD Management," correct "medical" to "MSD" in the first line.

25. On page 66065, left column, in the first paragraph under "C. Notice of Intention to Appear at the Hearings," correct the date in the first line to read "January 24, 2000".

Corrections to Regulatory Text

PART 1910—[CORRECTED]

Subpart Y—[Corrected]

§ 1910.945 [Corrected]

1. On page 66075, left column, correct the section number "§ 910.945" to read "§ 1910.945".

2. On page 66075, left column, in § 1910.945, in the definition of "Administrative controls," lines 2 and 3, correct the phrase "magnitude, frequency or duration" to read "magnitude, frequency, and/or duration".

3. On page 66075, left column, in § 1910.945, in the definition of "Covered MSD," correct paragraphs (1)(iv) and (2)(iv) by adding the words "of the job" after the words "core element".

4. On page 66075, right column, in § 1910.945, in paragraph (2) of the definition of "Ergonomic risk factors," lines 5 and 6, correct the phrase "duration, frequency and magnitude" to read "duration, frequency, and/or magnitude".

5. On page 66076, left column, in § 1910.945, in the definition for "Manual handling jobs," in the heading of the table, correct "(2) EXAMPLES OF JOB/TASKS THAT TYPICALLY ARE NOT MANUAL HANDLING JOBS" to read "(2) EXAMPLES OF JOBS THAT TYPICALLY ARE NOT MANUAL HANDLING JOBS".

6. On page 66077, right column, in § 1910.945, in paragraph (1) of the definition of "OSHA recordable MSD," line 2, correct "pre-existing MSD." to read "pre-existing MSD; and".

Signed at Washington, DC, this 23rd day of December, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–33860 Filed 12–29–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Workshops on Further Supplementary Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshops.

SUMMARY: The Minerals Management Service (MMS) is giving notice of three public workshops concerning the further supplementary proposed rule.

DATES: The public workshop dates are:

Workshop 1—Houston, Texas, on January 19, 2000, beginning at 9 a.m. and ending at 5 p.m., Central time.

Workshop 2—Albuquerque, New Mexico, on January 19, 2000, beginning at 9 a.m. and ending at 5 p.m., Mountain time.

Workshop 3—Washington, D.C., on January 20, 2000, beginning at 9 a.m. and ending at 5 p.m., Eastern time.

ADDRESSES: The workshop locations are:

Workshop 1 will be held at the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032, telephone number (281) 987–6802.

Workshop 2 will be held at the Bureau of Land Management, Albuquerque District Office, 435 Montano Road, Albuquerque, New Mexico 87107, telephone number (505) 761–8700.

Workshop 3 will be held at the Main Interior Building, 1849 C Street, NW, Washington, D.C. 20240 (South Penthouse Room), telephone number, (202) 208–3512.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax number (303) 231–3385, e-mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate in a discussion of the further supplementary proposed rule. For building security measures, each person may be required to present a picture identification to gain entry to the workshops.

Dated: December 23, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–33861 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Student Financial Assistance

AGENCY: Department of Education.

ACTION: Notice of intention to establish negotiated rulemaking committees on issues under Title IV of the Higher Education Act of 1965, as amended.

SUMMARY: We announce our intention to establish two negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965, as amended. Each committee will include representatives of the interests that are significantly affected by the subject matter of the regulations. We request nominations for participants from anyone who believes that his or her organization or group should participate in this negotiated rulemaking process.

DATES: We will consider all nominations for membership on the committees that we receive by January 18, 2000. We will also be holding a meeting on January 18, 2000, at the Department of Education for interested parties to discuss the procedures for the negotiated rulemaking sessions.

ADDRESSES: Please send your nomination to Beth Grebeldinger, U.S. Department of Education, 400 Maryland Ave., SW., ROB–3, Washington, DC 20202–5257, or fax to Beth Grebeldinger at (202) 708–7196. You may also email your nominations to: beth__grebeldinger@ed.gov

The meeting will be held at the Department of Education at the address above. Anyone interested in attending the meeting should contact Beth Grebeldinger at (202) 205–8822.

FOR FURTHER INFORMATION CONTACT: Beth Grebeldinger, U.S. Department of Education, 400 Maryland Ave., SW., ROB–3, Washington, DC 20202–5257. Telephone: (202) 205–8822. If you use a

telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.* interpreting service, assistive listening device, or materials in alternate format), notify the contact person listed in this NPRM in advance of the scheduled meeting date. Although we will attempt to meet a request we receive, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Structure of Committees

We anticipate having two negotiating committees. The ultimate goal of negotiated rulemaking is to reach a consensus on proposed regulations through discussion and negotiation among interested and affected parties, including the Department of Education. With this in mind, we will conduct these negotiations within a structure that is designed to meet this goal fairly and efficiently. We expect to make the committees large enough to allow significantly affected parties to be represented, without making the committees so large as to be unmanageable and potentially unsuccessful. We therefore encourage organizations and groups to work together to nominate someone who would represent a coalition of organizations or groups. The meetings will be open to the public.

We list below the issues each committee is likely to address. The list was developed through topic sessions held with representatives of the participants in the student financial aid programs in Washington, DC, through listening sessions held in Atlanta, Chicago, and San Francisco, and through listening sessions conducted by the Office of Student Financial Assistance's (OSFA's) Customer Service Task Force. This list of issues is tentative and may be revised as the process continues.

Note: A comprehensive review of delinquency and default management (including due diligence) has not been included on the list of issues for this round of negotiated rulemaking. Because of the complexity of these issues, we will convene discussions in early 2000 with all interested parties to begin consideration of these issues and to discuss what issues, if any, should be included in a future session of negotiated rulemaking.

Committee I: Loan Issues Committee

Cohort Default Rates

- Restructure and revise cohort default rate provisions for clarity and consistency (34 CFR 668.17).
- Address the effect of changes of ownership on calculation of cohort default rates and related determinations of eligibility (34 CFR 668.17(g)).
- Remove or modify the list of default reduction measures in Appendix D to Part 668.
- Develop regulations regarding electronic appeal submission and processing, including consideration of the functions to be performed by guaranty agencies, schools, and the Department.

Death and Disability—address evidentiary requirements for death discharges; standards for granting disability discharges; and processes for evaluating discharge applications (34 CFR 682.402(b) and (c)).

Delinquency and Default Management—address post-default due diligence (34 CFR 682.410(b)(6) and (7)).

Teacher Loan Forgiveness

False Certification Discharges—address implications of the decision in *Jordan* v. *Riley* and the existing ability to benefit standards (34 CFR 682.402(e)).

Federal Perkins Loans—address proof of claim requirements in bankruptcy (34 CFR 674) and criteria regarding institutions' ability to maintain an acceptable record of collecting on loans.

Cash Management—address just-in time provisions (34 CFR 668.162 and 668.167).

Committee II: Program and Eligibility Issues Committee

Change of Ownership—(34 CFR 668.12 and 668.13 and 34 CFR 600.20, 600.21, 600.30, and 600.31)

- Address changes of ownership of publicly traded corporations.
- Consider changes of control issues that are unique to public institutions.
- Clarify application procedures and information required for changes of ownership and other situations.
- Consolidate and clarify change of ownership provisions, including application procedures.

Nontraditional Programs

- Consider the definitions of standard term, nonstandard term and non-term (34 CFR 668.2).
- Address the application of the 12 hour rule as found in the academic year and eligible programs definitions (34 CFR 668.2 and 668.8).
- Revise notification and approval requirements for additional locations and new programs (34 CFR 600.10, 600.20, 600.21, and 600.30).
- Consider revisions to regulatory provisions governing consortium and contractual agreements (34 CFR 600.9).

Special Leveraging Education Assistance Partnerships (SLEAP)

Electronic Authorization and Verification, and Electronic Retention

- Address these issues for certain Title IV programs and purposes.

Each negotiating committee will include representatives of significantly affected interests, such as students, and/or legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.

Schedule for Negotiations

There are expected to be a total of approximately four meetings of each committee, all of which will be held in the metropolitan Washington, DC area. The following is the tentative schedule for negotiations for each of the committees. This schedule is subject to change.

Committee I

Session 1: February 7–8
Session 2: March 27–29
Session 3: May 1–3
Session 4: May 30–31

Committee II

Session 1: February 17–18
Session 2: March 29–31
Session 3: May 3–5
Session 4: June 1–2

Electronic Access to This Document

You may view this document, in Text or Adobe portable document format (pdf) on the World Wide Web at any of the following sites:
http://ocfo.ed.gov/fedreg/htm
http://www.ed.gov/news.html
http://www.ed.gov/legislation/HEA/rulemaking
To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1098a.

(Catalog of Federal Domestic Assistance Number does not apply)

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–33951 Filed 12–29–99; 8:45 am]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6515–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to delete the Monticello Radioactive Contaminated Properties Site (Site), located in Monticello, Utah, from the National Priorities List (NPL). The NPL is the National Oil and Hazardous Substances Pollution and Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). This action is being taken because EPA, with the preliminary concurrence of the State of Utah Department of Environmental Quality (UDEQ), has determined that responsible parties have implemented all appropriate response actions required and that no further response at the Site is appropriate.

A detailed rationale for this Proposal to Delete is set forth in the direct final rule which can be found in the Rules and Regulations section of this **Federal Register**. The direct final rule is being published because EPA views this deletion action as a noncontroversial revision and anticipates no significant adverse or critical comments. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by EPA by January 31, 2000.

ADDRESSES: Comments may be mailed to: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 312–6664.

Information repositories: Comprehensive information on the Site is available for viewing and copying at the Site information repositories at the following locations: U.S. Department of Energy Grand Junction Project Office Public Reading Room, 2597 B¾ Road, Grand Junction, Colorado 81503, (970) 248–6344; Monticello City Offices, 17 North First East Street, Monticello, Utah 84535, (435) 587–2271.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 312–6664; Mr. Joel Berwick, Project Manager, U.S. Department of Energy, 2597 B¾ Road, Grand Junction, Colorado, 81503, (970) 248–6020; Mr. David Bird, Project Manager, State of Utah Department of Environmental Quality, 168 North 1950 West, Salt Lake City, Utah, 84116, (801) 536–4219.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: December 15, 1999.

William P. Yellowtail,

Regional Administrator, Region 8.

[FR Doc. 99–33524 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–353; RM–9787]

Radio Broadcasting Services; Mojave, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Linda A. Davidson requesting the allotment of Channel 241A to Mojave, California, as that community's second local FM transmission service. As Mojave is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the requested allotment of Channel 241A at that community must be obtained. Coordinates used for this proposal are 35–06–11 NL; 118–10–22 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda A. Davidson, 2134 Oak St., Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–353, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33891 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–352; RM–9786]

Radio Broadcasting Services; Gaviota, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Brian Costello, requesting the allotment of Channel 266A to Gaviota, California, as that locality's first local aural transmission service. Coordinates used for this proposal are 34–27–37 NL; 120–04–25 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brian Costello, 15275 Old Cazadero Road, Guerneville, CA 95446.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–352, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33892 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–351; RM–9785]

Radio Broadcasting Services; Holbrook, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Navajo Broadcasting Company, Inc., licensee of Station KZUA-FM, Channel 221C1, Holbrook, Arizona, requesting the substitution of Channel 253C1 for Channel 221C1 at Holbrook and modification of its authorization accordingly. Coordinates used for this proposal are 34–41–25 NL; 110–06–00 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esq., 8404 Lee's Ridge Road, Warrenton, VA 20186.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–351, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33893 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–359, RM–9784]

Radio Broadcasting Services; Powers, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lyle R. Evans proposing the allotment of Channel 297C3 at Powers, Michigan. The channel can be allotted to Powers in compliance with the Commission's spacing requirements without a site restriction at coordinates 45–41–12 NL and 87–31–30 WL. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle R. Evans, 1296 Marian Ln., Green Bay, Wisconsin 54304 and Denise B. Moline, 1212 No. Naper Blvd, Suite 119, Naperville, Illinois 60540.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–359, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33897 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–358, RM–9783]

Radio Broadcasting Services; Burnet, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Elgin Fm Limited Partnership proposing the allotment of Channel 240A at Burnet, Texas. The channel can be allotted to Burnet in compliance with the Commission's spacing requirements with a site restriction 12.1 kilometers (7.5 miles) northwest of the community at coordinates 30–51–05 NL and 98–17–35 WL.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann C. Farhat, Bechtel & Cole Chartered, 1901 L Street, NW, Suite 250, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–358, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33898 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–357, RM–9780]

Radio Broadcasting Services; Eldorado, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Schleicher County Radio proposing the allotment of Channel 293A at Eldorado, Texas. The channel can be allotted to Eldorado in compliance with the Commission's spacing requirements without a site restriction at coordinates 30–51–36 NL and 100–36–00 WL. Mexican concurrence will be requested for the allotment at Eldorado.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Randy Parker, Schleicher County Radio 25415 Glenn Loch, The Woodlands, Texas 77380.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–357, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33899 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–356, RM–9779]

Radio Broadcasting Services; Mertzon, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Schleicher County Radio proposing the allotment of Channel 266A at Mertzon, Texas. The channel can be allotted to Mertzon in compliance with the Commission's spacing requirements without a site restriction at coordinates 31–15–30 NL and 100–49–00 WL. Mexican concurrence will be requested for the allotment at Mertzon.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Randy Parker, Schleicher County Radio, 25415 Glenn Lock, The Woodlands, Texas 77380.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–356, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33900 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–350; RM–9759]

Radio Broadcasting Services; Simmesport, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of C. Wayne Dowdy, requesting the allotment of Channel 287A to Simmesport, Louisiana, an incorporated community, as that locality's first local aural transmission service. Coordinates used for this proposal are 30–53–30 NL; 91–47–00 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lawrence J. Bernard, Jr., Esq., 5224 Chevy Chase Parkway, NW, Washington, DC 20015.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–350, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33894 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–349; RM–9756]

Radio Broadcasting Services; Hemet, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Arana Productions requesting the allotment of Channel 273A to Hemet, California, as that community's second local FM transmission service. As Hemet is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the requested allotment of Channel 273A to that community is required.

Coordinates used for this proposal are 33–44–41 NL; 116–59–13 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–349, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33895 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–348; RM–9765]

Radio Broadcasting Services; Tallulah, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Joe Kool Broadcasting requesting the allotment of Channel 248A to Tallulah, Louisiana, as that community's second local FM transmission service. Coordinates used for this proposal are 32–25–07 NL; 91–12–15 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Donald B. Brady, d/b/a Joe Kool Broadcasting, 204 Duncan Avenue, Jackson, MS 39202.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–348, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33896 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket RSPA–99–5455]

RIN 2137–AC34

Pipeline Safety: Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule defines drinking water and ecological areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline release. We refer to these areas as unusually sensitive areas (USAs). The proposed definition was created through a series of public workshops and our collaboration with a wide-range of federal, state, public, and industry stakeholders. RSPA is working on a pilot test that implements the proposed definition and identifies USAs in three states: Texas, Louisiana, and California. Other government agencies, environmental groups, and academia will evaluate the final results of this pilot test. RSPA will publish the results of the pilot test and technical analysis once they are complete. This proposed rule would not require specific action by pipeline operators. However, this proposed definition would be used as criteria in evaluating requirements by certain existing and future regulations.

DATES: Send written comments by June 27, 2000.

ADDRESSES: Send written comments in duplicate to the Dockets Facility, U.S. Department of Transportation, Room #PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Persons who want confirmation of mailed comments must include a self-addressed stamped postcard. Comments may also be e-mailed to

ops.comments@rspa.dot.gov in ASCII or text format. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Persons interested in receiving future information, including the final pilot results, should visit the OPS Home Page at http://ops.dot.gov, or send their name, affiliation, address, and phone number to Christina Sames, U.S. Department of Transportation, Office of Pipeline Safety, 400 Seventh Street SW, DPS–11, Washington, D.C. 20590–0001.

FOR FURTHER INFORMATION CONTACT: Christina Sames at (202) 366–4561 or christina.sames@rspa.dot.gov. Copies of this document or other material in the docket, including material from the public workshops, can be obtained from the Dockets Facility. The public may also review material in the docket by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document published in the **Federal Register** may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

SUPPLEMENTARY INFORMATION:

Legislative Mandates

In 1992, Congress amended the federal pipeline safety statute to require the Secretary of Transportation (Secretary) to prescribe regulations that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in an area that the Secretary describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident (USAs). The Secretary was to consider all hazardous liquid pipeline facilities and gathering lines, whether or not they are subject to safety regulation under 49 U.S.C. Chapter 601. The Secretary also had to consult with the Environmental Protection Agency (EPA) in establishing the criteria.

The following were to be considered:

- Earthquake zones and areas subject to substantial ground movements, such as landslides;
- Areas where ground water contamination would be likely in the event of the rupture of a pipeline facility;
- Freshwater lakes, rivers, and waterways; and
- River deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined.

In 1996, Congress amended the USA identification requirements (49 U.S.C. Section 60109). The Secretary was still required to prescribe standards that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in an USA. However, in establishing criteria, the Secretary was now to consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including:

- Locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and
- Locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.
- A Presidential memorandum that accompanied the 1996 statute clarified Administration policy on USAs. The memorandum said that the listed examples should be considered, but are not exclusive and that DOT was to accord full protection to all wetlands and other aquatic areas. DOT was also to consider both the potential for short term and permanent or long term injuries to natural resources or the environment.

The Secretary was to use the identification of these unusually sensitive environmental areas in future rulemakings, that include requiring additional prevention and inventory measures in these sensitive areas. For instance, 49 U.S.C. 60109(a)(2) directs the Secretary to require operators to identify unusually sensitive environmental areas through maps and pipeline inventories.

The Secretary is to consider requiring each pipeline in an unusually sensitive environmental area to be inspected periodically and to prescribe when an instrumented internal inspection device should be used to inspect the pipeline (49 U.S.C. 60102(f)(2)). Also, the Secretary is to survey and assess the effectiveness of emergency flow restricting devices and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device or such other procedure, system, or equipment (49 U.S.C. 60102(j)).

June 1994 Public Meeting: Consideration of an OPA Approach to USAs

On June 28, 1994, RSPA held a public meeting to gather data that would allow RSPA to establish criteria for identifying environmentally sensitive areas on or near hazardous liquid pipelines. RSPA would then use the established criteria to carry out the requirements of the Oil Pollution Act (OPA) and 49 U.S.C. Section 60109.

Under our regulations that implement OPA requirements for pipelines (49 CFR part 194), an operator of an onshore oil pipeline that, because of its location, could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by a release into or on any navigable waters or adjoining shorelines, must prepare and submit an oil spill response plan. These requirements are intended to improve response capabilities and to reduce the environmental impact of oil discharged from onshore oil pipelines.

The OPA regulations require an operator to identify the areas potentially affected by its pipeline that are of greatest vulnerability to an oil discharge, including navigable waters, public drinking water intakes, and environmentally sensitive areas. Environmentally sensitive areas were defined as "an area of environmental importance which is in or adjacent to navigable waters." These areas included wetlands, national parks, wilderness and recreational areas, wildlife refuges, marine sanctuaries, and conservation areas.

We hoped to create a single definition for environmentally sensitive areas that could be used for OPA spill response planning and for the preventive measures intended by the pipeline safety statute. As previously discussed, these pipeline safety requirements included increased inspection requirements, emergency flow restricting devices, and maps and pipeline inventories of pipelines in unusually sensitive areas.

Participants at the meeting included representatives from the EPA, U.S. Coast Guard, Department of Agriculture, Department of Interior, Department of Commerce, hazardous liquid pipeline industry, and the public. Participants discussed a draft definition that focused on areas where a hazardous liquid release could create significant long-term environmental harm or represent an imminent threat to human health. These areas included community water intakes; freshwater lakes, rivers and waterways; state or Federal wetlands, parks, natural areas, wilderness areas,

wild or scenic rivers, wildlife refuges or wildlife sanctuaries specifically designated, identified, and located by the Area Contingency Plans; and river deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined. Participants also discussed whether common criteria could be created for both spill response planning and prevention measures.

Meetings With Other Federal Agencies and the Pipeline Industry

RSPA held several meetings with other federal agencies and the pipeline industry following the June 1994 public meeting. The meetings were held to obtain additional information on sensitive resources that should be considered when defining USAs. Participants at the meetings included the EPA; the U.S. Coast Guard; the Departments of Interior, Commerce, and Agriculture; and the hazardous liquid pipeline industry.

Several participants at the meetings stated that it would be better to separate the OPA definition of environmentally sensitive areas from the USA definition. They stated that it would be better to maintain a broad definition within OPA for spill response functions and that a narrow definition should be created for USAs and the prevention measures the USA definition would be applied to.

Participants at the meetings also discussed the resources that should be considered when defining USAs. These included community drinking water intakes, threatened and endangered species, populated areas, economic resources, and commercial water intakes. Participants stated that a decision tree or matrix should be developed to help identify which environmentally sensitive areas were USAs.

RSPA used the information gathered at these meetings to create a revised draft definition for USAs. The definition built upon the values other Federal agencies had established for activities under OPA, but more narrowly identified those areas that were unusually sensitive to damage from a hazardous liquid release. The revised definition focused on areas where a release would reach the sensitive area before the release was contained or before the area was protected.

June 1995 Public Workshop: Consideration of a Three Tier Approach to USAs

On June 15 and 16, 1995, RSPA held a public workshop to openly discuss the revised draft definition for USAs (60 FR 27948, May 26, 1995). Participants included representatives from the U.S. Coast Guard; the Departments of Interior, Agriculture, and Commerce; the EPA; non-government agencies; the hazardous liquid pipeline industry; and the public.

The revised draft definition considered three tiers of USAs. RSPA considered phasing in the three tiers to give operators more time to determine which USAs could be affected by a hazardous liquid pipeline release.

Tier One consisted of areas that could affect human health if contaminated, such as intakes for community drinking water systems and sole source aquifers. Sole source aquifers supply at least half of the drinking water consumed in the area above the aquifer and have no alternative sources that could supply all those who get their drinking water from the aquifer. In the tier model, community drinking water systems and sole source aquifers that could reasonably be expected to be affected by a release would be considered the most sensitive and highest priority areas.

We gave Tier Two, USAs along surface water, the second highest priority. Tier Two took into account the surface water habitat's natural ability to restore itself to the condition that existed before the release, and the biological and human use resources in the body of water and along the water's edge. The habitat, the biological resources, and the human use resources were assigned numerical sensitivity ratings. Combining the numerical ratings of these three resources determined if a particular area was an USA.

Tier Three, USAs within terrestrial environments, was given the third highest priority. Tier Three, like Tier Two, took into account biological resources and human use resources be studied to determine if a given area is an USA. Each was assigned a numerical sensitivity rating; the combination of these ratings determined if a particular area was an USA.

Participants at the workshop discussed the above approach and criteria. Participants stated the tiered approach was complicated and that operators may not be able to carry out the process. Participants requested that additional workshops be held to further discuss this complex topic.

October 1995 Public Workshop: Discussions on the Three Tier Approach Continue and Discussions on the USA Process

On October 17, 1995, RSPA held a second public workshop on USAs (60 FR 44824; August 29, 1995) that focused on developing a process that could be used to determine if an area is an USA. Participants asked that the process include a series of workshops on topics such as guiding principles, defining terms that may be used when referring to USAs, and protecting drinking water sources, biological resources, and human use resources.

The hazardous liquid pipeline industry provided information on its current research on USAs and recommended that a definition consider the resource to be protected, the likelihood of a given pipeline impacting that resource, and what can be done to reduce the risk to the resource. Other participants recommended integrating factors on the likelihood of a rupture occurring and the severity of the consequence into the USA definition. Participants also discussed guiding principles that could be used when determining if a given area is a USA.

January 1996 Public Workshop: Guiding Principles and the Creation of a USA Model

RSPA held a third workshop on January 18, 1996, to further discuss the guiding principles for determining USAs (61 FR 342; January 4, 1996). Participants at the workshop included the EPA; the Departments of Interior, Agriculture, and Commerce; the hazardous liquid pipeline industry, and the public. The participants stated that significant drinking water and ecological resources should be considered USAs, but that economic or recreational areas should not. They maintained that economic and recreational areas could be restored following a hazardous liquid release, but certain drinking water or ecological resources could be irreparable if affected by a release. Several participants also questioned including cultural resources as USAs. These participants stated that most cultural resources can be repaired or replaced if they are impacted by a hazardous liquid release. Indian tribal concerns were also discussed and participants requested that additional research be conducted in this area.

Participants at the workshop identified consensus guiding principles to help RSPA determine which resources we should concentrate on (areas of primary concern), which areas of primary concern are the most sensitive to a hazardous liquid release, and how to collect and process resource data. The following is the list of those guiding principles:

- Human health and safety and serious threat of contamination are always to be considered.

• A functional definition of significant must be developed to determine USAs.

• Only areas in the trajectory of a potential spill, e.g. down gradient, should be considered.

• It is expected that no pipeline operator will be required to collect natural field resource data to determine USAs.

• USAs should be subject to a systematic review process. USAs may change through time as species migrate, change location, or for other reasons. The USA definition should be explicit and practical in application.

• All phases of the USA definition process should be pilot tested for validity, practicality, and workability, to the extent practical.

• The government agencies must describe and identify USAs so that the data will not be subject to various interpretations and will be applied consistently.

• Sources of USA data must be readily available to the public and uniform in criteria and standards.

• The standards and criteria for resource sensitivity should be uniform on a national basis such that equivalent resources receive equivalent sensitivity assessments regardless of regionally based priorities.

In addition to the guiding principles, the following guidelines were created:

• Workshops for each phase of developing a USA definition should include technical experts, representatives, and field personnel with appropriate experience from agencies as well as from industry.

• Public workshops should be used to gather information on the criteria that will determine USAs.

• The USA definition should be complete before its use in a rulemaking.

• The implementation of resource assessment and protection under the USA definition could be phased.

• All terms in the USA definition should be defined.

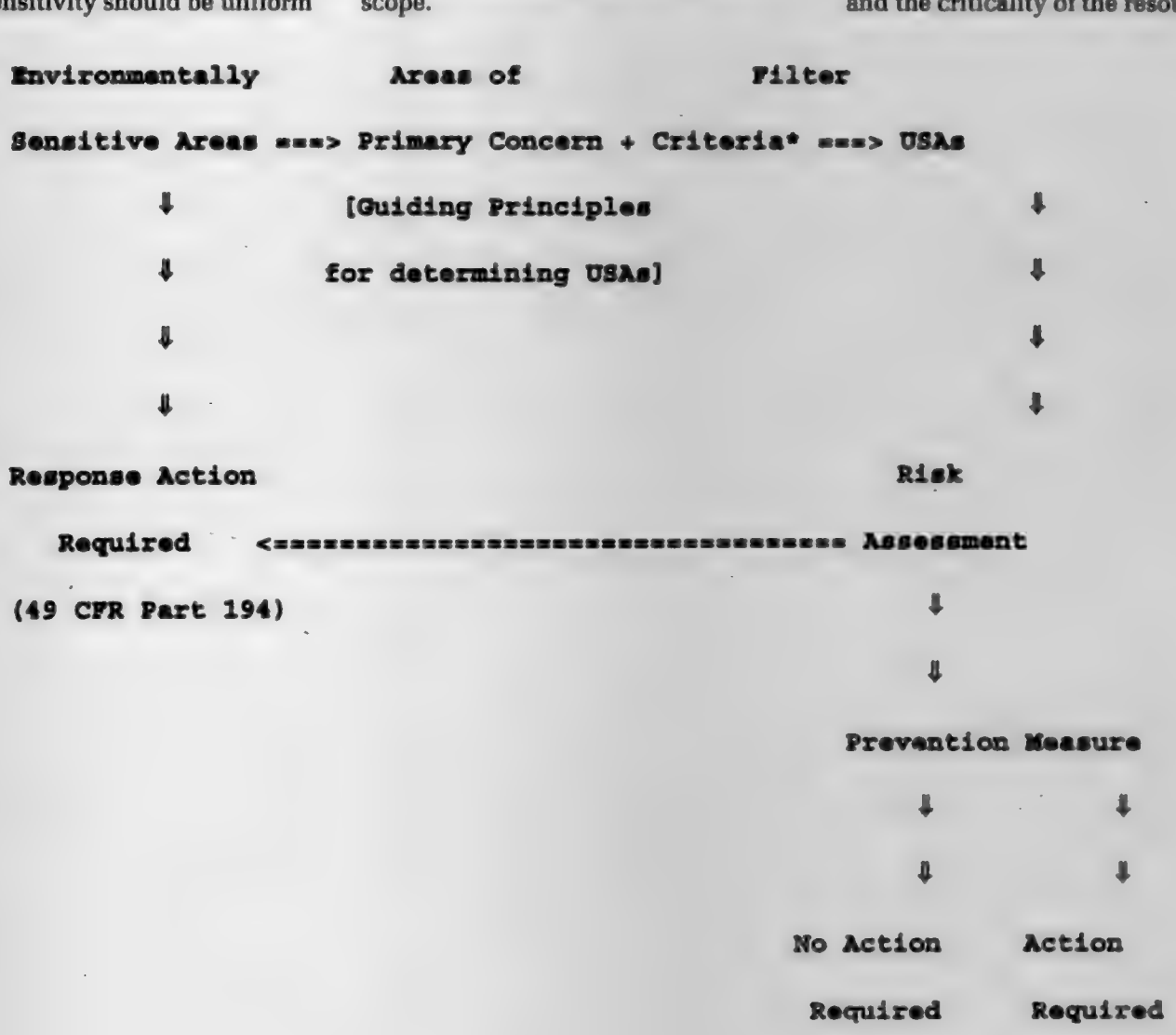
• National consistency in application of the USA definition should be the goal.

• Guidelines for data quality should include consistency, accuracy, and scope.

• Encourage open communication with land or resource managers in USAs.

• The ranking of resources or adding of values of several resources to reach a threshold USA quantity, as discussed in the June 1995 workshop, is not practical for many pipeline operators.

Participants at the workshop also created the following model of how the USA process could work. In this model, all areas that have been designated as environmentally sensitive are considered. From this large set, areas of greater concern due to their sensitivity to a hazardous liquid release are identified. These resource areas are called areas of primary concern. Filter criteria are then applied to the areas of primary concern to determine which areas of primary concern are unusually sensitive to damage from a potential hazardous liquid release. Filter criteria are designed to consider the likelihood that the resource could be impacted by a release, the guiding principles, the sensitivity of the resource, if the resource is irreparable or irreplaceable, if there are substitutes for the resource, and the criticality of the resource.



This model was used in all of the ensuing workshops and technical meetings and continues to be used in the current proposal. Finally, participants considered and identified the USA terms that they thought needed to be clarified.

April 1998 Public Workshop: USA Terms

The fourth public workshop on April 10–11, 1996, (61 FR 13144; March 26, 1996; Docket PS–140(d)), focused on criteria, components, and parameters of terms that have been used when describing USAs. These terms include the following: Significant, Threat of significant contamination, Contamination, Ecological, Drinking water resources, Recreational areas, Economic areas, Cultural areas, Readily available, and Uniform. Participants also discussed the scope and objectives of any additional USA workshops.

API Technical Meeting on Drinking Water Resources

On May 9–10, 1996, the API held a meeting of technical experts to discuss drinking water resources. RSPA and EPA attended this meeting and discussed our draft paper on drinking water resources that RSPA intended to present at its public workshop on drinking water resources. The draft discussed possible resource areas of primary concern and filtering criteria that could be used in determining which drinking water resources are unusually sensitive to damage from a hazardous liquid pipeline release.

June 1996 Public Workshop: Drinking Water Resources

RSPA held a fifth workshop on June 18–19, 1996, (61 FR 27323; May 31, 1996; Docket PS–140(e)) to discuss drinking water resources. Participants at this workshop included the EPA, the American Waterworks Association, Stanford University, the University of Alaska, and the public. This workshop focused on identifying critical drinking water resources (drinking water areas of primary concern) and possible filtering criteria that could be used to identify drinking water resources that are USAs.

Participants identified public water systems, wellhead protection areas, and sole source aquifers as drinking water areas of primary concern. Filtering criteria discussed include the depth of the aquifer, the geology surrounding the drinking water resource, and if the public water system has an adequate alternative drinking water supply.

Additional Technical Meetings

In addition to the five public workshops, we have had over a dozen meetings with other government agencies to discuss drinking water, ecological, and cultural resources. The API has also held meetings of technical experts to discuss unusually sensitive drinking water and ecological resources. RSPA, EPA, the Departments of Interior, Commerce, and Agriculture, The Nature Conservancy, and academia attended the API meetings.

API's technical meetings were on October 23–24, 1996, and June 25–26, 1997. Attendees discussed possible ecological areas of primary concern and filtering criteria that could be used to determine which ecological resources are unusually sensitive to damage from a hazardous liquid pipeline release. The significant ecological resources that were identified during the meetings included threatened and endangered species, critically imperiled and imperiled species, depleted marine mammals, and areas containing a large percent of the world's population of a migratory waterbird species. Filtering criteria focused on the extent to which a species is endangered, areas that are critical to multiple sensitive species, and areas where a large percent of a species population could be impacted. Notes from these technical meetings are in the Docket.

How RSPA Will Use the USA Definition

RSPA will use the definition for identifying USAs in current and future regulations. Any regulatory application of this definition will be aimed at ensuring that operators implement appropriate protective measures for pipelines in USAs.

Regulations where operators may have to identify USAs include the Risk-based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines (63 FR 59475; November 4, 1998), Response Plans for Onshore Oil Pipelines (62 FR 67292; December 24, 1997), Hazardous Liquid Pipelines Operated at 20% or Less of Specified Minimum Yield Strength (49 CFR Part 195), Emergency Flow Restricting Devices, (Docket PS–133), Increased Inspection Requirements, (Docket PS–141) and Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High Consequence Areas, (64 FR 56725; October 21, 1999)

Under the "Risk-based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines" rule (49 CFR § 195.303), operators may elect a risk-based alternative in lieu of hydrostatically testing certain older pipelines. The alternative establishes test priorities based on the inherent risk of a given pipeline segment. One of the risk factors is to determine the pipeline segment's proximity to environmentally sensitive areas when we issued the final rule (63 FR 59475; November 4, 1998), we explained that until we defined these areas, operators were to use their best judgement in applying this factor. We further said that we may define the environmental factor in a future rulemaking.

Under 49 CFR part 194, "Response Plans for Onshore Oil Pipelines," operators must consider areas of environmental importance that are in or adjacent to navigable waters for spill response planning. These regulations were mandated by the Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (OPA). RSPA intends to amend the definition of environmental importance to include USAs, once USAs are defined.

Hazardous liquid pipelines that operate at 20% of the specified minimum yield strength (SMYS) or less are currently exempt from 49 CFR part 195 regulations if they are in rural areas. When we issued the final rule extending 49 CFR part 195 regulations to certain pipelines operating at 20% SMYS or less (59 FR 35465; July 12, 1994), we deferred proposing to regulate non-hazardous volatile liquid low stress pipelines in rural environmentally sensitive areas. We did this because a definition of environmentally sensitive areas did not exist. We stated that we would revisit the issue once we defined such areas.

In 49 USC 60102(j), we are required to survey and assess the effectiveness of EFRDs and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an EFRD or other device. In an EFRD rulemaking (Docket PS–133), we will consider requiring operators to use an EFRD or other procedure or equipment on their pipelines located in USAs to mitigate the extent and impact of a release in the event of a failure.

We must also (49 USC 60102(f)(2)) prescribe, if necessary, additional standards that require the periodic inspection of certain pipelines in USAs using an instrumented internal inspection device or another inspection method that is at least as effective as using the device. RSPA plans to address this mandate in a proposed rule in early CY 2000 (Docket PS–141).

RSPA recently held a public meeting to discuss the need for additional protection in high consequence areas. (Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High Consequence Areas, 64 FR 56725; October 21, 1999). We stated that we planned to strengthen current pipeline safety regulations with respect to high consequence areas, including USAs. We will consider increased inspection, enhanced damage prevention, improved emergency response, and other preventive measures for pipelines in these areas.

We recognize that inventories of USAs will have to be updated on a periodic basis to incorporate new information and databases, and to reflect changes in species listings and their locations and the availability of drinking water resources. We intend to identify the locations of USAs through a comprehensive collection and analysis of drinking water and ecological resource data, contingent on the availability of funding and resources. These areas will be mapped using the National Pipeline Mapping System. Operators will have access to these maps through the internet. Operators will then be able to determine which areas of their pipeline intersect USAs. Operators may need to contact resource agencies to obtain additional information on a particular species or drinking water intake.

Existing Protections for Environmentally Sensitive Areas

Currently, pipeline safety regulations on pipeline design, construction, operation, maintenance, emergency and spill response planning generally protect all environmentally sensitive areas, cultural resources, and economic resources. The pipeline design and construction standards specify how pipeline components must be designed, welded together, installed in the ditch, and replaced to ensure the pipeline is constructed in a safe manner. The design and construction standards also cover the design and location of valves and flanges to minimize any potential release. The operation and maintenance standards specify the pipeline's acceptable operating pressure, require personnel training, and require operators to perform inspection, monitoring, and testing to assure that the pipeline continues to operate in a safe manner. Emergency and spill response planning regulations are also in place that require the identification of areas of environmental importance and that operators have response capabilities in place to minimize the release and impact of a pipeline accident on these resources.

In addition to current and intended future pipeline safety regulations, there are many other Federal, state, and local government regulations in place to protect sensitive resources. These include regulations to protect drinking water resources, threatened and endangered species, critical habitats for various species, and spawning areas. Areas have been created and designated to protect and maintain aquatic life, wildlife, various natural resources, and water resources. Permits from various Federal, state, and local agencies are needed before a pipeline can be installed or construction to modify or repair an existing line take place. Environmental reviews and consultations with resource experts are routinely conducting as part of the permit process. RSPA's existing and planned regulations complement these other Federal, state, and local government regulations on sensitive drinking water and ecological resources.

Our Current Proposal for Identifying USAs

We have developed our current proposed process for identifying USAs after extensive consultation with drinking water experts, conservation biologists, government agencies, and other stakeholders. This identification uses a process that begins by designating and assessing environmentally sensitive areas (ESAs), determining which of these ESAs are potentially more susceptible to permanent or long term damage from a hazardous liquid release (areas of primary concern), and finally identifying filtering criteria to determine which areas of primary concern can be reached by a release and sustain permanent or long-term damage. The areas that result are USAs.

RSPA has considered, but has not included, everything listed in the pipeline safety statute and the Presidential memorandum that accompanied the 1996 statute. RSPA has focused on the resources that could suffer permanent or long-term environmental damage if affected by a hazardous liquid release. RSPA has looked beyond the boundaries of the national parks, wetlands, wildlife preservation areas, refuges, etc. to the ecological species and drinking water resources that could suffer irreparable harm if affected by a hazardous liquid release.

Cultural resources, recreational resources, and economic resource areas are not being considered in this NPRM. These areas should be addressed as a separate risk factor and under separate regulations. We also believe that drinking water and ecological resources that do not qualify as USAs should also be addressed as a separate risk factor and under separate regulations. RSPA currently protects these resources under OPA's spill response plan requirements and will consider if additional measures are needed to better protect these areas. RSPA will issue additional regulations to protect these resources if it is determined that additional protections are needed.

The following discusses the areas of primary concern and filtering criteria that RSPA proposes as standards for drinking water and ecological resources.

Drinking Water Resources: Areas of Primary Concern

Drinking water resource areas of primary concern are a subset of all surface intakes and groundwater-based drinking water supplies that provide potable water for domestic, commercial, and industrial users. Drinking water resource areas of primary concern include drinking water resources for permanent communities such as cities and towns, transient communities such as campgrounds, or individual domestic supplies for residential consumption. As defined by the EPA, the drinking water areas of primary concern that we are proposing include the following:

A. *Public Water Systems (PWS):* provide piped water for human consumption to at least 15 service connections or serve an average of at least 25 people for at least 60 days each year. These systems include the sources of the water supplies—i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems, as described below:

1. *Community Water System (CWS):* a PWS that provides water to the same population year round.

2. *Non-transient Non-community Water System (NTNCWS):* a PWS that regularly serves at least 25 of the same people at least six months of the year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

3. *Transient Non-community Water System (TNCWS):* a PWS that caters to transitory customers in nonresidential areas. Examples of these systems include campgrounds, motels, rest stops, and gas stations.

B. *Wellhead Protection Areas (WHPA):* the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass

and eventually reach the water well or well field.

C. *Sole Source Aquifers (SSA):* areas designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the "sole or principal" source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50% or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard.

Drinking Water Resources: Filtering Criteria

Filtering criteria would be applied to the drinking water areas of primary concern to determine which of these areas are USAs. We believe the following filtering criteria would help identify which drinking water areas of primary concern are necessary for uninterrupted consumption by human populations and could be permanently affected, or have long term damage, from a hazardous liquid release.

A. *Filter Criterion #1*: TNCWS intakes would not be designated as USAs.

B. *Filter Criterion #2*: For CWS and NTNCWS that obtain their water supply primarily from surface water sources, and do not have an adequate alternative source of water, the water intakes would be designated as USAs.

C. *Filter Criterion #3*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and do not have an adequate alternative source of water, the WHPAs for such systems would be designated as USAs.

D. *Filter Criterion #4*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class IIb, III, or Class U (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A,) the public water systems that rely on these aquifers would not be designated as USAs.

E. *Filter Criterion #5*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and the aquifer is designated as a sole source aquifer, an area twice the WHPA would be designated a USA.

Ecological Resources: Areas of Primary Concern

On April 10–11, 1996, RSPA held a public workshop to discuss the elements that should define ecological resources (61 FR 13144, March 26, 1996). Participants concluded that ecological resources should include fish, wildlife, plants, biota and their habitats which may include land, air, and/or water. Examples of ecological resources are provided in a National Oceanic and Atmospheric Administration (NOAA) Guidance Document issued in March 1994 (59 FR 14714). Ecological resources include sensitive fish, wildlife, plant, and habitat resources that are at risk from hazardous liquid spills. These include such resources as breeding, spawning, and nesting areas; early life stage concentration and nursery areas; wintering or migratory areas; rare, threatened, and endangered species locations; and other types of high concentration or sensitive areas.

Ecological areas of primary concern are a subset of all ecological resources. These areas of primary concern are areas that contain ecological resources that are potentially more susceptible to permanent or long term environmental damage.

We are proposing four resource categories as ecological areas of primary concern. These categories are susceptible to permanent or long term ecological damage due to inherent characteristics of rarity, imperilment, or the potential for loss of large segments of an abundant population during periods of migratory concentration.

A. *Areas Containing Critically Imperiled and Imperiled Species and Subtaxa:* These areas contain known occurrences of animal and plant species that have such limited distribution that a hazardous liquid pipeline release could affect a significant percentage of the species population. There are a number of species that are at risk of extinction due to their extremely restricted distribution or limited numbers. These resources are identified, ranked, and inventoried by Natural Heritage Programs and Conservation Data Centers in conjunction with The Nature Conservancy (TNC). Under the TNC approach, each species is assigned a Global (or range-wide) Conservation Status Rank. This rank is based on several specific factors, including the number of known occurrences or populations, number of individuals, health of the population, its extinction potential, whether it is experiencing an increasing or decreasing trend, and if there are known threats to the species. Ecological areas of primary concern include occurrences of species and subtaxa with the following Global Ranks:

1. *Critically imperiled:* These species demonstrate extreme rarity (5 or fewer occurrences or fewer than 1,000 individuals) or extreme vulnerability to extinction due to some natural or man-made factor. There are approximately 1,300 species in the United States which are ranked as critically imperiled globally. Rare or extremely vulnerable subtaxa which are critically imperiled are included in this category, despite the conservation status of the species as a whole.

2. *Imperiled:* These species demonstrate rarity (6 to 20 occurrences or 1,000 to 3,000 individuals) or vulnerability to extinction due to some natural or man-made factor. There are approximately 1,800 species in the United States ranked as imperiled. Rare or vulnerable subtaxa which are imperiled are included in this category, despite the conservation status of the species as a whole.

B. *Areas Containing Federally Listed Threatened and Endangered (T&E) Species:* These areas contain known occurrences of animal and plant species that have been listed and are protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 *et seq.*). A summary of these listed species is published annually as the "List of Endangered and Threatened Wildlife and Plants" (50 CFR 17.11 and 17.12). There are currently more than 1,000 listed T&E species in the United States.

The term "endangered species" is defined as "any species which is in danger of extinction throughout all or a significant portion of its range" (16 U.S.C. 1532). The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (16 U.S.C. 1532). The term species includes species, subspecies, and distinct vertebrate populations.

In addition, a species that has been proposed or is a candidate to become a T&E species will become an ecological area of primary concern upon its final listing as a T&E species in the **Federal Register**.

C. *Areas Containing Depleted Marine Mammal Species:* These areas contain known occurrences of depleted species identified and protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The term "depleted" refers to marine mammal species that are listed

as T&E or are below their optimum sustainable populations (16 U.S.C. 1362). The term "species" includes species, subspecies, or population stocks. There are currently 18 species listed as "depleted" under the MMPA. Eleven of these species are also listed as endangered and three of these species are listed as threatened under the ESA73.

The term "marine mammal" is defined as "any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)" (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

D. *Areas Containing a Large Percentage of the World's Population of a Migratory Waterbird Species:* These areas contain very high concentrations of the world's population of a species for a short time. An example would be those areas of the Delaware Bay where a major portion of the world population of red knot (a shorebird species) stop-over to feed during migration.

Two programs of international significance are responsible for identifying and delimiting areas where significant populations of migratory waterbirds congregate during critical periods. The first program, the Western Hemisphere Shorebird Reserve Network (WHSRN), ranks migratory shorebird concentration areas into four different categories on the basis of biological criteria. These four categories are:

1. Hemispheric reserves—these areas host at least 500,000 shorebirds annually or 30% of a species flyway population;
2. International reserves—these areas host 100,000 shorebirds annually or 15% of a species flyway population;
3. Regional reserves—these areas host 20,000 shorebirds annually or 5% of a species flyway population; and
4. Endangered species reserves—these areas are critical to the survival of endangered species and no minimum number of birds is required.

Eighteen WHSRN sites have been established in the United States (Table 1).

A second program, The Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar), is dedicated to identifying globally critical wetland areas supporting migratory waterfowl. The establishment of a Ramsar site (Ramsar Articles, 1996) includes the following specific criteria for waterfowl:

1. A wetland area that regularly supports 20,000 waterfowl, or
2. A wetland area that regularly supports substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity, or
3. Where data on populations are available, a wetland area that regularly supports 1% of the individuals in a population of one species or subspecies of waterfowl.

There are a total of 17 Ramsar sites in the United States. See table 1 in the appendix to this document.

Additional information on the Ramsar and WHSRN sites is available on the internet or from the U.S. Fish and Wildlife Service, Office of International Affairs.

Ecological Resources: Filter Criteria

Filter criteria would be applied to the ecological resource areas of primary concern to determine which are most susceptible to permanent or long term environmental damage from a hazardous liquid pipeline spill. These resources would be ecological USAs.

We are proposing three ecological filter criteria that are consistent with current trends in conservation ecology to identify areas with critically imperiled species, multi-species protection sites, and migratory waterbird concentrations. The three criteria would be applied in a multi-tiered process where all ecological areas of primary concern receive repetitive consideration for USA status. For example, an ecological area of primary concern is first subjected to filter criterion 1, areas with critically imperiled species, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 1, it then receives consideration under filter criterion 2, multi-species protection areas, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 2, it receives consideration under filter criterion 3, migratory waterbird concentration areas, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 3, it remains an ecological area of primary concern. All ecological areas of primary concern must be periodically reviewed to consider changes in resource information or status. An ecological area of primary concern would become a USA once it meets one of the filtering criteria.

A. Filter Criterion 1: Areas With Critically Imperiled Species

Filter criterion 1 selects those ecological areas of primary concern that contain viable occurrences of species or subtaxa designated as critically imperiled globally to be USAs. These species or subtaxa demonstrate extreme rarity or extreme vulnerability to extinction due to some natural or man-made factor. They typically have five or fewer occurrences or fewer than 1,000 individuals globally. In some cases, species or subtaxa may be identified as critically imperiled because they are subject to an extreme threat of extinction due to factors other than low number of occurrences or individuals.

The critically imperiled designation includes a wide variety of plant and animal species and subtaxa. It includes approximately 64% of the listed threatened and endangered species and 53% of those species currently designated by the Departments of Interior and Commerce as proposed or as candidates for listing under ESA73. This filter criterion also selects an additional number of plant and animal species and subtaxa not designated under ESA73. All ecological areas of primary concern meeting this criterion would be considered USAs. Ecological areas of primary concern that do not meet filter criterion 1 would then be considered under filter criteria 2 and 3.

B. Filter Criterion 2: Multi-species Protection Areas

Filter criterion 2 selects the ecological areas of primary concern that form multi-species assemblages. Multi-species assemblages are defined as areas where three or more different critically imperiled or imperiled species, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur. These areas are valuable since they often represent unique ecosystems. Multi-species protection areas also protect a greater number of sensitive resources per site location.

C. Filter Criterion 3: Migratory Waterbird Concentration Areas

Filter criterion 3 selects the ecological areas of primary concern that are designated Ramsar sites. Filter criterion 3 also selects the ecological areas of primary concern that are WHSRN sites ranked as hemispheric, international, or endangered species reserves. These areas are valuable since significant populations of migratory waterbirds congregate in these areas during critical periods. Relatively common species may be at risk at such sites. In some

cases, as much as 80% of the entire North American population of a particular species may occur at one of these sites during critical concentration periods.

Pilot Test

RSPA published a Notice of Intent to Pilot Test (64 FR 38173) on July 15, 1999. This notice announced the commencement of a pilot test to determine if the definition described in this NPRM could be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations. RSPA is conducting the pilot test using the States of Texas, California, and Louisiana to test this proposed USA definition due to the large number of hazardous liquid pipelines in these states and the considerable drinking water and ecological resources that exist in these states. RSPA and others will use the results to evaluate whether the proposed definition identifies the majority of unusually sensitive areas and whether environmental data is accessible and appropriate to support the proposed definition. The results of this pilot test will be used to create an industry guidance document on unusually sensitive areas.

In this pilot test RSPA is:

- Identifying pertinent drinking water data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on public drinking water systems, aquifers, sole source aquifers, wellhead protection areas, alternative drinking water resources, and aquifer vulnerabilities.
- Identifying pertinent ecological data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on threatened and endangered species, critically imperilled and imperilled species, depleted marine mammal species, and areas containing a large percentage of the world's population of a migratory waterbird species.
- Identifying data on land features, such as the location of wetlands, rivers, transportation networks, and water routes (including flow direction).
- Obtaining, where possible, all pertinent drinking water, ecological, and land feature data. All problems encountered in gathering the data are being documented.
- Determining if the obtained data can be used with the proposed USA definition to identify and locate USAs. This includes reviewing the data for accuracy, attributes, format, restrictions on use, and determining if the resources and features were mapped with sufficient precision.
- Processing the data, using a geographic information system (GIS), according to the proposed USA definition. Identifying all problems encountered in processing the data.
- Comparing the USA pilot results to other preservation area identification efforts, where possible, and to all threatened and endangered specie areas.

RSPA will publish a Notice of Availability in the **Federal Register** and put the results of this pilot test on the OPS's Web Page: http://ops.dot.gov for review and comment as soon as the results are available. We currently expect to have the results in April 2000.

Technical Review

Drinking water and ecological resource experts will review the pilot test to determine whether the results identify the majority of unusually sensitive areas within the three pilot states. These experts will come from the Departments of Interior, Agriculture, and Commerce, the Environmental Protection Agency, state Nature Conservancies and Heritage Programs. We will also use experts on drinking water and ecological resources from state agencies, including the Texas Railroad Commission, Texas Parks and Wildlife, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, the California Department of Fish and Game, and the California State Fire Marshals Office.

These peer reviewers will help to identify other data sets that might be utilized and other resources that might be considered, and to improve the capability of the proposed USA definition to identify the majority of USAs within the three states. RSPA will publish a Notice of Availability in the **Federal Register** and the results of this peer review on OPS's Web Page: http://ops.dot.gov as soon as the results are available.

RSPA will also present this NPRM and the USA pilot results to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The THLPSSC is responsible for reviewing proposed federal hazardous liquid pipeline safety standards and reporting on their feasibility, reasonableness, and practicability. Representatives on the THLPSSC include the Minerals Management Service, City of Fredericksburg Virginia, U.S. Department of Agriculture, U.S. Department of Commerce, Virginia State Corporation Commission, Environmental Defense Fund, The Nature Conservancy, Kenai Peninsula, Atlantic Consultants, Southwest Research Institute, Buckeye Pipe Line, Lakehead Pipe Line, Kinder Morgan Energy Partners, and Mobil Pipe Line.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this rulemaking document. DOT does not consider this proposed rulemaking significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

This proposed definition will have no cost impact on the pipeline industry or the public because it is only a definition. It requires no immediate action on the part of pipeline operators. Potentially, it could impact current or future regulations but this would require specific rulemaking action. Because there is no accompanying action requiring anything of pipeline operators, there is no need to examine the cost impact. If future rulemakings require that operators take any specific actions on pipelines that are in unusually sensitive areas, then RSPA will perform a cost-benefit analysis to determine any potential impact. Because operators are taking no actions there are also no specific benefits attributable to this proposed definition.

B. Regulatory Flexibility Act

The proposed rule would not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Based on the above information showing that there is no economic impact of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13084

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Paperwork Reduction Act

This proposed rulemaking contains no information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995.

E. Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

F. National Environmental Policy Act

We have analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) The information and analysis provided in the Environmental Assessment demonstrate that the proposed action to define USAs in Part 195.2 and 195.6 will not have any significant environmental impact. However, as discussed in the Environmental Assessment, RSPA is considering several rulemakings that will provide additional protection for the USAs that will be identified using this definition. At the time these rulemakings are proposed, RSPA will perform Environmental Assessments to determine the impacts on the environment of these new requirements. The Environmental Assessment document is available for review in the docket.

G. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 Problem. This notice of proposed rulemaking does not propose business process changes or require modifications to computer systems. Because this notice apparently does not affect the ability of organizations to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the regulatory definition proposed in this notice.

H. Executive Order 12612

This action would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that the proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Anhydrous Ammonia, Carbon dioxide, Hazardous liquids, Petroleum, Pipeline Safety.

In consideration of the foregoing, RSPA hearby proposes to amend 49 CFR Part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118, and 49 CFR 1.53.

2. Section 195.2 would be revised by adding the following definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Unusually sensitive area (USA) means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under § 195.6.

3. Section 195.6 would be added to read as follows:

§ 195.6 Unusually Sensitive Areas (USAs).

As used in this part, an USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

(a) For drinking water resources: (1) The water intake for a Community Water System (CWS), as defined under § 195.6(c), or a Non-transient Non-community Water System (NTNCWS), as defined under § 195.6(c), that obtains its water supply primarily from a surface water source and does not have an adequate alternative source of water,

(2) The Wellhead Protection Area (WHPA) for a CWS, as defined under § 195.6(c), or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer, as defined under § 195.6(c), and does not have an adequate alternative source of water, or

(3) An area twice the WHPA for a CWS or a NTNCWS that obtains its water supply primarily from a sole source Class I or Class IIa aquifer and does not have an alternative source of water.

(b) For ecological resources: (1) An area containing critically imperiled species, as defined under § 195.6(c),

(2) A multi-species protection area, as defined under § 195.6(c), or

(3) A migratory waterbird concentration area, as defined under § 195.6(c).

(c) As used in this part—*Class I Aquifer* means an aquifer that is surficial or shallow, permeable, and is highly vulnerable to contamination. A Class I aquifer may be a:

(1) Unconsolidated Aquifer (Class Ia) that consists of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These aquifers generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all Class Ia aquifers are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of these aquifers is the thickness of the unsaturated zone and the presence of fine-grained material.

(2) Soluble and Fractured Bedrock Aquifer (Class Ib). Lithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these aquifers have a wide range of permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability.

(3) Semiconsolidated Aquifer (Class Ic) that generally contains poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated

units, such as occurs in parts of the High Plains Aquifer.

(4) Covered Aquifer (Class Id) that is any Class I aquifer overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

Class IIa aquifer means a Higher Yield Bedrock Aquifer that is consolidated and is moderately vulnerable to contamination. These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gallons per minute to be included in this class. Local fracturing may contribute to the dominant primary porosity and permeability of these systems.

Community Water System (CWS) means a public water system that provides water to the same population year round.

Critically imperiled species means a species of extreme rarity, based on The Nature Conservancy's Global Conservation Status Rank. These species have 5 or fewer occurrences or fewer than 1,000 individuals, or are extremely vulnerable to extinction due to some natural or man-made factor.

Depleted Marine Mammal species means a species that has been identified and is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The term "depleted" refers to marine mammal species that are listed as threatened or endangered, or are below their optimum sustainable populations (16 U.S.C. 1362). The term "marine mammal" means "any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)" (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

Imperiled species means a rare species, based on The Nature Conservancy's Global Conservation Status Rank. These species have 6 to 20 occurrences or 1,000 to 3,000 individuals, or are vulnerable to extinction due to some natural or man-made factor.

Migratory waterbird concentration area means a designated Ramsar site or Western Hemisphere Shoreline Reserve Network site ranked as hemispheric, international, or endangered species reserve.

Multi-species protection area means an area where three or more different critically imperiled or imperiled species, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur.

Non-transient Non-community Water System (NTNCWS) means a public water system that regularly serves at least 25 of the same people at least six months of the year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

Public Water System (PWS) means a system that provides piped water for human consumption to at least 15 service connections or serves an average of at least 25 people for at least 60 days each year. These systems include the sources of the water supplies—i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems.

Ramsar site means a site that has been designated under The Convention on Wetlands of International Importance Especially as Waterfowl Habitat program. Ramsar sites are globally critical wetland areas that support migratory waterfowl. These include wetland areas that regularly support 20,000 waterfowl; wetland areas that regularly support substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity; or wetland areas that regularly support 1% of the individuals in a population of one species or subspecies of waterfowl.

Sole Source Aquifer (SSA) means an area designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the "sole or principal" source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50% or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard.

Species means species, subspecies, population stocks, or distinct vertebrate populations.

Threatened and Endangered Species (T&E) means an animal or plant species that has been listed and is protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 *et seq.*). "Endangered species" is defined as "any species which is in danger of extinction throughout all or a significant portion of its range" (16 U.S.C. 1532). "Threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (16 U.S.C. 1532).

Transient Non-Community Water System (TNCWS) means a public water system that caters to transitory customers in nonresidential areas. Examples of these systems include campgrounds, motels, rest stops, and gas stations.

Wellhead Protection Area (WHPA) means the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or well field.

Western Hemisphere Shorebird Reserve Network (WHSRN) site means an area that contains migratory shorebird concentrations and has been designated as a hemispheric reserve, international reserve, regional reserve, or endangered species reserve. Hemispheric reserves host at least 500,000 shorebirds annually or 30% of a species flyway population. International reserves host 100,000 shorebirds annually or 15% of a species flyway population. Regional reserves host 20,000 shorebirds annually or 5% of a species flyway population. Endangered species reserves are critical to the survival of endangered species and no minimum number of birds is required.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

TABLE 1.—CURRENTLY RECOGNIZED MIGRATORY WATERBIRD PROTECTION AREAS IN THE U.S.

Site name	State	Size (ha)	Location coordinates
Ramsar Sites:			
Ash Meadows National Wildlife Refuge	Nevada	9,509	36°25′N 116°20′W
Bolinas Lagoon	California	445	37°55′N 112°41′W

TABLE 1.—CURRENTLY RECOGNIZED MIGRATORY WATERBIRD PROTECTION AREAS IN THE U.S.—Continued

Site name	State	Size (ha)	Location coordinates
Cache-Lower White Rivers	Arkansas	81,376	34°40'N 091°11'W
Cache River-Cypress Creek Wetlands	Illinois	24,281	37°13'N 089°08'W
Caddo Lake	Texas	8,382	32°45'N 094°08'W
Catahoula Lake	Louisiana	12,150	31°30'N 092°06'W
Chesapeake Bay Estuarine Complex	Virginia	45,000	38°00'N 076°20'W
Cheyenne Bottoms State Game Area	Kansas	8,036	38°29'N 098°40'W
Connecticut River Estuary & Tidal Wetland Complex	Connecticut	6,484	41°15'N 072°18'W
Delaware Bay Estuary	Delaware and New Jersey	51,252	39°11'N 075°14'W
Edwin B Forsythe National Wildlife Refuge	New Jersey	13,080	39°36'N 074°17'W
Everglades National Park MR	Florida	566,143	25°00'N 080°55'W
Horicon Marsh	Wisconsin	12,911	43°30'N 088°38'W
Izembek Lagoon National Wildlife Refuge	Alaska	168,433	55°45'N 162°41'W
Okefenokee National Wildlife Refuge	Georgia, Florida	159,889	30°49'N 082°20'W
Pelican Island National Wildlife Refuge	Florida	1,908	27°48'N 080°25'W
Sand Lake National Wildlife Refuge	South Dakota	8,700	45°45'N 098°15'W
WHSRN Sites:			
Copper River Delta	Alaska.		
Kachemak Bay	Alaska.		
Mono Lake	California.		
Grasslands	California.		
San Francisco Bay	California.		
Delaware Bay	Delaware, New Jersey.		
American Falls	Idaho.		
Cheyenne Bottoms	Kansas.		
Quivira	Kansas.		
Barrier Islands	Maryland, Virginia.		
Benton Lake	Montana.		
Stillwater	Nevada.		
Salt Plains	Oklahoma.		
Cape Roman	South Carolina.		
Bolivar Flats	Texas.		
Brazoria Refuge Complex	Texas.		
Great Salt Lake	Utah.		
Gray's Harbor	Washington.		

Attachment A

Recommended Data Source: EPA Report 600/2–91/043. Regional Assessment of Aquifer Vulnerability and Sensitivity in the Conterminous United States. Office of Research and Development. Washington, DC. 319pp.

The following information was obtained from pages 6–8 of the above report:

Class I Aquifers (Surficial or Shallow, Permeable Units; Highly Vulnerable to Contamination)

Unconsolidated Aquifers (Class Ia)

Class Ia aquifers consist of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These units generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all deposits mapped as Class Ia are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of aquifers of this class is the thickness of the unsaturated zone and the presence of fine-grained material.

Soluble and Fractured Bedrock Aquifers (Class Ib)

Lithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these systems have a wide range in permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability.

Semiconsolidated Aquifers (Class Ic)

Semiconsolidated systems generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer.

Covered Aquifers (Class Id)

This class consists of any Class I aquifer that is overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

Class II Aquifers (Consolidated Bedrock Aquifers; Moderately Vulnerable)

Higher Yield Bedrock Aquifers (Class IIa)

These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gpm to be included in this class. Locally fracturing may contribute to the dominant primary porosity and permeability of these systems.

Lower Yield Bedrock Aquifers (Class IIb)

In most cases, these aquifers consist of sedimentary or crystalline rocks. Most commonly, lower yield systems consist of the same clastic rock types present in the higher yield systems, but in the former case grain size is generally smaller and the degree of cementation or induration is greater, both of which lead to a lower permeability. In many existing and ancient mountain regions, such as the Appalachians (Blue Ridge and Piedmont), the core consists of crystalline rocks that are fractured to some degree. Well yields are commonly less than 50 gpm, although they may be larger in valleys than on interstream divides.

Covered Bedrock Aquifers (Class IIc)

This group consists of Class IIa and IIb aquifers that are overlain by less than 50 feet of unconsolidated material of low

permeability, such as glacial till, lacustrian, or loess deposits. It is assumed that most Class V wells are relatively shallow and, therefore, 50 feet or less of fine grained cover could reduce but not necessarily eliminate the vulnerability of underlying Class II systems.

Class III (Consolidated or Unconsolidated Aquifers That Are Overlain by More Than 50 Feet of Low Permeability Material; Low Vulnerability)

Aquifers of this type are the least vulnerable of all the classes because they are naturally protected by a thick layer of fine grained material, such as glacial till or shale. Examples include parts of the Northern Great Plains where the Pierre Shale of Cretaceous age crops out over thousands of square miles and is hundreds of feet thick. In many of the glaciated states, till forms an effective cover over bedrock or buried outwash aquifers, and elsewhere alternating layers of shale, siltstone, and fine grained sandstone insulate and protect the deeper major water bearing zones * * *

Class U (Undifferentiated Aquifers)

This classification is used where several lithologic and hydrologic conditions are present within a mappable area. Units are assigned to this class because of constraints of mapping scale, the presence of undelineated members within a formation or group, or the presence of nonuniformly occurring features, such as fracturing. This class is intended to convey a wider range of vulnerability than is usually contained within any other single class.

Subclass V (Variable Covered Aquifers)

The modifier "v", such as Class IIa-v, is used to describe areas where an undetermined or highly variable thickness of low permeability sediments overlie the major water bearing zone. To provide the largest amount of information, the underlying aquifer was mapped as if the cover were absent, and the "v" designation was added to the classification. The "v" indicates that a variable thickness of low permeability material covers the aquifer and, since the thickness of the cover, to a large degree, controls vulnerability, this aspect is undefined.

[FR Doc. 99–33614 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[NHTSA–99–6676]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a petition filed by DeTomaso Automobiles, Ltd. (DeTomaso) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 2000 and 2001, and that, for DeTomaso, lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted to DeTomaso and that alternative standards of 22.0 mpg be established for MY's 2000 and 2001.

DATES: Comments on this proposed decision must be received on or before January 31, 2000.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Sanjay Patel, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Mr. Patel's telephone number is: (202) 366–0307.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility.

(2) Economic practicability.

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on DeTomaso

DeTomaso Automobiles, Ltd. is a Delaware Corporation under common ownership with DeT. Auto Srl., an Italian corporation that produces DeTomaso automobiles in Italy and distributes them worldwide. These DeTomaso automobiles are produced under a license granted by DeTomaso Modena SpA., an Italian corporation owned by Alejandro DeTomaso. DeT Auto Srl. and DeTomaso Automobiles Ltd. produce fewer than 10,000 cars worldwide each year and are not owned by, or under common control with, any other auto company.

The DeTomaso marque has always provided high performance through technology and weight reduction. DeTomaso vehicles were last exported to the United States in the late 1970's. The number of vehicles imported annually at that time was quite small. DeTomaso traditionally produces fewer than 2000 vehicles each year.

For the 2000 and 2001 model years, DeTomaso's product-line for the U.S. market consists of the DeTomaso Mangusta, a two-seat convertible sports car powered by a 4.6 liter Ford V–8. This model will be the only vehicle imported by DeTomaso and the company projects that it will import 300 vehicles for MY 2000 and 500 vehicles for MY 2001. These projected sales volumes are consistent with its status as a low volume importer.

The DeTomaso Petition

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption are submitted "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown." (49 CFR 525.6(b).)

NHTSA received a joint petition from DeTomaso Automobiles Ltd. (DeTomaso) on June 20, 1998, seeking exemption from the passenger automobile fuel economy standards for MYs 2000–2001. This joint petition was filed less than 24 months before the beginning of MYs 2000 and 2001 and was therefore untimely under 49 C.F.R. 526.6(b). DeTomaso indicates that its decision to enter the U.S. market for MY

2000 was not made until early 1999 after it reached an agreement with Ford that allowed DeTomaso to use a U.S. built and certified powerplant and drivetrain in the Mangusta.

Under the circumstances, NHTSA concludes that DeTomaso took reasonable measures to submit a petition in as timely a manner as possible. The agency notes that DeTomaso's ability to enter the U.S. market apparently hinged on obtaining a U.S. powerplant for the Mangusta. This, according to DeTomaso, was not possible or feasible until it reached an agreement with Ford to provide the required engine. Therefore, the agency has determined that good cause exists for the late submission of the petition.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for DeTomaso

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by DeTomaso in the 2000 and 2001 model years, NHTSA considered whether there were technical or other improvements that would be feasible for these vehicles, and whether the company currently plans to incorporate such improvements in the vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to DeTomaso for use on its 2000 and 2001 model year automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets "economic practicability" as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 2000 and 2001 model year automobiles. In assuming that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of DeTomaso automobiles. Since NHTSA assumes that DeTomaso will continue to build high performance cars, design changes that would remove items traditionally offered on these cars were not considered. Such changes to the basic design would be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Technology for Fuel Economy Improvement

The nature of DeTomaso vehicles generally do not result in high fuel economy values. Also, DeTomaso lags in having the latest developments in fuel efficiency technology because suppliers generally provide components and technology to small manufacturers only after supplying large manufacturers.

DeTomaso states that the requested alternative fuel economy values represent the best possible CAFE that DeTomaso can achieve for the 2000 and 2001 model years. For MYs 2000 and 2001, DeTomaso stated that the fuel economy value of 22.0 mpg represents the best possible CAFE that it can achieve. DeTomaso has produced small lightweight innovative sports vehicles for more than 40 years. Performance is achieved through obtaining maximum output per unit of engine displacement and the use of lightweight aerodynamic body designs. The vehicle's compact dimensions provide efficient performance coupled with a strong and relatively light-weight aerodynamic body construction.

The current DeTomaso Mangusta engine, the Ford Cobra 4.6 litre V–8 is a relatively new design. The engine uses four valves per cylinder to obtain both maximum output and efficiency and relies on a sophisticated engine management system and fuel injection to increase efficiency and reduce emissions. The engine provides a high power/torque package that is a very efficient balance of fuel economy versus engine power.

Because of DeTomaso's financial constraints and its limited resources, the manufacturer must use an engine and transmission that is produced by Ford. Therefore, DeTomaso's ability to obtain further fuel economy improvements from engine and drivetrain modifications is quite limited. The Mangusta chassis/body configuration is small, aerodynamic and lightweight, so further fuel economy improvements through changes to the chassis and body also appear to be limited.

Model Mix

DeTomaso is a small vehicle manufacturer that produces a modest range of high performance exotic sport vehicles. There is little opportunity to improve fuel economy by changing model mix since DeTomaso will make only one basic model in each model year.

Effect of Other Federal Motor Vehicle Standards

The new, stringent California emission standards and the similarly stringent Federal Clean Air Act Amendments will apply to DeTomaso in MYs 2000 and 2001. DeTomaso will likely achieve lower fuel economy due to compliance with these standards. In addition, a portion of its limited engineering resources will have to be expended to comply with these more stringent emissions standards including, but not limited to, evaporative emission standards.

Federal motor vehicle safety standards (FMVSS) and regulations also have an adverse effect on the fuel economy of DeTomaso vehicles. These standards include 49 CFR Part 581 (energy absorbing bumpers), FMVSS 202 (head restraints), FMVSS 207(seating systems), FMVSS 208 (occupant crash protection), FMVSS 214 (side door strength), and FMVSS 216 (roof crush resistance). These standards tend to reduce achievable fuel economy values, since they result in increased vehicle weight.

DeTomaso is a small company and engineering resources are limited. Priority must be given to meeting mandatory standards to remain in the marketplace.

The Need of the United States to Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for DeTomaso to achieve an average fuel economy in MYs 2000 and 2001 above the levels set forth in this proposed decision. Granting an exemption to DeTomaso and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the United States to conserve energy. In fact, there would not be any increase since DeTomaso cannot attain those generally applicable standards. Nevertheless, the agency estimates that the additional fuel consumed by operating the MYs 2000 and 2001 fleets of DeTomaso vehicles at the CAFE of 22.0 mpg (compared to an hypothetical 27.5 mpg fleet) is 25,803 barrels of fuel. This value averages about 3.54 barrels/

day over the 20-year period that these vehicles will be an active part of the fleet. Obviously, this is insignificant compared to the fuel used daily by the entire motor vehicle fleet which amounts to 4.81 million barrels per day for passenger cars in the United States in 1994.

Maximum Feasible Average Fuel Economy for DeTomaso

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for DeTomaso to improve the fuel economy of its MY 2000 and 2001 fleet above an average of 22.0 mpg for MY 2000 and MY 2001. Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into DeTomaso' projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for DeTomaso is 22.0 for MYs 2000 and 2001.

Chapter 329 permits NHTSA to establish an alternative average fuel economy standard applicable to exempted manufacturers in one of three ways:(1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price or other factors, may be established for the automobiles of exempted manufacturers, with a separate fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers. The agency tentatively concludes that it would be appropriate to establish a separate standard for DeTomaso.

While the agency has the option of establishing a single standard for all exempted manufacturers, we note that previous exemptions have been granted to manufacturers of high-performance cars, luxury cars and specialized vehicles for the transportation of persons with physical impairments. The agency's experience in establishing exemptions indicates that selection of a single standard would be inappropriate. Such a standard would have little impact on energy conservation while doing little to ease the burdens faced by small manufacturers who cannot meet the fuel economy standards applicable to larger manufacturers. Similarly, the agency is not proposing to establish alternative standards based on different classes of vehicles. Again, the agency's experience has been that vehicles manufactured by low volume manufacturers may differ widely in size, price, design or other factors. Based on the information available at this time, we do not believe it would be appropriate to establish class-based alternative standards.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to DeTomaso Automobiles Ltd., as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be the maximum feasible levels for DeTomaso for MYs 2000 and 2001, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on "The Need of the United States to Conserve Energy" that because of the small size of the DeTomaso fleet, that incremental usage of gasoline by DeTomaso's customers would not affect the United States's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the Environmental Policy Act and determined that this proposed exemption if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed under the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 would be amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would be revised to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

2. In section 531.5, the introductory test of paragraph (b) is republished for the convenience of the reader and paragraph (b)(13) would be revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(13) DeTomaso Cars Ltd.

AVERAGE FUEL ECONOMY STANDARD

Model year	(Miles per gallon)
2000	22.0
2001	22.0

Issued on: December 23, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–33803 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207324–9324–01; I.D. No 081699C]

RIN 0648–AK94

Endangered and Threatened Species; Proposed Rule Governing Take of Threatened Snake River, Central California Coast, South/Central California Coast, Lower Columbia River, Central Valley California, Middle Columbia River, and Upper Willamette River Evolutionarily Significant Units (ESUs) of West Coast Steelhead

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments and notice of public hearings.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. This proposed ESA 4(d) rule represents the regulations NMFS believes necessary and advisable to conserve the seven listed threatened steelhead ESUs. Note that this rules applies only to the identified steelhead species. Effects resulting from implementation of activities on other listed species (e.g., bull trout) must be addressed through ESA section 7 and section 10 processes as appropriate. The rule would apply the take prohibitions enumerated in section 9(a)(1) of the ESA in most circumstances to seven threatened steelhead ESUs. NMFS does not find it necessary or advisable to apply the take prohibitions to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. The proposed rule describes 13 such limits on the application of the take prohibitions.

DATES: Comments on this rule must be received at the appropriate address (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on February 22, 2000. Public hearings on this proposed action have been scheduled. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Comments on this proposed rule or requests for information should be sent to Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. Comments will not be accepted if submitted via e-mail or Internet. See **SUPPLEMENTARY INFORMATION** for locations of public hearings. Parties interested in receiving notification of the availability of new or amended Fishery Management and Evaluation Plans (FMEPs) or Hatchery and Genetic Management Plans (HGMPs) should contact Chief, Hatchery/Inland Fisheries Branch, NMFS, Northwest Region, 525 NE Oregon Street, Suite 510, Portland, OR 97232–2737, or Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Parties interested in receiving notification of the availability of draft Watershed Conservation Plan Guidelines or draft changes to Oregon Department of Transportation's (ODOTs) 1999 Maintenance of Water Quality and Habitat Guide should contact Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at 503–231–2005; Craig Wingert at 562–980–4021.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1997, NMFS published a final rule listing the Snake River Basin (SRB), Central California Coast (CCC), and South/Central California Coast (SCCC) steelhead ESUs as threatened species under the ESA (62 FR 43937). On March 19, 1998, NMFS published a final rule listing the Lower Columbia River (LCR) and Central Valley, California (CVC) steelhead ESUs as threatened species under the ESA (63 FR 13347). On March 25, 1999, NMFS published a rule listing the Middle Columbia River (MCR) and Upper Willamette River (UWR) steelhead ESUs as threatened (64 FR 14517). Those final listing documents describe the background of the steelhead listing actions and provide summaries of NMFS' conclusions regarding the status of the listed steelhead ESUs.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, unless with written authorization for incidental take. It is also illegal under ESA section 9 to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether take prohibitions or other protective regulations are necessary and advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. These species have survived for thousands of years through cycles in ocean conditions and weather. NMFS concludes that threatened steelhead are at risk of extinction primarily because their populations have been reduced by human "take." West Coast steelhead populations have been depleted by take resulting from harvest, past and ongoing destruction of freshwater and estuarine habitat, poor hatchery practices,

hydropower development, and other causes. "Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead" (NMFS, 1996) concludes that all of the factors identified in section 4(a)(1) of the ESA have played some role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline. Therefore it is necessary and advisable in most circumstances to apply the section 9 take prohibitions to these threatened ESUs, in order to provide for their conservation.

Several other populations of West Coast salmonids that are impacted by similar risks associated with human-caused take, including chinook, coho, chum and sockeye salmon ESUs, have also recently been listed as threatened, and section 4(d) regulations are to be proposed for them in a separate **Federal Register** document. These listings have created a great deal of interest among states, counties and others in adjusting their programs that may affect the listed species to ensure they are consistent with salmonid conservation (see e.g., *Strahan v. Coxe*, 127 F.3d 155 (1st Cir. 1997), *cert. denied*, 119 S.Ct 81 (1998)). These entities have asked NMFS to provide clarity and guidance on what activities may adversely affect salmonids and how to avoid or limit those adverse effects, and to apply take prohibitions only where other governmental programs and efforts are inadequate to conserve threatened salmonids.

Although the primary purpose of state, local and other programs is generally to further some activity other than conserving salmon, such as maintaining roads, controlling development, ensuring clean water or harvesting trees, some entities have adjusted one or more of those programs to protect and conserve listed salmonids. NMFS believes that with appropriate safeguards, many such activities can be specifically tailored to minimize impacts on listed salmonids to an extent that makes additional Federal protections unnecessary for conservation of the listed ESU.

NMFS, therefore, proposes a mechanism whereby entities can be assured that an activity they are conducting or permitting is consistent with ESA requirements and avoids or minimizes the risk of take of listed salmonids. When such a program provides sufficient conservation for listed salmonids, NMFS does not find it necessary and advisable to apply take prohibitions to activities governed by those programs. In those circumstances, described in greater detail here, additional Federal ESA regulation through the take prohibitions is not necessary and advisable because it would not meaningfully enhance the conservation of the listed ESUs. In fact, declining to apply take prohibitions to such programs likely will result in greater conservation gains for a listed ESU than would blanket application of take prohibitions, through the program itself and by demonstrating to similarly situated entities that practical and realistic salmonid protection measures exist. An additional benefit of this approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of listed ESUs.

Substantive Content of Proposed Regulation

NMFS has not previously proposed any protective regulations for five of the steelhead ESUs subject to this proposed rule. When NMFS first proposed the LCR and SRB ESUs for listing (61 FR 41541, August 9, 1996), it also proposed to apply the prohibitions of ESA section 9(a) to those ESUs. NMFS received very little comment or response on that issue. However, because NMFS now proposes to limit the application of section 9(a) prohibitions for several additional programs, NMFS is issuing a revised proposal for them in order to have the benefit of public comment before enacting final protective regulations.

NMFS concludes at this time that the take prohibitions generally applicable for endangered species are necessary and advisable for conservation of these threatened steelhead ESUs, but believes that take of the SRB, CCC, SCCC, LCR, CVC, MCR and UWR steelhead need not be prohibited when it results from a specified subset of activities described here. These are activities that are conducted in a way that contributes to conserving the listed steelhead, or are governed by a program that limits impacts on listed steelhead to an extent that makes added protection through Federal regulation not necessary and advisable for conservation of an ESU. Therefore, NMFS now proposes to apply ESA section 9 prohibitions to the seven threatened steelhead ESUs, but not to apply the take prohibitions to the 13 programs described here as meeting that level of protection. Of course, the entity responsible for any habitat-related programs might equally choose to seek an ESA section 10 permit.

Working with state and local jurisdictions and other resource managers, NMFS has identified several programs for which it is not necessary and advisable to impose take prohibitions, because they contribute to conserving the ESU or are governed by a program that adequately limits impacts on listed salmonids. Under specified conditions and in appropriate geographic areas, these include: (1) activities conducted in accord with ESA incidental take authorization through ESA sections 7 or 10; (2) ongoing scientific research activities, for a period of 6 months; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management program activities; (6) activities in compliance with joint tribal/state plans developed within *United States* v. *Oregon*. (7) scientific research activities permitted or conducted by the states; (8) state, local, and private habitat restoration activities; (9) properly screened water diversion devices; (10) road maintenance activities in Oregon; (11) certain park maintenance activities in the City of Portland, Oregon; (12) certain development activities within urban areas; and (13) forest management activities within the State of Washington. Following is a summary of each of those programs, or potential limits on the take prohibitions. Some limits apply within all seven ESUs, and some to a subset thereof.

NMFS emphasizes that these limits are not prescriptive regulations. The fact of not being within a limit would not mean that a particular action necessarily violates the ESA or this regulation. The limits describe circumstances in which an entity or actor can be certain it is not at risk of violating the take prohibition or of consequent enforcement actions, because the take prohibition would not apply to programs within those limits.

The limits on the take prohibitions do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect listed species. Of course, to the extent that actions subject to section 7 consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, the consultation will be greatly simplified because of the analysis earlier done with respect to that circumstance.

NMFS wishes to continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve and meet the biological requirements of salmonids, and to strengthen other programs toward conservation of listed salmonids. For

programs that meet those needs, NMFS can provide ESA coverage through 4(d) rules, section 10 research and enhancement permits or incidental take permits, or through section 7 consultations with Federal agencies. A 4(d) rule may be amended to add new limits on the take prohibitions, or to amend or delete limits as circumstances warrant. For example, California has been working on revisions to its Forest Practice Rules (CFPRs) in order to improve the conservation of salmonids.

Concurrent with this proposed rule, NMFS proposes a limit on the take prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood of survival and recovery of threatened salmonid ESUs. NMFS will issue a similar ESA 4(d) rule for seven other threatened salmonid ESUs and a proposed limit on the take prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood and survival and recovery of threatened ESUs. Because this proposal and the ESA 4(d) rule for seven other threatened salmonid ESUs are similar, commenters wishing to comment on both need not submit separate comments but may indicate that NMFS should consider their comments as applying to both proposals.

Electronic Access

The Oregon Aquatic Restoration Guidelines is accessible via the Internet at *www.oregon-plan.org/hab_guide*. The Washington Fish Passage Design at Road Culverts is accessible via the Internet at *www.wa.gov:80/wdfw/hab/engineer/cm/culvertm.htm*. To the extent possible NMFS will post other documents referenced in these rules on its Northwest region's website at *www.nwr.noaa.gov*.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and the U.S. Fish and Wildlife Service published a policy committing the Services to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range.

As a matter of law, impacts on listed salmonids due to actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA are not violations of this rule. Section 10 permits may be issued for research activities, enhancement of the species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. Likewise federally-funded or approved activities for which section 7 consultations have been completed for listed salmonids, and which are conducted in accord with all reasonable and prudent measures, terms, and conditions provided by NMFS in a biological opinion and accompanying incidental take statement pursuant to section 7 of the ESA will not constitute violations of this rule. NMFS consults on a broad range of activities conducted, funded or authorized by Federal agencies, including fisheries harvest, hatchery operations, silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion.

With respect to other activities:

1. Based on available information, NMFS believes the following activities are very likely to injure or kill salmonids, and result in a violation of this rule unless within a limit on the take prohibitions provided in this rule. These are the categories of activity upon which NMFS enforcement resources are likely to concentrate.

A. Except as provided in this rule, collecting, handling, or harassing listed salmonids, including illegal harvest activities.

B. Diverting water through an unscreened or inadequately screened diversion at times when juvenile salmonids are present.

C. Physical disturbance or blockage of the streambed where spawners or redds are present concurrent with the disturbance. The disturbance could be mechanical disruption from creating push-up dams, gravel removal, mining, or other work within a stream channel, trampling or smothering of redds by livestock in the streambed, driving vehicles or equipment across or down the streambed, and similar physical disruptions.

D. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting the listed salmonids, particularly when done outside of a valid permit for the discharge.

E. Blocking fish passage through fills, dams, or impassable culverts.

F. Interstate and foreign commerce of listed salmonids and import/export of listed salmonids without an ESA permit, unless the fish were harvested pursuant to this rule.

2. Based upon available information, NMFS believes that the category of activities which may injure or kill listed salmonids and result in a violation of this rule (unless within an "exception" provided in the rule) includes, but is not limited to:

A. Water withdrawals that impact spawning or rearing habitat.

B. Diversion or discharge of flows that results in excessive, or excessive fluctuation of, stream temperatures.

C. Aside from the habitat restoration activities to which this rule does not apply take prohibitions, destruction or alteration of salmonid habitat, such as through removal of large woody debris, "sinker logs," riparian canopy or other riparian functional elements; dredging; discharge of fill material; or through alteration of surface or ground water flow by draining, ditching, gating, diverting, blocking, or altering stream or tidal channels (including side channels wetted only during high flows and connected ponds).

D. Land-use activities that adversely affect salmonid habitat (e.g., logging, grazing, farming, urban development, or road construction in riparian areas) (see, e.g., 64 FR 60727, November 8, 1999, definition of "harm" contained in the ESA).

E. Physical disturbance or blockage of the streambed in places where spawning gravels are present.

F. Violation of Federal or state Clean Water Act (CWA) discharge permits through actions that actually impact water quality, and thus may harm listed salmonids. Likelihood of harm is increased where the receiving waters are not currently meeting water quality standards for one or more components of the discharge.

G. Pesticide and herbicide applications that adversely affect the biological requirements of the species.

H. Introduction of non-native species likely to prey on listed salmonids or displace them from their habitat.

I. Altering habitat of listed salmonids in a way that promotes the development of predator populations or makes listed salmonids more susceptible to predation.

Enforcement activity may be initiated regarding these or any other activities that harm protected salmonids. NMFS' clear preference, however, is for persons or entities who believe their activity presents significant risk given the above guidance to immediately modify that activity to avoid take and actively pursue an incidental take statement or permit through negotiations with NMFS, or shape those activities to come within one of the limits on the take prohibitions described in this proposed rule. Numerous local watershed councils, the Lower Columbia Fish

Recovery Board, the Willamette Restoration Initiative, and many local and regional governmental efforts are already actively working to solve habitat problems that limit salmonid health and productivity. An entity that is moving forward in coordination with NMFS to promptly implement credible and reliable conservation measures will gain a good understanding of any actions that may be creating an emergency situation for listed fish or otherwise demand enforcement action. For example, if water availability is a limiting factor and local water users and the state are working toward solutions with NMFS through any of a variety of mechanisms (such as conservation, supplementing instream flows, development of an ESA section 10 habitat conservation plan, etc.), the users will quickly gain a pretty clear picture of any immediate adjustments that must be made in order not to create a high risk of harming salmonid eggs, juveniles or adults.

3. There is also a category of activities which, while individually are unlikely to injure or kill listed salmonids, may collectively cause significant detrimental impact on salmonids through water quality changes; climate change that affects ocean conditions; or cumulative pollution due to storm runoff carrying lawn fertilizers, pesticides, or road and driveway pollutants. Therefore, it is important that individuals alter their daily behaviors to reduce these impacts as much as possible, and for governmental entities to seek programmatic incentives, public education, regulatory changes, or other approaches to accomplish that reduction. These activities include, but are not limited to:

A. Discharges to streams that are not listed under section 303(d) of the CWA as water quality limited, when the discharge is in full compliance with current National Pollutant Discharge Elimination System permits.

B. Individual decisions about energy consumption for heating, travel, and other purposes.

C. Individual maintenance of residences or gardens.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be pursued by NMFS as constituting a take of listed salmonids under the ESA and its regulations. Questions regarding whether specific activities constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Aids for Understanding the Limits on the Take Prohibitions

Issue 1: 50 CFR 222.307(c)(2)

Included here are several references to 50 CFR 222.307(c)(2) (see 64 FR 14051, March 23, 1999, final rule consolidating NMFS' ESA regulations), which are criteria for issuance of an incidental take permit. For convenience of those commenting on this proposed rule, the criteria listed in 50 CFR 222.307(c) are:

(1) The taking will be incidental; (2) The applicant will, to the maximum extent practicable, monitor, minimize and mitigate the impacts of such taking; (3) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (4) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and (5) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

Issue 2: Population and Habitat Concepts

This proposed rule references scientific concepts that NMFS proposes to use in determining whether particular programs need not fall within the scope of the section 9 take prohibitions. One of these concepts allows for identifying populations that may warrant individual management within established ESUs on some issues. The second involves identifying relevant biological parameters to evaluate the status of these populations and identifying "critical thresholds" and "viable thresholds." NMFS is developing a scientific and policy paper entitled "Viable Salmonid Populations" (NMFS, December 1999) that addresses the biological concepts surrounding viable salmonid populations in more detail, and invites comment on that draft (see **ADDRESSES**). Once fully developed (including public and peer review), this paper will provide additional guidance in evaluating programs for eligibility under this 4(d) rule.

A third concept describes the freshwater habitat biological requirements of salmonids in terms of whether habitat is functioning properly.

Identifying Populations within ESUs

NMFS proposes to define populations following Ricker's (1972) definition of "stock": a population is a group of fish of the same species spawning in a particular lake or stream (or portion thereof) at a particular season which to a substantial degree do not interbreed with fish from any other group spawning in a different place or in the same place at a different season. This definition is widely accepted and applied in the field of fishery management. An independent population is an aggregation of one or more local breeding units that are closely linked by exchange of individuals among themselves, but are sufficiently isolated from other independent populations that exchanges of individuals among populations do not appreciably affect the population dynamics or extinction risk of the populations over a 100-year time frame. Such populations will generally be smaller than the whole ESU, and will generally inhabit geographic ranges on the scale of whole river basins or major sub-basins that are relatively isolated from outside migration. Using this definition, it is biologically meaningful to evaluate and discuss the extinction risk of one population independently of other populations within the same ESU.

Several types of information may be used to identify independent salmonid populations within existing ESUs, including (1) geographic indicators; (2) estimates of adult dispersal; (3) abundance correlations; (4) habitat characteristics; (5) genetic markers; and (6) quantitative traits. States and other groups involved in salmonid management have defined groups of fish for management purposes based on some or all of this information, and many of the definitions already used by managers are similar to the population definition proposed above. Further, while the types of information identified here may be useful in defining independent populations within ESUs, other methods may exist for identifying biologically meaningful population units consistent with the adopted definitions. Therefore, NMFS will evaluate proposed population boundaries on a case-by-case basis to determine if such boundaries are biologically supportable and consistent with the population definition in this rule.

NMFS believes it important to identify population units within established ESUs for several reasons. Identifying and assessing impacts on such units will enable greater consideration of the important biological diversity contained within each ESU, a factor considered in NMFS' ESU policy (Waples, 1991). Further, assessing impacts on a population level is typically a more practical undertaking given the scale and complexity of ESUs. Finally, assessing impacts on a

population level will help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

Assessing Population Status

NMFS proposes to evaluate population status through four primary biological parameters: (1) abundance; (2) productivity; (3) population substructure; and (4) genetic diversity. A discussion of the relevance of these parameters to salmonid population status may be found in a variety of scientific documents (e.g., Nehlsen et al., 1991; Burgman et al., 1993; Huntington et al., 1996; Caughley and Gunn, 1996; Myers et al., 1998).

Population abundance is important to evaluate due to potential impacts associated with genetic and demographic risks. Genetic risks associated with low population size include inbreeding depression and loss of genetic diversity. Demographic risks associated with low population size include random effects associated with stochastic environmental events. Population size may be assessed and estimated from dam and weir counts, redd counts, spawner surveys, and other methods. Viable abundance levels may be determined, based on historic abundance levels or habitat capacity for the population.

Population productivity may be thought of as the population's ability to increase or maintain its abundance. It is important to assess productivity since negative trends in productivity over sustained periods may lead to genetic and demographic impacts associated with small population sizes. However, trends in other parameters such as survival between life stages, age structure, and fecundity may also be useful in assessing productivity. In general, viable population trends should be positive unless the population is already at or above viable abundance levels. In that case, neutral or negative population trends may be acceptable so long as such declines will not lead the population to decline below viable abundance levels in the foreseeable future.

Population structure reflects the number, size and distribution of remaining habitat patches and the condition of migration corridors that provide linkages among these habitat types. Population structure affects evolutionary processes and may impact the ability of populations to respond to environmental changes or stochastic events. Habitat deficiencies, such as loss of migration corridors between habitat types, can lead to a high risk of extinction and may not become readily apparent through evaluating population sizes or productivity. Determining whether viable population structure exists may require comparison of existing and historic habitat conditions.

Population diversity is important because variation among populations is likely to buffer them against short term environmental change and stochastic events. Population diversity may be assessed by examining life history traits such as age, and run and spawn timing distributions. Further, more direct analysis of genetic diversity through DNA analysis may provide an indication of diversity. Viable population diversity will likely be determined through comparisons to historic information or comparisons to other populations existing in relatively undisturbed conditions. Ultimately, population diversity must be sufficient to buffer the population against normal environmental variation.

Establishing Population Thresholds

In applying the concepts discussed here to harvest and artificial propagation actions, NMFS relies on two functional thresholds of population status: (1) Critical population threshold, and (2) viable population threshold. The critical population threshold refers to a minimal functional level below which a population's risk of extinction increases exponentially in response to any additional genetic or demographic risks.

The viable population threshold refers to a condition where the population is self sustaining, and not at risk of becoming endangered in the foreseeable future. This threshold reflects the desired condition of individual populations and of their contribution to recovery of the ESU as a whole. Proposed actions must not preclude populations from attaining this condition.

Evaluating Habitat Conditions

This proposed rule restricts application of the take prohibitions when land and water management activities are conducted in a way that will help attain or protect properly functioning habitat. Properly functioning habitat conditions create and sustain the physical and biological features that are essential to conservation of the species, whether important for spawning, breeding, rearing, feeding, migration, sheltering, or other functions. Such features include water quantity; water quality attributes such as temperature, pH, oxygen content, etc; suitability of substrate for spawning; freedom from passage impediments; and availability of pools and other shelter. These features are not static; the concept of proper function recognizes that natural patterns of habitat disturbance, such as through floods, landslides and wildfires, will continue. Properly functioning habitat conditions are conditions that sustain a watershed's natural habitat-affecting processes (bedload transport, riparian community succession, precipitation runoff patterns, channel migration, etc.) over the full range of environmental variation, and that support salmonid productivity at a viable population level. Specific criteria associated with achieving these conditions are listed with each habitat-related limit on take prohibitions.

Issue 3: Direct and Incidental Take

Section 4(d) of the ESA requires that such regulations be adopted as are "necessary and advisable to provide for the conservation of" the listed species. In discussing the limits on the take prohibitions, NMFS does not generally distinguish "incidental" from "direct" take because that distinction is not required or helpful under section 4(d). The biological impact of take on the ESU is the same, whether a particular number of listed fish are lost as a result of incidental impacts or directed impacts. Hence the descriptions below of harvest and artificial propagation programs for which NMFS does not find it necessary and advisable to impose take prohibitions do not, as a general rule, make that distinction. Rather, those descriptions and criteria focus on the impacts of all take associated with a particular activity of the biological status of the listed ESU. (The distinction is retained in the discussion of scientific research targeted on listed fish, because the limit on take prohibitions applies in that situation only to research by agency personnel or agency contractors.)

Issue 4: Applicability to Specific ESUs

In the regulatory language in this proposed rule, the limit on applicability of the take prohibitions to a given ESU is accomplished through citation to the CFR enumeration of threatened marine and anadromous species, 50 CFR 223.102. For the convenience of readers of this document, 50 CFR 223.102 refers to threatened salmonid ESUs through the following designations:

(a)(1) Snake River spring/summer chinook

(a)(2) Snake River fall chinook

(a)(3) Central California Coast coho

(a)(4) Southern Oregon/Northern California Coast coho

(a)(5) Central California Coast steelhead

(a)(6) South-Central California Coast steelhead

(a)(7) Snake River Basin steelhead
(a)(8) Lower Columbia River steelhead
(a)(9) Central Valley, California steelhead
(a)(10) Oregon Coast coho
(a)(12) Hood Canal summer-run chum
(a)(13) Columbia River chum
(a)(14) Upper Willamette River steelhead
(a)(15) Middle Columbia River steelhead
(a)(16) Puget Sound chinook
(a)(17) Lower Columbia River chinook
(a)(18) Upper Willamette River chinook
(a)(19) Ozette Lake sockeye

Issue 5: Regular Evaluation of Limits on the Take Prohibitions

In determining that it is not necessary and advisable to impose take prohibitions on certain programs or activities described here, NMFS is mindful that new information may require a reevaluation of that conclusion at any time. For any of the limits on the take prohibitions described, NMFS will evaluate on a regular basis the effectiveness of the program in protecting and achieving a level salmonid productivity and/or of habitat function consistent with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. For habitat-related limits on the take prohibitions, changes may be required if the program is not achieving desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU.

If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to extend all ESA section 9 take prohibitions to the activities.

Issue 6: Coordination with United States Fish and Wildlife Service (FWS)

By its terms, this rule applies only to listed salmonids under NMFS' jurisdiction. However, as it evaluates any program against the criteria in this rule to determine whether the program warrants a limitation on take prohibitions, NMFS will coordinate closely with FWS regional staffs.

Permit/ESA Limit on the Take Prohibitions

This limit on the ESA section 9 take prohibitions recognizes that those holding permits under section 10 of the ESA or coming within other exceptions under the ESA are free of the take prohibition so long as they are acting in accord with the permit or applicable law. Examples of activities for which a section 10 permit may be issued are research or land management activities associated with a habitat conservation plan.

Continuity of Scientific Research

This proposed rule would not restrict ongoing scientific research activities affecting listed CCC, SCCC, SRB, LCR, CV, UWR and MCR steelhead ESUs for up to 6 months after its effective date, provided that an application for a permit for scientific purposes or to enhance the conservation or survival of the species is received by the Assistant Administrator for Fisheries (AA), NOAA, within 30 days from after the effective date of a final rule. The section 9 take prohibitions would extend to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or 6 months after the effective date of the final rule, whichever occurs earliest. It is in the interests of salmonid conservation not to disrupt ongoing research, some of which are of long term duration. This limit on the take prohibitions assures there will be no unnecessary disruption of those activities, yet provides NMFS with tools to halt the activity through denial if it is judged to have unacceptable impacts on a listed ESU. Therefore, NMFS does not find imposition of additional Federal protections in the form of take prohibitions necessary and advisable.

Take Prohibition Limit for Rescue and Salvage Actions

This limit on the take prohibitions relieves certain agency and official personnel or their designees from the take prohibition when they are acting to aid an injured or stranded salmonid, or salvage a dead individual for scientific study. Each agency acting under this "exception" is to report the numbers of fish handled and their status, on an annual basis. This limit on the take prohibitions will result in conservation of the listed species by preserving life or furthering our understanding of the species. By the very nature of the circumstances that trigger these actions (the listed fish is injured or stranded and in need of immediate help, or is already dead and may benefit the species if available for scientific study), NMFS concludes that imposition of Federal protections through a take prohibition is not necessary and advisable.

Fishery Management Limit on the Take Prohibitions

NMFS believes that in many cases, recreational fisheries for non-listed steelhead and resident game fish species will have acceptably small impacts on listed steelhead and will allow for the conservation of those listed salmonids, as long as state recreational fishery management programs are specifically tailored to meet certain criteria. This proposed rule provides a mechanism whereby NMFS may limit application of the take prohibitions to non-listed (hatchery) steelhead and resident species fisheries when a state develops an adequate Fishery Management and Evaluation Plan (FMEP). If NMFS finds that the FMEP contains specific management measures that adequately limits take of listed steelhead and otherwise protects the ESU, NMFS may enter into a Memorandum of Agreement (MOA) with the state for implementation of the plan. Where an FMEP and MOA that meet the following criteria are in place, NMFS concludes that problems associated with fishery impacts on listed steelhead will be addressed and that additional Federal protections through imposition of take prohibitions on harvest activities is not necessary and advisable. Therefore this rule proposes not to apply take prohibitions to actions in accord with FMEPs being implemented through an MOA. This proposed limit on the take prohibitions thus encourages states to move quickly to make needed changes in fishery management so that listed ESUs benefit from those improvements and protections as soon as possible.

Process for Developing FMEPs

Prior to determining that any state's new or amended FMEP is sufficient to eliminate the need for added Federal protection, NMFS must find that the plan is effective in addressing the criteria here. If NMFS finds that an FMEP meets those criteria, it will then enter into an MOA with the state which will set forth the terms of the FMEP's implementation and the duties of the parties pursuant to the FMEP. A state must confer annually with NMFS on its fishing regulation changes to ensure consistency with an approved FMEP.

NMFS recognizes the importance of providing meaningful opportunities for public review of FMEPs. Therefore, prior to approving new or amended FMEPs, NMFS will make such plans

available for public review and comment for a period of not less than 30 days. Notice of the availability of these plans will be published in the **Federal Register**.

Criteria for Evaluating FMEPs

NMFS will approve an FMEP only if it meets the following criteria, which are designed to minimize and adequately limit take and promote the conservation of all life stages of listed steelhead. The FMEP must:

(1) Provide a clear statement of the scope of the proposed action. The statement must include a description of the proposed action, a description of the area of impact, a statement of the management objectives and performance indicators for the proposed action, and anticipated effects of the proposed action on management objectives (including recovery goals) for affected populations. This information will provide objectives and indicators by which to assess management strategies, design monitoring and evaluation programs, measure management performance, and coordinate with other resource management actions in the ESU.

(2) Identify populations within affected ESUs, taking into account (A) spatial and temporal distribution; (B) genetic and phenotypic diversity; and (C) other appropriate identifiable unique biological and life history traits, as discussed earlier under Issue 2. Where available data or technology are inadequate to determine the effects of the proposed action on individual populations, plans may identify management units consisting of two or more population units, when the use of such management units is consistent with survival and recovery of the species. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units and describe how such units are defined such that they are consistent with the principles discussed under Issue 2.

(3) Describe the functional status of each ESU or of any population or management unit intended to be managed separately within the ESU, and determine and apply two thresholds, based on natural production: (A) one that describes the level of abundance and function at which the population is considered viable; and (B) a critical threshold, where because of very low population size and/or function, any additional demographic and genetic risks increases the extinction risk exponentially.

Thresholds may be described differently depending on the parameter for which thresholds are being established. Abundance and productivity thresholds may consist of a single value or a range of values whereas spatial and temporal distribution and genetic diversity thresholds may consist of multiple values, or describe a pattern or distribution of values. For example, a hypothetical abundance threshold might be defined either as 5,000 spawners per year or a range of 4,000-6,000 spawners per year, whereas a temporal distribution threshold might be defined as a pattern of spawning timing occurring from mid-June through August with random variation about that time, and with approximately 30 percent of the spawners entering in June, 50 percent in July and the remaining 20 percent throughout August.

Proposed management actions must recognize the significant differences in risk associated with these two thresholds and respond accordingly in order to minimize the risks to the long-term sustainability of the population(s). Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet viable, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not appreciably increase the genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that such an action will not appreciably reduce the likelihood of survival and recovery of the ESU as a whole, despite any increased risks to the individual population.

Thresholds represent a band of functions reflecting the reality that populations fluctuate from year to year because of natural events and variability. The biological analysis required to arrive at viable and critical thresholds will be more or less intensive depending on data availability and changes. After initial management strategies are developed, annual abundance data will be an extremely important indicator of what adjustments need be made. Then, as monitoring adds to and refines the data regarding functioning of other parameters, these must also be reviewed on a regular basis so that if significant changes have occurred in run timing, phenotypic diversity or other characteristics, the harvest strategy, (and if appropriate, other strategies) will be adjusted to respond to those changes.

(4) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status, and a harvest program that assures not exceeding those rates or objectives. While the term "exploitation" may suggest a purposeful intent to use the resource, it is used here as a term of art in fishery management indicating that all fishery-related mortality across all fisheries must be accounted for. In total, the combined exploitation across all fisheries and management units must not appreciably reduce the likelihood of recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations (those supported primarily by natural production) by reducing the likelihood that those populations will maintain or attain viable functional status, or by appreciably slowing attainment of viable function.

All unlisted hatchery-produced steelhead that are intended to be targeted for recreational harvest must be clearly, externally marked so anglers may identify the origin of steelhead. This differential marking will enable anglers to release naturally spawned fish, or fish intended for recovery. Only externally marked fish of hatchery origin may be retained in fisheries and all unmarked steelhead must be released unharmed back to the water. Research conducted in the Northwest United States and British Columbia indicates that adult steelhead can be hooked, landed, and released using recreational fishing equipment with an average mortality rate of less than 5 percent (Hooton, 1987). For example, in the Snake River, about 50 percent of the adult steelhead that return are caught in recreational fisheries. Since 50 percent of the listed population is subjected to a 5– percent mortality, the entire listed steelhead population is estimated to suffer about a 2.5–percent mortality due to the recreational fishery. Acceptable mortality rates may vary for different ESUs given differences in species status or differences in the overall FMEP.

These measures will allow recreational anglers to fish for, and harvest, non-listed, hatchery-produced steelhead, while providing protection for listed fish. Any fishery where the number of listed fish may exceed the number of unlisted fish in a given water must be strictly controlled.

Steelhead fishing seasons should be open only in areas, and during time periods, where and when non-listed, hatchery-produced fish are expected to occur. Hatchery-produced steelhead smolts are released from hatcheries and acclimation ponds or directly trucked to release points. Most adults return to areas near the point at which they were released. In many cases, hatchery programs have been adjusted to return non-listed hatchery fish to river sections where they are accessible to anglers and where they do not interfere with listed fish. Further refinement of hatchery releases will occur through hatchery plans and adaptive management based on evaluations of hatchery programs, fisheries and regulation strategies.

Sanctuaries must be provided for listed steelhead, in which fishing is not allowed and no hatchery-produced, non-listed steelhead are present. Hatchery-produced steelhead smolts are typically released in main stems of rivers, where fishing for returning non-listed hatchery fish is generally permitted. Important tributaries and headwater areas should be reserved as sanctuaries to provide adequate spawning and rearing areas for listed species. Under some circumstances, it may be an appropriate conservation strategy to utilize limited fisheries to selectively remove stray hatchery fish from sanctuary areas to reduce the proportion of hatchery fish that spawn naturally.

(5) Display a biologically based rationale demonstrating that the harvest management strategy does not appreciably reduce the likelihood of survival and recovery of the species in the wild. The effects must be assessed over the entire period of time the proposed harvest management strategy would affect the population, including effects reasonably certain to occur after the proposed action ceases.

(6) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics such as age, fecundity, size and sex data, and migration timing. The complexity and frequency of the monitoring program should be appropriate to the scale and likely effects of the action. Angling effort and harvest rates may be monitored with check stations, creel censuses, random surveys, and catch-card returns. Spawning ground surveys can track trends in spawning success of listed fish and proportion of hatchery-produced fish spawning naturally. Adult fish counts at dams and weirs can provide estimated total numbers of returns, the proportion of listed to non-listed fish, and abundance trends. Surveys of rearing areas and downstream migrant traps can provide estimates of production and juvenile abundance trends. Estimates of the number of hatchery-produced steelhead and mortality of listed fish should be monitored during the season and summarized at the end of the season in an annual report available to NMFS and the public.

(7) Provide for evaluating monitoring data and making any needed revisions of assumptions, management strategies, or objectives. The FMEP must describe the conditions under which revision will be made and the processes for accomplishing those revisions.

(8) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(9) Include restrictions on resident species fisheries that minimize and adequately limit any take of listed species, including time, size, gear, and area restrictions; and elimination of put-and-take fisheries in waters with listed anadromous salmonids. Recreational fisheries for resident trout or other resident species may result in take of juvenile and adult listed steelhead, but selective or catch-and-release fisheries for resident species, with appropriate restrictions on season, minimum length limits and fishing tackle may be conducted with little or no measurable impact on listed species.

Season dates must be adjusted to avoid fishing on concentrations of adult or juvenile listed steelhead. Steelhead smolts generally leave rearing streams during spring freshets between March and June, with peak outmigration in April and May. Delaying the opening of fishing season until late May or June will provide protection for this life stage. If monitoring of fisheries detects other times or areas where listed juvenile steelhead are vulnerable, seasons may need to be closed or shortened.

Minimum size limits for rainbow trout are necessary to protect steelhead parr and smolts. Most listed steelhead smolts are less than 8 inches (3.1 cm) in length in northern areas (i.e., Idaho, Washington, and Oregon) when they begin their migration. In some areas of California, steelhead smolts often exceed 10 inches (3.9 cm) in length. Fishing regulations should require rainbow trout retained by anglers to be larger than the maximum size attained by wild steelhead smolts rearing in those waters, to protect listed juvenile steelhead. In some cases, minimum size limits of up to 14 inches (5.5 cm) have been determined to be locally appropriate to avoid any chance of retention of juvenile listed steelhead.

Regulations must not allow retention of listed steelhead. A substantial amount of research indicates recreational fisheries for resident fish species can be conducted so as to limit take of listed steelhead. A review of over 70 studies of hooking mortality on trout indicates that trout caught on artificial flies and lures generally suffer less than 5 percent post-release mortality while trout caught on bait average 30 to 50 percent (Mongillo, 1984)(steelhead post-release mortality rates may be higher under warm water conditions). Many of these studies used trout that are similar in size to juvenile steelhead and results should be directly applicable. Therefore, use of bait in angling should be prohibited in waters where take of listed steelhead may occur. Barbless hooks should be required when necessary to minimize potential impacts to listed steelhead. Locally appropriate regulations that prohibit any retention of listed steelhead should likewise be developed.

Put-and-take fisheries for hatchery-produced resident trout should be eliminated in steelhead-producing streams since such fisheries can concentrate anglers and increase the harvest or post-release mortality of listed juvenile steelhead. In some cases, there may be cause for concern that hatchery-produced fish may compete with or prey upon listed juvenile steelhead. Release of hatchery-produced resident trout in streams that support listed steelhead must be severely curtailed; and

(10) Be consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

Artificial Propagation Limit on the Take Prohibitions

NMFS believes that in some cases it may not be necessary and advisable to prohibit take with respect to artificial production programs, including use of listed steelhead as hatchery broodstock, under specific circumstances. This limit on the take prohibitions proposes a mechanism whereby state or Federal hatchery managers may obtain assurance that a hatchery and genetic management program is adequate for protection and conservation of listed steelhead. The state or Federal agency would develop a Hatchery and Genetic Management Plan (HGMP) containing

specific management measures that will minimize and adequately limit impacts on listed steelhead and promote the conservation of the listed ESU, and then enter into an MOA with NMFS to ensure adequate implementation of the HGMP. NMFS believes that with an adequate HGMP and an MOA in place, additional Federal protection through imposition of take prohibitions on artificial propagation activities would not be necessary and advisable for conservation of the listed steelhead.

Process for Developing Hatchery and Genetic Management Plans

NMFS will evaluate the effectiveness of state or Federal HGMPs in addressing the following criteria. If the HGMP does so adequately, NMFS will then enter into an MOA with the state or complete an ESA section 7 consultation with a Federal entity, which will set forth the duties of the parties pursuant to the plan.

This proposed rule provides a mechanism whereby NMFS may limit application of take prohibitions that would otherwise apply to broodstock collection and other hatchery operations in compliance with an approved HGMP.

NMFS recognizes the importance of providing meaningful opportunities for public review of draft HGMPs. Therefore, prior to approving new or amended HGMPs, NMFS will make such plans available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft plans will be published in the **Federal Register**.

Criteria for Evaluating Hatchery and Genetic Management Plans

NMFS will evaluate salmonid HGMPs on the basis of criteria that are designed to minimize and adequately limit take and promote the conservation of the listed species. The criteria by which draft HGMPs will be evaluated include the following:

(1) *Goals and Objectives for the Propagation Program.* Each hatchery program must have clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals should address whether the program is intended to meet conservation objectives, contributing to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program against which its success or failure can be monitored.

(2) *Maintenance of Viable Populations.* Listed salmonids may be intentionally used for broodstock purposes only if (A) the donor population is currently at or above viable thresholds and the collection will not reduce the likelihood that the population remains viable; (B) the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or (C) the donor population is shown with a high degree of confidence to be above critical threshold although not yet viable, and the collection will not appreciably slow the attainment of viable population status.

(3) *Prioritization of Broodstock Collection Programs.* Broodstock collection programs of listed salmonids shall be prioritized on the following basis depending on health, abundance and trends in the donor population: (A) for captive brood or supplementation of the local indigenous population; (B) for supplementation and restoration of similar, at-risk, natural populations within the same ESU, or for reintroduction to underseeded habitat; and (C) production to sustain tribal and recreational fisheries consistent with recovery and maintenance of naturally spawned salmonid populations. The primary purpose of broodstock collection programs must first be to reestablish local indigenous salmonid populations and to supplement and restore existing populations. After the species' conservation needs are met, and when consistent with survival and recovery of the species, broodstock collection programs may be authorized by NMFS for secondary purposes, such as to sustain tribal, recreational and commercial fisheries.

(4) *Operational Protocols.* An HGMP must include comprehensive protocols pertaining to fish health; broodstock collection; broodstock mating; incubation, rearing and release of juveniles; disposition of hatchery adults; and catastrophic risk management.

(5) *Genetic and Ecological Effects.* An HGMP will be evaluated based on best available information to assure the program avoids or minimizes any deleterious genetic or ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by straying of hatchery fish.

(6) *Adequacy of Existing Fishery Management Programs and Regulations.* An HGMP shall describe interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. HGMPs for programs whose purpose is to sustain fisheries must not compromise the ability of FMEPs or other management plans to achieve management objectives for associated listed populations.

(7) *Adequacy of Hatchery Facilities.* Adequate artificial propagation facilities must exist to properly rear progeny of listed broodstock to maintain population health, maintain population diversity, and to avoid hatchery-influenced selection or domestication.

(8) *Availability of Effective Monitoring Efforts.* Adequate monitoring and evaluation must exist to detect and evaluate the success of the hatchery program and any risks to or impairment of recovery of the listed ESU, including monitoring of stray rates.

(9) *Consistency with Court Mandates.* An HGMP must be consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

Take of Progeny Resulting from Hatchery/Naturally Spawned Crosses

NMFS' "Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act," (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, "progeny of fish from listed species that are propagated artificially are considered part of the listed species and are protected under the ESA." According to the interim policy, the progeny of such hatchery-naturally spawned crosses or naturally spawned-naturally spawned crosses would also be listed.

NMFS believes it is desirable to incorporate enough naturally spawned fish into the hatchery populations to ensure that their genetic and life history characteristics do not diverge significantly from the naturally spawned population. Prior to any intentional use of listed fish for hatchery broodstock, an approved HGMP must be in place to ensure that native, naturally spawned populations are conserved. With such plans in place and where population status characteristics warrant it, NMFS will proceed through rulemaking to delist hatchery progeny of naturally spawned-naturally spawned or naturally spawned-hatchery crosses. A proposed rule setting forth the scientific basis for such a determination and providing the public with notification and an

opportunity to comment would be published in the **Federal Register**.

Limits on the Take Prohibitions for Joint Tribal/State Plans Developed within United States v. Oregon.

Non-tribal salmonid management in the Columbia River basin is profoundly influenced by the treaty rights of numerous Indian tribes in the basin and must be responsive to the court proceedings interpreting and/or defining those tribal interests. NMFS, therefore, proposes this limit on the take prohibitions to accommodate any resource management plan developed jointly by the States and the Tribes (joint plan) within the continuing jurisdiction of *United States* v. *Oregon*, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights. Such a plan would be developed and reviewed under the government-to-government processes of the general tribal limit (including technical assistance from NMFS in evaluating impacts on listed salmonids). Before the take prohibitions would be determined not to apply to a joint plan, the Secretary must determine that implementation and enforcement of the plan will not appreciably reduce the likelihood of survival and recovery of the species. Before making that determination for joint fishery management or hatchery and genetic management plans the Secretary must solicit and consider public comment on how any fishery management plan addresses the criteria in § 223.208(b)(4) of this proposed rule, or how any hatchery and genetic management plan addresses the criteria in § 223.208(b)(5) of this proposed rule. The Secretary shall publish notice of any determination regarding a joint plan, with a discussion of the biological analysis underlying that determination, in the **Federal Register**.

Limits on the Take Prohibitions for Scientific Research

In carrying out their responsibilities, state fishery management agencies in Idaho, Washington, Oregon and California conduct or permit a wide range of scientific research activities on various fisheries, including monitoring and other studies on steelhead which occur in the SR, CCC, SCCC, LCR, CVC, MCR and UWR steelhead ESUs. NMFS finds these activities vital for improving our understanding of the status and risks facing steelhead and other listed species of anadromous fish that occur in overlapping habitat, and provide critical information for assessing the effectiveness of current and future management practices. In general, NMFS concludes such activities will help to conserve the listed species by furthering our understanding of the species' life history and biological requirements, and that state biologists and cooperating agencies carefully consider the benefits and risks of proposed research before approving or undertaking such projects. NMFS concludes that it is not necessary or advisable to impose additional protections on such research through imposition of Federal take prohibitions. Therefore, in this notice, NMFS proposes not to apply take prohibitions to scientific research activities under the following circumstances.

Research activities that involve planned sacrifice or manipulation of, or will necessarily result in injury to or death of, listed steelhead come within this exception only if the state submits an annual report listing all scientific research activities involving such activities planned for the coming year, for NMFS' review and approval. Such reports shall contain (1) an estimate of the total take anticipated from such research; (2) a description of study designs, including a justification for taking the species; (3) a description of the techniques to be used; and (4) a point of contact. Research involving planned sacrifice or manipulation of, or which will necessarily result in injury to or death of listed salmonids must be conducted by employees or contractors of the state fishery management agency, or as part of a coordinated monitoring and research program overseen by that agency. Any research using electrofishing gear in waters known, or expected to contain, listed salmonids, is within this exception only if it complies with "Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act" (NMFS, 1998). Otherwise, electrofishing research requires a section 10 research permit from NMFS prior to commencing operations. NMFS welcomes comment on these guidelines, which are available (see **ADDRESSES**), during the comment period for this proposed rule.

The state must annually provide NMFS with the results of scientific research activities that involve directed take of listed salmonids, including a report of the amount of direct take resulting from the studies and a summary of the results of such studies.

A state may conduct and may authorize non-state parties to conduct research activities that may result in incidental take of listed salmonids under the following conditions. The state shall submit to NMFS annually, for its review and approval, a report listing all scientific research activities permitted that may incidentally take listed salmonids during the coming year. In that annual report, the state must also report the amount of incidental take of listed salmonids occurring in the previous year's scientific research activities, and provide a summary of the results of such research. Interested parties may request a copy of these annual reports from NMFS (see **ADDRESSES**).

Habitat Restoration Limits on the Take Prohibitions

NMFS considers a "habitat restoration activity" to be an activity whose primary purpose is to restore natural aquatic or riparian habitat processes or conditions; it is an activity which would not be undertaken but for its restoration purpose. NMFS does not consider herbicide applications or artificial bank stabilization to be restoration activity.

Certain habitat restoration activities are likely to contribute to conserving listed salmonids without significant risks, and NMFS concludes that it is not necessary and advisable to impose take prohibitions on those activities when conducted in accordance with appropriate standards and guidelines. Projects planned and carried out based on at least a watershed-scale analysis and conservation plan, and, where practicable, a sub-basin or basin-scale analysis and plan, are likely to be the most beneficial. NMFS strongly encourages local efforts to conduct watershed assessments to identify what problems are impairing watershed function, and to plan for watershed restoration or conservation in reliance on that assessment. Without the overview a watershed-level approach provides, habitat efforts are likely to focus on "fixes" that may prove short-lived, or even detrimental, because the underlying processes that are causing a particular problem have not been addressed.

This proposed rule, therefore, provides that ESA section 9(a) take prohibitions will not apply to habitat restoration activities found to be part of, and conducted pursuant to, a state-approved watershed conservation plan with which NMFS concurs. The state in which the activity occurs must determine in writing whether a watershed plan has been formulated in accordance with NMFS-approved state watershed conservation plan guidelines, and forward any positive finding for NMFS' concurrence. NMFS will work with interested states in developing guidelines that meet the criteria and standards set forth here. If NMFS finds they meet those criteria and standards, NMFS will then certify this

determination in writing to the state. Such a plan will contain adequate safeguards such that no additional Federal protections through imposition of take prohibitions on actions in accord with the plan, is necessary and advisable for conservation of the listed salmonids.

While criteria and plans are being developed, this proposed rule would not apply the take prohibitions to several habitat restoration activities if carried out in accord with the conditions described here, and with any required state or Federal reviews or permits. Until watershed conservation plans formulated in accord with NMFS-approved state watershed conservation plan guidelines are in place, but for no longer than 2 years, ESA section 9 take prohibitions will not apply to the following restoration activities when conducted in accord with the listed conditions and guidance. More complex restoration activities, such as habitat construction projects or channel alterations, require project by project technical review at least until watershed planning is complete.

Applicable state guidance includes the *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*, selected portions (cited here) of the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999); the Washington Department of Fish and Wildlife, (WDFW) Habitat and Lands Environmental Engineering Division's *Fish Passage Design at Road Culverts*, March 3, 1999; Washington Administrative Code rules for Hydraulic Project Approval; and *Washington's Integrated Streambank Protection Guidelines*, June, 1998. Applicable state guidance for California includes the *Stream Corridor Restoration, Principles, Processes and Practices* by the Federal Interagency Stream Restoration Working Group (October 1998) and the *California Salmonid Stream Habitat Restoration Manual*, January, 1998. Under those conditions and where consistent with any other state or Federal laws and regulations, NMFS proposes not to apply take prohibitions to the following habitat restoration activities:

1. *Riparian zone planting or fencing.* Conditions: No in-water work; no sediment runoff to stream; native vegetation only; fence placement consistent with standards in the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

2. *Livestock water development off-channel.* Conditions: No modification of bed or banks; no in-water structures except minimum necessary to provide source for off-channel watering; no sediment runoff to stream; diversion adequately screened; diversion in accord with state law and has no more than de minimus impacts on flows that are critical to fish; diversion quantity shall never exceed 10 percent of current flow at any moment, nor reduce any established instream flows.

3. *Large wood (LW) or boulder placement.* Conditions: Does not apply to LW placement associated with basal area credit in Oregon. No heavy equipment allowed in stream; work limited to any state in-water work season guidelines established for fish protection, or if there are none, limited to summer low-flow season with no work from the start of adult migration through the end of juvenile outmigration. Wood placement projects should rely on the size of wood for stability and may not use permanent anchoring including rebar or cabling (these would require ESA section 7 consultation or an ESA section 10 permit)(biodegradable manila/sisal rope may be used for temporary stabilization). Wood length should be at least two times the bankfull stream width (1.5 times the bankfull width for wood with rootwad attached) and meet diameter requirements and stream size and slope requirements outlined in *A Guide to Placing Large Wood in Streams*, Oregon Department of Forestry and Department of Fish and Wildlife (May, 1995). LW placement must be either associated with an intact, well-vegetated riparian area which is not yet mature enough to provide LW; or accompanied by a riparian revegetation project adjacent or upstream that will provide LW when mature. Placement of boulders only where human activity has created a bedrock stream situation not natural to that stream system, where the stream segment would normally be expected to have boulders, and where lack of boulder structure is a major contributing factor to the decline of the stream fisheries in the reach. Boulder placement projects within this exception must rely on size of boulder for stability, not on any artificial cabling or other devices. See applicable guidance in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

4. *Correcting road/stream crossings, including culverts, to allow or improve fish passage* (See WDFW's *Fish Passage Design at Road Culverts*, March 3, 1999; *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*; NMFS Southwest Region *Culvert Policy* (1999).

5. *Repair, maintenance, upgrade or decommissioning of roads in danger of failure.* All work to be done in dry season; prevent any sediment input into streams. In California, follow applicable guidance in Weaver, W.E. and D.K. Hagens *Handbook for Forest and Ranch Roads, A guide for planning, designing, constructing, reconstructing, maintaining, and closing wildland roads*, June, 1994.

6. *Salmonid carcass placement.* Carcass placement should be considered only where numbers of spawners are substantially below historic levels. Follow applicable guidelines in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999), including assuring that the proposed source of hatchery carcasses is from the same watershed or river basin as the proposed placement location. To prevent introduction of diseases from hatcheries, such as Bacterial Kidney Disease, carcasses must be approved for placement by a state fisheries fish pathologist.

These short term "exceptions" describe habitat restoration activities that are likely to promote conservation of listed salmonids with relatively small risk negative impacts. If conducted in accord with the limitations described above, NMFS concludes it is not necessary and advisable to provide additional Federal protections through imposition of take prohibitions on these restoration actions. Thus, these habitat restoration activities can proceed over the next 2 years without the need for ESA section 10 permit coverage. Before undertaking other habitat restoration activities the project coordinator should contact NMFS to determine whether the project can be conducted in such a way as to avoid take. If not, NMFS will recommend that an ESA section 10 incidental take permit be obtained before proceeding. If the project involves action, permitting or funding by a Federal agency, ESA coverage would occur through ESA section 7 consultation.

After a watershed conservation plan has been approved, only activities conducted pursuant to the plan fall outside the scope of the ESA section 9 take prohibitions. If no watershed conservation plan has been approved by two years after publication of the final rule in the **Federal Register**, then section 9 take prohibitions will apply to individual habitat restoration activities just as to all other habitat-affecting activities.

Criteria for Evaluating Watershed Conservation Plan Guidelines

NMFS will evaluate state watershed conservation plan guidelines based upon the standards here, which include criteria derived from those used for evaluating applications for incidental take permits, found at § 222.307(c) of

this chapter. Guidelines must result in plans that:

(1) Consider the status of the affected species and populations.

(2) Design and sequence restoration activities based upon information obtained from an overall watershed assessment.

(3) Prioritize restoration activities based on information from watershed assessment.

(4) Evaluate the potential severity of direct, indirect and cumulative impacts on the species and habitat as a result of the activities the plan would allow.

(5) Provide for effective monitoring. This criterion requires that the effectiveness of activities designed to improve natural watershed function will be evaluated through appropriate monitoring and that monitoring data will be analyzed to help develop adaptive management strategies. Successful monitoring requires identification of the problem, identification of the appropriate solution to the problem, and determination of the effectiveness of the solution over a period of time in increasing productivity of the listed salmonids.

(6) Use best available technology. Since the language of part 222 of this chapter contemplates activities unrelated to habitat restoration, it applies "best available technology" only to minimizing and mitigating incidental effects. For this application, NMFS makes the logical extension of also applying "best available technology" to the restoration activities per se. Guidelines must ensure that plans will represent the most recent developments in the science and technology of habitat restoration, and use adaptive management to incorporate new science and technology into plans as they develop, and where appropriate, provide for project specific review by disciplines such as hydrology, geomorphology, etc.

(7) Assure that any taking resulting from implementation will be incidental.

(8) Require the state, local government, or other responsible entity to monitor, minimize and mitigate the impacts of any such taking to the maximum extent practicable.

(9) Will not result in long-term adverse impacts. Implementation may cause some short-term adverse impacts, and plans must evaluate the ability of affected ESUs to withstand those impacts. Guidelines and plans must assure that habitat restoration activities will be consistent with the restoration and persistence of natural habitat forming processes.

(10) Assure that the safeguards required in watershed conservation plans will be funded and implemented.

NMFS recognizes the importance of providing meaningful opportunities for public review of watershed conservation plan guidelines. Therefore, prior to certifying such guidelines, NMFS will make the guidelines available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft guidelines will be published in the **Federal Register**. Notice will also be sent to parties expressing an interest in these guidelines. Parties interested in receiving notification should contact NMFS (see **ADDRESSES**).

Water Diversion Screening Limit on the Take Prohibitions

A widely recognized cause of mortality among anadromous fish is operation of water diversions without adequate screening. Juveniles may be sucked or attracted into diversion ditches where they later die from a variety of causes, including stranding. Adult and juvenile migration may be impaired by diversion structures, including push-up dams. Juveniles are often injured and killed through entrainment in pumping facilities or impingement on inadequate screens, where water pressure and mechanical forces are often lethal.

State laws and Federal programs have long recognized these problems in varying ways, and encouraged or required adequate screening of diversion ditches, structures, and pumps to prevent much of the anadromous fish loss attributable to this cause. Nonetheless, large numbers of diversions are not adequately screened and remain a threat, particularly to juvenile salmonids, and elimination of that source of injury or death is vital to conservation of listed salmonids.

Therefore, this proposed rule should prompt all diverters to move quickly to provide adequate screening or other protections for their diversions, by not applying take prohibitions to any diversion screened in accord with NMFS' Juvenile Fish Screening Criteria, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or any subsequent revision (available by contacting **ADDRESSES**). Compliance with these criteria will address the problems associated with water diversions lacking adequate screening. If a diversion is screened, operated and maintained consistent with those NMFS criteria, NMFS concludes that adequate safeguards will be in place such that no additional Federal protection (with respect to method of diversion) through imposition of take prohibitions is necessary and advisable for conservation of listed salmonids. Written acknowledgment from NMFS engineering staff is needed to establish that screens are in compliance with the above criteria.

The proposed take prohibitions would not apply to physical impacts on listed fish due to entrainment or similar impacts of the act of diverting so long as the diversion has been screened according to NMFS criteria and is being properly maintained. The take prohibitions would apply to take that may be caused by instream flow reductions associated with operation of the water diversion facility, and impacts caused by installation of the water diversion facility, such as dewatering/bypass of the stream or in-water work. Such take remains subject to the prohibitions of § 223.208(a) of this proposed rule.

Routine Road Maintenance Limit on the Take Prohibitions

The Oregon Department of Transportation (ODOT) is responsible for the extensive existing transportation infrastructure represented by the Oregon's state highway system. ODOT maintenance and environmental staff have worked with NMFS for more than a year toward performing routine road maintenance activities within the constraints of the ESA and the Clean Water Act, while carrying out the agency's fundamental mission to provide a safe and effective transportation system. That work has resulted in a program that greatly improves protections for listed salmonids with respect to the range of routine maintenance activities, minimizing their impacts on receiving streams. The Association of Oregon Counties and the City of Portland participated in some of the later discussions of needed measures and processes. ODOT's program includes its Maintenance of Water Quality and Habitat Guide dated June, 1999 (Guide) and a number of supporting policies and practices, including a strong training program, accountability mechanisms, close regional working relationships with Oregon Department of Fish and Wildlife (ODFW) biologists, two ODFW staff whose time is fully dedicated to work with ODOT, a biologist dedicated full time to work with NMFS on transportation issues, and several ongoing research projects.

The Director of ODOT has committed that ODOT will implement the Guide,

including training, documentation and accountability features that are described in the introduction to the document (Letter from Grace Crunican to William Stelle, dated June 30, 1999). The guide governs the manner in which crews should proceed on a wide variety of routine maintenance activities, including surface and shoulder work, ditch, bridge, and culvert maintenance, snow and ice removal, emergency maintenance, mowing, brush control and other vegetation management. The program directs activity toward favorable weather conditions, increases attention to erosion control, prescribes appropriate equipment use, governs disposal of vegetation or sediment removed from roadsides or ditches, and includes other improved protections for listed salmonids, as well as improving habitat conditions generally. Routine road maintenance conducted in compliance with the ODOT program will adequately address the problems potentially associated with such activity. In other words, the Guide provides adequate safeguards for listed salmonids. Furthermore, extension of the take prohibitions to these activities would not provide meaningful, increased protection for listed salmonids. In sum, NMFS does not find it necessary and advisable to apply take prohibitions to routine road maintenance work performed consistent with the Guide. The Guide governs only routine maintenance activities of ODOT staff. Other activities, including new construction, major replacements, or activity for which a U.S. Army Corps of Engineers (COE) permit is required, are not covered by the routine maintenance program and, therefore, would be subject to the take prohibitions.

NMFS realizes that in many circumstances the Guide includes language that could compromise the protections otherwise offered, through phrases such as "where possible", "where feasible" or "where practicable." Although as a general rule such language creates an unacceptable level of ambiguity or uncertainty for a program being recognized within the ESA, a variety of circumstances constrain and limit that uncertainty in the case of ODOT's routine maintenance program. Foremost is that ODOT intends these discretionary phrases to be exercised only where physical, safety, weather, equipment or other hard constraint make it impossible to follow a Best Management Practice (BMP) to the letter. ODOT has explained this in the Guide, making clear that the discretionary language is not included to create flexibility for the convenience of the crew or for ease of operation. ODOT is striving in its training program to have all crews understand that point, and to provide examples of appropriate and inappropriate application of those discretionary phrases. As an example of appropriate use, the Guide states that ODOT will "where feasible, schedule sweeping during damp weather, to minimize dust production." ODOT crews strive to follow that. However, debris on the road at other times may require that ODOT sweep a road regardless of road moisture, to ensure a safe surface. ODOT would then proceed with sweeping as necessary, using other applicable minimization and avoidance practices.

Further, ODOT crews undergo extensive and regular training, and are increasingly focused on environmental considerations and compliance as a core agency value and consideration. ODOT is testing new ideas for enhancing feedback from crews to managers and policy staff. One proposal establishes environmental leaders on each crew who then meet regularly to address successes and failures. Information from that group would then be fed into a monthly regional meeting for identification of needed adjustments, and then on to quarterly management reviews. While this system is not in place, it demonstrates ODOT's determination to find and use practical feedback mechanisms to enhance the routine maintenance program as well as other ODOT programs.

In sensitive resource areas, the possibilities of exercising discretionary flexibility are further constrained by a new tool that has been implemented in southern Oregon, will shortly be in place in the north coast region, and completed throughout Oregon in 2002. The agency is working to prepare detailed maps identifying any known sensitive resource sites that occur within ODOT rights of way. ODOT is mapping dominant land cover, functional overstory values, late successional stage, riparian management areas, presence of contiguous riparian areas, salmonid presence, spawning, rearing, offchannel areas, tributaries, wetlands, and other resource issues. This mapping does not delineate boundaries or provide presence or absence of species, but rather inventories known resources within ODOT'S rights of way.

A resource map and a restricted activity map are being produced for each road, by mile point and global position system coordinate. The restricted activity maps are coordinated with ODOT maintenance staff and will allow ODOT staff the knowledge to adjust their activities based on resource information. 'No restriction' areas indicate that no known resource of concern has been identified in the area, and routine maintenance can occur using the Guide. A 'Caution' value indicates the known presence of one or more resources in the general work area, and maintenance crews should increase their awareness of their activities, perhaps contacting region environmental staff. The district Integrated Pest/Vegetation Management Plan and the Guide will direct activities. The 'Restricted value' indicates that a resource of concern is known to be present within the right of way and consultation with technical staff needs to occur prior to any work or ground disturbing activity.

With a full-time staff person at NMFS dedicated to coordination and communication with ODOT staff on a regular basis and participation in monthly and quarterly review meetings, NMFS is assured of regular feedback on how the program is operating. That feedback will provide a picture of the frequency and nature of any deviations from the practices specified in the Guide. If at some time in the future that dedicated staff position is no longer available, then NMFS and ODOT will have to find another means of assuring that feedback or amend the program appropriately to keep it within the exception.

Finally, through annual reporting of external complaints and their outcomes, ODOT will identify needed "modifications of, or improvements to" any of the minimization/avoidance measures and has committed to making changes to the measures as necessary. Likewise, ODOT will incorporate changes reflecting new scientific information and new techniques and materials.

ODOT will notify NMFS of any changes to the ODOT guidance, and before NMFS determines that the take prohibitions should not be extended to these activities, NMFS will publish notification in the **Federal Register** providing a comment period of not less than 30 days for public review and comment on the proposed changes. If at any time NMFS determines that compliance problems or new information cause the ODOT program to no longer provide sufficient protection for threatened salmonids, NMFS shall notify ODOT. If ODOT does not effectively correct the matter within a mutually determined time period, NMFS shall notify ODOT that its routine road maintenance program is subject to the take prohibitions.

While ODOT implements an integrated vegetation management program which assures that herbicide or pesticide spraying will not occur in areas of sensitive natural resources, including streams, NMFS is unable to conclude at this time that the measures in ODOTs Guide governing herbicide or pesticide spraying (MMS #131) are sufficiently protective of listed salmonids to warrant not applying the take prohibitions of this rule to that activity. This is in part because of the large number of herbicide and pesticide formulations ODOT may employ, and the legitimate concerns about effects of many of these chemicals on aquatic species, and specifically on anadromous fish at various life stages. The fact that NMFS does propose to apply take prohibitions to spraying at this time does not indicate that NMFS has determined that any particular ODOT pesticide spraying activities constitute harm to salmonids; rather, that there is not sufficient evidence at this time to be sure the risk of harm is low. NMFS intends to continue working with ODOT on the issues surrounding herbicide and pesticide use. ODOT is currently conducting research on whether chemicals it applies reach streams under worst-case scenarios.

For similar reasons, the take prohibitions would apply to dust abatement measures in the Guide. ODOT routine maintenance seldom engages in dust abatement, and when it does uses only water and hence is not risk of harming salmonids. There is insufficient precision in the Guide as to chemical makeup of palliatives, specific areas of use, rates of application, and possible contaminants for NMFS to be sure the risk of harm would be acceptably low should any county or city that does significant dust abatement seek to come within this exception. Therefore, a county or city would have to provide those additional details and commit to appropriate limits in an MOA before dust abatement could be considered as within the limit on take prohibitions. NMFS believes that other than for herbicide and pesticide spraying and dust control, activity in compliance with the ODOT guidance and program would not further degrade or otherwise restrict attainment of properly functioning conditions. With respect to routine road maintenance activities in Oregon, the program limits impacts on listed salmonids and their habitat to an extent that makes additional Federal protections unnecessary for the conservation of listed salmonids. Therefore, in this proposed rule NMFS does not apply take prohibitions on routine road maintenance activities (other than herbicide and pesticide spraying, or dust abatement) so long as the activity is covered by and conducted in accord with ODOT's *Maintenance Management System Water Quality and Habitat Guide* (June, 1999). ODOT will continue to obtain permits from the COE and/or Oregon Division of State Lands for any in-stream work normally requiring those permits, and COE section 7 consultation requirements on permit issuance is not affected by this limit on the take prohibitions. ODOT has committed to review the Guide and revise as necessary at least every 5 years. ODOT is actively reviewing potential impacts or new technologies related to many issues. For instance, results from an earlier technical team evaluation of impacts of de-icing mechanisms on aquatic resources is included as an appendix to the Guide. That group has been reconvened (with NMFS as a member) and is revisiting adherence to the specifications, as well as evaluating extensive research on CMA (calcium-magnesium acetate). Initial research indicates that CMA is not getting to the water column, but the team will be following up. ODOT has also been doing roadside snow sampling to determine whether any typical road-side pollutant is present on road sand, and thus far has not identified any measurable concentrations.

ODOT has several other interagency teams working toward improving practices or further defining specific issues related to ditches, culverts, or emergency circumstances. It is also continuing research on how to best recycle or otherwise appropriately dispose of maintenance decant, sediment, or sweepings. Any of the above may result in improved practices and, where necessary, in revision of the Guide.

At any time ODOT revises part of the 1999 Guide, ODOT will need to provide the desired revision to NMFS for review and approval. NMFS will make draft changes available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft changes will be published in the **Federal Register**. Notice will also be sent to parties expressing an interest in the Guide. Parties interested in receiving notification should contact NMFS (see **ADDRESSES**).

Some Oregon city and county governments have indicated interest in using the ODOT guidance to be sure that their routine road maintenance activities are protective of salmonids. The fact that ODOT has an extensive and ongoing training program for all maintenance employees and has committed to report on an annual basis details of program implementation is fundamental to NMFS' belief that the program is adequate. Hence, any Oregon city or county desiring that its routine road maintenance activities come under this "exception" must not only commit in writing to apply the measures in the Guide, but also must first enter into a MOA with NMFS detailing how it will assure adequate training, tracking, and reporting, including how it will control and narrow the circumstances in which a practice will not be followed because it is not "feasible," "practical," or "possible."

Portland Parks Integrated Pest Management Limit on the Take Prohibitions

The City of Portland, Oregon, Parks and Recreation Department (PP&R) operates a diverse system of city parks representing a full spectrum from intensively managed recreation, sport, golf, or garden sites to largely natural, unmanaged parks, including the several thousand acre, wooded, Forest Park. PP&R has been operating and refining an integrated pest management program for 10 years, with a goal of reducing the extent of its use of herbicides and pesticides in park maintenance. The program's "decision tree" place first priority on prevention of pests (weeds, insects, disease) through policy, planning, and avoidance measures (design and plant selection). Second priority is on cultural and mechanical practices, trapping, and biological controls. Use of biological products, and finally, of chemical products, is to be considered last. PP&R's overall program affects only a small proportion of the land base and waterways within Portland, and serves to minimize any impacts on listed salmonids from chemical applications associated with that specific, limited land base. NMFS believes it would contribute to conservation of listed salmonids if jurisdictions would broadly adopt a similar approach to eliminating and limiting chemical use in their parks and in other governmental functions.

As a result of this program, the City has phased out regularly scheduled treatments such as turf spraying to control broadleaf weeds. This has reduced total use of chemical to control broadleaf weeds to less than 15 percent of its former level.

Decisions to use pesticides are not made lightly and require attention to public notification, mixing, cleaning and record keeping. Use of pesticides is no longer a "least hassle" kind of option. City personnel report that

pesticide use is avoided by maintenance crews unless there are no other workable options.

Crews cease application when winds will cause spray drift beyond the target site. Spot spraying or brushing of herbicides is frequently chosen.

The PP&R has recently developed special policies to provide extra protections near waterways and wetlands, including a 25– foot (7.5m) buffer zone in which pesticide use is limited to Glyphosphate products, Garlon 3A, Surfactant R–11, Napropamide, Cutrine Plus, and Aquashade. Within this buffer applications are spot applied with a hand wand from a backpack sprayer, which utilizes low pressure spray to minimize drift. Under certain circumstances broadcast spraying, which also uses the low pressure hand-wand spraying will be conducted. Application rates of chemicals used range from 9 percent to 100 percent of label allowances, depending on the identified task.

After careful analysis of PP&R's integrated program for pest management, NMFS concludes that it addresses potential impacts and provides adequate protection for listed salmonids with respect to the limited use the program may make of the above listed chemicals. Therefore, NMFS does not find it necessary and advisable to apply additional Federal protections in the form of take prohibitions to PP&R activities conducted under City of Portland, Oregon's Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy dated April 4, 1999. In addition, NMFS concludes that take prohibitions would not meaningfully increase the level of protection provided for listed salmonids. NMFS, therefore, does not propose to apply the take prohibitions of this proposed rule to activities within the PP&R program.

Confining the take prohibition limit to a specified list of chemicals does not indicate that NMFS has determined that other chemicals PP&R may employ necessarily will cause harm to salmonids in the manner used. NMFS intends to continue working with PP&R on the issues surrounding use of any other herbicide or pesticide.

PP&R's program includes a variety of monitoring commitments and a yearly assessment with NMFS of results, progress, and any problems. If at any time monitoring information, new scientific studies, or new techniques cause PP&R to amend its program or to cause PP&R and NMFS to wish to change the list of chemicals falling outside the scope of the take prohibitions, NMFS will publish notification in the **Federal Register** announcing the availability of the proposed changes for public review and comment. Such a notification will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether the changes will conserve listed salmonids. PP&R has been seeking to decrease the extent of its intensively managed riparian areas. NMFS commends that effort, while recognizing that PP&R is constrained by recreational, aesthetic, safety and other responsibilities. This limit on the take prohibitions does not include PP&R's initial planning determinations about the extent of riparian vegetative buffer provided; that question is separable from the integrated pest management approach taken to achieve the conditions planned. This limit focuses on the methods PP&R employs to assure that once it has identified a particular plant or animal as a pest, its control methods are as protective of natural processes, water quality, and listed species as possible.

Limit on Take Prohibitions for New Urban Density Development

As a general matter, significant new urban scale developments have the potential to degrade salmonid habitat and to injure or kill salmonids through a variety of impacts. NMFS believes that with appropriate safeguards, new development can be specifically tailored to minimize impacts on listed salmonids to an extent that makes additional Federal protections unnecessary for conservation of the listed ESU. Through this proposed rule, NMFS proposes a mechanism whereby jurisdictions can be assured that development authorized within those areas is consistent with ESA requirements and avoids or minimizes the risk of take of listed salmonids. Both potential developers and the jurisdictions controlling new development would benefit by assurance that their approvals and development actions conserve listed salmonids.

For example, urban density development in the Portland, Oregon metropolitan area may not occur outside of an adopted urban growth boundary (UGB). Metro, the regional governing body, is in the process of bringing some large areas currently designated as urban reserve areas into the UGB. Before development may commence within such newly included areas, the jurisdiction within which the area lies must prepare and adopt comprehensive plan amendments for urban reserve areas consistent with all provisions of the Metro Urban Growth management Functional Plan, outlining what development will be allowed and the conditions to be placed upon development.

Similarly, cities both within and outside the Metro region and in other states affected by this rule may be approving new urban development on tracts of a size that allows integrated planning for placement of buildings, transportation, storm water management, and other functions. Several areas under consideration for Metro boundary expansions, and several undeveloped tracts within currently urbanized areas, include streams that support listed salmonids.

This proposed rule further proposes that NMFS will not apply take prohibitions to new developments governed by and conducted in accord with adequate city or county ordinances that NMFS has determined are adequate to help conserve anadromous salmonids. Similarly, within the jurisdiction of the Metro regional government in Oregon, if NMFS finds that Metro's Urban Growth Management Functional Plan (Functional Plan) is adequate, take prohibitions will not be applied to development governed by ordinances that Metro has found consistent with that Functional Plan. NMFS must agree in writing that the city or county ordinances or Metro's Functional Plan are sufficient to assure that plans and development complying with them will result in development patterns and actions that conserve listed salmonids.

In determining whether Metro's Functional Plan or local ordinances are adequate NMFS will focus on 12 issues, discussed here. Many of these principles are derived from Spence, An Ecosystem Approach to Salmonid Conservation (NMFS, 1996) and citations therein. NMFS recognizes that some of these principles require integrated planning for placement of buildings, transportation or storm water management and that those 12 principles will have to be applied in the context within which the development is to occur, which will differ among major new developments and for small, single lot developments or redevelopments. Ordinances or Metro's Functional Plan must assure that urban reserve plans or developments will:

(1) Be sited in appropriate areas, avoiding unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(2) Avoid stormwater discharge impacts to water quality and quantity, and preserve, or move stream flow patterns (hydrograph) closer to, the

historic peak flow and other hydrograph characteristics of the watershed. Through a combination of reduction of impervious surfaces, runoff detention, and other techniques development can achieve that purpose within its portion of the watershed. Other development design characteristics, stormwater management practices and buffer requirements will prevent sediment and other pollutants from reaching any watercourse.

(3) Require adequate riparian buffers along all perennial and intermittent streams. Because of the intensity of disturbance in surrounding uplands, riparian buffers are at least as critical in urban areas as in rural areas. Without adequately vegetated riparian set-backs, properly functioning conditions including temperature control, bank stability, stream complexity and pollutant filtering cannot be achieved.

Retain all existing native vegetation because of its importance in maintaining bank stability, stream temperature, and other characteristics important to water quality and fish habitat. Prevent destruction of existing native vegetation prior to land use conversions. Where the area contains non-native vegetation, maintained lawn, or is cropped, add or substitute native vegetation within the riparian set-back to achieve a mix of conifer, deciduous trees, understory and ground covers must be planted. To the extent allowed by ownership patterns, the development set-back should be equivalent to greater than one site potential tree height (approximately 200 ft (60 m) or at least to the break in slope for steep slopes) from the outer edge of the channel migration zone on either side of all perennial and intermittent streams, in order to protect off-channel high flow rearing habitat and allow full stream function. Within that set-back the first 50 ft (15 m) should be protected from any mechanical entry or disturbance, structures, or utility installations, and should be dominated by maturing or mature conifers, together with some hardwoods and a vigorous, dense understory of native plants. This inner buffer should also be protected from high-impact recreational use and any trails should be of permeable, natural materials. The inner buffer provides multiple values, including root systems for bank stability. The outer 100–plus ft (30.5 m) of set-back should be entirely in native vegetation (not in maintained lawn) with a mix of conifer, deciduous trees, understory and groundcovers. Disturbances should be minimized.

(4) Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing, placement. One method of minimizing stream crossings and disturbances is to optimize transit opportunities to and within newly developing urban areas. Consider whether potential stream crossings can be avoided by access redesign. Where crossings are necessary, minimize their impacts by preferring bridges over culverts; sizing bridges to a minimum width; designing bridges and culverts to pass at least the 100– year flood and associated debris, and meet ODFW or WDFW criteria; assuring regular monitoring and maintenance over the long term; and prohibiting closing over of any intermittent or perennial stream. The Washington Department of Fish and Wildlife, (WDFW) Habitat and Lands Environmental Engineering Division's "Fish Passage Design at Road Culverts", March 3, 1999, or "Oregon Road/Stream Crossing Restoration Guide: Spring 1999" provide excellent frameworks for action.

(5) Protect historic stream meander patterns, flood plains and channel migration zones; do not allow hardening of stream banks. All development should be designed to allow streams to meander in historic patterns of channel migration. Adequate riparian buffers linked to the channel migration zone should avoid need for bank erosion control in all but the most unusual situations. If required by unusual circumstances, bank erosion should be controlled through vegetation or carefully bioengineered solutions. Rip-rap blankets or similar hardening techniques are not allowed, unless bioengineered solutions are impossible because of particular site constraints. Habitat elements such as wood, rock, or other naturally occurring material must not be removed from streams. WDFW's "Integrated Streambank Protection Guidelines, June, 1998" provide sound guidance, particularly regarding mitigation for gravel recruitment and channel complexity lost through streambank hardening.

(6) Protect wetlands and the vegetation surrounding them to maintain wetland functions. Design around wetlands for their positive habitat, water quality, flood control, and groundwater connection values, providing adequate buffers. Retain all existing natural wetlands.

(7) Preserve the hydrologic capacity of all intermittent and perennial streams to pass peak flows. Assure that at minimum the Flood Management Performance Standards of Title 3 of Metro's Urban Growth Management Functional Plan are applied to all development in urban expansion areas, together with any other steps needed to protect hydrologic capacity. In combination with the buffer or set-back provisions above, this means that for new, large developments, fill or dredging should never occur unless in conjunction with a necessary stream crossing.

(8) Landscape to reduce need for watering and application of herbicides, pesticides and fertilizer. Plans must include techniques local governments will use to encourage planting with native vegetation, reduction of lawn area, and reduced water use. These steps will contribute to water conservation and ultimate reduction of flow demands that compete with fish needs, as well as reduce applications of fertilizers, pesticides, herbicides that may contribute to water pollution.

(9) Prevent erosion and sediment run-off during and after construction to prevent discharge of sediments by assuring that at a minimum the requirements of Title 3 of Metro's Urban Growth Management Functional Plan are applied to all development in Metro-area urban expansion areas, and that an equivalent level of protection is provided in other large scale urban developments.

(10) Assure that water supply demands for the new development can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals. Assure that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(11) Identify a commitment to and the responsibility to regularly monitor and maintain any detention basins and other management tools over the long term, and to adapt practices as needed based on monitoring results.

(12) Provide all enforcement, funding, monitoring, reporting, and implementation mechanisms needed to assure that ultimate development will comply with the ordinances or the Metro Urban Growth Management Functional Plan.

To fall outside of the take prohibitions the development must comply with other state and Federal laws and permit requirements. NMFS concludes that development governed by ordinances or Metro guidelines that meet the preceding principles will address the potential negative impacts on salmonids associated with new development. In such circumstances adequate safeguards will be in place that NMFS does not find imposition of additional Federal protections through take prohibitions necessary and advisable for conservation of listed salmonids.

Forest Management Limit on Take Prohibitions

In the State of Washington, NMFS has been participating in discussions among timber industry, tribes, state and Federal agencies, and interest groups for many months. The purpose of these discussions was to develop modules of forest practices for inclusion in Washington Governor Locke's salmon recovery plan, and consequent implementation through the Department of Natural Resources. The product of those discussions, an April 29, 1999 Forests and Fish Report (FFR) to Governor Locke, provides important improvements in forest practice regulation which, if implemented by the Washington Forest Practices Board in a form at least as protective as laid out in the FFR, will provide a significant level of protection to listed salmonids and contribute to their conservation. It also mandates that all existing forest roads be inventoried for potential impacts on salmonids through culvert inadequacies, erosion, slope failures, and the like, and all needed improvements be completed within 15 years. Because of the substantial detrimental impacts of inadequately sited, constructed or maintained forest roads on salmonid habitat, this feature of the overall FFR provides a significant conservation benefit for listed ESUs in Washington. Because of these features, described in greater detail here, NMFS does not propose to apply ESA section 9 take prohibitions to non-federal forest management activity conducted in the State of Washington in compliance with the April 29, 1999 FFR and forest practice regulations implemented by the Washington Forest Practices Board that are at least as protective of habitat functions as are the regulatory elements of the FFR. Compliance with the provisions of FFR will address problems historically associated with forest management activity. NMFS concludes that in general the FFR package creates adequate safeguards that no additional Federal protections through imposition of take prohibitions to forest management activity is necessary and advisable for conservation of threatened salmonids.

NMFS believes rapid adoption and implementation of such improved forest practice regulations important to conservation of listed salmonids. Before making a judgement on the adequacy of regulations developed to implement the FFR, NMFS will provide an opportunity for public review and comment.

This restriction of the take prohibitions is limited to the State of Washington. Environmental factors such as current habitat conditions, climate and geology, landscape conditions, and functioning habitat elements vary between ecoregions. In addition, procedural and regulatory differences between Washington and other states containing steelhead ESUs limit the applicability of the FFR or similar provisions to watersheds outside of the State of Washington. Therefore, the take prohibitions applied generally by this proposed rule would apply to forest management activities in other states.

Although NMFS will continue working with Washington and others toward broadening this "exception", at this time information limitations prevent NMFS from determining that pesticide use or actions under an alternative forest management plan, as contemplated in the total FFR package, are sufficiently protective. Therefore, take prohibitions applied generally by this proposal would apply to those activities.

Elements of the FFR that provide protections or conservation benefits for listed salmonids are summarized here; anyone wishing to review the actual text of or details of those measures should request a copy of the FFR document (see **ADDRESSES**).

(1) It is based on adequate classification of water bodies and broad availability of stream typing information. Effective maintenance and recovery of fish habitats and populations requires specific geographic knowledge of existing and potential fish habitats as well as the higher elevation, non-fishbearing stream systems that create and influence them. Forest practices should be tailored to protect and reinforce the functions and roles of different stream classes in the continuum of the aquatic ecosystem, such as (A) fishbearing streams which are within the bankfull width of defined stream channels that are currently or potentially capable of supporting fish of any species, perennially or seasonally; (B) perennial, non-fishbearing streams, which include spatially intermittent streams; and (C) seasonal, non-fishbearing streams (intermittent or non-perennial), which have a defined channel that flows water, of any flow volume, some time during the water year. Landowners, regulatory agencies, and the public should have reasonable access to this information, preferably through Geographic Information Systems, or some other accessible repository of stream typing information.

(2) It provides for proper design and maintenance and upgrade of existing and new forest roads, which is necessary to maintain and improve water quality and instream habitats. Impacts associated with forest roads include changes in hydrology (basin capture, interception of groundwater, increased peak flows); generation and routing of coarse and fine sediments; physical impediments to fish passage; altered riparian function; altered fluvial processes and floodplain interaction; and direct loss of off-channel habitats. The FFR provisions include: (A) avoiding road construction or reconstruction in riparian areas unless alternative options for road construction would likely cause greater damage to aquatic habitats or riparian functions; (B) prohibits road construction or reconstruction on unstable slopes unless an analysis involving qualified geotechnical personnel and an opportunity for public environmental input shows that road construction can proceed without creating activity-related landslides, sediment delivery or other impacts to stream channels or water bodies; (C) new and reconstructed roads must not impair hydrologic connections between stream channels, ground water, and wetlands; must not increase sedimentation to aquatic systems; must use only clean fill materials; and must have adequate drainage and surfacing. Stream crossings must provide adequate fish passage and be designed to accommodate a 100-year flood as well as adequate large woody debris passage; (D) requires of each landowner/operator an inventory of the condition of all roads within that management ownership, and a plan for repair, reconstruction, maintenance, access control, and where needed abandonment and/or obliteration of all roads in any land ownership. Inventory showing priorities for all needed work should be completed within 5 years, and work identified as needed completed within 15 years. Road maintenance plans for all new or reconstructed roads must address routine operations (grading, ditch cleaning, etc.), placement of spoil or graded sediments, retention of coarse and large woody debris at stream crossings, placement of large woody debris recruited in proximity to riparian roads, and emergency repairs; (E) requires BMPs in all other aspects of forest road operations, including log haul use, recreational use, and seasonal closure as needed to maintain and improve stream habitats and water quality to meet seasonal life history requirements for fishes.

(3) It protects unstable slopes from increased rates and volume of failure delivering coarse and fine sediments to aquatic systems, which can significantly

impair fish species life stages. The goal for management of unstable slopes is to avoid an increase or acceleration of the naturally occurring rate and volume of landslides within forested watersheds subject to forest practices, while recognizing that mass-wasting of slopes is an essential element in watershed processes that route large woody debris through the stream system. The program provides a process through which the Washington Department of Natural Resources (DNR) attempts to identify potentially unstable slopes in areas subject to forest operations through interpretation of slope gradient, landform, surficial and parent geologies, current and historic aerial photography, landslide inventories, and computer models of slope stability. These will include inner gorges of streams, convergent headwalls and bedrock hollows with slopes greater than 70 percent, toes of deep-seated landslides with slopes greater than 65 percent, groundwater recharge areas for glacial, or other, deep-seated landslides, soil covered slopes steeper than 70 percent, and slopes along the outer bend of stream channels that have the potential to fail with continued fluvial erosion at the channel toe slope interface.

If a management activity on a potentially unstable slopes is found by the DNR to increase the probability of slope failure, deliver sediment to public resources, and is likely to cause significant adverse impacts, then DNR may approve, approve with conditions, or disapprove the application;

(4) It provides for achieving properly functioning riparian conditions along fishbearing waters. Proper function refers to the suite of riparian functions that includes stream bank stability, shade, litterfall and nutrient input, large woody debris recruitment, and such microclimate factors as air and soil temperature, windspeed, and relative humidity that affect both instream habitat conditions and the vigor and succession of riparian forest ecosystems. Assessing the adequacy of riparian conservation measures requires a synthesis of judgements about individual functions. For example, NMFS judgements about large woody debris function will be based on the proposed management widths, the probability of tree fall with distance from the stream and site potential tree heights of dominant and subdominant species in a mature riparian forest.

Two possible strategies may be followed to achieve properly functioning riparian ecosystems.

A natural succession and growth strategy establishes riparian management zone widths within which no silvicultural treatments occurs. These widths must be at least 2/3 or 3/4 of a site potential tree height for typical dominant conifers, depending on stream width. Disturbance for activities such as road crossings and cable yarding corridors should be avoided. Where ground and vegetation disturbance is unavoidable, it must be limited to a small percentage of the riparian area. Riparian stand development must be allowed to proceed under natural rates of growth and succession to mature conditions, undisturbed by future harvest or silvicultural activities. This strategy is expected to be employed when an evaluation of the riparian zone shows that all available trees need to be retained and allowed to grow and succeed to achieve the desired future conditions and the landowner does not choose to apply silvicultural treatments to accelerate these processes.

A managed succession and growth strategy achieves properly functioning conditions by providing potentially variable width management zones within which silvicultural treatments are allowed. These treatments are prescribed through silvicultural guidelines that assure NMFS that the riparian forest stand is on a growth and succession pathway toward a desired future condition of a mature riparian forest. Once the trajectory of growth toward the desired future condition is achieved the riparian forest must remain on that trajectory without further harvest or silvicultural treatment. Both strategies are expected to provide high levels of riparian function when implemented.

Characteristics of both the natural succession and managed growth strategies include:

(1) Continuous riparian management zones along all fish-bearing streams.

(2) A core zone at least 50 ft (15.24 m) wide west of the Cascades and 30 ft (9.15 m) on the east side, within which no harvest or salvage occurs. This width is measured horizontally from edge of the bankfull channel or where channel migration occurs, from the edge of the channel migration zone.

(3) An inner zone that varies in width by strategy.

(4) An outer zone extending to a site potential tree height (100-year base) that provides a minimum of 20 conifer trees per acre greater than 12 inches (.30 m) diameter at breast height. These trees will not be counted as trees retained to satisfy DFC silvicultural guidelines; and

(5) Disturbance limits do not exceed 20 percent of the overstory canopy along the stream length for yarding corridors and 10 percent ground disturbance. Ground disturbance includes, but is not limited to, yarding corridors, soil compaction and exposure, stream crossings and other effects that are a product of log yarding and equipment use. Tree retention to satisfy silvicultural guidelines must be achieved regardless of the area modified for yarding corridors.

The managed succession and growth strategy will achieve desired future conditions for riparian forest ecosystems through:

(6) Selecting a stand composition and age that represents a mature riparian forest as the desired future condition. Generally, mature riparian forest conditions are achieved at between 80 and 200 years, or more, together with a detailed description of basal area, stocking levels, average tree diameters and range of tree diameters of desired species, and any other characteristics needed to describe the desired future condition. The strategy then sets out a comprehensive set of prescriptions that describe the basal area, stocking, tree diameters, and other metrics that must be retained in a stand of any particular age or composition, to allow forest stand growth and succession to proceed toward DFC. These prescriptions vary with site productivity (100-year base), dominant species, and likely successional pathways and take into account natural disturbance processes, agents and patterns that affect pathways toward the desired future condition. Silvicultural treatments must be conservative and be limited to only those actions that assure achievement of DFC. Dominant and co-dominant trees will be retained. Once this DFC trajectory has been achieved the riparian stand will be allowed to grow and succeed without further harvest or treatment.

(7) A methodology for field application of riparian prescriptions that provides assurances that desired future conditions will be achieved.

(8) Requiring riparian conservation zone widths that provide bank stability, litterfall and nutrients, shade, large woody debris, sediment filtering, and microclimate functions in the near and long-term. Widths of the inner riparian zone may vary depending on site productivity, silvicultural guidelines and expected trajectories toward the DFC but must be 80 ft (24.5 m) or greater for the poorest productivity class. As site productivity increases so must the inner/core zone minimum widths. These minimum widths are necessary to provide riparian functions such as microclimate and shade that may be compromised when, for example,

mature, conifer-dominated riparian stands are managed.

(9) Providing for mitigation for disturbance of riparian function, water quality, and fluvial (floodplain) processes from permanent road systems near stream channels through such techniques as replacement of basal area and number of stems lost to the road prism, and placement of trees that have fallen across or onto the fill or cutslopes of riparian roads to the streamward side of the road as part of routine or emergency road maintenance activities.

(10) Treatment guidelines by tree species and region that address stocking levels, tree selection, spacing, and other common forest metrics for a given stand age and condition necessary to achieve the DFC; requires protection and release of residual or understory tree species that would form a desirable component of a future mature riparian forest; requires retention of structural diversity in the stand, including openings (spatial diversity), species diversity, and emphasis on tree retention on topographic features that increase the probability of tree fall toward stream channels; and guidelines for maintaining shade necessary to meet fish life history requirements. Shade retention along fish-bearing streams, sensitive sites such as seeps and springs, and other groundwater source areas must be 100 percent of the available shade unless local and/or regional water temperature models and/or standards can be shown to meet fish life history requirements.

(11) Guidelines for conversion of hardwood-dominated riparian areas that cannot achieve the stand requirements of forest stands on a successional pathway toward a desired future condition. They include a 50–ft (15 m) core zone that is not managed and is disturbed only for road crossings and yarding corridors. All overstory conifers must be retained and damage to understory conifers in the inner zone minimized. It also includes a minimum tree retention standard for the outer zone.

(12) A strategy for the conservation of fluvial processes and fish habitats that occur within the channel migration zone. Channel migration zones include those potential and standing riparian forests that occur on floodplains and low terraces along channels that migrate rapidly (on a geologic time-scale) over their valley floors. The area within the channel migration zone is susceptible to flooding and catastrophic events that often rapidly recruits standing and deposited woody material. Secondary channels provide summer and winter habitats for fishes. Therefore, core riparian management zones are measured from the channel migration zone boundary, when present.

(13) Guidelines for salvage of dead or downed timber in the inner and outer riparian zones that retain coarse woody debris on the riparian forest floor at levels seen in mature forests, retain live or standing dead trees in the inner zone that have value as future large woody debris and that can add structural and species diversity to the future riparian forest, retain all dead or downed timber within the channel, any channel migration zone, and the core zone, and minimize site preparation necessary for replanting.

(14) Evaluating the effects of multiple forest practices on the watershed scale through a standardized, repeatable methodology based on the best available science, considering the cumulative effects of forest practices over time, and providing a regulatory basis for precluding or delaying forest practices to prevent actual or potential damage to aquatic habitats that directly or indirectly support anadromous salmonids.

(15) It sets up riparian management zones along perennial and seasonal non-fish bearing streams that:

(A) Manage heat energy input to surface waters by retaining all existing overstory canopy along at least 50 percent of the length of perennial non-fish bearing streams. Shade retention around sensitive sites such as seeps and springs, and other groundwater source areas is 100 percent of the available shade unless local and/or regional water temperature models and/or standards can be shown to meet fish life history requirements.

(B) Limit the maximum percent of the riparian management area that may be subject to soil disturbance, soil compaction and the mortality alteration of vegetation from equipment, cable movements, log yarding, and road crossings.

(C) Limit equipment use within 30 ft (10 m) of perennial and seasonal non-fishbearing streams.

(D) Ensure partial recruitment and routing of woody material through defined channels to fishbearing waters downstream by retaining an unmanaged riparian zone in excess of one-half of a crown diameter of a mature dominant riparian tree along at least 50 percent of the length of perennial waters.

(E) Provide a continuous riparian buffer in excess of one-half of a crown diameter of a mature dominant riparian tree for a distance of 300 to 500 ft (91.5 to 152.5 m) upstream of confluences with fishbearing waters. This continuous buffer serves as a run-out zone for channelized landslides, an opportunity for groundwater interaction with surface waters and as an important source area for large woody debris recruited to fishbearing streams downstream.

(16) It includes monitoring and adaptive management to assess implementation compliance with, and effectiveness of, current regulations, measured against a baseline data set. Over time, some forest practices will require replacement or adjustment to respond to additions to our current body of knowledge. Whenever monitoring information or new scientific knowledge lead the state forest practice agency to amend a program that has been brought within this "exception", NMFS will publish notification in the **Federal Register** announcing the availability of those changes for review and comment. Such a notice will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether the changes conserve listed salmonids and, therefore, are included within this limit on the take prohibitions.

NMFS finds that, except with respect to pesticide applications and actions under alternative plans, with these safeguards in place, imposition of take prohibitions on forest management activities in Washington is not necessary and advisable because it would not provide meaningful additional conservation benefits for listed salmonids.

This limit on the take prohibitions will be applicable only within the State of Washington, because an adequate program for any other state would have to take into account interregional and interstate differences in land conditions, current function of various habitat elements, and other differences in situation that affect the biological status of salmonids.

Public Comments Solicited; Public Hearings

NMFS is soliciting comments, information, and/or recommendations on any aspect of this proposed rule from all concerned parties. (see **DATES** and **ADDRESSES**). Public hearings provide an additional opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS Northwest Region has, therefore, scheduled 15 public hearings throughout the Northwest to receive public comment on this rule and other ESA 4(d) rules proposed concurrently. Similarly, NMFS' Southwest Region will hold 7 hearings in California. The agency will consider all information,

comments, and recommendations received before reaching a final decision on 4(d) protections for these ESUs.

Public Hearings in Washington, Idaho, and Oregon

(1) January 10, 2000, 6:00 - 9:00 p.m., Metro Regional Center, Council Chamber, 600 NE Grand Ave, Portland, Oregon;

(2) January 11, 2000, 6:00 - 9:00 p.m., Quality Inn, 3301 Market St NE, Salem, Oregon;

(3) January 12, 2000, 6:00 - 9:00 p.m., Lewiston Community Center, 1424 Main Street, Lewiston Idaho;

(4) January 13, 2000, 6:00 - 9:00 p.m., Natural Resource Center, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho;

(5) January 18, 2000, 6:00 - 9:00 p.m., City Library, 525 Anderson Ave., Coos Bay, Oregon;

(6) January 19, 2000, 6:00 - 9:00 p.m., Hatfield Science Center, 2030 SE Marine Science Drive, Newport, Oregon;

(7) January 20, 2000, 6:00 - 9:00 p.m., Columbia River Maritime Museum, 1792 Marine Drive, Astoria, Oregon;

(8) January 24, 2000, 6:00 - 9:00 p.m., Eugene Water & Electric Board Training Room, 500 East 4TH Ave. Eugene, Oregon;

(9) January 25, 2000, 6:00 - 9:00 p.m., City Hall, 2nd Floor Council Chamber, 500 SW Dorian Ave., Pendleton, Oregon;

(10) January 26, 2000, 6:00 - 9:00 p.m., Yakima County Courthouse, Room 420, 128 North 2nd St., Yakima, Washington

(11) January 27, 2000, 6:00 - 9:00 p.m., Mid Columbia Senior Center, John Day Room, 1112 West 9th, The Dalles, Oregon;

(12) January 31, 2000, 6:00 - 9:00 p.m., City Hall, Dining Room (Basement), 904 6th St., Anacortes, Washington;

(13) February 1, 2000, 6:00 - 9:00 p.m., Northwest Fisheries Science Center Auditorium, 2725 Montlake Blvd. East, Seattle, Washington;

(14) February 2, 2000, 6:00 - 9:00 p.m., City Hall, Council Chamber, 321 E. 5th, Port Angeles Washington;

(15) February 3, 2000, 6:00 - 9:00 p.m., Sawyer Hall, 510 Desmond Drive, Lacey, Washington;

Public Hearings in California

(1) January 25, 2000, 6:30 - 9:00 p.m., Double Tree (now Red Lion), 1830 Hilltop Drive, Redding, California;

(2) January 26, 2000, 6:30 - 9:00 p.m., Heritage Hotel, 1780 Tribute Rd., Sacramento, California

(3) January 27, 2000, 6:30 - 9:00 p.m., Modesto Irrigation District, 1231 11th St., Modesto, California;

(4) January 31, 2000, 6:30 - 9:00 p.m., Eureka Inn, 518 Seventh St., Eureka, California;

(5) February 1, 2000, 6:30 - 9:00 p.m., Double Tree, One Double Tree Drive, Rohnert Park, California;

(6) February 2, 2000, 6:30 - 9:00 p.m., Best Western, 2600 Sand Dunes Drive, Monterey, California;

(7) February 3, 2000, 7:00 - 9:30 p.m., Embassy Suites, 333 Madonna Rd., San Luis Obispo, California. 7:00-9:30P

Special Accomodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin or Craig Wingert (see **ADDRESSES**) by 7 days prior to each meeting date.

References

A list of references cited in this proposed rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

When an agency proposes regulations, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) that describes the impact of the proposed rule on small businesses, nonprofit enterprises, local governments, and other small entities, unless the agency is able to certify that the action will not have a significant impact on a substantial number of small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The RFA was designed to ensure that agencies carefully assess whether aspects of a proposed regulatory scheme (record keeping, safety requirements, etc.) can be tailored to be less burdensome for small businesses while still achieving the agency's statutory responsibilities. This proposed ESA 4(d) rule has no specific requirements for regulatory compliance; it essentially sets an enforceable performance standard (do not take listed fish) that applies to all entities and individuals within the ESU unless that activity is within a carefully circumscribed set of activities on which NMFS proposes not to impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is broad.

The number of entities potentially affected by imposition of take prohibitions is substantial and the geographic range of these regulations crosses four states. Activities potentially affecting salmonids are those associated with agriculture, forestry, fishing, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities will also be impacted. The activities of some nonprofit organizations will also be affected by these regulations.

NMFS examined in as much detail as practical the potential impact of the regulation on a sector by sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, contiguity to waterways, individual strategies for dealing with the take prohibitions, etc.

There are no record-keeping or reporting requirements associated with the take prohibition and, therefore, it is not possible to simplify or tailor record keeping or reporting to be less burdensome for small entities. Some programs for which NMFS has found it not necessary to prohibit take involve record keeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with programs for which the take prohibitions are not enacted.

In formulating this proposed rule, NMFS considered several alternative approaches, described in more detail in the IRFA. These included (1) Enacting a "global" protective regulation for threatened species, through which section 9 take prohibitions are applied automatically to all threatened species at the time of listing; (2) ESA 4(d) protective regulations with no limits, or only a few limits, on the application of the take prohibition for relatively uncontroversial activities such as fish rescue/salvage; (3) Take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/ Northern California coast coho, which includes four additional limitations on the extension of the take prohibition, for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) A protective

regulation similar to the interim rule, but with recognition of more programs and circumstances in which application of take prohibitions is not necessary and advisable. That is the approach taken in this proposed rule, which limits the take prohibition for the seven items discussed above, but would also limit application of the take prohibition for properly screened water diversions, for routine road maintenance in Oregon, for Portland's Parks and Recreation Department integrated pest management program, for urban density development activities, and for forest management (including timber harvest) in Washington. For several of these categories (harvest, artificial propagation, habitat restoration, and urban development) the regulation is structured so that it allows plans or programs developed after promulgation of the rule to be submitted to NMFS for review under the criteria in the rule; (6) An option earlier advocated by the State of Oregon and others, in which ESA section 9 take prohibitions would not be applied to any activity addressed by the Oregon Plan for Salmon and Watersheds, fundamentally deferring protections to the state. At present, NMFS concludes that doing so would not provide sufficient protections to the listed steelhead; and (7) Enacting no protective regulations for threatened steelhead. That course would leave the ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus. Since NMFS' decision to list the ESUs as threatened, identifying broad segments of human activity as major factors in the decline of these steelhead ESUs, NMFS could not support that approach at this time as being consistent with the obligation to enact such protective regulations as are "necessary and advisable to provide for the conservation of" the listed steelhead.

NMFS concludes that at the present time there are no legally viable alternative rules that would have less impact on small entities and still fulfill the agency's obligations to protect listed salmonids. The first four alternatives may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species.

If you believe the alternative contained in this proposed rule will impact your economic activity, please comment on whether there is a preferable alternative (including alternatives not described here) that would meet the statutory requirements of ESA section 4(d). Please describe the impact that alternative would have on your economic activity and why the alternative is preferable.

Executive Order 12866

In applying take prohibitions broadly to protect seven ESUs of threatened salmonids, this proposed rule likely constitutes a significant action for purposes of Executive Order 12866. As discussed with respect to the Regulatory Flexibility Act analysis, data are not available to quantify the impacts on small entities in specific sectors of the economy; for the same reasons it is not possible to quantify costs of avoiding take of listed fish for all portions of the economy. However, as discussed earlier, NMFS has a clear statutory responsibility to enact whatever protective regulations are necessart to provide for conservation of threatened species. Abdicating that responsibility is not an option. For several prior listings of threatened salmonids, take prohibitions were imposed in a blanket manner, with no limitations. In the case of these seven salmonid ESUs, NMFS has sought an alternative to blanket imposition of the prohibitions. NMFS has worked with a variety of jurisdictions to identify programs or sectors of activity for which it is not necessary and advisable to impose take prohibitions, and this proposed rule recognizes thirteen such circumstances as limits on take prohibitions. NMFS believes that this approach provides the benefits demanded by the ESA (protection of threatened species) while minimizing uncertainty and costs for sectors of the economy wherever possible.

Executive Order 13084–Consultation and Coordination with Indian Tribal Governments

The United States has a unique legal relationship with tribal governments as set forth in the Constitution, treaties, statutes, and Executive Orders. In keeping with this relationship, with the mandates of the Presidential Memorandum on Government to Government Relations with Native American Tribal Governments (59 FR 22951), and with Executive Order 13084, NMFS has coordinated with tribal governments and organizations in the geographic areas affected by this proposed rule as it was developed over the past year. For instance, NMFS has provided these entities with the opportunity to provide input on the draft rule and the approach taken. In addition, NMFS has met with tribal governments and organizations and had numerous individual staff-to-staff conversations, in an effort to give consideration to the viewpoints of tribes and tribal organizations related to the protection of these species.

NMFS will schedule more formal consultation opportunities with each potentially affected tribe, to be completed during the first two months after publication. NMFS will continue to give careful consideration to all written or oral comments received and will continue its contacts and discussions with interested tribes as the agency moves toward a final rule.

Executive Order 13132–Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with numerous State, local and other governmental entities in the course of preparing this proposed rule. As the process continues, NMFS intends to continue engaging in informal and formal contacts with all affected States, discussing the rule with any interested local or regional entities and giving careful consideration to all written or oral comments received. As one part of that continued process, NMFS has scheduled public hearings to be held throughout the geographic range of the affected ESUs.

NMFS' interim ESA 4(d) rule for Southern Oregon/Northern California Coast coho ESU (62 FR 38479) was the first instance in which the agency defined some reasonably broad categories of activity, both public and private, for which take prohibitions were not necessary and advisable. Since then, NMFS has continued discussions with various Oregon and California governmental agencies and representatives involved with that ESU, and has also sought working relationships with other States and governmental organizations promoting salmonid restoration efforts throughout the geographic range affected by this proposed rule. Some of the limits in this proposed rule reflect the coordination NMFS has had with State and local jurisdictions.

In addition to these efforts, NMFS' staff have given numerous presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and NMFS' staff have met with them as rapidly as our resources permit. Finally, NMFS' Sustainable Fisheries Division staff have continued close coordination with State fisheries agencies toward

development of artificial propagation and harvest plans and programs that will be protective of listed salmonids and ultimately may be recognized within this rule. NMFS expects to continue to work with all of these entities and others toward the clearest and best possible final rule that protects these affected ESUs, and toward recognizing other conservation efforts in future amendments or through other ESA mechanisms.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. Public reporting burden for this collection-of-information is estimated to average 5 hours per response for water diverters who elect to provide documentation that their diversion structures are screened to NMFS criteria; 20 hours per response for cities or counties that elect to take advantage of the ODOT routine road maintenance program; or 30 hours per response for Metro, cities, or counties that elect to submit guidelines or ordinances for a limit on take prohibitions for urban development. Annual reporting for the limit regarding aiding sick, injured, stranded salmonids is estimated to average 5 hours. Annual reporting for the urban development limit is estimated to average 10 hours. This proposed rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed plans that has received PRA approval from OMB under control number 0648–0230. The public reporting burden for the approval of Watershed Plans is estimated to average 10 hours. These estimates include any time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Also, this proposed rule contains collection-of-information requirements not subject to the PRA because they are not requirements of general applicability, affecting fewer than ten potential respondents.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer). Comments must be received by February 28, 2000.

National Environmental Policy Act

NMFS has completed an Environmental Assessment (EA) for this action pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. NMFS concludes that this alternative will not result in environmentally significant negative impacts and may have several beneficial effects, and that preparation of an Environmental Impact Statement is not required. Copies of the EA are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under; 16 U.S.C. 1361 *et seq.*;

2. 223.208 is added to read as follows:

§ 223.208 Steelhead.

(a) *Prohibitions.* The prohibitions of section 9 of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15), except as provided in paragraph (b) of this section.

(b) *Limits on the take prohibitions.* (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15). This section supersedes other restrictions on the applicability of part 222 of this chapter.

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than 30 days from date of publication of the final rule in the **Federal Register**. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or 6 months after effective date of the final rule, whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game, Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, or any Tribe, when the employee or designee, acting in the course of their official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) dispose of a dead salmonid, or

(iii) salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency, or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved

Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a Memorandum of Agreement (MOA) between the state of Washington, Oregon, Idaho or California (State) and NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact, and sets forth management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Defines populations within affected ESUs, taking into account spatial and temporal distribution; genetic and phenotypic diversity; and other appropriate identifiable unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units and describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Determines and applies thresholds for viable and critical populations consistent with the concepts contained in a draft technical document titled "Viable Salmonid Populations" (NMFS, December 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the draft paper may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. The Viable Salmonid Populations paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and insuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with these two threshold states and respond accordingly to minimize the risks to long-term population. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that such an action will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild despite any increased risks to the individual population.

(C) Sets escapement objectives or maximum exploitation rates for each management unit or population based on its status, and a harvest program that assures not exceeding those rates or objectives. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Displays a biologically based rationale demonstrating the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Includes effective monitoring and evaluation programs to assess compliance, effectiveness and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics such as age, fecundity, size and sex data, and migration timing.

(F) Provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data shows are needed.

(G) Provides for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Includes restrictions on resident species fisheries that minimize and adequately limit any take of listed species, including time, size, gear, and area restrictions; and elimination of put-and-take fisheries in waters with listed anadromous salmonids.

(I) Is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on an annual basis a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The State shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers annually with NMFS on their fishing regulation changes to ensure congruity with the approved FMEP.

(iv) Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest or Southwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The plan has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet

conservation objectives, contributing to the ultimate sustain ability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program against which its success or failure can be determined.

(B) The plan utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in a draft technical document titled "Viable Salmonid Populations" (NMFS, December 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundance and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met, and when consistent with survival and recovery the species, broodstock collection programs may be authorized by NMFS for secondary purposes, such as to sustain tribal, recreational and commercial fisheries.

(D) The HGMP shall include protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP shall evaluate, minimize, and account for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by straying of hatchery fish.

(F) The HGMP will describe interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. HGMPs for programs whose purpose is to sustain fisheries must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks to or impairment of recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data shows are needed;

(J) An MOA or some other formal agreement is in place between the state and NMFS, to ensure proper implementation of the HGMPs and reporting of effects and results. For Federally operated or funded hatcheries, the section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on an annual basis a report summarizing this information, as well as the implementation and effectiveness of the HGMP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on an annual basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(7), (a)(8), (a)(14), and (a)(15) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington and/or Oregon and the Tribes (joint plan) within the continuing jurisdiction of *U.S.* v. *Washington* or *U.S.* v. *Oregon*, the on-going Federal Court proceeding to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR § 223.209(b) (the limit on take prohibitions for tribal resource management plans) and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within *U.S.* v. *Washington* or *U.S.* v. *Oregon*.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in 223.208(b)(4), or how any hatchery and genetic management plan addresses the criteria in 223.208(b)(5).

(iv) The Secretary shall publish notice in the **Federal Register** of any determination whether or not a joint plan will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(7) The prohibitions of paragraph (a) of this section relating to threatened

species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to activity associated with scientific research provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), Idaho Department of Fish and Game (IDFG), or the California Department of Fish and Game (CDFG)(Agency), or as part of a coordinated monitoring and research program overseen by that Agency.

(ii) The Agency provides NMFS with a list of all scientific research activities involving direct take planned for the coming year for NMFS' review and approval, including an estimate of the total direct take that is anticipated, a description of the study design including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agency annually provides NMFS with the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by Agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agency provides NMFS annually, for its review and approval, a report listing all scientific research activities they conduct or permit that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accord with "Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act".

(vii) NMFS' approval of a plan shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iii) of this section, provided that:

(i) The States of Washington, Oregon, Idaho or California (State) certify to NMFS in writing the activity is part of a watershed conservation plan, where:

(A) NMFS has certified to the state in writing that the State's watershed conservation plan guidelines meet the following standards. Guidelines must result in plans that:

(*1*) Consider the status of the affected species and populations;

(*2*) Design and sequence restoration activities based upon information obtained from an overall watershed assessment;

(*3*) Prioritize restoration activities based on information from watershed assessment;

(*4*) Evaluate the potential severity of direct, indirect and cumulative impacts on the species and habitat as a result of the activities the plan would allow;

(*5*) Provide for effective monitoring;

(*6*) Use best available science and technology of habitat restoration, use adaptive management to incorporate new science and technology into plans as they develop, and where appropriate, provide for project specific review by disciplines such as hydrology or geomorphology;

(*7*) Assure that any taking resulting from implementation will be incidental;

(*8*) Require the state, local government, or other responsible entity to monitor, minimize and mitigate the impacts of any such taking to the maximum extent practicable;

(*9*) Will not result in long-term adverse impacts;

(*10*) Assure that the safeguards required in watershed conservation plans will be funded and implemented;

(B) The state has made a written finding that the watershed conservation plan, including its provisions for clearing projects with other agencies, is consistent with those state watershed conservation plan guidelines.

(C) NMFS concurs in writing with the state finding.

(ii) Until a watershed conservation plan is approved under paragraph (b)(8)(i) of this section, or until 2 years after publication of the final rule in the **Federal Register**, whichever occurs first, take prohibitions shall not apply to the following habitat restoration activities if any in-water work is consistent with state in-water work season guidelines established for fish protection, or if there are none, limited to summer low-flow season with no work from the start of adult migration through the end of juvenile outmigration. The work must be implemented in compliance with the listed conditions and guidance:

(A) *Riparian zone planting or fencing.* Conditions include no in-water work; no sediment runoff to stream; native vegetation only; fence placement in Oregon consistent with standards in the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

(B) *Livestock water development off-channel.* No modification of bed or banks; no in-water structures except minimum necessary to provide source for off-channel watering; no sediment runoff to stream; diversion adequately screened; diversion in accord with state law and has not more than *de minimus* impacts on flows that are critical to fish; diversion quantity shall never exceed 10 percent of current flow at any moment, nor reduce any established instream flows.

(C) *Large wood (LW) placement.* Conditions: Does not apply to LW placement associated with basal area credit in Oregon. No heavy equipment allowed in stream. Wood placement projects should rely on the size of wood for stability and may not use permanent anchoring including rebar or cabling (these would require section 7 consultation or a section 10 permit)(biodegradable manila/sisal rope may be used for temporary stabilization). Wood should be at least two times the bankfull stream width (1.5 times the bankfull width for wood with rootwad attached) and meet diameter requirements and stream size and slope requirements outlined in *A Guide to Placing Large Wood in Streams*, Oregon Department of Forestry and Department of Fish and Wildlife (1995). LW placement must be either associated with an intact, well-vegetated riparian area which is not yet mature enough to provide LW; or accompanied by a riparian revegetation project adjacent or upstream that will provide LW when mature. Placement of boulders only where human activity has created a bedrock stream situation not natural to that stream system, where the stream segment would normally be expected to have boulders, and where lack of boulder structure is a major contributing factor to the decline of the stream fisheries in the reach. Boulder placement projects within this exception must rely on size of boulder for stability, not on any artificial cabling or other devices. See applicable guidance in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

(D) *Correcting road/stream crossings, including culverts, to allow or improve fish passage.* See WDFW's *Fish Passage Design at Road Culverts*, March 3, 1999; *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*; and NMFS Southwest Region *Culvert Policy* (1999).

(E) *Repair, maintenance, upgrade or decommissioning of roads in danger of failure.* All work to be done in dry season; prevent any sediment input into streams. In California, follow applicable guidance in Weaver. W.E. and D.K. Hagens *Handbook for Forest and Ranch Roads, A guide for planning, designing, constructing, reconstructing, maintaining, and closing wildland roads* (June, 1994).

(F) *Salmonid carcass placement.* Carcass placement should be considered only where numbers of spawners are substantially below historic levels. Follow applicable guidelines in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999), including assuring that the proposed source of hatchery carcasses is from the same watershed or river basin as the proposed placement location. To prevent introduction of diseases from hatcheries, such as Bacterial Kidney Disease, carcasses must be approved for placement by a state fisheries fish pathologist.

(iii) "Habitat restoration activity" is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. "Primary purpose" means the activity would not be undertaken but for its restoration purpose.

(iv) Prior to approving watershed conservation plan guidelines under paragraph (7)(i) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the draft guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of not less than 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of a state's watershed plan guidelines in assuring plans that protect a level salmonid productivity commensurate with conservation of the listed salmonids. If insufficient, NMFS will identify ways in which the guidelines or program needs to be altered or strengthened. If the state does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vii) Before this regulation becomes final, the Director of the Federal Register must approve the incorporation by reference of each of the state guidance documents listed in this habitat restoration limit on the take prohibitions in accordance with U.S.C.552(a) and 1 CFR part 51. The documents are: Oregon Aquatic Habitat Restoration and Enhancement Guide (1999; A Guide to Placing Large Wood in Streams, Oregon Department of Forestry and Department of Fish and Wildlife (1995); WDFW's Fish Passage Design at Road Culverts, March 3, 1999; and Oregon Road/Stream Crossing Restoration Guide; Spring 1999. Copies of the documents may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff has agreed in writing that the diversion facility is screened, maintained and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or any subsequent revision. Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) The owner or manager of the diversion will allow any NMFS engineer, biologist or Authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion, or caused during installation of the diversion device. These impacts remain subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(7), (a)(8), (a)(14) and (a)(15) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity by Oregon Department of Transportation, county or city employees that complies with the *Oregon Department of Transportation's Maintenance Management System Water Quality and Habitat Guide* (June, 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) Neither pesticide and herbicide spraying nor ODOT dust abatement are included within this exception, even if in accord with the state's guidance.

(iii) Prior to implementing any changes to the 1999 Guide the Oregon Department of Transportation will provide NMFS a copy of the proposed change for review and approval as within this exception.

(iv) Prior to approving any change in the 1999 Guide, NMFS will publish notification in the **Federal Register** announcing the availability of the draft changes for public review and comment. Such an announcement will provide for a comment period on the draft changes of not less than 30 days.

(v) Any city or a county in Oregon desiring its routine road maintenance activities to be within this exception first enters a memorandum of agreement with NMFS committing to apply the management practices in the guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If ODOT does not make changes to respond adequately to the new information, NMFS will publish

notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vii) NMFS' approval of city or county programs following the ODOT program, or of any amendments, shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(7), (a)(8), (a)(14), and (a)(15) do not apply to activities within the City of Portland, Oregon's Parks and Recreation Department's (PP&R) Pest Management Program (March, 1997), including its Waterways Pest Management Policy dated April 4, 1999 provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Glyphosphate products, Garlon 3A, Surfactant R–11, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department's Pest Management policy (March 27, 1997).

(iii) Any chemical use within a 25 ft (7.5 m) buffer complies with the buffer application constraints contained in PP&R' Waterways Pest Management Policy, (April 4, 1999).

(iv) Portland Parks and Recreation Department will regularly assess whether monitoring information, new scientific studies, or new techniques cause it to amend the program or change the list of chemicals covered by this limit on the take prohibitions. Before NMFS approves any change to qualify as within this limit on the take prohibitions, NMFS will publish notification in the **Federal Register** providing a comment period of not less than 30 days for public review and comment on the proposed changes.

(v) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If PP&R does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vi) NMFS' approval of amendments shall be a written approval by NMFS Northwest Regional Administrator. Before this regulation becomes final, the Director of the Federal Register must approve the incorporation by reference of Portland's Parks and Recreation Department's Waterways Pest Management Program (March, 1997), including its Waterways Pest Management Policy dated April 4, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of those documents may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to urban development activities provided that:

(i) Such development occurs pursuant to city or county ordinances that NMFS has agreed in writing are adequately protective, or within the jurisdiction of the Metro regional government in Oregon, with ordinances that Metro has found comply with an Urban Growth Management Functional Plan (Functional Plan) that NMFS has agreed in writing are adequately protective. For NMFS to find ordinances or the Functional Plan adequate, they must address the following issues in sufficient detail and in a manner that assures that urban developments will contribute to conserving listed salmonids:

(A) Avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) Avoid stormwater discharge impacts to water quality and quantity, or to the hydrograph of the watershed.

(C) Require adequate riparian buffers around all perennial and intermittent streams, lakes or wetlands.

(D) Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing, placement.

(E) Protect historic stream meander patterns and channel migration zones; avoid hardening of stream banks.

(F) Protect wetlands and wetland functions.

(G) Preserve the hydrologic capacity of any intermittent or permanent stream to pass peak flows.

(H) Landscape to reduce need for watering and application of herbicides, pesticides and fertilizer.

(I) Prevent erosion and sediment run-off during construction.

(J) Assure that water supply demands for the new development can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals, and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) Provide all necessary enforcement, funding, reporting, and implementation mechanisms.

(L) The development complies with all other state and Federal environmental or natural resource laws and permits.

(ii) The city, county or Metro will provide NMFS with annual reports regarding implementation and effectiveness of the ordinances, including any water quality monitoring information the jurisdiction has available, an aerial photo (or some other graphic display) of each urban development or urban expansion area at sufficient detail to demonstrate the width and vegetative condition of riparian set-backs, success of stormwater retention and other techniques; and a summary of any flood damage, maintenance problems, or other issues.

(iii) Prior to determining that city or county ordinances or Metro's Functional Plan are adequate, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinances or Functional Plans for public review and comment. The comment period will be not less than 30 days.

(iv) If new information indicates need to modify ordinances or Metro's Functional Plan that NMFS has previously found adequate, the city, county or Metro will work with NMFS to draft appropriate amendments and NMFS will use the processes of paragraph (b)(12)(iii) to determine whether the modified ordinances or Functional Plan are adequate. If at any time NMFS determines that compliance problems or new information show that the ordinances or guidelines are not achieving desired habitat functions, or where even with the habitat characteristics and functions originally

targeted, habitat is not supporting population productivity levels needed to conserve the ESU, NMFS will notify the jurisdiction. If the jurisdiction does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(v) NMFS approval of ordinances shall be a written approval by NMFS Northwest or Southwest Region Regional Administrator, as appropriate.

(13) The prohibitions of paragraph (a) of this section relating to threatened salmonids listed in § 223.102 (a)(7) (a)(8), and (a)(15) do not apply to non-federal forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies. Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the report may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) All other elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides or fungicides are not included within this exception.

(iv) Actions taken under alternate plans are not within this limit on the take prohibitions.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the **Federal Register** announcing the availability of the report and regulations for public review and comment.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not adequate, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(vii) NMFS approval of a regulations shall be a written approval by NMFS Northwest or Southwest Regional Administrator, as appropriate.

[FR Doc. 99–33689 Filed 12–23–99; 2:52 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122199D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on January 18, 19, and 20, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, January 18, 2000, at 1:00 p.m., and Wednesday and Thursday, January 19 and 20, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 18, 2000

After introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission. Following the reports, the Council will receive an Advisory Report on the status of the Northeast region skate complex. The Council will then review and possibly approve a scoping document for an amendment that will consider establishing a controlled access system in the Atlantic herring fishery and consider approval of a Council request that NMFS implement the permit and reporting requirements of the Fishery Management Plan (FMP) for the Atlantic Herring Fishery through an emergency rule.

Wednesday, January 19, 2000

The Chairman of the Groundfish Committee will begin this session of the meeting by considering approval of final action on Framework Adjustment 33, the annual adjustment to the Northeast Multispecies FMP, including setting of target Total Allowable Catch (TAC) and management measures for the 2000–2001 fishing year (May 1, 2000–April 30, 2001), with possible extension into the following fishing year. Options under consideration for the annual adjustment include: Management measures to achieve Northeast Multispecies FMP objectives for Gulf of Maine and Georges Bank cod stocks, including area closures, trip limits, an increase in the minimum fish size and adjustments to days-at-sea (DAS); an adjustment of the Georges Bank haddock trip limit; a decrease in the minimum mesh size for otter trawl vessels in the Large Mesh Permit Category and an allowance for exit from the program after one month; a revision of the definition of exempted midwater trawl gear; an exemption for raised footrope trawl gear in part of the Gulf of Maine closed areas; an exemption for small scallop dredges in the Western Gulf of Maine Closed Area; and an exemption certificate for party/charter vessels to fish in Gulf of Maine closed areas (vessels may not fish on DAS while in possession of the certificate). The discussion of groundfish issues will continue throughout the rest of the afternoon.

Thursday, January 20, 2000

The Chairman of the Scallop Committee will begin this session of the meeting with approval of final action on Framework Adjustment 13 to the Atlantic Sea Scallop FMP. The framework proposes access for scallop vessels to Closed Area I, Closed Area II, and the Nantucket Lightship Area during the 2000–2001 fishing year (March 1, 2000–February 28, 2001). The Council approved some provisions at the previous meeting on Framework Adjustment 13, including scallop TAC, scallop possession limit, initial trip allocations, and DAS tradeoffs. The Council will consider approving TACs for yellowtail flounder, multispecies possession limits, seasons to allow access, access by general category scallop vessels, research TAC administration, and other related measures.

During the afternoon portion of the meeting, the Whiting Committee will ask the Council to approve a scoping document for an upcoming action that may amend the Multispecies FMP by removing whiting, red hake, offshore hake, and possibly ocean pout and establishing a separate Small Mesh FMP for these species. The scoping document for this action may include options for limiting access to small mesh species fisheries, options for applying a TAC to small mesh fisheries, and any other issues that the Council identifies. The Red Crab Committee will seek approval of a scoping document for FMP development and a control date for entry into the fishery. A number of other committee reports will follow this agenda item. The Dogfish Committee will provide a briefing on the fishing year 2000–2001 (May 1, 2000–April 30, 2001) annual specification package to be submitted to the NMFS Regional Administrator. The Research Steering Committee will update the Council on its progress in the development of Regional research priorities. The Capacity, Gear Conflict and Habitat Committees will also report on ongoing activities. The Regional Administrator will consult with the Council regarding an application received by NMFS for an Experimental Fishery Permit to investigate the effects of a modified dredge in the Atlantic Sea Scallop fishery to reduce yellowtail flounder and barndoor skates bycatch will also be discussed. The application is unusual because it requests a scallop days-at-sea exemption while commercially harvesting scallops prior to the implementation of a proposed program to allow quota set-aside for research. There will be a discussion and opportunity for public comment. The meeting will adjourn after the Council addresses any other outstanding issues.

Although other non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained form the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 27, 1999

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33999 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 250
Thursday, December 30, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Higher Education Challenge Grants Program for Fiscal Year 2000; Request for Proposals and Request for Input; Correction Notice

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Correction to notice of request for proposals and request for input.

SUMMARY: In notice document published in the issue of Friday, December 17, 1999, (64 FR 242) the date to receive hand delivered proposals is erroneous. The due date for Form CSREES–711, "Intent to Submit a Proposal," also is erroneous. This notice corrects the date to receive hand delivered proposals and the due date for Form CSREES–711, "Intent to Submit a Proposal," as follows:

On page 70687, in the third column, third paragraph, first sentence of the USDA notice, the date to receive hand delivered proposals was erroneous. The correction is February 14, 2000.

On page 70687, in the third column, fifth paragraph, first sentence of the USDA notice, the date to receive Form CSREES–771, "Intent to Submit a Proposal," is erroneous. The correction is January 17, 2000.

Done at Washington, D.C., this 22 day of December 1999.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service

[FR Doc. 99–33994 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Steamboat Resource Area, Idaho Panhandle National Forests, Shoshone County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The project area is approximately 27,000 acres in size, and is located in the Steamboat Creek basin (T50N, R2E, Sec. 1–6, 8–15; T50N, R3E, Sec. 5–8, 18; T51N, R1E, Sec. 24–26, 35–36; T51N, R23, Sec. 9–11, 13–36; T51N, R3E, Sec. 30–32; Boise Meridian). The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of the project.

The purpose of this proposal is twofold: over the short term, the goal is to reduce the negative effects specific roads are having on streams in the watershed. The long-term goal is to trend the watershed toward a condition of increased resilience to withstand future disturbances (such as wildfire, disease, or insect infestations) by improving the overall health and stability of both the terrestrial and aquatic ecosystems.

DATES: Comments concerning the scope of the analysis should be received in writing by January 31, 2000.

ADDRESSES: Send written comments to Coeur d'Alene River Ranger District, 2502 East Sherman Avenue, Coeur d'Alene, Idaho, 83814–5899.

FOR FURTHER INFORMATION CONTACT: Sherri Lionberger, Project Team Leader, (208) 769–3065.

SUPPLEMENTARY INFORMATION: The resource area has been modified by the effects of past harvest, road building, and historic natural disturbances. White pine blister rust continues to cause mortality in the white pine, and the species composition is changing to a less resilient type of forest. Streamside roads that infringe on flood plains, large areas of regeneration harvests, outdated skidding practices, and natural flood events have combined to increase sediment and destabilize stream channels, causing a loss of fisheries habitat locally as well as further downstream. This history has led to vegetative and watershed conditions in need of rehabilitation to trend the resource area toward more naturally-resilient characteristics. The proposal will include the following possible actions: (1) Improving aquatic resource conditions by reducing the amount of sediment entering the stream from existing roads through repair or removal of specific road segments and/or road channel crossings; and (2) Increasing the stocking and size of rust-resistant white pine and other long-lived seral conifers through regeneration and stand-tending activities such as timber harvest, prescribed fire, tree planting, pruning and thinning. The scope of this analysis is limited to activities related to the purpose and need, and measures necessary to mitigate the effects these activities may have on the environment. The decision will identify if, when, how and where to schedule activities to meet these goals.

Similar activities were examined in this area under the Boston Brook Resource Area Environmental Assessment, published in September 1997. No decisions were implemented based on that document. Since that time, there have been changes in both resource conditions and Forest Service policies, which warrant another look at this area. A new name is being used for the current proposal to make it easier for the public to recognize the area to be analyzed and to avoid confusion with the earlier analysis.

The issues raised and alternatives developed as a result of the public participation for the Boston Brook Environmental Assessment will be brought forward for the EIS. Modifications may be made based on updated resource information, changes in Forest Service policy, and/or additional public comments.

Key issues that will drive alternative development have been preliminarily identified based on past scoping activities and known resource concerns. To date, these key issues include protection or improvement of aquatic resources (water quality and fisheries habitat), and protection or improvement of forest vegetation (timber stands and rare plants). There are other issues which may not drive alternative developed but which will be analyzed to disclose environmental effects. For example, protection of key big-game habitat, and ensuring access for recreation activities.

In addition to the "No Action" alternative, five action alternatives have been identifies for consideration:

- An alternative that would include both road removal and timber harvest, utilizing small harvest openings that would not result in any increase in water yields.
- An alternative that would include both road removal and timber harvest, creating harvest openings of at least 5 acres in the rain-on-snow zones, to minimize increases in water yields while creating openings large enough to re-establish seral species such as white pine and western larch.
- An alternative that would include both road removal and timber harvest, simulating historical disturbance patterns which involve patches larger than 5 acres. These larger harvest units would be more economically efficient in terms of harvest and reforestation costs.
- An alternative designed to resemble a "pulse" event such as a large fire, by harvesting at least 1,000 acres in one general area, leaving islands or structure similar to the mosaic found after a fire. This approach would start the trend toward more resilient timber stands with longer-lived seral species, and would result in less fragmentation of stands than would harvest utilizing smaller openings in greater number.
- An alternative that would accomplish watershed rehabilitation work, without timber harvest activities.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to:

(1) Identify additional potential issues;

(2) Eliminate minor issues or those issues which have been covered by a relevant previous environmental analysis;

(3) Identify additional alternatives to the proposed action;

(4) Identify potential environmental effects of the proposed action and alternatives (*i.e.*, direct, indirect and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in March 2000. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies, the Coeur d'Alene Tribe, and other individuals or organizations that may be interested in or affected by the proposed action.

The USDA Forest Service is the lead agency for this proposal. District Ranger Susan Jeheber-Matthews is the responsible official.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S.C. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 15, 1999.

Susan Jeheber-Matthews,

District Ranger.

[FR Doc. 99–33984 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on January 20, 2000, at the Hatfield Marine Science Center (Meeting Room #9), 2030 S. Marine Science Drive, Newport, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) Information sharing among PAC Members, (2) background will be provided on NW Forest Plan/aquatic strategies, and (3) will develop action plan for meetings in 2000. Two 15-minute open public forums are scheduled at 11:30 a.m. and 3:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest (541–750–7075), or write to the Acting Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: December 21, 1999.

Jose L. Linares,

Acting Forest Supervisor.

[FR Doc. 99–33985 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Departee Creek Watershed, Independence and Jackson Counties, Arkansas

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: Kalven L. Trice, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Arkansas, is hereby providing notification that a Record of Decision to proceed with the installation of the Departee Creek Watershed project is available. Single copies of the Record of Decision may be obtained from Kalven L. Trice at the address shown.

For further information contact Kalven L. Trice, State Conservationist,

Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone 501–301–3100.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials).

Dated: December 17, 1999.

Kalven L. Trice,

State Conservationist.

[FR Doc. 99–33923 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–16–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on January 10, 2000 at the U.S. International Trade Commission, Courtroom B, 500 E Street, S.W., Washington, D.C. Topics to be discussed at the meeting will include: management changes, status of reports to Congress and the Office of Management and Budget, preparations for the FY2001 budget, interim incident selection plan, incident investigation protocol, status of on-going investigations, review of notation items, proposed Federal Regulations regarding CSB quorum, voting procedures and compliance with the Government under the Sunshine Act, CSB mission statement, schedule of future public meetings, and review of Year 2000 technology problems and chemical safety. The meeting will be open to the public. The ITC office is a secure federal building requiring photo identification for public admission. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202)-261–7600, or visit our website at: *www.csb.gov*.

Christopher W. Warner,

General Counsel.

[FR Doc. 99–34025 Filed 12–28–99; 9:35 am]

BILLING CODE 5350–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, January 14, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of December 10, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Alabama, Florida, Illinois, Indiana, Minnesota (Interim) and Nebraska
VI. Program Planning
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312

Ruby G. Moy,

Staff Director.

[FR Doc. 99–34021 Filed 12–27–99; 4:37 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of five-year ("Sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, or Mark Young, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC Case No.	ITC Case No.	Country	Product
A–570–830	A–677	China	Coumarin
A–351–825	A–678	Brazil	Stainless Steel Bar
A–533–810	A–679	India	Stainless Steel Bar
A–588–833	A–681	Japan	Stainless Steel Bar
A–469–805	A–682	Spain	Stainless Steel Bar

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy*

Bulletin, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1999). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1999)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (1999) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33963 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–802; A–475–802; A–599–802; A–588–807]

Final Results of Expedited Sunset Reviews: Industrial Belts From Germany, Italy, Singapore, and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Industrial Belts from Germany, Italy, Singapore, and Japan.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of The Gates Rubber Company, a domestic interested party, and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Reviews* section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 30, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998), (*"Sunset Policy Bulletin"*).

Scope

The merchandise covered by the antidumping duty orders on Germany and Japan includes industrial belts other than V-belts and synchronous belts used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links from Germany and Japan.[1] The

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1999), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

[1] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components*

Continued

antidumping duty order on imports from Italy covers industrial V-belts and synchronous belts and components used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links.[2] The antidumping duty order on imports from Singapore includes industrial V-belts used for power transmission. These include industrial V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links.[3]

The above orders exclude conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift truck.

The subject merchandise was classifiable under Tariff Schedules of the United States Annotated ("TSUSA") item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 in the orders for all four countries. Currently, subject merchandise is classifiable under item numbers 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90 and 7326.20.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").[4]

In its substantive response, The Gates Rubber Company ("Gates") asserts that the HTSUS subheadings of Chapter 40 were significantly revised in 1996, and, as a result, the products covered by the orders became classifiable under HTSUS numbers 3626.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.21.30, 4010.21.60, 4010.22.30, 4010.22.60, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.10, 4010.29.20, 4010.29.30, 4010.29.41, 4010.29.45, 4010.29.50, 4010.29.90, 5910.00.10, 5910.00.90, and 7326.20.00.[5] U.S. Customs officials confirmed the accuracy of the HTSUS numbers for subject merchandise suggested by Gates.[6] However, the above HTSUS and TSUSA subheadings are provided for convenience and customs purposes and the written description remains dispositive.

The Department has made the following scope rulings for the orders on imports from Germany, Italy, and Japan:

With respect to the order on subject imports from Germany, the Department's sole administrative review clarified that the scope of the order includes round belts and flat belts (56 FR 9672, March 7, 1991). Additionally, the Department determined in a 1991 scope ruling, that the scope of the order includes nylon core flat belts and excludes spindle belting.[7]

With respect to the order on subject imports from Italy, the Department, in the February 24, 1993, Scope Ruling, determined that "Panther" industrial belts from Pirelli Power Corp. are within the scope of the order (58 FR 11209).

With respect to the order on subject imports from Japan, the Department has made several scope rulings. The following products were determined within the scope of the order:

Product within scope	Importer	Citation
V-volt model 5L118 ..... Closed loop synthetic timing belt used in the Epson LX–800 desk-top personal computer printer.	Japan Freight Consolidators (Calif.) Inc. ..... Tower Group International, Inc. and Epson America, Inc.	57FR 16602 (May 7, 1992). 58 FR 47124 (September 7, 1993).

The following products were determined to be not within the scope of the order:

Product outside scope	Importer	Citation
59011 series of belts	Kawasaki Motors Corp., USA	57 FR 19692 (May 7, 1992).
Certain round and flat belts which are composed of rubber or plastics but are not reinforced with a tensile member.	Matsushita Electric Corp., Matsushita Floor Care Company and Panasonic Company.	57 FR 57420 (December 4, 1992).
Conveyor Belts of five-series comprised of 30 models	Nitta Industries Corp., and Nitta International, Inc	58 FR 59991 (November 12, 1993).
Eight-drive and blade belts	Honda Power Equipment Manufacturing Inc	62 FR 30569 (June 4, 1997).
Twenty-two drive and blade belts	American Honda Motor Co	62 FR 30569 (June 4, 1997).

and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany (54 FR 25316, March 17, 1991), and *Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan*, 54 FR 25314 (June 14, 1989).

[2] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy*, 54 FR 25313 (June 14, 1989).

[3] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore*, 54 FR 25315 (June 14, 1989).

[4] Subject merchandise from Germany excludes item numbers 3926.90.55, 4010.10.10, and 4010.10.50; subject merchandise from Singapore excludes item numbers 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.99.11, 4010.99.15, 4010.99.19, and 4010.99.50.

[5] According to Gates, subject merchandise from Germany excludes item numbers 3926.90.55, 4010.21.30, 4010.21.60, 4010.22.30, 4010.22.60, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.10, and 4010.29.20 (*see* July 1, 1999, Substantive Response of Gates at 3); and subject merchandise from Singapore excludes item numbers 3926.90.56, 3926.90.57, 3926.90.59, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.30, 4010.29.41, 4010.29.45, 4010.29.50, 4010.29.90 for imports (*see* July 1, 1999, Substantive Response of Gates at 3).

[6] *See* Memo to File of telephone conversation with George Barthes, U.S. Customs official, regarding new HTSUS numbers for industrial belts.

[7] *See Scope Rulings*, 56 FR 57320 (November 8, 1991).

History of the Orders

Germany

In the original investigation, covering the period January 1, 1998, through June 30, 1988, the Department determined the dumping margins to be 100.60 percent *ad valorem* for Optibelt Corporation ("Optibelt"), the Germany company investigated, and "all others" (54 FR 15505, April 18, 1989).

Since the issuance of the order, there has been one administrative review, covering the period February 1, 1989, through May 31, 1990, in which the Department determined a dumping margin of 100.60 percent *ad valorem* for Volkmann GmbH ("Volkmann"), the German respondent subject to the review.[8]

Italy

In the original investigation, covering the period January 1, 1988, through June 30, 1998, the Department determined a dumping margin of 74.90 percent *ad valorem* percent for Pirelli Trasmissioni Industriali, S.p.A. ("Pirelli"), and "all others."[9]

There have been two administrative reviews of this order. In the first review, covering the period from February 1, 1989, through May 31, 1990, the Department determined a dumping margin of 60.38 percent *ad valorem* for Pirelli;[10] in the second review, covering the period June 1, 1990, through May 31, 1991, the dumping margin for Pirelli increased to 70.90 percent.[11]

Singapore

In the original investigation, covering the period January 1, 1988, through June 30, 1998, the Department determined the dumping margin for Mitsuboshi Belting (Singapore) Pte. Ltd. ("MBS"), a subsidiary of Mitsuboshi Belting Ltd. of Japan, and "all others", to be 31.73 percent *ad valorem*.[12]

There have been two completed administrative reviews and one terminated review of this order. The Department determined a dumping margin of 31.73 percent *ad valorem* for MBS in the first review[13] covering the period February 1, 1989, through May 31, 1990, and in the second review, covering the period June 1, 1990 through May 31, 1991.[14] A third review, covering the period June 1, 1991, through May 31, 1992, was terminated before a preliminary determination was issued (58 FR 53707, October 18, 1993).

Japan

In the original investigation, covering the period January 1, 1988, through June 30, 1998, the Department determined a dumping margin of 93.16 percent *ad valorem* for Bando Chemical Industries ("Bando") and "all others" (54 FR 15485, April 18, 1989).

There have been five administrative reviews of this order. In the first review, covering the period June 7, 1989, through May 31, 1990, the Department determined a dumping margin of 93.16 percent *ad valorem* for Bando, and 52.60 percent for Nitta Industries ("Nitta") and Mitsuboshi Belting Limited ("MBL").[15] In the second administrative review, covering the period June 1, 1990, through May 31, 1991, we determined that the dumping margin for MBL was 93.16 percent.[16]

In the third and fourth administrative reviews, covering the periods June 1, 1991, through May 31, 1992, and June 1, 1992, through May 31, 1993, respectively, the Department determined a dumping margin of 93.16 percent for MBL (59 FR 1373, January 10, 1994). The dumping margin continued at 93.16 for MBL in the fifth review, covering the period June 1, 1993, through May 31, 1994 (60 FR 39929, August 4, 1995).

At the request of Brecoflex Corporation ("Brecoflex"), the Department initiated a circumvention inquiry on October 18, 1993; however, the Department did not make a determination regarding the merits of the inquiry because it determined that Brecoflex lacked standing as a domestic producer of a like-product (56 FR 23693, May 6, 1994).

Background

On June 1, 1999, the Department initiated sunset reviews of the antidumping orders on industrial belts from Germany, Italy, Singapore, and Japan (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Gates within the applicable deadline (June 16, 1998) specified in section 351.218(d)(1)(i) of the *Sunset Regulations* from all four countries. As the petitioner in the original investigations and a participant in each of the respective administrative reviews, Gates claimed interested-party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product. Subsequently, we received Gates' complete substantive responses to the notice of initiation on July 1, 1999. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct expedited, 120-day reviews of these orders.

In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On October 12, 1999, the Department determined that the sunset reviews of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan are extraordinarily complicated and, therefore, the Department extended the time limit for completion of the final results of these reviews until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[17]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and

---

[8] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Federal Republic of Germany; Final Results of an Antidumping Administrative Review*, 56 FR 9672 (March 7, 1991).

[9] *See Industrial Belts and Components and Parts Thereof, Whether* Cured or Uncured, from Italy; Amendment of Final Results of an Antidumping Administrative Review, 57 FR 32196 (July 21, 1992).

[10] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Italy; Amendment of Final Results of Antidumping Duty Administrative Review*, 57 FR 8295 (March 9, 1992).

[11] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Italy; Final Results of Antidumping Duty Administrative Review*, 58 FR 30938 (July 13, 1992).

[12] *See Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore*, 54 FR 15489 (April 18, 1989).

[13] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore; Final Results of Antidumping Duty Administrative Review*, 57 FR 41916 (September 14, 1992).

[14] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore; Final Results of Antidumping Duty Administrative Review*, 57 FR 29469 (July 2, 1992).

[15] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 30018 (May 25, 1993).

[16] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 44496 (August 23, 1993).

[17] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 55233 (October 12, 1999).

shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Gates' comments with respect to continuation or recurrence of dumping and the magnitude of the margin for each of the orders are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise significantly (*see* section II.A.3).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

Gates argues that because manufacturers/exporters of industrial belts from Germany, Italy, Singapore, and Japan have continued to dump the subject merchandise covered by the 1989 orders and dumping margins are consistently very high, the Department should determine that revocation of the orders would likely lead to further dumping (*see* July 1, 1999 Substantive Responses of Gates (Germany and Singapore at 6; Japan and Italy at 7)).

With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Gates notes that German manufacturers/exporters continue to dump, albeit at reduced volumes, and continue to be subject to high margin rates of 100.60 percent (*see* July 1, 1999, Substantive Response of Gates at 8). Similarly, according the Gates, Italian, Singaporean and Japanese manufacturers/exporters have continued to dump since the issuance of the respective orders. Gates notes the high margin rates of 74.90 percent, 31.73 percent and 93.16 percent for Italian, Singaporean, and Japanese manufacturers/producers, respectively (*see* July 1, 1999, Substantive Responses of Gates (Italy at 9; Singapore at 8; and Japan at 10).

With respect to whether import volumes of the subject merchandise declined significantly, Gates notes that, although the average volume of imports industrial belts from Germany, Japan and Italy decreased following the imposition of the orders, dumping has not been entirely eliminated (*see* July 1, 1999, Substantive responses of Gates (Germany at 9; Japan and Italy, respectively, at 8)).

Finally, Gates asserts that dumping would likely become severe if the orders were revoked because the market for industrial belts is a mature market characterized by intense price competition (*see* July 1, 1999, Substantive Responses of Gates (Germany and Singapore at 9; Italy at 10 and Japan at 11)). Moreover, given that Asia remains in a recession, the U.S. market is an attractive target for manufacturers/exporters from Japan and Singapore (*see* July 1, 1999, Substantive Responses of Gates (Singapore at 9; Japan at 11)).

In conclusion, Gates argues that, in each case, the Department should determine that there is a likelihood that dumping would continue upon revocation of the orders because manufacturers/exporters have continued to import into the United States even as dumping margins remain very high.

Discussion

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. In these cases, dumping margins above *de minimis* continue to exist for shipments of the subject merchandise from all manufacturers/exporters from the subject countries.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the orders. By examining U.S. Census Bureau IM146 reports, the Department finds that, consistent with import statistics provided by Gates, imports of the subject merchandise from Germany, Italy and Japan decreased following the issuance of the orders, from 1989 through 1995. During this period, average imports from Germany and Japan decreased approximately 95 percent during this period, average imports from Italy decreased approximately 30 percent; and imports from Singapore ceased altogether. In 1996, imports from all four countries increased and remained generally steady until 1998; however, imports from Germany, Japan, and Singapore were significantly lower than pre-order levels. In contrast, Italian imports from 1996 to 1998 exceeded pre-order levels by approximately 25 percent.

Therefore, the Department finds that the existence of dumping margins after the issuance of the orders is highly probative of the likelihood of continuation of recurrence of dumping. Deposit rates for exports of the subject merchandise by all known manufacturers and exporters from Germany, Italy, Singapore, and Japan are above *de minimus*. Therefore, given that dumping has continued over the life of the orders, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption

determinations (*see* section II.B.2 and 3 of the *Sunset Policy Bulletin*).

Gates asserts that the Department should provide to the Commission the company-specific margins and the "all others" rates determined in the original investigations of imports from Germany, Italy, Singapore, and Japan (*see* July 1, 1999, Substantive Responses of Gates (Germany and Singapore, respectively, at 10; Japan at 11; Italy at 12)) as the rates likely to prevail if the orders were revoked. Specifically, Gates notes that, in the original investigation of subject imports from Germany, the Department determined a margin of 100.60 percent for Optibelt and "all others." Subsequently, in the sole administrative review, the Department determined a rate of 100.60 percent for Volkmann. Therefore, they argue that the Department should provide to the Commission the original margin of 100.60 percent for Optibelt and "all others" as determined in the investigation (*see* July 1, 1999, Substantive Response of Gates (Germany) at 11).

For Italian manufacturers/exporters, gates asserts that the 74.90 percent margin in the final determination and most recent review of the order on imports from Italy demonstrates the high probability of continued dumping were the order were revoked. Gates concludes, therefore, that the original rate should be applicable to Pirelli and "all others" (*see* July 1, 1999, Substantive Response of Gates (Italy) at 12).

For manufacturers/exporters from Singapore, Gates asserts that the Department should provide to the Commission the margin of 31.73 percent from the original investigation for MBS and "all others" (*see* July 1, 1999, Substantive Response of Gates (Singapore) at 10). The Department also applied this rate to MBS in subsequent administrative reviews.

Finally, for Japanese manufacturers/exporters, Gates notes that the original margin of 93.16 percent continued in the administrative reviews of the order on imports from Japan. Therefore, Gates argues, a rate of 93.16 percent should be applicable to Bando and all other companies not specifically investigated in the investigation (*see* July 1, 1999, Substantive Response of Gates at 11).

The Department agrees with Gates' arguments concerning the choice of margins to report to the Commission for each of the countries. As noted in the *Sunset Policy Bulletin*, the rates from the original investigation are the only rates that reflect the behavior of exporters without the discipline of the order. In these reviews, we find no reason to deviate from our stated policy. Therefore, consistent with section II.B.1 of the *Sunset Policy Bulletin*, the Department finds that the original rates are probative of the behavior of manufacturers/exporters from Germany, Italy, Singapore and Japan were the orders revoked. As such, the Department will report to the Commission the company-specific and "all others" rates from the original investigations as contained in the *Final Results of Reviews* section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation of recurrence of dumping at the margin listed below:

Country and manufacturer /exporter	Margin (percent)
Germany:	
Optibelt Corporation	100.60
All Others	100.60
Italy:	
Pirelli	74.90
All Others	74.90
Singapore:	
Mitsuboshi Belting (Singapore) Pte. Lte	31.73
All Others	31.73
Japan:	
Bando	93.16
All Others	93.16

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–33976 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–805; A–428–807; A–570–805]

Final Results of Expedited Sunset Reviews: Sulfur Chemicals (Sodium Thiosulfate) From the United Kingdom, Germany, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: sulfur chemicals (sodium thiosulfate) from the United Kingdom, Germany, and the People's Republic of China.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on sulfur chemicals (sodium thiosulfate) from the United Kingdom, Germany, and the People's Republic of China (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of Calabrian Corporation, a domestic interested party, and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Reviews* section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 30, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the

Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise covered by the antidumping duty orders includes all grades of sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial waste water, from the United Kingdom, Germany, and the People's Republic of China ("PRC"). The chemical composition of sodium thiosulfate is $Na_2S_2O_3$. Currently, subject merchandise is classifiable under item number 2832.30.1000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The above HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the above orders on imports of sodium thiosulfate from the subject countries.

History of the Orders

In the original investigations, covering the period February 1, 1990, through July 31, 1990, the Department determined the following weighted-average dumping margins: 100.40 percent for Th. Goldschmidt AG ("Goldschmidt"), the German respondent, and "all others" (55 FR 51749, December 17, 1990); 50.13 percent for William Blythe & Co., Ltd. ("Blythe"), the British respondent, and "all others" (*id.*); and a country-wide rate of 25.57 percent for all producers/exporters of subject merchandise from the PRC (56 FR 2904, January 25, 1991).

Since the issuance of these orders, there has been one administrative review of the order on imports from the PRC, covering the period December 12, 1990, through January 31, 1992, in which China National Chemicals Import and Export Corporation ("Sinochem") and "all others" were assigned a margin of 148.42 percent *ad valorem*.[1]

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC (64 FR 35588), pursuant to section 751(c) of the Act. the Department received a Notice of Intent to Participate on behalf of Calabrian Corporation ("Calabrian") within the deadline (July 15, 1998) specified in section 351.218(d)(1)(i) of the *Sunset Regulations* in all three reviews. As the petitioner in the original investigations and a participant in the administrative review of the order on imports from the PRC, Calabrian claimed interested-party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product. Subsequently, we received Calabrian's complete substantive responses to the notice of initiation on August 2, 1999. Although we received a Notice of Intent to Participate from General Chemical Corporation in the German order and an application for release of business proprietary information under administrative protective order ("APO") from Blythe in the British order, we did not receive a substantive response from either of the parties. Without a substantive response from any respondent interested party, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct expedited, 120-day reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On November 16, 1999, the Department determined that the sunset reviews of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC are extraordinarily complicated and, therefore, the Department extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Calabrian's comments with respect to continuation or recurrence of dumping and the magnitude of the margin for each of the orders are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

Calabrian argues that revocation of the orders would result in the continuation of dumping by producers/exporters of sodium thiosulfate from subject countries and the likelihood of dumping levels equal to or greater than those that existed prior to imposition of the orders (*see* August 2, 1999, Substantive Responses of Calabrian (United

[1] *See Sodium Thiosulfate From the People's Republic of China; Final Results of Antidumping Administrative Review*, 58 FR 12934 (March 8, 1993).

[2] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 62167 (November 16, 1999).

Kingdom, Germany, and the PRC) at 3). With respect to import volumes for the subject merchandise from the United Kingdom and Germany, Calabrian asserts that German and British exports decreased precipitously upon the imposition of the respective orders in 1991. Therefore, they contend that the drop in import volumes from 1991 to the present is evidence that dumping would continue if the order were revoked. *Id.* With respect to import volumes for subject merchandise from the PRC, Calabrian asserts that Chinese exports decreased precipitously upon completion of the first administrative review in March of 1993 and remained significantly below pre-order levels through 1996 (*see* August 2, 1999, Substantive Response of Calabrian (PRC) at 4).

With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Calabrian notes that, without any completed administrative reviews, British and German producers/exporters continue to dump, albeit at reduced volumes, and continue to be subject to their original rates of 50.13 percent and 100.40 percent, respectively (*see* August 2, 1999, Substantive Responses of Calabrian (United Kingdom and Germany) at 8). Similarly, according to Calabrian, Chinese producers/exporters continued to dump after the order, with declining volumes once the final results of the first administrative review were issued and the antidumping duty deposit rate increased to 148.42 percent.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. In these cases, dumping margins above *de minimis* continue to exist for shipments of subject merchandise from all producers/exporters from the subject countries.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the orders. By examining U.S. Census Bureau IM146 reports, the Department finds that, consistent with import statistics provided by Calabrian, imports of the subject merchandise from the United Kingdom and Germany declined significantly immediately following the issuance of the orders, and continue to remain at very low levels. Chinese imports increased following the issuance of the order (56 FR 6623, February 19, 1991) and decreased dramatically only after the administrative review, in which the margins rose to 148.42 percent for Sinochem and "all others." Imports from China continue to remain at very low levels.

Therefore, the Department finds that the existence of dumping margins after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates for exports of the subject merchandise by all known producers and exporters from the United Kingdom, Germany, and the PRC are above *de minimis*. Therefore, given that dumping has continued over the life of the orders, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

Calabrian asserts that, with respect to Germany and the United Kingdom, the Department should provide to the Commission the company-specific and "all others" margins determined in the original investigations as the rates likely to prevail if the orders were revoked (*see* August 2, 1999, Substantive Responses of Calabrian (United Kingdom and Germany) at 6). With respect to the margin on imports from the PRC, Calabrian asserts that the Department should report to the Commission the margin of 148.42 percent, from the first administrative review, after which Chinese imports declined significantly.

Finally, Calabrian notes that the Department has not issued any determinations with regard to duty absorption under these antidumping duty orders. However, the company asserts that, in instances where the foreign exporter sells the subject merchandise through an affiliated importer, absent findings in these sunset proceedings that no duty absorption is taking place, the Department should assume that on those transactions duty absorption is taking place.

The Department agrees with Calabrian's arguments concerning the choice of margins to report to the Commission for each of the countries. As noted in the *Sunset Policy Bulletin*, the rates from the original investigation are the only rates that reflect the behavior of exporters without the discipline of the order. Absent argument or evidence to the contrary, in the reviews of the United Kingdom and Germany, we find no reason to deviate from our stated policy. Therefore, consistent with section II.B.1 of the *Sunset Policy Bulletin*, the Department finds that the original rates are probative of the behavior of manufactures/exporters from the United Kingdom and Germany.

With respect to the PRC, as we stated in the *Sunset Policy Bulletin*, a company may choose to inrease dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order (*see* section II.B.2 of the *Sunset Policy Bulletin*). In addition, the *Sunset Policy Bulletin* notes that the Department will normally consider market share for purposes of determining whether a more recent rate is probative of an exporter's behavior. However, absent information on market share and absent argument or evidence to the contrary, we have relied on Chinese import volumes in the present case. Specifically, we found that imports from China increased after the issuance of the order, from approximately 462,000 kilograms in 1990, to 1.17 million kilograms in 1991. At the same time, dumping increased as reflected in the final results of the administrative review covering December 1990 through January 1992. Therefore, in light of the correlation between the increase in imports and the increase in the dumping margins of Sinochem and "all others" in the period between the original period of investigation and the first period of review, the Department finds the more recent rate from the review to be the most probative of the behavior of Chinese producers/exporters, were the order revoked.

As such, the Department will report to the Commission the company-specific and "all others" rates from the original British and German investigations and the country-wide rate for Chinese producers/exporters determined in the 1990/92 review as contained in the Final Results of Reviews section of this notice.

Finally, we disagree with Calabrian's assertion that we should assume that duty absorption is taking place under these orders in instances where the foreign exporter sells the subject merchandise through an affiliated importer. Because Calabrian did not request an administrative review or a duty-absorption determination in 1996 or 1998 with respect to these orders, the Department did not conduct a duty-absorption inquiry.[3] Therefore, given the lack of a finding of duty absorption, the Department will not assume a determination of duty-absorption for purposes of these sunset reviews.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Country	Manufacturer/exporter	Margin (percent)
United Kingdom	William Blythe & Co., Ltd	50.13
	All Others 50.13	50.13
Germany	Th. Goldschmidt AG	100.40
	All Others 100.40	100.40
China (PRC)	Country-wide	148.42

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–33977 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector Advisory Committees (ISACs) 10 and 12 for Trade Policy Matters; Request for Nominations

AGENCY: International Trade Administration, Trade Development, Commerce.

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) are seeking nominations for appointment of environmental representatives to the Industry Sector Advisory Committee on Lumber and Wood Products (ISAC 10) and the Industry Sector Advisory Committee on Paper and Paper Products (ISAC 12). Appointments will be effective for the remainder of the current charter term of these Committees, which expires March 19, 2000, and will be extended for the following two-year charter term. In order to be considered for appointment to one of these Committees, a nominee must be a U.S. citizen, must have an interest in and specialized knowledge of environmental issues relevant to the work of the Committee, and may not be a registered foreign agent under the Foreign Agents Registration Act. This notice responds to a November 8, 1999 order of the Federal District Court for the Western District of Washington in *Northwest Ecosystems Alliance* v. *USTR* (No. C99–1165R), directing Commerce and USTR to appoint a "properly qualified environmental representative" to each of these committees.

In order to receive full consideration, nominations for the current charter period should be received not later than January 21, 2000. Recruitment information is available on the International Trade Administration website at www.ita.doc.gov/icp. Further inquiries may be directed to Tamara Underwood, Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to—

"Seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) The operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) Other matters arising in connection with the development, implementation, and administration of the trade policy of the United States * * *."

Section 135(c)(2) of the 1974 Trade Act provides—

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) Consult with interested private organizations; and

(B) Take into account such factors as—

(i) Patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

[3] Section 751(a)(3) of the Act provides that, during the second and fourth administrative review of an order (or, for transition orders, during an administrative review initiated in 1996 or 1998 (*see* 19 CFR 351.213(j)), the Department, upon request, will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to a finding if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter.

(ii) The character of the nontariff barriers and other distortions affecting such competition,

(iii) The necessity for reasonable limits on the number of such advisory committees,

(iv) The necessity that each committee be reasonably limited in size, and

(v) In the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. Committees meet an average of four times a year in Washington, D.C. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings. For additional information regarding the functions and membership of these committees, and general qualifications for membership, *see* 64 FR 10448–10449, March 4, 1999 (Volume 64, Number 42).

On July 21, 1999, several groups interested in forest conservation issues brought a lawsuit against USTR and Commerce challenging the balance of representation on ISACs 10 and 12. The district court ruled in favor of plaintiffs on November 8, 1999 and ordered USTR and Commerce to "make a good faith effort to expedite the appointment of at least one properly qualified environmental representative" to each of these advisory committees. This notice is issued in compliance with the court's order.

Eligibility

Eligibility to serve as an environmental representative on ISAC 10 or ISAC 12 is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a "U.S. entity", and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a "U.S. entity" is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) At least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Selection Criteria

USTR and Commerce will select environmental representatives eligible for appointment to ISACs 10 and 12 based upon the following:

(1) The nominee should demonstrate personal interest in and knowledge of the formulation of environmental policies in the sector relevant to the work of the Committee, and ability to work with governmental and officials and industry representatives to reach consensus on complex environmental and trade issues affecting the relevant industry sector.

(2) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sector, as well as with international trade matters, including trade policy development, relevant to that sector.

Two representatives will be appointed, one for each Committee. Representatives will require a security clearance. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings.

Applicant Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

Michael J. Copps,

Assistant Secretary for Trade Development.

[FR Doc. 99–33862 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–805]

Final Results of Expedited Sunset Review: New Steel Rail From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: New steel rail from Canada.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on new steel rail from Canada (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of to this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 30, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (march 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871

(April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this countervailing duty order is new steel rail, whether of carbon, high carbon, alloy or other quality steel from Canada. Subject merchandise includes but is not limited to, standard rails, all main line sections (at least 30 kilograms per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines, and in industrial applications.

Specifically excluded from the order are light rails (less than 30 kilograms per meter or 60 pounds per yard). Also excluded from the order are relay rails, which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. As a result of a changed circumstances review in 1996, the countervailing duty order on new steel rail from Canada was partially revoked with regard to 100ARA–A new steel rail, except light rail.[1] Moreover, nominal 60 pounds per yard steel rail is outside the scope of this order.[2]

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 7302.10.1010, 7302.10.1015, 7302.10.1035, 7302.10.1045, 7302.10.5020, 8548.90.0000.[3] The HTS item numbers are provided for convenience and U.S. Customs purposes only. The written description remains dispositive.

This order covers imports from all producers and exporters of new steel rail from Canada, except the Algoma Steel Corporation, which was excluded from the original order.

History of the Order

In the final determination, as amended, the Department determined that the following programs conferred countervailable benefits:

Federal Programs

(1) Debenture Guarantees Provided to Sydney Steel Corporation ("Sysco");

(2) Forgiven Wharf Loan;

(3) Regional Development Incentives Program ("RDIP");

(4) Certain Investment Tax Credits ("ITCs");

Joint Federal-Provincial Programs

(5) General Development Agreements ("GDA");

(6) Economic and Regional Development Agreements ("ERDA");

(7) Iron Ore Freight Subsidy to Algoma;

Provincial Programs (Province of Nova Scotia)

(8) Grants for Payment of Principal and Interest on Debentures;

(9) Operating Grants Provided to Sysco; and

(10) Equity Infusions Provided to Sysco.[4]

Specifically, the Department calculated that these programs conferred a total net subsidy of 94.57 percent *ad valorem* for all Canadian manufacturers, producers, or exporters, excluding Algoma. As a result of a *de minimis* net subsidy determined for Algoma, this Canadian producer/exporter was excluded from the order.

Since the original investigation, the Department has conducted a changed circumstances review of the order.[5] As noted above, as a result of this review, the Department revoked the countervailing duty order with regard to 100ARA–A new steel rail, except light rail from Canada.[6] The Department has not conducted any administrative reviews of this order. The order remains in effect for all manufacturers and exporters of the subject merchandise from Canada, except for Algoma.

Background

On June 1, 1999, the Department initiated a sunset review of the countervailing duty order on new steel rail from Canada (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Pennsylvania Steel Technologies, Inc. ("PST"), a subsidiary of Bethlehem Steel Corporation, and Rocky Mountain Steel Mills ("RMSM") (collectively, the "domestic interested parties") on June 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested parties on July 1, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Both PST and RMSM claimed interested party status under 19 USC 1677(9)(C) as U.S. manufacturers of the subject merchandise. In addition, PST stated that it is a subsidiary of Bethlehem Steel Corporation, a petitioner in the original investigation. We did not receive a substantive response from any respondent interested party in this case. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of the order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On October 12, 1999, the Department determined that the sunset review of the countervailing duty order on new steel rail from Canada is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect the net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the Commission information concerning the nature of each subsidy and whether the subsidy is a subsidy

[1] *See New Steel Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders*, 61 FR 11607 (March 21, 1996).

[2] *See New Steel Rail, Except Light Rail, From Canada; Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language*, 63 FR 43137 (August 12, 1998).

[3] Per conversation with April Avalone at U.S. Customs on September 7, 1999.

[4] *See Final Affirmative Countervailing Duty Determination; New Steel Rail, Except Light Rail, from Canada*, 54 FR 31991 (August 3, 1989), as amended, *Countervailing Duty Order and Amendment to the Final Affirmative Countervailing Duty Determination of New Steel Rail, Except Light Rail, from Canada*, 54 FR 39032 (September 22, 1989), and, as amended *New Steel Rail, Except Light Rail, from Canada: Amendment to Final Affirmative Countervailing Duty Determination and Order in Accordance with Decision on Remand*, 55 FR 35702 (August 31, 1990).

[5] *See* footnote 1.

[6] *See id.*

[7] *See extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 55233 (October 12, 1999).

described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections below.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the Sunset Policy Bulletin). Additionally the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the Sunset Policy Bulletin).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.[8] In this instant review, the Department did not receive a substantive response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the countervailing duty order would likely result in the continuation or recurrence of countervailable subsidies. First, they describe several programs administered on the provincial level by the Province of Nova Scotia that were determined in the original investigation to confer bounties or grants. They argue that Sysco was and continues to be the recipient of these subsidies (*see* July 1, 1999, Substantive Response of the domestic interested parties at 8). The domestic interested parties argue that the Grants for Payment of Principal and Interest on Debentures, Operating Grants, and Equity Infusions programs continue to exist and confer countervailable subsidies. As for Long-Term Loan Guarantees, the domestic interested parties state that Sysco's public financial statements do not indicate that the trust company guarantees found countervailable in the original investigation have continued. However, they maintain that the financial position of the company is so weak that it could not obtain any commercial funding absent provincial guarantees of its debt (*see id.* at 10).

Of the three joint-federal programs, the domestic interested parties argue that under the General Development Agreements and Economic and Regional Development Agreements programs no direct or specific outlays were made to Sysco in the most recent budget, but the province or company may still be benefitting from these programs. Moreover, they point out that the Canadian government has notified the World Trade Organization that it uses both of these programs but that it considers them to be "green box" programs that cannot be countervailed (*see id.* at 12–13). Finally, the domestic interested parties point out that the Iron Ore Freight Subsidy to Algoma did not apply to Sysco, but rather to Algoma.

The domestic interested parties also state that there is no evidence that the federal programs found to be countervailable in the original investigation, namely, Debenture Guarantees, Forgiven Wharf Loan, Regional Development Incentives Program, and Investment tax Credits, continue to benefit Sysco. However, they point out, there has not been an administrative review of the order and the Government of Canada has not provided any information concerning these four programs (*see id.* at 13).

The domestic interested parties maintain that Sysco benefits from past and present subsidies, and therefore, the Department should determine that revocation of the countervailing duty order on new steel rail from Canada would likely result in the continuation or recurrence of countervailable subsidies.

As noted above, in our final determination, as amended, the Department determined that the programs in question conferred a bounty or grant, the net amount of which was calculated to be 94.57 percent *ad valorem* for Canadian exporters/producers other than Algoma. The Department has conducted no administrative reviews of this outstanding countervailing duty order.

Given that the Department has not conducted an administrative review of this order nor have we reviewed the programs in question in any other administrative review, the Department does not have any information that programs have been terminated without residual benefits. Therefore, we agree with the domestic interested parties that the Canadian programs remain in place. Based on the continued existence of programs found to confer countervailable subsidies, the fact that the foreign government and other respondent parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that it is likely that a countervailable subsidy will continue if the order is revoked.

Net Countervailable Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, if there has been a program-wide change, or if the rate ignores a program found to be countervailable in a subsequent administrative review. (*See* section III.B.3 of the Sunset Policy Bulletin). Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission

[8] *See* 19 CFR 351.218(d)(2)(iv).

company-specific rates from the original investigation or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or "all others" rate. (*See* section III.B.2 of the Sunset Policy Bulletin).

In their substantive response, the domestic interested parties argue that the countervailing duty rate likely to prevail if the order on new steel rail from Canada is revoked would be at least as large as that existing at the time of the original order. The domestic interested parties argue that as the rate determined in the original investigation is the only calculated rate which reflects the behavior of exporters without the discipline of the order in place, the Department's policy provides that it normally will select this rate to provide to the Commission. Noting that the programs found to provide subsidies in the original investigation continue to exist, the domestic interested parties maintain that the Department should utilize the subsidy rate it originally determined when calculating the net countervailable subsidy in this sunset review.

As discussed in the Sunset Policy Bulletin, the Department normally will report to the Commission an original subsidy rate as adjusted to take into account terminated programs, program-wide changes, and programs found to be countervailable in subsequent reviews. We agree with the domestic interested parties that all programs, with the exception of the Long-term Loan Guarantees program (which was determined on remand not to confer a countervailable subsidy), found in the original investigation to provide countervailable subsidies continue to exist. Absent evidence or argument that there have been any changes to the programs found to be countervailable in the original determination, as amended, that would affect the net countervailable subsidy, consistent with the Sunset Policy Bulletin, the Department determines that the net countervailable subsidy likely to prevail if the order were revoked is 94.57 percent.

Nature of the Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The domestic interested parties maintain that the provincial subsidy programs fall under Article 6 of the Subsidies Agreement because they cause serious prejudice to the importing country and the total value of the subsidies provided over the past ten years, spread over the total sales value of that period, far exceeds five percent of sales (*see* July 1, 1999, Substantive Response of the domestic interested parties at 21).

Given that receipt of benefits under any of the programs included in our calculation is not contingent upon export, none of these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. The Department agrees with the domestic interested parties that because the benefits received under the provincial programs include subsidies to cover operating losses sustained by an enterprise (Operating Grants) and direct forgiveness of debt and grants to cover debt repayment (Grants for Payment of Principal and Interest Debentures), these programs are actionable under Article 6 of the Subsidies Agreement. Moreover, the Equity Infusions program could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission the following program descriptions.

Subsidy Programs

The subsidy programs, including a description of each, identified by the Department and used in its determination of the net countervailable subsidy likely to prevail if the order were revoked are listed below.

Grants for Payment of Principal and Interest on Debentures

The Government of Nova Scotia has provided Sysco with grants to cover principal payments and interest payments on its long-term debentures since 1982.

Operating Grants Provided to Sysco

The Government of Nova Scotia has provided Sysco with operating grants to cover its general operating expenses and for capital expenditures.

Equity Infusions Provided to Sysco

The Department determined in the original investigation that Sysco is unequityworthy and, therefore, the equity infusions made by the Government of Nova Scotia were found to be countervailable.

Debenture Guarantees Provided to Sysco

Federal debentures were issued in 1973 and 1975 for 20 years.

Forgiven Wharf Loan

In 1972, the federal government provided Sysco with a loan to construct a loading wharf, which was completed in June 1978.

Regional Development Incentive Program

This program was established in 1969 for the purpose of creating stable employment opportunities in certain regions in Canada where employment and economic opportunities are chronically low, particularly in the Atlantic provinces.

General Development Agreements (GDA)

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic assistance programs.

Economic and Regional Development Agreements (ERDA)

Essentially a continuation of GDAs, ERDAs established programs, delineated administrative procedures, and set up the relative funding commitments of the federal and provincial governments.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order on new steel rail from Canada would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below.[9]

Manufacturer/exporter	Net subsidy rate (percent)
Sydney Steel Corporation	94.57
Bernard Railtrack Export Inc.	94.57
All Others	94.57

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[9] As noted above, due to a *de minimis* net subsidy found for Algoma, this Canadian producer/exporter was excluded from the order.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–33975 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121399B]

Marine Mammals; File Nos. 763–1534 and P624

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that two applicants have applied in due form for a permit and permit amendment for purposes of scientific research. The National Zoological Park, Smithsonian Institution, Washington, D.C. 20008–2598, wants a permit to import grey seals (*Halichoerus grypus*)specimens. Dr. Michael Moore, Woods Hole Oceanographic Institution, MS 33 Biology Department, Woods Hole, MA 02543, wants to amend permit no. 1032.

DATES: Written or telefaxed comments must be received on or before January 31, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

[763–1534 and P624] - Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (978/281–9250); and

[P624] - Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312);

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216),the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*)

The Smithsonian, NZP (File No. 763–1534–00) proposes to import from Canada skin samples taken from grey seals on Sable Island, Nova Scotia. Additionally, the applicant requests authority to obtain and import/export samples from all species of the Order Cetacea and Pinnipedia as they become available. The objective of the study is to use DNA analysis to determine if grey seal alternative mating strategies exist across all ages and provide comparable rates of success to the primary tenured strategy.

Dr. Moore (File No. P624) proposes to amend Permit No. 1032 which authorizes research on right whales and various other cetaceans. Dr. Moore requests an amendment to expand the area of activity to all U.S. and international waters; biopsy right whales, blue whales, sei whales and sperm whales, include acoustic analysis of blubber thickness, and conduct visual and passive acoustic surveys on marine mammals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on either application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 23, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–33981 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.110499B]

Marine Mammals; File No. 772#69–03

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla shores Drive, La Jolla, CA 92038 has been issued an amendment to scientific research Permit No. 1024 (File No. 772#69).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On October 5, 1999, notice was published in the **Federal Register** (64 FR 54002) that an amendment of Permit No. 1024, issued December 30, 1996 (62 FR 1875), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 1024 authorizes the permit holder to: conduct level B harassment activities [*i.e.* censuses] on, capture, handle, and release Antarctic pinnipeds in the South Shetland Islands, Antarctica. The holder is now authorized to increase the number of

Antarctic fur seal (*Arctocephalus gazella*) females captured for tooth extraction for age determination studies.

Dated: December 22, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–33982 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122199C]

Marine Mammals; Permit No. 982 (File No. P254D)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 982, issued to the Pacific Whale Foundation, 101 N. Kihei Road, Kihei, Maui, Hawaii 96753, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Resources Program Manager, Pacific Islands Area Office, NOAA, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96822–2396 (808/973–2937).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 982 authorizes the harassment of humpback whales (*Megaptera novaeangliae*) during the conduct of observational and photo-identification studies in Hawaii waters. This amendment changes the expiration date of the permit to September 13, 1999.

Dated: December 223, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 99–33983 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in South Eastern, South Western and Western Oriented Strand Board Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in South Eastern Oriented Strand Board, South Western Oriented Strand Board and Western Oriented Strand Board futures and options. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATE: Comments must be received on or before January 14, 2000.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CME Oriented Strand Board (OSB) futures and option contracts.

FOR FURTHER INFORMATION, CONTACT: Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5281. Facsimile number: (202) 418–5527. Electronic mail: *jforkkio@cftc.gov*.

SUPPLEMENTARY INFORMATION: The designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on February 7, 2000, 45 days after receipt of the proposals. In view of the limited review period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 27, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–33993 Filed 12–29–99; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Personal Information Questionnaire; NAVMC 11064; OMB Number 0703–0012.

Type of Request: Reinstatement.

Number of Respondents: 16,700.

Responses Per Respondent: 1.

Annual Responses: 16,700.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 8,350.

Needs and Uses: The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for service as a commissioned officer. Respondents are educators, employers, and other professional individuals to be named by the applicant.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing..

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 22, 1999.

Patrica L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33933 Filed 12–29–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC charters the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while ensuring economical and efficient processes at minimal operating costs, matching critical skills, balancing community economic benefits, and becoming a model for defense conversion. This meeting will update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—Logistics Support Facility (LST) Award using ARMS facility contract model; Office of Installations, Logistics and Environment and Pendulum Management Company LLC Team's "Leasing Comparison" presentation; tenant transition process at excessed facilities; the Industrial Operations Command Strategic Plan; procedures for competition of facilities; EAC membership nominations; criteria for tenant proposal evaluation; facility requirements due to Threatcon Level Alpha or higher security requirements; and PricewaterhouseCoopers' "Best of Breed" presentation. This meeting is open to the public.

Date of Meeting: February 8–9, 2000.

Place of Meeting: Xerox Document University (XDU), Routes 7 and 659, Leesburg, Virginia 20176.

Time of Meeting: 8 a.m.–5 p.m. on February 8 and 8 a.m.–2 p.m. on February 9.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: To assist in the EAC Meeting administrative support requirements, request that all attendees provide their desired overnight accommodations (2, 1 or 0 nights) to Mr. Elwood Weber (703) 617–9788/email eweber@hqamc.army.mil or Ms. Susan Alten (703) 617–4716/email susan.alten@hqda.army.mil. XDU is a multifunctional and secure campus type atmosphere, which requires all attendees to provide advance notification, even those not staying overnight. To insure your immediate accessibility and expeditious registration, we request your attendance confirmation with this office by January 19, 2000. After January 19 your requests will be accepted on a space available basis. Corporate casual is meeting attire.

Mary V. Yonts,

Army Alternate Federal Register Liaison Officer.

[FR Doc. 99–33986 Filed 12–29–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No: 84.031]

Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs; Notice Inviting Applications for New Awards for Fiscal Year 2000

Purpose of Programs

The Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs are all authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA). These programs will be referred to collectively in this notice as the Title III Part A programs. Each provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability, and increase their self-sufficiency; thereby supporting the elements of the National Education Goals that are relevant to these institutions' unique missions.

Special Notes

1. A grantee under the Developing Hispanic-Serving Institutions (HSI) Program authorized under Title V of the HEA may not receive a grant under any part of the Title III Part A program, if any part of its HSI Program grant would overlap with the Title III Part A Program grant. Further, an HSI Program grantee may not give up that grant in order to apply for a grant under any Title III Part

A program. Therefore, a current HSI Program grantee may not apply for a grant under any Title III Part A programs under this notice.

2. An institution that does not fall within the limitation described in paragraph one may apply for a fiscal year 2000 grant under any Title III Part A program as well as the HSI Program. However, the institution may receive only one grant under any of those programs. Accordingly, if an institution applies for a grant under more than one program it must indicate that fact in each application, and further indicate which grant it wishes to receive if it is selected to receive a grant under more than one program.

3. We have changed the way we collect information for determining the value of endowment funds and total expenditures for library materials. As a result of that change, we do not now have base year data beyond 1996–1997 data. Consequently, in order to award FY 2000 grants in a timely manner, we will use 1996–1997 base year data.

Applications Available: January 10, 2000.

Deadline For Transmittal of Applications: February 18, 2000 for Title III Part A Programs development grants; March 2, 2000 for Title III Part A Programs planning grants.

Electronic Submission of Planning Grant Applications

Methods for Submission of Grant Applications

Institutions may submit applications for planning grants under the Title III Part A Programs electronically or in a paper format. Institutions must submit paper applications for development grants under each Title III Part A program.

Electronic Submission

Starting with the fiscal year 2002 competition, we hope to develop the capability to distribute, receive, and process discretionary grant applications electronically. To that end, we are conducting a limited pilot project under which applicants can submit electronically their applications for selected discretionary grant programs. Applications for planning grants under the Title III Part A Programs (CFDA Nos.: 84.031A, N, T, and W) have been included in the pilot.

This pilot will involve the use of E–GAPS, the Electronic Grant Application System portion of the Grant Administration and Payment System (GAPS). If an applicant participates in an E–GAPS Pilot, it is important to note the following:

- Participation in the E–GAPS pilot is strictly voluntary.
- Applicants will be able to submit all documents electronically including the Application for Federal Education Assistance, ED 424, the ED 524 Budget form and all necessary assurances and certifications. Original signatures on required forms may be requested at a later date.
- No points will be added or subtracted from an applicant's score because the applicant chose to submit its application electronically.
- The electronic grant application for the Title III Part A Programs-Planning Grants can be accessed at: http://gapsweb.ed.gov/.

Deadline for Intergovernmental Review: April 18, 2000 for Title III Part A Programs development grants; May 2, 2000 for Title III Part A Programs planning grants.

Available Funds: Approximately $16,000,000 for the Strengthening Institutions Program; $3,000,000 for the American Indian Tribally Controlled Colleges and Universities Program; and $2,000,000 for the Alaska Native and Native Hawaiian-Serving Institutions Program.

Estimated Range of Awards: $330,000–365,000 for development grants under the Strengthening Institutions Program; $30,000–35,000 for planning grants under the Title III Part A Programs; and $347,000–$395,000 for development grants under the American Indian Tribally Native Hawaiian-Serving Institutions Program.

Estimated Average Size of Awards: $350,000 for development grants under the Strengthening Institutions Program; $32,500 for planning grants under the Strengthening Institutions Program; $371,000 for development grants under the American Indian Tribally Controlled Colleges and Universities Program; and $371,000 for development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Estimated Number of Awards: 44 development grants under the Strengthening Institutions Program; 14 planning grants under the Title III Part A Programs; 8 development grants under the American Indian Tribally Controlled Colleges and Universities Program; and 5 development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Project Period: 60 months for development grants under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Program; and 12 months for planning grants under the Title III Part A Program.

Note: The Department is not bound by any estimates in this notice.

Special Funding Considerations: In tie-breaking situations, described in 34 CFR 607.23 of the Strengthening Institutions Program regulations, we award one additional point to an applicant institution that has an endowment fund for which the 1996–1997 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at similar type institutions. We also award one additional point to an applicant institution that had 1996–1997 expenditures for library materials per FTE student that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the following national averages for years 1996–1997:

	Average market value of endowment fund, per FTE student	Average library materials expenditures per FTE student
Two-year Public Institutions	$ 1,332	$ 45
Two-year Nonprofit, Private Institutions	11,556	121
Four-year Public Institutions	2,829	165
Four-year Nonprofit Private Institutions	45,579	245

If a tie remains, after applying the additional point or points, we determine that an institution will receive a grant according to a combined ranking of two-year and four-year institutions. This ranking is established by combining endowment values per FTE student and library expenditures per FTE student. The institutions with the lowest combined library expenditures per FTE student and endowment values per FTE student are ranked higher in numerical order.

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; (b) the regulations for this program in 34 CFR part 607. Amendments to 34 CFR part 607 relating to the American Indian Tribally Controlled Colleges and Universities and Alaska Native and Native-Hawaiian-Serving Institutions Programs are published in the final rule portion of the **Federal Register** of December 15, 1999, 64 FR 70146, 70153–70155.

For Applications or Information Contact: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8513. Telephone (202) 502–7777; E-mail: darlene__collins@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://gcs.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 572–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1057.

Dated: December 23, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33958 Filed 12–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.031H]

Notice Inviting Applications for Designation as Eligible Institutions for fiscal year (FY) 2000 for the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions and Developing Hispanic-Serving Institutions (HSI) Programs

Purpose of These Programs: Under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, Hispanic-Serving Institutions are eligible to apply for grants under the HSI Program, now authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements.

In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work Study (FWS), and Undergraduate International Studies and Foreign Language Programs (UISFLP). These first two programs are student financial assistance programs authorized under Title IV of the HEA; the third program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A or Title V programs.

Special Note: Two of the criteria that each eligible institution must satisfy relate to enrollment of needy students and Education and General (E&G) expenditures. However, we changed the collection processes for determining the thresholds for these criteria, and as a result, base year data beyond 1996–1997 is currently unavailable.

In order to award FY 2000 grants in a timely manner, we will use 1996–1997 base year data to determine eligibility. Moreover, for FY 2000, we will extend the eligibility status an additional year for all institutions designated as eligible in FY 1999, with one exception—Title III and Title V institutions whose grant expired on September 30, 1999. These institutions must apply for FY 2000 eligibility using 1996–1997 base year data. Of course, institutions that were not designated as eligible institutions in fiscal year 1999 must apply under this notice for that designation for fiscal year 2000.

Deadline for Transmittal of Applications:

- February 4, 2000 for applicant institutions that wish to apply for fiscal year 2000 grants under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, and HSI Programs.
- May 26, 2000 for applicant institutions that wish to apply only for waivers under the FSEOG, FWS, or UISFLP Programs.

Thus, if an applicant institution wishes to apply for a grant and a waiver, the deadline date is February 4, 2000.

Electronic Submission of applications: For FY 2000, we are offering applicant institutions the option of submitting their Designation of Eligibility applications electronically. Moreover, institutions that are unable to meet the needy student enrollment or the E&G expenditure requirement may also submit their waiver requests electronically.

Eligibility Applications Available: January 5, 2000.

Eligibility Information: To qualify as an eligible institution under any of the programs included in this notice, an accredited institution must, among other things, have a high enrollment of needy students, and its education and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements for HSI Program institutions are found in the 34 CFR 606.2–606.5, which was published in the **Federal Register** of December 15, 1999, 64 FR 70146–70153. The complete eligibility requirements for the remaining programs are found in 34 CFR 607.2–607.5, a portion of which was also amended in the **Federal**

Register of December 15, 1999, 64 FR 70146, 70151–70155. The regulations may also be accessed by visiting the following Department of Education web site on the World Wide Web: http://www.ed.gov/offices/OPE/OHEP

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base (award) year 1996–1997 must be *more than* the median for its category of comparable institutions provided in the table set forth below in this notice.

Educational and General Expenditures per Full-Time Equivalent Student: An institution should compare its 1996–1997 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table set forth below in this notice. If the institution's E&G expenditure for the 1996–1997 base year are *less than* the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year for the four categories of comparable institutions:

Student	Median Pell Grant percentage	Average E&G FTE
2-year Public Institutions	26.9	$8,132
2-year Non-Profit Private Institutions	39.1	12,322
4-year Public Institutions	28.7	17,067
4-year Non-Profit Private Institutions	27.1	24,756

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d). *Institutions requesting a waiver of the needy student requirement must include the detailed information as set forth in the instructions for completing the application.*

The waiver authority provided in 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3) refers to "low-income" students and families. The regulations define "low-income" as an amount that does not exceed 150 percent of the amount equal to the poverty level in the 1996–97 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

FY 1996–97 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and outlying jurisdictions	Alaska	Hawaii
1	$11,610	$14,490	$13,365
2	15,540	19,410	17,880
3	19,470	24,330	22,395
4	23,400	29,250	26,910
5	27,330	34,170	31,425
6	31,260	39,090	35,940
7	35,190	44,010	40,455
8	39,120	48,930	44,970

For family units with more than eight members, add the following amount for each additional family member: $3,930 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,920 for Alaska; and $4,515 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on March 18, 1999 (64 FR 13428–13430).

In reference to the waiver option specified in 606.3(b)(4) and 607.3(b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by requesting the *Metropolitan Statistical Areas, 1999,* order number PB99–501538, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applicable Regulations: Regulations applicable to the eligibility process include the Strengthening Institutions Program Regulations in 34 CFR part 607, HSI Program regulations in 34 CFR part 606, and the Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 82, 85, 86, 97, 98 and 99.

For Applications or Information Contact: Ellen M. Sealey, Margaret A. Wheeler or Anne S. Young, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, N.W., 6th Floor, Washington, D.C. 20006–8513. Telephone (202) 502–7777. Individuals

who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities also may obtain a copy of the application package in an alternate format by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg/htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 572–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at http://www.access.gpo.gov/nara/index/html.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: December 23, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33959 Filed 12–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.339A; 84.339B]

Fund for the Improvement of Postsecondary Education—Learning Anytime Anywhere Partnerships (LAAP) (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000.

Purpose of Program: To provide grants or enter into cooperative agreements to enhance the delivery, quality, and accountability of postsecondary education and career-oriented lifelong learning through technology and related innovations.

For fiscal year (FY) 2000, the Secretary encourages applicants to design projects that focus on the invitational priorities set forth in the invitational priorities section of this application notice.

Eligible Applicants: Partnerships consisting of two or more independent agencies, organizations, or institutions, including institutions of higher education, community organizations, and other public and private institutions, agencies, and organizations. **Note:** A nonprofit organization must serve as the fiscal agent for a funded partnership.

Applications Available: December 30, 1999.

Deadline for Transmittal of Preapplications: March 3, 2000.

Deadline for Transmittal of Applications: June 9, 2000.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: August 8, 2000.

Available Funds: $4,300,000. **Note:** Federal funds available under this competition may not pay for more than 50 percent of the cost of a project. The non-Federal share of project costs may be in cash or in kind, fairly evaluated, including services, supplies, or equipment.

Estimated Range of Awards: $100,000 to $500,000 per year.

Estimated Size of Awards: $333,333 per year.

Estimated Number of Awards: 12–13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Authorized Activities: Funds awarded to an eligible partnership must be used to conduct one or more of the following activities:

(a) Develop and assess model distance learning programs or innovative educational software.

(b) Develop methodologies for the identification and measurement of skill competencies.

(c) Develop and assess innovative student support services.

(d) Support other activities consistent with the statutory purpose of this program.

Invitational Priorities

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1

Projects to address the need to ensure that significant development costs can be justified by wide-scale applicability and long-term sustainability of technology-mediated distance education, and the need to find new ways to overcome the barriers that may inhibit faculty across institutions from working collectively.

Invitational Priority 2

Projects to develop high quality, interactive courseware that can be implemented to achieve the scale necessary to recoup large investments, but is modular and sufficiently flexible for faculty to shape and modify academic content.

Invitational Priority 3

Projects to package courses and programs to assist students who wish to draw from the offerings of multiple providers and to assist institutions to cooperate and share resources.

Invitational Priority 4

Projects to use skill competencies and learning outcomes in order to measure student progress and achievement in technology-mediated distance learning programs.

Invitational Priority 5

Projects to improve quality and accountability of technology-mediated distance education to ensure that credentials are meaningful, that educational providers are accountable, and that courses meet high standards.

Invitational Priority 6

Projects to create new technology-mediated education opportunities for underserved learners, especially those who have not always been well served by traditional campus-based education or common forms of distance education, including: individuals with disabilities; individuals who have lost their jobs; individuals making the transition from welfare to the workforce; and individuals seeking basic or technical skills or their first postsecondary education experience.

Invitational Priority 7

Projects to improve support services for students seeking technology-mediated distance education to ensure that they have complete and convenient

access to needed services such as registration, financial aid, advising, assessment, counseling, libraries, and many others.

Invitational Priority 8

Projects to remove or revise institutional, system, state, or other policies which are barriers to the implementation of new types of technology-mediated distance education.

Selection Criteria

The Secretary selects from the criteria in 34 CFR 75.210 to evaluate preapplications and applications for this competition. Under 34 CFR 75.201, the Secretary announces in the application package the selection criteria and factors, if any, for this competition and the maximum weight assigned to each criterion.

GPRA Participation

In 1993, Congress enacted the Government Performance and Results Act (GPRA), which directs federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Under the GPRA policy, the LAAP program has four primary objectives, with related performance indicators that grant recipients will be asked to include in their evaluation plans. The four objectives are: (1) Develop innovative partnerships resulting in economies of scale, delivering asynchronous distance education and training; (2) increase access to asynchronous distance education for diverse groups of learners, especially to prepare them for work in technical and other areas of critical shortage or for the changing requirements of fields; (3) enable advancements in quality and accountability within postsecondary, asynchronous distance education; (4) enable advancements in flexibility of distance education design and delivery. More details about LAAP performance indicators are provided on the LAAP website: www.ed.gov/offices/OPE/FIPSE/LAAP.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its e-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.339A.

FOR FURTHER INFORMATION CONTACT: The Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, N.W., Washington, DC 20006–8544. Telephone: (202) 502–7500. Individuals may also request applications or request information by submitting the name of the competition, their name, and postal mailing address to the e-mail address LAAP@ed.gov. The application text may be obtained from the Internet address: http://www.ed.gov/FIPSE/LAAP.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact office listed in the preceding paragraph.

Individuals with disabilities also may obtain a copy of the application package in an alternate format by contacting the email address: LAAP@ed.gov

However, the Department is not able to reproduce in alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at http://www/access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1070f *et seq.*

Dated: December 23, 1999.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33957 Filed 12–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Financial Assistance Program Notice 00–09: Carbon Sequestration Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research on Carbon Sequestration in the Terrestrial Biosphere and the Oceans.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. Early submission of preapplications is encouraged to allow time for meaningful dialog.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 2, 2000, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000 and early Fiscal Year 2001.

ADDRESSES: Preapplications, referencing Program Notice 00–09, for Section A on Terrestrial Biosphere should be sent E-mail to roger.dahlman@science.doe.gov and for Section B on the Oceans to anna.palmisano@science.doe.gov.

Formal applications, referencing Program Notice 00–09, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–09. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, E-mail: john.houghton@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 00–09 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION:

Predictions of global energy use in the next century suggest a continued increase in carbon emissions and rising concentrations of carbon dioxide (CO_2) in the atmosphere unless major changes

are made in the way we produce and use energy—in particular, how we manage carbon.

One way to manage carbon is to use energy more efficiently to reduce our need for a major energy and carbon source—fossil fuel combustion. Another way is to increase our use of low-carbon and carbon-free fuels and technologies, such as nuclear power and renewable sources such as solar energy, wind power, and biomass fuels.

The third and newest way to manage carbon, capturing and securely storing carbon either from the global energy system or directly from the atmosphere, is relatively new. Although many options exist to capture and sequester carbon dioxide, the focus of this solicitation is fundamental research that would enable: (a) The operation of the terrestrial biosphere in such a way to enhance the absorption and retention of atmospheric carbon; (b) The operation of the ocean surface biota also to enhance the absorption and retention of atmospheric carbon; and (c) The use of the deep ocean to store carbon dioxide that has been already separated, captured, and transported. The result of carbon retention by terrestrial and oceanic systems is commonly termed "carbon sequestration."

Any viable system for sequestering carbon must have a number of characteristics. It must be effective and cost-competitive with alternative means, such as renewable energy. It must have environmentally benign consequences, at least compared to alternative solutions, including no action. It must be able to be monitored and verified, because contributions to carbon sequestration almost certainly need to be measured. Research sponsored by this program could contribute to any of these goals.

This solicitation invites applications for individual projects on carbon sequestration in the terrestrial biosphere and in the oceans. The proposed research should be fundamental in nature. We are not accepting applications that test demonstrations of engineered technologies. Principal Investigators may consider the two existing DOE carbon sequestration research centers, CSITE (Carbon Sequestration in Terrestrial Ecosystems), and DOCS (DOE Center for Research on Ocean Carbon Sequestration), and the ways in which their research can complement programs there in the Centers.

Technical Areas of Interest

A. Sequestration in the Terrestrial Biosphere:

Carbon pools in the natural biogeochemical cycle are immense and quantitative estimates of the natural sequestration of carbon in various locations of the terrestrial biosphere are improving in accuracy. The feasibility of various options for enhancing sequestration, however, is only beginning to be explored. The DOE "Carbon Sequestration Research and Development Report" (available at http://www.sc.doe.gov/production/ober/carbseq.html) identifies potential opportunities for sequestering carbon in many ecosystems using a variety of mechanisms. The scientific foundation of different potential approaches needs to be developed. In particular, better estimates of biological fixation and metabolism of carbon are needed, along with improved data on the quantities of carbon sequestered. The intent is to develop techniques that increase fixation and alter carbon metabolism to enhance sequestration. Advanced research is encouraged that will elucidate ways of modifying natural biological and physical processes in terrestrial ecosystems to enhance carbon sequestration rates and capacities.

In general, the research should consider mechanisms and processes that can be manipulated in terrestrial ecosystems to enhance net uptake and sequestration of atmospheric carbon dioxide. Field tests are encouraged that consider feasibility and effectiveness of applying new approaches with managed and/or unmanaged terrestrial ecosystems, and which will focus on those processes or properties of ecosystems for which alteration or management will offer significant potential for enhancing the net sequestration of carbon.

The following examples are illustrative of technical areas relevant to carbon sequestration research involving the terrestrial biosphere:

1. Increasing the net fixation of atmospheric carbon dioxide by terrestrial plants with emphasis on physiology and rates of photosynthesis of vascular plants, retention of carbon by ecosystems and enhancing the translocation of carbon to soil. Research might focus on:

—Intrinsic rates of carboxylation and changes in carbon balance of vascular plants.
—Native plant species that exhibit rapid growth under a wide range of environmental conditions.
—Ways that above-and below-ground partitioning of fixed carbon can generate long-lived sequestered products through the manipulation of nutrients, water and other environmental variables. This would include biotechnological approaches to increase the availability or supply of nutrients from natural sources that otherwise limit plant productivity.
—Understanding root architecture for optimal below-ground productivity and transformation of plant biomass, including lignified materials, into soil organic matter.

2. Reducing the emission of CO_2 from soils due to heterotrophic oxidation of soil organic carbon. Research might focus on:

—Defining and producing optimal mix of organisms and substrates for slowing oxidation of plant residues in soil.
—Isolating and defining the environmental and biochemical factors that control the oxidation rate of soil carbon and how these factors could be modified to slow the rate.

3. Developing and demonstrating new, novel techniques for measuring changes of the quantity of carbon in biomass and soil of terrestrial ecosystems. Research might focus on:

—Non-invasive methods that can measure carbon changes over time. The desired resolution would imply the ability to measure changes during a three year period of as little as 50g per square meter (0.5 tonnes per hectare) for biomass or 100g per square meter (1.0 tonnes per hectare) for soil.
—*In situ* devices for producing time series measurements for a given location, where detection is the same resolution as above.
—Remote measurement devices for detecting relative changes of carbon source or sink strength of terrestrial ecosystems at same resolution as stated above.

4. Assessing the beneficial and adverse side effects of enhancing sequestration in the natural terrestrial biosphere. Research might focus on:

—Certain management practices, such as low tillage agriculture, may enhance carbon sequestration. What secondary impacts affect the soil and runoff as a consequence of these practices, such as soil fertility, erosion control, and possible increased use of pesticides?
—How would altering the carbon cycle affect the biogeochemical cycling of other elements?
—What might be the impact of enhancing the carbon content of soils on the structure and function of ecosystems including biodiversity?

B. Sequestration in the Oceans

The ocean represents a large current sink for the sequestration of anthropogenic CO_2 emissions as well as a large potential for further enhancement. Two strategies for enhancing carbon sequestration in the ocean have been proposed. One strategy is the enhancement of the net oceanic uptake from the atmosphere by fertilization of phytoplankton with micro-or macronutrients. A second strategy is the direct injection of a relatively pure CO_2 stream to ocean depths greater than 1000 m. Sources of CO_2 might include power plants, industries or other sources. The long term effectiveness and potential environmental consequences of ocean sequestration by either strategy, however, are as yet unknown.

Examples of relevant research areas to the issue of enhanced carbon sequestration by the oceans.

1. Environmental consequences of long term ocean fertilization. Research might focus on:

—Examining changes in structure and function of marine ecosystems including community structure of phytoplankton and zooplankton, ocean food webs and trophodynamics, resulting from ocean fertilization.
—Examining changes in natural oceanic biogeochemical cycles (carbon, nitrogen, phosphorus, silicon, and sulfur) resulting from carbon sequestration.

2. Effectiveness of ocean fertilization on a large scale. Research might focus on:

—Understanding the biological pumping of carbon to deep waters, the export of particulate organic carbon and particulate inorganic carbon to the deep sea, and mineralization or dissolution of all forms at depth.
—Determining how micronutrients (such as iron) and macronutrients (such as nitrogen and phosphorus) regulate the biological pump in the ocean.
—Determining to what extent increased carbon fixation in surface waters will result in an increase in carbon sequestered in the deep ocean, and how long it will remain sequestered. One approach might be the use of coupled physical, chemical and biological models.

3. Environmental consequences of direct injection of CO_2 into the ocean in midwater or deep sea habitats. Research might focus on:

—Understanding the effects of sustained release of concentrated CO_2 on biogeochemistry and ecosystem structure and function.
—Determining the effects of changes in pH and CO_2 on organisms from midwater and deep sea habitats.
—Understanding the longer-term fate of carbon, which is added to the ocean including the carbonate chemistry of mid- and deep-ocean water.

4. Effectiveness of direct injection of CO_2 for carbon sequestration. Research might focus on:

—Addressing weaknesses in Ocean General Circulation Models (OGCMs), specifically western boundary currents, ocean bottom currents and sub-grid scale processes, and test models using natural or experimental tracers.
—Coupling near-field with far-field effects of CO_2 injection, for example, couple plume modeling with basin and global scale ocean circulation models.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: http://www.sc.doe.gov/production/grants/Colab.html.

Program Funding

It is anticipated that up to a total of $2,000,000 will be available for awards in this area during FY 2000, contingent upon availability of appropriated funds. Multiple year funding of awards is expected, and is also contingent upon availability of funds, progress of the research, and continuing program need.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, proposed collaborators, and the technical area of scientific research (i.e., A. Sequestration in the Terrestrial Biosphere or B. Sequestration in the Oceans). The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Carbon Sequestration Research Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington DC on December 22, 1999.

Ralph H. De Lorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 99–33939 Filed 12–29–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–133–001]

Algonquin Gas Transmission Company; Notice of Correction Filing

December 23, 1999.

Take notice that on December 21, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Twelfth Revised Sheet No. 431, to become effective January 1, 2000.

Algonquin states that the purpose of this filing is to make a correction to the corresponding tariff sheet filed in Algonquin's December 7, 1999 filing in Docket No. RP00–133–000, which revises the Gas Research Institute (GRI) surcharges effective January 1, 2000. Specifically, Algonquin states that its December 7, 1999 filing included Tenth Revised Sheet No. 431, which reflected an incorrect sheet number designation as well as an incorrect base tariff rate for Rate Schedule X–39. Algonquin states that the Twelfth Revised Sheet No. 431 filed herein reflects the correct base tariff rate for Rate Schedule X–39 as well as the new GRI surcharges to be effective January 1, 2000.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33887 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6759–016]

Aquenergy Systems, Inc.; Notice of Availability of Final Environmental Assessment

December 23, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to surrender the license for the existing Apalache Hydroelectric Project, located on the South Tyger River in Spartanburg County, South Carolina, and has prepared a Final Environmental Assessment (Final EA) for the proposed action.

In the Final EA, Commission staff concludes that approval of the subject surrender of license would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the Final EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The Final EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33874 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. OA00–3–000

Central Illinois Light Company; QST Energy Trading Inc., Notice of Filing

December 23, 1999.

Take notice that on December 17, 1999, Central Illinois Light Company and QST Energy Trading Inc. submitted revised standards of conduct under Order No. 889 *et seq.*[1]

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33867 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–31–001]

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company; Notice of Filing

December 23, 1999.

Take notice that on December 14, 1999, Columbia Gas Transmission Corporation and Columbia Gulf

[1] Open Access Same-Time Information System (Formerly Real-Time Information network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶31,035 (April 24, 1996), Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶31,253 (November 25, 1997).

Transmission Company (Columbia Pipelines) tendered for filing a response to the Commission's order issued on November 24, 1999 in the above-referenced proceeding.[1]

In the response Columbia Pipelines states that in the event that any Y2K-related communication failure that would render the NAVIGATOR system inaccessible through the normal electronic bulletin board process, the Columbia Pipelines are offering to all shippers several alternative methods to schedule their nominations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 28, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-33882 Filed 12-29-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00-3-001]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

December 23, 1999.

Take notice that on December 17, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing a revised electronic disk containing corrected versions of the following tariff sheets to Destin's FERC Gas Tariff, Original Volume No. 1.

Original Sheet No. 201, Original Sheet No. 202, Original Sheet No. 203.

Destin states that the purpose of this filing is to correct software formatting errors in compliance with the Commission's order issued December 3, 1999.

Destin states that copies of the filing will be served upon parties designated on the official service list, its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-33865 Filed 12-29-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00-51-000]

East Tennessee Natural Gas Company; Notice of Application

December 23, 1999.

Take notice that on December 13, 1999, East Tennessee Natural Gas Company (East Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in the above docket, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b) and 717f(c), as amended, and Subpart A of the regulations of the Federal Energy Regulatory Commission (Commission) thereunder, 18 CFR 1575 *et seq.*, Subpart A, for authorization to construct, install and operate: (1) 15.16 miles of 12-inch pipeline looping in Washington, Smyth and Wyth Counties, Virginia; (2) three new meter stations in McMinn, Greene and Roane Counties, Tennessee, and a modification to an existing meter station in Morgan County, Tennessee; (3) approximately 0.62 miles of 22-inch replacement pipe on East Tennessee's 3100 Line, and (4) approximately 450 feet of 10″ and 12″ replacement piping in addition to two (2) mainline valves of East Tennessee's 3200 Line at the Tennessee River Crossing. Additionally, East Tennessee is seeking certain other authorizations, including authorization to up rate four compressor units located at Station 3101 in Robertson County, Tennessee and Station 3210 in Marion County, Tennessee and authorization to hydrostatically test to increase the Maximum Allowable Operating Pressure (MAOP) of 26.42 miles of pipe on East Tennessee's 3100 Line in Smith and Overton Counties, Tennessee. Finally, East Tennessee requests that the Commission authorize the abandonment of approximately 0.62 miles of pipe being replaced along East Tennessee's 3100 plus 250 feet of pipe, two (2) mainline valve assemblies and miscellaneous fittings and appurtenances being replaced along the 3200 Line by the above-referenced replacement pipe. East Tennessee submits that these activities are necessary to provide additional firm transportation service to eight (8) customers in the part of East Tennessee's pipeline system located in eastern Tennessee and southwest Virginia (Rocky Top Expansion Project)

East Tennessee states that as a result of an open season conducted between May 28 and June 23, 1999, East Tennessee has entered precedent agreements for firm transportation service with eight (8) Shippers for a total of 36,493 dekatherms per day of firm transportation service through the proposed facilities for a primary term of ten years. East Tennessee further states that transportation service to the Shippers will be provided under East Tennessee's Rate Schedule FT-A.

East Tennessee states that the proposed additions, modifications and testing is estimated to be $21,162,000. East Tennessee proposes to place the Rocky Top Expansion Project in service by November 1, 2000.

The project is more fully set forth in the application on file with the Commission and open for public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call [202] 208-2222 for assistance).

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, P.O. Box 2511, Houston, Texas 77252 (713) 420-5751.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 13, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in

[1] 89 FERC ¶ 69,228 (1999).

determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds tat a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for East Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33864 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–041]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 23, 1999.

Take notice that on December 21, 1999, El Paso Natural Gas Company (El Paso) tendered for filing three firm Transportation Service Agreements (TSAs) between El Paso and Enron North America Corp. to be effective January 1, 2000.

El Paso states that the above TSAs are being submitted for Commission acceptance of two negotiated rate provisions pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33878 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–040]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 23, 1999.

Take notice that on December 20, 1999, El Paso Natural Gas Company (El Paso) tendered for filing a firm Transportation Service Agreement (TSA) between El Paso and Williams Energy Marketing & Trading Company (Williams) to be effective January 1, 2000.

El Paso states the TSA is being filed to implement a negotiated rate provision pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Roorr . This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33879 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–285–001]

Granite State Gas Transmission, Inc.; Notice of Pro Forma Filing

December 23, 1999.

Take notice that on December 21, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third

Revised Volume No. 1, pro forma tariff sheets to supersede its currently effective tariff sheets numbers 24, 146, 147, and 150.

Granite State states that the pro forma tariff sheets are being filed to address concerns raised at the Technical Conference held in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33881 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–227–004]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

December 23, 1999.

Take notice that on December 21, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 6, 1999.

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 5
First Revised Sheet No. 6
Original Sheet No. 10A
First Revised Sheet No. 13
First Revised Sheet No. 15
First Revised Sheet No. 16
Original Sheet Nos. 26 thru 44
First Revised Sheet No. 54
First Revised Sheet No. 55
First Revised Sheet No. 64
First Revised Sheet No. 70
First Revised Sheet No. 72
First Revised Sheet No. 79
First Revised Sheet No. 88
First Revised Sheet No. 89
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 101
First Revised Sheet No. 114
First Revised Sheet No. 116
First Revised Sheet No. 117
First Revised Sheet No. 123
Original Sheet No. 123A
First Revised Sheet No. 126
First Revised Sheet No. 134
First Revised Sheet No. 139
First Revised Sheet No. 143
First Revised Sheet No. 174
First Revised Sheet No. 177
First Revised Sheet No. 178
Original Sheet Nos. 201 thru 211
First Revised Sheet No. 212

HIOS states that such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's December 14, 1999, Letter Order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33880 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–48–001]

Iroquois Gas Transmission System, L.P.; Notice of Filing

December 23, 1999.

Take notice that on December 8, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing a response to the Commission's order issued on November 24, 1999 in the above referenced proceeding.[1]

Iroquois states that in the event that any Y2K-related communication failures during the Y2K rollover period it will not impose penalties that might otherwise apply when their occurrence is a result of good faith efforts to work within the contingency plan.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 28, 1999. protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rim.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33883 Filed 12–29–99 8:45 am]

BILLING CODE 6717–01–M

[1] 89 FERC ¶ 69,220 (1999).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

[Docket No. RP000–105–002]

December 23, 1999.

Take notice that on December 20, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–C, the following revised tariff sheet, to be effective January 1, 2000:

Second Substitute Fourteenth Revised Sheet No. 4

KNI states that this filing corrects an inadvertent error made during the submission of the annual GRI filing, approved by the Commission in Docket No. RP99–323–000. KNI proposes an effective date of January 1, 2000, in accordance with the Letter Order dated September 29, 1999 in the above referenced Docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33886 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–146–000]

K N Interstate Gas Transmission Co.; Notice of Reconciliation Filing

December 23, 1999.

Take notice that on December 21, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing its annual reconciliation filing pursuant to Section 35 (Crediting of Imbalance Revenue) of its General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1–B.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33888 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–21–002]

Northern Border Pipeline Company; Notice of Amendment

December 23, 1999.

Take notice that on December 17, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–21–002, an amendment to its application in Docket No. CP99–21, for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, to construct and operate pipeline and compression facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

On March 25, 1999, Northern Border filed with the Commission an amendment to its application in Docket No. CP99–21–001, wherein Northern Border modified the design of the pipeline and compression facilities it proposes. By this amendment, Northern Border now proposes to install approximately 34.4 miles of 30-inch pipeline (rather than 36-inch pipeline, as previously proposed), commencing from Northern Border's 36-inch pipeline near Manhattan, Illinois to a point near North Hayden, Indiana. The proposed pipeline extension will interconnect with Northern Indiana Public Service Company (NIPSCO) at the terminus of the pipeline at which point Northern Border proposes to install a meter station. The pipeline extension between Manhattan and North Hayden will have a design capacity of 544,000 Mcf/d and a maximum operating pressure of 1,050 psig. Due to the potential development of a new airport along the route of the proposed pipeline, Northern Border has been requested and proposes to install a tee and side value on the pipeline extension near the site. Further, the planned cooling modifications at proposed Compressor Station No. 18 have been eliminated. The change in pipeline diameter from a 36-inch to a 30-inch, and the elimination of cooling at Compressor Station No. 18 are the only facility changes from those proposed in the March 25, 1999, amendment.

As now amended, the estimated project cost is $94.4 million, in fourth quarter 1999 dollars. Northern Border says that it does not intend to use its cost projection in the instant application as the basis for an incentive rate proposal. Northern Border filed additional exhibits which compare the transportation cost for the year 2002 without the proposed facilities to the projected year 2002 cost with the proposed facilities in order to show the impact of rolling-in the proposed facilities on the first calendar year of operation's cost of service. Northern Border's year 2002 projected unit cost of service rate, including fuel, the proposed facility costs, and the related volumes is 4.30 cents per 100 Dekatherm-Miles, which is the same as the unit cost without the proposed facilities and related volumes. Northern Border says that this demonstrates that Project 2000 is financially viable without "subsidy" from existing customers.

On September 15, 1999, the Commission issued a Statement of Policy in Docket No. PL99–3–000, "Certification of new Interstate Natural Gas Pipeline Facilities". The Policy Statement announced changes to the pricing and rate criteria applicable to new construction projects and, specified that applicants proposing to add new pipeline capacity must satisfy a threshold requirement of "no financial subsidies". The Policy Statement also announced that a project will also be evaluated based upon consideration of (i) the interests of the applicant's existing customers; (ii) the interest of competing existing pipelines and their captive customers, and (iii) the interests of landowners and surrounding communities. Where a project results in adverse impacts to any of members of these three stakeholder groups, the project sponsor must show how the specific public benefits resulting from its project outweigh the adverse effects the members of the three stakeholder groups.

Northern Border states that Project 2000, as now amended, meets the Commission's threshold "no financial subsidies" requirement of for certification. Further, its says that the public benefits of Project 2000 outweigh any adverse impacts to any members of the three stakeholder groups identified in the Policy Statement, because in its amendment, Northern Border describes in detail how Project 2000 does not have any adverse impact on the three stakeholder groups listed in the Policy Statement. Northern Border therefore requests that the Commission promptly certificate Project 2000, as hereby amended, and that such approvals issue no later than March 15, 2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33944 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–7–000]

PanEnergy Texas Intrastate Pipeline Company; Notice of Petition for Rate Approval

December 23, 1999.

Take notice that on December 13, 1999, PanEnergy Texas Intrastate Pipeline Company (PTIP) filed pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of 6.374 per MMBtu for interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of PTIP's Petition, PTIP's rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before January 6, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33877 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–9–000]

PG&E Texas Pipeline, L.P.; Notice of Petition for Rate Approval

December 23, 1999.

Take notice that on December 20, 1999, PG&E Texas Pipeline, L.P. (PG&E TPLP) filed a Petition for Approval of Transportation Rates under Section 311 of the NGPA. In its Petition, PG&E TPLP seeks approval of rates for firm and interruptible transportation and interruptible parking and lending service. PG&E TPLP proposes that the rates be made effective December 20, 1999.

PG&E TPLP is an intrastate pipeline as defined in Section 2(16) of the NGPA, operating in the State of Texas.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of PG&E TPLP Petition, PG&E TPLP's rates for firm and interruptible transportation and parking services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before January 6, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/*

online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33875 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–8–000]

PG&E Texas Pipeline, L.P.; Notice of Petition for Rate Approval

December 23, 1999.

Take notice that on December 20, 1999, PG&E Texas Pipeline, L.P. (PG&E TPLP) filed a Petition for Approval of Contract Storage Rates under Section 311 of the NGPA. PG&E TPLP states that its petition is filed pursuant to Section 284.123(b)(2)(i) of the Commission's regulations. In its petition, PG&E TPLP proposes initial rates for firm and interruptible contract storage services. PG&E TPLP proposes that the contract storage rates be made effective December 20, 1999.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of PG&E TPLP's Petition, PG&E TPLP's rates for firm and interruptible contract storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before January 6, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33876 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 67; 120; 2085; 2175]

Southern California Edison; Notice of Southern California Edison's Request to use Alternative Procedures in Filing License Applications

December 23, 1999.

On December 10, 1999, the existing licensee, Southern California Edison (SCE) filed a request to use the Commission's alternative procedures in submitting applications to relicense four existing hydroelectric projects—Big Creek No. 2A, 8, and Eastwood (FERC No. 67); Big Creek No. 3 (FERC No. 120); Mammoth Pool (FERC No. 2085); and Big Creek No. 1 and 2 (FERC No. 2175). The projects are located in the San Joaquin River Basin of California, and have a combined capacity of about 871.6 megawatts. This notice invites comments on SCE's request, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here would combine the prefiling consultation process with the environmental review process, allowing the applicants to file an applicant-prepared Environmental Assessment in lieu of Exhibit E of the license applications. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs all of the environmental review after the application is filed. the alternative procedures are intended to reduce redundancies in the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedures can be tailored to the particular project under consideration.

Alternative Procedures and the Big Creek Projects

In this instance, SCE is proposing a consolidated relicensing of our projects within what is known as the Big Creek System. An applicant-prepared environmental assessment would be filed on all four projects with their applications. SCE also intends on negotiating an agreement on the relicensing of the projects by December, 2004. The application on the Mammoth Pool project is due to be filed in 2005, while the other three applications are due in 2007.

Comments

SCE has demonstrated that it has made an effort to contact resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus likely exists that the use of the alternative procedures is appropriate in this case. SCE has also submitted a communications protocol that was developed in consultation with interested entities.

Interested parties have 30 days from the date of this notice to file with the Commission, any additional comments on the licensee's proposal to use the alternative procedures. The licensee's request may be viewed on the web at http://rimsweb1.ferc.fed.us/rims/. Call 202–208–2222 for assistance.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedure," and include the project names and numbers: Big Creek No. 2A, 8, and Eastwood (FERC No. 67); Big Creek No. 3 (FERC No. 120); Mammoth Pool (FERC No. 2085); and Big Creek No. 1 and 2 (FERC No. 2175). For further information, please contact Vince Yearick at (202) 219–3073 or e-mail at vince.yearick@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33868 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–12–000]

Southern Natural Gas Company; Notice of Refund Report

December 23, 1999.

Take notice that on December 17, 1999, Southern Natural Gas Company (Southern) tendered for filing a Refund Report.

Southern states that pursuant to Section 23.3 of the General Terms and

Conditions of Southern's Tariff the Refund Report sets forth Rate Schedule ISS revenues to be refunded to Rate Schedule CSS customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33886 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–58–002]

Southwest Gas Storage Company; Notice of Compliance Filing

December 23, 1999.

Take notice that on December 20, 1999, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective December 15, 1999:

Sub Original Sheet No. 140

Southwest states that the purpose of this filing is to comply with the Commission's Letter Order issued on December 10, 1999 in Docket Nos. RP00–58–000 and RP00–58–001, 89 FERC ¶ 61,261. The revised tariff sheet included herewith modifies Section 12.6 of the General Terms and Conditions, as directed by the Commission.

Southwest states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33884 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–145–000]

Sumas International Pipeline Inc.; Notice of Request for Waivers

December 23, 1999.

Take notice that on December 21, 1999, Sumas International Pipeline Inc. (SIPI), filed a request for waiver of GISB electronic and interactive web site standards until its Part 284 shippers request that SIPI implement those standards on its system.

SIPI states that its waiver request is consistent with waivers granted by the Commission for comparable interstate pipelines.

SIPI states that copies of the filing have been mailed to all customers of SIPI and other Interested Parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33889 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–66–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

December 23, 1999.

Take notice that on December 20, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original Sheet No. 656A. Tennessee requests an effective date of December 13, 1999.

Tennessee states that it is filing the hard copy of Original Sheet No. 656A in compliance with the Commission's December 10, 1999 Letter Order in the above-referenced docket. Tennessee Gas Pipeline Company, 89 FERC (61,260 (1999)). Tennessee further states that the hard copy of the tariff sheet is being filed now since it was inadvertently omitted from its original November 12, 1999 filing in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33885 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–39–000, et al.]

Interstate Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 22, 1999.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. EC00–39–000]

Take notice that on December 13, 1999, Interstate Power Company (IPC), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, filed an Application for approval to sell its Medford Junction 69/12.5 kV step-down distribution substation (Substation) in Steele County, Minnesota, to Northern States Power Company (NSP), another public utility subject to Commission jurisdiction. The total sale price is $54,515.04.

Comment date: January 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Delmarva Power & Light Company; Atlantic City Electric Co; DPL REIT, Inc. and Conectiv Atlantic Generation, LLC

[Docket No. EC00–40–000]

Take notice that on December 17, 1999, Delmarva Power & Light Company (Delmarva), Atlantic City Electric Company (Atlantic), DPL REIT, Inc. (CDG) and Conectiv Atlantic Generation, LLC (CAG) (collectively, the Applicants) submitted a joint application under Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations to request authorization and approval for Delmarva and Atlantic to transfer certain jurisdictional transmission facilities to CDG and CAG. The Applicants' proposed closing date for the transfer is on or about May 1, 2000. The Applicants request approval of the transfer by April 1, 2000.

The Applicants state copies of this joint application have been served upon their wholesale requirements customers, the state regulatory commissions of New Jersey, Delaware, Maryland and Virginia and on the Pennsylvania-New Jersey-Maryland Interconnection, LLC.

Comment date: January 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Tenaska Alabama Partners, L.P.

[Docket No. EG00–54–000]

Take notice that on December 17, 1999, Tenaska Alabama Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Tenaska Alabama, a Delaware limited partnership, will construct, own, and operate a nature gas fire combined-cycle fuel conversion facility (the Facility) to be constructed and located near Billingsley, Alabama, in Autauga County. The Facility will consist of three "F" Class combustion turbine-generators and a steam turbine-generator and will use natural gas as the primary fuel and fuel oil as backup fuel for the combustion turbines. The facility will also include natural gas receipt facilities, fuel oil storage facilities, fuel oil unloading facilities, and a switchyard. The nominal net electric output of the facility will be 846 MW when operating at summer conditions using natural gas. The Facility will include related transmission interconnection components necessary to interconnect the Facility with the Alabama Power company. The Facility will be used exclusively for the generation of electric energy to be delivered to an unaffiliated third-party customer.

Comment date: January 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. O'Brien (Philadelphia) Cogeneration, Inc.

[Docket No. EG00–55–000]

Take notice that on December 17, 1999, O'Brien (Philadelphia) Cogeneration, Inc. (OPCI) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 563 of the Commission's regulations.

OPCI, a Delaware corporation, leases certain eligible facilities and make sales of electric energy exclusively at wholesale. The leased facilities consist of five bio gas fired electric generating sets having an aggregate capacity of approximately 2 MW and 17 oil fired diesel electric generating sets having an aggregate capacity of approximately 22 MW. The generating facilities are located at the Northeast and Southwest Water Pollution Control Plants in Philadelphia, Pennsylvania.

Comment date: January 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Wayne-White Counties Electric Cooperative

[Docket No. EL00–28–000]

Take notice that on December 17, 1999, Wayne-White Counties Electric Cooperative (WWCEC or Cooperative) on December 17, 1999, tendered for filing a petition for partial waiver of the requirements of Part 45 of the Commission's regulations, 18 CFR 45.1, *et seq.* Specifically, WWCEC requests that the Commission grant a blanket authorization, so that persons now holding or who may in the future hold otherwise proscribed interlocking positions involving WWCEC and satisfy their obligations under Part 45 by making abbreviated filings providing the following information: (1) Full name and business address; and (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

Copies of the filing were served upon WWCEC's only jurisdictional customer, the City of Fairfield, Illinois.

Comment date: January 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. GPU Advanced Resources, Inc.

[Docket No. ER97–3666–010]

Take notice that on December 15, 1999, GPU Advanced Resources, Inc. filed an amendment to their quarterly report for the second quarter, for information only.

7. Nicole Energy Services, Inc.

[Docket No. ER98–2683–005]

Take notice that on December 2, 1999, Nicole Energy Services, Inc. filed their quarterly report for the quarter ended September 30, 1999, for information only.

8. New Century Services, Inc.

[Docket No. ER99–4501–000]

Take notice that on December 15, 1999, New Century Services, Inc., on behalf of Public Service Company of Colorado, responded to the deficiency letter issued in this docket on November 15, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. AI Energy, Inc.

[Docket No. ER00–105–002]

Take notice that on December 3, 1999, AI Energy, Inc. filed their quarterly report for the quarter ended September 30, 1999, for information only.

10. California Independent System Operator Corporation

[Docket No. ER00–800–000]

Take notice that on December 15, 1999, California Independence System Operator Corporation tendered for filing an information filing in accordance with Part D of Appendix F, Schedule 1 of the ISO Tariff, Original Sheet No. 378, to present information concerning its calculation of the Grid Management Charge (GMC) to be effective for calendar year 2000. The informational filing contains the 2000 GMC calculation based on 2000 operating expenses, and the forecasted annual transmission volumes for 2000.

Copies of the filing were served upon the official service lists for Docket Nos. ER98–211–000, ER98–210–000, ER98–1729–000, ER98–462–000, ER98–556–000, ER98–557–000 and the California Public Utilities Commission.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Madison Gas and Electric Company

[Docket No. ER00–586–000]

Take notice that on December 16, 1999, Madison Gas and Electric Company (MGE), tendered for filing with the Federal Energy Regulatory Commission revisions to its Market-Based Power Sales Tariff.

Copies of this filing have been mailed to the service list and to the Public Service Commission of Wisconsin.

MGE requests an effective date of 60 days from the date of the original filing November 23, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER00–788–000]

Take notice that on December 14, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Network Integration Transmission Service with Consumers Energy Company—Electric Sourcing & Trading.

The agreement is pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and Detroit Edison Company (Detroit Edison) and has an effective date of January 1, 2000.

Copies of the filing were served upon the Michigan Public Service Commission, Detroit Edison and the customer listed above.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER00–789–000]

Take notice that on December 14, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to the Commonwealth Edison Company pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

The agreement has an effective date of January 1, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER00–790–000]

Take notice that on December 14, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Firm and/or Non-Firm Point-to-Point Transmission Service with the Customers listed below.

All of the agreements were pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) and have effective dates of January 1, 2000. The Customers are:

American Electric Power ("AEP") Service Corporation, and various AEP operating utility subsidiaries
Cinergy Services, Inc., and the Cinergy operating companies
CMS Marketing, Services and Trading
Consumers Energy Company—Electric Sourcing & Trading
Duke Power
Lansing Board of Water & Light
Minnesota Power, Inc.
Morgan Stanley Capital Group, Inc.
Northern Indiana Public Service Company
OGE Energy Resources Inc.
PECO Energy Co.
PP&L, Inc.
Tenaska Power Services Co.
Tractebel Energy Marketing, Inc.
Virginia Electric and Power Company
Cargill-Alliant LLC
Detroit Edison Merchant Operation
Florida Power & Light Company

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customers.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER00–791–000]

Take notice that on December 14, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Master Close-Out Netting Agreement between Wisconsin Electric Power Company (Wisconsin Electric or the Company) and Rainbow Energy Marketing (Rainbow). This agreement is a supplement to the electric service agreement No. 15 under Wisconsin Electric's Market Rate Sales Tariff. (FERC Electric Tariff, Original Volume No. 8) with Rainbow, and to the electric service agreement No. 3 under Wisconsin Electric's Coordination Sales Tariff. (FERC Electric Tariff, First Revised Volume No. 2) with Rainbow.

Wisconsin Electric respectfully requests an effective date of October 27, 1998.

Copies of the filing have been served on Rainbow, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER00–792–000]

Take notice that on December 14, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated November 5, 1999 with Enron Power Marketing, Inc. (ENRON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to ENRON and to the Pennsylvania Public Utility Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER00–793–000]

Take notice that on December 14, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated December 6, 1999 with Allegheny Electric Cooperative, Inc. (AEC) under PECO's

FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to ENRON and to the Pennsylvania Public Utility Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER00–794–000]

Take notice that on December 14, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Network Integration Transmission Service to The Connecticut Light and Power Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to The Connecticut Light and Power Company.

NUSCO requests that the Service Agreement become effective January 1, 2000.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Nordic Electric, L.L.C.

[Docket No. ER00–795–000]

Take notice that on December 14, 1999, Nordic Electric, L.L.C. (Nordic Electric) petitioned the Commission to conform Nordic Electric's existing market-based rate schedule to the model market-based rate schedule for power marketers that the Commission has posted on its website. Nordic Electric states that the amendment will permit it to make market-based sales to its newly-formed affiliate, Nordic Marketing, L.L.C. Nordic Electric further states that neither it nor any of its affiliates owns or controls any transmissions or operating generation facilities, or has a franchised service area for the sale of electricity to captive customers.

A copy of the filing has been served on the Michigan Public Service Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services Inc.

[Docket No. ER00–796–000]

Take notice that on December 14, 1999, New Century Services Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and the City of Glendale, California (Glendale), which is an umbrella service agreement under the Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on October 26, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. New Century Services Inc.

[Docket No. ER00–797–000]

Take notice that on December 14, 1999, New Century Services Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Enron Power Marketing Inc., (EPMI), which is an umbrella service agreement under the Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on October 26, 1999.

Comment date: Janury 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. New York Independent System Operator, Inc.; Central Hudson Gas & Electric Corp.; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corp.; Niagara Mohawk Power Corp.; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corp.

[Docket No. ER00–798–000]

Take notice that on December 15, 1999, the New York Independent System Operator, Inc. (NYISO or ISO) and the Members of the Transmission Owners Committee of the Energy Association of the State of New York (Transmission Owners Committee or Member Systems) tendered for filing an amendment to their Supplemental Rate Filing to recover New York Independent System Operator Start-up and Formation Costs filed on August 25, 1999, reflecting the proposed change to Rate Schedule 1 of the ISO Open Access Transmission Tariff (ISO OATT). The NYISO requests an effective date of January 1, 2000 for changing the amortization period for the recovery of start-up costs and to reflect an update of the projected costs sought to be recovered.

A copy of this filing was served upon all persons on the Commission's official service list in this proceeding.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company; Commonwealth Edison Company of Indiana

[Docket No. ER00–799–000]

Take notice that on December 15, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) tendered for filing amendments to ComEd's Open Access Transmission Tariff (OATT) to implement an Optional Additional Load Following Service for Non-Conforming Retail Loads and to modify Schedule 4A to permit Transmission Customers to trade retail imbalances attributable to adders/discounts.

ComEd requests an effective date of February 1, 1999, for the proposed amendments. Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Tampa Electric Company

[Docket No. ER00–801–000]

Take notice that on December 15, 1999, Tampa Electric Company (Tampa Electric), tendered for filing new and revised tariff sheets that provide for inclusion in Tampa Electric's open access transmission tariff of a schedule for a new service called Generation to Schedule Imbalance Service.

Tampa Electric requests that the tariff amendment be made effective on February 14, 2000.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Cleco Utility Group, Inc.

[Docket No. ER00–804–000]

Take notice that on December 16, 1999, Cleco Utility Group, Inc. (CLECO), tendered for filing service agreements for Non-Firm and Short Term Firm Point-to-Point Transmission Services with TXU Energy Trading Company.

CLECO requests that the Commission accept the Service Agreement with an effective date of December 15, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Southern California Edison Company

[Docket No. ER00–805–000]

Take notice that on December 16, 1999, Southern California Edison Company (SCE), tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment (TRBAA) set forth in its Transmission Owner Tariff (TO Tariff) to become

effective January 1, 2000. The TRBAA rate is proposed to be a negative $0.00041 per kilowatt-hour, a reduction from the present rate of negative $0.00009 per kilowatt-hour.

Copies of this filing were served upon the California Public Utilities Commission, the California Independent System Operator, Pacific Gas & Electric Company, Sand Diego Gas & Electric Company, and all interested parties.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–806–000]

Take notice that on December 16, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 2 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 20, 1999 to The Detroit Edison Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Public Service Corporation

[Docket No. ER00–807–000]

Take notice that on December 16, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 13 to its partial requirements Service Agreement No. 1 with Consolidated Water Power Company (CWPCO). Supplement No. 13 provides CWPCO's contract demand nominations for January 2000–December 2004, under WPSC's W–3 tariff and CWPCO's applicable service agreement.

The company states that copies of this filing have been served upon CWPCO and to the State Commissions where WPSC serves at retail.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Wisconsin Public Service Corporation

[Docket No. ER00–808–000]

Take notice that on December 16, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 13 to its partial requirements Service Agreement No. 5 with Manitowoc Public Utilities (MPU). Supplement No. 13 provides MPU's contract demand nominations for January 2000—December 2004, under WPSC's W–2A partial requirements tariff and MPU's applicable service agreement.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power & Light Company

[Docket No. ER00–810–000]

Take notice that on December 16, 1999, Florida Power & Light Company, tendered for filing the LCRR Facility Parallel Operation Agreement between Florida Power & Light Company and Seminole Electric Cooperative, Inc.

FPL requests that the agreement be made effective December 15, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: Janaury 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Virginia Electric and Power Company

[Docket No. ER00–811–000]

Take notice that on December 16, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Allegheny Energy Supply Company, LLC. Under the Service Agreement, Virginia Power will provide services to Allegheny Energy Supply Company, LLC under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of December 16, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Allegheny Energy Supply Company, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. New Century Services, Inc.

[Docket No. ER00–812–000]

Take notice that on December 16, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (SPS), tendered for filing the following agreements under SPS's Rate Schedule for Market-Based Power Sales (SPS FERC Electric Tariff, First Revised Volume No. 3), namely (1) the Master Power Sale Agreement between SPS and Oklahoma Gas and Electric Company (OG&E), which is an umbrella service agreement under the SPS market-based rate schedule, and (2) a transaction agreement for a specific sale by SPS to OG&E of capacity and associated energy to commence on January 1, 2000 and end on December 31, 2001.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Duquesne Light Company

[Docket No. ER00–813–000]

Take notice that on December 16, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated December 15, 1999 with ACN Power, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds ACN Power, Inc., as a customer under the Tariff.

DLC requests an effective date of December 15, 1999, for the Service Agreement.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Wisconsin Electric Power Company

[Docket No. ER00–815–000]

Take notice that on December 16, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Master Close-Out Netting Agreement between Wisconsin Electric Power Company (Wisconsin Electric or the Company) and Southern Company Energy Marketing (SCEM). This agreement is a supplement to the electric service agreement No. 86 under Wisconsin Electric's Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) with SCEM.

Wisconsin Electric respectfully requests an effective date of August 3, 1998.

Copies of the filing have been served on SCEM, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Ameren Services, Inc., on behalf of Ameren Generating Company, and, Marketing Company

[Docket No. ER00–816–000]

Take notice that on December 16, 1999, Ameren Services, Inc. tendered for filing the following agreements:

1. Electric Power Supply Agreement between Ameren Generating Company (Genco) and Marketing Company.

2. Electric Power Supply Agreement between Marketing Company and Central Illinois Public Service Company (AmerenCIPS).

3. FERC Electric Tariff No. 1 of Marketing Company.

Ameren Services states that these rate schedules are being filed to implement certain proposed power marketing arrangements to become effective upon the transfer to Genco of generating units currently owned and operated by AmerenCIPS. Ameren Services has proposed to make these rate schedules on February 15, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Ohio Valley Electric Corporation

[Docket No. ER00–821–000]

Take notice that on December 16, 1999, Ohio Valley Electric Corporation (OVEC), tendered for filing Modification No. 12, dated as of November 1, 1999, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utility companies named within that agreement as "Sponsoring Companies" (the Inter-Company Power Agreement). The Inter-Company Power Agreement bears the designation Ohio Valley Electric Corporation Rate Schedule FPC No. 1–B.

Mod. No. 12 is part of an arrangement intended to make additional electricity available to OVEC's Sponsoring Companies during the winter of 1999–2000 and to provide DOE with billing credits in exchange for its release of a portion of its entitlement to such electricity.

OVEC has requested that the changes to the Inter-Company Power Agreement become effective as of November 1, 1999.

Copies of the filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, The Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, Tennessee Regulatory Authority, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Duquesne Light Company

[Docket No. ER00–822–000]

Take notice that December 16, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated December 15, 1999 with Consumers Energy Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Consumers Energy Company as a customer under the Tariff.

DLC requests an effective date of December 15, 1999, for the Service Agreement.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. Duquesne Light Company

[Docket No. ER00–823–000]

Take notice that on December 16, 1999, Duquesne Light Company (DLC) tendered for filing a Service Agreement dated December 15, 1999 with ACN Power, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds ACN Power, Inc. as a customer under the Tariff.

DLC requests an effective date of December 15, 1999, for the Service Agreement.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Duke Energy South Bay, LLC

[Docket No. ER00–824–000]

Take notice that on December 16, 1999, Duke Energy South Bay, LLC (DESB) tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, a revised Schedule A to the Reliability Must Run Agreement (the RMR Agreement) between DESB and the California Independent System Operator Corporation (the ISO) relating to the South Bay generating plant at Chula Vista, California.

DESB states that the revisions to Schedule A correct certain inaccuracies in the figures for reactive power in the currently effective version, which was originally filed by San Diego Gas & Electric Company (SDG&E) which formerly owned the South Bay plant. DESB further states that the corrections are acceptable to the ISO and to SDG&E, which, under the ISO Tariff, bears costs payable by the ISO and under the RMR Agreement.

DESB states that it has served a copy of its filing on the California Public Utilities Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. Consumers Energy Company

[Docket No. ER00–825–000]

Take notice that on December 16, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Firm and Non-Firm Point-to-Point Transmission Service to the City of Holland, Michigan Board of Public Works pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

Each agreement has an effective date of January 1, 2000.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. Dauphin Island Gathering Partners

[Docket No. MG99–26–001]

Take notice that on December 20, 1999, Dauphin Island Gathering Partners filed revised standards of conduct in response to the Commission's November 29, 1999 Order On Standards of Conduct. 89 FERC § 61,247 (1999).

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must filed a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33943 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Motions to Intervene, and Protests

December 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of Licenses.

b. *Project Nos.:* 487–022 and 1881–028.

c . *Date Filed:* December 7, 1999.

d. *Applicants:* PP&L, Inc. (PP&L) and PPL Holtwood, LLC (PPL Holtwood).

e. *Name of Projects:* Wallenpaupack and Holtwood.

f. *Locations:* Wallenpaupack: on the Wallenpaupack Creek and Lackawaxen River in Wayne and Pike Counties, Pennsylvania; Holtwood: on the Susquehanna River in Lancaster and York Counties, Pennsylvania. The projects do not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants' Contacts:* Paul E. Russell, Esq., PP&L, Inc., Two North Ninth Street, Allentown, PA 18101–1179, (610) 774–4254 and Donald A. Kaplan, Esq., Adam W. Gravley, Esq., Lisa H. Tucker, Esq., Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Suite 500, Washington, DC 20006, (202) 628–1700.

i. *FERC Contact:* Regina Saizan, (202) 219–2673, or e-mail address: *regina.saizan@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* January 28, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Numbers (487–022 and 1881–028) on any comments or motions filed.

k. *Description of Transfer:* Transfer of the licenses for these projects to PPL Holtwood is being sought in connection with a proposed corporate realignment under which PP&L will separate its generation and power marketing businesses from its transmission and distribution businesses. PP&L intends to retain certain existing non-project transmission and distribution facilities and easements relating to such transmission and distribution facilities located within the project boundaries.

The transfer application was filed within five years of the expiration of the license for Project No. 487. PP&L has filed a Notice of Intent to relicense Project No. 487 and has been approved by the Commission to use the alternative licensing process pursuant to 18 CFR Section 4.34(i). In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.*, at p. 31,438 n.318).

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33869 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene, Protests, and Additional Study Requests

December 23, 1999.

Take notice that the following hydroelectric application has been accepted by the Commission and is available for public inspection.

a. *Type of Application:* Major New License.

b. *Project No.:* 1895–007.

c. *Date filed:* June 30, 1998.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Columbia Hydroelectric Project.

f. *Location:* On the Broad and Congaree Rivers in Richland County and the City of Columbia, South Carolina. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neville O. Lorick, Vice President, Fossil & Hydro Operations, South Carolina Electric & Gas Company, 111 Research Drive Columbia, SC 29203, (803) 748–3000.

i. *FERC Contact:* Charles R. Hall at (202) 219–2853, charles.hall@ferc.fed.us.

j. Deadline for filing motions to intervene, protests and additional study requests is 60 days from the issuance date of this notice.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The project consists of the following existing facilities: (1) A 1,021-foot-long, 14-foot-high timber crib diversion dam; (2) a shallow, 265-acre reservoir located in the Broad River upstream from the diversion dam; (3) an 85-acre, 10-foot-deep, 150-foot-wide, 3.5-mile-long canal; (4) a 210-foot-long, granite-block masonry canal intake structure, containing 12 manually operated vertical lift gates to control the flow of water into the canal; (5) a granite-block masonry canal spillway containing two, 12-foot-wide Taintor gates separated by a 208-foot-long stoplog section; (6) a granite-block and brick masonry powerhouse, containing seven turbine-generator units with a total installed capacity of 10,600 killowatts, producing about 48 million kilowatthours annually; and (7) other appurtenances.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of Practice and Procedure, 18 CFR 385.210,385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene and must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower, Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33870 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

December 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2090–003.

c. *Date filed:* August 31, 1999.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Waterbury Project.

f. *Location:* On Little River in Washington County, Vermont. No Federal Lands used in this project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Craig T. Myotte, Green Mountain Power Corporation, 163 Action Lane, Colchester, VT 05446, (802) 660–5830.

i. *FERC Contact:* Robert Bell, E-mail address, robert.bell@ferc.fed.us, or telephone 202–219–2806.

j. *Deadline for filing scoping comments: February 12, 2000.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The existing project consists of: (1) 1,845-foot-long, 158-foot-high rolled earth embankment Waterbury Dam; (2) an impounding having a surface area of 1,330-acres, with a storage capacity of 64,700 acre-feet and a normal water surface elevation of 593.00 feet msl; (3) a submerged concrete intake structure; (4) two 205-foot-long, 54-inch diameter steel penstocks which connects to a 79-inch diameter penstock; (4) a powerhouse having one generating unit with an installed capacity of 5,520-kW; (5) a tailrace; (9) four-mile-long, 33-kV transmission line; and (7) appurtenant facilities.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Scoping Process.

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the

environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting: Wednesday, January 12, 2000, 2:00 PM, Chapel Conference Room, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, Vermont.

Evening Meeting: Wednesday, January 12, 2000, 7:30 PM, Chapel Conference Room, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, Vermont.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the DS1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Wednesday, January 13, 2000. We will meet at 8 AM at the project site.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33871 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 23, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license for the non-project use of project lands and waters.

b. *Project No.* 2230–028.

c. *Date Filed:* November 1, 1999.

d. *Applicant:* City and Borough of Sitka, Alaska.

e. *Name of Project:* Blue Lake Hydroelectric Project.

f. *Location:* Sitka, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brian Omann, Sitka Electric Department, 1306 Halibut Point Road, Sitka, AK 99835, (907) 747–6633.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 20 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2230–028) on any comments or motions filed.

k. *Description of Project:* to permit the construction of: a new valve system to be located in the existing pulp mill diffusion chamber, a non-project facility within the Commission-approved project boundary; and a 20-inch-diameter, buried pipeline across approximately 200 feet of project land owned by the City. The new pipeline would then be buried in a trench with four feet of cover within non-project lands adjacent to Pioneer and Sawmill Creek roads. The pipeline would emerge at a new mooring facility for tankers to be constructed at Silver Bay. The Anchorage District Corps of Engineers, on November 24, 1999, issued a permit to the City and Borough of Sitka for the construction of the proposed moorage facility.

After completion, the pipeline would be used to transport water from the project's Blue Lake reservoir to tankers for shipment. The proposed project is expected to withdraw approximately 14,000 acre-feet per year from the Blue Lake watershed. The maximum rate of water withdrawal from the project would be 10.6 million gallons per day.

l. *Locations of the application:* Copies of the application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33872 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2362–009.

c. *Date Filed:* December 9, 1999.

d. *Applicants:* Blandin Paper Company (BPC or transferor) and Minnesota Power, Inc. (MPI or transferee).

e. *Name of Project:* Blandin.

f. *Location:* On the Mississippi River, in the City of Grand Rapids, in Itasca County, Minnesota. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* For transferor—Mr. W. John Licke, Secretary and General Counsel, Blandin Paper Company, 115 S.W. First Street, Grand Rapids, MN 55744–3699, (218) 327–6210.

For transferee—Mr. Steve Tyacke, Assistant General Counsel, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, telephone (218) 723–3963

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* January 28, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2362–009) on any comments or motions filed.

k. *Description of Transfer:* BPC requests approval to transfer its license to MPI. The applicants state that the transfer relates to BPC's planned sale of the project to MPI under an Asset Purchase Agreement between the parties dated November 23, 1999.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33873 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[CA021–NOA; FRL–6517–6]

Adequacy Status of the Santa Barbara County, California Submitted Ozone Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the 1999 on-road mobile source emissions budgets specified in the submitted Santa Barbara County, California Ozone Attainment Plan (1998 Clean Air Plan) are adequate for conformity purposes. As a result of our finding, the Santa Barbara County Association of Governments and the Federal Highway Administration are required to use the 1999 motor vehicle emissions budgets specified in the submitted 1998 Ozone Attainment Plan for future conformity determinations.

DATES: This budget finding is effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments are available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Sam Agpawa, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1228 or *Agpawa.sam@epa.gov*.

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the California Air Quality Board on December 3, 1999 stating that the 1999 on-road mobile source emissions budgets specified in the submitted 1998 Santa Barbara County Ozone Attainment Plan are adequate for conformity purposes. This finding has also been announced on our conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not

produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review which is required by section 110(k)(1) of the Clean Air Act, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 17, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–33956 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed December 20, 1999 through December 23, 1999 pursuant to 40 CFR 1506.9.

EIS No. 990488, Draft EIS, AFS, NC, Croatan National Forest Revised Land and Resource Management Plan (1986), Implementation, Carteret Craven and Jones Counties, NC, Due: February 14, 2000, Contact: John Ramey (828) 257–4268.

EIS No. 990489, Draft EIS, BLM, OR, North Bank Habitat Management Area (NBHMA)/Area of Critical Environmental Concern (ACEC), Federally Endangered Columbian White-Tailed Deer (CWTD) and Special Status Species Habitat Enhancements to Ensure Viability Over Time, Implementation, OR, Due: February 14, 2000, Contact: Jim Luse (541) 440–4930.

EIS No. 990490, Final EIS, USA, AZ, Fort Huachuca Real Property Master Planning, Approval of Land Use and Real Estate Investment Strategies, Cochise County, AZ, Due: January 28, 2000, Contact: Gregory Brewer (703) 692–9220.

EIS No. 990491, Final EIS, USN, GU, Agana Naval Air Station Disposal and Reuse, Implementation, Guam, Due: January 28, 2000, Contact: John Bigay (808) 471–9338.

EIS No. 990492, Draft EIS, AFS, AK, Finger Mountain Timber Sales, Timber Harvesting, Implementation, US Coast Guard, NPDES and COE Section 10 and 404 Permits, Tongass National Forest, Sitka Ranger District, AK, Due: February 28, 1999, Contact: Lisa Winn (907) 747–6671.

EIS No. 990493, Draft EIS, AFS, OR, Tower Fire Recovery Project, Restoration and Salvage, Implementation, Umatilla National Forest, North Fork John Day Ranger District, Umatilla and Grant Counties, OR, Due: February 16, 2000, Contact: Janel Lacey (541) 427–5311.

EIS No. 990494, Final EIS, NPS, VA, Booker T. Washington National Monument (BOWA), General Management Plan, Implementation, Franklin County, VA, Due: January 28, 2000, Contact: Fred Herling (215) 597–1702.

EIS No. 990495, Draft Supplement, NOA, Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan, Updated Information, Reduction of Bycatch and Incidental Catch in the Atlantic Pelagic Longline Fishery, Due: February 14, 2000, Contact: Rebecca J. Lent (301) 713–2347.

Amendment Notice:

EIS No. 990397, Draft EIS, FAA, OH, Cleveland Hopkins International Airport, To Provide Capacity, Facilities, Highway Improvements and Enhancement to Safety, Funding, Cugahoga County, OH, Due: January 31, 2000, Contact: Ernest P. Guby (734) 487–7280. Revision of FR notice published on 10/29/1999: CEQ Comment Date extended from 12/29/1999 to 01/31/2000.

EIS No. 990413, Draft EIS, AFS, ID, Salmon River Canyon Project, Implementation, Nez Perce, Payette, Bitterroot and Salmon-Challis National Forests, Idaho County, ID, Due: January 19, 2000, Contact: Bill Shields (208) 983–1950. Revision to FR notice published on 11/5/1999: CEQ Comment Date has been extended from 12/20/1999 to 01/19/2000.

EIS No. 990426, Draft EIS, USA, CA, Oakland Army Base Disposal and Reuse Plan, Implementation, City of Oakland, Alameda County, CA , Due: January 17, 2000, Contact: Theresa Persick Arnold (703) 697–0216. Published FR 11/19/1999: Review Period Extended from 1/03/2000 to 01/17/2000.

Dated: December 27, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33996 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 13, 1999 through December 17, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65315–UT Rating EC2, Monroe Mountain Ecosystem Restoration Project, Implementation, Fishlake National Forest, Richfield Ranger District, Sevier and Piute Counties, UT.

Summary: EPA expressed environmental concerns with the proposed action due to potential significant impacts to water quality, sensitive fish habitat (Utah Bonneville cutthroat trout) and two regionally sensitive bird species. Also, we expressed concerns with the scope of alternatives lack of a detailed monitoring plan to determine if ecosystem restoration will actually be achieved, the analysis of cumulative impacts, and the limited approach to managing livestock and elk grazing on the area where aspen will be harvested.

ERP No. D–BIA–L65330–WA Rating EC2, White River Amphitheater Project, Construction and Operation of a 20,000 Seat Open-Air Amphitheater on the Muckleshoot Indian Reservation, COE Section 404 Permit and NPDES Permit, Seattle-Tacoma, WA.

Summary: EPA expressed environmental concerns due to air quality, water quality and noise impacts. EPA recommended that the

final EIS provide an expanded evaluation of environmental effects, clearly identify mitigation measures (including monitoring efforts), and commit to implement appropriate mitigation measures.

ERP No. D–COE–C32035–00 Rating EO2, New York and New Jersey Harbor Navigation Study, Identify, Screen and Select Navigation Channel Improvements, NY and NJ.

Summary: EPA raised objections based on the significant adverse impacts that could result from the expansion of port facilities and related infrastructure, that would be associated with increasing cargo movement in the Port. EPA also requested additional information, including information on cumulative impacts, the no action alternative, and air quality impact analyses. EPA also requested a formal commitment by the involved agencies to move forward with a comprehensive port improvement plan EIS.

ERP No. D–FHW–C40151–NY Rating EC2, County Road (Mill Hill Road and Glen Road) Improvements, From Howard Drive to State Route 9N including a New Bridge over the East Branch of the Ausable River, Funding and COE Section 404 Permit, Essex County, NY.

Summary: EPA expressed environmental concerns about wetlands, water quality, and cumulative impacts associated with the project. EPA requested that these issues and other issues be addressed in the final EIS.

ERP No. D–FHW–G40153–NM Rating LO, New Mexico Forest Highway 45 (Forest Road 537) known locally as the Sacramento River Road, Improvements from Sunspot to Timberon, Otero County, NM.

Summary: EPA has no objections to the preferred alternative as proposed in the DEIS.

ERP No. D–FHW–K40239–CA Rating EC2, Interstate 215 (I–215) Transportation Improvements, From the short segments of CA–60 and CA–91 in the Cities of Riverside and Moreno Valley, Funding, Riverside County, CA.

Summary: EPA expressed environmental concerns that, both in the short-term and over the long-term, air quality could be impacted by implementing either of the build alternatives. In addition, in the long-term, the project's stated purpose of congestion relief may not be realized.

ERP No. D–NPS–L65331–WA Rating LO, Whitman National Historic Site, General Management Plan, Development Concept Plan, Implementation, Walla Walla County, WA.

Summary: EPA expressed lack of objections and suspects the proposed action will improve existing conditions.

ERP No. DS–UAF–A11074–00 Rating LO, Evolved Expendable Launch Vehicle Program, Updated Information, To Allow the Addition of up to Five Strap-on Solid Rocket Motors (SRM) to the Atlas V and Delta IV Lift Vehicle, Launch Locations are Cape Canaveral Air Station, Brevard County, FL and Vandenberg Air Force Base (AFB), Santa Barbara County, CA.

Summary: EPA has no objection to the proposed action, some technical/clarification items were provided.

Final EISs

ERP No. F–DOE–A09828–00 Surplus Plutonium Disposition (DOE/EIS–0283) for Siting, Construction and Operation of three facilities for Plutonium Disposition, Possible Sites Hanford, Idaho National Engineering and Environmental Laboratory, Pantex Plant and Savannah River, CA, ID, NM, SC, TX and WA.

Summary: EPA has no objection to the action as proposed.

ERP No. FR–BOP–E81033–MS Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security U. S. Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE Section 404 Permit, Yazoo City, Yazoo County, MS.

Summary: EPA expressed environmental concerns regarding potential wetland impacts and requested additional clarification and mitigation information.

Dated: December 27, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33997 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6517–7]

Gulf of Mexico Program Policy Review Board Meeting.

AGENCY: Environmental Protection Agency (US EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92–463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The PRB meeting will be held on Wednesday, January 19, 2000 from 1 p.m. to 5 p.m. and on Thursday, January 20, 2000 from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 101 South Adams Street, Tallahassee, Florida (850) 224–5000.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Overview of the GMP's Objectives, Sub-objectives, Annual Performance Goals & Work Plan for FY 2000 and 2001, Overview of Successes and Issues in 1999, GMP Funding & Support—FY 2000 and Beyond, and Discussion of Gulf Regional Awards and Gulf-wide Art Contest.

The meeting is open to the public.

Dated: December 14, 1999.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 99–33954 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6518–4]

Proposed CERCLA Administrative Cost Recovery Settlement; The Pyridium Mercury Disposal Superfund Sites #1 & #2, Village of Harriman, Orange County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Pyridium Mercury Disposal Superfund Sites #1 & #2 located in the Village of Harriman, Orange County, New York with the following settling party: the Estate of William S. Lasdon. The settlement requires the settling party to pay $1,280,000 to the Hazardous Substance Superfund in partial reimbursement of EPA's past response costs incurred with respect to the Sites. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607 (a) for past response costs. For thirty (30) days

following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before January 31, 2000.

ADDRESSES: The proposed settlement is available for public inspection at USEPA, 290 Broadway, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866, (212) 637–3169. Comments should reference the Pyridium Mercury Disposal Superfund Sites #1 & #2 located in the Village of Harriman, Orange County, New York, EPA Index No. CERCLA–02–99–02007, and should be addressed to Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866. The Agency's response to any comments received will be available for public inspection at the Monroe Free Public Library located at 44 Millpond Parkway, Monroe, NY 10950 (914) 783–4411, and at the EPA, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866, (212) 637–3169.

SUPPLEMENTARY INFORMATION: None.

Dated: December 14, 1999.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 99–33955 Filed 12–29–99; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6517–2]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; South Bay Asbestos Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(I) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the South Bay Asbestos Site in the Alviso district of San Jose, California was executed by the Agency on December 16, 1999. The proposed settlement resolves an EPA claim under Sections 106 and 107 of CERCLA against the following Respondents: CertainTeed Corporation and T&N Limited; T&N Industries Inc. The proposed settlement was entered into under the authority granted EPA in Section 122(h) of CERCLA, and requires the Respondents to pay $800,000 to the Hazardous Substances Superfund in settlement of past costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: Environmental Protection Agency, Region 9, Superfund Record Center, 4th floor, 95 Hawthorne Street, San Francisco, California, 94105.

DATES: Comments must be submitted on or before January 31, 2000.

ADDRESSES: The proposed settlement as set forth in the Administrative Consent Order may be obtained from Jeannie Cervera, Assistant Regional Counsel (ORC–2), Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments regarding the proposed settlement should be sent to Jeannie Cervera at the address provided above, and should reference the South Bay Asbestos site located in San Jose, California (EPA Docket No. 99–06).

FOR FURTHER INFORMATION CONTACT: Jeannie Cervera, Assistant Regional Counsel, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1395.

Dated: December 17, 1999.

Keith Takata,

Director, Superfund Division.

[FR Doc. 99–33953 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6500–4]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application for approval of the Maine Pollutant Discharge Elimination System.

SUMMARY: The State of Maine has submitted a request for approval of the Maine Pollutant Discharge Elimination System (MEPDES) Program pursuant to Section 402 of the Clean Water Act. If EPA approves the MEPDES program, the State will administer this program, which regulates the discharges of point sources to navigable waters, subject to continuing EPA oversight and enforcement authority, in place of the National Pollutant Discharge Elimination System (NPDES) program now administered by EPA in Maine. Today, EPA is requesting comments on the State's request and providing notice of a public hearing and comment period on that proposal. EPA will either approve or disapprove the State's request after considering all comments it receives.

DATES: EPA Region I will hold a public hearing on February 16, 2000 beginning at 7:00 p.m. for submission of oral or written comments on Maine's request for program approval. EPA Region I will continue to accept written comments through February 29, 2000 at its office in Boston, MA. EPA requests that copies of such written comments also be provided to the Maine Department of Environmental Protection (MEDEP).

ADDRESSES: The February 16, 2000, public hearing will be held at the Augusta Civic Center (Capital Pine Tree Room), Augusta, ME.

Written comments must be submitted to: Stephen Silva, USEPA Maine State Office, 1 Congress Street—Suite 1100 (CME), Boston, MA 02114–2023. EPA requests that a copy of each comment be submitted to: Dennis Merrill, MEDEP, Statehouse Station #17, Augusta, ME 34003.

Copies of documents Maine has submitted in support of its program approval request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at: EPA Region I, 11th Floor Library, 1 Congress Street—Suite 1100, Boston, MA 02114–2023, 617–918–1990 or 1–888–372–5427; and MEDEP, Ray Building, Hospital Street, Augusta, ME.

FOR FURTHER INFORMATION CONTACT: Stephen Silva at the address listed above or by calling (617) 918–1561 or Dennis Merrill at the address listed above or by calling (207) 287–7788. The State's submissions (which comprise approximately 128 pages in the application, 382 pages in the appendix, and 11 pages in a supplement with an additional 688 pages of attachments) may be copied at the MEDEP office in Augusta, or EPA office in Boston, at a cost of 15 cents per page. A copy of the entire initial submission (not including the supplement) may be obtained from the MEDEP office in Augusta for a $20 fee.

Part of the State's program submission and supporting documentation is available electronically at the following Internet address:

http://www.state.me.us/dep/blwq/delegation/delegation.htm

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (Act) created the NPDES program under which EPA may issue permits for the discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that EPA may approve a State to administer an equivalent State program upon a showing that the State has the necessary authority and a program sufficient to meet the Act's requirements. The basic requirements for State program approval are listed in 40 CFR part 123. EPA Region I considers the documents submitted by the State of Maine complete and believes they address each of the requirements of the regulations found at 40 CFR part 123. EPA will take final action after all public comments have been considered.

By letter dated October 13, 1999, the Governor of Maine requested NPDES program approval and submitted a program description (including funding, personnel requirements and organization, and enforcement procedures), an Attorney General's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region I and the Commissioner of MEDEP. EPA received this package of materials on November 18, 1999. By letter dated December 15, 1999, Maine submitted a supplement to its application describing its Continuing Planning Process (cpp). This supplement was received by the EPA on December 17, 1999 and makes the application complete as of December 17, 1999.

As discussed in more detail below, Maine is applying to implement and enforce its MEPDES program in Indian country. In determining that Maine's application is complete, the EPA has not made any decision regarding this issue. Rather, the EPA will make its decision on this issue as part of its decision approving or disapproving Maine's program, after consideration of public comments.

Maine is applying to administer both the permit program for direct dischargers to State waters and the pretreatment program (which covers industrial sources discharging to publicly owned treatment works). However, Maine has asked to assume responsibility for these programs in phases, pursuant to CWA 402(n)(4). Maine's submission appears to meet the requirements for such a phased approach. Thus, any approval of the program regarding direct dischargers would take effect immediately following approval. If approved, responsibility for operating the pretreatment program would be transferred to the State only later—effective December 31, 2000, unless an earlier transfer date was announced in the **Federal Register**. Note, however, that a decision whether to transfer the entire program (direct dischargers and pretreatment) would be made following the current public comment period. Thus, any comments related to any part of the State's program must be submitted during the current public comment period. Maine's MEPDES program generally covers all discharges of pollutants subject to the federal NPDES program, but does not regulate the disposal of sewage sludge. If it approves the State program, EPA will continue to regulate sewage sludge disposal in Maine in accordance with Section 405 of the Act and 40 CFR Part 503.

Pursuant to 40 CFR 123.21 and 123.61(b), the EPA must approve or disapprove the submitted Maine program (which has been determined to be complete) within 90 days of receipt, unless this review period is extended by EPA-State agreement. To obtain approval, the State must show, among other things, that it has authority to issue permits that comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period, EPA's Regional Administrator will decide to approve or disapprove the MEPDES program, based on the requirements of section 402 of the CWA and 40 CFR Part 123. If he approves the Maine program, the Regional Administrator will so notify the State. Notice would be published in the **Federal Register** and, as of the date of program approval, EPA would suspend issuance of NPDES permits in Maine (except for: sewage sludge permits under CWA Section 405 and 40 CFR part 503 and permits for which EPA has issued public notice prior to program approval). EPA would, however, retain the right to object to MEPDES permits proposed by MEDEP, and if the objections are not resolved, issue the permit itself. EPA would also retain jurisdiction over all existing NPDES permits it has issued in Maine until MEDEP reissued them as MEPDES permits. EPA would also oversee the State's implementation of other aspects of the program. Finally, the EPA would retain its full inspection and enforcement authorities as provided for in the CWA, to address any CWA violations in Maine. These authorities would continue to operate in addition to State inspection and enforcement authorities. If the program is approved, the EPA and State will enter into a Memorandum of Agreement (MOA) specifying particular State and EPA responsibilities in program implementation, including enforcement, but this MOA is not intended to restrict EPA's statutory enforcement responsibilities or to create any rights for persons not a party to the MOA.

If EPA's Regional Administrator disapproves the MEPDES program, he will notify MEDEP of the reasons for disapproval and of any revisions or modifications to the program which are necessary to obtain approval.

Public Hearing Procedures

The following procedures will be used at the January 16, 2000 public hearing:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may impose reasonable time limits. Any person may submit written statements or documents for the record at the hearing or otherwise during the comment period.

2. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

3. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

4. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of

this Notice to allow any person time to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing or other comments submitted during the comment period.

5. Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record. Statements should summarize any extensive written materials. All comments received by EPA Region I by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Maine request for NPDES program approval.

Summary of the Maine Pollution Discharge Elimination System (MEPDES) Permitting Program Submission

The MEPDES program is fully described in documents the State has submitted in accordance with 40 CFR 123.21, *i.e.*, a Memorandum of Agreement (MOA) for execution by MEDEP and EPA; a Program Description outlining the procedures, personnel and protocols that will be relied on to run the State's permitting and pretreatment program; a Statement signed by the Attorney General that describes the State's legal authority to administer a program equivalent to the federal NPDES program; and a description of the State's Continuing Planning Process.

I. The EPA/MEDEP MOA

The requirements for MOAs are found in 40 CFR 123.24. A Memorandum of Agreement is a document signed by both the State and the EPA. The MOA specifies program responsibilities and provides structure for the State's program management and EPA's program oversight. The MOA submitted by the State of Maine has been signed by the Commissioner of the Department of Environmental Protection. The Regional Administrator of U.S. EPA Region I will sign the document if the program has been determined approvable and all comments received during the comment period have been considered.

II. Program Description

A program description submitted by a State seeking program approval must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the State program; a description of the organization, staffing and position descriptions for the lead State agency; and itemized costs and funding sources for the program. It must describe all applicable State procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the State's compliance and enforcement tracking program. The State has submitted such a program description.

III. Attorney General's Statement

An Attorney General's Statement is required and described in regulations found at 40 CFR 123.23. Legal counsel representing the State must certify that the State has lawfully adopted statutes and regulations that provide the State agency with the legal authority to administer a program in compliance with 40 CFR part 123. The Attorney General's Statement from Maine certifies that the State has the legal authority to administer the MEPDES program in accordance with the regulations in 40 CFR part 123.

The Attorney General's Statement also includes the State's analysis, submitted pursuant to 40 CFR 123.23(b), asserting that the State has authority to implement the MEPDES program in Indian country. The Statement argues that the Maine Indian Claims Settlement Act (MICSA), 25 U.S.C. 1721–35, and the Maine Implementing Act, 30 MRSA §§ 6201–14, grant the State jurisdiction to enforce the program on the reservations and other Indian country of the five federally-recognized Indian tribes in the State. The State also asserts that the federal trust responsibility to federally-recognized tribes does not operate in Maine. EPA is seeking comment on the Attorney General's analysis regarding the State's jurisdiction and the EPA role in Indian country in Maine.

Finally, in anticipation of the State's assertion of jurisdiction in Indian country, EPA has already initiated consultations with representatives of the federally-recognized tribes in Maine pursuant to EPA's Indian policy of November 8, 1984 and the President's memorandum of April 1, 1993 on government-to-government relations with Indian tribes. While those consultations have been informative, EPA wishes to remind the public that any comments that any party wishes EPA to consider and address on the record in this action must be submitted during the comment period provided for in this notice.

IV. Continuing Planning Process

The State has submitted a description of its Continuing Planning Process in accordance with CWA Section 303(e) and 40 CFR 130.5. This document describes the State's planning processes for developing effluent limitations, total maximum daily loads (TMDLs) and water quality standards, among other things. This document is being separately reviewed by EPA pursuant to CWA Section 303(e) and 40 CFR 130.5, but also has been included as part of the State's application for the NPDES Program.

Comments on the Described Program

The program submitted by the State of Maine has been determined to be complete in accordance with the regulations found at 40 CFR part 123. EPA and MEDEP want to encourage public participation in this authorization process so that the citizens of Maine will understand the program in their State. Therefore, EPA requests that the public review the program that MEDEP has submitted and provide any comments they believe are appropriate. EPA will consider all comments on the MEPDES program and/or its authorization in its decision.

Other Federal Statutes

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires all federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Agency must consult with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) an all federal undertakings that have the potential to cause effects on historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations controlling Section 106 consultation are found at 36 CFR Part 800 (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal undertaking within the meaning of the NHPA. The EPA is currently in discussions with the appropriate SHPO and THPOs regarding its determination that approval of the State permitting program itself would have no effect on the preservation of historic properties within the State of Maine.

Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), as appropriate, to insure their

actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the designated critical habitat of such species. Section 7 also requires federal agencies to confer on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Regulations controlling interagency cooperation under Section 7 are codified at 50 CFR Part 402 (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal action subject to these requirements, however, subsequent State MEPDES permit actions would not. Pursuant to the ESA, the EPA is currently engaged in informal consultation and conferencing with both FWS and NMFS.

Magnuson-Stevens Fishery Conservation and Management Act

Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) on agency actions that may adversely affect essential fish habitat. Regulations controlling consultation under Section 305(b)(2) are codified at 50 CFR Part 600, Subpart K (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal actions requiring consultation, however, subsequent State MEPDES permit actions would not. Pursuant to the Magnuson-Stevens Act, the EPA is currently engaged in consultation with NMFS.

Coastal Zone Management Act

Pursuant to section 307(c)(1)(C) of the Coastal Zone Management Act, Federal agencies carrying out an activity which affects any land or water use or natural resource with the Coastal Zone of a state with an approved Coastal Zone Management Plan must determine whether that activity is, to the maximum extent practicable, consistent with the enforceable requirements of the Plan and provide its determination to the State agency responsible for implementation of the Plan for review. Maine's approved Coastal Zone Management Plan is administered by the Maine Office of State Planning. Maine's permit actions are themselves subject to consistency review under State law; thus approval of the MEPDES program would not affect Maine's Coastal Zone and would be consistent with the enforceable requirements of Maine's Coastal Zone Management Plan.

Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an "approval", within the meaning of the APA, constitutes a "license," which, in turn, is the product of an "adjudication". For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even is the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed MEPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: December 20, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–33776 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 99–295, FCC 99–404]

Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, Inter-LATA Service in the State of New York

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants Bell Atlantic's section 271 application for authority to enter the inter-LATA toll market in the state of New York. The Commission grants Bell Atlantic's application based on our conclusion that Bell Atlantic has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or Andrea Kearney, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580, or via the Internet at *cpabo@fcc.gov* or *akearney@fcc.gov*, respectively. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, CY–A257, 445 12th Street, Washington, DC 204554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This document is a brief description of the Commission's Memorandum Opinion and Order adopted December 21, 1999, and released December 22, 1999. The full text also may be obtained through the World Wide Web, at *http://www.fcc.gov/ccb/Orders/index6.html;* or may be purchased from the Commission's copy contractor, International Transcription Service Inc. (ITS), CY B–400, 445 12th Street, SW, Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. *The New York Commission's Evaluation.* The New York Commission advised the Commission that, following two and one-half years of review, testing, and process improvements, Bell Atlantic-NY had met the checklist requirements of section 271(c). Specifically, the New York Commission stated that Bell Atlantic had met its obligation under section 271(c)(1)(A) by entering into more than 75

interconnection agreements approved by the New York Commission, and that competitive LECs are providing facilities-based local exchange service. The New York Commission also stated that the record developed in the New York proceeding establishes that Bell Atlantic has a legal obligation to provide the 14 checklist items, and it is meeting that obligation.

2. *The Department of Justice's Evaluation.* The Department of Justice concluded that it did not have substantial concerns about the ability of facilities-based carriers and firms that wish to resell Bell Atlantic's retail services to enter the local telecommunications markets in New York. It also concluded that Bell Atlantic had made great progress in opening the market to competition through the use of unbundled network elements, but two major areas of deficiency, operations support systems (OSS) and access to unbundled local loops, remain as important obstacles to local competition. As a result, the Department stated that this Commission could properly deny this application or, as an alternative, approve the application subject to carefully drafted conditions under which Bell Atlantic would be permitted to offer interLATA services only after taking specified steps and demonstrating that its performance has met appropriate requirements.

3. *Compliance with Section 271(c)(1)(A).* We conclude that Bell Atlantic demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in New York. Specifically, we find that AT&T, MCI World Com, and Cablevision Lightpath provide telephone exchange service either exclusively or predominantly over their own facilities to residential subscribers and to business subscribers. The New York Commission also concludes that Bell Atlantic has met the requirements of section 271(c)(1)(A). None of the commenting parties, including the competitors cited by Bell Atlantic in support of its showing, challenges Bell Atlantic's assertion in this regard.

4. *Checklist Item 1—Interconnection.* We conclude that Bell Atlantic satisfies the requirements of checklist item 1. Pursuant to this checklist item, Bell Atlantic must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic. To do so, BellSouth must permit carriers to use any available method of interconnection at any available point in BellSouth's network. We find that Bell Atlantic demonstrates that it provides interconnection at all technically feasible points on its network. We likewise find that Bell Atlantic adequately demonstrates that it provides collocation in New York in accordance with the Commission's rules. Furthermore, interconnection between networks must be equal in quality whether the interconnection is between Bell Atlantic and an affiliate, or between Bell Atlantic and another carrier. Bell Atlantic demonstrates that it provides interconnection that meets this standard.

5. Bell Atlantic satisfies the pricing requirements of checklist item 1. Pursuant to this checklist item, Bell Atlantic must make physical and virtual collocation arrangements available at rates that are just, reasonable, and nondiscriminatory. We find that Bell Atlantic's collocation arrangements meet this test because Bell Atlantic offers cageless physical collocation to those competitive LECs that request it at just, reasonable, and nondiscriminatory prices. With respect to security measures, Bell Atlantic's collocation rates are not discriminatory because Bell Atlantic does not impose this cost. In addition, Bell Atlantic complies with the Commission's requirements that it allocate its space preparation and related up-front costs among competing carriers on a pro-rata basis. The New York Commission has set prices for a competing carrier's up-front site preparation costs at TELRIC-based costs, and ensured that the initial competitor to collocate will not bear the complete up-front collocation costs.

6. *Checklist Item 2—Access to Unbundled Network Elements.* We conclude that Bell Atlantic satisfies the requirements of checklist item 2. For purposes of the checklist, Bell Atlantic's obligation to provide "access to unbundled network elements," or the individual components of the telephone network, is comprised of three aspects. First, to fulfill its nondiscrimination checklist obligation, Bell Atlantic must provide access to its operations support systems (OSS), meaning the systems, databases and personnel necessary to support the elements or services. Nondiscriminatory access ensures that new entrants have the ability to order service for their customers and communicate effectively with Bell Atlantic regarding basic activities such as placing orders and providing maintenance and repair for customers. For each of the primary OSS functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance, Bell Atlantic must provide access that enables competing carriers to perform the function in substantially the same time and manner as Bell Atlantic or, if there is not an appropriate retail analogue in Bell Atlantic's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

7. As an initial matter, Bell Atlantic demonstrates that it provides documentation and technical assistance necessary for new entrants to connect with its OSS, and a change management process that provides information necessary for competing carriers to modify their systems and procedures when Bell Atlantic changes its OSS. With respect to pre-ordering, or the activities that a competing carrier undertakes to gather and verify the information necessary to place an order, Bell Atlantic demonstrates through evidence of actual commercial usage and results of independent third-party testing that it has deployed operationally ready interfaces and systems that offer nondiscriminatory access to pre-ordering OSS functions. Specifically, Bell Atlantic's pre-ordering interfaces and systems enable competing carriers to retrieve customer service records, validate addresses, select and reserve telephone numbers, assess the services and features available to customers, retrieve due date information, determine whether a loop is capable of supporting advanced technologies, and view a customers' directory listing.

8. In terms of the interfaces and systems that enables competing carriers to place an order for service, Bell Atlantic demonstrates through performance data and third-party testing that it return timely order confirmation and rejection notices, processes manually handled orders accurately, provides jeopardy information and order completion notification, and is capable of handling reasonably foreseeable demand volumes. In terms of provisioning, performance data and third-party test results demonstrate that Bell Atlantic provisions competing carriers' customers orders in substantially the same time and manner that it provisions orders for its own retail customers.

9. In addition, with respect to maintenance and repair, Bell Atlantic demonstrates through commercial usage and third-party test results that its interfaces and systems enable competing carriers to create, modify, and cancel trouble tickets, and to request that Bell Atlantic test a customer's circuit, in substantially the same time and manner as Bell Atlantic's retail operations. Similarly, Bell

Atlantic resolves problems associated with customers of competing carriers in substantially the same time and manner and at the same level of quality that it performs repair work for its own customers. Finally, with respect to billing, Bell Atlantic demonstrates that it provides complete and accurate reports on the service usage of competing carriers' customers in the same manner that Bell Atlantic provides such information to itself.

10. Second, pursuant to the checklist, Bell Atlantic must provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Using evidence of actual commercial usage and the results of independent third-party testing, Bell Atlantic demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

11. Bell Atlantic satisfies the pricing requirements of checklist item 2. In order to fulfill its obligations under this checklist item, Bell Atlantic must provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. This checklist item ensures that new entrants are not placed at a competitive disadvantage due to discriminatory prices for network elements. The Commission has determined that prices for unbundled network elements must be based on Bell Atlantic's forward-looking, long-run incremental costs, or TELRIC (Total Element Long Run Incremental Cost) for each network element.

12. We find that Bell Atlantic demonstrates that the pricing of its unbundled network elements complies with TELRIC. Specifically, Bell Atlantic's prices for switches and loops offered as unbundled network elements are priced pursuant to a forward-looking, long-run incremental cost methodology.

13. In addition, we do not find that the contract termination liability provisions contained in Bell Atlantic's customer-specific arrangements (CSAs) constitute an unreasonable or discriminatory condition or limitation on the resale of its telecommunications services. We also find that Bell Atlantic is not required to provide an avoided-cost discount on its wholesale DSL offering because it is not a retail service subject to discount obligations.

13. *Checklist Item 3—Access to Poles, Ducts, Conduits, and Rights-of-Way.* Based on the evidence in the record, we find that Bell Atlantic demonstrates that it is providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms, and conditions in accordance with the requirements of section 224, and thus, satisfies the requirements of checklist item 3. The New York Commission concluded that Bell Atlantic provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way in compliance with this checklist item.

14. *Checklist Item 4—Unbundled Local Loops.* Bell Atlantic satisfies the requirements of checklist item 4. Local loops are the wires, poles, and conduits that connect the telephone company end office to the customer's home or business. To satisfy the nondiscrimination requirement under checklist item 4, Bell Atlantic must demonstrate that it can efficiently furnish unbundled local loops to other carriers within a reasonable time frame, with a minimum level of service disruption, and at the same level of service quality it provides to its own customers. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.

15. Bell Atlantic provides evidence and performance data establishing that it can efficiently furnish unbundled loops, for the provision of both traditional voice services and various advanced services, to other carriers in a nondiscriminatory manner. More specifically, Bell Atlantic establishes that it misses fewer new loop installation appointments for competing carriers than it does for its retail customers. In addition, Bell Atlantic demonstrates that the new loops it installs are of substantially the same quality as the loops it provides to its retail customers. Bell Atlantic also demonstrates that it provides coordinated cutovers of loops, *i.e.*, hot cuts, to competing carriers within the prescribed time interval at least 90 percent of the time; that in no more than five percent of cases has the hot cut resulted in a service disruption; and that less than two percent of lines provisioned through hot cuts have been the subject of installation trouble reports. Additionally, Bell Atlantic establishes that it provides loop maintenance and repair functions to competitors in substantially the same time and manner as it provides them to its retail customers. Although due to unique circumstances present in this application we do not examine Bell Atlantic's provision of xDSL-capable loops separately, we provide guidance as to the evidentiary showing we would find most persuasive in evaluating future applicants' checklist compliance with respect to xDSL-capable loops.

16. *Checklist Item 5—Unbundled Local Transport.* Based on the evidence in the record, the Commission concludes that Bell Atlantic provides both shared and dedicated transport in compliance with the requirements of this checklist item. The New York Commission also finds that Bell Atlantic is in compliance with this checklist item. We are not persuaded by the assertions of some commenters that Bell Atlantic fails to provide dedicated local transport in a timely manner. We cannot accept the assertion by a number of these parties that the provision of special access should be considered for purposes of determining checklist compliance in this proceeding. Nevertheless, to the extent that parties are experiencing delays in the provisions of special access services ordered from Bell Atlantic's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 compliant process.

17. *Checklist Item 6—Unbundled Local Switching.* Bell Atlantic satisfies the requirements of checklist item 6. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services. We find that Bell Atlantic satisfies the requirements of checklist item 6, because Bell Atlantic demonstrates that it provides all of the features, functions, and capabilities of the switch.

18. *Checklist Item 7—911/E911/ Directory Assistance/Operator Services.* Based on the evidence submitted in the record, the Commission concludes that Bell Atlantic demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item 7. We note that no commenter disputes Bell Atlantic's compliance with this portion of checklist item 7, and the New York Commission concludes that Bell Atlantic is providing nondiscriminatory access to 911/E911. We further conclude that Bell Atlantic demonstrates that it provides directory assistance services in accordance with the requirements of

checklist item 7. The New York Commission concludes that Bell Atlantic satisfies this portion of checklist item 7. We are not persuaded by commenters' arguments that Bell Atlantic fails to provide adequately directory assistance and operator services. To the extent that Bell Atlantic has not adequately addressed this problem, we note that the present record does not indicate that there is a widespread problem. Only two commenters raise this objection, suggesting the difficulty is of limited competitive consequence. In fact, several parties support Bell Atlantic's assertion of compliance with this checklist item. Accordingly, we conclude that these objections are not sufficient to conclude that Bell Atlantic has failed to comply with the requirements of checklist item 7.

19. *Checklist Item 8—White Pages Directory Listings.* Bell Atlantic satisfies the requirements of checklist item 8. White pages are the directory listings of telephone numbers of residences and businesses in a particular area. This checklist item ensures that white pages listings for customers of different carriers are compatible, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider. Bell Atlantic demonstrates that its provision of white pages listings to customers of competitive LECs is nondiscriminatory in terms of their appearance and integration, and that it provides white pages listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.

20. *Checklist Item 9—Numbering Administration.* Bell Atlantic satisfies the requirements of checklist item 9. Telephone numbers are currently assigned to telecommunications carriers based on the first three digits of the local number, known as "NXX" codes. To fulfill the nondiscrimination obligation in checklist item 9, Bell Atlantic must comply with the numbering administration guidelines, plan, or rules. This checklist item ensures that other carriers have the same access to new telephone numbers as Bell Atlantic. Bell Atlantic demonstrates that it has adhered to industry guidelines and the Commission's requirements.

21. *Checklist Item 10—Databases and Associated Signaling.* Bell Atlantic satisfies the requirements of checklist item 10. Databases and associated signaling refer to the call-related databases and signaling systems that are used for billing and collection or the transmission, routing, or other provision of a telecommunications service. To fulfill the nondiscrimination obligation in checklist item 10, Bell Atlantic must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that other carriers have the same ability to transmit, route, complete, and bill for telephone calls as Bell Atlantic. Bell Atlantic demonstrates that it provides other carriers nondiscriminatory access to its: (1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion or, in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems; and to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment.

22. *Checklist Item 11—Number Portability.* Bell Atlantic satisfies the requirements of checklist item 11. Number portability enables consumers to take their phone number with them when they change local telephone companies. Bell Atlantic demonstrates that it provides number portability to consumers without impairment of quality, reliability, or convenience.

23. *Checklist Item 12—Dialing Parity.* Based on the evidence in the record, we find that Bell Atlantic demonstrates that it provides local dialing parity in accordance with the requirements of section 251(b)(3) and thus satisfies the requirements of this checklist item. No commenter challenges Bell Atlantic's assertion that it provides local dialing parity. Furthermore, the New York Commission concludes that Bell Atlantic meets the requirements of this checklist obligation.

24. *Checklist Item 13—Reciprocal Compensation.* Bell Atlantic satisfies the requirements of checklist item 13. Pursuant to this checklist item, Bell Atlantic must compensate other carriers for the cost of transporting and terminating a local call from Bell Atlantic. Alternatively, Bell Atlantic and the other carrier may enter into an arrangement whereby neither of the two carriers charges the other for terminating local traffic that originates on the other carrier's network. This checklist item is important to ensuring that all carriers that originate calls bear the cost of terminating such calls. Bell Atlantic demonstrates that it has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and that it is making all required payments in a timely fashion.

25. *Checklist Item 14—Resale.* Bell Atlantic satisfies the requirements of checklist item 14. This checklist item requires Bell Atlantic to offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations so that other carriers may resell those services to an end user. This checklist item ensures a mode of entry into the local market for carriers that have not deployed their own facilities. Bell Atlantic demonstrates that it offers all of its retail services for resale at wholesale rates without unreasonable or discriminatory conditions or limitations. Bell Atlantic also shows that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services, and provisions resale services on a nondiscriminatory basis.

26. *Section 272 Compliance.* Bell Atlantic demonstrates that it will comply with the requirements of section 272. Pursuant to section 271(d)(3), Bell Atlantic must demonstrate that it will comply with the structural, transitional, and non-discriminatory requirements of section 272, as well as certain requirements governing its marketing arrangements. Bell Atlantic shows that it will provide interLATA telecommunications through structurally separate affiliates, and that its BOCs will operate in a non-discriminatory manner with respect to these affiliates and unaffiliated third parties. In addition, Bell Atlantic demonstrates that it will comply with public disclosure requirements of section 272, which requires Bell Atlantic to post on the Internet certain information about transactions between its affiliates and BOCs. Finally, Bell Atlantic demonstrates compliance with the joint marketing requirements of section 272.

27. *Public Interest Standard.* We conclude that approval of this application is consistent with the public interest, convenience, and necessity. While no single factor is dispositive in our public interest analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition. We note that a strong public interest showing cannot overcome failure to demonstrate compliance with one or more checklist items.

28. Among other factors, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of

this Application. We find that, consistent with our extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. We thus disagree with commenters' arguments that the public interest would be disserved by granting Bell Atlantic's application because the local market in New York has not yet truly been opened to competition. We also find that the record confirms our view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

29. Another factor that could be relevant to our analysis is whether we lack sufficient assurance that markets will remain open after grant of application. We find that the performance monitoring and enforcement mechanisms developed in New York, in combination with other factors, provide strong assurance that Bell Atlantic will continue to satisfy the requirements of section 271 after entering the long distance market. Where, as here, a BOC relies on performance monitoring and enforcement mechanisms to provide such assurance, we will review the mechanisms involved to ensure that they are likely to perform as promised. We conclude that these mechanisms have a reasonable design and are likely to provide incentives sufficient to foster post-entry checklist compliance. We base this predictive judgment on the fact that the plan has the following important characteristics: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data is accurate. Parties to this proceeding identify numerous criticisms relating to the structure of these mechanisms, but none are sufficient to cause us to conclude that the plan will fail to foster post-entry compliance with the checklist requirements.

30. Consistent with our accounting rules with respect to antitrust damages and certain other penalties paid by carriers, we conclude that Bell Atlantic should not be permitted to reflect any portion of the bill credits associated with these enforcement mechanisms as expenses under the revenue requirement for interstate services of the Bell Atlantic incumbent LEC. We also conclude that other concerns identified by commenters do not convince us that grant of this application would be inconsistent with the public interest. Finally, we have determined in a separate order that Bell Atlantic's provisions of National Directory Assistance is permissible and consistent with section 271(g)(6) of the Act, and conclude that any uncertainty about Bell Atlantic's past compliance with this provisions is not grounds for denying the application.

31. *Section 271(d)(6) Enforcement Authority.* Congress sought to create incentives for BOCs to cooperate with competitions by withholding long distance authorization until they satisfy various conditions related to local competition. We note that these incentives may diminish with respect to a given state once a BOC receives authorization to provide interLATA service in that state. The statute nonetheless mandates that a BOC comply fully with section 271's requirements both before and after it receives approval from the Commission and competes in the interLATA market. Working in concert with state commissions, we intend to monitor closely post-entry compliance and to enforce vigorously the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act. Swift and effective post-approval enforcement of section 271's requirements is essential to Congress' goal of achieving lasting competition in local markets.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–33901 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Donald L. Howell and HQFP Holdings, LTD., LLP*, Houston, Texas; to acquire voting shares of FNB Financial Services, Inc., Durant, Oklahoma, and thereby indirectly acquire voting shares of First National Bank in Durant, Durant, Oklahoma.

2. *Donald Lee Patry and Donald Carl Harder* both of Whitewater, Kansas; to acquire voting shares of Whitewater BancShares, Inc., Whitewater, Kansas, and thereby indirectly acquire voting shares of Bank of Whitewater, Whitewater, Kansas.

Board of Governors of the Federal Reserve System, December 27, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33992 Filed 12–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. FGB Bankshares, Inc., Hammond, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Guaranty Bank, Hammond, Louisiana.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Baytree Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Baytree National Bank & Trust Company (in organization), Chicago, Illinois.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Calvert Financial Corporation, Jefferson City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bunceton Bancshares, Inc., Blue Springs, Missouri, and thereby indirectly acquire Bunceton State Bank, Bunceton, Missouri.

Board of Governors of the Federal Reserve System, December 27, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33991 Filed 12–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, Charlotte, North Carolina; BancWest Corporation, Honolulu, Hawaii; BB&T Corporation, Winston-Salem, North Carolina; First Union Corporation, Charlotte, North Carolina; SunTrust Banks, Inc., Atlanta, Georgia; Wachovia Corporation, Winston-Salem, North Carolina; and Zions Bancorporation, Salt Lake City, Utah; to acquire through their subsidiary, Star Systems, Inc., Maitland, Florida, and thereby indirectly acquire up to 38 percent of the voting securities of Bank Network Securities, Inc., Chicago, Illinois (in organization), and thereby engage in providing investment and financial advisory services, pursuant to § 225.28(b)(6) of Regulation Y; providing brokerage services and investment advisory services, pursuant to § 225.28(b)(7)(i) of Regulation Y; buying and selling all types of securities on a "riskless principal" basis, pursuant to § 225.28(b)(7)(ii) of Regulation Y; underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions and other obligations, instruments, and securities that a member bank of the Federal Reserve System may underwrite or deal in, pursuant to § 225.28(b)(8)(i) of Regulation Y; engaging as principal in investing and trading activities, pursuant to § 225.28(b)(8)(ii) of Regulation Y; engaging in lending activities, pursuant to § 225.28(b)(1) of Regulation Y; engaging in leasing activities, pursuant to § 225.26(b)(3) of Regulation Y; engaging in general insurance agency activities, pursuant to § 225.28(b)(11)(vii) of Regulation Y; underwriting and dealing in the following securities (collectively "Tier II Securities"): all types of debt, equity, and other securities (other than ownership interest in open-end investment companies that a member bank may not underwrite or deal in) ("bank ineligible securities"), *see Board Order, Societe Generale*, 84 Fed. Res. Bull. 680 (1998); and in providing cash management services, *see Board Order, Societe Generale*, Fed. Res. Bull. 680 (1998).

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Community Bancorp, Inc., Marco Island, Florida; to acquire CCB Mortgage Corporation, Marco Island, Florida, and thereby engage in extending credit and servicing loans pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 27, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33990 Filed 12–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST), January 10, 2000.

PLACE: 4th Floor Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the December 13, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 27, 1999.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–34023 Filed 12–27–99; 4:59 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of

proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Follow-up Survey for the Multi-site Evaluation of the Welfare-to-Work Grant Program—New—This data collection will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to further document the status of Welfare-to-Work formula and competitive grantees and provide information on implementation issues as part of the Congressionally mandated evaluation of the Welfare-to-work grants program.

Respondents: Individuals;

Number of Responses: 4,250;

Burden per Response: .75 hours;

Total Annual Burden: 3,188 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: December 21, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–33942 Filed 12–29–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

Health Care Financing Administration

CLIA Program; Transfer of Clinical Laboratory Complexity Categorization Responsibility

AGENCY: Centers for Disease Control and Prevention, Food and Drug Administration, and Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the Health Care Financing Administration (HFCA) are announcing that CDC is transferring the responsibility for the categorization of commercially marketed in vitro diagnostic (IVD) tests under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) to FDA. Categorization is the process of assigning commercial clinical laboratory tests to one of three CLIA regulatory categories (waived, moderate complexity, high complexity). An interagency agreement on the scope and nature of the transfer of this CLIA function was signed on February 27, 1999.

DATES: The transfer from CDC to FDA of responsibility under CLIA for complexity categorization of commercially marketed IVD's is expected to be completed by January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett or Clara A. Sliva, Center for Devices and Radiological Health (CDRH) (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–827–0496.

SUPPLEMENTARY INFORMATION: Under section 353 of the Public Health Service Act (42 U.S.C. 263a), as amended by CLIA, and regulations implementing CLIA published on February 28, 1992 (57 FR 7002), existing and new commercial clinical laboratory tests are categorized into one of three regulatory categories. The three test categories are: Waived, moderate complexity, and high complexity tests.

HCFA was originally charged with administering the CLIA program and the Public Health Service was enlisted later to provide technical and scientific support. Under the regulations issued in 1992, FDA was assigned the responsibility of categorizing the complexity of commercially marketed laboratory tests. In 1994, this responsibility was delegated to CDC because of budgetary considerations.

CDC, FDA, and HCFA signed an interagency agreement on February 27, 1999, to transfer the CLIA complexity categorization responsibility for commercially marketed tests from CDC to FDA. The transfer was contingent upon FDA's receipt of funding for this function. The transfer will permit manufacturers of commercially marketed IVD's to submit premarket applications for products and requests for complexity categorizations of those products to one agency. When the transfer is complete, FDA staff in CDRH will evaluate the appropriate complexity category as they review premarket submissions for clinical laboratory devices. Products seeking a waiver categorization, devices exempt from premarket notification, and devices under premarket review by other FDA centers also will be processed by these FDA staff. The criteria for categorization under CLIA will not change. All other CLIA responsibilities currently assigned to CDC, including review of test systems, assays, or examinations not commercially marketed as IVD products, will remain with CDC.

FDA and CDC expect the transfer of responsibility to be completed by January 31, 2000. Until that time, requests for categorization should continue to be submitted to CDC. Both agencies are currently participating in training necessary to accomplish the transfer. FDA intends to provide guidance on how categorizations will be administratively processed before manufacturers begin to send their requests to CDRH.

Dated: December 21, 1999.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention.

Jane E. Henney,

Commissioner of Food and Drugs.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administraion.

[FR Doc. 99–33941 Filed 12–29–99; 8:45 am]

BILLING CODE 4150–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5347]

Draft "Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts." The draft guidance document is intended to provide recommendations to all registered blood and plasma establishments, and establishments engaged in manufacturing plasma derivatives. The draft guidance document provides recommendations regarding donor deferral and the disposition of blood products.

DATES: Submit written comments at any time, however, comments should be submitted by February 28, 2000, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of "Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance document. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts." The draft guidance document provides FDA's recommendations to all registered blood and plasma establishments and establishments engaged in manufacturing plasma derivatives regarding donor deferral. It also provides recommendations on the disposition of blood products manufactured from a donor who is retrospectively discovered to have received a xenotransplantation product or to have been in close contact with a recipient of a xenotransplantation product.

Concerns have arisen in the last few years about the potential infectious disease and public health risks associated with xenotransplantation. Zoonoses are infectious diseases of animals that can be transmitted to humans through exposure to, or consumption of animals. Because transplantation necessitates disruption of the recipient's usual protective physical and immunologic barriers, xenotransplantation may facilitate transmission of known or as yet unrecognized infectious agents to humans.

The "Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation" published in the **Federal Register** of September 23, 1996 (61 FR 49920). The draft guideline, which includes outlines of health surveillance programs and principles for screening candidate source animals for infectious agents of concern, indicated that patient consent forms should state clearly that xenotransplantation product recipients should never, subsequent to receiving the transplant, donate Whole Blood, blood components, Source Plasma, Source Leukocytes, tissues, breast milk, ova, sperm, or any other body parts for use in humans.

In an open public meeting on December 17, 1997 (62 FR 62776, November 25, 1997), the Xenotransplantation Subcommittee of the Biological Response Modifiers Advisory Committee recommended that close contacts of xenotransplantation product recipients, as well as the recipients themselves, should not donate blood or tissue because these individuals are theoretically at risk of acquiring zoonoses, and of transmitting them through blood and tissue donations. At FDA's Blood Products Advisory Committee open public meeting held on March 19, 1998 (63 FR 8461, February 19, 1998), donor deferral issues related to xenotransplantation were also discussed.

The draft guidance document represents the agency's current thinking with regard to possible risk of transmission of zoonoses by xenotransplantation product recipients and their contacts, through blood and blood products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance document is being distributed for comment, however, the recommendations may be implemented immediately without prior approval by FDA. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by February 28, 2000, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: December 22, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33940 Filed 12–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0232]

Agency Information Collection Activities: Submission for OMB Review; Comment Request.

AGENCY: Health Care Financing Administration; HHS,

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Program Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations in 42 CFR 421.310 and 421.312;

Form No.: HCFA–R–0232 (OMB# 0938–0723); *Use:* This information is used to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract; *Frequency:* On occasion; *Affected Public:* Businesses or other for profit; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 2,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 6, 1999.

John Parmigiani,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–33987 Filed 12–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health and Human Services

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request The Multi-Ethnic Study of Atherosclerosis

Summary

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Multi-Ethnic Study of Atherosclerosis.

Type of Information Request: New.

Need and Use of Information Collection: MESA is a cohort study evaluating people aged 45–84 years and measures of subclinical disease cardiovascular disease (disease detected before it has produced signs and symptoms) that predict progression to clinically overt disease in a diverse population. The purpose is to develop population-based methods for identifying asymptomatic people at high risk of clinical events. The results of this study will allow application for future screening for identification of people at increased risk for cardiovascular disease and intervention studies for treatment of those at increased risk. This study will include a substantial proportion of previously understudied minority groups.

Need and use of Information Collection; Frequency of Response; Affected Public and Type of Respondents: The annual reporting burden is as follows:

Estimated number of Respondents: 16,514;

Estimated Responses/Respondent: 3.88;

Average Burden Hours/Response: 4.55; and

Estimated Total Annual Burden Hours Requested: 25,070.

There are no costs for respondents. Estimated annualized cost for information collection for a 10-year period (in thousands) is $6870. The estimated annualized start-up costs are $756, and the estimated annualized operating and maintenance costs are $6114.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have practical utility; (2) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information

To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Robin Boineau, Epidemiology and Biometry Program, Division of Epidemiology and Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC # 7934, Bethesda, MD, 20892–7934, or call non-toll-free number (301) 435–0707, or E-mail your request, including your address to: boineau@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 28, 2000.

Dated: December 22, 1999.

Peter Savage,

Acting Director, Division of Epidemiology and Clinical Applications.

[FR Doc. 99–33910 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request, the Framingham Study

Summary

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Framingham Study.

Type of Information Collection Request: Revision of a currently approved collection (OMB NO. 0925–0216).

Need and Use of Information Collection: This project involves physical examination and testing of the surviving members of the original Framingham Study cohort and the surviving members of the offspring cohort. Investigators will contact doctors, hospitals, and nursing homes to ascertain participants' cardiovascular events occurring outside the study clinic. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women.

Frequency of Response: The cohort participants respond every two years; the offspring participants respond every four years.

Affected Public: Individuals or households; Businesses or other for profit; Small businesses or organizations.

Type of Respondents: Middle aged and elderly adults; doctors and staff of hospitals and nursing homes.

The annual reporting burden is as follows:

Estimated Number of Respondents: 2,865;

Estimated Number of Responses per Respondent: 3,398;

Average Burden Hours Per Response: 0.6321; and

Estimated Total Annual Burden Hours Requested: 6,154.

The annualized cost to respondents is estimated at $61,540, assuming respondents time at the rate of $10 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Framingham Original Cohort	340	3,912	0.3496	465
Framingham Offspring Cohort	1,267	5,642	0.7300	5,218
Physician, hospital, nursing home staff [1]	629	1.0	0.6700	421
Framingham next-of-kin [1]	629	1.0	0.0800	50
Total	2,865	—	—	6,154

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events occurring outside the Framingham examining clinic.

Request For Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information-to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Paul Sorlie, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0456 or E-mail your request, including your address to: SorlieP@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 28, 2000.

Dated: December 14, 1999.

Lawrence Friedman,

Director, Division of Epidemiology and Clinical Applications.

[FR Doc. 99–33911 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: January 24–25, 2000.

January 24, 2000

8:30 am to 12:30 pm Open: The agenda includes Statement of Understanding, Review of the Director, NACCAM, Report, and other business of the Council

12:30 pm to adjournment Closed: To review and evaluate grant applications and/or proposals

Place: NIH Neuroscience Office Building, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

January 25, 2000

Open: Proposed program initiatives, Subcommittees, and Public Comments

Place: NIH Neuroscience Office Building, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Richard Nahin, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 9000 Rockville Pike, Room 5B36, Bethesda, MD 20892, 301–594–2013.

The public comments session is scheduled from 11:00 am to 11:30 am. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 31 Center Drive (MSC 2182), Building 31, Room 5B36, Bethesda, Maryland, 20892, 301–594–2013, Fax: 301–480–9500. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5:00 pm on January 12, 2000. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (February 4, 2000) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, NACCAM, National Institutes of Health, Building 31, Room 5B36, 31 Center Drive, Bethesda, Maryland 20892, (301) 594–2013, Fax 301–480–9500.

Dated: December 23, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–33915 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Thrombosis of the Arterial & Cerebral Vasculature: New Molecular Genetic Concepts for Prevention & Treatment.

Date: January 19–20, 2000.

Time: 7:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David T. George, PHD, NIH, NHLBI, DEA, Review Branch, Rockledge Building II, Room 7188, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 20, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33912 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: January 10–11, 2000.

Time: January 10, 2000, 8:00 a.m. to Recess.

Agenda: To review and evaluate grant application and/or proposals.

Place: Westin Hotel San Francisco Airport, 1 Old Bayshore Hwy., Millbrae, CA 94030.

Time: January 11, 2000, 8:00 a.m. to Adjournment at 12 noon.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Westin Hotel San Francisco Airport, 1 Old Bayshore Hwy., Millbrae, CA 94030.

Contact Person: Ken D. Nakamura, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 20, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33913 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting of the Osteoarthritis Initiative—A Public-private Research Collaboration

Notice is hereby given of the Meeting The Osteoarthritis Initiative—A Public-Private Research Collaboration, February 28–29, 2000, to be held at the Lister Hill Auditorium, NIH Campus, Bethesda, Maryland 20892 This meeting will be open to the public from 8 a.m. to 5 p.m. on both days.

This meeting is being organized by several NIH Institutes and Centers, the FDA, and numerous pharmaceutical and biotechnology companies who have formed a consortium to develop and support a project that will enhance and facilitate the development of clinical interventions for osteoarthritis. The development and testing of treatments for osteoarthritis through clinical trials are now limited because good biological markers to serve as surrogates for disease endpoints are not available. This consortium was formed in response to a 1998, NIH-wide initiative from Dr. Harold Varmus to foster investigations that utilize fundamental knowledge and laboratory technologies to develop surrogate biomarkers of disease. In all areas of medicine there has been an enormous growth in the identification of potential targets for disease modification. Without the tools for rapid and inexpensive testing of potential targets, the development of new drugs will continue to be limited. Osteoarthritis presents great scientific opportunity and public need.

The consortium that has resulted from meetings of an Osteoarthritis Initiative Steering Group is exploring the options for government and industry to cosponsor, as a public-private consortium, the establishment of a research infrastructure to develop and evaluate biomarkers for osteoarthritis. Summaries of the meetings held can be found at *http://www.nih.gov/niams/news/oisg/index.htm*.

The overall scientific goal of the OA Initiative is to examine the progressive development of OA through the support of an epidemiological, human cohort prospective study with the following aims:

- Identifying specific quantitative surrogate markers of OA disease which can be used to monitor disease progression and response to therapy and become acceptable as registrable end points in clinical studies evaluating disease modifying agents;
- Enabling more efficient and effective clinical trials and a better understanding of the causative pathological mechanisms responsible in the development and progression of the OA disease;
- Initiating a new paradigm in which registrable clinical endpoints are established in non-interventional studies; and
- Establishing the managerial framework for similar Public/Private Partnerships in other disease areas.

The broad questions stated below represent starting points for the discussion of the scientific plan at and following the OA Initiative Meeting February 28–29, 2000:

- Are structural (anatomic) features of the joint (hip, knee, and hand) and associated tissue, such as joint space narrowing and osteophyte development, reliable markers of disease and disease progression?
- Are there biochemical or biophysical markers that would allow assessment of response to disease-modifying therapies?
- What research tools, resources, and knowledge are needed to develop reliable biomarkers of OA that may serve as surrogate endpoints in clinical trials?

The February 28–29, 2000 meeting will focus on the development of a strategic plan for the Osteoarthritis Initiative. Input from the scientific community to this strategic plan based on the questions stated above is invited and welcomed.

Ms. Maureen Knowles (NIAMS; Extramural Program; Natcher building; Room 5As–43; Bethesda, MD 20892–6500; Phone: 301–594–5055, Fax: 301–480–4543, e-mail: *mk92w@nih.gov*) will provide further information or it can be accessed at the following Web site *http://www.nih.gov/niams/news/currmeetregmat.htm*.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knowles at 301–594–5055, in advance of the meeting.

Dated: December 20, 1999.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 99–33909 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: January 6, 2000.

Time: 12:00 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852.

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21k@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 CC (02) Special Emphasis Panel.

Date: January 6, 2000.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21k@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National

Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 21, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33917 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 13, 2000.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PHD, Scientific Review Administrator, NIEHS, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 19, 2000.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS–East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PHD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 21, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33918 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 13, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 13, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education, 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 21, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33919 Filed 12–29–99 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research, Special Emphasis Panel 00–19, Review of R03 & F33.

Date: January 4, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research, Special Emphasis Panel 20–00, Review of R03 & F32 Grants.

Date: January 7, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research, Special Emphasis Panel 27–00, Review of R01 Grant.

Date: February 8, 2000.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33920 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: February 1–2, 2000.

Open: February 1, 2000, 1:00 p.m. to 5:00 p.m.

Agenda: For discussion of program policies and issues.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Closed: February 2, 2000, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mary Leveck, PHD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Nursing Research, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33921 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: January 18, 2000.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33922 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Planning Subcommittee.

Date: January 24, 2000.

Open: 3 p.m. to 5 p.m.

Agenda: Reports and program discussion.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: January 24–26, 2000.

Open: January 25, 2000, 9 a.m. to 4 p.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: January 25, 2000, 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: January 26, 2000, 9 a.m. to 12 p.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: January 25, 2000.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach and Public Information items.

Place: National Library of Medicine, Building 38, Conference Room B, 8699 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: January 25, 2000.

Closed: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33916 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: January 5, 2000.

Time: 2 pm to 4:30 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892; (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 11, 2000.

Time: 2 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892; (301) 435–0903, yagerl@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 12, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892; (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Fund.

Date: January 12, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892; (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 17–19, 2000.

Time: 4 pm to 5 pm

Agenda: To review and evaluate grant applications.

Place: L'Auberge Del Mar, 1540 Camino Del Mar, Del Mar, CA 29014.

Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892; (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 18–19, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892; (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 19, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharam S. Dhindsa, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892; (301) 435–1174, dhindsad@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 23, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33914 Filed 12–29–99; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Survey of Organized Consumer Self-Help Entities—New

The self-help movement in the United States has mushroomed, and increasingly serves mental health consumers and family members as a complement to, or substitution for, traditional mental health services. The purposes of this project of SAMHSA's Center for Mental Health Services are to estimate the number of self-help entities nationwide and to describe their characteristics—structure, types of activities engaged in, approaches to well-being and recovery, resources, and linkages to other entities in the community, such as the mental health service delivery system. The survey will gather information from a sample of 3,000 mental health self-help entities run by and for recipients of mental health services and/or their family members. Data will be collected from three types of self-help entities: mutual support groups; self-help organizations; and, consumer-operated businesses and services. Computer Assisted Telephone Interviewing (CATI) will be used to conduct interviews with in-scope entities. The total response burden estimate is shown below.

Instrument	Number of respondents	Responses/respondent	Average burden/response (Hrs)	Total burden (Hrs)
Screener	7,600	1	.17	1,292
Questionnaire	3,000	1	.42	1,260
Total				2,552

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 23, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–33946 Filed 12–29–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–52]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 22, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 99–33671 Filed 12–29–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Environmental Impact Statement on Resident Canada Goose Management; Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is issuing this notice to invite public participation in the scoping process for preparing an Environmental Impact Statement (EIS) for resident Canada goose management under the authority of the Migratory Bird Treaty Act. The EIS will consider a range of management alternatives for addressing expanding populations of locally-breeding Canada geese that are

increasingly posing threats to health and human safety and damaging personal and public property. This notice describes possible alternatives, invites further public participation in the scoping process, identifies the location, date, and time of public scoping meetings, and identifies to whom you may direct questions and comments.

DATES: You must submit written comments regarding EIS scoping by March 30, 2000, to the address below. Dates for nine public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You should send written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. Alternately, you may submit comments electronically to the following address: canada__goose__eis@fws.gov. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On August 19, 1999, we published a Notice of Intent to prepare an EIS on resident Canada goose management (64 FR 45269). This action is in response to the growing numbers of Canada geese that nest and reside predominantly within the conterminous United States and our desire to examine alternative strategies to control and manage resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property.

Resident Canada Goose Populations

Numbers of Canada geese that nest and reside predominantly in the conterminous United States have increased tremendously in recent years. These geese are usually referred to as "resident" Canada geese. Recent surveys in the Atlantic, Mississippi, and Central Flyways (Wood *et al.*, 1994; Kelley *et al.*, 1998; Nelson and Oetting, 1998; Sheaffer and Malecki, 1998; Wilkins and Cooch, 1999) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic (17 States) and Mississippi (14 States) Flyways. Available information shows that in the Atlantic Flyway, the resident population has increased an average of 14 percent per year since 1989. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. We are concerned about the rapid growth rate exhibited by these already large populations.

Because resident Canada geese live in temperate climates with relatively stable breeding habitat conditions and low numbers of predators, tolerate human and other disturbances, have a relative abundance of preferred habitat provided by current urban/suburban landscaping techniques, and fly relatively short distances to winter compared with other Canada goose populations, they exhibit a consistently high annual production and survival. Given these characteristics, the absence of waterfowl hunting in many of these areas, and free food handouts by some people, these urban/suburban resident Canada goose populations are increasingly coming into conflict with human activities in many parts of the country.

Conflicts between geese and people affect or damage several types of resources, including property, human health and safety, agriculture, and natural resources. Common problem areas include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways.

While short-term management strategies have helped alleviate some localized problems and conflicts, because of the unique locations where large numbers of these geese nest, feed, and reside, for long-term management of these birds we believe that new and innovative approaches and strategies for dealing with bird/human conflicts will be needed. In order to properly examine alternative strategies to control and manage resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property, the preparation of an EIS is necessary.

Alternatives

We are considering the following alternatives. After the scoping process, we will develop the alternatives to be included in the EIS and base them on the mission of the Service and comments received during scoping. We are soliciting your comments on issues, alternatives, and impacts to be addressed in the EIS.

A. No Action Alternative

Under the No Action Alternative, no additional regulatory methods or strategies would be authorized. We would continue the use of special hunting seasons, the issuance of depredation permits, and the issuance of special Canada goose permits. These permits would continue to be issued under existing regulations.

For each of the next 5 alternatives, as a baseline for comparison, we would continue the use of special hunting seasons, the issuance of depredation permits, and the issuance of special Canada goose permits. All of these permits would continue to be issued under existing regulations.

B. Increased Promotion of Non-lethal Control and Management

Under this alternative, we would actively promote the increased use of non-lethal management tools, such as habitat manipulation and management, harassment techniques, and trapping and relocation. While permits would continue to be issued under existing regulations, no additional regulatory methods or strategies would be introduced.

C. Nest and Egg Depredation Order

This alternative would provide a direct population control strategy for resident Canada goose breeding areas in the U.S. This alternative would establish a depredation order authorizing States to implement a program allowing the take of nests and eggs to stabilize resident Canada goose populations without threatening their long-term health. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Since the goal of this alternative would be to stabilize breeding populations, not direct reduction, no appreciable reduction in the numbers of adult Canada geese would likely occur.

D. Depredation Order for Health and Human Safety

This alternative would establish a depredation order authorizing States to establish and implement a program allowing the take of resident Canada goose adults, goslings, nests and eggs from populations posing threats to health and human safety. The intent of this alternative is to significantly reduce

or stabilize resident Canada goose populations at areas such as airports, water supply reservoirs, and other such areas, where there is a demonstrated threat to health and human safety, without threatening the population's long-term health. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Under this alternative, some appreciable localized reductions in the numbers of adult geese could occur.

E. Conservation Order

This alternative would authorize direct population control strategies such as nest and egg destruction, gosling and adult trapping and culling programs, or other general population reduction strategies on resident Canada goose populations in the U.S. This alternative would establish a conservation order authorizing States to develop and implement a program allowing the take of geese posing threats to health and human safety and damaging personal and public property. The intent of this alternative is to significantly reduce or stabilize resident Canada goose populations at areas where conflicts are occurring without threatening the long-term health of the overall population. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. State breeding populations would be monitored annually each spring to determine the maximum allowable take under the conservation order. Under this alternative, some appreciable localized reductions in the numbers of adult geese would likely occur and lesser overall population reductions could occur.

F. General Depredation Order

This alternative would authorize direct population control strategies such as nest and egg destruction, gosling and adult trapping and culling programs, or other general population reduction strategies on resident Canada goose populations in the U.S. This alternative would establish a depredation order allowing any authorized person to take geese posing threats to health and human safety and damaging personal and public property. The intent of this alternative is to significantly reduce resident Canada goose populations at areas where conflicts are occurring. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Under this alternative, some appreciable localized reductions in the numbers of adult geese would likely occur and lesser overall population reductions could occur.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS is to determine which management alternatives for the control of resident Canada goose populations will be analyzed. We will prepare a discussion of the potential effect, by alternative, which will include the following areas:

(1) Resident Canada goose populations and their habitats.

(2) Human health and safety.

(3) Public and private property damage and conflicts.

(4) Sport hunting opportunities.

(5) Socioeconomic effects.

We will conduct the environmental review of the management action in accordance with the requirements of the National Environmental Policy Act, as appropriate. We are furnishing this Notice in accordance with 40 CFR 1501.7, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the spring of 2000.

Public Scoping Meetings

Nine public scoping meetings will be held on the following dates at the indicated locations and times:

1. February 8, 2000; Nashville, Tennessee, at the Ellington Agricultural Center, Ed Jones Auditorium, 440 Hogan Road, 7 p.m.

2. February 9, 2000; Parsippany, New Jersey, at the Holiday Inn, 707 Route 46 East, 7 p.m.

3. February 10, 2000; Danbury, Connecticut, at the Holiday Inn, 80 Newtown Road, 7 p.m.

4. February 15, 2000; Palatine, Illinois, at the Holiday Inn Express, 1550 E. Dundee Road, 7 p.m.

5. February 17, 2000; Bellevue, Washington, at the DoubleTree Hotel, 300—112th Avenue S.E., 7 p.m.

6. February 22, 2000; Bloomington, Minnesota, at the Minnesota Valley National Wildlife Refuge Visitors Center, 3815 East 80th Street, 7 p.m.

7. February 23, 2000; Brookings, South Dakota, at South Dakota State University, Northern Plains Biostress Laboratory, Room 103, Junction of North Campus Drive and Rotunda Lane, 7 p.m.

8. February 28, 2000; Richmond, Virginia, at the Virginia Department of Game and Inland Fisheries Headquarters, Board Room, 4000 West Broad Street, 7 p.m.

9. March 1, 2000; Denver, Colorado, at the Colorado Department of Wildlife, Northeast Region Service Center, Hunter Education Building, 6060 Broadway, 7 p.m.

At the scoping meetings, you may choose to submit oral and/or written comments. To facilitate planning, we request that those desiring to submit oral comments at meetings send us their name and the meeting location they plan on attending. You should send this information to the location indicated under the **ADDRESSES** caption. However, you are not required to submit your name prior to any particular meeting in order to present oral comments.

You may also submit written comments by either sending them to the location indicated under the **ADDRESSES** caption or sending them electronically to the following address: canada__gooseeis@fws.gov. All electronic comments should include a complete mailing address in order to receive a copy of the draft EIS. All comments must be submitted by March 30, 2000.

References Cited

Kelly, J. R., D. F. Caithamer, and K. A. Wilkins. 1998. Waterfowl population status, 1998. U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 33 pp. + app.

Nelson, H. K. and R. B. Oetting. 1998. Giant Canada goose flocks in the United States. Pages 483–495 in D. H. Rusch, M. D. Samuel, D. D. Humburg, and B. D. Sullivan, eds. Biology and management of Canada geese. Proceedings of the International Canada Goose Symposium, Milwaukee, WI.

Sheaffer, S. E. and R. A. Malecki. 1998. Status of Atlantic Flyway resident nesting Canada geese. Pages 29–34 in D. H. Rusch, M. D. Samuel, D. D. Humburg, and B. D. Sullivan, eds. Biology and management of Canada geese. Proceedings of the International Canada Goose Symposium, Milwaukee, WI.

Wilkins, K. A., and E. G. Cooch. 1999. Waterfowl population status, 1999. U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 33 pp. + appendices.

Wood, J. C., D. H. Rusch, and M. Samuel. 1994. Results of the 1994 spring survey of giant Canada goose survey in the Mississippi Flyway. U.W. Co-op Unit. 9 pp. (mimeo).

Dated: December 23, 1999.

Thomas O. Melius,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–33961 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–00–7122–00–56–36, SRP–00–06/07]

Temporary Closure of Selected Public Lands in La Paz County, AZ, During the Operation of the 2000 Whiplash Parker 400K/200K (kilometer) Desert Race(s)

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Lake Havasu Field Office Manager announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 2000 Whiplash Parker 400K/200K Desert Race.

DATES: January 14, 2000, through January 16, 2000.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the race course comprised of BLM lands, roads and ways located 2 miles either side of:

(a) Shea Road from the eastern boundary of the Colorado River Indian Tribes Reservation to the junction with Swansea Road and 2 miles either side of Swansea Road from its junction with Shea Road to the eastern bank of the Central Arizona Project Canal.

(b) Swansea Road from its junction with Shea Road to the Four Corners intersection.

(c) The unpaved road that runs from "Midway", north to Mineral Wash and then west to the CAP Canal is closed to public use from 6 a.m. Friday morning, January 14, 2000 to 6 p.m. Sunday, January 16, 2000.

2. The entire designated race course is closed to all vehicles except authorized and emergency vehicles.

3. Vehicle parking or stopping in areas affected by the closure is prohibited except in the designated spectator areas. Emergency parking for brief periods of time is permitted on roads open for public use.

4. Spectator viewing (on public land) is limited to the designated spectator areas located South and North of Shea Road, as signed app. 8 miles east of Parker, Arizona.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate or otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Firearms must be unloaded and cased, and are not to be used during the closure.

f. Fireworks are prohibited.

g. Operate any vehicle (other than registered event vehicles), including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

h. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

i. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier.

j. Fail to keep their site free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

k. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Mountain Standard Time.

l. Allow any pet or other animal in their care to be unrestrained at any time.

Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and/or the event sponsor. The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona or to La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all La Paz County and BLM roads and ways. Authority for closure of public lands is found in 43 CFR Part 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR Part 8372. Persons who violate its closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Bryan Pittman, District Law Enforcement Ranger, or Myron McCoy, Outdoor Recreation Planner, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (520) 505–1200.

Dated: December 23, 1999.

Donald Ellsworth,

Field Manager, Lake Havasu Field Office.

[FR Doc. 99–33947 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–AA]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting January 27, 2000 at the BLM—Montana State Office Conference Room, 5001 Southgate Drive, Billings, Montana starting at 8:00 a.m. Primary agenda topics include the Lewis and Clark Bicentennial Celebration, continued discussion on access, and an update on the draft off-highway vehicle environmental impact statement.

The meeting is open to the public and the public comment period is set for 11:00 a.m. on January 27. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with

public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council

Dated: December 16, 1999.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 99–33988 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–BE–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–99–1420–00]

Colorado: Filing of Plats of Survey

December 14, 1999.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., December 14, 1999. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey of portions of certain mineral claims in T. 47 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group 1202, was accepted December 2, 1999.

The plat representing the dependent resurvey of portions of the east and north boundaries, and subdivisional lines, and the survey of the subdivision of section 1 in T. 2 N., R. 94 W., Sixth Principal Meridian, Colorado, Group 1212, was accepted December 6, 1999.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of section 35, T. 11 N., R. 79 W., Sixth Principal Meridian, Colorado, Group 1213, was accepted October 28, 1999.

The plat representing the entire record of the dependent resurvey of a portion of the south boundary, T. 6 N., R. 93 W., Sixth Principal Meridian, Colorado, Group 1215, was accepted November 19, 1999.

The plat representing the dependent resurvey of a portion of the Base Line through R. 93 W., a portion of the subdivisional lines, certain tract lines, and the survey of the subdivision of section 34, T. 1 N., R. 93 W., Sixth Principal Meridian, Colorado, Group 1228, was accepted September 23, 1999.

The plat of the entire record for the survey in section 23, T. 46 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group 1251, was accepted September 27, 1999.

The supplemental plat, creating new lots 26 and 27 in section 36, T. 9 S., R. 81 W., Sixth Principal Meridian, Colorado, was accepted October 4, 1999.

These surveys were requested by the BLM for administrative purposes.

This plat(in 4 sheets) represents the dependent resurvey of a portion of the boundary between T. 51 N., Rs. 5 & 6 E., and portions of certain mineral claims in sections 7, 12, 13, and 18, T. 51 N., Rs. 5 & 6 E., New Mexico Principal Meridian, Colorado, Group 1022, was accepted September 29, 1999.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of the East bdy., a portion of the subdivisional lines, and the subdivision of certain sections in T. 33 N., R. 5 W., New Mexico Principal Meridian, Colorado, Group 1193, was accepted October 20, 1999.

This survey was requested by the Bureau of Indian Affairs for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado

[FR Doc. 99–33924 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–410]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On December 17, 1999, the Commission received a request from the United States Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing advice concerning possible modifications to the Generalized System of Preferences (GSP). Following receipt of the request and in accordance therewith, the Commission instituted investigation No. 332–410 in order to provide as follows—

(1) With respect to the articles listed in Part A of the attached Annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary developing countries under the GSP. In providing its advice, the USTR requested that the Commission assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the Trade Act of 1974(1974 Act) (19 U.S.C. 2463(c)(2)(A)); and

(2) With respect to articles listed in Part A and Part C of the attached Annex, advice as to whether products like or directly competitive with the articles were being produced in the United States on January 1, 1995; and

(3) With respect to the article listed in Part B of the attached Annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of the country specified with respect to the article in Part B from eligibility for duty-free treatment under the GSP for such article; and

(4) In accordance with section 503(d)(1)(A) of the 1974 Act, advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Brazil for HTS Subheading 7202.99.10 in Part A and the country specified with respect to the articles in Part D of the attached Annex.

With respect to the competitive need limit in section 503(c)(2)(A)(I)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $90,000,000.

As requested by USTR, the Commission will seek to provide its advice not later than March 16, 2000.

EFFECTIVE DATE: December 23, 1999.

FOR FURTHER INFORMATION CONTACT: (1) Project Manager, Eric Land (202–205–3349); (2) Deputy Project Manager, Cynthia B. Foreso (202–205–3348).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

Background

The USTR letter noted that the Trade Policy Staff Committee (TPSC) announced in the December 23, 1999 **Federal Register** the acceptance of product petitions for modification of the GSP received as part of the 1999 annual review. The letter stated that modifications to the GSP which may result from this review will be announced in the spring of 2000 and become effective in the summer of 2000.

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on February 2, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, D.C. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) January 18, 2000. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on January 20, 2000. Posthearing briefs should be filed with the Secretary by close of business on February 11, 2000. In the event that no requests to appear at the hearing are received by the close of business January 18, 2000, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after January 20, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on February 11, 2000. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Persons submitting business confidential information should be aware that the Commission may include such information in the confidential version of its report to the USTR. All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: December 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Attachment Annex I (HTS Subheadings) [1]

A. Petitions to add products to the list of eligible articles for the GSP.

7202.99.10 [2]
8104.19.00
8104.30.00

B. Petitions to remove duty-free status from beneficiary developing countries for products on the list of eligible articles for the GSP.

2905.42.00 (Brazil)

C. Petitions to determine whether products like or directly competitive with an eligible article were being produced in the United States on January 1, 1995.

3817.10.50

D. Petitions for waiver of competitive need limits for products on the list of eligible products for the specified country.

2905.11.20 (Chile)
7202.50.00 (Russia)

[FR Doc. 99–33903 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–70]

Circular Welded Carbon Quality Line Pipe

Determination

On the basis of the information in the investigation, the Commission—(1) Determines, pursuant to section 202(b) of the Trade Act of 1974, that circular welded carbon quality line pipe (hereinafter line pipe) [1] is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury [2] to the domestic industry producing an article like or directly competitive with the imported article; and (2) makes negative findings, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), with respect to imports of line pipe from Canada and Mexico.[3]

Recommendations with Respect to Remedy [4]

The Commission [5] *(Vice Chairman Miller and Commissioners Hillman and Koplan) recommends:*

(1) That the President impose a tariff-rate quota for a 4-year period on imports of line pipe, with the in-quota amount set at 151,124 short tons in the first year, and with that amount to be increased by

[1] See USTR **Federal Register** notice of December 23, 1999 (64 F.R. 246) for article description.

[2] The petitioner also requests a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Brazil on the articles provided for in subheading 7202.99.10.

[1] The imported article covered by this investigation is welded carbon quality line pipe of circular cross section, of a kind used for oil and gas pipelines, whether or not stencilled. For purposes of this investigation, "carbon quality" is defined to mean: products in which (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is 2 percent or less, by weight, and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

Such line pipe is currently classified in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS categories are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive. The investigation excludes certain merchandise described as arctic grade line pipe, defined as welded line pipe that (1) has an outer diameter of 4.5 inches or more and a wall thickness equal to or less than 0.75 inches; and (2) when subjected to a Charpy V-notch test performed at minus 50 degrees Fahrenheit or below applied to three specimens taken from the weld area, has a ft-lbs rating of no less than 17 ft-lbs for each sample, with an average for all three at no less than 19 ft-lbs; and (3) using at least three samples, has a minimum average shear area of 85 percent in the base metal and 50 percent in the weld; and (4) when subjected to a hydrogen induced cracking test to be performed as per NACE (National Association of Corrosion Engineers) TM0284 test with solution A, has a crack length ratio that does not exceed 15 percent, a crack sensibility ratio that does not exceed 2 percent, and a crack thickness ratio that does not exceed 5 percent.

[2] Vice Chairman Marcia E. Miller and Commissioners Jennifer A. Hillman and Stephen Koplan found serious injury. Chairman Lynn M. Bragg and Commissioner Thelma J. Askey found a threat of serious injury. Commissioner Carol T. Crawford made a negative determination.

[3] Chairman Bragg dissenting with respect to Mexico. Chairman Bragg finds that imports of welded line pipe from Mexico account for a substantial share of total imports and contribute importantly to the threat of serious injury to the domestic industry.

[4] Commissioner Crawford, having made a negative determination on injury, was not eligible to vote on remedy. In light of her negative determination, Commissioner Crawford does not believe any import relief is appropriate in this investigation.

[5] The Commission notes that, pursuant to section 330(d)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(2)), the remedy recommendation of Vice Chairman Miller and Commissioners Hillman and Koplan in this investigation is to be treated as the remedy finding of the Commission for purposes of section 203 of the Trade Act.

10 percent in each of the second, third, and fourth years, with over-quota imports to be subject to a duty of 30 percent ad valorem in addition to current U.S. tariffs;

(2) That the President, if he determines to allocate the overall quota, recognize the disproportionate growth and impact of the imports from Korea;

(3) That the President initiate international negotiations with Korea to address the underlying cause of the import surge and the serious injury to the domestic industry;

(4) Having made negative findings with respect to imports of line pipe from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the tariff-rate quota; and

(5) That the tariff-rate quota not apply to imports of line pipe from Israel, or to any imports of line pipe entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Chairman Bragg and Commissioner Askey recommend:

(1) That the President impose a duty, in addition to the current rate of duty, for a 4-year period, on imports of line pipe that are within the scope of this investigation as follows: 12.5 percent ad valorem in the first year of relief, 11 percent ad valorem in the second year of relief, 9.5 percent ad valorem in the third year of relief, and 8 percent ad valorem in the fourth year of relief;

(2) That the increased rates of duty not apply to imports of line pipe from Canada, Israel, or to any imports of line pipe that entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act;

(3) Commissioner Askey, having made a negative finding with respect to imports of line pipe from Mexico under section 311(a) of the NAFTA Implementation Act, recommends that such imports from Mexico be excluded from the increased duty. Chairman Bragg, having made an affirmative finding under section 311(a) of the NAFTA Implementation Act, recommends that imports of line pipe from Mexico be subject to the duty increase.

The Commissioners find that the respective actions that they have recommended will address the serious injury or threat of serious injury found to exist and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

Background

Following receipt of a petition properly filed on June 30, 1999, by counsel on behalf of Geneva Steel, Vineyard, UT; IPSCO Tubulars, Inc., Camanche, IA; Lone Star Steel Company, Dallas, TX; LTV Steel Tubular Products Company, Youngstown, OH;[6] Maverick Tube Corporation, Chesterfield, MO; Newport Steel, Newport, KY; Northwest Pipe Company, Portland, OR; Stupp Corporation, Baton Rouge, LA; and the United Steelworkers of America, AFL-CIO, Pittsburgh, PA, the Commission instituted investigation No. TA–201–70, Circular Welded Carbon Quality Line Pipe, under section 202 of the Trade Act of 1974 to determine whether circular welded carbon quality line pipe is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 4, 1999 (64 FR 42414). The hearing in connection with the injury phase of the investigation was held on September 30, 1999, and the hearing on the question of remedy was held on November 10, 1999. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on December 22, 1999. The views of the Commission are contained in USITC Publication 3261 (December 1999), entitled Circular Welded Carbon Quality Line Pipe: Investigation No. TA–201–70.

Issued: December 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33902 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–U

[6] Petitioners amended the petition on Sept. 14, 1999, to include LTV Steel.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–677 (Review)]

Coumarin From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on coumarin from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 22, 2000. Comments on the adequacy of responses may be filed with the Commission by March 20, 2000.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). The Rules may also be found on the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–050, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1995, the Department of Commerce issued an antidumping duty order on imports of coumarin from China (60 FR 7751). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as all coumarin.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of all coumarin.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is February 9, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 20, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33964 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–414]

Certain Semiconductor Memory Devices and Products Containing Same; Notice of Decision To Extend the Deadline for Determining Whether to Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by fourteen (14) days, or until January 27, 2000, the deadline for determining whether to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on September 18, 1998, based on a complaint filed on behalf of Micron Technology, Inc., 8000 South Federal Way, Boise, Idaho 83707–0006 ("complainant"). The notice of investigation was published in the **Federal Register** on September 25, 1998. 63 Fed. Reg. 51372 (1998).

The presiding administrative law judge (ALJ) issued his final ID on November 29, 1999, concluding that there was no violation of section 337. He found that: (a) Complainant failed to establish the requisite domestic industry showing for any of the three patents at issue; (b) all asserted claims of the patents are invalid; (c) none of the asserted claims of the patents are infringed; and (d) all of the patents are unenforceable for inequitable conduct.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h)(2) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42(h)(2)).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: December 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33906 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–678, 679, 681, and 682 (Review)]

Stainless Steel Bar From Brazil, India, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 22, 2000. Comments on the adequacy of responses may be filed with the Commission by March 20, 2000.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). The Rules may also be found on the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce issued antidumping duty orders on imports of stainless steel bar from Brazil, India, and Japan (60 FR 9661). On March 2, 1995, the Department of Commerce issued an antidumping duty order on imports of stainless steel bar from Spain (60 FR 11656). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, India, Japan, and Spain.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as all stainless steel bar. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of all stainless steel bar. One Commissioner defined the Domestic Industry differently.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the reviews concerning Brazil, India, and Japan, the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–051, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Order Date is February 21, 1995. In the review concerning Spain, the Order Date is March 2, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 20, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of

subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each of the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from each of the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandisefrom each of the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each of the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each of the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in each of the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each of the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each of the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each of the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33965 Filed 12–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–851 (Final)

Synthetic Indigo From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–851 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of synthetic indigo, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States. [1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

[1] For purposes of this investigation, synthetic indigo is defined as the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as "Vat Blue 1." Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives; pre-reduced indigo or indigo white (Color Index No. 73001); and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength.

EFFECTIVE DATE: December 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of synthetic indigo from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 30, 1999, by Buffalo Color Corp., Parsippany, NJ, and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on April 19, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on May 2, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 24, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 27, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 26, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 9, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 9, 2000. On May 25, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 30, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: December 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33904 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–409]

The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement with The United States, Canada, and Mexico

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: December 21, 1999.

SUMMARY: Following receipt of a request on November 18, 1999, from the Senate Committee on Finance (Committee), the Commission instituted investigation No. 332–409, The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement

with the United States, Canada, and Mexico, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The Commission plans to submit its report by August 18, 2000.

As requested by the Committee, the Commission will provide to the extent possible:

- An overview of the current economic relationship among the United States, Canada, Mexico, and the United Kingdom in terms of trade and investment flows, including a discussion of the key industries and comparative advantages of each country.
- Identification of all existing barriers (tariff and non-tariff) to trade and investment among the United States, Canada, Mexico, and the United Kingdom.
- For the United States and the United Kingdom, the estimated effect of eliminating these barriers on:
- The volume of trade in goods and services between the two countries;
- Gross Domestic Product for each country resulting from increased trade and investment
- Employment across industry sectors, with special attention to changes in the competitive position of industries, job creation and loss, productivity, and wages;
- Balance of payments for each country as a result of new trade patterns;
- Amount of foreign direct investment between the two countries,;
- Final prices paid by consumers in each country.
- A discussion on any increase in quality or selection of goods, or other consumer benefits.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Kyle Johnson, Project Leader (202–205–3229) or Soamiely Andriamananjara, Deputy Project Leader (202–205–3252), Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

In its letter to the Commission, the Committee stated that the U.S.-Canada Free Trade Agreement (CFTA) and the North American Free Trade Agreement (NAFTA) have significantly helped to expand the volume of trade between the United States and its North American trading partners, and that the Committee seeks an analysis in order to determine whether the success of the CFTA and NAFTA can be replicated with other trading partners.

In estimating the effect of the elimination of barriers to trade and investment on the economies of the United States and the United Kingdom, the Commission will conduct a comparative statics analysis based on the most current data available on trade, investment, the barriers to these flows, and the trade and investment relationships between these countries and their other significant trading partners.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on April 11, 2000. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 28, 2000. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 4, 2000; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 5, 2000. In the event that, as of the close of business on April 7, 2000, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after April 7, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 4, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

NAFTA, United Kingdom, tariffs, investment, and imports.

Issued: December 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33905 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on December 16, 1999, a proposed Consent Decree in *United States* v. *Akzo Nobel Coatings, Inc., et al.*, Civil Action No. 95–71470, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against Gage products Company for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, Gage Products Company will pay $187,020.49 in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site.

The Department of justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Akzo Nobel Coatings, Inc., et al.*, D.J. Ref. 90–11–3–289A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, and at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33837 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on December 16, 1999, a proposed *de minimis* Consent Decree in *United States* v. *American Jetway Corporation, et. at.*, Civil Action No. 98–73295, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against American Jetway Corporation for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, American Jetway Corporation will pay the total amount of $50,000, plus accrued interest, in five installment payments over a period of approximately 4 years, in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Jetway Corporation et. al.*, D.J. Ref. 90–11–3–289/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, and at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33836 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on December 15, 1999, a proposed consent decree in *United States* v. *Eagle-Picher Industries, Inc.* Civil Action No. CIV 99–712–S, was lodged with the United States District Court for the Eastern District of Oklahoma. The proposed Consent Decree resolves the liability of Eagle-Picher under sections 106 and 107 of CERCLA at the Eagle-Picher Henryetta Superfund Site ("Site") located in Henryetta, Oklahoma. Under the terms of the Consent Decree, Eagle-Picher has agreed to an Allowed Environmental Claim in its Bankruptcy proceeding in the amount of $5.0 million for reimbursement of response costs.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Eagle-Picher Industries, Inc.* DOJ #90–11–3–1724/1.

The proposed consent decree may be examined at the offices of the United States Attorney for the Eastern District of Oklahoma, 1200 West Okmulgee, Muskogee, Oklahoma, 74401, and at the office of the United Stats Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Jon Weisberg, Assistant Regional Counsel). A copy of the consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC. 20044. Copies of the decree may be obtained by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $5.50 (25 cents per page reproduction charge for decree, payable to "Consent Decree Library". When requesting copies, please refer to *United States* v. *Eagle-Picher Industries, Inc.* DOJ #90–11–3–1724/1.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33833 Filed 12–29–99 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 16, 1999, the United States lodged a consent decree in *United States* v. *St. Charles Riverfront Station, Inc.*, Civil Action No. 4:99CV01978SNL (E.D.Mo.), with the Untied States District Court for the Eastern District of Missouri.

The proposed consent decree would resolve the United States' allegations that Defendant St. Charles Riverfront Station violated sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, and section 12 of the Rivers and Harbors Act, 33 U.S.C. 406, by unlawfully discharging dredged material into the Missouri River in St. Charles County, Missouri. The proposed consent decree would require Defendant to pay a $550,000 civil penalty. The proposed decree also provides that Defendant is enjoined from discharging pollutants into waters of the United

States except as authorized by the Clean Water Act and Rivers and Harbors Act.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *St. Charles Riverfront Station, Inc.*, DJ Reference No. 90–5–1–1–05577.

The proposed consent decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of Missouri, 1114 Market Street, Room 260, St. Louis, Missouri.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 99–33835 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 17, 1999, a proposed consent decree in *United States* v. *Titanium Metals Corporation*, CV–9–98–00682–HDM (RLH) (D. Nev.), was lodged with the United States District Court for the District of Nevada. The proposed consent decree would resolve pending claims of the United States against Titanium Metals Corporation ("TIMET"), in the above-referenced action.

The Complaint in the above-referenced civil action seeks injunctive relief and civil penalties for alleged violations of the Clean Air Act, 42 U.S.C. § 7413(b), at TIMET's titanium manufacturing plant in Henderson, Nevada. The complaint alleges that TIMET installed a carbon monoxide ("CO") burner at its plant prior to obtaining either a Prevention of Significant Deterioration or minor source permit. The installation of the burner in reduced emissions of CO, but increased the facility's potential to emit sulfur dioxide ("SO_2"). Under the proposed Decree, TIMET has agreed to install the Best Available Control Technology to control SO_2 emissions, enforceable limits on CO and SO_2 emissions, and payment of a civil penalty of $430,000 over a two year period.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Titanium Metals Corporation*, CV–8–87–00682 (D. Nev.), and the Department of Justice Reference No. 90–5–2–1–2235.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Nevada, 701 East Bridger, 8th Floor, Las Vegas, NV 89101; and at the Region IX Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to DJ #90–5–2–1–2235, and enclose a check in the amount of $7.75 (31 pages at 25 cents per page for reproduction costs). Make checks payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33834 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 189–99]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ) is establishing a system of records entitled "DOJ Computer Systems Activity and Access Records, DOJ–002."

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. Therefore, please submit any comments by 40 days from publication of this notice. The public, OMB, and the Congress are invited to submit written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Washington, DC 20530, (202) 307–1823.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

Dated: December 17, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

SYSTEM NAME:

Department of Justice (DOJ) Computer Systems Activity and Access Records, DOJ–002

SYSTEM LOCATION:

Department of Justice offices (and other sites utilized by the Department of Justice) throughout the world.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who access DOJ network computers or mainframe/enterprise servers, including individuals who send and receive electronic communications, access Internet sites, or access system databases, files, or applications from DOJ computers or sending electronic communications to DOJ computers; and individuals attempting to access DOJ computers or systems without authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system of records may include: records on the use of the interoffice and Internet e-mail systems, including the e-mail address of the sender and receiver of the e-mail message, subject, date, and time; records on user access to DOJ's office automation networks, including user ID, date and time of log on and log off, and denials of access to unauthorized files or directories; records of Internet access from a DOJ computer, such as the Internet Protocol (IP) address of the computer being used to initiate the Internet connection, the site accessed, date, and time; records relating to mainframe/enterprise server access, such as user ID of the individual accessing the mainframe, date and time, and the process being run on the mainframe; records relating to verification or authorization of an individual's access to systems, files, or applications, such as user IDs, passwords, user names, title, and agency.

Logs of Internet access from a DOJ computer do not contain names or similar personal identifiers. However, for official government business purposes, a name may be associated with an IP address.

AUTORITY FOR MAINTENANCE OF THE SYSTEM:

The Computer Security Act of 1987, 40 U.S.C. 1441 note, requires Federal

Agencies to plan for the security and privacy of their computer systems.

PURPOSE(S):

the underlying raw data in this system of records is used by DOJ systems and security personnel, or persons authorized to assist these personnel, to plan and manage system services and to otherwise perform their official duties. Authorized DOJ managers may use the records in this system to investigate improper access or other improper activity related to computer system access; to initiate disciplinary or other such action; and/or where the record(s) may appear to indicate a violation or potential violation of the law, to refer such record(s) to the appropriate investigative arm of DOJ, or other law enforcement agency for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

Information maybe made available in accordance with the disclosure provisions cited below.

1. To members of Congress or staff to respond to inquiries made on behalf of individual constituents who are record subjects.

2. To representatives of the General Services Administration and/or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

3. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

4. To a Federal, state, local, tribal or foreign agency, or a private contractor, in connection with: the hiring or retention of any employee; the issuance of a security clearance; the conduct of a security or suitability investigation or pursuit of other appropriate personnel matter; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a grant, license, or other benefit to an employee by the agency, but only to the extent that the information disclosed is relevant and necessary to the agency's decision on the matter.

5. To provide information to any person(s) authorized to assist in an approved investigation of improper usage of DOJ computer systems.

6. To an actual or potential party or his or her authorized representative for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

7. In the event that material in this system of records appears to indicate, either on its face or in conjunction with other information, a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, to a Federal, State local tribal, or foreign unit of government charged with the responsibility therefor.

8. In a proceeding before a court or adjudicative body, when any of the following is a party to litigation or has an interest in litigation and such records are determined by the DOJ to be arguably relevant to the litigation: the DOJ; any employee of the DOJ in his or her official capacity; or any employee of the DOJ in his or her individual capacity where the DOJ has agreed to represent or has authorized private attorneys to represent the employees; or, the United States, where the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

9. To contractors, grantees, experts, consultants, detailees, and other non-DOJ employees performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

10. To other government agencies where required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic and/or paper form.

RETRIEVABILITY:

Records may be retrieved by user name, user ID, e-mail address, or other identifying search term employed, depending on the record category. The Department does not usually connect IP addresses with a person. However, in some instances, for official government business purposes, the Department may connect the IP address with an individual, and records may be retrieved by IP address.

SAFEGUARDS:

Access is limited to those who have an official need to know. Specifically, only systems and security personnel or persons authorized to assist these personnel have access to automated records and magnetic storage media. These records are kept in a locked room with controlled entry. The use of password protection identification features and other automated data processing system protection methods also restrict access. All records are located in buildings with restricted access.

RETENTION AND DISPOSAL:

Records of verification, authorization, computer system access, and other activities generated by the system shall be retained no longer than one year, unless required for management review, then destroyed/deleted. (Records retention schedule pending approval by the Archivist of the United States.)

SYSTEM MANAGER:

Deputy Assistant Attorney General, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

To determine whether the system may contain records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure" above. Provide name, assigned computer location, and a description of information being sought, including the time frame during which the record(s) may have been generated. Provide verification of identity as instructed in 28 CFR, § 16.41(d).

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" and "Record Access Procedure" above. Identify the information being contested, the reason for contesting it, and the correction requested. In general, this information is computer-generated and is not subject to contest.

RECORD SOURCE CATEGORIES:

Most records are generated internally, i.e., computer activity logs; individuals covered by the system; and management officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–33838 Filed 12–29–99; 8:45 am]
BILLING CODE 4410–OJ–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James Garvey Cavanagh, M.D. Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to James Garvey Cavanagh, M.D., of Hawthorne, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC9084485 pursuant to 21 U.S.C. 284(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada. The order also notified Dr. Cavanagh that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 21, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cavanagh or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cavanagh is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Cavanagh currently possesses DEA Certificate of Registration AC9084485 issued to him in Nevada. The Acting Deputy Administrator further finds that on March 18, 1999, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cavanagh's license to practice medicine in the State of Nevada.

The Acting Deputy Administrator concludes that Dr. Cavanagh is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Cavanagh is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cavanagh is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC9084485, previously issued to James Garvey Cavanagh, M.D. be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 31, 2000.

Dated: December 22, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33978 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–1]

Michael Alan Patterson, M.D., Grant of Restricted Registration

On September 23, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Alan Patterson, M.D. (Respondent) of Memphis, Tennessee, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated October 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Nashville, Tennessee on March 10, 1999, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On August 11, 1999, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Opinion), recommending that Respondent's application for registration be granted subject to various conditions. Neither party filed exceptions to Judge Randall's Opinion, and on September 15, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with specifically noted exceptions, the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues or conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent admits to a history of drug and alcohol abuse, beginning with marijuana and beer on the weekends as a teenager. When Respondent entered college in 1980, he used cocaine sporadically after being introduced to the drug by one of his brothers.

Respondent received his medical degree in 1983, and from July 1983 through June 1986, Respondent was a resident in family practice in Florida. During his residency Respondent used a DEA Certificate of Registration issued to him in Florida that expired on March 31, 1987. As a resident, his drug use remained sporadic but became more frequent.

In 1986, Respondent moved to Mississippi to fulfill an obligation to the National Health Service Corps. Respondent obtained medical licenses in both Mississippi and Tennessee. Ultimately, Respondent was issued DEA Certificates of Registration in both states.

In order to earn additional income, Respondent also worked for an emergency room service and for a freestanding urgent care center from 1986 through 1989. During this time he worked approximately 80 to 100 hours per week. According to Respondent, in 1986 his drug use "progress[ed] to heavy," and the use of cocaine helped him stay awake so he could continue working.

Respondent testified that financial, marital, and work-related stress contributed to his drug use. He further testified that he began staying out late at night, if he returned home at all, and he frequented topless clubs. He failed to show up for work, and if he did show up, he was too "crashed out" to be productive. Eventually, Respondent's former wife notified his employer that Respondent had a cocaine problem.

As a result, the then-medical director of the Tennessee Medical Foundation, Physicians Health Program, (PHP), set

up an intervention with Respondent, and Respondent entered treatment on March 16, 1990. According to Respondent he was very resistant to treatment at that time and fought it "tooth and nail." Respondent completed the four-month treatment program in July or August 1990, however he did not enter into an ongoing contract with the treatment center at that time.

After his treatment, Respondent returned to work part-time at the freestanding urgent care center, and later in 1990, he began a second job working full-time at a 24-hour minor medical emergency center. Additionally, in November or December 1991, Respondent began working at a hospital center. Respondent's employers were aware of his drug abuse problems and treatment.

In the spring or summer of 1991, Respondent began drinking again, and allowed his DEA registrations to expire. Although he had been sent notices to renew his registrations, Respondent testified that he "avoid[ed] the mail" during this time because he owed debts to several bill collectors. By January 1992, Respondent began using cocaine and crack cocaine again. As a result of his relapse, Respondent was fired from the 24-hour minor medical emergency center in March 1992.

Respondent was not aware that he had let his DEA registrations lapse until the hospital where he was working requested a copy of his current DEA registration. Respondent attempted to renew his registration in Tennessee, but he inadvertently sent the wrong form to DEA with the fee. When the incorrect form and money was returned to Respondent, he spent the money on cocaine and failed to renew his registration. Since he still needed to have a current registration to submit to the hospital, Respondent's then girlfriend altered his expired DEA Certificate of Registration to reflect a 1995 expiration date instead of the actual 1991 expiration date. This forgery resulted in the hospital terminating Respondent's employment on September 15, 1992. At the hearing Respondent testified that he was abusing drugs and alcohol at the time of the alteration of his Certificate of Registration, and that "there's no real justification to give you, other than I was sick and irresponsible."

Respondent's substance abuse worsened, and during this time he was arrested and charged with the misdemeanors of drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. Respondent pled guilty to two of the charged. In addition, from the summer of 1991 to November 1992, Respondent prescribed controlled substances without a valid registration and exchanged prescriptions for discounts on the cost of cocaine.

An investigation of Respondent began in 1992 based upon information from a confidential informant that she received controlled substance prescriptions from Respondent for no legitimate medical reason. On February 16, 1993, Respondent voluntarily met with law enforcement personnel. At this time, Respondent was currently undergoing inpatient treatment at a halfway house for his addiction. Respondent cooperated and provided full disclosure during this meeting, as well as subsequent meeting.

This investigation of Respondent, as well as his own admissions, revealed that Respondent has written controlled substance prescriptions to a number of individuals for no legitimate medical reason. He exchanged these prescriptions for services to include topless or private dances. He traded cocaine for sex and private dances, and he used cocaine and marijuana with these dancers.

Respondent acknowledged his prior behavior, his activity regarding his relationships with these individuals, and his unlawful prescribing of controlled substances. Respondent has accepted responsibility for his actions.

Subsequently, Respondent agreed to cooperate with the local police department. He provided a list of people that he had written controlled substance prescriptions to for no legitimate medical purpose. He also provided the names of individuals from whom he had purchased drugs from in the past and indicated from whom he thought he could buy drugs from in the future. Respondent agreed to work with the local police department to make telephone calls and contacts in an effort to set up undercover buys of drugs. Respondent was not very successful in gaining evidence against others since it was known that Respondent was in trouble. Respondent's cooperation with the local police department continued until August 1993.

Respondent entered treatment for a second time in November 1992, this time voluntarily. Respondent testified that he realized that his first attempt at treatment was "a half-hearted effort" and that at that time he was in denial of his addiction. By the time of his second attempt at treatment he had essentially lost everything. He testified, "if I didn't get into treatment at that time, I really didn't think I would be here much longer." Respondent was in impatient treatment for three weeks and then continued to undergo inpatient treatment at a halfway house for impaired professional until June 1993.

While in treatment, Respondent's Tennessee medical license expired on December 31, 1992. Respondent did not submit a renewal application for this license until March 23, 1993 and did not pay the license fee until May 11, 1993. Respondent continued to practice medicine even though his license had not been renewed. Respondent explained that when he returned to work in 1993, he thought his medical license was in a "grace period."

After completing his treatment in June 1993, Respondent returned to work at the 24-hour minor medical emergency center and for the emergency room service, both of which were aware of Respondent's prior drug treatments. On his application for employment with the emergency room service submitted on September 29, 1993, Respondent indicated that his privileges or professional services at any hospital had never been revoked, event though his privileges at the hospital center had been revoked in September 1992. At the hearing, Respondent admitted that this mistake was an oversight and that "[he] had no reason to intentionally try and mislead or lie on that application."

Respondent has maintained a contract with the PHP since March 3, 1993. After treatment, the PHP coordinates and monitors physician's recovery process for a minimum of two years. As part of the contract with the PHP physicians agree to attend weekly peer group meetings and monthly meetings with PHP personnel, to undergo random drug testing, to attend Alcoholics Anonymous or Narcotics Anonymous meetings, and to participate in individualized therapy.

After fulfilling the terms of his initial two-year contract with the PHP, Respondent has continued to renew his contract. Respondent has complied with the terms of this contract.

As a result of Respondent's past behavior, the Tennessee Board of Medical Examiners (Board) sought to take action against Respondent's Tennessee medical license. Respondent failed to appear for a scheduled hearing before the Board on June 21, 1994. According to Respondent he never received notice from the Board that the hearing was going to take place. As a result, on June 22, 1994, the board entered a Default Order revoking Respondent's Tennessee medical license and assessing a $4,300 civil penalty. The Board found among other things that Respondent had lied on his Tennessee medical license renewal form and on his employment application

dated September 29, 1993, that he engaged in unprofessional, dishonorable or unethical conduct, that he was habitually intoxicated which affected his ability to practice medicine, and that he dispensed controlled substances not in the course of professional practice. Respondent stopped practicing medicine when he received written notification in July 1994 of the Board's action.

Based upon his conduct in 1991 and 1992, Respondent was indicted on July 19, 1995, in the United States District Court for the Western District of Tennessee, and charged with 387 felony counts related to his handling of controlled substances. On November 18, 1996, Respondent pled guilty to 17 counts of the unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). On March 27, 1997, Respondent was sentenced to three years probation, 2,000 hours of community service, and assessed a fine of $850. As conditions of his probation, Respondent is required to submit to random drug screens and to meet monthly with his probation officer. As of the date of the hearing Respondent had completed 1,500 to 1,600 hours of his community service obligation and has complied with all of the conditions of his probation.

On July 1, 1995, Respondent began a three-year psychiatry residency program at the University of Tennessee. He was selected for the position of Chief Resident in psychiatry by his fellow residents and faculty. During his residency, Respondent used the institutional DEA numbers of the institutions where he worked as a resident. No questions were ever raised by any official or representative at the University of Tennessee regarding the Respondent's handling of controlled substances.

After his indictment and while in his residency program, Respondent assisted DEA in undercover activities for close to a year. Respondent's assistance produced four controlled substance buys, two of which resulted in convictions.

Effective October 6, 1997, the Board reinstated Respondent's medical license, finding that "[t]he [Respondent] has been monitored by the Tennessee Medical Foundation's Physician Health Program and is currently in good standing with the program. He presented evidence of five (5) years of sobriety." The Board placed several restrictions on Respondent's medical license including that he maintain an affiliation with the PHP for five years to include at least five unannounced drug screens per year; that he only apply for a DEA registration in Schedules III, IV and V; and that he only practice in a supervised setting under a licensed physician acceptable to the Board until his criminal probation is lifted, but for not less than two years.

Respondent has been in compliance with the Board's restrictions. On average, Respondent is tested for drugs eight to ten times per year. According to Respondent, he plans to maintain a lifetime relationship with the PHP, not just the five years imposed by the Board.

The medical director of the PHP testified at the hearing that he has been in frequent contact with Respondent for over three and a half years. He believes that Respondent's prognosis for continued recovery from his drug addiction is excellent. The medical director testified that he does not have any reservations concerning Respondent's ability to handle Schedules III, IV and V controlled substances and that he "fully support[s]" the granting of Respondent's application. However, both Respondent and the medical director testified that Respondent may benefit from a course on the proper handling of controlled substances.

Respondent testified that he has been sober since November 6, 1992. He further testified that he would pay greater attention to detail about his registration status, and the proper maintenance and renewal of his DEA and state registration "won't be a problem in the future at any time." He feels that he is "much more responsible" now. Respondent is ashamed of his previous conduct. He testified however that "today I know that I'm not the same person that I was six, seven, eight years ago . . . who was sick and addicted." Respondent testified that he understands the consequences of a relapse.

Since 1998, Respondent has been employed at a treatment facility where, for the most part, he practices addiction medicine. Presently, if Respondent's treatment of a patient requires the use of controlled substances, one of Respondent's supervisors writes the prescription. The Board has approved Respondent's employment at the treatment facility and any change in employment would require additional Board approval.

On October 28, 1997, Respondent executed the application for registration that is the subject of these proceedings. Respondent applied to be registered in Schedules III, IV and V and provided his home address as his "Proposed Business Address." Respondent testified that he does not intend to handle controlled substances at his residence and that the address on his application should be modified to reflect the address at the treatment facility where he is currently employed.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

As to factor one, the Board revoked Respondent's Tennessee medical license in June of 1994. However, three years later the Board reinstated Respondent's license subject to various restrictions. In reinstating Respondent's license, the Board recognized that Respondent had been drug-free for five years and was in good standing with the PHP. Therefore, it is undisputed that Respondent is currently authorized to handle controlled substances in Tennessee.

While state licensure is a prerequisite for a DEA registration, it is not dispositive of whether Respondent's registration would be in the public interest. However, it is noteworthy that the Board stated that "[a]ny DEA certificate that the [Respondent] shall apply for shall be limited to Schedule III, IV and V." The Acting Deputy Administrator agrees with Judge Randall that, "[a]lthough this restriction is not an endorsement by the Board for issuing a DEA registration to the Respondent, at a minimum, this statement expresses the Board's confidence in the Respondent's ability to handle the responsibilities of a DEA registrant, particularly regarding the Respondent's

ability to handle Schedules III, IV and V controlled substances."

Respondent's experience in dispensing controlled substances and his compliance with laws related to controlled substances may be considered under factors two and four. The Acting Deputy administrator finds that Respondent's handling of controlled substances was abysmal during his active drug abuse. Respondent violated 21 U.S.C. 843(a)(2) by prescribing controlled substances without a valid DEA registration. He caused his expired DEA Certificate of Registration to be altered. In addition, Respondent violated 21 U.S.C. 841(a)(1) by prescribing controlled substances to individuals for no legitimate medical purpose. He wrote these prescriptions in exchange for discounts on his cocaine and crack purchases and in exchange for topless dances from women.

The Acting Deputy Administrator finds this conduct to be reprehensible, and certainly could justify denying Respondent's application for registration. However, all of this conduct occurred when Respondent was heavily involved in substance abuse. Respondent has been drug-free since November 1992. He underwent intensive treatment and is still actively participating in aftercare treatment.

Also of concern is that Respondent continued to practice medicine in 1993 after he failed to timely renew his state medical license. However, this occurred when Respondent was undergoing substance abuse treatment and he thought his license was subject to a grace period.

Other than his practice of medicine without a current state license, there is no evidence that Respondent improperly handled controlled substances after he entered treatment in November 1992. In fact, Respondent handled controlled substances without question from July 1, 1995 to June 30, 1998 when using institutional numbers issued to him by the University of Tennessee during his residency.

Regarding factor three, it is undisputed that when Respondent was abusing drugs and alcohol, he was arrested for drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. He pled guilty to two of these charges. In addition, on November 18, 1996, Respondent pled guilty to 17 counts of unlawful distribution of controlled substances. Respondent was sentenced to three years probation and 2,000 hours of community service. Evidence in the record indicates that Respondent has complied with the terms of his probation. While such convictions clearly could justify denying Respondent's application for registration, the Acting Deputy Administrator finds it significant that these convictions resulted from Respondent's behavior when he was addicted to drugs and alcohol, and as has been previously discussed, Respondent has been drug-free for seven years and his prognosis for continued recovery is excellent.

As to factor five, other conduct which may threaten the public health and safety, it is undisputed that Respondent was previously addicted to alcohol and drugs, including marijuana, cocaine and crack cocaine. According to Respondent, his conduct was "dangerous, illegal, [and] irresponsible" when he was addicted. However, Respondent has undergone intensive treatment for his substance abuse and his treatment is ongoing.

It is true that Respondent previously had undergone treatment but had relapsed. However, Respondent admits that he was resistant to treatment at that time. The second time that Respondent entered treatment, he did so voluntarily and is committed to such treatment. The evidence suggests that his chances of repalse are slight. He understands the consequences of a relapse. He intends to maintain a lifetime relationship with the PHP and he currently works with others who are addicted to drugs and alcohol.

Judge Randall also found it significant under this factor that Respondent incorrectly listed his home address on his application for registration. However, she further found that it was not so egregious as to warrant a denial of Respondent's application for registration. The Acting Deputy Administrator agrees that this incorrect listing of his business address does not warrant denial of Respondent's application.

Judge Randall concluded, and the Acting Deputy Administrator agrees, that the Government has made a prima facie case for denial of Respondent's application. Respondent unlawfully prescribed controlled substances, altered his DEA Certificate of Registration, abused alcohol and drugs, and was convicted of offenses relating to controlled substances. However, it is not in the public interest to deny Respondent's application.

Respondent has acknowledged his past unlawful behavior and has accepted responsibility for his conduct. Respondent has a serious addiction to drugs and alcohol during his unlawful conduct. He has been sober since November 1992 and his chances of continued recovery are excellent. He intends to maintain a lifetime relationship with the PHP and he is currently still being monitored by the State of Tennessee. The evidence suggests that Respondent is clearly committed to his recovery and is seeking to help others with substance abuse problems by predominantly practicing addiction psychiatry. Judge Randall also found it significant that Respondent cooperated with law enforcement by fully disclosing his unlawful conduct, by providing information against others, and by assisting in undercover buys.

Therefore, the Acting Deputy Administrator agrees with Judge Randall that it would not be in the public interest to deny Respondent's application. However given the egregiousness of Respondent's past behavior, Judge Randall recommended that restrictions be imposed on Respondent's registration that would "add a measure of protection to the public interest, while affording [Respondent] the opportunity to demonstrate his ability and willingness to handle controlled substances responsibly in his medical practice." Judge Randall recommended that Respondent's application for registration be granted subject to the following restrictions:

(1) The Respondent must resubmit a registration application reflecting his "Proposed Business Address" as required by regulation;

(2) The Respondent be granted a Certificate of Registration only for Schedules III, IV and V;

(3) By not later than two years after the date of the final order, the Respondent shall submit to the local DEA office evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense;

(4) For three years after the effective date of the final order in this case, the Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered or dispensed during the previous quarter, to the Special Agent in Charge of the nearest DEA office, or his or her designee. The log should include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of

submission of the log. Review of such a log should provide adequate assurances for his future responsible conduct as a registrant.

The Acting Deputy Administrator agrees with Judge Randall that Respondent's application for registration should be granted and that it is appropriate to impose restrictions on such registration. However, the Acting Deputy Administrator finds it unnecessary to require Respondent to resubmit an application listing his proper business address. At the hearing in this matter, Respondent requested that his application be modified to reflect the address of his current place of employment. The Acting Deputy Administrator finds that this request is sufficient to modify his application and a new application for registration is not required. However, if Respondent's place of employment has changed from that represented at the hearing, a new written request for modification of the address on his application must be submitted.

In addition, the Acting Deputy Administrator disagrees with Judge Randall's recommendation that Respondent be given two years to present evidence of successful completion of formal training in the proper handling or prescribing of controlled substances. Given the nature of Respondent's past conduct, the Acting Deputy Administrator finds that it is in the public interest for such training to be completed within one year of being issued his DEA registration.

Finally, the Acting Deputy Administrator believes that it is prudent to require Respondent to continue his affiliation with the PHP for three years regardless of whether such affiliation is required by the Board.

Therefore, the Acting Deputy Administrator concludes that Respondent should be granted a DEA Certificate of Registration in Schedules III, IV and V subject to the following restrictions:

(1) By not later than one year after the Certificate of Registration is issued, Respondent shall submit to the DEA office in Nashville Tennessee evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense.

(2) For three years after the issuance of the Certificate of Registration, Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered, or dispensed during the previous quarter, to the Resident Agent in Charge of the DEA office in Nashville, Tennessee, or his or her designee. The log should include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log.

(3) Respondent shall continue his affiliation with the Tennessee Medical Foundation's Physicians' Health Program for at least three years from the issuance of the Certificate of Registration, regardless of whether such affiliation is required by the Tennessee Board of Medical Examiners.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Michael Alan Patterson, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than January 31, 2000.

Dated: December 22, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33979 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 31, 2000 and February 1, 2000, 8:00 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 380 and 390, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Clifford J. Astill, Program Director Geomechanics and Geotechnical Systems, Geoenvironmental Engineering and Geohazards Mitigation, Division of Civil and Mechanical Systems, Room 545, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 Control, Geomechanics and Geotechnical Systems and Geoenvironmental Engineering and Geohazards Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33974 Filed 12–29–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date/Time: January 13–14, 2000, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lawrence E. Brandt, Digital Government Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate CISE Digital Government Program proposals submitted in response to the program announcement (NSF 99–103).

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33973 Filed 12–29–99 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date/Time: January 13–14, 2000; 7:30 AM–5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Room 365, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Alexander Shor, Program Director, Oceanographic Technical Services & Instrumentation Panel, Oceanographic Centers & Facilities Section, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1580.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Oceanographic Technical Services & Instrumentation Panel.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33972 Filed 12–29–99 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education (57).

Date/Time: February 10th and 11th 2000, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Sonia Ortega, Program Director, Mrs. Carolyn L. Piper, Asst. Program Director, Mrs. Arneeta Speight, Senior Program Assistant and Ms. Deborah A. Daniels, Senior Program Assistant, Division of Graduate Education, National Science Foundation, 4201 Wilson Blvd. Room 907N, Arlington, VA 22230. (703) 306–1697.

Purpose of Meeting: To provide advice and recommendations concerning preproposals submitted to NSF for financial support.

Agenda: To review and evaluate applications submitted to the NSF–NATO Postdoctoral Fellowships in Science and Engineering program as part of the selection process for awards.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33971 Filed 12–29–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion. Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

5. *Who will be required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70 and 72.

6. *An estimate of the number of responses:* 27.

7. *The estimated number of annual respondents:* 29.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 60,288.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 51 of the NRC's regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 31, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0021), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of December, 1999.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33967 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

In the Matter of Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, that authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of three pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix J, contains the following requirements:

a. Section III.D.2(b)(i) requires that air locks be tested prior to initial fuel loading and at 6-month intervals thereafter at an internal pressure not less than P_a (the calculated peak containment internal pressure related to the design basis accident).

b. Section III.D.2(b)(ii) requires that air locks opened during periods when containment integrity is not required shall be tested at the end of such periods at P_a.

c. Section III.D.2(b)(iii) requires that air locks opened during periods when containment integrity is required shall be tested within 3 days after being opened. For air locks opened more frequently than once every 3 days, the air lock shall be tested at least once every 3 days during the period of frequent openings. For air lock doors having testable seals, testing the seals fulfills the 3-day test requirement.

III

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated October 5, 1999.

Whenever the plant is in cold shutdown (Mode 5) or refueling (Mode 6), containment integrity is not required. However, if an airlock is opened when in Modes 5 or 6 (which is usually the case), 10 CFR 50, Appendix J, Section III.D.2(b)(ii) requires that an overall air lock leakage test at not less than P_a be performed before plant heatup and startup (*i.e.*, before Mode 4 is entered). The licensee has requested an exemption that would allow this test requirement to be met by performing an air lock door seal leakage test per 10 CFR 50, Appendix J, Section III.D.(b)(iii) during plant startup prior to entering Mode 4 if no maintenance has been performed on the air lock that could affect its sealing capability. If maintenance has been performed that could affect its sealing capability, an overall air lock leakage test per 10 CFR 50, Appendix J, Section III.D.2(b)(ii) would be necessary prior to establishing containment integrity.

The existing air lock doors are designed so that the air lock pressure test can only be performed after a strongback (structural bracing) has been installed on the inner door, since the pressure used to perform the test is opposite that of accident pressure and would tend to unseat the door. Performing the full air lock test in accordance with the present requirements takes approximately 12 hours, since it requires installation of the strongback, performing the test, and removing the strongback. During the test, access through the air lock is prohibited, which, therefore, requires evacuation of personnel from the containment or the personnel must remain inside the containment during the test until Mode 4 is reached. The licensee has determined that pressurizing the volume between the seals to 60 pounds per square inch gauge pressure after each opening, and prior to establishing containment integrity, provides the necessary surveillance to ensure the sealing capability of the door seals.

If the periodic 6-month test of 10 CFR 50, Appendix J, Section III.D.(b)(i) and the test required by 10 CFR 50, Appendix J, Section III.D.(b)(iii) are current, no maintenance has been performed on the air lock that could affect its sealing capability, and the air lock is properly sealed as determined by the seal test, there is no reason to expect that the air lock will leak just because it has been opened in Modes 5 or 6. Therefore, there is no impact on plant operation or safety. In addition, due to the design of the air lock, the 6-month test should detect air lock deterioration.

IV

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations.

Accordingly, the staff concludes that the licensee's proposed approach of substituting the 3-day seal leakage test requirements of 10 CFR 50, Appendix J, Section III.D.(b)(iii) for the full pressure test of 10 CFR 50, Appendix J, Section III.D.(b)(ii) is acceptable when no maintenance that could affect the sealing capability has been performed on the air lock. Whenever maintenance that could affect the sealing capability has been performed on the air lock, the full pressure test requirements of 10 CFR 50, Appendix J, Section III.D.(b)(ii) must still be met.

Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that application of the regulation is not necessary to serve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that: (a) leakage through the primary containment, and systems and components penetrating the primary containment, does not exceed the allowable leakage rate values specified in the Technical Specifications or associated Bases; and (b) periodic surveillance of containment penetrations and isolation valves, and systems and components penetrating the containment, is performed so that proper maintenance and repairs are made during the service life of the containment.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Duke an exemption from the requirements of 10 CFR Part 50, Appendix J, Section III.D.2(b)(ii) for containment air lock tests as described above, for the Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (64 FR 70072).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of December 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33970 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

GPU Nuclear, Inc.

[Docket No. 50–219]

Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of GPU Nuclear, Inc. (the licensee), to withdraw its April 28, 1999 application, as supplemented by letters dated August 30 and September 3, 1999, proposing to amend Facility Operating License No. DPR–16 for the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would have revised the facility operating license to approve handling of loads up to and including 45 tons using the reactor building crane during power operations.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 8, 1999 (64 FR 54925). However, by letter dated December 8, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 28, 1999, as supplemented by letters dated August 30 and September 3, 1999, and the licensee's letter dated December 8, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 23rd day of December 1999.

For the Nuclear Regulatory Commission.

Helen N. Pastis, Sr.,

Project Manager, Section I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33969 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–1014]

Holtec International Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Requirements of 10 CFR Part 72

By letter dated October 4, 1999, Holtec International (Holtec or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). Holtec, located in Marlton, New Jersey, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to procure materials for, and fabricate, three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask prior to receipt of the Certificate of Compliance (CoC) for the HI–STORM 100 cask system. The MPC–68 multi-purpose canister, the HI–STORM 100 overpack, and the HI–TRAC–125 transfer cask are basic components of the HI–STORM 100 system, a cask system designed for the dry storage and transportation of spent nuclear fuel. The HI–STORM 100 cask system is intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by New York Power Authority (NYPA) at the James A. FitzPatrick Nuclear Power Plant (JAF) located in Oswego, New York.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated October 26, 1995, as supplemented, and pursuant to 10 CFR Part 72, Holtec submitted an application to the NRC for a CoC for the HI–STORM 100 cask system. This application is currently under consideration by the NRC staff. The applicant is seeking Commission approval to procure materials for, and fabricate, three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask prior to the Commission's issuance of a CoC for the HI–STORM 100 cask system. The HI–STORM 100 system is intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by NYPA at JAF in Oswego, New York. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which state that "Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model." The proposed action before the Commission is whether to approve fabrication, including material procurement, and whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action: Holtec requested the exemption to 10 CFR 72.234(c) to ensure the availability of storage casks so that NYPA can maintain full core off-load capability at JAF. JAF will lose full core off-load capability in the fall of 2002. JAF has proposed an initial cask loading in the summer of 2001. To support training and dry runs prior to the initial loading, NYPA requests the delivery of the first cask by the spring of 2001. Holtec states that to meet this schedule, fabrication, including material procurement, must begin in January 2000.

The HI–STORM 100 cask system application, dated October 26, 1995, is under consideration by the Commission. It is anticipated that, if approved, the HI–STORM–100 cask system CoC may be issued by July 2000. The proposed procurement and the fabrication exemption will not authorize use of any Holtec cask to store spent fuel. That will occur only when, and if, a CoC is issued. An NRC approval of the procurement and grant of the fabrication exemption request should not be construed as an NRC commitment to favorably consider any Holtec application for a CoC. Holtec will bear the risk of all activities conducted under the exemption, including the risk that the three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask that Holtec plans to construct may not be usable because they may not meet specifications or conditions placed in a CoC that the NRC may ultimately approve.

Environmental Impacts of the Proposed Action: Regarding the procurement approval and fabrication exemption, the Environmental Assessment for the final rule, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites" (55 FR 29181 (1990)), considered the potential environmental impacts of casks which are used to store spent nuclear fuel under a CoC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the casks, but would only permit procurement and fabrication. There are no radiological environmental impacts from procurement or fabrication since cask material procurement and cask fabrication do not involve radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to cask fabrication. Each MPC–68 multi-purpose canister weighs approximately

44 tons and is made of steel. Each HI–STORM 100 overpack weighs approximately 100 tons and is constructed of metal and concrete. The HI–TRAC–125 transfer cask weighs approximately 125 tons and is made of structural steel and lead. The amount of materials required to fabricate these components is expected to have very little impact on the associated industry. Fabrication of the metal components would be at a metal fabrication facility, while fabrication of the concrete overpacks would be partially fabricated at the same metal fabrication facility, with only the concrete pours being done at JAF. The metal and concrete used in the fabrication of these components is insignificant compared to the amount of metal and concrete fabrication performed annually in the United States. If the components are not usable, the components could be disposed of or recycled. The amount of metal and concrete disposed of is insignificant compared to the amount of metal and concrete that is disposed of annually in the United States. Based upon this information, the fabrication of these components will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed actions, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed actions would be to deny approval of the exemption and, therefore, not allow fabrication until a CoC is issued. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impact between the proposed action and the alternative considered and that the applicant has a legitimate need to procure materials and fabricate the components prior to certification and is willing to assume the risk that any fabricated components may not be approved or may require modification, the Commission concludes that the preferred alternative is to approve the procurement request and grant the exemption from the prohibition on fabrication prior to receipt of a CoC.

Agencies and Persons Consulted: Mr. J. Spath, Director, Radioactive Waste Policy and Nuclear Coordination, New York Energy Research and Development Authority, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of approving procurement of materials for three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask, and granting an exemption from 10 CFR 72.234(c) so that Holtec may fabricate these components prior to issuance of a CoC will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The request for the exemption from 10 CFR 72.234(c) was filed on October 4, 1999. For further details with respect to this action, see the application for CoC for the HI–STORM 100 cask system, dated October 26, 1995. On July 30, 1999, a preliminary Safety Evaluation Report and a proposed CoC for the HI–STORM 100 cask system were issued by the NRC staff to initiate the rulemaking process. The exemption request and CoC application are docketed under 10 CFR Part 72, Docket 72–1014. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–33968 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Commercial Activities Inventories.

SUMMARY: The Office of Management and Budget (OMB) hereby announces that the FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below.

The "Federal Activities Inventory Reform Act of 1998" (Pub. L. 105–270) ("FAIR Act") requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the agencies' inventory submissions. OMB has completed this process for the agencies listed below.

Commercial Activities Inventories are now available from the following agencies:

Agency and Contact

Department of Defense—Paul Solomon, 703–917–7431, Web address: http://gravity.Lmi.org/dodfair/
Department of Justice—Larry Silvis, 202–616–3754; Web address: http://www.usdoj.gov/jmd/pe/preface.htm
Department of State—Robert McFadden, 202–647–7780
Department of Transportation—Bill Moga, 202–366–9666
Department of the Treasury—Kevin Whitfield, 202–622–0248; Web address: http://www.treas.gov/fair
Department of Veterans Affairs—John O'Hara, 202–273–5068; Web address: http://www.va.gov; E-mail:fairact@mail.va.gov; fax: 202–273–5991 or 202–273–5993
Federal Communications Commission—Mark Reger, 202–418–1925
Federal Emergency Management Agency—Mary Ellen Presgraves, 202–646–2988
Intelligence Community Management Staff and Central Intelligence Agency*—Office of Public Affairs, 703–874–3050
Intelligence Community: Other Agencies*—Competitive Sourcing Officer, 703–695–1860
National Capital Planning Commission—Teresa Jackson, 202–482–7217
National Transportation Safety Board—Donald J. Libera of Richard Miller, 202–314–6210
Offices of Inspector General:
Department of Agriculture—Richard M. Guyer, 202–690–0291
Department of Defense—Joel L. Leson, 703–604–9701
Department of State—James K. Blubaugh, 202–647–5013
Department of the Treasury—Emilie Baebel, 202–927–5200
Department of the Treasury, Tax Administration—Agapi Doulaveris, 202–622–3968
Railroad Retirement Board—Martin J. Dickman, 312–751–4690
Peace Corps—Susan Hancks, 202–692–1612
Smithsonian Institution—L. Carole Wharton, 202–357–2917
Federal Retirement Thrift Investment Board—Richard White, 202–942–1633

* **Note:** Appropriate security clearance and need to know must be established for access.

Stephen A. Weigler,

Acting Associate Director for Administration.

[FR Doc. 99–33825 Filed 12–29–99; 8:45 am]

BILLING CODE 3110–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42233A; File No. SR–NYSE–99–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 23, 1999.

Correction

In FR Document 99–33052, beginning on page 71529 for Tuesday, December 21, 1999, on page 71534 the first sentence of the first paragraph in Column 1 was incorrectly stated. The sentence should read as follows:

"Moreover, the Commission believes that the Exchange's decision not to exempt Small Business Filers is appropriate.[1]"

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33907 Filed 12–29–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Lagos Airport Now Meets International Security Standards

SUMMARY: The Secretary of Transportation has now determined that Murtala Mohammed International Airport, Lagos, Nigeria, maintains and carries out effective security measures.

Notice

By Orders 92–10–17, issued October 8, 1992, and 93–8–15, issued August 11, 1993, the Secretary of Transportation made public his determinations that Murtala Mohammed International Airport did not maintain and carry out effective security measures. I now find that Murtala Mohammed International Airport maintains and carries out effective security measures. My determination is based on a recent Federal Aviation Administration (FAA) assessment which reveals that security measures used at the airport now meet or exceed the Standards established by the International Civil Aviation Organization. Accordingly, I am removing the prohibition on services between the United States and Murtala Mohammed International Airport imposed by Order 93–8–15 and the public notification requirements imposed by Order 92–10–17.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. As a result of this determination, the FAA will direct that signs posted in the U.S. airports relating to the 1992 determination be removed.

Dated: December 22, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–33804 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–62–P

[1] *See* NVCA and Airlease Letters.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4860]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DOT.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2000 minimum random drug testing rate at 50 percent of covered crewmembers. An evaluation of the 1998 Management Information System (MIS) data collection forms submitted by marine employers determined that random drug testing on covered crewmembers for the calendar year 1998 resulted in positive test results 1.68 percent of the time. Based on this percentage, we will maintain the minimum random drug testing rate at 50 percent of covered crewmembers for the calendar year 2000.

DATES: The minimum random drug testing rate is effective January 1, 2000 through December 31, 2000. You must submit your 1999 MIS reports no later than March 15, 2000.

ADDRESSES: You must mail your annual MIS report to Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW, Room 2403, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Lieutenant Jennifer Ledbetter, Project Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone 202–267–0684.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, The Coast requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. All marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 to December 31. You must submit this data to the Coast Guard in an annual MIS report (Form CG–5573 found in Appendix B of 46 CFR 16). You may either submit your own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The chemical drug testing data is essential to analyze our current approach for deterring and detecting illegal drug abuse in the maritime industry.

Since 1998 MIS data indicates that the positive random testing rate is greater than one percent industry-wide (1.68 percent), the Coast Guard announces that the minimum random drug testing rate is set at 50 percent of covered employees for the period of January 1, 2000 through December 31, 2000 in accordance with 46 CFR 16.230(e).

You must submit your MIS report to the Coast Guard no later than March 15 of each calendar year. Each year we will publish a notice reporting the results of the previous calendar year's MIS data, and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: December 21, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–33998 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotocraft issues.

DATES: The meeting will be held on January 27, 2000, 9 a.m. PST.

ADDRESSES: The meeting will be held at the Las Vegas Hilton, Conference Room

9, 3000 Paradise Road, Las Vegas, NV 89109, telephone (702) 732–5111.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

Status reports for the following:

a. Performance and Handling Qualities Requirements.

b. Rotocraft-Load Combination Safety Requirements.

c. Normal and Gross Weight and Passenger Issues.

d. Critical Parts.

e. Harmonization Management Team Issues.

Attendance is open to the public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 22, 1999.

Florence L. Hamn,

Acting Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–33938 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–1999–6574]

Small-Scale Rockets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA announces an on-line public forum on the Internet to solicit comments and information from the public on the regulation of launches of small-scale rockets. Based on information received, the FAA may initiate rulemaking to redefine the scope of launch activities that would not require FAA licensing. The FAA is also considering a simplified launch license (light-license) for designated classes of launch activities. This on-line public forum is intended to aid the FAA in its regulatory effort by receiving early input from the affected community.

DATES: The on-line public forum will begin on February 28, 2000, at 9 a.m. EST and end on March 10, 2000, at 4:30 p.m. EST. Written comments submitted to the docket must be received no later than March 24, 2000.

ADDRESSES: The on-line public forum can be reached by clicking the "On-Line Public Forum" hyperlink on the Associate Administrator for Commercial Space Transportation's (AST) Internet home page, *http://ast.faa.gov*, or going directly to *http://ast.faa.gov/publicforum*.

Persons who are unable to participate in the on-line public forum and wish to submit written comments may mail or deliver their comments in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6574, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the Documents Management System (DMS) at the following Internet address: *http://dms.dot.gov/* no later than March 24, 2000. Written comments, other than those provided during the on-line public forum, may be filed and/or examined in Room PL 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays. Written comments to the docket will receive the same consideration as statements made during the on-line public forum.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, Licensing and Safety Division, Commercial Space Transportation, (202) 267–8379, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; or Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, (202) 366–9320.

SUPPLEMENTARY INFORMATION: The on-line public forum will allow near real-time electronic discussion on the regulatory aspects of small-scale rockets. The discussion will allow a large cross-section of the interested public to share views with each other and the FAA, and assist the FAA in redefining the regulatory framework for small-scale rocket activities.

Background

Under 49 U.S.C. Subtitle IX, ch. 701, popularly referred to as the Commercial Space Launch Act of 1984, as amended (CSLA or the Act), any person proposing to launch a launch vehicle within the United States, and any U.S. citizen proposing to launch a launch vehicle outside the United States, must obtain a license authorizing the launch. 49 U.S.C. 70104(a). The FAA authorizes launches by the private sector to protect public health and safety, safety of property, and national security interests and foreign policy interests of the United States.

Regulations implementing the Act were issued in a final rule on April 4, 1988. The 1988 final rule, Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III, exempted certain small-scale rocket activities from licensing requirements. In the preamble to the 1988 final rule, the Office of Commercial Space Transportation (OCST), the predecessor office within the Department of Transportation responsible for carrying out the authority of the Secretary under the Act, explained that Congress did not intend the CSLA to encompass small-scale rocket launches from private sites conducted for recreational or educational purposes. The OCST stated that these types of launches do not warrant licensing and regulatory oversight under the CSLA.[1]

In the 1988 final rule, launches of small-scale rockets of limited performance were termed "amateur rocket activities." Under 14 CFR 401.5, a launch constituting an amateur rocket activity is one which takes place from a private site and involves a rocket that meets all three of the following criteria:

---

[1] As explained in the preamble of the 1988 final rule:

[OCST's] licensing policies and procedures have been developed for * * * commercial expendable launch vehicle (ELV) launches. However, consistent with the legislative history of the Act, the Office's regulatory guidance also provides adequate supervision for any other non-Federal launch activity. Thus, launch activities falling within the scope of the Office's authority may include activities conducted for experimental, developmental, or research purposes as well as those conducted without any apparent profit motive.

At the same time, neither the Act nor its legislative history evinces an intention to require licenses for small scale rocket launches conducted for recreational or educational purposes at private sites. These launches, which number annually in the millions, are currently subject to state and local regulation, self-regulation by the organizations sponsoring these activities, and Federal airspace requirements. These existing guidelines and requirements have been effective for purposes of protecting public safety and any other national interest that may be associated with these activities.

53 FR 11004, 11007.

- The rocket motor(s) has a total impulse of 200,000 pound-seconds or less; and
- The rocket motor(s) has a total burning time or operating time of less than 15 seconds; and
- The rocket has a ballistic coefficient—*i.e.*, gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

Small-scale rocket technology has emerged since 1988 such that the regulatory definition of "amateur rocket activities" may inadequately define the full range of rocket activities that may be excluded from FAA launch licensing because they do not pose sufficient risk to public health and safety and safety of property to warrant FAA licensing. Conversely, the current definition may exclude from FAA licensing certain launch activities that pose sufficient risk to public health and safety and safety of property as to warrant FAA licensing. This mismatching of the definition of "amateur rocket activities" with current small-scale rocket activities is due to a number of development since 1988, including:

(1) Small-scale launch vehicles that meet the criteria listed under the definition of "amateur rocket activities" in 14 CFR part 401 have become more powerful and sophisticated. These vehicles can achieve higher performance levels than anticipated under the current definition of "amateur rocket activity." Higher performance can lead to the ability to reach greater altitudes and travel greater distances resulting in greater risk to public health and safety and safety of property.

(2) A number of small-scale launch vehicles are being developed and launched using liquid propellants. Even though these vehicles may not have the size or power to warrant FAA licensing, they may have a burn time of 15 seconds or more and therefore do not meet a criterion of "amateur rocket activities." Under the current regulations, a person wishing to launch a liquid-propelled launch vehicle with a burn time of 15 seconds or greater would require a license or would have to apply to the FAA to waive the requirement for a license.

(3) New commercial launch concepts often begin with developmental tests using prototypes or other test vehicles. Some test vehicles are relatively powerful, but have limited altitude or range capability. Launches of these vehicles may not meet the definition of amateur rocket activities. However, launch vehicles that have limited altitude and range can be contained within a controlled area without using a flight safety system. Thus, only minimal safety measures are needed to protect the public from launch hazards.

New Regulatory Initiative

The FAA is considering two issues. The first is the need to redefine the scope of small-scale launch activities that may be conducted without an FAA license. Small-scale rocket technology has advanced over the years beyond that contemplated in the existing definition. FAA licensing may be necessary for certain small-scale rocket activities not currently licensed under the CSLA. Conversely, certain launch activities that do not currently meet the definition of "amateur rocket activity" may not require FAA licensing for reasons previously explained.

The second issue the FAA is considering is whether to establish a new launch licensing procedure entailing fewer application requirements or licensee responsibilities than those currently codified as part of the FAA's launch licensing provisions. 14 CFR Parts 413 and 415. This "light-license" would be appropriate for certain small-scale rocket activities that pose unacceptable risk to persons and property absent the use of certain essential safety standards. A "light-license" would ensure, with minimal burden, that launch operators take appropriate safety precautions to protect public health and safety and the safety of property.[2]

Identifying activities within these two classes, unlicensed and "light-licensed," is complicated because of the diversity of activities, the wide range of launch vehicles used, and the number and variety of launch sites used. The on-line public forum will enable the FAA to solicit information from hobbyists, educators, rocket organizations, launch companies with developmental or test vehicles, state and local government agencies that regulate various aspects of rocketry, private land owners whose land is used for rocket launches, and the general public.

The FAA hopes that an on-line public forum that allows the public to discuss diverse issues amongst themselves and with the FAA will provide the agency with information on which the FAA can formulate regulatory alternatives.

[2] The FAA has the authority to waive certain requirements for a license. Thus, today, the FAA can simplify the current licensing process on a case-by-case basis. However, ti would be more efficient for the FAA and the public if a streamlined licensing process can be established with requirements tailored to a clearly defined class of launch activity.

Information Requested

The FAA solicits on-line discussion and written comments on the questions below and any other ideas the public may have. Note that all of the FAA's regulatory decisions must be made with an understanding of the costs and benefits of its actions. Therefore, the FAA requests that commenters include estimates of costs for any proposal they recommend.

(1) What existing and future launch activities could be conducted without FAA licensing? What criteria could be used to define these activities? Possible criteria include—

- The total impulse of the rocket's motors;
- The maximum altitude the rocket can reach;
- The physical size of the rocket;
- The materials used to construct the rocket;
- Whether professionally manufactured rocket motors are used;
- Whether the rocket's propulsion system uses liquid, solid, or hybrid propellant;
- Whether toxic propellants are used;
- The size and location of the launch site; and
- Whether the rocket is launched from a balloon or other airborne platform.

(2) What existing and future launch activities would be appropriate for a "light-license?" What criteria could be used to define these activities? Should similar criteria be used as in question (1) but with higher thresholds?

(3) For launch activities that are appropriate for a "light-license," what standards or safety measures should be required as a matter of FAA licensing requirements to ensure public health and safety and the safety of property? Possible safety measures include—

- The use of trajectory and dispersion analyses during the planning stages of a launch;
- Analyzing the risks to the public during the planning stages of a launch;
- Determining and establishing hazard areas to contain launch hazards; and
- Using "wind weighting" to ensure the launch vehicle flies within established hazard areas.

(4) What would be an appropriate application process for a "light-license?" Would standard forms be helpful? Would electronic submission be helpful?

(5) What else, not addressed above, should the FAA consider?

On-Line Public Forum

The public can join the on-line public forum by clicking the "On-Line Public

Forum" hyperlink on the Associate Administrator for Commercial Space Transportation's (AST) Internet home page, *http://ast.faa.gov,* or going directly to *http://ast.faa.govpublicforum.*

The FAA will monitor public comments throughout the two-week forum. The FAA may ask clarifying questions of commenters. The FAA will not make any commitments or draw any conclusions during the open docket period.

Issued in Washington, DC, on December 23, 1999.

Joseph A. Hawkins,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–33937 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

First Tier Environmental Impact Statement: Jackson, Lafayette, Saline, Pettis, Cooper, Boone, Callaway, Montgomery, Warren, Lincoln, and St. Charles Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a First Tier environmental impact statement (EIS) will be prepared for proposed improvements to Interstate 70 in Jackson, Lafayette, Saline, Pettis, Cooper, Boone, Callaway, Montgomery, Warren, Lincoln, and St. Charles Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 636–7104 or Mr. Bob Sfreddo, Director of Project Development, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare a First Tier EIS for a proposal to investigate improvements to Interstate 70 through Missouri, from the interchange with Interstate 470 in Independence, Missouri (Exit 15) to the interchange in Lake St. Louis, Missouri (Exit 214). The first tier EIS will involve the examination of transportation strategies for improvements to Interstate 70 for 199 miles access the state of Missouri. The study area will be about five (5) miles on each side of existing Interstate 70 across Missouri.

Strategies under consideration include: (1) Taking no action, (2) transportation system management, (3) other modes of transportation, (4) upgrading and improving the existing Interstate 70, (5) constructing a new limited-access highway on new or partially-new location, and (6) a combination of the above strategies. The First Tier EIS will be completed to a Record of Decision indicating a strategy and a broad corridor up to a mile wide for improvements to Interstate 70 across Missouri. The first tier EIS also will indicate an approach for subsequent NEPA work in the Second Tier(s) within the selected corridor. It will indicate specific projects having independent utility and logical termini for the Second Tier effort to progress to subsequent detailed design and construction of manageable projects in the future. The Second Tier will involve the detailed NEPA study for specific alignments within the broad corridor previously selected in the First Tier EIS.

The proposed First Tier EIS is the result of MoDOT's identification of Interstate 70 across Missouri for improvement as part of the future long range transportation plan. Given the current and projected traffic volumes, and the dated design of existing Interstate 70 (some portions dating from as early as 1956 as the first construction in the United States on the interstate highway system), improvements to the Interstate 70 corridor are considered critical to provide for a safe, efficient, and economical transportation network that will meet traffic demands in the state and for national travelers. The proposed improvements are also intended to be environmentally sound. System improvements will be examined based on the purposes of reducing traffic congestion, addressing roadway deficiencies, improving safety, reducing traffic congestion, and enhancing system linkage.

A scoping process has been initiated that involves all appropriate federal and state agencies. This will continue throughout the study as an ongoing process. An intensive public information effort will be initiated in January 2000 to include those agencies, local agencies, and private organizations and citizens who have previously expressed, or are known to have, interest in this proposal. This effort also will inform the public living in the study area and those who travel on Interstate 70 from across the nation with the interest of capturing their comments for and about the study. Public informational meetings will be held across the study area to engage the regional community in the decision making process and to obtain public comment. In addition, public hearings will be held to present the findings of the First Tier Draft EIS (DEIS). Public notice will be given concerning the time and place of informational meetings and public hearings. The First Tier DEIS will be available for public and agency review and comment prior to the public hearings.

To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the First Tier EIS should be directed to the FHWA or MoDOT at the addresses previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 16, 1999.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 99–33925 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Raleigh County, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that it is revising the original notice of intent published in the **Federal Register** on August 28, 1997 (Volume 62, Number 167, Page 45695). The original notice stated that an environmental impact statement would be prepared for a proposed highway improvement project in Raleigh County, West Virginia. After further analysis, it has been determined there will be no significant environmental impacts and the appropriate NEPA document would be an environmental assessment.

FOR FURTHER INFORMATION CONTACT: Henry E. Compton, Division Environmental Coordinator, Federal Highway Administration, West Virginia Division, Geary Plaza, Suite 200, 700 Washington Street East, Charleston,

West Virginia, 25301, Telephone: (304) 347–5268.

SUPPLEMENTARY INFORMATION: In lieu of preparation of an environmental impact statement, the FHWA, in cooperation with the West Virginia Division of Highways (WVDOH) will prepare an environmental assessment for the proposed East Beckley Transportation Improvement Project. The project begins at the intersection I–64 just east of Beckley, and extends northward to connect with Appalachian Corridor L (US 19), a distance of approximately 7 miles. This project is considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) using alternate traffic modes; (3) improve the existing system by constructing a four lane, limited access highway on new location. Incorporated into the study with the various building alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in this proposal. A public meeting will be held in Beckley when appropriate. Public notice will be given of the time and place of the meeting. A draft environmental assessment will be available for public and agency review and comment prior to the public meeting.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited. Comments or questions concerning this proposed action or the modification of environmental document type should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 16, 1999.

Henry E. Compton,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 99–33989 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–6466]

Specialized Hauling Vehicle (SHV) Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The FHWA is announcing the initiation of a study required by Congress in the Transportation Equity Act for the 21st Century (TEA–21). Section 1213(f) of the Act directs the Secretary to examine the economic, safety and infrastructure impacts of truck weight standards on specialized hauling vehicles (SHVs). The Secretary is to report the results of the study to Congress and make any recommendations he determines appropriate as a result of the study, by June 9, 2000.

SHV's are generally single-unit trucks that have high tare (empty) weights from heavy-duty cargo-carrying bodies and special equipment to help load or unload their cargoes. They often require short wheelbases in order to access and maneuver safely at the types of loading and/or unloading facilities they serve. Because of the short wheelbase, the maximum legal weight for an SHV as determined by the federal bridge formula is often below the vehicle's gross weight limit as determined by individual single and tandem axle limits. SHV's are commonly considered to include: solid waste removal trucks, home fuel oil delivery trucks, construction material dump trucks, and cement transit mixers. Certain tractor-semitrailer dump vehicles hauling bulk construction materials might also be considered SHVs.

To gather data for this study, the FHWA requests information from State DOT officials, vehicle manufacturers, SHV operators, and other interested parties having knowledge of the weights and dimensions of the various types of SHVs, how these vehicles are used in various operations (trash removal, fuel oil delivery, hauling of construction/building materials), and the effects of truck size and weight limits on the productivity, safety and infrastructure impacts of those operations. The Agency is particularly interested in what provisions, if any, each State has excepting or permitting these vehicles to operate at weights above standard weight limits.

DATES: In order to be fully considered in the study, comments are requested by February 28, 2000. The docket will remain open for comments until the study is completed, but the study schedule may not allow full consideration of comments received after February 28, 2000.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Linde, Office of Transportation Policy Studies, HPTS, (202) 493–0173, or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354. FHWA, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

SHVs are generally single-unit trucks that, along with special cargo-carrying bodies, have equipment to help load and/or unload their cargoes. These specially equipped vehicles typically have high tare (empty) weights. SHVs are commonly considered to include: trash removal, home fuel oil delivery, dump, and cement transit mixers. Their operations often involve travel in inner city business districts, residential areas, or construction sites to load or unload. In these environments, SHVs require

short wheelbases in order to access and maneuver safely at the facilities they serve.

For several reasons, the specialized characteristics of these vehicles result in high ratios of transport costs to commodity values relative to those of general freight commodities. First, the specially equipped cargo-carrying bodies are generally used to haul low-value, bulk commodities and typically have high tare weights. When considered with the Federal weight standard applied to the short wheelbase of these vehicles, the high tare weight and high density of the commodities hauled generally restrict the legal payload well below the cargo capacity of the vehicle. Second, given the specialized characteristics of the cargo-carrying body of the vehicle, backhaul, or reload, opportunities are limited or nonexistent, resulting in a high percentage of empty miles. These vehicles' commodity and transport operating characteristics result in relatively high transport costs per ton-mile of cargo carried.

In order to accommodate vehicle operators' desire to utilize more of the cargo carrying capacity of the vehicle and reduce transportation costs, many States allow higher axle and gross weights off the Interstate Highway System than are allowed under Federal weight limits that apply to Interstate Highways. A 1993 study of dump vehicles conducted for the State of Maryland showed that 15 states and the District of Columbia allowed three-axle single-unit dump vehicles to operate on non-Interstate roads at gross weights above the maximum allowed under Federal axle-weight limits. In many cases these higher limits were also allowed on the Interstate Highway System through grandfather rights that allow States to retain weight limits that were higher than Federal limits when the Federal limits went into effect.

The increased productivity of higher weights comes at a price in terms of increased infrastructure deterioration and potential degradation to vehicle handling and stability. When loaded to higher weights, these vehicles cause disproportionate wear to pavements and bridges relative to those operating at Federal weight limits. In addition, the higher weights coupled with short cargo-carrying bodies typical of SHVs make them less stable than trucks of the same dimensions carrying less weight or trucks of greater length carrying the same weight.

Study Approach

The FHWA proposes to proceed with the study in three phases: (1) Outreach to understand views on SHV weights held by various interested groups and to gather information on vehicle dimensions, costs, and operating characteristics including trip patterns, areas of operation, roadway classes traveled, operating weights and annual mileage; (2) analysis of current SHV operations including economic, safety and infrastructure impacts; (3) identification of changes that have the potential to improve productivity and safety while minimizing infrastructure impacts.

Phase 1: Public Outreach

The FHWA is soliciting public input on all aspects of SHV operations as well as on the general study approach described in this notice. The Agency is particularly interested in participation by State DOT officials, vehicle manufacturers, and SHV operators and each group's perspectives on the effects of truck size and weight limits on the productivity, safety, and infrastructure impacts of SHVs. Previous studies of SHV impacts prepared for individual States are also of interest and the FHWA requests that States having undertaken such studies send a copy of the study report to the docket.

The Agency is seeking information on: (1) The segments of the trucking industry that use SHVs, (2) current size and weight limits, including exceptions and permitting, for SHVs by State, (3) vehicle characteristics, (4) operating costs, and (5) trip characteristics. This information is needed for all types and sizes of SHVs.

Request for Information: Respondents to this notice are requested to address the following items or questions in comments to the docket. The responses to these questions will be used to perform the impact analyses of Phases 2 and 3 of the study.

Segments of the Trucking Industry Utilizing SHVs

1. Specialized hauling vehicles are generally considered those vehicles with operating characteristics requiring short wheelbases for accessing, and maneuvering safely in, loading and unloading locations. They also have specialized equipment for loading/unloading, carry bulk commodities, and tend to have relatively short trip lengths with empty backhauls. Vehicles commonly considered SHVs include dump trucks, solid waste haulers, home fuel delivery trucks, and cement transit mixers. What other specific types of trucks meet these general criteria and should be included when considering policy issues related to specialized hauling vehicles?

Vehicle Characteristics

2. What are the current tare (empty) weights and dimensions of various types of SHVs? The following dimensions are important for the study:

- Vehicle width.
- Track width.
- Wheelbase.
- Chassis height.
- Axle spreads between axle groups and within axle groups.
- Height of center of gravity for cab, chassis, and cargo space.
- Cargo space dimensions or cargo capacity.

How have vehicle weights and dimensions changed in recent years? Are changes in vehicle weights and dimensions anticipated in the future?

3. What is the typical horsepower of various SHVs?

Trip Characteristics

4. What is the payload—the difference between the maximum allowable vehicle weight and the empty weight—of various SHVs? What is the density of the commodity hauled (pounds per cubic foot)?

5. What are the typical usage patterns of various SHVs? What is the average trip length? If there are large variations in trip length from day to day or season to season, what is the distribution of trip lengths during the year? What percentage of mileage is operated while fully loaded? Partially loaded? Empty? What percentage of mileage is operated on Interstate Highways? On other limited access highways? On other arterial roads? On local roads? What is the average annual mileage for different types of SHVs?

Operating Costs

6. For purposes of estimating economic impacts of changes in vehicle weight limits, what are the average hourly wages for operators of various types of SHVs? What is the cost and the expected useful life (in years and mileage) of the various types of SHVs? What is the fuel consumption when empty and when loaded of the various types of SHVs?

7. What operating taxes and user fees do the various types of SHVs pay by State? At what weights in excess of Federal standards are SHVs allowed to operate and does operating at those weights require a special permit or additional fee? If so, what is the weight/fee schedule?

Size and Weight Regulations

8. How do Federal weight limits affect operations of various SHVs? Which weight limits (axle load, bridge formula,

or gross vehicle weight) have the most significant impact and why?

9. How do Federal divisible load regulations affect SHV operations?

10. How do Federal weight limits affect the safety of SHVs? What would be the impacts of changes in weight limits on safety?

11. How do Federal weight limits affect infrastructure costs? What would be the impacts of changes in weight limits on pavement and bridge costs?

12. Are there any operating restrictions (speed, time of day, route) on SHVs operating under excess weight permits that would not apply to the same vehicle operating within Federal weight standards?

13. What opportunities exist to improve productivity while also improving safety and minimizing adverse impacts on pavements and bridges?

Phase 2: Analysis of Current SHV Operations

Many States have special weight provisions on non-Interstate highways for specific trucking operations such as dump trucking. Although not always the case, these special weight provisions are often extended to the Interstate System through grandfather rights. The analysis undertaken in this phase of the study will examine the economic, safety and infrastructure impacts of the current set of truck size and weight limits for SHVs, including divisible and non-divisible overweight permit provisions of the various States. This will be accomplished utilizing data gathered in the Phase I Outreach, as well as established data sources including the Truck Inventory and Use Survey (TIUS) collected by the Department of Commerce, and Trucks Involved in Fatal Accidents (TIFA), an enhancement of National Highway Traffic Safety Administration safety data compiled by University of Michigan Transportation Research Institute. Analytical tools used in the Department of Transportation's Comprehensive Truck Size and Weight Study will be used to assess infrastructure and safety issues.

State provisions for higher operating weights allow SHV operators to carry a given volume of commodity in fewer trips. This increase in productivity has the positive effects of reduced truck travel, which decreases fuel consumption and related emissions, and lower transportation costs per ton-mile.

Higher allowable operating weights of SHVs also impact the condition of highway infrastructure. Pavement damage per SHV vehicle mile traveled increases due to heavier axle loadings. Bridge stresses per SHV loading also increase with the higher weights. Bridge stressed depend not only on the gross weight of the vehicle, but on the concentration of the load, or the bridge area supporting the load. Thus, a short wheelbased SHV will generally cause more bridge stress than longer wheelbased vehicles of the same gross weight and lower gross weight vehicles of the same wheelbase.

Increased SHV weights may also impact highway safety. Because they generally haul dense, bulky commodities on short wheelbases, vehicle handling characteristics may be affected. At higher weights, there may be an increase in rollover propensity from a higher center of gravity and reduced braking capability from a high gross weight to braking axle ratio.

This phase of the study will provide illustrative examples of the operational economics, infrastructure and safety impacts for States where SHVs routinely operate legally at weights in excess of the Federal standard. The effectiveness of various permit program fee structures in recovering additional infrastructure cost will be assessed and to the extent practical, the impact of these programs on illegal overweight operations. The analysis will utilize information collected during Phase 1 of the study supplemented with data from TIUS and TIFA and other analytical tools developed for the Comprehensive Truck Size and Weight Study.

Phase 3: Analysis of Weight Standards for SHVs

Based on the Phase 2 assessment of Federal and State weight limits and permitting practices and the current usage of SHVs, Phase 3 of the study will analyze the implications of alternative Federal axle load, gross vehicle weight, and bridge formula weight limits and alternative permitting practices as they apply to SHVs. Factors to be considered shall include transportation costs and other economic impacts, safety, and pavement, bridge, and other infrastructure impacts.

The method for Phase 3 analysis will be similar to that used in Phase 2, an illustrative case study of potential economic, infrastructure and safety impacts from increased weights for various types of SHVs in States where weights are currently determined by the Federal Bridge Formula and Federal axle limits. Many of the analytical tools developed for the Comprehensive Truck Size and Weight Study will be used in assessing impacts of alternative weight limits and permitting practices.

Authority: 23 U.S.C. 315; 23 U.S.C. 217 note; 49 CFR 1.48.

Issued on: December 16, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–33859 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Extension of Comment Period; Petition for Grandfathering of Non-Compliant Equipment National Railroad Passenger Corporation

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant passenger equipment manufactured by Renfe Talgo of America (Talgo) for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 5920. Interested parties were invited to comment on the petition before the end of the comment period of December 2, 1999.

On December 2, 1999, FRA extended the comment period in this proceeding until December 15, 1999, following a Freedom of Information Act (FOIA) request that certain items in FRA files referenced in Amtrak's petition be made available for review (see 64 FR 68195; Dec. 6, 1999). Talgo has objected to released of certain of the requested information under FOIA exemption 4 (5 U.S.C. 552(b)(4)), which exempts from release trade secrets and commercial or financial information obtained from a person that is privileged or confidential. On December 15, 1999, FRA further extended the comment period in this proceeding until 10:00 a.m. on December 27, 1999 to enable FRA to finalize its response to the FOIA request, and to permit the responder time to analyze the documents released by FRA (see 64 FR 71846; Dec. 22, 1999). Unfortunately, processing the FOIA request has taken longer than anticipated; FRA released documents on November 30, December 10, and December 21. FRA has redacted from the documents released information that is protected under FOIA exemption 4. On December 13, the FOIA requester again asked FRA to further extend the comment period so that the requester would have 15 days after receipt of all

of the requested documents to analyze the documents and prepare comments on the grandfather petition. FRA has agreed to this request and has extended the comment period to the close of business on January 10, 2000. FRA expects that further extensions of the comment period will not be necessary.

FRA has placed in the docket a copy of all the documents provided to the FOIA requester. FRA has also placed in the docket several documents that it received from Talgo that are relevant to the Amtrak petition. Two of these documents contain comments or corrections to the minutes of the June 17, 1999 meeting between FRA, Amtrak and Talgo; the minutes of this meeting was one of the documents released to the FOIA requester. Another document contains weld information pertaining to the Talgo equipment. The remaining documents contain design changes to the Talgo equipment requested by FRA. Talgo has requested confidential treatment, under exemption 4 of FOIA, for certain information in the documents. FRA has redacted from the Talgo documents information that is protected by exemption 4. Unredacted versions of all of the documents placed in the docket are available to agency staff and will be used in the agency's review of the Amtrak petition to the extent deemed necessary.

Comments received after January 10, 2000 will be considered to the extent possible.

Comments received after January 10, 2000 will be considered to the extent possible. Amtrak's petition, documents inserted in the docket, and all written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on December 23, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–33926 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–1999–6704]

Matson Navigation Company—Application for Approval of a Proposed Ocean Freight Service under the Fourth Exception to Section 506 of the Merchant Marine Act, 1936, as Amended.

Notice is hereby given that Matson Navigation Company (Matson) has requested approval of the Maritime Administration that a proposed ocean freight service is permitted under the Fourth Exception to Section 506 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1156. The proposed service would use two of the following C–9 class vessels, MAHIMAHI, MANOA, and MOKIHANA, which were built with the aid of construction-differential subsidy. As a result of receiving such assistance, those vessels must be operated in the U.S. foreign trade, except that the vessels may be operated "on a voyage in foreign trade on which the vessel may stop at the State of Hawaii." Matson proposes to operate the vessels in an itinerary which includes stops at Vancouver, B.C., Seattle, Oakland, and Honolulu, with no coastwise cargo to be carried between Seattle and Oakland. The C–9 vessels would be substituted for two of the six vessels Matson presently operates in its Hawaii service. Matson also operates a Pacific Coast Shuttle service with calls at Los Angeles, Seattle and Vancouver.

A redacted copy of the application will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Dockets website (address information follows). Any person, firm, or corporation having an interest in this proposal, and desiring to submit comments concerning the application, may file comments as follows. You should mention the docket number that appears at the top of this notice. You should submit your written comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments may also be submitted by electronic means via the internet at *http://dmses.dot.gov/submit*. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m., EST, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*. Comments must be received no later than the close of business on (15 days from publication), 2000.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider any comments timely submitted, and take such action with respect thereto as may be deemed appropriate.

By Order of the Maritime Administration.

Dated: December 27, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–33934 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33837]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), to operate its trains, locomotives, cars and equipment with CSXT's own crews over NS's Track #A1 at Petersburg, VA, from the connection between CSXT and NS at or near milepost P004.85 to the connection with the industrial trackage of Chaparral Steel Corporation (CSC).

The transaction is scheduled to be consummated on or shortly after December 27, 1999.

The purpose of the trackage rights is to allow CSC to have two rail carriers serve its Petersburg facility. CSXT's trackage rights will be restricted to service to CSC, its existing and future subsidiary companies, or other supporting companies located on the industrial trackage of CSC, and the successor and assigns of those companies.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d)

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33837, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 22, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33832 Filed 12–29–99; 8:45 am]

BILLING CODE 4915–00–P

federal register

Thursday
December 30, 1999

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 655 and 945
Revision of the Manual on Uniform Traffic Control Devices: Temporary Traffic Control and General Provisions, Markings, and Signals; Proposed Rules
Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6576]

RIN 2125–AE72

Revision of the Manual on Uniform Traffic Control Devices; Temporary Traffic Control

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134.

This document proposes new text for the MUTCD in Part 6—Temporary Traffic Control. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes included herein are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before June 30, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Mr. Charlie L. Sears, Office of Transportation Operations, Room 3408, (202) 366–1555, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL): *http//dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

The text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA Home Page at the URL: *http://www.ohs.fhwa.dot.gov/operations/mutcd*. Please note that the proposed rewrite sections contained in this docket for MUTCD Part 6 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions is available for inspection and copying as prescribed in 49 CFR part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Highway-Rail Intersections. The summary of proposed changes for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The summary of proposed changes for Parts 1 and 7 was published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A— General Provisions and Standards for Signs, Chapter 2D—Guide Signs for Conventional Roads. Chapter 2E—Guide Signs for Expressways and Freeways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I was published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The summary of proposed changes for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles was published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33802. The summary of proposed changes for Chapter 2C—Warning Signs and Part 10—Traffic Control for Highway-Light Rail Transit Grade Crossings was published as Phase 5 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33806. The summary of proposed changes for Chapter 2B—Regulatory Signs, Part 5—Traffic Control for Low-Volume Rural roads, and update information for Part 8—Traffic Control at Highway-Rail Grade Crossings was published as Phase 6 of the MUTCD rewrite effort in a

previous notice of proposed amendment. The summary of proposed new changes for Part 1—General Provisions, Part 3—Markings, and Part 4—Signals was published as Phase 7 of the MUTCD rewrite effort in a previous notice of proposed amendment. This notice of proposed amendment is Phase 8 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Part 6.

The proposed new style of the MUTCD would be a 3-ring binder with 8–1/2 x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions; (2) Guidance—representing "should" conditions; (3) Options—representing "may" conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. The adopted final version of the new MUTCD will be in metric and english units. Dual units will be shown in the MUTCD particularly for speed limits, guide sign distances, and other measurements which the public must read.

The FHWA invites comments on the proposed text for MUTCD Part 6. A summary of the proposed significant changes contained in these sections are included in the following discussion:

Discussion of Proposed Amendments to Part 6—Temporary Traffic Control

The following items are the most significant proposed revisions to Part 6:

1. The FHWA proposes to change the title of Part 6 from "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations" to "Temporary Traffic Control." This title better explains the contents of this section.

2. In Section 6A, paragraph 4, the FHWA proposes to delete the word "must" from the second and third sentences. This deletion is proposed because temporary traffic control does not guarantee the safety or efficient completion of a work activity.

3. In Section 6A, in the second sentence of paragraph 5, the FHWA proposes to revise the sentence to read "A concurrent objective of the traffic control is the efficient construction and maintenance of the roadway." This change is proposed because it clarifies the objective of proper traffic control.

4. In Section 6B.3c, the FHWA proposes to revise the first sentence to read, "Flagging procedures when used, should provide positive guidance to drivers * * *." This change was suggested by the National Committee on Uniform Traffic Control Devices. The FHWA agrees with this suggestion because it will provide positive guidance to drivers to safely travel through temporary traffic control area.

5. In Section 6B.4a, the FHWA proposes to revise the second sentence to read, "The most important duty of these individuals should be to ensure that all traffic control elements of the project are consistent with the traffic control plan * * *." This change will help ensure that proper traffic control measures are being carried out.

6. In Section 6B, in the second paragraph of the STANDARD, the FHWA proposes to change the following recommended condition to a STANDARD: "All traffic control devices shall be removed when no longer needed." This change would ensure that all traffic control devices are removed when no longer required.

7. In Section 6B.7, the FHWA proposes to revise the first sentence to read, "Good public relations should be maintained." This sentence would be revised from a mandatory statement to GUIDANCE.

8. In Section 6C.1, the FHWA proposes to revise the third GUIDANCE paragraph concerning traffic control plans for transit from mandatory shall statements to recommended GUIDANCE.

9. In Section 6C.2, the FHWA proposes to add a new definition for a Temporary Traffic Control Zone. A Temporary Traffic Control Zone is now defined as including a Work Zone and/or an Incident Area. There currently is no uniform definition of a work zone. As a result, work zone crash data collection is not uniform.

10. In Section 6C.3, paragraph 3, the FHWA proposes to revise the discussion on advance warning area from a mandatory condition to GUIDANCE as follows:

"(A) On urban and rural two-lane roadways, effective placement of warning signs should be as follows:

(1) Urban: Warning sign spacings in meters (feet) in advance of the transition area normally should range from .75 (4) to 1.5 (8) times the speed limit, in km/h, (mph) in meters (feet), with the high end of the range being used when speeds are relatively high.

(2) Rural: Rural roadways are characterized by higher speeds. The spacing, in meters (feet), for the placement of warning signs should be substantially longer—from 1.5 (8) to 2.25 (12) times the speed limit, in km/h, (mph)."

The above proposed changes will provide clearer guidance on warning sign placement.

11. In Section 6C.3, paragraph 4, the FHWA proposes to revise the following sentences from a permissive condition to GUIDANCE: "Typical distances for placement of advance warning signs on freeways and expressways are longer because drivers are conditioned to uninterrupted flow. Therefore, the advance warning signs should extend on these facilities as far as 800m (one-half mile) or more."

12. In Section 6C.5, paragraph 9, the FHWA proposes to change the following discussion on an activity area from a recommended condition to an Option: "(a) Longitudinal Buffer Space: The Longitudinal buffer space may also be used to separate opposing traffic flows that utilize portions of the same traffic lane, as depicted in Figure 6–2."

This change is proposed because buffer spaces are optional.

13. In Section 6C.7, paragraphs 6 and 7, the FHWA proposes to clarify some of the discussion on tapers and make it GUIDANCE:

(A) "Taper lengths shown in Table 6–2 should be the minimum used." This change would require that tapers be calculated a certain way unless proper justification is given.

(B) "When using metric units, the maximum distance in meters between devices in a taper should not exceed 1/5 times the speed limit in kilometers per hour. When engineering judgment shows that there is a special need for a speed reduction, the maximum distance in kilometers between devices may be 1/10 of the speed limit in kilometers per hour. When using English units, the maximum distance in feet between devices in a taper should not exceed the speed limit in miles per hour. When engineering judgment shows there is a special need for speed reduction, the maximum distance in feet between devices may be one-half the speed limit in mph."

This proposed clarification requires a certain spacing between channelizing devices unless proper justification is given. Also, the option for the one-half spacing is in response to recommendations contained in the

"Older Driver Highway Design Handbook".[1]

14. In Section 6C.7 , paragraph 12, the FHWA proposes to clarify the discussion on shifting tapers and make it GUIDANCE: "A shifting taper should have a length of about one-half "L."" This clarification will require a certain length for shifting tapers unless proper justification is given. This proposed change is in response to recommendations contained in the "Older Driver Highway Design Handbook".

15. In Section 6C.9 A, paragraph 2, the FHWA proposes to change the discussion of the flagger method from an Option to GUIDANCE. "When good visibility and traffic control cannot be maintained by one flagger station, traffic should be controlled by a flagger at each end of the section." This proposed change recommends two flaggers in one-lane, two-way traffic operation.

16. In Section 6D.1, paragraph 2, the FHWA proposes to add a new GUIDANCE discussion on the staging of equipment and work vehicles, barrier installation and regular inspections of work sites. These additions will provide additional guidance for and increase safety of pedestrians.

17. In Section 6D.1, paragraph 16, the FHWA proposes to clarify the following sentence and make it GUIDANCE: "At fixed work sites of significant duration, especially in urban areas with high pedestrian volumes, a canopied walkway may be used to protect pedestrians from falling debris." In the existing MUTCD the intent of the sentence was to provide safety to pedestrians by providing a canopied walkway. This proposed change would provide an increased emphasis on pedestrian safety.

18. In Section 6D.2, paragraph 3, the FHWA proposes to add the following new Option: Shadow Vehicle—in the case of mobile and constantly moving operations, such as pothole patching and striping operations, a shadow vehicle, equipped with appropriate lights, warning signs and/or a rear-mounted impact attenuator may be used to provide additional safety for the workers from impacts by errant vehicles.

19. In Section 6E.2, paragraph 1, the FHWA proposes to revise the fourth sentence to read, " The retroreflective clothing shall be designed to identify clearly the wearer as a person." This change is proposed to delete the phase "and be visible through the full range of body motions " because a flagger visibility is the most important issue.

20. In Section 6E.4, paragraph 2, the FHWA proposes to revise the sentence to read: "When used at nighttime, flags shall be retroreflectorized ." Illuminating the flag would improve the visibility of the flag for the warning of motorists.

21. In Section 6E.4, paragraph 2, the FHWA proposes to change the following sentence from a recommended condition to a STANDARD: "The following methods of signaling with sign paddles shall be used."

22. Throughout Section 6F, the FHWA proposes to add a description of the following signs: STAY IN LANE, PEDESTRIAN CROSSWALK, SIDEWALK CLOSED (AHEAD) CROSS HERE, RIGHT TWO LANES CLOSED 0.8 KILOMETERS (½ MILE), CENTER LANE CLOSED AHEAD, THRU TRAFFIC MERGE RIGHT (LEFT), EXIT OPEN, ON RAMP, RAMP NARROWS, SLOW TRAFFIC AHEAD, SHOULDER WORK, RIGHT SHOULDER CLOSED, UTILITY WORK AHEAD, Lane Reduction Transition.

Several signs were in the Typical Application diagrams in the 1993 Edition of MUTCD, part 6 but there was no discussion as to their proper use.

23. In Section 6F.2, in the third sentence of paragraph 2, the FHWA proposes to add the following sentence as a STANDARD because mandatory "shall" is implied through the context of the sentence. "Colors for guide signs shall follow the standard in Chapter 2A, Table 2A.5, and Chapter 2D, except for special information signs as noted below in Section 6F.51." A second sentence is added to the sixth paragraph as a STANDARD to clarify that "red" flags shall not be used on warning signs.

24. In Section 6F.3, paragraphs 4, 6, 7 and 8 the FHWA proposes to modify the mounting height discussion from recommended GUIDANCE to mandatory STANDARD and added an Option condition to change the mounting height requirement for signs in work zones.

There is an existing FHWA/NHTSA National Crash Analysis Study, Contract DTFH61–97–X00015, on 1.5 m (5 ft) versus 2.1 m (7 ft) sign mounting height. This study does not show a need to raise the sign height to 2.1 m (7 ft). For all rural post-mounted signs, a 1.5 m (5 ft) minimum mounting height is appropriate for crashworthiness. If, however, there is an operational need (visibility, etc.) to have a higher mounting height, it may be used.

25. In Section 6F.3, paragraph 8, the FHWA proposes to change the requirement for the amount of days that signs mounted on portable supports may be used. The FHWA is also proposing to list the types of signs to be used on portable supports for more than three days. Methods of mounting signs other than on posts are illustrated in Figure 6–6. Signs mounted on portable supports may be used for a duration of three days or less (intermediate term stationary). The R11 series, W1–6 through W1–8, M4–10, E5–1 or similar type signs may be used on portable supports for more than three days.

26. In section 6F.3, paragraph 10, the FHWA proposes to change the following sentence from recommended condition to a STANDARD: "Unshielded sign supports shall be designed to breakaway or yield on impact to minimize hazards to motorists." The FHWA is proposing to change this sentence to a STANDARD because devices, according to National Cooperative Highway Research Program Report 350, are required to be crashworthy. The FHWA is proposing to add the word "breakaway" because it better explains what a sign does on impact. Also, the FHWA is proposing to add the following sentence to explain the requirements for signs mounted on multiple signs supports: "Signs erected on multiple breakaway posts shall be mounted a minimum of 2.1 m (7ft) above the ground so as to permit an errant vehicle to pass under the sign panel if all posts are not struck."

27. In Section 6F.4, the FHWA proposes to change the text from a recommended condition to a STANDARD. FHWA feels that this would increase visibility and safety.

28. In Section 6F.8, paragraph 1, the FHWA proposes to change the following sentence from a permissive condition to GUIDANCE: "The ROAD (STREET) CLOSED sign (R11–2) should be used where the roadway is closed to all traffic except contractors' equipment or officially authorized vehicles and should be accompanied by appropriate detour signing." Also, there is information on the use of these signs in both rural and urban areas.

29. In Section 6F.9, paragraph 2, the FHWA proposes to add the following new mandatory STANDARD sentence for rural areas: "In rural applications, the LOCAL TRAFFIC ONLY sign shall have the legend ROAD CLOSED (XX) KILOMETERS (MILES) AHEAD–LOCAL TRAFFIC ONLY."

30. In Section 6F.16, paragraphs 14, 15, and 16, the FHWA proposes to add the following STANDARD and GUIDANCE regarding the proper use of flexible signs: "Flexible warning signs for nighttime use shall have a black legend on a retroreflectorized orange or

[1] "Older Driver Highway Design Handbook," Report No. FHWA–RD–99–045, available from the FHWA Research and Technology report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

retroreflectorized flourescent orange background. The mounting height of flexible signs shall conform to the same requirements as rigid signs. A 300 mm (1 foot) mounting height is allowable for flexible signs, but they should normally be mounted higher in order to provide improved visibility."

The FHWA proposes to add the above sentences because of the increased use of flexible signs in work zones.

31. In Section 6F.55C, paragraph 4, the FHWA proposes to add a message format for Portable Changeable Message Signs. This format indicates the following: line 1 should present the problem, line 2 should present the location or distance ahead, and line 3 should present the recommended driver action. This addition is in response to recommendations contained in the "Older Driver Highway Design Handbook" which shows that motorists may benefit by having a message in a logical sequence.

32. In Section 6F.56A, paragraphs 2 and 4, the FHWA proposes to add SUPPORT and STANDARD conditions on TYPE D arrow panels to explain how this type of arrow panel should be used.

33. In Section 6F.58E, the fourth sentence of paragraph 1, the FHWA proposes to require the top stripe on all drums to be orange to allow for better uniformity. The text will read as follows: "Each drum shall have a minimum of two orange and two white stripes with the top stripe being orange."

34. In Section 6F.58I, paragraph 4, the FHWA proposes to add under GUIDANCE four paragraphs on two-way two-lane operations concerning speed, traffic volumes, geometrics and intersections.

35. In Section 6F.59B, paragraph 1, the FHWA proposes to change the minimum length of interim pavement marking from 1.2 m (4 ft) to 0.6 m (2 ft). Texas Transportation Institute Research Record 1160, Field Studies of Temporary Pavement Markings at Overlay Project work Zones on Two-Lane, Two-Way Rural Highways, indicates that there is no significant difference between the performance of the 1.2 m (4 ft) broken line or the 0.6 m (2 ft) broken line.

36. In Section 6F.59C, paragraph 1, the FHWA proposes to add the following new STANDARD wording: "If raised pavement markers are used to substitute for a broken line segment, at least two retroreflective markers shall be placed, one at each end of a segment of 0.6 m (2 ft) to 1.5 m (5 ft). For segments over 1.5 m (5 ft), a group of at least three retroreflective markers shall be equally spaced at no greater than N/8." This proposed change allows fewer raised pavement markings for a broken line segment.

37. In Section 6F.60D(3), paragraph 2, the FHWA proposes to add the new GUIDANCE discussion to ensure lights are put on the outside of the curve to improve delineation of the curve.

38. In Section 6F.61, paragraph 3, the FHWA proposes to allow the use of temporary traffic signals other than those controlled by hard wire. This was included in the February 19, 1998, Final Rule.

39. In Section 6F.66, the FHWA proposes to add a new GUIDANCE that the spacing of screens should not be more than 0.6 m (2 ft). This addition is in response to recommendations contained in the "Older Driver Highway Design Handbook" which shows that motorists may benefit by having screens at this spacing.

40. The FHWA proposes to add a new Section 6F.68, FUTURE AND EXPERIMENTAL DEVICES to Part 6. This section provides information on the use of experimental products.

41. In Section 6G.2, the FHWA proposes to add the following words to the second bullet of the second paragraph, "or nighttime work lasting more than one hour." The FHWA believes that the above information is helpful to further explain intermediate-term stationary work at night.

42. In Section 6G.2B, paragraph 2, the FHWA proposes to add the following STANDARD statement: "Since intermediate-term operations extend into nighttime, retroreflective and/or illuminated devices shall be used." This STANDARD is proposed because a good safety design feature for any/all nighttime work is one that is properly delineated with retroreflective signs and/or illuminated devices.

43. In Section 6G.10, the second sentence of paragraph 5, the FHWA proposes to add a new STANDARD statement to read as follows: "For lane closures, the merging taper shall utilize channelizing devices and the barrier shall be placed beyond the transition area." This proposed change would provide proper delineation of a lane closure to the road user. Also, this proposed change would delete the last sentence of the second paragraph of Section 6G–7 of the Part VI of the 1993 Edition of the MUTCD and Section 6G–7 would be transferred and renumbered as Section 6G.10.

44. In Section 6G.10 B, paragraph 2, the FHWA proposes to change the second sentence from a recommended condition to a STANDARD. This proposed change would provide the road user with better delineation of the left lane closure.

45. In Section 6G.10 D, the FHWA proposes to transfer to this Section old Section 6G–7c of Part VI of 1993 Edition of the MUTCD. The FHWA also proposes to change the sixth sentence of the existing Section 6G–7c from a recommended condition to a STANDARD. The proposed sentence would read as follows: "When a directional roadway is closed, inapplicable WRONG WAY signs and markings, and other existing traffic control devices at intersections within the temporary two-lane two-way operations section, shall be covered, removed or obliterated." The proposed sentence change would provide the road user with accurate information on whether the road is open or closed.

46. In Section 6H.2, Notes for Figure TA–7, the FHWA proposes to add the following sentence to note 1: "Devices similar to those depicted shall be placed for the opposite direction of travel." This proposed change is very important to motorists traveling in the opposite direction to inform them of the temporary traffic control condition ahead.

47. In Section 6H.2, Notes for Figure TA–7 (Note 3) and Notes for Figure TA–31 (Note 7), the FHWA proposes to change Note 3 for Figure TA–7 and Note 7 for Figure TA–31 to read as follows: "If the tangential distance along the temporary diversion is less than 180 m (600 feet), the winding road sign should be used at the location of the first Reverse Curve sign. The second Reverse Curve sign should be omitted." This proposed GUIDANCE statement would be in compliance with Section 2C–8, Winding Road Sign, page 2C–4 of the 1988 Edition of the MUTCD which describes the circumstances when the Winding Road sign should be used.

48. In Section 6H.2, the FHWA proposes to add new Notes 7 and 8 to Figure TA–10 on the use of the BE PREPARED TO STOP sign.

49. In Section 6H.2, the FHWA proposes to add new notes for Figure TA–10 (Notes 9, 10, 11, and 12), a new note for Figure TA–30 (Note 4), new notes for TA–32 (Notes 4, 5, and 6), new notes for TA–39 (Notes 11 and 12), and a new Figure TA–45 to provide additional information concerning work zone treatments near highway-rail grade crossings.

On March 17, 1993, a tractor-semitrailer hauling gasoline was struck by a National Railroad Passenger Corporation (Amtrak) train resulting in the truck driver and five occupants of three stopped vehicles being killed. The truck driver was attempting to cross a

highway-rail grade crossing on Cypress Creek in Fort Lauderdale, Florida and traffic in the area of the crossing was congested because the left and center lanes were closed just beyond the crossing. As a result of the investigation of the crash, the National Transportation Safety Board (NTSB) recommended that the FHWA provide information on channelization of traffic at work zones to minimize traffic congestion over highway-rail grade crossings. The above mentioned notes and figure are in compliance with the NTSB's recommendation. The above proposed changes would be added to provide information for safe and efficient operation of both highway and rail traffic at highway-rail grade crossings within construction and maintenance work zone limits.

50. In Section 6H.2, the FHWA proposes to modify the first sentence of Note 4 of Figure TA–12 to read as "Stop lines shall be installed with temporary traffic signals." The FHWA proposes to add the same sentence to a new Note 9 for Figure TA–14. The proposed changes will be in compliance with Part 4, Chapter 4D, of the Notice of Proposed Amendments to the Manual on Traffic Control Devices dated January 7, 1997, which discuss the location of stop lines with respect to traffic signals.

51. In Section 6H.2, for Figure TA–12, the FHWA proposes to move Note 7 from a permissive condition to Note 11 as GUIDANCE. The FHWA believes that changing the condition from a permissive condition to GUIDANCE would provide the State and local agencies, and contractors with additional guidance for making safe traffic operations' decisions.

52. In Section 6H.2, the FHWA proposes to add a new Note 8 for Figure TA–14 which states "Traffic control signal timing shall be established by authorized personnel." This proposed change is in compliance with Part 4, Chapter 4D, of the Notice of Proposed Amendments to the Manual on Uniform Traffic Control Devices dated January 7, 1997, which states the responsibility for operation and maintenance of traffic control signals and all of its appurtenances.

53. In Section 6H.2, Figure TA–14, under the signalized method, the FHWA proposes to delete the requirement to remove any double yellow pavement marking and add skip line pavement markings along the northbound lanes because there is no reason to prohibit passing for traffic leaving the intersection.

54. In Section 6H.2, the FHWA proposes to modify existing Note 4 for Figure TA–16 and to add a new Note 11 which would states, "For a survey along the edge of the road or along the shoulder, cones should be placed along the edge line." The FHWA also proposes to add a new Note 10 to read, "If the work is along the shoulder, the flagger may be omitted."

55. In Section 6H.2, for Figure TA–17, the FHWA proposes to move the second sentence of Note 5 from a recommended condition to Note 2 as a STANDARD. It would read, "Shadow and work vehicles shall display flashing or rotating beacons visible in all directions." The FHWA believes that flashing or rotating beacon visibility will help improve the safety and visibility of the shadow and work vehicles resulting in a reduction in work zone crashes. Also, the FHWA proposes to change the wording "protection vehicle" to "shadow vehicle" to be in compliance with the AASHTO Roadside Design Guide Book, Chapter 9.1.2.2, Truck-Mounted Attenuators.

56. In Section 6H.2, Figure TA–17, the FHWA proposes to add a CAUTION arrow board to be in compliance with Section 6F–55 B.

57. In Section 6H.2, Notes for Figure TA–17, the FHWA proposes to delete the note on "Optional Signs for Short Duration Operation" because TA–17 is not for Short Duration work.

58. In Section 6H.2, the FHWA proposes to modify the first sentence of Note 1 for Figure TA–18 to read as follows: "The traffic control procedures shall be used only for low-volume, low-speed facilities." This proposed change simplifies the STANDARD condition statement.

59. In Section 6H.2, the FHWA proposes to add a new Note 4 for Figure TA–18 to read, "Where traffic cannot effectively self-regulate, one or two flaggers shall be used as illustrated in Figure TA–10." The purpose is to improve the movement of traffic around the lane closure.

60. In Section 6H.2, the FHWA proposes to change Note 2 for Figure TA–21 from a permissive condition to a STANDARD. This proposed change is to provide for the direction of traffic around lane closures.

61. In Section 6H.2, the FHWA proposes to add a new Note 4 (GUIDANCE) and a new Note 5 (Option) to Figure TA–21 concerning flashing or rotating lights on work vehicles. These proposed new notes will assist in providing warning to road users and workers.

62. In Section 6H.2, the FHWA proposes to add a new Note 7 for Figure TA–21 for the optional use of a truck-mounted attentuator on shadow vehicles. This Option statement is proposed to provide safety to road users and workers.

63. In Section 6H.2, the FHWA proposes to add a new Note 2 (GUIDANCE) for Figure TA–24 to provide for turn prohibition signs. This GUIDANCE statement is being proposed to give road users addition warning that turns are prohibited.

64. In Section 6H–2, the FHWA proposes to delete Note 2 (mandatory condition) of Figure TA–26 concerning channelizing devices on tapers. This proposal will make this in compliance with Section 6F.59, CHANNELIZING DEVICES. That section recommends using a formula based on speed, rather than a set number of channelizing devices.

65. In Section 6H.2, the FHWA proposes to change Note 2 for Figure TA–27 on the use of uniformed law enforcement officers from a permissive condition to GUIDANCE. The proposed GUIDANCE is to provide for a person with recognized authority which should improve the safe movement of traffic through the intersection.

66. In Section 6H.2, the FHWA proposes to add a new Note 6 for Figure TA–27 which reduces the need for channelization for short-duration work operations. We propose to add Note 6 to be in compliance with Section 6G.2(1) which states that a reduction in the number of devices may be offset by the use of other more dominant devices such as flashing or rotating beacons on work vehicles.

67. In Section 6H.2, the FHWA proposes to add a new Note 1 (STANDARD) for Figure TA–28 to read as follows: "Where sidewalks exist, provisions shall be made for disabled pedestrians." The FHWA also proposes to add this note as Note 1 (STANDARD) for Figure TA–29. We propose to add this Note 1 to provide additional safety for disabled pedestrians and to be in compliance with the Americans with Disabilities Act Standards for Accessible Design.[2]

68. In Section 6H.2, the FHWA proposes to add a new Note 2 (STANDARD) for Figure TA–29 on curb parking restrictions in advance of mid-block crosswalks to provide additional safety for pedestrians. The proposed STANDARD statement provides additional safety for pedestrians.

69. In Section 6H.2, the FHWA proposes to add a second sentence to Note 3 (GUIDANCE) for Figure TA–30 providing for additional signing for

[2] *Americans with Disabilities Act Handbook*, U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice, EEOC–BK–19, Appendix B, "ADA Accessibility Guidelines," December 1991.

higher speed and higher volume roads. The proposed GUIDANCE is added to provide safety instruction for the road users traveling at higher speeds.

70. In Section 6H.2, the FHWA proposes to add new Notes 6, 7, 8, 9, and 10 for Figure TA–34 concerning the use of traffic control devices with movable barriers.

71. In Section 6H.2, the FHWA proposes to add a new Note 7 for Figure TA–35 and a new Note 3 for Figure TA–37 to provide optional use of truck-mounted attenuators on shadow vehicles. This is proposed because truck-mounted attenuators attached to the rear of shadow vehicles can reduce the severity of rear-end crashes.

72. In Section 6H.2, the FHWA proposes a new Note 6 for Figure TA–35 to allow optional use of a shadow vehicle. Existing Note 6 would be renumbered as Note 8.

73. In Section 6H.2, the FHWA proposes a new Note 5 for Figure TA–35 to provide for the optional use of a shadow vehicle on the shoulder. Note 5 will be renumbered as Note 9.

74. In Section 6H.2, the FHWA proposes to add a new Note 10 for Figure TA–35 (GUIDANCE) on work vehicles and shadow vehicle locations. This note is proposed to provide information and guidance to road users of work ahead.

75. In Section 6H.2, the FHWA proposes to add a new Note 4 for Figure TA–37 and a new Note 10 for Figure TA–38 to indicate where that traffic may be redirected around the work area. These notes provide additional information for the movement of traffic along the right shoulder because the shoulder width is wide enough to safely accommodate traffic.

76. In Section 6H.2, the FHWA proposes to add a new Note 6 for Figure TA–39 which will address a problem of poor guidance for traffic traveling through a two-lane, two-way operation at the end of the construction zone. Consequently, truck drivers with driver eye heights substantially above the road cannot see well enough through adverse weather conditions (fog, heavy rain, snow squalls, *etc.*) to find anything except the barrels leading back across the median. They too often follow the backside of those barrels into the median, resulting in crossover embankment collision, median side slope rollover, and bridge rail impact. If we are going to use delineators to separate two-lane, two-way traffic in construction zones, provisions should be made to extend the line of delineation well beyond the end of two-lane, two-way traffic in order to achieve "continuity" and to fulfill "driver expectancy" under low visibility conditions.

77. In Section 6H.2, the FHWA proposes to add a new Note 7 for Figure TA–39 concerning channelizing devices and signing for two-way traffic. This new note is GUIDANCE to warn motorists that the roadway is two-way traffic within a single lane, with flaggers.

78. In Section 6H.2, the FHWA proposes to change the third sentence of Note 1 for Figure TA–40 from a permissive condition to GUIDANCE. "A temporary acceleration lane should be used to facilitate merging." The proposed changed note will be renumbered Note 3 of the new Part VI.

79. In Section 6H.2, the FHWA proposes to add a STANDARD for Figure TA–41 (Note 5) and for Figure TA–42 (Note 3) concerning the mounting height for temporary EXIT signs in the temporary gore. The mounting height noted in the above notes will be in compliance with Section 6F–1, page 31, paragraph 6 of the Part 6 of 1993 Edition of MUTCD, Revision 3.

80. In Section 6H.2, the FHWA proposes to add a new Figure TA–46, Temporary Reversible Lane Using Moveable Barriers. Many jurisdictions are using movable barriers. However, guidance for these devices is not currently included in the MUTCD.

81. The FHWA proposes to add a new Figure TA–47, Variable Message Sign Abbreviations. This proposed change is in response to recommendations contained in the "Older Driver Highway Design Handbook" as it will provide for uniformity in messages.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures.

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: December 17, 1999.

Kenneth R. Wykle,

Administrator.

[FR Doc. 99–33404 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6575]

RIN 2125–AE71

Revision of the Manual on Uniform Traffic Control Devices; General Provisions, Markings, and Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD.

This document proposes new text for the MUTCD in Part 1—General Provisions, Part 3—Markings, and Part 4—Signals. The proposed changes included herein are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before June 30, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Transportation Operations, Room 3408, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): see "Addresses" *http:/dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

The text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA Home Page at the URL: *http://www.ohs.fhwa.dot.gov/operations/mutcd.* Please note that the proposed rewrite sections contained in this docket for the MUTCD Part 1, Part 3, and Part 4 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals

from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA has reviewed the NCUTCD's proposals for the MUTCD. The summary of proposed changes for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The summary of proposed changes for Parts 1 and 7 was published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I was published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The summary of proposed changes for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles was published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33802. The summary of proposed changes for Chapter 2C—Warning Signs and Part 10—Traffic Control for Highway-Light Rail Transit Grade Crossings was published as Phase 5 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33806. The summary of proposed changes for Chapter 2B—Regulatory Signs, Part 5—Traffic Control for Low-Volume Rural roads, and update information for Part 8—Traffic Control at Highway-Rail Grade Crossings was published as Phase 6 of the MUTCD rewrite effort in a previous notice of proposed amendment.

The summary of proposed changes for Part 6—Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations will be published as Phase 8 of the MUTCD rewrite effort in a future notice of proposed amendment. This notice of proposed amendment is Phase 7 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Part 1—General Provisions, Part 3—Markings, and Part 4—Signals.

The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions; (2) Guidance—representing "should" conditions; (3) Options—representing "may" conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. The adopted final version of the new MUTCD will be in metric and English units. Dual units will be shown in the MUTCD particularly for speed limits, guide sign distances, and other measurements which the public must read.

The FHWA invites comments on the proposed new text for the MUTCD Part 1, Part 3, and Part 4. Summaries of the proposed significant changes contained in these parts are included in the following discussions:

Discussion of Proposed Amendments to Part 1—General Provisions

The summary of proposed changes for Part 1 was published as Phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997. Since that time, several more Phases were published with additional definitions. The following are the most significant proposed revisions to Part 1:

1. In Section 1A.11, paragraph 3, the FHWA proposes to include a flow chart diagram showing the process for changes to the MUTCD and for experimentation with new traffic control devices and their application.

2. In Section 1A.14, the definitions for the following terms apply only to Part 4—Signals. Therefore, the FHWA proposes to delete them from Part 1—General Provisions and discuss them in Part 4 only. The terms are: actuated operation, actuation, backplate, conflict monitor, controller assembly, controller unit, coordination, cycle length, dark mode, detector, flasher, full-actuated operation, interval, interval sequence, louver, pedestrian change interval, pedestrian clearance time, pedestrian signal head, permitted mode, preemption control, priority control, protected mode, ramp control signal, red clearance interval, signal lens, signal phase, signal section, signal system, signal visor, signal warrant, steady mode, visibility-limited signal indication, and yellow change interval. The FHWA proposes to only include definitions in Part 1A.14 for terms that are used in more than one specific part of the MUTCD.

3. In Section 1A.14, the FHWA proposes to add the following definitions which appear in various sections of the MUTCD: Paved—A bituminous surface treatment, mixed bituminous concrete, or portland cement concrete roadway surface which has both a structural (weight bearing) and a sealing purpose for the roadway. Rural—A type of roadway as defined by the jurisdictions in compliance with their legislation, statute, regulations, and policies. Urban—A type of roadway as defined by the jurisdictions in compliance with their legislation, statute, regulations, and policies.

4. The FHWA proposes to add a new Section 1A.15 entitled, "Abbreviations." This section will list the standard abbreviations for word messages used in connection with traffic control devices.

Discussion of Proposed Amendments to Part 3—Markings

The summary of proposed changes for part 3 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997. Since that time, a number of changes have been suggested to FHWA by the NCUTCD and others, and a number of applicable recommendations were made in the "Older Driver Highway Design Handbook." [1] Section numbers used herein refer to the proposed text in the notice of proposed amendments dated January 6, 1997.

The FHWA has included Sections 3B.1, 3B.2, and 3B.3 in this notice so that those reviewing the following part 3 sections are aware of the Final Rule wording of these sections with regards to center lines and edge lines.

1. In Section 3B.2, the FHWA proposes to add a standard, which was inadvertently omitted from the proposed amendment dated January 6,

[1] "Older Driver Highway Design Handbook," Report No. FHWA–RD–99–045, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

1997, at 62 FR 691. The standard is that lane line markings shall be used on all Interstate highways and freeways.

2. In Section 3B.4, paragraph 2, the FHWA proposes to add Figure 3–9a to show more examples of using dotted line markings in intersections to extend longitudinal line markings. This proposed Figure is in response to older driver research that shows that motorists may benefit by having these additional markings.

3. In Section 3B.9, paragraphs 2, 4, and 6, the FHWA proposes to add a "Yield Line" marking as an optional marking where it is important to indicate the point behind which vehicles are required to yield. The proposed Figure 3–24 provides an illustration of these markings.

4. In Section 3B.12, paragraph 19, the FHWA proposes to add a "Yield Ahead" triangle symbol marking for optional use in advance of intersections where approaching traffic will encounter a YIELD sign. The proposed Figure 3–25 provides an illustration of these markings.

5. In Section 3B.13, the FHWA proposes to differentiate between types of preferential lanes. The diamond pavement marking symbol is proposed for exclusive HOV lane use. In situations where a preferential lane is not an HOV lane, then the word message (Bus, Taxi, etc.) or symbol (Bike, etc.) for the type of traffic allowed would be used.

6. In Section 3B.15, paragraph 5, the FHWA proposes to add "paved median noses" to the locations that should have retroreflective solid yellow markings. This addition is in response to recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) which shows that motorists may benefit by having these additional markings.

7. The FHWA proposes to add a new Section 3B.16 to provide standards for the longitudinal lane line markings for the various types of physically separated, reversible, non-reversible, and left and right side concurrent flow preferential lanes for motorized vehicles. The proposed Figure 3–23 provides an illustration of these markings. Furthermore, there is guidance on marking the neutral area between a preferential use lane and a regular traffic lane when the distance between them is greater than 1.2 m (4 ft).

8. The FHWA proposes to add a new Section 3B.17 to incorporate standard markings for roundabouts since roundabouts are becoming more commonly used. The proposed Figure 3–26 provides an illustration of typical roundabout markings.

9. The FHWA proposes to add a new Section 3B.18 to incorporate optional standard markings for other circular intersections including rotaries, traffic circles, and residential traffic calming designs. The proposed Figure 3–26a provides an illustration of typical markings for other circular intersections.

10. The FHWA proposes to add a new Section 3B.19 to provide pavement markings to assist motorists in identifying the locations of speed humps. The proposed Figure 3–27 and Figure 3–28 provide illustrations of typical speed hump markings.

11. The FHWA proposes to add a new Section 3B.20 to provide for pavement markings in advance of a speed hump where added visibility is desired or where a speed hump may not be expected. The proposed Figure 3–29 provides an illustration of a typical advanced speed hump marking.

Discussion of Proposed Amendments to Part 4—Signals

The summary of proposed changes for Part 4 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997. Since that time, a number of changes have been suggested to FHWA, and a number of applicable recommendations were made in the "Older Driver Highway Design Handbook" (see footnote 1). Section numbers used herein refer to the proposed text in the notice of proposed amendments dated January 6, 1997.

1. The FHWA proposes to change the name of Section 4B.2 to "Basis of Installation or Removal of Traffic Control Signals" to reflect that the section addresses both the installation and removal of traffic control signals. Under OPTION, a series of steps that may be considered in removing a traffic control signal is proposed.

2. In Section 4C.1, paragraph 12, the category OPTION is added and a new paragraph (d) is proposed for the various data that may be included in the engineering study for determining whether a traffic control signal is needed: "Information about nearby facilities and activity centers that serve the elderly, people with disabilities, and/or requests from people with disabilities for accessible crossing improvements along this route. These people may not be adequately reflected in the pedestrian volume count if the lack of a signal restrains their mobility." The FHWA is withdrawing the proposal that was made in the January 6, 1997, notice of proposed amendments to move the School Crossing Warrant from Part 4 to Section 7D.4. (See 62 FR 691, FHWA Docket No. 96–47 scanned into DOT's Document Management System as Docket No. 97–2295.) The FHWA proposes to keep it as Warrant 5 in Section 4C.1. However, the FHWA proposes to include a reference in Chapter 7D.

3. In Section 4D.3, paragraph 3, a new GUIDANCE is proposed: "Safety considerations should include the installation, where appropriate, of accessible pedestrian signals that provide information in nonvisual format (including audible tones, verbal messages, and/or vibrotactile information). Provisions for accessible signals are presented in Sections 4E.6 and 4E.8." This proposed change reflects the intent of language on Bicycle Transportation and Pedestrian Walkways contained in section 1202 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 107 (1998).

4. In Section 4D.4, paragraph 2, the FHWA is withdrawing its proposal (See 62 FR 691, FHWA Docket No. 96–47 scanned into DOT's Document Management System as Docket No. 97–2295) to delete the phrase "Unless otherwise determined by law" relative to the meaning of signal indications. The FHWA proposes to keep this statement because it encourages State and local entities to achieve uniform rules of the road that are in accord with Chapter 11, Rules of the Road, in the "Uniform Vehicle Code and Model Traffic Ordinance," (UVCMTO), Revised 1992, published by the National Committee on Uniform Traffic Laws and Ordinances in Evanston, Illinois.

5. In Section 4D.4, the FHWA proposes to revise paragraph 2c(1), paragraph 2, to delete the words, "or a RED ARROW indication is displayed." This proposed deletion is in response to recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication. In Figure 4–7 in Section 4D.16, the typical arrangement of lenses c and d are appropriately changed to eliminate the RED ARROW and to replace it with the CIRCULAR RED.

6. The FHWA proposes to delete Section 4D.4, paragraph 2c(2). This proposed deletion is in response to recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication.

7. In Section 4D.4, the FHWA proposes to revise paragraph 2c(3) to

delete "or RED ARROW." This proposed deletion is in response to recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication.

8. In Section 4D.4, the FHWA proposes to revise paragraph 2d(3) to delete "Flashing RED ARROW and." This proposed deletion is in response to recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication.

9. In Section 4D.5, the FHWA proposes to delete paragraph 3(d) that reads, "A steady RED ARROW indication shall be displayed when it is intended to prohibit traffic, except pedestrians directed by a pedestrian signal head, from entering the intersection or other controlled area to make the indicated turn. Turning on a steady RED ARROW indication shall not be permitted." This deletion would require a CIRCULAR RED signal indication to be used instead of a RED ARROW for right and left-turn indications. This is in response to recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication. The compliance date proposed by FHWA for this change is 3 years after the effective date of the final rule. This would allow State and local agencies time to implement this proposed change.

10. The FHWA proposes to delete Section 4D.5, paragraph 3(e)(2) that reads, "Shall not be displayed in conjunction with the change from a RED ARROW indication to a GREEN ARROW indication." This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

11. In Section 4D.5, the FHWA proposes to revise paragraph 3(e)(4) to read, "Shall be terminated by a CIRCULAR YELLOW indication or a CIRCULAR RED indication except." This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

12. In Section 4D.5, the FHWA proposes to revise paragraph 4, OPTION, to delete the words, "RED ARROW." This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

13. In Section 4D.6, paragraph 2, the FHWA proposes to add a new STANDARD which defines a leading protected-only left turn phase as one in which the GREEN ARROW, YELLOW ARROW, and CIRCULAR RED is given to vehicles turning left from a particular street before the CIRCULAR GREEN indication is given to the through movement on the same street. This proposed addition to the MUTCD is currently used in the field and is recommended in the "Older Driver Highway Design Handbook" (see footnote 1).

14. In Section 4D.6, paragraph 3, the FHWA proposes to add a new OPTION to read, "A leading protected-only left turn phase may be considered if there is not a sufficient number of acceptable gaps for the left-turning movement." This proposed addition to the MUTCD is based on recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) which shows a crash reduction with the use of a leading protected-only left-turn phase.

15. In Section 4D.6, the FHWA proposes to delete paragraph 2b(1) which reads, "RED, YELLOW, and GREEN left-turn ARROW indications only. Only one of the three lenses shall be illuminated at any given time. A signal instruction sign shall not be required with this set of signal indications. If used, it shall be a LEFT ON GREEN ARROW ONLY sign (R10–5) or." This deletion would require a CIRCULAR RED signal indication to be used instead of a RED ARROW for left-turn indications. This is in response to recommendations contained in the "Older Driver Highway Design Handbook" (see footnote 1) that shows confusion as to the meaning of the red arrow indication. The compliance date for this change is proposed to be 3 years after the effective date of the final rule. This would allow State and local agencies time to implement this proposed change.

16. In Section 4D.7, the FHWA proposes to revise paragraph 2(a) to replace "RED ARROW" with "CIRCULAR RED," and add "along with a RIGHT TURN SIGNAL sign, R10–10" at the end of the sentence. This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

17. In Section 4D.7, the FHWA proposes to delete paragraph 2 (1) that reads, "RED, YELLOW, and GREEN right-turn ARROW indications only. One of the three lenses shall be illuminated at any given time. A signal instruction sign shall not be required with this set of signal indications. If used, it shall be a RIGHT ON GREEN ARROW ONLY sign (R10–5a); or." The purpose of this proposed change is to require a CIRCULAR RED instead of a RED ARROW for right-turn indications.

18. In Section 4D.8, the FHWA proposes to revise paragraph 3 to no longer allow the display of red arrows on any signal face. The compliance date for this change is proposed to be 3 years after the effective date of the final rule. This would allow State and local agencies time to implement this proposed change.

19. In Section 4D.11, the FHWA proposes to revise paragraphs 3 (b) and 3 (c) to delete the reference to red arrows.

20. In Sections 4D.15 and 4D.17, the FHWA proposes to revise these sections to be consistent with a new maximum vertical viewing angle of 20 degrees. In Section 4D.15, paragraph 1d (2) and Section 4D.17, new paragraph 5, the FHWA proposes to require a maximum height of 7.8 m (25.6 ft) to the top of signal housings mounted above the pavement with a sliding scale of 6.4 m to 7.8 m (21 to 25.6 ft) maximum height for viewing distances between 12 m and 16 m (40 and 53 ft). Vertical viewing angles of as high as 23.8 degrees are implicitly allowed via the present wording of the MUTCD. This has been identified as a problem area. Ergonomic statistics demonstrated that tall motorists, with these extreme vertical angle placements, are unable to view the top of the signal face due to the blockage from the vehicle ceiling line. Therefore the FHWA proposes a maximum vertical viewing angle of 20 degrees.

21. In Section 4D.16, the FHWA proposes to revise paragraph 9 (a) and (b) to delete the words, "Left-turn RED ARROW," and "Right-turn RED ARROW." This would delete the reference to the RED ARROW since FHWA proposes to no longer display red arrows on any signal face.

22. In Section 4D.16, the FHWA proposes to insert a new paragraph 15 at the end of the section to provide supporting information for 300 mm (12-in) signals. The new paragraph will read, "The use of 300 mm (12-in) lenses or higher intensity 200 mm (8-in) lenses can be used to assist older drivers in decisionmaking tasks further from the intersection where traffic density is lower and there are fewer potential conflicts with other vehicles." The FHWA believes this proposed change will assist older drivers in the decisionmaking tasks encountered at roadway intersections.

23. In Section 4D.17, the FHWA proposes to add a new paragraph 16 to explain the benefits of using a backplate on signals. The FHWA believes the use of a backplate will help older drivers and enhance the signal conspicuity.

24. In Section 4E.4, paragraph 8, the FHWA proposes to revise the GUIDANCE as follows: "For crosswalks where the pedestrian enters the crosswalk more than 30 m (100 ft) from the pedestrian signal head indications, the symbols should be at least 225 mm (9 in) high." The MUTCD presently provides that where the pedestrian enters the crosswalk more than 20 m (60 ft) from the pedestrian signal head indication, the pedestrian symbols should be at least 225 mm (9 in) high. However research has found that the lesser, 150 mm (6 in) pedestrian symbols, are adequate for distances of up to 30 m (100 ft). The subjects used in the research included 48 seniors age 62 and older. The research included incandescent, light emitting diode (LED) and Fiber-optic pedestrian signals.

25. The FHWA proposes to add a new Section 4E.6, Accessible Pedestrian Signals and a new Section 4E.8, Accessible Pedestrian Detectors. In these new sections SUPPORT information would be provided on the primary techniques that pedestrians who have visual disabilities use to cross the street at signalized intersections. Information would also be provided on the availability of local organizations that can act as advisors to engineers when consideration is being given to the installation of accessible pedestrian signals. GUIDANCE would be provided on factors to consider in the engineering study to decide whether to install an accessible pedestrian signal. Finally, STANDARDS and GUIDANCE would be provided for such installations (if used). These would be useful to engineers in designing installations, to suppliers by providing a degree of standardization for these devices, and to pedestrians who have visual disabilities in assuring that their needs are met and that installations of accessible pedestrian signals are standardized. Based on this change, the section numbers for 4E.6, Pedestrian Signal Timing, would be renumbered as Section 4E.7. Section 4E.7, Pedestrian Intervals and Phases, would be renumbered as Section 4E.9.

26. In redesignated Section 4E.9 (formerly 4E.7), paragraph 4, the FHWA proposes to revise the GUIDANCE to change the WALK interval from a range of 4 to 7 seconds to a minimum of 7 seconds. In paragraph 9, the FHWA proposes to include an OPTION that if pedestrian volumes and characteristics do not require a 7-second WALK interval, a WALK interval as short as 4 seconds may be used.

27. In redesignated Section 4E.9 (formerly 4E.7), paragraph 6, the FHWA proposes an OPTION that allows the use of new technology for pedestrian detection as an alternative to using lower walking speeds for slower pedestrians. There has been a successful experiment in Portland, Oregon, on the use of passive methods to detect pedestrians in the crosswalk.[2] Such equipment can detect pedestrians that need more time to complete their crossing. The equipment extends the length of the pedestrian clearance time (flashing DON'T WALK) for that cycle to allow pedestrians to complete their crossing before cross traffic begins.

28. In Section 4J.3, paragraph 1, the FHWA proposes to increase the minimum height and width dimensions of each DOWNWARD GREEN ARROW, YELLOW X, and RED X signal face from 300 mm (12 in) to 450 mm (18 in). The FHWA believes this proposed change will ensure that these critical signals are adequately conspicuous to capture the drivers' attention. The FHWA is also including an OPTION to use 300 mm (12 in) lane-use control signal faces in areas having minimal visual clutter and having speeds of 70 km/h (45 mph) or less.

29. The FHWA proposes to add a new Section 4L, In-Roadway Lights, to the MUTCD. In-Roadway Lights are special types of highway traffic signals. They consist of a series of flashing light units embedded across the roadway to warn road users that they are approaching a condition on or adjacent to the roadway that might not be readily apparent and might require the road users to slow down and possibly come to a stop. These conditions include, but are not limited to, marked crosswalks that are not controlled by STOP signs, YIELD signs, or traffic control signals.

30. The proposed new Sections 4L.1 and 4L.2 would provide STANDARDS and GUIDANCE for the design and operation of In-Roadway Lights (if used) installations. The STANDARDS, among other things, would provide: (1) For the installation of In-Roadway Lights parallel to the edge of the crosswalk, (2) For the operation to be initiated based on pedestrian actuation (active or passive), (3) For the operation to cease at a predetermined time after the actuation or with passive detection when the pedestrian clears the crosswalk, (4) For the installation at marked crosswalks only with applicable warning signs, and (5) For the height of the In-Roadway Lights not to exceed a height of 20 mm (3/4 in).

[2] Kloos, W., "Implementing Passive Methods for Detecting Pedestrians," presentation at the 1998 Annual Meeting, Institute of Transportation Engineers, Washington, DC.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that it would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed action would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.
(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: December 17, 1999.

Kenneth R. Wykle,

Administrator.

BILLING CODE 4910-22-P

Manual on Uniform Traffic Control Devices

Introduction

Standard

Traffic control devices are all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over or adjacent to a street, highway, pedestrain facility, or bikeway by authority of a public body or official having jurisdiction.

The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 Code of Federal Regulations (CFR), Parts 655, Subpart F and recognized as the national standard for traffic control devices on all roads open to public travel. The policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices are described in 23 CFR 655, Subpart F.

Support:

The need for uniform standards was recognized long ago. The American Association of State and Highway Officials (AASHO), now know as the American Association of State Highway and Transportation Officials (AASHO) published a manual for rural highways in 1927 and the National Conference on Street and Highway Safety (NCSHS) published a manual for urban streets in 1930. In the early years, the necessity for unification of the standards applicable to the different classes of road and street systems was obvious. To meet this need, a joint committee of AASHO and NCHSH developed, and published in 1935, the original edition of this Manual of Uniform Traffic Control Devices (MUTCD). That committee, now called the National Committee on Uniform Traffic Control Devices (NCUTDC), though changed from time to time in name, organization and personnel, has been in continuous existence and has contributed to periodic revisions of the Manual. The FHWA has administered the MUTCD since the 1971 edition. The FHWA and its predecessor organizations have participated in the development and publishing of the previous editions. There were seven previous editions of the MUTCD and several additions were revised one or more times. Table I–1 traces the evolution of the MUTCD, including two manuals developed by AASHO and NCSHS.

The Secretary if Transportation, under authority granted by legislation in 1966, decreed that traffic control devices on all roads in each State shall be in substantial conformance with the standards issued or endorsed by FHWA.

23 CFR, Part 655.603 adopts the MUTCD as the national standard for any street, highway, or bicycle trail open to public travel. The Uniform Vehicle Code (UVC) is one of the referenced documents contained in the MUTCD. The UVC contains a model set of motor vehicle and traffic laws for use throughout the Nation. As with the MUTCD, the UVC also includes language in Section 15–117 which states that, "No person shall install or maintain in any area of private property used by the public any sign, signal, marking or other device intended to regulate, warn or guide traffic unless it conforms with the State manual and specifications adopted under Section 15–104." Section 15–104 of the UVC adopts the MUTCD as the standard for conformance.

EVOLUTION OF THE MUTCD

Year	Name	Month/year revised
1927	Manual and Specifications for the Manufacture, Display, and Erection of U.S. Standard Road Markers and Signs (for rural roads).	4/29, 12/31
1930	Manual on Street Traffic Signs, Signals, and Markings (for urban streets).	No revisions
1935	Manual on Uniform Traffic Control Devices for streets and Highway (MUTCD).	2/39
1942	MUTCD—War Emergency Edition	No revisions
1948	MUTCD	9/54
1961	MUTCD	No revisions
1971	MUTCD	11/71, 4/72, 3/73, 10/73, 6/74, 6/75, 9/76, 12/77
1978	MUTCD	12/79, 12/83, 9/84, 3/86
1988	MUTCD	1/90, 3/92, 9/93, 11/94, 12/96, 6/98, 6/99

Table I–1, Evolution of the MUTCD

Part 1. General Provisions

1A.1 Purpose of Traffic Control Devices

Support:

The purpose of traffic control devices and principles for their use is to promote highway safety and efficiency by providing for the orderly movement of all road users on streets and highways throughout the nation.

Traffic control devices notify road users of regulations and provide warning and guidance needed for the safe, uniform, and efficient operation of all elements of the traffic stream.

Standard:

Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.

1A.2 Principles of Traffic Control Devices

Support:

This Manual contains the basic principles that govern the design and use of traffic control devices for all streets and highways open to public travel regardless of type or class or the governmental body having jurisdiction. The text specifies the restriction on the use of a device if it is intended for limited application or for a specific system. It is important that these principles be given primary consideration in the selection and application of each device.

Guidance:

To be effective, a traffic control device should meet five basic requirements:

1. Fulfill a need.
2. Command attention.
3. Convey a clear, simple meaning.
4. Command respect from road users.
5. Give adequate time for proper response.

The following aspects of traffic control devices should be considered to ensure that these requirements are met: design; placement and operation; maintenance; and uniformity.

Support:

The term speed can mean the 85th percentile, design, average, operating, posted or statutory speed. The definitions of these and other specified speed terms are contained in Section 1A.14, *Definition of Words and Phrases.*

Guidance:

The policies and procedures of the FHWA to obtain basic uniformity of traffic control devices on all streets and highways are described in 23 CFR 655 Subpart F. The actions required for road users to obey regulatory devices should be specified by state statute, or in cases not covered by state statute, by local ordinance or resolution consistent with national standards.

The use of traffic control devices should provide the reasonable and prudent road user with the information necessary to safely and lawfully use the streets, highways, pedestrian facilities, and bikeways. Furthermore, the selection, application, design, placement, installation, operation, and maintenance of traffic control devices should be based on the minimum capabilities described in the Uniform Vehicle Code that a road user must possess to lawfully operate a vehicle.

Support:

Uniformity of the meaning of traffic control devices is vital to their effectiveness. The meanings ascribed in devices in this Manual are in general accord with the documents mentioned in Section 1A.12.

1A.3 Design of Traffic Control Devices

Guidance:

Devices should be designed so that such features as size, contrast, colors, shape, composition, and lighting or retroreflection are combined to draw attention to the devices; that shape, size, colors, and simplicity of message combine to produce a clear meaning; that legibility and size combine with placement to permit adequate time for response; and that uniformity, size, legibility, and reasonableness of the message combine to command respect.

Standard:

All new symbols and sign colors shall be adopted using the procedures described in Section 1A.11. All symbols shall be unmistakably similar to or mirror images of those shown herein. Symbols and colors shall not be modified.

Guidance:

Other aspects of a device's design should be modified only where there is demonstrated need. Modifications should be kept to a minimum and should be done in a way that will preserve the essential characteristics of the device's appearance.

Options: State and local highway agencies may develop word message signs to notify road users of special regulations or to warn of special situations or hazards. Unlike with symbol signs and colors, new word message signs may be used without the need for experimentation. With the exception of symbols and colors, minor modifications in the specific design elements of a device may be made provided the essential appearance characteristics are preserved. Although the standard design of symbol signs cannot be modified, it may be appropriate to change the orientation of the symbol to better reflect the direction of travel.

1A.4 Placement and Operation of Traffic Control Devices

Guidance:

Placement of the device should assure that it is within the cone of vision of the

viewer so that it will command attention; that it is appropriately positioned with respect to the location, object, or situation to which it applies to aid in conveying the proper meaning; and that its location, combined with suitable legibility, is such that a road user has adequate time to make the proper response in both day and night conditions.

Traffic control devices should be placed and operated in a uniform and consistent manner to assist road users in properly responding to the device, based on their previous exposure to similar traffic control situations.

Unnecessary traffic control devices should be removed. The fact that a device is in good physical condition should not be a basis for deferring needed replacement or change.

1A.5 Maintenance of Traffic Control Devices

Guidance:

Functional maintenance of traffic control devices should be provided to determine if certain devices need to be changed to meet current traffic conditions.

Physical maintenance of traffic control devices should be performed to ensure that legibility is retained, that the device is visible, and that it functions properly in relation to other traffic control devices in the vicinity.

Support:

Clean, legible, properly mounted devices in good working condition command the respect of road users.

1A.6 Uniformity of Traffic Control Devices

Support:

Uniformity of devices simplifies the task of the road user because it aids in recognition and understanding, thereby reducing perception/reaction time. It aids road users, police officers, and traffic courts by giving everyone the same interpretation. It aids public highway and traffic officials through efficiency in manufacture, installation, maintenance, and administration. Simply stated, uniformity means treating similar situations in the same way. The use of uniform traffic control devices does not, in itself, constitute uniformity. A standard device used where it is not appropriate is as objectionable as a nonstandard device; in fact, this may be worse, because such misuse may result in disrespect at those locations where the device is needed.

1A.7 Responsibiloity for Traffic Control Devices

Standard:

The responsibility for the design, placement, operation, maintenance, and uniformity of traffic control devices shall rest with the public agency or the official having jurisdiction. 23 CFR 655.603 adopts the MUTCD as the national standard for all traffic control devices installed on any street, highway, or bicycle path open to public travel. When a State or other Federal agency MUTCD or supplement is required, they shall be in substantial conformance with the national MUTCD.

23 CFR 655.603 also states that traffic control devices on all streets and highways open to public travel in each State shall be in substantial conformance with standards issued or endorsed by the Federal Highway Administrator.

Support:

The Uniform Vehicle Code has the following provision in Section 15–104 for the adoption of a uniform Manual:

"(a) The [State Highway Agency] shall adopt a manual and specification for a uniform system of traffic-control devices consistent with the provisions of this code for use upon highways within this State. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, and other standards issued or endorsed by the Federal Highway Administrator.

"(b) The Manual adopted pursuant to subsection (a) shall have the force and effect of law."

Additionally, States are encouraged to adopt Uniform Vehicle Code, Section 15–117 which states that, "No person shall install or maintain in any area of private property used by the public any sign, signal, marking or other device intended to regulate, warn of guide traffic unless it conforms with the State manual and specifications adopted under § 15–104."

1A.8 Placement Authority

Standard:

Traffic control devices and other signs or messages within the highway right-of-away shall be placed only by a public authority or the official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

When the public authority or the official having jurisdiction over a street or highway has granted proper authority, others such as contractors and public utility companies shall be permitted to install temporary traffic control devices. Such traffic control devices shall conform to the standards of this Manual.

Guidance:

Any unauthorized traffic control device or other sign or message placed on the highway right-of-way by a private organization or individual constitutes a public nuisance and should be removed. All unofficial and non-essential signs should be removed.

Standard:

All regulatory devices shall be supported by laws, ordinances, or regulations.

Support:

Provisions of this Manual are based on the concept that effective traffic control depends upon both appropriate application of the devices and reasonable enforcement of the regulations.

1A.9 Engineering Study or Judgment Required

Standard:

This Manual describes the application of traffic control devices, but shall not be a legal requirement for their installation, unless so stated in any specific section.

Guidance:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus while this Manual provides standards for design and application of traffic control devices, the Manual should not be considered a substitute for engineering judgment.

Qualified engineers should exercise engineering judgment inherent in the selection and application of traffic control devices, just as in the location and design of the roads and streets which the devices complement. Jurisdictions with responsibility for traffic control that do not have qualified engineers on their staffs, should seek assistance from the State transportation agency, their county, a nearby large city, or a traffic engineering consultant.

1A.10 Meaning of STANDARD, GUIDANCE, OPTION, AND SUPPORT

Support:

The standard, guidance, option, and support material described in this edition of the MUTCD provide the engineer with the information needed to

make appropriate decisions regarding the use of traffic control devices on streets and highways. This is organized to better differentiate between required conditions for traffic control devices (standards) that must be satisfied and other conditions (guidance and options) which may or may not be applicable, depending upon the particular circumstances of a situation.

Throughout this Manual the headings "Standard," "Guidance," "Option," and "Support" are used to classify the nature of the text that follows.

Standard:

When used in this Manual the headings shall be defined as follows:

1. Standard: A statement of required, mandatory or specifically prohibitive practice regarding a traffic control device. All standards are labeled and the headings appear in uppercase, blocked, and bold type. The word "shall" is typically used. Standards are sometimes modified by options.

2. Guidance: A statement of recommended but not mandatory practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All guidance statements are labeled and the headings appear in uppercase shaded type. The word "should" is typically used. Guidance statements are sometimes modified by options.

3. Option: A statement of practice which is a permissive condition and carries no recommendation or mandate. Options may contain allowable modifications to a standard and/or guidance. All option statements are labeled and the headings appear in lowercase normal type. The word "may" is typically used.

4. Support: An informational statement which does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled and the headings appear in uppercase normal type.

Support:

Figures, tables, and illustrations supplement the text and might constitute a Standard, Guidance, Option, or Support. The reader can refer to the appropriate text to determine the meaning of the figure, table, or illustration.

1A.11 Manual Changes, Interpretations and Authority to Experiment

Standard:

Use of devices that do not conform to the provisions of this Manual shall be prohibited unless the provisions of this section are followed.

Support:

Continuing advances in technology will produce changes in the highway, the vehicle, and in road user proficiency, and portions of the system of control devices in this Manual will require updating. In addition, unique situations often arise for device applications which might require interpretation or clarification of this Manual. It is important to have a procedure for recognizing these developments and for introducing new ideas and modifications into the system.

Guidance:

Requests for any change, interpretation or permission to experiment should be sent to the Federal Highway Administration (FHWA), Office of Transportation Operation (HOTO), 400 Seventh Street, SW., Washington, D.C. 20590. The request to experiment may be sent directly to HOTO with a copy to the FHWA Division Office or the request may be sent to the FHWA Division Office and then forwarded to HOTO. Diagrams showing the process for changes to the MUTCD and experimentation with traffic control devices are included after this section.

1. Change—A change includes consideration of new devices to replace a present standard device, additional devices to be added to the list of standard devices, or revisions to recommended application or meaning criteria.

Request for a change in the Manual should contain the following information:

(a) A statement indicating what change is proposed.

(b) Any illustration which would be helpful to understand the request.

(c) Any supporting research data which is pertinent to the item to be reviewed.

2. Interpretation—An interpretation includes application and operation of standard traffic control devices, official meanings of standard traffic control devices, or variations from standard device designs.

Requests for an interpretation of the Manual should contain the following information:

(a) A concise statement of the interpretation being sought.

(b) A description of the condition which provoked the need for an interpretation.

(c) Any illustration which would be helpful to understand the request.

(d) Any supporting research data which is pertinent to the item to be interpreted.

3. Experiment—Requests to experiment include consideration of testing or evaluating a new traffic control device, its application or manner of use, or a provision not specifically described in this Manual.

Request for permission to experiment will be considered only when submitted by the governmental agency or private toll facility responsible for the operation of the road or street on which the experiment is to take place and should contain the following:

(a) A statement indicating the nature of the problem.

(b) A description of the proposed change, how it was developed, the manner in which it deviates from the standard, and how it is expected to be an improvement over existing standards.

(c) Any illustration which would be helpful to understand the experimental device or use of the device.

(d) Any supporting data explaining how the experimental device was developed, if it has been tried, in what way it was found to be adequate or inadequate, and how this choice of device or application was derived.

(e) A detailed research or evaluation plan including the time period and location(s) of the experiment. This plan must also provide for close monitoring of the experimentation, especially in the early stages of its field implementation.

(f) An agreement to restore the experiment site to a condition which complies with the provisions of the Manual within 3 months following the end of the time period of the experiment. This agreement must also provide that the agency sponsoring the experimentation will terminate the experimentation at any time that it determines significant safety hazards are directly or indirectly attributable to the experimentation. The Office of Transportation Operations may also terminate approval of the experimentation at any time if there is an indication of hazards. If, as a result of the experimentation, a request is made that the Manual be changed to include the device or application being experimented with, the device or application may remain in place until an official rulemaking action has occurred.

(g) An agreement to provide semiannual progress reports for the duration of the experimentation and to provide a copy of the final results of the experimentation to the Office of Transportation Operations (HOTO), within 3 months following completion

of the experimentation. The Office of Transportation Operations may terminate approval of the experimentation if reports are not provided in accordance with this schedule.

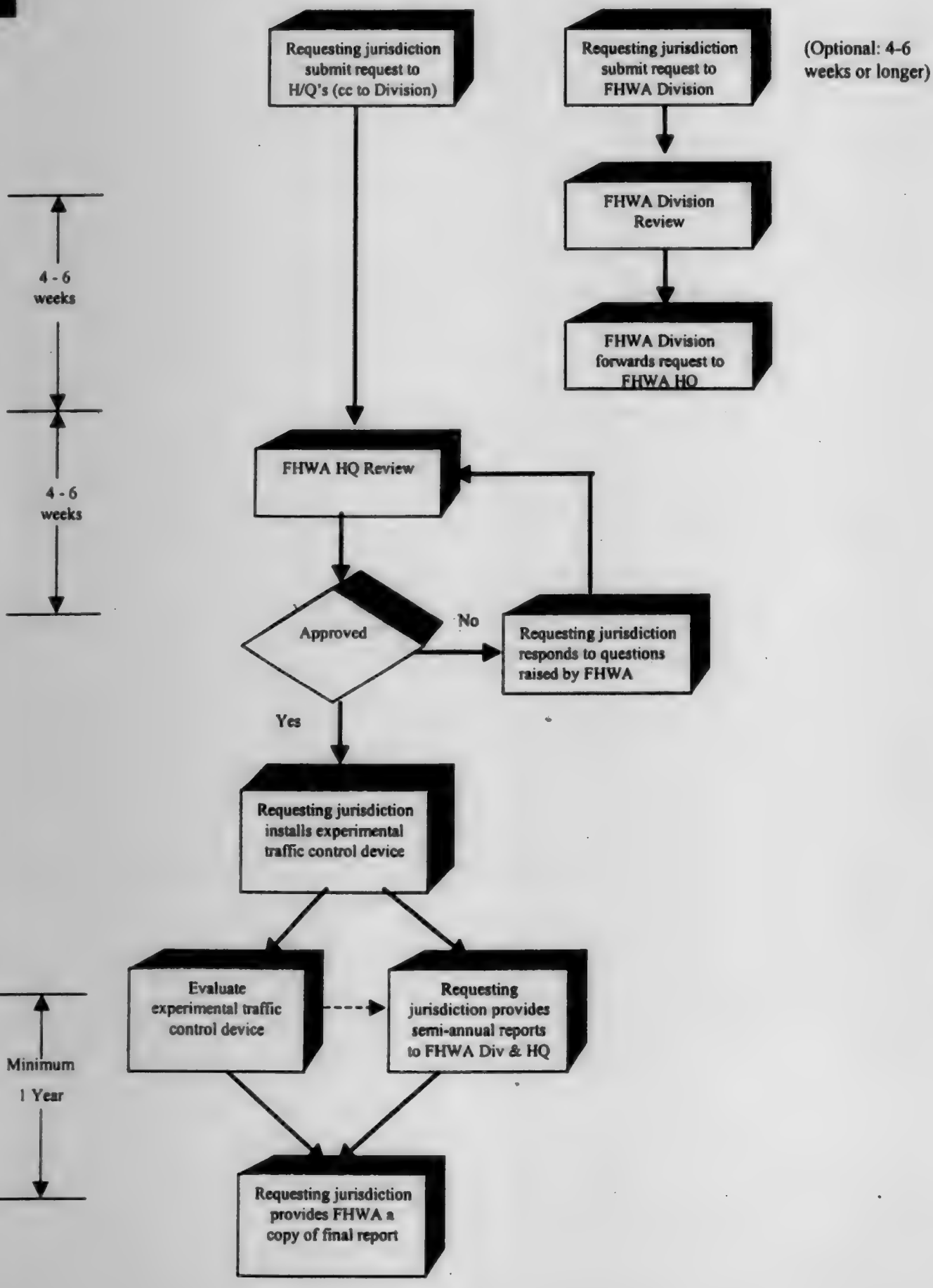
Support:

Procedures for revising the Manual are set out in the **Federal Register** of June 30, 1983, (48 FR 30145).

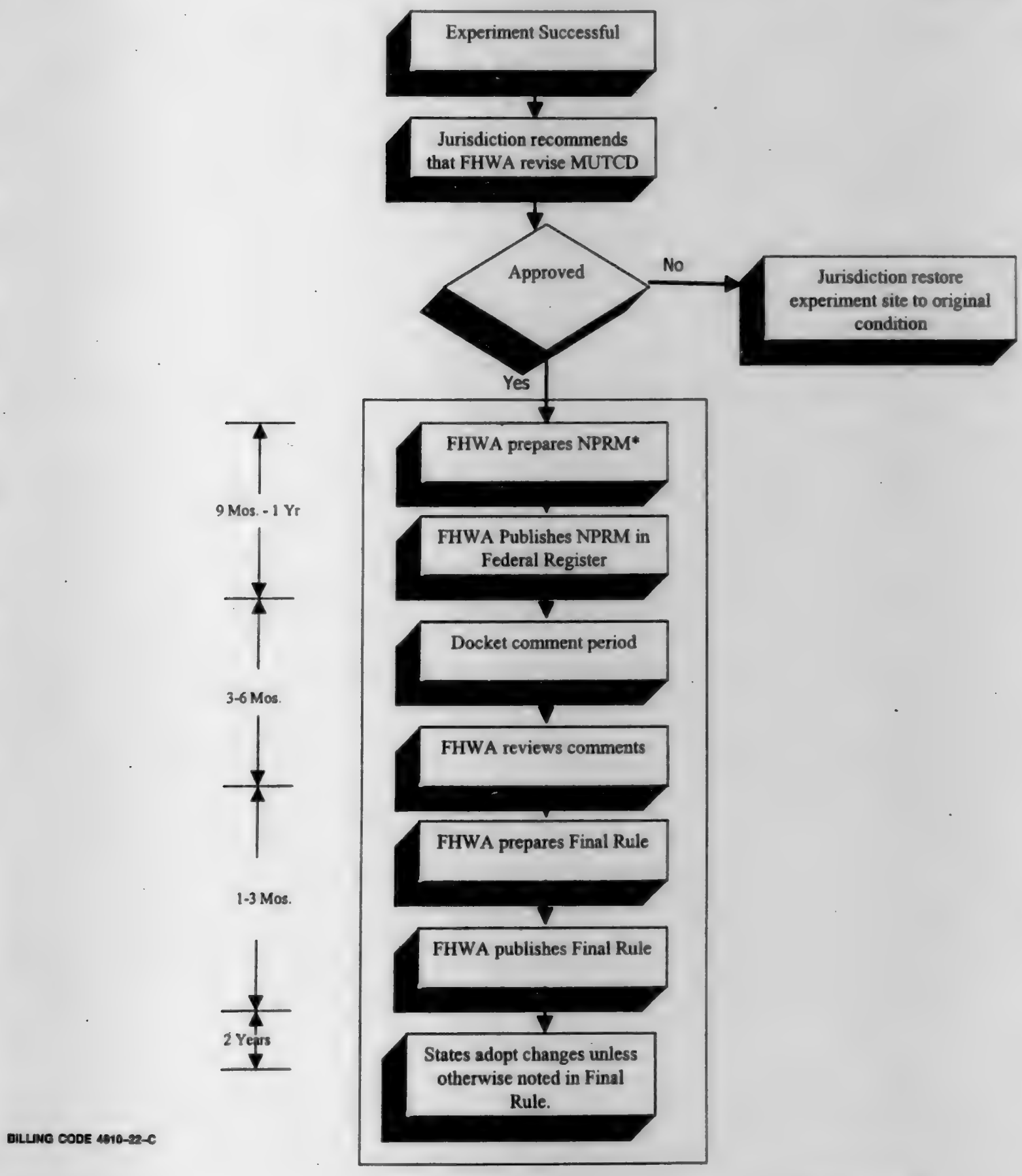
For additional copies of information concerning changes, interpretations, or experimentation, write to the FHWA (HOTO), 400 Seventh Street, SW., Washington, D.C. 20590.

BILLING CODE 4910-22-M

Obtaining Experimental Status for New Traffic Control Devices



Process to Incorporate New Traffic Control Device into MUTCD



BILLING CODE 4910-22-C

*NPRM notice of proposed rule making

1A.12 Relation to Other Documents

Support:

Two publications by the National Committee on Uniform Traffic Laws and Ordinances are specifically designed to provide the content and language of legislation needed to give regulatory devices the same meaning in all jurisdictions. These are the Uniform Vehicle Code and the Model Traffic Ordinance. Both the Code and the Ordinance require the placing of signs or other traffic control devices to make some of their provisions effective, and both define the legal meaning of certain devices. The Code directs State authorities to adopt a manual for a uniform system of traffic control devices, and requires all devices to conform thereto. The Ordinance also requires municipalities or other local governments to conform with the State manual for traffic control devices. The adoption of appropriate legislation is an essential step toward uniformity.

Standard:

To the extent they are incorporated by specific reference, the latest editions of the following documents, or those editions specifically noted, shall be a part of this Manual:

"Standard Alphabets for Highway Signs and Pavement Markings," FHWA
"Standard Color Tolerance Limits," FHWA
"Standard Highway Signs," FHWA
"Vehicle Traffic Control Signal Heads," Institute of Transportation Engineers (ITE)
"Pedestrian Traffic Control Signal Indications," ITE
"Purchase Specification for Flashing and Steady Burn Warning Lights," ITE
"Traffic Signal Lamps," ITE
"Uniform Vehicle Code" and "Model Traffic Ordinance", National Committee on Uniform Traffic Laws and Ordinances.

Support:

Other documents that are useful sources of information with respect to utilization of these standards include:

"Traffic Engineering Handbook", ITE
"Highway Capacity Manual," Transportation Research Board (TRB)
"A Policy on Geometric Design of Highway and Streets," American Association of State Highway and Transportation Officials (AASHTO)
"Guidelines for the Selection of Supplemental Guide Signs for Traffic Generators Adjacent to Freeways, (AASHTO)
List of Control Cities for Use in Guide Signs on Interstate Highways," ASSHTO
"Manual on Traffic Engineering Studies," ITE
"Manual of Transportation Engineering Studies," ITE
"Roadside Design Guide," AASHTO
"School Trip Safety Program Guidelines," ITE
"Manual of Traffic Signal Design," ITE
"Traffic Signal Installation and Maintenance Manual," ITE
"Traffic Detector Handbook," ITE
"Signal Manual of Recommended Practice," Association of American Railroads (AAR)

1A.13 Color Code

Support:

The following color code establishes general meanings for eight colors of a total of twelve colors that have been identified as being appropriate for use in conveying traffic control information. Central values and tolerance limits for each color are available from the Federal Highway Administration (HOTO), 400 Seventh Street SW., Washington, D.C. 20590.

The three colors for which general meanings have not yet been assigned are being reserved for future applications that will be determined only by FHWA after consultation with the States, the engineering community, and the general public. The meanings described in this Section are of a general nature. More specific assignments of colors are given in the individuals Parts of this Manual relating to each class of devices.

Standard:

YELLOW	General warning
RED	Stop or prohibition
BLUE	Road user services guidance, Tourist information, and Civil defense evacuation route
GREEN ..	Indicated movements permitted, direction guidance
BROWNn	Recreational and cultural interest guidance
ORANGE	Temporary traffic control
BLACK ...	Regulation
WHITE ...	Regulation
FLOURESCENT YELLOW-GREEN.	Pedestrian, Bicycle, School Warning
PURPLE	Unassigned
LIGHT BLUE.	Unassigned
CORAL ...	Unassigned

1A.14 Defintiions of Words and Phrases

Standard:

All words and phrases uses in this Manual shall have the meaning described herein. Unless otherwise defined herein, or in the other parts of this Manual, definitions contained in the most recent edition of the Uniform Vehicle Code, AASHTO Transportation Glossary (Highway Definitions), and other documents specified in Section 1A.12 are also incorporated and adopted by reference.

When definitions vary from UVC and AASHTO Glossary, the MUTCD definition shall be followed. Definitions included in this section are for items that are used throughout the MUTCD. If a term is used only in one specific part of the Manual (i.e., Signals), then the definition will appear in that specific part of the Manual.

85th percentile speed.—The speed at or below which eighty-five percent of the motorized vehicles travel.

Active highway-rail grade crossing warning system.—The flashing signals, with or without traffic gates, together with the necessary control equipment used to inform road users of the approach or presence of trains at the grade crossing.

Advisory speed.—A recommended maximum speed for all typical vehicles operating on a section of highway and based on an engineering study of the highway design and operating characteristics.

Approach.—All lanes of traffic moving towards an intersection or a mid-block location from one direction, including any adjacent parking lane(s).

Arterial highway (street).—A general term denoting a highway primarily use by through traffic, usually on a continuous route or a highway designated as part of an arterial highway system.

Average day.—A day representing traffic volumes normally and repeatedly found at a location, typically a weekdays when volumes are influenced by employment or a weekend day when volumes are influenced by entertainment or recreation.

Average speed.—The summation of the distances traveled divided by the summation of the time in motion to traverse the distances for all vehicles. Also may be the summation of the measured speeds of vehicles divided by the number of vehicles observed.

Bicycle.—A pedal-powered vehicle upon which the human operator sits.

Bicycle path.—A separate trail or path from which motor vehicles are prohibited and which is for the

exclusive use of bicycles or the shared use of bicycles and pedestrians. Where such trail or path forms a part of a highway, it is separated from the roadways for motor vehicle traffic by an open space or barrier.

Bicycle route.—A system of bikeways designated by appropriate route makers, and by the jurisdiction having authority.

Bikeway.—Any road, street, path, or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

Center line markings.—The yellow pavement marking line(s) that delineate the separation of traffic lanes which have opposite directions of travel on a roadway. These markings need not be at the geometrical center of the pavement.

Changeable message sign.—A sign with the flexibility to display various messages.

Channelizing line markings.—White pavement marking lines that define the neutral area, direct existing traffic at the proper angle for smooth divergence into the ramp, and reduce the probability of collision with objects adjacent to the roadway.

Collector highway.—A term denoting a highway which in rural areas connects small towns and local highways to arterial highways, and in urban areas provides land access and traffic circulation within residential, commercial and business areas and connects local highways to the arterial highways.

Crosswalk.—(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway, and in the absence of a sidewalk on one side of the roadway, the part of a roadway included within the extension of the lateral lines of the sidewalk at right angles to the centerline.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Crosswalk lines.—White pavement marking lines that mark both edges of a crosswalk.

Design speed.—A speed determined by the design and correlation of the physical features of a highway that influence vehicle operation.

Edge line markings.—White or yellow pavement marking lines that delineates the right or left edge(s) of a travel way.

End of roadway marker.—A device used to warn and alert road users of the end of a roadway in other than construction or maintenance areas.

Engineering judgment.—The evaluation of available pertinent information, and the application of appropriate principles, standards, guidance, and practice as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. Engineering judgment shall be exercised by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. Documentation of engineering judgment is not required.

Engineering study.—The comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, standards, guidance, and practice as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented.

Flashing (flashing mode).—A mode of operation in which a traffic signal indication is turned on and off repetitively.

Flashing beacon.—A highway traffic signal with one or more signal sections that operates in a flashing mode.

Guide signs.—A sign that shows route designations, destinations, directions, distances, services, points of interest, or other geographical, recreational, or cultural information.

Highway-rail grade crossing (roadway-rail intersection).—The general area where a highway and a railroad cross at the same level, within which are included the railroad, roadway and roadside facilities for traffic traversing that area.

Highway, road, or street.—General terms denoting a public way for purposes of travel, including the entire area within the right-of-way.

Highway traffic signal.—A power-operated traffic control device by which traffic is warned or directed to take some specific action. These devices do not include power-operated signs, barricade warning lights, or steady burning electric lamps.

Intersection.—(a) The area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways that join at any other angle may come into conflict.

(b) If a highway includes two roadways 9 meters (30 ft) or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two roadways 9 meters (30 ft) or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(c) The junction of an alley or driveway with a roadway or highway shall not constitute an intersection

Island.—A defined area between traffic lanes for control of vehicular movements or for pedestrian refuge. Within an intersection area, a median or an outer separation is considered to be an island.

Lane line markings.—The white pavement marking lines(s) that delineate the separation of traffic lanes that have the same direction of travel on a roadway.

Lane-use control signal.—An overhead signal face displaying indications to permit or prohibit the use of specific lanes of a roadway or to indicate the impending prohibition of such use.

Major roadway.—The roadway normally carrying the higher volume of vehicular traffic.

Median.—Area between two roadways of a divided highway measured from edge of traveled way to edge of traveled way. The median excludes turn lanes. The median width may be different between intersections, and at opposite approaches of the same intersection.

Minor roadway.—The roadway normally carrying the lower volume of vehicular traffic.

Roadway network.—A geographical arrangement of intersecting roadways.

Object markers.—Devices used to mark obstructions within or adjacent to the roadway.

Operating speed.—A speed at which a typical vehicle or the overall traffic operates. May be defined with speed values such as the average, pace, or 85th percentile speeds.

Pace speed.—The highest speed within a specific range of speeds which represents more vehicles than in any other like range of speed. The range of speeds typically used is 10 mph.

Paved.—A bituminous surface treatment, mixed bituminous concrete, or portland cement concrete roadway surface which has both a structural (weight bearing) and a sealing purpose for the roadway.

Pedestrian.—A person afoot, in a wheelchair, on skates, or on a skateboard.

Platoon.—A group of vehicles or pedestrians traveling together as a group, either voluntarily or involuntarily, because of traffic signal controls, geometrics, or other factors.

Posted speed.—A speed limit displayed on a traffic control device.

Preferential bicycle lane.—A portion of a roadway or shoulder which has been designated for use by bicyclists. It is distinguished from the portion of the roadway for motor vehicle traffic by a paint stripe, curb, or other similar device.

Preferential lane marking.—Consists of white lines formed in a diamond shape.

Pretimed operation.—A type of controller unit operation during which the length of various intervals remains constant.

Raised pavement marker.—A device with a height of at least 10 mm (0.4 inch), mounted on or in a road surface and intended to supplement or substitute for pavement markings.

Regulatory signs.—A sign that gives notice of traffic laws or regulations.

Resistance gate (second gate).—A type of traffic gate located downstream of the moveable bridge warning gate which may provide a physical barrier to vehicle and/or pedestrian traffic when placed in the appropriate position. Additional information is contained in the AASHTO Standard Specifications for Moveable Highway Bridges.

Retroreflectivity.—The return of a point source illumination from a surface to its origin.

Right-of-way (assignment).—Permitting vehicles and/or pedestrians to proceed in a lawful manner in preference to other vehicles or pedestrians by the display of signal indications.

Road (see roadway).

Road delineators.—Retroreflective devices mounted above the roadway surface and at the side of the roadway in a series to indicate the alignment of the roadway.

Road user.—A vehicle operator, bicyclist, or pedestrian within the highway.

Roadway.—That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk, berm, or shoulder even though such sidewalk, berm or shoulder is used by persons riding bicycles or other human-powered vehicles. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such "roadway" separately but not to all such roadways collectively. Roadway includes parking lanes.

Roadway-rail intersection (see highway-rail grade crossing.

Rural.—A type of roadway defined by the jurisdiction in compliance with their legislation, statute, regulations, and policies.

Second gate (see resistance gate).

Semi-actuated operation.—A type of operation of a controller unit in which one or more, but not all, signal phases do not function on basis of actuation.

Shared roadway.—A roadway which is officially designated and marked as a bicycle route, but which is open to motor vehicle travel and upon which no bicycle lane is designated.

Sidewalk.—That portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line, intended for use by pedestrians.

Sign illumination.—Either internal or external lighting that shows the same color day or night. Street, highway, or strobe lighting shall not be considered as meeting this definition.

Sign legend.—All word messages, borders, logos, and symbol designs that are intended to convey specific meanings.

Signal face.—Front part of a signal head.

Signal head.—An assembly of one or more signal faces together with the associated signal housings.

Signal housing.—That part of a signal section that protects the light source and other required components.

Signal indication.—The illumination of a signal lens or equivalent device or a combination of several lenses or equivalent devices at the same time.

Signal installation.—The traffic signal equipment, signal heads and their supports, and associated electrical circuitry at a particular location.

Speed.—The 85th percentile, design, average, operating, posted or statutory speed as defined by the road authority for the engineering application.

Speed limit.—The maximum (or minimum) speed applicable to a section of highway as established by law.

Speed measurement marking.—A white transverse pavement marking placed on the roadway to assist the enforcement of speed regulations.

Speed zone.—A section of highway with a speed limit which is established by law but which is different form a legislatively specified statutory speed limit. Often established by administrative action as permitted by law.

Statutory speed.—A speed limit established by legislative action which typically is applicable for highways with specified design, functional, jurisdictional and/or location characteristic.

Stop line.—A solid white pavement marking line extending across approach lanes to indicate the point at which a stop is intended or required to be made.

Street (see roadway).

Traffic.—Pedestrains, ridden or herded animals, vehicles, streetcars, and other conveyances either singularly or together while using any highway for purposes of travel.

Traffic control devices.—All signs, signals, markings, islands, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, road, pedestrian facility, or bicycle path by authority of a public body or official having jurisdiction.

Traffic control signal (traffic signal).—Any highway traffic signal by which traffic is alternately assigned the right-of-way to the various movements at an intersection or other roadway location.

Train.—A locomotive or self-propelled unit which is assigned a train number, which operates on fixed rails or tracks and to which all other traffic must yield the right-of-way by law.

Transverse markings.—Pavement markings that include shoulder markings, word and symbol markings, stop liens, crosswalk lines, speed measurement markings, parking space markings, and others.

Traveled way.—The portion of the roadway for the movement of vehicles, exclusive of the shoulders, berms, sidewalks, and parking lanes.

Urban.—A type of roadway as defined by the jurisdictions in compliance with their legislation, statute, regulations, and policies.

Vehicle.—Every device in, upon, or by which any person or property may be transported or drawn upon a highway, except trains. A light rail car operating on a roadway, to which other traffic is not required to yield the right-of-way by law, is vehicle.

Warning gate.—A type of traffic gate designed to warn, but not to primarily provide a physical barrier to, vehicle and/or pedestrian traffic when placed in the appropriate position.

Warning sign.—A sign that calls attention to conditions on a adjacent to a highway or street that present a situation that may not be readily apparent to the road user.

Warrant.—A warrant describes threshold conditions to the engineer in evaluating the potential safety and operational benefits of traffic control devices and is based upon "average" or "normal" conditions. Warrants are not a substitute for engineering judgment. The fact that a warrant for a particular traffic

control device is met is not conclusive justification for the installation of the device.

Wrong-way arrows.—Slender, elongated, white pavement marking arrows placed upstream from the ramp terminus to indicate the correct direction of traffic flow. They are intended primarily to warn wrong-way road users that they are going in the wrong direction.

1.A.15 Abbreviations

Standard:

The following are standard abbreviations for word messages used in connection with traffic control devices:

ON SIGNS

ALT = alternate
AM = morning
AVE = avenue
BIKE = bicycle
BLVD = boulevard
CB = CB Radio
CD = civil defense
CYCLES = 2-wheeled vehicles
D = diesel fuel
DR = drive
E = east
EV = electric vehicle
EXEMPT = stop at highway-rail grade crossing not required by some types of vehicles
FM = FM radio
FT = feet
H = hospital
HR = hour
INFO = information
JCT = junction/intersection
KM = kilometers
KM/HR = kilometers per hour
LN = lane
LBS = pounds
LP–GAS = liquid propane gas
LUGS = tires with lugs
M = meters
MIN = minutes
MI = miles
MON-FRI = days of week
M.P.H. = miles per hour
NAT'L = national
N = north
P = parking
PED = pedestrian
PHONE = telephone
PM = afternoon/night
R.R. = highway-rail grade crossing
ST = street
T = tons of weight
US = state numbered route
2-WAY = two way intersection
- = to
& = and
? = information
% = percent
" = inches
' = feet

PAVEMENT MARKINGS

MPH = miles per hour
PED = pedestrian
RXR = highway-rail grade crossing
US = state numbered route
XING = crossings other than highway-rail grade

ON SIGNALS

DONT = do not

3B. Pavement and Curb Markings

3B.1 Yellow Longitudinal Line Markings

A. Center Line Markings

Standard:

Center line markings, when used, shall be the pavement markings used to delineate the separation of traffic lanes which have opposite directions of travel on a roadway. These markings need not be placed at the geometrical center of the roadway.

Option: On roadways without a continuous center line marking, short sections may be marked with center line to control the position of traffic at specific locations, (e.g. around curves, over hills, on approaches to roadway-rail intersections, at roadway-rail intersections and at bridges.)

Standard:

The center line markings on two-lane, two-way roadways shall be one of the following as shown in Figure 3–1:

- Broken center line markings consisting of a normal broken yellow line where crossing the centerline markings for passing with care is permitted for traffic traveling in each direction.
- One-direction no-passing zone markings consisting of a normal broken yellow line and a normal solid yellow line where crossing the center line markings for passing with care is permitted for the traffic traveling adjacent to the broken line but is prohibited for traffic traveling adjacent to the solid line.
- Two-direction no-passing zone markings consisting of two normal solid yellow lines where crossing the centerline markings for passing is prohibited for traffic traveling in each direction.

Standard:

The center line markings one two-ways roadways with four or more traffic lanes always available, shall be the two-directions no-passing zone markings as shown in Figures 3–2 and 3–3.

Guidance:

On two-way roadways with three traffic lanes, two lanes should be designated for traffic in one direction by using one- or two-direction no-passing zone markings as shown in Figure 3–4.

Standard:

Center line markings shall be placed on paved two-way traveled ways on streets and highways having one or more of the following characteristics.

(a) All urban and rural arterials and collectors that have a roadway of 6 m (20 ft) or more in width with an ADT of 6000 or greater.

(b) All urban and rural highways that have three or more traffic lanes.

Guidance:

Center line markings should be place on the paved, two-way traveled ways on streets and highways having the following characteristics:

- Urban arterials and collectors that have a roadway 6 m (20 ft) or more in width with an ADT of 4000 or greater.
- All rural arterials and collectors that have a roadway of 5.5 m (18 ft) or more in width with an ADT of 3000 or greater.

An engineering study should be used in determining whether to place center line markings on a traveled way less than 4.8 m (16 ft) wide due to traffic encroaching on the pavement edges, traffic being affected by parked vehicles, and due to traffic encroachment into the lane of opposing traffic where edge line markings are used.

Option: Center line markings may be placed on other two-way roadways 4.8 m (16 ft) or more in width.

B. No-Passing Zone markings

Standard:

A no-passing zone shall be marked by either the one direction no-passing zone markings or the two-direction no-passing zone markings described above and shown in Figures 3–1b, 3–2, 3–3, and 3–4.

When center line markings are used, the no-passing zone marking shall be used on two-way roadways at lane reduction transitions (Sections 3B.5) and on approaches to obstructions that must be passed on the right (Section 3B.6).

Guidance:

Where the distance between successive no-passing zones is less than 120 m (400 ft), no-passing markings should connect the zones.

Option: In addition to the pavement markings herein prescribed, no-passing zone signs (Section 2B.21, 2B.22, 2C.38) may be used to emphasize the existence and extent of a no-passing zone.

Support:

Specific reference is made to Section 11–307 UVC Revised.

Standard:

On two-way, two- or three-lane roadways where center line markings are installed, no-passing zones shall be established as follows:

(1) at vertical and horizontal curves and other locations where an engineering study indicates passing must be prohibited because of inadequate sight distances or there special conditions.

(2) with the no-passing zone markings extended throughout the no-passing zone.

(3) on three-lane roadways where two lanes from each direction of travel transition to become one lane for each direction of travel, a median island shall be provided in the center lane. The median island shall consist of a lane transition at each end of a buffer zone and shown in Figure 3–5.

Guidance:

For roadways having a posted or statutory speed limit of 70 KM/H (45 mph) or greater, the transition taper length should be computed by the formula L = 0.62WS (L=WS).

For roadways having a posted or statutory speed limit of 60 KM/H (40 mph) or less, the taper length should be computed by the formula $L=WS^2/155$ ($L=WS^2/60$). Under both formulas, L equals the taper length in meters (feet), W equals the width of the center lane in meters (feet), and S equals the posted or statutory speed limiting in kilometers (miles) per hours.

The minimum taper length of the lane transitions shall be 30 m (100 ft) in urban areas and 60 m (200 ft) in rural areas.

Standard:

On roadways with center line markings, a no-passing zone marking shall be used at a horizontal or vertical curve where the sight distance is less than the minimum necessary for safe passing at the posted or statutory speed limit a s shown in Table 3–1, Passing sight distance on a vertical curve is the distance at which an object 1.07 m (3.50 ft) above the pavement can be seen by an approaching driver (Figure 3–6a). Similarly, passing sight distance on a horizontal curve is the distance measured along the center line (or right hand lane line of a three-lane highway) between two points 1.07 m (3.50 ft) above the pavement on a line tangent to the embankment or other obstruction that cuts off the view on the inside of the curve (Figure 3–6b).

TABLE 3–1. MINIMUM PASSING SIGHT DISTANCES

Posted or Statutory Speed Limit		Minimum Passing Sight Distance	
km/h	mph	meters	feet
40	25	140	450
50	30	160	500
60	35	180	550
a.	40	.....	600
70	45	210	700
80	50	245	800
90	55	280	900
100	60	320	1,000
110	65	355	1,100
120	70	395	1,200

Support:

The beginning of a no-passing zone at point "a," in Figure 3–6 is that point where the sight distance first becomes less than that specified in Table 3–1. The end of the no-passing zone at point "b" in Figure 3–6 that point at which the sight distance again becomes greater than the minimum specified.

C. Reversible Lane Line Markings

Standard:

The reversible lane line markings shall consist of two normal broken double yellow lines to delineate the edges of a lane in which the direction of travel is changed from time to time in such a way that these markings serve as the center line markings of the roadway during some period. Signs, signals, or both shall be used to supplement these pavement markings as shown in Figure 3–7.

D. Two-Way Left Turn Lane Markings

Standard:

The two-way left turn lane markings shall consist of a normal broken yellow line and a normal solid yellow line to delineate both edges of a two-way left turn lane which may be used by traffic for part of a left turn maneuver. These markings shall be placed with the broken line toward the two-way left turn lane and the solid line toward the adjacent traffic lane as show in Figure 3–3a. Traffic adjacent to the solid line may cross such markings with care only as part of a left turn maneuver.

Option: Pavement marking arrows may be used in conjunction with the two-way left turn markings as shown in Figure 3–3a.

Guidance:

Signs should be used in conjunction with the two-way left turn markings (Section 2B.19).

E. Median Islands Formed by Pavement Markings

Standard:

Two double solid yellow lines shall be used to form continuous median islands where these islands separate travel in opposite directions as shown in Figures 3–2b and 3–5. Other markings in the median island area shall be yellow, except crosswalk markings which shall be white (Section 3B.8).

F. Left Edge Line Markings

Standard:

The left edge line markings shall consist of a normal solid yellow line to delineate the left edge of a roadway, or to indicate driving or passing restrictions left of these markings on the roadways of divided and one-way highways and on any ramp in the direction of travel (Section 3B.3).

3B.2 White Longitudinal Line Markings

A. Lane Line Markings

Standard:

Lane line markings when used, shall be the pavement markings used to delineate the separation of traffic lanes that have the same direction of travel.

Support:

Typical applications of lane line markings are shown in Figures 3–1 through 3–6, 3–8 through 3–13, 3–20, and 3–21.

Standard:

The broken white lane line markings shall consist of a normal broken white line where crossing the lane line markings with care is permitted.

Standard:

The solid lane line markings shall consist of a normal solid white line where crossing the lane line markings is discouraged.

Option: Solid white lane line markings may be used to separate through traffic lanes from auxiliary lanes, such as uphill truck lanes, left or right turn lanes and preferential lanes. They may also be used to separate traffic lanes approaching an intersection. Wide solid lane line markings may be used for greater emphasis.

Standard:

Double solid lane markings shall consist of two normal solid white lines where crossing the lane line markings is prohibited.

Standard:

Lane line markings shall be used on all Interstate highways and freeways.

Guidance:

Lane line markings should be used at the following locations:

(a) on all roadways with 2 or more adjacent traffic lanes that have the same direction of travel,

(b) at congested locations where the roadway will accommodate more traffic lanes with lane line markings than without the markings.

Standard:

The channelizing line shall be a wide or double solid white line. Other markings in the island area shall be a normal solid white line.

Option: The channelizing line may be used to form islands where traffic with the same direction of travel is permitted on both sides of the island.

Support:

Typical examples of channelizing line applications are shown in Figures 3–2, 3–3, 3–8, 3–9, 3–11, 3–12, 3–13c, and 3–20.

C. Interchange Ramp Markings

Support:

Channelizing lines at exit ramps as shown in Figure 3–11, define the neutral area, direct existing traffic at the proper angle for smooth divergence into the ramp, and reduce the probability of colliding with objects adjacent to the roadway.

Channelizing lines at entrance ramps as shown in Figure 3–12, promote safe and efficient merging with the through traffic.

Standard:

For exit ramps, channelizing lines shall be placed along the sides of the neutral area adjacent to the through traffic lane and the ramp lane. With a parallel deceleration lane, a lane line shall be extended from the beginning of the channelizing line upstream for a distance of one-half the length of the full-width deceleration lane.

Option: White transverse markings may be placed in neutral area for special emphasis, as shown in Figures 3–11a,b, and 3–12c.

Guidance:

For entrance ramps, a channelizing line should be placed along the side of the neutral area adjacent to the ramp lane.

On entrance ramps with a parallel acceleration lane, or lane line should be extended from the end of the channelizing line for a distance one-half the length of the full width acceleration lane, as should in Figure 3–12a.

Option: With a tapered acceleration lane, lane line markings may be placed to extend the channelizing line, but not beyond a point where the tapered lane meets the near side of the through traffic lane, as shown in Figure 3–12b.

Lane drop markings as shown in Figure 3–11c may be used in advance of lane drops at exit ramps to distinguish a lane drop from a normal exit ramp or from an auxiliary lane. The lane drop marking may consist of a wide, white dotted line with segments 900 mm (3ft) in length separated by 3.6 m (12ft) gaps.

Guidance:

If used, lane drop markings should begin 800 m (0.5 mi) in advance of the theoretical gore point.

Option: Where lane changes might cause conflicts, a wide solid white channelizing line may extend upstream from the theoretical gore point.

Support:

Pavement marking arrow use for wrong-way traffic is included in Section 3B.12.

D. Right Edge Line Markings

Standard:

The right edge line markings shall consist of a normal solid white line to delineate the right edge of the roadway (Section 3B.3).

3B.3 Edge Line Markings

Standard:

Edge line markings are those markings which delineate the right or left edges of a roadway (Sections 3B.1 and 3B.2).

Edge line markings shall not be continued through intersections.

Guidance:

Edge line markings should not be broken for driveways.

Support:

Edge line markings have unique value as visual references to guide road users during adverse weather and visibility conditions.

Edge Line Marking Warrants

Standard:

Edge line markings shall be placed on the paved traveled ways on streets and highways with the following characteristics:

- freeways
- expressways
- rural arterials with a roadway 6 m (20 ft) or more in width with and ADT of 6000 or greater.

Guidance:

Edge line markings should be placed on the paved roadways of the following highways:

- Rural collectors with a roadway 6 m (20 ft) or more in width and where the edge of the roadway is not otherwise delineated with curbs or other pavement markings such as for parking.
- Other paved streets and highways where an engineering study indicates a need.

Option: Edge line markings may be placed on highways with or without center line markings. They may be excluded based on engineering judgment where the traveled way edge are delineated by curbs or other markings. Edge line markings may be used where edge delineation is desirable to minimize unnecessary driving on paved shoulders or on refuge areas that have lesser structural pavement strength than the adjacent roadway.

3B.4 - Extensions Through Intersections or Interchanges

Standard:

Pavement markings extended into or continued through an intersection or interchange area shall be the same color and at least the same width as the line markings they extend.

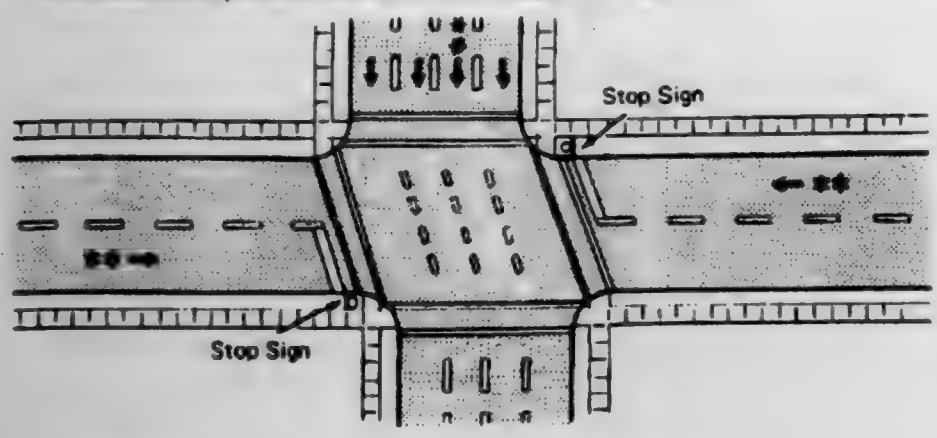
Guidance:

Where highway design or reduced visibility conditions make it desirable to provide control or to guide vehicles through an intersection or interchange such as at offset, skewed, complex multi-legged intersections, or where multiple turn lanes are used, dotted line markings should be used to extend longitudinal line markings as necessary through an intersection or interchange area (Figures 3–9, 3–9a, 3–11 & 3–20).

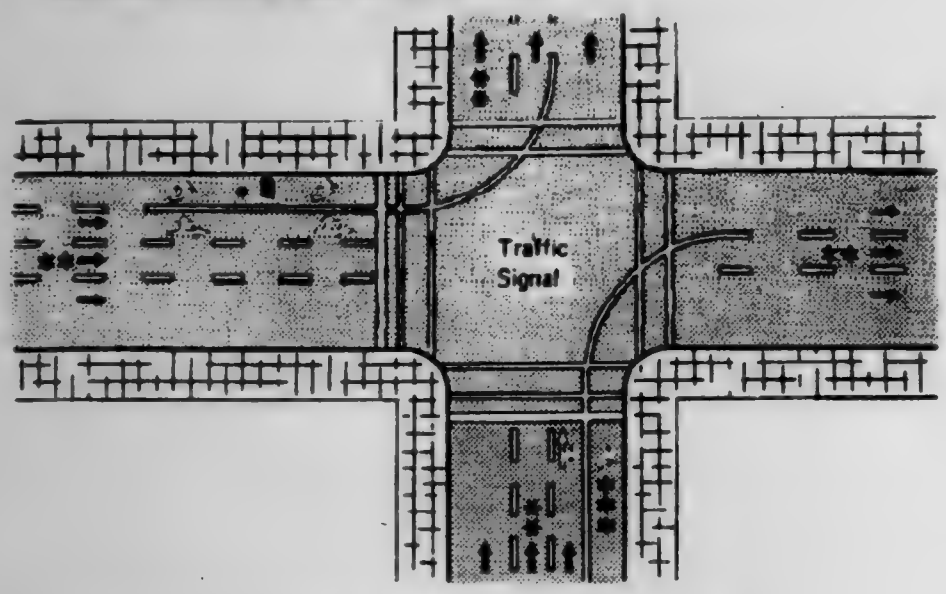
Where greater restriction is required, solid lane lines or channelizing lines should be extended into or continued through intersections.

BILLING CODE 4910–22–M

a–Typical pavement marking with offset lane lines continued through the intersection and optional crosswalk lines and stop limit lines.



b–Typical pavement marking with optional double turn lane lines, lane-use turn arrows, crosswalk lines, and stop limit lines.



c–Typical pavement marking with optional turn lane lines, lane use turn arrows, crosswalk lines, and stop limit lines.

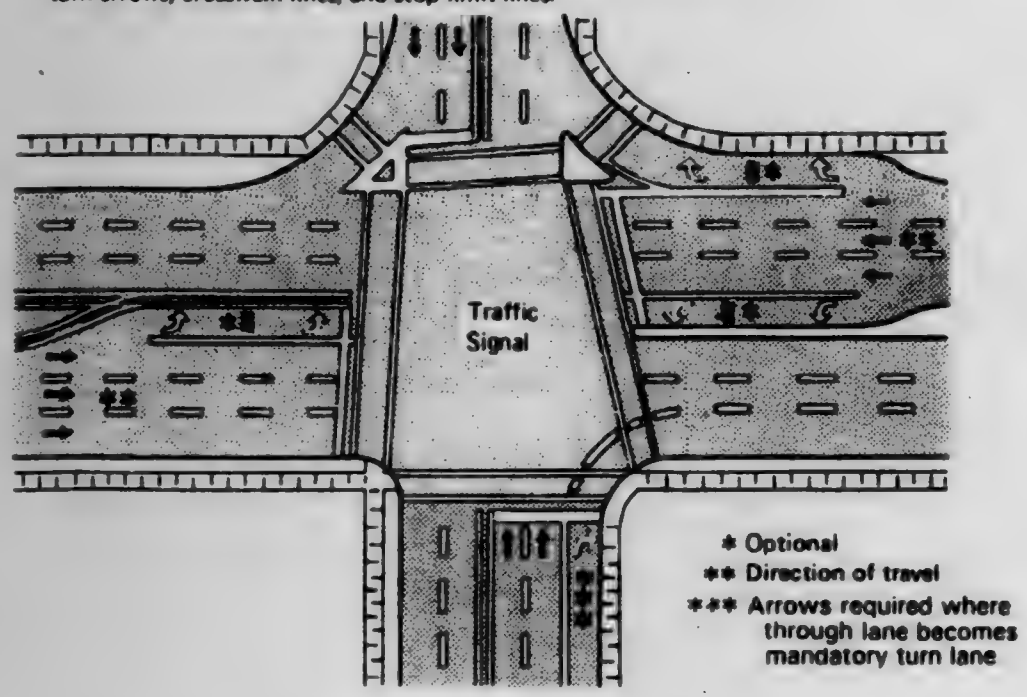
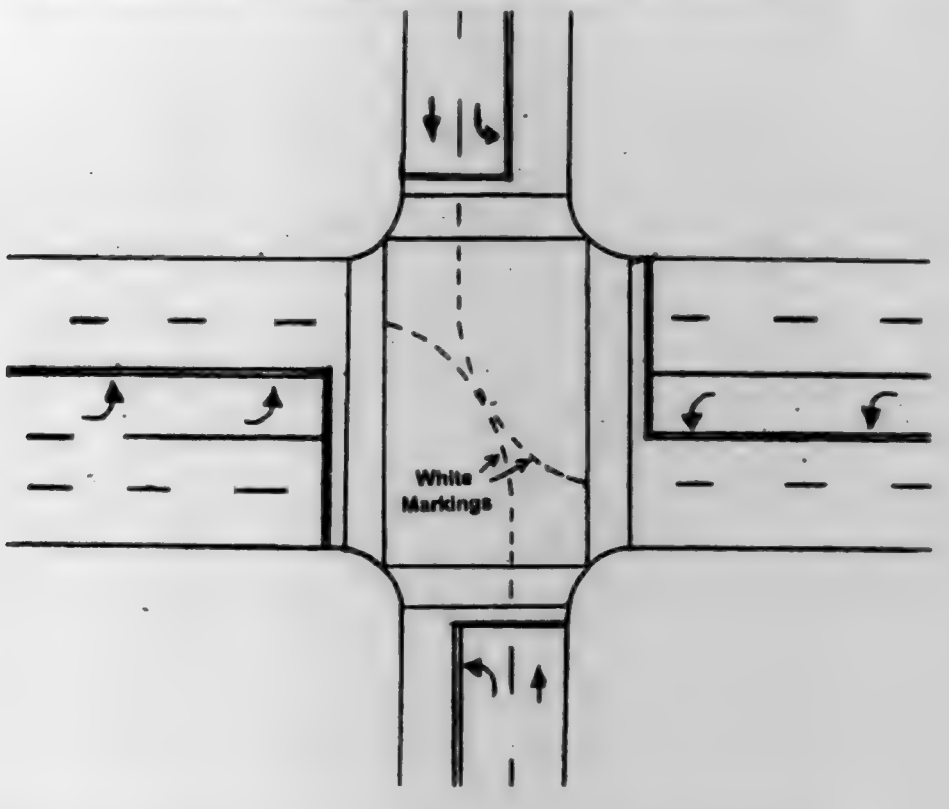


Figure 3-9. Typical pavement marking applications.

d - Typical dotted line markings to extend longitudinal lane line markings.



e - Typical dotted line markings to extend longitudinal center line markings.

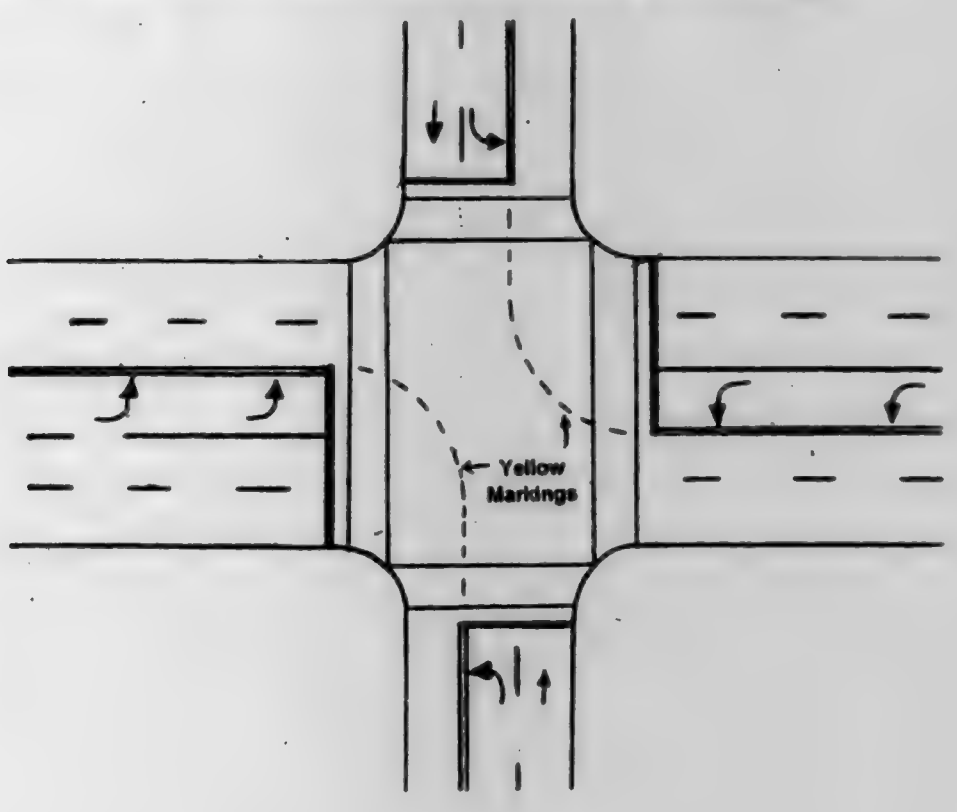


Figure 3-9a. Typical pavement marking applications.

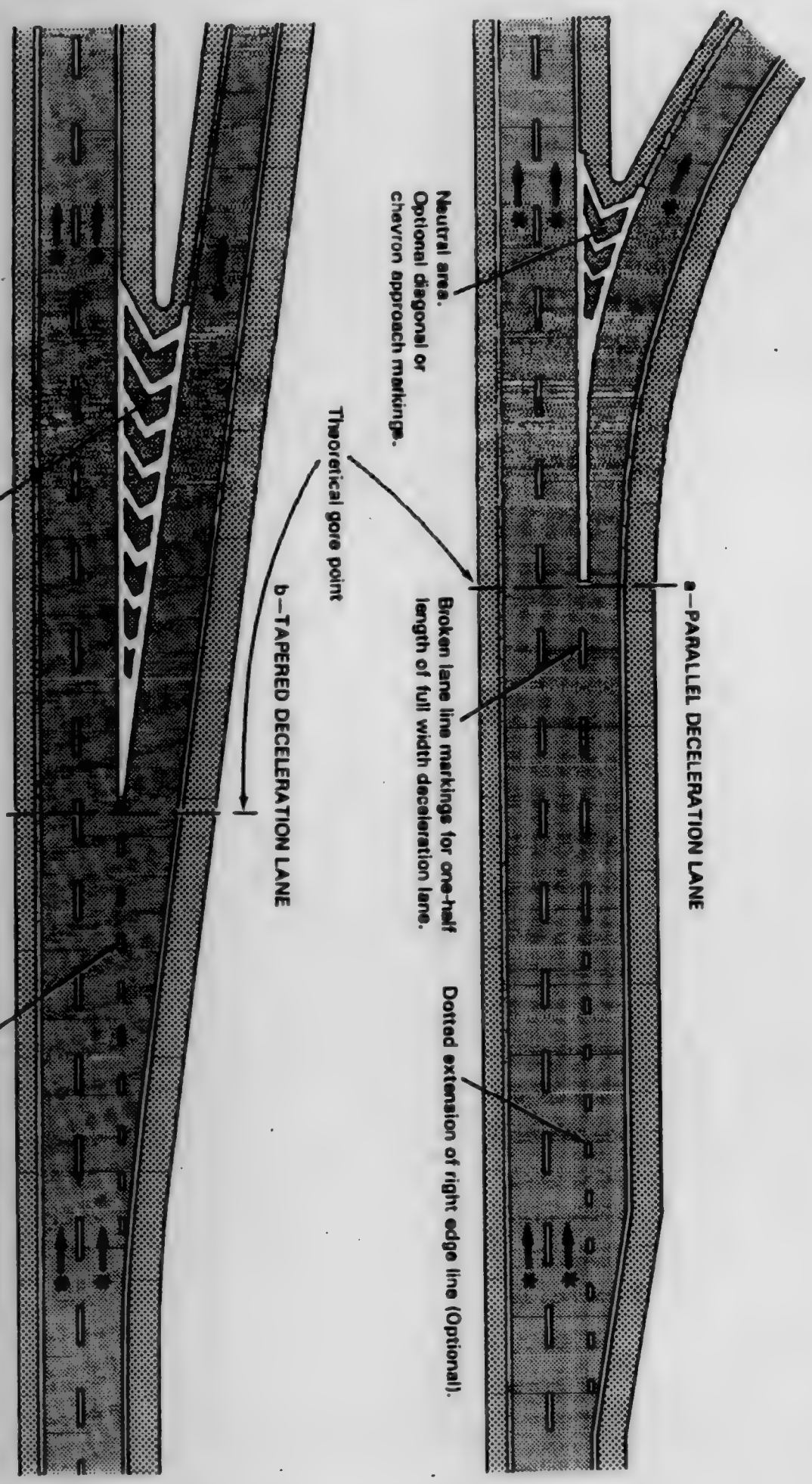


Figure 3-11. Typical exit ramp markings.

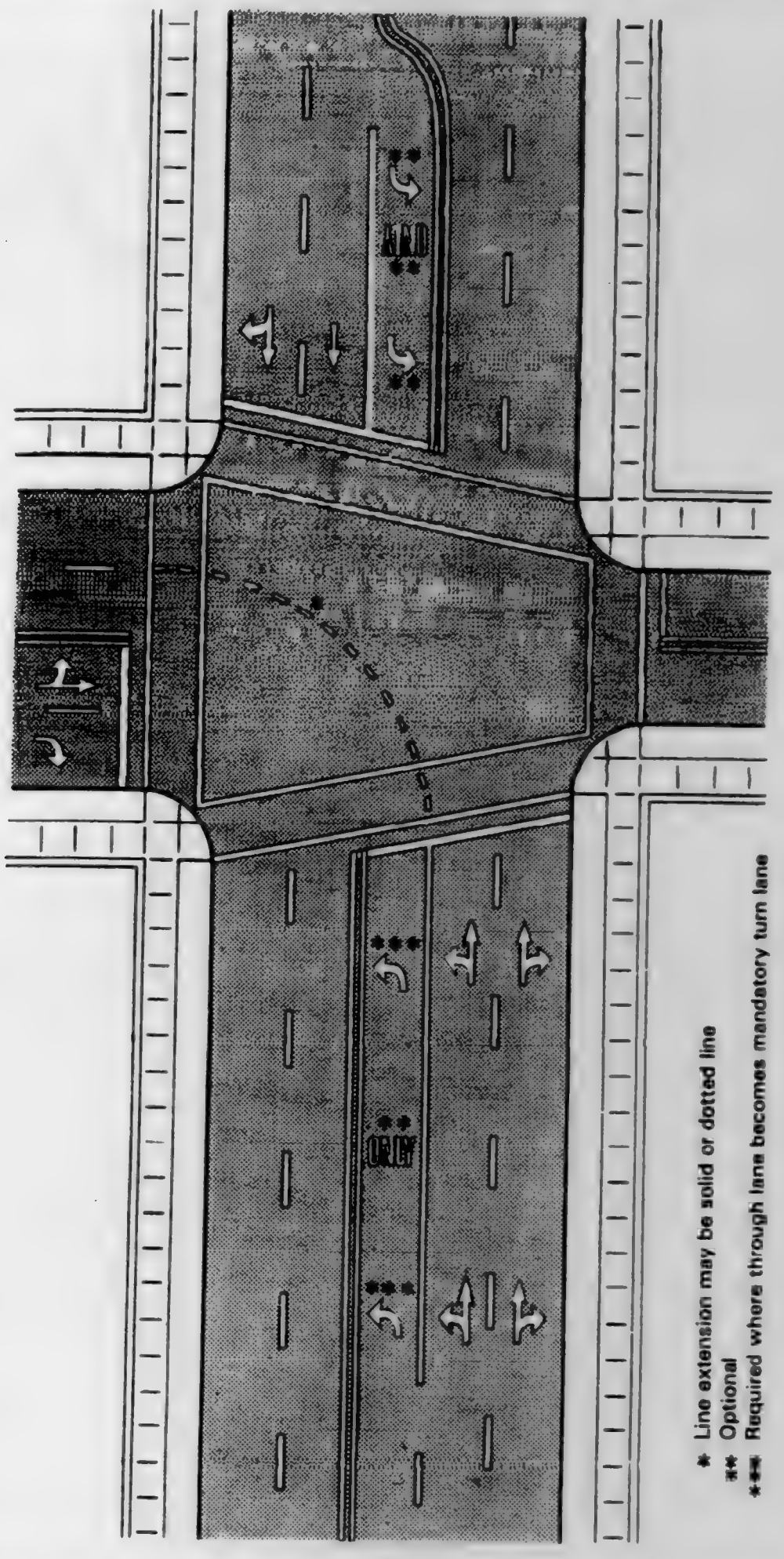
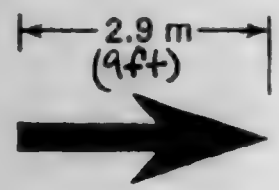
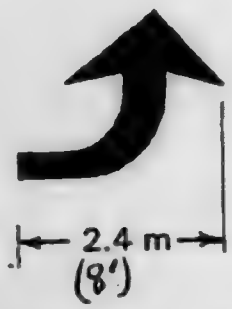


Figure 3-20. Typical lane-use-control word and symbol markings.

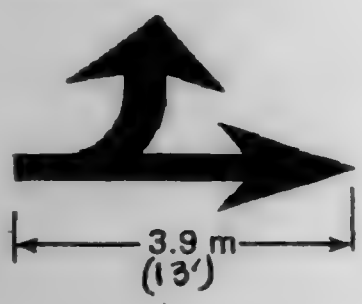
a. Through Lane-Use Arrow



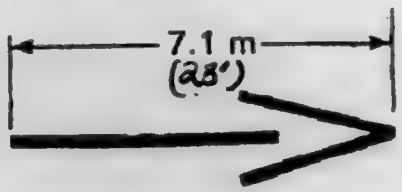
b. Turn Lane-Use Arrow



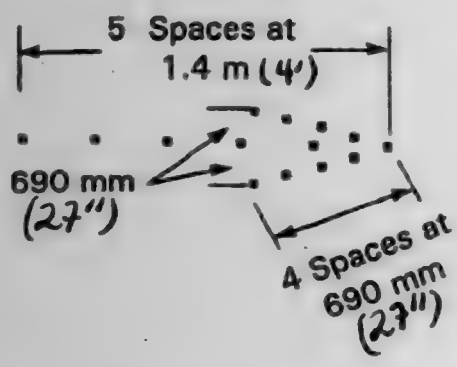
c. Turn and Through Lane-Use Arrow



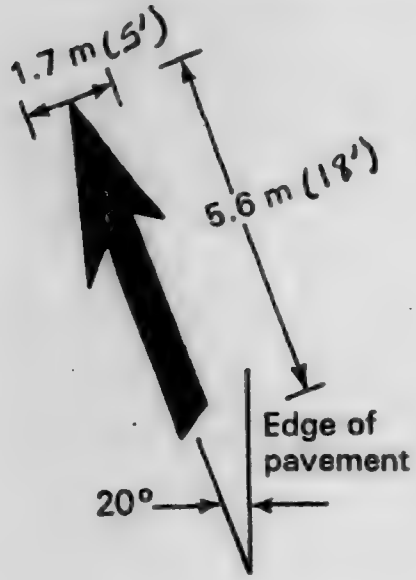
d. Wrong-Way Arrow



e. Wrong-Way Arrow



f. Lane Reduction Arrow



Standard sizes for normal installation; smaller sizes may be reduced approximately one-third for low speed urban conditions; larger sizes may be needed for freeways, above average speeds, and other critical locations. A narrow elongated arrow design is optional. For proper proportion, see Standard Alphabets for Highway Signs and Pavement Markings (Available from FHWA, HHS-10, Washington, DC. 20590)

Figure 3-19. Lane-Use, Lane Reduction and Wrong-Way Arrows for Pavement Markings.

3B.9 Stop and Yield Lines

Standard:

Stop lines are solid white lines extending across approach lanes to indicate the point at which the stop is intended or required to be made.

Yield lines consist of a row of isosceles triangles extending across approach lanes, and pointing toward approaching vehicles to indicate the point at which the yield is intended or required to be made.

Guidance:

Stop lines should be 300 to 600 mm (12 to 24 in) wide.

Stop lines should be used to indicate the point behind which vehicles are required to stop, in compliance with a STOP sign or traffic signal.

The individual triangles comprising the yield line should have a base of 0.3 to 0.6 m (12 to 24 in) wide and a height equal to 11/2 times the base. The space between the triangles should be 75 to 300 mm (3 to 12 in). (See Figure 3–24)

Option: Yield lines may be used to indicate the point behind which vehicles are required to yield in compliance with a YIELD sign.

Guidance:

Stop and yield lines, where used, should be placed 1.2 m (4 ft) in advance of and parallel to the nearest crosswalk line, except at roundabouts as provided for in Section 3B.17.

In the absence of a marked crosswalk, the stop line or yield line should be placed at the desired stopping or yielding point, but should be placed no more than 9.0 m (30 ft) nor less than 1.2 m (4 ft) from the nearest edge of the intersecting traveled way. Stop lines should be placed to ensure sufficient sight distance for all approaches to an intersection.

Stop lines at mid-block signalized locations should be placed at least 12.0 m (40 ft) in advance of the nearest signal indication. (See Section 4B.15)

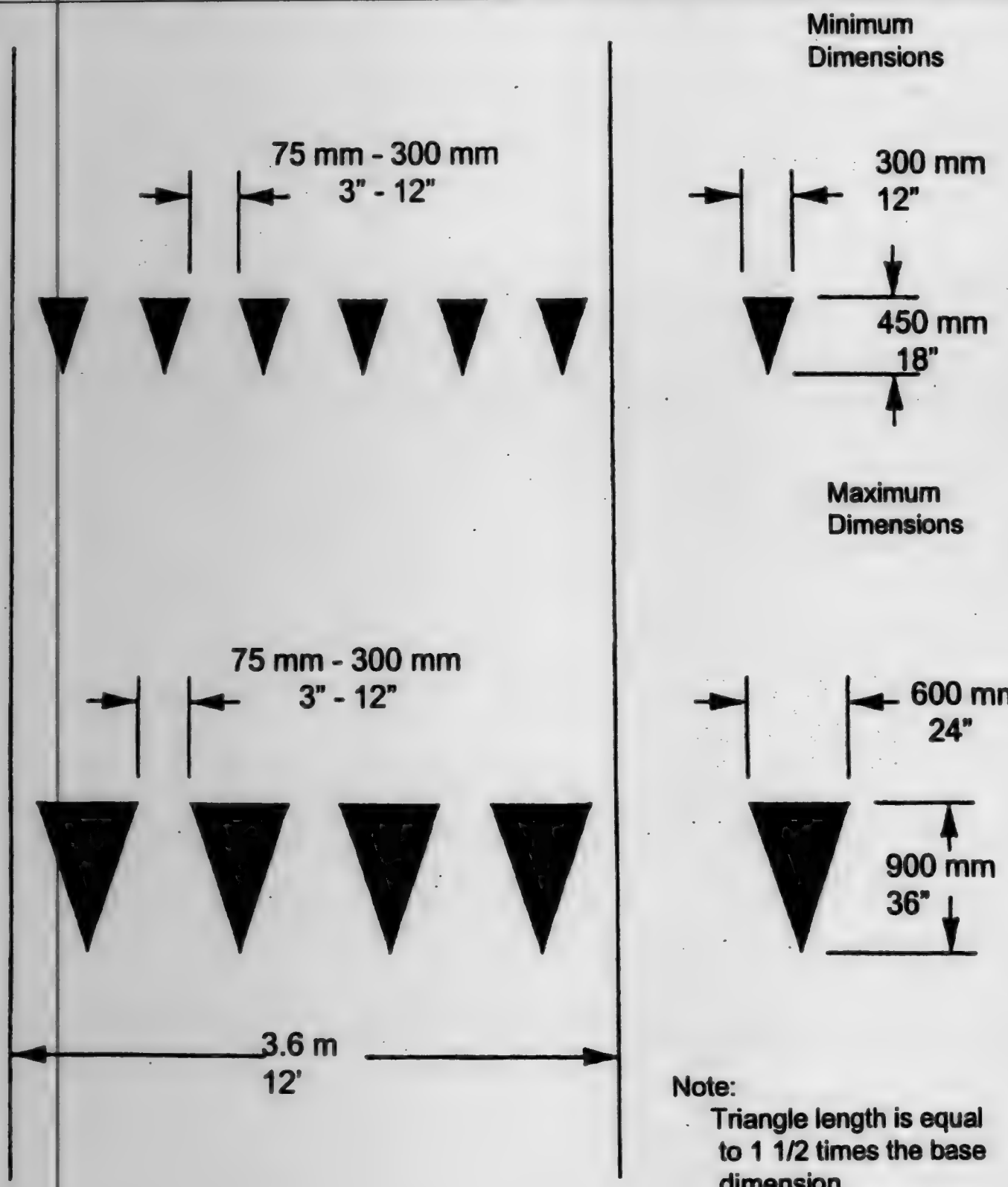


Figure 3-24. Typical Yield Line Layout

3B.12 Pavement Word and Symbol Markings

Support:

Word and symbol markings on the pavement are used for the purpose of guiding, warning, or regulating traffic. Symbol messages are preferable to word messages. Examples of standard symbol, word, and arrow pavement markings are shown in Figures 3–18 and 3–19.

Standard:

Word and symbol markings should be white.

Guidance:

Large letters and numerals should be 1.8 m (6 ft) or more in height.

Word and symbol markings should not exceed three lines of information.

If a pavement marking word message consists of more than one word, it should read in the direction of travel. The first word should be nearest to the road user.

The longitudinal space between words or symbol message markings, including arrow markings, should be at least four times the height of the characters for low speed roads but not more than ten times the height of the characters under any conditions.

The number of different word and symbol markings used should be minimized to provide effective guidance and avoid misunderstanding.

Pavement word and symbol markings should be no more than one lane in width except "SCHOOL" word markings.

Option: The "SCHOOL" word markings may extend to the width of two lanes. (Section 7C.6).

Guidance:

When the "SCHOOL" word markings are extended to the width of two lanes, the characters should be 3 m (10 ft) or more in height. (Section 7C.6).

Option: The International Symbol of Access (ISA) parking space markings may be placed in each parking space designated for use by persons with disabilities. A blue background with a white border may supplement the wheelchair symbol as shown in Figure 3–17.

Standard:

Where a through lane becomes a mandatory turn lane, lane-use arrow markings shown in Figure 3–19 shall be used and accompanied by standard signs.

The standard designs of lane use, lane reduction, and wrong way arrow markings are shown and discussed in Figure 3–19.

Guidance:

Where a through lane becomes a mandatory turn lane, signs or markings should be repeated as necessary to prevent entrapment and to help the road user select the appropriate lane in advance of reaching a queue of waiting vehicles.

Option: Lane-use arrow markings in Figure 3–19 may be used to convey either guidance or mandatory messages.

The message marking "ONLY" may be used to supplement lane-use arrow markings (Figures 3–18 and 3–20).

In situations where a lane reduction transition occurs, the lane reduction arrow markings in Figure 3–19 may be used.

The wrong-way arrow markings in Figure 3–19 may be placed near the downstream terminus of a ramp as shown in Figures 3–12(a) and 3–21(b). This arrow indicates the correct direction of traffic flow to warn of travel in the wrong direction.

A yield-ahead triangle symbol or "YIELD AHEAD" word pavement markings may only be used in advance of intersections where approaching traffic will encounter a YIELD sign. (See Figure 3–25).

Support:

Lane-use arrow markings are often used to provide guidance in turn bays (Figure 3–20) where turns may or may not be mandatory and in two-way left-turn lanes (Figure 3–3(a)).

Where crossroad channelization or ramp geometry do not make wrong-way movements physically difficult, guidance to a potential wrong-way road user can be provided by placing a lane-use arrow marking in each lane of the ramp near the crossroad where it is clearly visible.

Option: word and symbol markings may include, but are not limited to, the following: Other words or symbols may also be used under certain conditions.

a. Regulatory
STOP
RIGHT (LEFT) TURN ONLY
40 KM/H (25 MPH)
Arrow Symbols

b. Warning
STOP AHEAD
YIELD AHEAD
YIELD AHEAD Triangle Symbol
SCHOOL X-ING
SINGAL AHEAD
PED X-ING
SCHOOL
R X R

c. Guide
US 40
STATE 135
ROUTE 40

Standard:

The word "STOP" shall not be used on the pavement unless accompanied by a stop line (Section 3B.9) and STOP sign (Section 2B.4).

The word "STOP" shall not be placed on the pavement in advance of a stop line, unless every vehicle is required to stop at all times.

The yield-ahead triangle symbol or "YIELD AHEAD" word pavement marking shall not be used unless a YIELD sign (Section 2B.7) is in place at the intersection. The yield-ahead symbol marking shall be as shown in Figure 3–25.

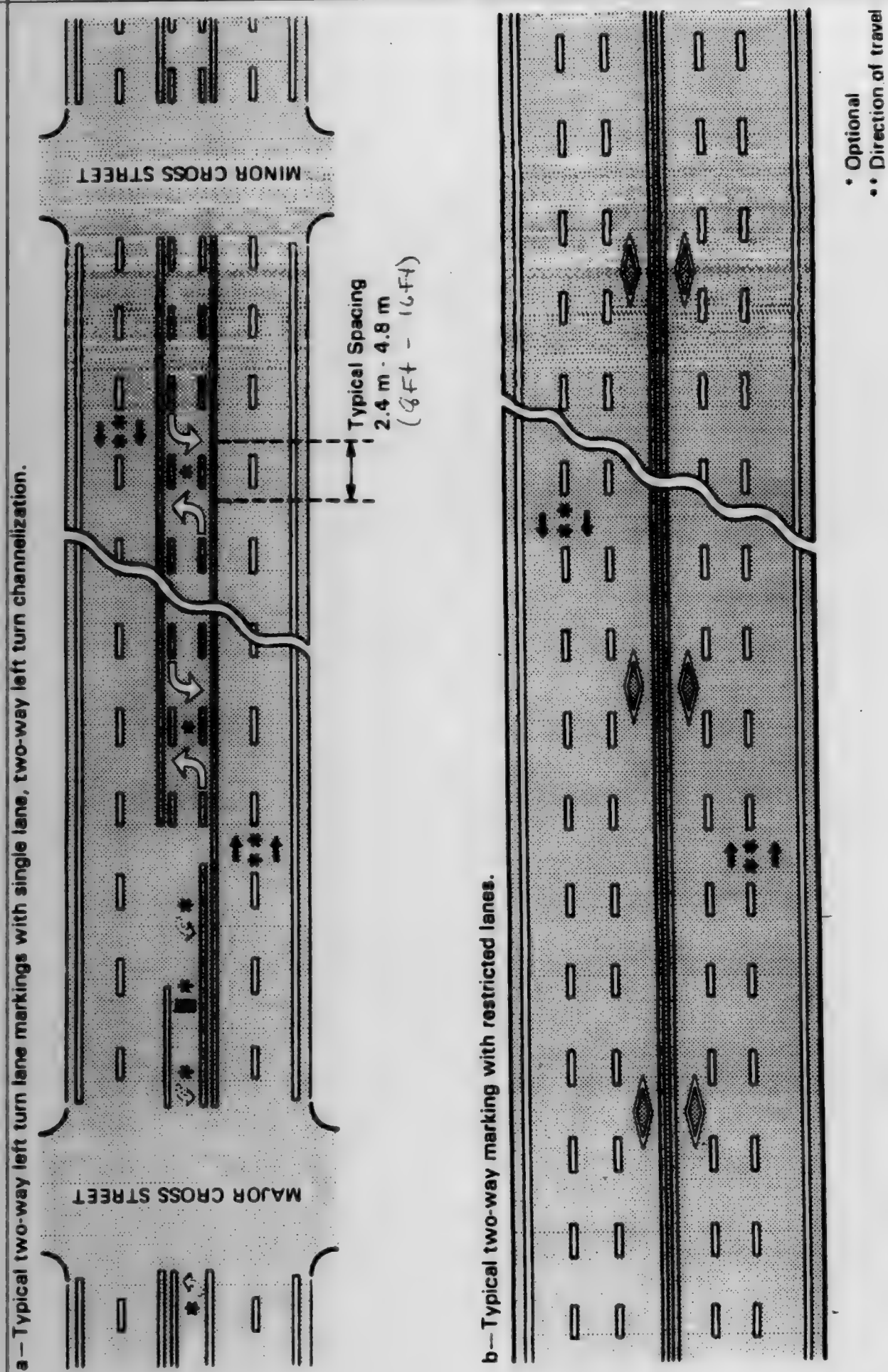


Figure 3-3. Typical two-way marking applications.

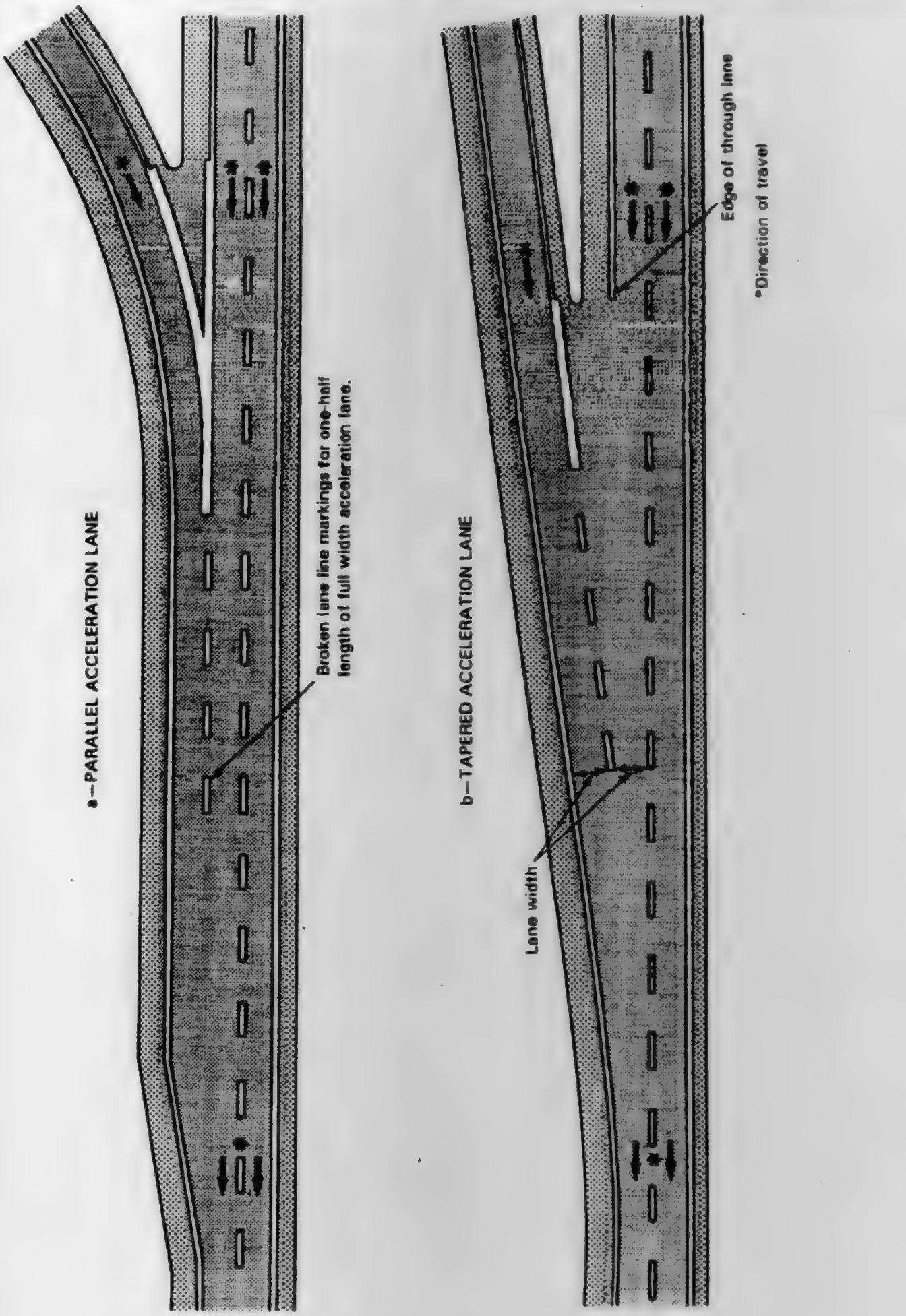


Figure 3-12. Typical entrance ramp markings.

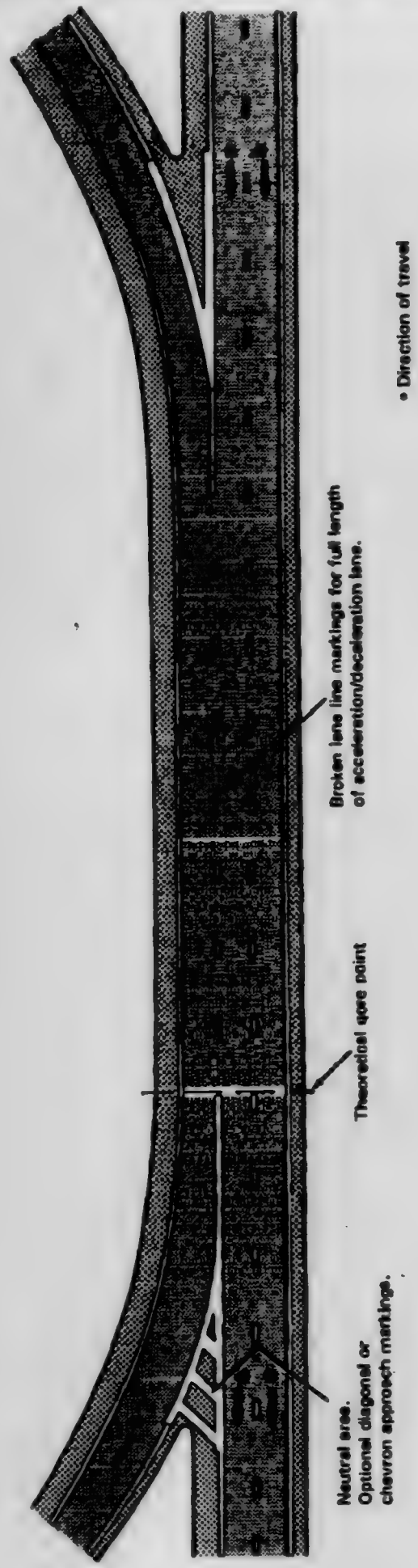


Figure 3-12c. Typical cloverleaf loop ramp markings.

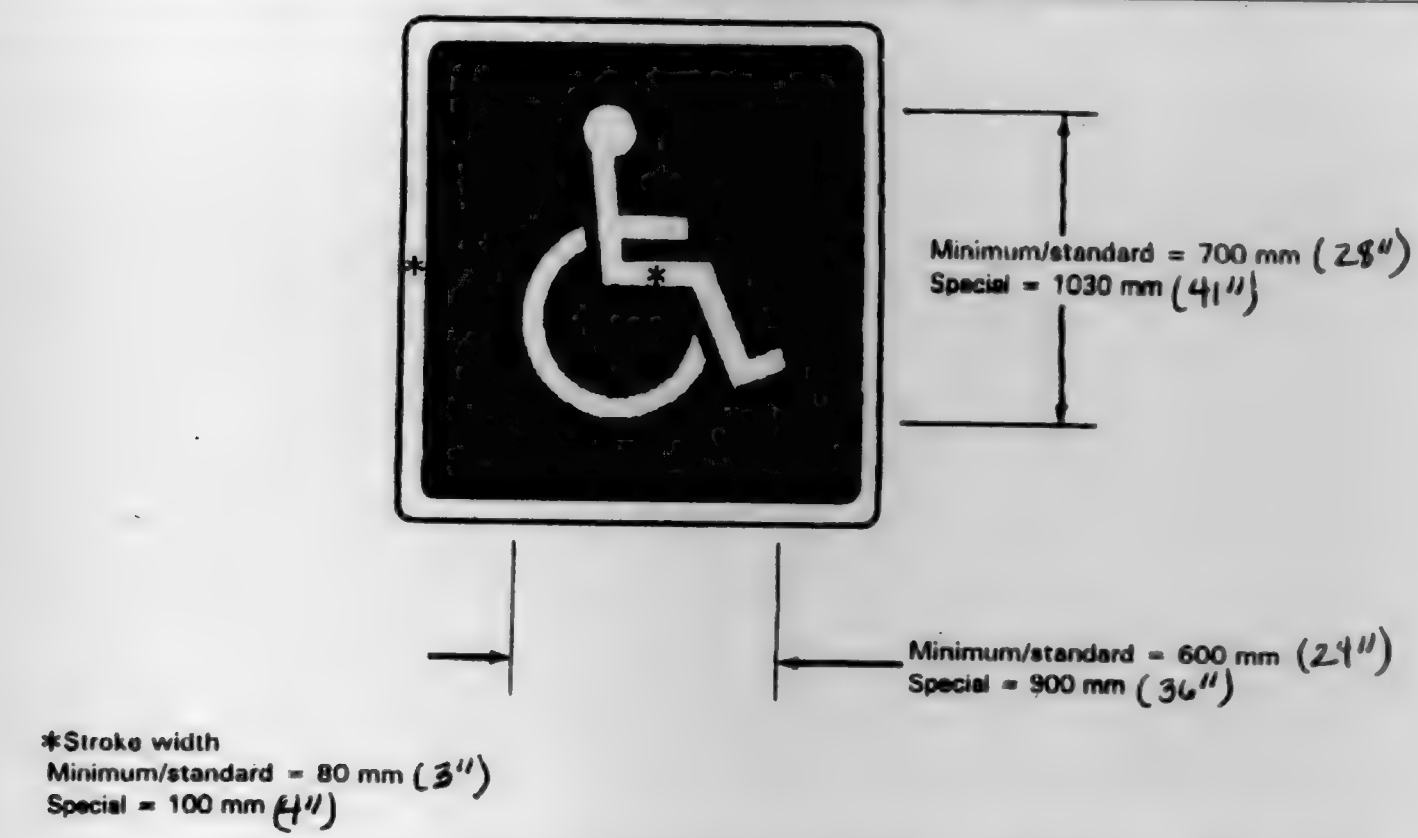


Figure 3-17. International symbol of access parking space marking with blue background and white border otions.

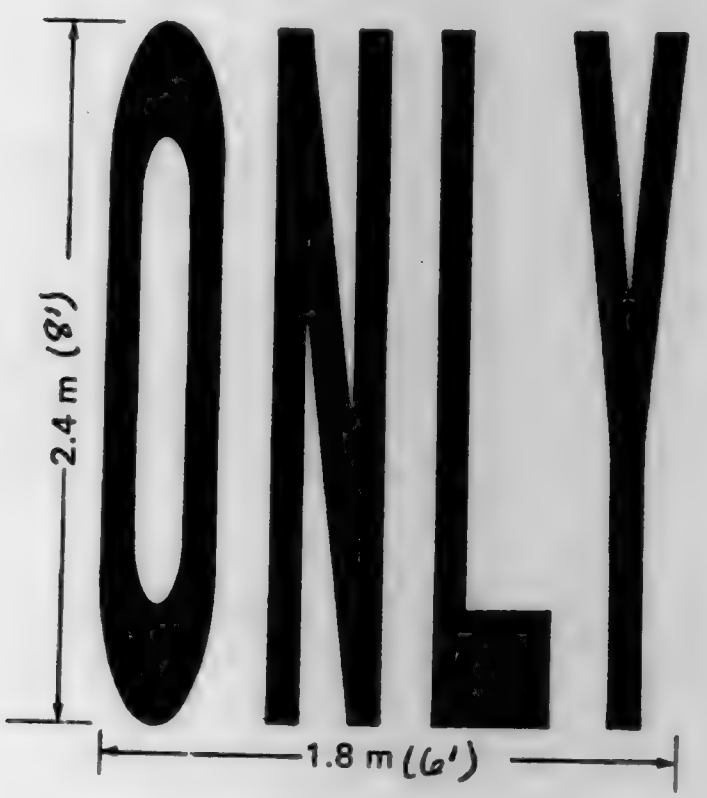


Figure 3-18. Typical elongated letters for pavement marking.

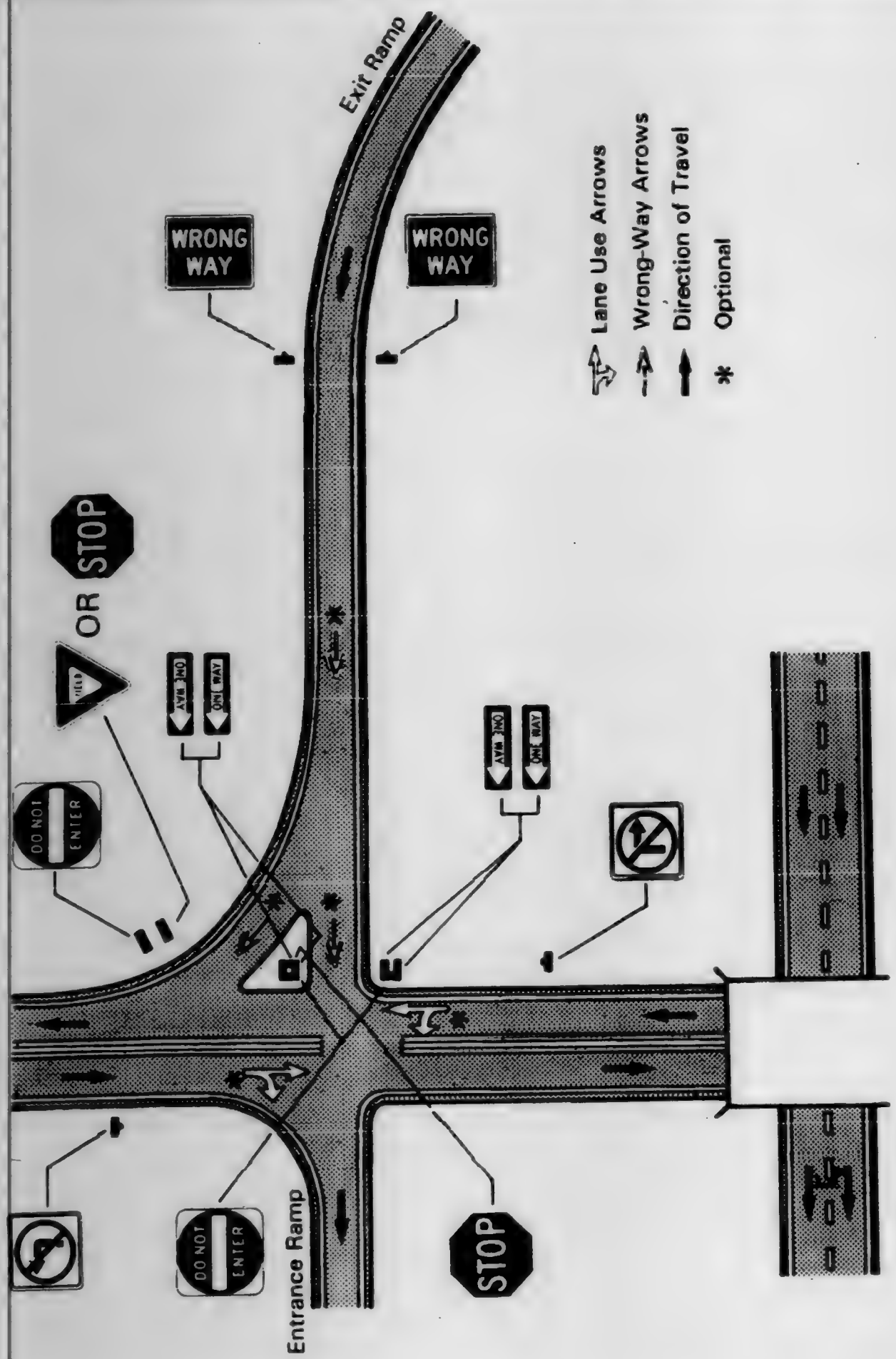


Figure 3-21a. Arrow markings at exit ramp terminals to deter wrong-way entry (Modify as appropriate for 4-lane crossroads).

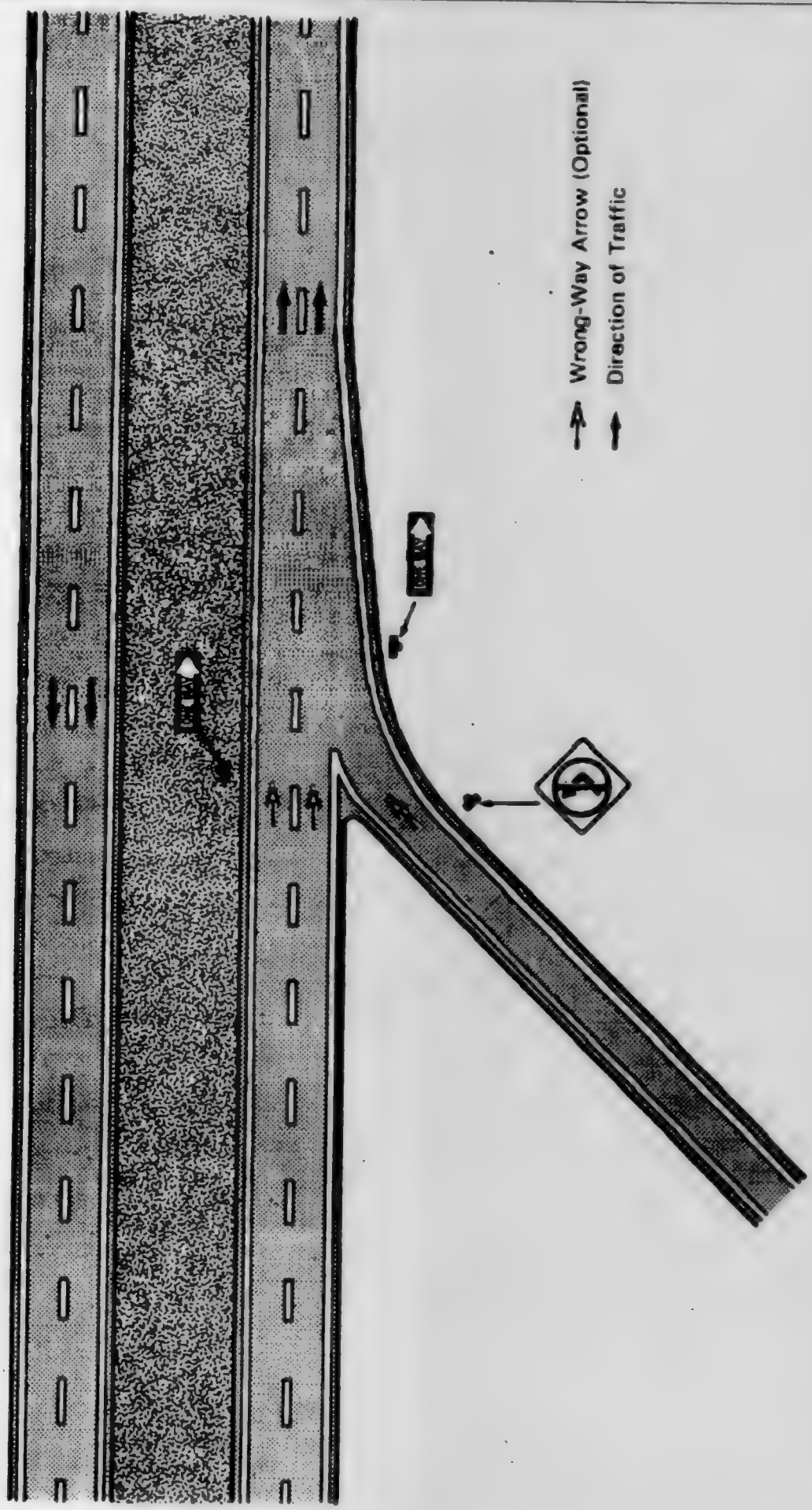
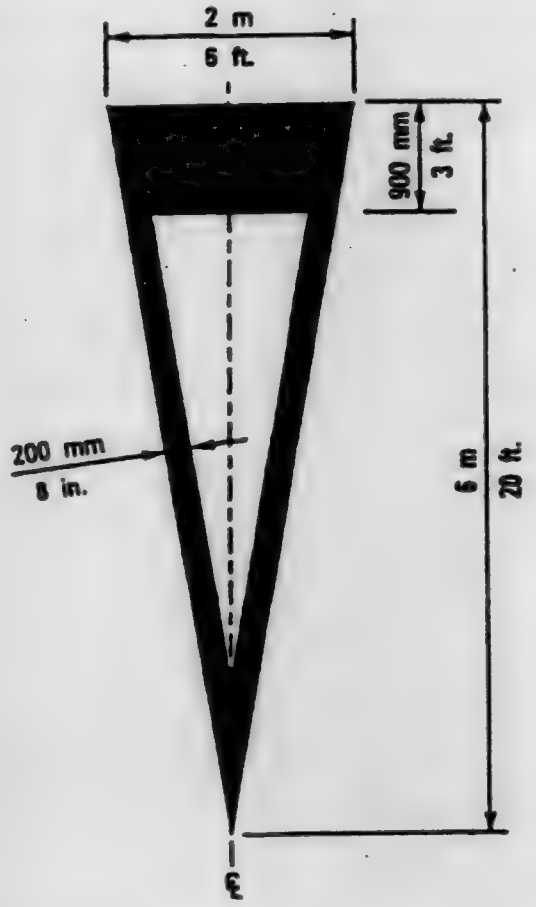


Figure 3-21b. Arrow markings at entrance ramp terminals where design does not clearly indicate the direction of flow.

Posted or statutory
speed limit
≥ 70 km/h (45mph)



Posted or statutory
speed limit
≤ 60 km/h (40mph)

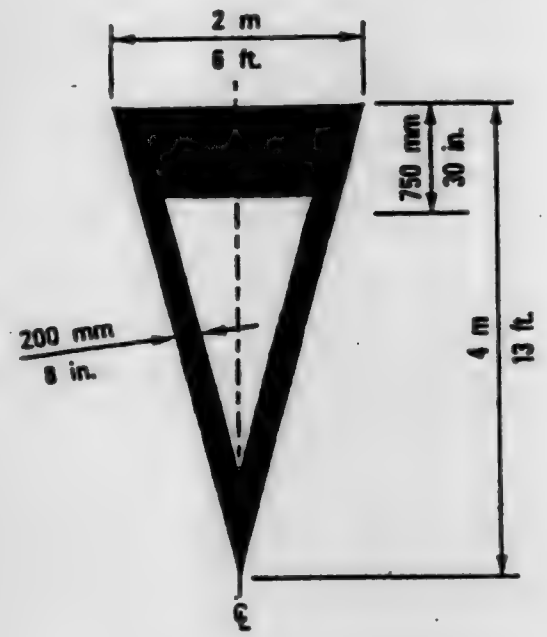


Figure 3-25. Typical Yield Ahead Triangle Symbols.

3B.13 Preferential Lane Word and Symbol Markings

Standard:

When a lane is assigned full or part time to a particular class or classes of vehicles, preferential lane markings shall be used.

Signs or signals shall be used with preferential lane word or symbol markings

All preferéntial lane word and symbol markings shall be white.

all preferential lane word and symbol markings shall be positioned laterally in the center of the preferred-use lane.

Support:

Preferential lanes may be designated to identify a wide variety of special uses. This could include, but is not limited to HOV (High Occupancy Vehicle) lanes, bicycle lanes, bus only lanes, taxicab only lanes, etc.

Standard:

Where a preferential lane use is established, the preferential lane shall be marked with one of the following symbol or word markings for the preferential lane use specified;

- HOV lane, the preferential lane use marking for HOV lanes shall consist of white lines formed in a diamond shape. The diamond shall be at least 750 mm (2.5 ft) wide and 3.6m (12 ft) in length. The lines shall be at least 150 mm (6 in) in width.
- Bicycle lane; the preferential lane use marking for a bicycle lane shall consist of a bicycle symbol or the word marking "BIKE LANE." (See Section 9C, Markings, and Figures 9–4 through 9–9).
- Bus Only Lane; the preferential lane use markings for a busses only lane shall consist of the word markings "BUS ONLY" (See Section 3B.12).
- Taxi Only Lane; the preferential lane use marking for a taxi only lane shall consist of the word markings "TAXI ONLY" (See Section 3B.12).
- Other preferential lane use marking shall be identified in accordance with Section 3B.12.

Guidance:

Engineering judgement should determine the need for supplemental devices such as tubular markers, traffic cones, or flashing lights.

SUPPORT:

The spacing of the marking is an engineering judgement based on prevailing speed, block lengths, distance form intersections and other factors that affect clear communication to the road user. Markings spaced as close as 24 m (80 ft) apart might be appropriate on city streets, while markings spaced 300 m (1,000 ft) may be appropriate for freeways.

The vehicle occupancy requirements established for an HOV lane may be included in sequence after the diamond symbol. The word message "HOV" may be used in lieu of the diamond symbol.

3B.15 Curb Markings

Support:

Curb markings are most often used to indicate parking regulations or to delineate the curb.

Standard:

Signs shall be used with curb markings those areas where curb markings are frequently obliterated by snow and ice accumulation.

Where curbs are marked, the colors shall conform to the general principles of markings (Section 3A.5).

Guidance:

When curb markings are used without signs to convey parking regulations, a legible word marking regarding the regulation should be placed on the curb. For example, "No Parking," or "No Standing."

Retroreflective solid yellow marking should be placed on paved median noses and the curbs of islands that are located in the line of traffic flow where the paved median nose or the curb serves to channel traffic to the right of the obstruction.

Retroreflective solid white marking should be used when traffic may pass on either side of the island.

Option: Local authorities may prescribe special colors for curb markings to supplement standard signs for parking regulation.

Support:

It is usually advisable to establish parking regulations by installing standard signs (Sections 2B.31, 2B.32 and 2B.33) because certain curb markings such as white and yellow curb markings are often used only for curb delineation and visibility purposes.

Where the curbs of the islands become parallel to the direction of traffic flow it is not necessary to mark the curbs unless an engineering study indicates the need for this type of delineation.

Curbs at openings in a continuous median island need not be marked unless an engineering study indicates the need for this type of marking.

3B.16 Preferential Lane Longitudinal Markings for Motorized Vehicles

Standard:

Preferential lane longitudinal markings for motorized vehicles shall be marked with the appropriate word or symbol pavement markings in accordance with Section 3B.13.

Support:

Preferential lanes can take many forms depending on the level of usage and the design of the facility. They may be physically separated from the other travel lanes by a barrier, median, or painted neutral area, or they may be concurrent with other travel lanes and be separated only by longitudinal pavement markings. Further, physically separated preferential lanes may operate in the same direction or be reversible.

Preferential lane may be operated either full-time (24 hours per day on all days), for extended periods of the day, or part-time (restricted usage during specific hours on specified days).

Standard:

The following four sections are presented in tabular form in Table 3–2:

2. Physically separated, non-reversible preferential lane; longitudinal pavement markings for preferential lane physically separated from the other travel lanes by a barrier, median, or painted neutral area shall consist of a single normal solid yellow line at the left edge of the travel lane(s), a single normal solid white line at the right edge of the travel lane(s), and if there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line. (See Figure 3.23a).

3. Physically separated, reversible preferential lane; longitudinal pavement markings for preferential lane shall consist of a single normal solid white line at both edges of the travel lane(s), and if there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line. (See Figure 3.23(a)).

4. Concurrent flow (left side) preferential lane; longitudinal pavement markings for a full-time or part-time preferential lane on the left side of the other traveled lanes, shall consist of a single normal solid yellow line at the left edge of the preferential travel lane(s) and one of the following at the right edge of the preferential travel lane(s):

a. a double solid wide white line where crossing is prohibited; see Figure 3–23(b);

b. a single solid wide white line where crossing is discouraged; see Figure 3–23(c);

c. a single broken wide white line where crossing is permitted; see Figure 3–23(d).

If there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line.

4. Concurrent flow (right side) preferential lane; longitudinal pavement markings for a full-time or part-time preferential lane on the right of the other travel lanes, shall consist of a single normal solid white line at the right edge of the preferential travel lane(s) if warranted and one of the following at the left edge of the preferential travel lane(s):

a. a double solid wide white line where crossing is prohibited; see Figure 3–23(b);

b. a single solid wide white line where crossing is discouraged; see Figure 3–23(c);

c. a single broken wide white line were crossing is permitted, see Figure 3–23(d);

d. a single dotted normal white line where crossing is permitted by any vehicle to perform a right turn maneuver; see Figure 3–23(e).

If there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line.

Guidance:

When concurrent flow preferential lanes and other travel lanes are separated by more than 1.2 m (4 ft) chevron markings should be placed in the neutral area. The chevron spacing should be 30 m (100 ft) or greater.

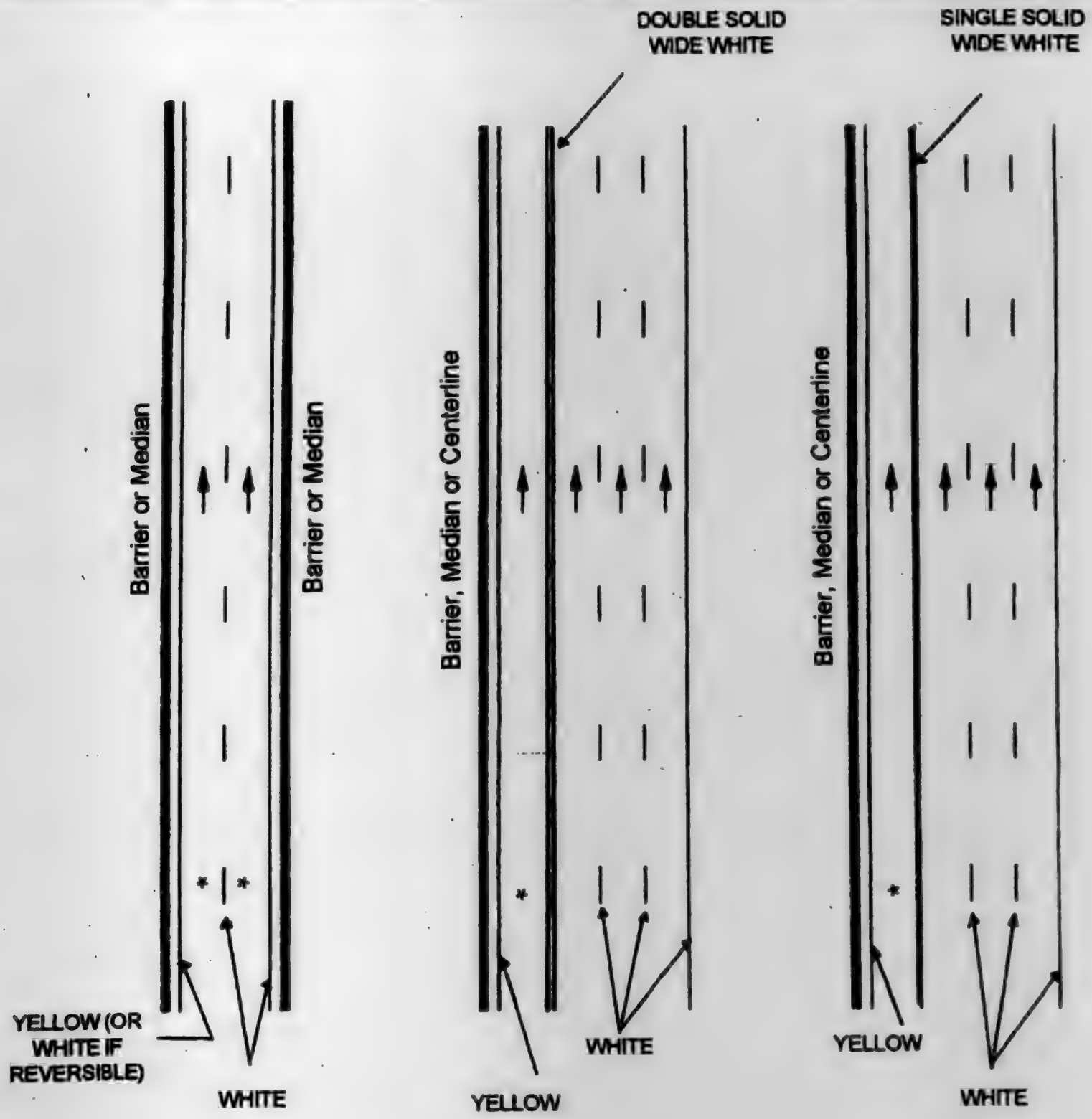
For full time or part-time concurrent flow preferential lanes, the spacing or skip pattern of the single broken wide white line may be reduced. The width of the single broken wide white line may also be increased.

TABLE 3–2. STANDARD LANE MARKINGS

Types of preferential lane		Longitudinal lane lines		
		Left edge line	Right edge line	2+ Lane centerline
Physically separated.	Non-reversible	Single normal solid yellow line	Single normal solid white line	Travel lanes shall be separated with a normal broken white line
Concurrent flow.	Reversible	Single normal solid white line at both edges	Single normal solid white line at both edges.	
	Left Side	Single normal solid yellow line at left edge ...	A double solid wide white line where crossing is prohibited; (See Figure 3–23b)..	
		.....	A single solid wide white line where crossing is discouraged; (See Figure 2–23c)..	
		.....	A single broken wide white line where crossing is permitted; (See Figure 3–23e)..	
	Right Side	A double solid wide white line where crossing is prohibited; (See figure 3–23e)..	Single normal solid white line at the right edge.	
		A single solid wide white line where crossing is discouraged; (See Figure 3–23e..		
		A single broken wide white line where crossing is permitted; (See Figure 3–23e)..		
		A single dotted normal white line where crossing is permitted for any vehicle to perform a right turn maneuver (See figure 3–23e)..		

The standard lane markings listed in this table is provided in a tabular format for reference. This information is also described in the second standard in Section 3B.16.

BILLING CODE 4910-22-M



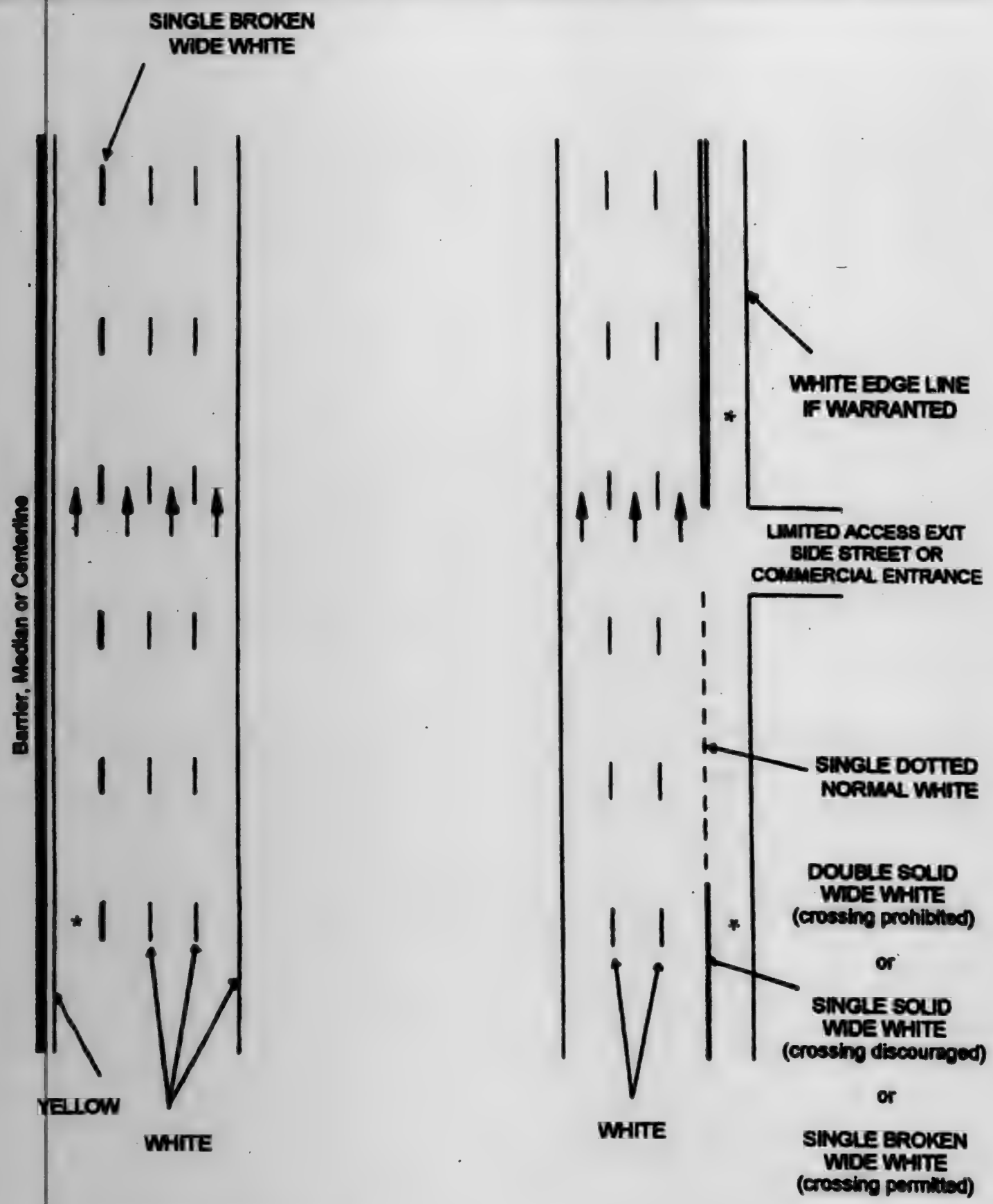
* - Applicable symbol or word

a - Physically separated permanent lanes(s)

b – Full-time concurrent lane(s) where enter/exit movements are PROHIBITED

c – Concurrent lane(s) where enter/exit movements are DISCOURAGED

Figure 3-23. Markings for Preferential Lanes for Motorized Vehicles



* – Applicable symbol or word

d – Concurrent lane(s) where enter/exit movements are ALLOWED

e – Right side concurrent lane(s)

Figure 3-23. Markings for Preferential Lanes for Motorized Vehicles (Continuation)

3B.17 Markings for Roundabouts

Support:

Roundabouts are distinctive circular roadways with the following three critical characteristics:

1. a requirement to yield at entry which gives a vehicle on the circular roadway the right-of-way; and

2. a deflection of the approaching vehicle around the central island; and

3. a flare or widening of the approach to match the width of the circular roadway.

Typical markings for roundabouts are shown in Figure 3–26 and 3–26a.

Option: A yellow edge line may be placed around the inner (left) edge of the circular roadway.

Guidance:

A white line should be used on the outer (right) side of the circular roadway as follows: a solid line along the splitter island and a dotted line across the lane(s) entering the roundabout.

Edge line extensions should not be placed across the exits from the circular roadway.

Where crosswalk markings are used, these markings should be located a minimum of 8m (25 ft) upstream for the yield line, or, if none, from the dotted white line.

Option: Lane lines may be used on the circular roadway when there is more than one lane.

3B.18 Markings for Other Circular Intersections

Support:

Other circular intersections include but are not limited to rotaries, traffic circles, and residential traffic calming designs.

Option: The markings shown in Figures 3–26 and 3–26a may be used in other circular intersections when engineering judgement indicates that their presence will benefit drivers and/or pedestrians.

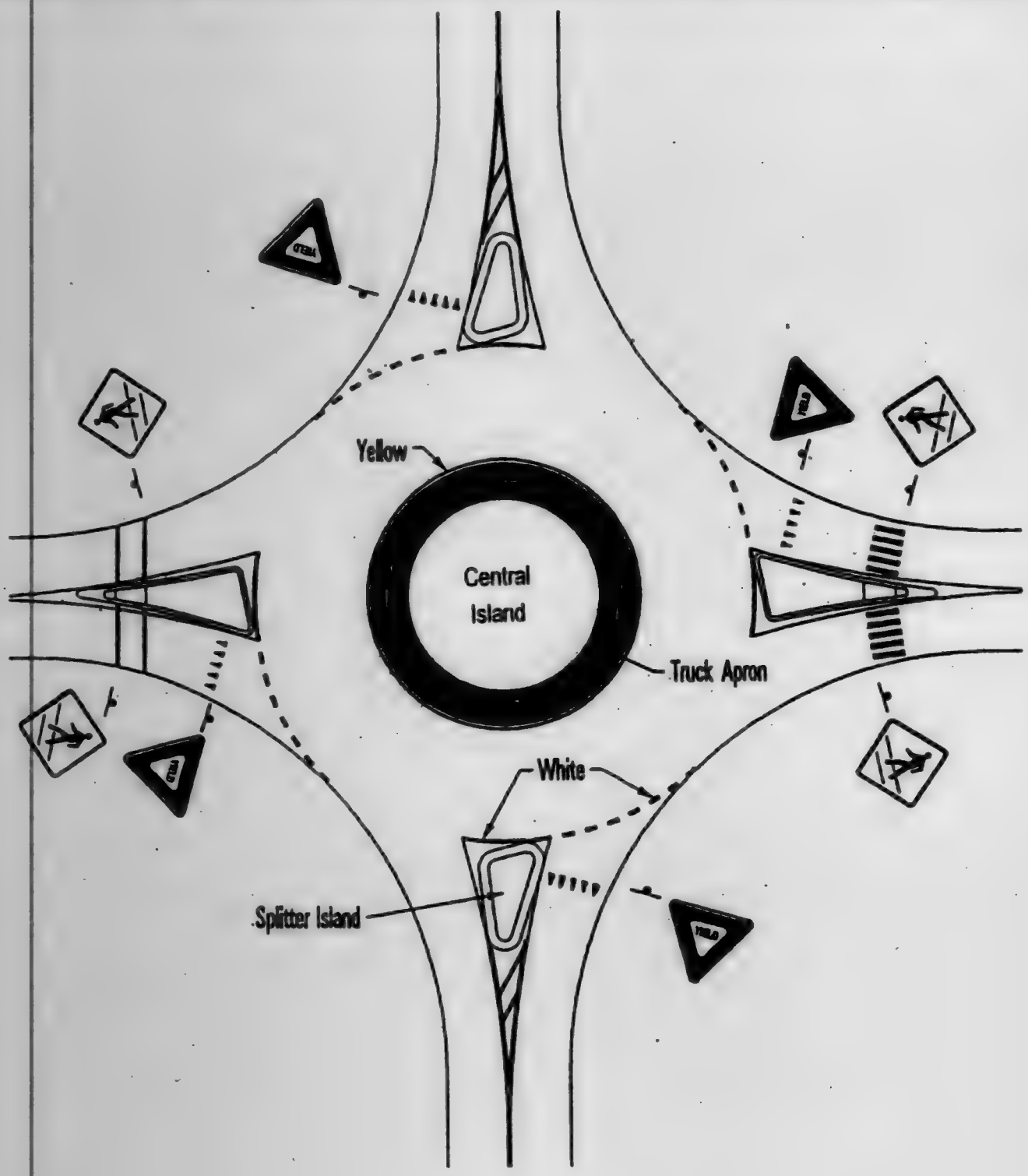


Figure 3-26. Typical Marking for Roundabouts.

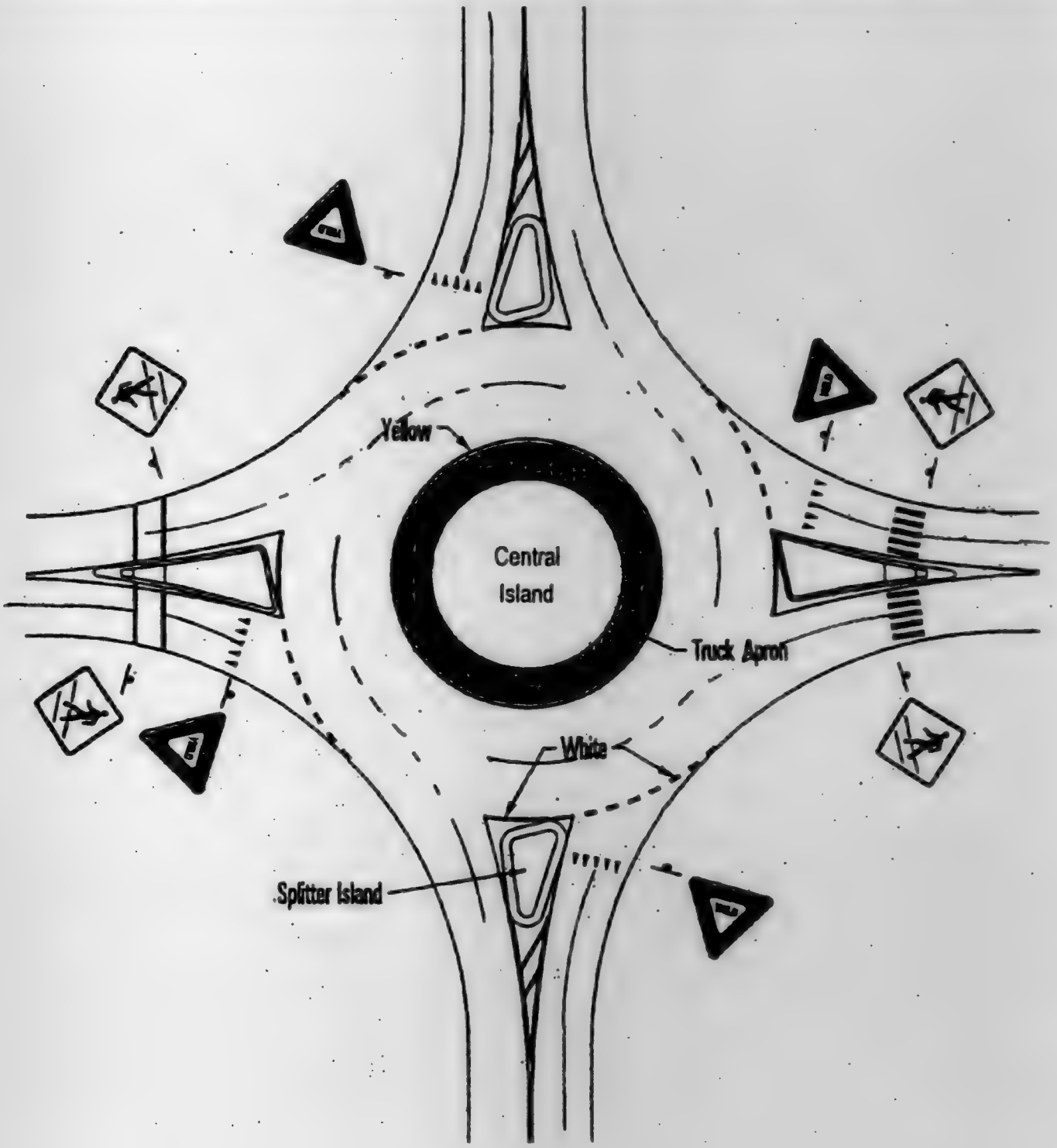


Figure 3-26a Typical Marking for Roundabouts.

3B.19 Speed Hump Markings

Standard:

Speed hump markings are a special white marking placed on a speed hump to identify its location.

Option: Speed humps, except those used for crosswalks, may be marked in accordance with Figure 3–27. The markings shown in Figure 3–28 may be used where the speed hump also functions with a crosswalk, or speed table.

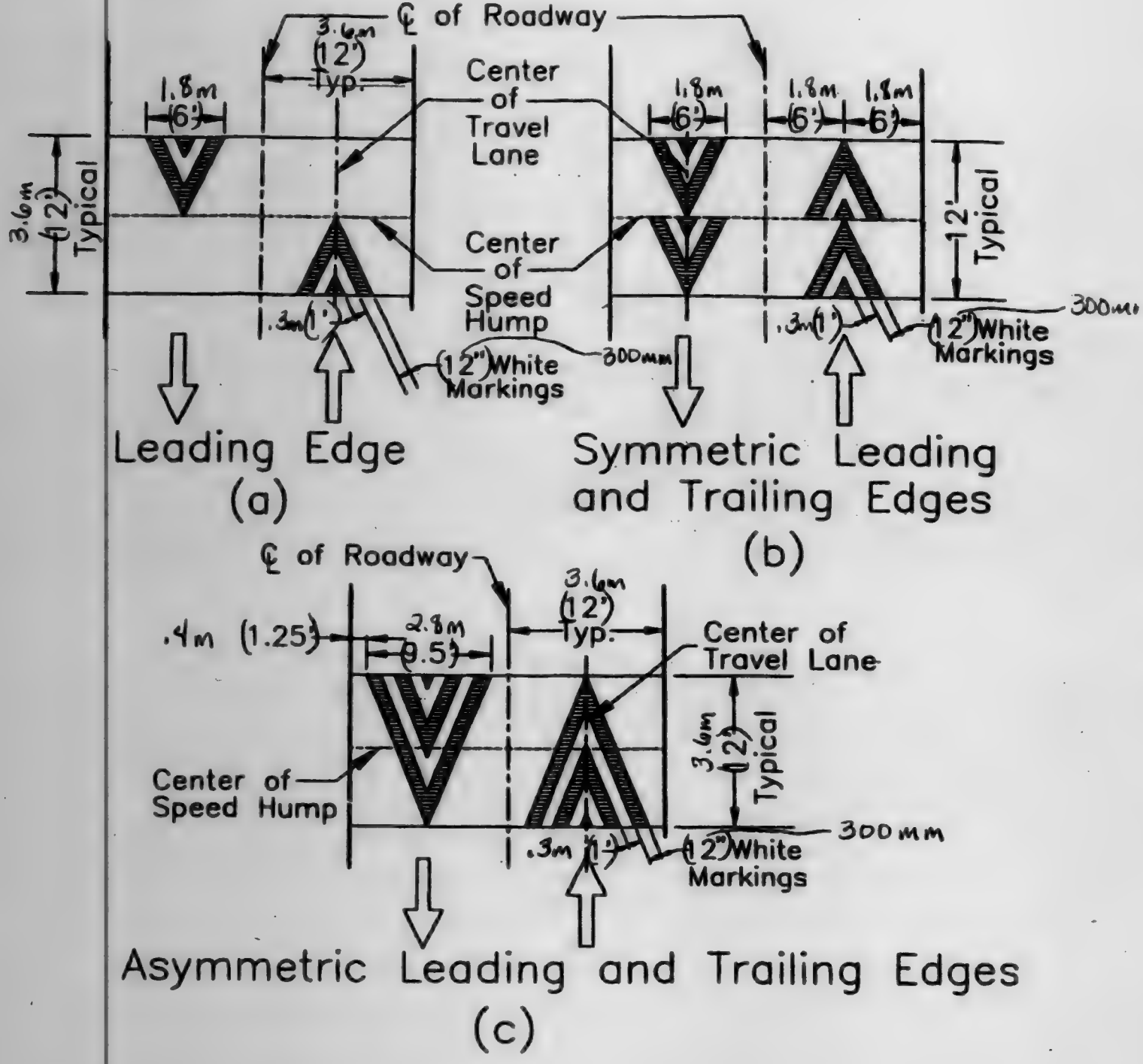


FIGURE 3-27. Pavement Markings for Speed Humps

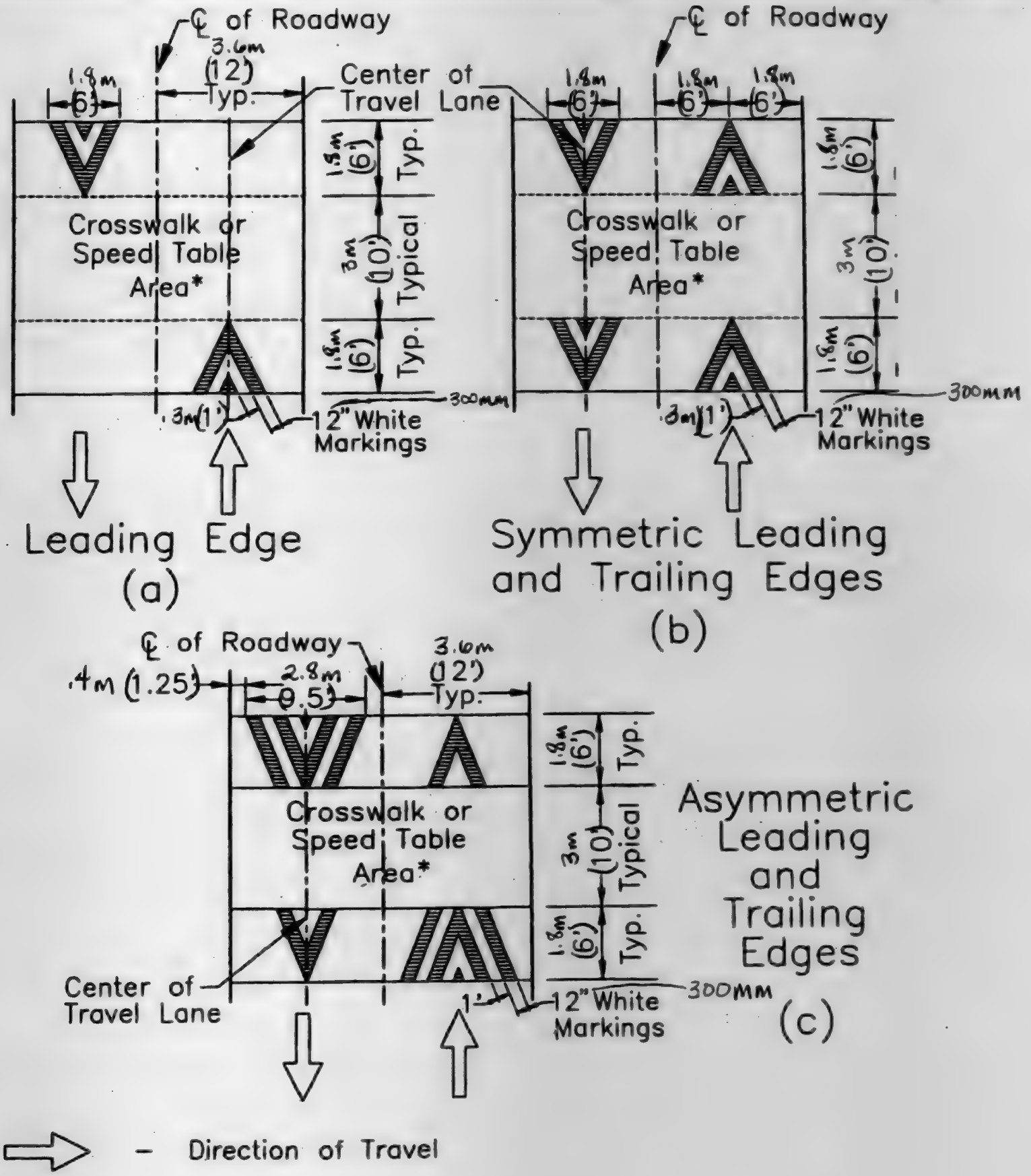


FIGURE 3-28. Pavement Markings for Speed Humps with Crosswalks

3B.20 Advance Speed Hump Marking

Standard:

Advance speed hump markings are a special white marking placed in advance of speed humps or other engineered, vertical roadway deflections such as dips.

Option: Advance speed hump markings may be used in advance of an engineered, vertical roadway deflection where added visibility is desired or where such deflection is not expected. (Figure 3–29)

Advance pavement wording such as "BUMP" or "HUMP" (see section 3B.12) may be used on the approach to a speed hump either alone or in conjunction with advance speed hump markings.

Guidance:

If used, advance speed hump markings should be installed in each approach lane.

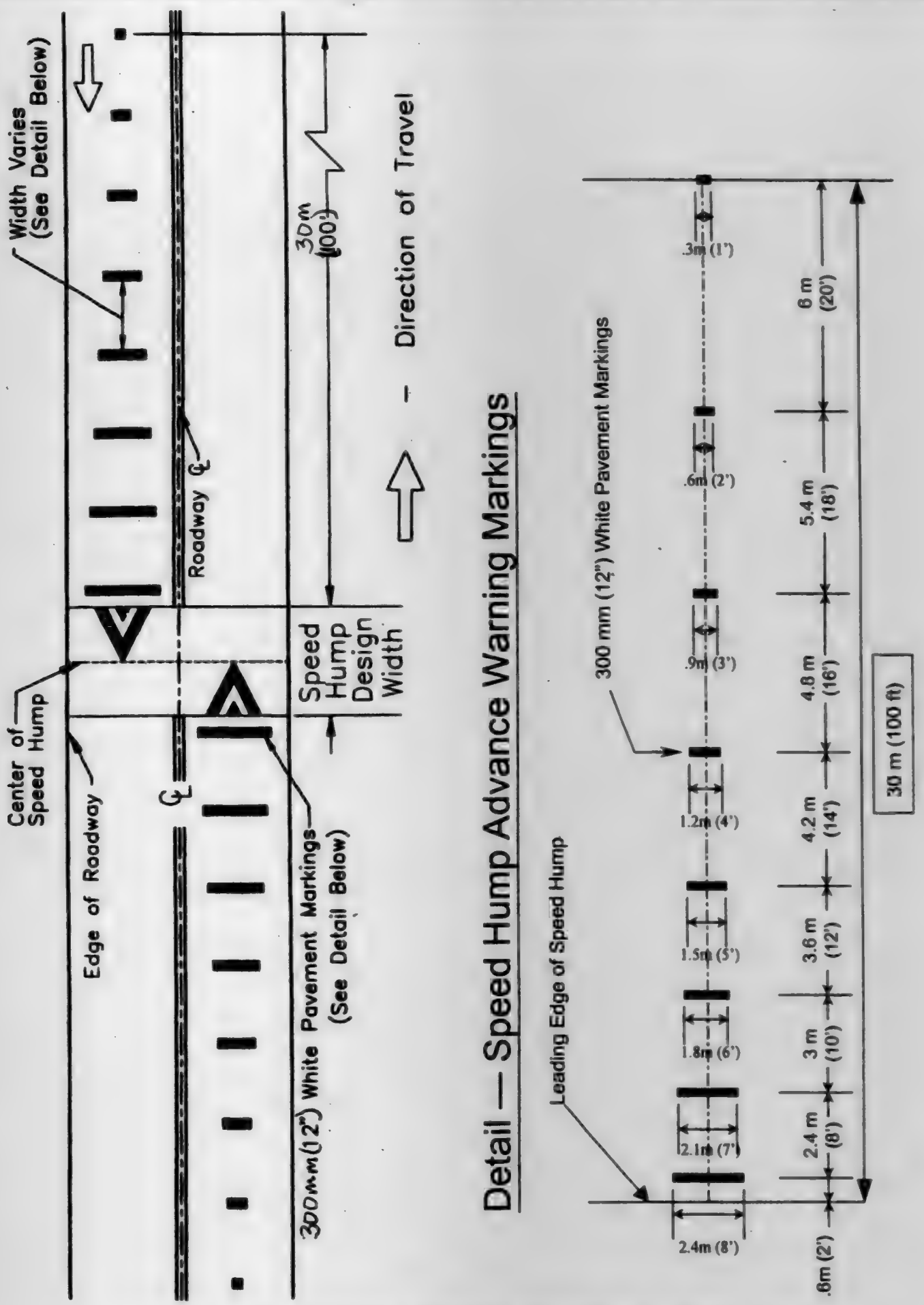


FIGURE 3-29. Advance Warning Markings for Speed Humps

BILLING CODE 4910-22-C

4B.2 Basis of Installation or Removal of Traffic Control Signals

Guidance:

The selection and use of highway traffic signals should be based on an engineering study of roadway, pedestrian, bicycle, and traffic conditions.

If changes in traffic patterns eliminate the need for a highway traffic signal, consideration should be given to removing it and replacing it with appropriate alternative traffic control devices.

Option: If the engineering study indicates that the traffic control signal is no longer justified, removal may be completed using the following steps:

a. Determine the appropriate traffic control to be used after removal of the signal.

b. Remove any sight-distance restrictions as necessary.

c. Inform the public of the removal study, for example by installing an information sign (or signs) with the legend TRAFFIC SIGNAL UNDER STUDY FOR REMOVAL at the signalized location in a position where it is visible to all road users.

d. Flash or cover the signal heads for a minimum of 90 days, and install the appropriate stop control or other traffic control devices.

e. Remove the signal if the engineering data collected during the removal study period confirms that the signal is no longer needed. Instead of total removal of the traffic control signal, the poles and cables may remain in place for a maximum of one year after removal of the signal heads for continued analysis.

Support:

A careful analysis of traffic operations, pedestrian needs, and other factors at a large number of signalized and unsignalized intersections, coupled with the judgment of experienced engineers, has provided a series of warrants, described in Section 4C, that define the minimum conditions under which installing highway traffic signals may be justified.

4C.1 Studies and Factors for Justifying Traffic Control Signals

Standard:

A traffic engineering study of traffic conditions, pedestrian characteristics, and physical characteristics of the location shall be performed to determine whether installation of a traffic control signal is justified at a particular location.

The investigation of the need for a traffic control signal shall include an analysis of the applicable factors contained in the following traffic signal warrants and other factors related to existing operation and safety at the study location:

Warrant 1—Eight-hour vehicular volume.
Warrant 2—Four-hour vehicular volume.
Warrant 3—Peak hour.
Warrant 4—Pedestrian volume.
Warrant 5—School crossing.
Warrant 6—Coordinated signal system.
Warrant 7—Accident experience.
Warrant 8—Roadway network.

The satisfaction of a traffic signal warrant or warrants shall not in itself require the installation of a traffic control signal.

Guidance:

A traffic control signal should not be installed unless one or more of the factors described in this section are met.

A traffic control signal should not be installed unless an engineering study indicates that installing a traffic control signal will improve the overall safety and/or operation of the intersection.

A traffic control signal should not be installed if it will seriously disrupt progressive traffic flow.

The study should consider the effects of the right-turn vehicles from the minor-roadway approaches. Engineering judgment should be used to determine what, if any, portion of the right-turn traffic is subtracted from the minor-roadway traffic count when evaluating the count against the above warrants.

Engineering judgment should also be used in applying various traffic signal warrants to cases where approaches consist of one lane plus one left-turn or right-turn lane. The site-specific traffic characteristics dictate whether an approach should be considered one lane or two lanes. For example, for a roadway approach with one lane (for through and right-turning traffic) plus a left-turn lane, engineering judgment could indicate that it should be considered a one-lane approach if the traffic using the left-turn lane is minor. In such a case, the total traffic volume approaching the intersection should be applied against the warrants as a one-lane approach. The approach should be considered two lane if traffic splits in half and the left-turn lane is sufficient length to accommodate all left-turn vehicles.

Similar judgment and rationale should be applied to a roadway approach with one lane plus a right-turn lane. In this case, the degree of conflict of minor-roadway right-turn traffic with traffic on the major roadway should be considered. Thus, right-turn traffic should not be included in the minor-roadway volume if the movement enters the major roadway with minimal conflict. The approach should be evaluated as a one-lane approach, and only the traffic volume in the through/left-turn lane considered.

At a location that is under development or construction and where it is not possible to obtain a traffic count that would represent future traffic conditions, vehicular and pedestrian hourly volumes should be estimated as part of an engineering study for comparison with traffic signal warrants.

For warrant analysis, a location with a wide-median should be considered as one intersection.

Option: Engineering study data may include the following:

a. The number of vehicles entering the intersection in each hour from each approach during 12 consecutive hours of an average day. The 12 hours selected should contain the greatest percentage of the 24-hour traffic volume.

b. Vehicular volumes for each traffic movement from each approach, classified by vehicle type (heavy trucks, passenger cars and light trucks, public-transit vehicles, and, in some locations, bicycles), during each 15-minute period of the two hours in the morning and two hours in the afternoon during which total traffic entering the intersection is greatest.

c. Pedestrian volume counts on each crosswalk during the same periods as the vehicular counts in paragraph b above and during hours of highest pedestrian volume. Where people who are young, elderly, physically challenged, have visual disabilities, or need special consideration, the pedestrians and their crossing times may be classified by general observation.

d. Information about nearby facilities and activity centers that serve the elderly, people with disabilities, and/or requests from people with disabilities for accessible crossing improvements along this route. These people may not be adequately reflected in the pedestrian volume count if the lack of a signal restrains their mobility.

e. The posted or statutory speed limit or the 85th-percentile speed on the uncontrolled approaches to the location.

f. A condition diagram showing details of the physical layout, including such features as inter-sectional geometrics, channelization, grades, sight-distance restrictions, bus stops and routings, parking conditions, pavement markings, roadway lighting, driveways, nearby railroad crossings, distance to nearest highway traffic signals, utility

poles and fixtures, and adjacent land use.

g. A collision diagram showing accident experience by type, location, direction of movement, severity, time of day, date and day of week for at least one year.

The following data, which are desirable for a more precise understanding of the operation of the intersection, may be obtained during the periods specified in paragraph b above:

a. Vehicle-seconds delay determined separately for each approach.

b. The number and distribution of gaps in vehicular traffic on the major roadway when minor-roadway traffic finds it difficult to use the intersection safely.

c. The posted or statutory speed limit or the 85th-percentile speed on controlled approaches at a point near to the intersection but unaffected by the control.

d. Pedestrian delay time for at least two 30-minute peak pedestrian delay periods of an average weekday or like periods of a Saturday or Sunday.

4D.3 Provisions for Pedestrians

Support:

Chapter 4E contains additional information regarding pedestrian signals.

Standard:

The design and operation of traffic control signals shall take into consideration the needs of pedestrians, including those with disabilities, as well as vehicular traffic.

If engineering judgment indicates the need for pedestrian provisions for a given pedestrians or other non-motorist movement, signal faces conveniently visible to pedestrians shall be provided by pedestrian signal heads or a signal face for an adjacent vehicular movement.

Guidance:

Safety considerations should include the installation, where appropriate, of accessible pedestrian signals that provide information in non-visual format (including audible tones, verbal messages, and/or vibrotactile information). Provisions for accessible signals are presented in Sections 4E.6 and 4E.8.

Where pedestrian movements regularly occur but are low in volume, pedestrians should be provided with sufficient time to cross the roadway by adjusting the traffic control signal operation and timing to continually provide sufficient crossing time or by providing pedestrian detectors.

Option: If it is desirable to prohibit certain pedestrian movements at a traffic control signal, a NO PEDESTRIAN CROSSING sign (R9–3a, R9–3) may be used. (see Section 2B.36.)

4D.4 Meaning of Vehicle Signal Indications

Support:

The Uniform Vehicle Code is the primary source for the standards for the meaning of vehicle signal indications to both vehicle operators and pedestrians set forth below, and the standards for the meaning of separate pedestrian signal indications as set forth in Section 4D.2.

Standard:

Unless otherwise determined by law, the following meanings shall be given to highway traffic control signal indications for vehicles and pedestrians:

a. Steady green indications shall have the following meanings:

(1) Traffic, except pedestrians, facing a CIRCULAR GREEN indication may proceed straight through or turn right or left except as such movement is modified by lane-use signs, turn prohibition signs, lane markings, or roadway design. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles, and to pedestrians lawfully within the intersection or an adjacent crosswork, at the time such signal indication is exhibited.

(2) Traffic, except pedestrians, facing a GREEN ARROW indications, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian signal head, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

b. Steady yellow indications shall have the following meanings:

(1) Traffic, except pedestrians, facing a steady CIRCULAR YELLOW or YELLOW ARROW indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter, when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady CIRCULAR YELLOW or YELLOW ARROW indication, unless otherwise directed by a pedestrian signal head, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

c. Steady red indications shall have the following meanings:

(1) Vehicular traffic facing a steady CIRCULAR RED indication alone shall stop at a clearly marked Stop line, but if there is no stop line, traffic shall stop before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, then before entering the intersection, and shall remain standing until an indication to proceed is shown, or as provided below.

Except when a sign is in place prohibiting a turn on red, vehicular traffic facing a CIRCULAR RED indication may enter the intersection to turn right, or to turn left from a one-way roadway into a one-way roadway, after stopping. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(2) Unless otherwise directed by a pedestrian signal head, pedestrians facing a steady CIRCULAR RED indication alone shall not enter the roadway.

d. Flashing signal indications shall have the following meanings:

(1) Flashing yellow—When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such indication only with caution.

(2) Flashing red—When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if there is no stop line, they shall stop, before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a STOP sign.

(3) Flashing YELLOW ARROW indications have the same meaning as the corresponding flashing circular indication, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow.

4D.5 Application of Steady Signal Indications

Standard:

When a traffic signal installation is being operated in a steady (stop-and-go)

mode, at least one lens in each signal face shall be illuminated at any given time.

A signal face(s) that controls a particular vehicular movement during any interval of a cycle shall control that same movement during all intervals of the cycle.

Steady signal indications shall be applied as follows:

a. A steady CIRCULAR RED indication

(1) Shall be displayed when it is intended to prohibit traffic, except pedestrians directed by a pedestrian signal head, from entering the intersection or other controlled area. Turning after stopping is permitted as stated in Section 4D.4(c)(1).

(2) Shall be displayed with the appropriate GREEN ARROW indications when it is intended to permit traffic to make a specified turn and to prohibit traffic from proceeding straight ahead through the intersection or other controlled area, except in exclusive mode turn signal faces.

b. A steady CIRCULAR YELLOW indication

(1) Shall be displayed following a CIRCULAR GREEN indication in the same signal face.

(2) Shall not be displayed in conjunction with the change from the CIRCULAR RED indication to the CIRCULAR GREEN indication.

(3) Shall be followed by the display of a CIRCULAR RED indication except that, when entering preemption operation, the display of the previous CIRCULAR GREEN indication shall be permitted following a CIRCULAR YELLOW indication. (See Section 4D.13.)

c. A steady CIRCULAR GREEN indication shall be displayed only when it is intended to permit traffic to proceed in any direction that is lawful and practical.

d. A steady YELLOW ARROW indication

(1) Shall be displayed in the same direction as a GREEN ARROW indication following a GREEN ARROW indication in the same signal face, unless the GREEN ARROW indication and a CIRCULAR GREEN indication terminate simultaneously in the same signal face.

(2) Shall not be displayed when any conflicting vehicular movement has a green or yellow indication or any conflicting pedestrian movement has a WALK or flashing DONT WALK indication. (See Section 4D.9.)

(3) Shall be terminated by a CIRCULAR YELLOW indication or a CIRCULAR RED indication except

(a) When entering preemption operation, the display of the previous GREEN ARROW indication shall be permitted following a YELLOW ARROW indication.

(b) When the movement controlled by the arrow is to continue as permitted during a subsequent CIRCULAR GREEN indication.

e. A steady GREEN ARROW indication

(1) Shall be displayed only to allow vehicular movements, in the direction indicated, that are not in conflict with other vehicles moving on a green or yellow indication or with pedestrians crossing in conformance with a WALK or flashing DONT WALK indication. (see Section 4D.9.)

(2) Shall be displayed on a signal face that controls a left-turn movement when said movement is not in conflict with other vehicles moving on a green or yellow indication or with pedestrians crossing in conformance with a WALK or flashing DONT WALK indication. (See Section 4D.9.)

(3) Shall not be required on the stem of T intersections or for turns from one-way roadways.

Option: Steady YELLOW ARROW, and GREEN ARROW indications, if not otherwise prohibited, may be used in lieu of the corresponding circular indications at the following locations:

a. On an approach intersecting a one-way roadway.

b. Where certain movements are prohibited.

c. Where certain movements are physically impossible.

4D.6 Application of Steady Signal Indications For Left Turns

Support:

Left-turning traffic is controlled by one of four modes as follows:

a. Permissive Mode—turns made on the CIRCULAR GREEN indication after yielding to oncoming traffic and pedestrians.

b. Protected Mode—turns made only when the left-turn GREEN ARROW indication is displayed.

c. Protected/Permissive Mode—both modes occur on an approach during the same cycle.

d. Variable left-turn mode—the operating mode changes among the protected mode and/or the protected/permissive mode and/or the permissive mode.

Standard:

A leading protected-only left turn phase is one in which the GREEN ARROW, YELLOW ARROW, and CIRCULAR RED is given to vehicles turning left from a particular street before the CIRCULAR GREEN indication is given to the through movement on the same street.

Option:

A leading protected-only left turn phase may be considered if there are not a sufficient number of acceptable gaps for the left-turning movement.

Standard:

The required left-turn signal indication or indications shall be determined by the selected mode of left-turn operation, as follows:

a. Permissive Mode only—The signal indication for permissive mode left turns shall be identical to the signal indication for through traffic. A separate signal indication or signal face for left turns shall not be required.

b. Protected Mode only—At least one left-turn signal face shall be provided in addition to the two approach signal faces required in Section 4D.15 for the through movement. The left-turn signal face shall be capable of displaying one of the following sets of indications:

(1) GREEN and YELLOW left-turn ARROW indications and a CIRCULAR RED indication. Only one of the three lenses shall be illuminated at any given time. If the CIRCULAR RED indication would be readily visible to other traffic on the same approach, either a LEFT TURN SIGNAL sign (R10–10) or a visibility-limited CIRCULAR RED signal indication shall be used.

(2) CIRCULAR RED, CIRCULAR YELLOW, CIRCULAR GREEN, and left-turn GREEN ARROW indications. This four-section signal face shall be used only when the CIRCULAR GREEN and left-turn GREEN ARROW indications begin and terminate together. During each interval, the circular indications shall be the same as the indication on the signal face(s) for the adjacent through traffic.

c. Protected/Permissive Mode—A separate signal face is not required for the left turn, but, if provided, it shall be considered an approach signal face, and shall meet the following requirements:

(1) During the protected left-turn movement, the signal face shall simultaneously display:

a) a left-turn GREEN ARROW; and

b) a circular indication that is the same as the indication for the adjacent through lane on the same approach as the protected left-turn.

During the protected left-turn movement, the signal face for through traffic on the opposing approach shall simultaneously display a CIRCULAR RED indication.

(2) During the permissive left-turn movement, all signal faces on the

approach shall display the CIRCULAR GREEN indication.

(3) All signal faces on the approach shall simultaneously display the same color of circular indications to both through and left-turn road users.

(4) A supplementary sign shall not be required. If used, it shall be a LEFT TURN YIELD ON GREEN (symbolic green ball) sign (R10–12).

d. Variable left-turn mode—If the protected mode occurs during one or more periods of the day, and the permissive mode or the combined protected/permissive mode occurs during other periods of the day, the requirements of paragraphs a, b, and c above that are appropriate to that mode of operation shall be met subject to the following:

(1) Signal faces for the protected mode shall not be limited to three signal sections,

(2) The display of the CIRCULAR GREEN and CIRCULAR YELLOW indications shall not be required when operating in the protected mode.

(3) The left-turn GREEN ARROW and left-turn YELLOW ARROW indications shall not be displayed when operating in the permissive mode.

(4) A supplementary sign shall not be required. If used, both the LEFT TURN SIGNAL sign (R10–10) and the LEFT TURN YIELD ON GREEN (symbolic green ball) sign (R10–12) shall be provided.

4D.7 Application of Steady Signal Indications For Right Turns

Support:

Right-turning traffic is controlled by one or four modes as follows:

a. Permissive Mode—turns made on the CIRCULAR GREEN indication after yielding to pedestrians.

b. Protected mode—turns made only when the right-turn GREEN ARROW indication is displayed.

c. Protected Permissive Mode—both modes occur on an approach during the same cycle.

d. Variable Right-Turn Mode—the operating mode changes among the protected mode, the protected/permissive mode, and/or the permissive mode during different periods of the day.

Standard:

The required right-turn signal faces and operation shall be determined by the selected mode of right-turn operation, as follows:

a. Permissive Mode only—A separate signal indication or signal face for right turns shall not be required. The signal indication for permissive mode right turns shall be identical to the indication for adjacent through traffic, except that if the right turn is held to provide an exclusive pedestrian movement, a separate right-turn RED CIRCULAR indication shall be provided along with a RIGHT TURN SIGNAL sign, R10–10.

b. Protected Mode only—At least one right-turn signal face shall be provided in addition to the two approach signal faces required for the through movement in Section 4C–15. The right-turn signal face shall be capable of displaying one of the following sets of indications:

(1) GREEN and YELLOW right-turn ARROW indications and a CIRCULAR RED indication. Only one of three lenses shall be illuminated at any given time. If the CIRCULAR RED indication would be readily visible to other traffic movements on the same approach, either a RIGHT TURN SINGLE sign (R10–120) or a visibility-limited CIRCULAR RED signal indication shall be used; or

(2) CIRCULAR RED, CIRCULAR YELLOW, CIRCULAR GREEN, and right-turn GREEN ARROW indications. This four-section signal shall be used only when the CIRCULAR GREEN and left-turn GREEN ARROW indications begin and terminate together. During each interval, the circular indication shall be the same as the indication on the signal faces for adjacent through traffic.

c. Protected/Permissive Mode—A separate signal face is not required for the right turn, but, if provided, it shall be considered an approach signal face, and shall meet the following requirements.

(1) During the protected right-turn movement, the single face shall simultaneously display:

(a) a right-turn GREEN ARROW indication and

(b) a circular indication that is identical to the adjacent through lane indication on the same approach with the protected right turn.

(2) During the permissive right-turn movement, all signal faces on the approach shall display the CIRCULAR GREEN indication.

(3) All signal faces on the approach shall simultaneously display the same color of circular indications to both through and right-turn road users.

d. Variable right-turn mode—If the protected mode occurs during one or more periods of the day, and the permissive mode or the combined protected/permissive mode occurs during other periods of the day, the requirements of paragraphs a, b, and c above that are appropriate to that mode of operation shall be met subject to the following:

(1) Signal faces for the protected mode shall not be limited to three signal sections.

(2) The display of the CIRCULAR GREEN and CIRCULAR YELLOW indications shall not be required when operating in the exclusive mode.

(3) The right-turn GREEN ARROW and right-turn YELLOW ARROW indications shall not be displayed when operating in the permissive mode.

Additional appropriate signal indications or changeable message signs shall be used, if necessary, to meet these requirements.

4D.8 Prohibited Steady Signal Indications

Standard:

The following combinations of signal indications shall not be simultaneously displayed on any one signal face:

a. CIRCULAR GREEN with CIRCULAR YELLOW.

b. CIRCULAR RED with CIRCULAR YELLOW.

c. CIRCULAR GREEN with CIRCULAR RED.

d. Straight-through GREEN ARROW with CIRCULAR RED.

The above combinations shall not be simultaneously displayed in different signal faces on any one approach unless:

a. One of the signal faces is a turn signal controlling only a protected mode, and a RIGHT (LEFT) TURN SIGNAL sign (R10–10) (see Sections 4D.6 and 4D.7) is mounted adjacent to each such signal face.

b. The signal faces are shielded, hooded, louvered, positioned, or designed so that the combination is not confusing to approaching road users.

The straight-through, left-turn, and right-turn RED ARROWs and the straight-through YELLOW ARROW signal indications shall not be displayed on any signal face, either alone or in combination with any other indication.

4D.11 Application of Flashing Signal Indications

Standard:

The light source of a flashing signal indication shall be flashed continuously at a rate of not less than 50 nor more then 60 times per minute. The illuminated period of each flash shall be not less than half and not more than two-thirds of the total flash cycle.

Flashing indications shall comply with the requirements of other sections of this manual regarding shielding or positioning of the display of conflicting signal indications except that flashing yellow indications for through traffic

shall not be required to be shielded or positioned to prevent visual conflict for road users in separately-controlled turn lanes.

The following applications shall apply whenever a traffic control signal is operated in the flashing mode:

a. Each approach or protected mode turn movement that is controlled during steady mode (stop-and-go) operation shall display a signal indication during flashing operation.

b. All signal faces that are flashed on an approach shall flash the same color, either yellow or red, except that separate signal faces for protected mode turn movements shall be permitted to flash a CIRCULAR RED indication when the through indications are flashed yellow.

c. The appropriate YELLOW ARROW indication shall be flashed when a signal face contains a YELLOW ARROW and a GREEN ARROW.

d. If a signal face includes both circular and arrow lenses of the color that is to be flashed, only the circular indication shall be flashed.

When a traffic control signal is operated in the flashing mode, a flashing yellow indication should be used for the major roadway and a flashing red indication should be used for the other approaches unless flashing red indications are used on all approaches.

4D.15 Number and Location of Signal Faces by Approach

Support:

Sections 4D.5, 4D.17, and 4D.18 contain additional information regarding the design of signal faces.

Standard:

The signal faces for each approach to an intersection or a mid-block location shall be provided as follows:

a. A minimum of two signal faces shall be provided:

(1) For through traffic.

(2) For one of the turning movements (left or right) if no through movement exists, such as on the stem approach to a T intersection.

b. See Section 4D.6 for left-turn signal indications.

c. See Section 4D.7 for right-turn signal indications.

d. Except where the width of an intersecting roadway or other conditions make it physically impractical,

(1) A signal face installed to satisfy paragraphs b and c above and at least one and preferably both of the signal faces required by paragraph a above shall be located:

(a) Not less than 12 m (40 ft) beyond the stop line.

(b) Not more than 45 m (150 ft) beyond the stop line unless a supplemental near side signal face is provided.

(c) As near as practicable to the line of the driver's normal view, if mounted over the roadway.

(2) A signal face installed to satisfy paragraphs b and c above and at least one and preferably both of the signal faces required by paragraph a above shall be located no higher than at a maximum height to the top of the signal housing mounted over a roadway of 7.8 meters (25.6 feet) above the pavement. For viewing distances between 12 meters (40 feet) and 16 meters (53 feet) from the stop line, the maximum mounting height to the top of the signal housing shall be as shown on Figure 4–5.

(3) At least one and preferably both of the signal faces required by paragraph a above shall be located between two lines intersecting with the center of the approach at a point 3 m (10 ft) behind the stop line, one making an angle of approximately 20 degrees to the right of the center of the approach extended, and the other making an angle of approximately 20 degrees to the left of the center of the approach extended (see Figure 4–6).

(4) If both of the signal faces required by paragraph a above are on mounted-posts, they shall both be on the far sides of the intersection, one of the right and one on the left of the approach lane(s).

e. If the minimum sight distance in Table 4–2 cannot be met, sign shall be erected to warm approaching traffic of the signal.

f. Required signal faces for through traffic on any one approach shall be placed not less than 2.5 m (8 ft) apart measured horizontally between the centers of the signal faces.

g. If more than one turn signal face is provided for a protected-mode turn, the signal faces shall be placed not less than 2.5 m (8 ft) apart measured horizontally between the centers of the signal faces.

h. If supplemental signal faces are used, the following limitations shall apply:

(1) Left-turn arrows shall not be used in near-right signal faces.

(2) Right-turn arrows shall not be used in far-left signal faces. A far-side median mounted signal face shall be considered a far-left signal for this application.

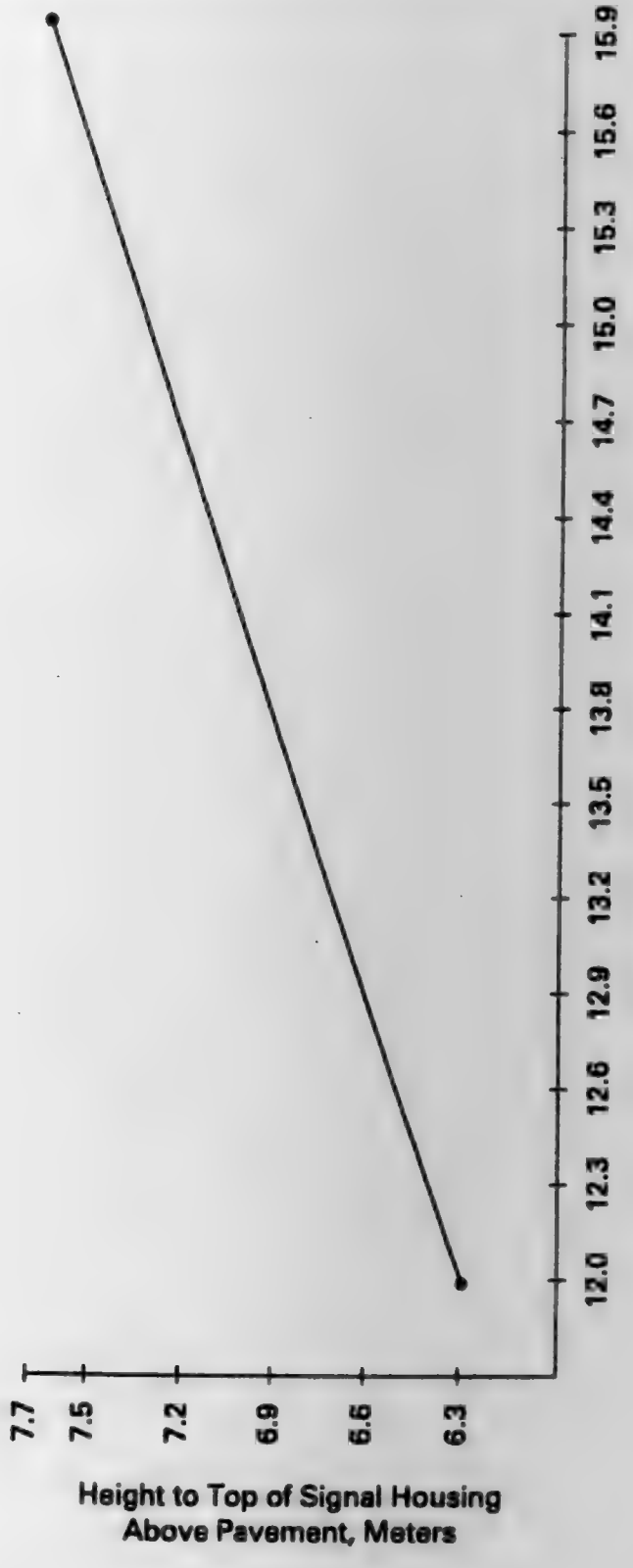


Figure 4-5. Maximum mounting height of signal heads located between 12 meters (40 feet) and 16 meters (53 feet) from stop line

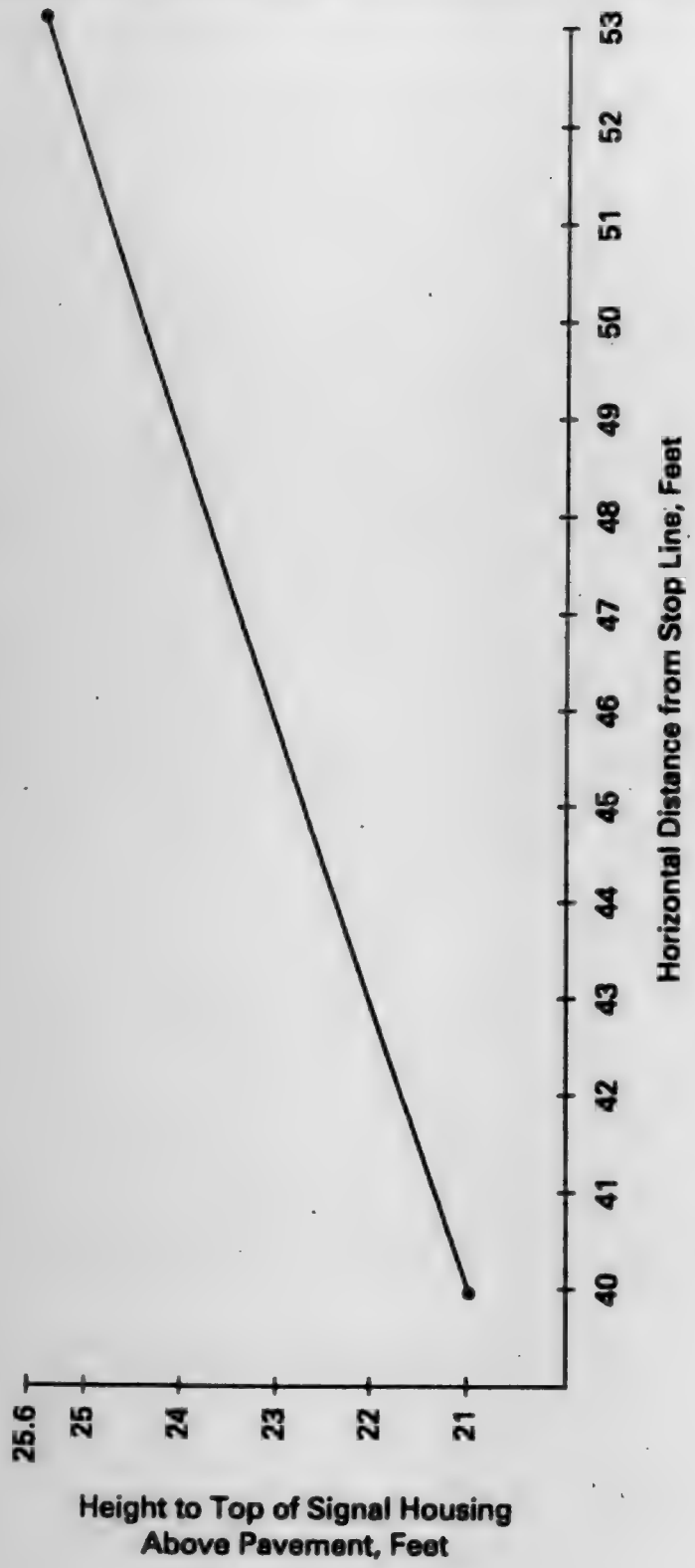
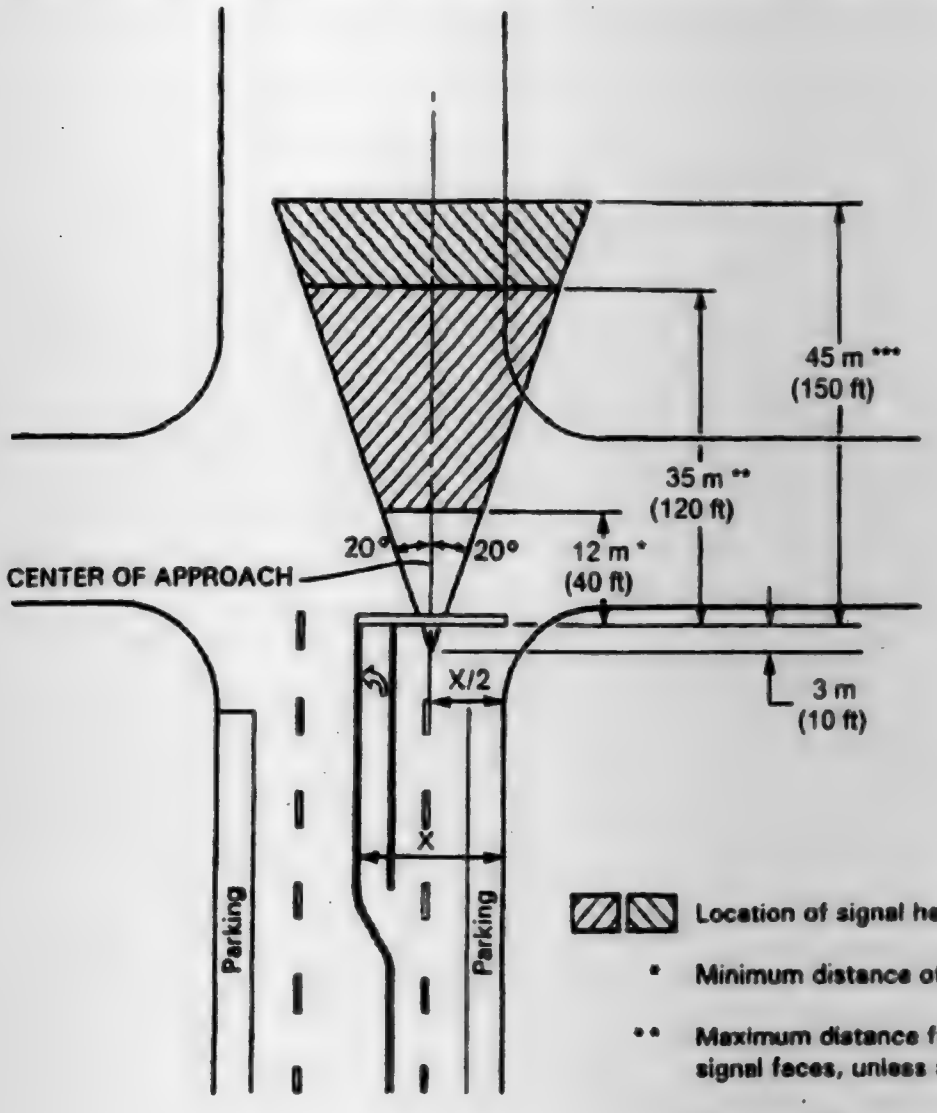


Figure 4-5. Maximum mounting height of signal heads located between 12 meters (40 feet) and 16 meters (53 feet) from stop line



Location of signal head(s).

* Minimum distance of signal faces from stop line.

** Maximum distance from stop line for 200 mm (8 inch) signal faces, unless a near-side signal face is used.

*** Maximum distance from stop line for 200 mm (8 inch) signal faces when near-side supplemental signal face is used.
Maximum distance from stop line for 300 mm (12 inch) signal faces, unless a near-side supplemental signal face is used.

Figure 4-6. Illustration of Section 4D.15.

BILLING CODE 4910-22-C

TABLE 4–2.—MINIMUM SIGHT DISTANCE

85th-Percentile Speed		Minimum Sight Distance	
km/h	mph	meters	feet
30	20	50	175
40	25	65	215
50	30	85	270
60	35	100	325
60	40	120	390
70	45	140	460
80	50	165	540
90	55	195	625
100	65	220	715

Guidance:

The two signal faces required for each approach should be continuously visible to traffic approaching the traffic control signal, from a point at least the minimum sight distance indicated in Table 4–2 in advance of and measured to the stop line. This range of continuous visibility should be provided unless precluded by a physical obstruction or unless another signalized location is within this range.

If two or more left-turn lanes are provided for a separately-controlled exclusive mode only left-turn movement or if a left-turn movement represents the major movement from an approach, two left-turn signal faces should be provided.

If two or more right-turn lanes are provided for a separately-controlled right-turn movement, or if a right-turn movement represents the major movement from an approach, two right-turn signal faces should be provided.

Near-side signal faces should be located as near as practicable to the stop line.

If a signal face controls a specific lane or lanes of approach, its position should make it readily visible to road users making that movement.

Supplemental signal faces should be used if an engineering study has shown that they are needed to achieve visibility both in advance and immediately before the signalized location. If supplemental signal faces are used, they should be located to provide optimum visibility for the movement to be controlled.

At signalized mid-block crosswalks, at least one of the signal faces should be over the traveled roadway for each approach.

Option: If a sign is erected to warn approaching road users who do not have a continuous view of at least one signal indication for the minimum sight distance, the sign may be supplemented by a warning beacon. (See Section 4J.2.)

A warning beacon used in this manner may be interconnected with the traffic signal controller assembly in such a manner as to flash yellow during the period when road users passing this beacon at the legal speed for the roadway, may encounter a red indication upon arrival at the signalized location.

4D.16 Number and Arrangement of Sections in Signal Faces

Standard:

Each signal face shall have not more than five signal sections.

Each signal face shall have at least three signal sections except under the following circumstances:

a. If pedestrian signal indications are present.

b. A single-section signal face consisting of a continuously illuminated GREEN ARROW lens that is being used to indicate a continuous movement.

c. A dual arrow signal section that is being used to display a GREEN ARROW and a YELLOW ARROW indication alternately.

d. A signal face used for a ramp control signal.

Arrows shall be pointed

a. Vertically upward to indicate a straight-through traffic movement.

b. Horizontally in the direction of the turn to indicate a turn at approximately or greater than a right angle.

c. Upward with a slope at an angle approximately equal to that of the turn if the angle of the turn is substantially less than a right angle.

The lenses in a signal face shall be arranged in a vertical or horizontal straight line, except that in a vertical array, lenses of the same color may be arranged horizontally adjacent to each other at right angles to the basic straight line arrangement. Such clusters shall be limited to two identical lenses or to two or three different lenses of the same color.

In each signal face, all red lenses in vertical faces shall be located above, and in horizontal faces shall be located to the left, of all yellow and green lenses.

A yellow lens shall be located between the red lens or lenses and all other lenses.

In vertically-arranged signal faces, each YELLOW ARROW lens shall be located immediately above the GREEN ARROW lens to which it applies. If a variable-indication signal section is used, the lens shall be in the same position relative to other lenses as are the GREEN ARROW lenses in a vertical signal face.

In horizontally-arranged signal faces, the YELLOW ARROW lens shall be located immediately to the left of the GREEN ARROW lens. If a variable-indication signal section is used, the variable left-turn arrow lens shall be located immediately to the right of the CIRCULAR YELLOW lens, the straight-through GREEN ARROW lens shall be located immediately to the right of the CIRCULAR GREEN lens, and the variable right-turn arrow lens shall be located to the right of all other lenses.

The relative positions of lenses within the signal face shall be as follows:

a. In a vertical signal face from top to bottom:
CIRCULAR RED
CIRCULAR YELLOW
CIRCULAR GREEN
Straight-through GREEN ARROW
Left-turn YELLOW ARROW
Left-turn GREEN ARROW
Right-turn YELLOW ARROW
Right-turn GREEN ARROW

b. In a horizontal signal face from left to right:
CIRCULAR RED
CIRCULAR YELLOW
Left-turn YELLOW ARROW
Left-turn GREEN ARROW
CIRCULAR GREEN
Straight-through GREEN ARROW
Right-turn YELLOW ARROW
Right-turn GREEN ARROW

c. If adjacent indications in a cluster are not identical, their arrangement shall follow paragraph a or b above, as applicable.

Option: In a vertical array cluster, identical signal indications may be repeated in adjacent horizontal locations within the same signal face.

Horizontal and vertical signal faces may be used on the same approach provided they are separated to meet the lateral clearance required in Section 4D.15.

Three hundred millimeter (12 in) lenses should be used for all signal indications for the following:

a. Approaches with 85th-percentile approach speeds exceeding 65 km/h (40 mph).

b. Approaches where a traffic control signal might be unexpected.

c. Arrows.

d. All approaches without curbs and gutters where only signal heads mounted on post are used.

Support:

Figure 4–7 illustrates some of the possible arrangements of lenses in signal faces.

Standard:

Three-hundred millimeter (12-in) lenses shall be used:

a. For signal indications for approaches (see definition in Section 4A.6) where road users view both traffic control and lane-use control signal heads simultaneously.

b. If the nearest signal face is between 35 m (120 ft) and 45 m (150 ft) beyond the stop line, unless a supplemental near-side signal indication is provided.

c. When signal faces are located more than 45 meters (150 feet) from the stop line.

d. For approaches to all signalized locations for which the minimum visibility distance in Table 4–2 cannot be met.

e. For arrow signal sections.

Support:

The use of 300 mm (12-in) lenses or higher intensity 200 mm (8-in) lenses can be used to assist older drivers in decision-making tasks further from the intersection where traffic density is lower and there are fewer potential conflicts with other vehicles.

BILLING CODE 4910-22-M

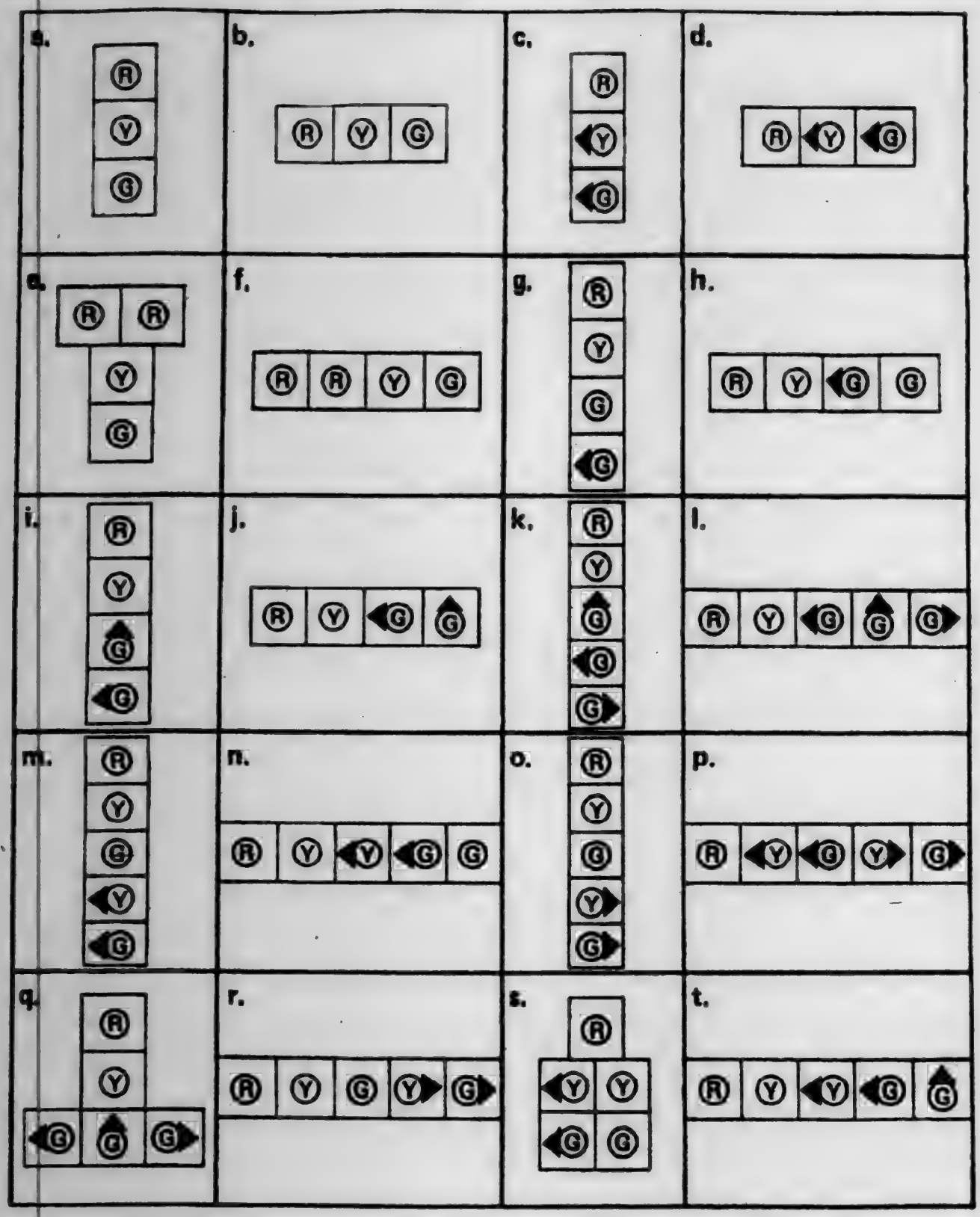


Figure 4-7. Typical arrangements of lenses in signal faces.

BILLING CODE 4910-22-C

4D.17 Visibility, Shielding, and Positioning of Signal Faces

Standard:

The primary consideration in signal face placement and adjustment shall be to optimize the signals visibility to approaching traffic. Road users approaching a signalized intersection or other signalized area, such as a mid-block crosswalk, shall be given a clear and unmistakable indication of their right-of-way assignment.

The geometry of each intersection to be signalized, including vertical grades, horizontal curves, and obstructions as well as the lateral and vertical angles of sight toward a signal face, as determined by typical driver-eye position, shall be considered in determining the vertical, longitudinal, and lateral position of the signal face.

If the sight distance to the signal heads facing the approach is limited by horizontal or vertical alignment, the signal faces shall be aimed at a point on the approach at which the signal indication first becomes visible.

In cases where irregular intersection geometric design necessitates placing signal faces for different roadway approaches with a comparatively small angle between their respective lenses, each signal lens shall, to the extent practicable, be shielded or directed by signal visors, louvers, or other means so that an approaching road user can see only the lens(es) controlling movements on the road user's approach.

The bottom of the signal housing and any related attachments to a vehicle face located over a roadway shall be at least 4.6 meters (15 feet) above the pavement. The top of the signal housing of a vehicle signal face located over a roadway shall not be more than 7.8 meters (25.6 feet) above the pavement.

Signal visors exceeding 300 mm (12 in) in length shall not be used on free-swinging signal heads.

The bottom of the housing of a vehicle signal face mounted or suspended over a roadway shall be at least 4.6 meters (15 feet) but not more than 5.8 meters (19 feet) above the pavement.

The bottom of the signal housing of a vehicle signal face, not mounted or suspended over a roadway.

a. Shall be at least 2.5 m (8 ft) but not more than 5.8 m (19 ft) above the sidewalk or, if there is no sidewalk, above the pavement grade at the center of the roadway.

b. Shall be at least 1.4 m (4.5 ft) but not more than 5.8 m (19 ft) above the median island grade of a center median island if located on the near side of the intersection.

Supports for post-mounted signal heads at the side of a roadway with curbs shall have a horizontal clearance of not less than 0.6 m (2 ft) from the face of a vertical curb.

If there is no curb, supports for post-mounted signal heads shall have a horizontal clearance of not less than 0.6 m (2 ft) from the edge of a shoulder.

Guidance:

On medians, the above minimum clearances for signal supports should be obtained if practicable.

There should be legal authority to prohibit the display of any unauthorized sign, signal, marking, or device that interferes with the effectiveness of any official traffic control device. Specific reference is made to Section 11–205, Uniform Vehicle Code (latest edition).

In the interest of safety:

a. Reference should be made to the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide.

b. Signal supports should be placed as far as practicable from the edge of the traveled way without adversely affecting the visibility of the signal indications.

Where supports cannot be located with the required clearances, consideration should be given to the use of breakaway designs or guard shielding barriers.

No part of a concrete base for a signal support should extend more than 100 mm (4 in) above the ground level at any point. This limitation does not apply to the concrete base for a rigid (non-breakaway) support.

c. A signal support or controller cabinet should not obstruct the sidewalk, or access from the sidewalk to the crosswalk.

d. Controller cabinets should be located as far as practicable from the edge of the roadway.

Signal visors should be used on signal faces to aid in directing the signal indication specifically to approaching traffic, as well as to reduce "sun phantom" which results when external light enters the lens.

In general, vehicular signal faces should be aimed so that the continuation of the optical axis of the signal sections passes through a point on the approach that is located at least the minimum sight distance from the stop line and at driver's eye height.

A backplate for target value enhancement should be used on signal faces viewed against bright sky or bright or confusing backgrounds.

Support:

The use of back-plates of a size (width) three times the diameter of the signal can be used to assist older drivers in decision-making tasks further from an intersection where the traffic density is lower and there are fewer potential conflicts with other vehicles. The use of back-plates also enhances the contrast between the traffic signals and their surroundings for both daytime and nighttime conditions.

Option: In some instances road users may be misdirected when two different signal indications on different signal faces are simultaneously visible. In these instances, a visibility-limited signal face may be used.

4E.4 Size, Design, and Illumination of Pedestrian Signal Head Indications

Standard:

All new pedestrian signal head indications shall be displayed within a rectangular background and shall consist of symbolized messages. Symbol designs are set forth in the Standard Highway Signs. Existing pedestrian signal head indications with lettered messages may be retained for the remainder of their useful service life. Each indication shall be independently illuminated and emit a single color. (See Figure 4–8.)

The DON'T WALK signal section shall be mounted directly above or integral with the WALK signal section.

The WALK indication shall be white, conforming to the document entitled Pedestrian Traffic Control Signal Indications[1], with all except the symbols obscured by an opaque material.

The DON'T WALK indication shall be Portland orange conforming to the Pedestrian Traffic Control Signal Indications[2], with all except the symbols obscured by an opaque material.

When not illuminated, the WALK and DON'T WALK symbols shall not be readily visible to pedestrians at the far end of the crosswalk that the signal head indications control.

Guidance:

Pedestrian signal head indications should be conspicuous and recognizable to pedestrians at all distances from the beginning of the controlled crosswalk to a point 3 m (10 ft) from the end of the controlled crosswalk during both day and night.

For crosswalks where the pedestrian enters the crosswalk more than 30 m (100 ft) from the pedestrian signal head

[1] Available in, "Equipment and Material Standards of the Institute of Transportation Engineers," see Preface.

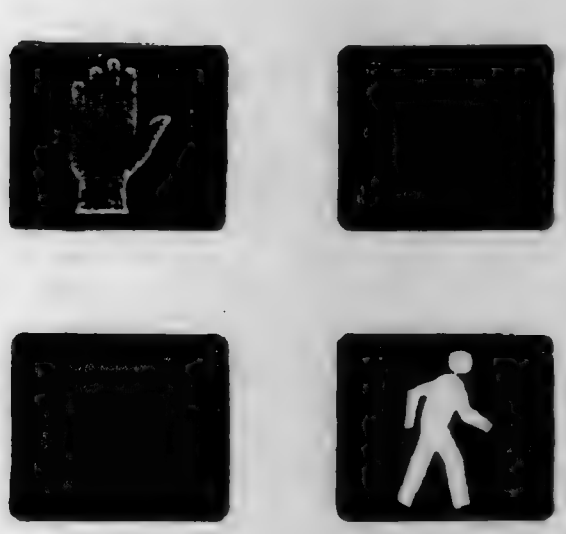
[2] Ibid.

indications, the symbols should be at least 225 mm (9 in) high.

For pedestrian signal head indications, the symbols shall be at least 150 mm (6 in) high.

BILLING CODE 4910-22-M

Single Section



Two Section

Figure 4-8. Typical pedestrian signal indications.
(Hands are in Orange, Walking People are in White)

BILLING CODE 4910-22-C

4E6. Accessible Pedestrian Signals

Support:

The primary technique that people who have visual disabilities use to cross streets at signalized locations is to initiate their crossing when they hear the traffic alongside them begin to move, corresponding to the onset of the green interval. The effectiveness of this technique is reduced by several factors including: increasingly quiet cars, right turn on red (which masks the beginning of the through phase), complex signal operations, and wide streets. Further, low traffic volumes make it difficult for pedestrians who have visual disabilities to discern signal phase changes.

Local organizations providing support services to pedestrians who have visual and/or hearing disabilities can often act as advisors to the engineer when consideration is being given to the installation of devices to assist such pedestrians. Orientation and mobility specialist or similar staff might be able to provide a wide range of advice. Information might range from assessing the needs of a single individual to commenting on the operation of proposed devices.[3]

Standard:

When used, accessible pedestrian signals (see Section 4D.3) which provide information in non-visual format (including audible tones, verbal messages, and/or vibrotactile information), shall be used in combination with pedestrian signal timing. Accessible pedestrian signals shall clearly indicate the direction of the pedestrian crossing served by devices, such as the tactile arrows.

Under stop-and-go operations, accessible pedestrian signals shall not be limited in operation by the time of day or day of week.

Guidance:

The installation of accessible pedestrian signals at signalized intersections should be based on an engineering study, which should consider the following factors:

a. Potential demand for accessible pedestrian signals.

b. A request for accessible pedestrian signals.

c. Traffic volumes during times when pedestrians might be present; including periods of low traffic volumes or high turn-on-red volumes.

d. The complexity of traffic signal phasing.

e. The complexity of intersection geometry.

Support:

Technology that provides different sounds for each non-concurrent signal phase has frequently been found to provide ambiguous information.

Standard:

When choosing audible tones, possible extraneous sources of sounds (such as wind, rain, vehicle back-up warnings, or birds) shall be considered in order to eliminate potential confusion to pedestrians who have visual disabilities.

Guidance:

Audible pedestrian tones should be carefully selected to avoid misleading pedestrians who have visual disabilities when the following conditions exist:

a. Where there is an island that allows unsignalized right turns across a crosswalk between the island and the sidewalk.

b. Where multi-leg approaches or complex signal phasing require more than two pedestrian phases, such that it may be unclear which crosswalk is served by each audible tone.

c. At intersections where a diagonal pedestrian crossing is allowed, or where one street receives a WALK indication simultaneously with another street.

Standard:

When accessible pedestrian signals have an audible tone(s), they shall have a tone for the WALK interval. The WALK interval tone shall have a faster repetition rate than the associated pushbutton locator tone. The audible tone(s) shall be audible from the beginning of the associated crosswalk.

Support:

A pushbutton locator tone is a repeating sound that informs approaching pedestrians that they are required to push a botton to actuate a WALK signal and that enables pedestrians who have visual disabilities to locate the pushbutton. (See Section 4E.8)

Guidance:

The accessible WALK signal tone should be no louder than the locator tone, except when there is optional activation to provide a louder signal tone for a signal pedestrian phase. (See Section 4.E.8)

Automatic volume adjustment in response to ambient traffic sound level should be provided up to a maximum volume of 89dB.[4] Where automatic volume adjustment is used, tones should be no more than 5dB louder than ambient sound.

Standard:

When verbal messages are used to communicate the pedestrian interval, they shall provide a clear message that the WALK interval is in effect, as well as to which crossing it applies.

The verbal messages that is provided at regular intervals throughout the timing of the WALK interval shall be the term 'walk sign," which may be followed by the name of the street to be crossed.

A verbal message is not required at times when the WALK interval is not timing, but, if provided:

a. It shall be the term "wait."

b. It need not be repeated for the entire time that the WALK interval is not timing.

Option: Accessible pedestrian signals that provide verbal messages may provide similar messages in languages other than English, if needed, except for the terms "walk sign" and "wait."

Standard:

A vibrotactile pedestrian device communicates information about pedestrian signal phasing through a vibrating surface by touch. Vibrotactile pedestrian devices, where used, shall indicate that the WALK interval is in effect, and for which direction it applies, through the use of a vibrating directional arrow or some other means.

Guidance:

When provided, vibrotactile pedestrians devices should be located next to, and on the same pole as, the pedestrian pushbuttom, if any, and adjacent to the intended crosswalk.

4E.8 Accessible Pedestrian Signal Detectors

Standard:

At accessible pedestrian signal locations with pedestrian actuation, each pushbutton shall activate both the WALK interval and the accessible pedestrian signals.

Guidance:

At accessible pedestrian signal locations, pushbuttons should clearly indicate which crosswalk signal is actuated by each pushbutton. Pushbuttons and tactile arrows should

[3] For guidance relative to techniques for making pedestrian signal information accessible to persons with visual impairment, including directly audible tones, transmitted speech messages, and vibration, refer to U.S. Access Board Document A–37b "Accessible pedestrian Signals" and the Federal Highway Administration.

[4] *Measurement of Highway-Related Noise*, FHWA–PD–96–046, DOT–UNTSC–FHWA–96–5. Available through the National Technical Information Service, see Preface.

have high visual contrast.[5] Tactile arrows should point in the same direction as the associated crosswalk. At corners of signalized locations with accessible pedestrian signals where two pedestrian pushbuttons are provided, the pushbuttons should be separated by a distance of at least 3 meters (10 feet). This enables pedestrians who have visual disabilities to distinguish and locate the appropriate pushbutton.

Pushbuttons for accessible pedestrian signals should be located as follows:

a. Adjacent to a level all-weather surface to provide access from a wheelchair, and where there is an all-weather surface, wheelchair route to the ramp.

b. Within 1.5 meters (5 feet) of the crosswalk extended.

c. Within 3 meters (10 feet) of the edge of the curb, shoulder, or pavement.

d. Parallel to the crosswalk to be used (see Figure 4–9).

If the pedestrian clearance time is sufficient only to cross from the curb or shoulder to a median of sufficient width for pedestrians to wait *and* accessible pedestrian detectors are used, an additional accessible pedestrian detector should be provided in the median.

Standard:

Pushbutton locator tones shall be highly locatable and shall repeal at one-second intervals.

Guidance:

Pushbuttons should be audible locatable. Pushbutton locator tones should be intensity responsive to ambient sound, and be audible 2 to 4 meters (6 to 12 feet) from the pushbutton, or to the building line, whichever is less. Pushbutton locator tones should be no more than 5 dB louder than ambient sound.

Pushbutton locator tones should be deactivated during flashing operation of the traffic control signal.

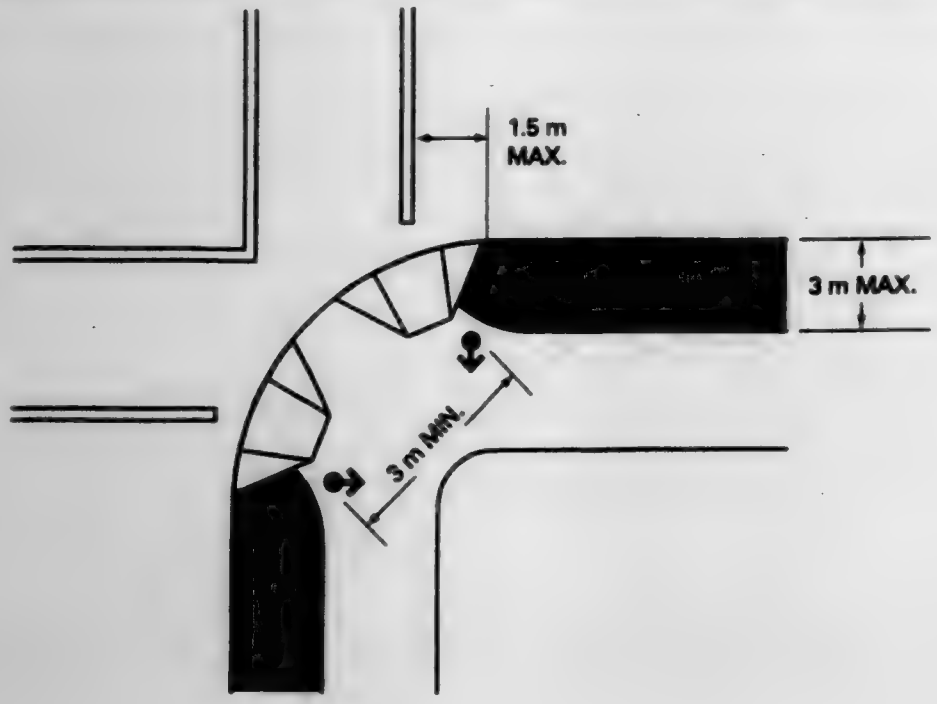
Option: At locations with pre-timed traffic signals or non-actuated approaches, pedestrian pushbuttons may be used to activate the accessible pedestrian signals.

The audible tone(s) may be made louder (up to a maximum of 89dB) by holding down the pushbutton for a minimum of 3 seconds. The louder audible tone(s) may also alternate back and forth across the crosswalk, thus providing optimal directional information.

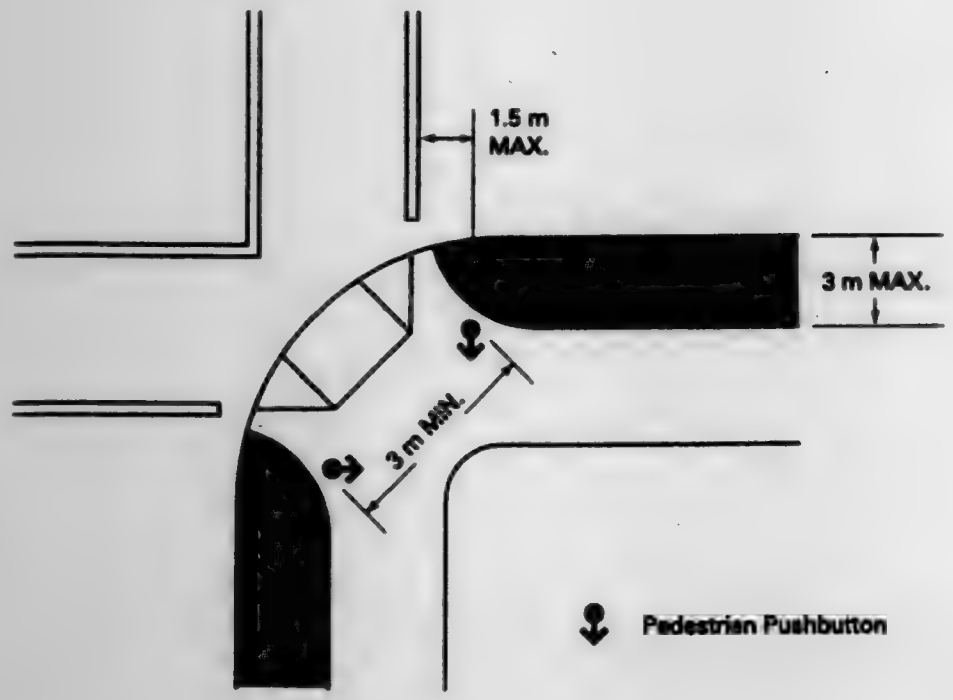
The name of the street to be crossed may also be provided in accessible format, such as braille, or raised print.

BILLING CODE 4910-22-M

[5] See Department of Justice Americans with Disabilities Act Standards for Accessible Design.



Two Curb



One Curb

Figure 4-9. Recommended Pushbutton Locations

BILLING CODE 4910-22-C

4E.9 Pedestrian Intervals and Phases

Standard:

When pedestrian signal heads are used, a WALK indication shall be displayed only when pedestrians are permitted to leave the curb or shoulder.

A pedestrian clearance time shall begin immediately following the WALK indication. The pedestrian clearance time shall consist of a pedestrian change interval during which a flashing DON'T WALK indication shall be displayed.

At intersections equipped with pedestrian signals, the pedestrian signal indications shall be displayed except when the vehicular traffic control signal is being operated as a flashing device. At those times, the pedestrian signal indications shall not be displayed.

Guidance:

The walk interval should be at least 7 seconds in length so that pedestrians will have adequate opportunity to leave the curb or shoulder before the pedestrian clearance time begins.

The pedestrian clearance time should be sufficient to allow a pedestrian crossing in the crosswalk to leave the curb or shoulder and travel at a normal walking speed of 1.2m (4 feet) per second, to at least the far side of the farthest traveled lane or to a median of sufficient width for a pedestrian to wait. Where significant numbers of pedestrians who walk slower than normal routinely use the crosswalk, a walking speed of less than 1.2 (4 feet) per second should be considered in determining the pedestrian clearance time.

Option: An alternative to using a lower walking speed to determine the pedestrian clearance time is to employ the use of passive pedestrian detection equipment in the crosswalks. Such equipment can detect pedestrians who need more time to complete their crossing. The equipment extends the length of the pedestrian clearance time for that cycle to allow pedestrians to complete their crossing before cross traffic begins.

Guidance:

Where the pedestrian clearance time is sufficient only for crossing from the curb or shoulder to the median, additional measures should be considered, such as median-mounted pedestrian signals, staggered crosswalks, or additional signing.

Option: Pedestrian clearance time may include the yellow change interval, if used, and the red clearance interval, if used.

If pedestrian volumes and characteristics do not require a 7-second walk interval, walk intervals as short as 4 seconds may be used.

On a roadway with a median of sufficient width for pedestrians to wait, a pedestrian clearance time that allows the pedestrian to cross only from the curb or shoulder to the median may be provided.

During the transition into preemption, the walk interval and the pedestrian change interval may be shortened or omitted as described in Sections 4D.13 and 8C.6.

Support:

The walk interval itself need not equal or exceed the pedestrian clearance time calculated for the roadway width, because many pedestrians will complete their crossing during the pedestrian clearance time.

4J.3 Design of Lane-use Control Signals

Standard:

All lane-use control signal indications shall be in units with rectangular signal faces and shall have opaque backgrounds. Nominal minimum height and width of each downward GREEN ARROW, YELLOW X, and RED X signal face shall be 450 mm (18 inches) for typical applications. The WHITE two-way and one-way left-turn ARROW signal indications shall have a nominal minimum height and width of 750 mm (30 inches).

Each lane to be reversed or closed shall have signal faces with a downward GREEN ARROW and a RED X symbol.

Each reversible lane that also operates as a two-way or one-way left-turn lane during certain periods shall have signal faces that also include the applicable WHITE two-way or one-way left-turn ARROW symbol.

Each nonreversible lane immediately adjacent to a reversible lane shall have signal indications that display a downward GREEN ARROW to traffic traveling in the permitted direction and a RED X to traffic traveling in the opposite direction.

If in separate units, the relative positions, from left to right, of the indications shall be RED X, YELLOW X, downward GREEN ARROW, two-way left-turn ARROW, one-way left-turn ARROW.

The color of lane-use control signal indications shall be clearly visible for 700 m (2300 ft) at all times under normal atmospheric conditions, unless otherwise physically obstructed.

Lane-use control signal units shall be located approximately over the center of the lane controlled.

If the area to be controlled is more than 700 m (2300 ft) in length, or if the vertical or horizontal alignment is curved, intermediate lane-use control signal indications shall be placed over each controlled lane at frequent intervals. This placement shall be such that road users will at all times be able to see at least one indication and preferably two along the roadway, and will have a definite indication of the lanes specifically reserved for their use.

All lane-use control signal faces shall be located in a straight line across the roadway approximately at right angles to the roadway alignment.

The bottom of any lane-use control signal unit shall be at least 4.6 m (15 ft) but not more than 5.8 m (19 ft) above the pavement grade.

On roadways having intersections controlled by traffic control signals, the lane-use control indication shall be placed sufficiently far in advance of or beyond such traffic control signals to prevent them from being misconstrued as traffic control signals.

Guidance:

In highly-developed commercial environments, signal faces with nominal height and width of 450 mm (18 in) or larger should be considered for additional target value.

Option: In areas with minimal visual clutter and with speeds of 70 km/h (40 mph) or less, lane-use control signal faces with nominal height and width of 300 mm (12 inches) may be used.

Other sizes of lane-use control signal faces with message recognition distances appropriate to signal spacing may be employed for unusual applications.

Signal faces with a YELLOW X symbol on an opaque background may be provided for operation as described in Section 4J.4.

Nonreversible lanes not immediately adjacent to a reversible lane on any street so controlled may also be provided with signal indications that display a downward GREEN ARROW to traffic traveling in the permitted direction and a RED X to traffic traveling in the opposite direction.

The indications provided for each lane may be in separate units or may be superimposed in the same unit.

4L IN-ROADWAY LIGHTS

4L.1 Application of In-Roadway Lights

Support:

In-Roadway Lights are special types of highway traffic signals installed in the roadway surface to warn road users that they are approaching a condition on or adjacent to the roadway that might not be readily apparent and might require the road users to slow down and

possibly come to a stop. This includes, but is not necessarily limited to, situations warning of marked school crosswalks, marked mid-block crosswalks, marked crosswalks on uncontrolled approaches, and other roadway situations involving pedestrian crossings.

Standard:

In-Roadway Lights shall not exceed a height of 20 millimeters (¾ inches) above the roadway surface.

Option: The flash rate for In-Roadway Light may be different than the flash rate of standard beacons.

4L.2 In-Roadway Warning Lights at Crosswalks

Standard:

In-Roadway Warning Lights at crosswalks shall be installed only at marked crosswalks with applicable warning signs. They shall not be used at crosswalks controlled by YIELD signs, STOP signs or traffic control signals.

In-Roadway Warning Lights at crosswalks shall be installed along both sides of the crosswalk and shall span its entire length.

In-Roadway Warning Lights at crosswalks shall initiate operation based on pedestrian actuation and shall cease operation at a predetermined time after the pedestrian actuation or with passive detection after the pedestrian clears the crosswalk.

In-Roadway Warning Lights at crosswalks shall display a flashing yellow indication when actuated. The flash rate for In-Roadway Warning Lights at crosswalks shall be at least 50 flash periods per minute. The flash rate shall not be between 5–30 flashes per second to avoid frequencies that might cause seizures.

For one-lane, one-way roadways, a minimum of two In-Roadway Warning Lights shall be installed on the approach side of the crosswalk. For two-lane roadways, a minimum of three In-Roadway Warning Lights shall be installed along both sides of the crosswalk. For roadways with more than two lanes, a minimum of one In-Roadway Light per lane shall be installed along both sides of the crosswalk.

In-Roadway Warning Lights shall be installed within 3 meters (10 feet) of the outside edge of the crosswalk. In-Roadway Warning Lights shall face away from the crosswalk if uni-directional, or shall face away from and across the crosswalk if bi-directional.

Guidance:

The period of operation of the In-Roadway Warning Lights following each actuation should be sufficient to allow a pedestrian crossing in the crosswalk to start crossing the traveled way and travel at a normal walking speed of 1.2 meters (4 feet) per second to at least the far side of the traveled way or to a median of sufficient width for pedestrians to wait. Where significant numbers of pedestrians who walk slower than normal routinely use the crosswalk, a walking speed of less than 1.2 m (4 feet) per second should be considered in determining the period of operation.

Where the period of operation is sufficient only for crossing from a curb or shoulder to a median of sufficient width for pedestrians to wait, additional measures should be considered, such as median-mounted pedestrian actuators.

The location of the In-Roadway Warning Lights within the lanes should be based on engineering judgment.

Option: On one-way streets, In-Roadway Warning Lights may be omitted on the departure side of the crosswalk.

Based on engineering judgment, the In-Roadway Warning Lights on the departure side of the crosswalk on the left side of a median may be omitted.

In-Roadway Warning Lights may be installed in the center of each travel lane, at the centerline of the roadway, at each edge of the roadway or parking lanes, or at other suitable locations.

Unidirectional In-Roadway Warning Lights installed at crosswalk locations may have a yellow light indication in each unit that is visible to pedestrians in the crosswalk. These lights may flash with and at the same flash rate as the light head in which each is installed.

[FR Doc. 99–33403 Filed 12–29–99; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 945

[FHWA Docket No. FHWA 99–5844]

RIN 2125–AE63

Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulations to require use of the FHWA Specification for "Dedicated Short Range Communications (DSRC) for Commercial Vehicles" as a provisional standard for Intelligent Transportation Systems (ITS) commercial vehicle projects using highway trust funds. The DSRC systems use microwave communications over very short distances to allow moving vehicles to communicate with roadside locations. In commercial vehicle applications, the DSRC devices provide identification of vehicles which allows electronic screening of the vehicle, for safety, regulatory compliance, and credentials at weigh stations, ports of entry, and international border crossings. The use of DSRC standards would promote interoperability among, and enable integration of the ITS systems for North American commercial vehicle applications. Interoperability provided by this provisional standard would also encourage business interoperability and cooperation.

DATES: Comments must be received on or before February 28, 2000.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, ITS Joint Program Office (JPO), (202) 366–2128, e-mail address <william.s.jones@fhwa.dot.gov>; or Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–32) (202) 366–0780, e-mail address <wilbert.baccus@fhwa.dot.gov>, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer with a modem and suitable communications software from the

Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara*. The ITS critical standards are available online at *http://www.its.dot.gov*.

Background

In section 6053(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, at 2190, the Congress directed the Secretary of Transportation (Secretary) to develop and implement standards and protocols to promote widespread use of ITS technology as a component of the Nation's ground transportation systems.

In the Transportation Equity Act for the 21st Century (TEA–21), section 5206 of Public Law 105–178, 112 Stat. 107, at 457 (23 U.S.C. 502 Note), the Congress requires the Department to "ensure the national interoperability" of ITS services through standards. To carry out this mandate, the Congress stated that the Secretary could use the services of existing standards-setting organizations, as appropriate. The statutory provisions also provide that use of approved standards shall be established as a prerequisite for use of highway trust funds on certain ITS projects. In addition, the Congress required the department to identify all standards that were critical to national interoperability. This report was submitted to Congress, and made available in July 1999.

Recently, approved standards issued by the American Society for Testing and Materials (ASTM) and the Institute of Electrical and Electronics Engineers (IEEE) apply to DSRC systems and devices using microwave communications in the 902–928 megahertz (MHz) frequency band. The DSRC systems use microwave communications over very short distances to allow moving vehicles to communicate with roadside locations. They are currently in use for applications, such as, electronic tolling, electronic clearance of commercial vehicles at weigh stations.

As transportation agencies with responsibility for commercial vehicle administration and toll collection have procured systems and other devices based on the DSRC, they have had to cope with proprietary interfaces, which are the interface designs held as industrial secrets by equipment suppliers. Selection of a manufacturer by an agency has often made that agency a captive market of that manufacturer for procurement of future system upgrades and expansions. These agencies could only use devices from the initial manufacturer, since only that manufacturer would have the correct proprietary interfaces. When agencies procure different proprietary DSRC systems, this precludes interoperability among these agencies. This limits the usefulness of this technology for vehicles that cross jurisdictional boundaries, such as, State lines and international borders. Even within States, there can be interoperability issues if different agencies purchase from different suppliers.

In TEA–21, the Congress has given the U.S. DOT the responsibility to "ensure national interoperability" of ITS technologies through the development and promulgation of standards. Further, the Congress authorized the Secretary to issue "provisional standards" when the normal consensus standard development process was unsuccessful in reaching agreement on a standard.

There is a clear need for interoperability in at least two applications of DSRC technology within the ITS program as follows:

1. Interstate trucks that participate in the Commercial Vehicle Operations (CVO) program, which, for example, will allow vehicles to be electronically cleared for operation without stopping at State ports of entry or weigh/inspection stations, require national interoperability.

2. All vehicles, including passenger cars and trucks, in a common multitoll environment within a single State or multistate metropolitan area, require regional interoperability.

This rulemaking only addresses the national interoperability requirement for commercial vehicle applications of DSRC technology. For the CVO program to be successful, it is essential that these vehicles be able to travel from State to State, and within a State, using DSRC technology for processing at automated inspection stations and to be able to bypass State ports of entry if they meet the criteria for safety and weight, and possess the appropriate credentials. The only way to achieve this fundamental objective is to have a set of DSRC standards that all States utilize for their ITS CVO implementations. Thus, this application clearly falls within the TEA–21 definition of standards "critical to national interoperability." The critical standards list defined by the ITS Joint Program Office (JPO), in response to TEA–21, includes CVO related standards.

With the imminent expansion of the CVO program, it is essential that the FHWA provide guidance to States that will meet the requirements of the law and achieve the minimum objectives of the statute. To implement the requirements of TEA–21, and to address the current applications of DSRC technology, the FHWA's objective is to achieve national interoperability for the ITS CVO applications and border crossing functions through the use of a "Provisional Standard" as defined in TEA–21.

When using DSRC, vehicles employ devices called tags, or transponders to communicate with readers, or roadside units. The operation of these devices can be specified with a standards profile consisting of three layers: the Physical Layer, the Data Link Layer and the Application Layer. (Per the Open Systems Interconnection Reference Model.)

The Physical Layer describes the transmission of data over the communications channel, for example, the media, the modulation format, the required transmission power and the physical configuration of the transmitter and receiver.

The Data Link Layer describes how the data is reliably and efficiently sent over the communications link, which includes framing and timing of the data, error control and flow control.

The Application Layer incorporates the specific user program, which in this case, refers to the definition of the various messages that must be communicated, such as those pertaining to commercial vehicle electronic clearance and international border clearance. This layer also potentially permits many other functions to be performed.

The DSRC systems can achieve interoperability if they conform to the same profile, and incorporate the same options within each standard that comprise the profile.

Current DSRC systems employ two different methods at the physical layer: backscatter and active. Backscatter systems use tags known as passive tags, which do not contain their own transmitter and power source. They use the energy received from the reader to generate a response. Active tags contain their own power source and transmitter to respond to the roadside unit.

Current DSRC systems also employ two different methods at the data link layer: asynchronous and synchronous. In asynchronous transmission, normally used in backscatter systems, tags respond to the reader when queried, without specific timing established between the tag and the reader for the response. In synchronous transmission, normally used on active systems, a specific timing is established for a tag to respond to a reader. It is the disparity

in these four options that preclude the interoperability of DSRC systems.

Under the auspices of the ASTM, the industry tried to generate a set of standards for DSRC for about eight years. However, because of the fundamental differences in implementing the technologies, the standards process deadlocked with no agreement attainable until late 1996, when the DOT became more active in the process.

The DOT recognized a need to have a standards-based DSRC for use by ITS Commercial Vehicle Operation program. This will enable commercial vehicles to use a common tag to be electronically processed while in motion at weight and inspection stations and at international borders.

In 1996, the CVO program was expanding due to the model deployments and the international border crossing programs. It was essential, therefore, that a standard be established. Thus, the DOT urged the community to come together and agree on a standard, or the DOT would mandate a provisional standard for CVO and border crossing applications.

The work of developing DSRC standards and building consensus among the stakeholders has been led by various standards development organizations (SDOs) with guidance and partial funding by the Department. The new standards development is being led by the ASTM and IEEE. The breadth of participation in this development approach has ensured the widest possible consensus base for the emerging standards, thus ensuring the ready acceptance of the application of these standards. This new activity started in 1996. These SDOs have worked under a cooperative agreement, with partial funding from the FHWA along with voluntary donations of time and travel expenses from committee participants, to develop very broad ranging direct user inputs to the standards development process in striving for broad consensus on requirements.

In an early attempt to break the standards deadlock, and to respond to the needs of the CVO community, Hughes Aircraft (Hughes), now Raytheon Systems Company, made public its proprietary protocol. Further, many of the CVO sites had already chosen the Hughes protocol for their applications. Mark IV Industries agreed to build tags to the Hughes protocol, which produced competition among suppliers for a single configuration of a tag for the first time. This version was submitted to the ASTM standards organization as a candidate standard, and was called "ASTM Version 6."

The Version 6 configuration was never approved by the committee. However, since the Hughes "Version 6" tag was employed in all CVO and international border crossing deployments, and it was the only device where there were two suppliers to compete in the CVO market, the ASTM Version 6 tag was chosen by the DOT as the interim device that would be used on all CVO applications until standards were formally adopted by the community.

There appears to be general agreement among the industry and the SDOs on the latest version of the application and Physical Layer standards, with the Physical Layer now approved by the ASTM, and the Application Layer standard (IEEE 1455) approved by the IEEE.

The Application Layer standard (IEEE P1455) is of particular importance. This standard is designed to allow a wide variety of applications to be implemented using a single device. Whereas, today, virtually all tags are customized to a particular application, e.g., tolls or CVO, and it is not easy to add applications. The IEEE standard facilitates the use of a single device for multiple applications.

The DSRC Physical Layer standard allows either active or passive technologies, or both, to be used.

Since all three tag types can be produced, it is likely that multiple tag configurations, that are not interoperable, will exist. The best way to afford the opportunity for interoperability is for DOT to specify a single configuration for a particular application when interoperability is required. Because the CVO community already has a large installed base, all using the active configuration, the DOT has selected the active configuration.

It is the Data Link Layer where the current standards process is stalemated. The current version of this standard allows the two fundamentally incompatible protocols, synchronous and asynchronous, to exist. Since there is no clear industry agreement on this protocol, interoperability can best be achieved by continuing to use the Data Link Layer functions found in the legacy systems that conform to ASTM Version 6.

Therefore, the recommended profile is to use a provisional standard that consists of the new ASTM Physical Layer in the active mode, the existing ASTM Version 6 Data Link layer in the synchronous mode, and the IEEE 1455 Application Layer. In addition, this provisional standard will be designed to ensure interoperability with the existing legacy equipment used in CVO that conforms to ASTM Version 6. This DSRC provisional standard is described in the FHWA Specification, "Dedicated Short Range Communications for Commercial Vehicles."

Purpose of this Rulemaking

In this NPRM, the FHWA proposes to amend its regulations to establish rules to ensure application of DSRC standards for CVO projects implemented with highway trust funds. The proposed regulations would apply DSRC standards to relevant systems, subsystems, devices, equipment and software to be acquired as part of those projects.

This rule covers the DSRC provisional standard defined in the FHWA specification for Dedicated Short Range Communications for Commercial Vehicles which incorporates the following protocols from existing standards efforts:

(1) ASTM PS 111–98, Standard Specification for Dedicated Short Range Communications Physical Layer Using Microwave in the 902–928 MHz Band (Active Mode Option),

(2) ASTM Version 6 data link layer functions, and

(3) IEEE P1455, Standard for Message Sets for Vehicle/Roadside Communication.

This configuration will be compatible and interoperable with ASTM Version 6 legacy CVO installations.

Costs and Benefits of the DSRC Interface Standards

The DSRC provisional standard includes some of the first protocols for wide use in the United States surface transportation industry providing for interoperability between products that have typically used proprietary interfaces even to the present day. Manufacturers will have some costs for developing and incorporating compliant interfaces. Only a small part of each of these devices will be affected, so the costs will be minimal. Many of these manufacturers have also been involved in development of the DSRC standards, thus ensuring that they are prepared to provide products that are in conformance.

On the benefits side, this provisional standard eliminates the need to purchase equipment with proprietary interfaces, thus freeing agencies of long-term commitments to specific vendors and their systems with proprietary interfaces. This standard also enables operation with reduced mutual interference, so that co-site and inter-site frequency coordination is greatly

simplified. The application layer portion of the provisional standard also makes possible the use of the device for applications other than CVO.

Interoperability will ensure that DSRC-based systems for CVO will become interchangeable for identical functions by having identical interfaces. This will allow States and carriers to rely on multiple manufacturers as sources of interoperable equipment, which would provide for increased competitiveness among manufacturers of ITS systems and devices. The competitiveness will in turn, encourage suppliers to strive for improved quality, functionality, reliability, and maintainability at lower cost. The agency specifically requests comment on the potential costs and benefits of this proposal.

Interface Compatibility

The FHWA would establish regulations that require conformance to the DSRC provisional standard, which is defined in the FHWA specification, "Dedicated Short Range Communications for Commercial Vehicles," in CVO systems, subsystems, devices, equipment and software being procured in ITS projects using highway trust funds. In this proposed action, the interface standards would apply to procurements of new equipment, or major upgrades of existing equipment, that occur after January 1, 2001.

There is no intent to require the replacement of, or the retrofitting of changes to existing equipment solely to be compatible with the DSRC provisional standard. Incorporation of the DSRC provisional standard should be an orderly process during the normal cycle of replacement of the equipment. This replacement process will be at the discretion of the transportation agency. The new DSRC provisional standard compliant equipment and the existing DSRC equipment used in CVO will operate on the same communications facilities.

This regulation would require that all new or updated equipment, for which this standard applies, procured after January 1, 2001, shall conform with the FHWA specification, "Dedicated Short Range Communication for Commercial Vehicles." This is interpreted as applying to any equipment which meets either of the following criteria:

(1) The specifications for the equipment are still in preparation on January 1, 2001 (i.e., specifications have not been approved and released to procurement and contracting prior to January 1, 2001).

(2) The equipment is the subject of an upgrade which is being procured after January 1, 2001. This means the specifications for the upgrade are still in preparation on January 1, 2001 (i.e., have not been approved and released to procurement and contracting prior to January 1, 2001).

There are various potential approaches to achieving DSRC conformity that could be utilized. It is the FHWA's objective to eventually have all DSRC equipment used for CVO applications conforming with the provisional standard. However, the exact path to that objective would be at the discretion of the implementing agency.

To facilitate the compliance process, the FHWA will conduct a testing program that will verify that the DSRC provisional standard, as embodied in the DSRC specification, performs the required functions and is backward compatible with the existing design of CVO DSRC equipment. There are no new Federal review processes required for complying with this proposed regulation. The specification of applicable standards is part of the existing processes which depend on the nature and scope of the project.

The FHWA believes that a federally established process for certifying manufacturer product conformance with DSRC standards is not necessary, and is left to the States and local agencies procuring the technology and their suppliers to determine.

Exemptions From the FHWA DSRC Standards Profile Specification

As the life cycle of newer ITS non-conforming devices nears an end and the transition to the DSRC provisional standard nears completion, the regulations would require open systems interfaces to the exclusion of proprietary interfaces in ITS systems, subsystems, devices, equipment and software implemented with the use of highway trust funds. In the specific case of this NPRM, open systems interfaces would be interpreted as including interfaces conforming with the FHWA DSRC specification. Note that the DSRC provisional standard is a small subset of the ITS standards that are soon to become available. Specific exemptions to be allowed, or disallowed, regarding the DSRC standards conformance requirements proposed in this NPRM are as follows:

1. Legacy System Exemptions. This policy would allow continued use of legacy (existing) devices having proprietary interfaces through their useful operating life during this transition to DSRC provisional standard conforming interfaces, and until such time as new products conforming to the DSRC provisional standard become available as commercial off-the-shelf items.

2. Grandfathered Interface Exemptions. Exemption of proprietary interfaces from DSRC provisional standard conformance in any legacy device applied to a CVO system would be limited to the useful operating life of the device and would not be construed as extending into the life of any replacement, upgrade, enhancement, or expansion of the legacy device.

Summation

The DSRC provisional standard is defined in the FHWA specification, "Dedicated Short Range Communications for Commercial Vehicles." This action proposes to implement this specification, which describes the Physical Layer standard using the active tag option, the Data Link Layer standard in the synchronous option, the Application Layer (IEEE 1455) standard and backward compatibility with existing ASTM Version 6 equipment as a prerequisite for highway trust funding of CVO projects. Rules are proposed for implementation of this standard, and supplementary information is provided to lay this rulemaking open for review and comment. In this regulatory process, some choices and decisions must be made. Listed below are topics on which the FHWA would like inputs, suggestions, or recommendations in order to benefit from the experience and knowledge of State and local agencies, system operators, carriers, and in the vendor community.

(1) The FHWA requests comments on when the rules described in this NPRM should become effective and the reasons for that recommendation.

(2) The FHWA requests recommendations on how to achieve compliance with the described rules by the State and/or local agencies involved in commercial vehicle operations.

(3) The FHWA requests recommendations on whether or how to verify compliance with the described rules by the manufacturers.

(4) The FHWA requests recommendations on how to address the problems of products that are represented as conforming to the DSRC standards, but do not prove to be interoperable when they are operated with legacy equipment or other DSRC equipment. The FHWA seeks to establish interoperability and to avoid litigation to resolve issues.

(5) Assumptions have been made in the Regulatory Evaluation contained in the regulatory analysis for Executive Order 12866, Regulatory Planning and

Review. The FHWA would like to receive comments on the validity of those assumptions, along with reasoning and explanations for them.

(6) The FHWA seeks comments on a possible limitation period for completion of the transition from the proprietary interfaces with legacy devices to interfaces that fully conform with the DSRC provisional standard.

(7) The FHWA seeks comments from the manufacturers concerning the costs, both to the manufacturer and their customers, of complying with the rules described in this NPRM. Information concerning costs of both a one-time nature as well as potential recurring costs are sought.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket, relevant information that becomes available after the comment period closing date. Interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal, therefore, a full regulatory evaluation is not required. The implementation of these standards will not alter the functionality of the DSRC equipment, both the reader on the roadside and the tag on the vehicle. The recurring cost of these devices should be virtually the same as State governments are now paying for existing equipment. We do not anticipate any significant economic impact of the regulation proposed in this rulemaking document. Nevertheless, the FHWA solicits comments, information, and data on this issue.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on that evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Any impact to small entities would likely be a positive one, due to the resulting ability of these entities to compete in the open market for ITS system integration work and other engineering services and to develop and market DSRC standards conforming devices useful in CVO deployment. Large corporations, through sales of their proprietary products and proprietary interfaces have previously dominated this market. Previously, large corporations that owned the proprietary interface designs were the only organizations able to manufacture, install, integrate, and service equipment with the proprietary interfaces. Although the large corporations may experience a small loss of engineering services business, this will be more than compensated for by the increased marketability of their DSRC standards profile-conforming products in the growing national ITS industry.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 and amendments thereto regarding intergovernmental consultation on Federal programs and activities apply to this program. Those regulations stipulate that Federal agencies shall provide opportunities for consultation by elected officials of State and local governments that would provide non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development. The regulations further state that the Federal agencies must communicate with the appropriate State and local officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

Since members of the ASTM, the IEEE, and the DSRC industry participated in establishing the need for the DSRC standards, in defining the requirements for the DSRC standards, and in development and approval of the DSRC standards, it is clear that requirements of the intergovernmental review regulations have been satisfied. In addition, the FHWA and ITS America have made information about the standards program and the standards widely and publicly available. Furthermore, publication of this action with request for comments further coordinates the action and opens the action to review and comment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in proposed rulemaking are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed regulation does not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no paperwork burden on the States or private entities. The proposal merely sets forth the DSRC

interoperability standards for devices that collect the vehicle data that is already being transmitted either electronically, visually, or otherwise. As for the States assuring that vendors of the devices comply with these standards, the FHWA is not imposing any formal certification process on them. The States may accomplish assurances of vendor compliance as part of their usual and customary processes that they would adopt to implement the requirements of any Federal regulation.

United States International Trade Policy

The agency has analyzed the impact of this rulemaking on United States trade in accordance with Executive Order 12661 and finds no significant detrimental impacts on United States international trade policy.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 945

Communications, Highways and roads, Radio, Transportation-intelligent systems.

Issued on: December 15, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR chapter I by establishing a new subchapter K consisting of part 945 as follows:

SUBCHAPTER K—TRANSPORTATION OPERATIONS AND MANAGEMENT

PART 945—DEDICATED SHORT RANGE COMMUNICATIONS (DSRC) FOR COMMERCIAL VEHICLES

Sec.

945.1 Purpose.
945.3 Applicability and scope.
945.5 Definitions.
945.7 Policy.
945.9 Exemptions from the provisional standard.
Appendix A to Part 945—Specification for Dedicated Short Range Communications for Commercial Vehicles.

Authority: 23 U.S.C.315, and 502 note; sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105–178, 112 Stat. 107, at 457; and 49 CFR 1.48.

§ 945.1 Purpose.

The purpose of this part is to define the provisional standard that will be utilized to ensure national interoperability of all commercial vehicle operation (CVO) projects that incorporate Dedicated Short Range Communications (DSRC) technology.

§ 945.3 Applicability and scope.

(a) The specification "Dedicated Short Range Communications for Commercial Vehicles" shall be used on all commercial vehicle projects and international border crossing projects utilizing DSRC that are procured after January 1, 2001, and utilize funds from the highway trust fund.

(b) Procurement funds are for new equipment, whether it be replacement of existing equipment or new installations.

(c) This part does not require the retrofitting or replacement of existing equipment to be compliant with the provisional standard.

(d) This provisional standard does not apply to other applications of DSRC technology, such as electronic toll collection.

§ 945.5 Definitions.

(a) The terms used in this part are consistent with those commonly used in the standards community as defined by the Institute of Transportation Engineers (ITE).

(b) The terms that are unique to Intelligent Transportation Systems (ITS) are defined as follows:

Commercial Vehicle Operations (CVO) means any ITS project that includes all the operations associated with moving goods and passengers via commercial vehicles over the North American highway system and the activities necessary to regulate these operations.

Dedicated Short Range Communications (DSRC) means a technology employing microwave communications over very short distances to allow moving vehicles to communicate with fixed roadside locations.

Provisional standard means a specification prescribed by the U.S. DOT. In this instance the specification is "Dedicated Short Range Communications for Commercial Vehicles."

§ 945.7 Policy.

It is the policy of the Federal Highway Administration (FHWA) to identify the standards that are critical to ensure national interoperability. Commercial vehicle applications that enable electronic screening, including checking safety status, and other credentials associated with the licencing and regulation of commercial carriers shall use equipment that conforms to the FHWA specification for Dedicated Short Range Communications for Commercial Vehicles, as provided in the appendix to this part.

§ 945.9 Exemptions from the provisional standard.

The specification, "Dedicated Short Range Communications for Commercial Vehicles" does not apply to future implementations of, or the current standard effort operating in the 5.8 gigahertz frequency band.

Appendix A to Part 945 Specification for Dedicated Short Range Communications (DSRC) for Commercial Vehicles—November 1999

Ver 0.0.1

Federal Highway Administration

United States Department of Transportation, Federal Highway Administration, Intelligent Transportation Systems Joint Program Office

Contents

1 Overview
2 Background Information
3 Physical Layer
4 Data Link Layer
5 Transponder Resources
6 Transponder Commands and Memory Access
7 Resource Manager
8 ITS Application Messages
9 Application Layer
Attachment A Compatibility Philosophy

1. Introduction

The primary objectives of this document are to specify the characteristics of the Dedicated Short Range Communication (DSRC) air interface which will be used in commercial vehicle applications and to specify the DSRC equipment that will be resident in a commercial vehicle. The air interface specification is focused on the interaction between equipment on-board a commercial vehicle called a transponder or On-Board Equipment (OBE) and fixed roadside equipment, called a beacon or Road Side Equipment (RSE). The specification uses a three-layer version of the Open Systems Interconnection interface model (i.e., physical, data link and application layers) which reflects the approach taken in current North American and international DSRC standards activities.

1.1 Overview of Specification

The air interface specification adheres to the general DSRC architecture in which the RSE controls the medium, allocating its use to OBEs within range of the RSE. As such, it was possible to take advantage of existing standardization efforts. Specifically, the physical layer specification is based on the characteristics of the active technology described in the ASTM standard PS 111–98. The primary deviation from the active portion of the standard is the elimination of the fast wake-up time requirement. The data link layer specification is based on the data link layer portion of the ASTM draft standard, "Standard for Dedicated, Short Range, Two-Way Vehicle to Roadside Communications Equipment, Draft 6," dated 23 Februrary 1996. Primary deviations from this effort include elimination of the requirement for a lane-based mode. Finally, the application layer is a simplified version of the application layer defined in the IEEE 1455–99. It does not explicitly specify services or interfaces since the application layer and interface to the lower layer services are not exposed and thus not testable. It also redefines the vehicle service table used in the initialization process.

The equipment specification defines characteristics of the OBE such as minimum memory requirements and user interface devices along with a command set that allows the RSE to manage OBE resources. It is adopted directly from IEEE 1455–99; however, there are three significant extensions. First, the specification provides for backwards compatibility with existing deployments within a number of CVO programs including Advantage CVO, Help Prepass and numerous border crossing deployments. Compatibility with the existing deployments is maintained by preserving the internal memory structures and capabilities of the deployed OBEs. Thus, all OBEs conforming to this specification will be required to have internal memory (as defined by OBEs deployed in current CVO programs) and external memory defined in this specification. Attachment A discusses the implications of this specification to compatibility with existing OBEs and RSEs.

Second, the transfer of memory pages up to 64 Kbytes in length requires new logical link control features. Supported functions include a fragmentation counter, flow control, and additional status bits needed for longer DSRC sessions. The first sixteen bits of the Slot Data Message have been set aside exclusively to support these functions.

Third, the specification defines a file transfer application that supports transfers of large data files between a device on the commercial vehicle, such as an on-board computer, connected to the OBE and the roadside back-office application. The file transfer capability operates in a similar fashion to the mailbox application defined in IEEE 1455–99, but requires specialized capability referred to as a Transfer Page.

Note that all the deviations listed above are also identified in the introductory text for each relevant section and are underlined and highlighted in bold text.

1.2 Scope of Specification

Although the air interface and equipment specifications define the critical elements of the DSRC capability, there are several critical practical considerations that are not addressed by this specification. They include: (1) definition of other DSRC system interfaces, (2) memory page registration and (3) security architecture.

This specification does not address two important interfaces. On the roadside, the interface between the RSE and the back office application is not defined. On the vehicle, the interface between the OBE and an in-vehicle device (e.g., on-board computer, vehicle data bus) is not defined. This is consistent with the approach taken in IEEE 1455–99. It is expected that the interface to the back office application will be defined by a vendor, but its specification should not be proprietary. Every effort should be made to define an open specification. The interface between the OBE and an in-vehicle device will likely be based on one of several computer network or vehicular data bus standards.

One critical component of the IEEE 1455–99 OBE memory architecture is the use of paged memory. However, the allocation of pages to specific users is left to a currently undefined IEEE registration process. In order to develop an OBE with the capabilities necessary to support US Department of Transportation Federal Highway Administration (FHWA) sanctioned Commercial Vehicle Operations (CVO) applications as well as other public and private applications, it will be necessary for FHWA, vendors, and other agencies to register a number of CVO pages.

The final unaddressed practical consideration is the DSRC security architecture. Although it is anticipated that it will be necessary to control access to financial, personal and business sensitive information on the OBE, this specification does not define a security approach. (IEEE 1455–99 does not define a specific information security approach, but does provide opportunities in which a user could implement a variety of approaches.) IEEE is currently proposing to develop methods to provide access controls and privacy within the IEEE 1455–99 standard. It is expected that this specification will rely on the proposed effort to define the overall security architecture for DSRC used by commercial vehicles.

2. Background Material

2.1 References

The following documents shall be used, when applicable, in the process of developing equipment and systems that will be compliant with the Sandwich Protocol DSRC Standard. When the following documents are superseded by an approved revision, then that revision shall apply.

ASTM Preliminary Standard-111–98, Specification for Dedicated Short Range Communication (DSRC) Physical Layer using Microwave in the 920 to 928 MHz band

ASTM Draft Standard for Dedicated, Short Range, Two-Way Vehicle to Roadside Communications Equipment, Draft 6, dated 23 Februrary 1996

IEEE Standard 1455–99, Standard for Message Sets for Vehicle/Roadside Communications

2.2 Abbreviations and Acronyms

APDU—Application Protocol Data Unit
ASK—Amplitude Shift Keying
ASN.1—Abstract Syntax Notation One
AID—Application Identification
ASTM—American Society of Testing and Materials
BER—Bit Error Rate
BOA—Back Office Application
BST—Beacon Service Table
CEN—Center for European Normalization
CFR—Code of Federal Regulations
C/R—Command/Response
CRC—Cyclic Redundancy Check
CVO—Commercial Vehicle Operations
DSRC—Dedicated Short Range Communications
EID—Entity Identification
EIRP—Effective Isotropic Radiated Power
FC—Flow Control
FCC—Federal Communications Commission
FCM—Frame Control Message
FHWA—Federal Highway Administration
GMT—Greenwich Mean Time
ID—Identification
ITS—Intelligent Transportation Systems
IEEE—Institute of Electrical and Electronics Engineers
LED—Light Emitting Diode
LID—Link Identification
MRA—Media Request Activation
OBC—Onboard Computer
OBE—Onboard Equipment
OSI—Open Systems Interconnection
PPM—Parts Per Million
RF—Radio Frequency
RM—Resource Manager
RSE—Roadside Equipment
SDM—Slot Data Message
S/I—Signal-to-Interference
s-TDMA—Slotted ALOHA, Time Division Multiple Access
VRC—Vehicle Roadside Controller
VST—Vehicle Service Table

3. Physical Layer

3.1 Introduction

This standard defines the Open Systems Interconnection (OSI) layer 1, physical layer, for DSRC equipment, operating in two-way, half-duplex, active mode.

This standard establishes a common framework for the physical layer in the 902 to 928 MHz LMS band. This band is allocated for DSRC applications by the Federal Communications Commission (FCC) in Title 47, Code of Federal Regulations (CFR), Part 90, Subpart M and by Industry Canada in the Spectrum Management, Radio Standard Specification, Location and Monitoring Service (902–928 MHz), RSS–137.

The physical layer described within this standard is nearly identical to the "Standard Specification for Dedicated Short Range Communication (DSRC) Physical Layer using Microwave in the 902 to 928 MHz band," ASTM PS 111–98, with regard to active technology. *Backscatter technology is not addressed in this physical layer specification. In addition, an exception was made in the wake-up time requirements to facilitate transition from existing products to this specification (see section 3.2.15).* Information not addressed by this document concerning active technology is identical to that addressed within ASTM PS 111–98.

3.2 Downlink Parameters

3.2.1 Carrier Frequencies: Values of the downlink carrier frequency.
Value:The RSE may be operated anywhere within the 915 to 918.75 MHz band.

3.2.2 Tolerance of Carrier Frequencies: Maximum deviation of the carrier frequency caused by any means, expressed in parts per million (ppm)
Value: +/−275ppm

3.2.3 RSE Transmitter Spectrum Mask: Maximum power emitted by an RSE transmitter as a function of the frequency.
Value: In-band power =<+44.77 dBm; Out of band power: =<−25 dBm transmitter power measured in 100 kHz.

3.2.4 RSE Transmitter Spectrum Mask for Modulated Carriers: Relative power emitted with a modulated carrier by an RSE transmitter as a function of the frequency.
Value: The in-band emissions shall be attenuated from the peak in-band power by the indicated value at each frequency offset in the classes listed below:

	Frequency Deviation (+/−)	Attenuation
Class A:	1.0 MHz	>=12 dB in 100 kHz
	1.5 MHz	>=20 dB in 100 kHz
	2.0 MHz	>=25 dB in 100 kHz
	2.5 MHz	>=33 dB in 100 kHz
	3.0 MHz	>=40 dB in 100 kHz
	3.5 MHz	>=44 dB in 100 kHz
	4.0 MHz	>=48 dB in 100 kHz
	4.5 MHz	>=52 dB in 100 kHz
	5.0 MHz	>=56 dB in 100 kHz
	5.5 MHz	>=60 dB in 100 kHz
	6.0 MHz	>=60 dB in 100 kHz
Class B:	1.0 MHz	>=12 dB in 100 kHz
	1.5 MHz	>=20 dB in 100 kHz
	2.0 MHz	>=35 dB in 100 kHz
	2.5 MHz	>=45 dB in 100 kHz
	3.0 MHz	>=55 dB in 100 kHz and have an output power <= −25 dBm
	3.5 MHz	>=60 dB in 100 kHz and have an output power <= −25 dBm
	4.0 MHz	>=63 dB in 100 kHz and have an output power <= −25 dBm

Any class may be used in a manufacturer's RSE. Not all classes have to be supported by all RSE.

Note 1: The resolution bandwidth of the instrument used to measure the peak in-band emission power and the frequency offset in-band emission power shall be 100 kHz and the video bandwidth shall be 100 kHz.

Note 2: Equipment complying with the different classes will require different separation distances.

3.2.5 OBE Minimum Operating Frequency Range: Minimum range of frequencies that must be received by the OBE receiver.
Value: All active OBE must meet the requirements of the slow and fast wake-up operations while receiving emissions from RSE operating on or between 915 and 918.75 MHz.

3.2.6 Maximum Effective Isotropic Radiated Power (EIRP): The maximum peak envelope power transmitted by the RSE referred to an isotropic antenna. The value is normally expressed in dBm, where 0 dBm equals 1 mW.
Value: The maximum EIRP. for each class is limited to the values listed below or a value less than listed if specified by the installation country's governing body.
Class A: for f = 915 and 915.75 MHz only, EIRP =<+40 dBm
Class B: for f= 918.75 MHz only, EIRP =<+44.77 dBm

3.2.7 Antenna Polarization: Locus of the tip of the vector of the electrical field strength in a plane perpendicular to the transmission vector. Examples are horizontal and vertical linear polarization and left and right-hand circular polarization.
Value: Limited to either Horizontal linear or Left-hand circular

3.2.8 Modulation: Keying of carrier wave by coded data.
Value: Binary Amplitude Modulation (Two-level Amplitude Shift Keying [ASK], with one level being off)

3.2.9 Eye Pattern for RSE: Description of the acceptable amplitude compared with the time envelope values of the modulated signal created by an RSE.

Parameter	Value
Class A&B:	
Maximum 'off' carrier to minimum 'on' carrier ratio	0.103

Parameter	Value
Maximum 'on' carrier to minimum 'on' carrier ratio	1.14
½ of bit period	1 microsecond
Allowed time variance	165 nanoseconds

3.2.10 Data Coding: Baseband signal presentation, such as a mapping of logical bits to physical signals.
Value: Manchester
3.2.11 Bit Rate: Number of bits per second.
Value: 500 kbps
3.2.12 Tolerance of Bit Clock: Maximum deviation of the bit clock expressed in ppm or percentage (%).
Value: +/−100 ppm
3.2.13 Bit Error Rate (BER): Averaged number of erroneous bits related to all transmitted bits. The realized BER assumes an established link, depends on the application, and does not consider any specific distribution of errors. Within the maximum horizontal range, the effective BER may be different from the reference value due to time variant and stochastic impacts.
Value: 10^{-6} in a non-fading channel (for reference only)
3.2.14 Signal to Interference (S/I): The signal-to-interference ratios over which the OBE must provide a BER of 10^{-5}, or better for downlink communications. Signal strength is limited to the range 210 millivolts/meter (−30 dBM with 0 dBi ant.) to 9377 millivolts/meter (+3 dBm with 0 dBi ant.) horizontal field strength. S/I measurements will be made with a signal strength 2 dB above the OBE sensitivity level.
In Band: Interference on the downlink frequency.
Value: S/I => 15 dB
LMS Band: Interference located in the 904 to 909.75 MHz and 921.75 to 928 MHz portions of the LMS Band.
Value: S/I => 8 dB
Out of Band: Interference located at the listed frequency offsets from 915 MHz.
Values: +/−13 MHz, S/I => 0 dB; +/−30 MHz, S/I => −5 dB; +/−65 MHz; S/I => −25 dB
3.2.15 Wake-up Process for OBE: The wake up process within the OBE switches the OBE main circuitry from standby mode (sleep mode) to the active mode.
Value: Wake-up is initiated by a received RF carrier at the OBE for the following specified amounts of time. Under this specification only Slow Wake-up is required. Fast Wake-up may be implemented at the vendor's discretion.
Slow Wake-up: <=50 msec within the power levels specified in the OBE receiver operating range for Slow Wake-up. (In testing this parameter an RSE Write message should be provided in slot 4 of the TDMA frame.)
Fast Wake-up: <= 2 msec within the power levels specified in the OBE receiver operating range for Fast Wake-up. (Fast Wake-up is not required for compliance with this specification.)
3.2.16 OBE Receiver Operating Range: Minimum and maximum signal strengths in which the OBE will respond to the RSE. These two values also specify the minimum dynamic range of the OBE receiver.
Value:
Slow Wake-up: Minimum signal strength: None—The OBE may wake-up at any signal strength less than the maximum indicated below and have a downlink BER less than 10^{-5}.
• Required Signal Strength: Downlink BER of 10^{-5} at 210 millivolts/meter (−30dBm with 0 dBi antenna) horizontal signal strength or greater.
• Maximum Signal Strength: Downlink BER of 10^{-5} at 9377 millivolts/meter (+3dBm with 0 dBi antenna) horizontal signal strength.
Fast Wake-up: Minimum signal strength: Downlink BER of 10^{-5} at 450 millivolts/meter minimum (−23dBm with 0 dBi antenna). (Fast Wake-up is not required for compliance with this specification.)
• Required Signal Strength: Downlink BER of 10^{-5} between 450 millivolts/meter (−23.38dBm with 0 dBi antenna) and 550 millivolts/meter maximum (−21.63 dBm with 0 dBi antenna) horizontal signal strength. (The OBE must not wake-up before the lower signal strength and must wake-up on or before the larger signal strength).
• Maximum Signal Strength: 9377 millivolts/meter (+3dBm with 0 dBi antenna) horizontal signal strength.
3.2.17 Preamble/Postamble: The preamble and postamble are sequences of bits that do not convey information. The preamble is a modulated carrier designed to facilitate notification of an incoming message and synchronization of the receiver with the incoming bit stream. The postamble is designed to facilitate recognition of the end of a message.
Value: All data frames shall be preceded by a preamble. The preamble shall consist of the following set of 8 bits: 01010101 Binary or 55 Hex. A postamble will not be used.

3.3 Uplink Parameters

3.3.1 Carrier Frequencies: Values of the uplink carrier frequency
Value: The OBE will generate a carrier of 915 MHz.
3.3.2 Tolerance of Carrier Frequencies: Maximum deviation of the carrier frequency caused by any means, expressed in parts per million (ppm)
Value: +/−819ppm for an OBE temperature range of −40° to +75° C continuous and up to +85° C for up to 30 minutes. (The temperature range limitation is a deviation from ASTM PS 111–98.)
3.3.3 OBE Transmitter Spectrum Mask: Maximum power emitted by an OBE transmitter as a function of the frequency.
Value: In-band power: See Maximum EIRP; Out of band power: =<−25 dBm in 100 kHz.
3.3.4 RSE Receiver RF Bandwidth: Bandwidth of the RSE receiver
Value: 3 MHz nominal
3.3.5 Maximum EIRP: Maximum EIRP transmitted by the OBE. The value is normally expressed in dBm where 0 dBm equals 1 mW. All power values are referred to an isotropic antenna.

Value: The EIRP shall be 3 dBm +/−3 dBm for a range of 0 to +6 dBm measured as 170 mV/m to 350 mV/m at one meter with a 0 dBi horizontally polarized antenna.

3.3.6 Antenna Beamwidth: The angle, measured across the center of the antenna beam, at each end of which the signal is 3 dB less than the maximum level.

Value: The OBE transmit and receive antennas shall have a beamwidth of 140 degrees minimum in elevation and 70 degrees minimum in azimuth. The antenna boresight axis of the OBE transmit and receiver antenna field of view is composed of the common bisector of both field of view angles.

3.3.7 Vehicle Mounted Antenna Beam Orientation: The position of the antenna beam relative to the vehicle direction of travel.

Value: The antenna boresight axis, in the required mounting position, shall be within +/−10 degrees in azimuth from the direction of travel and between 0 and 70 degrees above horizontal.

3.3.8 Antenna Position Tolerance: Deviation of the OBE sensitivity as an effect of rotation about the horizontal, vertical, and boresight axes of the OBE.

Value: Decreases from maximum sensitivity when the OBE is rotated away from precise orientations as follows:
+/−25 degrees rotation around the horizontal axis: =<2 dB
+/−25 degrees rotation around the vertical axis: =<2 dB
+/−25 degrees rotation around the boresight axis: =<2 dB
Rotation around any combination of axes: =<4 dB

3.3.9 Antenna Polarization: Locus of the tip of the vector of the electrical field strength in a plane perpendicular to the transmission vector. Examples are horizontal and vertical linear polarization and left and right-hand circular polarization.

Value: Horizontal linear

3.3.10 Modulation: Keying of carrier wave by coded data.

Value: Binary Amplitude Modulation (Two-level ASK, with one level being off)

3.3.11 Eye Pattern for OBE: Description of the acceptable amplitude compared with the time envelope values of the modulated signal created by an RSE.

Class A&B:	Parameter	Value
	Maximum 'off' carrier to minimum 'on' carrier ratio	0.103
	Maximum 'on' carrier to minimum 'on' carrier ratio	1.14
	½ of bit period	1 microsecond
	Allowed time variance	165 nanoseconds

3.3.12 Data Coding: Baseband signal presentation, such as a mapping of logical bits to physical signals.

Value: Manchester

3.3.13 Bit Rate: Number of bits per second

Value: 500 kbps

3.3.14 Tolerance of Bit Clock: Maximum deviation of the bit clock expressed in ppm or percentage (%).

Value: +/−450 ppm

3.3.15 BER: Averaged number of erroneous bits related to all transmitted bits. The realized BER assumes an established link, depends on the application, and does not consider any specific distribution of errors. Within the maximum horizontal range, the effective BER may be different from the reference value due to time variant and stochastic impacts.

Value: 10^{-6} in a non-fading channel (for reference only)

3.3.16 S/I: The signal-to-interference ratios over which the OBE must provide a BER of 10^{-5}, or better for downlink communications. Signal strength is limited to the range 210 millivolts/meter (−30 dBM with 0 dBi ant.) to 9377 millivolts/meter (+3 dBm with 0 dBi ant.) horizontal field strength. S/I measurements will be made with a signal strength 2 dB above the OBE sensitivity level.

In Band: Interference on the downlink frequency.

Value: S/I => 15 dB

LMS Band: Interference located in the 904 to 909.75 MHz and 921.75 to 928 MHz portions of the LMS Band.

Value: S/I => 8 dB

Out of Band: Interference located at the listed frequency offsets from 915 MHz.

Values: +/−13 MHz, S/I => 0 dB; +/−30 MHz, S/I => −5 dB; +/−65 MHz, S/I => −25 dB

3.3.17 Preamble/Postamble: The preamble and postamble are sequences of bits that do not convey information. The preamble is a modulated carrier designed to facilitate notification of an incoming message and synchronization of the receiver with the incoming bit stream. The postamble is designed to facilitate recognition of the end of a message.

Value: All data frames shall be preceded by a preamble. The preamble shall consist of the following set of 8 bits: 01010101 Binary or 55 Hex. A postamble will not be used.

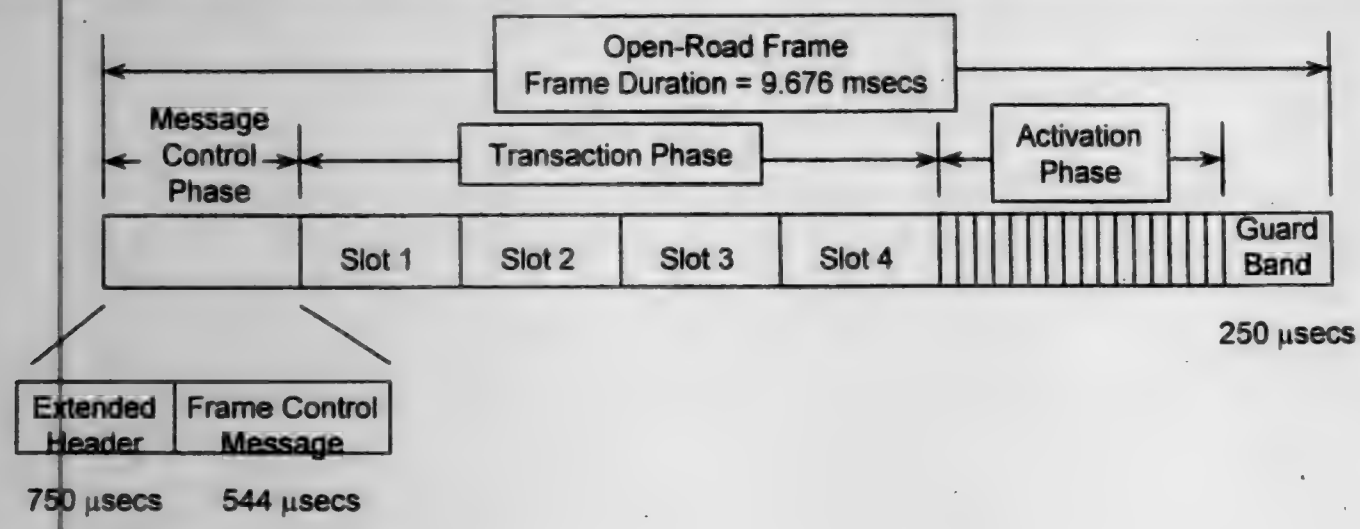
4. Data Link Layer

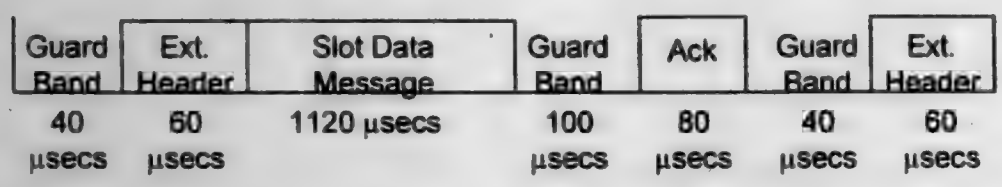
4.1 Introduction

The beacon shall control all transactions with the transponder, and implement a slotted ALOHA, time division multiple access (s–TDMA) data link control protocol as defined within this document. The protocol is based on a cyclic structure, known as a frame, as shown in Figure 4.1–1. Frames are transmitted continuously and contiguously. The frame consists of a Message Control Phase (with the Frame Control Message), a Transaction Phase (with data message slots), and an Activation Phase (with activation slots). The protocol permits multiple transponders to simulta-

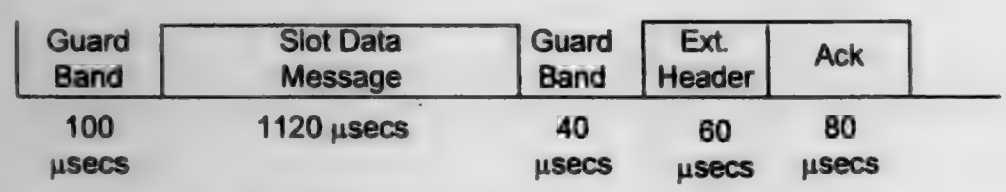
neously request permission to perform a transaction. The beacon then commands up to four transponders to communicate in one or more specific message slots within the frame. At the conclusion of each transaction, a confirmation mechanism is used. If the transaction fails for any reason, a mechanism to repeat the transaction is initiated.

BILLING CODE 4910-22-P

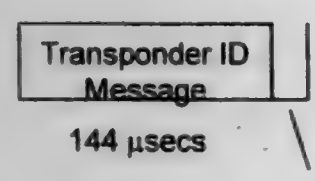




READER TO TRANSPONDER TRANSMISSIONS IN TRANSACTION PHASE SLOT



TRANSPONDER TO READER TRANSMISSIONS IN TRANSACTION PHASE SLOT



TRANSPONDER TRANSMISSIONS IN ACTIVATION PHASE SLOT

Figure 4.1-1 Frame Structure and Timing

BILLING CODE 4910-22-C

This specification is based on the data link layer described in the ASTM draft DSRC standard. However, it differs from the standard in two significant ways. *First, the specification alters the network entry philosophy (of the ASTM draft DSRC specification) to align with the approach described in IEEE 1455–99. Activation is no longer required by all compatible OBE's entering the read zone, but a decision to activate is made by each OBE (see section 4.5). Second, the specification identifies a logical link control sublayer which is used to facilitate the transfer of large data files (see section 4.8.5).*

4.2 Frame Structure

The DSRC protocol can be implemented as a dual frame structure to optimize performance for both wide area (open-road) and land-based applications. However, only the wide area protocol is required for compliance with this specification.

4.2.1 Wide Area Frame

There shall be four message slots and sixteen activation slots in a 9.676 millisecond frame. All OBEs shall be capable of transmitting or receiving in at least two message slots per frame.

4.2.2 Lane-Based Frame

There shall be one message slot and four activation slots. This option is not required under this specification, but may be needed to support some legacy applications.

4.3 Message Control Phase

The frame structure, synchronization, message slot assignments, transaction type, and data link control shall be commanded by the beacon during this phase via the Frame Control Message (FCM). Assignments are based upon requests received during Activation Phases of preceding frames. The beacon may assign multiple message slots and/or multiple frames to a transaction with a transponder. In this case, the slot command and Transponder ID will appear in multiple slot assignment fields in the FCM.

4.4 Transaction Phase

The slot command in the FCM shall indicate the type of transaction and in which slot(s) the transaction shall be performed. A transaction may be transmit or receive, addressed or broadcast, and internal or external data messages.

4.4.1 Message Acknowledgement

The beacon shall send an acknowledgement message after each scheduled addressed transponder transmission. The transponder shall send an acknowledgment message after each scheduled addressed transponder reception. The acknowledgment shall be set positive if a valid message is received (i.e., no Cyclic Redundancy Check [CRC] error and no link validation error). Otherwise, the acknowledgment shall be set negative. An incorrectly received acknowledgment shall be considered negative.

4.5 Activation Phase

The Beacon shall transmit a FCM at the beginning of each frame to define the frame structure, enable activation, and establish synchronization with transponders. In accordance with IEEE 1455 requirements, the reader suppresses activation by legacy OBE's and FHWA OBE's that do not contain the application information desired by the RSE. This is accomplished by using Frame Control bits 1 and 2 in the FCM to Inhibit Transponder Activation and Enable External Activation. Both normal and external activation may be permitted during a transition period when data from both FHWA OBE's and legacy OBE's must be read. To inform OBE's which memory pages are desired, the reader periodically transmits a beacon service table (BST) to the global ID using an External Memory Write. When transmitting the BST the Slot Command (section 4.8.7) must indicate the presence of a BST and "Transaction Not Complete" shall be asserted to guarantee sufficient processing time on the OBE. The BST structure is defined in Section 9.

The OBE processor examines the requested page ID's in the BST and determines whether or not the requested pages are present. If both of the requested pages are present, the OBE initiates External Activation by randomly choosing an Activation Slot and preparing to send an External Transponder ID message. The beacon shall listen for Transponder ID Messages in all of the activation slots at the end of the current frame, and shall make appropriate transaction assignments in the next available frame.

Upon receiving External Activation, the RSE allocates uplink slots to receive the VST. The VST consists of the requested pages. OBE Page 1 will be returned only when specifically requested. The OBE configuration bits identified in IEEE 1455–99 Table 9.5.2–1 will not be included. Since the VST is a response to an implicit Read Memory Page command, the standard command response format described in section 7.5 will be utilized. A "No Request" page ID (page 0) is always considered present on the OBE, but does not result in the transmission of data. (An RSE requesting Page 0 and Page 0 will not assign uplink slots when OBE activation is detected since the VST has no content.)

4.6 Guard Bands and Extended Headers

4.6.1 Guard Bands

Guard Bands, defined as a period of no RF transmission, shall be as follow:

- Following each Activation Phase—250μsec +10%, −0%
- Following each Transponder ID Msg—8μsec
- Preceding the Extended Header of each Originated Slot Data Message (SDM) or Acknowledgement—40μsec
- Preceding each Transponder-Originated SDM or Acknowledgement—100μsec

4.6.2 Extended Headers

An extended header, consisting of one of the following data patterns—all binary "1's", all "0's", or alternating 1's and 0's—shall be transmitted prior to the messages specified below. The preferred data pattern is "0101 * * *". The number of bits of extended header shall be as follows:

- Prior to the FCM—375 bits
- Prior to each Reader-Originated Acknowledgement Message—30 bits
- Prior to each Reader-Originated SDM—30 bits

4.7 Message Formats and Field Sequencing:

4.7.1 Frame Control Message

The Frame Control Message provides link control, frame parameters, and dictates the transaction assignments that are to be performed by transponders in the current frame.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Frame Control	4	-
Message Type	4	1100
Slot 1 Command	8	-
Slot 1 Transponder ID	32	-
Slot 2 Command	8	-
Slot 2 Transponder ID	32	-
Slot 3 Command	8	-
Slot 3 Transponder ID	32	-
Slot 4 Command	8	-
Slot 4 Transponder ID	32	-
Sleep Timeout	4	-
Spare	2	00
Activation Response Parameter	2	-
Validation Seed	64	-
CRC	16	-
Total bits	272	

4.7.2 Slot Data Message

The Slot Data Message contains a data packet to or from the transponder. Content of the Message Data is application specific. Unused bits should be set to zero. Note that for External Memory transactions 16 bits of the Message Data have been set aside for Logical Link Control functions. The number of Message Data bits is reduced to 496. For Internal Memory transactions none of the Message Data bits are used for Logical Link Control.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Data Link Header	4	1000
Message Type	4	01xx
Logical Link Control (Internal/External)	0/16	-
Message Data (Internal/External)	512/496	-
Validation Check	8	-
CRC	16	-
Total bits	560	

4.7.3 Acknowledgement Message

The Acknowledgement Message indicates whether or not the prior Slot Data Message was received properly. The format is the same for both the beacon and transponder. All SDMs shall be acknowledged with a positive or negative response, except for Broadcast messages.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Data Link Header	4	1000
Message Type	4	1001 (Positive Ack)
		1000 (Negative Ack)
CRC	16	
Total bits	40	

4.7.4 Transponder ID Message

The Transponder ID Message is used by the transponder to notify the beacon that it is present in the communication zone, and to request establishment of a logical link to perform a transaction with the beacon. Battery condition detection

status is a vendor option. When detection is implemented, Message Type filed shall be coded as shown. Otherwise, Message Type filed shall return a 0001 response.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Transponder Type	4	
Message Type	4	0000 (Low Battery)
		0001 (Battery OK)
Transponder ID	32	
CRC	16	
Total bits	72	

4.7.5 External Transponder ID message (Media Request Activation message)

The External Transponder ID Message is transmitted by an OBE to notify the RSE that an attached application layer process has data to send. This message is equivalent to a system interrupt. This message is also referred to as a Media Request Activation (MRA) message and is transmitted in an Activation Slot.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Transponder Type	4	
Message Type	4	0010
Transponder ID	32	
CRC	16	
Total bits	72	

4.8 Field Formats and Bit Definitions:

All data fields shall be transmitted most significant byte first and most significant bit first.

4.8.1 Activation Response Parameter

This 2-bit field specifies the probability transponders will use to determine if they will transmit a Transponder ID message in the current frame, or defer activation to a future frame. This field permits the beacon to modulate the level of activity in systems where large numbers of transponders are in the communications zone. The field is coded as follows:

Code	Activation probability (in percent)
00	100
01	50
10	25
11	12.5

4.8.1.1 If the transponder chooses to respond in the current frame, the transponder shall interpret the Frame Control field to determine the current frame structure. The transponder shall then randomly select one of the activation slots in which to send the Transponder ID message.

4.8.1.2 If the transponder chooses to defer to a future frame, then no Transponder ID message shall be transmitted in the current frame.

4.8.2 Data Link Header

A 4-bit field reserved for future message control between the transponder and beacon. Field shall be set to a value of binary 1000 to define "no operation".

4.8.3 Frame Control

This 4-bit field identifies the type of beacon protocol and activation control.

Bit	Code	Definition
3	1	Wide Area Frame
	0	Lane-Based Frame (not used under CVO protocol)
2	1	Transponder Activation Inhibited
	0	Transponder Activation Enabled
1	1	External Activation Inhibited
	0	External Activation Enabled

Bit	Code	Definition
0	1	Extended Variable Framing
	0	Normal TDMA Framing

4.8.3.1 Frame Type—Bit 3 shall identify which frame structure shall be used for the current frame, as shown in Figure A–1.

4.8.3.2 Transponder Activation Enabled—If Bit 2 = 0, transponders entering the communications zone shall make an attempt to gain entry by transmitting an appropriate Transponder ID Message during the Activation Phase. The probability of responding during the Activation Phase, however, shall be governed by the Activation Response Parameter.

4.8.3.3 Transponder Activation Disabled—Bit 2 = 1, transponder shall not respond with a Transponder ID Message during the current Activation Phase. The remainder of the FCM shall still be interpreted and processed, however, and the transponder shall perform any command operations.

4.8.3.4 External Activation Enabled—If Bit 1 = 0, then transponders shall be allowed to respond with an External Transponder ID Message (Media Request Activation Message) during the current Activation Phase. The probability of responding during the Activation Phase, however, shall be governed by the Activation Response Parameter.

4.8.3.5 External Activation Inhibited—If Bit 1 = 1, then transponders shall not respond with an External Transponder ID Message (Media Request Activation Message) during the current Activation Phase. The remainder of the FCM shall still be interpreted and processed, however, and the transponder shall perform any commanded operations.

4.8.3.6 Normal TDMA Framing—If Bit 0 = 0, then remaining Frame Control field bits define normal protocol operation as shown in Figure A–1.

4.8.3.7 Extended Variable Framing—If Bit 0 = 1, then remaining Frame control bits must be set as follows: Bit 3 = 0, Bit 2 = 0, bit 1 = 1. This combination provides a means to permit a beacon to generate an extended variable frame messaging structure. This feature is designed for future expansion. The specific protocol is outside the scope of this standard.

4.8.4 Message Type

This 4-bit field identifies the specific type of DSRC message. The bits are coded as follows:

Code	Definition
0000	Transponder ID Message with Low Battery Indication
0001	Transponder ID Message with Battery OK Indication
0010	External Transponder ID Message (Media Request Activation Message)
0011	(unused)
0100	Normal Slot Data Message
0101	(unused)
0110	Reserved for Factory Programming Message
0111	Reserved for Agency Programming Message
1001	Positive Acknowledgment Message
1010	(unused)
1011	(unused)
1100	Frame Control Message
1101	(unused)
1110	(unused)
1111	(unused)

4.8.4.1 Reserved Codes—Message Type codes 0110 and 0111 are not user accessible and shall be reserved only for Factory and Agency programming functions.

4.8.5 Logical Link Control

Link control features have been added to support the transfer of large memory pages. These include a fragment counter for fragmentation/defragmentation and flow control. Several status bits have been added to clarify link operation. These link control bits are implemented only for external memory operations. Operations using internal memory will not implement these bit fields. The following bit fields have been defined:

a. Flow Control (FC), 1 bit—This bit is used by the OBE to request a pause in flow for either uplink or downlink operations. The bit is used by the RSE to indicate that the next uplink slot allocated to the OBE is intended to read the flow control status. When the RSE needs a pause in data flow due to an internal resource limitation, the RSE simply stops allocating slots.

—OBE Uplink Flow Control. A pause in uplink flow ("Stop allocating uplink slots") is requested by the OBE by setting the Flow Control bit. No new data will be transmitted by the OBE after setting the bit; transmissions may be stopped (if an ACK was received) or data may simply be repeated if slot allocations continue. If the RSE is still assigning uplink slots to the OBE when the OBE is ready to continue, the data flow continues as before the stoppage with the Flow Control bit cleared. If the RSE has stopped assigning uplink slots to the OBE, the OBE requests a continuation of data flow by transmitting a MRA Message. Upon receiving the MRA, the RSE restarts the assignment of uplink slots. The OBE LLC status bits should reflect normal operation; Flow Control bit cleared and Fragment Counter set to the number of the current fragment. Valid Message Data starts with the first uplink slot.

—OBE Downlink Flow Control. No explicit signaling is provided for Downlink Flow Control. When the OBE needs a pause during a downlink operation, it begins replying to downlink slots with a negative acknowledgement (NACK). If the pause is short, the RSE repeats the unacknowledged slot. The OBE clears its backlog and continues acknowledging

downlink data. Layer 2 is never expected to accommodate a flow control delay of more than a few frames since transactions occur only as page transfers and the full page memory space must be available on the tag in order to initiate the transaction.

b. Sequence Number (S), 1 bit—Whenever a Layer 2 acknowledgment of a Slot Data Message is received, the Sequence bit is toggled to indicate the next transmission is new data. This bit permits Layer 2 (even though it's in the external processor, it's still Layer 2) to differentiate between successive, single-fragment transactions without resorting to examining the data.

c. Command/Response (C/R), 1 bit—Used by the RSE to command an application layer response consisting either of data or a confirmation that a command was successful. Setting the RSE C/R bit The bit is used by the OBE to indicate the status of the requested response, 1 indicates that the response is ready (and provided), 0 indicates that the OBE response is not yet available. When the response is not ready, the RSE may continue to assign uplink slots to receive the response. If slot assignments are available when the response becomes available, the OBE sets the C/R bit and returns the response. If the RSE has stopped assigning slots during the wait, the OBE transmits a Media Request Activation Message to indicate that the response is now available.

d. First (F), 1 bit—The "First" bit is set for the first fragment in a transaction. This permits the OBE to more easily identify the start of a broadcast transmission (so the OBE can tell when it has the whole message).

e. Activation (A), 1 bit—Set to 1 by the OBE on the first uplink slot assigned after activation of a new session. Set to 0 for all other uplink slots indicating the continuation of a session. This bit permits the RSE to identify an OBE that has declared a failure in an incomplete session and initiated a new session.

f. Fragment Counter (Frag), 11 bits—This is large enough to span a 64 K*bytes* page and header divided into 496 bit fragments (512 bit slots minus the 16 control bits per slot). The counter counts down from N–1 for an N fragment transaction. A zero counter-value indicates the last fragment. Frag0 is the least significant bit and is transmitted last.

Bit Number	7	6	5	4	3	2	1	0
First Byte	FC	S	C/R	F	A	Frag10	Frag9	Frag8
Second Byte	Frag7	Frag6	Frag5	Frag4	Frag3	Frag2	Frag1	Frag0

4.8.6 Message Data

This contains the packet of information that is transferred to or from the transponder. This data could be either a single internal transponder data packet, or external single or multi-packet application data, depending upon bit 4 of the associated Slot command in the Frame control Message.

For External Memory transactions the packet is a 496-bit field with 16 bits dedicated to Logical Link Control (4.8.4). For Internal Memory transactions the packet is a 512-bit field. For a Downlink Internal Message only, the first eight bits of the message are reserved for a driver interface command field. The coding is given below:

Field definition	Bit	Coding
Visual Signal Activation	7,6	00=Visual Signal Off 01=Activate Green 10=Activate Red 11=Activate Yellow
Audio signal Activation	5,4	00=Audio Signals Off 01=Activate Continuous 10=Activate Intermittent 11=Not Used
Data Field Indicator	3,2	00=Data Field Valid 01=Driver Interface Command Only—Ignore Data
Field		10=Not Used 11=Not Used
Reserved	1,0	Reserved

4.8.7 Sleep Timeout

This 4-bit field defines the period of time that a transponder shall not attempt activation after a completion of the current transaction with the beacon. This field is coded as binary values from 0000 to 1111. Each value is then multiplied by 2 seconds, i.e., 0–30 seconds. (This mechanism for commanding sleep is required in addition to the IEEE 1455 Sleep Transponder command (6.4.8).)

4.8.8 Slot Command

This 8-bit field identifies the transaction assignment for a specific Message Slot. The bits are coded as follows:

Bit	Code	Definition
7	1	Transmit Message to Beacon
	0	Receiver Message from Beacon
6	1	Acknowledge Message
	0	Unacknowledged Message
5	1	Last Frame of Transaction
	0	Transaction Not Complete
4	1	Internal Memory/Application

Bit	Code	Definition
3,2	0	External Memory/Application
	00	Normal Slot
	01	Idle Slot
	10	Continuous Wave Slot
	11	(undefined)
1	1	BST Present
	0	BST Not Present
0	0	Reserved

4.8.8.1 Bit 7: Transmit/Receive—The transponder shall transmit or receive in the indicated slot depending on the value of this bit field.

4.8.8.2 Bit 6=1: Acknowledged Message—The transponder shall perform the commanded transmission or reception, with acknowledgment. Global ID is not permitted. Positive or negative acknowledgment status shall be passed to the application layer. If the transponder receives an error-free message during the associated slot, then the transponder shall transmit a positive acknowledgement at the end of the slot. Otherwise, the transponder shall transmit a negative acknowledgment. If the transponder transmits a message during the associated slot, then the transponder shall expect an acknowledgment from the beacon at the end of the slot. If no acknowledgment is received, then a negative acknowledgment shall be assumed.

4.8.8.3 Bit 6=0: Unacknowledged Message—The transponder shall perform the commanded transmission or reception without acknowledgment. No acknowledgment message shall be transmitted or expected. This bit shall be ignored when the beacon uses the Global ID to broadcast messages to all transponders.

4.8.8.4 Bit 5=1: Last Frame—The transponder shall attempt to complete the assigned transaction in the current frame, then process the sleep function. If the transaction is completed successfully, the transponder shall initiate the sleep function at the end of the frame, using the sleep timeout value included in the FCM. If the transaction is not completed successfully, the transponder shall not initiate the sleep function at the end of the frame.

4.8.8.5 Bit 5=0: Transaction Not Complete—Transponder shall maintain link activation as additional messages are pending to complete the transaction.

4.8.8.6 Bit 4 = 1: Internal Memory/Application—A single packet message will be sent from or received to the memory within the transponder. If the single packet is a transponder receive message, then the most significant 8 bits of the 512-bit field are reserved for transponder application layer control purposes. The remaining 504 bits are interpreted as the data field. If the single packet is a transponder transmit message, then the entire 512 bits shall be constructed using internal transponder memory and ID information.

4.8.8.7 Bit 4 = 0: External Memory/Application—Single packet or multi-packet messages shall be transferred to or from an attached application buffer, depending upon whether the Slot Command indicates receive or transmit. That is, none of the 512 bits in each packet are interpreted by the transponder. The data field is considered to be an end-to end message between the beacon and transponder-attached application process.

4.8.8.8 Bit 3 & 2: Slot Type—These two bits shall be coded as follows to determine what type of slot commanded:

Code	Definition
00	A normal communication slot, as commanded by bits 7 through 4.
01	The addressed transponder shall remain idle for the associated slot. In this case, bits 7, 6, and 4 shall be ignored.
10	The addressed transponder shall transmit a continuous wave signal for the 560-bit duration of the assigned message slot. In this case, bits 7, 6, and 4 shall be ignored.
11	Currently undefined. When these bits are set to 11, the transponder shall default to idle.

4.8.8.9 Bit 1: Broadcast Service Table—A BST as defined in Section 9 shall be transferred in this slot. (This slot is expected to be a global external write.)

4.8.9 Transponder ID

A 32-bit binary value that uniquely identifies the link address of each transponder. A mechanism shall be established by an approved authority or organization to allocate unique ID values among manufacturers. Unique ID values shall be in the hexadecimal range between 0000 0001 through FFFF FFFE, inclusive. Remaining addresses are reserved. Four types of transponder IDs are permitted:

4.8.9.1 Global ID—A reserved address with the hexadecimal value of 0000 0000. Every transponder shall decode this value. It shall be used exclusively for broadcast transmission from the beacon to all transponders in the communication zone.

4.8.9.2 Public ID—A permanent, unique 32-bit identifier that is used to determine the link address of each transponder. This identifier shall be programmed once into the unit during factory programming. This identifier shall be used as the Transponder ID only if the Transponder Type field indicates "Public Link Entry". Otherwise, this identifier shall not be used. The global ID value is not permitted.

4.8.9.3 Random ID—A 32-bit identifier that is chosen at random by the transponder, for the purpose of "Anonymous Link Entry". This identifier shall be chosen only once, upon wake-up, and shall not change value until the transponder exits the logical link (sleeps & re-awakens). This identifier shall be used as the Transponder ID only if the Transponder Type field indicates "Anonymous Link Entry". Otherwise, this identifier shall not be used. The Global ID value is not permitted.

4.8.9.4 Private ID—A permanent, unique 32-bit identifier which may be used exclusively to validate Agency Programming Messages (Message Type code 0111). This identifier shall be programmed into the unit during factory programming. The Global ID value is not permitted. The contents of the Private ID are not governed by this specification.

4.8.10 Transponder Type

This 4-bit field specifies the type of transponder, what capabilities are available for the transaction, and identifies which transponder ID is used for activation.

Bit	Code	Definition
3	1	Open-Road Frame capable
	0	Open-Road or Lane-Based capable
2	1	Anonymous Link Entry (Use Random ID for Transponder ID)
	0	Public Link Entry (Use Public ID for Transponder ID)
1,0	00	Extended Protocol Capable [1]
	01	Internal Read-Only
	10	Internal Read/Write
	11	Internal and External Read/Write

[1] Extended Protocol—Transponder Type field must be set to binary 0000 to signal the beacon of a capability to support an extended protocol. This feature is designed for future expansion. Any specific protocol is outside the scope of this standard.

4.8.11 Validation Check

This 8-bit field is generated by the link validation algorithm and is used by the beacon or transponder to validate a received Slot Data Message. All fields except the Header Code are included in the calculation.

4.8.12 Validation Seed

This 64-bit field contains the random number seed used to initialize the validation algorithm in a given frame. This seed is used in the validation of every Slot Data Message transmitted in the Transaction Phase. This feature provides uplink playback protection for the beacon.

4.9 Message Processing

4.9.1 Link Protocol Flow

The DSRC communications protocol permits two-way messaging between the beacon and one or more transponders in an application specific communications zone. Messages are separated into one or more data packets of 512 bits each.

4.9.1.1 Packet Communications may be accomplished by, but not limited to, any of the following means:

- Single packet per vehicle, one to four vehicles simultaneously each frame
- Multiple packets per vehicle per frame.
- Multiple packets per vehicle in multiple frames.
- Multiple packets between one or more vehicles in multiple frames.

4.9.1.2 Protocol flowcharts are shown in Figures 4.9.1.2–1 through 4.9.1.2–4.

BILLING CODE 4910-22-P

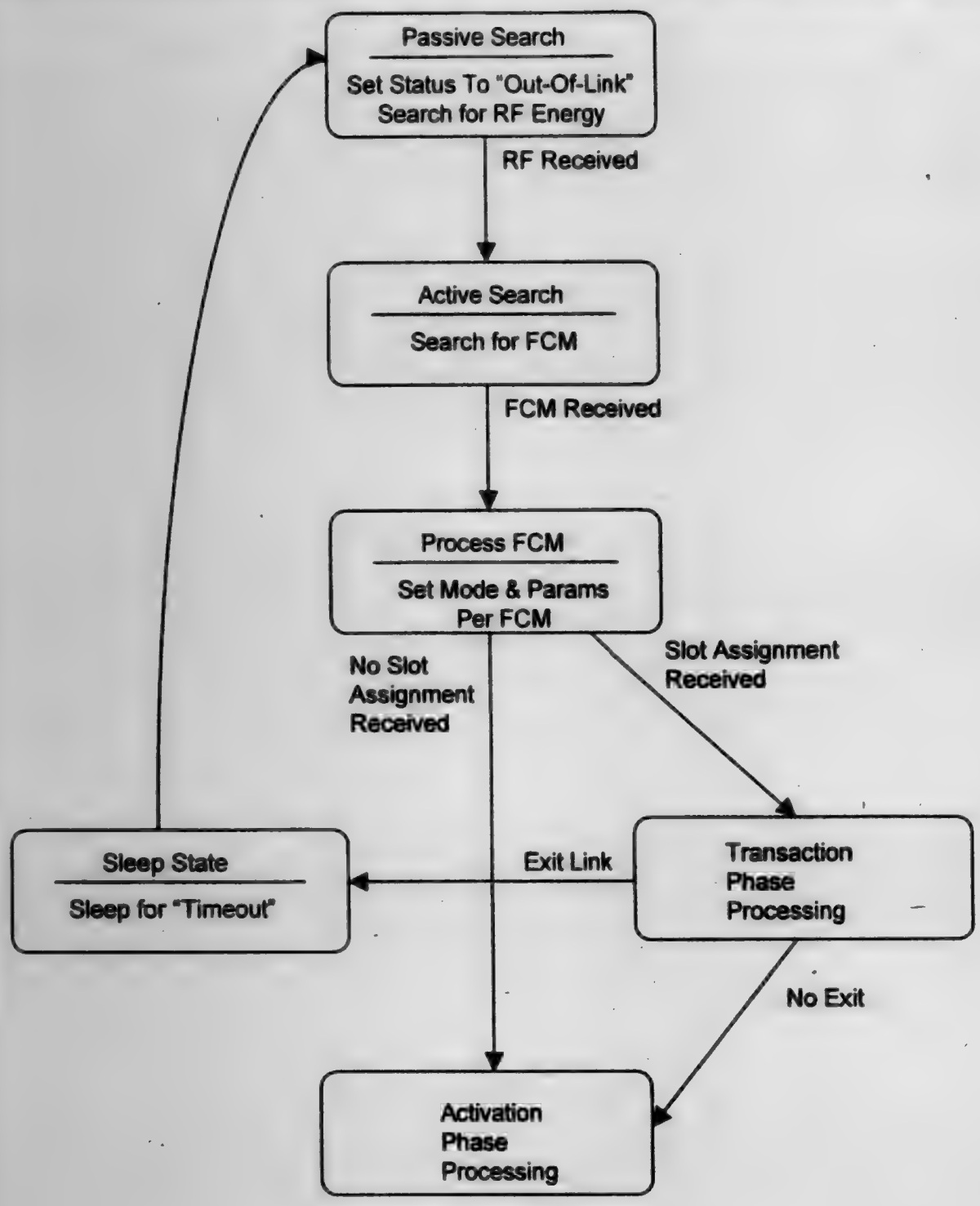


Figure 4.9.1.2-1 Top Level Protocol Flowchart

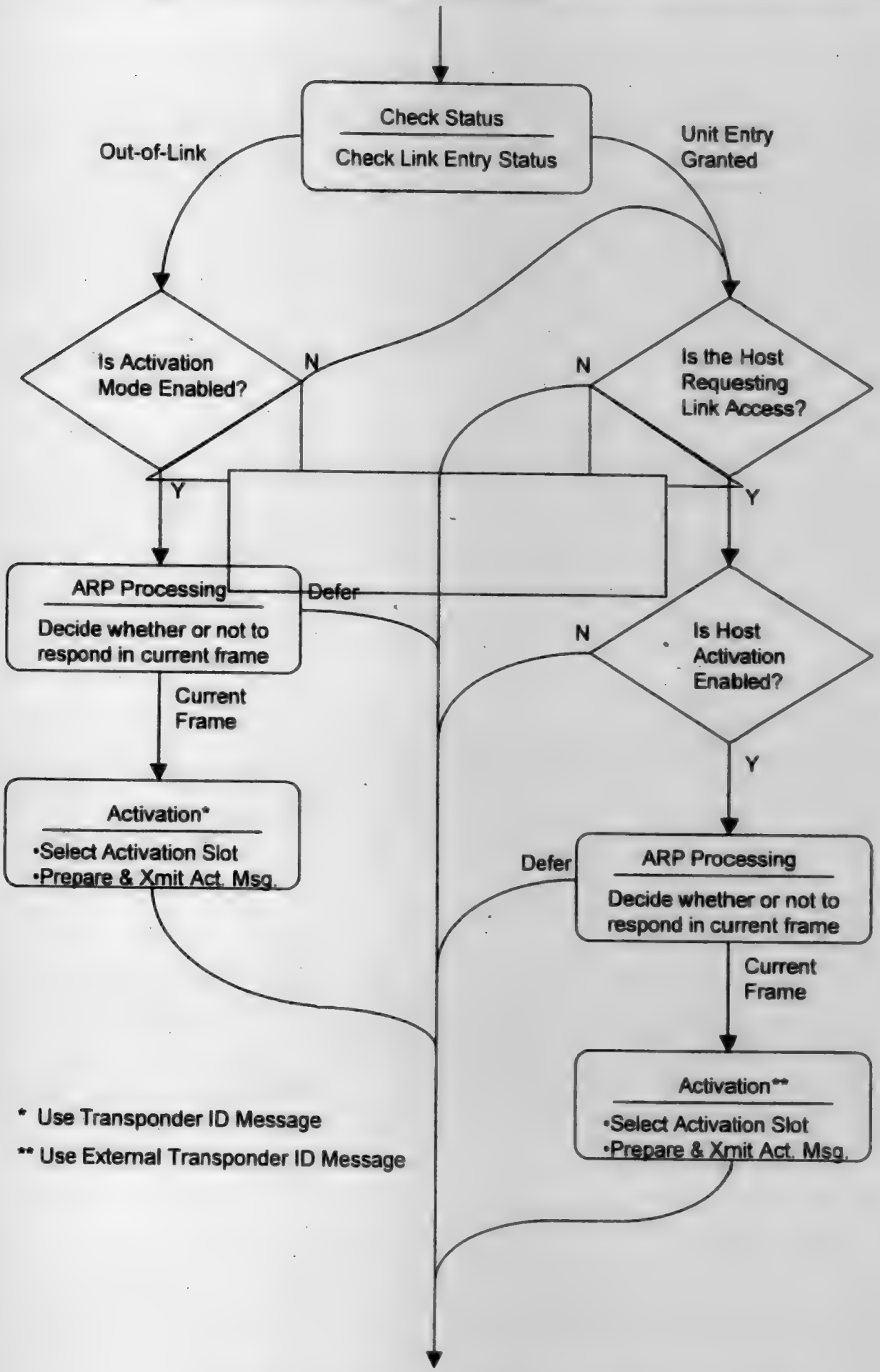


Figure 4.9.1.2-2 Transponder Activation Phase Processing

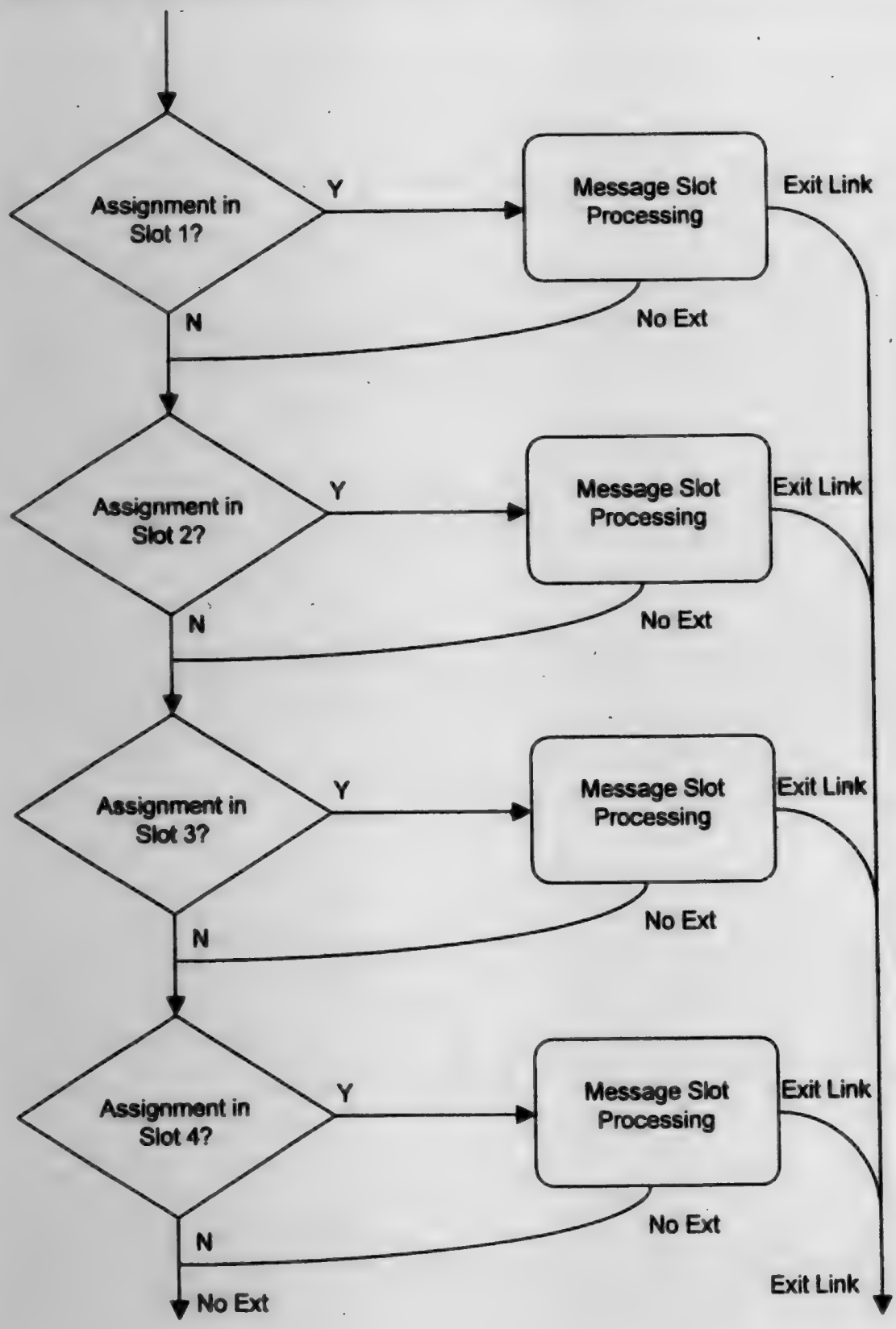


Figure 4.9.1.2-3 Transaction Phase Processing

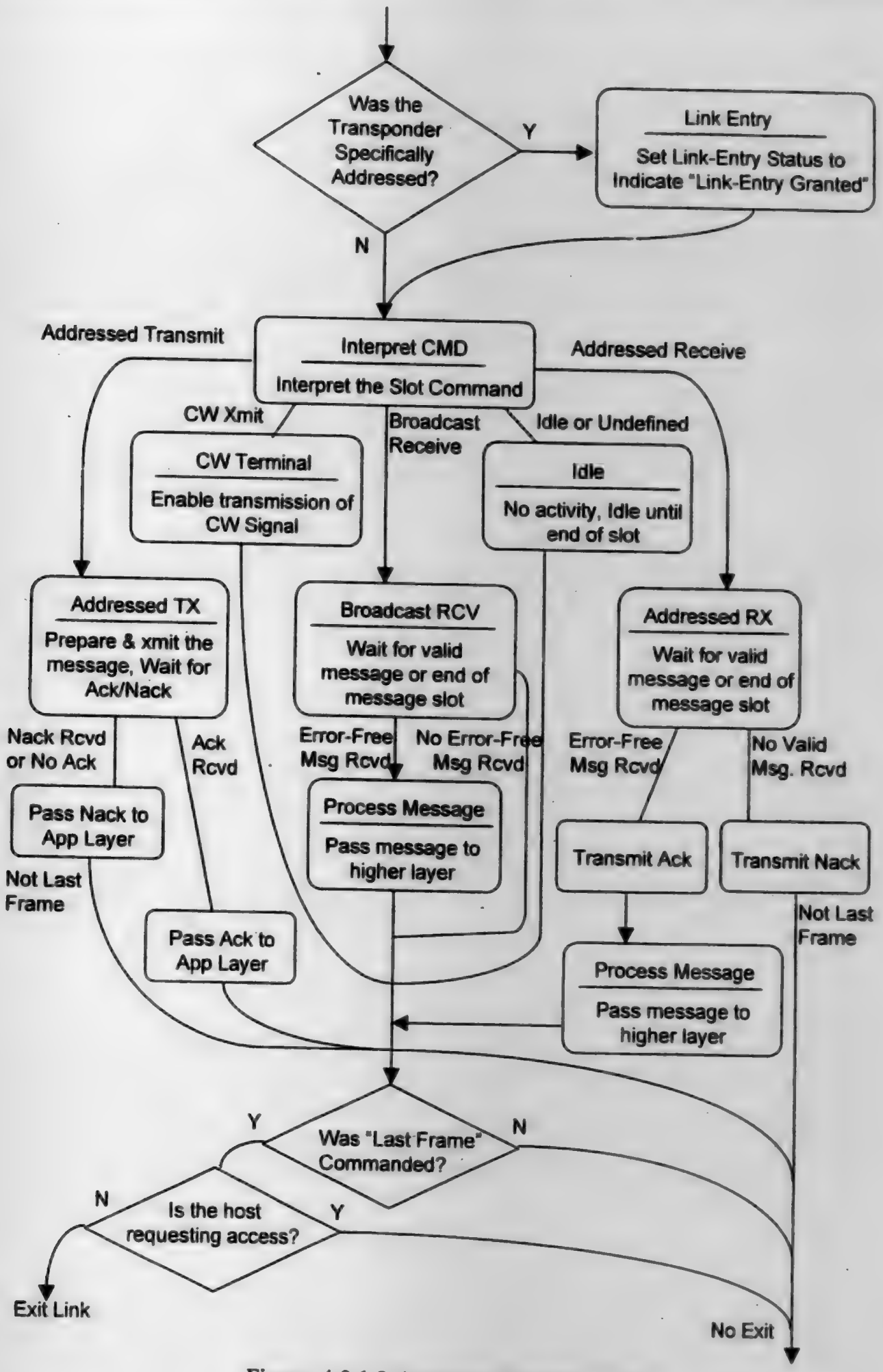


Figure 4.9.1.2-4 Message Slot Processing

4.9.2 Transponder ID Message

The Transponder ID Message is not used within the CVO protocol since only the External Transponder ID Message (MRA Message) is used. This message is nonetheless needed to maintain compatibility with legacy systems and is therefore required.

Upon first entering the beacon communication zone (after sleep timeout expires) and receiving a valid FCM, the transponder shall determine whether or not it is allowed to respond during the Activation Cycle. If the Frame Control field in the FCM indicates "Transponder Activation Enabled", then the transponder is allowed to respond in the Activation Cycle with a Transponder ID Message. In the case, the transponder shall use the Activation Response Parameter provided in the FCM in order to determine the response probability. The response probability shall be used to determine if the transponder will choose to respond in the current frame, or defer to a future frame. If the transponder chooses to defer to a future frame, then no activation message shall be transmitted in the current frame.

However, if the transponder chooses to respond in the current frame, the transponder shall interpret the Frame Control field in order to determine the current frame structure (i.e., how many activation slots). The transponder shall then randomly select one of the activation slots in which to send this message as shown in Figure 4.9.2–1. So long as the Frame Control field indicates "Transponder Activation Mode", the transponder shall repeat this process each frame until link entry is successful, as evidenced by an internal or external message slot assignment that is specifically addressed to the transponder. A message slot assignment with the Global ID of 0000 0000 shall not be considered sufficient to assume that a link entry is successful. However, any such message slot assignment shall be processed properly.

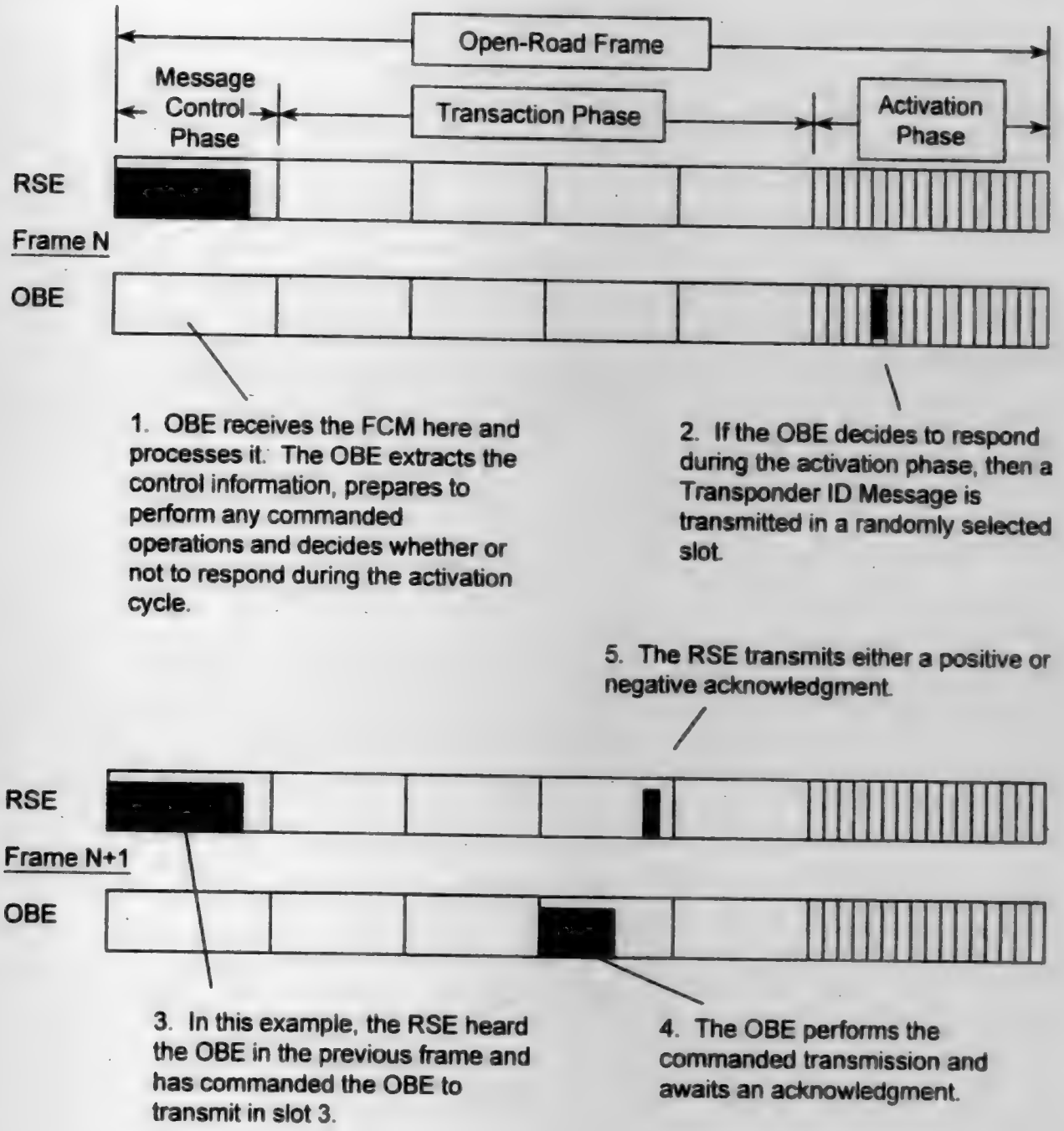


Figure 4.9.2-1 Sample Link Activation and Entry Sequence

If the Frame Control field indicates "Activation Inhibit", then the transponder shall refrain from responding during the Activation Cycle of the current frame.

4.9.3 External Transponder ID Message (Media Request Activation Message)

Upon receiving a transmit request from an attached application layer host, the transponder shall determine whether or not it is allowed to respond during the Activation Cycle. If the Frame Control field in the FCM indicates "External Activation Enabled", and if the transponder is currently in the link (i.e., the transponder has been previously assigned a message slot with its own Transponder ID), then the transponder is allowed to respond in the Activation Cycle with External Transponder ID Message.

In this case, the transponder shall use the Activation Response Parameter provided in the FCM in order to determine the response probability. The response probability shall be used to determine if the transponder will choose to respond in the current frame, or defer to a future frame. If the transponder chooses to defer to a future frame, then no activation message shall be transmitted in the current frame. If the transponder chooses to respond in the current frame, the transponder shall interpret the Frame Control field in order to determine the current frame structure (i.e., how many activation slots). The transponder shall then randomly select one of the activation slots in which to send this message. So long as the Frame control field indicates "External Activation Enabled", and the transponder remains in the link, The transponder shall repeat this process each frame until host link access is provided, as evidenced by an external message slot assignment. A message slot assignment with the Global ID of 0000 0000 shall not be considered sufficient to assume that link entry is successful. However, any such message slot assignment shall be properly processed.

If the Frame control field indicates "External Activation disabled", then the transponder shall refrain from responding during the Activation Cycle of the current frame.

4.9.4 Downlink Internal Message Slot

The Downlink Internal Message is not used within the CVO protocol since only external memory operations are performed. Likewise, the driver interface implemented through this message has been replaced for CVO operations with the IEEE 1455–99 user interface. This message and driver interface are nonetheless needed to maintain compatibility with legacy systems and are therefore required.

A message from the beacon to the transponder internal 512 bit message buffer. If the message was received without error then a positive acknowledgment shall be sent to the beacon if so commanded. If the data was received in error, the information shall be discarded and a negative acknowledgment sent to the beacon, if so commanded.

If the data field valid field in the driver interface command field indicates that the message data is valid, then the 256 least significant bits of the message shall be stored in the general-use portion of the transponder's internal memory. If the data field valid field in the driver interface command field indicates that the message data are not valid, the message data shall be discarded. However, the driver interface command shall be executed in all cases of a valid message reception.

Upon receipt of a valid Downlink Internal Message, the transponder shall activate the appropriate signals immediately. These signals shall be activated independently of the sleep function. Furthermore, the specified signal command shall override any previous signal command that is still active.

4.9.5 Downlink External Message Slot

A message from the beacon to a 512-bit buffer not located in the transponder. If the message was received without error then a positive acknowledgement shall be sent to the beacon if so commanded. If the data were received in error, the information shall be discarded and a negative acknowledgement sent to the beacon, if so commanded.

4.9.6 Uplink Acknowledgement Message

During an assigned message slot in which the transponder is scheduled to receive an addressed Slot Data Message, the transponder shall transmit an Acknowledgment Message with either a positive or negative indication. *Note that, during non-addressed message slots, acknowledgments are not expected, and should be ignored entirely.*

4.9.7 Uplink Internal Message Slot

A scheduled transmission in an assigned message slot from the transponder to the beacon. The entire 512-bit field shall be constructed using internal transponder memory and ID information. The least significant 256 bits of this field shall be copied directly from the General-use memory. The lower 192 bits of the most significant 256 bits shall be copied directly from the agency memory. The most significant 64 bits shall be used for transponder identification. Of these 64 bits, the most significant 32 bits shall be set equal to the Transponder ID (which could be either the Public ID or the Random ID). The lower 32 bits of the 64-bit field shall be set to zero (the Private ID shall never be transmitted). The bit positions of each field in the uplink message are defined below:

Field definition	Field size (bits)	Bit number
Public ID	32	480–511
All Zeros	32	448–479
Agency Memory Contents	192	256–447
General-Use Memory Contents	256	0–255

4.9.8 Uplink External Message Slot

A scheduled transmission in an assigned message slot from the transponder to the beacon. The transponder shall obtain the message packet from an external 512 bit buffer (application layer) and build the Slot Data Message.

4.9.9 Downlink Acknowledgement Message

During an assigned message slot in which the transponder is scheduled to transmit an addressed Slot Data Message, the beacon shall transmit an Acknowledgment Message with either a positive or negative indication. *Note that, during non-addressed message slots, acknowledgments are not expected, and should be ignored entirely.*

5. Transponder Resources

Transponders that are compliant with this document shall provide internal resources in accordance with the specifications described in this section. While a range of transponders having various capabilities may be defined in a manner compliant with those specifications, the basic structure and the capabilities definitions shall be adhered to in all cases. Not all resources defined in this section are mandatory in compliant transponders.

Many transponder identifiers provide for values that are available for registration. The registration process is controlled by the IEEE and is not defined within this document.

Note that this section is nearly identical to Clause 5 of IEEE 1455–99 with *one primary exception, the requirement to support a Transfer Page. The Transfer Page is intended to support the transfer of data files between the RSE and an on-vehicle data system or Onboard Computer (OBC) connected to the OBE (see Section 5.1.7).*

5.1 Transponder resources definition

This section functionally identifies and specifies the transponder resources requirements. These requirements shall in no way constrain the actual hardware implementation of transponders as long as the associated resources are partitioned in a manner compliant with this specification. A transponder compliant with this specification shall provide resources as defined in 5.1.1 through 5.1.12. These resources are illustrated in Figure 5.1–1.

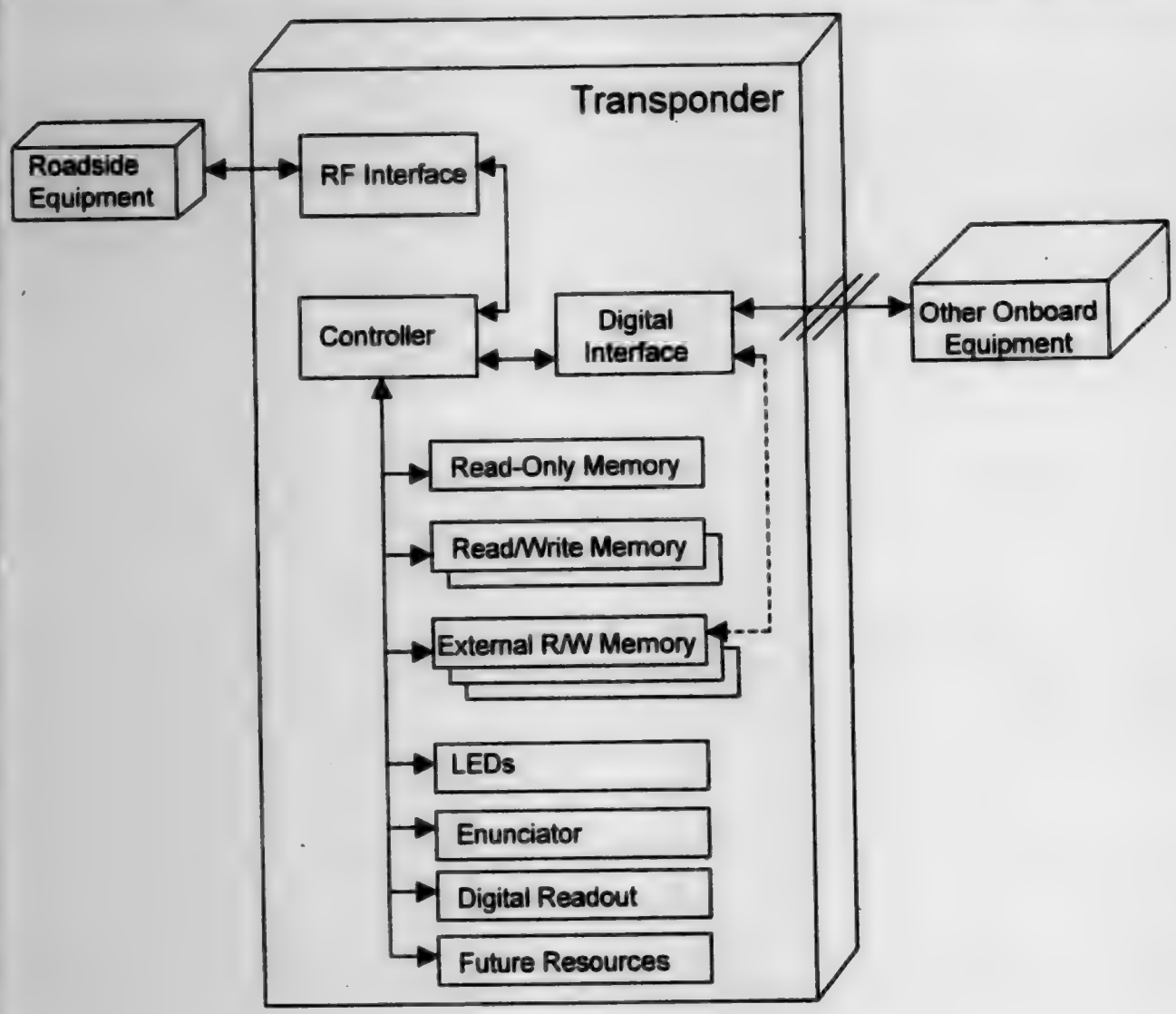


Figure 5.1-1 Transponder Resources

BILLING CODE 4910-22-C

5.1.1 Wireless interface

The transponder shall provide a wireless interface with the RSE. The characteristics of this interface are outside the scope of this specification. It is expected that this specification may be implemented in conjunction with a wide variety of radio frequency (RF) interfaces. However, the wireless interface must support the data transfers specified within this specification.

5.1.2 Controller

The controller shall interpret and implement commands (listed in Section 6) when received across the wireless interface. Implementation of those commands will typically require access to or control of the other transponder resources listed in this section. The controller may also implement the interface with other OBE.

5.1.3 External interface

Compliant transponders may provide an external interface. The availability and characteristics of this interface shall be indicated in the read-only memory (as defined in 5.2). If implemented, this interface shall provide other pieces of OBE with access to the transponder's resources and through those resources provide communications with the roadside.

The characteristics of this interface and the command set used across the external interface are outside the scope of this specification. However, it is anticipated that the command set will be comparable to that implemented across the wireless interface with the roadside.

5.1.4 Memory management and page identification

Memory within the transponder is formatted into partitions and pages. A partition is an area of memory that may be controlled by access credentials within which pages may be allocated. A page is an area of memory within a partition, which may also be protected with access credentials and from which data may be read or written.

As defined in 5.1.5 through 5.1.7, transponders may provide read-only memory, read/write memory, and/or extended read/write memory. While read-only memory and read/write memory pages are predefined, commands defined in Section 6 allow dynamic configuration of the extended read/write memory. This dynamic configuration may be accomplished by allocating partitions within the extended read/write memory or by reserving pages.

Pages may be reserved either within an existing partition or within the overall extended read/write memory area. A partition identifier is specified when a partition is allocated, and it is referenced when a page is reserved within the partition. A page identifier is specified when a page is reserved, and it is referenced when a page is accessed. A sample of partition identifiers is provided in Table 5.1.4–1.

TABLE 5.1.4–1—SAMPLE PARTITION IDENTIFIERS

Partition number	Partition designation
Hex (0000)	Reserved.
Hex (0001—FFFF)	Available for registration.

Compliant transponders shall comply with the following requirements:

- The minimum memory page size shall be 128 bits.
- The maximum memory page size shall be 64 Kbytes. This limitation is based upon the maximum length of a read/write memory page command.
- The first memory page shall always exist and shall be a read-only memory page as defined in 5.1.5.
- All memory pages shall have an associated 16-bit page identifier that can be used by the transponder commands described in Section 6.
- The first three transponder memory pages shall always be assigned the Page Identifiers hex (1) through hex (3).
- Page Identifiers hex (4) through hex (7) refer to predefined combinations of the first three memory pages.
- The page identifiers associated with the transponder user interface (UI) shall be assigned from values above hex (FEFF). These default values may be overridden by aliasing other page identifiers to the default identifiers using the commands defined in Section 6.
- Unreserved page identifiers may be assigned to agencies on an implementation-specific basis.

A sample of defined page identifiers is provided in Table 5.1.4–2. Page numbers shall be unique within a transponder, i.e., duplicate page numbers shall not be used in different partitions.

TABLE 5.1.4–2—SAMPLE PAGE IDENTIFIERS

Page number	Page designation
Hex (0)	Reserved.
Hex (0001 .. FFFF)	Specific values are defined in Table E.2 of IEEE 1455–99.

5.1.5 Read-only memory

Compliant transponders shall provide 16 bytes (128 bits) of read-only memory. The information within this region shall be formatted as specified in 5.2. The read-only memory shall be transmitted to the RSE within the VST (as defined in 9.5). The VST is returned by the OBE in response to a BST received from the RSE. The read-only memory may also be accessed using other memory access commands listed in Section 6.

This region of memory is "read only" from the roadside.

5.1.6 Read/write memory

Compliant transponders may provide zero, one, or two read/write memory regions. The availability of these memory regions shall be as indicated in the read-only memory as defined in 5.2.

When present, the read/write memory regions shall have the following characteristics:

- The short read/write memory region shall provide 16 bytes (128 bits) of storage.
- The long read/write memory region shall provide 32 bytes (256 bits) of storage.

The read/write memory images may be transmitted to the RSE within the VST command response, as defined in Section 6. The read/write memory regions may also be accessed using other memory access commands listed in Section 6.

5.1.7 Extended read/write memory

Compliant transponders may provide one or more extended read/write memory regions. The availability of these memory regions shall be as indicated in the read-only memory, as defined in 5.2. The extended memory may be configured into logical pages by the manufacturer and/or by issuance of the Reserve Memory Page command, as defined in 6.4.9. The size of a dynamically created page is specified as an operand of the Reservation command. Associated

with each page is a 16-bit page number. Permanent page numbers shall be reserved for specific purposes or agencies by registering the number. Table E.2 of IEEE 1455–99 provides a list of pre-assigned page numbers and their associated use. These pages may, optionally, have access credentials to protect the page for write or read/write access.

The list of reserved pages for a given transponder may be requested by issuing the Query Memory Configuration command, as defined in 6.4.11.

5.1.7.1 Transfer Page

This specification defines a new type of Extended Read/Write memory page called a Transfer Page. A Transfer Page is intended to support the transfer of data files between the RSE and an on-vehicle data system or Onboard Computer (OBC) connected to the OBE. On-vehicle data systems shall use the Transfer Page for data transfers to or from the roadside. The interface between the OBE and the OBC may be chosen at the vendor's discretion.

Definition: A Transfer Page is a scratchpad in the OBE memory. It can be written to and read from by both the DSRC interface and the OBC interface. Data written to a Transfer Page by one interface shall be transferred out via the other interface. Transfer Pages are registered as normal memory pages and accessed by the RSE by normal Read Memory Page and Write Memory Page commands. The OBE shall contain a list of page numbers that will be treated as Transfer Pages. The list may be fixed within OBE memory during manufacture or may be field programmable at the discretion of the vendor. The interface to the OBC must be implemented with a "handshake" protocol, assuring that data flow to and from the OBC is under control of the OBE and data transfers are reliably received in either direction. A Transfer Page conforms to the size constraints for Extended Read/Write Memory and is not protected by access credentials.

Operation: Files are broken down by the sending application into blocks appropriate to the defined size of the Transfer Page. Each block transfer is handled as a separate IEEE 1455 Read Memory Page or Write Memory Page command. Each block will include a Transfer Page Header. The Transfer Page Header is derived from the IEEE 1455–99 ITS Application/Utility Messages.

Downlink Flow Summary

—The BOA breaks the file into transfer page sized blocks.

—The BOA requests a page write to the OBE Transfer Page and passes the first block to the Resource Manager.

—The RM performs a page write operation to the Transfer Page using the IEEE 1455 Write Memory Page command.

—Upon receiving data in the Transfer Page, the OBE initiates transfer to the OBC. The IEEE 1455 Command Response is not returned to the RSE until the complete contents of the block have been written to the OBC and the required handshake has been fulfilled.

—Upon receiving confirmation that the first block has been successfully written to the OBE (and therefore to the OBC) the BOA requests another page write to the Transfer Page and passes the next block of the file. This process continues until the entire file is transferred.

Uplink Flow Summary

—The BOA requests a page write to the Transfer Page. The data contained on the page consists of OBC application commands requesting the uplink of the desired data files. As a result of these commands, the OBC writes a page-sized block of the requested data to the Transfer Page.

—The BOA requests a page read from the Transfer Page. The Resource Manager holds this request until a "command successful" indication is received from the previous RSE page write (indicating that the request has been written to the OBC) and then commands a page read of the Transfer Page.

When the BOA receives the page from the Resource Manager, it requests another read of the Transfer Page. This process continues until the entire file is transferred.

Transfer Page Header: The Transfer Page Header combines the function of the IEEE 1455 ITS Application Message Header and the "RSE to Other OBE" and "Other OBE to RSE" utility messages. Table 5.1.7.1–1 provides the layout of the header. Table 5.1.7.1–2 specifies the fields and values.

TABLE 5.1.7.1–1.—HEADER LAYOUT

Message identifier	OBE address	Message length	Error detect code	Message body
Bits 0 .. 7	Bits 8 .. 39	Bits 40 .. 55	Bits 56 .. 63	Remainder of page.

TABLE 5.1.7.1–2.—HEADER FIELDS AND VALUES

Field	Field name	Type	Length	Values
1	Message Identifier	Integer	8 bits	hex 01, other values are reserved for future use.
2	OBE Address	Bit String	32 bits	Vehicle bus address, vehicle device, or vehicle application.
3	Message Length	Integer	16 bits	(0..65535); Length of Message Body minus one, in bytes, does not include the header.
4	Error Detect Code	Bit String	8 bits	XOR Checksum of the Message Body.
5	Message Body	Octet String	1 to 65636 bytes	binary data.

5.1.8 Lamps

Compliant transponders may provide a red, a green, and a yellow lamp; it is not necessary for all lamps to be present. The availability of these lamps shall be as indicated in the read-only memory, as defined in 5.2. Lamps are controlled using the Set User Interface command specified in 6.4.6.

5.1.9 Enunciators

Compliant transponders may provide one or more enunciators. The availability of these enunciators shall be as indicated in the read-only memory, as defined in 5.2. Enunciators are controlled using the Set User Interface command specified in 6.4.6. Character readout

Compliant transponders may provide a digital readout. The availability of a digital readout shall be as indicated in the read-only memory, as defined in 5.2. The digital readout is controlled using the Set User Interface command specified in 6.4.6 and the Map User Interface command specified in 6.4.7.

The digital readout shall display Text String messages (defined in 8.7.1) that are stored in the memory page to which the digital readout is mapped. Controls may be provided that enable the user to scroll from one message to another within the mapped memory page.

5.1.11 Keypad

Compliant transponders may provide a keypad. The availability of a keypad shall be as indicated in the read-only memory, as defined in 5.2.

The data that are entered using the keypad shall be stored as a Text String message in the memory page to which the keypad is mapped. The memory-related commands specified in Section 6 shall be used to retrieve data entered at the keypad and to clear previously entered data.

5.1.12 Future resources

Future revisions of this specification may provide for additional UI resources. The availability of these resources is defined in 5.2; they shall be controlled using the Set User Interface command specified in 6.4.6 and the Map User Interface command specified in 6.4.7.

5.2 Read-only memory definition

Information within the read-only memory region shall be formatted as defined in Table 5.2–1 and described in 5.2.1 through 5.2.18.

TABLE 5.2–1.—READ-ONLY MEMORY FIELDS

Field name	Location (bits)	Length (bits)	Specification and description
T–APDU Tag	0–3	4	ASN.1 tag for an INITIALISATION.response (i.e., a VST) = hex (9).
Fill	4–7	4	Nonfunctional bits used to maintain byte boundaries.
Profile	8–15	8	Profile field of VST.
Number of Applications	16–23	8	Number of applications in the applications list = hex (1).
Application Identifier (AID)	24–31	8	Mailbox AID = hex (D).
EID/Revision Level	32–39	8	EID; shall be used for the IEEE Std 1455–1999 revision level.
Container Tag	40–47	8	Octet string tag = hex (4); used to encapsulate the VST parameter.
Octet String Length	48–55	8	The actual length (in octets) of the subsequent data in the octet string.
Octet String Data		Includes following fields.	An octet string used for ASN.1 compliance, which comprises the subsequent fields defined in this table.
Returned Pages Flag	56–57	2	Bits that correspond to the two memory images returned, as specified in the BST.
Reserved 1	58–60	3	Reserved by IEEE for future use.
Memory Configuration	61–63	3	Defines the availability of various memory regions.
Transponder Configuration	64–71	8	Defines the availability of various transponder peripherals, such as lamps and enunciators.
Service Agency	72–87	16	Identifies the unique agency that is primarily responsible for issuing statements corresponding to services received by the transponder's user.
Serial Number Type	88–91	4	Indicates how the serial number and manufacturer identifier should be interpreted.
Manufacturer Identifier	92–107	16	Identifies the manufacturer of the transponder.
Serial Number	108–127	20	Uniquely identifies the transponders produced under a single Manufacturer Identifier value.

5.2.1 T–APDU Tag

The T–APDU Tag field is required to provide ASN.1 compliance (see the ASN.1 definition of T–APDUs in Annex A of IEEE 1455–99). This field shall be set to hex(9) to indicate an INITIALISATION.response.

5.2.2 Fill

The Fill field is required to maintain byte boundaries. This field shall be set to hex (0).

5.2.3 Profile

The Profile field contains communications profiles as defined by the specific lower layer service. The values for this field are defined in Table E.3 of IEEE 1455–99, and a sample is shown in Table 5.2.3–1.

TABLE 5.2.3–1.—SAMPLE PROFILE FIELD VALUES

Value	Definition
Hex (0)	Reserved.
Hex (1)	Unspecified profile.
Hex (0 .. FF)	Available for registration.

5.2.4 Number of Applications

This field contains the number of applications in the subsequent application list. The value for this field shall always be set to hex(1).

5.2.5 AID

The AID field is required to provide compatibility with the CEN VST definition. This field shall be set to hex(D), which is the AID for the Mailbox application.

5.2.6 EID/Revision Level

The EID field is required to provide compatibility with the CEN VST definition. Within this specification, the EID/Revision Level field indicates the revision level of this specification with which the transponder complies. Values shall be interpreted as defined in Table 5.2.6–1.

TABLE 5.2.6–1.— EID/REVISION LEVEL FIELD VALUES

Value	Interpretation
Hex (0)	Reserved.
Hex (1)	Prerelease (field testing; current value).
Hex (2)	Initial release.
Hex (3 .. FF)	Reserved.

5.2.7 Container Tag

The Container Tag field is required to provide ASN.1 compliance. This field shall be set to hex (4), which indicates an octet string.

5.2.8 Octet String Length

The Octet String Length field, which is required to provide ASN.1 compliance, indicates the length of the subsequent octet string data. The low order bit of octet string length must always be set to zero for ASN.1 compliance (meaning that this octet is used for actual length designation). The remaining 7 bits of the Octet String Length field contain the actual length (in octets) of the subsequent data in the octet string. Therefore, the maximum length for the data is 127 bytes.

The Octet String Length field shall be overwritten dynamically by the OBE transponder application during VST transmission. It is overwritten with a value that represents the sum of the size of the memory images being returned in the VST, which includes the read-only memory.

5.2.9 Octet String Data

The Octet String Data field is descriptive only and has no actual bit representation in and of itself. The purpose of this descriptive field is to indicate that the octet string data that follow the Octet String Length field include the subsequent fields defined for read-only memory and represent the balance of the VST structure.

5.2.10 Returned Pages Flag

The Returned Pages Flag field indicates which memory pages requested in the BST are present in the transponder and, therefore, which memory pages are being returned as part of the VST. This field shall be interpreted as defined in Table 5.2.10–1.

TABLE 5.2.10–1.—RETURNED PAGES FIELD INTERPRETATION

Location (bits)	Interpretation
0	First page flag; a value of 1 indicates that the first page is returned within the VST.
1	Second page flag; a value of 1 indicates that the second page is returned within the VST.

5.2.11 Reserved 1

The Reserved 1 field is required to maintain byte boundaries. This field shall be set to hex (0).

5.2.12 Memory Configuration

The Memory Configuration field indicates which read/write memory regions are present. Values shall be interpreted as defined in Table 5.2.12–1.

TABLE 5.2.12–1.—READ/WRITE MEMORY CONFIGURATION FIELD VALUES

Value	Interpretation
Hex (0)	No read/write memory present.
Hex (1)	Short read/write memory present.
Hex (2)	Long read/write memory present.
Hex (3)	Short read/write and long read/write memory present.
Hex (4)	Extended memory present.
Hex (5)	Short read/write and extended memory present.
Hex (6)	Long read/write and extended memory present.
Hex (7)	Short read/write, long read/write, and extended memory present.

5.2.13 Transponder Configuration

The Transponder Configuration field indicates the configuration of installed transponder peripherals. The method of interpreting the field values is dependent upon the status of Bit 7. If Bit 7 is 1, then the remaining seven bits shall be individually interpreted to determine the peripherals configuration as defined in Table 8. If Bit 7 is 0, then the remaining seven bits shall be interpreted as an enumerated value using Table E.4 of IEEE 1455–99 (sample shown in Table 5.2.13–1).

TABLE 5.2.13–1A.—TRANSPONDER CONFIGURATION FIELD INTERPRETATION, BIT 7 SET TO 1

Location (bits)	Interpretation
7 (msb)	Always 1 when field is interpreted as binary flags rather than an enumerated value; if 0, then Table 9 applies.
6	Red, yellow, and green lamps all present.
5	Enunciator present.
4	External network interface present.
3	Character readout present.
2	Keypad present.
1	Reserved.
0 (lsb)	Reserved.

TABLE 5.2.13–1A.—TRANSPONDER CONFIGURATION ENUMERATED FIELD VALUES, BIT 7 SET TO 0

Value	Interpretation
Hex (0)	Reserved.
Hex (1 .. 7)	Available for registration. Specific values are defined in Table E.4.

5.2.14 Service Agency

The Service Agency field indicates the service agency that is responsible for collecting fees incurred by the person using this transponder. Values shall be interpreted as defined in Table E.5 of IEEE 1455–99.

5.2.15 Serial Number Type

The Serial Number Type field indicates the nature of the Manufacturer Identifier and the Serial Number fields when they are transmitted to the RSE. Those fields may be protected by encryption or masking, as indicated by the Serial Number Type field. The Serial Number Type field shall not be encrypted or masked. Values shall be interpreted as defined in Table 5.2.15–1.

TABLE 5.2.1–1.—SERIAL NUMBER TYPE FIELD VALUES

Value	Interpretation
Hex (0)	Reserved.
Hex (1)	Clear; Manufacturer Identifier and Serial Number fields are not altered.
Hex (2)	Encrypted; Manufacturer Identifier and Serial Number fields are encrypted.
Hex (3)	Masked; Manufacturer Identifier and Serial Number fields are masked.
Hex (4 .. F)	Reserved.

5.2.16 Manufacturer Identifier

The Manufacturer Identifier field indicates the manufacturer that produced the transponder. Values shall be interpreted as defined in Table E.6 of IEEE 1455–99. The Manufacturer Identifier field may be masked or encrypted when transmitted to the RSE.

5.2.17 Serial Number

The Serial Number field shall uniquely identify a transponder within a set of devices having the same Manufacturer Identifier field value. The method of assigning values to this field shall be entirely controlled by the manufacturer.

However, uniqueness shall be preserved. The Serial Number field may be masked or encrypted when transmitted to the RSE.

5.2.18 Unique identifier

The 40-bit sequence of data consisting of the Serial Number Type, Manufacturer Identifier, and Serial Number fields may be referred to as the transponder's unique identifier. The characteristics of the constituent fields shall be preserved as defined in 5.2.15 through 5.2.17.

5.3 Interoperability requirements

Compliant transponders meet all the requirements specified in this specification. Interoperable transponders additionally provide optional features. The following features defined in this subsection shall be provided in interoperable transponders:

—Read-only memory (128 bits), which shall not be protected by access credentials.
—Short read/write memory (128 bits), which shall not be protected by access credentials.
—Long read/write memory (256 bits), which shall not be protected by access credentials.
—Extended read/write memory (at least 512 bits).
—Red, yellow, and green lamps.
—An enunciator.

Interoperable transponders may also provide additional optional features such as using access credential protection. Additional interoperability requirements are specified in 6.6.

6. Transponder Commands and Memory Access

6.1 Basic concepts

Transponders that are compliant with this specification shall provide the capability to process the commands specified in this section (which is taken directly from Clause 6 of IEEE 1455–99). These commands reference the memory, processing, and UI resources that may be present on the transponder. The commands are independent of the BOA that may be utilizing those resources. The availability of the resources that may be referenced by commands is indicated by bits allocated in read-only memory that are defined in 5.2 and by the results of the Query Memory Configuration command.

The RSE shall not intentionally generate commands to the transponder that reference resources known to be absent from the addressed transponder.However, each of the commands defined in this section specifies the behavior that shall be exhibited when such absent resources are referenced.

The OBE is not in all cases required to provide the full set of behaviors specified for each of the commands specified in this section. For each command, abnormal behaviors are specified that include the method (if any) by which the OBE shall notify the RSE if a received command is optional and has not been fully implemented in the receiving OBE.

Some of the commands defined in this section, such as Read Memory Page and Write Memory Page, require transmission of an entire memory page image. The End Of Data message may be used to terminate the region of a memory page that contains valid messages. When an End Of Data message is present, the RSE and OBE may transmit only that initial portion of a memory page that contains valid messages. If this optional feature is not implemented, then the area of a memory image that does not contain valid messages shall be transmitted and shall be set to zeroes.

6.2 Command set template

Each command shall consist of the fields shown in Table 6.2–1 and described in 6.2.1 through 6.2.6.

TABLE 6.2–1.—COMMAND SET FIELDS

Command identifier	Command transaction identifier	Command length	Access control length	Access control	Command parameter
1 byte	1 byte	2 bytes	1 byte	1 to 32 bytes	Variable.

6.2.1 Command Identifier

6.2.1.1 Length

The length of the Command Identifier field shall be 1 byte.

6.2.1.2 Usage

The Command Identifier field shall identify the command to be performed and shall take on the values shown in Table 6.2.1.2–1. The high order bit (bit 7) of this field indicates the presence or absence of access credentials in the command. If bit 7 is 1, then the Access Control Length and Access Control fields shall be present after the Command Length field. If bit 7 is 0, then the Access Control Length and Access Control fields shall be omitted and the Command Length field shall be followed by the Command Parameter field.

TABLE 6.2.1.2–1.—COMMAND IDENTIFIERS (continued)

Codes	Codes with credentials	Meaning	OBE command support
Hex (0 .. F)	Hex (80 .. 8F)	Reserved	
Hex (10)	Hex (90)	Read Memory Page	Required to access memory other than through memory images returned in the VST.

TABLE 6.2.1.2–1.—COMMAND IDENTIFIERS (continued)—Continued

Codes	Codes with credentials	Meaning	OBE command support
Hex (11)	Hex (91)	Write Memory Page	Optional[1] (required if read/write memory is present).
Hex (12)	Hex (92)	Append Message	Optional[1] (required if read/write memory is present).
Hex (13)	Hex (93)	Initialize Circular Queue	Optional (required for circular queues).
Hex (14)	Hex (94)	Write Circular Queue	Optional* (required for circular queues).
Hex (15) .. (1F)	Hex (95) .. (9F)	Reserved	
Hex (20)	Hex (A0)	Set User Interface	Optional* (required if OBE has UI).
Hex (21)	Hex (A1)	Map User Interface	Optional.
Hex (22 .. 2F)	Hex (A2 .. AF)	Reserved	
Hex (30)	Hex (B0)	Sleep Transponder	Optional.
Hex (31 .. 3F)	Hex (B1 .. BF)	Reserved	
Hex (40)	Hex (C0)	Reserve Memory Page	Optional (required if extended memory is present).
Hex (41)	Hex (C1)	Release Memory Page	Optional (required if Reserve Memory Page command is implemented).
Hex (42)	Hex (C2)	Query Memory Configuration	Optional (required if Reserve Memory Page command is implemented).
Hex (43)	Hex (C3)	Reserve Memory Partition	Optional.
Hex (44) Hex (C4)	Release Memory Partition xID	Optional. (required if Reserve Memory Partition command is implemented).	
Hex (45 .. 6F)	Hex (C5 .. EF)	Reserved	
Hex (70 .. 7F)	Hex (F0 .. FF)	Available for manufacturer-specific testing.	Optional—shall not be used in production units deployed in the field.

[1] These commands are supported in broadcast mode.

6.2.2 Command Transaction Identifier

6.2.2.1 Length

The length of the Command Transaction Identifier field shall be 1 byte.

6.2.2.2 Usage

The Command Transaction Identifier field shall be an identifier that is uniquely calculated for each instance of a command. This identifier is returned in the command response and allows the resource manager to match a received response to a specific sent command.

6.2.3 Command Length

6.2.3.1 Length

The length of the Command Length field shall be 2 bytes.

6.2.3.2 Usage

The Command Length field shall specify the total length in bytes of the command instance, including all fields except the Command Identifier field, the Command Transaction Identifier field, and this Command Length field. The maximum value of this field effectively constrains the maximum size of a transferred memory image.

6.2.4 Access Control Length

6.2.4.1 Length

The length of the Access Control Length field shall be 1 byte.

6.2.4.2 Usage

The Access Control Length field shall specify the length of the Access Control field in bytes. This field, if present, will never be zero.

6.2.5 Access Control

6.2.5.1 Length

The length of the Access Control field shall vary up to 32 bytes, as specified by the Access Control Length field.

6.2.5.2 Usage

The Access Control field shall be used to provide access controls for command instances. The actual value of the Access Control field is implementation-specific and would typically follow some type of encryption and/or authentication scheme.

6.2.6 Command Parameters

6.2.6.1 Length

The length of the Command Parameters field shall be fixed for each command except for the Write Memory, Append Message, Write Circular Queue, and Set User Interface commands, which have variable parameter lengths.

6.2.6.2 Usage

The Command Parameters field shall be specific to each command set.

6.3 Command information flow

This specification provides for two communication modes. In the "connected" mode, all communications are prefaced by a BST/VST exchange that connects the RSE to a specific transponder. In the "broadcast" mode, transponder commands are broadcast from the RSE to all passing transponders without first establishing an RSE-to-OBE connection using a BST/VST. Transponders shall remain ready to receive a communication at all times, subject to vendor-specific power consumption optimization.

The connected mode is recommended because it allows the RSE to verify the transponder configuration before additional commands are transmitted to the transponder. However, the broadcast mode may be appropriate in certain applications where the communication opportunity is constrained.

Section 9 discusses all application layer services in detail. Annex C provides illustrations for the flow of commands from the resource manager to the OBE transponder application via the application layer.

6.3.1 Connected mode information flow

In the connected mode, the following RSE-to-OBE information flow shall be observed:

(a) The resource manager shall register itself as part of its startup sequence by using the RegisterApplicationBeacon service in the application layer. This registration causes the RSE application layer to construct a BST and initiate communication with potential OBE transponders.

(b) The connection is established when the OBE application layer returns a VST to the resource manager.

(c) The resource manager shall determine appropriate commands, based upon registration requests from the connected BOAs.

(d) The resource manager shall formulate the command instance using supplied information.

(e) The resource manager shall use the ACTION.request service in the application layer to transmit the command to the OBE. The OBE shall provide a response if required by the Mode field in the Action.request.

(f) The OBE shall process the command received from the resource manager as an ACTION.indication service and shall respond, if required, using the ACTION.response service of the OBE application layer.

(g) The resource manager shall process the received ACTION.confirm, potentially resending the command with appropriate access controls.

6.3.2 Broadcast mode information flow

The broadcast mode is used to transmit a command or a fixed set of commands to every transponder that passes through the RSE communication zone. In the broadcast mode, the following RSE-to-OBE information flow shall be observed:

(a) The resource manager may use the BroadcastData.request service of the RSE application layer to broadcast to the OBE.

(b) In that case, the OBE transponder application shall use the GetBroadcastData.request service of the OBE application layer to access a command or command set that was broadcast from the resource manager.

(c) The resource manager may also use the ACTION.request service of the RSE application layer to broadcast a command or command set in a broadcast mode. This may be accomplished by setting the LID field of the ACTION.request to a global LID; in this case a response from the OBE may also be requested by setting the Mode field of the ACTION.request.

(d) This ACTION.request will fail if the lower layer service associated with the application layer does not support the optional DATASEND_RESPOND_REPEAT or DATASEND_NORESPOND_REPEAT messages defined in 9.3.2. In this case, the RSE application layer may choose to repeat the command.

Also, subject to the capabilities of the lower layer media, the RSE must provide for the case that multiple transponders are within the communications zone at the time of transmission. The OBE transponder application shall use the ACTION.response service of the OBE application layer to send command responses back to the resource manager in response to a command received as a result of the resource manager sending that command using a broadcast ACTION.request.

6.4 Command definitions

The commands shall be created by the RSE and processed by the OBE as specified in 6.4.1 through 6.4.13. The command identifier values are shown with the Access Credential flag set to 0. The Command Parameter field locations are shown as if the Access Control Length and Access Control fields were not present. Details regarding command responses are provided in 6.5.

6.4.1 Read Memory Page (mandatory)

The Read Memory Page command shall initiate transmission of the specified OBE memory pages to the RSE.

6.4.1.1 Command set definition

The Read Memory Page command shall consist of the fields shown in Table 6.4.1.1–1.

TABLE 6.4.1.1–1.—READ MEMORY PAGE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	hex (10) / Hex (90).
Command transaction identifier	1	1	Identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes. A nonzero value indicates that the Page Identifier field will be offset by the indicated number of bytes (max. 32).
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		

6.4.1.2 OBE normal behaviors

The OBE shall access the memory page specified by the Read Memory Page command.

If the OBE successfully executes the Read Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success, the Response Data Length field set to the length of the read memory image, and the memory image itself in the Response Data field.

6.4.1.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions. See Table 6.5.3.4–1 for definitions.

Command Not Recognized
Access Control Error
Page Not Defined
Memory Access Error
Command Failed

6.4.2 Write Memory Page (optional)

The Write Memory Page command is suffixed by a memory image that shall be stored in the specified OBE memory page.

6.4.2.1 Command set definition

The Write Memory Page command shall consist of the fields shown in Table 6.4.2.1–1.

TABLE 6.4.2.1–1.—WRITE MEMORY PAGE COMMAND FIELDS (CONTINUED)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (11) / Hex (91).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2 xl		
Memory image	End of Access Control field + 3 .. n.		The information that shall consist of sequenced messages followed by zero-fill bytes or an End Of Data message identifier. The length of this image is only constrained by the maximum command length defined in 6.2.3.

6.4.2.2 OBE normal behaviors

The OBE shall store the memory image within the received command by completely overwriting the referenced agency memory page.

If the OBE successfully executes the Write Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.2.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
—Command Not Recognized
—Access Control Error
—Page Not Defined
—Page Length Mismatch
—Memory Access Error
—Command Failed

6.4.3 Append Message (optional)

The Append Message command is suffixed by a message image that shall be appended to the end of the previously used memory within the specified OBE memory page.

6.4.3.1 Command set definition

The Append Message command shall consist of the fields shown in Table 6.4.3.1–1.

TABLE 6.4.3.1–1.—APPEND MESSAGE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (12) / Hex (92).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional). Number of access credential bytes.
Access Control	5 .. n	0/1 .. 32	(Optional). Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		
Message Image	End of Access Control field + 3 .. n		The information that shall be appended to the specified memory page.

6.4.3.2 OBE normal behaviors

The OBE shall append the message image within the command to the end of existing messages in the specified page. Positioning within the page shall be determined by chaining through the stored messages until the first occurrence of either an End Of Data message or hex(00) following a message, where the next message header would begin. The message image shall be inserted at this point, overwriting the End Of Data message, if present. The new data shall be suffixed by either an End Of Data message or by zero filling the remainder of page.

If the OBE successfully executes the Append Message command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.3.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
Command Not Recognized
Access Control Error
Page Not Defined
Insufficient Memory
Memory Access Error
Command Failed

6.4.4 Initialize Circular Queue (optional)

The Initialize Circular Queue command shall cause all of the memory within the specified OBE extended memory page to be cleared to zeros and shall set any control data to indicate that the queue is empty.

6.4.4.1 Command set definition

The Initialize Circular Queue command shall consist of the fields shown in Table 6.4.4.1–1.

TABLE 6.4.4.1–1.—INITIALIZE CIRCULAR QUEUE COMMAND FIELDS

Field name	Location (bytes)	Length (bytes)	Specification and description
Command identifier	0	1	Hex (13) / Hex (93).

TABLE 6.4.4.1–1.—INITIALIZE CIRCULAR QUEUE COMMAND FIELDS—Continued

Field name	Location (bytes)	Length (bytes)	Specification and description
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2.		

6.4.4.2 OBE normal behaviors

The OBE shall clear the specified page to zeros and shall set any control data to indicate that the queue is empty.

If the OBE successfully executes the Initialize Circular Queue command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.4.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

Command Not Recognized
Page Not Defined
Access Control Error
Memory Access Error
Command Failed

6.4.5 Write Circular Queue (optional)

The Write Circular Queue command is suffixed by a message image that shall be written to the end of the circular queue within the specified OBE memory page.

6.4.5.1 Command set definition

The Write Circular Queue command shall consist of the fields shown in Table 6.4.5.1–1.

TABLE 6.4.5.1–1.—WRITE CIRCULAR QUEUE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (14) / Hex (94).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		
Message image	End of Access Control field 3 .. n		The information that shall be written to the end of the circular queue in the specified memory page.

6.4.5.2 OBE normal behaviors

The OBE shall write the message image within the received command by locating the end of the current circular queue contained in the referenced memory page, placing the message image at the end of the queue, and updating any queue control information. Existing messages shall be deleted on a first-in-first-out (FIFO) basis if required to create sufficient available memory for the insertion of the message image. All memory in the page that is not used for message storage shall be set to zero.

If the OBE successfully executes the Write Circular Queue command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.5.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
—Command Not Recognized
—Page Not Defined
—Access Control Error
—Insufficient Memory
—Memory Access Error
—Command Failed

6.4.6 Set User Interface (optional)

The Set User Interface command is suffixed by data specifying UI behaviors that shall be implemented by the OBE. The RSE may determine the UI elements that are available for a transponder by interpreting the Transponder Configuration field that is stored in the OBE read-only memory and transmitted to the RSE within the VST. The Transponder Configuration field is defined in Table 3. The RSE shall not address UI elements that are absent for a given OBE.

6.4.6.1 Command set definition I11The Set User Interface command shall consist of the fields shown in Table 6.4.6.1–1.

TABLE 6.4.6.1–1.—SET USER INTERFACE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (20) / Hex (A0).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Each command will affect only the addressed elements defined as follows:
User interface element	End of Access Control field + 2		Bit 0: Red lamp. Bit 1: Yellow lamp. Bit 2: Green lamp. Bit 3: Enunciator. Bit 4: Character display. Bits 5–15: Additional UI elements.
Type (ObeUICmdType)	End of Access Control field + 3	1	AbsoluteOff (0), AbsoluteOn (1), TimedCommand (2), Flashing Command (3), Reserved (4 .. 255).
Attributes:	End of Access Control field + 4 .. n	0	(Unused for Absolute Command).
Absolute command (0 bytes)	Control field + 4 .. n	2	Time period in 125 ms increments.
Timed command (2 bytes)		4	Cycle state bitmap, 125 ms per bit.
Flashing Command (5 bytes)		1	Repetition count (1 .. 255).

6.4.6.2 OBE normal behaviors

The OBE shall alter the UI element specified within the command parameter in the following fashion, depending upon the value of the type parameter:

—*Absolute Off command.* Turns the addressed UI element off. State is maintained until changed by a subsequent command.

—*Absolute On command.* Turns the addressed UI element on. State is maintained until changed by a subsequent command.

—*Timed command.* Turns the addressed UI element on for a specified period of time. The time period is specified in 125 ms increments.

—*Flashing command.* Cycles the state of the addressed UI element based upon a 4-byte bit map. Each bit in the map represents an interval of 125 ms (the total bit map represents 4 s). A repetition byte indicates the number of times the bit map cycle pattern should be performed (1 to 255 times).

If the OBE successfully executes the Set User Interface command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

The OBE may arbitrarily turn off any element after a preset period of time to preserve battery life.

The completion of a UI command shall not be affected by the reception of any other transmissions from the RSE except for an overriding UI command.

Table E.2 of IEEE 1455–99 defines a memory page associated with an enunciator. This is intended to support systems that provide a synthetic speech interface or other sophisticated auditory cues. The Set User Interface command

shall always be used to initiate changes to the UI, but the data in the enunciator memory page may be used to control the specific action.

Also, Table E.2 of IEEE 1455–99 defines a memory page associated with the character readout. The Set User Interface command shall always be used to initiate changes to the character display, but the specific information shown may be retrieved from the character display memory page.

6.4.6.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
Command Not Recognized
Access Control Error
Device Error
Command Failed

6.4.7 Map User Interface (optional)

The Map User Interface command shall cause the OBE to map a page of memory to the specified UI component. This reservation shall include the establishment of access control procedures. Mapping a page of memory to a specified UI element affects the behavior of the transponder when a Set User Interface command is subsequently received by indicating the information that is enunciated or displayed.

6.4.7.1 Command set definition

The Map User Interface command shall consist of the fields shown in Table 6.4.7.1–1.

TABLE 6.4.7.1–1.—MAP USER INTERFACE COMMAND FIELDS (CONTINUED)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (21) / Hex (A1).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credentials bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	1	Defines the UI element to be mapped.
User interface element			0: Keypad. 1: Character Display. 2: Enunciator voice 1. 3–255: Reserved for additional UI elements.
Page identifier	End of Access Control field + 2	2	Identifies referenced memory page (as per specification in Table E.2 of IEEE 1455–99).

6.4.7.2 OBE normal behaviors

The OBE shall first determine whether the specified page identifier has already been reserved. If the page identifier exists, then that page shall be used for all subsequent UI actions that reference the specified UI element. The predefined UI page identifiers listed in Table E.2 of IEEE 1455–99 may always be used to reference the specific pages that have been currently selected using the Map User Interface command. See 5.1.8 through 5.1.11 for how the data within the UI memory pages shall be utilized.

If the OBE successfully executes the Map User Interface command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.7.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
Command Not Recognized
Access Control Error
Previously Reserved
Device Error
Command Failed

6.4.8 Sleep Transponder (optional)

The Sleep Transponder command shall cause the receiving transponder to sleep (disable RF reception and transmission) for a period of time specified in the command instance. (This mechanism for commanding sleep is required in addition to the Sleep Timeout mechanism in the Frame Control Message (4.7.1 and 4.8.7).)

6.4.8.1 Command set definition

The Sleep Transponder command shall consist of the fields shown in Table 6.4.8.1–1.

TABLE 6.4.8.1–1 SLEEP TRANSPONDER COMMAND FIELDS (CONTINUED)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (30) / Hex (B0).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter:	End of Access Control field + 1	2	Sleep time duration in 125 ms increments.
Sleep duration	End of Access Control field + 2		

6.4.8.2 OBE normal behaviors

The OBE shall cause the transponder to cease responding to RF signaling for the specified period.

If the OBE successfully executes the Sleep Transponder command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field. Upon completion, the link shall be considered terminated.

When an RSE wishes an OBE to reinitialize, a sleep duration of 0 will result in the OBE reinitializing with the next Frame Control Frame that it receives.

6.4.8.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

Command Not Recognized
Access Control Error
Device Error
Command Failed

6.4.9 Reserve Memory Page (optional)

The Reserve Memory Page command shall cause the OBE to reserve a page of memory for the specified agency. This reservation shall include the establishment of access control procedures.

6.4.9.1 Command set definition

The Reserve Memory Page command shall consist of the fields shown in Table 6.4.9.1–1.

TABLE 6.4.9.1–1.—RESERVE MEMORY PAGE COMMAND FIELDS (continued)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (40) / Hex (C0).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Partition identifier	End of Access Control field + 1	2	Specifies the partition identifier in which the memory shall be allocated (as per specification in Table E.1). A value of 0 implies that the page shall be allocated within unpartitioned memory.
Command parameter	End of Access Control field + 3	2	Length (in bytes) of the memory page that is requested.
Page size	End of Access Control field + 4		
Page identifier	End of Access Control field + 5	2	Specifies the page identifier that will be associated with the allocated memory (as per specification in Table E.2).
	End of Access Control field + 6		

TABLE 6.4.9.1–1.—RESERVE MEMORY PAGE COMMAND FIELDS (continued)—Continued

Field name	Location (bytes)	Length	Specification and description
Page access credential type and length.	(End of Page Identifier field + 1)	0/1	(Optional.) Bits 0 .. 1 indicate the access credential scope: Bit 0 = Access Credentials applied to Read access Bit 1 = Access Credentials applied to Write access Bits 2 .. 7 : Number of access credentials bytes that shall be applied to reserved page; max value = 32.
Page access credentials	(End of Access Credential Type and Length + 1 .. n).	0/1 .. 32	(Optional.) Access credentials that shall be applied to reserved page.

6.4.9.2 OBE normal behaviors

The OBE shall determine whether sufficient unallocated memory exists in the specified partition to satisfy the request and that the page identifier is available. If so, the memory page shall be defined from the available memory in the specified partition. This reservation shall then be honored when subsequent page-related commands are received.

If the OBE successfully executes the Reserve Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.9.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error
—Partition Not Defined
—Page Not Defined
—Previously Reserved
—Device Error
—Command Failed
—Insufficient Memory

6.4.10 Release Memory Page (optional)

The Release Memory Page command shall cause the OBE to release a page of memory that had previously been reserved by the specified agency. This release shall require the same access controls (if any) that were specified at the time of page reservation.

6.4.10.1 Command set definition

The Release Memory Page command shall consist of the fields shown in Table 6.4.10.1–1.

TABLE 6.4.10.1–1.—RELEASE MEMORY PAGE COMMAND FIELDS (Continued)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (41) / Hex (C1).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credentials bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		

6.4.10.2 OBE normal behaviors

The OBE shall release the previously reserved page, allowing it to be reserved by other agencies and returning the associated extended memory to the pool available for new reservation requests.

If the OBE successfully executes the Release Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.10.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error

—Page Not Defined
—Device Error
—Command Failed

6.4.11 Query Memory Configuration (optional)

The Query Memory Configuration command shall cause the OBE to return to the RSE the information that describes the organization of memory including reserved memory partitions, reserved memory pages, and free (unreserved) memory.

Execution of this command may be controlled by access credentials. When this command is successfully executed, it shall return a complete description of the transponder memory organization. The data returned in response to this command shall not be affected by credentials required for specific partition page or memory access.

6.4.11.1 Command set definition

The Query Memory Configuration command shall consist of the fields shown in Table 6.4.11.1–1.

TABLE 6.4.11.1–1.—QUERY MEMORY CONFIGURATION COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (42) / Hex (C2).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	(4)	0/1	(Optional.) Number of access credentials bytes.
Access control	(5 .. n)	0/1 .. 32	(Optional.) Access credentials.
Command parameter			None.

6.4.11.2 OBE normal behaviors

The OBE shall return the roadside information that describes the memory configuration.

If the OBE successfully executes the Query Memory Configuration command, the OBE shall send a response with the Response Identifier field set to Command Success, the Response Data Length field set to the length of the returned memory configuration data, and the memory configuration data itself shall be returned in the Response Data field (see 6.5.5).

6.4.11.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
—Command Not Recognized
—Access Control Error
—Device Error
—Command Failed

6.4.12 Reserve Memory Partition (optional)

The Reserve Memory Partition command shall cause the OBE to reserve a partition of extended memory for the specified agency. This reservation shall include the establishment of access control procedures.

6.4.12.1 Command set definition

The Reserve Memory Partition command shall consist of the fields shown in Table 6.4.12.1–1.

TABLE 6.4.12.1–1.—RESERVE MEMORY PARTITION COMMAND FIELDS

Field Name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (43) / Hex (C3).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter:	End of Access Control field + 1	2	Length (in bytes) of the memory partition that is requested.
Partition size	End of Access Control field + 2		

TABLE 6.4.12.1–1.—RESERVE MEMORY PARTITION COMMAND FIELDS—Continued

Field Name	Location (bytes)	Length	Specification and description
Partition identifier	End of Access Control field + 3 End of Access Control field + 4.	2	Identifies the partition identifier that will be associated with this request; Table 1 defines the valid range of values for partition identifiers.
Partition access credential length.	(End of Partition Identifier field + 3).	0/1	(Optional.) Number of access credential bytes that shall be applied to this partition; max value = 32.
Partition access credentials	(End of Partition Access Credential Type field + 1.. n).	0/1 .. 32	(Optional.) Access credentials that shall be required when reserving memory pages within this partition.

6.4.12.2 OBE normal behaviors

The OBE shall determine whether sufficient nonpartitioned memory exists to satisfy the request and whether the partition identifier is available. If so, the partition shall be defined from the available memory. This partition shall then be honored when subsequent partition-related commands are received.

If the OBE successfully executes the Reserve Memory Partition command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.12.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error
—Previously Reserved
—Device Error
—Command Failed
—Insufficient Memory

6.4.13 Release Memory Partition (optional)

The Release Memory Partition command shall cause the OBE to release a partition of memory that had previously been reserved by the specified agency. This release shall require the same access controls (if any) that were specified at the time of partition reservation.

6.4.13.1 Command set definition

The Release Memory Partition command shall consist of the fields shown in Table 6.4.13.1–1.

TABLE 6.4.13.1–1.—RELEASE MEMORY PARTITION COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (44) / Hex (C4).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credentials bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies the partition identifier that will be associated with this request; Table E.1 defines the valid range of values for partition identifiers.
Partition identifier	End of Access Control field + 2		

6.4.13.2 OBE normal behaviors

The OBE shall release the previously reserved partition and return the memory to the pool available for partitioning.

If the OBE successfully executes the Release Memory Partition command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.13.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error

—Partition Not Defined
—Device Error
—Command Failed

6.5 Standard command responses

Each command response shall consist of the fields shown in Table 6.5–1 and described in 6.5.1 through 6.5.5.

TABLE 6.5–1.—COMMAND SET FIELDS

Response command identifier	Response transaction identifier	Response identifier	Response data length	Response data
1 byte	1 byte	1 byte	2 bytes	Variable.

6.5.1 Response Command Identifier

6.5.1.1 Length

The length of the Response Command Identifier field shall be 1 byte.

6.5.1.2 Usage

The Response Command Identifier field shall contain the command identifier of the original command that was sent to the OBE and effected this response. Command Identifier field values are listed in Table 6.2.1.2–1.

6.5.1.3 Default value

The Response Command Identifier field has no default value.

6.5.2 Response Transaction Identifier

6.5.2.1 Length

The length of the Response Transaction Identifier field shall be 1 byte.

6.5.2.2 Usage

The Response Transaction Identifier field shall contain the transaction identifier of the received command to which the response is addressed.

6.5.2.3 Default value

The Response Transaction Identifier field has no default value.

6.5.3 Response Identifier

6.5.3.1 Length

The length of the Response Identifier field shall be 1 byte.

6.5.3.2 Usage

The Response Identifier field shall contain a value indicating the status of command execution in the OBE.

6.5.3.3 Default value

The Response Identifier field has no default value.

6.5.3.4 Response definitions

Table 6.5.3.4–1 lists the valid values and their interpretation. (See ObeResponse in A.2 for ASN.1 definitions.) A command response will only contain valid response data when the Response Identifier field is set to Command Success. All other values indicate failure conditions.

TABLE 6.5.3.4–1.—RESPONSE IDENTIFIER VALUES

Response name	Value	Specification and description
Reserved	hex (0)	
Command Success	hex (1)	Completion is normal.
Command Failed	hex (2)	Completion is abnormal due to some unspecified condition.
Command Not Recognized	hex (3)	The command was invalid or unsupported by the OBE. This response is used if the RSE references a UI element that is not present on a transponder.
Access Control Error	hex (4)	Access credentials may not have been supplied in a required situation or the supplied credentials may be invalid; a nonce value is returned from the OBE.
Page Not Defined	hex (5)	The page identifier does not match a reserved page in the OBE.

TABLE 6.5.3.4–1.—RESPONSE IDENTIFIER VALUES—Continued

Response name	Value	Specification and description
Partition Not Defined	hex (6)	The partition identifier does not match an existing partition in the OBE.
Device Error	hex (7)	A malfunction has occurred in the OBE hardware or software.
Memory Access Error	hex (8)	The requested memory is faulty.
Page Length Mismatch	hex (9)	The length of the memory image is greater than the length of the referenced memory page, or command execution would require crossing a page boundary.
Insufficient Memory	hex (A)	Available free memory is insufficient in the referenced page to perform the command.
Previously Reserved	hex (B)	The specified page or partition identifier has already been reserved by a previous Reserve command.
Reserved	hex (C .. EF)	Reserved.
Vendor Area	hex (F0 .. FF)	Available for vendor-specific failure conditions.

6.5.4 Response Data Length

6.5.4.1 Length

The length of the Response Data Length field shall be 2 bytes.

6.5.4.2 Usage

The Response Data Length field shall specify the total length (in bytes) of the data contained in the Response Data field. Only the Read Memory Page and Query Memory Configuration commands return response data. Response data may also be created for a nonce if required access credentials are incorrect. The Response Data Length field shall always be present even if the response contains no response data.

6.5.4.3 Default value

The default value of the Response Data Length field shall be zero (0) if the response contains no data.

6.5.5 Response Data

6.5.5.1 Length

The length of the Response Data field shall be variable.

6.5.5.2 Usage

Three cases exist for which response data are returned. These cases are described in 6.5.5.2.1 through 6.5.5.2.3.

6.5.5.2.1 Case 1

Command = Read Memory Page
Response Identifier = Command Success

In this case, the Response Data field contains the requested OBE memory image.

6.5.5.2.2 Case 2

Command = Query Memory Configuration
Response Identifier = Command Success

In this case the Response Data field contains a contiguous snapshot of the transponder memory configuration represented as a set of triplets, where each triplet in the set consists of three 16-bit values defined as follows:

(1) Block Size: The size in bytes of this memory block.

(2) Page Identifier: The page identifier associated with this block of memory. A value of hex(0) means the memory is unallocated.

(3) Partition Identifier: The partition to which this block of memory belongs. A value of hex(0) means no associated partition exists.

6.5.5.2.3 Case 3

Command = Any Command
Response Identifier = Access Control Error

In this case, the Response Data field contains a nonce value.

6.5.5.3 Default value

The Response Data field does not exist except for the three cases specified in 6.5.5.2.

6.5.6 Response definitions

The OBE normal behaviors, which are described for each command definition in 6.4, specifically state the values that shall be contained in the Response Identifier field. The response data, if any, that shall be returned in the response is also included in these descriptions.

The only abnormal response (any value for the Response Identifier field other than Command Success) that shall return a non-null Response Data field is the Access Control Error, which returns a nonce value.

The Received Transaction Identifier field of any response shall always be set to the value of the Transaction Identifier field of the command to which the OBE is responding.

6.6 Interoperability requirements

Compliant transponders shall meet all the requirements specified in this specification. Interoperable transponders shall additionally provide specified features. The following commands defined in this subsection shall be implemented in interoperable transponders:

—Read Memory Page
—Write Memory Page
—Set User Interface
—Sleep Transponder
—Reserve Memory Page (If Reserve Memory Page is not supported, then available extended memory shall be preallocated into pages by the manufacturer.)
—Release Memory Page (Required when Reserve Memory Page is present.)
—Query Memory Configuration

Interoperable transponders may also implement additional optional commands.

Additional interoperability requirements are specified in 5.3.

6.7 Error detection and processing

The following methods shall be applied on the OBE and RSE to detect and process errors that may be present in commands and command responses.

6.7.1 OBE command error detection processing

The OBE shall check commands received from the RSE for the following error conditions prior to execution:

Verify that the command identifier is defined.

Verify that the command length matches the length of the received information.

For commands having fixed parameters, verify that the command length matches the value defined in this specification.

For command parameters that have a limited value domain, verify that all command parameters have values defined within this specification.

Additional, vendor-specific error checks may be provided.

If any of these conditions is detected, the OBE shall reject the command and shall issue a command response with the appropriate response identifier.

6.7.2 RSE command response error detection processing

The RSE shall check command responses received from the OBE for the following error conditions prior to execution:

(a) Verify that the response command identifier is defined.

(b) Verify that the response identifier is defined.

(c) Verify that the response command identifier is the same as the command identifier used in the previously transmitted command having a matching response transaction identifier.

(d) Verify that the response data length matches the length of the received information.

Additional, vendor-specific error checks may be provided.

If any of these error conditions is detected, the RSE shall reject the command response. The RSE may retransmit the command that resulted in the erroneous command response, using the identical information. If the OBE receives such a duplicated command, it shall regenerate and transmit the appropriate command response, but shall not reexecute the defined command processing. Reception of an erroneous command response may indicate a flaw in the overall processing, and the command that generated the condition should generally not be retransmitted.

7. Resource Manager

The resource manager shall provide the roadside "operating system" that accepts, arbitrates, implements, and responds to requests for DSRC services that are received from one or more BOAs. The resource manager shall be the initiator of all commands to the OBE controller, acting as the master in a master-slave relationship. The functional relationships are illustrated in Figure 7–1.

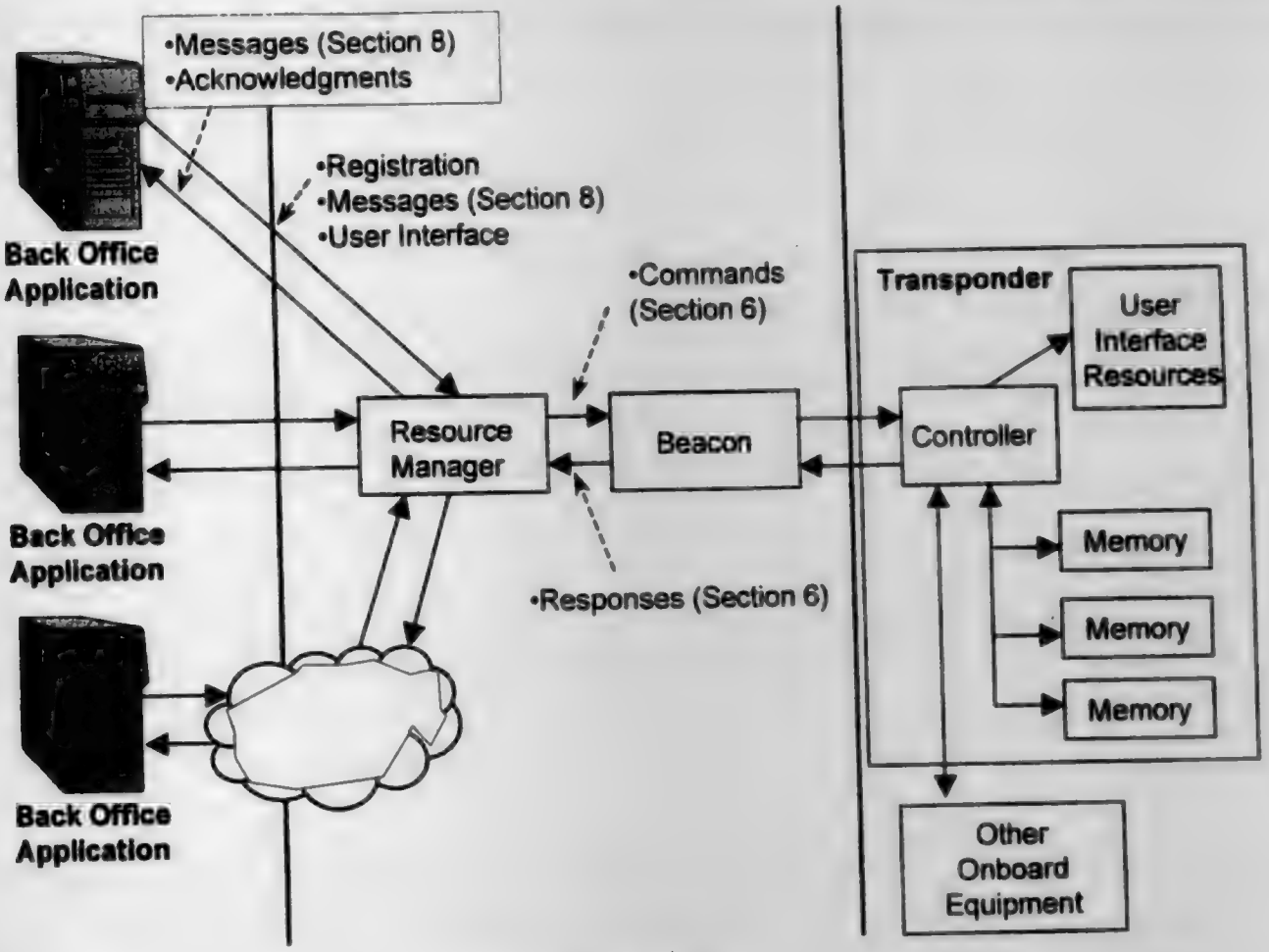


Figure 7-1 Resource Manager Relationships

BILLING CODE 4910-22-C

A typical DSRC roadside system shall consist of a single VRC controller connected to one or more readers with each reader connected to one or more antennas. Compliant DSRC roadside installations shall provide a resource manager function as specified in this section, and it is anticipated that the resource manager will in most cases be hosted within the VRC controller so that it may manage the transponder resources within an entire field of DSRC communications. However, this specification does not require any specific mapping of the resource manager to specific hardware.

Other equipment to accomplish functions such as automatic vehicle classification, weigh-in-motion, vehicle detection, etc., may exist at the roadside or in the roadway; however, this specification does not govern such equipment.

This section (which is taken directly from Clause 7 of IEEE 1455–99) specifies the characteristics of the resource manager function. An ITS application may include RSE other than that required for DSRC to perform functions such as vehicle classification or weigh-in-motion. This equipment is not governed by this specification.

7.1 Resource manager processing summary

The resource manager shall implement the following processing flow:

(a) The resource manager shall initially accept registrations from BOAs that specify the set of DSRC resources to which each BOA requires access. This registration process is further specified in 7.2.2.

(b) The resource manager shall then communicate with the connected beacons to configure each beacon's initial transactions with transponders that may pass within the beacon's communications zone. This communication process is further specified in 7.3.

(c) When a transponder enters a beacon's communications zone, the beacon will notify the resource manager and may also transmit one or more memory images that have been retrieved from the transponder. The resource manager may then request the retrieval of additional memory pages and may provide access credentials required for the retrieval.

(d) The resource manager shall then parse any received memory images and shall transmit the information contained within the memory images to the BOAs that have registered for it.

(e) In response, the BOAs may request that specific messages be deleted or that additional messages be stored within the specified transponder memory region.

(f) The resource manager shall then create a new memory image in response to the requests from the BOA and shall transmit that memory image to the beacon for storage within the transponder's memory region. [Steps (d), (e), and (f) are further specified in 7.4.]

(g) The resource manager shall also accept requests from the BOAs that the transponder's UI be manipulated. The resource manager shall arbitrate those requests when received from multiple BOAs and shall then communicate appropriate commands to the beacon for transmission to the transponder. This process is specified further in 7.5.

7.2 BOA interface

Since the BOA is the ultimate user of the DSRC information, it is essential that this specification allow for such information transmission. However, the actual specification of the interface between the resource manager and the BOA is beyond the scope of this specification. This subsection, therefore, specifies the capabilities that are required within all implementations of that interface and also provides guidance on how the interface might be implemented.

7.2.1 Physical media

BOAs shall be provided with a communications link via which they will—

—Be able to register themselves with the resource manager
—Be able to specify messages of interest it wants to receive
—Get the messages of interest as they are received
—Have a means of updating these messages upon receipt
—Have a means of specifying special actions that the resource manager must automatically perform upon receipt of these messages of interest

This specification does not govern the BOA interface; it is anticipated that the interface may be implemented using a variety of physical media. It is solely the responsibility of the system integrator and the user agency to select and implement the BOA interface using the media or combination of media appropriate for the cost, bandwidth, and physical limitations applicable to the DSRC installation.

7.2.2 Registration

Prior to receiving any transponder-derived information from the resource manager, the BOA shall register with the resource manager to define the types of information required and the conditions under which it should be transmitted. The classes of registration that are available and may be supported by the resource manager are listed in Table 7.2.2–1.

TABLE 7.2.2–1.—REGISTRATION PARAMETERS (CONTINUED)

Registration information type	Description and usage
Unique Identifiers of Interest	Specifies a set of transponders that are of interest to the registering application; data reports shall be made to the BOA only for transponders with included unique identifiers.
Unique Identifiers Not of Interest	Specifies a set of transponders that are not of interest to the registering application; data reports shall never be made to the BOA for transponders with included unique identifiers.
Service Agencies of Interest	Specifies a set of service agencies that are of interest to the registering application; data reports shall be made to the BOA only for transponders with included service agencies.
Service Agencies Not of Interest	Specifies a set of service agencies that are not of interest to the registering application; data reports shall never be made to the BOA for transponders with included service agencies.
Beacon Identifiers	Specifies a set of beacon identifiers that are of interest to the registering application; data reports shall be made to the BOA only for transponders that are in communication with an included beacon.
Message Identifiers	Specifies a set of message identifiers that are of interest to the registering application; only those messages identifiers registered by the BOA shall be reported to the BOA when a transponder communicates with a beacon.
Transponder Resources	Specifies a set of transponder resources, such as memory or peripheral configurations, that must be present in the transponder; the registering BOA shall be notified of messages only from transponders with these resources identified in the read-only memory.
Memory Page Identifiers	Specifies a set of transponder memory pages that are of interest to the registering BOA; only information that is stored within the memory pages registered by the BOA shall be reported to the BOA when a transponder communicates with a beacon.

These registration parameters essentially restrict the volume of information passed using the methods described in 7.2.3. Specific resource manager implementations need not implement all the registration parameters. However, the full set of unfiltered information defined in 7.2.3 may be transmitted to the BOA.

7.2.3 Information transmission to the BOA

In response to the registration information received from the BOA, the resource manager shall utilize the beacon interface specified in 7.3 to elicit transfer of information from the transponders that communicate with connected beacons. As a result of this communication, the resource manager will obtain one or more memory images. The resource manager shall then determine whether the communicating transponder matches the previously received registration filters.

If the transponder meets the registration constraints, then the resource manager shall process the memory images for which the BOA has registered to extract that information. For the read-only memory region, this processing shall consist solely of formatting the binary information contained within the memory region into appropriate data structures

for transmission. For all other memory regions, the resource manager shall parse the memory region to extract individual messages. Each message shall then be compared to the list of message identifiers that have been registered with the BOA. If the BOA has registered for a message that is present in the memory image, then the message shall be transmitted to the BOA. Messages may be reformatted for transmission to the BOA.

Once the resource manager has extracted all information within the transponders for which the BOA has registered, the resource manager shall assign an identifier to each message that will be transmitted to the BOA. The extracted information, including all messages and their identifiers, shall then be transmitted to the BOA using the selected communication channel.

7.2.4 Message reception from the BOA

After the BOA receives information from the resource manager that has been extracted from memory regions within a communicating transponder, the BOA may choose to alter the information stored within a specific memory region of a transponder. Two methods of alteration shall be provided:

(a) The BOA may request that a message be deleted from a specific memory region. This alteration is accomplished by specifying the corresponding message sequence number.

(b) The BOA may request that an additional message be stored within the transponder's memory region. This alteration is accomplished by creating the desired message and then passing it to the resource manager.

These memory image alteration requests shall be processed as specified in 7.4.

Due to vehicle movement and other factors, it is possible that the resource manager will be unable to accomplish the requested memory image alterations. If this condition is detected by the resource manager, it shall be reported to the requesting BOA.

7.2.5 UI requests from the BOA

After the BOA receives information from the resource manager that has been extracted from a communicating transponder, the BOA may choose to manipulate the transponder's UI. The resource manager shall provide service methods that allow the BOA to individually manipulate each of the UI resources defined in Section 5. These service requests shall be processed as defined in 7.5.

Due to vehicle movement and other factors, it is possible that the resource manager will be unable to accomplish the requested UI actions. If this condition is detected by the resource manager, it shall be reported to the requesting BOA.

7.2.6 Predefined transponder sessions

In some cases, the BOA may require the capability to predefine sequences of actions (which can be treated as a single logical action) that should be taken by the resource manager upon arrival of a transponder. Such a sequence is only executed when the transponder is within the beacon's communications field. This is likely to occur when the BOA is connected to the resource manager via a low-speed interface. In such a case, it is unlikely that the communication of individual sequential commands can be successfully accomplished during the period of time in which the vehicle is within the beacon's communications field.

The resource manager may provide for this requirement by implementing registration messages, configuration files, or custom software that implements the required sequences of actions. If this capability is provided, the resource manager shall still report all pertinent information received from or transmitted to the transponder using the processes defined in 7.2.4 and 7.2.5.

7.3 Beacon interface (nonmandatory)

It is anticipated that in many cases the resource manager will be implemented within a VRC controller that is physically distinct from, but connected to, the beacon. In this case, it will be necessary for the VRC controller to communicate with the beacon to control the beacon configuration, elicit information from each transponder that passes through the beacon's communication region, and transfer information to the beacon for storage on the transponders. However, this specification recognizes that in some cases the VRC controller and the beacon will actually be a single piece of equipment, hosting both the resource manager and the beacon functionality.

This specification anticipates that future efforts may be undertaken to specify a specification interface between the resource manager and the beacon. Absent such a specification, the following guidelines are recommended:

—The interface will typically correspond to the interface between the application layer and lower layer service as described in Section 9.

—The interface should allow the resource manager to initiate, terminate, monitor, and otherwise control the communications channel with the beacon.

—The interface should allow the resource manager to query the configuration and health of the beacon and any connected equipment.

—The interface should allow the resource manager to mute the beacon, i.e., cause the beacon to cease RF transmission and reception.

—The interface should allow the resource manager to specify that lower layer actions target a specific beacon.

—The interface should allow the beacon to transmit to the resource manager a transponder command response (specified in Section 6).

—In some DSRC systems, the vehicle speed and size of the beacon communications region will constrain the period of time during which the beacon may communicate with a transponder. The physical capabilities of the interface between the resource manager and the beacon should accommodate the correspondingly required transmission speeds.

7.4 Memory page management

The resource manager shall arbitrate, manage, and control all transponder memory regions that may be modified using the commands listed in Section 6. This capability shall be provided as follows, and in such a way as to meet the requirements specified in 7.2.3 and 7.2.4:

—The resource manager shall retrieve all memory regions that have been previously requested as part of BOA registrations. The resource manager shall not retrieve or process in any way memory regions that have not been requested as part of a BOA registration. The resource manager shall not write to pages that are unchanged.

—The resource manager shall parse all retrieved memory regions to isolate the messages stored within them.

—The resource manager shall transmit the messages to the BOAs that have previously registered for the messages. Messages that are stored within pages that have been reserved to a specific agency shall only be transmitted to BOAs that specify that page identifier as part of their registration parameters.

—If a BOA requests that messages be deleted from or added to a page, then the resource manager shall perform the memory consolidation process defined in 7.4.1. The resource manager shall only accept requests for changes to reserved memory pages from BOAs that specified the reserving page identifier as part of their registration parameters. If a page is not reserved, i.e., is a public page, then the resource manager shall accept requests for changes to that page from any (and potentially multiple) BOAs that request access to that page as part of their registration parameters.

—After performing the memory consolidation process, the resource manager shall transmit the modified memory image to the beacon for storage on the transponder. The resource manager may use the Write Memory Page, Append Message, or Write Circular Queue command as appropriate and as supported by the transponder.

7.4.1 Memory consolidation

After the resource manager has retrieved a memory region from a transponder, parsed the messages from that region, passed the messages to BOAs that have registered for them, and received requests for memory image updates from the BOAs, the resource manager will have three sets of information corresponding to the memory region:

—Existing messages. A list of messages that were stored within the memory region when it was received.

—Obsolete messages. A list of message sequence numbers corresponding to messages that one or more BOAs have requested be deleted.

—Requested messages. A list of messages that BOAs have requested be added.

The resource manager shall then create a list of new messages by performing the following steps:

(a) Each existing message shall be analyzed to determine whether it has expired. This shall be determined by comparing the message expiration date stored within the specified message to the date at which the analysis is performed.

(b) Each existing message that has not expired shall then be placed on the new message list if it is not present on the obsolete message list (in the resource manager).

(c) If room is available within the designated transponder memory region, all requested messages shall be added to the new message list. If insufficient room exists for all requested messages, the resource manager may add a subset of the requested message list to the new message list using a site-specific prioritization algorithm. The BOAs shall be notified if insufficient memory space exists for a message.

Once the new message list has been created, it shall be used to generate a new memory image of the designated transponder memory region.

7.5 UI management

The resource manager shall accept requests for UI services from the communicating BOAs as specified in 7.2.5. When the resource manager is servicing only a single BOA or when no conflicts exist in the UI requests received from multiple communicating BOAs, then the resource manager shall directly translate the UI service requests into the transponder UI commands specified in Section 6.

In some cases, conflicts may arise between BOAs that request access to the same UI resources. For example, an Electronic Toll Collection application might request illumination of the green lamp, while a Border Crossing application requests illumination of a red lamp. Site-specific rules shall be established for the arbitration of conflicting UI directives.

8. ITS application messages

8.1 Message concepts

Application messages are the data constructs that provide for communication between applications and positive identification of vehicles, containers, chassis, etc. Each application area, such as Electronic Toll Collection or Border Clearance, has messages that are unique to the application. In addition, there are utility messages that may be utilized in multiple applications. This section defines the general format of messages, specific message sets for each application area, and data element definitions for all messages.

Note that this section is the same as Clause 8 in IEEE 1455–99 with *the following two exceptions: (1) no ETC messages are specified (since this is a CVO focused specification), and (2) the CVO Electronic Screening Message Set has been slightly altered to align it with the Commercial Vehicle Information Systems and Networks architecture (see Section 8.6).*

8.1.1 Message format

Each application message shall consist of a header and a body. The header component is defined across all applications. The message body consists of the application data fields. Message body content is unique to each message type within each application. The specific data elements that are used in message headers are formally defined in 8.2.

8.1.2 Message encoding

The encoding and decoding of message fields into transfer syntax shall be performed by the application. All messages shall be encoded according to ASN.1 Packed Encoding Rules (PER), unaligned, as specified in ISO/IEC 8825–2:1996. The application may also encrypt the message body using an application-specific technique.

The specification of each application message includes an ASN.1 value specification of the message body with a specification header. Following the sample value assignments is a bit-level layout of the resulting encoding. Within

the bit-level layouts, a period (.) is used to indicate octet alignment and an "x" is used as a bit placeholder with no specific value.

8.2 Message headers

Two forms of the message header exist. The specification, or "long form," header, which is 5 bytes long, is used to prefix messages that are stored in transponder memory pages that are at least 512 bits in length. The "short form" header, which is 3 bytes long, is used to prefix messages that are stored in transponder memory pages that are less then 512 bits in length. Message headers shall not be encrypted. Tables 8.2–1 and 8.2–2 provide a layout of each message type.

TABLE 8.2–1.—STANDARD MESSAGE FORMAT

Application identifier	Message identifier	Message expiration date	Message length	Error detect code	Message body
Bits 0..5	Bits 6..11	Bits 12..23	Bits 24..31	Bits 32..39	Variable

TABLE 8.2–2.—SHORT MESSAGE FORMAT

Message identifier	Message expiration date	Message length	Error detect code	Message body
Bits 0..4	Bits 5..11	Bits 12..15	Bits 16..23	Variable

8.2.1 Standard message header

Table 8.2.1–1 specifies the fields and the permissible field values for the standard header. Messages using long headers are constrained to 255 bytes in length (excluding the header) by the definition of the Message Length field.

TABLE 8.2.1–1.—STANDARD MESSAGE HEADER FIELDS (CONTINUED)

Field	Field name	Type	Length	Values
1	Application Identifier	Integer	6 bits	See Table 34
2	Message Identifier	Integer	6 bits	See Tables 35 through 38
3	Message Expiration Date	Integer	12 bits	(0..4095); Days since last decade; a message expiration date equal to hex(FFF) indicates that the message never expires.
4	Message Length	Integer	8 bits	(0..255); Length of message body, in bytes (does not include header)
5	Error Detect Code	Bit string	8 bits	XOR Checksum of the message body

Standard message headers shall have an application identifier and a message identifier that uniquely identify the message type. Table 8.2.1–2 lists values for the application identifier. Table 8.2.1–3 through Table 8.2.1–6 list values for message identifiers within each application.

The Message Expiration Date field shall specify the point in time after which the message may be deleted. This field supports a message lifetime of up to 180 days. The field shall be interpreted as follows:

—If the message expiration date is less than or equal to 3652 and the current date within the decade is greater than the message expiration date, then the message shall be deleted.

—If the message expiration date is greater than 3652 and the current date within the decade is greater than 180 and less than 3472, then the message shall be deleted.

—If the message expiration date is greater than 3652 and the current date within the decade is less than 180, then the message shall be deleted if the message expiration date is less than the current date within the decade plus 3652.

TABLE 8.2.1–2.—APPLICATION IDENTIFIERS

Code	Application
0	Reserved
1	Electronic Toll and Traffic Management (ETTM)
2	Commercial Vehicle (CV) Management
3	Common Utility Messages
4..59	Reserved
60	Private (Uncontrolled); Message identifiers associated with this application identifier are available for uncontrolled use
61	Private (Controlled); Message identifiers associated with this application identifier are available for registration
62..63	Reserved

TABLE 8.2.1–3.—MESSAGE IDENTIFIERS: ETTM (CONTINUED)

Code	Message description
0	Reserved
1	Toll System Entry
2	Toll Vehicle Classification
3	Toll Variable Pricing
4	Toll System Enroll
5..63	Reserved

TABLE 8.2.1–4.—MESSAGE IDENTIFIERS: CV MANAGEMENT

Code	Message description
0	Reserved
1	Border Trip Identification
2	Border Clearance Event
3	Border Lock Notification
4	Border Lock Status
5	Border Itinerary Identification
6	Commercial Motor Vehicle (CMV) Screening Identification
7	CMV Screening Event
8	CMV Screening Identification—Expanded
9	CMV Screening Event—Expanded
10..63	Reserved

TABLE 8.2.1–5.—MESSAGE IDENTIFIERS: COMMON UTILITY MESSAGES

Code	Message description
0	Reserved
1	Text String
2	RSE to Other OBE—Generic Data
3	Other OBE to RSE—Generic Data
4	End Of Data
5..63	Reserved

TABLE 8.2.1–6.—MESSAGE IDENTIFIERS: PRIVATE CONTROLLED

Code	Message description
0	Reserved
01..63	Available for registration of private reserved messages

8.2.1.1 ASN.1 specification

```
Dsrcmsg-Header ::=  SEQUENCE
{
application-ID      INTEGER (0..63),        —Dsrcmsg-ApplicationIdentity
message-ID          INTEGER (0..63),        —Dsrcmsg-MessageIdentifier
message-date        INTEGER (0..4095),      —Dsrcmsg-Date
message-length      INTEGER (0..255),       —Dsrcmsg-Length
message-checksum    BIT STRING (SIZE(8))    —Dsrcmsg-ErrorDetect
}
```

8.2.1.2 ASN.1 sample values

```
Dsrcmsg-Header ::=  SEQUENCE
{                                           —Begin Standard Header
application-ID      1,                      —ETTM Application Identifier
message-ID          1,                      —Toll Entry Message Identifier
message-date        0,                      —1/1/1990
message-length      0,                      —0 byte message body
message-checksum    '00'H                   —XOR checksum (not calculated)
                                            —End Header/Begin Body
}
```

8.2.1.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000001	application-ID
6	00.0001	message-ID

Bit	Bit value	Field definition
12	0000.00000000.	message-date
24	00000000	message-length
32	xxxxxxxx.	message-checksum
40		—[end of Header]

8.2.2 Short message header

Short message headers shall use the short message identifier instead of the application identifier and message identifier. Table 8.2.2–1 lists the fields and the permissible field values for the short message header. Messages using short headers are constrained to 30 bytes in length (excluding the header) by the definition of the Message Length field.

TABLE 8.2.2–1 SHORT MESSAGE HEADER FIELDS (CONTINUED)

Field	Field name	Type	Length	Values
1	Message Identifier	Integer	5 bits	See Table 40
2	Message Expiration Month.	Integer	7 bits	(0 .. 127); Months since last decade. A value of 127 indicates that a message never expires.
3	Message Length	Integer	4 bits	(1 .. 15); Length of message body in byte pairs (does not include header)
4	Error Detect Code	Bit string	8 bits	XOR checksum of the message body

Short message headers shall use the short message identifier instead of the application identifier and message identifier. Table 40 lists the permissible values for short message identifiers.

TABLE 8.2.2–2 SHORT MESSAGE IDENTIFIERS (CONTINUED)

Code	Message description
0	Reserved
1	Toll Entry
2	Toll Vehicle Classification
3	Toll Variable Pricing
4	Toll System Enroll
5	Border Trip Identification
6	Border Clearance Event
7	Border Lock Notification
8	Border Lock Status
9	Border Itinerary Identification
10	Reserved by IEEE for future use
11	CMV Screening Clearance Event
12	Reserved by IEEE for future use
13	CMV Screening Clearance Event-Expanded
14	Utility Text String
15	Utility RSE to Other OBE
16	Utility Other OBE to RSE
17	Utility End Of Data
18..31	Reserved by IEEE for future use

The Message Expiration Month field shall specify the point in time after which the message may be deleted. This field supports a message lifetime of up to 6 mo. The field shall be interpreted as follows:

- If the message expiration month is less than or equal to 120 and the current month within the decade is greater than the message expiration month, then the message shall be deleted.
- If the message expiration month is greater than 120 and the current month within the decade is greater than 6 and less than 114, then the message shall be deleted.
- If the message expiration month is greater than 120 and the current date within the decade is less than 7, then the message shall be deleted if the message expiration month is less than the current month within the decade plus 120.

8.2.2.1 ASN.1 specification

```
Dsrcmsg-Header ::=   SEQUENCE
{
short-message-ID     INTEGER (0..31),          --Dsrcmsg-ShortMessageIdentity
message-month        INTEGER (0..4095),        --Dsrcmsg-ShortDate
message-length       INTEGER (1..16),          --Dsrcmsg-ShortLength
message-checksum     BIT STRING (SIZE(8))      --Dsrcmsg-ErrorDetect
}
```

8.2.2.2 ASN.1 sample values

```
Dsrcmsg-Header ::=   SEQUENCE
{                                              --Begin Short Header
short-message-ID     1,                        --Toll Entry Message Identifier
```

```
short-message-month      0,      --1/1/1990
short-message-length     4,      --5 byte pair message body
message-checksum         '00'H   --XOR checksum (not calculated)
                                 --End Header / Begin Body
}
```

8.2.2.3 ASN.1 PER encoding

	Bit	Bit value	Field definition
0		00001	short-message-ID
7		000.0000	short-message-date
12		0100.	short-message-length
16		xxxxxxxx.	message-checksum
24			—[end of Header]

8.3 Message data elements

This subsection describes the data elements used in the body of the application message. Each data element is accompanied by the corresponding ASN.1 name. A list of all the data elements and their ASN.1 attributes is provided in Annex A of IEEE 1455–99.

8.3.1 Common application data elements

The following elements are defined by this specification and were designed for use across DSRC applications.

8.3.1.1 Timestamp (Dsrc-Time)

DSRC date/time values shall be expressed as a 4 byte integer indicating the number of seconds since January 1, 1970 GMT.

8.3.1.2 Beacon Identifier (Beacon-Identity)

The roadside beacon shall have a unique identifier consisting of a 16 bit identifier registered to that agency followed by a 16 bit agency-unique serial number.

8.3.1.3 Transponder Identifier (Transponder-Identity)

The transponder shall have a unique identifier (see 5.2.18) consisting of 40 bits, which represent the Manufacturer Identifier and Serial Number fields (and associated subfields) defined for read-only memory (see 5.2).

8.3.2 Data elements—application-specific

Application data elements are specified using ASN.1 syntax in Annex A of IEEE 1455–99.

8.4 Electronic Toll Collection message set

There are no ETC messages required by this specification.

8.5 Commercial Vehicle Operations Border Clearance Message Set

Table 8.5–1 summarizes the messages that have been defined for the CVO Border Clearance application. This subclause details the specific formats, conditions, and uses for each message.

TABLE 8.5–1.—CVO BORDER CLEARANCE MESSAGE SUMMARY (CONTINUED)

Message name	Description
Trip Identification Number	Transmits the unique trip load number.
Border Clearance Event	Reports clearance event data to the vehicle.
Electronic Lock Notification	Notifies roadside that the vehicle has electronic locks.
Electronic Lock Status	Provides roadside with status of electronic lock.
Itinerary Verification	Shows percent likelihood that vehicle maintained its itinerary.
Warning/Notification	Indicates special attention for cargo or onboard sensor.

8.5.1 Trip Identification Number Message

The Trip Identification Number message contains the unique trip load number, consisting of the carrier's Dunn & Bradstreet number (DUNS) and a unique suffix. It is generated by a portable transfer device [e.g., a notebook computer or personal digital assistant (PDA)], stored in the transponder memory, and received by the beacon at a border clearance location. See Table 8.5.1–1.

TABLE 8.5.1–1.—TRIP IDENTIFICATION NUMBER MESSAGE

Field	Data element name	Type	Constraint
1	Tripload-DunsNumber	NumericString	Size (9)

TABLE 8.5.1–1.—TRIP IDENTIFICATION NUMBER MESSAGE—Continued

Field	Data element name	Type	Constraint
2	Tripload-CarrierSerial	NumericString	Size (6)

8.5.1.1 ASN.1 specification

```
Trip-Identification-Message::=   SEQUENCE
{
header                           Dsrcmsg-Header
duns-number                      NumericString (SIZE(9)),   —Tripload-DunsNumber
carrier-serial                   NumericString (SIZE(6))    —Tripload-CarrierSerial
}
```

8.5.1.2 ASN.1 sample values

```
Trip-Identification-Message::=   SEQUENCE
{                                                           —Begin Standard Header
application-ID                   2,                         —CVO Application Identifier
message-ID                       1,                         —Trip Identification Message Identifier
message-date                     0,                         —1/1/1990
message-length                   8,                         —8 byte message body
message-checksum                 '00'H,                     —XOR checksum (not calculated)
                                                            —End Header/Begin Body
duns-number                      123456789,
carrier-serial                   123456
}
```

8.5.1.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000001	application-ID
6	00.0001	message-ID
12	0000.00000000	message-date
24	00001000	message-length
32	xxxxxxxx.	message-checksum
		—[end of Header]
40	00010010.00110100.01010110	duns-number
64	01111000.1001	
76	0001.00100011.01000101.0110	carrier-serial
100	xxxx	octet alignment pad
104		—[end of Body]

8.5.2 Border Clearance Event message

The Border Clearance Event message reports border clearance information to the vehicle. It is generated by the border crossing location DSRC controller, stored in the transponder memory, and received by the beacon at another border clearance location. See Table 8.5.2–1.

TABLE 8.5.2–1.—BORDER CLEARANCE EVENT MESSAGE (CONTINUED)

Field	Data element name	Type	Constraint
1	Beacon-Identity	Bit string	Size (32).
2	Borderevent-Timestamp	Integer	Dsrc-Time.
3	Borderevent-DriverClearance	Boolean	Go/True—NoGo/False.
4	Borderevent-DriverClearanceFlag	Boolean	Valid/True—Invalid/False.
5	Borderevent-CargoClearance	Boolean	Go/True—NoGo/False.
6	Borderevent-CargoClearanceFlag	Boolean	Valid/True—Invalid/False.
7	Borderevent-TractorClearance	Boolean	Go/True—NoGo/False.
8	Borderevent-TractorClearanceFlag	Boolean	Valid/True—Invalid/False.
9	Borderevent-ReserveClearance	Boolean	Reserved for future use.
10	Borderevent-ReserveFlag	Boolean	Reserved for future use.
11	Transponder-DigitalSignature	Bit string	Size (64).

8.5.2.1 ASN.1 specification

```
Border-Clearance-Event-Message::=SEQUENCE
{
headerDsrcmsg-Header,                    —Standard Header.
```

```
beacon-IDBIT STRING SIZE((32)),          —Beacon-Identity.
timestampDsrc-Time,                      —Borderevent-Timestamp.
driver-clearanceBOOLEAN,                 —Borderevent-DriverClearance.
driver-clearance-flagBOOLEAN,            —Borderevent-DriverClearanceFlag.
cargo-clearanceBOOLEAN,                  —Borderevent-CargoClearance.
cargo-clearance-flagBOOLEAN,             —Borderevent-CargoClearanceFlag.
tractor-clearanceBOOLEAN,                —Borderevent-TractorClearance.
tractor-clearance-flagBOOLEAN,           —Borderevent-TractorClearanceFlag.
reserve-clearanceBOOLEAN,                —reserved field.
reserve-flagBOOLEAN,                     —reserved field.
digital-signatureBIT STRING (SIZE(64))   —Transponder-DigitalSignature.
]
```

8.5.2.2 ASN.1 sample values

```
Border-Clearance-Event-Mes-
    sage::=SEQUENCE
{                                        —Begin Standard Header.
application-ID          2,               —CVO Application Identifier.
message-ID              2,               —Border Clearance Event Mes-
                                           sage ID.
message-date            0,               —1/1/1990.
message-length          17,              —17 byte message body.
message-checksum        '00'H,           —XOR checksum (not cal-
                                           culated).
                                         —End Header/Begin Body.
beaconID                '00020100'H,     —Agency=2; Serial=256.
timestamp               0,               —00:00:00 1/1/1970 GMT.
driver-clearance        TRUE,            —GO.
driver-clearance-       TRUE,            —VALID.
  flag
cargo-clearance         TRUE,            —GO.
cargo-clearance-flag    TRUE,            —VALID.
tractor-clearance       TRUE,            —GO.
tractor-clearance-      TRUE,            —VALID.
  flag
reserve-clearance       FALSE,           —Reserved—NOGO.
reserve-flag            FALSE,           —Reserved—INVALID.
digital-signature       0                —Transponder-DigitalSignature.
]
```

8.5.2.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID.
6	00.0010	message-ID.
12	0000.00000000	message-date.
24	00010001	message-length.
32	xxxxxxxx	message-checksum.
		—[end of Header].
40	00000000.00000010	beaconID—Agency component.
56	00000001.00000000	beaconID—Serial component.
72	00000000.00000000.00000000.00000000	timestamp.
104	1	driver-clearance.
105	1	driver-clearance-flag.
106	1	cargo-clearance.
107	1	cargo-clearance-flag.
108	1	tractor-clearance.
109	1	tractor-clearance-flag.
110	0	reserve-clearance.
111	0	reserve-flag.
112	00000000.00000000.00000000.00000000	digital-signature.
144	00000000.00000000.00000000.00000000	
176		—[end of Body]

8.5.3 Electronic Lock Notification message

The Electronic Lock Notification message notifies the roadside that the vehicle contains electronic locks. It is generated by a portable transfer device (e.g., a notebook computer or PDA), stored in the transponder memory, and received by the beacon at a border clearance location. See Table 8.5.3–1.

TABLE 8.5.3–1.—ELECTRONIC LOCK NOTIFICATION MESSAGE

Field	Data element name	Type	Constraint
1	Lock-Quantity	Integer	(0 .. 15).

TABLE 8.5.3–1.—ELECTRONIC LOCK NOTIFICATION MESSAGE—Continued

Field	Data element name	Type	Constraint
2	Lock-Identity	Bit string	Size (40); Transponder-Identity; the value of the preceding Lock-Quantity field indicates the number of occurrences of this field.
3	Transponder-DigitalSignature.	Bit string	Size (64).

8.5.3.1 ASN.1 specification

```
Border-Lock-Notification-Message ::=SEQUENCE.
{.
headerDsrcmsg-Header,—Standard Header..
lock-quantityINTEGER (0..15)—Lock-Quantity..
lock-IDBIT STRING (SIZE(40)),—Lock-Identity (Transponder ID)..
digital-signatureBIT STRING (SIZE(64))—Transponder-DigitalSignature.
}.
```

8.5.3.2 ASN.1 sample values

```
Border-Lock-Notification-Message::=SEQUENCE
{
application-ID              2,          ——Begin Standard Header
message-ID                  3,          ——CVO Application Identifier
                                        ——Electronic Lock Status Message ID
message-date                0,          ——1/1/1990
message-length              14,         ——14 byte message body
message-checksum            '00'H,      ——XOR checksum (not calculated)
                                        ——End Header/Begin Body
lock-quantity               1,          ——Number of locks
lock-ID                     '0080000040'H,  ——Lock-Identity Man=2; Serial=4
digital-signature           0           ——Transponder-DigitalSignature
}
```

8.5.3.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0011	message-ID
12	0000.00000000.	message-date
24	00001110	message-length
32	xxxxxxxx.	message-checksum
		——[end of Header]
40	0001	lock-quantity
44	0000.000010	lock-ID Manufacturer=2
54	00.00000000.00000000.00000100.	lock-ID Serial=4
80	0000	lock-ID Reserved
84	0000.00000000.00000000.00000000.0000	digital-signature
116	0000.00000000.00000000.00000000.0000	
148	xxxx.	fill
152		——[end of Body]

8.5.4 Border Lock Status message

The Electronic Lock Status message notifies the roadside regarding the status (e.g., Open, Close, Bad) of an electronic lock. It is generated by an electronic lock and received by the beacon at a border clearance location. See Table 8.5.4–1.

TABLE 8.5.4–1.—ELECTRONIC LOCK STATUS MESSAGE

Field	Data element name	Type	Constraint
1	Lock-Identity	Bit string	Size (40); Transponder-Identity
2	Borderevent-Timestamp	Integer	Size (32); Dsrc-Time
3	Lock-CurrentStatus	Integer	(0..7)
4	Lock-HistoryCount	Integer	(0..15); the value of this field indicates the number occurrences of Fields 5 and 6.
5	Lock-Status	Integer	(0..7) 0 Open 1 Closed 2 Bad

TABLE 8.5.4–1.—ELECTRONIC LOCK STATUS MESSAGE—Continued

Field	Data element name	Type	Constraint
6	Borderevent-Timestamp	Integer	Size (32); Dsrc-Time
7	Transponder-DigitalSignature	Bit string	Size (64)

8.5.4.1 ASN.1 specification

```
Border-Lock-Status-Message::=SEQUENCE.
{.
headerDsrcmsg-Header,——Standard Header.
lock-IDBIT STRING (SIZE(40)),——Lock-Identity (Transponder ID).
border-timeDsrc-Time——Borderevent-Timestamp.
lock-statusINTEGER (0..7)——Lock-Status.
lock-quantityINTEGER (0..15)——Lock-HistoryCount.
lock-status-h1INTEGER (0..7)——Lock-Status.
border-time-h1Dsrc-Time——Borderevent-Timestamp.
digital-signatureBIT STRING (SIZE(64))——Transponder-DigitalSignature.
}.
```

8.5.4.2 ASN.1 sample values

```
Border-Lock-Status-Mes-
  sage::=SEQUENCE
{                                          —Begin Standard Header
application-ID              2,             —CVO Application Identifier
message-ID                  4,             —Electronic Lock Status Message ID
message-date                0,             —1/1/1990
message-length              23,            —23 byte message body
message-checksum            '00'H,         —XOR checksum (not calculated)
                                           —End Header/Begin Body
lock-ID                     '0080000040'H, —Lock-Identity Man=2; Serial=4
timestamp                   0,             —00:00:00 1/1/1970 GMT
lock-status                 0,             —Lock-Status=0; Open
lock-quantity               1              —Lock-HistoryCount=1
lock-status-h1              1              —Lock Status=1; Close
border-time-h1              0              —Borderevent-Timestamp
digital-signature           0              —Transponder-DigitalSignature
}
```

8.5.4.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0100	message-ID
12	0000.00000000	message-date
24	00001001	message-length
32	xxxxxxxx	message-checksum
		—— [end of Header]
40	0000	lock-ID Reserved
44	0000.000010	lock-ID Manufacturer = 2
54	00.00000000.00000000.00000100	lock-ID Serial = 4
80	00000000.00000000.00000000.00000000	timestamp
112	000	lock-status
115	0008	lock-count
119	0.01	lock-status-hl
122	000000.00000000.00000000.00000000.00	border-time-hl
154	000000.00000000.00000000.00000000	digital-signature
184	00000000.00000000.00000000.0000000.00	
218	xxxxxx	fill
224		—— [end of Body]

8.5.5 Itinerary Verification message

The Itinerary Verification message notifies the border clearance roadside on the percent likelihood that the vehicle maintained its preplanned itinerary. It is generated by an onboard computer and received by the beacon at a border clearance location. See Table 8.5.5–1.

TABLE 8.5.5–1.—ITINERARY VERIFICATION MESSAGE

Field	Data element name	Type	Constraint
1	Vehicle-ItineraryQuality	Integer	(0 .. 100); 100 indicates the highest confidence that the vehicle has followed a specified itinerary. 0 indicates a high confidence that the vehicle has significantly deviated from a specified itinerary. Other values indicate intermediate levels of confidence.
2	Borderevent-Timestamp	Integer	Size (32); Dsrc-Time.
3	Transponder-DigitalSignature.	Bit string	Size (64).

8.5.5.1 ASN.1 specification

```
Border-Itinerary-Message ::=SEQUENCE
{
header                  Dsrcmsg-Header,          --Standard Header
itinerary-quality       INTEGER (0..255),        --Vehicle-Itinerary Quality;
                                                   Max=100
border-time             0                        --Borderevent-Timestamp
digital-signature       BIT STRING (SIZE(64))    --Transponder-DigitalSignature
}
```

8.5.5.2 ASN.1 sample values

```
Border-Itinerary-Message ::= SEQUENCE
{                                                --Begin Standard Header
application-ID          2,                       --CVO Application Identifier
message-ID              5,                       --Border Itinerary Message ID
message-date            0,                       --1/1/1990
message-length          13,                      --13 byte message body
message-checksum        '00'H,                   --XOR checksum (not cal-
                                                   culated)
                                                 --End Header / Begin Body
itinerary-quality       64,                      --Itinerary Quality = 64%
border-time             0,                       --Borderevent-Timestamp
digital-signature       0,                       --Digital Signature = 0
}
```

8.5.5.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0101	message-ID
12	0000.00000000.	message-date
24	00001101	message-length
32	xxxxxxxx.	message-checksum
		—[end of Header]
40	01000000	itinerary-quality
48	00000000.00000000.00000000.00000000.	border-time
80	00000000.00000000.00000000.00000000.	digital-signature
112	00000000.00000000.00000000.00000000.	
144		—[end of Body]

8.6 CVO Electronic Screening message set

Table 8.6–1 summarizes the messages that have been defined for the CVO Electronic Screening (also referred to as Mainline Screening) application. This subclause details the specific formats, conditions, and uses for each message.

TABLE 8.6–1.—CVO ELECTRONIC SCREENING MESSAGE SUMMARY

Message name	Description
CMV Screening Identification	Sets and sends vehicle and cargo data.
CMV Screening Event	Reports clearance event data to the vehicle.
CMV Screening Identification Expanded	Sets and sends vehicle and cargo data.
CMV Screening Event Expanded	Reports clearance event data to the vehicle.

8.6.1 CMV Screening Identification message

The CMV Screening Identification message provides the information necessary to conduct electronic screening of CVs at CV check stations in North America. It is generated by a portable transfer device (e.g., a notebook computer or PDA), stored in the transponder memory, and received by the beacon at a CV check station. It is transferred from the transponder to the beacon at mainline speeds. See Table 8.6.1–1.

TABLE 8.6.1–1.—CMV SCREENING IDENTIFICATION MESSAGE

Field	Data element name	Type	Constraint
1	Carrier-Identity	IA5string	Size (24); this field may be repeated up to 3 times.
2	Vehicle-Identity	IA5string	Size (30); VIN.
5	Vehicle-CargoType	IA5string	Size (5); Hazmat Code.

8.6.1.1 ASN.1 specification

```
CMV-Clearance-Identification-Message ::= SE-
                QUENCE
{
header          Dsrcmsg-Header,         -- Standard Header
carrier-ID      IA5String (SIZE(24)),   -- Carrier-Identity
vin             IA5String (SIZE(30)),   -- Vehicle-Identity
cargo-code      IA5String (SIZE(5))     -- Vehicle-CargoType
}
```

8.6.1.2 ASN.1 sample values

```
CMV-Clearance-
  Identification-
  Message-
  ::=SEQUENCE
{                                       -- Begin Standard Header
application-ID      2,                  -- CVO Application Identifier
message-ID          6,                  -- Clearance ID Message Identi-
                                          fier
message-date        0,                  -- 1/1/1990
message-length      59,                 -- 59 byte message body
message-check sum   '00'H,              -- XOR checksum (not cal-
                                          culated)
                                        -- End Header/Begin Body
carrier-ID          64,                 --
vin                 0,                  --
cargo-code          0,                  --
}
```

8.6.1.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0110	message-ID
12	0000.00000000.	message-date
24	00101011	message-length
32	xxxxxxxx.	message-checksum
		—— [end of Header]
40	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	carrier-identity
72	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
104	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
136	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
168	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
200	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
232	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	vehicle-identity
264	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
296	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
328	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
360	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
392	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
424	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
456	xxxxxxxx.xxxxxxxx	
472	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	vehicle-cargo-type
504	xxxxxxxx	
512		—— [end of Body]

8.6.2 CMV Screening Event message

The CMV Screening Event message provides information documenting critical parameters of the last screening event. It is generated by the CV check station computer via a DSRC controller, stored in the transponder memory, and received by the beacon at a CV check station. See Table 8.6.2–1.

TABLE 8.6.2–1.—CMV SCREENING EVENT MESSAGE

Field	Data element name	Type	Constraint
1	Vehicle-GrossWeight	Integer	(0..16383); measured vehicle weight in 10 kg increments
2	Scale-Type	Integer	(1 .. 15); see Table 55
3	Vehicle-AxleNumber	Integer	(2 .. 17); measured number of vehicle axles
4	Beacon-Identity	Bit String	Size (32)
5	Mainlineevent-Timestamp.	Integer	Size (32); Dsrc-Time
6	Mainlineevent-Bypass	Boolean	Go/True 1=Bypass/True, 0=Pullin/False

TABLE 8.6.2–2.—SCALE TYPES

Values	Definitions
1	Jurisdictional weight.
2	Mainline WIM.
3	Ramp sorter WIM.
4	Slow rollover WIM.
5	Static scale weight.
15	Operator-entered weight.

8.6.2.1 ASN.1 specification

```
Screening-Event-Message ::=SEQUENCE
{
header              Dsrcmsg-Header,     -- Standard Header
gross-weight        INTEGER             -- Vehicle-Gross Weight
scale-type          INTEGER             -- Scale-Type
axle-number         INTEGER             -- Vehicle-Axle Number
beacon-ID           BIT STRING (SIZE(32)),  -- Beacon-Identity
timestamp           Dsrc-Time           -- Mainline event-Timestamp
pullin-clearance    BOOLEAN             -- Mainline event-Pullin Clear-
                                           ance
}
```

8.6.2.2 ASN.1 sample values

```
CMV-Screening-Event-Message ::=SEQUENCE
{                                       -- Begin Standard Header
application-ID      2,                  -- CVO Application Identifier
message-ID          7,                  -- Screening Event
                                        Message Identifier
message-date        0,                  -- 1/1/1990
message-length      12,                 -- 12 byte message body
message-checksum    '00'H,              -- XOR checksum
                                        (not calculated)
                                        -- End Header/Begin Body
gross-weight        500,                -- 5000 Kg
scale-type          1,                  -- Jurisdictional weight
axle-number         4                   -- Vehicle-Axle Number
beacon-ID           '00020100'H,        -- Agency=2; Serial=256
timestamp           0,                  -- 00:00:00 1/1/1970 GMT
pullin-clearance    TRUE                -- Go
}
```

8.6.2.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0111	message-ID
12	0000.00000000	message-date
24	00001100	message-length
32	xxxxxxxx	message-checksum
		— [end of Header]
40	00000111.110100	gross-weight
54	000100	scale-type
58	00100	axle-number

Bit		Bit value	Field definition
64	.....	00000000.00000010	beacon-ID—Agency component
80	.....	00000001.00000000	beacon-ID—Serial component
96	.....	00000000.00000000.00000000.00000000.	timestamp
128	.....	1	pullin-clearance
129	.....	xxxxxx -Fill	
136	.....		— [end of Body]

8.6.3 CMV Screening Expanded Identification message

The CMV Screening Expanded Identification message provides information that may become necessary to conduct electronic screening of CVs at CV check stations in North America and is used in conjunction with the CMV Screening Identification message (see 8.6.1). It is generated by a portable transfer device (e.g., a notebook computer or PDA), stored in the transponder memory, and received by the beacon at a CV check station. It is transferred from the transponder to the beacon at mainline speeds. See Table 8.6.3–1.

TABLE 8.6.3–1.—CMV SCREENING EXPANDED IDENTIFICATION MESSAGE

Field		Data element name	Type	Constraint
1	.....	Vehicle-Component Identity	IA5string	Size (30); VIN
2	.....	Driver-Identity	IA5string	Size (20)

8.6.3.1 ASN.1 specification

```
CMV-Screening-Expanded Identification-Message
                ::= SEQUENCE
{
header                  Dsrcmsg-Header,          -- Standard Header
vehicle-component-      IA5String (SIZE(30)),    -- Vehicle-Component Identity
  ID
driver-ID               IA5String (SIZE(20))     -- Driver-Identity
}
```

8.6.3.2 ASN.1 sample values

```
CMV-Screening-Expanded Identification-Message
                ::= SEQUENCE
{                                                -- Begin Standard Header
application-ID          2,                       -- CVO Application Identifier
message-ID              8,                       -- Screening Event
                                                 Message Identifier
message-date            0,                       -- 1/1/1990
message-length          50,                      -- 50 byte message body
message-checksum        '00'H,                   -- XOR checksum
                                                 (not calculated)
                                                 -- End Header / Begin Body
vehicle-component-                               --
  ID
driver-ID                                        --
}
```

8.6.3.3 ASN.1 PER Encoding

Bit		Bit value	Field definition
0	.....	000010	application-ID
6	.....	00.1000	message-ID
12	.....	0000.00000000.	message-date
24	.....	00001100	message-length
32	.....	xxxxxxxx.	message-checksum
			— [end of Header]
40	.....	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	vehicle-component-ID
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx	
250	.....	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	driver-ID
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
		xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
440	.....		—[end of Body]

8.6.4 CMV Screening Expanded Event Message

The CMV Screening Expanded Event message provides information documenting potentially critical parameters of the last clearance event and is used in conjunction with the CMV Screening Event message (see 8.6.2). It is generated by the CV check station computer via a DSRC controller, stored in the transponder memory, and received by the beacon at a CV check station. See Table 8.6.4–1.

TABLE 8.6.4–1.—CMV SCREENING EXPANDED EVENT MESSAGE

Field	Data element name	Type	Constraint
1	Vehicle-AxleNumber	Integer	(2 .. 17); measured number of vehicle axles
2	Vehicle-AxleWeight	Integer	(0 .. 4536); 10 kg steps; repeated for each axle
3	Vehicle-AxleSpacing	Integer	(0 .. 62); distance between axles in .5 m steps. Last value (for final axle) shall always be 0. Repeated for each axle.

8.6.4.1 ASN.1 Specification

```
CMV-Screening-Expanded Event-Message ::= SEQUENCE
{
header          Dsrcmsg-Header,     — Standard Header
axle-number     INTEGER,            — Vehicle-AxleNumber
axle-weight-1   INTEGER,            — Vehicle-AxleWeight
axle-weight-2   INTEGER,            — Vehicle-AxleWeight
axle-spacing-1  INTEGER,            — Vehicle-AxleSpacing
axle-spacing-2  INTEGER,            — Vehicle-AxleSpacing
}
```

8.6.4.2 ASN.1 Sample Values

```
CMV-Screening-Expanded Event-Message ::= SEQUENCE
{                       — Begin Standard Header
application-ID          2,          — CVO Application Identifier
message-ID              9,          — Screening Event Message Identifier
message-date            0,          — 1/1/1990
message-length          6,          — 6 byte message body
message-checksum        '00'H,      — XOR checksum (not calculated)
                        — End Header / Begin Body
axle-number             2           — Vehicle-AxlesNumber
axle-weight             100,        — 1000 kg
axle-weight             100,        — 1000 kg
axle-spacing            4           — 4 meters
axle-spacing            0           — terminal axle
}
```

8.6.4.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.1001	message-ID
12	0000.00000000.	message-date
24	00000110	message-length
32	xxxxxxxx.	message-checksum
		— [end of Header]
40	00010	axle-number
45	0011.11101000.0	axle-weight
58	0011111.010000	axle-weight
71	00.0100	axle-spacing
77	0000.00	axle-spacing
83	xxxxxx	octet alignment pad
88		—[end of Body]

9. Application Layer

9.1 Introduction

The purpose of the Application Layer is to provide communication services that allow the Resource Manager to communicate with the DSRC application on the OBE. The specification of the Application Layer is based on Clause 9 of IEEE 1455–99; however, it has been substantially modified for the following two reasons. First, a portion of the application layer functionality has been subsumed by lower layers. Second, the application layer and its interface to the other layers are not expected to be exposed and thus they will not be testable. Therefore, the application layer portion of this specification only provides limited guidance on the services and lower layer interface. *Specification compliant DSRC equipment does not need to support the capability discussed in this section, except formatting related to the initialization tables as described in section 9.4.*

9.2 DSRC Application Domain Assumptions

This specification makes the following assumptions about the domain of DSRC applications for which the Specification is intended:

• Point-to-Point Communication: Any session that includes the exchange of messages between a DSRC application on the RSE and the corresponding application on the OBE transponder is always through a single point-to-point communication between the two.

• Master-Slave: In all RSE-to-OBE point-to-point connections, the Resource Manager acts as the master and the OBE transponder application is the slave.

9.3 Architecture

9.3.1 Lower Layer Service

The Application Layer assumes there is a generic lower layer service. This lower layer service provides the minimum subset of the functionality defined by Layers 4 through 1 of the OSI model. Table 9.3.1–1 summarizes the minimum subset of the services, defined by OSI Layers 4 through 1, that the Application Layer assumes are provided within the lower layer service.

TABLE 9.3.1–1.—REQUIRED SUBSET OF OSI FUNCTIONALITY FOR THE LOWER LAYER SERVICE

OSI layer	Corresponding lower layer service
Layer 4 (transport)	• Fragmentation/Defragmentation. • Message sequencing. • Duplicate message handling.
Layer 3 (network)	Packet routing.
Layer 2(data link)	• Frame handling. • Transmission error detection. • Transmission error recovery.
Layer 1 (physical)	• Physical information transmission.

The Application Layer requires a service interface to the lower layer service. This service interface shall provide three basic classes of service for sending data from the RSE Application Layer and sending corresponding responses from the OBE Application Layer.

The specific syntax and semantics of the generic lower layer service implementation may be vendor specific. However, any conformant lower layer service must provide a lower layer service that corresponds to each of the required generic lower layer service classes defined in this section. The specific lower layer service implementation may also include additional services required for interoperability.

For the purposes of this Specification, the lower layer service classes are defined using the following generic service identifiers:

1. DATASEND_RESPOND: This service class sends data from the RSE Application Layer and receives a confirmation that the data was received by the OBE and response data from the OBE.

2. DATASEND_NORESPOND: This service class sends data from the RSE Application Layer with no subsequent OBE application confirmation that the data was received by the OBE.

3. SEND_BST_RESPOND_REPEAT: This service class sends a BST from the RSE Application Layer and receives a confirmation, which includes a returned VST, that the BST was received by the OBE.

9.3.2 Application Layer Services

The Application Layer shall consist of an Application Layer kernel whose services are defined by a set of application kernel elements. An application kernel element represents a logical component of Application Layer functionality.

The application kernel shall consist of a transfer kernel element (T–KE), an initialization kernel element (I–KE), and a broadcast kernel element (B–KE).

The T–KE shall provide services to transfer information between the Resource Manager and the application running on the OBE transponder.

The I–KE shall provide services to initialize a session between the Resource Manager and an application running on the OBE transponder. The I–KE shall initialize the session by means of a BST. The size of one BST shall enable the transfer of the BST in one layer service primitive. A response to an I–KE initialization using a BST shall be in the form of a VST. The BST and VST are defined in section 9.4.

The B–KE shall provide services to broadcast unacknowledged information from the Resource Manager to a Broadcast Pool maintained by the OBE Application Layer as well as services for the OBE transponder application to access the Broadcast Pool.

9.4 Initialization Tables

9.4.1 Beacon Service Table

As part of the initialization of a point-to-point connection between the RSE and the OBE, the I–KE collects the Resource Manager application identification number, initial data, and protocol layer parameters relevant for the communication, and assembles a BST. The BST is cyclically transmitted by the RSE. Either the Application Layer or the lower layer service may control this cyclic transmission depending on the capability of the lower layer service.

The reception of the BST by an OBE transponder is the initiator of the point-to-point data transfer. The OBE transponder evaluates a received BST to determine if a connection should be made, and if so, sends back a corresponding VST. Table 9.4.1–1 describes the individual fields and their values, which shall comprise the BST.

In order to avoid compatibility problems with a subset of legacy OBEs, the Logical Link Control bits in the slot used to transmit the BST shall be set to hex 0100.

TABLE 9.4.1–1.—BST FIELD DESCRIPTIONS AND VALUES

Field Name	ASN.1 Type	Description	Size (bits)	Bit Sequence = Value
T–APDU	T–APDUs	A BST identifier required for compliance with the CEN ASN.1 definition of a BST.	4	0–3 = ASN.1 T–APDUs value for a choice of initialisation.request = hex(8)
Options Flag	BIT STRING (SIZE (1)).	A bit indicating that the optional nonmadatory applications list field is missing; required for compliance with the CEN ASN.1 definition of a BST.	1	4 = 0
beacon	BeaconID	An identifier composed of a Manufacturer Identifier (a unique identifier assigned by IEEE) and an Individual Identifier whose use is vendor specific.	43	5–20 = Manufacturer Identifier 21–47 = Individual Identifier
time	Time	The number of seconds from 01/01/1970 GMT	32	48–79 = time
profile	Profile	The profile that will be used to transmit the BST; profile definitions are specific to the lower layer service.	8	80–87 = profile
mandApplications	ApplicationList	Defines the RSE applications; the only application currently defined by this Specification is mailbox The ASN.1 encoding of the application list requires that the first octet defines the number of elements in the list which shall always be hex(1) The application list consists of the mailbox AID, an EID, and a parameter field; the Parameter field consists of a data type tag, a data length octet, and the data itself. The Parameter Field data defines two Page Identifiers that must be present on the OBE for the OBE to respond with a BST The Parameter Field then defines four Page Identifiers for which OBE memory images will be returned by the OBE in the VST The Page Identifiers shall be set to zero if they are unused.	136	• 88–95 = number in list = hex (2) • 96–103 = hex(0D) (mailbox AID) • 104–111 = EID • 112–119 = hex(4) = tag for Octet String • 120–127 = length of data = hex(0C) • 128–143 = 1st filter identifier • 144–159 = 2nd filter identifier • 160–175 = 1st return identifier • 176–191 = 2nd return identifier • 192–207 = 3rd return identifier • 208–223 = 4th return identifier
profileList	SEQUENCE OF Profile; only one Profile in the sequence.	A profile, in addition to the profile specified in the Profile field, that is supported by the RSE lower layer service; the ASN.1 encoding of profileList requires two octets.	16	224–231 = number of profiles in list = hex(1) 232–239 = value of profile

9.4.2 Vehicle Service Table (VST)

The VST is constructed by the I–KE on the OBE transponder in response to a BST received from the RSE. The VST shall be composed of only the requested pages; each prefaced by the 40-bit IEEE1455–99 Command Response header (section 6.5). The Response Command Identifier shall be set to hex (10). The Response Transaction Identifier shall be set to hex (00). Page 1 (the Read-only Memory) will be transmitted only when requested. The "CEN configuration bits" will not be transmitted.

Attachment A—Compatibility Philosophy

Introduction

The primary objective of this document is to specify the characteristics of Dedicated Short Range Communication (DSRC) equipment that will serve as a basis for nationwide compatibility for commercial vehicle operations (CVO). The most significant difference between the equipment specified by this document (referred to as FHWA equipment) and equipment previously deployed is the use of the IEEE 1455–99 application layer. It is anticipated that future FHWA CVO applications will be conducted exclusively with IEEE 1455 and will require equipment conforming to this specification. However, this document carries forward the physical layer and data link layer characteristics of deployed CVO DSRC systems. A goal of this specification is to allow for compatible operation with deployed CVO systems such as Advantage CVO, Help Prepass, and border crossing and to permit a smooth transition from legacy systems to equipment conforming to this specification. This appendix briefly reviews the system compatibility philosophy.

Physical Layer

Basic communications compatibility at the physical layer is assured by adoption of the ASTM PS111–98 physical layer. All active legacy systems are compatible with the Class A beacon described in PS111–98. The new Class B

downlink frequencies permitted under the ASTM standard, however, may not be compatible with legacy OBE's. Also, the specification for Fast Wake-up Time has been eliminated to facilitate the adaptation of legacy equipment to this specification.

Data Link Layer

Although this document adds new data link layer capabilities, the TDMA data link structure as defined in "Standard for Dedicated, Short Range, Two-Way Vehicle to Roadside Communications Equipment, Draft 6," dated 23 February 1996, has been retained. The Draft 6 standard is relaxed in that only the Wide-Area Frame or "open road" mode is required by this document. The Lane-Based Frame is not required. To avoid conflicts in memory usage, both the "internal" and "external" memory commands defined in the "Draft 6" document have been retained. Internal memory commands are reserved for legacy operations and IEEE 1455 operations will be performed using external memory commands.

Legacy Roadside Operations

OBE's developed under this specification are compatible with deployed systems. Legacy RSE's operating in "open road" mode and using only internal memory commands will be able to read and write to the internal memory of FHWA OBE's (consisting of Public ID, Agency Memory, and General-Use Memory). Because IEEE 1455 operations are isolated in external memory, legacy RSE's may freely use the internal memory resources of the FHWA OBE's. The FHWA OBE internal memory has been reserved for use by legacy systems indefinitely. A FHWA OBE will not respond to legacy external memory commands.

Legacy On-Board Equipment

Legacy OBE's may be usable by FHWA RSE's. All legacy OBE's will respond to internal memory commands from FHWA RSE's using Class A beacons. Some legacy OBE's, however, may not respond to RSE's using a Class B beacon because of the higher downlink carrier frequency. Additionally, some legacy OBE's may suffer an uplink loss because the OBE carrier frequency is not within the tolerance of this specification. During a transition period, it is anticipated that sites such as international border crossings will support both legacy OBE's (with application data in internal memory) and FHWA OBE's.

[FR Doc. 99–33406 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–P

federal register

Thursday
December 30, 1999

Part III

Department of Commerce

Bureau of Export Administration

15 CFR Part 710 et al.
Chemical Weapons Convention Regulations; Final Rule

Department of State

22 CFR Part 103
Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998; Taking of Samples; Recordkeeping and Inspections; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 710 through 722

[Docket No. 990611158–9311–02]

RIN 0694–AB66

Chemical Weapons Convention Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). This interim rule establishes the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Convention affecting U.S. industry and other U.S. persons. The CWCR include requirements to report certain activities involving Scheduled chemicals and Unscheduled Discrete Organic Chemicals, and to provide access for on-site verification by international inspectors of certain facilities and locations in the United States.

DATES: *Effective Date:* December 30, 1999.

Comments: Written comments must be submitted no later than January 31, 2000.

ADDRESSES: Written comments should be sent to the Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on declarations, reports, notifications, and chemical determinations, contact the Information Technology Team of the Treaty Compliance Division, Office of Chemical & Biological Controls and Treaty Compliance, telephone: (703) 235–1335; for program information on inspections and facility agreements, contact the Inspection Management Team of the Treaty Compliance Division, Office of Chemical & Biological Controls and Treaty Compliance, telephone: (202) 482–6114; for legal questions, contact Cecil Hunt, Acting Chief Counsel, Office of the Chief Counsel for Export Administration, telephone (202) 482–5301.

SUPPLEMENTARY INFORMATION:

I. Background

Chemical Weapons Convention

On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Convention, which entered into force on April 29, 1997, is an arms control treaty with significant non-proliferation aspects. As such, the Convention bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties from assisting or encouraging anyone to engage in a prohibited activity. The Convention provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities and oversees the destruction of such weapons and facilities.

To fulfill its arms control and non-proliferation objectives, the Convention also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain "scheduled" chemicals and unscheduled discrete organic chemicals, many of which have significant commercial applications. The Convention also requires States Parties to report exports and imports and to impose export and import restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals. States Parties to the Convention, including the United States, have agreed to this verification scheme to provide transparency and to ensure that no State Party to the Convention is engaging in prohibited activities.

Specifically, the Convention requires States Parties to declare all facilities that produce Schedule 1 or Schedule 3 chemicals in quantities exceeding specified declaration thresholds, or that produce, process or consume Schedule 2 chemicals in quantities exceeding specified declaration thresholds. Schedule 1, 2 and 3 chemicals are set forth in the Convention's Schedules of Chemicals and have been selected for these Schedules based on degree of toxicity, history of use in chemical warfare and commercial utility. The Convention also requires States Parties to declare facilities that produce "Unscheduled Discrete Organic Chemicals" ("UDOCs") in quantities exceeding specified thresholds. The requirement to declare UDOC facilities is intended to identify facilities capable of producing chemical warfare agents or precursors.

Certain "declared" facilities will also be subject to routine on-site inspections by international inspectors from the Convention's implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW). All declared Schedule 1 facilities are subject to routine inspection. Declared Schedule 2 facilities are subject to inspection if they produce, process or consume Schedule 2 chemicals in quantities exceeding specified inspection thresholds. Declared Schedule 3 facilities are subject to inspection if they produce Schedule 3 chemicals in quantities exceeding a specified inspection threshold. Facilities producing UDOCs in quantities exceeding a specified threshold will be subject to inspection beginning April 29, 2000. With a few exceptions, inspection thresholds are higher than declaration thresholds.

The Convention also provides for challenge inspections of any facility or location under the jurisdiction of any State Party. Challenge inspections are intended to resolve questions of possible non-compliance with the Convention.

Finally, the Convention requires States Parties to provide information on exports and imports of Scheduled chemicals. States Parties must also, among other things, prohibit exports of Schedule 1 chemicals to non-States Parties, require advance notification of imports and exports of Schedule 1 chemicals, require End-Use Certificates for exports of Schedule 2 and 3 chemicals to non-States Parties, and ban the import from or export to non-States Parties of Schedule 2 chemicals after April 28, 2000.

Application of CWC Requirements to U.S. Commercial Entities and Individuals

The Chemical Weapons Convention Implementation Act of 1998 ("Act") (22 U.S.C. 6701 *et seq.*), enacted on October 21, 1998, authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections. Executive Order (E.O.) 13128 delegates authority to the Department of Commerce to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate

functions to implement the Convention, consistent with the Act. The Department of Commerce will carry out CWC import restrictions under the authority of the International Emergency Economic Powers Act, the National Emergencies Act and E.O. 12938, as revised by E.O. 13128. The Departments of State and Commerce are implementing CWC export restrictions under their respective export control authorities. E.O. 13128 designates the Department of State as the United States National Authority (USNA) for purposes of the Convention and the Act.

Other Department of State and Commerce Regulations Implementing Requirements of the Chemical Weapons Convention

In addition to this interim rule, the Department of State is publishing a separate rule on the taking of samples during on-site inspections in the United States and the enforcement provisions for violations of the reporting and inspection requirements set forth in the Act, and also maintains the International Traffic in Arms Regulations (ITAR) (22 CFR 120–130).

Further, on May 18, 1999, the Bureau of Export Administration (BXA) of the Department of Commerce published an interim rule (64 FR 27138) amending the Export Administration Regulations (15 CFR 730–799) to implement the following trade restriction provisions of the CWC:

—Annual reporting of all exports of Schedule 1 chemicals;
—Advance notification of all exports of Schedule 1 chemicals;
—Prohibition on exports of Schedule 1 chemicals subject to Department of Commerce jurisdiction to non-States Parties;
—Prohibition on all reexports of Schedule 1 chemicals subject to Department of Commerce jurisdiction;
—Prohibition on exports of Schedule 2 chemicals subject to Department of Commerce jurisdiction to non-States Parties after April 28, 2000;
—Requirement that exporters obtain an End-Use Certificate prior to exporting any Schedule 2 or 3 chemicals to a non-State Party; and
—License requirements for the export of Schedule 1 chemicals under Department of Commerce jurisdiction to all destinations, including Canada.

Note that all existing export license requirements that apply to CWC Scheduled chemicals and UDOCs subject to Department of Commerce jurisdiction continue in effect. Further, the new CWC reporting requirements, such as the End-Use Certificate and prior notification requirements, are in addition to existing export license and supporting documentation requirements for exports of chemicals subject to Department of Commerce or Department of State export licensing jurisdiction.

The Chemical Weapons Convention Regulations (CWCR)

This rule implements reporting and inspection requirements and import restrictions. The CWCR:

—Apply to all U.S. persons and to facilities in the United States, except for facilities of the Departments of Defense and Energy and other U.S. Government agencies that notify the United States National Authority (USNA) of their decision to be excluded from the CWCR (such entities are referred to as "persons and facilities subject to the CWCR"). United States Government facilities are those owned by or leased to the U.S. government, including facilities that are contractor-operated.
—Set forth the declaration and other reporting requirements that affect persons and facilities subject to the CWCR. The reporting requirements of this rule are consistent with the procedural provisions of section 401(a) of the Act. Section 401(a) of the Act requires submission to the Director of the USNA of such reports as the USNA may reasonably require to provide to the OPCW, pursuant to subparagraph 1(a) of the Convention's Annex on Confidentiality. Subparagraph 1(a) of the Confidentiality Annex provides that the OPCW shall require only the minimum amount of information and data necessary for the timely and efficient conduct by the OPCW of its responsibilities under the Convention. As required by Section 401(a) of the Act, the USNA, in coordination with the CWC interagency group, has determined that the reports required by the CWCR are those reasonably required to be provided to the OPCW. Declarations, notifications and other reports required under the CWCR will be due to the Department of Commerce at specified dates or within specified time frames for verification, aggregation and submission to the Director of the USNA. The USNA will transmit United States declarations, reports and notifications to the OPCW located in the Hague, the Netherlands.
—Require access for on-site inspections.
—Prohibit imports of Schedule 2 chemicals from non-States Parties after April 28, 2000.
—Contain recordkeeping requirements and administrative procedures and penalties related to violations of reporting and inspection requirements and importation restrictions.
—Implement section 211 of the Act, which authorizes revocation of the export privileges of any person determined to have violated the chemical weapons provisions of 18 U.S.C. § 229.

Reporting Requirements

Declaration Requirements. Facilities required to submit "declarations" are those that produce, process or consume certain chemicals in quantities that exceed specified thresholds. Four types of declarations are due to BXA when required by parts 712 through 715 of the CWCR: initial declarations, annual declarations on past activities, annual declarations on anticipated activities, and a one-time declaration of facilities that produced Schedule 2 or 3 chemicals for chemical weapons purposes at any time since January 1, 1946. The United States will transmit data on declared facilities to the OPCW. Such data will also be compiled to establish the U.S. national aggregate on production, processing and consumption of relevant chemicals. Export and import data contained in declarations will also be compiled and added to export and import information obtained from other reports to establish the U.S. national aggregate declaration on imports and exports of certain chemicals.

Initial declarations. Initial declarations are one-time declarations that are due to BXA BY March 30, 2000, except for the establishment of new Schedule 1 facilities, which requires submission of a technical description of the facility prior to producing above 100 grams aggregate. Any Schedule 2 or 3, or UDOC plant site that was not required to submit an initial declaration but that exceeded the applicable declaration or reporting thresholds for covered activities in a subsequent year, must submit only an annual declaration on past activities or an annual report on exports and imports. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998, or 1999 must submit an initial declaration (a technical description of the facilities). Note that the Schedule 1 Certification Form asks you to identify each year in which you produced in excess of 100 grams aggregate. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of the calendar years 1994, 1995, or 1996 must provide information on activities involving that Schedule 2 chemical that occurred in each of calendar years 1994, 1995, and 1996. Facilities that produced more than 30 metric tons of a Schedule 3 chemical in calendar year 1996 must provide information on activities involving this Schedule 3 chemical that occurred in 1996. Facilities that produced more than specified quantities of UDOCs in calendar year 1996 must provide ranges of production for 1996.

Annual declarations on past activities. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals, more than 30 metric tons of a Schedule 3 chemical, or more than

specified quantities of UDOCs in the previous calendar year, must submit an annual declaration on past activities. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of the three previous calendar years must submit an annual declaration on past activities for activities during the previous year. Annual declarations on past activities for calendar years 1997, 1998, and 1999 will be due to BXA March 30, 2000.

Annual declarations on anticipated activities and declarations on additionally planned activities. Facilities that anticipate engaging in production of Schedule 1 or Schedule 3 chemicals or production, processing or consumption of Schedule 2 chemicals above specified thresholds during the next calendar year must submit an annual declaration on anticipated activities. Facilities that have certain types of changes or additions to their annual declaration on anticipated activities must submit a declaration on additionally planned activities.

One time declaration of past production for chemical weapons purposes. Facilities that have produced Schedule 2 or Schedule 3 chemicals anytime since January 1, 1946, for chemical weapons purposes must submit a declaration by March 30, 2000.

Amended declarations and reports. The CWCR also provide for submission of "amended declarations" and "amended reports" to change, replace, or add information to previously submitted declarations or reports.

Notification Requirements. Facilities that intend to export or import Schedule 1 chemicals to or from States Parties must submit prior notifications of these activities. These notifications will be forwarded to the OPCW.

Other Reporting Requirements. U.S. persons and facilities subject to the CWCR that have exported or imported a scheduled chemical, but have not produced, processed, or consumed declarable quantities of that chemical, may nevertheless have an export or import reporting requirement. The USNA will NOT forward facility-specific information contained in these reports to the OPCW. BXA will include the export and import data in the compilation of the U.S. national aggregate declaration on exports and imports of relevant chemicals.

Initial reports on exports and imports. Initial reports for exports and imports are required for exports and imports of Schedule 2 and Schedule 3 chemicals above certain threshold quantities during calendar year 1996.

Annual reports on exports and imports. Annual reports for exports and imports are required for all exports and imports of Schedule 1 chemicals during the previous calendar year, and for exports and imports of Schedule 2 and 3 chemicals above certain threshold quantities. Annual reports on exports and imports for calendar years 1997, 1998, and 1999 will be due to BXA March 30, 2000.

Timing of submission of initial and annual declarations and reports. The first declaration and report package due to the Department of Commerce will include the initial declaration plus the annual declarations and reports for activities in calendar years 1997, 1998, and 1999. The first Schedule 1 annual declaration on anticipated activities for calendar year 2001 will be due to BXA on August 3, 2000. The first Schedule 2 and Schedule 3 annual declarations on anticipated activities for calendar year 2001 will be due on September 3, 2000. Certain facilities may also need to submit the one-time declaration on past production of Schedule 2 or Schedule 3 chemicals for chemical weapons purposes. CWC Declaration and Report Handbooks containing necessary multipurpose forms for declarations and reports will be available by mail and through the Internet. If there are discrepancies between the CWCR and the Handbooks (including instructions and form requirements), the CWCR prevail.

On-Site Inspection Requirements

This rule also sets forth the requirements and procedures for on-site inspections of U.S. facilities subject to the CWCR, consistent with sections 301 to 309 of the Act. On-site inspections will be conducted by inspectors from the OPCW's Technical Secretariat. The Department of Commerce will lead the Host Team accompanying and escorting the inspectors during inspections.

Types of inspections. There are two major kinds of inspections: (1) Initial and subsequent ("routine," under the Act) inspections of declared facilities whose level of production, processing or consumption of specified chemicals makes them subject to such verification as a routine matter; and (2) "challenge" inspections of any facility or location in the United States based on a request made by another State Party to clarify and resolve any questions concerning possible non-compliance with the Convention.

Notification and consent procedures. Pursuant to section 304 of the Act, before an inspection may take place, the USNA must authorize each inspection of a facility or location in the United States and provide actual written notification of each inspection to the owner and operator or other person in charge of the facility. For routine inspections of declared facilities, the USNA will provide such written notification within 6 hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to facilities to be inspected. The Department of Commerce intends to seek an administrative warrant, as provided for by section 305 of the Act and in E.O. 13128, if the owner or person in charge of the facility does not consent to the inspection.

II. Public Comments on Proposed Rule

On July 21, 1999, the Bureau of Export Administration published in the **Federal Register** (64 FR 39104) a proposed rule, with request for comment, to establish the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Convention and the Act affecting U.S. industry and other U.S. persons. BXA received comments from 18 respondents. Following is a summary of those comments, along with BXA's responses.

Scope of the CWCR

One respondent questioned whether the definition of "Chemical Weapons Convention" includes any annexes that have not yet entered into force under the Convention, and stated that annexes approved after January 13, 1993, should not automatically be implemented by the CWCR. This rule implements those relevant articles and annexes of the Convention that entered into force on April 29, 1997, as reflected in parts 710 through 722 of the CWCR.

To clarify what U.S. government facilities are excluded from the CWCR, one respondent sought guidance on whether the term "U.S. facilities that are contractor-operated" includes facilities owned by the U.S. Government, but leased to private companies. The CWCR reporting, declaration, and inspection requirements do apply to facilities owned by a U.S. Government agency and leased to a private company or other entity, such that the private company or other entity may independently decide for what purposes to use the facilities. BXA has revised § 710.2 of this rule to clarify the scope of the CWCR.

Chemicals Subject to the CWCR

One respondent requested that all Schedule 1, Schedule 2 and Schedule 3 chemicals subject to the CWCR be

identified by the Chemical Abstract Service registry number (CAS number) to clarify declaration and reporting requirements. Supplement No. 1 to Part 712 (Schedule 1), Supplement No. 1 to Part 713 (Schedule 2), and Supplement No. 1 to Part 714 (Schedule 3) of the CWCR list certain chemicals by name or family that are subject to the CWCR. These Supplements also identify certain of these chemicals by CAS number. These Supplements mirror the Schedules of Chemicals found in the Convention. BXA agrees that it is desirable to provide CAS registry numbers for all chemicals subject to the CWCR. However, because there are, by conservative estimates, 25,000 or more chemicals subject to the CWCR, listing each chemical by name and CAS number is not practical. In addition, new chemicals are being developed and/or assigned CAS numbers daily. Therefore, any list published by BXA would be neither exhaustive nor current. BXA believes that Supplement No. 1 to Parts 712, 713 and 714 of the CWCR provide sufficient information for a qualified chemist to determine whether a chemical is subject to the CWCR. In addition, BXA will, upon request, provide a binding determination of whether or not a specific chemical is subject to the CWCR. (See § 711.3 of the CWCR.)

Confidential Business Information

Four respondents submitted comments on confidential business information (CBI) issues, which fall into four broad categories: the amount of information BXA should collect; location and consolidation of CBI provisions in the CWCR; protection of information made available to the OPCW; and protection of CBI within the United States in both Freedom of Information Act (FOIA) and non-FOIA contexts.

Amount of information BXA should collect: Two respondents requested BXA to collect only the minimum amount of information necessary to comply with the Convention and the Act. Consistent with section 401 of the Act, the U.S. Government is requiring only the minimal information necessary to satisfy the requirements of the Convention and Act. This is reflected in the provisions of the CWCR.

One respondent suggested that BXA not make lists of companies subject to CWC verification, for fear that such lists could be exploited by persons seeking to stigmatize the lawful production of chemicals. The respondent suggested if BXA did establish such lists, that BXA implement procedures for removing facilities from those lists when such facilities are no longer subject to declaration requirements. From time to time, BXA will need to create such lists, for example, to comply with certain U.S. national declaration requirements. However, BXA will create the minimum number of lists necessary, and will update the lists as appropriate, to ensure effective U.S. implementation of the Convention.

One respondent was concerned that language in the proposed rule on the conduct of inspections would not allow the site representative to shroud or remove from the site items that the site representative determined were irrelevant to the inspection, unless "agreed by the U.S. Government Team." The respondent suggested deletion of the cited phrase. BXA has clarified this provision by changing it to read "as determined by the Host Team," since the right to take protective measures, such as shrouding equipment not related to the purpose of an inspection, is a right granted to the State Party under the Convention.

Consolidation and location of CBI provisions in the CWCR: One respondent suggested consolidating the CBI provisions in Part 716 (routine inspections) and Part 717 (challenge inspections). Three respondents requested BXA to consolidate all provisions in the CWCR relating to CBI and place these consolidated provisions in part 710 to highlight their importance. BXA agrees that to avoid any ambiguity that may arise because of slight differences in wording, the CBI provisions should be consolidated. To highlight the importance of CBI, BXA is placing these provisions in a dedicated CBI part. Because part 710 serves as an introduction to the CWCR and does not have regulatory force, BXA is placing the CBI provisions in Part 718, entitled "Confidential Business Information." BXA is creating new part 722, entitled "Interpretations," to replace Part 718, originally reserved for interpretations.

Status of information made available to the OPCW: Three respondents suggested that all CBI made available to the OPCW during inspections be designated "highly protected." The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate their declarations as "restricted," "protected," or "highly protected." The U.S. Government is directing the OPCW to accord "protected" status to all information contained in declarations, reports and advance notifications of exports and imports of Schedule 1 chemicals. The "protected" level of confidentiality is consistent with the level of protection designated by many other States Parties for their industrial declarations.

It is also the policy of the U.S. Government to designate CBI that it discloses to OPCW Inspection Teams as "protected" or "highly protected," depending on the sensitivity of the information. However, the U.S. Government will not request "protected" status for information made available to OPCW Inspection Teams that is publicly available, such as company sales or marketing literature or information from the company's Internet web site. The "protected" or "highly protected" status will apply to CBI disclosed to Inspection Teams, irrespective of the form or medium in which it is made available to the OPCW, whether in oral, written or visual form.

Definition and identification of CBI: Three respondents requested clarification about the "scope of coverage" of CBI in the CWCR. Section 103(g) of the Act defines U.S. confidential business information as any trade secrets or commercial or financial information that is privileged and confidential. BXA has determined that CBI contained in information submitted to, or obtained by, the U.S. Government for CWC purposes will fall into one of two categories:

(1) information that falls under the types of information listed in Section 103(g)(1) of the Act, called "section 103(g)(1) information"; and

(2) information that does not meet (1) but that meets all the criteria of section 103(g)(2) of the Act because it is a "trade secret" as described in 5 U.S.C. 552(b)(4) and is obtained from a U.S. person or through the U.S. Government or the conduct of an inspection in the United States, called "section 103(g)(2) information."

Information that satisfies the criteria of both sections 103(g)(1) and 103(g)(2) will be treated as section 103(g)(1) information.

BXA has determined that certain fields in the declaration and report forms meet the definition of section 103(g)(1) and has identified these fields in Supplement 1 to Part 718 of the CWCR. BXA will continue to determine whether additional types of information meet the requirements of section 103(g)(1) and will add to Part 718 any such types of information that can apply generally to entities subject to the CWCR. Section 103(g)(2) information

will likely involve specific circumstances, require case-by-case determination, and not lend itself to general use. Therefore, BXA cannot at this time provide additional clarification about the scope of coverage of section 103(g)(2).

Except for the section 103(g)(1) information BXA has identified in the declaration and report forms, the U.S. Government will not be able to distinguish CBI from non-CBI, as defined in the Act, and will require the assistance of industry in identifying such CBI, most notably in connection with inspections.

Two respondents objected to the implicit limitation of the scope of CBI in Supplement No. 1 to Part 711 of the proposed rule. BXA intends this chart to serve as general guidance by indicating the fields of information on declaration and report forms that BXA has identified as section 103(g)(1) information. BXA is revising the supplement (to new part 718) to add a note indicating that information in other fields on the forms may also be considered CBI when such information has been specifically identified by submitters and a rationale has been provided for the CBI status of such information.

In a related matter, two respondents urged BXA to indicate that CBI need not be "marked," but one respondent recommended that items not specifically identified in 103(g)(1) be marked. This rule requires companies to identify information they consider to be CBI that BXA has not specifically identified in Supplement No. 1 to Part 718 as section 103(g)(1) information. In addition, entities hosting on-site inspections will need to specifically identify to the Host Team any CBI contained in information made available to the U.S. Government to ensure proper handling and treatment of such CBI.

One respondent requested BXA to provide a box on the declaration/reporting forms so a company could check the box to indicate the form contained CBI. Checking a box would not serve to specifically identify the information on the completed form that meets the definition of CBI. BXA must reject this suggestion and require the system of identification set out in this preamble and in this rule.

One respondent asked BXA to state that all information provided to the U.S. Government for whatever purpose is confidential when it meets the CBI definition of the Act. The Act defines CBI, not for all purposes, but for specific purposes. BXA is unable to comply with this request. Certain data defined as CBI in a CWC compliance context might not qualify as a "trade secret" or otherwise be deemed confidential when obtained by the U.S. Government in non-CWC compliance contexts (e.g., publicly available research, patent, or sales data).

One respondent urged BXA to acknowledge that CBI would arise in a variety of contexts. BXA agrees that CBI will exist in tangible and intangible forms. BXA believes that Part 718 adequately covers CBI.

Protection of CBI by the U.S. Government in non-FOIA contexts: All four respondents expressed concern about U.S. Government protection of CBI in situations other than requests for information under the Freedom of Information Act (FOIA), such as Department of State and Commerce enforcement proceedings or litigation in which the U.S. Government is not a party. Three respondents requested BXA to draft CBI provisions in this regulation as a broad, blanket non-disclosure requirement, except where expressly permitted by section 404 of the Act (*i.e.*, to the OPCW, U.S. law enforcement agencies, and appropriate congressional committees).

Section 404 of the Act provides exemptions from the disclosure requirements of FOIA. BXA cannot guarantee non-disclosure of information in all circumstances, such as in instances of judge-issued subpoenas. Information and documents related to CWC administrative enforcement cases will be handled and protected according to procedures set forth in part 719 of the CWCR.

In a related issue, three respondents requested BXA to specify that the Act is a "confidentiality statute" for purposes of regulations administered by the Office of the Secretary of Commerce in 15 CFR Part 15 (Legal Proceedings). Part 15 sets forth procedures governing the production of Department of Commerce records or testimony by Department of Commerce employees in legal proceedings in which the United States is not a party. Federal agencies may establish such procedures under section 301 of Title 5, United States Code, to provide for the custody, use and preservation of its records. BXA has determined that it is unnecessary to specify whether the provisions of the Act fall under the meaning of "confidentiality statute," as used in 15 CFR section 15.17 because this, in and of itself, does not provide any protection other than that already available under the Act and other statutes. The Departmental regulations do not enhance existing statutory protections, but merely provide a mechanism whereby the Department can determine whether any evidentiary privileges or statutory requirements of privacy or confidentiality apply, or if there is any other legal basis for withholding information.

One respondent stated that the U.S. Government should request the United States magistrate judge to seal all records of warrants proceedings in order to guard against public disclosure of any CBI contained in the warrant or in material submitted in support of the issuance of the warrant. BXA intends to request that warrant proceedings be sealed if the warrant or related material includes CBI.

Protection of CBI requested under the Freedom of Information Act: Section 404 of the Act does not provide a statutory exemption from FOIA disclosure requirements for all information that is reported to, or otherwise obtained by, the U.S. Government, but only for "certain Convention information" (*i.e.*, that which is defined as "confidential business information" in section 103(g) of the Act). BXA will withhold from disclosure pursuant to a FOIA request only CBI, as defined in section 103(g), that has either been identified by BXA or by the person from whom the information is obtained.

National Interest Determination: Two respondents requested BXA to narrowly define the term "national interest," or to provide factors that the U.S. Government would consider in determining disclosure under the national interest disclosure provision. BXA cannot provide a definitive list of factors, since these would depend on specific circumstances, could change over time, and would need the concurrence of other agencies.

Two respondents suggested specific language for the consolidated CBI provisions, building upon language in the proposed rule. BXA is adopting some, but not all, the provisions in the suggested text. Under the suggested text, the notification and hearing procedures that apply to CBI disclosed in the "national interest" would also apply to disclosures to appropriate committees of Congress and law enforcement agencies. BXA rejects this suggestion. The Act does not require such notice and hearing procedures in the latter cases and provides no discretion regarding disclosure to such entities. Application of these procedures would only serve to delay authorized disclosures, without affecting the outcome. Moreover, delay in disclosure to other law enforcement agencies could hamper the actions of such law enforcement agencies, thereby thwarting the intention of the statute. BXA notes, however, that section 404 of the Act contains provisions limiting

further disclosure by such Congressional committees and law enforcement agencies of CBI released to them.

Recordkeeping

One respondent requested clarification on whether the declaration responsibilities for the production of Schedule 2 and 3 chemicals for chemical weapons purposes at any time since January 1, 1946 reside with the company that originally may have produced the chemicals. Four respondents addressed the proposed rule's requirement that the facility prepare declarations for activities dating back to 1994. The respondents state that the records and information necessary to prepare declarations may not be available because: (1) necessary information was not collected at the time of the activity, since no regulatory requirement to do so was in effect; (2) if collected at the time of the activity, the information has been discarded following normal business practices; or (3) due to changes in ownership or control of a facility, the current custodian of the information may no longer be affiliated with a facility subject to the CWCR. One respondent referenced a Supreme Court ruling which states that legislative rules, such as the CWCR, may not have a retroactive effect unless explicitly provided for by statute. The respondents request that BXA acknowledge that information necessary to prepare declarations or reports for previous years may not be available and that failure to prepare and submit declarations or reports for this reason should not constitute a violation under the CWCR.

BXA agrees that if records necessary to prepare a declaration and report are not available because one or more of the three factors cited in the preceding paragraph took place prior to the effective date of this rule, failure to prepare and submit the declaration or report should not constitute a violation under the CWCR. However, BXA has the authority under the Act to require the preparation and submission of a declaration or report for activities that occurred before the regulatory requirement becomes effective and, to the extent that information necessary to prepare the declarations and reports is available, the U.S. Government has the authority to impose an administrative sanction for willful failure or refusal to do so. Such a requirement is not "retroactive" under the Administrative Procedure Act, because it does not alter the past legal status of a past action (*i.e.*, disposal of records or failure to create records). In addition, the Technical Secretariat of the OPCW recently has confirmed that declarations and reports for activities occurring as early as 1994 may be useful to it in carrying out its verification and monitoring responsibilities. This rule includes new language in § 711.4 which addresses these issues.

One respondent requested that the 5-year record retention period be limited to 3 years. This rule maintains the 5-year requirement to correspond with the statute of limitations applicable to enforcement actions (28 U.S.C. 2462). Four respondents stated that part 721 was too vague and broad, and might be interpreted as requiring documents to be retained that are not necessary to enforcement or other administration of the CWCR. BXA has revised part 721 to clarify the types of documentation required to be retained, the location of documents, and the use of copies of documents to meet the record retention requirements. Finally, one respondent questioned the meaning of "formal or informal" requests for documents that would preclude their disposal or destruction. By "formal," the CWCR means a subpoena. By "informal," the CWCR means a verbal or written request by the investigating agency for a particular document or documents.

Declarations and Reports

One respondent requested an explanation of how the term "report" is used in the CWCR and a clearer description of the types of information that will be submitted to the OPCW. The term "report" is used to describe several different types of activities under the CWCR and the Act. The Act refers to reports to describe all types of requirements under the Convention, including declarations on production, processing and consumption, as well as reports on exports and imports. For reports required by the Act, this rule uses the following terms: (1) declarations; (2) reports on export and import activities; (3) notifications; (4) end-use certificates; (5) reports on inspection-related costs; and (6) post-inspection reports. BXA submits individual declarations for each declared facility to the USNA for transmission to the OPCW. These declarations contain facility-specific information, including facility name and address, and information on production, processing, consumption, and, in certain instances, export and import of specific chemicals. In addition, BXA submits to the USNA a national aggregate declaration on exports and imports, which combines information from facility declarations as well as information from reports submitted by other facilities and trading companies. The national aggregate declaration does not include facility-specific information, but only aggregate information by chemical or by country.

This rule provides that Schedule 1 and Schedule 3 facilities may include their export and import information with their declarations on past activities, or may submit the information separately as reports. Whether submitted as part of a declaration or as a report, Schedule 1 and Schedule 3 export and import information is included only in the national aggregate declaration; BXA does not submit facility-specific Schedule 1 or Schedule 3 export and import information from declarations or reports to the USNA for transmittal to the OPCW. (It should be noted, however, that notifications of Schedule 1 exports and imports are submitted to the USNA for transmittal to the OPCW.) For certain declared Schedule 2 plant sites, BXA does submit facility-specific production, processing, consumption, export and import information to the USNA for transmittal to the OPCW as part of the annual declaration on past activities. The Schedule 2 national aggregate declaration only includes information on exports and imports by chemical and by country. These different requirements are due to differences among the declaration provisions of the Verification Annex of the Convention for Schedule 1, 2 and 3 chemicals.

Initial Declarations

One respondent requested clarification of the initial declaration requirement for Schedule 1 facilities. For Schedule 1 facilities, unlike Schedule 2 and 3 facilities, the initial declaration does not include any production or other Schedule 1 chemical activity information; it only provides a technical description of the facility. Production and other activity information is provided in the annual declarations. For the annual declarations on past activities for calendar years 1997, 1998, and 1999, facilities are required to submit declarations only for those years during which they produced more than 100 grams aggregate of Schedule 1 chemicals.

One respondent requested clarification that for the Schedule 2 initial declaration, plant sites are not required to submit a declaration for all three years (1994, 1995, and 1996), but are only required to submit a declaration for the year(s) in which one or more plants on the plant site produced, processed, or consumed a

Schedule 2 chemical above the applicable threshold. BXA recognizes that the Schedule 2 initial declaration requirement, as well as the annual declaration on past activities, is burdensome on facilities and may appear unnecessary. However, Part VII of the Convention's Verification Annex requires initial declarations to be submitted for all three years (1994, 1995, and 1996) by plant sites comprised of one or more plants that produced, processed or consumed a Schedule 2 chemical above the applicable threshold in any one of those three previous calendar years. This initial declaration requirement will establish a profile on the plant site that will be used by the OPCW to monitor activities. The profile may be updated based on the plant site's subsequent submission of annual declarations on past activities. In order to maintain an accurate profile, a plant site must comply with the initial declaration requirement as described in the note to § 713.3(a)(1)(i). A plant site must declare each chemical that it produced processed or consumed over the applicable threshold quantity in any one of the calendar years 1994, 1995, or 1996, and must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996—for each chemical. For each year or years that a plant site did not produce, process or consume the declared chemical over threshold, it must declare "0" quantity only for those activities that triggered the declaration requirement. It should leave blank on Form 2–3 those questions relating to activities that did not exceed the applicable threshold quantity in any one of the three previous years. Plant sites that submit an initial declaration are subject to on-site verification if their activities exceed the applicable inspection threshold quantities set forth in part 716.

Declaration and Approval Requirements for Schedule 1 Facilities

One respondent requested clarification of whether a Schedule 1 facility would be subject to declaration requirements if all of its Schedule 1 production occurred prior to April 29, 1997, when the Convention entered into force. If a facility produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, it must submit an initial declaration and an annual declaration on past activities for 1997.

A respondent requested that BXA clarify that Schedule 1 facilities must declare consumption and storage of Schedule 1 chemicals only if they produced more than 100 grams aggregate of Schedule 1 chemicals. This is correct, but BXA does not agree that the rule requires clarification.

One respondent also requested BXA to state the grounds for disapproval of a Schedule 1 facility. The Convention requires States Parties to approve all Schedule 1 facilities. However, the Act does not authorize the U.S. Government to require a facility to stop or limit its production of Schedule 1 chemicals. Therefore, BXA cannot disapprove a Schedule 1 facility.

Mixtures and other exemptions to declaration and reporting requirements

Four respondents requested that BXA include a low-concentration threshold for mixtures containing Schedule 1 chemicals to reduce the burden on all companies of identifying, quantifying and accounting for trace amounts of Schedule 1 chemicals contained in complex product mixtures and waste streams at very low concentrations. One respondent expressed concerns about BXA not approving facilities that produce Schedule 1 chemicals as unwanted byproducts in the manufacture of another chemical, since the aggregate of such production could exceed the Convention's 10 kg limit for Schedule 1 chemicals. BXA believes that the production, export, and import of trace amounts of Schedule 1 chemicals as unavoidable by-products or impurities do not pose a threat to the object and purpose of the Convention, would capture industries totally unrelated to those involved in the intentional production of Schedule 1 chemicals, and would result in the inspection of facilities under a verification regime established for facilities that intentionally produce Schedule 1 chemicals. Therefore, this rule includes in part 712 a 0.5 percent "round to zero" rule for Schedule 1 chemicals produced as unavoidable by-products or impurities.

One respondent requested that BXA establish a uniform 30 percent low concentration exemption for Schedule 2 activities because the current two-tiered reporting system included in the proposed rule (10 percent for production, consumption, imports, exports; 30 percent for processing) would create legal and compliance problems for industry. Moreover, it puts U.S. companies at a competitive disadvantage with other major chemical producers and traders which have adopted a uniform 30 percent mixtures rule. BXA agrees that the two-tiered mixtures rule is unnecessarily complicated, creates an uneven playing field with our major industrial competitors, and will capture downstream consumers that pose no risk to the object and purpose of the Convention. BXA also believes that adopting a 30 percent low concentration exemption for declarations and reports on Schedule 2 transfers is consistent with the U.S. Government's non-proliferation objectives. Therefore, this rule establishes in part 713 of the CWCR a 30 percent mixtures exemption for production, processing, consumption, export and import of Schedule 2 chemicals. However, should conditions change, BXA will review the 30 percent low concentration exemption for Schedule 2 exports and imports to ensure that our non-proliferation interests are not being undermined.

One respondent requested BXA to clarify whether the mixtures rules contained in §§ 713.3(a)(2) (i) and (ii) are applicable to § 713.1 of the CWCR. The respondent was concerned that a complete prohibition on the importation of all Schedule 2 chemicals could create a situation where importers unknowingly violate the CWCR and become subject to penalties for importing of Schedule 2 chemicals. BXA agrees with the respondent. This rule adopts a 10 percent low concentration exemption for imports of Schedule 2 chemicals from non-States Parties after April 28, 2000. This exemption mirrors the mixtures rule contained in the Export Administration Regulations for exports of Schedule 2 chemicals to non-States Parties after April 28, 2000.

Four respondents requested an exemption for UDOC mixtures similar to that already existing for Schedule 3 chemicals. They noted the inconsistency between having an 80% threshold for Schedule 3 chemicals while maintaining a 0% threshold for UDOCs, which pose a much less threat to the object and purpose of the Convention. The respondents also wanted to use the mixtures rule to clarify what the term "discrete" means. Furthermore, the respondents stated that identifying, quantifying, and accounting for low concentrations of UDOCs contained in complex mixtures is excessively burdensome and provides no benefits to the object and purpose of the Convention. BXA does not accept these comments and this rule does not contain a UDOC mixtures exemption. The Convention does not specifically permit a mixtures rule similar to that for Schedule 2 or 3. Further, § 710.1 of the CWCR contains the Convention's definition of a discrete organic chemical. This rule does not provide specific exemptions for individual UDOCs. If companies have specific questions about whether their products

are covered by the CWCR, they should request a chemical determination from BXA. However, BXA believes that a specific exemption for UDOCs produced by synthesis as normal ingredients, by-products, or impurities in the manufacture of foods designed for consumption by humans and/or animals is warranted since such plant sites pose no threat to the object and purpose of the Convention. This rule does not include an exemption for facilities that produce UDOCs solely as consumer goods packaged for retail sale and requests that the public comment on the impact of the CWCR on such producers.

One respondent requested four additional exemptions to the declaration requirements for Schedule 3 chemicals: materials that are not produced by synthesis; materials that are not isolated for use or sale as a specific end product; process intermediates that are transformed at the same plant site; and components of waste streams (or substances formed in waste streams). At this time, BXA believes it is unnecessary to add additional exemptions for Schedule 3 chemicals beyond the 80% threshold that currently exists. If the OPCW acts to set a universal Schedule 3 threshold which is lower than 80% and if Congress amends the Act, BXA will consider additional exemptions. For purposes of the CWCR, the term "production" should be understood to include a scheduled chemical (*i.e.*, a Schedule 1, Schedule 2, or Schedule 3 chemical) produced by a biochemical or biologically mediated reaction. Further, Schedule 3 chemicals not isolated above 80% purity, whether used or sold as specific end products or as intermediates or disposed of as waste, are currently excluded by the Act and this rule. Finally, excluding Schedule 3 process intermediates, with concentrations greater than the applicable threshold (80% in the United States), would be inconsistent with the object and purpose of the Convention.

Another respondent suggested that in order to avoid double counting of UDOCs, a UDOC produced in salt form and pure form should only be counted once for declaration purposes, and that the substance to be declared would be the final "species" isolated for use or sale outside the facility. The CWCR require declaration of only the final UDOC produced in whatever form for use or sale. If a facility is producing UDOC(s) for use within the facility, that UDOC must be declared if produced in quantities greater than the threshold specified in part 715 of the CWCR.

Amended Declarations and Reports

One respondent requested clarification on whether or not the submission of amended declarations and reports will, in itself, trigger an enforcement action. An amended declaration or report will be used by BXA to replace the information on a declaration, or the aggregate national declaration that was previously submitted to the OPCW. Submission of an amended declaration or report is considered a change, a replacement, or an addition to previously submitted information. Amended declarations and reports will not automatically trigger an enforcement action.

One respondent requested clarification on the types of changes to a previously submitted declaration on the production of UDOCs that would require submission of an amended declaration or report. This rule clarifies in § 715.2 of the CWCR that for declarations involving UDOCs, only changes of production quantity into a higher range, the addition of a new PSF-chemical (phosphorus, sulfur, and fluorine) produced above 30 metric tons at a PSF plant not previously declared, changes to previously reported activities and end-use purposes, or the addition of new activities or end-use purposes require an amended declaration or report under part 715 of the CWCR.

One respondent requested clarification on the types of changes to declarations or reports that will not require submission of an amended declaration or report because they are considered minor or insignificant information. This rule makes such clarification in §§ 712.6, 713.7, and 714.6 of the CWCR. Changes to previously submitted information on chemicals, activities and end-use purposes, or the addition of new chemicals, activities and end-use purposes require submission of an amended declaration or report. For Schedule 1, 2, or 3 facilities subject to inspection, changes that may affect verification activities, such as changes of the owner or operator, company name, address, or inspection point of contact, require submission of an amended declaration. For Schedule 1, 2, or 3 facilities not subject to inspection and UDOC plant sites, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, points of contact, non-substantive typographical errors, etc., do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports that are submitted to BXA.

Timing of Submission of Declarations and Reports

One respondent suggested that the deadline for initial declarations and reports, and annual declarations and reports on past activities for calendar years 1997, 1998, and 1999, should be extended from 90 days to 150 days after the date of publication of the interim rule. The respondent notes that it will be difficult to coordinate preparation of declarations for its many facilities within the United States. Although BXA understands the respondent's concern that it will be difficult to coordinate declarations and reports from many different facilities in the United States, the U.S. Government has committed to the OPCW that it will meet its international obligations and submit data declarations as soon as possible. In the early phases of the regulatory planning process, BXA contemplated requiring industry to submit declarations within 30 days after publication of the interim rule. However, industry representatives advised BXA that industry would need 90 days to meet its obligations, and BXA therefore extended the deadline for submission of initial and annual declarations on past activities. This respondent also requested that the submission deadline for declarations and reports should be the "postmarked" date. This rule requires that declarations and reports due to BXA be postmarked by certain dates.

One respondent requested that additionally planned activities be declared to BXA 10 days in advance of the beginning of the additional or new production, processing or consumption of Schedule 2 chemicals or the additional or new production of Schedule 3 chemicals, rather than 21 days in advance as specified in the proposed rule. Because this rule requires that declarations and reports be postmarked by specified dates, BXA does not believe that 10 days is enough time for the U.S. Government to declare such activities to the OPCW. Therefore, this rule requires additionally planned activities be declared 15 days in advance of the beginning of the activities.

Several respondents requested an extension of the due dates for submission of annual declarations on past activities from February 13 to February 28, or later. The respondents believe that industry has a more burdensome and time-consuming task in preparing declarations than the U.S. Government. They noted that the U.S. Government has an electronic means to process, compile and aggregate the data

and does not need 45 days to accomplish this task. The respondents further stated that in early February, many companies may not have compiled all of the necessary data available to complete declarations because of ordinary business cycles, inventory control systems, or other reasons, and to comply with the February 18th due date, many companies will have to institute new changes to corporate policies and procedures that may affect many aspects of their business. BXA agrees with the respondents' arguments regarding the distribution of time under the Convention's 90-day time frame. This rule reflects in Table 1 to parts 712 through 715 of the CWCR the new due date of February 28 for annual declarations and reports on past activities. Note that annual declarations and reports for past activities for calendar years 1997, 1998, and 1999 are due to BXA by March 30, 2000.

Two respondents stated that declarations and reporting requirements should be based on the effective date of publication of the CWCR in calendar year 2000. They further state that the initial and first annual declaration of past activities should be combined into a single declaration for Schedule 2, Schedule 3, and UDOCs to prevent undue burdens on industry. BXA supports the respondents' concerns about the burden declarations and reports are on U.S. industry, and has already taken steps to minimize the burden. For example, this rule includes a recordkeeping provision that requires U.S. industry to provide information for years up to the effective date of the rule for which they do have records and states that BXA will accept whatever degree of precision is found in existing records. The final section of the Cost Benefit Analysis of the costs and benefits of alternatives, as well as Section 2.5.2 of the final Regulatory Flexibility Analysis, provides examples of how BXA has interpreted the CWC requirements as narrowly as possible so that all companies will be declaring on the same basis for calculating Schedule 2 activities to minimize declaration requirements for Schedule 2 sites. Further, the instructions for Form 2–3 (for Schedule 2 declarations), instruct plants sites producing below threshold quantities in the reporting year to declare "0" because they have a declaration requirement based upon activities in previous years thus reducing burden and confidential business information disclosure. Finally, this rule includes an exemption for UDOCs produced by synthesis that are ingredients, by-products, or impurities in the manufacture of foods designed for consumption by humans or animals.

One respondent requested that for rounding of information included on declarations and reports, no more than two significant digits be required, and that no greater precision be required than can reasonably be provided using existing documentation, equipment, and measurement techniques. This rule includes additional guidance in a new § 711.5 and in the reporting and declaration requirement sections of Parts 712 through 715 of the CWCR.

Additionally Planned Activities

One respondent was concerned that the Schedule 2 and Schedule 3 requirement for a declaration on additionally planned activities due to BXA 21 days before additionally planned activities can begin implies that the facility may not commence its activities until BXA gives permission to do so. The respondent believes that the declaration on additionally planned activities is a "notice" to BXA, and the facility should be free to commence additional production after the requisite time has passed without receipt of any type of permission from BXA. The respondent further notes that the CWCR indicate that the timing for the declaration on additionally planned activities runs from when the notice is "delivered to" BXA, stating that a facility will not know when the declaration "is delivered" to BXA, but rather when it is "sent to" BXA. BXA agrees that the additionally planned activities declaration requirement is a "notice" to BXA declaring newly planned activities. Facilities are responsible for submitting declarations to BXA within the required time frame prior to the commencement of the new activities. Facilities are not required to wait for permission from BXA to commence such activities. If a facility begins these activities prior to the required notification time frame, the facility may be in violation of the declaration requirement and may be subject to civil penalties. BXA agrees with the respondent's recommendation to make the timing for submission of a declaration on additionally planned activities the "sent to" date (e.g., the postmarked date), as reflected in §§ 713.5(b) and 714.4 of the CWCR.

Two respondents asked about the requirements for declaring additionally planned Schedule 2 and Schedule 3 activities provided in §§ 713.5 and 714.4, respectively, of the proposed CWCR. This rule expands the requirements for additionally planned activities consistent with an OPCW decision dated May 16, 1997 (C–I/DEC.38). Declarations on additionally planned activities by plant sites declared under § 713.3(a)(1)(iii) or § 714.2(a)(1)(iii) are required for: (1) An additional plant not declared under §§ 713.3(a)(1)(iii) or 714.2(a)(1)(iii) that plans to produce, process, or consume a Schedule 2 chemical or produce a Schedule 3 chemical above the applicable declaration threshold; (2) an additional Schedule 2 chemical that will be produced, processed, or consumed above the applicable declaration threshold at a plant declared under § 713.3(a)(1)(iii) or an additional Schedule 3 chemical which will be produced above the declaration threshold at a plant declared under § 714.2(a)(1)(iii); (3) an additional planned activity (production, processing, or consumption) above the applicable threshold for a chemical declared under § 713.3(a)(1)(iii); (4) a planned increase in the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.3(a)(1)(iii) or a planned increased in the production of a Schedule 3 chemical by a plant declared under § 714.2(a)(1)(iii) to an amount which exceeds the applicable inspection threshold (see §§ 716.1(b)(2) and 716.1(b)(3) for the respective Schedule 2 and 3 thresholds); (5) a planned increase in the production of a Schedule 3 chemical by declared plants at a plant site to an amount above the upper limit declared under § 714.2(a)(1)(iii); (6) a change in the anticipated starting or ending date of production, processing, or consumption declared under § 713.3(a)(1)(iii) by more than three months; and (7) a planned increase in the production, processing, or consumption of a Schedule 2 chemical by a declared plant by 20 percent or more above that declared under § 713.3(a)(1)(iii).

While BXA recognizes that some of the new requirements in this rule increase the declaration burden on industry, they are required in order to meet U.S. Government obligations under C–I/DEC.38 and are consistent in scope with the original requirements contained in §§ 713.5 and 714.4 of the proposed CWCR. BXA anticipates an additional 20 declarations on additionally planned activities based upon the above new requirements, but requests that concerned parties submit comments regarding this estimate and the overall burden of requirements mandated under C–I/DEC.38. BXA will reevaluate these additionally planned

activities requirements based upon this input.

Definitions

One respondent remarked that the definition of "declaration form" states that all declared facilities will have facility-specific information transmitted to the OPCW, but pointed out that information included with UDOC declarations and Schedule 3 export and import information is only aggregated and facility-specific information is not submitted to the OPCW. The respondent suggested revisions to the definition of "declaration forms" to clarify this point. Facility-specific information contained in UDOC declarations is submitted to the OPCW by the USNA. However, to clarify what information is submitted to the OPCW, this rule revises the definitions of "declaration or report form" and "reports."

One respondent requested a revision to the definition of "consumption," noting that most chemical reactions are not 100% complete. Accounting for the majority of the material as consumed and the remainder as either waste or as recycled starting material is reasonable. Therefore, this rule defines "consumption" of a chemical as its conversion into another chemical via a chemical reaction. Un-reacted material must be accounted for as either waste or as recycled starting material.

One respondent requested clarification of "toxic chemical" as used in § 716.2(b)(1)(ii)(E) of the CWCR. BXA agrees that clarification is warranted. Therefore, this rule adds a new definition of "toxic chemical" to § 710.1 of the CWCR. The definition is based on the definition found in the Act.

One respondent commented that the definition of the term "trading company" appears to cover the requirements for submitting a report by an undeclared plant site, stating that the terms "entity" and "companies" in the definition are confusing. The respondent further states that the phrase "entities involved in the export or import of chemicals" could be interpreted to mean that an entity engaged in both exports and imports is not a trading company, and only scheduled chemicals are subject to reporting by trading companies. BXA agrees that the definition of "trading company" requires clarification. Therefore, this rule revises the definition of "trading company" by replacing the word "entity" with "person," which is also defined in § 710.1, and by clarifying that trading companies that export or import scheduled chemicals in amounts greater than specified thresholds are subject to reporting requirements, but not routine inspections.

Several respondents requested that a definition of production be added to § 710.1 of the CWCR to help clarify declaration requirements. This rule adds the Convention's definition of "production" as the formation of a chemical through a chemical reaction.

One respondent requested that the definition of "host team" be modified to include facility representatives to recognize that the employees of the inspected facility must contribute to the host team because of their expertise. Section 303(b)(2) of the Act states that "[t]he United States National Authority shall coordinate the designation of employees of the Federal Government to accompany members of an inspection team of the Technical Secretariat." The term "Host Team" in § 710.1 of the CWCR is meant to assign a functional name to these designated federal government employees, who will be drawn from different agencies, by describing their role during inspections (*i.e.*, to host inspectors at U.S. facilities). While BXA fully expects that facility representatives will act as "de facto" Host Team members during inspection activities, the Act imposes certain requirements on federal employees that legally cannot be performed by facility representatives (*e.g.*, obtaining administrative warrants, negotiating facility agreements, and representing the United States' interests as a State Party). Therefore, the term "Host Team" in the CWCR refers to the U.S. Government team that accompanies inspectors from the OPCW at facilities subject to inspection, and does not include civilian site representatives.

Finally, one respondent requested clarification of the definition of "storage" as it applies to Schedule 2 and 3 chemicals and UDOCs. BXA does not agree that a clarification is necessary, because no quantitative reporting of storage for Schedule 2 or 3 chemicals or UDOCs is required by the CWCR.

Electronic Submission of Information

One respondent requested that BXA permit industry to electronically request assistance in determining its obligations under the CWCR, including chemical determinations. The respondent further requests that BXA respond to an incomplete request for assistance if the omitted information is not required for responding to the request. BXA supports electronic submissions of information to the extent possible. Therefore, this rule includes more detailed information in § 711.3 on how to contact BXA electronically. BXA will respond to requests for chemical determinations within 10 working days of receipt. BXA will respond to other inquiries about industry obligations under the CWCR in a timely manner.

Facility Agreements

One respondent, while supporting the U.S. Government's approach on managed access, requested that the concept of managed access be introduced for UDOC inspections to strengthen the ability of Host Teams to protect confidential business information. The Convention contains strict rules for inspection team access to UDOC facilities based on the area of the plant site to be inspected. The CWCR are not intended to provide this level of detail since the actual access provided to inspection teams will vary from facility to facility. Part IX of the Convention's Verification Annex provides that inspected States Parties have the right to manage inspection team access to declared plants on a plant site. However, access to other areas of the plant site will be agreed upon, which is more controlled than managed access. Therefore, this rule does not specify managed access for UDOC facilities because it could result in expanded access to inspection teams beyond the Convention, which BXA does not support. BXA will ensure that inspection team access does not exceed the terms of the Convention.

One respondent requested that BXA make a reasonable effort to complete facility agreement negotiations with the OPCW on the establishment of a new Schedule 1 facility within 200 days, stating that without this language, any new Schedule 1 production by a new facility could be delayed indefinitely. The Act does not give BXA the authority to implement the Convention's restrictions on Schedule 1 production at a new facility where a facility agreement has not been concluded. New Schedule 1 facilities must notify BXA 200 days prior to commencing production of Schedule 1 chemicals above 100 grams aggregate. BXA will work with the USNA to conclude a facility agreement for new Schedule 1 facilities with the OPCW prior to the commencement of production of Schedule 1 chemicals above 100 grams aggregate.

Two respondents requested that the facility be consulted and be authorized to approve any facility agreement prior to conclusion by the U.S. Government and the OPCW. The respondents further requested that the U.S. Government consult with the facility prior to final interpretations of the provisions of the facility agreement. BXA recognizes that facility input is critical to the successful negotiation of facility agreements. The

proposed rule inadvertently omitted language from the Act that provides facilities with the right to participate in the preparation of facility agreements. This rule includes such language in § 716.6(b) of the CWCR, and BXA will consult with facilities to the maximum extent possible during negotiations with the OPCW. The United States cannot withhold conclusion of a facility agreement with the OPCW because of facility concerns. The Convention does not provide for facility approval of the facility agreement. Industry should note that BXA will inform the affected facility of the status of negotiations at the OPCW, permit facility representatives to observe negotiations with the Technical Secretariat to the maximum extent practicable, and prior to conclusion of a facility agreement with the Executive Council, will provide facilities with an opportunity to comment. During final negotiations with the OPCW, BXA will give consideration to the facility's comments. Finally, BXA will consult with facility representatives prior to interpreting the facility agreement, once completed. If a disagreement over the provisions of a facility agreement occurs between the OPCW and BXA during an inspection that cannot be resolved on-site, the issue will be included in the preliminary factual finding report. After consulting with the U.S. interagency group established by the Act and E.O. 13128, the USNA and BXA will meet with the OPCW to resolve the issue. BXA will keep the facility informed of discussions with the OPCW.

BXA received several comments on the Schedule 2 Model Facility Agreement (MFA) found in Supplement No. 3 to part 716 of the CWCR. First, concerns were expressed about a provision found under Section 2—Health and Safety, that states that if the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The respondent states that the facility may not be legally authorized to store or dispose of contaminated items. BXA will discuss issues related to disposal of contaminated items and hazardous waste with facilities as necessary, and facility agreements will be drafted accordingly.

Another concern raised by the respondents regarded sampling. Section 7.4, paragraph 2 of the Schedule 2 MFA states in part that "[s]ampling and analysis, for inspection purposes, may be carried out to check for the absence of undeclared scheduled chemicals. Each sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 10." The respondent states that the facility should retain the right to request a sample split and analyze it. BXA does not believe that the sampling language needs revision. The language does not preclude the inspected facility from requesting split samples. Facilities should further note that attachments to the MFA are intended to be site-specific and completed with facility input.

One respondent correctly notes that Section 7.4, paragraph 12 of the Schedule 2 MFA erroneously states that the inspection must stop at the direction of the plant site representative. BXA agrees that the plant site representative should not be authorized to stop analysis activities in the event that these activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws. Therefore, this rule revises the language in Section 7.4, paragraph 12 to state that the inspected State Party, in consultation with the plant site representative, may cease such activities.

BXA received several other comments regarding concerns that the Schedule 2 MFA does not allow for enough consultation with the facility representative. Other comments focused on suggestions to add clarifying language in the MFA that is site specific. Industry should note that the MFAs found in Supplements No. 2 and 3 to part 716 are models that include general language that could apply to all inspected facilities. Attachments to the MFAs will make the facility agreement site-specific.

Other comments made by the public regarding the Schedule 1 and 2 MFAs have been incorporated in Supplements No. 2 and 3 to part 716. Where applicable, corresponding changes were made to both MFAs.

BXA also received a request to develop and include in the CWCR a Schedule 3 MFA. BXA is assessing the needs and requirements of a Schedule 3 MFA. The OPCW's Technical Secretariat has developed a draft MFA but there has been no movement by States Parties to complete it. To date, no State Party that has undergone a Schedule 3 inspection has requested a facility agreement. Moreover, the OPCW has suggested that if a State Party requests a facility agreement for a Schedule 3 plant site, the length of an initial inspection will be extended by 2 days. Since the Convention limits the number of Schedule 3 and UDOC inspections to a total of 20 inspections per year, it is unlikely that a re-inspection will occur at a Schedule 3 facility within 5 to 10 years. Nevertheless, the Act gives Schedule 3 facilities the right to request a facility agreement and BXA will take the respondent's suggestion into consideration. BXA would prefer that States Parties reach consensus on a general framework for a model before drafting a national model, but will consider doing so if States Parties are unable or unwilling to complete a model before Schedule 3 inspections commence in the United States.

Finally, one respondent requested that language be added to the CWCR to require OPCW inspection teams to follow the requirements of relevant model facility agreements during an initial inspection. During initial inspections, verification activities are subject to the Convention's "General Rules of Verification" (Part II of the Verification Annex) and the applicable annex for the type of facility being inspected (Parts VI, VII, VIII, or IX). Although BXA does not believe it is appropriate to include the respondent's suggested language in the CWCR, BXA suggests that facilities subject to initial inspection develop a preliminary draft facility agreement based on the CWCR's model facility agreement. This preliminary draft will be provided to the inspection team upon arrival at the facility. Although the OPCW is not bound by this preliminary draft, BXA will urge that inspection teams use it as a guide during initial inspections. Regardless, inspection teams are always under the obligation to discharge their functions with the least possible inconvenience and disturbance to the facility, and to avoid hampering or delaying the operation of a facility or affecting its safety.

Initial and Routine Inspections

Section 716.5 of the CWCR provides that the Department of Commerce provide written Host Team notification of an inspection. Such notice will usually be via fax or phone. If notification by fax or phone fails, a written notification of the inspection will immediately be posted at the plant site. A respondent questioned whether there will be an additional notification that includes the contents of the OPCW inspection mandate after it has been provided to the Host Team at the point of entry. This respondent also asked how much time the facility will have to respond to the notification, and whether the facility will be asked to respond to the notification regarding warrants. The

Host Team notice from the Department of Commerce serves to notify the facility of an inspection, advise the facility of the availability of U.S. Government assistance, and to determine if an administrative warrant is required. BXA asks the facility to reply to the request for consent within 4 hours. If, after 4 hours, the request for consent is not granted, BXA will seek an administrative warrant. The notification also advises the facility of the availability of an Advance Team. The company may wish to respond as soon as possible to maximize the time available for preparation of an inspection. The Convention requires transport of the OPCW Inspection Team to the inspected site within 12 hours of presenting the mandate. Due to this time constraint, BXA may not be able to provide the mandate to the facility prior to the arrival of the Inspection Team at the facility. However, the Commerce-led Host Team currently plans to pass the mandate, if possible, to the Advance Team at the site as soon as possible.

One respondent requested BXA to share a copy of its preliminary (renamed "Host Team") notice with industry for comment. The respondent wanted to ensure that it contains certain "critical" information such as the inspection mandate and establishes a dialogue between the U.S. Government and facility on health and safety information that could impact a facility during verification activities. Once the CWCR are published and the interagency formally clears the Host Team notification, BXA will make the notice available to the public upon request. The Host Team notification is meant to alert the facility of an impending inspection, determine whether the facility consents to the inspection, and ascertain whether the facility requests Advance Team support. The Host Team notification will also contain a copy of the OPCW's notification to the USNA, which includes health and safety information regarding special needs of inspectors and inspection equipment. However, such information will change from inspection to inspection, and BXA cannot anticipate Inspection Team needs in advance. If there are special facility-specific issues (*e.g.*, health and safety) that the Host Team or OPCW needs to be aware of prior to the commencement of an inspection, they should be communicated to the Advance Team during pre-inspection preparation activities. The Advance Team will then inform the Host Team Leader, who will brief the Inspection Team upon arrival at the U.S. point of entry (POE) (Washington Dulles International Airport). The inspection mandate is not part of the Host Team notification because the Host Team Leader will not receive the mandate until the Inspection Team arrives at the POE.

One respondent requested that inspections start in normal business hours, therefore reinforcing the Convention's commitment to not impact the regular operation of a facility. BXA does not agree that all inspections will be conducted during normal business working hours. Verification activities include, inter alia, physical plant inspections, records review, the preparation of preliminary factual findings and draft facility agreements, if applicable. Many of these activities can be done in an administrative work space outside of operations areas, but all must be completed prior to the conclusion of an inspection. Limiting inspection activities to normal working hours will increase the amount of time (*i.e.*, number of days) Inspection Teams remain on-site. Inspectors are obligated to discharge their functions with the least possible inconvenience and disturbance to the facility, and to avoid hampering or delaying the operation of a facility or affecting its safety. BXA will take all of these factors into consideration when determining whether an inspection should commence, continue, or conclude during other hours. The respondent also requested that the facility be consulted for any extension in the duration of an inspection prior to agreement by the Host Team Leader and the Inspection Team. BXA supports this request. Therefore, this rule adds to § 716.5(b)(2) and (b)(3) that the Host Team Leader will consult with the inspected facility on any extension of the inspection prior to making an agreement with the Inspection Team.

BXA has also determined that part 716 of the proposed CWCR was deficient regarding two inspection requirements of the Convention: pre-inspection briefing and debriefing on the preliminary factual findings. The Convention requires that prior to the commencement of an inspection, facility personnel brief the Inspection Team on the facility, the activities carried out there, safety measures, and administrative and logistic arrangements necessary for the inspection. The pre-inspection briefing is limited to three hours. New § 716.4(c) of the CWCR contains the requirement for facilities to provide a pre-inspection briefing and lists topics to be addressed. The Convention also requires that the Inspection Team meet with the inspected State Party and facility upon completion of the inspection to review its preliminary factual findings report and to clarify any ambiguities. The debriefing must be completed no later than 24 hours after the completion of the inspection. New § 716.4(i) contains the requirement for a debriefing. Facilities should note that the time required for a pre-inspection briefing and debriefing on the preliminary factual findings is in addition to the specified period of inspection for Schedule 2, Schedule 3, and UDOC plant sites. This rule also includes new §§ 716.4(b), (d) and (e) to provide a clearer description of the inspection process and to set forth the scope of consent to an inspection. BXA invites the public to comment on the changes to part 716, particularly the new sections.

Three respondents stated that additional information should be included in § 716.3 to clarify, for facilities subject to routine inspection, that withholding consent to an inspection or withdrawing consent following the commencement of an inspection are not violations of the regulations. BXA notes that the Act provides that consent may be withheld for any reason or no reason. BXA also agrees that in most circumstances, withdrawal of consent would not be a violation under § 719.2(a)(1) of the CWCR.

One respondent recommended that, in order to reduce the likelihood of a misunderstanding by the OPCW inspectors, and to avoid possible "international incidents," § 716.3 should also specify the procedures to be followed if consent is withdrawn during an inspection. BXA does not accept this recommendation because procedures may differ from inspection to inspection, depending on the circumstances and the timing of a withdrawal of consent, and on whether the OPCW inspectors decide to wait for BXA to obtain an administrative warrant and then to continue the inspection or to terminate the inspection.

One respondent raised Constitutional concerns about the installation of on-site monitoring equipment at Schedule 1 facilities. Although paragraph 29 of Part VI of the Convention's Verification Annex, pertaining to verification of declared Schedule 1 facilities, gives the OPCW the right to install such instruments, the U.S. Government does not anticipate that the OPCW will request to do so for facilities subject to the CWCR. This rule moves the provision for on-site monitoring of Schedule 1 facilities from § 716.2 to a new § 716.8.

A respondent requested that BXA reduce the post-inspection reporting burden on industry by allowing reports on inspection-related costs to be voluntary, summarized, estimated by BXA or the facility, or reported in ranges, and that the time frame for submitting such reports be extended to 180 days after an inspection. BXA is sympathetic to the respondent's concerns, however, the Act specifically requires that the President report the total costs borne by United States business firms in the course of inspections to the Congress. This requires BXA to compel industry to submit reports on the total costs related to inspection. BXA gives facilities the discretion to determine the methodology for computing total costs. Because the annual report on inspections must be submitted annually to Congress, BXA must be able to provide as current figures as possible without excessively burdening industry. BXA believes that the 90 day time frame is reasonable and meets the requirements of the Act.

Clarification Procedures; Challenge Inspection Requests

Two respondents questioned whether the Department of Commerce has the authority, under the Act, to require facilities subject to the CWCR to provide information in response to a clarification request from another State Party, and suggested deletion of § 717.1(b) of the CWCR. Section 101(e) of the Act and Section 3 of Executive Order No. 13128 give the Department of Commerce adequate authority to require such information. In addition, as one respondent highlighted, the clarification procedures in Article IX of the Convention provide a means of clarifying and resolving ambiguities without the need for challenge inspections. Three respondents stated that the requirement for facilities to provide information to the Department of Commerce pursuant to a clarification request from another State Party or the OPCW should be clarified to establish substantive limits on the scope of the request and a time frame for response. Substantive limits are already provided in § 717.1(b). The information must pertain to "reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716." BXA agrees that a time frame for response should be provided. Therefore, this rule requires in § 717.1(b) that information be provided to the Department of Commerce pursuant to a clarification request within five working days. This time frame will allow the U.S. Government to respond to another State Party or to the OPCW within 10 days, as required by Article IX of the Convention.

One respondent recommended that this part establish procedures for resolving differences, including meetings with the OPCW, to avoid the need for challenge inspections. BXA does not believe it is necessary or appropriate for the CWCR to set forth procedures that the U.S. Government will follow in communicating with other States Parties or the OPCW.

Finally, one respondent suggested that a request for information under the clarification procedure amounts to a criminal investigation, and another respondent suggested that a facility should be able to require BXA to obtain an administrative warrant before providing the requested information. A request for information does not rise to the level of a criminal investigation. An administrative warrant is not appropriate in this context, because no physical inspection of a facility is involved and the information requested falls within the scope of the CWCR. Willful failure or refusal to provide information in response to a BXA request under part 717 of the CWCR would constitute a violation under § 719.2 of the CWCR.

Facilities That Cease Involvement With Declarable Activities

Respondents were concerned about whether a facility will be absolved from further requirements under the CWCR when the facility eliminates its declarable activities. The respondents recommended that BXA provide a mechanism by which the facility can commit to elimination of declared activities, and therefore not be subject to initial declaration and reporting. BXA does not agree that a facility should be able to avoid submission of a declaration based on the facility's intent to terminate the declarable activity. This would be inconsistent with the requirements of the Convention.

Violations and Penalties

BXA received several comments on part 719—Enforcement, many of which were adopted. The most significant changes that were made to part 719 concern its structure and the application of the administrative process. Part 719 of this rule is intended to more accurately reflect the three categories of Chemical Weapons Convention violations: "violations of the Act subject to administrative and criminal enforcement proceedings" (§ 719.2); "violations of IEEPA subject to judicial enforcement proceedings" (§ 719.3); and "violations and sanctions under the Act not subject to proceedings under the CWCR" (§ 719.4). Section 719.2 of the CWCR sets forth violations of the Act. The Department of Commerce and Department of State jointly apply the administrative process that applies to these violations. The administrative procedures are found in 15 CFR §§ 719.5–719.22 and in 22 CFR part 103, subpart C. Section 719.3 sets forth the violations of the International Emergency Economic Powers Act (IEEPA). Part 719 provides no administrative process for these IEEPA violations. They are referred to the Department of Justice for judicial enforcement. The violations contained in § 719.4 have as their basis the Act, but they are not subject to the CWCR and are provided for informational purposes only.

In addition to the concerns expressed about structure and organization, there were also several comments expressing general displeasure with the precise wording of various violations and penalties. While BXA is sympathetic to some of these comments, the violations and penalties in the CWCR merely recite the violations and penalties as they appear in the relevant statutes. Thus, BXA made no substantive changes to the violation and penalty language.

Although no substantive changes were made to the language of the violations and penalties, BXA does believe it is necessary to clarify what the violation of "willfully impeding an inspection" might mean. One respondent expressed concern that this violation could be construed so that the exercise of the right to withhold consent (which makes it necessary for the government to obtain an administrative warrant), or that efforts to protect the safety of the inspectors, would constitute willfully delaying or impeding an inspection. Since § 305(a) of the Act provides that the owner or the operator, occupant, or agent in charge of the premises may withhold consent for any reason or no reason, BXA does not believe those concerns are well founded.

Finally with respect to the violations and penalties, some respondents were confused by use of the terms "knowingly" and "willfully." The basis for this confusion was the mistaken assumption that the Act was the statutory basis for the import violations, which caused confusion because the criminal penalty provision says "willfully" rather than "knowingly" as required by the Act. he reason for use of the word "willfully" rather than (or in addition to) "knowingly" is that the statutory basis for the import violations is the International Emergency

Economic Powers Act. Therefore, the criminal penalty for import violations mirrors the IEEPA penalty provision. Several respondents also asked BXA to clarify the meaning of the word "knowingly" as used to describe the criminal penalties for refusal violations. However, the penalty language and standards are statutory (see § 501(b) of the Act), and are therefore more appropriately interpreted by the courts.

Administrative Procedures

One respondent objected to § 719.6(c), which states that defenses that the respondent does not set forth in the Answer to a Notice of Violation and Assessment (NOVA) are waived, except for good cause shown. However, it is especially important that this standard administrative law provision be included in the CWCR because the statutory time limit for administrative proceedings is very short (30 days). Interested parties should keep in mind that the provision is not an absolute waiver of defenses—it does permit a respondent to present additional defenses if the Administrative Law Judge (ALJ) determines there is a good reason for doing so.

Several respondents expressed concern about § 719.20. As proposed, it permitted documents filed with the ALJ to be made available immediately upon filing. In response to these comments, this rule revises § 719.20(c)(2) to state that the record for decision, including the NOVA and other documents that are filed in an administrative proceeding, will be available to the public only after the final administrative resolution of a case. Prior to that final resolution, any party may request that the ALJ restrict access to any portion of the record, and the ALJ may so direct. Thus, the revised Part 719 ensures that parties have the opportunity to petition for restricted access to documents or portions of documents, and to have the ALJ rule on such petitions, before the record for decision becomes public.

In addition, respondents expressed concern, pursuant to § 719.20(b) of the CWCR, that the ALJ may transfer previously restricted material to the unrestricted portion of the record once it becomes declassified or unrestricted due to the passage of time. The respondent suggested implementing a new process whereby the ALJ would provide notice and opportunity for objection before making such a move. BXA has not made such a change as the material is already protected. Since material may not be transferred until it becomes declassified or derestricted, the ALJ would have to make inquiries if there were any doubt about the status of the material.

Other respondents requested that § 719.14, regarding hearings, be clarified. BXA changed this section to provide that hearings are closed to the public, except upon good cause shown, and clarified that evidence of settlement discussions is not admissible in any administrative proceeding, and that witnesses may be cross-examined. However, the ALJ continues to have discretion over what evidence is admissible; the federal rules of evidence do not apply.

One respondent asked why § 719.18 sets forth factors to be considered in assessing penalties for reporting- and inspection-related violations but not for import violations. As the revised CWCR provides no administrative process for import violations, the question is moot. However, the answer was that the statutory basis for the two types of violations is different: the Act is the basis for reporting- and inspection-related violations and the IEEPA is the basis for import violations. Only the Act requires specific factors for consideration.

Various other comments requested clarification regarding for whom the Department of Commerce provides legal representation (§ 719.1(a)(2)), service via facsimile (§ 719.8(b)), issuance of subpoenas (719.11(b)), and payment for copies of the hearing transcript (§ 719.14(c)(1)). All these clarifications have been made. BXA also agreed to use the word "request" rather than the word "demand" in connection with requests for a hearing (§ 719.6). Other comments did not result in any changes. BXA did not extend the time permitted to request a hearing from 15 days to 30 days for refusal violations as the 15-day time period is statutory, and BXA did not delete the requirement for a notice of appearance.

Denial of Export Privileges

Like part 719, part 720 of the CWCR was reorganized and clarified, though not significantly changed. This reorganization was accomplished in lieu of deleting part 720 and organizing denial cases as a third category of cases in part 719 as one respondent suggested. That suggestion was not adopted because a denial of export privileges can only occur after a conviction of crimes outside the scope of the CWCR. The Act requires that respondents have notice and an opportunity for hearing before a denial of export privileges is imposed, and this part sets forth that process. Several respondents noted discrepancies in part 720 of the CWCR regarding the standards for ALJ review and the standards for Under Secretary review. BXA has changed this part to make it clear that anyone may request a hearing before an ALJ, but that there are specific grounds for appeal from the ALJ decision to the Under Secretary. The grounds for appeal include: omission of a necessary finding of fact, a necessary legal conclusion is contrary to law, a prejudicial error occurred, or the decision was arbitrary, capricious, or an abuse of discretion.

Additional Public Comments

There were several public comments that were not addressed in this Supplementary Information section, but those comments were reviewed and incorporated, as appropriate, in the CWCR itself. Additionally, typographical errors and minor clarifications were corrected in this rule.

III. Public Comments on Declaration and Reporting Forms and Handbooks

This section outlines comments received from four respondents regarding the Department of Commerce's **Federal Register** notice (Volume 64, Number 141) of July 21, 1999, announcing an Office of Management and Budget review and request for comments on BXA's proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) for the Chemical Weapons Convention Declaration Forms (OMB Approval Number 0694–0091). Two respondents requested that BXA establish an official record of the public comments received on the forms by including those comments in the supplementary information section of this rule. BXA agrees with this request and provides those comments herein. All typographical errors and minor clarifications noted by the respondents were corrected, and are not addressed here.

Declaration and Report Handbooks for Schedule 1, 2 and 3 Chemicals and Unscheduled Discrete Organic Chemicals

Section 3 "Guide to Submission of Forms" of the Declaration and Report Handbooks for Schedules 1, 2 and 3 and Unscheduled Discrete Organic Chemicals. One respondent stated that the "Guide to Submission of Forms" complicates industry's ability to decipher its specific obligations. The respondent requested clarification and that BXA ensure the consistency of the final reporting requirements and establish an immediate routine for fulfilling these requirements. Additionally, two respondents stated

that the Guides indicate Form A is "required, as appropriate" whereas they believe Form A is optional and should be referred to as "attached, as appropriate."

BXA clarified each of the Handbooks' "Guide to Submission of Forms" by including the routine date for submission of annual declarations on past activities and annual reports on export and import activities. However, because initial declarations and reports as well as declarations and reports on past activities from multiple years must be submitted to BXA within 90 days after publication of this rule, BXA is maintaining the specific declaration and report submission requirements as a note to the Guide. In the first revision to the Handbook, BXA will remove these notes from the Guide and the routine filing requirements will be clearly defined.

BXA also revised each of the Handbooks' "Guide to Submission of Forms" to reflect that Form A is an attachment and should be submitted as appropriate. Form A should be used to submit any attachment to a declaration or report including, but not limited to, a plant site diagram, a technical description of a Schedule 1 facility or a structural formula drawing of a chemical.

The following clarifies the specific types of declarations and/or reports that must be submitted to BXA within 90 days of the publication of the Chemical Weapons Convention Regulations (CWCR) as well as the calendar years for which this information must be provided:

Schedule 1

—Initial Declaration: Submit a technical description of your facility if you produced in excess of 100 grams aggregate of Schedule 1 chemical in calendar years 1997, 1998, or 1999 (do not submit any production data)
—Annual Declaration on Past Activities: 1997, 1998, and 1999
—Annual Report on Exports and Imports: 1997, 1998, and 1999

Schedule 2

—Initial Declaration: 1994, 1995, and 1996 (For each chemical, you must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996.)
—Initial Report on Exports and Imports: 1996
—Declaration on Chemical Production at any time since January 1, 1946 for Chemical Weapons (CW) Purposes: one-time declaration
—Annual Declaration on Past Activities (production, processing consumption, export and import): 1997, 1998, and 1999
—Annual Report on Exports and Imports: 1997, 1998, and 1999

Schedule 3

—Initial Declaration: 1996
—Initial Report on Exports and Imports: 1996
—Declaration on Chemical Production at any time since January 1, 1946 for Chemical Weapons (CW) Purposes: one-time declaration
—Annual Declaration on Past Activities (production): 1997, 1998, and 1999
—Annual Report on Exports and Imports: 1997, 1998, and 1999

Unscheduled Discrete Organic Chemicals (UDOCs)

—Initial Declaration: 1996
—Annual Declaration on Past Activities (production): 1997, 1998, and 1999

Supplement 1 to the Declaration and Report Handbooks—Latitude and Longitude of the Facility. Three respondents recommended that the plant site should be able to choose and identify a reasonable or prominent location within the declared plant site for declaring the geographical coordinates. All three respondents noted that the center of the plant site may be an inaccessible location. One respondent recommended that if the plant site chooses the location for the geographical coordinates, then it must also describe or identify the point for which the coordinates were provided, such as a control room, an administration building or the front gate. Two respondents recommended that BXA specifically authorize the use of Global Positioning System (GPS) technology as the preferred method of calculating the center point of the facility. Lastly, one respondent that recommended BXA remove Supplement 1 (How to Determine Latitude and Longitude from Topographical Maps) and put this information on the BXA web site.

BXA recognizes that most companies will use a GPS to determine its latitude and longitude and that the OPCW generally uses this method to confirm declared geographical coordinates. BXA notes, however, that a GPS reading is not the only method available for identifying the geographical coordinates of the plant site and therefore will not designate GPS as the preferable method for providing latitude and longitude. Geographical coordinates provided from a GPS reading are acceptable. In addition, upon request BXA will informally assist companies to identify its geographical coordinates. BXA has made minor clarifications to Supplement 1 in response to the comments.

Supplement 3 to the Declaration and Report Handbooks. One respondent noted that Macedonia was missing from the list of country codes which are used for reporting exports and imports. Another respondent noted that Supplement 3 does not include a code for Taiwan. The respondent noted ongoing trade in CWC chemicals between the United States and Taiwan and suggested that BXA adopt a country code. Supplement 3 to the Declaration and Report Handbooks did include Macedonia as The Former Yugoslavia Republic of Macedonia (code: MKD). Consequently, BXA has not made any changes. BXA renamed Supplement No. 3 from "Country Codes" to "Destination Codes." BXA also created a new code for Taiwan (TAI) on Supplement Number 3, following the code for Zimbabwe. This new code should be used to declare or report transfers of Schedule 2 and 3 chemicals to or from Taiwan. Transfers to Taiwan of Schedule 2 and 3 chemicals require an End-Use Certificate and may also require an export license under the Export Administration Regulations (EAR) (15 CFR 730–799) or the International Traffic and in Arms Regulations (ITAR) (22 CFR 100–130). Note that effective April 29, 2000, transfers of Schedule 2 chemicals to or from Taiwan are prohibited under the EAR and the CWCR.

Glossary of Terms. Two respondents recommended that BXA create a glossary of common terms for use in completing declaration and report forms. The respondents noted that without a glossary, industry would constantly have to cross-reference the CWCR which is a time-consuming process. BXA created a Glossary of Terms which will be designated as Supplement 1 to each of the four Handbooks. Accordingly, Supplement 2 instructs industry how to determine the latitude and longitude of your plant site, Supplement 3 is the Product Group Codes, and Supplement 4 is the Destination Codes.

Point of contact for declarations, reports and inspections. Two respondents recommended that BXA change the term "point of contact" because it may create confusion when referring to individuals with responsibilities for declaration and report questions or inspection notifications. Both respondents recommended use of the terms "declaration point of contact" and "inspection point of contact." One respondent also recommended that BXA give the option of listing up to two

additional inspection contacts because one person may not be available 24 hours per day at the phone numbers provided. BXA changed the appropriate forms to differentiate between the two types of point of contacts: declaration and report point of contact and inspection point of contact. BXA also changed the appropriate forms to allow an optional inspection contact to be provided. Due to space constraints on the forms, BXA was unable to allocate space for a third inspection contact as requested by the respondent.

Product Group Codes. One respondent noted that industry may possibly be confused with the requirements for Product Group Codes because these codes combine classification of main activities by feature and function. The respondent recommended that BXA clarify the basis for selecting between the activities and suggested that industry should select the single best descriptor of any activity, whether a literal or functional descriptor, based on the company's representation of the activity. BXA has changed Form 2–2 (question 2–2.5), Form 3–2 (question 3–2.5) and the UDOC Form (question UDOC.6) to alleviate any possible confusion over what product group codes should be declared to describe the activities at the plant or plant site. Product group codes describe the type of ultimate or final products that are produced, processed or consumed at the plant or plant site. The forms have been changed to require that you provide one or more Standard International Trade Classification (SITC) Code that describes the type of ultimate products that are manufactured at the plant or plant site. If a plant site chooses to provide only one product group code, it will be accepted by BXA.

Plant Site and/or Plant names. One respondent noted that the forms for Schedules 1, 2 and 3 as well as for UDOCs state that BXA will assign a "unique name" to a declared plant site and/or plant. The respondent recommended that BXA clarify that a plant site and/or plant will have the same "unique name" across the different Schedules of Chemicals as well as for UDOCs, so there is no confusion and multiple "unique names" are not assigned. BXA believes the respondent has misinterpreted the instructions for assigning a "unique name" for the plant site and/or plant. Each company assigns the "unique name" to its plant site and plants, not BXA. Industry should be careful to assign the same "unique name" to its plant site and plants regardless of the Schedule of Chemicals under which the declaration or report is being submitted. Upon receipt of a declaration or report, BXA will assign a "unique code" to each plant site and all plants associated with the plant site. These codes are referred to as the "U.S. Code," which for plant sites, consists of the letters "USC" followed by five digits (e.g., USC00123), and plants will have a three-digit extension to the plant site code (e.g., USC00123–002). Industry should be careful to provide the same location and description of the plant site and plants to ensure that BXA will not mistakenly assign multiple codes. BXA will inform industry in writing of its relevant U.S. Codes so that it will be easier to identify the plant sites and plants during discussions as well as for submission of subsequent declarations or reports and recordkeeping purposes.

Confidential Business Information (CBI). One respondent noted that none of the forms contains a question or a check box for companies to indicate if Confidential Business Information (CBI) is included in the declaration or report. The respondent noted that companies should have the ability to inform BXA of which information it considers to be CBI and recommended that BXA change the forms to allow for the designation of CBI. CBI is governed by the provisions of part 718 of the CWCR. Supplement No. 1 to part 718 identifies those fields on each form which contain CBI as defined by the Act. If a company seeks additional CBI protection for information in fields which are not listed in part 718 of the CWCR, it should provide a detailed explanation describing why release of the information contained in those fields is a trade secret and should not be released to the public. This explanation should be attached to Form A.

Create a form to report undeclared status. One respondent recommended that BXA create a form for industry to report that it has ceased its declarable activities and is in an "undeclared status" capacity. It would be an additional burden on industry to submit a form to BXA to report its "undeclared status." If BXA does not receive a declaration or report from a company that was previously declared, BXA will conclude that the company has changed its status.

Add gray shading to forms. One respondent recommended that BXA add gray shading on the top of all relevant forms where the plant site and plant information is to be identified. The respondent noted that the gray shading features help it to identify what information must be completed. BXA has added the gray shading to all relevant forms.

Schedule 2 Forms

Schedule 2 Form 2–2—Activities of the Plant. Two respondents requested that question 2–2.7 on Form 2–2 be changed to add a separate selection for the activity type "other" and to also include the question "Is this plant dedicated to Schedule 2 activities? Yes/No." BXA deleted the word "exclusively" from question 2–2.7 and added a separate selection for activity type "other." BXA did not include the question recommended by the respondent because it is not necessary.

Schedule 2 Form 2–2—Definition of Nameplate and Design Capacities. Two respondents recommended that the definitions for "nameplate capacity" and "design capacity" be clarified. One respondent noted that industry's interpretation of these two definitions is synonymous and the other respondent noted that nameplate capacity has many different industrial meanings. One respondent also noted that the production capacity was requested for all Schedule 2 chemicals at the plant that were produced, processed, and/or consumed above the applicable threshold but that the instructions were unclear if the capacity should only be provided for chemicals that were produced. BXA acknowledges that industry may have different definitions for "nameplate capacity." However, for purposes of Schedule 2 declarations, the nameplate capacity definition remains unchanged and the design capacity definition is clarified by stating that it is the corresponding theoretically calculated product output, without test data or other supportive plant specific information. BXA also clarified the instruction to question 2–2.8 to state that you identify all Schedule 2 chemicals produced, processed or consumed above the applicable threshold, but that you only provide the production capacity and calculation method for those chemicals which you produced.

Schedule 2 Annual Declarations on Anticipated Activities and Declarations on Additionally Planned Activities. One respondent noted that it may not be possible to be certain about the starting and ending dates for production, processing or consumption of a Schedule 2 chemical as required in the Annual Declaration on Anticipated Activities and, therefore, requested that BXA clarify the requirement for approximate, not actual, start and end dates for submission of a Declaration on Additionally Planned Activities. The respondent further requested that BXA clarify that there is not a requirement for submitting a second Declaration on

Anticipated Activities. Lastly, the respondent noted the long lead-time for processing Schedule 2 and Schedule 3 Declarations on Anticipated Activities and recommended BXA to shorten the time frame for submission of the declaration from 21 days to 10 days.

For the Annual Declaration on Anticipated Activities, the time periods when declared activities are anticipated to occur should be as precise as possible, but should in any case be accurate to within a three-month period. The declaration requirement in relation to these periods does not necessarily mean that individual planned production, processing, or consumption campaigns need to be declared, rather this three-month period provides a flexible framework for declarations and will reduce the number and frequency of Declarations on Additionally Planned Activities. Since the requirement for declaring the anticipated time periods for production, processing or consumption is already an "approximate" projection coupled with the three-month period for completion of an activity, BXA does not believe it is necessary or appropriate to state that additionally planned time periods are "approximate." BXA did not add a clarification to Form 2–3C to state that only one Declaration on Anticipated Activities is required to be submitted. There may be situations in which a company submitted a Declaration on Additionally Planned Activities to declare new or changed anticipated production periods and it has further changes to those production periods which are not covered by the three-month period. BXA believes this will rarely occur, if ever. BXA has changed Form 2–3C to include the types of changes that will require a Declaration on Additionally Planned Activities. As previously noted, BXA has changed the time-frame for submission of the Declaration on Additionally Planned Activities from 21 days to 15 days.

Schedule 3 Forms

General changes to Schedule 3 Forms. One respondent recommended that Form 3–3 be revised to require identification of the year being reported. Two respondents recommended that an instruction be added before question 3–3.1 to clarify the type of declaration or report to which the question refers. Both respondents also recommended that new types of "purposes of production" be added to Questions 3–3.1b and 3–3.2b on Form 3–3, including inter-company transfers, as well as transfers to the agricultural, manufacturing, construction, pharmaceutical, and service or other industries. BXA has made the instructional clarifications to Form 3–3. However, we did not change Form 3–3 to require that the reporting years be identified because this information is indicated on the Certification Form and only one Form 3–3 per chemical, per year is included in the declaration package. Conversely, for the Schedule 2 Initial Declaration, three Forms 2–3 must be submitted for each chemical for calendar years 1994, 1995, and 1996. Therefore, there is a clear need for the Schedule 2–3 Form to identify the year of the data being reported. Separate Schedule 3 declarations must be submitted for the Initial Declaration (1996) and the Annual Declarations on Past Activities for calendar years 1997, 1998, and 1999. The Certification Form for each of these declarations will identify the year of the data declared. You cannot combine data from several years into one declaration. This procedure is the same for Initial Reports on Exports and Imports and Annual Reports on Exports and Imports. BXA changed the purpose of production from "transfer to other company" to "transfer to other industry." BXA believes this change broadens the scope of the purposes to cover all transfers.

Section 3 to the Schedule 3 Handbook. One respondent recommended that Section 3 of the Schedule 3 Handbook outline the mixtures' thresholds to assist industry in complying with its obligations. BXA has added the mixture thresholds to Section 3 of the Schedule 3 Handbook as well as to the relevant sections of the Schedule 1 and 2 Handbooks. BXA also included the exemptions for UDOCs in the UDOC Handbook.

Delete Structural Formula from Form 3–3. One respondent noted that Form 3–3 unnecessarily includes a check box to indicate that a structural formula is attached to the declaration or report. The respondent noted that the list of Schedule 3 chemicals is well known and identifiable and a structural formula would, therefore, not be required. BXA has changed Form 3–3 to make the requirement optional for submission of a Schedule 3 structural formula.

Exports and Imports of Schedule 2 and Schedule 3 Chemicals. One respondent requested that Forms 2–3B and 3–3 address the applicable threshold mixture for the export and import of Schedule 2 and Schedule 3 mixtures. The respondent also requested that Figure A on Forms 2–3B and 3–3 distinguish between the applicable threshold for declaring and reporting the chemical, including the mixture exemption, versus exporting or importing the chemical. The respondent further recommended that Forms 2–3B and 3–3 address the licensing or End-Use Certificate requirements for exports to non-States Parties.

BXA did not reference the End-Use Certificate or license requirements on the forms for the export of Schedule 2 or Schedule 3 chemicals to non-States Parties because these requirements are not applicable to declarations or reports. Such requirements are contained in § 745.2 of the EAR, which states in part that U.S. exporters must obtain an End-Use Certificate prior to the export of a Schedule 2 or 3 chemical to a non-State Party and to submit the Certificate to BXA. This is in addition to, but separate from, any license requirement under the EAR for such exports. BXA also did not change Figure A on Forms 2–3B and 3–3 because of space constraints. However, BXA created new tables in Section 3 of the Schedule 2 and Schedule 3 Report and Declaration Handbooks that will assist industry in determining the different thresholds that apply for declaration and reporting requirements for Schedule 2 and Schedule 3 chemicals.

Unscheduled Discrete Organic Chemicals Forms

General changes to the declaration form for Unscheduled Discrete Organic Chemicals (UDOCs). Two respondents requested that BXA clarify question UDOC.7 of the UDOC Form or change it to ask for an "estimate" or the "approximate" number of plants on the plant site producing UDOCs, including all PSF chemicals, instead of asking for the actual number of plants. One respondent requested a clarification to question UDOC.9 to request the "approximate" number of PSF plants at the plant site that produced an individual PSF chemical over 30 metric tons. This respondent also requested a clarification to question UDOC.10.1–10.4 to indicate that the "approximate" number of PSF plants whose aggregate production of all PSF chemicals falls within each of the PSF-chemical production ranges.

BXA changed UDOC Form questions UDOC.7 and UDOC.10.1–10.4 to require the "approximate" number of UDOC plants (including PSF plants) and the "approximate" aggregate production of all PSF chemicals, respectively. BXA did *not* change question UDOC.9 to require the "approximate" number of PSF plants that produced an "individual" PSF chemical over 30 metric tons. Rather BXA changed this question to require the "exact" number of PSF plants at the plant site that produced an individual PSF chemical over 30 metric tons because Part IX , paragraph 6, of the Convention's

Verification Annex states "* * * specify the number of PSF-plants within the plant site and include information on the approximate aggregate amount of production for PSF-chemicals produced by each PSF-plant in the previous calendar year expressed in ranges * * *" BXA believes that for PSF plants you must identify the exact number of plants on your plant site, but you can provide the approximate amount of PSF-chemicals produced by these plants.

Section 3—Exemptions—Unscheduled Discrete Organic Chemicals Handbook. Two respondents noted that the Unscheduled Discrete Organic Chemicals (UDOCs) Handbook did not appropriately list the exemptions from declaration requirements and requested that BXA include all of the exemptions that are listed in the CWCR. To assist industry in determining its obligations for UDOC declarations, BXA is listing all of the UDOC exemptions in Section 3 of the UDOC Handbook that are listed in part 715 the CWCR. BXA reminds industry that where there are any discrepancies between the requirements of the Handbooks and the CWCR, the CWCR prevails.

Miscellaneous issues

Assistance on questions and chemical determinations. Two respondents that requested BXA accept electronic requests for assistance or chemical determinations via e-mail in addition to telephone and fax requests. Both respondents noted that an electronic mechanism for processing requests will enhance BXA's flexibility and responsiveness to assist industry. One respondent requested BXA to provide a chemical determination even if all of the required information was not submitted. Lastly, one respondent requested BXA to establish a provision or a clarification to § 711.4 of the CWCR in which any assistance given to a company by BXA that turns out to be incorrect will not result in an enforcement action against the company and should be considered release from any penalty. BXA agrees with the respondents' request for an electronic means through which to seek assistance and to submit chemical determinations, and has revised § 711.4 appropriately. BXA also revised § 711.4 to identify the type of information that should be submitted for a chemical determination and established a provision for allowing facilities to explain why there are ambiguities or deficiencies that preclude them from supplying this information. BXA will make every effort to make a determination based upon the submitted information, and only if this is not possible will BXA return the request and identify what additional information must be provided in order to complete the chemical determination. For enforcement purposes, only a written response from BXA is binding. Written advice applies only to the person or persons to whom it is addressed.

Identification of the Owner and Operator of the facility. The Department of State requested BXA to provide information on the owner and operator, occupant or agent in charge of a facility or plant site so that it can inform the owner and operator, occupant or agent in charge in writing of an impending inspection as required by section 304 of the Act. Section 304 of the Act requires that the USNA notify, in writing, the owner and the operator, occupant, or agent in charge of the facility. In order to fulfill this legal requirement, BXA has changed the appropriate forms and forms instructions to obtain the telephone and facsimile numbers for both the owner and the operator, occupant, or agent in charge of a facility.

Chemicals Produced for Chemical Weapons Purposes. One respondent recommended that Question 2–4.2 on Form 2–4 and Question 3–4.2 on Form 3–4 should be revised to require the identification of the final chemical weapon (CW) product, if known, or the Scheduled Chemical name, if known. The respondent cited difficulties industry may have in identifying the final CW product because of the confidential and proprietary nature of commercial production records, availability of records, and terms of mergers, acquisition or internal restructuring. Forms 2–4 and 3–4 (questions and instructions) already instruct industry to provide the final product or chemical, if this information is known. Therefore, no changes were made to these forms.

IV. Part-by-Part Analysis

The Chemical Weapons Convention Regulations (CWCR) will include 13 parts, as follows:

Part 710—General Information and Overview of the CWCR. This part includes general information about the Convention, definitions of terms used in the CWCR, an overview of Scheduled chemicals and examples of affected industries. States Parties to the Convention are listed in Supplement No. 1 to part 710 of the CWCR. This part also briefly describes the declaration, reporting, and inspection provisions of the Convention.

Part 711—General Information Regarding Declaration, Reporting, and Notification Requirements. This part provides an overview of declaration and other reporting requirements, who is responsible for declarations and reports, and where to get assistance, forms and handbooks. The Convention requires an initial declaration and report and subsequent annual declarations and reports for activities involving specified amounts of certain chemicals. If, after reviewing parts 712 through 715, you determine that you have declaration and/or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (BXA). Note that in instances where a declaration or report is required, the operator of a facility required to declare or report under the CWCR is responsible for the submission of all required forms in accordance with all applicable provisions of the CWCR. Also note that the Act defines and provides for the protection of confidential business information obtained pursuant to the CWCR.

Part 712—Activities involving Schedule 1 Chemicals. This part prohibits imports of Schedule 1 chemicals from non-States Parties and imports from States Parties for purposes other than research, medical, pharmaceutical, or protective purposes. (Part 712 also cross-references similar export restrictions on Schedule 1 chemicals set forth in the Export Administration Regulations.) This part also describes declaration and other reporting requirements for activities involving Schedule 1 chemicals, including production, use (consumption), exports, imports, domestic transfers and storage of any quantity of Schedule 1 chemicals. This part provides that facilities that produce more than 100 grams aggregate of Schedule 1 chemicals in a calendar year are considered Schedule 1 "declared" facilities. Facility-specific information on "declared facilities" will be forwarded to the Organization for the Prohibition of Chemical Weapons (OPCW) and all Schedule 1 "declared" facilities will be subject to routine on-site inspection by the OPCW. Finally, this part requires advance notification of all exports and imports of Schedule 1 chemicals to or from other States Parties, and planned changes related to the initial declaration. Note that BXA published an interim rule in the **Federal Register** on May 18, 1999 (64 FR 27138), amending the Export Administration Regulations (EAR) to implement the export control provisions of the CWC that are subject to Department of Commerce jurisdiction. The EAR also require prior notification of all exports

of Schedule 1 chemicals and annual reports of exports of such chemicals. Schedule 1 chemicals are included in Supplement No. 1 to this part.

Part 713—Activities involving Schedule 2 Chemicals. This part prohibits imports of any Schedule 2 chemical on or after April 29, 2000, from any destination that is not a party to the Convention, except for mixtures containing 10 percent or less of a Schedule 2 chemical. (Part 713 cross-references similar export restrictions on Schedule 2 chemicals in the EAR.) This part also describes declaration and other reporting requirements for activities involving Schedule 2 chemicals, including production of any amount of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes; production, processing, or consumption of a Schedule 2 chemical in excess of specified quantities; and exports and imports of a Schedule 2 chemical in excess of specified quantities. Further, this part requires declarations on anticipated production, processing, or consumption in the next calendar year of a Schedule 2 chemical in excess of specified quantities as well as certain additionally planned production, processing or consumption activities. Declaration and reporting requirements apply also to Schedule 2 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration and report purposes only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

If the Schedule 2 chemical in a mixture equals or exceeds the stated percentage concentration, you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture. Schedule 2 chemicals are included in Supplement No. 1 to this part.

Part 714—Activities involving Schedule 3 Chemicals. This part describes declaration and other reporting requirements for activities involving Schedule 3 chemicals, including production of any amount of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes; production of a Schedule 3 chemical in excess of specified quantities; and exports and imports of a Schedule 3 chemical in excess of specified quantities. Further, this part requires declaration of anticipated production in the next calendar year of a Schedule 3 chemical in excess of specified quantities as well as certain additionally planned production activities. Declaration and reporting requirements apply also to Schedule 3 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration and reporting purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. If the mixture contains 80 percent or more of the Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical contained in the mixture, not the total weight of the mixture. Schedule 3 chemicals are included in Supplement No. 1 to this part.

Part 715—Activities involving Unscheduled Discrete Organic Chemicals (UDOCs). This part describes declaration requirements for the production of UDOCs in excess of specified quantities. However, note that declarations are not required for certain chemicals and chemical mixtures, including those produced through a biological or bio-mediated process; polymers and oligomers; certain synthetic mixtures of organic chemicals; unscheduled discrete organic chemicals produced coincidentally as byproducts of a manufacturing or production process that are not isolated or captured for use or sale during the process and are routed to, or escape from, the waste stream of a stack, incinerator, or wastewater treatment system or any other waste stream; or products from the refining of crude oil, including sulfur-containing crude oil.

Part 716—Inspections. This part implements the inspection provisions of the Convention, consistent with the Act. It describes notification procedures, the responsibilities of the Department of Commerce as host and escort for inspections, types of inspections, and scope and conduct of inspections. The United States National Authority (USNA) will provide written notification to the owner and operator, occupant or agent in charge of the premises to be inspected. BXA will provide Host Team notice to the inspection point of contact identified in declaration forms submitted by the facility. This part also describes the duration and frequency of inspections, and the role of a facility agreement. A facility agreement is a site-specific agreement between the U.S. Government and the Organization for the Prohibition of Chemical Weapons. The purpose for a facility agreement is to define the inspection scope and procedures for a given facility under the Convention and to facilitate future inspections of the facility by enhancing efficiency and predictability and reducing preparation costs for the facility. The U.S. Government and the OPCW will begin negotiating such facility agreements during the initial inspections of facilities that require facility agreements pursuant to the Convention and Act, and for additional declared facilities that request a facility agreement pursuant to the Act. Supplement Nos. 2 and 3 include model facility agreements for Schedule 1 and Schedule 2 facilities, respectively.

Part 717—Clarification and challenge inspection procedures. This part describes clarification procedures under the Convention and the scope and purpose of on-site challenge inspections. On-site challenge inspections may be conducted at any facility or location in the United States for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of the CWC. The USNA will provide written notification of a challenge inspection to the owner and operator, occupant or agent in charge of the premises. The Department of Commerce will provide Host Team notification to the inspection point of contact of a declared facility, or to the owner or occupant of an facility that has not been declared under the declaration requirements of the Convention.

Part 718—Confidential business information (CBI). This part sets forth the identification and treatment of CBI as defined in the Act.

Part 719—Enforcement. This part sets forth the civil and criminal penalties and enforcement procedures that apply to violations of the reporting and inspections requirements and provisions relating to the importation of Schedule 1 and 2 chemicals.

Part 720—Denial of export privileges. This part sets forth a penalty, denial of export privileges, that applies to persons convicted under 18 U.S.C. 229.

Part 721—Inspection of records and recordkeeping. This part includes the recordkeeping requirements of the CWCR, including retention and reproduction requirements.

Part 722—Interpretations. This part is reserved for future use. It will provide explanations and examples for declaration requirements and other interpretations to guide industry and other U.S. persons in determining obligations under the CWCR.

Comments on this interim rule must be submitted to BXA by January 31, 2000. Send comments to: the Regulatory Policy Division, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule revises an existing collection of information requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which the Office of Management and Budget has approved and reinstated under OMB Collection No. 0694–0091 (December 1999). The public reporting burdens for the new collections of information are estimated to average 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 for Unscheduled Discrete Organic Chemicals, and .17 hours for Schedule 1 notifications. It is estimated to take approximately 1.18 hours to complete each of the nine Schedule 1 forms, 1.19 hours for each of the ten Schedule 2 forms, .36 hours for each of the seven Schedule 3 forms, and 1.33 hours for each of the four Unscheduled Discrete Organic Chemicals forms. The burden hours associated with completing a particular type of declaration or report package (e.g., Schedule 1 initial declaration, Schedule 2 annual declaration on past activities) will change depending on the number of forms required to comply with the specific declaration or report requirement. Table 1 to Parts 712, 713, 714, and 715 of the CWCR identifies the specific forms which must be included in each type declaration or report package. The Declaration and Report Handbooks include a "Guide to Submission of Forms" which also identifies the specific forms that must be included in a declaration or report package. To calculate the number of hours it takes to complete a specific type of declaration or report, multiply the number of forms required for a specific declaration or report type by the number of hours estimated to complete each form.

BXA will use the information contained in declarations and reports submitted by U.S. persons to compile the U.S. National Industrial Declaration in order to meet our obligations under the Chemicals Weapons Convention. BXA will submit the U.S. National Industrial Declaration to the United States National Authority who will forward the Declaration to the Organization on the Prohibition of Chemical Weapons as required by the Convention.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. BXA completed a Cost Benefit Analysis (CBA) pursuant to Executive Order 12866 and an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603 for the proposed rule, and requested comments from the public. BXA received no comments from the public on either the CBA or the IRFA. Therefore, BXA is using the analysis of the IRFA and the CBA, with certain edits to make it consistent with this interim rule, for the Final Regulatory Flexibility Analysis (FRFA) required by 5 U.S.C. 604. A summary of the FRFA and CBA follows. The CBA and the FRFA are available on BXA's website at www.cwc.gov. Copies of the CBA and the complete FRFA may be obtained from the Bureau of Export Administration Freedom of Information Officer, Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230 or by calling (202) 482–0500.

The FRFA identifies the Small Business Administration's (SBA) small business size standards, in terms of number of employees, for "Chemicals and Allied Products" by four-digit Standard Industrial Classification (SIC) codes. These SBA standards indicate that a "small business" in the chemical industry can cover a range of sizes, from up to 500 employees to up to 1,000 employees. The FRFA states that BXA does not have information on which SIC code categories will include companies that are subject to the declaration, reporting, notification or inspection requirements of this rule, and therefore, BXA is unable to estimate with certainty the number of small businesses that will be affected by this rule. BXA anticipates some 2,000 firms will be affected by the CWCR, and many of them may have no more than 500 employees, thus falling under the SBA generic definition of "small business."

The FRFA and the CBA report BXA's estimate that compliance with the requirements of this rule will total approximately $377,654 to gather and maintain relevant data and to fill out declarations, reports and notifications, and approximately $2,166,880 for inspections. The average cost of an inspection, based on the assumption that 40 facilities will undergo inspections each year, is $54,150. The FRFA and CBA describe the expected benefits to the United States of implementing the requirements of the Convention, including increased national and economic security.

The FRFA explains that BXA's discretion in formulating the declaration, reporting and notification requirements of this rule is limited by the Convention. The OPCW has issued forms for States Parties to use for declarations. In drafting the CWCR requirements and the forms for U.S. persons to use, BXA has consistently interpreted the Convention's requirements as narrowly as possible to ensure that only information that the United States National Authority must declare to the OPCW is to be submitted to BXA. Other States Parties, such as Canada, have imposed much broader reporting requirements on their industries, with the government taking on the responsibility of determining which of the information collected must be declared to the OPCW. In addition, certain declaration requirements of the Convention are subject to interpretation by States Parties. Until the Conference of States Parties establishes clear rules for these requirements, States Parties may use their "national discretion" to implement them. "National discretion" generally means a reasonable interpretation of the requirement. For requirements currently subject to "national discretion," BXA has adopted in this rule the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

15 CFR Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 712

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 713

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 714

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 715

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrants, Treaties.

15 CFR Part 717

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrants, Treaties.

15 CFR Part 718

Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 719

Administrative proceedings, Exports, Imports, Penalties, Violations.

15 CFR Part 720

Penalties, violations.

15 CFR Part 721

Reporting and recordkeeping requirements.

1. In 15 CFR, Chapter VII, Subchapter B is designated as Chemical Weapons Convention Regulations.

2. In 15 CFR, Subchapter B, Parts 710 through 722 are added to read as follows:

PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

Sec.

710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).
710.2 Scope of the CWCR.
710.3 Purposes of the Convention and CWCR.
710.4 Overview of scheduled chemicals and examples of affected industries.
710.5 Authority.
710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Supplement No. 1 to Part 710—States Parties to the Convention on the Prohibition of the Development, production, Stockpiling and Use of Chemical Weapons and on Their Destruction

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

The following are definitions of terms used in the CWCR (parts 710 through 722 of this subchapter, unless otherwise noted):

Act (The): Means the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 *et seq.*).

Bureau of Export Administration (BXA). Means the Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

By-product. Means any chemical substance or mixture produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.

Chemical Weapon. Means the following, together or separately:

(1) A toxic chemical and its precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention (CWC), provided that the type and quantity are consistent with such purposes;

(2) A munition or device, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (1) of this definition, which would be released as a result of the employment of such munition or device; or

(3) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (2) of this definition.

Chemical Weapons Convention (CWC or Convention). Means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993.

Chemical Weapons Convention Regulations (CWCR). Means the regulations contained in 15 CFR parts 710 through 722.

Consumption. Consumption of a chemical means its conversion into another chemical via a chemical reaction. Unreacted material must be accounted for as either waste or as recycled starting material.

Declaration or report form. Means a multi-purpose form due to BXA regarding activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals. Declaration forms will be used by facilities that have data declaration obligations under the CWCR and are "declared" facilities whose facility-specific information will be transmitted to the OPCW. Report forms will be used by entities that are "undeclared" facilities or trading companies that have limited reporting requirements for only export and import activities under the CWCR and whose facility-specific information will not be transmitted to the OPCW. Information from declared facilities, undeclared facilities and trading companies will also be used to compile U.S. national aggregate figures on the production, processing, consumption, export and import of specific chemicals. See also related definitions of declared facility, undeclared facility and report.

Declared facility or plant site. Means a facility or plant site required to complete data declarations of activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals above specified threshold quantities. Only certain declared facilities and plant sites are subject to routine inspections under the CWCR. Plant sites that produced either Schedule 2 or Schedule 3 chemicals for CW purposes at any time since January 1, 1946, are also "declared" plant sites. However, such plant sites are not subject to routine inspection if they are not subject to declaration requirements because of past production, processing or consumption of Scheduled or unscheduled discrete organic chemicals above specified threshold quantities.

Discrete organic chemical. Means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides, and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned.

Domestic transfer. Means, with regard to declaration requirements for Schedule 1 and chemicals under the CWCR, any movement of any amount of Schedule 1 chemical outside the geographical boundary of a facility in the United States to another destination in the United States, for any purpose. Domestic transfer includes movement between two divisions of one company or a sale from one company to another. Note that any movement to or from a facility outside the United States is considered an export or import for reporting purposes, not a domestic transfer.

EAR. Means the Export Administration Regulations (15 CFR parts 730 through 799).

Explosive. Means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

Facility. Means any plant site, plant or unit.

Facility agreement. Means a written agreement or arrangement between a State Party and the Organization relating

to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Host Team. Means the U.S. Government team that accompanies the inspection team from the Organization for the Prohibition of Chemical Weapons during a CWC inspection for which the regulations in this subchapter apply.

Host Team Leader. Means the representative from the Department of Commerce who heads the U.S. Government team that accompanies the Inspection Team during a CWC inspection for which the regulations in this subchapter apply.

Hydrocarbon. Means any organic compound that contains only carbon and hydrogen.

Impurity. Means a chemical substance unintentionally present with another chemical substance or mixture.

Inspection Team. Means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat to conduct a particular inspection.

ITAR. Means the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, the Netherlands, that administers the CWC.

Person. Means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Plant. Means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

(1) Small administrative area;

(2) Storage/handling areas for feedstock and products;

(3) Effluent/waste handling/treatment area;

(4) Control/analytical laboratory;

(5) First aid service/related medical section; and

(6) Records associated with the movement into, around, and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

Plant site. Means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(1) Administration and other offices;

(2) Repair and maintenance shops;

(3) Medical center;

(4) Utilities;

(5) Central analytical laboratory;

(6) Research and development laboratories;

(7) Central effluent and waste treatment area; and

(8) Warehouse storage.

Precursor. Means any chemical reactant which takes part, at any stage in the production, by whatever method, of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

Processing. Means a physical process such as formulation, extraction and purification in which a chemical is not converted into another chemical.

Production. Means the formation of a chemical through chemical reaction.

Purposes not prohibited by the CWC. Means the following:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or

(4) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

Report. Means information due to BXA on exports and imports of Schedule 1, Schedule 2 or Schedule 3 chemicals above applicable thresholds. Such information is included in the national aggregate declaration transmitted to the OPCW. Facility-specific information is *not* included in the national aggregate declaration. Note: This definition does not apply to parts 719 and 720 (see § 719.1) of this subchapter.

Schedules of Chemicals. Means specific lists of toxic chemicals, groups of chemicals, and precursors contained in the CWC. See Supplements No. 1 to parts 712 through 714 of this subchapter.

State Party. Means a country for which the CWC is in force. See Supplement No. 1 to this part.

Storage. For purposes of Schedule 1 chemical reporting, means any quantity that is not accounted for under the categories of production, export, import, consumption or domestic transfer.

Synthesis. Means production of a chemical from its reactants.

Technical Secretariat. Means the organ of the OPCW charged with carrying out administrative and technical support functions for the OPCW, including carrying out the verification measures delineated in the CWC.

Toxic Chemical. Means any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation, or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere. Toxic chemicals that have been identified for the application of verification measures are in schedules contained in Supplements No. 1 to parts 712 through 714 of this subchapter.

Trading company. Means any person involved in the export and/or import of scheduled chemicals in amounts greater than specified thresholds, but not in the production, processing or consumption of such chemicals in amounts greater than threshold amounts requiring declaration. If such persons exclusively export or import scheduled chemicals in amounts greater than specified thresholds, they are subject to reporting requirements but are not subject to routine inspections.

Transfer. See domestic transfer.

Undeclared facility or plant site. Means a facility or plant site that is not subject to declaration requirements because of past or anticipated production, processing or consumption involving scheduled or unscheduled discrete organic chemicals above specified threshold quantities. However, such facilities and plant sites may have a reporting requirement for exports or imports of such chemicals.

Unit. Means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the

United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

United States National Authority (USNA). Means the Department of State serving as the national focal point for the effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention and implementing the provisions of the Chemical Weapons Convention Implementation Act of 1998 in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of other agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the USNA.

Unscheduled chemical. Means a chemical that is not contained in Schedule 1, Schedule 2, or Schedule 3 (see Supplements No. 1 to parts 712 through 714 of this subchapter).

Unscheduled Discrete Organic Chemical (UDOC). Means any "discrete organic chemical" that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter) and subject to the declaration requirements of part 715 of this subchapter. Unscheduled discrete organic chemicals subject to declaration under this subchapter are those produced by synthesis that are isolated for use or sale as a specific end-product.

You. The term "you" or "your" means any person (see also definition of "person"). With regard to the declaration and reporting requirements of the CWCR, "you" refers to persons that have an obligation to report certain activities under the provisions of the CWCR.

§ 710.2 Scope of the CWCR.

The Chemical Weapons Convention Regulations (parts 710 through 722 of this subchapter), or CWCR, implement certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as the CWC or Convention.

(a) *Persons and facilities subject to the CWCR.* (1) The CWCR declaration, reporting, and inspection requirements apply to all persons and facilities located in the United States, except U.S. Government facilities as follows:

(i) Department of Defense facilities;

(ii) Department of Energy facilities; and

(iii) Facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR.

(2) For purposes of this subchapter, "United States Government facilities" are those facilities owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those facilities leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). "United States Government facilities" does not include facilities owned by a U.S. Government agency and leased to a private company or other entity such that the private company or entity may independently decide for what purposes to use the facilities.

(b) *Activities subject to the CWCR.* The CWCR compel data declarations and reports from facilities subject to the CWCR (parts 710 through 722 of this subchapter) on activities, including production, processing, consumption, exports and imports, involving chemicals further described in parts 712 through 715 of this subchapter. These regulations do not apply to activities involving inorganic chemicals other than those listed in the Schedules of Chemicals or to other specifically exempted unscheduled discrete organic chemicals. In addition, these regulations set forth procedures for routine inspections of "declared" facilities by teams of international inspectors in part 716 of this subchapter, and set forth clarification procedures and procedures for challenge inspections (see part 717) that could be requested at any facility or location in the United States subject to the CWCR. Finally, the CWCR restrict certain imports of Schedule 1 and 2 chemicals into the United States from non-States Parties and prohibit imports of Schedule 1 chemicals except for research, medical, pharmaceutical, or protective purposes.

§ 710.3 Purposes of the Convention and CWCR.

(a) *Purposes of the Convention.* (1) The Convention imposes upon the United States, as a State Party, certain declaration, inspection, and other obligations. In addition, the United States and other States Parties to the Convention undertake never under any circumstances to:

(i) Develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

(ii) Use chemical weapons;

(iii) Engage in any military preparations to use chemical weapons; or

(iv) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

(2) One objective of the Convention is to assure States Parties that lawful activities of chemical producers and users are not converted to unlawful activities related to chemical weapons. To achieve this objective and to give States Parties a mechanism to verify compliance, the Convention requires the United States and all other States Parties to submit declarations concerning chemical production, consumption, processing and other activities, and to permit international inspections within their borders.

(b) *Purposes of the Chemical Weapons Convention Regulations.* To fulfill the United States' obligations under the Convention, the CWGR (parts 710 through 722 of this subchapter) prohibit certain activities, and compel the submission of information from all facilities in the United States, except for Department of Defense and Department of Energy facilities and facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR on activities, including exports and imports of scheduled chemicals and certain information regarding unscheduled discrete organic chemicals as described in parts 712 through 715 of this subchapter. U.S. Government facilities are those owned by or leased to the U.S Government, including facilities that are contractor-operated. The CWCR also require access for on-site inspections and monitoring by the OPCW, as described in parts 716 and 717 of this subchapter.

§ 710.4 Overview of scheduled chemicals and examples of affected industries.

The following provides examples of the types of industries that may be affected by the CWCR (parts 710 through 722 of this subchapter). These examples are not exhaustive, and you should refer to parts 712 through 715 of this subchapter to determine your obligations.

(a) Schedule 1 chemicals are listed in Supplement No. 1 to part 712 of this subchapter. Schedule 1 chemicals have little or no use in industrial and agricultural industries, but may have limited use for research, pharmaceutical, medical, public health, or protective purposes.

(b) Schedule 2 chemicals are listed in Supplement No. 1 to part 713 of this subchapter. Although Schedule 2 chemicals may be useful in the

production of chemical weapons, they also have legitimate uses in areas such as:

(1) Flame retardant additives and research;

(2) Dye and photographic industries (e.g., printing ink, ball point pen fluids, copy mediums, paints, etc.);

(3) Medical and pharmaceutical preparation (e.g., anticholinergics, arsenicals, tranquilizer preparations);

(4) Metal plating preparations;

(5) Epoxy resins; and

(6) Insecticides, herbicides, fungicides, defoliants, and rodenticides.

(c) Schedule 3 chemicals are listed in Supplement No. 1 to part 714 of this subchapter. Although Schedule 3 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) The production of:

(i) Resins;

(ii) Plastics;

(iii) Pharmaceuticals;

(iv) Pesticides;

(v) Batteries;

(vi) Cyanic acid;

(vii) Toiletries, including perfumes and scents;

(viii) Organic phosphate esters (e.g., hydraulic fluids, flame retardants, surfactants, and sequestering agents); and

(2) Leather tannery and finishing supplies.

(d) Unscheduled discrete organic chemicals are used in a wide variety of commercial industries, and include acetone, benzoyl peroxide and propylene glycol.

§ 710.5 Authority.

The CWCR (parts 710 through 722 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (Act), the National Emergencies Act, the International Emergency Economic Powers Act (IEEPA), as amended, and the Export Administration Act of 1979, as amended, by extending verification and trade restriction requirements under Article VI and related parts of the Verification Annex of the Convention to U.S. persons. In Executive Order 13128 of June 25, 1999, the President delegated authority to the Department of Commerce to promulgate regulations to implement the Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the Act.

§ 710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Certain obligations of the U.S. government under the CWC pertain to exports. These obligations are implemented in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). See in particular § 742.18 and part 745 of the EAR, and Export Control Classification Numbers 1C350, 1C351 and 1C355 of the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

Supplement No. 1 to Part 710—States Parties to The Convention on The Prohibition of The Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of December 30, 1999

Albania
Algeria
Argentina
Armenia
Australia
Austria
Bahrain
Bangladesh
Belarus
Belgium
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Chile
China*
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Ecuador
El Salvador
Equatorial Guinea
Ethiopia
Estonia
Fiji
Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Guinea
Guyana
Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kenya
Korea (Republic of)
Kuwait
Laos (P.D.R.)
Latvia
Lesotho
Liechtenstein
Lithuania
Luxembourg
Macedonia
Malawi
Maldives
Mali
Malta
Mauritius
Mauritania
Mexico
Moldova (Republic of)
Monaco
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden

Switzerland
Tajikistan
Tanzania, United Republic of
Togo
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Ukraine
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
Zimbabwe

*For CWC States Parties purposes, China includes Hong Kong and Macau.

PART 711—GENERAL INFORMATION REGARDING DECLARATION, REPORTING AND NOTIFICATION REQUIREMENTS

Sec.

711.1 Overview of declaration, reporting, and notification requirements.
711.2 Who submits declarations, reports, and notifications.
711.3 Assistance in determining your obligations.
711.4 Declaration and reporting of activities occurring prior to December 30, 1999.
711.5 Numerical precision of submitted data.
711.6 Where to obtain forms.

Authority: 22 U.S.C. 6701 et seq.; E.O. 13128, 64 FR 36703.

§ 711.1 Overview of declaration, reporting, and notification requirements.

Parts 712 through 715 of the CWCR (parts 710 through 722 of this subchapter) describe the declaration, notification and reporting requirements for Schedules 1, 2 and 3 chemicals and for unscheduled discrete organic chemicals (UDOCs). For each type of chemical, the Convention requires an initial declaration and subsequent annual declarations. If, after reviewing parts 712 through 715 of this subchapter, you determine that you have declaration, notification or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (see § 711.6).

§ 711.2 Who submits declarations, reports, and notifications.

The owner, operator, or senior management official of a facility subject to declaration, report, or notification requirements under the CWCR (parts 710 through 722 of this subchapter) is responsible for the submission of all required documents in accordance with all applicable provisions of the CWCR.

§ 711.3 Assistance in determining your obligations.

(a) *Determining if your chemical is subject to declaration, reporting or notification requirements.*

(1) If you need assistance in determining if your chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or is an unscheduled discrete organic chemical, submit your written request for a chemical determination to BXA. Such requests may be faxed to (703) 235–1481, e-mailed to cdr@cwc.gov, or mailed to Information Technology Team, Bureau of Export Administration, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, Virginia 22209–2405. Your request should include the information noted in paragraph (a)(2) of this section to ensure an accurate determination. Also include any additional information that you feel is relevant to the chemical or process involved (see part 718 of this subchapter for provisions regarding treatment of confidential business information). If you are unable to provide all of the information required in paragraph (a)(2) of this section, you should include an explanation identifying the reasons or deficiencies that preclude you from supplying the information. If BXA cannot make a determination based upon the information submitted, BXA will return the request to you and identify the additional information that is necessary to complete a chemical determination.

(2) Include the following information in each chemical determination request:

(i) Date of request;

(ii) Company name and complete street address;

(iii) Point of contact;

(iv) Phone and fax number of contact;

(v) E-mail address of contact, if you want an acknowledgment of receipt sent via e-mail;

(vi) Chemical Name;

(vii) Structural formula of the chemical, if the chemical is not specifically identified by name and chemical abstract service registry number in Supplements No. 1 to parts 712 through 714 of the CWCR; and

(viii) Chemical Abstract Service registry number, if assigned.

(b) *Other inquiries.* If you need assistance in interpreting the provisions of this subchapter or need assistance with other CWC-related issues, and you require a response from BXA in writing, submit a detailed request to BXA that explains your question, issue, or request. Send the request to the address or fax included in paragraph (a) of this section, or e-mail the request to cwcqa@cwc.gov.

(c) *BXA response to your request.* BXA will respond in writing to your chemical determination request submitted under paragraph (a) of this section within 10 working days of receipt of the request. BXA will respond to other inquiries about industry obligations under the CWCR in a timely manner.

(d) *Other BXA contact information.* (1) *Declaration and report requirements.* For questions on declaration or report requirements, or help in completing forms, you may also contact BXA's Information Technology Team (ITT) by phone at (703) 235–1335.

(2) *Inquiries regarding inspections and facility agreements.* For questions regarding inspections and facility agreements, contact BXA's Inspection Management Team (IMT) by phone at (202) 482–6114 or fax (202) 482–4744.

§ 711.4 Declaration and reporting of activities occurring prior to December 30, 1999.

(a) Facilities subject to the CWCR are required to prepare and submit declarations and reports, to the extent that the necessary information and records are available, on activities occurring prior to December 30, 1999. Willful failure or refusal to submit such declarations and reports constitutes a violation under part 719 of this subchapter. Declarations and reports are not required if records and information necessary to prepare them are not available for one or more of the following reasons:

(1) The necessary information was not collected, or the necessary records were not kept, because no regulatory requirement to do so was in effect prior to December 30, 1999 and at the time of the activity;

(2) The information, though collected at the time of the activity, was discarded prior to December 30, 1999 in accordance with normal business practices; or

(3) The current custodian of the records or information is no longer affiliated with a facility subject to the CWCR due to changes in ownership or control of that facility which took place prior to December 30, 1999.

(b) If partial information is available, facilities are required to provide whatever information is available, on the appropriate forms, with a notation on Form A indicating that complete information is not available.

(c) This § 711.4 applies only to initial declarations and reports, and to annual declarations and reports for calendar years 1997, 1998, and 1999.

§ 711.5 Numerical precision of submitted data.

Numerical information submitted in declarations and reports is to be provided per applicable rounding rules in each part (i.e., parts 712 through 715 of this subchapter) with a precision equal to that which can be reasonably provided using existing documentation, equipment, and measurement techniques.

§ 711.6 Where to obtain forms.

Forms to complete declarations and reports required by the CWCR may be obtained by contacting: Information Technology Team, Bureau of Export Administration, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 710, Arlington, VA 22209–2405, Telephone: (703) 235-1335. Forms may also be downloaded from the Internet at www.cwc.gov.

PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

Sec.

712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.
712.2 Prohibitions involving imports of Schedule 1 chemicals.
712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.
712.4 New Schedule 1 production facility.
712.5 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States' Parties.
712.6 Frequency and timing of declarations, reports and notifications.
712.7 Amended declaration or report.

Supplement No. 1 to Part 712—Schedule 1 Chemicals

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 1 chemicals.

(b) Facilities that produce, export or import mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities may round to zero and are not subject to the provisions of this part 712. Schedule 1 content may be calculated by volume or weight, whichever yields the lesser percent. Note that such mixtures may be subject to regulatory requirements of other federal agencies.

§ 712.2 Prohibitions involving imports of Schedule 1 chemicals.

(a) You may not import any Schedule 1 chemical unless:

(1) The import is from a State Party;

(2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified BXA 45 calendar days prior to the import pursuant to § 712.5.

(b)(1) The provisions of paragraph (a) of this section do not apply to the retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (b)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (b)(1) of this section is:

(i) Any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

Note to § 712.2: For specific provisions relating to the prior notification of exports of all Schedule 1 chemicals, see § 742.18 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, see §§ 742.2 and 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and see the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

§ 712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

(a) *Declaration requirements.* (1) *Initial declaration.* You must complete the forms specified in paragraph (b)(1) of this section, providing a current technical description of your facility or its relevant parts, if you produced Schedule 1 chemicals at your facility in excess of 100 grams aggregate in any one of the calendar years 1997, 1998, or 1999. Note: Do not include production data in your initial declaration. Such information should be included in your annual declaration on past activities. See paragraph (a)(2) of this section.

(2) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. As a declared Schedule 1 facility, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare the total amount of each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(3) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (see paragraph (a)(1) of this section) 200 calendar days before commencing operations or increasing production which will result in production of more than 100 grams aggregate of Schedule 1 chemicals (see § 712.4).

(b) *Declaration forms to be used.* (1) *Initial declaration.* (i) You must complete the Certification Form, Form 1–1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998, or 1999. You must provide a detailed current technical description of your facility or its relevant parts including a narrative statement, a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared area.

(ii) If you plan to change the technical description of your facility from your initial declaration completed and submitted pursuant to paragraph (a)(1) of this section and § 712.6, you must notify BXA 200 calendar days prior to the change. Such notifications must be made through an amended declaration by completing a Certification Form, Form 1–1 and Form A, including the new description of the facility. See § 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(2) of this section, you must complete the Certification Form and Forms 1–1, 1–2, 1–2A, 1–2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous

calendar year, beginning with calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1–1, 1–4, and Form A. Form B is optional.

(c) *Quantities to be declared.* If you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare the quantity of any Schedule 1, Schedule 2 or Schedule 3 precursor chemical used to produce the declared Schedule 1 chemical, rounded to the nearest gram. You must further declare the quantity of each Schedule 1 chemical consumed or stored by, or domestically transferred from, your facility, whether or not the Schedule 1 chemical was produced by your facility, rounded to the nearest gram. In calculating the amount of Schedule 1 chemical you produced, consumed or stored, count only the amount of the Schedule 1 chemical(s) in a mixture, not the total weight of the mixture (i.e., do not count the weight of the solution, solvent, or container).

Note to § 712.3(c): Schedule 1 reaction intermediates which exist or might exist during the course of synthesis to produce non-scheduled chemicals and which cannot be isolated using available technology should not be declared if the reaction is allowed to go to completion, completely consuming the real or hypothetical intermediates.

(d) *"Declared" Schedule 1 facilities and routine inspections.* Only facilities that produced in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997 or 1998, or during the previous calendar year, or that anticipate producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year are considered "declared" Schedule 1 facilities for the years declared. A "declared" Schedule 1 facility is subject to initial and routine inspection by the OPCW (see part 716 of this subchapter).

(e) *Approval of declared Schedule 1 production facilities.* Facilities that submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BXA within 30 days of receipt by BXA of an annual declaration on past activities or annual declaration on anticipated activities (see paragraphs (a)(2) and (a)(3) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BXA is required.

§ 712.4 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility.* (1) If your facility was not declared under § 712.3 in a previous calendar year, and you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must provide an initial declaration (a current detailed technical description of your facility) to BXA at least 200 calendar days in advance of commencing such production. Such facilities are considered "new Schedule 1 production facilities" and are subject to an initial inspection within 200 calendar days of submitting an initial declaration.

(2) New Schedule 1 production facilities that submit an initial declaration pursuant to paragraph (a)(1) of this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BXA within 30 days of receipt by BXA of that initial declaration.

(b) *Types of declaration forms required.* If your new Schedule 1 production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1–1 and Form A. You must also provide a detailed technical description of the new facility or its relevant parts, including a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared areas.

(c) Two hundred days after a new Schedule 1 production facility submits its initial declaration, it is subject to the annual declaration requirements of § 712.3(a)(2) and (a)(3).

§ 712.5 Advance notification and annual report of all exports [1] and imports of Schedule 1 chemicals to, or from, other States Parties.

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BXA in advance of the export or import and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit to the OPCW the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that the notification and annual report requirements of this section do not relieve you of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the Export Administration Regulations (15 CFR parts 730 through 799) or from the Department of State for the export of Schedule 1 chemicals subject to the International Traffic in Arms Regulations (22 CFR parts 120 through 130). Only facilities that produce in excess of 100 grams aggregate of Schedule 1 chemicals annually are "declared" facilities and are subject to routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* (1) You must notify BXA at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to or from another State Party. Note that notifications for exports may be sent to BXA prior to or after submission of a license application to BXA for Schedule 1 chemicals subject to the EAR and controlled under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled under the ITAR. Such notices must be submitted separately from license applications.

(i) Notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

(A) Chemical name;

(B) Structural formula of the chemical;

(C) Chemical Abstract Service (CAS) Registry Number;

(D) Quantity involved in grams;

(E) Planned date of export or import;

(F) Purpose (end-use) of export or import (i.e., research, medical, pharmaceutical, or protective purpose);

(G) Name(s) of exporter and importer;

(H) Complete street address(es) of exporter and importer;

[1] Effective May 18, 1999, these advance notification and annual report requirements for exports are set forth in parts 742 and 745 of the Export Administration Regulations (EAR) (15 CFR parts 742 and 745).

(I) U.S. export license or control number, if known; and

(J) Company identification number, once assigned by BXA.

(ii) Send the notification by fax to (703) 235–1481 or to the following address for mail and courier deliveries:

Information Technology Team, Bureau of Export Administration, Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209–2405, Attn: "Advance Notification of Schedule 1 Chemical [Export] [Import]."

(iii) Upon receipt of the notification, BXA will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical subject to an export license requirement either under the EAR or the ITAR, the exporter must have applied for and been granted a license (see §§ 742.2 and 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual report requirements for exports and imports of Schedule 1 chemicals.* Any person subject to the CWCR that exported or imported any quantity of Schedule 1 chemical to or from another State Party during the previous calendar year, beginning with calendar year 1997, has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared and undeclared facilities, trading companies, and any other person subject to the CWCR that exported or imported any quantity of a Schedule 1 chemical to or from another State Party in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

Note to paragraph (b)(1): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 1 chemicals contained in *reports.* The U.S. Government will add all export and import information contained in *reports* to establish the U.S. national aggregate declaration on exports and imports.

(2) *Report forms to submit.* (i) *Declared Schedule 1 facilities.* (A) If your facility declared production of a Schedule 1 chemical and you also exported or imported any amount of that *same* Schedule 1 chemical, you may report the export or import by:

(*1*) Submitting, along with your declaration, Form 1–3 for that same Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(*2*) Submitting, separately from your declaration, a Certification, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(B) If your facility declared production of a Schedule 1 chemical and exported or imported any amount of a different Schedule 1 chemical, you may report the export or import by:

(*1*) Submitting, along with your declaration, a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(*2*) Submitting, separately from your declaration, a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared facility, trading company, or any other person subject to the CWCR, and you exported or imported any amount of a Schedule 1 chemical, you must submit a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in § 712.2(b).

§ 712.6 Frequency and timing of declarations, reports and notifications.

Declarations, reports and notifications required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations, reports and notifications include:

(a) Initial declaration (technical description);

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997);

(c) Annual report on exports and imports from trading companies, facilities and other persons (during the previous calendar year, beginning with 1997);

(d) Annual declaration on anticipated activities (production in the next calendar year, beginning in calendar year 2000 for production anticipated for calendar year 2001);

(e) Advance notification of any export to or import from another State Party; and

(f) Initial declaration of a new Schedule 1 production facility.

TABLE 1 TO § 712.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS

Declarations and notifications	Applicable forms	Due dates
Initial Declaration—Declared facility (technical description).	Certification, 1–1, A, B (optional)	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared facility (past production).	Certification, 1–1, 1–2, 1–2A, 1–2B, 1–3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual report on exports and imports (previous calendar year, starting with 1997) (facility, trading company, other persons).	Certification, 1–1, 1–3, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 1–1, 1–4, A (as appropriate), B (optional).	August 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.5 of this subchapter.	45 calendar days prior to the export or import.
Initial Declaration of a new Schedule 1 facility ..	Certification, 1–1, A (as appropriate), B (optional).	200 calendar days before commencing such production.

§ 712.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared Schedule 1 facilities, changes that may affect verification activities, such as changes of owner or operator, company name, address, or

inspection point of contact, require an amended declaration. Non-substantive typographical errors and changes to the declaration point of contact do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(c) For undeclared Schedule 1 facilities, trading companies and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended report and may be corrected in subsequent reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities, annual declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

	(CAS registry number)
A. Toxic chemicals:	
(1) O-Alkyl (≤C_{10}, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates	
e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107–44–8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96–64–0)
(2) O-Alkyl (≤C_{10}, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77–81–6)
(3) O-Alkyl (H or ≤C_{10}, incl. cycloalkyl) S–2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts e.g. VX: O-Ethyl S–2-diisopropylaminoethyl methyl phosphonothiolate	(50782–69–9)
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	(2625–76–5)
Mustard gas: Bis(2-chloroethyl)sulfide	(505–60–2)
Bis(2-chloroethylthio)methane	(63869–13–6)
Sesquimustard: 1,2–Bis(2-chloroethylthio)ethane	(3563–36–8)
1,3-Bis(2-chloroethylthio)-n-propane	(63905–10–2)
1,4-Bis(2-chloroethylthio)-n-butane	(142868–93–7)
1,5-Bis(2-chloroethylthio)-n-pentane	(142868–94–8)
Bis(2-chloroethylthiomethyl)ether	(63918–90–1)
O-Mustard: Bis(2-chloroethylthioethyl)ether	(63918–89–8)
(5) Lewisites:	
Lewisite 1: 2-Chlorovinyldichloroarsine	(541–25–3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	(40334–69–8)
Lewisite 3: Tris(2-chlorovinyl)arsine	(40334–70–1)
(6) Nitrogen mustards:	
HN1: Bis(2-chloroethyl)ethylamine	(538–07–8)
HN2: Bis(2-chloroethyl)methylamine	(51–75–2)
HN3: Tris(2-chloroethyl)amine	(555–77–1)
(7) Saxitoxin	(35523–89–8)
(8) Ricin	(9009–86–3)
B. Precursors:	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF: Methylphosphonyldifluoride	(676–99–3)
(10) O-Alkyl (H or ≤C_{10}, incl. cycloalkyl) O–2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, N-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts e.g. QL: O-Ethyl O–2-diisopropylaminoethyl methylphosphonite	(57856–11–8)
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	(1445–76–7)
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	(7040–57–5)

Notes to Supplement No. 1:

Note 1: Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (see part 774 of the EAR, the Commerce Control List): O–Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), Methylphosphonyl difluoride (C.A.S. #676–99–3), Saxitoxin (35523–89–8), Ricin (9009–86–3).

Note 2: All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

713.2 Declaration on past production of Schedule 2 chemicals for chemical weapons purposes.

713.3 Initial and annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

713.5 Advance declaration requirements for additionally planned production, processing or consumption of Schedule 2 chemicals.

713.6 Frequency and timing of declarations and reports.

713.7 Amended declaration or report.

Supplement No. 1 to Part 713—Schedule 2 Chemicals

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 et seq; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 2 chemicals. You may not import any Schedule 2 chemical (see Supplement No. 1 to this part) on or after April 29, 2000, from

any destination other than a State Party to the Convention. See Supplement No. 1 to part 710 of this subchapter for a list of States that are party to the Convention.

Note to paragraph (a). See § 742.18 of the Export Administration Regulations (15 CFR part 742) for prohibitions that apply to exports of Schedule 2 chemicals on or after April 29, 2000 to non-States Parties and for End-Use Certificate requirements for exports of Schedule 2 chemicals prior to April 29, 2000 to such destinations.

(b) Paragraph (a) of this section does not apply to:

(1) The transfer or receipt of a Schedule 2 chemical from a non-State Party by a department, agency, or other entity of the United States, or by any person, including a member of the Armed Forces of the United States, who is authorized by law, or by an appropriate officer of the United States to transfer or receive the Schedule 2 chemical; or

(2) Mixtures containing Schedule 2 chemicals, if the concentration of each Schedule 2 chemical in the mixture is 10% or less by weight. Note, however, that such mixtures may be subject to regulatory requirements of other federal agencies.

§ 713.2 Declaration on past production of Schedule 2 chemicals for chemical weapons purposes.

You must complete the Certification Form and Forms 2–1, 2–2, 2–4, Form A, if you produced at your plant site any quantity of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes. Form B is optional. You must declare the total quantity of such a chemical produced, rounded to the nearest kilogram. Note that you are not subject to routine inspection unless you are a declared facility pursuant to § 713.3.

§ 713.3 Initial and annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

(a) *Declaration of production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC.*

(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (b) of this section if you have been or will be involved in the following activities:

(i) *Initial declaration.* You produced, processed or consumed at one or more plants on your plant site during any of the calendar years 1994, 1995, or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3–Quinuclidinyl benzilate (see Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of chemical Amiton: 0,0–Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No. 1 to this part); or

(C) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to this part).

Note to paragraph (a)(1)(i). To determine whether you have an initial declaration requirement for Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in calendar years 1994, 1995, or 1996. For example, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1994 or 1996, you have an initial declaration requirement under this paragraph. You must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996—and complete question 2–3.1 on each of the forms to declare production data on BZ for calendar years 1994, 1995 and 1996. For calendar year 1995, you would declare the quantity of BZ actually produced. For calendar years 1994 and 1996, you would declare "0" production quantity. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing), you would leave blank questions 2–3.2 and 2–3.3 on Form 2–3 for calendar years 1994, 1995, and 1996. Note that declaring a "0" quantity for production in 1994 and 1996, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the initial declaration requirement for each year from activities that were not declarable during that period.

(ii) *Annual declaration on past activities.* You produced, processed or consumed at one or more plants on your plant site during any of the previous three calendar years, a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section.

Note to paragraph (a)(1)(ii). To determine whether you have an annual declaration on past activities requirement for Schedule 2 chemicals, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in any one of the three previous calendar years. For example, for the 1997 declaration period, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1996 or 1997, you still have a declaration requirement under this paragraph for the previous calendar year (1997). However, you must only declare on Form 2–3 (question 2–3.1), production data for calendar year 1997. You would declare "0" production quantity because you did not produce BZ above the applicable threshold quantity in calendar year 1997. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing) in the 1995–1997 declaration period, you would leave blank questions 2–3.2 and 2–3.3 on Form 2–3. Note that declaring a "0" production quantity for 1997, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the declaration requirement from activities that were not declarable during that period.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce, process or consume at one or more plants on your plant site during the next calendar year, starting with activities anticipated for calendar year 2001, a Schedule 2 chemical in excess of the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Mixtures containing a Schedule 2 chemical.* (i)The quantity of a Schedule 2 chemical contained in a mixture must be counted when determining the total quantity of a Schedule 2 chemical produced, processed, or consumed at your plant only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 2 chemical in a mixture.* If your mixture contains 30% or more concentration of a Schedule 2 chemical, you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture.

(iii) *Determining declaration requirements for production, processing and consumption.* You must include the amount (weight) of a Schedule 2 chemical in a mixture when determining the total production, total processing, or total consumption of that Schedule 2 chemical at a plant on your plant site. If the total amount of the produced, processed or consumed Schedule 2 chemical exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A) through

(C) of this section, you have a declaration requirement. For example, if during calendar year 1997, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 32% and also produced 800 kilograms of thiodiglycol, that plant produced 1100 kilograms and exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 1997. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWCR purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture is less than 30% and therefore did not have to be "counted" and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if you produced, processed or consumed at one or more plants on your plant site a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section during any of the three calendar years 1994, 1995, or 1996. Form B is optional. If you are subject to initial declaration requirements, you must include data for each of the calendar years 1994, 1995, and 1996.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A) through (C) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, 2–3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during the following calendar year, beginning with activities planned for calendar year 2001. Form B is optional.

(c) *Quantities to be declared.* (1) *Production, processing and consumption of a Schedule 2 chemical above the declaration threshold.—(i) Initial declaration.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical for each of the calendar years 1994, 1995, and 1996. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. For those years in which you produced, processed or consumed the declared chemical below the declaration threshold, you declare "0" only for the declared activities.

(ii) *Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. If in the previous calendar year you produced, processed or consumed below the declaration threshold, but your declaration requirement is triggered because of activities occurring in an earlier year, you declare "0" only for the declared activities.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram (10 grams). For PFIB and the Amiton family, report quantities to the nearest 1 kilogram. For all other Schedule 2 chemicals, report quantities to the nearest 10 kilograms.

(d) *"Declared" Schedule 2 plant sites.* A plant site that comprises at least one plant that produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during any of the previous three calendar years or is anticipated to produce, process or consume a Schedule 2 chemical above the applicable threshold quantity in the next calendar year is a "declared" plant site. A plant site that submitted an initial declaration for activities that occurred in 1994, 1995, or 1996 is a "declared" Schedule 2 plant site for those years.

(e) *Declared Schedule 2 plant sites subject to routine inspections.* A "declared" Schedule 2 plant site is subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons if it produced, processed or consumed in any of the three previous calendar years, or is anticipated to produce, process or consume in the next calendar year, in excess of ten times the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section (see part 716 of this subchapter). A plant site that submitted an initial declaration for calendar years 1994, 1995, and 1996, and exceeded the applicable inspection threshold is also subject to an initial inspection.

§ 713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals

(a) *Declarations and reports of exports and imports of Schedule 2 chemicals.*

(1) *Declarations.* A Schedule 2 plant site that is declared because it produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity, and also exported from or imported to the plant site that same Schedule 2 chemical above the applicable threshold quantity, must submit export and import information as part of its declaration.

Note to paragraph (a)(1): A declared Schedule 2 plant site may need to declare exports or imports of Schedule 2 chemicals that it produced, processed or consumed above the applicable threshold quantity and also report exports or imports of different Schedule 2 chemicals that it did not produce, process or consume above the applicable threshold quantities.

(2) *Reports.* A declared plant site that does not meet the description of paragraph (a)(1) of this section, and an undeclared plant site or a trading company or any other person subject to the CWCR must submit a report if it exported or imported a Schedule 2 chemical above the applicable threshold quantity.

Note to paragraph (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 2 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to export and import information contained in declarations to establish the U.S. national aggregate declaration on exports and imports.

Note to paragraphs (a)(1) and (2): Declared and undeclared plant sites must count, for

declaration or report purposes, all exports from and imports to the *entire* plant site, not only from or to individual plants on the plant site.

(b) *Quantities of exports or imports that trigger a declaration or report requirement.* (1) You have a declaration or report requirement and must complete the forms specified in paragraph (d) of this section if you exported or imported a Schedule 2 chemical in excess of the following threshold quantities:

(i) 1 kilogram of chemical BZ: 3–Quinuclidinyl benzilate (See Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(ii) 100 kilograms of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of Amiton : O,O Diethyl S-[2(diethylamino)ethyl] phosphorothiolate *and* corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No.1 to this part);

(iii) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No.1 to this part).

(2) *Mixtures containing a Schedule 2 chemical.* The quantity of a Schedule 2 chemical contained in a mixture must be counted for the declaration or reporting of an export or import only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

Note 1 to paragraph (b)(2). See § 713.3(a)(2)(ii) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration and report requirements.

Note 2 to paragraph (b)(2). The "30% and above" mixtures rule applies only for declaration and report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§ 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

(c) *Declaration and report requirements.* (1) *Initial declaration.* A plant site described in paragrpah (a)(1) of this section that has an initial declaration requirement for production, processing, or consumption of a Schedule 2 chemical must also declare the export or import of that same Schedule 2 chemical if the amount exported or imported in 1994, 1995 or 1996 exceeded the applicable threshold quantity set forth in paragraph (b)(1)(i) through (iii) of this section. For the initial declaration, the plant site must only declare the export or import information for any of the calendar years (1994, 1995 and/or 1996) in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* Declared plant sites described in paragraph (a)(2) of this section, undeclared plant sites, trading companies or any other person subject to the CWCR that exported or imported a Schedule 2 chemical in 1996 in excess of the applicable threshold quantity set forth in paragraph (b) of this section, must submit an initial report on exports or imports for calendar year 1996.

(3) *Annual declaration on past activities.* A plant site described in paragraph (a)(1) that has an annual declaration requirement for production, processing, or consumption of a Schedule 2 chemical for the previous calendar year, beginning in 1997, must also declare the export and/or import of that same Schedule 2 chemical if the amount exceeded the applicable threshold quantity set forth in paragraph (b). The plant site must declare the export or import information for that same Schedule 2 chemical as part of its annual declaration of past activities.

(4) *Annual report on exports and imports.* Declared plant sites described in paragraph (a)(2), and undeclared plant sites, trading companies or any other person subject to the CWCR that exported or imported a Schedule 2 chemical in a previous calendar year, beginning in 1997, in excess of the applicable threshold quantity set forth in paragraphs (b)(1) (i) through (iii) must submit an annual report on exports or imports.

(d) *Types of declaration and report forms to be used.* (1) *Initial declaration.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2–3B in addition to the forms required by § 713.3(b)(1). You must complete the forms for each declared Schedule 2 chemical and for each of the calendar years 1994, 1995, and 1996, in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you may fulfill your reporting requirements by:

(A) Submitting, along with your initial declaration, a Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your initial declaration, a Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site or trading company, you must complete the Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(3) *Annual declaration on past activities.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2–3B, in addition to the forms required by § 713.3(b)(2), for each declared Schedule 2 chemical exported or imported above the applicable threshold quantity in the previous calendar year.

(4) *Annual report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you may fulfill your annual reporting requirements by:

(A) Submitting, along with your annual declaration on past activities, a Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your annual declaration on past activities, a Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site, trading company or any other person subject to the CWCR, you must complete the Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(e) *Quantities to be declared.* (1) *Calculations.* If you exported from or imported to your plant site, trading company, or other location more than the applicable threshold quantity of a Schedule 2 chemical, you must declare or report all exports and imports by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination is more than 1% of the applicable threshold (i.e., more than 10 grams of BZ, 1 kilogram of PFIB and

Amiton and corresponding alkylated or protonated salts, or 10 kilograms of all other Schedule 2 chemicals). However, in determining whether your total exports and imports worldwide for the year in question trigger a declaration or report requirement, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of declaring or reporting exports and imports of a Schedule 2 chemical, you must total all exports and imports per calendar year per recipient or source destination and then round as follows: for the chemical BZ, the total quantity for each destination should be reported to the nearest hundredth of a kilogram (10 grams); for PFIB and Amiton and corresponding alkylated or protonated salts, the quantity for each destination should be reported to the nearest 1 kilogram; and for all other Schedule 2 chemicals, the total quantity for each destination should be reported to the nearest 10 kilograms.

§ 713.5. Advance declaration requirements for additionally planned production, processing, or consumption of Schedule 2 chemicals.

(a) *Declaration requirements for additionally planned activities.* (1) You must declare additionally planned production, processing, or consumption of Schedule 2 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BXA if:

(i) You plan that a previously undeclared plant on your plant site under § 713.3(a)(1)(iii) will produce, process, or consume a Schedule 2 chemical above the applicable declaration threshold;

(ii) You plan to produce, process, or consume at a plant declared under § 713.3(a)(1)(iii) an additional Schedule 2 chemical above the applicable declaration threshold;

(iii) You plan an additional activity (production, processing, or consumption) at your declared plant above the applicable declaration threshold for a chemical declared under § 713.3(a)(1)(iii);

(iv) You plan to increase the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.3(a)(1)(iii) from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(2));

(v) You plan to change the starting or ending date of anticipated production, processing, or consumption declared under § 713.3(a)(1)(iii) by more than three months; or

(vi) You plan to increase your production, processing, or consumption of a Schedule 2 chemical by a declared plant site by 20 percent or more above that declared under § 713.3(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1) (i) through (vi) of this section, you should also declare changes to your declaration relating to the following activities. You do not have to submit an additionally planned declaration if you are only changing the following non-quantitative activities:

(i) Changes to the plant's production capacity;

(ii) Changes or additions to the product group codes for the plant site or the plant(s);

(iii) Changes to the plant's activity status (i.e., dedicated, multipurpose, or other status);

(iv) Changes to the plant's multipurpose activities;

(v) Changes to the plant site's status relating to domestic transfer of the chemical;

(vi) Changes to the plant site's purposes for which the chemical will be produced, processed or consumed; or

(vii) Changes to plant site's status relating to exports of the chemical or the addition of new countries for export (not to exceed 10 countries).

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this part, you must complete the Certification Form and Forms 2–1, 2–2, 2–3, and 2–3C as appropriate. Such forms are due to BXA at least 15 days prior to beginning the additional activity.

§ 713.6 Frequency and timing of declarations and reports.

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of Schedule 2 chemicals for chemical weapons (CW) purposes since January 1, 1946;

(b) Initial declaration (production, processing, consumption, export, or import of Schedule 2 chemicals during calendar years 1994, 1995, and 1996);

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production, processing, consumption, export or import of Schedule 2 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production, processing or consumption during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar years 1994, 1995, and 1996)—Declared plant site (production, processing, consumption, exports and imports).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site (production, processing, consumption, exports and imports).	Certification , 2–1, 2–2, 2–3 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3C, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Declaration on Additionally Planned Activities—(production, processing and consumption).	Certification, 2–1, 2–3C, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 2 Chemicals for CW Purposes.	Certification, 2–1, 2–2, 2–4 A (as appropriate), B (optional).	March 30, 2000.

§ 713.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 713.—SCHEDULE 2 CHEMICALS

A. Toxic chemicals:	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	(78–53–5)
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	(382–21–8)
(3) BZ: 3-Quinuclidinyl benzilate	(6581–06–2)
B. Precursors:	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms, e.g. Methylphosphonyl dichloride	(676–97–1)
Dimethyl methylphosphonate	(756–79–6)
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate	(944–22–9)
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates	
(7) Arsenic trichloride	(7784–34–1)
(8) 2,2-Diphenyl-2-hydroxyacetic acid	(76–93–7)
(9) Quinuclidine-3-ol	(1619–34–7)
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts	
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	(108–01–0)
N,N-Diethylaminoethanol and corresponding protonated salts	(100–37–8)
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13) Thiodiglycol: Bis(2-hydroxyethyl) sulfide	(111–48–8)
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol	(464–07–3)

PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS

Sec.

714.1 Declaration on past production of Schedule 3 chemicals for chemical weapons purposes.

714.2 Initial and annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

714.3 Initial and annual reporting requirements for exports and imports of Schedule 3 chemicals.

714.4 Advance declaration requirements for additionally planned production of a Schedule 3 chemical.

714.5 Frequency and timing of declarations.

714.6 Amended declaration or report.

Supplement No. 1 to Part 714—Schedule 3 Chemicals

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 714.1 Declaration on past production of Schedule 3 chemicals for chemical weapons purposes.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 3 chemicals.

(b) You must complete the Certification Form, Forms 3–1, 3–2, 3–4, Form A if you produced at one or more plants on your plant site any quantity of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes. Form B is optional. You must declare the total quantity of such chemical produced, rounded to the nearest tenth of a metric ton (or 100 kilograms). You are not subject to routine inspection unless you are a declared facility pursuant to § 714.2.

§ 714.2 Initial and annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

(a) *Declaration of production of Schedule 3 chemicals for purposes not prohibited by the CWC. (1) Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (b) of this section if you have

produced or anticipate producing a Schedule 3 chemical as follows:

(i) *Initial declaration.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996.

(ii) *Annual declaration on past activities.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with 1997.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Mixtures containing a Schedule 3 chemical.* (i) The quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 3 chemical in a mixture.* If your mixture contains 80% or more concentration of a Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical in the mixture, not the total weight of the mixture.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if you produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996. Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with production during calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form, and Forms 3–1 and 3–3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared.* (1) Production of a Schedule 3 chemical in excess of 30 metric tons. If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3–3. When specifying the range of production for your plant site, you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons. You must complete a separate Form 3–3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site that produced the Schedule 3 chemical in amounts exceeding 30 metric tons, and round to the nearest ten metric tons.

(d) *"Declared" Schedule 3 plant sites.* A plant site that comprises at least one plant that produced in excess of 30 metric tons of a Schedule 3 chemical during the previous calendar year, or that you anticipate will produce more than 30 metric tons of a Schedule 3 chemical in the next calendar year, is a "declared" Schedule 3 plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a "declared" Schedule 3 plant site for the years declared.

(e) *Routine inspections of declared Schedule 3 plant sites.* A "declared" Schedule 3 plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if the declared plants on your plant site produced during the previous calendar year or you anticipate they will produce during the next calendar year in excess of 200 metric tons aggregate of any Schedule 3 chemical. A plant site that submitted an initial declaration for 1996 and/or an annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

§ 714.3 Initial and annual report requirements for exports and imports of Schedule 3 chemicals.

(a) Any person subject to the CWCR that exported from or imported to the United States a Schedule 3 chemical in excess of 30 metric tons in any calendar year, beginning with calendar year 1996, has a reporting requirement under this section.

(1) *Initial report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWCR that exported from or imported to the United States in excess of 30 metric tons of a Schedule 3 chemical in calendar year 1996 must submit an initial report on exports and imports.

(2) *Annual report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWCR that exported from or imported to the United States in excess of 30 metric tons of a Schedule 3 chemical in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

Note 1 to paragraphs (a)(1) and (a)(2). Declared and undeclared plant sites must count, for report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

Note 2 to paragraphs (a)(1) and (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 3 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(3) *Mixtures containing a Schedule 3 chemical.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for reporting an export or import only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. For reporting purposes, only count the weight of the Schedule 3 chemical in the mixture, not the entire weight of the mixture.

Note to paragraph (a)(3). The "80% and above" mixtures rule applies only for report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§ 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 C.F.R. 120 through 130)).

(b) *Types of forms to be used.* (1) *Declared Schedule 3 plant sites.* (i) If your plant site is declared for production of a Schedule 3 chemical (and has completed questions 3–3.1 and 3–3.2 on Form 3–3) and you also exported or imported that same Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Completing question 3–3.3 on Form 3–3 on your declaration for that same Schedule 3 chemical to be reported; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1, and a Form 3–3 for each Schedule

3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(ii) If your plant site declared production of a Schedule 3 chemical and exported or imported a different Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Submitting, along with your declaration, a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1 and a Form 3.3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(2) If you are an undeclared plant site or trading company, or any other person subject to the CWCR, you must submit a Certification Form, Form 3–1, and a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(c) *Quantities to be reported.* (1) *Calculations.* If you exported from or imported to your plant site or trading company more than 30 metric tons of a Schedule 3 chemical in the previous calendar year, you must report all exports and imports of that chemical by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination is more than 1% of the applicable threshold (i.e., more than 0.3 metric tons). However, in determining whether your total exports and imports worldwide for the year in question trigger a report requirement, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 3 chemical, you must total all exports and imports per calendar year per recipient or source destination and then round to the nearest 0.1 metric tons.

Note to § 714.3: Under the Convention, the United States is obligated to provide the OPCW a national aggregate annual declaration of the quantities of each Schedule 3 chemical exported and imported. The U.S. Government will *not* submit your company-specific information relating to the export or import of a Schedule 3 chemical reported under this § 714.3. The U.S. Government will add all export and import information submitted by various facilities under this section to produce a national aggregate annual declaration of destination-by-destination trade for each Schedule 3 chemical.

§ 714.4 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.

(a) *Declaration requirements.* (1) You must declare additionally planned production of Schedule 3 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BXA if:

(i) You plan that a previously undeclared plant on your plant site under § 714.2(a)(1)(iii) will produce a Schedule 3 chemical above the declaration threshold;

(ii) You plan to produce at a plant declared under § 714.2(a)(1)(iii) an additional Schedule 3 chemical above the declaration threshold;

(iii) You plan to increase the production of a Schedule 3 chemical by declared plants on your plant site from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(3)); or

(iv) You plan to increase the aggregate production of a Schedule 3 chemical at a declared plant site to an amount above the upper limit of the range previously declared under § 714.2(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1)(i) through (iv) of this section, you should also declare any changes to the anticipated purposes of production or product group codes. You do not have to submit a declaration on additionally planned activities if you are only changing your purposes of production or product group codes.

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this section, you must complete the Certification Form and Forms 3–1, 3–2, and 3–3 as appropriate. Such forms are due to BXA at least 15 days in advance of the beginning of the additional or new activity.

§ 714.5 Frequency and timing of declarations.

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of any amount of Schedule 3 chemicals for chemical weapons (CW) purposes since January 1, 1946;

(b) Initial declaration (production of Schedule 3 chemicals during calendar year 1996);

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production of Schedule 3 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

TABLE 1 TO § 714.5—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar year 1996)—Declared plant site (production).	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site (production).	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.

TABLE 1 TO § 714.5—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (Production) (next calendar year).	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Declaration on Additionally Planned Activities	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 3 Chemicals for CW Purposes.	Certification, 3–1, 3–2, 3–4, A (as appropriate), B (optional).	March 30, 2000.

§ 714.6 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact, require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

A. Toxic chemicals:	
(1) Phosgene: Carbonyl dichloride	(75–44–5)
(2) Cyanogen chloride	(506–77–4)
(3) Hydrogen cyanide	(74–90–8)
(4) Chloropicrin: Trichloronitromethane	(76–06–2)
B. Precursors:	
(5) Phosphorus oxychloride	(10025–87–3)
(6) Phosphorus trichloride	(7719–12–2)
(7) Phosphorus pentachloride	(10026–13–8)
(8) Trimethyl phosphite	(121–45–9)
(9) Triethyl phosphite	(122–52–1)
(10) Dimethyl phosphite	(868–85–9)
(11) Diethyl phosphite	(762–04–9)
(12) Sulfur monochloride	(10025–67–9)
(13) Sulfur dichloride	(10545–99–0)
(14) Thionyl chloride	(7719–09–7)
(15) Ethyldiethanolamine	(139–87–7)
(16) Methyldiethanolamine	(105–59–9)
(17) Triethanolamine	(102–71–6)

Note to Supplement No. 1: Refer to Supplement No. 1 to part 774 of the Export Administration Regulations (the Commerce Control List), ECCN 1C355, Related Controls for chemicals controlled under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 715—ACTIVITIES INVOLVING UNSCHEDULED DISCRETE ORGANIC CHEMICALS (UDOCs)

Sec.

715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).
715.2 Frequency and timing of declarations.
715.3 Amended declaration.
Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical
Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare production of unscheduled discrete organic chemicals. *Declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC.* (1) *Production quantities that trigger the declaration requirement.* You must complete the forms specified in paragraph (b) of this section if your plant site produced by synthesis:

(i) In excess of 200 metric tons aggregate of all UDOCs (including *all* UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as "PSF-chemicals") in calendar year

1996 (for the initial declaration) or the previous calendar year beginning with 1997 (for an annual declaration); or

(ii) In excess of 30 metric tons of an individual PSF-chemical at one or more plants in calendar year 1996 (for the initial declaration) or in the previous calendar year beginning with 1997 (for an annual declaration).

(2) *UDOCs subject to declaration requirements under this part.* (i) UDOCs subject to declaration requirements under this part are those produced by synthesis that have been isolated for:

(A) Use; or

(B) Sale as a specific end product.

(ii) *Exemptions.* (A) Polymers and oligomers consisting of two or more repeating units which are formed by the chemical reaction of monomeric or polymeric substances;

(B) Chemicals and chemical mixtures produced through a biological or biomediated process;

(C) Products from the refining of crude oil, including sulfur-containing crude oil;

(D) Metal carbides (i.e., chemicals consisting only of metal and carbon); and

(E) UDOCs produced by synthesis that are ingredients or by-products in foods designed for consumption by humans and/or animals.

Note to Paragraph (a)(2): See Supplement No. 2 to this part for examples of UDOCs subject to the declaration requirements of this part, and for examples of activities that are not considered production by synthesis.

(3) *Exemptions for UDOC plant sites.* UDOC plant sites that exclusively produced hydrocarbons or explosives are exempt from UDOC declaration requirements. For the purposes of this part, the following definitions apply for hydrocarbons and explosives:

(i) Hydrocarbon means any organic compound that contains only carbon and hydrogen; and

(ii) Explosive means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(c) *"Declared" UDOC plant sites.* A plant site that produced by synthesis in excess of 200 metric tons aggregate of all UDOCs (including all PSF-chemicals), or that comprises at least one plant that produced by synthesis in excess of 30 metric tons of an individual PSF-chemical during the previous year, is a "declared" UDOC plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a "declared" UDOC plant site for the years declared.

(d) *Routine inspections of declared UDOC plant sites.* A "declared" UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if it produced by synthesis during the previous calendar year more than 200 metric tons aggregate of UDOCs. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

§ 715.2 Frequency and timing of declarations.

Declarations required under this part must be postmarked by the appropriate dates identified in Table 1 of this section. Required declarations include:

(a) Initial declaration (production during calendar year 1996).

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997).

TABLE 1 TO § 715.2—DEADLINES FOR SUBMISSION OF DECLARATIONS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICAL (UDOC) FACILITIES

Declarations	Applicable forms	Due dates
Initial Declaration (calendar year 1996)—Declared plant site	Certification, UDOC, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site.	Certification, UDOC, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.

§ 715.3 Amended declaration.

(a) Amended declarations are required to correct certain inaccuracies in a previously submitted declaration. These amended declarations are necessary to change a production range above the amount originally declared, or the production of a PSF-chemical above 30 metric tons by a plant not previously counted as a PSF-plant.

(b) Changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended declaration and may be corrected in subsequent declarations.

(c) If you are required to submit an amended declaration pursuant to paragraph (a) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that amends the previously submitted information.

Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical

Unscheduled discrete organic chemical means any chemical: (1) belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned; and (2) that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter). Unscheduled discrete organic chemicals subject to declaration under this part are those produced by synthesis that are isolated for use or sale as a specific end-product.

Note: Carbon oxides consist of chemical compounds that contain only the elements carbon and oxygen and have the chemical formula C_xO_y, where x and y denote integers. The two most common carbon oxides are carbon monoxide (CO) and carbon dioxide (CO_2). Carbon sulfides consist of chemical compounds that contain only the elements carbon and sulfur, and have the chemical formula C_aS_b, where a and b denote integers. The most common carbon sulfide is carbon disulfide (CS_2). Metal carbonates consist of chemical compounds that contain a metal

(i.e., the Group I Alkalis, Groups II Alkaline Earths, the Transition Metals, or the elements aluminum, gallium, indium, thallium, tin, lead, bismuth or polonium), and the elements carbon and oxygen. Metal carbonates have the chemical formula $M_d(CO_3)_e$, where d and e denote integers and M represents a metal. Common metal carbonates are sodium carbonate (Na_2CO_3) and calcium carbonate ($CaCO_3$). In addition, metal carbides or other compounds consisting of only a metal, as described above, and carbon (e.g., calcium carbide (CaC_2)), are exempt from declaration requirements (see § 715.1(a)(2)(ii)(D) of this part).

Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production

(1) Examples of UDOCs not subject to declaration include:

(i) UDOCs produced coincidentally as by-products that are not isolated for use or sale as a specific end product, and are routed to, or escape from, the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) UDOCs, contained in mixtures, which are produced coincidentally and not isolated for use or sale as a specific end-product;

(iii) UDOCs produced by recycling (i.e., involving one of the processes listed in paragraph (3) of this supplement) of previously declared UDOCs;

(iv) UDOCs produced by the mixing (i.e., the process of combining or blending into one mass) of previously declared UDOCs; and

(v) Intermediate UDOCs used in a single or multi-step process to produce another declared UDOC.

(2) Examples of UDOCs that you must declare under part 715 include, but are not limited to, the following, unless they are not isolated for use or sale as a specific end product:

(i) Acetophenone (CAS # 98–86–2);

(ii) 6–Chloro-2-methyl aniline (CAS # 87–63–8);

(iii) 2–Amino-3-hydroxybenzoic acid (CAS # 548–93–6); and

(iv) Acetone (CAS # 67–64–1).

(3) Examples of activities that are not considered production by synthesis under part 715 and, thus, the end products resulting from such activities would not be declared under part 715, are as follows:

(i) Fermentation;

(ii) Extraction;

(iii) Purification;

(iv) Distillation; and

(v) Filtration.

PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

Sec.

716.1 General information on the conduct of initial and routine inspections.
716.2 Purposes and types of inspections of declared facilities.
716.3 Consent to inspections; warrants for inspections.
716.4 Scope and conduct of inspections.
716.5 Notification, duration and frequency of inspections.
716.6 Facility agreements.
716.7 Samples.
716.8 On-site monitoring of Schedule 1 facilities.
716.9 Report of inspection-related costs.

Supplement No. 1 to Part 716—Notification, Duration, and Frequency of Inspections

Supplement No. 2 to Part 716—Schedule 1 Model Facility Agreement

Supplement No. 3 to Part 716—Schedule 2 Model Facility Agreement

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI (E), Part VII(B), Part VIII(B) and Part IX(B). See part 717 of this subchapter for provisions concerning challenge inspections.

(a) *Overview.* Each State Party to the CWC, including the United States, has agreed to allow certain inspections of declared facilities by inspectors employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the Convention. The Department of Commerce is responsible for leading, hosting and escorting inspections of all facilities subject to the provisions of this subchapter (see § 710.2 of this subchapter).

(b) *Declared facilities subject to initial and routine inspections.* (1) *Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

(ii) If you are a new Schedule 1 production facility pursuant to § 712.4 of this subchapter, your facility is subject to an initial inspection within 200 days of submitting an initial declaration.

(iii) If your declared facility submitted an annual declaration on past activities for calendar year 1997 or 1998, you are subject to an initial inspection.

Note to paragraph (b)(1): All Schedule 1 facilities submitting a declaration are subject to inspection.

(2) *Schedule 2 plant sites.* (i) Your declared plant site is subject to inspection if at least one plant on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(A) 10 kg of chemical BZ: 3–Quinuclidinyl benzilate (see Schedule 2, Part A, paragraph 3 in Supplement No. 1 to part 713 of this subchapter);

(B) 1 metric ton of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (see Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of this subchapter); or

(C) 10 metric tons of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to part 713 of this subchapter).

(ii) If your declared plant site submitted an initial declaration for calendar years 1994, 1995 and 1996, and at least one plant on your plant site produced a Schedule 2 chemical during any one of those three years in excess of the applicable inspection threshold quantity set forth in paragraphs (b)(2)(i)(A) through (C) of this section, you are subject to an initial inspection.

Note to paragraph (b)(2): The applicable inspection threshold quantity for Schedule 2 plant sites is ten times higher than the applicable declaration threshold quantity. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold quantity, are subject to inspection.

(3) *Schedule 3 plant sites.* (i) Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical (see Supplement No. 1 to part 714 of this subchapter).

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(3)(i) of this

section, you are subject to a routine inspection.

Note to paragraph (b)(3): The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* (i) Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals during the previous calendar year.

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(4)(i) of this section, you are subject to a routine inspection.

Note 1 to paragraph (b)(4): You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

Note 2 to paragraph (b)(4): All UDOC plant sites that submit a declaration based on § 715.1(a)(i) of this subchapter are subject to a routine inspection.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of this subchapter under this part, the Department of Commerce will: lead on-site inspections; provide Host Team notification to the facility of an impending inspection; take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection; dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation; escort the Inspection Team on-site throughout the inspection process; assist the Inspection Team with verification activities; negotiate the development of a site-specific facility agreement, if appropriate, during an initial inspection of a facility (see § 716.6); and ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

§ 716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities.* (1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see § 716.6) for the conduct of routine inspections.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (§ 716.6) developed during the initial inspections and concluded between the U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites.* (1) *Purposes of inspections.* (i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 plant sites are to verify:

(A) The absence of any Schedule 1 chemical, especially its production, except if in accordance with the provisions of the Convention;

(B) Consistency with declarations of levels of production, processing or consumption of Schedule 2 chemicals; and

(C) That Schedule 2 chemicals are not diverted to activities prohibited under the Convention.

(ii) During initial inspections, inspectors shall collect information to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. The inspectors will take the following criteria into account, inter alia:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 2 plant sites, in addition to the verification activities listed in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see § 716.6).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 plant sites, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to any appropriate site-specific facility agreements developed during the initial inspections (see § 716.6), and concluded between the U.S. Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 plant sites.* (1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared Schedule 3 plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and the Inspection Team may draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared Schedule 3 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled Discrete Organic Chemicals plant sites.* Declared unscheduled discrete organic chemical (UDOC) plant sites will be subject to inspection beginning April 29, 2000.

(1) *Purposes of inspections.* The general aim of inspections of declared UDOC plant sites is to verify that activities are consistent with the

information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared UDOC plant sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the Inspection Team may develop draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared UDOC plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

§ 716.3 Consent to inspections; warrants for inspections.

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility.

(b) In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, the Department of Commerce intends to seek administrative warrants as provided by the Act.

§ 716.4 Scope and conduct of inspections.

(a) *General.* Each inspection shall be limited to the purposes described in § 716.2 and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(b) Scope. (1) Description of inspections. During inspections, inspectors will receive a pre-inspection briefing from facility representatives; visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection; examine relevant records; and may take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States National Authority (USNA) at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission. When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

(c) *Pre-inspection briefing.* Upon arrival at the inspection site and before commencement of the inspection, facility representatives will provide to the Inspection Team and Host Team a pre-inspection briefing on the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

(1) The pre-inspection briefing will address:

(i) Plant site safety and alarms;

(ii) Activities, business and manufacturing operations;

(iii) Physical layout;

(iv) Delimitation of declared facility;

(v) Scheduled chemicals/chemistries (declared and undeclared);

(vi) Process flow;

(vii) Units specific to declared operations; and

(viii) Administrative and logistic information.

(2) The pre-inspection briefing may also address, inter alia:

(i) Introduction of key facility personnel;

(ii) Management, organization and history;

(iii) Confidential business information concerns;

(iv) Types and location of records/documents;

(v) Data declaration updates/revisions;

(vi) Draft facility agreement, if applicable; and

(vii) Proposed inspection plan.

(d) *Visual plant inspection.* The Inspection Team may visually inspect the declared plant or facility and other areas of the plant site or facility as agreed by the Host Team Leader after consulting with the facility representative.

(e) *Records review.* The facility must have available for the Inspection Team to review, on the inspection site, access to all supporting materials and documentation used by the facility to prepare declarations and to comply with the CWCR (see §§ 721.1 and 721.2 of this subchapter). Such access may be to paper copies or via electronic remote access by computer during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader.

(f) *Effect of facility agreements.* Routine inspections at facilities for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

(g) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary factual findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the Inspection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the facility, and the Host Team Leader will take into consideration the facility's input when providing official comment on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

§ 716.5 Notification, duration and frequency of inspections.

(a) *Notification.* (1)(i) *Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will also provide a separate Host Team notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, the Federal Bureau of Investigation, may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or location for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection; and

(D) The names and titles of the inspectors.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the Department of Commerce's Host Team notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the Host Team notification, BXA intends to seek an administrative warrant.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

Activity	Agency action	Facility action
(A) OPCW notification of inspection	(*1*) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours.	(*i*)Acknowledge receipt of fax.
	(*2*) Upon notification from the U.S. National Authority, BXA immediately transmits Host Team notification via facsimile to the inspection point of contact to ascertain whether the facility (1) grants consent and (2) requests assistance in preparing for the inspection. In absence of consent within four hours of transmission, BXA intends to seek an administrative warrant.	(*i*) Indicates whether it grants consent. (*ii*) May request advance team support. No requirement for reimbursement of U.S. Government's services.
(B) Preparation for inspection	(*1*) BXA advance team arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.	(*i*) If advance team support is provided, facility works with the advance team on inspection-related issues.

(2) *Timing of notice.* (i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the inspection team in the United States, and will notify the USNA of a routine inspection not less than 24 hours prior to arrival of the Inspection Team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and unscheduled discrete organic chemical plant sites.* For declared Schedule 3 and unscheduled discrete organic chemical plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 120 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections.* (1) *Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(2) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(3) *Schedule 3 and discrete organic chemical plant sites.* For declared

Schedule 3 or unscheduled discrete organic chemical plant sites, the maximum duration of initial and routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(c) *Frequency of inspections.* The frequency of inspections is as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites.* As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is 2 per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the inspectors' assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites.* As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical plant sites in the United States may not exceed 20 per calendar year.

(4) *Unscheduled Discrete Organic Chemical plant sites.* As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical plant sites in the United States may not exceed 20 per calendar year.

§ 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific agreement between the U.S. Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and unscheduled discrete organic chemical plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or unscheduled discrete organic chemical plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, the Department of Commerce shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with Department of Commerce representatives for the negotiation of such an agreement. During the initial inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BXA will consult with the affected facility on the contents of the agreements and take facility comments into consideration during negotiations. The Department of Commerce will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BXA will give consideration to such comments prior to approving final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and unscheduled discrete organic chemical facilities are concluded, as appropriate, with the OPCW in coordination with the Department of Commerce.

(c) *Format and content.* Schedule 1 and Schedule 2 model facility agreements are included in Supplement No. 2 and Supplement No. 3 to this part. These model facility agreements implement the general provisions of the Convention pertaining to inspections, including health and safety procedures, confidentiality of information, media and public relations, information about the facility, inspection equipment, pre-inspection activities, conduct of the inspection (including access to and inspection of areas, buildings and structures, access to and inspection of records and documentation, arrangements for interviews of facility personnel, photographs, sampling, and measurements), and logistical arrangements for the inspectors, such as communications and lodging. Attachments to the facility agreements will provide site-specific information such as working hours, special safety and health procedures, as well as site-specific agreements as to documents and records to be provided, specific areas of a facility to be inspected, site diagrams, sampling, photography, interview procedures, use of inspection equipment, procedures for protection of confidential business information, and administrative arrangements.

(d) *Further information.* For further information about facility agreements, please write or call: Inspection Management Team, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Room 6087B, Washington, D.C. 20230–0001, Telephone: (202) 482–6114.

§ 716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

§ 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWCR, however, such monitoring is not anticipated. The U.S. Government

will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

§ 716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BXA within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BXA on company letterhead at the address given in § 716.6(d), with the following notation: "Attn: Report of inspection-related costs."

Supplement No. 1 to Part 716

NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	24 hours prior to arrival at the point of entry.	48 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.
Duration of inspection	As specified in facility agreement.	96 hours	24 hours	24 hours.
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry.			
Duration of Challenge inspection*.	84 hours.			

*See part 717 of this subchapter.

Supplement No. 2 to Part 716—Schedule 1 Model Facility Agreement

Draft Model Agreement specifying the general form and content for facility agreements to be concluded pursuant to Verification Annex, Part VI, paragraph 31 (other facilities).

Facility Agreement between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-site Inspections at the _____ Facility Located at the _____.

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as "Organization", and the Government of the United States of America, hereinafter referred to as "inspected State Party", both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 3 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, hereinafter referred to as "Convention", at _____ (insert name of the facility, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as "facility".

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the facility pursuant to paragraph 3 of Article VI of the Convention and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the facility are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 23 or 30 of Part VI of the Verification Annex, whichever applies.

5. The inspection team shall consist of no more than ____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the facility, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

8. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

9. Inspectors shall wear identification badges at all times when on the premises of the facility.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and facility safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the facility are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the facility are listed in Attachment 2 and shall be made available for use by the inspection team at the facility.

3. In case of the need to modify any health- and safety-related arrangements at the facility contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 13 of this Agreement.

[1] Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the facility on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the facility, including:

(a) The health and safety measures at the Schedule 1 facilities to be inspected and the likely risks that may be encountered during the inspection;

(b) Any additional health and safety measures or regulations that need to be observed at the facility;

(c) Procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) Specific inspection activities which must be limited within particular areas at the facility, and in particular within those Schedule 1 facilities to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the facility, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the facility, the inspection team shall comply with the facility's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the facility at the end of the inspection. The inspection team reserves the right to destroy equipment left at the facility or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the facility are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the facility representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected facility will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the facility are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 1 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site, not belonging to the Organization, which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or, with respect to items of equipment which are not on the list of Organization-approved

equipment, are consistent with the intended purpose for using such equipment.[2]

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

6. For the purpose of verification, the list of agreed on-site monitoring instruments, if any, as well as agreed conditions, procedures for use, maintenance, repair, modification, replacement and provisions for the inspected State Party's support, if required, installation points, and security measures to prevent tampering with such on-site monitoring instruments are contained in Part D of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the facility in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) Information on the facility as described in Attachment 6;

(b) Health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) Any changes to the above-mentioned information since the last inspection; and

(d) Information on administrative and logistical arrangements additional to those contained in Attachment 10, if any, that shall apply during the inspection, as contained in Section 10.

2. Any information about the facility that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise. Upon completion of the pre-inspection briefing, the inspected State Party may, on a voluntary basis, provide a site tour at the request of the inspection team. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.

4. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the facility inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting safety. In particular, the inspection team shall not operate the facility. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out in the facility, it shall request the designated representative of the facility to have them performed.

5. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the facility utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

6. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the facility only in the presence of or through a representative of the inspected State Party.

7. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space. For ease of inspection, the inspected State Party will work with the facility representative to provide work space at the facility, if possible.

7.2 Access to the Declared Facility

1. The object of the inspection shall be the declared Schedule 1 facility as referenced in Attachment 6.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared facility in accordance with the relevant Articles and Annexes of the Convention and Attachments 6, 8, and 9.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 8. Such documentation and records will be provided to the inspection team upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the inspection team's on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes are contained in Attachment 9.

2. Sampling and analysis, for inspection purposes, may be carried out to fulfill the inspection mandate. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 9. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be controlled by the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the facility.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or facility shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized facility representative's[3] determination of whether the sample shall be taken by representatives of the facility or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party or of the inspected facility shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 9 to this Agreement.

4. Facility sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible,

[2] i.e. The inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

[3] The authorized facility representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 9 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 9.

12. If at any time, the inspected State Party or facility representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, the inspected State Party, in consultation with the facility representative, will cease these on-site activities pending resolution. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 9 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 11.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the facility in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the facility and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either "panel" or individual formats. At a minimum, interviews will be conducted with a member of the facility staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the facility representative, the inspected State Party representative, and legal counsel.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the facility only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5. The representative of the inspected facility retains the right to control the use of communications equipment in specific areas, buildings, or structures if such use would be incompatible with applicable safety or fire regulations.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part E of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected facility. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the facility.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the facility representative, shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the facility, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 12.

3. The representative of the inspected facility has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Visits

1. This section applies to visits conducted pursuant to paragraphs 15 and 16 of Part III of the Verification Annex.

2. The size of a team on such a visit shall be kept to the minimum number of personnel necessary to perform the specific tasks for which the visit is being conducted and shall in any case not exceed the size of inspection team referenced in paragraph 5 of Section 1.

3. The duration of the visit pursuant to this Section shall be limited to the minimum time required to perform the specific tasks relating to monitoring systems for which the visit is being conducted and in any case shall not exceed the estimated period of inspection referenced in Part B of Attachment 1 of this Agreement.

4. Access provided to the monitoring systems during the visit shall be limited to that required to perform the specific tasks for which the visit is being conducted, unless otherwise agreed to with the inspected State Party.

5. General arrangements and notifications for a visit shall be the same as for the conduct of an inspection.

Section 9. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The

inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, results of inventories, copies of photographs to be retained by the inspection team, and results of specified measurements. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 10. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 10 to the inspection team throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team [4] using the form contained in Attachment 10. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 11. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the facility in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 12. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 13. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 15.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5 and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 9, as necessary for the effective conduct of inspections.

Section 14. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 15. Entry Into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 16. Duration and Termination

1. This Agreement shall cease to be in force when, as determined by the Executive Council, the provisions of paragraphs 3 and 8 of Article VI and Part VI of the Verification Annex no longer apply to this facility.

Done at ____ in ____ copies, in English, each being equally authentic.[5]

Attachments

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Facility
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Facility Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Records Routinely Made Available to the Inspection Team at the Facility
Attachment 9: Sampling and Analysis for Verification Purposes
Attachment 10: Administrative Arrangements
Attachment 11: Agreed Procedures for Conducting Interviews
Attachment 12: Agreed Procedures for Photography

Attachment 1.—General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party:

1. Schedule 1 facility(s) working hours, if applicable: [6] ____hrs to ____hrs (local time) (days)

2. Working days: _____

3. Holidays or other non-working days:

_____

_____

4. Inspection activities which could/could not [7] be supported during non-working hours with notation of times and activities:

_____

_____

5. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the facility withhold consent to an inspection, the inspected State Party shall take all appropriate action under its law to obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

_____

6. Other: notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes): _____

(b) approximate inspection team size: ____

(c) estimated volume and weight of equipment to be brought on-site: _____

---

[4] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

[5] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[6] All references to time use a 24 hour clock.

[7] Choose one option.

Attachment 2

Health and Safety Requirements and Procedures

Part A. Basic Principles:

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

2. Health and safety regulations applicable at the facility:

(a) federal regulations:

(b) state regulations:

(c) local regulations:

(d) facility regulations:

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

Part B. Detection and Monitoring:

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

2. Procedures for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

Part C. Protection:

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements:

1. Applicable medical standards of the inspected State Party and, in particular, the inspected facility:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities:

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

Attachment 3.—Specific Arrangements in Relation to the Protection of Confidential Information at the Facility

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team: See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials:

Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Facility:

Part C. Storage of Confidential Documents at the Inspected Facility:

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable: Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected facility between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/ remarks

Part D. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Material Gathered by the Inspection Team:

Part E. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team:

Part F. Other Arrangements, If Any:

1. Unless specified otherwise, all facility information shall be returned to the inspected State Party at the completion of the inspection. No copies of facility information shall be made in any manner by the inspection team or the Organization.

2. Facility information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the facility.

3. Facility information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the facility. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

Attachment 4.—Arrangements for the Inspection Team's Contacts with the Media or the Public

Attachment 5.—Inspection Equipment

Part A: List of Equipment:

Item of approved inspection equipment	Agreed procedures for use			
	Nature of restrictions(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide:

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment:

Item of equipment	Procedures for use

Part D. Agreed On-Site Monitoring Instruments:

Part E. Means of Communication between Inspection Team Sub-Teams:

Request for and Certification of Equipment Available on Site To Be Provided in Accordance With Paragraph 3 of Section 5

Date:
Facility:
Inspection number:
Name of the authorized member of the inspection team:

Type and number of item(s) of equipment requested:

Approval of the request by inspected State Party:

Comments on the request by the inspected State Party:

Indication of the costs, if any, for the use of the equipment requested/volunteered:

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

Attachment 6.—Information on the Facility Provided in Accordance With Section 6

Part A. Topics of Information for the Pre-Inspection Briefing:

1. Specification of the elements constituting the declared facility, including their physical location(s) (i.e., detail the areas, equipment, and computers), with indications as to which information may be transferred off-site:

2. Procedures for unimpeded access within the declared facility: [8]

3. Other:

Part B. Any Information about the Facility that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing with Indications as to which May Be Transferred Off-Site:

Attachment 7.—Arrangements for Site Tour

The inspected State Party may provide a site tour at the request of the inspection team. The inspected State Party may provide explanations to the inspection team during the site tour.

Attachment 8.—Records Routinely Made Available to the Inspection Team at the Facility (i.e., Identify Records and Data)

Attachment 9.—Sampling and Analysis for Verification Purposes

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Facility(s) Operator(s):

Part B. Procedures for Taking Samples:

Part C. Procedures for Sample Handling and Sample Splitting:

Part D. Procedures for On-Site Sample Analysis, If Any:

Part E. Procedures for Off-Site Analysis, If Any:

Part F. Procedures for Transporting Samples:

Part G. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection:

Attachment 10.—Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below:

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:
2. Vehicles:
3. Working room, including adequate space for the storage of equipment:
4. Lodging:
5. Meals:
6. Medical care:
7. Interpretation Services:
(a) number of interpreters:
(b) estimated interpretation time:
(c) languages:
8. Other:

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

[8] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

Paragraphs 1–8 in Part A above	To be paid directly by the Organization after the inspection	To be paid by the inspection team on behalf of the Organization during the in-country period	To be paid by the inspected State Party and subsequently reimbursed by the Organization	To be paid by the inspected State Party
1				
2				
3				
4				
5				
6				
7				
8				

Part C. Other Arrangements. 1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated: _____

Request for and Certification of Amenities To Be Provided or Arranged

Date: _____
Facility: _____
Inspection number: _____
Category of amenities requested: _____
_____
Description of amenities requested: _____
_____
Approval of the request by the inspected State Party:
_____
Comments on the request by the inspected State Party:
_____
_____
Indication of the costs for the amenities requested:
_____
_____
Certification of the authorized member of the inspection team that the requested amenities have been provided:
_____
Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:
_____
_____
Name and signature of the authorized member of the inspection team:
_____
Name and signature of the representative of the inspected State Party:
_____

Attachment 11.—Agreed Procedures for Conducting Interviews

_____
_____

Attachment 12.—Agreed Procedures for Photography

_____
_____

Annexes

Note: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Facility Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

Supplement No. 3 to Part 716—Schedule 2 Model Facility Agreement

Draft Facility Agreement between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-Site Inspections at the _____ Schedule 2 Plant Site Located at _____

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as "Organization," and the Government of the United States of America, hereinafter referred to as "inspected State Party," both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 4 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, hereinafter referred to as "the Convention," at (insert name of the plant site, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as "plant site":

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the plant site pursuant to paragraph 4 of Article VI of the Convention, and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

[1] Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the plant site are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 18, 20 and 24 of Part VII of the Verification Annex.

5. The inspection team shall consist of no more than ____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. The period of inspection shall not last more than ninety-six (96) hours, unless an extension has been agreed to by the inspected State Party and the inspection team.

8. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the plant site, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

9. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

10. Inspectors shall wear identification badges at all times when on the premises of the plant site.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and plant site safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the plant site are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the plant site are listed in Attachment 2 and

shall be made available for use by the inspection team at the plant site.

3. In case of the need to modify any health- and safety-related arrangements at the plant site contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 12 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the plant site on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the plant site, including:

(a) the health and safety measures at the Schedule 2 plant(s) to be inspected and the likely risks that may be encountered during the inspection;

(b) any additional health and safety or regulations that need to be observed at the plant site;

(c) procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) specific inspection activities which must be limited within particular areas at the plant site, and in particular within those Schedule 2 plant(s) to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the plant site, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the plant site, the inspection team shall comply with the plant site's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The inspection team reserves the right to destroy equipment left at the plant site or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the plant site are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the plant site representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the plant site representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected plant site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the plant site representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the plant site are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 2 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site and not belonging to the Organization which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or—with respect to items of equipment which are not on the list of Organization-approved equipment—are consistent with the intended purpose for using such equipment.[2]

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the plant site in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) information on the plant site as described in Attachment 6;

(b) health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) any changes to the above-mentioned information since the last inspection; and

(d) information on administrative and logistical arrangements additional to those contained in Attachment 11, if any, that shall apply during the inspection, as contained in Section 9.

2. Any information about the plant site that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

[2] I.e., the inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

3. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7 to this Agreement.

4. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.[3]

5. The inspection team leader shall inform the representative of the inspected State Party during the inspection in a timely manner about each subsequent step to be taken by the inspection team in implementing the inspection plan. Without prejudice to paragraph 40 of Part II of the Verification Annex, this shall be done in time to allow the inspected State Party to arrange for the necessary measures to be taken to provide access and support to the inspection team as appropriate without causing unnecessary delay in the conduct of inspection activities.

6. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the plant site utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

7. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the plant site only in the presence of or through a representative of the inspected State Party.

8. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space. For ease of inspection, the inspected State Party will work with the plant site representative to provide work space at the plant site, if possible.

7.2 Access to and Inspection of Areas, Buildings and Structures

1. The focus of the inspection shall be the declared Schedule 2 plant(s) within the declared plant site as referenced in Attachment 6. If the inspection team requests access to other parts of the plant site, access to these areas shall be granted in accordance with the obligation to provide clarification pursuant to paragraph 51 of Part II and paragraph 25 of Part VII of the Verification Annex, and in accordance with Attachment 8.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared Schedule 2 plant(s) in accordance with the relevant Articles and Annexes of the Convention and Attachments 8, 9, and 10. Areas of the declared plant(s) likely to be inspected are mentioned in paragraph 28 of Part VII of the Verification Annex. Pursuant to Section C of Part X of the Verification Annex, the inspection team shall have managed access to the other areas of the plant site. Procedures for access to these areas are contained in Attachment 8.

[3] The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the plant site inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of the plant site and avoid affecting its safety. In particular, the inspection team shall not operate the plant site. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out at the plant site, it shall request the designated representative of the plant site to have them performed.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes, mentioned in paragraph 26 of Part VII of the Verification Annex, to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 9. Such documentation and records will be provided upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes as mentioned in paragraph 27 of Part VII of the Verification Annex are contained in Attachment 10 of this Agreement.

2. Sampling and analysis, for inspection purposes, may be carried out to check whether undeclared scheduled chemicals are detected. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 10. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be controlled by the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the plant site.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or plant site shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized plant site representative's[4] determination of whether the sample shall be taken by representatives of the plant site or the inspection team or other individuals present. If inspectors are

[4] The authorized plant site representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party and the inspected plant site shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 10 to this Agreement.

4. Plant site sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 10 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 10.

12. If at any time, the inspected State Party or plant site representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, the inspected State Party, in consultation with the plant site representative, will cease these on-site analysis activities pending resolution . If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 10 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any plant site personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 12.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the plant site in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the plant site and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either "panel" or individual formats. At a minimum, interviews will be conducted with a member of the plant site staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the plant site representative, the inspected State Party representative, and legal counsel.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the plant site only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5. The representative of the inspected plant site retains the right to control the use of communications equipment in specific areas, building or structures if such use would be incompatible with applicable safety or fire regulations.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part D of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected plant site. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the plant site.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the plant site representative, shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the plant site, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 13.

3. The representative of the inspected plant site has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the content of this document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, and copies of photographs to be retained by the inspection team. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 9. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 11 to the inspection team in a timely manner throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team[5] using the form contained in Attachment 11. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 10. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the plant site in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 11. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 12. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 14.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5, and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 8, as necessary for the effective conduct of inspections.

Section 13. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 14. Entry into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 15. Duration and Termination.

1. This Agreement shall cease to be in force when the provisions of paragraph 12 of Part VII of the Verification Annex no longer apply to this plant site, except if the continuation of the Agreement is agreed by mutual consent of the Parties.

Done at _____ in _____ copies, in English, each being equally authentic.[6]

Attachments

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Plant Site Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Access to the Plant Site in Accordance with Section 7.2.
Attachment 9: Records Routinely Made Available to the Inspection Team at the Plant Site
Attachment 10: Sampling and Analysis for Verification Purposes
Attachment 11: Administrative Arrangements
Attachment 12: Agreed Procedures for Conducting Interviews
Attachment 13: Agreed Procedures for Photography

Attachment 1.—General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party:

1. Plant site: _____
(a) working hours:[7] _____ hrs to _____ hrs (local time) (days)
(b) working days: _____
(c) holidays or other non-working days: _____

2. Schedule 2 plant(s):
(a) working hours, if applicable: _____ hrs to _____ hrs (days)
(b) working days: _____
(c) holidays or other non-working days: _____

3. Inspection activities which could/could not[8] be supported during non-working hours with notation of times and activities:

4. Any other factors that could adversely affect the effective conduct of inspections:
(a) inspection requests:
Should the plant site withhold consent to an inspection, the inspected State Party shall take all appropriate action under its law to obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the

[5] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

[6] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[7] All references to time use a 24 hour clock.

[8] Choose one option.

Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

5. Other: Notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes):[9] _____

(b) approximate inspection team size: _____

(c) estimated volume and weight of equipment to be brought on-site: _____

Attachment 2.—Health and Safety Requirements and Procedures

Part A. Basic Principles:

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

2. Health and safety regulations applicable at the plant site:

(a) federal regulations:

(b) state regulations:

(c) local regulations:

(d) plant site regulations:

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

Part B. Detection and Monitoring:

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

2. Procedures, if any, for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

Part C. Protection:

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements:

1. Applicable medical standards of the inspected State Party and, in particular, the inspected plant site:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities:

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

Attachment 3.—Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team:

See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials:

Part C. Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Plant Site:

Part D. Storage of Confidential Documents at the Inspected Plant Site:

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable:

Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection in accordance with Section 3. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed _____

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected plant site between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/ remarks

Part E. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Materials Gathered by the Inspection Team:

Part F. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team:

Part G. Other Arrangements, If Any:

1. Unless specified otherwise, all plant site information shall be returned to the inspected State Party at the completion of the inspection. No copies of plant site information shall be made in any manner by the inspection team or the Organization.

2. Plant site information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the plant site.

3. Plant site information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the plant site. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

Attachment 4.—Arrangements for the Inspection Team's Contacts with the Media or the Public

Attachment 5.—Inspection Equipment

Part A: List of Equipment:

[9] Any figure indicated is without prejudice to paragraph 29 of Part VII of the Verification Annex.

Item of approved inspection equipment	Agreed procedures for use	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team
	Nature of restrictions(s) (location, time, periods, etc.), if any			

Part B. Equipment which the inspected State Party Has Volunteered to Provide:

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment:

Item of equipment	Procedures for use

Part D. Means of Communication between Inspection Team Sub-Teams:

_____

Request for and Certification of Equipment Available on Site To Be Provided in Accordance With Paragraph 3 of Section 5

Date: _____

Plant Site: _____

Inspection number: _____

Name of the authorized member of the inspection team: _____

Type and number of item(s) of equipment requested: _____

Approval of the request by inspected State Party: _____

Comments on the request by the inspected State Party: _____

Indication of the costs, if any, for the use of the equipment requested/volunteered:

_____

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

_____

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

_____

Name and signature of the authorized member of the inspection team: _____

_____

Name and signature of the representative of the inspected State Party: _____

_____

Attachment 6.—Information on the Plant Site Provided in Accordance With Section 6

Part A. Topics of Information for the Pre-Inspection Briefing:

_____

Part B. Any Information about the Plant Site that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing and which May Be Transferred Off-Site:

_____

Attachment 7.—Arrangements for Site Tour

The inspected State Party, in consultation with the plant site, may provide a site tour at the request of the inspection team. Such tour shall take no more than 2 hours. If a site tour is conducted, the inspected State Party may provide explanations to the inspection team during the site tour.

Attachment 8.—Access to the Plant Site in Accordance With Section 7.2

Part A. Areas of the Declared Plant Site to which Inspectors Are Granted Access (i.e., detail the areas, equipment, and computers):

1. Declared Plant:[10,11]

_____

[10] Plant means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

[11] Areas to be inspected may include:

(a) small administrative section;

(b) storage/handling areas for feedstock and products;

(c) effluent/waste handling/treatment area;

(d) control/analytical laboratory;

(e) first aid service/related medical section;

(f) records associated with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

(a) areas where feed chemicals (reactants) are delivered or stored;

(b) areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessels;

(c) feed lines as appropriate from the areas referred to in subparagraph (a) or subparagraph (b) to the reaction vessels together with any associated valves, flow meters, etc.;

(d) the external aspect of the reaction vessels and ancillary equipment;

(e) lines from the reaction vessels leading to long- or short-term storage or to equipment further processing the declared Schedule 2 chemicals;

(f) control equipment associated with any of the items under subparagraphs (a) to (e);

(g) equipment and areas for waste and effluent handling;

(h) equipment and areas for disposition of chemicals not up to specification.

2. Declared Plant Site: [12]

Part B. Arrangements with Regard to the Scope of the Inspection Effort in Agreed Areas Referenced in Part A: [13]

_____

Attachment 9.—Records Routinely Made Available to the Inspection Team at the Plant Site: [14]

Attachment 10.—Sampling and Analysis for Verification Purposes

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Plant(s) Operator(s):

_____

[12] Plant Site means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(a) administration and other offices;

(b) repair and maintenance shops;

(c) medical center;

(d) utilities;

(e) central analytical laboratory;

(f) research and development laboratories;

(g) central effluent and waste treatment area; and

(h) warehouse storage.

[13] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

[14] Some illustrative examples of records and data to be detailed are given below. The actual list will be dependent on the specifics of the inspection site. Information about the format and language in which records are kept at the plant site should be mentioned. It is understood that confidential information not related to the implementation of the Convention, such as prices, will be excluded by the State Party from scrutiny.

(a) inventory and accountancy records in relation to the production, processing or consumption of the declared Schedule 2 chemicals and their storage or transportation on to or off the site;

(b) operational records for the unit(s) producing, processing or consuming Schedule 2 chemicals (units) (batch cards, log books);

(c) Schedule 2 plant(s) dispatch records within the plant site and off-site dispatches;

Part B. Procedures for Taking Samples:

Part C. Procedures for Sample Handling and Sample Splitting:

Part D. Procedures for Sample Analysis:

Part E. Procedures for Transporting Samples:

Part F. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection:

Attachment 11.—Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below:

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:
2. Vehicles:
3. Working room, including adequate space for the storage of equipment:
4. Lodging:
5. Meals:
6. Medical care:
7. Interpretation Services:
(a) number of interpreters:
(b) estimated interpretation time:
(c) languages:
8. Other:

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

Paragraphs 1–8 in Part A above	To be paid directly by the Organization after the inspection	To be paid by the inspection team on behalf of the Organization during the in-country period	To be paid by the inspected State Party and subsequently reimbursed by the Organization	To be paid by the inspected State Party
1				
2				
3				
4				
5				
6				
7				
8				

Part C. Other Arrangements.

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated:

Request for and Certification of Amenities to be Provided or Arranged

Date:
Plant site:
Inspection number:
Category of amenities requested:
Description of amenities requested:
Approval of the request by the inspected State Party:
Comments on the request by the inspected State Party:
Indication of the costs for the amenities requested:
Certification of the authorized member of the inspection team that the requested amenities have been provided:
Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:
Name and signature of the authorized member of the inspection team:
Name and signature of the representative of the inspected State Party:

Attachment 12.—Agreed Procedures for Conducting Interviews

Attachment 13.—Agreed Procedures for Photography

Annexes

Note: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Plant Site Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.

717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.
717.2 Challenge inspections.
717.3 Samples.
717.4 Report of inspection-related costs.

Authority: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703.

§717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. If States Parties are unable to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW), a State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) Any person or facility subject to the CWCR (parts 710 through 722 of this subchapter) must, within five working days, provide information required by the Department of Commerce pursuant to an Article IX clarification request from another State Party, or the OPCW, concerning possible non-compliance with the reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716 of this subchapter.

(d) Schedule 2 plant(s) maintenance schedule records;
(e) Schedule 2 plant(s) waste disposal records;
(f) Schedule 2 plant(s) (unit) calibration records;
(g) Schedule 2 plant(s) sales reports, as appropriate;
(h) sales or transfers, whether to another industry, trader, or other destination, and if possible, of final product types;
(i) data on direct exports/imports and to/from which States;
(j) other shipments, including specification of these other purposes; and (k) other.

§ 717.2 Challenge inspections.

Any person or facility subject to the CWCR (see § 710.2 of this subchapter), whether or not required to submit declarations or reports, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention. The Department of Commerce will host and escort the international Inspection Team for all challenge inspections of persons or facilities subject to the CWCR concerning possible non-compliance with the requirements set forth in parts 712 through 716 of this subchapter.

(a) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, the Department of Commerce will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. The Department of Commerce will provide Host Team notification to the inspection point of contact if such notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, another appropriate agency, may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the Inspection Team at the U.S. point of entry. Written notice will be provided to the owner and to the operator, occupant, or agent in charge of the premises at any appropriate time determined by the USNA after receipt of notification from the OPCW Technical Secretariat.

(2)(i) *Content of notice.* The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or locations for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection;

(D) The names and titles of the inspectors; and

(E) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the Department of Commerce's Host Team notification to the facility or plant site will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities.

(c) *Period of inspection.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the Inspection Team and the Host Team Leader.

(d) *Scope and conduct of inspections.* (1) *General.* Each inspection shall be limited to the purposes described in this section and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility or location consents to a challenge inspection, the inspection will be conducted in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted in accordance with a criminal warrant, as provided by the Act, and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. A challenge inspection will also be conducted in accordance with a facility agreement, if a facility agreement has been concluded for the subject facility, to the extent the terms of the facility agreement are relevant to the challenge inspection request.

(3) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(4) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

§ 717.3 Samples.

The owner, operator, occupant or agent in charge of a facility or location must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

§ 717.4 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BXA within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BXA on company letterhead at the address given in § 716.6(d) of this subchapter, with the following notation:

"ATTN: Report of Inspection-related Costs."

PART 718—CONFIDENTIAL BUSINESS INFORMATION

Sec.

718.1 Definition.
718.2 Identification of confidential business information.
718.3 Disclosure of confidential business information.

Supplement No. 1 to Part 718—Confidential Business Information Declared or Reported

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 ("the Act") defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

(a) Financial data;

(b) Sales and marketing data (other than shipment data);

(c) Pricing data;

(d) Personnel data;

(e) Research data;

(f) Patent data;

(g) Data maintained for compliance with environmental or occupational health and safety regulations;

(h) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;

(i) Any chemical structure;

(j) Any plant design, process, technology or operating method;

(k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(l) Any commercial sale, shipment or use of a chemical; or

(m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

§ 718.2 Identification of confidential business information.

(a) *General.* Certain confidential business information submitted to BXA in declarations and reports does not need to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BXA in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.* (1) BXA has identified those data fields on the declaration and report forms that request "confidential business information" as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of the data fields listed in the table included in Supplement No. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.

Note to paragraph (b): BXA has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify information in your notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See § 718.3(b) for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections, certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see § 718.3(c)(1)(ii)). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

§ 718.3 Disclosure of confidential business information.

(a) *General.* Confidentiality of information will be maintained by BXA consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information contained in these notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to § 404(b) of the Act.* (1) *Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).* (i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as "restricted," "protected," or "highly protected," depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons, for five years after termination of their employment, any confidential information coming to their knowledge or into their possession in the performance of their official duties.

(iii) *U.S. Government designation of information to the Technical Secretariat.* It is the policy of the U.S. Government to designate all facility

information it provides to the Technical Secretariat in declarations, reports and Schedule 1 notifications as "protected." It is the policy of the U.S. Government to designate confidential business information that it discloses to Inspection Teams during inspections as "protected" or "highly protected," depending on the sensitivity of the information. The Technical Secretariat is responsible for storing and limiting access to any confidential business information contained in a document according to its established procedures.

(2) *Disclosure to Congress.* Section 404(b)(2) of the Act provides that the U.S. Government must disclose confidential business information to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, and no member and no staff member of such committee or subcommittee, may disclose such information or material except as otherwise required or authorized by law.

(3) *Disclosure to other Federal agencies for law enforcement actions and disclosure in enforcement proceedings under the Act.* Section 404(b)(3) of the Act provides that the U.S. Government must disclose confidential business information to other Federal agencies for enforcement of the Act or any other law, and must disclose such information when relevant in any proceeding under the Act. Disclosure will be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. Section 719.14(b) of this subchapter provides that all hearings will be closed, unless the Administrative Law Judge for good cause shown determines otherwise. Section 719.20 of this subchapter provides that parties may request that the administrative law judge segregate and restrict access to confidential business information contained in material in the record of an enforcement proceeding.

(4) *Disclosure to the public; national interest determination.* Section 404(c) of the Act provides that confidential business information, as defined by the Act, that is in the possession of the U.S. Government, is exempt from public disclosure in response to a Freedom of Information Act request, except when such disclosure is determined to be in the national interest.

(i) *National interest determination.* The United States National Authority (USNA), in coordination with the CWC interagency group, shall determine on a case-by-case basis if disclosure of confidential business information in response to a Freedom of Information Act request is in the national interest.

(ii) *Notification of intent to disclose pursuant to a national interest determination.* The Act provides for notification to the affected person of intent to disclose confidential business information based on the national interest, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA does not determine that such notification of intent to disclose is contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information and the person to whom the information pertains of the intent to disclose the information.

SUPPLEMENT NO. 1 TO PART 718.—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED*

	Fields containing confidential business information
Schedule 1 Forms:	
Certification Form	None.
Form 1–1	None.
Form 1–2	All fields.
Form 1–2A	All fields.
Form 1–2B	All fields.
Form 1–3	All fields.
Form 1–4	All fields.
Schedule 2 Forms:	
Certification Form	None.
Form 2–1	None.
Form 2–2	Questions 2–2.8.
Form 2–3	All fields.
Form 2–3A	All fields.
Form 2–3B	All fields.
Form 2–3C	All fields.
Form 2–4	All fields.
Schedule 3 Forms:	
Certification Form	None.
Form 3–1	None.
Form 3–2	None.
Form 3–3	All fields.
Form 3–4	All fields.
Unscheduled Discrete Organic Chemicals Forms:	
Certification Form	None.
Form UDOC	None.

SUPPLEMENT NO. 1 TO PART 718.—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED*—Continued

	Fields containing confidential business information
Forms A and B and attachments (all Schedules and UDOCs).	Case-by-case; must be identified by submitter.

*This table lists those data fields on the Declaration and Report Forms that request "confidential business information" (CBI) as defined by the Act (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the Act, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)–(4)), unless a determination is made, pursuant to section 404(c) of the Act, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. You must identify CBI provided in Form A and/or Form B attachments, and provide the reasons supporting your claim of confidentiality, except that Schedule 1 facility technical descriptions submitted with initial declarations are always considered to include CBI. If you believe that information you are submitting in a data field marked "none" in the Table is CBI, as defined by the Act, you must identify the specific information and provide the reasons supporting your claim of confidentiality in a cover letter.

PART 719—ENFORCEMENT

Sec.

719.1 Scope and definitions.
719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.
719.3 Violations of the IEEPA subject to judicial enforcement proceedings.
719.4 Violations and sanctions under the Act not subject to proceedings under this subchapter.
719.5 Initiation of administrative proceedings.
719.6 Request for hearing and answer.
719.7 Representation.
719.8 Filing and service of papers other than the NOVA.
719.9 Summary decision.
719.10 Discovery.
719.11 Subpoenas.
719.12 Matters protected against disclosure.
719.13 Prehearing conference.
719.14 Hearings.
719.15 Procedural stipulations.
719.16 Extension of time.
719.17 Post-hearing submissions.
719.18 Decisions.
719.19 Settlement.
719.20 Record for decision.
719.21 Payment of final assessment.
719.22 Reporting a violation.

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13128, 64 FR 36703.

§ 719.1 Scope and definitions.

(a) *Scope.* This part 719 describes the various sanctions that apply to violations of the Act and this subchapter. It also establishes detailed administrative procedures for certain violations of the Act. The three categories of violations are as follows:

(1) *Violations of the Act subject to administrative and criminal enforcement proceedings.* This CWCR sets forth in § 719.2 violations for which the statutory basis is the Act. The Department of Commerce investigates these violations and, for administrative proceedings, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and makes recommendations to officials of the Department of State with respect to the initiation and resolution of proceedings. The administrative procedures applicable to these violations are found in §§ 719.5 through 719.22 of this part. The Department of State gives notice of initiation of administrative proceedings and issues orders imposing penalties pursuant to 22 CFR part 103, subpart C.

(2) *Violations of the International Emergency Economic Powers Act (IEEPA) subject to judicial enforcement proceedings.* Section 719.3 sets forth violations of the Chemical Weapons Convention for which the statutory basis is the IEEPA. The Department of Commerce refers these violations to the Department of Justice for civil or criminal judicial enforcement.

(3) *Violations and sanctions under the Act not subject to proceedings under this subchapter.* Section 719.4 sets forth violations and sanctions under the Act that are not violations of this subchapter and that are not subject to proceedings under this subchapter. This section is included solely for informational purposes. The Department of Commerce may assist in investigations of these violations, but has no authority to initiate any enforcement action under this subchapter.

Note to paragraph (a): This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used only in parts 719 and 720. For definitions of terms applicable to parts 710 through 722 of this subchapter, see part 710 of this subchapter.

The Act. The Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701–6777).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Export Administration, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

IEEPA. The International Emergency Economic Powers Act, as amended (50 U.S.C. 1701–1706).

Office of Chief Counsel. The Office of Chief Counsel for Export Administration, United States Department of Commerce.

Report. For purposes of parts 719 and 720 of this subchapter, the term "report" means any declaration, report, or notification required under parts 712 through 715 of this subchapter.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Under Secretary for Export Administration. The Under Secretary for Export Administration, Bureau of Export Administration, United States Department of Commerce.

§ 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations.* (1) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or this subchapter; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or this subchapter; or

(iii) To permit access to or copying of any record that is exempt from disclosure under the Act or this subchapter.

(b) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record or submit any report, notice, or other information required by the Act or this subchapter, or to permit access to or copying of any record exempt from disclosure under the Act or this subchapter as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the Act or CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(d) *Denial of export privileges.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of this subchapter if that person has been convicted under Title 18, section 229 of the United States Code.

§ 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.

(a) *Violations.* (1) *Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.1 of this subchapter, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of this subchapter) *unless*:

(i) The import is from a State Party;

(ii) The import is for research, medical, pharmaceutical, or protective purposes;

(iii) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(iv) The importing person has notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4 of this subchapter.

(2) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of this subchapter, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part

713 of this subchapter) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed $11,000 may be imposed in accordance with this part on any person for each violation of this section.[1]

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.[2]

§ 719.4 Violations and sanctions under the Act not subject to proceedings under this subchapter.

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 299 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed $100,000 for each such violation.

(c) *Criminal forfeiture.* (1) Any person convicted under section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(i) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(ii) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(iii) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(d) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(ii) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the Act, or compel the taking of any action required by or under the Act or the Convention.

§ 719.5 Initiation of administrative proceedings.

(a) *Request for Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, may request that the Secretary of State initiate an administrative enforcement proceeding under this § 719.5 and 22 CFR 103.7. If the request is in accordance with applicable law, the Secretary of State will initiate an administrative enforcement proceeding by issuing a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(b) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Export Administration, may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that the Department of Commerce has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BXA to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BXA within the specified time, or if the respondent requests it, BXA will make its request for initiation of an administrative enforcement proceeding to the Secretary of State in accordance with paragraph (a) of this section.

(c) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to § 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(d) *Proposed order.* A proposed order shall accompany every NOVA, letter of intent to charge, and draft NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(e) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings shall be given to the respondent (or respondent's agent for service of process, or attorney) by sending relevant documents, via first class mail, facsimile, or by personal delivery.

§ 719.6 Request for hearing and answer.

(a) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(b) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

---

[1] The maximum civil penalty allowed under the International Emergency Economic Powers Act is $11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

[2] Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) the amount provided by the statute that was violated; (2) an amount not more than $250,000 for an individual, or not more than $500,000 for an organization; or (3) an amount based on gain or loss from the offense.

(c) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the proposed order will be signed and become final and unappealable.

§ 719.7 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.

§ 719.8 Filing and service of papers other than the NOVA.

(a) *Filing.* All papers to be filed with the ALJ shall be addressed to "CWC Administrative Enforcement Proceedings" at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery, is acceptable. Filing from a foreign country shall be by airmail or via facsimile. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. The Department of State is a party to cases under this subchapter, but will be represented by the Office of Chief Counsel. Therefore, service on the government party in all proceedings shall be addressed to Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–3839, Washington, D.C. 20230, or faxed to (202) 482–0085. Service on a respondent shall be to the address to which the NOVA and proposed order was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA and proposed order, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 719.9 Summary decision.

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is no genuine issue as to any material fact and the party is entitled to summary decision as a matter of law.

§ 719.10 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including Confidential Business Information (CBI) as defined by the Act.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in

accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

§ 719.11 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas to any person requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with such subpoena. Any failure to obey such order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ may be served by any of the methods set forth in § 719.8(b).

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 719.12 Matters protected against disclosure.

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information, including Confidential Business Information as defined by the Act. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a party in order to avoid prejudice, the ALJ may direct the other party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 719.13 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 719.14 Hearings.

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for good cause shown, that another location would better serve the interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will be closed, unless the ALJ for good cause shown determines otherwise. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight, except that any evidence of settlement which would be excluded under Rule 408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both wish a transcript.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§ 719.15 Procedural stipulations.

Unless otherwise ordered and subject to § 719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

§ 719.16 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time, except that the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

§ 719.17 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

§ 719.18 Decisions.

(a) *Initial decision.* After considering the entire record in the case, the ALJ

will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington, D.C. 20520, to the Office of Chief Counsel at the address in § 719.8, and to the respondent, by personal delivery or overnight mail.

(d) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Secretary of State modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

§ 719.19 Settlement.

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will sign if the recommended settlement is in accordance with applicable law.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Assistant Secretary will sign if the recommended settlement is in accordance with applicable law.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 719.20 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents.* (1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be made available for public inspection in the BXA Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H–6624, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to any portion of the record under paragraph (b) of this section.

§ 719.21 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under these CWCR (this subchapter). This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent. .

§ 719.22 Reporting a violation.

If a person learns that a violation of the Convention, the Act, or this subchapter has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520, Washington, D.C. 20230; Tel: (202) 482–1208; Facsimile: (202) 482–0964.

PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Denial of export privileges for convictions under 18 U.S.C. 229.
720.2 Initiation of administrative action denying export privileges.
720.3 Final decision on administrative action denying export privileges.
720.4 Effect of denial.

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

Any person in the United States or any U.S. national may be denied export privileges after notice and opportunity for hearing if that person has been

convicted under Title 18, Section 229 of the United States Code of knowingly:

(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person to violate paragraph (a) of this section, or attempting or conspiring to violate paragraph (a) of this section.

§ 720.2 Initiation of administrative action denying export privileges.

(a) *Notice.* BXA will notify any person convicted of Section 229, Title 18, United States Code, of BXA's intent to deny that person's export privileges. The notification letter shall reference the person's conviction, specify the number of years for which BXA intends to deny export privileges, set forth the statutory and regulatory authority for the action, state whether the denial order will be standard or non-standard pursuant to Supplement No. 1 to Part 764 of the Export Administration Regulations (15 CFR parts 730 through 799), and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver.* The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BXA intends to impose.

(c) *Order of Assistant Secretary.* If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

§ 720.3 Final decision on administrative action denying export privileges.

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in § 719.14 of this subchapter.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an initial decision and order, based on a preponderance of the evidence. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing a denial of export privileges for the length of time the ALJ deems appropriate. An order denying export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799). The initial decision and order will be served on each party, and will be published in the **Federal Register** as the final decision of the Department of Commerce 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, petition the Under Secretary for Export Administration for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary for Export Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, and shall be served on the Office of Chief Counsel for Export Administration or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *Appeal procedure.* The Under Secretary for Export Administration normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The Under Secretary's decision will be in writing and will be accompanied by an order signed by the Under Secretary for Export Administration giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings. Any order that imposes a denial of export privileges will be published in the **Federal Register**.

§ 720.4 Effect of denial.

Any person denied export privileges pursuant to this part shall be considered a "person denied export privileges" for purposes of the Export Administration Regulations (15 CFR parts 730 through 799). The name and address of the denied person will be published on the Denied Persons List found in Supplement 2 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799).

PART 721—INSPECTION OF RECORDS AND RECORDKEEPING

Sec.
721.1 Inspection of records.
721.2 Recordkeeping.
721.3 Destruction or disposal of records.

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 721.1 Inspection of records.

Upon request by the Department of Commerce or any other agency of competent jurisdiction, you must permit access to and copying of any record relating to compliance with the requirements of this subchapter. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

§ 721.2 Recordkeeping.

(a) *General.* Each facility required to submit a declaration, report or notification under parts 712 through 715 of this subchapter must retain all supporting materials and documentation used by a unit, plant, facility and plant site to prepare such declaration, report or notification to determine production, processing, consumption, export or import of chemicals.

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or notification, or for five years from the date of submission of the applicable declaration, report or notification, whichever is later. Due dates for declarations, reports and notifications are provided in parts 712 through 715 of this subchapter.

(c) *Location of records.* If a facility is subject to inspection under part 716 of this subchapter, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is *not* subject to inspection under part 716 of this subchapter, records retained under

this section may be maintained either at the facility subject to a declaration, report, or notification requirement, or at a remote location, but all records must be accessible to any authorized agent, official or employee of the U.S. Government under § 721.1.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

§ 721.3 Destruction or disposal of records.

If the Department of Commerce or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

PART 722—INTERPRETATIONS—[RESERVED]

Note: This part is reserved for interpretations of parts 710 through 721 and also for applicability of decisions by the Organization for the Prohibition of Chemical Weapons (OPCW).

Dated: December 16, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–33149 Filed 12–30–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 103

[Public Notice 3183]

RIN 1400–ZA01

Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998; Taking of Samples; Recordkeeping and Inspections

AGENCY: Bureau of Arms Control, State.

ACTION: Final rule.

SUMMARY: The Department of State is issuing this final rule to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention), and the Chemical Weapons Convention Implementation Act of 1998 (Act) on the taking of samples and on the enforcement of the requirements concerning record keeping and inspections. The Act authorizes the United States Government to implement provisions of the Convention. These regulations will enable the United States Government to execute the relevant provisions of the Convention and the Act.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Coffee, Office of the Legal Adviser (L/ACN), 2201 C Street, N.W., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: In Part II of the July 21, 1999 **Federal Register**, the Department of State (64 Fed. Reg. 39244) and the Department of Commerce (64 Fed. Reg. 39194) published, with a thirty day public comment period, proposed rules to implement provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and the Chemical Weapons Convention Implementation Act of 1998.

On April 25, 1997, the United States ratified the CWC. The Convention is both an arms control and nonproliferation treaty. As such, the Convention bans the development, production, stockpiling, and use of chemical weapons, and prohibits States Parties from assisting or encouraging anyone to engage in any activity prohibited by the Convention. States Parties to the Convention, including the United States, have agreed to a comprehensive verification regime that provides transparency and ensures that no State Party to the Convention is engaging in activity prohibited by the Convention. The verification regime includes declarations and reports by, and on-site inspection of, facilities engaged in or formerly engaged in activities involving certain chemicals. To further its nonproliferation objectives, the Convention requires restrictions on the import and export of certain chemicals. This rule implements §§ 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998, 22 U.S.C. 6701 *et seq.* These regulations provide the guidelines under which the taking of a sample may be required during an on-site inspection conducted pursuant to the Convention. These regulations will also establish the civil enforcement regime for a violation of §§ 306 or 405 of the Act.

A number of responses were received by the Department of State. Following are relevant comments raised as well as the Department of State's response.

1. *Conformity with the Department of Commerce's Regulations.* One respondent indicated that the Departments of State's and Commerce's proposed regulations implementing the Convention and the Act did not always conform. The regulations have been modified to be more consistent.

2. *Definitions.* One respondent indicated that the definition of Administrative Law Judge was circular. As Administrative Law Judges are established by Title 5 of the United States Code, and are already defined in § 719.1(b) of the Department of Commerce's regulations, the term will not be defined in this rule. At the request of the same respondent, "Inspection assistant" has been defined. The same respondent requested a definition of "Site representatives." Because the term is self-explanatory, it will not be defined in this rule.

3. *Consultation with facility prior to requiring a sample.* All respondents requested that the Host Team Leader communicate with a representative of the site prior to the requirement of a sample. In practice, the site representative will be involved throughout the inspection. In § 103.3(a), the rule now explicitly gives the site representative the right to communicate reasons for which a sample should not be required.

4. *Voluntary provision of samples.* One respondent stated that a facility should be able to provide a sample without being required to do so. Although the section requiring the provision of samples had been drafted for situations in which samples are not volunteered, a new provision has been inserted in § 103.3(a) recognizing that samples may be voluntarily provided.

5. *Written notification of requirement to provide a sample.* One respondent requested that the notification of a requirement to provide a sample be in writing. This request has been approved, and is reflected in § 103.3(b).

6. *Purpose of analysis of samples.* All respondents commented on the limitation of the language concerning the reasons for analysis of samples. The provision has been deleted as it is unnecessary. Part II, paragraph 39, of the Convention's Verification Annex already provides that the Inspection Team may only engage in activities that are necessary to discharge its functions.

7. *On-site analysis of samples.* All respondents recommended that samples be analyzed on-site, where possible. This will occur pursuant to paragraph 53 of Part II of the Convention's Verification Annex, which provides that "[w]here possible, the analysis of samples shall be performed on-site."

8. *Observing the taking of a sample.* One respondent suggested that the owner or operator of a facility should be permitted to observe the taking of a sample. The owner or operator, occupant or agent in charge of the inspected premises already has the right to decide whether a representative of the premises will take the sample. The rule has been modified in § 103.3(f) to explicitly allow the owner or operator, occupant or agent in charge of the inspected premises to elect to have a representative present during the taking of a sample.

9. *United States National Authority (USNA) decision that a sample is not required.* One respondent requested clarification that a decision by the USNA not to require a sample will result in no requirement to provide a sample. The rule has been modified in § 103.3(e)(2) accordingly.

10. *Failure to comply with section 103.3 of this rule.* One respondent has questioned the text in § 103.3(i). Because a failure to provide a required sample might delay or impede an inspection, it may be determined to be a violation of § 306 of the Act.

11. *Handling of samples.* One respondent has recommended that samples should be handled in a manner consistent with facility rules. Such a provision belongs in a facility agreement between the United States and the Organization for the Prohibition of Chemical Weapons.

12. *Interpretation of Sections 306 and 405 of the Act.* All respondents sought clarity concerning actions that will be considered violations of sections 306 and 405 of the Act. Because determinations of violations are fact-specific, it would be impossible to adequately "interpret" these provisions in this rule.

13. *Recordkeeping Requirement.* One respondent stated that § 103.5(b)(3) of the proposed rule exceeded the authority of § 405(3) of the Act. That provision had been modified to provide clarity to the public. However, to avoid confusion, § 103.5(b)(3) now repeats the language of § 405(3) of the Act.

14. *Requesting a hearing.* One respondent suggested that thirty (30) days should be permitted to respond to a Notice of Violation and Assessment and a proposed order. Because § 501(a)(2)(A) of the Act establishes a fifteen (15) day timeframe for a response, this rule permits only fifteen (15) days for a response.

15. *Computation of time for section 103.8 of this rule.* One respondent requested that this rule adopt rules to compute time for purposes of § 103.8. A computation rule is included in § 103.8(c).

16. *Timing of review of initial decision.* All respondents requested more time during the review of the initial decision in § 103.8(a). Under § 501(a)(3) of the Act, an initial decision and order becomes final unless the head of the USNA modifies or vacates the decision and order within thirty (30) days. Minor changes were made to the timelines in § 103.8(a) to the extent possible, consistent with § 501(a)(3) of the Act.

17. *Introduction of new or additional evidence.* One respondent recommended that new or additional evidence be permitted during the review of an initial decision. Text has been deleted from § 103.8(a)(2); instead § 557 of the Administrative Procedure Act shall govern.

18. *Oral Argument.* Two respondents recommended that oral argument should not be explicitly precluded. Section 103.8(a)(6) no longer explicitly precludes oral argument. The Administrative Law Judge will have discretion in permitting oral argument.

Administrative Procedure Act Requirements

Because this rule involves a foreign affairs function of the United States, it is not subject to 5 U.S.C. 553 and 554. However, the Department has previously issued this rule in proposed form and comments were encouraged for the development of this final rule.

Regulatory Flexibility Analysis

Because this rule involves a foreign affairs function of the United States, the Department of State is not required to prepare a regulatory flexibility analysis.

Executive Order 12866 Determiniation

This rule is exempt from Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

Paperwork Reduction Act Statement

Section 103.5(b) of this rule states that no person may willfully fail or refuse: (1) to establish or maintain any record required under the Chemical Weapons Convention Implementation Act or 15 CFR Parts 710 through 722; (2) to submit any report, notice, or other information prescribed by the Act or 15 CFR Parts 710 through 722; or (3) to permit access to or copying of any record that is exempt from disclosure under the Act or 15 CFR Parts 710 through 722.

Notwithstanding any other provision of law, no person is required, nor shall any person be subject to a penalty for failure, to comply with a collection of

information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. In promulgating 15 CFR Parts 710 through 722, the Department of Commerce revised an existing collection of information requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which has been submitted for approval to the Office of Management and Budget. Accordingly, the Department of State will not seek the approval of the Office of Management and Budget. The public reporting burdens for the new collections of information are estimated to average 9 hours for Schedule 1 chemicals, 7.2 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 hours for unscheduled discrete organic chemicals, and .17 hours for Schedule 1 notifications. These estimates include the time required to complete the required forms.

Unfunded Mandates Reform Act Requirements

No actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Federalism Assessment

Because this rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, a Federalism Assessment is not warranted.

List of Subjects in 22 CFR Part 103

Administrative practice and procedures, Chemicals, Foreign relations, Freedom of information, International organizations, Investigations, National security information, Penalties, Reporting and recordkeeping requirements, Treaties.

For the reasons set forth in the preamble, the Department adds to subchapter K the following part 103 to Title 22 of the Code of Federal Regulations:

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

Subpart A—General

Sec.
103.1 Purpose.
103.2 Definitions.

Subpart B—Samples

103.3 Requirement to provide a sample.

Subpart C—Recordkeeping and Inspection Requirements

103.4 General.
103.5 Violations.
103.6 Penalties.
103.7 Initiation of administrative enforcement proceedings.
103.8 Final agency decision after administrative proceedings.
103.9 Final agency decision after settlement negotiations.
103.10 Appeals.
103.11 Payment of final assessment.
103.12 Reporting a violation.

Authority: Pub. L. 105–277, 112 Stat. 2681, Div. I (22 U.S.C. 6701 *et seq.*).

Subpart A—General

§ 103.1 Purpose.

This part is intended to implement sections 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998 (Act), 22 U.S.C. 6701 *et seq.* The Chemical Weapons Convention Regulations promulgated by the Department of Commerce, 15 CFR Parts 710 through 722, also implement sections of the Act.

§ 103.2 Definitions.

The following are definitions of terms as used in this part only.

Bureau of Export Administration (BXA). The Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

Chemical Weapons Convention (CWC or Convention). The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993, and entered into force on April 29, 1997.

CWCIA. The Chemical Weapons Convention Implementation Act of 1998. (22 U.S.C. 6701 *et seq.*)

CWCR. The Chemical Weapons Convention Regulations promulgated by the Department of Commerce. (15 CFR parts 710 through 722.)

Executive Director. The Executive Director, Office of the Legal Adviser, U.S. Department of State.

Facility agreement. A written agreement or arrangement between a State Party to the Convention and the Organization for the Prohibition of Chemical Weapons relating to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review under this part, but which may be subject to collection proceedings or judicial review in an appropriate federal court as authorized by law.

Host Team. The U.S. Government team that accompanies the Inspection Team during a CWC inspection to which this part applies.

Host Team Leader. The head of the U.S. Government team that hosts and accompanies the Inspection Team during a CWC inspection to which this part applies.

Inspection assistant. An individual designated by the Technical Secretariat to assist inspectors in an inspection, such as medical, security and administrative personnel and interpreters.

Inspection Team. The group of inspectors and inspection assistants assigned by the Director-General of the OPCW's Technical Secretariat to conduct a particular inspection.

Lead agency. The executive department or agency responsible for implementation of the CWC declaration and inspection requirements for specified facilities. The lead agencies are the Department of Defense (DOD) for facilities owned and operated by DOD (including those operated by contractors to the agency), and those facilities leased to and operated by DOD (including those operated by contractors to the agency); the Department of Energy (DOE) for facilities owned and operated by DOE (including those operated by contractors to the agency), and those facilities leased to and operated by DOE (including those operated by contractors to the agency), including the National Laboratories and components of the nuclear weapons complex; and the Department of Commerce (DOC) for all facilities that are not owned and operated by or leased to and operated by DOD, DOE or other U.S. Government agencies. Other departments and agencies that have notified the United States National Authority of their decision to be excluded from the CWCR shall also have lead agency responsibilities for facilities that are

owned or operated by (including those operated by contractors to the agency), or that are leased to or operated by, those other departments and agencies (including those operated by contractors to the agency).

Office of Chemical and Biological Weapons Conventions. The office in the Bureau of Arms Control of the United States Department of State that includes the United States National Authority Coordinating Staff.

Organization for the Prohibition of Chemical Weapons (OPCW). The entity established by the Convention to achieve the object and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

Party. The United States Department of State and any person named as a respondent under this part.

Perimeter. In case of a challenge inspection, the external boundary of the site, defined by either geographic coordinates or description on a map.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Secretary. The Secretary of State.

Technical Secretariat. The Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

United States National Authority. The Department of State serving as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and States Parties to the Convention and implementing the provisions of the CWCIA in coordination with an interagency group designated by the President consisting of the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Energy, the Chairman of the Joint Chiefs of Staff and the heads of agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the United States National Authority.

Subpart B—Samples

§ 103.3 Requirement to provide a sample.

(a) *Voluntary provision of a sample.* The Host Team Leader will notify appropriate site representatives of any request by an Inspection Team to take a sample. At the request of the appropriate site representative, this notification will be in writing. A site representative may volunteer to provide a sample to the Inspection Team, or may communicate to the Host Team Leader any reason for which the representative believes a sample should not be required.

(b) *Notification of requirement to provide a sample.* If a sample is not provided pursuant to paragraph (a) of this section, the Host Team Leader will notify, in writing, the owner or operator, occupant or agent in charge of an inspected premises of any requirement, under paragraph (c) or (e) of this section, to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat.

(c) *Requirement to provide a sample.* Pursuant to section 304(f)(1) of the CWCIA, unless a lead agency advises the United States National Authority pursuant to paragraph (d) of this section, the owner or operator, occupant or agent in charge of the premises to be inspected is hereby required to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat that a sample be taken in accordance with the applicable provisions contained in the Chemical Weapons Convention and the CWCIA.

(d) *Consultations with the United States National Authority.* After consulting with the Host Team Leader, a lead agency that finds that any of the following conditions, as modified pursuant to paragraph (j) of this section if applicable, may not have been satisfied shall promptly advise the United States National Authority, which, in coordination with the interagency group designated by the President in section 2 of Executive Order 13128, shall make a decision:

(1) The taking of a sample is consistent with the inspection aims under the Convention and with its Confidentiality Annex;

(2) The taking of a sample does not unnecessarily hamper or delay the operation of a facility or affect its safety, and is arranged so as to ensure the timely and effective discharge of the Inspection Team's functions with the least possible inconvenience and disturbance to the facility;

(3) The taking of a sample is consistent with the applicable facility agreement. In particular:

(i) Any sample will be taken at sampling points agreed to in the relevant facility agreement; and

(ii) Any sample will be taken according to procedures agreed to in the relevant facility agreement;

(4) In the absence of a facility agreement, due consideration is given to existing sampling points used by the owner or operator, occupant or agent in charge of the premises, consistent with any procedures developed pursuant to the CWCR (15 CFR parts 710 through 722);

(5) The taking of a sample does not affect the safety of the premises and will be consistent with safety regulations established at the premises, including those for protection of controlled environments within a facility and for personal safety;

(6) The taking of a sample does not pose a threat to the national security interests of the United States; and

(7) The taking of a sample is consistent with any conditions negotiated pursuant to paragraph (j) of this section, if applicable.

(e) *Determination by United States National Authority.* (1) If, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that all of the conditions of paragraph (d) are satisfied and that a sample shall be required, then the owner or the operator, occupant or agent in charge of the premises shall provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(2) If, however, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that any of the conditions of paragraph (d) are not satisfied and that a sample shall not be required, then the owner or the operator, occupant or agent in charge of the premises shall not be required to provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(f) *Person to take a sample.* If a sample is required, the owner or the operator, occupant or agent in charge of the inspected premises will determine whether the sample will be taken by a representative of the premises, the Inspection Team, or any other

individual present. The owner or the operator, occupant or agent in charge of the inspected premises may elect to have a representative present during the taking of a sample.

(g) *Requirement that samples remain in the United States.* No sample collected in the United States pursuant to an inspection permitted by the CWCIA may be transferred for analysis to any laboratory outside the territory of the United States.

(h) *Handling of samples.* Samples will be handled in accordance with the Convention, the CWCIA, other applicable law, and the provisions of any applicable facility agreement.

(i) *Failure to comply with this section.* Failure by any person to comply with this section may be treated as a violation of section 306 of the Act and section 103.5(a).

(j) *Conditions that restrict sampling activities during challenge inspections.* During challenge inspections within the inspected premises the Host Team may negotiate conditions that restrict activities regarding sampling, e.g., conditions that restrict where, when, and how samples are taken, whether samples are removed from the site, and how samples are analyzed.

(k) *Format of Inspection Team request.* It is the policy of the United States Government that Inspection Team requests for samples should be in written form from the head of the Inspection Team. When necessary, before a sample is required to be provided, the Host Team Leader should seek a written request from the head of the Inspection Team.

(l) *Requirement to provide a sample in the band around the outside of the perimeter during a challenge inspection.* In a band, not to exceed a width of 50 meters, around the outside of the perimeter of the inspected site, the Inspection Team, during a challenge inpsection, may take wipes, air, soil or effluent samples where either:

(1) There is consent; or

(2) Such activity is authorized by a search warrant obtained pursuant to section 305(b)(4) of the CWCIA.

Subpart C—Recordkeeping and Inspection Requirements

§ 103.4 General.

This subpart implements the enforcement of the civil penalty provisions of section 501 of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), and sets forth relevant administrative proceedings by which such violations are adjudicated. Both the Department of State (in this subpart), and the Department of Commerce (in part 719 of the CWCR at 15 CFR parts 710 through 722) are involved in the implementation and enforcement of section 501.

§ 103.5 Violations.

(a) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(b) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(1) To establish or maintain any record required by the CWCIA or the Chemical Weapons Convention Regulations (CWCR, 15 CFR parts 710 through 722) of the Department of Commerce; or

(2) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or CWCR; or

(3) To permit access to or copying of any record that is exempt from disclosure under the CWCIA or the CWCR.

§ 103.6 Penalties.

(a) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have willfully disrupted, delayed or otherwise impeded an authorized inspection, as set forth in § 103.5(a), shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record, or to submit any report, notice, or other information required by the CWCIA or the CWCR, or to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCR as set forth in § 103.5(b), shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

(b) *Criminal penalties.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection; or by disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, or be imprisoned for not more than one year, or both.

(c) *Other remedial action.* (1) *Injunction.* The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under 18 U.S.C. 229 or 229C; or

(ii) The preparation or solicitation to engage in conduct prohibited under 18 U.S.C. 229 or 229D.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or section 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 103.7 Initiation of administrative enforcement proceedings.

(a) *Issuance of Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, Department of Commerce, may request that the Secretary initiate an administrative enforcement proceeding under this section and 15 CFR 719.5. If the request is in accordance with applicable law, the Secretary will initiate an administrative enforcement proceeding by issuing a Notice of Violation and Assessment (NOVA). The Office of Chief Counsel for Export Administration, Department of Commerce shall serve the NOVA as directed by the Secretary.

(b) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to paragraph (e) of this section and the CWCR (15 CFR parts 710 through 722) at 15 CFR 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(c) *Proposed order.* A proposed order shall accompany every NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(d) *Notice.* The Secretary shall notify, via the Department of Commerce, the respondent (or respondent's agent for service of process or attorney) of the initiation of administrative proceedings by sending, via first class mail, facsimile, or by personal delivery, the relevant documents.

(e) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel for Export Administration, Department of Commerce, and any other address(es) specified in the NOVA, in accordance with 15 CFR 719.8.

(f) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(g) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(h) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the Secretary will sign the proposed order, which shall, upon signature, become final and unappealable.

(i) *Administrative procedures.* The regulations that govern the administrative procedures that apply when a hearing is requested are set forth in the CWCR at 15 CFR part 719.

§ 103.8 Final agency decision after administrative proceedings.

(a) *Review of initial decision.*

(1) *Petition for review.* Any party may, within 7 days of the Administrative Law Judge's (ALJ) certification of the initial decision and order, petition the Secretary for review of the initial decision. A petition for review shall be addressed to and served on the Executive Director of the Office of the Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington D.C. 20520, and shall also be served on the Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–3839, Washington, D.C. 20230, and on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or not supported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That a prejudicial procedural error has occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) *Content of petition for review.* The petition must specifically set forth the grounds on which review is requested and be supported by citations to the record, statutes, regulations, and principal authorities.

(3) *Decision to review.* Review of the initial decision by the Secretary is discretionary, and is not a matter of right. The Secretary shall accept or decline review of the initial decision and order within 3 days after a petition for review is filed. If no such petition is filed, the Secretary may, on his or her own initiative, notify the parties within 10 days after the ALJ's certification of the initial decision and order that he or she intends to exercise his or her discretion to review the initial decision.

(4) *Effect of decision to review.* The initial decision is stayed until further order of the Secretary upon a timely petition for review, or upon action to review taken by the Secretary on his or her own initiative.

(5) *Review declined.* If the Secretary declines to exercise discretionary review, such order, and the resulting final agency decision, will be served on all parties personally, by overnight mail, or by registered or certified mail, return receipt requested. The Secretary need not give reasons for declining review.

(6) *Review accepted.* If the Secretary grants a petition for review or decides to review the initial decision on his or her own initiative, he or she will issue an order confirming that acceptance and specifying any issues to be briefed by all parties within 10 days after the order. Briefing shall be limited to the issues specified in the order. Only those issues specified in the order will be considered by the Secretary. The parties may, within 5 days after the filing of any brief of the issues, file and serve a reply to that brief. The Department of Commerce shall review all written submissions, and, based on the record, make a recommendation to the Secretary as to whether the ALJ's initial decision should be modified or vacated. The Secretary will make a final decision within 30 days after the ALJ's certification of the initial decision and order.

(b) *Final decision.* Unless the Secretary, within 30 days after the date of the ALJ's certification of the initial decision and order, modifies or vacates the decision and order, with or without conditions, the ALJ's initial decision and order shall become effective as the final decision and order of the United States Government. If the Secretary does modify or vacate the initial decision and order, that decision and order of the Secretary shall become the final decision and order of the United States Government. The final decision and order shall be served on the parties and will be made available to the public.

(c) *Computation of time for the purposes of this section.* In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is computed to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day that is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 103.9 Final agency decision after settlement negotiations.

(a) *Settlements based on letter of intent to charge.*—(1) *Approval of settlement.* Pursuant to § 719.5(b) of the CWCR (15 CFR parts 710 through 722), the Department of Commerce may notify a respondent by letter of the intent to charge. If, following the issuance of such a letter of intent to charge, the Department of Commerce and respondent reach an agreement to settle a case, the Department of Commerce will recommend the proposed settlement to the Secretary. If the

recommended settlement is in accordance with applicable law the Secretary will approve and sign it. No action is required by the ALJ in cases where the Secretary approves and signs such a settlement agreement and order.

(2) *Refusal to approve settlement.* If the Secretary refuses to approve the recommended settlement, the Secretary will notify the parties and the case will proceed as though no settlement proposal had been made.

(b) *Settlements following issuance of a NOVA.*—(1) *Approval of settlement.* When the Department of Commerce and respondent reach an agreement to settle a case after administrative proceedings have been initiated before an ALJ, the Department of Commerce will recommend the settlement to the Secretary of State. If the recommended settlement is in accordance with applicable law, the Secretary will approve and sign it. If the Secretary approves the settlement, the Secretary shall notify the ALJ that the case is withdrawn from adjudication.

(2) *Refusal to approve settlement.* If the Secretary of State refuses to approve the recommended settlement, the Secretary will notify the parties of the disapproval, and the case will proceed as though no settlement proposal had been made.

(c) *Scope of settlement.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought pursuant to this part. This reflects the fact that the Government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility is vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 103.10 Appeals.

Any person adversely affected by a final order respecting an assessment may, within 30 days after the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business, to appeal the order.

§ 103.11 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The Secretary, through the Attorney General, may file suit in an appropriate district court if necessary to enforce compliance with a final order issued pursuant to this part. This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered or, if an appeal was filed pursuant to § 103.10, from the date of final judgment.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 103.12 Reporting a violation.

If a person learns that a violation of the Convention, the CWCIA, this part, or the CWCR (15 CFR parts 710 through 722) has occurred or may occur, that person may notify: United States National Authority, Office of Chemical and Biological Weapons Conventions, Bureau of Arms Control, U.S. Department of State, Washington, DC 20520, Telephone: (703) 235–1204 or toll-free (877) CWC–NACS ((877) 292–6227), Facsimile: (703) 235–1065.

Avis Bohlen,

Assistant Secretary of State, Bureau of Arms Control.

[FR Doc. 99–33239 Filed 12–29–99; 8:45 am]

BILLING CODE 4710–27–P

VOL

64

ISS

2
5
0

DE

30

999

MI

federal register

Thursday
December 30, 1999

Part IV

Department of the Interior

Minerals Management Service

30 CFR Part 206
Establishing Oil Value for Royalty Due on Federal Leases; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Further supplementary proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing further changes to its proposed rulemaking regarding the valuation, for royalty purposes, of crude oil produced from Federal leases. MMS is proposing to: eliminate MMS-published differentials; change the way that actual costs of transportation are calculated; change the definition of "affiliate" because of a judicial decision in a case decided after the close of the most recent comment period; issue binding value determinations; and add specific regulatory language regarding the issue of "second-guessing" a sale under an arm's-length contract. These amendments are intended to simplify and improve the proposed rule.

DATES: Submit comments on or before January 31, 2000.

ADDRESSES: Send your written comments to David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, M.S. 3021, Denver, Colorado 80225–0165; or e-Mail *David__Guzy@mms.gov*.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, phone (303) 231–3432, FAX (303) 231–3385, e-Mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this further supplementary proposed rule are David A. Hubbard and Deborah Gibbs Tschudy of the Royalty Management Program (RMP) and Peter Schaumberg and Geoffrey Heath of the Office of the Solicitor in Washington, D.C.

MMS is specifying a deadline for comments that is less than the 60 days recommended by Executive Order No. 12866. MMS believes that a 30-day comment period is appropriate in this instance because it previously extended and reopened the comment periods for several earlier proposed versions of this rule. MMS also held numerous workshops across the country to obtain public input on this proposed rulemaking. MMS also plans to hold public hearings during the 30-day comment period to give interested parties the opportunity to fully discuss and comment on this further supplementary proposed rule. MMS will publish specific dates and locations for the hearings in the **Federal Register**.

Most of the provisions in this supplementary proposed rule were in included in previous proposed rules. All of the comments we received thus far are part of the rulemaking record and MMS will consider all such comments before issuing a final rule. Therefore, it is unnecessary for commenters to resubmit earlier comments on provisions that are not proposed for further change. MMS requests that comments focus on the new proposals addressed in this supplementary proposed rule.

I. Background

This further supplementary proposed rule proposes changes to valuation rules in 30 CFR part 206 that have been in effect since March 1, 1988 (the 1988 rules).

The 1988 rules were developed based on the concept that gross proceeds received under an arm's-length contract represented the best measure of the value of production for royalty purposes. Further, those rules implicitly assumed the existence of a competitive and transparent market at the lease (or in the field or area) that could be used to determine the value of production not sold at arm's-length.

Characteristics of competitive markets include: (1) There is a large number of sellers, no one of whom commands a large share of the total market, (2) the products of different sellers are functionally identical and buyers have no preference among sellers, (3) there are so many buyers that sellers and buyers do not establish personal relationships with one another, and (4) buyers are perfectly informed about the prices of different sellers. In the context of particular leases or fields, generally there is not a large number of sellers. Further, one or a few of the producers in the lease or field often control a large share of the production sold. In addition, at the lease or field level, there are a limited number of buyers and sellers. Moreover, because of the proprietary nature of individual contract sales of crude oil, lessees usually will not know the prices at which other lease interest holders sell their oil. In other words, generally there is no price transparency at the lease or field level. None of the comments submitted throughout this nearly four-year rulemaking effort demonstrated that as a general rule a competitive market exists at the lease.

The overall lack of a truly competitive market at the lease has been compounded by the significant changes that occurred in the domestic industry during the 1980's and early 1990's, which had a profound effect on how crude oil is marketed today. These changes included: (1) The major oil companies' creation of separate affiliates for production, marketing and refining; (2) overall decline in domestic production and increased dependence on foreign imports and influence of international trading practices on domestic supply; (3) sharply increased volatility of oil prices marked by the price collapse in early 1986 (the last year in which posted prices exceeded spot market prices), and the rapid rise and decline in prices in late 1990 and early 1991 in response to the Gulf War; (4) entry and expansion of resellers, traders, and brokers who bought, transported, and sold domestic crude oil, taking advantage of pricing and location discrepancies in much the same way they were doing on the international market; and (5) development of a futures market for crude oil which alleviated many of the risks of spot trading. While many of these factors may be seen as increasing the level of competition, none of them served to increase the level of price transparency (i.e., the ability to discern the prices actually paid) at the lease or field or to simplify application of the existing oil valuation rules.

The 1988 rules placed heavy emphasis on posted prices as a measure of royalty value, particularly when valuing oil disposed of not at arm's-length and under no-sales conditions. Posted prices historically were the primary mechanism for pricing domestic crude oil before the 1980's. However, with the disruption of global petroleum supplies in the 1970's and decontrol of domestic crude oil prices in 1981, the domestic petroleum industry began moving away from posted prices and towards the spot and futures markets to buy and sell crude oil. In fact, studies commissioned by States and advice from MMS consultants (Innovation & Information Consultants, Inc.; Micronomics, Inc.; Reed Consulting Group; and Summit Resource Management, Inc.) found that: (1) sales prices are often above posted prices and are linked, in some form, to market prices, such as spot or futures prices, or represent premia over posted prices; (2) major producers have few truly outright sales; (3) most major producers use buy/sell exchanges; (4) there are regional differences in the

domestic crude oil market, particularly on the West Coast and in the Rocky Mountain Region, owing to differences in market concentration and availability of transportation options; and (5) posted prices have become a progressively less reliable indicator of the market value of crude oil since the late 1980s.

Development of the futures market and comprehensive publication of spot prices increased the market transparency of crude oil clearing prices. As a result, market participants became less willing to accept long-term sales contracts at fixed prices and instead negotiated short-term contracts with sales prices linked to spot or futures prices or to premia over posted prices. Major oil companies, however, generally continued to pay royalties on their production transferred not at arm's-length based on posted prices.

Recognizing that posted prices no longer reflected market value, State and private royalty owners in Alaska, California, Louisiana, New Mexico, and Texas brought lawsuits against several major oil companies over improper oil pricing and underpaid royalties. These lawsuits resulted in several oil companies paying additional royalties and some adjusting their posted prices to better reflect market value.

The majority of Federal lease oil production in fact is not sold at arm's length at or near the lease. Most Federal lease oil production is either moved directly to a refinery without a sale or disposed of under an exchange agreement (*e.g.*, buy/sell agreements) in which the lessee exchanges oil at one location for oil at another location. Exchange agreements frequently do not reference a price, but rather only the relative difference in the value of crude oils exchanged and thereby obscure the oil's actual market value. When the agreement does state a price but is conditioned upon the lessee's purchase of crude oil at a subsequent exchange point, the price specified in the exchange agreement does not represent the value of the oil. In a buy-sell exchange, the parties may state any base price they wish, because their primary concern is the difference in value between the oil sold and the oil purchased.

This rulemaking proposes to amend the current regulations by eliminating posted prices as a measure of value and relying instead on arm's-length sales prices and spot market prices as market value indicators. Today, spot prices are readily available to industry participants via price reporting services, and these and similar prices play a significant role in crude oil marketing in terms of the basis upon which deals are negotiated and priced.

Comments received so far during the rulemaking process made it apparent that regional differences exist in the domestic crude oil market. These differences are due in large part to geographic isolation of markets. Accordingly, this further proposed rule would establish different valuation procedures for three different regions: California and Alaska, the Rocky Mountain Region, and the rest of the country.

This proposal adopts parts of the February 1998 proposal, but includes modifications contemplated in the outline published in the March 12, 1999 notice of reopening of public comment period and notice of workshops, and a variety of other modifications in response to public comments.

II. History of This Rulemaking

MMS published an advance notice of its intent to amend the 1988 rules on December 20, 1995 (60 FR 65610). The purpose of that notice was to solicit comments on new methodologies to establish the royalty value of Federal (and Indian) crude oil production in view of the changes in the domestic petroleum market and particularly the market's move away from posted prices as an indicator of market value. The comment period on this advance notice closed on March 19, 1996.

Based on comments received on the advance notice, together with information gained from a number of presentations by experts in the oil marketing business, MMS published its initial notice of proposed rulemaking on January 24, 1997 (62 FR 3742). That proposal set out specific valuation procedures that focused on New York Mercantile Exchange (NYMEX) prices and Alaska North Slope (ANS) spot prices as value indicators, depending on the location of the production. It also clarified the lessee's duty to market the production at no cost to the Federal Government and required the lessee to use actual transportation costs instead of Federal Energy Regulatory Commission (FERC) tariffs for transportation allowances. The comment period for that proposal was to expire March 25, 1997, but was twice extended—first to April 28, 1997 (62 FR 7189), and then to May 28, 1997 (62 FR 19966). MMS held public meetings in Lakewood, Colorado, on April 15, 1997, and Houston, Texas, on April 17, 1997, to hear comments on the proposal.

In response to the variety of comments received on the initial proposal, MMS published a supplementary proposed rule on July 3, 1997 (62 FR 36030). That proposal expanded the eligibility requirements for valuing oil disposed of under arm's-length transactions. The comment period on that proposal closed August 4, 1997.

Because of the substantial comments received on both proposals, MMS reopened the rulemaking to public comment on September 22, 1997 (62 FR 49460). MMS specifically requested comments on five valuation alternatives arising from the public comments. The initial comment period for that request was to close October 22, 1997, but was extended to November 5, 1997 (62 FR 52518). During the comment period MMS held seven public workshops to discuss valuation alternatives: in Lakewood, Colorado, on September 30 and October 1, 1997 (62 FR 50544); Houston, Texas, on October 7 and 8, 1997, and again on October 14, 1997 (62 FR 50544); Bakersfield, California, on October 16, 1997 (62 FR 52518); Casper, Wyoming, on October 16, 1997 (62 FR 52518); Roswell, New Mexico, on October 21, 1997 (62 FR 52518); and Washington, D.C. on October 27, 1997 (62 FR 52518).

As a result of comments received on the proposed alternatives and comments made at the public workshops, MMS published a second supplementary proposed rule on February 6, 1998 (63 FR 6113), applicable to Federal leases only. The comment period for this second supplementary proposed rule was to close on March 23, 1998, but was extended to April 7, 1998 (63 FR 14057). MMS held five public workshops (63 FR 6887) on the second supplementary proposed rule, as follows: Houston, Texas, on February 18, 1998; Washington, D.C. on February 25, 1998; Lakewood, Colorado, on March 2, 1998; Bakersfield, California, on March 11, 1998; and Casper, Wyoming, on March 12, 1998.

Based on a request by Senator Breaux (Louisiana) to hold a meeting between industry and the Department of the Interior (DOI) to explain the direction DOI was going in the final rule, MMS once again opened the public comment period from July 9 through July 24, 1998. Two such meetings were held, on July 9 and July 22.

On July 16, 1998, as a result of comments during the prior comment period, MMS published a further supplementary proposed rule that clarified some of the changes MMS intended to make when the proposed rule became final.

Also, on July 21, Representatives Miller (California) and Maloney (New York) sponsored a meeting between DOI, States, the Indian community, and

multiple special interest groups. In that meeting DOI received a variety of comments in support of its efforts to move forward with the rule and against some of the changes promoted by industry.

The July 22 meeting involved further discussion of industry's issues and recommendations regarding the proposed rule. MMS immediately developed written responses to each industry issue and recommendation based on its published statements in prior proposed rules. MMS also extended the comment period for the proposed rule until July 31 to permit comment on the industry recommendations and MMS's responses.

On July 28, 1998, MMS and Departmental officials met with Senate staff members to further explain the content and rationale of the proposed rule. The notes from all of these meetings were posted on MMS's Internet Homepage for interested parties to review during the comment period.

On August 31, 1998, the Assistant Secretary for Land and Minerals Management wrote a letter to members of the Senate outlining the direction the final rule might take on several of the major issues. On October 8, 1998, the President signed the FY 1999 Department of the Interior Appropriations Act that contained language extending the moratorium prohibiting MMS from publishing a final rule until June 1, 1999. On March 4, 1999, the Secretary announced a reopening of the comment period in response to requests by Members of Congress and parties interested in moving the process forward to publish a final rule. The MMS published a **Federal Register** Notice on March 12, 1999, reopening the comment period through April 12, 1999, and announced that it would hold public workshops in Houston, Texas; Albuquerque, New Mexico; and Washington, D.C. to discuss specific areas of the rule. The MMS extended the comment period through April 27, 1999, to provide commenters adequate time to provide comments following the workshops.

The February 6, 1998, proposal, as modified by the July 16, 1998, further supplementary proposed rule and through consideration of all comments received during the rulemaking process, led to this further supplementary proposed rule.

In the discussion below, we use the following conventions: the January 24, 1997, proposed rule is termed the January 1997 proposal; the July 3, 1997, supplementary proposed rule is termed the July 1997 proposal; the September 22, 1997, notice reopening the public comment period is termed the September 1997 notice; the February 6, 1998, second supplementary proposed rule is termed the February 1998 proposal; the July 16, 1998, further supplementary proposed rule is termed the July 1998 proposal; and the March 12, 1999, notice of reopening of public comment period and notice of workshops is termed the March 1999 notice.

III. Summary and Discussion of Proposed Rule

This proposed rule incorporates changes made in response to comments on the January 1997 proposal, the July 1997 proposal, the September 1997 notice, the February 1998 proposal, the July 1998 proposal, and the March 1999 notice. As in the February 1998 proposal, we also added and renumbered sections and further reorganized the rule for readability.

Because this proposed rule is a product of changes made in response to comments received throughout this rulemaking, the preambles of each of the previous proposals and notices may be consulted in conjunction with this preamble to trace the evolution of this proposal.

Note that the renumbering and reorganization for this proposal resulted in the following modifications to the existing rule:

Section	Modification
§§ 206.100 and 206.101.	Revised.
§ 206.102	Revised and redesignated as §§ 206.102, 206.103, 206.104, 206.105, 206.106, 206.107, and 206.108.
§§ 206.103 and 206.104.	Redesignated as §§ 206.119 and 206.109, respectively.
§ 206.105	Revised and redesignated as §§ 206.110, 206.111, 206.114, 206.115, 206.116, 206.117, and 206.118.
§ 206.106	Revised and redesignated as § 206.120.
New §§ 206.112 and 206.113.	Added.

In addition, we rewrote all sections of the existing rule in plain English so the entire rule would read consistently.

Before proceeding with the summary and discussion of this proposal, it is necessary to explain further why MMS is not proposing further changes in certain areas.

Duty to Market. It is a well-established principle that lessees have the obligation to market lease production for the mutual benefit of the lessee and lessor, without deduction for the costs of marketing. See, e.g., Walter Oil and Gas Corp., 111 IBLA 260 (1989); Arco Oil and Gas Co., 112 IBLA 8 (1989); Taylor Energy Co., 143 IBLA 80 (1998) (motion for reconsideration pending); Yates Petroleum Corp., 148 IBLA 33 (1999); Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending); Texaco Exploration and Production Inc., No. MMS–92–0306–O&G (1999) (concurrence by the Secretary) (action for judicial review pending, *Texaco Exploration and Production Inc.* v. *Babbitt*, No. 1:99CV01670 (D.D.C.)).

In the context of Federal leases, the D.C. Circuit referred to this implied lease covenant many years ago in *California Co.* v. *Udall*, 296 F.2d 384, 387 (D.C. Cir. 1961), stating that "the lessee was obligated to market the product." The duty to market at no cost to the lessor is not unique to Federal leases. See, e.g., Merrill, Covenants Implied in Oil and Gas Leases (2d Ed. 1940), §§ 84–86 (Noting "[n]o part of the costs of marketing or of preparation for sale is chargeable to the lessor"); "Direct Gas Sales: Royalty Problems for the Producer," 46 Okla. L. Rev. 235 (1993); *Amoco Production Co.* v. *First Baptist Church of Pyote*, 579 S.W.2d 280 (Tex. Civ. App. 1979), writ ref'd n.r.e., 611 S.W.2d 610 (Tex. 1981), and cases cited in these authorities.

This duty to market means that the lessee must act as a prudent marketer. The duty to market is an implied covenant of virtually all oil and gas leases, whether the leases are private, Federal, or State leases. MMS as lessor has never shared in the "risks" of marketing and has never allowed deductions from royalty value for marketing costs. This proposed rulemaking makes no change to the lessee's duty to market.

The decisions cited above establish several principles. First, the lessee has an implied duty to prudently market the production for the mutual benefit of both the lessee and the lessor. The creation and development of markets is the essence of that obligation. As the IBLA correctly expressed it ten years ago in Arco Oil and Gas Co., supra:

> The creation and development of markets for production is the very essence of the lessee's implied obligation to prudently market production from the lease at the highest price obtainable for the mutual benefit of the lessee and lessor. Traditionally,

Federal gas lessees have borne 100 percent of the costs of developing a market for gas. Appellant has cited no authority, nor do we find any, which supports an allowance for creation and development of markets for the royalty share of production.

112 IBLA at 11.

Because of industry's repeatedly-expressed concerns in the comments and workshops, MMS emphasizes that this does not imply that lessees are somehow prohibited from marketing at the lease and must market production "downstream." Lessees may market at the lease without breaching the duty to market. However, if a lessee chooses to market downstream, the choice to do so is for the mutual benefit of itself and the lessor, and does not affect the lessee's relationship to the lessor. The choice to market downstream does not make marketing costs deductible or permit the lessee to disregard part of the sales price obtained at a downstream market.

In addition, lessees have always borne all of the marketing costs. The Department has not knowingly permitted an allowance or deduction from royalty value for marketing costs. As the Board held a decade ago in Walter Oil and Gas Corp., supra:

> The only allowances recognized as proper deductions in determining royalty value are transportation allowances for the cost of transporting production from the leasehold to the first available market, which has been considered a relevant factor pursuant to 30 CFR. § 206.150(e) * * * and processing allowances for processed gas authorized by 30 C.F.R. § 206.152(a)(2) (1987) * * *. Walter's unsupported assumption that it is somehow entitled to deduct its marketing costs from royalty value fails in the face of contrary regulatory requirements * * *.

111 IBLA at 265.

Lessees may deduct from value only those costs allowed by the regulations. The only deductible costs are transportation costs, processing costs (for "wet" gas with heavier entrained liquid hydrocarbons), and, for leases which so provide, an operating allowance under § 206.120.

Further, marketing costs are not deductible, regardless of whether the lessee bears them directly or transfers the marketing function or costs to a contractor or an affiliate.

Moreover, the fact that marketing arrangements enhance the lessee's ability to obtain a higher price does not imply that marketing costs are deductible. It also follows that a lessee may not deduct or disregard for royalty purposes the additional benefits it gains or value it receives through obtaining a higher price through its marketing skill or expertise. If the lessee manages to obtain a higher price for its oil through skillful marketing efforts, that higher price, less transportation costs, is the minimum royalty value under the gross proceeds rule.

At the same time, the location of the market at which the lessee chooses to sell its production does not change the lessee's obligation. Much of industry's opposition to the duty-to-market provision during this rulemaking process revolves around the argument that when royalty value is based on the sale of production at a downstream location, the downstream transportation, risks, and related services add more value to the oil than is reflected in allowances MMS permits.

The industry commenters' argument is contrary to established principles and uniform longstanding practice. Valuation based upon a "downstream" sale or disposition of production has been commonplace for many years. For sales at distant markets, the lessee is entitled to an allowance for transportation costs, but not for marketing costs. Sales away from (or "downstream" from) the lease often are the starting point for determining royalty value, and the costs of transportation always have been allowed in order to ascertain value at or near the lease. A lessee who transports production to sell it at a market remote from the lease or field is entitled to an allowance for the costs of transportation. See 30 C.F.R. 206.104, 206.105 (crude oil), 206.156 and 206.157 (gas) (1988–present). Before the 1988 regulations, transportation costs were allowed under judicial and administrative cases. *See, e.g., United States* v. *General Petroleum Corp.*, 73 F. Supp 225 (S.D. Cal. 1946), aff'd, *Continental Oil Co.* v. *United States*, 184 F.2d 802 (9th Cir. 1950); *Arco Oil and Gas Co.*, 109 IBLA 34 (1989); *Shell Oil Co.*, 52 IBLA 15 (1981); *Shell Oil Co.*, 70 I.D. 393, 396 (1963).

An excellent example is *Marathon Oil Co.* v. *United States*, 604 F. Supp. 1375 (D. Alaska 1985), aff'd, 807 F.2d 759 (9th Cir. 1986), cert. denied, 480 U.S. 940 (1987). In that case, Marathon produced natural gas from Federal leases in Alaska, and sold it in Japan after overseas transportation in liquid form by tanker. The court held that MMS properly deducted Marathon's costs of transportation (including liquefaction) from the sales price in Japan to derive the royalty value (gross proceeds) at the lease.

Indeed, transportation allowances have been common for decades precisely because the initial basis for establishing value often is a "downstream" sales price. Industry's argument that MMS is somehow improperly trying to "tap into" the benefits industry derives from its marketing expertise clouds the real issue. If a lessee can obtain a better price by selling away from the lease, then it will do so. How the lessee markets its production is its decision. The lessor is entitled to its royalty share of the total value derived from the production regardless of how the lessee chooses to dispose of it. The United States as lessor always has shared in the "benefit" of "downstream" marketing away from the lease, and has allowed deductions for the cost of transportation accordingly.

Moreover, these principles do not change in the event that a wholly-owned or wholly-commonly-owned affiliated marketing entity buys other production at arm's length from other working interest holders in the field at the same price it pays to its affiliated producer. The industry wants to limit royalty value to supposedly "comparable" sales at the lease even when the lessee receives a higher price for its production. In effect, industry wants to force MMS to adopt a "lowest common denominator" theory of valuation—*i.e.*, the price at which any production is sold at arm's length at the lease will be the value of production initially transferred non-arm's-length, even if the latter production nets a higher price in the open market. That position is incorrect for several reasons.

First, it would enable a lessee whose enterprise realizes more proceeds or greater value for its production than some other producers in the field to avoid paying royalty on part of those proceeds. If the lessee sells downstream, its gross proceeds are the higher price realized on the sale downstream, minus the lessee's transportation costs, regardless of the fact that other producers sold for less. The industry's position is directly contrary to *Marathon Oil Co.* v. *United States, supra*. If the lessee first transfers to a wholly-owned or wholly-commonly-owned affiliate who then resells at arm's length downstream, it is still true that the producing entity could have sold its production at the point and at the price its affiliate did, instead of using the wholly-owned affiliate arrangement. It is perfectly proper to value the production of a producer who markets through a wholly-owned affiliate at a higher level than the production that other producers sell at arm's length in the first instance, when the gas (or oil) marketed through the wholly-owned affiliate commands a higher price. Indeed, this is the very situation which the Third Circuit correctly anticipated in *Shell Oil Co.* v. *Babbitt*, 125 F.3d 172 (3d Cir. 1997).

Further, the industry's position would create an incentive for a lessee to sell some small percentage of its production at the lease at arm's length for a lower price so that it can pay royalty on the rest of its production at that price. Such a result is contrary to the intent and meaning of the gross proceeds rule.

MMS agrees that the duty to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is not the same as the lessee's duty to put production into marketable condition at no cost to the lessor. However, the fact that the two duties are not identical does not support the industry commenters' position. The decision of the Secretary and the Assistant Secretary for Land and Minerals Management in *Texaco Exploration and Production Inc., supra* (at pp. 16–19), discusses the relationship of the two duties and MMS affirms their rationale.

Industry comparable sales model. In this proposal, MMS did not adopt the industry-proposed comparable sales model to value production not sold at arm's length. We continue to believe that there are meaningful spot prices applicable to production in all areas other than the Rocky Mountains. With the exception of the Rocky Mountain Region, spot and spot-related prices drive the manner in which crude oil is bought and traded in the U.S. Spot prices play a major role in crude oil marketing and are readily available to lessees through price reporting services.

We believe spot prices are the best indicator of the value of production and are preferable to attempting to use supposedly comparable arm's-length sales in the field or area. Commenters have not demonstrated the consistent existence or availability of such transactions for volumes sufficient to use for royalty valuation. Contrary to the industry commenters, MMS believes that nationwide about two-thirds of crude oil production is disposed of non-arm's length. As previously mentioned, the general lack of competitive and transparent markets at the lease makes the attempt to find comparable sales transactions far inferior to the use of index prices.

In addition, the various industry proposals have substantial practical difficulties since companies are not privy to other companies' "comparable" sales transactions. Even if a comparable sales model included only a lessee's own arm's-length sales or purchases, such information is unaudited for current periods. Further, it is difficult to determine what portion of lease production must be sold at arm's length to reliably determine the value of the remainder of the production. This supplementary proposed rule thus primarily uses index prices, adjusted for location and quality, to establish value for oil not sold at arm's length.

California, and the West Coast in general, has long been recognized as a separate crude oil market isolated from the rest of the country. ANS crude is competitive with California crudes. While it may be true that only 10 percent of ANS crude is sold on the spot market, over 30 percent of the oil refined in California is ANS oil. An interagency study has found that companies engaged in buying and selling California crude oil commonly use ANS spot prices as the benchmark for determining California crude values (Final Interagency Report on the Valuation of Oil Produced from Federal Leases in California, May 16, 1996; Long Beach litigation). These companies apparently have no difficulty in adjusting the ANS prices for quality differences to derive the prices, including premia over postings, they are willing to pay for California crude oils. MMS believes ANS spot prices are a recognized benchmark for valuing California crudes and a reliable indicator of the market value of California crude oils.

Comments alleging that ANS spot prices are unreliable because ANS crude is thinly traded were analyzed for MMS by Innovation & Information Consultants, Inc. (Memorandum to MMS file, September 25, 1997). They report that it is the spot market for local California crude oils, not ANS crude, that is thinly traded and thus leads to unreliable price indices. They also report that there is a high degree of correlation between ANS spot prices and prices actually paid for California crudes. They indicate that the major oil companies in California regularly make comparisons between California crude oils and ANS with the understanding and expectation that a California crude should equate to ANS in value after accounting for location and quality differences.

The Rocky Mountain benchmarks for production not sold at arm's length are hierarchical and would not allow lessees to choose the benchmark most favorable to them. Rather, a lessee would have to use the first benchmark that applies to its situation—that is, first tendering, then a weighted average of sales and purchases, then Cushing, Oklahoma, adjusted spot prices, and lastly an MMS-established value. MMS proposes adopting a particular tendering alternative (designed with what MMS intends as safeguards against manipulation) as a first benchmark for the Rocky Mountain Region for production not sold at arm's length because of the lack of a reliable spot price in that region. One of the Rocky Mountain State commenters recommended this method as the initial benchmark in that region. MMS has acquiesced in that recommendation but nevertheless has substantial concerns about the potential for manipulation of tendering programs. MMS would closely monitor the reliability and workability of this benchmark. MMS's response to the comments regarding minimum volume and bid requirements is provided in Section IV below.

IV. Section-by-Section Analysis

Before discussing the individual sections of this proposed rule, it is appropriate to review the basic premises of this proposal. When crude oil is produced, it is either sold at arm's length or is refined without ever being sold at arm's length. If crude oil is exchanged for other crude oil at arm's length, the oil received in the exchange is either sold at arm's length or is refined without ever being sold at arm's length. Under this proposal, oil that ultimately is sold at arm's length before refining generally will be valued based on the gross proceeds accruing to the seller under the arm's-length sale. This includes oil that is exchanged at arm's length where the oil received in exchange is ultimately sold at arm's length. (The exceptions reflect particular circumstances in which MMS believes the arm's-length sale does not or may not reliably reflect the real value.) However, this proposal also provides the option for the lessee to apply index prices or benchmark values because of the difficulty of "tracing" production in some exchanges and affiliate resales. If oil (or oil received in exchange) is refined without being sold at arm's length, then the value would be based on appropriate index prices or other methods, as explained below.

These principles would apply regardless of whether oil is sold or transferred to one or more affiliates or other persons in non-arm's-length transactions before the arm's-length sale, and regardless of the number of those non-arm's-length transactions. They also would apply if an arm's-length exchange occurs before an arm's-length sale. (However, MMS believes that if there are multiple exchanges before an arm's-length sale, using the ultimate arm's-length sales price may in some cases require too much "tracing" of the oil to be cost-efficient for lessee and lessor alike. Consequently, under such circumstances, MMS would provide the option to determine value

based either on the arm's-length gross proceeds or on an index or benchmark basis. The same option would be provided for valuing production that is first sold or transferred to an affiliate and then resold at arm's length.)

Section 206.100 What is the purpose of this subpart?

Proposed section 206.100 includes the content of the existing section except for minor wording changes to improve clarity. At § 206.100(a), we have added some further language clarifying the respective roles of lessees and designees. (Those terms are defined in § 206.101, and those definitions follow the definitions contained in Section 3 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1702, as amended by Section 2 of the Federal Oil and Gas Royalty Simplification and Fairness Act, Public Law 104–185, 110 Stat. 1700.)

Specifically, if you are a designee and you or your affiliate dispose of production on behalf of a lessee, references to "you" and "your" in the rule would refer to you or your affiliate. In this event, you would have to report and pay royalty by applying the rule to your and your affiliate's disposition of the lessee's oil. If you are a designee and you report and pay royalties for a lessee but do not dispose of the lessee's production, the references to "you" and "your" would refer to the lessee. In that case, you as a designee would have to determine royalty value and report and pay royalty by applying the rule to the lessee's disposition of its oil. Some examples will illustrate the principle.

Assume that the designee is the unit operator, and that the operator sells all of the production of the respective working interest owners on their behalf and is the designee for each of them. For each of those working interest owners, the operator, as designee, would report and pay royalties on the basis of the operator's disposition of the production. For example, if the operator transferred the oil to its affiliate, who then resold the oil at arm's length, the royalty value would be the gross proceeds accruing to the designee's affiliate in the arm's-length resale under § 206.102, or the appropriate index or benchmark value under § 206.103, as explained further below.

Alternatively, assume the operator is the designee but a lessee disposes of its own production. Assume the lessee transfers its oil to an affiliate, who then resells the oil at arm's length. In this case, the operator would have to obtain the information from the lessee, and report and pay royalties on the basis of the gross proceeds accruing to the lessee's affiliate in the arm's-length resale under § 206.102, or, at the lessee's option, on the basis of the appropriate index or benchmark value under § 206.103.

In some cases, the designee is the purchaser of the oil. Assume the operator disposes of the lessee's oil and that the operator is not affiliated with the designee-purchaser. Because the lessee's sale to the designee is an arm's-length transaction, then under § 206.102 the designee would report and pay royalty on the total consideration (the gross proceeds) it paid to the lessee.

The content of proposed § 206.100(b) and (c) is the same as in the corresponding existing paragraphs, but we rewrote them for clarity. Paragraph (b) says that this subpart would not apply if these regulations are inconsistent with a Federal statute, a settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or an express provision of an oil and gas lease subject to this subpart. If so, the statute, settlement agreement, or lease provision would govern to the extent of the inconsistency.

Proposed paragraph (c) says MMS may audit and adjust all royalty payments. We removed existing paragraph (d). It said the regulations in this subpart are intended to ensure that the United States discharges its trust responsibilities concerning Indian oil and gas leases. Since Indian leases are subject to a separate set of valuation regulations at 30 CFR 206.50 that include the same language as existing paragraph (d), we believe the existing language at paragraph 206.100(d) is not needed.

Section 206.101 Definitions.

The definitions section remains largely the same as in the January 1997 proposal. However, MMS proposes several additions and clarifications consistent with changes to the rule throughout the rulemaking process and in response to comments received.

The July 1997 proposal (62 FR 36030) added a definition of *non-competitive crude oil call* as well as a new definition of *competitive crude oil call*. This supplementary proposed rule does not use either of these terms. Therefore, they have been deleted from the proposed definitions section.

However, oil subject to a noncompetitive crude oil call would be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately would be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

We propose to modify the definition of *arm's-length contract* to remove the criteria for determining affiliation. Instead, these criteria would be included in the new definition of *affiliate* discussed below.

We also propose to modify the definition of *exchange agreement* to delete the statement that exchange agreements do not include agreements whose principal purpose is transportation. MMS believes that transportation exchanges, while having different purposes than other types of exchanges, properly should be included under the generic definition of exchange agreements. We also propose to add, for clarity, several examples of other types of exchange agreements. These would include, but not be limited to, exchanges of produced oil for specific types of crude oil (e.g., West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP); exchanges of produced oil for similar oil produced in different months (Time Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges (for example, party A exchanges with party B, who then exchanges with party C, who then exchanges with party A).

We also propose to modify the definition of *gross proceeds* to clarify that they include payments made to reduce or buy down the purchase price of oil to be produced later. The concept that such payments are part of gross proceeds was included in the January 1997 proposal at paragraph 206.102(a)(5). Moving this provision directly to the gross proceeds definition would further clarify the components of gross proceeds and improve the structure of the rule.

We also clarified that gross proceeds would include payments for marketing, along with payments for such services as dehydration, measurement, and gathering. All of these are services that the lessee must perform at no cost to the Federal Government.

Also, since this proposal bases valuation for some production on crude oil spot prices for other than ANS oil, we propose to change the definitions of *index pricing* and *MMS-approved publication* to include other spot prices. *Index pricing* would mean using ANS crude oil spot prices, WTI crude oil spot prices at Cushing, Oklahoma, or other appropriate crude oil spot prices for royalty valuation. *MMS-approved*

publication would mean a publication MMS approves for determining ANS spot prices, other spot prices, or location differentials.

We also would delete the definitions of *aggregation point, prompt month* and *NYMEX* because they are not used in this proposal. All three of these terms were used in earlier versions of the proposed rule in applying various non-arm's-length benchmarks. But this proposal would apply spot, rather than NYMEX prices, and eliminate proposed Form MMS–4415, so none of these definitions would be needed.

We also would add three new definitions of terms used in the February 1998 proposal and incorporated in this proposal. They are *affiliate, Rocky Mountain Region,* and *tendering program.*

"*Affiliate* would mean a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person would constitute control. Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut.

(2) If there is ownership or common ownership of between 10 and 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person, MMS would consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) the extent to which there are common officers or directors;

(ii) with respect to the voting securities, or instruments of ownership, or other forms of ownership,

(A) the percentage of ownership or common ownership;

(B) the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) whether a person is the greatest single owner; and

(D) whether there is an opposing voting bloc of greater ownership;

(iii) operation of a lease, plant, or other facility;

(iv) the extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, would be affiliates."

The July 1998 proposal (63 FR 38356) retained the criteria for determining affiliation that are contained in the existing rule. The March 1999 notice that included the letter to the Senate (64 FR 12268) also indicated that MMS likely would retain the same criteria that are in the existing rule.

In response to the March 1999 notice, industry commenters proposed a set of criteria which lessees could use to rebut the presumption of control that arises from ownership or common ownership of between 10 and 50 percent. While MMS does not agree with the industry proposal, a judicial decision in a case decided after the close of the most recent comment period affects the criteria for determining control and the associated presumption in the existing rule.

In *National Mining Association* v. *Department of the Interior,* 177 F.3d 1 (D.C. Cir. 1999) (decided May 28, 1999), the United States Court of Appeals for the District of Columbia Circuit addressed the Office of Surface Mining Reclamation and Enforcement's (OSM's) so-called "ownership and control" rule at 30 CFR 773.5(b). That rule presumed ownership or control under six identified circumstances. One of those circumstances was where one entity owned between 10 and 50 percent of another entity. The court found that OSM had not offered any basis to support the rule's presumption "that an owner of as little as ten per cent of a company's stock controls it." 177 F.3d at 6–7. The court continued, "While ten percent ownership may, under specific circumstances, confer control, OSM has cited no authority for the proposition that it is ordinarily likely to do so." Id. (Emphasis added.) In a footnote, the court referred to the existing MMS rule:

> In its brief OSM referred the court to several regulations promulgated by other agencies but none of them presumes control based simply on a ten percent ownership stake, although another Department of Interior regulation does so. See 30 CFR 206.101(b) [sic] ("based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: * * * (b) Ownership of 10 through 50 percent creates a presumption of control"). We do not consider the validity of section 206.101 here.

The United States did not file a petition for rehearing. Nor did the United States seek Supreme Court review.

In this proposal, MMS is revising the definition of "affiliate" in light of the National Mining Association decision. In the event of ownership or common ownership of between 10 and 50 percent, the second paragraph of the definition in this proposal, instead of creating a presumption of control, identifies a number of factors that MMS would consider in determining whether there is control under the circumstances of a particular case.

With respect to ownership or common ownership, the new definition would identify such factors as the percentage of ownership, the relative percentage of ownership as compared with other owners, whether a person is the greatest single owner, and whether there is an opposing voting bloc of greater ownership. All of these are relevant factors in determining whether there is control in a particular case.

For example, company A could own one third of the voting stock of company B, while no other owner owns any percentage close to that. A is the greatest single owner, and it is very likely that A has control of B. If, in addition, A manages the day-to-day operations of B and the other owners effectively are passive investors, it would be very clear that A controls B and that they are affiliates.

A different example would be if A owns 20 percent of B, at the same time that C and D each own 35 percent of B. In such a case, it would be much harder to demonstrate that A controls B, and doing so would depend on additional facts that would show that A has effective control.

Yet another example would be if A owns 12 percent of B and other owners own roughly equivalent percentages of B. A may or may not control B, again depending on what additional circumstances are present.

We emphasize that simply because one entity is found not to control another on the basis of stock ownership and other factors, and therefore that the entities are not affiliates, that does not always mean that the relationship between the two entities is at arm's length. The entities may be engaged in a cooperative venture and therefore not have opposing economic interests. (An example is the situation in Xeno, Inc., 134 IBLA 172 (1995), in which a number of lessees in a large field combined to form another entity to purchase their gas, then gather, compress, and treat it, and then resell it to another purchaser.)

The proposed definition also identifies other factors in addition to ownership interests that are relevant to determining control. These include the extent of common officers or directors, operation by one entity of a lease or a

facility, the extent of participation by different owners in operations and day-to-day management of an entity, and other evidence of power to exercise control or common control. These factors would be evaluated on a case-by-case basis.

The proposed definition would continue the existing provisions that ownership of more than 50 percent constitutes control, and that relatives, either by blood or marriage, are affiliates regardless of any percentage of ownership or common ownership. Likewise, the proposed definition would continue the exiting provision that ownership of less than 10 percent would presume noncontrol that MMS may rebut. The National Mining Association decision does not affect these provisions.

Arm's-length contract would mean a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract would have to satisfy this definition for that month, as well as when the contract was executed. Again, we have defined *affiliate* separately for clarity.

In our February 1998 proposal, we asked for comments on the *Rocky Mountain Area* definition. We wanted to know whether other States or regions should be included in this definition and, conversely, whether the definition included States or regions that should be deleted. For example, although some participants in MMS's workshops believed the entire State of New Mexico belongs outside the Rocky Mountain Region for this rule's purposes, others believed that oil marketing in the northwest portion of New Mexico is similar to that in the other Rocky Mountain States. Some of these participants suggested that northwest New Mexico (not including the Permian Basin) more appropriately should be included in the Rocky Mountain Region.

Several commenters said the term's wording could conflict with the generic use of the term "area" elsewhere in the rule. As a result, we changed "Rocky Mountain Area" to "Rocky Mountain Region" in this supplementary proposed rule.

We received several comments, pro and con, regarding inclusion of part or all of New Mexico in the *Rocky Mountain Region* definition. The most telling comment was from the State of New Mexico itself, indicating that production there has much closer ties to Midland, Texas, than any Rocky Mountain markets. Thus, MMS has excluded New Mexico from the definition in this proposal. Other comments about additions and deletions of specific States or regions were limited, and MMS does not believe they warrant further changes to the definition. *Rocky Mountain Region* would mean the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

For the Rocky Mountain Region, this proposal incorporates *tendering* as one of the non-arm's-length valuation benchmarks; hence we propose a new definition. *Tendering program* would mean a company offer of a portion of its crude oil produced from a field or area for competitive bidding, regardless of whether the production is offered or sold at or near the lease or unit or away from the lease or unit. The definition in the February 1998 proposal said "* * * from a field, area, or other geographical/physical unit for competitive bidding." Several commenters said "or other geographical/physical unit" was confusing, and one commenter suggested deleting it. Although our intent was to provide for circumstances where tendered oil is produced from a very specific and more finite source than a field or area, we agree that the terminology as originally written could be confusing. Thus we have deleted "or other geographical/physical unit" in this proposal. The revised definition should cover all circumstances, since any production tendered will be from a given field or area. The offer and sale of oil under a tendering program would not be limited to offers or sales at or near the lease or unit. Oil could be tendered for bid or sale at remote or "downstream" locations. The proposal includes clarifying language to remove any potential ambiguity on this point.

Several commenters said the definition of "sale" should be modified to describe how transfers of production from a working interest owner to the operator under a joint operating agreement should be treated for valuation purposes. Two specific circumstances were described, namely where the operator sells the working interest owner's share of production: (1) At arm's length, or (2) to the operator's affiliate. The commenters said that if the initial transfer from the working interest owner to the operator, or the sale of the working interest owner's production by the operator, were not considered an arm's-length sale, there may be an inappropriate result. For example, the working interest owner might be required to either "trace" value back from the operator's affiliate's resale, or apply § 206.103. We are not persuaded that the result under this proposed rule would be inappropriate, and believe that the proposed definition of "sale" is clear and succinct.

Section 206.102 How Do I Calculate Royalty Value for Oil That I or my Affiliate Sell(s) Under an Arm's-length Contract?

We propose to revise and reorganize § 206.102 as written in the several previous proposed rules. We would revise § 206.102 to specifically address valuation of oil ultimately sold under arm's-length contracts. That sale may occur immediately, or may follow one or more non-arm's-length transfers or sales of the oil or one or more arm's-length exchanges.

Proposed paragraph (a) states that value is the gross proceeds accruing to you or your affiliate under an arm's-length contract, less applicable allowances. Similarly, if you sell or transfer your Federal oil production to some other person at less than arm's length (except for a non-arm's-length exchange), and that person or its affiliate then sells the oil at arm's length, royalty value would be the other person's (or its affiliate's) gross proceeds under the arm's-length contract. If you transfer under a non-arm's-length exchange, you must use § 206.103.

For example, a lessee might sell its Federal oil production to a person who is not an "affiliate" as defined, but with whom its relationship is not one of "opposing economic interests" and therefore is not at arm's length. An illustrative example would be a number of working interest owners in a large field forming a cooperative venture that purchases all of the working interest owners' production and resells the combined volumes to a purchaser at arm's length. *Xeno, Inc.*, 134 IBLA 172 (1995), involved a similar situation for a gas field. If no one of the working interest owners owned 10 percent or more of the new entity, the new entity would not be an "affiliate" of any of them. Nevertheless, the relationship between the new entity and the respective working interest owners would not be at arm's length. In this instance, it would be appropriate to value the production based on the arm's-length sale price the cooperative venture received for the oil.

Paragraph 206.102(a)(3) of the February 1998 proposal was meant to be specific to those cases, such as *Xeno*, where the transfer is not between affiliates but the sale is not arm's length because the parties do not have opposing economic interests. However, several commenters could not see the difference between (a)(3) and (a)(2); the latter applied only to sales or transfers to an affiliate who then sells the oil at

arm's length. Because the result of both paragraphs would be the same, and to stem this confusion, we propose to eliminate previous paragraph (a)(3) and include its intent in revised paragraph (a)(2). That paragraph would now say value is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances, where you sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person or another affiliate of either of them then sells the oil under an arm's-length contract. As a result of this change, paragraph (a)(4) of the February 1998 proposal would now become paragraph (a)(3).

In all these circumstances, you would have to value the production based on the gross proceeds accruing to you, your affiliate, or other person to whom you transferred the oil (or its affiliate) when the oil ultimately was sold at arm's length unless you elect to use index pricing or benchmarks under § 206.102(d).

Paragraph (a)(5) of the January 1997 proposal dealt with inclusion in gross proceeds of payments made to reduce or buy down the price of oil to be produced in later periods. We removed this paragraph in the February 1998 proposal but added the concept within the definition of *gross proceeds* as discussed above. This supplementary proposed rule reflects the February 1998 proposal in this regard without change.

Proposed paragraph (b) would clarify how to value the oil produced from your lease when you sell or transfer it to your affiliate or to another person under a non-arm's-length contract, and your affiliate, the other person, or an affiliate of either of them sells the oil at arm's-length under multiple arm's-length contracts. In this case, value would be the volume-weighted average of the values established under paragraph (a) for each contract for the sale of oil produced from that lease.

A number of commenters said that calculating this volume-weighted average value would be extremely problematic because it often would be difficult to tie specific contracts to specific Federal oil production, especially where commingling of various production is involved. MMS acknowledges that proper royalty calculations can be complicated in such situations, but that does not diminish the lessee's duty to pay proper royalties on its Federal production. Even under the existing rules, circumstances similar to those described by the commenters often require that the lessee allocate values and volumes. We believe this provision is consistent with ongoing practice.

Proposed paragraph (c) would specify two exceptions to the use of arm's-length gross proceeds. It would also require you to apply the exceptions to each of your contracts separately. Proposed paragraphs (c)(1) and (c)(2) would remain largely unchanged from paragraphs (a)(2) and (a)(3) in the January 1997 proposal and from § 206.102(b)(1) (i) and (ii) of the existing rules, except for additional language included in (c)(2) regarding "second guessing," as discussed below.

Paragraph (a)(4)(ii) of the July 1997 proposal said that where an arm's-length contract price does not represent market value because an overall balance between volumes bought and sold is maintained between the buyer and seller, royalty value would be calculated as if the sale were not at arm's length.

In the February 1998 proposal, MMS decided to remove that language as a specific, separate provision. Rather, in considering whether an arm's-length contract reflects your or your affiliates' total consideration or market value (proposed paragraphs (c)(1) and (c)(2)), MMS would examine whether the buyer and seller maintain an overall balance between volumes they bought from and sold to each other. Under these paragraphs, if an overall balance agreement were found to exist, MMS would require you to value your production under § 206.103 or the total consideration received.

Several commenters said that removal of the overall balance provision and relying on MMS to find such agreements put an undue burden on MMS. They further stated that MMS would have great difficulty verifying the existence of such agreements. We continue to believe, however, that verification of overall balancing arrangements, and appropriate follow up, is best left to audit in conjunction with the provisions of paragraphs 206.102 (c)(1) and (c)(2). Thus, this proposal does not contain any specific language regarding overall balancing agreements.

Likewise, this proposal does not contain any specific language regarding noncompetitive crude oil calls. In response to the July 1997 and February 1998 proposals, and in MMS's public workshops, several commenters asserted that producers often negotiate competitive prices even if a non-competitive call provision exists and a call on production is exercised. We agree and we propose not to treat oil sold under a noncompetitive crude oil call differently than other arm's-length sales. However, because the sale occurred in the context of a noncompetitive crude oil call, MMS would examine the transaction more carefully in view of paragraphs 206.102 (c)(1) and (c)(2) to determine whether the prices received represent market value.

This supplementary proposed rule contains language in paragraph 206.102(c)(2)(ii) regarding MMS's intent not to "second guess" industry marketing decisions. The rule would state that MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract. The fact that the price received by the seller in an arm's-length transaction is less than other measures of market price, such as index prices or other arm's-length sales, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.

In response to industry concerns, in its July 1998 proposal, MMS proposed adding specific language to § 206.102(c)(2)(ii) that MMS would not use the "breach of duty" provision to second-guess industry marketing decisions unless the arm's-length prices were substantially below market value. However, in their comments on the July 1998 proposal, industry and their representative organizations stated that the terms "substantially below" and "market value" were not easily defined and could lead to MMS questioning legitimate transactions. One commenter said that in the past, MMS has rejected legitimate, at-the-lease prices in favor of higher, downstream prices. One commenter believed that as long as a company is acting in good faith, they have nothing to fear with MMS "second-guessing" their decisions. One commenter offered alternate "breach of duty to market" language.

At the March 1999 workshops, industry commenters expressed concern that if a company sold production at the lease under an arm's-length arrangement, MMS might later "second-guess" the transaction and determine that the royalty should have been paid on a higher price than the company actually received, such as index. They proposed specific language to be added to the rule and preamble.

One State commenter also proposed specific regulatory language regarding "second-guessing." A public interest group commented that it would support language that MMS will not second-guess arm's-length contract prices received, provided that lessees disclose balancing arrangements between

themselves and the unaffiliated companies.

The provision MMS was attempting to clarify with its proposed additional language is identical to the provision in the existing rules (see 30 CFR 206.102(b)(1)(iii)). It has been in those rules for over a decade and has not been used to second-guess a lessee's marketing decisions to try to impose the benchmarks at § 206.102(c) on arm's-length transactions. It is longstanding MMS policy to rely on arm's-length prices as the best measure of value, and we have no intention of changing this. We expect no expansion of the use of this provision in the future as a result of this proposed rewrite.

We propose including the term "unreasonably" because we think that limiting the proposed provision only to situations involving "bad faith" is too narrow. We do not believe that a royalty interest holder should bear the consequences of a lessee's decision to enter into a transaction that no reasonable businessman would agree to. We anticipate that such situations would be extraordinarily rare. However, we believe that the duty to market for the mutual benefit of the lessee and the lessor may be breached by unreasonable actions that do not involve knowing or deliberate bad faith. The July 1998 proposal included language that MMS would not use the provision to dispute lessees' marketing decisions made "reasonably and in good faith." Although some industry commenters initially stated that the term "good faith" was too subjective, industry commenters later recommended including this term in their proposed rewrite of this section. Thus, we do not think that the terms "unreasonable" or "bad faith" are too subjective.

Requiring a lessee to include in gross proceeds or royalty value, amounts that were improperly deducted for marketing costs, costs of putting production in marketable condition, or other costs that are the responsibility of the lessee, does not constitute "second-guessing" an arm's-length contract.

Proposed paragraph 206.102(d)(1) provides the option, where arm's-length sales follow one or more arm's-length exchanges, to apply either the arm's-length gross proceeds or the index or benchmark value appropriate to the region of production.

In the February 1998 proposal, MMS expanded gross proceeds valuation to include situations where the oil received in exchange is ultimately sold at arm's length, regardless of the number of exchanges involved. However, many industry comments claimed that tracing multiple exchanges would be overly burdensome. MMS understands the potential administrative burden of tracing. However, we also are well aware of the desire of other producers, as expressed in the meetings sponsored by Senator Breaux and other Senators on July 9 and July 22, 1998, to be able to use prices received in arm's-length sales following multiple exchanges. As a result, under this proposal, MMS would allow lessees the option of using either their arm's-length gross proceeds regardless of the number of arm's-length exchanges preceding the arm's-length sale, or the provisions of § 206.103 (index prices or, in the Rocky Mountain Region, benchmarks). This process would preserve the integrity of the rule's underlying principle of applying arm's-length gross proceeds where appropriate, but still allow use of index/benchmark values that fairly represent market value where "tracing" would be too burdensome.

The chosen option would apply for at least 2 years. The lessee would have to use this method to value all of its crude oil that the lessee or its affiliate sells at arm's length following one or more exchanges.

The option to choose between index valuation and gross proceeds is not available for oil that is not sold at arm's length after the exchange or for oil subject to non-arm's-length exchanges regardless of whether an arm's-length sale follows such an exchange. The provisions of § 206.103 would apply to such dispositions. We included these qualifications to assure that lessees would not abuse the system by choosing case-specific options or time periods for the purpose of reducing royalty, or by using non-arm's-length exchange differentials to determine royalty value. We acknowledge that exchanges between affiliates are not at arm's length. Because there is potential for inflated differentials in such exchanges, production so transferred, even if followed by an arm's-length sale, would have to be valued at the appropriate index/benchmark value under this proposal.

Proposed paragraph (d)(2) of this proposal is new and results from comments received throughout the rulemaking process. Some commenters believe that where lessees sell or transfer production to an affiliate and the affiliate resells the oil at arm's length, they should be able to apply an alternative valuation method other than tracing the production to its final disposition. In this proposal, similar to the option for sales following arm's-length exchange agreements, we provide the option to use either the ultimate arm's-length gross proceeds or the appropriate index or benchmark value. Also, proposed paragraph (d)(2)(ii) states that whichever option you select, you must apply that same option for all of your production disposed of through affiliate resales at arm's length, and that you not change this election more often than once every 2 years. Again, we believe this achieves the best balance of valuing production based on arm's-length gross proceeds and limiting administrative burdens.

Proposed paragraph (e) would be essentially the same as paragraphs (b)(2) and (3) of § 206.102 in the January 1997 proposal and paragraphs (d)(2) and (3) of the February 1998 proposal and comes directly from existing § 206.102(b)(2) and (j). We would eliminate proposed paragraph (b)(1) of the January 1997 proposal (paragraph (d)(1) of the February 1998 proposal) in connection with the change to the definition of "affiliate" explained previously in this preamble.

Proposed section 206.102(e)(2) addresses circumstances in which a purchaser does not pay the full price obtainable by the seller under the contract between them. The proposed section, which is similar to the current section 206.102(j), establishes that if the seller takes reasonable efforts to obtain the highest price to which it is entitled under the contract, then the price it obtains will be the basis for determining value.

Industry commenters suggested rewriting the section now proposed at 206.102(e)(2) to make it virtually identical to the language in section 206.102(j) of the current rule. In other words, industry suggests using the term "lessee" instead of "seller." This proposal generally requires arm's-length gross proceeds as royalty value regardless of whether the ultimate seller is the lessee, an affiliate, or another person to whom the lessee has sold or transferred production under a non-arm's-length contract. All of these persons would come within the term "seller." MMS therefore would retain this term instead of using the term "lessee."

Section 206.103 How Do I Value Oil That Is Not Sold Under an Arm's-Length Contract?

In the February 1998 proposal, this section replaced paragraph 206.102(c) of the January 1997 proposal. This proposal includes a few changes in this section as explained below. This section would deal specifically with valuation of oil you could not value under § 206.102 because the oil is not ultimately sold at arm's length or is otherwise excepted under § 206.102. It

may also apply where you have elected one of the options available at § 206.102(d)(1) or (2).

Also, paragraph 206.102(c)(1) of the January 1997 proposal would have permitted you an option if you first transferred your oil production to an affiliate and that affiliate or another affiliate disposed of the oil under an arm's-length contract. The option was to value your oil at either the gross proceeds accruing to your affiliate under its arm's-length contract or the appropriate index price. For the reasons discussed earlier, we have reinserted that option in this proposal under paragraph 206.102(d)(2). MMS believes that where arm's-length transactions satisfying the provisions of § 206.102 occur, royalty value generally should be the arm's-length gross proceeds. However, providing this option should afford some administrative relief to lessees while assuring receipt of fair royalty values.

We received various comments about use of ANS spot prices. Most industry commenters said that because there are significant differences between ANS and California crudes in terms of quality, product yield, transportation modes and distances, and timing of production versus delivery, the ANS spot price is not a good value indicator for California crude oil production. The State of California and City of Long Beach, on the other hand, continue to endorse the use of ANS spot prices. They indicate that ANS spot prices are used in many arm's-length transactions and that ANS crude constitutes a large percentage of California refinery feedstock. MMS's own experience, including participation in the interagency task force investigating California oil undervaluation, shows that ANS crude frequently has been used by industry as a valuation benchmark for valuing California crudes. Also, because of the control of the pipeline transportation network in California by a few companies who also act as purchasers of a large portion of California crude oil production, the use of posted prices or contracts based on postings as a basis for valuing crude disposed of at other than arm's-length is questionable. We continue to believe that, with proper adjustments for location and quality differences, the ANS spot price is the best available measure of royalty value for Federal oil production in California that is not sold at arm's length.

Paragraph 206.103(b) would apply to production from leases in the Rocky Mountain Region, a defined term. As discussed above, production in the Rocky Mountain Region is controlled by relatively few companies, and the number of buyers is more limited than in the Texas, Gulf Coast, or Midcontinent areas. As a result, there is less spot market activity and trading in this area due to the control over production and refining. The majority of written comments we received, as well as oral comments in our public meetings, agreed that a separate valuation procedure is needed for the Rocky Mountain Region. For these reasons, we propose the following valuation hierarchy for the Rocky Mountain Region:

(1) As in the February 1998 proposal, if you have an MMS-approved tendering program (a defined term), the value of production from leases in the area the tendering program covers would be the highest price bid for tendered volumes. Under your tendering program you would have to offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. You also would have to receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

MMS added the several qualifications stated above to ensure receipt of market value under tendering programs. First, as provided in the February 1998 proposal, royalty value would be the highest price bid rather than some other individual or average value. Several commenters said this is inappropriate because it is possible that a single bidder may only bid on some small portion of the tendered volumes at a high price, but this price would then apply to all tendered volumes. We continue to believe, however, that to assure receipt of market value, value must be based on the highest bid received.

Second, you would have to offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could abuse the system for Federal royalty or State tax payment purposes. MMS originally chose 33⅓ percent as the minimum because it exceeded the typical combined Federal royalty rate and effective composite State tax and royalty rates for onshore oil leases by roughly 10 percent. We received various comments that this figure was too high and that it was not appropriate to consider State royalties, since they would not be payable on Federal leases. MMS recognizes this fact but also notes that for the oil-producing states in the Rocky Mountain Region the combined Federal royalty rate and state composite effective tax rate on Federal oil production typically ranges from about 17 to 27 percent. These percentages do not include state royalty rates. In this proposal, we thus chose 30 percent, or just above the high end of the royalty and tax range, as the minimum percentage the lessee would have to tender for sale to assure that some of the lessee's equity share of production generally was involved. Likewise, the tendering program would be required to include non-Federal lease production volumes in the 30 percent determination to ensure that the program isn't aimed at limiting Federal royalty value.

Third, as in the February 1998 proposal, to ensure receipt of competitive bids, your tendering program would have to result in at least three bids from bidders who do not have their own tendering programs covering some or all of the same area. In response to the February 1998 proposal, we received several comments that requiring three bidders was too stringent and that in many cases there simply would not be that many qualified bidders. We have reviewed this criterion and continue to believe that a minimum number of bidders is essential to ensure receipt of market value. We believe that at least three bidders are needed to provide an adequate measure of market value and have retained this provision in this proposal. Further, MMS is concerned about the possibility of cross-bidding between companies at below-market prices, which could otherwise satisfy the minimum number of bidders requirement. That is why we have retained the stipulation that bids would have to come from bidders who do not also have their own tendering programs in the area.

(2) As in the February 1998 proposal, for the second method in the valuation hierarchy for the Rocky Mountain Region, value would be the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts would have to exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

Under the February 1998 proposal, MMS proposed this method as the next alternative if a qualified tendering program did not exist. It is an effort to establish value based on actual transactions by the lessee and its

affiliate(s). We received a number of comments during the rulemaking process that MMS should look not only to sales by the lessee, but also purchases a lessee and its affiliates make in the field or area. Just as for the tendering program, MMS believes a floor percentage of the lessee's and its affiliates' production should be set to prevent any abuse. Although we received several comments that the 50 percent minimum figure is too high, it is not intended to be a more stringent standard than the 30 percent floor associated with the tendering program. That is because the 50 percent floor would apply to the lessee's and its affiliates' sales *and* purchases in the field or area, rather than just sales as in the tendering program. For example, Company A produces 10,000 barrels of crude oil in a given field during the production month. Company A sells 1,000 barrels under an arm's-length contract. Company A also has a refining affiliate, Company B, that purchases the remaining 9,000 barrels of Company A's production and 5,000 barrels of oil under arm's-length purchase contracts with other producers in the same field. Together the arm's-length sales by Company A and the arm's-length purchases by its affiliate, Company B, are 6,000 barrels, or 60 percent of the lessee's production in the field that month. The volume-weighted arm's-length gross proceeds accruing to Company A and paid by Company B for these 6,000 barrels would represent royalty value for the 9,000 barrels of Company A's Federal lease production in the field that could not be valued under § 206.102.

This proposal would continue to require using the unadjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's and its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We received several comments that this would result in improper valuation of some oil that was significantly different in quality than that associated with the "average" oil. However, we believe that production in the same field or area generally would be similar in quality. Further, given that these sales and purchases would have to be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable-volume contracts.

MMS received several industry comments that the proposed rule would cause hardships for producers who have marketing, but not refining, affiliates. The marketing affiliate takes the producing affiliate's production and also buys production from various other sources before reselling or otherwise disposing of the combined volumes. Section 206.102 of the February 1998 proposal would have required the producer to base royalty value on its marketing affiliate's various arm's-length sales and allocate the proper values back to the Federal lease production. Many commenters said this "tracing" would be difficult at best, but others wanted the opportunity to do so. One commenter suggested that as an alternative the lessee should be permitted to base the value of its production on the prices its marketing affiliate pays for crude oil it buys at arm's length in the same field or area.

We cannot agree with this proposal because an overriding general premise of this rulemaking is that where oil ultimately is sold at arm's length before refining, it should be valued based on the gross proceeds accruing to the seller under the arm's-length sale (with the option to use index or benchmark values under some circumstances as discussed earlier). This means the marketing affiliate's arm's-length resale should form the basis for valuing the producing affiliate's production. To do otherwise would be inconsistent with the way arm's-length resales are treated elsewhere in this proposal.

(3) As in the February 1998 proposal, if you could not apply either of the first two valuation criteria for the Rocky Mountain Region, value would be the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, for deliveries during the production month.

This paragraph is very similar to paragraph 206.102(c)(2)(i) of the January 1997 proposal. The main difference is that rather than using NYMEX futures prices, we apply Cushing spot prices in this proposal, as in the February 1998 proposal. This was due to an industry comment that since Cushing spot and NYMEX futures prices track closely over time and that we propose to use spot prices in the other two valuation regions, using the spot price in the Rocky Mountain Region would lend consistency with no downside effects. MMS proposes to make this the third method, to be used only if the first two do not apply, because of distances between Rocky Mountain Region locations and Cushing, Oklahoma, and the additional difficulties in deriving location/quality differentials.

(4) If you should demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) would result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

This method is the last alternative and would be intended for use only in very limited and highly unusual circumstances. We believe there should be very few such alternative valuation methods, and each one should be subject to careful review.

We received several comments that this option should be offered nationwide. However, we believe this is inappropriate because valid spot prices for which reasonable location and quality adjustments may be made are available throughout the rest of the country. While the Cushing spot price likewise is valid, the remoteness of the Rocky Mountain Region may in some cases cause such severe difficulties in making reasonable location/quality adjustments that an alternative method may be warranted.

Paragraph 206.103(c) would apply to production from leases not located in California, Alaska, or the Rocky Mountain Region. MMS proposes that value be the average of the daily mean *spot* prices published in an MMS-approved publication:

(1) For the market center nearest your lease for crude oil similar in quality to that of your production. For example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils. Their quality specifications differ significantly, and you would have to use the spot price for the oil that is similar to your production; and

(2) For deliveries during the production month.

You would calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. You would use only the days and corresponding spot prices for which such prices are published. You would be *required* to adjust the value for applicable location and quality differentials, and you *could* adjust it for transportation costs, under § 206.112 of this subpart.

There may be cases where the nearest market center may not be the appropriate one for you to use because the quality of your production better matches that typically traded at another, more distant market center. In such cases, you could use this more distant market center to value your production.

MMS proposes changing the valuation procedure to use spot, rather than NYMEX, prices, for several reasons. First, we believe that when the NYMEX futures price, properly adjusted for location and quality differences, is

compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location. Although industry continued to object to any form of valuation that begins with values away from the lease, we received several comments that using the spot price rather than NYMEX futures prices would improve administration of the rule with no apparent adverse effects.

MMS is not proposing any of the alternatives here (or for California and Alaska) that it did for the Rocky Mountain Region where oil cannot be valued under proposed § 206.102. That is because, unlike the Rocky Mountain Region, there are meaningful published spot prices applicable to production in the other regions (e.g., Cushing, Oklahoma; St. James, Louisiana; Empire, Louisiana; Midland, Texas; Los Angeles/San Francisco, California). In the United States, with the exception of the Rocky Mountain Region, spot and related index-type prices drive the manner in which crude oil is bought and traded. Spot prices play a significant role in crude oil marketing. They form a basis on which deals are negotiated and priced and are readily available to lessees via price reporting services. We believe spot prices are the best indicator of value for production from leases outside the Rocky Mountain Region. Therefore, it is not necessary to consider other, less accurate means of valuing production not sold at arm's length for regions outside the Rocky Mountains.

We received numerous comments about MMS inappropriately moving the value of production away from the lease without permitting deduction of marketing costs or the value added by the lessee and its affiliates. This proposal would not allow the costs of marketing production as a deduction from index prices or prices based on gross proceeds. The requirement to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is an implied covenant of the lease, and is not unique to Federal leases. See Section III for more detail. With respect to the costs of putting production into marketable condition, see, e.g., *Mesa Operating Limited Partnership* v. *Department of the Interior*, 931 F.2d 318 (5th Cir. 1991), cert. denied, 502 U.S. 1058 (1992); *Texaco, Inc.* v. *Quarterman*, Civil No. 96–CV–08–J (D. Wyo. 1997). It follows that any payments the lessee receives for performing such services are part of the value of the production and are royalty bearing. MMS is not altering this principle in this proposal. This proposal, in § 206.106 discussed below, simply would make express the longstanding implied covenant to market.

Proposed paragraph 206.103(d) is paragraph 206.102(c)(3) of the January 1997 proposal with minor clarifying word changes. It states that if MMS determines that any of the index (spot) prices are no longer available or no longer represent reasonable royalty value, then MMS would exercise the Secretary's authority to establish value based on other relevant matters. These could include, for example, well-established market basket formulas.

Proposed paragraph 206.103(e) addresses situations where you transport your oil directly to your or your affiliate's refinery and believe that use of a particular index price is unreasonable. In that event, you could apply to the MMS Director for approval to use a value representing the market at the refinery. Based on the lack of comments on this provision, which was included in the February 1998 proposal, we included it in this proposal with only minor clarifying changes.

Section 206.104 What Index Price Publications Are Acceptable to MMS?

Section 206.104 of this proposal is paragraphs (c)(4), (c)(5), and (c)(6) of § 206.102 from the January 1997 proposal with an added reference to spot prices for crude oil other than ANS. The few comments that MMS received on this section simply said that industry should have some input into which publications are accepted by MMS. We have included this section in this proposal unchanged. MMS would consult with industry groups as appropriate in deciding which publications should be used for index pricing.

Section 206.105 What Records Must I Keep To Support My Calculations of Value Under This Subpart?

Proposed section 206.105 specifies that you must be able to show how you calculated the value you reported, including all adjustments. This is important because if you were unable to demonstrate on audit how you calculated the value you reported to MMS, you could be subjected to sanctions for false reporting.

Section 206.106 What Are My Responsibilities To Place Production Into Marketable Condition and To Market Production?

Proposed section 206.106 is paragraph 206.102(e)(1) of the January 1997 proposal with minor clarifying word changes. It is unchanged from section 206.106 of in the February 1998 proposal. It says you must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. We received many comments from industry that MMS is inappropriately trying to force industry to bear all marketing costs and that MMS should share in these costs. Comments from States supported the "duty to market" concept. We discussed this issue previously. MMS is not altering the lessee's obligation to market production at no cost to the lessor in this proposal.

The January 1997 proposal also included, at paragraph 206.102(e)(2), a provision regarding the lessee's general responsibility to pay interest if the lessee reports value improperly and underpays royalties, or to take a credit for overpaid royalties. We deleted this provision in this proposal because these matters are already covered in other parts of MMS's regulations.

Section 206.107 How Do I Request a Value Determination?

This section of the February 1998 proposal provided that lessees may ask MMS for valuation guidance or propose a valuation method to MMS. It stated that MMS will promptly review the proposal and provide the requestor with a nonbinding determination.

During the workshops help in March and April 1999 and in their written comments, industry representatives proposed a provision under which MMS would provide binding valuation determinations on a case-by-case basis. Among other provisions, the determination would have no precedential value beyond the facts in the case. Under the industry proposal, the MMS would have 180 days from the date the lessee submitted the request to make a decision, otherwise the request would be deemed approved. An MMS decision on a request would be subject to the existing appeals process.

Industry commenters cited the need for obtaining timely valuation determinations that can be relied on for satisfying royalty obligations. Industry commenters referred MMS to procedures used by other Federal agencies to provide advance guidance on how to comply with their regulations.

State commenters expressed general opposition to or concerns with binding determinations, stating that information could be inaccurate, incomplete, or dated and that MMS should have discretion over issuing any binding

determinations. A public interest group indicated it would support a binding determination as long as all of the information submitted is correct and verifiable and that the determination only applies to the requestor. A congressional commenter stated that this issue remains of concern and needs to be developed further.

We disagree with the industry comment to make issuing a determination mandatory. In the vast majority of cases, the lessee will receive a value determination either from the Assistant Secretary, Land and Minerals Management, or from MMS staff. However, there are some situations in which a value determination is not appropriate. In proposed section 206.107(b)(3), we identify some situations in which MMS typically will not issue a value determination. These include: (1) Requests based on hypothetical situations; (2) matters that are inherently factual in nature; and (3) matters that are the subject of pending litigation or administrative appeals.

We also disagree with the industry comment that there should be a time limit for MMS responses to requests for value determinations. None of the other Federal agency processes identified by the industry commenters includes a time limitation.

We agree with the industry proposal to allow for lessees to propose a valuation method. We also agree that lessees should be able to rely on valuation methods they propose unless and until MMS modifies or rejects the proposal. However, industry commenters proposed that the lessee's proposed method would be automatically adopted if MMS failed to timely issue a determination.

We disagree with this comment. First, we did not find a similar approach in any of the other Federal agency procedures identified by the industry commenters. Second, such a system would be open to abuse. A lessee could propose an unreasonable valuation method and rely upon it until MMS had time to evaluate it and reject it. Further, if MMS were unable to respond within the stated time frame, it would be unable to correct an improper valuation method and the consequent undervaluation of oil.

The industry commenters proposed that lessees could appeal determinations with which they disagreed. A State representative commented that only bills (*i.e.*, orders to pay) should be appealable.

We agree with the State commenter. Under the proposed rule, value determinations issued by the Assistant Secretary would be the final action of the Department and subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706. Additionally, we propose in section 206.107(d)(2) that value determinations by MMS staff would not be subject to administrative appeal. A lessee that disagrees with a value determination by MMS staff may either request reconsideration or choose not to follow the determination, since it would not be binding on the lessee. However, if a lessee, either simultaneously or later, receives an order to pay on the same legal basis as the MMS staff value determination, the lessee may appeal the order under 30 CFR part 290 subpart B. Lessees should not be able to invoke the administrative appeal process until they receive actual orders to pay.

Industry commenters suggested that the Department should only change a value determination prospectively. A public interest group recommended that MMS should be able to audit the value determination requests, and if MMS finds the information provided by the lessee to be incomplete or incorrect, could change the determination and penalize the lessee.

We agree that as a general matter, value determinations may be changed only prospectively. The proposed rule expressly states that a value determination issued by the Assistant Secretary "is binding on both you and MMS until the Assistant Secretary modifies or rescinds it."

The proposed rule also provides that a value determination by MMS staff is binding on MMS and delegated States with respect to the specific situation addressed in the determination unless the MMS Director or the Assistant Secretary modifies or rescinds it. This contrasts with value determinations signed by the Assistant Secretary, because MMS staff value determinations are not binding on the lessee. This means that MMS will not issue an order inconsistent with a value determination by MMS staff, but if a lessee does not follow that value determination, it may receive an order requiring it to pay royalties on the same basis as the value determination.

Under proposed paragraph (e), a change in applicable statutes or regulations on which a value determination is based would supersede the value determination, regardless of whether the MMS Director or the Assistant Secretary modifies or rescinds the value determination. This would apply to all value determinations, including those signed by the Assistant Secretary, and would apply to all periods to which the change in statute or regulation applies.

Under proposed paragraph (f), the MMS Director or the Assistant Secretary generally would not modify or rescind a value determination retroactively (regardless of whether the Assistant Secretary or MMS staff issued it), unless (1) there was a misstatement or omission of material facts; or (2) the facts subsequently developed are materially different from the facts on which the guidance was based. This reflects the principle that a value determination should not stand if it was obtained through fraud or knowing submission of false information, or if the underlying factual premises on which a value determination is based are not correct. Lessees cannot bind the government through fraudulent means or through determinations that are not based on the actual facts. If it were not possible to retroactively modify or withdraw a value determination in such situations, the government and the public would be open to serious abuse. (MMS generally would not audit the facts presented in a value determination request at the time of the request, but instead would audit these facts as appropriate when auditing payments made under the determination.)

Proposed section 206.107(g) provides that MMS may make requests and replies available to the public subject to the confidentiality requirements of proposed section 206.108.

Section 206.108 Does MMS Protect Information I Provide?

As noted in the February 1998 proposal, Section 206.108 is paragraph 206.102(h) of the January 1997 proposal, but with minor wording changes for clarity.

Section 206.109 When May I Take a Transportation Allowance in Determining Value?

Proposed Section 206.109 includes the substance of § 206.104 of the January 1997 proposal with only minor wording changes. However, in this proposal, we removed the last two sentences of paragraph (a) regarding transportation of oil that MMS takes as royalty in kind. These provisions were unnecessary because this issue is addressed in the royalty-in-kind regulations in § 208.8.

This section also includes the provision that you may not take a transportation allowance greater than 50 percent of the value of the oil determined under this subpart. We received several comments that MMS should relax this limitation. However, paragraph 206.109(c)(2) would continue the existing practice that you may ask MMS to approve a larger transportation allowance by demonstrating that your

reasonable, actual, and necessary costs exceed the 50 percent limitation.

Sections 206.110 and 206.111 How Do I Determine a Transportation Allowance Under an Arm's-Length Transportation Contract, and How Do I Determine a Transportation Allowance Under a Non-Arm's-Length Transportation Contract?

Proposed sections 206.110 and 206.111 are paragraphs 206.105(a) and (b), respectively, of the existing rule, rewritten to reflect plain English.

Based on several comments received during the most recent workshops, we are proposing two changes to the calculation of actual transportation costs under § 206.111(g). First, under the current regulations, a change in ownership does not alter the depreciation schedule. That is, a transportation system cannot be depreciated more than once by one or more owners. Proposed paragraph § 206.111(g)(2) would state that an arm's-length change in ownership of a transportation system would result in a new depreciation schedule for purposes of the allowance calculation. If you or your affiliate purchase an existing transportation system at arm's length, your initial capital investment is equal to your purchase price of the transportation system.

Second, proposed paragraph § 206.111(g)(3) would provide that even after a transportation system has been, depreciated below a value equal to ten percent of your original capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your initial capital investment in the transportation system multiplied by a rate of return under paragraph (h) of this section. Under the current regulations a lessee is not allowed to claim any depreciation or return on capital once a pipeline is fully depreciated. We are proposing under paragraph § 206.111(g)(3) to allow lessees to continue to claim a return on a portion of their capital investment regardless of the pipeline's depreciation status.

Paragraph § 206.111(g)(4) (existing paragraph § 206.105(b)(2)(B) of the current regulations), provides an alternative for transportation facilities first placed in service after March 1, 1988. We are not proposing any change to this paragraph, but we specifically request comments on whether this paragraph should be retained in the final rule. We are asking whether this paragraph is necessary in light of the changes we are proposing to the calculation of actual transportation costs and because it is our understanding that this paragraph has been used in few, if any, situations.

The existing rule uses the Standard and Poor's Industrial BBB bond rate as an allowable rate of return on capital investment for producers who transport oil through their own pipelines (see 30 CFR 206.157(b)(2)(v)). Two commenters from affiliated companies said the use of the BBB bond rate as an allowable return within the calculation of actual costs of transportation is arbitrary and would be considered unacceptable by any court. They said the actual rate should be much higher, reflecting the real rates of return seen in the Gulf of Mexico, and particularly in deep waters to recognize additional risk. They assert that the current rate of return based on one times BBB is too low to accurately reflect a company's cost of capital. At the public workshops held in March and April 1999 and in their written comments, industry commenters stated that the current rate does not adequately account for the cost of equity or the inherent risks of transportation systems. Industry commenters suggested that the rate should be two times the Standard and Poor's BBB bond rate.

While MMS is not proposing specific changes to the rate of return used in calculating the return on investment under § 206.111(h), we specifically request comments on whether we should modify the rate of return and, if so, what that rate should be. MMS specifically requests comment on modifying the rate of return based on multiples of the Standard and Poor's BBB bond rate, such as 1.5 times or 2 times the BBB bond rate.

A member of Congress commented that the rate of return should be based on a company's weighted average cost of capital, taking into account both a company's return on debt and return on equity similar to the method used in formal rate making for electric utilities. We request comments on using either a company-specific or industry-wide weighted cost of capital to determine the rate of return. Your comments should address the administrative burden of verifying an individual company's or industry-wide annual weighted average cost of capital.

We also request comments on any other method of determining the appropriate rate of return applicable to transportation systems for oil production from Federal lands. Consistent with MMS's goals in this rulemaking, any proposed methods should provide certainty and simplicity while assuring that the public receives market value for its royalty interest in Federal lease oil production.

In the most recent round of comments, industry commenters proposed that transportation allowances in non-arm's-length situations should be based principally on the value of the service. That is, the allowance should be based on what companies pay under arm's-length contracts. Under industry's proposal, where more than 20 percent of the pipeline volume is transported at arm's length, an annualized volume-weighted average of the arm's-length rates would be used. Where less than 20 percent of the volume is arm's-length, the current MMS actual-cost method would apply; however, the rate of return would increase from the current level to twice the Standard and Poor's BBB bond rate. Undepreciated capital investment would never be less than 10 percent of the original capital cost.

Industry commenters asserted that they only agreed to the MMS actual-cost method under the 1988 rules because of the provision to use FERC tariffs. They oppose MMS proposing to revoke use of tariffs without allowing an adequate transportation allowance rate to be deducted from the value of production at the market centers.

Comments supporting industry's position that FERC tariffs still should be permitted in lieu of actual costs include: (1) FERC's decisions regarding its jurisdiction were flawed; (2) it was unfair for pipeline owners' transportation allowances to be based on their actual costs while non-owners could use the tariff; (3) the producing affiliate does not have the records needed to calculate actual costs; (4) audit costs for industry and MMS would increase; and (5) FERC's interpretation on jurisdiction applied only to offshore pipelines.

State commenters agreed with MMS's position under the latest proposed rule. One congressional commenter stated that MMS should confer with FERC and develop a proposal that is more consistent with accepted public rate setting practices.

MMS did not adopt the industry value-of-service proposal in this proposal because we continue to believe that the cost of service is most appropriate in determining deductions for royalty purposes. This is consistent with longstanding valuation and allowance principles. However, in response to industry comments and as noted above, we propose to modify the way depreciation is claimed when a transportation facility is sold. We also propose to permit a rate of return against a minimum of ten percent of the original capital investment even after the remaining depreciable amount falls below that level. We also are asking for

comments on the appropriate rate of return to be used in transportation allowance calculations. We believe these proposed changes and requests for comments respond in a fair and balanced way to the comments received.

This supplementary proposed rule continues MMS's position that FERC tariffs should not be permitted as a substitute for actual costs in non-arm's-length situations. We continue to believe that FERC tariffs often exceed the transporter's actual costs. Further, we cannot presume FERC's reasoning to be flawed where it has determined that it does not have jurisdiction over offshore pipelines.

MMS continues to maintain that it is fair to allow a lessee with an arm's-length transportation contract to use the amount it pays to the pipeline while limiting a producer transporting over its own pipeline to its actual costs. In both cases the amount allowed represents the actual costs incurred to transport the oil.

MMS also maintains that where producing and transporting affiliates are involved, the entity claiming the allowance should be able to acquire any needed records from its affiliate. It may be true that audit costs could be somewhat higher without the FERC tariff option. However, we believe that the principle of permitting only actual costs, including a reasonable rate of return, is consistent with longstanding royalty valuation and allowance principles and fairly and reasonably protects the public interest.

We also note that even if FERC's non-jurisdictional determinations are exclusive to offshore pipelines, those pipelines involve the great majority of transportation allowance deductions for Federal royalty purposes.

Section 206.112 What Adjustments and Transportation Allowances Apply When I Value Oil Using Index Pricing?

Proposed section 206.112 describes how to adjust the index price for location differentials, quality differentials, and transportation allowances depending on how you dispose of your oil.

In the February 1998 proposal, § 206.112 contained a "menu" of possible adjustments that could apply in different circumstances, and § 206.113 prescribed which of the adjustments from the "menu" applied to specific circumstances. In this proposal, we have eliminated the "menu" and instead combined proposed §§ 206.112 and 206.113 into one section that describes what adjustments apply when using index pricing. The "menu" of options would no longer be necessary with the elimination of aggregation points and MMS-published differentials, as discussed below. This new paragraph would cover all situations regardless of lease location, so there would be no need for geographical breakdown of adjustments and allowances.

This proposal eliminates the previously-proposed location differential between the index pricing point and the market center. This is because under the valuation procedures proposed under the February 1998 proposal and continued in this proposal, the index pricing point and market center are synonymous.

Under section 206.112(b)(1) of the February 1998 proposal, MMS would have specified location/quality differentials between aggregation points and market centers. Section 206.118 of the February 1998 proposal would have required lessees to submit a Form MMS–4415, from which MMS would have calculated these differentials. In this further supplementary proposed rule, in response to the various comments received throughout the rulemaking, we have eliminated MMS-published differentials. MMS believes that lessees using index pricing generally would have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions.

If a lessee disposes of its oil through one or more exchange agreements, it ordinarily should have the information necessary to determine adjustments to the index price. If the oil is not disposed of through exchange agreements, then the lessee is physically transporting the oil either to a market center or to an alternate disposal point (such as a refinery.) In that event, the lessee would have the necessary information regarding actual transportation costs to claim the appropriate transportation allowance.

As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is eliminated from this proposal. Therefore, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

Paragraph 206.112(a) of this supplementary proposed rule would cover situations where you dispose of your production under one or more arm's-length exchange agreements. In this case, you would adjust the index price for any location/quality differentials that reflect the difference in value of crude oil between the point(s) where your production is given in exchange and the point(s) where oil is received in exchange. You could also adjust the index price to reflect any actual transportation costs between the lease and the first point where you give your oil in exchange, and between any intermediate point where you receive oil in exchange to another point where you give the oil in exchange again, and between the last point you receive oil in exchange and a market center or refinery that is not at a market center. These costs would be determined under §§ 206.110 or 206.111, depending on whether your transportation arrangement is at arm's length or not. (Note again, that if the transportation costs from the lease to the market center or alternate disposal point are already reflected in the location differential between the lease and the market center, you could not claim duplicate transportation costs.) A third adjustment discussed below (paragraph (d)) could be warranted if the quality of your lease production differs from that of the oil you exchanged at any intermediate point (for example, due to commingling at intermediate locations). This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at intermediate commingling points before your oil reaches the market center or alternate disposal point.

For example, Company A transports its production from a platform in the Gulf of Mexico to an intermediate point under an arm's-length transportation contract for $0.50 per barrel. Company A then enters into an arm's-length exchange agreement between the intermediate point and the market center at St. James, Louisiana. Company A then refines the oil it receives at the market center, so it would have to determine value using an index price under § 206.103. The arm's-length exchange agreement between the intermediate point and St. James contains a location/quality differential of $0.10 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease would be $19.40 ($20.00—$0.10—$0.50) per barrel.

Under paragraph 206.112(a), you would have to determine the differentials from each of your arm's-length exchange agreements applicable to the exchanged oil. Therefore, for example, if you exchange 100 barrels of production under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, you would separately determine the location/quality differential under each of those exchange agreements, and

apply each differential to the corresponding index price.

As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, you would total the three adjustments from those exchanges to determine the adjustment under this subparagraph. (If one of the three exchanges were not at arm's length, you would have to request MMS approval under paragraph (b) for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

Proposed paragraph 206.112(b) addresses cases where your exchange agreement is not at arm's-length. In that case, you must request approval from MMS for any location/quality adjustment.

Paragraph 206.112(c) would address cases where you transport your production directly to a market center or to an alternate disposal point (for example, your refinery), and establish value based on index prices under § 206.103.

In the case of transportation directly to a refinery, you would deduct from the index price your actual costs of transporting production from the lease to the refinery with the costs determined under §§ 206.110 or 206.111 and any quality adjustments determined by pipeline quality banks under paragraph 206.112(d). The index pricing point would be the one nearest the lease.

For example, a lessee or its affiliate in the Gulf of Mexico might transport its production directly to a refinery on the eastern coast of Texas and not to an index pricing point. Because that production is not sold at arm's length, the lessee would have to base value on the average of the daily mean spot prices for St. James, less actual costs of transporting the oil to the refinery and any quality adjustments from the lease to the refinery.

Likewise, if a lessee or its affiliate transports Wyoming sour crude oil directly to its refinery in Salt Lake City, Utah, and values the oil based on paragraph 206.103(b)(3), the lessee would have to base value on the average of the daily Cushing spot prices, less the actual cost of transporting the oil to Salt Lake City and any quality adjustments between the lease and the refinery.

When production is moved directly to a refinery and value must be established using an index, issues arise because the refinery generally is not located at an index pricing point. Consequently, the lessee does not incur actual costs to transport production to an index pricing point, and in any event, the production is not sold at arm's length at that point. The principle underlying the rules and cases granting allowances for transportation costs is that the lessee is not required to transport production to a market remote from the lease or field at its own expense. When the lessee sells production at a remote market, the costs of transporting to that market are deductible from value at that market to determine the value of the production at or near the lease. Where sales occur only at or near the lease, the question of a transportation allowance, as that term always has been understood, does not arise. However, because the lease and the index pricing point may be distant from one another, there is a difference in the value of the production between the index pricing point and the lease location. The question becomes how to determine or how best to approximate that difference in value.

In theory, one solution would be for MMS to try to derive what it would cost a lessee to move production from the lease to the index pricing point. There are, in MMS's view, several problems with such an approach. First, it would require a burdensome information collection from industry and impose substantial information collection costs on many parties to whom the resulting calculation may never be relevant. Second, in many cases it may well not be possible to obtain information on which to base such a calculation. In many instances, it is likely that no production from the lease or field is transported to the index pricing point that applies under § 206.103. Consequently, in such cases there would be no useful data on which such a cost derivation could be based.

Another possible solution, in theory, would be for MMS to derive a location adjustment between the index pricing point and the refinery. This might be possible if, for example, there are arm's-length exchanges of significant volumes of oil between the index pricing point and the refinery, and if the exchange agreements provide for location adjustments that can be separated from quality adjustments. But establishing such location adjustments on any scale again would require a burdensome information collection effort. MMS also anticipates that in many cases there would be no useful data from which to derive a location adjustment.

MMS therefore believes that the best and most practical proxy method for determining the difference in value between the lease and the index pricing point is to use the index price as value at the refinery, and then allow the lessee to deduct the actual costs of moving the production from the lease to the refinery. This is not a "transportation allowance" as that term is commonly understood, but rather is part of the methodology for determining the difference in value due to the location difference between the lease and the index pricing point. Nevertheless, it is appropriate to include this deduction for situations in which index pricing is used.

MMS included this same method in the January 1997 proposal and did not receive any suggestions for alternative methods. We received few comments on this issue in response to the February 1998 proposal. However, one State commented that this method could result in calculation of inappropriate differentials. Absent better alternatives, MMS believes this method is the best and most reasonable way to calculate the differences in value due to location when production is not actually moved from the lease to an index pricing point.

However, if a lessee believes that applying the index price nearest the lease to production moved directly to a refinery results in an unreasonable value based on circumstances of the lessee's production, paragraph 206.103(e) would allow MMS to approve an alternative method if the lessee could demonstrate the market value at the refinery. Although we received a few comments that MMS should not allow such requests, MMS believes it should leave this opportunity open for those limited cases where the procedure discussed above may be shown to be inappropriate. MMS would do a thorough review and analysis of any such requests and would only approve them where the proper alternative value or procedure has been clearly demonstrated.

It would be the lessee's burden to provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence could include, but not be limited to: (1) Costs of acquiring other crude oil at or for the refinery; (2) how adjustments for quality, location, and transportation were factored into the price paid for the other oil; (3) the volumes acquired for the refinery; and (4) other appropriate evidence or documentation that MMS would require. If MMS approved an alternative value representing market value at the refinery, there would be no deduction for the costs of transporting the oil to the refinery unless specifically identified in the Director's approval. Whether any quality adjustment is available would depend on whether the oil passes through a pipeline quality

bank or if an arm's-length exchange agreement used to get oil to the refinery contains a separately-identifiable quality adjustment.

Paragraph 206.112(c) would also cover situations where you transport your oil directly to an MMS-identified market center. To arrive at the royalty value, you would adjust the index price by your actual costs of transportation under §§ 206.110 and 206.111. A second adjustment discussed below (paragraph (d)) may be warranted if the quality of your lease production differs from the quality of the oil at the market center. This adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at intermediate commingling points before your oil reaches the market center.

For example, Company A transports its production from a platform in the Gulf of Mexico to St. James, Louisiana, under a non-arm's-length transportation contract with its affiliate. The actual cost of transporting production under § 206.111 is $0.50 per barrel. The average of the daily spot prices at St. James is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease would be $19.50 ($20.00—$0.50) per barrel.

In the February 1998 proposal at paragraph 206.112(e), and in this proposal at paragraph 206.112(d), MMS added a separate adjustment to reflect quality differences based on quality banks between your lease and an alternate disposal point or market center applicable to your lease. You would make these quality adjustments according to the pipeline quality bank specifications and related premia or penalties that may apply in your specific situation. If no pipeline quality bank applies to your production, then you would not take this quality adjustment. Likewise, if a quality adjustment is already contained in an arm's-length exchange agreement from the lease to the market center, you could not also claim a pipeline quality bank adjustment from the lease to an intermediate point or the market center. MMS believes this additional adjustment would more accurately reflect actual quality adjustments made by buyers and sellers.

Also, in the absence of a quality bank, the proposal does not provide for any adjustments for quality differences between the indexed crude oil and the oil produced at the lease. MMS intentionally limited such adjustments only to those cases where a quality bank applies to the lessee's production. MMS does not want to be in a position of permitting quality adjustments where they may not be warranted. Further, quality adjustments would be reflected in the location differentials applied by lessees from their arm's-length exchange agreements.

In this proposal, paragraph 206.112(e) contains language from proposed paragraph 206.112(f) of the February 1998 proposal. It states that the term "market center" means Cushing, Oklahoma, when determining location/quality differentials and transportation allowances for production from leases in the Rocky Mountain Region.

Paragraph 206.112(f) of this proposal addresses situations where you may not have access to differentials between the lease and the alternate disposal point or market center, or you may not have access to the actual transportation costs from the lease to the alternate disposal point or market center. In such cases, which should be infrequent, MMS would permit you to request approval for a transportation allowance or quality adjustment. In determining the allowance for transportation from the lease to the alternate disposal point or market center, MMS would look to transportation costs and quality adjustments reported for other oil production in the same field or area, or to available information for similar transportation situations. Under paragraph 206.112(b), you also would have to request approval from MMS for any location/quality adjustments when you have a non-arm's-length exchange agreement.

In this proposal, we added a new paragraph (g) to § 206.112 to clarify that regardless of how you dispose of your production and which adjustments might otherwise apply, you would not be able to use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under § 206.112. Moreover, the structure of the proposal is not susceptible to the problem of "double dipping" quality adjustments as described by one commenter. Under this proposal, for example, if you disposed of your production under an arm's-length exchange agreement, but transported the oil away from the lease to an intermediate point before giving it in exchange, you would not be able to claim a transportation allowance between the point where you gave the oil in exchange and the point you received oil back in exchange if you used a location differential for the segment between those two points.

This same principle would apply for all adjustments addressed in § 206.112. That is, any time a lessee took one of the listed adjustments, it could not duplicate any portion of that adjustment as part or all of any other adjustment that otherwise would be allowable.

Section 206.113 How Will MMS Identify Market Centers?

Proposed section 206.113 is paragraph 206.105(c)(8) of the January 1997 proposal and Section 206.115 of the February 1998 proposal except that we have eliminated the identification of aggregation points and made minor wording changes. MMS proposes to eliminate the list of aggregation points identified in the January 1997 proposal in conjunction with the elimination of Form MMS–4415.

In the preamble to the January 1997 proposal, MMS listed market centers for purposes of the rule. That list included Guernsey, Wyoming. MMS proposes to eliminate Guernsey as a market center for the reasons given earlier. Also, we received comments that simply using Los Angeles and San Francisco as market centers for ANS pricing purposes was too broad and that multiple, local delivery points in and near these two cities should be included in the market center definition. So, for purposes of this rulemaking, the Los Angeles market center would includes Hines Station, GATX Terminal, and any of the refineries located in Los Angeles County. The San Francisco market center would include Avon, or any of the refineries located in Contra Costa or Solano Counties.

Section 206.114 What Are My Reporting Requirements Under an Arm's-Length Transportation Contract?

Proposed Section 206.114 is paragraph 206.105(c)(1) of the existing rule rewritten in plain English, and is the same as Section 206.116 in the February 1998 proposal.

Section 206.115 What Are My Reporting Requirements Under a Non-Arm's-Length Transportation Contract?

Proposed Section 206.115 is paragraph 206.105(c)(2) of the existing rule rewritten in plain English, except paragraph 206.105(c)(2)(iv) is deleted as described in the preamble to the January 1997 proposal. This also corresponds to Section 206.117 in the February 1998 proposal.

Section 206.116 What Interest and Assessments Apply If I Improperly Report a Transportation Allowance?

Section 206.116 of this proposal is paragraph 206.105(d) of the existing rule rewritten in plain English, and also corresponds to Section 206.119 of the February 1998 proposal.

Section 206.117 What Reporting Adjustments Must I Make for Transportation Allowances?

Section 206.117 of this proposal is paragraph 206.105(e) of the existing rule rewritten in plain English, and corresponds to Section 206.120 of the February 1998 proposal.

Section 206.118 Are Costs Allowed for Actual or Theoretical Losses?

Section 206.118 of this proposal is paragraph 206.105(f) of the existing rule rewritten in plain English, and corresponds to Section 206.121 of the February 1998 proposal. Reference to the FERC- or State regulatory agency-approved tariffs was deleted in the January 1997 proposal, as it is in this proposal. Although we received a comment that actual or theoretical losses are real costs of transportation, this section would simply continue longstanding policy.

Section 206.119 How Are the Royalty Quantity and Quality Determined?

Section 206.119 of this proposal is § 206.103 of the existing rule rewritten in plain English, and corresponds to Section 206.122 of the February 1998 proposal.

Section 206.120 How Are Operating Allowances Determined?

Section 206.120 of this proposal is § 206.106 of the existing rule rewritten in plain English, and corresponds to Section 206.123 of the February 1998 proposal.

V. Procedural Matters

Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.rmp.mms.gov. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may also comment via the Internet to www.rmp.mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Further Supplementary Proposed Rulemaking Establishing Oil Value for Royalty Due on Federal Leases, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at www.rmp.mms.gov. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this further supplementary proposed rule is not an economically significant regulatory action. The Office of Management and Budget (OMB) has made the determination under Executive Order 12866 to review this further supplementary proposed rule because it raises novel legal or policy issues.

This further supplementary proposed rule would not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of Government. We estimate that the economic impact of this further supplementary proposed rule would be about $63.5 million. This estimate represents the net impact of the proposal accounting for both estimated costs and benefits. This proposal would not create inconsistencies with other agencies' actions and would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

The Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a Small Entity Compliance Guide is not required. This proposed rule would not affect a substantial number of small businesses. Approximately 800 businesses pay royalties to MMS on oil produced from Federal leases. MMS believes only 45 of the 800 total payors would pay additional royalties under this proposed rule. We further believe that only nine of those 45 payors are small businesses as defined by the U.S. Small Business Administration. MMS further estimates that 97 percent of the remaining 755 payors, or 732, would be considered small businesses. The nine payors that we consider small businesses that would be affected by the rule make up less than 1.15 percent of all the payors reporting to MMS on oil produced from Federal leases and less than 1.25 percent of all the small businesses reporting to MMS on oil produced from Federal leases. A Regulatory Analysis is available upon request.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This further supplementary proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Would not have an annual effect on the economy of $100 million or more;

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule would not change the relationship between MMS, and State, local, or tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630

MMS received a comment on the February 1998 proposal that the proposed rule deprives lessees of their constitutionally protected property rights when royalties are paid based on a higher than actual lease sales price. This is a price that the lessee would find impossible to actually realize because it includes returns on investments and on downstream marketing profits. The commenter asserted that because such a taking would occur if the rule is approved, MMS must prepare a Takings Implication Assessment pursuant to Executive Order 12630.

The guidelines under Executive Order 12630 require a Federal agency to justly compensate a private property owner if private property is taken for public use. Disagreements over methods of valuing production for royalty purposes do not change the property relationship

between a lessee and the Federal lessor, and do not operate to deprive the lessee of any property interest. Even if a particular valuation method is held to be unlawful or unauthorized, the remedy is to overturn the unauthorized agency action. This does not have constitutional takings implications.

In accordance with Executive Order 12630, the rule would not have significant takings implications. This rule would not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

Executive Order 13132 (Federalism)

In accordance with Executive Order 13132, this further supplementary proposed rule does not have Federalism implications. The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with State governments on a percentage basis as prescribed by law. This further supplementary proposed rule would not alter any lease management or royalty sharing provisions. It would determine the value of production for royalty computation purposes only. This further supplementary proposed rule would not impose costs on States or localities. Costs associated with the management, collection and distribution of royalties to States and localities are currently shared on a revenue receipt basis. This further supplementary proposed rule would not alter that relationship.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, we are soliciting comments on information collections which are associated with this further supplementary proposed rulemaking establishing oil value for royalty due on federal leases. Written comments should be received on or before January 31, 2000.

If you wish to comment, please send your comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–NEW), 725 17th Street, NW, Washington, D.C. 20503.

You should also send copies of these comments to us. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, CO 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

For all of the following information collections, we estimate that there will be 45 respondents who will submit 85 responses. The frequency of response varies by rulemaking section. We estimate the annual proposed burden to be 17,711.5 hours. Based on $50 per hour, the total cost would be $885,575. For estimating the burden on industry, we divided the information collection requirements of the further supplementary proposed rule into five areas. A table for each of the areas and specific details follow:

a. Proper Valuation of Oil Not Sold at Arm's-Length

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of respondents	Burden	Annual burden hours
206.103	Calculate value of oil not sold at arm's-length.	Monthly	45	Category 1—222.5 hours; Category 2—116 hours; Category 3—31.25 hours.	4,231.5

For the reporting requirements associated with Section 206.103, we estimate that there are 45 respondents (lessees of Federal oil leases) that will be required to perform certain calculations and adjustments monthly. We estimate that the total initial burden for all lessees without arm's-length transactions is 4,231.5 hours at a cost of $211,575.

We anticipate that companies would have to sort through their exchange agreement contracts before the relevant ones can be compiled and the required information extracted and used in their royalty computations. We believe the further supplementary proposed rule would impact approximately 45 Federal oil lessees that would be required to use index pricing. For purposes of estimating the burden impact of this further supplementary proposed rule, we have categorized these lessees into three categories:

Category 1 lessees are companies with over 30 million barrels of annual production (this included 13 Federal lessees from our impact analysis).

Category 2 lessees are companies with annual domestic production between 10 and 30 million barrels (this included four Federal lessees from our impact analysis).

Category 3 lessees are companies with less than 10 million barrels of annual domestic production (this included 28 Federal lessees from our impact analysis).

We estimate that Category 1 lessees each would have approximately 1,000 exchange agreement contracts to review to identify the relevant contracts needed for proper valuation under this further supplementary proposed rule. Of those contracts, we estimate that each company would have to use 250 exchange agreements in its royalty reporting. We estimate that the reporting burden for a Category 1 company is 222.5 hours, including 80 hours to aggregate the exchange agreement contracts to a central location, 80 hours to sort and identify the relevant ones, and 62.5 additional hours to extract the relevant information and apply it in reporting royalties. We estimate the total reporting burden for the 13 Category 1 companies would be 2,892.5 hours (222.5 hours x 13 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $144,625.

We estimate that Category 2 lessees each would have approximately 250

exchange agreement contracts to review to identify the relevant contracts needed for valuation under this further supplementary proposed rule. Of those contracts, we estimate that each Category 2 company would have to use 63 exchange agreements. We estimate that the reporting burden for a Category 2 company would be 116 hours, including 60 hours to aggregate the exchange agreement contracts to a central location, 40 hours to sort them, and 16 additional hours to extract the relevant information and apply it in reporting royalties. For the 4 Category 2 companies, we estimate the total burden would be 464 hours (116 hours x 4 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $23,200.

We estimate that Category 3 lessees each would have approximately 50 exchange agreements to review to identify the relevant contracts needed for valuation under this further supplementary proposed rule. Of those contracts, we estimate that each Category 3 company would have to use 13 exchange agreements. We estimate that the burden for each Category 3 company would be 31.25 hours, including 20 hours to aggregate the exchange agreement contracts to a central location, 8 hours to sort them, and 3.25 additional hours to extract the relevant information and apply it in reporting royalties. For the 28 Category 3 companies, we estimate that the burden would be 875 hours (31.25 hours x 28 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $43,750.

We expect the annual burden to decline somewhat as industry becomes more familiar with the proposed valuation requirements.

b. Approval of Benchmarks in the Rocky Mountain Region

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.103(b)(1)	Obtain MMS approval for tendering program	1–2 annually	2	400	800
206.103(b)(4)	Obtain MMS approval for alternative valuation methodology.	1–2 annually	2	400	800

For the reporting requirements related to MMS approval of using the benchmarks, we estimate that there will be two responses for each of the two reporting requirements. On occasion, they will be required to submit requests to us in writing.

We anticipate that a lessee will undertake the following four steps in the formulation of specifics surrounding a tendering program or alternate valuation strategy: (1) formulation of valuation methodology: 100 hours, (2) economic evaluation of methodology: 100 hours, (3) legal review of methodology: 150 hours, and (4) presentation to MMS: 50 hours, for a total of 400 hours.

We anticipate four requests a year for an annual burden of 1,600 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate that the cost to industry is $80,000.

c. Requirements Related to Requested Valuation Determinations and Approval of Location/Quality Adjustments From MMS

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.107(a)(1)–(6)	Request a value determination from MMS	1–2 monthly	8	330	2,640
206.112(b)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	1–2 monthly	8	330	2,640
206.112(f)	Request MMS for location/quality adjustment when information is not available.	1–2 monthly	8	330	2,640

We anticipate that the companies may request guidance on how royalty statutes, regulations, administrative decisions, and policies apply to a specific set of facts. Their requests would have to: (1) be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the above written requests, we estimate that there will be eight responses annually for each of the reporting requirements. We estimate the annual burden for each of these is 2,640 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $132,000. The total burden is estimated at 7,920 hours and $396,000.

d. Requirements Related to Special Requests Due to Unique Circumstances

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.103(e)(1) and (2)(i)–(iv).	Obtain MMS approval to use value determined at refinery.	1–2 annually	2	330	660
206.110(b)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract..	1–2 annually	2	330	660

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.110(c)(1) and (3)	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	1–2 annually	2	330	660
206.111(g) and (g)(1)	Elect actual transportation cost method and depreciation method for non-arm's-length transportation allowances.	1–2 annually	2	330	660
206.111(i)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	1–2 annually	2	330	660
206.111(j)(1) and (3)	Propose transportation cost allocation method to MMS when transporting gaseous and liquid product under a non-arm's-length contract..	1–2 annually	2	330	660

There are several provisions in the further supplementary proposed rule that allow the lessee to propose some special consideration because the existing provisions of the rule may not precisely fit their situation. Like the written requests outlined above, their requests would have to: (1) be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the reporting requirements related to special requests because of unique circumstances, we estimate that there will be two responses for each of the six situations above. We estimate the annual burden for each of these is 660 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $33,000. The total burden is estimated to be 3,960 hours and $198,000.

e. Currently Approved Information Collections

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.105	Retain all records showing how value was determined.	Burden covered under OMB Control No. 1010–0061.			
206.109(c)(2)	Request to exceed regulatory limit—Form MMS–4393.	Burden covered under OMB Control No. 1010–0095.			
206.114 and 115(a)	Report a separate line for transportation allowances—Form MMS–2014.	Burden covered under OMB Control No. 1010–0022.			
206.114 and 115(c)	Submit transportation documents upon MMS request.	Burden covered under OMB Control No. 1010–0061.			

National Environmental Policy Act of 1969

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with this clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example § 206.100.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Natural gas, Petroleum, Pubic lands—mineral resources, Reporting and recordkeeping requirements.

Dated December 22, 1999.

Sylvia V. Baca,

Assistant Secretary for Land and Minerals Management.

For the reasons given in the preamble, 30 CFR Part 206 is proposed to be amended as set forth below:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Subpart C—Federal Oil is revised to read as follows:

Subpart C—Federal Oil

Sec.

206.100 What is the purpose of this subpart?
206.101 Definitions.

206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?
206.103 How do I value oil that is not sold under an arm's-length contract?
206.104 What index price publications are acceptable to MMS?
206.105 What records must I keep to support my calculations of value under this subpart?
206.106 What are my responsibilities to place production into marketable condition and to market production?
206.107 How do I request a value determination?
206.108 Does MMS protect information I provide?
206.109 When may I take a transportation allowance in determining value?
206.110 How do I determine a transportation allowance under an arm's-length transportation contract?
206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?
206.112 What adjustments and transportation allowances apply when I value oil using index pricing?
206.113 How will MMS identify market centers?
206.114 What are my reporting requirements under an arm's-length transportation contract?
206.115 What are my reporting requirements under a non-arm's-length transportation contract?
206.116 What interest and assessments apply if I improperly report a transportation allowance?
206.117 What reporting adjustments must I make for transportation allowances?
206.118 Are costs allowed for actual or theoretical losses?
206.119 How are the royalty quantity and quality determined?
206.120 How are operating allowances determined?

Subpart C—Federal Oil

§ 206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you as a lessee must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. If you are a designee and if you dispose of production on behalf of a lessee, the terms "you" and "your" in this subpart refer to you. If you are a designee and only report for a lessee, and do not dispose of the lessee's production, references to "you" and "your" in this subpart refer to the lessee and not the designee. Accordingly, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(b) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; or

(3) An express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, or lease provision will govern to the extent of the inconsistency.

(c) MMS may audit and adjust all royalty payments.

§ 206.101 Definitions.

The following definitions apply to this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of between 10 and 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership,

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

ANS means Alaska North Slope (ANS).

Area means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (e.g., West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP); exchanges of produced oil for similar oil produced in different months (Time Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil

and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. MMS names and designates boundaries of OCS fields.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or MMS approves for onshore and offshore leases, respectively.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(2) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Index pricing means using ANS crude oil spot prices, West Texas Intermediate (WTI) crude oil spot prices at Cushing, Oklahoma, or other appropriate crude oil spot prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of oil or gas—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

Location differential means an amount paid or received under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Market center means a major point MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

MMS-approved publication means a publication MMS approves for determining ANS spot prices, other spot prices, or location differentials.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means an amount paid or received under an exchange agreement that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tendering program means a company offer of a portion of its crude oil produced from a field or area for competitive bidding, regardless of whether the production is offered or sold at or near the lease or unit or away from the lease or unit.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?

(a) The value of oil under paragraphs (a)(1) and (a)(2) of this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under this subpart, unless you exercise an option provided in paragraph (d)(1) or (d)(2) of this section. See paragraph (c) of this section for exceptions. Use this paragraph (a) to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you sell under multiple arm's-length contracts oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the

volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) In conducting reviews and audits, if MMS determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, MMS may require that you value the oil sold under that contract either under § 206.103 or at the total consideration received.

(2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(B) The fact that the price received by the seller in an arm's length transaction is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.

(d)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(i) If you use § 206.102(a), your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If MMS determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 206.102(d)(1) to use § 206.102(a) or § 206.103, you must make the same election for all of your production sold under arm's-length contracts following arm's-length exchange agreements, and you may not change your election more often than once every two years.

(2)(i) If you sell or transfer your oil production to your affiliate and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(ii) When you elect under § 206.102(d)(2) to use § 206.102(a) or § 206.103, you must make the same election for all of your production that your affiliates resell at arm's length, and you may not change your election more often than once every two years.

(e) If you value oil under paragraph (a) of this section:

(1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(2) You must base value on the highest price the seller can receive through legally enforceable claims under the contract.

(i) If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. But you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits, if:

(A) The seller makes timely application for a price increase or benefit allowed under the contract;

(B) The purchaser refuses to comply; and

(C) The seller takes reasonable documented measures to force purchaser compliance.

(ii) Paragraph (e)(2)(i) of this section will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

§ 206.103 How do I value oil that is not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 206.102.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the calendar month preceding the production month.

(1) To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication.

(2) Use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(b) *Production from leases in the Rocky Mountain Region* Value your oil under the first applicable of the following paragraphs:

(1) If you have an MMS-approved tendering program, the value of production from leases in the area the tendering program covers is the highest price bid for tendered volumes.

(i) You must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area under your tendering program.

(ii) You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(iii) MMS will provide additional criteria for approval of a tendering program in its "Oil and Gas Payor Handbook."

(2) Value is the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

(3) Value is the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, for deliveries during the production month.

(i) Calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication.

(ii) Use only the days and corresponding spot prices for which such prices are published.

(iii) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(4) If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding

that production, the MMS Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* Value is the average of the daily mean spot prices published in an MMS-approved publication:

(1) For the market center nearest your lease for crude oil similar in quality to that of your production (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils—their quality specifications differ significantly); and

(2) For deliveries during the production month. Calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(d) If MMS determines that any of the index prices referenced in paragraphs (a), (b), and (c) of this section are unavailable or no longer represent reasonable royalty value, in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

(e) *What if I transport my oil to my refinery and believe that use of a particular index price is unreasonable?*

(1) You may apply to the MMS Director for approval to use a value representing the market at the refinery if:

(i) You transport your oil directly to your or your affiliate's refinery, or exchange your oil for oil delivered to your or your affiliate's refinery; and

(ii) You must value your oil under this section at an index price; and

(iii) You believe that use of the index price is unreasonable.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that MMS requires.

(3) If the MMS Director approves a value representing market value at the refinery, you may not take an allowance against that value under § 206.112(b) unless it is included in the Director's approval.

§ 206.104 What index price publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

(b) Any publication may petition MMS to be added to the list of acceptable publications.

(c) MMS will reference the tables you must use in the publications to determine the associated index prices.

§ 206.105 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value. You must be able to show how you calculated the value you reported, including all adjustments for location, quality, and transportation, and how you complied with these rules. Recordkeeping requirements are found at part 207 of this title. MMS may review and audit your data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§ 206.106 What are my responsibilities to place production into marketable condition and to market production?

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 206.107 How do I request a value determination?

(a) You may request a value determination from MMS regarding any Federal lease oil production. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases;

(3) Completely explain all relevant facts. You must inform MMS of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) MMS will reply to requests expeditiously. MMS may either:

(1) Issue a value determination signed by the Assistant Secretary, Land and Minerals Management; or

(2) Issue a value determination by MMS staff; or

(3) Inform you in writing that MMS will not provide a value determination. Situations in which MMS typically will not provide any value determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations;

(ii) Matters that are inherently factual in nature; and

(iii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay late payment interest under 30 CFR 218.54.

(3) A value determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d)(1) A value determination issued by MMS staff is binding on MMS and delegated States with respect to the specific situation addressed in the determination unless the MMS Director or the Assistant Secretary modifies or rescinds it.

(2) A value determination by MMS staff is not an appealable decision or order under 30 CFR part 290 subpart B. If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 290 subpart B.

(e) A change in applicable statute or regulation on which any value determination is based takes precedence

over the value determination, regardless of whether the MMS Director or the Assistant Secretary modifies or rescinds the value determination.

(f) The MMS Director or the Assistant Secretary generally will not modify or rescind a value determination retroactively, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(g) MMS may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 206.108.

§ 206.108 Does MMS protect information I provide?

Certain information you submit to MMS regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.109 When may I take a transportation allowance in determining value?

(a) *What transportation allowances are permitted when I value production based on gross proceeds?* This paragraph applies when you value oil under § 206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and the movement to the sales point is not gathering. MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under § 206.110 or § 206.111, as applicable. If MMS takes it royalty in kind, see § 206.8.

(b) *What transportation allowances and other adjustments apply when I value production based on index pricing?* If you value oil using an index price under § 206.103, MMS will allow a deduction for certain location/quality adjustments and certain costs associated with transporting oil as provided under § 206.112.

(c) *Are there limits on my transportation allowance?*

(1) Except as provided in paragraph (c)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(d) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in §§ 206.110 and 206.111. You must express transportation allowances for oil as dollars per barrel.

(e) *What additional payments may I be liable for?* If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest under applicable rules if you understated your transportation allowance. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.116.

§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting oil under that contract, except as provided in paragraphs (a)(1) and (a)(2) of this section and subject to the limitation in § 206.109(c). You must be able to demonstrate that your contract is arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.111.

(2) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, then you must calculate the transportation allowance under § 206.111.

(A) MMS will not use this provision to simply substitute its judgment of the reasonable oil transportation costs incurred by you or your affiliate under an arm's-length transportation contract.

(B) The fact that the cost you or your affiliate incur in an arm's length transaction is higher than other measures of transportation costs, such as rates paid by others in the field or area, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that you or your affiliate acted unreasonably or in bad faith in transporting oil from the lease.

(b)(1)(i) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs to each of the liquid products transported.

(ii) Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(iii) You may not claim an allowance for the costs of transporting lease production that is not royalty-bearing.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(c)(1) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.

(2) You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation.

(3) You must submit your initial proposal, including all available data, within three months after the last day of the month for which you propose an allocation procedure.

(d) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar-value equivalent.

(e) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance.

(1) You may use the transportation factor in determining your gross proceeds for the sale of the product.

(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?

(a) If you or your affiliate have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform your own transportation services, calculate your transportation allowance based on the reasonable, actual costs provided in this section.

(b) Base your transportation allowance for non-arm's-length or no-contract situations on your or your affiliate's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either:

(1) Depreciation and a return on undepreciated capital investment under paragraphs (g)(1) and (h) of this section, or

(2) A cost equal to the initial capital investment in the transportation system multiplied by a rate of return under paragraph (g)(2) of this section.

(c) Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense which you can document.

(e) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses which you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) You may use either depreciation and a return on remaining undepreciated capital investment or a return on depreciable capital investment as described in paragraph (b) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without MMS approval.

(1) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without MMS approval. You may not depreciate equipment below a reasonable salvage value.

(2) An arm's-length change in ownership of a transportation system will result in a new depreciation schedule for purposes of the allowance calculation. If you or your affiliate purchase an existing transportation system at arm's length, your initial capital investment is equal to your purchase price of the transportation system.

(3) Even after a transportation system, has been depreciated below a value equal to ten percent of your original capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your initial capital investment in the transportation system multiplied by a rate of return under paragraph (h) of this section.

(4) For transportation facilities first placed in service after March 1, 1988, you may use as a cost an amount equal to your initial capital investment in the transportation system multiplied by the rate of return under paragraph (h) of this section. You may not claim an allowance for depreciation.

(h) The rate of return is the industrial bond yield index for Standard and Poor's BBB rating. Use the monthly average rate published in "Standard and Poor's Bond Guide" for the first month of the reporting period for which the allowance applies. Calculate the rate at the beginning of each subsequent transportation allowance reporting period.

(i) Calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocate costs consistently and equitably to each of the liquid products transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method if it is consistent with the purposes of the regulations in this subpart.

(j)(1) Where both gaseous and liquid products are transported through the same transportation system, you must propose a cost allocation procedure to MMS.

(2) You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation.

(3) You must submit your initial proposal, including all available data, within three months after the last day of the month for which you request a transportation allowance.

§ 206.112 What adjustments and transportation allowances apply when I value oil using index pricing?

When you use index pricing to calculate the value of production under § 206.103, you must adjust the index price for location and quality differentials and you may adjust it for certain transportation costs, as follows:

(a) If you dispose of your production under one or more arm's-length exchange agreements, then

(1)(i) You must adjust the index price for location/quality differentials. You must determine those differentials from each of your arm's-length exchange agreements applicable to the exchanged oil.

(ii) Therefore, for example, if you exchange 100 barrels of production from a given lease under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, separately determine the location/quality differential under each of those exchange agreements, and apply each differential to the corresponding index price.

(iii) As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, total the three adjustments from those exchanges to

determine the adjustment under this paragraph (a)(1)(iii). (If one of the three exchanges was not at arm's length, you must request MMS approval under paragraph (b) of this section for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

(2) You may adjust the index price for actual transportation costs, determined under § 206.110 or § 206.111

(i) From the lease to the first point where you give your oil in exchange; and

(ii) From any intermediate point where you receive oil in exchange to another intermediate point where you give the oil in exchange again; and

(iii) From the point where you receive oil in exchange and transport it without further exchange to a market center, or to a refinery that is not at a market center.

(b) For non-arm's-length exchange agreements, you must request approval from MMS for any location/quality adjustment.

(c) If you transport lease production directly to a market center or to an alternate disposal point (for example, your refinery), you may adjust the index price for your actual transportation costs, determined under § 206.110 or § 206.111.

(d) If you adjust for location/quality or transportation costs under paragraph (a), (b), or (c) of this section, also adjust the index price for quality based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center. Make this adjustment only if and to the extent that such adjustments were not already included in the location/quality differentials determined from your arm's-length exchange agreements.

(e) For leases in the Rocky Mountain Region, for purposes of this section, the term "market center" means Cushing, Oklahoma, unless MMS specifies otherwise through a document published in the **Federal Register**.

(f) If you cannot determine your location/quality adjustment under paragraph (a) or (c) of this section, you must request approval from MMS for any location/quality adjustment.

(g) You may not use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under this section.

§ 206.113 How will MMS identify market centers?

MMS periodically will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, add to or modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:

(a) Points where MMS-approved publications publish prices useful for index purposes;

(b) Markets served;

(c) Input from industry and others knowledgeable in crude oil marketing and transportation;

(d) Simplification; and

(e) Other relevant matters.

§ 206.114 What are my reporting requirements under an arm's-length transportation contract?

You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur. MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 207 of this title.

§ 206.115 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.

(b) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable oil transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems.

(c) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 207 of this title.

§ 206.116 What interest and assessments apply if I improperly report a transportation allowance?

(a) If you or your affiliate net a transportation allowance against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease selling arrangement per sales period.

(b) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under § 206.109, you must pay interest on the excess allowance amount taken from the date that amount is taken to the date you or your affiliate file an exception request MMS approves.

(c) If you or your affiliate report an erroneous or excessive transportation allowance resulting in an underpayment of royalties, you must pay the additional royalties plus interest under 30 CFR 218.54.

§ 206.117 What reporting adjustments must I make for transportation allowances?

(a) If your or your affiliate's actual transportation allowance is less than the amount you claimed on Form MMS–2014 for each month during the allowance reporting period, you must pay additional royalties plus interest computed under 30 CFR 218.54 from the beginning of the allowance reporting period when you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form MMS–2014 for each month during the allowance form reporting period, you are entitled to a credit plus interest under applicable rules.

§ 206.118 Are costs allowed for actual or theoretical losses?

You are allowed a deduction for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses only under an arm's-length contract. You may not take such a deduction under a non-arm's-length contract.

§ 206.119 How are royalty quantity and quality determined?

(a) Compute royalties based on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases or MMS for offshore leases.

(b) If the value of oil determined under this subpart is based upon a quantity or quality different from the quantity or quality at the point of royalty settlement approved by the BLM for onshore leases or MMS for offshore leases, adjust the value for those differences in quantity or quality.

(c) You may not claim a deduction from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you may incur before the royalty settlement metering or measurement point is not subject to royalty if BLM or MMS, as appropriate, determines that the loss is unavoidable.

(d) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either before or after the approved point of royalty settlement.

§ 206.120 How are operating allowances determined?

MMS may use an operating allowance for the purpose of computing payment obligations when specified in the notice of sale and the lease. MMS will specify the allowance amount or formula in the notice of sale and in the lease agreement.

[FR Doc. 99–33613 Filed 12–29–99; 8:45 am]

BILLING CODE 4310-MR-P

VOL

64

ISS

2
5
0

DE

30

999

UML

federal register

Thursday
December 30, 1999

Part V

Department of Labor

Office of the Secretary

5 CFR Part 5201
29 CFR Part 0
Supplemental Standards of Ethical Conduct for Employees of the Department of Labor; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

5 CFR Part 5201

29 CFR Part 0

RINs 1290–AA15, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Labor

AGENCY: Office of the Secretary of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department), with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule for employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. The regulations established by the final rule adopt the prior interim regulations as final, with additional technical amendments to the Department's residual agency conduct regulations that reflect changes in underlying law and OGE regulations. The regulations are a necessary supplement to the Standards of Ethical Conduct because they address requirements that are unique to the Department.

EFFECTIVE DATE: This final rule is effective January 31, 2000.

FOR FURTHER INFORMATION CONTACT: David Apol, Office of the Solicitor, Department of Labor, telephone 202–219–8065, FAX 202–219–6896.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). The Standards, codified as corrected and amended at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that apply to all executive branch personnel.

On June 23, 1994, the Department issued a final rule which removed all of the provisions of its Ethics and Conduct Regulations at 29 CFR Part 0 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 59 FR 32611. The Department preserved those provisions of its Ethics and Conduct Regulations containing regulatory waivers issued under the prior version of 18 U.S.C. 208(b)(2) (1988), and provisions restricting the acquisition or holding of certain financial interests and requiring prior approval of outside employment or activities. These provisions were permitted to continue in effect until superseded, as provided respectively in 5 CFR 2635.402(d)(1) and the notes following 5 CFR 2635.403(a) and 2635.803, as extended by 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952.

Pursuant to E.O. 12674 (54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306) and 5 CFR 2635.105, executive branch agencies, with the concurrence of OGE, were permitted to issue agency-specific supplemental regulations necessary to implement their ethics programs. On November 6, 1996, the Department, with OGE concurrence, issued the interim rule with request for comments, setting forth Supplemental Standards of Ethical Conduct for Employees of the Department of Labor. See 61 FR 57281. The interim rule designated certain components of the Department as separate agencies for the purposes of provisions in the executive branch-wide Standards regarding gifts from outside sources, the receipt of compensation for teaching, speaking or writing, and fundraising in a personal capacity; restricted the outside employment and the holding of certain financial interests by employees of the Mine Safety and Health Administration and by their spouses and minor children; and required employees in the Department's Office of the Inspector General to obtain prior approval for outside employment. The supplemental standards are now codified at 5 CFR part 5201.

The interim rule also repealed 29 CFR 0.735–13, one of the remaining provisions of the Department's Ethics and Conduct Regulations. This provision required prior approval of outside employment or activities. Pursuant to the OGE Standards, this provision was superseded upon issuance of the interim rule. The interim rule also redesignated 29 CFR 0.735–12, the Department's regulatory waiver provision, as § 0.735–2 and inserted a new 29 CFR 0.735–1 cross-referencing the executive branch-wide Standards, the financial disclosure regulations, and the interim rule.

On December 18, 1996, the Office of Government Ethics issued a financial interests final rule, 61 FR 66830–66851 (Part III), as corrected at 62 FR 1361 (January 9, 1997) and further corrected at 62 FR 23127–23128 (April 29, 1997), and which became effective on January 17, 1997. This final rule as codified at 5 CFR part 2640, includes interpretations, and exemption and waiver guidance concerning 18 U.S.C. 208, dealing with official acts affecting a personal financial interest. The rule superseded the regulatory waivers issued by the Department of Labor under the prior 18 U.S.C. 208(b)(2) (1988). See 29 CFR 0.735–2, as redesignated by the Department's prior interim rule.

Amendments to 18 U.S.C. 207 effective January 1, 1991 substantially revised the post-employment restrictions applicable to executive branch employees. As a result, employees terminating Government service on or after that date were no longer subject to the old 18 U.S.C. 207(i) (1988) provision for administrative disciplinary proceedings for possible 18 U.S.C. 207 violations. The Office of Government Ethics issued partial regulations reflecting this change on February 1, 1991 with a retroactive effective date of January 1, 1991. See 5 CFR part 2641.

II. Comments and Amendments to Interim Rule

The Department has received no comments in response to its requests for comments on the interim rule. This final rule, nevertheless, makes a couple of needed further changes in the Department's agency conduct regulations at 29 CFR part 0, as revised in the prior interim rule.

This final rule revokes the regulatory waiver contained in 29 CFR 0.735–2 which has been superseded by the OGE regulations at subpart B of 5 CFR part 2641. The authority citation for part 0 is also being revised to remove reference to the Ethics in Government Act and 18 U.S.C. 207 (1988) and add reference to 18 U.S.C. 208 and 5 CFR part 2640. Moreover, the final rule adds a cross-reference to the conflict of interest regulations at 5 CFR part 2640 in § 0.735–1, and removes an outdated appendix of related statutory authorities which has been superseded by the list of such authorities at 5 CFR 2635.902.

This rule also corrects the applicability provision of the post-employment conflict of interest rule, at 29 CFR 0.737–1, to conform with both the amended 18 U.S.C. 207 (1988) and Office of Government Ethics regulations at 5 CFR part 2641. The final rule will now accurately define the executive branch employees subject to the administrative proceedings section of the previous version of 18 U.S.C. 207 (1988) as those employees terminating Government service on or after July 1, 1979 and prior to January 1, 1991.

III. Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C.

553(b)(3)(B), that good cause exists for waiving public comments on the minor changes being made in this rule. Publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful. This final rule adopts and makes final, with certain revisions, interim regulations that affect only Department of Labor employees or former employees. These additional minor technical amendments bring the Department of Labor's supplemental regulations up-to-date in order to conform with 18 U.S.C. 207 and 208 and Office of Government Ethics regulations.

IV. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

As Secretary of Labor, I have determined that this regulation is not a "regulatory action" under section 3 of Executive Order 12866. Because the rule is limited to agency organization, management and personnel, it falls within the exclusion set forth in section 3(d)(3) of the Executive order. In promulgating this rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of the Executive Order.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not classified as a "rule" under the Small Business Regulatory Enforcement Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

Regulatory Flexibility Act

As Secretary of Labor, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it imposes ethics standards only on Federal employees or former employees and their immediate families. The Secretary of Labor has provided this certification to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

As Secretary of Labor, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 5201 and 29 CFR Part 0:

Conflict of interests, Government employees.

Dated: December 23, 1999.

Alexis M. Herman,

Secretary of Labor.

Approved: December 23, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, the Department of Labor, with the concurrence of the Office of Government Ethics, is adopting the interim rule amending title 5 and amending title 29, subtitle A, of the Code of Federal Regulations, which was published at 61 FR 57281–57287 on November 6, 1996, as a final rule with the following changes:

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor

Part 0—[Amended]

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 207 (1988); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2634, part 2635, part 2640.

2. Section 0.735–1 is revised to read as follows:

§ 0.735–1 Cross-references to employee ethical conduct standards, financial disclosure regulations and other ethics regulations.

Employees of the Department of Labor (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulations at 5 CFR part 5201 which supplement the executive branch-wide standards, the executive branch financial disclosure regulations at 5 CFR part 2634, the conflicts of interest regulations at 5 CFR part 2640, and the post employment regulations at 5 CFR part 2641.

§ 0.735–2 [Removed]

3. Section 0.735–2 is removed.

4. Section 0.737–1 is revised to read as follows:

§ 0.737–1 Applicability.

This subpart is applicable to any former employee of the Department of Labor leaving Government service on or after July 1, 1979 and prior to January 1, 1991.

Appendix A to Part 0—is [Removed]

5. Appendix A to part 0 removed.

[FR Doc. 99–33960 Filed 12–29–99; 8:45 am]

BILLING CODE 4510–23–P

VOL

64

ISS

250

DE

30

999

UMI

federal register

Thursday
December 30, 1999

Part VI

Reader Aids

Cumulative List of Public Laws
106th Congress, First Session

CUMULATIVE LIST OF PUBLIC LAWS

This is a cumulative list of public laws for the 106th Congress, First Session. Other cumulative lists (1993-1998) are available online at http://www.nara.gov/fedreg. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send e-mail to info@nara.fedreg.gov.

The List of Public Laws will resume when bills are enacted into public law during the first second session of the One Hundred Sixth Congress, which convenes at noon on Monday, January 24, 2000. The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs. Some laws are not yet available online or for purchase.

Public Law	Title	Approved	113 Stat.
106–1	District of Columbia Management Restoration Act of 1999	Mar. 5, 1999	3
106–2	To nullify any reservation of funds during fiscal year 1999 for guaranteed loans under the Consolidated Farm and Rural Development Act for qualified beginning farmers or ranchers, and for other purposes.	Mar. 15, 1999	5
106–3	To deem as timely filed, and process for payment, the applications submitted by the Dodson School Districts for certain Impact Aid payments for fiscal year 1999.	Mar. 23, 1999	6
106–4	Nursing Home Resident Protection Amendments of 1999	Mar. 25, 1999	7
106–5	To extend for 6 additional months the period for which chapter 12 of title 11, United States Code, is reenacted.	Mar. 30, 1999	9
106–6	Interim Federal Aviation Administration Authorization Act	Mar. 31, 1999	10
106–7	To protect producers of agricultural commodities who applied for a Crop Revenue Coverage PLUS supplemental endorsement for the 1999 crop year.	Apr. 1, 1999	12
106–8	Small Business Year 2000 Readiness Act	Apr. 2, 1999	13
106–9	Small Business Investment Improvement Act of 1999	Apr. 5, 1999	17
106–10	To designate the Federal building and United States courthouse located at 251 North Main Street in Winston-Salem, North Carolina, as the "Hiram H. Ward Federal Building and United States Courthouse".	Apr. 5, 1999	20
106–11	To designate the United States courthouse located at 316 North 26th Street in Billings, Montana, as the "James F. Battin United States Courthouse".	Apr. 5, 1999	21
106–12	To designate the Federal building located at 700 East San Antonio Street in El Paso, Texas, as the "Richard C. White Federal Building".	Apr. 5, 1999	22
106–13	To designate the Federal building located at 1301 Clay Street in Oakland, California, as the "Ronald V. Dellums Federal Building".	Apr. 5, 1999	23
106–14	Providing for the reappointment of Barber B. Conable, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 6, 1999	24
106–15	Providing for the reappointment of Dr. Hanna H. Gray as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 6, 1999	25
106–16	Providing for the reappointment of Wesley S. Williams, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 6, 1999	26
106–17	Women's Business Center Amendments Act of 1999	Apr. 6, 1999	27
106–18	To authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes.	Apr. 8, 1999	28
106–19	To make technical corrections with respect to the monthly reports submitted by the Postmaster General on official mail of the House of Representatives.	Apr. 8, 1999	29
106–20	Sudbury, Assabet, and Concord Wild and Scenic River Act	Apr. 9, 1999	30
106–21	To extend the tax benefits available with respect to services performed in a combat zone to services performed in the Federal Republic of Yugoslavia (Serbia/Montenegro) and certain other areas, and for other purposes.	Apr. 19, 1999	34
106–22	Microloan Program Technical Corrections Act of 1999	Apr. 27, 1999	36
106–23	To designate the Federal building located at 310 New Bern Avenue in Raleigh, North Carolina, as the "Terry Sanford Federal Building".	Apr. 27, 1999	38
106–24	To authorize the establishment of a disaster mitigation pilot program in the Small Business Administration.	Apr. 27, 1999	39
106–25	Education Flexibility Partnership Act of 1999	Apr. 29, 1999	41
106–26	To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation.	May 4, 1999	50
106–27	To designate the Federal building located at 709 West 9th Street in Juneau, Alaska, as the "Hurff A. Saunders Federal Building".	May 13, 1999	52
106–28	To designate the United States courthouse located at 401 South Michigan Street in South Bend, Indiana, as the "Robert K. Rodibaugh United States Bankruptcy Courthouse".	May 13, 1999	53
106–29	To designate the North/South Center as the Dante B. Fascell North-South Center	May 21, 1999	54
106–30	To amend the Peace Corps Act to authorize appropriations for fiscal years 2000 through 2003 to carry out that Act, and for other purposes.	May 21, 1999	55
106–31	1999 Emergency Supplemental Appropriations Act	May 21, 1999	57
106–32	To declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States.	June 1, 1999	115
106–33	To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse".	June 7, 1999	117
106–34	Fastener Quality Act Amendments Act of 1999	June 8, 1999	118
106–35	Western Hemisphere Drug Elimination Technical Corrections Act	June 15, 1999	126
106–36	Miscellaneous Trade and Technical Corrections Act of 1999	June 25, 1999	127
106–37	Y2K Act	July 20, 1999	185
106–38	National Missile Defense Act of 1999	July 22, 1999	205
106–39	To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration.	July 28, 1999	206
106–40	Chemical Safety Information, Site Security and Fuels Regulatory Relief Act	Aug. 5, 1999	207

Public Law	Title	Approved	113 Stat.
106–41	Lake Oconee Land Exchange Act	Aug. 5, 1999	215
106–42	Patent Fee Integrity and Innovation Protection Act of 1999	Aug. 5, 1999	217
106–43	Trademark Amendments Act of 1999	Aug. 5, 1999	218
106–44	To make technical corrections in title 17, United States Code, and other laws	Aug. 5, 1999	221
106–45	To preserve the cultural resources of the Route 66 corridor and to authorize the Secretary of the Interior to provide assistance.	Aug. 10, 1999	224
106–46	To clarify the quorum requirement for the Board of Directors of the Export-Import Bank of the United States.	Aug. 11, 1999	227
106–47	To amend the Agricultural Adjustment Act of 1938 to release and protect the release of tobacco production and marketing information.	Aug. 13, 1999	228
106–48	To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza".	Aug. 17, 1999	230
106–49	Construction Industry Payment Protection Act of 1999	Aug. 17, 1999	231
106–50	Veterans Entrepreneurship and Small Business Development Act of 1999	Aug. 17, 1999	233
106–51	Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999	Aug. 17, 1999	252
106–52	Military Construction Appropriations Act, 2000	Aug. 17, 1999	259
106–53	Water Resources Development Act of 1999	Aug. 17, 1999	269
106–54	For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes.	Aug. 17, 1999	398
106–55	To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes.	Aug. 17, 1999	401
106–56	Organ Donor Leave Act	Sept. 24, 1999	407
106–57	Legislative Branch Appropriations Act, 2000	Sept. 29, 1999	408
106–58	Treasury and General Government Appropriations Act, 2000	Sept. 29, 1999	430
106–59	To extend through the end of the current fiscal year certain expiring Federal Aviation Administration authorizations.	Sept. 29, 1999	482
106–60	Energy and Water Development Appropriations Act, 2000	Sept. 29, 1999	483
106–61	Congratulating and commending the Veterans of Foreign Wars	Sept. 29, 1999	504
106–62	Making continuing appropriations for the fiscal year 2000, and for other purposes	Sept. 30, 1999	505
106–63	To reauthorize the Congressional Award Act	Oct. 1, 1999	510
106–64	To extend energy conservation programs under the Energy Policy and Conservation Act through March 31, 2000.	Oct. 5, 1999	511
106–65	National Defense Authorization Act for Fiscal Year 2000	Oct. 5, 1999	512
106–66	To direct the Secretaries of Agriculture and Interior to convey certain lands in San Juan County, New Mexico, to San Juan College.	Oct. 6, 1999	977
106–67	To amend Public Law 105-188 to provide for the mineral leasing of certain Indian lands in Oklahoma.	Oct. 6, 1999	979
106–68	To make certain technical and other corrections relating to the Centennial of Flight Commemoration Act (36 U.S.C. 143 note; 112 Stat. 3486 et seq.).	Oct. 6, 1999	981
106–69	Department of Transportation and Related Agencies Appropriations Act, 2000	Oct. 9, 1999	986
106–70	To extend for 9 additional months the period for which chapter 12 of title 11, United States Code, is reenacted.	Oct. 9, 1999	1031
106–71	Missing, Exploited, and Runaway Children Protection Act	Oct. 12, 1999	1032
106–72	To designate the Federal building located at 300 East 8th Street in Austin, Texas as the "J.J. 'Jake' Pickle Federal Building".	Oct. 19, 1999	1045
106–73	To restore motor carrier safety enforcement authority to the Department of Transportation	Oct. 19, 1999	1046
106–74	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000.	Oct. 20, 1999	1047
106–75	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Oct. 21, 1999	1125
106–76	Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999.	Oct. 21, 1999	1126
106–77	To designate the Federal building and United States courthouse located at the intersection of Comercio and San Justo Streets, in San Juan, Puerto Rico, as the "Jose V. Toledo Federal Building and United States Courthouse".	Oct. 22, 1999	1134
106–78	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000.	Oct. 22, 1999	1135
106–79	Department of Defense Appropriations Act, 2000	Oct. 25, 1999	1212
106–80	To amend title 4, United States Code, to add the Martin Luther King Jr. holiday to the list of days on which the flag should especially be displayed.	Oct. 25, 1999	1285
106–81	Wireless Communications and Public Safety Act of 1999	Oct. 26, 1999	1286
106–82	To provide for the conveyance of certain property from the United States to Stanislaus County, California.	Oct. 27, 1999	1291
106–83	National Medal of Honor Memorial Act	Oct. 28, 1999	1293
106–84	To amend the Revised Organic Act of the Virgin Islands to provide for greater fiscal autonomy consistent with other United States jurisdictions, and for other purposes.	Oct. 28, 1999	1295
106–85	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Oct. 29, 1999	1297
106–86	Pennsylvania Battlefields Protection Act of 1999	Oct. 31, 1999	1298
106–87	Torture Victims Relief Reauthorization Act of 1999	Nov. 3, 1999	1301
106–88	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 5, 1999	1304
106–89	To locate and secure the return of Zachary Baumel, a United States citizen, and other Israeli soldiers missing in action.	Nov. 8, 1999	1305
106–90	To grant the consent of Congress to the boundary change between Georgia and South Carolina	Nov. 8, 1999	1307
106–91	To designate the United States courthouse under construction at 333 Las Vegas Boulevard South in Las Vegas, Nevada, as the "Lloyd D. George United States Courthouse.".	Nov. 9, 1999	1308
106–92	To designate the Old Executive Office Building located at 17th Street and Pennsylvania Avenue, NW, in Washington, District of Columbia, as the "Dwight D. Eisenhower Executive Office Building.".	Nov. 9, 1999	1309

Public Law	Title	Approved	113 Stat.
106–93	Waiving certain enrollment requirements for the remainder of the first session of the One Hundred Sixth Congress with respect to any bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2000.	Nov. 10, 1999	1310
106–94	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 10, 1999	1311
106–95	Nursing Relief for Disadvantaged Areas Act of 1999	Nov. 12, 1999	1312
106–96	To amend the Export Apple and Pear Act to limit the applicability of the Act to apples	Nov. 12, 1999	1321
106–97	To authorize a cost of living adjustment in the pay of administrative law judges	Nov. 12, 1999	1322
106–98	District of Columbia College Access Act of 1999	Nov. 12, 1999	1323
106–99	History of the House Awareness and Preservation Act	Nov. 12, 1999	1330
106–100	To permit the enrollment in the House of Representatives Child Care Center of children of Federal employees who are not employees of the legislative branch.	Nov. 12, 1999	1332
106–101	Granting the consent of Congress to the Missouri-Nebraska Boundary Compact	Nov. 12, 1999	1333
106–102	Gramm-Leach-Bliley Act	Nov. 12, 1999	1338
106–103	To authorize the construction of a monument to honor those who have served the Nation's civil defense and emergency management programs.	Nov. 13, 1999	1482
106–104	To amend the Immigration and Nationality Act to extend for an additional 2 years the period for admission of an alien as a nonimmigrant under section 101(a)(15)(S) of such Act, and to authorize appropriations for the refugee assistance program under chapter 2 of title IV of the Immigration and Nationality Act.	Nov. 13, 1999	1483
106–105	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 18, 1999	1484
106–106	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 19, 1999	1485
106–107	Federal Financial Assistance Management Improvement Act of 1999	Nov. 20, 1999	1486
106–108	Arctic Tundra Habitat Emergency Conservation Act	Nov. 24, 1999	1491
106–109	To make technical corrections to the Water Resources Development Act of 1999	Nov. 24, 1999	1494
106–110	To amend part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the Federal Bureau of Investigation National Academy for law enforcement training.	Nov. 24, 1999	1497
106–111	To establish designations for United States Postal Service buildings in Philadelphia, Pennsylvania.	Nov. 29, 1999	1499
106–112	To designate the facility of the United States Postal Service at 410 North 6th Street in Garden City, Kansas, as the "Clifford R. Hope Post Office".	Nov. 29, 1999	1500
106–113	Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.	Nov. 29, 1999	1501
106–114	To direct the Secretary of the Interior to convey certain lands to the county of Rio Arriba, New Mexico.	Nov. 29, 1999	1538
106–115	Minuteman Missile National Historic Site Establishment Act of 1999	Nov. 29, 1999	1540
106–116	To clarify certain boundaries on maps relating to the Coastal Barrier Resources System	Nov. 29, 1999	1544
106–117	Veterans Millennium Health Care and Benefits Act	Nov. 30, 1999	1545
106–118	Veterans' Compensation Cost-of-Living Adjustment Act of 1999	Nov. 30, 1999	1601
106–119	Upper Delaware Scenic and Recreational River Mongaup Visitor Center Act of 1999	Dec. 3, 1999	1604
106–120	Intelligence Authorization Act for Fiscal Year 2000	Dec. 3, 1999	1606
106–121	To extend the deadline under the Federal Power Act for FERC Project No. 9401, the Mt. Hope Waterpower Project.	Dec. 6, 1999	1637
106–122	To amend the Federal Reserve Act to broaden the range of discount window loans which may be used as collateral for Federal reserve notes.	Dec. 6, 1999	1638
106–123	To designate certain facilities of the United States Postal Service in Chicago, Illinois	Dec. 6, 1999	1639
106–124	To designate the United States Postal Service building located at 8650 South 700 East, Sandy, Utah, as the "Noal Cushing Bateman Post Office Building".	Dec. 6, 1999	1641
106–125	To designate the United States Postal Service building located at 34480 Highway 101 South in Cloverdale, Oregon, as the "Maurine B. Neuberger United States Post Office".	Dec. 6, 1999	1642
106–126	To require the Secretary of the Treasury to mint coins in conjunction with the minting of coins by the Republic of Iceland in commemoration of the millennium of the discovery of the New World by Leif Ericson.	Dec. 6, 1999	1643
106–127	Appointing the day for the convening of the second session of the One Hundred Sixth Congress.	Dec. 6, 1999	1651
106–128	To direct the Secretary of the Interior to make corrections to a map relating to the Coastal Barrier Resources System.	Dec. 6, 1999	1652
106–129	Healthcare Research and Quality Act of 1999	Dec. 6, 1999	1653
106–130	To provide for the holding of court at Natchez, Mississippi, in the same manner as court is held at Vicksburg, Mississippi, and for other purposes.	Dec. 6, 1999	1677
106–131	Gateway Visitor Center Authorization Act of 1999	Dec. 7, 1999	1678
106–132	To designate a portion of Gateway National Recreation Area as "World War Veterans Park at Miller Field".	Dec. 7, 1999	1681
106–133	Arizona Statehood and Enabling Act Amendments of 1999	Dec. 7, 1999	1682
106–134	To amend the Act that established the Keweenaw National Historical Park to require the Secretary of the Interior to consider nominees of various local interests in appointing members of the Keweenaw National Historical Park Advisory Commission.	Dec. 7, 1999	1684
106–135	Star-Spangled Banner National Historic Trail Study Act of 1999	Dec. 7, 1999	1685
106–136	Perkins County Rural Water System Act of 1999	Dec. 7, 1999	1688
106–137	Concerning the participation of Taiwan in the World Health Organization (WHO)	Dec. 7, 1999	1691
106–138	Terry Peak Land Transfer Act of 1999	Dec. 7, 1999	1693
106–139	To amend the Immigration and Nationality Act to provide that an adopted alien who is less than 18 years of age may be considered a child under such Act if adopted with or after a sibling who is a child under such Act.	Dec. 7, 1999	1696
106–140	To amend the Central Utah Project Completion Act to provide for acquisition of water and water rights for Central Utah Project purposes, completion of Central Utah project facilities, and implementation of water conservation measures.	Dec. 7, 1999	1698
106–141	State Flexibility Clarification Act	Dec. 7, 1999	1699
106–142	Commending the World War II veterans who fought in the Battle of the Bulge, and for other purposes.	Dec. 7, 1999	1701
106–143	Four Corners Interpretive Center Act	Dec. 7, 1999	1703

Public Law	Title	Approved	113 Stat.
106–144	To direct the Secretary of Agriculture to convey to the city of Sisters, Oregon, a certain parcel of land for use in connection with a sewage treatment facility.	Dec. 7, 1999	1708
106–145	Otay Mountain Wilderness Act of 1999	Dec. 9, 1999	1711
106–146	Thomas Cole National Historic Site Act	Dec. 9, 1999	1714
106–147	To authorize the Secretary of the Interior to transfer administrative jurisdiction over land within the boundaries of the Home of Franklin D. Roosevelt National Historic Site to the Archivist of the United States for the construction of a visitor center.	Dec. 9, 1999	1717
106–148	National Geologic Mapping Reauthorization Act of 1999	Dec. 9, 1999	1719
106–149	Quinebaug and Shetucket Rivers Valley National Heritage Corridor Reauthorization Act of 1999.	Dec. 9, 1999	1726
106–150	To allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield in Virginia, as previously authorized by law, by purchase or exchange as well as by donation.	Dec. 9, 1999	1730
106–151	To amend the Fair Labor Standards Act of 1938 to clarify the overtime exemption for employees engaged in fire protection activities.	Dec. 9, 1999	1731
106–152	To amend title 18, United States Code, to punish the depiction of animal cruelty	Dec. 9, 1999	1732
106–153	Father Theodore M. Hesburgh Congressional Gold Medal Act	Dec. 9, 1999	1733
106–154	To improve protection and management of the Chattahoochee River National Recreation Area in the State of Georgia.	Dec. 9, 1999	1736
106–155	U.S. Holocaust Assets Commission Extension Act of 1999	Dec. 9, 1999	1740
106–156	Dugger Mountain Wilderness Act of 1999	Dec. 9, 1999	1741
106–157	To authorize the Secretary of the Interior to convey to the State of Illinois certain Federal land associated with the Lewis and Clark National Historic Trail to be used as an historic and interpretive site along the trail.	Dec. 9, 1999	1743
106–158	Export Enhancement Act of 1999	Dec. 9, 1999	1745
106–159	Motor Carrier Safety Improvement Act of 1999	Dec. 9, 1999	1748
106–160	To amend statutory damages provisions of title 17, United States Code	Dec. 9, 1999	1774
106–161	Conferring status as an honorary veteran of the United States Armed Forces on Zachary Fisher	Dec. 9, 1999	1775
106–162	To designate the headquarters building of the Department of Housing and Urban Development in Washington, District of Columbia, as the "Robert C. Weaver Federal Building".	Dec. 9, 1999	1777
106–163	Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999.	Dec. 9, 1999	1778
106–164	Fallen Timbers Battlefield and Fort Miamis National Historic Site Act of 1999	Dec. 9, 1999	1792
106–165	Women's Business Centers Sustainability Act of 1999	Dec. 9, 1999	1795
106–166	To designate the United States courthouse at 401 West Washington Street in Phoenix, Arizona, as the "Sandra Day O'Connor United States Courthouse".	Dec. 9, 1999	1802
106–167	John H. Chafee Coastal Barrier Resources System Act	Dec. 9, 1999	1803
106–168	To amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.	Dec. 12, 1999	1806
106–169	Foster Care Independence Act of 1999	Dec. 14, 1999	1822
106–170	Ticket to Work and Work Incentives Improvement Act of 1999	Dec. 17, 1999	1860

VOL

64

ISS

2
5
0

DE

30

999

ML

federal register

Thursday
December 30, 1999

Part VII

Department of Education

Bilingual Education: Teachers and Personnel Grants; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195A]

Bilingual Education: Teachers and Personnel Grants

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7143 and 7146–7149 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act)(20 U.S.C. 7473 and 7476–7479)).

Purpose of Program: This program provides grants for preservice and inservice professional development for bilingual education teachers, administrators, pupil services personnel, and other educational personnel who are either involved in, or preparing to be involved in, the provision of educational services for children and youth of limited English proficiency.

Eligible Applicants: (1) One or more institutions of higher education (IHEs) which have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of this section. (2) SEAs and LEAs for inservice professional development programs.

Applications Available: December 30, 1999.

Deadline for Transmittal of Applications: February 18, 2000.

Deadline for Intergovernmental Review: April 18, 2000.

Available Funds: $8 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 40.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

(b) 34 CFR part 299.

Description of Program

Funds under this program are to provide for preservice and inservice professional development for bilingual/ESL teachers and other educational personnel. Activities shall assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, shall lead to the awarding of college or university credit.

Priorities

Competitive Priority 1

The Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: For a list of areas that have been designated as Empowerment Zones and Enterprise Communities go to:

http://www.ezec.gov/ezec/mainmap.html

and

http://www.hud.gov/pressrel/ezec/urban.html

Competitive Priority 2

Under 34 CFR 75.105 (c)(2)(ii) and section 7143(b) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Institutions of higher education, in consortia with local or State educational agencies, that offer degree programs that prepare new bilingual education teachers in order to increase the availability of educators to provide high-quality education to limited English proficient students.

The Secretary selects applications that meet this priority over applications of comparable merit which do not meet the priority.

Invitational Priorities

The Secretary is particularly interested in applications that meet one of the following invitational priorities in the next paragraphs. However, an application that meets these invitational priorities receives no competitive or absolute preference over other applications.

(Authority: 34 CFR 105(c)(1)(1)).

Applications which propose to utilize school-based professional development approaches by linking beginning teachers of LEP students, pre-service teachers, and expert bilingual teachers in professional practice schools, teacher learning communities, or mentorship programs.

Applications proposing partnerships that link institutions of higher education experienced in preparing bilingual teachers with institutions of higher education proposing to develop new bilingual/ESL education teacher training preparation programs.

Selection Criteria

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(Authority: 34 CFR 75.210(a)(2)(i) and (v))

(b) *Quality of the project design.* (55 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(Authority: 34 CFR 75.210(c)(2)(i)–(ii), (v), (xii)–(xiii), (xvi), (xviii), and (xxiii))

(c) *Quality of project services.* (10 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(Authority: 34 CFR 75.210(d)(2) and (3)(v))

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(2) and (3)(ii))

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(34 CFR 75.210(g)(2)(i))

(f) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(2)(iii), (iv), and (vi))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC) see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963) or; you may view the latest SPOC list on the OMB website at: http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.195A, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195A), Washington, DC 20202–4725; or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with Section 427 of the General Education Provisions Act, questions and answers, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden
b. Group Application Certification
c. Participant Data
d. Project Documentation
e. Program Assurances
f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.
g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.
h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (**Note:** This form is intended for the use of grantees and should not be transmitted to the Department.)
i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit one original signed application and two copies of the application. Please mark each application as original or copy. No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Sue Kenworthy by email: sue__kenworthy@ed.gov or (202) 205–5539 or Franklin Reid by email: franklin__reid@ed.gov or (202) 205–9803 U.S. Department of Education, Switzer Bldg. Room 5090, 400 Maryland Avenue, SW., Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority 20 USC 7473.

Dated: December 21, 1999.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0536, Exp. Date: 12/31/00. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–6510.

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (Use this form to document participation of consortia members)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year (Attached to Form No. 524)
5. Participant Data-approximate number of participants to be served each year.
6. Project Documentation
   Transmittal Letter to SEA
   Documentation of Empowerment Zone or Enterprise Community (if applicable)
7. Program Assurances
8. Non-Construction Programs (SF 424B)
9. Certifications Regarding Lobbying; Debarment Suspension and Other Responsibility Matters; and Drug-

Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80-0014)
11. Disclosure of Lobbying Activities (SF-LLL)
12. Notice to All Applicants (See form provided below)
13. Table of Contents
14. One-page abstract (single-spaced)
15. Application Narrative (double-spaced not to exceed 30 pages, see instructions below)
16. One original and two copies of the application for transmittal to the Department's Application Control Center.

Mandatory Page Limits for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

1. A page is 8.5" x 11", on one side only with 1" margins at the top, bottom, and both sides.

2. You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents. The page limit applies only to item 15 in the checklist for Applicants provided above.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARDS SPECIFICED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Application Narrative and Abstract

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. *Do not simply paraphrase the criteria.* Provide position descriptions for key personnel. This package includes questions and answers to assist you in preparing the narrative portion of the application. Prepare a one-page single-spaced abstract that summarizes the proposed project activities, the expected outcomes, and how the application addresses the announced invitational priorities, if applicable.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. Prepare an itemized budget for each year of requested funding. Indirect costs for institutions of higher education which are the fiscal agents for Teachers and Personnel Grants are limited to the lower of either 8% of the modified total direct cost base or the institution's indirect cost agreement. A modified direct cost is defined as total direct costs less stipends, tuition and related fees and capital expenditures of $5,000 or more. In describing student support costs distinguish costs for tuition and fees from costs for stipends.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, 1999.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a) (4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Questions and Answers

Does the Teachers and Personnel Grants Program have specific evaluation requirements?

Yes, the evaluation requirements are described in section 7149 of Title VII of ESEA, 20 U.S.C. 7479

What requirements must grantees meet related to teacher certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

What activities are authorized under Teachers and Personnel Grants?

Authorized activities are those which support professional development of teachers and other educational personnel who are either involved with, or preparing to be involved with, serving students with limited English proficient proficiency. Such activities may include, but are not limited to, the development of program curricula; collaboration with local school districts in designing new teacher training activities; and reforming and improving teacher training programs to reflect high standards of professionalism. Only institutions of higher education, applying in consortia arrangements with one or more local educational agencies or State educational agencies, are eligible to apply for preservice programs. This means the institution of higher education would be the lead agency and the fiscal agent for the grant. State educational agencies and local educational agencies may, however apply for inservice training programs.

May program budgets include costs for items other than student tuition and fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other costs to support proposed professional developmental activities.

What information may be helpful in preparing a narrative for the Teachers and Personnel Grant?

In responding to the selection criteria, applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education, and other partnership organizations in

planning, implementing, and evaluating the proposed program? What resources and support will be provided by each of the contributing partners?

• How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?

• How will the program assist in systemically reforming policies and practices in the target schools and in the IHE related to the preparation of new teachers, the induction of new bilingual/ESL teachers, clinical experiences for new bilingual/ESL teachers and other educational personnel, or professional development opportunities for all teachers?

• What selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?

• What support will be provided to new bilingual/ESL teachers by experienced bilingual/ESL teachers, higher education faculty, and school administrators to guide them during their period of induction?

• How will the instructional responsibilities of new teachers be balanced with appropriate professional development, support and planning time?

• How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?

• How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?

• What are the expected outcomes for participant learning, effectiveness in the instructional setting, reform and improvement in the school or the university? What measures will the proposed program use to collect data on the effectiveness of the program in meeting its objectives, such as: field practice assessments, National or State benchmark tests, surveys of graduates, mentor teachers, school administrators, rates of transfer from 2-year to 4-year institutions, graduation rates, placement rates? How are needs, objectives, activities and measures linked?

• How will the program evaluation incorporate strategies for assessing progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; identifying exemplary program features; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?

• How will the proposed program improve teacher preparation curricula, clinical experiences and the skills and knowledge of higher education faculty to better prepare ALL teachers in content and pedagogy related to the needs of LEP students.

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning a Teachers and Personnel Grant.

The following are the professional development principles:

• Focuses on teachers as central to student learning, yet includes all other members of the school community;

• Focuses on individual, collegial and organizational improvement; Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;

• Reflects best available research and practice in teaching, learning, and leadership;

• Enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

• Promotes continuous inquiry and improvement embedded in the daily life of schools;

• Is planned collaboratively by those who will participate in and facilitate that development;

• Requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and

• Uses this assessment to guide subsequent professional development efforts.

What other information may be helpful in applying for a Teachers and Personnel grant?

Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive Order 12372. The SEA review requirement and the requirements for Executive Order 12372 is two distinct requirements.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____

_____ ____ _____ _____

City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4 . 1 9 5 A → Title: Teachers and Personnel ~~Grants~~

5. Project Director: _____

Address: _____

_____ ____ _____

City State ZIP Code + 4

Tel. #: ( ) _____ Fax #: ( ) _____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ { ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com/dbis/aboutdb/intlduns.htm.

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check "No." The remaining parts of item 12 are then not applicable.

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in "Protection of Human Subjects in Research" attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in "Protection of Human Subjects in Research" attached to this form to prepare the six-point narrative about the nonexempt activities. Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter "Pending" in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter "None" in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

BILLING CODE 4000-01-C

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

Public reporting burden for this collection of information is estimated to vary from 18 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington DC 20503.

Instructions for ED Form 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary

U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary

Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information

Pay Attention to Applicable Program Specific Instructions, if Attached

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–U

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number *Draft*

Expiration Date: *Pending OMB Clearance*

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

BILLING CODE 4000-01-C

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for all Teachers

Number of proposed participants in each of the following categories to be served each year of the grant.

Preservice Teachers (who are not paraprofessionals) _____
Preservice Teachers (who are currently paraprofessionals) _____
Inservice Teachers _____
Other Educational Personnel (Specify type of personnel below) _____
Degree level(s) to be attained (if applicable) _____
Certification Type(s) to be attained _____
Language(s) of Participants (other than English) _____

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

PROGRAM ASSURANCES

Note: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(g)(3))

Authorized Representative

Name: _____
Signature: _____
Typed Name: _____
Date: _____
Applicant Organization: _____

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to

all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of land-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1966 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the marking of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period proceeding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public

(Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202–4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program, approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202–4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name Of Applicant

_____

PR/Award Number and/or Project Name

_____

Printed Name and Title of Authorized Representative

_____

Signature

_____

Date

_____

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded," as used in this clause, have

the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Applicant

PR/Award Number and/or Project Name

Printed Name and Title of Authorized Representative

Signature

Date

BILLING CODE 4000-01-U

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4000-01-C

INSTRUCTIONS FOR COMPLETION OF SF–LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity, include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known enter the full Catalog of Federal Domestic assistance (CFDA) number of grants, cooperative agreements, loans and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (i.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, *e.g.*, "RFP–DE–90–001."

9. For covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the lobbying Disclosure Aid of 1995 engaged by the reporting entity identified in item 4 to influence of the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average to minutes per response, Including time for reviewing instructions, searching existing data sources, gathering and maintaining the data estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully

participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their environment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 99–33637 Filed 12–29–99; 8:45 am]
BILLING CODE 4000–01–U

VOL
64
ISS
2
50
DE
30
999
MI

Reader Aids

Federal Register

Vol. 64, No. 250

Thursday, December 30, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468	1
67469–67692	2
67693–67996	3
67997–68274	6
68275–68614	7
68615–68930	8
68931–69164	9
69165–69370	10
69371–69628	13
69629–69882	14
69883–70172	15
70173–70562	16
70563–70984	17
70985–71266	20
71267–71632	21
71633–71982	22
71983–72248	23
72249–72456	27
72457–72886	28
72887–73380	29
73381–73880	30

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders 72887

Presidential Determinations:

No. 2000–8 of December 17, 1999 72887

Proclamations:

7256 67691
7257 68269
7258 69161
7259 69163
7260 70563
7261 71629
7262 71631

Executive Orders:

June 24, 1914 (Revoked in part by PLO 7416) 67295
April 28, 1917 (Revoked in part by PLO 7416) 67295
February 11, 1918 (Revoked in part by PLO 7416) 67295
July 10, 1919 (Revoked in part by PLO 7416) 67295
May 25, 1921 (Revoked in part by PLO 7416) 67295
April 17, 1926 (Revoked in part by PLO 7416) 67295
February 7, 1930 (Revoked in part by PLO 7416) 67295
13106 (superceded by EO 13144) 72237
13143 68273
13144 72237

Administrative Orders

Memorandums:

November 29, 1999 68275

5 CFR

410 69165
530 69165
531 69165
532 ..... 69183, 72249
534 ..... 68931, 72889
536 69165
550 ..... 69165, 69936, 72457
551 69165
575 ..... 69165, 71633
591 69165
595 72457
610 ..... 69165, 72457
630 72250
831 72256
842 72256
870 72459
1205 71267
1630 67693
5201 73852
6801 68615
870 71983

Proposed Rules:

532 72292
792 72037
1201 72040

7 CFR

29 67469
210 72466
225 ..... 72474, 72889
226 72257
245 72466
246 ..... 67997, 70173, 71635
250 72898
253 ..... 72908, 73381
254 ..... 72908, 73381
301 71267
319 ..... 68001, 69629
353 72262
457 71270
761 69322
905 69371
906 69375
915 69380
955 ..... 72265, 72267
993 72909
1000 ..... 70868, 73386
1001 70868
1002 70868
1004 70868
1005 70868
1006 70868
1007 70868
1012 70868
1013 70868
1030 70868
1032 ..... 70868, 70985
1033 70868
1036 70868
1040 70868
1044 70868
1046 70868
1049 70868
1050 70868
1064 70868
1065 70868
1068 70868
1076 70868
1079 70868
1106 70868
1124 70868
1126 70868
1131 70868
1134 70868
1135 70868
1137 70868
1138 70868
1139 70868
1407 67470

1703 69937
1721 72488
4284 71984

Proposed Rules:
271 72196
272 ..... 70920, 72196
273 ..... 70920, 72196
301 71322
360 72293
361 72293
955 69419
985 69421
989 69204
1032 67201
1703 69937
1721 72575
1744 69946
1980 70124
3555 70124
4280 69937

8 CFR
103 69983
235 68616

Proposed Rules:
100 68638
103 71323
214 71323
299 71323

9 CFR
78 67695
94 ..... 67695, 72912
130 ..... 67697, 67699
310 72170
317 ..... 71989, 72490
381 ..... 71989, 72150, 72490
391 72492
424 72150

Proposed Rules:
54 70608
79 70608
301 70200
318 70200
320 70200

10 CFR
21 71990
50 71990
51 68005
52 72002
54 71990
72 ..... 67700, 72019
709 70962
710 70962
711 70962
850 68854

Proposed Rules:
26 67202
71 71331
73 71331
431 69598
960 69963
963 69963

11 CFR

Proposed Rules:
100 68951

12 CFR
22 71272
24 70986
203 70991
208 71272
308 72913
327 70178
339 71272
503 69183
505 69183
557 69183
559 69183
563 69183
572 69183
614 71272
701 72269
760 71272
932 71275
934 71275
935 71275
1102 72494
1780 72501

Proposed Rules:
202 69963
205 69963
213 69963
226 69963
230 69963
611 72041
615 72041
935 71689

13 CFR
107 70992
300 69868
301 69868
302 69868
303 69868
304 69868
305 69868
306 69868
307 69868
308 69868
314 69868
316 69868
317 69868
318 69868
400 72019
500 72022

Proposed Rules:
120 ..... 67205, 69964

14 CFR
25 ..... 67147, 67701, 67705, 69383
39 ..... 67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394, 69629, 69964, 69967, 70181, 70997, 71001, 71003, 71004, 71006, 71007, 71009, 71010, 71012, 71278, 71280, 71282, 72270, 72522, 72524, 72528, 72530, 72531, 72533, 72913, 72916, 72918, 72919
65 ..... 68916, 71635
71 ..... 67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932, 69631, 69632, 70565, 70566, 70567, 70568, 70570, 71014, 71637, 72922, 72924, 72925, 72926, 72928
91 70571
97 ..... 67473, 67476, 71015, 71017, 73387
254 70573
1203 72534

Proposed Rules:
11 69856
23 73437
25 ..... 67804, 69425
39 ..... 67206, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336, 71689, 71694, 71696, 72575, 72579, 72582, 72584, 72586, 72963, 72964, 72967, 73438, 73439, 73441
71 ..... 67525, 67810, 69430, 69431, 70610, 70611, 70612, 72969, 72970
450 69628
1261 71339
1267 71339

15 CFR
303 67148
806 67716
710 73744
711 73744
712 73744
713 73744
714 73744
715 73744
716 73744
717 73744
718 73744
719 73744
720 73744
721 73744
722 73744
902 ..... 68228, 68932, 69888
2015 67152

Proposed Rules:
280 69969
922 72296

16 CFR
0 71283
4 69397
305 71019
1145 71854
1212 71854
1213 71888
1500 71888
1513 71888

17 CFR
3 68011
32 68011
210 73389
211 ..... 67154, 68936
228 73389
229 73389
240 73389
270 68019

Proposed Rules:
Ch. II 69074
1 72587
4 68304
230 72590
240 ..... 69975, 70613, 72590
243 72590
249 72590
250 71341

18 CFR
35 72535
141 72537
375 73403
376 73403

19 CFR
12 67479
132 67481
163 67481

20 CFR
404 67719

Proposed Rules:
222 68647
325 67811
330 67811
335 67811
336 67811
604 ..... 67811, 67972, 71346

21 CFR
10 69188
12 69188
176 ..... 68629, 69898
177 71637
178 ..... 67483, 71639, 72272, 72273, 72274
179 69190
203 67720
205 67720
510 ..... 69188, 69191
520 68289
522 71640
529 71640
558 ..... 70576, 72026
1401 69901

Proposed Rules:
10 69209
12 69209
16 ..... 70202, 70203
314 67207
330 71062
510 69209
601 67207
807 71347
1309 67216

22 CFR
103 73743

23 CFR
130 71284
480 71284
620 71284
630 71284
635 71284
645 71284
710 71284
712 71284
713 71284

Proposed Rules:
655 ..... 71354, 71358, 73605, 736120
945 73674

24 CFR
180 72726
200 72868
290 72410
888 ..... 72722, 72730
985 67982

25 CFR

Proposed Rules:
504 72296
990 71698

26 CFR
1 ..... 67763, 69903, 71641, 72540, 72545, 72555, 73408

20 .....67763, 67767, 71021
25 67767
31 73408
35a 73408
301 .....67767, 73408
502 73408
503 73408
509 73408
513 73408
514 73408
516 73408
517 73408
520 73408
521 73408
601 69398
602 .....67767, 69903, 71641, 72545, 72555, 73408

Proposed Rules:
1 71082
301 73444

27 CFR

200 71918
270 .....71918, 71929, 71937
275 .....71918, 71929, 71937, 71947
290 .....71918, 71929, 71937
295 .....71929, 71937
296 .....71929, 71937, 71957

Proposed Rules:
4 72612
200 71927
270 .....71927, 71935
275 .....71927, 71935, 71955
290 .....71927, 71935
295 719351
296 719351

28 CFR

0 68307
91 71022
545 72798
551 68264

29 CFR

0 73852
403 71622
4011 67163
4022 67163
4044 .....67165, 69922

Proposed Rules:
1910 73448
2520 67436
2700 68649

30 CFR

0 73852
218 72756
250 .....69923, 72756
252 72756
253 72756
256 72756
282 72756
740 70766
745 70766
761 .....70766, 70838
762 70766
772 70766
773 70766
778 70766
780 70766
784 .....70766, 71652
817 71652
913 .....68024, 72275
914 70578
918 68289
936 70584
946 .....69399, 72277

Proposed Rules:
14 72617
18 .....72617, 72620
75 .....72617, 72620
206 73458
280 68649
931 .....71698, 71700
938 .....70644, 72297

31 CFR

285 71228

Proposed Rules:
28 69432
285 71233

32 CFR

44 72027
199 72030
287 67166
296 71297
299 71299
312 72928
806 72808
806b 72031

Proposed Rules:
199 .....67220, 69981
811 72621

33 CFR

26 69633
100 .....67168, 67169, 69182, 70184, 72929
117 .....67169, 67773, 68291, 71653
127 67170
154 67170
155 67170
159 67170
161 69633
164 67170
165 .....70587, 71023, 71655, 72281, 72558, 72559, 72929
183 67170
207 69402

Proposed Rules:
100 70650
140 68416
141 68416
142 68416
143 68416
144 68416
145 68416
146 68416
147 68416
165 70650

34 CFR

76 71964
304 69138
606 70146
607 70146
614 72802

Proposed Rules:
Ch. VI 73458
694 71552

35 CFR

Ch. I 73413

36 CFR

7 71025
1220 67662
1222 67662
1228 .....67662, 67634, 68945

Proposed Rules:
217 .....69446, 70204
219 .....69446, 70204
251 .....70204, 72971

37 CFR

1 .....67486, 67774
2 .....67486, 67774
253 67187
258 71659

Proposed Rules:
201 71086

38 CFR

20 73413

Proposed Rules:
3 67528

39 CFR

3001 67487

Proposed Rules:
111 .....68965, 71702, 72044
3001 72622

40 CFR

9 .....68546, 68722, 69636
51 71026
52 .....67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404, 70589, 70592, 70593, 71026, 71027, 71031, 71035, 71038, 71304, 71660, 71663, 71666, 72032, 72561, 72564, 72934, 72939, 72940
62 70595
63 .....67789, 67793, 69637, 71852, 72568
70 .....71038, 72032
82 68039
89 73300
92 73300
94 73300
122 68722
123 68722
124 68722
136 73414
141 67450
143 67450
144 .....68546, 70316
145 68546
146 68546
180 .....68044, 68046, 68631, 69407, 69409, 70184, 70599, 71670, 72282, 72284, 72947
185 72947
186 72947
243 70602
300 .....68052, 73423

Proposed Rules:
2 71366
50 68659
52 .....67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332 70347, 70364, 70380, 70397, 70412, 70428, 70443, 70459, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087, 71704, 71705, 72045, 72632, 72971, 72972
62 70665
63 72633
70 .....68066, 72045
80 70121
81 .....68659, 70660
85 .....68310, 70121
86 .....68310, 70121, 70665
141 71366
142 71367
160 72972
165 71367
180 71708
194 68661
243 70666
260 68968
300 73460
372 68311
503 72045
761 69358
792 72972
806 72972

41 CFR

Ch. 101 72570
Ch. 301 67670
300-3 67670
301-10 67670

42 CFR

121 71317
422 71673
1001 71626

Proposed Rules:
68c 69213
433 67223
438 67223
1001 69217

43 CFR

12 72287

44 CFR

61 71317
64 .....71317, 71678
65 .....69644, 69646, 69647, 69649
67 .....69652, 69655, 69657

Proposed Rules:
67 69676

45 CFR

61 71041
1302 69924
1641 67501

Proposed Rules:
160 69981
161 69981
162 69981
163 69981
164 69981
270 68202
2522 67235
2525 67235

46 CFR

28 67170
30 67170
32 67170
34 67170
35 67170
38 67170
39 67170
54 67170
56 67170
58 67170
61 67170
63 67170

76 67170
77 67170
78 67170
92 67170
95 67170
96 67170
97 67170
105 67170
108 67170
109 67170
110 67170
111 67170
114 67170
119 67170
125 67170
151 67170
153 67170
154 67170
160 67170
161 67170
162 67170
163 67170
164 67170
170 67170
174 67170
175 67170
182 67170
190 67170
193 67170
195 67170
199 67170

47 CFR

Ch. 1 68053
1 ..... 68946, 69926, 72570
2 ..... 69926, 72571
20 72951
36 ..... 67372, 67416, 72956, 73427
51 68637
54 ..... 67372, 67416, 72956, 73427
69 67372
73 ..... 70606, 71041, 73429
76 ..... 67193, 67198
90 ..... 67199, 71042
95 ..... 69926, 72956

Proposed Rules:

0 71369
1 71088
2 71088
73 ..... 67236, 67535, 68662, 68663, 68664, 68665, 70670, 70671, 70672, 71097, 71098, 71712, 73460, 73461, 73462, 73463, 73464
76 72985
80 71369
90 71369
101 ..... 71088, 71373

48 CFR

Ch. 1 ..... 72414, 72451
1 ..... 72415, 72416
2 ..... 72416, 72441, 72450
4 ..... 72441, 72444
5 ..... 72416, 72441, 72450
6 72416
7 72441
8 72445
9 72416
10 72441
11 72446
12 ..... 72415, 72416, 72447
13 ..... 2416, 72447
14 ..... 72416, 72450
15 ..... 72416, 72441, 72450
16 72448
17 72416
19 ..... 72416, 72441, 72447, 72450
23 72415
25 72416
32 72450
33 72450
36 ..... 72416, 72450
39 72445
42 ..... 72444, 72450
48 72448
52 ..... 72415, 72416, 72446, 72447, 72448, 72450
808 69934
812 69934
813 69934
852 69934
853 69934
1815 69415

Proposed Rules:

1 67986
2 70158
12 67992
13 67992
16 70158
22 ..... 67986, 67992
25 67446
28 72828
30 67814
37 70158
52 ..... 67446, 67986, 67992, 72828
919 68072
952 68072
1815 70208
1819 70208
1852 70208

49 CFR

Ch. III 72959
192 69660
195 69660
211 70193
219 ..... 69193, 72289
225 69193
235 70193
238 70193
240 70193
301 72959
571 69665

Proposed Rules:

40 69076
106 71098
107 71098
171 ..... 71098, 72633
172 72633
173 72633
174 72633
175 72633
176 72633
177 72633
178 72633
179 72633
180 72633
192 71713
195 ..... 71713, 73464
531 73476
571 ..... 70672, 71377

50 CFR

17 ..... 68508, 69195, 71680, 72960
20 71236
21 71236
222 ..... 69416, 70196
223 ..... 69416, 70196
229 73434
300 ..... 69672, 72035, 72961, 72962
600 67511
622 ..... 68932, 71056
635 70198
648 ..... 71060, 71320, 71687, 73435
649 68228
660 ..... 69888, 72290
679 ..... 68054, 68228, 68949, 69673, 70199, 71688, 72572

Proposed Rules:

17 ..... 67814, 69324, 70209, 71714, 72300, 72992, 72993
18 68973
216 ..... 70678, 71722
223 73479
226 ..... 67536, 69448
622 ..... 70678, 71388
635 ..... 69982, 72636
648 ..... 67551, 73506
660 70679
679 ..... 67555, 69219, 69458, 71390, 71396, 72302, 73003

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 30, 1999

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (dried) produced in California; published 12-29-99

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Rhododendron in established growing media; importation from Europe; published 11-30-99

COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; implementation; published 12-30-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Commercial fishing authorizations—
Atlantic large whale take reduction plan; published 12-30-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Non-rural local exchange carriers; high cost support; published 12-30-99
Radio broadcasting:
Network signals; satellite delivery to unserved households; published 12-30-99

STATE DEPARTMENT
Chemical Weapons Convention and Chemical Weapons Convention Implementation Act:
Sample taking and record keeping and inspections; published 12-30-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness standards:
Special conditions—
McDonnell Douglas Corp. Model MD-17 series airplane; published 11-30-99
Class D airspace; published 10-5-99
Class D and Class E airspace; published 10-15-99
Class E airspace; published 9-2-99
Class E airspace; correction; published 11-19-99
IFR altitudes; published 11-24-99
Low offshore airspace areas; published 11-5-99
Restricted areas; published 11-5-99
VOR Federal airways; published 10-26-99

RULES GOING INTO EFFECT DECEMBER 31, 1999

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
Toxic chemical release reporting; community right-to-know—
Persistent bioaccumulative toxic (PBT) chemicals; reporting thresholds lowered, etc.; published 10-29-99

PANAMA CANAL COMMISSION
General and shipping and navigation regulations; repeal; published 12-30-99

PERSONNEL MANAGEMENT OFFICE
Prevailing rate systems; published 12-27-99

RULES GOING INTO EFFECT JANUARY 1, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Milk marketing orders:
New England et al.; published 12-17-99
Onions (Vidalia) grown in—
Georgia; published 12-27-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Fee increase; published 12-28-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Vessel monitoring system; published 8-9-99
Magnuson-Stevens Act provisions—
Pacific Coast groundfish; annual specifications and management measures; published 1-4-00
Northeastern United States fisheries—
Atlantic surf clam and ocean quahog; published 12-30-99
International fisheries regulations:
Northwest Atlantic Fisheries Organization Regulatory Area; U.S. fish quota allocations; published 12-23-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Major Electric Utilities, Licensees, and Others annual report; electronic filing instructions; published 12-28-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Fuel and fuel additives—
California; enforcement exemptions for reformulated gasoline; extension; published 9-15-99

FEDERAL DEPOSIT INSURANCE CORPORATION
Management official interlocks; published 9-24-99

FEDERAL RESERVE SYSTEM
Home mortgage disclosure (Regulation C):
Depository institutions; asset-size exemption threshold adjustment; published 12-20-99
Management official interlocks; published 9-24-99
Truth in lending (Regulation Z):
Mortgage rates and fees; dollar amount adjustment; published 11-5-99

GENERAL SERVICES ADMINISTRATION
Federal travel:
Per diem localities; maximum lodging and meal allowances; published 12-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Physician fee schedule (2000 CY); payment policies and relative value unit adjustments; published 11-2-99

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Natural gas from Indian leases; valuation; published 8-10-99

LABOR DEPARTMENT
Labor-Management Standards Office
Labor-management standards:
Labor organization annual financial reports; technical amendments; published 12-21-99

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright arbitration royalty panel rules and procedures:
Musical compositions performance by colleges and universities; cost of living adjustment; published 12-1-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Insurance requirements—
Share insurance fund capitalization; published 10-18-99
Management official interlocks; clarification and statutory changes conformation; published 11-26-99
Supervisory committee audits and verifications; published 7-29-99

PENSION BENEFIT GUARANTY CORPORATION
Single employer plans:
Allocation of assets—
Valuation of benefits and assets; expected retirement age; published 12-1-99
Benefits payable in terminated plans; disclosure to participants; published 12-1-99
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits; published 12-15-99

TRANSPORTATION DEPARTMENT
Motor carrier safety standards:
CFR chapter revisions; published 12-29-99

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad accident/incident reporting:
Monetary threshold increase; published 12-10-99

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Cigarette papers and tubes; tax increase; published 12-22-99
Importation restrictions, markings, minimum manufacturing requirements, and penalty provisions; published 12-22-99

TREASURY DEPARTMENT
Comptroller of the Currency
Management official interlocks; published 9-24-99

TREASURY DEPARTMENT
Fiscal Service
Federal claims collection:
State income tax obligations; tax refund payments offset; published 12-20-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes, etc.:
Withholding of tax on certain U.S. source income paid to foreign persons and related collection, refunds, and credits; etc.; published 12-31-98
Witholding of tax on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc.; correction; published 3-9-99
Income taxes:
Partnership income return; published 11-12-99
Procedure and administration:
Partnership returns required on magnetic media; published 11-12-99

TREASURY DEPARTMENT
Thrift Supervision Office
Management official interlocks; published 9-24-99

RULES GOING INTO EFFECT JANUARY 2, 2000

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades:
Events requiring permits, written notices, or neither; identification; published 12-30-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Fire ant, imported; comments due by 1-4-00; published 11-5-99

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning
Supplemental information; comments due by 1-4-00; published 12-13-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Community development quota program; at-sea scales; comments due by 1-3-00; published 12-2-99
Pollock; comments due by 1-5-00; published 12-21-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico Fishery Management Council; meetings; comments due by 1-3-00; published 11-26-99
Northeastern United States fisheries—
Dealer and vessel reporting requirements; comments due by 1-3-00; published 12-2-99
Marine mammals:
Dolphin-safe tuna labeling; official mark; comments due by 1-5-00; published 12-22-99

ENERGY DEPARTMENT
Acquisition regulations:
Mentor-Protege Program; comments due by 1-5-00; published 12-6-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Ethylene oxide commercial sterilization and fumigation operations; chamber exhaust and aeration room vents; requirements suspended; comments due by 1-3-00; published 12-3-99
Air programs:
Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply
Findings rescission; comments due by 1-3-00; published 12-8-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 1-3-00; published 12-17-99
Connecticut; comments due by 1-3-00; published 12-1-99
Georgia; comments due by 1-3-00; published 12-2-99
Montana; comments due by 1-5-00; published 12-6-99
Pennsylvania; comments due by 1-5-00; published 12-6-99
Rhode Island; comments due by 1-3-00; published 12-2-99
Utah; comments due by 1-5-00; published 12-6-99
Radiation protection programs:
Hanford Site; transuranic radioactive waste proposed for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability; comments due by 1-7-00; published 12-8-99
Water supply:
National primary drinking water regulations—
Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 11-2-99
Radon-222; maximum contaminant level goal; public health protection; comments due by 1-4-00; published 0-0- 0

FEDERAL ELECTION COMMISSION
Internet use for campaign activity; inquiry; comments due by 1-4-00; published 11-5-99

FEDERAL MEDIATION AND CONCILIATION SERVICE
Freedom of Information Act; implementation; comments due by 1-3-00; published 11-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adjuvants, production aids, and sanitizers—
7-oxa-3,20-diazadispiro-[5.1.11.2]-heneicosan-21-one,2,2,4,4-tetramethyl-,hydrochloride, reaction products; comments due by 1-3-00; published 12-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicaid:
Children's Health Insurance Program; State allotments and grants; comments due by 1-7-00; published 11-8-99
Medicare:
Physician fee schedule (2000 CY); payment policies and relative value unit adjustments; comments due by 1-3-00; published 11-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 1-3-00; published 11-3-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Santa Ana sucker; comments due by 1-3-00; published 12-16-99
Scaleshell mussel; comments due by 1-7-00; published 11-29-99

LABOR DEPARTMENT
Employment Standards Administration
Federal Coal Mine Health and Safety Act of 1969, as amended:

Black Lung Benefits Act—
Individual claims by former coal miners and dependents processing and adjudication; regulations clarification and simplification; comments due by 1-6-00; published 11-18-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
Employee choice between appeal procedure and grievance procedure; agency requirement to provide notice when it takes appealable action against employee; comments due by 1-3-00; published 11-1-99

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 1-3-00; published 11-3-99

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:
New York; comments due by 1-4-00; published 11-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 1-6-00; published 12-7-99
Bell Helicopter Textron Canada; comments due by 1-3-00; published 11-4-99
BFGoodrich; comments due by 1-7-00; published 12-8-99
Boeing; comments due by 1-6-00; published 11-22-99
British Aerospace; comments due by 1-6-00; published 12-7-99
Eurocopter France; comments due by 1-4-00; published 11-5-99
Fokker; comments due by 1-5-00; published 12-6-99
McDonnell Douglas; comments due by 1-6-00; published 11-22-99
New Piper Aircraft, Inc.; comments due by 1-4-00; published 11-5-99
Raytheon; comments due by 1-3-00; published 11-16-99
Rolls-Royce plc; comments due by 1-3-00; published 11-2-99
Class E airspace; comments due by 1-3-00; published 11-19-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Controlled corporations; recognition of gain on certain distributions of stockor securities in connection with an acquisition; comments due by 1-5-00; published 8-24-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

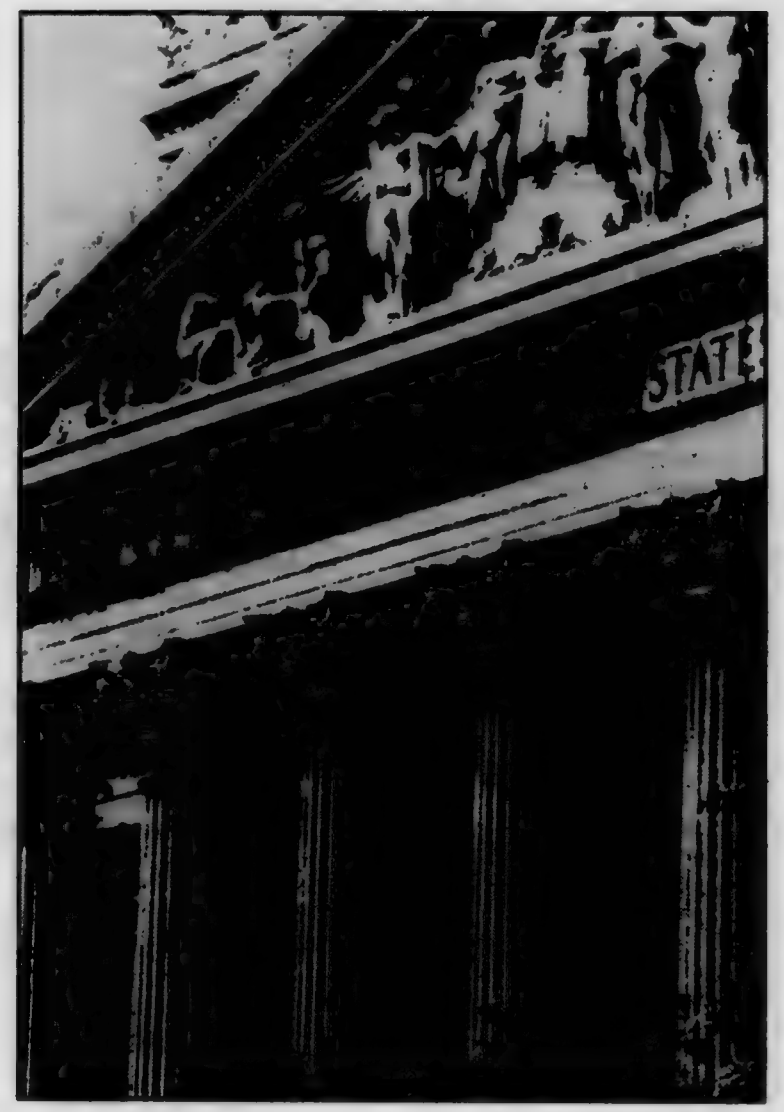
LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES** enter the following indicated subscriptions for one year:

____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

106th Congress, 2nd Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 2nd Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 2nd Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 12/99

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

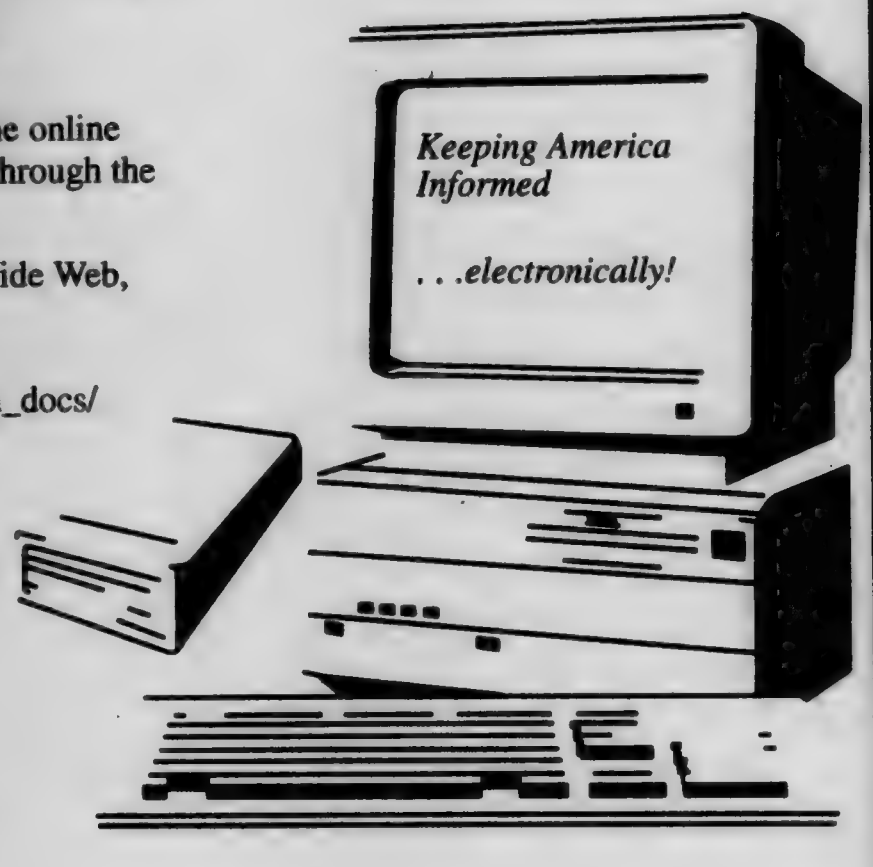
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

VOL
64
ISS
250
DE
30
999
UMI

Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICORFORM EDITION.

code of federal regulations

REFERENCE

LSA

List of CFR Sections Affected

October 1999

M-R
ANN ARBOR

DISTRICT LIBRARY

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

code of

Federal Regulations

LSA

List of CFR Sections Affected

October 1999

Title 1–16
Changes January 2, 1999
through October 29, 1999

Title 17–27
Changes April 1, 1999
through October 29, 1999

Title 28–41
Changes July 1, 1999
through October 29, 1999

Title 42–50
Changes October 1, 1999
through October 29, 1999

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (63 FR for 1997, 64 FR for 1998) and the page number. Example: 24727 in bold cite as 63 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

ONLINE LSA

The LSA is on the internet at http://www.access.gpo.gov/nara/lsa/aboutlsa.html.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Dwayne Dehlbom. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Gwen Henderson. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5]Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1]Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5]Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	35.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7]Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0–1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441–1.500	(869–038–00082–2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7]Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0–42	(869–038–00098–9)	39.00	July 1, 1999
43–end	(869–038–00099–7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8]July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–038–00144–6-2)	59.00	July 1, 1999
87–135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00148–9-7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00153–4-3)	34.00	July 1, 1999
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–038–00155–6-0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[5]No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7]No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8]No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

Other Related Publications

Title	Price	Revision Date
Federal Register:		
Yearly subscription (with FR Index and LSA)	607.00	
Yearly subscription (without FR Index and LSA)	555.00	
Individual copies	8.00	daily
LSA (List of CFR Sections Affected):		
Yearly subscription	27.00	
Federal Register Index:		
Yearly subscription	25.00	
CFR Index and Finding Aids	48.00	1999

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 1, 1999.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT

Chapter II—Executive Office of the President (Parts 100—199)

100.1 Revised 12881

Presidential Documents

Proclamations

4865 *See* Memorandum of Apr. 4, 1999 53883
See Memorandum of Sept. 24, 1999 53883
5030 *See* Proc. 7219 48701
6763 *See* Proc. 7235 55611
7103 *See* Proc. 7202 29773
See Proc. 7214 42265
7162 2989
7163 2991
7164 5583
7165 5585
7166 6181
7167 6777
7168 10101
7169 10381
7170 10383
7171 10385
7172 11373
7173 12879
7174 14353
7175 14807
7176 15123
7177 17075
7178 17077
7179 17499
7180 17939
7181 18317
7182 18321
7183 19017
7184 19439
7185 19681
7186 19683
7187 22777
7188 23005
7189 24275
7190 24277
7191 24279
7192 24281
7193 25189
7194 25191
7195 25797
7196 27437
7197 27439
7198 28083
7199 28709
7200 28711
7201 29769
7202 29773
See Proc. 7214 42265
7203 32379
7204 32381
See Proc. 7214 42265
7205 33737
7206 36229
7207 36549
7208 37389
7209 39895
7210 40723
7211 41001
7212 41003
7213 41005
7214 42265
7215 46813
7216 47091
7217 47093
7218 47337
7219 48701
Corrected 49276, 49844
7220 50417
7221 50731
7222 51183
7223 51185
7224 51415
7225 51417
7226 52625
7227 53877
7228 54193
7229 54195
7230 54197
7231 54755
7232 54757
7233 54759
7234 55405
7235 55611
7236 55613
7237 55615
7238 55617
7239 55619
7240 56393
7241 56397

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 3 Proclamations—Con.

7242 56665
7243 57767
7244 57967

Executive Orders

June 14, 1839 Revoked in part by PLO 7385 19386
July 2, 1910 Revoked in part by PLO 7388 23856
July 12, 1911 Revoked in part by PLO 7400 38212
Mar. 24, 1914 Revoked in part by PLO 7404 41131
Apr. 1, 1915 Revoked in part by PLO 7410 48849
Nov. 14, 1917 Revoked in part by PLO 7391 28211
Mar. 30, 1922 Revoked in part by PLO 7390 28211
5327 Revoked in part by PLO 7411 49235
11145 Amended by EO 13138 53879
11183 Amended by EO 13138 53879
11223 Amended by EO 13118 16595
11269 Amended by EO 13118 16595
11287 Amended by EO 13138 53879
11348 *See* EO 13111 2793
11958 Amended by EO 13118 16595
11987 Revoked by EO 13112 6183
12131 Amended by EO 13138 53879
12163 Amended by EO 13118 16595
12170 *See* Notice of Mar. 10, 1999 12239
12188 Amended by EO 13118 16595
12196 Amended by EO 13138 53879
12216 Amended by EO 13135 47339
Amended by EO 13138 53879
12260 Amended by EO 13118 16595
12345 Amended by EO 13138 53879
12367 Amended by EO 13138 53879
12382 Amended by EO 13138 53879
12293 Amended by EO 13118 16595
12301 Amended by EO 13118 16595
12372 Supplemented by EO 13132 43255
12473 Amended by EO 13140 55115
12484 *See* EO 13140 55115
12543 *See* Notice of Dec. 30, 1998 383
12544 *See* Notice of Dec. 30, 1998 383
12550 *See* EO 13140 55115
12586 *See* EO 13140 55115
12599 Amended by EO 13118 16595
12612 Revoked by EO 13132 43255
12703 Amended by EO 13118 16595
12708 *See* EO 13140 55115
12722 *See* Notice of July 20, 1999 39897
12724 *See* Notice of July 20, 1999 39897
12757 Amended by 13131 40733
12759 Revoked by EO 13123 30851
12767 *See* EO 13140 55115
12808 *See* Notice of May 27, 1999 29205
12810 *See* Notice of May 27, 1999 29205
12823 *See* EO 13131 40733
12831 *See* Notice of May 27, 1999 29205
12845 Revoked by EO 13123 30851
12846 *See* Notice of May 27, 1999 29205
12852 Amended by EO 13114 10099
Revoked by EO 13138 53879
12865 *See* Notice of Sept. 21, 1999 51419
12866 Supplemented by EO 13132 43255
12871 Amended by EO 13138 53879
12875 Revoked by EO 13132 43255
12876 Amended by EO 13138 53879
12882 Amended by EO 13138 53879
12884 Amended by EO 13118 16595
12888 *See* EO 13140 55115
12900 Amended by EO 13138 53879
12902 Revoked by EO 13123 30851
12905 Amended by EO 13138 53879
12934 *See* Notice of May 27, 1999 29205
See Notice of Aug. 10, 1999 44101
12936 *See* EO 13140 55115
12938 Amended by EO 13128 30851
12947 *See* Notice of Jan. 20, 1999 3393
12957 *See* Notice of Mar. 10, 1999 12239
12959 *See* Notice of Mar. 10, 1999 12239
12960 *See* EO 13140 55115
12961 Revoked by EO 13138 53879
12975 Amended by EO 13137 50733
12978 *See* Notice of Oct. 19, 1999 56667
12981 Amended by EO 13117 16391
12988 Supplemented by EO 13132 43255
12994 Amended by EO 13138 53879
13010 Revoked in part by EO 13138 53879
13017 Revoked by EO 13138 53879

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

13021 Amended by EO 13138 53879
13028 *See* EO 13131 40733
13035 Amended by EO 13113 7489
13037 Revoked by EO 13138 53879
13038 Revoked by EO 13138 53879
13047 *See* Notice of May 18, 1999 27443
13050 Revoked by EO 13138 53879
13059 *See* Notice of Mar. 10, 1999 12239
13062 Superseded in part by EO 13138 53879
13069 *See* Notice of Sept. 21, 1999 51419
13078 Revoked by EO 13127 30851
13083 Revoked by EO 13132 43255
13086 *See* EO 13140 55115
13088 Amended by EO 13121 24021
See Notice of May 27, 1999 29205
13090 Amended by EO 13136 48931
13095 Revoked by EO 13132 43255
13098 *See* Notice of Sept. 21, 1999 51419
13099 *See* Notice of Jan. 20, 1999 3393
13110 2419
13111 2793
13112 6183
13113 7489
13114 10099
13115 15283
Amended by EO 13138 53879
13116 16333
13117 16591
13118 16595
13119 18797
13120 23007
13121 24021
13122 29201
13123 30851
13124 31193
13125 31105
13126 32383
13127 32793
13128 34703
13129 36759
13130 38535
13131 40733
13132 43255
13133 43895
13134 44639
13135 47339
13136 48931
13137 50733
13138 53879
13139 54175
13140 55115

Administrative Orders

Memorandums:

Mar. 23, 1999 14809
Amended by EO 13118 16595
Mar. 31, 1999 17079
Apr. 16, 1999 53883
May 26, 1999 29539
June 10, 1999 32795
July 7, 1999 37393
July 16, 1999 40503
Aug. 17, 1999 47345
Sep. 24, 1999 55809

Notices:

Dec. 30, 1998 383
Jan. 20, 1999 3393
Feb. 24, 1999 9903
Mar. 10, 1999 12239
May 18, 1999 27443
May 27, 1999 29205
July 20, 1999 39897
Aug. 10, 1999 44101
Sep. 21, 1999 51419
Oct. 19, 1999 56667

Presidential Determinations:

No. 96–7 of Dec. 27, 1995 *See* Notice of May 27, 1999 29205
No. 98–35 of Sept. 11, 1998 *See* Presidential Determination No. 99–36 of Sept. 10, 1999 51885
No. 98–39 of Sept. 30, 1998 *See* Presidential Determination No. 99–33 of Aug. 12, 1999 47341
No. 99–9 of Dec. 24, 1998 983
No. 99–10 of Jan. 25, 1999 5925
No. 99–11 of Jan. 28, 1999 6773
No. 99–12 of Feb. 3, 1999 6779
No. 99–13 of Feb. 4, 1999 6781
No. 99–14 of Feb. 16, 1999 9263
No. 99–15 of Feb. 26, 1999 11319
No. 99–16 of Mar. 4, 1999 13495
No. 99–18 of Mar. 25, 1999 16337
No. 99–19 of Mar. 31, 1999 17081
No. 99–20 of Mar. 31, 1999 17083
No. 99–21 of Apr. 8, 1999 18551
No. 99–22 of Apr. 29, 1999 24501
No. 99–23 of May 18, 1999 28085
No. 99–24 of May 18, 1999 28087
No. 99–25 of May 24, 1999 29537
No. 99–26 of June 3, 1999 31109
No. 99–27 of June 3, 1999 31111
No. 99–28 of June 3, 1999 31113
No. 99–29 of June 17, 1999 33739

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 3 Administrative Orders—Con.

No. 99-30 of June 23, 1999.....35921
No. 99-31 of June 30, 1999.....37033
Corrected.....38075
No. 99-32 of July 1, 1999.....37035
Corrected.....38075
No. 99-33 of Aug. 12, 1999.....47341
No. 99-34 of Aug. 13, 1999.....47343
No. 99-35 of Aug. 17, 1999.....47347
No. 99-36 of Sept. 10, 1999.....51885
No. 99-38 of Sept. 21, 1999.....53573
No. 99-39 of Sept. 21, 1999.....53575
No. 99-40 of Sept. 21, 1999.....53577
No. 99-41 of Sept. 22, 1999.....53579
No. 99-42 of Sept. 29, 1999.....54499
No. 99-43 of Sept. 30, 1999.....54501
No. 99-44 of Sept. 30, 1999.....54503
No. 99-45 of Sept. 30, 1999.....54505

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office (Parts 1—99)

27.1 Revised; interim.....15125
28.3 Amended; interim.....15125

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

300.705 (a) revised.....28713
316.201 (b) revised.....15286
330 Authority citation revised.....24504, 40508
330.301 (b) revised; interim.....40508
330.401—330.407 (Subpart D) Revised; interim.....40506
330.603 Revised; interim.....40509
330.605 (b) and (c)(1) revised; interim.....40509
330.606 (d)(27) revised; (d)(29) and (30) added; interim.....40509
330.607 (b) revised; interim.....40509
330.702 Revised; interim.....40509
330.703 (b)(3) revised; interim.....40509
330.705 (a)(3) and (c)(8) revised; (c)(17) through (c)(20) added; interim.....40509
330.1201—330.1204 (Subpart L) Added.....24504
351.503 Revised.....16800
(c)(3) and (e) correctly revised.....23531
351.505 Revised.....16800
353.103 (a) amended.....31487
353.106 (c) introductory text amended; (c)(1), (2) and (3) added.....31487
353.110 (a)(1)(iii) revised; (a)(2) amended.....31487
353.203 (a)(4)(ii) revised.....31487
353.208 Amended.....31487
353.210 Revised.....31487
353.211 (b) amended.....31487
531.304 (d) revised.....36771
531.606 (d) revised.....36771
531.703 (c) revised.....36771
532.279 Regulation at 62 FR 67258 confirmed.....33175
532.201—532.285 (Subpart B) Regulation at 61 FR 47661 confirmed.....9905
Regulations at 61 FR 49649 and 62 FR 66973 confirmed.....9906
Regulation at 62 FR 51759 confirmed.....17941
Regulation at 63 FR 6471 confrimed.....17942
Appendix A amended; interim.....23532
Regulation at 62 FR 28978 confirmed.....33176
Regulation at 64 FR 23532 confirmed.....53179
Appendix C amended.....53180
532.501—532.513 (Subpart E) Appendix A amended.....15916
550.101—550.187 (Subpart A) Authority citation revised.....4519
550.103 Amended; interim.....4519
550.111 (f) revised; (h) added; interim.....4520
550.181 Revised; interim.....4520
550.182 (b) through (f) redesignated as (c) through (g); new (b) added; (a) and new (d) revised; interim.....4520
550.184 (e) revised; interim.....4520
550.185 (a) revised; interim.....4521
550.186 (b) revised; interim.....4521
(c) removed; (d) redesignated as (c).....36771
550.901—550.907 (Subpart I) Appendix A amended.....1502
550.1201—550.1207 (Subpart L) Added.....36771
591.210 (c)(1) amended.....36775
630.308 (a) revised.....46258
630.310 Added.....46259

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

831 Authority citation revised.....15287, 53582
831.108 Removed; interim.....53582
831.114 (b)(4) and (c)(2)(iii) revised; interim.....53582
831.201 (g)(3), (4) and (5) redesignated as (g)(4), (5) and (6); new (g)(3) and (i) added; new (g)(5) revised; interim.....15288
837.101 (a)(2) revised; interim.....15288
837.102 Amended; interim.....15288
842 Authority citation revised.....15288, 53582
842.104 (g) added; interim.....15289
842.107 (c) revised; interim.....15289
842.108 Added; interim.....15289
842.205 Removed; interim.....53582
842.213 (b)(4) and (c)(2)(iii) revised; interim.....53582
846 Authority citation revised.....15289
846.201 (d)(1) revised; interim.....15289
870 Authority citation revised.....15289, 16602, 22544
870.101 Amended; interim.....16602
Regulation at 64 FR 16602 confirmed.....54761
870.302 (a)(3) revised; interim.....15289
870.401 (b)(1) and (d) revised; interim.....22544
870.402 (d)(1) table and (e)(1) table, (f)(1) and (g) revised; interim.....22544
870.506 (e)(2) amended; interim.....16602
Regulation at 64 FR 16602 confirmed.....54761
870.801 (a) introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added; interim.....16602
Regulation at 64 FR 16602 confirmed.....54761
870.802 (a) amended; (i) added; interim.....16602
Regulation at 64 FR 16602 confirmed.....54761
870.901 (i) added; interim.....16602
Regulation at 64 FR 16602 confirmed.....54761
890 Authority citation revised.....15289, 31487, 36238
890.102 (c)(8) revised; interim.....15289
890.303 (i) revised.....31487
890.304 (a)(1)(vi), (vii) and (viii) revised.....31487
890.305 (a) revised.....31488
890.501 Regulation at 63 FR 45934 confirmed.....15633
(e), (f) and (g) revised.....31488
890.502 (f) revised.....31488
890.1301—890.1308 (Subpart M) Added; interim.....36238
950.102 Regulation at 64 FR 65637 confirmed.....27169

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1200.10 (a)(9) and (b)(9) removed; (a)(10) and (b)(10) redesignated as (a)(9) and (b)(9); (b)(8) revised.....15916
1201.22 (b)(1) revised.....27899
(b)(2) revised.....54508
1201.111 (c)(1) designation and (2) added.....27900
1201.115 (b) and (c) revised.....27900
1204 Revised.....51039
1205 Revised.....51043

Chapter III—Office of Management and Budget (Parts 1300—1399)

1315 Added.....52586

Chapter IV—Advisory Committee on Federal Pay (Parts 1400—1499)

Chapter IV Removed.....49639

Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600--1699)

1620 Revised.....31057
1650.15 (c) and (d) added.....31062
1651.1 Amended.....31062
1651.2 (c) added.....31062
1690.2 Added.....31052

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

2411.8 Revised.....18799
2430 Authority citation revised.....30861
2430.4 (a) amended.....30861

TITLE 5

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2604.103 Amended 28090
2604.201—2604.202 (Subpart B) Heading revised 28090
2604.201 Heading revised; (a)(1) designation and (2) added; new (a)(1), (b) and (c) amended; (b)(4) redesignated as (b)(5); new (b)(4) and (d) added 28090
2604.202 (a) amended 28090
2604.301 (a) amended; (e) added 28090
2604.302 (b) heading and (c) revised; (b) amended 28090
2604.303 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added 28091
2604.305 (a)(1) designation and (2) added; new (a)(1) amended 28091
2604.402 (b) amended 28091
2604.501 (b)(1)(i) and (3) amended 28091
2604.601—2604.602 (Subpart F) Revised 28091
2634 Authority citation revised 47096
2634.101 Revised 47096
2634.304 (f)(3)(iii) amended 2422
(f)(1) introductory text, (i), (2) and (3) revised; (f)(1)(ii) Example added 49640
2634.701 (b) amended 47096
2634.702 (a) and (b) amended 47097
2634.703 Amended 47097
2634.904 (b) amended 2422
2635.207 (b)(7) note amended 2422
2635.601 Amended 13064
2635.602 Introductory text and note amended 13064
2635.603 (d) revised 13064
2635.604 (a) amended 13064
2635.605 (a) and (b) amended 13064
2635.606 (a) amended 13064
2635.902 (o) and (z) amended; (q) revised 2422
2636 Authority citation revised 47097
2636.104 (a) revised 47097
2636.303 (a) introductory text revised; (a)(4) amended 2422
2641 Appendix B amended 5710

Proposed Rules:

177 33226
300 14842
317 41334
532 ..... 20221, 33427
630 31735
731 4336
831 33429
841 33429
1204 35952
1205 35957
1620 13924
1630 50012
1650 13725
1651 6818
2634 25849

TITLE 6—[RESERVED]

There is no regulatory text to this title.

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.1—1.23 (Subpart A) Authority citation revised 3395
1.20 Revised 33372
1.1—1.23 (Subpart A) Appendix A amended 3395
2.20 (a)(1)(vii) added 32797
(a)(1)(viii) added 34967
2.21 (a)(9) removed; (a)(10) redesignated as (a)(9) 40735
2.29 (a)(11) added 40735
2.60 (a)(47) and (b)(7) added 34967
2.67 (a)(11), (12) and (13) removed; (a)(14) redesignated as (a)(11) 40736
2.73 Added 40736
3.10 Amended 11755
6.20—6.36 (Subpart) Appendixes 1, 2 and 3 revised 17502
11 Revised 33373
Heading correctly revised 43043

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.909 (b) revised 28884

28.911 (a) amended 28884
29.81 (a) revised; interim 51888
37 Added 30867
47 Authority citation revised 38105
Nomenclature change 38108
47.2 (j)(2) removed; (j)(1) redesignated as (j); (e), (g), (h), (i), (s) and (t) revised 38105
47.3 (a)(2) introductory text and (vii) amended; (a)(2)(iv) revised; (a)(4) added; (c) removed 38106
47.4 Heading, (b)(1), (3), (c)(1) and (d)(1) revised 38106
47.6 (a) and (c) revised 38106
47.8 (a) amended 38106
47.9 (b) and (c) revised 38106
47.11 (c) introductory text, (4), (9), (10) and (13) revised 38106
47.12 Introductory text revised 38107
47.15 (a)(1), (2), (b) and (d)(1) revised 38107
47.16 (a) introductory text and (b)(1) revised 38107
47.17 (a) amended 38107
47.19 (d)(1), (4), (5) and (6) revised 38107
47.20 Heading, (b)(1), (2) and (h) introductory text revised; (a) amended 38107
47.21 Revised 38108
47.24 Heading and (a) revised; (d) added 38108
47.25 Heading and (d) revised; (e) removed; (f) redesignated as (e) 38108
51.882 (i)(1)(ii) amended 14576
51.884 (i)(1)(i) amended 14576
51.885 (h)(1)(i) amended 14576
51.888 (a)(2) amended 14577
56.1 Amended; interim 56947
56.35 (d) added; interim 56947
56.46 Revised 51672
56.52 (a)(4) revised 51672
56.54 (a)(2) revised 51672
56.76 (c)(1), (f) heading, (1) and (3) revised; interim 56947
57.1—57.970 Designated as Subpart A; heading added 40738
57.760 Reinstated in part; CFR correction 47349
57.1000 (Subpart B) Added 40738
59 Technical correction 3340
70.71 Revised 51673
70.76 (a)(2) revised 51673
70.77 (a)(4) and (5) revised 51673

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

210.2 Amended; Note removed 50740
210.8 (c)(1) amended 50740
210.9 (b) heading revised; (b) introductory text amended 50740
210.13 (b) redesignated as (c); new (b) added 50740
210.18 (a), (i)(3)(i)(B) concluding text, (j), (q) and (r) amended 50740
210.18a Removed 50741
210.19 (a)(6) and (c)(2)(ii) amended; (b) revised 50741
210.20 (a)(7) and (b)(11) amended 50741
210.21 (d) added 50741
210.23 (b) amended 50741
210.26 Amended 50741
210.27 Amended 50741
210.28 Removed; new 210.28 redesignated from 210.29 50741
210.29 Redesignated as 210.28; new 210.29 redesignated from 210.30 50741
210.30 Redesignated as 210.29; new 210.30 redesignated from 210.31 50741
210.31 Redesignated as 210.30; new 210.31 redesignated from 210.32 50741
210.32 Redesignated as 210.31 50741
215.2 (e–1) amended; (x–1) and (y) revised; (x–2) redesignated as (x–5); (x–2), (x–3) and (x–4) added; (x–1) Note removed 50741
215.6 (b) amended 50741
215.7 (b) introductory text and (d) introductory text amended 50741
215.10 (b) amended 50742
215.13 (a), (b) and (c) removed; (d) and (e) redesignated as (c) and (d); new (a) and new (b) added 50742
215 Appendix removed 50742
220.2 (c) and (u) amended; (x–1) and (y) revised; (x–2), (x–3) and (x–4) added 50742
220.6 (b)(1) amended 50742
220.7 (a–2) added; (e) introductory text amended 50742
220.11 (b) amended 50742

TITLE 7 Chapter II—Con.

220.13 (k) removed....50742
(k) reinstated; (l) correctly removed....55407
220.15 (a) through (d) removed; (e) and (f) redesignated as (c) and (d); new (a) and new (b) added....50742
220.16 (d) added....50743
220.17 (a) amended....50743
235.2 (o), (q–1) and (r) revised; (q–2), (q–3) and (q–4) added....50743
235.4 (b) amended; (h) added....50743
235.5 (a), introductory text and (d) amended; (b) and (c) revised....50743
235.6 (a), (a–2) and (g)(1) amended....50744
235.11 (b)(2) amended....50744
235.12 Revised....50744
245.5 (a) introductory text and (l)(x) amended....50744
245.6a (d) amended....50744
245.10 (a) introductory text and (c) amended; (a)(2) revised....50744
245.11 (a)(1) amended....50744
245.12 (a)(1) amended....50744
245.13 Removed; new 245.13 redesignated from 245.14....50744
245.14 Redesignated as 245.13....50744
246.2 Amended....13322, 56674
246.4 (a)(14)(v) through (x) redesignated as (a)(14)(vi) through (xi); new (a)(14)(v) added....13322
246.12 (f)(2)(xviii), (3) and (k) revised; (f)(2)(xix) and (xx) redesignated as (f)(2)(xxiii) and (xxiv); new (f)(2)(xix), new (xx), (xxi) and (xxii) added....13322
246.15 (b) amended....13324
246.16 (c)(2)(iii) and (iv) redesignated as (c)(2)(iv) and (v); new (c)(2)(iii) added; (c)(2)(i), (ii), new (iv), (3)(i) heading, (ii), (iii) heading and (A) revised; new (c)(2)(v), (3)(i)(A) and (e)(2)(i) amended....56674
246.18 (a)(1) and (b)(1) revised; (a)(3) amended....13324
248.2 Amended....48076
248.4 (a)(19) revised....48076
248.5 Revised....48076
248.14 (a)(1)(i) and (e) revised....48076
254 Effective date confirmation....17085
254.5 (b) amended....1098
271 Authority citation revised....38293
271.1 (g)(155) added....38294
271.2 Amended....23171, 38293
272 Authority citation revised....38293
272.1 (g)(156) added; interim....48255
(g)(154) added; interim....48937
273 Authority citation revised....38293
273.7 (d)(1)(i) revised; (d)(1)(ii), (iii) and (iv) redesignated as (d)(1)(v), (vi) and (vii); (c)(4)(ii), new (d)(1)(v) and (3) amended; (c)(6)(vi), (vii), (d)(1)(ii), (iii) and (iv) added; interim....48255
273.13 (a)(3)(vii) added; interim....48937
273.15 (k)(1) amended; interim....48938
273.24 Added; interim....48257
274 Authority citation revised....38293
274.12 (f)(4) and (l)(1)(iii) revised; (f)(7)(iii) amended; (f)(10)(viii) added; interim....48938
275 Authority citation revised....38293
275.3 (c)(1)(i) introductory text, (3)(i) introductory text and table revised; (c)(1)(i) table removed; (c)(1)(i)(A), (B) and (C) redesignated as (c)(1)(i)(C), (D) and (E); new (c)(1)(i)(A) and B) added; (c) introductory text, new (C), (3)(i)(A) introductory text and (ii) amended....38294
275.10 (a) amended....38294
275.11 (a)(2)(iii) removed; (a)(2)(iv) redesignated as (a)(2)(iii); new (a)(2)(iv) added; (a)(3), (b)(1)(ii) table, (iii) table, (2), (3), (e)(2), (f)(2) introductory text and (iv) revised; (b)(1)(ii), (iii), (iv) and (c)(1) amended; (f)(2)(v) and (ix) added....38295
275.12 (c)(1) introductory text revised; (f)(2) amended; (g)(2) introductory text revised....38296
275.13 (a) and (e)(2) revised; (b), (c)(1), (2) and (f) amended; (e)(1) heading added....38296
275.23 (c)(4), (e)(6)(i) and (8)(iii) amended; (e)(6)(iii) and (9) revised....38297
276 Authority citation revised....38293
277 Authority citation revised....38293
278 Authority citation revised....38293
278.1 (o) removed; (k)(2) amended; (k)(2), (l)(1)(iii), (iv), (v) and (p) through (t) redesignated as (k)(7), (l)(1)(v), (vi), (vii) and (o) through (s); (a), (b)(3), (j), new (l)(1)(vi), (m) introductory text and new (o) revised; new (k)(2), (3) through (6), new (l)(1)(iii) and new (iv) added; new (q) amended....23171
278.6 (a) and (n) revised; (b)(1), (2)(i), (c) and (i)(1)(v) amended; (e)(1)(iii), (3)(vi) and (8) added....23172
278.8 (a) revised....23174
279 Authority citation revised....38293
279.3 (a)(2) revised....23174
279.7 (a) amended....23174
279.10 (a) amended; (d) revised....23174
280 Authority citation revised....38293
281 Authority citation revised....38293
282 Authority citation revised....38293
283 Authority citation revised....38293
285 Authority citation revised....38293

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

300 Effective date confirmation....49079
300.1 (a) introductory text revised....37665
301 Effective date confirmation....49079
301.45 Regulation at 63 FR 38280 confirmed....4286
301.45–3 Regulation at 63 FR 38280 confirmed....4286
(a) amended; interim....40510
301.50–3 (c) amended; (d) removed; interim....387
Regulation at 64 FR 387 confirmed....15918
301.51–3 (c) amended; interim....28715
Regulation at 63 FR 63387 confirmed....29208
Regulation at 64 FR 28715 confirmed....56949
301.64 (a) amended; interim....40282
301.64–3 (c) amended....31965
(c) amended; interim....40282, 52212
301.64–10 (e) amended....37665
301.75–1 Regulation at 61 FR 1521 confirmed....38815
301.75–4 (a) revised; interim....4780
Regulations at 61 FR 1521 and 64 FR 4780 confirmed....38815
301.78–3 (c) amended; interim....30214, 45860
(c) revised; interim....48246
301.81–3 (e) amended; interim....27658
301.81—301.81–10 (Subpart) Appendix amended; interim....27659
Appendix amended....57970
301.89–1 Amended....23752
301.89–3 (e) and (f) revised....23752
301.89–4 Revised....23754
301.89–6 (b) amended; (d) removed; (e) redesignated as (d)....23754
301.89–9 (a) table amended....29550
301.89–12 (b) removed....23754
301.89–13 (f) removed....23754
301.89–15 Heading, introductory text, (a) introductory text, (b) and (c) introductory text revised; (c)(2) amended....34113
301.89–16 Heading, introductory text, (a), (b), (c)(1) and (2) amended....34113
301.93–3 (c) revised....31964
(c) amended; interim....52214, 55812
319.37–5 (p) added; interim....45866
319.40–2 (f) added; interim....45866
319.56–2 (h) revised....2994
319.74–1—319.74–4 (Subpart) Revised....38110
319.77–1—319.77–5 (Subpart) Added; interim....45866
353.1 Amended....1105
353.7 (a)(4), (b)(4) and (c)(4) amended....1105
353.8 Added....1105
354.2 Table amended....25800
360.200 (a) and (c) amended....12883
360.300 (a) through (d) redesignated as (b) through (e); new (a) added; heading, new (b) and new (e) revised; interim....41009
361.6 (a)(1) amended....12884

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

400.650—400.657 (Subpart T) Regulation at 63 FR 40633 confirmed....40742
400.651 Regulation at 63 FR 40633 confirmed; amended....40742

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 7 Chapter IV—Con.

400.653 Introductory text and (a) amended 40742
400.654 (b) and (c)(4) amended 40742
400.655 Regulation at 63 FR 40634 confirmed 40742
400.677 Regulation at 63 FR 40631 confirmed 40740
400.700—400.711 (Subpart V) Added 38542
400.765—400.768 (Subpart A) Regulation at 64 FR 70313 confirmed 50246
400.765 (b) revised 50246
400.767 (a)(1) amended 50246
402 Regulation at 63 FR 40631 confirmed 40740
402.4 Regulation at 63 FR 40631 confirmed; amended 40740
407 Added 30219
457.8 Regulation at 63 FR 40634 confirmed; amended 40742
457.134 Amended 33378
457.135 Amended; introductory text revised 33385
457.138 Amended; introductory text revised 24932
Amended 24933

Chapter VI—Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

610 Authority citation revised 42003
610.2 Revised 42003
610.21—610.25 (Subpart C) Added 42003

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723.113 (f) added 15295
723.114 (f) added 15295
723.115 (f) added 15295
723.116 (f) added 15295
723.117 (f) added 15295
729.216 (c) revised 48942
735.16 (a)(5), (9), (b) and (e) revised 54510
735.19 Revised 54510
735.21 Revised 54510
735.31 Revised 54510
735.32 (b) revised; (c) amended 54510
735.33 Revised 54510
735.38 (a) revised 54511
735.40 (b)(3) revised 54511
735.44 Revised 54511
735.47 Revised 54511
735.49 Revised 54511
735.77 Revised 54511
735.101 (b) removed; (c) through (p) redesignated as (b) through (o) 54511
735.102 (d)(4) and (f) revised 54511
760.1—760.34 (Subpart) Authority citation revised 17942
761 Added; interim 6496
761.4 Amended; interim 47099
761.5 Amended; interim 47099
761.6 Revised; interim 47099
762 Added 7378
762.106 (g)(2)(ix) correctly revised 38298
762.122 (a)(1), (4) and (c)(1) correctly revised 38298
762.145 (e)(7) corrected 38298
762.150 (e)(2) correctly revised; (g)(4) and (7) corrected 38298
762.160 (a)(2)(ii) correctly revised 38298
782.2 Amended 12885
782.12 (a) introductory text revised; (a)(6) through (9) redesignated as (a)(8) through (11); new (a)(6) and (7) added 12885

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.71 (a) amended 6783
Regulation at 63 FR 35504 confirmed 19022
800.86 (c)(2) Table 4 revised 6783
801.6 Regulation at 63 FR 34554 confirmed 731
801.7 Regulation at 63 FR 35505 confirmed 19022
868.91 Revised 7058

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.153 (d) and (e) revised; (f) added; interim 51892

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

905.306 Regulation at 63 FR 62922 confirmed 15636
905.350 Regulation at 63 FR 51518 confirmed 3814
Revised; interim 50425
906.235 Revised 45409
906.340—906.365 (Subpart) Heading revised; interim 47357
906.340 (a)(2)(i) and (ii) revised; interim 47357
906.365 (a)(2) and (4) revised 47358
915.235 Revised 26273
915.332 Table I amended 53185
916.350 (a)(3), (4)(i), (ii), (iv) Tables 1 and 2, (8)(i) and (d) revised 19031
916.356 (a)(1) introductory text, (iv) Table 1, (4) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed 19031
917.442 (a)(3), (4)(ii), (iv) Tables 1 and 2, (9)(i) and (d) revised 19033
917.459 (a)(1) introductory text, (iv) Table 1, (3) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed; (a)(4) introductory text added 19033
920.155 Stayed; eff. 8–1–99 through 7–31–00 41018
920.302 (a)(2), (4)(ii) and (iv) revised; (b)(2) removed; (b)(1) redesignated as (b) 41019
(a)(4)(iii) stayed; eff. 8–1–99 through 7–31–00 41019
920.303 (c)(3), (5) and (d) revised 41019
923.322 (e)(1) revised; interim 33743
Regulation at 64 FR 33743 confirmed 49352
Corrected 53885
924.236 Revised 48079
925.304 Regulation at 63 FR 28480 confirmed 37838
929.69 (d) amended; interim 24025
Regulation at 64 FR 24025 confirmed 34707
930 Marketing percentages 392
930.158 (b)(2) and (3) revised; interim 30219
Regulation at 64 FR 30232 confirmed 50748
930.159 (a) revised; (f) removed; (d) and (e) redesignated as (e) and (f); new (d) added; interim 9268
Regulation at 64 FR 9268 confirmed; (a) and (d) revised 33009
930.200 Revised; interim 40513
Regulation at 64 FR 40513 confirmed 58325
931.231 Revised 52216
932.159 Revised; interim 4288
Regulation at 64 FR 4288 confirmed 23011
932.160 Removed; interim 4288
Regulation at 64 FR 4288 confirmed 23011
932.230 Revised 14813
944.31 Table 1 amended 53186
944.106 Regulation at 63 FR 62923 confirmed 15636
944.503 Regulation at 63 FR 28480 confirmed 37838
947.120 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
Regulation at 64 FR 34117 confirmed 49355
947.123 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
Regulation at 64 FR 34117 confirmed 49355
947.125 Added; interim; eff. 7–1–99 through 6–30–99 34117
Regulation at 64 FR 34117 confirmed 49355
947.130 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
Regulation at 64 FR 34117 confirmed 49355
947.132 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
Regulation at 64 FR 34117 confirmed 49355
947.133 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
Regulation at 64 FR 34117 confirmed 49355
947.134 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
Regulation at 64 FR 34117 confirmed 49355
947.180 Undesignated center heading added; interim; eff. 7–1–99 through 6–30–99 34117
Regulation at 64 FR 34117 confirmed 49355

TITLE 7 Chapter IX—Con.

947.340 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
Regulation at 64 FR 34117 confirmed 49355
948.215 Revised 48081
955.101—955.209 (Subpart) Heading added; interim 48245
955.113 Added; interim 48245
955.209 Regulation at 63 FR 51271 confirmed 52219
956.15 Added 4933
956.16 Added 4933
956.20 (a) amended 4933
956.60 Added 4933
956.62 Revised 4933
956.64 Revised 4934
956.70 Undesignated center heading and section added 4934
966.234 Revised; interim 57363
966.323 (d)(1) amended 45413
979.180 Amended 23759
Regulation at 64 FR 23759 confirmed 41023
979.304 Amended; (b)(4), (c)(4) and (e)(3) revised; (e)(4) removed; (e)(5) redesignated as (e)(4) 23759
Regulation at 64 FR 23759 confirmed 41023
981.441 (a) and (e)(6)(ii) amended; (b), (e)(3), (4)(ii) and (iv) revised 41028
981.472 (a) revised 18802
982 Marketing percentages 2425
982.246 Regulation at 64 FR 2425 confirmed 23013
984.347 Revised; interim 56133
984.476 Added 58327
985 Marketing percentages 2802
989 Marketing percentages 10922
989.154—989.156 Undesignated center heading revised 43902
989.154 Revised 43902
989.157—989.160 Undesignated center heading added 43902
989.212 Regulation at 63 FR 56785 confirmed 2428
989.213 Regulation at 63 FR 56785 confirmed 2428
989.252 Marketing percentages 30236
989.347 Revised; interim 9056
Regulation at 64 FR 9056 confirmed 25422
993 Undersized regulation 23763
993.347 Revised 3623
Revised 50428
997.30 Table amended; interim 56135
998.200 Table amended; interim 56135
999.600 Table amended; interim 56135

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1000 Revised 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1001 Revised 47954
Regulation at 64 FR 47954 eff. date delayed 53885
1002 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1004 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1005 Revised 47960
Regulation at 64 FR 47960 eff. date delayed 53885
1006 Revised 47966
Regulation at 64 FR 47966 eff. date delayed 53885
1007 Revised 47971
Regulation at 64 FR 47971 eff. date delayed 53885
1012 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1013 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1030 Revised 47978
Regulation at 64 FR 47978 eff. date delayed 53885
1032 Revised 47985
Regulation at 64 FR 47985 eff. date delayed 53885
1033 Revised 47991
Regulation at 64 FR 47991 eff. date delayed 53885
1036 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1040 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1044 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1046 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1049 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1050 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1064 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1065 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1065.2 (a) suspended in part 4959
1068 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1076 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1079 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1079.7 (b) corrected; CFR correction 19034
(b) introductory text amended 25194
1106 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1106.6 Suspended in part; eff. 9–1–99 through 8–31–00 48083
1106.7 (b)(1) suspended in part; eff. 9–1–99 through 8–31–00 48083
1106.13 (d)(1) suspended; eff. 9–1–99 through 8–31–00 48083
1124 Revised 47998
Regulation at 64 FR 47998 eff. date delayed 53885
1126 Revised 48004
Regulation at 64 FR 48004 eff. date delayed 53885
1131 Revised 48010
Regulation at 64 FR 48010 eff. date delayed 53885
1131.7 (c) stayed in part; eff. 9–21–99 through 9–30–99 50749
1134 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1135 Revised 48015
Regulation at 64 FR 48015 eff. date delayed 53885
1137 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1138 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1139 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.510 (b)(2) and (3)(ii) table revised 30238
1216 Added 20105
1216.1—1216.88 (Subpart A) Added 41256
1220 Referendum request 49349
1220.10—1220.46 (Subpart F) Added 45416
1230.110 (b) revised 44644
1260.141 (a) revised 3815

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1301.13 (e) revised 34514
1307.4 Redesignated as 1307.5; new 1307.4 added 23538
1307.5 Redesignated from 1307.4 23538
1308.1 Introductory text revised 23538
1308.2 Added 23538
1361.11 (a) and (b) revised; interim 18324
1381.4 (a) revised 11756

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1430.500—1430.509 (Subpart D) Added 24934
1434 Added 10924
1437 Heading revised; interim 17272
1437.2 (f) and (g) revised; (h) added; interim 17272

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 7 Chapter XIV—Con.

1437.3 Amended; interim 17272
1437.4 (a) revised; interim 17272
1439 Authority citation revised 13498
1439.1—1439.12 (Subpart) Revised 13498
1439.101—1439.104 (Subpart) Removed 13499
1439.101 (c) amended; interim 47360
1439.201—1439.202 (Subpart) Removed 13499
Added; interim 47360
1439.301—1439.302 (Subpart) Removed 13499
1439.401—1439.403 (Subpart) Removed 13499
1439.501—1439.504 (Subpart) Removed 13499
1439.601—1439.602 (Subpart) Removed 13499
1439.701—1439.702 (Subpart) Removed 13499
1439.800—1439.810 (Subpart) Removed 13499
1439.101—1439.108 (Subpart) Added 13500
1446.310 (c) added 48942
1446.311 (c) added 48942
1464.13 (f) added 15295
1464.14 (f) added 15296
1464.15 (f) amended 15296
1464.16 (f) added 15296
1464.17 (f) added 15296
1469 Added 10930
1464.101 (b) amended 2803
1477 Added 18554
1477.110 Correctly designated 35559

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530 Revised 7062
1550 Revised 52630

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1703 Authority citation revised 14356
1703.100—1703.112 (Subpart D) Revised 14357
1703.103 (a)(3) corrected 25422
1703.105 (c) and (e)(6) corrected 25422
1703.108 (a) corrected 25422
1703.120—1703.129 (Subpart E) Added 14360
1703.123 (a)(13) and (14) corrected 25422
(a)(5) revised 25423
1703.125 (b)(9) added; (i)(1) through (7) revised; (i)(8) through (11) removed 25423
1703.126 (a) corrected 25422
1703.127 (c)(1) and (3) corrected 25422
1703.130—1703.137 (Subpart F) Added 14366
1703.134 (l) corrected 25422
(g)(1) through (7) revised; (g)(8) through (11) removed 25423
1703.140—1703.147 (Subpart G) Added 14369
1703.140 Introductory text amended 25423
1703.141 (i) amended 25423
1703.142 (a) and (b)(4) revised; (b)(5) added 25423
1703.144 (c)(4), (d)(2), (3), (f)(2) and (4) corrected 25422
(g)(1) through (7) revised; (g)(8), (9) and (10) removed 25423
1703.145 (b) corrected 25422
1703.300—1703.313 Redesignated as Subpart H 14356
1710 Authority citation revised 33178
1710.106 (a)(1)(i) and (2)(i) revised; (a)(3) removed; (a)(4), (5) and (6) redesignated as (a)(3), (4) and (5) 33178
1710.250 (f) amended 33178
1728 Bulletin 14813, 42005
1735 Authority citation revised 50429
1735.14 (c) revised 50429
1753 Authority citation revised 16604
1753.1 (a) revised 16604
1753.2 Amended 16604
1753.3 (a) amended 16604
1753.5 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 16604
1753.6 (a) revised; (e) added 16605
1753.7 (c) and (e) revised 16605
1753.8 (a)(1), (11)(i), (ii) introductory text, (iii) introductory text and (12)(i) revised; (a)(11)(iv) added 16605

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

1753.11 (a)(3), (b) and (d) revised 16605
1753.15 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1), new (5)(i) and (ii) revised; new (a)(2) added 16605
1753.16 (b)(1) through (4) revised 16606
1753.17 (b)(1)(ii)(D) amended; (b)(1)(ii)(E) added; (c)(1)(i)(C) and (2)(i)(A) revised 16606
1753.18 Added 16606
1753.25 (a), (c) and (d) revised 16606
1753.26 (a) through (d) redesignated as (b) through (e); new (a) added; new (b)(1) revised 16606
1753.30 (b), (c)(2) and (3) revised 16606
1753.36 (g) revised 16607
1753.37 (c) revised 16607
1753.38 (a)(1)(i), (v), (2)(i), (v), (b)(1), (3), (5), (e)(2) and (3) amended 16607
1753.39 (a), (e)(1), (2), (f) introductory text, (1)(ii)(A), (iii), (iv) and (g) revised; (e)(3) removed; (h) added 16608
1753.46 (c)(2) and (3) revised 16608
1753.47 (c) revised 16609
1753.48 (a)(4) and (b)(1) revised 16609
1753.49 (b), (c)(2) and (3) revised 16609
1753.50 Removed 16610
1753.58 (b), (c)(2) and (5) revised 16610
1753.68 (b)(2)(i) through (v), (4)(i), (ii), (c)(2) and (d)(3) revised 16611
1753.76 (a) revised 16611
1753.77 Revised 16612
1753.80 (b) revised 16612
1753 Appendixes A through F removed 16612
1755.26 Added 6500
1755.27 Added 6500
1755.28 Added 6500
1755.29 Added 6500
1755.30 Added 6501
(c)(41) revised 53887
1755.93 Removed 6501
1755.217 Removed 6501
1755.525 Removed 6501
1780.7 (h) removed 29946
1780.10 (b)(2) revised 29946
1780.35 (c) revised 29946
1780.39 (e)(2) and (f) introductory text revised 29946
1780.45 (a)(2) revised 29946
1780.48 (b) introductory text revised 29946
1780.49 (c)(4) and (d) revised 29946
1780.55 Revised 29946
1780.57 (o) added 29946
1780.94 (j)(3) revised 29947
1788 Revised 2

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1924.1—1924.50 (Subpart A) Exhibit D amended 48085
1940 Authority citation revised 24480
1940.560 Regulation at 63 FR 39458 confirmed 32371
1940.579 Revised 24480
1944.153 Amended 24480
1944.157 (a)(1) and (3) revised 24480
1944.160 Added 24480
1944.164 (b) revised; (d) introductory text and (1)(i) amended 24480
1944.169 (a)(1) revised 24480
1944.170 Heading, introductory text, (a) and (b) revised; (c) redesignated as (f); new (c), (d) and (e) added; new (f)(5)(i), (ii)(B) and (C) amended; new (f)(7) removed 24480
1944.151—1944.200 (Subpart D) Exhibits A and A-1 amended 24482
1951.914 Heading and (b) introductory text revised; (h) added; interim 19865
1951.951 Amended; interim 393
1951.952 Amended; interim 394
1951.953 (b) revised; interim 394
1951.954 (a)(1), (5), (7), (b)(2), (4) and (5) revised; interim 394
1980.1 Revised 7402
1980.6 (a) and (b) amended 7402
1980.11 Amended 7402
1980.13 (b) introductory text amended; (b)(4) introductory text revised 7402

1980.20 (a) introductory text amended 7402
1980.21 Revised 7402
1980.22 (a) revised; (b) introductory text and (3) amended 7402
1980.46 Removed 7402
1980.60 Heading, (a) introductory text, (1), (6), (7), (9) through (12), (b) and (c) amended 7402
1980.61 (a)(2) and (c) removed; (a)(3) and (d) through (h) redesignated as (a)(2) and (c) through (g); heading, (a)(1), new (2), (b)(1), (3), (4), new (c) and new (d) amended 7402
1980.61 (f) and (g) amended 7403
1980.62 Amended 7403
1980.63 (a) amended 7403
1980.64 (a) and (b) amended 7403
1980.65 Amended 7403
1980.66 Amended 7403
1980.67 (a) and (b) amended 7403
1980.68 Amended 7403
1980.83 Regulation at 56 FR 8259 confirmed 7378
(a) amended 7403
1980.84 Heading, (b)(1)(iv), (v) and (4) amended 7403
1980.100 Regulation at 56 FR 8260 confirmed 7378
1980.1—1980.100 (Subpart A) Regulations at 56 FR 8261 and 8263 confirmed 7378
Appendixes D through L removed 7403
1980.101 Regulation at 56 FR 8264 confirmed 7378
1980.110 Regulation at 56 FR 8264 confirmed 7378
1980.113 Regulation at 56 FR 8264 confirmed 7378
1980.115 Regulation at 56 FR 8264 confirmed 7378
1980.122 Regulation at 56 FR 8264 confirmed 7378
1980.124 Regulation at 56 FR 8264 confirmed 7378
1980.125 Regulation at 56 FR 8264 confirmed 7378
1980.145 Regulation at 56 FR 8264 confirmed 7378
1980.175 Regulation at 56 FR 8264 confirmed 7378
1980.200 Regulation at 56 FR 8264 confirmed 7378
1980.101—1980.200 (Subpart B) Regulations at 56 FR 8265, 8266 and 8271 confirmed 7378
1980.340 Regulation at 56 FR 8271 confirmed 7378
1980.354 Regulation at 56 FR 8271 confirmed 7378
1980.424 Regulation at 56 FR 8271 confirmed 7378
1980.451 Regulation at 56 FR 8271 confirmed 7378
1980.452 Regulation at 56 FR 8271 confirmed 7378
1980.628 Regulation at 56 FR 8271 confirmed 7378
1980.646 Regulation at 56 FR 8271 confirmed 7378
1980.648 Regulation at 56 FR 8271 confirmed 7378
1980.801 (b) amended 28336
1980.802 Amended 28336
1980.805 Amended 28336
1980.813 (a)(2), (b)(1) and (2) removed; (a)(3), (b)(3) and (4) redesignated as (a)(2), (b)(1) and (2); (a) introductory text and new (2)(i) amended 28336
1980.814 (d) removed; (e) through (h) redesignated as (d) through (g) 28336
1980.844 Revised 28336
1980.853 Regulation at 56 FR 8271 confirmed 7378
2003 Authority citation revised 32388
2003.18 (b)(5)(i) amended 32388

Chapter XXXIV—Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

3400 Authority citation revised 34103
3400.1 Revised 34103
3400.7 (c) revised 34103
3400.20—3400.22 (Subpart C) Added 34104
3400.23 (Subpart D) Added 34104

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

Chapter XXXV Corrected 56399

3565 Regulation at 63 FR 39458 confirmed 32371
3565.5 (b) revised 32371
3565.6 Revised 32371
3565.8 Revised 32371
3565.9 (e) removed; (f) redesignated as (e) 32372
3565.13 Revised 32372
3565.52 Introductory text amended 32372
3565.53 (a) revised; (b) amended 32372
3565.103 (d)(9) added 32372
3565.303 (d)(8) amended 32372
3565.351 (a) amended 32372
3570.51—3570.100 (Subpart B) Revised 32388
3575 Added 28337

Chapter XXXVII—Economic Research Service, Department of Agriculture (Parts 3700—3799)

3700.3 (g) removed 40736

Proposed Rules:

6 42288
27—209 (Ch. I) 8014
28 15937
29 ..... 25462, 39432
46 57405
47 4342
51 50774
54 38315
56 ..... 37886, 40522
70 37886
75 58358
210 ..... 38839, 46319, 48459
220 ..... 38839, 46319, 48459
225 ..... 38839, 46319, 48459
226 ..... 38839, 46319, 48459
246 ..... 32307, 48115
250 36978
251 36978
253 39432
254 39432
271 ..... 35082, 37454
272 35082
273 ..... 35082, 37454
274 ..... 8733, 28763, 35082
275 35082
276 ..... 35082, 37454
277 35082
278 35082
279 35082
280 35082
281 35082
282 35082
283 35082
284 35082
285 35082
300 2151
301 ..... 11392, 30250
318 47141
319 ..... 2151, 3049, 4347, 31512, 34141, 36608
340 16364
354 ..... 43103, 50331
400 ..... 25464, 52678
457 ..... 8015, 41336, 46599
505 44634
723 9452
735 28938
780 52678
782 2152
900—999 (Ch. IX) 8014
905 46603
906 38597
915 ..... 13123, 45461
916 ..... 11346, 30252
917 ..... 11346, 30252
920 34144
924 37088
928 48115
931 42858
932 ..... 4350, 42619, 57597
944 ..... 14642, 45461
948 37890
981 ..... 430, 31153, 43298
984 45208
989 34571
993 ..... 3660, 41045
1000—1199 (Ch. X) 8014
1000 ..... 16026, 37892, 39092
1001 ..... 16026, 37892, 39092
1002 ..... 16026, 37892, 39092
1004 ..... 16026, 37892, 39092
1005 ..... 16026, 37892, 39092
1006 ..... 16026, 37892, 39092
1007 ..... 16026, 37892, 39092
1012 ..... 16026, 37892, 39092
1013 ..... 16026, 37892, 39092
1030 ..... 16026, 37892, 39092
1032 ..... 16026, 37892, 39092
1033 ..... 16026, 37892, 39092
1036 ..... 16026, 37892, 39092
1040 ..... 16026, 37892, 39092
1044 ..... 16026, 37892, 39092
1046 ..... 16026, 37892, 39092
1049 ..... 16026, 37892, 39092
1050 ..... 16026, 37892, 39092
1064 ..... 16026, 37892, 39092
1065 ..... 13125, 16026, 30256, 37892, 39092

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 7 *Proposed Rules:—Con.*

1068 ..... 16026, 37892, 39092
1076 ..... 16026, 37892, 39092
1079 ..... 16026, 19071, 25851, 37892, 39092, 41047
1106 ..... 16026, 37892, 39092, 42860
1124 ..... 16026, 37892, 39092
1126 ..... 16026, 37892, 39092, 51083
1131 ..... 16026, 37892, 38144, 39092
1134 ..... 16026, 37892, 39092
1135 ..... 16026, 37892, 39092
1137 ..... 16026, 37892, 39092, 50777
1138 ..... 16026, 37892, 39092
1139 ..... 16026, 37892, 39092
1200—1299 (Ch. XI) 8014
1205 19072
1216 ..... 20107, 31736
1217 ..... 46754, 46765
1218 ..... 39790, 39803
1220 18831
1230 ..... 31158, 40783
1301 12769
1306 ..... 19084, 33027
1307 ..... 4353, 33027
1308 4353
1309 ..... 19084, 33027
1310 33027
1412 ..... 24091, 34154
1430 39442
1550 32156
1703 14401
1710 ..... 33228, 36609
1728 17219
1735 50476
1755 6577
1823 10235
1956 10235
2812 41049
3400 14348
3418 18534
3419 42576

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—599)

3 Authority citation revised 56141
3.1 (b)(12) revised; interim 25766
(d)(2)(i)(D) removed; (d)(1–a), (2) and (3) redesignated as (d)(2), (3) and (4); (d)(2)(i)(E), (F) and (ii) redesignated as (d)(2)(i)(D), (G) and (iii); (a)(1) and new (d)(2)(i)(D) amended; (a)(7) and new (d)(2)(i)(E), (F) and (ii) added 56141
3.2 (b)(3) added 56142
3.23 Heading revised; (b)(4)(i) amended; interim 8487
3.42 (d) and (f) revised; interim 8487
3.43 (b)(4)(v), (vi) and (c)(2) revised; (c)(3) added 13666
103.1 (g)(3)(ii) amended; interim 27875
103.5a (a)(3) added 17944
103.7 (b)(1) table amended; interim 27875
103.12 (a)(5) revised; interim 8487
207.2 (d) amended; interim 27661
208.1 Revised; interim 8487
208.2 (a), (b)(1)(ii) and (3) revised; interim 8487
208.4 (a) introductory text and (b)(2) revised; interim 8488
(b)(2) corrected 13881
208.5 (b)(1) introductory text revised; interim 8488
208.11 (b)(2) revised; interim 8488
208.12 (a) revised; interim 8488
208.13 (c)(1) revised; interim 8488
208.14 Heading revised; (f) added; interim 27875
208.16 (c) and (d) redesignated as (d) and (e); heading, (a), (b) introductory text and new (d) and (e) revised; new (c) and (f) added; interim 8488
208.17 Revised; interim 8489
208.18 Redesignated as 208.19; new 208.18 added; interim 8490
(b)(2) corrected 13881
208.19 Redesignated as 208.20; new 208.19 redesignated from 208.18; interim 8490
Revised; interim 8492
208.20 Redesignated as 208.21; new 208.20 redesignated from 208.19; interim 8490
208.21 Redesignated as 208.22; new 208.21 redesignated from 208.20; interim 8490
Revised; interim 8492
208.22 Redesignated as 208.23; new 208.22 redesignated from 208.21; interim 8490
208.23 Redesignated from 208.22; interim 8490

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

208.30 (b), (d), (e), (f)(1), (2) and (3) revised; interim 8492
208.31 Added; interim 8493
(e) and (g) corrected 13881
212.1 (b) revised; interim 7990
212.2 (d) amended; (g)(3) added; interim 25766
212.7 (a)(1)(iii) and (b)(2)(iv) added; (b)(2)(ii) and (iii) amended; interim 25766
212.15 (c) introductory text, (e) and (g)(4)(i) revised; (c)(3) added; interim 23177
214.2 (h)(16)(i) and (l)(16) revised; interim 29211
(h)(16)(i)(C) and (D) correctly added 30103
(f)(5)(i) and (j)(1)(ii) revised; (f)(5)(vi) and (j)(1)(vi) added; interim 32147
(j)(1)(iv) corrected 33346
Corrected 36423
217.2 (a) amended; interim 42007
235.1 (d)(4) revised; interim 8494
Regulation at 62 FR 47751 confirmed; (e) introductory text amended; (e)(1)(v), (4) and (5)(ii) revised 36561
235.3 (b)(4) introductory text and (i)(D) revised; interim 8494
235.6 (a)(1)(ii), (iii) and (2)(i) revised; interim 8494
235.8 (b)(4) added; interim 8494
238.1 (b)(2)(i) and (c)(1) revised; (f)(3) added; interim 8494
240 Authority citation revised 25766, 27875
240.1 (a) revised; interim 8495
(a)(1)(ii) amended; interim 25766
240.11 (a)(1) amended; interim 25766
240.20 (c) added; interim 27875
240.31 Amended; interim 25766
240.41 (a) amended; interim 25767
240.58 Added; interim 27875
240.60—240.70 (Subpart H) Added; interim 27876
240.64 (d)(1) corrected 33386
241 Technical correction 39560
241.8 (d) revised; interim 8495
241.11 (d)(1) revised; interim 8495
244.1 Amended; interim 4781
244.6 Revised; interim 4781
244.10 Heading, (a), (b), (d)(2), (f)(2)(iii) and (4)(ii) amended; interim 4782
244.12 (a) amended; interim 4782
244.15 (a) amended; interim 4782
244.18 (b) amended; interim 4782
245 Authority citation revised 25767
245.2 (a)(4)(ii) revised; interim 29211
245.15 Added; interim 25767
246.1 Amended; interim 27881
246.2 Amended; interim 27881
253.1 (f) revised; interim 8495
270 Authority citation revised 47101
270.3 (b)(1)(ii) revised 47101
274a Authority citation revised 47101
274a.2 (b)(1)(vi)(B) and (C) revised; interim 6189
(b)(1)(vi)(B)(*2*) and (C)(*1*) corrected 11533
274a.8 (b) revised 47101
274a.10 (b)(1)(ii) and (b)(2) introductory text revised 47101
274a.12 (c)(9) amended; interim 25773
(c)(10) amended; interim 27881
274a.13 (d) amended; interim 25773
280 Authority citation revised 47102
280.53 Added 47102
299.1 Table amended; interim 25773, 27881
299.5 Table amended; interim 25774, 27881
312.1 (b)(3) amended 7993
312.2 (b)(1) and (2) amended 7993
499.1 Table amended 7993
507 Added; interim 8496

Proposed Rules:

1—599 (Ch. I) 54794
2 17128
103 26698
212 28676
214 32149
237 28676
241 37461

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

1 Policy statement 38546
1.1 Suspended in part 15920
2 Policy statement 38546
3 Policy statement 38546

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 9 Chapter I—Con.

3.6 Regulation at 63 FR 37482 confirmed 19253
3.103 (c) added 56147
3.111 Suspended 15920
3.127 (d) added 56147
50.1 Regulation at 63 FR 72122 eff. 2–1–99 3340
52 Added; interim 2549
Regulation at 64 FR 2549 eff. date extended 37395
52.4 Revised 13065
72.5 Revised 41266
77.1—77.6 (Subpart A) Regulation at 63 FR 72122 eff. 2–1–99 3340
77.1 Regulation at 63 FR 72122 eff. 2–1–99 3340
Amended; interim 56400
77.3 Regulation at 63 FR 72122 eff. 2–1–99 3340
77.6 Regulation at 63 FR 72122 eff. 2–1–99 3340
77.7 Regulation at 63 FR 72122 eff. 2–1–99 3340
77.8—77.18 (Subpart B) Regulation at 63 FR 72122 eff. 2–1–99 3340
78.1 Amended 15298
78.41 Regulation at 63 FR 44545 confirmed 395
Regulation at 63 FR 53781 confirmed 15298
(a) and (b) amended 36777
78.43 Regulation at 63 FR 44777 confirmed 5
Regulation at 63 FR 53782 confirmed 5
91 Effective date confirmation 41266
91.1 Regulation at 63 FR 72129 eff. 2–1–99 3340
91.7 Regulation at 63 FR 72129 eff. 2–1–99 3340
91.14 (a)(11) and (12) revised 29949
93 Effective date confirmed 34707
93.303 (d) amended 23179
93.306 (a)(3) revised 31967
(a)(2) revised 48259
93.403 (e) amended 23179
93.503 (e) amended 23179
94 Footnotes 5 through 14, 15 and 16 redesignated as footnotes 6 through 15, 17 and 18; new footnote 13 revised 38550
94.6 Heading revised; (c)(5) redesignated as (c)(6); new (c)(5) added 38550
94.17 Footnote 2 redesignated as footnote 16 and revised 38550
94.18 Regulation at 62 FR 66000 confirmed 55813
Regulation at 62 FR 61434 confirmed 55814
98 Effective date confirmed 34707
98.33 (d) amended 23179
101.2 Amended 43044
102.5 (e) amended 43044
105.1 (a)(1) amended 43044
112.5 (d)(2)(ii) amended 43044
112.6 (c) introductory text amended 43044
113.35 (f) amended 43044
113.70 Introductory text, (b)(1) and (3) amended 43044
113.113 (a)(2), (3), (c)(2)(iv)(A) and (B) amended 43044
113.209 (b)(1) and (d)(3) revised 45420
113.327 (d)(2)(ii) table amended 43045
113.331 (d)(3) amended 43045
113.332 (d)(3) amended 43045
113.451 (a) introductory text amended 43045
113.452 (b)(4) table amended 43045
116.5 (b) revised 43045
124.1 (b) amended 43045
124.22 (a) introductory text amended 43045
124.32 (a) amended 43045
124.40 (b)(3) amended 43045
124.43 Amended 43045
130.7 Heading and (a) introductory text revised 51422
130.9 Revised 51422

Chapter III—Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Chapter III Policy statement 2803
Technical correction 3340
301 Authority citation revised 744
301.2 Amended 744
303.1 (a)(2)(i) revised; (c) amended; eff. 1–25–00 56415
304.2 (b) amended; eff. 1–25–00 56415
307.2 (l) revised; eff. 1–25–00 56415
307.3 Revised; eff. 1–25–00 56415
307.7 (a) revised; eff. 1–25–00 56415
308 Removed; eff. 1–25–00 56415
312.6 Introductory text, (a) and (3) revised; eff. 1–25–00 56415
314.2 Revised; eff. 1–25–00 56416
314.4 Revised; eff. 1–25–00 56416

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

317.2 (l) introductory text revised 744
317.20 (a) amended 53187
318 Effective date confirmed 44644
318.7 (c)(4) table amended 27904
318.17 Revised 744
318.23 Revised 744
319 Effective date confirmed 44644
319.104 (d) amended 27904
320 Authority citation revised 745
320.1 (b)(4) removed 745
320.4 Amended 745
327.6 (e) amended; eff. 1–25–00 56416
331.2 Table amended 37667
331.3 (c) revised; eff. 1–25–00 56416
331.6 Table amended 37667
350.3 (a)(2) amended; eff. 1–25–00 56416
362.2 (a) amended; eff. 1–25–00 56416
381 Authority citation revised 745
381.1 (b) amended 745
(b)(39) removed; eff. 1–25–00 56416
381.36 (c)(1)(iv), (vii), (viii), (x), (d)(1)(xi) and (e)(1)(ix) revised; (c)(1)(vi), (d)(1)(vi), (viii) and (e)(1)(v) amended; eff. 1–25–00 56416
381.45—381.61 (Subpart H) Removed; eff. 1–25–00 56417
381.99 Revised; eff. 1–25–00 56417
381.121c (a) amended 53188
381.125 (b) introductory text amended 746
381.150 Revised 746
381.196 (b) amended 49645
381.221 Table amended 37667
381.224 Table amended 37667
390.1 Revised 43903
390.2 Revised 43903
390.3 Revised 43904
390.4 Revised 43904
390.5 Revised 43904
390.6 Revised 43904
390.7 Revised 43904
390.8 Revised 43904
391.2 Revised 19868
391.3 Revised 19868
391.4 Revised 19868
391.5 (a) revised 19868
416 Request for comment 28351
416.1 Added; eff. 1–15–00 56417
416.2 Added; eff. 1–15–00 56417
416.3 Added; eff. 1–15–00 56418
416.4 Added; eff. 1–15–00 56418
416.5 Added; eff. 1–15–00 56418
416.6 Added; eff. 1–15–00 56418
417 Request for comment 28351

Proposed Rules:

1—199 (Ch. I) 23795
1 ..... 4356, 10400
2 28940
3 ..... 4356, 8735, 10400, 26330, 30257, 38145, 40560
70 27210
71 13726
72 17573
80 13726
88 27210
92 34155
93 ..... 2449, 16655
94 ..... 7816, 8755, 27711, 34155, 37897, 38599, 50014
96 37897
98 34155
101 52247
112 13365
113 ..... 10400, 14156
130 ..... 28942, 37903, 51477, 52680
145 43301
147 43301
201 15938
317 ..... 9089, 26892, 29602
318 ..... 9089, 26892, 29602
319 26892
381 ..... 9089, 26892, 29602
391 10402

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

1.3 (a) revised 48947
2.4 Amended 48947
2.101 (a)(2) revised 48947
2.110 (c) revised 48948
2.206 (a) revised 48948
2.701 (a)(1) revised 48948
2.715 (c) revised 29213
2.740 (b)(1) revised 48948
2.750 (a) revised 48948
2.790 (d)(1) revised 15641
(a) introductory text and (c) revised 48948
2.802 (e) and (g) revised 48949
2.804 (b)(2) revised 48949
2.809 (a) revised 48949
2.1006 (a) corrected 15920
2.1007 (a)(2) revised; (a)(3) removed 48949
2.1203 (e) revised 29214

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 10 Chapter I—Con.

2.1205 (f)(2), (g), (k)(1)(i) and (ii) revised 29214
2.1211 (b) revised 29213
2.1231 (a)(1)(ii), (2) and (b) revised 48949
2.1301 (a) and (c) revised 48949
2.1303 Heading and introductory text revised 48949
2.1306 (c)(2) revised 48949
2.1330 (b) revised 48949
7.10 (b)(6) revised 48949
7.11 (d)(5) revised 48950
7.14 Revised 48950
7.17 (a) and (b) revised 48950
9 Implementation 24936, 39393
Technical correction 27041
9.21 Revised 48950
9.23 (a)(2) removed; (a)(1), (c), (d)(2) and (e) revised 48950
9.35 (e) removed; (a)(2), (5) and (b) introductory text revised 48951
9.45 (b) revised 48951
9.105 (b) revised 48951
9.107 (d)(1) revised 48951
9.108 (b) revised 48951
10 Authority citation revised 15641
10.1 Revised 15641
10.2 (d) revised 15641
10.5 Amended 15641
10.10 (d) introductory text revised 15641
10.12 (a) and (c) revised 15642
10.20 Revised 15642
10.21 Revised 15642
10.22 Revised 15642
10.23 (a) revised 15642
10.25 (a) and (c) revised 15643
10.27 (c) revised 15643
10.28 (n) revised 15643
10.31 Revised 15643
10.32 Revised 15644
10.33 Revised 15644
10.34 (a) revised 15645
10.35 Revised 15645
11.3 (a) revised 15645
11.7 Amended 15645
11.15 Revised 15645
11.16 Revised 15647
11.21 (c) and (d) revised 15647
20.1003 Amended; eff. 2–4–00 54556
20.1701 Revised; eff. 2–4–00 54556
20.1702 Revised; eff. 2–4–00 54556
20.1703 Revised; eff. 2–4–00 54557
20.1704 Revised; eff. 2–4–00 54557
20.1705 Revised; eff. 2–4–00 54557
20 Appendix A amended; eff. 2–4–00 54558
Appendix A corrected 55524
25.5 Amended 15647
25.9 Revised 15647
25.11 Revised 15647
25.19 Revised 15648
25.21 (c) revised 15648
25.23 (a) revised 15648
25.25 Revised 15648
25.27 (b) revised 15648
25.31 (a), (b) and (c) revised 15648
25.33 (a) and (b) revised 15649
25.35 (b) revised 15649
25.37 (b) revised 15649
25 Appendix A revised 15649
31.5 (c)(11) added 42275
40 Appendix A amended 17510
50 Determination 42823
50.30 (a)(5) revised 48951
50.44 (c)(3)(iv)(C) revised 48951
50.54 (a)(3) revised; (a)(4) added 9034
(p)(3) and (t) revised; (p)(4) added 14817
50.55a (h) revised 17946
(h)(1) and (2) corrected 23763
(b)(2)(vii) removed; (b)(2)(viii), (ix) and (x) redesignated as (b)(2)(vii), (viii) and (ix); (b)(1)(i) through (v), new (2)(x) through (xvii), (3), (g)(4)(iii) and (6)(ii)(C) added; introductory text, (b) introductory text, (1), (2) introductory text, (vi), (f) introductory text, (1), (3) introductory text, (iii), (iv), (4) introductory text, (g)(1), (3) introductory text, (i), (4) introductory text, (v)(C), (6)(ii)(B)(1) and (2) revised 51394
50.59 Revised (effective date pending) 53613
50.65 Introductory text and (a)(4) added; (a)(3) revised (effective date pending) 38557
50.66 (a) introductory text, (2), (f)(2) introductory text and (3) revised 48952
(b) introductory text, (4), (c)(2) and (3)(iii) revised (effective date pending) 53613
50.71 (e) introductory text revised (effective date pending) 53614

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

50.90 Revised (effective date pending) 53614
50 Appendixes O and Q amended 48952
51 Notice 48507
51.53 (c)(3)(ii)(J) revised; (c)(3)(ii)(M) removed 48506
51.62 (a) revised 48952
51.120 Revised 48952
51.123 (a) and (b) revised 48952
51 Appendix B amended 48507
52 Appendixes A, B, O and Q amended 48953
55.8 (c)(4) revised 19878
55.40 Added 19878
55.49 Revised 19878
60.2 Amended 48953
60.18 (f) revised 48954
60.61 (d) revised 48954
60.63 (b) and (f) revised 48954
62.11 (b) revised 48954
62.22 (c) revised 48954
71 Response to comments and information request 57769
72 Authority citation revised 56121
72.1 Revised 33182
72.2 (e) removed; (f) redesignated as (e); new (f) added 33183
(b) revised 56121
72.3 Amended; eff. 2–1–00 53614
Amended 56121
72.4 Revised 33183
72.9 (b) revised; eff. 2–1–00 53615
Revised 56122
72.10 (a) introductory text, (c) introductory text, (1) and (e)(1) revised 56122
72.11 Revised 56122
72.24 (a) revised; eff. 2–1–00 53615
72.44 (d)(3) revised 33183
72.48 Revised; eff. 4–5–01 53615
72.56 Revised; eff. 2–1–00 53616
72.70 Revised; eff. 2–1–00 53616
72.75 (d)(2) revised; (d)(3) through (7) added 33183
72.80 (g) added; eff. 2–1–00 53616
72.82 (e) removed 17512
72.86 (b) revised; eff. 2–1–00 53616
(b) revised 56122
72.122 (h)(4) and (i) revised 33184
72.124 (b) revised 33184
72.140—72.176 (Subpart G) Revised 56122
72.140 (d) revised 33184
72.200 (c) revised 48954
72.212 (b)(2) and (4) revised; eff. 4–5–01 53616
72.214 Amended 48274, 51189
Corrected 50872
72.216 (c) revised 33184
72.236 Revised 56126
72.240 Revised 56127
72.242 Added 56127
72.244 Added; eff. 2–1–00 53617
72.246 Added; eff. 2–1–00 53617
72.248 Added; eff. 2–1–00 53617
73.55 (g)(4) revised 14818
(g)(4)(i) introductory text, (A), (B) and (ii) correctly designated 17947
73 Appendix C amended 14818
75.2 (b) revised 48954
76.7 (e)(1) revised 44649
76.9 (c) removed 44649
76.21 (a) revised 44649
76.33 Revised 44649
76.35 Heading and introductory text revised 44649
76.36 (a) revised 44649
76.37 Revised 44649
(a) revised 48955
76.39 (a), (b)(1) and (4) revised 44649
76.45 Revised 44649
76.60 (c)(2), (d)(2), (e)(1) and (2) revised 44650
76.62 (c) revised 44650
76.64 (d) revised 44650
76.91 Introductory text and (n) revised 44650
95 Heading revised 15649
95.5 Amended 15649
95.8 (b) revised 15650
95.9 Revised 15650
95.11 Revised 15650
95.15 (a) revised 15650
95.17 (a) introductory text and (1) revised 15650
95.19 Revised 15650
95.20 Revised 15651
95.21 Revised 15651
95.25 Heading, (a) introductory text, (2), (b), (c)(2), (f), (g), (h), (i), (j)(1), (6) and (7) revised 15651
95.27 Revised 15651
95.29 (a), (c)(2) and (4) revised 15652
95.33 (f) revised 15652
95.34 Added 15652
95.36 (a), (c) and (d) revised 15652
95.37 (c)(1)(iv) removed; (c)(1)(i) and (h)(2) revised 15652
95.39 (b)(3) and (c)(2) revised 15652
95.45 (a) revised 15653

TITLE 10 Chapter I—Con.

95.47 Revised 15653
95.53 Revised 15653
95.57 Revised 15653
100.11 Amended; (c) added 48955
110.2 Amended 48955
110.70 (a) revised; (d) removed 48955
110.71 Revised 48955
110.72 Heading and introductory text revised 48955
110.112 (b) revised 48955
110.113 (c) revised 48955
170.2 (r) added 31469
170.3 Amended 31469
170.5 Revised 31469
170.11 (a)(11) removed; (a)(12) added 31469
170.12 Revised 31469
(a)(7)(ii) and (iii) correctly designated as (a)(7)(ii)(B) and (C); (a)(7)(ii)(A) correctly added 38816
170.20 Revised 31470
170.21 Amended 31470
170.31 Revised 31471
171 Heading revised 31475
171.9 Revised 31475
171.13 Revised 31475
171.15 Revised 31475
Heading corrected 38816
171.16 Revised 31476
(d) table corrected 38816
171.17 Revised 31480
171.19 Revised 31480

Chapter II—Department of Energy (Parts 200—699)

420 Nomenclature change; interim 46114
420.12 (c) amended; interim 46114
420.13 (a), (b)(3) and (7) amended; interim 46114
420.14 (a), (b)(1)(i), (2) and (3) amended; interim 46114
420.17 (b)(3) amended; interim 46114
420.18 (a), (b), (d), (e) introductory text, (3), (5) and (f) amended; interim 46114
420.19 (e) and (i) amended; interim 46114
420.33 (d) amended; interim 46114
420.35 (a) amended; interim 46114
420.38 Added; interim 46114
431 Added 54141
490 Authority citation revised 27174
490.2 Amended 26829
490.701—490.708 (Subpart H) Added 27174
600.3 Amended 56420
600.4 (c)(2)(ii) and (3) amended 56420
600.6 (c)(8) revised 56420
600.10 (b) revised 56420
600.13 Revised 56420
600.14 Removed 56420
600.24 (b) introductory text amended 56420
600.27 (b)(2)(i)(B) amended 4029

Chapter III—Department of Energy (Parts 700—999)

708 Revised 12870
708.40 Added; interim 37397
708.41 Added; interim 37397
708.42 Added; interim 37397

Chapter XVII—Defense Nuclear Facilities Safety Board (Parts 1700—1799)

1703 FOIA fee schedule 31115

Proposed Rules:

1 24531
2 ..... 8640, 9219, 24092, 24531, 29246, 55176
5 58568
7 24531
9 24531
19 ..... 8640, 9219, 24092
20 ..... 8640, 9219, 24092, 35090, 41050, 50015, 56274
21 ..... 8640, 9219, 12117, 24092
30 ..... 3790, 8640, 9219, 18833, 24092, 40295, 45900, 57785
31 ..... 3052, 40295, 48333
32 ..... 3052, 23796, 40295
35 ..... 5721, 45907
39 19089
40 ..... 3790, 8640, 9219, 18833, 24092, 36617, 40784, 45900
50 ..... 57, 432, 3790, 3791, 5623, 9035, 12117, 22580, 24531, 31737, 36291, 36615, 39447, 44137, 44860, 45900, 45908, 45911, 53270, 56476
51 ..... 8640, 9219, 9884, 24092, 24531, 48117
52 ..... 24531, 27626
54 12117
60 ..... 8640, 9219, 24092, 24531
61 ..... 8640, 9219, 24092, 50778
62 24531
63 ..... 8640, 9219, 10405, 24092, 27935, 57409
70 ..... 1542, 3790, 3791, 13368, 18833, 41338, 45900, 45911, 46319

72 ..... 1542, 24531, 36291, 41050, 45918, 45920, 45923, 51270, 51271
73 49410
75 24531
76 24531
100 24531
110 24531
113 58568
170 ..... 15876, 18835, 40295
171 ..... 15876, 18835, 40295
430 ..... 1272, 1545, 37706, 52248
432 33431
474 37905
707 11819
709 45062
710 ..... 44433, 45062
711 45062
810 35959
850 29811

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100.8 (b)(4) introductory text and (iv) revised (effective date pending) 41272
110.1 (g) added; (effective date pending) 37400
Regulation at 64 FR 37400 eff. 11–12–99 55125
110.7 (d) added (effective date pending) 42582
114.1 (e) revised (effective date pending) 41273
9003.3 Heading, (a)(1)(i) introductory text and (A) revised (effective date pending) 49362
9003.5 (b)(1)(iv) and (3)(ii) revised (effective date pending) 49362
9004.4 (a)(4) and (b)(8) revised (effective date pending) 49362
9004.6 (a) and (b) revised (effective date pending) 42583
9004.9 (d)(1) revised (effective date pending) 49362
9008.7 (c) added (effective date pending) 49363
9008.14 Revised (effective date pending) 49363
9008.52 (c)(1) introductory text revised (effective date pending) 49363
9008.53 (b)(1) introductory text revised (effective date pending) 49363
9032.11 Revised (effective date pending) 49363
9033.11 (b)(1)(iv) and (3)(ii) revised (effective date pending) 49363
9034.2 (b) revised; (c) introductory text amended; and (8) added (effective date pending) 32397
Regulation at 64 FR 32397 eff. 1–1–99 51423
9034.3 (c) amended (effective date pending) 32397
Regulation at 64 FR 32397 eff. 1–1–99 51423
9034.4 (a)(3)(iii), (b)(8), (e) heading, introductory text and (6)(i) revised (effective date pending) 49364
9034.5 (c)(1) revised (effective date pending) 49364
9034.6 (a) and (b) revised (effective date pending) 42583
9035.1 Revised (effective date pending) 49364
9036 Heading revised (effective date pending) 49364
9036.1 (b)(7) and (8) redesignated as (b)(8) and (9); new (b)(7) added (effective date pending) 42585
(b)(3) revised (effective date pending) 49365
9036.2 (b)(1)(vii) added (effective date pending) 42585
(b)(1)(vi) revised (effective date pending) 49365

Proposed Rules:

2 10405
4 10405
5 10405
100 ..... 5200, 8270, 27478, 55440
102 55440
104 55440
110 ..... 31159, 39095
114 ..... 8270, 46319
9003 8270
9004 8270
9007 8270
9008 8270
9032 8270
9033 8270
9034 8270
9035 8270
9036 8270

TITLE 11 *Proposed Rules:—Con.*

9038.....8270

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

3.6 (c) revised.....10199
3 Appendix A amended.....10199
Regulation at 62 FR 68067 confirmed.....19037
4.6 Regulation at 63 FR 46120 confirmed.....56952
4.7 Regulation at 63 FR 46120 confirmed; (b)(1)(iii)(B) and (2) introductory text revised.....56952
4.31 Regulation at 63 FR 62929 confirmed; (b)(3) amended.....29216
4.32 Regulation at 63 FR 62929 confirmed; (b)(1)(vii) revised.....29216
4.34 (a), (c) introductory text, (1) and (2) amended.....29216
4.36 Regulation at 63 FR 62929 confirmed; (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added; new (c) heading revised.....29216
4.37 Regulation at 63 FR 62929 confirmed.....29216
(a)(1) revised; (a)(2)(i) and (ii) amended.....29217
4.38 Regulation at 63 FR 62929 confirmed.....29216
4.39 Regulation at 63 FR 62929 confirmed.....29216
4.40 Regulation at 63 FR 62929 confirmed.....29216
4.31—4.40 (Subpart C) Appendix A amended.....29217
26.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q).....51678
26.3 (c) revised.....51678
26.5 Revised.....51678
26.6 Revised.....51678
26.7 (a) revised.....51678
30 Authority citation revised.....52641
30.2 Amended; interim.....52641
30.3 (a) revised; interim.....52641
30 Appendix C added; interim.....52641

Chapter II—Federal Reserve System (Parts 200—299)

201.2 (j) and (k) added.....41769
201.3 (e) added.....41769
201.6 (d) revised.....41770
201.7 Existing text designated as (a); (b) added.....41770
201.51 Revised.....48274
201.52 Heading revised; (c) added.....41770
204.9 Revised.....53619
208 Authority citation revised.....10199
208 Appendix A amended.....10199
Appendixes A and B amended.....10200
Regulation at 62 FR 68067 confirmed; Appendix E amended.....19037
Appendix E amended.....19038
211.26 Regulation at 63 FR 26121 confirmed; (c)(2)(i)(C)(2) and (ii) revised.....56952
212.2 (b) and (f) removed; (c) through (r) redesignated as (b) through (p).....51679
212.3 (b) and (c) revised.....51679
212.5 Revised.....51679
212.6 Revised.....51679
212.7 (a) revised.....51679
213 Supplement I amended.....16613, 16614
220 OTC margin stock lists.....8711, 46559
225 Appendix A amended.....10203
Regulation at 62 FR 68068 confirmed.....19037
Appendix E amended.....19038
226 Supplement I amended.....16616, 16617
229.19 (g) redesignated as (g)(1); new (g)(1) heading and (2) added.....14577
229.40 Existing text designated as (a); (a) heading and (b) added.....14577
230.6 (c) added; interim.....49848
262.3 (b)(1)(ii) amended; (b)(1)(ii)(A) removed; (b)(1)(ii)(B) revised.....53188

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.164 (b) revised.....20142
325.3 (b)(2) revised.....10200
325 Appendix A amended.....10200

Regulation at 62 FR 68068 confirmed; Appendix C amended.....19038
330.3 (h) revised.....15656
330.5 Heading, (b)(1), (4) heading and (i) revised.....15656
330.9 (b) revised.....15656
330.10 (a) and (e) revised.....15657
330.14 (a) revised.....15657
331 Added; interim.....30875
Regulation at 64 FR 30875 confirmed; Appendix A revised.....50434
331.4 Amended.....50434
331 Appendix B revised.....50436
347.214 Regulation at 63 FR 26121 confirmed; revised.....56952
348.2 (b) and (f) removed; (c) through (r) redesignated as (b) through (p).....51679
348.3 (c) revised.....51679
348.5 Revised.....51680
348.6 Revised.....51680
348.7 (a) revised.....51680

Chapter IV—Export-Import Bank of the United States (Parts 400—499)

404 Revised.....14374
405 Removed.....14381

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

541.3 Removed.....46564
541.4 Removed.....46564
541.6 Removed.....46564
541.13 Removed.....46564
541.17 Removed.....46564
541.23 Revised.....46564
545.103 Redesignated as 560.60.....46565
560.60 Redesignated from 545.103 and revised.....46565
560.3 Amended.....46565
560.50 Added.....46565
560.120 (a) amended; (b)(2)(ii) revised.....46565
561.10 Removed.....46565
561.11 Removed.....46565
561.13 Removed.....6503
561.20 Removed.....46565
561.21 Removed.....46565
561.23 Removed.....46565
561.25 Removed.....46565
561.32 Removed.....46565
561.36 Removed.....46565
561.47 Removed.....6503
561.48 Removed.....6503
563 Authority citation revised.....2809
563.134 Removed.....2809
563.140—563.146 (Subpart E) Revised.....2809
563b.3 (g)(2) amended.....2810
563f.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q).....51680
563f.3 (c) revised.....51680
563f.5 Revised.....51680
563f.6 Revised.....51680
563f.7 (a) revised.....51681
567.1 Amended.....10200
567.2 (a)(2)(ii) revised.....10201
567.6 (a)(1)(vi) revised.....10201
567.8 Revised.....10201

Chapter VI—Farm Credit Administration (Parts 600—699)

602 Revised (effective date pending).....41770
Regulation at 64 FR 41770 eff. 10–6–99.....54512
602.11 (e) corrected.....45589
611.310—611.340 (Subpart C) Regulation at 63 FR 64843 eff. 2–11–99.....6784
611.330 Regulation at 63 FR 64843 eff. 2–11–99.....6784
611.340 Regulation at 63 FR 64843 eff. 2–11–99.....6784
611.400 (c) and (d)(3) revised (effective date pending).....16618
Regulation at 64 FR 16618 eff. 5–11–99.....25423
611.505 Regulation at 63 FR 64844 eff. 2–11–99.....6784
611.1122 Regulation at 63 FR 64844 eff. 2–11–99.....6784
612.2165 (b)(7) amended (effective date pending).....43048
Regulation at 64 FR 43048 eff. 10–13–99.....55621
614 Authority citation revised.....34517
614.4000 (e)(4) removed (effective date pending).....43049
Regulation at 64 FR 43049 eff. 10–13–99.....55621
614.4010 (f)(1) revised; (f)(4) removed (effective date pending).....43049
Regulation at 64 FR 43049 eff. 10–13–99.....55621

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 12 Chapter VI—Con.

614.4030 (c)(4) removed (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
614.4040 (c)(4) removed (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
614.4050 (d)(4) removed (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
614.4232 Introductory text amended; (c) revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4325 (a)(3) amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4350—614.4360 (Subpart J) Heading revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4350 (a) and (c) revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4351 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4352 (a), (b)(1) and (2) amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4353 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4354 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4355 (a) heading and (b) heading amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4356 Redesignated as 614.4357; new 614.4356 added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4357 Redesignated as 614.4358; new 614.4357 redesignated from 614.4356 (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4358 Redesignated as 614.4359; new 614.4358 redesignated from 614.4357; (a) introductory text, (1), (3) and (b) introductory text amended; (b)(5) redesignated as (b)(6); new (b)(5) added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4359 Redesignated as 614.4360; new 614.4359 redesignated from 614.4358; (a) introductory text, (a)(1)(iii), (b), (c) and Table 1 amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4360 Redesignated as 614.4361; new 614.4360 redesignated from 614.4359; heading, (a), (b), (c) and (d) amended; (d) redesignated as (e); new (d) added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4361 Redesignated from 614.4360 (effective date pending)....34517
(a) and (b) amended....34518
Regulations at 64 FR 34517 and 34518 eff. 8–6–99....43049
614.4460 (Subpart M) Revised (effective date pending)....43049
Regulation at 64 FR 43049 withdrawn....55621
614.4710 Introductory text, (a)(2) and (3) amended (effective date pending)....34518
Regulation at 64 FR 34518 eff. 8–6–99....43049
614.4720 (g) removed (effective date pending)....43049
Regulation at 64 FR 43049 confirmed; eff. 10–13–99....55621
615.5131 Revised (effective date pending)....28895
Regulation at 64 FR 28895 eff. 7–15–99....38111

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

615.5133 Revised (effective date pending)....28895
Regulation at 64 FR 28895 eff. 7–15–99....38111
615.5134 (b) revised (effective date pending)....28896
Regulation at 64 FR 28896 eff. 7–15–99....38111
615.5140 Revised (effective date pending)....28896
Regulation at 64 FR 28896 eff. 7–15–99....38111
615.5141 Redesignated as 615.5142; new 615.5141 added (effective date pending)....28899
Regulation at 64 FR 28899 eff. 7–15–99....38111
615.5142 Redesignated as 615.5143; new 615.5142 redesignated from 615.5141 and revised (effective date pending)....28899
Regulation at 64 FR 28899 eff. 7–15–99....38111
615.5143 Redesignated as 615.5144; new 615.5143 redesignated from 615.5142 and revised (effective date pending)....28899
Regulation at 64 FR 28899 eff. 7–15–99....38111
615.5144 Redesignated from 615.5143 (effective date pending)....28899
Regulation at 64 FR 28899 eff. 7–15–99....38111
615.5170—615.5174 (Subpart F) Heading revised (effective date pending)....49961
Regulation at 64 FR 49961 eff. 10–21–99....56676
615.5171 Revised (effective date pending)....49961
Regulation at 64 FR 49961 eff. 10–21–99....56676
615.5174 Revised....28899
Regulation at 64 FR 28899 eff. 7–15–99....38111
616 Added (effective date pending)....34518
Regulation at 64 FR 34518 eff. 8–6–99....43049
618.8050—618.8060 (Subpart C) Removed (effective date pending)....34519
Regulation at 64 FR 34519 eff. 8–6–99....43049
618.8210—618.8270 (Subpart F) Removed (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
618.8320 (b)(7) removed; (b)(8), (9) and (10) redesignated as (b)(7), (8) and (9) (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
618.8330 Revised (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
618.8440 (b)(6) amended (effective date pending)....34519
Regulation at 64 FR 34519 eff. 8–6–99....43049
620.5 (i)(1) amended (effective date pending)....16618
Regulation at 64 FR 16618 eff. 5–11–99....25423
621.7 (a)(2)(iii) amended (effective date pending)....34519
Regulation at 64 FR 34519 eff. 8–6–99....43049

Chapter VII—National Credit Union Administration (Parts 700—799)

701.2 Removed....57365
701.12 Removed....41035
701.13 Removed....41035
701.14 (b)(3) introductory text and (c)(2) revised; (b)(4) added; (d)(1) amended....28717
701.20 Removed....28719
701.21 (c)(7)(ii)(C) Revised....5929
Regulation at 63 FR 51799 confirmed....28729
(a) amended....57365
701.25 Added....19443
701.30 Removed....28718
701.39 Added....56956
703.20 (c) amended....33187
(a) and (c) amended....57365
704.7 (d) amended....57365
707.4 Regulation at 63 FR 71574 confirmed....33010
707.5 Regulation at 63 FR 71574 confirmed....33010
707.8 Regulation at 63 FR 71574 confirmed....33010
707.9 Regulation at 63 FR 71575 confirmed....33010

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 12 Chapter VII—Con.

707 Regulation at 63 FR 71575 confirmed 33010
708a.4 (b) amended 28735
708a.5 (c) amended 28735
708a.9 (b) revised 28735
709.5 (e) amended 57365
712.2 Heading revised; (a) and (c) amended; (d) and (e) added 33187
712.3 (a) and (b) amended; (c) revised 33187
(a) amended 57365
712.5 (p) added 33187
712.6 (b) revised; interim 33188
713 Added 28720
713.2 Amended 57365
715 Added 41035
722.3 Regulation at 63 FR 51799 confirmed 28729
723 Regulation at 63 FR 51799 confirmed; revised 28729
723.1 (b)(3) amended 57365
741.3 (a)(3) amended 41040
741.4 (a), (g) and (j) amended; (b)(3) removed; (b)(2) redesignated as (b)(3); (b)(2), (4) and (5) added; (b)(1), (c) through (f) and (h) revised 56150
741.6 (a) amended; (b) redesignated as (d); new (b) and (c) added 41040
741.201 (a) and (b) amended 28721
741.202 (a) and (b) amended 41040
741.203 Regulation at 63 FR 51802 confirmed 28729
(a) amended 28733
745 Authority citation revised 19687
745.4 Revised; interim 19687
745.8 Revised; interim 19687
745 Appendix amended; interim 19687, 19688
790.2 (b)(6)(ii) revised 17086
(b)(7) and (16) amended 57365
791.18 (e) amended 57365
792.54 (b) amended 57365
792.55 (a) amended 57365
792.56 (a) amended 57365
792.66 (b)(2) amended 57365
795.1 (b) revised (OMB numbers) 49080

Chapter IX—Federal Housing Finance Board (Parts 900—999)

902.6 Removed 30883
903 Added 30883
904.9 (f)(2) revised 5930
905 Added; interim 44106
910 Authority citation revised 55130
910.0 (b), (c) and (d) redesignated as (c), (d) and (e); (a) and new (c) revised; new (b), (f) and (g) added 55130
910.7 Added 55130
935 Authority citation revised 16621
935.1 Amended 16621
935.9 (a) revised; (b) heading, (c) heading and (e) heading amended 16621
935.11 (b) revised 16621
935.15 (b) revised; interim 16791
960 Interpretation 12079
960.1 Amended; interim 24027
960.3 (b)(4) revised; interim 24027
960.5 (b)(10)(ii) revised 23015
(b)(2)(ii)(B) amended; interim 24027
960.6 (b)(4)(iv)(D) and (F)(8) revised 23015
(b)(4)(iv)(D) and (F)(1) revised; interim 24028
960.7 Corrected 2550
960.9 Introductory text revised 23016

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1701—1799)

1730 Added; interim 34969
Regulation at 64 FR 34969 confirmed 50246

Proposed Rules:

1—199 (Ch. I) 25469
1 31749
5 31749
7 31749
21 15137
24 31160
201 28768
202 ..... 44582, 49688, 57409
205 ..... 49699, 57409
208 15310
211 15310
213 ..... 49713, 57409
225 15310
226 ..... 49722, 57409
229 ..... 9105, 37708
230 ..... 49740, 57409
326 14845

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

327 48719
340 51084
360 48968
361 ..... 42861, 42862
563 14845
584 5982
602 10954
615 8018
701 ..... 57, 58, 776, 40786, 52694
702 ..... 27090, 44663
704 40787
713 58
714 55866
715 776
724 55871
741 ..... 58, 776, 28415
745 55871
747 ..... 27090, 44663
900—999 (Ch. IX) 52148
910 6819
917 52163
925 52163
930 52163
933 16792
934 16792
935 ..... 16792, 44444
940 52163
954 52163
955 52163
958 52163
965 52163
966 52163
980 52163
1750 ..... 18084, 31756, 32828, 56274

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

107.50 Amended 52645
107.610 (e) added 52646
107.835 (d) redesignated as (e); new (d) added 52646
107.850 (a) introductory text revised 52646
107.855 (g)(12) added 52646
107.865 (d)(3) and (4) amended; (d)(5) added; (e)(3) revised 52646
114.102 Revised 40283
114.105 (b) and (c) revised 40283
114.106 Revised 40283
114.108 Revised 40283
115.31 (a)(2) revised 18324
120.10 Amended 2117
120.111 Amended 2117
120.131 Revised 2117
(a) corrected 27445
120.414 Undesignated center heading and section redesignated from 120.430; undesignated center heading revised 6509
120.420 Undesignated center heading and section revised 6507
120.421 Added 6508
120.422 Added 6508
120.423 Added 6508
120.424 Added 6508
120.425 Added 6508
120.426 Added 6509
120.427 Added 6509
120.428 Added 6509
120.430 Section and undesignated center heading redesignated as 120.414 6509
120.430—120.435 Undesignated center heading and sections added 6509
120.453 (a) and (b) revised; (c) removed 6510
120.540 Heading and (d) revised; (b)(4) added 44110
120.801 (a) amended; (c)(3) revised 2118
120.802 Amended 2118
120.845 Revised 26274
120.862 (b)(3) amended; (b)(7) revised 2118
120.870 (a)(1) revised; (c) added 2118
120.883 Revised 2118
120.884 (e) removed 2118
120.910 Revised 2118
120.920 Revised 2118
120.921 (d) and (e) redesignated as (e) and (f); new (d) added; new (e) and new (f) revised 2118
120.971 (a)(2) amended; (a)(3) and (d)(2) revised 2119
120.972 Redesignated as 120.973; new 120.973 added 2119
120.973 Redesignated from 120.972 2119
121 Authority citation revised 26280, 57370
121.103 (f)(3)(i) revised; interim 57370
121.201 Table amended 26280
121.302 (c) amended 48276

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 13 Chapter I—Con.

123.3 (a)(4) amended 13667
123.107 Amended 48276
123.400—123.407 Undesignated center heading and sections added 48276
125 Authority citation revised 57370
125.2 (a) and (b) redesignated as (b) and (c); new (a) and (d) added; new (b) revised; interim 57370
125.6 (g) added; interim 53772

Chapter III—Economic Development Administration, Department of Commerce (Parts 300—399)

Chapter III Revised; interim 5352
301.4 (b) revised; interim 32975

Chapter IV—Emergency Steel Guarantee Loan Board (Parts 400—499)

Chapter IV Established 57933

Chapter V—Emergency Oil and Gas Guarantee Loan Board (Parts 500—599)

Chapter V Established 57847

Proposed Rules:

107 ..... 6256, 18375
113 58568
114 23027
120 ..... 15942, 34745, 40310, 43636
121 ..... 2153, 15708, 23798, 40311, 40314, 55873, 57188
123 36617
125 2153
134 3454
140 3454

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

11 Technical correction 7066
13 Policy statement 19443
14 Authority citation revised 32935
Technical correction 47362
14.02 (a) revised 32935
14.03 (a) and (f) revised 32935
14.05 (b), (c) and (e) revised 32935
14.11 (c) revised 32935
14.20 (a) and (c) revised 32936
14.21 Revised 32936
14.22 (b) revised 32936
14.24 Revised 32936
14.26 (a) revised 32936
14.27 Revised 32936
14.28 Revised 32936
17 Added 32936
17.15 (f) corrected 47362
17.39 (n) correctly added 47362
21 Design standards availability 13501
Special FAA conditions 52646
23 Special FAA conditions 6510, 39899, 49365, 49367
25 Special FAA conditions 3201, 14818, 25800, 27175, 27445, 38999, 44817, 47649, 51423, 51424, 54761
25.145 (c)(3) concluding text designated as (d); (c) introductory text and new (d) revised 6164
(d) corrected 10740
25.731 (e) corrected 45589
25.735 (e)(1) corrected 45589
27 Special FAA conditions 27447
27.1 (a) revised 45094
27.2 Introductory text, (a), (b), (c), (d) introductory text, (1) and (2) redesignated as (a) introductory text, (a)(1), (2), (3), (4) introductory text, (i) and (ii); new (b) added 45094
27.25 (c) revised 43019
27.602 Added 46232
27.610 heading revised; (d) added 45094
27.805 Added 45094
27.807 Revised 45094
27.853 (a) amended; (b) removed 45095
27.865 (c) and (d) redesignated as (e) and (f); undesignated center heading, heading, (a) introductory text, (b), new (e) and new (f) revised; new (c) and new (d) added 43019
27.1027 (a) through (d) redesignated as (b) through (e); new (a) added; new (c)(2) and new (d) amended 45095
27.1185 (d) added 45095
27.1187 Revised 45095

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

27.1305 (v) added 45095
Heading corrected 47563
27.1337 (e) revised 45095
29.25 (c) revised 43020
29.59 (c), (d) and (e) redesignated as (d), (e) and (c); 45337
29.62 (a) revised 45337
29.67 (a)(2) introductory text, (i), (3)(i) and (b) revised; (a)(2)(ii) removed; (a)(2)(iii) and (a)(2)(iv) redesignated as (a)(2)(ii) and (a)(2)(iii) 45337
(a)(3)(i) corrected 47563
29.77 Revised 45338
29.81 Revised 45338
29.85 Revised 45338
29.602 Added 46232
29.865 (c) and (d) redesignated as (e) and (f); undesignated center heading, heading, (a) introductory text, (b), new (e) and new (f) revised; new (c) and new (d) added 43020
29.1323 (c)(1) amended 45338
29.1587 (a)(4) and (5) amended 45338
33 Special FAA conditions 28900
34.1 Amended 5558
34.2 Amended 5559
34.31 (d) and (e)(3) revised 5559
34.60 (c) revised 5559
34.61 Revised 5559
34.62 (a)(2) revised 5559
34.64 Revised 5559
34.71 Revised 5559
34.82 Revised 5560
34.89 Revised 5560
36 Appendix G amended 55602
39.13 ..... 7, 395, 750, 752, 986, 987, 990, 1107, 1109, 1111, 1114, 1115, 1117, 1119, 1503, 1716, 2014, 2036, 2059, 2081, 2552, 2554, 2556, 2557, 2559, 2560, 2562, 2811, 2815, 2816, 2818, 2820, 2822, 3203, 3205, 3816, 3818, 3820, 3823, 3825, 3827, 4030, 4289, 4291, 4293, 4522, 4524, 4526, 4964, 5150, 5588, 5589, 5591, 5593, 5711, 6190, 6513, 6515, 6517, 6520, 6524, 6785, 6787, 6790, 6792, 7492, 7493, 7496, 7499, 7772, 7774, 7776, 8226, 8229, 8231, 8232, 8500, 8501, 8713, 9057, 9908, 9909, 9911, 9912, 10207, 10208, 10210, 10212, 10215, 10217, 10556, 10559, 10560, 10937, 11375, 11758, 11760, 11763, 11765, 12242, 12243, 12245, 12248, 12251, 12253, 13226, 13227, 13330, 13332, 13504, 13668, 13671, 13883, 13885, 13887, 13890, 13891, 13893, 14097, 14579, 14582, 14584, 14586, 14589, 14822, 14824, 14825, 15126, 15300, 15658, 15660, 15662, 15670, 15921, 16340, 16623, 16625, 16634, 16802, 16805, 16808, 16810, 16812, 17130, 17513, 17519, 17523, 17526, 17948, 17951, 17953, 17955, 17957, 17960, 17961, 17963, 17965, 17967, 18326, 18803, 18806, 18807, 19255, 19690, 19693, 19695, 19697, 19880, 19882, 19884, 20144, 20145, 20148, 20149, 20151, 20153, 20154, 22546, 22780, 22782, 22784, 23017, 23181, 23765, 23768, 24029, 24030, 24032, 24033, 24035, 24507, 24509, 25196, 25197, 25199, 25200, 25425, 25428, 25803, 25805, 26654, 26833, 26835, 26836, 26838, 26840, 27662, 27910, 27912, 28355, 28356, 28358, 28904, 28906, 29777, 29780, 29782, 29784, 30381, 30383, 31489, 31491, 31492, 31688, 31690, 31968, 32399, 32401, 32799, 33010, 33388, 33391, 33393, 33396, 33744, 33746, 33748, 34523, 34524, 34525, 34527, 34529, 34531, 34976, 34978, 34980, 34709, 35560, 36562, 36564, 36778, 37668, 37670, 37840, 37842, 38300, 38302, 38559, 38818, 38821, 39002, 39004, 39006, 39397, 39399, 40285, 40515, 40744, 41274, 41775, 41777, 41779, 42008, 42276, 42825, 43050, 43052, 43055, 43057, 43059, 43061, 43063, 43905, 44111, 44113, 44652, 44821, 44823, 44825, 45150, 45422, 45424, 45426, 45431, 45434, 45435, 45437, 45869, 45871, 46260, 47363, 47367, 47369, 47370, 47372, 47374, 47375, 47377, 47381, 47383, 47385, 47142, 47144, 47146, 47148, 47149, 47653, 47655, 47657, 47659, 47661, 47663, 48279, 48281, 48283, 48285, 48287, 49081, 49963, 49965, 49968, 49970, 49973, 49976, 49978, 49980, 50440, 50441, 50443, 50751, 51190, 51191, 51193, 51194, 51196, 51197, 51198, 51200, 51202, 51204, 51207, 51682, 51684, 51685, 51687, 52220, 52222, 52423, 52426, 52649, 53190, 53191, 53194, 53620, 53622, 53624, 53626, 54200, 54201, 54203, 54513, 54514, 54516, 54518, 54519, 54766, 54768, 54770, 54772, 54773, 54775, 55408, 55410, 55412, 55414, 55415, 55417, 55622, 55625, 56153, 56157,

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 14 Chapter I—Con.

56159, 56160, 56162, 56164, 56422, 56423, 56426, 56428, 56958, 56959, 56961, 56963, 56964, 57409, 57550, 57552, 57554, 57556, 57557, 57787, 57789, 57790, 57792, 57794, 57796, 57798, 57800, 57802, 57806, 57808, 57810, 57811, 57814, 57816, 57818, 57820, 57822, 57823, 57971, 57973, 58329
Corrected.....395, 2428, 5093, 7994, 8233, 8234, 11533, 12743, 17086, 55815
61.57 (e)(3) added.....23529
71.1.....8—13, 1717, 2119, 2120, 2563—2566, 2824, 2825, 2826, 2828, 3010, 3011, 3207—3210, 3397, 3398, 3829—3833, 3835, 3836, 4530, 4782—4784, 5151, 5713, 5931, 6795, 6797—6800, 7500, 7995, 8234, 8502—8509, 8714, 9268—9270, 10387, 10563, 10564, 10938—10940, 10942, 12084, 12255, 12256, 13333, 13506, 13672, 14306, 14890—14603, 15300, 15301, 15674—15680, 16024, 16341—16345, 17134, 19256—19260, 19262—19264, 19266—19268, 19885, 20155—20163, 23184, 24036, 24037, 24510, 24511, 25806, 26656, 27913, 27914, 28092—28097, 29786, 30242, 30889, 31115—31117, 31119, 31120, 32401, 32402, 33011, 33013—33015, 33189—33193, 34981, 34982, 36566—36568, 37672, 38303—38306, 36560, 38823, 38824, 38825, 39008, 39009, 39011—39016, 39404, 40286, 40746, 41780, 42277, 42588, 42591—42593, 43064, 43066, 43067, 43069, 43070, 43262, 43599, 43908, 44115, 44116, 44117, 44398—44340, 44826, 46115—46117, 46264—46267, 46815—46818, 47386, 47387, 47664, 47665, 48087, 48089, 48527, 48528, 48703, 49374—49376, 49647, 49648, 50246, 50247, 50445, 51209, 51430, 52426, 52427, 53888—53897, 53899, 53900, 54203—54206, 55131, 55815—55820, 56252, 56428, 56429, 56676, 57558, 58330, 58332, 58333
Corrected.....3590, 3591, 4785, 5151, 6138, 10740, 12404, 17219, 17935, 18563, 19269, 19886, 22674, 23538, 23903, 24713, 28875, 29944, 32179, 32402, 35256, 38306, 41041, 42432, 43261, 44268, 44578, 46228, 46262, 47563, 47664, 48085, 48086, 48459, 48897, 49646, 49648, 49981, 50331, 52121, 53627
Added; eff. 9-16-99 through 9-15-00.....50444
71.5 Amended; eff. 9-16-99 through 9-15-00.....50444
71.31 Amended; eff. 9-16-99 through 9-15-00.....50444
71.33 (c) amended; eff. 9-16-99 through 9-15-00.....50444
71.41 Amended; eff. 9-16-99 through 9-15-00.....50444
71.51 Amended; eff. 9-16-99 through 9-15-00.....50444
71.61 Amended; eff. 9-16-99 through 9-15-00.....50444
71.71 (b) through (f) amended; eff. 9-16-99 through 9-15-00.....50444
71.79 Amended; eff. 9-16-99 through 9-15-00.....50445
71.901 (a) amended; eff. 9-16-99 through 9-15-00.....50445
73.21.....39017
73.22.....48090
73.25.....3624, 12744, 48091
73.29.....13506, 14604
73.32.....23769
73.48.....7778
73.56.....4534
73.57.....14604
73.71.....47666
73.87.....13334
91 Technical correction.....7066, 47563
Interpretation.....15912
SFAR No. 84 corrected.....23395
SFAR No. 86 added.....44816
Compliance date notification.....51432
91.1 (a) revised; (c) added.....1079
91.11 Heading revised.....1079
91.701—91.715 (Subpart H) Heading revised.....1079
91.701 Revised.....1079
91.702 Added.....1079
91 SFAR No. 84 added.....15121
93 SFAR No. 50-2 amended.....5154
93.51 Revised.....14976
93.53 Revised.....14976
Corrected.....17439
93.55 Revised.....14976
(b), (c), (e) and (f) corrected.....17439
93.57 Revised.....14977
93.59 Revised.....14977
93.61 Revised.....14977
93.63 Revised.....14977
93.65 Revised.....14977
(d) corrected.....17439
93.67 Revised.....14977
93.68 Revised.....14978
93.69 Revised.....14978
93.123 (a) table amended.....53564
93.217 (a) introductory text, (5), (6), (8) and (10)(i) revised.....53565
93.218 Added.....53565
93.223 (c)(4) added.....53565
93.225 (e) revised.....53565
93.301 Regulation at 61 FR 69330 eff. date delayed to 1-31-00.....5154
93.305 Regulation at 61 FR 69330 eff. date delayed to 1-31-00.....5154
93.307 Regulation at 61 FR 69330 eff. date delayed to 1-31-00.....5154
93 Appendix A removed.....14978
95.....8235, 18564, 30890, 41275
97.21—97.35.....1718, 1725, 2829, 2831, 5155, 5595, 7779, 7780, 7782, 9913, 9915, 13335, 13337, 14827, 14829, 17273, 17527, 17529, 19698, 22549, 24284, 24285, 27664, 27665, 30893, 30896, 30897, 33398, 33400, 35563, 35565, 38562, 38563, 41282, 41284, 41285, 44118, 44120, 47388, 49378, 49379, 49650, 51433, 51434, 55133, 55134, 55136, 57560, 57561, 57563
121 SFAR No. 36 amended.....960
Technical correction.....3837, 7066
SFAR No. 50-2 amended.....5154
Enforcement policy.....32176
121.306 Added.....1080
121.339 (a)(2) corrected; CFR correction.....49981
121.580 Added.....1080
121 Appendix M amended.....46120
125 Heading revised.....1080
Technical correction.....7066
125.1 (a) revised; (d) added.....1080
125.204 Added.....1080
125.328 Added.....1080
125 Appendix E amended.....46121
135 SFAR No. 36 amended.....960
Heading revised.....1080
Technical correction.....3837, 7066
SFAR No. 50-2 amended.....5154
Enforcement policy.....32176
135.120 Added.....1080
135.144 Added.....1080
145 SFAR No. 36 amended.....960
Technical correction.....3837

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

201.1 (b) amended.....3212
204.2 (k)(2) revised.....12085
212.10 (a) and (f)(1) amended.....3213
221 Revised.....40657
250.4 Removed.....40674
254.4 Amended.....41783
255.12 Revised.....15129
257 Added.....12851
Regulation at 64 FR 12851 eff. date delayed to 8-25-99.....38111
257.6 Added.....46821
258 Added.....12860
Regulation at 64 FR 12860 eff. date delayed to 8-25-99.....38111
258.6 Added.....46821
293 Added.....40674
382.43 (b) revised.....41783
399 Authority citation revised.....12852
399.88 Removed.....12852
Regulation at 64 FR 12852 eff. date delayed to 8-25-99.....38111

Chapter III—Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

401 Authority citation revised.....19613
Technical correction.....29786
401.5 Revised.....19613
411 Removed.....19614
Technical correction.....29786
413 Revised.....19614
Technical correction.....29786
415 Revised.....19616
Technical correction.....29786
417 Added.....19624
Technical correction.....29786

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1206 Revised.....39404
1214.900—1214.912 (Subpart 1214.9) Removed; interim.....19886
1214.1000—1214.1004 (Subpart 1214.10) Removed; interim.....19887

Proposed Rules:

1.....56275

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 14 *Proposed Rules:—Con.*

11.....33142, 56708
21.....35902, 58644
23.....14401, 29247, 49413
25....14408, 25851, 26900, 27478, 32978, 39095, 43570, 43579, 43943, 43946, 58644
27.....35902
29.....35902
39.....435, 438, 441, 443, 445, 785, 787, 1545, 1549, 1552, 2157, 2161, 2863, 3052, 3054, 3226, 4061, 4367, 4370, 4372, 4791, 5985, 6259, 6577, 7822, 7827, 7829, 7830, 8020, 8022, 8024, 8026, 8027, 8029, 8530, 8762, 9453, 9939, 10113, 10114, 10116, 10237, 10578, 10959, 11401, 12770, 12772, 13530, 13732, 13932, 13934, 13936, 15137, 16364, 16366, 16656, 18382, 18384, 18386, 18835, 18840, 18842, 18845, 19096, 19726, 19930, 19932, 19934, 19936, 19938, 19940, 19942, 20221, 20224, 20226, 20229, 20230, 22616, 22818, 23552, 24092, 24542, 24545, 24963, 24964, 25218, 26703, 27480, 27483, 28418, 28420, 29602, 29607, 29814, 29965, 29966, 29969, 29972, 31518, 31520, 31523, 31756, 31758, 31760, 31762, 31764, 33229, 33232, 33435, 33437, 33439, 33441, 33443, 33445, 33447, 34168, 34170, 34575, 34577, 34579, 34581, 34582, 34584, 34586, 34588, 34590, 34746, 36307, 36618, 36623, 36624, 36626, 36628, 37046, 37465, 37471, 37911, 37913, 37915, 37917, 37918, 37920, 38150, 38152, 38154, 38156, 38157, 38316, 38319, 38322, 38325, 38329, 38332, 38335, 38338, 38341, 38345, 38348, 38351, 38355, 38358, 38362, 38365, 38368, 38371, 38374, 38378, 38379, 38382, 38383, 38603, 38605, 38606, 38844, 38846, 38848, 38850, 39097, 39100, 39102, 39014, 39448, 39450, 39944, 39946, 40319, 40789, 41841, 41842, 42050, 42052, 42054, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211, 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487, 45925, 45927, 45929, 46609, 47438, 47440, 47442, 47447, 47715, 48120, 48333, 48721, 48723, 49105, 49110, 49112, 49113, 49115, 49418, 49420, 49752, 50016, 50018, 50020, 50022, 50023, 50781, 51479, 51481, 51483, 51484, 51486, 52259, 52260, 52263, 53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195—55197, 55201, 55204, 55208, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57600, 57602, 57606, 57608, 58359
65.....18302, 42810
66.....42810
71.....60, 447, 1142, 1554, 1555, 1557—1565, 2449, 2450, 2452, 2453, 2605, 2864, 2866, 3228, 3664—3666, 4793—4800, 5093, 6579—6583, 6823, 7141—7143, 7558, 8031, 8167, 8271, 8272, 8445, 9940, 10238, 10239, 10241—10243, 10410, 10411, 10962, 11533, 11819, 11820, 12126, 13938, 14410, 15139, 15140, 15142, 15708, 16368—16371, 17717, 17983, 17984, 18392, 18481, 18584, 19310, 19312—19314, 19316, 19317, 19728, 23028, 23805—23809, 25220—25222, 26705, 26712, 26922, 28122, 28944, 29817, 30259—30261, 30928, 31525—31527, 32828, 33234, 34592, 35100, 36630, 36631, 37713—37717, 38385, 38386, 38607, 38609, 39949, 39950, 41054, 41357—41360, 41362, 41363, 42300, 42301, 44139—44142, 44144, 44865, 47449, 47451, 47718, 48123, 49754, 49755, 51273, 51587, 52475, 53956, 53957, 57609, 57610, 57995, 58362, 58363
73.....9455
91....17293, 18302, 27160, 28770, 28945, 33142, 35902, 37018, 40791, 56708, 58644
93.....2086, 3055, 35963, 37296, 37304, 38851, 44145, 46155
105.....18302
107.....43321
108.....19220, 23554, 28945, 31686, 43322
119.....16298, 18302, 45090
121.....16298, 18766, 28770, 29813, 33142, 45090, 56708, 58644
125.....18766, 58644
129.....13880, 16298, 45090, 58644

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

135.....16298, 17293, 18766, 28770, 33142, 45090, 56708
139.....37026, 40791
145.....18766, 33142, 56708
146.....52695
147.....42810
183.....16298, 45090
193.....40472, 53958
234.....3883
254.....34592
255.....9457
298.....34747
382.....7833, 46611
389.....3229
400.....19626
401.....19626
404.....19626
405.....19626
406.....19626
413.....19626
415.....19626
417.....34316
420.....34316
431.....19626
433.....19626
435.....19626
450.....54448
1253.....58568
1260.....26923, 50334
1274.....50334

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

30.1 (c) added.....40976
30.7 Introductory text revised.....40976
30.39 Revised.....40976
30.60—30.66 (Subpart E) Added.....40977
30.70 (Subpart E) Redesignated as Subpart F:.....40977
30.80—30.83 (Subpart F) Redesignated as Subpart G.....40977
30.80 (d) revised.....24943
30.90—30.99 (Subpart G) Redesignated as Subpart H.....40977
30.91 (a) revised.....40981
30 Appendixes A, B and C added.....40981

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

734 Authority citation revised.....27140, 42011, 47105
734.2 (b)(1) and (4) amended.....13339
734.4 (b) revised.....13339
(a) revised.....42011
734.5 (a) revised; interim.....27141
(a) amended.....47105
736 Authority citation revised.....27141, 47105
736.2 (b)(7)(i) revised; interim.....27141
(b)(3)(ii)(A)(*1*) revised.....47105
738 Authority citation revised.....17970, 27141, 42011
738.2 (d)(2)(i)(A) amended; interim.....17970, 27141
738 Supplement No. 1 amended; interim.....17970
Supplement No. 1 amended.....28908, 42011
740 Authority citation revised.....2430, 17970, 27141, 28908, 40108, 42011
740.2 (a)(5) amended.....13339
740.7 (d)(4) redesignated as (d)(5); new (d)(4) and (5)(v)(A)(*8*) note added; new (d)(5)(iii), (v) introductory text and (A) introductory amended; new (d)(5)(v)(B) revised; interim.....2430
Amended.....28908
(b)(1), (c), (d)(2), (3), (5)(i) and (v) introductory text revised.....42011
740.11 Heading and introductory text revised; (c) added; interim.....27141
(a)(2) and Supplement No. 1 revised.....40108
(a)(2)(ii), (iii), (c)(2)(i) and Supplement No.1 amended.....42012
740.14 (e)(1)(iii) amended; interim.....17973
740 Supplement No. 1 amended.....28908
742 Authority citation revised.....2430, 17970, 27141, 42011, 47105, 47667, 49381, 50248
742.2 (a) introductory text revised; interim.....27142
Amended.....28909
742.8 (a)(4)(ii) amended; interim.....27142

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 15 Chapter VII—Con.

742.9 (a)(3)(ii) amended; interim 27142
(b)(1)(vii) added; interim 47667
(b)(1)(iv) revised; interim 50248
742.10 (a)(4)(ii) amended; interim 27142
(b)(1)(vii) added; interim 47667
742.12 (b)(3)(i)(C) and (iv)(B) revised; interim 2431
(b)(2)(i), (3)(i)(A), (i)(B), (ii) and (c) amended 42012
742.14 Revised 13339
742.15 Second (b)(6)(v) redesignated as (b)(6)(vi) 3214
742.17 Added; interim 17973
742.18 Added; interim 27142
(b)(2)(i) removed; (b)(2)(ii) and (iii) redesignated as (b)(2)(i) and (ii); new (b)(2)(i)(A) revised; interim 49381
742 Supplement No. 4 amended 3214
Supplement No. 2 amended; interim 27143
Supplement No. 2 amended 47105
743 Authority citation revised 40108, 47105
743.1 (b) amended 3214
(c)(1) revised 40110
(c)(1)(v) revised 47105
744 Authority citation revised 1121
744.10 Revised 14605
744.13 Added; interim 1121
744.14 Added; interim 1122
744 Supplement No. 4 amended 14606, 28910
745 Added; interim 27143
Authority citation revised 49381
745.1 (b)(3) amended 28909
745.2 (a)(1) amended; interim 49381
745 Supplement No. 3 amended 28909
Supplement No. 2 amended; interim 49381
Supplement No. 3 amended; interim 49382
746 Authority citation revised 24018, 49383
746.2 (b)(4)(iii) added 25808
746.4 (b)(2)(ii)(G) revised 49383
746.9 Revised 24019
748 Authority citation revised 2430, 17970, 47105
748.8 (q) added; interim 27146
748.9 (b)(2)(i)(*1*) removed; (b)(2)(i)(*2*) and (*3*) redesignated as (b)(2)(i)(A) and (B); interim 2431
(a) introductory text revised; interim 17973
748.10 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) introductory text revised; interim 2431
748.14 Added; interim 17973
748 Supplement No. 6 added; interim 17974
Supplement No. 2 amended; interim 27146
Supplements No. 2 and 4 amended 47105
750 Authority citation revised 47106
750.7 (i) redesignated as (j); new (i) added 47106
752.3 (a)(8) removed; (a)(9), (10) and (11) redesignated (a)(8), (9) and (10) 13339
758 Authority citation revised 27141
758.3 (h)(2) amended; interim 27146
762 Authority citation revised 17970
772 Authority citation revised 1121, 5932
Amended; interim 1122, 5932
Amended 13339, 27146
774 Authority citation revised 5932, 17970, 27141, 47106, 48956
774 Supplement No. 1, Category 1 (ECCN 1B115, 1C111, 1C118, 1E001 and 1E101) amended; interim 5932
Supplement No. 1, Category 0 (ECCN 0A982, 0D001 and 0E001) amended 10854
Supplement No. 1, Category 1 (ECCN 1A002, 1A005, 1C001, 1D390, 1D993, 1E994 and 1E001) amended 10854
Supplement No. 1, Category 2 (ECCN 2B001, 2B003, 2B004, 2B005, 2B104, 2B996 and 23003) amended 10855
Supplement No. 1, Category 3 (ECCN 3A001, 3A002, 3B001 and 3C002) amended 10857
Supplement No. 1, Category 4 (ECCN 4A003, 4D001 and 4E001) amended 10860
Supplement No. 1, Category 5 (ECCN 5A991, 5D001 and 5E001) amended 10861

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

Supplement No. 1, Category 6 (ECCN 6A001, 6A003, 6A005, 6A007, 6A008, 6D001, 6D003, 6E001 and 6E002) amended
Supplement No. 1, Category 7 (ECCN 7D003) amended 10867
Supplement No. 1, Category 8 (ECCN 8A002, 8A992, 8D001 and 8E001) amended 10867
Supplement No. 1, Category 9 (ECCN 9A018) 10869
Supplement No. 1, Category 4 (ECCN 4D001, 4E001) corrected 12745
Supplement No. 1, Category 9 (ECCN 9A004) amended 13340
Supplement No. 1, Category 0 (ECCN 0A984, 0A985 and 0A987) amended; interim 17975
Supplement No. 1, Category 1 (ECCN 1C350) amended; interim 27146
Supplement No. 1, Category 1 (ECCN 1C351) amended; interim 27148
Supplement No. 1, Category 1 (ECCN 1C355) amended; interim 27149
Supplement No. 1, Category 1 (ECCN 1E001) amended; interim 27150
Supplement No. 1 corrected 27854
Supplement No. 1, Category 1 (ECCN 1E001) amended 28909
Supplement No. 1, Category 1 (ECCN 1C350) corrected 30103
Supplement No. 1, Category 3 (ECCN 3A001) amended 36780
Supplement No.1, Category 1 (ECCN 1C004 and ECCN 1C996) amended 40110
Supplement No.1, Category 2 (ECCN 2B001, 2B004, 2B005, 2D001 and 2E003) amended 40111
Supplement No.1, Category 2 amended 40113
Supplement No.1, Category 3 (ECCN 3A001, 3A002, 3A991, 3B001, 3B991, 3C002, 3E001, 3C992 and 3E002) 40117
Supplement No.1, Category 4 (ECCN 4A003) amended 40124
Supplement No.1, Category 4 amended 40125
Supplement No.1, Category 5 amended 40128
Supplement No.1, Category 5 (ECCN 5A001, 5A991, 5B001, 5C001, 5C9991, 5D001 and 5E001) 40129
Supplement No.1, Category 6 (ECCN 6A003, 6A005, 6C002 and 6C992) 40132
Supplement No.1, Category 7 amended 40135
Supplement No. 1 Category 0 (ECCN 0A984) and Supplement No. 2 amended 47106
Supplement No. 1, Category 0 (ECCN 0A018) amended; interim 47667
Supplement No. 1, Category 1 (ECCN 1C018, 1C992 and 1C998) amended; interim 47667
Supplement No.1 (ECCN 0A984) amended 48956
Supplement No. 1, Category 1 (ECCN 1C351 and 1C991) amended 54521
Supplement No. 1, Category 2 (ECCN 2B351) amended 54521

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.15 (l) amended 10389

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers) ... 14, 3627, 4036, 14054, 29133, 36781, 39019, 42828, 52428, 54742, 55825

Chapter XX—Office of the United States Trade Representative (Parts 2000—2099)

2014 Added; interim 56430

Proposed Rules:

8a 58558
30 ..... 7412, 53861
303 46872
710 39194
711 39194
712 39194
713 39194

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

TITLE 15 *Proposed Rules:—Con.*

714.....39194
715.....39194
716.....39194
717.....39194
718.....39194
719.....39194
720.....39194
721.....39194
732.....53854
740.....53854
743.....53854
748.....53854
750.....53854
752.....53854
758.....53854
762.....53854
772.....53854
801.....37049
806.....2454, 48568
922.....19945, 27484, 30929, 35102, 38853

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

2.32 Revised 46268
2.34 Revised 46269
2.41 (f)(3) removed; (f)(4) and (f)(5) redesignated as (f)(3) and (f)(4) 43599
3 Authority citation revised.....46269
3.25 (f) revised.....46269
4 Authority citation revised.....46269
4.1 (b)(1) introductory text, (iii) and (5)(vii) amended 14830
4.8 (b)(4) and (6) revised.....3012
4.9 (b)(6) revised.....46269
4.11 (a)(1)(i)(A), (B), (iii)(A), (2)(i)(A), (B) and (ii)(A) revised; (a)(1)(i)(E) and (iii)(D) redesignated as (a)(1)(i)(F) and (iii)(E); new (a)(1)(i)(E), new (iii)(D) and (h) added 3013
(c) and (d) amended; (e) revised 32180
(d)(1) corrected 35256
4.13 (c) and (i)(1) amended 3014
5.1 Amended 42594
23.0 Amended 33194
239 Announcement.....19700
241 Removed 57374
245 Removed 30902
305.9 (a) revised 7785
305 Appendix H corrected 926
Appendix F revised.....32403
700 Announcement.....19700
701 Announcement.....19700
702 Announcement.....19700
703 Announcement.....19700
901.3 Introductory text and (d) amended 34533
901.4 (b) revised.....34533

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1051.1 (c) amended.....48704
1615 Authority citation revised 34535
1615.1 Introductory text, (o) introductory text, (1) and (3) revised 2838
(c)(1) amended 34533
(o)(10) and (11) added; eff. 6-28-00.....34535
(o)(10)(i) and (ii) amended; eff. 6-28-00.....48704
(o)(11) amended; eff. 6-28-00 48705
1615.2 (a), (b) and (c) amended 34533
1615.4 Footnotes 2, 3 and 4 redesignated as footnotes 3, 4 and 5; eff. 6-28-00 34536
1615.64 (d) introductory text revised 2832
(a)(1) and (b) amended 34533
1616 Authority citation revised 34536
1616.2 Introductory text, (m) introductory text, (1) and (3) revised 2841
(m)(10) and (11) added; eff. 6-28-00 34536
(m)(10)(i), (ii) and (11) amended; eff. 6-28-00.....48705
1616.5 Footnotes 2 through 6 redesignated as footnotes 3 through 7; eff. 6-28-00 34538
1616.65 (d) introductory text revised 2833
1700.14 (a)(29) added; eff. 6-19-00 32803

Proposed Rules:

0—999 (Ch. I) 3668, 14156
4.....57825
23.....30448, 37051
241 .....13368, 18081
256 .....13369, 18081
259.....19729

CHANGES JANUARY 4, 1999 THROUGH OCTOBER 29, 1999

308 61
312.....22750, 34595, 40525
432 .....38610, 51087
436.....57294
453.....24250, 35965, 56717
460.....48024
1000—1799 (Ch. II).....38387
1212 42302
1213 .....3456, 10245, 14158, 37051
1500 .....3456, 10245, 14158, 37051
1513 .....3456, 10245, 14158, 37051
1615 .....2867, 10963, 13126, 34597
1616 .....2867, 10963, 13126, 34597
1630 13132
1631 13132
1632 13137

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Fee schedules 19711
1.31 (b), (c) and (d) revised 28742
(b)(4) stayed; eff. 7–7–99 through 9–27–99 36569
1.61 Removed 24046
3 Advisory 39912
5 Fee schedules 19711, 30384
5 Appendix A revised 29217
Appendix E added 29224
9 Order 39913
Advisory 39915
Technical correction 43254
9.9 (b)(1) introductory text, (3) and (4) revised 46270
10.1 (d) revised 30903
10.68 (a)(2) amended 30903
10.92 (b)(1) revised 30903
10.101 (a)(5)(iii) revised 30903
10.102 (e)(1) amended 30903
10.106 (b)(3) amended 30903
10.109 Introductory text, (a)(2)(ii) and (b) revised; (d) removed 43071
10 Appendix A amended 30903
12.408 Introductory text and (b) revised 43071
17.00 (b)(1) introductory text revised; (b)(1) designation, (2) and (c) removed; (b)(1)(i) and (ii) redesignated as (b)(1) and (2); (b)(3) added 24046
18.01 Revised 24046
30 Technical correction 30103
30.5 Introductory text and (e) added; (a) revised 28914
30.6 Revised 28914
30 Appendix C amended 50251
31 Fee schedules 19711
60.41c Corrected; CFR correction 24049
150.1 (d) introductory text, (2), (e)(2) and (5) revised 24046
150.2 Revised 24047
150.4 Revised 24047
150.5 Added 24048
171.50 Heading, (a)(1) introductory text, (c) and (d) revised 46271

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.30–3 (a)(67) added 42595
200.30–5 (e)(2) revised 34540
202.3 (b)(2) revised 19451
210.3–19 Removed; eff. 9–30–00 53908
210.3–20 (d) amended; eff. 9–30–00 53908
210.3–01 (h) amended; eff. 9–30–00 53908
210.3–02 (d) amended; eff. 9–30–00 53908
210.3–12 (f) amended; eff. 9–30–00 53909
211 Staff accounting bulletin 45150
228.310 Note 2 amended; eff. 9–30–00 53909
229.402 (a)(1)(ii) amended; eff. 9–30–00 53909
229.404 Amended; eff. 9–30–00 53909
229.512 (a)(4) amended; eff. 9–30–00 53909
229.601 (b)(10)(iii)(B)(*5*) amended; eff. 9–30–00 53909
230.175 (b)(2)(i) and (c)(3) amended; eff. 9–30–00 53909
230.405 Amended; eff. 9–30–00 53909
230.434 (c)(3)(i) revised; (c)(3)(ii) amended; eff. 9–30–00 53909
230.463 (a) amended; eff. 9–30–00 53910
230.485 (f)(1) designation and (2) removed 27894
230.486 (f)(1) designation and (2) removed 27894
230.487 (d)(1) designation and (2) removed 27894
230.495 (e)(1) designation and (2) removed 27894
230.497 (k)(2)(ii) amended 27894
232.10 (b) revised 27894
232.11 Amended 27894
232.101 (a)(1)(iv) and (c)(11) amended 19471
(a)(1)(iii) note revised; (b)(7) removed 27894
232.102 (e) revised 27894
232.104 Added 27895
232.105 Added 27895
232.106 Added 27895
232.301 Revised 27898, 56431
232.302 (a) revised 27895
232.303 (a)(3) revised 27895

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 17 Chapter II—Con.

232.304 Heading, (a) and (b) revised; (c) amended 27895
232.305 Existing text designated as (a); (b) added 27896
232.306 (b) revised 27896
232.307 Existing text designated as (a); (b) added 27896
232.310 Revised 27896
239.14 Form N–2 amended 27897, 46837
239.15 Form N–1 amended 27897
239.15A Form N–1A amended 27897, 45836
239.16 Form S–6 amended 27896
239.17a Form N–3 amended 27897, 45837
239.17b Form N–4 amended 27897
239.18 Form S amended; eff. 9–30–00 53910
239.24 Form N–5 amended 27897, 46837, 46838
239.31 Form F–1 amended; eff. 9–30–00 53910
239.32 Form F–2 amended; eff. 9–30–00 53910
239.33 Form F–3 amended; eff. 9–30–00 53910
239.34 Form F–4 amended; eff. 9–30–00 53911
239.36 Form F–6 amended; eff. 9–30–00 53912
239.63 Form ID amended 56432
240.3a12–8 (a)(1)(xviii) and (xix) amended; (a)(1)(xx) added 29553
Corrected 31493
240.3b–4 Heading and (c) revised; eff. 9–30–00 53912
240.3b–6 (b)(2)(i) and (c)(3) amended; eff. 9–30–00 53912
240.10b–18 (a)(15) and (d) added; (c) revised 52433
240.13a–10 (g)(4) amended; eff. 9–30–00 53912
240.14a–101 Amended 27896
240.15b1–1 (c) revised 25147
240.15b3–1 (c) revised 25147
(b) removed; (c) redesignated as (b); new (c) added 37593
(c)(4) added 42595
240.15b6–1 Revised 25147
(e) added 42595
240.15b7–3T Added 42028
240.15Ba2–2 (d) revised 25148
(e) added 37594
(e)(4) added 42596
240.15Bc3–1 Revised 25148
(e) added 42596
240.15Ca1–1 (c) revised 25148
240.15Cc1–1 Revised 25148
240.15Ca2–1 (b) removed; (c) redesignated as (b); new (c) added 37594
(c)(4) added 42596
240.15Cc1–1 (d) added 42596
240.15d–10 (g)(4) amended; eff. 9–30–00 53912
240.17a–5 (g)(2) and (3) correctly added; CFR correction 39918
240.17a–9T Added 42029
240.17Ad–21T Added 42029
249.220f Form 20–F amended; eff. 9–30–00 53912
249.446 Form ID amended 56432
249.501a Form BDW revised 25149
Existing text designated as (a); (b) added 42596
249 Appendix B—Form BD revised 37594
259.602 Form ID amended 56432
260.0–11 (b)(2) and (c)(3) amended; eff. 9–30–00 53925
269.7 Form ID amended 56432
270 Compliance date extension 24488
Authority citation amended 46834
270.8b–23 (a) revised 27896
270.8b–32 (c) revised 27896
270.8f–1 Revised 19471
270.17j–1 Revised 46834
274.5 Form N–5 amended 27897, 46837, 46838
274.11 Form N–1 amended 27897
274.11a–1 Form N–2 amended 27897, 46837
274.11b Form N–3 amended 27897, 46837
274.11c Form N–4 amended 27897
274.11A Form N–1A amended 27897, 46836
274.12 Form N–8B–2 amended 46838
274.101 Form N–SAR amended 27896
274.218 Revised 19471
274.402 Form ID amended 56432
275.203A–6 Added; eff. 5–3–99 15683
275.204–2 (a)(12)(i) and (13)(i) revised; (a)(12)(ii), (iii), (13)(ii) and (iii) redesignated as (a)(12)(iii), (iv), (13)(iii) and (iv); new (a)(12)(iii)(B), (13)(iii)(B) and (C) redesignated as (a)(12)(iii)(C), (13)(iii)(C) and (D); new (a)(12)(ii), (iii)(B), (13)(ii) and (iii)(B) added 46838

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

279.1 Form ADV amended; eff. 12–31–99 15683

Proposed Rules:

1 ..... 17439, 22588, 32829, 38159, 47151
3 47452
4 41843
5 ..... 19730, 40528
30 ..... 22588, 32829, 46613, 46618
32 47452
146 52695
200 19732
210 55648
228 55648
229 55648
230 18481
240 ..... 18393, 18481, 25153, 29606, 41056, 55648, 57996
249 25153
270 ..... 18481, 24489, 52476
275 43556

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

1b Authority citation revised 17097
1b.1 (d) added 17097
1b.21 Added 17097
2.1 (a)(1)(viii)(A) through (I) removed 26603
2.55 (a) and (b)(1)(ii) revised; (b)(4)(i) and (d) removed; (b)(4)(ii) redesignated as (b)(4) 26603
(a)(2) introductory text and (ii) revised 54535
2.69 Removed 26603
2.102 Removed 26603
2 Appendix A added 26603
3.4 Removed 44404
37.5 (c) redesignated as (f); new (c), (d) and (e) added 34124
37.6 Heading, (a) introductory text, (4), (5) and (e)(3)(ii) revised; (a)(6) added 34124
37.8 Added 34124
153.3 Added 57390
153.8 (a)(7) revised 26604
153.12 Added 51220
153.21 (b) revised 26604
157.1 Added 51220
157.6 (a) and (b) heading revised; (b)(6) added; (b)(7) amended 26604
(a)(2) through (5) redesignated as (a)(3) through (6); new (a)(2) added; (b)(8) revised 54535
(d) added 57390
157.8 Revised 26605, 54536
157.9 Amended 26605
157.10 Revised 26605, 54536
157.14 (a) amended; (a)(6–a) and (14)(i) through (iv) revised; (a)(6–b), (6–c), (6–d), (12) and (14)(vii) through (xiii) removed 26605
157.16 (c)(1) revised 26605
157.17 (a) and (b) amended 26606
157.18 Introductory text, (f)(2) and (3) amended 26606
157.20 (c) introductory text and (d) introductory text amended; (c)(2), (d)(1) and (f) removed; (c)(3), (4), (d)(2), (3) and (g) redesignated as (c)(2), (3), (d)(1), (2) and (f); (b) and new (d)(2) revised 26606
157.21 Removed 26606
157.22 Added 51221
157.102 (a)(1) amended; (b)(1)(v) revised 26606
157.103 (j) amended 26606
(i) amended 54536
(k) added 57391
157.201 (a) amended 26606
157.202 (b)(2)(i), (ii)(A), (B), (D), (E), (4) through (7), (10) and (12) revised; (b)(13), (14) removed; (b)(2)(i)(F) added 26606
(b)(2)(ii)(G) correctly removed; first (b)(2)(ii)(F) correctly redesignated as (b)(2)(ii)(G) 37037
(b)(2)(i) amended; (b)(2)(ii)(D) and (12) revised 54536
(b)(6)(ii) and (11)(i) revised 57391
157.203 (b) and (c) amended 26607
(d) added 57391
157.204 (d)(2), (4), (5) and (e) removed; (d)(3) redesignated as (d)(2) 26607
157.205 (c) removed; (d) through (i) redesignated as (c) through (h); (a) introductory text, (b) introductory text and new (c) revised; (a)(2),

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 18 Chapter I—Con.

(b)(5), (6) and new (d), (e)(2), (f) and (g) amended 26607
157.206 (b), (c), (e) and (h) removed; (d), (f) and (g) redesignated as (b), (c) and (d); new (b) introductory text added; new (b)(1), (5) and (6) revised; new (b)(3)(i), (ii) and (iii) amended 26607
(c) amended; (d) revised 54536
(b)(2)(xii) and (3)(iv) added 57392
157.207 (b) and (c) revised; (f) removed; (g) and (h) redesignated as (f) and (g) 26607
157.208 Heading, (e) introductory text, (2) and (f)(2) revised; (c)(6), (8) and (4) through (7) removed; (c)(7), (9), (10), (11), (e)(8) and (9) redesignated as (c)(6), (7), (8), (9), (e)(4) and (5); (a), (b), new (c)(9), (d) and (g) amended 26608
(f)(2) amended 54536
157.209 Added 26608
157.210 Removed 26608
157.211 (a), (b)(1) through (5), (c)(1), (2) and (3) revised; (c)(4) added; (d) removed 26608
157.212 Removed 26609
157.213 Removed 26609
157.215 (a) introductory text and (b)(1)(iii) revised 26609
157.216 (a) introductory text amended; (a)(1), (2), (b), (c)(1), (3), (d)(1), (2) and (4) revised; (c)(5) and (d)(5) added 26609
(a)(2) revised 54536
157.217 (a) and (b)(2) revised 26609
(a)(4) added 54537
157.218 (a) revised 26609
157.201—157.218 (Subpart F) Appendix I amended 26609
Appendix II revised 26610
Appendixes I and II amended ..... , 54537
284.10 (b)(1)(i) through (v) revised 17278
284.11 (a) and (c)(2) amended 54537
284.221 (d)(1), (f)(3) and (h)(3) amended; (d)(3) removed; (f)(4) revised 26610
284.262 Revised 26610
284.288 Removed 26611
341.0 (a)(7) revised 44404
341.2 (c)(1) revised 44404
341.6 (d)(3) revised 44404
342.3 (b) and (d)(3) revised 44404
343.2 (c) revised 17097
(c)(4) revised 44405
343.4 (a) revised 17097
346.2 (c)(7) revised 44405
357.3 Revised 44405
362 (Subchapter S) Removed 44405
375.307 (a)(2), (8), (9), (17), (18), (b)(4), (5), (c), (e)(3) and (7) removed; (a)(3), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (d), (e)(4), (5) and (6) redesignated as (a)(2) through (9), (11), (12), (13), (c), (e)(3), (4) and (5); (e), (f) and (g) redesignated as (d), (e) and (f); (a)(1) and new (2), (3), (4) and (e)(3) revised; new (a)(10) added 26611
(h) added 51222
380 Authority citation revised 54537
380.3 (c)(2) amended 26611
380.4 (a)(28) amended 26611
(a)(31) through (36) added 57392
380.8 Amended 54537
380.9 (b) amended 54537
380.12 Added 26611
(f)(2) heading added; (f)(2) introductory text amended; (k)(4)(ii) revised 54537
(c)(5) and (10) revised; (e)(6) and (7) redesignated as (e)(7) and (8); new (e)(6) added 57392
380.13 Added 26617
380.14 Added 26618
380.15 Added 26619
380 Appendix A revised 26619
Appendix A amended 54537, 57392
381.302 (a) amended 44653
381.303 (a) amended 44653
381.304 (a) amended 44653
381.305 (a) amended 44653
381.403 Amended 44653
381.505 (a) amended 44653
381.801 Amended 44653
Corrected 47107
385.101 (b)(3) and (4)(i) removed; (b)(4)(ii) redesignated as (b)(4) 44405
(b)(4)(ii) removed; (b)(4)(i) redesignated as (b)(4) 51234
385.102 (a) and (e)(2) revised 44405
385.206 (b) and (c) redesignated as (f) and (j); new (b), new (c), (d), (e), (g), (h) and (i) added; new (f) revised 17097
(g)(2) revised; (g)(1) introductory text, (i), (ii) and (g)(1)(iii) redesignated as (g) introductory text, (1), (2) and (3); (b)(7), (8), (9)(i), (c), (e)(3), new (g)(1) and (h)(1) revised 43608
385.208 Removed 44405
385.213 (c)(4) and (5) added 17099
(c)(4), (5)(ii), (iii) and (d)(2) introductory text revised 43608
385.218 Added 17099
385.502 (a)(1) and (2) revised; (a)(3) removed 44405
385.604 (d)(2) revised; (d)(3) and (g) removed; (d)(4), (5) and (6) redesignated as (d)(3), (4) and (5) 17099
385.605 (a)(4) and (e)(2) revised; (f) removed 17099
385.606 (d) redesignated as (d)(1); (d)(2) and (1) added 17099
385.915 Revised 51234
385.1012 Revised 51234
385.1403 Removed; new 385.1403 redesignated from 385.1404 44405
385.1404 Redesignated as 385.1403; new 385.1404 redesignated from 385.1415 44405
Correctly removed 56172
385.1405 Removed 44405
Reinstated 51234
385.1406 Removed 44405
385.1407 Removed 44405
385.1408 Removed 44405
385.1409 Removed 44405
385.1410 Removed 44405
385.1411 Removed 44405
385.1412 Removed 44405
385.1413 Removed 44405
385.1414 Removed 44405
385.1415 Redesignated as 385.1404 44405
Removed 51234
385.1902 (a) revised; (b) removed; (c) redesignated as (b) 44405
385.2001 (b)(3) revised 26621
(a)(1)(ii) and (b)(3) correctly revised 37037
(a)(1)(i) amended 54537
385.2010 (f) revised 31496
385.2201—385.2202 (Subpart V) Heading revised 51234
385.2201 Revised 51234
385.2202 Heading revised 51236

Chapter III—Delaware River Basin Commission (Parts 400—499)

430.13 (i)(3) revised 35566

Proposed Rules:

2 27717
35 ..... 31390, 40533, 51933
101 42304
153 27717
157 27717
281 56982
330 37718
357 ..... 42623, 45931
380 27717
385 ..... 29614, 33034, 37718, 42307, 53959
1317 58568

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4.9 (f) amended 43265
4.12 (a)(5) amended 43265
4.61 (b)(3) amended 43265
4.76 Added 40986
4.82 (a) amended 43265
4 Footnotes 112 and 113 removed 43265
10.41b (b)(1), (2)(iv) and (4) amended 43265
10.62 (a) amended 16347
10.62b (c)(1) introductory text and (ii)(C) revised 16347
12 Authority citation amended 17531
12.8 (b) amended 43265
12.104g (b) table amended 17531
12.131 Existing text designated as (a); new (a) heading and (b) added; 48092
19 Authority citation amended 57565
19.2 (d)(3), (g), (h)(1) and (3) amended 57565
19.17 (g) amended 57565
19.19 (b) amended 57565
24 Authority citation amended 42031, 56437
24.1 Heading, (a) introductory text, (3)(i), (7), (b) introductory text, (3), (d) and (e) amended; interim 56437

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 19 Chapter I—Con.

24.3 (b) amended; (e) revised; interim 56437
24.3a Heading and (b)(2) revised; (a) amended; interim 56437
24.11 Revised; interim 56439
24.21 (b)(9) amended 43266
24.23 (c)(3) revised 42031
24.24 (g) amended 43266
24.25 (a) amended; interim 56439
24.36 (a) introductory text, (b) and (c) amended; (a)(1), (2) and (3) added; interim 56439
101.1 Amended 40987
102.20 (p) amended 43266
112.41 Amended 43266
113.38 (c)(4) amended 43266
113.67 (a)(1)(ii) and (b)(1)(ii) amended 48534
118.12 Amended 43266
122.13 Amended 18566
122.153 Revised 53628
122.154 (b)(2) revised 53628
122.162 (b) amended 43266
133.26 Amended 43266
133.46 Amended 43266
141.64 Amended 43266
141.68 (b) amended 43266
141.90 (a) removed 43266
141.103 Amended 43266
141.113 (b) amended 43266
143.21 (j) amended 43266
144.37 (h)(2)(vi) amended 43266
148.51 (a)(1) amended 43267
151.12 Added 48534
151.13 Revised 48539
151.14 Amended 48543
151.16 Added 43611
159 Authority citation revised 56440
159.4 Authority citation removed 56440
159.6 Authority citation removed; (a), (b) introductory text, (c) and (d); interim 56440
159.7 Authority citation removed 56440
159.21 Authority citation removed 56440
159.22 Authority citation removed 56440
159.44 Authority citation removed 56440
159.46 Authority citation removed 56440
159.55 Authority citation removed 56440
159.57 Authority citation removed 56440
162.65 (c) amended 43267
162.72 (b)(1), (2) and (3)(ii) amended 43267
162.73 (a)(2)(i), (ii), (3)(i), (ii), (b)(1)(i), (ii) and (2) amended 43267
162.74 (c) amended 43267
162.79b Amended 43267
173.6 Removed 43267
174 Authority citation amended 43612
174.11 (c) amended; interim 56441
174.12 (a)(2) amended; interim 56441
174.13 (a)(7), (8) and (9) amended 43267
174.21 (b) revised 43612
174.31 (a) and (b) amended; (c) added 43612
178.2 (b) table amended (OMB numbers) 16347, 16639
Table amended 40987, 43612, 48543
181.82 (b)(1)(ii) amended 43267
181.93 (b)(5)(i)(B)(4) amended 43267
192 Authority citation revised 16639, 40987
192.0 Amended 40987
192.1 Amended 16639
192.2 (a) amended; (b), (c) and (d) revised 16639
192.11—192.13 (Subpart B) Added 40987

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351.206 (c)(2) revised 48707
351.222 (b) and (c) revised 51240
Regulation at 64 FR 48707 eff. date corrected to 9–8–99 50553

Proposed Rules:

4 ..... 19508, 29975
12 41851
19 16868
111 ..... 22726, 34748
113 ..... 41851, 42872
141 ..... 41851, 49423
146 15873
159 ..... 19508, 29975
351 29818

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

220 Appendix 3 corrected; CFR correction 36239

Chapter III—Social Security Administration (Parts 400—499)

404.403 (g) added 17101
(a)(5) added; interim 57775
404.942 (g) revised 51893
404.1220 (a) revised 33016
404.1574 (b)(2), (3) and (4) revised 18570
(b)(3) table corrected 22903
404.1501—404.1599 (Subpart P) Appendix 1 amended 29788, 46128
416.200 Revised 31972
416.203 (b) revised 31972
416.211 (a)(1) revised 31972
416.262 (a) revised 31972
416.305 (a)(2) revised 31972
416.315 (c) revised 31972
416.330 Revised 31973
416.335 Revised 31973
416.420 (b)(1), (2) and (3) revised 31973
416.421 (a) and (b) amended 31973
416.501 Revised 31973
416.502 Amended 31974
416.520 (a) amended; (b)(1), (4), (c) introductory text, (1) and (d) revised 31974
416.974 (b)(2), (3) and (4) revised 18570
(b)(4) table corrected 22903
416.1160 (b)(2)(i) revised; (b)(2)(ii) and (iii) redesignated as (b)(2)(iii) and (iv); new (b)(2)(ii) added 31974
416.1163 (e)(1) revised 31974
416.1165 (f) revised 31974
416.1166 (d) revised 31975
416.1245 (b)(1), (2)(v) and (5) revised 31975
416.1335 Amended 31975
416.1442 (g) revised 51893
416.1801 Amended 31975
416.1902 Amended 31975
422.112 (b) revised 33016

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

652.1 (a) revised; (h) amended; interim 18761
652.3 (d) revised; interim 18762
652.5 Revised; interim 18762
652.6 Removed; interim 18762
652.7 Removed; interim 18762
652.8 (j)(1) and (5) amended; interim 18762
652.200—652.216 (Subpart C) Added; interim 18762
654 (Subpart E) Authority citation revised 34965
654.403 (a)(1) and (3) amended 34965
655.100 (a)(1) amended 34966
655.101 (c) introductory text, (1), (2) and (3) amended 34966
655.106 (e) revised 34966
660 Added; interim 18693
661 Added; interim 18694
662 Added; interim 18701
663 Added; interim 18704
664 Added; interim 18713
665 Added; interim 18717
666 Added; interim 18719
667 Added; interim 18722
668 Added; interim 18736
669 Added; interim 18746
670 Added; interim 18750
671 Added; interim 18760

Proposed Rules:

375 44670
404 ..... 42310, 55215
416 ..... 42310, 55217
718 54966
722 54966
725 54966
726 54966
727 54966

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

2 Effective date confirmation 26657
3 Effective date confirmation 26657
3.2 (k) revised 56447
5 Effective date confirmation 26657

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 21 Chapter I—Con.

5.22 (a)(13)(viii) removed 49383
5.31 (f)(3) revised 49383
5.58 (a)(3) revised 56448
5.61 (i) added 33194
5.67 Heading and introductory text revised; (e) added 47669
(a), (b) and (c) revised 56448
5.83 (c)(1) revised 23184
5.93 (b) revised 49383
10 Effective date confirmation 26657
10.50 (c)(19) revised 56448
12 Effective date confirmation 26657
16 Effective date confirmation 26657
20 Effective date confirmation 26657
20.100 (c)(24) revised 56448
25 Effective date confirmation 26657
25.32 (i) and (j) corrected; CFR correction 56454
26 Meeting 57776
26.1 (c) corrected 16348
26.31—26.50 (Subpart B) Appendix B corrected 16348
50 Effective date confirmation 26657
50.3 (b)(12) revised 56448
50.23 (d) revised; interim 54188
54 Effective date confirmation 26657
56 Effective date confirmation 26657
56.102 (b)(11) revised 56448
58 Effective date confirmation 26657
58.3 (e)(13) revised 56448
60 Effective date confirmation 26657
70 Effective date confirmation 26657
71 Effective date confirmation 26657
74 Effective date confirmation 39414, 57974
74.1102 (b)(1) and (c)(1) removed; (b)(2) and (c)(2) redesignated as (b) and (c) 48290
74.3045 (c)(1) introductory text revised 23186
74.3102 Added 48290
74.3602 (b)(4) redsignated as (b)(5); new (b)(4) added 32805
101 Workshop 34125
Comment period reopening 42277
101.4 (b)(23) added 50448
101.82 Added (effective date pending in part) 57732
172.831 Introductory text removed; (c) revised 43909
172.836 (c)(16) added 57976
172.883 Added 29958
(c) corrected 43072
172.886 (c)(2) revised 44122
173.25 (b)(2)(i) and (ii) added 56173
173.310 (c) table amended 29226
173.315 (a)(2) table amended; (a)(5) added 38564
173.325 (b)(1) revised 26841
(d) redesignated as (e); new (d) added 44123
(e) redesignated as (f); new (e) added 49982
175.105 (c)(5) table amended 29554, 45872
175.125 (b)(2) amended 48291
176.170 (a)(5) table amended 27915
176.180 (b)(2) table amended 46130
176.300 (c) table amended 46130
177.1200 (c) table amended 57978
177.1211 Added 28098
177.1350 (a) introductory text, (1) through (6) and (b) redesignated as (a)(1) introductory text, (i) through (vi) and (b)(1); new (a)(2) and (b)(2) added 47108
177.1390 (c)(1)(i)(f) revised 46272
177.1500 (b) table amended 46272
177.1520 (c) table amended 27916
(a)(2) redesignated as (a)(2)(1); (a)(2)(ii) and (3)(vi) added; (d)(7) table amended 47108
177.1585 (a) and (c)(1) revised 27178
178 Technical correction 27854
178.2010 (b) table amended 24944, 25429, 26282, 30386, 48293, 53926
(b) table corrected 46130
178.3295 Table amended 26843
178.3297 (e) table amended 26842, 44406, 44407
178.3400 (c) table amended 45874
178.3570 (a)(3) table amended 47670
178.3725 Table amended 48292
178.3910 (a)(2) table amended 47110
184.1148 Added 19894
184.1150 Added 19895
184.1250 Added 28361
200 Effective date confirmation 26657
201 Effective date confirmation 26657
201.63 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.64 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.66 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

201.319 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
201 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
202 Effective date confirmation 26657
206 Effective date confirmation 26657
207 Effective date confirmation 26657
207.20 (c) revised 56448
207.21 (a) amended 56448
210 Effective date confirmation 26657
211 Effective date confirmation 26657
299 Effective date confirmation 26657
300 Effective date confirmation 26657
310 Effective date confirmation 26657
310.4 Revised 56448
310.503 (b) amended 56449
310.545 (a)(29) and (d)(31) added; (d) introductory text revised; eff. 5–21–01 27687
310.548 Added 44658
312 Effective date confirmation 19269, 26657
312.3 (b) amended 56449
312.42 (b)(6) added; interim 54189
314 Effective date confirmation 26657
315 Added 26667
316 Effective date confirmation 26657
316.3 (b)(9) revised 56449
320 Effective date confirmation 26657
330.1 Regulation at 64 FR 13294 eff. date corrected to 5–16–99 18571
331.30 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
333 Effective date confirmation 26657
341.74 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.76 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.80 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
343.80 (a)(1) revised 49653
346.50 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
352 Added; eff. 5–21–01 27687
355.50 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
358.650 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369 Effective date confirmation 26657
369.9 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.20 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.21 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
510 Effective date confirmation 26657
510.105 (a) and (b) amended 51241
510.600 (c)(1) table and (2) table amended 15683, 18571, 23187, 42597, 48294
514 Effective date confirmation 26657
514.1 (b)(8)(ii) and (v) revised 40756
514.4 Added 40756
514.111 (a)(5) revised 40757
520 Effective date confirmation 26657
520.48 (b) amended 42597
520.260 (b) amended 15684
520.309 (a) revised; (c) redesignated as (d); new (d)(1) and (2) revised 32181
520.446b (d)(4)(iii)(C) amended 37673
520.534 (d) heading amended 30387
520.600 (i) revised 18571
520.812 (a) amended 48295
520.1310 Added 39919
520.1484 Revised 31497
520.1615 Added 18573
520.1660d (a)(1), (2) and (7) amended 48544
520.1807 Added 23018
520.2184 (b) amended 15684
520.2220a (a)(2) amended 18572

TITLE 21 Chapter I—Con.

520.2220b (a) removed; (b), (d) and (e) redesignated as (a), (b) and (d); new (a) and new (d)(2) revised 15684
520.2345d (a)(1) amended 37673
522 Effective date confirmation 26657
522.690 (b) amended 15685
522.723 (c) amended 15684
522.800 (b) amended 15684
522.842 (a) and (e) removed; (b) and (d) introductory text revised; (d)(1) redesignated as (d)(1)(i); (d)(1)(ii) added 48294
522.1081 (a)(3) and (b)(3) redesignated as (a)(4) and (b)(4); (a)(2)(i), (ii), (iii) and new (b)(4)(iii) amended; new (a)(3), (5) and new (b)(3) added; (a)(4) heading, (i) and (b)(4) heading revised; (a)(4) footnote removed 48544
522.1192 (d)(2)(ii) amended 26671
522.1193 (d)(2) amended 26671
522.1660 (b) and (d)(2)(iii) amended 23187
(d)(2)(iii) revised 26670
(d)(1)(iii) amended 42831
522.1940 (d)(1)(i) and (2)(i) redesignated as (d)(1)(i)(A) and (2)(i)(A); (b), new (d)(1)(i)(A) and new (2)(i)(A) revised; (d)(1)(i)(B) and (2)(i)(B) added 48295
522.2100 (a)(1), (b)(1), (c)(1), (d)(1) and (e)(1) amended 27916
522.2476 (b) amended 42597
(b) revised; (d)(1) and (2) redesignated as (d)(1)(i) and (2)(i); (d)(1)(ii) and (2)(ii) added 48294
522.2477 (a) amended 42597
(a), (b) and (c) redesignated as (b), (c) and (d); new (d)(1)(i) redesignated as (d)(1)(i)(A); new (b) revised; (d)(1)(i)(B) added 48294
522.2478 (c) redesignated as (d); new (d)(1)(ii) revised 18573
522.2680 (d)(3)(ii) amended 46840
524 Effective date confirmation 26657
524.770 (d)(2) revised 49082
524.1660a (b) revised; (c)(1)(i) footnote, (ii) footnote, (iii) footnote, (2)(i) footnote and (2)(ii) footnote removed 42831
524.2098 Added 37401
(d)(1) and (2) amended 48707
529 Effective date confirmation 26657
556.175 Added 35923
556.304 Added 48545
556.344 (b)(2)(ii) added 26671
556.430 Revised 31498
556.490 Revised 26672
556.513 Added 23019
556.597 Added 48296
556.640 Revised 26672
556.739 Revised 18574
556.750 Revised 48296
558.15 (g)(1) and (2) amended 37673
558.76 (d)(3)(xxi) added 18574
558.78 (d)(3)(xii) revised 26844
558.95 (d)(1)(xiv) added 49083
(d)(5) introductory text revised; (d)(5)(iv) added 49384
558.128 (d)(1) table amended 23539
558.140 (a) amended 15684
558.198 Added 35923
558.258 (c)(1)(i) introductory text amended 26844
558.265 (a) amended 42597
558.311 (e)(4)(ii) added 49083
(e)(1)(xiv) table amended 49656
558.363 (d)(2)(iii) added 18574
(d)(2)(iv) added 20164
556.366 (c) table amended 18574, 20164
(c) table amended 49384
558.485 (a)(17) removed 15684
(e)(2)(i) introductory text and (A) revised; (e)(2)(i)(B) amended 53927
558.530 (d)(5)(xxv) added 18575
(d)(5)(xxvi) added 20164
558.555 (b) redesignated as (d); new (b), (c), (d)(5), (6) and (7) added; new (d) heading revised; new (d)(1) introductory text removed 48296
558.575 (a) revised; (c) redesignated as (d); (d)(7) added 26672
(d)(4)(ii)(a) amended 43909
558.635 (b)(2) amended 15684
(a), (c), (e)(3) and (4) removed; (b), (d), (e) and (f) redesignated as (a) through (d); new (a)(1), (2) and (d)(2)(i) amended; new (d)(4)(vii) added 48296
573 Announcement 46841
573.625 Revised 46840
600.3 (n) and (w) revised 56449
600.15 (b) revised 56449

600.21 Amended 56449
600.80 (b) and (c)(2)(i) amended; (g) and (j) revised 56449
600.81 Amended 56449
601 Authority citation revised 26668
601.1 Removed 56450
601.2 Revised 56450
601.3 Removed 56450
601.4 (a) revised; (b) amended 56450
601.5 Revised 56451
601.6 Revised 56451
601.9 Revised 56451
601.10 Removed 56451
601.20 Revised 56451
601.21 Revised 56451
601.22 Amended; heading revised 56452
601.25 (b)(3) and (f)(3) amended 56452
601.26 (e) introductory text, (f)(1), (2) and (3) amended 56452
601.28 Redesignated from 601.33 26668
601.30—601.35 (Subpart D) Revised 26668
601.33 Redesignated as 601.28 26668
601.51 Heading and (b) revised; (a) amended 56452
606.3 (c), (e), (f) and (j) revised 45370
606.100 (b) introductory text, (b)(7), (18) and (d) introductory text revised 45370
606.121 (a), (d)(2) and (e)(1)(ii) revised 45370
606.122 (f) and (n)(4) revised 45371
606.151 (b), (c) and (e) revised 45371
606.160 (b)(2)(v) revised 45371
606.170 (b) revised 45371
607.20 (b) revised 56452
607.21 Amended 56453
610.13 Introductory text revised; (a)(1) amended 56453
610.53 (d) revised 56453
610.63 Revised 56453
640.2 (b) and (d) removed; (c), (e) and (f) redesignated as (b), (c) and (d); new (b) and new (c)(2) revised 45371
640.3 (b) introductory text, (3), (c)(1), (2) and (3) revised; (e) removed 45371
640.4 (d)(1) through (4) and (h) removed; (i) redesignated as (h); (b), (d), (g) introductory text, (1), (2), (4) and (5) revised 45371
640.5 Introductory text and (c) revised 45372
640.6 (c) removed 45372
Introductory text revised 56453
640.13 (a) revised 45372
640.15 Revised 45372
640.16 (a) and (b) revised 45372
640.21 (c) revised 56453
640.22 (a) revised 45372
(c) revised 56453
640.23 (a) revised 45372
640.24 (b) revised 45372
640.31 (c) removed 45372
640.32 (a) amended 45372
640.34 (a) through (d), (e)(1), (2), (3) and (g)(2) revised 45372
640.51 (c) removed 45373
640.52 (a) revised 45373
640.54 (a)(2) revised 45373
640.56 (c) introductory text revised 45373
640.62 Revised 45373
640.63 (c)(3), (5), (11), (12) and (13) revised 45373
640.64 (c) introductory text amended 56453
640.65 (b)(4) and (5) revised; (b)(8) added 45373
(a) amended 56453
640.69 (d) revised 45374
640.71 (a) introductory text revised 45374
(a) introductory text, (b) introductory text and (1) revised 56453
640.72 (a)(1) revised 45374
640.74 (a) revised; (b)(2) amended 56453
640.80 (a) amended; (b) revised 26286
640.81 (c) and (e) amended; (f) revised 26286
640.82 (a) heading, (c) heading, (d) and (e) revised 26286
640.84 (a) introductory text and (b) removed; (a)(1) through (4) redesignated as (a) through (d); introductory text, new (a) and new (d) revised 26286
640.90 (a) amended; (b) revised 26286
640.91 (b)(2) and (f) revised; (c) and (e) amended 26286
640.92 (a) heading, (c) heading, (d) and (e) revised 26286

TITLE 21 Chapter I—Con.

640.94 (a) revised 26286
640.100 (a) amended; (b) and (c) revised 26287
640.101 (b) amended; (e)(3), (4) and (f) removed 26287
640.102 (e) amended 26287
640.103 (b) revised 26287
640.104 (b)(2), (3), (c)(1) and (2) revised 26287
660.21 (a)(3) and (d) revised 56454
660.30 (b) revised 56454
660.33 Amended 56454
700.35 Added; eff. 5-21-01 27693
701.3 Regulation at 64 FR 13297 eff. date corrected to 5-16-99 18571
740.19 Added; eff. 5-22-00 27693
800 Effective date confirmation 26657
801 Effective date confirmation 26657
807 Effective date confirmation 26657
809 Effective date confirmation 26657
812 Effective date confirmation 26657
860 Effective date confirmation 26657
874.5350 (c) revised 18329
874.5370 (c) revised 18329
876.1735 Added 51444
878.3530 Regulation at 64 FR 45161 eff. date corrected to 8-19-99 46010
878.4014 Added 53929
878.4018 Added 53929
878.4020 Added 53929
878.4022 Added 53929
882.5860 (c) revised 18329
890.5275 (c) revised 18331
890.5300 (c) revised 18331
890.5860 (c) revised 18331
900.2 (yy) added 32407
Regulation at 64 FR 32407 eff. date delayed to 1-28-00 53195
900.4 (a)(4) amended; (c)(3)(ii), (5) introductory text, (i), (ii) and (6)(ii) revised 32407
Regulation at 64 FR 32407 eff. date delayed to 1-28-00 53195
900.12 (b)(5) and (e)(5)(vii)(A) revised 18333
(c)(2), (f)(3) and (j)(2) revised 32408
Regulation at 64 FR 32408 eff. date delayed to 1-28-00 53195
1020.30 (b) amended 35927
1020.31 (a)(2)(1), (f)(3) and (m) revised 35927

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308 Technical correction 39560, 42432
1308.12 (f)(1) removed; (f)(2) redesignated as (f)(1) 35930
1308.13 (g) added 35930
(c)(5) through (11) redesignated as (c)(6) through (12); new (c)(5) added 37675
1308.14 (c)(48) redesignated as (c)(49); new (c)(49) added 49983
1309.29 Regulation at 62 FR 53960 confirmed 40516
1310.09 Regulation at 62 FR 53960 confirmed 40516
1312 Technical correction 42432
1312.30 (a) added 35930

Proposed Rules:

1 ..... 15944, 32442
2 47719
5 ..... 34608, 53281
16 ..... 36492, 36516
25 53281
101 ..... 15948, 17295, 36492, 36516, 36824, 42315, 45932 46626, 50783
111 ..... 32830, 48336
115 ..... 36492, 36516, 46626
206 34608
207 ..... 26330, 43114
210 52696
211 52696
212 51274
250 34608
291 39810
310 ..... 17985, 44671
314 ..... 34608, 42625, 42873, 53960
333 39452
344 44671
500 53281
510 ..... 35966, 53281
514 ..... 35966, 40321, 53281
558 ..... 35966, 53281
600 ..... 34608, 45383
601 ..... 34608, 53960
606 ..... 45355, 45375
607 ..... 26330, 43114, 45340
610 45340

630 45355
640 ..... 26344, 45340, 45375
660 45340
801 ..... 41710, 58004
807 ..... 26330, 43114
820 52696
870 43114
878 ..... 41710, 58004
880 ..... 41710, 53294, 58004
884 ..... 24967, 31164
888 43114
890 43114
900 32443
1020 23811
1271 52696
1300—1399 (Ch. II) 54794
1308 ..... 17298, 17299, 24094, 25405
1401 51275

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised 54539
22.1 Amended 54539
40 Authority citation revised 55418
40.1 Introductory text, (a), (f), (g), (i) and (l) amended 55418
40.21 (a)(1) and (2) revised 55418
40.41 Regulation at 62 FR 67564 confirmed 50752
40.81 Revised 55418
41 Authority citation revised 54540
41.2 (j) revised 28916
(l)(2) amended; interim 42033
41.32 Revised 45163
41.33 Revised 45164
41.63 Redesignated from 514.44 54539
(g) heading and (1) introductory text revised; (g)(3) and (4) amended 54540
41.114 Removed 28916
42.21 (b) revised 55419
42.71 (a) revised 55419
42.72 (e)(4) amended 28916
50 Authority citation revised 19714
50.7 (d) added 19714
51 Authority citation revised 19714
51.72 (b) revised; (c) added 19714
51.80 Revised 19714
51.83 Amended 19715
51.84 Amended 19715
51.89 Revised 19715
61—67 (Subchapter G) Established 54539
61 Redesignated from Part 502; nomenclature change 54539
61.9 Amended 54539
62 Redesignated from Part 514; nomenclature change 54539
Authority citation revised 54540
62.50 (h)(1) introductory text revised 54540
63 Redesignated from Part 515; nomenclature change 54540
64 Redesignated from Part 516; nomenclature change; authority citation revised 54540
64.8 Amended 54540
65 Redesignated from Part 517; nomenclature change 54540
66 Redesignated from Part 526; nomenclature change; authority citation revised 54540
66.3 (a) revised 54540
66.5 (a)(1) amended; (a)(2) revised 54540
67 Redesignated from Part 527; authority citation revised 54541
67.2 (a) and (c) amended 54541
67.4 (i) amended 54541
121.1 Amended 17533
121.9 (a) revised 17533
123.4 (a) revised 17533
123.15 (b) revised 17533
123.17 (a) revised 17534
124.13 (e) revised 17534
126.5 Revised 17534
171 Authority citation revised 54539
171.11 (a)(3) amended 54539
171.20—171.26 (Subpart C) Revised 25430
171.32 (j)(1), (2) and (5) amended 18808

Chapter II—Agency for International Development (Parts 200—299)

Chapter II Heading revised 15685
201.03 Revised 17535
201.23 (c) amended 17535
201.31 (f) and (g) amended 17535
201.32 (b) and (c) amended 17535
201.51 (c)(4) amended 17535
201.52 (a)(2)(iii)(C), (4)(iii) introductory text and (B) amended 17535
201.67 (a)(5)(ii) amended 17535

TITLE 22

Chapter V—Broadcasting Board of Governors (Parts 500—599)

Chapter V Heading revised 54539
500 Removed 54539
501 Nomenclature Change 54539
502 Redesignated as Part 61 54539
503 Nomenclature Change 54539
504 Removed 54539
505 Nomenclature Change 54539
506 Nomenclature Change 54539
510 Nomenclature Change 54539
511 Nomenclature Change 54539
512 Nomenclature Change 54539
513 Nomenclature Change 54539
5144Policy statement 34982
Redesignated as Part 62 54539
514.21 (f) revised 17976
514.31 (e), (f), (h), (i) and (m) revised 53930
514.32 Added 17976
514.44 Redesignated as 41.63 54539
514.45 Added; interim 44126
514.80 (Subpart G) Removed 17976
514.90 Regulation at 63 FR 34810 comfirmed 40286
Revised; interim 51896
(b) removed 54539
515 Redesignated as Part 63 54540
516 Redesignated as Part 64 54540
517 Redesignated as Part 65 54540
521 Nomenclature Change 54540
525 Removed 54540
526 Redesignated as Part 66 54540
527 Redesignated as Part 67 54541
530 Nomenclature Change 54541

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

Chapter VI Removed 15686

Chapter VII—Overseas Private Investment Corporation (Parts 700—799)

Chapter VII Heading revised 32806

Proposed Rules:

22 ..... 28946, 58004
42 58004
146 58568
194 53632
229 58568
514 17988

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

180 Added 29750
655.601 Regulation at 61 FR 29626 confirmed; (c) and (d) revised; (e) removed 33753
Regulation at 64 FR 33753 eff. date corrected to 7–16–99 38307
661 Added; interim 38573
685 Authority citation revised 48959
658.5 Amended 48959

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200--1299)

1200 Regulation at 62 FR 34402 confirmed 40764
1200.4 (d)(1) and (2) amended 40764
1200.10 (b) and (d) revised 40764
1200.13 (b) revised 40764
1200.22 Amended 40764
1200.33 (a) and (b) revised 40764
1205.4 Regulation at 62 FR 34404 confirmed 40764
1225 Regulation at 63 FR 46886 confirmed 35573
1225.4 (a)(1) and (5) revised; (a)(6) removed 35573
Regulation at 64 FR 35573 eff. date corrected to 8–30–99 47110
1225.6 Revised 35573
Regulation at 64 FR 35573 eff. date corrected to 8–30–99 47110

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327.3 Regulation at 62 FR 63657 confirmed 19271
1327.5 Regulation at 62 FR 63657 confirmed; (a)(1)(ii) and (c)(2) amended; (c)(3) redesignated as (c)(4); new (c)(3) added 19271
1327.6 Regulation at 62 FR 63657 confirmed 19271

(a) through (f) revised; (g) and (h) redesignated as (h) and (i); new (g) added 19272
1327.7 Added 19273

Proposed Rules:

1—199 (Ch. I) 47741, 47744, 47746, 47749
655 33802
668 30263
777 16870

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.501 Removed 25731
5.506 (b)(1), (2), (h)(2) and (3) revised 25731
5.510 (b) revised 25731
5.512 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 25731
5.514 (b), (c)(1), (e)(1) and (f)(1) revised 25731
5.516 (c) introductory text revised 25732
5.518 (a), (b)(3) and (5) revised 25732
5.526 Revised 25732
5.801 (c) revised 33755
35 Authority citation revised 50201
35.1—35.5 (Subpart A) Removed; eff. 9–15–00 50201
35.1—35.19 (Subpart A) Redesignated from 35.80—35.98 (Subpart H); eff. 5–19–00 50201
35.80—35.98 (Subpart H) Redesignated as 35.1—35.19 (Subpart A); eff. 9–15–00 50201
35.100—35.175 (Subpart B) Revised; eff. in part 5–19–00 50202
35.200—35.215 (Subpart C) Revised; eff. 5–19–00 50208
35.300—35.325 (Subpart D) Revised; eff. 5–19–00 50209
35.500—35.510 (Subpart F) Revised; eff. 5–19–00 50209
35.600—35.630 (Subpart G) Revised; eff. 5–19–00 50209
35.700—35.730 (Subpart H) Added; eff. 9–15–00 50210
35.800—35.830 (Subpart I) Added; eff. 9–15–00 50211
35.900—35.940 (Subpart J) Added; eff. 9–15–00 50212
35.1000—35.1020 (Subpart K) Added; eff. 9–15–00 50214
35.1100—35.1140 (Subpart L) Added; eff. 9–15–00 50215
35.1200—35.1225 (Subpart M) Added; eff. 9–15–00 50216
35.1300—35.1355 (Subpart R) Added; eff. 9–15–00 50218
91.2 (b)(15) revised; eff. 9–15–00 50224
91.5 Amended; eff. 9–15–00 50223
91.225 (b)(7) revised; eff. 9–15–00 50224
92.206 (a)(2)(ii) revised; eff. 9–15–00 50224
92.355 Revised; eff. 9–15–00 50224
92.504 (c)(3)(iv) revised; eff. 9–15–00 50224
92.508 (a)(7)(vi) revised; eff. 9–15–00 50224

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.304 Revised 16329
100.305 Added 16329
100.306 Added 16330
100.307 Added 16330
100.308 Added 16330
103.10 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.15 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.20 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.25 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.30 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.35 Added; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.40 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.42 Removed; interim 18540

TITLE 24 Chapter I—Con.

Regulation at 64 FR 18540 confirmed 46844
103.45 Redesignated as 103.201; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.50 Redesignated as 103.202; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.55 Redesignated as 103.203; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.201 Redesignated from 103.45; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.202 Redesignated from 103.50; interim 18540
(b) revised; interim 18541
Regulations at 64 FR 18540 and 18541 confirmed 46844
103.203 Redesignated from 103.55; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.204 Added; interim 18541
Regulation at 64 FR 18541 confirmed 46844
108 Authority citation revised 44095
108.1 (e) and (f) added 44095
108.15 Amended 44095
108.20 Revised 44096
108.21 Revised 44096
108.25 (a), (b), (d) through (h) revised 44096
108.35 Amended 44096
108.40 (a) and (b) revised 44096
108.45 Amended 44097

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.800—200.810 (Subpart O) Revised; eff. 9–15–00 50224
200.926 (a)(1) revised 56110
200.926d (c)(1)(ii), (iii) and (4)(iv) revised; (c)(4)(vii) removed 56110
200.1301 Correctly added; CFR correction 55828
203.10 Added 29765
(e) revised 34984
203.12 Revised 56110
203.14 Regulation at 64 FR 14574 withdrawn 19895
203.16a Revised 56111
203.18 Regulation at 64 FR 14574 withdrawn 19895
203.200 Regulation at 64 FR 14574 withdrawn 19895
203.201 Regulation at 64 FR 14574 withdrawn 19895
203.202 Regulation at 64 FR 14574 withdrawn 19895
203.203 Regulation at 64 FR 14574 withdrawn 19895
203.204 Regulation at 64 FR 14574 withdrawn 19895
203.205 Regulation at 64 FR 14574 withdrawn 19895
203.206 Regulation at 64 FR 14574 withdrawn 19895
203.207 Regulation at 64 FR 14574 withdrawn 19895
203.208 Regulation at 64 FR 14574 withdrawn 19895
203.209 Regulation at 64 FR 14574 withdrawn 19895
203.673 (a) and (c) revised; eff. 9–15–00 50225
234.1 Regulation at 64 FR 14574 withdrawn 19895
Amended 56111
248.101 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.141 (c)(3) amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.147 (e)(1) amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.165 (a) revised; (l) amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.173 (m)(2) revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613

Regulation at 64 FR 26639 confirmed 56911
248.201 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
280.25 (e) revised; eff. 9–15–00 50225
291.100 (g) revised; eff. 9–15–00 50225
291.430 Revised; eff. 9–15–00 50225
291.500—291.590 (Subpart F) Added; interim 36212

Chapter III—Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

320.5 (a) amended; (e) and (f) revised; (g) added 34106
320.13 Revised 34107

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

511.10 (f)(1)(ii) revised; eff. 9–15–00 50225
511.15 Revised; eff. 9–15–00 50225
570.202 (f) revised; eff. 9–15–00 50225
570.461 Revised; eff. 9–15–00 50225
570.487 (c) revised; eff. 9–15–00 50225
570.506 (h) revised; interim 38813
570.608 Revised; eff. 9–15–00 50226
572.100 (d)(1) revised; eff. 9–15–00 50226
572.215 (e) revised; eff. 9–15–00 50226
572.420 (h) revised; eff. 9–15–00 50226
573.9 (c) revised; eff. 9–15–00 50226
574.635 Revised; eff. 9–15–00 50226
576.57 (c) revised; eff. 9–15–00 50226
582.305 (a) amended; eff. 9–15–00 50226
583.330 (d) revised; eff. 9–15–00 50226
585.305 (d) revised; eff. 9–15–00 50226
585.502 (h) revised; eff. 9–15–00 50227

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

761 Nomenclature change 49917
761.1 Introductory text revised 49917
761.5 Revised 49917
761.10 Amended; introductory text revised 49918
761.13 Added 49918
761.13—761.17 (Subpart B) Heading revised 49918
761.15 Revised 49918
761.17 Added 49919
761.20 Revised 49920
761.21 Added 49920
761.23 Added 49921
761.40 (f) and (g) revised 49921
(c) revised; eff. 9–15–00 50227
791 Heading revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.101 Revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.102 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.401—791.407 (Subpart C) Removed; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.401 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.402 (c)(1) designation and (2) removed; (d) revised; interim 26639

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 24 Chapter VII—Con.

Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.403 (a) and (b)(1)(i) revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
791.404 (c) revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792 Heading revised; nomenclature change; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.101 Revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.102 (a) and (b) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.103 Amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.202 (a)(1) and (2) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911

Chapter VIII—Office of the Assistant Secretary for Housing--Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

881.207 (e) revised; eff. 9–15–00 50227
882.403 (d) revised; interim 53869
882.404 (d) revised; eff. 9–15–00 50227
882.507 (b)(2)(iv) revised; eff. 9–15–00 50227
882.514 (d)(1)(vi) revised; eff. 9–15–00 50227
882.803 (b)(1) revised; eff. 9–15–00 50227
883.310 (b)(5) revised; eff. 9–15–00 50227
886.113 (i) revised; eff. 9–15–00 50227
886.307 (i) revised; eff. 9–15–00 50227
886.333 (b)(2)(iv) revised; eff. 9–15–00 50227
888 Fair market rent schedules 51860, 53450
Authority citation revised 56911
888.111 Revised 56911
888.113 (e) revised 56911
891.155 (g) revised; eff. 9–15–00 50227
891.325 Revised; eff. 9–15–00 50228

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1099)

901.5 Amended; eff. 9–15–00 50228
902 Implementation delay 56676
903 Forum 22550
Regulation at 64 FR 8181 confirmed; revised 56862
903.3 Revised 51047
903.23 (c) added 51047
906.6 (b) amended; eff. 9–15–00 50228
941.208 (b) revised; eff. 9–15–00 50228
941.606 (m) amended; eff. 9–15–00 50228
964 Authority citation revised 56879
964.3 (a) revised; (e) redesignated as (f); new (e) added 56879
964.110 Removed 56879
964.400—964.430 (Subpart E) Added 56879
965.215 (a), (b) introductory text, (1), (c) and (d) revised; eff. 9–15–00 50228
965.701 (Subpart H) Revised; eff. 9–15–00 50229
968.102 (c) amended; eff. 9–15–00 50229
968.110 (a) revised 33637
(k) revised; eff. 9–15–00 50229
968.112 (l) revised; eff. 9–15–00 50229
968.120 Revised 33637
968.205 Amended; eff. 9–15–00 50229

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

968.210 (e)(2)(ii) revised; eff. 9–15–00 50229
968.315 (e)(2)(i) amended; eff. 9–15–00 50229
968.435 (b) revised; eff. 9–15–00 50229
970.13 (d)(1)(i) revised; eff. 9–15–00 50229
982 Heading revised; nomenclature change; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.1 Heading, (a)(1), (2), (4) and (b)(2) revised; (a)(3) and (b)(1) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.2 (a) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.4 (a)(2), (4) and (b) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Corrected 49658
(b) amended 56887
(a)(4) revised; (b) amended 56911
982.51 (a) revised; interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
982.53 (b) and (c) revised; (d) added; interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
(c) revised; (d) amended 56911
982.54 (d)(1), (2), (14), (15) revised; (d)(16) removed; (d)(17) through (22) redesignated as (d)(16) through (21); interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
(d)(1), (2), (14), (15), (20) and (21) correctly revised; (d)(22) and (23) correctly added 49658
(b) revised 56911
982.101 (a) and (b)(2)(i) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.102 Redesignated as 982.103; new 982.102 added 56887
982.103 (a) revised; (c) added; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
Redesignated as 982.104; new 982.103 redesignated from 982.102 56887
982.104 Redesignated from 982.103 56887
982.151 (a)(1) and (2) amended; (b) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.152 (a)(1), (b)(1) and (c) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.154 Revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.155 (a) introductory text revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.157 (b)(1) revised; (c) added; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.158 (f)(5) revised; eff. 9–15–00 50229
982.162 (a)(3) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.201 (a), (d)(1), (2) and (e) amended; (b) and (f)(2) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
(b)(4) corrected 49658
Heading and (b)(2)(i) revised; (b)(2)(ii), (iii) and (iv) redesignated as (b)(2)(iv), (v) and (vi); new (b)(2)(ii), new (iii) and (vii) added; new (b)(2)(vi) and (4) amended 56911
982.202 (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3); new (b)(3) introductory text and (d) revised; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.203 (b)(1) amended; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.204 (b)(4) revised; (b)(5) amended; (f) added; interim 26643

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 24 Chapter IX—Con.

Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.205 (a) removed; (b) and (c) redesignated as (a) and (b); new (a)(2), (b)(1) and (3) amended; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.206 (b)(2) revised; (c)(1) designation and (2) removed; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.207 Revised; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
(a)(4) added; (b) and (d) revised 56912
982.301 (b)(1) amended; (b)(2), (5) and (6) revised; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b)(10) removed; (b)(11) through (16) redesignated as (b)(10) through (15); eff. 9–15–00 50229
(a)(5) added; (b)(14) revised 56912
982.302 Revised; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
982.303 Amended; heading revised; (c) amended; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b) revised 56913
982.305 Heading, (a)(3), (4) and (b) revised; (a) introductory text, (d) and (e) amended; (a)(5) removed; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b)(3) revised; eff. 9–15–00 50229
(a)(3) and (4) amended; (a)(5) added 56913
982.306 (a), (b) introductory text and (c) introductory text amended; (c)(3) revised; (c)(5) and (6) redesignated as (c)(6) and (7); new (c)(5) added; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
Heading revised; (c)(5) introductory text and (d) amended 56913
982.307 Heading and (a) revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(a)(1) correctly revised 49658
982.308 Revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(a), (b), (d) and (f) revised; (g) added 56913
982.309 Revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
982.310 (a)(1) and (d)(1)(iv) revised; (d)(2) amended; (e)(3) removed; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(e)(1)(i) revised 56913
982.314 (c)(2)(i) revised 56913
982.352 (b)(1) revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
982.353 (b), (c)(2) and (d) revised; (f) amended; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.354 Removed; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.355 (b), (c)(1) and (6) revised; (c)(4), (8), (d)(1) and (6) amended; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
Heading revised; (c)(9) amended; (c)(10) added 56914
982.401 (a)(4) revised; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
(a)(4)(iii)(A) corrected 49658
(j) revised; eff. 9–15–00 50230
982.402 (a)(3) amended; (c) revised; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.403 Heading and (c) introductory text revised; (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (a)(1), (b)(2) and (4) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.405 Heading and (a) revised; (f) added; interim 26647

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(f) removed 56914
982.451 (b)(5) revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(b)(5)(ii) revised 56914
982.452 (b)(1) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.453 (a)(5) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(a)(6) added 56914
982.454 Amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.455 Revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.456 (b) revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.457 Removed; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.501 Revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.502 Redesignated as 982.506; new 982.502 added; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
(c) amended; (c)(1) and (2) added 56914
982.503 Redesignated as 982.507; new 982.503 added; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
(b)(1)(iii) correctly added; (c)(2) correctly revised 49658
(d) revised; (e) added 56914
982.504 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
982.505 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
(c)(2) correctly revised 49658
(b)(1) and (c)(3) amended; (c)(1) introductory text revised; (c)(4) redesignated as (c)(5); new (c)(4) added 56914
982.506 Removed; interim 26647
Redesignated from 982.502; interim 26648
Regulations at 64 FR 26647 and 26648 eff. date delayed to 10–1–99 43613
982.507 Redesignated as 982.518; new 982.507 redesignated from 982.503; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.508 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
Heading correctly revised 49658
Revised 56914
982.509 Redesignated as 982.519; new 982.509 redesignated from 982.511; interim 26648
Heading revised; interim 26649
Regulations at 64 FR 26648 and 26649 eff. date delayed to 10–1–99 43613
982.510 Redesignated as 982.520; new 982.510 redesignated from 982.513; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.511 Redesignated as 982.509; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.512 Removed; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.513 Redesignated as 982.510; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.514 (b) amended 56914
982.515 (b) revised; (c) added 56914
982.516 (d)(2) revised; (e) amended; (f) added; interim 26649
Regulation at 64 FR 26649 eff. date delayed to 10–1–99 43613
(a)(1) revised; (g) added 56915
982.518 Redesignated from 982.507; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613

TITLE 24 Chapter IX—Con.

982.519 Redesignated from 982.509; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.520 Redesignated from 982.510; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.521 Added; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.551 (b)(2) and (3) amended; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.552 (a)(2) amended; (b) and (c) revised; (d) and (e) removed; (f) redesignated as (d); interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
(e) correctly added 49659
Heading, (c)(1)(ii), (x) and (2) revised; (b)(1) and (c)(3) removed 56915
982.554 (c)(4) amended; (c)(5) revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.555 (b)(4) amended; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.602 Revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.604 Revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.608 Heading and (a) revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.613 Heading and (c) revised; (b)(2) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.617 Heading and (c) revised; (b)(2) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.619 (b)(1) and (4) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.623 Revised; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
(a) correctly removed; (b) and (c) correctly redesignated as (a) and (b); (a)(3) correctly added; (b)(1) correctly revised 49659
(b)(1) revised 56915
983.1 (b)(2)(vii) revised; eff. 9–15–00 50230
983.5 (c) revised; eff. 9–15–00 50230
983.104 (b)(2)(iv) revised; eff. 9–15–00 50230
983.203 (d) introductory text amended; eff. 9–15–00 50230
985.1 (a) amended; interim 40497
985.2 (b) amended; interim 40497
985.3 Introductory text and (a)(2) amended; (a)(3) introductory text, (i) introductory text (i)(B), (ii), (b)(2), (3) introductory text, (i) introductory text, (i)(B), (ii), (iii), (c)(2), (3) introductory text, (i) introductory text, (ii), (iii), (d)(2), (3), (e), (f)(2), (3), (g)(2), (3) introductory text, (i) introductory text, (ii), (h)(2) and (3) revised; interim 40497
985.103 (d) redesignated as (e); new (d) added; new (e)(3) revised; interim 40498
1000.40 Revised; 9–15–00 50230
1003.202 (b)(7)(iv) revised; eff. 9–15–00 50230
1003.607 Revised; eff. 9–15–00 50230
1005.111 Existing text designated as (a); (b) added; eff. 9–15–00 50230

Proposed Rules:

0—99 (Ch. I) 24546
3 58568
5 ..... 23460, 40262
200 ..... 23480, 36216, 40262
203 ..... 23480, 49956
234 23480
245 32782
247 40262
290 38284
761 25736
880 40262
882 40262
884 40262
888 24866
891 40262
900—999 (Ch. IX) 20232, 20234, 26923, 30450, 38853
902 33348
905 49924
906 49932
943 49940
960 ..... 23460, 33640, 40262
964 ..... 33644, 56890
966 ..... 23460, 40262
968 23484
972 ..... 40232, 40240
982 ..... 23488, 40262
984 23460
990 ..... 17301, 30451, 48572

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

61 Authority citation revised 19898
61.4 (s) revised 19898
291 Added 17543

Chapter III—National Indian Gaming Commission (Parts 500—599)

516 Added 54542

Proposed Rules:

1—299 (Ch. I) 18585
20 ..... 24296, 34173
151 ..... 17574, 30929, 49756, 55878
500—599 (Ch. III) 22888
516 38164

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—899)

1 Authority citation amended 23189, 26851, 36099, 36125, 36177, 37676, 43075, 43272, 43615, 48547
1.61–8 (b) amended 26851
1.79–1 (d)(7) revised 29790
1.79–3 (d)(2) revised; (e) and (f) redesignated as (f) and (g); new (e) added 29790
1.367(e)–0 Added 43075
1.367(e)–0T Removed 43075
1.367(e)–1 Added 43076
1.367(e)–1T Removed 43075
1.367(e)–2 Added 43077
1.367(e)–2T Removed 43075
1.148–4 (h)(2)(v)(A) and (B) amended 48547
1.148–11 (b)(4), (h) and (i) added 37037
1.163–13 (e)(2) amended 48547
1.170–14 (h)(4) amended 23228
1.170A–6 (c)(5) Example 2 amended 23189
(c)(5) Examples 1, 2 and 3 amended 23228
(c)(5) Examples 2 and 3 corrected 33196
1.170A–12 (b)(2), (c), (e)(2) and (3) amended 23228
1.170A–12T Added 23189
(b)(2) corrected 33195
1.171–3 (b) amended 48547
1.367(a)–3 (a) and (d)(3) Example 6 corrected 15687
1.367(b)–4 (b)(5)(i) and (ii) Example corrected 15687
1.382–1 Amended 36177
Corrected 52650
1.382–2 (a)(1)(iv) removed; new (a)(1)(iv), (15) and (16) redesignated from 1.382–2T (f)(1)(ii), (4) and (5) 36177
(a)(1)(iii), (iv), (3)(i), (5) and (6) amended; (a)(1)(iv) added 36178
1.382–2T (e)(2)(iv) Example 2 and (h)(2)(i)(A) amended; (f)(1)(ii), (4) and (5) redesignated as 1.382–2 (a)(1)(iv), (15) and (16); (f)(1) removed; new (f)(4) and (5) added 36177
1.382–4 (b) revised 36178
1.382–5 Removed; new 1.382–5 redesignated from 1.382–5T; heading revised; (e) amended 36178
1.382–5T Redesignated as 1.382–5 36178
1.382–8 Removed; new 1.382–8 redesignated from 1.382–8T; heading revised; (b) introductory text, (1) and (2) redesignated as (b)(1) introductory text, (i) and (ii); new (b)(1) heading, (2) and (i) added; (f), (g) Examples 1, 2 and 4 and (h)(1) amended 36178
1.382–8T Redesignated as 1.382–8 36178

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 26 Chapter I—Con.

1.411(d)–4 Amended 38826
1.451–1 (g) added 26851
1.453–12 Added 45875
1.461–1 (a)(1) amended; (a)(2)(iii)(E) added 26851
1.461–4 (d)(3)(ii)(A) designation, heading and (B) added; (d)(7) introductory text amended 26851
1.467–0 Added 26851
1.467–1 Added 26852
1.467–2 Added 26859
1.467–3 Added 26860
1.467–4 Added 26863
1.467–5 Added 26865
1.467–7 Added 26867
1.467–8 Added 26875
1.467–9 Added 26875
1.469–1 (h)(2) amended 36099
1.597–2 (c)(5) amended 36099
1.597–4 (g)(3) amended 36099
1.642(c)–6 Heading, (d) and (f) revised; (e) redesignated as 1.642(c)–6A(e); new (e) added 23190
1.642(c)–6T Added 23190
1.642(c)–6A Undesignated center heading revised 23199
1.642(c)–6A (e) redesignated from 1.642(c)–6(e) 23190
Heading, (e) heading, (2)(ii), (3), (4) and (5) introductory text revised; (e)(1) and (5) Table S amended 23199
(e)(2)(i) amended 23228
(e)(2)(i) corrected 33196
1.643(h)–1 Added 43272
1.664–1 (a)(5)(ii)(*b*)(*1*) and (iv) introductory text amended 23228
(e)(6) introductory text amended 23229
1.664–2 (c) amended 23229
1.664–4 (a)(1) and (f) revised; (d) removed; (e) heading, (1) through (5), (6) heading, introductory text and Table U(1) redesignated as 1.664–4A(e) heading, (1) through (5), (6) heading, introductory text and Table U(1); (d) through (e)(5), new (6) heading and introductory text added 23199
1.664–4T Added 23200
1.664–4A Undesignated center heading revised 23209
1.664–4A (e) heading, (1) through (5), (6) heading, introductory text, Table U(1) redesignated from 1.664–4(e) heading, (1) through (5), (6) heading, introductory text and Table U(1) 23199
Heading, (d)(6) introductory text, (e) heading, (3), (4), (5) and (6) heading revised; (d)(4) and (e)(1) and (6) introductory text amended; (d)(6) Table D removed 23209
1.671–2 (e) revised 43274
1.671–2T Added 43274
1.672(f)–1 Added 43275
1.672(f)–2 Added 43276
1.672(f)–3 Added 43276
1.672(f)–4 Added 43278
1.672(f)–5 Added 43280
1.904–4 (c)(1) and (2)(i)(A) amended 32181
1.904–5 (o) amended 37677
1.904–5T Removed 37677
1.904(f)–3 (a) and (b) amended 36099
1.954–1 (c)(1)(iv) removed 37677
1.954–1T Removed 37678
1.954–2T Removed 37678
1.954–9T Removed 37678
1.1271–0 (b) amended 48547
1.1275–4 (a)(2)(vii) amended 48547
1.1275–7 Redesignated from 1.1275–7T; heading amended 48547
1.1275–7T Redesignated as 1.1275–7 48547
1.1286–2 Redesignated from 1.1286–2T and amended 48547
1.1286–2T Redesignated as 1.1286–2 48547
1.1397E–1T (b) and (j) revised; (h) redesignated as (i); new (h) added 35573
1.1502–1 (f)(4) revised 36101
1.1502–2 (h) amended 36099
1.1502–3T (c)(2)(iii) amended 36099
(c)(4) amended 43615
1.1502–9 (a) amended 36099
Redesignated as 1.1502–9A 43615
Added 43616
1.1502–9T Removed 43618
1.1502–11 (a)(2), (3), (4), (b)(2)(iii) Examples 1 and 2 amended 36099
1.1502–12 (b) amended 36099

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

1.1502–13 (c)(7)(ii) Example 10, (g)(5) Example 4 and (h)(2) Examples 1 and 2 amended 36099
1.1502–15 Added 36101
(d) Examples 3 and 4 and (g)(6) Example 1 corrected; (g)(4)(i) and (ii) correctly revised 41784
1.1502–15T Removed 36105
1.1502–20 (c)(4) Example 7 and (g)(3) Examples 1 and 2 amended 36099
1.1502–21 Added 36105
(c)(2) introductory text, (viii) Examples 1, 2 and 3 and (g)(5) Examples 4, 5 and 9 corrected 41784
1.1502–21T Removed 36114
1.1502–22 Added 36114
1.1502–22T Removed 36115
1.1502–23 Added 36115
(d)(1) corrected 41784
1.1502–23T Removed 36116
1.1502–26 (a)(1) amemded 36099
1.1502–32 (b)(5)(ii) Example 2 amended 36099
1.1502–42 (f)(4)(i)(A) amended 36100
1.1502–43 (b)(2)(iv), (v), (vi)(A), (vii) and (viii) amended 36100
1.1502–44 (b)(2) and (3) amended 36100
1.1502–47 (h)(2)(i) through (iv), (3)(iii), (4)(i), (ii), (iii), (k)(5) introductory text, (l)(3)(i), (m)(2)(ii), (3)(i), (vi)(A), (vii)(A), (ix) and (q) amended 36100
1.1502–55T (h)(4)(iii)(B)(*4*) amended 36100
1.1502–78 (a) amended 36100
1.1502–79 (a), (b), (c)(1), (d)(1) and (e)(1) amended 36100
1.1502–90 Added 36128
1.1502–90T Redesignated as 1.1502–90A 36127
1.1502–91 Added 36129
1.1502–91T (a)(2), (c)(3) Example, (d)(1)(iii), (6) Examples 1 and 2 and (f)(2) Example 36100
(a)(1), (3), (b) introductory text, (1), (c)(2), (3) Example, (d)(4), (5), (e)(2) Example, (f)(2) Example, (g)(1), (2)(i)(A), (B) and (j) amended 36125
Redesignated as 1.1502–91A 36127
1.1502–92 Added 36137
1.1502–92T (b)(2) Example 3 amended 36100
(a), (b)(1)(i)(A), (B), (ii) introductory text, (A), (2) Examples 1, 3, 4, (3)(iii) Examples 2 and 3, (4), (e)(1)(ii) and (2) amended 36125
Redesignated as 1.1502–92A 36127
1.1502–93 Added 36153
1.1502–93T (e) amended 36100
(a)(2) and (b)(2) amended 36125
Redesignated as 1.1502–93A 36127
1.1502–94 Added 36155
1.1502–94T (a)(1)(i) and (b)(4) Example 1 amended 36100
(a)(1)(i), (ii), (3) and (4) amended 36125
(a)(4), (5), (b)(4) Examples 1, 2 and 3, (c) and (d) amended 36126
Redesignated as 1.1502–94A 36128
1.1502–95 Added 36159
1.1502–95T (b)(1)(i), (4) Example 1 and (c)(7) Example 7 amended 36101
(a)(3), (b)(1) introductory text, (2) introductory text, (4) Example 2, (c)(2) introductory text, (7) Example 1, (d)(2) Examples 1 and 3 and (e)(1) introductory text amended 36126
Redesignated as 1.1502–95A 36128
1.1502–96 Added 36170
1.1502–96T (a)(1) introductory text, (2), (5), (b)(2)(ii)(A) and (B) amended 36101
(a)(2) introductory text, (ii), (3), (5), (b)(1) introductory text, (3) and (c) amended 36126
Redesignated as 1.1502–96A 36128
1.1502–97 Added 36174
1.1502–97T Redesignated as 1.1502–97A 36128
1.1502–98 Added 36174
1.1502–98T Amended 36126
Redesignated as 1.1502–98A 36128
1.1502–99 Added 36174
1.1502–99T
(c)(2)(i) and (ii) amended 36101
(a), (b), (c)(1)(ii), (iii), (2)(i), (ii) and (d)(1) amended 36126
(d)(3) amended 36127
Redesignated as 1.1502–99A 36128
1.1502–100 (c)(2) amended 36101

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 26 Chapter I—Con.

1.1503–2 (d)(2)(i), (ii), (4) Example 1, (g)(2)(vii)(B)(*1*), (*2*), (G) Examples 1 and 2 and (h)(3) amended 36101
1.1502–9A Undesignated center heading added 43615
1.1502–9A Redesignated from 1.1502–9; heading revised; (a) redesignated as (a)(2); (a) heading, (1), (b)(1)(v) and (vi) added 43615
1.1502–23A (a) and (b) amended 36099
1.1502–41A (c) amended 36099, 36100
1.1502–79A Undesignated centerheading added 36127
1.1502–90A Redesignated from 1.1502–90T; amended; heading and introductory text revised 36127
1.1502–91A Redesignated from 1.1502–91T; heading revised; (h)(2) amended 36127
1.1502–92A Redesignated from 1.1502–92T; heading revised 36127
1.1502–93A Redesignated from 1.1502–93T; heading revised; (c) amended 36128
1.1502–94A Redesignated from 1.1502–94A; heading revised; (b)(4) Example 3 amended 36128
1.1502–95A Redesignated from 1.1502–95T; heading revised 36128
1.1502–96A Redesignated from 1.1502–96T; heading revised 36128
1.1502–97A Redesignated from 1.1502–97T; heading revised; 36128
1.1502–98A Redesignated from 1.1502–98T; heading revised 36128
1.1502–99A Redesignated from 1.1502–99T; heading and (a) revised; (b)(2)(ii) and (c)(2)(i) amended 36128
1.1503–2A (f)(1)(i) introductory text, (C), (2)(i) and (ii) amended 36101
1.1520–20 (g)(5) redesignated as (g)(4); (g)(1), new (4)(i)(A) and new (B) amended; new (g)(4)(ii) redesignated as (g)(4)(iii); new (g)(4)(ii) added 36127
1.6038B–1 (b)(1)(i), (3) introductory text, (c) and (g) corrected 15686
(b)(2)(i) introductory text corrected 15687
(a) amended; (b)(1)(i), (d), (e) and (g) revised 43082
1.6038B–1T Heading and (e) revised; (g) amended 43083
1.6038B–2 (j)(1)(ii) corrected 15686
1.6041–2 (a)(1) corrected; CFR correction 55137
1.6109–2 (a) introductory text amended; (d) added 43911
1.6109–2T Added 43911
1.6302–4 Revised 37676
1.7520 (c)(1) heading, (2) heading, introductory text and (d) revised; (b)(2) and (c)(2)(iii) amended 23210
1.7520–1 (a)(2), (3) and (c)(1) amended 23229
1.7520–1T Added 23210
(c)(2) heading and (iii) corrected 33195
7 Technical correction 15687
20 Authority citation amended 23210, 37676
20.2031–0 Revised 23211
20.2031–7 Heading, (c) through (d)(5), (6) heading, introductory text and (e) revised; (d)(6) Tables S and 80CNSMT transferred to 20.2031–7A 23212
20.2031–7T Added 23212
(c) table and (d)(7) table corrected 33195
20.2031–7A Undesignated center heading revised 23211
20.2031–7A Heading revised; (e) added 23211
(e)(4) Tables S and 80CNSMT transferred from 20.2031–7 and amended 23212
(e)(4) corrected 33195
20.2032–1 (f)(1) and (2)(iv) Examples 1, 2 and 3 amended 23229
20.2055–2 (f)(4) revised 23222
(f)(2)(iv) Example 3 corrected 33196
20.2056A–4 (c)(4)(ii)(B) and (d) Example 4 amended 23229
(c)(4)(ii)(B) corrected 33196
20.6302–1 Added 37676
20.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading, introductory text and (d) revised 23222
20.7520–1T Added 23223

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

(c)(2) heading corrected 33195
25 Authority citation amended 23223, 37676
25.2512–0 Revised 23223
25.2512–5 Heading, (c), (d) and (e) revised 23224
25.2512–5T Added 23224
25.2512–5A Undesignated center heading revised 23226
25.2512–5A Heading revised; (e) added 23226
25.6302–1 Added 37676
25.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading and (d) revised 23227
(c)(1) corrected 33196
25.7520–1T Added 23227
(c)(2) heading corrected 33195
25.7520–3 (b)(2)(v) Example 5 and (4) Example revised 23228
31 Authority citaiton amended 32408
31.3121(v)(2)–1 (b)(5) Examples 10 and 11 and (g)(5) Example 8 corrected 15687
31.3221–4 Added 42833
31.6302–1 (f)(4) revised 32409
(h)(2) heading and (ii) revised; (j), (k), (m) redesignated as (k), (m) and (n); (h)(2)(i) heading, (C), (iii) and new (j) added 37676
31.6302–1T Removed 32409
40 Authority citation amended 37677
40.6302(a)–1 Added 37677
54 Technical correction 15873
Comment request 57520
301 Authority citation amended 17285, 51242
Technical correction 41783
301.6104(d)–2 Added 17285
301.6104(d)–3 Added 17285
301.6104(d)–4 Added 17288
301.6104(d)–5 Added 17289
301.6109–1 (a)(1)(i), (ii) introductory text, (A), (B) and (h)(2)(iii) revised 51242
301.6109–1T Removed 51242
301.6109–3 Added 51242
301.6109–3T Removed 51243
301.6311–2T (c)(2) amended 36569
301.6402–5 (h) added 48548
301.6402–6 (n) revised 48548
301.6402–7 (g)(2)(iii), (3) Example 2 and (h)(1)(ii) Example amended 36101
301.7122–1 Removed 39024
301.7122–0T Added 39024
Correctly designated 56246
301.7211–1T Added 39024
301.7701–3 (f)(1) amended 37678
301.7701–3T Removed 37678
602 Technical correction 15687
Technical correction 15873, 41783
602.101 (a) amended; (b) removed; (c) redesignated as (b) 15688
(b) table amended (OMB numbers) 17290, 36116, 36175, 38181, 37678, 43083, 43618, 51243
801 Added 42835

Proposed Rules:

1 ..... 16372, 23245, 23554, 23811, 24096, 25222, 26348, 26924, 27221, 27730, 27936, 31770, 32209, 32305, 35579, 37727, 43117, 43323, 43462, 43969, 46155, 46320, 46876, 46878, 48572, 49276, 50026, 50783, 54836, 56718, 58006
20 ..... 23245, 23811
25 ..... 23245, 23811, 33235, 56179
31 23811
40 23811
49 22819
54 15873
301 ..... 16640, 19217, 31529, 35102, 37727, 39106, 43324, 58006
602 ..... 15873, 43462

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

1.3 (a) amended; (b) revised 49985
1.4 Redesignated as 1.10; new 1.4 added 49985
1.10 Redesignated from 1.10 and amended 49985
1.24 Introductory text amended 49985
1.25 Revised 49985
Corrected 54776
1.27 Amended 49985
1.29 Revised 49985
1.30 Amended 49985

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 27 Chapter I—Con.

1.31 Amended 49985
1.35 Revised 49985
1.40 Amended 49985
1.41 Amended 49985
1.42 Amended 49985
1.50 Amended 49985
1.51 Amended 49985
1.52 Amended 49985
1.55 Amended 49985
1.56 Revised 49985
1.58 Amended 49985
1.59 Introductory text and (c) amended 49985
4 Compliance date notification 51896
4.21 (e)(1)(i) amended 50252
4.22 (b)(5) amended 50253
4.91 Amended 49388
4.92 (b) amended; (c) added 49388
24 Compliance date notification 51896
24.177 Amended 46844
24.178 (b)(3) and (4) revised 50253
24.180 Amended 46845
54 Comment request 57520
55.180 (b), (c)(2) and (d)(2) revised 55628
178.11 Amended 17291
178.22 (a)(3) and (b) amended 17291
178.25 Amended 17291
178.35 Amended 17291
178.41 (b) and (c) amended 17291
178.45 Amended 17291
178.47 Amended 17291
178.48 Amended 17291
178.52 Amended 17291
178.53 Amended 17291
178.54 Amended 17291
178.56 (b) amended 17291
178.57 (a) amended 17291
178.60 Amended 17291
178.71 Amended 17291
178.72 Amended 17291
178.73 Amended 17291
178.74 Amended 17291
178.76 Amended 17291
178.78 Amended 17291
178.95 Amended 17291
178.111 (b)(1) and (c) amended 17291
178.115 (a) amended 17291
178.122 (c) amended 17291
178.123 (c) amended 17291
178.124 (i) amended 17291
178.125 (h) amended 17291
178.126 Amended 17291
178.127 Amended 17291
178.130 (e) amended 17291
178.144 (i)(4) amended 17291
200.5 Amended 49084
200.25 Amended 49084
200.27 Heading and section amended 49084
200.29 Amended 49084
200.31 Amended 49084
200.35 Amended 49084
200.36 Amended 49084
200.37 Amended 49084
200.38 Amended 49084
200.45 Amended 49084
200.46 Amended 49084
200.48 Introductory text amended 49084
200.49 Amended 49084
200.49a Introductory text amended 49084
200.49b Introductory text and (b) amended 49084
200.55 (a) introductory text amended 49084
200.57 Amended 49084
200.59 Amended 49084
200.60 (a), (b) and (c) amended 49084
200.61 Amended 49084
200.62 Amended 49084
200.64 Amended 49084
200.65 Amended 49084
200.70 Amended 49084
200.71 Amended 49084
200.72 Amended 49084
200.73 Amended 49084
200.75 Amended 49084
200.78 Amended 49084
200.79 (b) amended 49084
200.80 Amended 49084
200.85 Introductory text amended 49084
200.95 Amended 49084
200.105 Amended 49084
200.106 (a) amended 49084
200.107—200.110 Undesignated center heading amended 49084
200.107 Amended 49084
200.107a Heading and (a)(3) amended 49084
200.109 Amended 49084
200.110 Amended 49084
200.115 Amended 49084
200.116 Amended 49084
200.117 Amended 49084
200.126 Amended 49084
200.129 Amended 49084
252.62 (c) amended 46845

CHANGES APRIL 1, 1999 THROUGH OCTOBER 29, 1999

Proposed Rules:

4 ..... 17588, 33448, 50265, 51933, 57413
5 ..... 17588, 57413
7 ..... 17588, 57413
9 ..... 24308, 52483
24 ..... 50265, 51933
178 33450
179 33450

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.14 Removed 37042
0.85 (b) amended; (j) revised 52226
0.137 Removed 46846
0.138 Revised 46846
0.157 (b), (c) and (d) revised; (e) removed 46846
16 Authority citation revised 52226
16.30 Revised 52226
16.31 Revised 52226
16.32 Amended 52226
16.33 Amended 52226
16.34 Amended 52226
20 Authority citation revised 47102
20.1 Revised 52226
20.3 Revised 52226
20.25 Amended 47102
20.30—20.38 (Subpart C) Revised 52227
20 Appendix amended 52229
22 Authority citation revised 47102
22.29 Revised 47102
32.31—32.40 (Subpart B) Heading revised 49953
32.31 Revised 49953
32.32 (a), (b)(3), (c), (d) and (f) revised 49953
32.33 (a)(1) revised 49953
32.34 (b)(2) revised 49953
32.35 (a) revised 49953
32.37 (c) revised; (d) added 49954
36 Authority citation revised 47103
36.504 (a)(3)(i) and (ii) revised 47103
50.12 Revised 52229
68 Regulation at 64 FR 7073 confirmed 49660
68.1 Regulation at 64 FR 7073 confirmed 49660
68.2 Regulation at 64 FR 7073 confirmed; amended 49660
68.3 Regulation at 64 FR 7074 confirmed 49660
68.6 Regulation at 64 FR 7074 confirmed 49660
68.7 Regulation at 64 FR 7074 confirmed 49660
68.9 Regulation at 64 FR 7075 confirmed 49660
68.10 Regulation at 64 FR 7075 confirmed 49660
68.14 Regulation at 64 FR 7075 confirmed 49660
68.22 Regulation at 64 FR 7076 confirmed 49660
68.23 Regulation at 64 FR 7076 confirmed 49660
68.24 Regulation at 64 FR 7077 confirmed 49660
68.27 Regulation at 64 FR 7077 confirmed 49660
68.33 Regulation at 64 FR 7077 confirmed; (c) heading, introductory text and (3)(iii) revised 49660
68.38 Regulation at 64 FR 7078 confirmed 49660
68.42 Regulation at 64 FR 7079 confirmed 49660
68.52 Regulation at 64 FR 7079 confirmed; (c)(5) amended 49660
68.53 Regulation at 64 FR 7081 confirmed 49660
68.54 Regulation at 64 FR 7082 confirmed 49660
68.55 Regulation at 64 FR 7082 confirmed 49660
68.56 Regulation at 64 FR 7083 confirmed 49660
68.57 Regulation at 64 FR 7083 confirmed 49660
68.58 Regulation at 64 FR 7083 confirmed 49660
71 Authority citation revised 47103
71.3 Amended; (a) introductory text and (f) introductory text revised; (a) concluding text and (f) concluding text 47103
76 Authority citation revised 47103
76.3 (a) revised 47103
85 Added 47103
90 Authority citation revised 39783
90.100—90.106 (Subpart E) Added 39783

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

505 Revised 43881
553 Authority citation revised 36753
553.10 Amended 36753
553.11 Revised 36753
553.12 Revised 36754
553.13 (b)(2)(iii) amended 36754
553.14 Revised 36754

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 28

Chapter VI—Offices of Independent Counsel, Department of Justice (Parts 600—699)

600 Revised 37042

Proposed Rules:

0—199 (Ch. I) 54794
5 37065
16 49117
54 58568
302 48336
540 40718
571 53872

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

18.9 (e)(2) revised 47089

Chapter II—Office of Labor-Management Programs, Department of Labor (Parts 200—299)

215 Guidelines 40990

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (2), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1), (o)(1) and (p)(1) revised 48525
697.3 Revised 48525

Chapter X—National Mediation Board (Parts 1200—1299)

1203.1 Amended 40287
1203.2 Amended 40287
1203.3 (a) amended 40287
1205.4 Amended 40287
1209 Authority citation revised 40287
1209.7 (f) amended 40287
1209.8 (d) amended 40287

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1604.11 (c) removed; Appendix A added 58334
1606.8 (c) removed; Appendix A added 58334
1610.4 Regulation at 63 FR 1341 confirmed 45164
1610.5 Regulation at 63 FR 1341 confirmed 45164
1610.8 Regulation at 63 FR 1341 confirmed 45164
1610.9 Regulation at 63 FR 1341 confirmed 45164
1610.10 Regulation at 63 FR 1342 confirmed 45164
1610.11 Regulation at 63 FR 1342 confirmed 45164
1610.14 Regulation at 63 FR 1342 confirmed 45164
1610.15 Regulation at 63 FR 1342 confirmed 45164
1610.18 Regulation at 63 FR 1342 confirmed 45164
1610.21 Regulation at 63 FR 1342 confirmed 45164
1610.34 Regulation at 63 FR 1342 confirmed 45164
1614.102 (b)(2) through (6) redesignated as (b)(3) through (7); (b)(2) added; (c)(5) revised 37655
1614.103 (b)(3) amended; (b)(4) revised; (5), (6) and (7) added 37655
1614.105 (b) redesignated as (b)(1); new (b)(1) and (d) amended; (b)(2) added; (f) revised 37656
1614.106 (d) redesignated as (e); new (d) added; (e) revised 37656
1614.107 (a) through (h) redesignated as (a)(1) through (8); introductory text redesignated as (a) introductory text and revised; (7) and (8) revised; (9) and (b) added 37656
1614.108 (b) amended; (f) revised; (g) added 37656
1614.109 (b) through (g) redesignated as (d) through (i); (a), new (f)(3) introductory text and new (i) revised; new (b) and new (c) added; new (f) introductory text removed 37657
1614.110 Revised 37657
1614.201 (a), (c)(1) and (2) amended 37658
1614.204 (b) revised; (d)(2) through (6) amended; (d)(7), (e)(1), (g)(2), (4) and (l)(3) revised; (j)(7) amended 37658

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

1614.302 (d)(1)(i) amended 37659
1614.401 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; new (c) revised 37659
1614.402 (a) revised 37659
1614.403 Revised 37659
1614.404 (c) added 37659
1614.405 (a) and (b) revised 37659
1614.407 Removed; new 1614.407 redesignated from 1614.408; (a) and (b) amended; 37659
1614.408 Redesignated as 1614.407; new 1614.408 redesignated from 1614.409 37659
1614.409 Redesignated as 1614.408; new 1614.409 redesignated from 1614.410 37659
1614.410 Redesignated as 1614.409 37659
1614.501 (e)(1) introductory text and (2)(ii) amended; (e)(1)(iv), (2)(i), (ii)(A) and (B) revised 37659
1614.502 (a) amended; (b) introductory text and (2) revised; (b)(3) added 37660
1614.504 (a) and (b) amended 37660
1614.505 Added 37660
1614.603 Amended 37661
1614.604 (b) amended 37661
1614.605 (d) amended 37661
1614.606 Revised 37661

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1917.1 (a)(2)(xiv) revised 46847
1918.1 (b)(10) revised 46847

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2575 Added 42246
2570 Authority citation revised 42246
2570.100—2570.502c–3 (Subpart E) Redesignated as 2575.100—2575.502c–3 (Subpart A) 42246
2575.100—2575.502c–3 (Subpart A) Redesignated from 2570.100—2570.502c–3 (Subpart E) 42246
2590 Comment request 57520

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2700.3 (c) revised 48712
2700.5 (c), (d) and (f) revised 48712
2700.7 (c) and (d) revised 48713
2700.9 Revised 48713
2700.10 (c) redesignated as (d); new (c) added; new (d) revised; 48713
2700.45 (a) and (f) revised 48713
2700.70 (a), (d) and (e) revised; (f) and (g) redesignated as (g) and (h); new (f) added 48713
2700.74 (b) revised; (c) added 48714
2700.75 (c) and (d) revised; (f) redesignated as (g); new (f) added 48714
2700.76 (a) revised 48714

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4044 Technical correction 51587
4044 Appendix B amended 38115, 44128, 49986, 55828

Proposed Rules:

36 58568
1908 35972
1910 45098
1926 ..... 38078, 47461, 51722
2510 ..... 38390, 51277, 57611
2520 ..... 42792, 42797
2560 ..... 42792, 42797
2570 42797
4044 38534

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

26 Removed 43282
29 Removed 43282
46 Added; eff. 10–2–00 53130
Tecnical correction 58334
48 Tecnical correction 58334
48.21 Amended; eff. 10–2–00 53130

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 30 Chapter I—Con.

50 (Subchapter M) Redesignated as 50 (Subchapter I); eff. 9–13–00 49630
56—58 (Subchapter N) Redesignated as 56—58 (Subchapter K); eff. 9–13–00 49630
56 Technical correction 49636
56.5050 Undesignated center heading and section removed; eff. 9–13–00 49629
57 Technical correction 49636
57.5050 Undesignated center heading and section removed; eff. 9–13–00 49629
57.22303 Revised 43283
62 (Subchapter M) Added; eff. 9–13–00 49630
62 Technical correction 49636
70 Authority citation revised 43285
Technical correction 49636
70.204 (a) and (e) revised 43285
70.500—70.511 (Subpart F) Removed; eff. 9–13–00 49630
71 Authority citation revised 43285
Technical correction 49636
71.204 (a) and (e) revised 43286
71.800—71.805 (Subpart I) Removed; eff. 9–13–00 49630
75.360 Heading and (a)(1) revised 45170
75.506 (d) revised 43283
75.800–4 Revised 43287
75.1800—75.1808 (Subpart S) Removed 43287
90.201—90.220 (Subpart C) Authority citation revised 43286
90.204 (a) and (e) revised 43286

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202 Training sessions 56454
202.51 (b) revised 43513
202.150—202.152(Subpart D) Heading revised 43513
202.150 (b)(1), (e)(1), (2) and (f) amended 43513
202.151 (a)(2) amended 43513
202.550—202.558 (Subpart J) Added 43514
206 Training sessions 56454
206.51 Amended 43288
206.53 (c) amended 43288
206.151 Amended 43288
206.156 (d) amended 43288
206.158 (e) amended 43288
206.159 (a)(1)(i) and (e)(2) amended 43288
206.160 Correctly designated 43288
206.170—206.181 (Subpart E) Revised 43515
206.172 (h) amended 43288
206.173 (a)(2) amended 43288
206.174 (d)(2) amended 43288
206.176 (c)(3) amended 43288
206.177 (b)(3)(ii) and (d)(1) amended 43288
206.251 Amended 43288
206.258 (a) amended 43288
206.259 (c)(2)(ii) amended 43288
206.261 (b) revised 43288
206.262 (c)(2)(v) redesignated as (c)(2)(iv); (d)(2) and (3) added; (e)(2) revised 43288
206.263 (b) amended 43289
206.264 Amended 43289
206.451 Amended 43289
206.457 (a) amended 43289
206.460 (b) revised 43289
206.461 (e)(1) amended 43289
206.462 (b) and (c) amended 43289
206.463 Amended 43289
206.464 (a) amended 43289
210 Authority citation revised 38122
210.10 (c)(1), (2), (7) and (d) revised 38122
210.20—210.22 (Subpart A) Added 38122
210.52 Revised 38123
216 Authority citation revised 38123
216.11 Added 38123
216.50 (a) revised; (b), (c) and (d) redesignated as (f), (g) and (h); new (b) through (e) added 38123
216.53 Revised 38123
216.55 Revised 38123
216.56 (b) revised; (c) added 38123
227.101 Revised 36784
250.203 (f) revised 53200
250.204 (i) and (j) revised 53200
250.1010 (a) amended 42598
256.46 (b) revised 40767
290.110 Added 50753
290.111 Added 50753

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

904.25 Table amended 50756

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

914.15 Table amended 43913, 57567
920.15 Table amended 36786
920.16 (l) revised 36786
924.15 Table amended 57571
924.16 (f), (g), (h), (j), (k), (m) and (n) removed 57571
925.15 Table amended 57981
925.16 (p)(7), (8) and (15) removed 57981
934.15 Table amended 38827
936.15 Table amended 52232
943.15 Table amended 43923
948.15 Table amended 52303
948.16 (mmm) and (uuu) removed 52303
950.15 Table amended 52308
950.16 (b), (c), (g), (v), (x), (ii)(1) and (kk) removed 52308

Proposed Rules:

57 ..... 36632, 36826, 40533
72 36826
75 ..... 36632, 36826, 40533
206 ..... 45213, 50026
250 53298
901 ..... 48573, 55878
904 ..... 37067, 56179
913 44674
914 ..... 38165, 44448, 50026
915 54840
916 ..... 40323, 56982
917 38391
918 49118
920 38392
924 40326
935 42887
936 ..... 43327, 56983
938 36828
946 ..... 45489, 54843
948 54845

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

100 Authority citation revised 39920
100.11 (b) revised 39920
100.12 (b) revised 39920
103 Exception 41041
103.11 (c)(7) and (n)(3) revised; (i), (n)(4), (5) and (10) removed; (n)(6) through (n)(9) redesignated as (n)(4) through (n)(7); new (n)(5), new (6) and new (7) amended; (uu) and (vv) added 45450
103.36 (b)(10) amended 45453
103.37 (c) added 45453
103.41—103.54 (Subpart D) Redesignated as 103.51—103.64 (Subpart E); new 103.41 (Subpart D) added 45451
103.56 (b)(7) amended 45453
103.57 (d) and (e) amended 45453
103.61—103.67 (Subpart E) Redesignated as 103.71—103.77 (Subpart F) 45451
103.72 Introductory text amended 45453
103.73 (a) introductory text, (1), (b) introductory text and (1) amended 45453
103.74 (a) amended 45453
103.75 (a) and (c) introductory text amended 45453
103.76 Amended 45453
103.70—103.77 (Subpart F) Redesignated as 103.80—103.87 (Subpart G) 45451
103.82 Amended 45453
103.83 (b) amended 45453
103.85 Amended 45453
103.86 (a) introductory text and (b) amended 45453

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

306.1 Revised 38125
306.2 (c) revised 38125
306.3 Revised 38125
306.12 Amended 38125
306.15 (a) revised; (b) introductory text amended; (b)(2) revised 38125
306.17 Revised 38126
306.19 Revised 38126
306.23 (c) revised; (g) amended 38126
306.24 Amended 38126
306.25 (a) amended 38126
306.26 Revised 38126
306.27 Revised 38126
306.28 Removed 38126
306.37 (d) revised 38126
306.38 Revised 38126
306.40 Amended 38126
306.41 Amended 38126
306.43 Amended 38126

TITLE 31 Chapter II—Con.

306.56 (a) and (b) amended 38126
306.57 (c)(1) amended 38126
306.117 Heading and (d) revised; (b) amended 38126
315.31 (b) and (c) amended; (h)(2) and (7) removed; (h)(3) through (6), (8) and (i) redesignated as (h)(2) through (5), (6) and (7); (h)(1), new (5), new (6) and new (7) revised 40486
353.31 (c)(2), (d) and (e) removed; (c)(1), (f), (g) and (h) redesignated as (c) through (f); (b) and new (c) amended; new (f)(2) and new (7) removed; new (f)(3) through (f)(6), new (f)(8) and (i) redesignated as (f)(2) through (5), (6) and (7); new (f)(1), (5)(ii), (6) and (7) revised 40487
357.26 Heading, (a) and (b) heading revised; (b)(1)(i), (iv), (2), (3), (c) and (d) removed; (b)(1)(ii), (iii), (v) and (vi) redesignated as (b), (c), (d) and (e); new (c) heading, new (d) heading and (e) heading added 40487
357.30 Revised 40487
370 Revised 40487

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

538.405 Revised 41786
538.523 Added 41787
538.524 Added 41787
538.525 Added 41788
538.526 Added 41788
538 Appendix A added 41788
550 Authority citation revised 41789
550.405 Revised 41789
550.569 Added 41789
550.570 Added 41790
550.571 Added 41790
550.572 Added 41790
550.573 Added 41791
550 Appendix A added 41791
560.405 Added 41791
560.530 Added 41791
560.531 Added 41792
560.532 Added 41793
560.533 Added 41793
560 Appendix designated as Appendix A; Appendix B added 41793
590 Revised 43926
Chapter V Appendix A amended 35576, 35577

Proposed Rules:

1 46627
28 58568
203 41748
375 42526
380 58364

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

199.2 (b) amended 46134
199.3 Revised 46135
199.4 (d)(3)(vii) and (g)(48) revised; interim 45454
(e)(5)(iii)(B), (f)(1), (2) introductory text, (ii) introductory text, (iii), (iv), (3) introductory text, (i), (iii), (4) introductory text and (ii) revised 46140
199.8 (a) and (d)(1) revised 46141
199.13 (i) revised 38576
199.20 (d)(1)(iv) added 46141
321 Revised 49660

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(13) revised 45877

Chapter VI—Department of the Navy (Parts 700—799)

700 Revised 56062
701 Added 49850

Chapter VII—Department of the Air Force (Parts 800—1099)

989 Revised 38129

Chapter XVIII—National Counterintelligence Center (Parts 1800—1899)

Chapter XVIII Established; interim 49878
1800.31 (c)(4)(ii) correctly revised 53769

Chapter XX—Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

2001.55 Added 49389
2004 Added 51854

Proposed Rules:

196 58568
199 56283
230 43856
231a 43856
231 43858
775 37069
776 37473
806b 56181

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

100.35–T05–064 Added (temporary) 39416
100.35–T05–070 Added (temporary) 46273
100.35–T05–079 Added (temporary) 50449
100.35T–07–056 Added (temporary) 53209
100.35–T08–046 Added (temporary) 42278
100.35T–08–048 Added (temporary) 42598
100.35–T08–049 Added (temporary) 43290
100.35–T08–052 Added (temporary) 53629
100.35–T08–060 Added (temporary) 55831
100.37T–07–063 Added (temporary) 50757
100.114 (a) table corrected 37583
100.504 (a) revised 55830
100.515 Implementation (temporary) 46274
100.519 Implementation (temporary) 51047
100.1103 Revised 39029
100.1104 Removed 39030
100.1203 Removed 39030
110.155 (c)(6) added 38829
110.156 (b)(11) added; eff. 8–28–99 through 11–28–99 49669
110.183 (b) revised 42279
117 Temporary drawbridge operations regulations 36239, 36569, 36570, 42033, 44131, 44826, 46273, 47389, 49391, 49669, 51444, 53209, 54776, 55137, 55831, 56677
117.333 Revised 55419
117.595 Revised 46275
117.723 (f) revised; interim 38831
117.755 Revised 44130
117.789 (c) suspended; (g) added (temporary) 56252
117.799 (d) revised 46276
117.869 (a)(3) added; eff. 7–26–99 through 9–15–00 37679
117.911 (f) revised; interim 38830
117.949 Suspended; eff. 7–26–99 through 10–1–99 42600
117.T408 Added (temporary) 50254
117.T950 Added (Temporary) 42600
160.307 (g) revised; interim; eff. 8–2–99 through 3–31–00 41794
160.313 (a)(1), (2) and (b)(2) revised; interim; eff. 8–2–99 through 3–31–00 41794
160.315 (b)(2) revised; interim; eff. 8–2–99 through 3–31–00 41795
160.317 (a)(1), (2) and (b)(2) revised; (f) and (g) redesignated as (e) and (f); interim; eff. 8–2–99 through 3–31–00 41795
160.301—160.317 (Subpart D) Appendix A revised; eff. 8–2–99 through 3–31–00 41796
165 Technical correction 36572
165.T01–030 Added (temporary) 36572
165.T01–094 Added (temporary) 46849
165.T01–102 Added (temporary) 36573
165.T01–104 Added (temporary) 39033
165.T01–110 Added (temporary) 39034
165.T01–115 Added (temporary) 37681
165.T01–118 Added (temporary) 43291
165.T01–141 Added (temporary) 45880
165.T01–145 Added (temporary) 46277
165.T01–147 Added (temporary) 49671
165.T01–149 Added (temporary) 46567
165.T01–152 Added (temporary) 49393
165.T01–154 Added (temporary) 49394
165.T01–161 Added (temporary) 51244
165.T01–163 Added (temporary) 52233
165.T01–167 Added (temporary) 51899
165.T05–041 Added (temporary) 45879
165.T05–080 Added (temporary) 49669
165.T05–090 Added (temporary) 55420

TITLE 33 Chapter I—Con.

165.T08-034 Added (temporary) 52434
165.T08-038 Added (temporary) 55139
165.T08-041 Added (temporary) 57981
165.T11-066 Added (temporary) 51900
165.T13-023 Added (temporary) 43292
165.T17-012 Added (temporary) 49395
165.161 Removed.....44659
165.166 Removed.....44659
165.167 Removed.....44659
165.170 Removed.....44659
165.174 Removed.....44659
165.175 Removed.....44659
165.178 Removed.....44659
165.1112 Added.....39030
173 Authority citation revised.....36243
173.85 Revised 36243
187.301—187.331 (Subpart D) Removed.....56966

Proposed Rules:

1—199 (Ch. I) 56286
20 53970
100.....41853, 47461, 52723, 54847, 54849
110.....38166, 47156, 52723
117.....36318, 39454, 44145, 44147—44149, 44151, 46322, 46323, 47751, 55218
165.....36633, 39108, 39454, 47752, 49424, 52723, 54252, 54963, 57418, 57419, 58356
167.....46627
175.....53971
181.....56287
183.....56287
207 .....47462, 55441

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

75.118 (a) amended 50391
75.215 Cross-reference amended 50391
75.220 (b)(2) revised 50391
75.511 Cross-reference revised.....50391
75.517 Amended.....50391
75.524 (b) amended; (b) note removed.....50391
75.530 Revised 50391
75.618 Heading and cross-reference revised.....50391
75.621 Cross-reference revised.....50391
75.626 Cross-reference.....50392
75.650 Cross-reference and heading revised.....50392
75.702 Cross-reference revised.....50392
75.708 (b) revised 50392
75.720 Cross-reference, (a)(1) and (c) revised.....50392
75.730 Cross-reference revised.....50392
75.732 Cross-reference revised.....50392
76.132 (a)(5) revised 50392
76.530 Revised 50392
76.681 Cross-reference removed 50392
77.1 Amended 50392
80.42 (b)(4) amended 50392

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

379 Revised 48053

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600 Authority citation revised.....58615
600.2 Amended 58615
600.4 (c) revised.....58615
600.5 (e) added; (h) removed; (i) redesignated as (h); (a)(8), (b)(3)(i), (d), (f), (g) and new (h) revised 58615
600.6 (b)(3)(iii) and (d) revised.....58616
600.7 (a)(1)(iii), (iv) and (c) revised 58616
600.8 Revised.....58616
600.20 (c)(8) added.....58616
600.31 (a)(1) revised; (f) removed 58616
600.55 (a)(5)(i)(A) revised.....58616
600.56 Redesignated as 600.57; new 600.56 added 58616
600.57 Redesignated from 600.56 58616
602 Revised 56617
611 Added.....42839
668 Authority citation revised.....57358, 58617
668.8 (h) revised 58291
668.12 (f) and (g) added; authority citation revised.....58617
668.13 (b)(1) amended.....58617
668.14 (b)(15), (20) and (24) revised; (b)(16), (d) and (e) removed; (f) through (i) redesignated as (e) through (h); new (d) added.....58617
668.27 Added.....56818

668.32 (e)(2), (3), (h), (j) and (k)(7) amended; (e)(4) and (l) added 57358
(c) revised.....58291
668.38 (b) revised 57358
668.40 Added.....57358
668.92 (d) added; authority citation revised 56818
668.95 (d) added; authority citation revised 56819
668.113 (d) added; authority citation revised 56819
668.161 (a)(4) revised.....58291
673.5 (c)(1) introductory text and (ix) revised; (c)(1)(x) and (xi) redesignated as (c)(1)(xi) and (xii); new (c)(1)(x) and (4) added; OMB number 58292
674.2 (b) amended.....58308
674.5 (a)(3), (4), (b)(2) and (c)(4) removed; (b)(3) and (c)(3)(ii) redesignated as (b)(2) and (c)(4); (a)(1), (2) and new (c)(3) revised; new (c)(4) amended 58308
674.6 Removed.....58309
674.7 Removed.....58309
674.8 OMB number 58315
674.9 (i) redesignated as (j); new (i) added 58309
674.10 (b) revised 58292
OMB number 58315
674.12 (a), (b) and (d) revised 58309
674.13 OMB number.....58315
674.16 (l) revised; OMB number 58309
674.19 OMB number.....58315
674.20 OMB number.....58315
674.31 (b)(2)(i)(C) and (D) redesignated as (b)(2)(i)(D) and (E); new (b)(2)(i)(C) added; (b)(10)(i) revised; OMB number 58309
674.33 (f) and (g) added; OMB number 58309
674.34 (e) introductory text revised; (e)(1) through (4) amended; (e)(6) through (9) redesignated as (e)(7) through (10); new (e)(6) added 57531
Heading, (a) and (c) revised; OMB number 58311
674.35 OMB number.....58315
674.36 OMB number.....58315
674.37 OMB number.....58315
674.38 (a)(1) and (d) revised; (a)(2) redesignated as (a)(3); new (a)(2) added.....57531
OMB number 58315
674.39 Revised 58311
674.41 (a)(3) added; OMB number 58312
674.42 (a) revised; (b) redesignated as (c); new (b) added; OMB number 58312
674.43 OMB number.....58315
674.45 (b) revised; (h) added; OMB number 58312
674.47 (e)(5) and (6) redesignated as (e)(6) and (7); new (e)(5) added; OMB number 58313
674.48 OMB number.....58315
674.49 (f)(2)(ii)(A), (B), (3)(ii)(A) and (B) redesignated as (f)(2)(ii)(B), (C), (3)(ii)(B) and (C); (c)(1), (2), (3), (e)(4)(i) introductory text, new (f)(2)(ii)(B), new (3)(ii)(B) and (g) revised; new (f)(2)(ii)(A) and (3)(ii)(A) added; OMB number 58313
674.50 OMB number.....58315
674.52 (c)(1) and (d) revised; OMB number 58313
674.53 Heading, (a)(1), (b) and (c) revised; (a)(2) through (6) redesignated as (a)(3) through (7); new (a)(2) added; OMB number 58313
674.54 Removed 58314
674.56 Heading, (a), (b) and (c) revised 58314
674.57 Heading and (a)(1) revised; (a)(2) through (7) redesignated as (a)(3) through (8); new (a)(2) added.....58314
674.58 (a) revised 58314
674.60 Heading and (a) revised.....58314
674.61 OMB number.....58315
675 Authority citation revised.....58292
675.2 (b) amended.....58292
675.8 (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f) 58292
675.10 (c) revised; OMB number 58292
675.16 (a)(1) and (b)(1) revised; (a)(2), (3) and (4) redesignated as (a)(10), (11) and (12); (a)(2) through (9) added; new (a)(11), new (12), (b)(2), (3)

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 34 Chapter VI—Con.

and (c) amended; OMB number 58292
675.18 (a)(2), (g)(1) and (2) revised; (f) amended; (g)(3) and (h) added; OMB number 58293
675.20 (d) added; OMB number 58293
675.23 (b)(1) revised 58294
675.26 (a)(1) and (d)(2)(iii) revised; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 58294
675.45 (a)(5) and (6) added 58294
676.10 (b) revised 58294
676.18 (a)(2) revised; (c) through (f) added 58294
682.205 (a)(1), (2)(i), (b), (c)(1), (2)(i), (d) and (e) revised; (a)(2)(ii) through (a)(2)(xvii) redesignated as (a)(2)(v) through (a)(2)(xx); new (a)(2)(ii), new (iii), new (iv), (3), (f), (g) and (h) added 58625
682.207 (b)(1)(vi) revised; (b)(1)(vii) added 58626
682.208 (c)(3) added 58626
682.210 (k) introductory text, (1), (2), (3) and (s)(6)(vi) through (x) redesignated as (k)(1) introductory text, (i), (ii), (iii) and (s)(6)(vii) through (xi); new (k)(2) and new (s)(6)(vi) added; (s)(6) introductory text revised; (s)(6)(i) through (iv) and new (viii) amended 57531
(a)(5) revised 58626
682.211 (f)(2) revised; (f)(10) added 58626
682.215 Removed 58626
682.302 (b)(2)(ii) and (iii) amended; (c)(1)(iii)(A) through (E) redesignated as (c)(1)(iii)(C) through (G); (b)(1), (2) introductory text, new (c)(1)(iii)(C) and (3)(i)(A) revised; (b)(2)(iv), new (c)(1)(iii)(A), (B) and (4) added 58626
682.305 Heading, (a)(1) and (c)(1) revised; (a)(3)(iii), (iv) and (v) added; OMB number 58627
682.400 (b)(1)(i) and (ii) amended; (b)(1)(iii) removed 58627
682.401 (b)(11), (c)(1), (2), (3), (e)(1) and (3) revised; (b)(23)(i) introductory text amended; (c) heading and (5) added 58627
682.402 Heading, (d)(3) introductory text and (f)(2) revised; (d)(8) added; OMB number 58628
682.404 (a)(2)(iii), (3) and (g)(3) removed; (a)(1)(ii), (4), (5) and (l) redesignated as (a)(1)(iii), (3), (4) and (l); (a)(1) introductory text, (i), new (iii) introductory text, new (A), (2)(ii), (4), (b) heading, (1)(i), (ii), (2)(i), (ii), (g) heading, (1) and (2) revised; new (a)(1)(ii), (b)(1)(iii), (2)(iii), (i), (j) and (k) added; (b)(1)(i) and (2)(i) amended; OMB number 58628
682.406 Heading, (a) introductory text and (a)(14) revised 58629
682.409 (a)(1) introductory text revised 58630
682.410 (b)(5)(vii) added 58630
682.411 Revised 58630
682.412 (a) amended 58632
682.413 (e)(1) revised 58632
682.414 (a)(4)(iii) and OMB control number revised 58632
682.417 Revised 58632
682.418 Amended; heading and (a)(1) revised 58634
682.419 Added 58634
682.420 Added 58634
682.421 Added 58635
682.422 Added 58635
682.423 Added 58635
682.800 Removed; new 682.800 redesignated from 682.840; (a) amended 58636
682.801 Removed 58636
682.802 Removed 58636
682.803 Removed 58636
682.804 Removed 58636
682.805 Removed 58636
682.830 Removed 58636
682.840 Redesignated as 682.800 58636
682 Appendix D revised 58636
685.202 (a) and (c)(1) revised 46254
685.211 (b) through (e) redesignated as (c) through (f); new (b) added; new (e)(2) and (3) amended 57961
685.400 (d) added 46255
685.401 Removed 46255
690.6 Heading and (a) revised; (c) and (d) added 58294

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

690.7 (c) redesignated as (d); new (c) added 58295

Proposed Rules:

75 54254
600—699 (Ch. VI) 46628
600 38272
614 57288
668 ..... 38272, 38504, 41752, 43024, 43582
673 42206
674 ..... 41232, 42206
675 42206
676 42206
682 ..... 42176, 43024, 43428
685 43428
690 42206
694 39109

TITLE 35—PANAMA CANAL

No amendments to 35 CFR have been published in the FEDERAL REGISTER since July 1, 1999.

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

13 Authority citation revised 56463
13.65 (a) added; (b)(5) and (6) removed 56463

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

242.24 Revised 35780
242.25 Added; eff. 7-1-99 through 6-30-00 35788
242.24 (a) introductory text and (1) correctly revised 35823
251.56 (a)(1)(ii)(G) note added 48960
251.80—251.102 (Subpart C) Authority citation revised 37846
251.84 Existing text designated as (a); (b) added 37846
251.90 (c) revised 37846
251.91 (a) revised 37846
251.92 (a)(8) added; (c) revised 37846
251.93 (b) revised 37846
251.94 (b) revised 37846
251.103 Added 37846

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1254.20 Regulation at 64 FR 19901 confirmed 48961
1275.48 (a) revised 56678
1275.64 (e) revised 56678

Proposed Rules:

13 41854
51 47336
217 ..... 54074, 56293
219 ..... 54074, 56293
242 49278
300—399 (Ch. II) 58368
327 38854
1010 ..... 39951, 51488
1191 ..... 37326, 42056
1211 58568
1228 50028
1275 37922

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.1 (a)(2) revised 48917
1.4 (a)(2) amended; (d)(1) introductory text and (ii) revised; (d)(1)(iii) added 48917
1.5 (c) revised 48917
1.6 (a)(1) revised; (a)(4) added 48917
1.23 Revised 48917
2.1 Revised 48917
2.6 Introductory text, (a)(6) and (14) revised; (a)(20) and (21) added 48917
2.17 (c) and (d) added 48918
2.20 Revised 48918
2.21 Revised 48918
2.31 Removed 48918
2.32 Revised 48918
2.33 Revised 48918
2.34 Revised 48919
2.35 Redesignated as 2.37; new 2.35 added 48920
2.37 Removed; new 2.37 redesignated from 2.35 48920
2.38 (a) revised 48920
2.39 Removed 48920
2.45 Revised 48920

TITLE 37 Chapter I—Con.

2.51 (c), (d) and (e) removed 48920
2.52 Revised 48920
2.56 Revised 48921
2.57 Removed 48921
2.58 Removed 48921
2.59 Revised 48921
2.66 Revised 48921
2.71 Revised 48922
2.72 Revised 48922
2.76 (b), (e)(2) and (3) revised; (i) and (j) added 48922
(b)(1) introductory text corrected 51245
2.86 Revised 48923
2.88 (b) and (e) revised; (k) and (l) added 48923
(b)(1) introductory text corrected 51245
2.89 (a), (b) and (d) revised; (g) amended; (h) added 48923
(a)(3) and (b)(3) corrected 51245
2.101 (d)(1) revised 48924
2.111 (c)(1) revised 48924
2.146 (d) revised; (i) and (j) added 48924
2.151 Revised 48924
2.155 Revised 48924
2.156 Revised 48924
2.160 Added 48924
2.161 Revised 48924
2.162 Revised 48925
2.163 Revised 48925
2.164 Revised 48925
2.165 Revised 48925
2.166 Revised 48925
2.167 (c) revised 48925
2.168 Revised 48925
2.173 Heading and (a) revised 48926
2.181 (a) revised 48926
2.182 Revised 48926
2.183 Revised 48926
2.184 Revised 48926
2.185 Added 48926
2.186 Added 48926
3.16 Revised 48926
3.24 Heading revised 48927
3.25 Added 48927
3.28 Revised 48927
3.31 (a) and (b) revised; (d) and (e) added 48927
6.1 Revised 48927

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201.1 (b) amended 36574
201.3 (c)(5) and (8) amended 36574
201.10 (b)(1)(v) and (e)(2) amended 36574
201.11 (d)(1), (e)(6), (7) and (h)(2)(i) amended 36574
201.17 (d)(1), (e)(2)(i), (h)(4)(iii), (j)(3)(iv)(A) and (k) amended 36574
201.18 (a)(1) and (3) amended 36574
(a)(4) added; (c)(1)(vi) amended; interim 41288
201.19 (a)(1), (2) and (4) amended 36574
(c)(4), (e)(4)(i) and (f)(3)(viii) amended 36575
(a)(5), (6) and (7) redesignated as (a)(6), (8) and (9); new (a)(5), new (7), (10), (11) and (e)(3)(ii)(E) added; new (a)(6), (e)(3)(i)(A), (B) and (4)(ii) amended; (e)(3)(ii)(D) revised; interim 41288
201.25 (c) amended; interim 49671
201.27 (c) and (e)(1) amended 36575
201.29 (e)(3) amended 36575
201.35 (a) amended 36575
(f) amended; interim 50759
201.36 (b)(1) and (c) amended 36575
201.37 (a) and (b)(1) amended 36575
202.3 (b)(7)(ii) amended 36575
202.17 (f)(2) amended 36575
202.20 (c)(2)(vii)(D)(*3*), (*4*), (*5*) and (xi)(A)(*2*) amended 36575
202.22 (a) and (c)(1) amended 36575
202.23 (c)(1), (2) and (d) amended 36575
203.3 (g) amended 36575
203.4 (f)(2) amended 36575
204.4 (a) amended 36575
204.5 (a) amended 36575
204.7 (a) amended 36575
204.8 (a) amended 36575
211.4 (e) amended 36575
211.5 (c)(2) and (d) amended 36575
212 Added; interim 36578
251.54 (e) amended 36575
251.56 (a) and (b) amended 36576
251.58 (b) amended 36576
253.3 (e)(4) amended 36576
253.6 (b)(1)(i)(A) and (ii)(D) amended 36576
259.3 (a)(5) amended 36576
260.2 (c)(1)(v) and (2) amended 36576
260.7 Amended 36576

Proposed Rules:

1 53772
3 53772
5 53772
10 53772
201 42316
212 36829
255 38861

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

2 Authority citation revised 47111
2.1 Redesignated as 2.2; new 2.1 added 47111
2.2 Redesignated as 2.3; new 2.2 redesignated from 2.1 47111
2.3 Redesignated from 2.2 47111
2.6 (a) introductory text, heading, (1), (3) and (7) amended; (e)(1) removed; (g) authority citation revised 47111
3.1003 (b) amended 54207
14 Heading and authority citation revised 47111
14.600 Revised 47112
14.601—14.604 Undesignated center heading removed 47112
14.601 (a) heading revised; (b) heading and authority citation added 47112
14.602 (a) amended 47112
14.604 (a) and (c) amended; authority citation added 47112
14.605 Undesignated center heading removed 47112
14.605 (b) and (d) amended; authority citation added 47112
14.615 (a) amended; authority citation added 47112
17.34 Amended 54212
17.36 Undesignated center heading and section added 54212
17.37 Added 54217
17.38 Added 54217
17.43 (a) removed; (b) through (e) redesignated as (a) through (d) 54218
17.47 (h) removed; (i) through (l) redesignated as (h) through (k); new (h) amended 54218
17.93 (a)(2) amended 54218
17.99 Removed 54218
17.100 Amended 54218
17.133 Undesignated center heading and section added 44660
21.4001—21.4280 (Subpart D) Authority citation revised 52651
21.4138 Introductory text, (c) and (d) removed; (a) and (b) revised; OMB number 52651
21.5135 Revised 52652
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (3)(ii) introductory text, (A) and (B) amended; (b)(2)(ii)(C) and (3)(ii)(C) revised 44661
21.5822 (a) introductory text, (b)(1)(i), (ii), (2)(i) and (ii) amended 44661
Corrected 46974
21.7040 Heading revised 52652
21.7042 Heading revised; OMB number 52652
21.7135 (f)(1) introductory text and (2) authority citation and (3) authority citation revised 38577
(v)(2) revised 51901
21.7140 (a) revised; (b) removed; (c) through (g) redesignated as (b) through (f) 52652
21.7500—21.7807 (Subpart L) Authority citation revised 52652
21.7640 (b) authority citation, (c) authority citation, (e), authority citation and (f) amended; (d) revised 52652

Proposed Rules:

20 53302
23 58568

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference 43293, 46142, 46278
111 DMM amended; incorporation by reference 38832, 48094, 50450, 57571
261.4 Revised 41290
262.2 (b) revised; (d) added 41290
262.4 (a) and (b) amended 41290
262.5 (d)(2) amended 41290
263.3 (a) amended 41290

TITLE 39 Chapter I—Con.

263.4 Removed; new 263.4 redesignated from 263.5 and amended....41290
263.5 Redesignated as 263.4; new 263.5 redesignated from 263.6 and revised....41290
263.6 Redesignated as 263.51290
264.3 (a) and (b) revised....41290
264.4 Amended....41290
265.3 (b) revised....41290
265.4 Amended....41290
265.6 (b) introductory text amended....41290
265.9 (b)(2)(ii) and (g)(4) amended....41290
265.7 (a)(2) amended....41290
265.12 (b)(7) amended....41291
266.3 (a), (c) and (d)(2) revised....41291
266.4 (b)(6)(i), (iii) and (iv) amended....41291
266.5 (d) amended....41291
266.6 (a)(1) amended....41291
266.7 (a)(4) amended....41291
266.10 (b) amended....41291
267.5 (e)(3)(i) amended....41291
776 Revised....56254

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.42 (c) removed; (d) redesignated as (c)....58337
3001.42a Removed....58337
3002.2 Redesignated as 3002.3; new 3002.2 added....58337
3002.3 Redesignated as 3002.4; new 3002.3 redesignated from 3002.2; (c) added....58337
3002.4 Redesignated as 3002.5; new 3002.4 redesignated from 3002.3; (e) added....58337
3002.5 Redesignated from 3002.4....58337
3002.7 (c) amended....37402
3002 Appendix A revised....37402
3003 Revised....57982
3004 Added....58337

Proposed Rules:

111....44681, 54255, 57419
265....46630
776....48124
3001....50031, 52725
3002....50031
3003....49120
3004....50031

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

9.1 (b) table amended (OMB numbers)....36585, 37636, 42461, 43937
Regulation at 64 FR 42461 eff. date corrected to 12–2–99....43426
Table amended (OMB numbers); eff. 1–1–01....50610
22 Revised....40176
51 Authority citation revised....35763
51.121 (e)(2) and (3)(iii) revised....49992
51.300 (a), (b)(1) introductory text and (2) revised; (b)(3) added; eff. 8–31–99....35763
51.301 Amended; eff. 8–31–99....35763
(v) amended; eff. 8–31–99....35774
51.302 Heading, (a), (c) introductory text, (1), (2) introductory text, (4) introductory text and (iv) revised; eff. 8–31–99....35764
(c)(2)(i) and (4)(i) amended; eff. 8–31–99....35774
51.303 (a)(1), (c), (d), (g) and (h) amended; eff. 8–31–99....35774
51.304 (c) amended; eff. 8–31–99....35774
51.305 Heading and (a) revised; eff. 8–31–99....35764
51.306 Heading, (a)(1), (c) introductory text and (d) revised; eff. 8–31–99....35764
(a)(1) and (c)(6) amended; eff. 8–31–99....35774
51.307 (a) introductory text, (2) and (c) revised; eff. 8–31–99....35765
(b)(1) and (c) amended; eff. 8–31–99....35774
51.308 Added; eff. 8–31–99....35765
51.309 Added; eff. 8–31–99....35769
52 State implementation plan determinations....36243, 40287, 40767, 45454, 49084, 50254, 50762, 55141
52.70 (c)(29) added....47679
Regulation at 64 FR 47679 withdrawn....53931
52.120 (c)(94) added....50762
52.220 (c)(168)(i)(F)(*2*), (173)(i)(C)(*2*), (196)(i)(E), (224)(i)(D), (244)(i)(A)(*3*) and (258)(i)(A)(*2*) added; eff. 8–2–99....35578

(b)(3)(ii) and (c)(6)(xv)(B) removed....37406
(c)(202)(i)(B), (254)(i)(H)(*2*) and (K) added....38836
(c)(263) and (264) added....39040
(c)(194)(i)(C)(*4*) and (199)(i)(D)(*6*) added....39920
(c)(235) removed; (c)(265) added....39926
(c)(254)(i)(D)(*2*) added....44135
(c)(179)(i)(E)(*3*), (G)(*2*), (184) introductory text, (i)(D) introductory text, (F)(*2*), (186)(i)(F), (197)(i)(C)(*3*) and (241)(i)(D) added....45174
(c)(39)(ii)(G), (225)(i)(A)(*4*) and (256)(i)(F)(*1*) added....45178
(c)(231)(i)(B)(*6*), (239)(i)(E)(*5*), (244)(i)(A)(*4*) and (262)(i)(C) added....45182
(c)(201) added....46852
(c)(226) added....47392
(c)(262)(i)(B)(*2*) and (264)(i)(A)(*2*) added....47395
(c)(247) added....48307
(c)(39)(ii)(D) removed; (b)(3)(ii) and (4) added....49400
(c)(164)(i)(C)(*4*), (249)(i)(B) and (254)(i)(C)(*4*) added....51690
(c)(32)(iv)(F) and (35)(xii)(G) added....52654
(c)(183)(H)(*1*) added....53212
(c)(263)(i)(A)(*2*) and (B) added....54561
(c)(140)(ii)(C), (194)(i)(B)(*4*), (215)(i)(D) introductory text and (*2*) added....57994
52.228 (b)(1)(iv) removed....49400
52.320 (c)(86) added....46288
52.336 Amended....47116
52.349 (c) added....46288
(d) added....51701
52.370 (c)(79) added....44414
(c)(80) and (82) added....52237
52.385 Table amended....44414, 52238
52.420 (c) table amended....48963, 52659
52.424 (b) removed....52660
(a) removed....55141
52.426 Added....55141
52.470 (d) table amended....52657
(c) table amended....57779
52.473 Removed....42602
52.476 Added....42602
52.478 Added....57781
52.719 Removed....37851
52.720 (c)(150) added....37851
(c)(153) added....49403
52.725 (g) added....37851
52.820 Regulation at 64 FR 25827 withdrawn....35941
52.939 (c)(94) added....49408
52.970 (c) table amended....35939
(d) table and (e) table amended....35940
(e) table amended....38580
52.993 (d) and (e) added....35941
52.1070 (c)(129) added....38838
(c)(139) added....45184
(c)(137) and (138) added....51447
(c)(145) added....57991
(c)(144) added....58343
52.1072 (a) removed....58344
52.1120 (c)(119) added....48098
(c)(117) added....48303
52.1167 Table amended....48098, 48303
52.1170 (c)(112) added....39036
52.1220 (c)(50) added....44133
(c)(49) added....44411
(c)(51) added....58347
52.1222 Table amended....58347
52.1237 (c) added....58354
52.1520 (c)(63) added....44420
(c)(61) and (62) added....52438
52.1525 Table amended....44420
52.1620 (c) table amended....36790
(b) revised; (d) and (e) table added....51692
52.1770 (c) table amended....55834
52.1820 (c)(31) added....47401
(c)(31)(i)(A) corrected....52378
52.1870 (c)(118) added....47116
52.1881 (a)(4) and (8) revised; (a)(13) added....47116
52.1885 (a)(12) added....37406
52.1970 (c)(128) added....51060
52.2070 Redesignated as 52.2087; new 52.2070 added....43085
52.2087 Redesignated from 52.2070; heading and (a) revised....43085
52.2220 (d) table amended....37410
(c) table amended....38582, 49397
52.2270 Redesignated as 52.2299; new 52.2270 added....36589
(c) table amended....36794, 57988
(b)(1) revised; (d) added; (e) table amended....55424
52.2299 Redesignated from 52.2270; heading and (a) revised....36589
52.2320 (c)(41) added....36252
52.2420 (c)(134) added....47674

TITLE 40 Chapter I—Con.

(c)(129) added 51051
52.2450 (b), (c) and (d) removed 47674
52.2520 (c)(42) added 37683
52.2570 (c)(99) added 44417
Regulation at 64 FR 44417 withdrawn 52438
58.50 Revised 42547
58 Appendix G revised 42547
60 Authority delegation notice 57392
60.4 (c) table amended 47401
60 Appendix A corrected 37196, 38241
Appendix A amended 53027
Appendix B amended 53032
61.205 (a) amended 53213
62 Technical correction 52577
Authority citation corrected; CFR correction 55141
62.600—602 (Subpart D) Added 50771
62.1100—62.1104 (Subpart F) Heading revised 51451
62.1100 Undesignated center heading added; (b)(5) and (c)(5) added 51451
62.1115 Undesignated center heading and section added 51451
62.1950—62.1952 Undesignated center heading and sections added 50457
62.3340—62.3342 Undesignated center heading and sections added 36805
62.5100—62.5152 (Subpart V) Undesignated center heading and sections added 48717
62.5340 Undesignated center heading and section added 37855
Regulation at 64 FR 37855 withdrawn 47680
62.5425 Undesignated center heading and section added 37855
Regulation at 64 FR 37855 withdrawn 47680
62.6358 Undesignated center heading and section added 45187
62.7100—62.7102 (Subpart DD) Added 50768
62.8104 Undesignated heading and section added 38586
62.8105 Section and undesignated heading added 43094
62.8610—62.8612 (Subpart JJ) Undesignated center heading and sections revised 44421
62.9611 Added 57784
62.9640—62.9642 Undesignated center heading and sections added 45884
62.10100 (b)(4) and (c)(4) added 46151
62.10160 Undesignated heading and section added 46151
62.10626 (b)(3) added 52663
62.11860 Undesignated center heading and section added 41294
62.11870 Undesignated center heading and section added 41294
63.99 (a)(3) table corrected 42764
63.461 Amended 45193
Regulation at 64 FR 45193 withdrawn 56173
63.462 (c) introductory text and (8) revised; (c)(9) added 45194
Regulation at 64 FR 45194 withdrawn 56173
63.463 (a) introductory text, (c) introductory text, (d) introductory text, (e) introductory text and (2) introductory text revised; (e)(2)(viii), (ix), (x) and (g) added 45194
Regulation at 64 FR 45194 withdrawn 56173
63.465 (f) added 45195
Regulation at 64 FR 45195 withdrawn 56173
63.466 (a) introductory text revised; (a)(3), (4) and (5) added 45196
Regulation at 64 FR 45196 withdrawn 56173
63.467 (a) introductory text revised; (a)(6) and (7) added 45196
Regulation at 64 FR 45196 withdrawn 56173
63.468 (j) revised 37687
63.680 (a)(2)(v), (b)(1)(ii), (iii), (2)(v), (vi), (c), (d) and (e) revised; (b)(2)(viii) added 38963
63.681 Amended 38964
63.683 Revised 38965
63.684 (a), (b) introductory text, (1)(ii), (3) introductory text, (4) introductory text, (5), (d) through (g) revised 38967
63.685 (b), (c)(2), (f)(1)(ii)(A), (g)(2)(i)(B), (h)(2), (3) and (i) introductory text revised; (i)(3) added 38968
63.686 (b) introductory text revised; (b)(3) added 38969

63.687 (b) introductory text revised 38969
63.688 (b) and (c) revised 38969
63.689 (b), (c), (d) introductory text and (5) introductory text revised 38970
63.690 Revised 38970
63.691 Revised 38970
63.693 Revised 38970
63.694 (a)(12) and (m) added; (b)(2)(ii), (iii), (3)(i), (c), (e) through (i) and (k) revised 38974
63.695 Revised 38977
63.697 (a) and (b) revised 38981
63.680—63.698 (Subpart DD) Table 1 revised 38981
63 (Subpart DD) Table 2 revised 38983
63.901 Amended 38985
63.902 (a) and (b)(3) introductory text revised 38986
63.905 Revised 38986
63.906 (a)(2) and (b)(2) revised; (d) added 38986
63.921 Amended 38987
63.925 (a) revised 38987
63.926 (a) revised 38988
63.941 Amended 38988
63.945 Revised 38988
63.946 (a)(2) and (b)(1)(ii) revised; (d) added 38989
63.961 Amended 38989
63.962 (b) revised 38990
63.964 (b)(2) revised 38990
63.965 (b) revised 38991
63.966 Revised 38991
63.1041 Revised 38991
63.1045 Added 38991
63.1046 (a) and (b)(3) revised 38991
63.1047 (a)(2) and (c)(1)(ii) revised; (e) added 38992
63.1200—63.1213 (Subpart EEE) Revised 53038
63.1350 (k) revised 53070
63.1580—63.1595 (Subpart VVV) Added 57579
75.19 (c)(4)(ii)(A) corrected 37582
75.57 (c)(4)(iv) table corrected 37582
75 Appendixes A, B, D and E corrected 37582
76.6 (a)(1) amended 55838
80.41 (f) table amended 37689
80.81 (i) removed 49997
80.101 (f)(4) introductory text, (i) and (ii) added 37689
81.305 Amended 39418
81.306 Amended 46289, 51701
81.324 Amended 58354
81.334 Amended 55425
81.343 Amended 37411
82 Technical correction 39040
86.000–7 Regulation at 61 FR 54878 eff. 8–27–97 43936
86.000–8 Regulation at 61 FR 54878 eff. 8–27–97 43936
86.000–9 Regulation at 61 FR 54879 eff. 8–27–97 43936
86.000–21 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–23 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–24 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–25 Regulation at 61 FR 54883 eff. 8–27–97 43936
86.000–26 Regulation at 61 FR 54883 eff. 8–27–97 43936
86.000–28 Regulation at 61 FR 54884 eff. 8–27–97 43936
86.001–2 Regulation at 61 FR 54886 eff. 8–27–97 43936
86.001–9 Regulation at 61 FR 54886 eff. 8–27–97 43936
86.001–21 Regulation at 61 FR 54886 eff. 8–27–97 43936
86.001–23 Regulation at 61 FR 54887 eff. 8–27–97 43936
86.001–24 Regulation at 61 FR 54887 eff. 8–27–97 43936
86.001–25 Regulation at 61 FR 54887 eff. 8–27–97 43936
86.001–26 Regulation at 61 FR 54888 eff. 8–27–97 43936
86.001–28 Regulation at 61 FR 54888 eff. 8–27–97 43936
86.004–9 Regulation at 61 FR 54889 eff. 8–27–97 43936
86.004–28 Regulation at 61 FR 54890 eff. 8–27–97 43936
86.108–00 Regulation at 61 FR 54890 eff. 8–27–97 43936
86.129–00 Regulation at 61 FR 54892 eff. 8–27–97 43936
86.159–00 Regulation at 61 FR 54894 eff. 8–27–97 43936
86.160–00 Regulation at 61 FR 54895 eff. 8–27–97 43936
86.161–00 Regulation at 61 FR 54897 eff. 8–27–97 43936
86.162–00 Regulation at 61 FR 54898 eff. 8–27–97 43936

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 40 Chapter I—Con.

86.162–03 Regulation at 61 FR 54899 eff. 8–27–97 43936
90.706 Corrected 36423
122.2 Amended 42462
Regulation at 64 FR 42462 eff. date corrected to 12–2–99 43426
122.21 (a), (c)(2), (e), (f) introductory text and (j) revised; (d)(3) removed; (q) added 42462
Regulation at 64 FR 42462 eff. date corrected to 12–2–99 43426
122.44 (j)(2) revised 42469
Regulation at 64 FR 42469 eff. date corrected to 12–2–99 43426
122 Appendix J added 42469
Regulation at 64 FR 42469 eff. date corrected to 12–2–99 43426
123.25 (a)(4) revised 42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
123.43 (b) added 42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
124.8 (b)(9) added 42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
141.151—141.55 (Subpart O) Appendix B amended 49672
141.35 Revised; eff. 1–1–01 50611
141.40 Revised; eff. 1–1–01 50612
142.15 (c)(3) removed; eff. 1–1–01 50620
142.16 (e) introductory text, (1) introductory text and (i)(C) revised; eff. 1–1–01 50620
180.102 Removed 39077
180.106 (b) added 41305
180.109 Removed 39053
180.124 Removed 39077
180.125 Removed 39053
180.130 Revised 39077
180.141 Removed 39053
180.150 Removed 39077
180.157 Revised 41822
180.161 Removed 39077
180.184 Revised 41822
180.189 Revised 39077
180.201 Removed 39053
180.205 (a) amended 39077
180.207 (a) table amended 39082
180.216 Removed 39053
180.221 Revised 39077
180.222 (a) table amended 39082
180.226 (a) table and (b) table amended 39082
180.244 Removed 39078
180.250 Removed 39078
180.252 Revised 39053
180.259 (a) heading and (2) added; (a) and (b) redesignated as (a)(1) and (c); new (a)(1) table amended; new (c) revised 39072
180.262 (a) amended 39078
180.265 Removed 39053
180.266 Removed 39053
180.267 Revised 39053
180.282 Removed 39053
180.283 Removed 39053
180.284 (b) amended 40767
180.292 (a)(1) table amended 39082
180.299 Table amended 39082
180.300 (a) table amended 39082
180.304 (a) introductory text revised; (a) table amended 39083
180.346 (a) amended 39083
180.353 (b) table amended 46292
180.355 (b) table amended 37863
(a) table amended 39083
180.362 (b) redesignated as (c); (a) heading and (c) heading added; (c) table amended 41822
180.363 Removed 39078
180.364 (a)(1) table amended 41823
180.368 (b) amended 56681
180.377 (b) added 52457
180.384 Amended 39078
180.398 Removed 39053
180.402 Removed 39053
180.412 (b) table amended 56703
180.415 Revised 36801
(b) revised 37875
180.416 (b) amended 54782
180.434 (b) table amended 41297, 41815
180.443 (b) table corrected 38308
180.449 (a) revised 48560
180.462 (b) added 46292
180.472 (b) table amended 39048
(a) table amended 41810
180.473 (b)(1) and (b)(2) redesignated as (a)(3) and (a)(4); (b) added 44835
180.474 (b) amended 51251
(b)(1) amended 54779
180.475 Revised 36254
(b) added 47687
180.482 (a) table amended 37870
(a) introductory text redesignated as (a)(1); new (a)(1) table amended; (a)(2) added 39068
(b) table amended 51258
(a)(1) table amended 52463

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

(d) amended 56697
180.487 (a) revised 56469
180.490 Revised 54224
180.495 (b) added 39059
(a) revised 51459
180.498 (b) redesignated as (d); (a) heading and new (d) heading revised; new (b) and (c) added 51067
180.503 (b) table amended 47689
180.508 (b) added 37861
180.510 (b) table amended 41812, 44829
(a) table amended 56689
180.511 (b) table amended 45887
180.513 (b) table amended 47692
180.515 (b) table amended 45890
180.520 Removed 39078
180.524 Removed 41823
180.527 (b) added 42846
180.555 Added 51907
180.556 Added 52450
180.597 (b) table amended 42286
180.1001 (c) table amended 55841
180.1013 Removed 39053
180.1020 (b) amended 42849
180.1032 Removed 41818
180.1208 Added 51248
185.1500 Removed 39078
185.2500 Revised 39083
185.2700 Table amended 39083
(a) amended 39083
180.3550 (b) removed 41823
185.4650 Removed 39078
185.5000 Removed 39072
186.1500 Removed 39078
201.24 Corrected; CFR correction 55141
228.15 (l)(3)(vi) amended; (l)(3)(vii), (viii)(A)(*1*), (*2*), (*4*), (*5*), (*7*), (*11*), (*12*) and (*13*) revised 39933
260.10 Amended 36487, 53070
261.9 (b) and (c) revised; (d) added 36487
261.32 Table amended 56470
261.38 Table 1 amended 53070
261 Appendix IX amended 42037
Appendix IX corrected; CFR correction 56256
262.10 (j) added 52392
262.34 (a)(4) revised 56471
262.90 Added 37636
262.100—262.108 (Subpart J) Added 52392
264.1 (g)(11)(ii) and (iii) revised; (g)(11)(iv) added 36488
(g)(12) added 37638
264.340 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 53074
264.601 Introductory text revised 53074
265.1 (c)(14)(ii) and (iii) revised; (c)(14)(iv) added 36488
(c)(15) added 37638
265.340 (b) redesignated as (c); new (b) added 53075
266.100 (b) through (f) redesignated as (c) through (g); new (d)(1) introductory text and (3) introductory text revised; new (b) and (h) added 53075
266.101 (c)(1) revised 53075
266.105 (c) redesignated as (d); new (c) added 53075
266.112 (b)(1) introductory text amended; (b)(2)(i) revised 53076
266 Appendix VIII amended 53076
268.1 (f)(2) and (3) revised; (f)(4) added 36488
268.7 (a)(3)(iii) added 56471
268.40 Table amended; (j) revised 56471
268.49 (c)(1)(A) and (B) revised 56472
270.1 (c)(2)(viii)(B) and (C) revised; (c)(2)(viii)(D) added 36488
(c)(2)(ix) added 37638
270.19 Introductory text revised; (e) added 53076
270.22 Introductory text added 53076
270.42 Appendix I amended 53077
270.62 Introductory text added 53077
270.66 Introductory text added 53077
271 State hazardous waste management program authorizations 41823, 42602, 44836, 46298, 46302, 47692, 48099, 49998, 51702, 55142, 55153, 55629, 56174
271.1 (j) Table 1 amended 53077
272.1851 Revised 46570
272.2201 Revised 49680
272 Appendix A amended 46571, 49682
273.1 (a)(2) and (3) revised; (a)(4) added 36488
273.2 (a)(1), (b)(2) and (3) revised 36488
273.3 (a) introductory text revised 36488
273.4 (a) revised 36488
273.5 Revised 36488
273.6 Redesignated as 273.9 36488
273.8 Added 36488

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 40 Chapter I—Con.

273.9 Redesignated from 273.6 36488
273.9 Amended 36489
273.10 Revised 36489
273.13 (d) added 36489
273.14 (e) added 36489
273.30 Revised 36489
273.32 (b)(4) and (5) revised.....36489
273.33 (d) added 36489
273.34 (e) added 36489
273.50 Revised 36490
273.60 (a) revised 36490
273.81 (a) revised 36490
300 Appendix B amended 39884, 44136, 47402, 48965, 50459, 50465, 50772, 51460, 51710, 52239, 52463, 52464, 52664, 52665, 53213, 53629, 56973
372.22 (c) amended.....58750
372.25 Introductory text, (f), (g) and (h) amended 58750
372.27 (e) added 58750
372.28 Added.....58750
372.30 (a), (b)(1), (3) introductory text, (i) and (iv) amended.....58751
372.38 (a), (b), (c) introductory text, (d) introductory text, (f), (g) and (h) amended 58751
372.65 (a) table, (b) table and (c) table amended 58751
372.85 (b)(15)(i) introductory text, (16)(i)(B) and (ii)(B) revised; (b)(15)(ii) added.....58753
403 Appendix G revised 42567
430.24 (b)(2) revised; (c) added 36586
439.1 (n) added.....48104
439.17 (d) removed; (e) redesignated as (d).....48104
439.27 (a) designation and (b) removed; introductory text revised 48104
439.37 (d) removed; (e) redesignated as (d).....48104
439.47 (a) designation and (b) removed.....48104
501.15 (d)(1)(i)(B) reinstated 42434
(a)(4) removed.....42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
503.2 (d) added.....42568
503.10 (b)(1), (c)(1) and (d) through (g) revised.....42568
503.16 (a)(1) and (2) revised.....42569
503.17 (a)(1)(ii), (2)(ii), (3)(i)(B), (ii)(A), (4)(i)(B), (ii)(A), (5)(i)(B), (ii)(C), (F), (H), (J), (L), (6)(iii), (b)(3), (6) and (7) revised; (a)(4)(ii)(E) added 42569
503.18 (a)(2) revised 42570
503.21 (c) revised 42570
503.22 (b) revised 42570
503.26 (a)(1) and (2) revised.....42570
503.27 (a)(1)(ii), (2)(ii), (b)(1)(i) and (2)(i) revised.....42571
503.31 (g) revised 42571
503.32 (b)(2)(i) and (5)(v) revised 42571
503.33 (b)(10)(i) revised 42571
503.41 (c) through (o) redesignated as (d) through (h), (j) and (l) through (r); new (c), (i) and (k) added 42571
503.43 (c) and (d) revised; (e) added.....42572
503.45 (a)(1), (b) through (f) revised; (h) added.....42573
503.46 (a)(1), (3) and (c) revised 42573
503.47 (f) revised.....42573
503 Appendix B revised 42573
745.107 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.110 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.113 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.115 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.226 (a)(5), (d)(2) and (f)(1) revised 42851
745.227 (a)(1) revised.....42852
745.239 (b) and (c) revised.....42852

Proposed Rules:

2.....57421
5.....58568
35 .....40064, 40084, 46234
49 .....48725, 48731, 54851
50 57424
51 .....45491, 50036, 52731
52....36635, 36639, 36830, 36831, 37491, 37492, 37734, 37923, 38616, 38617, 38862, 38863, 39110, 39963, 40328, 40791, 42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215—45217, 46325, 46331, 46878, 47464, 47465, 47754, 48126, 48127, 48337, 48725, 48731, 48739, 48970, 48976, 49425, 49756, 50787, 51088, 51278, 51488, 51489, 51493, 51722, 51723, 51937, 51943, 52265, 52486, 52737, 53303, 53973, 54600, 54601, 54851, 55220, 55442, 55662, 55667, 55879, 56181, 57826, 58006—58008, 58011, 58018, 58369
55 45217
60.....47465, 47234, 47276, 51088
62....36426, 37923, 38617, 41364, 43123, 45221, 45937, 46165, 48742, 50476, 50787, 50788, 51496, 52738, 57827
63.....37734, 38993, 45116, 45221
76 55880
80.....50036, 57827
81 .....37492, 46331, 51723, 55442, 58018
85 .....56985, 57827, 58472
86 .....56985, 57827, 58472
90 40940
97 .....43124, 44452, 50041
122.....46058, 53304, 57827
123.....46058, 53304, 57827
124.....46058, 53304, 57827
130.....46012, 53304, 57827
131 .....37072, 46058, 53304, 57827
132.....53632
144.....57430
146.....57430
147 .....43329, 56986
148 .....40192, 46476, 48742, 49052
152.....50672
156.....50672
165.....56918
180 .....36640, 50043, 51723, 56477
194.....56185
197 .....46976, 53304
258.....53976
259.....45632
261.....40192, 42317, 44866, 45632, 46166, 46476, 48742, 49052, 50788, 55443, 55880, 58022
262.....40696
264.....46476, 49052, 54604
265 .....46476, 49052
266.....45632
268.....40192, 40534, 46476, 48742, 49052
270.....45632
271.....40192, 42630, 43331, 44876, 46332, 46476, 47755, 48135, 48742, 49052, 50050, 51724, 55222, 55671
272 .....46632, 49757
281 .....43336, 46178
300.....39886, 40328, 41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224, 46333, 46632, 47465, 47478, 47481, 50476, 50477, 51496, 56992
302 .....40192, 46476, 48742, 49052
372.....42222, 51091, 58370
403 .....39564, 47755
441.....45072
442.....38863
710 .....46722, 56998
745.....40064

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

51–2.7 Revised 55842
51–5.5 (a), (d)(2) and (e) revised 55842
51–5.6 Revised 55842

Chapter 101—Federal Property Management Regulations (Parts 101–1—101–99)

101–35 (Subchapter F) Regulation at 61 FR 41003 effective date extended through 8–8–00 38588
101–42.1102–10 (a) and (b) revised 40772
101–43.304–2 (b) revised.....40773
101–43.305 Heading and (b)(2) revised 40773
101–43.4801 Revised.....40773

Chapter 102—Federal Management Regulations (Parts 102–1—102–99)

Chapter 102 Established; interim 39084

Chapter 301—Travel Allowances (Parts 301–1—301–99)

301–51 Revised; interim.....38528
301–52.17—301.52.21 Added; interim 38529
301.54 Added; interim.....38529
301–70.700—301–70.706 (Subpart H) Added; interim 38529
301–71.204 Revised; interim 38530
301–71.208—301–71.211 (Subpart C) Added; interim 38530
301–76 Added; interim 38530
Chapter 301 Appendix A amended 38587

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

CHANGES JULY 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 41

Chapter 303—Payment of Expenses Connected with the Death of Certain Employees (Parts 303–1—303–2)

303–70.100 Revised 45891
303–70.403 Heading revised 45891
303–70.600—303–70.602 (Subpart G) Added 45891

Proposed Rules:

51–2 41882
51–5 41882
101–4 58568
301–11 50051
301–74 50051

CHANGES OCTOBER 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

36 Redesignated as Part 36a 58318
Added 58319
36a Redesignated from Part 36 58318
Suspended 58319
36a.12 (a)(2), (3) and (b)(1) amended 58318
36a.15 (b)(1) amended 58318
36a.16 (a) amended 58318
36a.33 (a) and (b) amended 58318
36a.34 (b) amended 58318
36a.42 (a) amended 58318
36a.43 Amended 58318
36a.53 Amended 58318
36a.56 Amended 58318
36a.106 (a)(4) amended 58318
36a.116 Amended 58318
36a.120 (a) amended 58318
36a.205 (b)(18) amended 58318
36a.208 (b)(4) amended 58318
36a.212 (h)(1) through (iv) redesignated as (h)(1) through (4); new (h)(4) amended 58318
36a.230 (b) amended 58319
36a.232 Amended 58319
36a.302 (v)(4) amended 58319
36a.303 (a) and (d) amended 58319
36a.321 (d) amended 58319
36a.322 (a)(2) amended 58319
36a.350 (a) introductory text amended 58319
36a.351 (b)(5), (6), (7) and (9) amended 58319
36a.353 Amended 58319
36a.371 (c) and (d) amended 58319
36a.372 (a)(2) amended 58319
121 Authority citation revised 56658
121.1 (b) revised 56658
121.2 Amended 56658
121.3 (a)(2), (3), (4), (b) heading and (4) removed; (b)(1), (2), (3), (c), (d) and (e) redesignated as (a)(2), (3), (4), (b), (c) and (d); (a) heading, (1), new (2) and new (d) revised; new (a)(4)(ii) and new (c) heading amended; new (a)(3) and new (4) heading removed 56658
121.4 (a)(3)(i), (ii), (b)(2), (c) and (d) revised; (e) introductory text and (1) amended 56658
121.5 (a), (b) and (c) amended 56659
121.6 (b) revised 56659
121.7 (d) amended 56659
121.8 Revised 56659
121.9 (a)(1), (2)(vi) and (vii) amended; (a)(3) revised 56660
121.10 (c)(1) amended 56660
121.11 (a)(1)(i) and (b)(2) amended; (b)(1)(iv) revised 56661
121.12 Revised 56661

Proposed Rules:

8 56294
57 54263
58 54263
72 58022
405 57431
409 ..... 57612, 58134
410 ..... 57612, 58134
411 ..... 57612, 58134
413 ..... 57612, 58134
424 ..... 57612, 58134
447 54263
484 ..... 57612, 58134

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1820 Revised; eff. 11–1–99 53215
3809.1 Added 53219
3809.1–9 Revised 53219
3809.3–1 (b) revised 53220
3809.3–2 (e) revised; (f) removed 53220
3500—3570 Undesignated heading removed 53536
3500 Revised; eff. 11–1–99 53536
3510 Removed; eff. 11–1–99 53536
3520 Removed; eff. 11–1–99 53536
3530 Removed; eff. 11–1–99 53536
3540 Removed; eff. 11–1–99 53536
3550 Removed; eff. 11–1–99 53536
3560 Removed; eff. 11–1–99 53536
3570 Removed; eff. 11–1–99 53536

Proposed Rules:

41 58508
2800 55452
2880 55452
3730 57613
3820 57613

NOTE: Boldface page numbers indicate 1998 changes.

TITLE 43 *Proposed Rules:—Con.*

3830 57613
3840 57613
3850 57613
3800 57613

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

62.23 (j)(1) revised; (j)(2) through (6) redesignated as (j)(3) through (7); new (j)(2) added 56176
62 Appendix B amended 56176
64.6 Table amended 56257
65.4 Flood level determinations 53932, 53934, 53937
67.11 Flood level determinations 53938, 53940
206.200 Regulation at 63 FR 64425 confirmed; (b) revised 55160
206.201 Regulation at 63 FR 64425 confirmed; heading, (i) and (j) revised 55160
206.202 Regulation at 63 FR 64425 confirmed; revised 55160
206.204 (e) revised 55161
206.205 (a) revised 55161
206.208 (c)(1) revised 55161
206.228 Regulation at 63 FR 64426 confirmed 55160
(a)(2)(i) revised 55161

Proposed Rules:

19 58568
67 ..... 53980, 53982

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

61 Added 57758
96.1 (a) and (c) through (f) revised 55856
96.2 (d) revised 55856
96.10 (a) revised; (c) and (d) added 55856
96.15 Revised 55856
96.30 Existing text designated as (a); (a) heading and (b) added 55857
96.41 (a) revised; (c) added 55857
96.42 (f) amended 55857
96.49 Added 55857
96.53 Added 55857
96.81 Revised 55858
96.82 Revised; interim 55858
96.84 (d) added 55858
96.85 (a) revised 55858
144 Comment request 57520
146 Comment request 57520

Proposed Rules:

5b 57619
302 55074
303 55074
304 55074
305 55074
308 55102
618 58568
1155 58568
1171 58568
1182 58568
2555 58568

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(1), (2) and (3) revised 53222
2.01–25 (a)(1)(iv), (4)(i), (b)(2) and (e)(2) amended; (a)(1)(v) and (4)(ii) removed; (a)(1)(vi) through (ix) and (4)(iii) redesignated as (a)(1)(v) through (viii) and (4)(ii) 53222
2.10–105 (c) amended 53223
4.05–40 Added 53223
4.06–60 (e) added 53223
10.102 (a) amended 53223
10.109 Table correctly revised 53230
10.603 (c) removed; (d) and (e) redesignated as (c) and (d); new (d) introductory text amended 53223
12.01–3 (a) amended 53223
12.02–18 Table correctly revised 53231
15.105 (a) amended 53223
15.805 (b) revised 53223
27 Added; interim 56266
31.40–15 Heading revised; (a) and (b) amended 53223
31.40–20 Removed 53223

31.40–40 (c) amended 53223
34.01–15 (b) amended 53223
34.15–5 (a), (d)(1), (4), (5), (e)(1) table and (5) table amended 53223
34.15–10 (b), (d) and (f) amended 53223
34.15–20 (b) amended 53223
34.15–90 (a)(2) amended 53223
38.01–3 (b) amended 53223
52.01–1 (b) amended 53224
53.01–1 (b) amended 53224
54.01–1 (b) amended 53224
56.01–1—56.01–10 (Subpart 56.01–1) Amended 53224
56.01–2 Amended 53224
56.60–1 Table amended 53224
57.02–1 (b) amended 53224
58.03–1 (b) amended 53224
59.01–2 (b) amended 53225
61.03–1 (a) amended 53225
61.10–5 (h) amended 53225
63.05–1 (b) amended 53225
64.2 (a) and (b) amended 53225
67.15 (b) amended 53225
68.01–5 (a) and (b) amended 53225
68.01–7 (a), (b) and (c) amended 53225
68.01–9 (a) and (b) amended 53225
68.05–11 (a) and (b) amended 53225
68.05–13 (a) and (b) amended 53225
69.71 (b) amended 53225
69.73 (b) amended 53225
69.203 (b) amended 53225
76.15–5 (d) removed; (e) and (f) redesignated as (d) and (e); new (d)(1) table and new (e)(1) table amended 53225
76.15–5 New (d)(3), (4) and (e)(3) amended 53226
76.15–10 (b), (d) and (f) amended 53226
76.15–20 (b) amended 53226
76.15–90 (a)(2) amended 53226
91.60–15 (a) and (b) amended 53226
91.60–20 Removed 53226
91.60–40 (c) amended 53226
95.15–5 (a), (d)(1) table, (3), (4) table and (e)(3) amended 53226
95.15–10 (b), (d) and (f) amended 53226
95.15–20 (b) amended 53226
95.15–90 (a)(2) amended 53226
98.01–3 (b) amended 53226
105.05–10 (a), (c)(1) and (2) amended 53226
107.115 (b)(2) and (3) amended 53226
107.260 (a) amended 53226
107.269 Amended 53226
107.279 (b) and (c) amended 53226
108.237 (b) amended 53226
108.705 Heading revised; (a) amended 53226
109.431 (b) amended 53227
118.400 (d) amended 53227
125.180 (b) amended 53227
133.175 (b) introductory text revised 53227
147.7 (c) amended 53227
151.01–2 (b) amended 53227
151.50–73 (a)(4) Note amended 53227
153.933 (a)(4) Note amended 53227
160.010–1 Heading revised 53227
160.021–1 Heading revised 53227
160.022–1 Heading revised 53227
160.023–1 Heading revised 53227
160.024–1 Heading revised 53227
160.037–1 Heading revised 53227
160.040–1 Heading revised 53227
160.048–1 (c) amended 53227
160.049–1 (c) amended 53228
160.050–1 Revised 53228
160.057–1 Heading revised 53228
160.171–3 Heading revised 53228
160.174–3 Heading revised; (a) amended 53228
161.002–2 (d)(2) amended 53228
162.027–1 (a) amended 53228
162.050–4 (b)(1) amended 53228
162.050–5 (a) introductory text and (5) amended 53228
162.050–7 (h)(2) removed; (h)(3) through (6) redesignated as (h)(2) through (5) 53228
167.15–25 (a) amended 53228
167.20–1 (a) amended 53228
167.40–1 (a)(3) amended 53228
169.115 (c)(1) and (5) amended 53228
177.410 (c)(1) amended 53228
181.400 (d) amended 53228
189.60–15 Heading revised; (a) and (b) amended 53228
189.60–20 Removed 53228
189.60–40 (c) amended 53228
193.01–3 (b) amended 53229
197.482 (e) Note amended 53229
199.03 (b)(5) amended 53229
199.05 (b) amended 53229
199.10 (g)(3) and (h)(1)(iv) amended 53229
199.20 (d)(2) amended 53229
199.30 Amended 53229

CHANGES OCTOBER 1, 1999 THROUGH OCTOBER 29, 1999

TITLE 46 Chapter I—Con.

199.175 Table amended; (b)(21)(ii) removed; (b)(21)(i)(D), (E), (F) and (G) redesignated as (b)(21)(ii) introductory text, (A), (B) and (C) 53229
199.200 Amended 53229
199.220 (a)(2) amended 53229
199.260 Amended 53229
199.280 (b) and (e) amended 53229
199.610 (a) table, (b) Note and (c) amended 53229

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

204 Authority citation revised 54782
204.4 (b) amended 54782
204.7 Revised 54783
204.8 Revised 54783

Proposed Rules:

5 53970
15 56720

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Order 54561
0.41 (k) revised 57585
0.251 (f) revised 57585
0.408 Revised (OMB numbers) 55425
0.442 (a) and (b) amended; (d)(1), (3) and (e) revised 55162
0.459 (d)(1) and (g) amended; (i) added 55163
OMB number 56269
0.461 (i) revised 55163
1.923 (i) added; eff. 11–30–99 53238
1.927 (a) revised; eff. 11–30–99 53238
1.928 Added; eff. 11–30–99 53238
1.929 (b)(2), (c)(4)(i), (iii), (v) and (d) revised; eff. 11–30–99 53239
1.939 (b) amended; eff. 11–30–99 53240
1.947 (b) revised; eff. 11–30–99 53240
1.955 (a)(1) and (b)(2) amended; eff. 11–30–99 53240
13.8 Added; eff. 11–30–99 53240
13.10 Added; eff. 11–30–99 53240
20.6 Revised 54574
22.165 (e) amended; eff. 11–30–99 53240
22.529 Introductory text revised; (c) added; eff. 11–30–99 (effective date pending) 53240
22.709 (f) added (effective date pending in part) 53240
22.803 (c) added (effective date pending in part) 53240
22.929 Introductory text revised; (d) added; eff. 11–30–99 (effective date pending) 53241
22.942 Revised 54576
22.946 (a) amended; eff. 11–30–99 53241
22.953 (a)(5) removed; eff. 11–30–99 53241
64 Policy statement 55164
Technical correction 57994
64.703 Regulation at 64 FR 47119 eff. 11–8–99 54577
64.2005 (b)(1) revised; (b)(3) removed; (d) added (effective date pending) 53264
64.2007 (f)(4) removed (effective date pending) 53264
64.2009 (a), (b) and (e) revised (effective date pending) 53264
64.2301—64.2345 (Subpart X) Added 53947
64.2400 Regulation at 64 FR 34497 eff. 11–12–99 55163
Correctly designated 56177
64.2401 Regulation at 64 FR 34497 eff. 11–12–99 55163
Correctly designated 56177
73 Actions on petitions 55434
73.202 (b) table amended ..... 54224, 54225, 54783—54786, 55172—55175, 55435, 56704
73.3513 (c) revised 56978
73.3555 OMB number 54225
73.3564 (a)(2) revised; (a)(3) added 56978
80.59 (c)(2) amended; eff. 11–30–99 53241
87.25 (a) removed; eff. 11–30–99 53241
90.167 Heading revised; eff. 11–30–99 53241
90.693 (b), (c), (d)(1) and (2) amended; eff. 11–30–99 53241
95.5 Revised; eff. 11–30–99 53241
95.7 (a) amended; eff. 11–30–99 53241
95.29 (a) and (b) revised; (e) removed; eff. 11–30–99 53241
95.101 (d) added; eff. 11–30–99 53242
95.103 (a) and (b) revised; eff. 11–30–99 53242

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH OCTOBER 29, 1999

97.15 Revised; eff. 11–30–99 53242
97.17 (b)(1) and (c) revised; eff. 11–30–99 53242
97.21 (a)(2) revised; eff. 11–30–99 53242
101.705 Revised; eff. 11–30–99 53242

Proposed Rules:

0—199 (Ch. I) 55671
54 53648
61 53648
69 53648
73...53655, 54268—54270, 55223, 55452, 55453, 56723, 56724, 56999, 57835—57838
76 54854

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

52.211–6 Regulation at 64 FR 51850 eff. date corrected to 9–24–99 53264

Chapter 2—Department of Defense (Parts 200—299)

201.603–3 Existing text designated as (a); (b) added 56705
209.471 Regulation at 64 FR 31733 confirmed 55632
211.270 Removed 55633
211.270–1 Removed 55633
211.270–2 Removed 55633
213.301 Added 56705
214.202–5 (d) amended 55633
237.7204 Corrected 53447
252.211–7003 Removed 55633

Chapter 3—Department of Health and Human Services (Parts 300—399)

415.207 (b) corrected 54963

Chapter 19—Broadcasting Board of Governors (Parts 1900—1999)

Chapter 19 Nomenclature Change; heading revised 54541

Proposed Rules:

26 57964
28 58282
52 ..... 57964, 58282
204 56724
252 56724
909 55453
970 55453
1804 54270
1812 54270
1825 58031
1852 ..... 54270, 58031
9903 56296

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1 Authority citation revised 56270, 58357
1.4 (d)(5) removed; (d)(6) redesignated as (d)(5) 56270
1.48 (h), (i), (p), (u), (v), (w), (z), (aa), (hh), (ii) and (jj) removed 56270
(e), (f) and (g) removed 58357
1.73 Added 56270
(j) removed; (k) redesignated as (j); (k) through (n) added 58357
71.9 (b) revised 56707

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

172.101 Corrected 54730
192.459 Revised 56981

Chapter III—Office of Motor Carrier Safety, Department of Transportation (Parts 300—399)

Chapter III Heading revised 58356

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

544.5 (a) revised 57396
544 Appendixes A, B and C revised 57396

NOTE: Boldface page numbers indicate 1998 changes.

TITLE 49

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (d), (e)(2), (3) and (f)(7) amended 53266
1002.2 (a)(2) and (iii) amended; (a)(3) revised 53266
1003.1 (c) amended 53266
1007.3 (a) amended 53266
1007.6 (c) amended 53266
1007.8 (d) amended 53266
1007.11 (b) amended 53266
1011.4 (c)(7) removed 53266
1011.7 (c)(3) and (g) amended 53266
1011.8 (a) introductory text, (1), (b)(2) and (c)(10) amended 53266
1012.1 (a) amended 53266
1012.1 (b) amended 53267
1012.2 (a) revised; (b) and (c) amended 53267
1012.3 (a) and (b)(4) amended 53267
1014.170 (c) amended 53267
1017.4 (a) amended 53267
1017.9 (a) introductory text and (6) amended 53267
1018.3 Amended 53267
1018.29 (c) amended 53267
1019.2 (a) amended 53267
1019.6 Amended 53267
1021.3 Amended 53267
1034.1 (a) and (c) amended 53267
1039.10 Table amended 53267
1100.4 Revised 53267
1101.2 (b) amended 53267
1103.3 (d) amended 53267
1104.15 (b) amended 53267
1105.2 Amended 53268
1105.3 Revised 53268
1105.4 (i) and (j) amended 53268
1105.7 (b)(11) amended 53268
1105.10 (a)(1), (3), (b), (d) and (g) amended 53268
1105.11 Appendix amended 53268
1105.12 Appendix amended 53268
1113.19 Amended 53268
1133.2 (a) amended 53268
1139.22 Amended 53268
1139.26 Note amended 53268
1139.20—1139.26 (Subpart B) Appendix I amended 53268
1150.1 (b) amended 53268
1150.10 (g) amended 53268
1150.16 Amended 53268
1150.36 (c) amended 53268
1151.1 Amended 53268
1151.3 (a)(3)(i) amended 53268
1152.12 (b) amended 53268
1152.24 (a) and (c) amended 53268
1152.29 (b)(1)(ii) amended 53268
1177.3 (c) amended 53268
1177.4 (b) amended 53268
1180.4 (b)(1)(ii) amended 53269
1180.6 (a)(8) amended 53269
1180.7 (d) amended 53269
1180.9 (c) amended 53269
1184.1 Amended 53269
1184.2 Amended 53269

Proposed Rules:

25 58568
71 55892
192 56725
195 56725
300—399 (Ch. III) 56478
392 58372
661 54855

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

17.11 (h) table amended 56608
17.12 (h) table amended 56590, 56595,

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.23 Regulation at 64 FR 29727 confirmed 53269
222 Temporary regulations 55858, 55850, 57397
223 Temporary regulations ... 55858, 57397
223.206 (d)(2)(iii)(A) revised; interim 55863
223.207 (c) introductory text amended; interim 55438
223 Figure 6 added; interim 55864
226.205 (b) revised 57403

NOTE: Boldface page numbers indicate 1998 changes.

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600 Fishing restrictions 54786
622 Temporary regulations 57585
622.34 (g)(1) amended 57404
622.37 Heading, introductory text and (d) revised 57404
622.39 (a)(1) amended; (b)(1)(ii), (v) and (2) revised; (b)(1)(vi) and (vii) added 57404
622 Appendix A amended 57404
635 Fishing season notification 53949
Temporary regulations 54577
Quotas 56472
635.69 Regulations at 64 FR 37705 eff. delayed to 6-1-00 55633
648 Quotas 57586
648.1 (a) amended 54742
648.2 Amended 54743, 55825
648.4 (a)(9) amended 54743
(c)(2)(iii)(A) revised 55825
(a)(5)(iii) revised 57593
648.5 (a) amended 54744
(a) and (d) revised 57593
648.6 (a) revised 54744
(a) and (c) revised 57593
648.7 (a)(1)(i) and (3)(i) amended; (b)(1)(i) revised 54744
(c) amended; (f)(3) revised 57593
648.9 (d) revised 54745
648.10 (b) introductory text amended; (b)(1), (c) introductory text, (2) and (5) revised 54745
(b) and (d) revised 55825
648.11 (a) amended; (e) introductory text revised 54745
648.12 Introductory text revised 54745
648.14 (a)(49) and (103) revised; (x)(8) and (y) added 54746
(a)(117), (118) and (c)(31) added; (b), (c)(1), (2) introductory text, (d)(1), (e) and (g)(2) revised 55826
(p)(10) added 57593
648.20 (c) revised 57593
648.21 (b)(2)(i) revised; (e) removed 57593
648.24 Added 57593
648.73 (a)(4) added 57594
648.77 Added 57594
648.80—648.96 (Subpart F) Heading revised 54746
648.80 Heading, (a)(4)(i)(A), (7)(iv)(B), (8)(i), (9)(i)(D) and (b)(3)(ii) revised 54746
(g)(4) added 55826
648.81 Heading revised 54747
648.82 Heading revised 54747
648.83 Heading revised 54747
(a)(1) revised 55827
648.84 (a) revised 54747
648.86 Heading revised 54747
(c) revised; (e) added 55827
648.88 Heading revised 54747
(a)(1), (b), (c) and (d) revised 55827
648.89 (b)(1) and (c) revised 55827
648.90 Heading and (c) revised 54747
(b) introductory text and (1) revised 55827
648.91 Added 54747
648.92 Added 54748
648.93 Added 54748
648.94 Added 54749
648.96 Added 54751
648.106 Revised 57595
648.107 Added 57595
648.127 Added 57595
648.147 Added 57595
660 Fishing restrictions 54786
Inseason adjustments 56177
679 Temporary regulations ..... 53630, 53950, 54225, 54578, 54791, 54792, 55438, 55865, 56271, 56272, 56473—56475, 57595
Notification 54791
Inseason adjustments 55634
Reallocations 56474

Proposed Rules:

17 ..... 53655, 55892, 56297, 57534, 57620
216 ..... 56298, 57010, 57026
227 56297
622 ..... 57436, 57623
648 55688
660 ..... 54272, 55689, 56479
679 ..... 53305, 56481

NOTE: Boldface page numbers indicate 1998 changes.

1999

64 FR Page	
1–383	Jan. 4
385–729	5
731–983	6
985–1096	7
1097–1499	8
1501–1713	11
1715–2114	12
2115–2418	13
2419–2544	14
2545–2797	15
2799–2988	19
2989–3200	20
3201–3391	21
3393–3619	22
3621–3805	25
3807–4027	26
4029–4284	27
4285–4516	28
4517–4776	29
4777–4955	Feb. 1
4957–5148	2
5149–5584	3
5585–5707	4
5709–5925	5
5927–6185	8
6187–6493	9
6495–6777	10
6779–7055	11
7057–7488	12
7489–7770	16
7771–7987	17
7989–8224	18
8225–8498	19
8499–8709	22
8711–9051	23
9053–9262	24
9263–9434	25
9435–9903	26
9905–10099	Mar. 1
10101–10204	2
10205–10386	3
10387–10553	4
10555–10918	5
10919–11372	8
11373–11754	9
11375–12078	10
12079–12237	11
12239–12742	12
12743–12880	15
12881–13062	16
13063–13310	17
13311–13495	18
13497–13661	19
13663–13880	22
13881–14096	23
14097–14354	24
14355–14574	25
14575–14808	26
14809–15121	29
15123–15284	30
15285–15631	31
15633–15914	Apr. 1
15915–16332	2
16333–16599	5
16601–16795	6
16797–17078	7
17079–17270	8
17271–17500	9
17501–17940	12
17941–18322	13
18323–18549	14
18551–18795	15
18797–19016	16
19017–19250	19
19251–19437	20
19439–19684	21
19685–19861	22
19863–20139	23
20141–20538	26
22543–22777	27
22779–23006	28
23007–23163	29
23165–23530	30
23531–23747	May 3
23749–24019	4
24021–24281	5
24283–24499	6
24501–24929	7
24931–25188	10
25189–25417	11
25419–25795	12
25797–26270	13
26271–26651	14
26653–26829	17
26831–27167	18
27169–27443	19
27445–27655	20
27657–27898	21
27899–28087	24
28089–28331	25
28333–28712	26
28713–28881	27
28883–29205	28
29207–29535	June 1
29537–29775	2
29777–29944	3
29945–30211	4
30213–30378	7
30379–30860	8
30861–31104	9
31105–31483	10
31485–31686	11
31687–31962	14
31963–32177	15
32179–32385	16
32387–32793	17
32795–33003	18

33005–33173	21
33175–33366	22
33367–33738	23
33739–34107	24
34109–34509	25
34511–34704	28
34705–34966	29
34967–35558	30
35559–35919	July 1
35921–36235	2
36237–36557	6
36559–36761	7
36763–37031	8
37033–37392	9
37393–37661	12
37663–37831	13
37833–38101	14
38103–38286	15
38287–38534	16
38535–38813	19
38815–38997	20
38999–39392	21
39393–39896	22
39897–40280	23
40281–40503	26
40505–40734	27
40735–41002	28
41003–41263	29
41265–41763	30
41765–41997	Aug. 2
41999–42263	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43597	10
43599–43896	11
43897–44100	12
44101–44395	13
44397–44642	16
44643–44816	17
44817–45147	18
45149–45405	19
45407–45858	20
45859–46110	23
46111–46255	24
46257–46558	25
46559–46812	26
46813–47089	27
47091–47336	30
47337–47647	31
47649–48073	Sept. 1
48075–48241	2
48243–48525	3
48527–48700	7
48701–48931	8
48933–49077	9
49079–49348	10
49349–49637	13
49639–49958	14
49959–50244	15
50245–50415	16
50417–50730	17
50731–51037	20
51039–51186	21
51187–51418	22
51419–51699	23
51671–51884	24
51885–52210	27
52211–52421	28
52423–52625	29
52627–53178	30
53179–53579	Oct. 1
53581–53881	4
53883–54198	5
54199–54497	6
54499–54758	7
54759–55113	8
55115–55403	12
55405–55614	13
55615–55808	14
55809–56129	15
56131–56250	18
56251–56397	19
56399–56667	20
56669–56964	21
56945–57359	22
57361–57547	25
57549–57768	26
57769–57965	27
57967–58322	28
58323–58753	29

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

code of federal regulations

LSA

List of CFR Sections Affected

November 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S. Government Printing Office
ISSN 0097-6326

add.pdf

code of federal regulations

LSA

List of CFR Sections Affected

November 1999

Title 1–16
Changes January 2, 1999
through November 30, 1999

Title 17–27
Changes April 1, 1999
through November 30, 1999

Title 28–41
Changes July 1, 1999
through November 30, 1999

Title 42–50
Changes October 1, 1999
through November 30, 1999

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (63 FR for 1997, 64 FR for 1998) and the page number. Example: 24727 in bold cite as 63 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

ONLINE LSA

The LSA is on the internet at http://www.access.gpo.gov/nara/lsa/aboutlsa.html.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Dwayne Dehlbom. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Gwen Henderson. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of

the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7]Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0–1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441–1.500	(869–038–00082–2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7]Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0–42	(869–038–00098–9)	39.00	July 1, 1999
43–end	(869–038–00099–7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	11.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[5]No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7]No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8]No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

Other Related Publications

Title	*Price*		*Revision Date*
Federal Register:			
Yearly subscription (with FR Index and LSA)	607.00		
Yearly subscription (without FR Index and LSA)	555.00		
Individual copies	8.00		daily
LSA (List of CFR Sections Affected):			
Yearly subscription	27.00		
Federal Register Index:			
Yearly subscription	25.00		
CFR Index and Finding Aids	48.00		1999

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 1, 1999.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT

Chapter II—Executive Office of the President (Parts 100—199)

100.1 Revised 12881

Presidential Documents

Proclamations

4865 *See* Memorandum of Apr. 4, 1999 53883
See Memorandum of Sept. 24, 1999 53883
5030 *See* Proc. 7219 48701
6763 *See* Proc. 7235 55611
7103 *See* Proc. 7202 29773
See Proc. 7214 42265
7162 2989
7163 2991
7164 5583
7165 5585
7166 6181
7167 6777
7168 10101
7169 10381
7170 10383
7171 10385
7172 11373
7173 12879
7174 14353
7175 14807
7176 15123
7177 17075
7178 17077
7179 17499
7180 17939
7181 18317
7182 18321
7183 19017
7184 19439
7185 19681
7186 19683
7187 22777
7188 23005
7189 24275
7190 24277
7191 24279
7192 24281
7193 25189
7194 25191
7195 25797
7196 27437
7197 27439
7198 28083
7199 28709
7200 28711
7201 29769
7202 29773
See Proc. 7214 42265
7203 32379
7204 32381
See Proc. 7214 42265
7205 33737
7206 36229
7207 36549
7208 37389
7209 39895
7210 40723
7211 41001
7212 41003
7213 41005
7214 42265
7215 46813
7216 47091
7217 47093
7218 47337
7219 48701
Corrected 49276, 49844
7220 50417
7221 50731
7222 51183
7223 51185
7224 51415
7225 51417
7226 52625
7227 53877
7228 54193
7229 54195
7230 54197
7231 54755
7232 54757
7233 54759
7234 55405
7235 55611
7236 55613
7237 55615
7238 55617
7239 55619
7240 56393
7241 56397

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 3 Proclamations—Con.

7242 56665
7243 57767
7244 57967
7245 59103
7246 60083
7247 60085
7248 61473
7249 62561
7250 62563
7251 66081
7252 66083
7253 66085
7254 66087
7255 66093

Executive Orders

June 14, 1839 Revoked in part by PLO 7385 19386
July 2, 1910 Revoked in part by PLO 7388 23856
July 12, 1911 Revoked in part by PLO 7400 38212
Mar. 24, 1914 Revoked in part by PLO 7404 41131
Apr. 1, 1915 Revoked in part by PLO 7410 48849
Nov. 14, 1917 Revoked in part by PLO 7391 28211
Mar. 30, 1922 Revoked in part by PLO 7390 28211
5327 Revoked in part by PLO 7411 49235
11145 Amended by EO 13138 53879
11183 Amended by EO 13138 53879
11223 Amended by EO 13118 16595
11269 Amended by EO 13118 16595
11287 Amended by EO 13138 53879
11348 *See* EO 13111 2793
11958 Amended by EO 13118 16595
11987 Revoked by EO 13112 6183
12131 Amended by EO 13138 53879
12163 Amended by EO 13118 16595
12170 *See* Notice of Mar. 10, 1999 12239
See Notice of Nov. 5, 1999 61471
12188 Amended by EO 13118 16595
12196 Amended by EO 13138 53879
12216 Amended by EO 13135 47339
Amended by EO 13138 53879
12260 Amended by EO 13118 16595
12345 Amended by EO 13138 53879
12367 Amended by EO 13138 53879
12382 Amended by EO 13138 53879
12293 Amended by EO 13118 16595
12301 Amended by EO 13118 16595
12372 Supplemented by EO 13132 43255
12473 Amended by EO 13140 55115
12484 *See* EO 13140 55115
12543 *See* Notice of Dec. 30, 1998 383
12544 *See* Notice of Dec. 30, 1998 383
12550 *See* EO 13140 55115
12586 *See* EO 13140 55115
12599 Amended by EO 13118 16595
12612 Revoked by EO 13132 43255
12703 Amended by EO 13118 16595
12708 *See* EO 13140 55115
12722 *See* Notice of July 20, 1999 39897
12724 *See* Notice of July 20, 1999 39897
12757 Amended by 13131 40733
12759 Revoked by EO 13123 30851
12767 *See* EO 13140 55115
12808 *See* Notice of May 27, 1999 29205
12810 *See* Notice of May 27, 1999 29205
12823 *See* EO 13131 40733
12831 *See* Notice of May 27, 1999 29205
12845 Revoked by EO 13123 30851
12846 *See* Notice of May 27, 1999 29205
12852 Amended by EO 13114 10099
Revoked by EO 13138 53879
12865 *See* Notice of Sept. 21, 1999 51419
12866 Supplemented by EO 13132 43255
12871 Amended by EO 13138 53879
12875 Revoked by EO 13132 43255
12876 Amended by EO 13138 53879
12882 Amended by EO 13138 53879
12884 Amended by EO 13118 16595
12888 *See* EO 13140 55115
12900 Amended by EO 13138 53879
12902 Revoked by EO 13123 30851
12905 Amended by EO 13138 53879
12934 *See* Notice of May 27, 1999 29205
See Notice of Aug. 10, 1999 44101
12936 *See* EO 13140 55115
12938 Amended by EO 13128 30851
See Notice of November 10, 1999 61767
12947 *See* Notice of Jan. 20, 1999 3393

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

12957 *See* Notice of Mar. 10, 1999 12239
12958 Amended by EO 13142 66089
12959 *See* Notice of Mar. 10, 1999 12239
12960 *See* EO 13140 55115
12961 Revoked by EO 13138 53879
12975 Amended by EO 13137 50733
12978 *See* Notice of Oct. 19, 1999 56667
12981 Amended by EO 13117 16391
12988 Supplemented by EO 13132 43255
12994 Amended by EO 13138 53879
13010 Revoked in part by EO 13138 53879
13017 Revoked by EO 13138 53879
13021 Amended by EO 13138 53879
13028 *See* EO 13131 40733
13035 Amended by EO 13113 7489
13037 Revoked by EO 13138 53879
13038 Revoked by EO 13138 53879
13047 *See* Notice of May 18, 1999 27443
13050 Revoked by EO 13138 53879
13059 *See* Notice of Mar. 10, 1999 12239
13062 Superseded in part by EO 13138 53879
13067 *See* Notice of Oct. 29, 1999 59105
13069 *See* Notice of Sept. 21, 1999 51419
13078 Revoked by EO 13127 30851
13083 Revoked by EO 13132 43255
13086 *See* EO 13140 55115
13088 Amended by EO 13121 24021
See Notice of May 27, 1999 29205
13090 Amended by EO 13136 48931
13095 Revoked by EO 13132 43255
13096 *See* Proc. 7247 60085
13098 *See* Notice of Sept. 21, 1999 51419
13099 *See* Notice of Jan. 20, 1999 3393
13101 *See* Proc. 7250 62563
13110 2419
13111 2793
13112 6183
13113 7489
13114 10099
13115 15283
Amended by EO 13138 53879
13116 16333
13117 16591
13118 16595
13119 18797
13120 23007
13121 24021
13122 29201
13123 30851
13124 31193
13125 31105
13126 32383
13127 32793
13128 34703
13129 36759
13130 38535
13131 40733
13132 43255
13133 43895
13134 44639
13135 47339
13136 48931
13137 50733
13138 53879
13139 54175
13140 55115
13141 63169
13142 66089

Administrative Orders

Memorandums:

Mar. 23, 1999 14809
Amended by EO 13118 16595
Mar. 31, 1999 17079
Apr. 16, 1999 53883
May 26, 1999 29539
June 10, 1999 32795
July 7, 1999 37393
July 16, 1999 40503
Aug. 17, 1999 47345
Sep. 24, 1999 55809
Oct. 27, 1999 60647

Notices:

Dec. 30, 1998 383
Jan. 20, 1999 3393
Feb. 24, 1999 9903
Mar. 10, 1999 12239
May 18, 1999 27443
May 27, 1999 29205
July 20, 1999 39897
Aug. 10, 1999 44101
Sep. 21, 1999 51419
Oct. 19, 1999 56667
Oct. 29, 1999 59105
Nov. 5, 1999 61471
Nov. 10, 1999 61767

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 3 Administrative Orders—Con.

Presidential Determinations:

No. 96-7 of Dec. 27, 1995 *See* Notice of May 27, 1999 29205
No. 98-35 of Sept. 11, 1998 *See* Presidential Determination No. 99-36 of Sept. 10, 1999 51885
No. 98-39 of Sept. 30, 1998 *See* Presidential Determination No. 99-33 of Aug. 12, 1999 47341
No. 99-9 of Dec. 24, 1998 983
No. 99-10 of Jan. 25, 1999 5925
No. 99-11 of Jan. 28, 1999 6773
No. 99-12 of Feb. 3, 1999 6779
No. 99-13 of Feb. 4, 1999 6781
See Presidential Determination No. 2000-5 of Oct. 29, 1999 60651
No. 99-14 of Feb. 16, 1999 9263
No. 99-15 of Feb. 26, 1999 11319
No. 99-16 of Mar. 4, 1999 13495
No. 99-18 of Mar. 25, 1999 16337
No. 99-19 of Mar. 31, 1999 17081
No. 99-20 of Mar. 31, 1999 17083
No. 99-21 of Apr. 8, 1999 18551
No. 99-22 of Apr. 29, 1999 24501
No. 99-23 of May 18, 1999 28085
No. 99-24 of May 18, 1999 28087
No. 99-25 of May 24, 1999 29537
No. 99-26 of June 3, 1999 31109
No. 99-27 of June 3, 1999 31111
No. 99-28 of June 3, 1999 31113
No. 99-29 of June 17, 1999 33739
No. 99-30 of June 23, 1999 35921
No. 99-31 of June 30, 1999 37033
Corrected 38075
No. 99-32 of July 1, 1999 37035
Corrected 38075
No. 99-33 of Aug. 12, 1999 47341
No. 99-34 of Aug. 13, 1999 47343
No. 99-35 of Aug. 17, 1999 47347
No. 99-36 of Sept. 10, 1999 51885
No. 99-38 of Sept. 21, 1999 53573
No. 99-39 of Sept. 21, 1999 53575
No. 99-40 of Sept. 21, 1999 53577
No. 99-41 of Sept. 22, 1999 53579
No. 99-42 of Sept. 29, 1999 54499
No. 99-43 of Sept. 30, 1999 54501
No. 99-44 of Sept. 30, 1999 54503
No. 99-45 of Sept. 30, 1999 54505
No. 2000-2 of Oct. 21, 1999 58755
No. 2000-3 of Oct. 25, 1999 58757
No. 2000-4 of Oct. 27, 1999 60649
No. 2000-5 of Oct. 29, 1999 60651
No. 2000-7 of Nov. 10, 1999 65653

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office (Parts 1—99)

27.1 Revised; interim 15125
28.3 Amended; interim 15125

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

300.705 (a) revised 28713
316.201 (b) revised 15286
330 Authority citation revised 24504, 40508
330.301 (b) revised; interim 40508
330.401—330.407 (Subpart D) Revised; interim 40506
330.603 Revised; interim 40509
330.605 (b) and (c)(1) revised; interim 40509
330.606 (d)(27) revised; (d)(29) and (30) added; interim 40509
330.607 (b) revised; interim 40509
330.702 Revised; interim 40509
330.703 (b)(3) revised; interim 40509
330.705 (a)(3) and (c)(8) revised; (c)(17) through (20) added; interim 40509
330.1201—330.1204 (Subpart L) Added 24504
351.503 Revised 16800
(c)(3) and (e) correctly revised 23531
351.505 Revised 16800
353.103 (a) amended 31487
353.106 (c) introductory text amended; (c)(1), (2) and (3) added 31487
353.110 (a)(1)(iii) revised; (a)(2) amended 31487
353.203 (a)(4)(ii) revised 31487
353.208 Amended 31487
353.210 Revised 31487
353.211 (b) amended 31487
531.304 (d) revised 36771
531.606 (d) revised 36771
531.703 (c) revised 36771
532.279 Regulation at 62 FR 67258 confirmed 33175
532.201—532.285 (Subpart B) Regulation at 61 FR 47661 confirmed 9905

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

Regulations at 61 FR 49649 and 62 FR 66973 confirmed 9906
Regulation at 62 FR 51759 confirmed 17941
Regulation at 63 FR 6471 confrimed 17942
Appendix A amended; interim 23532
Regulation at 62 FR 28978 confirmed 33176
Regulation at 64 FR 23532 confirmed 53179
Appendix C amended 53180
Appendixes A and C amended; interim 60088
Appendix D amended; interim 61769
532.501—532.513 (Subpart E) Appendix A amended 15916
550.101—550.187 (Subpart A) Authority citation revised 4519
550.103 Amended; interim 4519
550.111 (f) revised; (h) added; interim 4520
550.181 Revised; interim 4520
550.182 (b) through (f) redesignated as (c) through (g); new (b) added; (a) and new (d) revised; interim 4520
550.184 (e) revised; interim 4520
550.185 (a) revised; interim 4521
550.186 (b) revised; interim 4521
(c) removed; (d) redesignated as (c) 36771
550.901—550.907 (Subpart I) Appendix A amended 1502
550.1201—550.1207 (Subpart L) Added 36771
591.210 (c)(1) amended 36775
630.308 (a) revised 46258
630.310 Added 46259
831 Authority citation revised 15287, 53582
831.108 Removed; interim 53582
831.114 (b)(4) and (c)(2)(iii) revised; interim 53582
831.201 (g)(3), (4) and (5) redesignated as (g)(4), (5) and (6); new (g)(3) and (i) added; new (g)(5) revised; interim 15288
837.101 (a)(2) revised; interim 15288
837.102 Amended; interim 15288
842 Authority citation revised 15288, 53582
842.104 (g) added; interim 15289
842.107 (c) revised; interim 15289
842.108 Added; interim 15289
842.205 Removed; interim 53582
842.213 (b)(4) and (c)(2)(iii) revised; interim 53582
846 Authority citation revised 15289
846.201 (d)(1) revised; interim 15289
870 Authority citation revised 15289, 16602, 22544
870.101 Amended; interim 16602
Regulation at 64 FR 16602 confirmed 54761
870.302 (a)(3) revised; interim 15289
870.401 (b)(1) and (d) revised; interim 22544
870.402 (d)(1) table and (e)(1) table, (f)(1) and (g) revised; interim 22544
870.506 (e)(2) amended; interim 16602
Regulation at 64 FR 16602 confirmed 54761
870.801 (a) introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added; interim 16602
Regulation at 64 FR 16602 confirmed 54761
870.802 (a) amended; (i) added; interim 16602
Regulation at 64 FR 16602 confirmed 54761
870.901 (i) added; interim 16602
Regulation at 64 FR 16602 confirmed 54761
890 Authority citation revised 15289, 31487, 36238
890.102 (c)(8) revised; interim 15289
890.303 (i) revised 31487
890.304 (a)(1)(vi), (vii) and (viii) revised 31487
890.305 (a) revised 31488
890.501 Regulation at 63 FR 45934 confirmed 15633
(e), (f) and (g) revised 31488
890.502 (f) revised 31488
890.1301—890.1308 (Subpart M) Added; interim 36238
950.102 Regulation at 64 FR 65637 confirmed 27169

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1200.10 (a)(9) and (b)(9) removed; (a)(10) and (b)(10) redesignated as (a)(9) and (b)(9); (b)(8) revised 15916
1201.22 (b)(1) revised 27899

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 5 Chapter II—Con.

(b)(2) revised 54508
1201.111 (c)(1) designation and (2) added 27900
1201.115 (b) and (c) revised 27900
1204 Revised 51039
1205 Revised 51043

Chapter III—Office of Management and Budget (Parts 1300—1399)

1315 Added 52586

Chapter IV—Advisory Committee on Federal Pay (Parts 1400—1499)

Chapter IV Removed 49639

Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600--1699)

1620 Revised 31057
1650.15 (c) and (d) added 31062
1651.1 Amended 31062
1651.2 (c) added 31062
1690.2 Added 31052

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

2411.8 Revised 18799
2430 Authority citation revised 30861
2430.4 (a) amended 30861

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2604.103 Amended 28090
2604.201—2604.202 (Subpart B) Heading revised 28090
2604.201 Heading revised; (a)(1) designation and (2) added; new (a)(1), (b) and (c) amended; (b)(4) redesignated as (b)(5); new (b)(4) and (d) added 28090
2604.202 (a) amended 28090
2604.301 (a) amended; (e) added 28090
2604.302 (b) heading and (c) revised; (b) amended 28090
2604.303 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added 28091
2604.305 (a)(1) designation and (2) added; new (a)(1) amended 28091
2604.402 (b) amended 28091
2604.501 (b)(1)(i) and (3) amended 28091
2604.601—2604.602 (Subpart F) Revised 28091
2634 Authority citation revised 47096
2634.101 Revised 47096
2634.304 (f)(3)(iii) amended 2422
(f)(1) introductory text, (i), (2) and (3) revised; (f)(1)(ii) Example added 49640
2634.701 (b) amended 47096
2634.702 (a) and (b) amended 47097
2634.703 Amended 47097
2634.904 (b) amended 2422
2635.207 (b)(7) note amended 2422
2635.601 Amended 13064
2635.602 Introductory text and note amended 13064
2635.603 (d) revised 13064
2635.604 (a) amended 13064
2635.605 (a) and (b) amended 13064
2635.606 (a) amended 13064
2635.902 (o) and (z) amended; (q) revised 2422
2636 Authority citation revised 47097
2636.104 (a) revised 47097
2636.303 (a) introductory text revised; (a)(4) amended 2422
2641 Appendix B amended 5710

Proposed Rules:

177 33226
300 14842
317 41334
532 ..... 20221, 33427, 61793
630 31735
731 4336
831 33429
841 33429
1201 58798
1204 35952
1205 35957
1620 13924
1630 50012
1650 13725
1651 6818
2430 66589
2634 25849

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 6—[RESERVED]

There is no regulatory text to this title.

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.1—1.23 (Subpart A) Authority citation revised....3395
1.20 Revised....33372
1.1—1.23 (Subpart A) Appendix A amended....3395
2.20 (a)(1)(vii) added....32797
(a)(1)(viii) added....34967
2.21 (a)(9) removed; (a)(10) redesignated as (a)(9)....40735
2.29 (a)(11) added....40735
2.60 (a)(47) and (b)(7) added....34967
2.67 (a)(11), (12) and (13) removed; (a)(14) redesignated as (a)(11)....40736
2.73 Added....40736
3.10 Amended....11755
6.20—6.36 (Subpart) Appendixes 1, 2 and 3 revised....17502
11 Revised....33373
Heading correctly revised....43043
15.50—15.52 (Subpart B) Removed....66709
15d Added....66709

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.909 (b) revised....28884
28.911 (a) amended....28884
29.81 (a) revised; interim....51888
37 Added....30867
47 Authority citation revised....38105
Nomenclature change....38108
47.2 (j)(2) removed; (j)(1) redesignated as (j); (e), (g), (h), (i), (s) and (t) revised....38105
47.3 (a)(2) introductory text and (vii) amended; (a)(2)(iv) revised; (a)(4) added; (c) removed....38106
47.4 Heading, (b)(1), (3), (c)(1) and (d)(1) revised....38106
47.6 (a) and (c) revised....38106
47.8 (a) amended....38106
47.9 (b) and (c) revised....38106
47.11 (c) introductory text, (4), (9), (10) and (13) revised....38106
47.12 Introductory text revised....38107
47.15 (a)(1), (2), (b) and (d)(1) revised....38107
47.16 (a) introductory text and (b)(1) revised....38107
47.17 (a) amended....38107
47.19 (d)(1), (4), (5) and (6) revised....38107
47.20 Heading, (b)(1), (2) and (h) introductory text revised; (a) amended....38107
47.21 Revised....38108
47.24 Heading and (a) revised; (d) added....38108
47.25 Heading and (d) revised; (e) removed; (f) redesignated as (e)....38108
51.882 (i)(1)(ii) amended....14576
51.884 (i)(1)(i) amended....14576
51.885 (h)(1)(i) amended....14576
51.888 (a)(2) amended....14577
56.1 Amended; interim....56947
56.35 (d) added; interim....56947
56.46 Revised....51672
56.52 (a)(4) revised....51672
56.54 (a)(2) revised....51672
56.76 (c)(1), (f) heading, (1) and (3) revised; interim....56947
57.1—57.970 Designated as Subpart A; heading added....40738
57.760 Reinstated in part; CFR correction....47349
57.1000 (Subpart B) Added....40738
59 Technical correction....3340
70.71 Revised....51673
70.76 (a)(2) revised....51673
70.77 (a)(4) and (5) revised....51673

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

210.2 Amended; Note removed....50740
210.8 (c)(1) amended....50740
210.9 (b) heading revised; (b) introductory text amended....50740
210.10 (m)(2)(iii)(C) table added; (n)(3)(iv) redesignated as (n)(4); (l)(1), (m)(1)(i), (2), (i), (ii)(A), (n)(3)(i), (ii), (iii) and new (4) amended;

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 7 Chapter II—Con.

(m)(2)(iii)(A) and new (n)(4) table revised; interim.....61773
210.10a (h)(3)(iii) table added; (j)(4) designation added; (a)(1), (d)(1), (h) introductory text, (1), (2)(i), (3)(i), (j)(3)(i), (ii), (iii) and new (4) amended; new (j)(4) table revised; interim.....61773
210.13 (b) redesignated as (c); new (b) added.....50740
210.18 (a), (i)(3)(i)(B) concluding text, (j), (q) and (r) amended.....50740
210.18a Removed.....50741
210.19 (a)(6) and (c)(2)(ii) amended; (b) revised.....50741
210.20 (a)(7) and (b)(11) amended.....50741
210.21 (d) added.....50741
210.23 (b) amended.....50741
210.26 Amended.....50741
210.27 Amended.....50741
210.28 Removed; new 210.28 redesignated from 210.29.....50741
210.29 Redesignated as 210.28; new 210.29 redesignated from 210.30.....50741
210.30 Redesignated as 210.29; new 210.30 redesignated from 210.31.....50741
210.31 Redesignated as 210.30; new 210.31 redesignated from 210.32.....50741
210.32 Redesignated as 210.31.....50741
215.2 (e–1) amended; (x–1) and (y) revised; (x–2) redesignated as (x–5); (x–2), (x–3) and (x–4) added; (x–1) Note removed.....50741
215.6 (b) amended.....50741
215.7 (b) introductory text and (d) introductory text amended.....50741
215.10 (b) amended.....50742
215.13 (a), (b) and (c) removed; (d) and (e) redesignated as (c) and (d); new (a) and new (b) added.....50742
215 Appendix removed.....50742
220.2 (c) and (u) amended; (x–1) and (y) revised; (x–2), (x–3) and (x–4) added.....50742
(k) and (n) amended; interim.....61774
220.6 (b)(1) amended.....50742
220.7 (a–2) added; (e) introductory text amended.....50742
220.8 (i) introductory text, (1), (2) and (3) amended; (i)(3) table added interim.....61774
220.8a (b) introductory text, (1), (2) and (3) amended; (b)(3) table added; interim.....61775
220.11 (b) amended.....50742
220.13 (k) removed.....50742
(k) reinstated; (l) correctly removed.....55407
220.15 (a) through (d) removed; (e) and (f) redesignated as (c) and (d); new (a) and new (b) added.....50742
220.16 (d) added.....50743
220.17 (a) amended.....50743
226.2 Amended; interim.....61775
226.20 (b) introductory text, (1), (2), (3)(i), (ii) and (iii) amended; (b)(4) table revised; interim.....61775
235.2 (o), (q–1) and (r) revised; (q–2), (q–3) and (q–4) added.....50743
235.4 (b) amended; (h) added.....50743
235.5 (a), introductory text and (d) amended; (b) and (c) revised.....50743
235.6 (a), (a–2) and (g)(1) amended.....50744
235.11 (b)(2) amended.....50744
235.12 Revised.....50744
245.5 (a) introductory text and (1)(x) amended.....50744
245.6a (d) amended.....50744
245.10 (a) introductory text and (c) amended; (a)(2) revised.....50744
245.11 (a)(1) amended.....50744
245.12 (a)(1) amended.....50744
245.13 Removed; new 245.13 redesignated from 245.14.....50744
245.14 Redesignated as 245.13.....50744
246.2 Amended.....13322, 56674
246.4 (a)(14)(v) through (x) redesignated as (a)(14)(vi) through (xi); new (a)(14)(v) added.....13322
246.12 (f)(2)(xviii), (3) and (k) revised; (f)(2)(xix) and (xx) redesignated as (f)(2)(xxiii) and (xxiv); new (f)(2)(xix), new (xx), (xxi) and (xxii) added.....13322
246.15 (b) amended.....13324
246.16 (c)(2)(iii) and (iv) redesignated as (c)(2)(iv) and (v); new (c)(2)(iii) added; (c)(2)(i),

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

(ii), new (iv), (3)(i) heading, (ii), (iii) heading and (A) revised; new (c)(2)(v), (3)(i)(A) and (e)(2)(i) amended 56674
(d) introductory text amended; eff. 1–24–00 61016
246.18 (a)(1) and (b)(1) revised; (a)(3) amended 13324
248.2 Amended 48076
248.4 (a)(19) revised 48076
248.5 Revised 48076
248.14 (a)(1)(i) and (e) revised 48076
254 Effective date confirmation 17085
254.5 (b) amended 1098
271 Authority citation revised 38293
271.1 (g)(155) added 38294
271.2 Amended 23171, 38293
272 Authority citation revised 38293
272.1 (g)(156) added; interim 48255
(g)(154) added; interim 48937
273 Authority citation revised 38293
273.7 (d)(1)(i) revised; (d)(1)(ii), (iii) and (iv) redesignated as (d)(1)(v), (vi) and (vii); (c)(4)(ii), new (d)(1)(v) and (3) amended; (c)(6)(vi), (vii), (d)(1)(ii), (iii) and (iv) added; interim 48255
273.13 (a)(3)(vii) added; interim 48937
273.15 (k)(1) amended; interim 48938
273.24 Added; interim 48257
274 Authority citation revised 38293
274.12 (f)(4) and (l)(1)(iii) revised; (f)(7)(iii) amended; (f)(10)(viii) added; interim 48938
275 Authority citation revised 38293
275.3 (c)(1)(i) introductory text, (3)(i) introductory text and table revised; (c)(1)(i) table removed; (c)(1)(i)(A), (B) and (C) redesignated as (c)(1)(i)(C), (D) and (E); new (c)(1)(i)(A) and B) added; (c) introductory text, new (C), (3)(i)(A) introductory text and (ii) amended 38294
275.10 (a) amended 38294
275.11 (a)(2)(iii) removed; (a)(2)(iv) redesignated as (a)(2)(iii); new (a)(2)(iv) added; (a)(3), (b)(1)(ii) table, (iii) table, (2), (3), (e)(2), (f)(2) introductory text and (iv) revised; (b)(1)(ii), (iii), (iv) and (c)(1) amended; (f)(2)(v) and (ix) added 38295
275.12 (c)(1) introductory text revised; (f)(2) amended; (g)(2) introductory text revised 38296
275.13 (a) and (e)(2) revised; (b), (c)(1), (2) and (f) amended; (e)(1) heading added 38296
275.23 (c)(4), (e)(6)(i) and (8)(iii) amended; (e)(6)(iii) and (9) revised 38297
276 Authority citation revised 38293
277 Authority citation revised 38293
278 Authority citation revised 38293
278.1 (o) removed; (k)(2) amended; (k)(2), (l)(1)(iii), (iv), (v) and (p) through (t) redesignated as (k)(7), (l)(1)(v), (vi), (vii) and (o) through (s); (a), (b)(3), (j), new (l)(1)(vi), (m) introductory text and new (o) revised; new (k)(2), (3) through (6), new (l)(1)(iii) and new (iv) added; new (q) amended 23171
278.6 (a) and (n) revised; (b)(1), (2)(i), (c) and (i)(1)(v) amended; (e)(1)(iii), (3)(vi) and (8) added 23172
278.8 (a) revised 23174
279 Authority citation revised 38293
279.3 (a)(2) revised 23174
279.7 (a) amended 23174
279.10 (a) amended; (d) revised 23174
280 Authority citation revised 38293
281 Authority citation revised 38293
282 Authority citation revised 38293
283 Authority citation revised 38293
285 Authority citation revised 38293

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

300 Effective date confirmation 49079
300.1 (a) introductory text revised 37665
301 Effective date confirmation 49079
301.45 Regulation at 63 FR 38280 confirmed 4286
301.45–3 Regulation at 63 FR 38280 confirmed 4286
(a) amended; interim 40510

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 7 Chapter III—Con.

301.50–3 (c) amended; (d) removed; interim 387
Regulation at 64 FR 387 confirmed 15918
301.51–3 (c) amended; interim 28715
Regulation at 63 FR 63387 confirmed 29208
Regulation at 64 FR 28715 confirmed 56949
301.64 (a) amended; interim 40282
301.64–3 (c) amended 31965
(c) amended; interim 40282, 52212
301.64–10 (e) amended 37665
301.75–1 Regulation at 61 FR 1521 confirmed 38815
301.75–4 (a) revised; interim 4780
Regulations at 61 FR 1521 and 64 FR 4780 confirmed 38815
301.75–7 (b) revised; interim 60091
301.78–3 (c) amended; interim 30214, 45860
(c) revised; interim 48246
Regulation at 64 FR 48246 confirmed 63171
301.81–3 (e) amended; interim 27658, 60334
301.81—301.81–10 (Subpart) Appendix amended; interim 27659
Appendix amended 57970
Appendix amended; interim 60334
301.89–1 Amended 23752
301.89–3 (e) and (f) revised 23752
301.89–4 Revised 23754
301.89–6 (b) amended; (d) removed; (e) redesignated as (d) 23754
301.89–9 (a) table amended 29550
301.89–12 (b) removed 23754
301.89–13 (f) removed 23754
301.89–15 Heading, introductory text, (a) introductory text, (b) and (c) introductory text revised; (c)(2) amended 34113
301.89–16 Heading, introductory text, (a), (b), (c)(1) and (2) amended 34113
301.93–3 (c) revised 31964
(c) amended; interim 52214, 55812
319.37–5 (p) added; interim 45866
319.37–8 (e) introductory text, (2)(ii), (vii) and (viii) amended; (e)(2)(ix) and (x) added 66716
319.40–2 (f) added; interim 45866
319.40–5 (g)(1), (2)(i), (6) and (i) amended 59604
319.40–7 (f) introductory text amended 59604
319.56–2 (h) revised 2994
319.74–1—319.74–4 (Subpart) Revised 38110
319.77–1—319.77–5 (Subpart) Added; interim 45866
353.1 Amended 1105
353.7 (a)(4), (b)(4) and (c)(4) amended 1105
353.8 Added 1105
354.2 Table amended 25800
354.3 (b)(1) table, (c)(1) table, (d)(1) table, (e)(1) table and (f)(1) table revised; (c)(3)(i) amended 62096
360.200 (a) and (c) amended 12883
360.300 (a) through (d) redesignated as (b) through (e); new (a) added; heading, new (b) and new (e) revised; interim 41009
361.6 (a)(1) amended 12884

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

400.650—400.657 (Subpart T) Regulation at 63 FR 40633 confirmed 40742
400.651 Regulation at 63 FR 40633 confirmed; amended 40742
400.653 Introductory text and (a) amended 40742
400.654 (b) and (c)(4) amended 40742
400.655 Regulation at 63 FR 40634 confirmed 40742
400.677 Regulation at 63 FR 40631 confirmed 40740
400.700—400.711 (Subpart V) Added 38542
400.765—400.768 (Subpart A) Regulation at 64 FR 70313 confirmed 50246
400.765 (b) revised 50246
400.767 (a)(1) amended 50246
402 Regulation at 63 FR 40631 confirmed 40740
402.4 Regulation at 63 FR 40631 confirmed; amended 40740
407 Added 30219
457.8 Regulation at 63 FR 40634 confirmed; amended 40742
457.134 Amended 33378
457.135 Amended; introductory text revised 33385

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

457.138 Amended; introductory text revised 24932
Amended 24933

Chapter VI—Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

610 Authority citation revised 42003
610.2 Revised 42003
610.21—610.25 (Subpart C) Added 42003

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723.111 (g) added 66718
723.113 (f) added 15295
723.114 (f) added 15295
723.115 (f) added 15295
723.116 (f) added 15295
723.117 (f) added 15295
729.216 (c) revised 48942
735.16 (a)(5), (9), (b) and (e) revised 54510
735.19 Revised 54510
735.21 Revised 54510
735.31 Revised 54510
735.32 (b) revised; (c) amended 54510
735.33 Revised 54510
735.38 (a) revised 54511
735.40 (b)(3) revised 54511
735.44 Revised 54511
735.47 Revised 54511
735.49 Revised 54511
735.77 Revised 54511
735.101 (b) removed; (c) through (p) redesignated as (b) through (o) 54511
735.102 (d)(4) and (f) revised 54511
759 Redesignated from 761; interim 62565
760.1—760.34 (Subpart) Authority citation revised 17942, 66096
761 Added; interim 6496
Redesignated as 759; interim 62565
Added 62567
761.4 Amended; interim 47099
761.5 Amended; interim 47099
761.6 Revised; interim 47099
762 Added 7378
762.106 (g)(2)(ix) correctly revised 38298
762.122 (a)(1), (4) and (c)(1) correctly revised 38298
762.127 (d) introductory text amended 62568
762.145 (e)(7) corrected 38298
762.150 (e)(2) correctly revised; (g)(4) and (7) corrected 38298
762.160 (a)(2)(ii) correctly revised 38298
782.2 Amended 12885
782.12 (a) introductory text revised; (a)(6) through (9) redesignated as (a)(8) through (11); new (a)(6) and (7) added 12885

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.71 (a) amended 6783
Regulation at 63 FR 35504 confirmed 19022
800.86 (c)(2) Table 4 revised 6783
801.6 Regulation at 63 FR 34554 confirmed 731
801.7 Regulation at 63 FR 35505 confirmed 19022
868.91 Revised 7058

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.153 (d) and (e) revised; (f) added; interim 51892
905.306 Regulation at 63 FR 62922 confirmed 15636
(a) Table I amended; interim; eff. 11-8-99 through 11-12-00 58762
905.350 Regulation at 63 FR 51518 confirmed 3814
Revised; interim 50425
Regulation at 64 FR 50425 confirmed 63166
906.235 Revised 45409
906.340—906.365 (Subpart) Heading revised; interim 47357
906.340 (a)(2)(i) and (ii) revised; interim 47357
906.365 (a)(2) and (4) revised 47358

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 7 Chapter IX—Con.

915.235 Revised 26273
915.332 Table I amended 53185
916.350 (a)(3), (4)(i), (ii), (iv) Tables 1 and 2, (8)(i) and (d) revised 19031
916.356 (a)(1) introductory text, (iv) Table 1, (4) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed 19031
917.442 (a)(3), (4)(ii), (iv) Tables 1 and 2, (9)(i) and (d) revised 19033
917.459 (a)(1) introductory text, (iv) Table 1, (3) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed; (a)(4) introductory text added 19033
920.155 Stayed; eff. 8-1-99 through 7-31-00 41018
920.302 (a)(2), (4)(ii) and (iv) revised; (b)(2) removed; (b)(1) redesignated as (b) 41019
(a)(4)(iii) stayed; eff. 8-1-99 through 7-31-00 41019
920.303 (c)(3), (5) and (d) revised 41019
923.322 (e)(1) revised; interim 33743
Regulation at 64 FR 33743 confirmed 49352
Corrected 53885
924.236 Revised 49079
925.304 Regulation at 63 FR 28480 confirmed 37838
928.226 Revised 59606
929.69 (d) amended; interim 24025
Regulation at 64 FR 24025 confirmed 34707
930 Marketing percentages 392
930.158 (b)(2) and (3) revised; interim 30232
Regulation at 64 FR 30232 confirmed 50748
930.159 (a) revised; (f) removed; (d) and (e) redesignated as (e) and (f); new (d) added; interim 9268
Regulation at 64 FR 9268 confirmed; (a) and (d) revised 33009
930.200 Revised; interim 40513
Regulation at 64 FR 40513 confirmed 58325
931.231 Revised 52216
932.159 Revised; interim 4288
Regulation at 64 FR 4288 confirmed 23011
932.160 Removed; interim 4288
Regulation at 64 FR 4288 confirmed 23011
932.230 Revised 14813
944.31 Table 1 amended 53186
944.106 Regulation at 63 FR 62923 confirmed 15636
(a) table amended; interim; eff. 11-8-99 through 11-12-00 58762
944.503 Regulation at 63 FR 28480 confirmed 37838
947.120 Suspended; interim; eff. 7-1-99 through 6-30-00 34117
Regulation at 64 FR 34117 confirmed 49355
947.123 Suspended; interim; eff. 7-1-99 through 6-30-00 34117
Regulation at 64 FR 34117 confirmed 49355
947.125 Added; interim; eff. 7-1-99 through 6-30-99 34117
Regulation at 64 FR 34117 confirmed 49355
947.130 Suspended; interim; eff. 7-1-99 through 6-30-00 34117
Regulation at 64 FR 34117 confirmed 49355
947.132 Suspended; interim; eff. 7-1-99 through 6-30-00 34117
Regulation at 64 FR 34117 confirmed 49355
947.133 Suspended; interim; eff. 7-1-99 through 6-30-00 34117
Regulation at 64 FR 34117 confirmed 49355
947.134 Suspended; interim; eff. 7-1-99 through 6-30-00 34117
Regulation at 64 FR 34117 confirmed 49355
947.180 Undesignated center heading added; interim; eff. 7-1-99 through 6-30-99 34117
Regulation at 64 FR 34117 confirmed 49355
947.340 Suspended; interim; eff. 7-1-99 through 6-30-00 34117
Regulation at 64 FR 34117 confirmed 49355
948.215 Revised 49081
955.101—955.209 (Subpart) Heading added; interim 48245
955.113 Added; interim 48245
955.209 Regulation at 63 FR 51271 confirmed 52219

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

956.15 Added 4933
956.16 Added 4933
956.20 (a) amended 4933
956.60 Added 4933
956.62 Revised 4933
956.64 Revised 4934
956.70 Undesignated center heading and section added 4934
966.234 Revised; interim 57363
966.323 (d)(1) amended 45413
979.180 Amended 23759
Regulation at 64 FR 23759 confirmed 41023
979.304 Amended; (b)(4), (c)(4) and (e)(3) revised; (e)(4) removed; (e)(5) redesignated as (e)(4) 23759
Regulation at 64 FR 23759 confirmed 41023
981.240 Added; eff. 12-2-99 through 7-31-00 59113
981.441 (a) and (e)(6)(ii) amended; (b), (e)(3), (4)(ii) and (iv) revised 41028
(e)(4) introductory text and (iv) revised; (e)(4)(v) added; interim 58766
981.472 (a) revised 18802
982 Marketing percentages 2425
982.246 Regulation at 64 FR 2425 confirmed 23013
984.347 Revised; interim 56133
984.476 Added 58327
985 Marketing percentages 2802
989 Marketing percentages 10922
989.154—989.156 Undesignated center heading revised 43902
989.154 Revised 43902
989.157—989.160 Undesignated center heading added 43902
989.212 Regulation at 63 FR 56785 confirmed 2428
989.213 Regulation at 63 FR 56785 confirmed 2428
989.252 Marketing percentages 30236
989.347 Revised; interim 9056
Regulation at 64 FR 9056 confirmed 25422
993 Undersized regulation 23763
993.347 Revised 3623
Revised 50428
997.30 Table amended; interim 56135
998.200 Table amended; interim 56135
999.600 Table amended; interim 56135

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1000 Revised 47899
Regulation at 64 FR 47899 eff. date delayed 53885
1001 Revised 47954
Regulation at 64 FR 47954 eff. date delayed 53885
Statutory amendment 61776
1002 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
1004 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
1005 Revised 47960
Regulation at 64 FR 47960 eff. date delayed 53885
Statutory amendment 61776
1006 Revised 47966
Regulation at 64 FR 47966 eff. date delayed 53885
Statutory amendment 61776
1007 Revised 47971
Regulation at 64 FR 47971 eff. date delayed 53885
Statutory amendment 61776
1012 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
1013 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
1030 Revised 47978
Regulation at 64 FR 47978 eff. date delayed 53885
Statutory amendment 61776
1032 Revised 47985
Regulation at 64 FR 47985 eff. date delayed 53885
Statutory amendment 61776
1033 Revised 47991
Regulation at 64 FR 47991 eff. date delayed 53885
Statutory amendment 61776
1036 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 7 Chapter X—Con.

Statutory amendment....61776
1040 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1044 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1046 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1049 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1050 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1064 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1065 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1065.2 (a) suspended in part....4959
1068 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1076 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1079 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1079.7 (b) corrected; CFR correction....19034
(b) introductory text amended....25194
1106 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1106.6 Suspended in part; eff. 9–1–99 through 8–31–00....48083
1106.7 (b)(1) suspended in part; eff. 9–1–99 through 8–31–00....48083
1106.13 (d)(1) suspended; eff. 9–1–99 through 8–31–00....48083
1124 Revised....47998
Regulation at 64 FR 47998 eff. date delayed....53885
Statutory amendment....61776
1126 Revised....48004
Regulation at 64 FR 48004 eff. date delayed....53885
Statutory amendment....61776
1126.7 (d) introductory text and (e) introductory text stayed in part....61201
1126.13 (e)(1) and (3) stayed in part; (e)(2) stayed....61201
1131 Revised....48010
Regulation at 64 FR 48010 eff. date delayed....53885
Statutory amendment....61776
1131.7 (c) stayed in part; eff. 9–21–99 through 9–30–99....50749
(c) stayed in part....61204
1134 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1135 Revised....48015
Regulation at 64 FR 48015 eff. date delayed....53885
Statutory amendment....61776
1137 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1137.12 (a)(1) stayed in part....61201
1138 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776
1138.7 (a)(1) and (c) introductory text stayed in part....61204
1138.13 (d)(1), (2) and (5) stayed in part....61204
1139 Removed....47899
Regulation at 64 FR 47899 eff. date delayed....53885
Statutory amendment....61776

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.510 (b)(2) and (3)(ii) table revised....30238
1216 Added....20105

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

1216.1—1216.88 (Subpart A) Added 41256
1220 Referendum request 49349
1220.10—1220.46 (Subpart F) Added 45416
1230.110 (b) revised 44644
1260.141 (a) revised 3815

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1301.13 (e) revised 34514
1307.4 Redesignated as 1307.5; new 1307.4 added 23538
1307.5 Redesignated from 1307.4 23538
1308.1 Introductory text revised 23538
1308.2 Added 23538
1361.11 (a) and (b) revised; interim 18324
1381.4 (a) revised; interim 11756

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1430.500—1430.509 (Subpart D) Added 24934
1434 Added 10924
1437 Heading revised; interim 17272
1437.2 (f) and (g) revised; (h) added; interim 17272
1437.3 Amended; interim 17272
1437.4 (a) revised; interim 17272
1439 Authority citation revised 13498, 47360, 58768
1439.1—1439.12 (Subpart) Revised 13498
1439.101—1439.104 (Subpart) Removed 13499
1439.101—1439.108 (Subpart) Added 13500
1439.101 (c) amended; interim 47360
1439.201—1439.202 (Subpart) Removed 13499
1439.201—1439.209 Added; interim 47360
1439.301—1439.302 (Subpart) Removed 13499
Added; interim 58768
1439.401—1439.403 (Subpart) Removed 13499
1439.501—1439.504 (Subpart) Removed 13499
1439.601—1439.602 (Subpart) Removed 13499
1439.701—1439.702 (Subpart) Removed 13499
1439.800—1439.810 (Subpart) Removed 13499
1446.310 (c) added 48942
1446.311 (c) added 48942
1464.12 (g) added 66718
1464.13 (f) added 15295
1464.14 (f) added 15296
1464.15 Heading amended; (f) added 15296
1464.16 (f) added 15296
1464.17 (f) added 15296
1469 Added 10930
1464.101 (b) amended 2803
1477 Added 18554
1477.109 (a) and (k) amended; (m) added; interim 58769
1477.110 Correctly designated 35559

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530 Revised 7062
1550 Revised 52630

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1703 Authority citation revised 14356
1703.100—1703.112 (Subpart D) Revised 14357
1703.103 (a)(3) corrected 25422
1703.105 (c) and (e)(6) corrected 25422
1703.108 (a) corrected 25422
1703.120—1703.129 (Subpart E) Added 14360
1703.123 (a)(13) and (14) corrected 25422
(a)(5) revised 25423
1703.125 (b)(9) added; (i)(1) through (7) revised; (i)(8) through (11) removed 25423
1703.126 (a) corrected 25422
1703.127 (c)(1) and (3) corrected 25422
1703.130—1703.137 (Subpart F) Added 14366
1703.134 (l) corrected 25422
(g)(1) through (7) revised; (g)(8) through (11) removed 25423

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 7 Chapter XVII—Con.

1703.140—1703.147 (Subpart G) Added 14369
1703.140 Introductory text amended 25423
1703.141 (i) amended 25423
1703.142 (a) and (b)(4) revised; (b)(5) added 25423
1703.144 (c)(4), (d)(2), (3), (f)(2) and (4) corrected 25422
(g)(1) through (7) revised; (g)(8), (9) and (10) removed 25423
1703.145 (b) corrected 25422
1703.300—1703.313 Redesignated as Subpart H 14356
1710 Authority citation revised 33178
1710.106 (a)(1)(i) and (2)(i) revised; (a)(3) removed; (a)(4), (5) and (6) redesignated as (a)(3), (4) and (5) 33178
1710.250 (f) amended 33178
1728 Bulletin 14813, 17219, 42005
1735 Authority citation revised 50429
1735.14 (c) revised 50429
1753 Authority citation revised 16604
1753.1 (a) revised 16604
1753.2 Amended 16604
1753.3 (a) amended 16604
1753.5 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 16604
1753.6 (a) revised; (e) added 16605
1753.7 (c) and (e) revised 16605
1753.8 (a)(1), (11)(i), (ii) introductory text, (iii) introductory text and (12)(i) revised; (a)(11)(iv) added 16605
1753.11 (a)(3), (b) and (d) revised 16605
1753.15 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1), new (5)(i) and (ii) revised; new (a)(2) added 16605
1753.16 (b)(1) through (4) revised 16606
1753.17 (b)(1)(ii)(D) amended; (b)(1)(ii)(E) added; (c)(1)(i)(C) and (2)(i)(A) revised 16606
1753.18 Added 16606
1753.25 (a), (c) and (d) revised 16606
1753.26 (a) through (d) redesignated as (b) through (e); new (a) added; new (b)(1) revised 16606
1753.30 (b), (c)(2) and (3) revised 16606
1753.36 (g) revised 16607
1753.37 (c) revised 16607
1753.38 (a)(1)(i), (v), (2)(i) introductory text, (v), (b)(1), (3), (5), (e)(2) and (3) revised 16607
1753.39 (a), (e)(1), (2), (f) introductory text, (1)(ii)(A), (iii), (iv) and (g) revised; (e)(3) removed; (h) added 16608
1753.46 (c)(2) and (3) revised 16608
1753.47 (c) revised 16609
1753.48 (a)(4) and (b) heading and (1) revised 16609
1753.49 (b), (c)(2) and (3) revised 16609
1753.50 Removed 16610
1753.58 (b), (c)(2) and (5) revised 16610
1753.68 (b)(2)(i) through (v), (4)(i), (ii), (c)(2) and (d)(3) revised 16611
1753.76 (a) revised 16611
1753.77 Revised 16612
1753.80 (b) revised 16612
1753 Appendixes A through F removed 16612
1755.26 Added 6500
1755.27 Added 6500
1755.28 Added 6500
1755.29 Added 6500
1755.30 Added 6501
(c)(41) revised 53887
1755.93 Removed 6501
1755.217 Removed 6501
1755.525 Removed 6501
1780.7 (h) removed 29946
1780.10 (b)(2) revised 29946
1780.35 (c) revised 29946
1780.39 (e)(2) and (f) introductory text revised 29946
1780.45 (a)(2) revised 29946
1780.48 (b) introductory text revised 29946
1780.49 (c)(4) and (d) revised 29946
1780.55 Revised 29946
1780.57 (o) added 29946
1780.94 (j)(3) revised 29947
1788 Revised 2

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1922 Removed 62568
1924.1—1924.50 (Subpart A) Exhibit D amended 48085
1940 Authority citation revised 24480
1940.560 Regulation at 63 FR 39458 confirmed 32371
1940.579 Revised 24480
1941 Authority citation revised 62568
1941.25 (a) introductory text amended 62568
1943.25 (c)(3) removed; (c)(4), (5) and (6) redesignated as (c)(3), (4) and (5); (c)(1) and new (3) amended 62568
1943.75 (c)(3) removed; (c)(4), (5) and (6) redesignated as (c)(3), (4) and (5); (c)(1) and new (3) amended 62568
1944.153 Amended 24480
1944.157 (a)(1) and (3) revised 24480
1944.160 Added 24480
1944.164 (b) revised; (d) introductory text and (1)(i) amended 24480
1944.169 (a)(1) revised 24480
1944.170 Heading, introductory text, (a) and (b) revised; (c) redesignated as (f); new (c), (d) and (e) added; new (f)(5)(i), (ii)(B) and (C) amended; new (f)(7) removed 24480
1944.151—1944.200 (Subpart D) Exhibits A and A–1 amended 24482
1945.169 (p)(1)(iii) amended 62568
1945.175 (c)(1) and (ii) amended; (c)(1)(iv) removed; (c)(1)(v) redesignated as (c)(1)(iv) 62568
1951.909 (f)(1) amended; (i)(3)(ii) revised 62568
1951.910 (a)(1) amended 62568
1951.914 Heading and (b) introductory text revised; (h) added; interim 19865
1951.901—1951.950 (Subpart S) Exhibit A amended 62972, 62973
1951.951 Amended; interim 393
1951.952 Amended; interim 394
1951.953 (b) revised; interim 394
1951.954 (a)(1), (5), (7), (b)(2), (4) and (5) revised; interim 394
1955.10 (e) introductory text amended 62568
1955.66 (h)(2) revised 62568
1955.107 (a)(1) amended 62569
1965.12 (e) amended 62569
1965.13 (d) amended 62569
1965.25 (d)(1) amended 62569
1965.26 (a)(2) amended 62569
1965.27 (g)(5) and (h)(1) amended 62569
1980.1 Revised 7402
1980.6 (a) and (b) amended 7402
1980.11 Amended 7402
1980.13 (b) introductory text amended; (b)(4) introductory text revised 7402
1980.20 (a) introductory text amended 7402
1980.21 Revised 7402
1980.22 (a) revised; (b) introductory text and (3) amended 7402
1980.46 Removed 7402
1980.60 Heading, (a) introductory text, (1), (6), (7), (9) through (12), (b) and (c) amended 7402
1980.61 (a)(2) and (c) removed; (a)(3) and (d) through (h) redesignated as (a)(2) and (c) through (g); heading, (a)(1), new (2), (b)(1), (3), (4), new (c) and new (d) amended 7402
1980.61 (f) and (g) amended 7403
1980.62 Amended 7403
1980.63 (a) amended 7403
1980.64 (a) and (b) amended 7403
1980.65 Amended 7403
1980.66 Amended 7403
1980.67 (a) and (b) amended 7403
1980.68 Amended 7403
1980.83 Regulation at 56 FR 8259 confirmed 7378
(a) amended 7403
1980.84 Heading, (b)(1)(iv), (v) and (4) amended 7403
1980.100 Regulation at 56 FR 8260 confirmed 7378
1980.1—1980.100 (Subpart A) Regulations at 56 FR 8261 and 8263 confirmed 7378
Appendixes D through L removed 7403

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 7 Chapter XVIII—Con.

1980.101 Regulation at 56 FR 8264 confirmed....7378
1980.110 Regulation at 56 FR 8264 confirmed....7378
1980.113 Regulation at 56 FR 8264 confirmed....7378
1980.115 Regulation at 56 FR 8264 confirmed....7378
1980.122 Regulation at 56 FR 8264 confirmed....7378
1980.124 Regulation at 56 FR 8264 confirmed....7378
1980.125 Regulation at 56 FR 8264 confirmed....7378
1980.145 Regulation at 56 FR 8264 confirmed....7378
1980.175 Regulation at 56 FR 8264 confirmed....7378
1980.200 Regulation at 56 FR 8264 confirmed....7378
1980.101—1980.200 (Subpart B) Regulations at 56 FR 8265, 8266 and 8271 confirmed....7378
1980.340 Regulation at 56 FR 8271 confirmed....7378
1980.354 Regulation at 56 FR 8271 confirmed....7378
1980.424 Regulation at 56 FR 8271 confirmed....7378
1980.451 Regulation at 56 FR 8271 confirmed....7378
1980.452 Regulation at 56 FR 8271 confirmed....7378
1980.628 Regulation at 56 FR 8271 confirmed....7378
1980.646 Regulation at 56 FR 8271 confirmed....7378
1980.648 Regulation at 56 FR 8271 confirmed....7378
1980.801 (b) amended....28336
1980.802 Amended....28336
1980.805 Amended....28336
1980.813 (a)(2), (b)(1) and (2) removed; (a)(3), (b)(3) and (4) redesignated as (a)(2), (b)(1) and (2); (a) introductory text and new (2)(i) amended....28336
1980.814 (d) removed; (e) through (h) redesignated as (d) through (g)....28336
1980.844 Revised....28336
1980.853 Regulation at 56 FR 8271 confirmed....7378
2003 Authority citation revised....32388
2003.18 (b)(5)(i) amended....32388

Chapter XXXIV—Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

3400 Authority citation revised....34103
3400.1 Revised....34103
3400.7 (c) revised....34103
3400.20—3400.22 (Subpart C) Added....34104
3400.23 (Subpart D) Added....34104

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

Chapter XXXV Corrected....56399
3565 Regulation at 63 FR 39458 confirmed....32371
3565.5 (b) revised....32371
3565.6 Revised....32371
3565.8 Revised....32371
3565.9 (e) removed; (f) redesignated as (e)....32372
3565.13 Revised....32372
3565.52 Introductory text amended....32372
3565.53 (a) revised; (b) amended....32372
3565.103 (d)(9) added....32372
3565.303 (d)(8) amended....32372
3565.351 Introductory text revised; (a) introductory text amended....32372
3570.51—3570.100 (Subpart B) Revised....32388
3575 Added....28337

Chapter XXXVII—Economic Research Service, Department of Agriculture (Parts 3700—3799)

3700.3 (g) removed....40736

Proposed Rules:

6....42288
27—209 (Ch. I)....8014
28....15937
29....25462, 39432
46....57405
47....4342
51....50774
54....38315
56....37886, 40522

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

70 37886
75 58358
210 ..... 38839, 46319, 48459
220 ..... 38839, 46319, 48459
225 ..... 38839, 46319, 48459
226 ..... 38839, 46319, 48459
246 ..... 32307, 48115
250 36978
251 36978
253 39432
254 39432
271 ..... 35082, 37454
272 35082
273 ..... 35082, 37454
274 ..... 8733, 28763, 35082
275 35082
276 ..... 35082, 37454
277 35082
278 ..... 35082, 59665
279 35082
280 35082
281 35082
282 35082
283 35082
284 35082
285 35082
300 2151
301 ..... 11392, 30250
318 47141
319 ..... 2151, 3049, 4347, 31512, 34141, 36608
340 16364
354 ..... 43103, 50331
400 ..... 25464, 52678
457 ..... 8015, 41336, 46599
505 44634
723 9452
729 66790
735 28938
770 59131
780 52678
782 2152
785 61034
900—999 (Ch. IX) 3014
905 46603
906 38597
915 ..... 13123, 45461
916 ..... 11346, 30252
917 ..... 11346, 30252
920 34144
923 60733
924 37888
928 48115
931 42858
932 ..... 4350, 42619, 57597
944 ..... 14642, 45461
948 37890
959 66411
981 ..... 430, 31153, 43298
984 45208
989 34571
993 ..... 3660, 41045
1000—1199 (Ch. X) 8014
1000 ..... 16026, 37892, 39092
1001 ..... 16026, 37892, 39092
1002 ..... 16026, 37892, 39092
1004 ..... 16026, 37892, 39092
1005 ..... 16026, 37892, 39092
1006 ..... 16026, 37892, 39092
1007 ..... 16026, 37892, 39092
1012 ..... 16026, 37892, 39092
1013 ..... 16026, 37892, 39092
1030 ..... 16026, 37892, 39092
1032 ..... 16026, 37892, 39092
1033 ..... 16026, 37892, 39092
1036 ..... 16026, 37892, 39092
1040 ..... 16026, 37892, 39092
1044 ..... 16026, 37892, 39092
1046 ..... 16026, 37892, 39092
1049 ..... 16026, 37892, 39092
1050 ..... 16026, 37892, 39092
1064 ..... 16026, 37892, 39092
1065 ..... 13125, 16026, 30256, 37892, 39092
1068 ..... 16026, 37892, 39092
1076 ..... 16026, 37892, 39092
1079 ..... 16026, 19071, 25851, 37892, 39092, 41047
1106 ..... 16026, 37892, 39092, 42860
1124 ..... 16026, 37892, 39092
1126 ..... 16026, 37892, 39092, 51083
1131 ..... 16026, 37892, 38144, 39092
1134 ..... 16026, 37892, 39092
1135 ..... 16026, 37892, 39092
1137 ..... 16026, 37892, 39092, 50777
1138 ..... 16026, 37892, 39092
1139 ..... 16026, 37892, 39092
1200—1299 (Ch. XI) 8014
1205 19072
1216 ..... 20107, 31736
1217 ..... 46754, 46765, 59669
1218 ..... 39790, 39803
1220 18831
1230 ..... 31158, 40783
1280 65665
1301 12769
1306 ..... 19084, 33027
1307 ..... 4353, 33027
1308 4353
1309 ..... 19084, 33027
1310 33027
1412 ..... 24091, 34154
1430 39442
1550 32156

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 7 *Proposed Rules:—Con.*

1703 14401
1710 ..... 33228, 36609
1728 17219
1735 50476
1755 6577
1823 ..... 10235, 59131
1946 61034
1951 61221
1956 ..... 10235, 59131
2812 41049
3400 14348
3418 18534
3419 42576

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—599)

3 Authority citation revised 56141
3.1 (b)(12) revised; interim 25766
(d)(2)(i)(D) removed; (d)(1–a), (2) and (3) redesignated as (d)(2), (3) and (4); (d)(2)(i)(E), (F) and (ii) redesignated as (d)(2)(i)(D), (G) and (iii); (a)(1) and new (d)(2)(i)(D) amended; (a)(7) and new (d)(2)(i)(E), (F) and (ii) added 56141
3.2 (b)(3) added 56142
3.23 Heading revised; (b)(4)(i) amended; interim 8487
3.42 (d) and (f) revised; interim 8487
3.43 (b)(4)(v), (vi) and (c)(2) revised; (c)(3) added 13666
103.1 (g)(3)(ii) amended; interim 27875
103.5a (a)(3) added 17944
103.7 (b)(1) table amended; interim 27875
103.12 (a)(5) revised; interim 8487
207.2 (d) amended; interim 27661
208.1 Revised; interim 8487
208.2 (a), (b)(1)(ii) and (3) revised; interim 8487
208.4 (a) introductory text and (b)(2) revised; interim 8488
(b)(2) corrected 13881
208.5 (b)(1) introductory text revised; interim 8488
208.11 (b)(2) revised; interim 8488
208.12 (a) revised; interim 8488
208.13 (c)(1) revised; interim 8488
208.14 Heading revised; (f) added; interim 27875
208.16 (c) and (d) redesignated as (d) and (e); heading, (a), (b) introductory text and new (d) and (e) revised; new (c) and (f) added; interim 8488
208.17 Revised; interim 8489
208.18 Redesignated as 208.19; new 208.18 added; interim 8490
(b)(2) corrected 13881
208.19 Redesignated as 208.20; new 208.19 redesignated from 208.18; interim 8490
Revised; interim 8492
208.20 Redesignated as 208.21; new 208.20 redesignated from 208.19; interim 8490
208.21 Redesignated as 208.22; new 208.21 redesignated from 208.20; interim 8490
Revised; interim 8492
208.22 Redesignated as 208.23; new 208.22 redesignated from 208.21; interim 8490
208.23 Redesignated from 208.22; interim 8490
208.30 (b), (d), (e), (f)(1), (2) and (3) revised; interim 8492
208.31 Added; interim 8493
(e) and (g) corrected 13881
212.1 (b) revised; interim 7990
212.2 (d) amended; (g)(3) added; interim 25766
212.7 (a)(1)(iii) and (b)(2)(iv) added; (b)(2)(ii) and (iii) amended; interim 25766
212.15 (c) introductory text, (e) and (g)(4)(i) revised; (c)(3) added; interim 23177
214.2 (h)(16)(i) and (l)(16) revised; interim 29211
(h)(16)(i)(C) and (D) correctly added 30103
(f)(5)(i) and (j)(1)(ii) revised; (f)(5)(vi) and (j)(1)(vi) added; interim 32147
(j)(1)(iv) corrected 33346
Corrected 36423
217.2 (a) amended; interim 42007
235.1 (d)(4) revised; interim 8494
Regulation at 62 FR 47751 confirmed; (e) introductory text amended; (e)(1)(v), (4) and (5)(ii) revised 36561

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

235.3 (b)(4) introductory text and (i)(D) revised; interim 8494
235.6 (a)(1)(ii), (iii) and (2)(i) revised; interim 8494
235.8 (b)(4) added; interim 8494
238.1 (b)(2)(i) and (c)(1) revised; (f)(3) added; interim 8494
240 Authority citation revised 25766, 27875
240.1 (a) revised; interim 8495
(a)(1)(ii) amended; interim 25766
240.11 (a)(1) amended; interim 25766
240.20 (c) added; interim 27875
240.31 Amended; interim 25766
240.41 (a) amended; interim 25767
240.58 Added; interim 27875
240.60—240.70 (Subpart H) Added; interim 27876
240.64 (d)(1) corrected 33386
241 Technical correction 39560
241.8 (d) revised; interim 8495
241.11 (d)(1) revised; interim 8495
244.1 Amended; interim 4781
244.6 Revised; interim 4781
244.10 Heading, (a), (b), (d)(2), (f)(2)(iii) and (4)(ii) amended; interim 4782
244.12 (a) amended; interim 4782
244.15 (a) amended; interim 4782
244.18 (b) amended; interim 4782
245 Authority citation revised 25767
245.2 (a)(4)(ii) revised; interim 29211
245.15 Added; interim 25767
246.1 Amended; interim 27881
246.2 Amended; interim 27881
253.1 (f) revised; interim 8495
270 Authority citation revised 47101
270.3 (b)(1)(ii) revised 47101
274a Authority citation revised 47101
274a.2 (b)(1)(vi)(B) and (C) revised; interim 6189
(b)(1)(vi)(B)(*2*) and (C)(*1*) corrected 11533
274a.8 (b) revised 47101
274a.10 (b)(1)(ii) and (b)(2) introductory text revised 47101
274a.12 (c)(9) amended; interim 25773
(c)(10) amended; interim 27881
274a.13 (d) amended; interim 25773
280 Authority citation revised 47102
280.53 Added 47102
299.1 Table amended; interim 25773, 27881
299.5 Table amended; interim 25774, 27881
312.1 (b)(3) amended 7993
312.2 (b)(1) and (2) amended 7993
499.1 Table amended 7993
507 Added; interim 8496

Proposed Rules:

1—599 (Ch. I) 54794
2 17128
103 26698
212 28676
214 32149
237 28676
241 37461

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

1 Policy statement 38546
1.1 Suspended in part 15920
2 Policy statement 38546
3 Policy statement 38546
3.6 Regulation at 63 FR 37482 confirmed 19253
3.103 (c) added 56147
3.111 Suspended 15920
3.127 (d) added 56147
50.1 Regulation at 63 FR 72122 eff. 2–1–99 3340
52 Added; interim 2549
Regulation at 64 FR 2549 eff. date extended 37395
Notice 62569
52.4 Revised 13065
72.5 Revised 41266
77.1—77.6 (Subpart A) Regulation at 63 FR 72122 eff. 2–1–99 3340
77.1 Regulation at 63 FR 72122 eff. 2–1–99 3340
Amended; interim 56400, 58777
77.2 Revised; interim 58777
77.3 Regulation at 63 FR 72122 eff. 2–1–99 3340
Revised; interim 58778
77.4 Revised; interim 58778
77.5 Redesignated as 77.9; new 77.5 added; interim 58779
77.6 Regulation at 63 FR 72122 eff. 2–1–99 3340

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 9 Chapter I—Con.

Redesignated as 77.10; new 77.6 added; interim 58779
77.7 Regulation at 63 FR 72122 eff. 2–1–99 3340
Redesignated as 77.11; new 77.7 added; interim 58779
77.8—77.18 (Subpart B) Regulation at 63 FR 72122 eff. 2–1–99 3340
77.8 Redesignated as 77.12; new 77.8 added; interim 58779
77.9 Redesignated as 77.13; new 77.9 redesignated from 77.5; interim 58779
77.10 Redesignated as 77.14; new 77.10 redesignated from 77.6; footnote 3 redesignated as footnote 5; interim 58779
77.11 Redesignated as 77.15; new 77.11 redesignated from 77.7; interim 58779
77.12 Redesignated as 77.16; new 77.12 redesignated from 77.8; interim 58779
Amended; interim 58780
77.13 Redesignated as 77.17; new 77.13 redesignated from 77.9; interim 58779
(a), (b) and (c) amended; interim 58780
77.14 Redesignated as 77.18; new 77.14 redesignated from 77.10; footnote 4 redesignated as footnote 6; interim 58779
(a)(1), (e)(1), (2), (3) and (f) amended; interim 58780
77.15 Redesignated as 77.19; new 77.15 redesignated from 77.11; interim 58779
(c)(2) amended; interim 58780
77.16 Redesignated as 77.20; new 77.16 redesignated from 77.12; interim 58779
(a)(1) and (b) amended; interim 58780
77.17 Redesignated as 77.21; new 77.17 redesignated from 77.13; interim 58779
(a)(1) and (b)(2) amended; interim 58780
77.18 Redesignated as 77.22; new 77.18 redesignated from 77.14; interim 58779
(b)(2) amended; interim 58780
77.20 (a)(2), (b) introductory text, (2), (i), (ii), (c), (d), (e) introductory text, (1) and (g)(2) amended; interim 58780
77.21 (a)(3) amended; interim 58780
78.1 Amended 15298
78.41 Regulation at 63 FR 44545 confirmed 395
Regulation at 63 FR 53781 confirmed 15298
(a) and (b) amended 36777
78.43 Regulation at 63 FR 44777 confirmed 5
Regulation at 63 FR 53782 confirmed 5
91 Effective date confirmation 41266
91.1 Regulation at 63 FR 72129 eff. 2–1–99 3340
91.7 Regulation at 63 FR 72129 eff. 2–1–99 3340
91.14 (a)(11) and (12) revised 29949
93 Effective date confirmed 34707
93.303 (d) amended 23179
93.306 (a)(3) revised 31967
(a)(2) revised 48259
93.403 (e) amended 23179
93.503 (e) amended 23179
94 Footnotes 5 through 14, 15 and 16 redesignated as footnotes 6 through 15, 17 and 18; new footnote 13 revised 38550
94.6 Heading revised; (c)(5) redesignated as (c)(6); new (c)(5) added 38550
94.17 Footnote 2 redesignated as footnote 16 and revised 38550
94.18 Regulation at 62 FR 66000 confirmed 55813
Regulation at 62 FR 61434 confirmed 55814
98 Effective date confirmed 34707
98.33 (d) amended 23179
101.2 Amended 43044
102.5 (e) amended 43044
105.1 (a)(1) amended 43044
112.5 (d)(2)(ii) amended 43044
112.6 (c) introductory text amended 43044
113.35 (f) amended 43044
113.70 Introductory text, (b)(1) and (3) amended 43044
113.113 (a)(2), (3), (c)(2)(iv)(A) and (B) amended 43044
113.209 (b)(1) and (d)(3) revised 45420
113.327 (d)(2)(ii) table amended 43045
113.331 (d)(3) amended 43045
113.332 (d)(3) amended 43045

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

113.451 (a) introductory text amended 43045
113.452 (b)(4) table amended 43045
116.5 (b) revised 43045
124.1 (b) amended 43045
124.22 (a) introductory text amended 43045
124.32 (a) amended 43045
124.40 (b)(3) amended 43045
124.43 Amended 43045
130.7 Heading and (a) introductory text revised 51422
(a) corrected 61689
130.9 Revised 51422

Chapter III—Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Chapter III Policy statement 2803
Technical correction 3340
301 Authority citation revised 744
301.2 Amended 744
303.1 (a)(2)(i) revised; (c) amended; eff. 1–25–00 56415
304 Heading revised; eff. 1–25–00 66545
304.2 (b) amended; eff. 1–25–00 56415
(c) and (e) removed; (d) redesignated as (c); (b) amended; eff. 1–25–00 66545
305.5 Removed; eff. 1–25–00 66545
307.2 (l) revised; eff. 1–25–00 56415
307.3 Revised; eff. 1–25–00 56415
307.7 (a) revised; eff. 1–25–00 56415
308 Removed; eff. 1–25–00 56415
310.25 Heading, (a)(2)(ii) and (iii) revised; (a)(1) introductory text and (2)(v)(A) amended; eff. 1–25–00 66552
312.6 Introductory text, (a) and (3) revised; eff. 1–25–00 56415
314.2 Revised; eff. 1–25–00 56416
314.4 Revised; eff. 1–25–00 56416
317.2 (l) introductory text revised 744
317.20 (a) amended 53187
318 Effective date confirmed 44644
318.7 (c)(4) table amended 27904
318.17 Revised 744
318.23 Revised 744
319 Effective date confirmed 44644
319.104 (d) amended 27904
320 Authority citation revised 745
320.1 (b)(4) removed 745
320.4 Amended 745
327.6 (e) amended; eff. 1–25–00 56416
(f) amended; eff. 1–25–00 66545
331.2 Table amended 37667
331.3 (c) revised; eff. 1–25–00 56416
331.6 Table amended 37667
335.1 (Subpart A) Removed; eff. 1–25–00 66545
335.10—335.13 (Subpart B) Removed; eff. 1–25–00 66545
335.20—335.21 (Subpart C) Removed; eff. 1–25–00 66545
335.30—335.32 (Subpart D) Removed; eff. 1–25–00 66545
335.40 (Subpart E) Redesignated as 335.40 (Subpart A); eff. 1–25–00 66545
350.3 (a)(2) amended; eff. 1–25–00 56416
362.2 (a) amended; eff. 1–25–00 56416
381 Authority citation revised 745
381.1 (b) amended 745
(b)(39) removed; eff. 1–25–00 56416
381.21 (a), (b) and (c) removed; (d) redesignated as (b); new (a) added; eff. 1–25–00 66545
381.29 Removed; eff. 1–25–00 66546
381.36 (c)(1)(iv), (vii), (viii), (x), (d)(1)(xi) and (e)(1)(ix) revised; (c)(1)(vi), (d)(1)(vi), (viii) and (e)(1)(v) amended; eff. 1–25–00 56416
381.45—381.61 (Subpart H) Removed; eff. 1–25–00 56417
381.94 (a)(2)(iii) and (5)(i) table 1 revised; (a)(2)(v)(A) amended; eff. 1–25–00 66553
381.99 Revised; eff. 1–25–00 56417
381.121c (a) amended 53188
381.125 (b) introductory text amended 746
381.150 Revised 746
381.196 (b) amended 49645
381.221 Table amended 37667
381.224 Table amended 37667
381.230—381.236 (Subpart W) Removed; eff. 1–25–00 66546
390.1 Revised 43903
390.2 Revised 43903
390.3 Revised 43904
390.4 Revised 43904
390.5 Revised 43904
390.6 Revised 43904
390.7 Revised 43904
390.8 Revised 43904
391.2 Revised 19868
391.3 Revised 19868
391.4 Revised 19868

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 9 Chapter III—Con.

391.5 (a) revised 19868
416 Request for comment 28351
416.1 Added; eff. 1-25-00 56417
416.2 Added; eff. 1-25-00 56417
416.3 Added; eff. 1-25-00 56418
416.4 Added; eff. 1-25-00 56418
416.5 Added; eff. 1-25-00 56418
416.6 Added; eff. 1-25-00 56418
417 Request for comment 28351
500 Added; eff. 1-25-00 66546

Proposed Rules:

1—199 (Ch. I) 23795
1 ..... 4356, 10400
2 28940
3 ..... 4356, 8735, 10400, 26330, 30257, 38145, 48568
54 66791
70 27210
71 13726
72 17573
79 66791
80 13726
88 27210
92 34155
93 ..... 2449, 16655
94 ..... 7816, 8755, 27711, 34155, 37897, 38599, 50014
96 37897
98 34155
101 52247
112 13365
113 ..... 10400, 14156
130 ..... 28942, 37903, 51477, 52680
145 43301
147 43301
201 15938
317 ..... 9089, 26892, 29602
318 ..... 9089, 26892, 29602
319 26892
381 ..... 9089, 26892, 29602
391 ..... 10402, 61223

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

1.3 (a) revised 48947
2.4 Amended 48947
2.101 (a)(2) revised 48947
2.110 (c) revised 48948
2.206 (a) revised 48948
2.701 (a)(1) revised 48948
2.715 (c) revised 29213
2.740 (b)(1) revised 48948
2.750 (a) revised 48948
2.790 (d)(1) revised 15641
(a) introductory text and (c) revised 48948
2.802 (e) and (g) revised 48949
2.804 (b)(2) revised 48949
2.809 (a) revised 48949
2.1006 (a) corrected 15920
2.1007 (a)(2) revised; (a)(3) removed 48949
2.1203 (e) revised 29214
2.1205 (f)(2), (g), (k)(1)(i) and (ii) revised 29214
2.1211 (b) revised 29213
2.1231 (a)(1)(ii), (2) and (b) revised 48949
2.1301 (a) and (c) revised 48949
2.1303 Heading and introductory text revised 48949
2.1306 (c)(2) revised 48949
2.1330 (b) revised 48949
7.10 (b)(6) revised 48949
7.11 (d)(5) revised 48950
7.14 Revised 48950
7.17 (a) and (b) revised 48950
9 Implementation 24936, 39393
Technical correction 27041
9.21 Revised 48950
9.23 (a)(2) removed; (a)(1), (c), (d)(2) and (e) revised 48950
9.35 (e) removed; (a)(2), (5) and (b) introductory text revised 48951
9.45 (b) revised 48951
9.105 (b) revised 48951
9.107 (d)(1) revised 48951
9.108 (b) revised 48951
10 Authority citation revised 15641
10.1 Revised 15641
10.2 (d) revised 15641
10.5 Amended 15641
10.10 (d) introductory text revised 15641
10.12 (a) and (c) revised 15642
10.20 Revised 15642
10.21 Revised 15642
10.22 Revised 15642
10.23 (a) revised 15642
10.25 (a) and (c) revised 15643
10.27 (c) revised 15643
10.28 (n) revised 15643
10.31 Revised 15643
10.32 Revised 15644
10.33 Revised 15644
10.34 (a) revised 15645
10.35 Revised 15645

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

11.3 (a) revised 15645
11.7 Amended 15645
11.15 Revised 15645
11.16 Revised 15647
11.21 (c) and (d) revised 15647
20.1003 Amended; eff. 2–4–00 54556
20.1701 Revised; eff. 2–4–00 54556
20.1702 Revised; eff. 2–4–00 54556
20.1703 Revised; eff. 2–4–00 54557
20.1704 Revised; eff. 2–4–00 54557
20.1705 Revised; eff. 2–4–00 54557
20 Appendix A amended; eff. 2–4–00 54558
Appendix A corrected 55524
25.5 Amended 15647
25.9 Revised 15647
25.11 Revised 15647
25.19 Revised 15648
25.21 (c) revised 15648
25.23 (a) revised 15648
25.25 Revised 15648
25.27 (b) revised 15648
25.31 (a), (b) and (c) revised 15648
25.33 (a) and (b) revised 15649
25.35 (b) revised 15649
25.37 (b) revised 15649
25 Appendix A revised 15649
31.5 (c)(11) added 42275
40 Appendix A amended 17510
50 Determination 42823
50.30 (a)(5) revised 48951
50.44 (c)(3)(iv)(C) revised 48951
50.54 (a)(3) revised; (a)(4) added 9034
(p)(3) and (t) revised; (p)(4) added 14817
50.55a (h) revised 17946
(h)(1) and (2) corrected 23763
(b)(2)(vii) removed; (b)(2)(viii), (ix) and (x) redesignated as (b)(2)(vii), (viii) and (ix); (b)(1)(i) through (v), new (2)(x) through (xvii), (3), (g)(4)(iii) and (6)(ii)(C) added; introductory text, (b) introductory text, (1), (2) introductory text, (vi), (f) introductory text, (1), (3) introductory text, (iii), (iv), (4) introductory text, (g)(1), (3) introductory text, (i), (4) introductory text, (v)(C), (6)(ii)(B)(1) and (2) revised 51394
50.59 Revised (effective date pending) 53613
50.65 Introductory text and (a)(4) added; (a)(3) revised (effective date pending) 38557
50.66 (a) introductory text, (2), (f)(2) introductory text and (3) revised 48952
(b) introductory text, (4), (c)(2) and (3)(iii) revised (effective date pending) 53613
50.71 (e) introductory text revised (effective date pending) 53614
50.90 Revised (effective date pending) 53614
50 Appendixes O and Q amended 48952
51 Notice 48507
51.53 (c)(3)(ii)(J) revised; (c)(3)(ii)(M) removed 48506
51.62 (a) revised 48952
51.120 Revised 48952
51.123 (a) and (b) revised 48952
51 Appendix B amended 48507
52 Appendixes A, B, O and Q amended 48953
55.8 (c)(4) revised 19878
55.40 Added 19878
55.49 Revised 19878
60.2 Amended 48953
60.18 (f) revised 48954
60.61 (d) revised 48954
60.63 (b) and (f) revised 48954
62.11 (b) revised 48954
62.22 (c) revised 48954
71 Response to comments and information request 57769
72 Authority citation revised 56121
72.1 Revised 33182
72.2 (e) removed; (f) redesignated as (e); new (f) added 33183
(b) revised 56121
72.3 Amended; eff. 2–1–00 53614
Amended 56121
72.4 Revised 33183
72.9 (b) revised; eff. 2–1–00 53615
Revised 56122
72.10 (a) introductory text, (c) introductory text, (1) and (e)(1) revised 56122
72.11 Revised 56122
72.24 (a) revised; eff. 2–1–00 53615
72.44 (d)(3) revised 33183
72.48 Revised; eff. 4–5–01 53615
72.56 Revised; eff. 2–1–00 53616
72.70 Revised; eff. 2–1–00 53616

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 10 Chapter I—Con.

72.75 (d)(2) revised; (d)(3) through (7) added 33183
72.80 (g) added; eff. 2-1-00 53616
72.82 (e) removed 17512
72.86 (b) revised; eff. 2-1-00 53616
(b) revised 56122
72.122 (h)(4) and (i) revised 33184
72.124 (b) revised 33184
72.140—72.176 (Subpart G) Revised 56122
72.140 (d) revised 33184
72.200 (c) revised 48954
72.212 (b)(2) and (4) revised; eff. 4-5-01 53616
72.214 Amended 48274, 51189
Corrected 50872
72.216 (c) revised 33184
72.236 Revised 56126
72.240 Revised 56127
72.242 Added 56127
72.244 Added; eff. 2-1-00 53617
72.246 Added; eff. 2-1-00 53617
72.248 Added; eff. 2-1-00 53617
73.55 (g)(4) revised 14818
(g)(4)(i) introductory text, (A), (B) and (ii) correctly designated 17947
73 Appendix C amended 14818
75.2 (b) revised 48954
76.7 (e)(1) revised 44649
76.9 (c) removed 44649
76.21 (a) revised 44649
76.33 Revised 44649
76.35 Heading and introductory text revised 44649
76.36 (a) revised 44649
76.37 Revised 44649
(a) revised 48955
76.39 (a), (b)(1) and (4) revised 44649
76.45 Revised 44649
76.60 (c)(2), (d)(2), (e)(1) and (2) revised 44650
76.62 (c) revised 44650
76.64 (d) revised 44650
76.91 Introductory text and (n) revised 44650
95 Heading revised 15649
95.5 Amended 15649
95.8 (b) revised 15650
95.9 Revised 15650
95.11 Revised 15650
95.15 (a) revised 15650
95.17 (a) introductory text and (1) revised 15650
95.19 Revised 15650
95.20 Revised 15651
95.21 Revised 15651
95.25 Heading, (a) introductory text, (2), (b), (c)(2), (f), (g), (h), (i), (j)(1), (6) and (7) revised 15651
95.27 Revised 15651
95.29 (a), (c)(2) and (4) revised 15652
95.33 (f) revised 15652
95.34 Added 15652
95.36 (a), (c) and (d) revised 15652
95.37 (c)(1)(iv) removed; (c)(1)(i) and (h)(2) revised 15652
95.39 (b)(3) and (c)(2) revised 15652
95.45 (a) revised 15653
95.47 Revised 15653
95.53 Revised 15653
95.57 Revised 15653
100.11 Amended; (c) added 48955
110.2 Amended 48955
110.70 (a) revised; (d) removed 48955
110.71 Revised 48955
110.72 Heading and introductory text revised 48955
110.112 (b) revised 48955
110.113 (c) revised 48955
170.2 (r) added 31469
170.3 Amended 31469
170.5 Revised 31469
170.11 (a)(11) removed; (a)(12) added 31469
170.12 Revised 31469
(a)(7)(ii) and (iii) correctly designated as (a)(7)(ii)(B) and (C); (a)(7)(ii)(A) correctly added 38816
170.20 Revised 31470
170.21 Amended 31470
170.31 Revised 31471
171 Heading revised 31475
171.9 Revised 31475
171.13 Revised 31475
171.15 Revised 31475
Heading corrected 38816
171.16 Revised 31476
(d) table corrected 38816
171.17 Revised 31480
171.19 Revised 31480

Chapter II—Department of Energy (Parts 200—699)

420 Nomenclature change; interim 46114
420.12 (c) amended; interim 46114
420.13 (a), (b)(3) and (7) amended; interim 46114

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

420.14 (a), (b)(1)(i), (2) and (3) amended; interim 46114
420.17 (b)(3) amended; interim 46114
420.18 (a), (b), (d), (e) introductory text, (3), (5) and (f) amended; interim 46114
420.19 (e) and (i) amended; interim 46114
420.33 (d) amended; interim 46114
420.35 (a) amended; interim 46114
420.38 Added; interim 46114
431 Added 54141
490 Authority citation revised 27174
490.2 Amended 26829
490.701—490.708 (Subpart H) Added 27174
600.3 Amended 56420
600.4 (c)(2)(ii) and (3) amended 56420
600.6 (c)(8) revised 56420
600.10 (b) revised 56420
600.13 Revised 56420
600.14 Removed 56420
600.24 (b) introductory text amended 56420
600.27 (b)(2)(i)(B) amended 4029

Chapter III—Department of Energy (Parts 700—999)

708 Revised 12870
708.40 Added; interim 37397
708.41 Added; interim 37397
708.42 Added; interim 37397

Chapter XVII—Defense Nuclear Facilities Safety Board (Parts 1700—1799)

1703 FOIA fee schedule 31115

Proposed Rules:

1 24531
2 ..... 8640, 9219, 24092, 24531, 29246, 55176, 59669, 59671
5 58568
7 24531
9 24531
19 ..... 8640, 9219, 24092
20 ..... 8640, 9219, 24092, 35090, 41050, 50015, 56274, 65665
21 ..... 8640, 9219, 12117, 24092
30 ..... 3790, 8640, 9219, 18833, 24092, 40295, 45900, 57785
31 ..... 3052, 40295, 48333
32 ..... 3052, 23796, 40295
35 ..... 5721, 45907
39 19089
40 ..... 3790, 8640, 9219, 18833, 24092, 36617, 40784, 45900
50 ..... 57, 432, 3790, 3791, 5623, 9035, 12117, 22580, 24531, 31737, 36291, 36615, 39447, 44137, 44860, 45900, 45908, 45911, 53270, 56476, 59671
51 ..... 8640, 9219, 9884, 24092, 24531, 48117
52 ..... 24531, 27626
54 12117
60 ..... 8640, 9219, 24092, 24531
61 ..... 8640, 9219, 24092, 50778
62 24531
63 ..... 8640, 9219, 10405, 24092, 27935, 57409
70 ..... 1542, 3790, 3791, 13368, 18833, 41338, 45900, 45911, 46319
72 ..... 1542, 24531, 36291, 41050, 45918, 45920, 45923, 51270, 51271, 59677
73 ..... 49410, 59684
75 24531
76 24531
100 24531
110 24531
113 58568
150 66115
170 ..... 15876, 18835, 40295
171 ..... 15876, 18835, 40295
430 ..... 1272, 1545, 37706, 52248, 61794, 66306
432 33431
474 37905
707 11819
709 45062
710 ..... 44433, 45062
711 45062
810 35959
850 29811
905 62604
960 67054
963 67054

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100.8 (b)(4) introductory text and (iv) revised (effective date pending) 41272
Regulation at 64 FR 41272 eff. 11-2-99 59113
110.1 (g) added; (effective date pending) 37400
Regulation at 64 FR 37400 eff. 11-12-99 55125
110.7 (d) added (effective date pending) 42582
Regulation at 64 FR 42582 eff. 11-3-99 59606

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 11 Chapter I—Con.

114.1 (e) revised (effective date pending) 41273
Regulation at 64 FR 41273 eff. 11-2-99 59113
9003.3 Heading, (a)(1)(i) introductory text and (A) revised (effective date pending) 49362
Regulation at 64 FR 49362 eff. 6-1-00 61475
9003.5 (b)(1)(iv) and (3)(ii) revised (effective date pending) 49362
Regulation at 64 FR 49362 eff. 11-12-99 61475
9004.4 (a)(4) and (b)(8) revised (effective date pending) 49362
Regulation at 64 FR 49362 eff. 11-12-99 61475
9004.6 (a) and (b) revised (effective date pending) 42583
Regulation at 64 FR 42583 eff. 11-3-99 59606
9004.9 (d)(1) revised (effective date pending) 49362
Regulation at 64 FR 49362 eff. 11-12-99 61475
9007.1 (b)(2)(iii) and (c) revised; (d)(1) amended (effective date pending) 61780
9008.7 (c) added (effective date pending) 49363
Regulation at 64 FR 49363 eff. 11-12-99 61475
9008.14 Revised (effective date pending) 49363
Regulation at 64 FR 49363 eff. 11-12-99 61475
9008.52 (c)(1) introductory text revised (effective date pending) 49363
Regulation at 64 FR 49363 eff. 11-12-99 61475
9008.53 (b)(1) introductory text revised (effective date pending) 49363
Regulation at 64 FR 49363 eff. 11-12-99 61475
9032.11 Revised (effective date pending) 49363
Regulation at 64 FR 49363 eff. 11-12-99 61475
9033.11 (b)(1)(iv) and (3)(ii) revised (effective date pending) 49363
Regulation at 64 FR 49363 eff. 11-12-99 61475
9034.2 (b) revised; (c) introductory text amended; and (8) added (effective date pending) 32397
Regulation at 64 FR 32397 eff. 1-1-99 51423
9034.3 (c) amended (effective date pending) 32397
Regulation at 64 FR 32397 eff. 1-1-99 51423
9034.4 (a)(3)(iii), (b)(8), (e) heading, introductory text and (6)(i) revised (effective date pending) 49364
Regulation at 64 FR 49364 eff. 11-12-99 61475
(e)(1) and (3) revised (effective date pending) 61781
9034.5 (c)(1) revised (effective date pending) 49364
Regulation at 64 FR 49364 eff. 11-12-99 61475
9034.6 (a) and (b) revised (effective date pending) 42583
Regulation at 64 FR 42583 eff. 11-3-99 59606
9035.1 Revised (effective date pending) 49364
Regulation at 64 FR 49364 eff. 11-12-99 61475
9035.3 Added (effective date pending) 61781
9036 Heading revised (effective date pending) 49364
Regulation at 64 FR 49364 eff. 11-12-99 61475
9036.1 (b)(7) and (8) redesignated as (b)(8) and (9); new (b)(7) added (effective date pending) 42585
(b)(3) revised (effective date pending) 49365
Regulation at 64 FR 42585 eff. 1-1-99 59607
Regulation at 64 FR 49365 eff. 11-12-99 61475
9036.2 (b)(1)(vii) added (effective date pending) 42585
(b)(1)(vi) revised (effective date pending) 49365
Regulation at 64 FR 42585 eff. 1-1-99 59607
Regulation at 64 FR 49365 eff. 11-12-99 61475

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

9038.1 (b)(2)(iii) and (c) revised; (d)(1) amended (effective date pending)....61781

Proposed Rules:

2....10405
4....10405
5....10405
100....5200, 8270, 27478, 55440, 60360
102....55440, 60360
103....60360
104....55440, 60360
106....60360
107....60360
109....60360
110....31159, 39095, 60360
114....8270, 46319, 60360
116....60360
9003....8270
9004....8270
9007....8270
9008....8270
9032....8270
9033....8270
9034....8270
9035....8270
9036....8270
9038....8270

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

1.3 (e)(1) revised....60098
3.6 (c) revised....10199
3 Appendix A amended....10199
Regulation at 62 FR 68067 confirmed....19037
4.6 Regulation at 63 FR 46120 confirmed....56952
4.7 Regulation at 63 FR 46120 confirmed; (b)(1)(iii)(B) and (2) introductory text revised....56952
4.31 Regulation at 63 FR 62929 confirmed; (b)(3) amended....29216
4.32 Regulation at 63 FR 62929 confirmed; (b)(1)(vii) revised....29216
4.34 (a), (c) introductory text, (1) and (2) amended....29216
4.36 Regulation at 63 FR 62929 confirmed; (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added; new (c) heading revised....29216
4.37 Regulation at 63 FR 62929 confirmed....29216
(a)(1) revised; (a)(2)(i) and (ii) amended....29217
4.38 Regulation at 63 FR 62929 confirmed....29216
4.39 Regulation at 63 FR 62929 confirmed....29216
4.40 Regulation at 63 FR 62929 confirmed....29216
4.31—4.40 (Subpart C) Appendix A amended....29217
5.3 (c) revised; (g)(2) amended....60098
5.11 (i)(1) amended....60098
5.33 (d)(2)(i) revised....60098
5.35 (g)(3) amended....60098
5.37 (d)(1)(i) and (3) amended....60098
5.51 (c)(6)(i) amended....60098
5.64 (b) amended....60098
7 Heading revised....60098
7.1012 (c)(2)(i) and (ii) revised; (c)(2)(iii) through (vi) added....60098
7.1016 (a), footnote, (b)(1)(iii)(C), (iv) and (2)(iv) revised....60099
7.1017 Introductory text revised....60099
7.2005 (b)(4) revised....60099
7.2008 (b) amended; (c) added....60099
7.2020 Revised....60099
7.2023 Added....60099
7.4000 Heading, (a) and (b) revised....60100
7.4003 Added....60100
7.4004 Added....60100
7.4005 Added....60100
26.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q)....51678
26.3 (c) revised....51678
26.5 Revised....51678
26.6 Revised....51678
26.7 (a) revised....51678
30 Authority citation revised....52641
30.2 Amended; interim....52641
30.3 (a) revised; interim....52641
30 Appendix C added; interim....52641
Appendix B revised....66704, 66705

Chapter II—Federal Reserve System (Parts 200—299)

201.2 (j) and (k) added....41769
201.3 (e) added....41769
201.6 (d) revised....41770

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 12 Chapter II—Con.

201.7 Existing text designated as (a); (b) added 41770
201.51 Revised 48274, 66554
201.52 Heading revised; (c) added 41770
204.9 Revised 53619
208 Authority citation revised 10199
208 Appendix A amended 10199
Appendixes A and B amended 10200
Regulation at 62 FR 68067 confirmed; Appendix E amended 19037
Appendix E amended 19038
Regulation at 63 FR 55486 confirmed 66705
Appendix D–2 revised 66704, 66705
211.26 Regulation at 63 FR 26121 confirmed; (c)(2)(i)(C)(2) and (ii) revised 56952
211.604 Added 58781
212.2 (b) and (f) removed; (c) through (r) redesignated as (b) through (p) 51679
212.3 (b) and (c) revised 51679
212.5 Revised 51679
212.6 Revised 51679
212.7 (a) revised 51679
213 Supplement I amended 16613, 16614
220 OTC margin stock lists 8711, 46559
225 Appendix A amended 10203
Regulation at 62 FR 68068 confirmed 19037
Appendix E amended 19038
226 Dollar amount adjustment notice 60335
226 Supplement I amended 16616, 16617
229.19 (g) redesignated as (g)(1); new (g)(1) heading and (2) added 14577
229.36 (c) removed 59613
229.40 Existing text designated as (a); (a) heading and (b) added 14577
229 Appendix E amended 59613
230.6 (c) added; interim 49848
262.3 (b)(1)(ii) amended; (b)(1)(ii)(A) removed; (b)(1)(ii)(B) revised 53188
263.302 Reguation at 63 FR 55488 confirmed 66707

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.164 (b) revised 20142
308 Authority citation revised 62100
308.101 (b) revised 62100
308.102 (b) revised 62100
308.109 (b)(3) and (c) revised 62100
308.127 (a) amended 62100
308.132 (c)(3) heading and introductory text amended 62100
308.145 Amended 62100
308.148 (b) and (d) amended 62100
308.151 Revised 62100
308.152 (a) and (b) amended 62101
308.153 Heading amended 62101
308.155 (c)(2) amended 62101
308.156 Amended 62101
308.157 (a)(1) amended 62101
308.158 Revised 62101
308.160 (c)(2) amended 62101
308.161 Revised 62101
308.162 (a) revised 62101
308.163 (b) revised 62101
308.164 (b)(2) amended 62102
308.170 (a) and (b) revised 62102
308.171 (b) revised 62102
308.172 (b)(3) added 62102
308.174 Revised 62102
308.175 (a) amended 62102
308.176 (a) revised 62102
308.179 Amended 62102
325.3 (b)(2) revised 10200
325 Appendix A amended 10200
Regulation at 62 FR 68068 confirmed; Appendix C amended 19038
330.3 (h) revised 15656
330.5 Heading, (b)(1), (4) heading and (i) revised 15656
330.9 (b) revised 15656
(a) revised 62102
330.10 (a) and (e) revised 15657
330.14 (a) revised 15657
331 Added; interim 30675
Regulation at 64 FR 30875 confirmed; Appendix A revised 50434
331.4 Amended 50434
331 Appendix B revised 50436
343 Removed 62105
347.214 Regulation at 63 FR 26121 confirmed; revised 56952
348.2 (b) and (f) removed; (c) through (r) redesignated as (b) through (p) 51679
348.3 (c) revised 51679
348.5 Revised 51680
348.6 Revised 51680
348.7 (a) revised 51680

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

364 Appendix B revised 66704, 66706
364.101 Regulation as 63 FR 55488 confirmed 66708

Chapter IV—Export-Import Bank of the United States (Parts 400—499)

404 Revised 14374
405 Removed 14381

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

541.3 Removed 46564
541.4 Removed 46564
541.6 Removed 46564
541.13 Removed 46564
541.17 Removed 46564
541.23 Revised 46564
545.103 Redesignated as 560.60 46565
560.60 Redesignated from 545.103 and revised 46565
560.3 Amended 46565
560.50 Added 46565
560.120 (a) amended; (b)(2)(ii) revised 46565
561.10 Removed 46565
561.11 Removed 46565
561.13 Removed 6503
561.20 Removed 46565
561.21 Removed 46565
561.23 Removed 46565
561.25 Removed 46565
561.32 Removed 46565
561.36 Removed 46565
561.47 Removed 6503
561.48 Removed 6503
563 Authority citation revised 2809
563.134 Removed 2809
563.140—563.146 (Subpart E) Revised 2809
563b.3 (g)(2) amended 2810
563f.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q) 51680
563f.3 (c) revised 51680
563f.5 Revised 51680
563f.6 Revised 51680
563f.7 (a) revised 51681
567.1 Amended 10200
567.2 (a)(2)(ii) revised 10201
567.6 (a)(1)(vi) revised 10201
567.8 Revised 10201
570.1 Regulation at 63 FR 55488 confirmed; (c) revised 66708
570 Appendix B revised 66704, 66706

Chapter VI—Farm Credit Administration (Parts 600—699)

602 Revised (effective date pending) 41770
Regulation at 64 FR 41770 eff. 10-6-99 54512
602.11 (e) corrected 45589
611.310—611.340 (Subpart C) Regulation at 63 FR 64843 eff. 2-11-99 6784
611.330 Regulation at 63 FR 64843 eff. 2-11-99 6784
611.340 Regulation at 63 FR 64843 eff. 2-11-99 6784
611.400 (c) and (d)(3) revised (effective date pending) 16618
Regulation at 64 FR 16618 eff. 5-11-99 25423
611.505 Regulation at 63 FR 64844 eff. 2-11-99 6784
611.1122 Regulation at 63 FR 64844 eff. 2-11-99 6784
612.2165 (b)(7) amended (effective date pending) 43048
Regulation at 64 FR 43048 eff. 10-13-99 55621
614 Authority citation revised 34517
614.4000 (e)(4) removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
614.4010 (f)(1) revised; (f)(4) removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
614.4030 (c)(4) removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
614.4040 (c)(4) removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
614.4050 (d)(4) removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
614.4232 Introductory text amended; (c) revised (effective date pending) 34517
Regulation at 64 FR 34517 eff. 8-6-99 43049

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 12 Chapter VI—Con.

614.4325 (a)(3) amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4350—614.4360 (Subpart J) Heading revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4350 (a) and (c) revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4351 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4352 (a), (b)(1) and (2) amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4353 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4354 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4355 (a) heading and (b) heading amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4356 Redesignated as 614.4357; new 614.4356 added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4357 Redesignated as 614.4358; new 614.4357 redesignated from 614.4356 (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4358 Redesignated as 614.4359; new 614.4358 redesignated from 614.4357; (a) introductory text, (1), (3) and (b) introductory text amended; (b)(5) redesignated as (b)(6); new (b)(5) added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4359 Redesignated as 614.4360; new 614.4359 redesignated from 614.4358; (a) introductory text, (a)(1)(iii), (b), (c) and Table 1 amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4360 Redesignated as 614.4361; new 614.4360 redesignated from 614.4359; heading, (a), (b), (c) and (d) amended; (d) redesignated as (e); new (d) added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8-6-99....43049
614.4361 Redesignated from 614.4360 (effective date pending)....34517
(a) and (b) amended....34518
Regulations at 64 FR 34517 and 34518 eff. 8-6-99....43049
614.4460 (Subpart M) Revised (effective date pending)....43049
Regulation at 64 FR 43049 withdrawn....55621
614.4710 Introductory text, (a)(2) and (3) amended (effective date pending)....34518
Regulation at 64 FR 34518 eff. 8-6-99....43049
614.4720 (g) removed (effective date pending)....43049
Regulation at 64 FR 43049 confirmed; eff. 10-13-99....55621
615.5131 Revised (effective date pending)....28895
Regulation at 64 FR 28895 eff. 7-15-99....38111
615.5133 Revised (effective date pending)....28895
Regulation at 64 FR 28895 eff. 7-15-99....38111
615.5134 (b) revised (effective date pending)....28896
Regulation at 64 FR 28896 eff. 7-15-99....38111
615.5140 Revised (effective date pending)....28896
Regulation at 64 FR 28896 eff. 7-15-99....38111
615.5141 Redesignated as 615.5142; new 615.5141 added (effective date pending)....28899

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

Regulation at 64 FR 28899 eff. 7-15-99 38111
615.5142 Redesignated as 615.5143; new 615.5142 redesignated from 615.5141 and revised (effective date pending) 28899
Regulation at 64 FR 28899 eff. 7-15-99 38111
615.5143 Redesignated as 615.5144; new 615.5143 redesignated from 615.5142 and revised (effective date pending) 28899
Regulation at 64 FR 28899 eff. 7-15-99 38111
615.5144 Redesignated from 615.5143 (effective date pending) 28899
Regulation at 64 FR 28899 eff. 7-15-99 38111
615.5170—615.5174 (Subpart F) Heading revised (effective date pending) 49961
Regulation at 64 FR 49961 eff. 10-21-99 56676
615.5171 Revised (effective date pending) 49961
Regulation at 64 FR 49961 eff. 10-21-99 56676
615.5174 Revised 28899
Regulation at 64 FR 28899 eff. 7-15-99 38111
616 Added (effective date pending) 34518
Regulation at 64 FR 34518 eff. 8-6-99 43049
618.8050—618.8060 (Subpart C) Removed (effective date pending) 34519
Regulation at 64 FR 34519 eff. 8-6-99 43049
618.8210—618.8270 (Subpart F) Removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
618.8320 (b)(7) removed; (b)(8), (9) and (10) redesignated as (b)(7), (8) and (9) (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
618.8330 Revised (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
618.8440 (b)(6) amended (effective date pending) 34519
Regulation at 64 FR 34519 eff. 8-6-99 43049
620.5 (i)(1) amended (effective date pending) 16618
Regulation at 64 FR 16618 eff. 5-11-99 25423
621.7 (a)(2)(iii) amended (effective date pending) 34519
Regulation at 64 FR 34519 eff. 8-6-99 43049

Chapter VII—National Credit Union Administration (Parts 700—799)

701.2 Removed 57365
701.12 Removed 41035
701.13 Removed 41035
701.14 (b)(3) introductory text and (c)(2) revised; (b)(4) added; (d)(1) amended 28717
701.20 Removed 28719
701.21 (c)(7)(ii)(C) Revised 5929
Regulation at 63 FR 51799 confirmed 28729
(a) amended 57365
701.25 Added 19443
701.30 Removed 28718
701.39 Added 56956
703.20 (c) amended 33187
(a) and (c) amended 57365
704.7 (d) amended 57365
707.4 Regulation at 63 FR 71574 confirmed 33010
707.5 Regulation at 63 FR 71574 confirmed 33010
707.6 Heading revised; (c) added; interim 66356
707.8 Regulation at 63 FR 71574 confirmed 33010
707.9 Regulation at 63 FR 71575 confirmed 33010
707 Regulation at 63 FR 71575 confirmed 33010
708a.4 (b) amended 28735
708a.5 (c) amended 28735
708a.9 (b) revised 28735
709.5 (e) amended 57365
711.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q) 66360
711.3 (c) revised 66360
711.5 Revised 66360
711.6 Revised 66360
711.7 (a) revised 66360

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 12 Chapter VII—Con.

712.2 Heading revised; (a) and (c) amended; (d) and (e) added 33187
712.3 (a) and (b) amended; (c) revised 33187
(a) amended 57365
712.5 (p) added 33187
(p) redesignated as (q); new (p) added 66361
712.6 (b) revised; interim 33188
(a) designation and (b) removed 66361
713 Added 28720
713.2 Amended 57365
715 Added 41035
722.3 Regulation at 63 FR 51799 confirmed 28729
723 Regulation at 63 FR 51799 confirmed; revised 28729
723.1 (b)(3) amended 57365
741.3 (a)(3) amended 41040
741.4 (a), (g) and (j) amended; (b)(3) removed; (b)(2) redesignated as (b)(3); (b)(2), (4) and (5) added; (b)(1), (c) through (f) and (h) revised 56150
741.6 (a) amended; (b) redesignated as (d); new (b) and (c) added 41040
741.201 (a) and (b) amended 28721
741.202 (a) and (b) amended 41040
741.203 Regulation at 63 FR 51802 confirmed 28729
(a) amended 28733
745 Authority citation revised 19687
745.4 Revised; interim 19687
745.8 Revised; interim 19687
745 Appendix amended; interim 19687, 19688
790.2 (b)(6)(ii) revised 17086
(b)(7) and (16) amended 57365
791.18 (e) amended 57365
792.54 (b) amended 57365
792.55 (a) amended 57365
792.56 (a) amended 57365
792.66 (b)(2) amended 57365
795.1 (b) revised (OMB numbers) 49080

Chapter IX—Federal Housing Finance Board (Parts 900—999)

902.6 Removed 30883
903 Added 30883
904.9 (f)(2) revised 5930
905 Added; interim 44106
Regulation at 64 FR 44106 confirmed 61016
910 Authority citation revised 55130
910.0 (b), (c) and (d) redesignated as (c), (d) and (e); (a) and new (c) revised; new (b), (f) and (g) added 55130
910.7 Added 55130
935 Authority citation revised 16621
935.1 Amended 16621
935.9 (a) revised; (b) heading, (c) heading and (e) heading amended 16621
935.11 (b) revised 16621
935.15 (b) revised; interim 16791
960 Interpretation 12079
960.1 Amended; interim 24027
960.3 (b)(4) revised; interim 24027
960.5 (b)(10)(ii) revised 23015
(b)(2)(ii)(B) amended; interim 24027
960.6 (b)(4)(iv)(D) and (F)(8) revised 23015
(b)(4)(iv)(D) and (F)(1) revised; interim 24028
960.7 Corrected 2550
960.9 Introductory text revised 23016

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1701—1799)

1730 Added; interim 34969
Regulation at 64 FR 34969 confirmed 50246

Chapter XVIII—Community Development Financial Institutions Fund, Department of the Treasury (Part 1800—1899)

1805 Revised; interim 59082

Proposed Rules:

1—199 (Ch. I) 25469
1 31749
5 31749
7 31749
21 15137
24 31160
201 28768
202 ..... 44582, 49688, 57409
205 ..... 49699, 57409

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

208.....15310
211.....15310
213.....49713, 57409
225.....15310
226.....49722, 57409, 60368
229.....9105, 37708
230.....49740, 57409
326.....14845
327.....48719
340.....51084
360.....48968
361.....42861, 42862
563.....14845
584.....5982
602.....10954
611.....60370
615.....8018
650.....61740
701.....57, 58, 776, 40786, 52694
702.....27090, 44663
704.....40787
713.....58
714.....55866
715.....776
721.....66413
724.....55871
741.....58, 776, 28415
745.....55871, 66812
747.....27090, 44663
900—999 (Ch. IX).....52148
910.....6819
917.....52163, 66115
925.....52163, 66115
930.....52163, 66115
933.....16792
934.....16792
935.....16792, 44444
940.....52163, 66115
950.....66115
954.....52163, 66115
955.....52163, 66115
958.....52163, 66115
965.....52163, 66115
966.....52163, 66115
980.....52163, 66115
1102.....58800
1750.....18084, 31756, 32828, 56274

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

107.50 Amended.....52645
107.610 (e) added.....52646
107.835 (d) redesignated as (e); new (d) added.....52646
107.850 (a) introductory text revised.....52646
107.855 (g)(12) added.....52646
107.865 (d)(3) and (4) amended; (d)(5) added; (e)(3) revised.....52646
114.102 Revised.....40283
114.105 (b) and (c) revised.....40283
114.106 Revised.....40283
114.108 Revised.....40283
115 Authority citation revised.....18324
115.31 (a)(2) revised.....18324
120.10 Amended.....2117
120.111 Amended.....2117
120.131 Revised.....2117
(a) corrected.....27445
120.414 Undesignated center heading and section redesignated from 120.430; undesignated center heading revised.....6509
120.415 Redesignated from 120.431.....6509
120.420 Undesignated center heading and section revised.....6507
120.421 Added.....6508
120.422 Added.....6508
120.423 Added.....6508
120.424 Added.....6508
120.425 Added.....6508
120.426 Added.....6509
120.427 Added.....6509
120.428 Added.....6509
120.430 Section and undesignated center heading redesignated as 120.414.....6509
120.430—120.435 Undesignated center heading and sections added.....6509
120.431 Redesignated as 120.415.....6509
120.453 (a) and (b) revised; (c) removed.....6510
120.540 Heading and (d) revised; (b)(4) added.....44110
120.801 (a) amended; (c)(3) revised.....2118
120.802 Amended.....2118
120.845 Revised.....26274
120.862 (b)(3) amended; (b)(7) revised.....2118
120.870 (a)(1) revised; (c) added.....2118
120.883 Revised.....2118
120.884 (e) removed.....2118
120.910 Revised.....2118

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 13 Chapter I—Con.

120.920 Revised 2118
120.921 (d) and (e) redesignated as (e) and (f); new (d) added; new (e) and new (f) revised 2118
120.971 (a)(2) amended; (a)(3) and (d)(2) revised 2119
120.972 Redesignated as 120.973; new 120.973 added 2119
120.973 Redesignated from 120.972 2119
121 Authority citation revised 26280, 57370
121.103 (f)(3)(i) revised; interim 57370
121.201 Table amended 26280
121.302 (c) amended 48276
123.3 (a)(4) amended 13667
123.107 Amended 48276
123.400—123.407 Undesignated center heading and sections added 48276
125 Authority citation revised 57370
125.2 (a) and (b) redesignated as (b) and (c); new (a) and (d) added; new (b) revised; interim 57370
125.6 (g) added; interim 53772

Chapter III—Economic Development Administration, Department of Commerce (Parts 300—399)

Chapter III Revised; interim 5352
301.4 (b) revised; interim 32975

Chapter IV—Emergency Steel Guarantee Loan Board (Parts 400—499)

Chapter IV Established 57933

Chapter V—Emergency Oil and Gas Guarantee Loan Board (Parts 500—599)

Chapter V Established 57847

Proposed Rules:

107 ..... 6256, 18375
113 58568
114 23027
120 ..... 15942, 34745, 40310, 43636, 60735
121 ..... 2153, 15708, 23798, 40311, 40314, 55873, 57188
123 36617
125 2153
134 3454
140 3454

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

11 Technical correction 7066
13 Policy statement 19443
14 Authority citation revised 32935
Technical correction 47362
14.02 (a) revised 32935
14.03 (a) and (f) revised 32935
14.05 (b), (c) and (e) revised 32935
14.11 (c) revised 32935
14.20 (a) and (c) revised 32936
14.21 Revised 32936
14.22 (b) revised 32936
14.24 Revised 32936
14.26 (a) revised 32936
14.27 Revised 32936
14.28 Revised 32936
17 Added 32936
17.15 (f) corrected 47362
17.39 (n) correctly added 47362
21 Design standards availability 13501
Special FAA conditions 52646
Policy statement 65655
23 Special FAA conditions 6510, 39899, 49365, 49367, 66719, 66721
25 Special FAA conditions 3201, 14818, 25800, 27175, 27445, 38999, 44817, 47649, 51423, 51424, 54761, 66723
25.145 (c)(3) concluding text designated as (d); (c) introductory text and new (d) revised 6164
(d) corrected 10740
25.731 (e) corrected 45589
25.735 (e)(1) corrected 45589
27 Special FAA conditions 27447
27.1 (a) revised 45094
27.2 Introductory text, (a), (b), (c), (d) introductory text, (1) and (2) redesignated as (a) introductory text, (a)(1), (2), (3), (4) introductory text, (i) and (ii); new (b) added 45094
27.25 (c) revised 43019
27.602 Added 46232

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

27.610 heading revised; (d) added 45094
27.805 Added 45094
27.807 Revised 45094
27.853 (a) amended; (b) removed 45095
27.865 (c) and (d) redesignated as (e) and (f); undesignated center heading, heading, (a) introductory text, (b), new (e) and new (f) revised; new (c) and new (d) added 43019
27.1027 (a) through (d) redesignated as (b) through (e); new (a) added; new (c)(2) and new (d) amended 45095
27.1185 (d) added 45095
27.1187 Revised 45095
27.1305 (v) added 45095
Heading corrected 47563
27.1337 (e) revised 45095
29.25 (c) revised 43020
29.59 (c), (d) and (e) redesignated as (d), (e) and (c); 45337
29.62 (a) revised 45337
29.67 (a)(2) introductory text, (i), (3)(i) and (b) revised; (a)(2)(ii) removed; (a)(2)(iii) and (iv) redesignated as (a)(2)(ii) and (iii) 45337
(a)(3)(i) corrected 47563
29.77 Revised 45338
29.81 Revised 45338
29.85 Revised 45338
29.602 Added 46232
29.865 (c) and (d) redesignated as (e) and (f); undesignated center heading, heading, (a) introductory text, (b), new (e) and new (f) revised; new (c) and new (d) added 43020
29.1323 (c)(1) amended 45338
29.1587 (a)(4) and (5) amended 45338
33 Special FAA conditions 28900
34.1 Amended 5558
34.2 Amended 5559
34.31 (d) and (e)(3) revised 5559
34.60 (c) revised 5559
34.61 Revised 5559
34.62 (a)(2) revised 5559
34.64 Revised 5559
Corrected 60336
34.71 Revised 5559
Corrected 60336
34.82 Revised 5560
Corrected 60336
34.89 Revised 5560
Corrected 60336
36 Appendix G amended 55602
39.13 ..... 7, 395, 750, 752, 986, 987, 990, 1107, 1109, 1111, 1114, 1115, 1117, 1119, 1503, 1716, 2014, 2036, 2059, 2081, 2552, 2554, 2556, 2557, 2559, 2560, 2562, 2811, 2815, 2816, 2818, 2820, 2822, 3203, 3205, 3816, 3818, 3820, 3823, 3825, 3827, 4030, 4289, 4291, 4293, 4522, 4524, 4526, 4964, 5150, 5588, 5589, 5591, 5593, 5711, 6190, 6513, 6515, 6517, 6520, 6524, 6785, 6787, 6790, 6792, 7492, 7493, 7496, 7499, 7772, 7774, 7776, 8226, 8229, 8231, 8232, 8500, 8501, 8713, 9057, 9908, 9909, 9911, 9912, 10207, 10208, 10210, 10212, 10215, 10217, 10556, 10559, 10560, 10937, 11375, 11758, 11760, 11763, 11765, 12242, 12243, 12245, 12248, 12251, 12253, 13226, 13227, 13330, 13332, 13504, 13668, 13671, 13883, 13885, 13887, 13890, 13891, 13893, 14097, 14579, 14582, 14584, 14586, 14589, 14822, 14824, 14825, 15126, 15300, 15658, 15660, 15662, 15670, 15921, 16340, 16623, 16625, 16634, 16802, 16805, 16808, 16810, 16812, 17130, 17513, 17519, 17523, 17526, 17948, 17951, 17953, 17955, 17957, 17960, 17961, 17963, 17965, 17967, 18326, 18803, 18806, 18807, 19255, 19690, 19693, 19695, 19697, 19880, 19882, 19884, 20144, 20145, 20148, 20149, 20151, 20153, 20154, 22546, 22780, 22782, 22784, 23017, 23181, 23765, 23768, 24029, 24030, 24032, 24033, 24035, 24507, 24509, 25196, 25197, 25199, 25200, 25425, 25428, 25803, 25805, 26654, 26833, 26835, 26836, 26838, 26840, 27662, 27910, 27912, 28355, 28356, 28358, 28904, 28906, 29777, 29780, 29782, 29784, 30381, 30383, 31489, 31491, 31492, 31688, 31690, 31968, 32399, 32401, 32799, 33010, 33388, 33391, 33393, 33396, 33744, 33746, 33748, 34523, 34524, 34525, 34527, 34529, 34531, 34976, 34978, 34980, 34709, 35560, 36562, 36564, 36778, 37668, 37670, 37840, 37842, 38300, 38302, 38559, 38818, 38821, 39002, 39004, 39006, 39397, 39399, 40285, 40515, 40744, 41274, 41775, 41777, 41779, 42008, 42276, 42825, 43050, 43052, 43055, 43057, 43059, 43061,

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 14 Chapter I—Con.

43063, 43905, 44111, 44113, 44652, 44821, 44823, 44825, 45150, 45422, 45424, 45426, 45431, 45434, 45435, 45437, 45869, 45871, 46260, 47363, 47367, 47369, 47370, 47372, 47374, 47375, 47377, 47381, 47383, 47385, 47142, 47144, 47146, 47148, 47149, 47653, 47655, 47657, 47659, 47661, 47663, 48279, 48281, 48283, 48285, 48287, 49081, 49963, 49965, 49968, 49970, 49973, 49976, 49978, 49980, 50440, 50441, 50443, 50751, 51190, 51191, 51193, 51194, 51196, 51197, 51198, 51200, 51202, 51204, 51207, 51682, 51684, 51685, 51687, 52220, 52222, 52423, 52426, 52649, 53190, 53191, 53194, 53620, 53622, 53624, 53626, 54200, 54201, 54203, 54513, 54514, 54516, 54518, 54519, 54766, 54768, 54770, 54772, 54773, 54775, 55408, 55410, 55412, 55414, 55415, 55417, 55622, 55625, 56153, 56157, 56159, 56160, 56162, 56164, 56422, 56423, 56426, 56428, 56958, 56959, 56961, 56963, 56964, 57409, 57550, 57552, 57554, 57556, 57557, 57787, 57789, 57790, 57792, 57794, 57796, 57798, 57800, 57802, 57806, 57808, 57810, 57811, 57814, 57816, 57818, 57820, 57822, 57823, 57971, 57973, 58329, 59114, 59115, 59117, 59118, 59614, 59615, 60102, 60104, 60337, 61476, 61478, 61479, 61482, 61483, 61485, 61486, 61490, 61493, 61495, 61496, 61783, 61785, 62106—62108, 62110, 62975, 63173, 63175, 63177, 63180, 63182, 63184, 63189, 63191, 63568, 63576, 63583, 63591, 63599, 63607, 63614, 63622, 63630, 63637, 63645, 63653, 63660, 63668, 63676, 66367, 66369, 66761, 66763, 66767

Corrected.....395, 2428, 5093, 7994, 8233, 8234, 11533, 12743, 17086, 55815, 62976

Eff. 1–18–00 .....62571, 63185

Eff. 1–3–00.....66364, 66371

Eff. 1–14–00 .....66365, 66749

Eff. 1–28–00.....66557

Eff. 1–4–00.....66753, 66755, 66757, 66759, 66764

61.57 (e)(3) added 23529

71.1.....8—13, 1717, 2119, 2120, 2563—2566, 2824, 2825, 2826, 2828, 3010, 3011, 3207—3210, 3397, 3398, 3829—3833, 3835, 3836, 4530, 4782—4784, 5151, 5713, 5931, 6795, 6797—6800, 7500, 7995, 8234, 8502—8509, 8714, 9268—9270, 10387, 10563, 10564, 10938—10940, 10942, 12084, 12255, 12256, 13333, 13506, 13672, 14306, 14890—14603, 15300, 15301, 15674—15680, 16024, 16341—16345, 17134, 19256—19260, 19262—19264, 19266—19268, 19885, 20155—20163, 23184, 24036, 24037, 24510, 24511, 25806, 26656, 27913, 27914, 28092—28097, 29786, 30242, 30889, 31115—31117, 31119, 31120, 32401, 32402, 33011, 33013—33015, 33189—33193, 34981, 34982, 36566—36568, 37672, 38303—38306, 36560, 38823, 38824, 38825, 39008, 39009, 39011—39016, 39404, 40286, 40746, 41780, 42277, 42588, 42591—42593, 43064, 43066, 43067, 43069, 43070, 43262, 43599, 43908, 44115, 44116, 44117, 44398—44340, 44826, 46115—46117, 46264—46267, 46815—46818, 47386, 47387, 47664, 47665, 48087, 48089, 48527, 48528, 48703, 49374—49376, 49647, 49648, 50246, 50247, 50445, 51209, 51430, 52426, 52427, 53888—53897, 53899, 53900, 54203—54206, 55131, 55815—55820, 56252, 56428, 56429, 56676, 57558, 58330, 58332, 58333, 60338, 60653, 60654, 61786, 63677, 63678, 66768

Corrected 3590, 3591, 4785, 5151, 6138, 10740, 12404, 17219, 17935, 18563, 19269, 19886, 22674, 23538, 23903, 24713, 28875, 29944, 32179, 32402, 35256, 38306, 41041, 42432, 43261, 44268, 44578, 46228, 46262, 47563, 47664, 48085, 48086, 48459, 48897, 49646, 49648, 49981, 50331, 52121, 53627, 60879, 63192, 63676

Added; eff. 9–16–99 through 9–15–00.....50444

Eff. 2–24–00 .....59616, 63679, 63680, 65656, 65566

71.5 Amended; eff. 9–16–99 through 9–15–00.....50444

71.31 Amended; eff. 9–16–99 through 9–15–00.....50444

71.33 (c) amended; eff. 9–16–99 through 9–15–00.....50444

71.41 Amended; eff. 9–16–99 through 9–15–00.....50444

71.51 Amended; eff. 9–16–99 through 9–15–00.....50444

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

71.61 Amended; eff. 9–16–99 through 9–15–00 50444
71.71 (b) through (f) amended; eff. 9–16–99 through 9–15–00 50444
71.79 Amended; eff. 9–16–99 through 9–15–00 50445
71.901 (a) amended; eff. 9–16–99 through 9–15–00 50445
73.21 39017
73.22 48090
73.25 ..... 3624, 12744, 48091
73.29 ..... 13506, 14604
73.32 23769
73.48 7778
73.52 60339
73.56 4534
73.57 14604
73.71 47666
73.87 13334
91 SFAR No. 50–2 amended 5154
Technical correction 7066, 47563
SFAR No. 84 added 15121
Interpretation 15912
SFAR No. 84 corrected 23395
SFAR No. 86 added 44816
Compliance date notification 51432
SFAR No. 82 removed 66097
91.1 (a) revised; (c) added 1079
91.11 Heading revised 1079
91.701—91.715 (Subpart H) Heading revised 1079
91.701 Revised 1079
91.702 Added 1079
91 Appendix D amended 66769
93.51 Revised 14976
93.53 Revised 14976
Corrected 17439
93.55 Revised 14976
(b), (c), (e) and (f) corrected 17439
93.57 Revised 14977
93.59 Revised 14977
93.61 Revised 14977
93.63 Revised 14977
93.65 Revised 14977
(d) corrected 17439
93.67 Revised 14977
93.68 Added 14978
93.69 Revised 14978
93.123 (a) table amended 53564
93.217 (a) introductory text, (5), (6), (8) and (10)(i) revised 53565
93.218 Added 53565
93.223 (c)(4) added 53565
93.225 (e) revised 53565
93.301 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93.305 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93.307 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93 Appendix A removed 14978
95 ..... 8235, 18564, 30890, 41275, 66097, 66101
97.21—97.35 ..... 1718, 1725, 2829, 2831, 5155, 5595, 7779, 7780, 7782, 9913, 9915, 13335, 13337, 14827, 14829, 17273, 17527, 17529, 19698, 22549, 24284, 24285, 27664, 27665, 30893, 30896, 30897, 33398, 33400, 35563, 35565, 38562, 38563, 41282, 41284, 41285, 44118, 44120, 47388, 49378, 49379, 49650, 51433, 51434, 55133, 55134, 55136, 57560, 57561, 57563, 61017, 61019, 63193, 63195
121 SFAR No. 36 amended 960
Technical correction 3837, 7066
SFAR No. 50–2 amended 5154
Enforcement policy 32176
121.306 Added 1080
121.339 (a)(2) corrected; CFR correction 49981
121.580 Added 1080
121 Appendix M amended 46120
125 Heading revised 1080
Technical correction 7066
125.1 (a) revised; (d) added 1080
125.204 Added 1080
125.328 Added 1080
125 Appendix E amended 46121
135 SFAR No. 36 amended 960
Heading revised 1080
Technical correction 3837, 7066
SFAR No. 50–2 amended 5154
Enforcement policy 32176
135.120 Added 1080
135.144 Added 1080
139 SFAR No. 85 added; eff. 1–1–00 through 1–5–00 60077
145 SFAR No. 36 amended 960
Technical correction 3837

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

201.1 (b) amended 3212
204.2 (k)(2) revised 12085

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 14 Chapter II—Con.

212.10 (a) and (f)(1) amended 3213
221 Revised 40657
250.4 Removed 40674
254.4 Amended 41783
255.12 Revised 15129
257 Added 12851
Regulation at 64 FR 12851 eff. date delayed to 8-25-99 38111
257.6 Added 46821
258 Added 12860
Regulation at 64 FR 12860 eff. date delayed to 8-25-99 38111
258.6 Added 46821
293 Added 40674
382.43 (b) revised 41783
399 Authority citation revised 12852
399.88 Removed 12852
Regulation at 64 FR 12852 eff. date delayed to 8-25-99 38111

Chapter III—Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

401 Authority citation revised 19613
Technical correction 29786
401.5 Revised 19613
411 Removed 19614
Technical correction 29786
413 Revised 19614
Technical correction 29786
415 Revised 19616
Technical correction 29786
417 Added 19624
Technical correction 29786

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1206 Revised 39404
1214.900—1214.912 (Subpart 1214.9) Removed; interim 19886
1214.1000—1214.1004 (Subpart 1214.10) Removed; interim 19887

Proposed Rules:

1—199 (Ch. I) 66591
1 56275
11 ..... 33142, 56708
21 ..... 35902, 58644
23 ..... 14401, 29247, 49413
25 ..... 14406, 25851, 26900, 27478, 32978, 39095, 43570, 43579, 43943, 43946, 58644
27 35902
29 35902
39 ..... 435, 438, 441, 443, 445, 785, 787, 1545, 1549, 1552, 2157, 2161, 2863, 3052, 3054, 3226, 4061, 4367, 4370, 4372, 4791, 5985, 6259, 6577, 7822, 7827, 7829, 7830, 8020, 8022, 8024, 8026, 8027, 8029, 8530, 8762, 9453, 9939, 10113, 10114, 10116, 10237, 10578, 10959, 11401, 12770, 12772, 13530, 13732, 13932, 13934, 13936, 15137, 16364, 16366, 16656, 18382, 18384, 18386, 18835, 18840, 18842, 18845, 19096, 19726, 19930, 19932, 19934, 19936, 19938, 19940, 19942, 20221, 20224, 20226, 20229, 20230, 22616, 22818, 23552, 24092, 24542, 24545, 24963, 24964, 25218, 26703, 27480, 27483, 28418, 28420, 29602, 29607, 29814, 29965, 29966, 29969, 29972, 31518, 31520, 31523, 31756, 31758, 31760, 31762, 31764, 33229, 33232, 33435, 33437, 33439, 33441, 33443, 33445, 33447, 34168, 34170, 34575, 34577, 34579, 34581, 34582, 34584, 34586, 34588, 34590, 34746, 36307, 36618, 36623, 36624, 36626, 36628, 37046, 37465, 37471, 37911, 37913, 37915, 37917, 37918, 37920, 38150, 38152, 38154, 38156, 38157, 38316, 38319, 38322, 38325, 38329, 38332, 38335, 38338, 38341, 38345, 38348, 38351, 38355, 38358, 38362, 38365, 38368, 38371, 38374, 38378, 38379, 38382, 38383, 38603, 38605, 38606, 38844, 38846, 38848, 38850, 39097, 39100, 39102, 39014, 39448, 39450, 39944, 39946, 40319, 40789, 41841, 41842, 42050, 42052, 42054, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211, 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487, 45925, 45927, 45929, 46609, 47438, 47440, 47442, 47447, 47715, 48120, 48333, 48721, 48723, 49105, 49110, 49112, 49113, 49115, 49418, 49420, 49752, 50016, 50018, 50020, 50022, 50023, 50781, 51479, 51481, 51483, 51484, 51486, 52259, 52260, 52263, 53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249,

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195—55197, 55201, 55204, 55208, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57600, 57602, 57606, 57608, 58359, 59137, 59685, 60134, 60136, 60138, 60383, 60386, 60742, 60743, 60745, 60748, 60750, 61039, 61042, 61044, 61533, 61540, 61547, 61554, 61794, 61796, 61798, 61801, 62129, 62131, 62613, 62615, 62988, 62990, 62991, 62993, 62995, 63753, 63755, 63757, 63760, 63762, 63764, 65666, 66116, 66118, 66119, 66121, 66415, 66417—66419, 66422, 66424, 66426, 66816

65 ..... 18302, 42810
66 42810
71 ..... 60, 447, 1142, 1554, 1555, 1557—1565, 2449, 2450, 2452, 2453, 2605, 2864, 2866, 3228, 3664—3666, 4793—4800, 5093, 6579—6583, 6823, 7141—7143, 7558, 8031, 8167, 8271, 8272, 8445, 9940, 10238, 10239, 10241—10243, 10410, 10411, 10962, 11533, 11819, 11820, 12126, 13938, 14410, 15139, 15140, 15142, 15708, 16368—16371, 17717, 17983, 17984, 18392, 18481, 18584, 19310, 19312—19314, 19316, 19317, 19728, 23028, 23805—23809, 25220—25222, 26705, 26712, 26922, 28122, 28944, 29817, 30259—30261, 30928, 31525—31527, 32828, 33234, 34592, 35100, 36630, 36631, 37713—37717, 38385, 38386, 38607, 38609, 39949, 39950, 41054, 41357—41360, 41362, 41363, 42300, 42301, 44139—44142, 44144, 44865, 47449, 47451, 47718, 48123, 49754, 49755, 51273, 51587, 52475, 53956, 53957, 57609, 57610, 57995, 58362, 58363, 59687—59690, 60388, 61225, 61689, 61690, 61803, 61804, 62133, 63261, 63765, 63767, 65668, 66123, 66258
73 9455
91 ..... 17293, 18302, 27160, 28770, 28945, 33142, 35902, 37018, 40791, 56708, 58644, 63140
93 ..... 2086, 3055, 35963, 37296, 37304, 38851, 44145, 46155
105 18302
107 43321
108 ..... 19220, 23554, 28945, 31686, 43322
119 ..... 16298, 18302, 45090
121 ..... 16298, 18766, 28770, 29813, 33142, 45090, 56708, 58644, 63140
125 ..... 18766, 58644, 63140
129 ..... 13880, 16298, 45090, 58644
135 ..... 16298, 17293, 18766, 28770, 33142, 45090, 56708
139 ..... 37026, 40791
145 ..... 18766, 33142, 56708
146 52695
147 42810
183 ..... 16298, 45090
193 ..... 40472, 53958
234 3883
254 34592
255 9457
298 34747
382 ..... 7833, 46611
389 3229
400 19626
401 19626
404 19626
405 19626
406 19626
413 19626
415 19626
417 34316
420 34316
431 19626
433 19626
435 19626
450 54448
1253 58568
1260 ..... 26923, 50334
1274 50334

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

30.1 (c) added 40976
30.7 Introductory text revised 40976
30.39 Revised 40976
30.60—30.66 (Subpart E) Added 40977
30.70 (Subpart E) Redesignated as Subpart F; 40977
30.80—30.83 (Subpart F) Redesignated as Subpart G 40977
30.80 (d) revised 24943

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 15 Chapter I—Con.

30.90—30.99 (Subpart G) Redesignated as Subpart H.....40977
30.91 (a) revised.....40981
30 Appendixes A, B and C added.....40981

Chapter II—National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

285.3 (c) amended.....59617
285.11 (a), (d) introductory text and (e) introductory text amended.....59617
285.12 (a) introductory text, (b) introductory text, (c), (d) and (e) amended.....59617
285.13 (a) and (d) amended.....59617
285.14 (a) introductory text and (d) amended.....59617
285.19 (a) and (c) amended.....59617

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

734 Authority citation revised.....27140, 42011, 47105
734.2 (b)(1) and (4) amended.....13339
734.4 (b) revised.....13339
(a) revised.....42011
734.5 (a) revised; interim.....27141
(a) amended.....47105
736 Authority citation revised.....27141, 47105
736.2 (b)(7)(i) revised; interim.....27141
(b)(3)(ii)(A)(*1*) revised.....47105
738 Authority citation revised.....17970, 27141, 42011, 60340
738.2 (d)(2)(i)(A) amended; interim.....17970, 27141
738 Supplement No. 1 amended; interim.....17970
Supplement No. 1 amended.....28908, 42011, 60340
740 Authority citation revised.....2430, 17970, 27141, 28908, 40108, 42011, 60340
740.2 (a)(5) amended.....13339
740.7 (d)(4) redesignated as (d)(5); new (d)(4) and (5)(v)(A)(*8*) note added; new (d)(5)(iii), (v) introductory text and (A) introductory amended; new (d)(5)(v)(B) revised; interim.....2430
Amended.....28908
(b)(1), (c), (d)(2), (3), (5)(i) and (v) introductory text revised.....42011
(d)(1) amended.....60341
740.11 Heading and introductory text revised; (c) added; interim.....27141
(a)(2) and Supplement No. 1 revised.....40108
(a)(2)(ii), (iii), (c)(2)(i) and Supplement No.1 amended.....42012
740.14 (e)(1)(iii) amended; interim.....17973
740 Supplement No. 1 amended.....28908, 60341
742 Authority citation revised.....2430, 17970, 27141, 42011, 47105, 47667, 49381, 50248
742.2 (a) introductory text revised; interim.....27142
Amended.....28909
742.8 (a)(4)(ii) amended; interim.....27142
742.9 (a)(3)(ii) amended; interim.....27142
(b)(1)(vii) added; interim.....47667
(b)(1)(iv) revised; interim.....50248
742.10 (a)(4)(ii) amended; interim.....27142
(b)(1)(vii) added; interim.....47667
742.12 (b)(3)(i)(C) and (iv)(B) revised; interim.....2431
(b)(2)(i), (3)(i)(A), (i)(B), (ii) and (c) amended.....42012
742.14 Revised.....13339
742.15 Second (b)(6)(v) redesignated as (b)(6)(vi).....3214
742.17 Added; interim.....17973
742.18 Added; interim.....27142
(b)(2)(i) removed; (b)(2)(ii) and (iii) redesignated as (b)(2)(i) and (ii); new (b)(2)(i)(A) revised; interim.....49381
742 Supplement No. 4 amended.....3214
Supplement No. 2 amended; interim.....27143
Supplement No. 2 amended.....47105
743 Authority citation revised.....40108, 47105
743.1 (b) amended.....3214
(c)(1) revised.....40110
(c)(1)(v) revised.....47105
744 Authority citation revised.....1121
744.10 Revised.....14605

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

744.13 Added; interim 1121
744.14 Added; interim 1122
744 Supplement No. 4 amended 14606, 28910
745 Added; interim 27143
Authority citation revised 49381
745.1 (b)(3) amended 28909
745.2 (a)(1) amended; interim 49381
745 Supplement No. 3 amended 28909
Supplement No. 2 amended; interim 49381
Supplement No. 3 amended; interim 49382
746 Authority citation revised 24018, 49383, 60340
746.2 (b)(4)(iii) added 25808
746.4 (b)(2)(ii)(G) revised 49383
746.9 Revised 24019, 60341
748 Authority citation revised 2430, 17970, 47105
748.8 (q) added; interim 27146
748.9 (b)(2)(i)(*1*) removed; (b)(2)(i)(*2*) and (*3*) redesignated as (b)(2)(i)(A) and (B); interim 2431
(a) introductory text revised; interim 17973
748.10 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) introductory text revised; interim 2431
748.14 Added; interim 17973
748 Supplement No. 6 added; interim 17974
Supplement No. 2 amended; interim 27146
Supplements No. 2 and 4 amended 47105
750 Authority citation revised 47106
750.7 (i) redesignated as (j); new (i) added 47106
752.3 (a)(8) removed; (a)(9), (10) and (11) redesignated (a)(8), (9) and (10) 13339
758 Authority citation revised 27141
758.3 (h)(2) amended; interim 27146
762 Authority citation revised 17970
772 Authority citation revised 1121, 5932
Amended; interim 1122, 5932
Amended 13339, 27146
774 Authority citation revised 5932, 17970, 27141, 47106, 48956
774 Supplement No. 1, Category 1 (ECCN 1B115, 1C111, 1C118, 1E001 and 1E101) amended; interim 5932
Supplement No. 1, Category 0 (ECCN 0A982, 0D001 and 0E001) amended 10854
Supplement No. 1, Category 1 (ECCN 1A002, 1A005, 1C001, 1D390, 1D993, 1E994 and 1E001) amended 10854
Supplement No. 1, Category 2 (ECCN 2B001, 2B003, 2B004, 2B005, 2B104, 2B996 and 23003) amended 10855
Supplement No. 1, Category 3 (ECCN 3A001, 3A002, 3B001 and 3C002) amended 10857
Supplement No. 1, Category 4 (ECCN 4A003, 4D001 and 4E001) amended 10860
Supplement No. 1, Category 5 (ECCN 5A991, 5D001 and 5E001) amended 10861
Supplement No. 1, Category 6 (ECCN 6A001, 6A003, 6A005, 6A007, 6A008, 6D001, 6D003, 6E001 and 6E002) amended
Supplement No. 1, Category 7 (ECCN 7D003) amended 10867
Supplement No. 1, Category 8 (ECCN 8A002, 8A992, 8D001 and 8E001) amended 10867
Supplement No. 1, Category 9 (ECCN 9A018) 10869
Supplement No. 1, Category 4 (ECCN 4D001, 4E001) corrected 12745
Supplement No. 1, Category 9 (ECCN 9A004) amended 13340
Supplement No. 1, Category 0 (ECCN 0A984, 0A985 and 0A987) amended; interim 17975
Supplement No. 1, Category 1 (ECCN 1C350) amended; interim 27146
Supplement No. 1, Category 1 (ECCN 1C351) amended; interim 27148
Supplement No. 1, Category 1 (ECCN 1C355) amended; interim 27149
Supplement No. 1, Category 1 (ECCN 1E001) amended; interim 27150
Supplement No. 1 corrected 27854

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 15 Chapter VII—Con.

Supplement No. 1, Category 1 (ECCN 1E001) amended 28909
Supplement No. 1, Category 1 (ECCN 1C350) corrected 30103
Supplement No. 1, Category 3 (ECCN 3A001) amended 36780
Supplement No.1, Category 1 (ECCN 1C004 and ECCN 1C996) amended 40110
Supplement No.1, Category 2 (ECCN 2B001, 2B004, 2B005, 2D001 and 2E003) amended 40111
Supplement No.1, Category 2 amended 40113
Supplement No.1, Category 3 (ECCN 3A001, 3A002, 3A991, 3B001, 3B991, 3C002, 3E001, 3C992 and 3E002) 40117
Supplement No.1, Category 4 (ECCN 4A003) amended 40124
Supplement No.1, Category 4 amended 40125
Supplement No.1, Category 5 amended 40128
Supplement No.1, Category 5 (ECCN 5A001, 5A991, 5B001, 5C001, 5C9991, 5D001 and 5E001) 40129
Supplement No.1, Category 6 (ECCN 6A003, 6A005, 6C002 and 6C992) 40132
Supplement No.1, Category 7 amended 40135
Supplement No. 1 Category 0 (ECCN 0A984) and Supplement No. 2 amended 47106
Supplement No. 1, Category 0 (ECCN 0A018) amended; interim 47667
Supplement No. 1, Category 1 (ECCN 1C018, 1C992 and 1C998) amended; interim 47667
Supplement No.1 (ECCN 0A984) amended 48956
Supplement No. 1, Category 1 (ECCN 1C351 and 1C991) amended 54521
Supplement No. 1, Category 2 (ECCN 2B351) amended 54521
Supplement No. 1, Category 3 amended; interim (ECCN 3A001) 66373

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

801.11 Revised 59121
806.15 (i) amended 10389

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers) 14, 3627, 4036, 14054, 29133, 36781, 39019, 42828, 52428, 54742, 55825
922.180—922.187 (Subpart Q) Revised 66570

Chapter XX—Office of the United States Trade Representative (Parts 2000—2099)

2014 Added; interim 56430

Proposed Rules:

8a 58568
30 ....7412, 53861
287 59691
303 46872
700--799 (Ch. VII) 66821
710 39194
711 39194
712 39194
713 39194
714 39194
715 39194
716 39194
717 39194
718 39194
719 39194
720 39194
721 39194
732 53854
740 53854
743 53854
748 53854
750 53854
752 53854
758 53854
762 53854
772 53854
801 37049
806 ....2454, 48568
922 ....19945, 27484, 30929, 35102, 38853, 63262

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

2.32 Revised 46268
2.34 Revised 46269
2.41 (f)(3) removed; (f)(4) and (f)(5) redesignated as (f)(3) and (f)(4) 43599
3 Authority citation revised 46269
3.25 (f) revised 46269
4 Authority citation revised 46269
4.1 (b)(1) introductory text, (iii) and (5)(vii) amended 14830
4.8 (b)(4) and (6) revised 3012
4.9 (b)(6) revised 46269
4.11 (a)(1)(i)(A), (B), (iii)(A), (2)(i)(A), (B) and (ii)(A) revised; (a)(1)(i)(E) and (iii)(D) redesignated as (a)(1)(i)(F) and (iii)(E); new (a)(1)(i)(E), new (iii)(D) and (h) added 3013
(c) and (d) amended; (e) revised 32180
(d)(1) corrected 35256
4.13 (c) and (i)(1) amended 3014
5.1 Amended 42594
23.0 Amended 33194
239 Announcement 19700
241 Removed 57374
245 Removed 30902
305.9 (a) revised 7785
305 Appendix H corrected 926
Appendix F revised 32403
312 Added; eff. 4-21-00 59911
700 Announcement 19700
701 Announcement 19700
702 Announcement 19700
703 Announcement 19700
901.3 Introductory text and (d) amended 34533
901.4 (b) revised 34533

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1000.12 (c) revised 66579
1000.27 Revised 66579
1000.28 Redesignated as 1000.29 66579
Added 66580
1000.29 Redesignated as 1000.30; new 1000.29 redesignated from 1000.28 66579
1000.30 Redesignated from 1000.29 66579
1051.1 (c) amended 48704
1615 Authority citation revised 34535
1615.1 Introductory text, (o) introductory text, (1) and (3) revised 2838
(c)(1) amended 34533
(o)(10) and (11) added; eff. 6-28-00 34535
(o)(10)(i) and (ii) amended; eff. 6-28-00 48704
(o)(11) amended; eff. 6-28-00 48705
1615.2 (a), (b) and (c) amended 34533
1615.4 Footnotes 2, 3 and 4 redesignated as footnotes 3, 4 and 5; eff. 6-28-00 34536
1615.64 (d) introductory text revised 2832
(a)(1) and (b) amended 34533
1616.1—1616.6 (Subpart A) Authority citation revised 34536
Corrected 61021
1616.2 Introductory text, (m) introductory text, (1) and (3) revised 2841
(m)(10) and (11) added; eff. 6-28-00 34536
(m)(10)(i), (ii) and (11) amended; eff. 6-28-00 48705
1616.5 Footnotes 2 through 6 redesignated as footnotes 3 through 7; eff. 6-28-00 34538
Footnotes 3 through 7 correctly redesignated as Footnotes 2 through 6 61021
1616.65 (d) introductory text revised 2833
1700.14 (a)(29) added; eff. 6-19-00 32803

Proposed Rules:

0—999 (Ch. I) 3668, 14156
4 57825
23 ..... 30448, 37051
241 ..... 13368, 18081
256 ..... 13369, 18081
259 19729
308 61
310 66124
312 ..... 22750, 34595, 40525
432 ..... 38610, 51087
436 57294
453 ..... 24250, 35965, 56717
460 48024

CHANGES JANUARY 4, 1999 THROUGH NOVEMBER 30, 1999

TITLE 16 *Proposed Rules:—Con.*

1000—1799 (Ch. II).....38387
1212.....42302
1213.....3456, 10245, 14158, 37051
1500.....3456, 10245, 14158, 37051
1513.....3456, 10245, 14158, 37051
1615.....2867, 10963, 13126, 34597
1616.....2867, 10963, 13126, 34597
1630.....13132
1631.....13132
1632.....13137

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Fee schedules 19711
1.31 (b), (c) and (d) revised 28742
(b)(4) stayed; eff. 7–7–99 through 9–27–99 36569
1.61 Removed 24046
3 Advisory 39912
5 Fee schedules 19711, 30384
Authority citation revised 66380
5.3 Added 66380
5 Appendix A revised 29217
Appendix E added 29224
9 Order 39913
Advisory 39915
Technical correction 43254
9.9 (b)(1) introductory text, (3) and (4) revised 46270
10.1 (d) revised 30903
10.68 (a)(2) amended 30903
10.92 (b)(1) revised 30903
10.101 (a)(5)(iii) revised 30903
10.102 (e)(1) amended 30903
10.106 (b)(3) amended 30903
10.109 Introductory text, (a)(2)(ii) and (b) revised; (d) removed 43071
10 Appendix A amended 30903
12.408 Introductory text and (b) revised 43071
17.00 (b)(1) introductory text revised; (b)(1) designation, (2) and (c) removed; (b)(1)(i) and (ii) redesignated as (b)(1) and (2); (b)(3) added 24046
18.01 Revised 24046
30 Technical correction 30103
30.5 Introductory text and (e) added; (a) revised 28914
30.6 Revised 28914
30 Appendix C amended 50251
31 Fee schedules 19711
60.41c Corrected; CFR correction 24049
150.1 (d) introductory text, (2), (e)(2) and (5) revised 24046
150.2 Revised 24047
150.4 Revised 24047
150.5 Added 24048
171.50 Heading, (a)(1) introductory text, (c) and (d) revised 46271

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.30–1 (e)(16) added 61400
200.30–3 (a)(67) added 42595
(a)(68) added 61400
(a)(6) amended 61442
200.30–5 (e)(2) revised 34540
202.3 (b)(2) revised 19451
210 Technical correction 61962
210.3–19 Removed; eff. 9–30–00 53908
210.3–20 (d) amended; eff. 9–30–00 53908
210.3–01 (h) amended; eff. 9–30–00 53908
210.3–02 (d) amended; eff. 9–30–00 53908
210.3–12 (f) amended; eff. 9–30–00 53909
211 Staff accounting bulletin 45150
228 Technical correction 61962
228.310 Note 2 amended; eff. 9–30–00 53909
229 Technical correction 61962
229.10 (a)(2) revised 61443
229.402 (a)(1)(ii) amended; eff. 9–30–00 53909
229.404 Amended; eff. 9–30–00 53909
229.512 (a)(4) amended; eff. 9–30–00 53909
229.601 (b)(10)(iii)(B)(*5*) amended; eff. 9–30–00 53909
229.1000—229.1016 (Subpart 229.1000) Added 61443
230 Authority citation revised 61449
Technical correction 61962
230.135 Revised 61449
230.144 (a)(3)(iv) and (v) amended; (a)(3)(vi) and (vii) added 61400
230.145 (b) revised 61449
230.154 Added 62545
230.162 Added 61450
230.165 Added 61450
230.166 Added 61450
230.175 (b)(2)(i) and (c)(3) amended; eff. 9–30–00 53909
230.405 Amended; eff. 9–30–00 53909
230.425 Added 61450
230.432 Revised 61451
230.434 (c)(3)(i) revised; (c)(3)(ii) amended; eff. 9–30–00 53909

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 17 Chapter II—Con.

230.463 (a) amended; eff. 9–30–00 53910
230.485 (f)(1) designation and (2) removed 27894
230.486 (f)(1) designation and (2) removed 27894
230.487 (d)(1) designation and (2) removed 27894
230.495 (e)(1) designation and (2) removed 27894
230.497 (k)(2)(ii) amended 27894
230.701 (c) introductory text, (d)(2)(ii) and (iii) amended 61498
230.800—230.802 Undesignated center heading and sections added 61400
232.10 (b) revised 27894
232.11 Amended 27894
232.13 (d) amended 61451
232.101 (a)(1)(iv) and (c)(11) amended 19471
(a)(1)(iii) note revised; (b)(7) removed 27894
232.102 (e) revised 27894
232.104 Added 27895
232.105 Added 27895
232.106 Added 27895
232.301 Revised 27898, 56431
232.302 (a) revised 27895
232.303 (a)(3) revised 27895
232.304 Heading, (a) and (b) revised; (c) amended 27895
232.305 Existing text designated as (a); (b) added 27896
232.306 (b) revised 27896
232.307 Existing text designated as (a); (b) added 27896
232.310 Revised 27896
239 Technical correction 61962
239.14 Form N–2 amended 27897, 46837
239.15 Form N–1 amended 27897
239.15A Form N–1A amended 27897, 45836
239.16 Form S–6 amended 27896
239.17a Form N–3 amended 27897, 45837
239.17b Form N–4 amended 27897
239.18 Form S amended; eff. 9–30–00 53910
239.24 Form N–5 amended 27897, 46837, 46838
239.25 Form S–4 amended 61451
239.31 Form F–1 amended; eff. 9–30–00 53910
239.32 Form F–2 amended; eff. 9–30–00 53910
239.33 Form F–3 amended; eff. 9–30–00 53910
239.34 Form F–4 amended; eff. 9–30–00 53911
Form F–4 amended 61451
239.36 Form F–6 amended; eff. 9–30–00 53912
239.42 Heading revised; (e) and (f) amended; (g) added 61402
Form F–X amended 61403
239.63 Form ID amended 56432
239.800 Added 61403
240 Technical correction 61962
240.3a12–8 (a)(1)(xviii) and (xix) amended; (a)(1)(xx) added 29553
Corrected 31493
240.3b–4 Heading and (c) revised; eff. 9–30–00 53912
240.3b–6 (b)(2)(i) and (c)(3) amended; eff. 9–30–00 53912
240.10b–13 Removed 61452
240.10b–18 (a)(15) and (d) added; (c) revised 52433
240.13a–10 (g)(4) amended; eff. 9–30–00 53912
240.13e–1 Revised 61452
240.13e–3 (g)(6) added 61403
(d), (e) and (f) heading revised; (g)(5) amended 61452
240.13e–4 (h)(7) amended; (h)(8) redesignated as (h)(9); (h)(8) and (i) added 61403
Heading, (a)(4), (c), (d) and (e) revised; (b) redesignated as (j); (a) introductory text, (3), (f)(12), (g) introductory text and new (j)(2)(i) and (ii) amended; new (b) added 61453
240.13e–100 Revised 61454
240.13e–101 Removed 61456
240.14a–3 (e)(1) and (2) introductory text revised 62546
240.14a–4 (f) amended 61456
240.14a–6 (b), (c), (e)(2) and (j) revised; (b) note removed; (o) added 61456
240.14a–11 Removed 61456
240.14a–12 Revised 61456
240.14a–101 Amended 27896, 61457
240.14c–3 (c) added 62547
240.14c–5 (b) and (d)(2) revised 61459
240.14c–7 Note 2 removed; Note 3 and Note 4 redesignated as Note 2 and Note 3 62547

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

240.14d–1 (c) through (f) redesignated as (e) through (h); new (f) amended; (c) and (d) added 61404
(g)(1) through (7) redesignated as (g)(2), (7), (5), (1), (9), (3) and (6); (b) introductory text and new (g)(1) amended; new (g)(4) and (8) added 61459
240.14d–2 Revised 61459
240.14d–3 (a)(1), (2), (ii), (3) introductory text and (c) amended; (b) revised 61460
240.14d–4 (b) and (c) redesignated as (c) and (d)(1); heading, (a) introductory text, (3) and new (d) heading revised; introductory text, (a) instruction, new (b) and (d)(2) added; new (d)(1) amended 61460
240.14d–5 (c)(1) revised 61460
240.14d–6 Revised 61460
240.14d–7 (a) redesignated as (a)(1); (a)(2) added 61461
240.14d–9 (d)(2) introductory text revised; (d)(2)(iii) added 61406
(a) through (f) redesignated as (b) through (g); heading and new (b) introductory text revised; new (a) added 61461
(b)(1), (2)(i), (3)(i), (c)(2), (d), (e)(1) introductory text, (2)(i) and (f)(4) amended 61462
240.14d–11 Added 61462
240.14d–100 Revised 61462
240.14d–101 Revised 61464
240.14e–1—240.14e–8 Note added 61465
240.14e–1 (c) revised 61465
240.14e–2 (d) added 61406
240.14e–5 Added 61465
240.14e–8 Added 61466
240.15b1–1 (c) revised 25147
240.15b3–1 (c) revised 25147
(b) removed; (c) redesignated as (b); new (c) added 37593
(c)(4) added 42595
240.15b6–1 Revised 25147
(e) added 42595
240.15b7–3T Added 42028
240.15Ba2–2 (d) revised 25148
(e) added 37594
(e)(4) added 42596
240.15Bc3–1 Revised 25148
(e) added 42596
240.15Ca1–1 (c) revised 25148
240.15Cc1–1 Revised 25148
240.15Ca2–1 (b) removed; (c) redesignated as (b); new (c) added 37594
(c)(4) added 42596
240.15Cc1–1 (d) added 42596
240.15d–10 (g)(4) amended; eff. 9–30–00 53912
240.17a–5 (g)(2) and (3) correctly added; CFR correction 39918
240.17a–9T Added 42029
240.17Ad–21T Added 42029
249 Technical correction 61962
249.220f Form 20–F amended; eff. 9–30–00 53912
249.446 Form ID amended 56432
249.480 Added 61406
249.501a Form BDW revised 25149
Existing text designated as (a); (b) added 42596
249 Appendix B—Form BD revised 37594
259.602 Form ID amended 56432
260 Technical correction 61962
260.0–11 (b)(2) and (c)(3) amended; eff. 9–30–00 53925
260.4d–10 Added 61406
269.7 Form ID amended 56432
270 Compliance date extension 24488
Authority citation amended 46834
270.8b–23 (a) revised 27896
270.8b–32 (c) revised 27896
270.8f–1 Revised 19471
270.17j–1 Revised 46834
270.30d–1 (f) added 62547
270.30d–2 Revised 62547
271 Interpretive releases 59877
274.5 Form N–5 amended 27897, 46837, 46838
274.11 Form N–1 amended 27897
274.11a–1 Form N–2 amended 27897, 46837
274.11b Form N–3 amended 27897, 46837
274.11c Form N–4 amended 27897
274.11A Form N–1A amended 27897, 46836
274.12 Form N–8B–2 amended 46838
274.101 Form N–SAR amended 27896
274.218 Revised 19471
274.402 Form ID amended 56432
275.203A–6 Added; eff. 5–3–99 15683
275.204–2 (a)(12)(i) and (13)(i) revised; (a)(12)(ii), (iii), (13)(ii) and (iii) redesignated as (a)(12)(iii), (iv), (13)(iii) and (iv); new (a)(12)(iii)(B),

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 17 Chapter II—Con.

(13)(iii)(B) and (C) redesignated as (a)(12)(iii)(C), (13)(iii)(C) and (D); new (a)(12)(ii), (iii)(B), (13)(ii) and (iii)(B) added 46838
279.1 Form ADV amended; eff. 12–31–99 15683

Proposed Rules:

1 ..... 17439, 22588, 32829, 38159, 47151, 59694, 66428, 66432
3 47452
4 41843
5 ..... 19730, 40528, 66432
30 ..... 22588, 32829, 46613, 46618
31 66432
32 47452
34 65669
35 65669
146 52695
200 19732
210 55648
228 55648
229 55648
230 ..... 18481, 62548
239 59826
240 ..... 18393, 18481, 25153, 29608, 41056, 55648, 57996, 59826, 62548
249 25153
270 ..... 18481, 24489, 52476, 59826
274 59826
275 ..... 43556, 61226
279 61226

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

1b Authority citation revised 17097
1b.1 (d) added 17097
1b.21 Added 17097
2.1 (a)(1)(viii)(A) through (I) removed 26603
2.55 (a) and (b)(1)(ii) revised; (b)(4)(i) and (d) removed; (b)(4)(ii) redesignated as (b)(4) 26603
(a)(2) introductory text and (ii) revised 54535
2.69 Removed 26603
2.102 Removed 26603
2 Appendix A added 26603
3.4 Removed 44404
11 Appendix A revised 62572
37.5 (c) redesignated as (f); new (c), (d) and (e) added 34124
37.6 Heading, (a) introductory text, (4), (5) and (e)(3)(ii) revised; (a)(6) added 34124
37.8 Added 34124
153.3 Added 57390
153.8 (a)(7) revised 26604
153.12 Added 51220
153.21 (b) revised 26604
157.1 Added 51220
157.6 (a) and (b) heading revised; (b)(6) added; (b)(7) amended 26604
(a)(2) through (5) redesignated as (a)(3) through (6); new (a)(2) added; (b)(8) revised 54535
(d) added 57390
157.8 Revised 26605, 54536
157.9 Amended 26605
157.10 Revised 26605, 54536
157.14 (a) amended; (a)(6–a) and (14)(i) through (iv) revised; (a)(6–b), (6–c), (6–d), (12) and (14)(vii) through (xiii) removed 26605
157.16 (c)(1) revised 26605
157.17 (a) and (b) amended 26606
157.18 Introductory text, (f)(2) and (3) amended 26606
157.20 (c) introductory text and (d) introductory text amended; (c)(2), (d)(1) and (f) removed; (c)(3), (4), (d)(2), (3) and (g) redesignated as (c)(2), (3), (d)(1), (2) and (f); (b) and new (d)(2) revised 26606
157.21 Removed 26606
157.22 Added 51221
157.102 (a)(1) amended; (b)(1)(v) revised 26606
157.103 (j) amended 26606
(i) amended 54536
(k) added 57391
157.201 (a) amended 26606
157.202 (b)(2)(i), (ii)(A), (B), (D), (E), (4) through (7), (10) and (12) revised; (b)(13), (14) removed; (b)(2)(i)(F) added 26606
(b)(2)(ii)(G) correctly removed; first (b)(2)(ii)(F) correctly redesignated as (b)(2)(ii)(G) 37037

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

(b)(2)(i) amended; (b)(2)(ii)(D) and (12) revised 54536
(b)(6)(ii) and (11)(i) revised 57391
157.203 (b) and (c) amended 26607
(d) added 57391
157.204 (d)(2), (4), (5) and (e) removed; (d)(3) redesignated as (d)(2) 26607
157.205 (c) removed; (d) through (i) redesignated as (c) through (h); (a) introductory text, (b) introductory text and new (c) revised; (a)(2), (b)(5), (6) and new (d), (e)(2), (f) and (g) amended 26607
157.206 (b), (c), (e) and (h) removed; (d), (f) and (g) redesignated as (b), (c) and (d); new (b) introductory text added; new (b)(1), (5) and (6) revised; new (b)(3)(i), (ii) and (iii) amended 26607
(c) amended; (d) revised 54536
(b)(2)(xii) and (3)(iv) added 57392
157.207 (b) and (c) revised; (f) removed; (g) and (h) redesignated as (f) and (g) 26607
157.208 Heading, (e) introductory text, (2) and (f)(2) revised; (c)(6), (8) and (4) through (7) removed; (c)(7), (9), (10), (11), (e)(8) and (9) redesignated as (c)(6), (7), (8), (9), (e)(4) and (5); (a), (b), new (c)(9), (d) and (g) amended 26608
(f)(2) amended 54536
157.209 Added 26608
157.210 Removed 26608
157.211 (a), (b)(1) through (5), (c)(1), (2) and (3) revised; (c)(4) added; (d) removed 26608
157.212 Removed 26609
157.213 Removed 26609
157.215 (a) introductory text and (b)(1)(iii) revised 26609
157.216 (a) introductory text amended; (a)(1), (2), (b), (c)(1), (3), (d)(1), (2) and (4) revised; (c)(5) and (d)(5) added 26609
(a)(2) revised 54536
157.217 (a) and (b)(2) revised 26609
(a)(4) added 54537
157.218 (a) revised 26609
157.201—157.218 (Subpart F) Appendix I amended 26609
Appendix II revised 26610
Appendixes I and II amended 54537
284.10 (b)(1)(i) through (v) revised 17278
284.11 (a) and (c)(2) amended 54537
284.221 (d)(1), (f)(3) and (h)(3) amended; (d)(3) removed; (f)(4) revised 26610
284.262 Revised 26610
284.288 Removed 26611
341.0 (a)(7) revised 44404
341.2 (c)(1) revised 44404
341.6 (d)(3) revised 44404
342.3 (b) and (d)(3) revised 44404
343.2 (c) revised 17097
(c)(4) revised 44405
343.4 (a) revised 17097
346.2 (c)(7) revised 44405
357.3 Revised 44405
362 (Subchapter S) Removed 44405
375.307 (a)(2), (8), (9), (17), (18), (b)(4), (5), (c), (e)(3) and (7) removed; (a)(3), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (d), (e)(4), (5) and (6) redesignated as (a)(2) through (9), (11), (12), (13), (c), (e)(3), (4) and (5); (e), (f) and (g) redesignated as (d), (e) and (f); (a)(1) and new (2), (3), (4) and (e)(3) revised; new (a)(10) added 26611
(h) added 51222
380 Authority citation revised 54537
380.3 (c)(2) amended 26611
380.4 (a)(28) amended 26611
(a)(31) through (36) added 57392
380.8 Amended 54537
380.9 (b) amended 54537
380.12 Added 26611
(f)(2) heading added; (f)(2) introductory text amended; (k)(4)(ii) revised 54537
(c)(5) and (10) revised; (e)(6) and (7) redesignated as (e)(7) and (8); new (e)(6) added 57392
380.13 Added 26617
380.14 Added 26618
380.15 Added 26619
380 Appendix A revised 26619
Appendix A amended 54537, 57392
381.302 (a) amended 44653
381.303 (a) amended 44653
381.304 (a) amended 44653
381.305 (a) amended 44653

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 18 Chapter I—Con.

381.403 Amended 44653
381.505 (a) amended 44653
381.801 Amended 44653
Corrected 47107
385.101 (b)(3) and (4)(i) removed; (b)(4)(ii) redesignated as (b)(4) 44405
(b)(4)(ii) removed; (b)(4)(i) redesignated as (b)(4) 51234
385.102 (a) and (e)(2) revised 44405
385.206 (b) and (c) redesignated as (f) and (j); new (b), new (c), (d), (e), (g), (h) and (i) added; new (f) revised 17097
(g)(2) removed; (g)(1) introductory text, (i), (ii) and (g)(1)(iii) redesignated as (g) introductory text, (1), (2) and (3); (b)(7), (8), (9)(i), (c), (e)(3), new (g)(1) and (h)(1) revised 43608
385.208 Removed 44405
385.213 (c)(4) and (5) added 17099
(c)(4), (5)(ii), (iii) and (d)(2) introductory text revised 43608
385.218 Added 17099
385.502 (a)(1) and (2) revised; (a)(3) removed 44405
385.604 (d)(2) revised; (d)(3) and (g) removed; (d)(4), (5) and (6) redesignated as (d)(3), (4) and (5) 17099
385.605 (a)(4) and (e)(2) revised; (f) removed 17099
385.606 (d) redesignated as (d)(1); (d)(2) and (l) added 17099
385.915 Revised 51234
385.1012 Revised 51234
385.1403 Removed; new 385.1403 redesignated from 385.1404 44405
385.1404 Redesignated as 385.1403; new 385.1404 redesignated from 385.1415 44405
Correctly removed 56172
385.1405 Removed 44405
Reinstated 51234
385.1406 Removed 44405
385.1407 Removed 44405
385.1408 Removed 44405
385.1409 Removed 44405
385.1410 Removed 44405
385.1411 Removed 44405
385.1412 Removed 44405
385.1413 Removed 44405
385.1414 Removed 44405
385.1415 Redesignated as 385.1404 44405
Removed 51234
385.1902 (a) revised; (b) removed; (c) redesignated as (b) 44405
385.2001 (b)(3) revised 26621
(a)(1)(ii) and (b)(3) correctly revised 37037
(a)(1)(i) amended 54537
385.2010 (f) revised 31496
(i) added 62582
385.2201—385.2202 (Subpart V) Heading revised 51234
385.2201 Revised 51234
385.2202 Heading revised 51236

Chapter III—Delaware River Basin Commission (Parts 400—499)

430.13 (i)(3) revised 35566

Proposed Rules:

2 27717
35 ..... 31390, 40533, 51933, 60390
101 42304
141 60140
153 27717
157 27717
281 56982
330 37718
357 ..... 42623, 45931
380 27717
385 ..... 29614, 33034, 37718, 42307, 53959, 60140
1317 58568

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4.9 (f) amended 43265
4.12 (a)(5) amended 43265
4.61 (b)(3) amended 43265
4.76 Added 40986
4.82 (a) amended 43265
4 Footnotes 112 and 113 removed 43265
10.41 (d) amended 61205
10.41b (b)(1), (2)(iv) and (4) amended 43265
10.62 (a) amended ..... , 16347
10.62b (c)(1) introductory text and (ii)(C) revised 16347
12 Authority citation amended 17531

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

12.8 (b) amended 43265
12.104g (b) table amended 17531
12.131 Existing text designated as (a); new (a) heading and (b) added; 48092
19 Authority citation amended 57565
19.2 (d)(3), (g), (h)(1) and (3) amended 57565
19.17 (g) amended 57565
19.19 (b) amended 57565
24 Authority citation amended 42031, 56437
24.1 Heading, (a) introductory text, (3)(i), (7), (b) introductory text, (3), (d) and (e) amended; interim 56437
24.3 (b) amended; (e) revised; interim 56437
24.3a Heading and (b)(2) revised; (a) amended; interim 56437
24.11 Revised; interim 56439
24.21 (b)(9) amended 43266
24.23 (c)(3) revised 42031
24.24 (g) amended 43266
24.25 (a) amended; interim 56439
24.36 (a) introductory text, (b) and (c) amended; (a)(1), (2) and (3) added; interim 56439
101.1 Amended 40987
102.20 (p) amended 43266
112.41 Amended 43266
113.38 (c)(4) amended 43266
113.67 (a)(1)(ii) and (b)(1)(ii) amended 48534
118.12 Amended 43266
122.13 Amended 18566
122.153 Revised 53628
122.154 (b)(2) revised 53628
122.162 (b) amended 43266
133.26 Amended 43266
133.46 Amended 43266
141.64 Amended 43266
141.68 (b) amended 43266
141.90 (a) removed 43266
141.103 Amended 43266
141.113 (b) amended 43266
143.21 (j) amended 43266
144.37 (h)(2)(vi) amended 43266
148.51 (a)(1) amended 43267
151.12 Added 48534
151.13 Revised 48539
151.14 Amended 48543
151.16 Added 43611
159 Authority citation revised 56440
159.4 Authority citation removed 56440
159.6 Authority citation removed; (a), (b) introductory text, (c) and (d); interim 56440
159.7 Authority citation removed 56440
159.21 Authority citation removed 56440
159.22 Authority citation removed 56440
159.44 Authority citation removed 56440
159.46 Authority citation removed 56440
159.55 Authority citation removed 56440
159.57 Authority citation removed 56440
162.65 (c) amended 43267
162.72 (b)(1), (2) and (3)(ii) amended 43267
162.73 (a)(2)(i), (ii), (3)(i), (ii), (b)(1)(i), (ii) and (2) amended 43267
162.74 (c) amended 43267
162.79b Amended 43267
173.6 Removed 43267
174 Authority citation amended 43612
174.11 (c) amended; interim 56441
174.12 (a)(2) amended; interim 56441
174.13 (a)(7), (8) and (9) amended 43267
174.21 (b) revised 43612
174.31 (a) and (b) amended; (c) added 43612
178.2 (b) table amended (OMB numbers) 16347, 16639
Table amended 40987, 43612, 48543
181.82 (b)(1)(ii) amended 43267
181.93 (b)(5)(i)(B)(4) amended 43267
192 Authority citation revised 16639, 40987
192.0 Amended 40987
192.1 Amended 16639
192.2 (a) amended; (b), (c) and (d) revised 16639
192.11—192.13 (Subpart B) Added 40987

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351.206 (c)(2) revised 48707
351.222 (b) and (c) revised 51240

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 19 Chapter III—Con.

Regulation at 64 FR 48707 eff. date corrected to 9–8–99 50553

Proposed Rules:

4 ..... 19508, 29975
12 ..... 41851, 62618
19 16868
24 62619
101 61232
111 ..... 22726, 34748
113 ..... 41851, 42872
141 ..... 41851, 49423, 62135
146 15873
159 ..... 19508, 29975
351 29818

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

220.143 (b)(2), (3) and (4) revised; interim 62976
220 Appendix 3 corrected; CFR correction 36239
375 Authority citation revised 66381
375.1 (a) revised; (c) added 66381
375.2 Amended 66381
375.5 (a), (b) introductory text, (1) and (2) revised; (b)(3) amended 66381
375.6 (a), (b)(1), (2) introductory text and (c)(1) revised 66381
375.7 (a)(2), (b)(1)(ii), (vi) and (2) amended 66382
375.8 Revised 66382

Chapter III—Social Security Administration (Parts 400—499)

404.403 (g) added 17101
(a)(5) added; interim 57775
404.942 (g) revised 51893
404.1220 (a) revised 33016
404.1574 (b)(2), (3) and (4) revised 18570
(b)(3) table corrected 22903
404.1501—404.1599 (Subpart P) Appendix 1 amended 29788, 46128
416.200 Revised 31972
416.203 (b) revised 31972
416.211 (a)(1) revised 31972
416.262 (a) revised 31972
416.305 (a)(2) revised 31972
416.315 (c) revised 31972
416.330 Revised 31973
416.335 Revised 31973
416.420 (b)(1), (2) and (3) revised 31973
416.421 (a) and (b) amended 31973
416.501 Revised 31973
416.502 Amended 31974
416.520 (a) amended; (b)(1), (4), (c) introductory text, (1) and (d) revised 31974
416.974 (b)(2), (3) and (4) revised 18570
(b)(4) table corrected 22903
416.1160 (b)(2)(i) revised; (b)(2)(ii) and (iii) redesignated as (b)(2)(iii) and (iv); new (b)(2)(ii) added 31974
416.1163 (e)(1) revised 31974
416.1165 (f) revised 31974
416.1166 (d) revised 31975
416.1245 (b)(1), (2)(v) and (5) revised 31975
416.1335 Amended 31975
416.1442 (g) revised 51893
416.1801 Amended 31975
416.1902 Amended 31975
422.112 (b) revised 33016

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

652.1 (a) revised; (h) amended; interim 18761
652.3 (d) revised; interim 18762
652.5 Revised; interim 18762
652.6 Removed; interim 18762
652.7 Removed; interim 18762
652.8 (j)(1) and (5) amended; interim 18762
652.200—652.216 (Subpart C) Added; interim 18762
654 (Subpart E) Authority citation revised 34965
654.403 (a)(1) and (3) amended 34965
655.100 (a)(1) amended 34966
655.101 (c) introductory text, (1), (2) and (3) amended 34966
655.106 (e) revised 34966
660 Added; interim 18693
661 Added; interim 18694
662 Added; interim 18701
663 Added; interim 18704
664 Added; interim 18713
665 Added; interim 18717
666 Added; interim 18719
667 Added; interim 18722
668 Added; interim 18736

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

669 Added; interim 18746
670 Added; interim 18750
671 Added; interim 18760

Proposed Rules:

219 66433
220 62996
322 62135
375 44670
404 ..... 42310, 55215
416 ..... 42310, 55217
718 ..... 54966, 62996
722 ..... 54966, 62996
725 ..... 54966, 62996
726 ..... 54966, 62996
727 ..... 54966, 62996

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

2 Effective date confirmation 26657
3 Effective date confirmation 26657
3.2 (k) revised 56447
5 Effective date confirmation 26657
5.20 (h) revised 59618
5.22 (a)(13)(viii) removed 49383
5.31 (f)(3) revised 49383
5.58 (a)(3) revised 56448
5.61 (i) added 33194
5.67 Heading and introductory text revised; (e) added 47669
(a), (b) and (c) revised 56448
5.83 (c)(1) revised 23184
5.93 (b) revised 49383
5.101 Added 59618
10 Effective date confirmation 26657
10.50 (c)(19) revised 56448
12 Effective date confirmation 26657
16 Effective date confirmation 26657
20 Effective date confirmation 26657
20.100 (c)(24) revised 56448
25 Effective date confirmation 26657
25.32 (i) and (j) corrected; CFR correction 56454
26 Meeting 57776
26.1 (c) corrected 16348
26.31—26.50 (Subpart B) Appendix B corrected 16348
50 Effective date confirmation 26657
50.3 (b)(12) revised 56448
50.23 (d) revised; interim 54188
54 Effective date confirmation 26657
56 Effective date confirmation 26657
56.102 (b)(11) revised 56448
58 Effective date confirmation 26657
58.3 (e)(13) revised 56448
60 Effective date confirmation 26657
70 Effective date confirmation 26657
71 Effective date confirmation 26657
74 Effective date confirmation 39414, 57974, 62582
74.1102 (b)(1) and (c)(1) removed; (b)(2) and (c)(2) redesignated as (b) and (c) 48290
74.3045 (c)(1) introductory text revised 23186
74.3102 Added 48290
74.3602 (b)(4) redsignated as (b)(5); new (b)(4) added 32805
101 Workshop 34125
Comment period reopening 42277
101.4 (b)(23) added 50448
101.82 Added (effective date pending in part) 57732
172.831 Introductory text removed; (c) revised 43909
172.836 (c)(16) added 57976
172.883 Added 29958
(c) corrected 43072
172.886 (c)(2) revised 44122
173.25 (b)(2)(i) and (ii) added 56173
173.310 (c) table amended 29226
173.315 (a)(2) table amended; (a)(5) added 38564
173.325 (b)(1) revised 26841
(d) redesignated as (e); new (d) added 44123
(e) redesignated as (f); new (e) added 49982
175.105 (c)(5) table amended 29554, 45872
175.125 (b)(2) amended 48291
175.300 (b)(3)(viii)(a) amended 60106
176.170 (a)(5) table amended 27915
176.180 (b)(2) table amended 46130
176.300 (c) table amended 46130
177.1200 (c) table amended 57978
177.1211 Added 28098
177.1350 (a) introductory text, (1) through (6) and (b) redesignated as (a)(1) introductory text, (i) through (vi) and (b)(1); new (a)(2) and (b)(2) added 47108
177.1390 (c)(1)(i)(f) revised 46272
177.1500 (b) table amended 46272
177.1520 (c) table amended 27916

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 21 Chapter I—Con.

(a)(2) redesignated as (a)(2)(i); (a)(2)(ii) and (3)(vi) added; (d)(7) table amended 47108
177.1585 (a) and (c)(1) revised 27178
178 Technical correction 27854
178.2010 (b) table amended 24944, 25429, 26282, 30386, 48293, 53926, 65658, 66104
(b) table corrected 46130
178.3130 (b) table amended 62585
178.3295 Table amended 26843
178.3297 (e) table amended 26842, 44406, 44407
178.3400 (c) table amended 45874
178.3570 (a)(3) table amended 47670
178.3725 Table amended 48292
178.3910 (a)(2) table amended 47110
184.1148 Added 19894
184.1150 Added 19895
184.1250 Added 28361
200 Effective date confirmation 26657
201 Effective date confirmation 26657
201.63 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.64 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.66 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.319 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
201 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
202 Effective date confirmation 26657
206 Effective date confirmation 26657
207 Effective date confirmation 26657
207.10 (f) revised 63203
207.20 (c) revised 56448
(c) amended 63203
207.21 (a) amended 56448
(a) amended 63203
210 Effective date confirmation 26657
211 Effective date confirmation 26657
225.1 (b)(2) revised; (c) added 63203
225.58 (b)(1) amended 63203
225.115 (b)(2) revised 63203
299 Effective date confirmation 26657
300 Effective date confirmation 26657
310 Effective date confirmation 26657
310.4 Revised 56448
310.503 (b) amended 56449
310.516 Removed; eff. 11–16–00 62112
310.545 (a)(29) and (d)(31) added; (d) introductory text revised; eff. 5–21–01 27687
310.548 Added 44658
312 Effective date confirmation 19269, 26657
312.3 (b) amended 56449
312.42 (b)(6) added; interim 54189
314 Effective date confirmation 26657
315 Added 26667
316 Effective date confirmation 26657
316.3 (b)(9) revised 56449
320 Effective date confirmation 26657
330.1 Regulation at 64 FR 13294 eff. date corrected to 5–16–99 18571
331.30 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
333 Effective date confirmation 26657
341.74 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.76 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.80 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
343.80 (a)(1) revised 49653
346.50 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
352 Added; eff. 5–21–01 27687
355.50 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
358.650 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369 Effective date confirmation 26657

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

369.9 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.20 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.21 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
510 Effective date confirmation 26657
510.7 (a)(1) and (2) revised 63203
510.105 (a) and (b) amended 51241
510.301 Heading revised 63203
510.305 Revised 63203
510.600 (c)(1) table and (2) table amended 15683, 18571, 23187, 42597, 48294
514 Effective date confirmation 26657
514.1 (b)(8)(ii) and (v) revised 40756
514.2 Removed 63203
514.4 Added 40756
514.9 Removed 63203
514.105 (a) introductory text and (b) removed; (a)(1) and (2) redesignated as (a) and (b); new (a) amended 63203
514.111 (a)(5) revised 40757
(b) removed; (c) redesignated as (b) 63204
514.112 Removed 63204
514.115 (a), (b), (c) introductory text, (1), (3), (d) and (e) amended 63204
514.201 Revised 63204
515 Added 63204
520 Effective date confirmation 26657
520.48 (b) amended 42597
520.260 (b) amended 15684
520.309 (a) revised; (c) redesignated as (d); new (d)(1) and (2) revised 32181
520.446b (d)(4)(iii)(C) amended 37673
520.534 (d) heading amended 30387
520.600 (i) revised 18571
520.812 (a) amended 48295
520.1263c (b) amended 66382
520.1310 Added 39919
520.1452 (d)(2) and (3) revised 66105
520.1484 Revised 31497
520.1615 Added 18573
520.1660d (a)(1), (2) and (7) amended 48544
520.1807 Added 23018
520.2184 (b) amended 15684
520.2220a (a)(2) amended 18572
520.2220b (a) removed; (b), (d) and (e) redesignated as (a), (b) and (d); new (a) and new (d)(2) revised 15684
520.2260a Heading and (a)(1) revised; (a)(4) removed 66383
520.2345d (a)(1) amended 37673
522 Effective date confirmation 26657
522.690 (b) amended 15685
522.723 (c) amended 15684
522.800 (b) amended 15684
522.842 (a) and (e) removed; (b) and (d) introductory text revised; (d)(1) redesignated as (d)(1)(i); (d)(1)(ii) added 48294
522.1081 (a)(3) and (b)(3) redesignated as (a)(4) and (b)(4); (a)(2)(i), (ii), (iii) and new (b)(4)(iii) amended; new (a)(3), (5) and new (b)(3) added; (a)(4) heading, (i) and (b)(4) heading revised; (a)(4) footnote removed 48544
522.1192 (d)(2)(ii) amended 26671
522.1193 (d)(2) amended 26671
522.1660 (b) and (d)(2)(iii) amended 23187
(d)(2)(iii) revised 26670
(d)(1)(iii) amended 42831
522.1940 (d)(1)(i) and (2)(i) redesignated as (d)(1)(i)(A) and (2)(i)(A); (b), new (d)(1)(i)(A) and new (2)(i)(A) revised; (d)(1)(i)(B) and (2)(i)(B) added 48295
522.2100 (a)(1), (b)(1), (c)(1), (d)(1) and (e)(1) amended 27916
522.2476 (b) amended 42597
(b) revised; (d)(1) and (2) redesignated as (d)(1)(i) and (2)(i); (d)(1)(ii) and (2)(ii) added 48294
522.2477 (a) amended 42597
(a), (b) and (c) redesignated as (b), (c) and (d); new (d)(1)(i) redesignated as (d)(1)(i)(A); new (b) revised; (d)(1)(i)(B) added 48294
522.2478 (c) redesignated as (d); new (d)(1)(ii) revised 18573
522.2680 (d)(3)(ii) amended 46840
524 Effective date confirmation 26657
524.770 (d)(2) revised 49092

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 21 Chapter I—Con.

524.1660a (b) revised; (c)(1)(i) footnote, (ii) footnote, (iii) footnote, (2)(i) footnote and (2)(ii) footnote removed....42831
524.2098 Added....37401
(d)(1) and (2) amended....48707
529 Effective date confirmation....26657
556.175 Added....35923
556.304 Added....48545
556.344 (b)(2)(ii) added....26671
556.430 Revised....31498
556.490 Revised....26672
556.513 Added....23019
556.597 Added....48296
556.640 Revised....26672
556.739 Revised....18574
556.750 Revised....48296
558.3 (b)(2), (3) and (4) amended....63206
558.4 Heading, (a), (b) and (c) revised....63206
558.15 (g)(1) and (2) amended....37673
558.76 (d)(3)(xxi) added....18574
558.78 (d)(3)(xii) revised....26844
558.95 (d)(1)(xiv) added....49083
(d)(5) introductory text revised; (d)(5)(iv) added....49384
558.128 (d)(1) table amended....23539
558.140 (a) amended....15684
558.198 Added....35923
558.258 (c)(1)(i) introductory text amended....26844
558.265 (a) amended....42597
558.311 (e)(4)(ii) added....49083
(e)(1)(xiv) table amended....49656
558.363 (d)(2)(iii) added....18574
(d)(2)(iv) added....20164
556.366 (c) table amended....18574, 20164
(c) table amended....49384
558.485 (a)(17) removed....15684
(e)(2)(i) introductory text and (A) revised; (e)(2)(i)(B) amended....53927
558.530 (d)(5)(xxv) added....18575
(d)(5)(xxvi) added....20164
558.555 (b) redesignated as (d); new (b), (c), (d)(5), (6) and (7) added; new (d) heading revised; new (d)(1) introductory text removed....48296
558.575 (a) revised; (c) redesignated as (d); (d)(7) added....26672
(d)(4)(ii)(*a*) amended....43909
558.635 (b)(2) amended....15684
(a), (c), (e)(3) and (4) removed; (b), (d), (e) and (f) redesignated as (a) through (d); new (a)(1), (2) and (d)(2)(i) amended; new (d)(4)(vii) added....48296
573 Announcement....46841
573.625 Revised....46840
600.3 (n) and (w) revised....56449
600.15 (b) revised....56449
600.21 Amended....56449
600.80 (b) and (c)(2)(i) amended; (g) and (j) revised....56449
600.81 Amended....56449
601 Authority citation revised....26668
601.1 Removed....56450
601.2 Revised....56450
601.3 Removed....56450
601.4 (a) revised; (b) amended....56450
601.5 Revised....56451
601.6 Revised....56451
601.9 Revised....56451
601.10 Removed....56451
601.20 Revised....56451
601.21 Revised....56451
601.22 Amended; heading revised....56452
601.25 (b)(3) and (f)(3) amended....56452
601.26 (e) introductory text, (f)(1), (2) and (3) amended....56452
601.28 Redesignated from 601.33....26668
601.30—601.35 (Subpart D) Revised....26668
601.33 Redesignated as 601.28....26668
601.51 Heading and (b) revised; (a) amended....56452
606.3 (c), (e), (f) and (j) revised....45370
606.100 (b) introductory text, (b)(7), (18) and (d) introductory text revised....45370
606.121 (a), (d)(2) and (e)(1)(ii) revised....45370
606.122 (f) and (n)(4) revised....45371
606.151 (b), (c) and (e) revised....45371
606.160 (b)(2)(v) revised....45371
606.170 (b) revised....45371
607.20 (b) revised....56452
607.21 Amended....56453
610.13 Introductory text revised; (a)(1) amended....56453
610.53 (d) revised....56453
610.63 Revised....56453
640.2 (b) and (d) removed; (c), (e) and (f) redesignated as (b),

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

(c) and (d); new (b) and new (c)(2) revised 45371
640.3 (b) introductory text, (3), (c)(1), (2) and (3) revised; (e) removed 45371
640.4 (d)(1) through (4) and (h) removed; (i) redesignated as (h); (b), (d), (g) introductory text, (1), (2), (4) and (5) revised 45371
640.5 Introductory text and (c) revised 45372
640.6 (c) removed 45372
Introductory text revised 56453
640.13 (a) revised 45372
640.15 Revised 45372
640.16 (a) and (b) revised 45372
640.21 (c) revised 56453
640.22 (a) revised 45372
(c) revised 56453
640.23 (a) revised 45372
640.24 (b) revised 45372
640.31 (c) removed 45372
640.32 (a) amended 45372
640.34 (a) through (d), (e)(1), (2), (3) and (g)(2) revised 45372
640.51 (c) removed 45373
640.52 (a) revised 45373
640.54 (a)(2) revised 45373
640.56 (c) introductory text revised 45373
640.62 Revised 45373
640.63 (c)(3), (5), (11), (12) and (13) revised 45373
640.64 (c) introductory text amended 56453
640.65 (b)(4) and (5) revised; (b)(8) added 45373
(a) amended 56453
640.69 (d) revised 45374
640.71 (a) introductory text revised 45374
(a) introductory text, (b) introductory text and (1) revised 56453
640.72 (a)(1) revised 45374
640.74 (a) revised; (b)(2) amended 56453
640.80 (a) amended; (b) revised 26286
640.81 (c) and (e) amended; (f) revised 26286
640.82 (a) heading, (c) heading, (d) and (e) revised 26286
640.84 (a) introductory text and (b) removed; (a)(1) through (4) redesignated as (a) through (d); introductory text, new (a) and new (d) revised 26286
640.90 (a) amended; (b) revised 26286
640.91 (b)(2) and (f) revised; (c) and (e) amended 26286
640.92 (a) heading, (c) heading, (d) and (e) revised 26286
640.94 (a) revised 26286
640.100 (a) amended; (b) and (c) revised 26287
640.101 (b) amended; (e)(3), (4) and (f) removed 26287
640.102 (e) amended 26287
640.103 (b) revised 26287
640.104 (b)(2), (3), (c)(1) and (2) revised 26287
660.21 (a)(3) and (d) revised 56454
660.30 (b) revised 56454
660.33 Amended 56454
700.35 Added; eff. 5-21-01 27693
701.3 Regulation at 64 FR 13297 eff. date corrected to 5-16-99 18571
740.19 Added; eff. 5-22-00 27693
800 Effective date confirmation 26657
801 Effective date confirmation 26657
801.420 (c)(4) amended 59620
805 Removed 66106
807 Effective date confirmation 26657
809 Effective date confirmation 26657
812 Effective date confirmation 26657
860 Effective date confirmation 26657
874.5350 (c) revised 18329
874.5370 (c) revised 18329
876.1735 Added 51444
878.3530 Regulation at 64 FR 45161 eff. date corrected to 8-19-99 46010
878.4014 Added 53929
878.4018 Added 53929
878.4020 Added 53929
878.4022 Added 53929
882.5860 (c) revised 18329
884.6190 (a) amended; (b) revised 62977
890.5275 (c) revised 18331
890.5300 (c) revised 18331
890.5860 (c) revised 18331
900.2 (yy) added 32407

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 21 Chapter I—Con.

Regulation at 64 FR 32407 eff. date delayed to 1-28-00 53195
900.4 (a)(4) amended; (c)(3)(ii), (5) introductory text, (i), (ii) and (6)(ii) revised 32407
Regulation at 64 FR 32407 eff. date delayed to 1-28-00 53195
900.12 (b)(5) and (e)(5)(vii)(A) revised 18333
(c)(2), (f)(3) and (j)(2) revised 32408
Regulation at 64 FR 32408 eff. date delayed to 1-28-00 53195
1020.30 (b) amended 35927
1020.31 (a)(2)(i), (f)(3) and (m) revised 35927

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308 Technical correction 39560, 42432
1308.12 (f)(1) removed; (f)(2) redesignated as (f)(1) 35930
1308.13 (g) added 35930
(c)(5) through (11) redesignated as (c)(6) through (12); new (c)(5) added 37675
1308.14 (c)(48) redesignated as (c)(49); new (c)(48) added 49983
1309.29 Regulation at 62 FR 53960 confirmed 40516
1310.09 Regulation at 62 FR 53960 confirmed 40516
1312 Technical correction 42432
1312.30 (a) added 35930

Proposed Rules:

1 ..... 15944, 32442
2 47719
5 ..... 34608, 53281
10 66822
16 ..... 36492, 36516
20 60143
25 53281
101 ..... 15948, 17295, 36492, 36516, 36824, 42315, 45932, 46626, 50783, 62746
111 ..... 32830, 48336
115 ..... 36492, 36516, 46626
120 65669
206 34608
207 ..... 26330, 43114
210 52696
211 52696
212 51274
250 34608
291 39810
310 ..... 17985, 44671
314 ..... 34608, 42625, 42873, 53960
333 39452
344 44671
500 53281
510 ..... 35966, 53281
514 ..... 35966, 40321, 53281
558 ..... 35966, 53281
600 ..... 34608, 45383, 61045
601 ..... 34608, 53960
606 ..... 45355, 45375, 61045
607 ..... 26330, 43114, 45340, 61045
610 ..... 45340, 61045
630 ..... 45355, 61045
640 ..... 26344, 45340, 45375, 61045
660 ..... 45340, 61045
801 ..... 41710, 58004, 59695
807 ..... 26330, 43114
820 52696
870 43114
878 ..... 41710, 58004
880 ..... 41710, 53294, 58004
884 ..... 24967, 31164
888 43114
890 43114
900 32443
1020 23811
1271 52696
1300—1399 (Ch. II) 54794
1308 ..... 17298, 17299, 24094, 25405
1401 51275

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised 54539
22.1 Amended 54539
(c) table amended 66770
22.2 (a) revised 66770
40 Authority citation revised 55418
40.1 Introductory text, (a), (f), (g), (i) and (l) amended 55418
40.21 (a)(1) and (2) revised 55418
40.41 Regulation at 62 FR 67564 confirmed 50752
40.81 Revised 55418
41 Authority citation revised 54540
41.2 (j) revised 28916
(l)(2) amended; interim 42033
41.32 Revised 45163
41.33 Revised 45164
41.63 Redesignated from 514.44 54539

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

(g) heading and (1) introductory text revised; (g)(3) and (4) amended 54540
41.114 Removed 28916
42.21 (b) revised 55419
42.71 (a) revised 55419
42.72 (e)(4) amended 28916
50 Authority citation revised 19714
50.7 (d) added 19714
51 Authority citation revised 19714
51.72 (b) revised; (c) added 19714
51.80 Revised 19714
51.83 Amended 19715
51.84 Amended 19715
51.89 Revised 19715
61—67 (Subchapter G) Established 54539
61 Redesignated from Part 502; nomenclature change 54539
61.9 Amended 54539
62 Redesignated from Part 514; nomenclature change 54539
Authority citation revised 54540
62.50 (h)(1) introductory text revised 54540
63 Redesignated from Part 515; nomenclature change 54540
64 Redesignated from Part 516; nomenclature change; authority citation revised 54540
64.8 Amended 54540
65 Redesignated from Part 517; nomenclature change 54540
66 Redesignated from Part 526; nomenclature change; authority citation revised 54540
66.3 (a) revised 54540
66.5 (a)(1) amended; (a)(2) revised 54540
67 Redesignated from Part 527; authority citation revised 54541
67.2 (a) and (c) amended 54541
67.4 (i) amended 54541
121.1 Amended 17533
121.9 (a) revised 17533
123.4 (a) revised 17533
123.15 (b) revised 17533
123.17 (a) revised 17534
124.13 (e) revised 17534
126.5 Revised 17534
171 Authority citation revised 54539
171.11 (a)(3) amended 54539
171.20—171.26 (Subpart C) Revised 25430
171.32 (j)(1), (2) and (5) amended 18808

Chapter II—Agency for International Development (Parts 200—299)

Chapter II Heading revised 15685
201.03 Revised 17535
201.23 (c) amended 17535
201.31 (f) and (g) amended 17535
201.32 (b) and (c) amended 17535
201.51 (c)(4) amended 17535
201.52 (a)(2)(iii)(C), (4)(iii) introductory text and (B) amended 17535
201.67 (a)(5)(ii) amended 17535

Chapter V—Broadcasting Board of Governors (Parts 500—599)

Chapter V Heading revised 54539
500 Removed 54539
501 Nomenclature Change 54539
502 Redesignated as Part 61 54539
503 Nomenclature Change 54539
504 Removed 54539
505 Nomenclature Change 54539
506 Nomenclature Change 54539
510 Nomenclature Change 54539
511 Nomenclature Change 54539
512 Nomenclature Change 54539
513 Nomenclature Change 54539
5144Policy statement 34982
Redesignated as Part 62 54539
514.21 (f) revised 17976
514.31 (e), (f), (h), (i) and (m) revised 53930
514.32 Added 17976
514.44 Redesignated as 41.63 54539
514.45 Added; interim 44126
514.80 (Subpart G) Removed 17976
514.90 Regulation at 63 FR 34810 comfirmed 40286
Revised; interim 51896
(b) removed 54539
515 Redesignated as Part 63 54540
516 Redesignated as Part 64 54540
517 Redesignated as Part 65 54540
521 Nomenclature Change 54540
525 Removed 54540
526 Redesignated as Part 66 54540
527 Redesignated as Part 67 54541
530 Nomenclature Change 54541

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

Chapter VI Removed 15686

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 22

Chapter VII—Overseas Private Investment Corporation (Parts 700—799)

Chapter VII Heading revised 32806

Proposed Rules:

22.....28946, 58004
42.....58004
146.....58568
194.....53632
229.....58568
514.....17988

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

180 Added.....29750
655.601 Regulation at 61 FR 29626 confirmed; (c) and (d) revised; (e) removed 33753
Regulation at 64 FR 33753 eff. date corrected to 7–16–99 38307
661 Added; interim.....38573
685 Authority citation revised.....48959
658.5 Amended 48959

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200--1299)

1200 Regulation at 62 FR 34402 confirmed 40764
1200.4 (d)(1) and (2) amended 40764
1200.10 (b) and (d) revised.....40764
1200.13 (b) revised.....40764
1200.22 Amended 40764
1200.33 (a) and (b) revised.....40764
1205.4 Regulation at 62 FR 34404 confirmed 40764
1225 Regulation at 63 FR 46886 confirmed 35573
1225.4 (a)(1) and (5) revised; (a)(6) removed.....35573
Regulation at 64 FR 35573 eff. date corrected to 8–30–99 47110
1225.6 Revised 35573
Regulation at 64 FR 35573 eff. date corrected to 8–30–99 47110

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327.3 Regulation at 62 FR 63657 confirmed 19271
1327.5 Regulation at 62 FR 63657 confirmed; (a)(1)(ii) and (c)(2) amended; (c)(3) redesignated as (c)(4); new (c)(3) added.....19271
1327.6 Regulation at 62 FR 63657 confirmed 19271
(a) through (f) revised; (g) and (h) redesignated as (h) and (i); new (g) added 19272
1327.7 Added.....19273

Proposed Rules:

1—199 (Ch. I).....47741, 47744, 47746, 47749
655.....33802
668.....30263
777.....16870

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.501 Removed.....25731
5.508 (b)(1), (2), (h)(2) and (3) revised.....25731
5.510 (b) revised.....25731
5.512 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added.....25731
5.514 (b), (c)(1), (e)(1) and (f)(1) revised.....25731
5.516 (c) introductory text revised.....25732
5.518 (a), (b)(3) and (5) revised 25732
5.526 Revised.....25732
5.801 (c) revised.....33755
35 Authority citation revised 50201
35.1—35.5 (Subpart A) Removed; eff. 9–15–00 50201
35.1—35.19 (Subpart A) Redesignated from 35.80—35.98 (Subpart H); eff. 5–19–00 50201
35.80—35.98 (Subpart H) Redesignated as 35.1—35.19 (Subpart A); eff. 9–15–00.....50201

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

35.100—35.175 (Subpart B) Revised; eff. in part 5–19–00.....50202
35.200—35.215 (Subpart C) Revised; eff. 5–19–00 50208
35.300—35.325 (Subpart D) Revised; eff. 5–19–00 50209
35.500—35.510 (Subpart F) Revised; eff. 5–19–00 50209
35.600—35.630 (Subpart G) Revised; eff. 5–19–00 50209
35.700—35.730 (Subpart H) Added; eff. 9–15–00 50210
35.800—35.830 (Subpart I) Added; eff. 9–15–00 50211
35.900—35.940 (Subpart J) Added; eff. 9–15–00 50212
35.1000—35.1020 (Subpart K) Added; eff. 9–15–00.....50214
35.1100—35.1140 (Subpart L) Added; eff. 9–15–00.....50215
35.1200—35.1225 (Subpart M) Added; eff. 9–15–00.....50216
35.1300—35.1355 (Subpart R) Added; eff. 9–15–00.....50218
91.2 (b)(15) revised; eff. 9–15–00 50224
91.5 Amended; eff. 9–15–00 50223
91.225 (b)(7) revised; eff. 9–15–00 50224
92.206 (a)(2)(ii) revised; eff. 9–15–00 50224
92.355 Revised; eff. 9–15–00.....50224
92.504 (c)(3)(iv) revised; eff. 9–15–00 50224
92.508 (a)(7)(vi) revised; eff. 9–15–00 50224

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.304 Revised.....16329
100.305 Added 16329
100.306 Added 16330
100.307 Added 16330
100.308 Added 16330
103.10 Revised; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.15 Revised; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.20 Revised; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.25 Revised; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.30 Revised; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.35 Added; interim.....18540
Regulation at 64 FR 18540 confirmed.....46844
103.40 Revised; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.42 Removed; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.45 Redesignated as 103.201; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.50 Redesignated as 103.202; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.55 Redesignated as 103.203; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.201 Redesignated from 103.45; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.202 Redesignated from 103.50; interim 18540
(b) revised; interim 18541
Regulations at 64 FR 18540 and 18541 confirmed.....46844
103.203 Redesignated from 103.55; interim 18540
Regulation at 64 FR 18540 confirmed.....46844
103.204 Added; interim 18541
Regulation at 64 FR 18541 confirmed.....46844
108 Authority citation revised.....44095
108.1 (e) and (f) added.....44095
108.15 Amended 44095
108.20 Revised 44096
108.21 Revised 44096
108.25 (a), (b), (d) through (h) revised 44096
108.35 Amended 44096
108.40 (a) and (b) revised 44096
108.45 Amended 44097

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 24

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.800—200.810 (Subpart O) Revised; eff. 9–15–00 50224
200.926 (a)(1) revised 56110
200.926d (c)(1)(ii), (iii) and (4)(iv) revised; (c)(4)(vii) removed 56110
200.1301 Correctly added; CFR correction 55828
203.10 Added 29765
(e) revised 34984
203.12 Revised 56110
203.14 Regulation at 64 FR 14574 withdrawn 19895
203.16a Revised 56111
203.18 Regulation at 64 FR 14574 withdrawn 19895
203.200 Regulation at 64 FR 14574 withdrawn 19895
203.201 Regulation at 64 FR 14574 withdrawn 19895
203.202 Regulation at 64 FR 14574 withdrawn 19895
203.203 Regulation at 64 FR 14574 withdrawn 19895
203.204 Regulation at 64 FR 14574 withdrawn 19895
203.205 Regulation at 64 FR 14574 withdrawn 19895
203.206 Regulation at 64 FR 14574 withdrawn 19895
203.207 Regulation at 64 FR 14574 withdrawn 19895
203.208 Regulation at 64 FR 14574 withdrawn 19895
203.209 Regulation at 64 FR 14574 withdrawn 19895
203.673 (a) and (c) revised; eff. 9–15–00 50225
234.1 Regulation at 64 FR 14574 withdrawn 19895
Amended 56111
248.101 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.141 (c)(3) amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.147 (e)(1) amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.165 (a) revised; (i) amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.173 (m)(2) revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
248.201 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
280.25 (e) revised; eff. 9–15–00 50225
291.100 (g) revised; eff. 9–15–00 50225
291.430 Revised; eff. 9–15–00 50225
291.500—291.590 (Subpart F) Added; interim 36212

Chapter III—Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

320.5 (a) amended; (e) and (f) revised; (g) added 34106
320.13 Revised 34107

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

511.10 (f)(1)(ii) revised; eff. 9–15–00 50225
511.15 Revised; eff. 9–15–00 50225
570.202 (f) revised; eff. 9–15–00 50225
570.461 Revised; eff. 9–15–00 50225
570.487 (c) revised; eff. 9–15–00 50225
570.506 (h) revised; interim 38813
Regulation at 64 FR 38813 confirmed 63681
570.608 Revised; eff. 9–15–00 50226
572.100 (d)(1) revised; eff. 9–15–00 50226

572.215 (e) revised; eff. 9–15–00 50226
572.420 (h) revised; eff. 9–15–00 50226
573.9 (c) revised; eff. 9–15–00 50226
574.635 Revised; eff. 9–15–00 50226
576.57 (c) revised; eff. 9–15–00 50226
582.305 (a) amended; eff. 9–15–00 50226
583.330 (d) revised; eff. 9–15–00 50226
585.305 (d) revised; eff. 9–15–00 50226
585.502 (h) revised; eff. 9–15–00 50227

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

761 Nomenclature change 49917
761.1 Introductory text revised 49917
761.5 Revised 49917
761.10 Amended; introductory text revised 49918
761.13—761.17 (Subpart B) Heading revised 49918
761.13 Added 49918
761.15 Revised 49918
761.17 Added 49919
761.20 Revised 49920
761.21 Added 49920
761.23 Added 49921
761.40 (f) and (g) revised 49921
(c) revised; eff. 9–15–00 50227
791 Heading revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.101 Revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.102 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.401—791.407 (Subpart C) Removed; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.401 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.402 (c)(1) designation and (2) removed; (d) revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.403 (a) and (b)(1)(i) revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
791.404 (c) revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792 Heading revised; nomenclature change; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.101 Revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.102 (a) and (b) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.103 Amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.202 (a)(1) and (2) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 24

Chapter VIII—Office of the Assistant Secretary for Housing--Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

881.207 (e) revised; eff. 9–15–00 50227
882.403 (d) revised; interim 53869
882.404 (d) revised; eff. 9–15–00 50227
882.507 (b)(2)(iv) revised; eff. 9–15–00 50227
882.514 (d)(1)(vi) revised; eff. 9–15–00 50227
882.803 (b)(1) revised; eff. 9–15–00 50227
883.310 (b)(5) revised; eff. 9–15–00 50227
886.113 (i) revised; eff. 9–15–00 50227
886.307 (i) revised; eff. 9–15–00 50227
886.333 (b)(2)(iv) revised; eff. 9–15–00 50227
888 Fair market rent schedules 51860, 53450
Authority citation revised 56911
888.111 Revised 56911
888.113 (e) revised 56911
891.155 (g) revised; eff. 9–15–00 50227
891.325 Revised; eff. 9–15–00 50228

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1099)

901.5 Amended; eff. 9–15–00 50228
902 Implementation delay 56676
903 Forum 22550
Regulation at 64 FR 8181 confirmed; revised 56862
Notice 66106
903.3 Revised 51047
903.23 (c) added 51047
906.6 (b) amended; eff. 9–15–00 50228
941.208 (b) revised; eff. 9–15–00 50228
941.606 (m) amended; eff. 9–15–00 50228
964 Authority citation revised 56879
964.3 (a) revised; (e) redesignated as (f); new (e) added 56879
964.110 Removed 56879
964.400—964.430 (Subpart E) Added 56879
965.215 (a), (b) introductory text, (1), (c) and (d) revised; eff. 9–15–00 50228
965.701 (Subpart H) Revised; eff. 9–15–00 50229
968.102 (c) amended; eff. 9–15–00 50229
968.110 (a) revised 33637
(k) revised; eff. 9–15–00 50229
968.112 (i) revised; eff. 9–15–00 50229
968.120 Revised 33637
968.205 Amended; eff. 9–15–00 50229
968.210 (e)(2)(ii) revised; eff. 9–15–00 50229
968.315 (e)(2)(i) amended; eff. 9–15–00 50229
968.435 (b) revised; eff. 9–15–00 50229
970.13 (d)(1)(i) revised; eff. 9–15–00 50229
982 Heading revised; nomenclature change; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.1 Heading, (a)(1), (2), (4) and (b)(2) revised; (a)(3) and (b)(1) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.2 (a) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.4 (a)(2), (4) and (b) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Corrected 49658
(b) amended 56887
(a)(4) revised; (b) amended 56911
982.51 (a) revised; interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
982.53 (b) and (c) revised; (d) added; interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
(c) revised; (d) amended 56911
982.54 (d)(1), (2), (14), (15) revised; (d)(16) removed; (d)(17) through (22) redesignated as (d)(16) through (21); interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

(d)(1), (2), (14), (15), (20) and (21) correctly revised; (d)(22) and (23) correctly added 49658
(b) revised 56911
982.101 (a) and (b)(2)(i) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.102 Redesignated as 982.103; new 982.102 added 56887
982.103 (a) revised; (c) added; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
Redesignated as 982.104; new 982.103 redesignated from 982.102 56887
982.104 Redesignated from 982.103 56887
982.151 (a)(1) and (2) amended; (b) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.152 (a)(1), (b)(1) and (c) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.154 Revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.155 (a) introductory text revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.157 (b)(1) revised; (c) added; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.158 (f)(5) revised; eff. 9–15–00 50229
982.162 (a)(3) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.201 (a), (d)(1), (2) and (e) amended; (b) and (f)(2) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
(b)(4) corrected 49658
Heading and (b)(2)(i) revised; (b)(2)(ii), (iii) and (iv) redesignated as (b)(2)(iv), (v) and (vi); new (b)(2)(ii), new (iii) and (vii) added; new (b)(2)(vi) and (4) amended 56911
982.202 (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3); new (b)(3) introductory text and (d) revised; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.203 (b)(1) amended; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.204 (b)(4) revised; (b)(5) amended; (f) added; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.205 (a) removed; (b) and (c) redesignated as (a) and (b); new (a)(2), (b)(1) and (3) amended; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.206 (b)(2) revised; (c)(1) designation and (2) removed; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.207 Revised; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
(a)(4) added; (b) and (d) revised 56912
982.301 (b)(1) amended; (b)(2), (5) and (6) revised; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b)(10) removed; (b)(11) through (16) redesignated as (b)(10) through (15); eff. 9–15–00 50229
(a)(5) added; (b)(14) revised 56912
982.302 Revised; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
982.303 Amended; heading revised; (c) amended; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b) revised 56913
982.305 Heading, (a)(3), (4) and (b) revised; (a) introductory text, (d) and (e) amended; (a)(5) removed; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b)(3) revised; eff. 9–15–00 50229

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 24 Chapter IX—Con.

(a)(3) and (4) amended; (a)(5) added 56913
(a)(5) revised 59622
982.306 (a), (b) introductory text and (c) introductory text amended; (c)(3) revised; (c)(5) and (6) redesignated as (c)(6) and (7); new (c)(5) added; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
Heading revised; (c)(5) introductory text and (d) amended 56913
982.307 Heading and (a) revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(a)(1) correctly revised 49658
982.308 Revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(a), (b), (d) and (f) revised; (g) added 56913
982.309 Revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
982.310 (a)(1) and (d)(1)(iv) revised; (d)(2) amended; (e)(3) removed; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(e)(1)(i) revised 56913
982.314 (c)(2)(i) revised 56913
982.352 (b)(1) revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
982.353 (b), (c)(2) and (d) revised; (f) amended; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.354 Removed; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.355 (b), (c)(1) and (6) revised; (c)(4), (8), (d)(1) and (6) amended; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
Heading revised; (c)(9) amended; (c)(10) added 56914
982.401 (a)(4) revised; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
(a)(4)(iii)(A) corrected 49658
(j) revised; eff. 9–15–00 50230
982.402 (a)(3) amended; (c) revised; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.403 Heading and (c) introductory text revised; (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (a)(1), (b)(2) and (4) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.405 Heading and (a) revised; (f) added; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(f) removed 56914
982.451 (b)(5) revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(b)(5)(ii) revised 56914
982.452 (b)(1) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.453 (a)(5) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(a)(6) added 56914
982.454 Amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.455 Revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.456 (b) revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.457 Removed; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.501 Revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.502 Redesignated as 982.506; new 982.502 added; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
(c) amended; (c)(1) and (2) added 56914
982.503 Redesignated as 982.507; new 982.503 added; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

(b)(1)(iii) correctly added; (c)(2) correctly revised 49658
(d) revised; (e) added 56914
982.504 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
982.505 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
(c)(2) correctly revised 49658
(b)(1) and (c)(3) amended; (c)(1) introductory text revised; (c)(4) redesignated as (c)(5); new (c)(4) added 56914
982.506 Removed; interim 26647
Redesignated from 982.502; interim 26648
Regulations at 64 FR 26647 and 26648 eff. date delayed to 10–1–99 43613
982.507 Redesignated as 982.518; new 982.507 redesignated from 982.503; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.508 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
Heading correctly revised 49658
Revised 56914, 59622
982.509 Redesignated as 982.519; new 982.509 redesignated from 982.511; interim 26648
Heading revised; interim 26649
Regulations at 64 FR 26648 and 26649 eff. date delayed to 10–1–99 43613
982.510 Redesignated as 982.520; new 982.510 redesignated from 982.513; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.511 Redesignated as 982.509; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.512 Removed; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.513 Redesignated as 982.510; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.514 (b) amended 56914
982.515 (b) revised; (c) added 56914
982.516 (d)(2) revised; (e) amended; (f) added; interim 26649
Regulation at 64 FR 26649 eff. date delayed to 10–1–99 43613
(a)(1) revised; (g) added 56915
982.518 Redesignated from 982.507; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.519 Redesignated from 982.509; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.520 Redesignated from 982.510; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.521 Added; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.551 (b)(2) and (3) amended; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.552 (a)(2) amended; (b) and (c) revised; (d) and (e) removed; (f) redesignated as (d); interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
(e) correctly added 49659
Heading, (c)(1)(ii), (x) and (2) revised; (b)(1) and (c)(3) removed 56915
982.554 (c)(4) amended; (c)(5) revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.555 (b)(4) amended; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.602 Revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.604 Revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.608 Heading and (a) revised; interim 26650

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 24 Chapter IX—Con.

Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.613 Heading and (c) revised; (b)(2) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.617 Heading and (c) revised; (b)(2) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.619 (b)(1) and (4) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.623 Revised; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
(a) correctly removed; (b) and (c) correctly redesignated as (a) and (b); (a)(3) correctly added; (b)(1) correctly revised 49659
(b)(1) revised 56915
983.1 (b)(2)(vii) revised; eff. 9–15–00 50230
983.5 (c) revised; eff. 9–15–00 50230
983.104 (b)(2)(iv) revised; eff. 9–15–00 50230
983.203 (d) introductory text amended; eff. 9–15–00 50230
985.1 (a) amended; interim 40497
985.2 (b) amended; interim 40497
985.3 Introductory text and (a)(2) amended; (a)(3) introductory text, (i) introductory text (i)(B), (ii), (b)(2), (3) introductory text, (i) introductory text, (i)(B), (ii), (iii), (c)(2), (3) introductory text, (i) introductory text, (ii), (iii), (d)(2), (3), (e), (f)(2), (3), (g)(2), (3) introductory text, (i) introductory text, (ii), (h)(2) and (3) revised; interim 40497
985.103 (d) redesignated as (e); new (d) added; new (e)(3) revised; interim 40498
1000.40 Revised; 9–15–00 50230
1003.202 (b)(7)(iv) revised; eff. 9–15–00 50230
1003.607 Revised; eff. 9–15–00 50230
1005.111 Existing text designated as (a); (b) added; eff. 9–15–00 50230

Proposed Rules:

0—99 (Ch. I) 24546
3 58568
5 ..... 23460, 40262, 66530
200 ..... 23480, 36216, 40262, 66530
203 ..... 23480, 49956
234 23480
245 32782
247 40262
290 38284
761 25736
880 40262
882 40262
884 40262
888 24866
891 40262
900—999 (Ch. IX) 20232, 20234, 26923, 30450, 38853
902 33348
905 49924
906 49932
943 49940
960 ..... 23460, 33640, 40262
964 ..... 33644, 56890
966 ..... 23460, 40262
968 23484
972 ..... 40232, 40240
982 ..... 23488, 40262
984 23460
990 ..... 17301, 30451, 48572, 61561

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

61 Authority citation revised 19898
61.4 (s) revised 19898
63.19 (a) corrected 66771
291 Added 17543

Chapter III—National Indian Gaming Commission (Parts 500—599)

516 Added 54542

Proposed Rules:

1—299 (Ch. I) 18585
20 ..... 24296, 34173
151 ..... 17574, 30929, 49756, 55878, 66828
500—599 (Ch. III) 22888
504 61234
516 38164

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—899)

1 Authority citation amended 23189, 26851, 36099, 36125, 36177, 37676, 43075, 43272, 43615, 48547, 60342, 61500

1.61–8 (b) amended 26851

1.79–1 (d)(7) revised 29790

1.79–3 (d)(2) revised; (e) and (f) redesignated as (f) and (g); new (e) added 29790

1.367(e)–0 Added 43075

1.367(e)–0T Removed 43075

1.367(e)–1 Added 43076

1.367(e)–1T Removed 43075

1.367(e)–2 Added 43077

1.367(e)–2T Removed 43075

1.148–4 (h)(2)(v)(A) and (B) amended 48547

1.148–11 (b)(4), (h) and (i) added 37037

1.163–13 (e)(2) amended 48547

1.170–14 (h)(4) amended 23228

1.170A–6 (c)(5) Example 2 amended 23189

(c)(5) Examples 1, 2 and 3 amended 23228

(c)(5) Examples 2 and 3 corrected 33196

1.170A–12 (b)(2), (c), (e)(2) and (3) amended 23228

1.170A–12T Added 23189

(b)(2) corrected 33195

1.171–3 (b) amended 48547

1.367(a)–3 (a) and (d)(3) Example 6 corrected 15687

1.367(b)–4 (b)(5)(i) and (ii) Example corrected 15687

1.382–1 Amended 36177

Corrected 52650

1.382–2 (a)(1)(iv) removed; new (a)(1)(iv), (15) and (16) redesignated from 1.382–2T (f)(1)(ii), (4) and (5) 36177

(a)(1)(iii), (iv), (3)(i), (5) and (6) amended; (a)(1)(iv) added 36178

1.382–2T (e)(2)(iv) Example 2 and (h)(2)(i)(A) amended; (f)(1)(ii), (4) and (5) redesignated as 1.382–2 (a)(1)(iv), (15) and (16); (f)(1) removed; new (f)(4) and (5) added 36177

1.382–4 (b) revised 36178

1.382–5 Removed; new 1.382–5 redesignated from 1.382–5T; heading revised; (e) amended 36178

1.382–5T Redesignated as 1.382–5 36178

1.382–8 Removed; new 1.382–8 redesignated from 1.382–8T; heading revised; (b) introductory text, (1) and (2) redesignated as (b)(1) introductory text, (i) and (ii); new (b)(1) heading, (2) and (i) added; (f), (g) Examples 1, 2 and 4 and (h)(1) amended 36178

1.382–8T Redesignated as 1.382–8 36178

1.411(d)–4 Amended 38826

1.451–1 (g) added 26851

1.453–12 Added 45875

1.461–1 (a)(1) amended; (a)(2)(iii)(E) added 26851

1.461–4 (d)(3)(ii)(A) designation, heading and (B) added; (d)(7) introductory text amended 26851

1.467–0 Added 26851

1.467–1 Added 26852

1.467–2 Added 26859

1.467–3 Added 26860

1.467–4 Added 26863

1.467–5 Added 26865

1.467–7 Added 26867

1.467–8 Added 26875

1.467–9 Added 26875

1.469–1 (h)(2) amended 36099

1.597–2 (c)(5) amended 36099

1.597–4 (g)(3) amended 36099

1.642(c)–6 Heading, (d) and (f) revised; (e) redesignated as 1.642(c)–6A(e); new (e) added 23190

1.642(c)–6T Added 23190

1.642(c)–6A Undesignated center heading revised 23199

1.642(c)–6A (e) redesignated from 1.642(c)–6(e) 23190

Heading, (e) heading, (2)(ii), (3), (4) and (5) introductory text revised; (e)(1) and (5) Table S amended 23199

(e)(2)(i) amended 23228

(e)(2)(i) corrected 33196

1.643(h)–1 Added 43272

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 26 Chapter I—Con.

1.664–1 (a)(5)(ii)(*b*)(*1*) and (iv) introductory text amended 23228
(e)(6) introductory text amended 23229
1.664–2 (c) amended 23229
1.664–4 (a)(1) and (f) revised; (d) removed; (e) heading, (1) through (5), (6) heading, introductory text and Table U(1) redesignated as 1.664–4A(e) heading, (1) through (5), (6) heading, introductory text and Table U(1); (d) through (e)(5), new (6) heading and introductory text added 23199
1.664–4T Added 23200
1.664–4A Undesignated center heading revised 23209
1.664–4A (e) heading, (1) through (5), (6) heading, introductory text, Table U(1) redesignated from 1.664–4(e) heading, (1) through (5), (6) heading, introductory text and Table U(1) 23199
Heading, (d)(6) introductory text, (e) heading, (3), (4), (5) and (6) heading revised; (d)(4) and (e)(1) and (6) introductory text amended; (d)(6) Table D removed 23209
1.671–2 (e) revised 43274
1.671–2T Added 43274
1.672(f)–1 Added 43275
1.672(f)–2 Added 43276
1.672(f)–3 Added 43276
1.672(f)–4 Added 43278
1.672(f)–5 Added 43280
1.904–4 (c)(1) and (2)(i)(A) amended 32181
1.904–5 (o) amended 37677
Corrected 58782
1.904–5T Removed 37677
1.904(f)–3 (a) and (b) amended 36099
1.954–1 (c)(1)(iv) removed 37677
1.954–1T Removed 37678
1.954–2T Removed 37678
1.954–9T Removed 37678
1.1271–0 (b) amended 48547, 60343
1.1275–2 (d) revised 60343
1.1275–2T Added 60343
1.1275–4 (a)(2)(vii) amended 48547
1.1275–7 Redesignated from 1.1275–7T; heading amended 48547
(g) removed 60343
1.1275–7T Redesignated as 1.1275–7 48547
1.1286–2 Redesignated from 1.1286–2T and amended 48547
1.1286–2T Redesignated as 1.1286–2 48547
1.1362–3 (a) amended 61205
1.1397E–1T (b) and (j) revised; (h) redesignated as (i); new (h) added 35573
1.1502–1 (f)(4) revised 36101
1.1502–2 (h) amended 36099
1.1502–3T (c)(2)(iii) amended 36099
(c)(4) amended 43615
1.1502–9 (a) amended 36099
Redesignated as 1.1502–9A 43615
Added 43616
1.1502–9T Removed 43618
1.1502–11 (a)(2), (3), (4), (b)(2)(iii) Examples 1 and 2 amended 36099
1.1502–12 (b) amended 36099
1.1502–13 (c)(7)(ii) Example 10, (g)(5) Example 4 and (h)(2) Examples 1 and 2 amended 36099
1.1502–15 Added 36101
(d) Examples 3 and 4 and (g)(6) Example 1 corrected; (g)(4)(i) and (ii) correctly revised 41784
1.1502–15T Removed 36105
1.1502–20 (c)(4) Example 7 and (g)(3) Examples 1 and 2 amended 36099
1.1502–21 Added 36105
(c)(2) introductory text, (viii) Examples 1, 2 and 3 and (g)(5) Examples 4, 5 and 9 corrected 41784
1.1502–21T Removed 36114
1.1502–22 Added 36114
1.1502–22T Removed 36115
1.1502–23 Added 36115
(d)(1) corrected 41784
1.1502–23T Removed 36116
1.1502–26 (a)(1) amemded 36099
1.1502–32 (b)(5)(ii) Example 2 amended 36099
1.1502–42 (f)(4)(i)(A) amended 36100
1.1502–43 (b)(2)(iv), (v), (vi)(A), (vii) and (viii) amended 36100
1.1502–44 (b)(2) and (3) amended 36100
1.1502–47 (h)(2)(i) through (iv), (3)(iii), (4)(i), (ii), (iii), (k)(5)

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

introductory text, (l)(3)(i), (m)(2)(ii), (3)(i), (vi)(A), (vii)(A), (ix) and (q) amended 36100
1.1502–55T (h)(4)(iii)(B)(*4*) amended 36100
1.1502–76 (b)(1)(ii)(A)(*1*) designation added; (b)(2)(v), (4) and (5) redesignated as (b)(2)(vi), (5) and (6); (b)(1)(ii)(A)(1) heading, (*2*), (2)(v), (4) and (5) Example 7 added; (b)(6)(i) revised; (b)(1)(ii)(A)(1) and (5) Example 6 amended 61205
1.1502–78 (a) amended 36100
1.1502–79 (a), (b), (c)(1), (d)(1) and (e)(1) amended 36100
1.1502–90 Added 36128
1.1502–90T Redesignated as 1.1502–90A 36127
1.1502–91 Added 36129
1.1502–91T (a)(2), (c)(3) Example, (d)(1)(iii), (6) Examples 1 and 2 and (f)(2) Example 36100
(a)(1), (3), (b) introductory text, (1), (c)(2), (3) Example, (d)(4), (5), (e)(2) Example, (f)(2) Example, (g)(1), (2)(i)(A), (B) and (j) amended 36125
Redesignated as 1.1502–91A 36127
1.1502–92 Added 36137
1.1502–92T (b)(2) Example 3 amended 36100
(a), (b)(1)(i)(A), (B), (ii) introductory text, (A), (2) Examples 1, 3, 4, (3)(iii) Examples 2 and 3, (4), (e)(1)(ii) and (2) amended 36125
Redesignated as 1.1502–92A 36127
1.1502–93 Added 36153
1.1502–93T (e) amended 36100
(a)(2) and (b)(2) amended 36125
Redesignated as 1.1502–93A 36127
1.1502–94 Added 36155
1.1502–94T (a)(1)(i) and (b)(4) Example 1 amended 36100
(a)(1)(i), (ii), (3) and (4) amended 36125
(a)(4), (5), (b)(4) Examples 1, 2 and 3, (c) and (d) amended 36126
Redesignated as 1.1502–94A 36128
1.1502–95 Added 36159
1.1502–95T (b)(1)(i), (4) Example 1 and (c)(7) Example 7 amended 36101
(a)(3), (b)(1) introductory text, (2) introductory text, (4) Example 2, (c)(2) introductory text, (7) Example 1, (d)(2) Examples 1 and 3 and (e)(1) introductory text amended 36126
Redesignated as 1.1502–95A 36128
1.1502–96 Added 36170
1.1502–96T (a)(1) introductory text, (2), (5), (b)(2)(ii)(A) and (B) amended 36101
(a)(2) introductory text, (ii), (3), (5), (b)(1) introductory text, (3) and (c) amended 36126
Redesignated as 1.1502–96A 36128
1.1502–97 Added 36174
1.1502–97T Redesignated as 1.1502–97A 36128
1.1502–98 Added 36174
1.1502–98T Amended 36126
Redesignated as 1.1502–98A 36128
1.1502–99 Added 36174
1.1502–99T (c)(2)(i) and (ii) amended 36101
(a), (b), (c)(1)(ii), (iii), (2)(i), (ii) and (d)(1) amended 36126
(d)(3) amended 36127
Redesignated as 1.1502–99A 36128
1.1502–100 (c)(2) amended 36101
1.1503–2 (d)(2)(i), (ii), (4) Example 1, (g)(2)(vii)(B)(*1*), (*2*), (G) Examples 1 and 2 and (h)(3) amended 36101
1.1502–9A Undesignated center heading added 43615
1.1502–9A Redesignated from 1.1502–9; heading revised; (a) redesignated as (a)(2); (a) heading, (1), (b)(1)(v) and (vi) added 43615
1.1502–23A (a) and (b) amended 36099
1.1502–41A (c) amended 36099, 36100
1.1502–79A Undesignated centerheading added 36127
1.1502–90A Redesignated from 1.1502–90T; amended; heading and introductory text revised 36127
1.1502–91A Redesignated from 1.1502–91T; heading revised; (h)(2) amended 36127
1.1502–92A Redesignated from 1.1502–92T; heading revised 36127

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 26 Chapter I—Con.

1.1502–93A Redesignated from 1.1502–93T; heading revised; (c) amended 36128
1.1502–94A Redesignated from 1.1502–94A; heading revised; (b)(4) Example 3 amended 36128
1.1502–95A Redesignated from 1.1502–95T; heading revised 36128
1.1502–96A Redesignated from 1.1502–96T; heading revised 36128
1.1502–97A Redesignated from 1.1502–97T; heading revised; 36128
1.1502–98A Redesignated from 1.1502–98T; heading revised 36128
1.1502–99A Redesignated from 1.1502–99T; heading and (a) revised; (b)(2)(ii) and (c)(2)(i) amended 36128
1.1503–2A (f)(1)(i) introductory text, (C), (2)(i) and (ii) amended 36101
1.1520–20 (g)(5) redesignated as (g)(4); (g)(1), new (4)(i)(A) and new (B) amended; new (g)(4)(ii) redesignated as (g)(4)(iii); new (g)(4)(ii) added 36127
1.6031–1 Removed 61500
1.6031(a)–1 Added; eff. in part 1–1–01 61500
1.6063–1 (c) added 61502
1.6038B–1 (b)(1)(i), (3) introductory text, (c) and (g) corrected 15686
(b)(2)(i) introductory text corrected 15687
(a) amended; (b)(1)(i), (d), (e) and (g) revised 43082
1.6038B–1T Heading and (e) revised; (g) amended 43083
1.6038B–2 (j)(1)(ii) corrected 15686
1.6041–2 (a)(1) corrected; CFR correction 55137
1.6109–2 (a) introductory text amended; (d) added 43911
1.6109–2T Added 43911
1.6302–4 Revised 37676
1.7520 (c)(1) heading, (2) heading, introductory text and (d) revised; (b)(2) and (c)(2)(iii) amended 23210
1.7520–1 (a)(2), (3) and (c)(1) amended 23229
1.7520–1T Added 23210
(c)(2) heading and (iii) corrected 33195
7 Technical correction 15687
20 Authority citation amended 23210, 37676
20.2031–0 Revised 23211
20.2031–7 Heading, (c) through (d)(5), (6) heading, introductory text and (e) revised; (d)(6) Tables S and 80CNSMT transferred to 20.2031–7A 23212
20.2031–7T Added 23212
(c) table and (d)(7) table corrected 33195
20.2031–7A Undesignated center heading revised 23211
20.2031–7A Heading revised; (e) added 23211
(e)(4) Tables S and 80CNSMT transferred from 20.2031–7 and amended 23212
(e)(4) corrected 33195
20.2032–1 (f)(1) and (2)(iv) Examples 1, 2 and 3 amended 23229
20.2055–2 (f)(4) revised 23222
(f)(2)(iv) Example 3 corrected 33196
20.2056A–4 (c)(4)(ii)(B) and (d) Example 4 amended 23229
(c)(4)(ii)(B) corrected 33196
20.6302–1 Added 37676
20.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading, introductory text and (d) revised 23222
20.7520–1T Added 23223
(c)(2) heading corrected 33195
25 Authority citation amended 23223, 37676
25.2512–0 Revised 23223
25.2512–5 Heading, (c), (d) and (e) revised 23224
25.2512–5T Added 23224
25.2512–5A Undesignated center heading revised 23226
25.2512–5A Heading revised; (e) added 23226
25.6302–1 Added 37676
25.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading and (d) revised 23227
(c)(1) corrected 33196
25.7520–1T Added 23227
(c)(2) heading corrected 33195
25.7520–3 (b)(2)(v) Example 5 and (4) Example revised 23228

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

31 Authority citaiton amended 32408
31.3121(v)(2)–1 (b)(5) Examples 10 and 11 and (g)(5) Example 8 corrected 15687
31.3221–4 Added 42833
31.6302–1 (f)(4) revised 32409
(h)(2) heading and (ii) revised; (j), (k), (m) redesignated as (k), (m) and (n); (h)(2)(i) heading, (C), (iii) and new (j) added 37676
31.6302–1T Removed 32409
40 Authority citation amended 37677
40.6302(a)–1 Added 37677
54 Technical correction 15873
Comment request 57520
301 Authority citation amended 17285, 51242, 61503
Technical correction 41783
301.6011–3 Added 61503
301.6031–1 Removed 61502
301.6031(a)–1 Added 61502
301.6104(d)–2 Added 17285
301.6104(d)–3 Added 17285
301.6104(d)–4 Added 17288
301.6104(d)–5 Added 17289
301.6109–1 (a)(1)(i), (ii) introductory text, (A), (B) and (h)(2)(iii) revised 51242
(d)(2)(ii) removed; (h) redesignated as (i); new (h) added; new (i)(1) amended 66583
301.6109–1T Removed 51242
301.6109–3 Added 51242
301.6109–3T Removed 51243
301.6311–2T (c)(2) amended 36569
301.6402–5 (h) added 48548
301.6402–6 (n) revised 48548
301.6402–7 (g)(2)(iii), (3) Example 2 and (h)(1)(ii) Example amended 36101
301.6721–1 (a)(2)(ii) amended 61504
301.7122–1 Removed 39024
301.7122–0T Added 39024
Correctly designated 56246
301.7211–1T Added 39024
301.7701–2 (b)(8)(i) amended; (b)(8)(ii) heading, introductory text, (A) and (B) redesignated as (b)(8)(ii)(A) heading, introductory text, *(1)* and *(2)*; (b)(8)(ii) heading, (A)(*3*) and (B) added; (b)(8)(ii)(A)(1), (iii), (iv) and (e) revised 66583
301.7701–3 (f)(1) amended 37678
Corrected 58782
(c)(1)(iii) and (iv) amended; (f) redesignated as (h); (c)(2)(iii), (d)(1) heading, new (f) and (g) added; new (h)(1) revised 66583
301.7701–3T Removed 37678
602 Technical correction 15687
Technical correction 15873, 41783
602.101 (a) amended; (b) removed; (c) redesignated as (b) 15688
(b) table amended (OMB numbers) 17290, 36116, 36175, 38181, 37678, 43083, 43618, 51243, 61502
801 Added 42835

Proposed Rules:

1 ..... 16372, 23245, 23554, 23811, 24096, 25222, 26348, 26924, 27221, 27730, 27936, 31770, 32209, 32305, 35579, 37727, 43117, 43323, 43462, 43969, 46155, 46320, 46876, 46878, 48572, 49276, 50026, 50783, 54836, 56718, 58006, 59139, 60395, 61236, 63768, 66591
20 ..... 23245, 23811
25 ..... 23245, 23811, 33235, 56179
26 62997
31 23811
40 23811
49 22819
54 15873
301 ..... 16640, 19217, 31529, 35102, 37727, 39106, 43324, 58006, 63768, 66591
602 ..... 15873, 43462

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

1.3 (a) amended; (b) revised 49985
1.4 Redesignated as 1.10; new 1.4 added 49985
1.10 Redesignated from 1.10 and amended 49985
1.24 Introductory text amended 49985
1.25 Revised 49985
Corrected 54776

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 27 Chapter I—Con.

1.27 Amended 49985
1.29 Revised 49985
1.30 Amended 49985
1.31 Amended 49985
1.35 Revised 49985
1.40 Amended 49985
1.41 Amended 49985
1.42 Amended 49985
1.50 Amended 49985
1.51 Amended 49985
1.52 Amended 49985
1.55 Amended 49985
1.56 Revised 49985
1.58 Amended 49985
1.59 Introductory text and (c) amended 49985
4 Compliance date notification 51896
4.21 (e)(1)(i) amended 50252
4.22 (b)(5) amended 50253
4.91 Amended 49388
4.92 (b) amended; (c) added 49388
24 Compliance date notification 51896
24.177 Amended 46844
24.178 (b)(3) and (4) revised 50253
24.180 Amended 46845
54 Comment request 57520
55.180 (b), (c)(2) and (d)(2) revised 55628
178.11 Amended 17291
178.22 (a)(3) and (b) amended 17291
178.25 Amended 17291
178.35 Amended 17291
178.41 (b) and (c) amended 17291
178.45 Amended 17291
178.47 Amended 17291
178.48 Amended 17291
178.52 Amended 17291
178.53 Amended 17291
178.54 Amended 17291
178.56 (b) amended 17291
178.57 (a) amended 17291
178.60 Amended 17291
178.71 Amended 17291
178.72 Amended 17291
178.73 Amended 17291
178.74 Amended 17291
178.76 Amended 17291
178.78 Amended 17291
178.95 Amended 17291
178.111 (b)(1) and (c) amended 17291
178.115 (a) amended 17291
178.122 (c) amended 17291
178.123 (c) amended 17291
178.124 (i) amended 17291
178.125 (h) amended 17291
178.126 Amended 17291
178.127 Amended 17291
178.130 (e) amended 17291
178.144 (i)(4) amended 17291
200.5 Amended 49084
200.25 Amended 49084
200.27 Heading and section amended 49084
200.29 Amended 49084
200.31 Amended 49084
200.35 Amended 49084
200.36 Amended 49084
200.37 Amended 49084
200.38 Amended 49084
200.45 Amended 49084
200.46 Amended 49084
200.48 Introductory text amended 49084
200.49 Amended 49084
200.49a Introductory text amended 49084
200.49b Introductory text and (b) amended 49084
200.55 (a) introductory text amended 49084
200.57 Amended 49084
200.59 Amended 49084
200.60 (a), (b) and (c) amended 49084
200.61 Amended 49084
200.62 Amended 49084
200.64 Amended 49084
200.65 Amended 49084
200.70 Amended 49084
200.71 Amended 49084
200.72 Amended 49084
200.73 Amended 49084
200.75 Amended 49084
200.78 Amended 49084
200.79 (b) amended 49084
200.80 Amended 49084
200.85 Introductory text amended 49084
200.95 Amended 49084
200.105 Amended 49084
200.106 (a) amended 49084
200.107—200.110 Undesignated center heading amended 49084
200.107 Amended 49084
200.107a Heading and (a)(3) amended 49084
200.109 Amended 49084
200.110 Amended 49084
200.115 Amended 49084
200.116 Amended 49084
200.117 Amended 49084

CHANGES APRIL 1, 1999 THROUGH NOVEMBER 30, 1999

200.126 Amended 49084
200.129 Amended 49084
252.62 (c) amended 46845

Proposed Rules:

4 ..... 17588, 33448, 50265, 51933, 57413
5 ..... 17588, 57413
7 ..... 17588, 57413
9 ..... 24308, 52483, 66433
24 ..... 50265, 51933
178 33450
179 33450

Ch

0.14
0.39

0.85
0.13
0.13
0.15

2.36
16 A
16.3
16.3
16.3
16.3
16.3
16.8
20 A
20.1
20.3
20.2
20.3

20 A
22 A
22.2
27 R

32.31

32.31
32.32

32.33
32.34
32.35
32.37
36 A
36.50
50.12
50.23
68 R

68.1

68.2

68.3

68.6

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.14 Removed 37042
0.39c Regulation at 63 FR 62938 confirmed 58786
0.85 (b) amended; (j) revised 52226
0.137 Removed 46846
0.138 Revised 46846
0.157 (b), (c) and (d) revised; (e) removed 46846
2.36 (a) amended; interim 59623
16 Authority citation revised 52226
16.30 Revised 52226
16.31 Revised 52226
16.32 Amended 52226
16.33 Amended 52226
16.34 Amended 52226
16.83 (c) and (d) added 61787
20 Authority citation revised 47102
20.1 Revised 52226
20.3 Revised 52226
20.25 Amended 47102
20.30—20.38 (Subpart C) Revised 52227
20 Appendix amended 52229
22 Authority citation revised 47102
22.29 Revised 47102
27 Regulation at 63 FR 62938 confirmed; revised 58786
32.31—32.40 (Subpart B) Heading revised 49953
32.31 Revised 49953
32.32 (a), (b)(3), (c), (d) and (f) revised 49953
32.33 (a)(1) revised 49953
32.34 (b)(2) revised 49953
32.35 (a) revised 49953
32.37 (c) revised; (d) added 49954
36 Authority citation revised 47103
36.504 (a)(3)(i) and (ii) revised 47103
50.12 Revised 52229
50.23 Added 59122
68 Regulation at 64 FR 7073 confirmed 49660
68.1 Regulation at 64 FR 7073 confirmed 49660
68.2 Regulation at 64 FR 7073 confirmed; amended 49660
68.3 Regulation at 64 FR 7074 confirmed 49660
68.6 Regulation at 64 FR 7074 confirmed 49660
68.7 Regulation at 64 FR 7074 confirmed 49660
68.9 Regulation at 64 FR 7075 confirmed 49660
68.10 Regulation at 64 FR 7075 confirmed 49660
68.14 Regulation at 64 FR 7075 confirmed 49660
68.22 Regulation at 64 FR 7076 confirmed 49660
68.23 Regulation at 64 FR 7076 confirmed 49660
68.24 Regulation at 64 FR 7077 confirmed 49660
68.27 Regulation at 64 FR 7077 confirmed 49660
68.33 Regulation at 64 FR 7077 confirmed; (c) heading, introductory text and (3)(iii) revised 49660
68.38 Regulation at 64 FR 7078 confirmed 49660
68.42 Regulation at 64 FR 7079 confirmed 49660
68.52 Regulation at 64 FR 7079 confirmed; (c)(5) amended 49660
68.53 Regulation at 64 FR 7081 confirmed 49660
68.54 Regulation at 64 FR 7082 confirmed 49660
68.55 Regulation at 64 FR 7082 confirmed 49660
68.56 Regulation at 64 FR 7083 confirmed 49660
68.57 Regulation at 64 FR 7083 confirmed 49660
68.58 Regulation at 64 FR 7083 confirmed 49660
71 Authority citation revised 47103
71.3 Amended; (a) introductory text and (f) introductory text revised; (a) concluding text and (f) concluding text 47103
76 Authority citation revised 47103
76.3 (a) revised 47103
85 Added 47103
90 Authority citation revised 39783
90.100—90.106 (Subpart E) Added 39783

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

505 Revised 43881
553 Authority citation revised 36753

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 28 Chapter V—Con.

553.10 Amended 36753
553.11 Revised 36753
553.12 Revised 36754
553.13 (b)(2)(iii) amended 36754
553.14 Revised 36754

Chapter VI—Offices of Independent Counsel, Department of Justice (Parts 600—699)

600 Revised 37042

Proposed Rules:

0—199 (Ch. I) 54794
5 37065
16 ..... 49117, 60753
54 58568
302 48336
540 40718
571 53872

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

18.9 (e)(2) revised 47089
37 Added; interim 61715

Chapter II—Office of Labor-Management Programs, Department of Labor (Parts 200—299)

215 Guidelines 40990

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (2), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1), (o)(1) and (p)(1) revised 48525
697.3 Revised 48525

Chapter X—National Mediation Board (Parts 1200—1299)

1203.1 Amended 40287
1203.2 Amended 40287
1203.3 (a) amended 40287
1205.4 Amended 40287
1209 Authority citation revised 40287
1209.7 (f) amended 40287
1209.8 (d) amended 40287

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1604.11 (c) removed; Appendix A added 58334
1606.8 (c) removed; Appendix A added 58334
1610.4 Regulation at 63 FR 1341 confirmed 45164
1610.5 Regulation at 63 FR 1341 confirmed 45164
1610.8 Regulation at 63 FR 1341 confirmed 45164
1610.9 Regulation at 63 FR 1341 confirmed 45164
1610.10 Regulation at 63 FR 1342 confirmed 45164
1610.11 Regulation at 63 FR 1342 confirmed 45164
1610.14 Regulation at 63 FR 1342 confirmed 45164
1610.15 Regulation at 63 FR 1342 confirmed 45164
1610.18 Regulation at 63 FR 1342 confirmed 45164
1610.21 Regulation at 63 FR 1342 confirmed 45164
1610.34 Regulation at 63 FR 1342 confirmed 45164
1614.102 (b)(2) through (6) redesignated as (b)(3) through (7); (b)(2) added; (c)(5) revised 37655
1614.103 (b)(3) amended; (b)(4) revised; (5), (6) and (7) added 37655
1614.105 (b) redesignated as (b)(1); new (b)(1) and (d) amended; (b)(2) added; (f) revised 37656
1614.106 (d) redesignated as (e); new (d) added; (e) revised 37656
1614.107 (a) through (h) redesignated as (a)(1) through (8); introductory text redesignated as (a) introductory text and revised; (7) and (8) revised; (9) and (b) added 37656
1614.108 (b) amended; (f) revised; (g) added 37656
1614.109 (b) through (g) redesignated as (d) through (i); (a), new (f)(3) introductory text and new (i) revised; new (b) and new (c) added; new (f) introductory text removed 37657
1614.110 Revised 37657

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

1614.201 (a), (c)(1) and (2) amended....37658
1614.204 (b) revised; (d)(2) through (6) amended; (d)(7), (e)(1), (g)(2), (4) and (l)(3) revised; (j)(7) amended....37658
1614.302 (d)(1)(i) amended....37659
1614.401 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; new (c) revised....37659
1614.402 (a) revised....37659
1614.403 Revised....37659
1614.404 (c) added....37659
1614.405 (a) and (b) revised....37659
1614.407 Removed; new 1614.407 redesignated from 1614.408; (a) and (b) amended;....37659
1614.408 Redesignated as 1614.407; new 1614.408 redesignated from 1614.409....37659
1614.409 Redesignated as 1614.408; new 1614.409 redesignated from 1614.410....37659
1614.410 Redesignated as 1614.409....37659
1614.501 (e)(1) introductory text and (2)(ii) amended; (e)(1)(iv), (2)(i), (ii)(A) and (B) revised....37659
1614.502 (a) amended; (b) introductory text and (2) revised; (b)(3) added....37660
1614.504 (a) and (b) amended....37660
1614.505 Added....37660
1614.603 Amended....37661
1614.604 (b) amended....37661
1614.605 (d) amended....37661
1614.606 Revised....37661

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1917 Authority citation revised....61505
1917.1—1917.4 (Subpart A) Heading revised....61505
1917.1 (a)(2)(xiv) revised....46847
1917.4 Added (OMB numbers)....61505
1917.50 OMB number....61506
1918 Authority citation revised....61506
1918.1—1918.4 (Subpart A) Heading revised....61506
1918.1 (b)(10) revised....46847
1918.4 Added (OMB numbers)....61506

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2575 Added....42246
2570 Authority citation revised....42246
2570.100—2570.502c-3 (Subpart E) Redesignated as 2575.100—2575.502c-3 (Subpart A)....42246
2575.100—2575.502c-3 (Subpart A) Redesignated from 2570.100—2570.502c-3 (Subpart E)....42246
2590 Comment request....57520

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2700.3 (c) revised....48712
2700.5 (c), (d) and (f) revised....48712
2700.7 (c) and (d) revised....48713
2700.9 Revised....48713
2700.10 (c) redesignated as (d); new (c) added; new (d) revised;....48713
2700.45 (a) and (f) revised....48713
2700.70 (a), (d) and (e) revised; (f) and (g) redesignated as (g) and (h); new (f) added....48713
2700.74 (b) revised; (c) added....48714
2700.75 (c) and (d) revised; (f) redesignated as (g); new (f) added....48714
2700.76 (a) revised....48714

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4003 Notice....65658
4007 Notice....65658
4007.8 Revised....66385
4011 Notice....65658
4041 Notice....65658
4041A Notice....65658
4043 Notice....65658
4044 Technical correction....51587
4044 Appendix B amended....38115, 44128, 49986, 55828, 61788
4050 Notice....65658

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 29

Proposed Rules:

36 58568
570 67130
579 67130
1401 59697
1908 35972
1910 ..... 45098, 65768
1926 ..... 38078, 47461, 51722, 66595
1952 62138
2510 ..... 38390, 51277, 57611
2520 ..... 42792, 42797
2560 ..... 42792, 42797
2570 42797
2590 62054
2700 61236
4044 38534

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

26 Removed 43282
29 Removed 43282
46 Added; eff. 10–2–00 53130
Tecnical correction 58334
48 Tecnical correction 58334
48.21 Amended; eff. 10–2–00 53130
50 (Subchapter M) Redesignated as 50 (Subchapter I); eff. 9–13–00 49630
56—58 (Subchapter N) Redesignated as 56—58 (Subchapter K): eff. 9–13–00 49630
56 Technical correction 49636
56.5050 Undesignated center heading and section removed; eff. 9–13–00 49629
57 Technical correction 49636
57.5050 Undesignated center heading and section removed; eff. 9–13–00 49629
57.22303 Revised 43283
62 (Subchapter M) Added; eff. 9–13–00 49630
62 Technical correction 49636
70 Authority citation revised 43285
Technical correction 49636
70.204 (a) and (e) revised 43285
70.500—70.511 (Subpart F) Removed; eff. 9–13–00 49630
71 Authority citation revised 43285
Technical correction 49636
71.204 (a) and (e) revised 43286
71.800—71.805 (Subpart I) Removed; eff. 9–13–00 49630
75.360 Heading and (a)(1) revised 45170
75.506 (d) revised 43283
75.800–4 Revised 43287
75.1800—75.1808 (Subpart S) Removed 43287
90.201—90.220 (Subpart C) Authority citation revised 43286
90.204 (a) and (e) revised 43286

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202 Training sessions 56454
Eligible index zones 66771
202.51 (b) revised 43513
202.150—202.152(Subpart D) Heading revised 43513
202.150 (b)(1), (e)(1), (2) and (f) amended 43513
202.151 (a)(2) amended 43513
202.550—202.558 (Subpart J) Added 43514
206 Training sessions 56454
Eligible index zones 66771
206.51 Amended 43288
206.53 (c) amended 43288
206.151 Amended 43288
206.156 (d) amended 43288
206.158 (e) amended 43288
206.159 (a)(1)(i) and (e)(2) amended 43288
206.160 Correctly designated 43288
206.170—206.181 (Subpart E) Revised 43515
206.172 (h) amended 43288
206.173 (a)(2) amended 43288
206.174 (d)(2) amended 43288
206.176 (c)(3) amended 43288
206.177 (b)(3)(ii) and (d)(1) amended 43288
206.251 Amended 43288
206.258 (a) amended 43288
206.259 (c)(2)(ii) amended 43288
206.261 (b) revised 43288
206.262 (c)(2)(v) redesignated as (c)(2)(iv); (d)(2) and (3) added; (e)(2) revised 43288
206.263 (b) amended 43289
206.264 Amended 43289
206.451 Amended 43289
206.457 (a) amended 43289
206.460 (b) revised 43289
206.461 (e)(1) amended 43289

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

206.462 (b) and (c) amended 43289
206.463 Amended 43289
206.464 (a) amended 43289
210 Authority citation revised 38122
210.10 (c)(1), (2), (7) and (d) revised 38122
210.20—210.22 (Subpart A) Added 38122
210.52 Revised 38123
216 Authority citation revised 38123
216.11 Added 38123
216.50 (a) revised; (b), (c) and (d) redesignated as (f), (g) and (h); new (b) through (e) added 38123
216.53 Revised 38123
216.55 Revised 38123
216.56 (b) revised; (c) added 38123
227.101 Revised 36784
250.203 (f) revised 53200
250.204 (i) and (j) revised 53200
250.1010 (a) amended 42598
256.46 (b) revised 40767
290.110 Added 50753
290.111 Added 50753

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

904.25 Table amended 50756
914.15 Table amended 43913, 57567, 63684
915.15 Table amended 66390
915.16 (a) through (e) added 66391
920.15 Table amended 36786, 63688
920.16 (l) revised 36786
924.15 Table amended 57571
924.16 (f), (g), (h), (j), (k), (m) and (n) removed 57571
925.15 Table amended 57981
925.16 (p)(7), (8) and (15) removed 57981
934.15 Table amended 38827, 60660
934.16 (cc) and (n) removed 60660
935.15 Table amended 63690
936.15 Table amended 52232
943.15 Table amended 43923
948.15 Table amended 52303, 61507, 61518
948.16 (mmm) and (uuu) removed 52303
(jjjj) added 61507
(kkkk), (llll) and (mmmm) added 61518
950.15 Table amended 52308
950.16 (b), (c), (g), (v), (x), (ii)(1) and (kk) removed 52308

Proposed Rules:

57 ..... 36632, 36826, 40533
70 65671
71 65671
72 36826
75 ..... 36632, 36826, 40533
90 65671
206 ..... 45213, 50026
250 53298
901 ..... 48573, 55878
904 ..... 37067, 56179
913 44674
914 ..... 38165, 44448, 50026
915 54840
916 ..... 40323, 56982
917 38391
918 49118
920 38392
924 40326
935 42887
936 ..... 43327, 56983
938 ..... 36828, 66595, 66598
946 ..... 45489, 54843, 61805
948 54845

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Amended 62586
18 Revised 62112

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

100 Authority citation revised 39920
100.11 (b) revised 39920
100.12 (b) revised 39920
103 Exception 41041
103.11 (c)(7) and (n)(3) revised; (i), (n)(4), (5) and (10) removed; (n)(6) through (9) redesignated as (n)(4) through (7); new (n)(5), new (6) and new (7) amended; (uu) and (vv) added 45450
103.36 (b)(10) amended 45453
103.37 (c) added 45453
103.41—103.54 (Subpart D) Redesignated as 103.51—103.64 (Subpart E); new 103.41 (Subpart D) added 45451

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 31 Chapter I—Con.

103.56 (b)(7) amended 45453
103.57 (d) and (e) amended 45453
103.61—103.67 (Subpart E) Redesignated as 103.71—103.77 (Subpart F) 45451
103.72 Introductory text amended 45453
103.73 (a) introductory text, (1), (b) introductory text and (1) amended 45453
103.74 (a) amended 45453
103.75 (a) and (c) introductory text amended 45453
103.76 Amended 45453
103.70—103.77 (Subpart F) Redesignated as 103.80—103.87 (Subpart G) 45451
103.82 Amended 45453
103.83 (b) amended 45453
103.85 Amended 45453
103.86 (a) introductory text and (b) amended 45453

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

306.1 Revised 38125
306.2 (c) revised 38125
306.3 Revised 38125
306.12 Amended 38125
306.15 (a) revised; (b) introductory text amended; (b)(2) revised 38125
306.17 Revised 38126
306.19 Revised 38126
306.23 (c) revised; (g) amended 38126
306.24 Amended 38126
306.25 (a) amended 38126
306.26 Revised 38126
306.27 Revised 38126
306.28 Removed 38126
306.37 (d) revised 38126
306.38 Revised 38126
306.40 Amended 38126
306.41 Amended 38126
306.43 Amended 38126
306.56 (a) and (b) amended 38126
306.57 (c)(1) amended 38126
306.117 Heading and (d) revised; (b) amended 38126
315.31 (b) and (c) amended; (h)(2) and (7) removed; (h)(3) through (6), (8) and (i) redesignated as (h)(2) through (5), (6) and (7); (h)(1), new (5), new (6) and new (7) revised 40486
353.31 (c)(2), (d) and (e) removed; (c)(1), (f), (g) and (h) redesignated as (c) through (f); (b) and new (c) amended; new (f)(2) and new (7) removed; new (f)(3) through (f)(6), new (f)(8) and (i) redesignated as (f)(2) through (5), (6) and (7); new (f)(1), (5)(ii), (6) and (7) revised 40487
357.26 Heading, (a) and (b) heading revised; (b)(1)(i), (iv), (2), (3), (c) and (d) removed; (b)(1)(ii), (iii), (v) and (vi) redesignated as (b), (c), (d) and (e); new (c) heading, new (d) heading and (e) heading added 40487
357.30 Revised 40487
370 Revised 40487

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

538.405 Revised 41786
538.523 Added 41787
Heading revised; (b)(4) amended 58790
538.524 Added 41787
Heading revised; (b)(4) amended 58790
538.525 Added 41788
(b) amended 58790
538.526 Added 41788
(b)(3) amended 58790
538 Appendix A added 41788
550 Authority citation revised 41789
550.405 Revised 41789
550.569 Added 41789
Heading and (a) introductory text revised; (b)(4) amended 58790
550.570 Added 41790
Heading revised; (b)(4) amended 58791
550.571 Added 41790
(b) amended 58791
550.572 Added 41790
(b)(3) amended 58791
550.573 Added 41791
550 Appendix A added 41791
Appendix B added 58791
560.210 (c)(2) amended 58791

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

560.405 Added 41791
560.505 (c) amended 58791
560.530 Added 41791
Heading and (a) introductory text revised; (b)(4) amended 58791
560.531 Added 41792
Heading revised; (b)(4) amended 58791
560.532 Added 41793
(b) amended; (c) revised 58791
560.533 Added 41793
(b)(3) amended; (c) revised 58791
560 Appendix designated as Appendix A; Appendix B added 41793
Appendix C added 58792
590 Revised 43926
Chapter V Appendix A amended 35576, 35577
Appendixes A and B amended 60661
Appendix B amended 60671

Proposed Rules:

1 ..... 46627, 62620
28 58568
203 41748
375 42626
380 58364

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

199.2 (b) amended 46134
199.3 Revised 46135
199.4 (d)(3)(vii) and (g)(48) revised; interim 45454
(e)(5)(iii)(B), (f)(1), (2) introductory text, (ii) introductory text, (iii), (iv), (3) introductory text, (i), (iii), (4) introductory text and (ii) revised 46140
199.8 (a) and (d)(1) revised 46141
199.13 (i) revised 38576
199.14 (a)(1)(iii)(B), (D)(*5*), (E)(*1*)(*i*)(*A*), (*B*), (*ii*)(*A*), (*B*), (G)(3) introductory text, (d)(3)(iv) and (h) introductory text revised; (a)(1)(iii)(D)(1) amended 60671
199.20 (d)(1)(iv) added 46141
321 Revised 49660

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(13) revised 45877

Chapter VI—Department of the Navy (Parts 700—799)

700 Revised 56062
701 Added 49850

Chapter VII—Department of the Air Force (Parts 800—1099)

989 Revised 38129

Chapter XVIII—National Counterintelligence Center (Parts 1800—1899)

Chapter XVIII Established; interim 49878
1800.31 (c)(4)(ii) correctly revised 53769

Chapter XX—Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

2001.55 Added 49389
(d) corrected 62113
2004 Added 51854

Proposed Rules:

196 58568
199 ..... 56283, 66126
230 43856
231a 43856
231 43858
767 63263
775 37069
776 37473
806b 56181

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

100.35–T05–064 Added (temporary) 39416
100.35–T05–070 Added (temporary) 46273
100.35–T05–079 Added (temporary) 50449

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 33 Chapter I—Con.

100.35T-07-056 Added (temporary) 53209
100.35T-07-057 Added (temporary) 66107
100.35T-07-068 Added (temporary) 59624
100.35-T08-046 Added (temporary) 42278
100.35T-08-048 Added (temporary) 42598
100.35-T08-049 Added (temporary) 43290
100.35-T08-052 Added (temporary) 53629
100.35-T08-060 Added (temporary) 55831
100.37T-07-063 Added (temporary) 50757
100.114 (a) table corrected 37583
100.504 (a) revised 55830
100.515 Implementation (temporary) 46274
100.519 Implementation (temporary) 51047
100.1103 Revised 39029
100.1104 Removed 39030
100.1203 Removed 39030
110.155 (c)(6) added 38829
110.156 (b)(11) added; eff. 8-28-99 through 11-28-99 49669
110.183 (b) revised 42279
117 Temporary drawbridge operations regulations 36239, 36569, 36570, 42033, 44131, 44826, 46273, 47389, 49391, 49669, 51444, 53209, 54776, 55137, 55831, 56677, 66107
117.39 (l) and (o) revised 62114
117.207 (a) revised 60674
117.211 (b)(2) revised 60675
117.215 (b) revised 61519
117.219 (b) revised 61522
117.333 Revised 55419
117.393 (d) amended 61520
117.525 (b) redesignated as (a)(8); new (b) added 61521
117.527 Revised 60673
117.565 Revised 61209
117.570 Added 61207
117.595 Revised 46275
117.661 Stayed; eff. 12-15-99 through 3-20-00 59124
117.715 Revised 59625
117.723 (f) revised; interim 38831
(g) revised 62114
117.755 Revised 44130
117.789 (c) suspended; (g) added (temporary) 56252
117.799 (d) revised 46276
117.869 (a)(3) added; eff. 7-26-99 through 9-15-00 37679
117.911 (f) revised; interim 38830
117.949 Suspended; eff. 7-26-99 through 10-1-99 42600
117.T408 Added (temporary) 50254
117.T662 Added (temporary) 59124
117.T950 Added (Temporary) 42600
160.307 (g) revised; interim; eff. 8-2-99 through 3-31-00 41794
160.313 (a)(1), (2) and (b)(2) revised; interim; eff. 8-2-99 through 3-31-00 41794
160.315 (b)(2) revised; interim; eff. 8-2-99 through 3-31-00 41795
160.317 (a)(1), (2) and (b)(2) revised; (f) and (g) redesignated as (e) and (f); interim; eff. 8-2-99 through 3-31-00 41795
160.301—160.317 (Subpart D) Appendix A revised; eff. 8-2-99 through 3-31-00 41796
165 Technical correction 36572
165.T01-030 Added (temporary) 36572
165.T01-094 Added (temporary) 46849
165.T01-102 Added (temporary) 36573
165.T01-104 Added (temporary) 39033
165.T01-110 Added (temporary) 39034
165.T01-115 Added (temporary) 37681
165.T01-118 Added (temporary) 43291
165.T01-141 Added (temporary) 45880
165.T01-145 Added (temporary) 46277
165.T01-147 Added (temporary) 49671
165.T01-149 Added (temporary) 46567
165.T01-152 Added (temporary) 49393
165.T01-154 Added (temporary) 49394
165.T01-161 Added (temporary) 51244
165.T01-163 Added (temporary) 52233
165.T01-167 Added (temporary) 51899
165.T01-181 Added (temporary) 61022
165.T01-185 Added (temporary) 62588
165.T05-041 Added (temporary) 45879
165.T05-080 Added (temporary) 49669
165.T05-090 Added (temporary) 55420
165.T05-094 Added (temporary) 66586
165.T08-034 Added (temporary) 52434
165.T08-038 Added (temporary) 55139
165.T08-041 Added (temporary) 57981
165.T11-066 Added (temporary) 51900
165.T13-023 Added (temporary) 43292
165.T17-012 Added (temporary) 49395
165.161 Removed 44659
165.166 Removed 44659

165.167 Removed.....44659
165.170 Removed.....44659
165.174 Removed.....44659
165.175 Removed.....44659
165.178 Removed.....44659
165.1112 Added.....39030
165.1310 (a) and (e) revised.....61212
173 Authority citation revised.....36243
173.85 Revised.....36243
187.301—187.331 (Subpart D) Removed.....56966

Proposed Rules:

1—199 (Ch. I).....56286, 63266
20.....53970
100.....41853, 47461, 52723, 54847, 54849
110.....38166, 47156, 52723, 60399
117.....36318, 39454, 44145, 44147—44149, 44151, 46322, 46323, 47751, 55218, 61561
147.....66434
165.....36633, 39108, 39454, 47752, 49424, 52723, 54252, 54963, 57418, 57419, 58366, 63267
167.....46627
175.....53971, 63773
181.....56287
183.....56287
207.....47462, 55441

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

75.118 (a) amended.....50391
75.215 Cross-reference amended.....50391
75.220 (b)(2) revised.....50391
75.511 Cross-reference revised.....50391
75.517 Amended.....50391
75.524 (b) amended; (b) note removed.....50391
75.530 Revised.....50391
75.618 Heading and cross-reference revised.....50391
75.621 Cross-reference revised.....50391
75.626 Cross-reference.....50392
75.650 Cross-reference and heading revised.....50392
75.702 Cross-reference revised.....50392
75.708 (b) revised.....50392
75.720 Cross-reference, (a)(1) and (c) revised.....50392
75.730 Cross-reference revised.....50392
75.732 Cross-reference revised.....50392
76.132 (a)(5) revised.....50392
76.530 Revised.....50392
76.681 Cross-reference removed.....50392
77.1 Amended.....50392
80.42 (b)(4) amended.....50392

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

379 Revised.....48053

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600 Authority citation revised.....58615
600.2 Amended.....58615
600.4 (c) revised.....58615
600.5 (e) added; (h) removed; (i) redesignated as (h); (a)(8), (b)(3)(i), (d), (f), (g) and new (h) revised.....58615
600.6 (b)(3)(iii) and (d) revised.....58616
600.7 (a)(1)(iii), (iv) and (c) revised.....58616
600.8 Revised.....58616
600.20 (c)(8) added.....58616
600.31 (a)(1) revised; (f) removed.....58616
600.55 (a)(5)(i)(A) revised.....58616
600.56 Redesignated as 600.57; new 600.56 added.....58616
600.57 Redesignated from 600.56.....58616
602 Revised.....56617
611 Added.....42839
668 Authority citation revised.....57358, 58617, 59037, 59066
668.8 (h) revised.....58291
(f)(2) revised.....59037
668.12 (f) and (g) added; authority citation revised.....58617
668.13 (b)(1) amended.....58617
668.14 (b)(15), (20) and (24) revised; (b)(16), (d) and (e) removed; (f) through (i) redesignated as (e) through (h); new (d) added.....58617
(b)(25)(ii) revised.....59038
668.16 (h)(3) and (l)(2) revised.....59038
668.17 (a)(1), (b)(4), (5), (c)(1)(ii), (2), (7) and (j)(1)(ii) revised; (j)(1)(iii) removed; (j)(2)

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 34 Chapter VI—Con.

through (5), (6) and (7) redesignated as (j)(3)(i) through (j)(3)(iv), (2), and (j)(3)(v); new (j)(4) and (k) added; (b)(3) introductory text, (c)(1) introductory text, (e)(1)(ii)(A), (B), (3)(f)(1)(ii)(A), (B), (3), (h)(2)(ii), (iii), (3)(ii)(B) introductory text, (iii)(B) introductory text and new (j)(2), (3)(i), (ii) and (v) amended; OMB number 58981
668.22 Revised 59038
668.24 (c)(1)(iv)(C) and (D) revised 59042
668.25 (c)(4)(ii) revised 59042
668.26 (b)(7) revised 59042
668.27 Added 56818
668.32 (e)(2), (3), (h), (j) and (k)(7) amended; (e)(4) and (l) added 57358
(c) revised 58291
668.38 (b) revised 57358
668.40 Added 57358
668.41—668.49 (Subpart D) Heading revised 59066
668.41 Revised 59066
668.42 Removed; new 668.42 redesignated from 668.43; (c)(5) and (6) amended; (c)(7) added; OMB number 59067
668.43 Redesignated as 668.42; new 668.43 redesignated from 668.44 59067
Revised 59068
668.44 Redesignated as 668.43; new 668.44 redesignated from 668.45 59067
668.45 Redesignated as 668.44; new 668.45 redesignated from 668.46 59067
Revised 59068
668.46 Redesignated as 668.45; new 668.46 redesignated from 668.47 59067
Revised 59069
668.47 Redesignated as 668.46; new 668.47 redesignated from 668.48 59067
Revised 59071
668.48 Redesignated as 668.47; new 668.48 redesignated from 668.49 59067
(a)(1), (iii) through (vi) and (b) amended; OMB number 59072
668.49 Redesignated as 668.48 59067
668.83 (c)(2)(ii)(C) revised 59042
668.92 (d) added; authority citation revised 56818
(b)(2) revised 59042
668.95 (d) added; authority citation revised 56819
(b)(2)(i) revised 59042
668.113 (d) added; authority citation revised 56819
668.161 (a)(4) revised 58291
668.164 (g)(1) revised 59042
668.171 (b)(4)(i) revised 59042
668.173 (a) introductory text, (b) introductory text, (1)(i) and (ii) revised 59042
668 Appendix H added 58984
Appendix A removed 59043
Appendix E amended 59073
673.5 (c)(1) introductory text and (ix) revised; (c)(1)(x) and (xi) redesignated as (c)(1)(xi) and (xii); new (c)(1)(x) and (4) added; OMB number 58292
674.2 (b) amended 58308
674.5 (a)(3), (4), (b)(2) and (c)(4) removed; (b)(3) and (c)(3)(ii) redesignated as (b)(2) and (c)(4); (a)(1), (2) and new (c)(3) revised; new (c)(4) amended 58308
674.6 Removed 58309
674.7 Removed 58309
674.8 OMB number 58315
674.9 (i) redesignated as (j); new (i) added 58309
674.10 (b) revised 58292
OMB number 58315
674.12 (a), (b) and (d) revised 58309
674.13 OMB number 58315
674.16 (i) revised; OMB number 58309
674.19 OMB number 58315
674.20 OMB number 58315
674.31 (b)(2)(i)(C) and (D) redesignated as (b)(2)(i)(D) and (E); new (b)(2)(i)(C) added; (b)(10)(i) revised; OMB number 58309
674.33 (f) and (g) added; OMB number 58309
674.34 (e) introductory text revised; (e)(1) through (4) amended; (e)(6) through (9)

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

redesignated as (e)(7) through (10); new (e)(6) added 57531
Heading, (a) and (c) revised; OMB number 58311
674.35 OMB number 58315
674.36 OMB number 58315
674.37 OMB number 58315
674.38 (a)(1) and (d) revised; (a)(2) redesignated as (a)(3); new (a)(2) added 57531
OMB number 58315
674.39 Revised 58311
674.41 (a)(3) added; OMB number 58312
674.42 (a) revised; (b) redesignated as (c); new (b) added; OMB number 58312
674.43 OMB number 58315
674.45 (b) revised; (h) added; OMB number 58312
674.47 (e)(5) and (6) redesignated as (e)(6) and (7); new (e)(5) added; OMB number 58313
674.48 OMB number 58315
674.49 (f)(2)(ii)(A), (B), (3)(ii)(A) and (B) redesignated as (f)(2)(ii)(B), (C), (3)(ii)(B) and (C); (c)(1), (2), (3), (e)(4)(i) introductory text, new (f)(2)(ii)(B), new (3)(ii)(B) and (g) revised; new (f)(2)(ii)(A) and (3)(ii)(A) added; OMB number 58313
674.50 OMB number 58315
674.52 (c)(1) and (d) revised; OMB number 58313
674.53 Heading, (a)(1), (b) and (c) revised; (a)(2) through (6) redesignated as (a)(3) through (7); new (a)(2) added; OMB number 58313
674.54 Removed 58314
674.56 Heading, (a), (b) and (c) revised 58314
674.57 Heading and (a)(1) revised; (a)(2) through (7) redesignated as (a)(3) through (8); new (a)(2) added 58314
674.58 (a) revised 58314
674.60 Heading and (a) revised 58314
674.61 OMB number 58315
675 Authority citation revised 58292
675.2 (b) amended 58292
675.8 (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f) 58292
675.10 (c) revised; OMB number 58292
675.16 (a)(1) and (b)(1) revised; (a)(2), (3) and (4) redesignated as (a)(10), (11) and (12); (a)(2) through (9) added; new (a)(11), new (12), (b)(2), (3) and (c) amended; OMB number 58292
675.18 (a)(2), (g)(1) and (2) revised; (f) amended; (g)(3) and (h) added; OMB number 58293
675.20 (d) added; OMB number 58293
675.23 (b)(1) revised 58294
675.26 (a)(1) and (d)(2)(iii) revised; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 58294
675.45 (a)(5) and (6) added 58294
676.10 (b) revised 58294
676.18 (a)(2) revised; (c) through (f) added 58294
682.100 (a)(2), (4) and (b)(2)(C) amended 58952
682.102 (a) and (d) revised; (b) removed; OMB number 58952
682.103 (a) amended 58952
682.200 (b) amended; OMB number 58952
682.201 (a)(2) and (c)(1) revised; (c)(2)(iii) amended; (c)(3) and (4) removed; (d) and (e) added 58952
682.202 (a)(4) designated in part as (a)(4)(i); (b)(5) removed; (a)(4)(i), (ii), (b)(4), (c)(3), (4) and (5) redesignated as (a)(4)(i)(A), (B), (b)(5), (c)(5), (6) and (7); (a)(1)(i), (ii)(B), (iii)(A), (iv), (2)(iii) introductory text, new (4)(i), (b)(1), (3) and new (c)(5) amended; (a)(1)(v) through (viii), (2)(iv), (v), (4)(ii) through (v) and new (b)(4), (c)(3) and (4) added; (b)(2), new (5), (c)(1) and (2) revised 58953
682.204 (a) through (e) revised; (f)(2)(i), (ii), (B) and (j) amended 58954
682.205 (a)(1), (2)(i), (b), (c)(1), (2)(i), (d) and (e) revised; (a)(2)(ii) through (a)(2)(xvii)

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 34 Chapter VI—Con.

redesignated as (a)(2)(v) through (a)(2)(xx); new (a)(2)(ii), new (iii), new (iv), (3), (f), (g) and (h) added 58625
OMB number 58965
682.206 (a)(1), (c)(2) and (d)(1) revised; (c)(1) amended; (c)(3) removed; OMB number 58957
682.207 (b)(1)(vi) revised; (b)(1)(vii) added 58626
(b)(1)(v)(B)(*3*) and (c) amended; (c)(5) removed; (c)(4) and (d) redesignated as (d) and (f); (e) added; new (f) revised; OMB number 58957
(b)(1)(v)(E) added; OMB number 59043
682.208 (c)(3) added 58626
OMB number 58965
682.209 (h)(3) removed; (a)(6), (7), (8), (h)(4), (5) and (6) redesignated as (a)(7), (8), (9), (h)(3), (4) and (5); new (4)(ii) removed; new (a)(7)(ix) and (h)(4)(iii) redesignated as (a)(7)(xi) and and (h)(4)(ii); new (a)(6), new (7)(ix) and (x) added; (a)(4), new (7)(iii), (c)(1)(i) and new (h)(3) revised; new (a)(7)(i)(B), (v) introductory text, (A), (B), (vii)(A)(*2*), (viii)(D), (E), (8)(i), (ii) and (iv) and (e)(2)(i), (ii) and (f)(2)(ii) amended; OMB number 58957
(i) revised 59043
682.210 (k) introductory text, (1), (2), (3) and (s)(6)(vi) through (x) redesignated as (k)(1) introductory text, (i), (ii), (iii) and (s)(6)(vii) through (xi); new (k)(2) and new (s)(6)(vi) added; (s)(6) introductory text revised; (s)(6)(i) through (iv) and new (viii) amended 57531
(a)(5) revised 58626
(c)(2), (3) and (4) redesignated as (c)(3), (4) and (5); (a)(3), (4), (6)(iv), (b)(4), (c) heading, (1), new (3) and (h) revised; (a)(7), (b)(1)(i), new (c)(4), new (5) and (s)(2) amended; new (c)(2) added; OMB number 58958
682.211 (f)(2) revised; (f)(10) added 58626
(a)(4) revised; (f)(9) added; (h)(2) amended; (h)(2)(ii)(B) and (3)(ii) removed; (h)(2)(ii)(C) and (3)(iii) redesignated as (h)(2)(ii)(B) and (3)(ii); (c), (h)(1) and new (3)(ii) amended; OMB number 58959
682.214 OMB number 58965
682.215 Removed 58626
682.300 (a) revised 58959
682.301 (a)(3), (b) and (c) revised; (a)(4) removed; OMB number 58959
682.302 (b)(2)(ii) and (iii) amended; (c)(1)(iii)(A) through (E) redesignated as (c)(1)(iii)(C) through (G); (b)(1), (2) introductory text, new (c)(1)(iii)(C) and (3)(i)(A) revised; (b)(2)(iv), new (c)(1)(iii)(A), (B) and (4) added 58626
682.305 Heading, (a)(1) and (c)(1) revised; (a)(3)(iii), (iv) and (v) added; OMB number 58627
682.400 (b)(1)(i) and (ii) amended; (b)(1)(iii) removed 58627
682.401 (b)(11), (c)(1), (2), (3), (e)(1) and (3) revised; (b)(23)(i) introductory text amended; (c) heading and (5) added 58627
(b)(5)(i), (ii) and (d)(3) revised; (b)(15) heading and (24) amended; (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number 58959
682.402 Heading, (d)(3) introductory text and (f)(2) revised; (d)(8) added; OMB number 58628
Heading, (a)(1), (f)(3), (g)(1)(i), (ii), (i)(1), (j)(1)(iii) and (k)(1)(i)(A) revised; (a)(3), (f)(1), (5)(i)(B), (h)(1)(i) and (j)(1)(ii) amended; (i)(3) removed; (l) and (m) redesignated as (r) and (s); (h)(1)(iv) and new (l) through (q) added; OMB number 58960
682.404 (a)(2)(iii), (3) and (g)(3) removed; (a)(1)(ii), (4), (5) and (i) redesignated as (a)(1)(iii),

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

(3), (4) and (l); (a)(1) introductory text, (i), new (iii) introductory text, new (A), (2)(ii), (4), (b) heading, (1)(i), (ii), (2)(i), (ii), (g) heading, (1) and (2) revised; new (a)(1)(ii), (b)(1)(iii), (2)(iii), (i), (j) and (k) added; (b)(1)(i) and (2)(i) amended; OMB number 58628
682.405 OMB number 58965
682.406 Heading, (a) introductory text and (a)(14) revised 58629
(a)(12) revised; (c) added; OMB number 58962
682.409 (a)(1) introductory text revised 58630
(c)(2) revised; (c)(4)(i), (iv) and (5) amended; OMB number 58963
682.410 (b)(5)(vii) added 58630
OMB number 58965
682.411 Revised 58630
OMB number 58965
682.412 (a) amended 58632
682.413 (e)(1) revised 58632
682.414 (a)(4)(iii) and OMB control number revised 58632
(a)(4)(ii)(A), (B), (J) and (5)(i) amended; (a)(4)(ii)(K) redesignated as (a)(4)(ii)(L); new (a)(4)(ii)(K) added; (a)(5)(ii) revised; (a)(5)(iii) removed; OMB number 58963
682.417 Revised 58632
682.418 Amended; heading and (a)(1) revised 58634
682.419 Added 58634
682.420 Added 58634
682.421 Added 58635
682.422 Added 58635
682.423 Added 58635
682.507 OMB number 58965
682.508 OMB number 58965
682.511 OMB number 58965
682.515 OMB number 58965
682.601 OMB number 58965
682.603 (b) revised; (g) and (h) redesignated as (h) and (i); (c) and new (g) added; OMB number 58963
682.604 (a)(3) and (c)(3) amended; (c)(5), (6) introductory text, (f) and (g) revised; (c)(10) added; OMB number 58963
(c)(4) revised 59043
682.605 OMB number 58965
682.605 (a) and (b) revised 59043
682.607 Amended 59043
682.610 (b) revised; OMB number 58965
682.711 OMB number 58965
682.712 OMB number 58965
682.713 OMB number 58965
682.800 Removed; new 682.800 redesignated from 682.840; (a) amended 58636
682.801 Removed 58636
682.802 Removed 58636
OMB number 58965
682.803 Removed 58636
OMB number 58965
682.804 Removed 58636
682.805 Removed 58636
682.830 Removed 58636
682.840 Redesignated as 682.800 58636
682 Appendix D revised 58636
685.102 (b) amended 58965
685.201 Revised 58965
685.202 (a) and (c)(1) revised 46254
685.203 (a), (c)(2), (d) introductory text and (e) introductory text revised 58966
685.204 (b)(1)(iii) added; OMB number 58968
685.205 (a) introductory text, (4) and (b)(6) revised; (a)(2), (b)(7) and (8) amended; (a)(5) removed; (a)(6) redesignated as (a)(5); (b)(9) added 58968
685.206 OMB number 58972
685.207 (b)(2)(ii) and (c)(2)(ii) redesignated as (b)(2)(iii) and (c)(2)(iii); new (b)(2)(ii) and new (c)(2)(ii) added; new (b)(2)(iii) revised 58968
685.209 OMB number 58972
685.211 (b) through (e) redesignated as (c) through (f); new (b) added; new (e)(2) and (3) amended 57961
685.211 (c) revised 59043
685.212 (d) through (g) revised; OMB number 58969
685.213 OMB number 58972
685.214 OMB number 58972
685.215 Redesignated as 685.216, new 685.215 added 58969
(k) revised 59044
685.216 Redesignated from 685.215 58969
(d), (g), (l)(1), (2) and (3) revised; OMB number 58970
685.300 (a)(1)(ii) revised 58970

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 34 Chapter VI—Con.

685.301 (b)(2), (3), (8) and (c)(2) revised; OMB number 58970
685.302 OMB number 58972
685.303 (b)(4) revised 58971
685.304 (a)(3)(i) through (iv), (b)(1)(ii), (2) introductory text, (i) through (vi), (vii), (3) and (4) redesignated as (a)(3)(ii) through (v), (b)(3), (4) introductory text, (i) through (vi), (viii), (5) and (7); (a)(1), (2), (3) introductory text, new (ii), new (iv), new (v), (5)(i), (ii), (b)(1) and new (3), (4) introductory text, (i) through (viii) and (7) revised; new (a)(3)(i), (6), (7), (b)(2), (4)(vii) and (6) added; OMB number 58971
685.305 Revised 59044
685.306 Revised 59044
685.400 (d) added 46255
685.401 Removed 46255
685.402 (f) added 58972
690.6 Heading and (a) revised; (c) and (d) added 58294
690.7 (c) redesignated as (d); new (c) added 58295

Proposed Rules:

75 54254
600—699 (Ch. VI) 46628
600 38272
611 60632
614 57288
668 ..... 38272, 38504, 41752, 43024, 43582
673 42206
674 ..... 41232, 42206
675 42206
676 42206
682 ..... 42176, 43024, 43428
685 43428
690 42206
694 39109

TITLE 35—PANAMA CANAL

No amendments to 35 CFR have been published in the FEDERAL REGISTER since July 1, 1999.

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

13 Authority citation revised 56463
13.65 (a) added; (b)(5) and (6) removed 56463

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

211 Authority citation revised 60677
211.1—211.6 (Subpart A) Heading revised 60677
211.6 Added 60678
242.24 Revised 35780
242.25 Added; eff. 7-1-99 through 6-30-00 35788
242.24 (a) introductory text and (1) correctly revised 35823
251.56 (a)(1)(ii)(G) note added 48960
251.80—251.102 (Subpart C) Authority citation revised 37846
251.84 Existing text designated as (a); (b) added 37846
251.90 (c) revised 37846
251.91 (a) revised 37846
251.92 (a)(8) added; (c) revised 37846
251.93 (b) revised 37846
251.94 (b) revised 37846
251.103 Added 37846

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1254.20 Regulation at 64 FR 19901 confirmed 48961
1275.48 (a) revised 56678
1275.64 (e) revised 56678

Proposed Rules:

5 61563
13 ..... 41854, 61563
51 ..... 47336, 63775
217 ..... 54074, 56293
219 ..... 54074, 56293
242 49278
251 66342
300—399 (Ch. II) 58368
327 38854
1010 ..... 39951, 51488

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

1100—1199 (Ch. XI) 60753
1190 ..... 62248, 62622
1191 ..... 37326, 42056, 62248, 62622
1211 58568
1228 50028
1275 37922

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.1 (a)(2) revised 48917
1.4 (a)(2) amended; (d)(1) introductory text and (ii) revised; (d)(1)(iii) added 48917
1.5 (c) revised 48917
1.6 (a)(1) revised; (a)(4) added 48917
1.23 Revised 48917
2.1 Revised 48917
2.6 Introductory text, (a)(6) and (14) revised; (a)(20) and (21) added 48917
2.17 (c) and (d) added 48918
2.20 Revised 48918
2.21 Revised 48918
2.31 Removed 48918
2.32 Revised 48918
2.33 Revised 48918
2.34 Revised 48919
2.35 Redesignated as 2.37; new 2.35 added 48920
2.37 Removed; new 2.37 redesignated from 2.35 48920
2.38 (a) revised 48920
2.39 Removed 48920
2.45 Revised 48920
2.51 (c), (d) and (e) removed 48920
2.52 Revised 48920
2.56 Revised 48921
2.57 Removed 48921
2.58 Removed 48921
2.59 Revised 48921
2.66 Revised 48921
2.71 Revised 48922
2.72 Revised 48922
2.76 (b), (e)(2) and (3) revised; (i) and (j) added 48922
(b)(1) introductory text corrected 51245
2.86 Revised 48923
2.88 (b) and (e) revised; (k) and (l) added 48923
(b)(1) introductory text corrected 51245
2.89 (a), (b) and (d) revised; (g) amended; (h) added 48923
(a)(3) and (b)(3) corrected 51245
2.101 (d)(1) revised 48924
2.111 (c)(1) revised 48924
2.146 (d) revised; (i) and (j) added 48924
2.151 Revised 48924
2.155 Revised 48924
2.156 Revised 48924
2.160 Added 48924
2.161 Revised 48924
2.162 Revised 48925
2.163 Revised 48925
2.164 Revised 48925
2.165 Revised 48925
2.166 Revised 48925
2.167 (c) revised 48925
2.168 Revised 48925
2.173 Heading and (a) revised 48926
2.181 (a) revised 48926
2.182 Revised 48926
2.183 Revised 48926
2.184 Revised 48926
2.185 Added 48926
2.186 Added 48926
3.16 Revised 48926
3.24 Heading revised 48927
3.25 Added 48927
3.28 Revised 48927
3.31 (a) and (b) revised; (d) and (e) added 48927
6.1 Revised 48927

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201.1 (b) amended 36574
201.3 (c)(5) and (8) amended 36574
201.10 (b)(1)(v) and (e)(2) amended 36574
201.11 (d)(1), (e)(6), (7) and (h)(2)(i) amended 36574
201.17 (d)(1), (e)(2)(i), (h)(4)(iii), (j)(3)(iv)(A) and (k) amended 36574
201.18 (a)(1) and (3) amended 36574
(a)(4) added; (c)(1)(vi) amended; interim 41288
201.19 (a)(1), (2) and (4) amended 36574
(c)(4), (e)(4)(i) and (f)(3)(viii) amended 36575

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 37 Chapter II—Con.

(a)(5), (6) and (7) redesignated as (a)(6), (8) and (9); new (a)(5), new (7), (10), (11) and (e)(3)(ii)(E) added; new (a)(6), (e)(3)(i)(A), (B) and (4)(ii) amended; (e)(3)(ii)(D) revised; interim 41288
201.25 (c) amended; interim 49671
201.27 (c) and (e)(1) amended 36575
201.29 (e)(3) amended 36575
201.35 (a) amended 36575
(f) amended; interim 50759, 68392
201.36 (b)(1) and (c) amended 36575
201.37 (a) and (b)(1) amended 36575
202.3 (b)(7)(ii) amended 36575
202.17 (f)(2) amended 36575
202.19 (b)(1)(i) and (ii) amended 62978
202.20 (c)(2)(vii)(D)(*3*), (*4*), (*5*) and (xi)(A)(*2*) amended 36575
202.22 (a) and (c)(1) amended 36575
202.23 (c)(1), (2) and (d) amended 36575
203.3 (g) amended 36575
203.4 (f)(2) amended 36575
204.4 (a) amended 36575
204.5 (a) amended 36575
204.7 (a) amended 36575
204.8 (a) amended 36575
211.4 (e) amended 36575
211.5 (c)(2) and (d) amended 36575
212 Added; interim 36578
251.54 (e) amended 36575
251.56 (a) and (b) amended 36576
251.58 (b) amended 36576
253.3 (e)(4) amended 36576
253.8 (b)(1)(i)(A) and (ii)(D) amended 36576
259.3 (a)(5) amended 36576
260.2 (c)(1)(v) and (2) amended 36576
260.7 Amended 36576

Proposed Rules:

1 ..... 53772, 59701
3 53772
5 53772
10 53772
201 ..... 42316, 59140, 66139
212 36829
255 38861

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

2 Authority citation revised 47111
2.1 Redesignated as 2.2; new 2.1 added 47111
2.2 Redesignated as 2.3; new 2.2 redesignated from 2.1 47111
2.3 Redesignated from 2.2 47111
2.6 (a) introductory text, heading, (1), (3) and (7) amended; (e)(1) removed; (g) authority citation revised 47111
3.1003 (b) amended 54207
14 Heading and authority citation revised 47111
14.600 Revised 47112
14.601—14.604 Undesignated center heading removed 47112
14.601 (a) heading revised; (b) heading and authority citation added 47112
14.602 (a) amended 47112
14.604 (a) and (c) amended; authority citation added 47112
14.605 Undesignated center heading removed 47112
14.605 (b) and (d) amended; authority citation added 47112
14.615 (a) amended; authority citation added 47112
17.34 Amended 54212
17.36 Undesignated center heading and section added 54212
17.37 Added 54217
17.38 Added 54217
17.43 (a) removed; (b) through (e) redesignated as (a) through (d) 54218
17.47 (h) removed; (i) through (l) redesignated as (h) through (k); new (h) amended 54218
17.93 (a)(2) amended 54218
17.99 Removed 54218
17.100 Amended 54218
17.133 Undesignated center heading and section added 44660
21.4001—21.4280 (Subpart D) Authority citation revised 52651
21.4138 Introductory text, (c) and (d) removed; (a) and (b) revised; OMB number 52651
21.5135 Revised 52652

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (3)(ii) introductory text, (A) and (B) amended; (b)(2)(ii)(C) and (3)(ii)(C) revised 44661
21.5822 (a) introductory text, (b)(1)(i), (ii), (2)(i) and (ii) amended 44661
Corrected 46974
21.7040 Heading revised 52652
21.7042 Heading revised; OMB number 52652
21.7135 (f)(1) introductory text and (2) authority citation and (3) authority citation revised 38577
(v)(2) revised 51901
21.7140 (a) revised; (b) removed; (c) through (g) redesignated as (b) through (f) 52652
21.7500—21.7807 (Subpart L) Authority citation revised 52652
21.7640 (b) authority citation, (c) authority citation, (e), authority citation and (f) amended; (d) revised 52652

Proposed Rules:

20 53302
23 58568

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference 43293, 46142, 46278, 60108
111 DMM amended; incorporation by reference 38832, 48094, 50450, 57571
261.4 Revised 41290
262.2 (b) revised; (d) added 41290
262.4 (a) and (b) amended 41290
262.5 (d)(2) amended 41290
263.3 (a) amended 41290
263.4 Removed; new 263.4 redesignated from 263.5 and amended 41290
263.5 Redesignated as 263.4; new 263.5 redesignated from 263.6 and revised 41290
263.6 Redesignated as 263.51290
264.3 (a) and (b) revised 41290
264.4 Amended 41290
265.3 (b) revised 41290
265.4 Amended 41290
265.6 (b) introductory text amended 41290
265.9 (b)(2)(ii) and (g)(4) amended 41290
265.7 (a)(2) amended 41290
265.12 (b)(7) amended 41291
266.3 (a), (c) and (d)(2) revised 41291
266.4 (b)(6)(i), (iii) and (iv) amended 41291
266.5 (d) amended 41291
266.6 (a)(1) amended 41291
266.7 (a)(4) amended 41291
266.10 (b) amended 41291
267.5 (e)(3)(i) amended 41291
776 Revised 56254

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.42 (c) removed; (d) redesignated as (c) 58337
3001.42a Removed 58337
3002.2 Redesignated as 3002.3; new 3002.2 added 58337
3002.3 Redesignated as 3002.4; new 3002.3 redesignated from 3002.2; (c) added 58337
3002.4 Redesignated as 3002.5; new 3002.4 redesignated from 3002.3; (e) added 58337
3002.5 Redesignated from 3002.4 58337
3002.7 (c) amended 37402
3002 Appendix A revised 37402
3003 Revised 57982
3004 Added 58337

Proposed Rules:

111 ..... 44681, 54255, 57419, 66143
265 46630
776 48124
3001 ..... 50031, 52725, 66436
3002 50031
3003 49120
3004 50031

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

9.1 (b) table amended (OMB numbers) ... 36585, 37636, 42461, 43937, 66393

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 40 Chapter I—Con.

Regulation at 64 FR 42461 eff. date corrected to 12–2–99 43426
Table amended (OMB numbers); eff. 1–1–01 50610
22 Revised 40176
49.22 Added 65663
51 Authority citation revised 35763
51.121 (e)(2) and (3)(iii) revised 49992
Regulation at 64 FR 49992 withdrawn 58792
51.300 (a), (b)(1) introductory text and (2) revised; (b)(3) added; eff. 8–31–99 35763
51.301 Amended; eff. 8–31–99 35763
(v) amended; eff. 8–31–99 35774
51.302 Heading, (a), (c) introductory text, (1), (2) introductory text, (4) introductory text and (iv) revised; eff. 8–31–99 35764
(c)(2)(i) and (4)(i) amended; eff. 8–31–99 35774
51.303 (a)(1), (c), (d), (g) and (h) amended; eff. 8–31–99 35774
51.304 (c) amended; eff. 8–31–99 35774
51.305 Heading and (a) revised; eff. 8–31–99 35764
51.306 Heading, (a)(1), (c) introductory text and (d) revised; eff. 8–31–99 35764
(a)(1) and (c)(6) amended; eff. 8–31–99 35774
51.307 (a) introductory text, (2) and (c) revised; eff. 8–31–99 35765
(b)(1) and (c) amended; eff. 8–31–99 35774
51.308 Added; eff. 8–31–99 35765
51.309 Added; eff. 8–31–99 35769
52 State implementation plan determinations 36243, 40287, 40767, 45454, 49084, 50254, 50762, 55141, 60681, 66775
52.50 (c) table amended 59635
52.70 (c)(29) added 47679
Regulation at 64 FR 47679 withdrawn 53931
52.120 (c)(94) added 50762
(c)(94)(i)(B) added 60681
52.142 Added 65664
52.220 (c)(168)(i)(F)(*2*), (173)(i)(C)(*2*), (196)(i)(E), (224)(i)(D), (244)(i)(A)(*3*) and (258)(i)(A)(*2*) added; eff. 8–2–99 35578
(b)(3)(ii) and (c)(6)(xv)(B) removed 37406
(c)(202)(i)(B), (254)(i)(H)(2) and (K) added 38836
(c)(263) and (264) added 39040
(c)(194)(i)(C)(*4*) and (199)(i)(D)(*6*) added 39920
(c)(235) removed; (c)(265) added 39926
(c)(254)(i)(D)(*2*) added 44135
(c)(179)(i)(E)(*3*), (G)(*2*), (184) introductory text, (i)(D) introductory text, (F)(*2*), (186)(i)(F), (197)(i)(C)(*3*) and (241)(i)(D) added 45174
(c)(39)(ii)(G), (225)(i)(A)(*4*) and (256)(i)(F)(*1*) added 45178
(c)(231)(i)(B)(*6*), (239)(i)(E)(*5*), (244)(i)(A)(*4*) and (262)(i)(C) added 45182
(c)(201) added 46852
(c)(226) added 47392
(c)(262)(i)(B)(*2*) and (264)(i)(A)(*2*) added 47395
(c)(247) added 48307
(c)(39)(ii)(D) removed; (b)(3)(ii) and (4) added 49400
(c)(164)(i)(C)(*4*), (249)(i)(B) and (254)(i)(C)(*4*) added 51690
(c)(32)(iv)(F) and (35)(xii)(G) added 52654
(c)(183)(H)(*1*) added 53212
(c)(263)(i)(A)(*2*) and (B) added 54561
(c)(140)(ii)(C), (194)(i)(B)(*4*), (215)(i)(D) introductory text and (*2*) added 57994
(c)(256)(i)(A)(2) added 60112
(c)(184)(i)(B)(*8*) added 60688
(c)(231)(i)(B)(*6*) removed 60689
(c)(207)(i)(C)(*8*), (248)(i)(E), (254)(C)(*5*) and (256)(i)(G) added 66396
52.228 (b)(1)(iv) removed 49400
52.320 (c)(86) added 46288
(c)(85) added 63209
52.336 Amended 47116
52.349 (c) added 46288
(d) added 51701
52.370 (c)(79) added 44414
(c)(80) and (82) added 52237
(c)(79) removed 61523
52.385 Table amended 44414, 52238, 61523
52.420 (c) table amended 48963, 52659
52.424 (b) removed 52660
(a) removed 55141

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

52.426 Added 55141
52.470 (d) table amended 52657
(c) table amended 57779
52.473 Removed 42602
52.476 Added 42602
52.478 Added 57781
52.719 Removed 37851
52.720 (c)(150) added 37851
(c)(153) added 49403
52.725 (g) added 37851
52.770 (c)(125) added 59644
52.820 Regulation at 64 FR 25827 withdrawn 35941
52.824 (b) revised 63694
52.939 (c)(94) added 49408
Regulation at 64 FR 49408 withdrawn 59644
52.970 (c) table amended 35939
(d) table and (e) table amended 35940
(e) table amended 38580
52.993 (d) and (e) added 35941
52.1070 (c)(129) added 38838
(c)(139) added 45184
(c)(137) and (138) added 51447
(c)(145) added 57991
(c)(144) added 58343
52.1072 (a) removed 58344
52.1120 (c)(119) added 48098
(c)(117) added 48303
52.1167 Table amended 48098, 48303
52.1170 (c)(112) added 39036
52.1220 (c)(50) added 44133
(c)(49) added 44411
(c)(51) added 58347
52.1222 Table amended 58347
52.1237 (c) added 58354
52.1520 (c)(63) added 44420
(c)(61) and (62) added 52438
52.1525 Table amended 44420
52.1570 (c)(67) added 59641
(c)(68) added 63692
52.1605 Table amended 59641, 63692
52.1620 (c) table amended 36790
(b) revised; (d) and (e) table added 51692
52.1770 (c) table amended 55834
(c) amended 61215
52.1820 (c)(31) added 47401
(c)(31)(i)(A) corrected 52378
52.1870 (c)(118) added 47116
52.1881 (a)(4) and (8) revised; (a)(13) added 47116
52.1885 (a)(12) added 37406
(a)(13) added 59648
52.1920 (c)(48) added 59632
(c)(49) added 60686
52.1933 Removed 60686
52.1970 (c)(128) added 51060
52.2070 Redesignated as 52.2087; new 52.2070 added 43085
52.2081 Table amended 61217
52.2087 Redesignated from 52.2070; heading and (a) revised 43085
52.2220 (d) table amended 37410, 60346
(c) table amended 38582, 49397, 59628
52.2239 (c)(168) added 59628
(c)(128) added 60348
52.2270 Redesignated as 52.2299; new 52.2270 added 36589
(c) table amended 36794, 57988, 61525
(b)(1) revised; (d) added; (e) table amended 55424
52.2299 Redesignated from 52.2270; heading and (a) revised 36589
52.2320 (c)(41) added 36252
(c)(42) added 63209
52.2420 (c)(134) added 47674
(c)(129) added 51051
(c)(130) added 59638
52.2423 (q) added 59638
52.2450 (b), (c) and (d) removed 47674
52.2520 (c)(42) added 37683
52.2570 (c)(99) added 44417
Regulation at 64 FR 44417 withdrawn 52438
52.2620 (c)(28) added 63209
58.50 Revised 42547
58 Appendix G revised 42547
60 Authority delegation notice 57392
60.4 (c) table amended 47401
60 Appendix A corrected 37196, 38241
Appendix A amended 53027
Appendix B amended 53032
61.205 (a) amended 53213
62 Technical correction 52577
Authority citation corrected; CFR correction 55141
62.600—602 (Subpart D) Added 50771
62.1100—62.1104 (Subpart F) Heading revised 51451
62.1100 Undesignated center heading added; (b)(5) and (c)(5) added 51451
62.1115 Undesignated center heading and section added 51451

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 40 Chapter I—Con.

62.1950—62.1952 Undesignated center heading and sections added 50457
62.3340—62.3342 Undesignated center heading and sections added 36605
62.3650—62.3652 Undesignated center heading and sections added 62982
62.5100—62.5152 (Subpart V) Undesignated center heading and sections added 48717
62.5100 (d) added 59650
62.5340 Undesignated center heading and section added 37855
Regulation at 64 FR 37855 withdrawn 47680
62.5425 Undesignated center heading and section added 37855
Regulation at 64 FR 37855 withdrawn 47680
62.6358 Undesignated center heading and section added 45187
62.6914 Undesignated center heading and section added 62117
62.7100—62.7102 (Subpart DD) Added 50768
62.8104 Undesignated heading and section added 38586
62.8105 Section and undesignated heading added 43094
62.8610—62.8612 (Subpart JJ) Undesignated center heading and sections revised 44421
62.9611 Added 57784
62.9640—62.9642 Undesignated center heading and sections added 45884
62.10100 (b)(4) and (c)(4) added 46151
62.10160 Undesignated heading and section added 46151
62.10626 (b)(3) added 52663
62.11475 Undesignated center heading and section added 62119
62.11860 Undesignated center heading and section added 41294
62.11870 Undesignated center heading and section added 41294
62.14350—62.14356 (Subpart GGG) Added 60703
63 Authority delegation notice 59650
63.99 (a)(3) table corrected 42764
63.461 Amended 45193
Regulation at 64 FR 45193 withdrawn 56173
63.462 (c) introductory text and (8) revised; (c)(9) added 45194
Regulation at 64 FR 45194 withdrawn 56173
63.463 (a) introductory text, (c) introductory text, (d) introductory text, (e) introductory text and (2) introductory text revised; (e)(2)(viii), (ix), (x) and (g) added 45194
Regulation at 64 FR 45194 withdrawn 56173
63.465 (f) added 45195
Regulation at 64 FR 45195 withdrawn 56173
63.466 (a) introductory text revised; (a)(3), (4) and (5) added 45196
Regulation at 64 FR 45196 withdrawn 56173
63.467 (a) introductory text revised; (a)(6) and (7) added 45196
Regulation at 64 FR 45196 withdrawn 56173
63.468 (j) revised 37687
63.680 (a)(2)(v), (b)(1)(ii), (iii), (2)(v), (vi), (c), (d) and (e) revised; (b)(2)(viii) added 38963
63.681 Amended 38964
63.683 Revised 38965
63.684 (a), (b) introductory text, (1)(ii), (3) introductory text, (4) introductory text, (5), (d) through (g) revised 38967
63.685 (b), (c)(2), (f)(1)(ii)(A), (g)(2)(i)(B), (h)(2), (3) and (i) introductory text revised; (i)(3) added 38968
63.686 (b) introductory text revised; (b)(3) added 38969
63.687 (b) introductory text revised 38969
63.688 (b) and (c) revised 38969
63.689 (b), (c), (d) introductory text and (5) introductory text revised 38970
63.690 Revised 38970
63.691 Revised 38970
63.693 Revised 38970
63.694 (a)(12) and (m) added; (b)(2)(ii), (iii), (3)(i), (c), (e) through (i) and (k) revised 38974
63.695 Revised 38977
63.697 (a) and (b) revised 38981

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

63.680—63.698 (Subpart DD) Table 1 revised 38981
63 (Subpart DD) Table 2 revised 38983
63.901 Amended 38985
63.902 (a) and (b)(3) introductory text revised 38986
63.905 Revised 38986
63.906 (a)(2) and (b)(2) revised; (d) added 38986
63.921 Amended 38987
63.925 (a) revised 38987
63.926 (a) revised 38988
63.941 Amended 38988
63.945 Revised 38988
63.946 (a)(2) and (b)(1)(ii) revised; (d) added 38989
63.961 Amended 38989
63.962 (b) revised 38990
63.964 (b)(2) revised 38990
63.965 (b) revised 38991
63.966 Revised 38991
63.981 Amended 63704
63.982 (f)(1) revised 63705
63.983 (b)(1)(i)(B) revised 63705
63.987 (c) amended 63705
63.998 (a)(1)(iii)(A) and (2)(ii)(A) amended; (a)(2)(ii)(B)(*6*) revised 63705
63.999 (c)(6)(i) and (iv) amended 63705
63.1000 (c)(2) revised 63705
63.1001 Amended 63705
63.1002 Heading, (a) heading and (b) introductory text revised 63705
63.1003 (c)(2) amended; (c)(5)(i) and (e)(1) revised 63705
63.1004 (c)(1) introductory text amended; (c)(1) revised 63706
63.1005 (d) revised 63706
63.1012 (f)(1) amended 63706
63.1026 (e)(6) revised 63706
63.1029 (b)(1) amended 63706
63.1041 Revised 38991
63.1045 Added 38991
63.1046 (a) and (b)(3) revised 38991
63.1047 (a)(2) and (c)(1)(ii) revised; (e) added 38992
63.1100 (g)(5) added 63698
(d)(4) introductory text amended; (d)(4)(ii) introductory text revised 63706
63.1101 Amended 63699, 63706
63.1103 (a)(3) table 1, (b)(3)(i) table 2 and (d)(3) tables 5 and 6 amended 63699
(b)(3)(i) table 2 and (d)(3) table 5 amended; (d)(3) table 6 revised 63706
63.1104 (f) introductory text and (j)(1) revised 63708
63.1106 Added 63701
63.1108 (b)(1) and (2) amended 63708
63.1110 (e)(2) revised 63709
63.1200—63.1213 (Subpart EEE) Revised 53038
63.1210 (b)(1)(ii) introductory text, (A), (B), and (iv) introductory text revised 63211
63.1211 (b) revised 63212
63.1350 (k) revised 53070
63.1580—63.1595 (Subpart VVV) Added 57579
68 Authority delegation notice 59650
75.19 (c)(4)(ii)(A) corrected 37582
75.57 (c)(4)(iv) table corrected 37582
75 Appendixes A, B, D and E corrected 37582
76.6 (a)(1) amended 55838
80.41 (f) table amended 37689
80.81 (i) removed 49997
80.101 (f)(4) introductory text, (i) and (ii) added 37689
81.305 Amended 39418
81.306 Amended 46289, 51701
81.324 Amended 58354
81.334 Amended 55425
81.343 Amended 37411
82 Technical correction 39040
86.000–7 Regulation at 61 FR 54878 eff. 8–27–97 43936
86.000–8 Regulation at 61 FR 54878 eff. 8–27–97 43936
86.000–9 Regulation at 61 FR 54879 eff. 8–27–97 43936
86.000–21 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–23 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–24 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–25 Regulation at 61 FR 54883 eff. 8–27–97 43936
86.000–26 Regulation at 61 FR 54883 eff. 8–27–97 43936
86.000–28 Regulation at 61 FR 54884 eff. 8–27–97 43936

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 40 Chapter I—Con.

86.001-2 Regulation at 61 FR 54886 eff. 8-27-97 43936
86.001-9 Regulation at 61 FR 54886 eff. 8-27-97 43936
86.001-21 Regulation at 61 FR 54886 eff. 8-27-97 43936
86.001-23 Regulation at 61 FR 54887 eff. 8-27-97 43936
86.001-24 Regulation at 61 FR 54887 eff. 8-27-97 43936
86.001-25 Regulation at 61 FR 54887 eff. 8-27-97 43936
86.001-26 Regulation at 61 FR 54888 eff. 8-27-97 43936
86.001-28 Regulation at 61 FR 54888 eff. 8-27-97 43936
86.004-9 Regulation at 61 FR 54889 eff. 8-27-97 43936
86.004-28 Regulation at 61 FR 54890 eff. 8-27-97 43936
86.108-00 Regulation at 61 FR 54890 eff. 8-27-97 43936
86.129-00 Regulation at 61 FR 54892 eff. 8-27-97 43936
86.159-00 Regulation at 61 FR 54894 eff. 8-27-97 43936
86.160-00 Regulation at 61 FR 54895 eff. 8-27-97 43936
86.161-00 Regulation at 61 FR 54897 eff. 8-27-97 43936
86.162-00 Regulation at 61 FR 54898 eff. 8-27-97 43936
86.162-03 Regulation at 61 FR 54899 eff. 8-27-97 43936
90.706 Corrected 36423
122.2 Amended 42462
Regulation at 64 FR 42462 eff. date corrected to 12-2-99 43426
122.21 (a), (c)(2), (e), (f) introductory text and (j) revised; (d)(3) removed; (q) added 42462
Regulation at 64 FR 42462 eff. date corrected to 12-2-99 43426
122.44 (j)(2) revised 42469
Regulation at 64 FR 42469 eff. date corrected to 12-2-99 43426
122 Appendix J added 42469
Regulation at 64 FR 42469 eff. date corrected to 12-2-99 43426
123.25 (a)(4) revised 42470
Regulation at 64 FR 42470 eff. date corrected to 12-2-99 43426
123.43 (b) added 42470
Regulation at 64 FR 42470 eff. date corrected to 12-2-99 43426
124.8 (b)(9) added 42470
Regulation at 64 FR 42470 eff. date corrected to 12-2-99 43426
131.36 (b)(1) revised; (d)(3)(ii) and (9)(ii) amended 61193
141.151—141.55 (Subpart O) Appendix B amended 49672
141.35 Revised; eff. 1-1-01 50611
141.40 Revised; eff. 1-1-01 50612
142.15 (c)(3) removed; eff. 1-1-01 50620
142.16 (e) introductory text, (1) introductory text and (i)(C) revised; eff. 1-1-01 50620
180.102 Removed 39077
180.106 (b) added 41305
180.109 Removed 39053
180.124 Removed 39077
180.125 Removed 39053
180.130 Revised 39077
180.141 Removed 39053
180.150 Removed 39077
180.157 Revised 41822
180.161 Removed 39077
180.184 Revised 41822
180.189 Revised 39077
180.201 Removed 39053
180.205 (a) amended 39077
(b) table amended 63719
180.207 (a) table amended 39082
180.216 Removed 39053
180.221 Revised 39077
180.222 (a) table amended 39082
180.226 (a) table and (b) table amended 39082
180.244 Removed 39078
180.250 Removed 39078
180.252 Revised 39053
180.259 (a) heading and (2) added; (a) and (b) redesignated as (a)(1) and (c); new (a)(1) table amended; new (c) revised 39072
(a)(1) table amended; eff. 10-19-99 through 11-18-99 58793
Regulation at 64 FR 58793 eff. date extended to 12-18-99 62982
180.262 (a) amended 39078
180.265 Removed 39053
180.266 Removed 39053
180.267 Revised 39053
180.282 Removed 39053
180.283 Removed 39053
180.284 (b) amended 40767, 61791
180.292 (a)(1) table amended 39082
180.299 Table amended 39082
180.300 (a) table amended 39082

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

180.304 (a) introductory text revised; (a) table amended 39083
180.346 (a) amended 39083
180.353 (b) table amended 46292
180.355 (b) table amended 37863
(a) table amended 39083
180.362 (b) redesignated as (c); (a) heading and (c) heading added; (c) table amended 41822
180.363 Removed 39078
180.364 (a)(1) table amended 41823
(a)(1) introductory text, (2) introductory text and (3) introductory text revised 66113
180.368 (b) amended 56681
180.377 (b) added 52457
180.384 Amended 39078
180.398 Removed 39053
180.402 Removed 39053
180.412 (b) table amended 56703
180.415 Revised 36801
(b) revised 37875
180.416 (b) amended 54782
180.431 (b) table amended 62594
180.434 (b) table amended 41297, 41815
180.443 (b) table corrected 38308
180.449 (a) revised 48560
(b) table amended 63711
180.462 (b) added 46292
180.472 (b) table amended 39048
(a) table amended 41810
180.473 (b)(1) and (b)(2) redesignated as (a)(3) and (a)(4); (b) added 44835
Revised 60120
180.474 (b) amended 51251
(b)(1) amended 54779
180.475 Revised 36254
(b) added 47687
180.482 (a) table amended 37870
(a) introductory text redesignated as (a)(1); new (a)(1) table amended; (a)(2) added 39068
(b) table amended 51258
(a)(1) table amended 52463
(d) amended 56697
180.487 (a) revised 56469
180.490 Revised 54224
180.495 (b) added 39059
(a) revised 51459
180.498 (b) redesignated as (d); (a) heading and new (d) heading revised; new (b) and (c) added 51067
180.503 (b) table amended 47689
180.508 (b) added 37861
180.509 (b) amended 63714
180.510 (b) table amended 41812, 44829
(a) table amended 56689
180.511 (b) table amended 45887, 59655
180.513 (b) table amended 47692
180.515 (b) table amended 45890
180.520 Removed 39078
180.524 Removed 41823
180.527 (b) added 42846
180.555 Added 51907
180.556 Added 52450
180.597 (b) table amended 42286
180.1001 (c) table amended 55841
180.1013 Removed 39053
180.1020 (b) amended 42849
180.1032 Removed 41818
180.1208 Added 51248
185.1500 Removed 39078
185.2500 Revised 39083
185.2700 Table amended 39083
(a) amended 39083
180.3550 (b) removed 41823
185.4650 Removed 39078
185.5000 Removed 39072
186.1500 Removed 39078
201.24 Corrected; CFR correction 55141
228.15 (l)(3)(vi) amended; (l)(3)(vii), (viii)(A)(*1*), (*2*), (*4*), (*5*), (*7*), (*11*), (*12*) and (*13*) revised 39933
260.10 Amended 36487, 53070
261.9 (b) and (c) revised; (d) added 36487
261.32 Table amended 56470
261.38 Table 1 amended 53070, 63213
261 Appendix IX amended 42037
Appendix IX corrected; CFR correction 56256
262.10 (j) added 52392
262.34 (a)(4) revised 56471
262.90 Added 37636
262.100—262.108 (Subpart J) Added 52392
264.1 (g)(11)(ii) and (iii) revised; (g)(11)(iv) added 36488
(g)(12) added 37638
264.340 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 53074
264.601 Introductory text revised 53074
265.1 (c)(14)(ii) and (iii) revised; (c)(14)(iv) added 36488
(c)(15) added 37638

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 40 Chapter I—Con.

265.340 (b) redesignated as (c); new (b) added....53075
266.100 (b) through (f) redesignated as (c) through (g); new (d)(1) introductory text and (3) introductory text revised; new (b) and (h) added....53075
266.101 (c)(1) revised....53075
266.105 (c) redesignated as (d); new (c) added....53075
266.112 (b)(1) introductory text amended; (b)(2)(i) revised....53076
266 Appendix VIII amended...53076, 63213
268.1 (f)(2) and (3) revised; (f)(4) added....36488
268.7 (a)(3)(iii) added....56471
268.40 Table amended; (j) revised....56471
268.49 (c)(1)(A) and (B) revised....56472
270.1 (c)(2)(viii)(B) and (C) revised; (c)(2)(viii)(D) added....36488
(c)(2)(ix) added....37638
270.19 Introductory text revised; (e) added....53076
270.22 Introductory text added....53076
270.42 Appendix I amended....53077
270.62 Introductory text added....53077
270.66 Introductory text added....53077
271 State hazardous waste management program authorizations....41823, 42602, 44836, 46298, 46302, 47692, 48099, 49998, 51702, 55142, 55153, 55629, 56174
271.1 (j) Table 1 amended....53077
272.1851 Revised....46570
272.2201 Revised....49680
272 Appendix A amended....46571, 49682
273.1 (a)(2) and (3) revised; (a)(4) added....36488
273.2 (a)(1), (b)(2) and (3) revised....36488
273.3 (a) introductory text revised....36488
273.4 (a) revised....36488
273.5 Revised....36488
273.6 Redesignated as 273.9....36488
273.8 Added....36488
273.9 Redesignated from 273.6....36488
273.9 Amended....36489
273.10 Revised....36489
273.13 (d) added....36489
273.14 (e) added....36489
273.30 Revised....36489
273.32 (b)(4) and (5) revised....36489
273.33 (d) added....36489
273.34 (e) added....36489
273.50 Revised....36490
273.60 (a) revised....36490
273.81 (a) revised....36490
300 Appendix B amended....39884, 44136, 47402, 48965, 50459, 50465, 50772, 51460, 51710, 52239, 52463, 52464, 52664, 52665, 53213, 53629, 56973, 60121, 60122, 61526, 63720
372.22 (c) amended....58750
372.25 Introductory text, (f), (g) and (h) amended....58750
372.27 (e) added....58750
372.28 Added....58750
372.30 (a), (b)(1), (3) introductory text, (i) and (iv) amended....58751
372.38 (a), (b), (c) introductory text, (d) introductory text, (f), (g) and (h) amended....58751
372.65 (a) table, (b) table and (c) table amended....58751
372.85 (b)(15)(i) introductory text, (16)(i)(B) and (ii)(B) revised; (b)(15)(ii) added....58753
403 Appendix G revised....42567
430.24 (b)(2) revised; (c) added....36586
439.1 (n) added....48104
439.17 (d) removed; (e) redesignated as (d)....48104
439.27 (a) designation and (b) removed; introductory text revised....48104
439.37 (d) removed; (e) redesignated as (d)....48104
439.47 (a) designation and (b) removed....48104
501.15 (d)(1)(i)(B) reinstated....42434
(a)(4) removed....42470
Regulation at 64 FR 42470 eff. date corrected to 12-2-99....43426
503.2 (d) added....42568
503.10 (b)(1), (c)(1) and (d) through (g) revised....42568
503.16 (a)(1) and (2) revised....42569
503.17 (a)(1)(ii), (2)(ii), (3)(i)(B), (ii)(A), (4)(i)(B), (ii)(A), (5)(i)(B), (ii)(C), (F), (H), (J), (L), (6)(iii), (b)(3), (6) and (7) revised; (a)(4)(ii)(E) added....42569
503.18 (a)(2) revised....42570
503.21 (c) revised....42570
503.22 (b) revised....42570
503.26 (a)(1) and (2) revised....42570
503.27 (a)(1)(ii), (2)(ii), (b)(1)(i) and (2)(i) revised....42571
503.31 (g) revised....42571

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

503.32 (b)(2)(i) and (5)(v) revised 42571
503.33 (b)(10)(i) revised 42571
503.41 (c) through (o) redesignated as (d) through (h), (j) and (l) through (r); new (c), (i) and (k) added 42571
503.43 (c) and (d) revised; (e) added 42572
503.45 (a)(1), (b) through (f) revised; (h) added 42573
503.46 (a)(1), (3) and (c) revised 42573
503.47 (f) revised 42573
503 Appendix B revised 42573
745.107 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.110 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.113 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.115 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.226 (a)(5), (d)(2) and (f)(1) revised 42851
745.227 (a)(1) revised 42852
745.239 (b) and (c) revised 42852

Proposed Rules:

2 57421
5 58568
35 ..... 40064, 40084, 46234
49 ..... 48725, 48731, 54851, 65673
50 ..... 57424, 63002
51 ..... 45491, 50036, 52731, 62144
52 ..... 36635, 36639, 36830, 36831, 37491, 37492, 37734, 37923, 38616, 38617, 38862, 38863, 39110, 39963, 40328, 40791, 42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215—45217, 46325, 46331, 46878, 47464, 47465, 47754, 48126, 48127, 48337, 48725, 48731, 48739, 48970, 48976, 49425, 49756, 50787, 51088, 51278, 51488, 51489, 51493, 51722, 51723, 51937, 51943, 52265, 52486, 52737, 53303, 53973, 54600, 54601, 54851, 55220, 55442, 55662, 55667, 55879, 56181, 57826, 58006—58008, 58011, 58018, 58369, 59703—59706, 60400, 60401, 60759, 61046, 61051, 61239, 61572, 63002, 63268, 63271, 65673, 66143, 66441, 66829
55 ..... 45217, 63271
60 ..... 47465, 47234, 47276, 51088, 67092
62 ..... 36426, 37923, 38617, 41364, 43123, 45221, 45937, 46165, 48742, 50476, 50787, 50788, 51496, 52738, 57827, 59718, 62144, 62145
63 ..... 37734, 38993, 45116, 45221, 59719, 63779
68 59719
76 55880
80 ..... 50036, 57827
81 ..... 37492, 46331, 51723, 55442, 58018, 60478
82 59141
85 ..... 56985, 57827, 58472
86 ..... 56985, 57827, 58472, 60401
90 40940
93 66832
97 ..... 43124, 44452, 50041
122 ..... 46058, 53304, 57827
123 ..... 46058, 53304, 57827
124 ..... 46058, 53304, 57827
130 ..... 46012, 53304, 57827
131 ..... 37072, 46058, 53304, 57827
132 53632
141 59246
142 59246
144 57430
146 57430
147 ..... 43329, 56986
148 ..... 40192, 46476, 48742, 49052
152 ..... 50672, 62145
156 ..... 50672, 62145
165 56918
180 ..... 36640, 50043, 51723, 56477
194 56185
197 ..... 46976, 53304
258 53976
259 45632
261 ..... 40192, 42317, 44866, 45632, 46166, 46476, 48742, 49052, 50788, 55443, 55880, 58022, 63382
262 40696
264 ..... 46476, 49052, 54604
265 ..... 46476, 49052
266 ..... 45632, 63464
268 ..... 40192, 40534, 46476, 48742, 49052
270 45632
271 ..... 40192, 42630, 43331, 44876, 46332, 46476, 47755, 48135, 48742, 49052, 50050, 51724, 55222, 55671
272 ..... 46632, 49757
281 ..... 43336, 46178
300 ..... 39886, 40328, 41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224, 46333, 46632, 47465, 47478, 47481, 50476, 50477, 51496, 56992, 61051
302 ..... 40192, 46476, 48742, 49052
372 ..... 42222, 51091, 58370, 61807

CHANGES JULY 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 40 *Proposed Rules:—Con.*

403 ..... 39564, 47755
441 45072
442 38863
710 ..... 46722, 56998
721 63275
745 40064

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

51–2.7 Revised 55842
51–5.5 (a), (d)(2) and (e) revised 55842
51–5.6 Revised 55842

Chapter 101—Federal Property Management Regulations (Parts 101–1—101–99)

101–11 Regulation at 61 FR 41001 eff. date extended to 12–31–00 60349
101–35 (Subchapter F) Regulation at 61 FR 41003 effective date extended through 8–8–00 38588
101–38 Revised 59593
101–42.1102–10 (a) and (b) revised 40772
101–43.304–2 (b) revised 40773
101–43.305 Heading and (b)(2) revised 40773
101–43.4801 Revised 40773

Chapter 102—Federal Management Regulations (Parts 102–1—102–99)

Chapter 102 Established; interim 39084
102–34 Added 59593
Corrected 66778
102–34.170 (d) corrected 66967

Chapter 301—Travel Allowances (Parts 301–1—301–99)

301–51 Revised; interim 38528
301–52.17—301.52.21 Added; interim 38529
301.54 Added; interim 38529
301–70.700—301–70.706 (Subpart H) Added; interim 38529
301–71.204 Revised; interim 38530
301–71.208—301–71.211 (Subpart C) Added; interim 38530
301–76 Added; interim 38530
Chapter 301 Appendix A amended 38587

Chapter 303—Payment of Expenses Connected with the Death of Certain Employees (Parts 303–1—303–2)

303–70.100 Revised 45891
303–70.403 Heading revised 45891
303–70.600—303–70.602 (Subpart G) Added 45891

Proposed Rules:

51–2 41882
51–5 41882
101–4 58568
101–43 62146
102–36 62146
301–11 50051
301–74 50051

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

36 Redesignated as Part 36a.....58318
Added.....58319
36a Redesignated from Part 36.....58318
Suspended.....58319
36a.12 (a)(2), (3) and (b)(1) amended.....58318
36a.15 (b)(1) amended.....58318
36a.16 (a) amended.....58318
36a.33 (a) and (b) amended.....58318
36a.34 (b) amended.....58318
36a.42 (a) amended.....58318
36a.43 Amended.....58318
36a.53 Amended.....58318
36a.56 Amended.....58318
36a.106 (a)(4) amended.....58318
36a.116 Amended.....58318
36a.120 (a) amended.....58318
36a.205 (b)(18) amended.....58318
36a.208 (b)(4) amended.....58318
36a.212 (h)(i) through (iv) redesignated as (h)(1) through (4); new (h)(4) amended.....58318
Corrected.....60879
36a.230 (b) amended.....58319
36a.232 Amended.....58319
36a.302 (v)(4) amended.....58319
36a.303 (a) and (d) amended.....58319
36a.321 (d) amended.....58319
36a.322 (a)(2) amended.....58319
36a.350 (a) introductory text amended.....58319
36a.351 (b)(5), (6), (7) and (9) amended.....58319
36a.353 Amended.....58319
36a.371 (c) and (d) amended.....58319
36a.372 (a)(2) amended.....58319
52b Revised.....63722
61.30 Regulation at 63 FR 9950 confirmed.....61218
61.33 Regulation at 63 FR 9950 confirmed.....61218
61.34 Regulation at 63 FR 9950 confirmed.....61218
61.35 Regulation at 63 FR 9950 confirmed.....61218
61.36 Regulation at 63 FR 9950 confirmed.....61218
61.38 Regulation at 63 FR 9951 confirmed.....61218
121 Authority citation revised.....56658
121.1 (b) revised.....56658
121.2 Amended.....56658
121.3 (a)(2), (3), (4), (b) heading and (4) removed; (b)(1), (2), (3), (c), (d) and (e) redesignated as (a)(2), (3), (4), (b), (c) and (d); (a) heading, (1), new (2) and new (d) revised; new (a)(4)(ii) and new (c) heading amended; new (a)(3) and new (4) heading removed.....56658
121.4 (a)(3)(i), (ii), (b)(2), (c) and (d) revised; (e) introductory text and (1) amended.....56658
121.5 (a), (b) and (c) amended.....56659
121.6 (b) revised.....56659
121.7 (d) amended.....56659
121.8 Revised.....56659
121.9 (a)(1), (2)(vi) and (vii) amended; (a)(3) revised.....56660
121.10 (c)(1) amended.....56660
121.11 (a)(1)(i) and (b)(2) amended; (b)(1)(iv) revised.....56661
121.12 Revised.....56661

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

403.700—403.756 (Subpart G) Added; interim.....67047
409 Technical correction.....60122
410.22 (b)(1) revised.....59439
410.23 Revised.....59439
410.32 (b)(2)(v) and (vi) added; (b)(3) introductory text revised.....59440
410.33 (a)(1) revised.....59440
410.39 Added.....59440
410.75 (b) revised.....59440
411 Technical correction.....60122
411.15 Introductory text and (a)(1) revised; (k)(9) and (q) added.....59441
412.90 (c) removed; interim.....67051
412.98 Removed; interim.....67051
413 Technical correction.....60122
414.22 (b)(5)(i) revised; (c)(3) added.....59441
414.46 (a)(1), (2), (b)(1) and (2) revised; (a)(3) added.....59441
414.60 (a) introductory text revised.....59441
415.130 (c) revised.....59442

NOTE: **Boldface page numbers indicate 1998 changes.**

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 42 Chapter IV—Con.

420.400—420.405 (Subpart E) Heading revised 66401
420.400 Revised 66401
420.410 Added 66401
431.610 (b) amended; interim 67052
431.701 (a) amended; interim 67052
440.155 (b)(1) amended; interim 67052
440.170 (b) and (c) revised; interim 67051
442.12 (b) amended; interim 67052
456.351 Amended; interim 67052
456.601 Amended; interim 67052
460 (Subchapter E) Added; interim 66279
462—482 Redesignated as Subchapter F; interim 66279
462 Redesignated as Part 475; interim 66279
466 Redesignated as Part 476; interim 66279
466.1 Amended; interim 67052
473 Redesignated as Part 478; interim 66279
475 Redesignated from Part 462; interim 66279
476 Redesignated as Part 480; new 476 redesignated from Part 466; interim 66279
478 Redesignated from Part 473; interim 66279
480 Redesignated from Part 476; interim 66279
482—498 Redesignated as Subchapter G; interim 66279
485.705 (c)(8) revised 59442
488.2 Amended; interim 67052
488.6 (a) amended; interim 67052
489 Technical correction 60122
Authority citation revised 67052
489.102 (a)(2) revised; interim 67052

Chapter V—Office of Inspector General–Health Care, Department of Health and Human Services (Parts 1000—1999)

1001.952 (t) and (u) added; interim 63513
1001.952 (a)(3), (4) designation, (b)(6), (c)(6), (d)(7) and (n) through (s) added; (a) introductory text, (1)(ii), (iv), (2)(i), (vi), (vii), new (4), (b) introductory text, (2), (c) introductory text, (2), (d) introductory text, (2), (e), (f)(2) and (h) revised 63551

Proposed Rules:

8 56294
57 54263
58 54263
72 58022
405 57431
409 ..... 57612, 58134
410 ..... 57612, 58134
411 ..... 57612, 58134
413 ..... 57612, 58134
424 ..... 57612, 58134
431 60882
433 60882
435 60882
447 54263
457 60882
484 ..... 57612, 58134

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

414 Added 59006

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1820 Revised; eff. 11–1–99 53215
3809.1 Added 53219
3809.1–9 Revised 53219
3809.3–1 (b) revised 53220
3809.3–2 (e) revised; (f) removed 53220
3500—3570 Undesignated heading removed 53536
3500 Revised; eff. 11–1–99 53536
3510 Removed; eff. 11–1–99 53536
3520 Removed; eff. 11–1–99 53536
3530 Removed; eff. 11–1–99 53536
3540 Removed; eff. 11–1–99 53536
3550 Removed; eff. 11–1–99 53536
3560 Removed; eff. 11–1–99 53536
3570 Removed; eff. 11–1–99 53536

Proposed Rules:

41 58568
1300 61810
2800 55452

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

2880 55452
3730 57613
3820 57613
3830 57613
3840 57613
3850 57613
3800 57613

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

62.23 (j)(1) revised; (j)(2) through (6) redesignated as (j)(3) through (7); new (j)(2) added 56176
62 Appendix B amended 56176
64.6 Table amended 56257, 62595, 62597, 62599
65.4 Flood level determinations 53932, 53934, 53937, 60707, 60710
67.11 Flood level determinations 53938, 53940, 60712
206.200 Regulation at 63 FR 64425 confirmed; (b) revised 55160
206.201 Regulation at 63 FR 64425 confirmed; heading, (i) and (j) revised 55160
206.202 Regulation at 63 FR 64425 confirmed; revised 55160
206.204 (e) revised 55161
206.205 (a) revised 55161
206.208 (c)(1) revised 55161
206.228 Regulation at 63 FR 64426 confirmed 55160
(a)(2)(i) revised 55161

Proposed Rules:

19 58568
67 ..... 53980, 53982, 60759

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

61 Added 57758
96.1 (a) and (c) through (f) revised 55856
96.2 (d) revised 55856
96.10 (a) revised; (c) and (d) added 55856
96.15 Revised 55856
96.30 Existing text designated as (a); (a) heading and (b) added 55857
96.41 (a) revised; (c) added 55857
96.42 (f) amended 55857
96.49 Added 55857
96.53 Added 55857
96.81 Revised 55858
96.82 Revised; interim 55858
96.84 (d) added 55858
96.85 (a) revised 55858
144 Comment request 57520
146 Comment request 57520

Chapter XXV—Corporation for National and Community Service (Parts 2500—2599)

2505 Added 66403

Proposed Rules:

5b 57619
160 59918
161 59918
162 59918
163 59918
164 59918
302 55074
303 ..... 55074, 62074
304 55074
305 55074
308 55102
612 66146
613 66146
618 58568
1155 58568
1171 58568
1182 58568
2555 58568

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(1), (2) and (3) revised 53222
2.01–25 (a)(1)(iv), (4)(i), (b)(2) and (e)(2) amended; (a)(1)(v) and (4)(ii) removed; (a)(1)(vi) through (ix) and (4)(iii) redesignated as (a)(1)(v) through (viii) and (4)(ii) 53222
2.10–105 (c) amended 53223

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 46 Chapter I—Con.

4.05–40 Added 53223
4.06–60 (e) added 53223
10 Authority citation revised 63225
10.102 (a) amended 53223
10.103 Amended; interim; eff. 11–20–00 63225
10.109 Table correctly revised 53230
10.201 (f)(1) and (2) amended; interim; eff. 11–20–00 63225
10.203 Table amended; interim; eff. 11–20–00 63225
10.205 (f)(1) amended; (g)(3) revised; interim; eff. 11–20–00 63225
10.209 (c)(6) and (7) added; interim; eff. 11–20–00 63225
10.304 Heading revised; (h) redesignated as (i); new (h) added; interim; eff. 11–20–00 63225
10.403 Heading and Figure 10.403 revised; interim; eff. 11–20–00 63226
10.412 (a) amended; interim; eff. 11–20–00 63228
10.414 (a) amended; interim; eff. 11–20–00 63228
10.418 (b) revised; interim; eff. 11–20–00 63228
10.420 Amended; interim; eff. 11–20–00 63228
10.424 (a)(2) amended; interim; eff. 11–20–00 63228
10.426 (a)(2) revised; interim; eff. 11–20–00 63228
10.442 (a) and (b) amended; interim; eff. 11–20–00 63228
10.444 (c) amended; interim; eff. 11–20–00 63228
10.446 (b) amended; interim; eff. 11–20–00 63228
10.452 (a) amended; interim; eff. 11–20–00 63228
10.462 (c) amended; interim; eff. 11–20–00 63228
10.463 Added; interim; eff. 11–20–00 63228
10.464 Revised; interim; eff. 11–20–00 63228
10.465 Added; interim; eff. 11–20–00 63232
10.466 Redesignated as 10.467; new 10.466 added; interim; eff. 11–20–00 63234
10.467 Redesignated from 10.466; interim; eff. 11–20–00 63234
10.482 (a) revised; interim; eff. 11–20–00 63235
10.603 (c) removed; (d) and (e) redesignated as (c) and (d); new (d) introductory text amended 53223
10.701 (a) amended; interim; eff. 11–20–00 63235
10.703 (a) amended; interim; eff. 11–20–00 63235
10.901 (b)(1) amended; interim; eff. 11–20–00 63235
10.903 (c) table amended; (a)(18), (b)(4) and (c)(7) revised; interim; eff. 11–20–00 63235
10.910 Table amended; interim; eff. 11–20–00 63235
12.01–3 (a) amended 53223
12.02–18 Table correctly revised 53231
15 Authority citatin revised 63235
15.105 (a) amended 53223
15.301 (a) amended; (b)(6) removed; (b)(7) through (10) redesignated as (b)(6) through (9); interim; eff. 11–20–00 63235
15.610 Revised; interim; eff. 11–20–00 63235
15.705 (d) amended; interim; eff. 11–20–00 63235
15.805 (b) revised 53223
(a)(5) added; interim; eff. 11–20–00 63235
15.810 (d) and (e) redesignated as (d) and (f); new (d) added; interim; eff. 11–20–00 63235
15.910 Revised; interim; eff. 11–20–00 63235
27 Added; interim 56266
31.40–15 Heading revised; (a) and (b) amended 53223
31.40–20 Removed 53223
31.40–40 (c) amended 53223
34.01–15 (b) amended 53223
34.15–5 (a), (d)(1), (4), (5), (e)(1) table and (5) table amended 53223
34.15–10 (b), (d) and (f) amended 53223
34.15–20 (b) amended 53223
34.15–90 (a)(2) amended 53223
38.01–3 (b) amended 53223
52.01–1 (b) amended 53224
53.01–1 (b) amended 53224
54.01–1 (b) amended 53224

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

56.01-1—56.01-10 (Subpart 56.01-1) Amended 53224
56.01-2 Amended 53224
56.60-1 Table amended 53224
57.02-1 (b) amended 53224
58.03-1 (b) amended 53224
59.01-2 (b) amended 53225
61.03-1 (a) amended 53225
61.10-5 (h) amended 53225
63.05-1 (b) amended 53225
64.2 (a) and (b) amended 53225
67.15 (b) amended 53225
68.01-5 (a) and (b) amended 53225
68.01-7 (a), (b) and (c) amended 53225
68.01-9 (a) and (b) amended 53225
68.05-11 (a) and (b) amended 53225
68.05-13 (a) and (b) amended 53225
69 Effective date confirmation 66778
69.71 (b) amended 53225
69.73 (b) amended 53225
69.203 (b) amended 53225
76.15-5 (d) removed; (e) and (f) redesignated as (d) and (e); new (d)(1) table and new (e)(1) table amended 53225
76.15-5 New (d)(3), (4) and (e)(3) amended 53226
76.15-10 (b), (d) and (f) amended 53226
76.15-20 (b) amended 53226
76.15-90 (a)(2) amended 53226
91.60-15 (a) and (b) amended 53226
91.60-20 Removed 53226
91.60-40 (c) amended 53226
95.15-5 (a), (d)(1) table, (3), (4) table and (e)(3) amended 53226
95.15-10 (b), (d) and (f) amended 53226
95.15-20 (b) amended 53226
95.15-90 (a)(2) amended 53226
98.01-3 (b) amended 53226
105.05-10 (a), (c)(1) and (2) amended 53226
107.115 (b)(2) and (3) amended 53226
107.260 (a) amended 53226
107.269 Amended 53226
107.279 (b) and (c) amended 53226
108.237 (b) amended 53226
108.705 Heading revised; (a) amended 53226
109.431 (b) amended 53227
118.400 (d) amended 53227
125.180 (b) amended 53227
133.175 (b) introductory text revised 53227
147.7 (c) amended 53227
151.01-2 (b) amended 53227
151.50-73 (a)(4) Note amended 53227
153.933 (a)(4) Note amended 53227
160.010-1 Heading revised 53227
160.021-1 Heading revised 53227
160.022-1 Heading revised 53227
160.023-1 Heading revised 53227
160.024-1 Heading revised 53227
160.037-1 Heading revised 53227
160.040-1 Heading revised 53227
160.048-1 (c) amended 53227
160.049-1 (c) amended 53228
160.050-1 Revised 53228
160.057-1 Heading revised 53228
160.171-3 Heading revised 53228
160.174-3 Heading revised; (a) amended 53228
161.002-2 (d)(2) amended 53228
162.027-1 (a) amended 53228
162.050-4 (b)(1) amended 53228
162.050-5 (a) introductory text and (5) amended 53228
162.050-7 (h)(2) removed; (h)(3) through (6) redesignated as (h)(2) through (5) 53228
167.15-25 (a) amended 53228
167.20-1 (a) amended 53228
167.40-1 (a)(3) amended 53228
169.115 (c)(1) and (5) amended 53228
177.410 (c)(1) amended 53228
181.400 (d) amended 53228
189.60-15 Heading revised; (a) and (b) amended 53228
189.60-20 Removed 53228
189.60-40 (c) amended 53228
193.01-3 (b) amended 53229
197.482 (e) Note amended 53229
199.03 (b)(5) amended 53229
199.05 (b) amended 53229
199.10 (g)(3) and (h)(1)(iv) amended 53229
199.20 (d)(2) amended 53229
199.30 Amended 53229
199.175 Table amended; (b)(21)(ii) removed; (b)(21)(i)(D), (E), (F) and (G) redesignated as (b)(21)(ii) introductory text, (A), (B) and (C) 53229
199.200 Amended 53229
199.220 (a)(2) amended 53229
199.260 Amended 53229
199.280 (b) and (e) amended 53229
199.610 (a) table, (b) Note and (c) amended 53229

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 46

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

204 Authority citation revised.....54782
204.4 (b) amended.....54782
204.7 Revised.....54783
204.8 Revised.....54783

Proposed Rules:

2.....62018
5.....53970
15.....56720
30.....62018
31.....62018
52.....62018
61.....62018
71.....62018
90.....62018
91.....62018
98.....62018
107.....62018
110.....62018
114.....62018
115.....62018
125.....62018
126.....62018
132.....62018
133.....62018
134.....62018
167.....62018
169.....62018
175.....62018
176.....62018
188.....62018
189.....62018
195.....62018
199.....62018

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Order.....54561, 61527
0.5 (a) revised.....60716
0.15 Undesignated center heading and section revised.....60716
0.17 (g) added.....60716
0.31 (n) added.....60716
0.41 (k) revised.....57585
0.51 (s) added.....60716
0.61 (c) removed; (f) revised; (g) added.....60716
0.91 (a), (c) and (h) revised.....60716
0.101 (d) revised.....60716
0.111 Undesignated center heading and section revised.....60716
0.121 (a) revised.....60718
0.131 (a), (h) and (i) revised.....60718
0.141 Undesignated center heading and section added.....60718
0.181 Introductory text, (c), (d) and (h) revised.....60720
0.182 Revised.....60720
0.183 Removed.....60721
0.185 Introductory text, (a) and (b) revised.....60721
0.251 (f) revised.....57585
0.261 (a)(15) revised.....60721
0.284 (a)(1) and (4) revised.....60721
0.285 Revised.....60721
0.302 Revised.....60721
0.311 Undesignated center heading and section revised.....60721
0.314 Revised.....60721
0.317 Revised.....60722
0.332 (a) removed; (b) and (c) revised.....60722
0.347 Revised.....60722
0.357 Revised.....60722
0.361 Undesignated center heading and section added.....60722
0.387 (b) revised.....60722
0.408 Revised (OMB numbers).....55425
0.413 Revised.....60722
0.416 Revised.....60722
0.422 Revised.....60722
0.423 Revised.....60722
0.431 Revised.....60722
0.434 Revised.....60722
0.441 Revised.....60722
0.442 (a) and (b) amended; (d)(1), (3) and (e) revised.....55162
0.443 Removed.....60723
0.445 (b), (c) and (g) revised.....60723
0.453 (a), (b), (d), (e) and (f) revised.....60723
0.455 Revised.....60724
0.459 (d)(1) and (g) amended; (i) added.....55163
OMB number.....56269
0.461 (i) revised.....55163
0.465 (a) notes, (b) notes, (c)(1), (d)(1) and (3) revised; (d)(4) removed.....60725
1 Authority citation revised.....63521
1.4 (b)(2) revised.....60725
1.47 (h) amended.....60725
1.221 (b) and (c) revised.....60725

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

1.720 Amended 60725
1.721 (b) amended 60725
1.722 (d)(1) amended 60725
1.730 Heading and (a) revised; (b), (c), (d) and (h) amended 60725
1.735 (b) revised 60726
1.774 Regulation at 64 FR 51264 eff. 11-4-99 60122
1.923 (i) added; eff. 11-30-99 53238
1.927 (a) revised; eff. 11-30-99 53238
1.928 Added; eff. 11-30-99 53238
1.929 (b)(2), (c)(4)(i), (iii), (v) and (d) revised; eff. 11-30-99 53239
1.939 (b) amended; eff. 11-30-99 53240
1.947 (b) revised; eff. 11-30-99 53240
1.948 (d) revised 62120
1.955 (a)(1) and (b)(2) amended; eff. 11-30-99 53240
1.1202 (d)(2) revised 63251
1.1204 (b)(5) revised 63251
1.2105 (a)(2)(xi) revised 59659
1.4000 (g) revised 60726
2 Petition reconsideration 60123
2.106 Table amended (OMB numbers) 66409
6 Added 63251
6.18 Effective date pending 63254
7 Added 63255
7.18 Effective date pending 63257
13.8 Added; eff. 11-30-99 53240
13.10 Added; eff. 11-30-99 53240
20.3 Amended 60130
20.6 Revised 54574
20.9 (a)(12) and (13) redesignated as (a)(13) and (14); new (a)(12) added 59659
20.12 Revised 61027
20.18 (e) revised; (f) and (g) redesignated as (j) and (k); (f) through (i) added; eff. in part 3-3-00 (OMB number pending) 60130
21.2 Amended 63730
21.11 (d) and (e) amended 63730
21.23 (c)(1)(vi) revised; (c)(2) added 63730
21.31 (a) revised; (e)(6)(iv) removed 63730
21.101 (a) footnote 2 revised 63730
21.201 Revised 63731
21.900 (a), (b) and (c) redesignated as (a)(1), (a)(2) and (a)(3); introductory text and concluding text designated as (a) introductory text and (b) 63731
21.901 (d) revised 63731
21.902 (b)(3), (4), (7), (f)(1), (2)(i), (ii), (i)(1), (2), (4) introductory text, (iii), (iv), (v), (6)(i) introductory text, (iii)(E), (F) and (iv) revised 63731
21.903 (d) revised 63732
21.904 Revised 63732
21.905 (b) and (d) introductory text revised 63732
21.906 (a) revised; (d) amended 63733
21.909 (b), (c), (d), (g)(3), (6)(i), (ii), (8), (h), (k), (m) and (n) revised; (a) and (o) amended 63733
21.910 Heading, (a) and (b) revised; introductory text, (c) and (d) removed 63735
21.913 (e)(4) removed; (e)(5) redesignated as (e)(4); (a), (b), (e) introductory text, (1), new (4)(i), new (vi) and (h) revised 63736
21.924 (a) revised 60726
21.938 (b) amended 63737
21.949 (a) and (b) introductory text revised; (d) amended; (b)(5) added 63737
22.165 (e) amended; eff. 11-30-99 53240
22.529 Introductory text revised; (c) added; eff. 11-30-99 (effective date pending) 53240
22.709 (f) added (effective date pending in part) 53240
22.803 (c) added (effective date pending in part) 53240
22.929 Introductory text revised; (d) added; eff. 11-30-99 (effective date pending) 53241
22.942 Revised 54576
22.946 (a) amended; eff. 11-30-99 53241
22.953 (a)(5) removed; eff. 11-30-99 53241
25.137 (a) introductory text and (b) revised (effective date pending) 61792
27.6 Introductory text revised 60726
52.19 (c)(3)(i) and (ii) revised; (c)(3)(iii) removed 62984
54.201 (a)(3) revised 62123
54.401 (b) removed 60358
54.601 (b)(3), (4) and (c)(1) revised 66787

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 47 Chapter I—Con.

54.609 (a)(1) and (2) added; (b) and (c) revised 66787
54.613 Revised 66787
54.621 Revised 62123
54.706 (b) and (c) revised; (d) added 60358
54.709 (a) revised 60358
61.47 Regulation at 64 FR 51265 eff. 11-4-99 60122
64 Policy statement 55164
Technical correction 57994
64.703 Regulation at 64 FR 47119 eff. 11-8-99 54577
64.2005 (b)(1) revised; (b)(3) removed; (d) added (effective date pending) 53264
64.2007 (f)(4) removed (effective date pending) 53264
64.2009 (a), (b) and (e) revised (effective date pending) 53264
64.2301—64.2345 (Subpart X) Added 53947
64.2400 Regulation at 64 FR 34497 eff. 11-12-99 55163
Correctly designated 56177
64.2401 Regulation at 64 FR 34497 eff. 11-12-99 55163
Correctly designated 56177
68.317 (g) revised 60726
69.4 (d) added 60359
69.5 (d) removed 60359
69.709 Regulation at 64 FR 51268 eff. 11-4-99 60122
69.711 Regulation at 64 FR 51268 eff. 11-4-99 60122
69.713 Regulation at 64 FR 51268 eff. 11-4-99 60122
69.729 Regulation at 64 FR 51269 eff. 11-4-99 60122
73 Actions on petitions 55434, 63745
Interpretation 62123
73.202 (b) table amended ..... 54224, 54225, 54783—54786, 55172—55175, 55435, 56704, 59124, 59125, 59655, 60131, 63258, 63259, 63745
73.3513 (c) revised 56978
73.3526 Regulation at 64 FR 50645 eff. 11-16-99 59655
73.3555 OMB number 54225
73.3613 Regulation at 64 FR 50646 eff. 11-16-99 59655
73.3564 (a)(2) revised; (a)(3) added 56978
74.901 Amended 63737
74.902 (f) amended 63737
74.903 (a)(1), (2)(i), (ii) introductory text, (6) and (b)(5) revised; (b) introductory text amended 63737
74.911 Revised 63738
74.931 (c)(3), (6)(ii), (d) introductory text, (1), (6)(ii) and (iii) revised 63739
74.932 (a)(4) revised 63739
74.935 Heading, (a), (b) and (c) revised; (e) added 63739
74.936 (a) and (b) introductory text revised 63740
74.939 (d)(1) removed; (d)(2) and (d)(3) redesignated as (d)(1) and (d)(2); (b), (c), new (d)(2)(iii), new (iv), new (v) introductory text, new (A), (g)(3), (6)(i), (ii), (8), (h), (i)(2), (l)(2) introductory text, (m), (o) and (p) revised; (f), (l)(1) and (q) amended; (l)(6) added 63740
74.949 (a) and (b) introductory text revised; (b)(5) added 63742
74.951 (b) revised 63743
74.961 (a) revised 63743
74.985 (d) amended; (e)(4) removed; (e)(5) redesignated as (e)(4); (a), (b) introductory text, (4), (5), (e) introductory text, new (4)(i), new (vi), (f) and (h) revised 63743
74 Index amended 63744
76.403 Regulation at 64 FR 28108 eff. 7-1-99 60131
80.59 (c)(2) amended; eff. 11-30-99 53241
87.25 (a) removed; eff. 11-30-99 53241
90 Petition reconsideration 60123
90.7 Amended 60726, 66409
90.167 Heading revised; eff. 11-30-99 53241
90.205 (m) and (n) redesignated as (n) and (o); new (m) added 66409
90.210 Table, (k)(3) introductory text, (i) and (ii) revised 66409
90.350 Revised 66410
90.371 Added 66410
90.693 (b), (c), (d)(1) and (2) amended; eff. 11-30-99 53241
95.1 (b) revised 59659
95.5 Revised; eff. 11-30-99 53241
95.7 (a) amended; eff. 11-30-99 53241
95.29 (a) and (b) revised; (e) removed; eff. 11-30-99 53241

NOTE: Boldface page numbers indicate 1999 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

95.101 (d) added; eff. 11–30–99 53242
95.103 (a) and (b) revised; eff. 11–30–99.....53242
95.801—95.863 (Subpart F) Heading revised.....59659
95.801 Revised 59659
95.803 Heading, (a) and (b) revised.....59660
95.805 Revised 59660
95.807 Added.....59660
95.811 (b), (c) and (d) revised 59660
95.812 Added.....59660
95.813 (b) revised; (c) removed.....59660
95.815 (a) and (b) revised 59660
95.816 Revised 59660
95.819 Revised 59661
95.823 Added.....59662
95.831 Revised 59662
95.833 Revised 59662
95.853 Revised 59663
95.855 Revised 59663
95.859 (a) revised; (b) removed 59663
95.861 Revised 59663
95.863 Removed 59663
97.15 Revised; eff. 11–30–99.....53242
97.17 (b)(1) and (c) revised; eff. 11–30–99 53242
97.21 (a)(2) revised; eff. 11–30–99 53242
101.56 (d)(1) and (d)(2) redesignated as (d) and (e); (i) revised.....59664
101.147 (u)(2) redesignated as (v)(2).....59664
(a) amended.....63745
101.705 Revised; eff. 11–30–99.....53242

Proposed Rules:

0—199 (Ch. I).....55671, 63277
1.....59719
15.....62159
18.....62159
20.....59719
43.....59719
54.....53648
61.....53648, 66442
69.....53648
73...53655, 54268—54270, 55223, 55452, 55453, 56723, 56724, 56999, 57835—57838, 59147, 59148, 59728, 60149—60151, 61054, 61239, 63783
76.....54854
90.....59148, 60151

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

52.211–6 Regulation at 64 FR 51850 eff. date corrected to 9–24–99.....53264

Chapter 2—Department of Defense (Parts 200—299)

201 Heading corrected.....58908
201.603–3 Existing text designated as (a); (b) added 56705
203.103–2 Revised.....62984
203.104–10 Added.....62984
203.203 Amended 62984
203.301 (b) amended.....62984
203.405 (b) amended.....62984
203.502 Amended 62984
203.570–4 Revised.....62984
204.202 (1)(iv) revised.....61028
204.7102 (b)(1) and (3) amended 61028
208.7003–1 Heading amended; (b)(2)(ii) revised.....61031
209.105–2 Added 62985
209.106–2 Amended 61028
209.403 Introductory text, (1) and (2) introductory text amended; (3) added.....62985
209.406–3 Revised.....62985
209.407 Added 62985
209.407–3 Added 62985
209.471 Regulation at 64 FR 31733 confirmed 55632
211.270 Removed.....55633
211.270–1 Removed.....55633
211.270–2 Removed.....55633
213.301 Added 56705
(2)(i) correctly designated 63380
214.202–5 (d) amended.....55633
215.404–71–3 (c), (d) and (e) revised.....61032
219.000 Introductory text amended.....62987
219.702 (a) introductory text and (i)(A)(1) amended.....62987
219.703 (a) introductory text and (2)(B) amended.....62986
225.206 Added 62986
225.872–6 (b) and (c)(1) revised 61028
225.872–7 Amended 61029
226.7000 (a) and (b) amended.....62987
237.7204 Corrected 53447
242 Heading revised 61029

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 48 Chapter 2—Con.

242.002 Added 61029
242.101—242.102 (Subpart 242.1) Removed 61029
242.200-70—242.202 (Subpart 242.2) Revised 61029
242.302 (a)(8) removed; (a)(13) added 61030
242.705-1 (a)(1) amended; (b) removed 61030
242.705-2 (b)(2)(ii) removed; (b)(2)(iv) redesignated as (b)(2)(iii) 61030
242.7400 (a) amended 61030
247.305-10 (b)(iv) introductory text amended 61030
247.370 (b)(1) revised 61030
249.106 Added 62986
251.102 Amended 61031
252.211-7003 Removed 55633

Chapter 3—Department of Health and Human Services (Parts 300—399)

415.207 (b) corrected 54963

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1845.7101 Revised 62601
1845.7101-1 Revised 62601
1845.7101-2 Revised 62601
1845.7101-3 Revised 62601
1845.7101-4 Revised 62601
1845.7101-5 Revised 62601
1852.245-73 Revised 62603

Chapter 19—Broadcasting Board of Governors (Parts 1900—1999)

Chapter 19 Nomenclature Change; heading revised 54541

Proposed Rules:

26 57964
28 58282
52 ..... 57964, 58282
203 63002
204 56724
211 61056
226 63003
252 56724
909 55453
970 55453
1804 54270
1812 54270
1825 58031
1852 ..... 54270, 58031
9903 56296

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1 Authority citation revised 56270, 58357
1.4 (d)(5) removed; (d)(6) redesignated as (d)(5) 56270
1.48 (h), (i), (p), (u), (v), (w), (z), (aa), (hh), (ii) and (jj) removed 56270
(e), (f) and (g) removed 58357
1.73 Added 56270
(j) removed; (k) redesignated as (j); (k) through (n) added 58357
71.9 (b) revised 56707

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

171.6 (b)(2) table amended 61220
172.101 Corrected 54730
Table amended 61220
192.459 Revised 56981
199 Random drug testing revision 66788

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

209 Authority citation revised 62864
209 Appendix A amended 62864
230 Revised 62865
240 Authority citation revised 60988
240.1 (b) revised 60988
240.3 Revised 60988
240.5 Heading, (a), (b) and (e) revised; (f) added 60988
240.7 Amended 60989
240.9 (a) and (c) revised 60989
240.11 Heading, (a), (b) and (c) revised 60989
240.103 (a) revised 60989
240.104 Added 60990
240.105 (b)(4) revised; (c) added 60990
240.111 (a) introductory text, (1) and (h) revised 60990

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

240.113 (a) introductory text revised 60990
240.117 Revised 60990
240.121 (b), (c)(3) and (e) revised; (f) added 60992
240.123 (b) revised; (d) added 60992
240.127 (c)(2) revised 60992
240.129 (c)(2) revised 60992
240.213 (b)(3) revised 60992
240.217 (a)(1) through (4) and (c)(2) revised 60992
240.223 (a)(1) revised 60993
240.225 Revised 60993
240.229 (c) revised 60993
240.231 Added 60993
240.305 (a) revised 60993
240.307 (b)(2), (c) introductory text, (2), (10) and (e) revised; (i), (j) and (k) added 60994
240.309 (e)(10) removed; second (e) introductory text, (1), (2) and (3) redesignated as (h) introductory text, (1), (2) and (3); (e) introductory text, (3), (5), (7), (8) and new (h) introductory text, (1), (2) and (3) revised 60994
240.403 (d) revised; (d) added 60995
240.405 (a) and (c) revised; (d)(3) added 60995
240.411 (e) revised; (f) added 60995
240 Appendix A amended 60995
Appendix F added 60996

Chapter III—Office of Motor Carrier Safety, Department of Transportation (Parts 300—399)

Chapter III Heading revised 58356

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

544.5 (a) revised 57396
544 Appendixes A, B and C revised 57396

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

601.4 Revised 61033

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (d), (e)(2), (3) and (f)(7) amended 53266
1002.2 (a)(2) and (iii) amended; (a)(3) revised 53266
1003.1 (c) amended 53266
1007.3 (a) amended 53266
1007.6 (c) amended 53266
1007.8 (d) amended 53266
1007.11 (b) amended 53266
1011.4 (c)(7) removed 53266
1011.7 (c)(3) and (g) amended 53266
1011.8 (a) introductory text, (1), (b)(2) and (c)(10) amended 53266
1012.1 (a) amended 53266
1012.1 (b) amended 53267
1012.2 (a) revised; (b) and (c) amended 53267
1012.3 (a) and (b)(4) amended 53267
1014.170 (c) amended 53267
1017.4 (a) amended 53267
1017.9 (a) introductory text and (6) amended 53267
1018.3 Amended 53267
1018.29 (c) amended 53267
1019.2 (a) amended 53267
1019.6 Amended 53267
1021.3 Amended 53267
1034.1 (a) and (c) amended 53267
1039.10 Table amended 53267
1100.4 Revised 53267
1101.2 (b) amended 53267
1103.3 (d) amended 53267
1104.15 (b) amended 53267
1105.2 Amended 53268
1105.3 Revised 53268
1105.4 (i) and (j) amended 53268
1105.7 (b)(11) amended 53268
1105.10 (a)(1), (3), (b), (d) and (g) amended 53268
1105.11 Appendix amended 53268
1105.12 Appendix amended 53268
1113.19 Amended 53268
1133.2 (a) amended 53268
1139.22 Amended 53268
1139.26 Note amended 53268
1139.20—1139.26 (Subpart B) Appendix I amended 53268
1150.1 (b) amended 53268
1150.10 (g) amended 53268
1150.16 Amended 53268
1150.36 (c) amended 53268

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 49 Chapter X—Con.

1151.1 Amended 53268
1151.3 (a)(3)(i) amended 53268
1152.12 (b) amended 53268
1152.24 (a) and (c) amended 53268
1152.29 (b)(1)(ii) amended 53268
1177.3 (c) amended 53268
1177.4 (b) amended 53268
1180.4 (b)(1)(ii) amended 53269
1180.6 (a)(8) amended 53269
1180.7 (d) amended 53269
1180.9 (c) amended 53269
1184.1 Amended 53269
1184.2 Amended 53269

Proposed Rules:

25 58568
71 55892
100—199 (Ch. I) 63279
178 62161
192 56725
195 56725
200—299 (Ch. II) 59046
209 59046
300—399 (Ch. III) 56478
392 58372
552 60556
567 66447
568 66447
571 ..... 60556, 61810, 62622
585 60556
595 60556
661 54855
1039 66156
1105 66157
1180 66157

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

17.11 (h) table amended 56608, 58932
17.12 (h) table amended 56590, 56595, 63752
17.44 (w) revised 58932
20.104 Seasonal hunting adjustments 61532
20.105 Seasonal hunting adjustments 61532
20.109 Seasonal hunting adjustments 61532

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.23 Regulation at 64 FR 29727 confirmed 53269
222 Temporary regulations 55858, 55850, 57397
222.102 Amended 60731
223 Temporary regulations 55858, 57397
223.206 (d)(2)(iii)(A) revised; interim 55863
223.207 (c) introductory text amended; interim 55438
223 Figure 6 added; interim 55864
226.205 (b) revised 57403

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600 Fishing restrictions 54786
Comment period reopened 60731
622 Temporary regulations 57585
622.2 Amended 59125
622.4 (a)(2)(ix), (b) introductory text, (c), (d), (e)(1), (2), (h), (m)(5), (6), (n)(3)(iii), (4), (5), (o)(1), (p)(1), (2), (4), (5)(ii)(C), (6)(i), (ii)(A), (B), (C), (q)(2), (7) and (8) amended; (a)(2)(x) heading added; (a)(3)(vi) removed 59126
622.5 (d)(2) introductory text and (3) amended 59126
622.6 (a)(1)(ii) introductory text, (b)(1)(i)(B), (ii)(B) and (iii) amended 59126
622.15 (a)(1), (2), (b), (c)(1) and (2) amended 59126
622.17 (b)(2), (c)(1) and (2) amended 59126
622.18 (d)(1), (2)(iv), (3)(i), (ii), (4)(i) through (v), (e) introductory text, (1)(i), (iii), (2), (f), (g)(1)(i), (ii), (2), (3)(i), (ii), (iii), (4)(i), (iii) and (5)(i) amended 59126
622.33 Revised 60133
622.34 (g)(1) amended 57404
(f), (h)(1) and (2) amended; (k) removed 59126

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

622.37 Heading, introductory text and (d) revised 57404
622.39 (a)(1) amended; (b)(1)(ii), (v) and (2) revised; (b)(1)(vi) and (vii) added 57404
622.41 (g)(3)(i), (h)(3)(i)(A), (B) and (ii) amended 59126
622.42 (b) revised 59126
622.43 (a)(2) and (b)(2) revised 59126
622.44 (d) removed; (e) and (f) redesignated as (d) and (e) 59126
622.45 (e) revised 59126
622.46 (b) and (c) amended 59126
622.48 Introductory text and (g) amended 59126
622.48 Introductory text, (c), (f), (g) and (h) revised 59128
622 Appendix A amended 57404
635 Fishing season notification 53949, 66114
Temporary regulations 54577
Quotas 56472
635.27 (a) introductory text, (4)(i) and (iii) revised 58796
635.69 Regulations at 64 FR 37705 eff. delayed to 6-1-00 55633
640.25 Added 59128
648 Quotas 57586, 60359, 61220, 66788
648.1 (a) amended 54742
648.2 Amended 54743, 55825
648.4 (a)(9) amended 54743
(c)(2)(iii) revised 55825
(a)(5)(iii) revised 57593
Correctly designated 66587
648.5 (a) amended 54744
(a) and (d) revised 57593
(a) and (d) corrected 66586
648.6 (a) revised 54744
(a) and (c) revised 57593
648.7 (a)(1)(i) and (3)(i) amended; (b)(1)(i) revised 54744
(c) amended; (f)(3) revised 57593
648.9 (d) revised 54745
648.10 (b) introductory text amended; (b)(1), (c) introductory text, (2) and (5) revised 54745
(b) and (d) revised 55825
648.11 (a) amended; (e) introductory text revised 54745
648.12 Introductory text revised 54745
648.14 (a)(49) and (103) revised; (x)(8) and (y) added 54746
(a)(117), (118) and (c)(31) added; (b), (c)(1), (2) introductory text, (d)(1), (e) and (g)(2) revised 55826
(p)(10) added 57593
648.20 (c) revised 57593
648.21 (b)(2)(i) revised; (e) removed 57593
648.24 Added 57593
648.73 (a)(4) added 57594
648.77 Added 57594
648.80—648.96 (Subpart F) Heading revised 54746
648.80 Heading, (a)(4)(i)(A), (7)(iv)(B), (8)(i), (9)(i)(D) and (b)(3)(ii) revised 54746
(g)(4) added 55826
648.81 Heading revised 54747
648.82 Heading revised 54747
648.83 Heading revised 54747
(a)(1) revised 55827
648.84 (a) revised 54747
648.86 Heading revised 54747
(c) revised; (e) added 55827
648.88 Heading revised 54747
(a)(1), (b), (c) and (d) revised 55827
648.89 (b)(1) and (c) revised 55827
648.90 Heading and (c) revised 54747
(b) introductory text and (1) revised 55827
648.91 Added 54747
648.92 Added 54748
648.93 Added 54748
648.94 Added 54749
648.96 Added 54751
648.106 Revised 57595
648.108 Added 57595
Correctly designated 66587
648.127 Added 57595
(a) introductory text and (1) through (4) corrected 66587
648.147 Added 57595
(a) introductory text and (1) through (4) corrected 66587
660 Fishing restrictions 54786
Inseason adjustments 56177
Quotas 63259
660 Tables 3 and 6 correctly revised 59129
679 Temporary regulations ..... 53630, 53950, 54225, 54578, 54791, 54792, 55438, 55865, 56271, 56272, 56473—56475, 57595, 63259
Notification 54791
Inseason adjustments 55634, 58796
Reallocations 56474
679.2 Amended 61970

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH NOVEMBER 30, 1999

TITLE 50 Chapter VI—Con.

679.4 (b)(2), (4)(ii), (5)(iv)(D), (v), (e), (f)(2)(vi), (4)(ii) and (h)(2) heading revised 61971
679.5 (c)(4), (5) and (6) removed; (h)(3) redesignated as (h)(4); (a)(1), (3)(iii), (4), (6), (7), (9)(i)(C), (ii)(B), (iii), (13), (14), (15), (c)(2), (3), (e)(1)(iii), (f)(1)(ii)(C), (g)(1) introductory text, (iv) heading, (3)(ii)(A), (h)(2), new (4), (i)(2), (k)(1), (l)(5)(vi), (m) and (n) revised; (a)(16), (d)(2)(iv), (e)(2)(v), (f)(1)(iii), (2)(v), (g)(1)(v) and new (h)(3) added 61972
679.6 (g) added 61981
679.20 (h)(1), (2) introductory text, (i) and (ii) amended 61970
(b)(1)(v) heading amended; (g)(3) table removed 61981
679.21 (b)(5) added; (e)(7)(vi)(A) revised 61981
(d)(3)(i) corrected; CFR correction 66507
679.22 (a)(7)(i), (ii), (8)(i), (ii), (b)(1)(i), (ii), (2)(i) and (ii) amended 61970
(b)(4) added; (a)(10) and (h) heading revised 61982
679.24 (d)(4) amended 61970
(b)(1)(i) and (ii) removed; (b)(1)(iii) introductory text, (A), (B) redesignated as (b)(1) introductory text, (i) and (ii); (e)(3)(iv) table amended 61982
679.28 (b)(5)(i) and (c)(3) amended 61982
679.31 (b)(3) introductory text revised 61982
679.32 (c) introductory text, (1), (3) introductory text, (4) introductory text, (iii), (d)(1) and (2)(v) heading revised 61982
679.42 (c)(2)(i), (ii) and (iii) removed 61982
679 Figures 1 through 5, 7 through 15 and tables 1, 2, 3, 5, 8, 9, 12, and 13 revised; figures 16 and 17 and tables 14 and 15 added 61982

Proposed Rules:

16 59149
17 ..... 53655, 55892, 56297, 57534, 57620, 58934, 59729, 62627, 62641, 63004, 66600
25 62163
26 62163
29 62163
216 ..... 56298, 57010, 57026, 63783
223 66601
224 ..... 62627, 66601
227 56297
622 ..... 57436, 57623, 59152, 59153, 60151, 60402, 66449
648 ..... 55688, 59156
654 59152
660 ..... 54272, 55689, 56479, 60402, 62127, 66158
679 ..... 53305, 56481, 59730, 60157

NOTE: Boldface page numbers indicate 1998 changes.

1999

64 FR Page	
1–383	Jan. 4
385–729	5
731–983	6
985–1096	7
1097–1499	8
1501–1713	11
1715–2114	12
2115–2418	13
2419–2544	14
2545–2797	15
2799–2988	19
2989–3200	20
3201–3391	21
3393–3619	22
3621–3805	25
3807–4027	26
4029–4284	27
4285–4516	28
4517–4776	29
4777–4955	Feb. 1
4957–5148	2
5149–5584	3
5585–5707	4
5709–5925	5
5927–6185	8
6187–6493	9
6495–6777	10
6779–7055	11
7057–7488	12
7489–7770	16
7771–7987	17
7989–8224	18
8225–8498	19
8499–8709	22
8711–9051	23
9053–9262	24
9263–9434	25
9435–9903	26
9905–10099	Mar. 1
10101–10204	2
10205–10386	3
10387–10553	4
10555–10918	5
10919–11372	8
11373–11754	9
11375–12078	10
12079–12237	11
12239–12742	12
12743–12880	15
12881–13062	16
13063–13310	17
13311–13495	18
13497–13661	19
13663–13880	22
13881–14096	23
14097–14354	24
14355–14574	25
14575–14808	26
14809–15121	29
15123–15284	30
15285–15631	31
15633–15914	Apr. 1
15915–16332	2
16333–16599	5
16601–16795	6
16797–17078	7
17079–17270	8
17271–17500	9
17501–17940	12
17941–18322	13
18323–18549	14
18551–18795	15
18797–19016	16
19017–19250	19
19251–19437	20
19439–19684	21
19685–19861	22
19863–20139	23
20141–20538	26
22543–22777	27
22779–23006	28
23007–23163	29
23165–23530	30
23531–23747	May 3
23749–24019	4
24021–24281	5
24283–24499	6
24501–24929	7
24931–25188	10
25189–25417	11
25419–25795	12
25797–26270	13
26271–26651	14
26653–26829	17
26831–27167	18
27169–27443	19
27445–27655	20
27657–27898	21
27899–28087	24
28089–28331	25
28333–28712	26
28713–28881	27
28883–29205	28
29207–29535	June 1
29537–29775	2
29777–29944	3
29945–30211	4
30213–30378	7
30379–30860	8
30861–31104	9
31105–31483	10
31485–31686	11
31687–31962	14
31963–32177	15
32179–32385	16
32387–32793	17
32795–33003	18

33005–33173	21
33175–33366	22
33367–33738	23
33739–34107	24
34109–34509	25
34511–34704	28
34705–34966	29
34967–35558	30
35559–35919	July 1
35921–36235	2
36237–36557	6
36559–36761	7
36763–37031	8
37033–37392	9
37393–37661	12
37663–37831	13
37833–38101	14
38103–38286	15
38287–38534	16
38535–38813	19
38815–38997	20
38999–39392	21
39393–39896	22
39897–40280	23
40281–40503	26
40505–40734	27
40735–41002	28
41003–41263	29
41265–41763	30
41765–41997	Aug. 2
41999–42263	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43597	10
43599–43896	11
43897–44100	12
44101–44395	13
44397–44642	16
44643–44816	17
44817–45147	18
45149–45405	19
45407–45858	20
45859–46110	23
46111–46255	24
46257–46558	25
46559–46812	26
46813–47089	27
47091–47336	30
47337–47647	31
47649–48073	Sept. 1
48075–48241	2
48243–48525	3
48527–48700	7
48701–48931	8
48933–49077	9
49079–49348	10
49349–49637	13
49639–49958	14
49959–50244	15
50245–50415	16
50417–50730	17
50731–51037	20
51039–51186	21
51187–51418	22
51419–51699	23
51671–51884	24
51885–52210	27
52211–52421	28
52423–52625	29
52627–53178	30
53179–53579	Oct. 1
53581–53881	4
53883–54198	5
54199–54497	6
54499–54758	7
54759–55113	8
55115–55403	12
55405–55614	13
55615–55808	14
55809–56129	15
56131–56250	18
56251–56397	19
56399–56667	20
56669–56964	21
56945–57359	22
57361–57547	25
57549–57768	26
57769–57965	27
57967–58322	28
58323–58753	29
58755–59105	Nov. 1
59107–59602	2
59603–60082	3
60083–60332	4
60333–60646	5
60647–61013	8
61015–61198	9
61199–61471	10
61473–61667	12
61769–62087	15
62089–62559	16
62561–62969	17
62971–63170	18
63171–63560	19
63561–63846	22
63853–64094	23
64095–64353	24
64355–64540	26
64541–64708	29
64709–65145	30

9
10
13
14
15
16
17
20
21
22
23
24
27
28
29
30
ct. 1
4
5
6
7
8
12
13
14
15
18
19
20
21
22
25
26
27
28
29
lov. 1
2
3
4
5
8
9
10
12
15
16
17
18
19
22
23
24
26
29
30

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

code of federal regulations

LSA

List of CFR Sections Affected

December 1999

Save this issue for Titles 1—16 (Annual)

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

code of federal regulations

LSA

List of CFR Sections Affected

December 1999

Title 1–16
Changes January 2, 1999
through December 30, 1999

Title 17–27
Changes April 1, 1999
through December 30, 1999

Title 28–41
Changes July 1, 1999
through December 30, 1999

Title 42–50
Changes October 1, 1999
through December 30, 1999

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (63 FR for 1997, 64 FR for 1998) and the page number. Example: 24727 in bold cite as 63 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

ONLINE LSA

The LSA is on the internet at http://www.access.gpo.gov/nara/lsa/aboutlsa.html.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Dwayne Dehlbom. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Gwen Henderson. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of

the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	16.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869–038–00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0–42	(869–038–00098–9)	39.00	July 1, 1999
43–end	(869–038–00099–7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[6] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	46.00	Oct. 1, 1998
44	(869–038–00167–5)	28.00	Oct. 1, 1999

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[5]No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7]No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8]No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

Other Related Publications

Title	*Price*		*Revision Date*
Federal Register:			
Yearly subscription (with FR Index and LSA)	607.00		
Yearly subscription (without FR Index and LSA)	555.00		
Individual copies	8.00		daily
LSA (List of CFR Sections Affected):			
Yearly subscription	27.00		
Federal Register Index:			
Yearly subscription	25.00		
CFR Index and Finding Aids	48.00		1999

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 1, 1999.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT

Chapter I—Executive Office of the President (Parts 100—102)

100 Revised 12881

Presidential Documents

Proclamations

4865 *See* Memorandum of Apr. 16, 1999 53883
See Memorandum of Sept. 24, 1999 55809
5030 *See* Proc. 7219 48701
6575 *See* Proc. 7206 36229
6763 *See* Proc. 7235 55611
6867 *See* Notice of Feb. 24, 1999 9903
6982 *See* Proc. 7207 36549
7103 *See* Proc. 7202 29973
See Proc. 7214 42265
7162 2989
7163 2991
7164 5583
7165 5585
7166 6181
7167 6777
7168 10101
7169 10381
7170 10383
7171 10385
7172 11373
7173 12879
7174 14353
7175 14807
7176 15123
7177 17075
7178 17077
7179 17499
7180 17939
7181 18317
7182 18321
7183 19017
7184 19439
7185 19681
7186 19683
7187 22777
7188 23005
7189 24275
7190 24277
7191 24279
7192 24281
7193 25189
7194 25191
7195 25797
7196 27437
7197 27439
7198 28083
7199 28709
7200 28711
7201 29769
7202 29773
See Proc. 7214 42265
7203 32379
7204 32381
Amended by Proc. 7214 42265
7205 33737
7206 36229
7207 36549
7208 37389
Amended by Proc. 7214 42265
7209 39895
7210 40723
7211 41001
7212 41003
7213 41005
7214 42265
7215 46813
7216 47091
7217 47093
7218 47337
7219 48701
Corrected 49276, 49844
7220 50417
7221 50731
7222 51183
7223 51185
7224 51415
7225 51417
7226 52625
7227 53877
7228 54193
7229 54195
7230 54197
7231 54755
7232 54757
7233 54759
7234 55405
7235 55611
7236 55613

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 3 Proclamations—Con.

7237 55615
7238 55617
7239 55619
7240 56393
7241 56397
7242 56665
7243 57767
7244 57967
7245 59103
7246 60083
7247 60085
7248 61473
7249 62561
7250 62563
7251 66081
7252 66083
7253 66085
7254 66087
7255 66093
7256 67691
7257 68269
7258 69161
7259 69163
7260 70563
7261 71629
7262 71631

Executive Orders

June 14, 1839 Revoked in part by PLO 7385 19386
July 2, 1910 Revoked in part by PLO 7388 23856
July 12, 1911 Revoked in part by PLO 7400 38212
Mar. 21, 1914 Revoked in part by PLO 7404 41131
June 24, 1914 Revoked in part by PLO 7416 67295
Apr. 1, 1915 Revoked in part by PLO 7410 46849
Apr. 28, 1917 Revoked in part by PLO 7416 67295
Nov. 14, 1917 Revoked by PLO 7391 28211
Feb. 11, 1918 Revoked in part by PLO 7416 67295
July 10, 1919 Revoked in part by PLO 7416 67295
May 25, 1921 Revoked in part by PLO 7416 67295
Mar. 30, 1922 Revoked by PLO 7390 28211
Apr. 17, 1926 Revoked in part by PLO 7416 67295
Feb. 7, 1930 Revoked in part by PLO 7416 67295
782 Revoked by PLO 7319 14261
5327 Revoked in part by PLO 7411 49235
10173 Amended by EO 13143 68273
11145 Amended by EO 13138 53879
11183 Amended by EO 13138 53879
11223 Amended by EO 13118 16595
11269 Amended by EO 13118 16595
11287 Amended by EO 13138 53879
11348 *See* EO 13111 2793
11958 Amended by EO 13118 16595
11987 Revoked by EO 13112 6183
12131 Amended by EO 13138 53879
12163 Amended by EO 13118 16595
12170 T3See Notice of Nov. 5, 1999 61471
12188 Amended by EO 13118 16595
12196 Amended by EO 13138 53879
12216 Amended by EO 13135 47339
Amended by EO 13138 53879
12260 Amended by EO 13118 16595
12293 Amended by EO 13118 16595
12301 Amended by EO 13118 16595
12345 Amended by EO 13138 53879
12367 Amended by EO 13138 53879
12372 Supplemented by EO 13132 43255
12382 Amended by EO 13138 53879
12473 Amended by EO 13140 55115
12484 *See* EO 13140 55115
12543 *See* Notice of Dec. 30, 1998 383
12544 *See* Notice of Dec. 30, 1998 383
12550 *See* EO 13140 55115
12586 *See* EO 13140 55115
12599 Amended by EO 13118 16595
12612 Revoked by EO 13132 43255
12703 Amended by EO 13118 16595
12708 *See* EO 13140 55115
12722 *See* Notice of July 20, 1999 39697
12724 *See* Notice of July 20, 1999 39697
12757 Amended by EO 13131 40733
12759 Revoked by EO 13123 30851
12767 *See* EO 13140 55115
12808 *See* Notice of May 27, 1999 29205
12810 *See* Notice of May 27, 1999 29205
12831 *See* Notice of May 27, 1999 29205
12845 Revoked by EO 13123 30851
12846 *See* Notice of May 27, 1999 29205

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

12852 Amended by EO 13114 10099
Revoked by EO 13138 53879
12865 *See* Notice of Sept. 21, 1999 51419
12866 Supplemented by EO 13132 43255
12871 Amended by EO 13138 53879
12875 Revoked by EO 13132 43255
12876 Amended by EO 13138 53879
12882 Amended by EO 13138 53879
12884 Amended by EO 13118 16595
12888 *See* EO 13140 55115
12900 Amended by EO 13138 53879
12902 Revoked by EO 13123 30851
12924 *See* Notice of Aug. 10, 1999 44101
12905 Amended by EO 13138 53879
12934 *See* Notice of May 27, 1999 29205
12936 *See* EO 13140 55115
12938 Amended by EO 13128 34703
See Notice of Nov. 10, 1999 61767
12947 *See* Notice of Jan. 20, 1999 3393
12957 *See* Notice of Mar. 10, 1999 12239
12958 Amended by EO 13142 66089
12959 *See* Notice of Mar. 10, 1999 12239
12960 *See* EO 13140 55115
12961 Revoked by EO 13138 53879
12975 Amended by EO 13137 50733
12978 *See* Notice of Oct. 19, 1999 56667
12981 Amended by EO 13117 16591
12988 Supplemented by EO 13132 43255
12994 Amended by EO 13138 53879
13010 *See* EO 13130 38525
Revoked in part by EO 13138 53879
13017 Revoked by EO 13138 53879
13021 Amended by EO 13138 53879
13029 *See* Presidential Determination No. 99-31 of June 30, 1999 37033
13035 Amended by EO 13113 7489
13037 Revoked by EO 13138 53879
13038 Revoked by EO 13138 53879
13047 *See* Notice of May 18, 1999 27443
13050 Revoked by EO 13138 53879
13059 *See* Notice of Mar. 10, 1999 12239
13062 Superseded in part by EO 13138 53879
13067 *See* Notice of Oct. 29, 1999 59105
13069 *See* Notice of Sept. 21, 1999 51419
13073 Amended by EO 13127 32793
13083 Revoked by EO 13132 43255
13086 *See* EO 13140 55115
13088 Amended by EO 13121 24021
See Notice of May 27, 1999 29205
13090 Amended by EO 13136 48931
13095 Revoked by EO 13132 43255
13096 *See* Proc. 7247 60085
13098 *See* Notice of Sept. 21, 1999 51419
13099 *See* Notice of Jan. 20, 1999 3393
13101 *See* Proc. 7250 62563
13106 Superseded in part by EO 13144 72237
13110 2419
13111 2793
13112 6183
13113 7489
13114 10099
13115 15283
Amended by EO 13138 53879
13116 16333
13117 16591
13118 16595
13119 18797
13120 23007
13121 24021
13122 29201
13123 30851
13124 31103
13125 31105
13126 32383
13127 32793
13128 34703
13129 36759
13130 38535
13131 40733
13132 43255
13133 43895
13134 44639
13135 47339
13136 48931
13137 50733
13138 53879
13139 54175
13140 55115
13141 63169
13142 66089
13143 68273
13144 72237

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 3
Administrative Orders

Memorandums:

Mar. 23, 1999 14809
Amended by EO 13118 16595
Mar. 31, 1999 17079
Apr. 16, 1999 53883
May 26, 1999 29539
June 10, 1999 32795
July 7, 1999 37393
July 9, 1999 38101
July 16, 1999 40503
Aug. 17, 1999 47345
Sep. 24, 1999 55809
Oct. 27, 1999 60647
Nov. 29, 1999 68275

Notices:

Dec. 30, 1998 383
Jan. 20, 1999 3393
Feb. 24, 1999 9903
Mar. 10, 1999 12239
May 18, 1999 27443
May 27, 1999 29205
July 20, 1999 39697
Aug. 10, 1999 44101
Sep. 21, 1999 51419
Oct. 19, 1999 56667
Oct. 29, 1999 59105
Nov. 5, 1999 61471
Nov. 10, 1999 61767

Presidential Determinations:

No. 96-7 of Dec. 27, 1995 *See* Notice of May 27, 1999 29205
No. 98-35 of Sept. 11, 1998 *See* Presidential Determination No. 99-36 of Sept. 10, 1999 51885
No. 98-39 of Sept. 30, 1998 *See* Presidential Determination No. 99-33 of Aug. 12, 1999 47341
No. 99-9 of Dec. 24, 1998 983
No. 99-10 of Jan. 25, 1999 5925
No. 99-11 of Jan. 28, 1999 6773
No. 99-12 of Feb. 3, 1999 6779
No. 99-13 of Feb. 4, 1999 6781
See Presidential Determination No. 2000-5 of Oct. 29, 1999 60651
No. 99-14 of Feb. 16, 1999 9263
No. 99-15 of Feb. 26, 1999 11319
No. 99-16 of Mar. 4, 1999 13495
No. 99-18 of Mar. 25, 1999 16337
No. 99-19 of Mar. 31, 1999 17081
No. 99-20 of Mar. 31, 1999 17083
No. 99-21 of Apr. 8, 1999 18551
No. 99-22 of Apr. 29, 1999 24501
No. 99-23 of May 18, 1999 26085
No. 99-24 of May 18, 1999 28087
No. 99-25 of May 24, 1999 29537
No. 99-26 of June 3, 1999 31109
No. 99-27 of June 3, 1999 31111
No. 99-28 of June 3, 1999 31113
No. 99-29 of June 17, 1999 33739
No. 99-30 of June 23, 1999 35921
No. 99-31 of June 30, 1999 37033
Corrected 38075
No. 99-32 of July 1, 1999 37035
Corrected 38075
No. 99-33 of Aug. 12, 1999 47341
No. 99-34 of Aug. 13, 1999 47343
No. 99-35 of Aug. 17, 1999 47347
No. 99-36 of Sept. 10, 1999 51885
No. 99-38 of Sept. 21, 1999 53573
No. 99-39 of Sept. 21, 1999 53575
No. 99-40 of Sept. 21, 1999 53577
No. 99-41 of Sept. 22, 1999 53579
No. 99-42 of Sept. 29, 1999 54499
No. 99-43 of Sept. 30, 1999 54501
No. 99-44 of Sept. 30, 1999 54503
No. 99-45 of Sept. 30, 1999 54505
No. 2000-2 of Oct. 21, 1999 58755
No. 2000-3 of Oct. 25, 1999 58757
No. 2000-4 of Oct. 27, 1999 60649
No. 2000-5 of Oct. 29, 1999 60651
No. 2000-7 of Nov. 10, 1999 65653
No. 2000-8 of Dec. 17, 1999 72887

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office (Parts 1—99)

27.1 Revised; interim 15125
28.3 Amended; interim 15125

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

300.705 (a) revised 28713
316.201 (b) revised 15286
330 Authority citation revised 24504, 40508
330.301 (b) revised; interim 40508
330.401—330.407 (Subpart D) Revised; interim 40506
330.603 Revised; interim 40509
330.605 (b) and (c)(1) revised; interim 40509

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

330.606 (d)(27) revised; (d)(29) and (30) added; interim....40509
330.607 (b) revised; interim....40509
330.702 Revised; interim....40509
330.703 (b)(3) revised; interim....40509
330.705 (a)(3) and (c)(8) revised; (c)(17) through (20) added; interim....40509
330.1201—330.1204 (Subpart L) Added....24504
351.503 Revised....16800
(c)(3) and (e) correctly revised....23531
351.505 Revised....16800
353.103 (a) amended....31487
353.106 (c) introductory text amended; (c)(1), (2) and (3) added....31487
353.110 (a)(1)(iii) revised; (a)(2) amended....31487
353.203 (a)(4)(ii) revised....31487
353.208 Amended....31487
353.210 Revised....31487
353.211 (b) amended....31487
410.402 (d) revised; eff. 1-10-00....69172
530.202 Amended; eff. 1-10-00....69172
530.203 (c) amended; (f) added; eff. 1-10-00....69172
530.303 (d) and (i) revised; eff. 1-10-00....69172
531.203 (c)(1)(ii) and (d)(3) amended; (d)(2)(vii) introductory text and (f) revised; eff. 1-10-00....69172
531.204 (a)(2) revised; eff. 1-10-00....69173
531.301 Amended; eff. 1-10-00....69173
531.304 (d) revised....36771
(b)(4) and (5) amended; (b)(6) added; eff. 1-10-00....69173
531.407 (d) revised; eff. 1-10-00....69173
531.602 Amended; eff. 1-10-00....69173
531.606 (d) revised....36771
(b)(4) and (5) amended; (b)(6) added; eff. 1-10-00....69173
531.703 (c) revised....36771
532.217 (a) table and (c) table amended; eff. 1-10-00....69183
532.279 Regulation at 62 FR 67258 confirmed....33175
532.201—532.285 (Subpart B) Regulation at 61 FR 47661 confirmed....9905
Regulations at 61 FR 49649 and 62 FR 66973 confirmed....9906
Regulation at 62 FR 51759 confirmed....17941
Regulation at 63 FR 6471 confrimed....17942
Appendix A amended; interim....23532
Regulation at 62 FR 28978 confirmed....33176
Regulation at 64 FR 23532 confirmed....53179
Appendix C amended....53180
Appendixes A and C amended; interim....60088
Appendix D amended; interim....61769
Appendixes B and D amended; interim....72250
532.501—532.513 (Subpart E) Appendix A amended....15916
534.202 (1), (2) and (3) redesignated as (a), (b) and (c)....68931
534.403 (b) revised....72889
536.102 Amended; eff. 1-10-00....69174
536.203 (b) amended; eff. 1-10-00....69174
536.205 (a)(2) amended; (b)(4) added; eff. 1-10-00....69174
550.101—550.187 (Subpart A) Authority citation revised....4519
550.101 (a)(2) and (d)(1) revised; (d) introductory text amended; (d)(3) and (7) removed; (d)(4), (5), (6), (8) and (9) redesignated as (d)(3), (4), (5), (6) and (7); eff. 1-10-00....69174
550.102 Revised; eff. 1-10-00....69174
550.103 Amended; interim....4519
Amended; eff. 1-10-00....69174
550.107 Introductory text amended; eff. 1-10-00....69175
550.111 (f) revised; (h) added; interim....4520
(i) added; eff. 1-10-00....69175
550.112 (k), (l) and (m) added; eff. 1-10-00....69175
550.114 (e) added; eff. 1-10-00....69175
550.121 (c) added; eff. 1-10-00....69175
550.131 (d) added; eff. 1-10-00....69175
550.153 (d)(1) amended; eff. 1-10-00....69175
550.162 (f) added; eff. 1-10-00....69175
550.171 Existing text designated as (a); (b) added; eff. 1-10-00....69175
550.181 Revised; interim....4520

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 5 Chapter I—Con.

550.182 (b) through (f) redesignated as (c) through (g); new (b) added; (a) and new (d) revised; interim 4520
550.184 (e) revised; interim 4520
550.185 (a) revised; interim 4521
550.186 (b) revised; interim 4521
(c) removed; (d) redesignated as (c) 36771
550.202 Amended; eff. 1–10–00 69176
550.205 (b) amended; eff. 1–10–00 69176
550.311 (b) amended; eff. 1–10–00 69176
550.312 (a), (c), (d) and (e) revised; eff. 1–10–00 69176
550.341 Revised; eff. 1–10–00 69176
550.342 Removed; eff. 1–10–00 69176
550.703 Amended; eff. 1–10–00 69176
550.706 (a) revised; (c) added; eff. 1–10–00 69177
550.707 Heading and (b) revised; (d) added; eff. 1–10–00 69177
550.708 (a) revised; (c) and (d) amended; (e) added; eff. 1–10–00 69177
550.709 Revised; eff. 1–10–00 69177
550.710 Revised; eff. 1–10–00 69178
550.711 Revised; eff. 1–10–00 69178
550.713 Amended; eff. 1–10–00 69178
550.803 Amended; eff. 1–10–00 69178
550.804 (e) added; interim 72458
550.805 (e) revised; (h) added; eff. 1–10–00 69178
550.806 (a) redesignated as (a)(1); (a)(2) added; eff. 1–10–00; (h) removed 69179
550.801—550.808 (Subpart H) Appendix A added; eff. 1–10–00 69179
550.902 Amended; eff. 1–10–00 69179
550.903 (b) introductory text revised; eff. 1–10–00 69179
550.905 Revised; eff. 1–10–00 69180
550.901—550.907 (Subpart I) Appendix A amended 1502
550.1104 (c)(2) and (d)(2) amended; eff. 1–10–00 69180
550.1201—550.1207 (Subpart L) Added 36771
551.401 (f) and (g) amended; eff. 1–10–00 69180
551.423 (a)(3) amended; (b)(1) revised; eff. 1–10–00 69180
551.431 (a) revised; eff. 1–10–00 69180
551.432 (a)(1) amended; (b) and (c) revised; (e) and (f) added; eff. 1–10–00 69180
551.501 (a)(2) amended; (a)(5) revised; eff. 1–10–00 69180
551.511 (b)(3) amended; eff. 1–10–00 69180
551.512 (b) amended; eff. 1–10–00 69181
551.514 Added; eff. 1–10–00 69181
551.531 (e) added; eff. 1–10–00 69181
551.541 (b) amended; eff. 1–10–00 69181
575 Authority citation revised 69181
575.102 (a)(3) revised; eff. 1–10–00 69181
575.103 Amended; eff. 1–10–00 69181
575.202 (a)(3) revised; eff. 1–10–00 69182
575.203 Amended; eff. 1–10–00 69182
575.205 (b)(5) amended; eff. 1–10–00 69182
575.302 (a)(3) revised; eff. 1–10–00 69182
575.304 (d) added; eff. 1–21–00 71634
575.305 Regulation at 63 FR 34121 confirmed; (d) revised; eff. 1–21–00 71634
575.307 (a) revised; eff. 1–10–00 69182
(b)(1), (2) and (3) revised; eff. 1–21–00 71635
591.201 Amended; eff. 1–10–00 69182
591.210 (c)(1) amended 36775
595.102 (c) added; interim 72458
595.105 (b) and (c) revised; interim 72458
610.101—610.123 (Subpart A) Authority citation revised 69182
610.102 Amended; eff. 1–10–00 69182
610.111 (a) introductory text, (1), (2) and (c)(2) amended; eff. 1–10–00 69182
610.201 Revised; interim 72458
610.202 (a) revised; (d) added; interim 72458
610.407 Existing text designated as (a); (b) added; eff. 1–10–00 69182
630 Authority citation revised 72253
630.308 (a) revised 46258
630.310 Added 46259
(b) and (d) amended 72253
630.1101—630.1109 (Subpart K) Redesignated as 630.1301—630.1309 (Subpart

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

M); new 630.1101—630.1109 (Subpart K) added 72253
630.1301—630.1309 (Subpart M) Redesignated from 630.1301—630.1109 (Subpart K) 72253
630.1304 Amended 72256
630.1308 Amended 72256
630.1309 Amended 72256
831 Authority citation revised 15287, 53582, 72256
831.108 Removed; interim 53582
831.114 (b)(4) and (c)(2)(iii) revised; interim 53582
(i) removed; interim 72257
831.201 (g)(3), (4) and (5) redesignated as (g)(4), (5) and (6); new (g)(3) and (i) added; new (g)(5) revised; interim 15288
837.101 (a)(2) revised; interim 15288
837.102 Amended; interim 15288
842 Authority citation revised 15288, 53582, 72257
842.104 (g) added; interim 15289
842.107 (c) revised; interim 15289
842.108 Added; interim 15289
842.205 Removed; interim 53582
842.213 (b)(4) and (c)(2)(iii) revised; interim 53582
(i) removed; interim 72257
846 Authority citation revised 15289
846.201 (d)(1) revised; interim 15289
870 Authority citation revised 15289, 16602, 22544, 72460
870.101 Amended; interim 16602
Regulation at 64 FR 16602 confirmed 54761
Amended; interim; eff. 1-27-00 72461
870.104 Redesignated as 870.105; new 870.104 added; interim; eff. 1-27-00 72461
870.105 Redesignated from 870.104; (a) revised; interim; eff. 1-27-00 72461
870.202 (a)(1)(ii) revised; interim; eff. 1-27-00 72461
870.205 (a), (b)(1) and (c) revised; interim; eff. 1-27-00 72461
870.301 (b) revised; interim; eff. 1-27-00 72461
870.302 (a)(3) revised; interim 15289
870.303 Added; interim; eff. 1-27-00 72461
870.401 (b)(1) and (d) revised; interim 22544
Regulation at 64 FR 22544 confirmed 71984
870.402 (d)(1) table and (e)(1) table, (f)(1) and (g) revised; interim 22544
Regulation at 64 FR 22544 confirmed 71984
(c) revised; interim; eff. 1-27-00 72461
870.405 Revised; interim; eff. 1-27-00 72462
870.506 (e)(2) amended; interim 16602
Regulation at 64 FR 16602 confirmed 54761
(a) revised; interim; eff. 1-27-00 72462
870.601 (e) added; interim; eff. 1-27-00 72463
870.602 (a), (c) and (e) revised; interim; eff. 1-27-00 72463
870.702 Redesignated as 870.703; new 870.702 added; interim; eff. 1-27-00 72463
870.703 Removed; new 870.703 redesignated from 870.702; interim; eff. 1-27-00 72463
870.704 Redesignated as 870.706; new 870.704 added; interim; eff. 1-27-00 72463
870.705 Redesignated as 870.707; interim; eff. 1-27-00 72463
Added; interim; eff. 1-27-00 72464
870.706 Redesignated as 870.708; new 870.706 redesignated from 870.704; interim; eff. 1-27-00 72463
870.707 Redesignated from 870.705; interim; eff. 1-27-00 72463
870.708 Redesignated from 870.706; interim; eff. 1-27-00 72463
870.801 (a) introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added; interim 16602
Regulation at 64 FR 16602 confirmed 54761
(d)(3)(v) added; interim; eff. 1-27-00 72464
870.802 (a) amended; (i) added; interim 16602
Regulation at 64 FR 16602 confirmed 54761
(b) and (g)(1) revised; interim; eff. 1-27-00 72464

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 5 Chapter I—Con.

870.901 (i) added; interim 16602
Regulation at 64 FR 16602 confirmed 54761
870.902 Revised; interim; eff. 1-27-00 72464
870.907 (c) revised; interim; eff. 1-27-00 72465
870.1201—870.1208 (Subpart L) Added; interim; eff. 1-27-00 72465
890 Authority citation revised 15289, 31487, 36238
890.102 (c)(8) revised; interim 15289
890.303 (i) revised 31487
890.304 (a)(1)(vi), (vii) and (viii) revised 31487
890.305 (a) revised 31488
890.501 Regulation at 63 FR 45934 confirmed 15633
(e), (f) and (g) revised 31488
890.502 (f) revised 31488
890.1301—890.1308 (Subpart M) Added; interim 36238
950.102 Regulation at 64 FR 65637 confirmed 27169

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1200.10 (a)(9) and (b)(9) removed; (a)(10) and (b)(10) redesignated as (a)(9) and (b)(9); (b)(8) revised 15916
1201.22 (b)(1) revised 27899
(b)(2) revised 54508
1201.111 (c)(1) designation and (2) added 27900
1201.115 (b) and (c) revised 27900
1204 Revised 51039
1205 Revised 51043
1205.12 (d) correctly designated 71267

Chapter III—Office of Management and Budget (Parts 1300—1399)

1315 Added 52586

Chapter IV—Advisory Committee on Federal Pay (Parts 1400—1499)

Chapter IV Removed 49639

Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600--1699)

1620 Revised 31057
1630.2 (e) amended; (f) through (n) redesignated as (g) through (l), (n), (o) and (p); new (f) and (m) added; eff. 1-3-00 67693
(n) amended; eff. 1-3-00 67695
1630.4 (a)(1) revised; (a)(2), (3) and (4) redesignated as (a)(3), (4) and (5); new (a)(2) added; eff. 1-3-00 67693
(a)(3) amended; eff. 1-3-00 67695
1630.5 (a) and (b) amended; eff. 1-3-00 67694
1630.6 (a) amended; eff. 1-3-00 ..... 67694, 67695
1630.7 (a) and (b) amended; (c) revised; eff. 1-3-00 67694
1630.8 (a), (b)(1) and (5) amended; eff. 1-3-00 67694
1630.10 (a) introductory text and (1) amended; eff. 1-3-00 67695
1630.11 (a)(1), (3) and (5) amended; eff. 1-3-00 67694
(a)(2) amended; eff. 1-3-00 67695
1630.12 (a) amended; eff. 1-3-00 67695
1630.14 (c) amended; eff. 1-3-00 67695
1630.16 (c) and (d)(1) amended; eff. 1-3-00 67695
1650.15 (c) and (d) added 31062
1651.1 Amended 31062
1651.2 (c) added 31062
1690.2 Added 31052

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

2411.8 Revised 18799
2430 Authority citation revised 30861
2430.4 (a) amended 30861

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2604.103 Amended 28090
2604.201—2604.202 (Subpart B) Heading revised 28090

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

2604.201 Heading revised; (a)(1) designation and (2) added; new (a)(1), (b) and (c) amended; (b)(4) redesignated as (b)(5); new (b)(4) and (d) added 28090
2604.202 (a) amended 28090
2604.301 (a) amended; (e) added 28090
2604.302 (b) heading and (c) revised; (b) amended 28090
2604.303 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added 28091
2604.305 (a)(1) designation and (2) added; new (a)(1) amended 28091
2604.402 (b) amended 28091
2604.501 (b)(1)(i) and (3) amended 28091
2604.601—2604.602 (Subpart F) Revised 28091
2634 Authority citation revised 47096
2634.101 Revised 47096
2634.304 (f)(3)(iii) amended 2422
(f)(1) introductory text, (i), (2) and (3) revised; (f)(1)(ii) Example added 49640
2634.701 (b) amended 47096
2634.702 (a) and (b) amended 47097
2634.703 Amended 47097
2634.904 (b) amended 2422
2635.207 (b)(7) note amended 2422
2635.601 Amended 13064
2635.602 Introductory text and note amended 13064
2635.603 (d) revised 13064
2635.604 (a) amended 13064
2635.605 (a) and (b) amended 13064
2635.606 (a) amended 13064
2635.902 (o) and (z) amended; (q) revised 2422
2636 Authority citation revised 47097
2636.104 (a) revised 47067
2636.303 (a) introductory text revised; (a)(4) amended 2422
2641 Appendix B amended 5710

Chapter XLII—Department of Labor (Part 5201)

5201 Regulation at 61 FR 57236 confirmed 73853

Chapter LVIII—Board of Governors of the Federal Reserve System (Parts 6800—6899)

6801.103 (a)(2) revised; (c)(1)(i) and (c)(1)(ii) redesignated as (c)(1)(ii) and (c)(1)(iii); new (c)(1)(i) added 68616

Proposed Rules:

177 33226
300 14842
317 41334
532 ..... 20221, 33427, 61793, 72292
550 69936
630 31735
731 4336
792 72037
831 33429
841 33429
1201 ..... 58798, 72040
1204 35952
1205 35957
1620 13924
1630 50012
1650 13725
1651 6818
2430 66589
2634 25849

TITLE 6—[RESERVED]

There is no regulatory text to this title.

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.1—1.23 (Subpart A) Authority citation revised 3395
1.20 Revised 33372
1.1—1.23 (Subpart A) Appendix A amended 3395
2.20 (a)(1)(vii) added 32797
(a)(1)(viii) added 34967
2.21 (a)(9) removed; (a)(10) redesignated as (a)(9) 40735
2.29 (a)(11) added 40735
2.60 (a)(47) and (b)(7) added 34967
2.67 (a)(11), (12) and (13) removed; (a)(14) redesignated as (a)(11) 40736
2.73 Added 40736
3.10 Amended 11755

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Subtitle A—Con.

6.20—6.36 (Subpart) Appendixes 1, 2 and 3 revised 17502
11 Revised 33373
Heading correctly revised 43043
15.50—15.52 (Subpart B) Removed 66709
15d Added 66709

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.909 (b) revised 28884
28.911 (a) amended 28884
29.56 Amended; interim 67470
29.81 (a) revised; interim 51888
29.123 (e) added; interim 67470
37 Added 30867
47 Authority citation revised 38105
Nomenclature change 38108
47.2 (j)(2) removed; (j)(1) redesignated as (j); (e), (g), (h), (i), (s) and (t) revised 38105
47.3 (a)(2) introductory text and (vii) amended; (a)(2)(iv) revised; (a)(4) added; (c) removed 38106
47.4 Heading, (b)(1), (3), (c)(1) and (d)(1) revised 38106
47.6 (a) and (c) revised 38106
47.8 (a) amended 38106
47.9 (b) and (c) revised 38106
47.11 (c) introductory text, (4), (9), (10) and (13) revised 38106
47.12 Introductory text revised 38107
47.15 (a)(1), (2), (b) and (d)(1) revised 38107
47.16 (a) introductory text and (b)(1) revised 38107
47.17 (a) amended 38107
47.19 (d)(1), (4), (5) and (6) revised 38107
47.20 Heading, (b)(1), (2) and (h) introductory text revised; (a) amended 38107
47.21 Revised 38108
47.24 Heading and (a) revised; (d) added 38108
47.25 Heading and (d) revised; (e) removed; (f) redesignated as (e) 38108
51.882 (i)(1)(ii) amended 14576
51.884 (i)(1)(i) amended 14576
51.885 (h)(1)(i) amended 14576
51.888 (a)(2) amended 14577
56.1 Amended; interim 56947
56.35 (d) added; interim 56947
56.46 Revised 51672
56.52 (a)(4) revised 51672
56.54 (a)(2) revised 51672
56.76 (c)(1), (f) heading, (1) and (3) revised; interim 56947
57.1—57.970 Designated as Subpart A; heading added 40738
57.760 Reinstated in part; CFR correction 47349
57.1000 (Subpart B) Added 40738
59 Technical correction 3340
70.71 Revised 51673
70.76 (a)(2) revised 51673
70.77 (a)(4) and (5) revised 51673

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

210.2 Amended; Note removed 50740
210.8 (c)(1) amended 50740
210.9 (b) heading revised; (b) introductory text amended 50740
(b)(18) amended; eff. 1-27-00 72471
210.10 (m)(2)(iii)(C) table added; (n)(3)(iv) redesignated as (n)(4); (l)(1), (m)(1)(i), (2), (i), (ii)(A), (n)(3)(i), (ii), (iii) and new (4) amended; (m)(2)(iii)(A) and new (n)(4) table revised; interim 61773
210.10a (h)(3)(iii) table added; (j)(4) designation added; (a)(1), (d)(1), (h) introductory text, (1), (2)(i), (3)(i), (j)(3)(i), (ii), (iii) and new (4) amended; new (j)(4) table revised; interim 61773
210.13 (b) redesignated as (c); new (b) added 50740
210.18 (a), (i)(3)(i)(B) concluding text, (j), (q) and (r) amended 50740
(g)(1)(i)(A)(*4*) revised; (g)(1)(i)(B) amended; eff. 1-27-00 72471
210.18a Removed 50741
210.19 (a)(6) and (c)(2)(ii) amended; (b) revised 50741
210.20 (a)(7) and (b)(11) amended 50741
210.21 (d) added 50741
210.23 (b) amended 50741

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

210.26 Amended 50741
210.27 Amended 50741
210.28 Removed; new 210.28 redesignated from 210.29 50741
210.29 Redesignated as 210.28; new 210.29 redesignated from 210.30 50741
210.30 Redesignated as 210.29; new 210.30 redesignated from 210.31 50741
210.31 Redesignated as 210.30; new 210.31 redesignated from 210.32 50741
210.32 Redesignated as 210.31 50741
215.2 (e–1) amended; (x–1) and (y) revised; (x–2) redesignated as (x–5); (x–2), (x–3) and (x–4) added; (x–1) Note removed 50741
215.6 (b) amended 50741
215.7 (b) introductory text and (d) introductory text amended 50741
215.10 (b) amended 50742
215.13 (a), (b) and (c) removed; (d) and (e) redesignated as (c) and (d); new (a) and new (b) added 50742
215 Appendix removed 50742
220.2 (c) and (u) amended; (x–1) and (y) revised; (x–2), (x–3) and (x–4) added 50742
(k) and (n) amended; interim 61774
220.6 (b)(1) amended 50742
220.7 (a–2) added; (e) introductory text amended 50742
220.8 (i) introductory text, (1), (2) and (3) amended; (i)(3) table added interim 61774
220.8a (b) introductory text, (1), (2) and (3) amended; (b)(3) table added; interim 61775
220.11 (b) amended 50742
220.13 (k) removed 50742
(k) reinstated; (l) correctly removed 55407
220.15 (a) through (d) removed; (e) and (f) redesignated as (c) and (d); new (a) and new (b) added 50742
220.16 (d) added 50743
220.17 (a) amended 50743
225.2 Amended; interim; eff. 1–27–00 72483
Amended; eff. 1–28–00 72895
225.3 (b) amended; interim; eff. 1–27–00 72483
225.4 (d) revised; interim; eff. 1–27–00 72483
225.6 (a)(2), (c)(2)(ii) introductory text and (d)(1)(i) amended; (a)(3) removed; (a)(4), (5) and (e)(3) through (15) redesignated as (a)(3), (4) and (e)(4) through (16); new (a)(4), (b)(1), (5), (6), (c)(2)(iv), (v), (3) introductory text, (i), (ii) introductory text, (B), (e) introductory text, (1), (2), (g) and (h)(2)(v) revised; interim; eff. 1–27–00 72484
(b)(4), (c)(1), (2) and (e)(1) revised; (c)(3) and (4) redesignated as (c)(4) and (5); (b)(1), new (c)(4)(i), new (ii)(D), (d)(1)(ii) and (iii) amended; new (c)(3), new (4) heading, (5) heading and (d)(1)(iv) added; new (c)(4) introductory text removed; eff. 1–28–00 72896
225.7 (a) and (d)(2) introductory text amended; (d)(2)(ii) removed; (d)(2)(iii) redesignated as (d)(2)(ii); interim; eff. 1–27–00 72485
(a) and (d)(1)(i) amended; (d)(1)(iii) and (2) revised; (d)(1)(iv) removed; eff. 1–28–00 72898
225.8 (d) and (e) removed; interim; eff. 1–27–00 72485
225.9 (c)(1)(i) and (f) amended; (d)(10) removed; (d)(1) through (d)(9) redesignated as (d)(2) through (d)(10); new (d)(1) added; new (d)(7), (8) and (9) revised; interim; eff. 1–27–00 72485
225.13 (a) amended; interim; eff. 1–27–00 72486
225.14 (c)(3) and (d)(1) amended; (d)(6) and (d)(7) designated as (d)(5) and (d)(6) and revised; interim; eff. 1–27–00 72486
(a) amended; (d)(1) removed; (d)(2) through (6) redesignated as (d)(1) through (5); eff. 1–28–00 72898
225.15 (f) revised; (g)(2) and new (5)(x) removed; (g)(3) through

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Chapter II—Con.

(8) redesignated as (g)(2) through (7); (g)(4)(xi), (xii) and (xiii) redesignated as (g)(4)(x), (xi) and (xii); (a)(2), (e) and new (g)(2) amended; interim; eff. 1–27–00 72486
(d)(1) amended; eff. 1–28–00 72898
225.16 (b)(2) and (e) removed; (b)(3), (4), (5), (f) and (g) redesignated as (b)(2), (3), (4), (e) and (f); (b) introductory text, (1)(i), new (2), (3), (d)(2) introductory text, (3) heading, introductory text, and new (f)(1) revised; new (b)(4), (c)(1), (d)(1) introductory text, (1) table and (3) table amended; interim; eff. 1–27–00 72487
225.18 (i) removed; interim; eff. 1–27–00.....72488
226.2 Amended; interim 61775
226.14 (a) introductory text amended; eff. 1–26–00.....72260
226.15 (e) introductory text revised; (e)(10), (11) and (12) redesignated as (e)(11), (13) and (14) and amended; new (e)(10) and (12) added; eff. 1–26–00 72260
226.16 (e) revised; eff. 1–26–00.....72260
226.17 (c) added; eff. 1–26–00.....72261
226.18 (g) added; eff. 1–26–00.....72261
226.19 (c) added; eff. 1–26–00.....72261
226.19a (c) added; eff. 1–26–00 72261
226.20 (b) introductory text, (1), (2), (3)(i), (ii) and (iii) amended; (b)(4) table revised; interim 61775
(b)(4) table revised; (c)(2) table, (3) table, (4) table and (d)(1) amended; eff. in part 12–15–99 and 1–26–00.....72261
235.2 (o), (q–1) and (r) revised; (q–2), (q–3) and (q–4) added 50743
235.4 (b) amended; (h) added 50743
235.5 (a), introductory text and (d) amended; (b) and (c) revised.....50743
235.6 (a), (a–2) and (g)(1) amended 50744
235.11 (b)(2) amended.....50744
235.12 Revised 50744
245 Authority citation revised.....72472
245.2 (a–1) removed; (a–2), (a–3), (a–4), (b–1) and (k) redesignated as (a–1), (a–2), (a–3), (b–2) and (l); new (a–3) revised; new (b–1) and new (k) added; (l) amended; eff. 1–27–00 72472
245.5 (a) introductory text and (1)(x) amended 50744
(a)(1) introductory text and (iii) amended; (a)(1)(iv) and (vi) revised; eff.1–27–00.....72472
245.6 (a) introductory text amended; (b) introductory text, (1), (2) and (c) redesignated as (c) introductory text, (2), (3) and (d); Heading, (a)(1) and new (c) introductory text revised; new (b), (c)(1) and (e) added; eff. 1–27–00 72472
245.6a (d) amended 50744
(a) introductory text, (2)(iv), (v), (3), (5) and (b)(3) amended; (a)(2)(i) and (3) heading revised; eff. 1–27–00 72474
245.10 (a) introductory text and (c) amended; (a)(2) revised.....50744
(a)(3) revised; eff. 1–27–00 72474
245.11 (a)(1) amended.....50744
(g) added; eff. 1–27–00 72474
245.12 (a)(1) amended.....50744
245.13 Removed; new 245.13 redesignated from 245.14 50744
245.14 Redesignated as 245.13.....50744
246 Effective date confirmation 71635
246.2 Amended 13322, 56674
246.4 (a)(14)(v) through (x) redesignated as (a)(14)(vi) through (xi); new (a)(14)(v) added.....13322
(a)(11)(i) revised; eff. 1–18–00 70177
246.7 (e)(1) introductory text removed; (e)(1)(i) through (e)(1)(iv) redesignated as (e)(1)(iii) through (e)(1)(vi); new (e)(1)(i), (ii), (iii) heading, (iv) heading and (vi) heading added; (e) introductory text and new (1)(v) revised; added; eff. 1–18–00 70177
246.12 (f)(2)(xviii), (3) and (k) revised; (f)(2)(xix) and (xx) redesignated as (f)(2)(xxiii) and (xxiv); new (f)(2)(xix), new (xx), (xxi) and (xxii) added.....13322
246.14 (b) and (e) revised; (c)(1) amended 67999
(c)(2) revised; eff. 1–18–00 70178
246.15 (b) amended 13324

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

246.16 (c)(2)(iii) and (iv) redesignated as (c)(2)(iv) and (v); new (c)(2)(iii) added; (c)(2)(i), (ii), new (iv), (3)(i) heading, (ii), (iii) heading and (A) revised; new (c)(2)(v), (3)(i)(A) and (e)(2)(i) amended 56674
(d) introductory text amended; eff. 1-24-00 61016
(b)(3), (e)(2)(ii) and (f) revised 68000
246.18 (a)(1) and (b)(1) revised; (a)(3) amended 13324
248.2 Amended 48076
248.4 (a)(19) revised 48076
248.5 Revised 48076
248.14 (a)(1)(i) and (e) revised 48076
250.3 Amended; eff. 2-28-00 72902
250.13 (a)(1)(iv) and (k)(2) amended; eff. 2-28-00 72902
250.24 (b)(4) removed; (b)(5) and (6) redesignated as (b)(4) and (5); eff. 2-28-00 72902
250.41 (a)(1) amended; eff. 2-28-00 72902
250.52 Removed; eff. 2-28-00 72902
251.1 Amended; eff. 2-28-00 72902
251.2 (a) heading, (b) heading and (d) added; (b) amended; (c) revised; eff. 2-28-00 72902
251.3 Revised; eff. 2-28-00 72903
251.4 Amended; (d)(3) removed; (g) and (h) revised; eff. 2-28-00 72904
251.5 Revised; eff. 2-28-00 72904
251.6 Revised; eff. 2-28-00 72905
251.7 Revised; eff. 2-28-00 72905
251.8 (a), (b), (c)(1) and (2) amended; (d) and (e) redesignated as (e) and (f); new (d) added; new (e) revised; eff. 2-28-00 72906
251.9 Amended; (a) revised; (e) removed; (f) and (g) redesignated as (e) and (f); eff. 2-28-00 72906
251.10 (a), (d), (e) and (h) revised; (b), (c), (f) and (g) amended; eff. 2-28-00 72907
253 Authority citation revised 73382
253.2 Regulation at 59 FR 1449 confirmed 72909
(f) through (i) redesignated as (g) through (j); new (f) added; eff. 2-28-00 73382
253.5 (a)(1), (2)(vii), (d)(1), (k)(1), (2), (l)(1)(iii) and (3)(i) amended; eff. 2-28-00 73383
253.6 Regulation at 59 FR 1449 confirmed 72909
(a)(3), (b)(2), (c)(1), (d)(2)(iii), (e)(1)(i), (2)(ii)(F) and (3)(ix) amended; eff. 2-28-00 73383
253.7 (e)(3) removed; (f) and (g) redesignated as (g) and (h); (a)(2), (5), (b)(3)(iii)(A), (B), (c)(1), new (g)(1) and new (2) amended; (b)(3)(iii)(C), new (h)(2)(i) and (11)(iii) revised; (b)(3)(iii)(E), new (f) and (h)(11)(iv) added; eff. 2-28-00 73383
253.8 Redesignated as 253.10; new 253.8 added; eff. 2-28-00 73384
253.9 Redesignated as 253.11; new 253.9 added; eff. 2-28-00 73385
253.10 Redesignated from 253.8; (c)(12), (e) and (f) amended; eff. 2-28-00 73384
253.11 Redesignated from 253.9; eff. 2-28-00 73385
254 Effective date confirmation 17085
254.2 Regulation at 59 FR 1449 confirmed 72909
(f) and (g) redesignated as (g) and (h); new (f) added; eff. 2-28-00 73385
254.5 (b) amended 1098
271 Authority citation revised 38293
271.1 (g)(155) added 38294
271.2 Amended 23171, 38293
272 Authority citation revised 38293
272.1 (g)(156) added; interim 48255
(g)(154) added; interim 48937
273 Authority citation revised 38293
273.7 (d)(1)(i) revised; (d)(1)(ii), (iii) and (iv) redesignated as (d)(1)(v), (vi) and (vii); (c)(4)(ii), new (d)(1)(v) and (3) amended; (c)(6)(vi), (vii), (d)(1)(ii), (iii) and (iv) added; interim 48255
273.13 (a)(3)(vii) added; interim 48937
273.15 (k)(1) amended; interim 48938
273.24 Added; interim 48257
274 Authority citation revised 38293
274.12 (f)(4) and (l)(1)(iii) revised; (f)(7)(iii) amended; (f)(10)(viii) added; interim 48938

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Chapter II—Con.

275 Authority citation revised.....38293
275.3 (c)(1)(i) introductory text, (3)(i) introductory text and table revised; (c)(1)(i) table removed; (c)(1)(i)(A), (B) and (C) redesignated as (c)(1)(i)(C), (D) and (E); new (c)(1)(i)(A) and B) added; (c) introductory text, new (C), (3)(i)(A) introductory text and (ii) amended.....38294
275.10 (a) amended.....38294
275.11 (a)(2)(iii) removed; (a)(2)(iv) redesignated as (a)(2)(iii); new (a)(2)(iv) added; (a)(3), (b)(1)(ii) table, (iii) table, (2), (3), (e)(2), (f)(2) introductory text and (iv) revised; (b)(1)(ii), (iii), (iv) and (c)(1) amended; (f)(2)(v) and (ix) added.....38295
275.12 (c)(1) introductory text revised; (f)(2) amended; (g)(2) introductory text revised.....38296
275.13 (a) and (e)(2) revised; (b), (c)(1), (2) and (f) amended; (e)(1) heading added.....38296
275.23 (c)(4), (e)(6)(i) and (8)(iii) amended; (e)(6)(iii) and (9) revised.....38297
276 Authority citation revised.....38293
277 Authority citation revised.....38293
278 Authority citation revised.....38293
278.1 (o) removed; (k)(2) amended; (k)(2), (l)(1)(iii), (iv), (v) and (p) through (t) redesignated as (k)(7), (l)(1)(v), (vi), (vii) and (o) through (s); (a), (b)(3), (j), new (l)(1)(vi), (m) introductory text and new (o) revised; new (k)(2), (3) through (6), new (l)(1)(iii) and new (iv) added; new (q) amended.....23171
278.6 (a) and (n) revised; (b)(1), (2)(i), (c) and (i)(1)(v) amended; (e)(1)(iii), (3)(vi) and (8) added.....23172
278.8 (a) revised.....23174
279 Authority citation revised.....38293
279.3 (a)(2) revised.....23174
279.7 (a) amended.....23174
279.10 (a) amended; (d) revised.....23174
280 Authority citation revised.....38293
281 Authority citation revised.....38293
282 Authority citation revised.....38293
283 Authority citation revised.....38293
285 Authority citation revised.....38293

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

300 Effective date confirmation.....49079
300.1 (a) introductory text revised.....37665
301 Effective date confirmation.....49079
301.45 Regulation at 63 FR 38280 confirmed.....4286
301.45–3 Regulation at 63 FR 38280 confirmed.....4286
(a) amended; interim.....40510
301.50–3 (c) amended; (d) removed; interim.....387
Regulation at 64 FR 387 confirmed.....15918
301.51–3 (c) amended; interim.....28715
Regulation at 63 FR 63387 confirmed.....29208
Regulation at 64 FR 28715 confirmed.....56949
301.64 (a) amended; interim.....40282
301.64–2 (a) amended; interim.....71269
301.64–3 (c) amended.....31965
(c) amended; interim.....40282, 52212, 71269
301.64–10 (e) amended.....37665
(c) revised; (f) added; interim.....71270
301.75–1 Regulation at 61 FR 1521 confirmed.....38815
301.75–4 (a) revised; interim.....4780
Regulations at 61 FR 1521 and 64 FR 4780 confirmed.....38815
301.75–7 (b) revised; interim.....60091
301.78–3 (c) amended; interim.....30214, 45860
(c) revised; interim.....48246
Regulation at 64 FR 48246 confirmed.....63171
301.81–3 (e) amended; interim.....27658, 60334
301.81—301.81–10 (Subpart) Appendix amended; interim.....27659
Appendix amended.....57970
Appendix amended; interim.....60334
301.89–1 Amended.....23752
301.89–3 (e) and (f) revised.....23752
301.89–4 Revised.....23754

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

301.89-6 (b) amended; (d) removed; (e) redesignated as (d) 23754
301.89-9 (a) table amended 29550
301.89-12 (b) removed 23754
301.89-13 (f) removed 23754
301.89-15 Heading, introductory text, (a) introductory text, (b) and (c) introductory text revised; (c)(2) amended 34113
301.89-16 Heading, introductory text, (a), (b), (c)(1) and (2) amended 34113
301.93-3 (c) revised 31964
(c) amended; interim 52214, 55812
319.28 (b)(1) corrected; CFR correction 69629
319.37-5 (p) added; interim 45866
319.37-8 (e) introductory text, (2)(ii), (vii) and (viii) amended; (e)(2)(ix) and (x) added 66716
319.40-2 (f) added; interim 45866
319.40-5 (g)(1), (2)(i), (6) and (i) amended 59604
319.40-7 (f) introductory text amended 59604
319.56-2 (h) revised 2994
319.56-2ff (j) and (k) added; eff. 1-5-00 68005
319.74-1—319.74-4 (Subpart) Revised 38110
319.77-1—319.77-5 (Subpart) Added; interim 45866
353 Authority citation revised 72264
353.1 Amended 1105
Amended; interim 72264
353.2 Amended; interim 72264
353.5 (a) and (b) amended; interim 72264
353.7 (a)(4), (b)(4) and (c)(4) amended 1105
(e) added; interim 72265
353.8 Added 1105
354.2 Table amended 25800
354.3 (b)(1) table, (c)(1) table, (d)(1) table, (e)(1) table and (f)(1) table revised; (c)(3)(i) amended 62096
360.200 (a) and (c) amended 12883
360.300 (a) through (d) redesignated as (b) through (e); new (a) added; heading, new (b) and new (e) revised; interim 41009
361.6 (a)(1) amended 12884

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

400.650—400.657 (Subpart T) Regulation at 63 FR 40633 confirmed 40742
400.651 Regulation at 63 FR 40633 confirmed; amended 40742
400.653 Introductory text and (a) amended 40742
400.654 (b) and (c)(4) amended 40742
400.655 Regulation at 63 FR 40634 confirmed 40742
400.677 Regulation at 63 FR 40631 confirmed 40740
400.700—400.711 (Subpart V) Added 38542
400.765—400.768 (Subpart A) Regulation at 64 FR 70313 confirmed 50246
400.765 (b) revised 50246
400.767 (a)(1) amended 50246
402 Regulation at 63 FR 40631 confirmed 40740
402.4 Regulation at 63 FR 40631 confirmed; amended 40740
407 Added 30219
457.8 Regulation at 63 FR 40634 confirmed; amended 40742
457.134 Amended 33378
457.135 Amended; introductory text revised 33385
457.138 Amended; introductory text revised 24932
Amended 24933
457.145 Amended; introductory text revised; eff. 1-20-00 71271

Chapter VI—Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

610 Authority citation revised 42003
610.2 Revised 42003
610.21—610.25 (Subpart C) Added 42003

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723.111 (g) added 66718
723.113 (f) added 15295
723.114 (f) added 15295

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Chapter VII—Con.

723.115 (f) added 15295
723.116 (f) added 15295
723.117 (f) added 15295
729.216 (c) revised 48942
735.16 (a)(5), (9), (b) and (e) revised 54510
735.19 Revised 54510
735.21 Revised 54510
735.31 Revised 54510
735.32 (b) revised; (c) amended 54510
735.33 Revised 54510
735.38 (a) revised 54511
735.40 (b)(3) revised 54511
735.44 Revised 54511
735.47 Revised 54511
735.49 Revised 54511
735.77 Revised 54511
735.101 (b) removed; (c) through (p) redesignated as (b) through (o) 54511
735.102 (d)(4) and (f) revised 54511
759 Redesignated from 761; interim 62565
760.1—760.34 (Subpart) Authority citation revised 17942, 66096
761 Added; interim 6496
Redesignated as 759; interim 62565
Added 62567
761.4 Amended; interim 47099
761.5 Amended; interim 47099
761.6 Revised; interim 47099
761.7 (d)(1) correctly added 69322
762 Added 7378
762.106 (g)(2)(ix) correctly revised 38298
762.122 (a)(1), (4) and (c)(1) correctly revised 38298
762.127 (d) introductory text amended 62568
762.145 (e)(7) corrected 38298
762.150 (e)(2) correctly revised; (g)(4) and (7) corrected 38298
762.160 (a)(2)(ii) correctly revised 38298
782.2 Amended 12885
782.12 (a) introductory text revised; (a)(6) through (9) redesignated as (a)(8) through (11); new (a)(6) and (7) added 12885

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.71 (a) amended 6783
Regulation at 63 FR 35504 confirmed 19022
800.86 (c)(2) Table 4 revised 6783
801.6 Regulation at 63 FR 34554 confirmed 731
801.7 Regulation at 63 FR 35505 confirmed 19022
868.91 Revised 7058

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.153 (d) and (e) revised; (f) added; interim 51892
Regulation at 64 FR 51892 confirmed 69375
905.306 Regulation at 63 FR 62922 confirmed 15636
(a) Table I amended; interim; eff. 11-8-99 through 11-12-00 58762
905.350 Regulation at 63 FR 51518 confirmed 3814
Revised; interim 50425
Regulation at 64 FR 50425 confirmed 63166
906.235 Revised 45409
906.340—906.365 (Subpart) Heading revised; interim 47357
Regulation at 64 FR 47357 confirmed 69380
906.340 (a)(2)(i) and (ii) revised; interim 47357
Regulation at 64 FR 47357 confirmed 69380
906.365 (a)(2) and (4) revised 47358
Regulation at 64 FR 47358 confirmed 69380
915.235 Revised 26273
915.305 (a)(1) revised; interim 69383
915.332 Table I amended 53185
916.350 (a)(3), (4)(i), (ii), (iv) Tables 1 and 2, (8)(i) and (d) revised 19031
916.356 (a)(1) introductory text, (iv) Table 1, (4) introductory

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

text and (6) introductory text revised; (a)(1)(i) Table 1 removed....19031
917.442 (a)(3), (4)(ii), (iv) Tables 1 and 2, (9)(i) and (d) revised 19033
917.459 (a)(1) introductory text, (iv) Table 1, (3) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed; (a)(4) introductory text added 19033
920.155 Stayed; eff. 8-1-99 through 7-31-00....41018
920.302 (a)(2), (4)(ii) and (iv) revised; (b)(2) removed; (b)(1) redesignated as (b) 41019
(a)(4)(iii) stayed; eff. 8-1-99 through 7-31-00....41019
920.303 (c)(3), (5) and (d) revised 41019
923.322 (e)(1) revised; interim....33743
Regulation at 64 FR 33743 confirmed....49352
Corrected....53885
924.236 Revised....48079
925.304 Regulation at 63 FR 28480 confirmed....37838
928.226 Revised....59606
929.69 (d) amended; interim 24025
Regulation at 64 FR 24025 confirmed....34707
930 Marketing percentages 392
930.158 (b)(2) and (3) revised; interim 30232
Regulation at 64 FR 30232 confirmed....50748
930.159 (a) revised; (f) removed; (d) and (e) redesignated as (e) and (f); new (d) added; interim....9268
Regulation at 64 FR 9268 confirmed; (a) and (d) revised 33009
930.200 Revised; interim....40513
Regulation at 64 FR 40513 confirmed....58325
931.231 Revised....52216
932.159 Revised; interim 4288
Regulation at 64 FR 4288 confirmed....23011
932.160 Removed; interim....4288
Regulation at 64 FR 4288 confirmed....23011
932.230 Revised....14813
944.31 Table 1 amended 53186
944.106 Regulation at 63 FR 62923 confirmed....15636
(a) table amended; interim; eff. 11-8-99 through 11-12-00....58762
944.503 Regulation at 63 FR 28480 confirmed....37838
947.120 Suspended; interim; eff. 7-1-99 through 6-30-00....34117
Regulation at 64 FR 34117 confirmed....49355
947.123 Suspended; interim; eff. 7-1-99 through 6-30-00....34117
Regulation at 64 FR 34117 confirmed....49355
947.125 Added; interim; eff. 7-1-99 through 6-30-99....34117
Regulation at 64 FR 34117 confirmed....49355
947.130 Suspended; interim; eff. 7-1-99 through 6-30-00....34117
Regulation at 64 FR 34117 confirmed....49355
947.132 Suspended; interim; eff. 7-1-99 through 6-30-00....34117
Regulation at 64 FR 34117 confirmed....49355
947.133 Suspended; interim; eff. 7-1-99 through 6-30-00....34117
Regulation at 64 FR 34117 confirmed....49355
947.134 Suspended; interim; eff. 7-1-99 through 6-30-00....34117
Regulation at 64 FR 34117 confirmed....49355
947.180 Undesignated center heading added; interim; eff. 7-1-99 through 6-30-99....34117
Regulation at 64 FR 34117 confirmed....49355
947.340 Suspended; interim; eff. 7-1-99 through 6-30-00....34117
Regulation at 64 FR 34117 confirmed....49355
948.215 Revised....48081
955.101—955.209 (Subpart) Heading added; interim....48245
955.101—955.209 (Subpart) Regulation at 64 FR 48245 confirmed 72267
955.113 Added; interim 48245
Regulation at 64 FR 48245 confirmed....72267
955.121 Added; interim 72269
955.122 Added; interim 72269
955.209 Regulation at 63 FR 51271 confirmed 52219

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Chapter IX—Con.

956.15 Added 4933
956.16 Added 4933
956.20 (a) amended 4933
956.60 Added 4933
956.62 Revised 4933
956.64 Revised 4934
956.70 Undesignated center heading and section added 4934
966.234 Revised; interim 57363
966.323 (d)(1) amended 45413
979.180 Amended 23759
Regulation at 64 FR 23759 confirmed 41023
979.304 Amended; (b)(4), (c)(4) and (e)(3) revised; (e)(4) removed; (e)(5) redesignated as (e)(4) 23759
Regulation at 64 FR 23759 confirmed 41023
981.240 Added; eff. 12–2–99 through 7–31–00 59113
981.441 (a) and (e)(6)(ii) amended; (b), (e)(3), (4)(ii) and (iv) revised 41028
(e)(4) introductory text and (iv) revised; (e)(4)(v) added; interim 58766
981.472 (a) revised 18802
982 Marketing percentages 2425
982.246 Regulation at 64 FR 2425 confirmed 23013
984.347 Revised; interim 56133
984.476 Added 58327
985 Marketing percentages 2802
989 Marketing percentages ... 10922, 30236
989.154—989.156 Undesignated center heading revised 43902
989.154 Revised 43902
989.157—989.160 Undesignated center heading added 43902
989.212 Regulation at 63 FR 56785 confirmed 2428
989.213 Regulation at 63 FR 56785 confirmed 2428
989.347 Revised; interim 9056
Regulation at 64 FR 9056 confirmed 25422
993 Undersized regulation 23763
993.128 (a) revised; interim 72912
993.347 Revised 3623
Revised 50428
997.30 Table amended; interim 56135
998.200 Table amended; interim 56135
999.600 Table amended; interim 56135

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1000 Revised 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Regulation at 64 FR 47899 eff. 1–1–00 70869
1000.52 Table correctly revised 73386
1001 Revised 47954
Regulation at 64 FR 47954 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47954 eff. 1–1–00 70869
1002 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1004 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1005 Revised 47960
Regulation at 64 FR 47960 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47960 eff. 1–1–00 70869
1006 Revised 47966
Regulation at 64 FR 47966 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47966 eff. 1–1–00 70869
1007 Revised 47971
Regulation at 64 FR 47971 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47971 eff. 1–1–00 70869
1012 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1013 Removed 47899

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1030 Revised 47978
Regulation at 64 FR 47978 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47978 eff. 1–1–00 70869
1032 Revised 47985
Regulation at 64 FR 47985 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47985 eff. 1–1–00 70869
1032.7 (b) suspended in part; eff. 12–1–99 through 12–31–99 70986
1033 Revised 47991
Regulation at 64 FR 47991 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47991 eff. 1–1–00 70869
1036 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1040 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1044 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1046 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1049 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1050 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1064 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1065 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1065.2 (a) suspended in part 4959
1068 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1076 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1079 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1079.7 (b) corrected; CFR correction 19034
(b) introductory text amended 25194
1106 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1106.6 Suspended in part; eff. 9–1–99 through 8–31–00 48083
1106.7 (b)(1) suspended in part; eff. 9–1–99 through 8–31–00 48083
1106.13 (d)(1) suspended; eff. 9–1–99 through 8–31–00 48083
1124 Revised 47998
Regulation at 64 FR 47998 eff. date delayed 53885
Statutory amendment 61776

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Chapter X—Con.

Regulation at 64 FR 47998 eff. 1–1–00 70869
1126 Revised 48004
Regulation at 64 FR 48004 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 48004 eff. 1–1–00 70869
1126.7 (d) introductory text and (e) introductory text stayed in part 61201
1126.13 (e)(1) and (3) stayed in part; (e)(2) stayed 61201
1131 Revised 48010
Regulation at 64 FR 48010 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 48010 eff. 1–1–00 70869
1131.7 (c) stayed in part; eff. 9–21–99 through 9–30–99 50749
(c) stayed in part 61204
1134 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
1135 Revised 48015
Regulation at 64 FR 48015 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 48015 eff. 1–1–00 70869
1137 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1137.12 (a)(1) stayed in part 61201
1138 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869
1138.7 (a)(1) and (c) introductory text stayed in part 61204
1138.13 (d)(1), (2) and (5) stayed in part 61204
1139 Removed 47899
Regulation at 64 FR 47899 eff. date delayed 53885
Statutory amendment 61776
Regulation at 64 FR 47899 eff. 1–1–00 70869

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.510 (b)(2) and (3)(ii) table revised 30238
1216 Added 20105
1216.1—1216.88 (Subpart A) Added 41256
1220 Referendum request 49349
1220.10—1220.46 (Subpart F) Added 45416
1230.110 (b) revised 44644
1260.141 (a) revised 3815

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1301.13 (e) revised 34514
1307.4 Redesignated as 1307.5; new 1307.4 added 23538
1307.5 Redesignated from 1307.4 23538
1308.1 Introductory text revised 23538
1308.2 Added 23538
1361.11 (a) and (b) revised; interim 18324
1381.4 (a) revised; interim 11756

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1407 Revised; eff. 1–3–00 67471
1430.500—1430.509 (Subpart D) Added 24934
1434 Added 10924
1437 Heading revised; interim 17272
1437.2 (f) and (g) revised; (h) added; interim 17272
1437.3 Amended; interim 17272
1437.4 (a) revised; interim 17272
1439 Authority citation revised 13498, 47360, 58768
1439.1—1439.12 (Subpart) Revised 13498
1439.101—1439.104 (Subpart) Removed 13499
1439.101—1439.108 (Subpart) Added 13500
1439.101 (c) amended; interim 47360

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

1439.201—1439.202 (Subpart) Removed 13499
1439.201—1439.209 Added; interim 47360
1439.301—1439.302 (Subpart) Removed 13499
Added; interim 58768
1439.401—1439.403 (Subpart) Removed 13499
1439.501—1439.504 (Subpart) Removed 13499
1439.601—1439.602 (Subpart) Removed 13499
1439.701—1439.702 (Subpart) Removed 13499
1439.800—1439.810 (Subpart) Removed 13499
1446.310 (c) added 48942
1446.311 (c) added 48942
1464.12 (g) added 66718
1464.13 (f) added 15295
1464.14 (f) added 15296
1464.15 Heading amended; (f) added 15296
1464.16 (f) added 15296
1464.17 (f) added 15296
1469 Added 10930
1464.101 (b) amended 2803
1477 Added 18554
1477.109 (a) and (k) amended; (m) added; interim 58769
1477.110 Correctly designated 35559

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530 Revised 7062
1550 Revised 52630

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1703 Authority citation revised 14356
1703.100—1703.112 (Subpart D) Revised 14357
1703.103 (a)(3) corrected 25422
1703.105 (c) and (e)(6) corrected 25422
1703.108 (a) corrected 25422
1703.120—1703.129 (Subpart E) Added 14360
1703.123 (a)(13) and (14) corrected 25422
(a)(5) revised 25423
1703.125 (b)(9) added; (i)(1) through (7) revised; (i)(8) through (11) removed 25423
1703.126 (a) corrected 25422
1703.127 (c)(1) and (3) corrected 25422
1703.130—1703.137 (Subpart F) Added 14366
1703.134 (l) corrected 25422
(g)(1) through (7) revised; (g)(8) through (11) removed 25423
1703.140—1703.147 (Subpart G) Added 14369
1703.140 Introductory text amended 25423
1703.141 (i) amended 25423
1703.142 (a) and (b)(4) revised; (b)(5) added 25423
1703.144 (c)(4), (d)(2), (3), (f)(2) and (4) corrected 25422
(g)(1) through (7) revised; (g)(8), (9) and (10) removed 25423
1703.145 (b) corrected 25422
1703.300—1703.313 Redesignated as Subpart H 14356
1710 Authority citation revised 33178
1710.106 (a)(1)(i) and (2)(i) revised; (a)(3) removed; (a)(4), (5) and (6) redesignated as (a)(3), (4) and (5) 33178
1710.250 (f) amended 33178
1721 Authority citation revised 72489
1721.1 Revised; eff. 2-11-00 72489
1728 Bulletin 14813, 17219, 42005
1735 Authority citation revised 50429
1735.14 (c) revised 50429
1753 Authority citation revised 16604
1753.1 (a) revised 16604
1753.2 Amended 16604
1753.3 (a) amended 16604
1753.5 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 16604
1753.6 (a) revised; (e) added 16605
1753.7 (c) and (e) revised 16605
1753.8 (a)(1), (11)(i), (ii) introductory text, (iii) introductory text and (12)(i) revised; (a)(11)(iv) added 16605
1753.11 (a)(3), (b) and (d) revised 16605

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Chapter XVII—Con.

1753.15 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1), new (5)(i) and (ii) revised; new (a)(2) added.....16605
1753.16 (b)(1) through (4) revised 16606
1753.17 (b)(1)(ii)(D) amended; (b)(1)(ii)(E) added; (c)(1)(i)(C) and (2)(i)(A) revised.....16606
1753.18 Added 16606
1753.25 (a), (c) and (d) revised.....16606
1753.26 (a) through (d) redesignated as (b) through (e); new (a) added; new (b)(1) revised 16606
1753.30 (b), (c)(2) and (3) revised 16606
1753.36 (g) revised.....16607
1753.37 (c) revised.....16607
1753.38 (a)(1)(i), (v), (2)(i) introductory text, (v), (b)(1), (3), (5), (e)(2) and (3) revised 16607
1753.39 (a), (e)(1), (2), (f) introductory text, (1)(ii)(A), (iii), (iv) and (g) revised; (e)(3) removed; (h) added 16608
1753.46 (c)(2) and (3) revised 16608
1753.47 (c) revised.....16609
1753.48 (a)(4) and (b) heading and (1) revised.....16609
1753.49 (b), (c)(2) and (3) revised 16609
1753.50 Removed.....16610
1753.58 (b), (c)(2) and (5) revised 16610
1753.68 (b)(2)(i) through (v), (4)(i), (ii), (c)(2) and (d)(3) revised 16611
1753.76 (a) revised.....16611
1753.77 Revised.....16612
1753.80 (b) revised.....16612
1753 Appendixes A through F removed.....16612
1755.26 Added.....6500
1755.27 Added.....6500
1755.28 Added.....6500
1755.29 Added.....6500
1755.30 Added.....6501
(c)(41) revised 53887
1755.93 Removed 6501
1755.217 Removed.....6501
1755.525 Removed.....6501
1780.7 (h) removed.....29946
1780.10 (b)(2) revised.....29946
1780.35 (c) revised.....29946
1780.39 (e)(2) and (f) introductory text revised 29946
1780.45 (a)(2) revised.....29946
1780.48 (b) introductory text revised.....29946
1780.49 (c)(4) and (d) revised 29946
1780.55 Revised.....29946
1780.57 (o) added.....29946
1780.94 (j)(3) revised 29947
1788 Revised.....2

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1922 Removed.....62568
1924.1—1924.50 (Subpart A) Exhibit D amended.....48085
1940 Authority citation revised 24480
1940.560 Regulation at 63 FR 39458 confirmed.....32371
1940.579 Revised 24480
1941 Authority citation revised 62568
1941.25 (a) introductory text amended 62568
1943.25 (c)(3) removed; (c)(4), (5) and (6) redesignated as (c)(3), (4) and (5); (c)(1) and new (3) amended 62568
1943.75 (c)(3) removed; (c)(4), (5) and (6) redesignated as (c)(3), (4) and (5); (c)(1) and new (3) amended 62568
1944.153 Amended 24480
1944.157 (a)(1) and (3) revised.....24480
1944.160 Added.....24480
1944.164 (b) revised; (d) introductory text and (1)(i) amended 24480
1944.169 (a)(1) revised 24480
1944.170 Heading, introductory text, (a) and (b) revised; (c) redesignated as (f); new (c), (d) and (e) added; new (f)(5)(i), (ii)(B) and (C) amended; new (f)(7) removed 24480
1944.151—1944.200 (Subpart D) Exhibits A and A-1 amended 24482
1945.169 (p)(1)(iii) amended.....62568

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

1945.175 (c)(1) and (ii) amended; (c)(1)(iv) removed; (c)(1)(v) redesignated as (c)(1)(iv) 62568
1951.909 (f)(1) amended; (i)(3)(ii) revised 62568
1951.910 (a)(1) amended 62568
1951.914 Heading and (b) introductory text revised; (h) added; interim 19865
1951.901—1951.950 (Subpart S) Exhibit A amended 62972, 62973
1951.951 Amended; interim 393
1951.952 Amended; interim 394
1951.953 (b) revised; interim 394
1951.954 (a)(1), (5), (7), (b)(2), (4) and (5) revised; interim 394
1955.10 (e) introductory text amended 62568
1955.66 (h)(2) revised 62568
1955.107 (a)(1) amended 62569
1965.12 (e) amended 62569
1965.13 (d) amended 62569
1965.25 (d)(1) amended 62569
1965.26 (a)(2) amended 62569
1965.27 (g)(5) and (h)(1) amended 62569
1980.1 Revised 7402
1980.6 (a) and (b) amended 7402
1980.11 Amended 7402
1980.13 (b) introductory text amended; (b)(4) introductory text revised 7402
1980.20 (a) introductory text amended 7402
1980.21 Revised 7402
1980.22 (a) revised; (b) introductory text and (3) amended 7402
1980.46 Removed 7402
1980.60 Heading, (a) introductory text, (1), (6), (7), (9) through (12), (b) and (c) amended 7402
1980.61 (a)(2) and (c) removed; (a)(3) and (d) through (h) redesignated as (a)(2) and (c) through (g); heading, (a)(1), new (2), (b)(1), (3), (4), new (c) and new (d) amended 7402
1980.61 (f) and (g) amended 7403
1980.62 Amended 7403
1980.63 (a) amended 7403
1980.64 (a) and (b) amended 7403
1980.65 Amended 7403
1980.66 Amended 7403
1980.67 (a) and (b) amended 7403
1980.68 Amended 7403
1980.83 Regulation at 56 FR 8259 confirmed 7378
(a) amended 7403
1980.84 Heading, (b)(1)(iv), (v) and (4) amended 7403
1980.100 Regulation at 56 FR 8260 confirmed 7378
1980.1—1980.100 (Subpart A) Regulations at 56 FR 8261 and 8263 confirmed 7378
1980.101 Regulation at 56 FR 8264 confirmed 7378
1980.110 Regulation at 56 FR 8264 confirmed 7378
1980.113 Regulation at 56 FR 8264 confirmed 7378
1980.115 Regulation at 56 FR 8264 confirmed 7378
1980.122 Regulation at 56 FR 8264 confirmed 7378
1980.124 Regulation at 56 FR 8264 confirmed 7378
1980.125 Regulation at 56 FR 8264 confirmed 7378
1980.145 Regulation at 56 FR 8264 confirmed 7378
1980.175 Regulation at 56 FR 8264 confirmed 7378
1980.200 Regulation at 56 FR 8264 confirmed 7378
1980.101—1980.200 (Subpart B) Regulations at 56 FR 8265, 8266 and 8271 confirmed 7378
Appendixes D through L removed 7403
1980.340 Regulation at 56 FR 8271 confirmed 7378
1980.354 Regulation at 56 FR 8271 confirmed 7378
1980.424 Regulation at 56 FR 8271 confirmed 7378
1980.451 Regulation at 56 FR 8271 confirmed 7378
1980.452 Regulation at 56 FR 8271 confirmed 7378
1980.628 Regulation at 56 FR 8271 confirmed 7378
1980.646 Regulation at 56 FR 8271 confirmed 7378
1980.648 Regulation at 56 FR 8271 confirmed 7378
1980.801 (b) amended 28336
1980.802 Amended 28336
1980.805 Amended 28336
1980.813 (a)(2), (b)(1) and (2) removed; (a)(3), (b)(3) and (4)

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 7 Chapter XVIII—Con.

redesignated as (a)(2), (b)(1) and (2); (a) introductory text and new (2)(i) amended 28336
1980.814 (d) removed; (e) through (h) redesignated as (d) through (g) 28336
1980.844 Revised 28336
1980.853 Regulation at 56 FR 8271 confirmed 7378
2003 Authority citation revised 32388
2003.18 (b)(5)(i) amended 32388

Chapter XXXIV—Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

3400 Authority citation revised 34103
3400.1 Revised 34103
3400.7 (c) revised 34103
3400.20—3400.22 (Subpart C) Added 34104
3400.23 (Subpart D) Added 34104

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

Chapter XXXV Corrected 56399
3565 Regulation at 63 FR 39458 confirmed 32371
3565.5 (b) revised 32371
3565.6 Revised 32371
3565.8 Revised 32371
3565.9 (e) removed; (f) redesignated as (e) 32372
3565.13 Revised 32372
3565.52 Introductory text amended 32372
3565.53 (a) revised; (b) amended 32372
3565.103 (d)(9) added 32372
3565.303 (d)(8) amended 32372
3565.351 Introductory text revised; (a) introductory text amended 32372
3570.51—3570.100 (Subpart B) Revised 32388
3575 Added 28337

Chapter XXXVII—Economic Research Service, Department of Agriculture (Parts 3700—3799)

3700.3 (g) removed 40736

Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Part 4200—4299)

4284 Authority citation revised 71985
4284.601—4284.700 (Subpart G) Added; eff. 1-24-00 71986

Proposed Rules:

6 42288
27—209 (Ch. I) 8014
28 15937
29 ..... 25462, 39432
46 57405
47 4342
51 50774
54 38315
56 ..... 37886, 40522
70 37886
75 58358
210 ..... 38839, 46319, 48459
220 ..... 38839, 46319, 48459
225 ..... 38839, 46319, 48459
226 ..... 38839, 46319, 48459
246 ..... 32307, 48115
250 36978
251 36978
253 39432
254 39432
271 ..... 35082, 37454, 72196
272 ..... 35082, 70920, 72196
273 ..... 35082, 37454, 70920, 72196
274 ..... 8733, 28763, 35082
275 35082
276 ..... 35082, 37454
277 35082
278 ..... 35082, 59665
279 35082
280 35082
281 35082
282 35082
283 35082
284 35082
285 35082
300 2151
301 ..... 11392, 30250, 71322
318 47141
319 ..... 2151, 3049, 4347, 31512, 34141, 36608

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

340 16364
354 ..... 43103, 50331
360 72293
361 72293
400 ..... 25464, 52678
457 ..... 8015, 41336, 46599
505 44634
723 9452
729 66790
735 28938
770 59131
780 52678
782 2152
785 61034
900—999 (Ch. IX) 8014
905 46603
906 38597
915 ..... 13123, 45461
916 ..... 11346, 30252
917 ..... 11346, 30252
920 34144
923 60733
924 37888
928 48115
931 42858
932 ..... 4350, 42619, 57597
944 ..... 14642, 45461
948 37890
955 69419
959 66411
981 ..... 430, 31153, 43298
984 45208
985 69421
989 ..... 34571, 69204
993 ..... 3660, 41045
1000—1199 (Ch. X) 8014
1000 ..... 16026, 37892, 39092
1001 ..... 16026, 37892, 39092
1002 ..... 16026, 37892, 39092
1004 ..... 16026, 37892, 39092
1005 ..... 16026, 37892, 39092
1006 ..... 16026, 37892, 39092
1007 ..... 16026, 37892, 39092
1012 ..... 16026, 37892, 39092
1013 ..... 16026, 37892, 39092
1030 ..... 16026, 37892, 39092
1032 ..... 16026, 37892, 39092, 67201
1033 ..... 16026, 37892, 39092
1036 ..... 16026, 37892, 39092
1040 ..... 16026, 37892, 39092
1044 ..... 16026, 37892, 39092
1046 ..... 16026, 37892, 39092
1049 ..... 16026, 37892, 39092
1050 ..... 16026, 37892, 39092
1064 ..... 16026, 37892, 39092
1065 ..... 13125, 16026, 30256, 37892, 39092
1068 ..... 16026, 37892, 39092
1076 ..... 16026, 37892, 39092
1079 ..... 16026, 19071, 25851, 37892, 39092, 41047
1106 ..... 16026, 37892, 39092, 42860
1124 ..... 16026, 37892, 39092
1126 ..... 16026, 37892, 39092, 51083
1131 ..... 16026, 37892, 38144, 39092
1134 ..... 16026, 37892, 39092
1135 ..... 16026, 37892, 39092
1137 ..... 16026, 37892, 39092, 50777
1138 ..... 16026, 37892, 39092
1139 ..... 16026, 37892, 39092
1200—1299 (Ch. XI) 8014
1205 19072
1216 ..... 20107, 31736
1217 ..... 46754, 46765, 59669
1218 ..... 39790, 39803
1220 18831
1230 ..... 31158, 40783
1280 65665
1301 12769
1306 ..... 19084, 33027
1307 ..... 4353, 33027
1308 4353
1309 ..... 19084, 33027
1310 33027
1412 ..... 24091, 34154
1430 39442
1550 32156
1703 ..... 14401, 69937
1710 ..... 33228, 36609
1721 72575
1728 17219
1735 50476
1744 69946
1755 6577
1823 ..... 10235, 59131
1946 61034
1951 61221
1956 ..... 10235, 59131
1980 70124
2812 41049
3400 14348
3418 18534
3419 42576
3555 70124
4280 69937

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—599)

3 Authority citation revised.....56141
3.1 (b)(12) revised; interim 25766
(d)(2)(i)(D) removed; (d)(1-a), (2) and (3) redesignated as (d)(2), (3) and (4); (d)(2)(i)(E), (F) and (ii) redesignated as (d)(2)(i)(D), (G) and (iii); (a)(1) and new (d)(2)(i)(D) amended; (a)(7) and new (d)(2)(i)(E), (F) and (ii) added 56141
3.2 (b)(3) added 56142
3.23 (b)(4)(i) amended; interim 8487
3.42 (d) and (f) revised; interim 8487
3.43 (b)(4)(v), (vi) and (c)(2) revised; (c)(3) added 13666
103.1 (g)(3)(ii) amended; interim 27875
103.5a (a)(3) added 17944
103.7 (b)(1) amended; interim 27875
(b)(1) amended; eff. 1-14-00 69888
103.12 (a)(5) revised; interim.....8487
207.2 (d) amended; interim.....27661
208.1 Revised; interim 8487
208.2 (a), (b)(1)(ii) and (3) revised; interim 8487
208.4 (a) introductory text and (b)(2) revised; interim 8488
(b)(2) introductory text corrected 13881
208.5 (b)(1) introductory text revised; interim 8488
208.11 (b)(2) revised; interim.....8488
208.12 (a) revised; interim 8488
208.13 (c)(1) revised; interim.....8488
208.14 Heading revised; (f) added; interim 27875
208.16 (c) and (d) redesignated as (d) and (e); heading, (a), (b) introductory text and new (d) and (e) revised; new (c) and (f) added; interim 8488
208.17 Revised; interim.....8489
208.18 Redesignated as 208.19; new 208.18 added; interim.....8490
(b)(2) corrected 13881
208.19 Redesignated as 208.20; new 208.19 redesignated from 208.18; interim 8490
Revised; interim 8492
208.20 Redesignated as 208.21; new 208.20 redesignated from 208.19; interim 8490
208.21 Redesignated as 208.22; new 208.21 redesignated from 208.20; interim 8490
Revised; interim 8492
208.22 Redesignated as 208.23; new 208.22 redesignated from 208.21; interim 8490
208.23 Redesignated from 208.22; interim 8490
208.30 (b), (d), (e), (f)(1), (2) and (3) revised; interim 8492
208.31 Added; interim 8493
(e) and (g) introductory text corrected 13881
212.1 (b) revised; interim 7990
212.2 (d) amended; (g)(3) added; interim 25766
212.7 (a)(1)(iii) and (b)(2)(iv) added; (b)(2)(ii) and (iii) amended; interim 25766
212.15 (c) introductory text, (e) and (g)(4)(i) revised; (c)(3) added; interim 23177
214.2 (h)(16)(i) and (l)(16) revised; interim 29211
(h)(16)(i)(C) and (D) correctly added 30103
(f)(5)(i) and (j)(1)(ii) revised; (f)(5)(vi) and (j)(1)(vi) added; interim 32147
(j)(1)(vi) corrected 33346
Corrected.....36423
217.2 (a) amended; interim.....42007
235.1 (d)(4) revised; interim 8494
Regulation at 62 FR 47751 confirmed; (e) introductory text amended; (e)(1)(v), (4) and (5)(ii) revised 36561
(f)(1)(iii) revised; (f)(1)(iv) amended; (f)(1)(v) added; interim 68617
235.3 (b)(4) introductory text and (i)(D) revised; interim.....8494
235.6 (a)(1)(ii), (iii) and (2)(i) revised; interim 8494
235.8 (b)(4) added; interim 8494
238.1 (b)(2)(i) and (c)(1) revised; (f)(3) added; interim 8494

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

240 Authority citation revised.....25766, 27875
240.1 (a) revised; interim.....8495
(a)(1)(ii) amended; interim.....25766
240.11 (a)(1) amended; interim.....25766
240.20 (c) added; interim.....27875
240.31 Amended; interim.....25766
240.41 (a) amended; interim.....25767
240.58 Added; interim.....27875
240.60—240.70 (Subpart H) Added; interim.....27876
240.64 (d)(1) corrected.....33386
241.8 (d) revised; interim.....8495
241.11 (d)(1) revised; interim.....8495
244.1 Amended; interim.....4781
244.6 Revised; interim.....4781
244.10 Heading, (a), (b), (d)(2), (f)(2)(iii) and (4)(ii) amended; interim.....4782
244.12 (a) amended; interim.....4782
244.15 (a) amended; interim.....4782
244.18 (b) amended; interim.....4782
245 Authority citation revised.....25767
245.2 (a)(4)(ii) revised; interim.....29211
245.15 Added; interim.....25767
246.1 Amended; interim.....27881
246.2 Amended; interim.....27881
253.1 (f) revised; interim.....8495
270 Authority citation revised.....47101
270.3 (b)(1)(ii) revised.....47101
274a Authority citation revised.....47101
274a.2 (b)(1)(vi)(B) and (C) revised; interim.....6189
(b)(1)(vi)(B)(*2*) and (C)(*1*) corrected.....11533
274a.8 (b) revised.....47101
274a.10 (b)(1)(ii) and (b)(2) introductory text revised.....47101
274a.12 (c)(9) amended; interim.....25773
(c)(10) amended; interim.....27881
274a.13 (d) amended; interim.....25773
280 Authority citation revised.....47102
280.53 Added.....47102
299.1 Table amended; interim.....25773, 27881
299.5 Table amended; interim.....25774, 27881
312.1 (b)(3) amended.....7993
312.2 (b)(1) and (2) amended.....7993
499.1 Table amended.....7993
507 Added; interim.....8496

Proposed Rules:

1—599 (Ch. I).....54794
2.....17128
100.....68638
103.....26698, 71323
212.....28676
214.....32149, 71323
237.....28676
241.....37461
299.....71323

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

1 Policy statement.....38546
1.1 Suspended in part.....15920
2 Policy statement.....38546
3 Policy statement.....38546
3.6 Regulation at 63 FR 37482 confirmed.....19253
3.103 (c) added.....56147
3.111 Suspended.....15920
3.127 (d) added.....56147
50.1 Regulation at 63 FR 72122 eff. 2–1–99.....3340
52 Added; interim.....2549
Regulation at 64 FR 2549 eff. date extended.....37395
Notice.....62569
52.4 Revised.....13065
72.5 Revised.....41266
77.1—77.6 (Subpart A) Regulation at 63 FR 72122 eff. 2–1–99.....3340
77.1 Regulation at 63 FR 72122 eff. 2–1–99.....3340
Amended; interim.....56400, 58777
77.2 Revised; interim.....58777
77.3 Regulation at 63 FR 72122 eff. 2–1–99.....3340
Revised; interim.....58778
77.4 Revised; interim.....58778
77.5 Redesignated as 77.9; new 77.5 added; interim.....58779
77.6 Regulation at 63 FR 72122 eff. 2–1–99.....3340
Redesignated as 77.10; new 77.6 added; interim.....58779
77.7 Regulation at 63 FR 72122 eff. 2–1–99.....3340
Redesignated as 77.11; new 77.7 added; interim.....58779

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 9 Chapter I—Con.

77.8—77.18 (Subpart B) Regulation at 63 FR 72122 eff. 2–1–99 3340
77.8 Redesignated as 77.12; new 77.8 added; interim 58779
77.9 Redesignated as 77.13; new 77.9 redesignated from 77.5; interim 58779
77.10 Redesignated as 77.14; new 77.10 redesignated from 77.6; footnote 3 redesignated as footnote 5; interim 58779
77.11 Redesignated as 77.15; new 77.11 redesignated from 77.7; interim 58779
77.12 Redesignated as 77.16; new 77.12 redesignated from 77.8; interim 58779
Amended; interim 58780
77.13 Redesignated as 77.17; new 77.13 redesignated from 77.9; interim 58779
(a), (b) and (c) amended; interim 58780
77.14 Redesignated as 77.18; new 77.14 redesignated from 77.10; footnote 4 redesignated as footnote 6; interim 58779
(a)(1), (e)(1), (2), (3) and (f) amended; interim 58780
77.15 Redesignated as 77.19; new 77.15 redesignated from 77.11; interim 58779
(c)(2) amended; interim 58780
77.16 Redesignated as 77.20; new 77.16 redesignated from 77.12; interim 58779
(a)(1) and (b) amended; interim 58780
77.17 Redesignated as 77.21; new 77.17 redesignated from 77.13; interim 58779
(a)(1) and (b)(2) amended; interim 58780
77.18 Redesignated as 77.22; new 77.18 redesignated from 77.14; interim 58779
(b)(2) amended; interim 58780
77.20 (a)(2), (b) introductory text, (2), (i), (ii), (c), (d), (e) introductory text, (1) and (g)(2) amended; interim 58780
77.21 (a)(3) amended; interim 58780
78.1 Amended 15298
78.41 Regulation at 63 FR 44545 confirmed 395
Regulation at 63 FR 53781 confirmed 15298
(a) and (b) amended 36777
Regulation at 64 FR 36777 confirmed 67695
78.43 Regulation at 63 FR 44777 confirmed 5
Regulation at 63 FR 53782 confirmed 5
91 Effective date confirmation 41266
91.1 Regulation at 63 FR 72129 eff. 2–1–99 3340
91.7 Regulation at 63 FR 72129 eff. 2–1–99 3340
91.14 (a)(11) and (12) revised 29949
93 Effective date confirmed 34707
93.303 (d) amended 23179
93.308 (a)(3) revised 31967
(a)(2) revised 46259
93.403 (e) amended 23179
93.503 (e) amended 23179
94 Footnotes 5 through 14, 15 and 16 redesignated as footnotes 6 through 15, 17 and 18; new footnote 13 revised 38550
94.6 Heading revised; (c)(5) redesignated as (c)(6); new (c)(5) added 38550
94.8 Introductory text amended; interim 72913
94.17 Footnote 2 redesignated as footnote 16 and revised 38550
94.18 Regulation at 62 FR 66000 confirmed 55813
Regulation at 62 FR 61434 confirmed 55814
Regulation at 63 FR 71210 confirmed 67697
98 Effective date confirmed 34707
98.33 (d) amended 23179
101.2 Amended 43044
102.5 (e) amended 43044
105.1 (a)(1) amended 43044
112.5 (d)(2)(ii) amended 43044
112.6 (c) introductory text amended 43044
113.35 (f) amended 43044
113.70 Introductory text, (b)(1) and (3) amended 43044
113.113 (a)(2), (3), (c)(2)(iv)(A) and (B) amended 43044
113.209 (b)(1) and (d)(3) revised 45420
113.327 (d)(2)(ii) table amended 43045
113.331 (d)(3) amended 43045
113.332 (d)(3) amended 43045

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

113.451 (a) introductory text amended 43045
113.452 (b)(4) table amended 43045
116.5 (b) revised 43045
124.1 (b) amended 43045
124.22 (a) introductory text amended 43045
124.32 (a) amended 43045
124.40 (b)(3) amended 43045
124.43 Amended 43045
130.1 Amended; eff. 1-3-00 67698
130.2 Heading revised 67700
130.6 (a) table amended 67700
130.7 Heading and (a) introductory text revised 51422
(a) corrected 61689
130.8 (a) table amended; eff. 1-3-00 67698
(a) table amended 67700
130.9 Revised 51422
(a) introductory text revised; eff. 1-3-00 67698
130.10 Heading revised; (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added; new (b) footnote 4 removed 67700
130.14 Footnote 5 redesignated as footnote 4 67700
130.20 (a) footnote 6 redesignated as footnote 5; (a) table and (b)(1) table revised 67700
130.50 (b)(3)(i) table amended 67700

Chapter III—Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Chapter III Policy statement 2803
Technical correction 3340
301 Authority citation revised 744
301.2 Amended 744
303.1 (a)(2)(i) revised; (c) amended; eff. 1-25-00 56415
304 Heading revised; eff. 1-25-00 66545
304.2 (b) amended; eff. 1-25-00 56415
(c) and (e) removed; (d) redesignated as (c); (b) amended; eff. 1-25-00 66545
305.5 Removed; eff. 1-25-00 66545
307.2 (l) revised; eff. 1-25-00 56415
307.3 Revised; eff. 1-25-00 56415
307.7 (a) revised; eff. 1-25-00 56415
308 Removed; eff. 1-25-00 56415
310.20 Revised; eff. 1-24-00 72174
310.25 Heading, (a)(2)(ii) and (iii) revised; (a)(1) introductory text and (2)(v)(A) amended; eff. 1-25-00 66552
312.6 Introductory text, (a) and (3) revised; eff. 1-25-00 56415
314.2 Revised; eff. 1-25-00 56416
314.4 Revised; eff. 1-25-00 56416
317 Effective date confirmed 71989
317.2 (l) introductory text revised 744
317.20 (a) amended 53187
317.363 (b)(3) introductory text and (i) amended; interim 72492
318 Effective date confirmed 44644
318.1 (d) revised; eff. 1-24-00 72174
318.7 (c)(4) table amended 27904
Removed; eff. 1-24-00 72174
318.17 Revised 744
318.23 Revised 744
319 Effective date confirmed 44644
319.100 Amended; eff. 1-24-00 72174
319.104 (d) amended 27904
319.106 (d)(2) amended; eff. 1-24-00 72174
319.140 Amended; eff. 1-24-00 72175
319.145 (a)(4) and (b)(6) amended; eff. 1-24-00 72175
319.180 (a), (b) and (e) amended; eff. 1-24-00 72175
319.303 (a)(3) amended; eff. 1-24-00 72175
319.700 (a)(4) through (7), (9) and (10) amended; eff. 1-24-00 72175
320 Authority citation revised 745
320.1 (b)(4) removed 745
320.4 Amended 745
327.6 (e) amended; eff. 1-25-00 56416
(f) amended; eff. 1-25-00 66545
331.2 Table amended 37667
331.3 (c) revised; eff. 1-25-00 56416
331.6 Table amended 37667
335.1 (Subpart A) Removed; eff. 1-25-00 66545
335.10—335.13 (Subpart B) Removed; eff. 1-25-00 66545
335.20—335.21 (Subpart C) Removed; eff. 1-25-00 66545
335.30—335.32 (Subpart D) Removed; eff. 1-25-00 66545
335.40 (Subpart E) Redesignated as 335.40 (Subpart A); eff. 1-25-00 66545
350.3 (a)(2) amended; eff. 1-25-00 56416
362.2 (a) amended; eff. 1-25-00 56416

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 9 Chapter III—Con.

381 Authority citation revised.....745
Effective date confirmed.....71989
381.1 (b) amended.....745
(b)(39) removed; eff. 1-25-00.....56416
381.19 Removed; eff. 2-22-00.....72165
381.21 (a), (b) and (c) removed; (d) redesignated as (b); new (a) added; eff. 1-25-00.....66545
381.29 Removed; eff. 1-25-00.....66546
381.36 (c)(1)(iv), (vii), (viii), (x), (d)(1)(xi) and (e)(1)(ix) revised; (c)(1)(vi), (d)(1)(vi), (viii) and (e)(1)(v) amended; eff. 1-25-00.....56416
381.45—381.61 (Subpart H) Removed; eff. 1-25-00.....56417
381.94 (a)(2)(iii) and (5)(i) table 1 revised; (a)(2)(v)(A) amended; eff. 1-25-00.....66553
381.99 Revised; eff. 1-25-00.....56417
381.120 Amended; eff. 1-24-00.....72175
381.121c (a) amended.....53188
381.125 (b) introductory text amended.....746
381.135 Removed; eff. 2-22-00.....72165
381.145 (i) revised; eff. 1-24-00.....72175
381.147 Removed; eff. 1-24-00.....72175
381.150 Revised.....746
381.171 (b) amended; eff. 1-24-00.....72175
381.196 (b) amended.....49645
381.221 Table amended.....37667
381.224 Table amended.....37667
381.230—381.236 (Subpart W) Removed; eff. 1-25-00.....66546
381.463 (b)(3) introductory text and (i) amended; interim.....72492
390.1 Revised.....43903
390.2 Revised.....43903
390.3 Revised.....43904
390.4 Revised.....43904
390.5 Revised.....43904
390.6 Revised.....43904
390.7 Revised.....43904
390.8 Revised.....43904
391.2 Revised.....19868
Revised.....72494
391.3 Revised.....19868
Revised.....72494
391.4 Revised.....19868
Revised.....72494
391.5 (a) revised.....19868
416 Request for comment.....28351
416.1 Added; eff. 1-25-00.....56417
416.2 Added; eff. 1-25-00.....56417
416.3 Added; eff. 1-25-00.....56418
416.4 Added; eff. 1-25-00.....56418
416.5 Added; eff. 1-25-00.....56418
416.6 Added; eff. 1-25-00.....56418
417 Request for comment.....28351
424 Added; eff. 1-24-00.....72175
424.22 (c) added; eff. 2-22-00.....72165
500 Added; eff. 1-25-00.....66546

Proposed Rules:

1—199 (Ch. I).....23795
1.....4356, 10400
2.....28940
3.....4356, 8735, 10400, 26330, 30257, 38145, 48568
54.....66791, 70608
70.....27210
71.....13726
72.....17573
79.....66791, 70608
80.....13726
88.....27210
92.....34155
93.....2449, 16655
94.....7816, 8755, 27711, 34155, 37897, 38599, 50014
96.....37897
98.....34155
101.....52247
112.....13365
113.....10400, 14156
130.....28942, 37903, 51477, 52680
145.....43301
147.....43301
201.....15938
241.....39560
301.....70200
317.....9089, 26892, 29602
318.....9089, 26892, 29602, 70200
319.....26892
320.....70200
381.....9089, 26892, 29602
391.....10402, 61223

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

1.3 (a) revised.....48947
2.4 Amended.....48947
2.101 (a)(2) revised.....48947
2.110 (c) revised.....48948
2.206 (a) revised.....48948
2.701 (a)(1) revised.....48948
2.715 (c) revised.....29213
2.740 (b)(1) revised.....48948

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

2.750 (a) revised 48948
2.790 (d)(1) revised 15641
(a) introductory text and (c) revised 48948
2.802 (e) and (g) revised 48949
2.804 (b)(2) revised 48949
2.809 (a) revised 48949
2.1006 (a) corrected 15920
2.1007 (a)(2) revised; (a)(3) removed 48949
2.1203 (e) revised 29214
2.1205 (f)(2), (g), (k)(1)(i) and (ii) revised 29214
2.1211 (b) revised 29213
2.1231 (a)(1)(ii), (2) and (b) revised 48949
2.1301 (a) and (c) revised 48949
2.1303 Heading and introductory text revised 48949
2.1306 (c)(2) revised 48949
2.1330 (b) revised 48949
7.10 (b)(6) revised 48949
7.11 (d)(5) revised 48950
7.14 Revised 48950
7.17 (a) and (b) revised 48950
9 Implementation 24936, 39393
Technical correction 27041
9.21 Revised 48950
9.23 (a)(2) removed; (a)(1), (c), (d)(2) and (e) revised 48950
9.35 (e) removed; (a)(2), (5) and (b) introductory text revised 48951
9.45 (b) revised 48951
9.105 (b) revised 48951
9.107 (d)(1) revised 48951
9.108 (b) revised 48951
10 Authority citation revised 15641
10.1 Revised 15641
10.2 (d) revised 15641
10.5 Amended 15641
10.10 (d) introductory text revised 15641
10.12 (a) and (c) revised 15642
10.20 Revised 15642
10.21 Revised 15642
10.22 Revised 15642
10.23 (a) revised 15642
10.25 (a) and (c) revised 15643
10.27 (c) revised 15643
10.28 (n) revised 15643
10.31 Revised 15643
10.32 Revised 15644
10.33 Revised 15644
10.34 (a) revised 15645
10.35 Revised 15645
11.3 (a) revised 15645
11.7 Amended 15645
11.15 Revised 15645
11.16 Revised 15647
11.21 (c) and (d) revised 15647
20.1003 Amended; eff. 2-4-00 54556
20.1701 Revised; eff. 2-4-00 54556
20.1702 Revised; eff. 2-4-00 54556
20.1703 Revised; eff. 2-4-00 54557
20.1704 Revised; eff. 2-4-00 54557
20.1705 Revised; eff. 2-4-00 54557
20 Appendix A amended; eff. 2-4-00 54558
Appendix A corrected 55524
21.3 Amended; eff. 1-24-00 72000
25.5 Amended 15647
25.9 Revised 15647
25.11 Revised 15647
25.19 Revised 15648
25.21 (c) revised 15648
25.23 (a) revised 15648
25.25 Revised 15648
25.27 (b) revised 15648
25.31 (a), (b) and (c) revised 15648
25.33 (a) and (b) revised 15649
25.35 (b) revised 15649
25.37 (b) revised 15649
25 Appendix A revised 15649
31.5 (c)(11) added 42275
40 Appendix A amended 17510
50 Determination 42823
50.2 Amended; eff. 1-24-00 72001
50.30 (a)(5) revised 48951
50.34 (f)(2)(vii), (viii), (xxvi) and (xxviii) revised; eff. 1-24-00 72001
50.44 (c)(3)(iv)(C) revised 48951
50.49 (b)(1)(i)(C) revised; eff. 1-24-00 72001
50.54 (a)(3) revised; (a)(4) added 9034
(p)(3) and (t) revised; (p)(4) added 14817
50.55a (h) revised 17946
(h)(1) and (2) corrected 23763
(b)(2)(vii) removed; (b)(2)(viii), (ix) and (x) redesignated as (b)(2)(vii), (viii) and (ix); (b)(1)(i) through (v), new (2)(x) through (xvii), (3), (g)(4)(iii) and (6)(ii)(C) added;

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 10 Chapter I—Con.

introductory text, (b) introductory text, (1), (2) introductory text, (vi), (f) introductory text, (1), (3) introductory text, (iii), (iv), (4) introductory text, (g)(1), (3) introductory text, (i), (4) introductory text, (v)(C), (6)(ii)(B)(1) and (2) revised 51394
50.59 Revised (effective date pending) 53613
50.65 Introductory text and (a)(4) added; (a)(3) revised (effective date pending) 38557
(b)(1) revised; eff. 1-24-00 72001
50.66 (a) introductory text, (2), (f)(2) introductory text and (3) revised 48952
(b) introductory text, (4), (c)(2) and (3)(iii) revised (effective date pending) 53613
50.67 Added; eff. 1-24-00 72001
50.71 (e) introductory text revised (effective date pending) 53614
50.90 Revised (effective date pending) 53614
50 Appendixes O and Q amended 48952
Appendix A amended; eff. 1-24-00 72002
51 Notice 48507
Waste confidence decision review 68005
51.53 (c)(3)(ii)(J) revised; (c)(3)(ii)(M) removed 48506
51.62 (a) revised 48952
51.120 Revised 48952
51.123 (a) and (b) revised 48952
51 Appendix B amended 48507
52.8 (b) revised; eff. 1-24-00 72015
52 Appendixes A, B, O and Q amended 48953
Appendix C added; eff. 1-24-00 72015
54.4 (a)(1)(iii) revised; eff. 1-24-00 72002
55.8 (c)(4) revised 19878
55.40 Added 19878
55.49 Revised 19878
60.2 Amended 48953
60.18 (f) revised 48954
60.61 (d) revised 48954
60.63 (b) and (f) revised 48954
62.11 (b) revised 48954
62.22 (c) revised 48954
71 Response to comments and information request 57769
72 Authority citation revised 56121
72.1 Revised 33182
72.2 (e) removed; (f) redesignated as (e); new (f) added 33183
(b) revised 56121
72.3 Amended; eff. 2-1-00 53614
Amended 56121
72.4 Revised 33183
72.9 (b) revised; eff. 2-1-00 53615
Revised 56122
72.10 (a) introductory text, (c) introductory text, (1) and (e)(1) revised 56122
72.11 Revised 56122
72.24 (a) revised; eff. 2-1-00 53615
72.44 (d)(3) revised 33183
72.48 Revised; eff. 4-5-01 53615
72.56 Revised; eff. 2-1-00 53616
72.70 Revised; eff. 2-1-00 53616
72.75 (d)(2) revised; (d)(3) through (7) added 33183
72.80 (g) added; eff. 2-1-00 53616
72.82 (e) removed 17512
72.86 (b) revised; eff. 2-1-00 53616
(b) revised 56122
72.122 (h)(4) and (i) revised 33184
72.124 (b) revised 33184
72.140—72.176 (Subpart G) Revised 56122
72.140 (d) revised 33184
72.200 (c) revised 48954
72.212 (b)(2) and (4) revised; eff. 4-5-01 53616
72.214 Amended 48274, 51189
Corrected 50872
Regulation at 64 FR 51189 eff. date extended to 1-5-00 67700
Regulation at 64 FR 51189 withdrawn 72019
72.216 (c) revised 33184
72.236 Revised 56126
72.240 Revised 56127
72.242 Added 56127
72.244 Added; eff. 2-1-00 53617
72.246 Added; eff. 2-1-00 53617
72.248 Added; eff. 2-1-00 53617
73.55 (g)(4) revised 14818
(g)(4)(i) introductory text, (A), (B) and (ii) correctly designated 17947
73 Appendix C amended 14818
75.2 (b) revised 48954
76.7 (e)(1) revised 44649
76.9 (c) removed 44649

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

76.21 (a) revised 44649
76.33 Revised 44649
76.35 Heading and introductory text revised 44649
76.36 (a) revised 44649
76.37 Revised 44649
(a) revised 48955
76.39 (a), (b)(1) and (4) revised 44649
76.45 Revised 44649
76.60 (c)(2), (d)(2), (e)(1) and (2) revised 44650
76.62 (c) revised 44650
76.64 (d) revised 44650
76.91 Introductory text and (n) revised 44650
95 Heading revised 15649
95.5 Amended 15649
95.8 (b) revised 15650
95.9 Revised 15650
95.11 Revised 15650
95.15 (a) revised 15650
95.17 (a) introductory text and (1) revised 15650
95.19 Revised 15650
95.20 Revised 15651
95.21 Revised 15651
95.25 Heading, (a) introductory text, (2), (b), (c)(2), (f), (g), (h), (i), (j)(1), (6) and (7) revised 15651
95.27 Revised 15651
95.29 (a), (c)(2) and (4) revised 15652
95.33 (f) revised 15652
95.34 Added 15652
95.36 (a), (c) and (d) revised 15652
95.37 (c)(1)(iv) removed; (c)(1)(i) and (h)(2) revised 15652
95.39 (b)(3) and (c)(2) revised 15652
95.45 (a) revised 15653
95.47 Revised 15653
95.53 Revised 15653
95.57 Revised 15653
100.11 Amended; (c) added 48955
110.2 Amended 48955
110.70 (a) revised; (d) removed 48955
110.71 Revised 48955
110.72 Heading and introductory text revised 48955
110.112 (b) revised 48955
110.113 (c) revised 48955
170.2 (r) added 31469
170.3 Amended 31469
170.5 Revised 31469
170.11 (a)(11) removed; (a)(12) added 31469
170.12 Revised 31469
(a)(7)(ii) and (iii) correctly designated as (a)(7)(ii)(B) and (C); (a)(7)(ii)(A) correctly added 38816
170.20 Revised 31470
170.21 Amended 31470
170.31 Revised 31471
171 Heading revised 31475
171.9 Revised 31475
171.13 Revised 31475
171.15 Revised 31475
Heading corrected 38816
171.16 Revised 31476
(d) table corrected 38816
171.17 Revised 31480
171.19 Revised 31480

Chapter II—Department of Energy (Parts 200—699)

420 Nomenclature change; interim 46114
420.12 (c) amended; interim 46114
420.13 (a), (b)(3) and (7) amended; interim 46114
420.14 (a), (b)(1)(i), (2) and (3) amended; interim 46114
420.17 (b)(3) amended; interim 46114
420.18 (a), (b), (d), (e) introductory text, (3), (5) and (f) amended; interim 46114
420.19 (e) and (i) amended; interim 46114
420.33 (d) amended; interim 46114
420.35 (a) amended; interim 46114
420.38 Added; interim 46114
431 Added 54141
490 Authority citation revised 27174
490.2 Amended 26829
490.701—490.708 (Subpart H) Added 27174
600.3 Amended 56420
600.4 (c)(2)(ii) and (3) amended 56420
600.6 (c)(8) revised 56420
600.10 (b) revised 56420
600.13 Revised 56420
600.14 Removed 56420
600.24 (b) introductory text amended 56420
600.27 (b)(2)(i)(B) amended 4029

Chapter III—Department of Energy (Parts 700—999)

708 Revised 12870
708.40 Added; interim 37397
708.41 Added; interim 37397

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 10 Chapter III—Con.

708.42 Added; interim 37397
709 Added; eff. 1–18–00 70975
710.57 (f) through (i) redesignated as (g) through (j); new (f) added; eff. 1–18–00 70980
711.5 (b)(6) and (7) amended; (b)(8) added; eff. 1–18–00 70980
850 Added; eff. 1–7–00 68905

Chapter XVII—Defense Nuclear Facilities Safety Board (Parts 1700—1799)

1703 FOIA fee schedule 31115

Proposed Rules:

1 24531
2 ..... 8640, 9219, 24092, 24531, 29246, 55176, 59669, 59671
5 58568
7 24531
9 24531
19 ..... 8640, 9219, 24092
20 ..... 8640, 9219, 24092, 35090, 41050, 50015, 56274, 65665
21 ..... 8640, 9219, 12117, 24092
26 67202
30 ..... 3790, 8640, 9219, 18833, 24092, 40295, 45900, 57785
31 ..... 3052, 40295, 48333
32 ..... 3052, 23796, 40295
35 ..... 5721, 45907
39 19089
40 ..... 3790, 8640, 9219, 18833, 24092, 36617, 40784, 45900
50 ..... 57, 432, 3790, 3791, 5623, 9035, 12117, 22580, 24531, 31737, 36291, 36615, 39447, 44137, 44860, 45900, 45908, 45911, 53270, 56476, 59671
51 ..... 8640, 9219, 9884, 24092, 24531, 48117
52 ..... 24531, 27626
54 12117
60 ..... 8640, 9219, 24092, 24531
61 ..... 8640, 9219, 24092, 50778
62 24531
63 ..... 8640, 9219, 10405, 24092, 27935, 57409
70 ..... 1542, 3790, 3791, 13368, 18833, 41338, 45900, 45911, 46319
71 71331
72 ..... 1542, 24531, 36291, 41050, 45918, 45920, 45923, 51270, 51271, 59677
73 ..... 49410, 59684, 71331
75 24531
76 24531
100 24531
110 24531
113 58568
150 66115
170 ..... 15876, 18835, 40295
171 ..... 15876, 18835, 40295
430 ..... 1272, 1545, 37706, 52248, 61794, 66306
431 69598
432 33431
474 37905
707 11819
709 45062
710 ..... 44433, 45062
711 45062
810 35959
850 29811
905 62604
960 ..... 67054, 69963
963 ..... 67054, 69963

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100.8 (b)(4) introductory text and (iv) revised (effective date pending) 41272
Regulation at 64 FR 41272 eff. 11–2–99 59113
110.1 (g) added; (effective date pending) 37400
Regulation at 64 FR 37400 eff. 11–12–99 55125
110.7 (d) added (effective date pending) 42582
Regulation at 64 FR 42582 eff. 11–3–99 59606
114.1 (e) revised (effective date pending) 41273
Regulation at 64 FR 41273 eff. 11–2–99 59113
9003.3 Heading, (a)(1)(i) introductory text and (A) revised (effective date pending) 49362
Regulation at 64 FR 49362 eff. 6–1–00 61475
9003.5 (b)(1)(iv) and (3)(ii) revised (effective date pending) 49362
Regulation at 64 FR 49362 eff. 11–12–99 61475
9004.4 (a)(4) and (b)(8) revised (effective date pending) 49362
Regulation at 64 FR 49362 eff. 11–12–99 61475
9004.6 (a) and (b) revised (effective date pending) 42583
Regulation at 64 FR 42583 eff. 11–3–99 59606

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

9004.9 (d)(1) revised (effective date pending)....49362
Regulation at 64 FR 49362 eff. 11-12-99....61475
9007.1 (b)(2)(iii) and (c) revised; (d)(1) amended (effective date pending)....61780
9008.7 (c) added (effective date pending)....49363
Regulation at 64 FR 49363 eff. 11-12-99....61475
9008.14 Revised (effective date pending)....49363
Regulation at 64 FR 49363 eff. 11-12-99....61475
9008.52 (c)(1) introductory text revised (effective date pending)....49363
Regulation at 64 FR 49363 eff. 11-12-99....61475
9008.53 (b)(1) introductory text revised (effective date pending)....49363
Regulation at 64 FR 49363 eff. 11-12-99....61475
9032.11 Revised (effective date pending)....49363
Regulation at 64 FR 49363 eff. 11-12-99....61475
9033.11 (b)(1)(iv) and (3)(ii) revised (effective date pending)....49363
Regulation at 64 FR 49363 eff. 11-12-99....61475
9034.2 (b) revised; (c) introductory text amended; and (8) added (effective date pending)....32397
Regulation at 64 FR 32397 eff. 1-1-99....51423
9034.3 (c) amended (effective date pending)....32397
Regulation at 64 FR 32397 eff. 1-1-99....51423
9034.4 (a)(3)(iii), (b)(8), (e) heading, introductory text and (6)(i) revised (effective date pending)....49364
Regulation at 64 FR 49364 eff. 11-12-99....61475
(e)(1) and (3) revised (effective date pending)....61781
9034.5 (c)(1) revised (effective date pending)....49364
Regulation at 64 FR 49364 eff. 11-12-99....61475
9034.6 (a) and (b) revised (effective date pending)....42583
Regulation at 64 FR 42583 eff. 11-3-99....59606
9035.1 Revised (effective date pending)....49364
Regulation at 64 FR 49364 eff. 11-12-99....61475
9035.3 Added (effective date pending)....61781
9036 Heading revised (effective date pending)....49364
Regulation at 64 FR 49364 eff. 11-12-99....61475
9036.1 (b)(7) and (8) redesignated as (b)(8) and (9); new (b)(7) added (effective date pending)....42585
(b)(3) revised (effective date pending)....49365
Regulation at 64 FR 42585 eff. 1-1-99....59607
Regulation at 64 FR 49365 eff. 11-12-99....61475
9036.2 (b)(1)(vii) added (effective date pending)....42585
(b)(1)(vi) revised (effective date pending)....49365
Regulation at 64 FR 42585 eff. 1-1-99....59607
Regulation at 64 FR 49365 eff. 11-12-99....61475
9038.1 (b)(2)(iii) and (c) revised; (d)(1) amended (effective date pending)....61781

Proposed Rules:

2....10405
4....10405
5....10405
100....5200, 8270, 27478, 55440, 60360, 68951
102....55440, 60360
103....60360
104....55440, 60360
106....60360
107....60360
109....60360
110....31159, 39095, 60360
114....8270, 46319, 60360
116....60360
9003....8270
9004....8270
9007....8270
9008....8270
9032....8270
9033....8270

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 11 *Proposed Rules:—Con.*

9034.....8270
9035.....8270
9036.....8270
9038.....8270

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

1.3 (e)(1) revised.....60098
3.6 (c) revised.....10199
3 Appendix A amended.....10199
Regulation at 62 FR 68067 confirmed.....19037
4.6 Regulation at 63 FR 46120 confirmed.....56952
4.7 Regulation at 63 FR 46120 confirmed; (b)(1)(iii)(B) and (2) introductory text revised.....56952
4.31 Regulation at 63 FR 62929 confirmed; (b)(3) amended.....29216
4.32 Regulation at 63 FR 62929 confirmed; (b)(1)(vii) revised.....29216
4.34 (a), (c) introductory text, (1) and (2) amended.....29216
4.36 Regulation at 63 FR 62929 confirmed; (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added; new (c) heading revised.....29216
4.37 Regulation at 63 FR 62929 confirmed.....29216
(a)(1) revised; (a)(2)(i) and (ii) amended.....29217
4.38 Regulation at 63 FR 62929 confirmed.....29216
4.39 Regulation at 63 FR 62929 confirmed.....29216
4.40 Regulation at 63 FR 62929 confirmed.....29216
4.31—4.40 (Subpart C) Appendix A amended.....29217
5.3 (c) revised; (g)(2) amended.....60098
5.11 (i)(1) amended.....60098
5.33 (d)(2)(i) revised.....60098
5.35 (g)(3) amended.....60098
5.37 (d)(1)(i) and (3) amended.....60098
5.51 (c)(6)(i) amended.....60098
5.64 (b) amended.....60098
7 Heading revised.....60098
7.1012 (c)(2)(i) and (ii) revised; (c)(2)(iii) through (vi) added.....60098
7.1016 (a), footnote, (b)(1)(iii)(C), (iv) and (2)(iv) revised.....60099
7.1017 Introductory text revised.....60099
7.2005 (b)(4) revised.....60099
7.2008 (b) amended; (c) added.....60099
7.2020 Revised.....60099
7.2023 Added.....60099
7.4000 Heading, (a) and (b) revised.....60100
7.4003 Added.....60100
7.4004 Added.....60100
7.4005 Added.....60100
22.6 (a) revised.....71273
24.1 (d) added; eff. 1–19–00.....70990
24.3 (b) and (c) removed; (d) redesignated as (b) and amended; new (b)(6) revised; eff. 1–19–00.....70990
24.4 (a) amended; eff. 1–19–00.....70991
24.5 (a)(1), (3)(iii), (b)(1) and (2)(iii) revised; (a)(3)(v) and (vi) amended; (a)(3)(vii) removed; (a)(5) added; eff. 1–19–00.....70991
24.6 Heading, (a) introductory text, (5) and (8) revised; (a)(9) redesignated as (a)(10); new (a)(9) added; (b) removed; eff. 1–19–00.....70991
26.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q).....51678
26.3 (c) revised.....51678
26.5 Revised.....51678
26.6 Revised.....51678
26.7 (a) revised.....51678
30 Authority citation revised.....52641
30.2 Amended; interim.....52641
30.3 (a) revised; interim.....52641
30 Appendix C added; interim.....52641
Appendix B revised.....66704, 66705

Chapter II—Federal Reserve System (Parts 200—299)

201.2 (j) and (k) added.....41769
201.3 (e) added.....41769
201.6 (d) revised.....41770
201.7 Existing text designated as (a); (b) added.....41770
201.51 Revised.....48274, 66554
201.52 Heading revised; (c) added.....41770

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

203 Supplement I amended 70992
204.9 Revised 53619
208 Authority citation revised 10199
208.25 (f)(1) revised 71274
208 Appendix A amended 10199
Appendixes A and B amended 10200
Regulation at 62 FR 68067 confirmed; Appendix E amended 19037
Appendix E amended 19038
Regulation at 63 FR 55486 confirmed 66705
Appendix D–2 revised 66704, 66705
211.26 Regulation at 63 FR 26121 confirmed; (c)(2)(i)(C)(2) and (ii) revised 56952
211.604 Added 58781
212.2 (b) and (f) removed; (c) through (r) redesignated as (b) through (p) 51679
212.3 (b) and (c) revised 51679
212.5 Revised 51679
212.6 Revised 51679
212.7 (a) revised 51679
213 Supplement I amended 16613, 16614
220 OTC margin stock lists 8711, 46559
225 Appendix A amended 10203
Regulation at 62 FR 68068 confirmed 19037
Appendix E amended 19038
226 Dollar amount adjustment notice 60335
226 Supplement I amended 16616, 16617
229.19 (g) redesignated as (g)(1); new (g)(1) heading and (2) added 14577
229.36 (c) removed 59613
229.40 Existing text designated as (a); (a) heading and (b) added 14577
229 Appendix E amended 59613
230.6 (c) added; interim 49848
262.3 (b)(1)(ii) amended; (b)(1)(ii)(A) removed; (b)(1)(ii)(B) revised 53188
263.302 Reguation at 63 FR 55488 confirmed 66707

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.164 (b) revised 20142
308 Authority citation revised 62100
308.101 (b) revised 62100
308.102 (b) revised 62100
308.109 (b)(3) and (c) revised 62100
308.127 (a) amended 62100
308.132 (c)(3) heading and introductory text amended 62100
308.145 Amended 62100
308.148 (b) and (d) amended 62100
308.151 Revised 62100
308.152 (a) and (b) amended 62101
308.153 Heading amended 62101
308.155 (c)(2) amended 62101
308.156 Amended 62101
Corrected 72913
308.157 (a)(1) amended 62101
308.158 Revised 62101
308.160 (c)(2) amended 62101
308.161 Revised 62101
308.162 (a) revised 62101
308.163 (b) revised 62101
308.164 (b)(2) amended 62102
308.170 (a) and (b) revised 62102
308.171 (b) revised 62102
308.172 (b)(3) added 62102
308.174 Revised 62102
308.175 (a) amended 62102
308.176 (a) revised 62102
308.179 Amended 62102
325.3 (b)(2) revised 10200
325 Appendix A amended 10200
Regulation at 62 FR 68068 confirmed; Appendix C amended 19038
327.3 (c)(1) and (d)(1) amended; eff. 4–1–00 70181
327.4 (a)(1) introductory text and (d) revised; (e) amended; eff. 4–1–00 70181
327.9 (c)(4) amended; eff. 4–1–00 70181
330.3 (h) revised 15656
330.5 Heading, (b)(1), (4) heading and (i) revised 15656
330.9 (b) revised 15656
(a) revised 62102
330.10 (a) and (e) revised 15657
330.14 (a) revised 15657
331 Added; interim 30875
Regulation at 64 FR 30875 confirmed; Appendix A revised 50434
331.4 Amended 50434
331 Appendix B revised 50436
339.6 (a) revised 71274
343 Removed 62105
347.214 Regulation at 63 FR 26121 confirmed; revised 56952

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 12 Chapter III—Con.

348.2 (b) and (f) removed; (c) through (r) redesignated as (b) through (p) 51679
348.3 (c) revised 51679
348.5 Revised 51680
348.6 Revised 51680
348.7 (a) revised 51680
364 Appendix B revised 66704, 66706
364.101 Regulation as 63 FR 55488 confirmed 66706

Chapter IV—Export-Import Bank of the United States (Parts 400—499)

404 Revised 14374
405 Removed 14381

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

503.1 (b), (c) and (d) amended 69184
505.2 Amended 69184
505.3 Amended 69184
505.4 Amended 69184
541.3 Removed 46564
541.4 Removed 46564
541.6 Removed 46564
541.13 Removed 46564
541.17 Removed 46564
541.23 Revised 46564
545.103 Redesignated as 560.60 46565
557.11 (a) introductory text revised 69184
559.11 Amended 69185
560.60 Redesignated from 545.103 and revised 46565
560.3 Amended 46565
560.50 Added 46565
560.120 (a) amended; (b)(2)(ii) revised 46565
561.10 Removed 46565
561.11 Removed 46565
561.13 Removed 6503
561.20 Removed 46565
561.21 Removed 46565
561.23 Removed 46565
561.25 Removed 46565
561.32 Removed 46565
561.36 Removed 46565
561.47 Removed 6503
561.48 Removed 6503
563 Authority citation revised 2809
563.41 (b)(1)(v)(B) revised 69185
563.134 Removed 2809
563.140—563.146 (Subpart E) Revised 2809
563.171 Heading revised 69185
563b.3 (g)(2) amended 2810
563f.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q) 51680
563f.3 (c) revised 51680
563f.5 Revised 51680
563f.6 Revised 51680
563f.7 (a) revised 51681
567.1 Amended 10200
567.2 (a)(2)(ii) revised 10201
567.6 (a)(1)(vi) revised 10201
567.8 Revised 10201
570.1 Regulation at 63 FR 55488 confirmed; (c) revised 66708
570 Appendix B revised 66704, 66706
572.6 (a) revised 69185

Chapter VI—Farm Credit Administration (Parts 600—699)

602 Revised (effective date pending) 41770
Regulation at 64 FR 41770 eff. 10-6-99 54512
602.11 (e) corrected 45589
611.310—611.340 (Subpart C) Regulation at 63 FR 64843 eff. 2-11-99 6784
611.330 Regulation at 63 FR 64843 eff. 2-11-99 6784
611.340 Regulation at 63 FR 64843 eff. 2-11-99 6784
611.400 (c) and (d)(3) revised (effective date pending) 16618
Regulation at 64 FR 16618 eff. 5-11-99 25423
611.505 Regulation at 63 FR 64844 eff. 2-11-99 6784
611.1122 Regulation at 63 FR 64844 eff. 2-11-99 6784
612.2165 (b)(7) amended (effective date pending) 43048
Regulation at 64 FR 43048 eff. 10-13-99 55621
614 Authority citation revised 34517
614.4000 (e)(4) removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621
614.4010 (f)(1) revised; (f)(4) removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10-13-99 55621

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

614.4030 (c)(4) removed (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
614.4040 (c)(4) removed (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
614.4050 (d)(4) removed (effective date pending)....43049
Regulation at 64 FR 43049 eff. 10–13–99....55621
614.4232 Introductory text amended; (c) revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4325 (a)(3) amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4350—614.4360 (Subpart J) Heading revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4350 (a) and (c) revised (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4351 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4352 (a), (b)(1) and (2) amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4353 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4354 Amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4355 (a) heading and (b) heading amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4356 Redesignated as 614.4357; new 614.4356 added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4357 Redesignated as 614.4358; new 614.4357 redesignated from 614.4356 (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4358 Redesignated as 614.4359; new 614.4358 redesignated from 614.4357; (a) introductory text, (1), (3) and (b) introductory text amended; (b)(5) redesignated as (b)(6); new (b)(5) added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4359 Redesignated as 614.4360; new 614.4359 redesignated from 614.4358; (a) introductory text, (a)(1)(iii), (b), (c) and Table 1 amended (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4360 Redesignated as 614.4361; new 614.4360 redesignated from 614.4359; heading, (a), (b), (c) and (d) amended; (d) redesignated as (e); new (d) added (effective date pending)....34517
Regulation at 64 FR 34517 eff. 8–6–99....43049
614.4361 Redesignated from 614.4360 (effective date pending)....34517
(a) and (b) amended....34518
Regulations at 64 FR 34517 and 34518 eff. 8–6–99....43049
614.4460 (Subpart M) Revised (effective date pending)....43049
Regulation at 64 FR 43049 withdrawn....55621
614.4710 Introductory text, (a)(2) and (3) amended (effective date pending)....34518
Regulation at 64 FR 34518 eff. 8–6–99....43049
614.4720 (g) removed (effective date pending)....43049
Regulation at 64 FR 43049 confirmed; eff. 10–13–99....55621
614.4940 (a) revised....71274
615.5131 Revised (effective date pending)....28895

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 12 Chapter VI—Con.

Regulation at 64 FR 28895 eff. 7–15–99 38111
615.5133 Revised (effective date pending) 28895
Regulation at 64 FR 28895 eff. 7–15–99 38111
615.5134 (b) revised (effective date pending) 28896
Regulation at 64 FR 28896 eff. 7–15–99 38111
615.5140 Revised (effective date pending) 28896
Regulation at 64 FR 28896 eff. 7–15–99 38111
615.5141 Redesignated as 615.5142; new 615.5141 added (effective date pending) 28899
Regulation at 64 FR 28899 eff. 7–15–99 38111
615.5142 Redesignated as 615.5143; new 615.5142 redesignated from 615.5141 and revised (effective date pending) 28899
Regulation at 64 FR 28899 eff. 7–15–99 38111
615.5143 Redesignated as 615.5144; new 615.5143 redesignated from 615.5142 and revised (effective date pending) 28899
Regulation at 64 FR 28899 eff. 7–15–99 38111
615.5144 Redesignated from 615.5143 (effective date pending) 28899
Regulation at 64 FR 28899 eff. 7–15–99 38111
615.5170—615.5174 (Subpart F) Heading revised (effective date pending) 49961
Regulation at 64 FR 49961 eff. 10–21–99 56676
615.5171 Revised (effective date pending) 49961
Regulation at 64 FR 49961 eff. 10–21–99 56676
615.5174 Revised 28899
Regulation at 64 FR 28899 eff. 7–15–99 38111
616 Added (effective date pending) 34518
Regulation at 64 FR 34518 eff. 8–6–99 43049
618.8050—618.8060 (Subpart C) Removed (effective date pending) 34519
Regulation at 64 FR 34519 eff. 8–6–99 43049
618.8210—618.8270 (Subpart F) Removed (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10–13–99 55621
618.8320 (b)(7) removed; (b)(8), (9) and (10) redesignated as (b)(7), (8) and (9) (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10–13–99 55621
618.8330 Revised (effective date pending) 43049
Regulation at 64 FR 43049 eff. 10–13–99 55621
618.8440 (b)(6) amended (effective date pending) 34519
Regulation at 64 FR 34519 eff. 8–6–99 43049
620.5 (i)(1) amended (effective date pending) 16618
Regulation at 64 FR 16618 eff. 5–11–99 25423
621.7 (a)(2)(iii) amended (effective date pending) 34519
Regulation at 64 FR 34519 eff. 8–6–99 43049

Chapter VII—National Credit Union Administration (Parts 700—799)

701.2 Removed 57365
701.12 Removed 41035
701.13 Removed 41035
701.14 (b)(3) introductory text and (c)(2) revised; (b)(4) added; (d)(1) amended 28717
701.20 Removed 28719
701.21 (c)(7)(ii)(C) Revised 5929
Regulation at 63 FR 51799 confirmed 28729
(a) amended 57365
701.25 Added 19443
701.30 Removed 28718
701.34 (b)(7) revised; Appendix amended; eff. 1–26–00 72270
701.39 Added 56956
703.20 (c) amended 33187
(a) and (c) amended 57365
704.7 (d) amended 57365
707.4 Regulation at 63 FR 71574 confirmed 33010
707.5 Regulation at 63 FR 71574 confirmed 33010

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

707.6 Heading revised; (c) added; interim 66356
707.8 Regulation at 63 FR 71574 confirmed 33010
707.9 Regulation at 63 FR 71575 confirmed 33010
707 Regulation at 63 FR 71575 confirmed 33010
708a.4 (b) amended 28735
708a.5 (c) amended 28735
708a.9 (b) revised 28735
709.5 (e) amended 57365
711.2 (b) and (f) removed; (c) through (s) redesignated as (b) through (q) 66360
711.3 (c) revised 66360
711.5 Revised 66360
711.6 Revised 66360
711.7 (a) revised 66360
712.2 Heading revised; (a) and (c) amended; (d) and (e) added 33187
712.3 (a) and (b) amended; (c) revised 33187
(a) amended 57365
712.5 (p) added 33187
(p) redesignated as (q); new (p) added 66361
712.6 (b) revised; interim 33188
(a) designation and (b) removed 66361
713 Added 28720
713.2 Amended 57365
715 Added 41035
722.3 Regulation at 63 FR 51799 confirmed 28729
723 Regulation at 63 FR 51799 confirmed; revised 28729
723.1 (b)(3) amended 57365
741.3 (a)(3) amended 41040
741.4 (a), (g) and (j) amended; (b)(3) removed; (b)(2) redesignated as (b)(3); (b)(2), (4) and (5) added; (b)(1), (c) through (f) and (h) revised 56150
741.6 (a) amended; (b) redesignated as (d); new (b) and (c) added 41040
741.201 (a) and (b) amended 28721
741.202 (a) and (b) amended 41040
741.203 Regulation at 63 FR 51802 confirmed 28729
(a) amended 28733
745 Authority citation revised 19687
745.4 Revised; interim 19687
745.8 Revised; interim 19687
745 Appendix amended; interim 19687, 19688
760.6 (a) revised 71274
790.2 (b)(6)(ii) revised 17086
(b)(7) and (16) amended 57365
791.18 (e) amended 57365
792.54 (b) amended 57365
792.55 (a) amended 57365
792.56 (a) amended 57365
792.66 (b)(2) amended 57365
795.1 (b) revised (OMB numbers) 49080

Chapter IX—Federal Housing Finance Board (Parts 900—999)

902.6 Removed 30883
903 Added 30883
904.9 (f)(2) revised 5930
905 Added; interim 44106
Regulation at 64 FR 44106 confirmed 61016
910 Authority citation revised 55130
910.0 (b), (c) and (d) redesignated as (c), (d) and (e); (a) and new (c) revised; new (b), (f) and (g) added 55130
910.7 Added 55130
932 Authority citation revised 71277
932.16 Revised; interim 71277
932.17 (a), (b) and (c) revised; (f) added; interim 71278
932.18—932.19 (Subpart C) Removed; interim 71278
934.7 Heading amended; (a)(2) and (b) through (e) removed; (a)(1), (a)(3), (a)(4) and (a)(5) redesignated as (a) through (d); interim 71278
934.16 Revised; interim 71278
934.17 Revised; interim 71278
935 Authority citation revised 16621
935.1 Amended 16621
935.4 (d)(1) designation and (2) removed; interim 71278
935.5 (a)(2) removed; (a)(3) redesignated as (a)(2); interim 71278
935.9 (a) revised; (b) heading, (c) heading and (e) heading amended 16621
935.11 (b) revised 16621
935.15 (b) revised; interim 16791
935.16 Removed; interim 71278
960 Interpretation 12079
960.1 Amended; interim 24027
960.3 (b)(4) revised; interim 24027
960.5 (b)(10)(ii) revised 23015

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 12 Chapter IX—Con.

(b)(2)(ii)(B) amended; interim 24027
960.6 (b)(4)(iv)(D) and (F)(*8*) revised 23015
(b)(4)(iv)(D) and (F)(*1*) revised; interim 24028
960.7 Corrected 2550
960.9 Introductory text revised 23016

Chapter XI—Federal Financial Institutions Examination Council (Parts 1100—1199)

1102.300 Revised; eff. 1-12-00 72496
1102.301 Revised; eff. 1-12-00 72496
1102.303 (b) and (d) revised; eff. 1-12-00 72497
1102.304 Revised; eff. 1-12-00 72497
1102.305 Heading, (a) and (c) revised; eff. 1-12-00 72497
1102.306 Redesignated as 1102.309; new 1102.306 added; eff. 1-12-00 72497
1102.307 Redesignated as 1102.308; eff. 1-12-00 72497
Added; eff. 1-12-00 72500
1102.308 Redesignated from 1102.307; eff. 1-12-00 72497
1102.309 Redesignated from 1102.306; eff. 1-12-00 72497
1102.310 Added; eff. 1-12-00 72501

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1701—1799)

1730 Added; interim 34969
Regulation at 64 FR 34969 confirmed 50246
1780.1—1780.16 (Subpart A) Added; eff. 1-27-00 72510
1780.20—1780.35 (Subpart B) Added; eff. 1-27-00 72513
1780.50—1780.57 (Subpart C) Added; eff. 1-27-00 72518
1780.70—1780.75 (Subpart D) Added; eff. 1-27-00 72520
1780.70 Redesignated as 1780.80; eff. 1-27-00 72510
1780.71 Redesignated as 1780.81; eff. 1-27-00 72510
1780.80 Redesignated from 1780.70; eff. 1-27-00 72510
1780.81 Redesignated from 1780.71; eff. 1-27-00 72510

Chapter XVIII—Community Development Financial Institutions Fund, Department of the Treasury (Part 1800—1899)

1805 Revised; interim 59082

Proposed Rules:

1—199 (Ch. I) 25469
1 31749
5 31749
7 31749
21 15137
24 31160
201 28768
202 ..... 44582, 49688, 57409, 69963
205 ..... 49699, 57409, 69963
208 15310
211 15310
213 ..... 49713, 57409, 69963
225 15310
226 ..... 49722, 57409, 60368, 69963
229 ..... 9105, 37708
230 ..... 49740, 57409, 69963
326 14845
327 48719
340 51084
360 48968
361 ..... 42861, 42862
563 14845
584 5982
602 10954
611 ..... 60370, 72041
615 ..... 8018, 72041
650 61740
701 ..... 57, 58, 776, 40786, 52694
702 ..... 27090, 44663
704 40787
713 58
714 55868
715 776
721 66413
724 55871
741 ..... 58, 776, 28415
745 ..... 55871, 66812
747 ..... 27090, 44663
900—999 (Ch. IX) 52148
910 6819
917 ..... 52163, 66115
925 ..... 52163, 66115
930 ..... 52163, 66115
933 16792
934 16792

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

935.....16792, 44444, 71689
940.....52163, 66115
950.....66115
954.....52163, 66115
955.....52163, 66115
958.....52163, 66115
965.....52163, 66115
966.....52163, 66115
980.....52163, 66115
1102.....58800
1750.....18084, 31756, 32828, 56274

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

107.50 Amended 52645, 70995
107.230 (b)(3) revised.....70995
107.504 Revised.....70995
107.508 Removed.....70995
107.610 (e) added.....52646
107.710 (b)(1), (c)(1)(i) and (ii) revised; (d) and (e) redesignated as (e) and (f); new (d) added; new (f) amended 70995
107.720 (c)(2) revised.....70995
107.730 (d)(3)(iv) revised 70996
107.740 (a) revised.....70996
107.835 (d) redesignated as (e); new (d) added.....52646
107.850 (a) introductory text revised 52646
107.855 (g)(12) added 52646
107.865 (d)(3) and (4) amended; (d)(5) added; (e)(3) revised.....52646
107.1100 Heading and (b) revised 70996
107.1120 (d) through (g) redesignated as (e) through (h); new (d) added.....70996
107.1150 (a) revised; (b)(1) amended.....70996
107.1220 Revised 70996
107.1230 (d)(1) revised; (d)(2) and (3) redesignated as (d)(3) and (d)(4); new (2) added; new (d)(4) amended.....70996
107.1550 Introductory text amended; (b)(1) and (d) revised; (e) added.....70996
107.1575 (a)(1) and (b)(2) revised; (a)(4) added.....70997
107.1580 (a) heading, (1), (4) and (b)(2) revised.....70997
114.102 Revised.....40283
114.105 (b) and (c) revised.....40283
114.106 Revised.....40283
114.108 Revised.....40283
115 Authority citation revised.....18324
115.31 (a)(2) revised 18324
120.10 Amended 2117
120.111 Amended.....2117
120.131 Revised 2117
(a) corrected.....27445
120.414 Undesignated center heading and section redesignated from 120.430; undesignated center heading revised 6509
120.415 Redesignated from 120.431 6509
120.420 Undesignated center heading and section revised 6507
120.421 Added.....6508
120.422 Added.....6508
120.423 Added.....6508
120.424 Added.....6508
120.425 Added.....6508
120.426 Added.....6509
120.427 Added.....6509
120.428 Added.....6509
120.430 Section and undesignated center heading redesignated as 120.414 6509
120.430—120.435 Undesignated center heading and sections added 6509
120.431 Redesignated as 120.415 6509
120.453 (a) and (b) revised; (c) removed 6510
120.540 Heading and (d) revised; (b)(4) added.....44110
120.801 (a) amended; (c)(3) revised 2118
120.802 Amended.....2118
120.845 Revised.....26274
120.862 (b)(3) amended; (b)(7) revised 2118
120.870 (a)(1) revised; (c) added 2118
120.883 Revised 2118
120.884 (e) removed 2118
120.910 Revised 2118
120.920 Revised 2118
120.921 (d) and (e) redesignated as (e) and (f); new (d) added; new (e) and new (f) revised 2118
120.971 (a)(2) amended; (a)(3) and (d)(2) revised 2119

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 13 Chapter I—Con.

120.972 Redesignated as 120.973; new 120.973 added 2119
120.973 Redesignated from 120.972 2119
121 Authority citation revised..... 26280, 57370
121.103 (f)(3)(i) revised; interim 57370
121.201 Table amended 26280
121.302 (c) amended 48276
123.3 (a)(4) amended 13667
123.107 Amended 48276
123.400—123.407 Undesignated center heading and sections added 48276
125 Authority citation revised..... 57370
125.2 (a) and (b) redesignated as (b) and (c); new (a) and (d) added; new (b) revised; interim 57370
125.6 (g) added; interim..... 53772

Chapter III—Economic Development Administration, Department of Commerce (Parts 300—399)

Chapter III Revised; interim..... 5352
Regulation at 64 FR 5352 confirmed..... 69873
300.2 Amended 69873
301.1 (b) revised..... 69873
301.2 (e) and (h) revised..... 69873
301.3 (a), (b) and (d) revised; (e) added 69873
301.4 (b) revised; interim 32975
(c) revised; (d)(4) and (5) added 69873
302.4 (a)(1)(v), (vi) and (vii) redesignated as (a)(1)(vi), (vii) and (viii); new (a)(1)(v) added; (b) introductory text revised..... 69874
302.6 Introductory text and (c) revised..... 69874
303.1 (a)(1) and (b) revised..... 69874
303.2 (e) revised; (f) added 69874
303.3 Introductory text and (b) revised..... 69874
304.1 (c) redesignated as (d); (a) introductory text, (b) introductory text, (1) and new (d) revised; new (c) added 69874
304.2 (a) revised..... 69875
305.2 (c) removed; (d) redesignated as (c)..... 69875
305.5 Redesignated as 305.24; new 305.5 added 69875
305.6 Redesignated as 305.25; new 305.6 added 69875
305.24 Redesignated from 305.5..... 69875
305.25 Redesignated from 305.6..... 69875
305.7 Revised..... 69875
305.8 Added 69875
305.9 Added 69875
305.10 Added..... 69876
305.11 Added..... 69876
305.12 Added..... 69876
305.13 Added..... 69876
305.14 Added..... 69876
305.15 Added..... 69876
305.16 Added..... 69876
305.17 Added..... 69876
305.18 Added..... 69876
305.19 Added..... 69876
305.20 Added..... 69876
305.21 Added..... 69876
305.22 Added..... 69876
305.23 Added..... 69876
305.24 (a)(4) revised 69876
305.25 Revised 69877
305.26 Added..... 69877
306.3 (b)(1), (2), new (4) and (c)(1) revised; (b)(3) redesignated as (b)(4); new (b)(3) added 69877
306.4 Heading revised..... 69878
307.2 (f) removed; (d) and (e) revised..... 69878
307.3 (b) removed; (c) and (d) redesignated as (b) and (c); new (c) revised..... 69878
307.4 Redesignated as 307.5; new 307.4 added 69878
307.5 Redesignated as 307.6; new 307.5 redesignated from 307.4 69878
307.6 Redesignated as 307.7; new 307.6 redesignated from 307.5; (d) removed; (e) and (f) redesignated as (d) and (e)..... 69878
307.7 Redesignated as 307.9; new 307.7 redesignated from 307.6; (d) revised; (e) added 69878
307.8 Redesignated as 307.10; new 307.8 added 69878
307.9 Redesignated as 307.11; new 307.9 redesignated from 307.7 69878
307.10 Redesignated from 307.8..... 69878
307.11 Redesignated from 307.9; (c) removed; (d) redesignated

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

as (c); new (c)(1)(ii) and (2) introductory text revised.....69878
307.12 Added.....69879
308.1 (b)(1) revised.....69879
308.4 (b) revised.....69879
308.5 (b) revised.....69879
314.3 (d) revised.....69879
314.4 (b) revised.....69879
316.2 (a) amended; (e) introductory text, (1), (2), (4), (6) and (8) revised.....69879
316.11 Heading and (a) revised.....69879
317 Authority citation revised.....69879
317.1 (b) through (e) and (f) redesignated as (c) through (f) and (h); (a)(5) and new (c) through (f) and (h) revised; (a)(6), new (b) and (g) added; 69880
318.1 (a)(3) and (b) revised.....69881
318.2 (b) and (c) revised.....69881

Chapter IV—Emergency Steel Guarantee Loan Board (Parts 400—499)

Chapter IV Established.....57933
400.204 (c)(2) revised; interim.....72020
400.205 (a) revised; interim.....72020
400.206 (a) revised; (b) and (c) removed; (d) redesignated as (b); new (c) added; interim 72021

Chapter V—Emergency Oil and Gas Guarantee Loan Board (Parts 500—599)

Chapter V Established.....57847
500.204 (c)(2) revised; interim.....72024
500.205 (a) and (b)(8) revised; interim.....72024
500.206 (a) revised; (b) and (c) removed; (d) redesignated as (b); new (c) added; interim 72024

Proposed Rules:

107.....6256, 18375
113.....58568
114.....23027
120.....15942, 34745, 40310, 43636, 60735, 67205, 69964
121....2153, 15708, 23798, 40311, 40314, 55873, 57188
123.....36617
125.....2153
134.....3454
140.....3454

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

11 Technical correction.....7066
13 Policy statement.....19443
14 Authority citation revised.....32935
Technical correction.....47362
14.02 (a) revised.....32935
14.03 (a) and (f) revised.....32935
14.05 (b), (c) and (e) revised.....32935
14.11 (c) revised.....32935
14.20 (a) and (c) revised.....32936
14.21 Revised.....32936
14.22 (b) revised.....32936
14.24 Revised.....32936
14.26 (a) revised.....32936
14.27 Revised.....32936
14.28 Revised.....32936
17 Added.....32936
17.15 (f) corrected.....47362
17.39 (n) correctly added.....47362
21 Design standards availability 13501
Special FAA conditions.....52646
Policy statement.....65655
23 Special FAA conditions....6510, 39899, 49365, 49367, 66719, 66721
25 Special FAA conditions....3201, 14818, 25800, 27175, 27445, 38999, 44817, 47649, 51423, 51424, 54761, 66723, 67147, 67701, 67705, 69383
25.145 (c)(3) concluding text designated as (d); (c) introductory text and new (d) revised 6164
(d) corrected.....10740
27 Special FAA conditions.....27447
27.1 (a) revised.....45094
27.2 Introductory text, (a), (b), (c), (d) introductory text, (1) and (2) redesignated as (a) introductory text, (a)(1), (2), (3), (4) introductory text, (i) and (ii); new (b) added.....45094
27.25 (c) revised.....43019
27.602 Added.....46232
27.610 Heading revised; (d) added 45094

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 14 Chapter I—Con.

27.805 Added 45094
27.807 Revised 45094
27.853 (a) amended; (b) removed 45095
27.865 (c) and (d) redesignated as (e) and (f); undesignated center heading, heading, (a) introductory text, (b), new (e) and new (f) revised; new (c) and new (d) added 43019
27.1027 (a) through (d) redesignated as (b) through (e); new (a) added; new (c)(2) and new (d) amended 45095
27.1185 (d) added 45095
27.1187 Revised 45095
27.1305 (v) added 45095
Corrected 47563
27.1337 (e) revised 45095
29.25 (c) revised 43020
29.59 (c), (d) and (e) redesignated as (d), (e) and (c); 45337
29.62 (a) revised 45337
29.67 (a)(2) introductory text, (i), (3)(i) and (b) revised; (a)(2)(ii) removed; (a)(2)(iii) and (iv) redesignated as (a)(2)(ii) and (iii) 45337
(a)(3)(i) corrected 47563
29.77 Revised 45338
29.81 Revised 45338
29.85 Revised 45338
29.602 Added 46232
29.865 (c) and (d) redesignated as (e) and (f); undesignated center heading, heading, (a) introductory text, (b), new (e) and new (f) revised; new (c) and new (d) added 43020
29.1323 (c)(1) amended 45338
29.1587 (a)(4) and (5) amended 45338
33 Special FAA conditions 28900
34.1 Amended 5558
34.2 Amended 5559
34.31 (d) and (e)(3) revised 5559
34.60 (c) revised 5559
34.61 Revised 5559
34.62 (a)(2) revised 5559
34.64 Revised 5559
Corrected 60336
34.71 Revised 5559
Corrected 60336
34.82 Revised 5560
Corrected 60336
34.89 Revised 5560
Corrected 60336
36 Appendix G amended 55602
39.13 ..... 7, 395, 750, 752, 986, 987, 990, 1107, 1109, 1111, 1114, 1115, 1117, 1119, 1503, 1716, 2014, 2036, 2059, 2081, 2552, 2554, 2556, 2557, 2559, 2560, 2562, 2811, 2815, 2816, 2818, 2820, 2822, 3203, 3205, 3816, 3818, 3820, 3823, 3825, 3827, 4030, 4289, 4291, 4293, 4522, 4524, 4526, 4964, 5150, 5588, 5589, 5591, 5593, 5711, 6190, 6513, 6515, 6517, 6520, 6524, 6785, 6787, 6790, 6792, 7492, 7493, 7496, 7499, 7772, 7774, 7776, 8226, 8229, 8231, 8232, 8500, 8501, 8713, 9057, 9908, 9909, 9911, 9912, 10207, 10208, 10210, 10212, 10215, 10217, 10556, 10559, 10560, 10937, 11375, 11758, 11760, 11763, 11765, 12242, 12243, 12245, 12248, 12251, 12253, 13226, 13227, 13330, 13332, 13504, 13668, 13671, 13883, 13885, 13887, 13890, 13891, 13893, 14097, 14579, 14582, 14584, 14586, 14589, 14822, 14824, 14825, 15126, 15300, 15658, 15660, 15662, 15670, 15921, 16340, 16623, 16625, 16634, 16802, 16805, 16808, 16810, 16812, 17130, 17513, 17519, 17523, 17526, 17948, 17951, 17953, 17955, 17957, 17960, 17961, 17963, 17965, 17967, 18326, 18803, 18806, 18807, 19255, 19690, 19693, 19695, 19697, 19880, 19882, 19884, 20144, 20145, 20148, 20149, 20151, 20153, 20154, 22546, 22780, 22782, 22784, 23017, 23181, 23765, 23768, 24029, 24030, 24032, 24033, 24035, 24507, 24509, 25196, 25197, 25199, 25200, 25425, 25428, 25803, 25805, 26654, 26833, 26835, 26836, 26838, 26840, 27662, 27910, 27912, 28355, 28356, 28358, 28904, 28906, 29777, 29780, 29782, 29784, 30381, 30383, 31489, 31491, 31492, 31688, 31690, 31968, 32399, 32401, 32799, 33010, 33388, 33391, 33393, 33396, 33744, 33746, 33748, 34523, 34524, 34525, 34527, 34529, 34531, 34976, 34978, 34980, 34709, 35560, 36562, 36564, 36778, 37668, 37670, 37840, 37842, 38300, 38302, 38559, 38818, 38821, 39002, 39004, 39006, 39397, 39399, 40285, 40515, 40744, 41274, 41775, 41777, 41779, 42008, 42276, 42825, 43050, 43052, 43055, 43057, 43059, 43061, 43063, 43905, 44111, 44113, 44652, 44821, 44823, 44825, 45150, 45422,

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

45424, 45426, 45431, 45434, 45435, 45437, 45869, 45871, 46260, 47363, 47367, 47369, 47370, 47372, 47374, 47375, 47377, 47381, 47383, 47385, 47142, 47144, 47146, 47148, 47149, 47653, 47655, 47657, 47659, 47661, 47663, 48279, 48281, 48283, 48285, 48287, 49081, 49963, 49965, 49968, 49970, 49973, 49976, 49978, 49980, 50440, 50441, 50443, 50751, 51190, 51191, 51193, 51194, 51196, 51197, 51198, 51200, 51202, 51204, 51207, 51682, 51684, 51685, 51687, 52220, 52222, 52423, 52426, 52649, 53190, 53191, 53194, 53620, 53622, 53624, 53626, 54200, 54201, 54203, 54513, 54514, 54516, 54518, 54519, 54766, 54768, 54770, 54772, 54773, 54775, 55408, 55410, 55412, 55414, 55415, 55417, 55622, 55625, 56153, 56157, 56159, 56160, 56162, 56164, 56422, 56423, 56426, 56428, 56958, 56959, 56961, 56963, 56964, 57409, 57550, 57552, 57554, 57556, 57557, 57787, 57789, 57790, 57792, 57794, 57796, 57798, 57800, 57802, 57806, 57808, 57810, 57811, 57814, 57816, 57818, 57820, 57822, 57823, 57971, 57973, 58329, 59114, 59115, 59117, 59118, 59614, 59615, 60102, 60104, 60337, 61476, 61478, 61479, 61482, 61483, 61485, 61486, 61490, 61493, 61495, 61496, 61783, 61785, 62106—62108, 62110, 62975, 63173, 63175, 63177, 63180, 63182, 63184, 63189, 63191, 63568, 63576, 63583, 63591, 63599, 63607, 63614, 63622, 63630, 63637, 63645, 63653, 63660, 63668, 63676, 66367, 66369, 66761, 66763, 66767, 67708, 67473, 68619, 68622, 69392, 70183

Corrected.....395, 2428, 5093, 7994, 8233, 8234, 11533, 12743, 17086, 55815, 62976, 69393, 71636, 72271

Eff. 1–18–00 .....62571, 63185, 69388, 69390

Eff. 1–3–00.....66364, 66371

Eff. 1–14–00.....66365, 66749, 69186

Eff. 1–28–00.....66557

Eff. 1–4–00.....66753, 66755, 66757, 66759, 66764, 71002, 71010, 71013

Eff. 1–7–00.....67709, 67711

Eff. 1–11–00.....68278

Eff. 1–12–00 .....68624, 68627, 68629, 69396

Eff. 1–13–00.....69630, 72913, 72915

Eff. 1–24–00 .....70999, 71003, 71005, 71006, 71008, 71012

Eff. 1–25–00 .....71279, 71283

Eff. 2–22–00.....71281

Eff. 2–1–00.....72523, 72529, 72530, 72532, 72534

Eff. 2–14–00.....72525

Eff. 2–2–00 72917

Eff. 2–28–00.....72918

Eff. 1–21–00.....72920

61.57 (e)(3) added 23529

65.51—65.70 (Subpart C) Revised; eff. 4–6–00.....68923

65 Appendix A revised; eff. 4–6–00 68925

71.1.....8—13, 1717, 2119, 2120, 2563—2566, 2824, 2825, 2826, 2828, 3010, 3011, 3207—3210, 3397, 3398, 3829—3833, 3835, 3836, 4530, 4782—4784, 5151, 5713, 5931, 6795, 6797—6800, 7500, 7995, 8234, 8502—8509, 8714, 9268—9270, 10387, 10563, 10564, 10938—10940, 10942, 12084, 12255, 12256, 13333, 13506, 13672, 14306, 14890—14603, 15300, 15301, 15674—15680, 16024, 16341—16345, 17134, 19256—19260, 19262—19264, 19266—19268, 19885, 20155—20163, 23184, 24036, 24037, 24510, 24511, 25806, 26656, 27913, 27914, 28092—28097, 29786, 30242, 30889, 31115—31117, 31119, 31120, 32401, 32402, 33011, 33013—33015, 33189—33193, 34981, 34982, 36566—36568, 37672, 38303—38306, 36560, 38823, 38824, 38825, 39008, 39009, 39011—39016, 39404, 40286, 40746, 41780, 42277, 42588, 42591—42593, 43064, 43066, 43067, 43069, 43070, 43262, 43599, 43908, 44115, 44116, 44117, 44398—44340, 44826, 46115—46117, 46264—46267, 46815—46818, 47386, 47387, 47664, 47665, 48087, 48089, 48527, 48528, 48703, 49374—49376, 49647, 49648, 50246, 50247, 50445, 51209, 51430, 52426, 52427, 53888—53897, 53899, 53900, 54203—54206, 55131, 55815—55820, 56252, 56428, 56429, 56676, 57558, 58330, 58332, 58333, 60338, 60653, 60654, 61786, 63677, 63678, 66768, 68007, 68931, 68932, 72922

Corrected 3590, 3591, 4785, 5151, 6138, 10740, 12404, 17219, 17935, 18563, 19269, 19886, 22674, 23538, 23903, 24713, 28875, 29944, 32179, 32402, 35256, 38306, 41041, 42432, 43261,

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 14 Chapter I—Con.

44268, 44578, 46228, 46262, 47563, 47664, 48085, 48086, 48459, 48897, 49646, 49648, 49981, 50331, 52121, 53627, 60879, 63192, 63676, 68011, 70566, 71014, 71637
Added; eff. 9–16–99 through 9–15–00 50444
Eff. 2–24–00 ..... 59616, 63679, 63680, 65656, 66566, 67712—67716, 68009, 69631—69633, 70565, 71015
Eff. 4–20–00 ..... 68010, 70567—70569, 70571, 72923, 72925–72927
Eff. 4–24–00 72928
71.5 Amended; eff. 9–16–99 through 9–15–00 50444
71.31 Amended; eff. 9–16–99 through 9–15–00 50444
71.33 (c) amended; eff. 9–16–99 through 9–15–00 50444
71.41 Amended; eff. 9–16–99 through 9–15–00 50444
71.51 Amended; eff. 9–16–99 through 9–15–00 50444
71.61 Amended; eff. 9–16–99 through 9–15–00 50444
71.71 (b) through (f) amended; eff. 9–16–99 through 9–15–00 50444
71.79 Amended; eff. 9–16–99 through 9–15–00 50445
71.901 (a) amended; eff. 9–16–99 through 9–15–00 50445
73.21 39017
73.22 48090
73.25 ..... 3624, 12744, 48091
73.29 ..... 13506, 14604
73.32 23769
73.48 7778
73.52 60339
73.56 4534
73.57 14604
73.71 47666
73.87 13334
91 SFAR No. 50–2 amended 5154
Technical correction 7066, 47563
SFAR No. 84 added 15121
Interpretation 15912
SFAR No. 84 corrected 23395
SFAR No. 86 added 44816
Compliance date notification 51432
SFAR No. 82 removed 66097
Statutory changes 70571
91.1 (a) revised; (c) added 1079
91.11 Heading revised 1079
91.701—91.715 (Subpart H) Heading revised 1079
91.701 Revised 1079
91.702 Added 1079
91 Appendix D amended 66769
93.51 Revised 14976
93.53 Revised 14976
Corrected 17439
93.55 Revised 14976
(b), (c), (e) and (f) corrected 17439
93.57 Revised 14977
93.59 Revised 14977
93.61 Revised 14977
93.63 Revised 14977
93.65 Revised 14977
(d) corrected 17439
93.67 Revised 14977
93.68 Added 14978
93.69 Revised 14978
93.123 (a) table amended 53564
93.217 (a) introductory text, (5), (6), (8) and (10)(i) revised 53565
93.218 Added 53565
93.223 (c)(4) added 53565
93.225 (e) revised 53565
93.301 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93.305 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93.307 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93 Appendix A removed 14978
95 ..... 8235, 18564, 30890, 41275, 66097, 66101
97 Authority citation revised 73385
97.21—97.35 ..... 1718, 1725, 2829, 2831, 5155, 5595, 7779, 7780, 7782, 9913, 9915, 13335, 13337, 14827, 14829. 17273, 17527, 17529, 19698, 22549, 24284, 24285, 27664, 27665, 30893, 30896, 30897, 33398, 33400, 35563, 35565, 38562, 38563, 41282, 41284, 41285, 44118, 44120, 47383, 49378, 49379, 49650, 51433, 51434, 55133, 55134, 55136, 57560, 57561, 57563, 61017, 61019, 63193, 63195, 67474, 67477, 71016, 71018, 73388
121 SFAR No. 36 amended 960
Technical correction 3837, 7066
SFAR No. 50–2 amended 5154
Enforcement policy 32176
121.306 Added 1080
121.339 (a)(2) corrected; CFR correction 49981
121.580 Added 1080
121 Appendix M amended 46120

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

125 Heading revised 1080
Technical correction 7066
125.1 (a) revised; (d) added 1080
125.204 Added 1080
125.328 Added 1080
125 Appendix E amended 46121
135 SFAR No. 36 amended 960
Heading revised 1080
Technical correction 3837, 7066
SFAR No. 50–2 amended 5154
Enforcement policy 32176
135.120 Added 1080
135.144 Added 1080
139 SFAR No. 85 added; eff. 1–1–00 through 1–5–00 60077
145 SFAR No. 36 amended 960
Technical correction 3837

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

201.1 (b) amended 3212
204.2 (k)(2) revised 12085
212.10 (a) and (f)(1) amended 3213
221 Revised 40657
250.4 Removed 40674
254 Authority citation revised 70575
254.1 Amended; eff. 1–18–00 70575
254.2 Amended; eff. 1–18–00 70575
254.4 Amended 41783
Revised; eff. 1–18–00 70575
254.5 (b) amended; eff. 1–18–00 70575
254.6 Added; eff. 1–18–00 70575
255.12 Revised 15129
257 Added 12851
Regulation at 64 FR 12851 eff. date delayed to 8–25–99 38111
257.6 Added 46821
258 Added 12860
Regulation at 64 FR 12860 eff. date delayed to 8–25–99 38111
258.6 Added 46821
293 Added 40674
382.43 (b) revised 41783
399 Authority citation revised 12852
399.88 Removed 12852
Regulation at 64 FR 12852 eff. date delayed to 8–25–99 38111

Chapter III—Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

401 Authority citation revised 19613
Technical correction 29786
401.5 Revised 19613
411 Removed 19614
Technical correction 29786
413 Revised 19614
Technical correction 29786
415 Revised 19616
Technical correction 29786
417 Added 19624
Technical correction 29786

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1203 Authority citation revised 72535
1203.100 (a) revised 72535
1203.202 (g) revised 72535
1203.900 Revised 72535
1203.902 Introductory text and (a) revised 72535
1206 Revised 39404
1214.900—1214.912 (Subpart 1214.9) Removed; interim 19886
1214.1000—1214.1004 (Subpart 1214.10) Removed; interim 19887

Proposed Rules:

1—199 (Ch. I) 66591
1 56275
11 ..... 33142, 56708, 69856
21 ..... 35902, 58644
23 ..... 14401, 29247, 49413, 73437
25 ..... 14408, 25851, 26900, 27478, 32978, 39095, 43570, 43579, 43943, 43946, 45589, 58644, 67804, 69425
27 35902
29 35902
39 ..... 435, 438, 441, 443, 445, 785, 787, 1545, 1549, 1552, 2157, 2161, 2863, 3052, 3054, 3226, 4061, 4367, 4370, 4372, 4791, 5985, 6259, 6577, 7822, 7827, 7829, 7830, 8020, 8022, 8024, 8026, 8027, 8029, 8530, 8762, 9453, 9939, 10113, 10114, 10116, 10237, 10578, 10959, 11401, 12770, 12772, 13530, 13732, 13932, 13934, 13936, 15137, 16364, 16366, 16656, 18382, 18384, 18386, 18835, 18840, 18842, 18845, 19096, 19726, 19930, 19932, 19934, 19936, 19938, 19940, 19942, 20221, 20224, 20226, 20229, 20230, 22616, 22818, 23552, 24092, 24542, 24545, 24963, 24964, 25218, 26703, 27480, 27483, 28418, 28420, 29602, 29607,

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 14 *Proposed Rules:—Con.*

29814, 29965, 29966, 29969, 29972, 31518, 31520, 31523, 31756, 31758, 31760, 31762, 31764, 33229, 33232, 33435, 33437, 33439, 33441, 33443, 33445, 33447, 34168, 34170, 34575, 34577, 34579, 34581, 34582, 34584, 34586, 34588, 34590, 34746, 36307, 36618, 36623, 36624, 36626, 36628, 37046, 37465, 37471, 37911, 37913, 37915, 37917, 37918, 37920, 38150, 38152, 38154, 38156, 38157, 38316, 38319, 38322, 38325, 38329, 38332, 38335, 38338, 38341, 38345, 38348, 38351, 38355, 38358, 38362, 38365, 38368, 38371, 38374, 38378, 38379, 38382, 38383, 38603, 38605, 38606, 38844, 38846, 38848, 38850, 39097, 39100, 39102, 39014, 39448, 39450, 39944, 39946, 40319, 40789, 41841, 41842, 42050, 42052, 42054, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211, 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487, 45925, 45927, 45929, 46609, 47438, 47440, 47442, 47447, 47715, 48120, 48333, 48721, 48723, 49105, 49110, 49112, 49113, 49115, 49418, 49420, 49752, 50016, 50018, 50020, 50022, 50023, 50781, 51479, 51481, 51483, 51484, 51486, 52259, 52260, 52263, 53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195—55197, 55201, 55204, 55208, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57600, 57602, 57606, 57608, 58359, 59137, 59685, 60134, 60136, 60138, 60383, 60386, 60742, 60743, 60745, 60748, 60750, 61039, 61042, 61044, 61533, 61540, 61547, 61554, 61794, 61796, 61798, 61801, 62129, 62131, 62613, 62615, 62988, 62990, 62991, 62993, 62995, 63753, 63755, 63757, 63760, 63762, 63764, 65666, 66116, 66118, 66119, 66121, 66415, 66417—66419, 66422, 66424, 66426, 66816, 67206, 67525, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428, 69674, 69964, 69967, 70201, 71333, 71336, 71689, 71694, 71696, 72575, 72579, 72582, 72584, 72586, 72963, 72964, 72967, 73438, 73439, 73441

65.....18302, 42810

66.....42810

71.....60, 447, 1142, 1554, 1555, 1557—1565, 2449, 2450, 2452, 2453, 2605, 2864, 2866, 3228, 3664—3666, 4793—4800, 5093, 6579—6583, 6823, 7141—7143, 7558, 8031, 8167, 8271, 8272, 8445, 9940, 10238, 10239, 10241—10243, 10410, 10411, 10962, 11533, 11819, 11820, 12126, 13938, 14410, 15139, 15140, 15142, 15708, 16368—16371, 17717, 17983, 17984, 18392, 18481, 18584, 19310, 19312—19314, 19316, 19317, 19728, 23028, 23805—23809, 25220—25222, 26705, 26712, 26922, 28122, 28944, 29817, 30259—30261, 30928, 31525—31527, 32828, 33234, 34592, 35100, 36630, 36631, 37713—37717, 38385, 38386, 38607, 38609, 39949, 39950, 41054, 41357—41360, 41362, 41363, 42300, 42301, 44139—44142, 44144, 44865, 47449, 47451, 47718, 48123, 49754, 49755, 51273, 51587, 52475, 53956, 53957, 57609, 57610, 57995, 58362, 58363, 59687—59690, 60388, 61225, 61689, 61690, 61803, 61804, 62133, 63261, 63765, 63767, 65668, 66123, 66258, 67716, 67810, 69430, 69431, 70610—70612, 72969, 72970

73.....9455

91.....17293, 18302, 27160, 28770, 28945, 33142, 35902, 37018, 40791, 56708, 58644, 63140

93.....2086, 3055, 35963, 37296, 37304, 38851, 44145, 46155

105.....18302

107.....43321

108.....19220, 23554, 28945, 31686, 43322

119.....16298, 18302, 45090

121.....16298, 18766, 28770, 29813, 33142, 45090, 56708, 58644, 63140

125.....18766, 58644, 63140

129.....13880, 16298, 45090, 58644

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

135.....16298, 17293, 18766, 28770, 33142, 45090, 56708
139.....37026, 40791
145.....18766, 33142, 56708
146.....52695
147.....42810
183.....16298, 45090
193.....40472, 53958
234.....3883
254.....34592
255.....9457
298.....34747
382.....7833, 46611
389.....3229
400.....19626
401.....19626
404.....19626
405.....19626
406.....19626
413.....19626
415.....19626
417.....34316
420.....34316
431.....19626
433.....19626
435.....19626
450.....54448, 69628
1253.....58568
1260.....26923, 50334
1261.....71339
1267.....71339
1274.....50334

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

30.1 (c) added.....40976
30.7 Introductory text revised.....40976
30.39 Revised.....40976
30.60—30.66 (Subpart E) Added.....40977
30.70 (Subpart E) Redesignated as Subpart F;.....40977
30.80—30.83 (Subpart F) Redesignated as Subpart G.....40977
30.80 (d) revised.....24943
30.90—30.99 (Subpart G) Redesignated as Subpart H.....40977
30.91 (a) revised.....40981
30 Appendixes A, B and C added.....40981

Chapter II—National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

285.3 (c) amended.....59617
285.11 (a), (d) introductory text and (e) introductory text amended.....59617
285.12 (a) introductory text, (b) introductory text, (c), (d) and (e) amended.....59617
285.13 (a) and (d) amended.....59617
285.14 (a) introductory text and (d) amended.....59617
285.19 (a) and (c) amended.....59617

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

303 Heading and authority citation revised.....67150
303.1—303.14 Designated as Subpart A; heading added.....67150
303.15—303.21 (Subpart B) Added.....67150

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

710 Added.....73764
711 Added.....73768
712 Added.....73769
713 Added.....73772
714 Added.....73777
715 Added.....73780
716 Added.....73782
717 Added.....73801
718 Added.....73802
719 Added.....73804
720 Added.....73809
721 Added.....73810
734 Authority citation revised.....27140, 42011, 47105
734.2 (b)(1) and (4) amended.....13339
734.4 (b) revised.....13339
(a) revised.....42011
734.5 (a) revised; interim.....27141
(a) amended.....47105
736 Authority citation revised.....27141, 47105
736.2 (b)(7)(i) revised; interim.....27141
(b)(3)(ii)(A)(*1*) revised.....47105
738 Authority citation revised.....17970, 27141, 42011, 60340

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 15 Chapter VII—Con.

738.2 (d)(2)(i)(A) amended; interim 17970, 27141
738 Supplement No. 1 amended; interim 17970
Supplement No. 1 amended 28908, 42011, 60340
740 Authority citation revised 2430, 17970, 27141, 28906, 40108, 42011, 60340
740.2 (a)(5) amended 13339
740.7 (d)(4) redesignated as (d)(5); new (d)(4) and (5)(v)(A)(*8*) note added; new (d)(5)(iii), (v) introductory text and (A) introductory amended; new (d)(5)(v)(B) revised; interim 2430
Amended 28908
(b)(1), (c), (d)(2), (3), (5)(i) and (v) introductory text revised 42011
(d)(1) amended 60341
740.11 Heading and introductory text revised; (c) added; interim 27141
(a)(2) and Supplement No. 1 revised 40108
(a)(2)(ii), (iii), (c)(2)(i) and Supplement No.1 amended 42012
740.14 (e)(1)(iii) amended; interim 17973
740 Supplement No. 1 amended 28908, 60341
742 Authority citation revised 2430, 17970, 27141, 42011, 47105, 47667, 49381, 50248
742.2 (a) introductory text revised; interim 27142
Amended 28909
742.8 (a)(4)(ii) amended; interim 27142
742.9 (a)(3)(ii) amended; interim 27142
(b)(1)(vii) added; interim 47667
(b)(1)(iv) revised; interim 50248
742.10 (a)(4)(ii) amended; interim 27142
(b)(1)(vii) added; interim 47667
742.12 (b)(3)(i)(C) and (iv)(B) revised; interim 2431
(b)(2)(i), (3)(i)(A), (i)(B), (ii) and (c) amended 42012
742.14 Revised 13339
742.15 Second (b)(6)(v) redesignated as (b)(6)(vi) 3214
742.17 Added; interim 17973
742.18 Added; interim 27142
(b)(2)(i) removed; (b)(2)(ii) and (iii) redesignated as (b)(2)(i) and (ii); new (b)(2)(i)(A) revised; interim 49381
742 Supplement No. 4 amended 3214
Supplement No. 2 amended; interim 27143
Supplement No. 2 amended 47105
743 Authority citation revised 40108, 47105
743.1 (b) amended 3214
(c)(1) revised 40110
(c)(1)(v) revised 47105
744 Authority citation revised 1121
744.10 Revised 14605
744.13 Added; interim 1121
744.14 Added; interim 1122
744 Supplement No. 4 amended 14606, 28910
745 Added; interim 27143
Authority citation revised 49381
745.1 (b)(3) amended 28909
745.2 (a)(1) amended; interim 49381
745 Supplement No. 3 amended 28909
Supplement No. 2 amended; interim 49381
Supplement No. 3 amended; interim 49382
746 Authority citation revised 24018, 49383, 60340
746.2 (b)(4)(iii) added 25808
746.4 (b)(2)(ii)(G) revised 49383
746.9 Revised 24019, 60341
748 Authority citation revised 2430, 17970, 47105
748.8 (q) added; interim 27146
748.9 (b)(2)(i)(*1*) removed; (b)(2)(i)(*2*) and (*3*) redesignated as (b)(2)(i)(A) and (B); interim 2431
(a) introductory text revised; interim 17973
748.10 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) introductory text revised; interim 2431
748.14 Added; interim 17973
748 Supplement No. 6 added; interim 17974
Supplement No. 2 amended; interim 27146

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

Supplements No. 2 and 4 amended 47105
750 Authority citation revised 47106
750.7 (i) redesignated as (j); new (i) added 47106
752.3 (a)(8) removed; (a)(9), (10) and (11) redesignated (a)(8), (9) and (10) 13339
758 Authority citation revised 27141
758.3 (h)(2) amended; interim 27146
762 Authority citation revised 17970
772 Authority citation revised 1121, 5932
Amended; interim 1122, 5932
Amended 13339, 27146
774 Authority citation revised 5932, 17970, 27141, 47106, 48956
774 Supplement No. 1, Category 1 (ECCN 1B115, 1C111, 1C118, 1E001 and 1E101) amended; interim 5932
Supplement No. 1, Category 0 (ECCN 0A982, 0D001 and 0E001) amended 10854
Supplement No. 1, Category 1 (ECCN 1A002, 1A005, 1C001, 1D390, 1D993, 1E994 and 1E001) amended 10854
Supplement No. 1, Category 2 (ECCN 2B001, 2B003, 2B004, 2B005, 2B104, 2B996 and 23003) amended 10855
Supplement No. 1, Category 3 (ECCN 3A001, 3A002, 3B001 and 3C002) amended 10857
Supplement No. 1, Category 4 (ECCN 4A003, 4D001 and 4E001) amended 10860
Supplement No. 1, Category 5 (ECCN 5A991, 5D001 and 5E001) amended 10861
Supplement No. 1, Category 6 (ECCN 6A001, 6A003, 6A005, 6A007, 6A008, 6D001, 6D003, 6E001 and 6E002) amended
Supplement No. 1, Category 7 (ECCN 7D003) amended 10867
Supplement No. 1, Category 8 (ECCN 8A002, 8A992, 8D001 and 8E001) amended 10867
Supplement No. 1, Category 9 (ECCN 9A018) 10869
Supplement No. 1, Category 4 (ECCN 4D001, 4E001) corrected 12745
Supplement No. 1, Category 9 (ECCN 9A004) amended 13340
Supplement No. 1, Category 0 (ECCN 0A984, 0A985 and 0A987) amended; interim 17975
Supplement No. 1, Category 1 (ECCN 1C350) amended; interim 27146
Supplement No. 1, Category 1 (ECCN 1C351) amended; interim 27148
Supplement No. 1, Category 1 (ECCN 1C355) amended; interim 27149
Supplement No. 1, Category 1 (ECCN 1E001) amended; interim 27150
Supplement No. 1 corrected 27854
Supplement No. 1, Category 1 (ECCN 1E001) amended 28909
Supplement No. 1, Category 1 (ECCN 1C350) corrected 30103
Supplement No. 1, Category 3 (ECCN 3A001) amended 36780
Supplement No.1, Category 1 (ECCN 1C004 and ECCN 1C996) amended 40110
Supplement No.1, Category 2 (ECCN 2B001, 2B004, 2B005, 2D001 and 2E003) amended 40111
Supplement No.1, Category 2 amended 40113
Supplement No.1, Category 3 (ECCN 3A001, 3A002, 3A991, 3B001, 3B991, 3C002, 3E001, 3C992 and 3E002) 40117
Supplement No.1, Category 4 (ECCN 4A003) amended 40124
Supplement No.1, Category 4 amended 40125
Supplement No.1, Category 5 amended 40128
Supplement No.1, Category 5 (ECCN 5A001, 5A991, 5B001, 5C001, 5C9991, 5D001 and 5E001) 40129
Supplement No.1, Category 6 (ECCN 6A003, 6A005, 6C002 and 6C992) 40132
Supplement No.1, Category 7 amended 40135
Supplement No. 1 Category 0 (ECCN 0A984) and Supplement No. 2 amended 47106

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

TITLE 15 Chapter VII—Con.

Supplement No. 1, Category 0 (ECCN 0A018) amended; interim 47667
Supplement No. 1, Category 1 (ECCN 1C018, 1C992 and 1C998) amended; interim....47667
Supplement No.1 (ECCN 0A984) amended 48956
Supplement No. 1, Category 1 (ECCN 1C351 and 1C991) amended 54521
Supplement No. 1, Category 2 (ECCN 2B351) amended 54521
Supplement No. 1, Category 3 amended; interim (ECCN 3A001) 66373

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

801.11 Revised 59121
806.15 (i) amended 10389
806.16 Revised; eff. 1-3-00 67718

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers)...14, 3627, 4036, 14054, 29133, 36781, 39019, 42828, 52428, 54742, 55825
(b) table amended (OMB numbers); eff. 1-5-00 68247
(b) table amended (OMB numbers); eff. 1-10-00....68935
(b) table amended (OMB numbers); eff. 1-14-00....69893
922.180—922.187 (Subpart Q) Revised 66570

Chapter XX—Office of the United States Trade Representative (Parts 2000—2099)

2014 Added; interim 56430
2015 Added; interim; eff. 1-31-00 67153

Proposed Rules:

8a....58568
30....7412, 53861
280....69969
287....59691
303....46872
700—799 (Ch. VII) 66821
710....39194
711....39194
712....39194
713....39194
714....39194
715....39194
716....39194
717....39194
718....39194
719....39194
720....39194
721....39194
732....53854
740....53854
743....53854
748....53854
750....53854
752....53854
758....53854
762....53854
772....53854
801....37049
806....2454, 48568
922....19945, 27484, 30929, 35102, 38853, 63262, 72296

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

0.19 (b) revised 71284
2.32 Revised 46268
2.34 Revised 46269
2.41 (f)(3) removed; (f)(4) and (f)(5) redesignated as (f)(3) and (f)(4)....43599
3 Authority citation revised....46269
3.25 (f) revised....46269
4 Authority citation revised....46269
4.1 (b)(1) introductory text, (iii) and (5)(vii) amended....14830
4.8 (b)(4) and (6) revised....3012
4.9 (b)(6) revised....46269
4.11 (a)(1)(i)(A), (B), (iii)(A), (2)(i)(A), (B) and (ii)(A) revised; (a)(1)(i)(E) and (iii)(D) redesignated as (a)(1)(i)(F) and (iii)(E); new (a)(1)(i)(E), new (iii)(D) and (h) added 3013
(c) and (d) amended; (e) revised 32180
(d)(1) corrected 35256

CHANGES JANUARY 4, 1999 THROUGH DECEMBER 30, 1999

4.13 (c) and (i)(1) amended 3014
(m)(2) revised 69397
5.1 Amended 42594
23.0 Amended 33194
239 Announcement 19700
241 Removed 57374
245 Removed 30902
305.9 (a) revised 7785
305 Appendix H corrected 926
Appendix F revised 32403
Appendixes C and D5 removed; Appendixes C1 and 2 added; Appendix D6 redesignated as Appendix D5; Appendixes H and I amended; Appendix D4 revised; eff. 3-22-00 71021
312 Added; eff. 4-21-00 59911
700 Announcement 19700
701 Announcement 19700
702 Announcement 19700
703 Announcement 19700
901.3 Introductory text and (d) amended 34533
901.4 (b) revised 34533

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1000.12 (c) revised 66579
1000.27 Revised 66579
1000.28 Redesignated as 1000.29 66579
Added 66580
1000.29 Redesignated as 1000.30; new 1000.29 redesignated from 1000.28 66579
1000.30 Redesignated from 1000.29 66579
1051.1 (c) amended 48704
1145 Authority citation revised 71884
1145.17 Added; eff. 1-21-00 71884
1212 Added; eff. 12-22-00 71872
1213 Added; eff. 6-19-00 71899
1500.18 (a)(18) added; eff. 6-19-00 71907
1513 Added; eff. 6-19-00 71907
1615 Authority citation revised 34535
1615.1 Introductory text, (o) introductory text, (1) and (3) revised 2838
(c)(1) amended 34533
(o)(10) and (11) added; eff. 6-28-00 34535
(o)(10)(i) and (ii) amended; eff. 6-28-00 48704
(o)(11) amended; eff. 6-28-00 48705
1615.2 (a), (b) and (c) amended 34533
1615.4 Footnotes 2, 3 and 4 redesignated as footnotes 3, 4 and 5; eff. 6-28-00 34536
1615.64 (d) introductory text revised 2832
(a)(1) and (b) amended 34533
1616.1—1616.6 (Subpart A) Authority citation revised 34536
Corrected 61021
1616.2 Introductory text, (m) introductory text, (1) and (3) revised 2841
(m)(10) and (11) added; eff. 6-28-00 34536
(m)(10)(i), (ii) and (11) amended; eff. 6-28-00 48705
1616.5 Footnotes 2 through 6 redesignated as footnotes 3 through 7; eff. 6-28-00 34538
Footnotes 3 through 7 correctly redesignated as Footnotes 2 through 6 61021
1616.65 (d) introductory text revised 2833
1700.14 (a)(29) added; eff. 6-19-00 32803

Proposed Rules:

0—999 (Ch. I) 3668, 14156
4 57825
23 ..... 30448, 37051
241 ..... 13368, 18081
256 ..... 13369, 18081
259 19729
308 61
310 66124
312 ..... 22750, 34595, 40525
432 ..... 38610, 51087
436 57294
453 ..... 24250, 35965, 56717
460 48024
1000—1799 (Ch. II) 38387
1212 42302
1213 ..... 3456, 10245, 14158, 37051
1500 ..... 3456, 10245, 14158, 37051
1513 ..... 3456, 10245, 14158, 37051
1615 ..... 2867, 10963, 13126, 34597
1616 ..... 2867, 10963, 13126, 34597
1630 13132
1631 13132
1632 13137

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Fee schedules 19711
1.31 (b), (c) and (d) revised 28742
(b)(4) stayed; eff. 7–7–99 through 9–27–99 36569
1.61 Removed 24046
3 Advisory 39912
3.13 Revised 68016
3.14 Removed 68017
5 Fee schedules 19711, 30384
Authority citation revised 66380
5.3 Added 66380
5 Appendix A revised 29217
Appendix E added 29224
9 Order 39913
Advisory 39915
Technical correction 43254
9.9 (b)(1) introductory text, (3) and (4) revised 46270
10.1 (d) revised 30903
10.68 (a)(2) amended 30903
10.92 (b)(1) revised 30903
10.101 (a)(5)(iii) revised 30903
10.102 (e)(1) amended 30903
10.106 (b)(3) amended 30903
10.109 Introductory text, (a)(2)(ii) and (b) revised; (d) removed 43071
10 Appendix A amended 30903
12.408 Introductory text and (b) revised 43071
17.00 (b)(1) introductory text revised; (b)(1) designation, (2) and (c) removed; (b)(1)(i) and (ii) redesignated as (b)(1) and (2); (b)(3) added 24046
18.01 Revised 24046
30 Technical correction 30103
30.5 Introductory text and (e) added; (a) revised 28914
30.6 (b) revised 28914
30 Appendix C amended 50251
31 Fee schedules 19711
32.13 Revised 68017
60.41c Corrected; CFR correction 24049
150.1 (d) introductory text, (2), (e)(2) and (5) revised 24046
150.2 Revised 24047
150.4 Revised 24047
150.5 Added 24048
171.50 Heading, (a)(1) introductory text, (c) and (d) revised 46271

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.30–1 (e)(16) added 61400
200.30–3 (a)(67) added 42595
(a)(68) added 61400
(a)(6) amended 61442
200.30–5 (e)(2) revised 34540
202.3 (b)(2) revised 19451
210 Technical correction 61962
210.3–19 Removed; eff. 9–30–00 53908
210.3–20 (d) amended; eff. 9–30–00 53908
210.3–01 (h) amended; eff. 9–30–00 53908
210.3–02 (d) amended; eff. 9–30–00 53908
210.3–12 (f) amended; eff. 9–30–00 53909
210.10–01 (d) revised 73401
211 Staff accounting bulletin 45150, 67154, 68936
228 Technical correction 61962
228.305 Added 73401
228.306 Added 73401
228.310 Note 2 amended; eff. 9–30–00 53909
(b) introductory text revised 73401
229 Technical correction 61962
229.10 (a)(2) revised 61443
229.302 (a)(5) revised 73402
229.306 Added 73402
229.402 (a)(1)(ii) amended; eff. 9–30–00 53909
229.404 Amended; eff. 9–30–00 53909
229.512 (a)(4) amended; eff. 9–30–00 53909
229.601 (b)(10)(iii)(B)(*5*) amended; eff. 9–30–00 53909
229.1000—229.1016 (Subpart 229.1000) Added 61443
230 Authority citation revised 61449
Technical correction 61962
230.135 Revised 61449
230.144 (a)(3)(iv) and (v) amended; (a)(3)(vi) and (vii) added 61400
230.145 (b) revised 61449
230.154 Added 62545
230.162 Added 61450
230.165 Added 61450

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 17 Chapter II—Con.

230.166 Added 61450
230.175 (b)(2)(i) and (c)(3) amended; eff. 9–30–00 53909
230.405 Amended; eff. 9–30–00 53909
230.425 Added 61450
230.432 Revised 61451
230.434 (c)(3)(i) revised; (c)(3)(ii) amended; eff. 9–30–00 53909
230.463 (a) amended; eff. 9–30–00 53910
230.485 (f)(1) designation and (2) removed 27894
230.486 (f)(1) designation and (2) removed 27894
230.487 (d)(1) designation and (2) removed 27894
230.495 (e)(1) designation and (2) removed 27894
230.497 (k)(2)(ii) amended 27894
230.701 (c) introductory text, (d)(2)(ii) and (iii) amended 61498
230.800—230.802 Undesignated center heading and sections added 61400
232.10 (b) revised 27894
232.11 Amended 27894
232.13 (d) amended 61451
232.101 (a)(1)(iv) and (c)(11) amended 19471
(a)(1)(iii) note revised; (b)(7) removed 27894
232.102 (e) revised 27894
232.104 Added 27895
232.105 Added 27895
232.106 Added 27895
232.301 Revised 27898, 56431
232.302 (a) revised 27895
232.303 (a)(3) revised 27895
232.304 Heading, (a) and (b) revised; (c) amended 27895
232.305 Existing text designated as (a); (b) added 27896
232.306 (b) revised 27896
232.307 Existing text designated as (a); (b) added 27896
232.310 Revised 27896
239 Technical correction 61962
239.14 Form N–2 amended 27897, 46837
239.15 Form N–1 amended 27897
239.15A Form N–1A amended 27897, 45836
239.16 Form S–6 amended 27896
239.17a Form N–3 amended 27897, 45837
239.17b Form N–4 amended 27897
239.18 Form S amended; eff. 9–30–00 53910
239.24 Form N–5 amended 27897, 46837, 46838
239.25 Form S–4 amended 61451
239.31 Form F–1 amended; eff. 9–30–00 53910
239.32 Form F–2 amended; eff. 9–30–00 53910
239.33 Form F–3 amended; eff. 9–30–00 53910
239.34 Form F–4 amended; eff. 9–30–00 53911
Form F–4 amended 61451
239.36 Form F–6 amended; eff. 9–30–00 53912
239.42 Heading revised; (e) and (f) amended; (g) added 61402
Form F–X amended 61403
239.63 Form ID amended 56432
239.800 Added 61403
240 Technical correction 61962
240.3a12–8 (a)(1)(xviii) and (xix) amended; (a)(1)(xx) added 29553
Corrected 31493
240.3b–4 Heading and (c) revised; eff. 9–30–00 53912
240.3b–6 (b)(2)(i) and (c)(3) amended; eff. 9–30–00 53912
240.10b–13 Removed 61452
240.10b–18 (a)(15) and (d) added; (c) revised 52433
240.13a–10 (g)(4) amended; eff. 9–30–00 53912
240.13e–1 Revised 61452
240.13e–3 (g)(6) added 61403
(d), (e) and (f) heading revised; (g)(5) amended 61452
240.13e–4 (h)(7) amended; (h)(8) redesignated as (h)(9); (h)(8) and (i) added 61403
Heading, (a)(4), (c), (d) and (e) revised; (b) redesignated as (j); (a) introductory text, (3), (f)(12), (g) introductory text and new (j)(2)(i) and (ii) amended; new (b) added 61453
240.13e–100 Revised 61454
240.13e–101 Removed 61456
240.14a–3 (e)(1) and (2) introductory text revised 62546
240.14a–4 (f) amended 61456
240.14a–6 (b), (c), (e)(2) and (j) revised; (b) note removed; (o) added 61456
240.14a–11 Removed 61456
240.14a–12 Revised 61456
240.14a–101 Amended 27896, 61457, 73402

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

240.14c-3 (c) added 62547
240.14c-5 (b) and (d)(2) revised 61459
240.14c-7 Note 2 removed; Note 3 and Note 4 redesignated as Note 2 and Note 3 62547
240.14d-1 (c) through (f) redesignated as (e) through (h); new (f) amended; (c) and (d) added 61404
(g)(1) through (7) redesignated as (g)(2), (7), (5), (1), (9), (3) and (6); (b) introductory text and new (g)(1) amended; new (g)(4) and (8) added 61459
240.14d-2 Revised 61459
240.14d-3 (a)(1), (2), (ii), (3) introductory text and (c) amended; (b) revised 61460
240.14d-4 (b) and (c) redesignated as (c) and (d)(1); heading, (a) introductory text, (3) and new (d) heading revised; introductory text, (a) instruction, new (b) and (d)(2) added; new (d)(1) amended 61460
240.14d-5 (c)(1) revised 61460
240.14d-6 Revised 61460
240.14d-7 (a) redesignated as (a)(1); (a)(2) added 61461
240.14d-9 (d)(2) introductory text revised; (d)(2)(iii) added 61406
(a) through (f) redesignated as (b) through (g); heading and new (b) introductory text revised; new (a) added 61461
(b)(1), (2)(i), (3)(i), (c)(2), (d), (e)(1) introductory text, (2)(i) and (f)(4) amended 61462
240.14d-11 Added 61462
240.14d-100 Revised 61462
240.14d-101 Revised 61464
240.14e-1—240.14e-8 Note added 61465
240.14e-1 (c) revised 61465
240.14e-2 (d) added 61406
240.14e-5 Added 61465
240.14e-8 Added 61466
240.15b1-1 (c) revised 25147
240.15b3-1 (c) revised 25147
(b) removed; (c) redesignated as (b); new (c) added 37593
(c)(4) added 42595
240.15b6-1 Revised 25147
(e) added 42595
240.15b7-3T Added 42028
240.15Ba2-2 (d) revised 25148
(e) added 37594
(e)(4) added 42596
240.15Bc3-1 Revised 25148
(e) added 42596
240.15Ca1-1 (c) revised 25148
240.15Cc1-1 Revised 25148
240.15Ca2-1 (b) removed; (c) redesignated as (b); new (c) added 37594
(c)(4) added 42596
240.15Cc1-1 (d) added 42596
240.15d-10 (g)(4) amended; eff. 9-30-00 53912
240.17a-5 (g)(2) and (3) correctly added; CFR correction 39918
240.17a-9T Added 42029
240.17Ad-21T Added 42029
249 Technical correction 61962
249.220f Form 20-F amended; eff. 9-30-00 53912
249.446 Form ID amended 56432
249.480 Added 61406
249.501a Form BDW revised 25149
Existing text designated as (a); (b) added 42596
249 Appendix B—Form BD revised 37594
259.602 Form ID amended 56432
260 Technical correction 61962
260.0-11 (b)(2) and (c)(3) amended; eff. 9-30-00 53925
260.4d-10 Added 61406
269.7 Form ID amended 56432
270 Compliance date extension 24488
Authority citation amended 46834
270.8b-23 (a) revised 27896
270.8b-32 (c) revised 27896
270.8f-1 Revised 19471
270.15a-4 Revised 68023
270.17j-1 Revised 46834
270.30d-1 (f) added 62547
270.30d-2 Revised 62547
271 Interpretive releases 59877
274.5 Form N-5 amended 27897, 46837, 46838
274.11 Form N-1 amended 27897
274.11a-1 Form N-2 amended 27897, 46837
274.11b Form N-3 amended 27897, 46837
274.11c Form N-4 amended 27897
274.11A Form N-1A amended 27897, 46836
274.12 Form N-8B-2 amended 46838
274.101 Form N-SAR amended 27896
274.218 Revised 19471
274.402 Form ID amended 56432

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 17 Chapter II—Con.

275.203A–6 Added; eff. 5–3–99 15683
275.204–2 (a)(12)(i) and (13)(i) revised; (a)(12)(ii), (iii), (13)(ii) and (iii) redesignated as (a)(12)(iii), (iv), (13)(iii) and (iv); new (a)(12)(iii)(B), (13)(iii)(B) and (C) redesignated as (a)(12)(iii)(C), (13)(iii)(C) and (D); new (a)(12)(ii), (iii)(B), (13)(ii) and (iii)(B) added 46838
279.1 Form ADV amended; eff. 12–31–99 15683

Proposed Rules:

1 ..... 17439, 22588, 32829, 38159, 47151, 59694, 66428, 66432, 72587
3 47452
4 ..... 41843, 68304
5 ..... 19730, 40526, 66432
30 ..... 22588, 32829, 46613, 46618
31 66432
32 47452
34 65669
35 65669
146 52695
200 19732
210 55648
228 55648
229 55648
230 ..... 18481, 62548, 72590
239 59826
240 ..... 18393, 18481, 25153, 29608, 41056, 55648, 57996, 59826, 62548, 69975, 70613, 72590
243 72590
249 ..... 25153, 72590
250 71341
270 ..... 18481, 24489, 52476, 59826
274 59826
275 ..... 43556, 61226
279 61226

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

1b Authority citation revised 17097
1b.1 (d) added 17097
1b.21 Added 17097
2.1 (a)(1)(viii)(A) through (I) removed 26603
2.55 (a) and (b)(1)(ii) revised; (b)(4)(i) and (d) removed; (b)(4)(ii) redesignated as (b)(4) 26603
(a)(2) introductory text and (ii) revised 54535
2.69 Removed 26603
2.102 Removed 26603
2 Appendix A added 26603
3.4 Removed 44404
11 Appendix A revised 62572
35.8 Revised 72537
37.5 (c) redesignated as (f); new (c), (d) and (e) added 34124
37.6 Heading, (a) introductory text, (4), (5) and (e)(3)(ii) revised; (a)(6) added 34124
37.8 Added 34124
141 FERC Form No. 1 instructions 72537
153.3 Added 57390
153.8 (a)(7) revised 26604
153.12 Added 51220
153.21 (b) revised 26604
157.1 Added 51220
157.6 (a) and (b) heading revised; (b)(6) added; (b)(7) amended 26604
(a)(2) through (5) redesignated as (a)(3) through (6); new (a)(2) added; (b)(8) revised 54535
(d) added 57390
157.8 Revised 26605, 54536
157.9 Amended 26605
157.10 Revised 26605, 54536
157.14 (a) amended; (a)(6–a) and (14)(i) through (iv) revised; (a)(6–b), (6–c), (6–d), (12) and (14)(vii) through (xiii) removed 26605
157.16 (c)(1) revised 26605
157.17 (a) and (b) amended 26606
157.18 Introductory text, (f)(2) and (3) amended 26606
157.20 (c) introductory text and (d) introductory text amended; (c)(2), (d)(1) and (f) removed; (c)(3), (4), (d)(2), (3) and (g) redesignated as (c)(2), (3), (d)(1), (2) and (f); (b) and new (d)(2) revised 26606
157.21 Removed 26606
157.22 Added 51221

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

157.102 (a)(1) amended; (b)(1)(v) revised 26606
157.103 (j) amended 26606
(i) amended 54536
(k) added 57391
157.201 (a) amended 26606
157.202 (b)(2)(i), (ii)(A), (B), (D), (E), (4) through (7), (10) and (12) revised; (b)(13), (14) removed; (b)(2)(i)(F) added 26606
(b)(2)(ii)(G) correctly removed; first (b)(2)(ii)(F) correctly redesignated as (b)(2)(ii)(G) 37037
(b)(2)(i) amended; (b)(2)(ii)(D) and (12) revised 54536
(b)(6)(ii) and (11)(i) revised 57391
157.203 (b) and (c) amended 26607
(d) added 57391
157.204 (d)(2), (4), (5) and (e) removed; (d)(3) redesignated as (d)(2) 26607
157.205 (c) removed; (d) through (i) redesignated as (c) through (h); (a) introductory text, (b) introductory text and new (c) revised; (a)(2), (b)(5), (6) and new (d), (e)(2), (f) and (g) amended 26607
157.206 (b), (c), (e) and (h) removed; (d), (f) and (g) redesignated as (b), (c) and (d); new (b) introductory text added; new (b)(1), (5) and (6) revised; new (b)(3)(i), (ii) and (iii) amended 26607
(c) amended; (d) revised 54536
(b)(2)(xii) and (3)(iv) added 57392
157.207 (b) and (c) revised; (f) removed; (g) and (h) redesignated as (f) and (g) 26607
157.208 Heading, (e) introductory text, (2) and (f)(2) revised; (c)(6), (8) and (4) through (7) removed; (c)(7), (9), (10), (11), (e)(8) and (9) redesignated as (c)(6), (7), (8), (9), (e)(4) and (5); (a), (b), new (c)(9), (d) and (g) amended 26608
(f)(2) amended 54536
157.209 Added 26608
157.210 Removed 26608
157.211 (a), (b)(1) through (5), (c)(1), (2) and (3) revised; (c)(4) added; (d) removed 26608
157.212 Removed 26609
157.213 Removed 26609
157.215 (a) introductory text and (b)(1)(iii) revised 26609
157.216 (a) introductory text amended; (a)(1), (2), (b), (c)(1), (3), (d)(1), (2) and (4) revised; (c)(5) and (d)(5) added 26609
(a)(2) revised 54536
157.217 (a) and (b)(2) revised 26609
(a)(4) added 54537
157.218 (a) revised 26609
157.201—157.218 (Subpart F) Appendix I amended 26609
Appendix II revised 26610
Appendixes I and II amended 54537
284.10 (b)(1)(i) through (v) revised 17278
284.11 (a) and (c)(2) amended 54537
284.221 (d)(1), (f)(3) and (h)(3) amended; (d)(3) removed; (f)(4) revised 26610
284.262 Revised 26610
284.288 Removed 26611
341.0 (a)(7) revised 44404
341.2 (c)(1) revised 44404
341.6 (d)(3) revised 44404
342.3 (b) and (d)(3) revised 44404
343.2 (c) revised 17097
(c)(4) revised 44405
343.4 (a) revised 17097
346.2 (c)(7) revised 44405
357.3 Revised 44405
362 (Subchapter S) Removed 44405
375.303 Revised 73404
375.307 (a)(2), (8), (9), (17), (18), (b)(4), (5), (c), (e)(3) and (7) removed; (a)(3), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (d), (e)(4), (5) and (6) redesignated as (a)(2) through (9), (11), (12), (13), (c), (e)(3), (4) and (5); (e), (f) and (g) redesignated as (d), (e) and (f); (a)(1) and new (2), (3), (4) and (e)(3) revised; new (a)(10) added 26611
(h) added 51222
Revised 73404
375.308 Removed; new 375.308 redesignated from 375.314; heading and introductory text revised; (v) through (z) added 73406
375.310 Removed; new 375.310 redesignated from 375.311 73407

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 18 Chapter I—Con.

375.311 Redesignated as 375.310; new 375.311 redesignated from 375.312 73407
375.312 Redesignated as 375.311; new 375.312 redesignated from 375.313 and revised 73407
375.313 Redesignated as 375.312 73407
375.314 Redesignated as 375.308 73406
376 Authority citation revised 73407
376.105 (b)(2) revised 73407
376.204 (b)(2) revised 73407
376.206 Revised 73408
376.207 Revised 73408
380 Authority citation revised 54537
380.3 (c)(2) amended 26611
380.4 (a)(28) amended 26611
(a)(31) through (36) added 57392
380.8 Amended 54537
380.9 (b) amended 54537
380.12 Added 26611
(f)(2) heading added; (f)(2) introductory text amended; (k)(4)(ii) revised 54537
(c)(5) and (10) revised; (e)(6) and (7) redesignated as (e)(7) and (8); new (e)(6) added 57392
380.13 Added 26617
380.14 Added 26618
380.15 Added 26619
380 Appendix A revised 26619
Appendix A amended 54537, 57392
381.302 (a) amended 44653
381.303 (a) amended 44653
381.304 (a) amended 44653
381.305 (a) amended 44653
381.403 Amended 44653
381.505 (a) amended 44653
381.801 Amended 44653
Corrected 47107
385.101 (b)(3) and (4)(i) removed; (b)(4)(ii) redesignated as (b)(4) 44405
(b)(4)(ii) removed; (b)(4)(i) redesignated as (b)(4) 51234
385.102 (a) and (e)(2) revised 44405
385.206 (b) and (c) redesignated as (f) and (j); new (b), new (c), (d), (e), (g), (h) and (i) added; new (f) revised 17097
(g)(2) removed; (g)(1) introductory text, (i), (ii) and (g)(1)(iii) redesignated as (g) introductory text, (1), (2) and (3); (b)(7), (8), (9)(i), (c), (e)(3), new (g)(1) and (h)(1) revised 43608
385.208 Removed 44405
385.213 (c)(4) and (5) added 17099
(c)(4), (5)(ii), (iii) and (d)(2) introductory text revised 43608
385.218 Added 17099
385.502 (a)(1) and (2) revised; (a)(3) removed 44405
385.604 (d)(2) revised; (d)(3) and (g) removed; (d)(4), (5) and (6) redesignated as (d)(3), (4) and (5) 17099
385.605 (a)(4) and (e)(2) revised; (f) removed 17099
385.606 (d) redesignated as (d)(1); (d)(2) and (l) added 17099
385.915 Revised 51234
385.1012 Revised 51234
385.1403 Removed; new 385.1403 redesignated from 385.1404 44405
385.1404 Redesignated as 385.1403; new 385.1404 redesignated from 385.1415 44405
Correctly removed 56172
385.1405 Removed 44405
Reinstated 51234
385.1406 Removed 44405
385.1407 Removed 44405
385.1408 Removed 44405
385.1409 Removed 44405
385.1410 Removed 44405
385.1411 Removed 44405
385.1412 Removed 44405
385.1413 Removed 44405
385.1414 Removed 44405
385.1415 Redesignated as 385.1404 44405
Removed 51234
385.1902 (a) revised; (b) removed; (c) redesignated as (b) 44405
385.2001 (b)(3) revised 26621
(a)(1)(ii) and (b)(3) correctly revised 37037
(a)(1)(i) amended 54537
385.2010 (f) revised 31496
(i) added 62582
385.2201—385.2202 (Subpart V) Heading revised 51234
385.2201 Revised 51234
385.2202 Heading revised 51236

Chapter III—Delaware River Basin Commission (Parts 400—499)

430.13 (i)(3) revised 35566

Proposed Rules:

2 27717

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

35.....31390, 40533, 51933, 60390
101.....42304
141.....60140
153.....27717
157.....27717
281.....56982
330.....37718
357.....42623, 45931
380.....27717
385...29614, 33034, 37718, 42307, 53959, 60140
1317.....58568

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4.9 (f) amended.....43265
4.12 (a)(5) amended.....43265
4.61 (b)(3) amended.....43265
4.76 Added.....40986
4.82 (a) amended.....43265
4 Footnotes 112 and 113 removed.....43265
10.41 (d) amended.....61205
10.41b (b)(1), (2)(iv) and (4) amended.....43265
10.62 (a) amended.....16347
10.62b (c)(1) introductory text and (ii)(C) revised.....16347
12.8 (b) amended.....43265
12.104g (b) table amended.....17531, 67481
12.131 Existing text designated as (a); new (a) heading and (b) added;.....48092
19.12 (d)(3), (g), (h)(1) and (3) amended.....57565
19.17 (g) amended.....57565
19.19 (b) amended.....57565
24 Authority citation amended.....42031, 56437
24.1 Heading, (a) introductory text, (3)(i), (7), (b) introductory text, (3), (d) and (e) amended; interim.....56437
24.3 (b) amended; (e) revised; interim.....56437
24.3a Heading and (b)(2) revised; (a) amended; interim.....56437
24.11 Revised; interim.....56439
24.21 (b)(9) amended.....43266
24.23 (c)(3) revised.....42031
24.24 (g) amended.....43266
24.25 (a) amended; interim.....56439
24.36 (a) introductory text, (b) and (c) amended; (a)(1), (2) and (3) added; interim.....56439
101.1 Amended.....40987
102.20 (p) amended.....43266
112.41 Amended.....43266
113.38 (c)(4) amended.....43266
113.67 (a)(1)(ii) and (b)(1)(ii) amended.....48534
118.12 Amended.....43266
122.13 Amended.....18566
122.153 Revised.....53628
122.154 (b)(2) revised.....53628
122.162 (b) amended.....43266
132 Authority citation amended.....67483
132.15 (c)(1) amended; interim.....67483
132.16 Added; interim.....67483
133.26 Amended.....43266
133.46 Amended.....43266
141.64 Amended.....43266
141.68 (b) amended.....43266
141.90 (a) removed.....43266
141.103 Amended.....43266
141.113 (b) amended.....43266
143.21 (j) amended.....43266
144.37 (h)(2)(vi) amended.....43266
148.51 (a)(1) amended.....43267
151.12 Added.....48534
151.13 Revised.....48539
151.14 Amended.....48543
151.16 Added.....43611
159 Authority citation revised.....56440
159.4 Authority citation removed.....56440
159.6 Authority citation removed; (a), (b) introductory text, (c) and (d); interim.....56440
159.7 Authority citation removed.....56440
159.21 Authority citation removed.....56440
159.22 Authority citation removed.....56440
159.44 Authority citation removed.....56440
159.46 Authority citation removed.....56440
159.55 Authority citation removed.....56440
159.57 Authority citation removed.....56440
162.65 (c) amended.....43267
162.72 (b)(1), (2) and (3)(ii) amended.....43267

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 19 Chapter I—Con.

162.73 (a)(2)(i), (ii), (3)(i), (ii), (b)(1)(i), (ii) and (2) amended 43267
162.74 (c) amended 43267
162.79b Amended 43267
163 Appendix amended; interim 67483
173.6 Removed 43267
174 Authority citation amended 43612
174.11 (c) amended; interim 56441
174.12 (a)(2) amended; interim 56441
174.13 (a)(7), (8) and (9) amended 43267
174.21 (b) revised 43612
174.31 (a) and (b) amended; (c) added 43612
178.2 (b) table amended (OMB numbers) 16347, 16639
Table amended 40987, 43612, 48543
181.82 (b)(1)(ii) amended 43267
181.93 (b)(5)(i)(B)(4) amended 43267
192 Authority citation revised 16639, 40987
192.0 Amended 40987
192.1 Amended 16639
192.2 (a) amended; (b), (c) and (d) revised 16639
192.11—192.13 (Subpart B) Added 40987

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351.206 (c)(2) revised 48707
351.222 (b) and (c) revised 51240
Regulation at 64 FR 48707 eff. date corrected to 9-8-99 50553

Proposed Rules:

4 ..... 19508, 29975
12 ..... 41851, 62618
19 16868
24 62619
101 61232
111 ..... 22726, 34748
113 ..... 41851, 42872
141 ..... 41851, 49423, 62135
146 15873
159 ..... 19508, 29975
351 29818

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

220.143 (b)(2), (3) and (4) revised; interim 62976
220 Appendix 3 corrected; CFR correction 36239
375 Authority citation revised 66381
375.1 (a) revised; (c) added 66381
375.2 Amended 66381
375.5 (a), (b) introductory text, (1) and (2) revised; (b)(3) amended 66381
375.6 (a), (b)(1), (2) introductory text and (c)(1) revised 66381
375.7 (a)(2), (b)(1)(ii), (vi) and (2) amended 66382
375.8 Revised 66382

Chapter III—Social Security Administration (Parts 400—499)

401.1501—404.1599 (Subpart P) Appendix 1 amended 67720
404.403 (g) added 17101
(a)(5) added; interim 57775
404.942 (g) revised 51893
404.1220 (a) revised 33016
404.1574 (b)(2), (3) and (4) revised 18570
(b)(3) table corrected 22903
404.1501—404.1599 (Subpart P) Appendix 1 amended 29788, 46128
416.200 Revised 31972
416.203 (b) revised 31972
416.211 (a)(1) revised 31972
416.262 (a) revised 31972
416.305 (a)(2) revised 31972
416.315 (c) revised 31972
416.330 Revised 31973
416.335 Revised 31973
416.420 (b)(1), (2) and (3) revised 31973
416.421 (a) and (b) amended 31973
416.501 Revised 31973
416.502 Amended 31974
416.520 (a) amended; (b)(1), (4), (c) introductory text, (1) and (d) revised 31974
416.974 (b)(2), (3) and (4) revised 18570
(b)(4) table corrected 22903
416.1160 (b)(2)(i) revised; (b)(2)(ii) and (iii) redesignated as

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

(b)(2)(iii) and (iv); new (b)(2)(ii) added 31974
416.1163 (e)(1) revised 31974
416.1165 (f) revised 31974
416.1166 (d) revised 31975
416.1245 (b)(1), (2)(v) and (5) revised 31975
416.1335 Amended 31975
416.1442 (g) revised 51893
416.1801 Amended 31975
416.1902 Amended 31975
422.112 (b) revised 33016

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

652.1 (a) revised; (h) amended; interim 18761
652.3 (d) revised; interim 18762
652.5 Revised; interim 18762
652.6 Removed; interim 18762
652.7 Removed; interim 18762
652.8 (j)(1) and (5) amended; interim 18762
652.200—652.216 (Subpart C) Added; interim 18762
654 (Subpart E) Authority citation revised 34965
654.403 (a)(1) and (3) amended 34965
655.100 (a)(1) amended 34966
655.101 (c) introductory text, (1), (2) and (3) amended 34966
655.106 (e) revised 34966
660 Added; interim 18693
661 Added; interim 18694
662 Added; interim 18701
663 Added; interim 18704
664 Added; interim 18713
665 Added; interim 18717
666 Added; interim 18719
667 Added; interim 18722
668 Added; interim 18736
669 Added; interim 18746
670 Added; interim 18750
671 Added; interim 18760

Proposed Rules:

219 66433
220 62996
222 68647
322 62135
325 67811
330 67811
335 67811
336 67811
375 44670
404 ..... 42310, 55215
416 ..... 42310, 55217
604 ..... 67972, 71346
718 ..... 54966, 62996
722 ..... 54966, 62996
725 ..... 54966, 62996
726 ..... 54966, 62996
727 ..... 54966, 62996

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

2 Effective date confirmation 26657
3 Effective date confirmation 26657
3.2 (k) revised 56447
5 Effective date confirmation 26657
5.20 (h) revised 59618
5.22 (a)(13)(viii) removed 49383
5.31 (f)(3) revised 49383
5.58 (a)(3) revised 56448
5.61 (i) added 33194
5.67 Heading and introductory text revised; (e) added 47669
(a), (b) and (c) revised 56448
5.83 (c)(1) revised 23184
5.93 (b) revised 49383
5.101 Added 59618
10 Effective date confirmation 26657
10.20 (c)(1)(iii) and (iv) amended; (c)(1)(v) removed; eff. 4-24-00 69190
10.50 (c)(19) revised 56448
12 Effective date confirmation 26657
12.22 (a)(5)(i)(*a*) and (*b*) amended; (a)(5)(i)(*c*) removed; eff. 4-24-00 69190
16 Effective date confirmation 26657
20 Effective date confirmation 26657
20.100 (c)(24) revised 56448
25 Effective date confirmation 26657
25.32 (i) and (j) corrected; CFR correction 56454
26 Meeting 57776
26.1 (c) corrected 16348
26.31—26.50 (Subpart B) Appendix B corrected 16348
50 Effective date confirmation 26657
50.3 (b)(12) revised 56448
50.23 (d) revised; interim 54188
54 Effective date confirmation 26657
56 Effective date confirmation 26657

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 21 Chapter I—Con.

56.102 (b)(11) revised 56448
58 Effective date confirmation 26657
58.3 (e)(13) revised 56448
60 Effective date confirmation 26657
70 Effective date confirmation 26657
71 Effective date confirmation 26657
74 Effective date confirmation 39414, 57974, 62582
74.1102 (b)(1) and (c)(1) removed; (b)(2) and (c)(2) redesignated as (b) and (c) 48290
74.3045 (c)(1) introductory text revised 23186
74.3102 Added 48290
74.3602 (b)(4) redsignated as (b)(5); new (b)(4) added 32805
101 Workshop 34125
Comment period reopening 42277
101.4 (b)(23) added 50448
101.82 Added (effective date pending in part) 57732
172.831 Introductory text removed; (c) revised 43909
172.836 (c)(16) added 57976
172.883 Added 29958
(c) corrected 43072
172.886 (c)(2) revised 44122
173.25 (b)(2)(i) and (ii) added 56173
173.310 (c) table amended 29226
173.315 (a)(2) table amended; (a)(5) added 38564
173.325 (b)(1) revised 26841
(d) redesignated as (e); new (d) added 44123
(e) redesignated as (f); new (e) added 49982
175.105 (c)(5) table amended 29554, 45872
175.125 (b)(2) amended 48291
175.300 (b)(3)(viii)(*a*) amended 60106
176.170 (a)(5) table amended 27915
176.180 (b)(2) table amended 46130, 58631
176.300 (c) table amended 46130, 69900
177.1200 (c) table amended 57978
177.1211 Added 28098
177.1350 (a) introductory text, (1) through (6) and (b) redesignated as (a)(1) introductory text, (i) through (vi) and (b)(1); new (a)(2) and (b)(2) added 47108
177.1390 (c)(1)(i)(f) revised 46272
177.1500 (b) table amended 46272
177.1520 (c) table amended 27916
(a)(2) redesignated as (a)(2)(i); (a)(2)(ii) and (3)(vi) added; (d)(7) table amended 47108
(a)(3)(ii) revised; (c) table amended 71638
177.1585 (a) and (c)(1) revised 27178
178 Technical correction 27854
178.2010 (b) table amended 24944, 25429, 26282, 30386, 48293, 53926, 65658, 66104, 67485, 72273
(b) table corrected 46130
178.3130 (b) table amended 62585
178.3295 Table amended 26843
178.3297 (e) table amended 26842, 44406, 44407, 72275
178.3400 (c) table amended 45874
178.3570 (a)(3) table amended 47670, 71639
178.3725 Table amended 48292, 72272
178.3910 (a)(2) table amended 47110
179.21 (a)(1) revised 69191
184.1148 Added 19894
184.1150 Added 19895
184.1250 Added 28361
200 Effective date confirmation 26657
201 Effective date confirmation 26657
201.63 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.64 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.66 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.319 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
201 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
202 Effective date confirmation 26657
203 Added; eff. 12–4–00 67756
205.3 (f)(9), (10) and (h) added; eff. 12–4–00 67762
205.50 (f)(2) revised; eff. 12–4–00 67763
206 Effective date confirmation 26657
207 Effective date confirmation 26657
207.10 (f) revised 63203
207.20 (c) revised 56448
(c) amended 63203

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

207.21 (a) amended 56448
(a) amended 63203
210 Effective date confirmation 26657
211 Effective date confirmation 26657
225.1 (b)(2) revised; (c) added 63203
225.58 (b)(1) amended 63203
225.115 (b)(2) revised 63203
299 Effective date confirmation 26657
300 Effective date confirmation 26657
310 Effective date confirmation 26657
310.4 Revised 56448
310.503 (b) amended 56449
310.516 Removed; eff. 11-16-00 62112
310.545 (a)(29) and (d)(31) added; (d) introductory text revised; eff. 5-21-01 27687
310.548 Added 44658
312 Effective date confirmation 19269, 26657
312.3 (b) amended 56449
312.42 (b)(6) added; interim 54189
314 Effective date confirmation 26657
315 Added 26667
316 Effective date confirmation 26657
316.3 (b)(9) revised 56449
320 Effective date confirmation 26657
330.1 Regulation at 64 FR 13294 eff. date corrected to 5-16-99 18571
331.30 Regulation at 64 FR 13295 eff. date corrected to 5-16-99 18571
333 Effective date confirmation 26657
341.74 Regulation at 64 FR 13295 eff. date corrected to 5-16-99 18571
341.76 Regulation at 64 FR 13295 eff. date corrected to 5-16-99 18571
341.80 Regulation at 64 FR 13295 eff. date corrected to 5-16-99 18571
343.80 (a)(1) revised 49653
346.50 Regulation at 64 FR 13295 eff. date corrected to 5-16-99 18571
352 Added; eff. 5-21-01 27687
355.50 Regulation at 64 FR 13296 eff. date corrected to 5-16-99 18571
358.650 Regulation at 64 FR 13296 eff. date corrected to 5-16-99 18571
369 Effective date confirmation 26657
369.9 Regulation at 64 FR 13296 eff. date corrected to 5-16-99 18571
369.20 Regulation at 64 FR 13296 eff. date corrected to 5-16-99 18571
369.21 Regulation at 64 FR 13296 eff. date corrected to 5-16-99 18571
510 Effective date confirmation 26657
510.3 (l) removed; eff. 4-24-00 69190
510.7 (a)(1) and (2) revised 63203
510.95 Removed; eff. 4-24-00 69190
510.105 (a) and (b) amended 51241
510.301 Heading revised 63203
510.305 Revised 63203
510.600 (c)(1) table and (2) table amended 15683, 18571, 23187, 42597, 48294, 69191
514 Effective date confirmation 26657
514.1 (b)(8)(ii) and (v) revised 40756
514.2 Removed 63203
514.4 Added 40756
514.9 Removed 63203
514.105 (a) introductory text and (b) removed; (a)(1) and (2) redesignated as (a) and (b); new (a) amended 63203
514.111 (a)(5) revised 40757
(b) removed; (c) redesignated as (b) 63204
514.112 Removed 63204
514.115 (a), (b), (c) introductory text, (1), (3), (d) and (e) amended 63204
514.201 Revised 63204
515 Added 63204
520 Effective date confirmation 26657
520.48 (b) amended 42597
520.260 (b) amended 15684
520.309 (a) revised; (c) redesignated as (d); new (d)(1) and (2) revised 32181
520.446b (d)(4)(iii)(C) amended 37673
520.534 (d) heading amended 30387

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 21 Chapter I—Con.

520.600 (i) revised 18571
520.812 (a) amended 48295
520.1263c (b) amended 66382
520.1310 Added 39919
520.1452 (d)(2) and (3) revised 66105
520.1484 Revised 31497
520.1615 Added 18573
520.1660d (a)(1), (2) and (7) amended 48544
520.1807 Added 23018
520.2184 (b) amended 15684
520.2220a (a)(2) amended 18572
520.2220b (a) removed; (b), (d) and (e) redesignated as (a), (b) and (d); new (a) and new (d)(2) revised 15684
520.2260a Heading and (a)(1) revised; (a)(4) removed 66383
520.2345d (a)(1) amended 37673
520.2613 (b) amended 68289
522 Effective date confirmation 26657
522.147 (b) amended 71640
522.690 (b) amended 15685
522.723 (c) amended 15684
522.800 (b) amended 15684
522.842 (a) and (e) removed; (b) and (d) introductory text revised; (d)(1) redesignated as (d)(1)(i); (d)(1)(ii) added 48294
522.1081 (a)(3) and (b)(3) redesignated as (a)(4) and (b)(4); (a)(2)(i), (ii), (iii) and new (b)(4)(iii) amended; new (a)(3), (5) and new (b)(3) added; (a)(4) heading, (i) and (b)(4) heading revised; (a)(4) footnote removed 48544
522.1192 (d)(2)(ii) amended 26671
522.1193 (d)(2) amended 26671
522.1660 (b) and (d)(2)(iii) amended 23167
(d)(2)(iii) revised 26670
(d)(1)(iii) amended 42831
522.1940 (d)(1)(i) and (2)(i) redesignated as (d)(1)(i)(A) and (2)(i)(A); (b), new (d)(1)(i)(A) and new (2)(i)(A) revised; (d)(1)(i)(B) and (2)(i)(B) added 48295
522.2100 (a)(1), (b)(1), (c)(1), (d)(1) and (e)(1) amended 27916
522.2476 (b) amended 42597
(b) revised; (d)(1) and (2) redesignated as (d)(1)(i) and (2)(i); (d)(1)(ii) and (2)(ii) added 48294
522.2477 (a) amended 42597
(a), (b) and (c) redesignated as (b), (c) and (d); new (d)(1)(i) redesignated as (d)(1)(i)(A); new (b) revised; (d)(1)(i)(B) added 48294
522.2478 (c) redesignated as (d); new (d)(1)(ii) revised 18573
522.2680 (d)(3)(ii) amended 46840
524 Effective date confirmation 26657
524.770 (d)(2) revised 49082
524.1660a (b) revised; (c)(1)(i) footnote, (ii) footnote, (iii) footnote, (2)(i) footnote and (2)(ii) footnote removed 42831
524.2098 Added 37401
(d)(1) and (2) amended 48707
529 Effective date confirmation 26657
529.2150 Added 71640
556.175 Added 35923
556.304 Added 48545
556.344 (b)(2)(ii) added 26671
556.366 (c) table amended 18574, 20164
(c) table amended 49384
556.430 Revised 31498
556.490 Revised 26672
556.513 Added 23019
556.597 Added 48296
556.640 Revised 26672
556.739 Revised 18574
556.750 Revised 48296
558.3 (b)(2), (3) and (4) amended 63206
558.4 Heading, (a), (b) and (c) revised 63206
(d) table amended 70576, 72027
558.15 (g)(1) and (2) amended 37673
558.76 (d)(3)(xxi) added 18574
558.78 (d)(3)(xii) revised 26844
558.95 (d)(1)(xiv) added 49083
(d)(5) introductory text revised; (d)(5)(iv) added 49384
558.128 (d)(1) table amended 23539
558.140 (a) amended 15684
558.198 Added 35923
558.258 (c)(1)(i) introductory text amended 26844
558.265 (a) amended 42597
558.311 (e)(4)(ii) added 49083
(e)(1)(xiv) table amended 49656
558.363 (d)(2)(iii) added 18574
(d)(2)(iv) added 20164
558.364 Added 70576
558.485 (a)(17) removed 15684

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

(e)(2)(i) introductory text and (A) revised; (e)(2)(i)(B) amended 53927
558.530 (d)(5)(xxv) added 18575
(d)(5)(xxvi) added 20164
558.555 (b) redesignated as (d); new (b), (c), (d)(5), (6) and (7) added; new (d) heading revised; new (d)(1) introductory text removed 48296
558.575 (a) revised; (c) redesignated as (d); (d)(7) added 26672
(d)(4)(ii)(a) amended 43909
558.635 (b)(2) amended 15684
(a), (c), (e)(3) and (4) removed; (b), (d), (e) and (f) redesignated as (a) through (d); new (a)(1), (2) and (d)(2)(i) amended; new (d)(4)(vii) added 48296
573 Announcement 46841
573.625 Revised 46840
600.3 (n) and (w) revised 56449
600.15 (b) revised 56449
600.21 Amended 56449
600.80 (b) and (c)(2)(i) amended; (g) and (j) revised 56449
600.81 Amended 56449
601 Authority citation revised 26668
601.1 Removed 56450
601.2 Revised 56450
601.3 Removed 56450
601.4 (a) revised; (b) amended 56450
601.5 Revised 56451
601.6 Revised 56451
601.9 Revised 56451
601.10 Removed 56451
601.20 Revised 56451
601.21 Revised 56451
601.22 Amended; heading revised 56452
601.25 (b)(3) and (f)(3) amended 56452
601.26 (e) introductory text, (f)(1), (2) and (3) amended 56452
601.28 Redesignated from 601.33 26668
601.30—601.35 (Subpart D) Revised 26668
601.33 Redesignated as 601.28 26668
601.51 Heading and (b) revised; (a) amended 56452
606.3 (c), (e), (f) and (j) revised 45370
606.100 (b) introductory text, (b)(7), (18) and (d) introductory text revised 45370
606.121 (a), (d)(2) and (e)(1)(ii) revised 45370
606.122 (f) and (n)(4) revised 45371
606.151 (b), (c) and (e) revised 45371
606.160 (b)(2)(v) revised 45371
606.170 (b) revised 45371
607.20 (b) revised 56452
607.21 Amended 56453
610.13 Introductory text revised; (a)(1) amended 56453
610.53 (d) revised 56453
610.63 Revised 56453
640.2 (b) and (d) removed; (c), (e) and (f) redesignated as (b), (c) and (d); new (b) and new (c)(2) revised 45371
640.3 (b) introductory text, (3), (c)(1), (2) and (3) revised; (e) removed 45371
640.4 (d)(1) through (4) and (h) removed; (i) redesignated as (h); (b), (d), (g) introductory text, (1), (2), (4) and (5) revised 45371
640.5 Introductory text and (c) revised 45372
640.6 (c) removed 45372
Introductory text revised 56453
640.13 (a) revised 45372
640.15 Revised 45372
640.16 (a) and (b) revised 45372
640.21 (c) revised 56453
640.22 (a) revised 45372
(c) revised 56453
640.23 (a) revised 45372
640.24 (b) revised 45372
640.31 (c) removed 45372
640.32 (a) amended 45372
640.34 (a) through (d), (e)(1), (2), (3) and (g)(2) revised 45372
640.51 (c) removed 45373
640.52 (a) revised 45373
640.54 (a)(2) revised 45373
640.56 (c) introductory text revised 45373
640.62 Revised 45373
640.63 (c)(3), (5), (11), (12) and (13) revised 45373
640.64 (c) introductory text amended 56453
640.65 (b)(4) and (5) revised; (b)(8) added 45373
(a) amended 56453
640.69 (d) revised 45374
640.71 (a) introductory text revised 45374

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 21 Chapter I—Con.

(a) introductory text, (b) introductory text and (1) revised 56453
640.72 (a)(1) revised 45374
640.74 (a) revised; (b)(2) amended 56453
640.80 (a) amended; (b) revised 26286
640.81 (c) and (e) amended; (f) revised 26286
640.82 (a) heading, (c) heading, (d) and (e) revised 26286
640.84 (a) introductory text and (b) removed; (a)(1) through (4) redesignated as (a) through (d); introductory text, new (a) and new (d) revised 26286
640.90 (a) amended; (b) revised 26286
640.91 (b)(2) and (f) revised; (c) and (e) amended 26286
640.92 (a) heading, (c) heading, (d) and (e) revised 26286
640.94 (a) revised 26286
640.100 (a) amended; (b) and (c) revised 26287
640.101 (b) amended; (e)(3), (4) and (f) removed 26287
640.102 (e) amended 26287
640.103 (b) revised 26287
640.104 (b)(2), (3), (c)(1) and (2) revised 26287
660.21 (a)(3) and (d) revised 56454
660.30 (b) revised 56454
660.33 Amended 56454
700.35 Added; eff. 5-21-01 27693
701.3 Regulation at 64 FR 13297 eff. date corrected to 5-16-99 18571
740.19 Added; eff. 5-22-00 27693
800 Effective date confirmation 26657
801 Effective date confirmation 26657
801.420 (c)(4) amended 59620
805 Removed 66106
807 Effective date confirmation 26657
809 Effective date confirmation 26657
812 Effective date confirmation 26657
860 Effective date confirmation 26657
874.5350 (c) revised 18329
874.5370 (c) revised 18329
876.1735 Added 51444
878.3530 (c) revised 45161
Regulation at 64 FR 45161 eff. date corrected to 8-19-99 46010
878.4014 Added 53929
878.4018 Added 53929
878.4020 Added 53929
878.4022 Added 53929
882.5860 (c) revised 18329
884.6190 (a) amended; (b) revised 62977
890.5275 (c) revised 18331
890.5300 (c) revised 18331
890.5860 (c) revised 18331
900.2 (yy) added 32407
Regulation at 64 FR 32407 eff. date delayed to 1-28-00 53195
900.4 (a)(4) amended; (c)(3)(ii), (5) introductory text, (i), (ii) and (6)(ii) revised 32407
Regulation at 64 FR 32407 eff. date delayed to 1-28-00 53195
900.12 (b)(5) and (e)(5)(vii)(A) revised 18333
(c)(2) and (f)(3) revised; (j)(2) amended 32408
Regulation at 64 FR 32408 eff. date delayed to 1-28-00 53195
1020.30 (b) amended 35927
1020.31 (a)(2)(i), (f)(3) and (m) revised 35927

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308 Technical correction 39560, 42432
1308.12 (f)(1) removed; (f)(2) redesignated as (f)(1) 35930
1308.13 (g) added 35930
(c)(5) through (11) redesignated as (c)(6) through (12); new (c)(5) added 37675
1308.14 (c)(48) redesignated as (c)(49); new (c)(48) added 49983
1309.29 Regulation at 62 FR 53960 confirmed 40516
1310.09 Regulation at 62 FR 53960 confirmed 40516
1312 Technical correction 42432
1312.30 (a) added 35930

Chapter III—Office of National Drug Control Policy (Parts 1400—1499)

1401 Revised 69901

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

Proposed Rules:

1 ..... 15944, 32442
2 47719
5 ..... 34608, 53281
10 ..... 66822, 69209
12 69209
16 ..... 36492, 36516
20 60143
25 53281
101 ..... 15948, 17295, 36492, 36516, 36824, 42315, 45932, 46626, 50783, 62746
111 ..... 32830, 48336
115 ..... 36492, 36516, 46626
120 65669
206 34608
207 ..... 26330, 43114
210 52696
211 52696
212 51274
250 34608
291 39810
310 ..... 17985, 44671
314 ..... 34608, 42625, 42873, 53960, 67207
330 71062
333 39452
344 44671
500 53281
510 ..... 35966, 53281, 69209
514 ..... 35966, 40321, 53281
558 ..... 35966, 53281
600 ..... 34608, 45383, 61045
601 ..... 34608, 53960, 67207
606 ..... 45355, 45375, 61045
607 ..... 26330, 43114, 45340, 61045
610 ..... 45340, 61045
630 ..... 45355, 61045
640 ..... 26344, 45340, 45375, 61045
660 ..... 45340, 61045
801 ..... 41710, 58004, 59695
807 ..... 26330, 43114, 71347
820 52696
870 43114
878 ..... 41710, 58004
880 ..... 41710, 53294, 58004
884 ..... 24967, 31164
888 43114
890 43114
900 32443
1020 23811
1271 52696
1300—1399 (Ch. II) 54794
1308 ..... 17298, 17299, 24094, 25405
1309 ..... 67216, 70316
1401 51275

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised 54539
22.1 Amended 54539
(c) table amended 66770
22.2 (a) revised 66770
40 Authority citation revised 55418
40.1 Introductory text, (a), (f), (g), (i) and (l) amended 55418
40.21 (a)(1) and (2) revised 55418
40.41 Regulation at 62 FR 67564 confirmed 50752
40.81 Revised 55418
41 Authority citation revised 54540
41.2 (j) revised 28916
(l)(2) amended; interim 42033
41.32 Revised 45163
41.33 Revised 45164
41.63 Redesignated from 514.44 54539
(g) heading and (1) introductory text revised; (g)(3) and (4) amended 54540
41.114 Removed 28916
42.21 (b) revised 55419
42.71 (a) revised 55419
42.72 (e)(4) amended 28916
50 Authority citation revised 19714
50.7 (d) added 19714
51 Authority citation revised 19714
51.72 (b) revised; (c) added 19714
51.80 Revised 19714
51.83 Amended 19715
51.84 Amended 19715
51.89 Revised 19715
61—67 (Subchapter G) Established 54539
61 Redesignated from Part 502; nomenclature change 54539
61.9 Amended 54539
62 Redesignated from Part 514; nomenclature change 54539
Authority citation revised 54540
62.50 (h)(1) introductory text revised 54540
63 Redesignated from Part 515; nomenclature change 54540
64 Redesignated from Part 516; nomenclature change; authority citation revised 54540
64.8 Amended 54540
65 Redesignated from Part 517; nomenclature change 54540

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 22 Chapter I—Con.

66 Redesignated from Part 526; nomenclature change; authority citation revised 54540
66.3 (a) revised 54540
66.5 (a)(1) amended; (a)(2) revised 54540
67 Redesignated from Part 527; authority citation revised 54541
67.2 (a) and (c) amended 54541
67.4 (i) amended 54541
103 Added 73813
121.1 Amended 17533
121.9 (a) revised 17533
123.4 (a) revised 17533
123.15 (b) revised 17533
123.17 (a) revised 17534
124.13 (e) revised 17534
126.5 Revised 17534
171 Authority citation revised 54539
171.11 (a)(3) amended 54539
171.20—171.26 (Subpart C) Revised 25430
171.32 (j)(1), (2) and (5) amended 18808

Chapter II—Agency for International Development (Parts 200—299)

Chapter II Heading revised 15685
201.03 Revised 17535
201.23 (c) amended 17535
201.31 (f) and (g) amended 17535
201.32 (b) and (c) amended 17535
201.51 (c)(4) amended 17535
201.52 (a)(2)(iii)(C), (4)(iii) introductory text and (B) amended 17535
201.67 (a)(5)(ii) amended 17535

Chapter V—Broadcasting Board of Governors (Parts 500—599)

Chapter V Heading revised 54539
500 Removed 54539
501 Nomenclature Change 54539
502 Redesignated as Part 61 54539
503 Nomenclature Change 54539
504 Removed 54539
505 Nomenclature Change 54539
506 Nomenclature Change 54539
510 Nomenclature Change 54539
511 Nomenclature Change 54539
512 Nomenclature Change 54539
513 Nomenclature Change 54539
514 Policy statement 34982
Redesignated as Part 62 54539
514.21 (f) revised 17976
514.31 (e), (f), (h), (i) and (m) revised 53930
514.32 Added 17976
514.44 Redesignated as 41.63 54539
514.45 Added; interim 44126
514.80 (Subpart G) Removed 17976
514.90 Regulation at 63 FR 34810 comfirmed 40286
Revised; interim 51896
(b) removed 54539
515 Redesignated as Part 63 54540
516 Redesignated as Part 64 54540
517 Redesignated as Part 65 54540
521 Nomenclature Change 54540
525 Removed 54540
526 Redesignated as Part 66 54540
527 Redesignated as Part 67 54541
530 Nomenclature Change 54541

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

Chapter VI Removed 15686

Chapter VII—Overseas Private Investment Corporation (Parts 700—799)

Chapter VII Heading revised 32806

Proposed Rules:

22 ..... 28946, 58004
42 58004
146 58568
194 53632
229 58568
514 17988

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

130 Removed 71289
180 Added 29750
480 Removed 71289
620.202 Revised 71289
620.203 (j) revised 71289
630 Authority citation revised 71289
630.106 (c)(3) amended 71289
635 Authority citation revised 71289
635.307 (b)(3) amended 71289
645.103 (c) amended 71289

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

645.111 (c) and (d) amended 71289
645.113 (i) amended 71289
655.601 Regulation at 61 FR 29626 confirmed; (c) and (d) revised; (e) removed 33753
Regulation at 64 FR 33753 eff. date corrected to 7-16-99 38307
661 Added; interim 38573
685 Authority citation revised 48959
658.5 Amended 48959
710 Revised 71290
712 Removed 71289
713 Removed 71290

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200--1299)

1200 Regulation at 62 FR 34402 confirmed 40764
1200.4 (d)(1) and (2) amended 40764
1200.10 (b) and (d) revised 40764
1200.13 (b) revised 40764
1200.22 Amended 40764
1200.33 (a) and (b) revised 40764
1205.4 Regulation at 62 FR 34404 confirmed 40764
1225 Regulation at 63 FR 46886 confirmed 35573
1225.4 (a)(1) and (5) revised; (a)(6) removed 35573
Regulation at 64 FR 35573 eff. date corrected to 8-30-99 47110
1225.6 Revised 35573
Regulation at 64 FR 35573 eff. date corrected to 8-30-99 47110

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327.3 Regulation at 62 FR 63657 confirmed 19271
1327.5 Regulation at 62 FR 63657 confirmed; (a)(1)(ii) and (c)(2) amended; (c)(3) redesignated as (c)(4); new (c)(3) added 19271
1327.6 Regulation at 62 FR 63657 confirmed 19271
(a) through (f) revised; (g) and (h) redesignated as (h) and (i); new (g) added 19272
1327.7 Added 19273

Proposed Rules:

1—199 (Ch. I) 47741, 47744, 47746, 47749
655 ..... 33802, 71354, 71358, 73606, 73612
668 30263
777 16870
945 73674

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.501 Removed 25731
5.506 (b)(1), (2), (h)(2) and (3) revised 25731
5.510 (b) revised 25731
5.512 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 25731
5.514 (b), (c)(1), (e)(1) and (f)(1) revised 25731
5.516 (c) introductory text revised 25732
5.518 (a), (b)(3) and (5) revised 25732
5.526 Revised 25732
5.801 (c) revised 33755
35 Authority citation revised 50201
35.1—35.5 (Subpart A) Removed; eff. 9-15-00 50201
35.1—35.19 (Subpart A) Redesignated from 35.80—35.98 (Subpart H); eff. 5-19-00 50201
35.80—35.98 (Subpart H) Redesignated as 35.1—35.19 (Subpart A); eff. 9-15-00 50201
35.100—35.175 (Subpart B) Revised; eff. in part 5-19-00 50202
35.200—35.215 (Subpart C) Revised; eff. 5-19-00 50208
35.300—35.325 (Subpart D) Revised; eff. 5-19-00 50209
35.500—35.510 (Subpart F) Revised; eff. 5-19-00 50209
35.600—35.630 (Subpart G) Revised; eff. 5-19-00 50209
35.700—35.730 (Subpart H) Added; eff. 9-15-00 50210
35.800—35.830 (Subpart I) Added; eff. 9-15-00 50211
35.900—35.940 (Subpart J) Added; eff. 9-15-00 50212

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 24 Subtitle A—Con.

35.1000—35.1020 (Subpart K) Added; eff. 9–15–00 50214
35.1100—35.1140 (Subpart L) Added; eff. 9–15–00 50215
35.1200—35.1225 (Subpart M) Added; eff. 9–15–00 50216
35.1300—35.1355 (Subpart R) Added; eff. 9–15–00 50218
91.2 (b)(15) revised; eff. 9–15–00 50224
91.5 Amended; eff. 9–15–00 50223
91.225 (b)(7) revised; eff. 9–15–00 50224
92.206 (a)(2)(ii) revised; eff. 9–15–00 50224
92.355 Revised; eff. 9–15–00 50224
92.504 (c)(3)(iv) revised; eff. 9–15–00 50224
92.508 (a)(7)(vi) revised; eff. 9–15–00 50224

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.304 Revised 16329
100.305 Added 16329
100.306 Added 16330
100.307 Added 16330
100.308 Added 16330
103.10 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.15 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.20 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.25 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.30 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.35 Added; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.40 Revised; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.42 Removed; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.45 Redesignated as 103.201; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.50 Redesignated as 103.202; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.55 Redesignated as 103.203; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.201 Redesignated from 103.45; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.202 Redesignated from 103.50; interim 18540
(b) revised; interim 18541
Regulations at 64 FR 18540 and 18541 confirmed 46844
103.203 Redesignated from 103.55; interim 18540
Regulation at 64 FR 18540 confirmed 46844
103.204 Added; interim 18541
Regulation at 64 FR 18541 confirmed 46844
108 Authority citation revised 44095
108.1 (e) and (f) added 44095
108.15 Amended 44095
108.20 Revised 44096
108.21 Revised 44096
108.25 (a), (b), (d) through (h) revised 44096
108.35 Amended 44096
108.40 (a) and (b) revised 44096
108.45 Amended 44097
180.670 Regulation at 64 FR 6754 confirmed 72728
180.671 Regulation at 64 FR 6754 confirmed 72728

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.200—200.206 (Subpart G) Added 72869
200.800—200.810 (Subpart O) Revised; eff. 9–15–00 50224
200.926 (a)(1) revised 56110
200.926d (c)(1)(ii), (iii) and (4)(iv) revised; (c)(4)(vii) removed 56110

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

200.1301 Correctly added; CFR correction....55828
203.10 Added....29765
(e) revised....34984
203.12 Revised....56110
203.14 Regulation at 64 FR 14574 withdrawn....19895
203.16a Revised....56111
203.18 Regulation at 64 FR 14574 withdrawn....19895
203.200 Regulation at 64 FR 14574 withdrawn....19895
203.201 Regulation at 64 FR 14574 withdrawn....19895
203.202 Regulation at 64 FR 14574 withdrawn....19895
203.203 Regulation at 64 FR 14574 withdrawn....19895
203.204 Regulation at 64 FR 14574 withdrawn....19895
203.205 Regulation at 64 FR 14574 withdrawn....19895
203.206 Regulation at 64 FR 14574 withdrawn....19895
203.207 Regulation at 64 FR 14574 withdrawn....19895
203.208 Regulation at 64 FR 14574 withdrawn....19895
203.209 Regulation at 64 FR 14574 withdrawn....19895
203.673 (a) and (c) revised; eff. 9–15–00....50225
234.1 Regulation at 64 FR 14574 withdrawn....19895
Amended....56111
248.101 Amended; interim....26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99....43613
Regulation at 64 FR 26639 confirmed....56911
248.141 (c)(3) amended; interim....26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99....43613
Regulation at 64 FR 26639 confirmed....56911
248.147 (e)(1) amended; interim....26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99....43613
Regulation at 64 FR 26639 confirmed....56911
248.165 (a) revised; (i) amended; interim....26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99....43613
Regulation at 64 FR 26639 confirmed....56911
248.173 (m)(2) revised; interim....26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99....43613
Regulation at 64 FR 26639 confirmed....56911
248.201 Amended; interim....26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99....43613
Regulation at 64 FR 26639 confirmed....56911
280.25 (e) revised; eff. 9–15–00....50225
290 Heading and authority citation revised....72412
290.1 Revised....72412
290.27 Added....72412
291.100 (g) revised; eff. 9–15–00....50225
291.430 Revised; eff. 9–15–00....50225
291.500—291.590 (Subpart F) Added; interim....36212

Chapter III—Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

320.5 (a) amended; (e) and (f) revised; (g) added....34106
320.13 Revised....34107

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

511.10 (f)(1)(ii) revised; eff. 9–15–00....50225
511.15 Revised; eff. 9–15–00....50225
570.202 (f) revised; eff. 9–15–00....50225
570.461 Revised; eff. 9–15–00....50225
570.487 (c) revised; eff. 9–15–00....50225
570.506 (h) revised; interim....38813
Regulation at 64 FR 38813 confirmed....63681
570.608 Revised; eff. 9–15–00....50226
572.100 (d)(1) revised; eff. 9–15–00....50226
572.215 (e) revised; eff. 9–15–00....50226
572.420 (h) revised; eff. 9–15–00....50226
573.9 (c) revised; eff. 9–15–00....50226
574.635 Revised; eff. 9–15–00....50226
576.57 (c) revised; eff. 9–15–00....50226
582.305 (a) amended; eff. 9–15–00....50226
583.330 (d) revised; eff. 9–15–00....50226
585.305 (d) revised; eff. 9–15–00....50226

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 24 Chapter V—Con.

585.502 (h) revised; eff. 9–15–00 50227

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

761 Nomenclature change 49917
761.1 Introductory text revised 49917
761.5 Revised 49917
761.10 Amended; introductory text revised 49918
761.13—761.17 (Subpart B) Heading revised 49918
761.13 Added 49918
761.15 Revised 49918
761.17 Added 49919
761.20 Revised 49920
761.21 Added 49920
761.23 Added 49921
761.40 (f) and (g) revised 49921
(c) revised; eff. 9–15–00 50227
791 Heading revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.101 Revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.102 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.401—791.407 (Subpart C) Removed; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.401 Amended; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.402 (c)(1) designation and (2) removed; (d) revised; interim 26639
Regulation at 64 FR 26639 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26639 confirmed 56911
791.403 (a) and (b)(1)(i) revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
791.404 (c) revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792 Heading revised; nomenclature change; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.101 Revised; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.102 (a) and (b) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.103 Amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911
792.202 (a)(1) and (2) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Regulation at 64 FR 26640 confirmed 56911

Chapter VIII—Office of the Assistant Secretary for Housing--Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

881.207 (e) revised; eff. 9–15–00 50227
882.403 (d) revised; interim 53869
882.404 (d) revised; eff. 9–15–00 50227
882.507 (b)(2)(iv) revised; eff. 9–15–00 50227

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

882.514 (d)(1)(vi) revised; eff. 9–15–00 50227
882.803 (b)(1) revised; eff. 9–15–00 50227
883.310 (b)(5) revised; eff. 9–15–00 50227
886.113 (i) revised; eff. 9–15–00 50227
886.307 (i) revised; eff. 9–15–00 50227
886.333 (b)(2)(iv) revised; eff. 9–15–00 50227
888 Fair market rent schedules 51860, 53450, 72722, 72730
Authority citation revised 56911
888.111 Revised 56911
888.113 (e) revised 56911
891.155 (g) revised; eff. 9–15–00 50227
891.325 Revised; eff. 9–15–00 50228

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1099)

901.5 Amended; eff. 9–15–00 50228
902 Implementation delay 56676
903 Forum 22550
Regulation at 64 FR 8181 confirmed; revised 56862
Notice 66106
903.3 Revised 51047
903.23 (c) added 51047
906.6 (b) amended; eff. 9–15–00 50228
941.208 (b) revised; eff. 9–15–00 50228
941.606 (m) amended; eff. 9–15–00 50228
964 Authority citation revised 56879
964.3 (a) revised; (e) redesignated as (f); new (e) added 56879
964.110 Removed 56879
964.400—964.430 (Subpart E) Added 56879
965.215 (a), (b) introductory text, (1), (c) and (d) revised; eff. 9–15–00 50228
965.701 (Subpart H) Revised; eff. 9–15–00 50229
968.102 (c) amended; eff. 9–15–00 50229
968.110 (a) revised 33637
(k) revised; eff. 9–15–00 50229
968.112 (i) revised; eff. 9–15–00 50229
968.120 Revised 33637
968.205 Amended; eff. 9–15–00 50229
968.210 (e)(2)(ii) revised; eff. 9–15–00 50229
968.315 (e)(2)(i) amended; eff. 9–15–00 50229
968.435 (b) revised; eff. 9–15–00 50229
970.13 (d)(1)(i) revised; eff. 9–15–00 50229
982 Heading revised; nomenclature change; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.1 Heading, (a)(1), (2), (4) and (b)(2) revised; (a)(3) and (b)(1) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.2 (a) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
982.4 (a)(2), (4) and (b) amended; interim 26640
Regulation at 64 FR 26640 eff. date delayed to 10–1–99 43613
Corrected 49658
(b) amended 56887
(a)(4) revised; (b) amended 56911
982.51 (a) revised; interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
982.53 (b) and (c) revised; (d) added; interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
(c) revised; (d) amended 56911
982.54 (d)(1), (2), (14), (15) revised; (d)(16) removed; (d)(17) through (22) redesignated as (d)(16) through (21); interim 26641
Regulation at 64 FR 26641 eff. date delayed to 10–1–99 43613
(d)(1), (2), (14), (15), (20) and (21) correctly revised; (d)(22) and (23) correctly added 49658
(b) revised 56911
982.101 (a) and (b)(2)(i) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.102 Redesignated as 982.103; new 982.102 added 56887
982.103 (a) revised; (c) added; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
Redesignated as 982.104; new 982.103 redesignated from 982.102 56887

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 24 Chapter IX—Con.

982.104 Redesignated from 982.103 56887
982.151 (a)(1) and (2) amended; (b) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.152 (a)(1), (b)(1) and (c) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.154 Revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.155 (a) introductory text revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.157 (b)(1) revised; (c) added; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.158 (f)(5) revised; eff. 9–15–00 50229
982.162 (a)(3) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
982.201 (a), (d)(1), (2) and (e) amended; (b) and (f)(2) revised; interim 26642
Regulation at 64 FR 26642 eff. date delayed to 10–1–99 43613
(b)(4) corrected 49658
Heading and (b)(2)(i) revised; (b)(2)(ii), (iii) and (iv) redesignated as (b)(2)(iv), (v) and (vi); new (b)(2)(ii), new (iii) and (vii) added; new (b)(2)(vi) and (4) amended 56911
982.202 (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3); new (b)(3) introductory text and (d) revised; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.203 (b)(1) amended; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.204 (b)(4) revised; (b)(5) amended; (f) added; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.205 (a) removed; (b) and (c) redesignated as (a) and (b); new (a)(2), (b)(1) and (3) amended; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.206 (b)(2) revised; (c)(1) designation and (2) removed; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
982.207 Revised; interim 26643
Regulation at 64 FR 26643 eff. date delayed to 10–1–99 43613
(a)(4) added; (b) and (d) revised 56912
982.301 (b)(1) amended; (b)(2), (5) and (6) revised; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b)(10) removed; (b)(11) through (16) redesignated as (b)(10) through (15); eff. 9–15–00 50229
(a)(5) added; (b)(14) revised 56912
982.302 Revised; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
982.303 Amended; heading revised; (c) amended; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b) revised 56913
982.305 Heading, (a)(3), (4) and (b) revised; (a) introductory text, (d) and (e) amended; (a)(5) removed; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
(b)(3) revised; eff. 9–15–00 50229
(a)(3) and (4) amended; (a)(5) added 56913
(a)(5) revised 59622
982.306 (a), (b) introductory text and (c) introductory text amended; (c)(3) revised; (c)(5) and (6) redesignated as (c)(6) and (7); new (c)(5) added; interim 26644
Regulation at 64 FR 26644 eff. date delayed to 10–1–99 43613
Heading revised; (c)(5) introductory text and (d) amended 56913
982.307 Heading and (a) revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

(a)(1) correctly revised 49658
982.308 Revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(a), (b), (d) and (f) revised; (g) added 56913
982.309 Revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
982.310 (a)(1) and (d)(1)(iv) revised; (d)(2) amended; (e)(3) removed; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
(e)(1)(i) revised 56913
982.314 (c)(2)(i) revised 56913
982.352 (b)(1) revised; interim 26645
Regulation at 64 FR 26645 eff. date delayed to 10–1–99 43613
982.353 (b), (c)(2) and (d) revised; (f) amended; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.354 Removed; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.355 (b), (c)(1) and (6) revised; (c)(4), (8), (d)(1) and (6) amended; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
Heading revised; (c)(9) amended; (c)(10) added 56914
982.401 (a)(4) revised; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
(a)(4)(iii)(A) corrected 49658
(j) revised; eff. 9–15–00 50230
982.402 (a)(3) amended; (c) revised; interim 26646
Regulation at 64 FR 26646 eff. date delayed to 10–1–99 43613
982.403 Heading and (c) introductory text revised; (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (a)(1), (b)(2) and (4) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.405 Heading and (a) revised; (f) added; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(f) removed 56914
982.451 (b)(5) revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(b)(5)(ii) revised 56914
982.452 (b)(1) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.453 (a)(5) amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
(a)(6) added 56914
982.454 Amended; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.455 Revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.456 (b) revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.457 Removed; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.501 Revised; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.502 Redesignated as 982.506; new 982.502 added; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
(c) amended; (c)(1) and (2) added 56914
982.503 Redesignated as 982.507; new 982.503 added; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
(b)(1)(iii) correctly added; (c)(2) correctly revised 49658
(d) revised; (e) added 56914
982.504 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
982.505 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
(c)(2) correctly revised 49658
(b)(1) and (c)(3) amended; (c)(1) introductory text revised; (c)(4) redesignated as (c)(5); new (c)(4) added 56914
982.506 Removed; interim 26647

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 24 Chapter IX—Con.

Redesignated from 982.502; interim 26648
Regulations at 64 FR 26647 and 26648 eff. date delayed to 10–1–99 43613
982.507 Redesignated as 982.518; new 982.507 redesignated from 982.503; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.508 Removed; interim 26647
Added; interim 26649
Regulations at 64 FR 26647 and 26649 eff. date delayed to 10–1–99 43613
Heading correctly revised 49658
Revised 56914, 59622
982.509 Redesignated as 982.519; new 982.509 redesignated from 982.511; interim 26648
Heading revised; interim 26649
Regulations at 64 FR 26648 and 26649 eff. date delayed to 10–1–99 43613
982.510 Redesignated as 982.520; new 982.510 redesignated from 982.513; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.511 Redesignated as 982.509; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.512 Removed; interim 26647
Regulation at 64 FR 26647 eff. date delayed to 10–1–99 43613
982.513 Redesignated as 982.510; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.514 (b) amended 56914
982.515 (b) revised; (c) added 56914
982.516 (d)(2) revised; (e) amended; (f) added; interim 26649
Regulation at 64 FR 26649 eff. date delayed to 10–1–99 43613
(a)(1) revised; (g) added 56915
982.518 Redesignated from 982.507; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.519 Redesignated from 982.509; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.520 Redesignated from 982.510; interim 26648
Regulation at 64 FR 26648 eff. date delayed to 10–1–99 43613
982.521 Added; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.551 (b)(2) and (3) amended; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.552 (a)(2) amended; (b) and (c) revised; (d) and (e) removed; (f) redesignated as (d); interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
(e) correctly added 49659
Heading, (c)(1)(ii), (x) and (2) revised; (b)(1) and (c)(3) removed 56915
982.554 (c)(4) amended; (c)(5) revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.555 (b)(4) amended; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.602 Revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.604 Revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.608 Heading and (a) revised; interim 26650
Regulation at 64 FR 26650 eff. date delayed to 10–1–99 43613
982.613 Heading and (c) revised; (b)(2) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.617 Heading and (c) revised; (b)(2) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.619 (b)(1) and (4) amended; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
982.623 Revised; interim 26651
Regulation at 64 FR 26651 eff. date delayed to 10–1–99 43613
(a) correctly removed; (b) and (c) correctly redesignated as

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

(a) and (b); (a)(3) correctly added; (b)(1) correctly revised 49659
(b)(1) revised 56915
983.1 (b)(2)(vii) revised; eff. 9–15–00 50230
983.5 (c) revised; eff. 9–15–00 50230
983.104 (b)(2)(iv) revised; eff. 9–15–00 50230
983.203 (d) introductory text amended; eff. 9–15–00 50230
985 Nomenclature change 67983
985.1 (a) amended; interim 40497
Regulation at 64 FR 40497 confirmed 67983
985.2 (b) amended; interim 40497
Regulation at 64 FR 40497 confirmed 67983
985.3 Introductory text and (a)(2) amended; (a)(3) introductory text, (i) introductory text (i)(B), (ii), (b)(2), (3) introductory text, (i) introductory text, (i)(B), (ii), (iii), (c)(2), (3) introductory text, (i) introductory text, (ii), (iii), (d)(2), (3), (e), (f)(2), (3), (g)(2), (3) introductory text, (i) introductory text, (ii), (h)(2) and (3) revised; interim 40497
Regulation at 64 FR 40497 confirmed; (b)(1), (3)(i)(B), (e)(1), (g)(1), (3)(i)(C), (D), (F) and (k)(2) amended; (i) revised 67983
985.103 (d) redesignated as (e); new (d) added; new (e)(3) revised; interim 40498
Regulation at 64 FR 40498 confirmed 67983
1000.40 Revised; 9–15–00 50230
1003.202 (b)(7)(iv) revised; eff. 9–15–00 50230
1003.607 Revised; eff. 9–15–00 50230
1005.111 Existing text designated as (a); (b) added; eff. 9–15–00 50230

Proposed Rules:

0—99 (Ch. I) 24546
3 58568
5 ..... 23460, 40262, 66530
200 ..... 23480, 36216, 40262, 66530
203 ..... 23480, 49956
234 23480
245 32782
247 40262
290 38284
761 25736
880 40262
882 40262
884 40262
888 24866
891 40262
900—999 (Ch. IX) 20232, 20234, 26923, 30450, 38853
902 33348
905 49924
906 49932
943 49940
960 ..... 23460, 33640, 40262
964 ..... 33644, 56890
966 ..... 23460, 40262
968 23484
972 ..... 40232, 40240
982 ..... 23488, 40262
984 23460
990 ..... 17301, 30451, 48572, 61561, 71698

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

61 Authority citation revised 19898
61.4 (s) revised 19898
63.19 (a) corrected 66771
291 Added 17543

Chapter III—National Indian Gaming Commission (Parts 500—599)

516 Added 54542

Proposed Rules:

1—299 (Ch. I) 18585
20 ..... 24296, 34173
151 ..... 17574, 30929, 49756, 55878, 66828
500—599 (Ch. III) 22888
504 ..... 61234, 72296
516 38164

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—899)

1 Authority citation amended 22189, 26851, 36099, 36125, 36177, 37676,

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 26 Chapter I—Con.

43075, 43272, 43615, 48547, 60342, 61500, 69907, 72543, 72549, 72556

1.61–8 (b) amended 26851
1.79–1 (d)(7) revised 29790
1.79–3 (d)(2) revised; (e) and (f) redesignated as (f) and (g); new (e) added 29790
1.148–4 (h)(2)(v)(A) and (B) amended 48547
1.148–11 (b)(4), (h) and (i) added 37037
1.163–5 Regulation at 62 FR 53416 eff. date delayed to 1–1–01 73408
1.163–13 (e)(2) amended 48547
1.165–12 Regulation at 62 FR 53416 eff. date delayed to 1–1–01 73408
1.170–14 (h)(4) amended 23228
1.170A–6 (c)(5) Example 2 amended 23189
(c)(5) Examples 1, 2 and 3 amended 23228
(c)(5) Examples 2 and 3 corrected 33196
1.170A–12 (b)(2), (c), (e)(2) and (3) amended 23228
1.170A–12T Added 23189
(b)(2) corrected 33195
1.171–3 (b) amended 48547
1.367(a)–3 (a) and (d)(3) Example 6 corrected 15687
(c)(8) amended 72549
1.367(b)–4 (b)(5)(i) and (ii) Example corrected 15687
1.367(e)–0 Added 43075
1.367(e)–0T Removed 43075
1.367(e)–1 Added 43076
1.367(e)–1T Removed 43075
1.367(e)–2 Added 43077
1.367(e)–2T Removed 43075
1.382–1 Amended 36177
Corrected 52650
1.382–2 (a)(1)(iv) removed; new (a)(1)(iv), (15) and (16) redesignated from 1.382–2T (f)(1)(ii), (4) and (5) 36177
(a)(1)(iii), (iv), (3)(i), (5) and (6) amended; (a)(1)(iv) added 36178
1.382–2T (e)(2)(iv) Example 2 and (h)(2)(i)(A) amended; (f)(1)(ii), (4) and (5) redesignated as 1.382–2 (a)(1)(iv), (15) and (16); (f)(1) removed; new (f)(4) and (5) added 36177
1.382–4 (b) revised 36178
1.382–5 Removed; new 1.382–5 redesignated from 1.382–5T; heading revised; (e) amended 36178
1.382–5T Redesignated as 1.382–5 36178
1.382–8 Removed; new 1.382–8 redesignated from 1.382–8T; heading revised; (b) introductory text, (1) and (2) redesignated as (b)(1) introductory text, (i) and (ii); new (b)(1) heading, (2) and (i) added; (f), (g) Examples 1, 2 and 4 and (h)(1) amended 36178
1.382–8T Redesignated as 1.382–8 36178
1.411(d)–4 Amended 38826
1.451–1 (g) added 26851
1.453–12 Added 45875
1.461–1 (a)(1) amended; (a)(2)(iii)(E) added 26851
1.461–4 (d)(3)(ii)(A) designation, heading and (B) added; (d)(7) introductory text amended 26851
1.467–0 Added 26851
1.467–1 Added 26852
1.467–2 Added 26859
1.467–3 Added 26860
1.467–4 Added 26863
1.467–5 Added 26865
1.467–7 Added 26867
1.467–8 Added 26875
1.467–9 Added 26875
1.469–1 (h)(2) amended 36099
1.597–2 (c)(5) amended 36099
1.597–4 (g)(3) amended 36099
1.642(c)–6 Heading, (d) and (f) revised; (e) redesignated as 1.642(c)–6A(e); new (e) added 23190
1.642(c)–6T Added 23190
1.642(c)–6A Undesignated center heading revised 23199
1.642(c)–6A (e) redesignated from 1.642(c)–6(e) 23190
Heading, (e) heading, (2)(ii), (3), (4) and (5) introductory text revised; (e)(1) and (5) Table S amended 23199
(e)(2)(i) amended 23228
(e)(2)(i) corrected 33196
1.643(h)–1 Added 43272
1.663(a)–1 (b)(3) Examples 1, 2, and 3 revised 72543

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

1.663(c)–1 Heading revised; (a) through (d) amended; (b)(2) removed; (b)(3) and (b)(4) redesignated as (b)(2) and (b)(3) 72543
1.663(c)–2 Revised 72543
1.663(c)–3 Heading revised; (a) amended; (f) removed 72543
1.663(c)–4 Redesignated as 1.663(c)–5 72543
Added 72544
1.663(c)–5 Redesignated from 1.663(c)–4 72543
Heading and introductory text revised; Example designated as Example 1 and amended; Examples 2 through 11 added 72544
1.663(c)–6 Added 72545
1.664–1 (a)(5)(ii)(*b*)(*1*) and (iv) introductory text amended 23228
(e)(6) introductory text amended 23229
1.664–2 (c) amended 23229
1.664–4 (a)(1) and (f) revised; (d) removed; (e) heading, (1) through (5), (6) heading, introductory text and Table U(1) redesignated as 1.664–4A(e) heading, (1) through (5), (6) heading, introductory text and Table U(1); (d) through (e)(5), new (6) heading and introductory text added 23199
1.664–4T Added 23200
1.664–4A Undesignated center heading revised 23209
1.664–4A (e) heading, (1) through (5), (6) heading, introductory text, Table U(1) redesignated from 1.664–4(e) heading, (1) through (5), (6) heading, introductory text and Table U(1) 23199
Heading, (d)(6) introductory text, (e) heading, (3), (4), (5) and (6) heading revised; (d)(4) and (e)(1) and (6) introductory text amended; (d)(6) Table D removed 23209
1.671–2 (e) revised 43274
1.671–2T Added 43274
1.672(f)–1 Added 43275
1.672(f)–2 Added 43276
1.672(f)–3 Added 43276
1.672(f)–4 Added 43278
1.672(f)–5 Added 43280
1.704–1 (b)(0) table corrected; CFR correction 67763
1.732–1 (c), (d)(1)(ii), (vi) and (4)(iii) revised; (d)(1)(v) amended; (d)(5) added 69907
1.732–2 (b) Example amended 69908
1.734–1 (e) added 69908
1.743–1 Revised 69909
1.751–1 (a)(2), (3), (c)(3) and (g) Example 1 revised; (c)(4)(x) removed; (f) amended 69915
1.754–1 (c)(1) designation, heading and (2) added 69916
1.755–1 Revised 69916
1.871–6 Regulation at 62 FR 53416 eff. date delayed to 1–1–01 73408
1.871–7 Regulation at 62 FR 53416 eff. date delayed to 1–1–01 73408
1.871–14 Regulation at 62 FR 53416 eff. date delayed to 1–1–01 73408
(h) revised; eff. 1–1–01 73409
(c)(3)(ii) Example amended; eff. 1–1–01 73412
1.904–4 (c)(1) and (2)(i)(A) amended 32181
1.904–5 (o) amended 37677
Corrected 58782
1.904–5T Removed 37677
1.904(f)–3 (a) and (b) amended 36099
1.954–1 (c)(1)(iv) removed 37677
1.954–1T Removed 37678
1.954–2T Removed 37678
1.954–9T Removed 37678
1.1017–1 (g)(2)(iv) revised; (g)(2)(v) added 69921
1.1271–0 (b) amended 48547, 60343
1.1275–2 (d) revised 60343
1.1275–2T Added 60343
1.1275–4 (a)(2)(vii) amended 48547
1.1275–7 Redesignated from 1.1275–7T; heading amended 48547
(g) removed 60343
1.1275–7T Redesignated as 1.1275–7 48547
1.1286–2 Redesignated from 1.1286–2T and amended 48547
1.1286–2T Redesignated as 1.1286–2 48547
1.1362–3 (a) amended 61205
1.1366–0 Added 71644
1.1366–1 Added 71645
1.1366–2 Revised 71646

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 26 Chapter I—Con.

1.1366–3 Added 71648
1.1366–4 Added 71648
1.1366–5 Added 71648
1.1367–0 Amended 71648
1.1367–1 Heading, (e) introductory text, new (h) Example 1 heading and Example 4 heading revised; (f) and (g) redesignated as (g) and (h); new (h) Examples 2 and 3 redesignated as (h) Examples 3 and 4; new (f), (i), (j) and new (h) Examples 2 and 5 added; new (g) amended 71648
1.1367–3 Revised 71649
1.1368–0 Amended 71649
1.1368–1 (d)(1) and (e) revised 71650
1.1368–2 (a)(1), (3)(ii), (4) heading, introductory text and (d) heading revised; (a)(5) added 71650
1.1368–3 Examples 2 through 6 redesignated as Example 3 and Examples 6 through 9; Example 1 heading and new 3 heading revised; new Examples 2, 4, and 5 added 71650
1.1368–4 Revised 71651
1.1397E–1T (b) and (j) revised; (h) redesignated as (i); new (h) added 35573
1.1441–0 Regulation at 62 FR 53421 eff. date delayed to 1–1–01 73408
1.1441–1 Regulation at 62 FR 53424 eff. date delayed to 1–1–01 73408
(f) revised; eff. 1–1–01 73409
(b)(4)(xix), (7)(v) Examples 1 and 2, (c)(6)(ii)(B) and (e)(4)(ii)(A) amended; eff. 1–1–01 73412
1.1441–2 Regulation at 62 FR 53444 eff. date delayed to 1–1–01 73408
(b)(3)(iv) and (f) amended; eff. 1–1–01 73412
1.1441–3 Regulation at 62 FR 53446 eff. date delayed to 1–1–01 73408
(h) amended; eff. 1–1–01 73412
1.1441–4 Regulation at 62 FR 53450 eff. date delayed to 1–1–01 73408
(g) revised; eff. 1–1–01 73409
1.1441–4T Regulation at 62 FR 53452 eff. date delayed to 1–1–01 73408
1.1441–5 Regulation at 62 FR 53452 eff. date delayed to 1–1–01 73408
(g) revised; eff. 1–1–01 73410
1.1441–6 Regulation at 62 FR 53458 eff. date delayed to 1–1–01 73408
(g) revised; eff. 1–1–01 73410
1.1441–7 Regulation at 62 FR 53462 eff. date delayed to 1–1–01 73408
(g) amended; eff. 1–1–01 73412
1.1441–8 Regulation at 62 FR 53464 eff. date delayed to 1–1–01 73408
(f) revised; eff. 1–1–01 73410
1.1441–8T Regulation at 62 FR 53464 eff. date delayed to 1–1–01 73408
1.1441–9 Regulation at 62 FR 53465 eff. date delayed to 1–1–01 73408
(d) revised; eff. 1–1–01 73410
1.1442–1 Regulation at 62 FR 53466 eff. date delayed to 1–1–01 73408
1.1442–2 Regulation at 62 FR 53466 eff. date delayed to 1–1–01 73408
1.1442–3 Regulation at 62 FR 53466 eff. date delayed to 1–1–01 73408
1.1443–1 Regulation at 62 FR 53466 eff. date delayed to 1–1–01 73408
(c) revised; eff. 1–1–01 73411
1.1445–5 Regulation at 62 FR 53467 eff. date delayed to 1–1–01 73408
1.1461–1 Regulation at 62 FR 53467 eff. date delayed to 1–1–01 73408
(i) amended; eff. 1–1–01 73412
1.1461–2 Regulation at 62 FR 53470 eff. date delayed to 1–1–01 73408
(a)(4) Examples 1, 2 and 3 and (d) amended; eff. 1–1–01 73412
1.1461–3 Regulation at 62 FR 53471 eff. date delayed to 1–1–01 73408

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

1.1461–4 Regulation at 62 FR 53471 eff. date delayed to 1–1–01 73408
1.1462–1 Regulation at 62 FR 53471 eff. date delayed to 1–1–01 73408
(c) amended; eff. 1–1–01 73412
1.1463–1 Regulation at 62 FR 53471 eff. date delayed to 1–1–01 73408
(b) amended; eff. 1–1–01 73412
1.1502–1 (f)(4) revised 36101
1.1502–2 (h) amended 36099
1.1502–3T (c)(2)(iii) amended 36099
(c)(4) amended 43615
1.1502–9 (a) amended 36099
Redesignated as 1.1502–9A 43615
Added 43616
1.1502–9T Removed 43618
1.1502–11 (a)(2), (3), (4), (b)(2)(iii) Examples 1 and 2 amended 36099
1.1502–12 (b) amended 36099
1.1502–13 (c)(7)(ii) Example 10, (g)(5) Example 4 and (h)(2) Examples 1 and 2 amended 36099
1.1502–15 Added 36101
(d) Examples 3 and 4 and (g)(6) Example 1 corrected; (g)(4)(i) and (ii) correctly revised 41784
1.1502–15T Removed 36105
1.1502–20 (c)(4) Example 7 and (g)(3) Examples 1 and 2 amended 36099
1.1502–21 Added 36105
(c)(2) introductory text, (viii) Examples 1, 2 and 3 and (g)(5) Examples 4, 5 and 9 corrected 41784
1.1502–21T Removed 36114
1.1502–22 Added 36114
1.1502–22T Removed 36115
1.1502–23 Added 36115
(d)(1) corrected 41784
1.1502–23T Removed 36116
1.1502–26 (a)(1) amemded 36099
1.1502–32 (b)(5)(ii) Example 2 amended 36099
1.1502–42 (f)(4)(i)(A) amended 36100
1.1502–43 (b)(2)(iv), (v), (vi)(A), (vii) and (viii) amended 36100
1.1502–44 (b)(2) and (3) amended 36100
1.1502–47 (h)(2)(i) through (iv), (3)(iii), (4)(i), (ii), (iii), (k)(5) introductory text, (l)(3)(i), (m)(2)(ii), (3)(i), (vi)(A), (vii)(A), (ix) and (q) amended 36100
1.1502–55T (h)(4)(iii)(B)(*4*) amended 36100
1.1502–76 (b)(1)(ii)(A)(*1*) designation added; (b)(2)(v), (4) and (5) redesignated as (b)(2)(vi), (5) and (6); (b)(1)(ii)(A)(1) heading, (*2*), (2)(v), (4) and (5) Example 7 added; (b)(6)(i) revised; (b)(1)(ii)(A)(1) and (5) Example 6 amended 61205
1.1502–78 (a) amended 36100
1.1502–79 (a), (b), (c)(1), (d)(1) and (e)(1) amended 36100
1.1502–90 Added 36128
1.1502–90T Redesignated as 1.1502–90A 36127
1.1502–91 Added 36129
1.1502–91T (a)(2), (c)(3) Example, (d)(1)(iii), (6) Examples 1 and 2 and (f)(2) Example 36100
(a)(1), (3), (b) introductory text, (1), (c)(2), (3) Example, (d)(4), (5), (e)(2) Example, (f)(2) Example, (g)(1), (2)(i)(A), (B) and (j) amended 36125
Redesignated as 1.1502–91A 36127
1.1502–92 Added 36137
1.1502–92T (b)(2) Example 3 amended 36100
(a), (b)(1)(i)(A), (B), (ii) introductory text, (A), (2) Examples 1, 3, 4, (3)(iii) Examples 2 and 3, (4), (e)(1)(ii) and (2) amended 36125
Redesignated as 1.1502–92A 36127
1.1502–93 Added 36153
1.1502–93T (e) amended 36100
(a)(2) and (b)(2) amended 36125
Redesignated as 1.1502–93A 36127
1.1502–94 Added 36155
1.1502–94T (a)(1)(i) and (b)(4) Example 1 amended 36100
(a)(1)(i), (ii), (3) and (4) amended 36125
(a)(4), (5), (b)(4) Examples 1, 2 and 3, (c) and (d) amended 36126
Redesignated as 1.1502–94A 36128
1.1502–95 Added 36159

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 26 Chapter I—Con.

1.1502–95T (b)(1)(i), (4) Example 1 and (c)(7) Example 7 amended 36101
(a)(3), (b)(1) introductory text, (2) introductory text, (4) Example 2, (c)(2) introductory text, (7) Example 1, (d)(2) Examples 1 and 3 and (e)(1) introductory text amended 36126
Redesignated as 1.1502–95A 36128
1.1502–96 Added 36170
1.1502–96T (a)(1) introductory text, (2), (5), (b)(2)(ii)(A) and (B) amended 36101
(a)(2) introductory text, (ii), (3), (5), (b)(1) introductory text, (3) and (c) amended 36126
Redesignated as 1.1502–96A 36128
1.1502–97 Added 36174
1.1502–97T Redesignated as 1.1502–97A 36128
1.1502–98 Added 36174
1.1502–98T Amended 36126
Redesignated as 1.1502–98A 36128
1.1502–99 Added 36174
1.1502–99T
(c)(2)(i) and (ii) amended 36101
(a), (b), (c)(1)(ii), (iii), (2)(i), (ii) and (d)(1) amended 36126
(d)(3) amended 36127
Redesignated as 1.1502–99A 36128
1.1502–100 (c)(2) amended 36101
1.1503–2 (d)(2)(i), (ii), (4) Example 1, (g)(2)(vii)(B)(*1*), (*2*), (G) Examples 1 and 2 and (h)(3) amended 36101
1.1502–9A Undesignated center heading added 43615
1.1502–9A Redesignated from 1.1502–9; heading revised; (a) redesignated as (a)(2); (a) heading, (1), (b)(1)(v) and (vi) added 43615
1.1502–23A (a) and (b) amended 36099
1.1502–41A (c) amended 36099, 36100
1.1502–79A Undesignated centerheading added 36127
1.1502–90A Redesignated from 1.1502–90T; amended; heading and introductory text revised 36127
1.1502–91A Redesignated from 1.1502–91T; heading revised; (h)(2) amended 36127
1.1502–92A Redesignated from 1.1502–92T; heading revised 36127
1.1502–93A Redesignated from 1.1502–93T; heading revised; (c) amended 36128
1.1502–94A Redesignated from 1.1502–94A; heading revised; (b)(4) Example 3 amended 36128
1.1502–95A Redesignated from 1.1502–95T; heading revised 36128
1.1502–96A Redesignated from 1.1502–96T; heading revised 36128
1.1502–97A Redesignated from 1.1502–97T; heading revised; 36128
1.1502–98A Redesignated from 1.1502–98T; heading revised 36128
1.1502–99A Redesignated from 1.1502–99T; heading and (a) revised; (b)(2)(ii) and (c)(2)(i) amended 36128
1.1503–2A (f)(1)(i) introductory text, (C), (2)(i) and (ii) amended 36101
1.1520–20 (g)(5) redesignated as (g)(4); (g)(1), new (4)(i)(A) and new (B) amended; new (g)(4)(ii) redesignated as (g)(4)(iii); new (g)(4)(ii) added 36127
1.6031–1 Removed 61500
1.6031(a)–1 Added; eff. in part 1–1–01 61500
1.6063–1 (c) added 61502
1.6038–2 (j)(2)(i)(C) amended; (l) added 72550
1.6038–3 Added 72550
1.6038B–1 (b)(1)(i), (3) introductory text, (c) and (g) corrected 15686
(b)(2)(i) introductory text corrected 15687
(a) amended; (b)(1)(i), (d), (e) and (g) revised 43082
Heading, (b)(2)(i)(B)(3) and (g) revised; (b)(1)(i) amended; (b)(2)(i)(A)(*4*) and (B)(*4*) added 72554
1.6038B–1T Heading and (e) revised; (g) amended 43083
1.6038B–2 (j)(1)(ii) corrected 15686
(a)(5) and (c)(4) revised; (c)(6) and (j)(1) introductory text amended; (j)(3) added 72554
1.6041–1 Regulation at 62 FR 53471 eff. date delayed to 1–1–01 73408

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

1.6041-2 (a)(1) corrected; CFR correction 55137
Regulation at 62 FR 53472 eff. date delayed to 1-1-01 73408
1.6041-3 Regulation at 62 FR 53472 eff. date delayed to 1-1-01 73408
1.6041-4 Regulation at 62 FR 53473 eff. date delayed to 1-1-01 73408
(d) amended; eff. 1-1-01 73412
1.6041-7 Regulation at 62 FR 53473 eff. date delayed to 1-1-01 73408
1.6041-8 Regulation at 62 FR 53474 eff. date delayed to 1-1-01 73408
1.6041A-1 Regulation at 62 FR 53474 eff. date delayed to 1-1-01 73408
(d)(3)(v) amended; eff. 1-1-01 73412
1.6042-2 Regulation at 62 FR 53474 eff. date delayed to 1-1-01 73408
1.6042-3 Regulation at 62 FR 53475 eff. date delayed to 1-1-01 73408
(b)(5) revised; eff. 1-1-01 73411
1.6042-4 Regulation at 62 FR 53476 eff. date delayed to 1-1-01 73408
1.6043-2 Regulation at 62 FR 53476 eff. date delayed to 1-1-01 73408
1.6044-2 Regulation at 62 FR 53476 eff. date delayed to 1-1-01 73408
1.6044-3 Regulation at 62 FR 53476 eff. date delayed to 1-1-01 73408
1.6044-5 Regulation at 62 FR 53476 eff. date delayed to 1-1-01 73408
1.6045-1 Regulation at 62 FR 53477 eff. date delayed to 1-1-01 73408
(g)(5) revised; eff. 1-1-01 73411
(d)(6)(ii)(B) amended; eff. 1-1-01 73412
1.6045-1T Regulation at 62 FR 53480 eff. date delayed to 1-1-01 73408
1.6045-2 Regulation at 62 FR 53480 eff. date delayed to 1-1-01 73408
1.6045-2T Regulation at 62 FR 53480 eff. date delayed to 1-1-01 73408
1.6046A-1 Added 72556
1.6049-4 Regulation at 62 FR 53480 eff. date delayed to 1-1-01 73408
(d)(3)(ii)(B) amended; eff. 1-1-01 73412
1.6049-5 Regulation at 62 FR 53483 eff. date delayed to 1-1-01 73408
(g) revised; eff. 1-1-01 73411
(c)(4)(v) amended; eff. 1-1-01 73412
1.6049-6 Regulation at 62 FR 53491 eff. date delayed to 1-1-01 73408
1.6049-7 Regulation at 62 FR 53491 eff. date delayed to 1-1-01 73408
1.6049-8 Regulation at 62 FR 53491 eff. date delayed to 1-1-01 73408
1.6050A-1 Regulation at 62 FR 53492 eff. date delayed to 1-1-01 73408
1.6050H-1 Regulation at 62 FR 53492 eff. date delayed to 1-1-01 73408
1.6050N-1 Regulation at 62 FR 53492 eff. date delayed to 1-1-01 73408
(e) amended; eff. 1-1-01 73412
1.6071-1 Regulation at 62 FR 53492 eff. date delayed to 1-1-01 73408
1.6091-1 Regulation at 62 FR 53493 eff. date delayed to 1-1-01 73408
1.6109-2 (a) introductory text amended; (d) added 43911
1.6109-2T Added 43911
1.6302-4 Revised 37676
1.7520 (c)(1) heading, (2) heading, introductory text and (d) revised; (b)(2) and (c)(2)(iii) amended 23210
1.7520-1 (a)(2), (3) and (c)(1) amended 23229
1.7520-1T Added 23210
(c)(2) heading and (iii) corrected 33195
7 Technical correction 15687
20 Authority citation amended 23210, 37676
20.2001-1 Revised 67769

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 26 Chapter I—Con.

20.2013–4 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added 67764
20.2031–0 Revised 23211
20.2031–7 Heading, (c) through (d)(5), (6) heading, introductory text and (e) revised; (d)(6) Tables S and 80CNSMT transferred to 20.2031–7A 23212
20.2031–7T Added 23212
(c) table and (d)(7) table corrected 33195
20.2031–7A Undesignated center heading revised 23211
20.2031–7A Heading revised; (e) added 23211
(e)(4) Tables S and 80CNSMT transferred from 20.2031–7 and amended 23212
(e)(4) corrected 33195
20.2032–1 (f)(1) and (2)(iv) Examples 1, 2 and 3 amended 23229
20.2055–2 (f)(4) revised 23222
(f)(2)(iv) Example 3 corrected 33196
20.2055–3 Heading revised; (a) existing text, (b) and (c) redesignated as (a)(1), (a)(2) and (a)(3); new (b) added 67764
(b)(1)(ii) corrected 71022
20.2056(b)–4 (a) amended; (d) redesignated as (e); new (d) added 67765
(d)(1)(ii) and (5) Examples 5 and 7 corrected 71022
20.2056A–4 (c)(4)(ii)(B) and (d) Example 4 amended 23229
(c)(4)(ii)(B) corrected 33196
20.6302–1 Added 37676
20.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading, introductory text and (d) revised 23222
20.7520–1T Added 23223
(c)(2) heading corrected 33195
25 Authority citation amended 23223, 37676
25.2504–1 (d) amended 67770
25.2504–2 Revised 67770
25.2511–2 (j) revised 67771
25.2512–0 Revised 23223
25.2512–5 Heading, (c), (d) and (e) revised 23224
25.2512–5T Added 23224
25.2512–5A Undesignated center heading revised 23226
25.2512–5A Heading revised; (e) added 23226
25.6302–1 Added 37676
25.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading and (d) revised 23227
(c)(1) corrected 33196
25.7520–1T Added 23227
(c)(2) heading corrected 33195
25.7520–3 (b)(2)(v) Example 5 and (4) Example revised 23228
31 Authority citaiton amended 32408
31.3121(v)(2)–1 (b)(5) Examples 10 and 11 and (g)(5) Example 8 corrected 15687
31.3221–4 Added 42833
31.3401(a)(6)–1 Regulation at 62 FR 53493 eff. date delayed to 1–1–01 73408
(e) and (f) amended; eff. 1–1–01 73412
31.3406–0 Regulation at 62 FR 53493 eff. date delayed to 1–1–01 73408
31.3406(d)–3 Regulation at 62 FR 53493 eff. date delayed to 1–1–01 73408
31.3406(g)–1 Regulation at 62 FR 53493 eff. date delayed to 1–1–01 73408
(e) amended; eff. 1–1–01 73412
31.3406(h)–2 Regulation at 62 FR 53493 eff. date delayed to 1–1–01 73408
(d) amended; eff. 1–1–01 73412
31.6302–1 (f)(4) revised 32409
(h)(2) heading and (ii) revised; (j), (k), (m) redesignated as (k), (m) and (n); (h)(2)(i) heading, (C), (iii) and new (j) added 37676
31.6302–1T Removed 32409
31.6413(a)–3 Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408
31.9999–0 Amended; eff. 1–1–01 73412
35a.9999–1 Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408
35a.9999–2 Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408
35a.9999–3 Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

35a.9999–3A Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408
35a.9999–4T Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408
35a.9999–5 Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408
40 Authority citation amended 37677
40.6302(a)–1 Added 37677
54 Technical correction 15873
Comment request 57520
301 Authority citation amended 17285, 51242, 61503
Technical correction 41783
301.6011–3 Added 61503
301.6031–1 Removed 61502
301.6031(a)–1 Added 61502
301.6104(d)–2 Added 17285
301.6104(d)–3 Added 17285
301.6104(d)–4 Added 17288
301.6104(d)–5 Added 17289
301.6109–1 (a)(1)(i), (ii) introductory text, (A), (B) and (h)(2)(iii) revised 51242
(d)(2)(ii) removed; (h) redesignated as (i); new (h) added; new (i)(1) amended 66583
Regulation at 62 FR 53494 eff. date delayed to 1–1–01 73408
301.6109–1T Removed 51242
301.6109–3 Added 51242
301.6109–3T Removed 51243
301.6114–1 Regulation at 62 FR 53495 eff. date delayed to 1–1–01 73408
(b)(4)(ii)(C) introductory text and (D) amended; eff. 1–1–01 73413
301.6311–2T (c)(2) amended 36569
301.6402–3 Regulation at 62 FR 53495 eff. date delayed to 1–1–01 73408
301.6402–5 (h) added 48548
301.6402–6 (n) revised 48548
301.6402–7 (g)(2)(iii), (3) Example 2 and (h)(1)(ii) Example amended 36101
301.6501(c)–1 (e) heading revised; (f) added 67771
301.6721–0 Regulation at 62 FR 53496 eff. date delayed to 1–1–01 73408
301.6721–1 (a)(2)(ii) amended 61504
301.6724–1 Regulation at 62 FR 53496 eff. date delayed to 1–1–01 73408
(g)(2) and (3) amended; eff. 1–1–01 73413
301.7122–1 Removed 39024
301.7122–0T Added 39024
Correctly designated 56246
301.7211–1T Added 39024
301.7701–2 (b)(8)(i) amended; (b)(8)(ii) heading, introductory text, (A) and (B) redesignated as (b)(8)(ii)(A) heading, introductory text, (*1*) and (*2*); (b)(8)(ii) heading, (A)(*3*) and (B) added; (b)(8)(ii)(A)(1), (iii), (iv) and (e) revised 66583
301.7701–3 (f)(1) amended 37678
Corrected 58782
(c)(1)(iii) and (iv) amended; (f) redesignated as (h); (c)(2)(iii), (d)(1) heading, new (f) and (g) added; new (h)(1) revised 66583
301.7701–3T Removed 37678
502 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
503 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
509–1—509.10 (Subpart) Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
509.103 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
509.117 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
509.119 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
509.122 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
513.1 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
513.2 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
513.3 Regulation at 62 FR 53497 eff. date delayed to 1–1–01 73408
513.4 Regulation at 62 FR 53498 eff. date delayed to 1–1–01 73408
513.5 Regulation at 62 FR 53498 eff. date delayed to 1–1–01 73408
514.1—514.10 Regulation at 62 FR 53498 eff. date delayed to 1–1–01 73408
514.20 Regulation at 62 FR 53498 eff. date delayed to 1–1–01 73408

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 26 Chapter I—Con.

514.21 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.22 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.23 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.24 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.25 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.26 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.27 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.28 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.29 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.30 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.31 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.32 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
514.101—514.117 (Subpart) Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
516 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
517 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
520 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
521.1—521.8 (Subpart) Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
521.103 Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
601.901 (Subpart I) Added.....69398
602 Technical correction.....15687
Technical correction.....15873, 41783
602.101 (a) amended; (b) removed; (c) redesignated as (b).....15688
(b) table amended (OMB numbers).....17290, 36116, 36175, 38181, 37678, 43083, 43618, 51243, 61502, 67771, 69921, 71651, 72554, 72558
Regulation at 62 FR 53498 eff. date delayed to 1-1-01.....73408
801 Added.....42835

Proposed Rules:

1.....16372, 23245, 23554, 23811, 24096, 25222, 26348, 26924, 27221, 27730, 27936, 31770, 32209, 32305, 35579, 37727, 43117, 43323, 43462, 43969, 46155, 46320, 46876, 46878, 48572, 49276, 50026, 50783, 54836, 56718, 58006, 59139, 60395, 61236, 63768, 66591, 71082
20.....23245, 23811
25.....23245, 23811, 33235, 56179
26.....62997
31.....23811
40.....23811
49.....22819
54.....15873
301.....16640, 19217, 31529, 35102, 37727, 39106, 43324, 58006, 63768, 66591, 73444
602.....15873, 43462

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

1.3 (a) amended; (b) revised.....49985
1.4 Redesignated as 1.10; new 1.4 added.....49985
1.10 Redesignated from 1.10 and amended.....49985
1.24 Introductory text amended.....49985
1.25 Revised.....49985
Corrected.....54776
1.27 Amended.....49985
1.29 Revised.....49985
1.30 Amended.....49985
1.31 Amended.....49985
1.35 Revised.....49985
1.40 Amended.....49985
1.41 Amended.....49985
1.42 Amended.....49985
1.50 Amended.....49985
1.51 Amended.....49985
1.52 Amended.....49985
1.55 Amended.....49985
1.56 Revised.....49985
1.58 Amended.....49985
1.59 Introductory text and (c) amended.....49985
4 Compliance date notification.....51896
4.21 (e)(1)(i) amended.....50252
4.22 (b)(5) amended.....50253
4.91 Amended.....49388
4.92 (b) amended; (c) added.....49388

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

24 Compliance date notification 51896
24.177 Amended 46844
24.178 (b)(3) and (4) revised 50253
24.180 Amended 46845
54 Comment request 57520
55.180 (b), (c)(2) and (d)(2) revised 55628
178.11 Amended 17291
178.22 (a)(3) and (b) amended 17291
178.25 Amended 17291
178.35 Amended 17291
178.41 (b) and (c) amended 17291
178.45 Amended 17291
178.47 Amended 17291
178.48 Amended 17291
178.52 Amended 17291
178.53 Amended 17291
178.54 Amended 17291
178.56 (b) amended 17291
178.57 (a) amended 17291
178.60 Amended 17291
178.71 Amended 17291
178.72 Amended 17291
178.73 Amended 17291
178.74 Amended 17291
178.76 Amended 17291
178.78 Amended 17291
178.95 Amended 17291
178.111 (b)(1) and (c) amended 17291
178.115 (a) amended 17291
178.122 (c) amended 17291
178.123 (c) amended 17291
178.124 (i) amended 17291
178.125 (h) amended 17291
178.126 Amended 17291
178.127 Amended 17291
178.130 (e) amended 17291
178.144 (i)(4) amended 17291
200.5 Amended 49084
200.25 Amended 49084
200.27 Heading and section amended 49084
200.29 Amended 49084
200.31 Amended 49084
200.35 Amended 49084
200.36 Amended 49084
200.37 Amended 49084
200.38 Amended 49084
200.45 Amended 49084
200.46 Amended 49084
200.48 Introductory text amended 49084
200.49 Amended 49084
200.49a Introductory text amended 49084
200.49b Introductory text and (b) amended 49084
(b) redesignated as (c); new (b) added 71923
200.55 (a) introductory text amended 49084
200.57 Amended 49084
200.59 Amended 49084
200.60 (a), (b) and (c) amended 49084
200.61 Amended 49084
200.62 Amended 49084
200.64 Amended 49084
200.65 Amended 49084
200.70 Amended 49084
200.71 Amended 49084
200.72 Amended 49084
200.73 Amended 49084
200.75 Amended 49084
200.78 Amended 49084
200.79 (b) amended 49084
200.80 Amended 49084
200.85 Introductory text amended 49084
200.95 Amended 49084
200.105 Amended 49084
200.106 (a) amended 49084
200.107—200.110 Undesignated center heading amended 49084
200.107 Amended 49084
200.107a Heading and (a)(3) amended 49084
200.109 Amended 49084
200.110 Amended 49084
200.115 Amended 49084
200.116 Amended 49084
200.117 Amended 49084
200.126 Amended 49084
200.129 Amended 49084
252.62 (c) amended 46845
270 Heading revised 71930, 71939
270.11 Amended 71930, 71939
270.21 Revised 71939
270.22 Removed; new 270.22 redesignated from 270.22a and revised 71939
270.22a Redesignated as 270.22 71939
270.23 Revised 71940
270.25 Revised 71940
270.25a Revised 71940
270.49 Added 71940
270.61 Revised 71923
270.61a Revised 71931
270.61b Removed 71930
270.133 Amended 71931
270.181 Revised 71931
270.182 (a) revised 71931

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 27 Chapter I—Con.

270.183 Revised 71923
Introductory text revised 71931
(e) revised 71940
270.184 Revised 71941
270.187 Removed 71941
270.201 Amended 71931
270.202 Introductory text amended 71931
270.213 Added 71924
270.216a Removed; new 270.216a redesignated from 270.216b 71931
270.216b Redesignated as 270.216a; new 270.216b added 71931
270.216c Revised 71931
270.231 Amended 71931
270.233 Amended 71924
270.252 Amended 71931
270.255 Amended 71931
270.311 Amended 71932
(b) revised 71941
270.351 Revised 71941
270.352 Revised 71941
270.421 Revised 71941
270.422 Revised 71942
270.431 Revised 71942
270.476 Amended 71932
275 Authority citation revised 71924, 71948
275.1 Revised 71924
275.11 Amended 71924, 71932, 71942, 71948
275.25 Amended 71948
275.29 Added 71942
275.30 Revised 71942
275.31 Revised 71942
275.32 Revised 71943
275.33 Revised 71943
275.34 Revised 71943
275.35 Revised 71943
275.39 Amended 71944
Removed 71948
275.40 Revised 71948
275.41 Revised 71949
275.50 Amended; undesignated centerheading revised 71949
275.62 Revised 71949
275.72b Added 71932
275.81 (a) revised 71924
(c)(7) added 71932
(c)(1), (4)(ii) and (iii) revised 71944
(a), (b) and (c) introductory text revised 71949
275.82 Added 71924
275.83 Added 71924
275.85 Revised 71949
275.85a Revised 71949
275.86 Amended 71932
Revised 71950
275.101 (d) and (e) removed 71950
275.106 Revised 71950
275.107 Revised 71932
(c)(4) revised 71944
Removed 71950
275.108 Removed 71950
275.110 (e) revised 71932
(b) and (c) revised 71944
Amended 71950
275.111 Introductory text, (a), (b) and (c) revised 71950
275.115a (e) revised 71950
275.117 (e) revised 71932
(b) and (c) revised 71944
Removed 71951
275.118 Removed 71951
275.121 Amended 71932
275.135—275.141 Undesignated center heading removed 71951
275.135 Removed 71951
275.136 Removed 71951
275.137 Removed 71951
275.138 Removed 71951
275.139 (a) revised 71933
(b) and (c) revised 71944
275.140 Amended 71933, 71951
275.141 Amended 71933, 71951
275.170 Amended 71933
Heading and (b) revised 71944
275.172 Amended 71933
(b) revised 71944
275.181 Revised 71944
275.190—275.208 (Subpart K) Added 71951
275.220—275.228 (Subpart L) Added 71953
290 Authority citation revised 71925
290.11 Amended 71925, 71933, 71945
290.61 Revised 71925
290.61a Amended 71925
290.62 Amended 71925
290.142 Revised 71925
290.143 (b) amended 71925
(a) revised 71933
290.147 Amended 71925, 71933
290.152 Amended 71925
290.153 Amended 71925
290.154 Amended 71925
290.181 Revised 71925
290.198 Amended 71925
290.199 Amended 71926
290.200 Amended 71926
290.201 Amended 71926
290.202 Amended 71926

CHANGES APRIL 1, 1999 THROUGH DECEMBER 30, 1999

290.203 Amended 71926
290.204 Amended 71926
290.205 Amended 71926
290.206 Amended 71926
290.207 Amended 71926
290.207a Amended 71926
290.208 Amended 71926
290.210 Amended 71926
290.213 Amended 71926
290.222 Amended 71933
290.224 Amended 71933
290.225 Amended 71933
290.226 Amended 71933
290.227 Amended 71933
290.232 Amended 71933
290.256 Amended 71926
290.257 Amended 71926
290.258 Amended 71926
290.259 Amended 71926
290.260 Amended 71926
290.261 Amended 71926
290.262 Amended 71926
290.263 Amended 71926
290.264 Amended 71926
290.264a Amended 71926
290.265 Amended 71926
290.266 Amended 71926
290.267 Amended 71926
295.11 Amended 71933, 71945
295.45b Revised 71933
295.45c Added 71934
296 Authority citation revised 71958
296.72 Amended 71934
296.74 Amended 71934
295.51 Revised 71945
296.71—296.80 (Subpart C) Heading revised 71945
296.72 Amended 71945
296.74 Revised 71945
296.75 Revised 71945
296.76 Revised 71946
296.77 Revised 71946
296.81 Undesignated centerheading and section added 71947
296.163 Amended 71934
296.191—296.274 (Subpart I) Revised 71958

Proposed Rules:

4 ..... 17588, 33448, 50265, 51933, 57413, 72612
5 ..... 17588, 57413
7 ..... 17588, 57413
9 ..... 24308, 52483, 66433
24 ..... 50265, 51933
178 33450
179 33450
200 71927
270 ..... 71927, 71935
275 ..... 71927, 71935, 71955
290 ..... 71927, 71935
295 71935
296 71935

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.14 Removed 37042
0.39c Regulation at 63 FR 62938 confirmed 58786
0.85 (b) amended; (j) revised 52226
0.137 Removed 46846
0.138 Revised 46846
0.157 (b), (c) and (d) revised; (e) removed 46846
2.36 (a) amended; interim 59623
16 Authority citation revised 52226
16.30 Revised 52226
16.31 Revised 52226
16.32 Amended 52226
16.33 Amended 52226
16.34 Amended 52226
16.83 (c) and (d) added 61787
20 Authority citation revised 47102
20.1 Revised 52226
20.3 Revised 52226
20.25 Amended 47102
20.30—20.38 (Subpart C) Revised 52227
20 Appendix amended 52229
22 Authority citation revised 47102
22.29 Revised 47102
27 Regulation at 63 FR 62938 confirmed; revised 58786
32.31—32.40 (Subpart B) Heading revised 49953
32.31 Revised 49953
32.32 (a), (b)(3), (c), (d) and (f) revised 49953
32.33 (a)(1) revised 49953
32.34 (b)(2) revised 49953
32.35 (a) revised 49953
32.37 (c) revised; (d) added 49954
36 Authority citation revised 47103
36.504 (a)(3)(i) and (ii) revised 47103
50.12 Revised 52229
50.23 Added 59122
68 Regulation at 64 FR 7073 confirmed 49660
68.1 Regulation at 64 FR 7073 confirmed 49660
68.2 Regulation at 64 FR 7073 confirmed; amended 49660
68.3 Regulation at 64 FR 7074 confirmed 49660
68.6 Regulation at 64 FR 7074 confirmed 49660
68.7 Regulation at 64 FR 7074 confirmed 49660
68.9 Regulation at 64 FR 7075 confirmed 49660
68.10 Regulation at 64 FR 7075 confirmed 49660
68.14 Regulation at 64 FR 7075 confirmed 49660
68.22 Regulation at 64 FR 7076 confirmed 49660
68.23 Regulation at 64 FR 7076 confirmed 49660
68.24 Regulation at 64 FR 7077 confirmed 49660
68.27 Regulation at 64 FR 7077 confirmed 49660
68.33 Regulation at 64 FR 7077 confirmed; (c) heading, introductory text and (3)(iii) revised 49660
68.38 Regulation at 64 FR 7078 confirmed 49660
68.42 Regulation at 64 FR 7079 confirmed 49660
68.52 Regulation at 64 FR 7079 confirmed; (c)(5) amended 49660
68.53 Regulation at 64 FR 7081 confirmed 49660
68.54 Regulation at 64 FR 7082 confirmed 49660
68.55 Regulation at 64 FR 7082 confirmed 49660
68.56 Regulation at 64 FR 7083 confirmed 49660
68.57 Regulation at 64 FR 7083 confirmed 49660
68.58 Regulation at 64 FR 7083 confirmed 49660
71 Authority citation revised 47103
71.3 Amended; (a) introductory text and (f) introductory text revised; (a) concluding text and (f) concluding text 47103
76 Authority citation revised 47103
76.3 (a) revised 47103
85 Added 47103
90 Authority citation revised 39783
90.100—90.106 (Subpart E) Added 39783
91 Interpretation 71022

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

505 Revised 43881

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 28 Chapter V—Con.

545.11 (b) introductory text, (2) and (d)(9) amended; (d)(2) and (6) revised 72799
551 Authority citation revised 68264
551.150 Revised 68265
551.151 (d) revised 68265
553 Authority citation revised 36753
553.10 Amended 36753
553.11 Revised 36753
553.12 Revised 36754
553.13 (b)(2)(iii) amended 36754
553.14 Revised 36754

Chapter VI—Offices of Independent Counsel, Department of Justice (Parts 600—699)

600 Revised 37042

Proposed Rules:

0—199 (Ch. I) 54794
0 68307
5 37065
16 ..... 49117, 60753, 70202, 70203
54 58568
302 48336
540 40718
571 53872

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

0.735–1 Regulation at 61 FR 57287 confirmed; revised 73853
0.735–2 Regulation at 61 FR 57287 confirmed; removed 73853
0.735–12 Regulation at 61 FR 57287 confirmed 73853
0.735–13 Regulation at 61 FR 57287 confirmed 73853
0.737–1—0.737–11 (Subpart B) Regulation at 61 FR 57287 confirmed 73853
0.737–1 Revised 73853
0 Appendix A removed 73853
18.9 (e)(2) revised 47089
37 Added; interim 61715

Chapter II—Office of Labor-Management Programs, Department of Labor (Parts 200—299)

215 Guidelines 40990

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

403.4 (b) revised 71623

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (2), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1), (o)(1) and (p)(1) revised 48525
697.3 Revised 48525

Chapter X—National Mediation Board (Parts 1200—1299)

1203.1 Amended 40287
1203.2 Amended 40287
1203.3 (a) amended 40287
1205.4 Amended 40287
1209 Authority citation revised 40287
1209.7 (f) amended 40287
1209.8 (d) amended 40287

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1604.11 (c) removed; Appendix A added 58334
1606.8 (c) removed; Appendix A added 58334
1610.4 Regulation at 63 FR 1341 confirmed 45164
1610.5 Regulation at 63 FR 1341 confirmed 45164
1610.8 Regulation at 63 FR 1341 confirmed 45164
1610.9 Regulation at 63 FR 1341 confirmed 45164
1610.10 Regulation at 63 FR 1342 confirmed 45164
1610.11 Regulation at 63 FR 1342 confirmed 45164
1610.14 Regulation at 63 FR 1342 confirmed 45164
1610.15 Regulation at 63 FR 1342 confirmed 45164
1610.18 Regulation at 63 FR 1342 confirmed 45164
1610.21 Regulation at 63 FR 1342 confirmed 45164

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

1610.34 Regulation at 63 FR 1342 confirmed 45164
1614.102 (b)(2) through (6) redesignated as (b)(3) through (7); (b)(2) added; (c)(5) revised 37655
1614.103 (b)(3) amended; (b)(4) revised; (5), (6) and (7) added 37655
1614.105 (b) redesignated as (b)(1); new (b)(1) and (d) amended; (b)(2) added; (f) revised 37656
1614.106 (d) redesignated as (e); new (d) added; (e) revised 37656
1614.107 (a) through (h) redesignated as (a)(1) through (8); introductory text redesignated as (a) introductory text and revised; (7) and (8) revised; (9) and (b) added 37656
1614.108 (b) amended; (f) revised; (g) added 37656
1614.109 (b) through (g) redesignated as (d) through (i); (a), new (f)(3) introductory text and new (i) revised; new (b) and new (c) added; new (f) introductory text removed 37657
1614.110 Revised 37657
1614.201 (a), (c)(1) and (2) amended 37658
1614.204 (b) revised; (d)(2) through (6) amended; (d)(7), (e)(1), (g)(2), (4) and (l)(3) revised; (j)(7) amended 37658
1614.302 (d)(1)(i) amended 37659
1614.401 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; new (c) revised 37659
1614.402 (a) revised 37659
1614.403 Revised 37659
1614.404 (c) added 37659
1614.405 (a) and (b) revised 37659
1614.407 Removed; new 1614.407 redesignated from 1614.408; (a) and (b) amended; 37659
1614.408 Redesignated as 1614.407; new 1614.408 redesignated from 1614.409 37659
1614.409 Redesignated as 1614.408; new 1614.409 redesignated from 1614.410 37659
1614.410 Redesignated as 1614.409 37659
1614.501 (e)(i) introductory text and (2)(ii) amended; (e)(1)(iv), (2)(i), (ii)(A) and (B) revised 37659
1614.502 (a) amended; (b) introductory text and (2) revised; (b)(3) added 37660
1614.504 (a) and (b) amended 37660
1614.505 Added 37660
1614.603 Amended 37661
1614.604 (b) amended 37661
1614.605 (d) amended 37661
1614.606 Revised 37661

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1917 Authority citation revised 61505
1917.1—1917.4 (Subpart A) Heading revised 61505
1917.1 (a)(2)(xiv) revised 46847
1917.4 Added (OMB numbers) 61505
1917.50 OMB number 61506
1918 Authority citation revised 61506
1918.1—1918.4 (Subpart A) Heading revised 61506
1918.1 (b)(10) revised 46847
1918.4 Added (OMB numbers) 61506

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2575 Added 42246
2570 Authority citation revised 42246
2570.100—2570.502c–3 (Subpart E) Redesignated as 2575.100—2575.502c–3 (Subpart A) 42246
2575.100—2575.502c–3 (Subpart A) Redesignated from 2570.100—2570.502c–3 (Subpart E) 42246
2590 Comment request 57520

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2700.3 (c) revised 48712
2700.5 (c), (d) and (f) revised 48712
2700.7 (c) and (d) revised 48713
2700.9 Revised 48713

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 29 Chapter XXVII—Con.

2700.10 (c) redesignated as (d); new (c) added; new (d) revised; 48713
2700.45 (a) and (f) revised 48713
2700.70 (a), (d) and (e) revised; (f) and (g) redesignated as (g) and (h); new (f) added 48713
2700.74 (b) revised; (c) added 48714
2700.75 (c) and (d) revised; (f) redesignated as (g); new (f) added 48714
2700.76 (a) revised....48714

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4003 Notice....65658
4007 Notice....65658
4007.8 Revised 66385
4011 Notice....65658
4011 Appendix B amended 67165
4022 Appendix amended 67164
4041 Notice....65658
4041A Notice 65658
4043 Notice....65658
4044 Technical correction 51587
4044 Appendix B amended....38115, 44128, 49986, 55828, 61788, 69922
Appendix D amended....67166
4050 Notice....65658

Proposed Rules:

36 58568
570....67130
579....67130
1401 59697
1908 35972
1910 ....45098, 65768, 73448
1926....38078, 47461, 51722, 66595
1952 62138
2510 ....38390, 51277, 57611
2520 ....42792, 42797, 67436
2560....42792, 42797
2570 42797
2590 62054
2700....61236, 68649
4044 38534

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

26 Removed....43282
29 Removed....43282
46 Added; eff. 10-2-00....53130
Tecnical correction 58334
48 Tecnical correction 58334
48.21 Amended; eff. 10-2-00....53130
50 (Subchapter M) Redesignated as 50 (Subchapter I); eff. 9-13-00....49630
56—58 (Subchapter N) Redesignated as 56—58 (Subchapter K); eff. 9-13-00....49630
56 Technical correction 49636
56.5050 Undesignated center heading and section removed; eff. 9-13-00 49629
57 Technical correction 49636
57.5050 Undesignated center heading and section removed; eff. 9-13-00 49629
57.22303 Revised 43283
62 (Subchapter M) Added; eff. 9-13-00....49630
62 Technical correction 49636
70 Authority citation revised 43285
Technical correction 49636
70.204 (a) and (e) revised 43285
70.500—70.511 (Subpart F) Removed; eff. 9-13-00 49630
71 Authority citation revised 43285
Technical correction 49636
71.204 (a) and (e) revised 43286
71.800—71.805 (Subpart I) Removed; eff. 9-13-00 49630
75.360 Heading and (a)(1) revised 45170
75.506 (d) revised 43283
75.800-4 Revised 43287
75.1800—75.1808 (Subpart S) Removed....43287
90.201—90.220 (Subpart C) Authority citation revised....43286
90.204 (a) and (e) revised 43286

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202 Training sessions....56454
Eligible index zones 66771
202.51 (b) revised....43513
202.150—202.152(Subpart D) Heading revised....43513
202.150 (b)(1), (e)(1), (2) and (f) amended 43513
202.151 (a)(2) amended....43513
202.550—202.558 (Subpart J) Added 43514

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

206 Training sessions 56454
Eligible index zones 66771
206.51 Amended 43288
206.53 (c) amended 43288
206.151 Amended 43288
206.156 (d) amended 43288
206.158 (e) amended 43288
206.159 (a)(1)(i) and (e)(2) amended 43288
206.160 Correctly designated 43288
206.170—206.181 (Subpart E) Revised 43515
206.172 (h) amended 43288
206.173 (a)(2) amended 43288
206.174 (d)(2) amended 43288
206.176 (c)(3) amended 43288
206.177 (b)(3)(ii) and (d)(1) amended 43288
206.251 Amended 43288
206.258 (a) amended 43288
206.259 (c)(2)(ii) amended 43288
206.261 (b) revised 43288
206.262 (c)(2)(v) redesignated as (c)(2)(iv); (d)(2) and (3) added; (e)(2) revised 43288
206.263 (b) amended 43289
206.264 Amended 43289
206.451 Amended 43289
206.457 (a) amended 43289
206.460 (b) revised 43289
206.461 (e)(1) amended 43289
206.462 (b) and (c) amended 43289
206.463 Amended 43289
206.464 (a) amended 43289
210 Authority citation revised 38122
210.10 (c)(1), (2), (7) and (d) revised 38122
210.20—210.22 (Subpart A) Added 38122
210.52 Revised 38123
216 Authority citation revised 38123
216.11 Added 38123
216.50 (a) revised; (b), (c) and (d) redesignated as (f), (g) and (h); new (b) through (e) added 38123
216.53 Revised 38123
216.55 Revised 38123
216.56 (b) revised; (c) added 38123
218.154 (a) and (b) revised 72775
227.101 Revised 36784
250.101—250.199 (Subpart A) Revised 72775
250.101 (e) table amended 69923
250.203 (f) revised 53200
(m) amended 72794
250.204 (i) and (j) revised 53200
(p) and (r) amended 72794
250.304 (e)(2) amended 72794
250.402 Removed 72794
250.403 Removed 72794
250.414 (a) and (g) amended 72794
250.415 (d) amended 72794
250.416 (b) amended 72794
250.507 Removed 72794
250.508 Removed 72794
250.513 (d) amended 72794
250.607 Removed 72794
250.608 Removed 72794
250.1010 (a) amended 42598
250.1102 (a)(9), (b)(8) and (9) amended 72794
250.1201 Introductory text amended 72794
250.1202 (a)(3), (b)(4)(i), (g) introductory text, (k)(1) and (l)(4) amended 72794
250.1203 (b)(2) and (4) amended 72794
250.1301 (d), (g)(1) and (2)(ii) amended 72794
250.1507 Table amended 72794
250.1617 (a) and (d) amended 72794
250.1618 (a) amended 72794
250.1619 (b) amended 72794
250.1629 (a) amended 72794
252.7 (a)(2)(i) and (ii) amended 72794
253.11 (b)(2) amended 72794
253.51 (d) amended 72794
256 Authority citation revised 72795
256.1 Revised 72795
256.4 Revised 72795
256.35 (c) added 72795
256.46 (b) revised 40767
256.70 Amended 72795
256.73 Revised 72795
256.77 (d)(3) amended 72795
282.28 (a) amended 72795
290.110 Added 50753
290.111 Added 50753

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

740.4 (a)(2) and (3) amended; (a)(4) and (5) revised 70830
740.10 Revised 70831
740.11 (a) revised; (g) added 70831
745.10 Revised 70831
745.13 (o) and (p) revised 70831
761.5 Amended 70831

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 30 Chapter VII—Con.

761.10 Added 70832
761.11 Revised 70832
761.12 Revised 70833
761.13 Added 70833
761.14 Added 70833
761.15 Added 70833
761.16 Added 70833
761.17 Added 70836
761.200 Added 70866
762 Authority citation revised 70836
762.14 Redesignated as 762.15; new 762.14 added 70837
762.15 Redesignated from 762.14 70837
772 Authority citation revised 70837
772.10 Revised 70837
772.12 Heading, (d)(2)(ii) and (iii) revised; (b)(14) and (d)(2)(iv) added 70837
773 Authority citation revised 70837
773.13 (a)(1)(v) amended 70837
773.15 (c)(3)(ii) revised 70837
778 Authority citation revised 70837
778.16 (c) revised 70837
780 Authority citation revised 70838
780.31 Heading and (a)(2) revised 70838
780.33 Amended 70838
784 Authority citation revised 70838
784.17 Heading and (a)(2) revised 70838
784.18 Introductory text and (a) amended 70838
784.20 (a)(3) amended 71653
817 Authority citation revised 71653
817.121 (c)(4)(i) through (iv) suspended 71653
904.25 Table amended 50756
913.15 Table amended 68031, 72277
914.15 Table amended 43913, 57567, 63684
914.30 Added 70580
915.15 Table amended 66390
915.16 (a) through (e) added 66391
918.15 Table amended 68291
920.15 Table amended 36786, 63688
920.16 (l) revised 36786
924.15 Table amended 57571
924.16 (f), (g), (h), (j), (k), (m) and (n) removed 57571
925.15 Table amended 57981
925.16 (p)(7), (8) and (15) removed 57981
934.15 Table amended 38827, 60660
934.16 (cc) and (n) removed 60660
935.15 Table amended 63690
936.15 Table amended 52232, 70586
936.16 (c) and (g) removed 70587
943.15 Table amended 43923
946.15 Table amended 69402, 72280
948.15 Table amended 52303, 61507, 61518
948.16 (mmm) and (uuu) removed 52303
(jjjj) added 61507
(kkkk), (llll) and (mmmm) added 61518
950.15 Table amended 52308
950.16 (b), (c), (g), (v), (x), (ii)(1) and (kk) removed 52308

Proposed Rules:

14 72617
18 ..... 72617, 72620
57 ..... 36632, 36826, 40533
70 65671
71 65671
72 36826
75 ..... 36632, 36826, 40533, 72617, 72620
90 65671
206 ..... 45213, 50026, 73458, 73820
250 53298
280 68649
901 ..... 48573, 55878
904 ..... 37067, 56179
913 44674
914 ..... 38165, 44448, 50026
915 54840
916 ..... 40323, 56982
917 38391
918 49118
920 38392
924 40326
931 ..... 71698, 71700
935 42887
936 ..... 43327, 56983
938 ..... 36828, 66595, 66598, 70644, 72297
946 ..... 45489, 54843, 61805
948 54845

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Amended 62586
18 Revised 62112

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

100 Authority citation revised 39920

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

100.11 (b) revised 39920
100.12 (b) revised 39920
103 Exception 41041
103.11 (c)(7) and (n)(3) revised; (i), (n)(4), (5) and (10) removed; (n)(6) through (9) redesignated as (n)(4) through (7); new (n)(5), new (6) and new (7) amended; (uu) and (vv) added 45450
103.36 (b)(10) amended 45453
103.37 (c) added 45453
103.41—103.54 (Subpart D) Redesignated as 103.51—103.64 (Subpart E); new 103.41 (Subpart D) added 45451
103.56 (b)(7) amended 45453
103.57 (d) and (e) amended 45453
103.61—103.67 (Subpart E) Redesignated as 103.71—103.77 (Subpart F) 45451
103.72 Introductory text amended 45453
103.73 (a) introductory text, (1), (b) introductory text and (1) amended 45453
103.74 (a) amended 45453
103.75 (a) and (c) introductory text amended 45453
103.76 Amended 45453
103.70—103.77 (Subpart F) Redesignated as 103.80—103.87 (Subpart G) 45451
103.82 Amended 45453
103.83 (b) amended 45453
103.85 Amended 45453
103.86 (a) introductory text and (b) amended 45453

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

285.8 Added; interim 71231
306.1 Revised 38125
306.2 (c) revised 38125
306.3 Revised 38125
306.12 Amended 38125
306.15 (a) revised; (b) introductory text amended; (b)(2) revised 38125
306.17 Revised 38126
306.19 Revised 38126
306.23 (c) revised; (g) amended 38126
306.24 Amended 38126
306.25 (a) amended 38126
306.26 Revised 38126
306.27 Revised 38126
306.28 Removed 38126
306.37 (d) revised 38126
306.38 Revised 38126
306.40 Amended 38126
306.41 Amended 38126
306.43 Amended 38126
306.56 (a) and (b) amended 38126
306.57 (c)(1) amended 38126
306.117 Heading and (d) revised; (b) amended 38126
315.31 (b) and (c) amended; (h)(2) and (7) removed; (h)(3) through (6), (8) and (i) redesignated as (h)(2) through (5), (6) and (7); (h)(1), new (5), new (6) and new (7) revised 40486
353.31 (c)(2), (d) and (e) removed; (c)(1), (f), (g) and (h) redesignated as (c) through (f); (b) and new (c) amended; new (f)(2) and new (7) removed; new (f)(3) through (f)(6), new (f)(8) and (i) redesignated as (f)(2) through (5), (6) and (7); new (f)(1), (5)(ii), (6) and (7) revised 40487
357.26 Heading, (a) and (b) heading revised; (b)(1)(i), (iv), (2), (3), (c) and (d) removed; (b)(1)(ii), (iii), (v) and (vi) redesignated as (b), (c), (d) and (e); new (c) heading, new (d) heading and (e) heading added 40487
357.30 Revised 40487
370 Revised 40487

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

538.405 Revised 41786
538.523 Added 41787
Heading revised; (b)(4) amended 58790
538.524 Added 41787
Heading revised; (b)(4) amended 58790
538.525 Added 41788
(b) amended 58790
538.526 Added 41788
(b)(3) amended 58790
538 Appendix A added 41788
550 Authority citation revised 41789
550.405 Revised 41789

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 31 Chapter V—Con.

550.569 Added 41789
Heading and (a) introductory text revised; (b)(4) amended 58790
550.570 Added 41790
Heading revised; (b)(4) amended 58791
550.571 Added 41790
(b) amended 58791
550.572 Added 41790
(b)(3) amended 58791
550.573 Added 41791
550 Appendix A added 41791
Appendix B added 58791
560.210 (c)(2) amended 58791
560.405 Added 41791
560.505 (c) amended 58791
560.530 Added 41791
Heading and (a) introductory text revised; (b)(4) amended 58791
560.531 Added 41792
Heading revised; (b)(4) amended 58791
560.532 Added 41793
(b) amended; (c) revised 58791
560.533 Added 41793
(b)(3) amended; (c) revised 58791
560 Appendix designated as Appendix A; Appendix B added 41793
Appendix C added 58792
590 Revised 43926
Chapter V Appendix A amended 35576, 35577
Appendixes A and B amended 60661
Appendix B amended 60671

Proposed Rules:

1 ..... 46627, 62620
28 ..... 58568, 69433
203 41748
285 71233
375 42625
380 58364

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

44 Revised 72027
199.2 (b) amended 46134
199.3 Revised 46135
199.4 (d)(3)(vii) and (g)(48) revised; interim 45454
(e)(5)(iii)(B), (f)(1), (2) introductory text, (ii) introductory text, (iii), (iv), (3) introductory text, (i), (iii), (4) introductory text and (ii) revised 46140
(a)(9) introductory text and (i)(B) revised; interim 72031
199.8 (a) and (d)(1) revised 46141
199.13 (i) revised 38576
199.14 (a)(1)(iii)(B), (D)(*5*), (E)(*1*)(*i*)(*A*), (*B*), (*ii*)(*A*), (*B*), (G)(3) introductory text, (d)(3)(iv) and (h) introductory text revised; (a)(1)(iii)(D)(1) amended 60671
199.20 (d)(1)(iv) added 46141
287 Revised 67166
296 Revised 71298
299 Revised 71299
312.12 (f)(1) and (2) revised 72929
321 Revised 49660

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(13) revised 45877

Chapter VI—Department of the Navy (Parts 700—799)

700 Revised 56062
701 Added 49850

Chapter VII—Department of the Air Force (Parts 800—1099)

806 Revised 72808
806b Appendix C amended 72032
989 Revised 38129

Chapter XVIII—National Counterintelligence Center (Parts 1800—1899)

Chapter XVIII Established; interim 49878
1800.31 (c)(4)(ii) correctly revised 53769

Chapter XX—Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

2001.55 Added 49389

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

(d) corrected 62113
2004 Added 51854

Proposed Rules:

196 58568
199 ..... 56283, 66126, 67220, 69981
230 43856
231a 43856
231 43858
767 63263
775 37069
776 37473
806b 56181
811 72621

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

26.03 (f) table amended 69635
100 Regulation at 61 FR 33032 eff. date delayed 70184
Temporary regulations list 72929
100.01—100.50 (Subpart A) Regulation at 61 FR 33032 eff. date delayed 70184
100.01 Regulation at 61 FR 33032 eff. date delayed 70184
100.05 Regulation at 61 FR 33032 eff. date delayed 70184
100.15 Regulation at 61 FR 33032 eff. date delayed 70184
100.17 Regulation at 61 FR 33032 eff. date delayed 70184
100.18 Regulation at 61 FR 33032 eff. date delayed 70184
100.19 Regulation at 61 FR 33032 eff. date delayed 70184
100.25 Regulation at 61 FR 33033 eff. date delayed 70184
100.30 Regulation at 61 FR 33033 eff. date delayed 70184
100.35 Regulation at 61 FR 33033 eff. date delayed 70184
100.35-T05-064 Added (temporary) 39416
100.35-T05-070 Added (temporary) 46273
100.35-T05-079 Added (temporary) 50449
100.35-T05-089 Added (temporary) 67169
100.35T-07-056 Added (temporary) 53209
100.35T-07-057 Added (temporary) 66107
100.35T-07-068 Added (temporary) 59624
100.35T-07-082 Added (temporary) 69193
100.35-T08-046 Added (temporary) 42278
100.35T-08-048 Added (temporary) 42598
100.35-T08-049 Added (temporary) 43290
100.35-T08-052 Added (temporary) 53629
100.35-T08-060 Added (temporary) 55831
100.37T-07-063 Added (temporary) 50757
100.50 Regulation at 61 FR 33033 eff. date delayed 70184
100.100—100.1306 (Subpart B) Regulation at 61 FR 33033 eff. date delayed 70184
100.100 Regulation at 61 FR 33033 eff. date delayed 70184
100.114 (a) table corrected 37583
100.504 (a) revised 55830
100.511 Implementation (temporary) 67169
100.515 Implementation (temporary) 46274
100.519 Implementation (temporary) 51047
100.1103 Revised 39029
100.1104 Removed 39030
100.1203 Removed 39030
110.155 (c)(6) added 38829
110.156 (b)(11) added; eff. 8-28-99 through 11-28-99 49669
110.183 (b) revised 42279
117 Temporary drawbridge operations regulations 36239, 36569, 36570, 42033, 44131, 44826, 46273, 47389, 49391, 49669, 51444, 53209, 54776, 55137, 55831, 56677, 66107, 67169, 68291
117.39 (l) and (o) revised 62114
117.207 (a) revised 60674
117.211 (b)(2) revised 60675
117.215 (b) revised 61519
117.219 (b) revised 61522
117.333 Revised 55419
117.393 (d) amended 61520

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 33 Chapter I—Con.

117.525 (b) redesignated as (a)(8); new (b) added 61521
117.527 Revised 60673
117.565 Revised 61209
117.570 Added 61207
117.595 Revised 46275
117.635 Suspended; eff. 1-1-00 through 4-25-00 67774
117.661 Stayed; eff. 12-15-99 through 3-20-00 59124
117.715 Revised 59625
117.723 (f) revised; interim 38831
(g) revised 62114
117.734 Revised 71655
117.755 Revised 44130
117.789 (c) suspended; (g) added (temporary) 56252
117.799 (d) revised 46276
117.869 (a)(3) added; eff. 7-26-99 through 9-15-00 37679
117.911 (f) revised; interim 38830
117.949 Suspended; eff. 7-26-99 through 10-1-99 42600
117.T408 Added (temporary) 50254
117.T636 Added (temporary) 67774
117.T662 Added (temporary) 59124
117.T950 Added (Temporary) 42600
127.003 (b) amended 67175
154 Authority citation revised 67175
154.106 (b) amended 67175
154 Appendix C amended 67175
155.140 (b) amended 67176
155 Appendix B amended 67176
159.4 Added 67176
159.125 Amended 67176
160.307 (g) revised; interim; eff. 8-2-99 through 3-31-00 41794
160.313 (a)(1), (2) and (b)(2) revised; interim; eff. 8-2-99 through 3-31-00 41794
160.315 (b)(2) revised; interim; eff. 8-2-99 through 3-31-00 41795
160.317 (a)(1), (2) and (b)(2) revised; (f) and (g) redesignated as (e) and (f); interim; eff. 8-2-99 through 3-31-00 41795
160.301—160.317 (Subpart D) Appendix A revised; eff. 8-2-99 through 3-31-00 41796
161.12 (b) table amended 69636
164.03 (b) amended 67176
164.74 (a)(3)(i) and (ii) amended 67176
165 Technical correction 36572
Temporary regulations list 72929
165.T01-030 Added (temporary) 36572
165.T01-094 Added (temporary) 46849
165.T01-102 Added (temporary) 36573
165.T01-104 Added (temporary) 39033
165.T01-110 Added (temporary) 39034
165.T01-115 Added (temporary) 37681
165.T01-118 Added (temporary) 43291
165.T01-141 Added (temporary) 45880
165.T01-145 Added (temporary) 46277
165.T01-147 Added (temporary) 49671
165.T01-149 Added (temporary) 46567
165.T01-152 Added (temporary) 49393
165.T01-154 Added (temporary) 49394
165.T01-161 Added (temporary) 51244
165.T01-163 Added (temporary) 52233
165.T01-167 Added (temporary) 51899
165.T01-180 Added (temporary) 70588
165.T01-181 Added (temporary) 61022
165.T01-CGD1-184 Added (temporary) 71025
165.T01-185 Added (temporary) 62588
165.T05-041 Added (temporary) 45879
165.T05-080 Added (temporary) 49669
165.T05-090 Added (temporary) 55420
165.T05-094 Added (temporary) 66586
165.T08-034 Added (temporary) 52434
165.T08-038 Added (temporary) 55139
165.T08-041 Added (temporary) 57981
165.T11-066 Added (temporary) 51900
165.T13-023 Added (temporary) 43292
165.T13-035 Added (temporary) 72282
165.T17-012 Added (temporary) 49395
165.T09085 Added (temporary) 72559
165.123 Added; eff. 12-22-99 through 3-1-00 71659
165.161 Removed 44659
165.166 Removed 44659
165.167 Removed 44659
165.170 Removed 44659
165.174 Removed 44659
165.175 Removed 44659
165.178 Removed 44659
165.1112 Added 39030
165.1309 Added 72561
165.1310 (a) and (e) revised 61212
173 Authority citation revised 36243
173.85 Revised 36243
183.5 (b) amended 67176
183.110 Amended 67176
183.620 (a)(5)(ii) note amended 67176
187.301—187.331 (Subpart D) Removed 56966

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

207.440 (c), (e), (f), (h) and (r) revised 69403

Proposed Rules:

1—199 (Ch. I) 56286, 63266
20 53970
100 ... 41853, 47461, 52723, 54847, 54849, 70650
110 ..... 38166, 47156, 52723, 60399
117 ..... 36318, 39454, 44145, 44147—44149, 44151, 46322, 46323, 47751, 55218, 61561
140 68416
141 68416
142 68416
143 68416
144 68416
145 68416
146 68416
147 ..... 66434, 68416
165 ..... 36633, 39106, 39454, 47752, 49424, 52723, 54252, 54963, 57418, 57419, 58366, 63267, 70650
167 46627
175 ..... 53971, 63773
181 56287
183 56287
207 ..... 47462, 55441

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

75.118 (a) amended 50391
75.215 Cross-reference amended 50391
75.220 (b)(2) revised 50391
75.511 Cross-reference revised 50391
75.517 Amended 50391
75.524 (b) amended; (b) note removed 50391
75.530 Revised 50391
75.618 Heading and cross-reference revised 50391
75.621 Cross-reference revised 50391
75.626 Cross-reference revised 50392
75.650 Cross-reference and heading revised 50392
75.702 Cross-reference revised 50392
75.708 (b) revised 50392
75.720 Cross-reference, (a)(1) and (c) revised 50392
75.730 Cross-reference revised 50392
75.732 Cross-reference revised 50392
76 Authority citation revised 71965
76.132 (a)(5) revised 50392
76.530 Revised 50392
76.681 Cross-reference removed 50392
76.785—76.799 (Subpart H) Added 71965
76.900—76.910 (Subpart H) Redesignated as 76.900—76.910 (Subpart I) 71965
76.900—76.910 (Subpart I) Redesignated from 76.900—76.910 (Subpart H) 71965
77.1 Amended 50392
80.42 (b)(4) amended 50392

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

304 Revised 69144
379 Revised 48053

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600 Authority citation revised 58615
600.2 Amended 58615
600.4 (c) revised 58615
600.5 (e) added; (h) removed; (i) redesignated as (h); (a)(8), (b)(3)(i), (d), (f), (g) and new (h) revised 58615
600.6 (b)(3)(iii) and (d) revised 58616
600.7 (a)(1)(iii), (iv) and (c) revised 58616
600.8 Revised 58616
600.20 (c)(8) added 58616
600.31 (a)(1) revised; (f) removed 58616
600.55 (a)(5)(i)(A) revised 58616
600.56 Redesignated as 600.57; new 600.56 added 58616
600.57 Redesignated from 600.56 58616
602 Revised 56617
606 Added 70147
607.2 (c), (d) and (e) revised; (f) and (g) added 70153

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 34 Chapter VI—Con.

607.3 (b)(5) amended; (b)(6) redesignated as (b)(7); new (b)(6) added 70153
607.7 (b) revised; (c) redesignated as (e); new (c) and (d) added; new (e) amended 70153
607.8 (b)(5) and (6) added 70154
607.9 (b) revised 70154
607.10 (b)(8) redesignated as (b)(13); (b)(1) introductory text, new (13) introductory text, (ii), (v), (viii), (c)(6) and (11) revised; (b)(7) and new (13)(vii) amended; (b)(8) through (12), (13)(ix) through (xiii) and (14) added 70154
607.11 (c) and (d) revised; (e) removed 70155
607.13 Introductory text and (a) revised 70155
607.20 (a)(2) and (b)(1) revised 70155
607.23 (b)(2) amended; (e) removed 70155
607.24 (a)(1) amended 70155
611 Added 42839
614 Added 72803
668 Authority citation revised 57358, 58617, 59037, 59066
668.8 (h) revised 58291
(f)(2) revised 59037
668.12 (f) and (g) added; authority citation revised 58617
668.13 (b)(1) amended 58617
668.14 (b)(15), (20) and (24) revised; (b)(16), (d) and (e) removed; (f) through (i) redesignated as (e) through (h); new (d) added 58617
(b)(25)(ii) revised 59038
668.16 (h)(3) and (l)(2) revised 59038
668.17 (a)(1), (b)(4), (5), (c)(1)(ii), (2), (7) and (j)(1)(ii) revised; (j)(1)(iii) removed; (j)(2) through (5), (6) and (7) redesignated as (j)(3)(i) through (j)(3)(iv), (2), and (j)(3)(v); new (j)(4) and (k) added; (b)(3) introductory text, (c)(1) introductory text, (e)(1)(ii)(A), (B), (3)(f)(1)(ii)(A), (B), (3), (h)(2)(ii), (iii), (3)(ii)(B) introductory text, (iii)(B) introductory text and new (j)(2), (3)(i), (ii) and (v) amended; OMB number 58981
668.22 Revised 59038
668.24 (c)(1)(iv)(C) and (D) revised 59042
668.25 (c)(4)(ii) revised 59042
668.26 (b)(7) revised 59042
668.27 Added 56818
668.32 (e)(2), (3), (h), (j) and (k)(7) amended; (e)(4) and (l) added 57358
(c) revised 58291
668.38 (b) revised 57358
668.40 Added 57358
668.41—668.49 (Subpart D) Heading revised 59066
668.41 Revised 59066
668.42 Removed; new 668.42 redesignated from 668.43; (c)(5) and (6) amended; (c)(7) added; OMB number 59067
668.43 Redesignated as 668.42; new 668.43 redesignated from 668.44 59067
Revised 59068
668.44 Redesignated as 668.43; new 668.44 redesignated from 668.45 59067
668.45 Redesignated as 668.44; new 668.45 redesignated from 668.46 59067
Revised 59068
668.46 Redesignated as 668.45; new 668.46 redesignated from 668.47 59067
Revised 59069
668.47 Redesignated as 668.46; new 668.47 redesignated from 668.48 59067
Revised 59071
668.48 Redesignated as 668.47; new 668.48 redesignated from 668.49 59067
(a)(1), (iii) through (vi) and (b) amended; OMB number 59072
668.49 Redesignated as 668.48 59067
668.83 (c)(2)(ii)(C) revised 59042
668.92 (d) added; authority citation revised 56818
(b)(2) revised 59042
668.95 (d) added; authority citation revised 56819
(b)(2)(i) revised 59042
668.113 (d) added; authority citation revised 56819
668.161 (a)(4) revised 58291
668.164 (g)(1) revised 59042
668.171 (b)(4)(i) revised 59042

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

668.173 (a) introductory text, (b) introductory text, (1)(i) and (ii) revised 59042
668 Appendix H added 58984
Appendix A removed 59043
Appendix E amended 59073
673.5 (c)(1) introductory text and (ix) revised; (c)(1)(x) and (xi) redesignated as (c)(1)(xi) and (xii); new (c)(1)(x) and (4) added; OMB number 58292
674.2 (b) amended 58308
674.5 (a)(3), (4), (b)(2) and (c)(4) removed; (b)(3) and (c)(3)(ii) redesignated as (b)(2) and (c)(4); (a)(1), (2) and new (c)(3) revised; new (c)(4) amended 58308
674.6 Removed 58309
674.7 Removed 58309
674.8 OMB number 58315
674.9 (i) redesignated as (j); new (i) added 58309
674.10 (b) revised 58292
OMB number 58315
674.12 (a), (b) and (d) revised 58309
674.13 OMB number 58315
674.16 (i) revised; OMB number 58309
674.19 OMB number 58315
674.20 OMB number 58315
674.31 (b)(2)(i)(C) and (D) redesignated as (b)(2)(i)(D) and (E); new (b)(2)(i)(C) added; (b)(10)(i) revised; OMB number 58309
674.33 (f) and (g) added; OMB number 58309
674.34 (e) introductory text revised; (e)(1) through (4) amended; (e)(6) through (9) redesignated as (e)(7) through (10); new (e)(6) added 57531
Heading, (a) and (c) revised; OMB number 58311
674.35 OMB number 58315
674.36 OMB number 58315
674.37 OMB number 58315
674.38 (a)(1) and (d) revised; (a)(2) redesignated as (a)(3); new (a)(2) added 57531
OMB number 58315
674.39 Revised 58311
674.41 (a)(3) added; OMB number 58312
674.42 (a) revised; (b) redesignated as (c); new (b) added; OMB number 58312
674.43 OMB number 58315
674.45 (b) revised; (h) added; OMB number 58312
674.47 (e)(5) and (6) redesignated as (e)(6) and (7); new (e)(5) added; OMB number 58313
674.48 OMB number 58315
674.49 (f)(2)(ii)(A), (B), (3)(ii)(A) and (B) redesignated as (f)(2)(ii)(B), (C), (3)(ii)(B) and (C); (c)(1), (2), (3), (e)(4)(i) introductory text, new (f)(2)(ii)(B), new (3)(ii)(B) and (g) revised; new (f)(2)(ii)(A) and (3)(ii)(A) added; OMB number 58313
674.50 OMB number 58315
674.52 (c)(1) and (d) revised; OMB number 58313
674.53 Heading, (a)(1), (b) and (c) revised; (a)(2) through (6) redesignated as (a)(3) through (7); new (a)(2) added; OMB number 58313
674.54 Removed 58314
674.56 Heading, (a), (b) and (c) revised 58314
674.57 Heading and (a)(1) revised; (a)(2) through (7) redesignated as (a)(3) through (8); new (a)(2) added 58314
674.58 (a) revised 58314
674.60 Heading and (a) revised 58314
674.61 OMB number 58315
675 Authority citation revised 58292
675.2 (b) amended 58292
675.8 (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f) 58292
675.10 (c) revised; OMB number 58292
675.16 (a)(1) and (b)(1) revised; (a)(2), (3) and (4) redesignated as (a)(10), (11) and (12); (a)(2) through (9) added; new (a)(11), new (12), (b)(2), (3) and (c) amended; OMB number 58292
675.18 (a)(2), (g)(1) and (2) revised; (f) amended; (g)(3) and (h) added; OMB number 58293
675.20 (d) added; OMB number 58293
675.23 (b)(1) revised 58294

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 34 Chapter VI—Con.

675.26 (a)(1) and (d)(2)(iii) revised; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 58294
675.45 (a)(5) and (6) added 58294
676.10 (b) revised 58294
676.18 (a)(2) revised; (c) through (f) added 58294
682.100 (a)(2), (4) and (b)(2)(C) amended 58952
682.102 (a) and (d) revised; (b) removed; OMB number 58952
682.103 (a) amended 58952
682.200 (b) amended; OMB number 58952
682.201 (a)(2) and (c)(1) revised; (c)(2)(iii) amended; (c)(3) and (4) removed; (d) and (e) added 58952
682.202 (a)(4) designated in part as (a)(4)(i); (b)(5) removed; (a)(4)(i), (ii), (b)(4), (c)(3), (4) and (5) redesignated as (a)(4)(i)(A), (B), (b)(5), (c)(5), (6) and (7); (a)(1)(i), (ii)(B), (iii)(A), (iv), (2)(iii) introductory text, new (4)(i), (b)(1), (3) and new (c)(5) amended; (a)(1)(v) through (viii), (2)(iv), (v), (4)(ii) through (v) and new (b)(4), (c)(3) and (4) added; (b)(2), new (5), (c)(1) and (2) revised 58953
682.204 (a) through (e) revised; (f)(2)(i), (ii), (B) and (j) amended 58954
682.205 (a)(1), (2)(i), (b), (c)(1), (2)(i), (d) and (e) revised; (a)(2)(ii) through (a)(2)(xvii) redesignated as (a)(2)(v) through (a)(2)(xx); new (a)(2)(ii), new (iii), new (iv), (3), (f), (g) and (h) added 58625
OMB number 58965
682.206 (a)(1), (c)(2) and (d)(1) revised; (c)(1) amended; (c)(3) removed; OMB number 58957
682.207 (b)(1)(vi) revised; (b)(1)(vii) added 58626
(b)(1)(v)(B)(3) and (c) amended; (c)(5) removed; (c)(4) and (d) redesignated as (d) and (f); (e) added; new (f) revised; OMB number 58957
(b)(1)(v)(E) added; OMB number 59043
682.208 (c)(3) added 58626
OMB number 58965
682.209 (h)(3) removed; (a)(6), (7), (8), (h)(4), (5) and (6) redesignated as (a)(7), (8), (9), (h)(3), (4) and (5); new (4)(ii) removed; new (a)(7)(ix) and (h)(4)(iii) redesignated as (a)(7)(xi) and and (h)(4)(ii); new (a)(6), new (7)(ix) and (x) added; (a)(4), new (7)(iii), (c)(1)(i) and new (h)(3) revised; new (a)(7)(i)(B), (v) introductory text, (A), (B), (vii)(A)(*2*), (viii)(D), (E), (8)(i), (ii) and (iv) and (e)(2)(i), (ii) and (f)(2)(ii) amended; OMB number 58957
(i) revised 59043
682.210 (k) introductory text, (1), (2), (3) and (s)(6)(vi) through (x) redesignated as (k)(1) introductory text, (i), (ii), (iii) and (s)(6)(vii) through (xi); new (k)(2) and new (s)(6)(vi) added; (s)(6) introductory text revised; (s)(6)(i) through (iv) and new (viii) amended 57531
(a)(5) revised 58626
(c)(2), (3) and (4) redesignated as (c)(3), (4) and (5); (a)(3), (4), (6)(iv), (b)(4), (c) heading, (1), new (3) and (h) revised; (a)(7), (b)(1)(i), new (c)(4), new (5) and (s)(2) amended; new (c)(2) added; OMB number 58958
682.211 (f)(2) revised; (f)(10) added 58626
(a)(4) revised; (f)(9) added; (h)(2) amended; (h)(2)(ii)(B) and (3)(ii) removed; (h)(2)(ii)(C) and (3)(iii) redesignated as (h)(2)(ii)(B) and (3)(ii); (c), (h)(1) and new (3)(ii) amended; OMB number 58959
682.214 OMB number 58965
682.215 Removed 58626
682.300 (a) revised 58959
682.301 (a)(3), (b) and (c) revised; (a)(4) removed; OMB number 58959
682.302 (b)(2)(ii) and (iii) amended; (c)(1)(iii)(A) through (E)

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

redesignated as (c)(1)(iii)(C) through (G); (b)(1), (2) introductory text, new (c)(1)(iii)(C) and (3)(i)(A) revised; (b)(2)(iv), new (c)(1)(iii)(A), (B) and (4) added 58626
682.305 Heading, (a)(1) and (c)(1) revised; (a)(3)(iii), (iv) and (v) added; OMB number 58627
682.400 (b)(1)(i) and (ii) amended; (b)(1)(iii) removed 58627
682.401 (b)(11), (c)(1), (2), (3), (e)(1) and (3) revised; (b)(23)(i) introductory text amended; (c) heading and (5) added 58627
(b)(5)(i), (ii) and (d)(3) revised; (b)(15) heading and (24) amended; (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number 58959
682.402 Heading, (d)(3) introductory text and (f)(2) revised; (d)(8) added; OMB number 58628
Heading, (a)(1), (f)(3), (g)(1)(i), (ii), (i)(1), (j)(1)(iii) and (k)(1)(i)(A) revised; (a)(3), (f)(1), (5)(i)(B), (h)(1)(i) and (j)(1)(ii) amended; (i)(3) removed; (l) and (m) redesignated as (r) and (s); (h)(1)(iv) and new (l) through (q) added; OMB number 58960
682.404 (a)(2)(iii), (3) and (g)(3) removed; (a)(1)(ii), (4), (5) and (i) redesignated as (a)(1)(iii), (3), (4) and (l); (a)(1) introductory text, (i), new (iii) introductory text, new (A), (2)(ii), (4), (b) heading, (1)(i), (ii), (2)(i), (ii), (g) heading, (1) and (2) revised; new (a)(1)(ii), (b)(1)(iii), (2)(iii), (i), (j) and (k) added; (b)(1)(i) and (2)(i) amended; OMB number 58628
682.405 OMB number 58965
682.406 Heading, (a) introductory text and (a)(14) revised 58629
(a)(12) revised; (c) added; OMB number 58962
682.409 (a)(1) introductory text revised 58630
(c)(2) revised; (c)(4)(i), (iv) and (5) amended; OMB number 58963
682.410 (b)(5)(vii) added 58630
OMB number 58965
682.411 Revised 58630
OMB number 58965
682.412 (a) amended 58632
682.413 (e)(1) revised 58632
682.414 (a)(4)(iii) and OMB control number revised 58632
(a)(4)(ii)(A), (B), (J) and (5)(i) amended; (a)(4)(ii)(K) redesignated as (a)(4)(ii)(L); new (a)(4)(ii)(K) added; (a)(5)(ii) revised; (a)(5)(iii) removed; OMB number 58963
682.417 Revised 58632
682.418 Amended; heading and (a)(1) revised 58634
682.419 Added 58634
682.420 Added 58634
682.421 Added 58635
682.422 Added 58635
682.423 Added 58635
682.507 OMB number 58965
682.508 OMB number 58965
682.511 OMB number 58965
682.515 OMB number 58965
682.601 OMB number 58965
682.603 (b) revised; (g) and (h) redesignated as (h) and (i); (c) and new (g) added; OMB number 58963
682.604 (a)(3) and (c)(3) amended; (c)(5), (6) introductory text, (f) and (g) revised; (c)(10) added; OMB number 58963
(c)(4) revised 59043
682.605 OMB number 58965
682.605 (a) and (b) revised 59043
682.607 Amended 59043
682.610 (b) revised; OMB number 58965
682.711 OMB number 58965
682.712 OMB number 58965
682.713 OMB number 58965
682.800 Removed; new 682.800 redesignated from 682.840; (a) amended 58636
682.801 Removed 58636
682.802 Removed 58636
OMB number 58965
682.803 Removed 58636
OMB number 58965
682.804 Removed 58636
682.805 Removed 58636
682.830 Removed 58636
682.840 Redesignated as 682.800 58636
682 Appendix D revised 58636
685.102 (b) amended 58965

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 34 Chapter VI—Con.

685.201 Revised 58965
685.202 (a) and (c)(1) revised 46254
685.203 (a), (c)(2), (d) introductory text and (e) introductory text revised 58966
685.204 (b)(1)(iii) added; OMB number 58968
685.205 (a) introductory text, (4) and (b)(6) revised; (a)(2), (b)(7) and (8) amended; (a)(5) removed; (a)(6) redesignated as (a)(5); (b)(9) added 58968
685.206 OMB number 58972
685.207 (b)(2)(ii) and (c)(2)(ii) redesignated as (b)(2)(iii) and (c)(2)(iii); new (b)(2)(ii) and new (c)(2)(ii) added; new (b)(2)(iii) revised 58968
685.209 OMB number 58972
685.211 (b) through (e) redesignated as (c) through (f); new (b) added; new (e)(2) and (3) amended 57961
685.211 (c) revised 59043
685.212 (d) through (g) revised; OMB number 58969
685.213 OMB number 58972
685.214 OMB number 58972
685.215 Redesignated as 685.216, new 685.215 added 58969
(k) revised 59044
685.216 Redesignated from 685.215 58969
(d), (g), (l)(1), (2) and (3) revised; OMB number 58970
685.300 (a)(1)(ii) revised 58970
685.301 (b)(2), (3), (8) and (c)(2) revised; OMB number 58970
685.302 OMB number 58972
685.303 (b)(4) revised 58971
685.304 (a)(3)(i) through (iv), (b)(1)(ii), (2) introductory text, (i) through (vi), (vii), (3) and (4) redesignated as (a)(3)(ii) through (v), (b)(3), (4) introductory text, (i) through (vi), (viii), (5) and (7); (a)(1), (2), (3) introductory text, new (ii), new (iv), new (v), (5)(i), (ii), (b)(1) and new (3), (4) introductory text, (i) through (viii) and (7) revised; new (a)(3)(i), (6), (7), (b)(2), (4)(vii) and (6) added; OMB number 58971
685.305 Revised 59044
685.306 Revised 59044
685.400 (d) added 46255
685.401 Removed 46255
685.402 (f) added 58972
690.6 Heading and (a) revised; (c) and (d) added 58294
690.7 (c) redesignated as (d); new (c) added 58295

Proposed Rules:

75 54254
600—699 (Ch. VI) 46628, 73458
600 38272
611 60632
614 57288
668 ..... 38272, 38504, 41752, 43024, 43582
673 42206
674 ..... 41232, 42206
675 42206
676 42206
682 ..... 42176, 43024, 43428
685 43428
690 42206
694 ..... 39109, 71552

TITLE 35—PANAMA CANAL

Chapter I—Panama Canal Regulations (Parts 1—299)

60—70 (Subchapter B) Removed 73413
101—135 (Subchapter C) Removed 73413

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.96 (g)(3)(ii)(A) amended; eff. 12–20–99 through 1–8–00 71026
13 Authority citation revised 56463
13.65 (a) added; (b)(5) and (6) removed 56463

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

211 Authority citation revised 60677
211.1—211.6 (Subpart A) Heading revised 60677
211.6 Added 60678

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

242.24 Revised 35780
242.25 Added; eff. 7-1-99 through 6-30-00 35788
242.24 (a) introductory text and (1) correctly revised 35823
251.56 (a)(1)(ii)(G) note added 48960
251.80—251.102 (Subpart C) Authority citation revised 37846
251.84 Existing text designated as (a); (b) added 37846
251.90 (c) revised 37846
251.91 (a) revised 37846
251.92 (a)(8) added; (c) revised 37846
251.93 (b) revised 37846
251.94 (b) revised 37846
251.103 Added 37846

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1220.14 Amended 67663
1220.18 Heading revised; existing text designated as (b); (a) added 67664
1220.36 Revised 67664
1220.38 Revised 67664
1220.42 Revised 67664
1222.20 (b)(5), (8), and (9) amended; (b)(10) added 67664
1222.50 Heading revised; (c) added 67664
1228.22 (d) revised 67665
1228.24 (c)(2) revised 67665
1228.32 (c) added 67665
1228.50 (a)(1) and (3) revised 67665
1228.54 (a), (c)(4) and (e) revised; (g) and (h) removed 67665
1228.100 (a) revised 67665
1228.150—1228.156 (Subpart I) Revised 67665
1228.160—1228.170 (Subpart J) Added 67667
1228.180—1228.200 (Subpart J) Redesignated as 1228.260—1228.282 (Subpart L) 67667
1228.180 Redesignated as 1228.260 67667
1228.182 Redesignated as 1228.262 67667
1228.183 Redesignated as 1228.264 67667
1228.184 Redesignated as 1228.266 67667
1228.186 Redesignated as 1228.268 67667
1228.188 Redesignated as 1228.270 67667
1228.190 Redesignated as 1228.272 67667
1228.192 Redesignated as 1228.274 67667
1228.194 Redesignated as 1228.276 67667
1228.196 Redesignated as 1228.278 67667
1228.198 Redesignated as 1228.280 67667
1228.200 Redesignated as 1228.282 67667
1228.220—1228.244 (Subpart K) Revised 67642
1228.226 Corrected 68946
1228.228 (k) and (n)(4) corrected 68946
1228.260—1228.282 (Subpart L) Redesignated from 1228.180—1228.200 (Subpart J) 67667
Heading revised 67668
1228.260 Redesignated from 1228.180 67667
1228.262 Redesignated from 1228.182 67667
1228.264 Redesignated from 1228.183 67667
1228.266 Redesignated from 1228.184 67667
1228.268 Redesignated from 1228.186 67667
1228.270 Redesignated from 1228.188 67667
1228.272 Redesignated from 1228.190 67667
1228.272 Heading and (a) revised; (b)(2) and (c) amended 67668
1228.274 Redesignated from 1228.192 67667
1228.276 Redesignated from 1228.194 67667
1228.278 Redesignated from 1228.196 67667
1228.280 Redesignated from 1228.198 67667
1228.282 Redesignated from 1228.200 67667
1228 Appendixes A and B added 67648
1254.20 Regulation at 64 FR 19901 confirmed 48961
1275.48 (a) revised 56678
1275.64 (e) revised 56678

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 36

Proposed Rules:

5.....61563
13.....41854, 61563
51.....47336, 63775
217.....54074, 56293, 69446, 70204
219.....54074, 56293, 69446, 70204
242.....49278
251.....66342, 70204, 72971
300—399 (Ch. II).....58368
327.....38854
1010.....39951, 51488
1100—1199 (Ch. XI).....60753
1190.....62248, 62622
1191.....37326, 42056, 62248, 62622
1211.....58568
1228.....50028
1275.....37922

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.1 (a)(2) revised.....48917
1.4 (a)(2) amended; (d)(1) introductory text and (ii) revised; (d)(1)(iii) added.....48917
1.5 (c) revised.....48917
1.6 (a)(1) revised; (a)(4) added.....48917
1.16 (a) and (h) revised.....67777
1.17 (r) and (s) revised.....67777
1.19 (a)(1)(i), (ii) and (iii) revised.....67486
1.20 (e) revised.....67777
1.23 Revised.....48917
1.492 (a)(2) revised.....67777
2.1 Revised.....48917
2.6 Introductory text, (a)(6) and (14) revised; (a)(20) and (21) added.....48917
(b)(1)(i), (ii) and (iii) revised.....67486
(a)(1), (4), (5), (13), (16) and (17) revised.....67777
2.17 (c) and (d) added.....48918
2.20 Revised.....48918
2.21 Revised.....48918
2.31 Removed.....48918
2.32 Revised.....48918
2.33 Revised.....48918
2.34 Revised.....48919
2.35 Redesignated as 2.37; new 2.35 added.....48920
2.37 Removed; new 2.37 redesignated from 2.35.....48920
2.38 (a) revised.....48920
2.39 Removed.....48920
2.45 Revised.....48920
2.51 (c), (d) and (e) removed.....48920
2.52 Revised.....48920
2.56 Revised.....48921
2.57 Removed.....48921
2.58 Removed.....48921
2.59 Revised.....48921
2.66 Revised.....48921
2.71 Revised.....48922
2.72 Revised.....48922
2.76 (b), (e)(2) and (3) revised; (i) and (j) added.....48922
(b)(1) introductory text corrected.....51245
2.86 Revised.....48923
2.88 (b) and (e) revised; (k) and (l) added.....48923
(b)(1) introductory text corrected.....51245
2.89 (a), (b) and (d) revised; (g) amended; (h) added.....48923
(a)(3) and (b)(3) corrected.....51245
2.101 (d)(1) revised.....48924
2.111 (c)(1) revised.....48924
2.146 (d) revised; (i) and (j) added.....48924
2.151 Revised.....48924
2.155 Revised.....48924
2.156 Revised.....48924
2.160 Added.....48924
2.161 Revised.....48924
2.162 Revised.....48925
2.163 Revised.....48925
2.164 Revised.....48925
2.165 Revised.....48925
2.166 Revised.....48925
2.167 (c) revised.....48925
2.168 Revised.....48925
2.173 Heading and (a) revised.....48926
2.181 (a) revised.....48926
2.182 Revised.....48926
2.183 Revised.....48926
2.184 Revised.....48926
2.185 Added.....48926
2.186 Added.....48926
3.16 Revised.....48926
3.24 Heading revised.....48927
3.25 Added.....48927
3.28 Revised.....48927
3.31 (a) and (b) revised; (d) and (e) added.....48927
6.1 Revised.....48927

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201.1 (b) amended 36574
201.3 (c)(5) and (8) amended 36574
201.10 (b)(1)(v) and (e)(2) amended 36574
201.11 (d)(1), (e)(6), (7) and (h)(2)(i) amended 36574
201.17 (d)(1), (e)(2)(i), (h)(4)(iii), (j)(3)(iv)(A) and (k) amended 36574
201.18 (a)(1) and (3) amended 36574
(a)(4) added; (c)(1)(vi) amended; interim 41288
201.19 (a)(1), (2) and (4) amended 36574
(c)(4), (e)(4)(i) and (f)(3)(viii) amended 36575
(a)(5), (6) and (7) redesignated as (a)(6), (8) and (9); new (a)(5), new (7), (10), (11) and (e)(3)(ii)(E) added; new (a)(6), (e)(3)(i)(A), (B) and (4)(ii) amended; (e)(3)(ii)(D) revised; interim 41288
201.25 (c) amended; interim 49671
201.27 (c) and (e)(1) amended 36575
201.29 (e)(3) amended 36575
201.35 (a) amended 36575
(f) amended; interim 50759, 68392
201.36 (b)(1) and (c) amended 36575
201.37 (a) and (b)(1) amended 36575
202.3 (b)(7)(ii) amended 36575
202.17 (f)(2) amended 36575
202.19 (b)(1)(i) and (ii) amended 62978
202.20 (c)(2)(vii)(D)(*3*), (*4*), (*5*) and (xi)(A)(*2*) amended 36575
202.22 (a) and (c)(1) amended 36575
202.23 (c)(1), (2) and (d) amended 36575
203.3 (g) amended 36575
203.4 (f)(2) amended 36575
204.4 (a) amended 36575
204.5 (a) amended 36575
204.7 (a) amended 36575
204.8 (a) amended 36575
211.4 (e) amended 36575
211.5 (c)(2) and (d) amended 36575
212 Added; interim 36578
251.54 (e) amended 36575
251.56 (a) and (b) amended 36576
251.58 (b) amended 36576
253.3 (e)(4) amended 36576
253.5 (c)(1), (2) and (3) revised 67188
253.8 (b)(1)(i)(A) and (ii)(D) amended 36576
258.3 (c) added 71660
259.3 (a)(5) amended 36576
260.2 (c)(1)(v) and (2) amended 36576
260.7 Amended 36576

Proposed Rules:

1 ..... 53772, 59701
3 53772
5 53772
10 53772
201 ..... 42316, 59140, 66139, 71086
212 36829
255 38861

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

2 Authority citation revised 47111
2.1 Redesignated as 2.2; new 2.1 added 47111
2.2 Redesignated as 2.3; new 2.2 redesignated from 2.1 47111
2.3 Redesignated from 2.2 47111
2.6 (a) introductory text, heading, (1), (3) and (7) amended; (e)(1) removed; (g) authority citation revised 47111
3.1003 (b) amended 54207
14 Heading and authority citation revised 47111
14.600 Revised 47112
14.601—14.604 Undesignated center heading removed 47112
14.601 (a) heading revised; (b) heading and authority citation added 47112
14.602 (a) amended 47112
14.604 (a) and (c) amended; authority citation added 47112
14.605 Undesignated center heading removed 47112
14.605 (b) and (d) amended; authority citation added 47112
14.615 (a) amended; authority citation added 47112
17.34 Amended 54212
17.36 Undesignated center heading and section added 54212
17.37 Added 54217
17.38 Added 54217

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 38 Chapter I—Con.

17.43 (a) removed; (b) through (e) redesignated as (a) through (d) 54218
17.47 (h) removed; (i) through (l) redesignated as (h) through (k); new (h) amended 54218
17.93 (a)(2) amended 54218
17.99 Removed 54218
17.100 Amended 54218
17.133 Undesignated center heading and section added 44660
20 Authority citation revised 73414
20.1400 (b)(1) amended 73414
21.4001—21.4280 (Subpart D) Authority citation revised 52651
21.4138 Introductory text, (c) and (d) removed; (a) and (b) revised; OMB number 52651
21.5135 Revised 52652
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (3)(ii) introductory text, (A) and (B) amended; (b)(2)(ii)(C) and (3)(ii)(C) revised 44661
21.5822 (a) introductory text, (b)(1)(i), (ii), (2)(i) and (ii) amended 44661
Corrected 46974
21.7040 Heading revised 52652
21.7042 Heading revised; OMB number 52652
21.7135 (f)(1) introductory text and (2) authority citation and (3) authority citation revised 38577
(v)(2) revised 51901
21.7140 (a) revised; (b) removed; (c) through (g) redesignated as (b) through (f) 52652
21.7500—21.7807 (Subpart L) Authority citation revised 52652
21.7640 (b) authority citation, (c) authority citation, (e), authority citation and (f) amended; (d) revised 52652

Proposed Rules:

3 67528
20 53302
23 58568

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference 43293, 46142, 46278, 60108
111 DMM amended; incorporation by reference 38832, 48094, 50450, 57571
261.4 Revised 41290
262.2 (b) revised; (d) added 41290
262.4 (a) and (b) amended 41290
262.5 (d)(2) amended 41290
263.3 (a) amended 41290
263.4 Removed; new 263.4 redesignated from 263.5 and amended 41290
263.5 Redesignated as 263.4; new 263.5 redesignated from 263.6 and revised 41290
263.6 Redesignated as 263.51290
264.3 (a) and (b) revised 41290
264.4 Amended 41290
265.3 (b) revised 41290
265.4 Amended 41290
265.6 (b) introductory text amended 41290
265.9 (b)(2)(ii) and (g)(4) amended 41290
265.7 (a)(2) amended 41290
265.12 (b)(7) amended 41291
266.3 (a), (c) and (d)(2) revised 41291
266.4 (b)(6)(i), (iii) and (iv) amended 41291
266.5 (d) amended 41291
266.6 (a)(1) amended 41291
266.7 (a)(4) amended 41291
266.10 (b) amended 41291
267.5 (e)(3)(i) amended 41291
776 Revised 56254

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.31 (b) revised 46740
3001.42 (c) removed; (d) redesignated as (c) 58337
3001.42a Removed 58337
3002.2 Redesignated as 3002.3; new 3002.2 added 58337
3002.3 Redesignated as 3002.4; new 3002.3 redesignated from 3002.2; (c) added 58337

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

3002.4 Redesignated as 3002.5; new 3002.4 redesignated from 3002.3; (e) added 58337
3002.5 Redesignated from 3002.4 58337
3002.7 (c) amended 37402
3002 Appendix A revised 37402
3003 Revised 57982
3004 Added 58337

Proposed Rules:

111 ..... 44681, 54255, 57419, 66143, 68965, 71702, 72044
265 46630
776 48124
3001 ..... 50031, 52725, 66436, 72622
3002 50031
3003 49120
3004 50031

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

9.1 (b) table amended (OMB numbers) 36585, 37636, 42461, 43937, 66393, 68565, 69637
Regulation at 64 FR 42461 eff. date corrected to 12–2–99 43426
Table amended (OMB numbers); eff. 1–1–01 ..... 50610, 68837
22 Revised 40176
49.22 Added 65663
51 Authority citation revised 35763
Meetings 71026
51.121 (e)(2) and (3)(iii) revised 49992
Regulation at 64 FR 49992 withdrawn 58792
51.300 (a), (b)(1) introductory text and (2) revised; (b)(3) added; eff. 8–31–99 35763
51.301 Amended; eff. 8–31–99 35763
(v) amended; eff. 8–31–99 35774
51.302 Heading, (a), (c) introductory text, (1), (2) introductory text, (4) introductory text and (iv) revised; eff. 8–31–99 35764
(c)(2)(i) and (4)(i) amended; eff. 8–31–99 35774
51.303 (a)(1), (c), (d), (g) and (h) amended; eff. 8–31–99 35774
51.304 (c) amended; eff. 8–31–99 35774
51.305 Heading and (a) revised; eff. 8–31–99 35764
51.306 Heading, (a)(1), (c) introductory text and (d) revised; eff. 8–31–99 35764
(a)(1) and (c)(6) amended; eff. 8–31–99 35774
51.307 (a) introductory text, (2) and (c) revised; eff. 8–31–99 35765
(b)(1) and (c) amended; eff. 8–31–99 35774
51.308 Added; eff. 8–31–99 35765
51.309 Added; eff. 8–31–99 35769
52 State implementation plan determinations 36243, 40287, 40767, 45454, 49084, 50254, 50762, 55141, 60681, 66775, 70593
Meetings 71026
52.34 (l) revised 67784
52.50 (c) table amended 59635
52.70 (c)(29) added 47679
Regulation at 64 FR 47679 withdrawn 53931
(c)(29) added 72946
52.120 (c)(94) added 50762
(c)(94)(i)(B) added 60681
52.128 Revised 71308
52.142 Added 65664
52.220 (c)(168)(i)(F)(*2*), (173)(i)(C)(*2*), (196)(i)(E), (224)(i)(D), (244)(i)(A)(*3*) and (258)(i)(A)(*2*) added; eff. 8–2–99 35578
(b)(3)(ii) and (c)(6)(xv)(B) removed 37406
(c)(202)(i)(B), (254)(i)(H)(2) and (K) added 38836
(c)(263) and (264) added 39040
(c)(194)(i)(C)(*4*) and (199)(i)(D)(*6*) added 39920
(c)(235) removed; (c)(265) added 39926
(c)(254)(i)(D)(*2*) added 44135
(c)(179)(i)(E)(*3*), (G)(*2*), (184) introductory text, (i)(D) introductory text, (F)(*2*), (186)(i)(F), (197)(i)(C)(*3*) and (241)(i)(D) added 45174
(c)(39)(ii)(G), (225)(i)(A)(*4*) and (256)(i)(F)(*1*) added 45178
(c)(231)(i)(B)(*6*), (239)(i)(E)(*5*), (244)(i)(A)(*4*) and (262)(i)(C) added 45182
(c)(201) added 46852
(c)(266) added 47392

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 40 Chapter I—Con.

(c)(262)(i)(B)(*2*) and (264)(i)(A)(*2*) added 47395
(c)(247) added 48307
(c)(39)(ii)(D) removed; (b)(3)(ii) and (*4*) added 49400
(c)(164)(i)(C)(*4*), (249)(i)(B) and (254)(i)(C)(*4*) added 51690
(c)(32)(iv)(F) and (35)(xii)(G) added 52654
(c)(183)(H)(*1*) added 53212
(c)(263)(i)(A)(*2*) and (B) added 54561
(c)(140)(ii)(C), (194)(i)(B)(*4*), (215)(i)(D) introductory text and (*2*) added 57994
(c)(256)(i)(A)(2) added 60112
(c)(184)(i)(B)(*5*) added 60688
(c)(231)(i)(B)(*6*) removed 60689
(c)(207)(i)(C)(*5*), (248)(i)(E), (254)(C)(*5*) and (256)(i)(G) added 66396
(c)(264)(i)(C) and (266)(i)(A)(*2*) added 67789
(c)(268), (269) and (270) added 69406
(c)(6)(xvii) through (xviv), (47)(i)(D), (68)(ii) and (121)(i)(D) added 71663
52.228 (b)(1)(iv) removed 49400
52.320 (c)(86) added 46288
(c)(85) added 63209
52.336 Amended 47116
52.349 (c) added 46288
(d) added 51701
52.370 (c)(79) added 44414
(c)(80) and (82) added 52237
(c)(79) removed 61523
(c)(83) added 67192
52.372 (a) removed 67192
52.376 (g) added 67192
52.385 Table amended 44414, 52238, 61523, 67192
52.420 (c) table amended 48963, 52659, 72567
52.424 (b) removed 52660
(a) removed 55141
52.426 Added 55141
52.470 (d) table amended 52657
(c) table amended 57779, 68294
52.473 Removed 42602
52.476 Added 42602
52.478 Added 57781
52.570 (c) table amended 67494
(e) added 72940
52.719 Removed 37851
52.720 (c)(150) added 37851
(c)(153) added 49403
52.725 (g) added 37851
52.770 (c)(125) added 59644
(c)(126) and (127) added 71034
(c)(129) added 72563
52.820 Regulation at 64 FR 25827 withdrawn 35941
(c) table amended 67786
(e) table amended 68292
52.824 (b) revised 63694
52.939 (c)(94) added 49408
Regulation at 64 FR 49408 withdrawn 59644
52.970 (c) table amended 35939, 72938
(d) table and (e) table amended 35940
(e) table amended 38580
52.993 (d) and (e) added 35941
52.1070 (c)(129) added 38838
(c)(139) added 45184
(c)(137) and (138) added 51447
(c)(145) added 57991
(c)(144) added 58343
(c)(146) added 72567
52.1072 (a) removed 58344
52.1120 (c)(119) added 48098
(c)(117) added 48303
52.1167 Table amended 48098, 48303
52.1170 (c)(112) added 39036
52.1220 (c)(50) added 44133
(c)(49) added 44411
(c)(51) added 58347
52.1222 Table amended 58347
52.1237 (c) added 58354
52.1320 (c)(42) removed 68038
(c) table amended 71037, 71040, 71666, 72035
52.1370 (c)(42) added 68038
52.1371 Revised 68038
52.1373 Revised 68038
52.1374 Added 68038
52.1375 Removed 68038
52.1384 (b) removed 68038
52.1385 Removed 68038
52.1520 (c)(63) added 44420
(c)(61) and (62) added 52438
52.1525 Table amended 44420
52.1570 (c)(67) added 59641
(c)(68) added 63692
52.1605 Table amended 59641, 63692
52.1620 (c) table amended 36790
(b) revised; (d) and (e) table added 51692
(e) table amended 71031
52.1770 (c) table amended 55834
(c) amended 61215
52.1820 (c)(31) added 47401

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

(c)(31)(i)(A) corrected 52378
52.1870 (c)(118) added 47116
52.1881 (a)(4) and (8) revised; (a)(13) added 47116
52.1885 (a)(12) added 37406
(a)(13) added 59648
52.1920 (c)(48) added 59632
(c)(49) added 60686
52.1933 Removed 60686
52.1970 (c)(128) added 51060
52.2020 (c)(142) added 70592
(c)(141) added 72567
52.2070 Redesignated as 52.2087; new 52.2070 added 43085
(c) table and (d) table amended 67500
52.2081 Table amended 61217
52.2087 Redesignated from 52.2070; heading and (a) revised 43085
52.2220 (d) table amended 37410, 60346
(c) table amended 38582, 49397, 59628
52.2239 (c)(168) added 59628
(c)(128) added 60348
52.2270 Redesignated as 52.2299; new 52.2270 added 36589
(c) table amended 36794, 57988, 61525, 71689
(b)(1) revised; (d) added; (e) table amended 55424
Regulation at 64 FR 57988 withdrawn 70593
52.2299 Redesignated from 52.2270; heading and (a) revised 36589
52.2320 (c)(41) added 36252
(c)(42) added 63209
(c)(43) added 68034
52.2420 (c)(134) added 47674
(c)(129) added 51051
(c)(130) added 59638
(c)(135) added 72567
52.2423 (q) added 59638
52.2450 (b), (c) and (d) removed 47674
52.2520 (c)(42) added 37683
52.2570 (c)(99) added 44417
Regulation at 64 FR 44417 withdrawn 52438
52.2620 (c)(28) added 63209
58.50 Revised 42547
58 Appendix G revised 42547
60 Authority delegation notice 57392
60.4 (c) table amended 47401
60 Appendix A corrected 37196, 38241
Appendix A amended 53027
Appendix B amended 53032
61.205 (a) amended 53213
62 Technical correction 52577
Authority citation corrected; CFR correction 55141
62.600—602 (Subpart D) Added 50771
62.1100—62.1104 (Subpart F) Heading revised 51451
62.1100 Undesignated center heading added; (b)(5) and (c)(5) added 51451
62.1115 Undesignated center heading and section added 51451
62.1950—62.1952 Undesignated center heading and sections added 50457
62.3340—62.3342 Undesignated center heading and sections added 36605
62.3640—62.3642 Undesignated center heading and sections added 70599
62.3650—62.3652 Undesignated center heading and sections added 62982
62.5100—62.5152 (Subpart V) Undesignated center heading and sections added 48717
62.5100 (d) added 59650
62.5340 Undesignated center heading and section added 37855
Regulation at 64 FR 37855 withdrawn 47680
62.5425 Undesignated center heading and section added 37855
Regulation at 64 FR 37855 withdrawn 47680
62.6358 Undesignated center heading and section added 45187
62.6914 Undesignated center heading and section added 62117
62.7100—62.7102 (Subpart DD) Added 50768
62.8104 Undesignated heading and section added 38586
62.8105 Section and undesignated heading added 43094
62.8610—62.8612 (Subpart JJ) Undesignated center heading and sections revised 44421
62.9611 Added 57784
62.9640—62.9642 Undesignated center heading and sections added 45884
62.10100 (b)(4) and (c)(4) added 46151

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 40 Chapter I—Con.

62.10160 Undesignated heading and section added 46151
62.10626 (b)(3) added 52663
62.11475 Undesignated center heading and section added 62119
62.11860 Undesignated center heading and section added 41294
62.11870 Undesignated center heading and section added 41294
62.14350—62.14356 (Subpart GGG) Added 60703
63 Authority delegation notice 59650, 42764
63.320 (k) revised 69643
63.340 (e)(2) revised 69643
63.360 (g)(4), (5) and (6) revised; (g)(7) through (10) added; interim 67793
(f) revised 69643
63.461 Amended 45193, 67798
Regulation at 64 FR 45193 withdrawn 56173
63.462 (c) introductory text and (8) revised; (c)(9) added ... 45194, 67799
Regulation at 64 FR 45194 withdrawn 56173
63.463 (a) introductory text, (c) introductory text, (d) introductory text, (e) introductory text and (2) introductory text revised; (e)(2)(viii), (ix), (x) and (g) added 45194
Regulation at 64 FR 45194 withdrawn 56173
(a) introductory text, (c) introductory text, (d) introductory text, (e) introductory text and (2) revised; (e)(2)(viii) through (xi), (g) and (h) added 67799
63.464 (d) added 67801
63.465 (f) added 45195
Regulation at 64 FR 45195 withdrawn 56173
(a), (b) and (c) introductory text revised; (f), (g) and (h) added 67801
63.466 (a) introductory text revised; (a)(3), (4) and (5) added 45196
Regulation at 64 FR 45196 withdrawn 56173
(a) introductory text revised; (a)(3), (4) and (5) added 67802
63.467 (a) introductory text revised; (a)(6) and (7) added 45196
Regulation at 64 FR 45196 withdrawn 56173
(a) introductory text and (c) introductory text revised; (a)(6), (7) and (e) added 67802
63.468 (j) revised 37687, 69643
63.541 (c) revised 69643
63.680 (a)(2)(v), (b)(1)(ii), (iii), (2)(v), (vi), (c), (d) and (e) revised; (b)(2)(viii) added 38963
63.681 Amended 38964
63.683 Revised 38965
63.684 (a), (b) introductory text, (1)(ii), (3) introductory text, (4) introductory text, (5), (d) through (g) revised 38967
63.685 (b), (c)(2), (f)(1)(ii)(A), (g)(2)(i)(B), (h)(2), (3) and (i) introductory text revised; (i)(3) added 38968
63.686 (b) introductory text revised; (b)(3) added 38969
63.687 (b) introductory text revised 38969
63.688 (b) and (c) revised 38969
63.689 (b), (c), (d) introductory text and (5) introductory text revised 38970
63.690 Revised 38970
63.691 Revised 38970
63.693 Revised 38970
63.694 (a)(12) and (m) added; (b)(2)(ii), (iii), (3)(i), (c), (e) through (i) and (k) revised 38974
63.695 Revised 38977
63.697 (a) and (b) revised 38981
63.680—63.698 (Subpart DD) Table 1 revised 38981
63 (Subpart DD) Table 2 revised 38983
63.901 Amended 38985
63.902 (a) and (b)(3) introductory text revised 38986
63.905 Revised 38986
63.906 (a)(2) and (b)(2) revised; (d) added 38986
63.921 Amended 38987
63.925 (a) revised 38987
63.926 (a) revised 38988
63.941 Amended 38988
63.945 Revised 38988
63.946 (a)(2) and (b)(1)(ii) revised; (d) added 38989
63.961 Amended 38989
63.962 (b) revised 38990

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

63.964 (b)(2) revised 38990
63.965 (b) revised 38991
63.966 Revised 38991
63.981 Amended 63704
63.982 (f)(1) revised 63705
63.983 (b)(1)(i)(B) revised 63705
63.987 (c) amended 63705
63.998 (a)(1)(iii)(A) and (2)(ii)(A) amended; (a)(2)(ii)(B)(*6*) revised 63705
63.999 (c)(6)(i) and (iv) amended 63705
63.1000 (c)(2) revised 63705
63.1001 Amended 63705
63.1002 Heading, (a) heading and (b) introductory text revised 63705
63.1003 (c)(2) amended; (c)(5)(i) and (e)(1) revised 63705
63.1004 (c)(1) introductory text amended; (c)(1) revised 63706
63.1005 (d) revised 63706
63.1012 (f)(1) amended 63706
63.1026 (e)(6) revised 63706
63.1029 (b)(1) amended 63706
63.1041 Revised 38991
63.1045 Added 38991
63.1046 (a) and (b)(3) revised 38991
63.1047 (a)(2) and (c)(1)(ii) revised; (e) added 38992
63.1100 (g)(5) added 63698
(d)(4) introductory text amended; (d)(4)(ii) introductory text revised 63706
63.1101 Amended 63699, 63706
63.1103 (a)(3) table 1, (b)(3)(i) table 2 and (d)(3) tables 5 and 6 amended 63699
(b)(3)(i) table 2 and (d)(3) table 5 amended; (d)(3) table 6 revised 63706
(d) Table 5 corrected 71852
63.1104 (f) introductory text and (j)(1) revised 63708
63.1106 Added 63701
63.1108 (b)(1) and (2) amended 63708
63.1110 (e)(2) revised 63709
63.1200—63.1213 (Subpart EEE) Revised 53038
63.1210 (b)(1)(ii) introductory text, (A), (B), and (iv) introductory text revised 63211
63.1211 (b) revised 63212
63.1350 (k) revised 53070
63.1580—63.1595 (Subpart VVV) Added 57579
68 Authority delegation notice 59650
70 Appendix A amended 71041, 72035
75.19 (c)(4)(ii)(A) corrected 37582
75.57 (c)(4)(iv) table corrected 37582
75 Appendixes A, B, D and E corrected 37582
76.6 (a)(1) amended 55838
80.41 (f) table amended 37689
80.81 (i) removed 49997
80.101 (f)(4) introductory text, (i) and (ii) added 37689
81.305 Amended 39418
81.306 Amended 46289, 51701
81.324 Amended 58354
81.334 Amended 55425
81.343 Amended 37411
82 Technical correction 39040
Notice 68039
86.000–7 Regulation at 61 FR 54878 eff. 8–27–97 43936
86.000–8 Regulation at 61 FR 54878 eff. 8–27–97 43936
86.000–9 Regulation at 61 FR 54879 eff. 8–27–97 43936
86.000–21 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–23 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–24 Regulation at 61 FR 54882 eff. 8–27–97 43936
86.000–25 Regulation at 61 FR 54883 eff. 8–27–97 43936
86.000–26 Regulation at 61 FR 54883 eff. 8–27–97 43936
86.000–28 Regulation at 61 FR 54884 eff. 8–27–97 43936
86.001–2 Regulation at 61 FR 54886 eff. 8–27–97 43936
86.001–9 Regulation at 61 FR 54886 eff. 8–27–97 43936
86.001–21 Regulation at 61 FR 54886 eff. 8–27–97 43936
86.001–23 Regulation at 61 FR 54887 eff. 8–27–97 43936
86.001–24 Regulation at 61 FR 54887 eff. 8–27–97 43936
86.001–25 Regulation at 61 FR 54887 eff. 8–27–97 43936
86.001–26 Regulation at 61 FR 54888 eff. 8–27–97 43936
86.001–28 Regulation at 61 FR 54888 eff. 8–27–97 43936
86.004–9 Regulation at 61 FR 54889 eff. 8–27–97 43936

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 40 Chapter I—Con.

86.004–28 Regulation at 61 FR 54890 eff. 8–27–97 43936
86.106–00 Regulation at 61 FR 54890 eff. 8–27–97 43936
86.129–00 Regulation at 61 FR 54892 eff. 8–27–97 43936
86.159–00 Regulation at 61 FR 54894 eff. 8–27–97 43936
86.160–00 Regulation at 61 FR 54895 eff. 8–27–97 43936
86.161–00 Regulation at 61 FR 54897 eff. 8–27–97 43936
86.162–00 Regulation at 61 FR 54898 eff. 8–27–97 43936
86.162–03 Regulation at 61 FR 54899 eff. 8–27–97 43936
89 Authority citation revised 73330
89.1 Revised 73330
89.2 Amended 73331
90.706 Corrected 36423
92.503 (c) added 73331
92.506 (c) revised 73331
94 Added 73331
122.2 Amended 42462
Regulation at 64 FR 42462 eff. date corrected to 12–2–99 43426
122.21 (a), (c)(2), (e), (f) introductory text and (j) revised; (d)(3) removed; (q) added 42462
Regulation at 64 FR 42462 eff. date corrected to 12–2–99 43426
(c)(1) revised 68838
122.26 (a)(9), (b)(4)(i), (7)(i), (14) introductory text, (x), (xi), (c) heading, (e) heading, introductory text, (1), (5) introductory text, (i), (f)(4), (5) and (g) revised; (b)(15) redesignated as (b)(20); new (b)(15) through (19) added; (c)(1) introductory text and (ii) introductory text amended 68838
122.28 (b)(2)(v) revised 68841
122.30 Added 68842
122.31 Added 68842
122.32 Added 68842
122.33 Added 68843
122.34 Added 68843
122.35 Added 68846
122.36 Added 68847
122.37 Added 68847
122.44 (j)(2) revised 42469
Regulation at 64 FR 42469 eff. date corrected to 12–2–99 43426
(k)(2) and (3) redesignated as (k)(3) and (4); new (k)(2) and (s) added; new (k)(3) amended 68847
122.62 (a)(14) added 68847
122 Appendix J added 42469
Regulation at 64 FR 42469 eff. date corrected to 12–2–99 43426
Appendix F revised 68847
Appendixes G and H revised 68848
Appendix I revised 68849
123.25 (a)(4) revised 42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
(a)(37) and (38) amended; (a)(39) through (45) added 68849
123.35 Added 68850
123.43 (b) added 42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
124.8 (b)(9) added 42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
124.52 (c) revised 68851
131.36 (b)(1) revised; (d)(3)(ii) and (9)(ii) amended 61193
136.3 (a) Table amended; (b)(43) added 73423
141.21 (f)(3) revised; (f)(5), (6)(i), (ii) and (8) amended; (f)(6)(v), (vi) and (vii) added 67461
141.23 (a)(4)(iii), (k)(1) table, (2), (3)(i) and (ii) introductory text revised 67461
141.24 Heading, (e), (f)(14)(ii), (17)(i)(A), (B), (ii) introductory text, (A), (h)(10)(ii), (13) introductory text, (i), (19)(i)(A) and (B) introductory text revised 67464
141.28 (a) revised 67465
141.35 Revised; eff. 1–1–01 50611
141.40 Revised; eff. 1–1–01 50612
141.74 (a) introductory text and (2) amended; (a)(1) table revised 67465
141.89 (a)(1) introductory text and (i) revised; (a)(1)(ii)(B) amended 67466
141.151—141.155 (Subpart O) Appendix B amended 49672
142.15 (c)(3) removed; eff. 1–1–01 50620
142.16 (e) introductory text, (1) introductory text and (i)(C) revised; eff. 1–1–01 50620

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

143.4 (b) table and footnotes revised 67466
144.1 (f)(1)(vii) added; (g)(1) introductory text, (iii) and (2)(v) revised 68565
144.3 Amended 68565
144.6 (a)(3) added; (e) revised 68565
144.23 (c) added 68566
144.24 (a) revised 63566
144.26 (b)(1)(iii)(B) revised; (e) removed 68566
144.79—144.89 (Subpart G) Added 68566
144.88 (a)(1) table corrected 70316
145.11 (a)(32) added; (b)(1) amended 68572
145.23 (f)(12) added 68572
146.3 Amended 68572
146.5 (a)(3) added; (e) introductory text amended 68573
146.10 Revised 68573
180.102 Removed 39077
180.106 (b) added 41305
180.109 Removed 39053
180.110 (b) table amended 72284
180.124 Removed 39077
180.125 Removed 39053
180.130 Revised 39077
180.141 Removed 39053
180.142 (b) table amended 69409
180.150 Removed 39077
180.157 Revised 41822
180.161 Removed 39077
180.184 Revised 41822
180.189 Revised 39077
180.200 Removed 72951
180.201 Removed 39053
180.205 (a) amended 39077
(b) table amended 63719
180.207 (a) table amended 39082
180.216 Removed 39053
180.221 Revised 39077
180.222 (a) table amended 39082
180.225 Revised 72950
180.226 (a) table and (b) table amended 39082
180.244 Removed 39078
180.250 Removed 39078
180.252 Revised 39053
180.259 (a) heading and (2) added; (a) and (b) redesignated as (a)(1) and (c); new (a)(1) table amended; new (c) revised 39072
(a)(1) table amended; eff. 10-19-99 through 11-18-99 58793
Regulation at 64 FR 58793 eff. date extended to 12–18–99 62982
180.262 (a) amended 39078
180.265 Removed 39053
180.266 Removed 39053
180.267 Revised 39053
180.282 Removed 39053
180.283 Removed 39053
180.284 (b) amended 40767, 61791
180.292 (a)(1) table amended 39082
180.299 Table amended 39082
180.300 (a) table amended 39082
180.304 (a) introductory text revised; (a) table amended 39083
180.346 (a) amended 39083
180.353 (b) table amended 46292
180.355 (b) table amended 37863
(a) table amended 39083
180.362 (b) redesignated as (c); (a) heading and (c) heading added; (c) table amended 41822
180.363 Removed 39078
180.364 (a)(1) table amended 41823
(a)(1) introductory text, (2) introductory text and (3) introductory text revised 66113
180.368 (b) amended 56681
180.375 Removed 72951
180.377 (b) added 52457
180.384 Amended 39078
180.398 Removed 39053
180.402 Removed 39053
180.412 (b) table amended 56703
180.415 Revised 36801
(b) revised 37875
180.416 (b) amended 54782
180.425 (b) table amended 69415
180.428 Revised 70191
180.431 (b) table amended 62594
180.434 (b) table amended 41297, 41815
180.442 (b) table amended 70602
180.443 (b) table corrected 38306
(b) table amended 71673
180.449 (a) revised 48560
(b) table amended 63711
180.462 (b) added 46292
180.472 (b) table amended 39048
(a) table amended 41810
180.473 (b)(1) and (2) redesignated as (a)(3) and (4); (b) added 44835
Revised 60120
(b) table amended 72287
180.474 (b) amended 51251
(b)(1) amended 54779
180.475 Revised 36254
(b) added 47687

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 40 Chapter I—Con.

180.482 (a) table amended 37870
(a) introductory text redesignated as (a)(1); new (a)(1) table amended; (a)(2) added 39068
(b) table amended 51258, 68637
(a)(1) table amended 52463
(d) amended 56697
180.487 (a) revised 56469
180.490 Revised 54224
180.495 (b) added 39059
(a) revised 51459
180.498 (b) redesignated as (d); (a) heading and new (d) heading revised; new (b) and (c) added 51067
180.503 (b) table amended 47689
180.508 (b) added 37861
180.509 (b) amended 63714
180.510 (b) table amended 41812, 44829
(a) table amended 56689
180.511 (b) table amended 45887, 59655
180.513 (b) table amended 47692
180.515 (b) table amended 45890
180.520 Removed 39078
180.524 Removed 41823
180.527 (b) added 42846
180.555 Added 51907
180.556 Added 52450
180.557 Added 68052
180.597 (b) table amended 42286
180.1001 (c) table amended 55841
180.1013 Removed 39053
180.1020 (b) amended 42849
180.1032 Removed 41818
180.1207 Added 68046
180.1208 Added 51248
185.1500 Removed 39078
185.2500 Revised 39083
185.2700 Table amended 39083
(a) amended 39083
180.3550 (b) removed 41823
180.3800 Removed 72951
185.4650 Removed 39078
185.5000 Removed 39072
186.200 Removed 72951
186.1500 Removed 39078
186.3800 Removed 72951
201.24 Corrected; CFR correction 55141
228.15 (l)(3)(vi) amended; (l)(3)(vii), (viii)(A)(*1*), (*2*), (*4*), (*5*), (*7*), (*11*), (*12*) and (*13*) revised 39933
243 Authority citation revised 70606
243.100 (c) and (g) revised 70606
243.200–1 (e) added 70606
243.202–1 (d) revised 70606
260.10 Amended 36487, 53070
261.9 (b) and (c) revised; (d) added 36487
261.32 Table amended 56470
261.38 Table 1 amended 53070, 63213
261 Appendix IX amended 42037
Appendix IX corrected; CFR correction 56256
262.10 (j) added 52392
262.34 (a)(4) revised 56471
262.90 Added 37636
262.100—262.108 (Subpart J) Added 52392
264.1 (g)(11)(ii) and (iii) revised; (g)(11)(iv) added 36488
(g)(12) added 37638
264.340 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 53074
264.601 Introductory text revised 53074
265.1 (c)(14)(ii) and (iii) revised; (c)(14)(iv) added 36488
(c)(15) added 37638
265.340 (b) redesignated as (c); new (b) added 53075
266.100 (b) through (f) redesignated as (c) through (g); new (d)(1) introductory text and (3) introductory text revised; new (b) and (h) added 53075
266.101 (c)(1) revised 53075
266.105 (c) redesignated as (d); new (c) added 53075
266.112 (b)(1) introductory text amended; (b)(2)(i) revised 53076
266 Appendix VIII amended 53076, 63213
268.1 (f)(2) and (3) revised; (f)(4) added 36488
268.7 (a)(3)(iii) added 56471
268.40 Table amended; (j) revised 56471
268.49 (c)(1)(A) and (B) revised 56472
270.1 (c)(2)(viii)(B) and (C) revised; (c)(2)(viii)(D) added 36488
(c)(2)(ix) added 37638
270.19 Introductory text revised; (e) added 53076
270.22 Introductory text added 53076
270.42 Appendix I amended 53077
270.62 Introductory text added 53077
270.66 Introductory text added 53077

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

271 State hazardous waste management program authorizations.....41823, 42602, 44836, 46298, 46302, 47692, 48099, 49998, 51702, 55142, 55153, 55629, 56174
271.1 (j) Table 1 amended 53077
272.1851 Revised 46570
272.2201 Revised 49680
272 Appendix A amended 46571, 49682
273.1 (a)(2) and (3) revised; (a)(4) added 36488
273.2 (a)(1), (b)(2) and (3) revised 36488
273.3 (a) introductory text revised 36488
273.4 (a) revised 36488
273.5 Revised 36488
273.6 Redesignated as 273.9 36488
273.8 Added 36488
273.9 Redesignated from 273.6 36488
273.9 Amended 36489
273.10 Revised 36489
273.13 (d) added 36489
273.14 (e) added 36489
273.30 Revised 36489
273.32 (b)(4) and (5) revised 36489
273.33 (d) added 36489
273.34 (e) added 36489
273.50 Revised 36490
273.60 (a) revised 36490
273.81 (a) revised 36490
300 Appendix B amended 39884, 44136, 47402, 48965, 50459, 50465, 50772, 51460, 51710, 52239, 52463, 52464, 52664, 52665, 53213, 53629, 56973, 60121, 60122, 61526, 63720, 68053, 73426
372.22 (c) amended 58750
372.25 Introductory text, (f), (g) and (h) amended 58750
372.27 (e) added 58750
372.28 Added 58750
372.30 (a), (b)(1), (3) introductory text, (i) and (iv) amended 58751
372.38 (a), (b), (c) introductory text, (d) introductory text, (f), (g) and (h) amended 58751
372.65 (a) table, (b) table and (c) table amended 58751
372.85 (b)(15)(i) introductory text, (16)(i)(B) and (ii)(B) revised; (b)(15)(ii) added 58753
403 Appendix G revised 42567
430.24 (b)(2) revised; (c) added 36586
439.1 (n) added 48104
439.17 (d) removed; (e) redesignated as (d) 48104
439.27 (a) designation and (b) removed; introductory text revised 48104
439.37 (d) removed; (e) redesignated as (d) 48104
439.47 (a) designation and (b) removed 48104
501.15 (d)(1)(i)(B) reinstated 42434
(a)(4) removed 42470
Regulation at 64 FR 42470 eff. date corrected to 12–2–99 43426
503.2 (d) added 42568
503.10 (b)(1), (c)(1) and (d) through (g) revised 42568
503.16 (a)(1) and (2) revised 42569
503.17 (a)(1)(ii), (2)(ii), (3)(i)(B), (ii)(A), (4)(i)(B), (ii)(A), (5)(i)(B), (ii)(C), (F), (H), (J), (L), (6)(iii), (b)(3), (6) and (7) revised; (a)(4)(ii)(E) added 42569
503.18 (a)(2) revised 42570
503.21 (c) revised 42570
503.22 (b) revised 42570
503.26 (a)(1) and (2) revised 42570
503.27 (a)(1)(ii), (2)(ii), (b)(1)(i) and (2)(i) revised 42571
503.31 (g) revised 42571
503.32 (b)(2)(i) and (5)(v) revised 42571
503.33 (b)(10)(i) revised 42571
503.41 (c) through (o) redesignated as (d) through (h), (j) and (l) through (r); new (c), (i) and (k) added 42571
503.43 (c) and (d) revised; (e) added 42572
503.45 (a)(1), (b) through (f) revised; (h) added 42573
503.46 (a)(1), (3) and (c) revised 42573
503.47 (f) revised 42573
503 Appendix B revised 42573
745.107 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.110 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.113 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.115 Regulation at 61 FR 9087 eff. 4–22–97 39420
745.226 (a)(5), (d)(2) and (f)(1) revised 42851
745.227 (a)(1) revised 42852
745.239 (b) and (c) revised 42852

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 40

Proposed Rules:

2 ..... 57421, 71366
5 58568
35 ..... 40064, 40084, 46234
49 ..... 48725, 48731, 54851, 65673
50 ..... 57424, 63002, 68659
51 ..... 45491, 50036, 52731, 62144
52 ..... 36635, 36639, 36830, 36831, 37491, 37492, 37734, 37923, 38616, 38617, 38862, 38863, 39110, 39963, 40328, 40791, 42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215—45217, 46325, 46331, 46878, 47464, 47465, 47754, 48126, 48127, 48337, 48725, 48731, 48739, 48970, 48976, 49425, 49756, 50787, 51088, 51278, 51488, 51489, 51493, 51722, 51723, 51937, 51943, 52265, 52486, 52737, 53303, 53973, 54600, 54601, 54851, 55220, 55442, 55662, 55667, 55879, 56181, 57826, 58006—58008, 58011, 58018, 58369, 59703—59706, 60400, 60401, 60759, 61046, 61051, 61239, 61572, 63002, 63268, 63271, 65673, 66143, 66441, 66829, 67222, 67534, 67535, 68065, 68066, 69211, 69448, 70205, 70207, 70318, 70319, 70332, 70348, 70364, 70380, 70397, 70412, 70428, 70444, 70460, 70478, 70496, 70514, 70531, 70548, 70652, 70659, 70660, 71086, 71087, 71704, 71705, 72045, 72632, 72971, 72972
55 ..... 45217, 63271
60 ..... 47465, 47234, 47276, 51088, 67092
62 ..... 36426, 37923, 38617, 41364, 43123, 45221, 45937, 46165, 48742, 50476, 50787, 50788, 51496, 52738, 57827, 59718, 62144, 62145, 70665
63 ..... 37734, 38993, 45116, 45221, 59719, 63779, 72833
69 59719
70 ..... 68066, 72045
76 55880
80 ..... 50036, 57827, 70121
81 ..... 37492, 46331, 51723, 55442, 58018, 60478, 66559, 70660
82 59141
85 ..... 56985, 57827, 58472, 68310, 70121
86 ..... 56985, 57827, 58472, 60401, 68310, 70121, 70665
90 40940
93 66832
97 ..... 43124, 44452, 50041
122 ..... 46058, 53304, 57827
123 ..... 46058, 53304, 57827
124 ..... 46058, 53304, 57827
130 ..... 46012, 53304, 57827
131 ..... 37072, 46058, 53304, 57827
132 53632
141 ..... 59246, 71367
142 ..... 59246, 71367
144 57430
146 57430
147 ..... 43329, 56986
148 ..... 40192, 46476, 48742, 49052
152 ..... 50672, 62145
156 ..... 50672, 62145
160 72972
165 ..... 56918, 71368
180 ..... 36640, 50043, 51723, 56477, 71708
194 ..... 56185, 68661
197 ..... 46976, 53304
243 70666
258 53976
259 45632
260 68968
261 ..... 40192, 42317, 44866, 45632, 46166, 46476, 48742, 49052, 50788, 55443, 55880, 58022, 63382
262 40696
264 ..... 46476, 49052, 54604
265 ..... 46476, 49052
266 ..... 45632, 63464
268 ..... 40192, 40534, 46476, 48742, 49052
270 45632
271 ..... 40192, 42630, 43331, 44876, 46332, 46476, 47755, 48135, 48742, 49052, 50050, 51724, 55222, 55671
272 ..... 46632, 49757
281 ..... 43336, 46178
300 ..... 39886, 40328, 41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224, 46333, 46632, 47465, 47478, 47481, 50476, 50477, 51496, 56992, 61051, 73460
302 ..... 40192, 46476, 48742, 49052
372 ..... 42222, 51091, 58370, 61807, 68311
403 ..... 39564, 47755
441 45072
442 38863
503 72045
710 ..... 46722, 56998
721 63275
745 40064
761 69358
792 72972
806 72972

CHANGES JULY 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)

51-2.7 Revised 55842
51-5.5 (a), (d)(2) and (e) revised 55842
51-5.6 Revised 55842

Chapter 101—Federal Property Management Regulations (Parts 101-1—101-99)

101-11 Regulation at 61 FR 41001 eff. date extended to 12-31-00 60349
101-35 (Subchapter F) Regulation at 61 FR 41003 effective date extended through 8-8-00 38588
101-38 Revised 59593
101-42.1102-10 (a) and (b) revised 40772
101-43.304-2 (b) revised 40773
101-43.305 Heading and (b)(2) revised 40773
101-43.4801 Revised 40773
101-42—101-49 (Subchapter H Apperdix) Temporary Reg. H-29 eff. date extended to 7-31-00 72570

Chapter 102—Federal Management Regulations (Parts 102-1—102-99)

Chapter 102 Established; interim 39084
102-34 Added 59593
Corrected 66778
102-34.170 (d) corrected 66967

Chapter 300—General (Parts 300-1—300-70)

300-3.1 Amended 67670
300-10.124 Introductory text revised; (i) amended; (j) added 67670

Chapter 301—Travel Allowances (Parts 301-1—301-99)

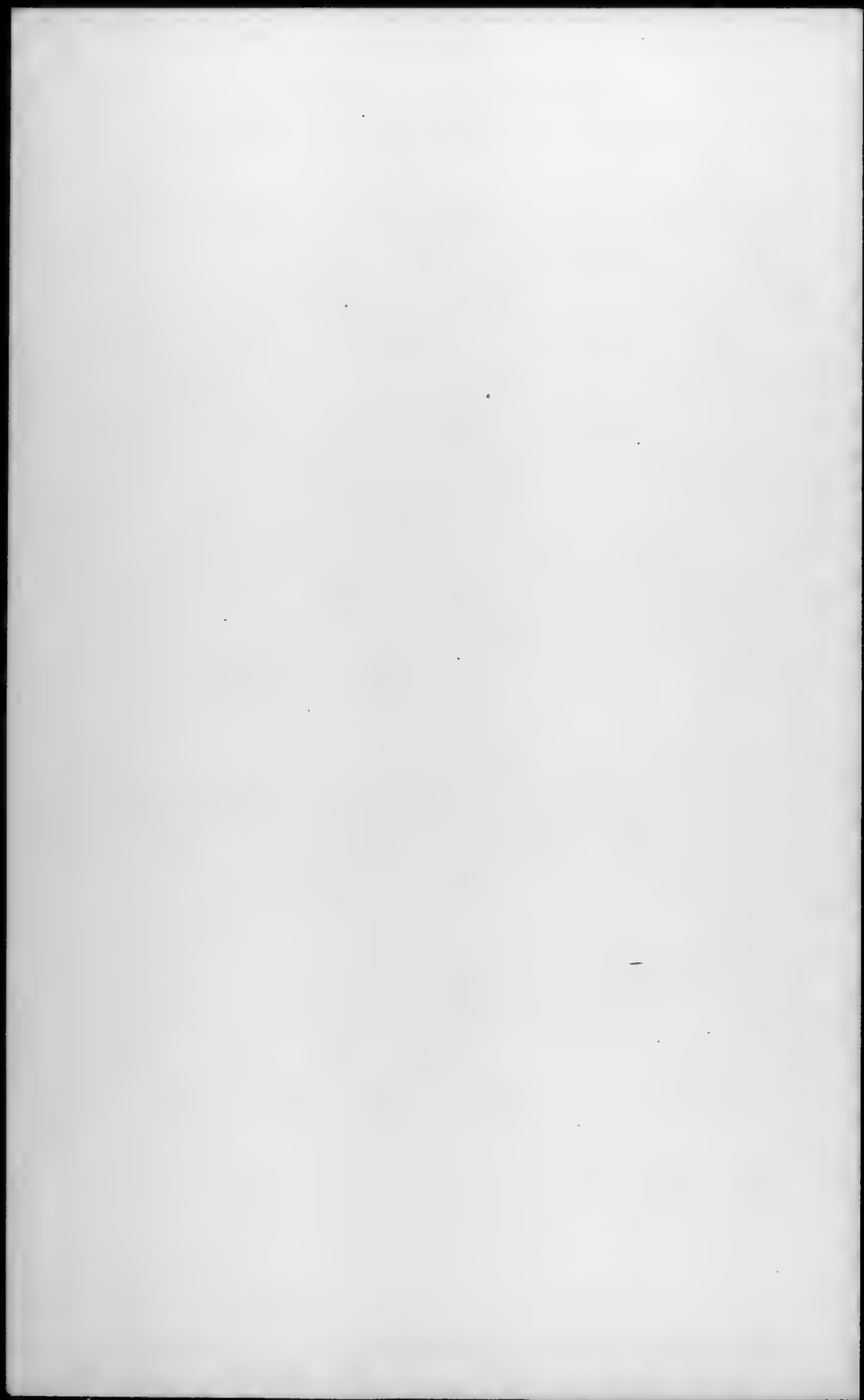
301-51 Revised; interim 38528
301-52.17—301.52.21 Added; interim 38529
301.54 Added; interim 38529
301-70.700—301-70.706 (Subpart H) Added; interim 38529
301-71.204 Revised; interim 38530
301-71.208—301-71.211 (Subpart C) Added; interim 38530
301-76 Added; interim 38530
Chapter 301 Appendix A amended 38587
Appendix A revised 67670

Chapter 303—Payment of Expenses Connected with the Death of Certain Employees (Parts 303-1—303-2)

303-70.100 Revised 45891
303-70.403 Heading revised 45891
303-70.600—303-70.602 (Subpart G) Added 45891

Proposed Rules:

51-2 41882
51-5 41882
101-4 58568
101-43 62146
102-36 62146
301-11 50051
301-74 50051



CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

36 Redesignated as Part 36a.....58318
Added.....58319
36a Redesignated from Part 36.....58318
Suspended.....58319
36a.12 (a)(2), (3) and (b)(1) amended.....58318
36a.15 (b)(1) amended.....58318
36a.16 (a) amended.....58318
36a.33 (a) and (b) amended.....58318
36a.34 (b) amended.....58318
36a.42 (a) amended.....58318
36a.43 Amended.....58318
36a.53 Amended.....58318
36a.56 Amended.....58318
36a.106 (a)(4) amended.....58318
36a.116 Amended.....58318
36a.120 (a) amended.....58318
36a.205 (b)(18) amended.....58318
36a.208 (b)(4) amended.....58318
36a.212 (h)(i) through (iv) redesignated as (h)(1) through (4); new (h)(4) amended.....58318
Corrected.....60879
36a.230 (b) amended.....58319
36a.232 Amended.....58319
36a.302 (v)(4) amended.....58319
36a.303 (a) and (d) amended.....58319
36a.321 (d) amended.....58319
36a.322 (a)(2) amended.....58319
36a.350 (a) introductory text amended.....58319
36a.351 (b)(5), (6), (7) and (9) amended.....58319
36a.353 Amended.....58319
36a.371 (c) and (d) amended.....58319
36a.372 (a)(2) amended.....58319
52b Revised.....63722
61.30 Regulation at 63 FR 9950 confirmed.....61218
61.33 Regulation at 63 FR 9950 confirmed.....61218
61.34 Regulation at 63 FR 9950 confirmed.....61218
61.35 Regulation at 63 FR 9950 confirmed.....61218
61.36 Regulation at 63 FR 9950 confirmed.....61218
61.38 Regulation at 63 FR 9951 confirmed.....61218
121 Authority citation revised.....56658
121.1 (b) revised.....56658
121.2 Amended.....56658
121.3 (a)(2), (3), (4), (b) heading and (4) removed; (b)(1), (2), (3), (c), (d) and (e) redesignated as (a)(2), (3), (4), (b), (c) and (d); (a) heading, (1), new (2) and new (d) revised; new (a)(4)(ii) and new (c) heading amended; new (a)(3) and new (4) heading removed.....56658
121.4 (a)(3)(i), (ii), (b)(2), (c) and (d) revised; (e) introductory text and (1) amended.....56658
121.5 (a), (b) and (c) amended.....56659
121.6 (b) revised.....56659
121.7 (d) amended.....56659
121.8 Revised.....56659
(e)(2) amended.....71626
121.9 (a)(1), (2)(vi) and (vii) amended; (a)(3) revised.....56660
121.10 (c)(1) amended.....56660
121.11 (a)(1)(i) and (b)(2) amended; (b)(1)(iv) revised.....56661
121.12 Revised.....56661

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

403.700—403.756 (Subpart G) Added; interim.....67047
409 Technical correction.....60122
410.22 (b)(1) revised.....59439
410.23 Revised.....59439
410.32 (b)(2)(v) and (vi) added; (b)(3) introductory text revised.....59440
410.33 (a)(1) revised.....59440
410.39 Added.....59440
410.75 (b) revised.....59440
411 Technical correction.....60122
411.15 Introductory text and (a)(1) revised; (k)(9) and (q) added.....59441
412.90 (c) removed; interim.....67051
412.98 Removed; interim.....67051
413 Technical correction.....60122
414.22 (b)(5)(i) revised; (c)(3) added.....59441
414.46 (a)(1), (2), (b)(1) and (2) revised; (a)(3) added.....59441
414.60 (a) introductory text revised.....59441

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 42 Chapter IV—Con.

415.130 (c) revised 59442
420.400—420.405 (Subpart E) Heading revised 66401
420.400 Revised 66401
420.410 Added 66401
422.382 (b)(4) introductory text and (iii) revised 71678
422.384 (b)(5) amended 71678
422.386 (d) introductory text and (e) revised 71678
431.610 (b) amended; interim 67052
431.701 (a) amended; interim 67052
440.155 (b)(1) amended; interim 67052
440.170 (b) and (c) revised; interim 67051
442.12 (b) amended; interim 67052
456.351 Amended; interim 67052
456.601 Amended; interim 67052
460 (Subchapter E) Added; interim 66279
462—482 Redesignated as Subchapter F; interim 66279
462 Redesignated as Part 475; interim 66279
466 Redesignated as Part 476; interim 66279
466.1 Amended; interim 67052
473 Redesignated as Part 478; interim 66279
475 Redesignated from Part 462; interim 66279
476 Redesignated as Part 480; new 476 redesignated from Part 466; interim 66279
478 Redesignated from Part 473; interim 66279
480 Redesignated from Part 476; interim 66279
482—498 Redesignated as Subchapter G; interim 66279
485.705 (c)(8) revised 59442
488.2 Amended; interim 67052
488.6 (a) amended; interim 67052
489 Technical correction 60122
Authority citation revised 67052
489.102 (a)(2) revised; interim 67052

Chapter V—Office of Inspector General–Health Care, Department of Health and Human Services (Parts 1000—1999)

1001.952 (t) and (u) added; interim 63513
(a)(3), (4) designation, (b)(6), (c)(6), (d)(7) and (n) through (s) added; (a) introductory text, (1)(ii), (iv), (2)(i), (vi), (vii), new (4), (b) introductory text, (2), (c) introductory text, (2), (d) introductory text, (2), (e), (f)(2) and (h) revised 63551
(t)(1)(i)(B) and (ii)(B) revised; interim 71317

Proposed Rules:

8 56294
57 54263
58 54263
68c 69213
72 58022
405 57431
409 ..... 57612, 58134
410 ..... 57612, 58134
411 ..... 57612, 58134
413 ..... 57612, 58134
424 ..... 57612, 58134
431 60882
433 ..... 60882, 67223
435 60882
438 67223
447 54263
457 60882
484 ..... 57612, 58134
1001 69217

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

12 Authority citation revised 72289
12.2 (e) added; interim 72289

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

414 Added 59006

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1820 Revised; eff. 11-1-99 53215
3809.1 Added 53219
3809.1-9 Revised 53219
3809.3-1 (b) revised 53220

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

3809.3-2 (e) revised; (f) removed 53220
3500—3570 Undesignated heading removed 53536
3500 Revised; eff. 11-1-99 53536
3510 Removed; eff. 11-1-99 53536
3520 Removed; eff. 11-1-99 53536
3530 Removed; eff. 11-1-99 53536
3540 Removed; eff. 11-1-99 53536
3550 Removed; eff. 11-1-99 53536
3560 Removed; eff. 11-1-99 53536
3570 Removed; eff. 11-1-99 53536

Proposed Rules:

41 58568
1300 61810
2800 55452
2880 55452
3730 57613
3820 57613
3830 57613
3840 57613
3850 57613
3800 57613

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

61 Appendixes A(1), A(2) and A(3) amended 70192
62.23 (j)(1) revised; (j)(2) through (6) redesignated as (j)(3) through (7); new (j)(2) added 56176
62 Appendix B amended 56176
64.6 Table amended 56257, 62595, 62597, 62599, 71318, 71679
65.4 Flood level determinations 53932, 53934, 53937, 60707, 60710, 69644, 69647, 69648, 69650
67.11 Flood level determinations 53938, 53940, 60712, 69653, 69656
206.200 Regulation at 63 FR 64425 confirmed; (b) revised 55160
206.201 Regulation at 63 FR 64425 confirmed; heading, (i) and (j) revised 55160
206.202 Regulation at 63 FR 64425 confirmed; revised 55160
206.204 (e) revised 55161
206.205 (a) revised 55161
206.208 (c)(1) revised 55161
206.228 Regulation at 63 FR 64426 confirmed 55160
(a)(2)(i) revised 55161

Proposed Rules:

19 58568
67 ..... 53980, 53982, 60759, 69656, 69676

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

61 Added 57758
61.15 (a) revised 71041
96.1 (a) and (c) through (f) revised 55856
96.2 (d) revised 55856
96.10 (a) revised; (c) and (d) added 55856
96.15 Revised 55856
96.30 Existing text designated as (a); (a) heading and (b) added 55857
96.41 (a) revised; (c) added 55857
96.42 (f) amended 55857
96.49 Added 55857
96.53 Added 55857
96.81 Revised 55858
96.82 Revised; interim 55858
96.84 (d) added 55858
96.85 (a) revised 55858
144 Comment request 57520
146 Comment request 57520

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1302 Authority citation revised 69925
1302.12 Removed 69926

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1641 Added 67507

Chapter XXV—Corporation for National and Community Service (Parts 2500—2599)

2505 Added 66403

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 45

Proposed Rules:

5b.....57619
160.....59918, 69981
161.....59918, 69981
162.....59918, 69981
163.....59918, 69981
164.....59918, 69981
270.....68202
302.....55074
303.....55074, 62074
304.....55074
305.....55074
308.....55102
612.....66146
613.....66146
618.....58568
1155.....58568
1171.....58568
1182.....58568
2522.....67235
2525.....67235
2555.....58568

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(1), (2) and (3) revised.....53222
2.01–25 (a)(1)(iv), (4)(i), (b)(2) and (e)(2) amended; (a)(1)(v) and (4)(ii) removed; (a)(1)(vi) through (ix) and (4)(iii) redesignated as (a)(1)(v) through (viii) and (4)(ii).....53222
2.10–105 (c) amended.....53223
4.06–40 Added.....53223
4.06–60 (e) added.....53223
10 Authority citation revised.....63225
10.102 (a) amended.....53223
10.103 Amended; interim; eff. 11–20–00.....63225
10.109 Table correctly revised.....53230
10.201 (f)(1) and (2) amended; interim; eff. 11–20–00.....63225
10.203 Table amended; interim; eff. 11–20–00.....63225
10.205 (f)(1) amended; (g)(3) revised; interim; eff. 11–20–00.....63225
10.209 (c)(6) and (7) added; interim; eff. 11–20–00.....63225
10.304 Heading revised; (h) redesignated as (i); new (h) added; interim; eff. 11–20–00.....63225
10.403 Heading and Figure 10.403 revised; interim; eff. 11–20–00.....63226
10.412 (a) amended; interim; eff. 11–20–00.....63228
10.414 (a) amended; interim; eff. 11–20–00.....63228
10.418 (b) revised; interim; eff. 11–20–00.....63228
10.420 Amended; interim; eff. 11–20–00.....63228
10.424 (a)(2) amended; interim; eff. 11–20–00.....63228
10.426 (a)(2) revised; interim; eff. 11–20–00.....63228
10.442 (a) and (b) amended; interim; eff. 11–20–00.....63228
10.444 (c) amended; interim; eff. 11–20–00.....63228
10.446 (b) amended; interim; eff. 11–20–00.....63228
10.452 (a) amended; interim; eff. 11–20–00.....63228
10.462 (c) amended; interim; eff. 11–20–00.....63228
10.463 Added; interim; eff. 11–20–00.....63228
10.464 Revised; interim; eff. 11–20–00.....63228
10.465 Added; interim; eff. 11–20–00.....63232
10.466 Redesignated as 10.467; new 10.466 added; interim; eff. 11–20–00.....63234
10.467 Redesignated from 10.466; interim; eff. 11–20–00.....63234
10.482 (a) revised; interim; eff. 11–20–00.....63235
10.603 (c) removed; (d) and (e) redesignated as (c) and (d); new (d) introductory text amended.....53223
10.701 (a) amended; interim; eff. 11–20–00.....63235
10.703 (a) amended; interim; eff. 11–20–00.....63235
10.901 (b)(1) amended; interim; eff. 11–20–00.....63235
10.903 (c) table amended; (a)(18), (b)(4) and (c)(7) revised; interim; eff. 11–20–00.....63235
10.910 Table amended; interim; eff. 11–20–00.....63235

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

12.01–3 (a) amended 53223
12.02–18 Table correctly revised 53231
15 Authority citatin revised 63235
15.105 (a) amended 53223
15.301 (a) amended; (b)(6) removed; (b)(7) through (10) redesignated as (b)(6) through (9); interim; eff. 11–20–00 63235
15.610 Revised; interim; eff. 11–20–00 63235
15.705 (d) amended; interim; eff. 11–20–00 63235
15.805 (b) revised 53223
(a)(5) added; interim; eff. 11–20–00 63235
15.810 (d) and (e) redesignated as (d) and (f); new (d) added; interim; eff. 11–20–00 63235
15.910 Revised; interim; eff. 11–20–00 63235
27 Added; interim 56266
28.40 (b) amended 67176
28.535 (d) amended 67176
30.01–3 Added 67177
31.40–15 Heading revised; (a) and (b) amended 53223
31.40–20 Removed 53223
31.40–40 (c) amended 53223
32.01–1 (b) amended 67177
32.57–10 (d)(7–a) amended 67177
34.01–15 (b) amended 53223, 67177
34.15–5 (a), (d)(1), (4), (5), (e)(1) table and (5) table amended 53223
34.15–10 (b), (d) and (f) amended 53223
34.15–20 (b) amended 53223
34.15–90 (a)(2) amended 53223
35.01–3 (b) amended 67177
35.30–20 (c)(3) amended 67177
38.01–3 (b) amended 53223, 67177
38.05–20 (a)(1)(ii) amended 67177
39.10–5 (b) amended 67177
52.01–1 (b) amended 53224
53.01–1 (b) amended 53224
54.01–1 (b) amended 53224, 67177
54.05–10 (a) amended 67178
54.25–10 (d)(1)(v) and (2)(ii) removed; (d)(1)(vi), (vii), (viii) and (2)(iii) through (ix) redesignated as (d)(1)(v), (vi), (vii) and (2)(ii) through (viii) 67178
56.01–1—56.01–10 (Subpart 56.01–1) Amended 53224
56.01–2 Amended 53224, 67178
56.30–25 (a) amended 67180
56.30–35 (a) amended 67180
56.60–1 Table amended 53224
(a) table amended 67180
56.60–2 (a) table amended 67180
57.02–1 (b) amended 53224
58.01–10 (b) amended 67180
58.03–1 (b) amended 53224, 67180
58.30–10 (b) amended 67180
58.50–5 (a) table amended 67180
58.50–10 (a) table amended 67180
59.01–2 (b) amended 53225
61.03–1 (a) amended 53225, 67180
61.10–5 (h) amended 53225
61.20–17 (a) amended 67180
63.05–1 (b) amended 53225, 67181
63.25–9 Amended 67181
64.2 (a) and (b) amended 53225
67.15 (b) amended 53225
68.01–5 (a) and (b) amended 53225
68.01–7 (a), (b) and (c) amended 53225
68.01–9 (a) and (b) amended 53225
68.05–11 (a) and (b) amended 53225
68.05–13 (a) and (b) amended 53225
69 Effective date confirmation 66778
69.71 (b) amended 53225
69.73 (b) amended 53225
69.203 (b) amended 53225
76.01–2 (b) amended 67181
76.15–5 (d) removed; (e) and (f) redesignated as (d) and (e); new (d)(1) table and new (e)(1) table amended 53225
(d)(3), (4) and (e)(3) amended 53226
76.15–10 (b), (d) and (f) amended 53226
76.15–20 (b) amended 53226
76.15–90 (a)(2) amended 53226
77.01–3 (b) amended 67181
77.35–5 (c) amended 67181
78.01–2 (b) amended 67181
91.60–15 (a) and (b) amended 53226
91.60–20 Removed 53226
91.60–40 (c) amended 53226
92.01–2 Removed 67181
95.01–2 (b) amended 67181
95.15–5 (a), (d)(1) table, (3), (4) table and (e)(3) amended 53226
95.15–10 (b), (d) and (f) amended 53226
95.15–20 (b) amended 53226
95.15–90 (a)(2) amended 53226
96.01–3 (b) amended 67181
96.35–5 (c) amended 67181

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 46 Chapter I—Con.

97.01–2 (b) amended 67181
98.01–3 (b) amended 53226
105.01–3 Added 67182
105.05–10 (a), (c)(1) and (2) amended 53226
107.115 (b)(2) and (3) amended 53226
107.260 (a) amended 53226
107.269 Amended 53226
107.279 (b) and (c) amended 53226
108.101 (b) amended 67182
108.237 (b) amended 53226
108.497 (b) amended 67182
108.500 (b) amended 67182
108.705 Heading revised; (a) amended 53226
109.105 (b) amended 67182
109.431 (b) amended 53227
110.10–1 (b) amended 67182
111.60–1 (c)(4) amended 67182
114.600 (b) amended 67182
118.400 (d) amended 53227
119.440 (a)(1) table amended 67183
125.180 (b) amended 53227, 67183
133.175 (b) introductory text revised 53227
147.7 (c) amended 53227
151.01–2 (b) amended 53227, 67183
151.15–3 (g)(2)(iii) amended 67183
151.50–73 (a)(4) Note amended 53227
153.4 (b) amended 67183
153.933 (a)(4) Note amended 53227
154.1 (b) amended 67183
154.610 (c) amended 67183
154.1400 Amended 67183
160.010–1 Heading revised 53227
160.021–1 Heading revised 53227
160.022–1 Heading revised 53227
160.023–1 Heading revised 53227
160.024–1 Heading revised 53227
160.032–1 (a)(1) revised; (b) amended 67183
160.032–3 (c) amended 67184
160.035–1 (a)(1) revised; (b) amended 67184
160.035–3 (b)(1) revised 67184
160.037–1 Heading revised 53227
160.040–1 Heading revised 53227
160.048–1 (c) amended 53227
160.049–1 (c) amended 53228
160.050–1 Revised 53228
160.055–1 (a)(4) revised 67184
160.057–1 Heading revised 53228
160.076–11 (b) amended 67184
160.077–5 (b) amended 67184
160.151–5 (b) amended 67184
160.171–3 Heading revised 53228
(b) amended 67184
160.174–3 Heading revised; (a) amended 53228
(b) amended 67184
160.176–4 (b) amended 67185
161.002–1 (b) amended 67185
161.002–2 (d)(2) amended 53228
161.006–1 (a)(3) revised 67185
161.006–4 (h) amended 67185
161.006–5 (b)(3) amended 67185
162 Authority citation revised 67185
162.027–1 (a) amended 53228
(b) amended 67185
162.027–2 Amended 67185
162.027–3 (a) amended 67185
162.050–4 (b)(1) amended 53228
(a)(3) and (b)(2) revised 67185
162.050–5 (a) introductory text and (5) amended 53228
162.050–7 (h)(2) removed; (h)(3) through (6) redesignated as (h)(2) through (5) 53228
162.050–15 (f)(1) amended 67185
163.003–3 Revised 67185
164.007–1 (b) revised 67185
164.008–1 (b) revised 67185
164.012–1 (a)(1) amended 67185
164.015–1 (a)(4) revised; (b)(3) amended 67186
167.15–25 (a) amended 53228
167.20–1 (a) amended 53228
167.40–1 (a)(3) amended 53228
169.115 (c)(1) and (5) amended 53228
170.015 (b) amended 67186
174.007 (b) amended 67186
175.600 (b) amended 67186
177.410 (c)(1) amended 53228
181.400 (d) amended 53228
182.440 (a)(1) table amended 67186
189.60–15 Heading revised; (a) and (b) amended 53228
189.60–20 Removed 53228
189.60–40 (c) amended 53228
190.01–3 Removed 67186
193.01–3 (b) amended 53229, 67186
195.01–3 (b) amended 67187
195.35–5 (c) amended 67187
197.482 (e) Note amended 53229
199.03 (b)(5) amended 53229
199.05 (b) amended 53229, 67187
199.10 (g)(3) and (h)(1)(iv) amended 53229
199.20 (d)(2) amended 53229
199.30 Amended 53229
199.175 Table amended; (b)(21)(ii) removed; (b)(21)(i)(D), (E),

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

(F) and (G) redesignated as (b)(21)(ii) introductory text, (A), (B) and (C) 53229
199.200 Amended 53229
199.220 (a)(2) amended 53229
199.260 Amended 53229
199.261 (g) amended 67187
199.280 (b) and (e) amended 53229
199.290 (b) amended 67187
199.610 (a) table, (b) Note and (c) amended 53229

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

204 Authority citation revised 54782
204.4 (b) amended 54782
204.7 Revised 54783
204.8 Revised 54783

Proposed Rules:

2 62018
5 53970
15 56720
30 62018
31 62018
52 62018
61 62018
71 62018
90 62018
91 62018
98 62018
107 62018
110 62018
114 62018
115 62018
125 62018
126 62018
132 62018
133 62018
134 62018
167 62018
169 62018
175 62018
176 62018
188 62018
189 62018
195 62018
199 62018

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Order 54561, 61527, 68053
0.5 (a) revised 60716
0.15 Undesignated center heading and section revised 60716
0.17 (g) added 60716
0.31 (n) added 60716
0.41 (k) revised 57585
0.51 (s) added 60716
0.61 (c) removed; (f) revised; (g) added 60716
0.91 (a), (c) and (h) revised 60716
0.101 (d) revised 60716
0.111 Undesignated center heading and section revised 60716
0.121 (a) revised 60718
0.131 (a), (h) and (i) revised 60718
0.141 Undesignated center heading and section added 60718
0.181 Introductory text, (c), (d) and (h) revised 60720
0.182 Revised 60720
0.183 Removed 60721
0.185 Introductory text, (a) and (b) revised 60721
0.251 (f) revised 57585
0.261 (a)(15) revised 60721
0.284 (a)(1) and (4) revised 60721
0.285 Revised 60721
0.302 Revised 60721
0.311 Undesignated center heading and section revised 60721
0.314 Revised 60721
0.317 Revised 60722
0.332 (a) removed; (b) and (c) revised 60722
0.347 Revised 60722
0.357 Revised 60722
0.361 Undesignated center heading and section added 60722
0.387 (b) revised 60722
0.408 Revised (OMB numbers) 55425
0.413 Revised 60722
0.416 Revised 60722
0.422 Revised 60722
0.423 Revised 60722
0.431 Revised 60722
0.434 Revised 60722
0.441 Revised 60722
0.442 (a) and (b) amended; (d)(1), (3) and (e) revised 55162

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 47 Chapter I—Con.

0.443 Removed....60723
0.445 (b), (c) and (g) revised....60723
0.453 (a), (b), (d), (e) and (f) revised....60723
0.455 Revised....60724
0.459 (d)(1) and (g) amended; (i) added....55163
OMB number....56269
0.461 (i) revised....55163
0.465 (a) notes, (b) notes, (c)(1), (d)(1) and (3) revised; (d)(4) removed....60725
1 Authority citation revised....63521
Petition reconsideration....69926
1.4 (b)(2) revised....60725
1.47 (h) amended....60725
1.221 (b) and (c) revised....60725
1.720 Amended....60725
1.721 (b) amended....60725
1.722 (d)(1) amended....60725
1.730 Heading and (a) revised; (b), (c), (d) and (h) amended....60725
1.735 (b) revised....60726
1.774 Regulation at 64 FR 51264 eff. 11-4-99....60122
1.923 (i) added; eff. 11-30-99....53238
1.927 (a) revised; eff. 11-30-99....53238
1.928 Added; eff. 11-30-99....53238
1.929 (b)(2), (c)(4)(i), (iii), (v) and (d) revised; eff. 11-30-99....53239
1.939 (b) amended; eff. 11-30-99....53240
1.947 (b) revised; eff. 11-30-99....53240
1.948 (d) revised....62120
1.955 (a)(1) and (b)(2) amended; eff. 11-30-99....53240
1.1202 (d)(2) revised....63251
(a) note, (d) introductory text and (1) through (5) revised; (d) note 5 added....68947
(d)(2) revised....72571
1.1203 (a) introductory text revised....68947
1.1204 (b)(5) revised....63251
(a) introductory text, (6), (9), (10)(iii) and (11) revised; (a)(12) and (b) note added....68947
1.1206 (a) note 1 and (a) note 2 redesignated as (a) note 2 and (a) note 3; new (a) note 1, (12), (13) and (14) added....68948
1.1208 Revised....68948
1.1210 Revised....68949
1.1307 (b)(2) revised....69928
1.2105 (a)(2)(xi) revised....59659
1.4000 (g) revised....60726
2 Petition reconsideration....60123
Authority citation amended....72572
2.106 Table amended (OMB numbers)....66409, 69928
2.1204 (a)(9) added....69929
(a)(5) revised....72572
2.1205 (a) revised; note removed....72572
6 Added....63251
6.18 Effective date pending....63254
7 Added....63255
7.18 Effective date pending....63257
13.8 Added; eff. 11-30-99....53240
13.10 Added; eff. 11-30-99....53240
20.3 Amended....60130
20.6 Revised....54574
20.9 (a)(12) and (13) redesignated as (a)(13) and (14); new (a)(12) added....59659
20.12 Revised....61027
20.18 (e) revised; (f) and (g) redesignated as (j) and (k); (f) through (i) added; eff. in part 3-3-00 (OMB number pending)....60130
(d)(1) and (j) revised....72956
21.2 Amended....63730
21.11 (d) and (e) amended....63730
21.23 (c)(1)(vi) revised; (c)(2) added....63730
21.31 (a) revised; (e)(6)(iv) removed....63730
21.101 (a) footnote 2 revised....63730
21.201 Revised....63731
21.900 (a), (b) and (c) redesignated as (a)(1), (2) and (3); introductory text and concluding text designated as (a) introductory text and (b)....63731
21.901 (d) revised....63731
21.902 (b)(3), (4), (7), (f)(1), (2)(i), (ii), (i)(1), (2), (4) introductory text, (iii), (iv), (v), (6)(i) introductory text, (iii)(E), (F) and (iv) revised....63731
21.903 (d) revised....63732
21.904 Revised....63732
21.905 (b) and (d) introductory text revised....63732
21.906 (a) revised; (d) amended....63733
21.909 (b), (c), (d), (g)(3), (6)(i), (ii), (8), (h), (k), (m) and (n) revised; (a) and (o) amended....63733

NOTE: Boldface page numbers indicate 1999 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

21.910 Heading, (a) and (b) revised; introductory text, (c) and (d) removed....63735
21.913 (e)(4) removed; (e)(5) redesignated as (e)(4); (a), (b), (e) introductory text, (1), new (4)(i), new (vi) and (h) revised....63736
21.924 (a) revised....60726
21.938 (b) amended....63737
21.949 (a) and (b) introductory text revised; (d) amended; (b)(5) added....63737
22.165 (e) amended; eff. 11-30-99....53240
22.529 Introductory text revised; (c) added; eff. 11-30-99 (effective date pending)....53240
22.709 (f) added (effective date pending in part)....53240
22.803 (c) added (effective date pending in part)....53240
22.929 Introductory text revised; (d) added; eff. 11-30-99 (effective date pending)....53241
22.942 Revised....54576
22.946 (a) amended; eff. 11-30-99....53241
22.953 (a)(5) removed; eff. 11-30-99....53241
25.137 (a) introductory text and (b) revised (effective date pending)....61792
27.6 Introductory text revised....60726
36 Order....67372
Effective date confirmation....72956
36.601 (c) revised....67430
36.611 Introductory text and (h) revised (effective date pending in part)....67430
36.612 (a) revised (effective date pending)....67430
36.622 (a)(1) and (b)(1) revised; (d) removed....67430
36.631 (d) introductory text revised....67430
(c) introductory text revised....73428
51.507 (f) reinstated....68637
52.19 (c)(3)(i) and (ii) revised; (c)(3)(iii) removed....62984
54 Order....67372
Effective date confirmation....72956
54.5 Amended....67431
54.201 (a)(3) revised....62123
54.307 (a) introductory text, (1), (2), (3) and (b) revised; (c) added; eff. date pending and eff. in part 12-1-99....67431
54.309 Added (effective date pending in part)....67431
54.311 Added (effective date pending in part)....67432
(b) revised....73428
54.313 Added (effective date pending in part)....67432
(c) revised....73429
54.401 (b) removed....60358
54.601 (b)(3), (4) and (c)(1) revised....66787
54.609 (a)(1) and (2) added; (b) and (c) revised....66787
54.613 Revised....66787
54.621 Revised....62123
54.706 (b) and (c) revised; (d) added....60358
54.709 (a) revised....60358
61.47 Regulation at 64 FR 51265 eff. 11-4-99....60122
64 Policy statement....55164
Technical correction....57994
64.703 Regulation at 64 FR 47119 eff. 11-8-99....54577
64.2005 (b)(1) revised; (b)(3) removed; (d) added (effective date pending)....53264
64.2007 (f)(4) removed (effective date pending)....53264
64.2009 (a), (b) and (e) revised (effective date pending)....53264
64.2301—64.2345 (Subpart X) Added....53947
64.2400 Regulation at 64 FR 34497 eff. 11-12-99....55163
Correctly designated....56177
64.2401 Regulation at 64 FR 34497 eff. 11-12-99....55163
Correctly designated....56177
68.317 (g) revised....60726
69 Order....67372
69.4 (d) added....60359
69.5 (d) removed....60359
69.709 Regulation at 64 FR 51268 eff. 11-4-99....60122
69.711 Regulation at 64 FR 51268 eff. 11-4-99....60122
69.713 Regulation at 64 FR 51268 eff. 11-4-99....60122
69.729 Regulation at 64 FR 51269 eff. 11-4-99....60122
73 Actions on petitions....55434, 63745

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 47 Chapter I—Con.

Interpretation 62123
73.202 (b) table amended ..... 54224, 54225, 54783—54786, 55172—55175, 55435, 56704, 59124, 59125, 59655, 60131, 63258, 63259, 63745, 70607, 71042
73.686 (d) revised 73433
73.3513 (c) revised 56978
73.3526 Regulation at 64 FR 50645 eff. 11-16-99 59655
73.3555 OMB number 54225
73.3613 Regulation at 64 FR 50646 eff. 11-16-99 59655
73.3564 (a)(2) revised; (a)(3) added 56978
74.901 Amended 63737
74.902 (f) amended 63737
74.903 (a)(1), (2)(i), (ii) introductory text, (6) and (b)(5) revised; (b) introductory text amended 63737
74.911 Revised 63738
74.931 (c)(3), (6)(ii), (d) introductory text, (1), (6)(ii) and (iii) revised 63739
74.932 (a)(4) revised 63739
74.935 Heading, (a), (b) and (c) revised; (e) added 63739
74.936 (a) and (b) introductory text revised 63740
74.939 (d)(1) removed; (d)(2) and (3) redesignated as (d)(1) and (2); (b), (c), new (d)(2)(iii), new (iv), new (v) introductory text, new (A), (g)(3), (6)(i), (ii), (8), (h), (i)(2), (l)(2) introductory text, (m), (o) and (p) revised; (f), (l)(1) and (q) amended; (l)(6) added 63740
74.949 (a) and (b) introductory text revised; (b)(5) added 63742
74.951 (b) revised 63743
74.961 (a) revised 63743
74.985 (d) amended; (e)(4) removed; (e)(5) redesignated as (e)(4); (a), (b) introductory text, (4), (5), (e) introductory text, new (4)(i), new (vi), (f) and (h) revised 63743
74 Index amended 63744
76.403 Regulation at 64 FR 28108 eff. 7-1-99 60131
76.501 Notes 1, 2, 5 and 6 revised 67194
76.503 Note 2 added 67195
Revised 67199
76.504 (h) removed; Note 1 added 67196
76.505 (f) and (g) added 67196
76.905 (h) and (i) added 67196
76.922 (f)(6)(i) and (ii) added 67197
76.924 (i)(6) and (7) added 67197
76.970 (b) revised; (c) through (h) redesignated as (d) through (i); new (c) added 67197
76.1000 (b) revised 67197
76.1300 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 67197
76.1401 Removed 67197
76.1500 (g) revised; (h) redesignated as (i); new (h) added 67197
80.59 (c)(2) amended; eff. 11-30-99 53241
87.25 (a) removed; eff. 11-30-99 53241
90 Petition reconsideration 60123
90.7 Amended 60726, 66409
90.167 Heading revised; eff. 11-30-99 53241
90.187 (b)(2) introductory text revised 67200
90.205 (m) and (n) redesignated as (n) and (o); new (m) added 66409
90.210 Table, (k)(3) introductory text, (i) and (ii) revised 66409
90.350 Revised 66410
90.371 Added 66410
90.615 Revised 71054
90.619 (a)(5) Table 4A, (b)(9) Table 16, (10) Table 20 and (11) Table 24 amended 71054
90.621 (b) introductory text, (1) and (3) introductory text revised 71054
90.693 (b), (c), (d)(1) and (2) amended; eff. 11-30-99 53241
Revised 71055
90.903 (b)(1) revised 71055
95.1 (b) revised 59659
95.5 Revised; eff. 11-30-99 53241
95.7 (a) amended; eff. 11-30-99 53241
95.29 (a) and (b) revised; (e) removed; eff. 11-30-99 53241
95.101 (d) added; eff. 11-30-99 53242
95.103 (a) and (b) revised; eff. 11-30-99 53242
95.401 (d) added 69929
95.601 Amended 69929
95.603 (f) added 69929
95.605 Amended 69930
95.628 Added 69930

NOTE: Boldface page numbers indicate 1999 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

95.631 (h) added 69930
95.633 (e) added 69930
95.635 (b) revised; (d) added 69931
95.639 (f) added 69932
95.649 Revised 69932
95.651 Revised 69932
95.601—95.673 (Subpart E) Appendix 1 revised 69932
95.801—95.863 (Subpart F) Heading revised 59659
95.801 Revised 59659
95.803 Heading, (a) and (b) revised 59660
95.805 Revised 59660
95.807 Added 59660
95.811 (b), (c) and (d) revised 59660
95.812 Added 59660
95.813 (b) revised; (c) removed 59660
95.815 (a) and (b) revised 59660
95.816 Revised 59660
95.819 Revised 59661
95.823 Added 59662
95.831 Revised 59662
95.833 Revised 59662
95.853 Revised 59663
95.855 Revised 59663
95.859 (a) revised; (b) removed 59663
95.861 Revised 59663
95.863 Removed 59663
95.1019 Revised 69933
95.1201—95.1219 (Subpart I) Added 69933
97 Petition reconsideration 72956
97.15 Revised; eff. 11–30–99 53242
97.17 (b)(1) and (c) revised; eff. 11–30–99 53242
97.21 (a)(2) revised; eff. 11–30–99 53242
101.56 (d)(1) and (d)(2) redesignated as (d) and (e); (i) revised 59664
101.147 (u)(2) redesignated as (v)(2) 59664
(a) amended 63745
101.705 Revised; eff. 11–30–99 53242

Proposed Rules:

0—199 (Ch. I) 55671, 63277
0 71369
1 ..... 59719, 71088
2 71088
15 62159
18 62159
20 59719
43 59719
54 53648
61 ..... 53648, 66442
69 53648
73 ..... 53655, 54268—54270, 55223, 55452, 55453, 56723, 56724, 56999, 57835—57838, 59147, 59148, 59728, 60149—60151, 61054, 61239, 63783, 67236, 67535, 68662—68665, 70670—70672, 71097, 71098, 71712, 73460—73464
76 ..... 54854, 72985
80 71369
90 ..... 59148, 60151, 71369
101 ..... 71088, 71373

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 97–15 72414
Small entity compliance guide 72451
1.106 Introductory text and table amended 72416
Table amended (OMB numbers) 72417
2.101 Amended 72417, 72451
Amended; interim 72442
4.601 (e) redesignated as (f) and revised; new (e) added; interim 72442
4.804–5 Heading, (a) introductory text and (15) revised; (b) introductory text and (c) introductory text amended 72445
5.205 (f)(3) revised 72451
5.206 Revised; interim 72442
5.301 (a) revised; (c) amended 72418
6.303–1 (d) revised 72418
7.103 (r) added; interim 72442
7.105 (b)(1) revised; interim 72442
7.107 Added; interim 72443
8.901—8.904 (Subpart 8.9) Removed 72446
9.205 (b) revised 72418
10.001 (a) introductory text, (1), (2)(ii), (3)(iv) and (v) amended; (a)(2)(iv), (3)(vi) and (c) added; interim 72443
11.201 (d)(2) revised 72446
12.102 Regulation at 64 FR 32743 confirmed 72447
12.205 (c) revised 72418
12.301 (b)(4) amended 72418

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 48 Chapter 1—Con.

12.503 (b) introductory text revised; (b)(1) and (4) removed; (b)(2), (3) and (b)(5) redesignated as (b)(1), (2) and (3) 72416
12.504 (b) revised 72416
(a)(2), (3) and (4) removed; (a)(5) through (15) redesignated as (a)(2) through (12) 72418
13.101 (a)(2) amended; (a)(3) removed; (a)(4) redesignated as (a)(3) 72418
13.302–5 (d) revised 72418
13.500 (b) amended; (d) revised 72448
13.501 (a)(1) introductory text and (b) introductory text amended; (a)(2)(ii) revised 72448
14.201–6 (w) and (x) revised 72418
(r) revised 72451
14.409–1 (a)(2) introductory text amended 72418
15.101–2 (b)(1) amended; interim 72443
15.208 (a) and (b)(1) amended 72451
15.209 (b)(4) revised 72418
15.304 (c)(3)(i) and (ii) amended; (c)(3)(iii) redesignated as (c)(3)(iv); (c)(3)(iii) and (5) added; interim 72443
15.305 (a)(5) added; interim 72444
16.405–2 (a) amended 72449
16.406 (a), (b) and (e) introductory text amended; (e)(3) revised 72449
17.203 (h) revised 72419
19.101 (g)(1) revised; interim 72444
Regulation at 64 FR 32743 confirmed 72447
19.201 (d)(5) through (9) redesignated as (d)(6) through (10); new (d)(5) added; (e) amended; interim 72444
19.202–1 (e)(1)(i), (ii), (2) introductory text, (iii) and (iv) amended; (e)(1)(iii) and (2)(v) added; interim 72444
19.302 Regulation at 64 FR 32743 confirmed 72447
19.702 (d) amended 72451
19.800 Regulation at 64 FR 32743 confirmed 72447
19.802 Regulation at 64 FR 32744 confirmed 72447
19.804–2 Regulation at 64 FR 32744 confirmed 72447
19.804–3 Regulation at 64 FR 32744 confirmed 72447
19.804–4 Regulation at 64 FR 32744 confirmed 72447
19.804–5 Regulation at 64 FR 32744 confirmed 72447
19.804–6 Regulation at 64 FR 32744 confirmed 72447
19.805–1 Regulation at 64 FR 32744 confirmed 72447
19.805–2 Regulation at 64 FR 32745 confirmed 72447
19.806 Regulation at 64 FR 32745 confirmed 72447
19.808–2 Regulation at 64 FR 32745 confirmed 72447
19.809 Regulation at 64 FR 32745 confirmed 72447
19.810 Regulation at 64 FR 32745 confirmed 72447
19.811–1 Regulation at 64 FR 32745 confirmed 72447
19.811–2 Regulation at 64 FR 32745 confirmed 72447
19.812 Regulation at 64 FR 32745 confirmed 72447
19.1103 (a)(2) amended 72419
19.1307 (b)(3) amended 72419
23.101—223.107 (Subpart 23.1) Removed 72416
25 Revised 72419
32.503–6 (e)(3) amended 72451
33.213 (a) amended 72451
36.102 Amended 72432
36.104 Amended 72451
39.000 Revised 72446
39.101 (c) added 72446
42.203 Amended 72451
42.302 (a) introductory text revised; (a)(70) added 72445
48.103 (c) introductory text revised; (c)(4) added 72449
52.211–2 Revised 72446
52.211–6 Regulation at 64 FR 51850 eff. date corrected to 9–24–99 53264
52.212–3 Amended 72432
52.212–5 Amended 72433, 72450
52.213–4 Amended 72433
52.214–34 Introductory text amended 72433
52.214–35 Introductory text amended 72433
52.215–1 Amended 72433, 72451
52.219–10 Amended 72449

NOTE: Boldface page numbers indicate 1999 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

52.219–18 Regulation at 64 FR 32745 confirmed 72447
52.219–26 Amended 72449
52.223–1 Removed 72416
52.223–2 Removed 72416
52.225–1 Revised 72433
52.225–2 Revised 72434
52.225–3 Revised 72434
52.225–4 Revised 72435
52.225–5 Revised 72435
52.225–6 Revised 72436
52.225–7 Revised 72436
52.225–8 Revised 72436
52.225–9 Revised 72437
52.225–10 Revised 72438
52.225–11 Revised 72438
52.225–12 Revised 72440
52.225–13 Revised 72440
52.225–14 Revised 72440
52.225–15 Revised 72440
52.225–16 Added 72441
52.225–17 Added 72441
52.225–18 Removed 72433
52.225–19 Removed 72433
52.225–20 Removed 72433
52.225–21 Removed 72433
52.225–22 Removed 72433
52.226–1 Amended 72449
52.228–14 Amended 72451
52.248–1 Amended 72449
52.248–3 Amended 72449

Chapter 2—Department of Defense (Parts 200—299)

201 Heading corrected 58908
201.603–3 Existing text designated as (a); (b) added 56705
203.103–2 Revised 62984
203.104–10 Added 62984
203.203 Amended 62984
203.301 (b) amended 62984
203.405 (b) amended 62984
203.502 Amended 62984
203.570–4 Revised 62984
204.202 (1)(iv) revised 61028
204.7102 (b)(1) and (3) amended 61028
208.7003–1 Heading amended; (b)(2)(ii) revised 61031
209.105–2 Added 62985
209.106–2 Amended 61028
209.403 Introductory text, (1) and (2) introductory text amended; (3) added 62985
209.406–3 Revised 62985
209.407 Added 62985
209.407–3 Added 62985
209.471 Regulation at 64 FR 31733 confirmed 55632
211.270 Removed 55633
211.270–1 Removed 55633
211.270–2 Removed 55633
213.301 Added 56705
(2)(i) correctly designated 63380
214.202–5 (d) amended 55633
215.404–71–3 (c), (d) and (e) revised 61032
219.000 Introductory text amended 62987
219.702 (a) introductory text and (i)(A)(1) amended 62987
219.703 (a) introductory text and (2)(B) amended 62986
225.206 Added 62986
225.872–6 (b) and (c)(1) revised 61028
225.872–7 Amended 61029
226.7000 (a) and (b) amended 62987
237.7204 Corrected 53447
242 Heading revised 61029
242.002 Added 61029
242.101—242.102 (Subpart 242.1) Removed 61029
242.200–70—242.202 (Subpart 242.2) Revised 61029
242.302 (a)(8) removed; (a)(13) added 61030
242.705–1 (a)(1) amended; (b) removed 61030
242.705–2 (b)(2)(ii) removed; (b)(2)(iv) redesignated as (b)(2)(iii) 61030
242.7400 (a) amended 61030
247.305–10 (b)(iv) introductory text amended 61030
247.370 (b)(1) revised 61030
249.106 Added 62986
251.102 Amended 61031
252.211–7003 Removed 55633

Chapter 3—Department of Health and Human Services (Parts 300—399)

415.207 (b) corrected 54963

Chapter 8—Department of Veterans Affairs (Parts 800—899)

808.404–1 Removed 69934
808.404–3 Removed 69934
812.301 (c)(13), (14) and (15) redesignated as (c)(14), (15) and (16); new (c)(13) added; new (c)(16) revised 69934

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 48 Chapter 8—Con.

813 Heading and authority citation revised 69934
813.1 (Subpart) Added 69934
813.5 (Subpart) Redesignated as Subpart 813.3 69934
813.3 (Subpart 813.3) Redesignated from Subpart 813.5; heading revised 69934
813.106–70 Redesignated from 813.506–70 and amended 69935
813.302 Added 69934
813.302–5 Redesignated from 813.507 and revised 69935
813.307 Redesignated from 813.505–2; heading, (a) and (e) revised 69934
813.505–2 Redesignated as 813.307 69934
813.506–70 Redesignated as 813.106–70 69935
813.507 Redesignated as 813.302–5 69935
852.102 Added 69935
852.252–1 Added 69935
853 Authority citation revised 69935
853.213 Revised 69935

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1815.403–3 Revised 69416
1845.7101 Revised 62601
1845.7101–1 Revised 62601
1845.7101–2 Revised 62601
1845.7101–3 Revised 62601
1845.7101–4 Revised 62601
1845.7101–5 Revised 62601
1852.245–73 Revised 62603

Chapter 19—Broadcasting Board of Governors (Parts 1900—1999)

Chapter 19 Nomenclature Change; heading revised 54541

Proposed Rules:

1 67986
2 70158
12 67992
13 67992
16 70158
22 ..... 67986, 67992
25 67446
26 57964
28 ..... 58282, 72828
30 67814
37 70158
52 ..... 57964, 58282, 67446, 67986, 67992, 72828
203 63002
204 56724
211 61056
226 63003
252 56724
909 55453
919 68072
952 68072
970 55453
1804 54270
1812 54270
1815 70208
1819 70208
1825 58031
1852 ..... 54270, 58031, 70208
9903 56296

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1 Authority citation revised 56270, 58357
1.4 (d)(5) removed; (d)(6) redesignated as (d)(5) 56270
1.48 (h), (i), (p), (u), (v), (w), (z), (aa), (hh), (ii) and (jj) removed 56270
(e), (f) and (g) removed 58357
1.73 Added 56270
(j) removed; (k) redesignated as (j); (k) through (n) added 58357
71.9 (b) revised 56707

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

171.6 (b)(2) table amended 61220
172.101 Corrected 54730
Table amended 61220
192.309 (b) introductory text revised 69664
195.416 (f) revised 69665
192.459 Revised 56981
192.485 (a) revised 69664
192.487 (a) revised 69665
192.711 (b) amended 69665
192.713 Revised 69665
192.717 Revised 69665

NOTE: Boldface page numbers indicate 1999 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

199 Random drug testing revision 66788

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

209 Authority citation revised 62864
209 Appendix A amended 62864
211 Authority citation revised 70195
211.1 (b)(4) revised 70195
211.5 (a) and (b) revised 70195
211.7 Revised 70195
211.19 (a) amended 70195
219 Determination 72289
219.5 Amended 69194
219.201 (a)(1) introductory text, (2) introductory text and (4) revised 69195
225 Authority citation revised 69195
225.19 (c) amended; (e) revised 69195
225 Appendix B amended 69195
230 Revised 62865
235.14 Revised 70195
238.21 (f) revised 70196
238.203 (g) revised 70196
240 Authority citation revised 60988
240.1 (b) revised 60988
240.3 Revised 60988
240.5 Heading, (a), (b) and (e) revised; (f) added 60988
240.7 Amended 60989
240.9 (a) and (c) revised 60989
240.11 Heading, (a), (b) and (c) revised 60989
240.103 (a) revised 60989
240.104 Added 60990
240.105 (b)(4) revised; (c) added 60990
240.111 (a) introductory text, (1) and (h) revised 60990
240.113 (a) introductory text revised 60990
240.117 Revised 60990
240.121 (b), (c)(3) and (e) revised; (f) added 60992
240.123 (b) revised; (d) added 60992
240.127 (c)(2) revised 60992
240.129 (c)(2) revised 60992
240.213 (b)(3) revised 60992
240.217 (a)(1) through (4) and (c)(2) revised 60992
240.223 (a)(1) revised 60993
240.225 Revised 60993
240.229 (c) revised 60993
240.231 Added 60993
240.305 (a) revised 60993
240.307 (b)(2), (c) introductory text, (2), (10) and (e) revised; (i), (j) and (k) added 60994
240.309 (e)(10) removed; second (e) introductory text, (1), (2) and (3) redesignated as (h) introductory text, (1), (2) and (3); (e) introductory text, (3), (5), (7), (8) and new (h) introductory text, (1), (2) and (3) revised 60994
240.403 (d) revised; (e) added 60995
(b)(2) revised 70196
240.405 (a) and (c) revised; (d)(3) added 60995
240.407 (b) revised 70196
240.411 (e) revised; (f) added 60995
240 Appendix A amended 60995
Appendix F added 60996

Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

Chapter III Heading revised 58356, 72960
301 Removed 72960

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

544.5 (a) revised 57396
544 Appendixes A, B and C revised 57396
571.201 Amended 69671

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

601.4 Revised 61033

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (d), (e)(2), (3) and (f)(7) amended 53266
1002.2 (a)(2) and (iii) amended; (a)(3) revised 53266
1003.1 (c) amended 53266
1007.3 (a) amended 53266
1007.6 (c) amended 53266

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 49 Chapter X—Con.

1007.8 (d) amended 53266
1007.11 (b) amended 53266
1011.4 (c)(7) removed 53266
1011.7 (c)(3) and (g) amended 53266
1011.8 (a) introductory text, (1), (b)(2) and (c)(10) amended 53266
1012.1 (a) amended 53266
1012.1 (b) amended 53267
1012.2 (a) revised; (b) and (c) amended 53267
1012.3 (a) and (b)(4) amended 53267
1014.170 (c) amended 53267
1017.4 (a) amended 53267
1017.9 (a) introductory text and (6) amended 53267
1018.3 Amended 53267
1018.29 (c) amended 53267
1019.2 (a) amended 53267
1019.6 Amended 53267
1021.3 Amended 53267
1034.1 (a) and (c) amended 53267
1039.10 Table amended 53267
1100.4 Revised 53267
1101.2 (b) amended 53267
1103.3 (d) amended 53267
1104.15 (b) amended 53267
1105.2 Amended 53268
1105.3 Revised 53268
1105.4 (i) and (j) amended 53268
1105.7 (b)(11) amended 53268
1105.10 (a)(1), (3), (b), (d) and (g) amended 53268
1105.11 Appendix amended 53268
1105.12 Appendix amended 53268
1113.19 Amended 53268
1133.2 (a) amended 53268
1139.22 Amended 53268
1139.26 Note amended 53268
1139.20—1139.26 (Subpart B) Appendix I amended 53268
1150.1 (b) amended 53268
1150.10 (g) amended 53268
1150.16 Amended 53268
1150.36 (c) amended 53268
1151.1 Amended 53268
1151.3 (a)(3)(i) amended 53268
1152.12 (b) amended 53268
1152.24 (a) and (c) amended 53268
1152.29 (b)(1)(ii) amended 53268
1177.3 (c) amended 53268
1177.4 (b) amended 53268
1180.4 (b)(1)(ii) amended 53269
1180.6 (a)(8) amended 53269
1180.7 (d) amended 53269
1180.9 (c) amended 53269
1184.1 Amended 53269
1184.2 Amended 53269

Proposed Rules:

25 58568
40 69076
71 55892
100—199 (Ch. I) 63279
106 71098
107 71098
171 ..... 71098, 72633
172 72633
173 72633
174 72633
175 72633
176 72633
177 72633
178 ..... 62161, 72633
179 72633
180 72633
192 ..... 56725, 71713
195 ..... 56725, 71713, 73464
200—299 (Ch. II) 59046
209 59046
300—399 (Ch. III) 56478
392 58372
531 73476
552 60556
567 66447
568 66447
571 ..... 60556, 61810, 62622, 70672, 71377
585 60556
595 60556
661 54855
1039 66156
1105 66157
1180 66157

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

17.11 (h) table amended 56608, 58932, 68521, 72960
17.12 (h) table amended 56590, 56595, 63752, 69203, 71687
17.44 (w) revised 58932
17.95 (b) amended 68521
20 Authority citation revised 71237
20.21 (b) and (g) revised; eff. 12-20-99 through 5-15-01 71237
20.22 Amended; eff. 12-20-99 through 5-15-01 71237

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

20.104 Seasonal hunting adjustments 61532
20.105 Seasonal hunting adjustments 61532
20.109 Seasonal hunting adjustments 61532
21 Authority citation revised 71237
21.60 (Subpart E) Added; eff. 12-20-99 through 5-15-01 71237

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.23 Regulation at 64 FR 29727 confirmed 53269
222 Temporary regulations 55858, 55850, 57397, 69417, 70196
222.102 Amended 60731
223 Temporary regulations 55858, 57397, 69417, 70196
223.206 (d)(2)(iii)(A) revised; interim 55863
223.207 (c) introductory text amended; interim 55438
223 Figure 6 added; interim 55864
226.205 (b) revised 57403
229.32 (b), (c)(3)(ii), (4)(ii), (5)(ii), (d)(2)(ii), (3)(ii), (4)(ii) and (5)(ii) suspended; eff. 12-30-99 through 11-1-00 73434

Chapter III—International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

300 Quotas 69672, 72035
Fishing restrictions 72961, 72962

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600 Fishing restrictions 54786
Comment period reopened 60731
600.10 Amended 67516
600.725 (v) revised 67516
622 Temporary regulations 57585
622.2 Amended 59125
622.4 (a)(2)(ix), (b) introductory text, (c), (d), (e)(1), (2), (h), (m)(5), (6), (n)(3)(iii), (4), (5), (o)(1), (p)(1), (2), (4), (5)(ii)(C), (6)(i), (ii)(A), (B), (C), (q)(2), (7) and (8) amended; (a)(2)(x) heading added; (a)(3)(vi) removed 59126
622.5 (d)(2) introductory text and (3) amended 59126
(a)(1)(ii)(A) added 68935
622.6 (a)(1)(ii) introductory text, (b)(1)(i)(B), (ii)(B) and (iii) amended 59126
622.7 (d) revised 68935
622.15 (a)(1), (2), (b), (c)(1) and (2) amended 59126
622.17 (b)(2), (c)(1) and (2) amended 59126
622.18 (d)(1), (2)(iv), (3)(i), (ii), (4)(i) through (v), (e) introductory text, (1)(i), (iii), (2), (f), (g)(1)(i), (ii), (2), (3)(i), (ii), (iii), (4)(i), (iii) and (5)(i) amended 59126
622.33 Revised 60133
622.34 (g)(1) amended 57404
(f), (h)(1) and (2) amended; (k) removed 59126
(l) suspended; (m) added; interim; eff. in part 1-19-00 through 6-19-00; (n) added; eff. in part 1-1-00 through 6-19-00 71060
622.37 Heading, introductory text and (d) revised 57404
(d)(1)(iv) suspended; (d)(1)(vi) added; interim; eff. 1-19-00 through 6-19-00 71060
622.39 (a)(1) amended; (b)(1)(ii), (v) and (2) revised; (b)(1)(vi) and (vii) added 57404
(b)(1)(iii) and (v) suspended; (b)(1)(viii) and (ix) added; interim; eff. 1-19-00 through 6-19-00 71060
622.41 (g)(3)(i), (h)(3)(i)(A), (B) and (ii) amended 59126
(i) added 68935
622.42 (b) revised 59126
622.43 (a)(2) and (b)(2) revised 59126
622.44 (d) removed; (e) and (f) redesignated as (d) and (e) 59126
622.45 (e) revised 59126
622.46 (b) and (c) amended 59126
622.48 Introductory text and (g) amended 59126
622.49 Introductory text, (c), (f), (g) and (h) revised 59126

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

TITLE 50 Chapter VI—Con.

622 Appendix A amended 57404
635 Fishing season notification 53949, 66114
Temporary regulations 54577
Quotas 56472
Inseason adjustments 70198
635.27 (a) introductory text, (4)(i) and (iii) revised 58796
635.69 Regulations at 64 FR 37705 eff. delayed to 6–1–00 55633
640.25 Added 59128
648 Quotas 57586, 60359, 61220, 66788, 71060, 71320, 71687
Notification 73435
648.1 (a) amended 54742
648.2 Amended 54743, 55825
648.4 (a)(9) amended 54743
(c)(2)(iii) revised 55825
(a)(5)(iii) revised 57593
Correctly designated 66587
648.5 (a) amended 54744
(a) and (d) revised 57593
(a) and (d) corrected 66586
648.6 (a) revised 54744
(a) and (c) revised 57593
648.7 (a)(1)(i) and (3)(i) amended; (b)(1)(i) revised 54744
(c) amended; (f)(3) revised 57593
648.9 (d) revised 54745
648.10 (b) introductory text amended; (b)(1), (c) introductory text, (2) and (5) revised 54745
(b) and (d) revised 55825
648.11 (a) amended; (e) introductory text revised 54745
648.12 Introductory text revised 54745
648.14 (a)(49) and (103) revised; (x)(8) and (y) added 54746
(a)(117), (118) and (c)(31) added; (b), (c)(1), (2) introductory text, (d)(1), (e) and (g)(2) revised 55826
(p)(10) added 57593
648.20 (c) revised 57593
648.21 (b)(2)(i) revised; (e) removed 57593
648.24 Added 57593
648.73 (a)(4) added 57594
648.77 Added 57594
648.80—648.96 (Subpart F) Heading revised 54746
648.80 Heading, (a)(4)(i)(A), (7)(iv)(B), (8)(i), (9)(i)(D) and (b)(3)(ii) revised 54746
(g)(4) added 55826
648.81 Heading revised 54747
648.82 Heading revised 54747
648.83 Heading revised 54747
(a)(1) revised 55827
648.84 (a) revised 54747
648.86 Heading revised 54747
(c) revised; (e) added 55827
648.88 Heading revised 54747
(a)(1), (b), (c) and (d) revised 55827
648.89 (b)(1) and (c) revised 55827
648.90 Heading and (c) revised 54747
(b) introductory text and (1) revised 55827
648.91 Added 54747
648.92 Added 54748
648.93 Added 54748
648.94 Added 54749
648.96 Added 54751
648.106 Revised 57595
648.108 Added 57595
Correctly designated 66587
648.127 Added 57595
(a) introductory text and (1) through (4) corrected 66587
648.147 Added 57595
(a) introductory text and (1) through (4) corrected 66587
649 Removed 68247
660 Fishing restrictions 54786
Inseason adjustments ..... , 56177
Quotas 63259
660.22 (z), (aa) and (bb) added; eff. 1–23–99 through 6–26–00 72291
660.302 Amended 69893
660.337 (a)(1) revised 69893
660.501—660.517 (Subpart I) Revised 69893
660 Tables 3 and 6 correctly revised 59129
679 Temporary regulations ..... 53630, 53950, 54225, 54578, 54791, 54792, 55438, 55865, 56271, 56272, 56473—56475, 57595, 63259, 68949, 72572
Notification 54791
Inseason adjustments 55634, 58796
Reallocations 56474, 68949
Workshop 70199
Quotas 71688
679.2 Amended 61970
679.4 (b)(2), (4)(ii), (5)(iv)(D), (v), (e), (f)(2)(vi), (4)(ii) and (h)(2) heading revised 61971

NOTE: Boldface page numbers indicate 1998 changes.

CHANGES OCTOBER 1, 1999 THROUGH DECEMBER 30, 1999

679.5 (c)(4), (5) and (6) removed; (h)(3) redesignated as (h)(4); (a)(1), (3)(iii), (4), (6), (7), (9)(i)(C), (ii)(B), (iii), (13), (14), (15), (c)(2), (3), (e)(1)(iii), (f)(1)(ii)(C), (g)(1) introductory text, (iv) heading, (3)(ii)(A), (h)(2), new (4), (i)(2), (k)(1), (l)(5)(vi), (m) and (n) revised; (a)(16), (d)(2)(iv), (e)(2)(v), (f)(1)(iii), (2)(v), (g)(1)(v) and new (h)(3) added 61972
(a)(1)(iii) corrected; (a)(6)(v)(A)(*2*)(*iii*) correctly designated 69673
679.6 (g) added 61981
679.20 (h)(1), (2) introductory text, (i) and (ii) amended 61970
(b)(1)(v) heading amended; (g)(3) table removed 61981
679.21 (b)(5) added; (e)(7)(vi)(A) revised 61981
(d)(3)(i) corrected; CFR correction 66587
679.22 (a)(7)(i), (ii), (8)(i), (ii), (b)(1)(i), (ii), (2)(i) and (ii) amended 61970
(b)(4) added; (a)(10) and (h) heading revised 61982
679.24 (d)(4) amended 61970
(b)(1)(i) and (ii) removed; (b)(1)(iii) introductory text, (A), (B) redesignated as (b)(1) introductory text, (i) and (ii); (e)(3)(iv) table amended 61982
679.28 (b)(5)(i) and (c)(3) amended 61982
679.31 (b)(3) introductory text revised 61982
679.32 (c) introductory text, (1), (3) introductory text, (4) introductory text, (iii), (d)(1) and (2)(v) heading revised 61982
679.42 (c)(2)(i), (ii) and (iii) removed 61982
679 Figures 1 through 5, 7 through 15 and tables 1, 2, 3, 5, 8, 9, 12, and 13 revised; figures 16 and 17 and tables 14 and 15 added 61982
Table 10 revised 68055
697 Revised 68248

Proposed Rules:

16 59149
17 ..... 53655, 55892, 56297, 57534, 57620, 58934, 59729, 62627, 62641, 63004, 66600, 67814, 69324, 71714, 72300, 72992, 72993
18 68973
25 62163
26 62163
29 62163
216 ..... 56298, 57010, 57026, 63783, 70678, 71722
226 ..... 67536, 69448
223 ..... 66601, 73479
224 ..... 62627, 66601
227 56297
622 ..... 57436, 57623, 59152, 59153, 60151, 60402, 66449, 70678, 71388
635 ..... 69982, 72636
648 ..... 55688, 59156, 67551, 73506
654 59152
660 ..... 54272, 55689, 56479, 60402, 62127, 66158, 70679
679 ..... 53305, 56481, 59730, 60157, 67555, 69219, 69457, 69464, 70209, 71390, 71396, 72300, 73003

NOTE: Boldface page numbers indicate 1998 changes.

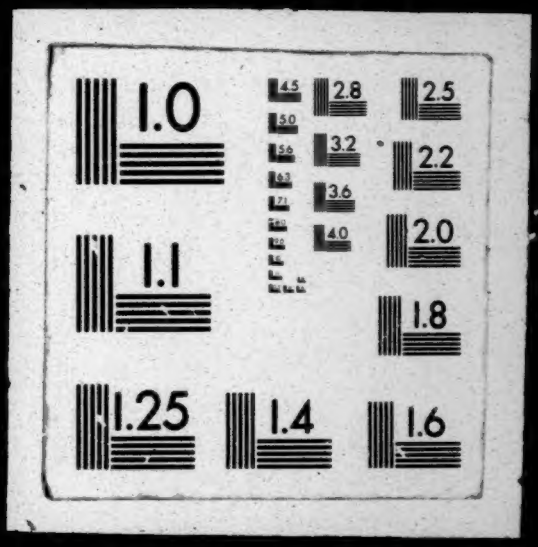
1999

64 FR Page

1–383	Jan. 4
385–729	5
731–983	6
985–1096	7
1097–1499	8
1501–1713	11
1715–2114	12
2115–2418	13
2419–2544	14
2545–2797	15
2799–2988	19
2989–3200	20
3201–3391	21
3393–3619	22
3621–3805	25
3807–4027	26
4029–4284	27
4285–4516	28
4517–4776	29
4777–4955	Feb. 1
4957–5148	2
5149–5584	3
5585–5707	4
5709–5925	5
5927–6185	8
6187–6493	9
6495–6777	10
6779–7055	11
7057–7488	12
7489–7770	16
7771–7987	17
7989–8224	18
8225–8498	19
8499–8709	22
8711–9051	23
9053–9262	24
9263–9434	25
9435–9903	26
9905–10099	Mar. 1
10101–10204	2
10205–10386	3
10387–10553	4
10555–10918	5
10919–11372	8
11373–11754	9
11375–12078	10
12079–12237	11
12239–12742	12
12743–12880	15
12881–13062	16
13063–13310	17
13311–13495	18
13497–13661	19
13663–13880	22
13881–14096	23
14097–14354	24
14355–14574	25
14575–14808	26
14809–15121	29
15123–15284	30
15285–15631	31
15633–15914	Apr. 1
15915–16332	2
16333–16599	5
16601–16795	6
16797–17078	7
17079–17270	8
17271–17500	9
17501–17940	12
17941–18322	13
18323–18549	14
18551–18795	15
18797–19016	16
19017–19250	19
19251–19437	20
19439–19684	21
19685–19861	22
19863–20139	23
20141–20538	26
22543–22777	27
22779–23006	28
23007–23163	29
23165–23530	30
23531–23747	May 3
23749–24019	4
24021–24281	5
24283–24499	6
24501–24929	7
24931–25188	10
25189–25417	11
25419–25795	12
25797–26270	13
26271–26651	14
26653–26829	17
26831–27167	18
27169–27443	19
27445–27655	20
27657–27898	21
27899–28087	24
28089–28331	25
28333–28712	26
28713–28881	27
28883–29205	28
29207–29535	June 1
29537–29775	2
29777–29944	3
29945–30211	4
30213–30378	7
30379–30860	8
30861–31104	9
31105–31483	10
31485–31686	11
31687–31962	14
31963–32177	15
32179–32385	16
32387–32793	17
32795–33003	18

33005–33173	21
33175–33366	22
33367–33738	23
33739–34107	24
34109–34509	25
34511–34704	28
34705–34966	29
34967–35558	30
35559–35919	July 1
35921–36235	2
36237–36557	6
36559–36761	7
36763–37031	8
37033–37392	9
37393–37661	12
37663–37831	13
37833–38101	14
38103–38286	15
38287–38534	16
38535–38813	19
38815–38997	20
38999–39392	21
39393–39896	22
39897–40280	23
40281–40503	26
40505–40734	27
40735–41002	28
41003–41263	29
41265–41763	30
41765–41997	Aug. 2
41999–42263	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43597	10
43599–43896	11
43897–44100	12
44101–44395	13
44397–44642	16
44643–44816	17
44817–45147	18
45149–45405	19
45407–45858	20
45859–46110	23
46111–46255	24
46257–46558	25
46559–46812	26
46813–47089	27
47091–47336	30
47337–47647	31
47649–48073	Sept. 1
48075–48241	2
48243–48525	3
48527–48700	7
48701–48931	8
48933–49077	9
49079–49348	10
49349–49637	13
49639–49958	14
49959–50244	15
50245–50415	16
50417–50730	17
50731–51037	20
51039–51186	21
51187–51418	22
51419–51699	23
51671–51884	24
51885–52210	27
52211–52421	28
52423–52625	29
52627–53178	30
53179–53579	Oct. 1
53581–53881	4
53883–54198	5
54199–54497	6
54499–54758	7
54759–55113	8
55115–55403	12
55405–55614	13
55615–55808	14
55809–56129	15
56131–56250	18
56251–56397	19
56399–56667	20
56669–56964	21
56945–57359	22
57361–57547	25
57549–57768	26
57769–57965	27
57967–58322	28
58323–58753	29
58755–59105	Nov. 1
59107–59602	2
59603–60082	3
60083–60332	4
60333–60646	5
60647–61013	8
61015–61198	9
61199–61471	10
61473–61667	12
61769–62087	15
62089–62559	16
62561–62969	17
62971–63170	18
63171–63560	19
63561–63846	22
65653–66094	23
66095–66353	24
66355–66540	25
66541–66708	29
66709–67145	30
67147–67467	Dec. 1
67469–67692	2
67693–67996	3
67997–68273	6
68275–68614	7
68615–68929	8
68931–69164	9
69165–69370	10

69371–69628	13
69629–69881	14
69883–70171	15
70173–70562	16
70563–70983	17
70985–71266	20
71267–71632	21
71633–71982	22
71983–72247	23
72249–72456	27
72457–72886	28
72887–73379	29
73881–73879	30


1.0
1.1
1.25
1.4
1.6
2.8
3.2
3.6
4.0
4.5
5.0
5.6
6.3
7.1
2.5
2.2
2.0
1.8

END